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THIS INDEX is based on a consolidation of contents entries appearing in the January-December issues of the **Federal Register** together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **Federal Register** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Department of the Interior, National Park Service, Office of Policy	Listing of Director's orders, handbooks, reference manuals, and other documents that guide employees in managing parks/programs administered by the NPS.	Chief, Office of Policy, MS 2414, Main Interior Building, Washington, DC 20240. Telephone 202-208-7456. No charge	Chief, Office of Policy, MS 2414, Main Interior Building, Washington, DC 20240. Telephone 202-208-7456. http://www.nps.gov/refdesk/Refdesk.htm
Department of the Interior, Office of Hearings and Appeals	Index-Digest. Index of synopses for all decisions decided by Office of Hearings and Appeals Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, Office of Hearings & Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791 Price: $495.00 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to "Department of the Interior." Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to "Department of the Interior." Price on Quinquennial issue is set by Government Printing Office and available from that agency.	Editorial Branch, Office of Hearings and Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791
	Indian Citator. Index of authorities cited in decisions of the Interior Board of Indian Appeals (IBIA). Initial publication covers volumes 1-15 of IBIA decisions. Updated annually.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3799 Price: $40.00 for Citator. Checks made payable to: Department of the Interior.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone (703) 235-3799
	Administrative Manual. Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Administrative Division, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to Department of the Interior.	Administrative Division, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone (703) 235-3793
Department of the Interior, Office of Inspector General	Inspector General Manual Index, December 17, 1992. Numeric and subject listing of internal policies and procedures by volume, chapter, section, and subsection	In accordance with fee schedule in 43 CFR Part 2, Appendix A - Fees Office of Inspector General	Betty Foyes, Information Officer, Department of the Interior, Office of Inspector General, 18th and C Streets, NW., Washington, DC 20240 Telephone 202–208–4356

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Interior, Office of Surface Mining	Functional Index (OSMRE Directives Listed by Functions) dated December 21, 1993	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 No charge	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone (202) 343-5447
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Phone (202) 523-9277
Legal Services Corporation	LSC Index lists decisions, opinions, statements of policy, manuals, and other records of general interest to members of the public in understanding the activities of the Corporation. The index contains records from 1975 to date.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250. No charge.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250.
Department of Transportation, Federal Highway Administration (FHWA)	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1968-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Treasury, Departmental Offices	Index of Selected Records, July 1967 to December 31, 1994. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, Federal Law Enforcement Training Center, Office of Thrift Supervision.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.7. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220 Telephone 202-622-0990
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW.; Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone 202-245-1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1990 incorporates all additions and deletions through November 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. April 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. April 21, 1975 to date	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202 254-6314

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Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Index of Commission administrative manuals and instructions to staff that affect a member of the public. April 21, 1975 to date. (Commission instructions no longer in use are not included in this index)		
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 14≥x36≥ $4.00 per map; 10≥x28≥ $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secreatry, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since April 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Policy and Program Analysis Division (NAA), National Archives, College Park, MD 20740-6001 One copy only (free).	Policy and Program Analysis Division (NAA), Room 3200, National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001. 301-713-6730
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550

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	Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of January 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletins; (3) NSF Manuals/Circulars; (4) NSF Handbooks; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	NSF Guide to Programs, A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	
	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $13.00	NSF Division of Grants and Contracts. Room 1150, 1800 G St., NW., Washington, DC 20550
Office of Personnel Management	Handbook of Publications, Periodicals, and Operating Manuals, OPM-OCAS-PSD-01. As of September 1996. A listing of publications, periodicals, and operating manuals arranged in alphabetical order by title within each OPM issuing organization. This handbook contains some information formerly published in the Index to Information (no longer published).	Publishing Management Branch, Office of Personnel Management, Room 5H35, 1900 E St. NW, Washington, DC 20415-0001.	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since October 27, 1972, to date. The index is updated semi-annually (March and September).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Office of the General Counsel	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005; Charge $0.15 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, 202–326–4040 (202–326–4179 for TTY and TDD), Suite 240, 1200 K St., NW., Washington, DC 20005
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	

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Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp.	
Department of Veterans Affairs	Board of Veterans' Appeals Index I–01–1, an index to appellate decisions. Decisions of the BVA that were written prior to 1977 are available only in a "digest" form that consists of summaries of decisions, organized by subject. Final decisions are published in redacted form from 1977 through 1993. The text of these decisions are on microfiche and may be retrieved by subject matter through the use of BVA Decisions Index I-01-1 for the following years: 1977 through 1993.	The microfiche index may be purchased for approximately $22.50 per copy from: Promisel & Korn, Inc., 7201 Wisconsin Ave., Suite 620, Bethesda, MD 20814. Make check payable to: Promisel & Korn, Inc.	The index is available for inspection at Department of Veterans Affairs regional offices.
	Board of Veterans' Appeals Decisions CD-ROM are available in CD-ROM format. Decisions from 1992 through 1995 may be searched by subject or by any word that appears in them. Included in this format are BVA Indexes for 1993 and 1994 decisions; and a subject index, identified as "VOCABULARY" that pertains to the following years: 1993, 1994 and 1995.	The Board of Veterans' Appeals Decisions CD-ROM may be purchased for $19.00 from: Superintendent of Documents, P.O. Box 371954, Pittsburg, PA 15250-7954. Make check payable to: Superintendent of Documents.	The CD-ROM is available for copying and inspection at Department of Veterans' Affairs regional offices or at the Board of Veterans' Appeals Research Center, 811 Vermont Avenue, N.W., Washington, DC 20420.
Department of Veterans Affairs	Department of Veterans Affairs Publication I–03–1. All information is current as of April 1991. Classification, subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the VA Service and Distribution Center, Forms and Publications Services (901P), P.O. Box 7010, Hines, IL 60141.	VA Central Office, IRM Policies and Standards Service (045A3), Room 583, 810 Vermont Ave., NW., Washington, DC 20420. Phone: (202) 273-8129 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Department of Veterans Affairs, or ask your Directory Assistance Operator for the number in your area.

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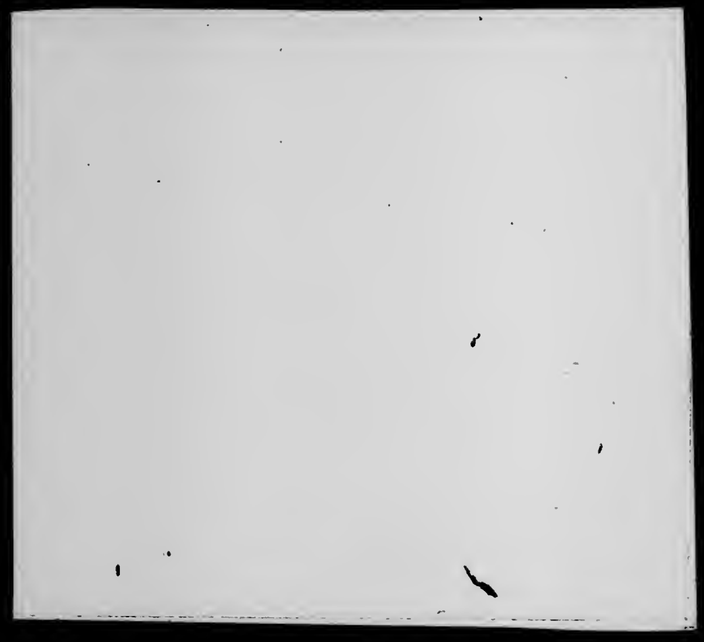
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1477

RIN: 0560–AF75

1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** on Thursday, April 15, 1999, regarding the terms and conditions of the 1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program. This document corrects the number of the section entitled "Matters of general applicability" in 7 CFR part 1477, which was incorrectly numbered as § 1477.10.

DATES: This correction is effective on July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Sharp, Director, Compliance and Production Adjustment Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Ave. SW, Washington, DC 20013–2415.

SUPPLEMENTARY INFORMATION:

Correction of Publication

Accordingly, in the final rule (FR Doc. 99–9350) published April 15, 1999, (64 FR 18553) make the following correction:

On page 18559, in the first column, the section number "§ 1477.10" for the section entitled "Matters of general applicability" is corrected to read "§ 1477.110".

Signed at Washington, DC, on 25 June 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–16776 Filed 6–30–99; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–38–AD; Amendment 39–11217; AD 99–12–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland (Eurocopter) Model EC135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–12–01, which was sent previously to all known U.S. owners and operators of Eurocopter Model EC135 helicopters by individual letters. This AD requires initial and repetitive visual inspections and one dye-penetrant inspection of the main rotor hub shaft (shaft) for cracks. If a crack is found during any of the inspections, this AD requires replacing the shaft with an airworthy shaft before further flight. This amendment is prompted by the discovery of fatigue cracks on the shaft of a helicopter. The actions specified by this AD are intended to detect fatigue cracks in the shaft that could lead to shaft failure and subsequent loss of control of the helicopter.

DATES: Effective July 16, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–12–01, issued on May 27, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–38–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On May 27, 1999, the FAA issued Priority Letter AD 99–12–01, applicable to Eurocopter Model EC135 helicopters, which requires initial and repetitive visual inspections and one dye-penetrant inspection of the shaft for cracks. If a crack is found during any of the inspections, the AD requires replacing the shaft with an airworthy shaft before further flight. That action was prompted by the discovery of fatigue cracks on the shaft of a helicopter. This condition, if not corrected, could result in failure of the shaft and subsequent loss of control of the helicopter.

Eurocopter has issued Eurocopter EC135 Alert Service Bulletin (ASB) EC 135–62A–004, dated May 5, 1999, which specifies inspecting the shaft for cracks. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, classified this service bulletin as mandatory and issued AD 1999–185, dated May 6, 1999, to assure the continued airworthiness of these helicopters in the Federal Republic of Germany. Eurocopter later issued ASB EC135–62A–004, Rev. 1, dated May 7, 1999.

Since the unsafe condition described is likely to exist or develop on other Eurocopter Model EC135 helicopters of the same type design, the FAA issued Priority Letter AD 99–12–01 to detect fatigue cracks in the shaft that could lead to shaft failure and subsequent loss of control of the helicopter. The AD requires initial and repetitive visual inspections and one dye-penetrant inspection of the shaft for cracks. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inspecting the shaft for cracks is required before further flight and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable

and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 27, 1999, to all known U.S. owners and operators of Eurocopter Model EC135 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 10 helicopters will be affected by this AD; that it will take approximately 0.5 work hour per helicopter to perform the visual inspections, 1 work hour per helicopter to perform the dye-penetrant inspection, 10 work hours to replace the shaft, if necessary; and that the average labor rate is $60 per work hour. Required parts will cost approximately $25,000 per shaft. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $55,900 per year, assuming the initial inspection, one dye-penetrant inspection, and 100 visual inspections per year on each helicopter, and one shaft replacement in the fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–38–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–12–01 Eurocopter Deutschland GmbH: Amendment 39–11217. Docket No. 99–SW–38–AD.

Applicability: Model EC135 helicopter with main rotor hub shaft (shaft), part number (P/N) L623M100S 101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

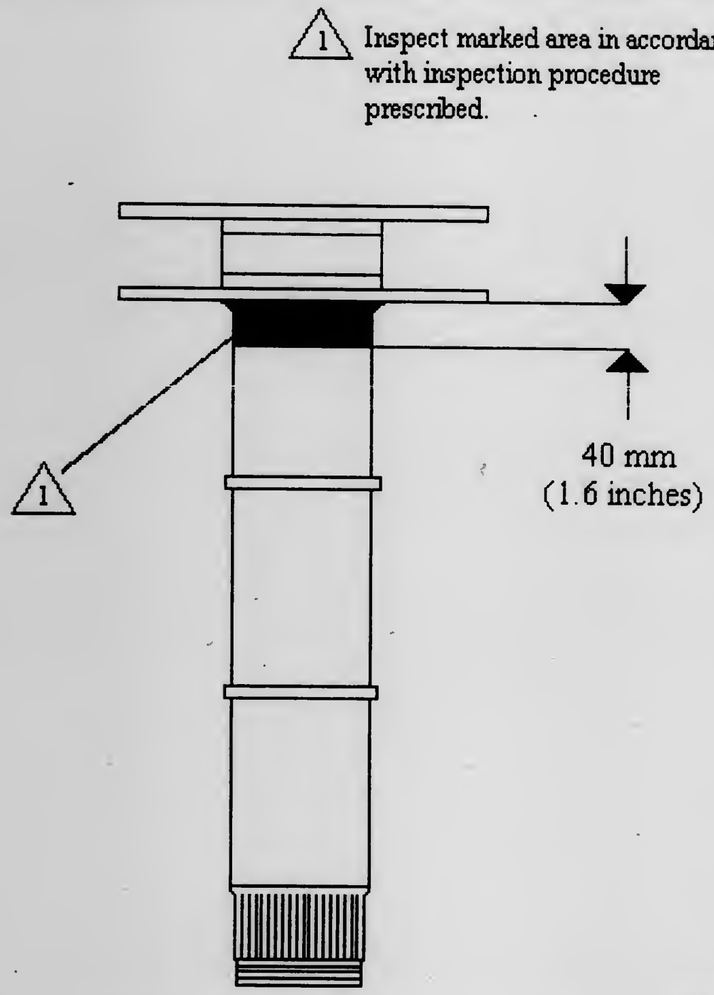
To detect a fatigue crack in the shaft that could lead to shaft failure and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter, at intervals not to exceed 15 hours time-in-service (TIS), visually inspect the shaft, P/N L623M100S 101, for any crack in the area marked in Figure 1. Clean the shaft before using a bright light source to inspect for cracks. If any crack is found, replace the shaft with an airworthy shaft before further flight.

(b) Within 10 hours TIS, conduct a one-time dye-penetrant inspection of the shaft using the MIL–STD–6866 or ASTM–E–1417 procedure in the area shown in Figure 1. If any crack is found, replace the shaft with an airworthy shaft before further flight.

Note 2: Eurocopter EC 135 Alert Service Bulletin EC 135–62A–004, Rev. 1, dated May 7, 1999, pertains to the subject of this AD.

BILLING CODE 4910–13–P



Crack Inspection on Main Rotor Hub Shaft

Figure 1

BILLING CODE 4910–13–C

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(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on July 16, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–12–01, issued May 27, 1999, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 1999–185, dated May 6, 1999.

Issued in Fort Worth, Texas, on June 23, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–16591 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29616; Amdt. No. 1937]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subcription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspend, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by references are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types of and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on June 25, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

Part 97—Standard Instrument Approach Procedures

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective July 15, 1999

Kapolei, HI, Kalaeloa (John Rodgers Field) NDB RWY 4R, Orig
Kapolei, HI, Kalaeloa (John Rodgers Field) VOR/DME OR TACAN RWY 4R, Orig
Des Moines, IA, Des Moines Intl, VOR OR GPS RWY 23, Amdt 2
Des Moines, IA, Des Moines Intl, NDB OR GPS RWY 31R, Amdt 19
Des Moines, IA, Des Moines Intl, LOC RWY 5, Amdt 1
Des Moines, IA, Des Moines Intl, ILS RWY 13L, Amdt 8
Des Moines, IA, Des Moines Intl, ILS RWY 31R, Amdt 21
Laconia, NH, Laconia Muni, ILS RWY 8, Orig
Laconia, NH, Laconia Muni, LOC RWY 8, Amdt 9, CANCELLED
Lexington, NC, Davidson County, GPS RWY 6, Orig
Lexington, NC, Davidson County, GPS RWY 24, Orig
Marion, OH, Marion Muni, LOC/DME RWY 24, Orig
Greer, SC, Greenville-Spartanburg Intl, NDB RWY 4, Amdt 15
Greer, SC, Greenville-Spartanburg Intl, ILS RWY 4, Amdt 21
Greer, SC, Greenville-Spartanburg Intl, ILS RWY 22, Amdt 3
Greer, SC, Greenville-Spartanburg Intl, RADAR-1, Amdt 5
Greer, SC, Greenville-Spartanburg Intl, GPS RWY 4, Amdt 1
Greer, SC, Greenville-Spartanburg Intl, GPS RWY 22, Amdt 2

. . . Effective August 12, 1999

Cresco, IA, Ellen Church Field, NDB RWY 33, Amdt 3
Cresco, IA, Ellen Church Field, GPS RWY 15, Orig
Cresco, IA, Ellen Church Field, GPS RWY 33, Orig
Newton, KS, Newton-City-County, NDB RWY 35, Amdt 3
Tahlequah, OK, Tahlequah Muni, GPS RWY 17, Orig

. . . Effective September 9, 1999

Fort Huachuca/Sierra Vista, AZ, Sierra Vista Muni/Libby AAF, RADAR–2, Orig, CANCELLED
Taylor, AZ, Taylor Municipal, GPS RWY 21, Orig
Modesto, CA, Modesto City-County-Harry Sham Field, NDB RWY 28R, Amdt 9
Redding, CA, Redding Muni, GPS RWY 34, Orig
Agana, Guam, Guam Intl, ILS RWY 6L, Amdt 2
Kahului, HI, Kahului, VOR RWY 20, Orig
Kahului, HI, Kahului, VOR/DME OR TACAN RWY 20, Orig
Kahului, HI, Kahului, LOC/DME (BC) RWY 20, Amdt 13
Kahului, HI, Kahului, NDB RWY 20, Amdt 11
Kahului, HI, Kahului, NDB/DME OR GPS RWY 2, Amdt 2
Kahului, HI, Kahului, ILS RWY 2, Amdt 23
Champaign/Urbana, IL, University of Illinois-Willard, VOR OR GPS RWY 4L, Amdt 11
Lacon, IL, Marshall County, VOR RWY 13, Amdt 2
Lacon, IL, Marshall County, GPS RWY 13, Orig
Lacon, IL, Marshall County, GPS RWY 31, Orig
Mount Vernon, IL, Mount Vernon, VOR RWY 5, Amdt 16
Mount Vernon, IL, Mount Vernon, VOR RWY 23, Amdt 16
Mount Vernon, IL, Mount Vernon, ILS RWY 23, Amdt 11
Mount Vernon, IL, Mount Vernon, GPS RWY 5, Orig
Mount Vernon, IL, Mount Vermon, GPS RWY 23, Orig
Huntingburg, IN, Huntingburg, VOR RWY 9, Amdt 3
Huntingburg, IN, Huntingburg, VOR RWY 27, Amdt 3
Huntingburg, IN, Huntingburg, NDB RWY 27, Amdt 3
Huntingburg, IN, Huntingburg, GPS RWY 9, Orig
Huntingburg, IN, Huntingburg, GPS RWY 27, Orig
Sullivan, IN, Sullivan County, GPS RWY 18, Orig
Sullivan, IN, Sullivan County, GPS RWY 36, Amdt 1
Ottawa, KS, Ottawa Muni, NDB OR GPS RWY 35, Amdt 2, CANCELLED
Ottawa, KS, Ottawa Muni, GPS RWY 17, Orig
Ottawa, KS, Ottawa Muni, GPS RWY 35, Orig
Lawrence, MA, Lawrence Muni, VOR OR GPS RWY 23, Amdt 10
Lawrence, MA, Lawrence Muni, NDB OR GPS RWY 5, Amdt 5
Lawrence, MA, Lawrence Muni, ILS RWY 5, Amdt 3
Monticello, MO, Lewis County Regional, VOR/DME–A, Amdt 1
Monticello, MO, Lewis County Regional, GPS RWY 18, Orig
Monticello, MO, Lewis County Regional, GPS RWY 36, Orig
Concord, NH, Concord Muni, GPS RWY 17, Orig
Charlotte, NC, Charlotte/Douglas Intl, VOR/DME OR GPS RWY 18L, Amdt 6
Charlotte, NC, Charlotte/Douglas Intl, VOR/DME RWY 23, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, VOR RWY 36L, Amdt 5
Charlotte, NC, Charlotte/Douglas Intl, NDB RWY 5, Amdt 32
Charlotte, NC, Charlotte/Douglas Intl, NDB RWY 23, Amdt 7
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 5, Amdt 36
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 18L, Amdt 5
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 18R, Amdt 8
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 36L, Amdt 14
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 36R, Amdt 9
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 5, Orig
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 23, Orig
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 36L, Orig
Charlotte, NC, Charlotte/Douglas Intl, GPS RWY 36R, Orig
Jefferson, NC, Ashe County, LOC RWY 28, Amdt 1
Jefferson, NC, Ashe County, NDB RWY 28, Amdt 1
Jefferson, NC, Ashe County, GPS RWY 28, Amdt 1

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Devils Lake, ND, Devils Lake Muni, NDB RWY 31, Amdt 1
Devils Lake, ND, Devils Lake Muni, ILS RWY 31, Amdt 1
Devils Lake, ND, Devils Lake Muni, GPS RSY 13, Orig
Devils Lake, ND, Devils Lake Muni, GPS RWY 31, Orig
Norman, OK, University of Oklahoma Westheimer, GPS RWY 3, Orig
Norman, OK, University of Oklahoma Westheimer, GPS RWY 17, Amdt 1
Philadelphia, PA, Philadelphia Intl, ILS RWY 27R, Amdt 9
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt 9
Westerly, RI, Westerly State, NDB RWY 7, Amdt 3, CANCELLED
Sioux Falls, SD, Joe Foss Field, RADAR–1, Amdt 10
Jackson, TN, McKeller-Sipes Regional, GPS RWY 2, Orig
Jackson, TN, McKeller-Sipes Regional, GPS RWY 20, Orig
Brady, TX, Curtis Field, NDB RWY 17, Amdt 3
Brady, TX, Curtis Field, GPS RWY 17, Orig
Del Rio, TX, Del Rio Intl, VOR OR GPS–A, Amdt 11
Del Rio, TX, Del Rio Intl, VOR/DME OR GPS–B, Amdt 4
Del Rio, TX, Del Rio Intl, LOC RWY 13, Amdt 4
Del Rio, TX, Del Rio Intl, NDB RWY 13, Amdt 3
Del Rio, TX, Del Rio Intl, GPS RWY 13, Amdt 1
Blackstone, VA, Allen C. Perkinson/ BAAF, NDB OR GPS–A, Amdt 11
Blackstone, VA, Allen C. Perkinson/ BAAF, GPS RWY 4, Orig
Blackstone, VA, Allen C. Perkinson/ BAAF, GPS RWY 22, Orig
Orange, VA, Orange County, NDB RWY 7, Amdt 1
Lewisburg, WV, Greenbrier Valley, NDB RWY 4, Amdt 6
Lewisburg, WV, Greenbrier Valley, ILS RWY 4, Amdt 9
Lewisburg, WV, Greenbrier Valley, GPS RWY 4, Amdt 1
Lewisburg, WV, Greenbrier Valley, GPS RWY 22, Amdt 1

[FR Doc. 99–16753 Filed 6–30–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29617; Amdt. No. 1938]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depicition of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS), In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on June 25, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
05/22/99	VA	Warrenton	Warrenton-Fauquier	9/4326	VOR or GPS Rwy 14 Amdt 3
06/09/99	OH	Columbus	Ohio State University	9/3978	VOR/DME RNAW Rwy 27L, Amdt 6A
06/11/99	AK	Barrow	Wiley Post-Will Rogers Mem	9/4012	ILS/DME Rwy 6, Amdt 2A
06/11/99	AL	Muscle Shoals	Northwest Alabama Regional	9/4014	VOR or GPS Rwy 29 Amdt 26B
06/11/99	AL	Muscle Shoals	Northwest Alabama Regional	9/4015	ILS Rwy 29 Amdt 3B
06/11/99	AL	Muscle Shoals	Northwest Alabama Regional	9/4021	VOR/DME or GPS Rwy 11, Amdt 5B
06/11/99	NV	Reno	Reno/Tahoe Intl	9/4016	LOC–2 Rwy 16R Amdt 6
06/11/99	NV	Reno	Reno/Tahoe Intl	9/4017	ILS Rwy 16R Amdt 10
06/14/99	AL	Tuscaloosa	Tuscaloosa Muni	9/4099	GPS Rwy 4, Orig
06/14/99	AL	Tuscaloosa	Tuscaloosa Muni	9/4100	VOR or TACAN Rwy 22, Amdt 14
06/14/99	AL	Tuscaloosa	Tuscaloosa Muni	9/4101	GPS Rwy 22, Orig
06/14/99	AL	Tuscaloosa	Tuscaloosa Muni	9/4105	ILS Rwy 4, Amdt 14A
06/14/99	CA	Colusa	Colusa County	9/4079	VOR or GPS–A Amdt 4A
06/14/99	IA	Burlington	Burlington Regional	9/4069	ILS Rwy 36, Amdt 9C
06/14/99	IA	Forest City	Forest City Muni	9/4113	VOR/DME or GPS–A, Amdt 2B
06/14/99	MO	St. Louis	Lambert-St. Louis Intl	9/4073	ILS Rwy 24, Amdt 45A
06/14/99	MT	Butte	Bert Mooney	9/4088	LOC/DME Rwy 15, Amdt 6B
06/15/99	DE	Georgetown	Sussex County	9/4142	GPS Rwy 4 Orig
06/15/99	DE	Georgetown	Sussex County	9/4143	VOR/DME RNAV or GPS Rwy 22 Amdt 3
06/15/99	DE	Georgetown	Sussex County	9/4144	VOR Rwy 4 Amdt 4
06/15/99	DE	Georgetown	Sussex County	9/4145	VOR Rwy 22 Amdt 5
06/15/99	PA	Lancaster	Lancaster	9/4122	VOR Rwy 8 Amdt 19
06/15/99	PA	Lancaster	Lancaster	9/4123	VOR Rwy 31 Amdt 15
06/15/99	PA	Lancaster	Lancaster	9/4124	VOR/DME or GPS Rwy 31 Amdt 3
06/15/99	PA	Lancaster	Lancaster	9/4125	ILS Rwy 8 Amdt 14
06/16/99	IN	Indianapolis	Indianapolis Intl	9/4165	ILS Rwy 5R, Amdt 2A (Cat II, Cat III)
06/16/99	KS	Pittsburg	Atkinson Muni	9/4157	NDB or GPS Rwy 16, Amdt 3
06/16/99	SD	Spearfish	Black Hills-Clyde Ice Field	9/4171	GPS Rwy 12, Orig-B
06/16/99	SD	Spearfish	Black Hills-Clyde Ice Field	9/4172	NDB or GPS–A, Orig-B
06/17/99	GA	Marietta	Temporary—Cobb County-McCollum Field.	9/4188	VOR/DME or GPS Rwy 9, Orig-B
06/17/99	GA	Marietta	Cobb County-McCollum Field	9/4190	ILS Rwy 27, Orig-B
06/17/99	GA	Marietta	Cobb County-McCollum Field	9/4191	GPS Rwy 27, Orig

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FDC date	State	City	Airport	FDC No.	SIAP
06/17/99	IN	Columbus	Columbus Muni	9/4209	ILS Rwy 23, Amdt 7
06/18/99	AR	Blytheville	Arkansas International	9/4240	ILS/DME Rwy 18, Orig-A
06/18/99	AR	Harrison	Boone County	9/4241	ILS/DME Rwy 36, Orig
06/18/99	CA	Santa Ana	John Wayne Airport-Orange County	9/4234	LDA Rwy 19R Amdt 1B
06/18/99	CT	Meriden	Meriden Markham Muni	9/4220	NDB Rwy 36 Amdt 8
06/22/99	VA	Culpeper	Culpeper County	9/4322	VOR or GPS–A Amdt 4
06/22/99	VA	Culpeper	Culpeper County	9/4323	NDB Rwy 22 Amdt 1
06/22/99	VA	Culpeper	Culpeper County	9/4324	NDB or GPS–B Orig
06/22/99	VA	Culpeper	Culpeper County	9/4325	VOR/DME RNAV or GPS Rwy 22 Amdt 1
06/22/99	VA	Norfolk	Norfolk Intl	9/4301	GPS Rwy 14 Orig
06/23/99	AZ	St. Johns	St. Johns Industrial Airpark	9/4338	VOR/DME or GPS–A Amdt 1 This Replaces FDC 9/3931.

[FR Doc. 99–16754 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–13–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 430

Protected Area Permits for New Withdrawals; Amendments to the Delaware River Basin Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its June 23, 1999 business meeting, the Delaware River Basin Commission amended its Ground Water Protected Area Regulations for Southeastern Pennsylvania by the establishment of numerical withdrawal limits for 62 subbasins which are entirely or partially within the Protected Area.

EFFECTIVE DATE: June 23, 1999.

ADDRESSES: Copies of the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: On March 9, 1999 the Commission held public hearings on proposed amendments to its Ground Water Protected Area Regulations for Southeastern Pennsylvania as noticed in the **Federal Register**, Vol. 64, No. 7, page 1763, January 12, 1999 and Vol. 64, No. 41, page 10280, March 3, 1999. The Commission has considered the extensive testimony and comments from interested parties and has prepared a "Response Document on Proposed Amendments to the Ground Water Protected Area Regulations for Southeastern Pennsylvania: May 1999" which is available upon request to Ms. Weisman at the number provided above.

List of Subjects in 18 CFR Part 430

Water supply.

18 CFR part 430 is amended as follows:

PART 430—GROUND WATER PROTECTION AREA: PENNSYLVANIA

1. The authority citation for part 430 continues to read as follows:

Authority: Pub. L. 87–328 (75 Stat. 688).

2. Section 430.13 is amended by revising paragraph (i)(3) to read as follows:

§ 430.13 Protected area permits for new withdrawals.

* * * * * * *

(i) * * *

(3)(i) The potentially stressed levels and withdrawal limits for all delineated basins and subbasins are set forth below:

Subbasin	Potentially Stressed (mgy) [1]	Withdrawal Limit (mgy)
Neshaminy Creek Basin		
West Branch Neshaminy Creek Basin	1054	1405
Pine Run Basin	596	795
North Branch Neshaminy Creek	853	1131
Doylestown Subbasin Neshaminy Creek	710	946
Warwick Subbasin Neshaminy Creek	889	1185
Warrington Subbasin Little Neshaminy Creek	505	673
Park Creek Basin	582	776
Warminster Subbasin Little Neshaminy Creek	1016	1355
Mill Creek Basin	1174	1565
Northampton Subbasin Neshaminy Creek	596	794
Newtown Creek	298	397
Core Creek Basin	494	658
Ironworks Creek Basin	326	434
Lower Section Subbasin Neshaminy Creek	3026	4034
Schuylkill River Basin		
Hay Creek	974	1299
Lower Reach Manatawny-Ironstone Creek	1811	2414
Pigeon Creek	611	815

Subbasin	Potentially Stressed (mgy) [1]	Withdrawal Limit (mgy)
Schuylkill-Crow Creek	1157	1543
Schuylkill-Mingo Creek	671	895
Schuylkill-Plymouth-Mill Creeks	4446	5929
Schuylkill-Sixpenny Creek	1490	1987
Schuylkill-Sprogels Run	1091	1455
Schuylkill-Stony Creek	687	916
Schuylkill-Trout Creek	1082	1443
Stony Creek	1242	1655
Valley Creek	1865	2486
French and Pickering Creek Subbasins		
Lower Reach French Creek	634	845
Lower Reach Pickering Creek	1716	2288
Middle Reach French Creek	1608	2145
South Branch French Creek	1044	1393
Upper Reach French Creek	1295	1726
Upper Reach Pickering Creek	1358	1811
Perkiomen and Skippack Creek Subbasins		
East Branch Perkiomen-Indian Creeks	633	844
East Branch Perkiomen-Mill Creeks	720	961
East Branch Perkiomen-Morris Run	1214	1619
Hosensack-Indian Creeks	1257	1676
Lower Reach Skippack Creek	1069	1426
Perkiomen-Deep Creeks	1047	1396
Perkiomen-Lodal Creeks	1200	1600
Perkiomen-Macoby Creek	1252	1669
Swamp-Middle Creeks	1423	1898
Swamp-Minister Creeks	547	730
Swamp-Scioto Creeks	746	994
Towamencin Creek	466	622
Unami-Licking Creeks	992	1322
Unami-Ridge Valley Creeks	1068	1424
Upper Reach Perkiomen Creek	1223	1631
Upper Reach Skippack Creek	813	1084
West Branch Perkiomen Creek	1566	2088
Delaware River Basin		
Jericho Creek	421	562
Mill Creek	1600	2134
Paunnacussing Creek	513	684
Pidcock Creek	563	751
Upper Reach Cobbs Creek	871	1161
Upper Reach Crum Creek	1290	1721
Upper Reach Darby Creek	1625	2167
Upper Reach East Branch Chester Creek	1865	2487
Upper Reach Frankford Creek	1414	1886
Upper Reach Poquessing Creek	1008	1344
Upper Reach Ridley Creek	1707	2275
Tohickon Subbasin		
Tohickon-Beaver-Morgan Creeks	1156	1541
Tohickon-Deep Run	956	1274
Tohickon-Geddes-Cabin Runs	602	803
Tohickon-Lake Nockamixon	556	741
Tohickon-Three Mile Run	726	968
Pennypack and Wissahickon Subbasins		
Lower Reach Wissahickon Creek	2750	3666
Upper Reach Wissahickon Creek	1302	1736
Middle Reach Pennypack Creek	1295	1727
Upper Reach Pennypack Creek	1358	1811
Brandywine Creek Subbasin		
East Branch Brandywine-Taylor Run	1054	1405
Middle Reach Brandywine Creek	823	1098
Upper Reach Brandywine Creek	1614	2153
West Branch Brandywine-Beaver Run	2110	2813

Subbasin	Potentially Stressed (mgy) [1]	Withdrawal Limit (mgy)
West Branch Brandywine-Broad Run	2380	3173
West Valley Creek	1673	2231
Lehigh Subbasin		
Upper Reach Saucon Creek	946	1262

[1] mgy means million gallons per year.

(ii) Subject to public notice and hearing, this section may be updated or revised based upon new and evolving information on hydrology and streamflow and ground water monitoring or in accordance with paragraph (i)(2) of this section.

* * * * *

Dated: June 24, 1999.

Susan M. Weisman,

Secretary.

[FR Doc. 99–16786 Filed 6–30–99; 8:45 am]

BILLING CODE 6560–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA–99–5873]

RIN 2127–AH39

Operation of Motor Vehicles by Intoxicated Persons

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document announces that the regulations that were published in an interim final rule to implement a new program established by the Transportation Equity Act for the 21st Century (TEA 21) will remain in effect. Under the final rule, States can qualify for incentive grant funds if they enact and enforce a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. This final rule also modifies the interim requirements with respect to procedural issues, including the date by which certifications are due.

DATES: This final rule becomes effective on July 1, 1999.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Byron Dover, Office of Highway Safety Infrastructure, HMHS–1, telephone (202) 366–2161; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, was signed into law on June 9, 1998. Section 1404 of the Act established a new incentive grant program under Section 163 of Title 23, United States Code (Section 163). Under this new program, States may qualify for incentive grant funds by enacting and enforcing laws that provide that "any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated (or an equivalent *per se* offense)."

The new program was put into place to address the issue of impaired driving, which continues to be a serious national problem with tragic consequences. The agencies believe that 0.08 BAC laws will have a significant impact on reducing this problem.

Background

The Problem of Impaired Driving

Injuries caused by motor vehicle traffic crashes are a major health care problem in America and are the leading cause of death for people aged 6 to 27. Each year, the injuries caused by traffic crashes in the United States claim approximately 42,000 lives and cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash related costs.

In 1997, alcohol was involved in approximately 39 percent of fatal traffic crashes. Every 30 minutes, someone in this country dies in an alcohol-related crash. Each year, alcohol-involved crashes result in $45 billion in economic costs, accounting for 30 percent of all crash costs. Impaired driving is the most frequently committed violent crime in America.

Impaired Driving Laws

States have enacted a number of different types of laws in their efforts to fight the battle against impaired driving. For example, forty-eight States and the District of Columbia have enacted "illegal *per se*" laws. Two States and Puerto Rico have not. An illegal *per se* law makes it illegal, in and of itself, to drive with a blood alcohol concentration (BAC) measured at or above the established legal limit.

In 32 of the States with illegal *per se* laws, the legal limit is 0.10 percent blood alcohol concentration (BAC). Sixteen States and the District of Columbia have enacted (and made effective) laws that establish 0.08 BAC as the legal limit. In addition, on May 28, 1999, the State of Texas enacted a 0.08 BAC law. This law is to become effective on September 1, 1999.

The Effectiveness of 0.08 BAC Laws

A number of studies have been conducted to determine the effectiveness of 0.08 BAC laws.

For example, the effect of California's 0.08 law was analyzed in a 1991 NHTSA study. The agency found that 81 percent of the driving population knew that the BAC limit had become stricter (as the result of a successful public education effort). The State experienced a 12 percent reduction in alcohol-related fatalities, although some of the reduction may have resulted from a new administrative license revocation law that was enacted during the same year that the BAC standard was lowered. The State also experienced an increase in the number of impaired driving arrests.

A multi-state analysis of the effect of lowering BAC levels to 0.08 was conducted by Boston University's School of Public Health. The results of that study were reported in the September 1996 issue of the American Journal of Public Health, a peer-reviewed journal. The Boston University study compared the first five states to lower their BAC limit to 0.08 (California, Maine, Oregon, Utah, and Vermont) with five nearby states that retained the 0.10 BAC limit. The results of this study suggest that 0.08 BAC laws, particularly in combination with administrative license revocation, reduce the proportion of fatal crashes involving drivers and fatally injured drivers at blood alcohol levels of 0.08 percent and higher by 16 percent and those at a BAC of 0.15 percent and greater by 18 percent.

The immediate significance of these findings is that the 0.08 BAC laws, particularly in combination with administrative license revocation, not only reduced the overall incidence of alcohol fatalities, but also reduced fatalities at the higher BAC levels. The effect on the number of extremely impaired drivers was even greater than the overall effect.

The study concluded that if all States lowered their BAC limits to 0.08, alcohol-related highway deaths would decrease nationwide by 500–600 per year, which would result in an economic cost savings of approximately $1.5 billion.

In a 1995 NHTSA analysis of the same five States studied by Boston University, the agency examined six different measures of driver alcohol involvement in fatal crashes and compared the time period before the 0.08 law was passed with the time period after passage of the law for each State. A total of thirty comparisons of the level of driver alcohol involvement were made. Ten of the thirty comparisons (in four of the five States) showed statistically significant decreases. An additional 16 comparisons, while not statistically significant, also showed decreases. None of the comparisons for the rest of the nation (States at 0.10 BAC) showed changes that were statistically significant.

Other studies published on the effects of enacting 0.08 BAC laws, which use various different measures, have all shown significant decreases in alcohol-related fatalities. NHTSA surveys all show that most people would not drive after consuming two or three beers in an hour (the amount of alcohol an average 120-pound woman would have to drink on an empty stomach to reach 0.08 BAC; an average 170-pound man would have to consume 4–5 beers in an hour on an empty stomach to reach that BAC level). In addition, three recent scientific telephone polls indicate that two out of every three Americans think the BAC standard should be lowered to 0.08.

NHTSA recently completed three additional studies of the effects of lowering the illegal BAC limit from 0.10 to 0.08 percent. The most comprehensive study (covering all 50 States) analyzed the effects of both 0.08 and 0.10 illegal per se laws, as well as administrative license revocation (ALR) laws over a 16-year time period. That study estimated that 0.08 BAC laws had an 8 percent effect in reducing fatal crashes involving drivers at both high BAC's and lower BAC's, and resulted in 275 fewer fatalities in the 15 States where they were in effect in 1997. The study also concluded that, if all 50 States had 0.08 BAC laws in effect in 1997, an additional 5 percent of the fatalities would have been prevented.

The second study examined the effects of 0.08 BAC and ALR laws in eleven States. It found that 0.08 BAC laws were associated with reductions in alcohol-related fatalities, alone or in conjunction with ALR laws, in seven of the eleven States studied.

The third study analyzed the effects of a 0.08 BAC law implemented in 1993 in North Carolina, a State which had already been experiencing a sharp decline in alcohol-related fatalities since 1987. The North Carolina study recognized that there was a pre-existing downward trend in measures pertaining to alcohol-related crashes in the State prior to the enactment of the 0.08 BAC law. The results of the study suggested that some portion of the decline in alcohol-related fatalities experienced in the State after the enactment of the 0.08 law may have been associated with the law, but the magnitude of these effects was not sufficient to make this conclusion. The study found no statistically significant change in the pre-existing downward trend as a result of the 0.08 law.

Copies of these three new studies will be placed in the docket for this final rule.

Presidential Support for a National Standard at 0.08 BAC

President Clinton strongly supports the enactment of 0.08 BAC laws by the States. In fact, on March 3, 1998, the President addressed the Nation about his interest in promoting a national illegal per se limit of 0.08 BAC across the country, including on Federal property. During his address, the President called on Congress to pass impaired driving legislation that would establish a national 0.08 BAC per se standard.

On March 4, 1998, the United States Senate passed "The Safe and Sober Streets Act of 1997," which had been introduced by Senator Frank Lautenberg (D–NJ) and Senator Mike DeWine (R–OH). Similar legislation was introduced in the U.S. House of Representatives by Rep. Nita Lowey (D–NY).

The Safe and Sober Streets Act would have required the withholding of certain Federal-aid highway funds from States that do not enact and enforce 0.08 BAC per se laws. To avoid the withholding of funds, States would have been required to enact and enforce 0.08 BAC per se laws by October 1, 2001. This legislation, however, was not enacted into law.

Instead, Congress passed an incentive grant program to encourage State enactment of 0.08 BAC laws. This program was included in TEA–21 (H.R. 2400). On June 9, 1998, President Clinton signed the legislation and remarked, in his signing statement:

> Today I am pleased to sign into law H.R. 2400, the "Transportation Equity Act for the 21st Century." This comprehensive infrastructure measure for our surface transportation programs—highway, highway safety, and transit—retains the core programs and builds on the initiatives established in the landmark Intermodal Surface Transportation Efficiency Act of 1991.
>
> * * * * *
>
> I am deeply disappointed, however, that H.R. 2400 fails to include language that would help to establish 0.08 percent [BAC] as the standard for drunk driving in each of the 50 States. The experience of States that have adopted the 0.08 blood alcohol level shows that this stringent measure against drunk driving has the potential, when applied nationwide, to save hundreds of lives each year. Applying 0.08 nationwide is an important cornerstone of our safety efforts. My Administration will continue to fight for it. In the meantime, H.R. 2400 does establish a new $500 million incentive program encouraging the States to adopt tough 0.08 BAC laws.

TEA–21 Section 163 Program

Section 163 provides that the Secretary of Transportation shall make a grant to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a per se offense of driving while intoxicated or an equivalent per se offense.

Interim Final Rule

On September 3, 1998, NHTSA and the FHWA published a joint interim final rule in the **Federal Register** to implement the Section 163 program. The interim final rule explained that, consistent with other grant programs that are administered by the agencies, to qualify for funding under the Section 163 program, States must have a law

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that has both passed and been made effective, and the State must have begun to implement the law. In addition, the law must meet certain basic elements.

Compliance Criteria

The interim final rule defined those basic elements, as described below. To qualify for funds under this program, a State must meet all of the basic elements.

1. Any Person

A State must enact and enforce a law that establishes a BAC limit of 0.08 or greater that applies to all persons. The law can provide for no exceptions.

2. Blood Alcohol Concentration (BAC) of 0.08 Percent

A State must set a level of no more than 0.08 percent as the legal limit for blood alcohol concentration, thereby making it an offense for any person to have a BAC of 0.08 or greater while operating a motor vehicle.

3. Per Se Law

A State must consider persons who have a BAC of 0.08 percent or greater while operating a motor vehicle in the State to have committed a per se offense of driving while intoxicated.

In other words, States must establish a 0.08 "per se" law, that makes driving with a BAC of 0.08 percent or above, in and of itself, an offense.

4. Primary Enforcement

A State must enact and enforce a 0.08 BAC law that provides for primary enforcement.

Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense. Any State with a law that provides for secondary enforcement of its 0.08 BAC provision will not qualify for funds under this program.

5. Both Criminal and ALR Laws

A State must establish a 0.08 BAC per se level under its criminal code. In addition, if the State has an administrative license revocation or suspension (ALR) law, the State must establish an illegal 0.08 BAC per se level under its ALR law, as well.

6. Standard Driving While Intoxicated Offense

The State's 0.08 BAC per se law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense.

In States with multiple drinking and driving provisions, the interim final rule stated that the agencies will consider a number of factors to determine whether the State's 0.08 BAC per se law has been deemed to be or is equivalent to the standard driving while intoxicated offense in the State. These factors will include the treatment of these offenses, their relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses.

A more detailed discussion of the six elements described above is contained in the interim final rule (63 FR 46883–84).

Terms Governing the Incentive Grant Funds

The interim final rule indicated that a total of $500 million has been authorized for the Section 163 program over a period of six years, beginning in FY 1998. Specifically, TEA–21 authorized $55 million for fiscal year 1998, $65 million for FY 99, $80 million for FY 2000, $90 million for FY 2001, $100 million for FY 2002 and $110 million for FY 2003.

Available funds will be apportioned in each fiscal year to the States that qualify for grants, according to the Section 402 formula, which is apportioned 75 percent based on the State's population and 25 percent based on the number of public road miles in the State.

In FY 1998, a total of $49,005,000 were distributed under this program to fifteen States. The States were Alabama, California, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, New Hampshire, New Mexico, North Carolina, Oregon, Utah, Vermont and Virginia.

As explained in the interim final rule, funds received by States under the Section 163 program may be used for any project eligible for assistance under Title 23 of the United States Code, which includes highway construction as well as highway safety projects or programs. Since States will be receiving Section 163 funds on the basis on their 0.08 BAC per se laws, a highway safety initiative, the agencies strongly encouraged the States in the interim final rule to consider eligible highway safety projects and programs when they are deciding how they will spend these funds. The recipient States in FY 1998 expended approximately 78 percent of the funds received in the area of highway safety.

Since Section 163 provides that the Federal share of the cost of a project funded under this program shall be 100 percent, the interim final rule provided that there is no State matching requirement for these funds. The interim rule stated also that the funds authorized by Section 163 shall remain available until expended.

Demonstrating Compliance

To demonstrate compliance with the provisions of the statutory and regulatory requirements, the interim final rule provided that each State must submit a certification in each year that it wishes to receive a grant. A more detailed discussion regarding the contents of the certifications is contained in the interim final rule (63 FR 46884).

To be eligible for grant funds in FY 1998, the interim rule provided that States must submit their certifications no later than September 4, 1998. To be eligible for grant funds in a subsequent fiscal year, the interim rule provided that States must submit their certifications no later than July 1 of that fiscal year. Under this requirement, for example, States would be required to submit their certifications no later than July 1, 1999 to be eligible for grant funds in FY 1999. The agencies strongly encouraged States to submit their certifications in advance of the regulatory deadlines.

Request for Comments

The agencies requested comments from interested persons on the interim final rule that was published in September 3, 1998. Comments were due by October 19. The agencies stated in the interim final rule that all comments submitted to the agencies would be considered and that following the close of the comment period, the agencies would publish a document in the **Federal Register** responding to the comments and, if appropriate, would make revisions to the provisions of Part 1225.

Comments Received

The agencies received submissions from four commenters in response to the interim final rule. The commenters included: Earl Havatone, Chairman of the Hualapai Nation; Robert R. McNichols, Superintendent of the Bureau of Indian Affairs (BIA), Truxton Canon Agency, U.S. Department of the Interior; Henry M. Jasny, General Counsel for Advocates for Highway and Auto Safety (Advocates); and Kirk Brown, Secretary of the Illinois Department of Transportation (IDOT).

1. General Comments

In general, the comments in response to the interim final rule were very positive. Secretary Brown of IDOT offered one recommendation regarding the date by which funds should be distributed, but stated, "IDOT supports the adoption of this interim final rule as proposed." In addition, Mr. Jasny of Advocates stated:

> Advocates is in agreement with [NHTSA] and the [FHWA] with respect to nearly all the parameters set forth in the notice. The agencies establish appropriate compliance criteria with respect to the six items specifically referred to in the notice * * * [Advocates recommends one addition to the regulation. With the exception of this one suggestion,] Advocates concurs with the agencies and supports this interim rule.

2. Comments Regarding Indian Tribes

Mr. Havatone of the Hualapai Nation and Mr. McNichols of BIA submitted almost identical comments. They both urge the agencies to set aside a portion of the funds authorized under this program for "Indian tribes for incentive grants which are not controlled by the States." These commenters point out that "fatalities occur at higher rates on Indian lands than anywhere else in the country, [but] this funding will do little to help * * * [because] [m]any tribes will not apply to the States for funding because we believe that doing so reduces the sovereignty of the tribe."

These commenters suggest that establishing such a set aside is supported by a directive that was issued by the President, on April 29, 1994, entitled Government-to-Government Relations with Native American Tribal Governments. A copy of this directive was enclosed with each of these commenters' submissions.

The agencies agree that there is a disproportionate number of fatalities on Indian lands, and actions should be taken to address this serious problem. In addition, the agencies do encourage Tribal governments to enact and enforce 0.08 BAC laws. In fact, when President Clinton directed the Secretary of Transportation to develop a plan to promote the adoption of a .08 BAC legal limit nationwide, he directed that the plan consider "encouraging Tribal governments to adopt, enforce, and publicize a .08 BAC standard on highways in Indian Country that are subject to their jurisdiction."

Pursuant to the plan that was developed by the Secretary in response to the President's direction, NHTSA is working jointly with the Indian Health Service (IHS) on a number of initiatives to reduce the problem of impaired driving on Indian lands. For example, IHS is conducting a survey of Indian tribal laws covering impaired driving and other highway safety areas; educational, enforcement and other efforts, such as the "None for the Road" campaign, are being conducted on Tribal lands; and Tribal governments are participating in highway safety initiatives, including Buckle Up! America and the Safe Tribal Communities Youth Campaign.

In addition, the Presidential directive on Government-to-Government Relations with Native American Tribal Governments encourages executive departments and agencies to undertake activities affecting Native American tribal rights or trust resources in a knowledgeable, sensitive manner respectful of tribal sovereignty, and to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments. Specifically, it directs executive departments and agencies, in appropriate circumstances, to consult with tribal governments prior to taking actions that affect them and to design solutions and tailor Federal programs to address specific or unique need of tribal communities.

However, the directive specifically states that it "is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right * * * or benefit or trust responsibility * * *," and the Section 163 program, which was established in TEA–21, does not authorize the agency to set aside any funds for incentive grants for Indian tribes. The statutory language provides, "The Secretary shall make a grant * * * to any State [with a conforming law] * * *" Some of the programs that are administered by NHTSA and the FHWA define the term "State" in a manner that includes Indian Tribes. (See, for example, Section 2001 of TEA–21, which re-authorized the Section 402 program.) However, the Section 163 program defines the term "State" to include only "any of the 50 States, the District of Columbia or Puerto Rico."

Accordingly, while Tribal governments can continue to apply for funds from States that receive Section 163 incentive grants, the agencies are not authorized to set aside any Section 163 funds for incentive grants to be given directly to Indian tribes. Therefore, no changes have been made to the regulations in response to these comments.

3. Comments from Advocates

As stated above, Advocates concurred with the agencies' interim final rule, except in one area. Advocates agreed with all six compliance criteria included in the interim rule. However, Advocates stated that the agencies should have "set criteria for minimum penalties that a state law must impose in order to be eligible under the program."

Advocates recognized that Congress did not address the issue of penalties in the statute, but stated that "the agencies have the authority to exercise * * * discretion in this area and are not prohibited from doing so by the wording of the statute." Advocates suggested that the agencies could "evaluate the laws in states that previously adopted 0.08 BAC as the threshold for intoxication violations and use the least stringent penalty provision of the laws already enacted as the minimum criteria for eligibility" or, alternatively, the agencies could "establish a series of options, at least one of which would be required for eligibility."

The agencies do not believe it is necessary to establish a minimum penalty criterion under this program. Rather, we believe the criteria already established in the regulations are sufficient to ensure that States establish meaningful penalties, because they require that the State's 0.08 BAC per se law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense.

As the agencies explained in the interim final rule, most States provide for a single driving while intoxicated offense. However, some States have multiple offenses that relate to drinking and driving. In these States, the most serious offense generally will be the State's "standard driving while intoxicated" offense (although it might be called by another name, such as "driving under the influence"). These States may have a "less-serious" offense, which may be a "lesser-included" offense of the standard driving while intoxicated offense in the State.

With regard to States with multiple drinking and driving provisions, it was explained in the interim final rule that the agencies will consider a number of factors to determine whether the State's 0.08 BAC per se law has been deemed to be or is equivalent to the standard driving while intoxicated offense in the State. These factors include the treatment of these offenses, their relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses.

When the agencies have reviewed laws and proposed legislation from States to determine whether they comply with Section 163 and the interim regulations, we have considered these factors very carefully.

For example, one State that currently has a 0.10 per se law submitted to us for review proposed legislation that would

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have created a per se level at 0.08 BAC. However, the proposed legislation would have retained the 0.10 law. It also would have continued to apply to 0.10 offenders the same sanctions that currently apply to such offenders, and an offender of the new 0.08 law would have been subject to a lesser set of sanctions. Based on an examination of these proposed provisions, we concluded that the proposed legislation, if enacted without change, would not have complied with Section 163 and the interim regulations because it would not have established 0.08 BAC as the standard driving while intoxicated offense.

Because the agencies believe the criteria contained in the interim regulations are sufficient to ensure that meaningful penalties will apply to 0.08 offenders, the agencies have decided not to add a new compliance criterion in response to this comment.

4. Timing for Applications and the Distribution of Funds

The interim final rule provided that, to qualify beginning in FY 1999, the agencies must receive from the State a certification no later than July 1 of that fiscal year, and the certification must indicate that the State "has enacted and is enforcing a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and [the agencies' implementing regulations]."

Upon further consideration of this requirement, the agencies realize that a State could enact a conforming law prior to July 1 of a fiscal year, and the law could become effective prior to the end of that fiscal year, but after July 1 of that year. Accordingly, the agencies have decided to amend the regulations to enable such States to qualify for funding in the year in which the State's new law goes into effect. To qualify for a first-year grant, they may submit certifications that provide that the State has enacted a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and the agencies' implementing regulations and will become effective and be enforced in the current fiscal year.

To provide States with additional time to adjust to this change, and to provide States with additional time to enact conforming legislation each year, the agencies will also extend from July 1 to July 15, the date by which certifications must be received.

The interim final rule did not specify the date by which grant funds would be distributed to the States. In its comments, IDOT recommends an early distribution date (in July), to assist the States in their ability to obligate the funds by September 30. The agencies appreciate IDOT's concerns, and hope to make a distribution this fiscal year during the month of July. Any State that has qualified on the basis of a law that has been enacted, but is not yet effective, however, will not receive its distribution of funds until the law has gone into effect. Should the law fail to become effective, the agency would redistribute the funds to all eligible States.

The interim final rule also did not set forth procedures to ensure the efficient administration of funds. Due to the need to accommodate both Federal-aid Highway and Highway Safety interests, the agencies have added language to the section on Award Procedures, specifying the joint involvement of State Department of Transportation and Highway Safety officials. The officials will provide written notification of their funding decisions to the agencies, identifying the amounts of apportioned funds to be obligated to highway safety activities and to Federal-aid highway activities. This process will permit account entries to be made.

Finally, the interim final rule contained a separate provision regarding the submission of State certifications in FY 1998. Since this provision is now obsolete, it has been removed from the regulations.

Regulatory Analyses and Notices

Executive Order 12778 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation Regulatory Policies and Procedures. This determination is based on a finding that the rule is likely to have an annual effect on the economy of $100 million or more in FY's 2002 and 2003. A sum of $100 million is authorized for this program in FY 2002 and $110 million is authorized in FY 2003. It is likely that these sums will be awarded to qualifying States under the section 163 program in those fiscal years. Accordingly, an economic assessment has been prepared.

The economic assessment concludes that the costs to the States of obtaining the funding under the Section 163 program, which include the administrative costs of submitting a certification that the State has enacted and is enforcing the law, are minimal. In addition, it finds that the costs to States to enact and publicize new 0.08 BAC *per se* laws will not be significant, and the costs to enforce these laws need not be different than those incurred by States to enforce their current impaired driving laws.

However, the economic assessment notes that it is expected that at least some States will increase enforcement efforts when their new laws become effective, and arrests and prosecutions are likely to increase for drivers with a BAC at 0.08 and above. Since many States have self-sufficient programs supported by fines for the post-conviction phase of their programs, the economic assessment concludes that any additional activity during this phase of their programs, will not result in additional costs to the States.

While it is difficult to isolate the effects that a national 0.08 BAC *per se* standard would have, the economic assessment indicates that a study conducted by the Boston University School of Public Health, which was published in the September 1996 issue of the American Journal of Public Health estimated that 500–600 alcohol-related highway deaths would be prevented each year if all States lowered their BAC limits to 0.08 BAC. Such a reduction in deaths would represent a 4 percent decrease in alcohol-related deaths nationwide and would result in cost savings of approximately $1.5 billion each year. Copies of the economic assessment are available to the public in the docket for this rulemaking action.

The agencies received no comments regarding the economic assessment. Accordingly, no changes to this document are required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. Studies to date have not shown that 0.08 BAC *per se* laws have affected alcohol consumption in any of the five States analyzed. Thus, there should be no noticeable impact on small businesses that sell and serve alcohol. Since this interim final rule will apparently affect only State governments, it will not have any effect on small businesses. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This interim final rule does not meet the definition of a Federal mandate. It is a voluntary program in which States can choose to participate, solely at their option. The costs to States to qualify for participation in this program are minimal, and will result in annual expenditures that will not exceed the $100 million threshold. Moreover, States that choose to participate in this program will receive Federal incentive grants, which will provide funds for activities that are eligible under Title 23 of the United States Code.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1225

Alcohol and alcoholic beverages, Grant programs, Transportation, Highway safety.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of September 3, 1998, 63 FR 46886, adding a new Part 1225 to chapter II of Title 23 of the Code of Federal Regulations, is adopted as final, with the following changes:

PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

1. The authority citation for Part 1225 continues to read as follows:

Authority: 23 U.S.C. 163; delegation of authority at 49 CFR 1.48 and 1.50.

2. Section 1225.4 is amended by revising paragraph (a)(1), removing paragraph (a)(6), and revising paragraph (a)(5) to read as follows:

§ 1225.4 General requirements.

(a) * * *

(1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and § 1225.5 of this part and will become effective and be enforced in the current fiscal year and that the funds will be used for eligible projects and programs.

(i) If the State's 0.08 BAC per se law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted and is enforcing a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under Title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC per se law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under Title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

* * * * *

(5) To qualify for grant funds in FY 1999 or in a subsequent fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

* * * * *

3. Section 1225.6 is revised to read as follows:

§ 1225.6 Award procedures.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.4(a) and subject to the limitations in § 1225.4(b). The obligation authority associated with these funds is subject to the limitation on obligations pursuant to section 1102 of TEA 21.

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportion for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator and FHWA Division Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects.

Issued on: June 25, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 99–16747 Filed 6–28–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8826]

RIN 1545–AX23

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to state and local government issuers of qualified zone academy bonds. These temporary regulations change the method of ascertaining the qualified zone academy bond credit rate and provide reimbursement rules. State and local governments that issue

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qualified zone academy bonds will be affected by these temporary regulations. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective July 1, 1999.

Applicability Date: For dates of applicability, see § 1.1397E–1T(j).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Timothy L. Jones (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 226(a) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788), amended the Internal Revenue Code by redesignating section 1397E as 1397F and adding a new section 1397E. Section 1397E authorizes a new type of debt instrument known as a qualified zone academy bond. Temporary regulations interpreting section 1397E were published on January 7, 1998 (63 FR 671).

Explanation of Provisions

In General

A qualified zone academy bond is a taxable bond issued by a state or local government, the proceeds of which are used to improve certain eligible public schools. In lieu of receiving periodic interest payments from the issuer, an eligible holder of a qualified zone academy bond is generally allowed annual federal income tax credits while the bond is outstanding. These credits compensate the holder for lending money to the issuer and function as payments of interest on the bond.

Credit Rate

Under section 1397E(b)(2), the Secretary shall determine a credit rate for qualified zone academy bonds that the Secretary estimates will permit the bonds to be issued without discount and without interest cost to the issuer. Section 1.1397E–1T(b) provides that the credit rate for a qualified zone academy bond is equal to 110 percent of the long-term applicable Federal rate(AFR), compounded annually, for the month in which the bond is issued.

Comments have been received that the credit rate established by § 1.1397E–1T(b) is generally lower than the rate required to permit the issuance of qualified zone academy bonds without discount and without interest cost to the issuer. Comments have also been received that a single credit rate applicable to obligations issued during a monthly period is too rigid and non-responsive to market interest rate movements.

The revised regulations state that the Secretary will determine monthly (or more often as the Secretary deems necessary) a credit rate that will generally permit the issuance of qualified zone academy bonds without discount and without interest cost to the issuers. The revised regulations also provide that the manner for ascertaining the credit rate determined by the Secretary will be set forth in procedures, notices, forms, and instructions as prescribed by the Commissioner. A notice to be published in the Internal Revenue Bulletin will further provide that, until otherwise provided, the qualified zone academy bond credit rate will be determined daily and will be published on the Internet site for State and Local Government Bonds. The credit rate to be applied to a qualified zone academy bond will be the daily rate for the first day on which there is a binding contract in writing for the sale or exchange of the bond. Treasury and the Internal Revenue Service will monitor the issuance of qualified zone academy bonds to determine if future adjustments in the credit rate may be required.

Coordination with Reimbursement Rules

These temporary regulations provide that the proceeds of a qualified zone academy bond may be used to reimburse a qualified expenditure (including any qualified non-capital expenditure) made prior to the date the bond was issued. The temporary regulations provide that rules similar to the reimbursement rules set forth in § 1.150–2 will apply. Comments are solicited about whether these rules provide adequate guidance regarding reimbursement matters for issuers of qualified zone academy bonds.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. See also the Special Analysis Section of the notice of proposed rulemaking on qualified zone academy bonds in the Proposed Rules Section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Timothy L. Jones, Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1397E–1T is amended as follows:

1. Revising paragraphs (b) and (j).
2. Redesignating paragraph (h) as paragraph (i).
3. Adding new paragraph (h).

The revisions and additions read as follows:

§ 1.1397E–1T Qualified zone academy bonds (temporary).

* * * * *

(b) *Credit rate.* The Secretary shall determine monthly (or more often as deemed necessary by the Secretary) the credit rate the Secretary estimates will generally permit the issuance of a qualified zone academy bond without discount and without interest cost to the issuer. The manner for ascertaining the credit rate for a qualified zone academy bond as determined by the Secretary shall be set forth in procedures, notices, forms, or instructions prescribed by the Commissioner.

* * * * *

(h) *Reimbursement.* An expenditure for a qualified purpose may be reimbursed with proceeds of a qualified zone academy bond. For this purpose, rules similar to those in § 1.150–2 shall apply.

* * * * *

(j) *Effective dates.* Except as provided in this paragraph (j), this section applies to a qualified zone academy bond issued on or after January 1, 1998. Paragraph (b) and paragraph (h) of this section shall apply to a qualified zone academy bond sold on or after July 1, 1999. Paragraph (b) of this section as in effect on January 7, 1998 (See 26 CFR Part 1 as revised April 1, 1999), shall apply to a qualified zone academy bond sold prior to July 1, 1999. This section shall not apply to a qualified zone academy bond sold after January 5, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 22, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–16621 Filed 6–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Sudanese Government Designations and Supplementary Information, and Removal of One Individual

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V by adding the names of 60 entities and providing additional identifying information on 3 entities that have been determined to act for or on behalf of, or to be owned or controlled by, the Government of Sudan, and by adding the names of one organization and 3 individuals who are specially designated terrorists. In addition, the name of one specially designated national of the Government of Iraq is being removed because the Office of Foreign Assets Control has determined that this individual no longer meets the criteria for designation as an SDN.

EFFECTIVE DATE: June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). Pursuant to Executive Order 13067 of November 3, 1997, "Blocking Sudanese Government Property and Prohibiting Transactions With Sudan" (62 FR 59989, 3 CFR, 1997 Comp., p. 230), and § 538.305 of the Sudanese Sanctions Regulations (31 CFR part 538), 60 Sudanese entities are added to appendix A to 31 CFR chapter V as entities which have been determined to act for or on behalf if, or to be owned or controlled by, the Government of Sudan (specially designated nationals or "SDNs"). Any property subject to the jurisdiction of the United States in which an SDN has an interest is blocked, and U.S. persons are prohibited from engaging in any transactions or in dealing in any property in which an SDN has an interest. In addition, appendix A is being amended by modifying the entries for three existing SDNs of the Government of Sudan to provide additional identifying information regarding these entities.

Pursuant to Executive Order 13099 of August 20, 1998, "Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process" (63 FR 45167, 3 CFR, 1998 Comp., p. 208), and the Terrorism Sanctions Regulations (31 CFR part 595), 3 individuals and 1 organization are being added to appendix A to 31 CFR chapter V as persons who have been designated in the Executive order as terrorists who threaten to disrupt the Middle East peace process (specially designated terrorists or "SDTs"). Any property subject to the jurisdiction of the United States in which an SDT has an interest is blocked, and U.S. persons are prohibited from engaging in any transactions or in dealing in any property in which an SDT has an interest.

Pursuant to the Iraqi Sanctions Regulations, 31 CFR part 575, the name of one specially designated national of the Government of Iraq is being removed from appendix A because the Office of Foreign Assets Control has determined that this individual no longer meets the criteria for designation as an SDN of the Government of Iraq. All real and personal property of this individual, including all accounts in which he has any interest, that had been blocked solely due to his designation as an SDN are unblocked; and all lawful transactions involving U.S. persons and this individual are permissible.

Designations of foreign persons blocked pursuant to the Order and Regulations are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Because the Executive orders and regulations under which these actions are taken involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of (1) 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230, with respect to SDN entries for the Government of Sudan; (2) 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104

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Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317, with respect to the removal of the SDN entry for the Government of Iraq; and (3) 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208, with respect to SDT entries, appendix A to 31 CFR chapter V is amended as set forth below:

Appendix A [Amended]

1. Appendix A to 31 CFR chapter V is amended by adding the following names inserted in alphabetical order in appendix A, section I:

'ABD ALLAH, 'Issam 'Ali Muhammad (see MUSA, Rifa'i Ahmad Taha) [SDT]
'ABD–AL–'IZ (see MUSA, Rifa'i Ahmad Taha) [SDT]
ABD–AL–WAHAB, Abd–al–Hai Ahmad (see MUSA, Rifa'i Ahmad Taha) [SDT]
ABU HAFS (see ATEF, Muhammad) [SDT]
ABU YASIR (see MUSA, Rifa'i Ahmad Taha) [SDT]
ABDULLAH, Sheikh Taysir (see ATEF, Muhammad) [SDT]
ACCOUNTS AND ELECTRONICS EQUIPMENTS, c/o ENGINEERING EQUIPMENT CORPORATION, P.O. Box 97, Khartoum, Sudan [SUDAN]
AFRICAN OIL CORPORATION, P.O. Box 1, Khartoum North, Sudan [SUDAN]
AL–KAMEL, Salah 'Ali (see MUSA, Rifa'i Ahmad Taha) [SDT]
AL–MASRI, Abu Hafs (see ATEF, Muhammad) [SDT]
AL–QAIDA (see ISLAMIC ARMY) [SDT]
ALAKTAN COTTON TRADING COMPANY (see ALAKTAN TRADING COMPANY) [SUDAN]
ALAKTAN TRADING COMPANY (a.k.a. ALAKTAN COTTON TRADING COMPANY), P.O. Box 2067, Khartoum, Sudan [SUDAN]
ARAB CEMENT COMPANY, Durdeib, Sudan; P.O. Box 6180, Khartoum, Sudan [SUDAN]
ATBARA CEMENT COMPANY LIMITED, P.O. Box 36, Atbara, Sudan [SUDAN]
ATEF, Muhammad (a.k.a. ABU HAFS; a.k.a: ABDULLAH, Sheikh Taysir; a.k.a. AL–MASRI, Abu Hafs; a.k.a. EL KHABIR, Abu Hafs el Masry; a.k.a. TAYSIR) DOB 1956; POB Egypt (individual) [SDT]
BABANOUSA MILK PRODUCTS FACTORY, P.O. Box 16, Babanousa, Sudan [SUDAN]
BIN LADIN, Usama bin Muhammad bin Awad (a.k.a. BIN LADIN, Usama), DOB 30 July 1957; POB Jeddah, Saudi Arabia (individual) [SDT]
BLUE NILE BREWERY, P.O. Box 1408, Khartoum, Sudan [SUDAN]
BUILDING MATERIALS AND REFRACTORIES CORPORATION, P.O. Box 2241, Khartoum, Sudan [SUDAN]
CENTRAL ELECTRICITY AND WATER CORPORATION (see PUBLIC ELECTRICITY AND WATER CORPORATION) [SUDAN]
DUTY FREE SHOPS CORPORATION, P.O. Box 1789, Khartoum, Sudan [SUDAN]
EL KHABIR, Abu Hafs el Masry (see ATEF, Muhammad) [SDT]
ENGINEERING EQUIPMENT COMPANY, c/o ENGINEERING EQUIPMENT CORPORATION, P.O. Box 97, Khartoum, Sudan [SUDAN]
ENGINEERING EQUIPMENT CORPORATION, P.O. Box 97, Khartoum, Sudan [SUDAN]
EXPLORATION AND PRODUCTION AUTHORITY (SUDAN), Kuwait Building, Nile Avenue, Khartoum, Sudan; P.O. Box 2986, Khartoum, Sudan [SUDAN]
FOOD INDUSTRIES CORPORATION, P.O. Box 2341, Khartoum, Sudan [SUDAN]
FRIENDSHIP SPINNING FACTORY, Hassaheisa, Sudan [SUDAN]
GEZIRA TANNERY, Gezira, Sudan [SUDAN]
GINEID SUGAR FACTORY, P.O. Box 1, Gineid, Sudan [SUDAN]
GROUP FOR THE PRESERVATION OF THE HOLY SITES, THE (see ISLAMIC ARMY) [SDT]
HAGGAR ASSALAYA SUGAR FACTORY, Haggar Assalaya, Sudan [SUDAN]
INDUSTRIAL PRODUCTION CORPORATION, P.O. Box 1034, El Gamaa Street, Khartoum, Sudan [SUDAN]
INGESSANA HILLS MINES CORPORATION (see INGASSANA HILLS MINES CORPORATION) [SUDAN]
ISLAMIC ARMY (a.k.a. AL–QAIDA; a.k.a. ISLAMIC SALVATION FOUNDATION; a.k.a. THE ISLAMIC ARMY FOR THE LIBERATION OF THE HOLY PLACES; a.k.a. THE WORLD ISLAMIC FRONT FOR JIHAD AGAINST JEWS AND CRUSADERS; a.k.a. THE GROUP FOR THE PRESERVATION OF THE HOLY SITES) [SDT]
ISLAMIC ARMY FOR THE LIBERATION OF THE HOLY PLACES, THE (see ISLAMIC ARMY) [SDT]
ISLAMIC SALVATION FOUNDATION (see ISLAMIC ARMY) [SDT]
JUBA DUTY FREE SHOP, Juba, Sudan [SUDAN]
KARIMA DATE FACTORY, Karima, Sudan [SUDAN]
KARIMA FRUIT AND VEGETABLE CANNING FACTORY, P.O. Box 54, Karima, Sudan [SUDAN]
KASSALA ONION DEHYDRATION FACTORY, P.O. Box 22, Kassala, Sudan [SUDAN]
KENAF SOCKS FACTORY, Abu Naama, Sudan [SUDAN]
KRIKAH INDUSTRIES GROUP, P.O. Box 755, Khartoum North, Sudan [SUDAN]
LEATHER INDUSTRIES CORPORATION (a.k.a. LEATHER INDUSTRIES TANNERIES), P.O. Box 1639, Khartoum, Sudan [SUDAN]
LEATHER INDUSTRIES TANNERIES (see LEATHER INDUSTRIES CORPORATION) [SUDAN]
MALUT SUGAR FACTORY, Malut, Sudan [SUDAN]
MANGALA SUGAR FACTORY, Mangala, Sudan [SUDAN]
MASPIO CEMENT CORPORATION, P.O. Box 96, Atbara, Sudan [SUDAN]
MAY ENGINEERING COMPANY, c/o ENGINEERING EQUIPMENT CORPORATION, P.O. Box 97, Khartoum, Sudan [SUDAN]
MUSA, Rifa'i Ahmad Taha (a.k.a. 'ABD ALLAH, 'Issam 'Ali Muhammad; a.k.a. 'ABD–AL–'IZ; a.k.a. ABD–AL–WAHAB, Abd–al–Hai Ahmad; a.k.a. ABU YASIR; a.k.a. AL–KAMEL, Salah 'Ali; a.k.a. TAHA, Rifa'i Ahmad; a.k.a. TAHA MUSA, Rifa'i Ahmad; a.k.a. THABIT 'IZ), DOB 24 June 1954; POB Egypt; Passport No. 83860 (Sudan), 30455 (Egypt), 1046403 (Egypt) (individual) [SDT]
NATIONAL COTTON AND TRADE COMPANY, P.O. Box 1552, Khartoum, Sudan [SUDAN]
NEW HAIFA SUGAR FACTORY, Kashm el Girba, Sudan [SUDAN]
NEW KHARTOUM TANNERY, P.O. Box 17, Khartoum, Sudan [SUDAN]
NORTHWEST SENNAR SUGAR FACTORY, Northwest Sennar, Sudan [SUDAN]
OIL CORPORATION, P.O. Box 64, Khartoum, Sudan [SUDAN]
OMDURMAN SHOE FACTORY, Omdurman, Sudan [SUDAN]
PETROLEUM GENERAL ADMINISTRATION, P.O. Box 2649, Khartoum, Sudan [SUDAN]
PLASTIC SACKS FACTORY (see SACKS FACTORY) [SUDAN]
PORT SUDAN COTTON AND TRADE COMPANY (a.k.a. PORT SUDAN COTTON COMPANY), P.O. Box 590, Khartoum, Sudan; P.O. Box 261, Port Sudan, Sudan [SUDAN]
PORT SUDAN COTTON COMPANY (see PORT SUDAN COTTON AND TRADE COMPANY) [SUDAN]
PORT SUDAN DUTY FREE SHOP, Port Sudan, Sudan [SUDAN]
PORT SUDAN EDIBLE OILS STORAGE CORPORATION, P.O. Box 429, Port Sudan, Sudan [SUDAN]
PORT SUDAN SPINNING FACTORY, Port Sudan, Sudan [SUDAN]
PUBLIC CORPORATION FOR OIL PRODUCTS AND PIPELINES, Khartoum, Sudan [SUDAN]
RABAK OIL MILL, P.O. Box 2105, Khartoum, Sudan [SUDAN]
RAINBOW FACTORIES, P.O. Box 1768, Khartoum, Sudan [SUDAN]
REA SWEET FACTORY, P.O. Box 1027, Khartoum, Sudan [SUDAN]
RED SEA HILLS MINERALS COMPANY, c/o SUDANESE MINING CORPORATION, P.O. Box 1034, Khartoum, Sudan [SUDAN]
REFRIGERATION AND ENGINEERING IMPORT COMPANY, P.O. Box 1092, Khartoum, Sudan [SUDAN]
SHEREIK MICA MINES COMPANY (a.k.a. SHEREIK MICA PROJECT), c/o SUDANESE MINING CORPORATION, P.O. Box 1034, Khartoum, Sudan [SUDAN]
SHEREIK MICA PROJECT (see SHEREIK MICA MINES COMPANY) [SUDAN]
SPINNING AND WEAVING CORPORATION, P.O. Box 795, Khartoum, Sudan [SUDAN]
SUDAN COTTON COMPANY, Khartoum, Sudan [SUDAN]
SUDAN COTTON COMPANY LIMITED, P.O. Box 1672, Khartoum, Sudan [SUDAN]
SUDAN OIL CORPORATION, P.O. Box 2, Khartoum North, Sudan [SUDAN]
SUDAN SOAP CORPORATION, P.O. Box 23, Khartoum North, Sudan [SUDAN]
SUDANESE INTERNATIONAL TOURISM COMPANY, c/o TOURISM AND HOTELS CORPORATION, P.O. Box 7104, Khartoum, Sudan [SUDAN]
SUDANESE MINING CORPORATION, P.O. Box 1034, Khartoum, Sudan [SUDAN]
SUGAR AND DISTILLING CORPORATION, New Mustafa el Amin Building, Barlaman Avenue, P.O. Box 511, Khartoum, Sudan [SUDAN]
TAHA, Rifa'i Ahmad (see MUSA, Rifa'i Ahmad Taha) [SDT]
TAHA MUSA, Rifa'i Ahmad (see MUSA, Rifa'i Ahmad Taha) [SDT]
TAYSIR (see ATEF, Muhammad) [SDT]
THABIT 'IZ (see MUSA, Rifa'i Ahmad Taha) [SDT]
TOURISM AND HOTELS CORPORATION, P.O. Box 7104, Khartoum, Sudan; Ed Damer, Sudan; El Fasher, Sudan; Khartoum Airport, Sudan; Port Sudan, Sudan [SUDAN]
WAD MADANI DUTY FREE SHOP, Wad Madani, Sudan [SUDAN]
WAU FRUIT AND VEGETABLE CANNING FACTORY, P.O. Box 110, Wau, Sudan [SUDAN]
WHITE NILE BREWERY, P.O. Box 1378, Khartoum, Sudan [SUDAN]
WHITE NILE TANNERY, P.O. Box 4078, Khartoum, Sudan [SUDAN]
WORLD ISLAMIC FRONT FOR JIHAD AGAINST JEWS AND CRUSADERS, THE (see ISLAMIC ARMY) [SDT]

2. Appendix A to 31 CFR chapter V is amended by revising the following existing entries to include additional identifying information in appendix A, section I to read as revised as follows:

PUBLIC ELECTRICITY AND WATER CORPORATION (a.k.a. CENTRAL ELECTRICITY AND WATER CORPORATION), P.O. Box 1380, Khartoum, Sudan [SUDAN]
INGASSANA HILLS MINES CORPORATION (a.k.a. INGESSANA HILLS MINES CORPORATION), P.O. Box 2241, Khartoum, Sudan; P.O. Box 1108, Khartoum, Sudan [SUDAN]
SACKS FACTORY (a.k.a. PLASTIC SACKS FACTORY), P.O. Box 2328, Khartoum, Sudan [SUDAN]

3. Appendix A to 31 CFR chapter V is amended by removing in its entirety the entry for the name "DE BOCCARD, Phillipe (a.k.a. DE BOCCARD, Philippe)" from appendix A, section I.

Dated: June 23, 1999.
R. Richard Newcomb,
Director, Office of Foreign Assets Control.
Approved: June 24, 1999.
Elisabeth A. Bresee,
Assistant Secretary (Enforcement), Department of the Treasury.
[FR Doc. 99–16726 Filed 6–28–99; 9:45 am]
BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA079–149; FRL–6363–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on April 16, 1999. The revisions concern rules from the Monterey Bay Unified Air Pollution Control District (MBUAPCD). This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate permitting of stationary sources in accordance with the requirements of the Act, as amended in 1990. EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on August 2, 1999.

ADDRESSES: Copies of the rule(s) and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule(s) are available for inspection at the following locations:

(1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.
(2) California Air Resources Board, 2020 L Street, Sacramento, CA 95814.
(3) Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey CA 93940.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office, [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1238; E-mail: kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: MBUAPCD Rules 200 (Permits Required), 204 (Cancellation of Applications), 207 (Review of New or Modified Sources), 213 (Continuous Emissions Monitoring), 215 (Banking of Emissions Reductions), and 436 (Title V: General Prohibitory Rule). These rules were submitted by the California Air Resources Board to EPA on June 9, 1987 (Rule 200), February 10, 1986 (Rule 204), March 3, 1997 (Rule 207), March 29, 1994 (Rule 213), June 3, 1997 (Rule 215), and August 10, 1995 (Rule 436).

II. Background

On April 16, 1999 in 64 FR 18858, EPA proposed to approve the above rules into the California SIP. A detailed discussion of the background for each of the above rules is provided in the proposed rule cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the proposed rule and in the technical support document (TSD), dated April 1, 1999, which is available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 18858. No comments were submitted to EPA during the comment period, which ended on May 17, 1999.

IV. EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and parts C and D of the CAA. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate stationary sources in accordance with the requirements of the CAA.

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V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The [proposed/final] rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions [On signature page-add header and suppress page #] for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: June 9, 1999.

Nora L. McGee,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(168)(i)(F)(*2*), (c)(173)(i)(C)(*2*), (c)(196)(i)(E), (c)(224)(i)(D), (c)(224)(i)(A)(*3*) and (c)(258)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(168) * * *

(i) * * *

(F) * * *

(*2*) Rule 204, amended on July 17, 1985.

* * * * *

(173) * * *

(i) * * *

(C) * * *

(*2*) Rule 200, amended on December 17, 1986.

* * * * *

(196) * * *

(i) * * *

(E) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 213, amended on February 16, 1994.

* * * * *

(224) * * *

(i) * * *

(D) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 436, adopted on May 17, 1995.

* * * * *

(244) * * *

(i) * * *

(A) * * *

(*3*) Rule 207, amended on December 18, 1996.

* * * * *

(258) * * *

(i) * * *

(A) * * *

(*2*) Rule 215, amended on March 26, 1997.

* * * * *

[FR Doc. 99–15546 Filed 6–30–99; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 64, No. 126
Thursday, July 1, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105327–99]

RIN 1545–AX03

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing guidance to holders and issuers of qualified zone academy bonds. These proposed regulations would change the method of ascertaining the qualified zone academy bond credit rate and would provide reimbursement rules. State and local governments that issue qualified zone academy bonds would be affected by these proposed regulations. The text of the temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by September 29, 1999. Outlines of topics to be discussed at the public hearing scheduled for November 9, 1999, at 10 a.m. must be received by October 19, 1999.

ADDRESSES: Send Submissions to: CC:DOM:CORP:R (REG–105327–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105327–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/reglist.html. The public hearing will be held in the room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Timothy L. Jones at 202–622–3980; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Michael Slaughter at 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 226(a) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788) amended the Internal Revenue Code by redesignating section 1397E as 1397F and adding a new section 1397E. Section 1397E authorizes a new type of debt instrument known as a qualified zone academy bond. Temporary Regulations (TD 8755) interpreting section 1397E were published on January 7, 1998 (63 FR 671), as § 1.1397E–1T.

Temporary regulations amending § 1.1397E–1T are published in the Rules and Regulations portion of this issue of the Federal Register. Section 1.1397E–1T is amended by revising paragraphs (b) and (j), redesignating paragraph (h) as paragraph (i) and adding new paragraph (h). The text of the temporary regulations also serves as the text of these proposed regulations. An explanation of the regulations may be found in the preamble of the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. The Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply because these regulations do not impose a collection of information on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies, if written) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how the regulations may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 19, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to

attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by September 29, 1999 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 19, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Timothy L. Jones, Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1397E–1 as proposed to be added at 63 FR 708 is amended by:

1. Revising paragraphs (b) and (j);

2. Redesignating paragraph (h) as paragraph (i);

3. Adding new paragraph (h).

The revisions and addition read as follows:

§ 1.1397E–1 Qualified zone academy bonds.

[The text of proposed paragraphs (b), (h) and (j) is the same as the text of § 1.1397E–1T(b), (h), and (j) published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–16622 Filed 6–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–98–4868, Notice 3]

RIN 2137–AB15

Gas Gathering Line Definition

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice announces an extension to October 8, 1999 for RSPA's public comment period for identifying issues related to gas gathering lines.

DATES: Submit comments to the docket on or before October 8, 1999.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the Docket No. RSPA–98–4868. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard.

The Dockets Management System is located on the Plaza Level of the Department of Transportation's Nassif Building at 400 Seventh Street, SW, Washington, DC. Public dockets may be reviewed in person between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, the public may also review comments by accessing the Docket Management System's home page at http://dms.dot.gov. An electronic copy of any document may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On 11 March, 1999, we published a notice in the **Federal Register** announcing an Internet public discussion forum on gas gathering for the purposes of pipeline safety regulation (64 FR, 12147–12148 , March 11, 1999). This Internet discussion forum was scheduled from April 13, 1999 through May 3, 1999. In addition to the Internet discussion forum, we provided the opportunity for interested persons to submit comment to a rulemaking docket. This rulemaking docket comment period was scheduled to close on April 28, 1999. At the request of several participants in the Internet discussion forum, we extended the forum for an additional three weeks until May 17, 1999. In order to provide sufficient opportunity for review of the discussion forum we extended the rulemaking docket comment period to July 7, 1999 (64 FR 23256, April 30, 1999).

On June 22, 1999, we received a request from the American Petroleum Institute (API) to further extend the comment period an additional 90 days. API stated that an industry coalition had been formed to address our request for comments. The coalition includes representation from the American Petroleum Institute, the Gas Processors Association, the Appalachia Producers Association, the Independent Petroleum Association of America, oil and gas associations from Ohio, Texas, Oklahoma, Kansas, Alaska, Colorado, and others. According to API, the coalition members plan to file written comments after reaching a consensus that addresses industry concerns. However, due to the complexity of the issue, the summer schedule, and to ensure that the comments reflect a broad consensus within the petroleum industry and with state and local interests, a 90-day extension to the comment period was needed.

We commend the API for taking steps to insure that this issue is addressed thoroughly. Therefore we are granting a 90-day extension.

Issued in Washington, DC on June 25, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–16806 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–60–P

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Notices

Federal Register
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Thursday, July 1, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture Meeting

AGENCY: Office of the Secretary, Agriculture.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of the sixth meeting of the Commission on 21st Century Production Agriculture. The purpose of this meeting is to prepare for the Commission's final report on the effects of the Federal Agriculture Improvement and Reform Act of 1996 and any other necessary business. This meeting will be open to the public.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held in Room 221–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. 20250, from 8:30–5:00 EST on July 8, 1999, and 8:30 am–12 noon EST on July 9, 1999.

FOR FURTHER INFORMATION CONTACT: Tim Peters (202–720–4860), Assistant Director, Commission on 21st Century Production Agriculture, c/o Office of the Chief Economist, or Keith J. Collins (202–720–5955), Chief Economist, Room 3702, South Building, 1400 Independence Avenue., Washington, D.C. 20250–0524.

Dated: June 21, 1999.

Keith J. Collins

Chief Economist

[FR Doc. 99–16775 Filed 6–30–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Northeast Regional Listening Session

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of *Listening Session.*

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a *Northeast Regional Listening Session* of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127), will send representatives of its membership (6 members, the Executive Director, a Representative from the Research, Education, and Economics Mission area, and a USDA administrative support person) to the Joint Northeast Region Sections Conference to hold a *Northeast Regional Listening Session,* 8:00 a.m. until noon on July 12, 1999.

The *Northeast Regional Listening Session* will engage northeast regional stakeholders (small farmers, producers/ranchers, academia including 1890 and 1994 institutions, the private sector, and other stakeholder groups) in panel sessions to present statements to Advisory Board members on agricultural research and education priorities and other issues of significant concern to the Northeast Region. Findings of this *Listening Session* will be presented to the full Advisory Board for consideration in its ongoing effort to advise USDA on future agricultural research and education priorities. Time will be allowed at the end of *Listening Session* panels for open discussion and audience participation.

Dates: Northeast Regional Listening Session, July 12, 1999, 8:00 a.m. until noon.

Place: Sheraton Harborside Hotel, Portsmouth, NH.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or within 2 weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, D.C. 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 23rd day of June 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–16748 Filed 6–30–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Substitution of Donated Poultry With Commercial Poultry

AGENCY: Food and Nutrition Service, USDA

ACTION: Notice.

SUMMARY: This notice announces the Food and Nutrition Service's (FNS) intent to continue a demonstration project to test program changes designed to improve the State processing of donated poultry by allowing the substitution of donated poultry supplied by the Department of Agriculture (the Department) with commercial poultry. The Department is currently operating a demonstration project that allows selected poultry processors to substitute commercial poultry for donated poultry in the State processing of donated poultry. Only bulk pack poultry and poultry parts are eligible for substitution under the current demonstration

project. Notice of the project, which has operated from February 1, 1996 through June 30, 1997, was first published in the **Federal Register** at 61 FR 5373 on February 12, 1996. The project was then expanded and extended through June 30, 1999 (62 FR 25885). Under the demonstration project, FNS invoked its authority under 7 CFR 250.30(t) to waive the current prohibition at 7 CFR 250.30(f)(1)(i) against the substitution of poultry items and to establish the criteria under which substitution will be permitted.

The Department will continue to operate the demonstration project from July 1, 1999 through June 30, 2000. The Department will use the results of the demonstration project to further examine whether allowing the substitution will result in increased processor participation and provide a greater variety of processed end products to recipient agencies in a more timely manner at lower costs. The Department believes that the demonstration is providing additional benefits to the program recipients currently. However, the Food Distribution Division has undertaken a complete review of the current program through Business Process Reengineering (BPR). Recommendations for program change will be forthcoming and the issues regarding substitution of all donated foods will be a priority topic of discussion.

DATES: The proposals described in this Notice may be submitted to FNS through December 30, 1999. Note that the demonstration project runs until June 30, 2000.

ADDRESSES: Proposals should be sent to David Brothers, Program Analyst, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: David Brothers, Schools and Institutions Branch, at (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22675, May 31, 1984).

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Background

Section 250.30 of the current Food Distribution Program regulations (7 CFR part 250) sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for processing donated foods and prescribes the minimum requirements to be included in such contracts. Section 250.30(t) authorizes FNS to waive any of the requirements contained in 7 CFR part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Current Program Requirements

The State processing regulations at § 250.30(f)(1)(i) currently allow for the substitution of certain specified donated food items with commercial foods, with the exception of meat and poultry. Under the current regulations at § 250.30(g), when donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing is required to be performed in plants under continuous Federal meat or poultry inspection or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to Food Safety Inspection Service (FSIS) inspection, all donated meat and poultry processing must be performed under Agricultural Marketing Service (AMS) acceptance service grading.

Traditionally only a few companies have processed donated poultry. Those processors have stated that the policy prohibiting the substitution of donated poultry reduces the quantity of donated poultry they are able to accept and process during a given period. Poultry purchased by USDA for further processing is bulk chill packed. Processors must schedule production around deliveries of the donated poultry because it is a highly perishable product. Some of the processors must schedule production around deliveries of donated poultry for up to 30 individual States. Vendors do not always deliver donated poultry to the processors as scheduled, causing delays in production of end products. These delays may be alleviated if the processors can substitute their commercial poultry for donated poultry.

Demonstration Project

From July 1, 1999 to June 30, 2000, the Department will continue to operate a demonstration project under which it will permit approved processors to substitute commercial poultry for donated poultry in the State processing of donated poultry. Processors may submit proposals and be approved to participate in the demonstration project during this time. FNS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) against the substitution of poultry for purposes of this demonstration project.

The demonstration project will continue to be limited to bulk pack poultry and poultry parts because the processing of such items can be readily evaluated. The definition of substitution in § 250.3 requires the replacement of commercial product for donated food to be of the same generic identity and equal or better quality.

FNS is inviting interested poultry processors to submit written proposals to participate in the demonstration project. The following basic requirements will apply to the demonstration project:

- As with the processing of donated poultry into end products, AMS graders must monitor the processing of any substituted commercial poultry to ensure program integrity is maintained.
- Only bulk pack poultry and poultry parts delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically cut-up frozen poultry parts delivered to schools which may be turned over to processors for further processing at a later time.)
- Commercial poultry substituted for donated poultry must be certified by an AMS grader as complying with all product specifications for the donated poultry.
- Substitution of commercial poultry may occur in advance of the actual receipt of the donated poultry by the processor. However, no substitution may occur before the product is purchased by USDA and the contract is awarded. Lead time between the purchase and delivery of donated poultry may be up to five weeks. Any variation between the amount of

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commercial poultry substituted and the amount of donated poultry received by the processor will be adjusted according to guidelines furnished by USDA.

• Any donated poultry not used in end products because of substitution must only be used by the processor at one of its facilities in other commercial processed products and cannot be sold as an intact unit. However, in lieu of processing the donated poultry, the processor may use the product to fulfill other contracts with USDA provided all terms of the other contract are met.

• The only regulatory provision or State processing contract term affected by the demonstration project is the prohibition on substitution of poultry (§ 250.30(f)(1)(i) of the regulations). All other regulatory and contract requirements remain unchanged and must still be met by processors participating in the demonstration project.

The demonstration project will enable FNS to evaluate whether to amend program regulations to provide for the substitution of donated poultry with commercial poultry in the State processing program. Particular attention will be paid to whether such an amendment of the regulations would probably increase the number of processors participating, and whether it would probably increase the quantity of donated poultry that each processor accepts for processing. Further, FNS will attempt to determine whether the expected increase in competition and the expected increase in the quantity of donated poultry accepted for processing enables processors to function more efficiently, producing a greater variety of processed poultry end products in a more timely manner at lower costs.

The data gathered to date from recipient agencies, AMS graders, and AMS procurement has been positive. The data suggests that given additional time, more poultry processors will decide to participate.

Interested processors should submit a written proposal to FNS outlining how they plan to carry out the substitution while complying with the above conditions. Processors who are currently participating in the demonstration should apply to continue in the demonstration. The proposal must contain (1) a step-by-step description of how production will be monitored (2) a complete description of the records that will be maintained for (a) the commercial poultry substituted for the donated poultry (b) the disposition of the donated poultry delivered. All proposals will be reviewed by representatives of the Food Distribution Division of FNS and by representatives of AMS Poultry Division's Grading Branch. Companies approved for participation in the demonstration project will be required to enter into an agreement with FNS and AMS which authorizes the processor to substitute commercial bulk pack poultry and poultry parts in fulfilling any current or future State processing contracts during the demonstration project period. Participation in the demonstration project will not ensure the processor will receive any State processing contracts.

Dated: June 24, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–16761 Filed 6–30–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request an extension for a currently approved information collection procedure for Sugar Import Licensing Programs described in 7 CFR part 1530.

DATES: Comments on this notice must be received on or before August 30, 1999 to be assured of consideration.

ADDRESSES: Mail or deliver comments to Stephen C. Hammond, Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Ave SW, Washington DC 20250–1021, telephone (202) 720–2916.

FOR FURTHER INFORMATION CONTACT: David J. Williams, Licensing Authority, Stop 1021, 1400 Independence Ave SW, Washington DC 20250–1021, (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Title: Sugar to be Imported and Re-exported in Refined Form or in Sugar Containing Products or Used for the Production of Polyhydric Alcohol.

OMB Number: 0551–0015.

Expiration Date of Approval: November 30, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the Sugar Import Licensing Program is to permit entry of raw cane sugar exempt from the sugar tariff-rate quota for re-export in refined form or in a sugar containing product or for the production of certain polyhydric alcohols. These programs are in use by as many as 400 licensees currently eligible to participate. Under 7 CFR part 1530, licensees are required to submit the following: (1) "Application for a license" information required for participation as outlined in sections 1530.104 and 1530.110, (2) "Regular reporting" of import, export, transfer, or use for charges and credits to licenses under section 1530.109, and (3) "miscellaneous submission" of bonds or letters credit under section 1530.107, appeals to determinations by the licensing authority under section 1530.112, or requests to the licensing authority for waivers under section 1530.113. In addition, each participant must maintain records on all program reports as set forth in section 1530.110. The information collected is used by the licensing authority to manage, plan, evaluate and account for program activities. The reports and records are required to ensure the proper operation of these programs.

Estimate of Burden: (1) "application for a license" would require 20 hours per response; (2) "regular reporting" would require between 10 and 15 minutes per transaction. The number of transactions per respondent will vary; (3) "miscellaneous submission" would require between 1 or 2 hours per bond or letter of credit, 2 to 10 hours per waiver request, and 10 to 100 hours per appeal.

Respondents: Sugar refiners, manufacturers of sugar containing products and producers of polyhydric alcohol.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: New/Renew License: 1; Regular reporting: 75 transactions, average; Miscellaneous: 50/250 bonds/letters of credit; 5/250 waiver requests; and 0/250 appeals.

Estimated Total Burden Hours on Respondents: 8,230 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments

The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

Signed at Washington, DC, on June 22, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 99–16746 Filed 6–30–99; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–1430–01–24–1A]

Quitchupah Creek Road, UTU–57907, Fishlake National Forest and Bureau of Land Management, Richfield District, Sevier and Emery Counties, Utah

ACTION: Notice of intent to prepare a third-party environmental impact statement.

SUMMARY: The Forest Service and Bureau of Land Management will jointly direct preparation of a Third-Party Environmental Impact Statement (EIS) to document the analysis and disclose the environmental and human effects of proposed actions to upgrade and realign an existing road/trail through Quitchupah Canyon, Sevier and Emery Counties, Utah. The road crosses public land parcels administered by the Forest Service, the Bureau of Land Management, and the State of Utah, as well as land that is privately owned.

The 9.2-mile Quitchupah Creek Road would connect State Road 10 in T 22 S, R 6 E, Section 30 of Emery County, with an existing Sevier County road in T 22 S, R 4 E, Section 11. This Sevier County road in Convulsion Canyon is utilized predominantly for hauling coal from the SUFCO Mine.

Currently, the Quitchupah Creek Road is unpaved, and is only maintained over the lower 3 to 4 miles.

Within the Quitchupah Creek canyon area, steep cut slopes, the incised stream channel, and erodible soils have recently rendered the road impassable by vehicles. Livestock are trailed through the canyon seasonally; other users are primarily local recreationists and/or hunters.

Agency Decisions

Separate Records of Decision would be issued by the Forest Service and Bureau of Land Management on whether or not to grant right-of-way to Sevier County and under what terms and conditions.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before July 31, 1999.

ADDRESSES: Send written comments to JBR Environmental Consultants, Inc., 8160 South Highland Drive, Suite A–4, Sandy, Utah 84093.

FOR FURTHER INFORMATION CONTACT: Kay Erickson, Bureau of Land Management, Richfield District, (435) 896–1500; or Linda Jackson, Fishlake National Forest, Richfield, (435) 896–9233.

SUPPLEMENTARY INFORMATION: Sevier County has proposed to upgrade the Quitchupah Creek Road as an additional, shorter haul road for trucks entering Emery County from Canyon Fuels' SUFCO Mine. The Mine would be the primary user of the upgraded road. The road would also provide access to the Accord Lakes area, and a shorter route for those in the Emery area traveling west toward Salina and I–15.

The proposed project would generally follow the existing Quitchupah Creek Road alignment. However, where needed to avoid archeological sites or other constraints to widening, short reaches of the road are proposed to be realigned. Given the proximity of the existing road with Quitchupah Creek in the narrow canyon bottom, it is anticipated that stream crossings would be required.

When completed, the road would have a 26-foot wide paved surface. The corridor width to be disturbed during construction would be expected to average about 100 feet. In addition, several construction equipment staging areas would be required, and would be located along the road corridor. Borrow sites to obtain fill material would also be needed and they may be located adjacent to the project area. The disturbed area associated with this project is expected to be less than 200 acres.

Preliminary Issues

Initially identified issues of concern include: archaeological resources, wildlife, livestock, land use, sensitive species, wetlands and riparian habitat, stream quality, and socioeconomics.

Possible Alternatives

The EIS will analyze the Proposed Action and No Action Alternatives. Other alternatives may include altering portions of the route, or designing parameters to provide mitigation for resources of concern.

Tentative Project Schedule

The tentative project schedule is as follows:

• Begin Public Comment Period—July, 1999.
• Hold Public Scoping Meetings—July, 1999.
• File Draft EIS—March, 2000
• File Final EIS—June, 2000.
• Record of Decision—July, 2000.

Public Scoping Meetings

Two public scoping meetings will be held in Utah, each an open house type meeting from 7:00 p.m.—9:00 p.m. The open house will include displays explaining the project and a forum for commenting on the project. The meetings will be held as follows:

• July 21, 1999—Museum of the San Rafael, Castle Dale, Utah.
• July 22, 1999—Quality Inn, Richfield, Utah.

Public Input Requested

Comments concerning the Proposed Action and EIS should address issues to be considered, feasible alternatives to examine, possible mitigation, and information relevant to or having bearing on the Proposed Action.

Dated: June 23, 1999.

Ron Sanden,

Acting Forest Supervisor, Fishlake National Forest.

Dave Henderson,

Acting Field Manager, Richfield Bureau of Land Management Field Office.

[FR Doc. 99–16713 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Notice of Intent To Prepare an Environmental Impact Statement; Indian River Timber Sale(s), Sitka and Hoonah Ranger Districts, Tongass National Forest, Sitka, AK

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Final Environmental Impact Statement

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for the Indian River Timber Sale(s) Project, located on the Sitka and Hoonah Ranger Districts, Tongass National Forest. This Notice of Intent revises the schedule for decision and designates a responsible official different from the one described in the Notice of Intent published November 1, 1995 (**Federal Register:** Volume 60, Number 211, Pages 55538–55540).

FOR FURTHER INFORMATION CONTACT: Linn Shipley, Team Leader, Assistant Forest Supervisors' Office, 204 Siginaka Way, Sitka, AK 99835, phone (907) 747–6671, FAX (907) 747–4331, email: lshipley/r10_chatham@fs.fed.us.

Decisions To Be Made

Fred S. Salinas, Assistant Forest Supervisor of the Tongass National Forest, is now the responsible official and will decide whether or not to authorize timber harvest within the Indian River Project Area. In addition, if timber harvest will occur, he will determine the following: (1) Whether the design of the timber sale(s) is consistent with meeting resource protection standards and guidelines in the modified 1997 Tongass Land and Resource Management Plan and the 1999 Record of Decision; (2) how much timber volume will be made available and what are the effects of the planned activities; (3) the location and design of the timber harvest units, log transfer facilities, and road system; (4) mitigation and monitoring required for sound resource management; (5) whether there is a significant possibility of a significant restriction on subsistence uses; and (6) road management objectives, including closures for resource protection and economics.

The Final Environmental Impact Statement and Record of Decision is expected to be released by August 1999. The Responsible Official will make a decision regarding this project after considering public comments, the environmental consequences displayed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The decision and supporting reasons will be documented in the Record of Decision.

Dated: June 21, 1999.

Fred S. Salinas,

Assistant Forest Supervisor.

[FR Doc. 99–16715 Filed 6–30–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on July 14, 1999 at Diamond Lake Resort (east of Roseburg, Oregon).

The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Umpqua River Basin Land Exchange Project; (2) Aquatic Conservation Strategy; (3) Basin watershed restoration technical team development; (4) Diamond Lake rehabilitation; (5) Public comment; and (6) Current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee Coordinator, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone (541) 858–2322.

Dated: June 23, 1999.

Charles J. Anderson,

Acting Designated Federal Official.

[FR Doc. 99–16791 Filed 6–30–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the California, Kankakee (IL), Washington, Alabama, and Springfield (IL) Areas and Request for Comments on the California, Kankakee (IL), Washington, Alabama, and Springfield (IL) Agencies

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in January and February 2000. GIPSA is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

California Department of Food and Agriculture (California);

Kankakee Grain Inspection, Inc. (Kankakee);

Washington Department of Agriculture (Washington);

Alabama Department of Agriculture and Industries (Alabama); and

Springfield Grain Inspection, Inc. (Springfield).

DATES: Applications and comments must be postmarked or sent by telecopier (FAX) on or before July 30, 1999.

ADDRESSES: Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Applications and comments may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Designation start	Designation end
California	Sacramento, CA	2/1/1997	1/31/2000
Kankakee	Bourbonnais, IL	2/1/1997	1/31/2000
Washington	Olympia, WA	2/1/1997	1/31/2000
Alabama	Mobile, AL	3/1/1997	2/29/2000
Springfield	Springfield, IL	4/1/1997	2/29/2000

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area is assigned to California. The entire State of California, except those export port locations within the State which are serviced by GIPSA, and the geographic area assigned to the Los Angeles Grain Inspection Service, Inc., which is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to Kankakee.

Bounded on the North by the northern Bureau County line; the northern LaSalle and Grundy County lines; the northern Will County line east-southeast to Interstate 57;

Bounded on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;

Bounded on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to U.S. Route 51; U.S. Route 51 north to State Route 18; State Route 18 west to State Route 26; State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 west to the western Peoria County line; and

Bounded on the West by the western Peoria and Stark County lines; the northern Stark County line east to State Route 88; State Route 88 north to the Bureau County line.

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Washington, except those export port locations within the State, is assigned to Washington.

d. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Alabama, except those export port locations within the State, is assigned to Alabama.

e. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to Springfield.

Bounded on the North by the northern Schuyler, Cass, and Menard County lines; the western Logan County line north to State Route 10; State Route 10 east to the west side of Beason;

Bounded on the East by a straight line from the west side of Beason southwest to Elkhart on Interstate 55; a straight line from Elkhart southeast to Stonington on State Route 48; a straight line from Stonington southwest to Irving on State Route 16;

Bounded on the South by State Route 16 west to the eastern Macoupin County line; the eastern, southern, and western Macoupin County lines; the southern and western Greene County lines; the southern Pike County line; and

Bounded on the West by the western Pike County line west to U.S. route 54; U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the western Morgan County line. The western Morgan, Cass, and Schuyler County lines.

The following grain elevator, located outside of the above contiguous geographic area, is part of this geographic area assignment: East Lincoln Farmers Grain Co., Lincoln, Logan County (located inside Central Illinois Grain Inspection, Inc.'s, area).

2. Opportunity for Designation

Interested persons, including California, Kankakee, Washington, Alabama, and Springfield, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

Designation Term	
California	02/01/2000 to 12/31/2002.
Kankakee	02/01/2000 to 12/31/2002.
Washington	02/01/2000 to 12/31/2002.
Alabama	03/01/2000 to 12/31/2002.
Springfield	03/01/2000 to 12/31/2002.

Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the California, Kankakee, Washington, Alabama, and Springfield official agencies. Commenters are encouraged to submit pertinent data concerning the California, Kankakee, Washington, Alabama, and Springfield official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 22, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–16582 Filed 6–30–99; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:30 p.m. on July 19, 1999, at the Ramada Inn, 357 Odlin Road, Bangor, Maine 04401. The purpose of the meeting is to review the final draft of the report, "Limited English Proficient

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Students in Maine: An Assessment of Equal Educational Opportunities." The Committee will also discuss plans for a new project.

Persons desiring additional information, or planning a presentation to the Committee, should contact or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 25, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–16716 Filed 6–30–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4 p.m. on August 24, 1999, at the Sheraton Hotel, 27 North 27th Street, Billings, Montana 59101. The purpose of the meeting is to review the current project on equal educational opportunities for Native American students in Montana public schools and to discuss current civil rights issues in Montana.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 24, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–16717 Filed 6–30–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–802]

May 1999 Sunset Review: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset review and revocation of antidumping duty order: 3.5" micro disks and coated media thereof from Japan (A–588–802).

SUMMARY: On May 3, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on 3.5" micro disks and coated media thereof from Japan. Because no domestic party responded with a complete substantive response to the sunset review notice of initiation by the applicable deadline, the Department is revoking this order.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued an antidumping duty order on 3.5" micro disks and coated media thereof from Japan on April 3, 1989 (54 FR 13406). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated a sunset review of this order by publishing notice of the initiation in the **Federal Register** on May 3, 1999 (64 FR 23596). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review on this order.

In the sunset review of 3.5" micro disks and coated media thereof from Japan we received a notice of intent to participate from Imation Enterprises Corporation ("Imation") by the May 18, 1999, deadline. We did not receive a complete substantive response from Imation by the June 2, 1999, deadline (see section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) (*"Sunset Regulations"*)). Since the Department did not receive a complete substantive response from Imation or any other domestic interested party, the Department has determined that no domestic party intends to participate in this sunset review and has notified the International Trade Commission of our intent to publish a final determination revoking this order.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because we did not receive a complete substantive response from any domestic interested party by the applicable deadline, June 2, 1999, we are revoking this antidumping duty order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: June 25, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–16816 Filed 6–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of Institution of Five-Year Reviews covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205-3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC Case No.	ITC Case No.	Country	Product
A–570–803	A–45	China, PR	Bars, Wedges.
A–570–803	A–45	China, PR	Axes, Adzes.
A–570–803	A–45	China, PR	Picks, Mattocks.
A–570–803	A–45	China, PR	Hammers, Sledges.
A–570–805	A–466	China, PR	Sulfur Chemicals (Sodium Thiosulfate).
A–428–807	A–465	Germany	Sulfur Chemicals (Sodium Thiosulfate).
A–412–805	A–468	United Kingdom	Sulfur Chemicals (Sodium Thiosulfate)
C–469–004	C–178	Spain	Stainless Steel Wire Rods.
A–533–808	A–638	India	Stainless Steel Wire Rods.
A–351–819	A–636	Brazil	Stainless Steel Wire Rods.
A–427–811	A–637	France	Stainless Steel Wire Rods.
A–401–603	A–354	Sweden	Seamless Stainless Steel Hollow Products.
A–580–810	A–540	Korea (South)	Welded Stainless Steel Pipes.
A–583–815	A–541	Taiwan	Welded Stainless Steel Pipes.
A–403–801	A–454	Norway	Fresh & Chilled Atlantic Salmon.
C–403–802	C–302	Norway	Fresh & Chilled Atlantic Salmon.
A–580–807	A–459	Korea (South)	Polyethylene Terephthalate Film.
A–570–804	A–464	China, PR	Sparklers.
A–588–702	A–376	Japan	Stainless Steel Butt-Weld Pipe Fittings.
A–580–813	A–563	Korea (South)	Stainless Steel Butt-Weld Pipe Fittings.
A–583–816	A–564	Taiwan	Stainless Steel Butt-Weld Pipe Fittings.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Filing Information:

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address:

"http://www.ita.doc.gov/import_admin/records/sunset/'.

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by

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filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. Because the case number is the same for four antidumping duty orders covering different products from China, we request that all submissions clearly identify the order for which the submission is being made by product name as listed above. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–16817 Filed 6–30–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On February 23, 1999, the Department of Commerce published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 21 manufacturers/exporters. The period of review is May 1, 1997, through April 30, 1998.

Based on our analysis of the comments received, we have made changes, including corrections of certain programming and other clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Reviews."

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION: Please contact the appropriate case analysts for the various respondent firms as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Lyn Johnson (SKF), Larry Tabash or Davina Hashmi (SNFA), J. David Dirstine (SNR), Robin Gray, or Richard Rimlinger.

Germany

Mark Ross (INA and Torrington Nadellager), Farah Naim or Davina Hashmi (SKF), Thomas Schauer (FAG), Robin Gray, or Richard Rimlinger.

Italy

Anne Copper or J. David Dirstine (SKF), Edythe Artman or Mark Ross (FAG), Minoo Hatten (Somecat), Robin Gray, or Richard Rimlinger.

Japan

J. David Dirstine (Koyo and Nachi), Thomas Schauer (NTN), Davina Hashmi (NPBS), Diane Krawczun (NSK), Robin Gray, or Richard Rimlinger.

Romania

Suzanne Flood (TIE, S.A.) or Robin Gray.

Sweden

Davina Hashmi (SKF) or Richard Rimlinger.

United Kingdom

Stacey King (Barden), Diane Krawczun (NSK/RHP), Hermes Pinilla (FAG), Lyn Johnson (SNFA U.K.), Robin Gray, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On February 23, 1999, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom (64 FR 8790). The reviews cover 21 manufacturers/exporters. The period of review (POR) is May 1, 1997, through April 30, 1998. We invited parties to comment on the preliminary results of reviews. At the request of certain interested parties, we held hearings for Germany-specific issues on April 1, 1999, and for Japan-specific issues on April 6, 1999. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following classes or kinds of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix," which is appended to this notice of final results.

Duty Absorption

We have determined that duty absorption has occurred with respect to the following firms and with respect to the following percentages of sales which these firms made through their U.S. affiliated parties:

Name of firm	Class or kind	Percentage of U.S. affiliate's sales with dumping margins
France		
SKF	BBs	18.44
SNR	BBs	5.14
	CRBs	10.27
Germany		
SKF	BBs	3.17
	CRBs	33.52
	SPBs	20.31
Torrington Nadellager.	CRBs	0.26
FAG	BBs	10.31
	CRBs	24.59
INA	BBs	9.14
	CRBs	9.24
	SPBs	3.53
Italy		
FAG	BBs	10.38
SKF	BBs	20.73
Japan		
Koyo	BBs	29.73
	CRBs	47.46
Nachi	BBs	43.96
	CRBs	8.04
NPBS	BBs	9.75
NSK	BBs	4.89
	CRBs	16.23
NTN	BBs	28.83
	CRBs	32.57
	SPBs	57.17
Sweden		
SKF	BBs	4.16
	CRBs	100.00
United Kingdom		
Barden	BBs	19.43
NSK/RHP	BBs	31.46
	CRBs	47.88

For a discussion of our determination with respect to this matter, see the "Duty Absorption" section of the Issues Appendix.

Use of Facts Available

For a discussion of our application of facts available, see the "Facts Available" section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded home-market sales that failed the cost test for the following firms and classes or kinds of merchandise for these final results of reviews:

Country	Company	Subject merchandise
France	SKF	BBs.
	SNR	BBs.
Germany	SKF	BBs, CRBs, SPBs.
	FAG	BBs, CRBs.
	INA	BBs, CRBs, SPBs.
Italy	FAG	BBs.
	SKF	BBs.
Japan	Koyo	BBs, CRBs.
	Nachi	BBs, CRBs.
	NSK	BBs, CRBs.
	NTN	BBs, CRBs, SPBs.
	NPBS	BBs.
Sweden	SKF	BBs.
United Kingdom	Barden	BBs.
	NSK–RHP	BBs, CRBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made revisions that have changed our results. We have corrected programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors about which we or the parties do not agree are discussed in the relevant sections of the Issues Appendix.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of AFBs are addressed in the "Issues Appendix," which is appended to this notice of final results.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1997, through April 30, 1998:

Company	BBs	CRBs	SPBs
France			
SKF	7.40	(2)	7.39
SNFA	0.41	0.21	(2)
SNR	0.31	0.37	(1)
Germany			
SKF	1.23	5.47	3.06
Torrington Nadellager	(2)	0.45	(3)
FAG	2.93	8.92	(1)
INA	7.38	3.88	0.87
Italy			
FAG	0.96	(1)	
SKF	3.42	(3)	
Somecat	0.45	(2)	
Japan			
Koyo Seiko	7.23	11.15	(1)

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Company	BBs	CRBs	SPBs
Nachi	4.33	1.02	(1)
NPBS	1.20	(2)	(2)
NSK Ltd.	1.12	4.55	(2)
NTN	6.13	3.48	12.49
Romania			
TIE	0.07		
Sweden			
SKF	2.87	13.69	
United Kingdom			
Barden	2.89	(1)	
FAG (U.K.)	(1)	(1)	
NSK–RHP	21.02	49.13	
SNFA	0.00	(2)	

(1) No shipments or sales subject to this review. The cash-deposit rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.
(2) No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
(3) No review.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer- or customer-specific assessment rate or value for subject merchandise.

a. Export Price Sales

With respect to export price (EP) sales for these final results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise on each of that importer's/customer's entries under the relevant order during the review period.

b. Constructed Export Price Sales

For constructed export price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. When an affiliated party acts as an importer for EP sales we have included the applicable EP sales in this assessment-rate calculation. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews) we divided the total dumping duties due for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent, we weight-averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

We will direct the Customs Service to collect the resulting percentage deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant order made effective by the final results of review published on July 26, 1993 (see *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the "All Others" rates from the relevant LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 23, 1999.

Richard W. Moreland

Acting Assistant Secretary for Import Administration.

Scope Appendix Contents

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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The HTS item numbers are provided for convenience and customs purposes. They are not determinative of the products subject to the orders. The written descriptions remain dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The status of the following products was decided during the investigation:

Products covered:

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Wave generator bearings
- Bearings (including mounted or housed units and flanged or enhanced bearings) ultimately utilized in textile machinery

Products excluded:

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions
- Slewing rings and slewing bearings

In addition, since the time of the investigation the Department has issued the following rulings:

Scope rulings completed between April 1, 1990, and June 30, 1990 (see *Scope Rulings*, 55 FR 42750 (October 23, 1990)):

Products excluded:

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990, and September 30, 1990 (see

Scope Rulings, 55 FR 43020 (October 25, 1990)):

Products covered:
- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review*, 56 FR 31692, 31696 (July 11, 1991):

Products covered:
- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between April 1, 1991, and June 30, 1991 (see *Scope Rulings*, 56 FR 36774 (August 1, 1991)):

Products excluded:
- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings completed between July 1, 1991, and September 30, 1991 (see *Scope Rulings*, 56 FR 57320 (November 8, 1991)):

Products covered:
- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products excluded:
- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991, and December 31, 1991 (see *Scope Rulings*, 57 FR 4597 (February 6, 1992)):

Products covered:
- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers
- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992, and March 31, 1992 (see *Scope Rulings*, 57 FR 19602 (May 7, 1992)):

Products covered:
- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products excluded:
- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992, and June 30, 1992 (see *Scope Rulings*, 57 FR 32973 (July 24, 1992)):

Products excluded:
- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992, and September 30, 1992 (see *Scope Rulings*, 57 FR 57420 (December 4, 1992)):

Products covered:
- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products excluded:
- Certain textile machinery components

Scope rulings completed between October 1, 1992, and December 31, 1992 (see *Scope Rulings*, 58 FR 11209 (February 24, 1993)):

Products covered:
- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products excluded:
- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope rulings completed between January 1, 1993, and March 31, 1993 (see *Scope Rulings*, 58 FR 27542 (May 10, 1993)):

Products covered:
- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed between April 1, 1993, and June 30, 1993 (see *Scope Rulings*, 58 FR 47124 (September 7, 1993)):

Products covered:
- Certain series of INA bearings

Products excluded:
- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope rulings completed between October 1, 1993, and December 31, 1993 (see *Scope Rulings*, 59 FR 8910 (February 24, 1994)):

Products excluded:
- Certain textile machinery components

Scope rulings completed between January 1, 1994, and March 31, 1994:

Products excluded:
- Certain textile machinery components

Scope rulings completed between October 1, 1994 and December 31, 1994 (see *Scope Rulings*, 60 FR 12196 (March 6, 1995)):

Products excluded:
- Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order.

Scope rulings completed between April 1, 1995 and June 30, 1995 (see *Scope Rulings*, 60 FR 36782 (July 18, 1995)):

Products covered:
- Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.
- Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

Scope rulings completed between January 1, 1996 and March 31, 1996 (see *Scope Rulings*, 61 FR 18381 (April 25, 1996)):

Products excluded:
- Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order.

Scope rulings completed between April 1, 1996 and June 30, 1996 (see *Scope Rulings*, 61 FR 40194 (August 1, 1996)):

Products excluded:
- Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.
- Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order.
- Enkotec Company, Inc.—"Main bearings" imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order.

Scope ruling January 19, 1999, memorandum from Laurie Parkhill to Richard W. Moreland:

Products excluded:
- Nissei Sangyo America, Ltd.—Certain vacuum nozzle assembly, designated as part 630–063–2316, is outside the scope of the order.

Scope ruling February 26, 1999, memorandum from Laurie Parkhill to Richard W. Moreland:

Products excluded:
- Holland Hitch—"Turntable bearing" (slewing rings, gearless slewing rings, or slewing bearings) is outside the scope of the order.

Issues Appendix

Company Abbreviations

Barden—Barden Corporation (U.K.) Ltd.; the Barden Corporation
FAG Italy—FAG Italia S.p.A.
FAG Germany—FAG Kugelfischer Georg Shaefer AG
FAG U.K.—FAG (U.K.) Ltd.
INA—INA Walzlager Schaeffler KG
Koyo—Koyo Seiko Co. Ltd.
Nachi—Nachi-Fujikoshi Corp.; Nachi America Inc.; Nachi Technology, Inc.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK/RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
SNR France—SNR Roulements
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV-SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF Group—SKF-France; SKF-Germany; SKF-Italy; SKF-Sweden; SKF USA, Inc.
SKF Sweden—SKF Sverige AB
SNFA France—SNFA S.A.
SNFA U.K.-SNFA Bearings, Ltd.
Somecat—Somecat S.p.A.
TIE—Tehnoimportexport
Torrington—The Torrington Company
Torrington Nadellager—Torrington Nadellager, GmbH

Other Abbreviations

CAFC—Court of Appeals for the Federal Circuit
COP—Cost of Production
CV—Constructed Value
CEP—Constructed Export Price
CIT—Court of International Trade
G&A—General and Administrative Expenses
EP—Export Price
NME—Non-market Economy
OEM—Original Equipment Manufacturer
POR—Period of Review
SAA—Statement of Administrative Action
URAA—Uruguay Round Agreements Act

AFB Administrative Determinations

LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006 (May 3, 1989).

AFBs 1—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991).

AFBs 2—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992).

AFBs 3—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

AFBs 4—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

AFBs 5—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996).

AFBs 6—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 2081 (January 15, 1997).

AFBs 7—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 54043 (October 17, 1997).

AFBs 8—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 63 FR 33320 (June 18, 1998).

Comments and Responses

1. Facts Available

Comment 1: Torrington contends that NTN refused to (1) explain its method for distinguishing subject CRBs from nonsubject needle roller bearings, (2) provide adequate documentation to support its claim that it could not obtain sales information from affiliated home-market resellers, (3) report the total downstream value of merchandise sold by affiliated home-market resellers on a class-or-kind basis for companies in which NTN owns a majority interest, (4) revise its calculation of home-market and U.S. inventory carrying costs in accordance with the Department's instructions, (5) explain an apparent discrepancy between its narrative description and its reported home-market packing expenses, (6) provide supplemental information regarding its U.S. indirect selling expenses for which the Department asked, (7) recalculate its freight and packing expenses on the basis on which they were incurred, and 8) segregate U.S. warehousing expenses as instructed by the Department. Citing *Koyo Seiko Co., Ltd.* v. *United States*, 92 F.3d 1162, 1166–1167 (CAFC 1996), Torrington argues that the Department should apply total adverse facts available because of NTN's refusal to cooperate.

NTN asserts that it answered all of the Department's requests for information fully and completely. NTN contends that the case Torrington cites is irrelevant because it interpreted the pre-URAA statutory provision for best information available. NTN also contends that the Department has verified and approved NTN's data and methodologies in almost every single past review of this case. Citing *Borden* v. *United States*, 4 F. Supp. 2d 1221, 1244 (CIT 1998) (*Borden*), NTN argues that the Department must use a respondent's information, regardless of the condition of the information, if the criteria of section 782(e) of the Act have been met. Regarding its own situation, NTN claims that it has met the statutory criteria.

NTN argues that, in contrast to Torrington's argument, it has explained how it segregated subject CRBs from nonsubject needle roller bearings and that the Department has verified its methodology in prior reviews. NTN argues that the Department asked that NTN report downstream-sales information only where possible and that NTN explained that it was not possible to provide such information. With respect to inventory carrying costs, NTN argues that the Department asked that NTN report these costs on a

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particular basis only where possible and that NTN explained that it was not possible. With respect to indirect selling expenses, NTN contends that it provided detailed explanations of each of its worksheets and that Torrington did not offer any substantive argument regarding the merit of the worksheets. With respect to freight and packing expenses, NTN contends that it explained why it could not allocate the expenses on the basis on which they were incurred and that the Department has verified NTN's methodology in prior reviews. Finally, NTN argues that the Department segregated warehousing expenses itself in the preliminary results.

Department's Position: For the majority of items which Torrington raised, NTN provided adequate information which we could use to calculate NTN's margin. More specifically, with respect to the segregation of subject CRBs from nonsubject needle roller bearings, we have verified NTN's methodology in past reviews and found it to be acceptable and there is no evidence in these reviews that NTN either reported sales of nonsubject merchandise or did not report sales of subject merchandise. With regard to warehousing expenses, as NTN observes, we were able to segregate these expenses for the preliminary results. With regard to U.S. indirect selling expenses, we find that NTN excluded the adjustments to which Torrington refers from its indirect selling expense calculation properly.

We find, however, that NTN should have addressed an adjustment elsewhere in the response but did not. We are unable to discuss this adjustment further due to the proprietary nature of this data (see NTN final results analysis memorandum dated June 16, 1999, for our analysis, a description of this adjustment, and how we addressed it in our analysis of NTN).

Because NTN's responses to our requests for information allowed us to calculate margins, it would not be appropriate to base NTN's margin on total facts available.

However, we find that NTN's responses to our requests for the total value of sales by home-market affiliates and for revised home-market packing expenses is not adequate for us to use in calculating NTN's margin. Therefore, the use of partial facts available for these items is appropriate. Further, we determine that, because NTN did not act to the best of its ability in responding to our requests for information concerning these items, the use of adverse facts available is warranted for these items.

With regard to sales by home-market affiliates, we requested that NTN report the total value of sales by affiliates on a class-or-kind basis. We also requested that, if NTN could not "obtain this information for all affiliated resellers, please provide it for at least those companies in which NTN owns a majority interest." See supplemental questionnaire dated September 24, 1998, at 1. We asked this question to determine whether sales to affiliates would be a reasonable substitute for sales by affiliates in our calculation of normal value. Because NTN did not provide this information, we are not able to make this determination. Therefore, the use of facts available is warranted.

Contrary to NTN's assertion, we did not indicate in our supplemental questionnaire that NTN should only report this "where possible." Instead, we indicated that, if NTN could not obtain this information from affiliates in which it does not own a majority interest, NTN should at least obtain this information from affiliates in which it does own a majority interest. Furthermore, NTN's explanation for why it could not obtain this information from those companies in which it owns a majority interest is not convincing. We are unable to go into further detail due to the proprietary nature of the explanation. See NTN final results analysis memorandum dated June 16, 1999, for our analysis of NTN's explanation and why we find it unsatisfactory.

As a result of our analysis, we determine that NTN did not act to the best of its ability in responding to our requests for information concerning sales by affiliated resellers. Therefore, the use of the adverse facts available with regard to NTN's sales by affiliated resellers in which NTN owns a majority interest is appropriate. The use of facts available affects the calculation of normal value. Therefore, where we compared U.S. sales to weighted-average normal values which are wholly or partly comprised of sales to affiliated resellers in which NTN owns a majority interest, we applied facts available. Because it is appropriate to use the facts available to the extent we use these sales to calculate normal value, we have adjusted the calculated net prices of these sales by increasing them by the class-or-kind-specific adverse facts-available rate applicable to NTN. In this manner, we ensure that the facts available are being used only when the sales are used to calculate normal value and, in instances where such sales are weight-averaged with sales to unaffiliated companies, the facts available are "diluted" accordingly.

Finally, with regard to home-market packing expenses, NTN did not revise its packing-expense calculation in the manner we requested nor did it attempt to do so. NTN stated merely that it does not keep records in that manner and made no attempt at a more reasonable segregation pursuant to our request. In addition, NTN's methodology is distortive. However, due to the proprietary nature of NTN's calculation, we are unable to explain the decision. See NTN final results analysis memorandum dated June 16, 1999, for an explanation of why we consider NTN's calculation to be distortive. Therefore, because NTN did not attempt to revise its packing expenses in the manner we requested and did not offer a reasonable alternative and because the methodology it used is manifestly distortive, we have denied NTN's home-market packing adjustment for these final results.

Comment 2: Torrington contends that NTN did not include either retirement benefits for directors and statutory auditors or a certain proprietary expense in its general and administrative (G&A) expenses. Torrington argues that the Department should include amounts for these expenses using, where necessary, non-punitive facts available.

With respect to retirement benefits, NTN argues that it explained that these expenses have no effect on its responses because the expenses in question were extraordinary. With regard to the certain proprietary expense, NTN contends that the Department's questionnaire instructed NTN to report costs for subject merchandise only. Therefore, NTN asserts that its cost response complies fully with the Department's instructions.

Department's Position: NTN did not include an amount for retirement benefits for directors and statutory auditors in its reported costs on the grounds that it does "not have any effect on the questionnaire response because it was an extraordinary expense." See NTN's supplemental response dated October 19, 1998, at A–7. However, it is incumbent upon the respondent to demonstrate that it is entitled to a favorable expense adjustment. NTN did not explain how retirement benefits are an "extraordinary expense" and provided no other justification for exclusion of these expenses. Therefore, we have recalculated NTN's G&A expenses to include these benefits.

With regard to the certain proprietary expense, we determine that, based on the evidence on the record of this review, it is appropriate to exclude this expense from G&A. Because of the proprietary nature of this expense, please see NTN final results analysis memorandum dated June 16, 1999, for an explanation of our determination.

Comment 3: SKF Sweden disagrees with the Department's characterization of it as a non-cooperative respondent. SKF Sweden contends that the Department's assignment of the highest SKF Sweden-specific CRB margin, 13.69 percent, as total adverse facts available for its CRB sales is unlawful. SKF Sweden asserts that it informed the Department in a timely manner that its production of CRBs sold to the United States during the POR had ceased in 1993. SKF Sweden submits that, in light of this fact, it cooperated fully with the Department by providing aggregated U.S. quantity and value sales data, informing the Department that there were no home-market sales of CRBs made during the review period, and that no detailed cost data existed with respect to this merchandise. Accordingly, SKF Sweden argues, it did not have sufficient information to provide detailed cost or CV data in response to the Department's questionnaire.

SKF Sweden contends that the Department should not resort to facts available because it was unable to comply with the Department's requests for information, citing *Borden*. SKF Sweden argues that, because it no longer produced CRBs, its inability to provide the requested CRB data should not lead to the mischaracterization of SKF Sweden as a non-cooperative respondent and therefore to the use of adverse facts available. To do otherwise, SKF Sweden asserts, would be opposite to the position the Department took recently in *Final Results Administrative Review; Certain Pasta from Italy*, 64 FR 6615 (February 10, 1999) (*Pasta Italy Review*), in which the Department determined that adverse facts available should not be applied to a company which informs the Department in a timely manner of its inability to comply with information requests due to the liquidation of assets. Finally, SKF Sweden argues that the Department determined erroneously that SKF Sweden absorbed 100 percent of the dumping duties on its CRB transactions.

Torrington contends that it was appropriate for the Department to determine SKF Sweden as a non-cooperative respondent and assign an adverse facts-available rate to its CRB sales. Torrington posits that inconsistencies in the record demonstrate that SKF Sweden has not cooperated fully with the Department. Torrington points to several discrepancies on the record where SKF Sweden states that it sold CRBs during the review period and where it states it did not sell CRBs. Torrington also identifies language in SKF Sweden's case brief that indicates SKF Sweden's acknowledgment that it could have provided some information about the CRB sales. Torrington argues that reporting all sales of CRBs would not have been burdensome given that SKF Sweden had already provided aggregate quantity and value data.

Torrington also contends that it is unlikely that SKF Sweden would not retain cost and CV data of its CRBs for at least a five-year period following ceased production of such merchandise, given the existence of the antidumping duty order. Torrington also asserts that SKF Sweden did not address the issue of why it did not retain such data and that SKF Sweden should not benefit from having destroyed the cost data for CRBs. Torrington points out that the Department requested the CRB data in both the original and second supplemental questionnaires and never informed SKF Sweden that it was not required to report such data. Torrington also argues that SKF Sweden has not established the basis on which the Department would not assess duties on its CRBs, citing *The Torrington Company* v. *United States*, 82 F.3d 1039, 1047 (CAFC 1996) (*Torrington I*). Accordingly, Torrington argues that SKF Sweden did not act or cooperate to the best of its ability to provide the requested information.

Torrington asserts that, while the Department should, at the least, assign the highest SKF Sweden-specific CRB margin to SKF Sweden's unreported CRBs, a higher more punitive facts-available rate should be assigned to the unreported sales. Torrington suggests that, owing to the fact that SKF Sweden continued to withhold requested data, the LTFV margins of 76.2 percent assigned to SKF Germany or 212.45 percent assigned to SKF Italy would be more appropriate to use as the total facts-available rate for SKF Sweden's CRB sales. Finally, Torrington contends that the Department should continue to determine that SKF Sweden absorbed duties on all of its CRB transactions.

SKF Sweden rebuts Torrington's claim that the record demonstrates inconsistencies in SKF Sweden's responses and argues that Torrington is misconstruing the facts on the record. SKF Sweden contends that it never stated that there were no sales of CRBs in the United States during the review period. Rather, SKF Sweden submits that it stated that there were no home-market sales of CRBs during the review period. SKF Sweden asserts that there is no justification to use the SKF Germany or SKF Italy facts-available rates Torrington suggests, arguing that the investigation must pertain to the same class or kind of merchandise in the same country of origin, citing *Peer Bearing Company* v. *United States*, 12 F. Supp. 2d 445, 451 n.4 (CIT 1998) (*Peer Bearing*). SKF Sweden contends that, given that the SKF Germany and SKF Italy rates Torrington suggests relate to different orders from different countries, the underlying price and cost data of merchandise involved in those orders is in no way indicative of the prices or costs of CRBs from Sweden.

Department's Position: SKF Sweden sold CRBs in the United States during the POR but did not provide CRB sales or cost data, thereby precluding us from conducting an analysis of its CRB sales. Section 776(a) of the Act requires us to make a determination on the basis of the facts available where requested information is missing from the record and, thus, cannot be used because it was not provided. Therefore, in accordance with the Act, we must rely upon facts available for these final results of review.

In order to determine whether we should make an adverse inference in the application of facts available, we considered whether SKF Sweden cooperated to the best of its ability in the instant administrative review with respect to its CRB sales. We requested CRB sales and cost data in both our original and supplemental questionnaires. However, despite our requests for CRB information, SKF Sweden did not provide such information, indicating that, because (a) SKF Sweden ceased production of CRBs in 1993, (b) the imports of the CRBs in question were *de minimis* during the review period, and (c) the cost involved to prepare the data would outweigh the benefits of submitting the requested data for the administrative review, it would not respond to our requests for CRB information. See SKF Sweden's original questionnaire response, dated August 28, 1998, at 1.

Section 776(b) of the Act permits us to draw an adverse inference where a party has not cooperated in a proceeding. This section of the Act deems a respondent uncooperative where it has not acted to the best of its ability to comply with requests for necessary information. See the SAA at 870. Because SKF Sweden chose not to provide the requested CRB information, we find that SKF Sweden was not cooperative. Specifically, we are not convinced that SKF Sweden could not provide the requested cost data.

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Accordingly, we find that SKF Sweden did not act to the best of its ability to comply with our requests for this information. Therefore we have made an adverse inference and assigned a total facts-available rate to SKF Sweden's sales of CRBs.

In its original and supplemental questionnaire responses, SKF Sweden submitted only total quantity and value data with respect to its CRB sales. At no time did SKF Sweden indicate that it did not have the sales data underlying its CRB sales transactions. It appears that SKF Sweden could have provided all of the data maintained in its records as it pertains to the sales of CRBs, albeit only the U.S. sales data. We also note that the quantity of CRBs sold during the review period is irrelevant.

SKF Sweden also claimed in its original questionnaire response that because it did not make any sales of CRBs in the comparison market it would have to provide cost information for purposes of CV, but it no longer had such cost information because it ceased production of CRBs in 1993. As discussed below, we find that ceasing production of subject merchandise does not relieve SKF Sweden of its responsibility to provide requested information. On May 15, 1989, we published in the **Federal Register** the orders on AFBs from Sweden for both BBs and CRBs. Thus, while SKF Sweden ceased production of CRBs in 1993, it was aware of the order on the subject merchandise and had already participated in several administrative reviews. SKF Sweden pointed out in its response that it retained in its inventory the CRBs that it sold in this review period. Given that SKF Sweden retained this merchandise in inventory, it anticipated that it might sell such merchandise in the future. Based on SKF Sweden's experience as a participant in these administrative reviews, it was well informed that, upon selling those CRBs during a period in which we are conducting an administrative review and in which it was a participant, we would, in accordance with our statute and regulations, request sales and possibly cost data and other information with regard to that merchandise. Accordingly, SKF Sweden cannot benefit from its failure to maintain relevant records merely because it ceased production of the subject merchandise.

In addition, SKF Sweden's reliance upon *Pasta Italy Review* is misplaced. In *Pasta Italy Review*, the respondent was precluded from using financial and personnel resources in responding to our questionnaires due to legal proceedings underlying the liquidation of its assets. In *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Administrative Review*, 59 FR 15159, 15173 (March 31, 1994) (*Flowers from Colombia*), a case cited in *Pasta Italy Review* which elaborated on the issue of how liquidation affects a respondent's ability to provide information to the Department, the companies that went out of business were required by law to sell or dispose of their assets. Herein lies the difference between the situation that SKF Sweden faces after ceasing production of its CRBs and the situation that the respondents faced in *Pasta Italy Review* and *Flowers from Colombia*. Unlike those respondents, SKF Sweden was not required to relinquish its assets and dispose of its records with regard to its CRBs. SKF Sweden merely chose not to maintain such records, despite its knowledge of and experience in the AFB proceedings. In fact, SKF Sweden decided to retain some of its assets, the physical merchandise in question, in its inventory. In contrast, the respondents which liquidated their assets were legally required to sell or dispose of all of their assets. Therefore, SKF Sweden's decision not to maintain its CRB cost records does not excuse SKF from responding to our requests for cost and sales information with respect to CRBs. See *Koyo Seiko Co.* v. *United States*, 796 F. Supp. 517, 525–26 (CIT 1992), and *Pulton Chain Co., Inc*, v. *United States*, 17 CIT 1136 (October 18, 1993).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See *Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review*, 62 FR 69472, 60477 (November 10, 1997).

We disagree with Torrington's suggestion that we use the LTFV margins assigned to SKF Germany and SKF Italy because the rate used as facts available normally should pertain to the same class or kind of merchandise from the same country of origin. See *Peer Bearing*. In order to ensure that the rate is sufficiently adverse so as to induce SKF Sweden's cooperation, we have assigned to SKF Sweden's CRB sales as adverse total facts available a rate of 13.69 percent, which we determined in the LTFV investigation and which is the highest margin ever calculated for CRBs from Sweden. Finally, because we have determined that a dumping margin does exist on the sales in question based on adverse facts available and lacking other information, we find duty absorption on all U.S. sales of CRBs made by SKF Sweden.

Comment 4: Torrington argues that NSK provided inadequate responses to the Department's supplemental questionnaire regarding NSK's downstream sales for certain affiliates. Torrington asserts that NSK's claim that it need not report downstream sales of certain affiliates because it did not have to do so in the LTFV investigation is irrelevant to this review. Torrington also contends that, in spite of the Department's request, NSK did not provide documentation demonstrating that sales to certain affiliates were made at arm's length. Torrington argues that the Department should apply facts available to all U.S. sales matched to models sold to affiliates in the home market for which NSK did not provide resale data.

NSK argues that the Department should not apply facts available regarding its home-market downstream-sales information because it responded fully to the Department's requests. NSK argues that it is for the Department, not Torrington, to decide whether NSK's explanations were adequate. NSK notes that the downstream-sales information with which Torrington takes issue represents a *de minimis* amount of NSK's home-market sales of scope merchandise. NSK argues further that Torrington's argument regarding arm's-length sales is irrelevant because the Department's arm's-length test removes from the home-market database all sales that fail the test.

Department's Position: We normally do not calculate normal value based on the sales by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the foreign like product in the market in question (see 19 CFR 351.403(d)(1998)). Based on information NSK submitted for the record, the sales in question comprise less than five percent of the total quantity of home-market sales. See NSK's section A response dated August 28, 1998, at A–26. Therefore, we consider NSK's response to be adequate with respect to this matter and have not used facts available.

Comment 5: Torrington argues that NSK did not respond to the Department's request that NSK report price adjustments made after NSK submitted its home-market sales listing. Torrington argues that, as facts available, the Department should assume that all home-market sales had unreported upward adjustments in the amount of the highest upward adjustment on any reported home-market sale.

NSK responds that it explained in its response, and the Department verified, the issue of NSK's updated billing-adjustments. NSK contends that the Department's decision not to resort to facts available in the preliminary results was appropriate and should be the same in the final results.

Department's Position: NSK claimed in its response and at verification that it was impractical to report post-submission billing adjustments and that such an exercise would require NSK to recreate its entire database. Based on records we examined at verification, we found evidence that NSK's exclusion of this price-adjustment has no material impact on our margin calculation and, thus, does not warrant the use of facts available. The details of our findings are not susceptible to public summary. See Verification Report of NSK's Sales Response at 8 and Exhibit VI. Accordingly, we have not applied facts available for NSK's unreported billing adjustments.

Comment 6: Torrington argues that NSK did not cooperate with the Department's request that NSK demonstrate the estimated period during which subject merchandise remains in home-market distribution centers. According to Torrington, this precludes the proper calculation of NSK's inventory carrying cost calculation for U.S. sales. Torrington argues that, as facts available, the Department should apply the highest inventory carrying cost rate (expenses to sales value) in the home market for any other Japanese respondent.

NSK responds that Torrington's argument is irrelevant to the margin calculation because the Department does not deduct inventory carrying costs in the home market from CEP or EP. NSK argues that, nonetheless, it responded fully to the Department's supplemental questionnaire.

Department's Position: NSK cooperated with our request for information regarding this issue adequately. In response to our request that NSK explain how it calculated the estimated period during which merchandise destined for the United States remains in distribution centers, NSK stated that it based the reported time period on its normal shipping schedules and average experience for shipping merchandise. See NSK's Supplemental Response at 27. NSK explained that it did not provide worksheets pursuant to our request because there were none to provide. Thus, we determined that NSK cooperated with our request as best it was able. Accordingly, we did not apply facts available for NSK's inventory carrying costs. However, contrary to NSK's assertion, inventory carrying costs are germane to our margin calculation because these costs comprise part of the expenses used to calculate a commission offset.

Comment 7: Torrington argues that NSK did not respond to the Department's request that NSK justify its reporting of depreciation costs for equipment obtained from affiliated suppliers. Torrington argues that NSK's statement that any adjustment to the purchase price of machinery from affiliates would result in a *de minimis* change to COP is inadequate and unresponsive. Torrington argues, therefore, the Department should restate depreciation based on facts available.

NSK responds that the Department should not restate NSK's depreciation costs based on facts available because NSK responded fully to the Department's question regarding equipment from affiliated suppliers. NSK notes that, according to its standard accounting practices and Japanese Generally Accepted Accounting Practices (GAAP), equipment purchases from affiliated companies were treated no differently than those purchases from unaffiliated companies. NSK argues further that, since any adjustment to the purchase price of equipment from affiliates would result in a *de minimis* adjustment to COP, it would gain nothing by attempting to alter the treatment of these depreciation costs.

Department's Position: NSK's supplemental response dated October 29, 1998, at 36, demonstrates that the amount of depreciation costs on equipment from affiliates is small enough that any adjustment to NSK's purchase price of equipment from affiliates would have an insignificant impact on NSK's reported COP. Also, NSK's methodology was in accordance with GAAP of the country of exportation, which we generally accept unless the methodology is determined to be distortive. That is not the case in this situation. Furthermore, NSK responded adequately to our requests for information. Therefore, we have not used facts available.

Comment 8: Torrington argues that the Department should use facts available for certain major inputs obtained from affiliated parties for which SKF France did not provide market prices. For valuing major inputs, Torrington notes that the Department's questionnaire instructs respondents to report the highest of the following values: (a) The transfer price from the affiliate, (b) the affiliate's COP, or (c) the market price. Torrington asserts that SKF France only reported the higher of the transfer price or the affiliate's COP. Therefore, Torrington argues, since SKF France has not responded fully to the questionnaire, the Department should use facts available for the inputs at issue.

SKF France states that, in response to the Department's supplemental questionnaire, it reported the overlap of components that it purchased from both affiliated and unaffiliated parties. SKF France notes that it explained in its response that the number of overlaps is insignificant compared to the thousands of parts used. SKF France argues that this substantiates its contention that market prices are generally not available for such components and notes that during verification the Department examined the issue of SKF France's valuation of materials purchased from affiliated parties and found no discrepancies. Therefore, SKF France contends, the Department is correct in accepting its reporting of values for these inputs.

Department's Position: SKF France did not respond fully to our questionnaire and the use of partial facts available is appropriate. SKF France admits in its questionnaire response and case brief that it valued major inputs purchased from affiliated suppliers based on the higher of transfer price or COP and that it did not take into consideration the market prices for some components which it purchased from both affiliated and unaffiliated suppliers. Therefore, SKF's reporting is not in accordance with section 351.407 of the Department's regulations which states that, for purposes of section 773(f)(3) of the Act, the value of a major input purchased from an affiliated person will be based on the higher of: (1) The price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. In an effort to obtain market values for major inputs in usable form, we sent SKF France a supplemental questionnaire requesting that it provide a chart listing, for each

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major input, the per-unit transfer price charged by the affiliated party and the per-unit COP incurred by the affiliated party. In addition, we asked that SKF France include in its chart the sales prices charged by unaffiliated parties (where possible) and that SKF France provide documentation to support these prices. See supplemental questionnaire dated October 26, 1998, at 9. In response to our question, SKF provided a chart with the requested information for COP and transfer prices. However, the market-price information it provided for components purchased by unaffiliated parties was not comparable to the manner in which it reported the COP and transfer price information. Therefore, we could not determine whether the market prices were higher than the reported COP or transfer prices. Since SKF France did not provide the market-price data in the form which we requested, it could not be used. In addition, contrary to SKF France's contention, the market value of materials was not examined during verification.

Section 776(a) of the Act provides for the use of facts available where a company fails to provide requested information in the form and manner requested. See also the SAA at 869 (providing that the Department may use facts available to fill gaps in the record due to deficient submissions). As a result of SKF France's failure to provide requested information, we have used partial facts available to ensure that these market prices are taken into consideration. We applied partial facts available by making an adjustment to SKF France's reported total cost of manufacturing on a transaction-specific basis. Because of the proprietary nature of the information, we cannot discuss the details of the facts available we are applying in this public notice. See SKF France's final results analysis memorandum dated June 16, 1999.

2. Duty Absorption

Section 751(a)(4) of the Act provides that, if requested, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) of the Act authorizes this type of inquiry during an administrative review initiated two years or four years after publication of an order.

For transition orders as defined in section 751(c)(6)(C) of the Act (*i.e.*, orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. On May 29, 1998, and July 29, 1998, Torrington requested the Department to determine, with respect to all respondents except Torrington Nadellager and SNFA UK, whether antidumping duties had been absorbed during the POR. On May 29, 1998, FAG Bearings Corp. requested that the Department determine for Torrington Nadellager whether antidumping duties had been absorbed during the POR. Since these reviews were initiated in 1998 and we received timely requests, we have made a duty-absorption determination as part of these administrative reviews.

In our preliminary results of review, we calculated the percentage of sales by a U.S. affiliate with dumping margins for each exporter. We stated that, with respect to those companies (with affiliated importer(s)) that had dumping margins, we would rebuttably presume that the duties will be absorbed for those sales which were dumped. We received several comments responding to these preliminary findings.

Comment 1: Certain respondents argue that the statute only permits the Department to conduct a duty-absorption inquiry initiated two or four years after the publication of an antidumping duty order. These respondents claim that, although the Department defended its decision to conduct a duty-absorption inquiry in these reviews on the grounds that these cases involve transition orders, there is nothing in section 751(c) of the Act that suggests that the definition of "transition order" for purposes of sunset reviews applies to the definition of "antidumping duty order" in section 751(a)(4) of the Act for purposes of duty-absorption inquiries. Therefore, these respondents argue, the Department is incorrect in justifying the duty-absorption inquiry by calling AFBs orders "transition orders" in accordance with section 751(c)(6)(C) of the Act as this section only applies to "sunset" reviews. These respondents conclude that the lack of explicit Congressional approval for duty-absorption inquiries for transition orders shows that Congress did not intend for duty-absorption inquiries to be initiated more than four years after publication of an antidumping duty order. Finally, these respondents assert that the Department cannot rely on its own regulation to create an exception for transition orders when such an exception is not authorized by the statute.

Torrington argues that, in *AFBs 7*, the Department rejected respondents' claim that the statute only permits duty-absorption determinations in the second and fourth reviews following the initial publication of the order. Citing the SAA at 885–886, Torrington contends that the respondents' position, if accepted, would "gut" the statute since the existence of duty absorption is a critical factor in the context of both the Department's determination in sunset reviews of whether dumping is likely to continue or recur and the International Trade Commission's determination in sunset reviews of whether injury is likely to continue or recur. Torrington argues that accepting the respondents' restrictive reading of the statute would mean that duty absorption, while remaining as an analytical tool in sunset reviews of new orders, would no longer be available in sunset reviews of any transition orders. Torrington argues further that even new orders would be affected, as the respondents' narrow reading of the statute would allow an absorption inquiry only in the second and fourth year after the issuance of an order. Finally, citing *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR at 27317 (May 19, 1997) (*Final Rule*) (discussing 19 CFR 351.213(j)(1)), Torrington argues that, in the context of drafting its revised regulations in order to implement the new law, the Department considered the statute and the comments of interested parties carefully and determined that the duty-absorption inquiry is equally applicable to transition orders.

Department's Position: With regard to the time frame in which we are conducting these reviews, section 351.213(j)(1) of our regulations, in accordance with section 751(a)(4) of the Act, provides for the conduct, upon request, of absorption inquiries in reviews initiated two and four years after the publication of an antidumping duty order. With respect to transition orders, the preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year (61 FR at 7317). Because these orders on AFBs have been in effect since 1989, these are transition orders in accordance with section 751(c)(6)(C) of the Act. This being a review initiated in 1998 and a request having been made, we have made duty-absorption determinations as part of these administrative reviews.

We believe that Congress intended that the International Trade Commission would consider the issue of duty absorption in all sunset reviews. In this regard, the statutory provision requiring the consideration of duty absorption does not distinguish between antidumping orders issued after January 1, 1995, and transition orders. See section 752(a)(1)(D) of the Act. Moreover, in all of the legislative history, Congress explained the implications of affirmative duty-absorption findings and clearly contemplated that such findings would be considered in all sunset reviews. See S. Rep. 103–412 at 50 (1994). See also H. Rep. 103–826 at 60–61 (1994) ("Commerce will inform the Commission of its findings regarding duty absorption, and the Commission will take such findings into account in determining whether injury is likely to continue or recur if an order were revoked"). Thus, we have made duty-absorption determinations as part of these administrative reviews.

Comment 2: Certain respondents state that gauging absorption on information that they do not know until completion of an administrative review is unfair. More specifically, they claim that the nature of the review process prevents them from determining the U.S. price increase necessary to pass dumping duties on to customers because the ultimate liability is not known until the end of a review. The respondents claim further that, other than dumping deposits paid at the time of entry, they have no means of estimating the price increases necessary to pass dumping duties to the customers.

The respondents also argue that the Department cannot presume that duty absorption on sales to the U.S. affiliate exists if the record does not contain evidence of the U.S. purchaser's assumption of liability for ultimate assessment. They claim that the Department's rebuttable presumption ignores commercial reality in that no U.S. buyer would agree to assume liability for an unascertainable amount of duties. The respondents claim that the Department has not provided any reason for adopting the presumption of duty absorption and that the presumption is not allowable by law.

SKF states that the Department's 15-day deadline for submitting evidence to rebut the assumption that unaffiliated U.S. purchasers will pay the assessed dumping duty is too short, given the amount of evidence that would have to be collected and the number of customers that would have to be contacted.

FAG argues that, notwithstanding the fact that the Department does not have the authority to conduct an absorption review in this review, the methodology chosen by the Department is arbitrary and capricious. FAG argues that the Department has simply calculated the percentage of FAG's U.S. affiliate's sales with dumping margins versus total sales and concluded that this figure demonstrates duty absorption within the meaning of the statute. FAG contends that, absent some explanation of the relevance of this information, there is no connection between the percentage of sales of a U.S. importer with dumping margins and any alleged duty absorption by the affiliated foreign producer or exporter. Therefore, FAG argues, the Department should demonstrate how its methodology has performed the analysis required by the statute (*i.e.*, determining whether the foreign producer or exporter has absorbed antidumping duties). Finally, FAG contends that, if the Department cannot explain how its methodology has fulfilled the task specified by the statute, then the results of the absorption inquiry should be disregarded.

Torrington contends that the Department's decision was fair. According to Torrington, it was correct to reject SKF's arguments that the Department's methodology does not give respondents enough time and that the use of a presumption renders the duty-absorption provision superfluous. Torrington states further that in *AFBs 7* the Department rejected SKF's argument that the record shows SKF did not absorb duties correctly. Torrington also states that the Department rejected FAG's argument that there is no connection between the percentage of sales dumped and the presence of duty absorption in *AFBs 7*.

Department's Position: An investigation as to whether there is duty absorption does not simply involve publishing the margin in the final results of review. As we noted in the preliminary results of these reviews, the determination that duty absorption exists is also based on the lack of any information on the record that the first unaffiliated customer will be responsible for paying the duty that is ultimately assessed. Absent an irrevocable agreement between the affiliated U.S. importer(s) and the first unaffiliated customer, there is no basis for us to conclude that the duty attributable to the margin is not being absorbed.

Section 751(a)(4) of the Act does not specify the methodology we are to use in an administrative review in determining whether duty absorption occurred. Similarly, the SAA at 885 simply notes that the Department "will examine * * * whether absorption has taken place." Moreover, the legislative history provides no guidance on what methodology the Department is to employ in making its determination. See also S. Rep. No. 103–412 at 44 (1994).

In considering methodologies that might be used for a duty-absorption inquiry, the Department sought to adopt one that would comply with the statute, as well as one that would be administrable within the time frame of a review period and still provide respondents with a sufficient opportunity to cure any deficiencies. The method the Department adopted accomplishes these goals. As the Department explained in *AFBs 7*, 62 FR at 54076, the "existence of a margin raises an initial presumption that the respondent and its affiliated importer(s) are absorbing the duty." This is a reasonable presumption because the continued existence of dumping duties indicates that the producer and its affiliated U.S. importer have not adjusted their prices to eliminate dumping. If the producer has not set its price to the first unaffiliated U.S. customer high enough to eliminate dumping, it is reasonable to presume that the producer is also absorbing the dumping duties. The reasonableness of this presumption is also reflected in the SAA at 885, which states that "the affiliated importer may choose to pay the antidumping duty *rather than eliminate the dumping*" (emphasis added). In sum, the existence of dumping gives rise to a reasonable presumption that the affiliated importer is absorbing dumping duties.

This is an instance where the existence of a margin raises an initial presumption that the respondent and its affiliated importer(s) are absorbing the duty. As such, the burden of producing evidence to the contrary shifts to the respondent. See *Creswell Trading Co., Inc.* v. *United States*, 15 F.3d 1054 (CAFC 1994). Here the respondents have not placed evidence on the record, despite being given ample time to do so, in support of their position that they and their affiliated importer(s) are not absorbing the duties. Regarding FAG's argument that there is no connection between the percentage of sales of a U.S. importer with dumping margins and any alleged duty absorption by the affiliated foreign producer or exporter, the percentage of sales with dumping margins is an indication of the volume of imports for which antidumping duties are being absorbed.

Comment 3: SKF argues that, by using data already available on the record, the Department is able to conduct an accurate analysis of whether dumping duties are being absorbed by comparing

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the total profit of CEP sales to the total amount of the antidumping liability. SKF, Koyo, and NSK also emphasize that, while dumping must be measured on a transaction-specific basis, there are no reasons why a duty-absorption inquiry can not be done on an aggregate basis. SKF argues that the Department must consider aggregate sales if an accurate duty-absorption determination is to be made. SKF states that, when the Department calculates dumping margins for transactions where the U.S. price exceeds normal value, the margin is set to zero. SKF contends that these "negative" margins need to be taken into account since "negative" margins indicate that, overall, duties are not being absorbed but, rather, that a company is offsetting dumping prices completely by passing on the cost of duties to its customers through universally higher prices. SKF also argues that, at a minimum, the Department's duty-absorption methodology must be modified to exclude from the percentage of dumped sales those transactions with *de minimis* margins. SKF contends that, if this is not done, a nonsensical result could be achieved where a respondent is found not to be dumping yet is found to be absorbing antidumping duties. SKF states that to disregard *de minimis* margins for purposes of the duty-absorption analysis is consistent with the Department's treatment of such margins for other purposes. NSK contends that, by adopting an aggregate approach, the Department would be creating a much more equitable standard consistent with World Trade Organization obligations for measuring duty absorption.

Torrington argues that the Department should reject SKF's proposals, as it did in *AFBs 7*, that sales with negative margins should be used for purposes of the duty-absorption determination and that no inquiry should proceed where total CEP profit exceeds the dumping duties due. Torrington argues further that the fact that there are sales by an importer at fair value is of no consequence for duty-absorption inquiries just as they are of no consequence for dumping-margin calculations. Torrington states that, as there is no basis in the antidumping law to use negative margins as an offset or credit against positive margins, the same consideration applies in the context of duty absorption.

Department's Position: The Department treats so-called "negative" margins as being equal to zero in calculating a weighted-average margin because otherwise exporters would be able to mask their dumped sales with non-dumped sales. See *Tapered Roller bearings and Parts Thereof, Finished and Unfinished from Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2559, 2576 (January 15, 1998), and *AFBs 7*, 62 FR at 54076. It would be inconsistent on one hand to calculate margins using only positive-margin sales, which is the Department's practice, and then effectively argue for duty absorption purposes that there are no margins for duty-absorption purposes because a deduction from the total duties determined should be made for non-margin sales. See *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 62 FR 18744, 18745 (April 17, 1997). In addition, accounting for negative margins would allow respondents to absorb duties selectively (on a customer, regional, or some other basis). With respect to *de minimis* margins, we apply *de minimis* margins on an aggregate, not on a sale-by-sale, basis. We disregard aggregate *de minimis* weighted-average margins for cash-deposit purposes, but we do not disregard individual sales that may have been dumped at less than 0.5 percent from a company's weighted-average margin.

Finally, a company's profit on CEP sales is not relevant to a duty-absorption inquiry. The existence of profit on such sales does not negate the fact that the dumping duties assessed on the entries are absorbed by the affiliate.

3. Discounts, Rebates and Price Adjustments

Comment 1: Torrington argues that the Department should not deduct FAG's reported home-market rebates because FAG used a broad allocation to report its rebates. Torrington contends that the CAFC, in *Torrington I*, ruled that direct expenses must be reported on a transaction-specific basis. Torrington argues that FAG's reported rebates are distortive because they assign a rebate amount to all sales of a particular customer rather than only to the individual sales on which the rebate was incurred. Torrington also asserts that FAG has not shown that it reported these rebates to the best of its ability.

FAG argues that, where a rebate program only applied to a customer's purchase of specific products, the rebate FAG paid was factored only over those product purchases rather than all of the customer's purchases. Thus, FAG contends, the rebate is only reported for those sales on which it incurred the expense. FAG also observes that the Department has examined this issue in prior reviews and rejected Torrington's argument.

Department's Position: Under section 351.401(g) of the Department's regulations, we accept allocated price adjustments, such as rebates, when transaction-specific reporting is not feasible and the allocation method used does not cause unreasonable inaccuracies or distortions. In judging the feasibility of transaction-specific reporting, we take into account the records maintained by a respondent, as well as such factors as the accounting practices in the country and industry in question and the number of sales made during the POR. See also *AFBs 7*, 62 FR at 54049.

FAG's home-market rebates were reported in the same manner as in prior reviews (see *AFBs 7*, 62 FR at 54051) and are limited to the sales on which FAG actually incurred the rebate expense. FAG stated in its supplemental response that rebates that were payable in connection with purchases of certain types of products or for purchases made during certain select periods were reported on the basis on which they were granted. See FAG's supplemental response dated October 27, 1998, at 6. In addition, Exhibit B–6 of FAG's section B response dated August 28, 1998, shows that FAG allocated the rebate only over those sales which received a rebate and it applied the allocation only to the sales for which it paid a rebate. Based on these facts, we determine that FAG's methodology for reporting its home-market rebates is reasonable and not distortive because it assigns rebates only to those sales which incurred rebates on a customer-specific basis.

With regard to Torrington's reliance on *Torrington I*, as we have stated in prior determinations and in the preamble to our regulations, *Torrington I* does not address the propriety of allocation methods but rather holds that we may not treat direct price adjustments as if they were indirect selling expenses. See *Final Rule*, 62 FR at 27347, and *AFBs 7*, 62 FR at 54050.

Comment 2: Torrington asserts that the Department should reject SKF Germany's claim for home-market billing adjustment two, which applies to multiple transactions involving the same customer. Torrington contends that SKF Germany summed all adjustments applicable to the customer number involved and allocated this amount over all sales to that customer. Torrington asserts that this allocation is contrary to the court's decision in *Torrington I* regarding the reporting of direct selling expenses. Torrington alleges that, by accepting SKF Germany's allocation, the Department in effect treated these as indirect expenses. Torrington argues that SKF Germany's reporting method is distortive because it does not tie the reported adjustment to specific transactions (or specific groups of transactions) to which they actually applied, but instead it allocates adjustments across product lines. Torrington argues that SKF Germany's reporting method is therefore contrary to the Department's post-URAA practice regarding such adjustments and that, as facts available, only positive billing adjustments should be retained for purposes of calculating the net home-market price. Furthermore, Torrington contends that, to the extent the facts seem to indicate that customers are simply awarded certain lump sums, the adjustment claimed by SKF Germany is not a billing adjustment but a rebate. Torrington argues that the Department does not accept rebates unless they were contemplated at the time of sale or are understood from past dealings of the parties.

SKF Germany responds that its reporting of billing adjustment two is not distortive, is consistent with the way that it incurs this expense, and constitutes a reasonable allocation under U.S. law. SKF Germany asserts further that the Department has accepted this adjustment in the last three reviews, as well as verified it in the last administrative review where it found that transaction-by-transaction reporting is simply not possible because the adjustments related to multiple transactions and, therefore, could not have been reported more specifically. SKF Germany contends that *Torrington I* was decided under the pre-URAA law and that the 1994 amendments emphasized that reasonable allocations of direct expenses are acceptable. SKF Germany contends further that, in *Torrington I*, the CAFC merely held that the Department could not treat direct adjustments as indirect selling expenses and that, therefore, acceptance of an allocation is not incompatible with its holding. SKF Germany insists that there is no factual or legal basis for distinguishing between upward and downward billing adjustments with respect to the amounts reported in its home market billing-adjustments-two field since it has reported this adjustment in a manner consistent with its business records. Moreover, SKF Germany asserts, the Department examined these adjustments in prior reviews and found them to be allocated reasonably.

Department's Position: We accept post-sale billing adjustments as direct adjustments to price if we determine that a respondent, in reporting these adjustments, acted to the best of its ability to associate the adjustment with the sale on which the adjustment was made, rendering its reporting methodology not unreasonably distortive. See *AFBs 6*, 62 FR at 2090. While we prefer that respondents report these adjustments on a transaction-specific basis (or, where a single adjustment was granted for a group of sales, as a fixed and constant percentage of the value of those sales), we recognize that this is not always feasible, particularly given the extremely large volume of transactions involved in these reviews and the time constraints imposed by the statutory deadlines.

SKF Germany's two billing adjustments were part of credit or debit notes issued to the customer that related to multiple invoices, products, or invoice lines, and which, therefore, could not be tied to a single specific transaction. In these cases, the most feasible reporting methodology that SKF Germany could use was a customer-specific allocation, which is not unreasonably inaccurate or distortive.

It is inappropriate to reject allocations that are not unreasonably distortive where a fully cooperating respondent is unable to report the information in a more specific manner. Because these adjustments are associated with multiple invoices, products, or product lines, they could not be tied to a specific transaction. Verification in the 96/97 review was an opportunity to determine whether billing adjustment two represented a reasonable approximation of SKF Germany's experience in granting this adjustment. Our conclusion in that review was that there was no reason to believe that the actual data would differ significantly. In this review, there is no evidence on the record to indicate that the bearings included in SKF Germany's current allocations vary significantly, either in terms of value, physical characteristics, or the manner in which they were sold. For this reason, we find that this methodology is not unreasonably distortive. With regard to the holding in *Torrington I*, see our response to the previous comment.

Comment 3: Torrington argues that the Department should reject all of Koyo's downward billing adjustments to home-market prices reported as billing adjustment two because the reporting methodology was incorrect and distortive. Torrington contends that billing adjustment two is distortive because it includes adjustments which Koyo granted on a model-specific basis but allocated over all sales to the customer involved, as well as lump-sum adjustments granted on a customer-specific basis, with the result that adjustments are made to transactions for which no adjustment actually applied. Citing *Torrington I*, the petitioner argues further that expenses which vary from sale to sale are direct expenses and must be reported as such (*i.e.*, varying from sale to sale) or be denied. Torrington contends that, by accepting Koyo's allocation, the Department in effect is treating Koyo's reported billing adjustments as an indirect expense (*i.e.*, not varying from sale to sale) and, thus, reaching a result that is incompatible with *Torrington I*.

In rebuttal, Koyo argues that Torrington has offered no new reason why the Department should not reject Torrington's arguments in these reviews as it has done in the past three AFB reviews. Koyo contends that the petitioner continues to rely on *Torrington I* even though the Department dismissed *Torrington I* as inapplicable to the issue at hand, citing *AFBs 6*, 62 FR at 2091.

Department's Position: Koyo has reported billing adjustment two to the best of its ability. We have based this determination on the fact that this post-sale price adjustment is comprised of two types of adjustments: (1) Lump-sum adjustments negotiated with customers without reference to model-specific prices, and (2) adjustments granted on a model-specific basis but which Koyo records in its computer system on a customer-specific basis only. Given the large number of sales involved, it is not feasible to report this on a more specific basis. See *AFBs 7*, 62 FR at 54050–51, and *AFBs 8*, 63 FR at 33328. Furthermore, we examined this expense closely at verification and found no indication that Koyo's methodology would result in distortive allocations. Therefore, we have allowed Koyo's billing adjustment two as a direct adjustment to normal value.

4. Circumstance-of-Sale Adjustments

4.A. Credit

Comment 1: Torrington notes that a home-market verification exhibit discloses that FAG Italy was uncertain of the dates of payments for some home-market sales. Torrington requests that the Department accept revised, post-verification data from FAG Italy only to the extent that it is satisfied that the payment dates have been reported accurately. Torrington requests that the Department otherwise apply partial facts available to the imputed credit calculation.

FAG Italy responds that, after verification, it revised its home-market

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credit expense calculation properly; it notes that it based the dates of payments for transactions of April and May 1998 on the customer-specific averages of the prior six months and that it recalculated imputed credit using these new dates. It asserts that, because the payment dates have now been reported accurately, the Department should accept its revised data.

Department Position: We have no reason to believe that FAG Italy reported payment dates for home-market sales inappropriately. Per our request, on December 18, 1998, FAG Italy submitted its post-verification amendments to account for corrections it presented at the beginning of verification and to correct certain errors that we discovered during verification. The revised payment dates for April and May 1998, based on customer-specific averages, comprised part of FAG Italy's post-verification amendments. In these reviews, as in past reviews, we allowed FAG Italy to calculate its payment dates on the basis of customer-specific averages because it did not maintain its payment records in a manner which provided transaction-specific payment dates. See FAG Italy's August 28, 1998, Section B questionnaire response at 31. We have not found the use of the averages to be unreasonably inaccurate or distortive. Moreover, this methodology is consistent with ones we have accepted in other segments of these proceedings where companies were not able to provide transaction-specific payment dates. See, *e.g., AFBs 6*, 62 FR at 2101, and *AFBs 7*, 62 FR at 54053. For these reasons, we have accepted FAG Italy's methodology and, consequently, its revised data for these final results.

Comment 2: Torrington argues that the Department should either reject or recalculate Koyo's home-market credit adjustment because its reporting method accounts for neither actual payment periods nor special agreements between Koyo and its customers for reducing accounts-receivable balances. Torrington contends that, since Koyo is able to distinguish all home-market transactions by product code, the sale date, the customer code, and the sales branch, reporting of actual payment periods is possible. Torrington concludes that, since Koyo calculates a customer-specific average, based on the ratio between receivables and sales rather than reporting actual payment periods, its methodology is inherently flawed.

Koyo argues that, although Torrington states that Koyo can distinguish home-market transactions by product code, the sale date, the customer code, and the sales branch, Torrington does not mention that these data are all invoice items, not payment information. Koyo states that it keeps its customer receivables on a customer-specific basis but not on an invoice-specific basis. When Koyo receives payment from a customer, the respondent explains, it applies the payment to that customer's accounts receivable balance and not to a specific invoice. Koyo states that its methodology of calculating the average number of days until receipt of payment by dividing the accumulated month-end receivables for each customer by the average daily sales to that customer is acknowledged widely as a standard measure of accounts receivable turnover. Koyo maintains that the Department has accepted this methodology in previous reviews. Finally, Koyo argues that certain arrangements it has with specific customers regarding payment types, *e.g.*, cash and 30-day notes, do not distort Koyo's home-market credit expenses because it accounted for these payments in its calculation of the average number of days outstanding which it then used for calculation of home-market credit expense.

Department's Position: Based on our review of information on the record, we find no indication that Koyo has changed its computerized payment-record system so that it can link specific shipments to payments. We examined Koyo's credit expense calculations during verification and found, as in *AFBs 4, 5, 6, and 7*, that Koyo's methodology reflects that which it reported in its questionnaire response dated August 28, 1998, at B–11. Therefore, in these reviews, as in *AFBs 4 through 7*, we have accepted Koyo's calculation of its home-market credit expense for each customer on the basis of the average number of days that receivables are outstanding. We are also satisfied by information on the record of this and previous reviews that the arrangements that Koyo has with certain customers regarding payments do not distort Koyo's home-market credit expense calculations.

4.B. Technical Services and Warranties

Comment 1: Torrington argues that SNR's claim that it incurred no direct technical-service expenses on its EP sales is not supported by information on the record. Torrington states that SNR's description of its selling functions regarding EP sales reveals that EP sales benefit from considerable technical-service expenditures by SNR and that such service expenditures are likely to have a significant direct expense portion. Since SNR did not distinguish direct and indirect technical-service expenses, Torrington asserts that the Department should treat such expenses as direct expenses.

SNR argues that Torrington completely ignores the fact that SNR did distinguish its technical-service expenses in its August 28, 1998, questionnaire response at C–32. SNR concludes that, since Torrington has not rebutted SNR's evidence illustrating why SNR's treatment of technical-services expenses was correct, the Department should accept these expenses as indirect in nature.

Department's Position: We have examined the information on the record and have concluded that the record supports SNR's contention that the technical services rendered were indirect. In particular, SNR's Section C questionnaire response dated August 28, 1998, at C–32 indicates that the expenses reported under this item covered the fixed expenses incurred in providing technical advice to salesmen concerning subject and non-subject merchandise. We have found that SNR's U.S. technical expense (*i.e.*, salary and benefit expense) is a fixed expense that can neither be related to individual sales nor subject or nonsubject merchandise. We examined the information on the record and found no support for Torrington's allegation that SNR's EP sales benefit from "considerable technical service expenditures" by SNR. Since there is no indication on the record that SNR incurred direct technical expenses, we have made no changes to our treatment of SNR's technical services as an indirect expense.

Comment 2: Torrington argues that the Department should review Nachi's direct and indirect technical-services expenses and, if Nachi included any direct technical-service expense in indirect technical-service expense, the Department should restate Nachi's indirect expenses and reduce the CEP-offset "cap." Torrington contends that Nachi replaces faulty bearings as part of its technical-services program and reported the costs of replacements as an indirect technical-service expense.

Nachi argues that the Department's practice has been to accept Nachi's reporting of the costs associated with the activities of Nachi Technical Center (NTC) as an indirect technical-service expense since NTC does not provide services, whether related to sales, repairs, or replacement of bearings, to customers directly. Nachi contends that it did not report the costs of replacements as indirect technical-service expense but as a direct expense in another expense category.

Department's Position: Based on our analysis of the record, we agree that Nachi reported the costs associated with NTC as indirect expenses correctly. Because such expenses, consisting principally of salaries and benefits of NTC personnel, are fixed expenses, it was proper to report them as indirect expenses. In addition, the record supports Nachi's claim that replacement costs are captured as a direct expense in another expense category. Due to the proprietary nature of this argument, see the Department's Analysis Memorandum for Nachi, dated June 15, 1999, for a more detailed discussion of this expense.

Comment 3: Torrington argues that SKF France's claim that it incurs no direct expenses for technical services on its EP sales to the United States for merchandise manufactured by its affiliate, Sarma, is not supported by the record. It argues that, due to the demanding nature of the market to which Sarma sells (*i.e.*, OEMs in the aerospace industry), it is likely that Sarma incurs significant direct selling expenses for technical and engineering services. Torrington contends that this is confirmed by SKF's reporting of a high degree of engineering services performed by Sarma. Torrington adds that the ledger of Sarma's indirect selling expenses includes items traditionally regarded as variable expenses. Citing *AFBs 3 and AFBs 4*, Torrington argues that, where the Department finds that the respondent has not distinguished between direct and indirect technical-services expenses, it is the Department's policy to treat such expenses as direct in the United States. When such information is lacking, Torrington continues, the Department calculates a direct-expense deduction on the basis of facts available. Torrington concludes that the Department should calculate and apply a direct-expense rate based on facts available in this case.

SKF France states that its reporting of indirect selling expenses for Sarma is correct and that the Department should continue to accept such expenses as reported. SKF France asserts that its response to the Department's questionnaire indicates that Sarma does not provide direct technical services or advice to its customers and that Sarma's technical department only provides general design and quality-control advice for future bearing development. Thus, the respondent contends, the response supports SKF France's claim that expenses are indirect in nature. SKF notes that its selling-function chart, which depicts the levels of activity and functions for indirect selling activities and which shows a high level of engineering services, is consistent with its narrative response. It argues that the expenses related to the activity the petitioner identifies (in Sarma's indirect selling expense ledger as being traditionally regarded as a variable expense) are not direct since they do not vary with the quantity sold nor are they tied to specific sales.

Department's Position: SKF France stated in response to our questionnaire that its affiliate, Sarma, does not provide direct technical services to its U.S. customers. We found no record evidence that SKF France misclassified these expenses as indirect selling expenses. Moreover, there is no presumption that a company operating in Sarma's market should have direct selling expenses. Thus, the petitioner's allegation alone does not call into question Sarma's responses. In response to the petitioner's reference to *AFBs 3* and *AFBs 4*, it is clear that in these cases the Department found that the respondents did not distinguish direct and indirect expenses. Furthermore, in *AFBs 3*, in addition to not distinguishing between direct and indirect expenses, the respondent did not indicate that the expenses were all indirect in nature. Because there is no indication from the record of these reviews that certain indirect expenses should be reclassified as direct expenses, we have accepted SKF France's expenses as reported.

Comment 4: Torrington argues that the Department should reallocate FAG Germany's U.S. technical-service expenses because FAG Germany's allocation methodology is distortive. Torrington contends that FAG Germany's selling-functions chart indicates that these expenses are incurred in greater amounts for some types of sales than for others and argues that the Department should reallocate these expenses to take this into account. Torrington argues further that the record shows that FAG Germany likely incurred significant direct technical-service expenses on certain EP sales even though FAG Germany did not report such expenses. Torrington argues that the Department should, consistent with its policy where a respondent has not distinguished direct and indirect technical-service expenses, treat all of FAG Germany's indirect technical-service expenses as direct expenses.

FAG Germany argues that there is no demonstrative correlation on the record between selling functions and selling expenses. In this regard, FAG Germany notes that the description of selling functions in the selling-functions chart includes indirect as well as direct technical-service expenses and thus cannot be used as a basis for determining the accuracy of its reported direct expenses. FAG Germany contends further that, because it had no reported U.S. sales of the type that Torrington contends should incur more expense, the issue is essentially moot. Thus, FAG Germany concludes that there is no basis for imputing a facts-available direct technical-service expense for FAG Germany's EP sales.

Department's Position: FAG Germany reported no direct technical-service expenses on its EP sales. See FAG Germany's supplemental response dated October 27, 1998, at 12. Because the chart of selling functions FAG Germany provided in its response includes all technical-service expenses, including indirect selling expenses, it is not a reliable guide for demonstrating an inconsistency in FAG Germany's response with regard to technical-service expenses. Moreover, Torrington's suggestion that FAG Germany should have incurred such expenses, without record evidence demonstrating the existence of such expenses, is insufficient to call the record evidence into question. Therefore, we have not made any adjustment to FAG Germany's claimed amount.

Comment 5: Torrington argues that the Department should reject NSK-RHP's claim that RHP Aerospace incurred no direct technical-service expenses for EP sales. Torrington argues that NSK–RHP's questionnaire response contradicts the respondent's claim that this expense is indirect in nature and, therefore, the Department should calculate a direct-expense factor for technical-service expenses as a basis for facts available.

NSK–RHP responds that the Department verified NSK–RHP's reported U.S. indirect technical service expenses and found no discrepancy, thereby confirming that there was no direct link between RHP Aerospace's technical services and sales. NSK–RHP argues that Torrington has attempted to refute NSK–RHP's claim by overlapping different sections of NSK–RHP's response inaccurately.

Department's Position: We verified the accuracy of NSK–RHP's claim that it incurred no direct technical-service expenses for EP sales and found no discrepancies. See *Verification Report of NSK–RHP's Response to Sections A, B and C of the Department's Questionnaire* at 14, dated January 21, 1999. Accordingly, we have not calculated a direct technical-service expense factor for RHP Aerospace based on facts available.

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4.C. Commissions

Comment: NTN argues that the Department's methodology for determining that its home-market commissions were not made at arm's length is unreasonable. NTN contends that commission rates vary significantly between selling agents according to the services provided by each agent and that the Department's methodology does not account for these differences. NTN also asserts that the Department's methodology does not account for differences related solely to levels of trade. Finally, NTN asserts that the fact that commissions paid to related parties are often much higher than those paid to unrelated parties demonstrates that the Department's methodology is distortive. By reviewing commission rates on an individual basis rather than a weighted-average basis, NTN asserts, the Department can determine which sales were made on an arm's-length basis accurately.

Torrington argues that the Department's methodology is appropriate. Torrington contends that NTN provides no concrete evidence that the Department's reliance on a commission-rate comparison is not appropriate to determine whether commissions paid to related sales agents were at arm's length. Citing *AFBs 6*, 62 FR at 2099, Torrington observes that the Department's test of NTN's commissions conforms with it prior practice with regard to other respondents.

Department's Position: There is no evidence on the record supporting NTN's claim that commission rates vary significantly between selling agents according to the services provided by each agent. As NTN notes, its response indicates that it negotiates commission rates with each selling agent. However, NTN has not provided any explanation as to how or why commission rates might vary or any information regarding the differences in services rendered by different selling agents. In the absence of such information, it is reasonable to presume that commissions paid to affiliates which are higher than those paid to unaffiliated parties are not at arm's length.

Furthermore, NTN's assertion that "commissions paid to related parties are often much higher than those paid to unrelated parties' does not demonstrate that our methodology is unreasonable. Rather, it indicates that the commissions paid to those related parties are more favorable than those paid to unrelated parties and, therefore, are not at arm's length. In addition, while it is true that NTN performs a number of different selling functions for different levels of trade, the record does not show or suggest that the selling functions performed by the selling agent vary by level of trade.

The record also does not show or suggest that NTN pays different commissions to selling agents depending on the level of trade of the ultimate customer. Finally, with respect to this issue, it is important to note that the purpose of our commission arm's-length test is to determine whether the commissions paid are at arm's-length amounts, not whether the sales themselves made to affiliated parties were at arm's-length prices. Indeed, we have a separate test for determining whether sales were made at arm's-length prices. Therefore, we have not altered our methodology.

4.D. Other Direct Selling Expenses

Comment 1: Torrington argues that the Department should recalculate Koyo's U.S. direct selling expenses. Torrington asserts that Koyo did not account for the expenses of administering a certain sales program sponsored by Koyo Corporation of the U.S.A. (KCU). Koyo argues that Torrington's argument is a misrepresentation of the record because Koyo accounted for the expenses fully in KCU's U.S. selling expenses reported in Section C of its questionnaire response.

Department's Position: We are satisfied by information on the record that Koyo has accounted for these expenses in its response. We have verified this item in previous reviews and find no information for these reviews that would indicate that the reporting of this expense has changed. Due to the proprietary nature of the comments raised by Torrington, see the Department's Analysis Memorandum for Koyo, dated June 16, 1999, for a more detailed discussion of this expense.

Comment 2: NPBS argues that the statute makes no provision for the deduction of repacking expenses from U.S. price. Accordingly, NPBS asserts that the Department should not make any adjustment to U.S. price for repacking expenses.

Department's Position: As we discussed in the CEP-profit section of this notice (see below) we view repacking expenses as direct selling expenses that the respondent incurs as a result of the sale. Accordingly, we deduct such expenses from U.S. price pursuant to section 772(d)(1)(B) of the Act which directs us to deduct from the CEP "* * * expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties." See also *AFBs 8*, 63 FR at 33339, and *Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 26934, 26942 (May 18, 1999). Therefore, we have deducted repacking expenses from the CEP.

4.E. Indirect Selling Expenses

Comment 1: Torrington argues that the Department should not deduct from normal value Koyo's indirect selling expenses and those reported for two consolidated affiliated resellers (distributors) in the home market. Torrington contends that Koyo has not supported its claim that the former are in addition to the latter expenses.

Koyo contends that it was appropriate to accept its reported indirect selling expenses. Koyo argues that all three companies—Koyo Seiko and its two consolidated distributors—are involved in the selling of the product to the ultimate customer. Koyo argues, therefore, that it is appropriate to deduct the indirect selling expenses of each of the three from the gross home-market price. Koyo states that Torrington bases its argument incorrectly on a situation where the product is sold to a related party. In the instant situation, Koyo argues, it does not sell the bearings to its consolidated distributors but rather simply shifts the responsibilities of some of the selling functions to the consolidated distributors.

In response to Torrington's assertion that Koyo's indirect selling expenses are the same as those reported for its two consolidated distributors, Koyo argues that, at each stage in the chain from Koyo Seiko to the ultimate customer, Koyo Seiko and the two consolidated distributors incur expenses individually in support of those sales to the ultimate customer. Koyo contends further that, because each company incurred discrete expenses in the process of selling the merchandise to the ultimate customer, the Department adjusted home-market price for those expenses correctly. Finally, Koyo concludes that there has been no double-counting of indirect selling expenses and therefore there is no need for the Department to recalculate Koyo's home-market indirect selling expenses.

Department's Position: We examined Koyo's distributors' expenses closely at verification. We found no indication that there had been double-counting of indirect selling expenses. We were able to verify that each company incurred discrete expenses in the process of selling the merchandise to the ultimate customer. Therefore, we have not recalculated Koyo's home-market indirect selling expenses.

Comment 2: Torrington notes that INA reported that its U.S. affiliate reimbursed the parent company for certain indirect selling expenses incurred in Germany to support sales to the United States. The petitioner contends that these reimbursements are associated with U.S. commercial activity and should be deducted from CEP. As facts available, the petitioner suggests that the Department deduct from CEP all of the reported indirect selling expenses incurred in Germany to support sales to the United States.

INA argues that it has included the reimbursed expenses in the total U.S. indirect selling expenses incurred by its U.S. affiliate. INA asserts that, as a result, the Department has already deducted such expenses from the CEP.

Department's Position: The evidence on the record indicates that the reimbursements in question are reflected in INA's ISE totals. Thus, we have already deducted the reimbursements at issue from CEP and the use of facts available is not warranted.

Comment 3: Torrington argues that the Department should review NTN's U.S. ISE calculation to ensure that it is not distortive. Torrington contends that NTN apparently removed a portion of the warehousing expense from its total indirect selling expenses on the ground that these expenses were not allocable to subject merchandise. Torrington argues that, because NTN allocated the remaining indirect selling expenses to both subject and non-subject merchandise, NTN's methodology may be distortive.

NTN indicates that it removed a portion of its warehousing expense from total warehousing expenses because this portion was associated exclusively with warehousing non-subject merchandise. NTN asserts that the remaining expenses have to be allocated between subject and non-subject merchandise because these expenses were incurred on both subject and non-subject merchandise.

Department's Position: It is appropriate to remove the warehousing expenses incurred exclusively on non-subject merchandise to the extent that the sales of the non-subject merchandise in question are not included in the sales total used to allocate the expenses. A comparison of Exhibit C–8 to the financial statements NTN submitted in Exhibit A–18 of its September 5, 1998, response suggests that NTN did not include the sales on which these warehousing expenses were incurred in its calculation of per-unit indirect selling expenses. Therefore, we determine that NTN's allocation of warehousing expenses is not distortive.

Comment 4: NTN argues that the Department should not have recalculated its home-market and U.S. indirect selling expenses without regard to its customer categories. NTN observes that its selling functions differ between levels of trade and NTN contends that, by reallocating selling expenses without regard to the level of trade, the Department distorted the margin calculation because the expenses are not the same for each level of trade. NTN argues this is particularly true of sales made by NSCL, an affiliated party in the home market, because NSCL sells only to distributors.

Torrington observes that the Department has rejected NTN's argument in prior reviews. Torrington contends further that NTN neither acknowledges the Department's prior decisions nor does it acknowledge any changes in its reporting.

Department's Position: We rejected NTN's allocation methodology because the method that NTN used to allocate its indirect selling expenses does not bear any relationship to the manner in which NTN incurs the expenses in question, thereby leading to distorted allocations. We have addressed this issue in prior reviews. See *AFBs 8*, 63 FR at 33329, first addressed in *AFBs 3*, 58 FR at 39750. NTN has not changed the methodology we rejected in these prior reviews nor has it presented any evidence that its selling expenses are incurred in the manner in which it allocated the expenses. In addition, we note that we allocated expenses incurred by NSCL only to NSCL's sales. The only change we made to NSCL's expenses was to segregate warehousing expenses so we could treat them as a movement expense. Therefore, we have not distorted the selling expenses attributable to NSCL's sales.

Comment 5: Torrington notes that, under a reserve for doubtful accounts, SKF Italy reported negative amounts as revenue for the account and reported positive amounts as bad-debt expenses. Torrington argues that the Department should not accept the positive amount in SKF Italy's reserve for doubtful accounts as indirect selling expenses because SKF Italy has not demonstrated that the bad-debt expense was incurred on sales of subject merchandise and contends that, without supporting evidence, no adjustment should be made. In support of its position, Torrington cites *AFBs 4*, 60 FR at 10916: "(a)lthough [the respondent] claimed as an expense an amount set aside in reserve in the event that its customers fail to pay outstanding charges in the future, Koyo failed to demonstrate that it actually wrote off any bad debts during the [POR]" (material in brackets added).

SKF Italy contends that Torrington misapprehends the nature of the respondent's reserve for doubtful accounts. SKF Italy explains that the negative amount represents the actual collection of bad debt that was outstanding and written off which offsets the positive amount that represents bad debt that was actually written off. SKF Italy indicates that it considers and records such expenses as indirect and argues that, since indirect selling expenses are allocated over all home-market sales, whether such expenses relate strictly to subject merchandise is not an appropriate issue.

Department's Position: As SKF Italy reported in its response that it incurred actual bad-debt expenses during the instant review from the write-off of actual bearing sales, this situation differs from the one cited by Torrington, and we believe an expense adjustment is appropriate. Further, as we said in *AFBs 4*, 60 FR at 10917, we consider bad-debt expense to be either direct or indirect depending on the relationship between the bad-debt expense and the sale. Based on the information reported in SKF Italy's response, we find that the bad-debt expense does not bear a direct relationship to the sale of merchandise made during the POR because SKF Italy is unable to tie these expenses to particular sales. Accordingly, we have treated its bad-debt expenses as indirect for these final results.

5. Level of Trade

Comment 1: Torrington argues that NTN has not demonstrated that it is entitled to a level-of-trade adjustment or CEP offset because it did not provide information that the Department requested. In addition, Torrington argues that NTN's descriptions of the selling functions it performs for its EP level of trade demonstrates that the EP level of trade is not comparable to any level of trade in the home market and, therefore, NTN is not entitled to a level-of-trade adjustment with respect to any of its home-market sales. Torrington asserts that NTN has an office which serves the EP customer and performs a number of selling functions that are not performed at any other level of trade. Torrington also observes that Exhibit A–7 of NTN's September 5, 1998, questionnaire response indicates that all merchandise is packaged and shipped to the EP customer's specifications and, Torrington argues, NTN does not provide this service to customers at any level of trade in the home market.

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Finally, Torrington asserts that the record does not demonstrate that there are patterns of consistent price differences among sales at different levels of trade in the home market. Torrington bases its argument on its assertion that there is significant overlap between the prices at the different levels of trade. Torrington asserts that, because a popular model could skew the relative figures significantly and distort the analysis of consistent price patterns, the Department's analysis of the patterns of price differences by quantity is misleading.

NTN contends that it provided the information which the Department requested. NTN also argues that the Department issues supplemental questionnaires routinely and that the fact that the Department asks a question does not necessarily mean that a response contains a deficiency.

With respect to its EP sales, NTN contends that it provides essentially the same services for its EP sales as it does for one of its home-market levels of trade. NTN argues that the fact that it has an office which acts as a facilitator for EP sales is no more remarkable than the existence of branch sales offices throughout Japan to service customers in particular regions. NTN also argues that the fact that merchandise shipped to the EP customer is shipped to that customer's specifications is not unique because NTN packs all merchandise to its customers' specifications. Finally, NTN argues that the record demonstrates that there is a pattern of consistent price differences, that Torrington's arguments are based on conjecture, and that Torrington's claims are not supported by the record. NTN also contends that the Department's analytical methodology removed the distortions that Torrington suggests could occur.

Department's Position: For the preliminary results, we granted a level-of-trade adjustment for NTN's EP sales and made a CEP offset for NTN's CEP sales based on an analysis of NTN's responses to our requests for information. See Level of Trade Memorandum dated January 26, 1999. We have not changed the analysis for these final results.

We disagree with Torrington's assertion that NTN did not provide information to justify a level-of-trade adjustment. The information NTN provided was adequate for us to make an determination regarding NTN's level-of trade claims; therefore, Torrington's cite to NTN's supplemental response in support of its contention is inappropriate. NTN's supplemental response indicated that there was no additional information beyond that originally reported and we made our determination that NTN was entitled to a level-of-trade adjustment for EP sales and a CEP offset for CEP sales on the basis of NTN's original submissions.

With regard to EP sales, we find that the record demonstrates that the level of trade of EP sales is the same as that of one of the home-market levels of trade. First, the existence of a separate sales office to service EP sales does not demonstrate, by itself, that the level of trade is necessarily different from one of the home-market levels of trade. Rather, what is important is whether the selling functions performed by NTN (including the functions performed by the selling office) for EP sales are similar to those performed for one of the home-market levels of trade. We find that this is, in fact, the case. We disagree with Torrington's claim that the selling functions performed by NTN's EP sales office are not performed for any of the home-market levels of trade. Rather, we find that most of the expenses incurred by the EP sales office to which Torrington refers are likely to be incurred by any sales office and that the others can reasonably be correlated with the home-market selling functions NTN performed. See NTN final results analysis memorandum dated June 16, 1999.

Second, we do not find remarkable that merchandise shipped to the EP customer is packaged and shipped to that customer's specifications, given the nature of the customer for EP sales. There is no evidence on the record, nor any logical reason to believe, that merchandise shipped to customers which comprise one of the home-market levels of trade are not also packaged and shipped to the customer's specifications.

Furthermore, the SAA at 830 directs that, "[w]hile the pattern of pricing at the two levels of trade under section 773(a)(7)(A) must be different, the prices at the levels need not be mutually exclusive; there may be some overlap between prices at the different levels of trade." We agree with Torrington that the amount of overlap measured in the number of models sold is substantial. However, the record demonstrates that the overlapping models account for a very small percentage of the total quantity of sales. The record also demonstrates that, for the vast majority of sales, measured by quantity, prices are higher at one level of trade than for the other. It is on this basis that we conclude that there is a pattern of consistent price differences between the two levels of trade.

Finally, while it may be theoretically possible that one popular model could skew the relative figures significantly and distort the analysis of consistent price patterns, Torrington does not cite any evidence on the record to suggest that this is happening. In addition, if one accepts Torrington's premise, it is also just as possible that a popular model could skew the relative figures so that we would *not* find a pattern of consistent price differences. More importantly, however, if we do not incorporate the figures from our analysis of the pattern of price differences by quantity into our calculations, it would be possible that a number of models that are sold infrequently and in low quantities could influence our analysis unduly. Therefore, we continue to base our findings on all of the information available to us and, on this basis, we find that there is a pattern of consistent price differences between the home-market levels of trade. Because there is such a pattern and because the level of trade of NTN's EP sales is the same as one of its home-market levels of trade, we made a level-of-trade adjustment whenever we compared NTN's EP sales to home-market sales made at a different level of trade for these final results.

Comment 2: NTN argues that the Department should use the transaction to the first unaffiliated customer in the United States to determine the level of trade of CEP sales. NTN contends that it would then qualify for a price-based level-of-trade adjustment. NTN also asserts that the Department's methodology of examining the level of CEP sales net of the functions whose expenses are deducted from CEP effectively bars all CEP transactions from ever being granted a price-based level-of-trade adjustment because the selling functions which a respondent performs in the home market are performed by its affiliated U.S. importer for CEP sales. NTN argues that this is contrary to the intent of the SAA and the legislative history of the Act.

Torrington observes that the Department has rejected NTN's argument in prior reviews. Torrington contends further that NTN neither acknowledges the Department's prior decisions nor discusses why the Department should reach a different decision in these reviews.

Department's Position: The statutory definition of "constructed export price" contained at section 772(d) of the Act indicates clearly that we are to base CEP on the U.S. resale price adjusted for selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. See SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a "constructed" export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Act ("Additional Adjustments for Constructed Export Price"), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive of the expenses (and concomitant selling functions) that we deduct pursuant to this sub-section. Therefore, because no home-market levels of trade reported by NTN were equivalent to the level of trade of its CEP sales, we were unable to make a level-of-trade adjustment for such sales.

The CIT has held recently that the Department's level-of-trade practice (basing the level-of-trade comparisons of CEP after making CEP deductions) is an impermissible interpretation of section 772(d) of the Act. See *Borden* at 58; see also *Micron Technology* v. *United States*, Court No. 96–06–01529, Slip Op. 99–02 (CIT January 28, 1999) (*Micron*). The Department believes, however, that its practice is in full compliance with the statute and that the CIT decision does not contain persuasive statutory analysis. The *Borden* decision became final on June 4, 1999 (Slip. Op. 99–50, Court No. 96–08–01970 (CIT 1999)). Because the time for filing an appeal of *Borden* has not yet run and *Micron* is not yet final, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a level-of-trade analysis, as articulated in 19 CFR 351.412.

Comment 3: NSK and NSK–RHP argue that the Department should make a level-of-trade adjustment when CEP sales are matched to home-market aftermarket sales. NSK and NSK–RHP contend that the Department can make a level-of-trade adjustment on the basis of the difference between the OEM and aftermarket levels of trade in the home market. NSK asserts that, although the home-market OEM sales and the level of CEP sales are not equivalent, the Department is not required to adjust for the entire amount of the difference between levels of trade when making a level-of-trade adjustment and could make a partial adjustment instead. NSK and NSK–RHP contend that the levels of home-market OEM sales are closer to the levels of CEP sales than the levels of home-market aftermarket sales because the prices for home-market OEM sales are lower than the prices for home-market aftermarket sales. NSK and NSK–RHP assert that it would be appropriate, therefore, to adjust normal value with a level-of-trade adjustment based on the difference between the home-market levels of trade whenever CEP sales are compared to home-market aftermarket sales.

Torrington notes that the Department rejected this argument in *AFBs 8* when NSK raised it for those reviews. Torrington, citing the Department's position from the prior reviews, argues that the Department should maintain its position.

Department's Position: There is no provision in the statute for making such a partial adjustment. We make a level-of-trade adjustment when there is "any difference between the export price or constructed export price and the normal value that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and the normal value." See section 773(a)(7)(A) of the Act. We interpret the statutory phrase "wholly or partly due to a difference in level of trade" to mean that we may make a level-of-trade adjustment only if part of the differences in prices between levels of trade is attributable to the difference in level of trade. In other words, we need not demonstrate that no factor other than level of trade influenced a pattern of price differences. Thus, we do not read into this language of the statute the authority to make a level-of-trade adjustment between two home-market levels of trade where neither level is equivalent to the level of trade of the U.S. sale. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558, 2578 (January 15, 1998), and *AFBs 8*, 63 FR at 33330.

Comment 4: Torrington argues that Nachi's sales to affiliated and unaffiliated resellers do not constitute one level of trade. Torrington asserts that selling-expense levels must differ for Nachi's affiliated and unaffiliated customers due to the nature of the affiliated customers' relationships to Nachi and, in certain cases, the Department should not allow a CEP offset to Nachi's home-market prices (the proprietary nature of the information does not permit us to describe this issue with more specificity). Torrington supports its position by citing the SAA at 829, which states that "a sales subsidiary created merely to perform the role of a *de facto* sales department is not an appropriate basis for level-of-trade adjustments."

Nachi argues that Torrington does not cite any information on the record to demonstrate how Nachi's sales to affiliated and unaffiliated parties involve "different selling activities." Nachi argues that, when it provided the Department with an analysis of its selling functions performed in sales to OEMs and sales to distributors, it did not distinguish between affiliated and unaffiliated distributors precisely because there are no differences in selling functions between the two. Nachi maintains that the Department was correct in finding that one level of trade exists in Nachi's home market and that a level-of-trade difference from the CEP level of trade justifies the application of a CEP-offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act.

Nachi argues that Torrington's reference to the SAA is irrelevant and taken out of context. Nachi maintains that it is clear that its affiliated resellers are not subsidiaries created merely to act as *de facto* Nachi sales offices. Nachi contends that Nachi has its own sales branches and that it reported the selling expenses of these sales branches as indirect selling expenses. Nachi argues further that a close reading of the SAA reveals that it is addressing the potential for manipulation that could result when a company incorporates a sales branch, thereby turning the sales branch into a subsidiary. Nachi states that the parent company may then claim that sales made by the subsidiary are at a different and higher level of trade than that of the parent, even though there has been no change at all in the functions performed, in order to gain the benefits of the CEP offset. Nachi states that Torrington's argument is focused on the selling activities which Nachi performed when selling to the affiliates and not the selling activities of the affiliated distributors. Nachi also argues that, through the application of the arm's-length test, the Department eliminates sales by Nachi to its affiliates that are not made at an arm's-length price. Nachi states that those remaining sales are made at the same or higher price than the prices of sales made to unaffiliated parties. Nachi maintains that the similarity in pricing of the sales that are used in the margin calculation is further assurance that Nachi incurs the same costs and performs the same selling functions in sales to both affiliated and unaffiliated parties.

Department's Position: Based on our review of the information on the record, we find no indication that Nachi's dealings with both affiliated and unaffiliated parties involve different selling functions and services. We

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reviewed the selling functions and services Nachi performed in sales to OEMs and sales to distributors and found that the selling functions and services performed were similar in making sales to both. There is no information on the record that indicates that Nachi's actual experience in the home market is contrary to that reported in its submissions. Therefore, we determined that there was one level of trade in Nachi's home market. Based upon our examination of the information on the record, we found that the home-market level is not equivalent to the level of the CEP. Our determination is supported further by the arm's-length test, through which we found that Nachi dealt with its resellers on an arm's-length basis with respect to pricing. Also, there is insufficient evidence on the record to indicate that any of Nachi's resellers performed the role of a *de facto* sales department. Therefore, since we determined that the home-market level of trade was at a more advanced stage than the CEP level of trade, a CEP-offset adjustment to home-market price is appropriate.

6. Cost of Production and Constructed Value

6.A. Profit for Constructed Value

Comment 1: FAG Germany and FAG Italy (collectively, FAG), Barden, INA, NSK, NSK-RHP, SNR, and SKF France, SKF Germany, SKF Italy, SKF Sweden (collectively, SKF) argue that the Department's calculation of profit for CV is unlawful in that it excludes below-cost sales from the calculation. The respondents argue that the profit-calculation methodology, which the Department based on all reported sales at each level of trade within each class or kind of merchandise, is not permitted under section 773(e)(2)(A) of the Act, which requires the Department to calculate profit "in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country." The respondents argue that "foreign like product" is indisputably a much smaller group than the "class or kind" of merchandise. Moreover, they argue, the Department's interpretation of "foreign like product" for the purposes of calculating CV profit is contrary to the definition of the term under section 771(16) of the Act. Under this section, the respondents continue, "foreign like product" is defined as merchandise in the first of three enumerated categories which is merchandise sold in the home market that is either identical or sufficiently similar to particular subject merchandise. They contend that calculating profit by aggregating different foreign like products results in the use of merchandise classified on a class-or-kind basis, which is consistent with the provision under section 773(e)(2)(B)(i) of the Act, requiring the Department to calculate profits "in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise."

The respondents contend further that, when calculating CV profit pursuant to section 773(e)(2)(B)(i) of the Act, it would be proper to assume that sales outside the ordinary course of trade should be included in the calculation because language limiting the calculation to sales within the ordinary course of trade is included in sections 773(e)(2)(A) and 773(e)(2)(B)(ii) of the Act but not in section 773(e)(2)(B)(i) of the Act. INA argues that, since the Department did not actually apply the methodology set forth in section 773(e)(2)(A) of the Act but, in fact, applied the methodology in section 773(e)(2)(B)(i) of the Act, the Department had no authority to exclude below-cost sales from its calculation of CV profit. SKF comments that the "normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning," citing *Sullivan* v. *Stroop*, 496 U.S. 478, 484 (1990) (internal quotations and citations omitted). SKF asserts further that, when the relevant act includes an explicit definition of the word or term in the same subchapter, this presumption is strengthened, citing *Sorenson* v. *Treasury*, 475 U.S. 851, 860 (1986). Thus, SKF concludes, the term "foreign like product" for purposes of the CV-profit calculation should be consistent with the definition of the term as used for matching purposes. FAG and Barden argue that, although the Department has stated in the past that it has adopted a different meaning for "foreign like product" for the purposes of calculating CV profit, this reasoning cannot prevail because Congress was aware of the statutory definition of "foreign like product" at the time it chose to include the term within the language of section 773(e)(2)(A) of the Act. Furthermore, FAG and Barden contend, the SAA states that section 773(e)(2)(B)(i) of the Act is consistent with the existing practice of relying on a producer's sales of products in the "general class or kind of merchandise," which the SAA indicates "encompasses a category of merchandise broader than the 'foreign like product,'" citing the SAA at 840. INA adds that calculating profit on a foreign-like-product basis, as required by the plain language of the statute, is not any more complicated than other calculations performed routinely by the Department in a review, noting that the Department calculates weighted-average prices for each foreign like product and that CV is already calculated separately for each different bearing model, based on model-specific costs. INA argues further that, since CV serves as a proxy for a sales price, the logical reason for establishing section 773(e)(2)(A) of the Act as the preferred method of profit calculation is that it results in normal value that most closely approximates the normal value that would be determined based on sales of the foreign like product. Therefore, INA explains, under this method, if the profit earned on sales of the foreign product that is like the U.S. product is relatively high, then the profit add-on would be relatively high, resulting in CV for the U.S. product that correlates to price-based normal value. Conversely, INA continues, if the profit earned on sales of the foreign product that is like the U.S. product is relatively low, the profit add-on for CV would be relatively low. INA concludes that this differentiation, and thus the purpose of the section 773(e)(2)(A) method, is lost under the aggregated approach the Department applied in the preliminary results. INA, NSK, and NSK/RHP argue that, if all merchandise sold in the home market constituted a single foreign like product, then an average of all such sales would be used to determine a single normal value applicable to sales of every type of subject merchandise.

INA observes that the Department has made a subtle change in its description of foreign like product comparisons for AFBs. In prior reviews, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Preliminary Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews*, 61 FR 35713, 35717 (July 8, 1996), among others, INA contends that the Department stated "[a]s defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics * * *." However, in these reviews, INA continues, the Department stated that, "[a]s defined in the questionnaire, a bearing family consists of all bearings which are the foreign like product that are the same in the following physical characteristics * * *," referring to

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Reviews, 64 FR 8790, 8795 (February 23, 1999). INA believes that this is evidence of a shift by the Department in the rationale for its aggregate profit-calculation approach. "Foreign like product" is a product-specific concept and not a collective description of all foreign like products sold in the home market, INA asserts.

Torrington contends that the Department has already addressed the respondents' proposal to make multiple product-specific CV-profit calculations in *AFBs 7*, 62 FR at 54062, and that the Department concluded correctly that the respondents' proposal would be overly complex and make the statutorily preferred method inapplicable in most cases. Torrington concludes that the Department's method results in the application of the statutorily preferred method and is consistent with the similar use of aggregate data for profit and selling and general expenses in pre-URAA practice.

Department's Position: As we stated in *AFBs 7*, 62 FR at 54062, and *AFBs 8*, 63 at 33333, we believe that an aggregate calculation that encompasses all foreign like products under consideration for normal value represents a reasonable interpretation of section 773(e)(2)(A) of the Act. Moreover, we believe that, in applying the preferred method for computing CV profit under section 773(e)(2)(A) of the Act, the use of aggregate data results in a reasonable and practical measure of profit that we can apply consistently where there are sales of the foreign like product in the ordinary course of trade. In the preamble to our regulations, we stated:

> The Department recognizes that there are other methods available for computing SG&A and profit for CV under section 773(e)(2)(A) of the Act, including those suggested by the commenters. We continue to believe, however, that an aggregate calculation that encompasses all foreign like products under consideration for normal value represents a reasonable interpretation of the statute. This approach is consistent with the Department's method of computing SG&A and profit under the pre-URAA version of the statute, and, while the URAA revised certain aspects of the SG&A and profit calculation, we do not believe that Congress intended to change this particular aspect of our practice.
>
> Moreover, the Department believes that in applying the preferred method for computing SG&A and profit under section 773(e)(2)(A), the use of aggregate data results in a reasonable and practical measure of profit that the Department can apply consistently in each case. By contrast, a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to [antidumping] proceedings without generating more accurate results.

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In addition, we disagree with the respondents' interpretation of the term "foreign like product." In accordance with the definition of foreign like product under section 771(16) of the Act, it is clear that "foreign like product" is not limited to the product which is identical in physical characteristics to the subject merchandise (section 771(16)(A)) or even to the product that is similar to the subject merchandise (section 771(16)(B)). Merchandise of the "same general class or kind" as the subject merchandise (section 771(16)(C)) will qualify as the "foreign like product" in cases where either the identical or the similar merchandise is not available. There is no indication that, by referring to "a foreign like product" in section 773(e)(2)(A) of the Act, Congress intended that profit be calculated upon the basis of merchandise that is identical or similar to the subject merchandise. If Congress had such intentions, then the "preferred" method provided in section 773(e)(2)(A) of the Act would rarely be applicable since CV ordinarily becomes necessary for determining normal value when identical or similar home market merchandise is not available for comparison to the U.S. merchandise. Furthermore, the respondents imply that the term "general category of products" is synonymous with the class or kind of merchandise. However, there is no statutory indication that, for purposes of sections 773(e)(2)(B)(i) or 773(e)(2)(B)(iii) of the Act, the "general category of products" must correspond to the "same class or kind of merchandise." It has been our past practice to interpret the term "general category of products" to "encompass a group of products that is broader than the subject merchandise." See 19 CFR 351.405. For example, if the profit amount for AFBs were unavailable and the "general category of products" were available, then the Department could consider a profit amount for the general category of "bearings," which could include all AFBs as well as tapered roller bearings (*i.e.*, subject and non-subject merchandise). This general category is broader than the "subject bearings," which, in these cases, would be limited to ball, cylindrical, and spherical plain bearings, respectively. See *Shop Towels from Bangladesh, Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 55957, 55961 (October 30, 1996), and *Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review*, 62 FR 37869, 37878 (July 15, 1997).

We also disagree with INA that calculating profit on a product-by-product basis is not any more complicated than calculating weighted-average prices or CV for each product. In general, the respondents have reported numerous varieties of bearings which fall into hundreds of product or family categories. Calculating CV profit on a product-by-product basis would require a product-by-product analysis and profit-calculation determination. For certain products, if there were sales (i.e., sales in the ordinary course of trade) of identical or family bearings, we would be able to use the preferred method under section 773(e)(2)(A) of the Act to calculate profit. However, for other bearing families, we would need to determine which of the three alternative methods under section 773(e)(2)(B) of the Act would be appropriate based on the factual situation before us. Given the number of bearing families, this would add layers of complexity which the Department does not face in calculating weighted-average prices or in calculating an aggregate profit figure. In the Department's view, Congress did not intend such a result when it enacted section 773(e)(2) of the Act.

Finally, we disagree with INA's comment that we have changed our description of bearing families in an effort to support our rationale for our CV-profit calculation. In describing bearing families for comparison purposes, we replaced the term "class or kind" with "foreign like product" simply because the term "foreign like product" is reflective of the new-law terminology concerning the merchandise subject to an order.

Comment 2: The SKF companies argue that, assuming that the Department continues to rely on section 773(e)(2)(A) of the Act for the CV-profit calculation, it should take the revenue from non-disregarded profitable sales, subtract from that figure the COP for those sales, and then divide by the total COP for all sales, both profitable and unprofitable (total sales revenue on non-disregarded profitable sales minus total COP on non-disregarded profitable sales divided by total COP on all sales). SKF asserts that the URAA requires that CV profit reflect the "actual amounts * * * realized" by foreign producers. It also

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asserts that this proposed methodology would arrive at a more realistic assessment of a foreign producer's actual profit.

Torrington argues that the Department has rejected SKF's argument previously that non-profitable sales could be used in calculating profit and cites *AFBs 7*, 62 FR at 54062.

Department's Position: As we concluded in *AFBs 7*, section 773(e)(2)(A) of the Act requires us to use the actual amount for profit in connection with the production and sale of a foreign like product in the ordinary course of trade. Section 771(15) of the Act defines sales outside the ordinary course of trade as those sales disregarded under section 773(b)(1) of the Act because they failed the cost test. Thus, as required by law, the Department has continued to exclude sales that failed the cost test from the CV-profit calculation under section 773(e)(2)(A) of the Act.

6.B. Affiliated-Party Inputs

Comment 1: NTN disagrees with the Department's recalculation of the value of NTN's affiliated-party inputs. It contends that the Department should use NTN's reported actual costs for affiliated-party inputs. NTN observes that, while sections 773(f)(2) and 773(f)(3) of the Act provide for disregarding certain affiliated transactions, these provisions do not apply to NTN's factual situation. With regard to section 773(f)(2) of the Act, NTN contends that there is no evidence that its affiliated-party inputs do not reflect the amount usually reflected in the sales of merchandise under consideration. NTN also claims that the fact that an input may be sold at less than its COP does not necessarily mean that it is not reflective of a fair market price.

With regard to section 773(f)(3) of the Act, NTN contends that the Department must have reasonable grounds to believe that inputs are being sold at less than the COP before it may use COP information to value the inputs. NTN also contends that, while the statute permits the use of the rule only for major inputs, the Department did not distinguish between major and minor inputs in its recalculation of NTN's costs for the preliminary results. NTN also contends that the Department applied this methodology inappropriately to production processes performed by affiliated parties, which are, according to NTN, clearly different from major inputs.

Finally, NTN argues that, assuming the Department was justified in making the adjustment, the Department's calculation is distortive because it does not take into account NTN's cost accounting system. NTN claims that its reported costs are based on standard costs multiplied by variances. Thus, according to NTN, if the transfer price of a particular component were 100 yen and the variance was 5 percent, NTN reported a cost of 105 yen. Thus, NTN argues, if the affiliated supplier's actual cost was 103 yen, the Department would have made an adjustment based on the difference between the transfer price and the supplier's actual cost rather than NTN's actual cost.

Torrington observes that the Department has rejected this argument made by NTN in *AFBs 8* and should continue to reject it for the reasons the Department enunciated in that decision.

Department's Position: Pursuant to section 773(f)(3) of the Act, in the case of a transaction between affiliated persons involving the production of a major input, the Department may consider whether the amount represented as the value of the major input is less than its COP. In addition, section 351.407 of the Department's regulations states that, for purposes of section 773(f)(3) of the Act, the value of a major input purchased from an affiliated person will be based on the higher of (1) the price paid by the exporter or producer to the affiliated person for the major input, (2) the amount usually reflected in sales of the major input in the market under consideration, or (3) the cost to the affiliated person of producing the major input. We have relied upon this methodology in past AFB reviews as well as in other cases. See, *e.g.*, *AFBs 6*, 62 FR at 2117, *AFBs 7*, 62 FR at 54065, *AFBs 8*, 63 FR at 33337, and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan*, 64 FR 17336 (April 9, 1999) (*Round Wire from Taiwan*).

In this case, we asked NTN in our COP questionnaire to provide a list of the major inputs it received from affiliated parties which it used to produce the subject merchandise. NTN responded to the question by directing us to several exhibits. These exhibits list inputs which NTN considered to be major inputs and identify the respective transfer prices and supplier's cost information for the inputs. We examined this information and determined that in some instances the company's reported transfer prices were less than its respective costs. As there were no other market prices available in most instances, we restated NTN's COP and CV in the instances where the affiliated supplier's cost of producing the inputs was higher than the transfer price. Therefore, since we reasonably relied upon the information provided by NTN regarding the cost of major inputs it used in manufacturing the subject merchandise, we applied section 773(f)(3) of the Act correctly for purposes of determining COP and CV for our analysis.

NTN argues that the Department must have reasonable grounds to believe that inputs are being sold at less than COP before it may use COP information. The Department considers the initiation of a cost investigation concerning home-market sales a specific and objective reason to believe or suspect that the transfer price from a related party for any element of value may be below the related suppliers' COP. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 63 FR 20585 (April 27, 1998). This practice was affirmed by the Court of International Trade in *NSK Ltd.* v. *United States*, 910 F. Supp 663 (CIT 1995). Therefore, based upon prior case precedent, it was appropriate to consider the cost data available on the record in determining how to value major inputs.

Regarding NTN's allegation that we should not apply the major-input rule to production processes performed by affiliates, section 773(f)(3) of the Act directs us to examine the costs incurred for transactions between affiliated persons. These transactions may involve either the purchase of materials, subcontracted labor, or other services. Thus, we applied the major-input rule properly to the production processes performed by affiliates. This decision is consistent with our practice in prior reviews. See *AFBs 8*, 63 FR at 33337.

Finally, we disagree with NTN that our methodology is distortive. NTN's cost-reporting methodology does not account for the fact that the affiliate's cost is higher than the transfer price. NTN calculated its variances by comparing its standard costs to its actual costs, which are, for all inputs it purchased from all suppliers, based on the transfer prices from each supplier. As a result, the affiliate's costs do not enter into the calculation of NTN's variances and NTN's reported "actual" costs are based on transfer prices. Therefore, because the reported costs are based on transfer prices, it was appropriate to adjust the reported costs for the difference between the affiliate's cost and the transfer price when the affiliate's cost is higher than the transfer price. Therefore, we conclude that there is no reason to alter our methodology.

Comment 2: Torrington asserts that the Department should use facts available to value certain major inputs SKF Germany obtained from affiliated parties for which it did not provide market prices, contrary to the Department's questionnaire instructions.

SKF Germany rebuts that, since its related supplier does not sell these major inputs to unaffiliated parties, it does not have a comparable market value or price for the inputs it purchased from its affiliated suppliers. SKF Germany argues that its reporting is consistent with the questionnaire instructions as it has reported the higher of COP or transfer price for these inputs.

Department's Position: In its August 28, 1998, Section D response at 14, SKF Germany stated that the components it buys from affiliated suppliers are not sold by these affiliates to unaffiliated customers in Germany. In addition, at 17 of its Section D response, SKF Germany asserted that, "[a]bsent an observable market for such purchases, the higher of cost/transfer price necessarily defines the statutory value for those inputs." Pursuant to section 773(f)(3) of the Act and 19 CFR 351.407(b), we have accepted SKF Germany's reporting of its major-input costs. As cited above in response to comment 1, we have relied upon this methodology in past AFB reviews as well as in other cases.

Comment 3: Citing the Department's February 16, 1999, verification report for FAG Italy's COP and CV data, Torrington contends that the Department determined that FAG Italy's unaffiliated supplier's prices were not always lower than prices from affiliates even though FAG Italy claimed otherwise in an earlier submission. According to the petitioner, at the beginning of verification, FAG Italy presented revised COP and CV information that valued affiliated-party inputs on the higher of cost, transfer price, or arm's-length price. Further, the petitioner asserts, the Department's preliminary analysis memorandum regarding FAG Italy indicates that, for the preliminary results, the Department used the revised COP and CV information. The petitioner argues that, for the final results, the Department should only accept FAG Italy's revised COP and CV information to the extent that it is satisfied that FAG Italy reported the values of the affiliated-party inputs accurately based on the higher of COP, transfer prices, or arm's-length prices.

FAG Italy contends that it reported the revised costs for materials purchased from affiliated parties correctly and that the Department should accept them. Citing the Department's verification report, FAG Italy argues that the Department verified these corrections fully.

Department's Position: FAG Italy reported its revised costs of materials accurately and we have used the revised information for the final results of these reviews.

Comment 4: Citing the verification report, Torrington contends that FAG Italy excluded net financing expenses from its calculation of the COP of materials purchased from affiliated parties. The petitioner argues that the Department should only accept FAG Italy's revised data to the extent that it is satisfied that the correct amounts have been reported. Otherwise, Torrington contends, the Department should make all appropriate adjustments to FAG Italy's reported costs, thereby increasing the company's COP by the full net financing expenses for materials purchased from affiliated parties.

FAG Italy argues that it added financial expenses to the revised cost information specifically at the request of the Department. The respondent also contends that the Department verified this issue fully and accepted the information during the cost verification. FAG Italy contends that Torrington's concerns are unwarranted because the percentage of affiliated-party inputs to total inputs (by value and volume) is negligible and these revised material costs have no effect on the ultimate margin calculation.

Department's Position: FAG Italy included the net financial expenses in its revised cost information. We verified and accepted these new costs during our verification. See February 16, 1999, verification report on FAG Italy at 16.

Comment 5: Citing INA's August 28, 1998, section D questionnaire response at 7, Torrington notes that the respondent purchased inputs such as cages, blanks, and subcontracted processing from certain affiliates. The petitioner also notes that the Department requested that INA report the highest of transfer price, the affiliated supplier's cost, or the input's market price for major inputs purchased from an affiliated supplier. The petitioner asserts that INA did not comply with the Department's request since it reported neither transfer prices nor market values for the inputs purchased from a Slovakian affiliate and did not provide market values for the inputs obtained from a Hungarian affiliate. Furthermore, with respect to the inputs provided by the Slovakian affiliate, Torrington contends that, while INA valued the inputs at the affiliated supplier's costs, such costs are not reliable since INA "grossed up" the reported amounts to account for situations where INA supplied the affiliate with raw materials free of charge. For the inputs provided by the Hungarian affiliate, the petitioner also contends that INA did not support its claim that the transfer prices exceeded the affiliate's costs consistently. In light of the alleged reporting deficiencies, the petitioner requests that the Department not accept INA's reported costs for models incorporating inputs supplied by these affiliates and instead use facts available for the models involved.

INA contends that it followed the Department's instructions in reporting the value of the inputs which it obtained from its affiliates. It states that it reported the value of inputs purchased from the Slovakian affiliate at the affiliate's costs since no market prices were available and compiling transfer prices was extremely burdensome because to do so would have required tracing information manually through thousands of transactions. INA notes, however, that in its original questionnaire response it provided information to support its assertion that the cost figures were higher than the transfer prices. Moreover, for its supplemental questionnaire response, INA states that it conducted a manual search for transfer-price information and provided a comparison of transfer prices with costs to substantiate that the costs were almost always higher than the transfer prices. Furthermore, in situations where INA discovered that the transfer prices were higher than costs, it says it revised the COP and CV submissions to value the inputs from the affiliate based on the transfer prices.

INA rebuts the petitioner's assertion that the reported costs of inputs from the Slovakian supplier are not reliable. It contends that the petitioner has misconstrued the manner in which INA determined the costs and that the allegedly distortive "gross up" to which the petitioner refers was necessary for converting standard costs to actual costs, an adjustment that is consistent with the Department's instructions in its questionnaire. INA clarifies that, for situations in which it provided materials free of charge to its affiliate for the production of bearing inputs, it included standard and actual material consumption to calculate the gross-up factor for converting the standard material cost to an actual material cost.

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INA asserts that this results in costs that reflect the cost of material consumed in producing the parts supplied by the affiliate accurately. INA cites the criteria set forth under section 782(e) of the Act for accepting information: the information is acceptable if it is timely, verifiable, sufficiently complete to serve as a reliable basis for a determination, provided to the best of the respondent's ability, and can be used without undue difficulty. INA contends that its valuation of the inputs meets these criteria.

INA contends that it provided both transfer price and cost data concerning purchases from its Hungarian affiliate as requested by the Department, and it clarifies that it did not provide market prices since it did not purchase the inputs from other sources and the affiliate did not sell the inputs to unaffiliated purchasers. INA contends that its valuation of these inputs on the basis of transfer prices is proper since the transfer prices were in all instances higher than the affiliate's costs. Finally, INA contends that it supported its claim by referring to the exhibit of its questionnaire response that contains a comparison of costs with transfer prices.

Department's Position: We find that the information INA used to value cages, blanks, and subcontracted processing provided by affiliates is proper in light of the information that it had available. Moreover, INA's reporting methodology complies with our regulatory requirements for valuing inputs from affiliates. Section 351.407 of our regulations states that, for purposes of calculating the COP and CV under section 773(f)(3) of the Act, the value of a major input purchased from an affiliated person will be based on the higher of the following: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. INA's reporting methodology fulfills this requirement considering the information that was reasonably available to it. Moreover, we have relied upon this methodology for valuing inputs in past AFB reviews as well as in other cases. See, *e.g., AFBs 8*, 63 FR at 33337, and *Round Wire from Taiwan*, 64 FR 17336 (April 9, 1999). Thus, we find that this situation does not warrant the use of facts available.

6.C. General and Administrative Expenses

Comment 1: Torrington argues that the Department should deny FAG Germany's claimed offset to its G&A for the gain on the sale and leaseback of certain assets. Torrington contends that, even if the Department agrees with FAG Germany that these assets are related to production, the Department should reject this offset because FAG Germany's sales-and-leaseback arrangement is not a routine disposition of fixed assets. Torrington cites *Certain Welded Stainless Steel Pipe from the Republic of Korea, Final Determination of Sales at Less than Fair Value*, 57 FR 53693, 53704 (November 12, 1992), in support of this contention. Torrington also claims that other evidence on the record suggests that the assets in question are related to real property owned by FAG Germany rather than to production.

FAG Germany argues that the case Torrington cites is inapposite to this case because, in that case, the plant that the respondent sold was not related to the production of the subject merchandise and the transaction was not a routine disposition of fixed assets. In this case, FAG Germany contends, the asset in question is the plant where most of the AFBs shipped to the United States are manufactured. FAG Germany also argues that a sale-and-leaseback transaction is a common commercial financing method and that the annual lease payments, as well as the amortized gain, FAG Germany made relative to the sale-and-leaseback transaction are included routinely in its G&A calculation. FAG Germany cites *Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9748 (March 4, 1997), and *Oil Country Tubular Goods from Mexico*, 60 FR 33567, 33574 (June 28, 1995), in support of its contention that its offset to G&A is proper. Finally, FAG Germany argues that, while the transaction included the land upon which the facilities are located, it was not simply a real-estate transaction but also included assets involved in the production of subject merchandise.

Department's Position: It is our practice to adjust G&A expenses for miscellaneous revenue and expenses related to the production of subject merchandise. See, *e.g., Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9748 (March 4, 1997), and *Oil Country Tubular Goods from Mexico*, 60 FR 33567, 33574 (June 28, 1995).

In this case, FAG Germany demonstrated, and the petitioner does not dispute, that the plant in question produced subject merchandise during the POR. See Exhibit D–1 of FAG Germany's section D response dated August 28, 1998. Further, FAG Germany's claimed offset to G&A expenses corresponds to the portion of the gain on the plant sale attributable to the current period, which FAG Germany amortized over the life of the lease. See FAG Germany's section D response dated August 28, 1998, at 28. In addition, FAG Germany included the expense from this lease in its calculation of the reported G&A expenses. See Exhibit 14 of FAG Germany's section D response dated August 28, 1998 (compare lessor's name to 18 of FAG Germany's supplemental response dated October 27, 1998). Therefore, we conclude that it is appropriate to offset FAG Germany's G&A expenses by the amortized gain on the sale of the plant.

6.D. When To Use Constructed Value

Comment: NTN argues that the Department should base normal value on CV where all contemporaneous sales of identical merchandise were disregarded because they were sold below cost. NTN argues that the Department's interpretation of *CEMEX* v. *United States*, 133 F.3d 897 (CAFC 1998) (*CEMEX*), the basis of the Department's current practice, is erroneous because it is inconsistent with the current statutory scheme. NTN contends that the statute provides that normal value be based on the foreign like product, which the statute defines as the first of several categories. NTN argues that, if there is identical merchandise, that merchandise is the foreign like product. NTN also contends that the statute directs that, if no sales made in the ordinary course of trade remain, the normal value shall be based on CV.

NTN argues that the *CEMEX* decision was for a pre-URAA case with facts different than those in the instant case. NTN claims that below-cost sales were not an issue in the CEMEX case. NTN also contends that the treatment of both sales below cost and sales outside the ordinary course of trade has changed under the revised statutory scheme.

Torrington observes that the Department addressed this issue in the prior review and should not alter its methodology.

Department's Position: The CAFC stated in *CEMEX* that "[t]he language of the statute requires Commerce to base foreign market value on nonidentical but similar merchandise * * * rather than CV when sales of identical merchandise have been found to be outside the ordinary course of trade." See *CEMEX*, 133 F.3d at 904. NTN is correct that there was no cost test in *CEMEX* and *CEMEX* was under the pre-URAA statute; however, under the URAA, below-cost sales which are disregarded pursuant to section

773(b)(1) of the Act are now defined to be outside the ordinary course of trade and, therefore, not included in normal value. Therefore, consistent with *CEMEX*, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market that were comparable to merchandise within the scope of each order and which were sold in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Only where there were no sales of foreign like product in the ordinary course of trade did we resort to CV.

6.E. Miscellaneous

Comment 1: Torrington argues that the Department should recharacterize certain expenses NSK claimed as non-operating expenses.

NSK responds that the Department characterized certain NSK expenses as non-operating expenses correctly. NSK argues that the Department verified thoroughly that NSK reported each of its claimed non-operating expenses properly. Moreover, NSK argues, any adjustment for non-operating expenses would be *de minimis* and would require the Department to offset the non-operating expenses by comparable non-operating income so as to avoid double-counting.

Department's Position: Based on our findings at verification, NSK recorded the expenses in question properly as non-operating expenses. Torrington provided no argument or explanation as to why these expenses were not non-operating expenses. Thus, we have not recharacterized these expenses as Torrington argued that we should.

Comment 2: Torrington raises four other arguments regarding NSK's section D costs. Because of their proprietary nature, the arguments are not susceptible to public summary.

Department's Position: We have summarized the arguments and addressed them in the *Final Analysis Memorandum of NSK*, dated June 15, 1999. For the reasons explained therein, we have not made any adjustments to NSK's section D costs based on these four arguments.

Comment 3: Torrington states that, based on its concerns about certain aspects of verification, the Department asked FAG Italy to explain instances where the reported cost for a model deviated significantly from the average cost for models within the product family. Because the Department found that the product code had been entered incorrectly in some of the instances, Torrington asserts that the Department should reject FAG Italy's COP/CV data. According to Torrington, the Department's verification report also shows that FAG Italy had entered incorrect cost into the data for one transaction. According to Torrington, these discoveries indicate that there are other errors in the cost data and that the Department should accept only revised COP/CV data from FAG Italy where it is satisfied that accurate product codes and costs have been reported.

FAG Italy rebuts that Torrington identified code and costs anomalies prior to verification, at which time the Department verified the corrections for any errors. FAG Italy affirms that the identified anomalies were the only inaccuracies the Department or Torrington discovered in the COP/CV data. It dismisses Torrington's conclusion that additional errors exist as untrue and a distortion of the record evidence.

Department's Position: As discussed in our CV and COP verification report, we examined at verification the records Torrington had identified. See *Constructed Value and Cost-of-Production Verification Report for FAG Italia S.p.A.*, dated February 16, 1999, at 20–21. We concluded that product codes had been entered erroneously in some instances due to input errors in source documentation. In reviewing the records, FAG Italy acknowledged that it had made an error in entering the cost for one of the observations. We examined reported costs for other models at verification and confirmed that they were reported accurately. On this basis, we do not have reason to find that the anomalous records are reflective of FAG's entire database.

We continue to be satisfied that the revised COP/CV information which FAG Italy presented is accurate and, accordingly, have used it in our final results.

7. Packing and Movement Expenses

7.A. Repacking Expenses

Comment: Torrington argues that Nachi reported labor costs incurred for repacking in the United States incorrectly as U.S. indirect selling expenses and thereby increased the CEP offset eligible for deduction from home-market prices improperly. Torrington contends that the Department should correct Nachi's error by restating U.S. repacking costs and U.S. indirect selling expenses. Torrington argues that, if this adjustment cannot be made on the basis of information on the record, the Department should use data of another Japanese respondent as facts available.

Nachi argues that repacking labor costs incurred by Nachi America are characterized correctly as an ISE. Since such costs are not identified in Nachi's books and records separately, Nachi argues that any attempt to state repacking labor costs separately would require it to make an allocation. Nachi states that, before this review, it has not allocated repacking labor costs because it would result in an infinitesimal amount. Nachi states further that the Department should determine that its repacking labor costs meet the definition of an insignificant adjustment under section 351.413 of the Department's regulations. Nachi suggests that, if the Department wishes to segregate repacking labor expense, it should use the U.S. repacking labor costs that Nachi reported in its November 20, 1998, supplemental questionnaire response.

Department's Position: We have recalculated repacking expenses, a direct selling expense, to include repacking labor costs for these final results. We also have recalculated U.S. indirect selling expenses to exclude repacking labor costs which had been included by Nachi incorrectly. We made our recalculations based on information in Nachi's November 20, 1998, supplemental questionnaire response.

7.B. Inland Freight

Comment 1: Torrington argues that questionnaire responses from FAG Italy contradict one another with regard to inland-freight expenses. Torrington asserts that FAG Italy stated in one response that it could only report freight expenses on an allocation basis and that, in another response, FAG Italy stated that freight arrangements were recorded on a transaction-specific manner, thus allowing for home-market price adjustments where the invoice did not reflect the freight arrangements properly. Torrington asserts that FAG Italy should be required either to explain the discrepancies between the two statements or to report freight expenses on a transaction-specific basis. It requests that the Department apply a partial facts-available approach in the event that FAG Italy does not undertake one of these two actions.

FAG Italy responds that Torrington has confused freight charges, which are billed to FAG Italy by freight forwarders at the end of each month for shipments from FAG Italy to its home-market customers, with freight reimbursements, which are charged to certain customers

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by FAG Italy on an invoice-specific basis. FAG Italy states that the freight costs it reported in the inland-freight data element are based on an allocation of freight charges invoiced to FAG Italy at the end of each month by freight companies. It states that it cannot link these charges to individual orders because the bills for these charges do not specify the individual shipments underlying the charges. FAG Italy asserts that therefore it cannot tie the monthly freight charges to the individual orders of its customers. It clarifies, however, that it maintains terms of sale with certain home-market customers which dictate that the customer reimburses FAG Italy for freight charges. FAG Italy states that, when this occurs, the reimbursements are billed to the customer on its invoice. FAG Italy asserts that, because these reimbursements are not traceable to the original freight charges, there is no inconsistency in its questionnaire responses.

Department's Position: While we prefer that respondents report freight charges on a transaction-specific basis, we are satisfied with FAG Italy's explanation that it is unable to report its freight expenses on that basis. As we stated in *AFBs 8*, 63 FR at 33340, the averaging of home-market prices, for the purpose of calculating a weighted-average home-market price, has the effect of averaging the components used to calculate those net prices, including inland freight. Therefore, the use of an allocated freight expense would not necessarily result in a distortion of home-market prices and a partial facts-available approach is not appropriate.

We are satisfied that FAG Italy reported the components of its inland-freight expenses accurately and allocated these expense reasonably for the calculation of normal value. Accordingly, we have used these expenses in our final results.

Comment 2: Torrington argues that FAG Germany and FAG Italy did not report certain freight which apparently was incurred on U.S. sales made by an affiliated party. Torrington argues that, if the reported price includes this freight charge, the Department should calculate this expense and deduct it from the price of these sales.

FAG Germany and FAG Italy contend that the reported prices do not reflect freight charges because the customer pays the freight on these sales. The respondents state further that, for some sales, they grant a freight allowance but that this allowance is reflected as a reduction in the sales price to the customer. Thus, the respondents conclude, no adjustment to their reported freight or prices is warranted.

Department's Position: FAG Germany's section C response dated August 28, 1998, at 34 makes clear that this affiliated party did not incur freight charges on sales to U.S. customers. Furthermore, FAG Germany's section C response dated August 28, 1998, at 20 makes clear that the prices charged by this affiliated party are net of any freight allowance granted to a customer. Similarly, we have reviewed FAG Italy's Section C response dated August 28, 1998, at 34 which shows that no freight charges were incurred on sales by the affiliate to U.S. customers. FAG Italy's Section B response dated August 28, 1998, at 20 clarifies that prices charged by the affiliate were net of any freight allowance. Thus, no adjustments are necessary.

Comment 3: Torrington argues that Nachi's pre-sale warehousing expense incurred after shipment from the factory should be treated as movement expense, not U.S. indirect selling expenses, citing section 351.401(e)(2) of the Department's regulations.

Nachi argues that the Department's long-standing practice has been to treat Nachi's U.S. pre-sale warehousing as a U.S. ISE.

Department's Position: The practice Nachi cites pre-dates the URAA. The SAA states that warehousing expenses should be treated as movement expenses. SAA at 823. This treatment is reflected in our regulations. For these final results we treated Nachi's warehousing expense incurred after the merchandise left the factory as a movement expense in accordance with 19 CFR 351.401(e)(2).

Comment 4: Torrington argues that the Department should ensure that amounts Barden reported as freight reimbursements in one data element have a corresponding amount billed in another element.

Barden contends that it reported both the freight reimbursements and the amount billed in the two data elements correctly and on a corresponding basis.

Department's Position: We have compared the billing amounts Barden reported and find that the information corresponds correctly.

7.C. Ocean and Air Freight

Comment 1: Torrington asserts that FAG Italy incurred air-freight expenses as the result of specific existing orders and that, as a result, it should not be permitted to aggregate its ocean-freight and air-freight expenses. Torrington states that other respondents in the reviews were able to report the two expenses separately. Asserting that air freight is generally substantially more expensive than ocean freight, it argues that FAG Italy should be required to identify the sales which were subject to air freight and apply an air-freight rate to these sales.

FAG Italy responds that the Department's past practice and decisions, which permitted the aggregation of ocean and air freight where a respondent was unable to identify freight charges on a transaction-specific basis and the record evidence did not show aggregation to be distortive, is the correct approach. It asserts that Torrington misinterprets a statement by FAG Italy in reaching the conclusion that FAG Italy was, and is, able to relate an air or sea shipment to a specific order. On the contrary, FAG Italy contends, its business practices do not permit traceable linkage between a U.S. customer's order, the air or sea shipment, inventoried bearings, and the ultimate resale. FAG Italy states that whether another respondent can trace its specific transactions to a mode of shipping is not a relevant consideration.

Department's Position: We have found that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis in these proceedings. See *AFBs 8*, 63 FR at 33340, and *AFBs 7*, 62 FR at 54081. Where respondents were unable to report ocean and air freight separately, we have accepted aggregated international freight data. See *AFBs 6*, 62 FR at 2121; see also *The Torrington Company* v. *United States*, 965 F. Supp. 40 (CIT 1997) (*Torrington II*) (affirming the Department's methodology for accepting combined ocean and air freight where a respondent could not report the two expenses separately). Furthermore, section 351.401(g) of our regulations provides that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions.

At 29 of its section C response, FAG Italy explained that it could not tie resales of merchandise in the United States to its shipment of that merchandise. FAG Italy stated that it delivered merchandise to the United States by both air and freight and that, once delivered, the merchandise was entered into the inventories of importing companies. From that point, the merchandise was resold to unaffiliated U.S. customers. FAG Italy could not trace its shipment costs to this resale. Because the use of air freight was not limited to particular models or customers, allocated reporting of the air-freight and ocean-freight expenses is not unreasonably distorted in this case. Therefore, we have accepted FAG Italy's data concerning these expenses.

Comment 2: Torrington argues that the Department should not accept Koyo's continued failure to account for air-freight expenses for shipments to the United States separately when direct links between the sale and the air shipment exist. Torrington argues further that, given the relative cost of air freight versus ocean freight, the Department should apply an appropriate facts-available adjustment to increase the reported freight costs of all U.S. transactions.

Koyo states that Torrington admits that the Department does not require companies to report their air and ocean freight separately when there is an absence of a direct link between the air shipment and the resale to the unaffiliated U.S. customer. Koyo contends that it is because Koyo cannot tie its air-freight shipments to specific customer invoices that the Department does not require Koyo to segregate its air-freight expenses. Finally, Koyo argues that Torrington provides no new evidence that Koyo can now tie those shipments to specific invoices.

Department's Position: We find no new information on the record that would indicate that Koyo has changed the manner in which it records these expenses in its accounting system and is now able to determine a direct link between a sale and an air shipment. We have discussed this issue extensively in previous reviews. See *AFBs 4*, 60 FR at 10942, *AFBs 5*, 61 FR at 66510, *AFBs 6*, 62 FR at 2121, and *AFBs 8*, 63 FR at 33340. We have found that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis in these proceedings. Therefore, we have accepted Koyo's reporting of these movement expenses for the final results.

Comment 3: Torrington contends that SKF Germany, SKF Italy, and SKF Sweden should report their air-freight and ocean-freight expenses for EP and CEP sales separately. Torrington posits that it is general knowledge that air freight is substantially more expensive than ocean freight. Torrington asserts that, given that this is the ninth administrative review of these orders, the respondents have had ample time to modify their reporting systems. Torrington also argues that the respondents' alleged inconvenience in segregating these expenses is not a valid excuse, citing *Torrington II*. The petitioner states that other respondents participating in these administrative reviews, including SKF Germany, have identified separately those sales that were shipped by air freight and calculated separate factors for such sales. Torrington argues further that, if these respondents do not report such expenses separately, the Department should use some form of facts available, suggesting that it rely upon the highest air-freight rate reported by any other respondent participating in the current AFB reviews.

The respondents state that their reporting of combined air-freight and ocean-freight expenses is factually and legally correct, and they contend that it is consistent with the manner in which such expenses have been reported in all prior reviews and with the Department's determinations in those reviews. The respondents state that the reporting capabilities of other respondents is not a measure of their own reporting capabilities. SKF Germany indicates that it did not report its air-freight and ocean-freight factors separately even though it identified those transactions for which the subject merchandise was transported by air.

The respondents submit that it is not an issue of inconvenience to report such expenses separately but, rather, as explained in their responses, they do not incur the international freight expenses on a transaction-specific basis. SKF Sweden points out further that, as stated in its responses, shipments from its European consolidation point to SKF USA are not segregated by country of manufacture and, thus, the expenses at issue relate to products shipped from Italy, Germany, France, and Sweden. Moreover, the respondents contend that they receive cumulated bills which are independent of the invoices they issued to their customers and their pricing is unrelated to the manner in which goods are shipped internationally.

The SKF respondents also assert that they can identify *post-hoc* whether the merchandise sold out of SKF USA's inventory was shipped via air or ocean freight but argue that *post-hoc* linkage does not affect the pricing of merchandise for any given transaction. SKF Sweden contends further that, before the Department can make a determination of whether a respondent is uncooperative and, thus, resort to adverse facts available, the Department is required to request information at issue from a respondent in a supplemental questionnaire, citing *Olympic Adhesives, Inc.* v. *United States*, 899 F. 2d 1565, 1572–75 (CAFC 1990). SKF Sweden contends that the Department is precluded from resorting to facts available because the issue of reporting air-freight and ocean-freight expenses separately was not raised in either of the two supplemental questionnaires it received from the Department.

Department's Position: With respect to SKF Italy and SKF Sweden, we were not informed until the submission of the respondents' rebuttal briefs that these firms were capable of segregating air freight for particular U.S. resales in the United States. Since we did not request in our questionnaires and, thus, did not receive this information in questionnaire responses for these reviews, we have used the combined freight charges of those firms for these final results. For other respondents which were unable to report ocean and air freight separately, we have accepted aggregated international freight data. See *AFBs 8*, 63 FR at 33340; see also *Torrington II*. Furthermore, section 351.401(g) of our regulations provides that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method does not cause inaccuracies or distortions. In addition, because the use of air freight is not limited to particular models or customers, allocated reporting of freight expenses is not unreasonably distortive in this case. Because we determine that these respondents acted to the best of their ability, it would be improper to make adverse inferences about their reported data by applying facts available simply because their record-keeping system does not record the data on a transaction-specific basis.

Our practice in prior AFB reviews has been to accept aggregated ocean-freight and air-freight expenses in cases where the respondent indicates that it cannot report such expenses separately. SKF Germany demonstrated in response to our supplemental questionnaire, however, that it could identify separately the relevant sales transactions for which it incurred air-freight expenses. While SKF Germany identified the relevant transactions in its supplemental questionnaire response, it did not provide the actual air-freight expenses specific to these transactions. However, it did provide calculations yielding separate air-freight and ocean-freight factors. Because we did not have transaction-specific air-freight expenses, we used these factors and other information reported in its supplemental questionnaire response to determine a separate amount for air and ocean freight for purposes of our margin calculation. See the Final Analysis Memorandum for SKF Germany for a complete discussion of the proprietary data we used in the air-freight and

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ocean-freight calculations for these final results.

Comment 4: Torrington argues that the Department should not permit Barden to aggregate air and ocean freight but should require that Barden report air freight separately for those U.S. sales which were shipped by air, particularly those shipped directly to the U.S. customer. Torrington argues that, in such instances, Barden UK should know whether the shipment was by ocean or air. Torrington argues that the Department should require Barden to identify those sales shipped by air and apply the air-freight rate to those sales.

Barden argues that it did not incur ocean-freight expenses on bearing shipments made during this review period and all expenses reported as "air and ocean freight" are indeed air-freight expenses.

Department's Position: Barden reported, at 32 of its November 24, 1998, supplemental questionnaire response, that it shipped all bearings via air freight. As Barden reported in its August 28, 1998, Section C questionnaire response, the ocean-freight data element includes all freight charges from Barden UK to Barden US, *i.e.*, air freight. Since Barden does not incur ocean freight, the air-freight rate was applied to all sales.

7.D. Inventory Carrying Costs

Comment 1: Torrington argues that the Department should deduct inventory carrying costs for the time that merchandise was in transit from the exporting country to the United States from CEP.

With regard to SKF Italy and SKF Sweden, Torrington argues that amended section 772(d) of the Act provides for such a deduction under subsection (d)(1)(B) as a credit expense or, alternatively, under subsection (d)(1)(D) as a selling expense. Torrington asserts that the SAA at 823 provides broad categories under which the deduction can be undertaken, that the SAA is silent as to a prohibition of such a deduction, and that 19 CFR 351.402(b) does not preclude the deduction. It asserts that inventory carrying costs should be deducted pursuant to this regulation, as they are expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, regardless of where or when the costs are paid, citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30352 (June 14, 1996) (*Pasta Italy LTFV*) (where the Department deducted inventory carrying costs for time in transit after finding that the costs were attributable to U.S. economic activity because virtually all the subject merchandise was sold in the United States), and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 63 FR 68429 (December 11, 1998) (*Pasta Turkey Review*) (where a deduction for inventory carrying costs was permitted for time that the merchandise was held in U.S. Customs). Torrington argues that the Department should follow the approach taken in the above-referenced *Pasta* notices because, in these AFB reviews, the inventory carrying costs were borne on the books of the U.S. affiliate and because the subject merchandise would not have been placed in transit to the United States if not intended for that market. Torrington asserts that these circumstances establish the inventory carrying costs for time in transit are attributable to U.S. economic activity. Torrington also argues that, in the event the Department retains its current position, SKF Italy and SKF Sweden have not demonstrated that the costs were not associated with commercial activities in the United States and did not relate to the resale to the unaffiliated customer which, according to Torrington, is an affirmative burden on the respondent. Finally, Torrington asserts that, at minimum, the Department should deduct inventory carrying costs for the time that merchandise was held in U.S. Customs or otherwise remained at the port of entry, pursuant to its finding in *Pasta Turkey Review*, 63 FR at 68432.

With regard to SKF Germany, INA, and FAG Germany, Torrington argues that the Department's position in *AFBs 8* was based in part on the finding that inventory carrying costs in transit reflected part of the interest expense incurred by the home-market company when it extended credit on the sale to the U.S. affiliate. It requests that the Department reconsider its AFBs 8 rationale in light of *Pasta Italy LTFV*, 61 FR at 30326. Torrington argues that, with respect to the German respondents, SKF France, Barden UK, NSK-RHP, and SNR France, regardless of credit arrangements between the exporting company and the U.S. affiliate, the cost of carrying inventory is borne by the company owning the inventory. It asserts that, because the costs are listed on the books of the U.S. affiliate, the affiliate has assumed responsibility for the merchandise. Torrington argues that, moreover, the business purpose of these companies is to sell bearings in the United States. Thus, it concludes that inventory carrying costs relate to commercial activity in the United States and should be deducted from CEP.

Torrington argues similarly for a deduction of in-transit inventory carrying costs for NTN. Torrington asserts that, through transference of ownership of the inventory to a U.S. affiliate who will resell the goods in the United States, inventory carrying costs for time in transit have been incurred in connection with commercial activities in the United States.

Torrington contends, with regard to SKF Germany, that the inventory carrying costs should be deducted from CEP because these expenses appear on the books of SKF USA and are associated with U.S. commercial activity.

SKF Italy, SKF Sweden, and SKF Germany rebut that there is no legal or factual support for Torrington's position and that, therefore as in prior reviews, the inventory carrying costs should not be deducted from CEP. They assert that the Department has interpreted the provisions of the law properly. The companies argue that reliance upon *Pasta Italy LTFV* is misplaced since, unlike the pasta manufacturer, they do not sell their products exclusively in the United States. They distinguish *Pasta Turkey Review* because there the exporting company had not calculated any U.S. inventory carrying costs, having alleged that the importer did not inventory the merchandise and thus had not incurred any such costs. According to the respondents, in that review the Department found that U.S. inventory carrying costs had been incurred by the importer because of a 16-day delay of the merchandise at U.S. Customs. The respondents contrast this situation to their own, noting that these are not issues in the instant administrative reviews. The respondents cite several recent determinations by the Department, including *Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results of Antidumping Duty Administrative Review*, 63 FR 67855 (December 9, 1998), which support their position that inventory carrying costs incurred in transit are not associated with commercial activity in the United States and do not relate to resale of the merchandise to the U.S. unaffiliated customer.

INA responds that, as determined in *AFBs 8*, inventory carrying costs in transit are deductible neither as a movement expense under section 772(c) of the Act, since they are not associated with bringing merchandise to the United States, or as a CEP selling expense under section 772(d) of the Act. INA cites to *Color Picture Tubes from Japan; Final Results of Antidumping*

Administrative Review, 62 FR 34201, 34207 (June 25, 1997), in which the Department declined to apply its decision of *Pasta Italy LTFV* on two grounds. According to INA, the first reason was that in-transit inventory carrying costs were incurred regardless of the final destination of the merchandise; the second reason was that the in-transit costs were not considered to be associated with U.S. commercial activity but rather were associated with the sale by the foreign producer to its U.S. affiliate. INA asserts that these same considerations apply in the current reviews. It rebuts Torrington's argument that the destination of the bearings relates inventory carrying costs to U.S. commercial activity by asserting that costs in transit are not related to such activity and do not relate to the resale of the merchandise to an unaffiliated purchaser. It responds to Torrington's argument regarding ownership of the merchandise by noting that the costs are incurred by the party incurring an imputed interest cost, a cost that is not associated with ownership and which does relate to the sale by the foreign producer to the U.S. affiliate.

FAG Germany asserts that Torrington has presented no new argument in support of its request for a deduction. It notes that AFBs which the U.S. affiliate imports from FAG Germany are shipped on a Delivered-Duty-Unpaid basis, which means that the exporter bears all costs and risks in delivering the merchandise to a named place in the country of importation. It asserts that, therefore, in-transit inventory carrying costs are not associated with U.S. commercial activity.

SKF France agrees with the Department's decision regarding the deduction. SKF France argues that the fact that SKF USA paid the costs is irrelevant; it asserts that the relevant consideration is where the economic activity associated with the expense has occurred. It cites recent determinations of the Department which support the position that inventory carrying costs in transit are not associated with U.S. economic activity and do not relate to resale of the merchandise to the unaffiliated customer.

Barden UK rebuts that the SAA at 823 states that CEP can only be reduced by amounts associated with economic activities occurring in the United States. It also cites to the *Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7331 (February 27, 1996), in which the Department set forth its intent not to deduct a foreign seller's expenses associated with selling to the affiliated reseller in the United States under section 772(d) of the Act. Barden UK asserts that this is the correct approach and asks that the Department not reconsider its methodology.

NSK–RHP responds that the Department should reject Torrington's argument because the Department already deducts inventory carrying costs incurred in the United States from CEP. NSK–RHP notes that, moreover, the Department has concluded consistently that inventory carrying costs incurred for the time merchandise was in transit should not be deducted from CEP, as decided in *AFBs 8*.

SNR France notes that, in *AFBs 8*, the Department found that deducting inventory carrying costs for time in transit would be contrary to the SAA and its own regulations. It asserts that Torrington offers no new justification for a departure from prior practice and that, accordingly, Torrington's argument should be rejected.

NTN rebuts that section 351.402(b) of the Department's regulation and the SAA at 823 prohibit the deduction; it asserts that the in-transit inventory carrying costs are not associated with commercial activities in the United States that relate to the unaffiliated purchaser, a position that the Department took in *AFBs 8*. NTN argues that, because the facts in the current reviews are consistent with those in the previous reviews and those in other cases in which the Department has declined to make the deduction, it should continue its practice.

Department's Position: In *AFBs 8*, 63 FR at 33344, we concluded that both the SAA at 823 and section 772(d) of the Act permit us to deduct from CEP only those expenses which were associated with commercial activity in the United States and which related to the resale to an unaffiliated purchaser. We concluded that in-transit inventory carrying costs did not meet these criteria but rather reflected the interest expense of the exporting company. As such, we found the costs to be related solely to the sale to the affiliated importer in the United States. Moreover, we noted that section 351.402 of our regulations directs us not to deduct from CEP starting price any expenses related to the sale to the affiliate.

The Department clarified its position further in *Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, 63 FR at 67856. We stated there that, according to the SAA at 823, CEP should be calculated to be, as closely as possible, a price which corresponds to a price between non-affiliated exporters and importers. This approach is codified at section 351.402(b) of the Department's regulations, which provides that the Department will make adjustments to CEP under section 772(d) of the Act for expenses associated with commercial activity in the United States that relate to the sale to an unaffiliated purchaser, no matter where it was incurred. Therefore, in *Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, we concluded that, consistent with section 772(d) of the Act and the SAA, we could deduct only those expenses representing activities undertaken to make the sale to the unaffiliated customer in the United States and not indirect expenses incurred in selling to the affiliated U.S. importer.

We maintain that in-transit inventory carrying costs are indirect selling expenses relating to the sale to the affiliate and, consequently, are not associated with U.S. economic activity or related to the resale of the merchandise. The issue of whether the exporting company or the affiliate holds title to the merchandise is irrelevant in light of this finding. Likewise, it does not matter whether the expenses are listed on the accounts of the exporting company or the affiliate. Our decision in *Pasta Italy LTFV*, 61 FR at 30352, that the in-transit costs should be deducted was based on the fact that the subject merchandise was produced solely for the U.S. market. Here, there is no evidence that any of the bearings under review were produced solely for the U.S. market. Thus, the finding in *Pasta Italy LTFV* is not applicable here. Torrington's reliance on *Pasta Turkey Review* is misplaced because, contrary to that case, the respondents' inventory carrying costs do not reflect costs for a period of time when the merchandise was being stored or held at U.S. Customs.

For all of these reasons, we have not deducted inventory carrying costs for time in transit from CEP.

Comment 2: Torrington argues that U.S. interest rates should be applied in the calculation of in-transit and U.S. inventory carrying costs for NTN and NSK, since U.S. dollars are the functional currency for the U.S. affiliates. It notes that this approach conforms to the fundamental scheme of the amended antidumping law: it asserts that another approach would undermine the objective, when calculating CEP, of arriving at arm's-length, ex-factory prices that are not influenced by affiliations. It asserts that, in the attempt to construct arm's-length ex-factory prices, the Department should not assume that the costs are being financed by the exporting company at the most favorable rates that it can obtain.

NTN argues that Torrington ignores regulatory and administrative authority

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concerning the calculation of inventory carrying costs. It asserts that the use of the yen borrowing rate for calculation of inventory carrying costs in the preliminary results was appropriate and that the facts of the current reviews support the use of the yen. It observes that this issue was settled by the CIT in *Timken Co.* v. *United States*, 858 F. Supp. 206 (CIT 1994).

NSK responds that Torrington's argument has been rejected for years and that the law is settled on the point of the proper interest rate to be applied.

Department's Position: Normally, the Department calculates U.S. inventory carrying costs using the U.S. interest rate because the affiliate bears the costs of carrying the merchandise. However, where the payment terms that an exporting company extends to its affiliate and the time that the merchandise remains in the affiliate's inventory, indicate that the exporting company bears the cost of carrying the merchandise for a portion of the time that the merchandise is in inventory, then the exporting company's short-term interest rate will be used to calculate that portion of the inventory carrying costs. As noted by NTN, this practice was sustained by the CIT in *Timken*, 858 F. Supp. at 212 (citing *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 65228, 65236 (Dec. 16, 1991)).

Both NTN and NSK have demonstrated that they extended their financing terms to their affiliates through the time in transit and the time that merchandise remained in inventory in the United States. Therefore, we have applied the yen borrowing rate to the calculation of in-transit and U.S. inventory carrying costs.

Comment 3: Torrington argues that the Department should restate Nachi's U.S. inventory carrying costs. Nachi does not make a rebuttal.

Department's Position: We are satisfied from information on the record that Nachi calculated its U.S. inventory carrying costs correctly. For a more detailed explanation of this expense, see page 4 of the Department's Analysis Memorandum for Nachi, dated June 16, 1999 (which provides, *inter alia*, the Department's position on Torrington's proprietary argument).

8. Sales to Affiliated Parties

Comment: Torrington asserts that the chairman of SKF Germany's parent company, AB SKF, also chairs six other companies, including Investor AB, which is the largest single shareholder of AB SKF. Torrington states further that Investor AB also holds shares in seven companies and that SKF Germany made home-market sales to one of those seven companies during the POR. Torrington asserts that the Department should apply the affiliated-party test to determine whether sales to this customer are in fact at arm's-length prices.

SKF Germany contends that Investor AB's share of the specified customer is not large enough to be considered a controlling interest. SKF Germany claims that it does not own any shares in the specified company and the company is not a shareholder in SKF Germany. SKF Germany claims further that the entities do not share management teams or have supply, sales, marketing, or financial agreements with each other. SKF Germany believes that all of these elements confirm an absence of common control.

Department's Position: SKF Germany and the specified customer are not affiliated parties and, therefore, have not applied our arm's-length test to transactions between the two entities. Section 771(33)(E) of the Act states that "[a]ny person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization" shall be considered to be "affiliated". Record evidence shows that SKF Germany does not own any shares of the customer concerned and that the customer in turn is not a shareholder of SKF Germany. Section 771(33)(F) of the Act states that "[t]wo or more persons directly or indirectly * * * controlled by * * * any person" shall also be considered to be "affiliated". However, there is no evidence indicating the presence of management control of any kind between SKF Germany and the specified customer. Since there is no evidence of affiliation in the context of the remaining provisions of section 771(33) of the Act, we conclude that SKF Germany and the specified customer are not affiliated parties and have not applied our arm's-length test to transactions between the two entities.

9. Samples, Prototypes and Sales Outside the Ordinary Course of Trade

Comment 1: NTN argues that the Department should exclude its reported sales made outside the ordinary course of trade from the calculation of normal value and CV profit. NTN contends that the purpose of the ordinary-course-of-trade provision of the statute is to prevent dumping margins from being based on sales which are not representative of the home market. NTN claims that the Department should regard all of its sales which have abnormally high profits as outside the ordinary course of trade. Citing *CEMEX*, NTN contends that the Department has regarded sales as outside the ordinary course of trade in other cases because of significant differences in profit levels.

NTN also argues that the Department should exclude its claimed sample sales from its normal-value calculation because they are outside the ordinary course of trade. *Citing Granular Polytetrafluoroethylene Resin from Japan; Preliminary Results of Antidumping Administrative Review*, 60 FR 5622 (January 30, 1995), and *Notice of Final Determinations of Sales at Less than Fair Value: Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Cut-to-Length Carbon Steel Plate from France*, 58 FR 73125, 73126 (July 9, 1993), NTN claims that the Department has regarded sample sales as outside the ordinary course of trade in other cases.

Torrington argues that NTN has not justified its claim that these sales should be regarded as outside the ordinary course of trade. Torrington contends that NTN did not provide the information the Department requested with regard to its claim and that the only information NTN did provide was the profit amounts for its sales. Torrington observes that the Department has rejected identical claims made by NTN in prior AFB reviews.

Department's Position: Our practice is to exclude home-market sales transactions from the margin calculation as outside the ordinary course of trade based on all the circumstances particular to the sales in question. See *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 607 (CIT 1993). This practice has been codified in section 351.102 of the Department's regulations, which states:

> [t]he Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary *might* consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits; merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's-length price.
>
> (Emphasis added.)

In these reviews, NTN provided no evidence, other than the allegedly high profits of some sales, to suggest that any of these sales, whether "high profit" or sample sales, are outside the ordinary course of trade. The simple fact of high profits, standing alone, is not sufficient for us to determine that a sale is outside the ordinary course of trade. See *AFBs 8*, 63 FR at 33344: "the presence of profits higher than those of numerous other sales does not necessarily place the sales outside the ordinary course of trade. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be unique and unusual characteristics related to the sale in question which make it unrepresentative of the home market." Thus, it would only be appropriate to exclude these sales from our normal-value calculation if there were circumstances surrounding these sales which would lead us to conclude that they were, in fact, made outside the ordinary course of trade.

NTN's citation to *CEMEX* is inapposite to this situation. In *CEMEX*, the profitability of the sales in question was merely one of the factors we considered in our determination that those sales were made outside the ordinary course of trade. In addition to profits, we found the sales in question were sales of "specialty [products] that were sold to a niche market," that these "sales represent[ed] a minuscule percentage of [the respondent's] total sales of cement," that "the shipping arrangements for home market sales of Types II and V cements were not ordinary," and that the record "indicated that the home market sales of Types II and V cements were of a promotional nature." See *CEMEX*, 133 F.3d at 901. Thus, it was the totality of circumstances, rather than the relative profitability alone, which, in *CEMEX*, led us to conclude that the sales were made outside the ordinary course of trade. In this case, the level of profitability is the only indicator that the sales might have been made outside the ordinary course of trade.

Furthermore, NTN provided no evidence which demonstrated that the profit amounts experienced on its claimed outside-the-ordinary-course-of-trade sales are particularly, much less abnormally, high. NTN has selected an arbitrary profit margin which it defines as "high," but it provides no evidence or analysis which suggests that the profit margin it chose is in any way unusual. To the contrary, there are enough of these claimed "high profit" sales in NTN's home-market database that it is apparent that these sales are not unusual but, rather, occur typically within NTN's normal course of business.

With regard to NTN's claimed non-zero-priced sample sales (we excluded all zero-priced sales because the record suggests that NTN did not receive consideration for these sales), NTN provided no evidence to support its contention that these sales were made outside the ordinary course of trade. The mere labeling of a sale as a sample, absent any other evidence, is an insufficient basis on which to find the sale outside the ordinary course of trade.

Finally, while we agree with NTN as to the purpose of the ordinary-course-of-trade provision of the statute, the burden is on respondents to demonstrate that the sales in question were made outside the ordinary course of trade. NTN did not demonstrate this with regard to any of its claimed outside-the-ordinary-course-of-trade sales. Accordingly, we have not excluded NTN's "high-profit" sales or sample sales from our analysis.

Comment 2: Torrington argues that, with respect to SKF Sweden and SKF Italy (collectively SKF), the Department should include U.S. sample sales in the margin calculation. Torrington comments that exclusion of sample sales is not automatic, citing *NSK Ltd.* v. *United States*, 115 F.3d 965 (CAFC 1997), and asserts that SKF did not provide all of the information the Department requested. For instance, Torrington observes, SKF did not provide price and quantity comparisons and described only in vague terms the ultimate disposition of the sample sales.

SKF argues that it provided detailed responses to the Department's questions concerning sample and prototype sales. SKF argues that, with regard to Torrington's assertion that it discussed the ultimate disposition of the sample sales vaguely, SKF provided as complete an answer as it could. SKF contends that, while Torrington desires more detailed information on the record, it responded fully to the Department's questions and, accordingly, the Department should continue to exclude the U.S. sample and prototype sales from the margin calculation.

Department's Position: Contrary to Torrington's assertions, we find that there is sufficient information provided in SKF Italy's and SKF Sweden's responses for us to make a determination as to whether the respondents received consideration for these sales. SKF Italy and SKF Sweden described how orders for sample or prototype sales were communicated, identified the documents available to demonstrate that the sales in question were sample or prototype sales, explained the ultimate disposition of the bearings, indicated whether such bearings were tested and destroyed during trial application, and, to the extent possible, contrasted sample or prototype sales prices and quantities with the prices and quantities of normal-priced sales. Based on this information, we determined that no consideration was provided for their reported U.S. zero-priced sample and prototype sales. Therefore, we did not calculate a margin on U.S. sales which SKF Italy and SKF Sweden designated as zero-priced samples and prototypes.

10. Constructed Export Price Profit

Comment 1: NTN argues that the Department should calculate CEP profit on a level-of-trade-specific basis. NTN asserts that prices differed significantly between levels of trade and contends that, to account fully for price differences between levels of trade, the Department must consider profit levels. NTN claims that there is a clear statutory preference for the Department to calculate CEP profit on the narrowest basis.

Torrington observes that the Department has rejected NTN's argument in prior reviews and that NTN neither acknowledges the Department's prior decisions nor discusses why the Department should alter its decision.

Department's Position: It is not our practice to calculate CEP profit for different levels of trade. See, *e.g.*, *AFBs 7*, 62 FR at 54072, and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2570, 2583 (January 15, 1998) (*TRBs*).

We believe that NTN's reliance on the term "narrowest" as used in sections 772(f)(2)(c)(ii) and (iii) of the Act is misplaced. While the statute uses the term "narrowest" in describing the second and third alternative methods, methods in which CEP profit is calculated based on financial reports, for NTN we used the first alternative method since the company provided the necessary data (*i.e.*, U.S. and home-market sales information as well as CV and COP data for the subject merchandise and the foreign like product, respectively). This is consistent with the instructions set forth in section 772(f)(2)(C) of the Act and the SAA at 824-825. Moreover, regardless of the basis for the CEP-profit calculation,

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neither the statute nor the SAA requires us to calculate CEP profit on a basis more specific than subject merchandise and foreign like product. See *Toyota Motor Sales, USA* v. *United States*, Court No. 97–0300415, Slip Op. 98–95 (CIT July 2, 1998) (*Toyota*). Thus, we have not adopted NTN's suggestion.

Comment 2: NTN argues that the Department should exclude EP sales from its CEP-profit calculation. NTN contends that section 772(f)(2)(C)(i) of the Act directs the Department to calculate CEP profit based on "[t]he expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purposes of establishing normal value and constructed export price." NTN argues that, because this section refers specifically to CEP sales and not EP sales, it precludes the Department from including EP sales in the CEP-profit calculation.

Torrington contends that the Department's approach in these reviews is consistent with Policy Bulletin 97.1 and that the Department rejected NTN's argument in a prior review.

Department's Position: It is our practice to include EP sales in the calculation of CEP profit. See, *e.g.*, *AFBs 8*, 63 FR at 33345, *TRBs*, 63 FR at 2570, and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53295 (October 14, 1997). In addition, our analysis in these reviews is consistent with Policy Bulletin 97.1 of September 4, 1997.

The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C) of the Act. The first alternative under this section states that, for purposes of determining profit, the term "total expenses" refers to all expenses incurred with respect to the subject merchandise sold in the United States (as well as the foreign like product sold in the exporting country). Thus, where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions. Therefore, because NTN had EP sales, we have included these sales in the calculation of CEP profit.

Comment 3: NPBS, NSK, and NSK–RHP argue that the Department erred in deducting U.S. repacking expenses under section 772(d)(1) of the Act and including such expenses in the pool of selling expenses for which it then calculated CEP profit. NPBS contends that section 772(d)(3) of the Act does not provide for profit to be attributed to repacking expenses because the statute limits the application of profit to selling expenses and further-manufacturing costs and, according to NPBS, repacking expenses are neither. NSK and NSK–RHP argue that the Department should treat U.S. repacking expenses as movement expenses deductible from U.S. price under section 772(c)(2)(A) of the Act. The respondents contend that section 772(c)(2)(A) of the Act does not preclude the Department from including U.S. repacking just because the expenses may relate directly to particular sales. As support, the respondents point out the direct nature of certain movement expenses which the Department deducts from U.S. price in accordance with section 772(c)(2)(A) of the Act. NSK and NSK–RHP also assert that U.S. repacking does not qualify as a deductible expense under section 772(d)(1)(B) of the Act because the selling expenses included under this part of the statute do not involve bringing the goods from the exporting country to the U.S. unaffiliated customer. The respondents also assert that, unlike the deductible selling expenses under section 772(d)(1)(B) of the Act, repacking expenses do not entice a customer to purchase a product. NSK and NSK–RHP request that, for the final results, the Department reclassify U.S. repacking as a movement expense and exclude it from the selling expenses it uses to calculate CEP profit.

Torrington argues that the Department should not treat U.S. repacking expenses as a movement expense. Citing *AFBs 8* at 33338, Torrington asserts that the Department has rejected the respondents' argument in prior reviews and that the Department's position is valid.

Department's Position: Section 772(c)(2)(A) of the Act covers "transportation and other expenses, including warehousing expenses, incurred in bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." See SAA at 824. As we stated in *AFBs 8*, 63 FR at 33339, we do not view repacking expenses as movement expenses. The repacking of subject merchandise in the United States bears no relationship to moving the merchandise from one point to another. The fact that repacking is not necessary to move merchandise is borne out by the fact that the merchandise was moved from the exporting country to the United States prior to repacking. We regard repacking expense as a direct selling expense because the company incurred the expense on individual products in order to sell the merchandise to the unaffiliated customer in the United States. We deducted this repacking expense pursuant to section 772(d)(1)(B) of the Act, which directs us to reduce CEP by "expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties." Furthermore, because these expenses are direct selling expenses, we attribute profit to them pursuant to section 772(d)(3) of the Act by including them in the calculation of total CEP selling expenses.

Comment 4: INA argues that the Department erred by calculating the CEP-profit rate on a class-or-kind basis rather than a product-specific basis. To support this argument, INA contends that section 772(d) of the Act requires the Department to calculate and apply all CEP deductions on sales of subject merchandise on a transaction-specific basis. In addition, INA asserts that the use of the term "subject merchandise" in section 772(f)(2)(C)(i) of the Act was intended to mean the specific product in the particular transaction for which the Department is calculating CEP.

Torrington contends that the Department has calculated the CEP-profit rate correctly. Torrington notes that the Department rejected INA's arguments for a product-specific CEP-profit rate calculation in *AFBs 7*. Citing *AFBs 7*, 62 FR at 54071, Torrington argues that the Department stated correctly that INA's proposed methodology for calculating a product-specific CEP-profit rate is not required by the statute, would complicate the margin calculation, would not increase accuracy, and would invite manipulation.

Department's Position: Section 772(d)(3) of the Act requires that we adjust CEP for an amount of profit allocable to U.S. sales, and our practice is to base this calculated profit on revenues and expenses associated with total sales of subject merchandise (both in the home market and the United States). As discussed in *AFBs 6*, 61 FR at 2125, *AFBs 7*, 62 FR at 54072, and our response to Comment 1 of this section, we find that neither the statute nor the SAA requires us to calculate CEP profit on a basis that is more specific than the one applied currently. See also *Toyota* (upholding our decision to calculate total expenses and total actual profit for all subject merchandise sold in the United States and all foreign like products sold in the home market rather than segregating certain products when performing the CEP-profit calculation). Consistent with the rationale in these cases, we have not altered our CEP-profit calculation methodology.

Comment 5: INA argues that the Department erred by excluding imputed expenses (credit and inventory carrying costs) from the calculation of the ratio that it applied to total U.S. selling expenses (including imputed expenses) to determine CEP profit. INA argues that excluding the imputed interest expenses from the calculation of the ratio and then applying the ratio to a value that includes imputed interest expenses results in an unlawful double deduction of imputed expenses in determining CEP (once as an expense and once as a component of profit). INA cites *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review*, 63 FR 39071 (July 21, 1998), as an example of a situation where the Department recognized the necessity for consistency in calculating and applying a profit rate. INA asserts that the Department's exclusion of the imputed expenses from the calculation of the CEP-profit ratio is at odds with the statute since imputed expenses are recognized as an expense under section 772(f) of the Act, which establishes the rules for determining profit.

Torrington contends that the Department calculated CEP profit correctly and refers to the Department's position on this topic in *AFBs 7*, 62 FR at 54072. The petitioner also asserts that by including imputed expenses in the U.S. expenses the Department recognizes that related parties may shift expenses among them, thus affecting the accuracy of the calculation. The petitioner asserts that such shifting is not a concern when calculating the total expenses mentioned under section 772(f)(2)(C) of the Act.

Department's Position: It is our practice to exclude imputed selling expenses in calculating the total actual profit for sales of the subject merchandise and the foreign like product. See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review; Canned Pineapple Fruit From Thailand*, 63 FR 7395 (February 13, 1998). In the preamble to our *Final Rule* we address INA's issue directly. In response to a comment that we should include imputed expenses in the total selling expenses used to derive total profit to avoid double-counting, we stated, "(w)e have not adopted this suggestion, because the Department does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit." See the preamble to our new regulations at section 351.402 (*Final Rule*, 62 FR at 27354).

In Policy Bulletin 97.1 of September 4, 1997, which describes our methodology for calculating profit for CEP transactions, we explain why it is appropriate to exclude imputed selling expenses in calculating the total actual profit for sales of the subject merchandise and the foreign like product while including these expenses as part of the total U.S. expenses when allocating a portion of the total actual profit to U.S. sales. Specifically, we stated that "there is no need to include imputed interest amounts in the profit calculation since we have already accounted for actual interest in computing "actual profit" under section 772(f)." See Policy Bulletin 97.1 at fn. 5. Furthermore, we stated that, "when allocating a portion of the actual profit to each U.S. CEP sale, we will include imputed credit and inventory carrying costs as part of the total U.S. expenses allocation factor." *Id.* As noted in the Policy Bulletin, the latter statement is consistent with section 772(f)(1) of the Act which defines the term "total U.S. expenses" as those expenses described in sections 772(d)(1) and (2) of the Act. Therefore, we have not altered our CEP-profit calculation methodology for these final results of reviews.

11. Miscellaneous

11.A. *Clerical Errors* FAG Germany, FAG Italy, INA, Koyo, NSK, NSK–RHP, Nachi, NPBS, NTN, SKF France, SKF Germany, SKF Italy, Somecat, SNR, and the petitioner have alleged that we made certain programming and/or clerical errors in the preliminary results calculations. Where we and all parties agree that a programming or clerical error occurred, we have made the necessary correction and addressed the comment only in the final-results analysis memoranda. (See company-specific Final Results Analysis Memoranda of June 1999.) The comments included in this notice address situations where parties alleged that we made a programming or clerical error but either we disagree or a party to the proceedings disagrees with the allegation.

Comment 1: FAG Germany argues that the Department neglected to add to U.S. price amounts for "other revenue" it received from customers on U.S. sales. FAG Germany argues further that in all prior reviews the Department has acknowledged this type of revenue and added it to U.S. price.

Torrington contends that some of the revenue at issue includes amounts FAG Germany received where the company arranged freight and collected freight charges for transportation between the U.S. warehouse and the unaffiliated customer. Torrington concludes that an addition of such revenue is appropriate only on sales for which FAG Germany reported freight expenses and that the Department should limit the revenue adjustment to the amount reported for freight.

Department's Position: FAG Germany stated in its response that, for "CEP sales, FAG US bills to and collects from its customer the freight charges incurred and prepaid by FAG." See FAG Germany's section C response dated August 29, 1998, at 65. Therefore, we find it is appropriate to add the revenue reported only to the extent that it offsets the reported freight expense and we have done this for the final results. In addition, we have only added the revenue to CEP sales since FAG Germany did not receive this revenue on its EP sales.

Comment 2: NTN argues that the Department made a clerical error in recalculating inventory carrying costs for home-market sales. Torrington agrees with NTN.

Department's Position: NTN calculated its inventory carrying costs for home-market sales erroneously by using 360 days as the period of inventory. For the preliminary results, we adjusted these miscalculated inventory carrying costs by multiplying the reported amounts, which presumably were calculated using the formula NTN indicated in its brief, by a ratio we calculated by dividing the actual number of days in inventory by 360 days. Therefore, no adjustment is necessary.

Comment 3: Torrington argues that the Department made a clerical error in calculating the CEP offset for SNR by suppressing certain programming language. Torrington claims that this error could lead to a potential overstatement or understatement of the CEP offset.

SNR argues that the alleged clerical error is part of a new set of standard programming language the Department uses to calculate the CEP offset properly when there are commissions on only some of the home-market sales. SNR asserts that, since it did not pay commissions on home-market sales, the suppressed programming language was not necessary for the Department's margin calculation.

Department's Position: We did not need to use the programming language concerning home-market commissions in our calculation of SNR's margin. However, to avoid the appearance of a

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programming error, we have not suppressed the programming instruction for the final results of these reviews. This change did not affect the weighted-average margin for SNR.

Comment 4: SKF Germany contends that, in its preliminary analysis memorandum, the Department listed inventory carrying costs for ocean transit time between Europe and the United States as subtracted in the calculation of the CEP incorrectly but that the calculations were accurate.

Torrington argues that, consistent with SKF Germany's recording of such expenses, the Department should have deducted these costs as an expense associated with U.S. commercial activity.

Department's Position: Listing these particular inventory carrying costs in the analysis memorandum as a subtraction from the calculation of CEP was a clerical error. With regard to Torrington's argument for subtracting the expenses at issue, we disagree because we find that the expenses are not associated with U.S. economic activity. See our response to Comment 1 in the section on inventory carrying costs above.

Comment 5: Nachi asserts that the Department made a clerical error that exaggerates values for "Other U.S. Direct Selling Expenses" by a factor of one hundred.

Torrington expresses concern over whether Nachi has identified the alleged error adequately and states that it only concurs with the respondent's argument to the extent that a clerical error occurred.

Department's Position: Upon examining Nachi's U.S. sales database, we determined that we made a formatting error that caused the values for "Other U.S. Direct Selling Expenses" to be overstated by a factor of 100 which may have occurred when we processed the U.S. sales database Nachi submitted. We have corrected this error for the final results of review.

Comment 6: NPBS argues that the Department made a clerical error in calculating the ratio it used to determine CEP profit. Specifically, NPBS asserts that, in calculating the total profit for use in determining the CEP-profit ratio, the Department "grossed up" the profit and costs for the U.S. sales made in the sample weeks but neglected to "gross up" the profit and costs for the home-market sales made in the sample months, thereby understating profit on home-market sales. NPBS asserts that this error led to an overstatement of the CEP-profit ratio and, therefore, an inflation of its dumping margin. To correct this error, NPBS proposes a methodology for "grossing-up" the sampled home-market sales.

Torrington argues that the Department's calculation of the ratio used to determine CEP profit was reasonable and consistent with the section 772(f)(2)(C) of the Act. Torrington therefore contends that the Department should not alter its calculation of the ratio.

Department's Position: We find that we made a clerical error in our calculation of the total actual profit we used to determine the ratio for CEP profit. Since NPBS reported sales on a sampled basis, before calculating total actual profit it is necessary to "gross up" the revenues and expenses for the U.S. and comparison-market sales to ensure that they are on a comparable basis. Due to a clerical error, we did not make this adjustment to NPBS's sampled home-market sales for the preliminary results. We have corrected this error for the final results by applying our customary "grossing-up" ratio to the sampled home-market sales. We did not use NPBS's proposed methodology because it is not consistent with our practice in these proceedings.

Comment 7: NPBS argues that the Department treated its reported U.S. advertising expenses erroneously as direct selling expenses. NPBS states that, in its response, it explained that its U.S. affiliate does not assume expenses for advertising directed at its customers' customers. NPBS states that, despite the fact that it identified its U.S. advertising expenses separately, this does not deem such expenses as direct in nature. NPBS concludes that the Department should treat the reported U.S. advertising expenses as indirect selling expenses. In addition, NPBS requests that the Department add its reported U.S. advertising expenses to the calculation of U.S. indirect selling expenses in the margin calculations.

Torrington disagrees with NPBS, stating that the burden rests upon NPBS to prove that its reported U.S. selling expenses are indirect. Torrington contends that, because NPBS did not satisfy this burden, the Department should continue to treat these expenses as direct selling expenses for the final results.

Department's Position: We treated NPBS's reported advertising expenses inadvertently as a direct expense for the preliminary results of review. Since NPBS stated in its questionnaire response that the advertising expenses were indirect in nature and we did not find it necessary to subject this response to additional verification, we have accepted its description of these expenses as indirect and have treated them as indirect for these final results. In addition, because NPBS removed its reported U.S. advertising expenses from its per-unit ISE calculation and reported these expenses separately from one another, we added the advertising expenses to its reported indirect selling expenses in our final margin calculations.

Comment 8: SNR argues that the Department's arm's-length test contains a clerical error which distorts the calculation of the customer-specific percentage ratio of affiliated-to-unaffiliated sales prices. SNR contends that the error occurs when there is a sale of a model to an affiliated party but no sale of that same model to an unaffiliated party. SNR states that in these situations the Department assigns a zero to these sales which distorts the overall average because the ratios are weighted by the total quantity of affiliated-party sales. SNR argues that this distortion virtually guarantees that the overall average will drop below 99.5 percent and that, as a result, the Department disregards all sales of models to affiliated parties without corresponding sales to unaffiliated parties in the calculations.

Torrington did not rebut this issue.

Department's Position: We find that the test does contain a clerical error. We have made the appropriate changes to our calculations for these final results. For the same reason, we have also made the appropriate changes to the calculations for SKF Sweden, SKF Italy, SKF France, SKF Germany, NTN, Nachi, Koyo, FAG Germany, FAG Italy, NSK–RHP, NSK, Somecat S.p.A., the Barden Corporation, Torrington Nadellager, and INA.

11.B. Miscellaneous Other

Comment 1: Somecat contends that the Department should clarify that Somecat's dumping margin applies to Italian bearings marked "SNFA" to reduce the likelihood of confusion for the Customs Service at the time of entry and for liquidation purposes. The respondent asserts that the record demonstrates that Somecat bearings are laser-marked with the label "SNFA ITALY" and that Somecat's bearings are packaged in boxes marked with the SNFA trade name. In addition, Somecat contends, the cover page to its product catalog plainly shows a bearing marked "SNFA Italy'.

The petitioner takes no position with respect to Somecat's request for clarifying that its dumping margin applies to Italian bearings marked "SNFA Italy'.

Department's Position: The record reflects that Somecat's bearings are marked "SNFA ITALY". To reduce the possibility of confusion at the time of entry and to ensure that the Customs Service assesses dumping duties on Somecat's bearings properly, we will refer to Somecat as "Somecat or SNFA Italy" in our cash-deposit instructions and liquidation instructions.

Comment 2: Torrington asserts that it requested that the Department make a determination at verification as to whether FAG Italy reimbursed its U.S. affiliate for antidumping duties. It now requests that the Department pursue additional inquiries into this issue or make a determination of the issue based on the current record.

FAG Italy rebuts that the Department stated in its report on the home-market sales verification that the verification was not the appropriate forum at which to conduct a reimbursement inquiry. It asserts that the Department was correct in this assessment. FAG Italy argues that, notwithstanding this point, Torrington has actually presented record evidence which supports the position that no reimbursement occurs. It contends that Torrington has cited to the consolidated 1997 FAG Group financial statement, which accounts for FAG US's antidumping duty liabilities. FAG Italy asserts that Torrington must submit either record evidence of financial intermingling between group companies or the existence of a written agreement between these companies regarding reimbursement before the Department is obligated to conduct a further inquiry into reimbursement.

Department's Position: There is no obligation to conduct an inquiry into reimbursement based on the information on the record. Reimbursement, within the meaning of section 351.402(f) of the Department's regulations, takes place between affiliated parties if evidence demonstrates that the exporter pays antidumping duties on behalf of the affiliated importer or reimburses the importer for such duties. In this case, the petitioner has not presented evidence that a reimbursement agreement exists. Mere allegations of reimbursement are not sufficient to sustain a more in-depth reimbursement inquiry. See *AFBs 7*, 62 FR at 54043. See also *Torrington* v. *United States*, 881 F. Supp. 622, 632 (CIT 1997), *aff'd*, 127 F.3d 1077, 1080 (CAFC 1997). Therefore, we have not conducted any further inquiry into reimbursement.

12. Romania-Specific Issues

Comment 1: Torrington argues that the Department should modify the calculation of normal value in its analysis of TIE by applying the appropriate inflators, based on changes in the published Consumer Price Index (CPI), to the base data used in the Department's memorandum entitled "Expected Wage Rates of Selected NME Countries—1995 Income Data" (wage memorandum). Torrington argues that the wage values upon which the Department relied in the preliminary results have not been updated to account for changes due to inflation since 1995. Citing section 351.408(c)(3) of the Department's regulations, Torrington claims that the Department's calculation of wage rates should be based on current data. Torrington also asserts that the Department's wage memorandum uses a CPI inflator to adjust pre-1995 wage data and that, in prior reviews, the Department valued wages based on a single surrogate by applying an inflator to values obtained for wages whenever the values pertained to periods preceding the investigation period, citing *Preliminary Results of Antidumping Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Romania*, 63 FR 11217, 11218 (March 6, 1998).

Department's Position: We have updated the 1995 base data by applying 1997 data in accordance with section 351.408(c)(3) of our regulations and used this information in calculating normal value for our analysis of TIE.

Comment 2: TIE argues that the Department's preliminary margin calculation for one model contains an obvious ministerial error, causing an abnormally high normal value for this model. TIE claims that it provided an overstated weight value for low-density foil in its questionnaire response inadvertently and the Department then used this erroneous value in its margin calculation. TIE points out that the low-density foil weight exceeds the total weight of the bearing. TIE claims further that the Department has the authority to correct errors which are obvious and has done so in previous cases, citing *Technoimportexport, S.A.* v. *United States*, 766 F. Supp. 1169, 1178 (CIT 1991). Therefore, for purposes of the final results, TIE requests that the Department correct this error and use the low-density foil weight listed in its March 22, 1999, case brief or the low-density foil weight found in TIE's response for similar models.

In rebuttal, Torrington contests TIE's argument that an obvious ministerial error occurred in the reporting of this packaging factor. Torrington asserts that the new information is untimely and unreliable, citing section 351.301 of the Department's regulations. Torrington argues further that the Department recognizes an exception to the general rule in the case of obvious errors, provided that: (1) the error is of a clerical nature; (2) the fact of the error is obvious from the record at the time the new data are submitted; and (3) the correctness of the new data is obvious, citing *RHP Bearings* v. *United States*, 19 CIT 1389, 1392 (1995), and *RHP Bearings* v. *United States*, 875 F. Supp. 854, 857 (CIT 1995). Torrington claims that there is nothing on the record which supports the corrections of the new data offered by TIE. Therefore, Torrington argues, the Department should not accept TIE's amended data.

Department's Position: We will accept corrections of clerical errors made in a party's submission under the following conditions: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical-error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantive revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. See *Final Results of the Antidumping Duty Administrative Review; Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 63 FR 16758 (April 6, 1998). TIE's alleged clerical error satisfies these six criteria. We agree that the error is obvious and clerical in nature. It is not a substantive error and does not entail a substantive revision of TIE's response. We have reviewed the record and found that similar models had approximately the same weight for low-density foil as reported in TIE's case brief. Therefore, we accept TIE's request that we revise this error and have used the information in TIE's case brief in our final margin calculations.

[FR Doc. 99–16657 Filed 6–30–99; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Notice of Extension of Time Limit for Second Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the second administrative review of the antidumping duty order on manganese metal from the People's Republic of China. The period of review is February 1, 1997 through January 31, 1998. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Greg Campbell, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–2239.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act") (i.e., November 2, 1998), the Department of Commerce ("the Department") is extending the time limit for completion of the final results to not later than September 4, 1999. *See Memorandum from Deputy Assistant Secretary Richard W. Moreland to Assistant Secretary for Import Administration Robert LaRussa,* (June 1, 1999), a public copy of which is available in the Department's Central Records Unit, room B–099.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 351.213(h)(2).

Dated: June 21, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–16812 Filed 6–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–045]

Final Results of Expedited Sunset Review: Steel Wire Rope From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of expedited sunset review: Steel wire rope from Japan

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping finding on steel wire rope from Japan (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: July 1, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping finding is steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7312.109030, 7312.109060, and 7312.109090. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

This review covers imports from all known manufacturers and exporters of steel wire rope from Japan.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping finding on steel wire rope from Japan (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the "Committee") and M & G Industries, Inc., on January 19, 1999, and January 7, 1999, respectively, both within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* We received a complete substantive response on behalf of the Committee on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). However, no substantive response was received from M & G Industries. The Committee claimed interested-party status under section 771(9)(C) and (F) as U.S. manufacturers of a domestic like product and an association, a majority of whose members is composed of interested parties described in subparagraph (C). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations,* the Department determined to conduct an expedited review of this finding.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent

reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the Committee's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping finding is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood determinations cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping when a respondent interested party waives its participation in the sunset review. In this instant review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

On October 15, 1973, the Department of Treasury ("Treasury") issued its Final Affirmative Antidumping Duty Determination, T.D. 73–296 (38 FR 28571). Since that time, the Department has conducted several administrative reviews.[1] The finding remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, the Committee argued that actions taken by producers and exporters of Japanese steel wire rope during the life of the finding, including the dramatic decline in imports from Japan consequent to the antidumping finding and the subsequent administrative reviews, particularly in combination with the fact that a substantial number of Japanese producers/exporters continued to dump after the finding was issued, are a strong indication that dumping is likely to recur should the finding be revoked (*see* Substantive Response of the Committee, February 3, 1999, at 4). With respect to whether dumping continued at any level above *de minimis* after the issuance of the finding, the Committee argued that, as documented in several final determinations reached by the Department, dumping levels have varied greatly for respective Japanese producers/exporters during the life of the finding (*see id.* at 3).

With respect to whether imports of the subject merchandise ceased after the issuance of the finding, the Committee, citing U.S. Department of Commerce reports and U.S. Census Bureau statistics for U.S. imports (IM146 reports), asserted that the antidumping finding on steel wire rope from Japan has resulted in a steady decline in the volume of imports of subject merchandise from that country (*see id.* at 3).[2]

In its substantive response, the Committee also argued that the dramatic appreciation of the Japanese yen vis-a-vis the U.S. dollar in the recent months indicates that revocation of the antidumping finding is likely to lead to continuation or recurrence of dumping (*see id.* at 3).

In conclusion, the Committee argued that the Department should determine that there is a likelihood that dumping would continue were the finding revoked because (1) dumping margins above *de minimis* continue to exist for several companies, and (2) imports of the subject merchandise decreased significantly after the imposition of the finding, although there were some later fluctuations. The Committee argued moreover that, as a direct result of the antidumping finding, Japan was reduced from being a leading supplier of the subject merchandise to the U.S. market in the early and mid-1980s to a supplier of negligible volume of imports over the past decade (*see* Substantive Response of the Committee, February 3, 1999, at 3).

As discussed in Section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. The Department, after examining the final results of administrative reviews, can confirm that dumping margins above *de minimis* continue to exist for shipments of the subject merchandise from several Japanese producers/exporters.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the finding. The statistics provided by the Committee on imports of the subject merchandise between 1985 and 1998, confirmed through the Department's examination of U.S. Census data (IM146 reports), demonstrate that imports of the subject merchandise have decreased almost every year since the finding. However, it must be noted that, while shipments of steel wire rope from Japan did fall steadily throughout most of the life of the finding, in the 1990s shipments from Japan began to fluctuate and in some cases actually increased. For example, import volumes increased from 1996 to 1997 and almost doubled in the period from 1997 to 1998.[3] However, these statistics also establish that imports of steel wire rope from Japan have not surpassed 1000 net tons per year since 1990. This is consistent with the Department's findings of no shipments by several of the reviewed companies in many of the

[1] *See Steel Wire Rope from Japan; Final Results of Administrative Review of Antidumping Finding,* 47 FR 3395 (January 25, 1982); *Steel Wire Rope from Japan; Final Results of Administrative Review of Antidumping Finding,* 48 FR 8524 (March 1, 1983); *Steel Wire Rope from Japan; Finnl Results of Administrative Review of Antidumping Finding,* 49 FR 12294 (March 29, 1984); *Steel Wire Rope from Japan; Final Results of Antidumping Duty Administrative Review,* 52 FR 28585 (July 31, 1987); *Steel Wire Rope from Japan; Final Results of Antidumping Duty Administrative Review,* 54 FR 6737 (February 14, 1989); *Steel Wire Rope from Japan; Final Results of Antidumping Duty Administrative Review,* 54 FR 38541 (September 19, 1989).

[2] The Committee provided information on U.S. imports of steel wire rope from Japan, on an annual basis, in net tons, from 1985 through November 1998.

[3] *See* U.S. Department of Commerce, Bureau of the Census, Report IM146 and Substantive Response of the Committee, February 3, 1999, at 3.

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administrative reviews conducted by the Department.[4]

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the finding along with declining import volumes is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above *de minimis* continues in effect for exports of the subject merchandise by at least one known Japanese manufacturer/exporter. Therefore, given that dumping has continued since the issuance of the finding, respondent interested parties waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the finding were revoked.

Because the Department based this determination on the fact that dumping continued at levels above *de minimis*, it is not necessary to address the Committee's arguments concerning Japanese yen appreciation and its affect on this finding.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

Further, in the *Sunset Policy Bulletin* the Department stated that, in a sunset review of an antidumping finding where the original investigation was conducted by Treasury and no company-specific margin or "all others" rate was included in the Treasury finding, the Department normally will provide to the Commission the company-specific margin from the first administrative review published in the **Federal Register** by the Department. For any company not covered in the first administrative review, the Department normally will provide to the Commission, as the margin for any new company not reviewed by Treasury, the first "new shipper" rate established by the Department for that order (*see* section II.B.1). We note, that, to date, the Department has not issued any duty absorption findings in this case.

Treasury, in its original final determination, did not publish any dumping margins. Therefore, the Department normally will select the margin from the first administrative review conducted by the Department as the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Committee stated that, because Treasury did not publish a specific dumping margin in its original finding, the Department must select a rate calculated during one of the administrative reviews. It recommended that the Department select the highest rate determined by the Department for a Japanese producer/exporter of the subject merchandise for the most recent period reviewed—at least 17.18 percent, the dumping margin established by the Department for Tokyo Rope/Ataka for the period January 1, 1974, through September 30, 1984 (54 FR 6737) (*see* Substantive Response of the Committee, February 3, 1999, at 6).

As for Japanese companies not reviewed in the original investigation, the Committee did not recommend a specific margin to be applied; however, it seemed to suggest that the Department also assign these companies a rate of at least 17.18 percent.

The Department agrees with the Committee's observation that because Treasury issued no margins in its original final determination the Department must select dumping margins from an administrative review conducted by the Department. However, the Department disagrees with the Committee's assertion that it should report to the Commission the company-specific margins published in one of the later administrative reviews. While the *Sunset Policy Bulletin* does state that the Department may provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins increased after the issuance of the finding or order, in this case, there has been no consistent pattern of increasing margins.

The Department finds no reason to deviate from the above-stated policy of utilizing the margins from the first administrative review. Therefore, the Department has selected the rates from the April 1, 1978, through September 30, 1980, administrative review of steel wire rope from Japan, published in the **Federal Register** on January 25, 1982 (47 FR 3395). The Department will report to the Commission the company-specific and "all others" rates from the original investigation as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping finding would likely to lead to continuation or recurrence of dumping at the margins listed in the attached Appendix.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: Jule 25, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix

Manufacturer/exporter	Margin (percent)
Ace Industrial Co., Ltd	11.88
Ako Rope & Wire Mfg. Co., Ltd	11.88
Asahii Mini Rope Co., Ltd/Dia Enterprises Ltd	11.88
Chrysanthemum Nippon Wire Rope Co., Ltd./Watanabe Trading Co	0.77
Chrysanthemum Nippon Wire Rope Co., Ltd,/Kent-Moore Japan Ltd	0.00
Chrysathemum Nippon Wire Rope Co., Ltd/C. Itoh & Co., Ltd	11.88
Chuo Seisakusho Ltd./Kinyo Co., Ltd	0.00
Chuo Seisakusho Ltd./Koh-shin Co	0.00
Chuo Seisakusho Ltd./Other Trading Companies	11.88
Daido Corp	5.68
Daisen Kogyo	5.68

[4] *See Steel Wire Rope from Japan: Final Results of Administrative Review of Antidumping Finding*, 47 FR 3395 (January 25, 1982); *Steel Wire Rope from Japan; Final Results of Administrative Review of Antidumping Finding*, 48 FR 8524 (March 1, 1983); *Steel Wire Rope from Japan: Final Results of Administrative Review of Antidumping Finding*, 49 FR 12294 (March 29, 1984); *Steel Wire Rope from Japan; Final Results of Antidumping Duty Administrative Review*, 52 FR 28585 (July 31, 1987); *Steel Wire Rope from Japan; Final Results of Antidumping Duty Administrative Review*, 54 FR 6737 (February 14, 1989); *Steel Wire Rope from Japan; Final Results of Antidumping Duty Administrative Review*, 54 FR 38541 (September 19, 1989).

Manufacturer/exporter	Margin (percent)
Daishin Shoji Co., Ltd	11.88
Daishin Shoji Co., Ltd/Vanguard Steel Ltd. (transshipper)	0.00
Daiwa Steel Co., Ltd	11.88
Daiwa Kogyo, K.K	11.88
Dia Enterprises, Ltd	11.88
Godo Tessen Co., Ltd	11.88
Hakko Sangyo K.K./Mitsui and Co	0.00
Hannan Wire Rope Mfg. Co., Ltd./Far East Industrial Co., Ltd	9.68
Hannan Wire Rope Mfg. Ltd./ Higashishiba & Co	11.88
Igeta Wire Rope Co., Ltd./ Mitsui & Co., Ltd	3.81
Igeta Wire Rope Co., Ltd/ Kimura Shorten, Ltd	3.81
Ito-Ume and Co., Inc	11.88
Iwata Wire Rope Mfg. Co., Ltd./ Mitsui and Co., Ltd	0.47
Kasuga Seiko Co., Ltd./ Higashishiba & Co	0.00
Kasuga Seiko Co., Ltd./Kohshin Co	0.00
Kasuga Seiko Co., Ltd./Nissho-Iwai	0.12
Kasuga Seiko Co., Ltd./ Sumitomo Shoji Kaisha, Ltd	1.89
Kawashma Trading Co., Ltd	11.88
Kawatertsu Wire Products Co., Ltd./Mitsui and Co	0.00
K–M International	11.88
Kinki Steel Wire Rope Mfg. Co. Ltd/S.M. Industries	0.00
Kinki Steel Wire Rope Mfg. Co., Ltd./Yutoko and Co	11.88
Kobayashi Metals, Ltd	11.88
Kokoku Steel Wire Ltd./ Nichimen Co., Ltd	0.28
Kokoku Steel Wire Ltd./Nissho-Iwai	0.33
Kokoku Steel Wire Ltd/Itotaka International	0.31
Kokoku Steel Wire Ltd./Shinko Shoji Kaisha	1.76
Kokoku Steel Wire Ltd./Mitsui and Co	1.01
Kokoku Steel Wire Ltd./ Sumitomo Shoji Kaisha Ltd	11.88
Kokoku Steel Wire Ltd./ Kanematsu-Gosho Ltd	11.88
Kokoku Steel Wire Ltd./Yutoko & Co., Ltd	11.88
Kondo Iron Works Co., Ltd	11.88
Koshihara Iron Works Co., Ltd	11.88
Kyosei Industry Co., Ltd	0.00
Kyowa Bussan, K.K	11.88
Kyowa Wire Rope Mfg. Co., Ltd./Mitsui and Co	0.07
Maruka Machinery Co., Ltd	11.88
Marusen Wire Rope Mfg. Co., Ltd./S.M. Industries	11.88
Meiji Rope Mfg. Co., Ltd./Mitsui and Co	0.00
Mill Wire Industries/F.A. Industries	0.00
Misawa Trading Co., Ltd./S.M	11.88
Naigai Rope Mfg. Co., Ltd./ Mitani Kogyo Co	0.00
Naniwa Wire Rope Mfg. Co. Ltd/Mitsui and Co	0.00
Naniwa Wire Rope Mfg. Co., Ltd./Higashishiba & Co	11.88
Naniwa Wire Rope Mfg. Co., Ltd./other than Mitsui or Higashishiba	11.88
Nankai Senshu Steel Wire & Rope Co., Ltd./Sumitomo Shoji Kaisha	0.00
Nanri Trading Co., Ltd	11.88
Nihon Miniature Rope Mfg. Co., Ltd./ S.M. Industries	0.00
Nihon Minature Rope Mfg. Co., Ltd./Yutoko and Co., Ltd	0.00
Nikko Steel Wire Rope Mfg. Co., Ltd./Union Co	11.88
Nippon Miniature Rope Co., Ltd./Kinyo Co., Ltd	0.00
Nippon Steel Wire Rope Co., Ltd./Mitsui and Co	0.00
Nishimura Wire Rope Mfg. Co., Ltd/Kinyo Co., Ltd	0.35
Nishimura Wire Rope Mfg. Co., Ltd./K–M International	0.00
Nisshi-Nippon Fujikara Co., Ltd	11.88
Nishiya Wire Rope Co., Ltd./ Mitsui and Co	0.06
Nobuhara Mfg. & Supply Co	5.68
Oriental Corp./F.A. Industries Corp	0.00
Osaka Wire Rope Mfrs. Assn./ Mitsui and Co	0.00
Rope Service K.K.	11.88
Ryoei Shoji Co., Ltd	11.88
Sakai & Co., Ltd	11.88
Sanko Wire Rope Mfg. Co., Ltd./Tokyo Trading Co	0.00
Sanwa Seiko Co., Ltd./J. Gerber & Co., Ltd	11.88
Sanyo Shokai K.K./J. Gerber & Co., Ltd	0.00
Sasaki Kogyo Co., Ltd	9.68
Seiko Wire Rope Co., Ltd./ Okura Trading Co., Ltd	11.88
Seiko Wire Rope Co., Ltd/Kinyo Co., Ltd	0.00
Seiko Wire Rope Co., Ltd./ Kohshin Co., Ltd	11.88
Seiko Wire Rope Co., Ltd./ Syuto Co., Ltd	11.88
Shibamoto & Co., Ltd	5.68
Shigeyama & Co., Ltd	11.88
Shinko Wire Rope Co./Mitsui and Co	0.00
Shinko Wire Rope Co./Shinko Shoji Kaisha	0.00
Shinko Wire Rope Co./Nissho-Iwai	0.00
Shinko Wire Rope Co./ Kanematsu-Gosho Ltd	0.00
Shinko Wire Rope Co., Ltd	0.00
Shinyo Ropes Mfg. Co., Ltd./ Higashishiba & Co	0.00
Shinyo Ropes Mfg. Co., Ltd./ Mitsui and Co	0.08
Shinyo Ropes Mfg. Co., Ltd./ S. M. Industries, Inc	11.88
Shinyo Ropes Mfg. Co., Ltd./ Vanguard Steel Ltd. (transshipper)	0.00
Shinyo Ropes Mfg. Co., Ltd./ Yutoko and Co., Ltd	11.88
Shinyo Ropes Mfg. Co., Ltd./ Other Trading Companies	0.80
Showa Boeki Co., Ltd	11.88
Sumiyoshi Kinzoku Kogyo	11.88
Taiho Seiko/Kinyo Co	0.00
Taisei International Corp	11.88
Y. Takeuchi and Co	11.88
Tanaka Metals Corp	11.88
Teikoku Sangyo Co., Ltd./ Sumitomo-Shoji Kaisha, Ltd	0.00
Teikoku Sangyo Co., Ltd./The Tosho Co., Ltd	0.00
Teikoku Sangyo Co., Ltd./Mitsui and Co	0.00
Teikoku Sangyo Co., Ltd./ Nissho-Iwai	1.09
Teikoku Sangyo Co., Ltd./ Watanabe Trading Co., Ltd	1.00
Teikoku Sangyo Co., Ltd./ Mitsubishi Corporation	0.00
Toyo Sangyo Co., Ltd	11.88
Union Wire Rope Mfg. Co./ Sanyo Bussan Kaisha, Ltd	0.04
Nikko Steel Wire Rope Mfg. Co., Ltd./The Yamasho Co., Ltd	9.68
Yamato Industries Co., Ltd	11.88
Yuasa Sangyo K.K	5.68
C.T. Takahashi & Co	5.68
Daimyo Bussan	9.68
IBA Steel Rope Mfg. Co., Ltd./ Hori Trading Co., Ltd	9.68
Izumi Trading Co., Ltd	9.68
Japan Steel Wire Rope/ Kohshin Co., Ltd	9.68
Kanto Steel Wire Co., Ltd	5.68
Kiku Steel and Wire Rope Co./ Watanabe Trading Co., Ltd	0.00
Liberty Shokai, Ltd	5.68
Nan Rope Co., Ltd	5.68
Nissei Sangyo Co	5.68
Seo Hardware Corp	9.68
Taiyo Seiki Iron Works	5.68
Taiyo Iron Works	9.68
Tokyo Special Wire Co., Mfg. Ltd	5.68
Yasada and Co	9.68
Taiyo Sunco Inc	5.68
All Others	11.88

[FR Doc. 99–16815 Filed 6–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Harvard University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision Consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

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Docket Number: 99–006. *Applicant:* Harvard University, Cambridge, MA 02138. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 64 FR 27515, May 20, 1999. *Order Date:* March 4, 1999.

Docket Number: 99–007. *Applicant:* Baylor College of Medicine, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM–3000F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 64 FR 27516, May 20, 1999. *Order Date:* April 3, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–16813 Filed 6–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, US Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Room 4211, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C.

Docket Number: 99–014. *Applicant:* National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401–3393. *Instrument:* 2 (Two) Anemometer Systems, Model DA–600. *Manufacturer:* Kaijo-Denki Corp. *Intended Use:* The instruments are intended to be used in conjunction with previously purchased systems to study the 3–D structure of small-scale atmospheric turbulence related to the operation, efficiency, and fatigue life of wind turbine generators and their component parts. *Application accepted by Commissioner of Customs:* June 11, 1999.

Docket Number: 99–015. *Applicant:* University of Southern California, Biological Sciences, 835 West 37th Street—ACB 510, Los Angeles, CA 90089–1340. *Instrument:* Automated Microscope Workstation, Series 200. *Manufacturer:* Singer Instrument, United Kingdom. *Intended Use:* The instrument is intended to be used to analyze the segregation of genes in yeast cells which are being used to study the basic molecular events of genetic instability that can cause a number of neurodegenerative diseases such as Huntington's disease and Fragile X mental retardation syndrome in humans. *Application accepted by Commissioner of Customs:* June 14, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–16814 Filed 6–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062599C]

Collections of Information for Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 30, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to James Hale, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

This document requests comments on a number of collections-of- information requirements for the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries off Alaska. The requirements described below have been in place without having obtained the necessary OMB approval, which will now be requested.

Request for Quota Share Application - Prior to the end of the application period to apply for IFQ Quota Shares(QS), the Application for QS was used to assess eligibility to receive QS. That application period ended on July 15, 1994. Applications for QS submitted after that date are categorically denied. An applicant denied for untimely submission of an application for QS may, however, file an appeal of that administrative decision. Hence, at this point in time, RAM facilitates such appeals by substituting the Request for Application for QS in place of the more extensive Application for QS itself. RAM determined that for purposes of categorically denying claims for QS the lengthy QS application is no longer necessary. The categorical denial then allows the applicant to enter the appeals process.

Vessel Clearance and Departure Reports - A vessel operator who intends to make an IFQ landing at a location other than in an IFQ regulatory area or in the State of Alaska must obtain pre-landing written clearance of the vessel from a clearing officer. If the pre-landing vessel clearance is to be obtained in Washington or another non-Alaska state, a departure report must be provided to NMFS Enforcement prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska. Although these reports are currently cleared under OMB Control Number 0648–0272, some of the data elements in the reports were not described in the related clearance request. Data elements for which authorization is being requested are: vessel home port, vessel ADF&G number, vessel official number, Federal fisheries permit number, International Pacific Halibut Commission number, halibut and sablefish weight, name of each IFQ cardholder onboard, registered buyer name and number, time of landing, location of clearance, registered buyer signature and date signed.

Dockside Sales Receipt - A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish to a person who has not been issued a registered buyer permit but must issue a dockside sales receipt in lieu of a shipment report.

The purpose of reporting the amount of IFQ fish involved in a dockside sale is to provide NMFS Enforcement with the ability to monitor and inspect the shipment of IFQ fish to determine whether there was proper accounting for all IFQ fish landed.

Request for Transaction Terminal - All IFQ landings must be reported electronically, using IFQ landing cards and transaction terminals activated with custom-designed computer software. Transaction terminals may be purchased directly from the supplier and sent to NMFS for installation of the custom software that makes a transaction terminal functional. Transaction terminals may also be requested from NMFS, but remain the property of the U.S. Government. This request form is used to request that a transaction terminal be supplied by NMFS. Since the number of terminals available from NMFS may not be sufficient to meet all requests, NMFS requests the address or location of expected activity so that a single terminal may be supplied to appropriate public places, such as Harbormaster offices, to meet the needs of numerous applicants in the same location.

Transshipment Authorization - No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization from a clearing officer and unless operating as a registered buyer. Authorization must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence and the transshipment must occur at a place specified by a NMFS Clearing Officer. The advance notice and restriction to a primary port affords NMFS the opportunity to inspect the fish. Transshipment authorization may be obtained through telephone, FAX, or other voice communications.

Existing data elements without clearance are: date and location of transshipment; vessel names and ADF&G numbers; product destination; registered buyer's name and number; species; regulatory areas fished; product type and code; number of units; unit and product weights; request date and time; and requester's name, phone, and fax.

IFQ/CDQ Shipment Report - Each registered buyer, other than those conducting dockside sales, must complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish from that registered buyer before the fish leave the landing site and assure that a copy of the shipment report or a bill of lading containing the same information as a shipment report accompanies the shipment of IFQ species from the landing site to the first destination beyond the location of the IFQ landing. Existing data elements without clearance are: whether the report is original or revised; signature of registered buyer's representative; and unit product weight.

IFQ Administrative Waiver - This form is used by NMFS/Enforcement to document the request for and the granting of waivers for either of several requirements: the Six-hour Prior of Notice of Landing, the 12–hour IFQ Landing Window, the Electronic Landing Report requirement, the IFQ cardholder onboard requirement, or the requirement that vessel clearance be obtained at a primary port.

II. Method of Collection

Most information is submitted by telephone or letter. Receipts must be issued for dockside sales receipts. A form is used to submit shipping reports and requesting waivers .

III. Data

OMB Number: 0648–0272

Form Number: None

Type of Review: Regular submission

Affected public: Individuals, businesses and other for-profit

Estimated Number of Respondents: 6,700 (unchanged from currently approved figure)

Estimated Time Per Response: 30 minutes for an Application for Quota Share, 6 additional minutes for the uncleared elements of the Vessel Clearance and Departure Report, 6 minutes for a Dockside Sale Receipt, 30 minutes for a Request for a Transaction Terminal, 6 additional minutes for the uncleared elements of the Transshipment Authorization, 6 additional minutes for the uncleared elements of the Shipment Report, and 6 minutes for the Administrative Waiver.

Estimated Total Annual Burden Hours: 3,505 (this represents the hours to be added to the 0648–0272 clearance, whose total would then be 22,275 hours)

Estimated Total Annual Cost to Public: $175 additional costs for the requirements being submitted, mostly for postage (many requirements involve the use of toll-free phone calls). The total costs for 0648–0272 requirements would then be $90,996.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; — ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 24, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–16810 Filed 6–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Lapse of Exploration License

AGENCY: National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of lapse of Deep Seabed Mining Exploration License USA–2 held by Ocean Management, Inc. and Relinquishment of Deep Seabed Mining Exploration License USA–3 held by Ocean Mining Associates.

SUMMARY: Pursuant to section 115(a) of the Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1425(a), and 15 CFR 971.803(a) notice is hereby given

that on March 31, 1999, NOAA received formal notification that Ocean Management, Inc. (OMI), holder of Deep Seabed Exploration License USA–2, was dissolved. Dissolution papers were filed with the Delaware Secretary of State on January 14, 1999. NOAA has issued the exploration license for Site USA–2, to OMI in August 1984. Since OMI no longer exists as a legal entity, a condition precedent for the continued validity of the license has been eliminated and the license has, thereby, lapsed. This is deemed a relinquishment of the license under the Act. Also pursuant to those statutory and regulatory authorities, notice is hereby given that by letter to NOAA dated August 29, 1997, Ocean Mining Associates, holder of Deep Seabed Exploration License USA–3 issued by NOAA, formally relinquished its license as of the date of the letter.

FOR FURTHER INFORMATION CONTACT: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, MD 20910, Tel. 301–713–3121, ext. 201.

Dated: June 25, 1999.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 99–16700 Filed 6–30–99; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

Technology Administration

Office of Technology Policy; National Medal of Technology Nomination Evaluation Committee; Notice of Determination for Closure of Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for July 13, 1999.

The Committee was established to assist the Department in executing its responsibilities under 15 U.S.C. 3711. Under this provision, the Secretary is responsible for recommending to the President prospective recipients of the National Medal of Technology. The committee's recommendations are made after reviewing all nominations received in response to a public solicitation. The Committee is chartered to have twelve members.

Time and Place: The meeting will begin at 10 a.m. and end at 4 p.m. on July 13, 1999. The meeting will be held in Room 1410 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For further information contact: Allison Rosenberg, Director, National Medal of Technology, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, Room 4226, Washington, DC 20230. Ph: (202–482–5572).

If a member of the public would like to submit written comments concerning the committee's affairs at any time before and after the meeting, written comments should be addressed to the Director, National Medal of Technology as indicated above.

Supplementary Information: The meeting will be closed to discuss the relative merits of persons and companies nominated for the Medal. Public disclosure of this information would be likely to significantly frustrate implementation of the National Medal of Technology program because premature publicity about candidates under consideration of the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal.

Accordingly, I find and determine, pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, that the July 13, 1999, meeting may be closed to the public in accordance with section 552b(c)(9)(B) of Title 5, United States Code because revealing information about Medal candidates would like to significantly frustrate implementation of a proposed agency action.

Due to the closure of the meeting, copies of the minutes of the meeting will not be available, however, a copy of the Notice of Determination will be available for public inspection and copying in the office of Allison Rosenberg, Director, National Medal of Technology, 14th and Constitution Avenue, NW, Herbert Hoover Building, Room 4226, Washington, DC 20230, (Ph: 202–482–5572).

Dated: June 25, 1999.

Kelly H. Carnes,

Deputy Assistant Secretary, Office of Technology Policy.

[FR Doc. 99–16826 Filed 6–30–99; 8:45 am]

BILLING CODE 3510–18–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection: Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection, and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility: (b) the accuracy of the agency's estimate of burden of the proposed information collection: (c) ways to enhance the quality, utility, and clarity of the information to be collected: and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 30, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Military Personnel Policy), ATTN: Dr. Jane Arabian, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 697–9271.

Title and Applicable OMB Control Number: Survey of Home School Associations, and OMB Control Number 0704–[to be determined].

Needs and Uses: The Conference Report of the Storm Thurmond National Defense Authorization Act for Fiscal Year 1999, Section 571, created a five-year pilot program that moved home school graduates from Tier II priority status (with General Education Development (GED) certificate holders) to Tier I (high school diploma graduates) for enlistment purposes. The purpose of this survey is to obtain information to support implementation of this program. Individual responses will be kept confidential. Only group statistics will be reported. All information will be used for research only. Participation will be voluntary.

Affected Public: Not-for-profit institutions.

Annual Burden Hours: 50.

Number of Respondents: 200.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Conference Report (Section 571) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 directs the establishment of a five-year pilot program requiring the Military Services to permit home school graduates and General Education Development (GED) certificate holders from the National Guard Youth ChalleNGe Program to enter the military with the same enlistment priority as high school diploma graduates. The Act also includes a requirement that the Government evaluate the program's effectiveness. The proposed survey supports this requirement. The survey will be administered to representatives of home school associations nationwide. The survey will gather information on how military recruiters can effectively reach out to home schoolers. It will also gather information on how military recruiters can identify genuine home school graduates.

Dated: June 25, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–16705 Filed 6–30–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Proposed Rule Changes

ACTION: Notice of proposed changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 9(d), 30(e), 36, and 39, and new Rule 36A of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment.

Proposed Revision to Rule 9(d)

Rule 9. Clerk

[Amend Rule 9(d) to delete the word "citations" in the first sentence of this subsection.]

Proposed Revision to Rule 30(e)

Rule 30. Motions

[Amend Rule 30(e) to delete the words "other than those to file recent supplemental citations of authority without additional argument."]

Proposed Rule 36. Filing of Pleadings

(a) *In general.* Pleadings or other papers relative to a case shall be filed in the Clerk's office, 450 E Street, Northwest, Washington, D.C. 20442–0001, either in person or by mail. *See* Rule 37(b)(2).

(b) *Filing in person.* If a pleading or other paper is filed in person, such filing shall consist of delivery to a member of the Clerk's office during normal business hours. *See* Rule 9(e).

(c) *Filing by mail.* If a pleading or other paper is filed by mail, such filing shall consist of depositing the pleading or other paper with the United States Postal Service, with no less than first-class postage prepaid, properly addressed to the Clerk's office.

(d) *Time of filing.* Pleadings or other papers shall be deemed to have been filed on the date they are delivered to the Clerk's office under subsection (b) or on the date they are mailed under subsection (c). *See* Rules 37(b)(1) and 39(e).

(e) *Non-compliant pleadings.* If any pleading or other paper is not filed or offered for filing in compliance with these rules or an order of the Court, the Court may issue an order to show cause, dismiss the proceeding, or return the proffered pleading or paper on its own motion or the motion of a party. *See* Rules 27(a)(4) and 37(b)(1).

* * * * *

Proposed Rule 39. Service of Pleadings

(a) *In general.* At or before the filing of any pleading or other paper relative to a case in the Clerk's office, a copy thereof shall be served in person or by mail on all counsel of record, including *amicus curiae* counsel. *See* Rule 16(b). When a party is not represented by counsel, service shall be made on such party in person or by mail. When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service must be at least as expeditious as the manner used to file the pleading or other paper with the Court. *See* Rule 36.

(b) *Personal service.* If service is made in person, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If the party is not represented, service shall consist of delivery to such party.

(c) *Service by mail.* If service is made by mail, it shall consist of depositing the pleading or other paper with the United States Postal Service, with no less than first-class postage prepaid, addressed to the counsel of record or, if the party is not represented, to such party, at the proper post office address.

(d) *Certificate for review.* In the case of a certificate for review, service of a copy thereof shall be made on appellate defense counsel and appellate government counsel as prescribed in Rule 22(a).

(e) *Form of certificate of filing and service.* A certificate indicating the specific manner of filing under Rule 36 and the specific manner of service under this rule shall be included in any pleading or other paper substantially in the following form:

Certificate of Filing and Service

I certify that the original and seven copies of the foregoing were [delivered] *(or)* [mailed-*specify class of mail*] to the Court on _____ (date) *and* that a copy of the foregoing was [delivered] *(or)* [mailed-*specify class of mail*] to (*enter specific name of each counsel of record or party, if not represented*) on _____ (date)

_____

(Typed name *and* signature of certifying person)

_____

(Address and telephone no. of certifying person)

* * * * *

Proposed Rule 36A. Citations to Supplemental Authorities

If pertinent and significant authorities come to a party's attention after such party has filed a pleading allowed under these Rules, or after oral argument but before a final decision, the party may promptly advise the Clerk by letter, with a copy to all parties, setting forth the citations. The letter must state, without argument, the reasons for each supplemental citation, referring either to the page of the earlier filed pleading or to a point argued orally to which the citation is pertinent. Any response by other parties must be made promptly and must be similarly limited.

DATES: Comments on the proposed changes must be received by August 30, 1999.

ADDRESSES: Forward written comments to Thomas F. Granahan, Clerk of the Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, D.C. 20442–0001.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of the Court, telephone (202) 761–1448 (x600).

SUPPLEMENTARY INFORMATION: The Rules Advisory Committee Comments on the proposed changes to Rules 9(d), 30(e), 36, and 39, and on proposed new Rule 36A are included as an attachment to this notice.

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Rules Advisory Committee Comment on Proposed Revision to Rule 9(d)

If proposed Rule 36A is promulgated, the reference to "citations" in Rule 9(d) should be deleted as no longer necessary.

Rules Advisory Committee Comment on Proposed Revision to Rule 30(e)

If proposed Rule 36A is promulgated, the phrase referring to motions "to file recent supplemental citations of authority without additional argument" should be deleted as no longer necessary.

Rules Advisory Committee Comment on Proposed Rule 36

The proposed amendments to Rule 36 set forth the particular methods for filing pleadings or other papers relative to a case in person and by mail and provide that, when a filing is accomplished by mail, it must be made with no less than first-class postage prepaid, properly addressed to the Clerk's office. A similar provision is incorporated in the proposed amendments to Rule 39 for service of pleadings and other papers relative to a case.

Rules Advisory Committee Comment on Proposed Rule 39

The proposed amendments to Rule 39 specify that the service of pleadings or other papers relative to a case, when accomplished by mail, must be made with no less than first-class postage prepaid. A similar provision is incorporated in the proposed amendments to Rule 36 for the filing of pleadings and other papers relative to a case. Rule 36(a) also provides that, where practicable, service of a pleading or other paper should be by a means at least as expeditious as the manner in which the filing of such pleading or paper with the Court is accomplished under Rule 36.

Rules Advisory Committee Comment on Proposed Rule 36A

New Rule 36A substantially tracks Rule 28(j) of the Federal Rules of Appellate Procedure. It is designed to provide a party with an expeditious means of submitting important authorities to the Court that were either previously overlooked or unavailable when an earlier pleading was filed. The rule does not allow additional argument to be made and such letters should not be used for this purpose. If a party believes that supplemental briefing would be appropriate, that party should seek leave of Court to do so on motion under Rule 30 and should not rely on this rule for that purpose.

Dated: June 25, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–16704 Filed 6–30–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors Meeting

Pursuant to Section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the U.S. Air Force Academy, Colorado, August 9–11, 1999. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in Subsections (2), (4), and (6) of 552b(c), Title 5, United States Code. These closed sessions will include attendance at cadet training programs and discussions with cadets, military staff, and faculty officers involving personal information and opinion, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will include executive sessions involving discussions of personnel issues, financial topics, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Closed sessions may also include proprietary information from sources outside the government. Meeting sessions will be held in various facilities throughout the cadet area.

For further information contact Lt Col Wayne A. Schiefer or Ms Deborah Mercurio, Plans and Current Operations Division, HQ USAFA/XPO, 2304 Cadet Drive, Suite 350, USAF Academy, CO 80840–5002, (719) 333–3933.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–16781 Filed 6–30–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Environmental Impact Statement For Proposed Open-Water Placement of Dredged Material At Site 104 Queen Anne's County, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Extension of comment period (July 31, 1999).

SUMMARY: Reference previous **Federal Register** notice, Volume 64, Number 83, page 23285, dated April 30, 1999, announcing the Baltimore District's extension of comment period to July 1, 1999. The Baltimore District is now extending the public comment period for an additional 30 days (July 31, 1999). The purpose of this extension is to provide additional time for public evaluation and comment.

DATES: Comments must be submitted on or before July 31, 1999 to be evaluated and considered in the final environmental impact statement.

ADDRESSES: Questions, comments, or requests for copies of the Draft Environmental Impact Statement should be directed to Mr. Wesley E. Coleman Jr. at the Corps of Engineers, Baltimore District (ATTN: CENAB–PL–P), P.O. Box 1715, Baltimore, MD 21203–1715. Or e-mail wesley.e.coleman@usace.army.mil

FOR FURTHER INFORMATION CONTACT: Mr. Wesley E. Coleman, Jr. at facsimile (410) 962–4698 or 1–800–295–1610.

SUPPLEMENTARY INFORMATION: A Notice of Availability (NOA) and a summary of the proposed action was published in the **Federal Register** (64 FR 9480) on February 26, 1999. The U.S. Army Corps of Engineers, Baltimore District is evaluating the potential use of Site 104 as an open-water placement area. Site 104 is located in the Chesapeake Bay one-half mile north of the Chesapeake Bay Bridge and one mile west of Kent Island. Open-water placement is proposed for approximately 18 million cubic yards of dredged material from the mainstem Chesapeake Bay channels leading to the port of Baltimore. The Maryland Port Administration has recommended the use of Site 104 for open-water placement of clean sediment. No decision has been made to use the site. The Baltimore District will analyze and incorporate all public comments on this Draft Environmental Impact Statement before making a final decision.

The DEIS and associated technical appendices are available at the following area libraries: Anne Arundel County Public Library, North County Branch, 1010 Eastway Drive Glen Burnie, MD 21060; Queen Anne's County Free Library, 121 South Commerce Street, Centreville, MD 21617; Kent County Public Library, 408 High Street Chestertown, MD 21620; Frederick Douglas Library. University of MD, Eastern Shore, Backbone Road, Princess Anne, MD 21853–1299; Miller Library, Washington College, 300 Washington Avenue, Chestertown, MD 21620; MD State Law Library, Court of Appeals Building 361 Rowe Boulevard, Annapolis, MD 21401; Queen Anne's County Public Library, Kent Island Branch, 200 Library Circle, Stevensville, MD 21666; Annapolis Library, 1410 West Street Annapolis, MD 21401; Broadneck Library, 1275 Green Holly Drive, Annapolis MD 21401; Reference Library, State Department of Legislation, 90 State Circle, Annapolis MD 21401.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–16811 Filed 6–30–99; 8:45 am]

BILLING CODE 3710–41–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–212 and EA–213]

Applications to Export Electric Energy; Coral Power, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Coral Power, L.L.C. (Coral) has applied for authority to transmit electric energy from the United States to Mexico and Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 2, 1999.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On June 9, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received two separate applications from Coral to transmit electric energy from the United States to Mexico and Canada. Coral is a power marketer and does not own or control any facilities for the generation or transmission of electricity, nor does it have a franchised service area. Coral proposes to transmit to Mexico and Canada electric energy purchased from electric utilities and other suppliers within the U.S.

In FE Docket EA–212, Coral proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico.

In FE Docket EA–213, Coral proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Coral, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Coral application to export electric energy to Mexico should be clearly marked with Docket EA–212. Comments on the Coral application to export electric energy to Canada should be clearly marked with Docket EA–213. Additional copies are to be filed directly with Jeffrey D. Watkiss, Esq. *AND* Robin F. Wallace, Esq. Bracewell & Patterson, L.L.P., 2000 K Street, N.W., Suite 500, Washington, D.C. 20006.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA) and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory", then "Electricity", then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on June 18, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–16804 Filed 6–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Draft Supplement Analysis: Pit Manufacturing Facilities at Los Alamos National Laboratory, Stockpile Stewardship and Management Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Supplement Analysis: Pit Manufacturing Facilities at Los Alamos National Laboratory, Stockpile Stewardship and Management Programmatic Environmental Impact Statement (SSM PEIS), DOE/EIS–0236/SA–6, for public review and comment.

DATES: Written comments on the Draft Supplement Analysis are invited from the public during the comment period, which ends August 2, 1999 (see **ADDRESSES** section for more details). Comments must be postmarked by August 2 to ensure consideration; late comments will be considered to the extent practicable. The DOE will use the comments received to help prepare the Final Supplement Analysis.

ADDRESSES: To obtain a copy of the Supplement Analysis or to submit comments in writing or orally to DOE, contact: Corey Cruz, Albuquerque Operations Office Project Manager, U.S. DOE, Albuquerque Operations Office, Nuclear Programs Division (NPD), PO

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Box 5400, Albuquerque, NM 87185–5400.

Mr. Cruz may also be contacted by telephone 505–845–4282 or fax (505) 845–4216. Comments may also be sent to the E-mail address ssmpeissa@doeal.gov. Requests for copies of the Draft SA or other matters regarding this environmental review should be addressed to Mr. Cruz at the address above. The Draft Supplement Analysis will be available under the NEPA Analyses Module of the DOE NEPA Web Site at http://tis.eh.doe.gov/nepa/.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, EH–42, Director, Office of NEPA Policy and Assistance, Department of Energy 1000 Independence Ave., SW, Washington, DC 20585.

Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Draft Supplement Analysis was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 *et seq.*], the Council on Environmental Quality NEPA regulations [40 CFR Parts 1500–1508], and the DOE NEPA regulations [10 CFR Part 1021]. The Department examined issues related to the possibility of seismic activity, fire, and sabotage at facilities at LANL. DOE prepared the Draft Supplement Analysis in compliance with the Memorandum Opinion and Order issued by the United States District Court for the District of Columbia in *Natural Resources Defense Council, et al.*, v. *Federico Peña, et al.*, (CA 97–0936(SS)).

DOE has distributed copies of the Draft Supplement Analysis to the State of New Mexico, American Indian tribal governments, local county governments, other Federal agencies, and other interested parties. The Draft Supplement Analysis is also available for public review and copying at the following four locations:

University of New Mexico, Dan Barkley Reading Room, Government Information Department, Zimmerman Library, Albuquerque, NM, 87131–1466.

Albuquerque Technical Vocational Institute (TVI), Main Campus Library, 525 Buena Vista Dr. SE, Albuquerque, NM.

LANL Community Relations Office, 1619 Central Avenue, Los Alamos, New Mexico.

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, 1000 Independence Ave, SW, Washington, DC.

After the public comment period, which ends August 2, 1999, the Department will consider and respond to the comments received, revise the Draft Supplement Analysis as appropriate, and issue a Final Supplement Analysis. The Department will consider the analyses in the Final Supplement Analysis in making a determination as to whether the SSM PEIS should be supplemented or a new SSM PEIS should be prepared.

Signed in Washington, DC, 25th this of June 1999, for the United States Department of Energy.

Victor H. Reis,

Assistant Secretary for Defense Programs.

[FR Doc. 99–16803 Filed 6–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: U.S. Department of Energy.

ACTION: Notice of meeting cancellation.

SUMMARY: An open meeting of the High Energy Physics Advisory Panel was scheduled to be held on July 12–13, 1999, at the Holiday Inn, 2 Montgomery Village Avenue, in Gaithersburg, Maryland 20879, has been cancelled due to scheduling difficulties. This meeting was announced in the **Federal Register** on May 17, 1999, 64 FR 26740.

Issued at Washington, D.C. on June 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–16802 Filed 6–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Sandia. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Wednesday, July 21, 1999: 6:00 p.m.—9:00 p.m. (MST)

ADDRESSES: North Valley Senior Center, 3825 4th, NW, Albuquerque, New Mexico 87110, (505) 761–4025.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: 6:00 p.m.

- Call to Order by DOE
- Welcome by Chair
- Roll Call
- Approval of Agenda
- Approval of Previous Minutes
- Chair Update
- Task Group and Committee Updates

7:30 p.m. Public Comments
7:50 p.m. Break
8:00 p.m. Board Business
9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on June 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–16801 Filed 6–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. FE C&E 99–12, C&E 99–13 and C&E 99–14; Certification Notice—175]

Office of Fossil Energy; Notice of Filings of Coal Capability of Hays Energy, L.P., Midlothian Energy, L.P. and AES Red Oak, L.L.C. Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: Hays Energy, L.P., Midlothian Energy, L.P. and AES Red Oak, L.L.C submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in acccordance with section 201(d).

Owner: Hays Energy, L.P. (C&E 99–12).
Operator: Hays Energy, L.P.
Location: Hays County, TX.
Plant Configuration: Combined cycle.
Capacity: 1,100 megawatts.
Fuel: Natural gas.
Purchasing Entities: Wholesale purchasers.
In-Service Date: 2nd Quarter, 2001.

Owner: Midlothian Energy, L.P. (C&E 99–13).
Operator: Midlothian Energy, L.P.
Location: Midlothian, TX.
Plant Configuration: Combined cycle.
Capacity: 1,100 megawatts.
Fuel: Natural gas.
Purchasing Entities: Texas Utilities Electric Company and other wholesale purchasers.
In-Service Date: 2nd Quarter, 2000.

Owner: AES Red Oak, L.L.C. (C&E 99–14).
Operator: AES Red Oak, L.L.C.
Location: Middlesex County, NJ.
Plant Configuration: Combined cycle.
Capacity: 816 megawatts.
Fuel: Natural gas.
Purchasing Entities: Williams Energy.
In-Service Date: November, 2001.

Issued in Washington, D.C., June 24, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–16805 Filed 6–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–43–000]

Algonquin Gas Transmission Company; Notice of Refund Report

June 25, 1999.

Take notice that on June 22, 1999, Algonquin Gas Transmission Company (Algonquin), tendered for filing a refund report pursuant to Ordering Paragraph (C) of the Commission's February 22, 1995 order in Gas Research Institute (GRI), Docket No. RP95–124–000.

Algonquin states that on May 28, 1999, Algonquin received its share of the GRI refund totaling $975,297.00.

Algonquin states that on June 7, 1999, each eligible firm customer was credited its pro rata share of the GRI refund.

Algonquin states that copies of the filing were served on each of its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16740 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–345–000]

Arkansas Western Pipeline, L.L.C.; Notice of Tariff Filing

June 25, 1999.

Take notice that on June 22, 1999, Arkansas Western Pipeline L.L.C. (AWP L.L.C.), tendered for filing revised tariff sheets, as part of to its FERC Gas Tariff, Second Revised Volume No. 1.

AWP L.L.C., asserts that the purpose of this filing is to comply with Order Nos. 587, et al., excluding 587–K, with which its tariff is not in compliance. AWP L.L.C., states that it is contemporaneously filing revised tariff sheets necessary to comply with Order No. 587–K.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–16735 Filed 6–30–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-187-010]

Arkansas Western Pipeline, L.L.C.; Notice of Petition for Waiver

June 25, 1999.

Take notice that on June 21, 1999, Arkansas Western Pipeline, L.L.C. (AWP L.L.C.), tendered for filing its Motion for Waiver of Interactive Web Site Requirement pursuant to the Commission's Order No. 587-I.

AWP L.L.C., states that this filing has been served on all its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-16736 Filed 6-30-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-206-005]

Atlanta Gas Light Company; Notice of Filing

June 25, 1999.

Take notice that on June 22, 1999, Atlanta Gas Light Company (Atlanta) tendered for filing a request for extension of the waivers and limited jurisdiction blanket certificate granted by the Commission in its "Order Issuing Limited-Term, Limited-Jurisdiction Blanket Certificate, Amending Certificates for a Limited Term, and Granting Temporary Waivers" issued on July 31, 1998 in the above-captioned proceeding (July 31 Order).

Atlanta requests that the Commission grant an extension of the waivers and other authorizations granted in the July 31 Order in order to enable Atlanta to continue to implement the interstate capacity assignment provisions of Georgia's retail natural gas unbundling program beyond the October 31, 1999 expiration date of the authorizations granted in the July 31 Order. To provide certainty for parties participating in the Georgia program, Atlanta requests that the Commission extend the waivers and other authorizations until March 31, 2003, or the time that the affected interstate services either expire, are made directly assignable, or are converted to Part 284 service, whichever occurs sooner. In addition, Atlanta requests that the Commission expand Atlanta's waiver of Section 284.243(h)(2) of the Commission's regulations to enable Atlanta to pass through to marketers the benefits of discount and negotiated rate arrangements Atlanta may enter into in the future, in addition to the existing Southern discount arrangement. Atlanta further requests that the Commission act on its request by July 28, 1999, to enable Atlanta and its marketers to make the necessary arrangements and adjustments with interstate pipeline suppliers prior to October 1, 1999, when it is anticipated that Atlanta will exit the merchant function.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 285.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-16731 Filed 6-30-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-344-000]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 25, 1999.

Take notice that on June 21, 1999, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the Tariff sheets listed in Appendix A to the filing, to be effective August 1.

CIG states that the purpose of this filing is to conform its tariff to the requirements of Order No. 587-K (FERC Statues and Regulations (Preambles) 31,072 (1999)). Order No. 587-K requires interstate pipelines transporting pursuant to Section 284.223 of the Commission's Regulations to conform their tariffs to the most recent version of the Cas Industry Standards Board standards, Version 1.3, promulgated July 31, 1998.

CIG further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be head or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-16733 Filed 6-30-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-94-000]

Florida Gas Transmission Company; Notice of Site Visits

On July 7 and 8 of 1999, the Office of Pipeline Regulation (OPR) staff will inspect Florida Gas Transmission Company's (FGT), proposed compressor unit addition at Compressor Station 13 (CS-13) in Caryville, Florida and its proposed site for Compressor Station 24 (CS-24) in Trenton, Florida. The areas will be inspected by automobile. Representatives of FGT will accompany the OPR staff.

Anyone interested in participating in the site visits must provide their own transportation.

For further information, contact Paul McKee of the Commission's Office of External Affairs at (202) 208-1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-16743 Filed 6-30-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-284-002]

Kern River Gas Transmission Company; Notice of Compliance Filing

June 25, 1999.

Take notice that on June 22, 1999, Kern River Gas Transmission Company (Kern River), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute First Revised Sheet No. 92-A, to be effective June 1, 1999.

Kern River states that the purpose of this filing is to correct an error on the tariff sheet filed on June 8, 1999 in this docket. This tariff sheet pertains to a new fuel reimbursement mechanism proposed by Kern River.

Kern River states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for pubic inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-028-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-16734 Filed 6-30-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-347-000]

Kern River Gas Transmission Company; Notice of Tariff Filing

June 25, 1999.

Take notice that on June 22, 1999, Kern River Gas Transmission Company (Kern River), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective August 1, 1999.

Sixth Revised Sheet No. 71
Sixth Revised Sheet No. 72
Fifth Revised Sheet No. 72-A
Third Revised Sheet No. 74
First Revised Sheet No. 74-A
Second Revised Sheet No. 82-A
Eighth Revised Sheet No. 93
Second Revised Sheet No. 93-A
Original Sheet No. 93-B
Fourth Revised Sheet No. 94-A
Original Sheet No. 94-D
Fifth Revised Sheet No. 128
Fifth Revised Sheet No. 129
Fourth Revised Sheet No. 130
Fourth Revised Sheet No. 502
Fourth Revised Sheet No. 602
Third Revised Sheet No. 702
Third Revised Sheet No. 803
Seventh Revised Sheet No. 891

Kern River states that the purpose of this filing is to submit tariff sheets in compliance with Order No. 587-K to incorporate the Version 1.3 standards promulgated by the Gas Industry Standards Board (GISB) on July 31, 1998 and adopted by the Commission as Section 284.10(b)(1) of the Commission's Regulations.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-16737 Filed 6-30-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99-42-000]

Kern River Gas Transmission Company; Notice of Refund Report

June 25, 1999.

Take notice that on June 22, 1999, Kern River Gas Transmission Company (Kern River), tendered for filing a report of Gas Research Institute (GRI) refunds made to its customers.

Kern River states that on May 28, 1999 it received a refund from the GRI in the amount of $957,563, representing an over collection of the 1998 GRI Tier 1 funding target level set for Kern River by the GRI. On June 11, 1999 Kern River credited the GRI refund, pro rata, to its eligible firm customers who received nondiscounted transportation service during 1998.

Kern River states that a copy of this filing has been served upon its affected customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to

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intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–16741 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–010]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 25, 1999.

Take notice that on June 22, 1999, National Fuel Gas Supply Corporation (National Fuel), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Original Sheet No. 13, to be effective August 1, 1999.

National Fuel states that the filing is made to implement an Amendment to a firm storage agreement between National Fuel and KN Marketing, L.P. National Fuel further states that the Amendment to its FSS Service Agreement provides for a negotiated rate pursuant to Section 17.2 of the General Terms and Conditions of National Fuel's tariff and to the Commission's policy regarding negotiated rates.

National Fuel also states that the firm storage service would be provided at a formula rate based upon seventy five (75) percent of the difference between the monthly index price of gas withdrawn at the North Point of CNG Transmission Corporation as published by Gas Daily Price Guide, and the Weighted Average Value of Injected Gas, less $0.84 per Dth. The specific formula is set forth in the Amendment.

Finally, National Fuel states that it is serving copies of the filing upon its firm customers and interested state commissions. Copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16729 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–44–000]

National Fuel Gas Supply Corporation; Notice of Refund Report

June 25, 1999.

Take notice that on June 23, 1999, National Fuel Gas Supply Corporation (National), tendered for filing a refund report pursuant to the Commission's April 29, 1998, "Order Approving Settlement" issued in Docket No. RP97–391–003 *et al.*

National states that it has refunded the Gas Research Institute demand surcharge based on the non-discounted GRI dollars paid by each firm shipper during the 1998 calendar year as a percentage of the total non-discounted GRI demand dollars paid by all firm shippers. National further states that it made these refunds in the form of credits to invoices issued in June 11, 1999. Total credit amounted to $1,267,048.

National states that notice of the refund and refund amounts have been posted on National's EBB and copies of National's filing were served on National's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr,.

Acting Secretary.

[FR Doc. 99–16730 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–561–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

June 25, 1999.

Take notice that on June 16, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, tendered for filing in Docket No. CP99–561–000, a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon five small volume meter stations located in Pottawattamie and Shelby Counties, Iowa, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern proposes to abandon and remove five small volume farm taps, all located on the Avoca Branchline in Pottawattamie and Shelby Counties, Iowa. Northern states that the branchline on which the farm taps reside will be abandoned and removed thereby requiring the removal of the farm taps. Northern further states that a replacement line at an alternate location will be installed to provide service to downstream customers. Northern states that all branchline activity will be performed and reported to FERC under the automatic blanket authority. Northern states that all customers served by the subject facilities have consented to the abandonment.

Any questions regarding the application should be directed to either Don Vignaroli at (402) 398–7139 (dvignaro@enron.com) or Glen Hass at (402) 398–7419 (ghass@enron.com), Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124–1000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–16739 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–348–007 and RP96–348–008]

Panhandle Eastern Pipe Line Corporation; Notice of Technical Conference

June 25, 1999.

The Commission's order issued on June 18, 1999, in the above-captioned proceeding, 87 FERC ¶ 61,331 (1999), established a technical conference to address the operational aspects of certain issues concerning Panhandle Eastern Pipe Line Company's (Panhandle) proposed transportation penalties and proposal to revise scheduling priorities for firm transportation at secondary receipt and delivery points raised (a) in the rehearing requests to the Commission's February 18, 1998, order on rehearing, 82 FERC ¶ 61,163 (1998), and (b) in the protests to Panhandle's March 5, 1998 filing to comply with the requirements of the February 18, 1998 order.

Take notice that the conference to address the issues has been scheduled for Wednesday, July 21, 1999, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16725 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–41–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

June 25, 1999.

Take notice that on June 22, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW), tendered for filing a report of refunds made for calendar year 1998 in accordance with the Commission's Order of September 27, 1996 (76 FERC ¶ 61,337 (1996)) in Gas Research Institute (GRI) Docket No. RP96–267–000 and the Commission's Orders of February 22, 1995 (70 FERC ¶ 61,205 (1995)) and May 3, 1995 (71 FERC ¶ 61,131 (1995)) in Gas Research Institute Docket Nos. RP95–124–000, et al.

PG&E GT–NW asserts these Orders required it to credit eligible firm customers with refunds received from GRI and to file a report with the Commission within 15 days of making such refunds. The refund is allocated to customers based on each customer's pro-rata contributions to PG&E GT–NW's GRI surcharge collections on non-discounted firm transportation during 1998, and has been reflected as credits on customer invoices issued June 9, 1999.

PG&E GT–NW further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies, and will be posted to all recipients of a share of the refund.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16728 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

Power Authority of the State of New York; Notice of Meetings To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project

June 25, 1999.

The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence-FDR Power Project was identified in the NOTICE OF MEMORANDUM OF UNDERSTANDING, FORMATION OF COOPERATIVE CONSULTATION PROCESS TEAM, AND INITIATION OF SCOPING PROCESS ASSOCIATED WITH RELICENSING THE ST. LAWRENCE-FDR POWER PROJECT issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The following is a list of meetings for the CCP Team to continue settlement negotiations on ecological and local issues. The meetings will be conducted at the New York Power Authority's (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

The CCP Team will meet:

July 28–29, 1999
August 25–26, 1999
September 29–30, 1999
October 27–28, 1999
November 17–18, 1999, and
December 15–16, 1999

If you would like more information about the CCP Team and the relicensing process, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, (212) 468–6272 (fax), EMAIL: Ytathat@IP3GATE.USA.COM

Mr. Bill Little, Esq., New York State Dept. of Environmental Conservation, (518) 457–0986, (518) 457–3978 (fax), EMAIL: WGLittle@GW.DEC.State.NY.US

Dr. Jennifer Hill, Ms. Patti Leppert-Slack, Federal Energy Regulatory

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Commission, (202) 219–2797 (Jennifer), (202) 219–2767 (Patti), (202) 219–0125 (fax), EMAIL: Jennifer.Hill@FERC.FED.US, EMAIL: Patricia.LeppertSlack@FERC.FED.US

Further information about NYPA and the St. Lawrence-FDR Power Project can be obtained through the Internet at http://www.stl.nypa.gov/index.html. Information about the Federal Energy Regulatory Commission can be obtained at http://www.ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16732 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–343–000]

Southern Natural Gas Company; Notice of Petition for Waiver

June 25, 1999.

Take notice that on June 18, 1999, Southern Natural Gas Company (Southern), tendered for filing a petition for a limited waiver of Section 14.1(b)(1) and (c)(1) of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1.

Southern requests the Commission to grant a limited waiver of Section 14.1 of the General Terms and Conditions of Southern's Tariff for cashout premiums incurred in May 1999.

Southern states that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 1, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16727 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–56–000 and ER97–4669–000]

Western Resources, Inc. and Kansas City Power & Light Company; Notice of Settlement Conference

June 25, 1999.

Take notice that a settlement conference will be convened to discuss issues raised in Docket Nos. EC97–56–000 and ER97–4669–000. The conference is scheduled for Tuesday, July 13, 1999, at 1:00 p.m. and Wednesday, July 14, 1999, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring settlement of Docket Nos. EC97–56–000 and ER97–4669–000.

Any party as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information contact Linda Lee at (202) 208–0673, Thomas J. Burgess at (202) 208–2058, Theresa J. Burns at (202) 208–2160, or Marcia C. Hooks (202) 208–0993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16742 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–346–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

June 25, 1999.

Take notice that on June 22, 1999, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, the Tariff sheets listed in on Appendix A to the filing, to be effective August 1, 1999.

WIC states that the purpose of this compliance filing is to conform WIC's tariff to requirements of Order No. 587–K (FERC Statutes and Regulations (Preambles) 31,072 (1999)) that interstate pipelines transporting pursuant to Section 284.223 of the Commission's Regulations conform their tariffs to the most recent version of the Standards, Version 1.3 promulgated July 31, 1998 by the Gas Industry Standards Board.

WIC further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16738 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3127–000, et al.]

Bishop Power Company, Inc. et al.; Electric Rate and Corporate Regulation Filings

June 23, 1999.

Take notice that the following filings have been made with the Commission:

1. Bishop Power Company, Inc.

[Docket No. ER99–3127–000]

Take notice that on June 18, 1999, Bishop Power Company, Inc. (Bishop Power) submitted an amendment to Bishop Power's petition for acceptance of Bishop Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. The amendment provides additional information about the ownership of Bishop Power.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. ER99–3133–000]

Take notice that on June 18, 1999, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing changes to the Generator Imbalance Agreement with Dow Chemical Co.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER99–3175–000]

Take notice that on June 18, 1999, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing changes to the Generator Imbalance Agreement with Crown Paper Co. d/b/a Crown Vantage.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Alliant Energy Services Company, Inc.

[Docket No. ER99–3292–000]

Take notice that on June 17, 1999, Alliant Energy Services Company, Inc. (Alliant) on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light Company (WPL), tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period June 1, 1999 through August 31, 1999. The Agreement was negotiated to provide service under the IEC System and Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Alliant Energy Services Company, Inc.

[Docket No. ER99–3293–000]

Take notice that on June 17, 1999, Alliant Energy Services Company, Inc. (Alliant) on behalf of Wisconsin Power & Light Company (WPL) and Interstate Power Company (IPC), tendered for filing a Negotiated Capacity Transaction (Agreement) between WPL and IPC for the period June 1, 1999 through August 31, 1999. The Agreement was negotiated to provide service under the Alliant Energy Corporation System and Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PP&L, Inc.

[Docket No. ER99–3294–000]

Take notice that on June 18, 1999, PP&L, Inc. (PP&L), tendered for filing with the Commission an application to amend its Market-Based Rate Tariff, FERC Electric Tariff Revised Volume No. 5, to allow PP&L to sell specified ancillary services at market-based rates.

PP&L requested waiver of Commission regulations to permit the tariff amendment to become effective on June 21, 1999.

PP&L stated that it served a copy of the foregoing on the Pennsylvania Public Utility Commission and on those parties who have executed service agreements under PP&L's Market-Based Rate Tariff.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. TXU Electric Company

[Docket No. ER99–3295–000]

Take notice that on June 18, 1999, TXU Electric Company (TXU Electric), tendered for filing a notice of succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16. As a result of a name change, TXU Electric is succeeding to the tariffs and related service agreements of Texas Utilities Electric Company, effective June 14, 1999.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER99–3296–000]

Take notice that on June 18, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Ameren Services Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1999.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER99–3297–000]

Take notice that on June 18, 1999, UtiliCorp United Inc., on behalf of its Missouri Public Service operating division, tendered for filing an Interconnection Agreement between UtiliCorp United Inc., d/b/a Missouri Public Service and MEP Pleasant Hill LLC dated June 4, 1999.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER99–3298–000]

Take notice that on June 18, 1999, Commonwealth Edison Company (ComEd), tendered for filing service agreements establishing DukeSolutions, Inc. (Duke), Otter Tail Power Company (OTP), and Duquesne Light Company (Duquesne), as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of June 18, 1999, for the Service Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Duke, OTP and Duquesne.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER99–3299–000]

Take notice that on June 18, 1999, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Williams Energy Marketing & Trading. Service will be provided pursuant to CMP's Wholesale Market Tariff, Volume No. 4, as supplemented.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Company

[Docket No. ER99–3300–000]

Take notice that on June 18, 1999, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with ENRON Power Marketing, Inc. Service will be provided pursuant to CMP's Wholesale Market Tariff, Volume No. 4, as supplemented.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

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13. Entergy Services, Inc.

[Docket No. ER99–3302–000]

Take notice that on June 18, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (EGSI), tendered for filing a Generator Imbalance Agreement with Exxon Company, U.S.A.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. West Texas Utilities Company

[Docket No. ER99–3312–000]

Take notice that on June 18, 1999, West Texas Utilities Company (WTU), tendered for filing a letter agreement to supplement the Control Area Services Agreement currently on file between WTU, Rayburn Country Electric Cooperative, Inc. (Rayburn) and LG&E Energy Marketing, Inc., (LEM).

WTU requests an effective date of June 22, 1998, and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Rayburn, LEM and the Public Utility Commission of Texas.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16764 Filed 6–30–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1764–001, et al.]

Erie Boulevard Hydropower, L.P., et al. Electric Rate and Corporate Regulation Filings

June 25, 1999.

Take notice that the following filings have been made with the Commission:

1. Erie Boulevard Hydropower, L.P.

[Docket No. ER99–1764–001]

Take notice that on June 21, 1999, Erie Boulevard Hydropower, L.P. (Applicant), tendered for filing its Compliance Filing in the above-referenced docket.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Full Power Corporation

[Docket No. ER99–2540–000]

Take notice that on June 21, 1999, Full Power Corporation tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Amendment No. 2 to its pending proposed FERC Electric Rate Schedule No. 1, waiver of certain of the Commission's Regulations under the Federal Power Act (FPA), and grant of certain blanket approvals, all as more particularly described in the Amendment to its pending Application for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective June 18, 1999, or the date that the Commission issues an order in this proceeding, whichever is earlier. Full Power Corporation intends to engage in electric energy and capacity transactions as a marketer.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company

[Docket No. ER99–3317–000]

Take notice that on June 21, 1999, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Illinova Energy Partners, Inc., (IEPI).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to IEPI pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of June 30, 1999.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Mid-Continent Area Power Pool

[Docket No. ER99–3318–000]

Take notice that on June 21, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, tendered for filing the MAPP open-access transmission tariff (Regional Tariff). The Regional Tariff provides regional, firm point-to-point transmission service on a zonal basis.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER99–3319–000]

Take notice that on June 21, 1999, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, an Interconnection Agreement with LG&E Capital Corporation (LCC), for the interconnection with the LG&E and KU transmission system of two 164 megawatt combustion turbine units being installed on the premises of KU's E. W. Brown generating station, located in Mercer County, Kentucky. LCC will own and operate the plants during a start-up and testing period and potentially for some period thereafter.

LG&E and KU have requested waiver of the Commission's prior notice and filing requirements, and an effective date of June 21, 1999.

Copies of the filing were served upon the Kentucky Public Service Commission and the Virginia State Corporation Commission.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Rathdrum Power, LLC

[Docket No. ER99–3320–000]

Take notice that on June 21, 1999, Rathdrum Power, LLC, an electric power developer organized under the laws of Delaware, petitioned the Commission for acceptance of its market-based rate schedule, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's Regulations, and preapproval of transactions under Part 34 of the regulations.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER99–3321–000]

Take notice that on June 21, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Omaha Public Power District.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER99–3323–000]

Take notice that on June 21, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Basin Electric Power Cooperative.

NSP requests that the Commission accept both the agreements effective May 18, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER99–3324–000]

Take notice that on June 21, 1999, Niagara Mohawk (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Enron Power Marketing, Inc. (Enron). This Transmission Service Agreement specifies that Enron has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Enron to enter into separately scheduled transactions under which Niagara Mohawk will provide firm transmission service for Enron as the parties may mutually agree.

Niagara Mohawk requests an effective date of June 11, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Enron.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Electric Power Company

[Docket No. ER99–3325–000]

Take notice that on June 21, 1999, Southwestern Electric Power Company (SWEPCO), tendered for filing proposed tariff changes in its Rate Schedule FERC No. 72, applicable to transmission service rendered to Arkansas Electric Cooperative Corporation (AECC) under the Flint Creek Power Plant Power Coordination, Interchange and Transmission Service Agreement (Flint Creek Agreement). SWEPCO has proposed decreased rates (calculated in accordance with the formula contained in the Flint Creek Agreement).

SWEPCO requests an effective date of July 1, 1999, and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on AECC and the Arkansas Public Service Commission.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11, Niagara Mohawk Power Corporation

[Docket No. ER99–3330–000]

Take notice that on June 21, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of June 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER99–3331–000]

Take notice that on June 21, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA), to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of June 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER99–3332–000]

Take notice that on June 21, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution

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system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of June 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. IMC-Agrico Company

[Docket No. QF99–61–000]

Take notice that on June 18, 1999 as supplemented on June 24, 1999, IMC-Agrico Company (IMCA), whose address is Pierce Offices, 5000 Old Highway 37, P.O. Box 2000, Mulberry, Florida 33860, tendered for filing with the Federal Energy Regulatory Commission an amended application for certification of a facility as a cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

IMCA's proposed facility is a topping cycle cogeneration facility fueled by natural gas that will produce electricity and provide steam to an adjacent facility, which will in turn produce distilled water for IMCA's internal system. Electricity will be generated using combustion turbine generators and a steam turbine generator for a combined maximum gross output of approximately 400 MW.

IMCA's proposed facility will interconnect with the transmission system of one or more of IMCA's incumbent utilities (Tampa Electric Company, Florida Power Corporation, and Peace River Electric Cooperative), which may provide supplementary and backup power to the proposed facility and purchase useful electric power output of the facility to the extent not consumed internally by IMCA.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16766 Filed 6–30–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3038–000, et al.]

Indianapolis Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

June 24, 1999.

Take notice that the following filings have been made with the Commission:

1. Indianapolis Power & Light Company

[Docket No. ER99–3038–000]

Take notice that on June 18, 1999, Indianapolis Power & Light Company, tendered for filing a conformed copy of the Certificate of Concurrence signed by a representative of the Dayton Power & Light Company (Dayton P&L).

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket Nos. EC99–87–000, ER99–3306–000]

Take notice that on June 18, 1999, New England Power Company (NEP), tendered for filing an application and rate schedule associated with the sale of NEP's 115 kV facilities at the South Danvers substation to the Town of Danvers, Massachusetts for use by its municipal light department.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. New Energy Ventures, Inc., The AES Corporation

[Docket No. EC99–88–000]

Take notice that on June 18, 1999, New Energy Ventures, Inc. (NEV) and The AES Corporation (AES), tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act and Request for Expedition in the above-referenced docket. In the proposed transactions, NEV will dispose of its jurisdictional assets through the sale of 100 percent of its issued and outstanding common stock to AES; and AES will acquire control of, and the entire equity interest in, NEV, through the acquisition of the common stock of NEV.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER99–3288–000]

Take notice that on June 17, 1999, Arizona Public Service Company (APS), tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC) per Terms of the Agreement in the Matter of Surface Transportation Board Docket 41185 Reparations and 1999–2002 Coal Transportation to the Cholla Generating Station.

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer name	APS–FPC/FERC rate schedule 1
Electrical District No. 3 (ED–3)	12
Tohono O'odham Utility Authority (TOUA) [1]	52
Arizona Electric Power Cooperative (AEPCO)	57
Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk)	58
Arizona Power Authority (APA)	59
Colorado River Indian Irrigation Project (CRIIP) [2]	65

Customer name	APS–FPC/FERC rate schedule 1
Electrical District No. 1 (ED–1)	68
Arizona Power Pooling Association (APPA)	70
Town of Wickenburg (Wickenburg)	74
Southern California Edison Company (SCE)	120
Electrical District No. 6 (ED–6)	126
Electrical District No. 7 (ED–7)	128
City of Page	134
Electrical District No. 8 (ED–8)	140
Aguila Irrigation District (AID)	141
McMullen Valley Water Conservation and Drainage District (MVD)	142
Tonopah Irrigation District (TID)	143
Citizens Utilities Company (Citizens) [2]	207
Harquahala Valley Power District (HVPD)	153
Buckeye Water Conservation and Drainage District (BID)	155
Roosevelt Irrigation District (RID)	158
Maricopa County Municipal Water Conservation District (MCMWCD)	168
City of Williams (Williams)	192
San Carlos Indian Irrigation Project (SCIIP)	201
Maricopa County Municipal Water Conservation District at Lake Pleasant (MCMWCD–Lk.Pl.)	209

[1] Formerly Papago Utility Tribal Authority.
[2] APS–FPC/FERC Rate Schedule in effect during the refund period.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Archer Daniels Midland

[Docket No. ER99–2792–000]

Take notice that on June 18, 1999, Archer Daniels Midland (ADM), tendered for filing in response to staff request an amendment to its executed Power Purchase Agreement with Central Illinois Light Company, filed on May 4, 1999, in the above-referenced docket.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER99–3305–000]

Take notice that on June 18, 1999, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy Gulf States, Inc., tendered for filing changes to Generator Imbalance Agreements with Georgia Gulf Corporation; Huntsman Petrochemical Corporation; Tenaska Frontier Partners, Ltd.; LSP Energy Limited Partnership; Union Carbide Corporation; PPG Industries, Inc.; CII Carbon, L.L.C.; PanEnergy Lake Charles Generation.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. United Power, Inc.

[Docket No. ER99–3307–000]

Take notice that on June 18, 1999, United Power, Inc. (UPI), tendered for filing its Initial Rate Filing consisting of (i) a Borderline Agreement between Public Service Company of Colorado and UPI; and (ii) a Partial Requirements Agreement between the Town of Frederick and UPI. UPI also seeks waivers of certain Commission filing requirements and other regulations.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Equitable Energy, L.L.C.

[Docket No. ER99–3308–000]

Take notice that on June 18, 1999, Equitable Energy, L.L.C. (Equitable), tendered for filing pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15, a notice canceling Equitable's Rate Schedule FERC No. 1, and Supplement No. 1 to Rate Schedule No. 1, effective May 20, 1999. In its notice, Equitable states that it has no customers.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER99–3309–000]

Take notice that on June 18, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35, a service agreement (the Service Agreement) under which NYSEG may provide capacity and/or energy to Edison Mission Marketing & Trading, Inc. (EMMT) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement with EMMT becomes effective as of May 3, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission and EMMT.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Central Illinois Light Company

[Docket No. ER99–3310–000]

Take notice that on June 18, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, The Dayton Power & Light Company.

CILCO requests an effective date of June 15, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Light Company

[Docket No. ER99–3311–000]

Take notice that on June 18, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, The Dayton Power & Light Company.

CILCO requests an effective date of June 15, 1999.

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Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER99–3313–000]

Take notice that on June 18, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Sacramento Municipal Utility District.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective May 24, 1999.

A copy of this filing was caused to be served upon Sacramento Municipal Utility District, as noted in the filing letter.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Portland General Electric Company

[Docket No. ER99–3314–000]

Take notice that on June 18, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with PacifiCorp Power Marketing, Inc.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective June 1, 1999.

A copy of this filing was caused to be served upon PacifiCorp Power Marketing, Inc., as noted in the filing letter.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER99–3315–000]

Take notice that on June 18, 1999, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing changes to the Interconnection Agreement between Entergy Gulf States, Inc., and Exxon Company, U.S.A.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER99–3316–000]

Take notice that on June 18, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Enron Power Marketing, Inc., (Enron). This Transmission Service Agreement specifies that Enron has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Enron to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for Enron as the parties may mutually agree.

Niagara Mohawk requests an effective date of June 11, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Enron.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. David M. Carlisle

[Docket No. ID–3383–000]

Take notice that on June 18, 1999, David M. Carlisle, tendered for filing an application for authorization under Section 305(b) of the Federal Power Act to hold the following interlocking positions and request for waiver of 18 CFR 45.3(b).

Director of Bangor Hydro-Electric Company
Director of Bangor Savings Bank
Director of Livada Securities, Inc.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16765 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2620–005 South Carolina]

Lockhart Power Company; Notice of Availability of Draft Environmental Assessment

June 25, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Lockhart Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project is located on the Broad River, near the town of Lockhart, in Union, Chester, York, and Cherokee counties, South Carolina. No federal lands or facilities are occupied or used by the project. The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, contact Charles Hall, Environmental Coordinator, at (202) 219–2853.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16724 Filed 6–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Exhibit S.

b. *Project No.:* 2426–144.

c. *Date Filed:* March 25, 1999.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* California Aqueduct Project.

f. *Location:* The project is located in San Bernardino and Los Angeles Counties, California. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Dale Martfeld, Department of Water Resources, 1418 Ninth St., P.O. Box 942838, Sacramento, CA 94236–001, (916) 653–5951.

i. *FERC Contact:* Robert Fletcher, robert.fletcher@ferc.fed.us, (202) 219–1206.

j. *Deadline for filing comments, motions to intervene and protests:* 30 days from the issuance date of this notice. Please include the project number (2426–144) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426.

k. *Description of Application:* The original Exhibit S annual trout stocking requirements for Silverwood, Pyramid, and Castaic Lakes were 300,000; 200,000; and 250,000 trout, respectively. In cooperation with the California Department of Fish and Game, it was determined that these stocking rates were unattainable. As a result, the licensee proposes to amend the above annual stocking rates to 20,000 pounds of catchable trout at Silverwood Lake, 20,000 pounds of catchable trout at Pyramid Lake, and 4,000 pounds of catchable trout at Piru Creek.

l. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426 or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address listed in item h above.

m. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16722 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of PP&L, Inc. Request To Use Alternative Procedures in Preparing a License Application

June 25, 1999.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission:

a. *Type of Application:* Request to use alternative procedures to prepare a license application.

b. *Project No.:* 487.

c. *Date filed:* May 4, 1999.

d. *Applicant:* PP&L, Inc.

e. *Name of Project:* Wallenpaupack.

f. *Location:* On the Wallenpaupack Creek and Lackawaxen River, near the Borough of Hawley and the City of Seranton, in Wayne and Pike Counties, Pennsylvania. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Gary Petrewski, PP&L, Inc., Two North Ninth Street (GENN5), Allentown, PA 18101–1179, 610–774–4759.

i. *FERC Contact:* Any questions on this notice should be addressed to Patrick Murphy, E-mail address, patrick.murphy@ferc.fed.us, or telephone 202–219–2659.

j. *Deadline for comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Project:* The project consists of an 870-foot-long, 67-foot-high concrete dam with a center spillway equipped with two 67.5-foot-long by 14-foot-high steel roller gates; a 13-mile-long, 5,700-acre reservoir at a full pool elevation of 1,190 feet msl; an 18,000-foot-long 14-foot-diameter pipeline connecting the dam with the powerhouse; a powerhouse containing two generating units with a total

installed capacity of 40,000 kW; and other appurtenances.

m. PP&L has demonstrated that it has made an effort to contact all resource agencies, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus exists that the use of alternative procedures is appropriate in this case. PP&L has submitted a communications protocol that is supported by the interested entities.

The purpose of this notice is to invite any additional comments on PP&L's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. PP&L will complete and file a preliminary Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process in which an applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

PP&L has met with state and federal resource agencies, and NGOs regarding the Wallenpaupack Project. PP&L intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by September 30, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16723 Filed 6–30–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6370–4]

Sustainable Development Challenge Grant Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of proposals for FY 1999/2000.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting proposals for the combined FY 1999/2000 Sustainable Development Challenge Grant (SDCG) program, one of President Clinton's "high priority" actions described in the March 16, 1995 report, "Reinventing Environmental Regulation." EPA also is soliciting comments on the SDCG program's overall design. The EPA anticipates that approximately $9.4 million will be available for the SDCG program in FY 1999/2000. This includes $4.7 million already authorized by Congress for FY 1999 and an additional $4.7 million requested for the program in the President's FY 2000 Budget Request and subject to Congressional authorization.

The SDCG program challenges communities to invest in a sustainable future that links environmental protection, economic prosperity and community well-being. It provides an opportunity to develop place-based approaches to problem solving that can be replicated in other communities. The SDCG program strongly encourages community members, business and government entities to work cooperatively to develop flexible, locally-oriented approaches that link place-based environmental management and quality of life activities with sustainable development and revitalization. These grants are intended to catalyze community-based projects to promote environmentally and economically sustainable development; build partnerships which increase a community's capacity to take steps that will ensure the long-term health of ecosystems and humans, economic vitality, and community well-being; and leverage public and private investments to enhance environmental quality by enabling community efforts to continue beyond the period of EPA funding.

EPA will select projects on a competitive basis using the criteria outlined in the section titled "SDCG Program Criteria." Applicants may compete for funding from EPA in two ranges for FY 1999/2000: (1) Requesting $30,000 to $100,000 with a total project budget of $125,000 or less and (2) requesting between $100,001 and $250,000 with no limit on the total project budget amount. Proposals will compete with other proposals in the same range (i.e., a proposal for $30,000–$100,000 will not compete with a proposal requesting $100,001–$250,000). Applicants in each category are required to provide a minimum 20% match from non-federal funding sources.

This document includes the following: Background information on the Sustainable Development Challenge Grant program; the process for preparing and submitting proposals; a description of the FY 1999/2000 program; the program's relationship to other related EPA activities; the SDCG Program Criteria; and the selection and award process.

DATES: The period for submission of proposals for FY 1999/2000 will begin upon publication of this **Federal Register** document. Project proposals must be postmarked by September 29, 1999 to be considered for funding.

Submission of Proposals

Please provide an original and four copies of your entire proposal to the regional representative listed below for the state in which your project will take place. Applicants applying for $100,000 or less are only required to submit an original and one copy of the proposal. Proposals must be postmarked no later than September 29, 1999 to be considered for funding. Telefaxed or electronic submissions will not be accepted. An acknowledgment of receipt for your proposal will be sent by your respective EPA Regional Office. This should take a minimum of two weeks from the postmark date. We expect to announce final selections in April 2000 and to complete the full grant award process, including grant workplan negotiations with the appropriate EPA Region, by June 2000.

Preparing the SDCG Proposal: Proposals should not exceed eight (8) page sides (four double-sided pages, single or double-spaced). Where proposals exceed the eight pages in length, the additional pages will not be considered.

- Items 2 through 5 in the list below count towards the (8) page maximum. The only items not included in the eight (8) page maximum are the Summary Information Page (item 1) and the Mandatory Attachments described in item 6 (these are your Proof of Non-profit Status, and your Letters of Commitment from match partners).
- The new EPA Small Grants Policy states that any grant proposal requesting $100,000 or less is not required to submit a proposal which exceeds five (5) page sides. These applicants may, however, submit up to the eight page limit if they so desire.
- Please do not use covers, binders or folders.
- Proposals should be submitted on 8½ x 11" recycled paper and be double-sided.
- Use no smaller than 10-point type and have one inch page margins all around.

The project proposal should contain the following in the given order:

(1) Summary Information Page (recommended length: 1 page) that provides:

A. Applicant Information

- Project title and location;
- Applicant name, address, telephone and fax numbers, and e-mail address;
- Type of applicant organization, e.g., non-profit, state, local government, Native American (American Indians and Alaskan Native Villages), or educational;
- Name of project contact, address, telephone and fax numbers, and e-mail address;
- Indicate if the project is being done in cooperation with or funded by another federal or EPA program; if so, please identify the program.
- Project category (see the section titled "List of Potential Project Categories" and choose those that apply; feel free to use a different category from those listed if it better describes your project).

B. Summary Budget Information

- Dollar Amount Requested from EPA
- Dollar Amount of Matching Funds
- Dollar Amount of Total Project Budget
- Match Percentage

C. Match Partner Information

- List of Organizations (including addresses) providing match
- Match Amount

The Summary Information page does not count against the eight page limit.

(2) Project Overview (Recommended page length: (1) Briefly address the following questions. Your responses provide an overview of the proposed project and help reviewers understand the context of your proposal. You have the opportunity to expand on these questions when addressing the SDCG Program Criteria.

- What is the role of your organization in the community?
- Where will the activity occur and what is the geographic scale of the proposed activity (community, city, watershed, region, state-wide)?
- What are the goals and objectives of the project?
- What are the project's expected results and what vision do you have for the ultimate impact of activity (what do you expect to see change over time among the people involved, the physical environment, and the environmental, economic or social conditions)?

(3) SDCG Program Criteria (Recommended page length: 3–4) Address the program criteria question-by-question. Include criteria subheadings (Sustainability, Community Commitment and Contribution, and Measurable Results and Evaluation) and use the question numbers to organize your responses. The specific criteria are found in the "SDCG Program Criteria" section. Definitions of some of the key terms included in the criteria are provided at the end of this notice.

(4) Project Schedule and Time-Frame (Recommended page length: ½ page) Show when you expect to complete significant steps and milestones in your project. Clearly depict the project's duration, and include months and dates. Use July 1, 2000 as the project start date (the exact date will be negotiated with EPA if your project is selected). One to three year project duration is permitted under the SDCG program. See the sample schedule below:

Convene project team—Jul 1, 2000
Complete Task 1 (include brief description of task)—Oct 30, 2000
Complete Task 2 (include brief description of task)—Mar 15, 2001
Complete Task 3 (include brief description of task)—Jun 1, 2001
Complete final report—Jun 30, 2001

(5) Budget Detail (Recommended page length: ½ page) Be sure to review the section titled "Funding Ranges and Match" before preparing your budget. Prepare a proposed budget showing expected costs by major categories (personnel, travel, supplies, rent, subcontracts, etc.). This should include how the matching funds (i.e., funds provided from non-federal sources) will be spent, what the sources of those funds are, and whether the funds are cash, in-kind, or both. Proposals that do not document a minimum 20% match via commitment letters will not be considered. See the sample budget format provided below:

	EPA share	Matching funds	Total
Staff Salaries and Benefits	$33,000	$8,000	$41,000
Travel	7,000	0	7,000
Supplies	3,000	1,000	4,000
Service Contract	5,000	3,000	8,000
Totals	48,000	12,000	60,000
Break-Down of Matching Funds: Your Organization—$5,000 (in-kind) Cityville, USA—$3,000 (cash) Cityville, USA—$3,000 (in-kind) LocalBusiness, Inc.—$1,000 (cash) Total—$12,000			

(6) Mandatory Attachments (These items do not count toward the page limit.)

A. Proof of Non-profit Status. All non-governmental applicants must attach articles of incorporation or other documentation demonstrating non-profit status. For more information, see the section titled "Eligible Applicants." Applications without this documentation will not be considered.

B. Match Commitment Letters. Letters of commitment from ALL partners contributing matching funds (cash and/or in-kind) to the project must be submitted with your proposal, not sent separately or at a later date. Commitment letters from project partners must specify the nature of the match (cash or in-kind services), the dollar value of the match, and the role the contributor will play in the project. Project partners providing matching funds must certify that the funds will be available during the project period. Letters must be submitted on letterhead (if applicable), signed by an individual with authority to commit funds, and include the organization's telephone number and address. Letters can be addressed to the appropriate EPA contact for your proposal or to the organization submitting the proposal. Applications submitted without commitment letters confirming available match funds will not be considered. Please do not send letters of general support from non-match partners or

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others; they will not be used in the evaluation and review process.

Submission of Comments

EPA also is requesting comments on the overall content and design of the FY 1999/2000 Program. Please send comments to Dr. Lynn Desautels at EPA Headquarters in Washington, DC via letter, fax, or e-mail (see **FOR FURTHER INFORMATION** for specifics). Your comments will be used to help the agency make further improvements in the program in subsequent funding years. Please submit your comments by December 1, 1999.

FOR FURTHER INFORMATION: Contact the regional representative for your state or Dr. Lynn Desautels, Director, Sustainable Development Challenge Grant Program, Office of the Administrator, U.S. EPA (MC 1306), 401 M Street SW, Washington, DC 20460, telephone (202) 260–6812, fax (202) 260–2555, e-mail desautels.lynn@epa.gov.

Regional Offices

Rosemary Monahan, US EPA Region I, 1 Congress Street, Suite 1100, RSP, Boston, MA 02114–2023, (617) 918–1087, monahan.rosemary@epa.gov. States: ME, NH, VT, MA, CT, RI

Marcia Seidner, US EPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007–1866, (212) 637–3590, seidner.marcia@epa.gov. States & Territories: NY, NJ, PR, VI

Theresa Martella, US EPA Region 3, 1650 Arch Street (3CB00), Philadelphia, PA 19103, (215) 814–5423, martella.theresa@epa.gov. States: DE, DC, MD, PA, VA, WV

Annette N. Hill, US EPA Region 4, OPM, 61 Forsyth Street, SW, Atlant, GA 30303, (404) 562–8287, hill.annetten.@epa.gov. States: AL, FL, GA, KY, MS, NC, SC, TN

Janette Marsh, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3507, (312) 886–4856, marsh.janette@epa.gov. States: MN, WI, MI, IL, IN, OH

Diane Hinds, US EPA Region 6, Fountain Place, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–7561, hinds.diane@epa.gov, States: AR, LA, NM, OK, TX

Dick Sumpter, US EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7661, sumpter.richard@epa.gov, States: KS, MO, NE, IA

David Schaller, US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6146, schaller.david@epa.gov, States: CO, MT, ND, SD, UT, WY

Nova Blazej, US EPA Region 9, 75 Hawthorne Street (CMD–7), San Francisco, CA 94105, (415) 744–2089, blazej.nova@epa.gov, States & Territories: CA, NV, AZ, HI, AS, GU

Anne Dalrymple, US EPA Region 10, 1200 Sixth Avenue (01–085), Seattle, WA 98101, (206) 553–0199, dalrymple.anne@epa.gov, States: AK, ID, OR, WA

Headquarters Office

Dr. Lynn Desautels, Director, Sustainable Development Challenge Grant Program, Office of the Administrator, US EPA, MC 1306, 401 M Street SW MC 1306, Washington, D.C. 20460, (202) 260–6812 (SDCG Line) desautels.lynn@epa.gov

SUPPLEMENTARY INFORMATION:

Overview of the Sustainable Development Challenge Grant Approach

The Sustainable Development Challenge Grant (SDCG) program is an important opportunity for EPA to award competitive grants that leverage private and other public sector investment in communities (ranging in size from neighborhoods to cities to larger geographic areas such as watersheds or metropolitan areas). These grants will build partnerships that will increase the capacity of communities to ensure long-term environmental protection through the application of sustainable development strategies. EPA intends these competitive grants to be catalysts that challenge communities to invest in a more sustainable future.

The program encourages communities to recognize and build upon the fundamental connection between environmental protection, economic prosperity and community well-being. Accomplishing this linkage requires integrating environmental protection in policy and decision-making at all levels of government and throughout the economy. Achieving sustainability is a responsibility shared by environmental, community and economic interests.

The SDCG program recognizes the significant role that communities have and should play in environmental protection. The program acknowledges that sustainable development is often best designed and implemented at a community level and encourages projects that can be replicated in other communities. This emphasis on strong community involvement requires a commitment to ensuring that all residents of a community, of varying economic and social groups, have opportunities to participate in decision-making and benefit from successful sustainable development activities. Only through the combined efforts and collaboration of government, private organizations and individuals can our communities, regions, states, and nation achieve the benefits of sustainable development. In keeping with this philosophy, the EPA will implement this program consistent with the principles of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994). We encourage submissions from Empowerment Zones and Enterprise Communities.

The EPA initiated the SDCG program as a pilot effort in 1996 and has funded 96 of the 2,218 proposals received in the first three years of the program (FY96, 97, 98) for a total of approximately $10,500,000. Project descriptions for all of the projects funded to date are available via the Internet at http:www.epa.gov/ecocommunity (see "List of Potential Project Categories" for further information).

Linkages to Other Initiatives

EPA and its state and local partners continue to refine how environmental protection is accomplished in the United States. The Agency recognizes that environmental progress will not be achieved solely by regulation. Innovative attitudes of regulatory agencies combined with individual, institutional, and corporate responsibility, commitment and stewardship will be needed to assure adequate protection of the earth's resources. The Sustainable Development Challenge Grant program is consistent with other community-based efforts EPA has introduced, such as the Brownfields Initiative, Environmental Justice Small Grants Program, Project XL, the President's American Heritage Rivers Initiative, the Watershed Protection Approach, the Clean Water Action Plan, Transportation Partners, the $mart Growth Network, and the Community-Based Environmental Protection Approach. The Sustainable Development Challenge Grant program is also a step in implementing "Agenda 21, the Global Plan of Action on Sustainable Development," signed by the United States at the Earth Summit in Rio de Janeiro in 1992. All of these programs require broad community participation to identify and address environmental issues.

Through the Sustainable Development Challenge Grant program, EPA also intends to further the vision and goals of the President's Council on Sustainable Development (PCSD), created in 1993 by President Clinton. EPA is coordinating existing urban environmental programs within the Agency and with other federal, state and local agencies. The President charged the Council, composed of corporate, government, and non-profit representatives, to find ways to "bring people together to meet the needs of the present without jeopardizing the future." The Council has declared this vision:

"Our vision is of a life-sustaining Earth. We are committed to the achievement of a dignified, peaceful and equitable existence. We believe a sustainable United States will have a growing economy that equitably provides opportunities for satisfying livelihoods and a safe, healthy, high quality of life for current and future generations. Our nation will protect its environment, its natural resource base, and the functions and viability of natural systems on which all life depends." (February 1996)

The Sustainable Development Challenge Grant program furthers this vision by encouraging community-based sustainable development initiatives.

Eligible Applicants

Eligible applicants include: (1) Incorporated non-profit (or not-for-profit) private agencies, institutions and organizations, and (2) public (state, county, regional or local) agencies, institutions and organizations, including those of Native Americans (American Indians and Alaskan Native Villages), the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the U.S. Applicants must be located in, and project activities must be conducted within, the U.S., the Commonwealth of Puerto Rico, or a territory or possession of the U.S. While state agencies are eligible they are encouraged to work in partnership with community groups and other non-profit organizations. Federal agencies are not eligible for funding, however, they are also encouraged to work in partnership with state and local agencies and non-governmental organizations on these projects. Profit-making organizations and individuals are not eligible for funding; however, they are encouraged to participate in sustainability efforts in their community by becoming partners with eligible organizations.

Non-profit Status: Applicants are not required to have a formal Internal Revenue Service (IRS) non-profit designation, such as 501(c)(3) or 501(c)(4), however they must present their letter of incorporation documenting their non-profit or not-for-profit status. This requirement does not apply to public agencies. Failure to enclose the letter of incorporation documenting an applicant's non-profit or not-for-profit status will result in an incomplete submission and the proposal will not be reviewed. Applicants who do have an IRS 501(c)(4) designation are not eligible for grants if they engage in lobbying, no matter what the source of funding for the lobbying activity. No recipient may use grant funds for lobbying. Further, profit-makers are not eligible to receive sub-grants from eligible recipients, although they may receive contracts, subject to EPA's regulations on procurement under assistance agreements, 40 Code of Federal Regulations (CFR) 30.40 (for non-governmental recipients) and 40 CFR 31.36 (for governments).

SDCG Program Criteria

The proposed project must meet the two statutory threshold determinations described below in the Statutory Authority section. Then, proposals will be ranked according to how well they address and integrate the SDCG Program Criteria. Definitions of some of the key terms used in the criteria are included at the end of this notice. A higher ranking will be given to those proposals which clearly and comprehensively meet and integrate the greatest number of criteria, address serious environmental problems, and are likely to produce successful results. Applicants should address each of the three criteria sections question-by-question. If a proposal does not address one or more criteria, the applicant must clearly state why these criteria were not addressed.

(A) Sustainability: 50 Points

A1. How do the proposed project solutions integrate and sustain environmental protection, economic prosperity and community well-being at the community level and at the regional level?

A2. How does the proposal address the ways in which future generations are affected by the proposed project?

A3. What are the specific environmental, economic, and community problem(s) the proposal addresses and what are their significance?

A4. What type of sustainable behavior is desired, and what type of non-sustainable behavior needs to be changed?

A5. How do the environmental solutions proposed illustrate an ecosystem approach to environmental protection? An ecosystem approach is one that looks at a specific area and addresses the air, land, water, plants, animals, and people as an integrated and interconnected system.

A6. How do the proposal's environmental and economic impacts promote community well-being for all people in the community?

A7. How does the proposal assure that the project's activities do not exhaust or degrade the environment in your community or shift the problem to another community or another part of the environment?

A8. How do the environmental solutions proposed by the project lead to long-term economic vitality? For example, will the project lead to more sustainable use of natural resources, reduce consumption of non-renewable resources, create a more skilled and flexible labor force, and maximize local financial resources?

A9. How does the proposal represent new solutions for the community, given their previous history and current circumstances?

A10. How does the project build upon lessons learned from similar sustainable development projects conducted in your community or elsewhere?

(B) Community Commitment and Contribution: 25 Points

B1. How do your partners fully represent those in the community who have an interest in or will be affected by the project?

B2. What methods will be used for community involvement to assure that all affected by the project are provided an opportunity to participate?

B3. Does the community have in place the legal and regulatory authority they need to implement the project?

B4. What evidence is there of long-term commitment to the proposal? Describe how you plan to continue the work after the grant ends or how this project will evolve into other efforts.

(C) Measurable Results and Evaluation: 25 Points

C1. What are the achievable short-term (within three years) and long-term objectives that will be used to measure the proposal's contribution to sustainability? These objectives should be both quantitative and qualitative.

C2. For planning or visioning proposals: Once the plan or vision is developed, what next steps will be taken to ensure the plan or vision is implemented? How will the plan or vision's contribution be measured?

C3. How will you measure and evaluate how well the project meets its goals and objectives? Goal and objective measures should be both qualitative and quantitative, and should assess the project's contribution to sustainability.

C4. In what ways will the project be transferable to other communities and how will you transfer that information?

List of Potential Project Categories

EPA welcomes proposals for many types of demonstration projects under the SDCG program. Those most likely to be chosen for funding will innovatively link solutions for significant environmental, economic and community issues and problems. Short descriptions of all previously funded SDCG projects can be found on the

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Internet at our web site: "www.epa.gov/ecocommunity." If you do not have Internet access, copies of these descriptions can be obtained from your regional representative or from our headquarters office (see section titled "For Further Information"). The list below illustrates some of the categories that best describe projects previously funded under this program. Projects often fall under more than one category. The list is not intended to be exhaustive, and proposed projects may fit into several categories or into new categories.

- Comprehensive planning for sustainable growth.
- Comprehensive resource management and restoration (e.g. watershed restoration, habitat protection, wildlife corridors, greenways, wetlands, local environmental features, etc.).
- Educational ecology or environment-based tourism supporting local communities.
- Green business incentives.
- Sustainability indicators.
- Sustainable agriculture.
- Sustainable forestry.
- Green building design.
- Community revitalization and redevelopment.
- Sustainability education.
- Community/local government tools for sustainability.
- Sustainable energy systems.
- Aquaculture.
- Materials reuse.

Since the program seeks to fund innovative ideas, proposals that are repetitious of earlier funded projects must state how the proposal addresses new aspects of the problem or issue. Proposals focused on planning or visioning should clearly state goals and objectives and indicate the next steps for implementation. Projects do not have to fall into a single project type, but can incorporate aspects of several project types.

Funding Ranges and Match

Applicants may compete for funding from EPA in two ranges for FY 1999/2000: (1) Requesting $30,000 to $100,000 with a total project budget of $125,000 or less, and (2) requesting between $100,001 and $250,000 with no limit on total project budget. Proposals will compete with other proposals in the same range. Applicants in each category are required to demonstrate how they will meet the minimum 20% non-federal match. Applicants may submit multiple proposals, however, each proposal must be for a separate and distinct project. No organization may receive funding for more than one grant each year under the SDCG program, and projects awarded in any given year will be ineligible for future funding from this program. Applicants who have received funding under this program in the past are eligible to receive funds for new projects which are unrelated to the previously funded projects.

This program is intended to provide seed money to leverage a broader public and private investment in sustainability activities. As a result, the program requires a minimum non-federal match of at least 20% of the total project budget. The total budget includes (1) EPA's share, (2) funds identified as match, and (3) any other funds directly supporting the project. EPA strongly encourages applicants to leverage as much investment in community sustainability as possible. EPA views this leverage as a measure of community support and an indication of the possible longevity of the project. The match can come from a variety of public and private sources and can include in-kind goods and services. No Federal funds, however, can be used as matching funds without specific statutory authority. The match must be calculated in accordance with the following example calculation:

(1) If you want to request $100,000 from EPA, your match amount is not $20,000. You calculate the amount of match you must provide by dividing the amount you are requesting by 80%. For example:

$100,000 divided by .8 = $125,000 (total project costs)

(2) Amount Requested From US EPA—$100,000
Your Match—+25,000
Total Project Budget—$125,000

These equations calculate the minimum match required. Your match must be at least 20% to be eligible for funding; fractions (e.g. 19.5%) will not be rounded up.

Note: Consistent with the provisions of the Omnibus Territories Act, as amended, 48 U.S.C. 1469a(d), the match requirement is waived for applications submitted by the governments of American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands.

In-Kind Contributions to Meet Your Match Requirement: In-kind contributions are non-cash contributions to a project. Volunteered services and donated supplies (use of equipment, office/meeting space, printing, etc.) used toward your match are called "in-kind contributions," which you are allowed to count toward the required match. Volunteered services may include a bookkeeper's maintenance of your group's financial records and preparation of required financial reports; an auditor's review of your group's financial records; a lawyer's aid in drafting a contract for your technical advisor(s), etc. You must place a reasonable monetary value on your in-kind contributions and include them in your budget. You must be prepared to document in-kind contributions in your records. Rates for volunteer services must be consistent with rates in your community for similar services and may not include fringe benefits, overhead or profit. EPA can only provide funds for project costs that are allowable under EPA statutory authority. The funds that match partners contribute to a successful challenge grant can only be counted toward match if they are for costs which EPA can fund. If selected to receive an SDCG grant, applicants and their match partners are subject to audit to ensure that all costs are appropriate. If costs are ineligible or the grantee cannot properly document match dollars , the grantee would be liable for the disallowed costs.

FOIA, CBI, and Enforcement Screening: Applicants should be aware that proposals submitted under this or any other EPA grant program are subject to the Freedom of Information Act (FOIA). This means that anyone can request and receive copies of all the information submitted in your grant proposal. If your application contains any Confidential Business Information (CBI), be sure to highlight it so the confidentiality can be protected in the event of a FOIA request.

Finalists for challenge grant awards may be screened to ensure that the applicants and their match partners are in compliance with applicable EPA statutes.

Duration: Funded projects are expected to be structured for a period of one to three years.

What Costs Can Be Paid?

Even though a proposal may involve an eligible applicant, eligible activity, and eligible purpose, grant funds cannot necessarily pay for all of the costs which the recipient might incur in the course of carrying out the project. Allowable costs, including those paid for by matching funds, are determined by reference to EPA regulations cited below and to OMB Circulars A–122, "Cost Principles for Non-profit Organizations," A–21 "Cost Principles for Education Institutions," and A–87, "Cost Principles for State, Local, and Indian Tribal Governments." Generally, costs which are allowable include salaries; equipment, supplies, training, rental of office space, etc., as long as these are "necessary and reasonable." Entertainment costs are an example of unallowable costs.

Statutory Authority

EPA expects to award Sustainable Development Challenge Grants program under the following eight grant authorities: Clean Air Act section 103(b)(3); Clean Water Act section 104 (b)(3); Resource Conservation and Recovery Act section 8001; Toxics Substances Control Act section 10; Federal Insecticide, Fungicide, and Rodenticide Act section 20; Safe Drinking Water Act sections 1442(a) and (c); National Environmental Education Act, section 6; and Pollution Prevention Act, section 6605.

In addition to the program criteria listed in the SDCG Program Criteria section above, a proposal must meet the following two important threshold criteria to be considered for funding:

Threshold Criterion #1. A project must consist of activities authorized under one or more of the eight EPA grant authorities cited above. Most of the statutes authorize grants for the following activities: "research, investigations, experiments, training, demonstrations, surveys and studies." These activities relate generally to the gathering or transferring of information or advancing the state of knowledge. Grant proposals should emphasize this "learning" concept, as opposed to "fixing" an environmental problem via a well-established method. For example, a proposal to plant some trees in an economically depressed area in order to prevent erosion would probably not in itself fall within the statutory terms "research, studies, demonstrations," etc., nor would a proposal to start a routine recycling program. The project's activities must advance the state of knowledge or transfer information. The statutory term "demonstration" can encompass the first instance of the application of pollution control and prevention techniques, or an innovative application of a previously used method. The term "research" may include the application of established practices when they contribute to "learning" about an environmental concept or problem.

Threshold Criterion #2. In order to be funded, a project's focus generally must be one that is specified in the statutes listed above. For most of the statutes, a project must address the causes, effects, extent, prevention, reduction, and elimination of air, water, or solid/hazardous waste pollution, or, in the case of grants under the Toxic Substances Control Act or the Federal Insecticide, Fungicide and Rodenticide Act, to "carrying out the purposes of the Act." While the purpose of the SDCG program will include the other two aspects of sustainable development (economic prosperity and community well-being), the overarching concern or principal focus must be on the statutory purpose of the applicable grant authority, in most cases "to prevent or control pollution." In light of this, proposals relating to other topics which are sometimes included within the term "environment" such as recreation, conservation, restoration, protection of wildlife habitats, etc., should describe the relationship of these topics to the statutorily required purpose of pollution prevention and/or control. For assistance in understanding statutory authorities under which EPA is providing these grants, please contact your EPA representative listed earlier in this notice.

Selection and Award Process

EPA will select Sustainable Development Challenge Grant recipients for FY 1999/2000 through a national competition. EPA Regional Offices will assess how well the proposals meet the program criteria and forward their top proposals to EPA Headquarters for review by a national panel consisting of EPA Headquarters and Regional representatives. Proposals will be evaluated and final selections will be recommended by the national panel. The panel's recommendations will be presented to EPA Senior Management for final selection. In making these final selections such factors as geographic diversity, project diversity, costs, matching funds, and project transferability or replicability may be considered. We expect to announce final selections in April 2000 and to complete the full grant award process, including workplan negotiations with the appropriate EPA Region, by June 2000.

Although the selections will be made nationally, SDCG grants will be awarded and managed by the appropriate EPA Regional Offices. Applicants selected to receive SDCG grants will be contacted by the appropriate EPA Regional Office, and will be requested to submit a full grant application (i.e. Application for Domestic Federal Assistance). Your EPA Regional Contact will provide you with the information you need, and will be available to answer any questions.

Definitions

Sustainable Development: Sustainable development means integrating environmental protection and community and economic goals. Sustainable development meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The sustainable development approach seeks to encourage broad-based community participation and public and private investment in decisions and activities that define a community's environmental and economic future and community well-being.

Community Well-being: In the sustainable development context, community well-being means understanding and considering the impacts of activity on the diversity of cultures, values, and traditions in a community and on the overall quality of life. It acknowledges both current and future generations. Community well-being means ensuring that all members of the community, regardless of ethnic or cultural group, age or income, have access to services provided through the sustainable development project, and that the benefits/burdens of the project are fairly distributed.

Community: The scale used to define "community" under this challenge grant program will vary with the issues, problems, or opportunities that an applicant intends to address. The SDCG program recognizes the significant role that communities have and should play in environmental protection. "Community" means a geographic area within which different groups and individuals share common interests related to their homes and businesses, their personal and professional lives, the surrounding natural landscape and environment, and the local or regional economy. A community can be one or more local governments, a neighborhood within a small or large city, a large metropolitan area, a small or large watershed, an airshed, tribal lands, ecosystems of various scales, or some other specific geographic area with which people identify.

Non-sustainable Behavior: Development, or land and water activities, management or uses, which limit the ability of humans and ecosystems to live sustainably by destroying or degrading ecological values and functions, diminishing the material quality of life, diverting economic benefits away from long-term community prosperity, and decreasing the long-term capacity for sustainability.

Pollution Prevention: Any practice that (1) reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or released into the environment (including fugitive emissions) prior to recycling, treatment or disposal, and (2) reduces the hazards associated with such substances, pollutants or contaminants; and (3) other practices

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that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources; or (4) protection of natural resources by conservation.

Applicable Grant Regulations

40 CFR part 30 for other than state/local governments, for example, non-profit organizations (see 61 FR 6065 (Feb. 15, 1996)), and part 31 for state and local governments and Indian tribes.

Paperwork Reduction Act

The information collection provisions in this document for solicitation of proposals are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* in a generic Information Collection Request titled Generic Administrative Requirements for Assistance Programs (ICR No. 938.06 and OMB Approval No. 2030–0020). A copy of the Information Collection Request (ICR No. 938.06) may be obtained from Sandy Farmer in the Regulatory Information Division, EPA, 401 M Street, SW (Mail Code 2137), Washington, DC 20460 or by calling (202) 260–2740.

Dated: June 25, 1999.

Peter D. Robertson,

Acting Deputy Administrator.

[FR Doc. 99–16773 Filed 6–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6370–2]

The National Advisory Council for Environmental Policy and Technology, (NACEPT) Standing Committee on Sectors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory NACEPT Standing Committee on Sectors meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Standing Committee on Sectors will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below.

NACEPT Standing Committee on Sectors;—July 29, 1999

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the NACEPT Standing Committee on Sectors on Thursday, July 29, 1999 from 9:00 a.m. EST to 5:00 p.m. EST. The agenda for the meeting will be focused primarily on the development of the fiscal year 2000 Sector Based Environmental Protection Action Plan. A formal Agenda will be available at the meeting.

The meeting will be held on Thursday, July 29th, 9 a.m.–5 p.m., in Washington, D.C. at the offices of RESOLVE, 1255 23rd St., NW, Suite 275. The telephone number is 202/844–2300.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Pub. L. 92–463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing.

In follow-up to completion of work by EPA's Common Sense Initiative (CSI) Council, the Administrator asked NACEPT to create a new Standing Committee on Sectors. This will provide a continuing Federal Advisory Committee forum from which the Agency can continue to receive valuable multi-stakeholder advise and recommendations on sector approaches.

For further information concerning the NACEPT Standing Committee on Sectors meeting, contact Kathleen Bailey, Designated Federal Officer (DFO), on (202) 260–7417, or E-mail: bailey.kathleen@epa.gov.

Inspection of Subcommittee Documents

Documents relating to the above topics will be publicly available at the meeting. Thereafter, key documents and the minutes of the meeting will be available electronically on our web site at http.//www.epa.gov/sectors, or by calling the DFO.

Dated: June 23, 1999.

Gregory Ondich,

Acting Designated Federal Officer.

[FR Doc. 99–16771 Filed 6–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6370–7]

Koppers Charleston Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g) of the comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA), proposes to enter into an Administrative Order on Consent (AOC) with 17 de minimis parties at the Koppers Charleston Superfund Site (Site), located in Charleston County, South Carolina to settle claims for past and future response costs at the Site. The parties to the proposed settlement are: Amerada Hess Corporation, Amoco Chemical Company, Chevron U.S.A. Inc.; Detyens Shipyards, Inc.; Exxon Corporation; Fina Oil and Chemical Company; Marathon Oil Company; Matlack Inc.; Metal Trades, Inc.; Mile, Inc.; formally known as Mobay Chemical Company, now known as Bayer Corporation; Mobile Chemical Company, Inc.; Swygert Shipyards, Inc.; Texaco Refining and Marketing, Inc.; United States Defense Logistics Agency, Defense Fuel Supply Center; United States Department of Transportation, Maritime Administration; United States Coast Guard; United States Navy. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement in inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth St., Atlanta, Georgia 30303, 404–562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: June 22, 1999.

Franklin Hill,

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–16770 Filed 6–30–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6370–6]

Old ATC Refinery Superfund Site; Notice of Withdrawal of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of proposed settlement.

SUMMARY: Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), requires EPA to publish in the **Federal Register** notice of proposed administrative settlements entered under section 122(h) of CERCLA, 42 U.S.C. 6922(h), and, for a 30-day period beginning on the date of publication, to provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. Section 122(i) further requires EPA to consider any comments filed during the 30-day period and permits EPA to withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

In accordance with section 122(i) of CERCLA, EPA published notice of a proposed administrative settlement with Linda Carroll and Carroll Carolina Corporation (Carroll), concerning the Old ATC Refinery Site located in Wilmington, New Hanover County, North Carolina, in the **Federal Register** on November 10, 1998 (63 FR 63,052 (1998)).

Comments to the proposed settlement were received from Skadden, Arps, Slate Meagher & Flom, on behalf of their client, Axel Johnson, Inc., (Axel). EPA has considered these comments, and hereby withdraws the proposed settlement.

Dated: June 10, 1999.

Franklin E. Hill,

Chief, Programs Services Branch, Waste Management Branch.

[FR Doc. 99–16769 Filed 6–30–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6370–5]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act for the Woodward Metal Processing Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a de minimis administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve four de minimis parties' liability for certain response costs incurred by EPA at the Woodward Metal Processing Superfund Site in Jersey City, New Jersey.

DATES: Comments must be provided on or before August 2, 1999.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, and should refer to: In the Matter of the Woodward Metal Processing Superfund Site: De Minimis Settlement, U.S. EPA Region II Docket No. CERCLA–02–99–0211.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007; Attention: Virginia A. Curry, Esq. (212) 637–3134, or curry.virginia@epa.mail.epa.gov

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative de minimis settlement concerning the Woodward Metal Processing Superfund Site located in Jersey City, New Jersey. Section 122(g) of CERCLA provides EPA with authority to settle certain claims for costs incurred by the United States when, as in this case, the settlement involves only a minor portion of the response costs at the Site, the amount of hazardous substances contributed by each settling party is minimal compared with the other hazardous substances at the Site and the contributed hazardous substances are not more toxic than the other substances at the Site.

De minimis parties will pay a total of $9,981.55 under the terms of the settlement to reimburse EPA for response costs incurred at the Woodward Metal Processing Superfund Site.

A copy of the proposed administrative settlement agreement may be obtained from the Office of Regional Counsel, U.S. EPA Region II, 290 Broadway—17th Floor, New York, NY 10007.

Dated: April 6, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–16772 Filed 6–30–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 23, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 2, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

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advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0096.

Title: Application for Ship Radio Station License (and Temporary Operating Authority).

Form Numbers: FCC 506/FCC 506A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 8,200.

Estimated Time Per Response: 22 mins. (0.36 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2,952 hours.

Total Annual Costs: $623,676 (filing fees).

Needs and Uses: FCC rules require that applicants file the FCC 506 to apply for a new or modified ship radio station license. The form can also be used to renew a ship radio station license when the applicant does not receive the renewal application FCC Form 405B automatically generated by the Commission. The FCC 506A is used by the applicant to self certify to a temporary operating authority while the ship application is being processed by the FCC. This form is being revised to delete the fee payment and Taxpayer Identification Number blocks. Any payment to the FCC requires an FCC Form 159 (Fee Remittance Advice), and this information is duplicated on that form. The instructions have been revised and renumbered to accommodate these changes.

OMB Control Number: 3060–0795.

Title: ULS TIN Registration and FCC Form 606.

Form Number: FCC 606.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 429,000.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 429,000 hours.

Total Annual Cost: None.

Needs and Uses: FCC Form 606 is used (1) to register a licensee's Taxpayer Identification Number (TIN) and its associated Wireless Telecommunications call signs with the FCC; (2) to register the Taxpayer Identification Number (TIN) of a first time application for a Wireless Telecommunications license with the FCC; or (3) to register the Taxpayer Identification Number (TIN) of the owner of an antenna structure and its associated antenna structure registration numbers with the FCC. This form is also used by an antenna structure tenant licensee who is required to register the antenna structure because the owner is subject to the Anti-Drug Abuse Act of 1988. It must be submitted before filing any subsequent applications associated with the existing license or antenna structure registration and prior to applying for a Wireless Telecommunications license or antenna structure registration for the first time.

The form and its instructions are being revised to add information about the antenna structure owner TIN registration requirements due to the implementation of Antenna Structure Registration in the Universal Licensing System (ULS).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16694 Filed 6–30–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. WA–RP–80061]

Notice of Opportunity To Submit Amici Curiae Briefs in a Representation Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority is determining the representational status of employees who have been subject to reorganizations that modified chains of command at managerial levels, but did not otherwise affect the employees' day-to-day working conditions.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on significant issues arising in a case pending before the Authority. The Authority is considering the case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute and its regulations. The issue concerns how the Authority should resolve a representation case arising from an agency reorganization where employees in an installation-wide unit were separated along functional lines, and where their chains of command changed, but where their day-to-day working conditions did not otherwise change.

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Office of Case Control by 5 p.m. on Monday, July 26, 1999. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

Format: All briefs shall be captioned "*U.S. Department of the Navy, Commander, Naval Base, Norfolk, Virginia*, Case No. WA–RP–80061." Briefs must contain separate, numbered topic-headings. Parties must submit an original and four copies of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27 (a) and (c). The designated representatives are: George L. Reaves, Jr., Union Representative, National Association of Government Employees, 38 Wine Street, Hampton, VA 23669; Joseph R. Barco, Agency Representative, U.S. Department of the Navy, Human Resources Service Center East, Norfolk Naval Shipyard, Building 17, Portsmouth, VA 23709–5000; and Gerald M. Cole, Regional Director, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, CA 94103–1791.

ADDRESSES: Mail or deliver briefs to Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW, Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: On June 25, 1999, the Authority granted an application for review of the Regional Director's Decision and Order in *U.S. Department of the Navy, Commander, Naval Base, Norfolk, Virginia*, Case No. WA–RP–80061 (55 FLRA No. 89 (1999)). The Authority is considering the case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994 & Supp. III 1997) (the Statute) and its regulations, set forth at 5 CFR part 2422. A summary of that case follows.

A copy of the Authority's complete decision may be obtained by telephoning Peter Constantine at the number listed above.

A. Background

The National Association of Government Employees (NAGE) was certified in 1985 as the exclusive representative of a consolidated unit of 325 professional and nonprofessional employees of the original Weapons Station Yorktown (WSY). Working conditions for the employees were set by the commanding officer of WSY, and their competitive area for RIF was limited to WSY employees. In 1997 and 1998, the Agency underwent reorganizations.

As a result of the reorganizations, the original WSY's functions were split among three separate entities: (1) WSY; (2) the Atlantic Ordnance Command (AOC); and (3) the Housing Department and Regional Resource Services Office of the U.S. Department of the Navy, Commander, Naval Base, Norfolk (COMNAVBASE). Of the bargaining unit employees who worked for WSY prior to the reorganizations, 84 employees continue to work for WSY, and they have experienced no change in their working conditions. The commanding officer of WSY now reports to the commanding officer of COMNAVBASE.

Of the bargaining unit employees who worked for WSY prior to the reorganizations, 239 employees have been transferred to AOC. They have experienced no change in their working conditions, although they now report to the commanding officer of AOC, who reports, in turn, to the commanding officer of COMNAVBASE. Their competitive area for RIF is now limited to AOC employees.

Three bargaining unit employees from the original WSY now work for the Housing Department of COMNAVBASE, and three other bargaining unit employees from the original WSY now work for the Regional Resource Services Office of COMNAVBASE. Their working conditions have not changed, except that one of the employees now splits his time between Yorktown and COMNAVBASE's Norfolk headquarters. The six employees report to the commanding officer of COMNAVBASE. Their competitive area for RIF includes all COMNAVBASE employees.

The Agency has conducted simultaneous negotiations with NAGE for employees of both WSY and AOC, and has submitted similar, but not identical, proposals to the Union to cover employees of both entities.

B. The Regional Director's Decision

The Regional Director dismissed the Union's petition seeking certification of a unit consisting of all of the employees of the original WSY. The Regional Director found that WSY, AOC, and COMNAVBASE constitute three distinct activities, and as such, the employees are now employed by three different entities. Specifically, he found that the employees' working conditions are set by three different commanding officers, they are in three different competitive areas for RIF, and they support three different missions. The Regional Director concluded that the employees do not continue to share a community of interest, and that, consequently, the unit is not appropriate, within the meaning of section 7122(a) of the Statute. The Regional Director also found that recognition of the proposed unit would not promote effective dealings with the Agency, because the working conditions of the employees are established by three separate commanding officers, and because two different human resources offices provide personnel services to the employees. The Regional Director dismissed the petition.

C. The Application for Review

NAGE filed the application for review, contending that review of the Regional Director's decision is warranted, under 5 CFR 2422.31, because: There is an absence of relevant Authority precedent; the Regional Director failed to apply established precedent; the Regional Director committed several clear and prejudicial errors concerning substantial factual matters; and established law and policy warrants reconsideration.

D. Question on Which Briefs Are Solicited

The Authority granted the application for review under 5 CFR 2422.31(c). The Authority found that Authority precedent warrants reconsideration because that precedent does not provide sufficient guidance in cases where units have been certified on an installation-wide basis, and where organizational changes affect the chains of command but do not otherwise affect day-to-day working conditions of bargaining unit employees. In granting the application on these grounds, the Authority found that some precedent supports a conclusion that changes in chains of command are sufficient to destroy a unit's community of interest, while other precedent supports continued recognition of the existing unit despite such changes in chains of command.

The Authority directed the parties in the case to file briefs addressing the following question: How should the Authority assess the effect on bargaining units of reorganizations that modify portions of the chains of command at managerial levels, but do not affect the day-to-day working conditions of bargaining unit employees? As this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing this issue.

For the Authority.

Dated: June 28, 1999.

Peter Constantine,

Director of Case Control.

[FR Doc. 99–16760 Filed 6–30–99; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–007690–027

Title: India, Pakistan, Bangladesh, Ceylon and Burma Outward Freight Conference

Parties:

The Shipping Corporation of India, Ltd.

Waterman Steamship Corporation

Synopsis: The proposed Amendment revises Articles 13 and 14 of the Agreement to comply with the Ocean Shipping Reform Act of 1998 for independent action and service contract authorities.

Agreement No.: 202–011454–001

Title: U.S.A./Oceania Agreement

Parties:

Safbank Line, Ltd.

Mediterranean Shipping Co., S.A.

Synopsis: The proposed Amendment revises Articles 13 and 14 of the Agreement to comply with the Ocean Shipping Reform Act of 1998 for independent action and service contract authorities.

Dated: June 25, 1999.

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By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assisant Secretary.

[FR Doc. 99–16693 Filed 6–30–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. HSBC Holdings plc, London, United Kingdom (HSBC Holdings), HSBC Finance, Netherlands, London, England, HSBC Holdings BV, Amsterdam, Netherlands, and a newly established intermediate holding company (USHoldco, New York, New York), to acquire all of the voting shares of Republic New York Corporation, New York, New York (RNYC), and thereby acquire the following bank subsidiaries of RNYC: Republic National Bank of New York, New York, New York (Republic Bank), and Republic Bank California, National Association, Beverly Hills, California. Following these transactions, HSBC would merge RNYC with and into HSBC Americas, Inc., Buffalo, New York, a bank holding company that is the current parent of HSBC Bank USA, Buffalo, New York. RNYC would survive this merger and be renamed HSBC USA. HSBC Holdings and its subsidiaries (collectively HSBC) may form one or more intermediate bank holding companies to facilitate these transactions.

In connection with the proposed transaction, HSBC has provided notice to acquire all of the nonbank subsidiaries of RNYC and to engage, directly or indirectly through such nonbank subsidiaries, in a variety of nonbanking activities that previously have been determined to be permissible for bank holding companies. HSBC also would continue to control all its existing bank and nonbank subsidiaries. The nonbanking companies that HSBC proposes to acquire are listed in the notice filed with the Board and include Republic Bank Delaware, National Association, Wilmington, Delaware; Republic New York Securities Corporation, New York, New York (RNYSC); Republic Business Credit Corporation, New York, New York. The nonbanking activities of the companies to be acquired also are listed in the notice and include extending credit and servicing loans, pursuant to 12 CFR 225.28(b)(1); performing functions or activities that may be performed by a trust company, pursuant to 12 CFR 225.28(b)(5); providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, pursuant to 12 CFR 225.28(b)(7); and underwriting and dealing in government obligations and money market instruments, engaging in certain investing and trading activities as principal, and buying and selling bullion and related activities, pursuant to 12 CFR 225.28(b)(8).

In connection with the proposed transaction, HSBC also has applied to acquire an option to purchase up to 19.9 percent of the outstanding shares of RNYC common stock. This option would expire upon consummation of the merger.

2. Security Bancorp, M.H.C., Monmouth, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Security Savings Bank, Monmouth, Illinois.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Griffith Family Financial Holdings, L.L.C., Lindsay, Oklahoma; to become a bank holding company by acquiring 79 percent of the voting shares of First Fletcher Bankshares, Fletcher, Oklahoma, and thereby indirectly acquire First National Bank of Fletcher, Fletcher, Oklahoma; and 68 percent of the voting shares of American Holding Company, Lindsay, Oklahoma, and thereby indirectly acquire American Exchange Bank, Lindsay, Oklahoma.

Board of Governors of the Federal Reserve System, June 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16703 Filed 6–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99-16170) published on page 34257 of the issue for Friday, June 25, 1999.

Under the Federal Reserve Bank of San Francisco heading, the entry for Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan; to acquire Yasuda Bank and Trust Company (U.S.A), New York, New York, and thereby engage in performing functions or activities that may be performed by a trust company, pursuant to § 225.28(b)(5) of Regulation Y.

Comments on this application must be received by July 9, 1999.

Board of Governors of the Federal Reserve System, June 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16701 Filed 6–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. FLAG Financial Corporation, Lagrange, Georgia; to acquire Thomaston Federal Savings Bank, Thomaston, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1999.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Commonwealth Bancshares, Inc., Shelbyville, Kentucky; to acquire F.A.S.T. Software, L.L.C., Louisville, Kentucky, and thereby engage in providing data processing and data transmission products and services, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, June 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–16702 Filed 6–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT) July 12, 1999.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the June 14, 1999, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION:

Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Thomas L. Gray,

Assistant General Counsel.

[FR Doc. 99–16848 Filed 6–29–99; 10:57 am]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File No. 9823177]

Body Systems Technology, Inc. et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Donald D'Amato, New York Regional Office, Federal Trade Commission, 150 William Street, Suite 1300, New York, NY 10038, (212) 264–1223.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (June 24, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Body Systems Technology, Inc. ("BST"), a corporation, and William E. Chace and James D. Davis, individually and as officers of the corporation ("proposed respondents").

The proposed consent order has been placed on the public record for sixty (60) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves proposed respondents' making of health-related advertising claims on the Internet and elsewhere for their shark cartilage capsules, uña de gato capsules, and uña de gato liquid. The proposed complaint alleges that BST and its two principal officers violated Section 5 of the Federal Trade Commission Act ("FTC Act") by making the following unsubstantiated claims: BST's uña de gato products are or are likely to be an effective treatment of cancer, HIV/AIDS, and arthritis; and BST's shark cartilage capsules are effective in the prevention and treatment of cancer. The proposed complaint also alleges that the proposed respondents violated Section 5 of the FTC Act by falsely representing that research studies show that BST's uña de gato products are or are likely to be an effective treatment of cancer, HIV/AIDs,

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and arthritis; and by falsely representing that published laboratory studies prove that BST's shark cartilage capsules are effective in the prevention and treatment of cancer.

Paragraph I of the proposed consent order prohibits proposed respondents from representing that BST's shark cartilage capsules or any other product or program is effective in the prevention of cancer or is effective in the treatment of cancer unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed consent order prohibits proposed respondents from representing that BST's uña de gato capsules, BST's uña de gato liquid, or any other product or program is or is likely to be an effective treatment of cancer, is or is likely to be an effective treatment of HIV/AIDS, or is or is likely to be an effective treatment of arthritis unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the proposed consent order prohibits for any food, dietary supplement, drug, or any program, representations about the health benefits, performance, efficacy, or safety of such product or program, unless, at the time the presentation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph IV of the proposed consent order prohibits for any product or program, misrepresentations about the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Paragraph V of the proposed consent order allows proposed respondents to make any representation that is specifically permitted in the labeling for any product by regulations promulgated by FDA pursuant to the Nutrition Labeling and Education Act of 1990.

Paragraph VI of the proposed consent order allows proposed respondents to make any representation for any drug that is permitted by the FDA in the drug's labeling.

Paragraph VII of the proposed consent order governs proposed respondents' notification, termination, and monitoring requirements with respect to BST distributors. Proposed respondents are required to send a letter to distributors that informs then that it is against the law to make false claims about any BST product or program or to make health-related claims about any product or program of BST that are not substantiated by competent and reliable scientific evidence. The letter further states that distributors must agree not to use, rely on, or distribute any advertising or make oral representations containing false or unsubstantiated claims. Further, distributors must agree to submit all advertising to BST for approval prior to dissemination. The letter informs distributors that failure to comply with these terms will result in immediate termination, and if BST believes that the distributor has made false or unsubstantiated claims it will report the violation to the Federal Trade Commission. The proposed respondents are required to have their distributors sign, date, and return the letter as a condition of remaining a distributor.

Paragraph VIII is a record-keeping provision that requires proposed respondents to maintain records of all notification letters sent to distributors, communications between respondents and distributors referring or relating to the requirements of Paragraph VII, and any other materials created pursuant to Paragraph VII of the proposed order.

Paragraph IX of the proposed consent order requires the proposed respondents to provide full refunds for a specified period of time to all purchasers of their shark cartilage capsules, uña de gato capsules, and uña de gato liquid identifiable prior to the time the respondents stopped making, and took aggressive steps to stop its distributors from making, the alleged deceptive claims.

Paragraph X of the proposed order requires the proposed respondents to provide the FTC with a monitoring report detailing the steps respondents have taken to comply with the redress requirements.

Paragraph XI of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict claims covered by the proposed order. Paragraph XII of the proposed order requires distribution of a copy of the order to current and future officers and agents. Paragraph XIII provides for Commission notification upon a change in the corporate respondent and Paragraph XIV requires Commission notification when the individual respondent changes his business or employment. Paragraph XV requires the proposed respondents to keep and maintain all records demonstrating compliance with the terms and provisions of the order. Paragraph XVI provides for the termination of the order after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By director of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc 99–16709 Filed 6–30–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[D09287]

Continental Gown Cleaning Service, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Constance Vecellio, FTC/S–3231, 601 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2966.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 3.25(f) of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 23, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Continental Gown Cleaning Service, Inc., Nationwide Gown Cleaning Service, Inc., Prestige Gown Cleaning Service, Inc., Gown Cleaning Service, Inc., and Jonathan Ashley, Ltd., and Lewis Weissman and Gary Marcus, the principals who control these corporations (referred to collectively as "Continental Gown"). The agreement would settle a proposed complaint by the Federal Trade Commission that Continental Gown engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns care labeling of wedding gowns and other formal wear and advertising practices related to the sale of the "Zurcion Method" of drycleaning and preservation of these gowns. The administrative complaint alleged that Continental Gown violated the FTC Act by distributing care labels that read "Dryclean Only by Zurcion Method" (hereinafter "Zurcion labels") to clothing companies who used the labels. The complaint alleged that these labels do not comply with the Commission's Care Labeling Rule because they fail to provide information to consumers that is required by the Rule. The complaint alleged that by distributing the Zurcion labels, Continental Gown provided apparel companies with the means and instrumentalities with which to violate the Care Labeling Rule. The complaint also alleged that Continental Gown had falsely represented in advertising that: (1) The Zurcion labels complied with the Care Labeling Rule, (2) that the Zurcion Method of drycleaning is patented, (3) the Zurcion Method is the only safe and effective cleaning method for wedding gowns and other formal wear, and (4) Continental Gown and the other named cleaning companies were the only cleaners who can clean wedding gowns and other formal wear safely and effectively. The complaint alleged that Respondents falsely represented that they had a reasonable basis for these representations. The complaint also alleged that Respondents advertised their guarantee as unconditional, whereas in fact undisclosed conditions were placed on the guarantee.

The proposed consent order contains provisions designed to prevent Continental Gown from engaging in similar acts and practices in the future. Part I of the proposed consent order contains a general prohibition against providing apparel manufacturers and importers and retail and wholesale stores with the means and instrumentalities with which to violate the FTC Act and the Care Labeling Rule. It specifies that Continental Gown may not provide care labels or other tags, such as hang-tags that are pinned to garments, that fail to provide the specific information required by the Rule or that represent that the Zurcion Method is the only cleaning method that can be used safely and effectively to clean the garment or that Continental Gown is the only cleaner who can clean the garments. Part I also requires Continental Gown to possess a written statement from an apparel manufacturer or importer stating the apparel company's reasonable basis for any care instructions that appear on labels or tags disseminated by Continental Gown.

Parts II, III, and IV of the proposed consent order address Continental Gown's advertising representations. Part II prohibits Continental Gown from making misrepresentations regarding the Care Labeling Rule or compliance with the Rule. Part III prohibits Continental Gown from misrepresenting that the Zurcion Method or any other cleaning or preservation method is patented. Part IV prohibits misrepresentations regarding the comparative or absolute safety or efficacy of any cleaning or preservation method, service, company, or product. Part IV requires competent and reliable evidence as substantiation for safety or efficacy claims and specifies that competent and reliable scientific evidence may be required when appropriate.

Part V addresses the guarantee allegation of the complaint. It prohibits representations that a garment cleaning or preservation service is guaranteed unless Continental Gown discloses any material limitations or conditions on the guarantee.

Parts VI and VII concern contacts with apparel companies, consumers and others regarding Zurcion labels and promotional materials. Part VI requires Continental Gown to notify certain garment manufacturers or importers with whom Continental Gown did business that they should stop using the Zurcion labels and promotional materials, and to provide a copy of the Consent Order with the notice. Part VII requires Continental Gown to disclose to persons (other than apparel companies) who contact them regarding the cleaning or preservation of garments bearing Zurcion labels that other cleaning methods may be used safely and effectively to clean the garments. Part VII also requires Continental Gown to refer these persons to the manufacturer or importer of their garment to obtain cleaning instructions, and requires Continental Gown to provide information about how consumers can contact those companies.

The proposed order also contains provisions regarding distribution of the order, recordkeeping, notification of changes in corporate status, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–16708 Filed 6–30–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9823150]

Magnetic Therapeutic Technologies, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or

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deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christa V.A. Vecchi, FTC/H–263, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3166.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 24, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order ("proposed order") from Magnetic Therapeutic Technologies, Inc. ("MTT") and Jim B. Richardson, the President of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Internet, print, and catalogue advertisements disseminated directly to consumers, and print advertisements provided to distributors and retail stores, including health food stores and pharmacies, for dissemination directly to consumers, for proposed respondents' magnetic therapy products. These products contain magnets that purportedly treat and alleviate a variety of medical problems, including cancer, high blood pressure, HIV, diabetic neuropathy, and Multiple Sclerosis. Proposed respondents' magnetic products include an assortment of devices, such as Magnetic Knee Supports and Magnetic Sleep Pads.

The Commission's complaint charges that the proposed respondents engaged in deceptive advertising in violation of section 5 and 12 of the FTC Act by making unsubstantiated claims that its magnetic therapy products: (1) Are effective in treating cancer, including lung and breast cancers, diabetic ulcers, arthritis, and degenerative joint conditions; (2) lower high blood pressure; (3) stabilize or increase the T-cell count of HIV patients; (4) reduce muscle spasms in persons with Multiple Sclerosis; (5) reduce nerve spasms associated with diabetic neuropathy; (6) increase bone density, immunity, and circulation; and (7) are as effective as prescription pain medicine in alleviating severe pain caused by conditions such as arthritis, carpal tunnel syndrome, and back pain.

The complaint further alleges that proposed respondents represented that testimonials from consumers appearing in the advertisements or promotional materials for proposed respondents' products reflect the typical or ordinary experience of members of the public who use the products. The proposed complaint alleges that respondents lack substantiation for this claim.

This proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from representing that their magnetic therapy products (defined as any product that contains a magnet of any kind purporting to relieve the symptoms of, treat, mitigate, cure, relieve, heal or alleviate any disease or health condition): (1) Are effective in treating cancer, including lung and breast cancers, diabetic, ulcers, arthritis, or degenerative joint conditions; (2) lower high blood pressure; (3) stabilize or increase the T-cell count of HIV patients; (4) reduce muscle spasm in persons with Multiple Sclerosis; (5) reduce nerve spasms associated with diabetic neuropathy; (6) increase bone density, immunity, or circulation; or (7) are comparable or superior to prescription pain medicine, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order prohibits proposed respondents from representing that the experience represented by any user testimonial or endorsement of any product or program represents the typical or ordinary experience of members of the public who use the product or program, unless the representation is true, and competent and reliable scientific evidence substantiates that claim, or respondents clearly and prominently disclose either: (1) What the generally expected results would be for product or program participants; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to achieve similar results.

Paragraph III of the proposed order prohibits proposed respondents from making any representation about the health benefits, performance, or efficacy of any product or program, unless, at the time the representation is made, respondents posses and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph IV of the proposed order prohibits proposed respondents from: (1) Disseminating to any distributor any material containing any claims prohibited by the order; and (2) authorizing any distributor to make any representations prohibited by the order. In addition, Paragraph IV requires proposed respondents to (1) send a short notice to distributors with whom they have done business since January 1, 1994, announcing their settlement with the FTC and the state of Texas, and requiring distributors to submit all proposed promotional and marketing materials to proposed respondents for approval prior to their dissemination; (2) send, for a period of three years, the same notice to future distributors with whom proposed respondents to business; (3) monitor distributors' promotional activities; (4) terminate, as appropriate, the right of any distributor to market MTT products or programs who continues to use promotional materials or make oral representations that violate the order; (5) provide the FTC all relevant information about the distributors who continue to engage in activities that violate the order; and (6) approve all marketing materials before distributors disseminate them to the public.

Paragraph V contains record keeping requirements for the notification letters sent to distributors, communications between respondents and distributors referring or relating to the requirements of Paragraph IV of the order, and any other materials created pursuant to Paragraph IV.

Paragraph VI of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, Paragraph VII requires distribution of a copy of the consent decree to current and future officers and agents. Further, Paragraph VIII provides for Commission notification upon a change in the corporate respondents. Paragraph IX requires proposed respondent Jim B. Richardson to notify the Commission when he discontinues his current business or employment and of his affiliation with any new business or employment. The proposed order, in Paragraph X, also requires the filing of a compliance report.

Finally, Paragraph XI of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–16707 Filed 6–30–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9823175]

Pain Stops Here!, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christa V.A. Vecchi, FTC/H–263, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3166.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 24, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order ("proposed order") from Pain Stops Here! Inc. and Sande R. Caplin, the President and majority shareholder of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Internet and print advertisements disseminated directly to consumers as well as through distributors and retail stores, including drug store, health food stores, sporting goods stores, health care products stores, and private individuals working out of their homes. These products contain magnets that purportedly treat or alleviate a variety of medical problems, including cancer, liver disease, heart disease, and arthritis. Proposed respondents' magnetic products include an assortment of devices, such as sleep pad, pillow insert, and magnetized water ceramic magnetic ring.

The Commission's complaint charges that the proposed respondents engaged in deceptive advertising in violation of Sections 5 and 12 of the FTC Act by making unsubstantiated claims that its magnetic therapy products: (1) Are effective in treating cancer; (2) cure liver disease and other diseased internal organs; (3) are effective in reducing cholesterol deposits in the arteries and veins and normalizing the circulatory system; (4) are effective in breaking up kidney and gallbladder stones and in the prevention of further formation of stones; (5) are effective in treating infectious disease, urinary infection, gastric ulcers, dysentery, diarrhea, skin ulcers, and bed sores; (6) prevent and reverse heart disease, circulatory disease, arthritis, auto-immune illness, neuro-degenerative disease, and allergies; (7) are effective in treating arthritis, bursitis, tendinitis, sprains, strains, sciatica, lameness, navicular, and foot growth problems in animals; (8) stimulate the body's production of

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the hormone Melatonin; (9) are effective in treating pain caused by conditions such as arthritis, bursitis, and sciatica; and (10) are effective in stimulating growth in plants causing them to grow 20 to 40 percent faster.

The complaint further alleges that proposed respondents represented that studies prove that proposed respondents' magnetic products are effective in the mitigation and treatment of pain caused by conditions such as arthritis, bursitis, and sciatica. The proposed complaint alleges that respondents lack substantiation for this claim.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from representing that their magnetic therapy products (defined as any product that contains a magnet of any kind purporting to relieve the symptoms of, treat, mitigate, cure, relieve, heal or alleviate any disease or health condition): (1) Are effective in the treatment of cancer; (2) cure liver disease or other diseased internal organs; (3) are effective in the reduction of cholesterol deposits in the arteries and veins or normalizing the circulatory system; (4) are effective in breaking up kidney or gallbladder stones or in the prevention of further formation of stones; (5) are effective in the mitigation or treatment of infectious diseases, urinary infection, gastric ulcers, dysentery, diarrhea, skin ulcers, or bed sores; (6) prevent or reverse heart disease, circulatory disease, arthritis, auto-immune illness, neuro-degenerative disease, or allergies; (7) are effective in the mitigation or treatment of arthritis, bursitis, tendinitis, sprains, strains, sciatica, lameness, navicular, and foot growth problems in animals; (8) stimulate the body's production of the hormone Melatonin; (9) are effective in the mitigation or treatment of pain caused by conditions such as arthritis, bursitis, and sciatica; or (10) are effective in stimulating significant growth in plants, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Paragraph III of the proposed order prohibits proposed respondents from making any representation about the health benefits, performance, or efficacy of any product or program, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph IV of the proposed order prohibits proposed respondents from: (1) Disseminating to any distributor any material containing any claims prohibited by the order; and (2) authorizing any distributor to make any representations prohibited by the order. In addition, Paragraph IV requires proposed respondents to (1) send a notice to distributors with whom they have done business since January 1, 1998, announcing their settlement with the FTC, and requiring distributors to submit all proposed promotional and marketing materials to proposed respondents for review prior to their dissemination; (2) send, for a period of three years, the same notice to future distributors with whom proposed respondents do business; (3) monitor distributors' promotional activities; (4) terminate, as appropriate, the right of any distributor to market PSH products or programs who continues to use promotional materials or make oral representations that violate the order, (5) provide the FTC all relevant information about the distributors who continue to engage in activities that violate the order, and (6) review all marketing materials before distributors disseminate them to the public.

Paragraph V contains record keeping requirements for the notification letters sent to distributors, communications between respondents and distributors referring or relating to the requirements of Paragraph IV of the order, and any other materials created pursuant to Paragraph IV.

Paragraph VI of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, Paragraph VII requires distribution of a copy of the consent decree to current and future officers and agents. Further, Paragraph VIII provides for Commission notification upon a change in the corporate respondents. Paragraph IX requires proposed respondent Sande R. Caplin to notify the Commission when he discontinues his current business or employment and of his affiliation with any new business or employment. The proposed order, in Paragraph X, also requires the filing of a compliance report.

Finally, Paragraph XI of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–16710 Filed 6–30–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9823182]

Melinda R. Sneed et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be receive on or before August 30, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Judith A. Shepherd, Dallas Regional Office, Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, TX 75201, (214) 979–9383.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been field with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 24, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order ("proposed order") from Melinda Sneed and John Sneed, doing business as Arthritis Pain Care Center.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertisements on the Internet, audio cassettes, and print advertisements provided to consumers and prospective distributors, for a product called "CMO," described as a form of cetylmyristoleate, purportedly useful in the treatment of cure of arthritis and other diseases. CMO is said to be a fatty acid ester, extracted from beef tallow, which regulates the immune system. Purportedly, the substance, in one or two courses of treatment, each lasting less than three weeks, permanently relives the symptoms of osteoarthritis and rheumatoid arthritis and reverses the effects of the disease. CMO is also claimed to be useful for the treatment, mitigation, prevention, and cure of most forms of arthritis and a number of other diseases.

The Commission's complaint charges that the proposed respondents engaged in deceptive advertising in violation of Sections 5 and 12 of the FTC Act by making unsubstantiated claims that their CMO products: (1) Are effective in the mitigation, treatment, prevention, and cure of most forms of arthritis, including rheumatoid arthritis and osteoarthritis; (2) provide permanent relief from symptoms of arthritis, including pain, impaired mobility, swelling, and joint deformities; (3) are as effective as or superior to prescription medications in the treatment of arthritis and the relief of arthritis symptoms; (4) are completely safe and without adverse side effects; and (5) are effective in the treatment of multiple sclerosis, lupus, emphysema, chronic bronchitis, silicone breast disease, cancer, benign prostate hyperplasia, hypertention, hypotension, and cardiac arrhythmia.

The complaint further alleges that the proposed respondents made false claims that (1) clinical studies prove that their CMO products are a safe and effective treatment for arthritis; and that (2) studies were conducted at the national Institutes of Health that prove that CMO reverses the effects of arthritis.

The complaint further alleges that proposed respondents engaged in a deceptive practice by representing that John Sneed is an endorser of their CMO products, without adequately disclosing that Mr. Sneed, at the time of his endorsement, had a material connection with respondents' CMO products in that he had a financial interest in Arthritis Pain Care Center and received a financial benefit from respondents' sales of the product.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from making any representation that CMO or any similar product: (1) Is effective in the mitigation, treatment, prevention, or cure of arthritis, including rheumatoid arthritis and osteoarthritis; (2) provides permanent relief from symptoms of arthritis, including pain, impaired mobility, swelling, or joint deformities; (3) is as effective or as superior to prescription medications in the treatment of arthritis or the relief or arthritis symptoms; (4) is completely safe or has no adverse side effects; or (5) is effective in the treatment of multiple sclerosis, lupus, emphysema, chronic bronchitis, silicone breast disease, cancer, benign prostate hyperplasia, hypertension, hypotension, or cardiac arrhythmia, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order prohibits proposed respondents from making any representations about the performance, safety, efficacy, or health benefits of CMO or any other food, drug, dietary supplement, or program, unless the claims are substantiated by competent and reliable scientific evidence.

Paragraph III of the proposed order provides that proposed respondents are not prohibited from making representations which are specifically permitted by regulations of the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990. Paragraph IV of the proposed order provides that proposed respondents are not prohibited from making representations for a drug that are permitted under tentative final or final standards issued by the Food and Drug Administration or under any new drug application approved by that agency.

Paragraph V of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Paragraph VI of the proposed order prohibits proposed respondents from representing that the experience represented by any user testimonial or endorsement of any product or program represents the typical or ordinary experience of members of the public who use the product or program, unless the representation is true, and competent and reliable scientific evidence substantiates that claim, or respondents clearly and prominently disclose either: (1) What the generally expected results would be for users or the product or program; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Paragraph VII of the proposed order requires proposed respondents to disclose clearly and prominently, and in close proximity to the endorsement, any material connection between a person providing an endorsement of any product or program and any respondent or other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product or program. A "material connection" is a relationship that might materially affect the weight or credibility of the endorsement and

would not reasonably be expected by consumers.

Paragraph VIII of the proposed order requires that proposed respondents: (1) Not disseminate to any distributor any material containing any representations prohibited by the order; (2) not authorize any distributor to make any representations prohibited by the order; (3) send a required notice to each distributor with whom proposed respondents have done business since January 1, 1996, requesting that the distributor cease using any advertising or promotional materials containing unsubstantiated claims for CMO, requesting distributors not to make unsubstantiated oral representations, informing the distributor of this settlement, attaching a copy of this proposed complaint and order, and not including any other documents in the mailing; (4) for a period of three (3) years following service of the order, send the required notice to each distributor who has not previously received the notice; the notices shall be sent within one week of the first shipment of respondents' products to the distributor; (5) require distributors to submit to proposed respondents all advertising and promotional materials and claims for any products or programs covered by the order for review prior to their dissemination and publication, and not authorize distributors to disseminate materials and claims unless they comply with the order, or furnishing to distributors marketing materials that do not contain representations prohibited by the order and requiring the distributors to submit for review all advertising and promotional materials for a particular product covered by the order that contain representations that are not substantially similar to the materials most recently provided by proposed respondents; and (6) monitor distributors' advertising and promotional activities, immediately terminate the right of any distributor who disseminates advertisements or marketing material or makes oral representations prohibited by the order, and immediately provide information to the Federal Trade Commission about any such distributor and the materials used. "Distributor" is defined in the proposed order to mean any purchaser or transferee of a product covered by the order who acquires product from proposed respondents, with or without consideration, and who sells, or who has sold, such product to other sellers or to consumers, including individuals, retail stores, or catalogs. Paragraph IX of the proposed order requires proposed respondents to retain for five (5) years after the last correspondence to which they pertain and to make available to the Federal Trade Commission on request, copies of all notification letters and other communications with distributors relating to the requirements of Paragraph VIII.

Paragraph X of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, Paragraph XI requires distribution of a copy of the consent decree to current and future officers and agents. Further, Paragraph XII requires the filing of a compliance report.

Finally, Paragraph XIII of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–16706 Filed 6–30–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, is submitting to the Office of Management and Budget (OMB) the following proposal for the collection of information in compliance with the Paperwork Reduction Act of 1995 (Pub. L. 96–511):

Title of Information Collection: State Program Report (SPR): Reporting Requirements for Titles III and VII of the Older Americans Act.

Type of Request: Extension of currently approved collections.

Use: To extend the expiration date of the currently approved information collection format without any change in substance or the method of collection. This format conforms to the requirements of the Older Americans Act, as amended.

Frequency: Annual.

Respondents: State and Territorial Units on Aging.

Estimated Number of Respondents: 50 States, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, and the U.S. territories.

Total Estimated Burden Hours: 141,132.

Additional Information or Comments: The Administration on Aging is submitting to the Office of Management and Budget for approval an extension of the existing information collection format for state programs administered under the Older Americans Act. The AoA last announced reporting specifications for the current format in the **Federal Register** on February 11, 1999. There was one written response to that announcement. AoA responded to the concern raised in the comment about flexibility by continuing to be responsive to specific state requests for extensions and waivers.

The Office of Management and Budget approved use of the current collection instrument subject to the following conditions:

"For the FY 1996 SPR, AoA is responsive to state-specific problems in meeting the November 30, 1996 deadline (as discussed in the State of New York's public comments to OMB dated July 16, 1996 and August 16, 1996). Particularly for large complex states, this deadline may be challenging, and a month extension may make a considerable difference in the quality of data submitted by local units. In addition, the next submission for OMB review should include an analysis of state compliance with the November deadline. If a significant number of states persist in missing this deadline and request extensions, the AoA should consider alternatives to this deadline, e.g. a month extension or a statutory amendment extending its January deadline;

In response to numerous comments (e.g. the State of California, the State of Wisconsin, and the State of New Mexico), AoA allows states additional flexibility by providing limited state-specific extensions of the compliance deadline for the FY 1997 SPR, based upon criteria outlined in a future state policy transmittal. Criteria for granting such an extension should include submission of a state plan for meeting the SPR requirements in the future and evidence that the state has made reasonable progress in fulfilling the SPR objectives to date. In drafting this transmittal, the AoA must consult with state aging agency associations such as NASUA [National Association of State Units on Aging] and the NAAAA [National Association of Area Agencies on Aging]. The transmittal must be approved by OMB prior to final issuance. If the AoA's authorizing legislation is amended or GPRA [Government Performance and Review Act] performance measures are formalized, AoA will meet with OMB immediately to discuss appropriate amendments to the SPR. As a result of these discussions, OMB may request that an amended SPR be resubmitted for OMB review pursuant to the Paperwork Reduction Act. In addition, in the next submission for OMB review, the AoA will continue to evaluate the appropriateness of performance measurement and accountability reporting for each of its services, as well as the statistical validity and reliability of these data; and, to enhance cross cutting research within HHS, AoA ensures that its uniform ADL/IADL [activities of daily living/instrumental activities of daily living] definitions for FY 1997 can be cross walked with the definitions in the Public Health Service's National Health Interview Survey."

The Administration on Aging has complied with the request that it be flexible in granting extensions of the deadline when requested and continues to do so. This submission includes an analysis of state compliance with the November 30, 1996 deadline but is actually based upon the FY 1997 requirements because that was the first fiscal year that compliance with the full set of items in the current collection instrument was requested by the AoA. The AoA's authorizing legislation has not been amended. The information collected through this effort is needed to meet the baseline performance measures identified in the AoA GPRA Performance Plan. Also, AoA is developing in conjunction with state and area agencies on aging a core set of outcome measures which may be voluntarily adopted by the network.

For copies of the reporting requirements and/or a copy of the analysis of states' compliance with the November 30, 1996 deadline call the Administration on Aging, Office of State and Community Programs at (202) 619–0011. Written comments and recommendations for the proposed information collection requirements should be sent, within thirty days of the publication of this notice, to the following address: Office of Information and Regulatory Affairs, Attention: Allison Eydt, OMB Desk Officer, Office of Management and Budget, Washington, DC 20503.

Dated: June 23, 1999.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 99–16790 Filed 6–30–99; 8:45 am]

BILLING CODE 4150–04–P.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–99–23]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received with 60 days of this notice.

Proposed Project

1. National Hospital Discharge Survey—(0920–0212)—Extension—National Center for Health Statistics (NCHS)

The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the production of goals for the Year 2000 Health Objectives and the subsequent monitoring of these goals. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, Health, United States. Data for the NHDS are collected annually on approximately 300,000 discharges from a nationally representative sample of noninstitutional hospitals, exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS). Data for approximately fifty-five percent of the responding hospitals are abstracted from medical records while the remainder of the hospitals supply data through commercial abstract service organizations, state data systems, in-house tapes or printouts. There is no actual cost to respondents since hospital staff who actively participate in the data collection effort are compensated by the government for their time.

Respondents (hospitals)	Number of respondents	Number of responses/respondent	Avg. rurden/response (in hrs)	Total burden (in hrs)
Medical Record Abstracts:				
Primary Procedure Hospitals	73	250	.08333	1,521
Alternate Procedure Hospitals	189	250	.01667	788
In-House Tape or Printout Hospitals	37	12	.18333	81

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Respondents (hospitals)	Number of respondents	Number of responses/respondent	Avg. rurden/response (in hrs)	Total burden (in hrs)
Update Form (Abstract Service Hospitals)	175	2	.03333	12
Quality Control Forms	50	40	.01667	33
Induction Forms	15	1	2	30
Total				2,465

Nancy Cheal,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–16751 Filed 6–30–99; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99149]

Changing Antimicrobial Prescribing To Reduce Antimicrobial Resistance in Hospitalized Patients; Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Changing Antimicrobial Prescribing to Reduce Antimicrobial Resistance in Hospitalized Patients. This program addresses the "Healthy People 2000" priority area(s) of Immunization and Infectious Diseases.

The impact of antimicrobial resistant infections on patients is considered to be substantial, and the societal cost to the United States (U.S.) has been estimated to be as high as $4 Billion each year. Hospitalized patients are at greatest risk of acquiring these resistant infections. An increasing number of hospitals and other healthcare facilities are reporting the presence of antimicrobial resistant bacteria each year. The knowledge that a defined program to change antimicrobial prescribing activity will reduce the incidence of these infections will benefit all U.S. hospitals in their battle against antimicrobial resistant infections. The proposed study in this program announcement will impart such knowledge to the infection control and hospital community.

The purpose of the program is to assist U.S. healthcare institutions and public health agencies in evaluating the impact of changes in antimicrobial prescribing on the incidence of antimicrobial resistance and other health outcomes among hospitalized patients. Recipients of this award will form a collaborative network of researchers, using similar methodology to allow aggregation of surveillance data from all sites into a multi-site study. The change in antimicrobial prescribing would be considered a part of routine medical practice for the selected patient population groups. Evaluating the impact of routine cycling of available select antimicrobial agents for empiric therapy is the top priority for this collaborative network. Results of this multi-site study will provide other U.S. hospitals with guidance to implement programs to reduce antimicrobial resistance at their institutions. The objective of this program is to measure (see recipient activities) the change in incidence and prevalence of patient colonization and infection with select antimicrobial resistant bacteria of epidemiologic concern in the following scenario:

1. During a time of altered antimicrobial prescription activity (specifically the routine cycling of available antimicrobial agents).

2. In a (1) medical intensive care unit and (2) other target patient population group(s) (e.g., trauma intensive care unit, transplant patients, diabetic patients, etc.).

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit or for-profit organizations participating in the healthcare delivery to patients in hospitals. These hospitals must fulfill the following criteria and provide appropriate documentation (see application instructions) in the application:

1. Have >250 licenced beds.

2. Have a medical intensive care unit in which a limited number (i.e., 1–4) of attending physicians have ultimate responsibility for patient care in that intensive care unit during a typical month (*i.e.*, a closed unit).

3. Have ongoing surveillance in the medical intensive care unit of two types: (1) nosocomial infections and (2) rectal (or stool) surveillance cultures, on admission or at some standard period, for some antimicrobial resistant bacteria.

4. Have access to a clinical microbiology laboratory which can demonstrate proficiency at:

a. Identifying extended-spectrum "β-lactamase producing enterobactericea.

b. Maintain viable frozen specimens from surveillance samples.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 1999 to fund approximately 3 awards. It is expected that the average award will be $80,000, ranging from $60,000 to $100,000. It is expected that the awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to 3 years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

To achieve appropriate geographic representation of the study network, funding preference may be given to approved applications that would enhance the geographic diversity of the network (e.g., network ideally comprised of sites from different cities or states).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop consensus among appropriate patient-care, pharmacy and infection control personnel towards

changing antimicrobial prescribing practices in (1) the medical intensive care unit, and (2) a second target patient population group (e.g., trauma intensive care unit, respiratory care unit, other). Implement this change in antimicrobial prescribing practice, specifically a cycling program. Characteristics of the cycling program should include cycling between classes of agents with similar spectrum of coverage available for empiric treatment of patients at a defined interval. This should also include provisions to ensure the safety of all patients affected by this change in medical practice, and maintain the spirit of a multi-center study as part of a collaborative network.

b. Prior to and during the periods of changes in antimicrobial prescribing,

1. Enhance existing surveillance activities in the medical intensive care unit including routine rectal or stool cultures on all patients upon admission to the unit in a manner to minimize laboratory burden and maximize ability to detect colonization with target organisms upon admission and before discharge from the unit. This may include combining data with results of routine clinical cultures of eligible patients.

2. Obtain basic demographic, severity of illness, exposure, and outcome data on patients in the intensive care unit.

c. Monitor antimicrobial use in the medical intensive care unit and second target patient population group. Document changes in dispensed antimicrobials throughout the study period.

d. Demonstrate infection control activities remain similar throughout the study period (i.e., barrier precautions, hand washing frequency) through periodic observational studies of healthcare workers in the target patient population group.

e. Obtain technical assistance, if needed.

f. Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program.

g. Participate in the development of a research protocol for IRB review by all cooperating institutions participating in the research project.

h. As part of the study network manage, analyze, and interpret surveillance and observational data; provide select data for aggregation among study network; publish and disseminate important information in collaboration with the study network.

2. CDC Activities

a. Provide consultation, scientific and technical assistance in protocol development and in general operation of the study network. The CDC IRB will also review and approve the protocol initially and on at least an annual basis until the research project is completed.

b. Participate in analysis and interpretation of aggregate surveillance data from study network.

c. Assist in monitoring and evaluating scientific and operational accomplishments of the study network and progress in achieving the purpose and overall goals of this program.

d. As needed, perform laboratory evaluation of specimens or isolates (e.g., molecular epidemiologic studies, evaluation of diagnostic tools) obtained as part of this program.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Applications should address the following topics in the order presented:

1. Understanding the objectives of the study network and program.

2. Description of the target population groups.

3. Description of existing capacity. There are several things applicants could do to document their capacity to perform the recipient activities:

a. Demonstration of capacity to alter physician prescribing activity in an intensive care unit may include (in decreasing order of strength):

1. Previous publication (peer-reviewed or abstract) of a trial of routine cycling of antimicrobial agents in an intensive care unit (in appendix).

2. Photocopies of memorandum or internal documents which cite the successful institution of an antimicrobial control program in the intensive care unit (in appendix).

3. Letters of support from pharmacy, critical care, or infectious disease departments which cite that alteration of prescribing activity in an intensive care unit has been (or is planned to be) accomplished (in appendix).

b. Provide in an appendix to the application a list of the rates of antimicrobial resistance among the bacteria listed in the eligibility criteria (from routine clinical cultures or surveillance cultures) among patients in the medical intensive unit or the hospital.

4. Operational plan. This should include a description of the change in antimicrobial prescribing (i.e., description of best possible cycling practice based on relevant surveillance data and patient population)

5. Evaluation plan.

6. Budget.

7. Appendix.

Applicant's operational plan should clearly address all recipient activities. The narrative (excluding budget, budget narrative, appendices, and required forms) should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font (10 or 12 point). The following information should be presented in appendicies: Letters of support or memorandum (see application content above), curricula vitae (CV) of co-investigators, and budget. Also, for purposes of meeting the eligibility requirement, there are several means in which applicants may provide documentation of eligibility in the appendix:

1. Demonstrate the medical intensive care unit is a closed unit (i.e., a unit in which a limited number of physicians are responsible for patient care in that unit) by submitting a letter from the appropriate department describing which clinicians have primary responsibility for patient care in the medical intensive care unit.

2. Demonstrate ongoing surveillance of nosocomial infections or antimicrobial resistance in the medical intensive care unit by submitting a letter from the infection control department describing the type of surveillance currently performed in the medical intensive care unit, including any surveillance cultures done routinely.

3. Provide letter of support from the microbiology or infection control laboratory describing the laboratory capacity to perform the necessary functions listed in the eligibility criteria. Including capacity to change antimicrobial prescribing activity in the target population groups, and capacity to obtain and aggregate surveillance data (see application instructions).

In addition, documentation of relevant accomplishments, such as abstracts, manuscripts, or bibliographies may be included in appendices. Information that should be included in the narrative will not be accepted if placed in the appendices.

Budget Instructions: For each staff member listed under the Personnel line item, indicate their specific responsibilities. All other line-items should also be clearly justified.

F. Submission and Deadline

Letter of Intent (LOI)

All eligible parties intending to submit an application are requested to

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inform CDC of their intention to do so by submitting a brief LOI no later than July 15, 1999. The purpose of the LOI is to assist CDC in timely planning and administration of the evaluation process. The LOI should be a brief notice that (1) identifies the applicant organization, and (2) provides the name, address, and telephone number of a contact person. LOI should be submitted to the technical assistant contact identified in "where to obtain additional information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189) Forms are in the application kit. On or before August 15, 1999 submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received by Grants Management office in time for scheduled review. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding the objectives of the program (5 points) a. Demonstration of a clear understanding of the background and objectives of this cooperative agreement program.

b. Demonstration of a clear understanding of the requirements, responsibilities, and complexities that may be encountered in participating in this study network.

2. Description of target population groups involved in the program activities, including a medical intensive care unit and another population group. (5 points)

3. Description of existing capacity to perform enhanced surveillance during a period of changing antimicrobial prescribing activity in the target patient-populations. (40 points). a. Description of applicants past experience and documentation of accomplishments in conducting active surveillance, applied epidemiologic research, applied laboratory research, and prevention research on the incidence of nosocomial infections and/or antimicrobial resistant pathogens. (A list of relevant papers and abstracts should be included in the appendix, as well as the CV for all key professional personnel). (10 points)

b. Description of applicant's past experience and documentation of accomplishments in changing prescribing activity in an intensive care unit (e.g., previous experience with routine cycling or antimicrobial agents), and demonstrate the capacity to alter physician prescribing activity as a part of this study (see application content for suggested documentation criteria). (13 points)

c. Description of applicants past experience of collecting and aggregating surveillance data, including documentation (see application content) that susceptibility profiles of clinical isolates from medical intensive care unit patients include ≥2 of the following: (1) the proportion of Enterobacter cloacae resistant to ceftazidime or cefotaxime or ceftriaxone is >25%, (2) Pseudomonas aeurginosa isolates resistant to imipenem is >10%, (3) Klebsiella pneumoniae resistant to ceftazidime is >5%, and/or Acinetobacter baumanii resistant to ceftazidime is >20%. (10 points)

d. Demonstration of support from non-applicant participating departments, laboratories, individuals, or consultants, indicated in applicant's operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate collaborators' willingness to be participants in the study network. Do not include letters of support from CDC personnel. (5 points)

e. Statements supporting applicant's ability to participate in a multi center collaborative network (2 points).

4. Operational plan (45 points). a. The extent to which the applicant's plan for establishing and maintaining the enhanced surveillance for antimicrobial resistant bacteria clearly describes the (1) proposed organizational and operative structure/procedures, (2) clearly identifies the roles and responsibilities of all participating departments or individuals, and (3) addresses each of the recipient activities. (15 points)

b. The extent to which the applicant describes plans for collaboration with CDC and the other members of this study network in the establishment and operation of the multi-center study described in this programs objectives, including project design/development, management and analysis of data, and synthesis and dissemination of findings. (10 points)

c. Description of consensus building process, which is ongoing or planned, to change prescribing practices in the target patient-population as a part of routine change in medical care (i.e., cycled availability of antimicrobial agents), and appropriateness of the described cycling program to alter the target pathogens as documented in that unit (see attachment I). (15 points)

d. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

5. Evaluation (5 points). Quality of a plan for monitoring and evaluating progress in achieving the purpose and overall objectives of this cooperative agreement program.

6. Budget (not scored). Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program. Extent to which applicant shows federal and non-Federal (e.g., State or Private Funding) shares of total cost for program.

7. Human Subjects (not scored). Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The first semiannual report is required with each year's continuation application and should cover program activities from beginning of the current budget period to the date of report/application preparation. The second semiannual report is due 90 days after the end of each budget period and should cover activities for the entire budget period recently completed. This second report may simply be a "cut/paste" update of the first semiannual report to add information from date of first report to the end of the budget period.

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following other requirements are also applicable:

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Public Health Service Act, Section 301(a) [42 U.S.C. 241(a)], 317(k)(1) [42 U.S.C. 247b(k)(1)], and 317(k)(2) [42 U.S.C. section 247b(k)(2)], as amended. The catalog of federal domestic number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. See also the CDC home page on the Internet for information of programs and grants: http://www.cdc.gov

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99149, Centers for Disease Control and Prevention (CDC). 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone (770) 488–2748, Email address: oxb3@cdc.gov.

For program technical assistance, contact: Scott Fridkin, M.D., Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, MS E–55, Atlanta, GA 30333, Telephone number: (404) 639–6417, Email address: skf0@cdc.gov.

Dated: June 25, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–16759 Filed 6–30–99; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cancer Advisory Panel for Complementary and Alternative Medicine, Thursday, July 8, 1999, to Friday, July 9, 1999, Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on June 21, 1999, 64 FR 33105.

The public comments session is scheduled on July 9, 1999, from 11:00 am to 11:30 am.

Dated: June 24, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–16697 Filed 6–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: July 12–13, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 24, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16698 Filed 6–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: July 22–23, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 24, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16699 Filed 6–30–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C. as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 99–71, R01 Review.
Date: June 29, 1999.
Time: 10:00 a.m. to 11:00 a.m.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: H. George Hausch, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 99–70, R01 Review.
Date: June 29, 1999.
Time: 10:00 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Yong A. Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 99–76, P01 Review.
Date: July 29, 1999.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: H. George Hausch, Chief, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 99–66, Applicant Interview, P01.
Date: August 5–6, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Agendo: To review and evaluate grant applications.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 99–68, P01 Applicant Interview.
Date: August 15–16, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Yong A. Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.
(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 24, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–16695 Filed 6–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: July 1, 1999.
Time: 1:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9592, Bethesda, MD 20892–9529, 301–496–9223.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 24, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16696 Filed 6–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Document Entitled, "Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska"

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service is requesting comments on a plan to establish management bodies for the development of a migratory bird subsistence program in Alaska. This action is the result of the 1997 amendments to the migratory bird treaties with Canada and Mexico ratified by the US Senate on October 23, 1997. The amendment to the treaty with Canada requires that indigenous inhabitants of the State of Alaska will have a meaningful role in migratory bird conservation by participating on relevant management bodies. A Notice of Intent to write an options document leading to the establishment of management bodies was published on page 49707 of the **Federal Register** dated Thursday, September 17, 1998. The document, which is now available for review, describes four models for organizing management bodies. You are encouraged to comment on each of the models or present an alternative model.

DATES: Comments must be received by close of business on September 30, 1999.

ADDRESSES: Submit comments to Regional Director, US Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503, Attn: Migratory Bird Management; fax: 907/786–3641. See Supplementary Information section for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: Mimi Hogan at 907/786–3673 or Bob Stevens at 907/786–3499.

SUPPLEMENTARY INFORMATION: Copies of the document for review may be obtained by writing to the above address or by telephoning Mimi Hogan or Bob Stevens. Electronic Access and Filing Addresses: The document is also available for viewing and downloading at <www.r7.fws.gov/mbm/treaty>. Comments can be sent by e-mail to <treaty@fws.gov>. Submit comments as an ASCII file avoiding the use of special characters and any form of encryption.

Dated: June 23, 1999.

David B. Allen,

Regional Director, Anchorage, Alaska.

[FR Doc. 99–16784 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1610–00]

Correction on the Dates of the Protest Period for the Proposed Caliente Management Framework Plan Amendment and Final Environmental Impact Statement for the Management of Desert Tortoise Habitat

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of the changes in the protest period.

SUMMARY: The protest period for the Proposed Plan Amendment and Final Environmental Impact Statement for the Caliente Management Framework Plan will be extended to July 30, 1999. The Proposed Plan Amendment may be protested by any person who participated in the planning process, and who has an interest which is or may be adversely affected by the approval of the Proposed Plan Amendment. A protest may raise only those issues which were submitted for the record during the planning process (see 43 Code of Federal Regulations 1610.5–2).

All protests must be written and must now be postmarked on or before July 30, 1999 and shall contain the following information:

—The name, mailing address, telephone number, and interest of the person filing the protest.

—A statement of the issue or issues being protested.

—A statement of the part or parts of the document being protested.

—A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.

—A concise statement explaining precisely why the Bureau of Land Management, Nevada State Directors's decision is wrong.

Upon resolution of any protests, an Approved Plan Amendment and Record of Decision will be issued. The Approved Plan Amendment/Record of Decision will be mailed to all individuals who participated in this planning process and all other interested publics upon their request.

DATES: All written protests must be postmarked no later than July 30, 1999.

ADDRESSES: Protests must be filed with: Director, Bureau of Land Management, Attn. Ms. Brenda Williams, Protest Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240.

Copies of the Proposed Plan Amendment/FEIS may be obtained from the Ely Field Office, HC33 Box 33500, Ely, NV 89301 and the Caliente Field Station, U.S. Highway 93, P.O. Box 237, Caliente NV, 89008.

Public reading copies are available for review at the public libraries of Clark, White Pine and Lincoln Counties, all government document repository libraries and at the following BLM locations:

Office of External Affairs, Main Interior Building, Room 5000, 1849 C Street, NW, Washington, DC;

Public Room, Nevada State Office, 1340 financial Blvd., Reno, NV;

The Caliente Field Station and the Ely Field Office at the above addresses.

FOR FURTHER INFORMATION CONTACT: Gene L. Drais, Project Manager at (775) 289–1880 at the Ely Field Office.

Dated: June 22, 1999.

James M. Perkins,

Acting Ely Field Manager.

[FR Doc. 99–16780 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–952–09–1420–00]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted June 21, 1999, of the following described lands, are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Tps. 4, 5, and 6 N., Rs. 16, 17, 18, and 19 W.

The plat, representing the Amended Protraction Diagram 17 Index of unsurveyed Townships 4, 5, and 6 North, Ranges 16, 17, 18, and 19 West, Principal Meridian, Montana, was accepted June 21, 1999.

Tps. 7 and 8 N., Rs. 17, 18, and 19 W.

The plat, representing the Amended Protraction Diagram 17 Index of unsurveyed Townships 7 and 8 North, Ranges 17, 18, and 19 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 4 N., R. 17 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 4 North, Range 17 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 4 N., R. 18 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 4 North, Range 18 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 4 N., R. 19 W.

The plat, representing Amended Protraction Diagram 17 of fractional unsurveyed Township 4 North, Range 19 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 5 N., R. 16 W.

The plat, representing Amended Protraction Diagram 17 of fractional unsurveyed Township 5 North, Range 16 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 5 N., R. 17 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 5 North, Range 17 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 5 N., R. 18 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 5 North, Range 18 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 5 N., R. 19 W.

The plat, representing Amended Protraction Diagram 17 of fractional

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unsurveyed Township 5 North, Range 19 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 6 N., R. 16 W.

The plat, representing Amended Protraction Diagram 17 of fractional unsurveyed Township 6 North, Range 16 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 6 N., R. 17 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 6 North, Range 17 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 6 N., R. 18 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 6 North, Range 18 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 6 N., R. 19 W.

The plat, representing Amended Protraction Diagram 17 of fractional unsurveyed Township 6 North, Range 19 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 7 N., R. 17 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 7 North, Range 17 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 7 N., R. 18 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 7 North, Range 18 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 7 N., R. 19 W.

The plat, representing Amended Protraction Diagram 17 of fractional unsurveyed Township 7 North, Range 19 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 8 N., R. 17 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 8 North, Range 17 West, Principal Meridian, Montana, was accepted June 21, 1999.

T. 8 N., R. 18 W.

The plat, representing Amended Protraction Diagram 17 of unsurveyed Township 8 North, Range 18 West, Principal Meridian, Montana, was accepted June 21, 1999.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams, accepted June 21, 1999, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted June 21, 1999, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests. These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: June 22, 1999.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–16782 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–1430–01; NMNM 98057/G–010–G9–0254]

Public Land Order No. 7394; Withdrawal of Public Land and Federal Minerals for the Copper Hill Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 3,632.31 acres of public land from surface entry and mining, and 1,148.19 acres of federally reserved mineral interests underlying private surface estate from mining, for a period of 20 years, for the Bureau of Land Management to protect the outstanding cultural, wildlife, and visual resources of the Copper Hill area. The land has been and will remain open to mineral leasing. An additional 640 acres of non-Federal land and the surface estate of the above 1,148.19 acres would become subject to the withdrawal if acquired by the United States.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Hal Knox, BLM Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico 87571, 505–758–8851.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect the outstanding cultural, wildlife, and visual resources of the Copper Hill area:

New Mexico Principal Meridian

T. 23 N., R. 10 E.,
- Sec. 12, E½E½SE¼SE¼;
- Sec. 13, E½E½E½E½;
- Sec. 24, E½E½E½E½;
- Sec. 25, E½NE¼NE¼NE¼ and NE¼SE¼NE¼NE¼.

T. 23 N., R. 11 E.,
- Sec. 7, E½NE¼NE¼SE¼, S½N½N½S½, S½N½S½, and S½S½;
- Sec. 8, S½;
- Sec. 9, S½S½S½N½ and S½;
- Sec. 15, lots 7 and 8, and SW¼;
- Sec. 18, lot 1, N½, SW¼, N½SE¼, and SW¼SE¼;
- Sec. 19, lot 1, NW¼NE¼, S½NE¼, NW¼, and S½;
- Sec. 20, lots 1, 2, and 3, NE¼, N½S½, and N½S½S½;
- Sec. 21, S½NE¼;
- Sec. 22, lots 5 to 8, inclusive, and W½;
- Sec. 28, N½N½N½;
- Sec. 30, N½N½N½.

The area described contains 3,632.31 acres in Taos County.

2. Subject to valid existing rights, the federally reserved mineral interests in the following described land are hereby withdrawn from mining under the United States mining laws (30 U.S.C. Ch.2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect the outstanding cultural, wildlife, and visual resources of the Copper Hill area:

New Mexico Principal Meridian

T. 23 N., R. 11 E.,
- Sec. 17, lots 1 and 2, N½, N½SW¼, and SE¼;
- Sec. 21, N½NE¼, W½, and SE¼.

The area described contains 1,148.19 acres in Taos County.

3. The surface estate of the land described in Paragraph 2 is non-Federal. In the event the land returns to Federal ownership, it would be subject to the terms and conditions of this withdrawal as described in Paragraph 1.

4. The following described non-Federal land is located in the Copper Hill area. In the event the land returns to Federal ownership, it would become subject to the terms and conditions of this withdrawal as described in Paragraph 1:

T. 23 N., R. 11 E.,
- Sec. 16.

The area described contains 640 acres in Taos County.

5. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

6. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: June 11, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–16714 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–AG–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–05; N–62868]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Segregation terminated, recreation and public purposes lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated on July 23, 1997 for exchange purposes under serial number N–61855. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land for the expansion of the White Transportation Center.

Mount Diablo Meridian, Nevada

T. 21 S., R. 61 E.,
- Sec. 19, NE¼SE¼SW¼NW¼.

Containing 2.5 acres, more or less, generally located at Cameron St. and University Ave.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. And will be subject to:

1. Easements thirty (30) feet in width on the north and east boundaries together with a 15 foot spandrel on the northeast corner in favor of Clark County for streets, roads, and public utilities.

2. Those rights for road purposes which have been granted to Clark County by Permit No. N–44661 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for communication site purposes which have been granted to Sprint Central by Permit No. N–61854 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for the expansion of the White Transportation Center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the expansion of the White Transportation Center.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 17, 1999.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 99–16712 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–2810–00; GP9–0214]

Recreation Management Restrictions, etc: Lakeview District, OR: Fire Prevention Order

AGENCY: Bureau of Land Management (BLM), Lakeview District, Interior.

ACTION: Fire prevention order.

SUMMARY: During periods of very high and extreme fire danger, human-caused fires cause considerable resource damage. Pursuant to Title 43 CFR 9212.1(h) and 9212.2(a), the following acts are prohibited on lands administered by the Lakeview District, Bureau of Land Management to prevent human caused fires and reduce wildfire potential:

1. Building, maintaining, attending, or using a fire, campfire, or stove fire, including charcoal briquettes except at the following designated campgrounds (portable cooking stoves using liquified or bottled fuels are allowed):

Lakeview Resource Area

Duncan Reservoir, Green Mountain, Buck Creek, West Fork Silver Lake, The Junipers (The Sand Dunes).

Klamath Falls Resource Area

North and South Gerber Reservoir, Stan H. Spring, Potholes, Miller Creek, Wildhorse.

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2. Smoking while traveling in timber, brush, or grass areas, except in vehicles on roads, or while stopped in an area at least three (3) feet in diameter, that is barren or cleared of all flammable material.

3. Operating any type of motorized vehicle except on roadways clear of flammable vegetation. Parking of vehicles off roadways must be done in an area barren of flammable materials.

4. Operating any type of motorized vehicle without the following:

a. One shovel not less than twenty-six (26) inches in overall length, with a blade not less than eight (8) inches wide.

b. One water container of at least one gallon filled to capacity, or a 2.5-pound fire extinguisher, 4BC, fully-charged.

c. One axe, with a handle 26 inches in length and a head weight of not less than two (2) pounds.

Note: These items are not required while traveling on state and county roads.

5. Operating a chain saw.

6. Welding, or operating an acetylene or other torch with open flame.

Exemptions

Pursuant to Title 43 CFR 9212.3(a) the following persons are exempt from this order:

1. Persons with a permit specifically authorizing the otherwise prohibited act or omission.

2. Any Federal, State or local officer, or member of an organized rescue or fire fighting force while in the performance of an official duty.

Penalties

Violation of these prohibitions are punishable under Title 43 CFR by a fine of not more than $1000 or imprisonment of not more than 12 months, or both. Violations may also be subject to the enhanced fines provided for by Title 18 U.S.C. 3571 ($100,000 and up to 12 months).

DATES: These prohibitions will become effective whenever the fire danger indices reach "very high". Notices of the effective dates of these prohibited acts will be posted in prominent locations and publicized through the media prior to their enactment. They will be rescinded as soon as the fire danger decreases to a safe level. Fire prevention orders are normally enacted on an emergency basis for a short period of time (during the very high and extreme fire danger levels), but this can happen several times a year as the weather changes.

FOR FURTHER INFORMATION CONTACT: Larry Bowman, BLM, Lakeview District, HC 10 Box 337, Lakeview, OR 97630, ph: (541) 947–6264.

Dated: June 18, 1999.

Steven A. Ellis,

District Manager.

[FR Doc. 99–16711 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1910–00–4839]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., June 18, 1999.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of sections 21, 22, 27, and 28, and the metes-and-bounds survey of certain tracts in sections 21, 22, 27, and 28, T. 4 S., R. 5 E., Boise Meridian, Idaho, Group 1034, was accepted June 18, 1999. This survey was executed to meet certain administrative needs of the Mountain Home Air Force Base, USAF.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: June 18, 1999.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 99–16785 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 89170]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice Correction.

SUMMARY: This notice corrects an error in the land description published as FR Doc. 99–13531 in the **Federal Register**, 64 FR 28833–4, May 27, 1999, for a proposed Bureau of Land Management withdrawal.

On page 28834, column 1, the legal description immediately following T. 25 N., R. 24 E., should be corrected to include "sec. 1, lot 13". The acreage remains the same.

Dated: June 23, 1999.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 99–16779 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Minerals Management Service Meeting on Natural Gas Royalty-In-Kind Pilot Program in the Federal Gulf of Mexico Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) will hold a public meeting with lessees, operators and payors, and potential purchasers concerning royalty-in-kind gas produced from Federal leases administered by MMS in the Gulf of Mexico Region. The purpose of the meeting is to discuss the operational issues involved in implementing sales of Federal gas production to be taken as royalty in kind.

DATES: The meeting will be held on July 20, 1999, from 10:00 a.m. until 3:00 p.m., Central Daylight Time.

ADDRESSES: The meeting will be held at MMS's Houston Compliance Division Office, Room 104, 4141 N. Sam Houston Parkway East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, NW, MS 4230, Washington, D.C. 20240–0001; telephone number (202) 208–3827; fax (202) 208–3918; e-mail Bonn.Macy@mms.gov.

Comments: Written comments on the meetings or the topics for discussion listed below should be addressed to Mr. Bonn J. Macy at the address given in the **FOR FURTHER INFORMATION CONTACT** section.

SUPPLEMENTARY INFORMATION: The subject of this Notice is preparation for the Gulf of Mexico Royalty-in-Kind (RIK) Pilot, the last of three planned RIK Pilots being implemented by MMS. This Pilot, in MMS's Gulf of Mexico Region (GOMR), will potentially involve large numbers of leases, operators, payors, lessees, and potential purchasers. The GOMR Pilot will be similar to the Pilot we are currently operating in the "8(g)" zone off the coast of Texas. Much of what we have done in the 8(g) Pilot will be expanded and further developed in the GOMR. Gas volumes in the GOMR Pilot will be substantially larger, involving as much as 800 million cubic feet of gas per day. The objectives of this GOMR Pilot program for Federal gas are, as with all three Pilots, to determine the key factors required for a successful Federal RIK program and to test its effectiveness for collecting Federal oil and gas royalties. Consistent with these objectives, MMS seeks the comments and suggestions of the public and our stakeholders. We urge all with an interest in the program to attend and participate in the discussion.

MMS will direct operators of affected Federal leases and associated communitization/unit agreements to deliver royalty volumes in kind to the Federal Government beginning this fall. For all other leases or agreements, payors will continue paying royalties based on current requirements.

Topics to be discussed at the meeting are:

1. Overall framework and phases of the GOMR Pilot.

2. Intent of the GOMR Pilot.

3. Responsibilities of Federal Government or its purchasers or agents:

- 100 per cent take of all royalty volumes delivered.
- Communication with operator.
- Imbalance procedures.
- Reporting.

4. Responsibilities of operators:

- Reporting.
- Imbalance procedures.
- Communication with purchaser or agent.
- Verification of royalty volumes.
- Project termination and next phase of the pilot.

5. Delivery for Federal RIK gas volumes and transportation arrangements.

6. Sales of RIK natural gas production:

' Within the Federal Government.

' To the public.

7. Question and answer period.

Dated: June 25, 1999.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99–16744 Filed 6–30–99; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–416

Certain Compact Mutipurpose Tools; Notice of Commission Decision Not To Review an Initial Determination Granting Summary Determination; and Request for Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review the presiding administrative law judge's ("ALJ's") initial determination granting a motion for summary determination concerning violation of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. 1337) by the four respondents remaining in the investigation.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. General information concerning the Commission also may be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: On August 28, 1998, Leatherman Tool Group, Inc., filed a complaint with the Commission alleging violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain compact multipurpose tools that infringe claims of four U.S. design patents. The Commission instituted the investigation on September 30, 1998. Five firms were named as respondents: Suncoast of America, Inc.; Quan Da Industries; Kumasama Products Co., Ltd.; Jiangsu Hongbao Group, Corp.; and SCIKO Chinalight, Ltd. *See* 63 FR 52287 (Sept. 30, 1998). The Commission added Charles Amash Imports, Inc., d/b/a Grip On Tools, as a sixth respondent on December 14, 1998. *See* 63 FR 70215 (Dec. 18, 1998).

Grip On and Suncoast eventually were terminated on the basis of consent orders. Notice of Commission Decision Not to Review an Initial Determination Terminating a Respondent on the Basis of a Consent Order [and] Issuance of Consent Order (Apr. 21, 1999); Order No. 13 (Mar. 25, 1999); Notice of Commission Decision Not to Review an Initial Determination Terminating a Respondent on the Basis of a Consent Order [and] Issuance of Consent Order (Mar. 5, 1999); and Order No. 9 (Feb. 5, 1999).

The Commission subsequently found the remaining respondents to be in default, in light of their failure to answer the complaint and notice of investigation in the manner prescribed by the Commission rules and their failure to respond to orders directing them to show cause why they should not be found in default. *See* Notice of Commission Decision Not to Review an Initial Determination Finding a Respondent in Default (May 11, 1999); Order No. 14 (Apr. 8, 1999); Notice of Commission Decision Not to Review an Initial Determination Finding Three Respondents in Default (Mar. 25, 1999); and Order No. 11 (Mar. 2, 1999).

On February 1, 1999, complainant Leatherman Tool Group, Inc., filed Motion No. 416–6 for summary determination that the four respondents remaining in the investigation have violated section 337.

On February 11, 1999, the Commission investigative attorney filed a response supporting the motion. No other party responded to the motion.

On May 27, 1999, the ALJ issued the ID granting the motion for summary determination concerning violation of section 337 by respondents. The ALJ found that there is no genuine issue of fact that: (1) Each respondent has imported an accused tool into the United States, sold it for importation, and/or sold it in the United States after importation; (2) the four design patents at issue are valid and enforceable; and (3) the complainant has satisfied the technical prong of the domestic industry requirement (19 U.S.C. 1337(a)(2)).[1]

No party filed a petition for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus became the determination of the Commission pursuant to 19 CFR 210.42(h)(3).

As a final disposition of this investigation, the Commission may issue (1) an order that could result in exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair

[1] The Commission previously determined not to review an ID granting a summary determination on the economic prong of the statutory domestic industry requirement. *See* Notice of Commission Decision Not to Review an Initial Determination Granting Summary Determination on the Domestic Industry Requirement (Mar. 5, 1999); and Order No. 7 (Feb. 2, 1999).

action in the importation and sale of such articles. The Commission is therefore interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *In the Matter of: Certain Devices for Connecting Computers Via Telephone Lines,* Inv. No. 337–TA–360, USITC Publication No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are the subject of this investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation, interested Government agencies, and other interested persons or entities are encouraged to file written submissions on remedy, the public interest, and bonding.

The document constituting the ID also contains the ALJ's recommended determination ("RD") under 19 CFR 210.42(a)(2) concerning remedy and bonding. The ALJ has recommended that the Commission issue a general exclusion order and set the bond at 100 percent of the entered value of the accused imports during the Presidential review period. The parties' written submissions on remedy, the public interest, and bonding may assert their arguments concerning the RD in accordance with 19 CFR 210.46(a). The Commission also requests that the complainant and the Commission investigative attorney submit proposed remedial orders for the Commission's consideration.

All written submissions and proposed remedial orders must be filed with the Office of the Secretary no later than 5:15 p.m. on Tuesday, July 13, 1999. Reply submissions must be filed no later than 5:15 p.m. on Tuesday, July 20, 1999. No further submissions on remedy, the public interest, and bonding will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions and proposed remedial orders must file the original document and 14 true copies with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document or portion thereof in confidence must request confidential treatment unless the information contained in the document or portion thereof has already been granted such treatment during the investigation. All requests for confidential treatment should be directed to the Secretary of the Commission and must include a full statement of the reasons that the Commission should grant such treatment. See 19 CFR 201.6. All nonconfidential written submissions will be available for public inspection at the Office of Secretary.

Nonconfidential copies of the ID granting the motion for summary determination, the RD on remedy and public interest, all other nonconfidential documents filed in the investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802.

By order of the Commission.

Issued: June 28, 1999

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16809 Filed 6–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–302 (Review) and 731–TA–454 (Review)]

Fresh and Chilled Atlantic Salmon From Norway

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on fresh & chilled Atlantic salmon from Norway.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on fresh & chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 20, 1999. Comments on the adequacy of responses may be filed with the Commission by September 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On April 12, 1991, the Department of Commerce issued countervailing duty and antidumping duty orders on imports of fresh & chilled Atlantic salmon from Norway (56 FR 14920). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include that information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Country in these reviews is Norway.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: fresh and chilled Atlantic salmon, including adult Atlantic salmon and Atlantic salmon smolt.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one Domestic Industry: producers of fresh and chilled Atlantic salmon, including adult Atlantic salmon and Atlantic salmon smolt.

(5) The Order Date is the date that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the Order Date is April 12, 1991.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 13, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–022. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16818 Filed 6–30–99; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–457 (Review)]

Heavy Forged Handtools From China

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on heavy forged handtools from China.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on heavy forged handtools from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 20, 1999. Comments on the adequacy of responses may be filed with the Commission by September 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm*.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1991, the Department of Commerce issued antidumping duty orders on imports of the following classes or kinds of heavy forged handtools from China: (1) Axes & adzes, (2) bars & wedges, (3) hammers & sledges, and (4) picks & mattocks (56 F.R. 6622). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Country in these reviews is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found four Domestic Like Products: (1) Axes, adzes and hewing tools, other than machetes, with or without handles; (2) bar tools, track tools, and wedges; (3) hammers and sledges, with heads weighing 2 pounds or more, with or without handles; and (4) picks and mattocks, with or without handles.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found four Domestic Industries: (1) producers of axes, adzes and hewing tools, other than machetes, with or without handles; (2) producers of bar tools, track tools, and wedges; (3) producers of hammers and sledges, with heads weighing 2 pounds or more, with or without handles; and (4) producers of picks and mattocks, with or without handles. The Commission excluded from the Domestic Industries companies that do no more than assemble imported heads with handles purchased from a domestic manufacturer. The Commission also excluded one domestic producer, Madison Mill, from the Domestic Industries under the related parties provision.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is February 19, 1991.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–018. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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September 13, 1999. All written submissions must conform with the provisions of § 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its original determinations, and for each of the products identified by Commerce as Subject Merchandise. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s") production; and

(b) The quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of each Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s") operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s") imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s") operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s") production; and

(b) The quantity and value of your firm's(s") exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s") exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 25, 1999.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 99–16825 Filed 6–30–99; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–459 (Review)]

Polyethylene Terephthalate (PET) Film From Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on PET film from Korea.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 20, 1999. Comments on the adequacy of responses may be filed with the Commission by September 13, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department of Commerce issued an antidumping duty order on imports of PET film from Korea (56 FR 25669). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Korea.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: PET film, including equivalent PET film. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: producers of PET film, including equivalent PET film. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 5, 1991.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–023. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 13, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/ business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 25, 1999.
By order of the Commission.
Donna R. Koehnke,
Secretary.
[FR Doc. 99–16819 Filed 6–30–99; 8:45 am]
BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–466, 465, and 468 (Review)]

Sodium Thiosulfate From China, Germany, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 20, 1999. Comments on the adequacy of responses may be filed with the Commission by September 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1991, the Department of Commerce issued antidumping duty orders on imports of sodium thiosulfate from China, Germany, and the United Kingdom (56 FR 6623). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) *The Subject Countries* in these reviews are China, Germany, and the United Kingdom.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: sodium thiosulfate.

(4) *The Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one Domestic

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–019. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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Industry: producers of sodium thiosulfate.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is February 19, 1991.

(6) *An Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1 677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 13, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16824 Filed 6–30–99; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–464 (Review)]

Sparklers From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on sparklers from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 20, 1999. Comments on the adequacy of responses may be filed with the Commission by September 13, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–024. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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Background

On June 18, 1991, the Department of Commerce issued an antidumping duty order on imports of sparklers from China (56 FR 27946). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: sparklers.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: producers of sparklers.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 18, 1991.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 13, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s'') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 99–16826 Filed 6–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-376 and 563-564 (Review)]

Stainless Steel Butt-Weld Pipe Fittings from Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 20, 1999. Comments on the adequacy of responses may be filed with the Commission by September 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–025. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, the Department of Commerce issued antidumping duty orders on the subject imports:

Order date	Product/country	Inv. No.	FR cite
3/25/88	Stainless steel butt-weld pipe fittings/Japan	731–TA–376	53 F.R. 9787
2/23/93	Stainless steel butt-weld pipe fittings/Korea	731–TA–563	58 F.R. 11029
6/16/93	Stainless steel butt-weld pipe fittings/Taiwan	731–TA–564	58 F.R. 33250

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Japan, Korea, and Taiwan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: finished and unfinished stainless steel butt-weld pipe fittings of less than 14 inches in diameter.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one Domestic Industry: integrated and combination producers of finished and unfinished stainless steel butt-weld pipe fittings of less than 14 inches in diameter.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In these reviews, the Order Dates are as presented in the preceding tabulation.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 13, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1987. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Korea and Taiwan that currently export or have exported Subject Merchandise to the United States or other countries since 1992.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand

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conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16821 Filed 6–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–540, 354, and 541 (Review)]

Certain Stainless Steel Pipe From Korea, Sweden, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on certain stainless steel pipe from Korea, Sweden, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on certain stainless steel pipe from Korea, Sweden, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 20, 1999. Comments on the adequacy of responses may be filed with the Commission by September 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1987, the Department of Commerce issued an antidumping duty order on imports of seamless stainless steel hollow products from Sweden (52 FR 45985). The Department of Commerce amended the order on November 5, 1992 to include welded stainless steel hollow products from Sweden (57 FR 52761). The Department subsequently revoked the order as to the seamless products on August 16, 1995, the order thus remaining in effect only as to the welded products (60 FR 42529). On December 30, 1992, the Department of Commerce issued antidumping duty orders on imports of welded ASTM A–312 stainless steel pipe from Korea (57 FR 62301) and Taiwan (57 FR 62300). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Korea, Sweden, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In the original and remand determinations concerning Sweden, the Commission found two Domestic Like Products: (1) Welded pipe and tube, excluding articles containing between 10.1 and 11.5 percent chromium (primarily grade 409 pipe and tube), and (2) seamless pipe and tube, including redraw hollows and finished seamless pipe and tube. One Commissioner defined the welded pipe and tube Domestic Like Product differently. Because the antidumping order was subsequently revoked as to seamless pipe and tube, the seamless pipe and tube Domestic Like Product, as defined above, is no longer like, or most similar in characteristics with, the merchandise from Sweden that remains subject to the order. Accordingly, for purposes of responding to this notice, persons should consider welded pipe and tube, excluding articles containing between 10.1 and 11.5 percent chromium by weight (primarily grade 409 pipe and tube), to be the sole Domestic Like Product corresponding to the subject merchandise from Sweden. In its original determinations concerning Korea and Taiwan, the Commission found one Domestic Like Product: welded stainless steel pipes and pressure tubes, excluding grade 409 tubes and mechanical tubes (also known as ornamental tubes). For purposes of this notice, you should report information separately on each of the two foregoing welded pipe and tube Domestic Like Products.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In the original and remand determinations concerning Sweden, the Commission found two Domestic Industries corresponding to the two Domestic Like Products. The first is the welded pipe and tube industry, which consists of integrated companies that melt stainless steel, produce the required basic shapes (sheet, strip, and plate), and then make the pipe and tube; and non-integrated companies that purchase the basic shapes and make the pipe and tube. The second is the seamless pipe and tube industry, which consists of integrated companies that melt the steel, produce the basic shapes, and then make the pipe and tube; and redrawers. Because the antidumping order was subsequently revoked as to seamless pipe and tube, the Domestic Industry corresponding to the Domestic Like Product is now the welded pipe and tube industry, as defined above. The Commission excluded one domestic producer, Sandvik, from the Domestic Industry under the related parties provision. In its original determinations concerning Korea and Taiwan, the Commission found one Domestic Industry: producers of welded stainless steel pipes and pressure tubes, excluding grade 409 tubes and mechanical tubes (also known as ornamental tubes). For purposes of this notice, you should report information separately on each of the two foregoing welded pipe and tube Domestic Industries.

(5) The *Order Dates* are the dates that the antidumping duty order under review became effective. In the review concerning Sweden, the Order Date is December 3, 1987. In the reviews concerning Korea and Taiwan, the Order Date is December 30, 1992.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 13, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–021. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Sweden that currently export or have exported Subject Merchandise to the United States or other countries since 1986. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Korea and Taiwan that currently export or have exported Subject Merchandise to the United States or other countries since 1991.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s") production; and

(b) The quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of each Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s") operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s") operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s") production; and

(b) The quantity and value of your firm's(s") exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s") exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16822 Filed 6–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701–TA–178 (Review) and 731–TA–636–638 (Review)

Stainless Steel Wire Rod From Brazil, France, India, and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on stainless steel wire rod from Brazil, France, India, and Spain.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on stainless steel wire rod from Brazil, France, India, and Spain would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 20, 1999. Comments on the adequacy of responses may be filed with the Commission by September 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, the Department of Commerce issued countervailing duty and antidumping duty orders on the subject imports:

Order date	Product/country	Inv. No.	FR cite
1/3/83	Stainless steel wire rod/Spain	701–TA–178	48 FR 52
12/1/93	Stainless steel wire rod/India	731–TA–638	58 FR 63335
1/28/94	Stainless steel wire rod/Brazil	731–TA–636	59 FR 4021
1/28/94	Stainless steel wire rod/France	731–TA–637	59 FR 4022

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, France, India, and Spain.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: stainless steel wire rod.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one Domestic Industry: producers of stainless steel wire rod.

(5) The *Order Dates* are the dates that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the Order Dates are as presented in the preceding tabulation.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–020. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 13, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Spain that currently export or have exported Subject Merchandise to the United States or other countries since 1982. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Brazil, France, and India that currently export or have exported Subject Merchandise to the United States or other countries since 1992.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16823 Filed 6–30–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–3]

Hazardous Waste Operations and Emergency Response (HAZWOPER); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction and extension of the information collection requirements contained in the standard on Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120).

Request for Comment

The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before August 30, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–3, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the HAZWOPER standard is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR on HAZWOPER, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements in the HAZWOPER Standard (29 CFR 1910.120) prevent or

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minimize the consequences of accidents involving highly hazardous chemicals.

II. Proposed Actions

OSHA proposes to reduce its earlier estimates of the burden hours for the HAZWOPER Standard from 2,229,062 to 1,592,338 hours. The burden reduction resulted when the Agency reestimated the number of clean-up sites, as well as the number of storage, treatment, and disposal (STD) sites (also referred to as Resource Conservation and Recovery Act [RCRA] sites) from 725 to 1,115. OSHA determined that the number of emergency response units remained the same as originally estimated. The Agency also changed the methodology for the training requirements and medical surveillance provisions, using the number of employees rather than sites to better estimate the burden hours for these provisions.

In addition, OSHA identified several activities as usual and customary business practices. Under PRA–95, the burden associated with usual and customary activities are not calculated as part of the paperwork burden.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the HAZWOPER standard.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120).

OMB Number: 1218–0202.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 38,363.

Frequency: Varies (On Occasion, Annually).

Average Time per Response: Varies from 5 minutes (.08 hr.) to 64 hours.

Estimated Total Burden Hours: 1,592,338.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 25th day of June 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–16808 Filed 6–30–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–093]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: Thursday, July 22, 1999, 10:00 a.m. to 4:00 p.m.; and Friday, July 23, 1999, 8:00 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW, MIC–6, Room 6H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond P. Whitten, Code UM, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1996.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—Update: Office of Life & Microgravity Sciences and Applications
—Biology Pillars
—Congressional Budget
—ISS Research
—Biology Inspired Technology
—Discussion of Committee Findings and Recommendations
—Subcommittee Report Review

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 25, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–16788 Filed 6–30–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–094]

NASA Advisory Council, Aero-Space Technology Advisory Committee, Rotorcraft Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aero-Space Technology Advisory Committee, Rotorcraft Subcommittee meeting.

DATES: Tuesday, August 24, 1999, 8:30 a.m. to 5:00 p.m.; Wednesday, August 25, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 235, Galileo Room, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Zabor, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–2890.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Rotorcraft Base Program
—Short Haul & Civil Tiltrotor Program
—Rotorcraft Safety Program
—Rotorcraft Subcommittee Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 25, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–16789 Filed 6–30–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meetings of the Combined Arts Panel, Dance Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on August 9–13, 1999 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC., 20506. The panel will meet with 9:00 a.m. to 6:00 p.m. on August 9th–12th and from 9:00 a.m. to 4:00 p.m. on August 13th. A portion of this meeting, from 11:00 a.m. to 12:30 p.m. on August 13th, will be open to the public for policy discussions.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on August 9th–12th and from 9:00 a.m. to 11:00 a.m. and 12:30 p.m. to 4:00 p.m. on August 13th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: June 21, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–16787 Filed 6–30–99; 8:45 am]

BILLING CODE 7537–01–M

OFFICE OF MANAGEMENT AND BUDGET

[OMB Circular A–127, "Financial Management Systems."]

Interim Final Revision of OMB Circular A–127, "Financial Management Systems"

AGENCY: Office of Management and Budget, Executive Office of the President.

SUMMARY: OMB Circular No. A–127 "Financial Management Systems," dated July 23, 1993, prescribes policies and standards for executive departments and agencies to follow in developing, operating, evaluating, and reporting on financial management systems. The Office of Management and Budget is issuing an interim final revision to Circular A–127 to incorporate recommendations from the Chief Financial Officers (CFO) Council. These recommendations change the process for acquiring software to meet core financial system requirements by eliminating the restriction to only acquire the software and related services from the FMSS Schedule, and to provide for software testing that is independent of the procurement process. These recommendations will result in the revision of Sections 8d and 9b, as well as adding a new Section 9a(3) and 9c. These changes are shown below.

DATES: The interim final revision is effective July 1, 1999. Comments on the interim final revision must be received on or before August 2, 1999.

ADDRESSES: Comments on this interim final revision should be addressed to Jean Holcombe, Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503. Comments up to three pages in length may be submitted via facsimile to 202–395–3952. Electronic mail comments may be submitted via Internet to jholcomb@omb.eop.gov. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Jean Holcombe, Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993.

SUPPLEMENTARY INFORMATION: In January, 1997, at the request of Federal agencies, the Financial Systems Committee (FSC) of the Chief Financial Officers (CFO) Council formed the Joint Systems Solution Team (JSST) to assess the core financial management system acquisition process that was based upon using the FMSS Schedule. At that time, the mandatory GSA FMSS Schedule acquisition award process was linked directly with the software certification (testing) process. The team recommended to the CFO Council an approach that included separation of the testing of products from the acquisition process in order to: (1) Provide more information to agencies; (2) provide assistance to vendors to stimulate product development, and (3) establish a procurement vehicle with streamlined procedures. Through research and analysis, including on-site visits and groupware sessions with public and private sector representatives, the JSST recommended a three-phase program to achieve the goals of effective certification of the off-the-shelf financial systems and simplified procurement. The three phases recommended were: (1) Determinations of requirements, (2) test and qualification of software, and (3) establishment of a procurement vehicle with streamlined procedures. The JSST also recommended that a Program Management Office (PMO) within the Joint Financial Management Improvement Program (JFMIP) be responsible for the requirements determination and the testing and qualification phases and that GSA manage the establishment and administration of the procurement vehicle. These recommendations were approved by the CFO Council. Circular A–127 is being revised to reflect changes in testing and acquiring that resulted from these recommendations. In addition, OMB intends to seek public comment on additional revision to A–127 later this year. These revisions will include: (1) FFMIA review and reporting requirements; (2) guidance on procuring financial management systems and services; and (3) clarifications of current financial management system requirements.

Jacob J. Lew,

Director.

The changes to Circular A–127 are as follows.

1. *Section 8d of the current Circular should be deleted in its entirety and replaced with the following:*

8d(1). *Use of "Off-the-Shelf" Software.* Agencies replacing software to meet core financial system requirements are required to use the GSA FMSS Multiple Award Schedule until its expiration on September 30, 1999. As of October 1, 1999 agencies replacing software to meet core financial system

requirements are no longer required to use the GSA FMSS Multiple Award Schedule; they must use "off-the-shelf" software that has been tested and certified through the JFMIP software certification process as meeting JFMIP Core Financial Management System Requirements. Agencies may purchase this software using the strategy and procurement vehicle they believe will best enable them to meet their needs in a timely and effective manner following the competition requirements associated with the procurement vehicle being used to conduct the acquisition.

In addition, agencies will notify JFMIP that a core financial management software procurement is planned-preferably prior to, or in the early phases of, acquisition planning. JFMIP will electronically post a public message to permit interested certified system vendors to market agencies. The sole purpose of this message is to facilitate agency market research. This message is not intended to, and shall not, serve as an invitation for offerors to submit bids, proposals, or quotes.

OMB policy pertaining to using "off-the-shelf" software is contained in OMB Circular A–130 and must be followed when replacing financial management systems.

8d(2). *Software Certification Testing.* "Off-the-shelf" software will be tested to ensure that it meets core financial system requirements as defined in the *Core Financial System Requirements* document published by JFMIP. JFMIP will coordinate the testing process and issue software certifications. Information on the details of the certification testing process and its results will be available to any interested Federal agency for any certified software package.

2. *A new section 9a(3) is being added to the current Circular as follows:*

9a.(3). *Notify JFMIP on Plans to Acquire Core Financial System Software.* Agencies shall notify JFMIP on plans to acquire software supporting core financial system functions.

3. *Section 9b of the current Circular is revised to read as follows:*

9b. *GSA Responsibilities.* GSA is responsible for continuing to support existing contracts under the FMSS Schedule until their completion. GSA also will make procurement vehicles available to agencies for acquiring software which has been certified according to the processes in Section8d(2).

4. *A new Section 9c is being added and will read as follows:*

9c. *JFMIP Responsibilities.* JFMIP will establish processes for testing "off-the-shelf" software supporting core financial system requirements which include:

—Developing and administering the certification test.
—Notifying GSA when a software package successfully completes the certification test.
—Providing interested parties with information on the core financial system requirements and their related testing scenarios.
—Providing interested parties with details on the results of the certification tests for certified software packages.
—Posting a public notice on planned core financial system procurements.

[FR Doc. 99–16763 Filed 6–30–99; 8:45 am]

BILLING CODE 3110–01–U

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of the collection of information under Part 4043 of its regulations relating to Reportable Events (OMB control number 1212–0013; expires September 30, 1999). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by August 30, 1999.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulations, forms, and instructions may be accessed on the PBGC's web site at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and corporate events to the PBGC. The reporting requirements give the PBGC timely notice of events that indicate plan or employer financial problems. The PBGC uses the information provided in determining what, if any, action it needs to take. For example, the PBGC might need to institute proceedings to terminate the plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

The collection of information under the regulation has been approved through September 30, 1999, by OMB under control number 1212–0013. The PBGC intends to request that OMB extend approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive 305 reportable event per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 1,249 hours and $187,350.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, D.C., this 28th day of June, 1999.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–16795 Filed 6–30–99; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Notice of Failure To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of the collection of information under Part 4043 of its regulations relating to Notice of Failure to Make Required Contributions (OMB control number 1212–0041; expires September 30, 1999). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by August 30, 1999.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulations, forms, and instructions relating to the notice of failure to make required contributions may be accessed on the PBGC's web site at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

SUPPLEMENTARY INFORMATION: Section 302(f) of the Employee Retirement Income Security Act of 1974 ("ERISA") and section 412(n) of the Internal Revenue Code of 1986 ("Code") impose a lien in favor of an underfunded single-employer plan that is covered by the termination insurance program if (1) any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds $1 million. (For this purpose, a plan is underfunded if its funded current liability percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons who are liable for required contributions (i.e., a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only the PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. Therefore, ERISA and the Code require persons committing payment failures to notify the PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions, implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR 4043.81.

The collection of information under the regulation has been approved through September 30, 1999, by OMB under control number 1212–0041. The PBGC intends to request that OMB extend approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive 10 Form 200 filings per year under this collection of information. The PBGC further estimates that the average burden of this collection of information is 42.5 hours and $6,375.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, D.C., this 28th day of June, 1999.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–16796 Filed 6–30–99; 8:45 am]

BILLING CODE 7708–01–P

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

1. The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S Chapter 35):

SSS–2, 3A&B, 3C

Title: The Selective Service System Change of Information, Correction/Change Form and Registration Status Forms.

Purpose: To insure the accuracy and completeness of the Selective Service System registration data.

Respondents: Registrants are required to report changes or corrections in data submitted on SSS Form 1.

Frequency: When changes in a registrant's name or address occur.

Burden: The reporting burden is two minutes or less per report.

II. The following forms, to be used only in the event that inductions into the armed services are resumed, have

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been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS–21

Title: Claim Documentation Form—Administrative.

Purpose: Is used to document those claims for reclassification which can be approved by an Area Office upon the presentation of documentary proof.

Respondents: Registrants whose past or present status is reason for reclassification.

Frequency: One-time.

Burden: The report burden is ten minutes or less per individual.

SSS–23

Title: Claim Documentation Form—Divinity Student.

Purpose: Is used to document a claim for classification as a divinity student.

Respondents: Registrants who are divinity students.

Frequency: One-time.

Burden: The reporting burden is 20 minutes or less per individual.

SSS–24

Title: Claim Documentation Form—Hardship to Dependents.

Purpose: Is used to document a claim for classification on the basis of the hardship induction will cause a registrant's dependent(s).

Respondents: Registrants whose induction will cause hardship on their dependent(s).

Frequency: This form is normally used one-time.

Burden: The reporting burden is 30 minutes or less per individual.

SSS–25

Title: Claim Documentation Form—Minister of Religion.

Purpose: Is used to document claims for classification as a regular of duly ordained minister.

Respondents: Registrants who are regular or duly ordained ministers.

Frequency: One-time.

Burden: The reporting burden is 20 minutes or less per individual.

SSS–26

Title: Claim Documentation Form—Alien or Dual National.

Purpose: Is used to document a registrant's claim for classification as an Alien, Dual National or Treaty Alien.

Respondents: Registrants who wish to be classified as an Alien, Dual National or Treaty Alien.

Frequency: One-time.

Burden: The reporting burden is 20 minutes or less per individual.

SSS–27

Title: Claim Documentation Form—Postponement of Induction.

Purpose: Is used to document a claim for the postponement of induction.

Respondents: Registrants whose present status warrants postponement of induction.

Frequency: This form is normally used one-time.

Burden: The reporting burden is ten minutes or less per individual.

SSS–109

Title: Student Certificate.

Purpose: Is used to substantiate a claim for postponement of induction because the subject registrant is a student.

Respondents: Registrants who are attending school but have not graduated.

Frequency: This certificate is normally used one-time.

Burden: The reporting burden is six minutes or less per individual.

SSS–130

Title: Application by Alien for Relief from Training and Service in the Armed Forces of the United States.

Purpose: Is used to request relief from training and service based on being a national of a country with which an applicable treaty is in effect, i.e., "Treaty Alien."

Respondents: Those registrants who are "Treaty Aliens" and desire not to serve in the Armed Forces of the United States.

Frequency: One-time.

Burden: The reporting burden is five minutes or less per individual.

SSS–402

Title: Uncompensated Registrar Appointment.

Purpose: Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

Respondents: United States citizens over the age of 18.

Frequency: One-time.

Burden: The reporting burden is three minutes or less.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Dated: June 24, 1999.

Gil Coronado,

Director.

[FR Doc. 99–16783 Filed 6–30–99; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice #3073]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Closed Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 section 10(a)(2)(1996), the Secretary of State announces the following Arms Control and Nonproliferation Advisory Board (ACNAB) meetings:

Date	Location
July 14–15, 1999	Sandia National Laboratory, Albuquerque, NM.
August 25–26, 1999	Minot Air Force Base, ND.
September 14–15, 1999	State Department Building, 2201 C Street, NW, Room 5930, MS Washington, DC 20520.
October 26–27, 1999	Los Alamos National Laboratory, Los Alamos, NM.
November 8–9, 1999	Livermore National Laboratory, Livermore, CA.
December 1–2, 1999	State Department Building, 2201 C Street, NW, Room 5930, MS Washington, DC 20520.

Pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 section 10(d)(1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that these Board meetings will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The Board will review specific arms control and nonproliferation issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Convention on Conventional Weapons and the Chemical and Biological Weapons Convention. Members will observe mock arms control inspections at Minot Air Force Base, ND.

For more information, please contact Robert Sherman, Executive Director, Arms Control and Nonproliferation Board, at (202) 647–1192.

Dated: June 28, 1999.

Robert Sherman,

Executive Director, Secretory of State's Arms Control and Nonproliferation Advisory Board.

[FR Doc. 99–16880 Filed 6–29–99; 1:18 pm]

BILLING CODE 4710–27–U

DEPARTMENT OF STATE

[Public Notice No. 3070]

United States International Telecommunications Advisory Committee, Radiocommunication Sector (ITAC–R); Notice of Meeting

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee Radiocommunication Sector (ITAC–R). The purpose of the Committee is to advise the Department on policy and positions with respect to the International Telecommunication Union and international radiocommunication matters.

The ITAC–R will meet from 1:30 to 4:30 on July 21, 1999 at the Department of State east auditorium to review ITU Council actions with respect to radiocommunication matters, consider draft guidelines for preparatory activities for international radiocommunication meetings and to begin preparations for the Conference Preparatory Meeting (CPM) for the World Radiocommunication Conference 2000.

Members of the general public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend ITAC–R meeting and subsequent preparatory meetings for the CPM should send a fax to (202) 647–7407 no later than 24 hours before the meeting. The fax should include the name of the meeting (ITAC–R National Committee and date of meeting), your name, social security number, date of birth, and organization. One of the following will be required for admission: U.S. driver's license, U.S, passport, U.S. Government identification card. Enter from the "C" Street Main Lobby; in view of escorting requirement, non-government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: June 23, 1999.

John T. Gilsenan,

Chairman, ITAC–R National Committee.

[FR Doc. 99–16797 Filed 6–30–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice No. 3072]

United States International Telecommunication Advisory Committee, Telecommunication Standardization Sector (ITAC–T) National Committee; Notice of Meeting

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee Telecommunication Standardization (ITAC–T). The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization. Meetings will be held at the Department of State, 2201 "C" Street, NW, Washington, DC.

The ITAC–T National Committee will meet from 9:30 to 4 on July 20 in Room 5951 (rather than July 13), August 19 in Room 3524 (rather than August 25), September 14, in room 1406, and October 6, 1999 in Room 1207 to prepare for the next ITU Telecommunication Sector Advisory Group (TSAG) and World Telecommunication Sector Assembly (WTSA) meetings.

Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend ITAC–T National Committee meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC–T National Committee and date of meeting), your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, U.S. passport, U.S. Government identification card. Enter from the "C" Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: June 23, 1999.

Marian R. Gordon,

Director, Telecommunication and Information Standards.

[FR Doc. 99–16798 Filed 6–30–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of the June 1999 Federal Aviation Administration Change 12 of the Standard Clauses

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of the June 1999 Change 12 of the standard clauses used in FAA procurement contracts and Screening Information Requests (SIR), as well as the latest versions of the real property and utility clauses.

ADDRESSES: The complete text of the June 1999 FAA Change 12 of the standard clauses and the latest versions of the real property and utility clauses are available on the Internet at http://fast.faa.gov/. Use of the Internet World Wide Web Site is strongly encouraged for access to copies of the FAA Acquisition Management System and the current clauses. If Internet service is not available, requests for copies of these documents may be made to the following address: FAA Acquisition Reform, ASU–100, Rm. 438, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Yvonne Joseph, Procurement Management Branch, Federal Aviation Administration, Rm. 435, 800 Independence Avenue, SW, Washington, DC 20591, (202) 267–8638.

SUPPLEMENTARY INFORMATION: On October 31, 1995, Congress passed an Act *Making Appropriations for the Department of Transportation and Related Agencies, for the Fiscal Year Ending September 30, 1996, and for Other Purposes* (The 1996 DOT Appropriations Act). On November 15, 1995, the President signed this bill into law. In Section 348 of this law, Congress directed the Administrator of the FAA to develop and implement a new acquisition management system that addresses the unique needs of the agency. The new FAA Acquisition Management System went into effect on April 1, 1996 (see *Notice of availability* at 61 FR 15155 (April 4, 1996)).

The Air Traffic Management System Performance Improvement Act of 1996, title II of the Federal Aviation Reauthorization Act of 1996, Pub. L. 104–264, October 9, 1996, expanded the procurement reforms previously authorized by the 1996 DOT Appropriations Act. Amendment 01 implements title II and makes other necessary changes to, and clarifications of, the FAA Acquisition Management System.

Issued in Washington, DC, on June 18, 1999.

Deborah W. Wilson,

Acting Director of Acquisitions, ASU–1.

[FR Doc. 99–16530 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Kona International Airport, Kailua-Kona, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on a new Noise Compatibility Program for Kona International Airport, submitted by the state of Hawaii, Department of Transportation, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On September 24, 1998, the FAA determined that the Noise Exposure Maps, submitted by the State of Hawaii, Department of Transportation under 14 CFR part 150, were in compliance with applicable requirements. On March 23, 1999, the Associate Administrator for Airports approved the Noise Compatibility Program for Kona International Airport.

EFFECTIVE DATE: The effective date of the FAA's approval of the Noise Compatibility Program for Kona International Airport is March 23, 1999.

FOR FURTHER INFORMATION CONTACT: David J. Wellhouse, Airport Planner, Honolulu Airports District Office, Federal Aviation Administration, Box 50244, Honolulu, Hawaii 96850–0001, Telephone: 808/541–1243. Street address: Federal Building, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii 96813. Documents reflecting the FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to a Noise Compatibility Program for Kona International Airport, effective March 23, 1999. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (herein after referred to as the "Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non compatible land uses and prevention of additional non compatible land use within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government and;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of navigable airspace and air traffic control responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State or local law. Approval does not, by itself, constitute a FAA implementation action. A request for Federal action or approval to implement specific Noise Compatibility Measures may be required and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Honolulu, Hawaii.

The state of Hawaii, Department of Transportation submitted to the FAA on December 29, 1997, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 1996 through November 1996. The Kona International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on September 24, 1998. Notice of this determination was published in the **Federal Register** on October 8, 1998.

The Kona International Airport study contained a proposed Noise Compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2001. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on September 24, 1998 and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program.

The submitted program contained one proposed action for noise abatement, one action for noise mitigation, and three program management measures for both on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program was approved, by the Associate Administrator for Airports, effective March 23, 1999.

Outright approval was granted for two of the five specific program measures. The approved measures included such items as: Annually monitor aircraft noise levels and operations at the airport; monitor development proposals in the airport environs; and include disclosure provisions in land transfer documents. No Action was taken on the measure to implement an informal preferential runway use program and on the measure to use Runway 35, 68 percent of the time at night during light winds instead of Runway 7. The measure to install sound treatment of impacted residences within the 60 DNL contour was disapproved pending submission of additional information.

These determinations are set forth in detail in the Record of Approval endorsed by the Associate Administrator for Airports on March 23, 1999. The Record of Approval, as well as other evaluation materials, and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of state of Hawaii, Department of Transportation and at the Kona International Airport, Kailua-Kona, Hawaii.

Issued in Hawthorne, California on June 23, 1999.

Ellsworth L. Chan,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 99–16755 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

FeEderal Aviation Administration

Intent To Prepare an Environmental Impact Statement (EIS) and Hold Scoping Meetings for Proposed Runway Reconfiguration at San Francisco International Airport (SFO), San Francisco, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to prepare an EIS and conduct three (3) public scoping meetings and one (1) scoping meeting for interested Federal, state and local agencies.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice to advise the public that an Environmental Impact Statement will be prepared to evaluate a proposed reconfiguration of the runways at San Francisco International Airport, San Francisco, California. To ensure that all major and/or substantial issues related to the proposed action are identified three (3) public scoping meetings and one (1) scoping meeting for interested Federal; state and local agencies will be held.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, SFO–613, Planning and Programming Section, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2927. Comments on the scope of the EIS should be submitted to the address above and must be received no later than September 9, 1999.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) in cooperation with the U.S. Army Corps of Engineers (ACOE), and U.S. Fish and Wildlife Service (FWS), will prepare an Environmental Impact Statement for the proposed reconfiguration of the runways at SFO. The need to prepare a National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS) is based on the procedures described in FAA Order 5050.4A, Airport Environmental Handbook: SFO is a commercial service airport located within a standard metropolitan statistical area and the proposed runway reconfiguration includes construction of reconfigured runways to accommodate air carrier aircraft arrival and departure operations. FAA approval of the Airport Layout Plan for the airfield design will impact the area around the airport that has existing non-compatible land uses in terms of aircraft noise; and the proposed development is likely to be controversial on several other significant environmental categories.

The City and County of San Francisco, pursuant to the California Environmental Quality Act of 1970 (CEQA) will also prepare an Environmental Impact Report (EIR) for the proposed development.

The FAA is the Federal Lead Agency responsible for preparing the EIS in cooperation with ACOE and FWS. The City and County of San Francisco, Office of Environmental Review is the State Lead Agency responsible for preparing the EIR. The lead agencies anticipate that separate EIS and EIR documents will be prepared on a parallel course. The EIS will meet the requirements of NEPA, while the EIR will meet CEQA requirements.

ALTERNATIVES: The EIS will evaluate multiple alternatives including various runway configurations at SFO, off airport alternatives, and a no action alternative. The proposed Runway Reconfiguration project alternatives will include one or more of the components listed below. A range and/or combination of construction methodologies will be considered. Methodologies may include fill in San Francisco Bay. Examples of potential construction methodologies include placement of fill in the San Francisco Bay (up to approximately 1,500 acres) and/or piling to support the runway(s).

Potential Runway Reconfiguration Project Components

- Construction of a new Runway 28R/10L parallel to and north of existing Runway 28R/10L.
- Construction of a new Runway 1/19 parallel to and either east or west of the existing Runway 1/19 system.
- New/revised instrument approach/departure flight procedures.
- Lengthening and northerly relocation of existing Runway 19R/1L.
- Construction of Runway Safety Areas for new and existing runways per the latest FAA requirements.
- Reconstruction and relocation of taxiway system to support the newly reconfigured runways.
- Reconstruction and relocation of airfield access roadways to support the new runway configuration.
- Reconstruction and relocation of navigation, communication and aircraft control facilities as required to support the reconfigured runways.
- Reconstruction of Aircraft Rescue and Fire Fighting facilities as necessary to support the runways.

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• Potential removal and/or relocation of hangar and airfreight facilities to support the runway configuration.

• Reconstruction of ancillary support facilities such as drainage facilities, utilities and seawalls, etc to support the runway reconfiguration.

• Potential borrow site for fill material.

• Mitigation projects, as required, for the runway reconfiguration and associated actions.

PUBLIC SCOPING MEETINGS: The FAA will hold three (3) public and one (1) governmental agency scoping meetings to solicit input from the public and various Federal, state and local agencies to ensure that the full range of issues related to the proposed project are addressed and all major and/or substantial issues are identified. The first public scoping meeting will be held on Wednesday, August 4, 1999, from 7 p.m. to 10 p.m. at the South San Francisco Conference Center, 225 South Airport Boulevard, South San Francisco, California. The second public scoping meeting will be held on Saturday, August 7, 1999, from 12 p.m. to 4 p.m. at the San Mateo City Council Chambers, 300 West 20th Avenue, San Mateo, California. The third public scoping meeting will be held on Tuesday, August 10, 1999, from 7 p.m. to 10 p.m. at the City of San Francisco Board of Supervisors' Legislative Chamber, Room 250 at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, California. A scoping meeting will be held specifically for governmental and public agencies on Tuesday, August 10, 1999, from 1 p.m. to 3 p.m. In the City of San Francisco Board of Supervisors' Legislative Chamber, Room 250 at City Hall, for those agencies which have jurisdiction or special expertise on any environmental issue that should be addressed in the EIS being prepared for the project.

Comments and Suggestions: Written comments and suggestions concerning the scope of the EIS may be mailed to the FAA informational contact listed above and must be received no later than September 9, 1999.

Issued in Hawthorne, California on June 24, 1999.

Herman C. Bliss,

Manager, Airports Division, AWP-600, Western-Pacific Region.

[FR Doc. 99–16756 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Streamlining; Notice of Availability of Information

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of available information.

SUMMARY: The FHWA is announcing the availability of information about environmental streamlining efforts under section 1309 of the Transportation Equity Act for the 21st Century (TEA–21).

FOR FURTHER INFORMATION CONTACT: Ms. Lucy Garliauskas, Office of NEPA Facilitation, HENP, (202)366–2068, or Ms. Virginia I. Cherwek, Office of the Chief Counsel, HCC–31, (202)366–1372, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; e-mail: lucy.garliauskas@fhwa.dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The environmental provisions of TEA–21, Pub. L. 105–178, 112 Stat. 107, 232, reflect Congress' reaction to concerns expressed about delays, unnecessary duplication of effort, and added costs often associated with the current process for reviewing and approving transportation projects. At the same time, the Congress did not change any environmental laws. Therefore, the FHWA concludes that the Congress intended no reduction in environmental protection. The chief objective of section 1309 of TEA–21, Environmental Streamlining, is to focus efforts on better, earlier, and more timely coordination among Federal, State, and local agencies.

The FHWA is currently in the process of identifying and defining ways to improve and streamline the environmental review processes for the development of highway projects consistent with continued environmental protection. These efforts may include:

(a) Entering into a national Memorandum of Understanding with other Federal agencies who are responsible for reviewing environmental documents prepared under the National Environmental Policy Act of 1969, Pub. L. 91–190, 83 Stat. 852, as amended, for a highway construction or transit project, or who issue a permit, license, and opinion relating to the project;

(b) Recognizing successful efforts, promoting creative solutions at State and local levels, building upon successful practices;

(c) Encouraging field organizations to pursue partnering opportunities and programmatic agreements for site specific or project specific (pilot) efforts;

(d) Developing national dispute resolution procedures; and

(e) Identifying ways to develop performance measures and to benchmark techniques assessing the effectiveness of the project development processes and practices.

The FHWA is also considering revisions to its Environmental Impact and Related Procedures regulations. Any proposed revisions will be published separately in the **Federal Register** for public comment.

Updates on the FHWA's activities, documents, and streamlining initiatives are available to the public. Additionally, information on future meetings and conference calls will be located on the FHWA Office of Planning and Environment's website: *http://www.fhwa.dot.gov/environment/index.htm.*

Authority: 23 U.S.C. 315; sec. 1309, Pub. L. 105–178, 112 Stat. 107, 232; and 49 CFR 1.48.

Issued on: June 24, 1999.

Kenneth R. Wykle,

Administrator.

[FR Doc. 99–16827 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–5057]

Fatigue Reducing Technologies

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Request for information.

SUMMARY: In accordance with section 4021(a) of the Transportation Equity Act for the 21st Century (TEA–21), the FHWA seeks information about technologies that may reduce commercial motor vehicle (CMV) driver fatigue, while also lowering CMV emissions and reducing fuel consumption. The FHWA believes that many such technologies may exist in various stages of development and would like to obtain more information about them.

DATES: The FHWA must receive your submission of information on potential technologies on or before August 30, 1999.

ADDRESSES: All information should refer to the docket number that appears in the heading of this document. Submit it to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All submissions will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. If you desire notification of receipt of your submission of information, include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Alvarez, Office of Motor Carrier Research & Standards, HMCS–20, (202) 366–4706, or Mr. Charles Medalen, Office of Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC. 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments by using the DOT's Dockets Management System (DMS) at *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1662. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

Section 4021 of TEA–21 (Pub. L. 105–178) requires the Secretary of Transportation to encourage the research, development, and demonstration of technologies that may aid in reducing commercial motor vehicle (CMV) operators' fatigue. In implementing Section 4021, the Secretary must take into account the degree to which the fatigue-reducing technology: will be cost-efficient; can be used effectively under diverse climactic conditions; and will further emission reductions, conserve energy, and support other transportation goals.

The FHWA has received information about a few private initiatives that appear to reduce fatigue while meeting varied climactic demands, conserving energy, and reducing emissions. However, as far as the FHWA is aware, the relative benefits and costs of these technologies (e.g., in terms of fuel consumption, definable level of emissions reductions, developmental cost, and operating cost) have not been subjected to a rigorous assessment. Moreover, other viable products may be planned or under development that the FHWA should include in any general assessment.

Consequently, the FHWA is interested in obtaining as much information as possible about a variety of emerging technologies, and requests that all interested parties provide the agency with information about specific technologies that appear to satisfy the intent of section 4021.

The FHWA will use the information that it collects to help it determine research priorities and funding needs. The FHWA also will use the information to determine whether Federal support of initial engineering and cost-benefit evaluations of the described technologies would be appropriate to answer questions about their performance. Analyzing performance will help determine potential benefits, as well as cost or design obstacles that might lessen acceptance. This cost-benefit analysis would be essential before the FHWA could make any further public investment in research to determine how well any specific technology mitigates fatigue.

Response Requirements

The FHWA asks that respondents provide the following information, at a minimum:

1. A general description of the technology itself, identifying, for example, its chemical, mechanical, and electronic components and configuration;

2. A brief description of the developmental history;

3. A summary of the technology's current or intended use(s);

4. The energy source(s) used, or to be used. In particular, whether it would, in a commercial motor vehicle environment, rely upon existing sources (e.g., on-vehicle fuel or battery power) or some additional/external source of energy;

5. A description of its status (i.e., initial design stage, available prototype, pilot application/testing in an industry or transportation environment);

6. If appropriate, its current domestic or foreign application, either in transportation or some other industrial capacity;

7. Its potential for use and maintainability in a mobile CMV environment (assuming the technology is not now specifically designed for, or being used on CMVs);

8. Information about its public and private sector sponsor(s); and

9. The estimated cost of the technology.

In addition to the specific questions listed above, commenters are encouraged to discuss any other issues they believe are relevant to the assessment of technologies described in this Notice. The FHWA requests that commenters avoid submitting proprietary or confidential information.

Subsequent Evaluations

Once the FHWA has completed its review of all the submissions, the agency will publish a summary report on the characteristics, status and future developmental needs of the technologies described by individual respondents to this Notice. The FHWA also will discuss in its report the agency's determination of any need for additional evaluations or tests, based on the nature and number of individual technologies described in the submissions. The FHWA hopes to devote research dollars in FY 2000 to these additional evaluations or tests, as determined appropriate, subject to the availability of funds.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Sec. 4021(a) of Pub. L. 105–178.

Issued on: June 23, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–16758 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5476; Notice 2]

Electric Vehicles International; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

We are granting the application by Electric Vehicles International LLC ("EVI") of Anderson, Indiana, to be exempted from portions of Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems.* The statutory basis

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for granting this request is our finding that "compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard." 49 U.S.C. 30113.

We published a notice of receipt of the application on April 12, 1999 (64 FR 17715), and asked for comments on it. There was one comment: Gillig Corporation opposed granting the application. We present Gillig's comment in our discussion below on why we have decided to grant EVI's request.

The discussion below is based on information that EVI provided in its application.

Why EVI Needs an Exemption

EVI requested an exemption for three years. In August 1997, EVI was organized as a corporation, acquiring some of the assets of Specialty Vehicle Mfg. Corp. of California, a manufacturer of buses and trolleys for use in transit and shuttle service. EVI's goal is to turn the operation into "a first class bus company." It estimated its projected start-up costs at $4,000,000, and has raised $3,000,000 through a private placement offering.

Effective with vehicles manufactured on or after March 1, 1998, S5.1.6.1(a) of Standard No. 121 requires each single unit vehicle including buses to be equipped with an antilock brake system. EVI's product line consists of battery-powered and hybrid electric buses and trolleys, primarily used by transit agencies. Presently, it produces Generation III buses and trolleys. These vehicles are rated at 18,000 to 22,000 GVW, "so they do not fall in either the light vehicle or heavy vehicle class." It knows "from experience working with axle suppliers that it would take a minimum of 18–24 months to receive a prototype axle with antilock brakes." After receiving the prototype system, it would have to review for further design changes necessary to install on future vehicles.

Why Compliance Would Cause EVI Substantial Economic Hardship

To design, develop, and test an antilock brake system for a production rate of 50 to 300 vehicles per year would create a substantial increase in the price of the buses and trolleys that EVI intends to manufacture. If EVI is unable to obtain an exemption, it would have to "cease production and close the company." Its net loss for the 5 months it was in existence in 1997 was $437,900, increasing to $1,632,800 for the 12 months of 1998. The company had manufactured two vehicles as of the end of January 1998.

How EVI Has Tried in Good Faith To Comply With Standard No. 121

EVI's buses use an air-over-hydraulic brake system. The company has searched the industry to find an antilock brake system for vehicles defined as "medium duty vehicles." To date, it has been unable to find any manufacturer that has a system available to meet its braking requirements. Attachment 3 to EVI's application listed 19 manufacturers and suppliers that it contacted in its attempt to comply with the antilock brake system requirements in Standard No. 121.

Why an Exemption for EVI Would Be in the Public Interest and Consistent with the Objectives of Motor Vehicle Safety

The City of Anderson is assisting EVI financially with additional capital with the stipulation that EVI hire "at least 51% low and moderate income persons by creating jobs." EVI will offer prospective assembly positions extensive training in conjunction with the County's job training and partnership administration.

EVI enclosed data purporting to show that the total service and emergency brake stopping distance of its bus already comply with the maximum stopping distances specified in Table II of Standard No. 121, and will be unaffected by an exemption.

Why Gillig Corporation Opposes Granting EVI a Temporary Exemption

As noted earlier, we received one comment on EVI's application, from Gillig Corporation, which opposed it.

Gillig describes itself as "a manufacturer of heavy duty buses, primarily for transit operations." It views the antilock features of Standard No. 121 as a justifiable safety requirement, and not an option dependent on the profitability of a corporation. Given the April 1994 SNPRM that proposed applicability of antilock feature to buses initially in 1998, Gillig argues that this "is more than enough notice to plan for a business like change over," and concludes that "EVI ignored this important standard for at least two years." It criticizes EVI's "development time claims [as] obviously overstated." Gillig asserts that all EVI's competitors "have exactly the same business problems and economic hardships," and feels that it is "unfair for EVI to seek relief . . . for their business mismanagement." Gillig comments that "virtually all transit buses are included in F[ederal]T[ransit]A[dministration] funding programs" and that the taxpayers will not be receiving buses that fully comply with the FMVSS. Finally, in Gillig's view, we "encouraged this petition last year with a large scale exception to Orion Bus Industries."

Our Finding That a Denial Would Cause Substantial Economic Hardship to a Manufacturer That Has Tried in Good Faith To Comply With Standard No. 121

According to its application, EVI was organized in August 1997, slightly over 6 months before the effective date of the requirement from which it seeks temporary relief. For this reason, Gillig's comment that "EVI ignored this important standard for at least two years" does not seem to be accurate. Nor does it appear that "all EVI's competitors have exactly the same business problems and economic hardships," because we have received no other applications from start-up manufacturers who cannot find a supplier. The Orion exemption (63 FR 26248) that Gillig mentioned is not on point; Orion simply was unable to complete an order of 148 buses before the effective date of the anti-lock requirement because of the insolvency of one of its suppliers. The rest of Orion's production complied as of March 1, 1998.

EVI's total production to date appears to be two buses, produced before March 1, 1998. The company first approached us about applying for an exemption at the end of September 1998. It appears obvious that it did not do so until it concluded that it could not find a supplier, after contacting 19 prospects. Although Gillig commented that EVI's "development times are obviously overstated," EVI's inability to find a supplier was not contested. In the meantime, EVI's cumulative net losses as of the end of 1998 were approximately $2,000,000.

We find therefore that denial of an exemption will cause substantial economic hardship to a company that has made a good faith attempt to meet the anti-lock requirements of the air brake standard.

Our Finding That a Temporary Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

EVI informed us that, under a financing agreement with the City of Anderson, it is required to hire at least 51% low and moderate income persons by creating jobs, in conjunction with the County's job training and partnership administration. We have concluded that it is in the public interest as well to facilitate the development of electric and hybrid propulsion systems.

EVI enclosed data which it believes show that the total service and emergency brake stopping distances of its bus already comply with the maximum stopping distances specified in Table II of Standard No. 121, and will be unaffected by an exemption.

We find therefore that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. We are nevertheless mindful that vehicles engaged in carrying the public on a daily basis ought to comply with anti-lock requirements at the earliest possible time. Although EVI has asked for a 3-year exemption, and we are granting it, we have the authority to impose appropriate terms on the grant (49 U.S.C. 30113(b)(1)). We are therefore asking EVI to provide us with a yearly report on the progress it is making in bringing its buses into full compliance with Standard No. 121, with the hope that this may be achieved before the end of the exemption period. This report will also include the number of buses produced under the exemption as of that date.

Grant of the Temporary Exemption

Electric Vehicles International is hereby granted NHTSA Temporary Exemption No. 99–7 from S5.1.6.1(a) of 49 CFR 571.121 Standard No. 121 *Air brake systems*, expiring May 1, 2002, subject to the condition that it provide a report to the Administrator on May 1, 2000, and May 1, 2001, detailing its continuing efforts to conform, and including the number of buses manufactured under the exemption.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: June 22, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–16718 Filed 6–30–99; 8:45 am]

BILLING CODE 4910–59–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "The Treasury of St. Francis of Assisi"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This is an amendment to the Notice regarding Culturally Significant Objects Imported for Exhibition in the exhibit entitled "The Treasury of St. Francis of Assisi." This is to amend **Federal Register** Doc. 99–1839, FR Vol. 64, No. 17 (January 27, 1999) by inserting the following language after the words "June 27, 1999": "and at the Fine Arts Museums of San Francisco, CA from on or about July 24, 1999, to on or about November 14, 1999." is in the national interest.

Dated: June 25, 1999.

Les Sin,

General Counsel.

[FR Doc. 99–16749 Filed 6–30–99; 8:45 am]

BILLING CODE 8230–01–M

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Thursday
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Part II

Environmental Protection Agency

40 CFR Part 51
Regional Haze Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6353–4]

RIN 2060–AF32

[Docket No A–95–38]

Regional Haze Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 169A of the Clean Air Act (CAA) sets forth a national goal for visibility which is the "prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution." There are 156 Class I areas across the country, including many well-known national parks and wilderness areas, such as the Grand Canyon, Great Smokies, Shenandoah, Yellowstone, Yosemite, the Everglades, and the Boundary Waters. Regional haze is visibility impairment caused by the cumulative air pollutant emissions from numerous sources over a wide geographic area. The EPA promulgated regulations in 1980 to address visibility impairment that is "reasonably attributable" to one or a small group of sources, but EPA deferred action on regional haze regulations until monitoring, modeling, and scientific knowledge about the relationship between pollutants and visibility effects improved. In 1993, the National Academy of Sciences (NAS) concluded that "current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility."

On July 31, 1997 (62 FR 41138), EPA published proposed amendments to the 1980 regulations to set forth a program to address regional haze visibility impairment. The EPA also published a notice of availability of additional information on the proposed regional haze regulation on September 3, 1998. This notice took comment specifically on new implementation plan timelines set forth in the Transportation Equity Act for the 21st Century, Public Law 105–178, and on a proposal from the Western Governors' Association (WGA) for addressing the recommendations of the Grand Canyon Visibility Transport Commission (GCVTC) in the final rule. The EPA received more than 1300 comments overall on the proposal and notice of availability.

Today's final rule calls for States to establish goals and emission reduction strategies for improving visibility in all 156 mandatory Class I national parks and wilderness areas. Specific provisions are included in the rule allowing nine western States to implement the recommendations of the GCVTC within the framework of the national regional haze program. In addition, EPA encourages States to work together in regional partnerships to develop and implement multistate strategies to reduce emissions of visibility-impairing fine particle pollution.

DATES: The regulatory amendments announced herein take effect on August 30, 1999.

ADDRESSES: *Docket.* The public docket for this action is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday excluding legal holidays, at the Air and Radiation Docket and Information Center (6102), Attention: Docket A–95–38, Room M–1500, 401 M Street, SW, Washington, DC 20460, phone 202–260–7548, fax 202–260–4400, email: A-and-R-Docket@epamail.epa.gov. A reasonable fee for copying may be charged. The regional haze regulations are subject to the rulemaking procedures under section 307(d) of the CAA. The documents relied on to develop the regional haze regulations have been placed in the docket.

FOR FURTHER INFORMATION CONTACT: For general questions regarding this notice, contact Richard Damberg, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5592, email: damberg.rich@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The official record for this rulemaking, as well as the public version, has been established under docket number A–95–38 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. World Wide Web sites have been developed for overview information on visibility issues and related programs. These web sites can be accessed from Uniform Resource Locator (URL): http://www.epa.gov/airlinks/.

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I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
J. National Technology Transfer and Advancement Act

I. Overview of Today's Final Rule

This preamble provides the details and rationale for the final regional haze rule. Unit II includes background information on regional haze and on the legal and scientific basis for today's action. Unit III describes the provisions of the national requirements for regional haze and includes a discussion of the comments received on the July 1997 proposal. Unit IV discusses specific regional provisions for 16 western Class I areas that were the subject of a 1996 report by the GCVTC. Unit V is a discussion of issues related to implementation of the rule by Indian tribes. Unit VI summarizes several technical amendments to existing visibility regulations in order to coordinate those requirements with the requirements of today's final rule. Unit VII discusses how today's final rulemaking is in compliance with the requirements of various executive orders and statutes.

II. Background Information on the Regional Haze Program

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which emit fine particles and their precursors and which are located across a broad geographic area.[1] Twenty years ago, when initially adopting the visibility protection provisions of the CAA, Congress specifically recognized that the "visibility problem is caused primarily by emission into the atmosphere of SO_2, oxides of nitrogen, and particulate matter, especially fine particulate matter, from inadequate[ly] controlled sources."[2] The fine particulate matter (PM) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) that impairs visibility by scattering and absorbing light can cause serious health effects and mortality in humans, and contribute to environmental effects such as acid deposition and eutrophication. Data from the existing visibility monitoring network show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness area monitoring stations.[3] Average visual range in many Class I areas[4] in the Western United States is 100–150 kilometers (13.6–9.6 deciviews),[5] or about one-half to two-thirds of the visual range that would exist without manmade air pollution. In most of the east, the average visual range is less than 30 kilometers (25 deciviews or more), or about one-fifth of the visual range that would exist under estimated natural conditions. The role of regional transport of fine particles in contributing to elevated PM levels and regional haze impairment has been well documented by many researchers[6] and recognized as a significant issue by policymakers from Federal, State and local agencies, industry and environmental organizations.

B. How Today's Final Rule Responds to the CAA

The visibility protection program under sections 169A, 169B, and 110(a)(2)(J) of the CAA is designed to protect Class I areas[7] from impairment due to manmade air pollution. Congress adopted the visibility provisions in the CAA to protect visibility in these "areas of great scenic importance."[8] The current regulatory program addresses visibility impairment in these areas that is "reasonably attributable"[9] to a specific source or small group of sources. In adopting section 169A, the core visibility provisions adopted in the 1977 CAA Amendments, Congress also expressed its concern with visibility problems caused by pollutants that "emanate from a variety of sources." It noted the problem of "hazes" from "regionally distributed sources,"[10] and concluded that additional provisions were needed to remedy "the growing visibility problem." The purpose of today's final rule is to revise the existing visibility regulations[11] in order to integrate provisions addressing regional haze impairment. Today's final rule establishes a comprehensive visibility protection program for Class I areas. Figure 1 is a map indicating the locations of the Class I areas.

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[1] U.S. EPA. Air Quality Criteria for Particulate Matter. Office of Research and Development, National Center for Environmental Assessment. EPA/600/P–95/001bF. Research Triangle Park, NC. 1996.

[2] H.R. Rep. No. 95–294 at 204 (1977).

[3] National Park Service. Air Quality in the National Parks: A Summary of Findings from the National Park Service Air Quality Research and Monitoring Program. Natural Resources Report 88–1. Denver, CO, July 1988.

[4] Areas designated as mandatory Class I Federal areas are those national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 areas, and all international parks which were in existence on August 7, 1977. Visibility has been identified as an important value in 156 of these areas. See 40 CFR part 81, subpart D. The extent of a Class I area includes subsequent changes in boundaries, such as park expansions. (CAA section 162(a)). States and tribes may designate additional areas as Class I, but the requirements of the visibility program under section 169A of the CAA apply only to "mandatory Class I Federal areas," and they do not directly address any additional areas.

[5] "Deciview" is a visibility metric discussed further in unit III.C. of today's notice, and defined in section 51.301(bb) of the rule. Higher deciview values indicate greater levels of visibility impairment.

[6] See National Acid Precipitation Assessment Program. Acid Deposition: State of Science and Technology. Report 24, Visibility: Existing and Historical Conditions—Causes and Effects, Table 24–6. Washington, DC 1991. See also U.S. EPA. Air Quality Criteria for Particulate Matter. Office of Research and Development, National Center for Environmental Assessment. EPA/600/P–95/001bF. Research Triangle Park, NC. 1996.

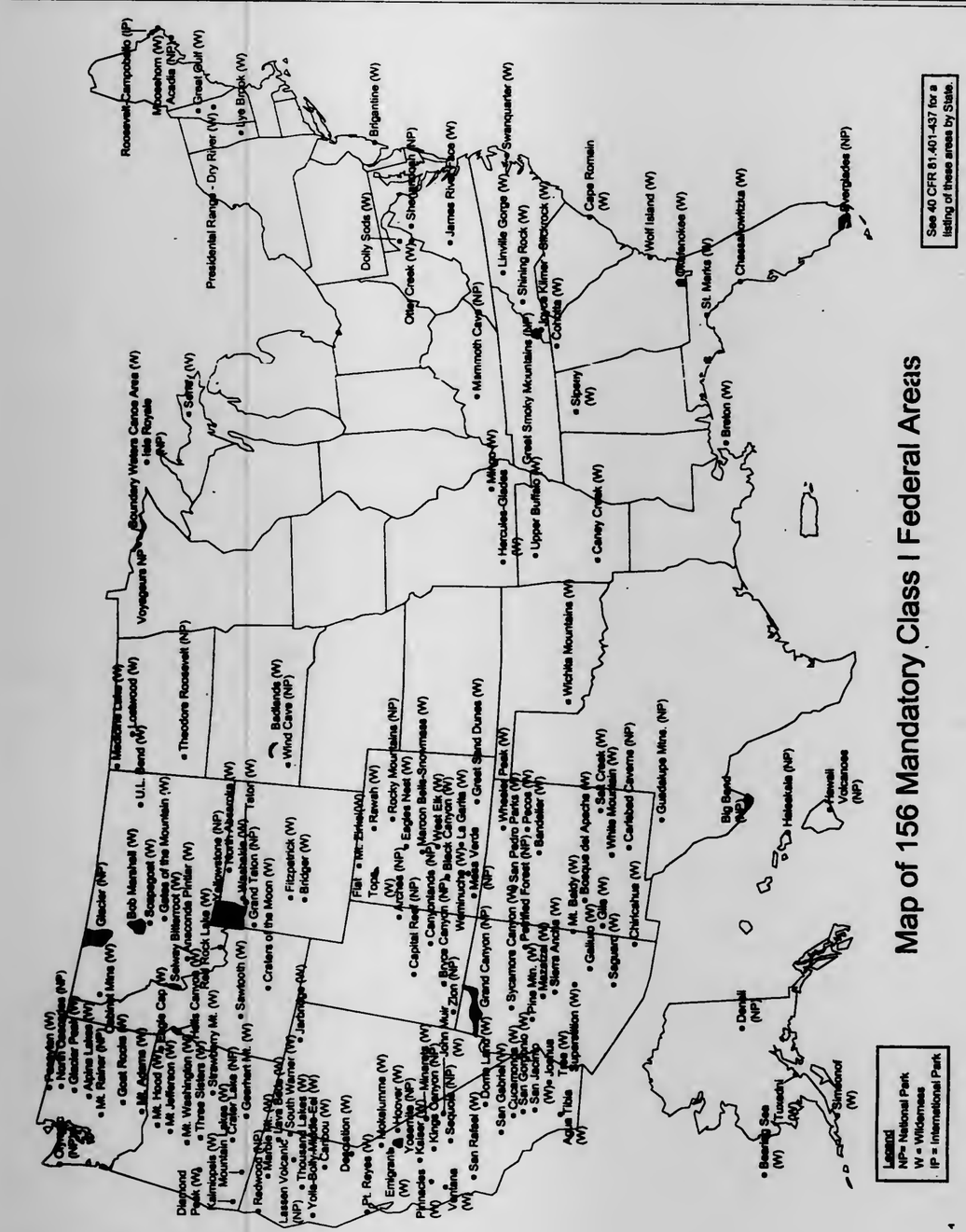
[7] For the purposes of this preamble, the term "Class I area" will be used to describe the 156 mandatory Class I Federal areas identified in section 51.301(o) and in part 81, subpart D of this title.

[8] H.R. Rep. No. 294, 95th Cong. 1st Sess. at 205 (1977).

[9] "Reasonably attributable" visibility impairment, as defined in section 51.301(s), means "attributable by visual observation or any other technique the State deems appropriate." It includes impacts to Class I areas caused by plumes or layered hazes from a single source or small group of sources.

[10] H.R. Rep. No. 95–294 at 204 (1977).

[11] 45 FR 80084 (December 2, 1980) and section 51.300–307.



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C. The 1980 Visibility Regulation—Commitment to a Regional Haze Program

Section 169A of the CAA, established in the 1977 Amendments, sets forth a national visibility goal that calls for "the prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution." The EPA's initial visibility regulations, developed in 1980, address visibility impairment that is "reasonably attributable" to a single source or small group of sources. Under the 1980 rules, the 35 States and 1 territory containing Class I areas [12] are required to:

(1) Revise their SIPs to assure reasonable progress toward the national visibility goal;

(2) Determine which existing stationary facilities should install the best available retrofit technology (BART) for controlling pollutants which impair visibility;

(3) Develop, adopt, implement, and evaluate long-term strategies for making reasonable progress toward remedying any existing and preventing any future impairment in the Class I areas;

(4) Adopt certain measures to assess potential visibility impacts due to new or modified major stationary sources, including measures to notify Federal land managers (FLMs) of proposed new source permit applications, and to consider visibility analyses conducted by FLMs in their new source permitting decisions; and

(5) Conduct visibility monitoring in Class I areas.

The 1980 rules addressing "reasonably attributable" visibility impairment were designed to be the first phase in EPA's overall program to protect visibility. The EPA explicitly deferred national rules addressing regional haze impairment until some future date:

• • • when improvement in monitoring techniques provides more data on source-specific levels of visibility impairment, regional scale models become refined, and our scientific knowledge about the relationships between emitted air pollutants and visibility impairment improves.[13]

The EPA believes that the technical tools and our scientific understanding of visibility impairment are now sufficiently refined to move forward with a national program addressing regional haze in Class I areas. The EPA's position is supported by the NAS 1993 report, Protecting Visibility in National Parks and Wilderness Areas. One of the principal conclusions of this report is that "current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility." [14] Section II.D. describes a number of other studies and information now available which provide the technical basis to move forward with a regional haze program.

In addition, EPA finds the visibility protection provisions of the CAA to be quite broad. Although EPA is addressing visibility protection in phases, the national visibility goal in section 169A calls for addressing visibility impairment generally, including regional haze.[15]

Further, Congress added section 169B as part of the 1990 Amendments to the CAA to focus attention on regional haze issues; it calls for EPA to issue regional haze rules within 18 months of receipt of the final report from the GCVTC. In addition, section 169B includes provisions for EPA to conduct visibility research with the National Park Service and other Federal agencies, to develop an interim findings report on the visibility research,[16] to develop a Report to Congress on expected visibility improvements due to implementation of other air pollution programs,[17] and to provide periodic reports to Congress on trends in visibility improvements. Section 169B also provides the authority to the Administrator to establish visibility transport commissions in response to a petition from two or more States, or on her and/or his own motion. To date, EPA has not received any petitions from groups of States requesting formation of a visibility transport commission.

Section 169B(f) called for EPA to establish a visibility transport commission for the region affecting visibility of the Grand Canyon National Park. The purpose of this commission was to assess scientific and technical information pertaining to adverse impacts on visibility at the Park from existing emissions and projected growth in emissions. The statute specifically called for a report to EPA recommending measures to remedy such impacts and to address long-term strategies for addressing regional haze.[18] In 1991, EPA established the GCVTC,[19] and the GCVTC issued its final report in June 1996.[20] The recommendations of the GCVTC and their incorporation as potential SIP requirements into the final rule, are discussed in greater detail in unit IV of the preamble.

Finally, section 169B(e) calls for the Administrator to consider past research and the recommendations of visibility transport commissions in carrying out the "regulatory responsibilities under section 169A, including criteria for measuring 'reasonable progress' toward the national goal." [21] The EPA is required by the CAA to meet these regulatory responsibilities within 18 months of receiving the GCVTC report. Today's final rule fulfills EPA's responsibility under section 169A, pending since 1980, to put in place a national regulatory program that addresses both reasonably attributable and regional haze visibility impairment. Today's action is also EPA's response to the GCVTC report as anticipated by section 169B.

D. Sources of Scientific Information and Policy Recommendations on Regional Haze

In developing today's revisions to the visibility regulations, EPA has taken into account a significant body of scientific information and policy recommendations on visibility issues that have been developed over more than 20 years. This unit highlights key sources of information upon which the final regional haze rule is based.

For many years, visibility impairment has been considered the "best understood and most easily measured

[12] The States and one territory having at least one Class I area are listed in section 51.300(b)(2). These States and one territory are as follows: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, and Wyoming. For a specific list of Class I areas located in each state or territory, see 40 CFR 81.401–437.

[13] 45 FR 80086.

[14] National Research Council Committee on Haze in National Parks and Wilderness Areas, Protecting Visibility in National Parks and Wilderness Areas, National Academy Press, 1993, p. 11.

[15] *State of Maine* v. *Thomas*, 874 F.2d 883, 885 (1st Cir. 1989) ("EPA's mandate to control the vexing problem of regional haze emanates directly from the CAA, which 'declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.'") (citation omitted).

[16] U.S. EPA, Interim Findings on the Status of Visibility Research, Office of Research and Development, EPA/600/R–95/021, February 1995. See also 60 FR 8659 notice announcing the report availability and how to obtain copies (Feb. 15, 1995.

[17] U.S. EPA, Effects of the 1990 CAA Amendments on Visibility in Class I Areas: An EPA Report to Congress, October 1993 (EPA–452/R–93–014).

[18] CAA section 169B(d)(2)(C).

[19] 56 FR 57522, November 12, 1991.

[20] Grand Canyon Visibility Transport Commission, Recommendations for Improving Western Vistas, Report to the U.S. EPA, June 10, 1996 (hereafter referred to as "GCVTC Report").

[21] CAA section 169B(e)(1).

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effect of air pollution."[22] Visibility degradation has also been recognized as an indicator of multiple human-health effects and environmental effects resulting from air pollution all over the world.[23] Visibility conditions have been monitored and evaluated for many years, using airport visibility data collected from the 1940's to the present.[24]

In October 1979, EPA published a Report to Congress describing the state of the science on visibility.[25] The report, required under section 169A(a)(3), described available methods for visibility monitoring, modeling, and assessment of strategies to make progress toward the national goal. This report was developed in advance of the 1980 visibility regulations. As noted above, EPA deferred action on regional haze until monitoring techniques, modeling capabilities, and the understanding of the pollutants affecting visibility were improved. In 1986, the IMPROVE (Interagency Monitoring of Protected Visual Environments) visibility monitoring program was initiated in 30 Class I areas. The IMPROVE program has been coordinated through a cooperative, multiagency approach with participation by EPA, the FLMs, and States. Through the IMPROVE program, significant progress has been made in understanding the effect of various pollutants on current visibility conditions and trends, in developing well-accepted monitoring protocols, and in developing a sound approach for calculating light extinction values from aerosol and humidity data. The IMPROVE program has issued two major reviews of the monitoring data collected to date,[26] and numerous technical papers have been developed using data collected by the network.

In addition, in 1996 EPA began to include a chapter on visibility trends, based on data collected throughout the IMPROVE network, in the National Air Quality and Emissions Trends Report in 1996.[27] Data from 1988 to the present are analyzed for the best 20 percent, middle 20 percent, and worst 20 percent days of the annual distribution, and aggregated for eastern and western sites. Annual summary data are also presented for each individual site in an appendix.

Visibility research continued throughout the 1980's and is documented in many published articles and the proceedings of three major visibility conferences.[28] In addition, the NAPAP completed a comprehensive review of the state of the science of visibility in 1991.[29] This peer-reviewed report reached a number of important conclusions, including: (1) Light scattering is dominated by fine particles; (2) sulfates are the dominant source of light extinction in the east, and one of several major sources of extinction in the west; (3) rural visibility varies significantly between the east and west; (4) average natural visibility conditions are 150 kilometers visual range (9.6 deciviews) in the east and 230 kilometers visual range (5.3 deciviews) in the west; and (5) haze trends in the eastern United States have been dominated by sulfur emission trends since the late 1940's.

The NAS formed a Committee on Haze in National Parks and Wilderness Areas in 1990 to address a number of regional haze-related issues, including methods for determining anthropogenic source contributions to haze and methods for considering alternative source control measures. The 1993 report by this Committee contributed significantly to the state of the science regarding regional haze visibility impairment.[30] The Committee issued several important conclusions in the report, including: (1) Current scientific knowledge is adequate and control technologies are available for taking regulatory action to address regional haze; (2) progress toward the national goal will require regional programs that operate over large geographic areas and limit emissions of pollutants that can cause regional haze; (3) a program to address regional haze visibility impairment that focuses solely on determining the contributions of individual emission sources to such visibility impairment is likely to fail, and instead, strategies should be adopted to consider simultaneously the effect of many sources on a regional basis; (4) visibility impairment can be attributed to emission sources on a regional scale through the use of several kinds of models; (5) visibility and control policies might need to be different in the west than the east; (6) efforts to improve visibility within Class I areas will benefit visibility outside these areas and could help alleviate other types of air quality problems as well; (7) achieving the national visibility goal will require a substantial, long-term program; and (8) continued progress toward this goal will require a greater commitment toward atmospheric research, monitoring, and emissions control research and development.

Also in 1993, EPA developed its Report to Congress on the projected effects on visibility in Class I areas due to implementation of the 1990 CAA Amendments.[31] The report concluded that conditions on the worst visibility days are expected to improve by approximately 3 deciviews by 2010 across the most impaired portions of the Eastern United States. Most of this improvement is expected in the 1995–2005 timeframe due to sulfur dioxide reductions under the acid rain program. In the Southwestern United States, the visibility change was predicted to be less than 1 deciview in most Class I areas except San Gorgonio Wilderness (which is located downwind of Los Angeles), for which a 1–2 deciview improvement is expected.

[22] Council on Environmental Quality, Visibility Protection for Class I Areas: The Technical Basis, Washington, DC, 1978.

[23] National Research Council, NAS Committee on Haze in National Parks and Wilderness Areas, Protecting Visibility in National Parks and Wilderness Areas, National Academy Press, 1993, p. 23.

[24] National Acid Precipitation Assessment Program (NAPAP), Acid Deposition: State of Science and Technology. Report 24, Visibility: Existing and Historical Conditions—Causes and Effects, Washington, DC, 1991.

[25] U.S. EPA, Protecting Visibility: An EPA Report to Congress; Office of Air Quality Planning and Standards, EPA–450/5–79–008, October 1979.

[26] Sisler, J. et al., Spatial and Seasonal Patters and Long-Term Variability of the Chemical Composition of the Haze in the U.S.: An Analysis of Data from the IMPROVE Network, Fort Collins, CO, Cooperative Institute for Research in the Atmosphere, Colorado State University, 1996. See also Sisler, J., et al., Spatial and Temporal Patters and the Chemical Composition of the Haze in the United States: An Analysis of Data From the IMPROVE Network, 1988–1991, Fort Callins, CO, 1993.

[27] U.S. EPA, National Air Quality and Emissions Trends Report, 1996, Office of Air Quality Planning and Standards, EPA 454/R–97–013, January 1998. See also U.S. EPA, National Air Quality and Emissions Trends Report, 1997, Office of Air Quality Planning and Standards, EPA 454/R–98–016, January 1999.

[28] Atmospheric Environment, Proceedings of EPA Symposium on Plumes and Visibility—Measurements and Model Components, November 1980, Atmos. Environ., 15:1785–2646. See also Bhardwaja, P.J., ed., Visibility Protection: Research and Policy Aspects. Transactions of APCA Specialty Conference, September 1986, Grand Tetons National Park, WY. Air Pollution Control Assoc., Pittsburgh, PA, 1987. See also Mathei, C.V., ed., Visibility and Fine Particles. Transactions of AWMA specialty conference, October 1989, Estes Park, CO. Air and Waste Management Assoc., Pittsburgh, PA, 1990.

[29] National Acid Precipitation Assessment Program (NAPAP), Acid Deposition: State of Science and Technology, Report 24, Visibility: Existing and Historical Conditions—Causes and Effects, Washington, DC, 1991.

[30] National Research Council, NAS Committee on Haze in National Parks and Wilderness Areas, Protecting Visibility in National Parks and Wilderness Areas, National Academy Press, Washington, DC, 1993.

[31] U.S. EPA, Effects of the 1990 Clean Air Act Amendments on Visibility in Class I Areas: An EPA Report to Congress, Office of Air Quality Planning and Standards, EPA–452/R–93–014, October 1993.

As required by section 169B(a)(2) of the CAA, EPA issued a report in 1995 on interim findings on the status of visibility research completed since 1990.[32] This report reviewed four major visibility related reports published since 1990,[33] provided citations of published research papers, and summarized research under way by the GCVTC, four Federal agencies, and the Electric Power Research Institute. As noted above, the GCVTC issued a report in June 1996 containing recommendations for protecting visibility at 16 Class I areas on the Colorado Plateau. Based on EPA's discretionary authority under section 169B(c), it expanded the scope of the GCVTC:

> * * * to include additional Class I areas in the vicinity of the Grand Canyon National Park—what is sometimes referred to as the "Golden Circle" of parks and wilderness arees. This includes most of the national parks and national wilderness areas of the Colorado Plateau.[34]

The GCVTC was charged with assessing information about visibility impacts in the region and making policy recommendations to EPA to address such impacts. The CAA called for the GCVTC to assess studies conducted under section 169B as well as other available information "pertaining to adverse impacts on visibility from potential or projected growth in emissions for sources located in the * * * Region," and to issue a report to EPA recommending what measures, if any, should be taken to protect visibility.[35] The CAA specifically provided for the GCVTC's report to address the following measures: (1) The establishment of clean air corridors, in which additional restrictions on increases in emissions may be appropriate to protect visibility in affected Class I areas; (2) the imposition of additional new source review requirements in clean air corridors;[36] and (3) the promulgation of regulations addressing regional haze.

In unit IV of the proposal, EPA discusses the major recommendations of the GCVTC. The GCVTC's recommendations have components that contemplate implementation through a combination of actions by EPA, other Federal agencies, States and tribes in the region, and voluntary measures on the part of public and private entities throughout the region. The GCVTC's recommendations also distinguish between recommended actions and policy or strategy options for consideration. Unit IV addresses how EPA took these recommendations, as well as the body of technical information developed by the GCVTC, into account in developing the final rule.

Response to comments. Some commenters on the regional haze proposal suggested that EPA had not provided an adequate scientific or legal justification for developing a regional haze program. The commenters asserted that the science of regional haze is not understood well enough to develop regulations at this time. In addition, some commenters claimed that EPA has not provided adequate technical guidance for implementation of the rule, and that providing such guidance is a legal prerequisite to promulgating a regional haze rule. The EPA does not agree with these claims.

First, EPA believes it has relied upon a substantial amount of scientific evidence to support development of the regional haze program. Many of the important studies, reports, and other scientific and technical information on which the regional haze rule is based are referenced earlier in this section. In particular, the NAS Committee on Haze in National Parks and Wilderness Areas concluded that "Current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility."[37] Thus, EPA believes that its decision to move forward with promulgation of the regional haze program is reasonable, particularly in light of the fact that the Agency's obligation to address regional haze originated more than 20 years ago with passage of the 1977 CAA Amendments.

Second, as discussed in the response to comments, today's final rule provides the States with the necessary guidelines to implement a regional haze program. The EPA believes that the supposition that all technical guidance associated with a program be developed before a rule can be promulgated is unfounded. The EPA recognizes the importance of timely implementation guidance and is committed to providing such guidance, as appropriate, for the regional haze program.

The EPA does not interpret sections 169A and 169B as requiring all technical guidance to be issued by the Agency before the rule is finalized. The EPA is committed to working closely with the States and other interested parties in developing effective guidance documents within a reasonable period of time after promulgation of the final regional haze rule.

E. Relationship to Secondary NAAQS for PM

Today's final rule is an important element in EPA's overall approach to protecting visibility under the CAA. In July 1997, EPA established national secondary ambient air quality standards (NAAQS) for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$) as part of its final decision on revision of the existing NAAQS for particulate matter under section 109(d) of the CAA.[38] The secondary standards were based on EPA's determination that the levels selected were "requisite to protect the public welfare" against visibility impairment on a nationally uniform basis as provided in section 109(b). Consistent with the purposes of section 169A, however, EPA recognized that such nationally uniform standards would not eliminate all visibility impairment in all parts of the country.[39] The visibility impacts remaining in Class I areas are addressed by today's final rule.

Today's final rule has additional benefits, as EPA expects the regional strategies implemented as part of the regional haze program to improve visibility outside of Class I areas as well. Thus, the regional haze program should contribute to the improvement of local visibility impacts outside of Class I areas that may persist after attainment of the secondary standards.

F. Regional Planning and Integration With Programs to Implement the NAAQS for Ozone and Particulate Matter

The regional haze program is being promulgated in a manner that facilitates integration of emission management strategies for regional haze with the implementation of programs for new NAAQS for ozone and PM. This is being done because of the existing scientific evidence that these air quality problems have common precursor pollutants, emission sources, atmospheric processes, spatial scales for transport, and geographic areas of concern.

[32] U.S. EPA, Interim Findings on the Status of Visibility Research, Office of Research and Development, EPA/600/R–95/021, February 1995.

[33] These repdorts have already been mentioned in this section: the 1993 NAS report, the 1993 IMPROVE report (Sisler et al.), the 1993 EPA Report to Congress, and the 1991 NAPAP Report to Congress.

[34] 56 FR 57523

[35] CAA Section 169B(d).

[36] A clean air corridor is defined as a region that generally brings clear air to a receptor region, such as the Class I areas of the Golden Circle.

[37] National Research Council, NAS Committee on Haze in National Parks and Wilderness Areas, Protecting Visibility in National Parks and Wilderness Areas, National Academy Press, Washington, DC, 1993, p. 11.

[38] 62 FR 38652 (July 18, 1997).

[39] See section 160(1); H.R. Rep. No. 95–294 at 205 (1977).

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Because of the key role of regional pollutant transport in contributing to haze at Class I areas, most of which are in remote locations, the regional haze program recognizes the value of multistate coordination for regional haze program planning and implementation. Consistent with the recommendations of the Clean Air Act Advisory Committee, Subcommittee on Ozone, Particulate Matter, and Regional Haze Implementation Programs,[40] EPA strongly encourages States to undertake multistate regional planning efforts addressing regional haze in a way that coordinates technical analyses and strategy development with the NAAQS to the maximum extent possible. Examples of ongoing coordination among States to address visibility issues include the Western Regional Air Partnership (WRAP) and the Southern Appalachian Mountain Initiative.

The EPA believes that States (and tribes, at their discretion), in partnership with other interested stakeholders, should consider conducting future regional air quality planning efforts to address the implementation of the ozone and PM NAAQS and regional haze program. We encourage States to continue to work together to establish common protocols and approaches for emissions inventory development, emissions tracking, application of regional models, and development of effective emission reduction strategies.

The EPA plans to participate early and actively in regional planning efforts. The EPA recognizes that we must provide early input on issues and to make our views known as issues arise. The EPA has a responsibility to independently review the adequacy of implementation plans in the public rulemaking process and to consider all public comments received on a plan in determining if it meets applicable requirements. However, it is equally important that EPA be open in letting participants know of our views and concerns throughout the process.

The EPA will soon issue final guidance on such regional planning efforts for the purposes of implementing the ozone, particulate matter, and regional haze implementation programs.[41] Also, as a part of EPA's 1999 fiscal year budget, Congress provided $4 million dollars to support regional planning activities. EPA is currently involved with the States in a process to define the appropriate size and composition of regional planning bodies. The final planning guidance will provide a discussion of several important issues related to regional planning efforts. These issues include:

- Taking credit for emissions reductions in other States;
- Important principles for future regional planning efforts;
- The technical assessment process; and
- The strategy development process.

Some important principles discussed in the guidance for conducting regional planning efforts include the following points.

- Regional planning efforts should be a product of State (and, at the discretion of any tribe, tribal) leadership and, thus, should be led by States (and tribes), not EPA. Representatives should have the authority to speak for their organizations.
- States (and tribes at their discretion) should be prepared to make strong, early commitments to implementing the outcome of the regional process to ensure that SIP submittal dates are met.
- Participants in regional planning efforts should set up a work plan to carry out their work. The work plan should contain clearly stated products of the process, dates for completion of those products and mechanisms for funding the needed analyses.
- The technical assessment process should include steps for problem definition, development of emissions inventories, and development of tools to evaluate strategy alternatives.
- In the strategy development process, participants should strive to develop a consensus about (1) the set of regional emissions reductions strategies needed to attain the NAAQS or make "reasonable progress" toward the national visibility goal in Class I areas, and (2) the degree to which each State and relevant source category should be required to reduce emissions to implement the recommended strategies.

III. Discussion of National Program Requirements and Response to Comments

- *Scope of Rule—Extending Coverage to All States*

Proposed rule. In the regional haze proposal, EPA proposed to amend section 51.300(b)(3) to extend coverage to all States (excluding certain territories) for the purpose of addressing regional haze visibility impairment. This approach differed from the 1980 visibility regulations for "reasonably attributable" impairment, which required the 35 States and the Virgin Islands containing Class I areas to submit SIP revisions and to revise them periodically to assure reasonable progress toward the national visibility goal. Thus, under the proposal, the following additional States and the District of Columbia would be required to submit visibility SIPs: Nebraska, Kansas, Iowa, Wisconsin, Illinois, Indiana, Ohio, Mississippi, New York, Pennsylvania, Massachusetts, Rhode Island, Connecticut, and Maryland. The territories of Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands were not included because their distance from any Class I area significantly exceed the distance that their emissions could be expected to be transported in order to contribute to visibility impairment in any Class I area. However, Hawaii, Alaska, and the Virgin Islands would be subject to the regional haze provisions because of the potential for emissions from sources within their borders to contribute to regional haze impairment in Class I areas also located within their own jurisdiction.

In the proposal, EPA also recommended that all States initially participate in regional planning efforts to more precisely characterize which States are contributing to visibility impairment in other States, as well as the magnitude of such contributions. States could then develop strategies for making reasonable progress in Class I areas throughout the region. The EPA noted that as a result of this process, all States may not have to adopt control strategies. At the same time, EPA cited the 1993 NAS report, which observed that the requirement for a State to revise its implementation plan if it "may reasonably be anticipated" to contribute to visibility impairment indicates that Congress intended that "the philosophy of precautionary action should apply to visibility protection as it applies to other areas [such as the NAAQS]." Thus, EPA proposed that, at a minimum, all States should be required to develop visibility SIPs in order to "prevent any future impairment" as called for by the national goal in section 169A(a)(1).

Contracts received. The EPA received a number of comments on the proposed applicability provisions. Many commenters approved of EPA's approach to require SIPs from all States. Those who did not agree with the scope of the program provided a number of reasons for their opposition. Some commenters recognized the need for a regional haze program, but stated that EPA must first conduct or review additional scientific analyses in order to provide justification for requiring additional States to submit visibility SIPs. Other commenters felt that in the proposed applicability provisions, EPA exceeded its statutory authority by extending the regional haze program to States that have not been demonstrated to "cause or contribute" to visibility impairment. Some commenters suggested that EPA rely on States with Class I areas to engage nearby States, as appropriate, in regional planning efforts. Some commenters in States containing Class I areas suggested that, for their particular Class I areas, there was no demonstrated visibility problem. They asserted that because visibility levels should already be deemed acceptable, there was no need for a regional haze program in their States. Other commenters felt that EPA should include specific criteria (e.g., distance, emissions, and visibility impact cutoffs) for excluding States or geographic areas from consideration as contributing to regional haze visibility impairment.

Final rule. Consistent with the proposal, EPA has concluded in today's final rule that all States contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area and, therefore, must submit regional haze SIPs. The rationale for this finding is discussed in more detail below.

In making this finding, EPA considered three factors: (1) The specific statutory language in the CAA; (2) the weight of evidence demonstrating long-range transport of fine particulate pollution that affects visibility in Class I areas; and (3) current monitored conditions in Class I areas across the country. The EPA's consideration of each of these factors is discussed below.

Two key provisions in section 169A support EPA's finding that all States must develop SIPs for regional haze. Section 169A(b)(2) requires EPA to promulgate regulations to require SIPs from those States where the emissions "may reasonably be anticipated to cause or contribute to any impairment of visibility" in a mandatory Class I Federal area. The EPA believes that this provision does not require the Agency to provide absolute certainty regarding the effect of emissions from the State on visibility in a particular Class I area.

The Ninth Circuit has interpreted the language, "may reasonably be anticipated to cause or contribute to any impairment of visibility," in a case involving identical language in section 169A(b)(2)(A) relating to BART.[42] The EPA believes that the court's interpretation of this phrase may be appropriately used in regard to program applicability as well. In its decision, the court found that the language "may reasonably be anticipated to cause or contribute" establishes an "extremely low triggering threshold" for requiring a source to control emissions, adding that "the NAS correctly noted that Congress has not required ironclad scientific certainty establishing the precise relationship between a source's emission and resulting visibility impairment. * * *"[43] In considering whether additional States should be subject to the visibility program, EPA believes the court's reasoning supports adoption of the predicate requirement that States develop the necessary provisions in their implementation plans to determine whether and to what extent control of emissions from sources is needed. That is, given that the court believed this "low triggering threshold" was sufficient to require a source to control its emissions under BART, EPA believes it is reasonable that a similarly low or even lower threshold applies to whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State. The EPA believes this is particularly appropriate since the requirement for SIPs does not mandate the actual control of emissions from any source without further technical analysis by the State. Accordingly, EPA believes the concept of an "extremely low triggering threshold" can also apply in determining which States should submit SIPs for regional haze.

Section 169A(a)(1) sets forth a national goal of "the prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution." Thus, in addition to requiring a program to reduce existing impairment, the CAA requires SIPs to be established in order to prevent future impairment. This preventative component of the national goal requires that States have the framework in place to address future growth in emissions from new sources or other activities that could impair visibility. For this reason, the EPA does not believe that it is appropriate to establish criteria for excluding States or geographic areas from consideration as potential contributors to regional haze visibility impairment.

As noted in the proposal, EPA is not specifying in this final rule what specific control measures a State must implement in its initial SIP for regional haze. That determination can only be made by a State once it has conducted the necessary technical analyses of emissions, air quality, and the other factors that go into determining reasonable progress. As discussed in section II(F), because of the regional, multistate nature of visibility impairment in Class I areas,[44] EPA recommends that these analyses and the determination of the extent of emissions reductions needed from individual States be developed and refined through multistate planning efforts using the best available technical tools, such as regional-scale modeling. The EPA also recommends the coordination of resulting strategies for regional haze with strategies needed to attain the $PM_{2.5}$ NAAQS. The EPA anticipates that as a result of the more refined analyses required by this rule, some States may conclude that control strategies specifically for protection of visibility are not needed at this time because the analyses may show that existing measures are sufficient to meet reasonable progress goals. The EPA is requiring States to document their analyses, including any consultations with other States in support of their conclusions that further controls are not needed at this time. The EPA believes that there is more than sufficient evidence to support our conclusion that emissions from each of the 48 contiguous States may be reasonably anticipated to cause or contribute to visibility impairment in a Class I area.

As stated in EPA's proposal, a large body of evidence demonstrates that long-range transport of fine PM contributes to regional haze and other related effects such as acid rain. In the preamble to the proposal and in the relevant docket, EPA cited numerous studies that contribute to this body of evidence.[45] Indeed, EPA recognized the role of long-range transport in relation to visibility impairment 20 years ago in its 1979 Report to Congress on visibility.[46]

Among the more important studies on which EPA relied are the 1991 report from the NAPAP, the 1993 NAS report Protecting Visibility in National Parks

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[40] Subcommittee for Ozone, Particulate Matter, and Regional Haze Implementation Programs, Final Report on Subcommittee Discussions, May 1996.

[41] See the November 17, 1998 draft of Implementation Guidance for the Ozone and Particulate Matter NAAQS and Regional Haze Program. EPA's internet site for an electronic version of this guidance: http://www.epa.gov/ttn/oarpg/tlpgm.html.

[42] *Central Arizona Water Conservation District* v. *EPA*, 990 F.2d 1531 (1993).

[43] 990 F.2d at 1541.

[44] Refer to unit II of this final rule for additional background on the long-range transport of pollution contributing to regional haze.

[45] See Unit II, Background Information. See also July 29, 1997 memorandum to regional haze docket A–95–38, "Supporting Information for Proposed Applicability of Regional Haze Regulations," by Richard Damberg, EPA, Office of Air Quality Planning and Standards.

[46] U.S. EPA, Protecting Visibility: An EPA Report to Congress, Office of Air Quality Planning and Standards, EPA–450/5–79–008, October 1979.

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and Wilderness Areas, EPA studies using the regional acid deposition model (RADM), the 1996 GCVTC report Recommendations for Improving Western Vistas, and two contractor reports prepared for EPA.[47] All of these reports are available in the docket. They were referenced and discussed in EPA's proposal and in an additional memorandum to the docket. The NAPAP report included a comprehensive technical review of historical visibility trends.[48] The NAS report found that the range of fine particle transport is on the order of hundreds or thousands of kilometers.[49] Analyses using the RADM have estimated that sulfate and nitrate deposition receptors are influenced by sources located up to 600–800 kilometers away.[50] In its deliberations and in its final report, the GCVTC acknowledged the role of long-range transport from sources and activities located across a very large geographic area, and its effect on the Class I areas on the Colorado Plateau.[51]

Finally, two contractor modeling reports prepared for EPA provided information that preliminarily demonstrated that each State not having a Class I area had emissions contributing to impairment in at least one downwind Class I area. Some State commenters asserted that the contractor reports referenced in the proposal show relatively low contributions from all or part of their States toward visibility impairment in a nearby Class I area. As a result, these commenters suggested that EPA had sufficient information to reach a conclusion that all or part of their States could be excluded from the regional haze program. The EPA disagrees with these comments for two reasons.

First, the EPA did not base its proposed applicability provisions only on the referenced contractor reports. The EPA based its decision on the assessments provided by these reports as well as a number of other studies and sources of information. Second, as explained above, EPA believes that all States must have a visibility SIP to prevent, at a minimum, future impairment of visibility. While EPA agrees that portions of some States may not need to implement additional measures, at this time, to improve visibility impairment in any Class I area, the EPA believes that more refined future assessments will be needed to support such a finding. Additionally, the EPA believes that a State wishing to demonstrate that it does not contribute to visibility impairment in any Class I area will need to provide information showing that it has consulted with other potentially affected States to assist EPA in assuring that the State's demonstration is not contradicted by evidence presented by other States.

Current monitoring information for Class I areas shows that all of the monitored sites in the central and eastern parts of the country have visibility impairment levels exceeding estimated natural conditions for the 20 percent most impaired days, some by more than 20 deciviews. Although the degree of impairment varies, the data demonstrate that no existing site has reached the goal in section 169A(a)(1) of the CAA for "remedying * * * any existing impairment of visibility."[52]

In light of this finding, EPA disagrees with the commenter who asserted that because visibility levels in its State are already "acceptable," there is no need for the State to implement a regional haze program. The section 169A national goal of the visibility program, a condition of no human-caused impairment, does not provide for judgments of acceptable visibility levels which are poorer than natural conditions in Class I areas. Through adoption of section 169A(a)(1), Congress established natural visibility conditions as the overall goal.

The data also show that in the monitored locations in the central and eastern United States, sulfate is the key contributor to visibility impairment, responsible for between 45–90 percent of light extinction due to aerosols on the 20 percent most impaired days. This fact is significant because the broad, regional scale of long-range transport of sulfate has already been acknowledged in many studies done for the acid rain program. Based on these data, it appears that although the acid rain program is expected to improve visibility by approximately 3 deciviews in the most impaired Class I areas in the Eastern United States by 2005,[53] further regional reductions in SO_2 emissions may be needed after the acid rain program is complete to assure continued visibility improvement toward the national goal. Thus, EPA finds it is reasonable to require SIPs from the States without Class I areas which are located in the central and eastern parts of the United States since many, if not all, are expected to have sources contributing to regional loadings of SO_2 emissions, even after implementation of the acid rain program is completed.

For all of the reasons stated above, EPA has concluded in today's final rule that EPA's statutory authority and scientific evidence are sufficient to require all States to develop regional haze SIPs to ensure the prevention of any future impairment of visibility, and to conduct further analyses to determine whether additional emission reduction measures are needed to ensure reasonable progress in remedying existing impairment in downwind Class I areas.

B. Timetable for Submitting the First Regional Haze State Implementation Plan (SIP)

This final rule establishes a schedule setting forth deadlines by which the States must submit their first regional haze SIPs and subsequent revisions to that first SIP. In this unit, we discuss the deadlines for the first regional haze SIP, the concerns raised in comments regarding these deadlines, and recent legislation affecting the deadlines. The requirements for periodic revisions to this first regional haze SIP are discussed below in unit III.J.

Proposed rule. The proposed rule, consistent with section 169B(e)(2) of the CAA, would have required States to submit revisions to their SIP to address regional haze within 12 months of the effective date of the rule. We had intended that these 12-month SIP submittals serve as program planning SIPs in which the States would review existing regulatory authorities and provide the framework for a number of future actions.

Comments received. Commenters expressed the view that 12 months was an insufficient time period to meet the proposed requirements for the program planning SIP. Moreover, commenters were concerned that the 12-month SIP requirement was not well coordinated with similar program planning for the new $PM_{2.5}$ standard.

Transportation Equity Act for the 21st Century (TEA–21). After the close of the comment period for the July 1997 proposal, Congress passed the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178. The TEA–21 superseded the statutory requirement for a 12-month SIP deadline and established a specific schedule for regional haze SIP submissions. In a September 3, 1998 notice of availability, EPA provided the public with an opportunity to comment on how the regional haze rule should address the TEA–21 requirements.[54]

The TEA–21 provisions establish a timetable for the regional haze SIPs by first creating certain deadlines for $PM_{2.5}$ monitoring and area designations, and then by linking those deadlines to further deadlines for the regional haze program. The TEA–21 amendments, in section 4102(a), require EPA to fund a $PM_{2.5}$ monitoring network. In section 4102(b), EPA and States are required to put this network in place by no later than December 31, 1999.

Section 4102(c)(1) of TEA–21 establishes deadlines for States to use the data collected by the network for purposes of formally designating areas as attaining the $PM_{2.5}$ standard or as nonattainment or unclassifiable. Section 4102(c)(1) states:

> (1) The Governors shall be required to submit designations referred to in section 107(d)(1) of the CAA for each area following promulgation of the July 1997 $PM_{2.5}$ national ambient air quality standard within 1 year after receipt of 3 years of air quality monitoring data performed in accordance with any applicable Federal reference method for the relevant areas.

Section 4102(c)(2) of TEA–21 contains the following language which links the timing requirements for the visibility program to the $PM_{2.5}$ designation process:

> (2) For any area designated as nonattainment for the July 1997 $PM_{2.5}$ national ambient air quality standard in accordance with the schedule set forth in this section, notwithstanding the time limit prescribed in paragraph (2) of section 169B(e) of the CAA, the Administrator shall require State implementation plan revisions referred to in such paragraph (2) to be submitted at the same time as State implementation plan revisions referred to in section 172 of the CAA implementing the revised national ambient air quality standard for fine particulate matter are required to be submitted. For any area designated as attainment or unclassifiable for such standard, the Administrator shall require the State implementation plan revisions referred to in such paragraph (2) to be submitted 1 year after the area has been so designated. The preceding provisions of this paragraph shall not preclude the implementation of the agreements and recommendations set forth in the GCVTC Report dated June 1996.

To accompany the statutory changes contained in the TEA–21 law, Congress released a Conference Report. With respect to the visibility provisions of TEA–21, the Conference Report states:

> The Conferees recognize that the Regional Haze regulation has not been finalized and the Administrator of the Environmental Protection Agency (EPA) is still considering the views of various stakeholders. The Conferees agree with EPA's public statements that the schedule for the State Implementation Plan due pursuant to section 169B(e)(2) of the * * * [Clean Air] * * * CAA should be harmonized with the Schedule for State Implementation Plan submissions required for $PM_{2.5}$ ambient air quality standard promulgated in July, 1997.[55]

This new statutory language has two effects. First, it supersedes the section 169B requirement for EPA to require States to submit SIPs within 12 months of the promulgation of today's final rule. Second, it spells out a timetable for SIP revisions that is linked to the dates of attainment/nonattainment designations for $PM_{2.5}$. It is important to note that the timetable is based on the designation of areas within a State. Thus, under the legislation, one State could have multiple SIP submission deadlines depending on the dates of designation of each area within the State. This issue, and how EPA intends to address it, is further discussed later in this unit.

According to a Presidential memorandum dated July 16, 1997, the EPA and States must collect 3 years of monitoring data in order to have a sufficient basis for designations. This point is reiterated in TEA–21.[56] Routine collection of monitoring data begins in 1999. Hence, we expect the requirements of TEA–21, section 4102(c)(1), to result in the following:

Submissions of designation requests by States. States must submit designations within 1 year of the date that 3 years of $PM_{2.5}$ data are available. Because widespread monitoring for $PM_{2.5}$ is being implemented between January 1999 and December 31, 1999, we expect 3 years of data to be collected by December 31, 2001 for most areas and no later than December 31, 2002 for the remaining areas. Taking into account additional time (not more than 6 months) for quality assurance and certification of the data, we expect 3 years of data to be available for States to use for designations between July 2002 and July 2003. In the TEA–21 amendments, States have up to 1 year to submit designations. Thus, we expect that the required date for submittal of designations generally will occur between July 2003 and July 2004.[57]

EPA action on State designations. The EPA is required to act upon the designations no later than 1 year after the date States are required to submit the designations, but not later than December 31, 2005 in any case. If States submit their designations between July 2003 and July 2004, EPA would be required to designate areas between July 2004 and July 2005.

For areas designated as attainment or unclassifiable, the TEA–21 amendments require that States must submit SIPs for regional haze within 1 year after EPA publishes the designations. As a result, for these areas, regional haze SIPs are likely to be due generally between July 2005 and July 2006.

For areas designated as nonattainment for fine particulate matter, the TEA–21 amendments require States to submit SIP revisions addressing regional haze "at the same time as States submit SIPs as required by section 172 of the CAA implementing the July 1997 revision to the national ambient air quality standard for fine particulate matter." Section 172(b) of the CAA requires SIPs no later than 3 years after EPA publishes the nonattainment designation. If EPA designates areas nonattainment between July 2004 and July 2005, the regional haze SIPs for areas designated as nonattainment and the $PM_{2.5}$ nonattainment SIPs would both be due no later than the July 2007 to July 2008 timeframe.

The date for startup of $PM_{2.5}$ monitoring may vary in different parts of a given State. Accordingly, the EPA expects that States may not be able to submit designation requests at the same time for the entire State. Rather, EPA

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[47] See Latimer and Associates, Particulate Matter Source—Receptor Relationships Between All Point and Area Sources in the United States and PSD Class I Area Receptors, Report prepared for EPA, Office of Air Quality Planning and Standards, September 1996. See also ENVIRON International Corporation, Development of Revised Federal Class I Area Groups in Support of Regional Haze Regulations, Report prepared for EPA, Office of Air Quality Planning and Standards, September 1996.

[48] National Acid Precipitation Assessment Program. Acid Deposition: State of the Science and Technology. Report 24. Visibility: Existing and Historical Conditions—Causes and Effects, Washington, DC, 1991.

[49] National Research Council, NAS Committee on Haze in National Parks and Wilderness Areas, Protecting Visibility in National Parks and Wilderness Areas, National Academy Press, Washington, D.C., 1993.

[50] Dennis, Robin L. "Using the Regional Acid Deposition Model to Determine the Nitrogen Deposition Airshed of the Chesapeake Bay Watershed," in Atmospheric Deposition to the Great Lakes and Coastal Waters, edited by Joel Baker, 1996.

[51] GCVTC, Recommendations for Improving Western Vistas, Report to the U.S. EPA, June 1996.

[52] Sisler, J. *et al.*, Spatial and Seasonal Patterns and Long-Term Variability of the Chemical Composition of the Haze in the United States: An Analysis of Data from the IMPROVE Network, Fort Collins, CO, Cooperative Institute for Research in the Atmosphere, Colorado State University, 1996. See also Sisler, J., et al., Spatial and Temporal Patterns and the Chemical Composition of the Haze in the United States: An Analysis of Data from the IMPROVE Network, 1988–1991, Fort Collins, CO, 1993.

[53] U.S. EPA, Effects of the 1990 Clean Air Act Amendments on Visibility in Class I Areas: An EPA Report to Congress, Office of Air Quality Planning and Standards, EPA–452/R–93–014, October 1993.

[54] 83 FR 46952.

[55] H.R. Conf. Rep. No. 550, 105th Cong., 2d. Sess. 519 (1998), reprinted in 1998 U.S.C.C.A.N., No. 6 at 196.

[56] See TEA–21, Section 4102(c)(1).

[57] We expect that some States will want to move expeditiously with some designations, leading to submissions and final action on some areas as early as late 2002 or early 2003. Where this is the case, this would lead to earlier regional haze SIP submittal deadlines as well.

expects that it is possible that individual "areas" within a given State may be designated at different times. Even if areas were all designated at the same time, in many States some areas will likely be designated attainment, with others designated nonattainment. In either case, the TEA–21 deadlines would require separate regional haze SIPs for each of these areas to be submitted at different times.

While the language in TEA–21 establishing the timetable for submission of regional haze SIPs is generally clear, the transportation legislation does not address the situation where States are participating in a regional planning effort that incorporates numerous areas. On its face, TEA–21 requires the submission of separate regional haze SIPs on an area-by-area basis with varying deadlines that could range over a period of several years. As noted above, however, regional haze is the result of emissions from a number of sources located over a broad geographic area. Because of the long-range transport of pollutants causing regional haze, EPA believes that well-coordinated regional planning efforts are needed to make progress toward natural visibility conditions. As EPA noted in the September 3, 1998 notice of availability, we do not believe that Congress intended to inhibit regional planning efforts by requiring area-by-area submittals. In light of this, EPA requested comment on incorporating an optional approach into the final rule to facilitate regional planning.

Notice of availability of additional information. The optional approach EPA described in the September 3, 1998 notice of availability would allow States which commit to participating in regional planning efforts to postpone addressing certain of the requirements of the regional haze program. Under this approach, States would have the option to first submit SIPs which contain commitments to specific integrated regional planning efforts but which do not set forth control strategies. States committing to regional planning would subsequently submit SIP revisions containing control strategies for attainment, unclassifiable, and nonattainment areas at the same time. This would allow multiple areas within a single planning region to have coordinated deadlines for regional haze control strategies. In the supplemental notice, we noted that this approach could have the effect of delaying control strategy plan submittal dates for some areas, but we believe that such an option will support more effective coordination between the $PM_{2.5}$ and regional haze programs, will support coordinated regional planning for both programs, and will be consistent with the statement of congressional intent.

Comments received. Some commenters argued that TEA–21 does not authorize EPA to defer implementation of the regional haze program in this way. The basis for this argument is the claim that the 1-year deadline in section 169B(e)(2) applies only to regulations promulgated pursuant to the report of a visibility transport commission. These commenters claim that EPA is obligated under section 169A to provide for more expedited implementation of measures to assure reasonable progress.

The final rule. The regulations made final today are issued under the authority of CAA sections 169A and 169B. As discussed in unit II.C above, EPA in 1980 explicitly deferred issuing regulations to address regional haze until our scientific and technical knowledge was better developed. In 1990, Congress amended the CAA by adding section 169B. This section authorizes the establishment of visibility transport commissions which, among other things, must issue a report addressing "the promulgation of regulations under [section 169A] to address long range strategies for addressing regional haze." Section 169B further establishes explicit timeframes in which EPA must, taking into account any reports of visibility transport commissions, issue regulations under section 169A, and in which States must respond by submitting revised SIPs. Congress modified the timeframe for SIP submission in TEA–21 to ensure the ability of EPA to harmonize the implementation of today's final rule with the requirements for the new $PM_{2.5}$ NAAQS.[58] Today's final rule carries out EPA's obligation under sections 169A and 169B to issue regulations addressing regional haze according to the timeframe as set forth in section 169B as modified by TEA–21.

The final rule includes the deadlines for SIP submittals set forth in TEA–21 and incorporates an optional set of requirements for States which commit to participate in regional planning. Commenters generally agreed with EPA's view in the notice of availability that it is important to ensure that the $PM_{2.5}$ program and regional haze program are fully integrated. The EPA believes that the approach taken in the final rule supports effective coordination between these programs, while also facilitating regional planning.

In the final rule, the timetable for SIP submittals is set forth in section 51.308(b) and (c). Section 51.308(b) directly codifies the TEA–21 timetable. Section 51.308(c) provides States that have committed to participate with other States in a regional planning process the option of choosing to defer submittal of a SIP which addresses the substantive requirements of the regional haze program. States are not required to exercise the option provided by section 51.308(c), but those which do must meet the deadlines set forth in that section for submitting a SIP which addresses the distinct requirements in section 51.308(c) and a SIP revision which addresses the substantive requirements of the regional haze program.[59]

As a first step, States electing to participate in regional planning must submit a SIP demonstrating the State's ongoing participation in a regional planning process. This SIP must address all areas in the State and is due on the earliest date by which an implementation plan affecting any area within the State would be due under the TEA–21 deadlines. Unless an entire State is designated as nonattainment, this SIP will be due 1 year after EPA designates any area within the State as attainment or unclassifiable. This SIP submission must contain a number of specific elements to demonstrate the State's commitment to the regional planning process and to ensure that by the date of the SIP submittal, the States in the regional planning body have taken the necessary steps to initiate the regional planning process.

The following briefly summarizes the required elements of the first SIP submittal called for under the optional approach for regional planning:

Need for regional planning. In the SIP, the State must demonstrate the need for regional planning. The State must make this demonstration by showing that emissions from sources within the State contribute to visibility impairment in Class I areas in another State, or by showing that other States contribute to visibility impairment in the Class I areas in the State. The EPA does not intend for this to be an overly complex analysis.

Description of regional planning organization. The State must also submit a detailed description of the regional planning process. In its SIP, the State must show that the participating States have a credible regional planning process in place which all parties are committed to follow. We have outlined general principles for regional planning organizations in a document entitled Implementation Guidance for the Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and the Regional Haze Program, which discusses features of effective regional planning organizations, including a discussion of organization and representation issues, issues related to developing workplans and schedules, and issues related to ensuring that technical efforts are consistent. This document is available on the internet at http://www.epa.gov/ttn/oarpg/t1pgm.html.

Enforceable commitment to submit coordinated control strategy by 2008. The regional planning SIP must include provisions requiring the State to submit a SIP revision meeting all of the requirements of the regional haze rule. This SIP revision is due by the latest date an area within the planning region would be required to submit an implementation plan under TEA–21, but in no event any later than December 31, 2008. The SIP must require that the SIP revision is developed in coordination with the other States in the regional planning body and that it fully addresses the recommendations of that body.

List of BART-eligible sources. The State must identify those sources from one of 26 source categories and placed into operation between 1962 and 1977 that are potentially subject to BART. This information will enable the State and regional planning organization to begin evaluating options for meeting the BART requirement or for implementing an emissions trading program or alternative measure that achieves greater reasonable progress.

Summary of timetable for submission of the first regional haze SIPs. The following table is a summary of the deadlines for submitting the first regional haze SIPs.

For this case . . .	. . . States must submit the first regional haze SIPs no later than:	. . . and the SIP must meet . . .
Areas designated as attainment or unclassifiable for $PM_{2.5}$.	1 year after EPA publishes the designation (generally 2004–2006).	ALL requirements of section 51.308(d) and (e).
Areas designated as nonattainment for $PM_{2.5}$ ...	At the same time as $PM_{2.5}$ SIPs are due under section 172 of the CAA. (That is, 3 years after EPA publishes the designation, generally 2006–2008).	ALL requirements of section 51.308(d) and (e).
States participating in multistate regional planning efforts for combined attainment and nonattainment areas.	Two phases: ..... Commitment to regional planning due 1 year after the EPA publishes the first designation for any area within the State, and. Complete implementation plan due at the same time as $PM_{2.5}$ SIPs are due under section 172 of the CAA. (That is, 3 years after EPA publishes the designation).	The regional planning requirements listed in section 51.308(c). The "core requirements" listed in section 51.308(d) and BART requirements in section 51.308(e).
States following the recommendations of the GCVTC, as contained in section 51.309 of the final rule.	December 31, 2003	SIPs must meet the specific provisions for Grand Canyon Transport Region States listed in section 51.309.

C. Tracking Deciviews and Emissions Reductions

Visibility impairment is caused by particles and gases in the atmosphere. Some particles and gases scatter light, while others absorb light. The net effect is called "light extinction." The result of these processes is a reduction of the amount of light from a scene that is returned to the observer, creating a hazy condition.

Proposed rule. In the proposal, EPA established a regulatory framework by which a State would establish a "reasonable progress target" for each Class I area within its borders for the purpose of improving visibility on the worst visibility days over the next 10 or 15 years. The States would implement emission management strategies to improve visibility in these Class I areas. The proposal also called for the States to monitor progress in improving visibility over time. The EPA proposed that visibility targets and tracking of visibility changes over time be expressed in terms of the "deciview" haze metric. The proposal also called for the tracking of pollutant emissions to supplement the tracking of monitored visibility changes for use in periodically reviewing State progress in achieving visibility targets. The proposal included the definition of the deciview metric for tracking visibility. The proposal also called for a review of emissions reductions achieved as part of the long-term strategy.

Deciview. The proposal explained that the deciview is an atmospheric haze index that expresses changes in visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions.[60] Because each unit change in deciview represents a common change in perception, the deciview scale is like the decibel scale for sound. The proposal also stated that "A one deciview change in haziness is a small but noticeable change in haziness under most circumstances when viewing scenes in Class I areas."[61]

The proposal discussed that an advantage to using the deciview over other scales is that it can be used to express changes in visibility impairment in a way that corresponds to human perception in a linear, or one for one, manner. For example, this metric is designed such that a change of 3 deciviews in a highly impaired environment would be perceived as roughly the same degree of change as a 3 deciview change in a relatively clear environment. As noted in the preamble to the proposed regulation, the deciview is mathematically related to other common metrics used to describe visibility: the light extinction coefficient and visual range. However, the deciview metric can be used to compare changes in perception in a way that the other two metrics cannot. This feature makes the deciview a more useful metric for regulatory purposes. For example, a 5-

[58] See H.R. Conf. Rep. No. 550, 105th Cong., 2d. Sess. 517.

[59] The option for regional planning provided by section 51.308(c) is not available for Alaska, Hawaii, and the Virgin Islands. Class I areas within their boundaries are not effected by emissions from any other State. As a result, regional planning will not be needed to develop regional haze SIPs for these areas.

[60] Pitchford, M. and Malm, W., "Development and Applications of a Standard Visual Index," Atmospheric Environment, v. 28, no. 5, March 1994.

[61] 62 FR 41145.

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mile change in visual range can in some cases be very significant, such as from 5 to 10 miles in an impaired environment (equal to a change of 6.9 deciviews), whereas a 5-mile change may not be perceptible in a less impaired environment, such as from 95 to 100 miles (equal to a change of 0.5 deciviews). The following sections discuss the comments received on specific issues and how such issues are addressed in the final rule.

Tracking emissions versus visibility. Many commenters supported the use of the deciview metric to track changes in visibility improvement as a key aspect of the program. These commenters agreed with EPA's proposal that under a visibility-oriented program, progress in fact should be tracked in terms of a visibility-based metric. Others felt the program could be successfully implemented by tracking emissions only because this approach would not be greatly affected by meteorological variations as would an approach based on ambient monitoring.

The final rule provides for the tracking of both visibility improvement and emissions reductions.[62] The final rule presents visibility improvement and tracking of emissions as linked elements of the program. The EPA has retained the use of the deciview metric for tracking changes in visibility. The EPA believes the tracking of actual visibility improvements is necessary to be responsive to the goals of the CAA. Section 169A(a) of the CAA sets forth the national goal of the "prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution." The CAA also requires EPA to establish regulations to be implemented by the States to ensure that 'reasonable progress' is made toward the national goal. In addition, section 169B(e) of the CAA calls for EPA to carry out its "regulatory responsibilities under section 169A, including criteria for measuring 'reasonable progress' toward the national goal."[63]

The EPA believes that tracking of emissions reductions is also an important component of the regional haze program. The mechanism for achieving improvements in visibility will be the implementation of enforceable emissions reduction measures that have been adopted as part of the SIP. Tracking emissions will provide a good indicator of whether adopted measures are reducing emissions and is thus a useful indicator of progress in reducing visibility impairment. The tracking of emissions without concurrently tracking changes in visibility, however, would be problematic because of the variable effect on visibility of each of the principal constituents of PM, the more significant light scattering efficiency of fine PM versus coarse PM, and the generally greater effect of nearby versus distant sources on visibility impairment.

Since the national goal is expressed in terms of air quality (i.e., visibility) rather than emissions, we believe that it is very important to require the quantitative tracking of visibility impairment as an integral element in measuring reasonable progress. Because ambient monitoring data are subject to meteorological fluctuations, EPA designs standards and requirements for analysis of monitoring data to limit the effects of unusual meteorological events. For regional haze, we have provided in this final rule for the tracking of visibility trends based on 5-year averages of annual deciview values for the most impaired and least impaired days. We believe that this approach responds to commenters' concerns about significant unusual fluctuations in annual average values for the best and worst days due to unusual meteorological conditions in any particular year. However, it is also important to note that EPA has long held that normal meteorological variations should be explicitly accounted for in air quality analyses and control strategy design. Air quality improvement plans should be able to assure protection of public health and welfare under the normal and foreseeable range of meteorological conditions.

Tracking visibility in deciviews. Some commenters disagreed with the use of the deciview to measure changes in visibility, claiming that the deciview metric has not been adequately reviewed for use in a regulatory program. The EPA disagrees with this assertion. The EPA believes the deciview metric has been adequately reviewed for use in the regional haze program. The deciview concept was introduced in 1994 in an article appearing in the peer-reviewed journal Atmospheric Environment.[64] It was presented in the 1996 Criteria Document for the PM NAAQS as a valid metric for characterizing visibility impairment.[65] The EPA also recognized the deciview as an appropriate metric for regulatory purposes in chapter 8 of the 1996 Staff Paper for the PM NAAQS review.[66] Both of these documents were reviewed and accepted by the Clean Air Scientific Advisory Committee. Visibility conditions at Class I areas have been characterized in terms of deciview in summary reports on the IMPROVE visibility monitoring network.[67]

The EPA also supports use of the deciview metric because it satisfies one of the recommendations of the NAS Committee on Haze in National Parks and Wilderness Areas. In its 1993 report on visibility, the NAS recommended the development of an index that takes into account both measurement of physical changes (i.e., changes in air quality) with elements of human perception.[68] Further, a report on the regional haze proposal by the Congressional Research Service found that the deciview index "conforms closely"[69] to the NAS recommendation cited above.

Some commenters stated that the final rule should not suggest that a one deciview change is the threshold of perception in all cases for all scenes. The EPA agrees with the comment that a one deciview change should not be considered the threshold of perception in all cases for all scenes. The EPA believes that visibility changes of less than one deciview are likely to be perceptible in some cases, especially where the scene being viewed is highly sensitive to small amounts of pollution. The EPA also acknowledges the technical point made by some commenters that for other types of scenes with other site-specific conditions,[70] a change of more than 1 deciview might be required in order for the change to be perceptible. However, EPA wishes to emphasize that the overall goal of the regional haze program is not to track changes in visibility for only certain vistas at a specific Class I area. Rather, the program is designed to track changes in regional visibility for the range of possible views of sky and terrain found in any Class I area, and to assure progress toward the national goal. For this purpose, EPA supports the use of the deciview metric as calculated from ambient monitoring data for tracking changes in regional visibility. The monitoring network is not designed to track changes in visibility for specific views in each Class I area. Rather, the network is designed to characterize visibility conditions that, for each site, are representative of a fairly broad geographic region. The EPA believes this approach is consistent with the nature of regional haze, which is defined as a uniform haze caused by numerous sources covering a broad area. Thus, although a 1 deciview change may not be the threshold of perception in all situations, the fundamental advantage of using the deciview remains: the deciview metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. The metric provides a useful means of expressing changes in visibility caused by changes in air quality while also providing a scale that relates visibility to perception. The final rule maintains the deciview as the principle visibility metric used in establishing reasonable progress goals, in defining baseline, current, and natural conditions, and in tracking changes in visibility conditions over time. States may choose to express visibility changes in terms of other metrics, such as visual range or light extinction, as well as in terms of deciview. The definition in the final rule was modified slightly to provide additional clarity.

Light extinction calculated from aerosol data. Some other commenters did not support EPA's proposed approach to calculating light extinction based on monitored fine particle data (referred to as "reconstructed light extinction" in the proposal). These commenters preferred other methods, such as direct measurement of light scattering or light extinction with an optical device. While such methods are desired in comprehensively monitoring visibility impairment, the EPA supports the use of a common approach for calculating visibility changes based on monitored fine particle data as the primary monitoring method for tracking visual air quality.

Such an approach has been established and implemented for many years by the IMPROVE Steering Committee. The IMPROVE approach uses a set of standard assumptions,[71] which have been tested and found to be reasonable, in calculating light extinction and deciviews from changes in air quality. Two important aspects of the approach are: (1) Standard rates of light extinction per unit mass of visibility-impairing pollutants (e.g., sulfate, nitrate, organic carbon, elemental carbon, and crustal material); and (2) standard effects of humidity on sulfate and nitrate.

Through extensive analysis of empirical data, a value (or "dry extinction coefficient") has been developed for each aerosol component which represents the amount of light extinction (expressed in inverse megameters) caused by each microgram/m3 of that component. Light extinction is calculated by multiplying the aerosol mass for each component by its extinction coefficient and summing the products. Because sulfates and nitrates become more efficient at scattering light as humidity increases, the values for these two components are also multiplied by a relative humidity adjustment factor. It has been shown that annual and seasonal light extinction values developed according to this method correlate well with averages of optical measurements of light extinction for the same locations.[72] The EPA plans to issue future guidance describing the details of calculating visibility changes in this manner and tracking visibility over time.

Although light extinction can be measured directly by certain optical devices (i.e., transmissometers and nephelometers), EPA supports an approach based on the mass of PM components derived from ambient monitoring for calculating light extinction for two main reasons. First, this approach provides for the tracking of actual changes in the components of air pollution, and the information obtained from analysis of the chemical composition of PM is critical to the air quality modeling and strategy development processes. By understanding the chemical composition of particulate matter, we can better define the manmade and natural components contributing to overall light extinction. Second, direct measurements of visibility from some optical instruments (e.g., transmissometer) are more frequently disrupted by precipitation events (i.e., rain or snow) than are aerosol measurements.

For all of the reasons discussed above, the final rule provides for the tracking of visibility and emissions reductions. The deciview will be the principal visibility metric for use in implementing the regional haze program. The deciview will be used for expressing reasonable progress goals, defining baseline, current, and natural conditions, and tracking changes in visibility conditions over time. The definition of deciview in the final rule in section 51.301(bb) was modified slightly to provide additional clarity and state that deciview values are to be derived from calculated light extinction based on aerosol measurements in accordance with EPA guidance.

D. Regional Haze Implementation Plan Principles

Section 169A of the CAA calls for States to develop implementation plans ensuring reasonable progress toward the national goal, including emission limits, schedules of compliance and other measures as necessary. At a minimum, the CAA calls for SIPs to include a long-term strategy and provisions for BART for certain major stationary sources. We would like to emphasize several overarching themes for the specific implementation plan requirements in the final rule:

- Regional haze regulations and State implementation plans must address all of the statutory requirements outlined in 169A and 169B of the CAA. Regional haze requirements must address a number of specific statutory requirements, including "criteria for reasonable progress," long-term strategies addressing all types of sources and activities, and best available retrofit technology for certain stationary sources. The implementation plan requirements in the final rule are designed to ensure that all of these statutory requirements will be met.
- Tracking "reasonable progress" should involve the tracking of both emissions and visibility improvement. Regional haze implementation plans must include provisions for tracking the implementation of enforceable emission management strategies designed to make reasonable progress toward the national

[62] Tracking of visibility is addressed in section 51.308(d) and 51.308(g). Tracking of emissions reductions is addressed in section 51.308(g).

[63] Section 169B(e)(1).

[64] Pitchford, M. and Malm, W., "Development and Applications of a Standard Visual Index," Atmospheric Environment, V. 28, no. 5, March 1994.

[65] U.S. EPA, Air Quality Criteria for Particulate Matter, Research Triangle Park, NC, National Center for Environmental Assessment. Office of Research and Development, July 1996.

[66] U.S. Environmental Protection Agency. Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information. OAQPS Staff Paper. Office of Air Quality Planning and Standards. July 1996.

[67] Sisler, J., *et al.*, Spatial and Seasonal Patterns and Long-Term Variability of the Composition of the Haze in the United States: An Analysis of Data from the IMPROVE Network. Cooperative Institute for Research in the Atmosphere, Colorado State University, 1996. See also Sisler, J., et al., Spatial and Temporal Patterns and the Chemical Composition of the Haze in the United States: An Analysis of Data From the IMPROVE Network, 1988–1991, Fort Collins, CO, 1993.

[68] National Research Council, Protecting Visibility in National Parks and Wilderness Areas, 1993, p. 354.

[69] Congressional Research Service, Regional Haze: EPA's Proposal to Improve Visibility in National Parks and Wilderness Areas, November 17, 1997, p. 17.

[70] For example, where the sight path to a scenic feature is less than the maximum visual range.

[71] See Sisler, *et al.*, Spatial and Seasonal Patterns and Long-Term Variability of the Composition of the Haze in the United States: An Analysis of Data from the IMPROVE Network. Cooperative Institute for Research in the Atmosphere, Colorado State University, 1996.

[72] Id.

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visibility goal. Emission control measures will be the component that will be enforceable to ensure reasonable progress. Measuring reasonable progress should involve tracking the actual emissions achieved through implementation of such strategies, and the tracking of visibility for the most impaired and least impaired days using established monitoring and data analysis techniques.

• Strategies for improving visibility should address all types of sources. Section 169A provides for State long-term strategies to address all types of sources and activities emitting pollutants that contribute to visibility impairment in Class I areas, including stationary, mobile, and area sources. Implementation plans also must give specific attention to certain stationary sources built between 1962 and 1977 and provide for meeting the BART provisions for these sources.

• Successful implementation of the regional haze program will involve long-term regional coordination among States. Pollution affecting the air quality in Class I areas can be transported long distances, even hundreds of kilometers. Therefore, States will need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction to air quality in another. In addition, as noted by the NAS study, "achieving the national visibility goal will require a substantial, long-term program." [73] Accordingly, the regional haze program requires the periodic review by each State of whether "reasonable progress" is being achieved and revisions of implementation plans as needed to continue progress toward the national visibility goal.

E. Determination of "Baseline," "Natural" and "Current" Visibility

Background. The fundamental goal of the visibility program, as provided by Congress, is the prevention of future visibility impairment and the remedying of existing impairment in Class I areas. Thus, the regional haze program must track progress toward the national goal.

In order to facilitate this tracking process, the proposed rule required each State having one or more Class I areas to establish, and update as necessary, three important visibility parameters for the best and worst visibility days at each Class I area within the State. Each parameter is discussed in detail below.

• Baseline conditions—Baseline conditions represent visibility for the best and worst days at the time the regional haze program is established. Baseline conditions are calculated using multiyear averaging.

• Natural conditions—As specified in the CAA, estimated natural conditions, or the visibility conditions that would be experienced in the absence of human-caused impairment, constitute the ultimate goal of the program. Under the regional haze program, natural conditions need to be estimated for the 20 percent best and worst days.

• Current conditions—Current conditions for the best and worst days are calculated from a multiyear average, based on the most recent years of monitored data. This value would be revised at the time of each periodic SIP revision, and would be used to illustrate: (1) The amount of progress made since the last SIP revision, and (2) the amount of progress made from the baseline period of the program.

Baseline Conditions

Proposed rule. The preamble to the proposal discussed an approach for determining baseline visibility conditions for the haziest 20 percent and clearest 20 percent of days that would allow using a minimum of 3 years of monitored data, and up to a maximum of 9 years of data.

Comments received. The EPA received some comments suggesting that it would be more equitable to use a standardized time period to establish baseline values for all Class I areas across the country. Other commenters supported the use of baseline values based on a varying number of years from site to site. Some commenters also supported the establishment of baseline conditions based on a period of time longer than 3 years because a 3-year period could be significantly influenced by unique meteorological circumstances.

Final rule. After considering public comments on the baseline issue, EPA has determined that the most appropriate "baseline period" would be a fixed, 5-year period extending from calendar year 2000 through calendar year 2004. The EPA concluded that a standard baseline period provides for greater national consistency in establishing this important value, and therefore, is preferable to a provision allowing the baseline period to be a variable number of years. Using a common number of years and data points to calculate the baseline value for each site is consistent with fundamental statistical principles and will provide for easy comparison of data from multiple sites as the program is implemented.

The EPA also concluded that it would be preferable to have a baseline value based on more than 3 years in order to establish a more robust baseline value. The EPA agrees with commenters that a 5-year period, rather than a 3-year period, provides for a more stable treatment of the inherent variability in emissions and meteorology. This approach decreases the probability that the baseline period will be unduly affected by unusual or nonrepresentative events.

In deciding upon the specific baseline period of 2000–2004, the Agency took into account the fact that EPA has obtained funding to provide several hundred monitors to the States for the purposes of characterizing $PM_{2.5}$ concentrations in urban and rural areas nationally. In accordance with the part 58 monitoring provision enabling IMPROVE protocol aerosol monitors to be used to characterize $PM_{2.5}$ conditions at background and transport sites, the IMPROVE network will be expanding from 30 to more than 100 sites by the end of 1999 in order to characterize both background $PM_{2.5}$ levels and visibility impairment levels in Class I areas. Thus, EPA concluded that the baseline period should begin in 2000, after monitoring coverage for Class I areas is expanded significantly.

The approach to calculating baseline values will also provide for more stable values because the frequency of monitoring samples in the IMPROVE network will increase in 1999 to one sample every 3 days. In this way, the frequency of sampling for IMPROVE will be consistent with the $PM_{2.5}$ monitoring approach. Thus, annual values should become more robust since 17 percent more samples will be collected each year. Baseline conditions must be determined in terms of deciviews for the years 2000–2004 for the "most impaired days" and the "least impaired days." The final rule defines these values as the average of the 20 percent of monitored days with the highest or lowest light extinction values, expressed in deciviews. The EPA will issue guidance for calculating baseline visibility conditions based on ambient monitoring data. The baseline value is determined by calculating the average deciview value for the 20 percent most (or least) impaired days for each of the 5 years (2000 through 2004), and by averaging those five values.

The final rule also calls for baseline conditions to be established by the State for any Class I area without on-site monitoring by using "representative" monitoring data for the site. In the SIP, the State will need to provide an adequate demonstration supporting the use of any "representative" data. The EPA will issue guidance to help the States address this issue. The IMPROVE Steering Committee (comprised of representatives from EPA, States, and FLMs) is working to develop acceptable criteria to configure the expanded visibility monitoring network in such a way that virtually all Class I areas will either have an aerosol monitor or will be characterized by a "representative" site. The IMPROVE Steering Committee, including State representatives, will complete the process for identifying representative sites before monitoring for the expanded network begins in the year 2000. For this reason, it is expected that most States needing to rely on representative data from another site will be able to meet the requirement of section 51.308(d)(4) by referencing the Visibility Monitoring Guidance Document, which will be released shortly after promulgation of this rule, and other technical support materials developed by the IMPROVE Steering Committee to support the determination of representative sites.

Finally, States that submit SIPs for regional haze by 2003 under section 51.309 (further discussion in unit IV) must determine baseline conditions based on the most recent 5-year period for which monitoring data are available for the Class I area. For an area without monitoring data, the State may use data from another representative Class I area.

Natural Visibility Conditions

Proposal. The proposed rule called for each State having a Class I area, in consultation with the appropriate FLMs, to: (1) Develop a procedure to estimate natural conditions for the 20 percent most impaired and least impaired days at each Class I area within the State; and (2) provide this estimate with the State's first SIP revision for regional haze (in the 2003–2005 timeframe as stated in the proposal). The estimates for natural conditions would be expressed in deciviews. The preamble cited as a default annual average, estimates of natural visibility that were included in the 1991 NAPAP chapter on visibility. When converted to deciview values, these annual average estimates are 9.6 deciviews in the Eastern United States and 5.3 deciviews in the Western United States.

Comments received. A number of commenters noted that there are several factors which can make the determination of natural conditions difficult. For example, organic aerosols resulting from biogenic sources, windblown dust, and natural causes of fire all contribute to natural visibility conditions. Several commenters emphasized the difficulty in determining the estimated contribution of naturally-caused fire to natural conditions. Some commenters suggested that EPA provide guidance on how to estimate natural conditions.

Final rule. The EPA understands that estimating natural visibility conditions can involve many technically complex issues. The EPA is committed to working with the States, tribes, and FLMs on this issue to develop technical guidance on estimating natural visibility conditions. The EPA expects that these estimates may be refined over time. In addition, after the regional haze rule is promulgated, and in advance of SIP due dates, EPA plans to revise the Interim Air Quality Policy on Wildland and Prescribed Fires [74] to address a number of issues, including the contribution of fire to natural visibility conditions.

Consistent with the proposal, the final rule retains the requirement that each State provide an adequate estimate of natural visibility conditions for best and worst visibility days in each Class I area within the State. These estimates will be due at the time the State submits its initial control strategy SIP for regional haze. However, because the requirement for a SIP revision within 12 months of promulgation has been overridden by the provisions of TEA–21, there no longer is a requirement for States to separately submit to EPA recommended procedures for estimating natural conditions in advance of their control strategy SIPs.[75]

The EPA recommends that the States work closely with the FLMs, tribes, and EPA in developing and documenting in their SIPs appropriate methods for estimating natural conditions. Estimates of natural visibility conditions are needed to aid all interested parties, including the general public, in understanding how "close" or "far" a particular Class I area is in relation to the ultimate goal of the program. Understanding the estimated relative contributions of natural PM constituents (such as organic carbon and crustal material) also can help the States and tribes in understanding the extent of the contribution from manmade components, and thus can help in designing appropriate emission management strategies in the future. With each subsequent SIP revision, the estimates of natural conditions for each Class I area may be reviewed and revised as appropriate as the technical basis for estimates of natural conditions improve.

The EPA believes that, as a starting point, it will be appropriate to derive regional estimates of natural visibility conditions by using estimates of natural levels of visibility-impairing pollutants [76] in conjunction with the IMPROVE methodology for calculating light extinction from measurements of the five main components of fine particle mass (sulfate, nitrate, organic carbon, elemental carbon, and crustal material). By using this approach with appropriate assumptions for annual average relative humidity, EPA estimates natural conditions for the worst visibility days to be approximately 11–12 deciviews in the east and 8 deciviews in the west. The EPA supports use of these estimating techniques as a valid starting point because they rely on peer-reviewed estimates of the natural composition of fine particle mass,[77] and analysis of data from the IMPROVE program's well-established approach, refined over the past 10 years or more, for calculating light extinction from monitored PM constituents.

Because these values are expressed in regional terms only, further refinement of these estimates will need to take place in the future on a site-specific basis. However, because current conditions at most Class I areas with existing IMPROVE monitoring exceed the above estimates by at least several deciviews (with some of the more impaired Class I areas having values that exceed estimated natural conditions by 20 deciviews or more), EPA does not believe that such refined values are necessary for the initial 10-year program implementation period. As the difference between current and natural conditions for a particular Class I area becomes smaller, it will be important to develop more precise techniques for estimating natural conditions.

Current Conditions

Proposal. The proposed rule required the State to revise its long-term strategy every 3 years and to compare current conditions to the visibility conditions existing at the time of its previous long-term strategy revision. Current conditions would be established for the most impaired and least impaired days, and would be expressed in deciviews.

[73] National Research Council, Committee on Haze in National Parks and Wilderness Areas, Protecting Visibility in National Parks and Wilderness Areas, National Academy Press, 1993.

[74] Interim Air Quality Policy on Wildland and Prescribed Fires, U.S. EPA, Office of Air Quality Planning and Standards, May 1998.

[75] See unit III.B. for a detailed discussion of the TEA–21 provisions and their affect on the timing for implementation of the regional haze program.

[76] See National Acid Precipitation Assessment Program. Acid Deposition: State of Science and Technology. Report 24, Visibility: Existing and Historical Conditions—Causes and Effects, Table 24–6. Washington, DC. 1991.

[77] The NAPAP estimates were cited in both the Criteria Document and EPA Staff for the PM NAAQS.

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Comments received. Many commenters supported EPA's approach to periodic tracking of changes in visibility to determine reasonable progress. Some commenters felt that averaging 5 years of data, rather than 3, would be preferable.

Final rule. Section 51.308(f)(1) of the final rule retains the requirement for each State, at the time of any SIP revision, to determine the current visibility conditions for the most impaired and least impaired days for each Class I area within the State. Current conditions are to be based on the 5 most recent years of monitoring data available at the time a SIP revision or progress report is submitted. The approach for calculating current conditions is similar to the approach for calculating baseline conditions discussed above: the value is determined by calculating the average for the 20 percent most impaired days for each of the 5 most recent years for which quality-assured data are available, and then by calculating the average of those five values.[78]

Sections 51.308(f)(1) and 51.308(g)(3) of the final rule also require the State to calculate the difference between current conditions and several other parameters so that this information can be taken into account when the State is revising its SIP and considering new reasonable progress goals. A discussion of these calculations is provided in unit III.J of this preamble addressing periodic SIP revisions and progress reports.

Summary

The following summary table further illustrates the uses of "baseline," "natural," and current conditions in the regional haze program.

Term	What does it mean?	How is it used in the regional haze program?
"Baseline conditions"	Visibility (in deciviews) for the 20 percent most-impaired days, and for the 20 percent least-impaired days, for the years 2000 through 2004.	"Baseline" conditions are used in two ways: (1) For the first regional haze SIPs, due in about 2006–2008, baseline conditions are the reference point against which visibility improvement is tracked. (2) For subsequent SIP updates (in the year 2018 and every 10 years thereafter), baseline conditions are used to calculate progress from the beginning of the regional haze program.
"Natural conditions"	The level of visibility (in deciviews) for the 20 percent most-impaired days, and for the 20 percent least-impaired days, that would exist if there were no manmade impairment..	"Natural conditions" represents the absence of visibility impairment due to human-caused emissions, the ultimate goal of the regional haze program.
"Current conditions"	"Visibility (in deciviews) for the 20 percent most-impaired days, and for the 20 percent least-impaired days, for the most recent 5-year period.	For the initial planning SIPs, "current" and "baseline" conditions are the same. For subsequent 5-year progress reports, "current conditions" describe the amount of progress that has been made at the mid-course review point halfway through an implementation cycle. For subsequent comprehensive regional haze SIPs (beginning in 2018 and every 10 years thereafter), "current conditions" will be used to show how much progress has been made relative to the "baseline," and will serve as the reference point for tracking progress for the next implementation period.

F. Reasonable Progress Goals

The previous section discussed three important visibility parameters for tracking "reasonable progress" toward the national visibility goal. In this section, EPA describes the requirements of section 51.308(d)(1) of the final rule for States to establish "reasonable progress goals" for each Class I area within the State. In addition, this section also discusses important analyses and other factors for States to take into consideration in setting these goals.

Proposed rule. In the proposed rule, EPA presented a framework for a long-term program under which continued progress would be achieved in Class I areas toward the national visibility goal. The EPA proposed presumptive "reasonable progress targets," expressed in terms of deciviews, for the purposes of improving visibility on the 20 percent worst days and allowing no degradation of visibility on the 20 percent best days. Two options were presented for the presumptive target for the most impaired days: (1) A rate of improvement equivalent to 1.0 deciview over a 10-year period, and (2) a rate of improvement equivalent to 1.0 deciview over a 15-year period. For the least impaired days, EPA proposed a target of no degradation, defined as less than a 0.1 deciview increase.

The EPA noted that the 10- and 15-year time periods for tracking improvement were consistent with section 169A(b)(2)(B), which calls for States to develop long-term strategies covering 10 to 15 years. The EPA also emphasized the importance of achieving a perceptible change in visibility over the time period of a long-term strategy. In addition, EPA stated that gradual improvements in visibility as defined by reasonable progress targets were consistent with the GCVTC definition of reasonable progress, which is "achieving continuous emissions necessary to reduce existing impairment and attain steady improvement of visibility in mandatory Class I areas.

[78] See the section on Baseline Conditions for a discussion of the rationale for selecting a 5-year period.

* * *"[79] As noted in unit III.C., EPA also proposed to track progress in relation to the targets through the use of monitored air quality data and calculation of light extinction values from this aerosol data.

The proposal also provided a process by which a State could establish alternate reasonable progress targets, expressed in deciviews, provided the State justified the alternate target based on a review of the relevant statutory factors.[80] These factors are:

- The costs of compliance;
- The time necessary for compliance;
- The energy and nonair quality environmental impacts of compliance; and
- The remaining useful life of any existing source subject to such requirements.

Comments received. A number of commenters advocated a faster rate of improvement than the proposed presumptive rate of 1 deciview every 10 or 15 years since, as proposed, they claimed it could take more than 200 years to reach the national visibility goal in some eastern locations. They felt that this rate of progress should not be considered "reasonable." Many of these commenters supported a rate of improvement for the worst days equal to 10–20 percent of the current deciview value (i.e., 3–6 deciviews per 10 years in an average eastern location with a worst day value of 30 deciviews, and 1.5–3.0 deciviews for an average southwestern location with a worst day value of 15 deciviews). A number of other commenters interpreted the proposed rule as requiring an inflexible visibility "standard" of 1 deciview improvement every 10 or 15 years. They maintained that such a standard would be infeasible to achieve in some areas of the country, and that EPA had failed to justify such a presumption through an analysis of the statutory factors in section 169A(g). These commenters wanted the States to have greater flexibility in setting visibility goals. Some commenters stated that 1 deciview is not the threshold of perception in all situations, and that for this reason the one deciview presumptive target in the proposal should be dropped. Other commenters asserted that the no degradation target for the best visibility days would prevent new source growth in some areas. Some commenters also opposed the presumptive target because of the concern that a State could be subject to a citizen lawsuit for not meeting a reasonable progress target.

Final rule. In considering how to address the reasonable progress target issue in the final rule, EPA was mindful of the balance that must be maintained between the need for strategies that will achieve meaningful improvements in air quality and the need to provide appropriate flexibility for States in designing strategies that are responsive to both air quality and economic concerns. After considering the comments on the "presumptive target" issue, EPA has revised the rule to eliminate "presumptive targets." There is no presumptive target that States are required to meet to achieve reasonable progress. States have flexibility in determining their reasonable progress goals based on consideration of the statutory factors. However, as discussed below, the final rule requires States to conduct certain analyses to ensure that they consider the possibility of setting an ambitious reasonable progress goal, one that is aimed at reaching natural background conditions in 60 years.

The final rule calls for States to establish "reasonable progress goals,"[81] expressed in deciviews, for each Class I area for the purpose of improving visibility on the haziest days and not allowing degradation on the clearest days over the period of each implementation plan or revision. The EPA believes that requiring States to establish such goals is consistent with section 169A of the CAA, which gives EPA broad authority to establish regulations to "ensure reasonable progress," and with section 169B of the CAA, which calls for EPA to establish "criteria for measuring reasonable progress" toward the national goal.

This approach is designed to address the concerns of those commenters interested in greater State flexibility in setting visibility goals, as well as the concerns of those commenters who believed that the presumptive 1 deciview target approach could actually provide a disincentive for some States to pursue more ambitious rates of progress, particularly for the most impaired Class I areas in the East. The EPA has taken this approach in the final rule because the CAA national visibility goal and "reasonable progress" provisions do not mandate specific rates of progress, but instead call for "reasonable progress" toward the ultimate goal of returning to natural background conditions. Today's final rule requires the States to determine the rate of progress for remedying existing impairment that is reasonable, taking into consideration the statutory factors, and informed by input from all stakeholders.

Required analysis of rate of progress which would attain natural conditions in sixty years. The EPA received numerous comments expressing the concern that a rate of progress that would result in reaching the national goal in 200 years should not be considered "reasonable." These comments are based on the fact that the most impaired Eastern United States Class I areas have current conditions for the worst days (around 26–31 deciviews) that exceed estimated natural conditions (approximately 10–12 deciviews) by 16–20 deciviews or more. At the proposed presumptive rate of progress of 1 deciview per 10 years, it would take 200 years or more to reach the national visibility goal in many Eastern Class I areas. In addition, several commenters felt that rates of progress should vary between the east and the west because many parts of the western United States have much lower levels of visibility impairment than the east. For example, they asserted that a 1 deciview improvement over 10 years may not be very ambitious in an eastern location, whereas it could be very ambitious in some of the least impaired Class I areas in the west.

In order to address the diverse concerns of commenters on the proposal, EPA is establishing an analytical requirement that takes into account the varying levels of visibility impairment in Class I areas around the country while ensuring an equitable approach nationwide. To determine an equitable analytical approach, we considered the CAA amendments of 1990, which require actions to attain air quality health standards over a 20-year period for the 1-hour ozone standard, depending on the severity of the area's problem, and over a 10-year period for new standards, such as the new 8-hour ozone standard and the $PM_{2.5}$ standards. The CAA also requires reductions over the same time period to address acid rain. In the eastern United States, EPA's analyses show that the reductions from these and other CAA programs will result in a rate of improvement estimated at approximately 3 deciviews over the period from the mid-1990's to about 2005.[82] The EPA calculated that if this rate of improvement could be sustained, these areas would reach the national goal in 60 years.[83] The EPA

[79] GCVTC Report, June 1996, p. x.

[80] See CA A section 169A(g)(1) and 169A(g)(2). See also 82 FR 41145–41148.

[81] See section 51.308(d)(1).

[82] U.S. EPA. Effects of the 1990 Clean Air Act Amendments on Visibility in Class I Areas: An EPA Report to Congress. Office of Air Quality Planning and Standards. EPA–452/R–93–014, 1993.

[83] Calculated by dividing 3 deciviews (per 10 years) into an average of 18 deciviews away from

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concluded that it would be reasonable to establish an analytical requirement based on this rate of progress given that this rate of improvement is expected to be achieved due to emissions under CAA programs.

The EPA also believes that the analytical requirement of the rate of improvement needed to reach natural conditions in 60 years is reasonable because in the near-term, cost-effective controls will continue to be available to reduce emissions that contribute to visibility impairment in Class I areas across the country. Recent analyses for other air quality programs show that significant emissions can be achieved through cost-effective control measures.

In addition, in the longer term, it can be expected that continued progress in visibility will be possible as industrial facilities built in the latter half of the 20th century reach the end of their "useful lives" and are retired and/or replaced by cleaner, more fuel-efficient facilities. Significant improvements in pollution prevention techniques, emissions control technologies, and renewable energy have been made over the past 30 years, and continue to be made. History strongly suggests that further innovations in control technologies are likely to continue in future decades, leading to the ability of new plants to meet lower emissions rates.

In light of this analysis of progress that could potentially be achieved, EPA has established in section 51.308(d)(1)(i)(B) an analytical requirement for setting reasonable progress goals that should provide for greater equity between goals set for the more impaired Eastern United States and the less impaired Western United States. This analytical requirement has the following four steps.

First, the State (or regional planning group) must compare the baseline visibility conditions in the years 2000–2004 (in deciviews) for the most impaired days with the natural background conditions, for each relevant Class I area. From this comparison, the State must determine the amount of progress needed to reach natural background conditions in 60 years, that is, by the year 2064. For example, if the baseline visibility is 30 deciviews, and the natural background is 12 declviews, then this step would show the need for an 18 deciview improvement between 2004 and 2064.

Second, the State must identify the uniform rate of progress over the 60 year period that would be needed to attain natural background conditions by the year 2064. For the example case noted above, where 18 deciviews is the amount for the 60-year period, this would result in a uniform rate of progress for each year of (18/60), or 0.3 deciviews for a year.

Third, the State must identify the amount of progress that would result if this uniform rate of progress were achieved during the period of the first regional haze implementation plan. For example, if the first implementation plan covers a 10-year period, then for the above example, the State would identify a 3 deciview amount of progress over that time period.

Fourth, the State must identify and analyze the emissions measures that would be needed to achieve this amount of progress during the period covered by the first long-term strategy, and to determine whether those measures are reasonable based on the statutory factors. These factors are the costs of compliance with the measures, the time necessary for compliance with the measures, the energy and nonair quality environmental impacts of the compliance with the measures, and the remaining useful life of any existing source subject to the measures.

In doing this analysis, the State must consult with other States which are anticipated to contribute to visibility impairment in the Class I area under consideration. Because haze is a regional problem, States are encouraged to work together to develop acceptable approaches for addressing visibility problems to which they jointly contribute. If a contributing State cannot agree with the State establishing the reasonable progress goal, the State setting the goal must describe the actions taken to resolve the disagreement.

If the State determines that the amount of progress identified through the analysis is reasonable based upon the statutory factors, the State should identify this amount of progress as its reasonable progress goal for the first long-term strategy, unless it determines that additional progress beyond this amount is also reasonable. If the State determines that additional progress is reasonable based on the statutory factors, the State should adopt that amount of progress as its goal for the first long-term strategy.

If the State determines, based on the statutory factors, that the identified uniform rate of progress needed to reach natural conditions is not reasonable, the State must provide in its plan submission the analysis and rationale supporting this determination. The State then must provide a demonstration as part of its SIP submission showing why a less ambitious goal is reasonable, based on the statutory factors. The EPA intends to issue guidance interpreting the statutory factors and providing examples of ways in which they may be applied.

The State must also provide to the public, in accordance with section 51.308(d)(1)(ii), an assessment of the number of years it would take to reach natural conditions if the State continued to make progress at the alternative rate of progress it selected. For example, if average worst day visibility at the class I area is 18 deciviews from estimated natural conditions, the uniform rate of progress needed to reach natural conditions is 3 deciviews per 10 years. If the State determined that 3 deciviews is not reasonable but 2 deciviews is, then the State would have to include a statement in its SIP that it would take 90 years to reach natural conditions if this rate is maintained.

It should be noted that in developing the first regional haze implementation plan (and subsequent revisions), there is a time period of several years between the time period for which data are available and the date of plan submission. The first regional haze implementation plans for most of the United States will use the years 2000 through 2004 as the baseline for monitoring and emission inventories, while the first implementation plan for much of the country will not be due until a deadline that occurs between 2006 to 2008. In identifying the amount of progress needed by the end of the implementation period (the third step described above), States must account for this time period. Assume, for example, for the case discussed above (i.e., a 30 deciview baseline, and a uniform rate of progress of 0.3 deciviews per year to reach natural conditions in 60 years) that the first regional haze SIPs covers the years 2009 through the year 2018. For this case, there would thus be a 4-year period (2005 through 2008) that would occur between the baseline and the date of SIP submission. The uniform rate of progress of 0.3 deciviews per year over this time period would result in 1.2 deciviews of improvement before the plan submission. Hence, for this example, in identifying the amount of progress needed between the baseline and the end of the implementation period (i.e., the year 2018), the State must evaluate strategies that provide for a total of 4.2 deciviews: 1.2 deciviews between the last year of the baseline period and plan submission, and 3 deciviews for the implementation

natural conditions, and multiplying 6 increments by 10 years, assuming 10 years to achieve each increment.

period. The effect of this provision is that States must be mindful of the expected activities that take place before plan submission. Generally, we expect for the first plan submission period that progress in visibility improvement will continue to occur during the 2004 to 2008 period due to implementation of other CAA programs.

Rationale for the required 60-year analysis. The EPA has adopted this analytical requirement for two reasons. First, a common analytical framework that recognizes regional differences meets the concerns of several commenters by providing greater equity between the Eastern United States and Western United States.

Second, EPA believes this analysis will provide important additional information for the public to consider as States establish progress goals. The EPA believes this analysis will provide for a more informed and equitable decision making process by giving the public information about the level of emissions needed, related costs, and other factors associated with improvements in visibility. The EPA recommends that as part of this process, the States use computer-based scene optics modeling tools to present to the general public the anticipated change in Class I area visibility that would result from one reasonable progress goal versus another.

Consideration of other CAA measures. In determining the emissions and visibility improvement achieved during each implementation period, States should include all air quality improvements that will be achieved by other programs and activities under the CAA and any State air pollution control requirements. Therefore, any reasonable progress goal for a Class I area should reflect at least the rate of visibility improvement expected from the implementation of other "applicable requirements" under the CAA during the period covered by the long-term strategy. Consequently, States must take into account, at a minimum, the effect of measures to meet the NAAQS, the national mobile source program, and other applicable requirements under the CAA on Class I area visibility.

While, as noted above, based on our current understanding, EPA expects in the eastern United States that the reductions from measures implementing the CAA requirements will provide the visibility improvement and emissions needed for reasonable progress during the first regional haze implementation plan, EPA also recognizes that States will not be submitting their regional haze plans for several years. In developing its submittal, each State will need to conduct analyses to support its reasonable progress goals according to information available at the time the plan is submitted about benefits from the existing CAA programs. Each State should set its goal(s) taking into consideration input from its stakeholders and based on the statutory factors described above. In addition, the State must also conduct a BART determination for each source subject to BART as required in section 51.308(e) of the rule and described in section III.H. of the preamble. In considering whether reasonable progress will continue to be maintained, States will need to consider during each new SIP revision cycle whether additional control measures for improving visibility may be needed to make reasonable progress based on the statutory factors.

Some commenters expressed concern that the State would be subject to sanctions or enforcement actions in the event that a State fails to meet a reasonable progress target. As noted above, the reasonable progress goal is a *goal* and not a mandatory standard which must be achieved by a particular date as is the case with the NAAQS. Once a State has adopted a reasonable progress goal and determined what progress will be made toward that goal over a 10-year period, the goal itself is not enforceable. All that is "enforceable" is the set of control measures which the State has adopted to meet that goal. If the State's strategies have been implemented but the State has not met its reasonable progress goal, the State could either: (1) revise its strategies in the SIP for the next long-term strategy period to meet its goal, or (2) revise the reasonable progress goals for the next implementation period. In either case, the State would be required to base its decisions on appropriate analyses of the statutory factors included in section 51.308(d)(1)(i)(A) and (B) of the final rule.

If a State fails to submit an approvable SIP, or if it fails to implement and enforce strategies adopted into its SIP, the State could be subject to sanctions under the CAA. If the State continues to fail in meeting its obligations, EPA could be required to develop and implement a Federal implementation plan (FIP).

Allowing no degradation for the best days. Some commenters supported the goal of no degradation at a minimum, but they asserted that in many Class I areas, particularly in the east, the "best days" are in fact still quite impaired. In their view, a rule requiring only preservation of existing clean days would not meet the national goal.[84] Other commenters stated that a "no degradation" target for the clearest days could result in limitations to economic growth.

The final rule maintains the approach used in the proposed rule, which established a goal of no degradation for the best visibility days. The EPA believes this approach is consistent with the national goal in that it is designed to prevent future impairment, a fundamental concept of section 169A of the CAA. The EPA recognizes that the best days are still impaired in many Class I area locations, particularly in the east. The EPA encourages States to evaluate monitoring data to determine whether the same types of sources are affecting both the clear days and the hazy days. If the relative contribution of different particle types to light extinction is similar for both clear and hazy days, as it is for many sites currently monitored, then by developing strategies to improve conditions on the worst visibility days, the States will likely improve the entire distribution of hazy and clear days. Thus, under the final rule, the clean days for most Class I areas are expected to improve over time. Indeed, recent analyses of visibility trends have shown that at many Class I areas, deciview values for the 20 percent least impaired days are declining.

If at a Class I area the average conditions for clear days degrades over time, the State must provide in the next plan revision an explanation of why this happened, a set of measures designed to reverse this trend, and a plan for implementation during the next 10-year period. The State should review the effectiveness of these measures in subsequent 5-year progress reviews.

Integral vistas. The scenic vistas enjoyed by visitors to many parks often extend to important natural features outside these parks. The 1980 rules included a provision whereby the States could identify specific vistas for protection. For this reason, EPA solicited comment on whether the integral vistas concept should be extended to the regional haze program.

Some commenters supported reopening the vista identification program because such vistas are a significant resource of a Class I area. Several others opposed extending the program for a variety of reasons.

[84] Data from the IMPROVE network show that for several sites in the Eastern United States, the deciview values for the best days are greater than 14 deciviews, which is higher than even the NAPAP estimate of annual average conditions in the Eastern United States (9.6 deciviews).

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The final regional haze rule does not extend the integral vista concept to the regional haze program. As noted earlier in the background section of this preamble, regional haze is caused by a multitude of sources across a broad geographic area, and it can create a uniform haze in all directions. The regional haze program is designed to bring about improvements in regional visibility for the range of possible views of sky and terrain found in any Class I area. Accordingly, the program does not protect only specific views from a Class I area. To address haze, regional strategies will be needed, and emissions resulting from these strategies are expected to improve visibility across a broad region, not just within a Class I area. Thus, although the regional haze program does not include a specific provision regarding integral vistas, the long-term strategies developed to meet reasonable progress goals would also serve to improve scenic vistas viewed from and within Class I areas.

Use of 20 percent most-impaired days and 20 percent least-impaired days. The final rule maintains the approach discussed in the proposal of improving the most-impaired visibility days (i.e., the average of the 20 percent most impaired days over an entire year), and allowing no degradation in the "cleanest" or least impaired days (i.e., the average of the 20 percent least impaired days over an entire year). In deciding upon an appropriate characterization of the "most" and "least" impaired days, EPA considered the typical frequency of aerosol monitoring in the IMPROVE network [85] (once every 3 days), and the number of samples that would be available for analysis annually (122 possible samples per year). The EPA believes that calculating annual "best" and "worst" conditions on the basis of an average of the 20 percent best and worst visibility days represents a reasonable approach to characterizing the typical best and worst conditions without having these values unduly influenced by a single anomalous data point.

The EPA's basis for maintaining the proposed approach is supported by the CAA and its legislative history, and by the approach used by the GCVTC in its technical assessment work and in its definition of reasonable progress. The EPA believes that a rule that requires strategies for improving the worst days and allowing no degradation on the clean days is consistent with the national visibility goal in section 169A of the CAA, which calls for preventing any future impairment (protecting clearest days) and remedying any existing impairment (improving the already impaired days). This approach is also supported by the legislative history of the 1990 CAA and the reasonable progress definition. The legislative history provides that, "At a minimum, progress and improvement must require that visibility be perceptibly improved compared to periods of impairment, and that it not be degraded or impaired during conditions that historically contribute to relatively unimpaired visibility." [86] The GCVTC interpreted "reasonable progress" to be "achieving continuous emissions reductions necessary to reduce existing impairment and attain a steady improvement in visibility in mandatory Class I areas, and managing emissions growth so as to prevent perceptible degradation of clear air days." [87] In today's final rule, EPA is similarly providing for "attaining a steady improvement in visibility" and "preventing degradation of clean air days" through the requirement to improve the haziest days and prevent degradation of the clearest days.

Tracking progress based on 5-year averages. To determine whether reasonable progress in improving visibility is being achieved, States will need to collect and analyze air quality data each year and review progress at 5-year intervals. Because the regional haze program represents a long-term effort to improve visibility in Class I areas, EPA believes that monitoring and assessments of progress should not be unduly influenced by short-term events or unusual meteorological conditions, but should reflect trends in air quality which are robust and insensitive to minor fluctuations. For this reason, the final rule calls for measuring progress by tracking changes in 5-year average deciview values for the haziest and clearest days, and comparing these current conditions against baseline conditions as well as impairment levels at the time of the last SIP revision. (See unit III.E above for further discussion about establishing baseline and current conditions based on 5-year averages.)

G. Long-Term Strategy

Proposed rule. Under Section 169A(b)(2) of the CAA, EPA's visibility regulations must require States to include in their SIPs "such emission limitations schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in * * * [section 169A(a)] * * *" In section 169A(b)(2)(B), the CAA requires that these SIPs must include a "long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal." The EPA interprets the term "long-term strategy" as the control measures that are needed to ensure reasonable progress, together with a demonstration that those measures will provide for reasonable progress during the 10 to 15 year period. The proposed rule required the State to develop a long-term strategy for regional haze with the initial regional haze SIP, and to provide for regular updates. (Issues regarding updates of the long-term strategy are discussed below in unit III.J).

The proposal also required States to consider a specific list of factors when they developed their long-term strategies for regional haze. Under the proposal, in developing long-term strategies for regional haze, States would be required to consider the six items listed in section 51.306(e) of the 1980 rule, and the five items listed in section 51.306(g) of the 1980 rule. We proposed to add a seventh item to section 51.306(e), "the anticipated effect on visibility due to projected changes in point, area and mobile source emissions over the next 10 years."

Comments received. Public commenters on the long-term strategy requirement expressed concerns that the proposed rule had over-emphasized stationary source contributions, and had under-emphasized contributions from minor sources, area sources, mobile sources and prescribed fires. Other commenters expressed concerns that control strategies would be ineffective in cases where contributions from international sources were causing visibility impairment. Commenters also emphasized that States be able to take credit in their long-term strategies for the effects of existing CAA programs. We did not receive any comments on the specific list of factors to consider in developing long-term strategies.

Final rule. As discussed further below in unit III.J of today's notice, the final rule requires control strategies to cover an initial implementation period extending to the year 2018, with a reassessment and revision of those strategies, as appropriate, every 10 years. The final rule, in section 51.308(d)(3), includes a requirement for regional haze SIPs to include a long-term strategy. The long-term strategy must include specific enforceable measures that are sufficient to meet the "reasonable progress goals" for all Class I areas affected by emissions from the State.

Multistate contributions—requirements for consultation and apportionment. As noted in section 51.308(d)(3)(i), when a State's emissions are reasonably anticipated to cause or contribute to impairment in a Class I area located in another State or States, the rule requires that the State consult with the other State or States in order to develop coordinated emission management strategies. Regarding the Class I areas within the State, section 51.308(d)(3)(i) also requires States to consult with any other State having emissions that are reasonably anticipated to contribute to impairment in any Class I area within the State.

For Class I areas where the State and other States cause or contribute to impairment in a mandatory Class I area, section 51.308(d)(3)(ii) requires that the State must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emissions needed to meet the progress goal for the area. Section 51.308(d)(3)(iii) requires that States must document the technical basis, including modeling, monitoring and emissions information, that it uses to determine its apportionment of emission reduction obligations for the Class I areas the State affects. It is important that EPA and stakeholders understand the modeling, monitoring and emission information that the State used to support its conclusion that the long-term strategy provides for reasonable progress.

The EPA expects that much of the consultation, apportionment demonstrations, and technical documentation will be facilitated and developed by regional planning organizations. We expect, and encourage, these efforts to develop a common technical basis and apportionment for long-term strategies that could be approved by individual State participants, and translated into regional haze SIPs for submission to EPA. While States are not bound by the results of a regional planning effort, nor can the content of their SIPs be dictated by a regional planning body, we expect that a coordinated regional effort will likely produce results the States will find beneficial in developing their regional haze implementation plans. Any State choosing not to follow the recommendations of a regional body would need to provide a specific technical basis that its strategy nonetheless provides for reasonable progress based on the statutory factors. At the same time, EPA cannot require States to participate in regional planning efforts if the State prefers to develop a long-term strategy on its own. We note that any State that acts alone in this regard must conduct the necessary technical support to justify their apportionment, which generally will require regional inventories and a regional modeling analysis. Additionally, any such State must consult with other States before submitting its long-term strategy to EPA.

Consideration of all anthropogenic sources. In the final rule, we have clarified in section 51.308(d)(3)(iv) that the State should consider all types of anthropogenic sources including stationary, minor, mobile, and area sources in developing its long-term strategy. The State should review all such sources in identifying the emission reduction measures to be included in the strategy. In addition, we provide the following points of clarification:

Minor sources. Because of the focus of the BART provision on major stationary sources, EPA believes that commenters may have the impression that EPA has concluded that minor sources with emissions, below the BART cutoff of 250 tons per year, are not significant contributors to regional haze. This is not the case. The EPA believes that States should take the cumulative emissions from minor sources into account in developing their regional haze long-term strategies. For example, if growth in minor source emissions for a particular category had a substantial impact on emission trends and a corresponding effect on regional haze in a given geographic area, States should consider emission control strategies for such source categories as part of their long-term strategies.

Mobile sources. In cases where pollutants emitted by mobile sources contribute to regional haze, States must include in their SIPs mobile source emissions inventories representing current conditions, as well as comparisons of those emissions with future emissions projected for the end of the covered by the long-term strategy. It will be particularly important for States to address the effects of population growth and accompanying increases in vehicle miles traveled on their ability to provide for reasonable progress. The EPA agrees with commenters that national mobile source emission standards also will be an important factor in projecting mobile source emissions. The EPA intends to support States in their efforts to estimate mobile source emissions (including the effects of Federal rules) of pollutants that lead to regional haze.

Area sources. States also need to develop emission inventories and conduct analyses to understand the importance of area sources. For example, the GCVTC report cited emissions from road dust as a possible contributor to impairment. Depending on the nature of the visibility problem, road dust and other area sources may at times make a significant contribution to visibility impairment. States should include area sources in emission inventories and control strategy analyses as warranted.

Fire. Commenters expressed a number of concerns with respect to the appropriate consideration of emissions from fire in the development of long-term strategies.

The EPA notes that fire emissions have both a natural and a manmade component. In addressing fire emissions in long-term strategies, EPA believes that States must take into account the degree to which fire emissions cause or contribute to "manmade" visibility impairment and its contribution to natural background conditions. Reducing "manmade" visibility impairment is the focus of sections 169A and 169B of the CAA. The EPA recognizes the natural role of fire in forest ecosystems, and the fact that forest fuels have built up over many years due to past management practices designed to protect public health and safety through fire suppression. Research has shown that these practices have led to an increased risk of catastrophic wildfire as well as reduced forest health. In response to this situation, the Federal land management agencies, as well as some States and private landowners, have recommended the increased use of prescribed fire in order to return certain forest ecosystems to a more natural fire cycle and to reduce the risk of adverse health and environmental impacts due to catastrophic wildfire.

The EPA also recognizes that fire of all kinds (wildfire, prescribed fire, etc.) contributes to regional haze, and that there is a complex relationship between what is considered a natural source of fire versus a human-caused source of fire. For example, the increased use of prescribed fire in some ecosystems may lead to PM emissions levels lower than those that would be expected from catastrophic wildfire. Given that the purpose of prescribed fire in many instances is to restore natural fire cycles to forest ecosystems, it would be appropriate to consider some portion of prescribed fire as "natural." Consequently, in determining natural background for a Class I area, EPA believes States should be permitted to consider some amount of fire in the calculation to reflect the fact that some

[85] The IMPROVE network is described in unit III.J. of the preamble.

[86] 136 Cong. Rec. S2878 (daily ed. March 21, 1990) (statement of Sen. Adams).

[87] GCVTC Report, p. x.

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prescribed fire effects serve merely to offset what would be expected to occur naturally. The EPA will work with the FLMs, States and other stakeholders to develop guidance on ways in which fire can be considered in the determination of natural background, and in the determination baseline and current conditions.

Commenters asserted that in the proposed rule, EPA ignored the contribution of fires and thus overlooked the most important haze-contributing emission source in many Class I areas. The EPA agrees that fire is an important emission source to include in the analysis, but current data do not show that fire is the predominant source of visibility impairment in any Class I area. Annual data from the IMPROVE network show that elemental carbon (which we generally use as the main indicator of emissions from fire and other combustion sources such as diesel emissions), accounts for only about 3–7 percent of $PM_{2.5}$ mass on the worst visibility days in eastern sites. In western sites, elemental carbon accounts for about 4–7 percent of total $PM_{2.5}$ mass on the worst days. The contribution from fires can be substantial over short-term periods, but fires occur relatively infrequently and thus have a lower contribution to long-term averages. Fire events making substantial contributions to haze in a given Class I area have occurred relatively infrequently, and as a practical matter will contribute less than sources for which emissions are more continuous. As noted previously, the final rule requires States to develop long-term strategies for regional haze that address 5-year averages of the 20 percent worst days. These 5-year averages will also be used in evaluating monitoring results. The frequency with which fires occur will effect the importance of their emissions on predicted future 5-year averages for visibility conditions on the 20 percent worst days.

Commenters expressed concerns with the expected increase in emissions from prescribed burning on Federal lands. Specifically, the commenters asserted that States would not be able to address emission increases from these prescribed burns, and that stationary sources would be required to compensate for the increased amount.

The EPA believes these commenters are mistaken in their view of State's authority to address emissions from prescribed Federal burns. Pursuant to section 118 of the CAA, when States impose requirements on sources, Federal agencies must comply with those requirements in the same manner, and to the same extent, as any nongovernmental entity. States therefore have the authority to address emissions from prescribed Federal burns in the same manner, and to the same extent, they regulate prescribed fires generally. Additionally, to the degree that States determine in the development of long-range strategies that the manmade component of fire is a significant contributor to regional haze, States have a substantial degree of flexibility under the CAA and in the final rule. The final rule provides States flexibility in determining the amount of progress that is "reasonable" in light of the statutory factors, and also provides flexibility to determine the best mix of strategies to meet the reasonable progress goal they select. Nothing in the final rule requires States to develop long-term strategies that reduce emissions from other sources by amounts equivalent to any increases from the manmade fraction of prescribed fires. We do expect that States consider and analyze the full range of available control measures and that they consider the causes of visibility impairment when evaluating the potential measures to include in their long-term strategies.

The EPA encourages the development of smoke management programs between air regulators and land managers as a means to manage the impacts of wildland and prescribed burning. The sources of information described above, as well as other developmental efforts currently underway, provide effective, flexible approaches to smoke management. Where smoke impacts from fire are identified as an important contributor to regional haze, smoke management programs should be a key component of regional and State regional haze planning efforts and long-term strategies.

There are a number of sources of information on mitigation approaches for fire emissions, including: (1) The EPA Interim Air Quality Policy on Wildland and Prescribed Burning, (2) fire-related strategies developed by the GCVTC and (3) the best available control methods (BACM) document for prescribed burning. In the Interim Air Quality Policy on Wildland and Prescribed Burning, EPA, in collaboration with a national stakeholder group comprised of Federal, State, and private land managers, State air regulators, environmental groups, tribes, and others, developed a framework for managing the impacts of smoke from increased prescribed fire programs across the country. This policy describes the elements and process of smoke management planning that air regulators and land managers can use to reach agreement on development of smoke programs. The GCVTC included a number of long-term strategies for fire in its report and recommendations, including emissions tracking and emission goals for fire, smoke management programs, and full consideration for alternatives to fire. The GCVTC's strategy is illustrative of the available mitigation approaches for emissions from fire that other States may consider. The GCVTC's approach is contained in section 51.309(d)(6) of the final rule and discussed further in unit IV.C of this notice. The BACM document, Prescribed Burning Background Document and Technical Information Document, EPA–450/2–92–003, is organized to discuss various aspects of State smoke management programs. The document includes information on how States administer and enforce programs for burn/no-burn days, and information on various topics including emission inventories, cost estimation, and public information programs.

Transboundary emissions from sources outside the United States. Some Class I areas located near international borders are particularly prone to influence by emissions beyond the United States border. Commenters expressed concerns that EPA should take into account that States are not able to control international sources in reviewing a State's proposal for a reasonable progress target. Additionally, commenters urged EPA to work with Mexico and Canada to reduce emissions from sources that States determine to be significant contributors to regional haze in their Class I areas.

The EPA agrees that the projected emissions from international sources will in some cases affect the ability of States to meet reasonable progress goals. The EPA does not expect States to restrict emissions from domestic sources to offset the impacts of international transport of pollution. We believe that States should evaluate the impacts of current and projected emissions from international sources in their regional haze programs, particularly in cases where it has already been well documented that such sources are important. At the same time, EPA will work with the governments of Canada and Mexico to seek cooperative solutions on transboundary pollution problems.

Factors to consider for long-term strategies. In section 51.308(d)(3)(v) (A) through (G) in the final rule, we have incorporated a list of seven factors that States must consider in developing long-term strategies. The final rule includes six factors in the July 1997 proposal that are derived from section 51.306(e) of the existing rule, and the additional item, "the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy" that was specifically added by the July 1997 proposal. We have decided not to include the five proposed items that are derived from section 51.306(g), because four of these items are included on the list of "reasonable progress" factors in section 51.308(d)(1)(i)(A) of the final rule, and because we believe that the fifth factor "effect of new sources" is part of "projected changes in point source emissions."

In their regional haze SIP submissions, States must describe how each of these seven factors is taken into account in developing long-term strategies. We believe it is useful to clarify several of these factors, and EPA's expectations on how SIPs can address them.

Item (A): Emissions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment.

It is expected that for some areas of the country, such as parts of the eastern United States, emissions achieved for the acid rain program and for meeting the $PM_{2.5}$ NAAQS, will lead to substantial improvements in visibility as well. Item (A) makes clear that States must take these other emissions into account in developing their long-term strategies for regional haze. We expect that some States may be able to demonstrate reasonable progress based on these emissions alone, particularly for the first 10-year period.

Item (B): Measures to mitigate the impacts of construction activities.

Item (B) requires that in developing long-term strategies, States must consider the impacts of construction activities. States, for example, should include these activities in emission inventories used for long-term strategy development.

Item (C): Additional measures and limitations and schedules for compliance to achieve the reasonable progress goal.

Where emissions from ongoing requirements, addressed by item (A), are not sufficient to achieve the reasonable progress goal, States must identify additional measures that will ensure that the goal will be met. Schedules for compliance for these additional measures must be included in the SIP, and measures considered for inclusion must be identified in the SIP submission.

Item (D): Source retirement and replacement schedules.

Item (D) requires the consideration of source retirement and replacement schedules in developing the long-term strategies, particularly, where these schedules would have a significant impact on regional emission loadings and on a State's ability to achieve reasonable progress.

Item (E): Smoke management techniques for agricultural and forestry management purposes including plans as they currently exist within the State for these purposes.

Item (E) highlights the widely recognized importance of prescribed burning programs on regional haze. Issues related to fire and forestry management practices are discussed above.

Item (F): Enforceability of emissions limitations and control measures.

States must ensure that control measures are written in a way that EPA and citizens may enforce as a practical matter. Guidance on practical enforceability issues is readily available in EPA policy guidance memoranda, for example Guidance on Limiting Potential to Emit in New Source Permitting, June 13, 1989.

Item (G): The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the next 10 years.

Item (G) requires that States must address the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the next 10 years when developing emissions strategies that will meet the reasonable progress requirements. In some areas, these changes in emissions would be expected primarily from population growth, while in others, emissions changes may result from potential new industrial, energy, natural resource development, or land management activities. These changes in emissions would also include the changes due to measures developed specifically for the regional haze program.

Relationship to long-term strategies under the existing rule. The final rule provides for coordination of the long-term strategies to address regional haze impairment with any existing long-term strategies under the 1980 visibility rule. Some long-term strategies are already in place to address reasonably attributable visibility impairment under the existing 1980 regulation. Coordination of the two programs is addressed in section 51.306(c) of the final rule. This section clarifies two points. First, that the provisions of existing long-term strategies will continue to apply until regional haze strategies are in place. Second, once the first regional haze strategy is in place, the final rule, in section 51.306(c) requires the State to develop a coordinated long-term strategy which address both reasonably attributable impairment and regional haze.

H. Best Available Retrofit Technology (BART)

Background. One of the principal elements of the visibility protection provisions of the CAA is the provision in section 169A addressing the installation of BART for certain existing sources. The conference committee report accompanying the 1977 CAA amendments indicates that a major concern motivating the adoption of the visibility provisions was "the need to remedy existing pollution in the Federal mandatory class I areas from existing sources."[88] The BART provision in section 169A(b)(2)(A) demonstrates Congress' intention to focus attention directly on the problem of pollution from a specific set of existing sources. This provision provides that EPA's regulations to protect visibility must require States to revise their SIPs to contain such measures as may be necessary to make reasonable progress toward the national visibility goal, including a requirement that certain existing stationary sources procure, install, and operate the "best available retrofit technology."

The CAA defines the sources potentially subject to BART as major stationary sources, including reconstructed sources, from one of 26 identified source categories which have the potential to emit 250 tons per year or more of any air pollutant, and which were placed into operation between August 1962 and August 1977.[89] This set of sources potentially subject to BART was defined in the 1977 CAA and will not be modified by rule. The 26 source categories are:

(1) Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input,
(2) Coal cleaning plants (thermal dryers),
(3) Kraft pulp mills,
(4) Portland cement plants,
(5) Primary zinc smelters,
(6) Iron and steel mill plants,
(7) Primary aluminum ore reduction plants,
(8) Primary copper smelters,
(9) Municipal incinerators capable of charging more than 250 tons of refuse per day,

[88] H.R. Rep. No. 564, 95th Cong., 1st Sess. at 155 (1977) (emphasis added).
[89] See CAA sections 169A (b)(2)(A) & (g)(7).

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(10) Hydrofluoric, sulfuric, and nitric acid plants,
(11) Petroleum refineries,
(12) Lime plants,
(13) Phosphate rock processing plants,
(14) Coke oven batteries,
(15) Sulfur recovery plants,
(16) Carbon black plants (furnace process),
(17) Primary lead smelters,
(18) Fuel conversion plants,
(19) Sintering plants,
(20) Secondary metal production facilities,
(21) Chemical process plants,
(22) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,
(23) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,
(24) Taconite ore processing facilities,
(25) Glass fiber processing plants, and
(26) Charcoal production facilities.

In section 51.301(e) of the 1980 visibility regulations, a source meeting the above criteria was defined as an "existing stationary facility." In today's regional haze rule, EPA has added the definition of a "BART-eligible source" in section 51.301(hh) that is identical to the definition of "existing stationary facility." This new definition is used throughout the regional haze rule and preamble in order to avoid the potential misinterpretation of the "existing stationary facility" definition as representing a collection of sources broader than the subset of sources potentially subject to BART.

The regulations issued in 1980 define BART as "an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted" by a BART eligible facility.[90] The BART emission limitation must be established, on a case-by-case basis, taking into consideration the following factors:

- The technology available,
- The costs of compliance,
- The energy and nonair environmental impacts of compliance,
- Any pollution control equipment in use at the source,
- The remaining useful life of the source, and
- The degree of improvement in visibility which may reasonably be anticipated from the use of such technology.[91]

The EPA published guidelines in 1980 which outline the general procedures for States to follow in analyzing sources and establishing BART emission limits.[92] These guidelines apply to situations in which visibility impairment in the Class I area is determined to be "reasonably attributable" to a single source or a small group of sources.

Proposed rule. The proposed regional haze rule discussed a process for addressing BART in the context of regional haze and requested comment on how the requirement should be implemented. The first step in this process was a requirement that the State identify all sources potentially subject to BART early in the planning process. The second step required the State to submit a plan and schedule for evaluating BART and the corresponding potential emissions for those existing sources which may reasonably be anticipated to contribute to regional haze visibility impairment. The notice proposed to provide 3 years for completing this evaluation so that the results could be taken into consideration by States as they develop coordinated strategies for attaining the $PM_{2.5}$ and ozone NAAQS.

In setting out the proposed approach to the BART requirement, EPA proposed that the test for determining whether a BART-eligible source "may reasonably be anticipated to contribute" to regional haze should be evaluated in the context of the overall emissions reduction strategy. The EPA also noted that it believed that a similar approach should be taken in addressing "the degree of improvement in visibility which may reasonably be anticipated" from the imposition of BART controls. The EPA proposed a cumulative approach because of the nature of the regional haze problem (i.e., the cumulative product of emissions from many sources over a broad area) and because of the time and expense necessary to try to determine, one source at a time, the percentage contribution of each BART-eligible source to regional haze. In addition, EPA noted the substantial technical difficulties associated with estimating the degree of visibility improvement resulting from a single source. The EPA broadly requested comments on effective approaches for States and sources to meet the BART requirement under the regional haze program in the most appropriate manner, and in particular how BART, once determined, should be implemented.

Comments received. Commenters identified a number of issues concerning how EPA should address the BART requirement under the regional haze program. Some commenters asserted that the BART requirement simply should not apply under the regional haze program. These commenters argued that the procurement, installation, and operation of BART is not explicitly required under section 169B, and that section 169B is the primary statutory authority for the regional haze program. Other opponents of the BART requirement contended that the proposal placed too much emphasis on stationary sources, and on BART sources in particular, as opposed to other sources of visibility-impairing pollutant emissions, such as mobile and area sources. The commenters contended that BART should not be the principal control strategy employed under the regional haze program.

Another group of commenters supported EPA's proposed approach for addressing the BART requirement. Some pointed out that while existing stationary sources are not the only contributors to regional haze, controlling these sources is an essential element of a national regional haze program. These commenters also supported the approach of evaluating BART-eligible sources collectively to determine their overall contribution to visibility impairment within a given airshed. Several commenters recommended that BART be equivalent to, or more stringent than, new source performance standards (NSPS) for sulfur dioxide and nitrogen oxides. Some commenters suggested allowing an emissions cap-and-trade program to meet the BART requirement. One commenter described a process whereby States would conduct an assessment of the availability of retrofit controls for all BART-eligible sources in a region, calculate the cumulative emissions possible from application of BART to eligible sources, establish a cap for each visibility-reducing pollutant, and implement a 10-year program to achieve emissions equivalent to the emissions cap.

Response to comments. The EPA disagrees with the commenters who argued that the BART requirements should not apply to the regional haze program. The statutory authority for developing a regional haze program emanates from section 169A of the CAA, and any SIPs that are to be developed under a regional haze program must include provisions that meet the requirements of this section, including the requirement that certain sources procure, install, and operate BART.

[90] Section S1.301(c).
[91] *Id.*
[92] See EPA, Office of Air Quality Planning and Standards, Guidelines for Determining Best Available Retrofit Technology for Coal-Fired Power Plants and Other Existing Stationary Facilities, EPA–450/3–80–009b, November 1980.

Since 1977, section 169A of the CAA has authorized EPA to address regional haze. Section 169A(a)(1) of the CAA establishes as the national visibility protection goal "the prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution." Visibility impairment is defined broadly in the CAA and includes that caused by regional haze.[93] This language does not distinguish between reasonably attributable impairment and regional haze, but provides for visibility protection generally. This reading of the statute is consistent with the legislative history; in adopting section 169A, Congress evinced its intent to address impairment caused by "hazes" and the potential corresponding need to control a "variety of sources" and "regionally distributed sources."[94] While EPA deferred addressing regional haze in 1980 when it promulgated the first phase of visibility regulations, it did so because of technical obstacles, not because of a limitation on its legal authority.[95] Indeed, in the 1980 rule, EPA expressed its intent to address regional haze in a future rulemaking under section 169A. Thus, EPA's decision to address visibility impairment in separate phases does not change the fact that the BART requirement is an integral part of the statutory scheme in section 169A.

The provisions in section 169B of the CAA, adopted in 1990, do not override EPA's statutory authority to require State plans to remedy regional haze. These provisions grew out of Congress' frustration that EPA had not more expeditiously addressed regional haze under its section 169A delegated rulemaking authority. Thus, section 169B(e) explicitly requires EPA to carry out its "regulatory responsibilities under section [169A]" within a set time period. The legislative history confirms that Congress did not intend section 169B to impinge upon EPA's long-standing authority to address regional haze visibility impairment,[96] including the authority to require BART.

The EPA believes that commenters asserting that EPA overemphasized the control of stationary sources and, in particular, the role of BART in the regional haze program misinterpreted the proposal. The EPA did not intend to emphasize controls on BART-eligible sources over, or to the exclusion of, other sources. While the BART requirement is limited to a specified population of major stationary sources, States will need to consider measures addressing a wide range of sources and activities, including mobile sources, area sources, activities involving fire, and other major and non-major stationary point sources in their long-term strategies. The unit on long-term strategies includes further discussion of this point.

Final Rule. The final rule requires each implementation plan to be revised to contain two basic elements related to BART. The first is the requirement that the States submit a list of the "BART-eligible sources" in the State. Second, the State must determine and include in the plan the "best available retrofit technology," taking into account certain factors identified in section 169A(g)(2) of the CAA, for each BART-eligible source in the State reasonably anticipated to cause or contribute to any impairment of visibility.

In recognition of the control and cost efficiencies that can be achieved through trading programs and other alternative measures, EPA is providing States with the opportunity to adopt alternative measures in lieu of BART where such measures would achieve even greater reasonable progress toward the national visibility goal. The overarching requirement of the visibility protection provisions of section 169A is to make reasonable progress toward the national goal of eliminating visibility impairment. If greater reasonable progress can be made through an approach that does not require source specific application of BART, EPA believes that approach would comport with this statutory goal. The EPA reached this conclusion in determining the appropriate measures to address visibility impairment in the Grand Canyon National Park resulting from the Navajo Generating Station.[97] In that case, EPA ultimately chose not to adopt the emission control limits indicated by its BART analysis.[98] Instead, as explained by the Ninth Circuit in upholding EPA's final decision, EPA acted within its discretion in adopting an alternative emission control standard "that would produce greater visibility improvement at a lower cost. Congress's use of the term 'including' in [section 169A(b)(2)] prior to its listing BART as a method of attaining 'reasonable progress' supports EPA's position that it has the discretion to allow States to adopt implementation plan provisions other than those provided by source-specific BART analyses in situations where the agency reasonably concludes that more 'reasonable progress' will thereby be attained."[99] Under today's final rule, States may elect to adopt an emissions trading program or other alternative measures in lieu of BART so long as greater reasonable progress is made.

List of BART-eligible sources. To ensure adequate time for developing long-term strategies to ensure reasonable progress, we recommend that States begin identifying and evaluating the list of potential BART sources as soon as possible after promulgation of the final rule. Identifying the BART-eligible sources will require States to collect information as to the dates that emission units at stationary sources were placed into operation, the pollutants emitted, and the potential to emit of these units. We suggest that, at the same time that they begin refining their emissions inventories for $PM_{2.5}$ and its precursors, States request that stationary sources provide them with these dates. While such information is generally available for electric utilities through data bases maintained by the Energy Information Administration, this information is not normally maintained in national data bases for the other 25 source categories subject to BART. However, EPA believes that much of this information is likely to be available in States permitting data bases or other inventories. To assist the States in this task, we will continue efforts to identify other helpful sources of information.

Determination of sources subject to BART. After the State has identified the BART-eligible sources, the next step is determining whether these sources emit any air pollutant "which may reasonably be anticipated to cause or contribute" to any visibility impairment in a Federal Class I area. As noted in the proposal, EPA believes that this determination should not require extremely costly or lengthy studies of the contribution of specific sources to regional haze. Unlike the 1980 regulatory program, which addresses the

[93] *See* CAA section 169A(g)(6); see *also Maine* v. *Thomas*, 874 F.2d.883, 885 (1st Cir. 1989) ("EPA's mandate to control the vexing problem of regional haze emanates directly" from CAA section 169A).
[94] H.R. Rep. No. 294, 95th Cong., 1st Sess. 204 (1977).
[95] 45 FR 80084 (Dec. 2, 1980).
[96] *See* 136 Cong. Rec. S2875 (daily ed. March 21, 1990) (statement of Sen. Adams) ("[t]he authority to establish visibility transport regions and commissions is a supplement to the administrators [sic] obligation under current law. * * * The Administrator may not delay requirements under section 169A because of the appointment of a commission for a region under section 169B") (daily ed. Oct. 26, 1990) (statement of Rep. Wyden) ("[n]either the original House language nor the Senate language adopted in conference repealed or lessened EPA's obligations under the 1977 law").
[97] *See Central Arizona Water Conservation District* v. *EPA*, 990 F.2d 1531, 1543 (1993).
[98] See 58 FR at 50178.
[99] Central Arizona Water Conservation District v. *EPA*, 990 F.2d 1531, 1543 (1993).

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visibility impairment that is reasonably attributable to a specific source or small group of sources, today's final rule addresses the problem of visibility impairment resulting from emissions from a multitude of sources located across a wide geographic area. As the regional haze rule is not limited to addressing visibility impairment that can be attributed to a specific source or small group of sources, EPA believes it would be inappropriate to focus on the contribution of one source or a small group of sources. First, the States will not face the same need to define the precise contribution from one particular source to the visibility problem. Second, establishing the contribution from one particular source to the problem of regional haze would require lengthy and expensive studies and pose substantial technical difficulties. The EPA has thus concluded that a detailed source-receptor analysis would not be appropriate in determining whether a source "may reasonably be anticipated to contribute" to regional haze in a Class I area.

In implementing today's final rule, a State should find that a BART-eligible source is "reasonably anticipated to cause or contribute" to regional haze if it can be shown that the source emits pollutants within a geographic area from which pollutants can be emitted and transported downwind to a Class I area. The EPA believes that this test is an appropriate one for determining whether a source can reasonably be anticipated to cause or contribute to the problem of regional haze. As the Ninth Circuit stated in considering this language:

> Congress mandated an extremely low triggering threshold, requiring the installment of stringent emission controls when an individual source "emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility" in a Class I Federal area. 42 U.S.C. sec. 7491(b)(2)(A). The NAS correctly noted that Congress has not required ironclad scientific certainty in establishing the precise relationship between a source's emission and resulting visibility impairment.* * *[100]

The approach taken here is consistent with that taken in the programs for acid rain and ozone, programs which also address regional air quality problems caused by transported pollutants. These programs do not require a specific demonstration of each source's contribution to the overall problem, but instead focus efforts on developing cost-effective solutions to reducing emissions over a broad area that is regional or national in scope. For example, in the recent NO_X SIP call addressing the regional transport of NO_X emissions (an ozone precursor) in the Eastern United States, EPA adopted a "collective contribution" approach to determining whether sources "contribute" to ozone nonattainment in downwind areas. In this rulemaking, EPA concluded that because ozone nonattainment results from the collective contribution of many entities over a broad geographic area, even relatively small (in an absolute sense) contributions from upwind entities should be considered to be "significant."[101]

The EPA has concluded that a similar approach in the regional haze program is appropriate. Where emissions from a region are considered to contribute to regional haze in a Class I area, any emissions from BART-eligible sources in that region should also be considered to cause or contribute to the regional haze problem. The EPA will issue and update guidance, including EPA modeling guidelines,[102] to assist the States in analyzing whether sources contribute to regional haze.

Establishing source-specific BART emission limits. The second element of the BART requirement is for the States to establish emission limitations for those BART-eligible sources which may reasonably be anticipated to cause or contribute to regional haze. To meet this requirement, the State must develop source-specific emission limits which reflect the application of the best system of continuous emission reduction for each pollutant which is emitted by a source subject to BART.[103] As stated above, the State can also choose to develop an emissions trading program, or other alternative measure, that achieve greater reasonable progress rather than require source specific BART emission limits on each source subject to BART.

In developing source specific emission limits for BART, the State must take into consideration the technology available and a number of specific factors set forth in the statute. These factors are the costs of compliance, the energy and nonair environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated from the use of such technology. Taking these factors into account, the State may conclude that BART is the best level of emissions reduction that can be achieved by available retrofit technology or some other level of control. In some cases, the State may determine that a source has already installed sufficiently stringent emission controls for compliance with other programs (e.g., the acid rain program), such that no additional controls would be needed for compliance with the BART requirement. In establishing BART for a particular facility, the State must make available during public review of the SIP at the State level the materials supporting its BART determination. The State must also include this documentation in the technical support materials accompanying the SIP.

In establishing source specific BART emission limits, the State should identify the maximum level of emission reduction that has been achieved in other recent retrofits at existing sources in the source category. As noted above, the visibility regulations define BART as "an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction." Recent retrofits at existing sources provide a good indication of the current "best system" for controlling emissions. Thus, for example, recent retrofits for large utility sources (e.g., sources under the acid rain program and the Navajo Generating Station) have commonly achieved a 90 percent or better rate of SO_2 emissions (at an average cost of $265 per ton of SO_2 removed).[105] For source categories with recently promulgated NSPS, that standard may also provide a good indication of the current "best system" for controlling emissions. In addition, current information concerning control technology performance for many source categories is available from EPA's Clean Air Technology Center, http://www.epa.gov/ttn/catc. EPA plans to issue revised BART guidance to provide updated guidance to the States on how to calculate BART for purposes of regional haze within a year of promulgation of this rule. The EPA will be developing this guidance through a national stakeholder process.

Once the State has identified the retrofit technology that provides the maximum degree of continuous emission reduction, it should take into consideration the costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control equipment in use at the source, and the remaining useful life of the source. Taking these factors into account allows the State to arrive at an estimate of the "best system" of retrofit control technology for a particular source and a corresponding estimate of the likely emissions which would be achieved by the imposition of BART. These factors should be taken into account for each source subject to BART in order to compare tradeoffs between the control efficiencies and costs associated with various control alternatives.

The remaining factor which the States must take into account in determining BART is "the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology." In applying this factor in the context of the regional haze program, a State should use the degree of improvement in visibility that would be expected at each Class I area as a result of imposing BART, as determined through the application of the factors discussed above, on all sources subject to BART. For the same reasons that the determination of whether a BART-eligible source may be reasonably anticipated to cause or contribute to a visibility problem should be made on a cumulative basis, EPA believes that a regional analysis is appropriate for determining the degree of visibility improvement that can be achieved through application of BART. Moreover, the statute requires the States to consider "the degree of improvement in visibility which may reasonably be anticipated to result *from the use of such technology.*"[106] EPA interprets the language "from the use of such technology" to refer to the application of BART level controls to all sources subject to BART. As a result, EPA believes that it is reasonable to interpret this provision as requiring the State to consider, as part of its source-specific analysis, the cumulative impact of applying retrofit controls to all sources subject to BART to estimate the degree of visibility improvement which may reasonably be anticipated to result from the use of BART.

The EPA also believes that such a regional analysis provides important information to the State and to the public about the magnitude of potential emissions from sources subject to BART. This information could be used to help inform the public debate in developing reasonable progress goals, in setting a regional emissions target for a trading program, and in developing the overall long-term strategies for making reasonable progress.

To calculate the degree of improvement in visibility that would be expected at each Class I area as a result of imposing BART on all sources subject to BART, the State should estimate the possible emissions reductions resulting from the application of BART at all subject sources located within the region that contributes to visibility impairment in the Class I area. The State should work on its own or in conjunction with other States, such as in a regional planning body, to determine the geographic scope of the region that contributes to each Class I area. The States should consult with one another to determine the emission reductions achievable from sources subject to BART in other States.

The estimate of possible emission reductions from sources subject to BART should be based on the application of the technology, cost, time for compliance, energy and nonair environmental impacts, and remaining useful life factors discussed above. Using this estimate, the State will then need to calculate the resulting degree of visibility improvement that would be achieved at Class I areas. The EPA expects that this exercise will be in the form of a regional modeling analysis. The State should use this estimated degree of visibility improvement in determining the appropriate BART emission limitations for specific sources.

Unless a State commits to regional planning, a State must include its source-specific BART determinations in its initial SIP revision for the area in which the source is located.[107] Where the State commits to regional planning, a State may defer submitting its source-specific BART determinations consistent with the timing requirements described in unit III.B. However, the State must submit its list of BART-eligible sources at the same time it submits its committal SIP.

The SIP revision must include the emission limitations determined to be BART for sources subject to BART and a compliance schedule for each source. Each source subject to the BART requirement will have to meet the BART emission limitation within 5 years of SIP approval, as required under the CAA. As noted above, within a year, EPA will be issuing revised BART guidance to provide States with assistance in determining BART for regional haze.

Alternative Measures in Lieu of BART. In today's final rule, States may elect to adopt alternative measures, such as a regional emissions trading program, in lieu of BART so long as the alternative measures achieve more reasonable progress than would application of source-specific BART. The EPA believes that a regional emissions trading program would be the most efficient means of achieving BART-level emission reductions and the emission reductions needed to meet the States' reasonable progress goals as implemented through the States' long-term strategies.

The EPA believes that this approach is consistent with the Ninth Circuit's decision in *Central Arizona Water Conservation District* v. *EPA*.[108] In this case, the court upheld EPA's exercise of discretion to adopt an alternative emission standard that achieved greater reasonable progress than would have been achieved through the imposition of BART. Allowing States to adopt alternative measures such as an emissions trading program rather than to require BART will provide the States with the flexibility to achieve greater reasonable progress towards the national goal at a lower cost, while still addressing the Congressional concern that existing sources contributing to visibility impairment be required to control emissions appropriately. The EPA believes that this best fulfills the overarching statutory requirement in section 169A(b) that States make reasonable progress toward the national visibility goal, but also ensures that, at a minimum, the degree of visibility impairment attributable to BART sources is addressed by the States during the first long-term strategy. Moreover, while an appropriately designed alternative might result in differing levels of control at particular sources than a source-by-source BART requirement, the environment will benefit through the achievement of greater reasonable progress.

As noted above, to take advantage of the flexibility offered by this provision, the State must demonstrate that the alternative measures adopted in lieu of meeting the BART requirements achieve greater reasonable progress than would result from the installation of source-specific BART. One way of making this showing is for a State to show in its SIP demonstration that the alternative

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[100] *Central Arizona Water Conservaiton District* v. *EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993).

[101] 63 FR 57356, 57376 (Oct. 27, 1998).

[102] See 40 CFR part 51, appendix W for information on EPA's modeling guideline for conducting regional-scale modeling for particulate matter and visibility.

[103] See section 51.301(c).

[104] See CAA section 169A(g)(2).

[105] Ellerman A. Danny et al., Emissions Trading Under the U.S. Acid Rain Program: Evaluation of Compliance Costs and Allowance Market Performance, Massachusetts Institute of Technology, Center for Energy and Environmental Policy Research, 1997.

CAA section 169A(g)(2) (emphasis added).

[107] For areas designated attainment or unclassifiable for $PM_{2.5}$, this SIP will be due 12 months after the areas are designated. For areas designated as nonattainment, this SIP will be due no later than 3 years after the area is designated nonattainment.

[108] 990 F.2d 1531, 1543 (1993).

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measures will achieve greater emission reductions and visibility improvement than would result from meeting the BART requirements.

In making this showing, States may rely on the assessments and analyses developed by regional planning groups that are formed to address regional haze. To compare the emissions reductions and visibility improvement that would result from application of source specific BART to that resulting from implementation of alternative measures, such as a regional emissions trading program, the State must estimate the emissions reductions that would result from the use of BART-level controls. To do this, the State could undertake a source-specific review of the sources in the State subject to BART, or it could use a modified approach that simplifies the analysis.

To simplify the process of arriving at an estimate of emissions, EPA believes that one approach that would be acceptable in place of a source by source BART analysis would be to consider some of the BART factors on a category-wide basis. For example, the average cost per ton of complying with alternate control technologies and associated energy and nonair environmental impacts could be considered on a category-wide basis. It may be more appropriate to consider other factors on a source-by-source basis. For example, the State could identify the current control technology in operation at each source and calculate the emissions that would be achieved at each source with a given retrofit control technology or determine and consider the remaining useful life of individual sources.

Alternatively, EPA believes it may be appropriate for the State to combine a category-wide BART assessment with a source-specific assessment for certain sources. For example, if a State can verify that a source will be retired within a short period of time, it could take this into account in determining BART-level emissions reductions for that facility while assessing the remaining sources subject to BART on a category-wide basis.

The States accordingly have flexibility in developing a method to determine the emission reductions that could be achieved through the application of BART. Whatever methodology is chosen by the State to evaluate possible emissions reductions from BART, the estimate must reflect at least the minimum level of emissions reductions that can be expected. This estimate becomes the point of comparison for determining whether an alternative measure, such as an emission trading program, achieves greater reasonable progress toward visibility improvement. Once the State has arrived at an estimate of the emissions that would result from application of source-specific BART, it should then compare the degree of visibility improvement expected to be achieved in Class I areas through the application of BART to the degree of visibility improvement projected to be achieved by the alternative measures proposed by the State.[109] It is not necessary to go through an additional analysis of the BART factors in considering the effects of alternative measures.

The EPA believes that the most likely alternative measures adopted by the States will be an emissions trading program. There are several advantages associated with a regional trading approach in lieu of meeting a source-specific BART requirement. First, it provides flexibility to participating sources in deciding whether to purchase credits or to implement on-site emission reduction strategies, while being designed to achieve an equivalent level of emissions. Many commenters felt the proposal did not provide this type of flexibility. Second, trading allows sources to assess the costs of control technology, alternative fuels, and process changes across a broad array of sources and source categories. Thus, a trading program typically will result in lower cost per ton of pollutant reduced than a program which mandates plant-specific technological control. For example, EPA's experiences in the acid rain program have shown that sulfur dioxide reductions achieved through market-based programs within the electric utility sector continue to be quite cost effective, in the $170—320 per ton range.[110] A program which allows broader trading among sources in other industrial categories as well would likely lead to even greater cost effectiveness for individual sources.

In designing emissions trading programs that will achieve the requisite improvement in visibility, States must ensure that such programs meet several criteria. First, as noted above, the legislative history demonstrates Congress' recognition of the need to control emissions from a specific set of existing sources. Because of the Congressional focus on control of these sources, any emissions trading program must include, at a minimum, the sources within the trading region subject to BART. The one exception to this is where a source has already installed BART-level pollution control technology and the emission limit is a federally-enforceable requirement. In that case, States may elect to allow a source the option of not participating in the trading program.

Second, a trading program adopted in lieu of BART must be fully implemented within the period of the first long-term strategy. To ensure this, States must provide schedules for implementing emissions trading programs with their SIP submittal. While EPA is allowing States to fully implement a trading program within the period addressed by the State's first long-term strategy, under section 169A, BART emission limits are to be implemented within 5 years. To provide States with the additional flexibility they may need to implement a trading program, EPA has concluded that it is appropriate for States to have the full period of the long-term strategy to achieve the full measure of necessary emissions. The basis for allowing this longer implementation period is the provision that the trading program achieve greater reasonable progress than would be achieved by source-specific application of BART within 5 years of plan submittal. The EPA will consider the estimated period of time to implement the program in determining whether the alternative measures "achieve more reasonable progress." In any event, a trading program adopted in lieu of BART must be implemented during the period of the first long-term strategy.

Third, the reductions in emissions required of BART sources must be surplus to other Federal requirements as of the baseline date of the SIP, that is, the date of the emissions inventories on which the SIP relies. In addition, sources must be required to monitor their emissions in a way that allows States and EPA to assure that the reductions are being achieved. The basic concept of an emission trading program is to allow for alternative, cost-effective ways of achieving equal or greater overall emissions. To ensure that the trading program does achieve a greater overall emission reduction, it is important that the emission credits are created by genuine reductions in emissions. We will be issuing further guidance to assist States in designing their trading programs to ensure that programs provide such accountability.

Fourth, the regional trading program may include sources not subject to BART. Inclusion of such sources provides for a more economically efficient and robust trading program. The EPA believes the program can include diverse sources, including mobile and area sources, so long as the reductions from these sources can be accurately calculated and tracked.

Fifth, EPA encourages States wishing to develop such programs to consider the emission reduction requirements of other air quality programs. To implement reductions in a fully integrated fashion, the State should consider the extent to which some sources should be limited in their ability to trade. Examples of such factors include the significant contribution to a local nonattainment situation and the extent to which trading may assist or undermine the achievement of greater progress toward attainment of the NAAQS or the national visibility goal.

A related issue is the connection between determinations of BART under the reasonably attributable regulations and a trading program adopted in lieu of BART. The EPA has adopted a provision in the final rule that allows States to include a geographic enhancement in such a trading program to accommodate reasonably attributable BART. The purpose for including this provision is to address concerns regarding "hot spots"—the concern that some part of visibility impairment in a specific Class I area is attributable or uniquely attributable to a single source or small group of sources because of the nature and location of the pollution from the source(s). Should action be taken by a State (or EPA) to address reasonably attributable impairment, these provisions would allow the State to incorporate methods, procedures, or processes in a market-based strategy to accommodate such action.

Sixth, interpollutant trading should not be allowed until the technical difficulties associated with ensuring equivalence in the overall environmental effect are resolved. Some other emissions trading programs (e.g., trading under the acid rain program) prohibit emission trades between pollutants. An emissions trading program for regional haze might also need to restrict trades to common pollutants. Each of the five pollutants which cause or contribute to visibility impairment has a different impact on light extinction for a given particle mass, making it therefore extremely difficult to judge the equivalence of interpollutant trades in a manner that would be technically credible, yet convenient to implement in the timeframe needed for transactions to be efficient. This analysis is further complicated by the fact that the visibility impact that each pollutant can have varies with humidity, so that control of different pollutants can have markedly different effects on visibility in different geographic areas and at different times of the year. Despite the technical difficulties associated with interpollutant trading today, EPA would be willing to consider such trading programs in the future that demonstrate an acceptable technical approach.

Application for Exemption from BART. Even where a source may reasonably be anticipated to cause or contribute to visibility impairment, section 169A(c) allows for the exemption of any source from the BART requirements if it can be demonstrated that the source, by itself or in combination with other sources, is not reasonably anticipated to cause or contribute to significant visibility impairment. In addition, as specified in section 169A(c)(2) of the CAA, any fossil-fuel fired power plant with a total generating capacity of 750 megawatts or more may receive an exemption only if the owner demonstrates that the power plant is located at such distance from all Class I areas that it does not, or will not, in combination with other sources, emit any pollutant which may be reasonably anticipated to contribute to significant visibility impairment.

As with the question of whether a source can be reasonably anticipated to cause or contribute to any visibility impairment, EPA believes that the question of whether a source causes or contributes to significant visibility impairment requires an analysis of the cumulative effects of emission sources on a region. Regional modeling will be one appropriate method to determine whether a source could qualify for the exemption from the BART requirements. If a significant cumulative impact is demonstrated from the sources across the relevant regional modeling domain, then any BART-eligible source in the region would most likely be found to be reasonably anticipated to cause or contribute to significant visibility impairment.

The proposed regional haze rule was structured such that the BART exemption provisions in section 51.303 of the existing visibility regulations would also apply to sources subject to BART under the regional haze regulation. In the final rule, EPA has taken the same approach. Consistent with section 51.303, a source may apply to EPA for an exemption from the BART requirement. The EPA will grant or deny an application after providing notice and opportunity for a public hearing. Any exemption granted by EPA must have the concurrence from all affected Federal land managers.

Timing for Submittal of BART Elements. Because TEA–21 changed the schedule for submittal of visibility SIPs, EPA is not requiring States to submit a list of BART-eligible sources to EPA within 12 months, as proposed. Under the final rule, the emission limits or other measures to address BART under the regional haze program must be included in the State's initial SIP submittal(s), as discussed further in unit III.B of this notice, except where the State commits to regional planning. In the case where a State opts to work with other States to develop a coordinated approach to regional haze by participating in a regional planning process, SIP revisions containing the BART emission limits or alternative measures in lieu of BART will be due generally at the time $PM_{2.5}$ nonattainment SIPs are submitted, but in no case later than December 31, 2008. As discussed in unit III.B, States that submit a commitment to participate in regional planning are required to submit the list of BART-eligible sources as part of that submittal.

I. Monitoring Strategy and Other Implementation Plan Requirements

Monitoring Strategy

Proposed rule. In the proposed rule, we included a requirement for States to develop a monitoring strategy. We believe that actual monitoring data are a critical component of any air quality management approach to visibility impairment. Data on individual components of PM (nitrates, sulfates, elemental carbon, organic carbon, crustal material) are crucial to understanding the causes of visibility impairment at a given location, and accordingly are necessary for long-term strategy development. Reviewing these data with time, and additional data provided by monitoring sites, are necessary to understand whether the long-term strategies are effective.

Under the proposed rule, an initial monitoring strategy was due 12 months after promulgation, with periodic updates every 3 years thereafter. Requirements for visibility monitoring are authorized under section 110(a)(2)(B), requiring SIPs to provide for the monitoring of ambient air quality, and under section 169A(b)(2), which authorizes EPA to establish regulations requiring SIPs to address "other measures as may be necessary."

[109] The State should be able to compare the degree of visibility improvement through modeling. For example, for an emissions trading program, the State may undertake a regional modeling analysis that simulates least-cost market trades to predict the geographic distribution of the emission reductions that could be achieved through a market trading program and the resultant improvement in visibility at different Class I areas.

[110] U.S. Department of Energy, Energy Information Administration, "The Effects of Title IV of the Clean Air Act Amendments of 1990 on Electric Utilities: An Update," DOE/EIA–0582(97), March 1997.

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Four separate provisions were included in the monitoring strategy requirement: (1) a requirement for States to provide for additional that is monitoring "representative of all Class I areas," (2) a requirement for States with Class I areas to assess the relative contributions of sources within and outside the State to any Class I area within the State, (3) requirements for States without Class I areas to include a procedure by which monitoring data will be used to determine the contribution of emissions from within the State to Class I areas outside the State, and (4) a requirement to report all visibility monitoring data to EPA at least annually, in accordance with EPA guidance.

Comments received. Commenters on this requirement raised a number of concerns. One concern raised by State and local agencies was that the costs of monitoring could be substantial and urged EPA to provide funding. Other commenters urged EPA to exercise flexibility in determining the degree to which monitors in one Class I area could be considered representative of other nearby areas. Other commenters raised concerns about the feasibility of monitoring in remote areas and for areas with difficulty in gaining access to monitors during the winter. Commenters also expressed concerns over the timetable for the monitoring plan and the requirement for updating the strategy.

Final rule. Section 51.308(d)(4) of the final rule includes the requirement for a monitoring strategy. Under the final rule, this monitoring strategy is due with the first regional haze SIP, and it must be reviewed every 5 years.

Additional sites. Since the 1980's, EPA has cooperatively managed and funded the IMPROVE network with FLMs and States. Today, the IMPROVE network of 30 Class I sites (and an additional network of about 40 sites that use the IMPROVE methods) collects data on fine particle concentrations and on individual particle species. These individual species (sulfates, nitrates, elemental carbon, organic carbon, crustal material) are important for understanding causes and trends of visibility impairment at a given location. The network also employs optical monitoring methods for the direct measurement of light extinction, and scene monitoring methods using 35 millimeter photography.

The EPA is funding the deployment of several hundred $PM_{2.5}$ monitors by the end of calendar year 1999. In order to meet the requirements for some monitors to characterize background conditions and transport patterns, as well as to more broadly characterize visibility impairment in Class I areas for implementation of the regional haze program, EPA is funding the deployment of an additional 78 IMPROVE sites for Class I areas by the end of 1999. As a result of this anticipated network expansion, we expect that few, if any, State-funded monitors will be needed in implementing today's final rule. The IMPROVE Steering Committee is coordinating closely with the States on the selection of sites for the expanded network to help ensure that the new sites will meet States' needs for SIP development. The EPA expects that as a result of the IMPROVE Steering Committee process, the expanded network should provide for data that can be considered representative of most if not all Class I areas.

The monitoring strategy must, however, provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether reasonable progress goals will be met. This provision requires States with Class I areas to work with EPA and the FLMs to ensure that monitoring networks provide monitoring data that are representative of visibility conditions in each affected Class I area within the State. We want to clarify that this provision does not require a monitor in each Class I area, only that a monitor be representative of a Class I area. Accordingly, a monitor in or adjacent to one Class I area can be representative of one or more other Class I areas, based on certain criteria. Additionally, EPA agrees with commenters that a few Class I areas may have severe accessibility problems for which monitoring may not be feasible.

Use of Monitoring Data to Understand Contributions to Class I Areas. States with Class I areas are required to include in the regional haze SIP a monitoring strategy that is tailored to a given representative site. The strategy must identify the ways that the visibility monitoring and chemical composition analysis will be used to understand the emission sources that contribute to visibility impairment at a given monitoring site. Additionally, the monitoring strategy should identify the procedures for reviewing monitoring data and coordinating with other technical experts. We believe that continued coordination of visibility monitoring and chemical composition analysis among States, FLMs, and EPA will be important for future regional planning activities. Analysis of trends in emissions of those constituents can assist States in the development of long-term strategies for making reasonable progress.

The rule also requires monitoring strategies for States without Class I areas. We believe it is equally important for those States to understand and describe the implications of monitoring data. First, it is important for those States to review monitoring information, including data on the chemical composition of individual species concentrations, to help understand the relative contribution of emissions from their State to Class I areas in other States. Second, it is important for these States to understand and describe how they will use the monitoring data to review progress and trends.

Periodic Updates to Strategy. The rule requires an initial monitoring strategy and periodic updates. The initial monitoring strategy is due with a State's first SIP submission. Additionally, the rule requires that the monitoring strategy be reviewed every 5 years. We believe that when progress is reviewed and control strategies are updated, it will be important to review the monitoring strategy. For the periodic updates, States should review the existing monitoring strategy with the FLMs and other participating agencies to assess the need for additional monitoring sites or modifications to existing sites, as well as the need for updated guidance on monitoring protocols.

Monitoring Guidance. The EPA plans to issue a visibility monitoring guidance document soon after promulgating this rule that will be designed to assist the States in developing monitoring strategies. The document will include technical criteria and procedures for conducting aerosol, optical, and scene monitoring of visibility conditions in Class I areas. The protocols of the IMPROVE network will be included in this guidance.

Reporting of Monitoring Data

Proposed Rule. The proposed rule required States to report all visibility monitoring at least annually for each Class I area having such monitoring. We proposed that States report data in accordance with EPA guidance and through electronic data transfer techniques to the extent possible. There were no adverse comments on this reporting requirement.

Final Rule. We have retained a general requirement in section 51.308(d)(4) that States submit as part of the SIP a monitoring strategy that addresses the reporting of visibility monitoring data to EPA. As noted above, EPA expects that few, if any, additional State-funded sites will be necessary to fully implement the regional haze rule. Where States do choose to fund additional sites, however, EPA believes it is important for the States to make data from these sites available to EPA and other agencies.

For monitoring sites in the IMPROVE network, the IMPROVE Steering Committee oversees network contractors who quality assure and consolidate data from chemical composition analysis of filter samples. Such data are made available to all interested parties through various electronic formats and online websites. Assuming this practice continues with the IMPROVE Steering Committee, States will experience little or no burden in meeting this requirement for reporting to EPA.

Annual consolidation of these data will serve several purposes. First, a central data base will allow the States and other interested parties to track progress over time in relation to reasonable progress goals. It will also assist the States in understanding current visibility conditions as well as past trends. Consolidation of the data will assist EPA, the State, other agencies, and the public in reviewing the effectiveness of the State's long-term strategy for regional haze. Additionally, consolidation of the data will enable EPA to better characterize national and regional visibility trends in its annual air quality trends report. Finally, a centralized data base will provide for the integration of monitoring data from the new $PM_{2.5}$ monitoring network and the visibility monitoring network, both of which will include $PM_{2.5}$ and PM_{10} mass, as well as compositional analysis by aerosol species. Class I area particle mass and chemical composition data can fill important data gaps in defining regional concentrations for air quality modeling analyses.

Requirements Under Section 110(a)(2) of the CAA. Visibility SIP submittals must document certain program infrastructure capabilities consistent with the requirements of section 169B(e)(2) and section 110(a)(2) of the CAA. Section 169(B)(e)(2) requires States to revise their section 110 SIPs to "contain such emission limits, schedules of compliance, and other measures as may be necessary" to carry out regulations promulgated pursuant to this section. The EPA believes that this language authorizes EPA to ensure that States review their existing program infrastructures to ensure that the types of elements required by section 110(a)(2) for programs addressing the NAAQS are also sufficient for adoption and implementation of SIP measures for regional haze. The final rule does not include specific provisions addressing all elements of section 110(a)(2). However, section 51.308(d)(4)(iv) of the final rule requires the State to maintain and update periodically a statewide inventory of emissions of pollutants that contribute to visibility impairment.

Where a State is also revising its SIP to incorporate changes to address the $PM_{2.5}$ NAAQS, many of these revisions may be sufficient to address both $PM_{2.5}$ and regional haze. The EPA encourages States to consider the needs of both programs when updating the provisions required by section 110 of the CAA to minimize any administrative burdens.

J. Periodic SIP Revisions and 5-year Progress Reports

Proposed Rule. The proposed rule required States to periodically review and revise their SIPs every 3 years. The preamble to the proposal stated that "[t]he EPA believes that a requirement for regular SIP revisions will result in a more effective program over time and provide a focus for demonstrating ongoing progress and making mid-course corrections in emission strategies."[11] Each SIP revision would include a comprehensive review of the long-term strategy, and a review of emissions reductions estimates relied on in the previous plan if the State does not achieve any reasonable progress target.

The proposal also requested comment on whether SIP revisions should instead be required every 5 years. Regarding this option, EPA also took comment on whether it should revise the existing requirement in the "reasonably attributable" regulations for long-term strategy reviews from every 3 years to every 5 years, such that SIP revision schedules for both regional haze and reasonably attributable impairment would be coordinated.

Public Comments. Some commenters stated that the CAA does not allow EPA to require periodic SIP revisions. Several commenters felt that a requirement to submit comprehensive SIP revisions every 3 years would be overly burdensome, and would not provide enough time to properly evaluate changes in air quality and emissions resulting from implementation of strategies to meet reasonable progress targets. For this reason, a number of commenters supported a 5-year period between SIP revisions. Several participants in the GCVTC supported a 5-year review of progress that meets the procedural requirements of a SIP revision, but that also allows for the State to make a negative declaration if current strategies are deemed adequate for making reasonable progress at that time.

Other commenters supported SIP revisions every 3 years, citing EPA's preamble language, which noted that implementing mid-course corrections after the 5-year mark may in fact be too late to correct situations where impairment is steadily increasing. Some of these commenters also supported the 3-year cycle for regional haze SIPs since it would be consistent with the requirement for 3-year reviews of long-term strategies in the existing 1980 visibility rules.

Authority for Periodic Updates. The EPA does not agree with commenters that it lacks the authority to require periodic SIP revisions. Section 110(a)(2)(F) of the CAA provides that SIPs are to require "periodic reports on the nature and amounts of emissions and emissions-related data" and "correlation of such reports * * * with any emission limitations or standards established pursuant to this chapter." Moreover, section 110(a)(2)(H) requires SIPs to provide for revision when found to be substantially inadequate to "comply with any additional requirements established under * * * [the CAA]." Both of these provisions provide EPA with the authority to require periodic SIP revisions.

The CAA calls for regulations to protect visual air quality in the Class I areas in a way that assures prevention of future impairment in addition to remedying existing impairment. A one-time review of impairment and development of strategies to address that impairment cannot provide such continuing assurance and, at best, can only focus on remedying currently known manmade visibility impairment within the limits of resources and technology. A program that did not anticipate and provide for the need for future periodic review and revisions, would not be responsive to the national goal of preventing any future manmade visibility impairment.

The requirement for periodic review of SIP measures also directly responds to the CAA goal for States to develop strategies to ensure reasonable progress toward the national goal of no human-caused impairment. Given that the statutory factors which States must consider in determining a reasonable progress goal include costs of control and availability of controls, among others, and given that technology changes can affect costs and availability of controls over time, EPA believes that the requirement for a periodic SIP revision is appropriate. The periodic revisions will assure that the statutory requirement for reasonable progress will

[11] 62 FR 41151.

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continue to be met. The EPA believes that the need for periodic updates is also clear from the NAS conclusion that "achieving the national visibility goal will require a substantial *long-term* (emphasis added) program."[112]

Three-year versus 5-year period. In considering the public comments, EPA also took into account the body of evidence indicating a need for multistate regional planning efforts under the regional haze program. Past experience with regional air quality planning efforts, such as the GCVTC or the Ozone Tranport Assessment Group (OTAG), has shown that regional air quality planning efforts often take 2 or more years to complete, with additional time needed for State adoption of measures and for review and approval by EPA.

After consideration of the comments described above, and the timeframes needed for regional planning, EPA concluded that a 5-year progress review and SIP revision cycle is more appropriate than a 3-year cycle. The EPA determined that the States will be better able to assess the effectiveness of emission management strategies by considering 5 years of data rather than 3 years since a 5-year period provides for more stable trend lines for emissions and air quality changes than a 3-year period. The EPA also concluded that a 5-year period should result in significantly less administrative burden on the States than a 3-year period.

Final rule requirements for comprehensive plan revisions and progress reports. The EPA has included in the final rule, two main requirements for comprehensive periodic plan revisions (section 51.308(f)) and progress reviews (section 51.308(g)). Section 51.308(f) requires the States to submit a comprehensive SIP revision in 2018 and every 10 years thereafter. It must meet all of the core requirements of section 51.308(d). The BART provisions of section 51.308(e), as noted above, apply only to the first implementation period. Section 51.308(g) requires progress reports for each Class I area in the State in the form of SIP revisions every 5 years.

Requirements for comprehensive periodic plan revisions. Comprehensive SIP revisions under section 51.308(f) must include all of the implementation plan elements found in section 51.308(d) of the final rule. These elements include, but are not limited to, the following: (1) reasonable progress goals for the next 10-year implementation period, (2) determination of current conditions and review of estimates for natural conditions, (3) a revised long-term strategy, as necessary to achieve the reasonable progress goal for the next 10-year implementation period, and (4) revised emission inventories, technical analyses and monitoring strategies. The EPA wishes to clarify the following points with respect to the basic core provisions of section 51.308(d) for the purpose of periodic comprehensive plan updates.

Reasonable progress goals. For purposes of the periodic plan revisions, the State must select a reasonable progress goal based upon the statutory factors discussed above in unit III.F. In determining the goal for the next implementation cycle, the State must include an analysis of the rate of improvement needed to reach natural conditions by the year 2064 as an analytical framework for the plan revision. To conduct this required analysis, the State must follow the same four steps discussed in unit II.F for the initial plan revision, that is (1) identification of the difference between baseline conditions and natural conditions (noting any updates to the estimate of natural conditions based upon technical refinements), (2) identification of the uniform rate of progress over the 60-year period that would be needed to attain natural conditions by the year 2064, (3) identification of the amount of progress that would result if this uniform rate of progress were achieved during the period of the regional haze implementation plan,[113] and (4) identification of reasonable progress goals in light of the statutory factors, taking the 60-year analysis into account. The State must also calculate the number of years it would take to attain natural conditions if visibility improvement continues at the rate of progress selected by the State as required in section 51.308(d)(1)(ii).

Reporting of Baseline and natural visibility conditions. In the SIP submission for the comprehensive periodic plan updates, the State must identify (1) the visibility change from baseline conditions, (2) the visibility change since the last SIP revision 10 years ago, and (3) the difference between current and natural conditions.

Visibility Change from Baseline Conditions. Section 51.308(f) calls for States to consider, at the time of any future SIP revision after the initial implementation plan, the amount of visibility improvement achieved from baseline visibility conditions (established over the period 2000-2004) in developing future reasonable progress goals and associated strategies. The final rule requires the State to do this by comparing "current conditions" for the 5 years of most recent visibility data with baseline conditions. (See discussion in unit III.E on definition of "current.") Any lack of progress in improvement of visibility from baseline conditions will need to be explained in the SIP revision and considered by the State in the establishment and/or revision of new reasonable progress goals and/or emission management strategies. Similarly, greater than expected improvements should be considered by the State in setting new visibility goals and emission management strategies.

If little or no perceptible visibility improvement has occurred in comparison to baseline conditions, or if conditions have actually degraded, then the State will need to explain the reason for this degradation in the SIP, and should seriously consider establishing more ambitious goals and additional enforceable measures to achieve these goals. The EPA will take into account the amount of progress achieved to date from the baseline period in determining whether any future strategy would ensure "reasonable progress." If significant visibility improvement has occurred from baseline conditions, then EPA can also take this into account in reviewing future reasonable progress goals and strategies.

Visibility Change Since Last SIP Revision. Section 51.308(f) also calls for States, in developing reasonable progress goals for the next 10 years, to take into account how visibility conditions have actually changed since establishment of the previous reasonable progress goal. (This provision would apply beginning in the second SIP revision cycle under the regional haze program.) If conditions degraded or failed to meet reasonable progress goals, the State would be required to analyze the cause of the shortfall, and address it as appropriate in future strategies. If the State has failed to achieve its reasonable progress goal for the prior implementation period, the State would be required to include in its revision a comparison of the visibility improvement the State expected to achieve to the visibility improvement the State actually achieved.

Difference between current and natural conditions. Section 51.308(f) of the final rule requires the State, at the time of any comprehensive SIP revision, to calculate the difference between current conditions and natural conditions for the most impaired and least impaired days. "Current conditions" means the conditions for the most recent 5-year period preceding the required date of the implementation plan submittal. This calculation is needed to determine the total amount of improvement that States will ultimately need to address in their long-term strategies.

Long-term strategies. As for the first implementation plan, subsequent comprehensive updates must identify the enforceable emissions reductions that will provide for meeting the reasonable progress goal for Class I areas within the State and for Class I areas outside the State which may be affected by emissions from the State. Unit III.G provides additional detail on the requirements of the long-term strategies.

Update of monitoring strategies and other requirements. The comprehensive updates are also required to meet the requirements of section 51.308(d)(4) for updated monitoring strategies, updated emission inventories, and other required technical analyses.

Requirements for 5-year progress reports. Section 51.308(g) describes the required elements for progress reports due every 5 years. For States that participate in regional planning and submit initial SIPs in 2008, the first progress report will be due in 2013. If a State submits its initial SIP in the 2004–2008 timeframe, its first progress report would be due before 2013. These progress reports must follow the same procedural requirements required for implementation plan revisions, and the State must provide the opportunity for public review and comment. However, the rule also allows the State to submit this progress report in the form of a negative declaration if the State finds that emission management measures in the SIP are being implemented on schedule, and visibility improvement appears to be consistent with existing reasonable progress goals. The EPA intends for progress reports to involve significantly less effort than a comprehensive SIP revision.

Each 5-year progress report must contain the following elements as specified in section 51.308(g):

- The status of implementation, and summary of the emissions reductions achieved, for all emission management measures implemented within the State in order to achieve reasonable progress goals for Class I areas within and outside the State.
- For each Class I area located in the State, the report must include calculations of the following parameters:
  - —Current visibility conditions for the most impaired and least impaired days.
  - —The difference between current conditions and baseline conditions for the most impaired and least impaired days.
  - —The change in visibility for the most impaired and least impaired days over the past 5 years.
- An emissions tracking report that analyzes the change over the past 5 years in emissions of pollutants contributing to visibility impairment, disaggregated by source category and emissions activity, for significant categories of sources or activities.
- An assessment of whether current implementation plan strategies are sufficient for the State or affected States to meet their reasonable progress goals.

Based on the required calculations and assessments in the progress report, the State must take one of four actions as specified in section 51.308(h). If the State finds that an additional substantive SIP revision is not required, then it may submit a "negative declaration" to EPA after opportunity for public review and comment. The EPA anticipates that if the State is implementing a reasonable set of strategies according to the schedule as developed in the previous comprehensive SIP revision, and that visibility trends show that reasonable progress goals should be achieved over the 10-year long-term strategy period, then the State should be able to certify, through a negative declaration, that no additional control measures are needed at the time of this mid-course review.

If the State finds that over the past 5 years there has been a substantial increase in emissions by intrastate sources, or there has been a deficiency in plan implementation, the final rule requires the State to revise the SIP within 1 year, rather than waiting for the next 10-year comprehensive review. Such a mid-course correction would be designed to achieve the existing reasonable progress goal for the relevant Class I area. The EPA believes that it is appropriate for the State to take prompt action to address intrastate problems since they would not need to participate in further regional planning.

If the State finds that there is a substantial increase in emissions or a deficiency in plan implementation resulting primarily from interstate emissions, section 51.308(h)(2) calls for the State to re-initiate the regional planning process with other States so that the deficiency can be addressed in the next comprehensive SIP revision due in 5 years. If the State finds that international emissions sources are responsible for a substantial increase in emissions affecting visibility conditions in any Class I area or causing a deficiency in plan implementation, the State must submit a technical demonstration to EPA in support of its finding. If EPA agrees with the State's finding, EPA will take appropriate action to address the international emissions through available mechanisms. Appropriate mechanisms for addressing visibility-impairing emissions from international sources are further discussed in unit III.G on the long-term strategy.

If EPA finds that the State has not been implementing certain measures adopted into its SIP, or that the State has submitted a SIP that is not approvable, or that the State has failed to submit any required progress report or SIP revision at all, the State could be subject to sanctions in accordance with sections 179(b) and 110(m) of the CAA. If the State does not resolve the situation expeditiously, EPA may be obligated to take further appropriate action to resolve the situation, including promulgation of a FIP within 2 years in accordance with section 110(c) of the CAA. The EPA believes that in this regionally-oriented program, it will be important for States to implement measures designed to improve visibility for Class I areas outside of their State, as well as to improve visibility within the State. The EPA will exercise its FIP authority as appropriate and necessary to ensure that States fulfill their obligations such that Class I areas make reasonable progress toward the national visibility goal.

K. Coordination With Federal Land Managers

Section 51.308(i) of the final rule requires that States consult with FLMs before adopting and submitting their regional haze SIPs. This requirement is consistent with the proposed regional haze rule and the 1980 regulation for "reasonably attributable" visibility impairment. A number of commenters expressed a concern that this provision was not equitable, in that States are required to consult with FLMs, but the rule does not require FLMs to consult with States before they take action, even when actions such as prescribed burning could have a significant impact

[112] National Research Council, NAS Committee on Haze in National Parks and Wilderness Areas, Protecting Visibility in National Parks and Wilderness Areas, National Academy Press, 1993, page 10.

[113] Referring to the example in unit III.F, if the second implementation plan covers a 10-year period from 2019 through 2028, then the State would identify a 3 deciview rate of improvement, and the amount of visibility improvement that must be analyzed for the year 2028 would be the 3 deciview improvement for the years 2019 through 2028, plus the 4.2 deciviews of improvement for the years 2004 through 2018.

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on a State's visibility program. These commenters recommended that the proposed rule be amended to mandate a two-way communication.

The EPA agrees that it is important and necessary for FLMs to consult with States on visibility-related issues. Land-use activities on Federal lands can have impacts on nearby areas of a State, and there have been significant air quality issues related to these activities. In recent years, FLMs have undertaken activities to improve communications with States. There are a number of examples of these efforts. The IMPROVE steering committee, the group that oversees FLM efforts to monitor visibility in Class I areas, includes representation from State agencies. Recently, State representation on this committee was expanded by adding two more State members. Another example are the memoranda of understanding that FLMs have entered into with States to coordinate prescribed burning activities. The EPA believes that the FLM agencies generally recognize the importance of involving States in the development and implementation of land use policies and other actions that affect States' abilities to make air quality improvements.

The EPA believes that it is unnecessary to impose an administrative requirement on another agency of the sort requested by commenters in a Federal rule, because Federal agencies are already subject to compliance with SIP requirements in the same manner, and to the same extent as any nongovernmental entity through section 118, as discussed below. The EPA will, however, be working with FLMs and States to assist in their communications over air quality issues.

Commenters also expressed concerns that emissions from Federal agencies are beyond their jurisdiction. These commenters felt that if States were not able to regulate such emissions, then other sources within the State would be treated inequitably under the final rule. The EPA does not agree that Federal sources are beyond a State's jurisdiction. As required by section 118 of the CAA, if a State air quality regulation affects a given type of source within its jurisdiction, Federal facilities having that type of source must comply with the State regulations in the same manner, and to the same extent as any nongovernmental entity. Thus, FLMs having emission sources of the type that are covered by State air quality regulations are subject to the same extent as private sector entities.

IV. Treatment of the GCVTC Recommendations

A. Background

The EPA established the GCVTC on November 13, 1991.[114] The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around 16 Class I areas on the Colorado Plateau region and to provide policy recommendations to EPA to address such impacts. Section 169B of the CAA called for the GCVTC to evaluate visibility research as well as other available information "pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the region."

The GCVTC was required to issue a report to EPA recommending what measures, if any, should be taken to protect visibility.[115] The CAA required that, at a minimum, this report was to consider: (1) The establishment of clean air corridors,[116] (2) the need to impose additional new source review requirements in any clean air corridors, and (3) additional restrictions on increases in emissions which may be appropriate to protect visibility in affected Class I areas. The GCVTC was also required to address the promulgation of regulations addressing long-range strategies to address regional haze in the region. In June 1996, the GCVTC issued its recommendations to EPA.

The GCVTC recommendations covered a wide range of control strategy approaches, planning and tracking activities, and technical findings. The primary recommendations of the GCVTC covered nine categories of activities:[117]

- Air pollution prevention and reduction of per capita pollution as a high priority, including non-binding targets on production of electricity from renewable energy sources;
- Tracking the effect of new sources of emissions on clean air corridors;
- Closely monitoring stationary source emissions, establishment of regional targets for sulfur dioxide emissions for the year 2000 and the year 2040 with interim targets to be established in the future, exploration of a similar tracking system for other pollutants, and the development of market-based regulatory programs if emissions targets are not met;
- Emissions reductions in and near Class I areas;
- Capping of mobile source emissions for areas contributing to visibility impairment, and State support for national measures aimed at further reducing tailpipe emissions;
- Further assessment of the contribution of road dust to visibility impairment;
- Future binational collaboration to resolve technical and policy concerns about contributions to visibility impairment on the Colorado Plateau resulting from emissions from pollution sources in Mexico;
- Implementation of smoke management programs to minimize effects of all fire activities on visibility; and
- The need for a future regional coordinating entity to follow through on implementing the recommendations.

Proposed rule. In the July 31, 1997 proposal of the regional haze rule, EPA included an extensive review of the recommendations of the GCVTC.[118] The preamble discussed how several concepts from the GCVTC's recommendations were incorporated into the proposed framework for the national regional haze program. For example, EPA proposed an approach for tracking reasonable progress, based on improving conditions on the worst visibility days and not allowing conditions on the best days to degrade, that was consistent with both the GCVTC's definition of "reasonable progress" and with the CAA national visibility goal of remedying any existing impairment and preventing any future impairment. The proposal also called for tracking of continuous emissions to inform State control strategy decisions on a periodic basis.[119]

However, in its proposal, EPA chose not to incorporate the GCVTC's specific emission management strategies as direct requirements for SIPs. The EPA followed this approach because the proposed rule was designed to establish a national framework for development of SIPs to remedy regional haze visibility impairment in all Class I areas nationwide. In addition, it was not clear how the various elements of the GCVTC's report were to be translated into SIP requirements. The EPA noted in the proposal that the "Commission's recommendations have components that contemplate implementation through a combination of actions by EPA, other Federal agencies, States and Tribes in the region, and voluntary measures on the part of the public and private

[114] See 56 FR 57522, Nov. 12, 1991.

[115] CAA Section 169B(d).

[116] A Clean air corridor is defined as a region that generally brings clear air to a receptor region, such as the Class I areas of the Golden Circle.

[117] See GCVTC Report, pp. i–iii.

[118] 62 FR 41141.

[119] 62 FR 41148.

entities throughout the region."[120] The EPA indicated that such a mixture of activities made it difficult for EPA to directly require States to implement all of these measures in their SIPs. Instead, the EPA specifically sought public comment on the manner in which the national regional haze program framework, as proposed, would allow for implementation of the GCVTC's recommendations.[121] The EPA also solicited comment on whether to adopt the GCVTC's stationary source strategies with or without modification.[122]

The EPA also reiterated its position in testimony before the United States Congress, stating that "we specifically designed the regional haze rule to allow for implementation of the GCVTC's recommendations to address the environmental goal of improving visibility."[123]

In public meetings and written comments following the proposal, interested parties expressed concern that the proposed rule did not specifically endorse or incorporate the GCVTC's recommendations. Some commentors asserted that the rule "ignored" the recommendations. The EPA also received numerous comments that supported adoption of the GCVTC recommendations as part of the national regional haze rule. In particular, several commentors who believed that EPA's proposed rule did not adequately support the GCVTC's recommendations asserted that EPA's participation in the GCVTC implied that strategies developed to address visibility in Class I areas of the Colorado Plateau would be taken into account within the structure of the rule. Commentors also noted that EPA's proposal of a visibility target and requirements to address BART left a high degree of uncertainty as to whether the GCVTC recommendations could form the basis for SIPs.

On June 29, 1998, after the close of the public comment period on the proposed regulations, the WGA sent to EPA additional comments on the proposed regional haze rules. These comments contained specific new language for addressing the recommendations of the GCVTC. The comments offered provisions to be included in the national regional haze rule to allow certain western States to submit SIPs to assure reasonable progress in addressing regional haze impacts on the Colorado Plateau based upon the technical work and policy recommendations of the GCVTC.[124] The transmittal letter signed by Michael O. Leavitt, Governor of the State of Utah, reemphasized the commitment of Western governors to the GCVTC recommendations, and requested that EPA take public comment on their suggested preamble and rule language as part of the EPA process in reaching decisions on a final regional haze rule. In response to this submittal, on September 3, 1998, EPA published a notice of availability in the **Federal Register**.[125] The notice solicited public comment on the contents of the WGA letter and EPA's translation of the letter's requirements for SIPs into draft regulatory language. The comment period for the notice of availability closed on October 5, 1998 and EPA received approximately 125 comments. In summary, most of the commentors supported the adoption of provisions to directly address the GCVTC recommendations in the national rule, although many requested changes to the draft regulatory language. Some commentors expressed concern over how these provisions would relate to the national rule, in particular to the national provisions for BART. Other commentors addressed the way in which the WGA letter and EPA's draft regulatory language translated the GCVTC's recommendations. In addition, some commentors expressed concern over the timing of the SIP submittals both over the linkage to timing of SIP submittals for ozone and $PM_{2.5}$ SIPs and the requirements of TEA–21. Commentors also requested EPA to commit to consider the national transportation measures noted by the GCVTC as part of EPA's responsibility toward helping the States make reasonable progress.

In the final rule, EPA is establishing specific SIP requirements which may be used by the States and tribes that participated in the GCVTC to satisfy the national regional haze rule. These SIP requirements will form a basis for these States to meet the CAA requirements for reasonable progress in the 16 Class I areas addressed by the GCVTC Report. These SIP requirements acknowledge and give effect to the substantial body of work already completed by the States and tribes participating in the GCVTC. The Agency, therefore, and for reasons explained in more detail below, provides these SIP requirements as an optional way for these States and tribes to implement the national rule based on the merits of the work of the GCVTC completed before establishment of the national framework. The EPA finds that the GCVTC actions to date address, or provide a mechanism to address, the statutory factors for assessing reasonable progress required by the CAA. The EPA is satisfied that the GCVTC's strategies as set forth in section 51.309, when supplemented by the annex process discussed below, will provide for "reasonable progress" toward the national visibility goal for the 16 parks and wilderness areas addressed by the GCVTC. Consequently, if a State submits a plan that addresses the requirements of section 51.309, including the requirements related to the annex, as described below, that plan will be considered to comply with the national rule's requirement for reasonable progress for the period from plan approval to 2018.

Today's final rulemaking, including section 51.309, is directly responsive to the western States' and tribes' comments calling for recognition of the policy development efforts of the GCVTC. At the same time, the rule allows for future cooperative efforts among the GCVTC States, so that the national requirements for ensuring reasonable progress are fully addressed. This action exemplifies how the regional haze protection provisions can be flexible and allow for a broad range of emissions control strategies tailored to a specific region. This action fully recognizes the GCVTC and its follow-up body, the WRAP, as a valid regional planning process to address, at a minimum, the 16 Class I areas that were the focus of the GCVTC. Section 51.309 provides for continued work of the GCVTC, which may be accomplished through the WRAP, to establish a complete framework which can be adopted in the SIPs for addressing all sources of visibility impairment in the 16 Class I areas. The section also sets forth provisions for addressing additional Class I areas that were not directly addressed in the GCVTC report.

Section 51.309 does not preclude States from developing and adopting their own control strategies. Rather, it provides an expedited process whereby a State choosing to follow the GCVTC's recommendations in its SIP can rely fully on the technical analyses, policy recommendations, and agreements reached by the GCVTC members, thereby significantly reducing the effort required to establish federally approvable SIPs. A State remains free to develop and submit a SIP to EPA which does not rely on the GCVTC's work or

[120] 62 FR 41142.

[121] 62 FR 41143.

[122] 62 FR 41143.

[123] Written Testimony of John S. Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, before the Subcommittee on Forest and Public Land Management of the Committee on Energy and Natural Resources, United States Senate, October 28, 1997.

[124] Docket A–95–38, Item # VIII–G–76.

[125] 63 FR 46952.

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section 51.309. Such a State will be fully subject to the requirements and schedules set forth in section 51.308, in the same manner and to the same extent as the States and tribes throughout the United States that did not participate in the GCVTC process.

B. General Requirements of Section 51.309

Section 51.309 requires specific emissions control strategies for a broad region of the Western United States and includes measures which address different types of emissions sources, including stationary, area and mobile sources. Some of these strategies are already in place while others, such as mobile source provisions and the structure of a market trading system to assure compliance with stationary source emissions goals, will require development of additional regulatory measures. A review of each element of section 51.309 is found in unit IV.C below.

The GCVTC recommended emission reduction targets from stationary sources of SO_2 for the years 2000 and 2040. The GCVTC did not recommend quantitative interim targets between the years 2000 and 2040. Therefore, in addition to provisions for specific emissions strategies, section 51.309 allows for an annex to the GCVTC report which will be considered in establishing specific targets for SO_2 emissions from stationary sources in the region between 2003 and 2018. This annex process and EPA's approval of acceptable interim emissions targets for SO_2 will be key in completing a series of strategies that can be deemed by EPA as meeting reasonable progress for the Class I areas on the Colorado Plateau.

The provisions for adoption of strategies consistent with the GCVTC recommendations do not preclude the States and tribes from developing additional control strategies for achieving reasonable progress in other Class I areas. Nor do they preclude States and tribes which did not participate in the GCVTC, but which may benefit from its strategies due to the geographic proximity of their Class I areas to the State where strategies will be implemented and regional transport throughout the west, from building on these strategies to address reasonable progress for their Class I areas. However, for all Class I areas not on the Colorado Plateau, the States and tribes would need to demonstrate, through the required analyses, that implementation of these strategies would contribute to meeting the requirements of section 51.308. By focusing first on implementation strategies for the 16 Class I areas based on the recommendations of the GCVTC, all western States may reduce the technical and administrative costs of addressing the remaining Class I areas by building on the outcome of existing programs rather than requiring the development of two programs in parallel.

In the national rule, EPA is requiring States to analyze the rate of progress in visibility improvement that would be needed to reach natural conditions within 60 years. The analyses must assess what strategies are available to meet that rate for the period of the long-term strategy. The GCVTC reviewed the period from 1990 to 2040 to assess what strategies were reasonable to achieve visibility improvement in the 16 Class I areas. The GCVTC's Alternatives Assessment Committee developed a modeling system linking emissions control strategies, the costs of such strategies and the degree of visibility improvement that would result from those strategies. While not specifically attempting to reach natural conditions within 60 years, a key emissions control scenario assessed in the GCVTC process was a "maximum management alternative." The GCVTC looked at many source types and their impacts on visibility. This specific assessment applied all known and anticipated control strategies over the time period as an indicator of the maximum amount of improvement in visibility possible in the region. The results of this analysis did not show sufficient emissions to reach natural conditions in any mandatory Class I area by 2040. The analysis of this scenario did, however, demonstrate that the "maximum management alternative" is not likely to be achievable based on technological, economic and policy choices made by the Alternates Assessment Committee due to costs, degree of visibility improvement and other factors. Consequently, EPA finds this analysis, plus the management alternatives chosen (i.e., market-based emissions reductions, specific source-sector reductions, etc.) to be an acceptable basis for approvable SIP strategies for the 16 Class I areas for the first long-term strategy period since, in effect, reaching natural conditions by 2040 was shown not to be reasonable in this transport region at this time. In making this finding, EPA concludes that the GCVTC analyses and process provide for an assessment comparable to that called for by section 51.308.

In promulgating section 51.309, EPA is establishing specific SIP requirements for the time period 2003 through 2018 based on demonstrations by the GCVTC. The EPA finds the GCVTC demonstrations satisfy requirements for review of the statutory factors as provided for under subsection 51.308(d).

While the GCVTC's assessment included projections to the 2040, EPA feels that the strategies incorporated in section 51.309 must be re-evaluated in 2018 to assure that they will continue to achieve reasonable progress after a thorough review of the CAA factors. As discussed elsewhere in today's notice, this periodic review and revision of regional haze SIPs is needed because of technological changes and economic factors which are likely to significantly alter both the rate of emissions growth within a region, and the degree to which new technologies can more effectively reduce emissions, both of which can affect the rate of visibility improvement. In addition, the requirement for periodic revisions is consistent with the statutory provisions governing long-term strategies.

The EPA agrees with commentors who noted certain benefits to following the pathway provided through section 51.309 for addressing regional haze impairment. First, there is the benefit that the mixture of required strategies for the 16 Class 1 areas has already been through public comment as part of the GCVTC deliberations and subject to review by many stakeholders. This previous public debate should help ensure broader public support for the State's plans as they are adopted and implemented. As pointed out by commentors, one of the benefits of the GCVTC recommended strategies is that they are aimed at developing cost-effective control strategies and ensuring compliance flexibility for affected sources. For example, the strategy to address emissions from stationary sources uses a milestone and backstop emissions trading program mechanism. This rewards voluntary emissions reductions since a regional emissions trading program would only become effective if regional milestones are exceeded. Given that the provisions for the milestone and backstop emissions trading system may be approvable in lieu of BART, depending on the milestones developed in the annex, full compliance with BART emissions limitations would not be required within 5 years of plan submittal, as would be required of States which submit plans under section 51.308 requiring source-specific BART. In addition, the economies of scale offered by the work of the WRAP in conducting coordinated assessment activities, such as economic and air quality modeling, could be substantial in aiding States in meeting their planning obligations.

Finally, EPA's provisional view that SIPs which meet section 51.309 would satisfy the requirement for reasonable progress minimizes the analyses required of States which adhere to the requirements of section 51.309, compared to States making an independent submittal under section 51.308.

C. Elements of the GCVTC-Based State and Tribal Implementation Plans

1. Time Period

Section 51.309(d)(1) establishes the time period of the plan to cover the 16 parks and wilderness areas for the period 2003 through 2018. The GCVTC's recommended emissions reduction strategies, including the emission reduction approach for stationary sources of SO_2, establish the long-term strategy requirements for plan submittals to EPA until the year 2018. This time period is consistent with the submittals required under section 51.308 which will be due between 2004 and 2008 depending on the classification of State areas with respect to attainment of the recently promulgated NAAQS for $PM_{2.5}$. The time period covered by the plan revision due under section 51.309, 2003–2018, is somewhat different from the timeframe for long-term strategies required by section 51.308 for the Class I areas not on the Colorado Plateau. The differences that exist acknowledge the substantial early work of the GCVTC, on the 16 Class I areas, while at the same time making the strategy review cycle consistent with the timetable established in section 51.308.

The EPA received comment that it should allow the GCVTC recommendations to be the basis of all future strategies to address regional haze for the 16 Class I areas on the Colorado Plateau permanently. The EPA disagrees. No given set of emissions strategies can be determined reliably to achieve reasonable progress into the distant future. While the GCVTC strategies adopted by the States under the provisions of section 51.309 may well continue to be adequate to meet the future long-term strategy requirement, a full review of emissions strategies for all Class I areas of the region is appropriate to assure that "reasonable progress" is being achieved and will continue to be achieved during the periods of subsequent long-term strategies. As noted above, the relevant facts concerning costs of controls, availability of control strategies, and other statutory factors will change over time. Advancements in technology and changes in economic factors will likely provide opportunities for implementation of new cost-effective control measures to assure reasonable progress. The structure of EPA's rule is designed to require States, through the SIP process, to review the statutory factors on a periodic basis and determine appropriate changes to their strategies based on that review.

2. Projection of Visibility Improvement

Section 51.309(d)(2) requires the plan to contain a projection of the visibility conditions expected through the year 2018 and to take into account the measures required in the GCVTC report and the provisions of section 51.309. This projection must, at a minimum, be expressed in units of deciview.

The Agency received comment that the GCVTC States should not be required to estimate visibility conditions using the deciview metric, but should be permitted simply to track emissions over time. While EPA encourages States to track emissions in order to evaluate the emission reduction effectiveness of adopted control measures, it is equally important that changes be translated into visibility improvements in order to be responsive to the national goal. As noted earlier in unit III.C of this notice on the deciview metric, EPA's selection of the deciview scale is an appropriate way to do this. The Agency also included this provision to ensure that the public understands the relationship of the SIP to visibility conditions at the Class I areas and to the national goal of no manmade impairment in visibility in these areas. The Agency thus feels that it is appropriate to inform the public on the relationship between chosen emissions control measures and their effect on visibility by requiring States to report on actual and expected changes in visibility to be achieved through implementation of section 31.309. Those changes can be based on monitored data as well as estimated for future conditions based on implementation of emissions strategies. Moreover, the requirement for use of the deciview metric does not prevent the States from using other indicators, in addition to the deciview, for describing regional haze conditions, such as standard visual range or atmospheric light extinction.

3. Treatment of Clean Air Corridors

Section 51.309(d)(3) requires the States to identify a geographic region or regions which will be subject to a comprehensive emissions tracking strategy. The purpose of such comprehensive emissions tracking is to ensure that the frequency of clear days, or days with good visibility, increases or does not decrease at any of the 16 Class I areas addressed by the GCVTC. This section of the rule is designed to make the review of emissions, and their resulting impact on the clear days at the Class I areas, part of the public record through the SIP approval process. It does not mandate any emissions control strategies specifically aimed at improving clear days, but provides for the State to periodically review the need for such strategies. If anthropogenic emissions create visibility impairment above natural conditions, and if overall annual human-caused emissions reductions take place in a region, it is likely that visibility will improve for both the most impaired days and the least impaired days.

The geographic area (or areas) to be covered by the emissions tracking strategy is to be determined initially based on the GCVTC Meteorology Subcommittee's report entitled Clean Air Corridors: A Framework for Identifying Regions that Influence Clean Air on the Colorado Plateau. The geographic area (or areas) can be further refined based on new technical findings over time. The requirement to track emissions will enable States to quickly determine if changes in patterns of emissions will reduce the number of clean air days (defined as the average of the 20 percent clearest days) in any of the 16 Class I areas. The State must analyze the effects of the emissions changes and implement additional measures to protect the clean days if necessary. The States may include the tracking of emissions for the clean air corridors with tracking of emissions for other purposes such as compliance with stationary source emissions targets, if appropriate. The EPA notes that clean air corridors will be protected by other implementation plan requirements, such as other SIP measures that may apply to existing stationary sources. States may wish to rely on technical cooperation now beginning under the WRAP as an efficient means to consolidate efforts on emission inventories and projections needed to monitor clean air corridor emissions and their effects on clear air days.

4. Implementation of Stationary Source Reductions

To achieve the reductions in emissions for stationary sources projected in the GCVTC's strategies, subsection 51.309(f)(1)(i) requires the establishment of SO_2 emission reduction milestones as part of the development of an annex to the GCVTC report. Section 51.309(d)(4) requires monitoring and reporting of stationary

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source emissions of SO_2 in order to assess compliance with these milestones during the period 2003 to 2018. The SIP must contain criteria and procedures for implementing a market trading program or other program documented in the SIP, consistent with section 51.309(f)(1)(i), if triggered by emissions exceeding the emissions reduction milestones. In particular, the SIPs must provide for implementation of the market-based program or other emissions control strategy as called for by an assessment of SO_2 emissions for the years 2003, 2008, 2013, and 2018. States must fully activate the market system or other program within 1 year after an assessment showing the excessive emissions. In addition, the implementation plan must provide for all affected sources to comply with the market system or other programs allocating emissions within 5 years after the date the program is triggered. The rule also requires States to report on actual emissions reductions and compare them to the established milestones. If a market trading program or other program is triggered, the rule requires States to report whether all sources covered by the market trading or other programs are in compliance with applicable requirements.

In addition to requirements for control of emissions of SO_2, the rule requires the State to explore emission management options for stationary source emissions of PM and NO_X. The States are required to report by 2003 on their consideration of the need for emissions targets for these pollutants to prevent growth in emissions of these pollutants in the region as a whole. The EPA believes that the States should base their decisions on the need for, and levels of, emissions targets for these pollutants on the degree to which such pollutants contribute to regional haze impairment in the Class I areas addressed by their SIPs. The States must report to EPA by 2003 on their decisions whether to develop targets and additional control strategies for PM and NO_X emissions from stationary sources. If the States determine that such targets and controls are needed, they must submit a plan revision to EPA not later than December 31, 2008 containing any necessary long-term strategies and BART or other requirements for stationary sources of PM and NO_X.

In adopting the requirements for stationary source emission reduction milestones in this manner, EPA is indicating that the State's adoption of approvable SO_2 milestones and a backstop market trading program as set forth in section 51.309(f) in addition to the other requirements in section 51.309 would provide for reasonable progress for the 16 Class I areas for the implementation period from 2003 to 2018. The emissions reductions provided for by the milestones and trading program must address the BART provisions in section 51.308(e). For the reasons discussed in the portion of this preamble concerning BART requirements, EPA believes that the GCVTC's adoption of a market based alternative to source-by-source BART will permit the GCVTC States to meet the provisions of the national rule which allow the use of alternative measures in lieu of BART. Implementation of the framework established by subsections 51.309 (d)(4) and (f) will thus satisfy the provisions for an alternative measure in lieu of BART for regional haze impairment set forth in section 51.308(e)(2), provided the interim milestones called for in the annex assure greater reasonable progress than would be achieved by application of BART. The EPA will supplement its actions on the stationary source strategy with future rulemaking on the States' submission of interim milestones for SO_2 emissions as part of the annex. In reviewing the interim milestones, EPA will be informed by the annex to the GCVTC report provided for in section 51.309(f) to be discussed later.

5. Mobile Sources

Section 51.309(d)(5) requires implementation plans to address the contribution to regional haze by emissions from mobile sources. This mobile source provision is based on the finding in the GCVTC Report that reducing total mobile source emissions is an essential part of any long-term strategy for management of visibility on the Colorado Plateau.[126] The GCVTC found that some urban areas will already be developing mobile source emissions budgets and programs to meet other CAA requirements. To the extent that mobile source emissions in these or other areas are found to contribute significantly to visibility impairment in the Class I areas of the Colorado Plateau, the GCVTC recommended that an emissions budget be established for any area with a significant contribution to the regional mobile source emissions total. The GCVTC called for the budgets to be established beginning in the approximate year in which emissions from mobile sources are projected to be at their lowest point during the planning period of 2003 to 2018, which is expected to be in 2005. The emissions budget should serve both as a planning objective and a performance indicator for that area.

Accordingly, today's final rule requires all plans to provide for an inventory of current and projected emissions (VOC, NO_X, SO_2, elemental carbon, organic carbon, and direct fine particles) from mobile sources for the 2003 to 2018 period. Because, as noted in the GCVTC Report, the inventory for the year 2005 is expected to represent the expected lowest total emissions from mobile sources in the planning period, that inventory must be included in the SIP. Once State inventories have been compiled and evaluated, the States with urban areas found to contribute significantly to visibility impairment in the 16 Class I areas must establish and document their mobile source emissions budgets for any such area. In addition, the States must establish SIP components which limit VOC, SO_2, NO_X, elemental and organic carbon and direct fine particulate mobile source emissions to their projected lowest levels for the period 2003 to 2018. The State plans must also provide for the implementation of measures to achieve the mobile emissions budget, and for demonstrations of compliance with any such budget. The demonstrations must include a tracking system to evaluate and demonstrate the State is meeting its share of the regional mobile source emissions budget.

The GCVTC report also noted that the Federal government has a role in addressing mobile source emissions. The GCVTC report identified several national mobile source-related emissions reduction strategies under consideration by EPA that are important to visibility conditions in the Class I areas on the Colorado Plateau. The GCVTC agreed to promote these initiatives on a national level. With regard to ongoing development of policies and regulations on emissions from mobile sources, the June 29 letter from the WGA requests that EPA "make a binding commitment in its final regional haze rule to fully consider the GCVTC's recommendations' on several national mobile source emissions control strategies. Comment on the regional haze rule specifically requested that EPA commit to consider development of a list of very specific national mobile source emissions control strategies.

The EPA agrees with the GCVTC's conclusion that emissions from mobile sources can be significant contributors to regional haze visibility impairment. The EPA is currently working on a number of the strategies the GCVTC requested us to "fully consider" and the

[126] GCVTC Report, pp. 38–46.

summary below indicates the status of activities under way.

No.	Measure	Status of EPA efforts to fully consider the measure
1	Adoption of the 49-State LEV standard in 2001 and Tier II vehicle emission standards in year 2004 (if determined to be more effective).	Combined Tier II/gasoline sulfur NPRM is being drafted, with publication expected in early to mid-1999.
2	Support of EPA's current proposal for new on-road, heavy-duty vehicles emission standards that reduce NO_X emissions by at least 50 percent over the 1998 requirements in the CAA, while maintaining current stringent PM emission limits.	Finalized 2004 standards for on-road heavy-duty in 10/97 [62 FR 54693]; reductions in NO_X emissions and secondary PM.
3	Pursue additional PM reductions from on-road vehicles	Potential actions being evaluated.
4	Pursue additional engine emission standards for new off-road vehicles (heavy-duty, construction-type) that provide reasonably achievable reductions.	Finalized standards in 8/98 [63 FR 56967]. Also planning a technology review by December 2001 to evaluate feasibility standards and additional reductions.
5	Explore broader application of and additional reductions in the sulfur content of both gasoline and diesel fuel.	Gasoline sulfur control-rulemaking underway. Considering regulation of diesel fuel sulfur.
6	Promotion of cleaner-burning fuels	In first year of implementing clean-fuel fleets program. The Office of Mobile Sources presented a series of fleet manager workshops during May, June and July of '98. Clean Fuel Fleet Program Implementation Guidance was issued in August '98. We have a team within OMS working on promoting clean fuels efforts.
7	Pursue fuel standards and control strategies for diesel locomotives, marine vessels/pleasure craft, airplanes, and Federal vehicles as described in the GCVTC's Report.	Study of these issues is ongoing, but no specific actions have been scheduled.
8	Support requirements for effective refueling vapor recovery systems that capture evaporative emissions.	On-board re-fueling standards for cars and trucks finalized October 1996. We may consider refueling systems for on-road, heavy-duty gasoline in future.

The EPA will continue to work with States and regional planning entities to help them assess how national mobile source emissions strategies will affect other strategies needed to ensure reasonable progress toward the national visibility goal during the implementation of the regulations promulgated today. The EPA will also grant States full credit for implementation of future national mobile source programs in emissions strategies needed to attain reasonable progress goals.

6. Emissions Related to Fire

Section 51.309(d)(6) requires documentation that all prescribed fire programs within the State consider and address the effects of smoke on visibility when planning and issuing permits for prescribed fires. The GCVTC Report stated that "fire has played a major role in the development of and maintenance of most ecosystems in the West." [127] In addition, the report notes "emissions from fire (wildfire and prescribed fire) are an important episodic contributor to visibility-impairing aerosols, including organic carbon, and particulate matter ($PM_{2.5}$)". Agricultural burning emissions and their effects have been identified as a concern by the GCVTC but have not been quantified due to lack of data. The GCVTC concluded that all types of fire (prescribed fire, wildfire, and agricultural burning) must be addressed equitably as part of a visibility protection strategy.[128]

The EPA agrees with the GCVTC's conclusions and is including in this section of the rule a requirement for the States to address all types of fire in fulfilling the requirements of this section and in submitting SIPs for approval by EPA. Section 51.309(d)(6) requires each State to establish an emissions inventory and tracking system (spatial and temporal) for VOC, NO_X, elemental carbon and organic carbon, and direct fine particulate emissions from prescribed fire, wildfire, and agricultural burning. The EPA believes that such information could be developed on a regional basis and could be accomplished through mechanisms such as recording acres experiencing fire and calculating emissions based on vegetation type and soil moisture. Most importantly, the rule requires the establishment of enhanced smoke management programs for fire that consider visibility effects, in addition to health and nuisance objectives, and calls for programs to be based on the criteria of efficiency, economics, law, emissions reduction opportunities, land management objectives, and reduction of visibility impacts. The comprehensive approach envisioned by the rule will allow States to plan a smoke management program that minimizes visibility impacts but also fully recognizes the ecological role of fire.

The smoke management plans must address all sources of fire used for land management purposes. The provisions of this section also provide for establishment of annual emissions goals for fire (excluding wildfire) that will minimize increases in emissions to the maximum extent feasible. These goals are to be established cooperatively by States, tribes, State and Federal land management agencies, and their private sector counterparts, considering factors similar to those identified for enhanced smoke management plans.

7. Dust From Roads

Section 51.309(d)(7) requires States to assess the impact of dust emissions on regional haze visibility in the 16 Class I areas. If such dust emissions are determined to be a significant contributor to visibility impairment, the State must implement emissions management strategies to address their impact. In the technical work of the GCVTC, road dust was not shown to be a major contributor to regional haze impairment based on current monitoring data. However, work on future emissions projections of road dust emissions was directly tied to growth in vehicle miles traveled (VMT). The large increase projected for the west in VMT over the planning period of the GCVTC report resulted in initial

[127] GCVTC Report, p. 47.

[128] See Id.

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predictions of a very large contribution of road dust to regional haze.[129] This technical result was addressed in the GCVTC report and the.GCVTC discounted the predictions of the future impacts from road dust. However, the GCVTC recommended that its policy conclusion that distant road dust is not likely to play an important role in regional haze should be confirmed through further tracking of road dust emissions. The GCVTC also emphasized that road dust control should be considered in locations "in and near" Class I areas.[130] The EPA agrees with this approach and has included the assessment of road dust as a requirement of the SIP. In addition, today's action requires appropriate SIP measures over time based on the contribution of road dust to regional haze.

8. Pollution Prevention

This section addresses the GCVTC's recommendations on pollution prevention and renewable energy. The GCVTC goal recommended that renewable energy comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015. The Administration has recently offered legislation proposing a national mandate of 7.5 percent by 2010. The Commission's goal represents the outcome of its consensus process and is a more aggressive goal than what the Administration has proposed as a national mandate. As with other GCVTC recommendations, the EPA has included this provision in this rule in recognition of the overall body of the GCVTC's work and believes it is consistent with the provisions of the national rule. Section 51.309(d)(8) requires the State to summarize all pollution prevention plans currently in place, inventory the current and expected energy generation capacity through 2002, the total energy generation capacity and production for the State, the State's percentage of total energy generation and capacity that comes from renewable energy sources, and the State's anticipated contribution toward the GCVTC's goal that renewable energy comprise 10 percent of the regional power needs by 2005, and 20 percent by 2015.

The GCVTC found that to prevent further degradation of vistas in the west, it would be necessary to combine cost-effective pollution control strategies with a greater emphasis on pollution prevention, including low or zero emission technologies and energy conservation. It further found that there was a high potential for renewable energy production, especially electrical energy, and that the relative cost of renewable energy production is declining over time. The GCVTC cited forecasts of renewable energy production by the Western Systems Coordinating Council and by the Land and Water Fund of the Rockies in support of its adoption of the goal that 10 percent of regional power needs be served by renewable energy sources by the year 2005 and 20 percent by the year 2015.[131]

In establishing assessment and reporting requirements for the States, EPA is supporting the GCVTC Report's promotion of renewable power production. Such production will likely be based on emerging renewable energy technologies such as wind, solar, biomass, and geothermal. The EPA also supports tracking annual goals for increases in renewable power generation in the transport region.[132] The GCVTC identified strategies which the States could rely on to help achieve this regional renewable energy goal, including, but not limited to, focusing research funding for renewables, financial incentives, and requiring new power generation projects to include a portion of the generation from renewable energy sources. The EPA notes that the WRAP is committed to following through on the GCVTC's recommendations and can assist the States in developing strategies they can rely on to achieve regional renewable energy goals contained in the GCVTC Report.

In response to the GCVTC's recommendations on pollution prevention, section 51.309(d)(8) calls for each SIP to provide for incentives to reward efforts that go beyond compliance and/or achieve early compliance with air pollution related requirements. The plan also must identify specific areas where renewable energy has the potential to supply power where it is not now provided by current service systems and where renewable energy systems are most cost effective. The plan must contain projections of the short-term and long-term emissions reductions, visibility improvements, costs savings, and secondary benefits associated with renewable energy goals, energy efficiency and pollution prevention activities. The plan must also contain a description of the programs being relied on to achieve the State's contribution toward the GCVTC's renewable energy goals.

The State must provide a demonstration of its progress toward achieving the renewable energy goals in 2003, 2008, 2013 and 2018. The demonstration must include documentation describing the potential for renewable energy resources, the percentage of renewable energy associated with new power generation projects implemented or planned, and the renewable energy generation capacity and production in use or planned within the State. Where a State cannot feasibly meet its planned contribution to the regional renewable energy goals, the State must identify the measures implemented to achieve its contribution and explain why meeting the State's contribution was not feasible.

Commentors on EPA's September 3, 1998 notice of availability stated that incorporation of language from the WGA letter on renewable energy restricts State and local energy planning since a SIP is federally enforceable under the CAA. Commentors also expressed the opinion that the requirements for SIPs to address renewable energy goals may overstep EPA's legal authorities which are limited to emissions limitation and pollution performance standards.

The EPA disagrees that the provisions of section 51.309(d)(8) impermissibly restrict State and local energy planning or that these provisions exceed EPA's authority under the CAA. As stated previously, the requirements of section 51.309 are provided to GCVTC States as an alternative to the general provisions of section 51.308 as a means of giving effect to the policy and technical work of the GCVTC. The goals themselves are not enforceable and States are not required to meet the renewable energy goals. However, as the WGA letter and the GCVTC provide, these provisions are not severable. States which wish to take advantage of the GCVTC's efforts and EPA's acceptance thereof are obligated to meet all of the requirements of section 51.309.

Rather, EPA is setting enforceable requirements for the States to assess progress toward goals established by the GCVTC with respect to renewable energy production as a means for reducing dependence on more polluting forms of energy production. States participating in the GCVTC strategy are responsible for explaining why they cannot meet the GCVTC goals. The required reporting by the States will inform the public of air quality improvements that would result from that goal had it been realized. It is the relationship between renewable energy production and associated environmental effects (direct and indirect) that is the thrust of the assessment and reporting effort under the SIP.

[129] GCVTC Report, p. 46.
[130] See id.
[131] GCVTC Report, p. 28.
[132] GCVTC Report, p. 7.

9. Implementation of Additional Requirements

In section 51.309(d)(9), EPA requires SIPs to provide for implementation of other GCVTC Report policy and strategy options that can be practicably included as enforceable emissions limits, schedules of compliance or other enforceable measures to make reasonable progress toward the national visibility goal for the 16 Class I areas.

The GCVTC's recommendations included items that are not appropriate to directly translate to SIP requirements for every State. The EPA supports State choice of appropriate actions on other options and measures identified by the GCVTC and has, therefore, established a general provision for SIPs calling for them to consider and adopt additional measures as necessary and appropriate. The rule further requires States to report to EPA in 2003, 2008, 2013, and 2018 on what measures have been adopted and the status of implementation of those measures.

10. International Transport of Pollution

One of the additional areas of concern noted in the GCVTC report, for instance, relates to effects of emissions from sources outside of the territory of the United States. As stated elsewhere in this notice, the EPA will not hold States responsible for developing strategies to "compensate" for the effects of emissions from foreign sources. However, the States should not consider the presence of emissions from foreign sources as a reason not to strive to ensure reasonable progress in reducing any visibility impairment caused by sources located within their jurisdiction. The States retain a duty to work with EPA in helping the Federal government use appropriate means to address international pollution transport concerns. Indeed, such efforts are under way. The EPA and other Federal officials are working with representatives of the Mexican government to complete a study which will assess the contribution of fossil-fuel fired electric generation stations in northern Mexico to haze in Big Bend National Park. These efforts and funding of work to establish emissions inventories in Mexico will help address concerns raised by the GCVTC. In addition to activities directly related to visibility effects, there are other efforts underway related to the United States-Mexico border health issues. Given that emissions contributing to health effects and those contributing to visibility impairment are generally the same, the border studies and emissions inventories will help support assessment of regional visibility conditions. In addition to work with Mexico, EPA routinely meets with representatives of the Canadian government on issues related to transport of air pollutants, particularly focusing on emissions affecting acidic deposition. The EPA intends to continue to work through appropriate channels in building technical information and addressing policy concerns related to international pollution transport.

11. Periodic Implementation Plan Revisions

Section 51.309(d)(10) requires the States to periodically assess their progress in implementing measures for protection of visibility. This includes a review of how the measures implemented under section 51.309 are consistent with the national rule's provisions for long-term strategies and BART. The assessments must be completed by 2008, 2013, and 2018 and must be submitted to EPA as SIP revisions that comply with the procedural requirements of sections 51.102 and 51.103. As with any other review and revision of SIP requirements, States will be expected to use the most current available technical methods and procedures in conducting their assessments.

The provisions of section 51.309(d)(10) further require that where a State concludes that planning adjustments are necessary as a result of emissions occurring within the State, it revise its implementation strategies to include rule revisions that are effective within 1 year after the State makes such a conclusion in order to assure reasonable progress at any of the 16 Class I areas on the Colorado Plateau. States may also conclude, based on their assessments, that no changes to the plan are needed, and the plan revision requirement can be met by submitting a "negative declaration" as an implementation plan revision to EPA. This revision must provide the State's basis for finding that no changes are needed. This submission will provide the public with necessary information and an opportunity to comment on the State's findings.

The EPA views the requirement of section 51.309(d)(10) as a periodic check on progress rather than a thorough revision of regional strategies. The State interim assessments should focus on significant failures or shortfalls in implementing adopted strategies and on emissions from in-State or out-of-State sources which may be causing degradation in regional haze visibility but were not anticipated in the development of the original plan and will, therefore, not be addressed by currently-adopted programs. If a State makes such findings with respect to in-State sources, EPA expects the State to revise its SIP, reducing emissions to be consistent with the regional planning effort reflected in the reasonable progress SIPs due in 2003. If transport of emissions from out of State is suspected of impairing reasonable progress, the State should identify this to EPA and should initiate cooperative efforts with upwind States so the emissions can be more fully evaluated and, as needed, addressed in the next mandatory full SIP revision. This requirement is virtually identical to the provisions for periodic review under sections 51.308(g) and (h).

12. State Planning and Interstate Coordination

Section 51.309(d)(11) provides flexibility to a State to address its contribution to visibility impairment through the regional emissions control strategies discussed above. The SIP strategies to protect the 16 Class I areas on the Colorado Plateau can thus be developed through interstate coordination in a regional planning process. Such regional planning can help a State develop documentation of the technical and policy basis for the individual State apportionment of emissions and visibility impairment, the contribution to emissions addressed by the State's plan, coordination in the analysis of interstate transport and control of pollution with other States, and compliance with other criteria for approval of SIPs under CAA sections 110 and 169A and B. Therefore, under today's final rule and EPA policy, States may rely on regional entities' efforts to develop and document technical and policy support for the SIPs required by this rule. For the purposes of implementing the requirements of section 51.309, EPA recognizes the WRAP as a regional planning group for purposes of interstate consultation under section 51.308(c).

As indicated in the introduction to the section of today's notice addressing the WGA and GCVTC recommendations, States retain the right to develop their own programs with or without reliance on the work products of a regional entity. In the case where a State chooses to develop a SIP without reliance on a regional planning process, however, the State will need to show how it accounted for the effect of its emissions on Class I areas which may be

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located beyond the State's borders, as well as the effect of upwind emissions from other States on the Class I areas within its borders.

The regional haze SIP for a State choosing not to implement the requirements of section 51.309, including the SIP submittal deadlines, would be governed by the national rules provided in section 51.308. Any State choosing not to adopt a SIP in accordance with the GCVTC strategy and optional approach in section 51.309, but wishing to use the WRAP mechanism for regional cooperation in developing its SIP requirements, would need to comply with all of the requirements outlined in the national rule in section 51.308.

13. Tribal Implementation Plans

The WGA called for EPA's final rule to permit tribes within the GCVTC Transport Region to implement visibility programs, or reasonably severable elements, in the same manner as States, regardless of whether such tribes have participated as members of a visibility transport GCVTC. The EPA has not included the WGA's recommended rule provision in today's action because the necessary authority for tribal organizations has already been provided in a previous EPA rulemaking.[133] The EPA does, however, agree with the position expressed in the WGA recommendation. The EPA wishes to clarify that tribes may directly implement the requirements of this section of the regional haze rule in the same manner as States. The Tribal Authority Rule provides for this, as discussed further in unit V of today's notice. The independence of tribes means that a tribal visibility program is not dependent on strategies selected by the State or States in which the tribe is located. If tribes within the Transport Region decline to implement visibility programs and EPA finds that emissions management strategies are needed to assure reasonable progress, EPA will work with the appropriate tribes directly to provide for Federal implementation of appropriate emissions reduction strategies. This is based on the government to government principles of Federal-Tribal relations.

D. Requirements for States Electing Not To Follow All Provisions of the Section 51.309(e)

The EPA notes that the provisions for allowing the Transport Region States to adopt SIPs based on the GCVTC recommendations requires that States endorse the range of strategies recognized by the GCVTC. A State electing not to implement the GCVTC recommendations as set forth in section 51.309(d) must address all of its Class I areas and any Class I area to which its sources' emissions may contribute to impairment under the provisions of section 51.308. In addition, any Transport Region State must advise other States electing to comply with section 51.309 of the nature and effect of their program on visibility impairing emissions so that other States can use this information in developing programs under section 51.309. This provision assures that all components needed to address reasonable progress are part of SIPs either under the provisions of section 51.309 or section 51.308.

E. Annex to the GCVTC Report

1. Interim Milestones

Section 51.309(f) calls for an annex to the GCVTC Report for the purpose of completing the program requirements to meet reasonable progress under the CAA, including submission of a complete long-term strategy and addressing the BART requirement for the 16 Class I areas on the Colorado Plateau. The purpose of the annex is to develop interim emissions milestones for stationary source SO_2 interim targets between the year 2000 target and the target for the year 2040. Under section 51.309(f)(1)(i), the States must consider four specific factors in setting the interim emission milestones. The first factor affecting the selection of interim milestones is the GCVTC's definition of reasonable progress. The GCVTC notes in its report that the term "reasonable progress" refers to "progress in reducing human-caused haze in Class I areas under the national visibility goal."[134] It goes on to note that "the CAA indicates that 'reasonable' should consider the cost of reducing air pollution emissions, the time necessary for compliance, the energy and non-air quality environmental impacts of reducing emissions, and the remaining useful life of any existing air pollution source considered for these reductions." The discussion also includes the GCVTC's Public Advisory Committee definition that "progress towards the national visibility goal is achieving continuous emissions reductions necessary to reduce existing impairment and attain steady improvement in visibility in mandatory Class I areas, and managing emissions growth so as to prevent perceptible degradation of clean air days." Together, these provisions call for the achievement of continuous emissions reductions and tracking the reductions to ensure visibility improvement in hazy days and visibility maintenance on clear days. To be consistent with and responsive to the guiding principles, recommendations and strategies adopted by the GCVTC, EPA expects any interim targets to demonstrate a significant continuous downward trend in emissions and not postpone significant progress to periods covered by future long-term strategies.

The second factor is the quantifiable target for 2040 to which interim targets must contribute. This target is a 50 to 70 percent reduction by 2040 in emissions from stationary source SO_2 emissions, based on the projection of the GCVTC's baseline forecast scenario from actual 1990 emission levels. Interim targets should reflect assessment of reasonable measures which reduce regional loadings of SO_2. Such assessments may include examination of interim targets based on costs per ton of reducing SO_2 in line with recently adopted control measures.

The third factor is the applicable requirements of the CAA for making reasonable progress and implementing BART. As noted previously in this preamble, the CAA requires a long-term strategy to ensure reasonable progress and the application of BART to certain large sources that are reasonably anticipated to cause or contribute to regional haze. The rule requires the annex to address the BART provisions of the national rule. As noted in the earlier discussion of BART, EPA will accept alternative measures, such as regional emissions trading programs, which achieve greater reasonable progress in lieu of meeting the source-specific BART requirement. As noted elsewhere in the preamble, EPA plans to issue revised BART guidance within a year. During the next year and a half, EPA also plans to issue new or revised guidance related to the design of emission trading programs, including guidance on the structure of economic incentive programs. Given this schedule, EPA intends to work closely with the WRAP as it develops the annex, its approach to meeting the rule's BART requirements and its backstop market-trading program. The EPA believes that its participation in the WRAP will help to ensure that the way in which the annex addresses BART and the market trading program will be compatible with EPA's revised BART guidance and any new or revised guidance EPA issues related to emissions trading programs.

In the event EPA finds that the annex does not meet the rule's BART provisions because it is inconsistent with EPA's revised BART guidance, the Transport Region States may submit a revised annex to address any deficiencies. The revision should be submitted as expeditiously as practicable but no later than 12 months from EPA's determination that the annex is deficient with respect to BART due to its inconsistency with the BART guidance. Similarly, if EPA finds the annex does not meet the provisions of any EPA guidance applicable to market-trading programs that is issued after promulgation of this rule, the Transport Region States may submit a revision to the annex to remedy any such deficiencies. These revisions should also be submitted no later than 12 months from EPA's determination that the annex cannot be incorporated in the SIP because of inconsistencies with the guidance. The EPA expects that the States and WRAP stakeholders will make every effort to address both the revised BART guidance and any new or revised emission trading program guidance within the timeframe established by section 51.309 for submittal of the annex. By providing for EPA participation in the WRAP, encouraging State and stakeholder efforts to respond expeditiously to new or revised guidance, and calling for any needed revisions to the annex to be submitted within a year from an EPA determination of deficiency, this approach will ensure compliance with the SIP submittal deadlines in section 51.309(c).

The fourth factor to be addressed in the setting of interim milestones is the timing of implementation plan assessments of progress and the identification of mechanisms to address cases where emissions exceed milestone levels for the reporting years 2003, 2008, 2013 and 2018. This schedule is designed to achieve eventual coordination of target years with assessments for regions affecting other Class I areas. Because these efforts call for continuing consultation and sharing of information between regions as well as between States, timetables for further work by the GCVTC States are designed to bring the GCVTC States' long-term strategy updates in line with the schedule for the next long-term strategy update required of all other States.

2. Documentation of Market Trading or Other Alternative Measures To Assure Reasonable Progress.

In addition to the interim targets, section 51.309(f)(1)(iii) requires the annex to contain final documentation of the market trading program or other programs to be implemented by the GCVTC States if current implementation plans and voluntary measures are not sufficient to meet the established interim milestones. This documentation must include model rules, memoranda of understanding, and other materials necessary to describe in detail and establish in enforceable fashion how emission reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate.

3. Additional Class I Areas

An additional provision, section 51.309(g) allows States to elect to demonstrate reasonable progress for other Class I areas within the Transport Region States beyond the original 16 areas addressed by the GCVTC's assessment, relying on the strategies recommended by the GCVTC. See the discussion in unit IV.F. of this preamble.

4. Geographic Enhancements

The EPA has also adopted provisions in subsections 51.309(b)(7) and 51.309(f)(4) that would allow the Transport Region States to establish a process as part of a broad regional strategy, such as backstop market-trading program, to accommodate the situation where a State takes action to address reasonably attributable BART under the provisions of section 51.306(c)(2). As noted elsewhere, the annex, if approved, will allow the Transport Region States to submit a SIP which adopts an alternative measure in lieu of BART. The purpose for including the provisions regarding geographic enhancement is to address the intersection between the existing reasonably attributable BART provision and regional haze BART, which may be met through an emissions trading program such as the milestone/backstop market-trading program which is to be included in the annex. Existing rules address "hot spots"—those situations in which part of the visibility impairment in a specific national park or wilderness area is reasonably attributable to a single source or small group of sources in the airshed because of the nature and location of the pollution relative to the Class I area. Should action be taken by the State to address such reasonably attributable impairment through BART, the geographic enhancement provisions would allow the backstop market-based trading program to accommodate such action. These provisions parallel a similar allowance in subsections 51.301(ii) and 51.308(e)(2)(C)(v).

The EPA is repeating these provisions, with minor language changes, to be clear that they apply to both the milestones or backstop market-trading program provided for in the annex. Subsection 51.309(b)(7) defines the term geographic enhancement for the provisions governing the annex and section 51.309(f)(4) allows the annex to contain a geographic enhancement. Similar to the national program, these provisions will allow the market trading system included in the annex to accommodate situations where a State wishes to require BART control measures on sources or a small group of sources due to reasonably attributable impairment and that source has been included in the backstop market trading program under the annex. In this situation, the milestone or backstop market-trading program may include a level of reasonably attributable impairment which may require additional emissions reductions over and above those achieved under the quantitative emissions reductions milestones established for regional haze.

5. The EPA Responsibilities in Relation to the Annex

Section 51.309(f)(3) spells out EPA's responsibilities with respect to the annex and calls for EPA to publish the annex upon receipt. The EPA must then conduct a review and decide, after notice and opportunity for public comment, whether the annex meets the requirement of section 51.309(f)(1) and whether it assures reasonable progress. If EPA finds the interim targets and accompanying documentation meet the requirements of reasonable progress, then it will incorporate the interim targets into the stationary source SIP requirements in section 51.309(d)(4) within 1 year of receipt, after public notice and comment. If EPA decides that the annex does not meet SIP requirements for reasonable progress or if EPA does not receive an annex, it will notify the GCVTC States, who will then be subject to the general provisions of section 51.308 in the same manner as other States.

One commentor on the annex approach described in EPA's September 3 notice of availability noted that the WGA letter set forth a tight timetable for development of the market system and that it appears to violate the TEA–21 requirements. In response, EPA notes that these are the timetables established by the GCVTC in 1996 and which have been the basis for work by the follow-up body of the WRAP. With respect to TEA–21, the colloquy between Senator Allard and Senator Baucus in the Congressional Record on the conference report concerning implementation of GCVTC recommendations is instructive,

[133] *See* 63 FR 7254 (Feb. 12, 1998).

[134] GCVTC Report, p. x–xi.

and EPA believes that it fully addresses the commentor's concern. Senator Baucus stated that "[TEA–21] clarifies that it does not affect EPA's authority to provide for State implementation of the agreements and recommendations set forth in the June 1996 GCVTC Report on a schedule consistent with the GCVTC's Report. * * * The conferees added specific language so as not to preclude the Administrator from providing for earlier State implementation of the GCVTC's agreements and recommendations * * *." [135] That language states that:

> The preceding provisions of this paragraph shall not preclude the implementation of the agreements and recommendations set forth in the GCVTC Report dated June 1996

TEA–21 section 4102(c)(2).

F. Additional Class I Areas

Section 51.309(g) calls for Transport Region States to identify in their 2003 plan submissions whether they elect to meet the provisions of section 51.308 or 51.309 in establishing their long-term strategy and BART requirements for additional Class I areas not covered by the original GCVTC effort. By no later than December 31, 2008 the States electing to use section 51.309 to address additional Class I areas must submit plan revisions which include a modeling demonstration establishing expected visibility conditions on the most-impaired and least-impaired days at the Class I areas for which they seek to demonstrate reasonable progress. These demonstrations may be conducted by the State or based on refined studies conducted by regional entities. The plan must include the analyses required in section 51.308(d)(1). The plan can build upon and take full credit for the strategies adopted for the 16 Class I areas. It must also contain any additional measures beyond those strategies that may be needed to demonstrate reasonable progress in those areas, in accordance with the provisions of section 51.308(d)(1) through (4). As provided for in section 51.309(g)(2), a Transport Region State may have until no later than December 31, 2008, to submit a plan for additional Class I areas, which is the date for submission that additional Class I areas under section 51.308. Transport Region States may well benefit by addressing the additional Class I areas under section 51.309, since using the same rule provision for both sets of Class I areas could facilitate coordination of the requirements for the areas as well as enabling consolidation of plans after 2008.

Furthermore, if the State can develop the necessary demonstration for other Class I areas before 2003, a Transport Region State could submit one implementation plan in 2003 covering both the 16 Class I areas and other Class I areas for which it must assure reasonable progress.

V. Implementation of the Regional Haze Program in Indian Country

This section discusses how the requirements of the regional haze rule relate to emissions released from Indian country.

A. Background on Tribal Air Quality Programs

Before discussing how the regional haze rule affects tribes, we believe it is useful to briefly describe EPA's overall policy and rulemaking efforts on tribal air quality programs.

On November 8, 1984, the EPA released a policy statement entitled "EPA Policy for the Administration of Environmental Programs on Indian Reservations." This policy statement, available on the Internet at http://www.epa.gov/indian/1984.htm, stresses a number of themes. In particular, this policy stresses that EPA, consistent with overall Federal government policy, will pursue the principle of Indian "self-government," and that it will work with tribal governments on a "government-to-government" basis. The policy statement also emphasizes EPA's desire to work with interested tribal governments in developing programs and in preparing to assume regulatory and environmental program management responsibility for Indian country. The EPA will retain responsibility for protecting tribal air quality until such time as tribes administer their own air quality protection programs.

The CAA, as amended in 1990, added a new section 301(d) which authorizes EPA to "treat tribes as States" for the purposes of administering CAA programs. Section 301(d) required that EPA promulgate regulations listing specific CAA provisions for which it would be appropriate to treat tribes as States and establishing the criteria that tribes must meet in order to be eligible for such treatment under the CAA. The EPA proposed these regulations on August 25, 1994 (59 FR 43956), and finalized the rule on February 12, 1998 (63 FR 7254). Much of the regulatory language in this rule is codified in the Code of Federal Regulations (CFR) as a new 40 CFR part 49. This rule is generally referred to as the Tribal Authority Rule or TAR.

The TAR includes general eligibility requirements for tribes interested in assuming program responsibilities that are codified in section 49.6 of the rule. These eligibility requirements are designed in part to ensure that such tribes have the infrastructure needed to successfully implement a tribal air quality program. Tribes may request a formal eligibility determination using administrative procedures contained in 49.7. Tribes may also use the administrative procedures in 49.7 to seek approval to implement CAA programs. The TAR authorizes EPA to review requests for eligibility determinations and program approvals simultaneously. As noted in 49.7(c), tribes that are interested in seeking EPA approval to implement air quality programs under the CAA may request approval to implement only partial elements of a CAA program, so long as the elements of the partial program are "reasonably severable."

Section 301(d)(4) of the CAA confers discretionary authority on EPA to provide, through regulation, alternative means to ensure air quality protection in cases where it determines that treating tribes as "identical" to States would be inappropriate. Accordingly, in promulgating the TAR, EPA provided flexibility to tribes seeking to implement the CAA. Some flexibility is established by virtue of EPA's decision, under 49.4 of the final rule, not to treat tribes as States for specified provisions of the CAA. The rationale for this approach is discussed on pages 7264 and 7265 of the preamble to the final rule, and in unit III.B of the preamble to the proposed rule. For example, unlike States, tribes are not required by the TAR to adopt and implement CAA plans or programs, thus tribes are not subject to mandatory deadlines for submittal of implementation plans. As discussed in the preamble sections identified above, EPA believes that it generally would not be reasonable to impose the same types of deadlines on tribes as on States. Among the CAA provisions for which EPA has determined it will not treat tribes as States is section 110(c)(1) of the CAA, which requires EPA to intervene and ensure air quality protection within 2 years after a State either fails to adopt a SIP or does not win EPA approval for a SIP that was determined to be deficient. The EPA did not apply this provision to tribes because the section 110(c) obligation on EPA to promulgate a FIP is based on failures with respect to required submittals, and, as noted above, tribal submissions under the TAR are voluntary, not mandatory. Instead, pursuant to its section 301(d)(4) discretionary authority, EPA has provided in the TAR that, where necessary and appropriate, it will promulgate FIPs within reasonable timeframes to protect air quality in Indian country. See 40 CFR 49.11(a).

B. Issues Related to the Regional Haze Program in Indian Country

Today's final rule imposes requirements for revisions to SIPs. The rule requires States to develop SIP revisions to address regional haze, to update the SIP every 10 years, and to continue to evaluate progress toward the national visibility goal. The requirements of today's final rule are among those air quality programs for which tribes may be determined eligible and receive authorization to implement under the TAR. Tribes wishing to assume these regional haze program requirements and be "treated as States" may seek approval under 40 CFR 49, but are not required to do so. Where tribes do not take on this responsibility, EPA will ensure air quality protection in Indian country consistent with the provisions of 40 CFR 49.11(a).

We encourage tribes to participate in regional planning efforts for regional haze. A good example of tribal participation in regional haze planning is the efforts of tribal representatives on the GCVTC. These efforts are continuing with tribal participation on the WRAP. The EPA expects, as noted above, that additional regional planning groups will be formed in reaction to today's final rule. A number of tribes have indicated interest in participating in regional planning efforts, and we believe this is beneficial in many respects. Tribal participation can help provide emissions inventory information that can serve to better understand the importance of sources in Indian country to regional visibility impairment. Conversely, such participation can also help provide a forum for tribal participants to alert regional planning organizations as to concerns on how regional emissions are affecting air quality in Indian country.

As noted in the preamble to the TAR, we intend to work with tribes to identify air quality priorities and needs, to build communication and outreach to tribes on air quality issues, and to provide training to build tribes' technical capacity for implementing air quality programs. We recognize, however, that not all tribes will have the resources nor the expertise to participate in regional planning efforts for regional haze. An important EPA role in regional planning efforts will be to ensure that the overall objectives of the regional haze program are met where tribes are unable to participate.

In order to encourage tribes to develop self-sufficient programs, the TAR provides tribes with the flexibility of submitting programs as they are developed, rather than in accordance with statutory deadlines. This means that tribes that choose to develop programs, where necessary may take additional time to submit implementation plans for regional haze over and above the deadlines in the TEA–21 legislation as codified in today's final rule. (See unit III.B for a discussion of these deadlines.) The TEA–21 legislation changed the deadlines for State submission of SIP revisions to address regional haze, which were originally set out in section 169B(e)(2) of the CAA. Section 49.4(f) of the TAR provides that deadlines related to SIP submittals under section 169(B)(e)(2) do not apply to tribes. We encourage tribes choosing to develop implementation plans to make every effort to submit by the deadlines to ensure that the plans are integrated with and coordinated with regional planning efforts. In the interim, EPA will work with the States and tribes to ensure that achievement of reasonable progress is not delayed.

As noted previously in unit II of this notice, sections 169A and 169B of the CAA contain requirements for visibility protection in Class I areas, and do not require that States or tribes develop plans and control strategies for visibility protection for additional locations. These provisions of the CAA do not require implementation plans to address regional haze in other Class I areas, such as those designated as Class I by tribes or States under section 164 of the CAA. One commenter from a tribe expressed concerns that the scenic beauty and value of tribal areas should not be viewed by EPA as less important than the national parks and wilderness areas that have "mandatory Class I" status. While EPA believes that these tribal areas are not afforded the same legal protection under the CAA as Class I areas, it is important for tribes to understand that the regional haze control program for the Federal areas will help to protect scenic locations of interest to tribes. For example, EPA believes that modeling analyses aimed at addressing Class I areas can readily add receptor locations to analyze the visibility improvements at selected tribal locations. The EPA will work with regional planning bodies to ensure that tribal interests are represented and to foster communication between States and tribes, and we will encourage the consideration of impacts on visibility in tribal locations in regional planning efforts.

VI. Miscellaneous Technical Amendments to the Existing Rule

The rule includes the following changes to coordinate the requirements of today's regional haze rule with the 1980 visibility regulations for "reasonably attributable" visibility impairment:

Section 51.300. Purpose and Applicability

We have amended this section to clarify that subpart P includes provisions for regional haze as well as reasonably attributable visibility impairment.

Section 51.301. Definitions

We have added the following terms: reasonably attributable visibility impairment, regional haze, deciview, State, most-impaired days, least-impaired days, implementation plan, tribe, BART-eligible source, and geographic enhancement. The other definitions in this section apply to the program for reasonably attributable impairment as well as the new regional haze program, except where it is noted that they only apply to the program for reasonably attributable impairment.

Section 51.302. Implementation Control Strategies

We have changed references in section 51.302(a) to the administrative process requirements for public hearings and SIP submissions, which are now located in section 51.102 and 51.103. We have also amended this section to clarify that the implementation control strategies addressed in the section apply to reasonably attributable visibility impairment.

Section 51.305. Monitoring

We have amended this section to clarify that the monitoring requirements in this section apply to reasonably attributable visibility impairment.

VII. Administrative Requirements

In preparing any final rule, EPA must meet the administrative requirements contained in a number of statutes and executive orders. In this section of the preamble, we discuss how the final regional haze rule addresses these administrative requirements.

A. Regulatory Planning and Review by the Office of Management and Budget (OMB) (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735, October 4, 1993,) the Agency

[135] 144 Cong Rec. SS407 (daily ed. May 22, 1998).

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must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" and EPA has submitted it to OMB for review. The drafts of rules submitted to OMB, the documents accompanying such drafts, written comments thereon, written responses by EPA, and identification of the changes made in response to OMB suggestions or recommendations are available for public inspection at EPA's Air and Radiation Docket Information Center (Docket No. A–95–38).

The EPA has prepared and entered into the docket a Regulatory Impact Analysis (RIA) entitled Regulatory Impact Analysis for the Regional Haze Rule. This RIA assesses the costs, economic impacts, and benefits for four illustrative progress goals, two sets of control strategies, two sets of assumptions for estimating benefits, and systems of national uniform versus regionally varying progress goals. The RIA is a caveated and illustrative assessment of the potential consequences of the regional haze rule in 2015, a year near the end of the first long-term progress period, 2018. As a result of comments from the public as well as changes initiated by EPA staff, the RIA has a broader scope, improved data, and more realistic modeling than the analysis issued with the proposed rule.

Despite these improvements, the RIA is not a precise reflection of the actual costs, economic impacts, and benefits associated with the progress goals and emission management strategies developed as a result of the final regional haze rule. This is due to the fact that under the regional haze rule, the States bear the primary responsibility for establishing reasonable progress goals as well as emission management strategies for meeting these goals. Until such time as the States make those decisions, EPA can only speculate as to which goals may be established and what types of control requirements or emission limits might result from the associated emission management strategies.

According to the RIA, there is substantial visibility improvement due to emissions from other CAA programs such as those for the new O3 and PM NAAQS and the Tier 2 mobile sources rule. With illustrative goals ranging from 1.0 deciview improvement in 15 years to 10 percent deciview improvement in 10 years, the RIA finds that between 22 and 52 percent of the Class I area counties in the continental U.S. achieve or surpass the progress goals due to emissions reductions from other CAA programs. Furthermore, by looking at only partial attainment of the PM and O3 NAAQS and a modest (relative to the proposed rule) Tier 2 program, the RIA understated the visibility improvements from these and other CAA programs. Hence, if States established reasonable progress goals equivalent to the amount of visibility improvement which could be achieved by other CAA programs, the incremental control costs of the regional haze rule may be less than the costs estimated in the RIA, as noted below, for the first long-term strategy period. Under these conditions there could be costs associated with the planning, analysis, and BART control elements of the rule. Incremental annualized costs for those elements are estimated to be $72 million (1990 dollars).

However, if States all choose to establish the same illustrative progress goal, the RIA estimates incremental control costs ranging from $1 to $4 billion with associated benefits ranging from $1 billion to $19 billion. But, visibility is not the only monetized effects category. Many of the benefits which could be monetized are associated with improvements to human health and other welfare effects. This is because the emission control strategies targeted at improving visibility in Class I areas also generate air quality improvements in many other parts of the country. However, the estimated visibility benefits which are monetized are substantial, ranging, for example, from 86 to 111 percent of control costs for the 1 deciview improvement in 15 years illustrative progress goal and from 32 to 52 percent for the 10 percent deciview improvement in 10 years illustrative progress goal.

The RIA finds that the estimated net benefits (benefits minus costs) may increase and the potential for adverse economic impact would decrease if States exercise their discretion to establish State or region-specific reasonable visibility progress goals and emission-management strategies.

According to the RIA simulations, not all Class I areas achieve or surpass the illustrative visibility progress goals even after the simulation of two sets of control strategies. But, the visibility improvement is substantial with 84 to 94 percent of the 121 counties with 147 Class I areas in the continental U.S. achieving the 1.0 deciview in 15 years goal and 31 to 43 percent of the areas achieving 10 percent deciview improvement in 10 years goal. Furthermore, all areas have improved visibility. How much of the estimated progress shortfall is due to the failure of the RIA to fully account for the visibility progress due to other CAA programs and advances in control technology is unknown.

The RIA, although highly caveated and illustrative, represents an improvement over the analysis prepared for the proposed rule. Furthermore, the RIA demonstrates significant visibility progress in 121 counties with 147 Class I areas in the continental U.S. These improvements result from other CAA programs as well as those targeted at the illustrative progress goals. Despite incomplete coverage of effects and pollutants, the monetized benefits of strategies associated with illustrative nationally uniform goals are substantial, outweighing the control strategy costs under most conditions for the first long-term strategy period. However, higher net benefits may result and the potential for significant adverse impact may be mitigated if States exercise the discretion to establish reasonable progress goals and emission management strategies. The flexibility for State discretion is, of course, exactly what the regional haze rule provides.

B. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant impact on a substantial number of small entities because the rule does not establish requirements applicable to small entities.

The Regulatory Flexibility Act (5 U.S.C. §§ 601 et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. No.104–121) (SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. § 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See *Motor and Equip. Mfrs. Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); Mid-Tex Elec. Co-op, Inc. v. FERC, 773 F.2d 327, 342 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the rule).

As stated in the proposal, the regional haze rule will not establish requirements applicable to small entities. The rule applies to States, not to small entities. The rule requires States to develop, adopt, and submit SIP revisions that will ensure reasonable progress toward the national visibility goal, and would generally leave to the States the task of determining how to obtain those reductions, including which entities to regulate. In developing emission control measures, section 169A of the CAA requires States to address BART for a select list of major stationary sources defined by section 169A(g)(7) of the CAA. As noted in the proposal, however, the State's determination of BART for regional haze involves some State discretion in considering a number of factors set forth in section 169A(g)(2), including the costs of compliance. Further, the final rule allows States to adopt alternative measures in lieu of requiring the installation and operation of BART at these major stationary sources. As a result, the potential consequences of today's final rule at specific sources are speculative. Any requirements for emission control measures, including any requirements for BART, will be established by State rulemakings. The States will accordingly exercise substantial intervening discretion in implementing the final rule.

For the final rule, EPA is confirming its initial certification that the rule would not have a significant impact on a substantial number of small entities. The EPA notes, however, that the Agency did conduct a more general analysis of the potential impact on small entities of possible State implementation strategies. This analysis is documented in the RIA. In addition, as noted in the proposal, EPA undertook small-entity outreach activities on a voluntary basis. The EPA also has issued guidance, entitled "Guidance on Mitigation of Impact to Small Business While Implementing Air Quality Standards and Regulations," which can be found on the internet at: http://ttnwww.rtpnc.epa.gov/implement/actions.htm#Other. This guidance outlines potential implementation strategies that would mitigate impacts on small sources and encourages States to make use of these strategies wherever possible and appropriate. The EPA did receive comments regarding the impact on the regional haze rule on small entities. These comments are addressed in the Response to Comments document.

C. Paperwork Reduction Act—Impact on Reporting Requirements

The information collection requirements in this rule relating to State requirements for the protection of visibility in Class I national parks and wilderness areas were submitted to OMB for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request document was prepared by EPA (ICR No. 1813.02) and a copy may be obtained from Sandy Farmer, by mail at OPPE Regulatory Information Division, U.S. EPA (2137) 401 M Street, S.W.; Washington, DC 20460, by email at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

This collection of information has an estimated reporting burden, for the fifty States and District of Columbia, of approximately 22,000 to 47,000 hours for a 3-year period between mid-1999 and mid-2002. The Agency expects the Federal burden will be approximately 1900 to 4000 hours for the 3-year period. The Agency anticipates States costs of about $980,000 to $2,064,000 for the 3-year period. The Agency estimates the annual Federal costs to be approximately $83,000 to $175,000 for the 3-year period. These estimates include time for reviewing requirements and instructions, evaluating data sources, gathering and maintaining data, and completing and reviewing the collection of information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule.

The RIA prepared by EPA and placed in the docket for this rulemaking is consistent with the requirements of

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section 202 of the UMRA. Furthermore, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan. Further, as described in the proposal, EPA carried out consultations with the governmental entities affected by this rule in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA.

The EPA also believes that because the rule provides States with substantial flexibility, the proposed rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate to issue regulations that make reasonable progress toward the national visibility protection goal. The rule provides States with the flexibility to establish reasonable progress goals and BART based on certain criteria, one of which is the costs of compliance. The rule also provides States with the flexibility to adopt alternatives, such as an emissions trading program, in lieu of requiring BART. Finally, the rule provides the States with the flexibility to develop long-term strategies. The regional haze rule, therefore, inherently provides for adoption of the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule.

The EPA is not reaching a final conclusion as to the applicability of the requirements of UMRA to this rulemaking action. It is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate. The obligation for a state to revise its SIP that arises out of sections 110(a), 169A and 169B of the CAA is not legally enforceable by a court of law and, at most, is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(A)(i) of UMRA (2 U.S.C. 658(5)(A)(i)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(A)(i)(I) of UMRA (2 U.S.C. 658(5)(A)(i)(I)). As noted earlier, however, notwithstanding these issues, the discussion in section 2 and the analysis in Chapter 8 of the RIA constitutes the UMRA statement that would be required by UMRA if its statutory provisions applied, and EPA has consulted with governmental entities as would be required by UMRA. Consequently, it is not necessary for EPA to reach a conclusion as to the applicability of the UMRA requirements.

E. Environmental Justice—Executive Order 12898

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The requirements of Executive Order 12898 have been addressed to the extent practicable in the RIA cited above, particularly in chapters 2 and 9 of the RIA.

F. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective August 30, 1999.

G. Protection of Children From Environmental Health Risks and Safety Risks—Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The regional haze rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Enhancing the Intergovernmental Partnership—Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's final rule does not create a mandate on State, local or tribal governments. As explained in the discussion of UMRA (unit VII.D), this rule does not impose an enforceable duty on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

The EPA notes, however that considerable consultation has taken place with State, local and tribal government representatives in developing the final regional haze rule. In September 1995, EPA formed a subcommittee under the authority of the Federal Advisory Committee Act to advise the Agency on various issues related to implementation of the revised ozone and particulate matter NAAQS and the regional haze program. This group met a total of 13 times between September 1995 and completion of its duties in December 1997. Several State and local governmental representatives were on this subcommittee. The EPA received and reviewed comments from over 40 States and 1 tribal government on the July 1997 proposal. Tribes in the west have been active in discussion on regional haze, both as members of the GCVTC, and in the follow-on body, the WRAP. In addition, EPA has held numerous meetings with State and local representatives.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Because the rule does not establish a visibility progress goal or emission management strategy, the rule does not impose control or other direct compliance requirements. Hence, the rule does not create a mandate on tribal governments. Accordingly, the requirements of 3(b) of Executive Order 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: April 22, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51 is revised to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, and 7602.

Subpart P—Protection of Visibility

2. Section 51.300 is amended by revising paragraphs (a), (b)(1) introductory text, and (b)(2), and by adding paragraph (b)(3) to read as follows:

§ 51.300 Purpose and applicability.

(a) *Purpose.* The primary purposes of this subpart are to require States to develop programs to assure reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution; and to establish necessary additional procedures for new source permit applicants, States and Federal Land Managers to use in conducting the visibility impact analysis required for new sources under § 51.166. This subpart sets forth requirements addressing visibility impairment in its two principal forms: "reasonably attributable" impairment (i.e., impairment attributable to a single source/small group of sources) and regional haze (i.e., widespread haze from a multitude of sources which impairs visibility in every direction over a large area).

(b) *Applicability.* (1) *General Applicability.* The provisions of this subpart pertaining to implementation plan requirements for assuring reasonable progress in preventing any future and remedying any existing visibility impairment are applicable to:

* * * * *

(2) The provisions of this subpart pertaining to implementation plans to address reasonably attributable visibility impairment are applicable to the following States:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wyoming.

(3) The provisions of this subpart pertaining to implementation plans to address regional haze visibility impairment are applicable to all States as defined in section 302(d) of the Clean Air Act (CAA) except Guam, Puerto Rico, American Samoa, and the Northern Mariana Islands.

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3. Section 51.301 is amended by removing the paragraph designations, placing the defined terms in alphabetical order, revising the definitions of *Federal Land Manager*, *Major stationary source*, *Natural conditions*, and *Visibility impairment*, and adding in alphabetical order definitions of *Reasonably attributable visibility impairment*, *Regional haze*, *Deciview*, *State*, *Most impaired days*, *Least impaired days*, *Implementation plan*, *Indian tribe* or *tribe*, *BART-eligible source*, and *Geographic enhancement for the purpose of § 51.308* to read as follows:

§ 51.301 Definitions.

* * * * *

BART-eligible source means an *existing stationary facility* as defined in this section.

* * * * *

Deciview means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

$$\text{Deciview haze index} = 10 \ln_e (b_{ext}/10\ Mm^{-1}).$$

Where b_{ext}=the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

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Federal Land Manager means the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.

* * * * *

Geographic enhancement for the purpose of § 51.308 means a method, procedure, or process to allow a broad regional strategy, such as an emissions trading program designed to achieve greater reasonable progress than BART for regional haze, to accommodate BART for reasonably attributable impairment.

Implementation plan means, for the purposes of this part, any State Implementation Plan, Federal Implementation Plan, or Tribal Implementation Plan.

* * * * *

Indian tribe or *tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

Least impaired days means the average visibility impairment (measured in deciviews) for the twenty percent of monitored days in a calendar year with the lowest amount of visibility impairment.

Major stationary source and major modification mean major stationary source and major modification, respectively, as defined in § 51.166.

* * * * *

Most impaired days means the average visibility impairment (measured in deciviews) for the twenty percent of monitored days in a calendar year with the highest amount of visibility impairment.

Natural conditions includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

* * * * *

Reasonably attributable visibility impairment means visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.

* * * * *

Regional haze means visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources.

* * * * *

State means "State" as defined in section 302(d) of the CAA.

* * * * *

Visibility impairment means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.

* * * * *

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4. Section 51.302 is amended by revising the section heading, paragraphs (a), (c) introductory text, (c)(1), (c)(2) introductory text, and (c)(4)(iv) to read as follows:

§ 51.302 Implementation control strategies for reasonably attributable visibility impairment.

(a) *Plan Revision Procedures.* (1) Each State identified in § 51.300(b)(2) must have submitted, not later than September 2, 1981, an implementation plan meeting the requirements of this subpart pertaining to reasonably attributable visibility impairment.

(2)(i) The State, prior to adoption of any implementation plan to address reasonably attributable visibility impairment required by this subpart, must conduct one or more public hearings on such plan in accordance with § 51.102.

(ii) In addition to the requirements in § 51.102, the State must provide written notification of such hearings to each affected Federal Land Manager, and other affected States, and must state where the public can inspect a summary prepared by the Federal Land Managers of their conclusions and recommendations, if any, on the proposed plan revision.

(3) Submission of plans as required by this subpart must be conducted in accordance with the procedures in § 51.103.

* * * * *

(c) *General plan requirements for reasonably attributable visibility impairment.* (1) The affected Federal Land Manager may certify to the State, at any time, that there exists reasonably attributable impairment of visibility in any mandatory Class I Federal area.

(2) The plan must contain the following to address reasonably attributable impairment:

* * * * *

(4) For any existing reasonably attributable visibility impairment the Federal Land Manager certifies to the State under paragraph (c)(1) of this section, at least 6 months prior to plan submission or revision:

* * * * *

(iv) The plan must require that each existing stationary facility required to install and operate BART do so as expeditiously as practicable but in no case later than five years after plan approval.

* * * * *

5. Section 51.305 is amended by revising the section heading and paragraph (a) to read as follows:

§ 51.305 Monitoring for reasonably attributable visibility impairment.

(a) For the purposes of addressing reasonably attributable visibility impairment, each State containing a mandatory Class I Federal area must include in the plan a strategy for evaluating reasonably attributable visibility impairment in any mandatory Class I Federal area by visual observation or other appropriate monitoring techniques. Such strategy must take into account current and anticipated visibility monitoring research, the availability of appropriate monitoring techniques, and such guidance as is provided by the Agency.

* * * * *

6. Section 51.306 is amended by revising the section heading, paragraph (a)(1), paragraph (c) introductory text, and paragraph (d) to read as follows:

§ 51.306 Long-term strategy requirements for reasonably attributable visibility impairment.

(a)(1) For the purposes of addressing reasonably attributable visibility impairment, each plan must include a long-term (10–15 years) strategy for making reasonable progress toward the national goal specified in § 51.300(a). This strategy must cover any existing impairment the Federal Land Manager certifies to the State at least 6 months prior to plan submission, and any integral vista of which the Federal Land Manager notifies the State at least 6 months prior to plan submission.

* * * * *

(c) The plan must provide for periodic review and revision, as appropriate, of the long-term strategy for addressing reasonably attributable visibility impairment. The plan must provide for such periodic review and revision not less frequently than every 3 years until the date of submission of the State's first plan addressing regional haze visibility impairment in accordance with § 51.308(b) and (c). On or before this date, the State must revise its plan to provide for review and revision of a coordinated long-term strategy for addressing reasonably attributable and regional haze visibility impairment, and the State must submit the first such coordinated long-term strategy. Future coordinated long-term strategies must be submitted consistent with the schedule for periodic progress reports set forth in § 51.308(g). Until the State revises its plan to meet this requirement, the State must continue to comply with existing requirements for plan review and revision, and with all emission management requirements in the plan to address reasonably attributable impairment. This requirement does not affect any preexisting deadlines for State submittal of a long-term strategy review (or element thereof) between August 30, 1999, and the date required for submission of the State's first regional haze plan. In addition, the plan must provide for review of the long-term strategy as it applies to reasonably attributable impairment, and revision as appropriate, within 3 years of State receipt of any certification of reasonably attributable impairment from a Federal Land Manager. The review process must include consultation with the appropriate Federal Land Managers, and the State must provide a report to the public and the Administrator on progress toward the national goal. This report must include an assessment of:

* * * * *

(d) The long-term strategy must provide for review of the impacts from any new major stationary source or major modifications on visibility in any mandatory Class I Federal area. This review of major stationary sources or major modifications must be in accordance with § 51.307, § 51.166, § 51.160, and any other binding guidance provided by the Agency insofar as these provisions pertain to protection of visibility in any mandatory Class I Federal areas.

* * * * *

7. Section 51.307 is amended by revising paragraph (a) introductory text, (a)(2) and (c) to read as follows:

§ 51.307 New source review.

(a) For purposes of new source review of any new major stationary source or major modification that would be constructed in an area that is designated attainment or unclassified under section 107(d)(1)(D) or (E) of the CAA, the State plan must, in any review under § 51.166 with respect to visibility protection and analyses, provide for:

* * * * *

(2) Where the State requires or receives advance notification (e.g. early consultation with the source prior to submission of the application or notification of intent to monitor under § 51.166) of a permit application of a source that may affect visibility the State must notify all affected Federal Land Managers within 30 days of such advance notification, and

* * * * *

(c) Review of any major stationary source or major modification under paragraph (b) of this section, shall be conducted in accordance with paragraph (a) of this section, and § 51.166(o), (p)(1) through (2), and (q). In conducting such reviews the State must ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal referred to in § 51.300(a). The State may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

* * * * *

8. A new § 51.308 is added to subpart P to read as follows:

§ 51.308 Regional haze program requirements.

(a) *What is the purpose of this section?* This section establishes requirements for implementation plans, plan revisions, and periodic progress reviews to address regional haze.

(b) *When are the first implementation plans due under the regional haze program?* Except as provided in paragraph (c) of this section and § 51.309(c), each State identified in § 51.300(b)(3) must submit an implementation plan for regional haze meeting the requirements of paragraphs (d) and (e) of this section by the following dates:

(1) For any area designated as attainment or unclassifiable for the national ambient air quality standard (NAAQS) for fine particulate matter ($PM_{2.5}$), the State must submit a regional haze implementation plan to EPA within 12 months after the date of designation.

(2) For any area designated as nonattainment for the $PM_{2.5}$ NAAQS, the State must submit a regional haze implementation plan to EPA at the same time that the State's plan for implementation of the $PM_{2.5}$ NAAQS must be submitted under section 172 of the CAA, that is, within 3 years after the area is designated as nonattainment, but not later than December 31, 2008.

(c) *Options for regional planning.* If at the time the SIP for regional haze would otherwise be due, a State is working with other States to develop a coordinated approach to regional haze by participating in a regional planning process, the State may choose to defer addressing the core requirements for regional haze in paragraph (d) of this section and the requirements for BART in paragraph (e) of this section. If a State opts to do this, it must meet the following requirements:

(1) The State must submit an implementation plan by the earliest date by which an implementation plan would be due for any area of the State under paragraph (b) of this section. This implementation plan must contain the following:

(i) A demonstration of ongoing participation in a regional planning process to address regional haze, and an agreement by the State to continue participating with one or more other States in such a process for the development of this and future implementation plan revisions;

(ii) A showing, based on available inventory, monitoring, or modeling information, that emissions from within the State contribute to visibility impairment in a mandatory Class I Federal Area outside the State, or that emissions from another State contribute to visibility impairment in any mandatory Class I Federal area within the State.

(iii) A description of the regional planning process, including a list of the States which have agreed to work together to address regional haze in a region (i.e., the regional planning group), the goals, objectives, management, and decisionmaking structure of the regional planning group, deadlines for completing significant technical analyses and developing emission management strategies, and a schedule for State review and adoption of regulations implementing the recommendations of the regional group;

(iv) A commitment by the State to submit an implementation plan revision addressing the requirements in paragraphs (d) and (e) of this section by the date specified in paragraph (c)(2) of this section. In addition, the State must commit to develop its plan revision in coordination with the other States participating in the regional planning process, and to fully address the recommendations of the regional planning group.

(v) A list of all BART-eligible sources within the State.

(2) The State must submit an implementation plan revision addressing the requirements in paragraphs (d) and (e) of this section by the latest date an area within the planning region would be required to submit an implementation plan under paragraph (b) of this section, but in any event, no later than December 31, 2008.

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(d) *What are the core requirements for the implementation plan for regional haze?* The State must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State which may be affected by emissions from within the State. To meet the core requirements for regional haze for these areas, the State must submit an implementation plan containing the following plan elements and supporting documentation for all required analyses:

(1) *Reasonable progress goals.* For each mandatory Class I Federal area located within the State, the State must establish goals (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility conditions. The reasonable progress goals must provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period.

(i) In establishing a reasonable progress goal for any mandatory Class I Federal area within the State, the State must:

(A) Consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.

(B) Analyze and determine the rate of progress needed to attain natural visibility conditions by the year 2064. To calculate this rate of progress, the State must compare baseline visibility conditions to natural visibility conditions in the mandatory Federal Class I area and determine the uniform rate of visibility improvement (measured in deciviews) that would need to be maintained during each implementation period in order to attain natural visibility conditions by 2064. In establishing the reasonable progress goal, the State must consider the uniform rate of improvement in visibility and the emission reduction measures needed to achieve it for the period covered by the implementation plan.

(ii) For the period of the implementation plan, if the State establishes a reasonable progress goal that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, the State must demonstrate, based on the factors in paragraph (d)(1)(i)(A) of this section, that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable; and that the progress goal adopted by the State is reasonable. The State must provide to the public for review as part of its implementation plan an assessment of the number of years it would take to attain natural conditions if visibility improvement continues at the rate of progress selected by the State as reasonable.

(iii) In determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will evaluate the demonstrations developed by the State pursuant to paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(iv) In developing each reasonable progress goal, the State must consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment in the mandatory Class I Federal area. In any situation in which the State cannot agree with another such State or group of States that a goal provides for reasonable progress, the State must describe in its submittal the actions taken to resolve the disagreement. In reviewing the State's implementation plan submittal, the Administrator will take this information into account in determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions.

(v) The reasonable progress goals established by the State are not directly enforceable but will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan to achieve the progress goal adopted by the State.

(vi) The State may not adopt a reasonable progress goal that represents less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period.

(2) *Calculations of baseline and natural visibility conditions.* For each mandatory Class I Federal area located within the State, the State must determine the following visibility conditions (expressed in deciviews):

(i) Baseline visibility conditions for the most impaired and least impaired days. The period for establishing baseline visibility conditions is 2000 to 2004. Baseline visibility conditions must be calculated, using available monitoring data, by establishing the average degree of visibility impairment for the most and least impaired days for each calendar year from 2000 to 2004. The baseline visibility conditions are the average of these annual values. For mandatory Class I Federal areas without onsite monitoring data for 2000–2004, the State must establish baseline values using the most representative available monitoring data for 2000–2004, in consultation with the Administrator or his or her designee;

(ii) For an implementation plan that is submitted by 2003, the period for establishing baseline visibility conditions for the period of the first long-term strategy is the most recent 5-year period for which visibility monitoring data are available for the mandatory Class I Federal areas addressed by the plan. For mandatory Class I Federal areas without onsite monitoring data, the State must establish baseline values using the most representative available monitoring data, in consultation with the Administrator or his or her designee;

(iii) Natural visibility conditions for the most impaired and least impaired days. Natural visibility conditions must be calculated by estimating the degree of visibility impairment existing under natural conditions for the most impaired and least impaired days, based on available monitoring information and appropriate data analysis techniques; and

(iv)(A) For the first implementation plan addressing the requirements of paragraphs (d) and (e) of this section, the number of deciviews by which baseline conditions exceed natural visibility conditions for the most impaired and least impaired days; or

(B) For all future implementation plan revisions, the number of deciviews by which current conditions, as calculated under paragraph (f)(1) of this section, exceed natural visibility conditions for the most impaired and least impaired days.

(3) *Long-term strategy for regional haze.* Each State listed in § 51.300(b)(3) must submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State which may be affected by emissions from the State. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by States having mandatory Class I Federal areas. In establishing its long-term strategy for regional haze, the State must meet the following requirements:

(i) Where the State has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area located in another State or States, the State must consult with the other State(s) in order to develop coordinated emission management strategies. The State must consult with any other State having emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area within the State.

(ii) Where other States cause or contribute to impairment in a mandatory Class I Federal area, the State must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area. If the State has participated in a regional planning process, the State must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.

(iii) The State must document the technical basis, including modeling, monitoring and emissions information, on which the State is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. The State may meet this requirement by relying on technical analyses developed by the regional planning organization and approved by all State participants. The State must identify the baseline emissions inventory on which its strategies are based. The baseline emissions inventory year is presumed to be the most recent year of the consolidate periodic emissions inventory.

(iv) The State must identify all anthropogenic sources of visibility impairment considered by the State in developing its long-term strategy. The State should consider major and minor stationary sources, mobile sources, and area sources.

(v) The State must consider, at a minimum, the following factors in developing its long-term strategy:

(A) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;

(B) Measures to mitigate the impacts of construction activities;

(C) Emissions limitations and schedules for compliance to achieve the reasonable progress goal;

(D) Source retirement and replacement schedules;

(E) Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes;

(F) Enforceability of emissions limitations and control measures; and

(G) The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

(4) *Monitoring strategy and other implementation plan requirements.* The State must submit with the implementation plan a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. This monitoring strategy must be coordinated with the monitoring strategy required in § 51.305 for reasonably attributable visibility impairment. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environments network. The implementation plan must also provide for the following:

(i) The establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the State are being achieved.

(ii) Procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the State.

(iii) For a State with no mandatory Class I Federal areas, procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at mandatory Class I Federal areas in other States.

(iv) The implementation plan must provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I Federal area in the State. To the extent possible, the State should report visibility monitoring data electronically.

(v) A statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The State must also include a commitment to update the inventory periodically.

(vi) Other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility.

(e) *Best Available Retrofit Technology (BART) requirements for regional haze visibility impairment.* The State must submit an implementation plan containing emission limitations representing BART and schedules for compliance with BART for each BART-eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area, unless the State demonstrates that an emissions trading program or other alternative will achieve greater reasonable progress toward natural visibility conditions.

(1) To address the requirements for BART, the State must submit an implementation plan containing the following plan elements and include documentation for all required analyses:

(i) A list of all BART-eligible sources within the State.

(ii) A determination of BART for each BART-eligible source in the State that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area. All such sources are subject to BART. This determination must be based on the following analyses:

(A) An analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source within the State subject to BART. In this analysis, the State must take into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source; and

(B) An analysis of the degree of visibility improvement that would be achieved in each mandatory Class I Federal area as a result of the emission reductions achievable from all sources subject to BART located within the region that contributes to visibility impairment in the Class I area, based on the analysis conducted under paragraph (e)(1)(ii)(A) of this section.

(iii) If the State determines in establishing BART that technological or economic limitations on the applicability of measurement methodology to a particular source would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to

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require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means which achieve equivalent results.

(iv) A requirement that each source subject to BART be required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.

(v) A requirement that each source subject to BART maintain the control equipment required by this subpart and establish procedures to ensure such equipment is properly operated and maintained.

(2) A State may opt to implement an emissions trading program or other alternative measure rather than to require sources subject to BART to install, operate, and maintain BART. To do so, the State must demonstrate that this emissions trading program or other alternative measure will achieve greater reasonable progress than would be achieved through the installation and operation of BART. To make this demonstration, the State must submit an implementation plan containing the following plan elements and include documentation for all required analyses:

(i) A demonstration that the emissions trading program or other alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State. This demonstration must be based on the following:

(A) A list of all BART-eligible sources within the State.

(B) An analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each source within the State subject to BART. In this analysis, the State must take into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source. The best system of continuous emission control technology and the above factors may be determined on a source category basis. The State may elect to consider both source-specific and category-wide information, as appropriate, in conducting its analysis.

(C) An analysis of the degree of visibility improvement that would be achieved in each mandatory Class I Federal area as a result of the emission reductions achievable from all such sources subject to BART located within the region that contributes to visibility impairment in the Class I area, based on the analysis conducted under paragraph (e)(2)(i)(B) of this section.

(ii) A demonstration that the emissions trading program or alternative measure will apply, at a minimum, to all BART-eligible sources in the State. Those sources having a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART in accordance with § 51.302(c) or paragraph (e)(1) of this section do not need to meet the requirements of the emissions trading program or alternative measure, but may choose to participate if they meet the requirements of the emissions trading program or alternative measure.

(iii) A requirement that all necessary emission reductions take place during the period of the first long-term strategy for regional haze. To meet this requirement, the State must provide a detailed description of the emissions trading program or other alternative measure, including schedules for implementation, the emission reductions required by the program, all necessary administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement.

(iv) A demonstration that the emission reductions resulting from the emissions trading program or other alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.

(v) At the State's option, a provision that the emissions trading program or other alternative measure may include a geographic enhancement to the program to address the requirement under § 51.302(c) related to BART for reasonably attributable impairment from the pollutants covered under the emissions trading program or other alternative measure.

(3) After a State has met the requirements for BART or implemented emissions trading program or other alternative measure that achieve more reasonable progress than the installation and operation of BART, BART-eligible sources will be subject to the requirements of paragraph (d) of this section in the same manner as other sources.

(4) Any BART-eligible facility subject to the requirement under paragraph (e) of this section to install, operate, and maintain BART may apply to the Administrator for an exemption from that requirement. An application for an exemption will be subject to the requirements of § 51.303 (a)(2) through (h).

(f) *Requirements for comprehensive periodic revisions of implementation plans for regional haze.* Each State identified in § 51.300(b)(3) must revise and submit its regional haze implementation plan revision to EPA by July 31, 2018 and every ten years thereafter. In each plan revision, the State must evaluate and reassess all of the elements required in paragraph (d) of this section, taking into account improvements in monitoring data collection and analysis techniques, control technologies, and other relevant factors. In evaluating and reassessing these elements, the State must address the following:

(1) Current visibility conditions for the most impaired and least impaired days, and actual progress made towards natural conditions during the previous implementation period. The period for calculating current visibility conditions is the most recent five year period preceding the required date of the implementation plan submittal for which data are available. Current visibility conditions must be calculated based on the annual average level of visibility impairment for the most and least impaired days for each of these five years. Current visibility conditions are the average of these annual values.

(2) The effectiveness of the long-term strategy for achieving reasonable progress goals over the prior implementation period(s); and

(3) Affirmation of, or revision to, the reasonable progress goal in accordance with the procedures set forth in paragraph (d)(1) of this section. If the State established a reasonable progress goal for the prior period which provided a slower rate of progress than that needed to attain natural conditions by the year 2064, the State must evaluate and determine the reasonableness, based on the factors in paragraph (d)(1)(i)(A) of this section, of additional measures that could be adopted to achieve the degree of visibility improvement projected by the analysis contained in the first implementation plan described in paragraph (d)(1)(i)(B) of this section.

(g) *Requirements for periodic reports describing progress towards the reasonable progress goals.* Each State identified in § 51.300(b)(3) must submit a report to the Administrator every 5 years evaluating progress towards the reasonable progress goal for each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State which may be affected by emissions from within the State. The first progress report is due 5 years from submittal of the initial implementation plan addressing paragraphs (d) and (e) of this section. The progress reports must be in the form of implementation plan revisions that comply with the procedural requirements of § 51.102 and § 51.103. Periodic progress reports must contain at a minimum the following elements:

(1) A description of the status of implementation of all measures included in the implementation plan for achieving reasonable progress goals for mandatory Class I Federal areas both within and outside the State.

(2) A summary of the emissions reductions achieved throughout the State through implementation of the measures described in paragraph (g)(1) of this section.

(3) For each mandatory Class I Federal area within the State, the State must assess the following visibility conditions and changes, with values for most impaired and least impaired days expressed in terms of 5-year averages of these annual values.

(i) The current visibility conditions for the most impaired and least impaired days;

(ii) The difference between current visibility conditions for the most impaired and least impaired days and baseline visibility conditions;

(iii) The change in visibility impairment for the most impaired and least impaired days over the past 5 years;

(4) An analysis tracking the change over the past 5 years in emissions of pollutants contributing to visibility impairment from all sources and activities within the State. Emissions changes should be identified by type of source or activity. The analysis must be based on the most recent updated emissions inventory, with estimates projected forward as necessary and appropriate, to account for emissions changes during the applicable 5-year period.

(5) An assessment of any significant changes in anthropogenic emissions within or outside the State that have occurred over the past 5 years that have limited or impeded progress in reducing pollutant emissions and improving visibility.

(6) An assessment of whether the current implementation plan elements and strategies are sufficient to enable the State, or other States with mandatory Federal Class I areas affected by emissions from the State, to meet all established reasonable progress goals.

(7) A review of the State's visibility monitoring strategy and any modifications to the strategy as necessary.

(h) *Determination of the adequacy of existing implementation plan.* At the same time the State is required to submit any 5-year progress report to EPA in accordance with paragraph (g) of this section, the State must also take one of the following actions based upon the information presented in the progress report:

(1) If the State determines that the existing implementation plan requires no further substantive revision at this time in order to achieve established goals for visibility improvement and emissions reductions, the State must provide to the Administrator a negative declaration that further revision of the existing implementation plan is not needed at this time.

(2) If the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from sources in another State(s) which participated in a regional planning process, the State must provide notification to the Administrator and to the other State(s) which participated in the regional planning process with the States. The State must also collaborate with the other State(s) through the regional planning process for the purpose of developing additional strategies to address the plan's deficiencies.

(3) Where the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from sources in another country, the State shall provide notification, along with available information, to the Administrator.

(4) Where the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from sources within the State, the State shall revise its implementation plan to address the plan's deficiencies within one year.

(i) *What are the requirements for State and Federal Land Manager coordination?*

(1) By November 29, 1999, the State must identify in writing to the Federal Land Managers the title of the official to which the Federal Land Manager of any mandatory Class I Federal area can submit any recommendations on the implementation of this subpart including, but not limited to:

(i) Identification of impairment of visibility in any mandatory Class I Federal area(s); and

(ii) Identification of elements for inclusion in the visibility monitoring strategy required by § 51.305 and this section.

(2) The State must provide the Federal Land Manager with an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on an implementation plan (or plan revision) for regional haze required by this subpart. This consultation must include the opportunity for the affected Federal Land Managers to discuss their:

(i) Assessment of impairment of visibility in any mandatory Class I Federal area; and

(ii) Recommendations on the development of the reasonable progress goal and on the development and implementation of strategies to address visibility impairment.

(3) In developing any implementation plan (or plan revision), the State must include a description of how it addressed any comments provided by the Federal Land Managers.

(4) The plan (or plan revision) must provide procedures for continuing consultation between the State and Federal Land Manager on the implementation of the visibility protection program required by this subpart, including development and review of implementation plan revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in mandatory Class I Federal areas.

9. A new § 51.309 is added to subpart P to read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

(a) *What is the purpose of this section?* This section establishes the requirements for the first regional haze implementation plan to address regional haze visibility impairment in the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. For the years 2003 to 2018, certain States (defined in paragraph (b) of this section as Transport Region States) may choose to implement the Commission's recommendations within the framework of the national regional haze program and applicable requirements of the Act by complying with the provisions of this section, as supplemented by an approvable Annex to the Commission Report as required by paragraph (f) of this section. If a transport region State submits an implementation plan which is approved by EPA as meeting the requirements of this section, it will be deemed to comply with the requirements for reasonable progress for the period from approval of the plan to 2018.

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(b) *Definitions.* For the purposes of this section:

(1) *16 Class I areas* means the following mandatory Class I Federal areas on the Colorado Plateau: Grand Canyon National Park, Sycamore Canyon Wilderness, Petrified Forest National Park, Mount Baldy Wilderness, San Pedro Parks Wilderness, Mesa Verde National Park, Weminuche Wilderness, Black Canyon of the Gunnison Wilderness, West Elk Wilderness, Maroon Bells Wilderness, Flat Tops Wilderness, Arches National Park, Canyonlands National Park, Capital Reef National Park, Bryce Canyon National Park, and Zion National Park.

(2) *Transport Region State* means one of the States that is included within the Transport Region addressed by the Grand Canyon Visibility Transport Commission (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming).

(3) *Commission Report* means the report of the Grand Canyon Visibility Transport Commission entitled "Recommendations for Improving Western Vistas," dated June 10, 1996.

(4) *Fire* means wildfire, wildland fire (including prescribed natural fire), prescribed fire, and agricultural burning conducted and occurring on Federal, State, and private wildlands and farmlands.

(5) *Milestone* means an average percentage reduction in emissions, expressed in tons per year, for a given year or for a period of up to 5 years ending in that year, compared to a 1990 actual emissions baseline.

(6) *Mobile Source Emission Budget* means the lowest level of VOC, NO_X, SO_2 elemental and organic carbon, and fine particles which are projected to occur in any area within the transport region from which mobile source emissions are determined to contribute significantly to visibility impairment in any of the 16 Class I areas.

(7) *Geographic enhancement* means a method, procedure, or process to allow a broad regional strategy, such as a milestone or backstop market trading program designed to achieve greater reasonable progress than BART for regional haze, to accommodate BART for reasonably attributable impairment.

(c) *Implementation Plan Schedule.* Each Transport Region State may meet the requirements of § 51.308(b) through (e) by electing to submit an implementation plan that complies with the requirements of this section. Each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the 16 Class I areas no later than December 31, 2003. A Transport Region State that elects not to submit an implementation plan that complies with the requirements of this section (or whose plan does not comply with all of the requirements of this section) is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region.

(d) *Requirements of the first implementation plan for States electing to adopt all of the recommendations of the Commission Report.* Except as provided for in paragraph (e) of this section, each Transport Region State must submit an implementation plan that meets the following requirements:

(1) *Time period covered.* The implementation plan must be effective for the entire time period between December 31, 2003 and December 31, 2018.

(2) *Projection of visibility improvement.* For each of the 16 mandatory Class I areas located within the Transport Region State, the plan must include a projection of the improvement in visibility conditions (expressed in deciviews, and in any additional ambient visibility metrics deemed appropriate by the State) expected through the year 2018 for the most impaired and least impaired days, based on the implementation of all measures as required in the Commission report and the provisions in this section. The projection must be made in consultation with other Transport Region States with sources which may be reasonably anticipated to contribute to visibility impairment in the relevant Class I area. The projection may be based on a satisfactory regional analysis.

(3) *Treatment of clean-air corridors.* The plan must describe and provide for implementation of comprehensive emission tracking strategies for clean-air corridors to ensure that the visibility does not degrade on the least-impaired days at any of the 16 Class I areas. The strategy must include:

(i) An identification of clean-air corridors. The EPA will evaluate the State's identification of such corridors based upon the reports of the Commission's Meteorology Subcommittee and any future updates by a successor organization;

(ii) Within areas that are clean-air corridors, an identification of patterns of growth or specific sites of growth that could cause, or are causing, significant emissions increases that could have, or are having, visibility impairment at one or more of the 16 Class I areas.

(iii) In areas outside of clean-air corridors, an identification of significant emissions growth that could begin, or is beginning, to impair the quality of air in the corridor and thereby lead to visibility degradation for the least-impaired days in one or more of the 16 Class I areas.

(iv) If impairment of air quality in clean air corridors is identified pursuant to paragraphs (d)(3)(ii) and (iii) of this section, an analysis of the effects of increased emissions, including provisions for the identification of the need for additional emission reductions measures, and implementation of the additional measures where necessary.

(v) A determination of whether other clean air corridors exist for any of the 16 Class I areas. For any such clean air corridors, an identification of the necessary measures to protect against future degradation of air quality in any of the 16 Class I areas.

(4) *Implementation of stationary source reductions.* The first implementation plan submission must include:

(i) Monitoring and reporting of sulfur dioxide emissions. The plan submission must include provisions requiring the monitoring and reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring and reporting data must be sufficient to determine whether a 13 percent reduction in actual stationary source sulfur dioxide emissions has occurred between the years 1990 and 2000, and whether milestones required by paragraph (f)(1)(i) of this section have been achieved for the transport region. The plan submission must provide for reporting of these data by the State to the Administrator. Where procedures developed under paragraph (f)(1)(ii) of this section and agreed upon by the State include reporting to a regional planning organization, the plan submission must provide for reporting to the regional planning body in addition to the Administrator.

(ii) Criteria and procedures for a market trading program. The plan must include the criteria and procedures for activating a market trading program or other program consistent with paragraph (f)(1)(i) of this section if an applicable regional milestone is exceeded, procedures for operation of the program, and implementation plan assessments and provisions for implementation plan assessments of the program in the years 2008, 2013, and 2018.

(iii) Provisions for activating a market trading program. Provisions to activate the market trading program or other program within 12 months after the emissions for the region are determined to exceed the applicable emission reduction milestone, and to assure that all affected sources are in compliance with allocation and other requirements within 5 years after the emissions for the region are determined to exceed the applicable emission reduction milestone.

(iv) Provisions for market trading program compliance reporting. If the market trading program has been activated, the plan submission must include provisions requiring the State to provide annual reports assuring that all sources are in compliance with applicable requirements of the market trading program.

(v) Provisions for stationary source NO_X and PM. The plan submission must include a report which assesses emissions control strategies for stationary source NO_X and PM, and the degree of visibility improvement that would result from such strategies. In the report, the State must evaluate and discuss the need to establish emission milestones for NO_X and PM to avoid any net increase in these pollutants from stationary sources within the transport region, and to support potential future development and implementation of a multipollutant and possibly multisource market-based program. The plan submission must provide for an implementation plan revision, containing any necessary long-term strategies and BART requirements for stationary source PM and NO_X (including enforceable limitations, compliance schedules, and other measures) by no later than December 31, 2008.

(5) *Mobile sources.* The plan submission must provide for:

(i) Statewide inventories of current annual emissions and projected future annual emissions of VO_c, NO_X, SO_2, elemental carbon, organic carbon, and fine particles from mobile sources for the years 2003 to 2018. The future year inventories must include projections for the year 2005, or an alternative year that is determined by the State to represent the year during which mobile source emissions will be at their lowest levels within the State.

(ii) A determination whether mobile source emissions in any areas of the State contribute significantly to visibility impairment in any of the 16 Class I Areas, based on the statewide inventory of current and projected mobile source emissions.

(iii) For States with areas in which mobile source emissions are found to contribute significantly to visibility impairment in any of the 16 Class I areas:

(A) The establishment and documentation of a mobile source emissions budget for any such area, including provisions requiring the State to restrict the annual VOC, NO_X, SO_2, elemental and organic carbon, and/or fine particle mobile source emissions to their projected lowest levels, to implement measures to achieve the budget or cap, and to demonstrate compliance with the budget.

(B) An emission tracking system providing for reporting of annual mobile source emissions from the State in the periodic implementation plan revisions required by paragraph (d)(10) of this section. The emission tracking system must be sufficient to determine the States' contribution toward the Commission's objective of reducing emissions from mobile sources by 2005 or an alternate year that is determined by the State to represent the year during which mobile source emissions will be at their lowest levels within the State, and to ensure that mobile source emissions do not increase thereafter.

(iv) Interim reports to EPA and the public in years 2003, 2008, 2013, and 2018 on the implementation status of the regional and local strategies recommended by the Commission Report to address mobile source emissions.

(6) *Programs related to fire.* The plan must provide for:

(i) Documentation that all Federal, State, and private prescribed fire programs within the State evaluate and address the degree visibility impairment from smoke in their planning and application. In addition the plan must include smoke management programs that include all necessary components including, but not limited to, actions to minimize emissions, evaluation of smoke dispersion, alternatives to fire, public notification, air quality monitoring, surveillance and enforcement, and program evaluation.

(ii) A statewide inventory and emissions tracking system (spatial and temporal) of VOC, NO_X, elemental and organic carbon, and fine particle emissions from fire. In reporting and tracking emissions from fire from within the State, States may use information from regional data-gathering and tracking initiatives.

(iii) Identification and removal wherever feasible of any administrative barriers to the use of alternatives to burning in Federal, State, and private prescribed fire programs within the State.

(iv) Enhanced smoke management programs for fire that consider visibility effects, not only health and nuisance objectives, and that are based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impact.

(v) Establishment of annual emission goals for fire, excluding wildfire, that will minimize emission increases from fire to the maximum extent feasible and that are established in cooperation with States, tribes, Federal land management agencies, and private entities.

(7) *Area sources of dust emissions from paved and unpaved roads.* The plan must include an assessment of the impact of dust emissions from paved and unpaved roads on visibility conditions in the 16 Class I Areas. If such dust emissions are determined to be a significant contributor to visibility impairment in the 16 Class I areas, the State must implement emissions management strategies to address the impact as necessary and appropriate.

(8) *Pollution prevention.* The plan must provide for:

(i) An initial summary of all pollution prevention programs currently in place, an inventory of all renewable energy generation capacity and production in use, or planned as of the year 2002 (expressed in megawatts and megawatt-hours), the total energy generation capacity and production for the State, the percent of the total that is renewable energy, and the State's anticipated contribution toward the renewable energy goals for 2005 and 2015, as provided in paragraph (d)(8)(vi) of this section.

(ii) Programs to provide incentives that reward efforts that go beyond compliance and/or achieve early compliance with air-pollution related requirements.

(iii) Programs to preserve and expand energy conservation efforts.

(iv) The identification of specific areas where renewable energy has the potential to supply power where it is now lacking and where renewable energy is most cost-effective.

(v) Projections of the short- and long-term emissions reductions, visibility improvements, cost savings, and secondary benefits associated with the renewable energy goals, energy efficiency and pollution prevention activities.

(vi) A description of the programs relied on to achieve the State's contribution toward the Commission's goal that renewable energy will comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015, and a demonstration of the progress toward achievement of the renewable energy goals in the years 2003, 2008, 2013, and 2018. This description must include documentation of the potential for renewable energy resources, the

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percentage of renewable energy associated with new power generation projects implemented or planned, and the renewable energy generation capacity and production in use and planned in the State. To the extent that it is not feasible for a State to meet its contribution to the regional renewable energy goals, the State must identify in the progress reports the measures implemented to achieve its contribution and explain why meeting the State's contribution was not feasible.

(9) *Implementation of additional recommendations.* The plan must provide for implementation of all other recommendations in the Commission report that can be practicably included as enforceable emission limits, schedules of compliance, or other enforceable measures (including economic incentives) to make reasonable progress toward remedying existing and preventing future regional haze in the 16 Class I areas. The State must provide a report to EPA and the public in 2003, 2008, 2013, and 2018 on the progress toward developing and implementing policy or strategy options recommended in the Commission Report.

(10) *Periodic implementation plan revisions.* Each Transport Region State must submit to the Administrator periodic reports in the years 2008, 2013, and 2018. The progress reports must be in the form of implementation plan revisions that comply with the procedural requirements of § 51.102 and § 51.103.

(i) The report will assess the area for reasonable progress as provided in this section for mandatory Class I Federal area(s) located within the State and for mandatory Class I Federal area(s) located outside the State which may be affected by emissions from within the State. This demonstration may be based on assessments conducted by the States and/or a regional planning body. The progress reports must contain at a minimum the following elements:

(A) A description of the status of implementation of all measures included in the implementation plan for achieving reasonable progress goals for mandatory Class I Federal areas both within and outside the State.

(B) A summary of the emissions reductions achieved throughout the State through implementation of the measures described in paragraph (d)(10)(i)(A) of this section.

(C) For each mandatory Class I Federal area within the State, an assessment of the following: the current visibility conditions for the most impaired and least impaired days; the difference between current visibility conditions for the most impaired and least impaired days and baseline visibility conditions; the change in visibility impairment for the most impaired and least impaired days over the past 5 years.

(D) An analysis tracking the change over the past 5 years in emissions of pollutants contributing to visibility impairment from all sources and activities within the State. Emissions changes should be identified by type of source or activity. The analysis must be based on the most recent updated emissions inventory, with estimates projected forward as necessary and appropriate, to account for emissions changes during the applicable 5-year period.

(E) An assessment of any significant changes in anthropogenic emissions within or outside the State that have occurred over the past 5 years that have limited or impeded progress in reducing pollutant emissions and improving visibility.

(F) An assessment of whether the current implementation plan elements and strategies are sufficient to enable the State, or other States with mandatory Federal Class I areas affected by emissions from the State, to meet all established reasonable progress goals.

(G) A review of the State's visibility monitoring strategy and any modifications to the strategy as necessary.

(ii) At the same time the State is required to submit any 5-year progress report to EPA in accordance with paragaph (d)(10)(i) of this section, the State must also take one of the following actions based upon the information presented in the progress report:

(A) If the State determines that the existing implementation plan requires no further substantive revision at this time in order to achieve established goals for visibility improvement and emissions reductions, the State must provide to the Administrator a negative declaration that further revision of the existing implementation plan is not needed at this time.

(B) If the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from sources in another State(s) which participated in a regional planning process, the State must provide notification to the Administrator and to the other State(s) which participated in the regional planning process with the States. The State must also collaborate with the other State(s) through the regional planning process for the purpose of developing additional strategies to address the plan's deficiencies.

(C) Where the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from sources in another country, the State shall provide notification, along with available information, to the Administrator.

(D) Where the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from within the State, the State shall develop additional strategies to address the plan deficiencies and revise the implementation plan no later than one year from the date that the progress report was due.

(11) *State planning and interstate coordination.* In complying with the requirements of this section, States may include emission reductions strategies that are based on coordinated implementation with other States. Examples of these strategies include economic incentive programs and transboundary emissions trading programs. The implementation plan must include documentation of the technical and policy basis for the individual State apportionment (or the procedures for apportionment throughout the trans-boundary region), the contribution addressed by the State's plan, how it coordinates with other State plans, and compliance with any other appropriate implementation plan approvability criteria. States may rely on the relevant technical, policy and other analyses developed by a regional entity (such as the Western Regional Air Partnership) in providing such documentation. Conversely, States may elect to develop their own programs without relying on work products from a regional entity.

(12) *Tribal implementation.* Consistent with 40 CFR Part 49, tribes within the Transport Region may implement the required visibility programs for the 16 Class I areas, in the same manner as States, regardless of whether such tribes have participated as members of a visibility transport commission.

(e) *States electing not to implement the commission recommendations.* Any Transport Region State may elect not to implement the Commission recommendations set forth in paragraph (d) of this section. Such States are required to comply with the timelines and requirements of § 51.308. Any Transport Region State electing not to implement the Commission recommendations must advise the other States in the Transport Region of the nature of the program and the effect of the program on visibility-impairing emissions, so that other States can take this information into account in developing programs under this section.

(f) *Annex to the Commission Report.* (1) A Transport Region State may choose to comply with the provisions of this section and by doing so shall satisfy the requirements of § 51.308(b) through (e) only if the Grand Canyon Visibility Transport Commission (or a regional planning body formed to implement the Commission recommendations) submits a satisfactory annex to the Commission Report no later than October 1, 2000. To be satisfactory, the Annex must contain the following elements:

(i) The annex must contain quantitative emission reduction milestones for stationary source sulfur dioxide emissions for the reporting years 2003, 2008, 2013 and 2018. The milestones must provide for steady and continuing emission reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2008, 2013, and 2018. The emission reduction milestones must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2) and would be approvable in lieu of BART.

(ii) The annex must contain documentation of the market trading program or other programs to be implemented pursuant to paragraph (d)(4) of this section if current programs and voluntary measures are not sufficient to meet the required emission reduction milestones. This documentation must include model rules, memoranda of understanding, and other documentation describing in detail how emission reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate.

(2) The Commission may elect, at the same time it submits the annex, to make recommendations intended to demonstrate reasonable progress for other mandatory Class I areas (beyond the original 16) within the Transport Region States, including the technical and policy justification for these additional mandatory Class I Federal areas in accordance with the provisions of paragraph (g) of this section.

(3) The EPA will publish the annex upon receipt. If EPA finds that the annex meets the requirements of paragraph (f)(1) of this section and assures reasonable progress, then, after public notice and comment, will amend the requirements of paragraph (d)(4) of this section to incorporate the provisions of the annex within 1 year after EPA receives the annex. If EPA finds that the annex does not meet the requirements of paragraph (f)(1) of this section, or does not assure reasonable progress, or if EPA finds that the annex is not received, then each Transport Region State must submit an implementation plan for regional haze meeting all of the requirements of § 51.308.

(4) In accordance with the provisions under paragraph (f)(1) of this section, the annex may include a geographic enhancement to the program provided for in paragraph (d)(4) of this section to address the requirement under § 51.302(c) related to Best Available Retrofit Technology for reasonably attributable impairment from the pollutants covered by the milestones or the backstop market trading program. The geographic enhancement program may include an appropriate level of reasonably attributable impairment which may require additional emission reductions over and above those achieved under the milestones defines in paragraph (f)(1)(i) of this section.

(g) *Additional Class I areas.* The following submittals must be made by Transport Region States implementing the provisions of this section as the basis for demonstrating reasonable progress for additional Class I areas in the Transport Region States. If a Transport Region State submits an implementation plan which is approved by EPA as meeting the requirements of this section, it will be deemed to comply with the requirements for reasonable progress for the period from approval of the plan to 2018.

(1) In the plan submitted for the 16 Class I areas no later than December 31, 2003, a declaration indicating whether other Class I areas will be addressed under § 51.308 or paragraphs (g)(2) and (3) of this section.

(2) In a plan submitted no later than December 31, 2008, provide a demonstration of expected visibility conditions for the most impaired and least impaired days at the additional mandatory Class I Federal area(s) based on emissions projections from the long-term strategies in the implementation plan. This demonstration may be based on assessments conducted by the States and/or a regional planning body.

(3) In a plan submitted no later than December 31, 2008, provide revisions to the plan submitted under paragraph (c) of this section, including provisions to establish reasonable progress goals and implement any additional measures necessary to demonstrate reasonable progress for the additional mandatory Federal Class I areas. These revisions must comply with the provisions of § 51.308(d)(1) through (4).

(4) The following provisions apply for Transport Region States establishing reasonable progress goals and adopting any additional measures for Class I areas other than the 16 Class I areas under paragraphs (g)(2) and (3) of this section.

(i) In developing long-term strategies pursuant to § 51.308(d)(3), the State may build upon the strategies implemented under paragraph (d) of this section, and take full credit for the visibility improvement achieved through these strategies.

(ii) The requirement under § 51.308(e) related to Best Available Retrofit Technology for regional haze is deemed to be satisfied for pollutants addressed by the milestones and backstop trading program if, in establishing the emission reductions milestones under paragraph (f) of this section, it is shown that greater reasonable progress will be achieved for these Class I areas than would be achieved through the application of source-specific BART emission limitations under § 51.308(e)(1).

(iii) The Transport Region State may consider whether any strategies necessary to achieve the reasonable progress goals required by paragraph (g)(3) of this section are incompatible with the strategies implemented under paragraph (d) of this section to the extent the State adequately demonstrates that the incompatibility is related to the costs of the compliance, the time necessary for compliance, the energy and no air quality environmental impacts of compliance, or the remaining useful life of any existing source subject to such requirements.

10. In the sections listed in the first column remove the reference listed in the middle column and add the reference listed in the third column in its place:

Section	Remove	Add
51.301(v)	Section 303	§51.303
51.302(c)(2)(i)	Section 305	§51.305
51.302(c)(2)(i)	Section 306	§51.306
51.302(c)(2)(i)	Section 300(a)	§51.300(a)
51.302(c)(4)(i)	Section 304(b)	§51.304(b)
51.303(a)(1)	Section 302	§51.302
51.303(c)	Section 303	§51.303
51.303(d)	Section 303	§51.303
51.303(g)	Section 303	§51.303
51.303(h)	Section 303	§51.303
51.304(c)	Section 306(c)	§51.306(c)
51.306(a)(1)	Section 300(a)	§51.300(a)
51.306(c)(6)	Section 303	§51.303
51.307(b)(1)	Section 304	§51.304
51.307(b)(1)	Section 304(d)	§51.304(d)
51.307(c)	Section 300(a)	§51.300(a)

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Part III

Department of Agriculture

Forest Service

Department of the Interior

Fish and Wildlife Service

36 CFR Part 242 and 50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1999–2000 Subsistence Taking of Fish and Wildlife Regulations; Final Rule

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority; Final Rule; Correction

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AE69

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1999–2000 Subsistence Taking of Fish and Wildlife Regulations

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 1999–2000 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the wildlife regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1998–1999 Subsistence Taking of Fish and Wildlife Regulations", which expire on June 30, 1999. This rule also amends the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section _____.24 of Subpart C).

DATES: Section _____.24 is effective July 1, 1999. Section _____.25 is effective July 1, 1999, through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, telephone (907) 271–2540.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule for §§ _____.23–_____.25. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR 100.3(b) and 36 CFR 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States government.

The Board recognizes Judge Holland's order granting preliminary relief to the plaintiffs in the case of the *Native Village of Quinhagak et al.* v. *United States of America et al.* Therefore, to the extent that these regulations would continue any existing restrictions on the taking of rainbow trout by the residents of Quinhagak and Goodnews Bay in the Kanektok, Arolik, and Goodnews Rivers, those regulations will not be enforced pending completion of proceedings in that case. However, in light of the continuation of the proceedings in the consolidated "Katie John" litigation, a petition to the Secretaries of the Interior and Agriculture addressing jurisdiction in navigable waters, and activities in the State Legislature, no attempt is being made to alter the fish and shellfish portions of the regulations (Sections _____.26 and _____.27) until final guidance has been received regarding the jurisdictional authority of the Federal government over navigable waters in general, and specifically with respect to the waters at issue in *Native Village of Quinhagak et al.* v. *United States of America et al.*

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting in May 1999.

Summary of Changes

Section _____.24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of effected subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** (59 FR 27462, published May 27, 1994; 59 FR 51855, published October 13, 1994; 60 FR 10317, published February 24, 1995; 61 FR 39698, published July 30, 1996; 62 FR 29016, published May 29, 1997; 63 FR 35332, published June 29, 1998; and 63 FR 46148, published August 28, 1998.) During its May 3—May 5, 1999, meeting, the Board made additional determinations in addition to various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained in the section on Analysis of Proposals Adopted by the Board.

Section _____.25 (Subpart D) regulations are subject to an annual cycle and require development of an entire new rule each year. Proposed Subpart D regulations for the 1999–2000 seasons and harvest limits, and methods and means were published on August 17, 1998, in the **Federal Register** (63 FR43990–44032). A 60-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. Overall, the Board received a total of 63 proposals for change to Customary and Traditional Use Determinations or to Subpart D. Subsequent to the 60-day review period, the Board prepared a booklet describing the proposals and distributed it to the public. The public had an additional 30 days in which to comment on the proposals for changes to the regulations. The ten Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Four of the proposals were withdrawn from consideration and a request for review of the Kenai Peninsula nonrural determinations was included for deliberation at the May Board meeting. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board.

Section _____.26 (Subsistence taking of fish) and Section _____.27 (Subsistence taking of shellfish) were last published on May 29, 1997, (62 FR 29016). Due to litigation and petitions to the Secretaries of the Interior and Agriculture, both relating to extended jurisdiction to navigable waters, the fish and shellfish regulations are not revised, but rather, remain in effect through December 31, 1999.

Analysis of Proposals Rejected by the Board

The Board rejected 9 proposals and parts of 5 others based on recommendations from the respective Regional Council and additional factors.

The Board rejected six proposals requesting that customary and traditional use determinations be revised for bear or sheep. In each case, the cultural resource data did not substantiate the request or the Regional Council requested rejection because the proposal adversely impacted subsistence resource users.

Eight proposals requested establishing or expanding seasons for moose or closing Federal lands to nonsubsistence users. These proposals were rejected because for conservation reasons or because the moose population in the area could support both subsistence and non-subsistence harvest.

The Board also deferred action on 8 proposals in order to collect additional data, or allow communities or Regional Councils additional time to review the issues and provide additional information.

Analysis of Proposals Adopted by the Board

The Board adopted 37 proposals and parts of 5 others. Some of these proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils and were based on meeting customary and traditional uses, harvest practices, or protecting wildlife populations. Detailed information relating to justification on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management at the address listed previously. Some additional changes are a result of Board actions occurring over the past year. Additional technical clarifications and removal of excess materials have been made which result in a more readable document.

Southeast Region

The Board acted on one proposal affecting residents of the Southeast Region resulting in no changes to the regulations found in § _____.24 and § _____.25.

Southcentral Region

The Board acted on 22 proposals affecting residents in the Southcentral Region resulting in the following changes to the regulations found in § _____.24 and § _____.25.

- Established a brown bear season in Units 11 and 13.
- Revised the customary and traditional use determination for caribou, sheep, moose, and goat in Unit 11.
- Revised the customary and traditional use determination for moose in Units 13 and 20.
- Extended the season for moose in Unit 11.
- Increased the harvest limit for coyotes and wolves in Units 11 and 12.

Kodiak/Aleutians Region

The Board acted on three proposals affecting residents in the Kodiak/Aleutians Region resulting in the following changes to the regulations found in § _____.24 and § _____.25.

- Revised the season for elk in Unit 8.
- Established a customary and traditional use determination for moose and brown bear in part of Unit 9.

Bristol Bay Region

The Board acted on 11 proposals affecting residents in the Bristol Bay Region resulting in the following changes to the regulations found in § _____.24 and § _____.25.

- Revised the customary and traditional use determination for brown bear in parts of Unit 9.
- Closed Federal lands to non-subsistence harvest and revised the seasons and harvest limits for caribou in part of Unit 9.
- Revised the customary and traditional use determination for caribou in Unit 17.
- Extended the season for moose in part of Unit 9.

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Yukon-Kuskokwim Delta Region

The Board acted on one proposal affecting residents of the Yukon-Kuskokwim Delta Region resulting in no changes to the regulations found in §_____.24 and §_____.25.

Western Interior Region

The Board acted on four proposals affecting residents of the Western Interior Region resulting in the following change to the regulations found in §_____.24 and §_____.25.

• Revised the customary and traditional use determinations for moose in part of Unit 19.

Seward Peninsula Region

The Board acted on two proposals affecting residents of the Seward Peninsula Region resulting in the following change to the regulations found in §_____.24 and §_____.25.

• Continued a cooperative hunt program with the State for muskox in Unit 22.

Northwest Arctic Region

The Board acted on one proposal affecting residents of the Northwest Arctic Region resulting in the following change to the regulations found in §_____.24 and §_____.25.

• Continued a sheep hunting program for sheep and opened a portion of Federal lands in Units 23 and 26.

Eastern Interior Region

The Board acted on 13 proposals affecting residents of the Eastern Interior Region resulting in the following changes to the regulations found in §_____.24 and §_____.25.

• Revised the seasons and/or harvest limits for coyote, moose, lynx, beaver, and caribou in Units 12, 20, and 25 to align with existing State regulations.

• Revised the criteria for closing the caribou season in Units 20 and 25.

• Provided for the take of moose in a portion of Unit 25 for ceremonial use.

• Established a season for brown bear in Unit 25.

North Slope Region

The Board acted on one proposal affecting residents of the North Slope Region resulting in no changes to the regulations.

In addition, the Board adopted a policy for making individual customary and traditional use determinations provided for in 50 CFR 100.16(a) and 36 CFR 242.16(a). Under this policy, the Board will consider proposals for individual customary and traditional use determinations only for National Park and Monument lands from those persons living in resident zone communities (see 36 CFR 13.43) or those holding a Section 13.44 subsistence use permit (see 36 CFR 13.44). The Board will consider such proposals only during the annual proposal cycle. Proposals for individual customary and traditional use determinations will not be considered through the Special Action process. In making an individual customary and traditional use determination, the Board will use the same criteria it uses for making decisions for communities and areas (found at 50 CFR 100.16(b) and 36 CFR 242.16(b)). Persons granted a positive individual customary and traditional use determination will be notified in writing by the Board. The U.S. Fish and Wildlife Service and the Superintendent of the identified National Park or Monument will maintain a list of qualified individuals. The Board will continue to make customary and traditional use determinations for National Preserve lands on an area or community basis.

The Board finds that additional public notice under the Administrative Procedure Act (APA) for this final rule are unnecessary, and contrary to the public interest. The Board has provided extensive opportunity for public input and involvement over and above standard APA requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change. Over the eight years the Program has been operating, there has been no benefit to the public demonstrated by delaying the effective date of the regulations. A lapse in regulatory control could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice prior to publication of this rule. The Board finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective July 1, 1999.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below have been approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075, which expires 5/31/2000.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, [§_____.24 Customary and traditional determinations.]) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand. Send a copy of any comments that concern how we could make this rule easier to understand to: USFWS, Office of Subsistence Management, Thomas H. Boyd, 1011 E. Tudor Road, Anchorage, Alaska 99503.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound, would equate to $6 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities. The implementation of this rule is by Federal agencies and there is no cost involved to any state or local entities or tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Drafting information—William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

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For the reasons set out in the preamble, the Federal Subsistence Board amends Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § _____.24 is revised to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Fish & Wildlife Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this Part.

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Residents of Unit 1(C), 1(D), 3, and residents of Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.
1(A)	Brown Bear	Residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Residents of Unit 1(C), Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Residents of 1(A) and 2.
1(B)	Deer	Residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Residents of 1(C) and (D), and residents of Hoonah, Kake, and Petersburg.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
1(B)	Moose	Residents of Units, 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Goat	Residents of Unit 5(A).
5	Moose	Residents of Unit 5(A).
5	Wolf	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(A)	Goat	Residents of Unit 5(A), 6(C), Chenega Bay and Tatitlek.
6(C) and (D)	Goat	Residents of Unit 6(C) and (D).
6(A)	Moose	Unit 6(A)—Residents of Units 5(A), 6(A), 6(B) and 6(C).
6(B) and (C)	Moose	Residents of Units 6(A), 6(B) and 6(C).
6(D)	Moose	No Federal subsistence priority.
6(A)	Wolf	Residents of Units 5(A), 6, 9, 10(Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
6, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

Area	Species	Determination
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area.	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and Tatitlek.
7, remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A)	Brown Bear	Residents of Pedro Bay.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C)	Brown Bear	Residents of Unit 9(C).
9(D)	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
9(E)	Brown Bear	Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island.	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
Unit 10 Unimak Island.	Caribou	Residents of False Pass, King Cove, and Sand Point.
10, remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11, north of the Sanford River	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Moose	Residents of Units 11, 13 (A)–(D), and residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).

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Area	Species	Determination
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
12	Caribou	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12, south of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River..	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13(A)–(D) and the residents of Chickaloon, Dot Lake, and Healy Lake.
12, east of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border..	Moose	Residents of Unit 12 and Healy Lake.
12, remainder	Moose	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	Residents of Unit 13.
13(B)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, Dot Lake and Healy Lake.
13(A) & (D)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
13(E)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A) and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(B)	Moose	Residents of Units 13, 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon, Healy Lake, and Dot Lake.
13(E)	Moose	Residents of Unit 13 and the residents of Chickaloon and of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed.	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.

Area	Species	Determination
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16(B)	Black Bear	Residents of Unit 16(B).
16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A) and that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake.	Black Bear	Residents of Units 9(A) and (B), 17, and residents of Akaik and Akiachak.
17, remainder	Black Bear	Residents of Units 9(A) and (B), and 17.
17(A)	Brown Bear	Residents of Unit 17, and residents of Akiak, Akiachak, Goodnews Bay and Platinum.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B), that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear	Residents of Akaik and Akiachak.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
Unit 17(A, that portion west of the Izaveieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River.	Caribou	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
Unit 17(B), that portion of Togiak National Wildlife Refuge within Unit 17(B).	Caribou	Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay, and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.

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Area	Species	Determination
18, north of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C), (D)	Bison	No Federal subsistence priority.
19(A) and (B)	Brown Bear	Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Units 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Units 19(A) and 19(B), residents of Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute, and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
Unit 19(B), west of the Kogrukluk River	Moose	Residents of Eek and Quinhagak.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A)	Caribou	Residents of Cantwell, Nenana, and those domiciled between milepost 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(B)	Caribou	Residents of Unit 20(B), Nenana, and Tanana.
20(C)	Caribou	Residents of Unit 20(C) living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenena, Nikolai, Tanana, Talida, and those domiciled between milepost 216 and 239 of the Parks Highway and between milepost 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(D) and (E)	Caribou	Residents of 20(D), 20(E), and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.
20(F)	Caribou	Residents of 20(F), 25(D), and Manley.
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—residents of Unit 20(B), and residents of Nenana and Tanana.

Area	Species	Determination
20(C)	Moose	Residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto, and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 21	Brown Bear	Residents of Units 21 and 23.
21(A)	Caribou	Residents of Units 21(A), 21(D), 21(E), Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(B) & (C)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Tanana.
21(D)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Huslia.
21(E)	Caribou	Residents of Units 21(A), 21(E) and Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(A)	Moose	Residents of Units 21(A), (E), Takotna, McGrath, Aniak, and Crooked Creek.
21(B) and (C)	Moose	Residents of Units 21(B) and (C), Tanana, Ruby, and Galena.
21(D)	Moose	Residents of Units 21(D), Huslia, and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22.
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Sheldon Point, and Alakanuk.
22, remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23. Unit 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 23	Black Bear	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.
23	Brown Bear	Residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
		Residents of Unit 23.
23	Moose	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.

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Area	Species	Determination
23, south of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23, remainder	Muskox	Residents of Point Lay and Unit 23 north of the Arctic Circle.
23	Sheep	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, Koyukuk, and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(D)	Caribou	Residents of 20(F), 25(D), and Manley.
25(A)	Moose	Residents of Units 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek, and Stevens Village.
25(D), remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

(2) Fish and shellfish determinations.

Area	Species	Determination
KOTZEBUE-NORTHERN AREA—Northern District	All finfish	Residents of the Northern District, except for those domiciled in State of Alaska Unit 26–B.
Kotzebue District	Salmon, sheefish, char	Residents of the Kotzebue District.
NORTON SOUND—PORT CLARENCE AREA	Salmon	Residents of the Norton Sound—Port Clarence Area.
YUKON AREA	Salmon	Residents of the Yukon Area, including the community of Stebbins.
	Yukon River Fall chum salmon.	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
	Freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Area.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
Waters adjacent to the western-most tip of the Naskonant Peninsula and the terminus of the Ishowik River and around Nunivak Island.	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district.	Salmon	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichek District—Naknek River drainage	Salmon	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichek District—Iliamna-Lake Clark drainage	Salmon	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater finfish.	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
KODIAK AREA—except the Mainland District, which is all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and west of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
KODIAK AREA—except the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA—Port Graham Subdistrict	Dolly Varden	Residents of Port Graham and English Bay.
Port Graham Subdistrict and Koyuktolik Subdistrict	Salmon	Residents of Port Graham and English Bay.
Tyonek Subdistrict	Salmon	Residents of the village of Tyonek.
PRINCE WILLIAM SOUND AREA—South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
PRINCE WILLIAM SOUND AREA—North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
YAKUTAT AREA—freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden char, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
SOUTH-EASTERN ALASKA AREA—District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon and Dolly Varden char.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadre in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon and Dolly Varden char.	Residents of the City of Saxman.
District 2—north of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon and Dolly Varden char.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′W. long. and east of 132°25′W. long.

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Area	Species	Determination
District 3—Section 3–A	Salmon and Dolly Varden char.	Residents of the townsite of Hydaburg.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes	Salmon, Dolly Varden char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—north of a line from Point Barrie to Boulder Point.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—west of a line from Pinta Point to False Point Pybus.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—south of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon and Dolly Varden char.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon and Dolly Varden char.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C	Salmon, smelt and Dolly Varden char.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
District 15—Chilkat and Chilkoot Rivers	Salmon and smelt	Residents west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River, but not elsewhere in Klukwan; and, those residents of other areas of the city and borough of Haines, excluding residents in the drainage of Excursion Inlet.

(b) [Reserved]

Subpart D—Subsistence Taking of Fish and Wildlife

3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § _____.25 is added effective July 1, 1999, through June 30, 2000, to read as follows:

§ _____.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section:

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, elk, or moose.

Antlered means any caribou, deer, elk, or moose having at least one visible antler.

Antlerless means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, elk, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or *hares* collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air, or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt, or fur means any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur, or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry, or transport by any means whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or *unclassified species* means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Hunters may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(1) Except for special provisions found at paragraphs (k)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this

prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(B) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a ⅞ inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, you may use bait to take wolves and wolverine with a trapping license, and, you may use bait to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (k)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(A) Before establishing a black bear bait station, you must register the site with ADF&G;

(B) When using bait you must clearly mark the site with a sign reading "black bear bait station" that also displays your hunting license number and ADF&G assigned number;

(C) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(D) You may not use bait within one-quarter mile of a publicly maintained road or trail;

(E) You may not use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) When using bait, you must remove litter and equipment from the bait station site when done hunting;

(G) You may not give or receive payment for the use of a bait station, including barter or exchange of goods;

(H) You may not have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bears, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b)(1) of this section:

(i) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(c) Possession and transportation of wildlife. (1) Except as specified in paragraphs (c)(3)(ii) or (c)(4) of this section, or as otherwise provided, you may not take a species of wildlife in any Unit, or portion of a Unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § _____.6(f)(3) or as otherwise provided for by this Part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) Harvest limits. (i) Harvest limits, including those related to ceremonial uses, authorized by this section and harvest limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § _____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § _____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § _____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) You may not possess, transport, give, receive, or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this paragraph (c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(11) You must leave all edible meat from caribou and moose harvested in Units 9(B), 17, and 19(B) prior to October 1 on the bones of the front quarters and hind quarters until you remove the meat from the field or process it for human consumption.

(d) If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return any identification equipment to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified in this paragraph, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area from the area or present it for commercial tanning within the Management Area, you must be first have it sealed by an ADF&G representative in Barrow, Fairbanks, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver, lynx, marten, otter, wolf, and wolverine. You may not possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(1) You must seal any wolf taken in Unit 2 on or before the 30th day after the date of taking.

(2) You must leave the radius and ulna of the left foreleg naturally attached to the hide of any wolf taken in Units 1–5 until the hide is sealed.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of wildlife. (1) You may not use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, and ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear

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Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse and ptarmigan.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in this section do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit regulations. You may take for subsistence unclassified wildlife, all squirrel species, and marmots in all Units, without harvest limits, for the period of July 1-June 30. You may not take for subsistence wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, unless otherwise provided for by the Board. You may take wildlife under State regulations on public lands, except as otherwise restricted at paragraphs (k)(1) through (26) of this section. Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (k)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage within one mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a one mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of black bear and brown bear;

(D) Unit 1(C):

(*1*) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area;

(*2*) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier;

(vi) You may not trap furbearers for subsistence uses in Unit 1(C), Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15—Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of LeConte Bay. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(B)—that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A) and Unit 1(B)—remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Unit 1(C)—remainder—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Unit 1(D)—remainder—1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull	Sept. 15–Oct. 15.
Unit 1(B)—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C), that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C)—remainder, excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10—Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: Unit 1(A), (B), and (C)—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

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(3) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(4) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved].

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
4 deer; however, no more than one may be an antlerless deer.	
Antlerless deer may be taken only during the period Oct. 15—Dec. 31 by Federal registration permit only	Aug. 1–Dec. 31
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Dec. 1–Mar. 31.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Dec. 1–Mar. 31.
Wolverine: No limit	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island;

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Unit 3—remainder—2 antlered deer	Aug. 1–Nov. 30.
Moose:	
1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Sept. 15–Oct. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3—Mitkof Island—No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10.–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take bears in the Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock);

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay;

(E) You may not use any motorized land vehicle for the taking of marten, mink, and weasel on Chichagof Island.

(iii) Unit-specific regulations:

(A) You may not use boats to take bear, wolves, or wolverine, unless you are certified as disabled;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) You may take of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur.

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Harvest limits	Open season
Hunting	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.) to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.) to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 21. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20
Unit 4—remainder—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Goat: 1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1.–May 15.
Trapping	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15:

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag; if you have obtained a Federal registration permit prior to hunting;

(D) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat: 1 goat by Federal registration permit only	Aug. 1–Jan. 31.
Moose:	
Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5(A), except Nunatak Bench—1 antlered bull by Federal registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by residents of Unit 5(A).	Oct. 8–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Nov. 10–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Nov. 10–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take mountain goat in the Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River;

(B) You may not take mountain goat in the Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may take coyotes in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting	
Black Bear: 1 bear	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only.	Aug. 20–Jan. 31.
In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG244—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat	
Unit 6(D) (subareas RG243 and RG245)—The taking of goats is prohibited on all public lands	No open season.

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Harvest limits	Open season
Coyote:	
Unit 6(A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Unit 6(C)—remainder—No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases)	No open season.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx	No open season.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: 20 beaver per season	Dec. 1–Mar. 31.
Coyote:	
Unit 6(A), (B), and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Unit 6(C)—remainder—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park;

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse, ptarmigan, hares, and squirrels with shotguns after September 1.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15; except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: Unit 7—3 bears	July 1–June 30.
Moose:	
Unit 7—that portion draining into Kings Bay—1 bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler may be taken by the community of Chenega Bay and also by the community of Tatitlek. Public lands are closed to the taking of moose except by eligible rural residents.	Aug. 10–Sept. 20.
Unit 7—remainder	No open season.
Coyote: No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves.	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 20 beaver per season	Dec. 1–Mar. 31.
Coyote: No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Feb. 28.
Wolverine: No limit	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Brown Bear:	
1 bear by Federal registration permit only. Up to 1 permit may be issued in Akiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31.	Aug. 1–Jan. 31.
Unit 8—remainder—5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Jan. 31.
Elk:	
Afognak Island above mean high tide—1 elk per household by Federal registration permit only; only 1 elk in possession for each two hunters in a party. Entry for elk hunting shall be from marine waters only. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd.	Sept. 1–Nov. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park;

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek;

(C) If you have a trapping license, you may use a firearm to take beaver in Unit 9(B) from April 1–May 31 and in the remainder of Unit 9 from April 1–April 30;

(D) In Unit 9(B), Lake Clark National Park and Preserve, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community but no more than five permits will be issued in a single community; the season will be closed when four females or ten bears have been taken, whichever occurs first;

(E) Residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9(B) for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local

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organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)-Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only.	July 1–June 30.
Unit 9(B), remainder—1 bear by State registration permit only	Sept. 1–May 31.
Unit 9(E)—1 bear by Federal registration permit	Oct. 1–Dec. 31.
	May 10–May 25.
Caribou:	
Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug.10–Mar. 31.
Unit 9(C), that portion within the Alagnak River drainage—1 caribou	Aug.1–Mar. 31.
Unit 9(C), remainder—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 1–Sept. 20
	Nov. 15–Feb. 28.
Unit 9(B)—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30	Aug. 1–Apr. 15.
Unit 9(D)—closed to all hunting of caribou	No open season.
Unit 9(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 10–Sept. 20
	Nov. 1–Apr. 30.
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—1 ram with 7/8 curl horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 bull	Sept. 1–Sept. 15.
Unit 9(B)—1 bull	Aug. 20–Sept. 15.
	Dec. 1–Jan. 15.
Unit 9(C)—that portion draining into the Naknek River from the north—1 bull	Sept. 1–Sept. 15.
	Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 bull. However, during the period Aug. 20–Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31	Sept. 1–Sept. 15.
	Dec. 1–Dec. 31.
Unit 9(E)—1 bull	Sept. 1–Sept. 20.
	Dec. 1–Jan. 20.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 9(B)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Jan. 1–May 31.
Unit 9—remainder—40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30	Jan. 1–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.
(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

Harvest limits	Open season
Hunting	
Caribou:	
Unit 10—Unimak Island only	No open season.

Harvest limits	Open season
Unit 10—remainder—No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30
Wolf: 5 wolves	Aug. 10–Apr. 30
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved].

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 11—1 bear	Sept. 1–May 31.
Caribou: Unit 11	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
1 sheep by Federal registration permit only by persons 60 years of age or older. No designated hunter permits will be issued for this hunt.	Sept. 21–Oct. 20.
Goat:	
Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. Federal public lands will be closed to the harvest of goats when a total of 45 goats have been harvested between Federal and State hunts.	Aug. 25–Dec. 31.
Moose: 1 antlered bull	Aug. 20–Sept. 20.
Coyote: 10 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 12 during April and October;

(C) A Federally-qualified subsistence user (recipient) may designate another

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Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved].

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Aug. 10–June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands.	No open season.
Unit 12—remainder—1 bull	Sept. 1–Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced	Winter season to be announced by the Board.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken. The November season is open by Federal registration permit only.	Aug. 15–Aug. 28. Sept. 1–Sept. 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 15–Aug. 28. Sept. 1–Sept. 30.
Unit 12—remainder—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 15–Aug. 28. Sept. 1–Sept. 15.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July–June 30.
Lynx: 2 lynx	Nov. 1–Mar. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 15 beaver per season	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Sept. 20–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5—Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested.	Aug. 10–May 31.
Caribou: 2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 30. Oct. 21–Mar. 31
Sheep: Unit 13—excluding Unit 13(D) and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl horn.	Aug. 10–Sept. 20.
Moose:.	
Unit 13(E)—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 1 Sept. 20.
Unit 13—remainder—1 antlered bull moose by Federal registration permit only	Aug. 1–Sept. 20..
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–AApr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Oct. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

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(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation;

(B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.

(iii) Unit-specific regulations:

Harvest limits	Open season
Hunting	
Black Bear: Unit 14(C)—1 bear	July 1–June 30.
Coyote: Unit 14(C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
Lynx: Unit 14(C)—2 lynx	Dec. 15—Jan. 15.
Wolf: Unit 14(C)—5 wolves	Aug. 10–Apr. 30.
Wolverine: Unit 14(C)—1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.
Trapping	
Beaver: Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Lynx: Unit 14(C)—No limit	Dec. 15–Jan. 15.
Marten: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Mink and Weasel: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Muskrat: Unit 14(C)—No limit	Nov. 10–May 15.
Otter: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf: Unit 14(C)—No limit	Nov. 10–Feb. 28
Wolverine: Unit 14(C)—No limit	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1–March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;

(C) You may not trap marten in that portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier;

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 15(C)—3 bears	July 1—June 30.
Unit 15—remainder	No open season.
Moose:	
Unit 15(A)—excluding the Skilak Loop Wildlife Management Area.—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 18—Sept. 20
Unit 15(A)—Skilak Loop Wildlife Management Area	No open season.
Unit 15(B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10—Sept. 20.
Coyote: No limit	Sept. 1—Apr. 30.
Hare (Snowshoe and Tundra): No limit	July 1—June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10—Apr. 30.
Unit 15—remainder—5 Wolves	Aug. 10—Apr. 30.
Wolverine: 1 Wolverine	Sept. 1—Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10—Mar. 31.
Grouse (Ruffed)	No open season.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15(A) and (B)—20 per day, 40 in possession	Aug. 10—Mar. 31.
Unit 15(C)—20 per day, 40 in possession	Aug. 10—Dec. 31.
Unit 15(C)—5 per day, 10 in possession	Jan. 1—Mar. 31.
Trapping	
Beaver: 20 Beaver per season	Dec. 1—Mar. 31.
Coyote: No limit	Nov. 10—Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox	Nov. 10—Feb. 28.
Lynx: No limit	Jan. 1—Feb. 15.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier	No open season.
Remainder of Unit 15—No limit	Nov. 10—Jan. 31.
Mink and Weasel: No limit	Nov. 10—Jan. 31.
Muskrat: No limit	Nov. 10—May 15.
Otter:	
Unit 15(A), (B)—No limit	Nov. 10—Jan. 31.
Unit 15(C)—No limit	Nov. 10—Feb. 28.
Wolf: No limit	Nov. 10—Feb. 28.
Wolverine: Unit 15(B) and (C)—No limit	Nov. 10—Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1—June 30.
Caribou: 1 caribou	Aug. 10—Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1—Sept. 15.
Unit 16(B)—remainder—1 moose; however, antlerless moose may be taken only from Sept. 25—Sept. 30 and from Dec. 1—Feb. 28 by Federal registration permit only.	Sept. 1—Sept. 30. Dec. 1—Feb. 28.
Coyote: 2 coyotes	Sept. 1—Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1—Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1—June 30.
Lynx: 2 lynx	Dec. 15—Jan. 15.
Wolf: 5 wolves	Aug. 10—Apr. 30.
Wolverine: 1 wolverine	Sept. 1—Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10—Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10—Mar. 31.

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Harvest limits	Open season
Trapping	
Beaver: 30 beaver per season	Nov. 10—Apr. 30.
Coyote: No limit	Nov. 10—Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10—Feb. 28.
Lynx: No limit	Dec. 15—Jan. 15.
Marten: No limit	Nov. 10—Jan. 31.
Mink and Weasel: No limit	Nov. 10—Jan. 31.
Muskrat: No limit	Nov. 10—June 10.
Otter: No limit	Nov. 10—Mar. 31.
Wolf: No limit	Nov. 10—Mar. 31.
Wolverine: No limit	Nov. 10—Feb. 28.

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bears, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), from Aug. 1—Nov. 1;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting	
Black Bear: 2 bears	Aug. 1–May 31.
Brown Bear: Unit 17—1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 17(A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Aug. 1–Sept. 30. Dec. 1–Mar. 31
Unit 17(B) and (C)—that portion of 17(C) east of the Wood River and Wood River Lakes—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30.	Aug. 1–Apr. 15
Unit 17(A)—remainder and 17(C)—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager between Aug. 1–Mar. 31.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(A)	No open season.
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(C)—that portion that includes the lowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(A)—remainder and 17(C)—remainder—1 bull by State registration permit only during the periods Aug. 20–Aug. 31 and Dec. 1–Dec. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: Unit 17—40 beaver per season	Nov. 10–Feb. 28.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: 2 muskrats	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you may not use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm may be used to take beaver in Unit 18 from Apr. 1–Jun. 10;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou south of the Yukon River on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—A harvest limit of up to 5 caribou will be determined at the time the season is announced and will be based on the management objectives in the "Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan." The season will be closed when the total harvest reaches guidelines as described in the approved "Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan".	Season to be announced by the Yukon Delta National Wildlife Refuge Manager between Aug. 25 and Mar. 31.
Unit 18—that portion north of the Yukon River—5 caribou per day	Aug. 1–Mar. 31.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—south of and including the Kanektok River drainages	No open season.
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Aug. 25–Sept. 25. Winter season to be announced.
Unit 18—remainder—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Sept. 1–Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by Federally-qualified rural Alaska residents during seasons identified above.	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Mar. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–May 30.
Trapping	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Mar. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf benchmark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, you may not use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30.

(B) [Reserved].

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:.	
Unit 19(A) and (B)—those portions which are downstream of and including the Aniak River drainage—1 bear	Sept. 1–May 31.
Unit 19(A)—remainder, 19(B)—remainder, and Unit 19(D)—1 bear every four regulatory years	Sept. 10–May 25.
Caribou:	
Unit 19(A)—north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A)—south of the Kuskokwim River and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou.	Aug. 1–Apr. 15.
Unit 19(C)—1 caribou	Aug. 10–ct. 10.
Unit 19(D)—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Unit 19(D)—remainder—1 caribou	Aug. 10–Sept. 30.
Unit 19—rural Alaska residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.

Harvest limits	Open season
Sheep: 1 ram with 7/8 curl	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—no individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(A)—remainder—1 bull	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–ct. 10.
Unit 19(C)—1 bull by State registration permit	Jan. 15–Feb. 15.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Unit 19(D)—remainder—1 antlered bull	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Jun. 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Mar. 31.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7

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Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) You may not use motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. Only the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(D) You may not use any motorized vehicle for hunting from August 5–September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) You may by permit only hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(F) You may hunt moose by bow and arrow only in the Fairbanks Management Area, which consists of the Goldstream subdivision (SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 20(E) during April and October;

(C) Residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 20(E)—1 bear	Aug. 10–June 30.
Unit 20—remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 55 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River—1 caribou	Dec. 1–Dec. 31.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—remainder—1 antlered bull	Sept. 1–Sept. 20.

Harvest limits	Open season
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Unit 20(C)—remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull; however during the period Aug. 20—Aug. 28 only a bull with Spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 15.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Unit 20(F)—remainder—1 antlered bull	Sept. 1–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Unit 20—remainder—2 lynx	Dec. 1–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Units 20(A), 20(B), Unit 20(C), and 20(F)—No limit	Nov. 1–Apr. 15.
Units 20(D) and (E)—25 beaver	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20(A), (B), (D), (E), and (C) east of the Teklanika River—No limit	Dec. 1–Feb. 15.
Unit 20(F) and the remainder of 20(C)—No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Unit 20—remainder—No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1–Apr. 30
Unit 20—remainder—No limit.	Nov. 1–Mar. 31.
Wolverine: No limit	Nov. 1–Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River

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at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Apr. 1–June 1;

(C) The residents of Units 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 21(A)—1 caribou	Aug. 10–Sept. 30. Dec. 10–Dec. 20.
Unit 21(B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.
Unit 21(D)—north of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 21(A)—1 bull	Aug. 20–Sept. 25. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; moose may not be taken within one-half mile of the Yukon River during the February season. During the Sept. 1–Sept. 25 season a State registration permit is required within the Koyukuk Controlled Use Area.	Sept. 1–Sept. 25. Feb. 1–Feb. 10.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No Limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 22(A)—1 bear by State registration permit by residents of Unit 22(A) only	Sept 1–May 31.
Unit 22(B)—1 bear by State registration permit by residents of Unit 22(B) only	Sept. 1–May 31.
Unit 22(C)	No open season.
Unit 22—remainder—1 bear by State registration permit	Sept. 1–May 31.
Caribou: Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 22(A)—1 bull; however, the period of Dec. 1–Jan. 31 is closed to hunting except by residents of Unit 22(A) only.	Aug. 1–Sept. 30. Dec. 1–Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—that portion within the Kuzitrin River drainage—1 antlered bull	Aug. 1–Jan. 31.
Unit 22(D)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 22(D)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Twelve Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 36 permits. Six Federal permits will be issued for National Park Service lands and six for Bureau of Land Management lands.	Aug. 1–Mar. 15.
Unit 22(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Nine Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 18 permits.	Aug. 1–Mar. 15.
Unit 22—remainder	No open season.
Beaver:	
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22—remainder	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	Sept. 1–Apr. 15.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Marten:	
Unit 22(A) 22(B)—No limit	Nov. 1–Apr. 15
Unit 22—remainder	No open season.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: 3 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22 Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.

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Harvest limits	Open season
Trapping	
Beaver:	
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22(C)	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit.	Nov. 1–Apr. 15.
Wolverine: No limit.	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species in the Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25—September 15. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A); if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat under power in Unit 23;

(B) You may take swimming caribou with a firearm using rimfire cartridges;

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1—Jun. 10;

(D) For the Baird and DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear by State registration permit	Sept. 1–May 31.
Unit 23—remainder—1 bear every four regulatory years	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested.
Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested including those harvested during the Aug. 1–Sept. 30 season.

Harvest limits	Open season
Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested in the DeLong Mountains.
Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season.
Unit 23, remainder (Schwatka Mountains)—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Unit 23, remainder (Schwatka Mountains)—1 sheep	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Unit 23—remainder—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23—south of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eight Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 10 permits.	Aug. 1–Mar. 15.
Unit 23—remainder	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra) No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 1–Jan. 15.
Wolf: 5 wolves	Nov. 10–Mar. 31.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	Nov. 1–June 10.
Unit 23—remainder—30 beaver	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: 3 lynx	Dec. 1–Jan. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR;

however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 24—1 bear by State registration permit	Sept. 1–May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 24—remainder—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, upstream from Huslia antlerless moose may only be taken during the periods of Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 1–Sept. 25. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose.	Aug. 1–Dec. 31.
Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Dec. 31. Mar. 1–Mar. 10.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Unit 24—remainder—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents.	Aug. 25–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. Residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into 2 roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may take caribou and moose from a boat under power in Unit 25;

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25(D) west provided that:

(*1*) The person organizing the religious ceremony or cultural event contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, the general area in which the taking will occur;

(*2*) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge not more than 15 days after the harvest specifying the harvester's name and address, and the date(s) and location(s) of the taking(s);

(*3*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25(D) west;

(*4*) Any moose taken under this provision counts against the annual quota of 30 bulls.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 25(D)—1 bear	July 1–June 30.
Caribou:	
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 30 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.

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Harvest limits	Open season
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit. The winter season will be closed by announcement of the Northern Field Office, BLM, when the quota of 30 caribou has been taken.	Aug. 10–Sept. 20. Feb. 1–Mar. 31.
Unit 25 (D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull	Aug. 10–Sept. 30. Dec. 1–Dec. 31.
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou	July 1–Apr. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area	No open season.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Unit 25(A)—remainder—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion, other than Yukon Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Unit 25(B)—remainder—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek, and Stevens Village during seasons identified above. The moose season will be closed when 30 moose have been harvested in the entirety of Unit 25(D)(West).	Aug. 25–Feb. 28.
Unit 25(D)—remainder—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25(C)	No Federal open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Unit 25—remainder—2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 25(C)—No limit	Nov. 1–Apr. 15.
Unit 25—remainder—50 beaver	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.

Harvest limits	Open season
Unit 25—remainder—No limit	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1–Aug. 31 and from Jan. 1–Mar. 31 in Unit 26(A). No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) You may not use motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat under power in Unit 26;

(B) You may take swimming caribou with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) For the DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear by State registration permit	Sept. 1–May 31.
Unit 26(B) and (C)—1 bear	Sept. 1–May 31.
Caribou:	
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the Killik River are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30.
You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass.	
Sheep:	
Unit 26(A) and (B)—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26(A)—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.

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Harvest limits	Open season
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested in the DeLong Mountains.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 26(A)—remainder and 26(B)—remainder—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year, the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20 Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage downstream from the mouth of the Anaktuvuk River—1 bull. Federal public lands are closed to the taking of moose by non-Federally qualified subsistence users.	Aug. 1–31.
Unit 26—remainder	No open season.
Muskox: Unit 26(C)—1 muskox by Federal registration permit only; 12 permits for bulls and 3 permits for cows may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during open seasons.	Sept. 15–Mar. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (Including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves	Aug. 10–Apr. 30.
Wolverine: 5 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

Dated: June 9, 1999.

James A. Caplan,

Acting Regional Forester, USDA—Forest Service.

Dated: June 7, 1999.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 99–16409 Filed 6–30–99; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AD68

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority; Correction

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects Sections 50 CFR 100.24 and 36 CFR 242.24 of the Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority that was published in the **Federal Register** of January 8, 1999, to include updated material which was inadvertently omitted. This document also corrects the effective dates for 36 CFR 242.26 and 242.27 and 50 CFR 100.26 and 100.27.

DATES: This correction to 36 CFR 242.24 and 50 CFR 100.24 is effective October 1, 1999. The effective dates for 36 CFR 242.26 and 242.27 and 50 CFR 100.26 and 100.27 are corrected to be October 1, 1999 through February 28, 2001.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Thomas H. Boyd, (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

SUPPLEMENTARY INFORMATION: On January 8, 1999, the Secretaries of the Interior and Agriculture published a Final Rule in the **Federal Register** (64 FR 1276) that extended jurisdiction for providing subsistence priority to rural Alaskans for harvesting fish in waters where there is a Federal reservedwater right. In that document, an outdated version of Section _____.24(a)(1) was inadvertently used. The Federal Subsistence Board, which has been delegated authority to promulgate regulations in subparts C and D, has also corrected the wording of Section _____.24(a) introductory text. This document corrects Sections _____.24(a) introductory text and _____.24(a)(1).

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text is incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment has been prepared on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under "For Further Information Contact." The Secretary of the Interior with the concurrence of the Secretary of Agriculture has determined that the expansion of Federal jurisdiction does not constitute a major Federal action, significantly effecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA

A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the Final Rule will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. It applies to the use of public lands in Alaska. The information collection requirements are a revision of the collection requirements already approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075, which expires 5/31/2000. This revision was submitted to OMB for approval. A comment period was open on OMB

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collection requirements and no comments were received.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Hunter Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (one hour or less). This information is accessed via computer data base. The current overall annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the existing rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

The collection of information under this Final Rule will be achieved through the use of a Federal Subsistence Registration Permit Application, which would be the same form as currently approved and used for the hunting program. This information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish populations. The annual burden of reporting and recordkeeping is estimated to average 0.50 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 10,000, yielding a total annual reporting and recordkeeping burden of 5,000 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

Additional information collection requirements may be imposed if local advisory committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, § _____.24 Customary and traditional determinations.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: USFWS, Office of Subsistence Management, Thomas H. Boyd, 1011 E. Tudor Road, Anchorage, Alaska 99503.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

This rulemaking will impose no significant costs on small entities; this Final Rule does not restrict any existing sport or commercial fishery on the public lands and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound for salmon and $0.58 per pound for other fish, would equate to about $34 million in food value statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*) requires that before a rule can take effect, copies of the rule and other documents must be sent to the U.S. House and U.S. Senate and establishes a means for Congress to disapprove the rulemaking. The Departments have determined that this rulemaking is not a major rule under the Act, and thus the effective date of the rule is not additionally delayed unless Congress takes additional action.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any state or local entities or tribal governments.

The Secretaries have determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Drafting information—William Knauer drafted this correction under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests. Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments correct FR Doc. 99–11 published at 64 FR 1276, January 8, 1999, as set forth below:

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA [CORRECTED]

1. On page 1294, beginning in column 2, correct paragraphs (a) introductory text and (a)(1) of 36 CFR 242.24 and 50 CFR 100.24, to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Fish and Wildlife Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Residents of Unit 1(C), 1(D), 3, and residents of Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.
1(A)	Brown Bear	Residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Residents of Unit 1(C), Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Residents of 1(A) and 2.
1(B)	Deer	Residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Residents of 1(C) and (D), and residents of Hoonah, Kake, and Petersburg.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
1(B)	Moose	Residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Goat	Residents of Unit 5(A)
5	Moose	Residents of Unit 5(A).

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Area	Species	Determination
5	Wolf	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(A)	Goat	Residents of Unit 5(A), 6(C), Chenega Bay and Tatitlek.
6(C) and (D)	Goat	Residents of Unit 6(C) and (D).
6(A)	Moose	Unit 6(A)—Residents of Units 5(A), 6(A), 6(B) and 6(C).
6(B) and (C)	Moose	Residents of Units 6(A), 6(B) and 6(C).
6(D)	Moose	No Federal subsistence priority.
6(A)	Wolf	Residents of Units 5(A), 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
6, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and Tatitlek.
7, remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A)	Brown Bear	Residents of Pedro Bay.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C)	Brown Bear	Residents of Unit 9(C).
9(D)	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
9(E)	Brown Bear	Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
Unit 10 Unimak Island	Caribou	Residents of False Pass, King Cove, and Sand Point.
10, remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11, north of the Sanford River	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)—(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)—(D) and the residents of Chickaloon.

Area	Species	Determination
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Moose	Residents of Units 11, 13 (A)–(D), and residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
12	Caribou	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12, south of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13(A)–(D) and the residents of Chickaloon, Dot Lake, and Healy Lake.
12, east of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12 and Healy Lake.
12, remainder	Moose	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	Residents of Unit 13.
13(B)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, Dot Lake and Healy Lake.
13(A) & (D)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
13(E)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A) & (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(B)	Moose	Residents of Units 13, 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon, Healy Lake, and Dot Lake.
13(E)	Moose	Residents of Unit 13 and the residents of Chickaloon and of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.

Area	Species	Determination
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (rock, Willow and White-tailed.	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Resident of Port Graham and Namwalek only.
15, remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas.	Goat	Residents of Port Graham and Nanwale,
15(C), Seldovia hunt area.	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
16(B)	Black Bear	Residents of Unit 16(B).
16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A) and that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake.	Black Bear	Residents of Units 9(A) and (B), 17, and resident of Akaik and Akiachak.
17, remainder	Black Bear	Residents of Units 9(A) and (B), and 17.
17(A)	Brown Bear	Residents of Unit 17, and residents of Akiak, Akiachak, Goodnews Bay and Platinum.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B), that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear	Residents of Akaik and Akiachak.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
Unit 17(A), that portion west of the Izaveieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River.	Caribou	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
Unit 17(B), that portion of Togiak National Wildlife Refuge within Unit 17(B).	Caribou	Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay, and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.

Area	Species	Determination
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Craibou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18, north of the Yukon River	Caribou (except Kilbuch caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, remainder	Caribou (except Kilbuch caribou herd).	Residents of Kwethluk
18, that portion fo the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C), (D)	Bison	No Federal subsistence priority.
19(A) and (B)	Brown Bear	Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Units 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Units 19(A) and 19(B), residents of Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute, and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
Unit 19(B), west of the Kogrukluk River	Moose	Residents of Eek and Quinhagak.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A)	Caribou	Residents of Cantwell, Nenana, and those domiciled between milepost 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(B)	Caribou	Residents of Unit 20(B), Nenana, and Tanana.
20(C)	Caribou	Residents of Unit 20(C) living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenena, Nikolai, Tanana, Talida, and those domiciled between milepost 216 and 239 of the Parks Highway and between milepost 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(D) and (E)	Caribou	Residents of 20(D), 20(E), and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.

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Area	Species	Determination
20(F)	Caribou	Residents of 20(F), 25(D), and Manley.
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto, and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 21	Brown Bear	Residents of Units 21 and 23.
21(A)	Caribou	Residents of Units 21(A), 21(D), 21(E), Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(B) & (C)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Tanana.
21(D)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Huslia.
21(E)	Caribou	Residents of Units 21(A), 21(E) and Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(A)	Moose	Residents of Units 21(A), (E), Takotna, McGrath, Aniak, and Crooked Creek.
21(B) and (C)	Moose	Residents of Units 21(B) and (C), Tanana, Ruby, and Galena.
21(D)	Moose	Residents of Units 21(D), Huslia, and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Sheldon Point, and Alakanuk.
22, remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 23	Black Bear	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.

Area	Species	Determination
23	Brown Bear	Residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23, south of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 south of Kotzebue Sound and west of and including the Buckland River drainage.
23, remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Point Lay and Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of United 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area..	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, Koyukuk, and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(D)	Caribou	Residents of 20(F), 25(D), and Manley.
25(A)	Moose	Residents of Units 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek, and Stevens Village.
25(D), remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.

Area	Species	Determination
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

* * * * *

Dated: June 9, 1999.

James A. Caplan,

Acting Regional Forester, UDSA-Forest Service.

Dated: June 7, 1999.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

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Part IV

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 1999; Final Rule

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–200; FCC 99–146]

Assessment and Collection of Regulatory Fees for Fiscal Year 1999

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1999. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1999 sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

Adopted: June 11, 1999; Released: June 18, 1999

By the Commission.

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I. Introduction

1. By this *Report and Order*, the Commission concludes a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress has required it to collect for Fiscal Year (FY) 1999.[1]

[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, FCC 98–298, released December 4, 1998, 63 FR 70090 (Dec. 18, 1998) (NOI), and FCC 99–44, released March 24, 1999, 64 FR 16661 (Apr. 6, 1999) (NPRM).

2. Congress has required that we collect $172,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1999.[2] This amount is $10,000,000 or approximately 6% more than the amount that Congress designated for recovery through regulatory fees for FY 1998.[3] Thus, we are revising our fees in order to collect the increased amount that Congress has required for us to collect. Additionally, we are amending the Schedule in order to simplify and streamline it.[4]

3. In revising our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with sections 159(b) (2) and (3). In addition, we are making changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.[5]

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.[6] See Attachment G for a description of these activities. In our *FY 1994 Fee Order*,[7] we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.[8] Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our experience administering the program in prior years.[9]

5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b) (2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.[10] Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees.[11]

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services."[12]

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to subsection b(3), and for other purposes.[13] For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service, so that we can phase in our reliance on cost-based fees for those services, whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of these costs. This methodology, which we continued to utilize for FY 1998, enabled us to develop regulatory fees which we believed to be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect.[14]

III. Discussion

A. Summary of FY 1999 Fee Methodology

8. As noted above, Congress has required that the Commission recover $172,523,000 for FY 1999 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[15] This fact is the overriding principle that determines how the fee schedule is adjusted. Notwithstanding any considerations of benefit to the fee payer, it is a zero-sum mandate in which any adjustment downward must be met with a corresponding adjustment upward for all others to ensure collection of the aggregate amount mandated by Congress in its appropriation Act.

9. In developing our FY 1999 fee schedule, we first determined that we would continue to use the same general methodology for "Mandatory Adjustments" to the Fee Schedule as we used in developing fees for previous fiscal years. As required by section 9(b)(2), we estimated the number of payment units[16] for FY 1999 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1998 fees. Next, we compared this revenue amount to the $172,523,000 that Congress has required us to collect in FY 1999 and pro-rated the difference among all the existing fee categories.

10. Once we established our tentative FY 1999 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. However, as stated in paragraph 8, any permitted amendment made affects all other feeable categories to ensure the total amount required will still be collected. These proposals are discussed in paragraphs 16–31 and are factored into our FY 1999 Schedule of Regulatory Fees, set forth in Attachment D.

11. It should be further noted that the requirement to derive fees based on the number of full-time equivalent number of employees is superseded by the cost accounting system developed pursuant to section 9(i) which is combined with the payroll and benefits system to incorporate that information. Non-employee contractual activities are not charged to feeable activities directly, but are factored into overhead. Also, the primary purpose of the cost accounting system is to support the making of permitted amendments, and it is not required to be used in developing the fee schedule.

12. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for

[2] Pub. L. 105–277 and 47 U.S.C. 159(a)(2).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, FCC 98–115, released June 16, 1998, 63 FR 35847 (Jul. 1, 1998).

[4] 47 U.S.C. 159(b)(3).

[5] 47 CFR 1.1152 through 1.1156.

[6] 47 U.S.C. 159(a).

[7] 59 FR 30984 (Jun. 16, 1994).

[8] 47 U.S.C. 159(b), (f)(1).

[9] 47 CFR 1.1151 *et seq.*

[10] 47 U.S.C. 159(b)(2), (b)(3).

[11] 47 U.S.C. 159(b)(2).

[12] 47 U.S.C. 159(b)(3).

[13] 47 U.S.C. 159(i).

[14] 47 U.S.C. 159(b)(4)(B).

[15] 47 U.S.C. 159(a).

[16] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1999. In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1999 regulatory fees.

B. Development of FY 1999 Fees

i. Adjustment of Payment Units

13. In calculating individual service regulatory fees for FY 1999, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1998 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.[17]

ii. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by the FY 1998 fees in each category to determine how much revenue we would collect without any change to the FY 1998 Schedule of Regulatory Fees. The amount of revenue which we would collect without changes to the Fee Schedule is approximately $157.6 million. This amount is approximately $14.9 million less than the amount the Commission is required to collect in FY 1999. We then adjusted the revenue requirements for each category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect $172,523,000 as required by Congress. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

15. Once we determined the amount of fee revenue that is necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. *See* Attachment C.

C. Changes to Fee Schedule

16. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3).[18] As a result of this review, we are making the following "Permitted Amendments" to our Fee Schedule:

i. FY 1999 Fee Schedule Based on Mandatory Adjustments

17. The FY 1999 fee schedule is based on the "Mandatory Adjustments" as computed in Attachment C and in accordance with section 9(b)(2) of the Act. After the *Notice of Proposed Rulemaking (Assessment and Collection of Regulatory Fees for Fiscal Year 1999,* FCC 99–44, released March 24, 1999, 64 FR 16661 (Apr. 6, 1999) was issued, the staff determined that its original estimates of the number of payment units for Marine (Ship) should be reduced from 16,800 to 7,100 to reflect a reduction in renewal applications caused by the transition from five-year to ten-year license terms. Likewise, the number of payment units for Aviation (Aircraft) is being reduced from 4,800 to 4,500.

ii. Reduction of the FM Construction Permit Fee

18. In the original Congressional fee schedule, the FM Construction Permit fee was set at $500 (five times the AM Construction Permit fee of $100). In succeeding years' schedules, nearly the same relationship has prevailed as evidenced by the calculated FM Construction Permit fee for FY 1999 of $1,250 (compared to the calculated AM Construction Permit fee for FY 1999 of $260). While the Commission's regulatory costs in processing FM Construction Permit fees are higher than its costs for AM Construction Permit fees, several parties have expressed concern that the FM Construction Permit fee is nevertheless disproportionately high particularly in less populated areas.

19. In the *Notice of Proposed Rulemaking* (NPRM), we sought comment on a staff proposal to make a permitted amendment to the schedule of regulatory fees for FY 1999 reducing the FM Construction Permit fee to three times the AM Construction Permit fee. The Commission did not receive comments on the proposal to reduce the FM Construction Permit regulatory fee, and is adopting the proposal herein.

iii. Redesignation of Small SMR Systems as CMRS Messaging

20. In the NOI,[19] we solicited comment on whether the Commercial Mobile Radio Services ("CMRS") fee categories should be revised to reflect types of service or usage. In FY 1998, the demarcation of fee categories was based on the authorized bandwidth, rather than the nature of the service offered. CMRS licensees authorized to operate on broadband spectrum were classified within the CMRS Mobile Services fee category, while CMRS licensees authorized to operate on narrowband spectrum were classified within the CMRS Messaging fee category. In this context, several parties, including BellSouth Wireless Data, the Paging Network ("PageNet"), and ARDIS Company (Ardis) urge the Commission to reclassify the 900 MHz Specialized Mobile Radio Service ("SMR") systems for regulatory fee purposes. Specifically, the commenters assert that SMR systems used for mobile data services are similar to and compete with CMRS messaging services, and accordingly, should be classified as such for section 9 purposes. The Council of Independent Communications Suppliers ("CICS") and the American Mobile Telecommunications Association, Inc. ("AMTA") further maintain that all "traditional" SMR are similarly situated to messaging services in terms of the limited amount of spectrum utilized and the limited nature of the services offered, and thus recommend the reclassification of all traditional SMR services.

21. We are persuaded by the comments that the SMR service is similar to the CMRS Messaging service, that the SMR service should be accorded similar treatment with respect to regulatory fee requirements, and thus that reclassification is warranted. Accordingly, we are revising our designation of services contained in the CMRS Messaging fee category. For FY 1999, the CMRS Messaging fee category will also include all SMR systems authorized for operation with less than 10 MHz bandwidth.

[17] It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately six percent in FY 1999 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

[18] In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999, none of the proposed fee increases exceed 25%.

[19] See FY 1999 NOI at paragraph 9.

iv. Other Comments Regarding Adjustments to CMRS

22. In the NOI,[20] we specifically asked commenters to provide proposals to establish models, or direct us to available sources of data, that estimate the number of payment units (number of subscribers) in the CMRS service to enable us to calculate fees that more accurately reflect the regulatory costs associated with this service. The Cellular Telecommunications Industry Association (CTIA) takes issue with the Commission's methodology and projections. CTIA argues that section 9(i) of the Communications Act of 1934 ("Act"), as amended, "requires that [the Commission] develop accounting systems necessary to adjust [its] fees pursuant to changes in the *costs* of regulation of various services that are subject to a fee."[21] Instead, they argue further, the Commission has adopted a more complicated, and ultimately unreliable, approach described in detail in the Notice.[22] CTIA argues that the Notice prescribes fees that raise an additional 6 percent above FY 1998, but that the proposed increase to CMRS Mobile services is over 10 percent. CTIA argues that this approach is wrong because it bases fees on growth in a particular sector of the industry instead of on the costs of regulating that sector, and it uses a figure that underestimates the number of wireless subscribers. We disagree and believe our actions are proper and consistent with the Act. As described above, the Commission began by estimating the number of units[23] for FY 1999 for each industry and multiplying that figure by each industry's FY 1998 per unit charge. The amount which resulted was $157.6 million, $14.9 million less than required by Congress.[24] To collect the difference, the Commission "then adjusted the revenue requirements for each category on a proportional basis."[25] In other words, each communications sector's proportional contribution percentage was multiplied by the anticipated shortfall, and the result was added to that sector's total revenue requirement for FY 1999. Finally, the total revenue requirement was divided by the total number of estimated units to determine the per unit fee for each category.[26]

23. Section 9(i) states that "(t)he Commission shall develop accounting systems necessary to making the adjustments authorized by subsection (b)(3)." Subsection (b)(3) states that "(i)n addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires an amendment to comply with the requirements of paragraph (1)(A)." Paragraph (2) refers to paragraph (b)(2) which requires that "the Commission shall, by rule, revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect, in accordance with paragraph (1)(B), changes in the amount appropriated for the performance of the activities described in subsection (a) for such fiscal year." Subsection (b)(2)(A) requires the adjustments to be made in accordance with the "increases or decreases in the number of licensees or units subject to payment of such fees." Subsection (b)(2)(B) requires that the fees be "established at amounts that will result in collection of an aggregate amount of fees pursuant to this section that can reasonably be expected to equal the aggregate amount of fees that are required to be collected by appropriations Acts pursuant to paragraph (1)(B)."

24. Given the provisions as a whole, the statute requires that, first and foremost, we must attempt to collect the aggregate amount that Congress requires in the appropriation Act, i.e. $172,523,000 for FY 1999. To achieve this, we must first adjust our estimates of payment units and apply proportionate shares of the shortfall to all fee categories until the $172,523,000 total is reached. At this point, we have the option of making permitted amendments, *if we determine that it is required.* Bearing in mind that any reduction in the fee obligations for any fee category must result in additional increases in the fee obligations imposed on all other fee categories to insure full collection of the $173,523,000, we (with one minor exception, namely FM Construction Permits) did not propose such amendments, and use of the cost accounting system to support such adjustments was not necessary. Finally, our cost accounting system has been previously explained in great detail in our FY 1996 and FY 1997 proceedings. It is the language of the Act in section (b)(2) which establishes the relationship between the number of payment units and the costs we must recover for our regulatory activities. Nothing in CTIA's argument convinces us that we erred in our methodology.

25. CTIA also argues that we have seriously underestimated the number of CMRS units. It states that it "is confident that the number of CMRS mobile services units has risen dramatically over last year—enough to result in a substantial decrease in per unit charges."[27] CTIA states that the "correct number for FY 1999 is 69,209,000 units, not the 55,540,000 units the Commission has estimated."[28] In its comments, AirTouch also argues that our estimate is too low.

26. In determining its estimates of the number of payment units, the Commission consults several sources, if available. We have found that there are often large disparities in the estimates provided by various industry associations. These differences may be due to the differences in purposes for which the data is gathered, sampling methods used, etc. It should be further noted that our experience with industry estimates in prior years has resulted in high levels of underpayment in the CMRS category. Given the fact that we are required by the statute to collect "an amount that can reasonably be expected to equal the amount appropriated * * *" we have proposed to establish estimates that more closely match the number of units for which payments have been received. With regard to the CMRS sector, the following chart shows the number of subscriber payment units estimated and the actual number based on fee payments per year.

	CMRS mobile	CMRS messaging
FY 1995 ESTIMATE	23,400,000	19,600,000
FY 1995 ACTUAL	22,959,273	12,189,094
FY 1996 ESTIMATE	30,000,000	24,500,000
FY 1996 ACTUAL	24,560,543	18,810,299
FY 1997 ESTIMATE	51,472,190	48,900,000
FY 1997 ACTUAL	43,553,534	31,047,469
FY 1998 ESTIMATE	55,540,000	39,592,000
FY 1998 ACTUAL	54,730,365	34,373,200

Given the data before us, while recognizing it is a conservative increase over the 1998 actual figure, we continue to believe our estimate for 1999 is

[20] See FY 1999 NOI at paragraph 9.

[21] CTIA comments at p. 2.

[22] CTIA comments at p. 2.

[23] "Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated." Notice at paragraph 9, n.16. For the purpose of these Comments, the term "subscribers" is used interchangeably with "units."

[24] CTIA comments at p. 2.

[25] CTIA comments at p. 2–3.

[26] CTIA comments at p. 3.

[27] CTIA comments at p. 5

[28] CTIA comments at p. 5.

reasonable, especially in light of our reclassification of small SMR systems.

v. Re-Activation of Interactive Video Data Services Fee (Now 218–219 MHz Service)

27. When the *NPRM* was being developed, it was thought that there would be no interactive video data service (IVDS) applications received in FY 1999. No new assignments are available and most previous authorizations were granted for a ten-year license term (none of which expire in FY 1999). After release of the *NPRM*, it was discovered that there are 513 IVDS licenses that were issued with five-year expiration dates that will come up for renewal in FY 1999. Therefore, we are re-activating the regulatory fee for IVDS (now 218–219 MHz Service) and have calculated it to be $13 on an annual basis. The entire regulatory fee will be $65 for a five-year term.

D. Other Issues Raised by Commenters

28. On November 10, 1998, the Commission adopted a *Notice of Inquiry* in this proceeding seeking comments on five specific issues.[29] Briefly, the issues for which comments were sought included: (1) Clarification of the Commercial Mobile Radio Services ("CMRS") fee categories and demarcation of which types of services or usage to include in each category; [30] (2) determination of the appropriate basis for assessing regulatory fees on geostationary orbit space stations ("GSOs"); (3) determination of the appropriate method of assessing our regulatory costs associated with non-geostationary orbit space station systems ("NGSOs") to licensees which have launched satellites or to all NGSO licensees; (4) whether we should base revenues for interstate telephone service providers on the Universal Services Fund's end user methodology rather than the Telecommunication Relay Services Fund's adjusted gross revenue methodology; and (5) whether we should create a "new services" category in our cost accounting system in which costs associated with development of new services, regardless of the service, would be proportionately assessed to all feeable categories rather than assessed to existing licensees in the same service category. In the interest of expediting the *NPRM*, we deferred analysis of the comments and replies received pursuant to the *NOI* for inclusion in this final *Report and Order*.

29. In addition to the comments which support the changes we are adopting in this *Report and Order*, commenters expressed other views which we intend to address here. These issues cover comments and reply comments received on both the *NOI* and the *NPRM*.

i. Interstate Telephone Service Providers

30. In the NOI,[31] we solicited comment on BellSouth Corporation's (BellSouth) proposal to change the methodology used to assess fees upon interstate telephone service providers. Specifically, BellSouth proposed that the regulatory fees imposed upon interstate telephone service providers be based on their end user revenues (i.e., the same contribution base used for the Universal Fund), instead of the current methodology, which is based on their proportionate share of industry net revenues (i.e., the same contribution base used for the TRS Fund). BellSouth contended that its proposal is "more competitively neutral," given that the current methodology favors interexchange carriers ("IXCs") by virtue of the fact that they are able to deduct payments made to the underlying carriers. The end user methodology was opposed by MCI WorldCom, Inc. (MCI WorldCom), which claimed that this methodology effectively would shift regulatory costs from the local exchange carriers ("LECs") to the "highly competitive, price sensitive" IXCs (which unlike LECs cannot recover their costs through regulated rates) and, as such, would not be competitively neutral. BellSouth supported the end user methodology, but recommended that the Commission defer consideration on the appropriate methodology until it concludes the pending rulemaking (CC Docket No. 98–171, *In the Matter of 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms)*, which is examining, among other things, both TRS and Universal Fund support mechanisms.[32] We believe that properly calculated, the end result should be relatively equivalent regardless of whether the fee is based on gross revenues less expenses paid to the underlying carriers or end user revenues.

31. We are unpersuaded by MCI WorldCom, Inc.'s contention that the end-user telecommunications revenue method is not competitively neutral simply because it will attribute a greater portion of direct contributions to IXCs.[33] As support for its proposal that the Commission utilize a net telecommunications revenue basis for NANP and TRS, MCI correctly observes that the portion of contributions paid by IXCs will likely increase, as compared to that paid directly by local service providers, under an end-user telecommunications revenue basis, primarily because toll carriers, including IXCs, will contribute based on the revenues they collect from their end users to pay incumbent LECs' access charges. As described above, however, the end-user basis meets our two prong test for competitive neutrality, as set out in the LNP Cost Recovery Order.[34] The fact that carriers—whether IXCs or incumbent LECs—providing interstate toll services to end users may bear a slightly higher portion of contributions does not alter that analysis, because, even assuming that MCI's projections are correct, this change would not give one service provider an appreciable, incremental cost advantage when competing for a particular subscriber.

32. Further, we believe that MCI's analysis of the purported burden shift falls short. We do not believe that this change in revenue basis will significantly favor one segment of the industry over another. To the extent that direct contributions are shifted, we note that IXCs would incur those costs attributable to access revenues under both a net telecommunications revenue basis and an end-user telecommunications revenue basis.[35] For example, contributions to the TRS mechanism under the current gross telecommunications revenue basis are treated as exogenous costs under price cap regulation, meaning that the overwhelming majority of these costs are passed through to toll carriers under

[29] 63 FR 70090 (Dec. 18, 1998).

[30] In this regard we specifically requested additional comments on a proposal raised by BellSouth Wireless in its Petitions for Reconsideration of the FY 1997 and FY 1998 Rulemakings, that the Commission reclassify 900 MHz SMR Service into the CMRS Message Service.

[31] See FY 1999 NOI at paragraph 15.

[32] FCC 98–233, released September 25, 1998, 63 FR 54090 (Oct. 8, 1998).

[33] See MCI Reply Comments at 4.

[34] See LNP Cost Recovery Order, paragraph 106–107.

[35] See Telecommunications Relay Services and the Americans with Disabilities Act of 1990, Second Order on Reconsideration and Fourth Report and Order, FCC 93–463, Docket No. 90–571, 9 FCC Rcd 1637 (rel. Sept. 29, 1993) (clarifying that TRS Fund contributions may be treated as exogenous costs under price cap regulation). To this end, we believe that AT&T suggestion concerning price cap reductions would be more appropriately considered in access charge proceedings. See CFR section 69.1. See also LNP Cost Recovery Order, paragraph 109 (suggesting that incumbent LECs would like pass on shared costs of number portability to IXCs through exogenous treatment in their access rates).

either methodology.[36] As the Commission concluded in the LNP Cost Recovery Order, because the end-user telecommunications revenue basis reaches the same result, but without the inefficiency and added complication of the pass-through step, we prefer the end-user telecommunications revenue basis.[37] In any event, we agree with BellSouth that any decision on the appropriate methodology should be deferred until the conclusion of the pending rulemaking proceeding.

ii. New Serices Fee Category

33. In the *NOI* we sought comments on establishing a new services fee category. The regulatory costs associated with the policy and rulemaking to establish new and emerging technologies and services were to be charged to the new services activity. The costs attributed to the new services category were then to be distributed proportionally to *all* other feeable activities, and would not be borne by a specific, established service.

34. GE American Communications, Inc. (GE) argues in support of establishing a new services fee category on the basis that until an authorization is granted, licensees are unknown and it would be unfair to attribute the costs to existing licensees. BellSouth, Personal Communications Industry Association (PCIA), and Lockheed Martin, on the other hand, disagree that it would be appropriate to charge costs to licensees in other unrelated service categories in the form of overhead when it is clear that they derive no benefit from the regulatory activity. Indeed, as BellSouth points out, under section 9(a)(1), the Commission shall assess and collect regulatory fees for rulemaking proceedings, which would include the costs associated with the introduction of new services. However, section 9(b)(1)(A) provides that the fees assessed must be adjusted "to take into account factors that are reasonably related to the payor of the fee." BellSouth thus asserts that an "across-the-board" new service fee category would not comply with section 9(b)(1)(A), because it would impose fees on payers who are not benefited by the introduction of the new service.

35. We are not persuaded that creation of a new services category is appropriate at this time. Further, this concept presents technical and policy problems with respect to our current cost accounting system which cannot be resolved for FY 1999 fee collections. Data is not available in its present form and costs cannot be reallocated as would be necessary to implement a new services fee category now. We are in the planning stages for rewriting the software for our cost accounting system, and this issue will become part of those discussions.

iii. COMSAT and Non-U.S. Licensees

36. PanAmSat and GE American Communications argue that we should impose fees on COMSAT Corporation (COMSAT) to recover the Signatory and other expenses created by COMSAT. Loral Space & Communications states that because COMSAT competes with other U.S. satellite operators that are subject to regulatory fees, it is given a clear advantage over its competitors. Loral Space and Communications, therefore, contends that the Commission should impose fair and equitable fees on COMSAT. This issue has been considered and dismissed several times. In addition, GE, the Satellite Industry Association (SIA), and PanAmSat contend that the cost of regulation should be borne by all satellite service providers, which in light of the recent privatization of Inmarsat Limited, should include fair share payments from COMSAT and foreign-licensed satellite providers. Previously, because of the International Organization Immunities Act, COMSAT was exempt from paying regulatory fee payments for Inmarsat space stations. In its reply comments, COMSAT argues to the contrary that neither COMSAT, INTELSAT, nor Inmarsat are subject to Section 9 of the Communications Act of 1934, and neither Inmarsat nor its satellites are subject to Title III of the Act. In short, COMSAT argues that the FCC lacks jurisdiction in imposing space station or any new category of fees on COMSAT because "regulatory fees apply only to space stations directly licensed by the FCC under Title III of the Communications Act." Finally, SIA questions the estimate of 42.5 GSO space stations.

37. COMSAT has in the past and continues to be responsible for payment of regulatory fees for its licensed facilities. For example, in FY 1998, COMSAT paid regulatory fees for two geostationary space stations, 142 earth stations, and 53,957 international bearer circuits for a total of $585,172. With respect to the estimate of 42.5 GSO space stations, based on the October 1, 1998 cut-off date, there are 43 satellites in operation. However, Columbia received a waiver for one-half the capacity for one of its satellites. The waiver was granted because Columbia established that, unlike other U.S. fixed satellite service licensees, it was under contract with NASA, its satellite capacity was not entirely within its control, and its use was secondary to NASA's.[38] Therefore, the GSO fees was formulated based on 42.5 satellites.

38. The space station facilities owned by INTELSAT and Inmarsat are not licensed to COMSAT. COMSAT has been designated to represent the United States as its signatory agent. As COMSAT argues, the courts have ruled that we may not assess a fee upon COMSAT for its role in the administration of the INTELSAT and Inmarsat space stations. Moreover, commenters have argued that since Inmarsat space stations were converted "to a newly created private company, Inmarsat Limited (incorporated in the United Kingdom), COMSAT's exemption from payment in relation to the Inmarsat system should be eliminated. Legislation requiring INTELSAT to privatize is currently pending before Congress, and full privatization is not complete. At present, it is not clear who will hold the license after privatization. Therefore, COMSAT presently remains as the designated U.S. Signatory to INTELSAT. Regardless of COMSAT's interest in the INTELSAT satellites in question, they are not licensed under Title III and, therefore, not subject to regulatory fees.[39]

39. It has also been suggested that non-U.S. licensed satellite service providers who operate in the U.S. should be assessed regulatory fees. Clearly, legislative history provides that only space stations licensed under Title III may be subject to regulatory fees. Although non-U.S.-licensed satellite operators do compete with U.S.-licensed satellite operators, they are not licensed under Title III. Therefore, we cannot include operators of non-U.S.-licensed satellite space stations among regulatory fee payers.

iv. Non-Common Carrier Bearer Circuits

40. The Satellite Industry Association ("SIA") maintains that the Commission should revisit whether it is authorized to assess international bearer circuit regulatory fees on non-common carrier satellite operators. According to SIA, because section 9 of the Communications Act specifies that carriers are required to pay international

[36] Id.

[37] See LNP Cost Recovery Order, paragraph 109.

[38] 1999 Westlaw 22920. In regarding Application of Columbia Communications Corporation, FCC 98–299 (January 22, 1999) (WESTLAW, FCOM–FCC library).

[39] *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 60 FR 30004 (June 29, 1995) and *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 62 FR 37408 (July 11, 1997). *COMSAT Corp v. Federal Communications Commission*, 114 F. 3d 223 (D.C. Cir. 1997).

bearer circuit fees, the Commission is only authorized to collect such fees from common carriers, not non-common carrier satellite operators. PanAmSat, in support of SIA, asserts that because non-common carrier bearer circuits are offered on a private basis and not subject to Title II regulations, they do not exact the same regulatory costs and should not be subject to the same regulatory fees as common carrier satellite operators.

41. In response to SIA's position that international bearer circuit regulatory fees be imposed only on common carriers, the Commission contends that SIA's argument is a matter of terminology. When section 9 was initially drafted, the fee schedule was divided along the lines of the existing bureaus and offices at the time. Since then, the Commission has undergone reorganizations and shifting of responsibilities for administering several services. When the original legislation was drafted, international bearer circuits were administered by the Common Carrier Bureau—thus in the Common Carrier Bureau section of the original schedule. With the creation of the International Bureau, international bearer circuits became the responsibility of the International Bureau. Moreover, justification for including non-common carrier circuits, which serve users internationally, was provided in previous years' proceedings.[40]

v. Geostationary Orbit Space Stations ("GSOs")

42. In the NOI,[41] we noted that the method of calculating and assessing the regulatory fees imposed on GSO licensees on a "per satellite basis" has been controversial and the subject of comments for several years. Therefore, we solicited comment on alternative methods for calculating and assessing GSOs regulatory fees. In this connection, we specifically requested commenters to "specify the data upon which we can base any alternative approach and the most feasible method for obtaining the data necessary to calculate fees".[42] However, notwithstanding alternative methods for calculating regulatory fees, it is important to note that the percentage of increase in FY 1999 fees will not exactly match the overall Congressional increase of 6 percent. For most fee categories, the increase will be less than 10 percent, which is necessary to cover the costs of services that are exempt from payment of regulatory fees. In our FY 1998 *Report and Order* at paragraph 51, we explained that the costs used to develop our fees were derived from our cost accounting system which separates application processing costs from regulatory costs. We find nothing in the arguments put forth by the Satellite Industry Association ("SIA") and GE American Communications ("GE") which persuade us that our methodology is incorrect.

43. PanAmSat, Loral and GE argue that the regulatory fees imposed on in-orbit GSOs bear scant relationship to the Commission's costs. Specifically, they argue that the Commission's costs are primarily incurred at the application stage, and are recovered through the substantial application fees imposed on GSO licensees. Because the Commission's oversight is very limited once the GSO space station is in orbit, they urge the Commission to re-examine the assessment of regulatory fees in this context to ensure that GSO licensees are not subsidizing other services.

44. The Commission incurs costs for satellite policy and rulemaking, enforcement and user information activities. As directed by Congress, these costs must be recovered through the collection of regulatory fees. In accordance with the provisions of Section 9, the Commission's overall goal is to recover all of the costs associated with satellite regulatory activities and to distribute these costs fairly amongst fee payers, taking into account factors reasonably related to the benefits provided by the payer, as well as "other factors we determine are necessary in the public interest."

vi. Non-Geostationary Orbit Space Stations ("NGSOs")

45. In our NOI,[43] we noted that Orbital Communications Corporation ("ORBCOMM") had submitted comments in our FY 1998 rulemaking proceeding, challenging the Commission's practice of requiring each NGSO licensee to pay regulatory fees upon commencement or certification of its first satellite's operation.[44] ORBCOMM contended that because all NGSOs licensees benefit from the Commission's policy, enforcement and information activities and services, they all should be required to pay regulatory fees, irrespective of whether they have launched their first satellite. Space Imaging L.P. (Space Imaging) suggests that the Commission should create a new regulatory fee category for small constellations of non-geostationary orbit (NGSO) satellites. Further, Space Imaging recommends that the two categories be: (1) systems of up to five satellites and (2) systems of more than five satellites. Orbital Communications Corporation (ORBCOMM) argues that all NGSO systems authorized should pay regulatory fees regardless of whether or not there is at least one satellite launched and operational. L/Q Licensee, Inc. (LQL) and Globalstar LP (Globalstar) contend that a NGSO system is not operational until more than one satellite is capable of operating. LQL and Globalstar recommend that we delay requiring fee payment until the full constellation is completed, or that we establish a lower fee of 25% when only the first satellite becomes operational.

46. For the reasons stated above, we believe that the methodology for establishing the fee increase is reasonable. Regarding L/QL's and Globalstar's proposal to delay fee payments, we decline to adopt the proposal. We have previously dismissed the idea of waiting until the full constellation is completed because of the potentially lengthy time that it takes to construct the entire system.[45] The amount of revenue required for commercial viability will also vary from system to system, particularly since there is no standard time-frame to achieve commercial viability. Further, we are concerned that any attempt to establish a lower percentage fee will be fraught with endless discussion of what that percentage should be. The concept of establishing separate categories for small and large constellations may warrant consideration. However, further study is needed and more systems need to be operational before we can properly evaluate its appropriateness. For FY 1999, the fee payment criteria for NGSO systems will remain unchanged.

vii. Commercial Radio and Television

47. The National Association of Broadcasters (NAB) supports the Commission's use of allocating fees for AM and FM stations based on station class and population served by each station. According to NAB, it received fewer complaints in 1998 after the Commission revised its AM and FM station fee methodology. Although NAB acknowledges that the Commission's 1998 fee methodology is a noticeable improvement from 1997, NAB argues that stations located in suburban areas, but close to larger urban centers, are assessed a larger licensing fee simply because they are located near larger advertising markets. For equitable reasons, NAB urges the Commission to entertain requests for partial fee waivers from stations that are located close to a larger listening audience.

48. Although NAB supports the Commission on its allocation of fees on an individual station basis, NAB disagrees with the Commission for increasing the broadcast industry's overall fees by 9.4 percent rather than by the 6% that Congress required the Commission to collect. NAB acknowledges that the increase is a congressional requirement, but feels that the 9.4% increase for the broadcast industry as a whole is far greater than what Congress required of the Commission, particularly since the number of payment units in the broadcast industry has increased from the previous year. Furthermore, NAB also argues that the Commission does not explain the basis of its costs in regulating the broadcast industry, except by showing that the number of FY 1999 estimated units were multiplied by the FY 1998 fee, and pro-rated among all existing fee categories. Hence, according to NAB, without these calculations, it is not easily apparent whether the cost of regulating the broadcast industry has actually increased or decreased, or whether the broadcast industry is bearing the costs of regulating other aspects of the communication industry. Finally, NAB also argues that the fruits of the Commission's streamlining efforts should be incorporated into the fee methodology, resulting in lower application and regulatory fees.

49. With respect to NAB's request that partial fee waivers be granted, the Commission's rules already provide for petitions for waivers. We will consider such requests on an individual basis and on the particular merits of the situation. Absent specific information to indicate whether a waiver is warranted, it would be inappropriate to guarantee results in favor of any group of broadcast licensees in general herein.

50. Although the overall regulatory fee increase is approximately 6%, factoring in costs for exempt entities, overhead, and changes due to increases or decreases in payment units could cause some shifting or cross-subsidization, which means that application of the required increase may not fall equally on every group of fee payers. Cost data from our cost accounting system was reviewed before making the decision not to apply the data across-the-board to all services as wholesale permitted amendments. The use of the cost data in implementing this cost shifting proved too extreme and would have required significantly higher increases in several fee categories than the 9.4 percent that NAB questions. This occurs because the actual costs attributable to several other services would require fees that are as much as several thousand percent above what it would be reasonable and fair to charge. Also, a few services would have decreases in fees which would require adding more costs to other services in order to collect the amount that Congress requires us. Finally, as many other commenters, NAB argues that its industry is being streamlined or deregulated. Nearly all commenters have argued that deregulation has benefited one industry over another. However, ultimately, it does not change the fact that we must collect the full $172.5 million proportionately from all payers.

viii. Fee Filing Software

51. The Walt Disney Company states that while the Commission prefers that payers of multiple fees file using FCC software, that software has been plagued with errors and released too near the payment deadline.

52. The Commission recognizes, and is striving to remedy, the problems associated with the software and the late release last year. We are planning to conduct beta testing and to release the "fee filer" user software in July 1999, well in advance of the filing deadline of mid-September. A Public Notice will be released including a detailed description of the software application. Anyone wishing to participate in the beta testing may contact Linwood Jenkins at (202) 418–1995.

53. Regulatees paying for more than 50 licenses may utilize the "fee filer" software; or complete the individual copies of the FCC Form 159 and 159C. The FCC Form 159 must be completed in its entirety. Improperly completing the FCC Form 159 and 159C will result in a delay in crediting your account. These are the only two acceptable methods of submission. The Commission will not accept any attachments listing call signs. Each call sign must be listed separately on the Form 159/159C in order to receive proper credit.

E. Procedures for Payment of Regulatory Fees

54. Generally, we will retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

55. As we have in the past, we are treating regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their respective regulatory fee category. The payment dates for each regulatory fee category will be announced either in this *Report and Order* terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

56. As we noted in the *NPRM*, time constraints will preclude an opportunity for installment payments. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, there will not be sufficient time for installment payments, and regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for a single payment will be announced either in this *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

57. As we have in the past, we are treating regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.[46] Payers of advance fees

[40] See FY 1998 Report & Order at paragraphs 57–63.

[41] See FY 1999 NOI at paragraph 10.

[42] See FY 1999 NOI at paragraph 10.

[43] See FY 1999 NOI at paragraph 11.

[44] See FY 1998 Report & Order at paragraph 55.

[45] *Assessment and Collections of Regulatory Fees for Fiscal Year 1997*, 62 FR 37408 (July 11, 1997), at paragraph 75.

[46] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship)

Continued

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will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term must be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in this *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

58. As we have in the past, we are establishing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 1999.

v. Standard Fee Calculations and Payment Dates

59. As noted, the time for payment of standard fees and any installment payments will be announced in this *Report and Order* terminating this proceeding or will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services, whose fees are not based on a subscriber, unit, or circuit count, fees must be paid for any authorization issued on or before October 1, 1998.[47]

60. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of the regulatees' subscribers, units or circuits on *December 31, 1998*, will be used to calculate the fee payment.[48]

vi. Improved Fee Collection Systems

61. The Commission is taking several steps to improve its fee collection program. Development of a new fee collections system is currently underway that will provide a single improved internal source of information for all of the Commission's financial transactions. In addition, we are establishing procedures that will require assignment of a unique identifier code to each entity doing business with the FCC to enable it to track payments and other transactions made by the entity, even when its name or ownership changes. These enhancements will assist the FCC in identifying all feeable entities and ensuring that proper payments are received and recorded accurately.

vii. Late or Insufficient Regulatory Fee Payment

62. As a reminder, in accordance with section 1.1164 of the Commission's Rules, regulatees will be subject to a 25 percent penalty for late or insufficient regulatory fee payment. All payments not received by the due date shall be assessed the penalty.

F. Schedule of Regulatory Fees

63. The Commission's Schedule of Regulatory Fees for FY 1999 is contained in Attachment D of this *Report and Order*.

IV. Procedural Matters

A. Ordering Clause

64. Accordingly, it is ordered that the rule changes specified herein are adopted. It is further ordered that the rule changes made herein will become effective 60 days from the date of publication in the **Federal Register**, except that changes to the Schedule of Regulatory Fees made pursuant to section 9(b)(3) of the Communications Act, and incorporating regulatory fees for FY 1999, will become effective September 10, 1999, which is 90 days from the date of notification to Congress. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Office of Public Affairs send this to Small Business Administration. Finally, it is ordered that this proceeding is *Terminated*.

B. Authority and Further Information

65. This action is taken pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended,[49] 47 U.S.C. 154(i) and (j), 9, and 303(r).

66. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. Sec. 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz, Base Station and SMRS) (47 CFR, Part 90).		
(a) 800 MHz, New, Renewal, Reinstatement (FCC 600)	$13.00	FCC, 800 MHz, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) 900 MHz, New, Renewal, Reinstatement (FCC 600)	13.00	FCC, 900 MHz, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(c) 470–512,800,900, 220 MHz, 220 MHz Nationwide Renewal (FCC 574R, FCC 405A).	13.00	FCC, 470–512, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Correspondence Blanket Renewal (470–512,800,900,220 MHz) (Remittance Advice, Correspondence).	13.00	FCC, Corres., P.O. Box 358130, Pittsburgh, PA 15251–5130.
(e) 220 MHz, New, Renewal, Reinstatement (FCC 600)	13.00	FCC, 220 MHz, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(f) 470–512 MHz New, Renewal, Reinstatement (FCC 600).	13.00	FCC, 470–512 P.O. Box 358130, Pittsburgh, PA 15251–5130.
(g) 220 MHz Nationwide, New, Renewal, Reinstatement (FCC 600).	13.00	FCC, Nationwide, P.O. Box 358130, Pittsburgh, PA 15251–5130.
2. Microwave (47 CFR Pt. 101):		
(a) Microwave, New, Renewal, Reinstatement (FCC 415)	13.00	FCC, Microwave, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Microwave, Renewal (FCC 402R)	13.00	FCC, Microwave, P.O. Box 358255, Pittsburgh, PA 15251–5255.
(c) Correspondence,s Blanket Renewal (Microwave) (Remittance Advice, Correspondence).	13.00	FCC, Corres., P.O. Box 358130, Pittsburgh, PA 15251–5130.
3. 218–219 MHz Service:		
(a) New, Renewal (FCC 574 or FCC 600)	13.00	FCC, 218–219 MHz Service, P.O. Box 358130, Pittsburgh, PA 15251–5130.
4. Shared Use Services:		
(a) Land Transportation (LT), New, Renewal, Reinstatement (FCC 600).	7.00	FCC, Land Trans., P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Business (Bus.) New, Renewal, Reinstatement (FCC 600).	7.00	FCC, Business, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(c) Other Industrial (OI), New, Renewal, Reinstatement (FCC 600).	7.00	FCC, Other Indus., P.O. Box 358130, Pittsburgh, PA 15251–5130.
(d) General Mobile Radio Service (GMRS), New, Renewal, Modifications (RM) (FCC 605).	7.00	FCC, GMRS P.O. Box 358130, Pittsburgh, PA 15251–5130.
(e) Business, Other Industrial, Land Transportation, Renewal (FCC 574R, FCC 405A).	7.00	FCC, Bus., OI, LT, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(f) GMRS Renewal (RO) (FCC 605)	7.00	FCC,GMRS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(g) Ground, New, Renewal, Reinstatement (FCC 406)	7.00	FCC, Ground, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(h) Coast, New, Renewal, Reinstatement (FCC 503)	7.00	FCC, Coast, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(i) Ground, Renewal (FCC 452R)	7.00	FCC, Ground, P.O. Box 358270, Pittsburgh, PA 15251–5270.
(j) Coast, Renewal (FCC 452R)	7.00	FCC, Coast, P.O. Box 358270, Pittsburgh, PA 15251–5270.
(k) Ship, New, Renewal, Reinstatement (FCC 506)	7.00	FCC, Ship, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(l) Aircraft, New, Renewal,Modification (RM), Reinstatement (FCC 605).	7.00	FCC, Aircraft, P.O. Box 358130 Pittsburgh, PA 15251–5130.
(m) Ship, Renewal (FCC 405B)	7.00	FCC, Ship, P.O. Box 358290, Pittsburgh, PA 15251–5290.
(n) Aircraft, Renewal (RO) (FCC 605)	7.00	FCC, Aircraft, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(o) Correspondence, Blanket Renewal (Bus.,OI,LT) (Remittance Advice, Correspondence).	7.00	FCC, Corres. P.O. Box 358130, Pittsburgh, PA 15251–5130.
(p) Correspondence, Blanket Renewal (Ground) (Remittance Advice, Correspondence).	7.00	FCC, Corres., P.O. Box 358130, Pittsburgh, PA 15251–5130.
(q) Correspondence, Blanket Renewal (Coast) (Remittance Advice, Correspondence).	7.00	FCC, Corres., P.O. Box 358130, Pittsburgh, PA 15251–5130.
(r) Correspondence, Blanket Renewal (Ship) (Remittance Advice, Correspondence).	7.00	FCC, Corres., P.O. Box 358130, Pittsburgh, PA 15251–5130.
5. Amateur Vanity Call Signs	1.40	FCC, Amateur Vanity, P.O. Box 358924, Pittsburgh, PA 15251–5924.
6. CMRS Mobile Services, (per unit)	.32	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835.
7. CMRS Messaging Services (per unit)	.04	FCC, Messaging, P.O. Box 358835, Pittsburgh, PA 15251–5835.

[1] Note that *small fees* are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table must be multiplied by the 5-or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in Section 1.1102 of this chapter.

3. Sec. 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
I. Radio [AM and FM] (47 CFR, Part 73)		
1. AM Class A:		
<=20,000 population	$430	FCC, Radio, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
20,001–50,000 population	825	
50,001–125,000 population	1,350	
125,001–400,000 population	2,000	
400,001–1,000,000 population	2,750	

Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, 218–219 MHz Service (previously IVDS), and General Mobile Radio Service (GMRS).

[47] Where a license or authorization is transferred or assigned after October 1, 1998, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

[48] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: BulkRate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1998, rather than on a count as of December 31, 1998.

[49] 47 U.S.C. 154(i)–(j), 159, & 303(r).

	Fee amount	Address
>1,000,000 population	4,400	
2. AM Class B:		
<=20,000 population	325	
20,001–50,000 population	650	
50,001–125,000 population	875	
125,001–400,000 population	1,400	
400,001–1,000,000 population	2,250	
>1,000,000 population	3,600	
3. AM Class C:		
<=20,000 population	225	
20,001–50,000 population	325	
50,001–125,000 population	450	
125,001–400,000 population	675	
400,001–1,000,000 population	1,250	
>1,000,000 population	1,750	
4. AM Class D:		
<=20,000 population	275	
20,001–50,000 population	450	
50,001–125,000 population	675	
125,001–400,000 population	825	
400,001–1,000,000 population	1,500	
>1,000,000 population	2,250	
5. AM Construction Permit	260	
6. FM Classes A, B1 and C3:		
<=20,000 population	325	
20,001–50,000 population	650	
50,001–125,000 population	875	
125,001–400,000 population	1,400	
400,001–1,000,000 population	2,250	
>1,000,000 population	3,600	
7. FM Classes B, C, C1 and C2:		
<=20,000 population	430	
20,001–50,000 population	825	
50,001–125,000 population	1,350	
125,001–400,000 population	2,000	
400,001–1,000,000 population	2,750	
>1,000,000 population	4,400	
8. FM Construction Permits	780	
II. TV (47 CFR, Part 73) VHF Commercial:		
1. Markets 1 thru 10	41,225	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	34,325	
3. Markets 26 thru 50	23,475	
4. Markets 51 thru 100	13,150	
5. Remaining Markets	3,400	
6. Construction Permits	2,775	
III. TV (47 CFR, Part 73) UHF Commercial:		
1. Markets 1 thru 10	15,550	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	11,775	
3. Markets 26 thru 50	7,300	
4. Markets 51 thru 100	4,350	
5. Remaining Markets	1,175	
6. Construction Permits	2,900	
IV. TV (47 CFR, Part 73) Satellite UHF/VHF Commercial:		
1. All Markets	1,300	FCC Satellite TV, P.O. Box 358835 Pittsburgh, PA 15251–5835.
2. Construction Permits	460	
V. Low Power TV, TV/FM Translator,& TV/FM Booster (47 CFR, Part 74).	290	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
VI. Broadcast Auxiliary	12	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.
VII. Multipoint Distribution	285	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251–5835.

4. Sec. 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
I. Radio Facilities:		
1. Microwave (Domestic Public Fixed)	$13	FCC, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
II. Carriers:		

	Fee amount	Address
1. Interstate Telephone Service Providers (per dollar contributed to TRS Fund).	.00121	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA.

5. Sec. 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service	$55	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835
2. Cable TV System (per subscriber)	.48	

6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
I. Radio Facilities:		
1. International (HF) Broadcast	$520	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. International Public Fixed	410	FCC, International, P.O. Box 358835 Pittsburgh, PA 15251–5835.
II. Space Stations (Geostationary Orbit)	130,550	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
III. Space Stations (Non-Geostationary Orbit)	180,800	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
IV. Earth Stations Transmit/Receive and Transmit Only (per authorization or registration).	180	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835.
V. Carriers:		
1. International Bearer Circuits (per active 64KB circuit or equivalent).	7.00	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.

Note: The following attachments will not appear in the Code of Federal Regulations.

Attachment A—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[50–51] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, 64 FR 16661 (Apr. 6, 1999). The Commission sought written public comments on the proposals in its FY 1999 regulatory fees *NPRM*, including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended (see 5 U.S.C. 604).

I. Need for, and Objectives of, the Rules

2. This rulemaking proceeding was initiated in order to collect regulatory fees in the amount of $172,523,000, the amount that Congress has required the Commission to recover through the collection of regulatory fees in FY 1999. The Commission seeks to collect the necessary amount through its revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

[50–51] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. None.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[52] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[53] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[54] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[55] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[56] Nationwide, as of 1992, there were approximately 275,801 small organizations.[57] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[58] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[59] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[60] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules, herein adopted.

Cable Services for Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in

[52] 5 U.S.C. 603(b)(3).

[53] *Id.* 601(6).

[54] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[55] Small Business Act, 15 U.S.C. 632 (1996).

[56] 5 U.S.C. 601(4).

[57] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[58] 5 U.S.C. 601(5).

[59] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[60] *Id.*

revenue annually.[61] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[62]

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[63] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[64] Since then, some of those companies may have grown, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[65] The Commission has determined that there are 64,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[66] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[67] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[68] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[69] multipoint distribution systems (MDS),[70] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.[71] According to data in the most recent report, there are 3,528 interstate carriers.[72] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[73] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."[74]

12. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[75] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."[76] For example, a reseller that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the rules, herein adopted.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[77] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[78] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the rules, herein adopted.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[79] According to the most recent *Telecommunications Industry Revenue* data, 1,410 carriers reported that they were engaged in the provision of local exchange services.[80] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,410 providers of local exchange service are small entities or small ILECs that may be affected by the rules, herein adopted.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[81] According to the most recent *Trends in Telephone Service* data, 151 carriers reported that they were engaged in the provision of interexchange services.[82] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 151 small entity IXCs that may be affected by the rules, herein adopted.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[83] According to the most recent *Trends in Telephone Service* data, 147 carriers reported that they were engaged in the provision of competitive local exchange services.[84] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 147 small entity CAPs that may be affected by the rules, herein adopted.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[85] According to the most recent *Trends in Telephone Service* data, 32 carriers reported that they were engaged in the provision of operator services.[86] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 32 small entity operator service providers that may be affected by the rules, herein adopted.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[87] According to the most recent *Trends in Telephone Service* data, 509 carriers reported that they were engaged in the provision of pay telephone services.[88] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 509 small entity pay telephone operators that may be affected by the rules, herein adopted.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[89] According to the most recent *Trends in Telephone Service* data, 358 reported that they were engaged in the resale of telephone service.[90] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 358 small entity resellers that may be affected by the rules, herein adopted.

20. 800 and 800-Like Service Subscribers.[91] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[92] According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the rules, herein adopted.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[93] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[94] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.[95] The Census report does not provide more precise data.

22. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

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[61] 13 CFR 121.201, SIC code 4841.

[62] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[63] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[64] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[65] 47 U.S.C. 543(m)(2).

[66] *Id.* 76.1403(b).

[67] Paul Kagan Associates, Inc., *Coble TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[68] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[69] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[70] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

[71] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[72] *Id.*

[73] 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[74] 13 CFR 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

[75] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[76] *See generally* 15 U.S.C. 632(a)(1).

[77] *1992 Census, supra*, at Firm Size 1–123.

[78] 13 CFR 121.201, SIC code 4813.

[79] *Id.*

[80] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[81] 13 CFR 121.201, SIC code 4813.

[82] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[83] 13 CFR 121.201, SIC code 4813.

[84] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[85] 13 CFR 121.201, SIC code 4813.

[86] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[87] 13 CFR 121.201, SIC code 4813.

[88] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[89] 13 CFR 121.201, SIC code 4813.

[90] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[91] We include all toll-free number subscribers in this category, including 888 numbers.

[92] FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

[93] An exception is the Direct Broadcast Satellite (DBS) Service, infra.

[94] 13 CFR 120.121, SIC code 4899.

[95] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

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23. International Public Fixed Radio (Public and Control Stations). There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. Based on actual payments from FY 1998, there are approximately 3,100 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 3,100 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

27. Mobile Satellite Earth Stations. There are 11 licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. Space Stations (Geostationary). Commission records reveal that there are 43 Geostationary Space Station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

30. Space Stations (Non-Geostationary). There are 12 Non-Geostationary Space Station licensees, of which only two systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."[96] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[97] As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that would be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

Mass Media Services

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[98] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[99] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[100] Included in this industry are commercial, religious, educational, and other television stations.[101] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[102] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[103] There were 1,509 television stations operating in the nation in 1992.[104] That number has remained fairly constant as indicated by the approximately 1,564 operating television broadcasting stations in the nation as of December 31, 1997.[105] For 1992,[106] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[107] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[108] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[109] Included in this industry are commercial, religious, educational, and other radio stations.[110] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[111] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[112] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[113] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[114] As of December 31, 1997, Commission records indicate that 12,270 radio stations were operating, of which 7,465 were FM stations.[115] Only commercial stations are subject to regulatory fees.

34. Thus, the rules may affect approximately 1,558 full power television stations, approximately 1,200 of which are considered small businesses.[116] Additionally, the proposed rules will affect some 12,156 full power radio stations, approximately 11,670 of which are small businesses.[117] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,952 low power television stations (LPTV).[118] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.[119] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[120] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.[121]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[122]

37. There are currently 2,720 FM translators and boosters, and 4,952 TV translators.[123] The FCC does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[124]

38. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[125] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[126] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[127] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[128] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[129] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,650 MDS licensees are subject to regulatory fees, and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[130] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[131] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[132] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the rules, herein adopted.

40. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity

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[96] 13 CFR 120.121, SIC code 4841.

[97] 13 CFR 121.201, SIC code 4841.

[98] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Notice* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Notice*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. 601(3).

[99] 13 CFR 121.201, SIC code 4833.

[100] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Estoblishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[101] *Id.*; *see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as:

> Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[102] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[103] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[104] FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[105] FCC News Release, "Broadcast Station Totals as of Dec. 31, 1997."

[106] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." *See 1992 Census, Series UC92–S–1, at III.*

[107] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[108] 13 CFR 121.201, SIC code 4832.

[109] *1992 Census*, Series UC92–S–1, at Appendix A–9.

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[114] FCC News Release, No. 31327 (Jan. 13, 1993).

[115] FCC News Release, "Broadcast Station Totals as of December 31, 1997."

[116] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

[117] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[118] FCC News Release, No. 7033 (Mar. 6, 1997).

[119] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. 102–366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. 103–403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. *See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (Jun. 6, 1970).*

[120] *See, e.g.*, 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); *First Report and Order in Docket No.21474 (Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979), 50 FR 50329 (Dec. 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (Streamlining Broadcast EEO Rule and Policies, Vocating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (Mar. 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[121] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[122] 13 CFR 121.201, SIC code 4832.

[123] FCC News Release, *Broadcast Station Totals as of December 31, 1996*, No. 71831 (Jan. 21, 1997).

[124] 15 U.S.C. 632.

[125] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[126] 47 CFR 1.2110 (a)(1).

[127] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[128] 47 U.S.C. 309(j).

[129] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36–39.

[130] 13 CFR 121.201, SIC code 4812.

[131] *1992 Census, Series UC92–S–1*, at Table 5, SIC code 4812.

[132] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

is a radiotelephone company employing no more than 1,500 persons.[133] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[134] Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

41. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[135] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[136] The SBA has approved these definitions.[137] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[138] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[139] A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

42. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[140] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 137 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[141] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

43. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[142] and the most recent *Telecommunications Industry Revenue* data shows that 23 carriers reported that they were engaged in the provision of SMR dispatching and "other mobile" services.[143] Consequently, we estimate that there are fewer than 23 small mobile service carriers that may be affected by the rules, herein adopted.

44. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[144] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[145] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[146] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[147] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

45. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

46. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[148] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[149] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[150] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

47. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[151] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[152] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

48. Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[153] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

49. The proposed fees in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

50. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

51. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

52. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs[154] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

53. Amateur Radio Service. We estimate that 6,800 applicants will apply for vanity call signs in FY 1999. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

54. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.[155]

55. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 11,600 will be subject to FY 1999 regulatory fees.

56. Fixed Microwave Services. Microwave services include common carrier,[156] private-operational fixed,[157] and broadcast auxiliary radio services.[158] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[159] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

57. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[160] There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[161] All licensees in this category are exempt from the payment of regulatory fees.

58. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signalling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[162] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of these licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

59. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[163] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

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[133] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[134] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC 92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[135] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997).

[136] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, para. 291.

[137] See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[138] See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[139] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[140] 13 CFR 121.201, SIC code 4812.

[141] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[142] 13 CFR 121.201, SIC code 4812.

[143] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[144] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); *see also* 47 CFR 24.720(b).

[145] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[146] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[147] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

[148] The service is defined in 47 CFR 22.99.

[149] BETRS is defined in 47 CFR 22.757 and 22.759.

[150] 13 CFR 121.201, SIC code 4812.

[151] The service is defined in 47 CFR 22.99.

[152] 13 CFR 121.201, SIC code 4812.

[153] 47 CFR 90.814(b)(1).

[154] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

[155] 13 CFR 121.201, SIC code 4812.

[156] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[157] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[158] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[159] 13 CFR 121.201, SIC 4812.

[160] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[161] 5 U.S.C. 601(5).

[162] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401–95.428; 95.1–95.181; 95.201–95.225; 47 CFR 95.191–95.194.

[163] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

60. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

61. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[164] Interstate telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the Telecommunications Relay Service (TRS) Fund, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

62. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. This latter, optional procedure may require additional technical skills. Applicants who pay small fees in advance supply fee information as part of their application or by attaching FCC Form 159, where applicable.

63. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25 percent in addition to the required fee.[165] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[166] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[167] Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[168]

64. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[169] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999*, Public Law 105–277 requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 1999.[170] We have sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small business entities.

66. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology we are adopting in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

67. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 164, *supra*, and Attachment F of the *Report and Order, infra.*

Report to Small Business Administration: The Commission will send a copy of this *Report and Order*, including a copy of the Final Regulatory Flexibility Analysis (FRFA), to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Congress: The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with the *Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA and *Report and Order* (or summaries thereof) will also be published in the **Federal Register**.

Attachment B—Sources of Payment Unit Estimates for FY 1999

In order to calculate individual service fees for FY 1999, we adjusted FY 1998 payment units for each service to more accurately reflect expected FY 1999 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1999 estimates with actual FY 1998 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1999 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1999 payment units are based on FY 1998 actual payment units, it does not necessarily mean that our FY 1999 projection is *exactly* the same number as FY 1998. It means that we have either rounded the FY 1999 number or adjusted it slightly to account for these variables.

[164] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[165] 47 U.S.C. 1.1164(a).

[166] 47 U.S.C. 1.1164(c).

[167] Pub. L. 104–134, 110 Stat. 1321 (1996).

[168] 31 U.S.C. 7701(c)(2)(B).

[169] 47 U.S.C. 1.1166.

[170] 47 U.S.C. 159(a).

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS (now 218–219 MHz Serv.)[171], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on actual FY 1998 payment units adjusted to take into consideration industry estimates of growth between FY 1998 and FY 1999 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1998 payment units.
UHF/VHF Television Stations	Based on actual FY 1998 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1998 payment units.
LPTV, Translators and Boosters	Based on actual FY 1998 payment units.
Auxiliaries	Based on actual FY 1998 payment units.
MDS/MMDS	Based on actual FY 1998 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1998 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 1998 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1999 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1998 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1998 payment units.

[171] After the *NPRM* was issued in this proceeding, the Wireless Telecommunications Bureau's staff advised that they anticipate receiving 513 renewal applications for IVDS in FY 1999. Therefore, there will be a regulatory fee in the 218–219 MHz Service (previously IVDS) category for FY 1999.

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Attachment C

CALCULATION OF REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee Category	FY 1999 Payment Units	(times) FY 1998 Fee	(times) Payment Years	(equals) Computed FY 1999 Revenue Requirement	Pro-Rated Revenue Requirement*	Rounded New FY 1999 Regulatory Fee	Expected FY 1999 Revenue
LM (220 MHz, >470 MHZ-Base, SMRS)	5,800	12	5	348,000	381,799	13	377,000
Private Microwave	5,375	12	10	645,000	707,645	13	698,750
Domestic Public Fixed/Comc'l Microwave	1,000	12	10	120,000	131,655	13	130,000
216-219 MHz Service	513	(12 assumed)	5	30,780	33,789	13	33,345
Marine (Ship)	7,100	6	10	426,000	467,375	7	497,000
GMRS/Other LM	68,700	6	5	2,061,000	2,261,172	7	2,404,500
Aviation (Aircraft)	4,500	6	10	270,000	296,223	7	315,000
Marine (Coast)	1,400	6	5	42,000	46,079	7	49,000
Aviation (Ground)	1,600	6	5	48,000	52,662	7	56,000
Amateur Vanity Call Signs	6,800	6	10	88,400	96,966	1.43	96,732
AM/FM Radio	6,905	1,370	1	12,195,735	13,380,229	1,500	13,381,900
AM Construction Permits	75	235	1	17,625	19,337	260	19,500
FM Construction Permits	300	1,150	1	345,000	378,506	1,250	375,000
Satellite TV	109	1,175	1	128,075	140,514	1,300	141,700
Satellite TV Construction Permit	6	420	1	2,520	2,765	460	2,760
VHF Markets 1-10	42	37,575	1	1,578,150	1,731,426	41,225	1,731,450
VHF Markets 11-25	60	31,275	1	1,876,500	2,058,752	34,325	2,059,500
VHF Markets 26-50	70	21,400	1	1,498,000	1,643,491	23,475	1,643,250
VHF Markets 51-100	119	11,975	1	1,425,025	1,563,429	13,150	1,564,850
VHF Remaining Markets	205	3,100	1	635,500	697,222	3,400	697,000
VHF Construction Permits	15	2,525	1	37,875	41,554	2,775	41,625
UHF Markets 1-10	68	14,175	1	963,900	1,057,517	15,550	1,057,400
UHF Markets 11-25	67	10,725	1	718,575	788,366	11,775	788,925
UHF Markets 26-50	100	6,650	1	665,000	729,587	7,300	730,000
UHF Markets 51-100	150	3,975	1	596,250	654,180	4,350	652,500
UHF Remaining Markets	180	1,075	1	193,500	212,293	1,175	211,500
UHF Construction Permits	60	2,650	1	159,000	174,443	2,900	174,000
Auxiliaries	22,000	11	1	242,000	265,504	12	264,000
International HF Broadcast	5	475	1	2,375	2,606	520	2,600
LPTV/Translators/Boosters	2,020	265	1	535,300	587,290	290	585,800
CARS	1,687	50	1	84,350	92,542	55	92,785
Cable Systems	64,000,000	0.44	1	28,160,000	30,895,000	0.48	30,895,000
Interstate Telephone Service Providers	67,732,300,000	0.0011	1	74,505,530	81,741,773	0.00121	81,741,773
CMRS Mobile Services	55,540,000	0.29	1	16,106,600	17,670,931	0.32	17,670,931
CMRS Messaging Services	34,500,000	0.04	1	1,380,000	1,514,031	0.04	1,514,031
MDS/MMDS	1,650	260	1	429,000	470,866	285	470,250
International Circuits	465,000	6	1	2,790,000	3,060,975	7	3,255,000
International Public Fixed	3	375	1	1,125	1,234	410	1,230
Earth Stations	3,100	165	1	511,500	561,179	180	558,000
Space Stations (Geostationary)	42.5	119,000	1	5,057,500	5,548,702	130,550	5,548,375
Space Stations (Non-geostationary)	2	164,800	1	329,600	361,812	180,600	361,600
****** Total Estimated Revenue Collected				157,250,290	172,523,000		172,894,779
****** Total Revenue Requirement				172,523,000	172,523,000		172,523,000
Difference				(15,272,710)	0		371,779

* 1.097123573 factor applied

Fee Category	FY 1999 Payment Units	(times) FY 1998 Fee	(times) Payment Years	(equals) Computed FY 1999 Revenue Requirement	Pro-Rated Revenue Requirement*	Rounded New FY 1999 Regulatory Fee	Expected FY 1999 Revenue
UHF Markets 26-50	100	6,650	1	665,000	729,587	7,300	730,000
UHF Markets 51-100	150	3,975	1	596,250	654,180	4,350	652,500
UHF Remaining Markets	180	1,075	1	193,500	212,293	1,175	211,500
UHF Construction Permits	60	2,650	1	159,000	174,443	2,900	174,000
Auxiliaries	22,000	11	1	242,000	265,504	12	264,000
International HF Broadcast	5	475	1	2,375	2,606	520	2,600
LPTV/Translators/Boosters	2,020	265	1	535,300	587,290	290	585,800
CARS	1,687	50	1	84,350	92,542	55	92,785
Cable Systems	64,000,000	0.44	1	28,160,000	30,895,000	0.48	30,895,000
Interstate Telephone Service Providers	67,732,300,000	0.0011	1	74,505,530	81,741,773	0.00121	81,741,773
CMRS Mobile Services	55,540,000	0.29	1	16,106,600	17,670,931	0.32	17,670,931
CMRS Messaging Services	34,500,000	0.04	1	1,380,000	1,514,031	0.04	1,514,031
MDS/MMDS	1,650	260	1	429,000	470,866	285	470,250
International Circuits	465,000	6	1	2,790,000	3,060,975	7	3,255,000
International Public Fixed	3	375	1	1,125	1,234	410	1,230
Earth Stations	3,100	165	1	511,500	561,179	180	558,000
Space Stations (Geostationary)	42.5	119,000	1	5,057,500	5,548,702	130,550	5,548,375
Space Stations (Non-geostationary)	2	164,800	1	329,600	361,812	180,600	361,600
****** Total Estimated Revenue Collected				157,250,290	172,523,000		172,894,779
****** Total Revenue Requirement				172,523,000	172,523,000		172,523,000
Difference				(15,272,710)	0		371,779

* 1.097123573 factor applied

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Attachment D—FY 1999 Schedule of Regulatory Fees

Fee category	Annual regulatory fee (U.S. $'s)
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR part 90)	13
Microwave (per license) (47 CFR part 101)	13
218–219 MHz Service (per license) (47 CFR part 95)	13
Marine (Ship) (per station) (47 CFR part 80)	7
Marine (Coast) (per license) (47 CFR part 80)	7
General Mobile Radio Service (per license) (47 CFR part 95)	7
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	7
Aviation (Aircraft) (per station) (47 CFR part 87)	7
Aviation (Ground) (per license) (47 CFR part 87)	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 80 and 90)	.32
CMRS Messaging Services (per unit) (47 CFR parts 20, 22 and 90)	.04
Multipoint Distribution Services (per call sign) (47 CFR part 21)	285
AM Radio Construction Permits	260
FM Radio Construction Permits	780
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	41,225
Markets 11–25	34,325
Markets 26–50	23,475
Markets 51–100	13,150
Remaining Markets	3,400
Construction Permits	2,775
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	15,550
Markets 11–25	11,775
Markets 26–50	7,300
Markets 51–100	4,350
Remaining Markets	1,175
Construction Permits	2,900
Satellite Television Stations (All Markets)	1,300
Construction Permits—Satellite Television Stations	460
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	290
Broadcast Auxiliary (47 CFR part 74)	12
Cable Antenna Relay Service (47 CFR part 78)	55
Cable Television Systems (per subscriber) (47 CFR part 76)	.48
Interstate Telephone Service Providers (per revenue dollar)	121
Earth Stations (47 CFR part 25)	180
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	130,550
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	180,800
International Bearer Circuits (per active 64KB circuit)	7
International Public Fixed (per call sign) (47 CFR part 23)	410
International (HF) Broadcast (47 CFR part 73)	520

RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	430	325	225	275	325	430
20,001–50,000	825	650	325	450	650	825
50,001–125,000	1,350	875	450	675	875	1,350
125,001–400,000	2,000	1,400	675	825	1,400	2,000
400,001–1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

Attachment E—Comparison Between FY 1998, FY 1999 Proposed and FY 1999 Final Regulatory Fees

Fee category	Annual regulatory fee FY 1998	NPRM proposed fee FY 1999	Annual regulatory fee FY 1999
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR part 90)	12	13	13

Fee category	Annual regulatory fee FY 1998	NPRM proposed fee FY 1999	Annual regulatory fee FY 1999
Microwave (per license) (47 CFR part 101)	12	13	13
218–219 MHz Service (per license) (47 CFR part 95)	(1)	(1)	13
Marine (Ship) (per station) (47 CFR part 80)	6	7	7
Marine (Coast) (per license) (47 CFR part 80)	6	7	7
General Mobile Radio Service (per license) (47 CFR part 95)	6	7	7
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	6	7	7
Aviation (Aircraft) (per station) (47 CFR part 87)	6	7	7
Aviation (Ground) (per license) (47 CFR part 87)	6	7	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.30	1.42	1.40
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 80 and 90)	.29	.32	.32
CMRS Messaging Services [formerly One Way Paging] (per unit) (47 CFR parts 20, 22, and 90)	.04	.04	.04
Multipoint Distribution Services (per call sign) (47 CFR part 21)	260	285	285
AM Construction Permits	235	255	260
FM Construction Permits	1,150	1,250	780
TV (47 CFR part 73) VHF Commercial:			
Markets 1–10	37,575	41,125	41,225
Markets 11–25	31,275	34,225	34,325
Markets 26–50	21,400	23,425	23,475
Markets 51–100	11,975	13,100	13,150
Remaining Markets	3,100	3,400	3,400
Construction Permits	2,525	2,775	2,775
TV (47 CFR part 73) UHF Commercial:			
Markets 1–10	14,175	15,500	15,550
Markets 11–25	10,725	11,725	11,775
Markets 26–50	6,650	7,275	7,300
Markets 51–100	3,975	4,350	4,350
Remaining Markets	1,075	1,175	1,175
Construction Permits	2,650	2,900	2,900
Satellite Television Stations (All Markets)	1,175	1,275	1,300
Construction Permits—Satellite Television Stations	420	460	460
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	265	290	290
Broadcast Auxiliary (47 CFR part 74)	11	12	12
Cable Antenna Relay Service (47 CFR part 78)	50	55	55
Earth Stations (47 CFR part 25)	165	180	180
Cable Television Systems (per subscriber) (47 CFR part 76)	.44	.48	.48
Interstate Telephone Service Providers (per revenue dollar)	.0011	0012	.00121
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	119,000	130,225	130,550
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	164,800	180,325	180,800
International Bearer Circuits (per active 64KB circuit)	6	7	7
International Public Fixed (per call sign) (47 CFR part 23)	375	410	410
International (HF) Broadcast (47 CFR part 73)	475	520	520

[1] No fee.

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001—50,000	750	600	300	400	600	750
50.001—125,000	1,250	800	400	600	800	1,250
125,001—400,000	1,750	1,250	600	750	1,250	1,750
400,001—1,000,000	2,500	2,000	1,000	1,250	2,000	2,500
>1,000,000	4,000	3,250	1,500	2,000	3,250	4,000

FY 1999 RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	430	325	225	275	325	430
20,001—50,000	825	650	325	450	650	825
50.001—125,000	1,350	875	450	675	8751,350	
125,001—400,000	2,000	1,400	675	825	1,400	2,000
400,001—1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

Attachment F—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,[172] as modified in the instant *Report and Order*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, and our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, 1997, and 1998 and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[173]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[174] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive use Services

4. *Private Mobile Radio Services (PMRS)*: Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[175] For FY 1999, PMRS licensees will pay a $13 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[176] The total regulatory fee due is either $65 for a license with a five year term or $130 for a license with a 10 year term.

5. *Microwave Services*: These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1999, Microwave licensees will pay a $13 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $130 for the ten year license term.

6. *Interactive Video Data Service (now 218–219 MHz Service):* The 218–219 MHz Service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz Service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz Service is offered on a private carrier basis. The Commission anticipates receiving 513 renewal applications for the 218–219 MHz Service during FY 1999. Therefore, for FY 1999, the regulatory fee for 218–219 MHz Service licensees will be $13 per renewal, payable for an entire five year term. The total regulatory fee due is $65 for the five year license term.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Thus, private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1999, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $7 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 for the ten year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1999, licensees of Marine (Coast) Stations will pay a $7 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services:* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1999, licensees of services in this category will pay a $7 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Thus, private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1999, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $7 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1999, licensees of Aviation (Ground) Stations will pay a $7 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $35 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 1999, GMRS licensees will pay a $7 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $35 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.30 annual regulatory fee per call sign, as prescribed in the FY 1998 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 1999 fee schedule becomes effective. The total regulatory fee due would be $13 per license for the ten-year license term.[177] For FY 1999, Amateur Vanity Call Sign applicants will pay a $1.40 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $14.00 per call sign for the ten-year license term.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[178] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 1999, the regulatory fee is $.32 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (e.g., one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. In addition, for FY 1999, this category will also include small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 1999, the regulatory fee is $.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is "active" on the "as-of" date for payment of these fees. The unit becomes "feeable" if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[179] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 1999 are as follows:

FY 1999 Radio Station Regulatory Fees

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	430	325	225	275	325	430
20,001–50,000	825	650	325	450	650	825

[172] 47 U.S.C. 159(g)

[173] 47 U.S.C. 159(b)(2), (3).

[174] 47 U.S.C. 159(b)(1)(A).

[175] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[176] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1999 is less than one-tenth of one percent and, therefore, is statistically insignificant.

[177] Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[178] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

[179] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

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FY 1999 RADIO STATION REGULATORY FEES—Continued

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
50,001–125,000	1,350	875	450	675	875	1,350
125,001–400,000	2,000	1,400	675	825	1,400	2,000
400,001–1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

19. Licensees may determine the appropriate fee payment by referring to a list which will be provided as an attachment to the final *Report and Order* in this proceeding. This same information will be available on the FCC's Internet world wide web site (http://www.fcc.gov) by calling the FCC's National Call Center (1–888–225–5322), and may be included in the Public Notices mailed to each licensee for which we have a current address on file.

Note: Non-receipt of a public notice does not relieve a licensee of its obligation to submit its regulatory fee payment.

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 1999, permittees will pay a fee of $260 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 1999, permittees will pay a fee of $780 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 67, 1999 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$41,225
VHF Markets 11–25	34,325
VHF Markets 26–50	23,475
VHF Markets 51–100	13,150
VHF Remaining Markets	3,400
UHF Markets 1–10	15,550
UHF Markets 11–25	11,775
UHF Markets 26–50	7,300
UHF Markets 51–100	4,350
UHF Remaining Markets	1,175

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $1,300 annually. Those stations designated as Television Satellite Stations in the 1999 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1999, VHF permittees will pay an annual regulatory fee of $2,775. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 1999, UHF Television permittees will pay an annual regulatory fee of $2,900. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 1999 is $460. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community-based Translators are exempt from regulatory fees. For FY 1999, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $290 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 1999, licensees of Commercial Auxiliary Stations will pay a $12 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1999, MDS, LMDS, and MMDS stations will pay an annual regulatory fee of $285 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 1999, Cable Systems will pay a regulatory fee of $.48 per subscriber.[180] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1998. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers, and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at paragraph 31.

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1999, licensees will pay an annual regulatory fee of $55 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

b. Interstate Telephone Service Providers

33. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund.[181] In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1999, carriers must multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.00121 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets		
(2) Less: Access charges paid		
(3) Less: Other telecommunications facilities and services taken for resale		
(4) Adjusted revenues (1) minus (2) minus (3)		
(5) Fee factor		0.00121
(6) Fee due (4) times (5)		

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[182] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas*, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1999, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $180 per authorization or registration *as well as a separate fee of $180 for each associated Hub Station*.

35. *Receive-only earth stations*. For FY 1999, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1999, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $130,550 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1999, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $180,800 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order* at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

[180] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

[181] *See Telecommunicotions Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (Jul. 26, 1993).

[182] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1999.

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 kbps circuits, or equivalent circuits. Under this formulation, 64 kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 kbps circuit equivalent of larger bit stream circuits. For example, the 64 kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, circuits derived from 64 kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 kbps circuits. Such circuits are not subject to fees. Only the 64 kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1999, the regulatory fee is $7.00 for each active 64 kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel	No. of equivalent 64 kbps circuits size in MHz
36	630
24	288
18	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico, and the United States and Canada, using frequencies above 72 MHz. For FY 1999, International Public Fixed Radio Service licensees will pay a $410 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 1999, International HF Broadcast Stations will pay an annual regulatory fee of $520 per station license.

Attachment G—Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.[183]

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

[183] Although Authorization of Service is described in this exhibit, it is not one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

Attachment H—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[184] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[185] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.
Attachment I

Parties Filing Comments on the Notice of Inquiry

MCI WorldCom, Inc.
BellSouth Corporation
Paging Network, Inc.
American Mobile Telecommunications Association, Inc.
Small Business in Telecommunications
ARDIS Company
Personal Communications Industry Association
Industrial Telecommunications Association, Inc.
GE American Communications, Inc.

[184] 47 U.S.C. 73.150 and 73.152.

[185] 47 U.S.C. 73.313.

Space Imaging L.P.
Lockheed Martin Corporation
PanAmSat Corporation
Orbital Communications Corporation
L/Q Licensee, Inc.

Parties Filing Reply Comments on the Notice of Inquiry

BellSouth Corporation (Late Filed)
L/Q Licensee, Inc.
GE American Communications, Inc.
COMSAT Corporation
Loral Space & Communications Ltd.

Parties Filing Comments on the Notice of Proposed Rule Making

Rural Telecommunications Group (Oral Ex Parte)
Council of Independent Communications Suppliers
Satellite Industry Association
AirTouch Communications, Inc.
Cellular Telecommunications Industry Association
National Association of Broadcasters
Walt Disney Company
PanAmSat Corporation
GE American Communications, Inc.
BellSouth Corporation

Parties Filing Reply Comments on the Notice of Proposed Rule Making

PrimeCo Personal Communications, L.P.
GE American Communications, Inc.
COMSAT Corporation
Blooston, Mordkofsky, Jackson & Dickens
American Mobile Telecommunications Association, Inc. (also filed Oral Ex Parte)

Attachment J—AM and FM Radio Regulatory Fees

The List of regulatory fees is available from the FCC Public Reference Room, CY–AT57, 445 12th St. SW, Washington DC 20554.

[FR Doc. 99–16584 Filed 6–30–99; 8:45 am]

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July 1, 1999

Part V

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsuring Companies; Notice

4810-35

DEPARTMENT OF THE TREASURY

FISCAL SERVICE
(Dept. Circular 570; 1999 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 1999

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6A04, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax (202) 874-9978.

The most current list of Treasury authorized companies is always available through the Internet at http://www.fms.treas.gov/c570/index.html. In addition, applicable laws and regulations are also available at the same site.

Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write. Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

JUN 25 1999

Judith R. Tillman
Acting Assistant Commissioner
Financial Operations
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acadia Insurance Company
BUSINESS ADDRESS: P.O. BOX 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION [b/]: $4,385,000. SURETY LICENSES [c/] [f/]: CT, DE, ME, MD, MA, NH, NY, PA, RI, VT. INCORPORATED IN: Maine.

Acceptance Insurance Company
BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102-1616. PHONE: (402) 344-8800. UNDERWRITING LIMITATION [b/]: $5,297,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, GA, IL, IN, IA, KY, ME, MI, NE, ND, OH, TN, VA, WI. INCORPORATED IN: Nebraska.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.
BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. PHONE: (407) 841-8500. UNDERWRITING LIMITATION [b/]: $842,000. SURETY LICENSES [c/] [f/]: AL, CA, CT, DE, FL, GA, ID, IN, IA, KS, LA, MD, MN, MS, MO, MT, NE, NV, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, TX, VA, WA, WY. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION [b/]: $1,453,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company
BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION [b/]: $1,407,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Affiliated FM Insurance Company
BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION [b/]: $2,786,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

ALL AMERICA INSURANCE COMPANY
BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-1010. UNDERWRITING LIMITATION [b/]: $3,150,000. SURETY LICENSES [c/] [f/]: AZ, CA, CT, GA, IL, IN, IA, KY, MA, MI, NV, NJ, NY, NC, OH, OK, TN, TX, VA. INCORPORATED IN: Ohio.

Allegheny Casualty Company
BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION [b/]: $1,237,000. SURETY LICENSES [c/] [f/]: CA, DC, FL, ID, IL, IN, LA, MD, MI, MS, MO, MT, NV, NJ, NC, OH, OK, PA, SC, SD, TN, TX, WA, WI. INCORPORATED IN: Pennsylvania.

Allendale Mutual Insurance Company
BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION [b/]: $114,720,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

ALLSTATE INSURANCE COMPANY
BUSINESS ADDRESS: 3075 Sanders Rd. Ste. H1A, Northbrook, IL 60062-7127. PHONE: (847) 402-5000. UNDERWRITING LIMITATION [b/]: $1,119,510,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

AMCO Insurance Company
BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION 3/: $5,727,000. SURETY LICENSES 4/ 5/: AZ, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

American Alliance Insurance Company 1/
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION 3/: $997,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

AMERICAN ALTERNATIVE INSURANCE CORPORATION
BUSINESS ADDRESS: 555 College Road East - P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION 3/: $8,832,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN AND FOREIGN INSURANCE COMPANY
BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P. O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION 3/: $8,890,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Automobile Insurance Company
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION 3/: $4,843,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA
BUSINESS ADDRESS: 11222 Quail Roost Drive, Miami, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION 3/: $14,571,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION 3/: $44,972,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMERICAN CONTRACTORS INDEMNITY COMPANY 2/
BUSINESS ADDRESS: 9841 Airport Blvd., 9th Floor, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION 3/: $711,000. SURETY LICENSES 4/ 5/: CA, FL, GA, NV, NM, OH, OK, TN, TX. INCORPORATED IN: California.

American Economy Insurance Company
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION 3/: $50,546,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Fire and Casualty Company
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION 3/: $11,453,000. SURETY LICENSES 4/ 5/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

American Guarantee and Liability Insurance Company
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION 3/: $29,394,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WJ, WY. INCORPORATED IN: New York.

American Home Assurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION 3/: $276,003,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (402) 346-6000. UNDERWRITING LIMITATION 3/: $36,132,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

AMERICAN INTERNATIONAL INSURANCE COMPANY OF PUERTO RICO
BUSINESS ADDRESS: P.O. Box 10181, San Juan, PR 00908. PHONE: (787) 767-6400. UNDERWRITING LIMITATION 3/: $4,179,000. SURETY LICENSES 4/ 5/: PR. INCORPORATED IN: Puerto Rico.

American International Pacific Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION 3/: $2,235,000. SURETY LICENSES 4/ 5/: AK, CO, CT, DC, IA, ME, MD, MA, MS, MT, NE, NH, ND, RI, SD, UT, VT, WV, WY. INCORPORATED IN: Colorado.

American Interstate Insurance Company
BUSINESS ADDRESS: 2301 Highway 190 West, DeRidder, LA 70634-6005. PHONE: (800) 256-9052. UNDERWRITING LIMITATION 3/: $4,533,000. SURETY LICENSES 4/ 5/: AL, AK, AR, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WI, WY. INCORPORATED IN: Louisiana.

American Manufacturers Mutual Insurance Company
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION 3/: $25,514,000. SURETY LICENSES 4/ 5/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Motorists Insurance Company
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION 3/: $39,305,000. SURETY LICENSES 4/ 5/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American National Fire Insurance Company
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION 3/: $2,703,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company
BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION 3/: $248,807,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

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AMERICAN RELIABLE INSURANCE COMPANY
BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (602) 483-8666. UNDERWRITING LIMITATION [b/]: $3,668,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Safety Casualty Insurance Company
BUSINESS ADDRESS: 1845 The Exchange, Suite 200, Atlanta, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION [b/]: $805,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American States Insurance Company
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $146,408,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety Company
BUSINESS ADDRESS: 3901 West 86th Street, Suite 450, Indianapolis, IN 46268-0932. PHONE: (317) 875-8700. UNDERWRITING LIMITATION [b/]: $521,000. SURETY LICENSES [c/] [f/]: AL, CA, FL, HI, ID, IN, KS, LA, MD, MS, MO, NE, NV, ND, OH, PA, SD, TN, TX, UT. INCORPORATED IN: California.

Amwest Surety Insurance Company
BUSINESS ADDRESS: 5230 Las Virgenes Road, Calabasas, CA 91302. PHONE: (818) 871-2000. UNDERWRITING LIMITATION [b/]: $2,914,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Antilles Insurance Company
BUSINESS ADDRESS: P.O. Box 9023507, San Juan, PR 00902-3507. PHONE: (787) 721-4900. UNDERWRITING LIMITATION [b/]: $2,420,000. SURETY LICENSES [c/] [f/]: PR. INCORPORATED IN: Puerto Rico.

Arkwright Mutual Insurance Company
BUSINESS ADDRESS: 225 Wyman Street, P.O. Box 9198, Waltham, MA 02254-9198. PHONE: (781) 890-9300. UNDERWRITING LIMITATION [b/]: $91,653,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $3,769,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY
BUSINESS ADDRESS: 100 Dobbs Lane, Suite 204, Cherry Hill, NJ 08034. PHONE: (609) 795-5575. UNDERWRITING LIMITATION [b/]: $436,000. SURETY LICENSES [c/] [f/]: AL, CT, DE, DC, FL, GA, IL, IN, KS, KY, MD, MA, MN, MO, NJ, NY, NC, OK, PA, TN, TX. INCORPORATED IN: New Jersey.

Atlantic Mutual Insurance Company
BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION [b/]: $55,966,000. SURETY LICENSES [c/] [f/]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

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ATLAS ASSURANCE COMPANY OF AMERICA
BUSINESS ADDRESS: 61 Broadway, New York, NY 10006. PHONE: (212) 208-4100. UNDERWRITING LIMITATION [b/]: $36,415,000. SURETY LICENSES [c/] [f/]: AK, AZ, AR, CA, CO, DE, GA, ID, IL, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company
BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909-8160. PHONE: (517) 323-1200. UNDERWRITING LIMITATION [b/]: $239,660,000. SURETY LICENSES [c/] [f/]: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

AXA GLOBAL RISKS US INSURANCE COMPANY
BUSINESS ADDRESS: 199 Water Street, New York, NY 10038. PHONE: (212) 412-0700. UNDERWRITING LIMITATION [b/]: $8,533,000. SURETY LICENSES [c/] [f/]: AK, AZ, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

BANKERS INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733-5707. PHONE: (727) 823-4000. UNDERWRITING LIMITATION [b/]: $3,772,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WV, WY. INCORPORATED IN: Florida.

BITUMINOUS CASUALTY CORPORATION
BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201-8744. PHONE: (309) 786-5401 x-268. UNDERWRITING LIMITATION [b/]: $16,560,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY
BUSINESS ADDRESS: 1919 S. Highland Ave., Bldg. A, Suite 300, Lombard, IL 60148. PHONE: (630) 495-9380. UNDERWRITING LIMITATION [b/]: $487,000. SURETY LICENSES [c/] [f/]: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

Buckeye Union Insurance Company (The)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $17,776,000. SURETY LICENSES [c/] [f/]: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capital City Insurance Company, Inc.
BUSINESS ADDRESS: P.O. Box 212157, Columbia, SC 29221. PHONE: (803) 781-7118. UNDERWRITING LIMITATION [b/]: $1,693,000. SURETY LICENSES [c/] [f/]: AL, AR, GA, LA, MS, NC, OK, PA, SC, TN, TX, VA, WV. INCORPORATED IN: S. Carolina.

Capitol Indemnity Corporation
BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION [b/]: $10,290,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company
BUSINESS ADDRESS: P.O. Box 2575, Jacksonville, FL 32256. PHONE: (904) 363-0900. UNDERWRITING LIMITATION [b/]: $5,415,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company
BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION [b/]: $14,550,000. SURETY LICENSES [c/] [f/]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

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CENTRAL MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-1010. UNDERWRITING LIMITATION [b/]: $14,635,000. SURETY LICENSES [c/] [f/]: AZ, CA, CT, DE, GA, IL, IN, IA, KY, MA, MI, NV, NH, NJ, NM, NY, NC, OH, OK, PA, TN, TX, VT, VA, WV. INCORPORATED IN: Ohio.

CENTURY SURETY COMPANY
BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION [b/]: $1,550,000. SURETY LICENSES [c/] [f/]: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

Chartwell Reinsurance Company
BUSINESS ADDRESS: Four Stamford Plaza, P.O. Box 120043, Stamford, CT 06912-0043. PHONE: (203) 705-2500. UNDERWRITING LIMITATION [b/]: $11,453,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, KS, KY, MD, MI, MN, MS, MT, NE, NV, NM, NY, NC, ND, OH, PA, TN, TX, UT, WA, WV, WI. INCORPORATED IN: Minnesota.

Chatham Reinsurance Corporation
BUSINESS ADDRESS: 100 Campus Drive, Florham Park, NJ 07932-1006. PHONE: (973) 443-0443. UNDERWRITING LIMITATION [b/]: $2,977,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DC, HI, ID, IL, IN, IA, KY, MD, MA, MN, MS, NE, NV, NJ, NY, OK, OR, PA, SC, SD, TX, UT, WA, WI. INCORPORATED IN: California.

CHRYSLER INSURANCE COMPANY
BUSINESS ADDRESS: CIMS:465-20-85, P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (248) 948-3443. UNDERWRITING LIMITATION [b/]: $19,026,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY
BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. PHONE: (212) 612-4000. UNDERWRITING LIMITATION [b/]: $1,678,000. SURETY LICENSES [c/] [f/]: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MT, NE, NV, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Cincinnati Casualty Company (The)
BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION [b/]: $18,432,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS; KY, MD, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)
BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION [b/]: $277,406,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
BUSINESS ADDRESS: 300 Saint Paul Place, Baltimore, MD 21202. PHONE: (410) 539-0800. UNDERWRITING LIMITATION [b/]: $1,973,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY
BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION [b/]: $322,000. SURETY LICENSES [c/] [f/]: AL, AK, AR, CA, CT, DE, DC, FL, KS, MD, MA, MT, NE, NJ, NM, NY, ND, OR, PA, SD, TX, UT, WV, WY. INCORPORATED IN: Pennsylvania.

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Columbia Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 618, Columbia, MO 65202. PHONE: (573) 474-6193. UNDERWRITING LIMITATION [b/]: $6,095,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, VA, WA, WV, WY. INCORPORATED IN: Missouri.

Commercial Casualty Insurance Company of Georgia
BUSINESS ADDRESS: 160 Technology Parkway, Norcross, GA 30092. PHONE: (770) 729-8101. UNDERWRITING LIMITATION [b/]: $1,223,000. SURETY LICENSES [c/] [f/]: CA, FL, GA, IN, LA, NC, SC, WA. INCORPORATED IN: Georgia.

Commercial Insurance Company of Newark, New Jersey
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $3,603,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $33,428,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE)
BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION [b/]: $5,148,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Connecticut Surety Company (The)
BUSINESS ADDRESS: City Place II, 185 Asylum Street, Hartford, CT 06103-3403. PHONE: (860) 527-6732. UNDERWRITING LIMITATION [b/]: $600,000. SURETY LICENSES [c/] [f/]: AK, AZ, AR, CA, CT, DE, DC, FL, GA, IN, IA, KY, LA, MD, MA, MO, MT, NE, NV, NJ, NY, ND, OR, PA, SC, SD, TX, UT, WA. INCORPORATED IN: Connecticut.

Consolidated Insurance Company
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION [b/]: $3,054,000. SURETY LICENSES [c/] [f/]: IL, IN, IA, KY, MI, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $433,585,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $20,736,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Continental Western Insurance Company
BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION [b/]: $5,414,000. SURETY LICENSES [c/] [f/]: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Iowa.

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CONTRACTORS BONDING AND INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 622-7053. UNDERWRITING LIMITATION [b/]: $2,113,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico
BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (787) 758-8585. UNDERWRITING LIMITATION [b/]: $9,559,000. SURETY LICENSES [c/] [f/]: PR. INCORPORATED IN: Puerto Rico.

CREDIT GENERAL INSURANCE COMPANY
BUSINESS ADDRESS: 3201 Enterprise Parkway - Suite 310, Beachwood, OH 44122. PHONE: (216) 831-7500. UNDERWRITING LIMITATION [b/]: $3,034,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

CUMBERLAND CASUALTY & SURETY COMPANY
BUSINESS ADDRESS: 4311 West Waters Ave. #401, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION [b/]: $455.000. SURETY LICENSES [c/] [f/]: AL, AR, DE, DC, FL, GA, GU, ID, IN, KS, KY, LA, MD, MA, MO, MT, NE, NV, ND, OR, PA, SC, SD, TN, TX, WA, WV, WY. INCORPORATED IN: Florida.

CUMIS INSURANCE SOCIETY, INC.
BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION [b/]: $34,681,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY
BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION [b/]: $24,969,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DEVELOPERS INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92613. PHONE: (949) 263-3300. UNDERWRITING LIMITATION [b/]: $606,000. SURETY LICENSES [c/] [f/]: AK, AZ, CA, HI, ID, IN, NV, NC, OR, SC, UT, VA, WA. INCORPORATED IN: California.

Developers Surety and Indemnity Company
BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92613. PHONE: (949) 263-3300. UNDERWRITING LIMITATION [b/]: $563,000. SURETY LICENSES [c/] [f/]: AZ, CO, DC, ID, IL, IN, IA, KS, MD, MN, MO, MT, NE, NM, ND, OK, OR, SC, SD, UT, WI, WY. INCORPORATED IN: Iowa.

DIAMOND STATE INSURANCE COMPANY
BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION [b/]: $4,475,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

ECONOMY FIRE & CASUALTY COMPANY
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION [b/]: $24,780,000. SURETY LICENSES [c/] [f/]: AL, AR, CA, CO, FL, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SD, UT, WV, WI, WY. INCORPORATED IN: Illinois.

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Empire Fire and Marine Insurance Company
BUSINESS ADDRESS: 13810 FNB Parkway, Omaha, NE 68154-5202. PHONE: (402) 963-5000. UNDERWRITING LIMITATION [b/]: $8,579,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company
BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION [b/]: $43,762,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company
BUSINESS ADDRESS: P.O. Box 712, Des Moines, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION [b/]: $54,275,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation
BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION [b/]: $391,513,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Erie Insurance Company
BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION [b/]: $6,805,000. SURETY LICENSES [c/] [f/]: DC, IL, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company
BUSINESS ADDRESS: P.O. Box 830, Liberty Corner, NJ 07938-0830. PHONE: (908) 604-3000. UNDERWRITING LIMITATION [b/]: $72,050,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

Evergreen National Indemnity Company
BUSINESS ADDRESS: P.O. Box 18295, Columbus, OH 43218. PHONE: (614) 895-1773. UNDERWRITING LIMITATION [b/]: $1,316,000. SURETY LICENSES [c/] [f/]: AL, AK, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, WA, WI, WY. INCORPORATED IN: Ohio.

Excelsior Insurance Company
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $3,417,000. SURETY LICENSES [c/] [f/]: CT, DE, DC, FL, GA, IN, KY, MD, MA, NH, NJ, NY, NC, PA, VT, VA. INCORPORATED IN: New Hampshire.

Executive Risk Indemnity Inc.
BUSINESS ADDRESS: 82 Hopmeadow Street, P.O. Box 2002, Simsbury, CT 06070-7683. PHONE: (860) 408-2000. UNDERWRITING LIMITATION [b/]: $30,585,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

EXPLORER INSURANCE COMPANY (THE)
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION [b/]: $2,512,000. SURETY LICENSES [c/] [f/]: AZ, CA, FL, HI, ID, IL, IA, MT, NV, NM, OR, PA, TX, UT, WA. INCORPORATED IN: Arizona.

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FAR WEST INSURANCE COMPANY
BUSINESS ADDRESS: 5230 Las Virgenes Road, Calabasas, CA 91302. PHONE: (818) 871-2000. UNDERWRITING LIMITATION [b/]: $756,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Farmers Alliance Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 1401, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION [b/]: $6,812,000. SURETY LICENSES [c/] [f/]: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NM, ND, OK, SD, TX. INCORPORATED IN: Kansas.

Farmington Casualty Company
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $19,057,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Farmland Mutual Insurance Company
BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315-1030. PHONE: (515) 245-8800. UNDERWRITING LIMITATION [b/]: $7,571,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $278,822,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION [b/]: $89,022,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $18,109,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland
BUSINESS ADDRESS: 300 Saint Paul Place, Baltimore, MD 21202. PHONE: (410) 539-0800. UNDERWRITING LIMITATION [b/]: $39,686,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION [b/]: $1,220,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc.
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION [b/]: $3,192,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

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Financial Pacific Insurance Company
BUSINESS ADDRESS: P.O. Box 292220, Sacramento, CA 95829-2220. PHONE: (916) 630-5000. UNDERWRITING LIMITATION [b/]: $2,027,000. SURETY LICENSES [c/] [f/]: AZ, AR, CA, ID, KS, MO, MT, NE, NV, ND, OR, SD, UT. INCORPORATED IN: California.

Fireman's Fund Insurance Company
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $230,629,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $17,433,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company
BUSINESS ADDRESS: 360 Central Avenue, St. Petersburg, FL 33701. PHONE: (727) 823-4000. UNDERWRITING LIMITATION [b/]: $827,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

First Excess and Reinsurance Corporation
BUSINESS ADDRESS: P. O. Box 29164, Overland Park, KS 66201-9164. PHONE: (913) 676-5520. UNDERWRITING LIMITATION [b/]: $37,253,000. SURETY LICENSES [c/] [f/]: AK, AZ, CA, CT, DC, GA, ID, IL, IN, IA, KS, KY, MI, MS, MO, MT, NE, NM, NY, OH, OK, SD, TN, TX, WA, WV, WI. INCORPORATED IN: Missouri.

FIRST FINANCIAL INSURANCE COMPANY
BUSINESS ADDRESS: 238 International Road, Burlington, NC 27215. PHONE: (336) 586-2500. UNDERWRITING LIMITATION [b/]: $8,573,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MO, MT, NE, NV, NM, NY, ND, OH, OR, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd.
BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION [b/]: $12,031,000. SURETY LICENSES [c/] [f/]: GU, HI. INCORPORATED IN: Hawaii.

First Liberty Insurance Corporation (The)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $1,507,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

First National Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $7,399,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FRONTIER INSURANCE COMPANY
BUSINESS ADDRESS: 195 Lake Louise Marie Road, Rock Hill, NY 12775-8000. PHONE: (914) 796-2100. UNDERWRITING LIMITATION [b/]: $4,876,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

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Frontier Pacific Insurance Company
BUSINESS ADDRESS: 4250 Executive Square, Suite 200, La Jolla, CA 92037. PHONE: (619) 642-5000. UNDERWRITING LIMITATION [b/]: $3,492,000. SURETY LICENSES [c/] [f/]: CA, NV, NY. INCORPORATED IN: California.

GE Reinsurance Corporation [3/]
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0015. PHONE: (847) 320-2600. UNDERWRITING LIMITATION [b/]: $18,287,000. SURETY LICENSES [c/] [f/]: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, KY, MI, MN, MS, NE, NV, NM, OK, OR, PA, RI, TX, UT, WA, WI. INCORPORATED IN: Illinois.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $131,739,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $68,279,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation
BUSINESS ADDRESS: 695 East Main Street, Stamford, CT 06904-2349. PHONE: (203) 328-5000. UNDERWRITING LIMITATION [b/]: $459,653,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.
BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271-2840. UNDERWRITING LIMITATION [b/]: $1,938,000. SURETY LICENSES [c/] [f/]: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

GLOBE INDEMNITY COMPANY
BUSINESS ADDRESS: 9300 Arrowpoint Blvd.,P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $32,699,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Grain Dealers Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION [b/]: $2,377,000. SURETY LICENSES [c/] [f/]: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, ND, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRANITE RE, INC.
BUSINESS ADDRESS: P.O. Box 20683, Oklahoma City, OK 73156. PHONE: (405) 516-5100. UNDERWRITING LIMITATION [b/]: $202,000. SURETY LICENSES [c/] [f/]: AR, KS, MN, ND, OK, SD. INCORPORATED IN: Oklahoma.

Granite State Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $2,198,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Insurance Company
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $126,284,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

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Great Northern Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $14,323,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Greenwich Insurance Company
BUSINESS ADDRESS: One Greenwich Plaza, PO Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION [b/]: $1,745,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Gulf Insurance Company
BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION [b/]: $33,382,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hanover Insurance Company (The)
BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION [b/]: $126,604,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (847) 734-4100. UNDERWRITING LIMITATION [b/]: $5,309,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company
BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION [b/]: $44,972,000. SURETY LICENSES [c/] [f/]: AR, CA, CO, DE, DC, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NJ, NM, NC, OH, OK, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $568,606,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $29,684,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $841,732,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $38,212,000. SURETY LICENSES [c/] [f/]: IL, PA. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Hartford Insurance Company of the Midwest
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $6,956,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,634,000. SURETY LICENSES [c/] [f/]: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $20,641,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Heritage Mutual Insurance Company [4/]
BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082-0058. PHONE: (920) 458-9131. UNDERWRITING LIMITATION [b/]: $17,832,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MS, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Highlands Insurance Company
BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555 x-8334. UNDERWRITING LIMITATION [b/]: $9,696,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company
BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555 x-8334. UNDERWRITING LIMITATION [b/]: $2,517,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, FL, GA, LA, MS, NM, ND, OK, SD, TX. INCORPORATED IN: Texas.

ICI MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 102 South Winooski Avenue, Burlington, VT 05402-0730. PHONE: (802) 863-0096. UNDERWRITING LIMITATION [b/]: $10,337,000. SURETY LICENSES [c/] [f/]: VT. INCORPORATED IN: Vermont.

Indemnity Company of California
BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92613. PHONE: (949) 263-3300. UNDERWRITING LIMITATION [b/]: $837,000. SURETY LICENSES [c/] [f/]: AK, AZ, CA, HI, ID, NV, OR, SC, UT, VA, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America
BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $1,509,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Independance Casualty and Surety Company
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION [b/]: $1,643,000. SURETY LICENSES [c/] [f/]: TX. INCORPORATED IN: Texas.

Indiana Insurance Company
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION [b/]: $11,117,000. SURETY LICENSES [c/] [f/]: FL, IL, IN, IA, KY, MI, NJ, OH, TN, WA, WI. INCORPORATED IN: Indiana.

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Indiana Lumbermens Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. PHONE: (800) 428-1441 x-710. UNDERWRITING LIMITATION [b/]: $3,727,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company
BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION [b/]: $8,199,000. SURETY LICENSES [c/] [f/]: AZ, CO, IA, KS, MN, MO, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of the State of Pennsylvania (The)
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $65,110,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION [b/]: $19,329,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Insurance Corporation of New York (The)
BUSINESS ADDRESS: 500 North Broadway, Suite #155, Jericho, NY 11753. PHONE: (516) 822-9410. UNDERWRITING LIMITATION [b/]: $9,113,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Insurors Indemnity Company
BUSINESS ADDRESS: P.O. Box 2683, Waco, TX 76702-2683. PHONE: (817) 750-8128. UNDERWRITING LIMITATION [b/]: $228,000. SURETY LICENSES [c/] [f/]: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707 x-269. UNDERWRITING LIMITATION [b/]: $3,137,000. SURETY LICENSES [c/] [f/]: PR, VI. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company
BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (847) 517-2990. UNDERWRITING LIMITATION [b/]: $2,890,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Business & Mercantile REassurance Company
BUSINESS ADDRESS: 307 North Michigan Avenue, Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION [b/]: $7,732,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Fidelity Insurance Company
BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102-5207. PHONE: (973) 624-7200 x-226. UNDERWRITING LIMITATION [b/]: $3,859,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

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ISLAND INSURANCE COMPANY, LIMITED
BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. PHONE: (808) 531-1311. UNDERWRITING LIMITATION [b/]: $7,929,000. SURETY LICENSES [c/] [f/]: HI. INCORPORATED IN: Hawaii.

John Deere Insurance Company
BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265-5886. PHONE: (800) 447-0633. UNDERWRITING LIMITATION [b/]: $14,764,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The)
BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (785) 228-0000. UNDERWRITING LIMITATION [b/]: $6,521,000. SURETY LICENSES [c/] [f/]: AZ, AR, CO, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, WI, WY. INCORPORATED IN: Kansas.

KEMPER REINSURANCE COMPANY [3/]

Liberty Insurance Corporation
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $16,676,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Vermont.

LIBERTY MUTUAL FIRE INSURANCE COMPANY
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $61,087,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Liberty Mutual Insurance Company
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $420,366,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company
BUSINESS ADDRESS: 3350 Whiteford Road, P.O. Box 3819, York, PA 17402-0137. PHONE: (717) 757-0000. UNDERWRITING LIMITATION [b/]: $1,007,000. SURETY LICENSES [c/] [f/]: AL, AR, CO, DE, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

LM Insurance Corporation
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $1,497,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Lumbermens Mutual Casualty Company
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $182,276,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

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Lyndon Property Insurance Company
BUSINESS ADDRESS: 520 Maryville Centre Drive, Ste 500, St. Louis, MO 63141-5814. PHONE: (314) 275-5200. UNDERWRITING LIMITATION [b/]: $3,044,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

MARKEL INSURANCE COMPANY
BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. PHONE: (847) 866-2800. UNDERWRITING LIMITATION [b/]: $5,768,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company
BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION [b/]: $1,810,000. SURETY LICENSES [c/] [f/]: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual)
BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION [b/]: $2,328,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211. UNDERWRITING LIMITATION [b/]: $7,796,000. SURETY LICENSES [c/] [f/]: AZ, AR, CA, ID, IL, IN, IA, KS, KY, MI, MO, NE, NY, NC, OH, OK, PA, VA, WI. INCORPORATED IN: Michigan.

Michigan Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 2060, Farmington Hills, MI 48333-2060. PHONE: (248) 615-9000. UNDERWRITING LIMITATION [b/]: $13,745,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

MID-CONTINENT CASUALTY COMPANY
BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221 x-200. UNDERWRITING LIMITATION [b/]: $6,116,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NM, ND, OK, OR, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation
BUSINESS ADDRESS: 102 Kercheval, Grosse Pointe Farms, MI 48236. PHONE: (313) 886-2200. UNDERWRITING LIMITATION [b/]: $1,001,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NJ, NY, ND, OH, PA, SC, SD, TN, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Michigan.

MIDWESTERN INDEMNITY COMPANY (THE) [5/]
BUSINESS ADDRESS: 6281 Tri-Ridge Boulevard, Loveland, OH 45140. PHONE: (513) 576-3200. UNDERWRITING LIMITATION [b/]: $2,068,000. SURETY LICENSES [c/] [f/]: AL, AR, CT, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NJ, NY, NC, OH, OK, PA, SC, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Millers Mutual Fire Insurance Company (The)
BUSINESS ADDRESS: P.O. Box 2269, Fort Worth, TX 76113-2269. PHONE: (817) 332-7761. UNDERWRITING LIMITATION [b/]: $8,826,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CO, DC, FL, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

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Millers Mutual Insurance Association
BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. PHONE: (618) 463-3636. UNDERWRITING LIMITATION [b/]: $2,939,000. SURETY LICENSES [c/] [f/]: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, NC, ND, OH, SD, TN, TX, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin
BUSINESS ADDRESS: P. O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION [b/]: $166,000. SURETY LICENSES [c/] [f/]: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

Motors Insurance Corporation [6/]
BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI 48202. PHONE: (313) 556-5000. UNDERWRITING LIMITATION [b/]: $105,033,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Mountbatten Surety Company, Inc. (The)
BUSINESS ADDRESS: 33 Rock Hill Road, Bala Cynwyd, PA 19004. PHONE: (610) 664-2259. UNDERWRITING LIMITATION [b/]: $1,054,000. SURETY LICENSES [c/] [f/]: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, MD, MI, MS, NJ, NY, NC, OH, PA, SC, TN, TX, VA. INCORPORATED IN: Pennsylvania.

MUTUAL SERVICE CASUALTY INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164-0035. PHONE: (651) 631-7000. UNDERWRITING LIMITATION [b/]: $4,167,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NAC Reinsurance Corporation
BUSINESS ADDRESS: One Greenwich Plaza, P.O. Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION [b/]: $71,169,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company
BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION [b/]: $4,008,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National Fire Insurance Company of Hartford
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $77,666,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company
BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION [b/]: $25,177,000. SURETY LICENSES [c/] [f/]: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company
BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. PHONE: (402) 536-3000. UNDERWRITING LIMITATION [b/]: $1,425,078,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

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NATIONAL REINSURANCE CORPORATION
BUSINESS ADDRESS: 695 East Main St., P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION [b/]: $33,517,000. SURETY LICENSES [c/] [f/]: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation
BUSINESS ADDRESS: 233 South Wacker Drive, Suite 2000, Chicago, IL 60606-6308. PHONE: (312) 441-5400. UNDERWRITING LIMITATION [b/]: $10,600,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $82,875,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

National-Ben Franklin Insurance Company of Illinois
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $6,609,000. SURETY LICENSES [c/] [f/]: DC, FL, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

Nationwide Mutual Insurance Company
BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION [b/]: $818,168,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

NAVIGATORS INSURANCE COMPANY
BUSINESS ADDRESS: 123 William Street, New York, NY 10038-3871. PHONE: (212) 349-1600. UNDERWRITING LIMITATION [b/]: $8,428,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NV, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: New York.

Netherlands Insurance Company (The)
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $2,371,000. SURETY LICENSES [c/] [f/]: AZ, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MA, MI, NV, NH, NJ, NY, NC, OH, RI, SC, TN, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $38,806,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
BUSINESS ADDRESS: 650 Elm Street, Manchester, NH 03101. PHONE: (603) 644-6600. UNDERWRITING LIMITATION [b/]: $8,862,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION [b/]: $24,301,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

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NORTHLAND INSURANCE COMPANY
BUSINESS ADDRESS: P. O. Box 64816, St. Paul, MN 55164-0816. PHONE: (612) 688-4100. UNDERWRITING LIMITATION [b/]: $14,442,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NORTHWESTERN PACIFIC INDEMNITY COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (503) 221-4240. UNDERWRITING LIMITATION [b/]: $2,897,000. SURETY LICENSES [c/] [f/]: CA, OR, TX, WA. INCORPORATED IN: Oregon.

NOVA Casualty Company
BUSINESS ADDRESS: 180 Oak Street, Buffalo, NY 14203-1610. PHONE: (716) 856-3722. UNDERWRITING LIMITATION [b/]: $811,000. SURETY LICENSES [c/] [f/]: DC, IN, IA, MS, NV, NY, ND. INCORPORATED IN: New York.

Ohio Casualty Insurance Company (The)
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION [b/]: $102,711,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION [b/]: $67,982,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Oklahoma Surety Company
BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION [b/]: $631,000. SURETY LICENSES [c/] [f/]: AR, KS, LA, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company
BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601-0789. PHONE: (724) 834-5000. UNDERWRITING LIMITATION [b/]: $42,797,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company
BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (414) 797-2640. UNDERWRITING LIMITATION [b/]: $2,240,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

ORISKA INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 400, Oriskany, NY 13424. PHONE: (315) 768-2726. UNDERWRITING LIMITATION [b/]: $331,000. SURETY LICENSES [c/] [f/]: NY, PA, TN. INCORPORATED IN: New York.

Pacific Employers Insurance Company
BUSINESS ADDRESS: 1601 Chestnut Street, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $2,474,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

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Pacific Indemnity Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $54,575,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Pacific Insurance Company, Limited
BUSINESS ADDRESS: 150 Federal Street, Boston, MA 02110. PHONE: (617) 526-7600. UNDERWRITING LIMITATION [b/]: $30,879,000. SURETY LICENSES [c/] [f/]: CT, HI. INCORPORATED IN: Connecticut.

PARTNER REINSURANCE COMPANY OF THE U.S.
BUSINESS ADDRESS: Two World Financial Ctr., 225 Liberty St., 42nd Fl., New York, NY 10281-1076. PHONE: (212) 416-5700. UNDERWRITING LIMITATION [b/]: $26,378,000. SURETY LICENSES [c/] [f/]: AL, AZ, CA, CO, DC, GA, IL, IA, MS, NE, NV, NY, SD, TX. INCORPORATED IN: New York.

PARTNERRE INSURANCE COMPANY OF NEW YORK [7/]
BUSINESS ADDRESS: Two World Financial Ctr, 225 Liberty Street, 42nd Fl., New York, NY 10281-1076. PHONE: (212) 416-5700. UNDERWRITING LIMITATION [b/]: $3,788,000. SURETY LICENSES [c/] [f/]: AL, AZ, CA, CO, DE, DC, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

Peerless Insurance Company
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $20,647,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company
BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION [b/]: $5,636,000. SURETY LICENSES [c/] [f/]: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Penn Millers Insurance Company [8/]
BUSINESS ADDRESS: P. O. Box P, Wilkes-Barre, PA 18773-0016. PHONE: (570) 822-8111. UNDERWRITING LIMITATION [b/]: $4,982,000. SURETY LICENSES [c/] [f/]: AL, AR, CT, DC, FL, GA, IL, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania General Insurance Company
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $18,569,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Millers Mutual Insurance Company [8/]

Pennsylvania National Mutual Casualty Insurance Company
BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION [b/]: $14,138,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pioneer General Insurance Company
BUSINESS ADDRESS: 6780 East Hampden Avenue, Denver, CO 80224. PHONE: (303) 758-8122. UNDERWRITING LIMITATION [b/]: $189,000. SURETY LICENSES [c/] [f/]: CO. INCORPORATED IN: Colorado.

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PLANET INDEMNITY COMPANY
BUSINESS ADDRESS: 216 Sixteenth Street, Suite 1300, Denver, CO 80202. PHONE: (303) 534-5300. UNDERWRITING LIMITATION [b/]: $1,208,000. SURETY LICENSES [c/] [f/]: AL, CO, FL, GA, HI, ID, IL, KS, KY, MI, MS, ND, OH, OR, PA, SD, TX, WA, WV. INCORPORATED IN: Colorado.

PREFERRED NATIONAL INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 407003, Ft. Lauderdale, FL 33340-7003. PHONE: (954) 752-1222. UNDERWRITING LIMITATION [b/]: $2,821,000. SURETY LICENSES [c/] [f/]: FL, IL. INCORPORATED IN: Florida.

Progressive Casualty Insurance Company
BUSINESS ADDRESS: 6300 Wilson Mills Road, W33, Mayfield Village, OH 44143-2182. PHONE: (440) 461-5000. UNDERWRITING LIMITATION [b/]: $81,938,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

PROTECTION MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. PHONE: (847) 825-4474. UNDERWRITING LIMITATION [b/]: $52,787,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Protective Insurance Company
BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION [b/]: $25,504,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Ranger Insurance Company
BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954-8100. UNDERWRITING LIMITATION [b/]: $2,323,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Redland Insurance Company
BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102-1616. PHONE: (402) 344-8800. UNDERWRITING LIMITATION [b/]: $8,215,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Reliance Insurance Company
BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $104,673,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of Illinois [9/]
BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $4,865,000. SURETY LICENSES [c/] [f/]: IL. INCORPORATED IN: Illinois.

Reliance National Indemnity Company
BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $7,995,000. SURETY LICENSES [c/] [f/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

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Reliance Surety Company
BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $2,244,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company
BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1163. PHONE: (602) 263-6755. UNDERWRITING LIMITATION [b/]: $11,981,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Arizona.

RLI Insurance Company
BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION [b/]: $31,448,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Royal Indemnity Company
BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $23,024,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

ROYAL INSURANCE COMPANY OF AMERICA
BUSINESS ADDRESS: 1240 E. Diehl Rd., Ste 500, P. O. Box 3144, Naperville, IL 60566. PHONE: (630) 577-9200. UNDERWRITING LIMITATION [b/]: $53,278,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $90,423,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $14,770,000. SURETY LICENSES [c/] [f/]: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $7,048,000. SURETY LICENSES [c/] [f/]: CO, KY, MD, MO, NY, UT, WI, WY. INCORPORATED IN: Missouri.

Safeguard Insurance Company
BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P. O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $12,430,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

SCOR REINSURANCE COMPANY
BUSINESS ADDRESS: 2 World Trade Center, New York, NY 10048-2495. PHONE: (212) 390-5200. UNDERWRITING LIMITATION [b/]: $40,265,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, CA, DE, DC, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, TN, TX, UT, WA, WI. INCORPORATED IN: New York.

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Seaboard Surety Company
BUSINESS ADDRESS: 6225 Centennial Way, Baltimore, MD 21209. PHONE: (410) 205-3000. UNDERWRITING LIMITATION [b/]: $15,353,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURITY INSURANCE COMPANY OF HARTFORD
BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION [b/]: $5,763,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Security National Insurance Company
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $1,659,000. SURETY LICENSES [c/] [f/]: AL, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

Select Insurance Company
BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION [b/]: $4,141,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America
BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. PHONE: (973) 948-3000. UNDERWRITING LIMITATION [b/]: $24,281,000. SURETY LICENSES [c/] [f/]: AL, DE, DC, GA, IL, IN, IA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, PA, RI, SC, TX, VA, WI. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,122,000. SURETY LICENSES [c/] [f/]: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company
BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION [b/]: $162,429,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

SERVICE INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 9729, Bradenton, FL 34206-9729. PHONE: (941) 746-4107. UNDERWRITING LIMITATION [b/]: $658,000. SURETY LICENSES [c/] [f/]: AL, FL, GA, NE, SC, TN. INCORPORATED IN: Florida.

Signet Star Reinsurance Company
BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (973) 301-8000. UNDERWRITING LIMITATION [b/]: $25,702,000. SURETY LICENSES [c/] [f/]: AL, AK, AR, CA, CO, DE, DC, FL, ID, IL, IN, IA, KY, LA, MD, MI, MN, NE, NV, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WV, WI. INCORPORATED IN: Delaware.

SOREMA NORTH AMERICA REINSURANCE COMPANY
BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION [b/]: $15,229,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

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St. Paul Fire and Marine Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION [b/]: $131,034,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION [b/]: $3,709,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION [b/]: $7,062,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $81,908,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company
BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (248) 358-1100. UNDERWRITING LIMITATION [b/]: $4,337,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company
BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION [b/]: $69,117,000. SURETY LICENSES [c/] [f/]: AL, AZ, AR, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company
BUSINESS ADDRESS: One State Farm Plaza, Bloomington, IL 61710. PHONE: (309) 766-2311. UNDERWRITING LIMITATION [b/]: $452,668,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Statewide Insurance Company
BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079-0799. PHONE: (847) 662-0073. UNDERWRITING LIMITATION [b/]: $1,185,000. SURETY LICENSES [c/] [f/]: AZ, AR, ID, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, NM, ND, OH, OR, PA, SC, SD, TN, UT, WA, WI, WY. INCORPORATED IN: Illinois.

Surety Company of the Pacific
BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410-0289. PHONE: (818) 609-9232. UNDERWRITING LIMITATION [b/]: $469,000. SURETY LICENSES [c/] [f/]: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation
BUSINESS ADDRESS: 175 King Street, Armonk, NY 10504. PHONE: (212) 907-8000. UNDERWRITING LIMITATION [b/]: $178,016,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

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TEXAS PACIFIC INDEMNITY COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (214) 754-0777. UNDERWRITING LIMITATION [b/]: $865,000. SURETY LICENSES [c/ f/]: AR, TX. INCORPORATED IN: Texas.

TIG Insurance Company
BUSINESS ADDRESS: P. O. Box 152870, Irving, TX 75015. PHONE: (972) 831-5000. UNDERWRITING LIMITATION [b/]: $71,878,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

TIG Insurance Company of Michigan
BUSINESS ADDRESS: P.O. Box 152870, Irving, TX 75015. PHONE: (972) 831-5000. UNDERWRITING LIMITATION [b/]: $2,020,000. SURETY LICENSES [c/ f/]: AR, ID, IN, MI, MN, NY, TX. INCORPORATED IN: Michigan.

TIG Premier Insurance Company
BUSINESS ADDRESS: P.O. Box 152870, Irving, TX 75015. PHONE: (972) 831-5000. UNDERWRITING LIMITATION [b/]: $3,446,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC. ND. OH, OK. OR. PA. RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

TRANSATLANTIC REINSURANCE COMPANY
BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION [b/]: $124,124,000. SURETY LICENSES [c/ f/]: AK, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, NY, OH, OK, PA, SD, UT, WA, WI. INCORPORATED IN: New York.

Travelers Casualty and Surety Company
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $216,862,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of America
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $50,073,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of Illinois
BUSINESS ADDRESS: 215 Shuman Boulevard, Naperville, IL 60563. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $34,532,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $180,268,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company of Connecticut (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $24,670,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

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Tri-State Insurance Company of Minnesota
BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. PHONE: (507) 283-9561. UNDERWRITING LIMITATION [b/]: $524,000. SURETY LICENSES [c/ f/]: CO, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $49,941,000. SURETY LICENSES [c/ f/]: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, NM, OH, OK, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

Trinity Universal Insurance Company of Kansas, Inc.
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $1,051,000. SURETY LICENSES [c/ f/]: AL, AZ, AR, CO, GA, ID, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NM, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Kansas.

Trumbull Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,663,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CO, CT, DE, DC, ID, IL, IN, IA, KY, ME, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, WY. INCORPORATED IN: Connecticut.

Twin City Fire Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $11,463,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

ULICO CASUALTY COMPANY
BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. PHONE: (202) 682-0900. UNDERWRITING LIMITATION [b/]: $4,097,000. SURETY LICENSES [c/ f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Underwriters Indemnity Company
BUSINESS ADDRESS: 8 Greenway Plaza, Suite 400, Houston, TX 77046. PHONE: (713) 961-1300. UNDERWRITING LIMITATION [b/]: $360,000. SURETY LICENSES [c/ f/]: AL, AR, GA, HI, IL, IN, KS, KY, LA, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Texas.

UNDERWRITERS REINSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 878-9500. UNDERWRITING LIMITATION [b/]: $30,184,000. SURETY LICENSES [c/ f/]: AZ, CA, CT, DE, DC, ID, IL, IN, IA, MI, MS, NE, NV, NH, NJ, NM, NY, OH, PA, PR, RI, SD, TX, UT, WI, WY. INCORPORATED IN: New Hampshire.

Union Insurance Company
BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501-0439. PHONE: (402) 423-7688. UNDERWRITING LIMITATION [b/]: $820,000. SURETY LICENSES [c/ f/]: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, NC, ND, OK, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company [10/]
BUSINESS ADDRESS: 400 Perimeter Center Terrace, Suite 345, Atlanta, GA 30346. PHONE: (770) 677-0330. UNDERWRITING LIMITATION [b/]: $4,608,000. SURETY LICENSES [c/ f/]: AZ, IL, WI. INCORPORATED IN: Illinois.

United Coastal Insurance Company [11/]
BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 223-5000. UNDERWRITING LIMITATION [b/]: $3,029,000. SURETY LICENSES [c/ f/]: AZ. INCORPORATED IN: Arizona.

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United Fire & Casualty Company
BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION 3/: $20,234,000. SURETY LICENSES 4/ 5/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY
BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION 3/: $12,767,000. SURETY LICENSES 4/ 5/: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company
BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION 3/: $5,298,000. SURETY LICENSES 4/ 5/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

United States Fidelity and Guaranty Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION 3/: $73,974,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNITED STATES FIRE INSURANCE COMPANY
BUSINESS ADDRESS: 305 Madison Avenue, Morristown, NJ 07960. PHONE: (973) 490-6600. UNDERWRITING LIMITATION 3/: $43,845,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

United States Surety Company
BUSINESS ADDRESS: P.O. Box 5605, Timonium, MD 21094. PHONE: (410) 453-9522. UNDERWRITING LIMITATION 3/: $211,000. SURETY LICENSES 4/ 5/: MD, PA. INCORPORATED IN: Maryland.

UNITED SURETY AND INDEMNITY COMPANY
BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922-2111. PHONE: (809) 273-1818. UNDERWRITING LIMITATION 3/: $2,136,000. SURETY LICENSES 4/ 5/: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY
BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438-7223. UNDERWRITING LIMITATION 3/: $1,259,000. SURETY LICENSES 4/ 5/: NJ, NY, PA. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY
BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (787) 793-7202. UNDERWRITING LIMITATION 3/: $3,345,000. SURETY LICENSES 4/ 5/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company
BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION 3/: $3,679,000. SURETY LICENSES 4/ 5/: AZ, AR, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America
BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION 3/: $1,673,000. SURETY LICENSES 4/ 5/: AL, AK, AR, CA, CO, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

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UNIVERSAL UNDERWRITERS INSURANCE COMPANY 12/
BUSINESS ADDRESS: 7045 College Boulevard, Overland Park, KS 66211-1523. PHONE: (913) 339-1000. UNDERWRITING LIMITATION 3/: $55,551,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Kansas.

Utica Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION 3/: $34,600,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

VAN TOL SURETY COMPANY, INCORPORATED
BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION 3/: $256,000. SURETY LICENSES 4/ 5/: SD. INCORPORATED IN: South Dakota.

Vigilant Insurance Company
BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. PHONE: (212) 612-4000. UNDERWRITING LIMITATION 3/: $31,907,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company
BUSINESS ADDRESS: 300 Park Boulevard, Suite 500, Itasca, IL 60143-2625. PHONE: (630) 227-4700. UNDERWRITING LIMITATION 3/: $2,355,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION 3/: $76,400,000. SURETY LICENSES 4/ 5/: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Westchester Fire Insurance Company
BUSINESS ADDRESS: Six Concourse Parkway, Suite 2500, Atlanta, GA 30328-5346. PHONE: (678) 441-5000. UNDERWRITING LIMITATION 3/: $15,618,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Surety Company
BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION 3/: $14,975,000. SURETY LICENSES 4/ 5/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION 3/: $34,454,000. SURETY LICENSES 4/ 5/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION 3/: $9,323,000. SURETY LICENSES 4/ 5/: CA, IA, OH. INCORPORATED IN: Ohio.

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Westport Insurance Corporation
BUSINESS ADDRESS: P.O. Box 2979, Overland Park, KS 66201-1379. PHONE: (913) 676-5270. UNDERWRITING LIMITATION [b/]: $16,735,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

WINTERTHUR REINSURANCE CORPORATION OF AMERICA 7/

Worcester Insurance Company
BUSINESS ADDRESS: 120 Front Street, Ste 500, Worcester, MA 01608-1408. PHONE: (508) 751-8100. UNDERWRITING LIMITATION [b/]: $10,194,000. SURETY LICENSES [c/] [f/]: CT, MA, MI, NH, NY, RI, VT. INCORPORATED IN: Massachusetts.

Zurich American Insurance Company
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION [b/]: $117,782,000. SURETY LICENSES [c/] [f/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

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COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

Charter Oak Fire Insurance Company (The) 13/
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $15,726,000.

FOLKSAMERICA REINSURANCE COMPANY
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 312-2500. UNDERWRITING LIMITATION [b/]: $32,850,000.

Generali - U.S. Branch
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION [b/]: $10,390,000.

Odyssey Reinsurance Corporation
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 978-4700. UNDERWRITING LIMITATION [b/]: $32,677,000.

Phoenix Insurance Company (The) 14/
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $65,648,000.

RISK CAPITAL REINSURANCE COMPANY
BUSINESS ADDRESS: 20 Horseneck Lane, Greenwich, CT 06830. PHONE: (203) 862-4300. UNDERWRITING LIMITATION [b/]: $35,870,000.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE) 15/
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $10,487,000.

Travelers Indemnity Company of Illinois (The) 16/
BUSINESS ADDRESS: 215 Shuman Boulevard, Naperville, IL 60563. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $7,248,000.

ZENITH INSURANCE COMPANY 17/
BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713-1000. UNDERWRITING LIMITATION [b/]: $26,905,000.

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FOOTNOTES

1 American Alliance Insurance Company changed its state of incorporation from Arizona to Ohio, effective 12/9/98.

2 AMERICAN CONTRACTORS INDEMNITY COMPANY is required by state law to conduct business in the state of Texas as TEXAS BONDING COMPANY, Assumed Name of AMERICAN CONTRACTORS INDEMNITY COMPANY.

3 KEMPER REINSURANCE COMPANY changed its name to GE Reinsurance Corporation, effective 2/3/99.

4 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

5 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

6 Motors Insurance Corporation changed its state of incorporation from New York to Michigan, effective 4/29/99.

7 WINTERTHUR REINSURANCE CORPORATION OF AMERICA changed its name to PARTNERRE INSURANCE COMPANY OF NEW YORK, effective 3/1/99.

8 Pennsylvania Millers Mutual Insurance Company changed its name to Penn Millers Insurance Company, effective 4/1/99.

9 Reliance Insurance Company of Illinois is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

10 United Capitol Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

11 United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

12 UNIVERSAL UNDERWRITERS INSURANCE COMPANY changed its state of incorporation from Missouri to Kansas, effective 4/1/98.

13 The Charter Oak Fire Insurance Company's Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective 7/1/99.

14 The Phoenix Insurance Company's Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective 7/1/99.

Footnotes Continued on Next Page

FOOTNOTES (Continued)

15 THE TRAVELERS INDMENITY COMPANY OF AMERICA's Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective 7/1/99.

16 The Travelers Indemnity Company of Illinois' Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective 7/1/99.

17 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

ZENITH INSURANCE COMPANY's Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective 7/1/99.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a *per bond basis*. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, *when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected* by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a *bond of this type as an Excess Risk*. When Excess Risks on *bonds in favor of the United States are protected by reinsurance*, such reinsurance is to be effected by use of a *Federal reinsurance form* to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(c) A surety company *must be licensed in the State or other area in which it provides a bond*, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec.24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. *For updated license information, you may contact the company directly or the applicable State Insurance Department*. Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

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NOTES (Continued)

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the *principal resides;* where the *obligation is to be performed;* and in the *District of Columbia* where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.)
(NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved *surplus lines carriers* in various states. Such approval may indicate that the company is *authorized to write surety in a particular state, even though the company is not licensed in the state.* Questions related to this may be directed to the appropriate State Insurance Department. Refer to the list of state insurance departments at the end of this publication.

STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery	(334) 269-3550
Alaska, Juneau	(907) 465-2515
Arizona, Phoenix	(602) 912-8420
Arkansas, Little Rock	(501) 371-2600
California, Sacremento	(916) 492-3500
Colorado, Denver	(303) 894-7499
Connecticut, Hartford	(860) 297-3800
Delaware, Dover	(302) 739-4251
D. C., Washington	(202) 727-8000
Florida, Tallahasse	(850) 922-3100
Georgia, Atlanta	(404) 656-2056
Hawaii, Honolulu	(808) 586-2799
Idaho, Boise	(208) 334-2250
Illinois, Springfield	(217) 782-4515
Indiana, Indianapolis	(317) 232-2385
Iowa, Des Moines	(515) 281-5705
Kansas, Topeka	(785) 296-7801
Kentucky, Frankfort	(502) 564-3630
Louisiana, Baton Rouge	(225) 342-5900
Maine, Augusta	(207) 624-8475
Maryland, Baltimore	(410) 468-2090
Massachusetts, Boston	(617) 521-7794
Michigan, Lansing	(517) 373-9273
Minnesota, St. Paul	(651) 296-6848
Mississippi, Jackson	(601) 359-3569
Missouri, Jefferson City	(573) 751-4126
Montana, Helena	(406) 444-2040
Nebraska, Lincoln	(402) 471-2201
Nevada, Carson City	(775) 687-4270
New Hampshire, Concord	(603) 271-2261
New Jersey, Trenton	(609) 292-5360
New Mexico, Sante Fe	(505) 827-4500
New York, New York	(212) 480-6400
North Carolina, Raleigh	(919) 733-7349
North Dakota, Bismarck	(701) 328-2440
Ohio, Columbus	(614) 488-7924
Oklahoma, Oklahoma City	(405) 521-2828
Oregon, Salem	(503) 378-4281
Pennsylvania, Harrisburg	(717) 787-5173
Puerto Rico, Santurce	(787) 722-8686
Rhode Island, Providence	(401) 222-2223
South Carolina, Columbia	(803) 737-6160
South Dakota, Pierre	(605) 773-3563
Tennessee, Nashville	(615) 741-2241
Texas, Austin	(512) 463-6464
Utah, Salt Lake City	(801) 538-3800
Vermont, Montpelier	(802) 828-3301
Virginia, Richmond	(804) 371-9741
Virgin Islands, St. Thomas	(809) 773-6449
Washington, Olympia	(360) 753-7301
West Virginia, Charleston	(304) 558-3394
Wisconsin, Madison	(608) 266-0102
Wyoming, Cheyenne	(307) 777-7401

[FR Doc. 99–16588 Filed 6–30–99; 8:45 am]
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federal register

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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 27, 29, and 91
Flight Plan Requirements for Helicopter Operations Under Instrument Flight Rules; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 27, 29, and 91

[Docket No. FAA 98–4390; Notice No. 99–10]

RIN 2120–AG53

Flight Plan Requirements for Helicopter Operations Under Instrument Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On September 2, 1998, the FAA proposed to change instrument flight rules (IFR) for helicopters by revising alternate airport weather planning requirements, weather minima necessary to designate an airport as an alternate on an IFR flight plan, and fuel requirements for helicopter flight into IFR conditions. The comment period closed on October 2, 1998. In response to concerns raised by commenters regarding discrepancies in the original proposal between flight plan information required for helicopters and airplanes, the use of weather minima necessary to designate an airport as an alternate on an IFR flight plan, and the inconsistent use of meteorological terminology, the FAA is revising the original proposal to include commenters' suggestions and correct inadvertent omissions.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Comments on this document should be delivered or mailed, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–98–4390, 400 Seventh St., SW, Rm. Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William H. Wallace, General Aviation Commercial Division (AFS–804), Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–3771.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, economic, or federalism impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals contained in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–98–4390." The postcard will be date-stamped and mailed to the commenter.

Availability of the SNPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Washington DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this SNPRM.

Persons interested in being placed in the mailing list for future rulemaking documents should request from the FAA's Office of Rulemaking a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On August 28, 1998, the FAA issued a Notice of Proposed Rulemaking (NPRM) which proposed to amend the general operating rules for helicopters by revising alternate airport weather planning requirements, weather minima necessary to designate an airport as an alternate on an IFR flight plan, and the fuel requirements for helicopter flight into IFR conditions (63 FR 46834; September 2, 1998). The NPRM also proposed to withdraw Special Federal Aviation Regulation (SFAR) No. 29–4, Limited IFR Operations of Rotorcraft. This SFAR provides operators with a means to conduct approved limited IFR operations in rotorcraft that are not otherwise certificated for IFR operations.

The FAA issued the proposal because flight planning requirements (including alternate airport weather minima) for helicopters and other aircraft are virtually identical even though their operating characteristics are substantially different. The only distinction between the flight planning requirements for helicopters and other aircraft is addressed in 14 CFR 91.167. That section specifies different requirements for the amount of fuel helicopters and other aircraft must carry after completing a flight to the first airport of intended landing.

Helicopters, however, fly shorter distances at slower airspeeds than most other aircraft, and they generally remain in the air for shorter periods between landings; therefore, a helicopter is less likely to fly into unanticipated, unknown, or unforecast weather. The relatively short duration of the typical helicopter flight means that the departure weather and the destination weather are likely to be within the same weather system. The original notice therefore proposed to revise the flight planning requirements for helicopter IFR operations to take into account the unique operating characteristics of these aircraft.

In general, commenters supported the provisions contained in the notice because the proposal not only recognized the unique operating characteristics of helicopters but also provided operators with an additional margin of safety by easing access of helicopters to the IFR system. Commenters also agreed that the proposal would provide qualitative benefits by reducing noise on the ground and by increasing the ability of operators to more efficiently use helicopters. Some of the commenters, however, raised technical issues that were not addressed in the original notice. The FAA has therefore modified the original proposal in response to these comments and is issuing this SNPRM with a 30-day comment period.

Discussion of Comments and Changes to the Original Proposal

General

Thirty-nine comments were received on the NPRM, all of which were generally supportive of the proposal. Commenters praised the NPRM for its potential to enhance safety by facilitating the expansion of helicopter operations under IFR in marginal weather conditions, thereby reducing weather-related accidents. Commenters also stated that adoption of the proposal would enable operators to better utilize their IFR-equipped helicopters, transport clients more efficiently, and reduce noise on the ground. Seven commenters however stated that certain technical issues were not adequately addressed by the FAA in the proposal. These concerns are addressed in detail in the following discussion. In addition, since the FAA's economic analysis did not anticipate any cost of compliance or need for additional equipment or training, comments on both the quantitative and qualitative benefits of the proposal were favorable also.

Removal of SFAR No. 29–4

A number of commenters addressed the proposed removal of SFAR No. 29–4, Limited IFR Operations of Rotorcraft. One commenter stated that in the past, his company used the provisions of the SFAR to "prove IFR capabilities in a then non-IFR certified helicopter," and the company "does not want to lose this capability." Two other commenters stated that the FAA should retain the provisions of the SFAR for a period of time (for either a year or a "reasonable time") after the other provisions of the NPRM are implemented as a final rule. The commenters believe that this course of action would enable the FAA and industry to determine whether the SFAR is needed or has outlived its usefulness and then reconsider its removal. The FAA does not believe this action is necessary and is again proposing to remove the SFAR.

The SFAR was originally adopted to permit the FAA to collect operational data to study the feasibility of limited rotorcraft operations in IFR conditions. Since the adoption of the SFAR, the FAA has addressed the issue of helicopter IFR operations and issued regulations that govern both the certification and operation of helicopters under IFR. These regulations are found in Appendix B—Airworthiness Criteria for Helicopter Instrument Flight, contained in both 14 CFR parts 27 and 29. Operational regulations permitting helicopters to engage in IFR operations are found in 14 CFR parts 91 and 135.

Paragraph 5 of SFAR 29–4 states that "new applications for limited IFR rotorcraft operations under SFAR No. 29 may be submitted for approval until, but not including the effective date of Amendment No. 1 of the Rotorcraft Regulatory Review Program. On and after the effective date of Amendment No. 1, all applicants for certification of IFR rotorcraft operations must comply with the applicable provisions of the Federal Aviation Regulations." The effective date of Amendment No. 1 was March 2, 1983. Concurrent with the effective date of Amendment No. 1, regulations establishing airworthiness criteria for helicopter instrument flight became effective. All new applicants for certification of helicopter IFR operations must now comply with the provisions of Appendix B of parts 27 or 29, as applicable, and part 91. Because the FAA has established certification criteria and operational limitations for helicopters engaged in IFR operations, the need to prove IFR capabilities in a non-IFR certified helicopter is no longer warranted. The changes made to the regulations since the promulgation of SFAR No. 29 therefore no longer make its provisions necessary.

Alternate Airport Weather Minima

Commenters stated that the notice did not provide alternate airport weather minima reductions for helicopters when airports that have non-standard alternate airport weather minima are used as alternate airports. Standard alternate airport weather minima are stated in current 14 CFR 91.169(c)(1)(i) and (ii), (i.e., for a precision approach procedure a ceiling of 600 feet and a visibility of 2 statute miles; for a nonprecision approach procedure, a ceiling of 800 feet and a visibility of 2 statute miles).

The commenters stated that helicopter operators should not be subject to the same restrictions imposed on operators of other types of aircraft by the use of nonstandard alternate minimums. The commenters noted that these restrictions are generally imposed to facilitate the conduct of circle-to-land operations. Due to the ability of helicopters to fly any available instrument approach, regardless of wind direction, and to land at the approach threshold regardless of runway length by pivoting into the wind, if necessary, just before touchdown, the commenters asserted that helicopter operators should not be restricted by these non-standard alternate minimums. They further stated that helicopter operators therefore should be allowed to use lower-than-standard alternate weather minima, regardless of whether standard or nonstandard alternate airport weather minima are specified on part 97 approach plates.

The FAA agrees with these comments. Historically, the FAA has permitted helicopter operators to use procedures different from those permitted to be used by other aircraft. 14 CFR part 97 for example, allows helicopters to utilize "copter procedures" or other procedures prescribed in subpart C of that part, and to use the Category A minimum descent altitude (MDA) or decision height (DH). Part 97 also authorizes helicopter operators to reduce the required visibility minimum to one-half the published visibility minimum for Category A aircraft, but in no case may it be reduced to less than one-quarter mile or 1,200 feet runway visibility range (RVR).

Alternate airport weather minima are established using the ceiling and visibility requirements for circling approaches as a minimum. *The United States Standard for Terminal Instrument Procedures (TERPS)* (FAA Order 8260.3B), Chapter 11. Helicopter Procedures, paragraph 1100.a. "Identification of Inapplicable Criteria", states in part, "circling approach and high altitude penetration criteria do not apply to helicopter procedures." The FAA in fact does not evaluate pilots in the performance of circling approaches during evaluation for any rating or check involving the piloting of a helicopter. Additionally, the Instrument Rating Practical Test Standards (PTS) (FAA–S–8081–4C), published by the FAA to establish the standards for instrument rating certification practical tests for airplane, helicopter, and powered lift category and classes of aircraft indicates that the circling approach task is appropriate only to airplane and airship instrument proficiency checks and ratings.

Therefore, the FAA is proposing to change the language of § 91.169(c) to permit a helicopter operator to use an airport as an alternate airport provided the ceiling is at least 200 feet above, and the visibility is at least 1 mile above, the approach minima for the approach to be flown. This change would allow helicopters to use lower-than-standard

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alternate airport minima regardless of the approach to be flown while eliminating the need to alter current approach plates.

Certain commenters proposed that the FAA specify separate alternate airport weather minima for precision and nonprecision approaches used by a helicopter operator. Specifically, a 400-foot ceiling and one mile visibility was proposed for precision approach procedures and a 600-foot ceiling and one mile visibility was proposed for nonprecision approach procedures.

The FAA, however, adopted the language specified in the proposal to ensure that alternate airport approach minima are above actual approach minima in those situations where actual approach minima may be above values commonly associated with precision and nonprecision approaches. The proposed changes would recognize the unique operating characteristics of helicopters and would remove the operational restrictions that occur by requiring helicopters to use alternate approach minima specified in current instrument approach procedures.

Special Instrument Approach Procedures

Current 14 CFR 91.167(b) states in part that, "paragraph (a)(2) of this section does not apply if—(1) Part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing." Additionally, current 14 CFR 91.169(b) states in part that "Paragraph (a)(2) of this section does not apply if part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing." Current regulatory language does not provide for the use of special instrument approach procedures in determining an aircraft operator's ability to meet alternate airport requirements. The proposal would permit all aircraft operators to use special instrument approach procedures in determining compliance with alternate airport requirements.

Special instrument approach procedures are not issued pursuant to 14 CFR part 97 but may be issued to an operator through inclusion in the operator's Operations Specifications or through a letter of authorization issued by the Administrator to a specific operator. These approach procedures are not published in part 97, but are developed under the authority of 14 CFR 91.175(a). The FAA has developed over 120 new helicopter non-precision Global Positioning System (GPS) instrument approaches to heliports since 1995, over 75% of them since October 1997. The FAA has determined that these approaches are not standard instrument approach procedures but "special instrument approach procedures" which require additional aircrew training prior to their use. Therefore, to permit aircraft operators to use special instrument approach procedures to comply with alternate airport requirements, the FAA has revised the language contained in §§ 91.167(b)(1) and 91.169(b)(1), (c)(1), and (c)(2) of the original notice to permit the use of these special approaches when issued to an operator by the Administrator.

Weather Reports and Forecasts

Certain commenters noted the FAA's inaccurate use of the terms "weather forecasts" and "weather reports," and the inconsistency between the way the terms "weather reports and forecasts and weather conditions" and "weather reports and/or prevailing weather forecast"' were used in the proposed narrative format and tabular format, respectively. The FAA agrees that the phrases were used inconsistently in the proposal and is therefore proposing use of the phrase "appropriate weather reports or weather forecasts, or a combination of them" in those instances where weather reports and weather forecasts are to be considered by an operator.

The proposed language reflects current usage of the terms "weather forecasts" and "weather reports" by meteorologists and aviation industry personnel. It also includes the term "appropriate" when referring to weather reports and weather forecasts to indicate that an operator should consider current weather reports and current and valid weather forecasts when determining if a flight requires an alternate airport. Use of the term "appropriate" is consistent with references to weather reports and forecasts in other operating rules. Its inclusion should eliminate any ambiguity and ensure conformity in determining those reports and forecasts that should be considered by an operator when designating an alternate airport. Use of the term "appropriate" is also consistent with the provisions of 14 CFR 91.103 which requires each pilot in command, before beginning a flight, to become familiar with all available information concerning that flight.

With regard to the use of weather forecasts, the FAA notes that although a weather forecast may be valid for a period as long as 24 hours, only the most current and valid weather forecast would be considered "appropriate." In some instances a current weather forecast may be issued, however it may not be valid for the time period required to be considered by an operator when choosing an alternate airport. Such a report would not be considered "appropriate." Any superseded weather report is not considered current and its use in determining an alternate airport would not be considered appropriate.

The proposal also does not include the descriptive term "prevailing" with the phrase "weather forecasts" because "prevailing" is used to refer to actual weather conditions observed at a station and not to weather forecasts. Its use in the context of the original proposal was therefore improper and has been deleted.

Format of the Proposed Rule

In response to the FAA's request for specific comments on the comparative merits of displaying portions of §§ 91.167(b) and 91.169(b) and (c) in tabular or narrative format, seven commenters addressed this issue. Three commenters preferred the tabular format; two preferred the narrative; and two stated that either format was acceptable. Originally the FAA believed that the tabular format could be a method to make the regulations clearer, pursuant to a recommendation by the White House Commission on Aviation Safety and Security and the June 1, 1998 Presidential Memorandum, "Plain Language in Government Writing." Upon further consideration of the advantages and disadvantages of narrative and tabular formats, the FAA believes that the narrative format is preferable. Use of a narrative format is consistent with the format of other regulations in part 91 and does not cause a visual break in the flow of type on a page. This revised proposal is therefore in the all-narrative format.

Technical Corrections

In the original notice the FAA proposed distinct alternate airport weather minima for airplanes and helicopters. Aircraft other than airplanes and helicopters (e.g. airships) however may require access to the IFR system and require the need for an alternate airport. The FAA therefore has revised the original proposal to provide different alternate airport requirements for helicopters and for aircraft other than helicopters, as opposed to airplanes.

Paperwork Reduction Act

In accordance with the Paperwork Reduction of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP's) to the maximum extent practicable. The FAA has reviewed corresponding ICAO SARP's and has identified the following differences with these proposed regulations.

The proposal would not prescribe that the weather at the airport of intended landing be at or above the operating minima at the estimated time of arrival. Paragraph 2.6.2.1 of ICAO Annex 6, Part III, International Operations-Helicopters, Section III, International General Aviation, Chapter 2. Flight Operations, requires that the heliport of intended landing meet operating minima at the estimated time of arrival. Current § 91.169 also does not specify minimum weather requirements for the airport of intended landing at the estimated time of arrival.

The proposal would require helicopter operators to evaluate weather conditions at the airport of intended landing from the estimated time of arrival until one hour after the estimated time of arrival when determining whether an alternate airport is required. Paragraph 2.6.2.2 of ICAO Annex 6, Part III, Section III, requires an operator to evaluate weather conditions at the heliport of intended landing from two hours before to two hours after the estimated time of arrival or from the actual time of departure to two hours after the estimated time of arrival. Current § 91.169 (b) requires an operator to evaluate weather conditions at the airport of intended landing from 1 hour before the estimated time of arrival until 1 hour after the estimated time of arrival. Proposed § 91.169 (b) would require an operator of a helicopter to evaluate weather conditions at the airport of intended landing from the estimated time of arrival until one hour after the estimated time of arrival.

Paragraph 2.7.1 of ICAO Annex 6, Part III, Section III, states that an alternate shall be required in an operator's flight plan unless the weather conditions specified in paragraph 2.6.2.2 of that section prevail or other specific conditions related to isolated heliports are met and a point of no return (PNR) determination is made, if applicable. The proposed weather conditions for the selection of an alternate differ from those specified in paragraph 2.6.2.2. and the proposal does not address isolated heliports and PNR determinations.

The FAA recognizes that certain provisions of the notice differ from ICAO SARPs, however the agency has set forth the proposal to recognize the unique operational characteristics of helicopters and to facilitate their entry into the IFR system. If the proposal is adopted the FAA intends to file these differences with ICAO.

Economic Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined this proposal is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This proposed rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

This section summarizes the FAA's economic and trade analyses, findings, and determinations in response to these requirements. The complete economic and trade analyses are contained in the docket (see **ADDRESSES** above).

Benefits

There are both quantifiable and non-quantifiable benefits that can be attributed to this SPNRM. Non-quantifiable benefits include the reduction in the level of aircraft noise experienced by individuals on the ground when helicopters fly at higher altitudes and cost savings associated with enhanced corporate flight operations. These benefits are difficult to accurately measure, and are discussed below under "A. Qualitative Benefits." Other benefits would be any reduction in the number of fatal and serious accidents that occur in marginal weather conditions. These benefits can be estimated more readily, and are discussed below under "B. Quantitative Benefits."

A. Qualitative Benefits

During periods of marginal or inclement weather conditions, helicopter operators are often unable to utilize the IFR system because they are unable to meet the IFR flight plan requirements and criteria for specifying an alternate airport. When this occurs, helicopter operators often will fly under either VFR or Special VFR at lower altitudes. By flying at lower altitudes, third party costs (increased level of aircraft noise), are experienced by individuals on the ground.

All noise has the potential to annoy because of interference with speech, sleep, work, or other activities. However, aircraft noise is a function of aircraft altitude, and noise or sound energy can be reduced by increasing the flight altitude. Therefore, by providing helicopter operators with the opportunity to increase the altitude of a helicopter flight through increased access to the IFR system, the proposed rule will help to reduce the sound energy on the ground generated by that helicopter. For example, if a helicopter flying VFR at 250 ft above ground level (AGL) in marginal weather conditions is able to fly IFR at 4,000 ft AGL in the same marginal weather conditions, the sound energy is reduced by 24 dB, which represents a decrease to less than one-hundredth the level of sound intensity experienced by third parties on the ground.

Another benefit of this rule that is difficult to quantify is the reduction of the opportunity cost of idle executive and other management time. Due to the high level of concern many companies have regarding the safety of their senior executives, the safe operation of their corporate helicopters receives a high priority. As such, during periods of marginal or adverse weather conditions, many corporate helicopter operations are canceled rather than flown VFR under those conditions. Because helicopters provide prompt and effective transportation, a portion of the opportunity cost resulting from canceled operations can be measured by the lost productivity associated with the extra time involved by executives and other personnel using alternate forms of transportation, such as automobiles. By enabling more helicopter pilots to operate under IFR in marginal weather conditions, these opportunity costs could be avoided.

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B. Quantitative Benefits

The quantitative benefits of this rulemaking are derived from a potential reduction in weather related accidents associated with helicopters operating under VFR or special VFR. The FAA believes that many weather related accidents of the type that in the past occurred under VFR can be prevented in the future by enhanced helicopter operator access into the IFR system. The FAA further believes that this proposed rule will result in increased safety and offer greater operational flexibility for helicopter operators. The FAA bases this belief largely on the U.S. Army's experience of no mishaps over the past 16 years associated with flight planning criteria similar to the FAA's proposed rule.

To estimate potential safety benefits, the FAA analyzed National Transportation Safety Board (NTSB) helicopter accident data, where weather was a cause or factor, for the 10-year period from 1988 to 1997. The most recent accidents that occurred in 1998 are still under review; therefore, because the data record is not complete, no data from 1998 is used in this analysis.

During the 10-year period studied, there were a total of 258 helicopter accidents where weather was a cause or factor of the accident. The total includes 182 accidents involving VFR flight without a flight plan filed, 73 accidents where a VFR flight plan was filed, and three accidents where an IFR flight plan was filed. The 182 accidents involving VFR flights is approximately 60 times greater than the three accidents that occurred under an IFR flight. In addition, the 73 accidents where VFR flight plans were filed is approximately 24 times greater than the three in IFR operation. When the 182 accidents are added to the 73 accidents, the result is a total of 255 accidents, which represents approximately 99 percent of all the accidents that occurred when weather was a cause or factor.

According to informal industry surveys, approximately 10 percent of all helicopter flights flown are performed under an IFR flight plan. To corroborate the results of the industry surveys, the FAA conducted a simple random sample of helicopter flight plans. The sample consisted of 104 randomly selected helicopter flight plans from the Southern Region. The results showed 33 helicopter flight plans were IFR and 71 were VFR. To approximate the proportion of VFR flights that occurred without a flight plan compared to the sample number of VFR flights, the FAA calculated the ratio of VFR flights without a flight plan to VFR flight plans from the observed accident history. The FAA then multiplied that ratio by the number of VFR flight plans from the sample. The computation produced an estimate of 178 helicopter flights flown VFR without a flight plan during the time period to compare with the 33 flight plans of the sample.

Once an estimate of the number of VFR flights without a flight plan was determined (178), the FAA then added that to the number of sample VFR flight plans filed (71) and the sample IFR flight plans filed (33). That total (282) was divided into the number of IFR flight plans (33). This produced the estimated percentage of all helicopter flights flown IFR (11.7%), which is only 1.7 percent greater than the industry survey results of 10 percent.

The percent of IFR flights from the sample approximately equals the industry survey results. These comparable ratios provide some corroborative evidence that 10 percent of all helicopter operations are conducted under an IFR flight plan. As such, the number of accidents flying IFR would be expected to be approximately 10 percent of the total accidents, or 26 accidents. However, instead of 26 accidents only three accidents occurred under an IFR flight plan. Because the actual number of accidents (3) is approximately 12 percent of the expected number of accidents (26), this information suggests that IFR flight is safer than VFR flight when marginal weather conditions are present.

When the fatalities sustained during the study period flying with no flight plan (67) are added to the fatalities sustained flying with a VFR flight plan (64) the result is 131 fatal injuries. There were 10 fatal injuries sustained under an IFR flight plan. Similarly, when serious injuries sustained flying with no flight plan (46) are added to the serious injuries sustained flying with a VFR flight plan (41), the result is 87. There was one serious injury sustained in IFR flight.

In aggregate, the number of fatalities and serious injuries that occurred under VFR flight is significantly greater than those that occurred under an IFR flight plan. The FAA is aware that even though weather was a cause or contributing factor in all of these accidents, this rulemaking would not have prevented all of these accidents or injuries. However, the accident and injury data discussed previously suggest IFR flight is safer than VFR flight when marginal weather conditions are present.

Further research revealed that in 19 of the 255 accidents involving VFR flight, the pilot-in-command had instrument ratings for helicopters, or for a combination of helicopters and airplanes. The FAA believes that with the revised weather minimums and the revised standard/nonstandard approach minima provided by the proposal, the pilots with instrument ratings could have taken advantage of positive air traffic control services (such as obstacle avoidance) and flown IFR. However, due to the uncertainty regarding the weather at the destination airports, the FAA recognizes that not all of these 19 accidents may have been avoided. Therefore, the FAA applied the same percentage described above regarding the expected and actual accidents under IFR ($3/26 \cong 12\%$) where weather was a cause or factor of the accident and determined that 3 of the 19 accidents ($19 \times 12\% \cong 3$) would not have been avoided due to this rulemaking.

There were a total of 16 serious injuries and 18 fatalities that were sustained in the 19 accidents involving VFR flight where the pilot-in-command had instrument ratings for helicopters, or for a combination of helicopters and airplanes. To determine the potential benefits that will result from this SNPRM, the FAA estimated the average costs associated with all the injuries and fatalities. A economic value of $2.7 million and $518,000 was applied to each human fatality and serious injury, respectively in accordance with current guidance provided by the Department of Transportation. This computation resulted in an estimate of approximately $57 million in casualty costs. Also, the value of all of the destroyed aircraft was estimated to be $8 million. If this rulemaking (the NPRM plus the SNPRM) helps prevent 88 percent of these injuries and fatalities that resulted from 19 accidents, the expected potential safety benefits evenly distributed over the next ten years will be approximately $57 million ($40 million, discounted).

Costs

As was the case with the preceding NPRM, this SNPRM would not impose any additional equipment, training, or other cost to the aviation industry. Therefore, the FAA believes there is no apparent compliance cost associated with this SNPRM. However, the FAA solicits comments regarding the plausibility and extent of the adverse impacts on operators from implementation of the proposed rule.

Comparison of Costs and Benefits

The proposed rule would not place any additional requirements on the aviation industry. Therefore, there are no compliance costs associated with the proposed rule. Qualitative benefits from the proposed rule would come from reducing the level of aircraft noise experienced by individuals on the ground and from cost savings associated with reducing transportation time for corporate executives and other personnel.

The quantitative benefits come from a potential reduction in accidents by enabling more helicopter pilots to operate under IFR in marginal weather conditions. The regulatory evaluation for the original NPRM found that there were potential safety benefits of $48 million ($34 million, present value) in addition to the non-quantified benefits discussed above. In this regulatory evaluation of the original NPRM plus the SNPRM, the potential safety benefits over the next 10 years could be $57 million or $40 million, present value. Therefore, the FAA has determined both the original NPRM and this SNPRM are cost beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposal or final rule would have a significant economic impact on a substantial number of entities. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605 (b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule would impact entities regulated by part 91. The FAA has determined that there would be no compliance costs associated with this SNPRM, but in the NPRM published September 2, 1998, the agency solicited comments from operators who felt they would be negatively impacted from implementation of the proposed rule. Only positive comments were received supporting the FAA's position that this proposed rulemaking would not place any additional requirements on the aviation industry. Therefore, the FAA believes that there are no compliance costs associated with the proposed rule. Accordingly, the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The provisions of this proposed rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act (2 U.S.C. 1533), which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandate exceeds $100 million in any one year.

Federalism Implications

The proposed regulations would not have substantial direct effects on the States, on the relationship between national Government and the States, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation would not have federalism implications warranting the preparation of a Federalism Assessment.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

14 CFR Part 91

Aircraft, Airports, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 21, 27, 29, and 91 of Chapter I, title 14, Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

SFAR No. 29–4 [Removed]

2. Remove Special Federal Aviation Regulation (SFAR) No. 29–4—Limited IFR Operations of Rotorcraft from part 21.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

3. The authority citation for part 27 continues to read as follows:

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Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. Remove the reference to SFAR No. 29–4.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

5. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

6. Remove the reference to SFAR No. 29–4.

PART 91—GENERAL OPERATING AND FLIGHT RULES

7. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

SFAR No. 29–4 [Removed]

8. Remove Special Federal Aviation Regulation (SFAR) No. 29–4, Limited IFR Operations of Rotorcraft, from part 91.

9. Revise § 91.167 to read as follows:

§ 91.167 Fuel requirements for flight into IFR conditions.

(a) No person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering appropriate weather reports or weather forecasts, or a combination of them) to—

(1) Complete the flight to the first airport of intended landing;

(2) Except as provided in paragraph (b) of this section, fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if:

(1) Part 97 of this chapter prescribes a standard instrument approach procedure to, or a special instrument approach procedure has been issued by the Administrator to the operator for, the first airport of intended landing; and

(2) Appropriate weather reports or weather forecasts, or a combination of them, indicate the following:

(i) *For aircraft other than helicopters.* For at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.

(ii) *For helicopters.* At the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport elevation, or at least 400 feet above the lowest applicable approach minima, whichever is higher, and the visibility will be at least 2 statute miles.

10. Revise § 91.169 (a), (b), and (c) to read as follows:

§ 91.169 IFR flight plan: Information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing an IFR flight plan must include in it the following information:

(1) Information required under § 91.153 (a) of this part;

(2) Except as provided in paragraph (b) of this section, an alternate airport.

(b) Paragraph (a)(2) of this section does not apply if :

(1) Part 97 of this chapter prescribes a standard instrument approach procedure to, or a special instrument approach procedure has been issued by the Administrator to the operator for, the first airport of intended landing; and

(2) Appropriate weather reports or weather forecasts, or a combination of them, indicate the following:

(i) *For aircraft other than helicopters.* For at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.

(ii) *For helicopters.* At the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport elevation, or at least 400 feet above the lowest applicable approach minima, whichever is higher, and the visibility will be at least 2 statute miles.

(c) *IFR alternate airport weather minima.* Unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless appropriate weather reports or weather forecasts, or a combination of them, indicate that, at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be at or above the following weather minima:

(1) If an instrument approach procedure has been published in part 97 of this chapter, or a special instrument approach procedure has been issued by the Administrator to the operator, for that airport, the following minima:

(i) *For aircraft other than helicopters:* The alternate airport minima specified in that procedure, or if none are specified the following standard approach minima:

(A) *For a precision approach procedure.* Ceiling 600 feet and visibility 2 statute miles.

(B) *For a nonprecision approach procedure.* Ceiling 800 feet and visibility 2 statute miles.

(ii) *For helicopters:* Ceiling 200 feet above and visibility 1 statute mile above the approach minima for the approach to be flown, and

(2) If no instrument approach procedure has been published in part 97 of this chapter or no special instrument approach procedure has been issued by the Administrator to the operator, for the alternate airport, the ceiling and visibility minima are those allowing descent from the MEA, approach, and landing under basic VFR.

* * * * *

Issued in Washington, DC, on June 25, 1999.

Ava L. Mims,

Deputy Director, Flight Standards Service.

[FR Doc. 99–16794 Filed 6–28–99; 2:54 pm]

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Part VII

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final notice.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is implementing the Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds. These guidelines prescribe the procedures to be followed by the eligible institutions receiving Federal agricultural research and extension formula funds under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*); sections 3(b)(1) and (c) of the Smith-Lever Act of 1914, as amended (7 U.S.C. 343 (b)(1) & (c)); and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222). The recipients of these funds are commonly referred to as the 1862 land-grant institutions and 1890 land-grant institutions, including Tuskegee University. This action also establishes the research and extension protocols used to evaluate the success of multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, in addressing critical agricultural issues identified in the submitted plans of work.

FOR FURTHER INFORMATION CONTACT: Dr. George Cooper; Deputy Administrator, Partnerships; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Washington, D.C. 20250; at 202–720–5285 or 202–720–5369, 202–720–4924 (fax) or via electronic mail at bhewitt@reeusda.gov.

SUPPLEMENTARY INFORMATION: CSREES published a notice and request for comment on the Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds in the **Federal Register** on April 19, 1999 (64 FR 19242–19248).

Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) is implementing the following Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds in order to meet the plan of work reporting requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Public Law 105–185. The AREERA amendments added new and consistent plan of work requirements for agricultural research and extension formula funds provided under the Hatch Act of 1887 (7 U.S.C. 361a *et seq.*), the Smith-lever Act (7 U.S.C. 341 *et seq.*), and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (U.S.C. 3221 and 3222). The specific plan of work reporting requirements are outlined in the "Preface and Authority" section of the Guidelines.

These guidelines were developed by CSREES in consultation with the State partners at the 1862 land-grant institutions and the 1890 land-grant institutions, including Tuskegee University. Since the enactment of AREERA on June 23, 1998, the Agency has engaged in these consultations, under an exemption to the Federal Advisory Committee Act (7 U.S.C. 3124a(e)), with members of both the Federal and State partnership focusing on different aspects of the plan of work and requirements for the agricultural research and extension formula funds (i.e., stakeholder input, multistate and integrated activities), and has received input and comments from the 1862 and 1890 land-grant community to ensure that the Guidelines, while meeting the legal requirements of the legislation, address the issues and concerns of the recipients. The Proposed Guidelines were published in the **Federal Register** as a notice with a 30-day comment period on April 19, 1999, and these Final Guidelines reflect consideration by CSREES of the comments received.

The amendments to the Hatch and Smith-Lever Acts plan of work requirements made by section 202 of AREERA require the Secretary of Agriculture to develop protocols to evaluate the success of multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, in addressing the critical agricultural issues identified in the plans of work. As part of the previous notice and request for comment, CSREES sought comment on these evaluation protocols, including four evaluation criteria. Comments received were considered in the final version of section II.C.3., "Evaluation of Multistate and Integrated Research and Extension Activities." CSREES will be using the Annual Reports of Accomplishments and Results to evaluate the success of multistate, multi-institutional, and multidisciplinary activities, and joint research and extension activities, in addressing critical agricultural issues identified in the 5-Year Plans of Work. CSREES will be using the following evaluation criteria: (1) Did the planned program address the critical issues of strategic importance, including those identified by the stakeholders? (2) Did the planned program address the needs of under-served and under-represented populations of the State(s)? (3) Did the planned program describe the expected outcomes and impacts? and (4) Did the planned program result in improved program effectiveness and/or efficiency? This section also stipulates that these protocols be developed by CSREES in shared consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board. CSREES has developed these protocols in consultation with this Advisory Board.

The due date for submission of the 5-Year Plan of Work for the period covering October 1, 1999, through September 30, 2004, is July 15, 1999.

Public Comments and Guideline Changes in Response

In the Notice of the Proposed Guidelines, CSREES invited comments on the Proposed Guidelines as well as comments on the protocols to evaluate success of the multistate, multi-institutional, and multidisciplinary research and extension activities, in addressing critical agricultural issues identified in the plans of work. Fourteen comments were received. Eleven were from deans, directors, or administrators of research and extension programs at the 1862 land-grant institutions and three were from organizations representing stakeholder groups and agricultural producers.

Positive Comments

Ten of the 14 comments focused on some of the positive aspects of the Proposed Guidelines such as flexibility, accountability, appreciation for engaging the State partner institutions in the development of the plan of work guidelines as well as the opportunity to comment on the Proposed Guidelines, meeting the intent of Congress and AREERA, focus of the plan of work process on outcomes and impacts, and efforts to integrate research and extension activities. Thirteen of the comments addressed issues requiring clarification resulting in minor revisions to the Proposed Guidelines. Some areas of concern included the evaluation of the success of multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, implementation of sections 105 and 204 of AREERA for multistate extension activities and integrated research and extension activities, definitions of "activities" and programs," the stakeholder input process, and the merit review and scientific peer review processes.

Seven out of 14 commenters appreciated the flexibility that both the plan of work process and the Proposed Guidelines provide as State programs have major differences due to geographic uniqueness and location specificity. Emphasizing the benefits of such flexibility, one commenter wrote: "The flexibility will result in the strengths of the State, regional, and national programs being contained in the annual reports and will manifest the strength of the Federal/State partnership in meeting the needs of consumers and producers."

Seven of the commenters expressed appreciation for either the opportunity CSREES afforded the partnership institutions to engage in the discussions about the process and approach to implementing the provisions of AREERA or the opportunity to comment on the Proposed Guidelines. Other positive comments noted that the Proposed Guidelines focused on accountability through reporting on outcomes and impacts, met the intent of Congress and AREERA, and made efforts to further integrate research and extension activities.

Evaluation Protocols and Criteria

Six commenters discussed the research and extension protocols for evaluating the success of multistate, multi-institutional, and multidisciplinary research and extension activities, in addressing the critical agricultural issues identified in the plans of work. CSREES proposed using the Annual Reports of Accomplishments and Results to evaluate the success of multistate, multi-institutional, and multidisciplinary activities, and joint research and extension activities, in addressing critical agricultural issues in the 5-Year Plans of Work. CSREES proposed using the following evaluation criteria: (1) Did the planned program address the critical issues of strategic importance, including those identified by the stakeholders? (2) Did the planned program address the needs of under-served populations of the State(s)? (3) Did the planned program prescribe the expected outcomes and impacts? and (4) Did the planned program result in improved effectiveness and /or efficiency? Three of the evaluation commenters said that they looked forward to the public comment process on these evaluation protocols. However, they offered no comments on the process. The Proposed Guidelines that were published in the **Federal Register** on April 19, 1999, included the proposed evaluation protocols for these activities as well as the proposed evaluation criteria. Therefore, there will be no need for a future comment process as CSREES has already received comments on these proposed evaluation protocols.

The fourth commenter questioned the evaluation criteria for measuring the success of multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, particularly evaluation criteria nos. 2 and 4. The commenter noted that no. 2 asks if the needs of the under-served populations were addressed by the planned program and that this question was not asked during the planning process (development of the 5-Year Plan of Work). The commenter suggested that this be included in the planning process.

In response, CSREES has revised the section on *targeted audiences* under "Planned Programs" to: "The *targeted audiences* identifies the set of stakeholders, customers, and/or consumers for which the program is intended. The 5-Year Plan of Work should address the institution's commitment to facilitating equality of service and ease of access to all research and extension programs and services and to meeting the needs of under-served and under-represented individuals, groups, and/or organizations."

The commenter also questioned evaluation criterion no. 4 which asks whether the planned program resulted in improved program effectiveness and/or efficiency. The commenter wanted to know how improvement in efficiency was to be measured, when the planning process focuses on effectiveness—impacts and outcomes.

CSREES has revised the section on *internal and external linkages* to clarify this issue under "Planned Programs" to: The *internal and external linkages* include activities identified as integrated, multidisciplinary, multi-institutional, and/or multistate. This component may also address any efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues within the State and the extent of current and emerging efforts (including regional efforts) to work with those institutions. Within this planning component, discussion should be made regarding any efficiencies achieved through these external and internal linkages both in the use of resources and in the ability to solve critical agricultural issues."

The fifth commenter commended CSREES for specifically seeking comment on the development of protocols to evaluate the success in meeting the new directives concerning multistate, multi-institutional, and multidisciplinary" and integration." This commenter along with the sixth commenter on these evaluation protocols urged CSREES to include a strong stakeholder review and input process as an integral part of the review process for the 5-Year Plans of Work, for the Annual Reports of Accomplishments and Results, and for measuring the success of multistate, multi-institutional, and multidisciplinary research and extension activities and joint research and extension activities.

CSREES at this time does not plan to have stakeholders involved at the Federal level in the review of the 5-Year Plans of Work, the review of the Annual Reports of Accomplishments and Results, or the evaluation of the multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, in addressing critical agricultural issues identified in the 5-Year Plans of Work. CSREES feels that the stakeholder input processes at the 1862 and 1890 land-grant institutions in the States will be the most effective protocol for stakeholders to provide input on these reviews and evaluations. See proposed stakeholder input rule, 64 FR 18534, April 14, 1999. However, CSREES does plan to make available through the CSREES homepage all the approved 5-Year Plans of Work and Annual Reports of Accomplishments and Results so that stakeholders may be provided an opportunity to review these documents in order to participate more fully in the stakeholder input processes in the States.

The sixth commenter felt that the Annual Report of Accomplishments and Results would not be an adequate vehicle for the evaluation of multistate and integrated research and extension activities. CSREES plans to use these reports, the 5-Year Plans of Work, and the four evaluation criteria stated in these Guidelines as the evaluation protocols and has consulted with the National Agricultural Research, Extension, Education, and Economics Advisory Board in both development

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and adoption of these evaluation protocols. CSREES, however, plans to continue to dialogue with the 1862 and 1890 land-grant institutions on both the programmatic and administrative aspects of these activities as AREERA has placed significant emphasis on these types of activities.

Stakeholder Input Process

Two commenters discussed the stakeholder input process as it relates to the plan of work reporting requirements. Section 102(c) of AREERA requires the 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions receiving agricultural research, education, and extension formula funds from CSREES to establish a process for stakeholder input on the uses of such funds. As mentioned in the **Federal Register** notice for the Proposed Guidelines on April 19, 1999, CSREES is in the process of promulgating separately regulations to implement these stakeholder input requirements. See proposed stakeholder input rule, 64 FR 18534, April 14, 1999. CSREES anticipates the final rule being published by July 31, 1999.

One of the commenters supported the decision of CSREES to provide the maximum flexibility to institutions in the way they report their stakeholder input in their plans of work. The other commenter focused on the definition of *seek stakeholder input*. The previous notice for these Guidelines defined *seek stakeholder input* "means an open and fair process which allows opportunities for individuals, groups, and organizations a voice in a process that treats all with dignity and respect." The commenter urged CSREES to adopt a new definition, building upon the concepts of "open and fair," "equality of service," and "ease of access" in the Final Guidelines, as follows: "Seek stakeholder input means an open, fair, transparent, accessible, inclusive, accountable, and comprehensive process which provides opportunities for diverse individuals, groups, and organizations, especially the traditionally under-served and under-represented, to have a voice in a process and one that treats all with dignity and respect."

CSREES has modified the definition of *seek stakeholder input* to "*Seek stakeholder input* means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice and one that treats all with dignity and respect." However, although CSREES does encourage States to implement a stakeholder input process satisfying the above definition posed by the commenter, CSREES has recognized in consultation with the State partners that each State has unique characteristics and should implement a stakeholder input process that best suits the needs of their State. CSREES has determined to use this modified definition of *seek stakeholder input* as the lowest acceptable threshold of stakeholder input process because CSREES wishes to maintain an environment in which States may quickly modify their stakeholder input processes to respond effectively to existing and emerging critical agricultural issues. Also, CSREES does not wish to place undue administrative burdens upon the States in meeting the stakeholder input requirement that potentially may interfere with the conduct and delivery of research and extension programs.

The above commenter made three additional comments about stakeholders. First, the commenter noted that while the definition for *under-served* is referenced once in the review criteria (C.2.), the definition for *under-represented* did not appear in the Proposed Guidelines. As the commenter had thought, this was an oversight and has been included in the review criteria. Second, this commenter thought we should address *under-served* and *under-represented* stakeholders in *target audiences* (B.1.c.5) under "Program Descriptions." As mentioned previously, we have revised this section to include these stakeholders. Third, the commenter urged CSREES to broaden the definition of *under-represented* to specifically include "small farm owners and operators." CSREES has revised the definition as suggested.

Research and Extension Cooperation

Five comments were received requesting clarification of the phrase, "The manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including the activities to be carried out separately, sequentially, or jointly" under "I. Preface and Authority." This is a specific requirement of the Hatch and Smith-Lever Acts and NARETPA as amended by sections 202 and 225 of AREERA. At a minimum, States should be reporting under "Program Descriptions" on those research and extension activities, supported with Federal formula funds (allocated by CSREES and identified as formula funds for the purposes of this 5-Year Plan of Work) and the associated required matching funds. States are required to discuss other funds only under planning component #,7 *allocated resources*, when a research and/or extension program, supported by either Federal formula funds (allocated by CSREES and identified as formula funds for purposes of this 5-Year Plan of Work) or the associated required matching funds, is also receiving funds from other sources. All that is required is a brief statement about the funding sources and how these funds contribute to the conduct and delivery of the research and/or extension program(s).

Programs, Projects, and Activities

Three comments were received on the use of the terms: "programs," "projects," and "activities." All three commenters requested that the casual use of the terms "programs" in the Proposed Guidelines should be reconciled with section 103(d)(1) of AREERA which refers to "activities," not "programs" for peer review. To these commenters, this issue was critical as their institutions would want to peer review "projects", not collections of "projects" ("programs"). "Projects" historically has been recognized by the agricultural experiment station community in planning and assigning responsibility to agricultural experiment station staff and "programs" has been recognized by the cooperative extension services in their planning and assigning responsibility to extension staff. CSREES has determined that an "activity" is either a "project," "program," or a combination thereof; and that for the sake of plan of work reporting purposes, "planned programs" are collections of these research and extension activities, or research projects and extension programs. Accordingly, a definition of "activities" and "planned programs" has been added to the Final Guidelines.

Due Date

Two commenters thought that the due date of July 15, 1999, for the 5-Year Plan of Work is unreasonable considering the workload being imposed. The requirements of the 5-Year Plan of Work as described in the Proposed Guidelines very closely resemble the requirements imposed by the Hatch and Smith-Lever Acts as amended by sections 202 and 225 of AREERA for State Plans of Work and reflect the collaborative efforts of CSREES and the State partners in developing the proposed guidelines since the enactment of AREERA on June 23, 1998. CSREES needs to receive the 5-Year Plans of Work by July 15, 1999, in order to review and approve these 5-Year Plans of Work prior to October 1, 1999, in order to guarantee the timely release of first quarter FY 2000 formula funds.

Multistate and Integrated Activity Baselines

Five comments were received expressing concern about the implementation of the Hatch and Smith-Lever Act amendments, section 105 and 204 of AREERA, particularly the establishment of the FY 1997 baselines for multistate extension activities and integrated research and extension activities. CSREES has established a workgroup comprised of representatives from the fiscal and plan of work reporting staffs at the land-grant institutions, staff from the Office of Extramural Programs, and plan of work staff from the Partnerships Unit. These workgroup participants will be meeting 6/30–7/1/99 in Washington, D.C. to make recommendations for the guidelines on the implementation of sections 105 and 204 of AREERA. This group will be focusing on three areas: (1) How to "account" for multistate extension activities and integrated research and extension activities, (2) how to establish FY 1997 baselines for multistate extension activities and integrated research and extension activities, and (3) establishment of criteria for a reduction in the minimum percentage required to be expended for multistate extension activities and integrated research and extension activities. One of the goals of this workgroup will be developing guidelines that place the least amount of administrative and fiscal reporting burden on the States while meeting the intent of the AREERA legislation.

As mentioned in the notice of the Proposed Guidelines, CSREES will be issuing separate guidance on the implementation of these two sections of AREERA. CSREES anticipates issuing this guidance by July 31, 1999.

One commenter thought that the evidence (formal agreements, letters of memorandums, contracts or other instruments) required for documentation of multistate extension activities as indicated under section II.B.4.b, "Smith-Lever Multistate Extension," was an onerous task that added no value to the work being done and created a negative value to the paperwork now being required. The commenter also felt that this onerous paperwork would motivate States to initiate minimal multistate efforts, rather than to increase them. CSREES can appreciate the amount of paperwork generated by section 105 of AREERA. However, this requirement only applies to the minimum percentage of Federal formula funds that must be expended on multitate activities. Multistate activities reported under the 5-Year Plan of Work component #4 of the 5-Year Plan of Work for "Smith-Lever Multistate Extension" should be only those activities used to meet the requirements imposed by section 105 of AREERA. Additional multistate activities may be identified in overall program descriptions under planning component #4, *internal and external linkages*. In contrast to the commenter's view that this requirement may discourage multistate extension activities, CSREES feels that this requirement may actually stimulate multistate activities in States and regions and in programs where they have not existed previously.

Another commenter was unclear whether regional and/or national efforts which maximize the resources in developing program curriculum and publications are recognized in the stated criteria for multistate activities and whether national networks (technology based) with States contributing human resources should be recognized as multistate program efforts. Assuming that participation in the above activities meets the criteria set forth in the Final Guidelines (that the State staff contribute towards the impacts of the program, collaborate towards the objectives, and are involved in the outcomes), the above activities, including technology-based networks, could be identified as multistate activities for the purposes of meeting the requirements of the Smith-Lever Act amendment in section 105 of AREERA.

One commenter requested, as part of his overall comments, a waiver from the Hatch and Smith-Lever Act requirements in section 204 of AREERA that require that States expend the lesser of 25 percent or twice the percentage of funds expended in FY 1997 on integrated research and extension activities. As mentioned previously, CSREES will be issuing separate guidance on the administrative and fiscal implementation of section 204 for integrated research and extension activities.

Three comments were received requesting clarification on section 204 and its applicability to the matching funds. Section 204 only applies to the Federal funds allocated. Section II.B.5, "Integrated Research and Extension Activities," has been revised to clarify this point.

Education and Outreach Programs

One commenter questioned the requirement under "Planned Programs" for a description of the education and outreach programs (section II.B.1.c.8) that are already underway to convey the research results and efforts to encourage multicounty cooperation in dissemination of research results. The commenter questioned the rationale of this requirement when calling for a forward looking plan and that the requirements were busy work that add zero value to the plan of work process." Describing the "education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural issue, including the efforts to encourage multicounty cooperation in the dissemination of research results' is a requirement for the plans of work under section 202(a)(1) of AREERA which amended section 4 of the Smith-Lever Act and under section 225(a)(1) of AREERA which amended section 1444(d) of NAREPTA. As noted in the Proposed Guidelines this planning component applies only to those 5-Year Plans of Work incorporating extension activities of the 1862 and/or 1890 land-grant institutions.

Annual Update

Three comments were received on the Annual Update to the 5-Year Plan of Work. All three commenters requested that CSREES consider a "roll-forward" time frame for a plan of work that has substantive change reflected in the annual update. In other words, the 5-year clock would start over from the date of the updated 5-Year Plan of Work. Commenters suggested this for two primary reasons: (1) Reduce the 5-year rush at the Federal level to review the 5-Year Plans of Work and (2) Potentially provide additional incentive at the State level to keep a refined plan in place as planned programs evolve to address emerging critical agricultural issues.

Although CSREES is appreciative of the concern from the State partners about the "rush" to review these 5-Year Plans of Work, CSREES is committed to a timely and meaningful review process. This was demonstrated when CSREES sent an email message to the State partners entitled "SPECIAL MESSAGE RE: POW" on May 12, 1999, regarding the criteria for review of the 5-Year Plans of Work, the evaluation protocols for these plans, and the anticipated timetable. CSREES has determined to keep the existing fixed 5-Year time frame for the plan of work process in place. By keeping all the 5-Year Plans of Work on the same 5-year cycle, both the evaluation of the Annual Reports of Accomplishments and Results against the current 5-Year Plans of Work and the Federal reporting requirements, including annual budget justifications and Government Performance Results Act (GPRA) reporting, will be accomplished more effectively and more

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efficiently. In addition, these 5-Year Plans of Work will have been prepared based on the existing five national goals established in CSREES Strategic Plans and linked to the five national goals within the Research, Education, and Economics (REE) Mission Areas of the U.S. Department of Agriculture.

Merit and Peer Review

Four comments were received about the merit review and peer review processes. One commenter noted that the merit review process must be established prior to October 1, 1999, and requested clarification whether the plan of work itself needed to be merit reviewed. Section 103(e) of AREERA requires that effective October 1, 1999, to be eligible to obtain agricultural research or extension funds for an activity, each 1862 and 1890 institution shall: (1) Establish a process for the merit review of the activity; and (2) Review the activity in accordance with the process. Only the research projects supported with Hatch Multistate Research Funds are subject to a scientific peer review which will also satisfy the merit review requirement. CSREES has intended that the merit review process and/or scientific peer view process be in place by October 1, 1999, as required by the legislation, and that a description of the process(es) be provided in the 5-Year Plan of Work. Since the Final Guidelines requires reporting on planned programs which are collections of research activities or projects and/or extension activities or programs, the plan of work does not have to be merit reviewed, but the individual research projects or activities and/or the extension programs or activities have to be merit reviewed according to the established process at the land-grant institution. And in the case of Hatch Multistate Research projects, a scientific peer review is required in lieu of a merit review.

Two of the commenters also were concerned that by having these merit reviews and scientific peer reviews conducted by the institutions, the research projects or activities and/or extension programs or activities will be subject to a review process twice. Although it may appear that research and extension activities are being reviewed twice, the merit review and/or scientific peer review of research and extension activities conducted at the institutions and the review of the 5-Year Plans of Work are evaluated against different criteria and for different purposes. The merit review and/or scientific peer review process(es) are established by the land-grant institutions within the general framework of these Guidelines and the 5-Year Plan of Work is an evaluation of the planned programs (which are collections of research and/or extension activities) against the criteria set forth in section II.C.2., "Review Criteria."

The fourth commenter on the program review processes expressed concern that their existing merit review and scientific review processes for both research and extension activities may result in Annual Updates to the 5-Year Plan of Work each year as they perform their reviews each year. Since the Final Guidelines require reporting on planned programs which are collections of research and/or extension activities, the results of annual merit reviews and scientific peer reviews may not result in substantive changes in the 5-Year Plans of Work that would require the submission of an Annual Update to the 5-Year Plan of Work.

Separate Extension and Research Administrative Structures

One commenter noted that their cooperative extension service and their agricultural experiment station are under separate administrative structures and that it may be difficult to have consistent reporting on joint research and extension efforts. They expressed concern that they may be penalized for not being completely aligned in their reporting when they submit two separate reports. These Final Guidelines provide as much flexibility as possible in the submission of the 5-Year Plans of Work, Annual Updates to the 5-Year Plans of Work, and Annual Reports of Results and Accomplishments in order to accommodate the needs of each State and its land-grant institutions.

Withholding of Funds

One commenter noted that the Proposed Guidelines lacked a procedure to "withhold formula funds" if the goals and objectives have not been met. CSREES has had established procedures for "witholding formula funds" when certain programmatic, administrative, and fiscal requirements are not met by the land-grant institutions. The land-grant institutions are notified and given ample opportunity to satisfy these requirements prior to the next quarterly allocation of funds. These procedures have worked well in the past; while the procedures help to ensure that requirements are met, the conduct and delivery of research and extension programs are neither interrupted nor jeopardized. As stated in section II.C.1, "Schedule," adherence to the Plan of Work schedule by the recipient institution is critical to assuring the timely allocation of funds by CSREES.

Annual Reports of Accomplishments and Results

One commenter thought that the submission date for the Annual Reports of Accomplishments and Results should be March or April, instead of December 31. CSREES can appreciate institutions' desire for more time to synthesize information from the previous calendar year's research and extension activities and therefore submit a more meaningful report; however, CSREES uses these reports in preparation of CSREES budget documents as well as for questions posed by congressional committees during the annual budget process. Consequently, CSREES has not changed the due dates for the Annual Reports of Accomplishments and Results.

Another commenter suggested that some form of web-based reporting mechanism be used in the Annual Report of Accomplishments and Results for reporting on multistate extension activities and integrated research and extension activities in order to simplify the process. As the system progresses through this 5-Year Plan of Work cycle, CSREES will consider this suggestion before the first Annual Reports of Accomplishments and Results are due.

Continuing Dialogue

The last and final comment concerned the importance of continuing the dialogue between the Federal and State Partners to ensure flexibility in both the Plan of Work and the reporting against the Plan of Work. CSREES intends to invite the State partners back within the next year to engage in discussions regarding the submission of the 5-Year Plan of Work as well as the review process conducted by CSREES.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. Chapter 35), the collection of information requirements contained in these Final Guidelines have been reviewed and approved by OMB and given OMB Document No. 0524–0036. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

The public reporting burden for this collection of information contained in these guidelines is estimated at 1349.44 hours per response for the 5-Year Plan of Work; 134.94 hours per response for the Annual Update to the 5-Year Plan of Work; and 1,366.67 hours per response for the Annual Report of Accomplishments and Results. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, Office of the Chief Information Officer, Stop 7603, 1400 Independence Avenue, SW., Washington, DC 20250–7630, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. These guidelines have no additional impact on any existing data collection burden.

Pursuant to the plan of work requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998, the Cooperative State Research, Education, and Extension Service hereby is implementing the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds as follows:

Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds

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I. Preface and Authority

Sections 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Public Law 105–185, enacted amendments requiring all States and 1890 institutions receiving formula funds authorized under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*), the Smith-Lever Act, as amended (7 U.S.C. 341 *et seq.*), and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221 and 3222), to prepare and submit to the Cooperative State Research, Education, and Extension Service (CSREES) a plan of work for the use of those funds.

While the requirement for the Hatch Act and Smith-Lever Act funds applies to the States, CSREES assumes that in most cases the function will be performed by the 1862 land-grant institution in the States. The only "eligible institutions" to receive formula funding under sections 1444 and 1445 of NARETPA are the 1890 land-grant institutions and Tuskegee University. Therefore, these guidelines refer throughout to "institutions" to include both the 1862 and 1890 land-grant institutions, including Tuskegee University.

Further, these guidelines require a plan of work that covers both research and extension. Although the District of Columbia receives extension funds under the District of Columbia Postsecondary Education Reorganization Act, Pub. L. 93–471, as opposed to the Smith-Lever Act, CSREES has determined that it should be subject to the plan of work requirements imposed under these guidelines except where expressly excluded.

All the requirements of AREERA with regard to agricultural research and extension formula funds were considered and were incorporated in these plan of work guidelines including descriptions of the following: (1) The critical short-term, intermediate, and long-term agricultural issues in the State and the current and planned research and extension programs and projects targeted to address the issues; (2) the process established to consult with stakeholders regarding the identification of critical agricultural issues in the State and the development of research and extension projects and programs targeted to address the issues; (3) the efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues in the State and the extent of current and emerging efforts (including regional and multistate efforts) to work with those other institutions; (4) the manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including the activities to be carried out separately, sequentially, or jointly; and (5) For extension, the education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural issue, including efforts to encourage multicounty cooperation in the dissemination of research information.

These guidelines also take into consideration the requirement in section 102(c) of AREERA for the 1862, 1890, and 1994 land-grant institutions receiving agricultural research, extension, and education formula funds to establish a process for receiving stakeholder input on the uses of such funds. This stakeholder input requirement, as it applies to research and extension at 1862 and 1890 land-grant institutions, has been incorporated as part of the plan of work process.

The requirement of section 103(e) of AREERA also is addressed in these plan of work guidelines. This section requires that the 1862, 1890, and 1994 land-grant institutions establish a merit review process, prior to October 1, 1999, in order to obtain agricultural research, extension, and education funds. For purposes of these guidelines applicable to formula funds, a merit review process must be established for extension programs funded under sections 3(b)(1) and (c) of the Smith-Lever Act and under section 1444 of NARETPA, and for research programs funded under sections 3(c)(1) and (2) of the Hatch Act (commonly referred to as Hatch Regular Formula Funds) and under section 1445 of NARETPA. Section 104 of AREERA amended the Hatch Act of 1887 also to stipulate that a scientific peer review process (that also would satisfy the requirements of a merit review process under section 103(e)) be established for research programs funded under section 3(c)(3) of the Hatch Act (commonly referred to as Hatch Multistate Research Funds). As previously stated, these program review processes must be established prior to October 1, 1999, in order for the institutions to obtain agricultural research and extension formula funds. Consequently, a description of the merit review and scientific peer review process has been included as a requirement in the submission of the 5-Year Plan of Work.

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These plan of work guidelines also require reporting on the multistate and integrated research and extension programs. Section 104 of AREERA amended the Hatch Act of 1887 to redesignate the Hatch regional research funds as the Hatch Multistate Research Fund, specifying that these funds be used for cooperative research employing multidisciplinary approaches in which a State agricultural experiment station, working with another state agricultural experiment station, the Agricultural Research Service, or a college or university, cooperates to solve the problems that concern more than one State. Section 105 of AREERA amended the Smith-Lever Act to require that each institution receiving extension formula funds under sections 3(b) and (c) of the Smith-Lever Act expend for multistate activities in FY 2000 and thereafter a percentage that is at least equal to the lesser of 25 percent or twice the percentage of funds expended by the institution for multistate activities in FY 1997. Section 204 of AREERA amended both the Hatch and Smith-Lever Acts to require that each institution receiving agricultural research and extension formula funds under the Hatch Act and sections 3(b) and (c) of the Smith-Lever Act expend for integrated research and extension activities in FY 2000 and thereafter a percentage that is at least equal to the lesser of 25 percent or twice the percentage of funds expended by the institution for integrated research and extension activities in FY 1997. These sections also require that the institutions include in the plan of work a description of the manner in which they will meet these multistate and integrated requirements.

These applicable percentages apply to the Federal agricultural research and extension formula funds only. Federal formula funds that are used by the institution for a fiscal year for integrated activities may also be counted to satisfy the multistate activities requirement.

The multistate and integrated research and extension requirements do not apply to formula funds received by American Samoa, Guam, Micronesia, Northern Marianas, Puerto Rico, and the Virgin Islands. Since the Smith-Lever Act is not directly applicable, the multistate and integrated extension requirements do not apply to extension funds received by the District of Columbia, except to the extent it voluntarily complies.

The amendments made by sections 105 and 204 of AREERA also provide that the Secretary of Agriculture may reduce the minimum percentage required to be expended by the institution for multistate and integrated activities in the case of hardship, infeasibility, or other similar circumstance beyond the control of the institution. CSREES will issue separate guidance on the establishment of the FY 1997 baseline percentages for multistate activities and integrated activities and on requests for reduction in the required minimum percentage.

Also included in these guidelines are instructions on how to report on the annual accomplishments and results of the planned programs contained in the 5-Year Plan of Work, information on the evaluation of accomplishments and results, and information on when and how to update the 5-Year Plan of Work if necessary.

II. Submission of the 5-Year Plan of Work

A. General

1. Planning Option

This document provides guidance for preparing the plan of work with preservation of institutional autonomy and programmatic flexibility within the Federal-State Partnership. The plan of work is a 5-year prospective plan that covers the period of fiscal year 2000 through 2004, with the option to submit annual updates to the 5-Year Plan of Work. The 5-Year Plans of Work may be prepared for an institution's individual functions (*i.e.*, research or extension activities), for an individual institution (including the planning of research and extension activities), or for state-wide activities (a 5-year research and/or extension plan of work for all the eligible institutions in a State). Each 5-Year Plan of Work must reflect the content of the program(s) funded by Federal agricultural research and extension formula funds and the required matching funds. This 5-Year Plan of Work must describe not only how the program(s) address critical short-term, intermediate, and long-term agricultural issues in a State, but how it relates to and is part of the broad national goals.

2. Period Covered

The 5-Year Plan of Work should cover the period from October 1, 1999, through September 30, 2004.

3. Projected Resources

The resources that are allocated for various planned programs in the 5-Year Plan of Work, in terms of human and fiscal measures, should be included and projected over the next five years. The baseline for the institution's or State's initial plan (for five years) should be the Federal agricultural research and extension formula funds for FY 1999 and the required matching funds. During the course of the 5-Year Plan of Work, if the baseline for the formula funds at the FY 1999 level changes by more than 10 percent in one year or by 20 percent or more cumulatively during the 5-year period, a revised 5-Year Plan of Work should be submitted as an annual update the following fiscal year.

4. Submission and Due Date

The 5-Year Plan of Work must be submitted by July 15, 1999, to the Partnerships Unit of the Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture. It is preferred that these 5-Year Plans of Work be submitted electronically to bhewitt@reeusda.gov in either WordPerfect file format, Microsoft Word file format, or ASCII file format. If this submission method is not available, an original and two copies of the 5-Year Plan of Work should be submitted to: Partnerships/POW; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Stop 2214; 1400 Independence Avenue, SW.; Washington, DC. 20250–2214.

5. Certification

The 5-Year Plan of Work must be signed by the 1862 Extension Director, 1862 Research Director, 1890 Extension Administrator, and/or 1890 Research Director, depending on the planning option chosen.

6. Definitions

For the purpose of implementing the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds, the following definitions are applicable:

Activities means either research projects or extension programs.

Formula funds for the purposes of the plan of work guidelines means funding provided by formula to 1862 land-grant institutions under section 3 of the Hatch Act of 1887, as amended (7 U.S.C. 361a) and sections 3(b)(1) and (c) of the Smith-Lever Act, as amended (7 U.S.C. 343(b)(1) and (c)) and to the 1890 land-grant institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222).

Formula funds for the purposes of stakeholder input means the funding by formula to the 1862 land-grant institutions and 1890 land-grant institutions covered by these plan of work guidelines as well as the formula funds provided under the McIntire-Stennis Cooperative Forestry Research Program (16 U.S.C. 582, *et seq.*), the Animal Health and Disease Research Program (7 U.S.C. 3195), and the education payments made to the 1994 land-grant institutions under section 534(a) of Public Law 103–382 (7 U.S.C. 301 note).

Integrated or joint activities means jointly planned, funded, and interwoven activities between research and extension to solve problems. This includes the generation of knowledge and the transfer of information and technology.

Merit review means an evaluation whereby the quality and relevance to program goals are assessed.

Multi-institutional means two or more institutions within the same or different States or territories that will collaborate in the planning and implementation of programs.

Multistate means collaborative efforts that reflect the programs of institutions located in at least two or more States or territories.

Multi-disciplinary means efforts that represent research, education, and/or extension programs in which principal investigators or other collaborators from two or more disciplines or fields of specialization work together to accomplish specified objectives.

Outcome indicator means an assessment of the results of a program activity compared to its intended purpose.

Output indicator means a tabulation, calculation, or recording of activity of effort expressed in quantitative or qualitative manner which measures the products or services produced by the planned program.

Planned programs means collections of research projects or activities and/or extension programs or activities.

Program review means either a merit review or a scientific peer review.

Scientific peer review means an evaluation performed by experts with scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to program goals are assessed.

Seek stakeholder input means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice, and one that treats all with dignity and respect.

Stakeholder is any person who has the opportunity to use or conduct agricultural research, extension, and education activities in the State.

Under-served means individuals, groups, and/or organizations whose needs have not been addressed in past programs.

Under-represented means individuals, groups, and/or organizations especially those who may not have participated fully including, but not limited to, women, racial and ethnic minorities, persons with disabilities, limited resource clients, and small farm owners and operators.

B. Components of the 5-Year Plan of Work

1. Planned Programs

a. National Goals. The 5-Year Plan of Work should be based on the five national goals established in the Cooperative State Research, Education, and Extension Service (CSREES) Agency Strategic Plans and linked to the five national goals within the Research, Education, and Economics (REE) Mission Area of the U.S. Department of Agriculture. These national goals were adopted by the National Agricultural Research, Extension, Education, and Economics Advisory Board. These goals were developed from stakeholder input in conjunction with existing Federal-State Partnerships. The body of the 5-Year Plan of Work narrative should focus on these goals and outcomes.

Currently the national goals are:

Goal 1: An agricultural system that is highly competitive in the global economy. Through research and education, empower the agricultural system with knowledge that will improve competitiveness in domestic production, processing, and marketing.

Goal 2: A safe and secure food and fiber system. To ensure an adequate food and fiber supply and food safety through improved science based detection, surveillance, prevention, and education.

Goal 3: A healthy, well-nourished population. Through research and education on nutrition and development of more nutritious foods, enable people to make health promoting choices.

Goal 4: Greater harmony between agriculture and the environment. Enhance the quality of the environment through better understanding of and building on agriculture's and forestry's complex links with soil, water, air, and biotic resources.

Goal 5: Enhanced economic opportunity and quality of life for Americans. Empower people and communities, through research-based information and education, to address economic and social challenges facing our youth, families, and communities.

b. Format. As mentioned under the Planning Options section, an institution or State may opt to submit independent plans for the various units (e.g. 1862 research) or an integrated plan which includes all units in the institution or State.

Regardless of the option chosen, the 5-Year Plan of Work should be reported in the appropriate matrix format, each cell of which identifies planned programs that fall under one of the national program goals. If an integrated 5-Year Plan of Work is submitted, the various units within the entity for which the 5-Year Plan of Work has been developed (i.e., 1862 research, 1890 research, 1862 extension, 1890 extension) would appear on the vertical axis. Individual cells within the matrix would be used to summarize the State programs.

The following example illustrates the desired matrix.

	Goal 1	Goal 2	Goal 3	Goal 4	Goal 5
1862 Research					
1862 Extension					
1890 Research					
1890 Extension					

c. Program Descriptions. Program descriptions presented in a narrative form or in each cell of the matrix for a planned program will be related to one of the five national goals and should reflect the following planning components:

1. The *statement of issue* to be addressed. This component should discuss the critical agricultural issue within the State that was identified and being targeted by this planned program. This component may also reference the stakeholder input which identified the critical agricultural issue in the State and the need for the targeted research and/or extension program.

2. The *performance goal(s)* is a target level of performance. The *output indicators* should reflect the tabulation, calculation, or recording of activity or effort expressed in quantitative or qualitative manner which measures the

products or services produced by the program. The *outcome indicators* should assess the results of a program activity compared to its intended goal.

3. The *key program component(s)* identify the major efforts included in the work to be conducted.

4. The *internal and external linkages* include activities identified as integrated, multidisciplinary, multi-institutional, and/or multistate. This component may also address any efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues within the State and the extent of current and emerging efforts (including regional efforts) to work with those institutions. Within this planning component, discussion should be made regarding the efficiencies achieved through these internal and external linkages both in the use of resources and/or in the ability to solve critical agricultural issues.

5. The *target audiences* identifies the set of stakeholders, customers, and/or consumers for which the program is intended. The 5-Year Plans of Work should address the institution's commitment to facilitating equality of service and ease of access to all research and extension programs and services and to meeting the needs of under-served and under-represented individuals, groups, and/or organizations.

6. The *program duration* should be expressed as short-term, intermediate (one to five years), or long-term (over five years).

7. The *allocated resources* (human and fiscal measures) must be described for each planned program. This component may not only include the amount of Federal agricultural research and/or extension formula funds and matching funds allocated to this planned program, but also the manner in which funds, other than formula funds, will be expended to address the critical issues being targeted by this planned program.

8. *Education and outreach programs* must be described that are already underway to convey the research results that are pertinent to the critical agricultural issue identified in the "Statement of Issue." Efforts to encourage multicounty cooperation in dissemination of research results should also be identified. This planning component applies only to those 5-Year Plans of Work incorporating extension activities of the 1862 and/or 1890 land-grant institutions.

2. Stakeholder Input Process

Section 102(c) of AREERA requires the 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions receiving agricultural research, extension, and education formula funds from CSREES to establish a process for stakeholder input on the uses of such funds. CSREES is in the process of promulgating separately in the **Federal Register** regulations to implement this stakeholder input requirement.

As a component of the 5-Year Plan of Work, each institution must report on the actions taken to seek stakeholder input that encourages their participation and a brief statement of the process used by the institution to identify stakeholders and to collect input from them. This report will be required annually and may be submitted with the Annual Report of Accomplishments and Results. This component will satisfy the reporting requirements imposed by the separately promulgated regulations on stakeholder input. However, the above procedures are contingent upon the outcome of the Final Rule on Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds.

3. Program Review Process

a. Merit Review. Effective October 1, 1999, each 1862 land-grant institution and 1890 land-grant institution must establish a process for merit review in order to obtain agricultural research or extension formula funds.

b. Scientific Peer Review. A scientific peer review is required for all research funded under the Hatch Act of 1887 Multistate Research Fund. For such research, this scientific peer review will satisfy the merit review requirement specified above.

c. Reporting Requirement. As a component of the 5-year Plan of Work, each institution depending on the type of program review required will provide a description of the merit review process or scientific peer review process established at their institution. This description should include the process used in the selection of reviewers with expertise relevant to the effort and appropriate scientific and technical standards.

4. Multistate Research and Extension Activities

a. Hatch Multistate Research. Effective October 1, 1998, the Hatch Multistate Research Fund replaced the Hatch Regional Research Program. The Hatch Multistate Research Fund must be used for research employing multidisciplinary approaches to solve research problems that concern more than one State. For such research, State agricultural experiment stations must partner with another experiment station, the Agricultural Research Service, or another college or university.

b. Smith-Lever Multistate Extension. Effective October 1, 1999, the cooperative extension programs at the 1862 land-grant institutions must expend up to 25 percent of their formula funds provided under sections 3(b)(1) and (c) of the Smith-Lever Act for activities in which two or more State extension services cooperate to solve problems that concern more than one State. As required by law, CSREES will work with each 1862 land-grant institution to identify the amount each institution expended for multistate extension activities for fiscal year (FY) 1997. For FY 2000 and thereafter, cooperative extension programs must commit two times their FY 1997 baseline percentage or 25 percent, whichever is less, for multistate activities. Institutions should describe the contributions of extension staff and programs toward impacts rather than to describe the programs. Each participating State or territory must be a collaborator towards objectives and involved in the outcomes. Evidence of the proposed collaboration must be provided in the 5-Year Plan of Work submitted by each State. This planning is documented through formal agreements, letters of memorandums, contracts, or other instruments that provide primary evidence that a multistate relationship exists.

c. Reporting Requirements. The 5-Year Plan of Work should include a description of the Multistate Research, where applicable, and Multistate Extension programs as specified above and these programs must be reported consistently across the units of an institution as well as with the 5-Year Plan of Work of the cooperating State(s) or State institutions.

5. Integrated Research and Extension Activities

Effective October 1, 1999, up to 25 percent of all funds provided under section 3 of the Hatch Act and under section 3(b)(1) and (c) of the Smith-Lever Act must be spent on activities that integrate cooperative research and extension. As required by law, CSREES will work with each 1862 land-grant institution to establish the institution's baseline for integrated research and extension activities for FY 1997. For FY 2000 and thereafter, 1862 land-grant institutions must commit twice the FY 1997 baseline percentage or 25 percent, whichever is less, for integrated activities. Integration may occur within the State or between units within two or more States. Integrated programming must be reported in the 5-Year Plan of Work and be reported consistently across the units of the institutions as well as with the 5-Year Plan of Work submitted by cooperating State(s). Federal formula funds used by a State for integrated activities may also be counted to satisfy the multistate research and the multistate extension activity requirements. The requirements of this section apply only to the Federal funds.

C. 5-Year Plan of Work Evaluation by CSREES

1. Schedule

All 5-Year Plans of Work will be evaluated by CSREES. The 5-Year Plans of Work will either be accepted by CSREES without change or returned to the institution, with clear and detailed recommendations for its modification. The submitting institution(s) will be notified by CSREES of its determination within 90 days (review to be completed in 60 days, communications to the institutions allowing a 30-day response) of receipt of the document. Adherence to the Plan of Work schedule by the recipient institution is critical to assuring the timely allocation of funds by CSREES. Five Year Plans of Work accepted by CSREES will remain in effect for five years and will be publicly available in a CSREES database. CSREES will notify all institutions of a need for a new 5-year plan of work two years prior to the plan's expiration on September 30.

2. Review Criteria

CSREES will evaluate the 5-Year Plans of Work to determine if they address agricultural issues of critical importance to the State; identify the alignment and realignment of programs to address those critical issues; identify the involvement of stakeholders in the planning process; give attention to under-served and under-represented populations; indicate the level of Federal formula funds in proportion to all other funds at the director or administrator level; provide evidence of multistate, multi-institutional, and multidisciplinary and integrated activities; and identify the expected outcomes and impacts from the proposed 5-Year Plan of Work.

3. Evaluation of Multistate and Integrated Research and Extension Activities

CSREES will be using the Annual Reports of Accomplishments and Results to evaluate the success of multistate, multi-institutional, and multidisciplinary activities and joint research and extension activities, in addressing critical agricultural issues identified in the 5-Year Plans of Work. CSREES will be using the following evaluation criteria: (1) Did the planned program address the critical issues of strategic importance, including those identified by the stakeholders? (2) Did the planned program address the needs of under-served and under-represented populations of the State(s)? (3) Did the planned program describe the expected outcomes and impacts? and (4) Did the planned program result in improved program effectiveness and/or efficiency?

III. Annual Update of the 5-Year Plan of Work

A. Applicability

An annual update to the 5-Year Plan of Work is optional and is only required if: (1) There is a substantive change in planned programs; (2) if the change in Federal agricultural research and extension formula funding is 10 percent or greater in one year from the FY 1999 base year; or (3) if the cumulative change during the five year period is 20 percent or greater than the FY 1999 base year.

B. Reporting Requirement

If a revised 5-Year Plan of Work is required, or if the institution(s) chooses to submit an optional update to the 5-Year Plan of Work, it should be submitted at the beginning of the next plan of work cycle (July 1) to either the same electronic mail address or regular mail address as listed for the submission of the 5-Year Plan of Work.

IV. Annual Report of Accomplishments and Results

1. Reporting Requirement

The 5-Year Plan of Work for a reporting unit, institution, or State should form the basis for annually reporting its accomplishments and results. This report will be due on or before December 31 each year with the first report being due on December 31, 2000, for FY 2000. This report should be submitted to either the same electronic mail address or regular mail address as listed for the submission of the 5-Year Plan of Work.

2. Format

This annual report should include the relevant information related to each component of the program in the matrix cells of the 5-Year Plan of Work. Accomplishments and results reporting should involve two parts. First, institutions should submit an annual set of impact statements linked to sources of funding. Strict attention to just the preceding year is not expected in all situations. Some impact statements may need to cover ten or more years of activity. Focus should be given to the benefits received by targeted end-users. Second, institutions should submit annual results statements based on the indicators of the outputs and outcomes for the activities undertaken the preceding year. These should be identified as short-term, intermediate, or long-term critical issues in the 5-Year Plan of Work. Attention should be given to highlighting multistate, multi-institutional, and multidisciplinary and integrated activities, as appropriate to the 5-Year Plan of Work.

Done at Washington, D.C., this 25 day of 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–16774 Filed 6–30–99; 8:45 am]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 99–30 of June 23, 1999

Presidential Determination on the Proposed Protocol Amending the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of Canada

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Protocol Amending the Agreement for Cooperation Concerning Civil Uses of Atomic Energy Between the Government of the United States of America and the Government of Canada signed at Washington on June 15, 1955, as amended, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Protocol will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Protocol and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
June 23, 1999.

[FR Doc. 99–17013
Filed 7–1–99; 8:45 am]
Billing code 4710–10–M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Diclazuril

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for the use of a Type A medicated article containing diclazuril for use in manufacturing a Type C medicated feed indicated for the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed NADA 140–951, which provides for the use of a Type A medicated article containing 0.2 percent of diclazuril (Clinacox™) for use in manufacturing a Type C medicated feed indicated for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mitis* (*mivati*), and *E. maxima*. Because diclazuril is effective against *E. maxima* later in its life cycle, subclinical intestinal lesions may be present for a short time after infection. Diclazuril was shown in studies to reduce lesion scores and improve performance and health of birds challenged with *E. maxima*. The NADA is approved as of April 21, 1999, and the regulations are amended in 21 CFR part 558 by adding § 558.198 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, the regulations are amended in 21 CFR part 556 by adding § 556.175 to establish tolerances for diclazuril residues in the edible tissues of chickens and to establish an acceptable daily intake (ADI) for total diclazuril residues. The ADI represents the total amount of drug residue that can safely be consumed by humans every day.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity for the use of diclazuril in chicken feed beginning April 21, 1999, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.175 is added to subpart B to read as follows:

§ 556.175 Diclazuril.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of diclazuril is 25 micrograms per kilogram of body weight per day.

(b) *Tolerances.* (1) Chickens: Tolerances are established for residues of parent diclazuril at 0.5 part per million (ppm) in muscle, 3 ppm in liver, and 1 ppm in skin/fat.

(2) [Reserved]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

4. Section 558.198 is added to subpart B to read as follows:

§ 558.198 Diclazuril.

(a) *Approvals.* Type A medicated article: 0.2 percent of diclazuril to 000061 in § 510.600(c) of this chapter.

(b) *Related tolerances.* See § 556.175 of this chapter.

(c) [Reserved]

(d) *Conditions of use.* It is used in broiler chickens as follows:

(1) *Amount.* 1 part per million (ppm).

(2) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mitis* (*mivati*), and *E. maxima*. Because diclazuril is effective against *E. maxima* later in its life cycle, subclinical intestinal lesions may be present for a short time after infection. Diclazuril was shown in studies to reduce lesion scores and

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improve performance and health of birds challenged with *E. maxima*.

(3) *Limitations.* Feed continuously. Not for use in hens producing eggs for human food.

Dated: June 4, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–16836 Filed 7–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 98N–0877]

Medical Devices; Performance Standard for Diagnostic X–Ray Systems; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that amends the diagnostic x-ray systems performance standard for dental panoramic systems and mammography systems. This rule exempts panoramic dental x-ray units from the requirement that they be manufactured with exposure timers that automatically reset to zero upon premature termination of an exposure. Removing the automatic timer reset requirement will not compromise the quality of the radiographic image and will protect patients from being subject to unnecessary radiation due to repeat radiographs. This action also is intended to align the performance standard for mammography systems with the equipment requirements issued under the Mammography Quality Standards Act of 1992 (the MQSA).

EFFECTIVE DATE: September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Richard V. Kaczmarek, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–0865.

SUPPLEMENTARY INFORMATION:

I. Background

A. Panoramic Dental Radiograph

The requirements in § 1020.31 (21 CFR 1020.31) apply to diagnostic x-ray systems, including those used for dental radiography and mammography. Based on information from manufacturers, FDA had determined that the timer requirement in § 1020.31(a)(2)(i) should not apply to panoramic dental units. As a result of that determination, FDA exercised its enforcement discretion and did not apply the timer requirement to panoramic dental units. Some States had adopted local standards that were identical in language to FDA's regulation, but did not exempt panoramic dental units from the timer requirement because those units were not expressly exempted in the Federal regulation. Those States were applying the timer requirement to dental panoramic units. To correct this inconsistency, FDA has amended the regulations to expressly exempt panoramic dental units from the timer requirement in § 1020.31(a)(2)(i). This change should lead to consistency among government requirements.

B. Mammography X–Ray Devices

The recent passage of the MQSA (Pub. L. 102–539) and issuance of the interim and final MQSA regulations have focussed attention on the mammography equipment requirements contained in 21 CFR part 1020. Although the MQSA is directed to facility requirements for maintaining mammography quality, both the interim and the final MQSA regulations address x-ray equipment that is also subject to the performance standard for diagnostic x-ray systems (58 FR 67558 and 58 FR 67565, December 21, 1993; and 62 FR 55976, October 28, 1997). The MQSA and FDA's regulations governing mammography establish quality standards for facilities performing mammography to ensure safe, reliable, and accurate mammography nationwide. FDA wanted to ensure that the standards applying to radiation emitting electronic products, including mammography equipment, and those applying to the facilities that use such equipment were in accord. To bring the standards into harmony, FDA has amended its performance standard for diagnostic x-ray systems.

The MQSA standards also address the proper viewing of mammography films. The standard practice is that these films be read on view boxes (light boxes) with the ambient room light levels reduced. Unexposed film areas and parts of the light box not covered by exposed film should be masked to prevent the bright light surrounding the radiograph from interfering with reading the film.

Extending the x-ray field to expose the borders of the film simplifies the work of the radiologist and accreditation bodies because they have to create only one mask size, rather than having to create individualized masks for each facility. With the current practice being to irradiate the same area of the same sized film for all patients, there is little evidence that allowing the x-ray field to completely darken the film will significantly raise the radiation safety risk to the patient. FDA has amended the diagnostic x-ray systems standard to allow fixed aperture and variable aperture beam-limiting device (BLD) systems, to open up or adjust the field size to cover the entire film and thus reduce the need to provide a different mask for each film. In certain instances, limiting the x-ray field to the size of the breast may be considered to be advantageous. Practitioners still retain this option, which may result in improved imaging quality due to the reduction of scattered radiation.

To reduce unnecessary radiation exposure to the patient beyond the plane of the image receptor, FDA has requirements for x-ray field limitation and alignment. In the past, all systems in use for mammography had fixed aperture plates for x-ray field limitation. The advent of the variable aperture BLD for mammography is potentially a problem with respect to the primary barrier requirement if a BLD is opened so that the useful beam extends beyond the primary barrier provided by the image receptor support device. To prevent this problem, a variable aperture BLD must provide some restriction on the maximum field size to ensure that the entire useful beam at the plane of the image receptor is contained within the image receptor support device, which is also a primary barrier. In other words, for a fixed aperture or a variable aperture BLD with the collimator opened as wide as possible, the entire useful beam should not extend beyond the barrier, at any available source-image receptor distance (SID), except at the chest wall side, and the exposure level 5 centimeters beyond this barrier should not exceed $2.58X10^{-8}$ coulombs per kilogram (C/k) (0.1 milliroentgen (mR)) per exposure. This requirement is in agreement with the International Electrotechnical Commission (IEC) draft standard for mammography systems (IEC 62B/60601–2–45).

II. The Final Rule

FDA believes that the final rule establishes reasonable requirements that can be implemented by the regulated industry without unnecessary burden. None of the comments on the proposed rule requested that FDA revise any of the changes proposed.

A. Panoramic Dental Radiograph

The final rule exempts panoramic dental x-ray units from the requirement in § 1020.31(a)(2)(i) that they be manufactured with exposure timers that automatically reset to zero upon premature termination of an exposure. This change incorporates into regulation current FDA policy and should lead to consistency among Federal, State, and local requirements.

B. Mammography X–Ray Devices

The MQSA requires that only x-ray equipment specifically designed for mammography can be used for mammography. Therefore, FDA has removed the reference in § 1020.31(f)(3), which allowed the use of general purpose x-ray equipment with special attachments for mammography. This change harmonizes this regulation with the MQSA equipment requirements.

Section 1020.31 permits the x-ray irradiation field at the plane of the image receptor to extend to the edges of the x-ray film. However, to protect the patient from unnecessary exposure to radiation, the mammographic field alignment requirement restricts the irradiation beam from extending beyond the edge of the receptor by no more than 2 percent of the SID. The limit on x-ray transmission through the primary barrier (except on the chest wall edge) remains unchanged. FDA has added the words "for transmission" to § 1020.31(m)(4) to further clarify the section.

The definition for "image receptor support device" replaces the definition of "image receptor support" and clarifies that image receptor support devices must provide a primary protective barrier for any orientation of the x-ray tube and the image receptor support device (except the chest wall side). This revision maintains the requirement in the current § 1020.31(m) that the image receptor support device must serve to provide a primary protective barrier that intercepts the useful beam. Equipment manufactured prior to the effective date of this rule has always been, and will continue to be, subject to the requirement that the primary barrier must intercept the useful beam.

Unlike fixed aperture systems, which meet the established primary barrier requirement, with variable aperture collimation there is the possibility that the dimensions of the x-ray beam may be adjusted to exceed the area of the image receptor. This requirement confines the x-ray beam to the dimensions of the primary barrier provided by the image receptor support device, except on the chest wall side.

FDA has clarified the requirement that patient exposures not be permitted without an appropriate primary barrier in place, by stating the requirement explicitly. FDA further clarifies the requirement by adding the word appropriate prior to primary barrier. FDA wants to clarify that it is not appropriate for a mammographic x-ray system to generate x-rays with an inappropriate image receptor support device in place. To reduce radiation exposure to the patient, the rule provides that the image receptor support device, acting as the primary barrier, must be in place before a mammographic x-ray system can generate x-rays. This requirement requires the image receptor support device be interlocked with the system so that an exposure cannot be made with the image receptor support device removed.

C. Effective Date

This rule will be effective in 90 days. Usually, amendments to performance standards for electronic products become effective 1 year after the date of publication of the final rule to allow sufficient time for manufacturers to implement the changes in design or production practices (21 U.S.C. 360kk(c)). In the proposed rule, FDA explained its good cause basis for proposing a shorter timeframe, namely that the amendments were codifying current industry practice, making regulatory requirements consistent, or relaxing requirements, and requested comments on the proposed shortening of the timeframe. No comments were received. Consequently, this rule becomes effective September 30, 1999.

III. The Proposed Rule

In the **Federal Register** of October 29, 1998 (63 FR 57957), FDA published a proposed rule to amend the performance standard for diagnostic x-ray systems (dental and mammographic systems requirements). The proposed rule contained the reasons for the proposed amendment, summarized the Technical Electronic Product Radiation Safety Standards Committee's recommendation regarding dental and mammographic systems, and delineated the statutory authority under which FDA issues this rule. The proposed rule also stated FDA's grounds showing good cause for prescribing an earlier effective date than 1 year after the date of publication of the final rule for these amendments to the performance standard and solicited specific comment on the timeframe for implementation of the final rule. Written comments were due January 27, 1999.

FDA received three comments, one each from a manufacturer, a professional society, and a State agency. All three comments supported the actions proposed in the rule. None of the comments commented on the timeframe for implementation of the final rule.

IV. Response to Comments

All three comments supported the actions proposed in the rule. One of the comments requested clarification concerning § 1020.31(m)(2), which would require that the x-ray tube shall not permit exposure unless the barrier is in place to intercept the useful beam. The concern was whether the manufacturer would be held responsible if an individual equipment owner chose to partially dismantle the system or bypass interlocks so that the x-ray tube could be operated with the primary barrier removed. The comment stated that such action would violate § 1020.30(q)(2), which prohibits the owner of the equipment from modifying the equipment such that it would no longer comply with § 1020.31. In such a case, the comment argued that FDA should cite the owner, not the manufacturer, for noncompliance.

FDA agrees that a manufacturer should not be held responsible should an owner circumvent the interlocks to operate the system with the primary barrier removed. The regulation does not require the manufacturer to design an interlock that cannot be defeated. A modification by the owner that makes the unit noncompliant with §§ 1020.31(m)(2) and 1020.30(q) may cause the device to be misbranded and adulterated. FDA could bring an action against the person who caused the misbranding and adulteration and also seek to enjoin use of the device.

None of the comments include any recommendations on the timeframe for implementation of the final rule or suggest that FDA does not have good cause for shortening the customary 1-year period. FDA believes that unneeded delay in the implementation of these amendments could lead to difficulties for mammography facilities because of confusion over the requirements of the x-ray performance standard and standards issued under the MQSA. In addition, because the amendments clarify a provision of the Federal standard, FDA believes it is in the best interests of patients, facilities, and manufacturers to implement the dental x-ray equipment amendment expeditiously. For these reasons, the effective date of the final rule will be 90 days after date of publication in the **Federal Register**.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(a) and (i) and 25.34(c) that

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this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impact of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and therefore is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule increases the flexibility of the performance standard and codifies current interpretations of Federal regulations in order to prevent inconsistent interpretations by State and local governments, and because none of the domestic manufacturers of panoramic dental units or mammography x-ray systems would be considered small entities, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities engaged in manufacturing. Because dental and mammography facilities will buy machines with the changes to the performance standard allowed in this final rule only if it is economically advantageous to do so, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities that are facilities (most, if not all, of which would be considered small entities). Therefore, under the Regulatory Flexibility Act, no further analysis is required.

In the proposed rule, FDA conducted and published an initial regulatory flexibility analysis to ensure that impacts on small entities were assessed and to alert any potentially impacted entities to the opportunity to submit comments to this agency. No comments on the initial regulatory flexibility analysis were submitted. This final rule will not impose costs of $100 million or more in either the private sector or State, local, and tribal governments in the aggregate. Consequently, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

In part, the final rule codifies the equipment performance standards established under the MQSA by requiring only x-ray systems designed specifically for mammography be marketed for mammography. This rule updates the x-ray performance standard to reflect a standard already enforced under the MQSA. Consequently, FDA expects no economic impact from this portion of the final rule.

The final rule also permits the x-ray irradiation field to extend to the edges of the x-ray film but not beyond the primary barrier provided by the image receptor support device. It further changes the definition of an image receptor support device, clarifying that it must provide a primary protective barrier and that exposures not be possible without the image receptor support device being in place, acting as the primary barrier. Exposing all of the film allows one size of film mask to be used for proper viewing of mammography films using light boxes and prohibiting extension of the beam beyond the primary barrier protects the patient from unnecessary exposure to radiation. The amendment to relax the field edge alignment criteria will not require any changes to x-ray mammography systems that are currently compliant; these systems will remain compliant after the effective date. The amendment will, however, allow the user to modify or purchase a collimator that has the ability to provide films without light borders as a convenience in simplifying viewing conditions. FDA believes that most of the image receptor support devices that are currently in use meet the requirements in the amendments to §§ 1020.30(b) and 1020.31(m). In addition, when the manufacturer's design of the cassette holder provides the primary barrier attenuation itself, then the cassette holder is considered a part of the image receptor support device. Therefore, FDA estimates that the amendments to §§ 1020.30(b) and 1020.31(m) will impose minimal new costs. This rule also allows more flexibility for mammography facilities and accreditation bodies without compromising the public health and may reduce costs to mammography facilities and accreditation bodies by simplifying the masking of images.

The final rule exempts panoramic x-ray dental units from the requirement that they be manufactured with exposure timers that automatically reset to zero or the initial setting upon premature termination of an exposure. For panoramic dental exposures, interrupting the exposure does not affect the quality of images already taken. Consequently, restarting the exposure at the initial starting point exposes patients to unnecessary radiation. This rule removes a regulatory requirement, while still protecting the public health, and may reduce costs to dental facilities and patients. FDA has identified no new reporting, recordkeeping, or other compliance requirements associated with this rule.

The Safe Medical Devices Act of 1990 (Pub. L. 101–629) enacted on November 28, 1990, transferred the provisions of the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602) from Title III of the Public Health Service Act (42 U.S.C. 201 *et seq.*) to Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 *et seq.*). These provisions regulate electronic products that emit radiation. On October 27, 1992, the MQSA was enacted to establish uniform, national quality standards for mammography. The MQSA (42 U.S.C. 263b(f)(1)(B)) requires the use of radiological equipment specifically designed for mammography to be used for mammography. Similarly, 21 CFR 900.12(b)(1) of the interim and final mammography regulations prohibits the use of conventional radiographic equipment for mammography.

There are approximately 10,000 mammography facilities in the United States. Because this change in the performance standard only applies to components manufactured after the effective date of the final rule, the associated cost does not apply to those machines manufactured prior to that date. FDA estimates that approximately 10 percent of facilities replace their mammography machines in any one year. At this time, FDA is unable to estimate the demand for the modifications to systems currently in use. As discussed previously, the change concerning x-ray beam collimation is less restrictive than the present standard. FDA estimates the cost per system to be between $0 and $5,000, if the system modification is made during production.

There are approximately 138,500 dental facilities in the United States of which 40 percent provide access to panoramic dental x-ray units. An uncertain number of these facilities may request the manufacturer to remove the automatic reset of the exposure timer on their panoramic machines; however, they are not required to do so. FDA believes that the facility will only make this change if it is economically or clinically advantageous to do so. FDA estimates it will cost a facility an amount equal to what would be assessed for a routine service call (approximately $150.00 or less) to remove the automatic reset function for premature termination of an exposure for existing systems. FDA believes that manufacturers no longer manufacture panoramic dental x-ray units with automatic reset exposure times.

Most, if not all, of the mammography facilities and dental facilities would be considered small under the criteria establishment by the Small Business Administration. FDA's registration system shows five manufacturers of panoramic dental units. Of the domestic manufacturers, none would be considered small entities. There are approximately 10 manufacturers of mammography x-ray systems. Of these manufacturers, none would be considered small entities.

For the mandatory changes to image receptor support devices, FDA believes that most of the image receptor support devices that are currently in use provide a primary barrier that is capable of meeting the requirements in the amendments to §§ 1020.30(b) and 1020.31(m). There are approximately 10,000 mammography facilities in the United States. Because this change in the performance standard only applies to systems manufactured after the effective date of a final rule, the costs associated with any changes that may need to be made, would not apply to those machines manufactured prior to that date. FDA estimates that approximately 10 percent of facilities replace their mammography systems in any one year (10 percent of 10,000 = 1,000). FDA estimates the cost per system to be between $0 and $2,000 in the event that any manufacturers are required to implement design or production changes to ensure that exposures not be permitted on their systems without a primary barrier being in place. FDA estimates approximately 95 percent of systems currently being marketed already meet this requirement. With an annual mammography system replacement rate of 10 percent (i.e., 1,000 new systems purchased per year), FDA estimates only approximately 5 percent of these 1,000 systems may increase the cost to meet the requirement. To calculate the annual cost, FDA estimates a cost of $0 to $2,000 per system multiplied by 50 systems (5 percent of 1,000 = 50). Using this estimate, the costs are expected to be approximately $0 to $100,000.

Under these changes to the performance standard, FDA allows manufacturers and facilities to decide whether to implement any device modifications in response to the greater flexibility in these mammography collimation requirements. If the benefits associated with the flexibility in this rulemaking are outweighed by the costs to the facility, the facility can choose to not purchase a device that has been modified in response to the greater flexibility in this rulemaking. With regard to the mandatory change, FDA believes that the great majority of the image receptor support devices that are currently being manufactured provide a primary barrier that is capable of meeting the requirements in the amendment to § 1020.31(m). Therefore, FDA does not anticipate that the amendment to § 1020.31(m) will impose any significant costs.

Because most of these changes to the mammography performance standard and the change to the timer requirement for panoramic dental systems do not increase regulatory burdens, FDA considered no alternatives to accomplish the stated objectives of the applicable statutes. For the primary barrier standard in § 1020.31(m), FDA considered not requiring the primary barrier to be in place to intercept the useful beam. This alternative was rejected because without the primary barrier in place, patients would be exposed to unnecessary radiation.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1020 is amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. The authority citation for 21 CFR part 1020 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360gg–360ss, 371, 381.

2. Section 1020.30 is amended in paragraph (b) by removing the definition of "image receptor support" and adding a new definition in alphabetical order to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(b) * * *

Image receptor support device means, for mammography x-ray systems, that part of the system designed to support the image receptor during a mammographic examination and to provide a primary protective barrier.

* * * * *

3. Section 1020.31 is amended by revising paragraphs (a)(2)(i), (f)(3), and (m) to read as follows:

§ 1020.31 Radiographic equipment.

* * * * *

(a) * * *

(2) * * *

(i) Except during serial radiography, the operator shall be able to terminate the exposure at any time during an exposure of greater than one-half second. Except during panoramic dental radiography, termination of exposure shall cause automatic resetting of the timer to its initial setting or to zero. It shall not be possible to make an exposure when the timer is set to a zero or off position if either position is provided.

* * * * *

(f) * * *

(3) *Systems designed for mammography.* (i) Mammographic beam-limiting devices manufactured after September 30, 1999, shall be provided with means to limit the useful beam such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor by more than 2 percent of the SID. This requirement can be met with a system that performs as prescribed in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section. For systems that allow changes in the SID, the SID indication specified in paragraphs (f)(4)(ii) and (f)(4)(iii) of this section shall be the maximum SID for which the beam-limiting device or aperture is designed.

(ii) Each image receptor support device intended for installation on a system designed for mammography shall have clear and permanent markings to indicate the maximum image receptor size for which it is designed.

* * * * *

(m) *Primary protective barrier for mammography x-ray systems.* For mammography x-ray systems manufactured after September 30, 1999:

(1) At any SID where exposures can be made, the image receptor support device shall provide a primary protective barrier that intercepts the cross section of the useful beam along every direction except at the chest wall edge.

(2) The x-ray tube shall not permit exposure unless the appropriate barrier is in place to intercept the useful beam as required in paragraph (m)(1) of this section.

(3) The transmission of the useful beam through the primary protective barrier shall be limited such that the exposure 5 centimeters from any accessible surface beyond the plane of the primary protective barrier does not exceed 2.58×10^{-8} C/kg (0.1 mR) for each activation of the tube.

(4) Compliance for transmission shall be determined with the x-ray system operated at the minimum SID for which it is designed, at the maximum rated peak tube potential, at the maximum rated product of x-ray tube current and exposure time (mAs) for the maximum rated peak tube potential, and by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters. The sensitive volume of the radiation measuring instrument shall not be positioned beyond the edge of the primary protective barrier along the chest wall side.

Dated: June 16, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–16835 Filed 7–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1308, 1312

[DEA–180F]

Schedules of Controlled Substances: Rescheduling of the Food and Drug Administration Approved Product Containing Synthetic Dronabinol [(-)-Δ⁹-(trans)-Tetrahydrocannabinol] in Sesame Oil and Encapsulated in Soft Gelatin Capsules From Schedule II to Schedule III

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This is a final rule of the Deputy Administrator of the Drug Enforcement Administration (DEA) transferring a drug between schedules of the Controlled Substances Act (CSA) pursuant to 21 U.S.C. 811. With the issuance of this final rule, the Deputy Administrator transfers from schedule II to schedule III of the CSA the drug containing synthetic dronabinol [(-)-Δ⁹-(*trans*)-tetrahydrocannabinol] in sesame oil and encapsulated in soft gelatin capsules in a product approved by the Food and Drug Administration (FDA). This rule also designates this drug as a schedule III non-narcotic substance requiring an import/export permit. As a result of this rule, the regulatory controls and criminal sanctions of schedule III will be applicable to the manufacture, distribution, importation and exportation of this drug.

EFFECTIVE DATE: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, 202–307–7183.

SUPPLEMENTARY INFORMATION:

Background

Dronabinol is the United States Adopted Name (USAN) for the (-)-isomer of Δ⁹-(*trans*)-tetrahydrocannabinol [(-)-Δ⁹-(*trans*)-THC], which is believed to be the major psychoactive component of *Cannibas sativa L.* (marijuana). On May 31, 1985, FDA approved for marketing the product Marinol®—which contains synthetic dronabinol in sesame oil and encapsulated in soft gelatin capsules—for the treatment of nausea and vomiting associated with cancer chemotherapy. Following this FDA approval, DEA issued a final rule on May 13, 1986, transferring FDA-approved products of the same formulation as Marinol® from schedule I to schedule II of the CSA in accordance with 21 U.S.C. 811(a). (For simplicity within this document, the term "Marinol®" will be used hereafter to refer to Marinol® and any other products, which may by approved by FDA in the future, that have the same formulation as Marinol®.) The 1986 rescheduling of Marinol® was based on a medical and scientific evaluation and scheduling recommendation from the Assistant Secretary for Health in accordance with 21 U.S.C. 811(b). The transfer of Marinol® to schedule II did not affect the CSA classification of pure dronabinol, which—as a tetrahydrocannabinol with no currently accepted medical use in treatment in the United States—remains a schedule I controlled substance. On December 22, 1992, FDA expanded Marinol®'s indications to include the treatment of anorexia associated with weight loss in patients with AIDS.

The Petition To Reschedule Marinol®

On February 3, 1995, UNIMED Pharmaceuticals, Inc. petitioned the Administrator of DEA to transfer Marinol® from schedule II to schedule III. In response to this petition, and in view of supplemental information that UNIMED provided to DEA on December 11, 1996, DEA had to determine whether this proposed rescheduling of Marinol® would comport with United States obligations under the Convention on Psychotropic Substances, 1971 (Psychotropic Convention). See 21 U.S.C. 811(d). Under the Psychotropic Convention, dronabinol and all dronabinol-containing products, such as Marinol®, are listed in schedule II. As a result, the United States is obligated under the Psychotropic Convention to impose certain restrictions on the export and import of Marinol®. DEA has concluded that, in order for the United States to continue to meet its obligations under the Psychotropic Convention, DEA will continue to require import and export permits for international transactions involving Marinol®, even though Marinol® will be transferred to schedule III of the CSA. (As set forth below, to accomplish this, DEA is hereby amending 21 CFR 1312.30 to require import and export permits for international transactions involving Marinol®.)

After determining that Marinol® could be transferred to schedule III while maintaining the controls required by the Psychotropic Convention, and after gathering the necessary data, on August 7, 1997, DEA requested from the Acting Assistant Secretary for Health, Department of Health and Human Services (DHHS), a scientific and medical evaluation, and recommendation, as to whether Marinol® should be rescheduled, in accordance with 21 U.S.C. 811(b).

On September 11, 1998, the Acting Assistant Secretary for Health sent to DEA a letter recommending that Marinol® be transferred from schedule II to schedule III of the CSA. Enclosed with the September 11, 1998, letter was a document prepared by the FDA entitled "Basis for the Recommendation for Rescheduling Marinol® Capsules from schedule II to schedule III of the Controlled Substances Act (CSA)." In this document, the FDA defines the Marinol® product as "an FDA-approved drug product containing synthetically produced dronabinol dissolved in sesame oil and encapsulated in soft gelatin capsules (2.5 mg, 5 mg, and 10 mg per dosage unit)." The document contained a review of the factors which the CSA requires the Secretary to consider, which are set forth in 21 U.S.C. 811(c).

The Proposed Rule

On November 7, 1998, the then-Acting Deputy Administrator of DEA published a notice of proposed rule making in the **Federal Register** (63 FR 59751), proposing to transfer Marinol® from schedule II to schedule III of the CSA. The proposed rule was based on the DHHS scientific and medical evaluation and scheduling recommendation and DEA's independent evaluation. Also under the proposed rule, 21 CFR 1312.30 would be amended to include Marinol® as a schedule III non-narcotic controlled substance specifically designated as requiring import and export permits pursuant to 21 U.S.C. 952(b)(2) and 953(e)(3). As discussed above, this proposed amendment to 21 CFR 1312.30 is necessary for the United States to continue to meet its obligations under the Psychotropic Convention. The notice of proposed rule provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing in writing to DEA on or before December 7, 1998.

Comments From the Public

DEA received comments regarding the proposed rule from ten persons. Nine of the commenters supported the proposed rule. One commenter objected to the proposed rule and requested a hearing thereon. The comments are briefly summarized below.

The nine commenters who supported the proposed rule included organizations, physicians, and one individual. Eight of the nine commenters who supported the proposed rule expressed the opinion that Marinol® is a safe and effective alternative to smoking marijuana for treatment of nausea and loss of appetite and has low abuse potential.

One commenter who supported the proposed rule expressed the view that the rescheduling of Marinol® should not serve as a substitute for making marijuana legally available for medical use. This commenter stated that it supported the use of marijuana for medical purposes and, therefore, wished to emphasize that the proposed rule affected the CSA status of Marinol®—not that of marijuana, which remains a schedule I controlled substance.

The one commenter who objected to the proposed rule, and requested a hearing thereon, asserted that Marinol® should not be transferred to schedule III unless and until marijuana and all other THC-containing drugs are simultaneously and likewise rescheduled. This commenter asserted that Marinol® has the same potential for abuse as marijuana and all other THC-containing drugs. This commenter agreed with the proposed rule that Marinol®'s potential for abuse is less than the "high potential for abuse" commensurate with schedules I and II of the CSA. Accordingly, this commenter agreed that Marinol® should be transferred to a less restrictive schedule than schedule II. However, this commenter disagreed with what would be the resultant status of Marinol® vis-á-vis marijuana and THC if the NPRM becomes final: Marinol® would be in schedule III while marijuana and THC would remain in schedule I. This commenter asserted that the CSA prohibited transferring Marinol® to a less restrictive schedule unless marijuana and all THC-containing drugs are simultaneously transferred to the same schedule. DEA has determined that this commenter's objections are based on a misinterpretation of the CSA, which can be addressed, as a matter of law, without conducting a fact-finding hearing. Accordingly, as this commenter presented no material issues of fact, DEA denied this commenter's request for a hearing.

Findings

Relying on the scientific and medical evaluation and scheduling recommendations of the Assistant Secretary for Health, and based on DEA's independent review thereof, the Deputy Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 811(b), finds that:

(1) Based on information now available, Marinol® has a potential for abuse less than the drugs or other substances in schedules I and II.

(2) Marinol® is a FDA-approved drug product and has a currently accepted medical use in treatment in the United States; and

(3) Abuse of Marinol® may lead to moderate of low physical dependence or high psychological dependence.

Rescheduling Action

Based on the above findings, the Deputy Administrator of the DEA concludes that Marinol® should be transferred from schedule II to schedule III. Schedule III regulations will, among other things, allow five prescription refills in six months and lessen record keeping requirements and distribution restrictions. The schedule III control of Marinol® will become effective July 2, 1999, except that certain regulatory provisions governing registrants who handle Marinol will take effect as indicated below. In the event that the regulations impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the schedule III regulations regarding Marinol®. The applicable regulations are as follows.

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports Marinol® or who engages in research or conducts instructional activities with Marinol®, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* Marinol® must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All commercial containers of Marinol®, which are packaged on or after January 3, 2000 must have the appropriate Schedule III labeling as required by §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations. Commercial containers of Marinol® packaged before January 3, 2000. After April 3, 2000, all commercial containers of Marinol must bear the CIII labels as specified in §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

4. *Inventory.* Registrants possessing Marinol® are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations.

5. *Records.* All registrants must keep records pursuant to §§ 1304.03, 1304.04 and 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

6. *Prescriptions.* All prescriptions for Marinol® are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulations. All prescriptions for Marinol® issued on or after July 2, 1999, if authorized for refilling, shall as of that date be limited to five refills and shall not be refilled after January 2, 2000.

7. *Importation and Exportation.* Due to its international control status, import and export permits for Marinol® will be required in accordance with 21 CFR 1312.30. All importation and exportation of Marinol® shall be in compliance with part 1312 of Title 21 of the CFR.

8. *Criminal Liability.* Any activity with Marinol® not authorized by, or in violation of, the CSA or the Controlled

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Substances Import and Export Act shall continue to be unlawful.

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rule making "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1). The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Marinol® is a prescription drug used to treat nausea due to cancer chemotherapy and AIDS wasting. Handlers of Marinol® are likely to handle other controlled substances used to treat cancer or AIDS which are already subject to the regulatory requirements of the CSA. Further, placement of Marinol® in schedule III of the CSA will mean a significant decrease in the regulatory requirements for persons handling Marinol®.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule, if finalized, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

21 CFR Part 1312

Administrative practice and procedure, Drug traffic control, Exports, Imports, Narcotics, Reporting requirements.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR parts 1308 and 1312 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

§ 1308.12 [Amended]

2. Section 1308.12 is amended by removing paragraph (f)(1) and redesignating the existing paragraph (f)(2) as (f)(1).

3. Section 1308.13 is amended by adding a new paragraph (g) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(g) *Hallucinogenic substances.*

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product—7369.

[Some other names for dronabinol: (6a*R*-*trans*)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*-dibenzo [*b*,*d*]pyran-1-ol] or (-)-delta-9-(*trans*)-tetrahydrocannabinol]

(2) [Reserved]

PART 1312—[AMENDED]

1. The authority citation for part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

2. Section 1312.30 is amended by adding a new paragraph (a) and reserving paragraph (b) to read as follows:

§ 1312.30 Schedule III, IV and V non-narcotic controlled substances requiring an import and export permit.

* * * * *

(a) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product.

(b) [Reserved]

Dated: June 28, 1999.

Donnie R. Marshall,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 99–16833 Filed 7–1–99; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–29–1–7403; FRL–6370–8]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana: Reasonable-Further-Progress Plan for the 1996–1999 Period, Attainment Demonstration, Contingency Plan, Motor Vehicle Emission Budgets, and 1990 Emission Inventory for the Baton Rouge Ozone Nonattainment Area; Louisiana Point Source Banking Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is finalizing its approval of revisions to the Louisiana State Implementation Plan (SIP) for the Baton Rouge ozone nonattainment area. These revisions were submitted by the State of Louisiana for the purpose of satisfying the Post-1996 Rate-of-Progress (ROP), Attainment Demonstration, and Contingency Plan requirements of the Federal Clean Air Act (the Act), which will aid in ensuring the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. The EPA is also approving the associated 1999 Motor Vehicle Emissions Budgets (MVEBs) for the area.

The EPA is also taking final action to approve additional SIP revisions submitted by Louisiana including codifying revisions that were made to the 1990 base year emission inventory and submitted to the EPA as part of the Baton Rouge 15% Rate-of-Progress Plan approved on October 22, 1996. Furthermore, the EPA is approving additional revisions to the 1990 base year emissions inventory submitted as part of the Post-1996 ROP Plan. The EPA is also approving the State's point source banking regulations. This rulemaking action is being taken under sections 110, 301, and part D of the Act.

EFFECTIVE DATE: This action is effective on August 2, 1999.

ADDRESSES: Information relevant to this rulemaking is available for viewing during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 70202–2733. Louisiana Department of Environmental Quality, Office of Air Quality and Radiation Protection, H.B. Garlock Building, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Schulze, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7254.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Summary of Today's Action

The EPA is finalizing approval of revisions to the SIP for the Baton Rouge ozone nonattainment area including the Post-1996 ROP Plan, Attainment Demonstration, and Contingency Plan. In addition, the EPA is approving the associated 1999 MVEBs, revisions to the 1990 base year emission inventory, and the Louisiana Point Source Banking Regulations.

The EPA proposed approval of these SIP revisions on August 18, 1998 (63 FR 44192). The public comment period on the proposed rulemaking ended on October 19, 1998. The EPA received no public comments on its proposal. Accordingly, in today's rulemaking, the EPA is taking final approval action to approve these revisions, which are summarized in the following discussion. For more details on these SIP submittals, relevant Clean Air Act requirements, etc., please refer to the EPA's proposed rulemaking action.

B. Clean Air Act Requirements

1. Reasonable Further Progress (RFP) Requirements

Section 182(c)(2)(B) of the Act requires each State having one or more ozone nonattainment areas classified as serious or worse to develop a plan by November 15, 1994, that provides for additional actual volatile organic compound (VOC) reductions of at least three percent per year, averaged over each consecutive three year period, beginning six years after enactment of the Act, until such time as these areas have attained the NAAQS for ozone. These plans are referred to hereafter as Post-1996 ROP Plans. These plans were due to be submitted to the EPA as a SIP revision by November 15, 1994.

Section 182(b)(1) of the Act mandates a 15 percent VOC emission reduction, net of growth, between 1990 and 1996 for each State having one or more ozone nonattainment areas classified as moderate or worse. That SIP revision was due to the EPA by November 15, 1993. The plan for these reductions occurring between 1990–1996 is hereafter referred to as the 15% ROP Plan.

Sections 182(b)(1)(C), 182(h)(1)(D) and 182(c)(2)(B) of the Act limit the creditability of certain control measures toward the ROP requirements. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990, or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure (RVP)) of gasoline. Furthermore, the Act does not allow credit towards ROP requirements for post-1990 corrections to existing motor vehicle Inspection and Maintenance (I/M) Programs or corrections to Reasonably Available Control Technology (RACT) rules, since these programs were required to be in place prior to 1990. Emissions and emissions reductions shall be calculated on a typical weekday basis for the "peak" 3-month ozone period (generally June through August).

2. Contingency Measures Requirements

Sections 172(c)(9) and 182(c)(9) of the Act require contingency measures to be included in the ROP and attainment plans. These measures are required to be implemented immediately if reasonable further progress has not been achieved, or if the NAAQS is not met by the deadline set forth in the Act.

3. Motor Vehicle Emissions Budgets

Section 176(c) of the Act, and 40 CFR 51.452(b) of the Federal Transportation Conformity Rule require States to establish motor vehicle emissions budgets in any control strategy SIP that is submitted for attainment and maintenance of the NAAQS.

4. Attainment Demonstration Requirements

Under section 182(c)(2)(A) of the Act, States required to submit Post-1996 ROP Plans, by November 15, 1994, for serious or worse ozone nonattainment areas, must also submit for those areas an attainment demonstration to provide for achievement of the ozone NAAQS by the statutory deadline. This demonstration is to be based on photochemical grid modeling, such as the Urban Airshed Model (UAM), or an equivalent analytical method. The reader is referred to the proposal for a discussion of the relevant EPA memoranda on attainment demonstration submissions.

The Baton Rouge ozone nonattainment area is classified as "serious" and is subject to the section 182(b)(1) 15% ROP requirements, section 182(c)(2)(B) Post-1996 ROP requirements, and section 182(c)(2)(A) attainment demonstration requirements. The Baton Rouge ozone nonattainment

area is comprised of the following parishes: East Baton Rouge, West Baton Rouge, Ascension, Livingston, and Iberville. As a serious ozone nonattainment area, Baton Rouge has a statutory attainment date of November 15, 1999. Therefore, the area's Post-1996 ROP requirement is to achieve an overall 9 percent reduction in actual VOCs (net of growth) during the period 1996–1999 pursuant to section 182(c)(2)(B) of the Act.

C. Related SIP Approvals

As stated previously, section 182(b)(1) of the Act requires that moderate and above ozone nonattainment areas reduce their 1990 emissions of VOCs by 15 percent (net of growth) on or before November 15, 1996. The 15% ROP Plan submittals were required to be submitted to the EPA by November 15, 1993. The EPA approved Louisiana's 15% ROP Plan on October 22, 1996 (61 FR 54737).

The following is a summary of the emissions reductions in the 15% ROP Plan:

Louisiana 15 percent ROP plan required reductions (Excluding RVP/FMVCP)	(Tons/Day)
15% ROP Reduction	29.7
I/M Correction	1.3
RACT Correction	0.0
Growth	3.8
Total	34.8
Reductions In the Plan:	
Stage II Vapor Recovery	3.4
Vents to Flares	3.7
Marine Vapor Recovery	8.6
Tank Fitting Controls	7.9
Fugitive Emission Controls	10.4
Federal Rules (Wastewater National Emission Standards for Hazardous Air Pollutants; Volatile Organic Storage New Source Performance Standards)	1.5
Compliance Orders/Permits	1.0
Other (Tank Vent Recovery, Secondary Roof Seal on Tank)	.9
Total	37.4
Surplus Reductions (To Be Carried Over to Post-1996 Rate-of-Progress Plan)	2.6

Louisiana subsequently submitted a site-specific revision to the approved 15% ROP Plan on December 20, 1997. On May 11, 1998, the EPA approved the 15% ROP Plan revision (63 FR 25773).

In another rulemaking action, the EPA redesignated Pointe Coupee Parish, which was formerly part of the six-parish Baton Rouge nonattainment area, to attainment for the ozone NAAQS (62 FR 648, dated January 6, 1997). The Baton Rouge area was designated nonattainment for ozone and classified as serious pursuant to sections 107(d)(4) and 181(a) of the Act (56 FR 56694, dated November 6, 1991). (It should be noted that, in the August 18, 1998, proposal, the EPA did not reopen or request comment on the approval actions described in this section.)

D. Current SIP Submittals

In a letter from the Governor dated November 10, 1994, the State of Louisiana submitted to the EPA the Post-1996 ROP Plan and attainment demonstration according to section 182(c)(2). The combined plan submittal addressed both the 9 percent VOC emissions reduction requirement and the requirement to demonstrate attainment of the ozone NAAQS by the area's statutory attainment date, November 15, 1999. The SIP submittal was deemed administratively complete on May 15, 1995, by operation of law pursuant to section 110(k)(1)(B) of the Clean Air Act.

Subsequently, on December 22, 1995, the Governor of Louisiana submitted revisions to the November 10, 1994, submittal. The EPA determined that, in effect, this revised Post-1996 ROP Plan and Attainment Demonstration superseded the previous submittal.[1] The plan was determined to be administratively complete on March 22, 1996. The revisions that Louisiana made to the plan substantially modified the mix of control measures utilized to satisfy the 9% ROP requirement, and also made changes to the attainment demonstration based on the EPA's draft guidance document on attainment modeling entitled, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS.* As provided for by the draft guidance document on modeling, the submittal included a weight-of-evidence determination in support of the urban airshed modeling results.

Finally, on January 2, 1997, the Governor of Louisiana submitted a revision to the December 22, 1995, submittal. The 1997 submittal included significant changes to the 1990 base year emissions inventory (and associated 15% and 9% ROP reductions) to account for the impending redesignation of Pointe Coupee Parish to ozone attainment. Also, the 1997 submittal incorporated into the 1990 base year emissions inventory previously unreported emissions from several point sources. In addition, the 1997 submittal removed the emission reduction credits taken for the vehicle I/M control measure in the December 22, 1995, submittal, and replaced them with additional point source emission reductions. Furthermore, the submittal incorporated enhanced mobile modeling required by Federal conformity regulations, and also included an analysis of how removal of the I/M reductions would impact the modeling results submitted in the December 22, 1995, attainment demonstration. The 1997 submittal was determined to be administratively complete on June 20, 1997.

In addition, Louisiana submitted its contingency measure, point source emissions reduction banking

[1] In this submittal, the State deleted several of the appendices found in the previous submittal and substantially revised the remaining portion of the plan (i.e., control strategy, modeling demonstration, etc.). The December 22, 1995, submittal is capable of standing alone and does not rely on the November 10, 1994, submittal to be a complete plan. As such, the EPA's legal obligation to act on the State's original Post-1996 ROP Plan/Attainment Demonstration submittal, dated November 10, 1994, is rendered moot.

regulations, as part of the December 15, 1995, 15% ROP Plan pursuant to sections 172(c)(9) and section 182(c)(9) of the Act. The State subsequently submitted the same contingency measure in both the December 22, 1995, and January 2, 1997, Post-1996 ROP/attainment demonstration submittals. The EPA deferred taking action on the regulations in the context of the 15% ROP Plan approval until its rulemaking action on the Post-1996 ROP Plan/attainment demonstration SIP. (The rationale is explained in more detail in the EPA's rulemaking on the 15% ROP Plan, along with the associated Technical Support Document (TSD).)

II. Analysis of the Submittals

The EPA has reviewed the State's submittals for consistency with the Act and applicable EPA regulations and policy. A summary of the EPA's analysis is provided below. More detailed support and technical discussion are contained in the proposed rulemaking and associated TSD entitled, "TSD for Proposed Clean Air Act Approval and Promulgation of the Post-1996 Rate-of-Progress Plan and Attainment Demonstration for the Baton Rouge Ozone Nonattainment Area (July 1998)."

A. Post-1996 Rate-of-Progress Plan

1. Introduction

As stated previously, section 182(c)(2)(B) of the Act requires each serious and above ozone nonattainment area to submit a SIP revision by November 15, 1994, which provides for an actual reduction in VOC emissions of at least three percent per year averaged over each consecutive 3-year period, beginning 6 years after enactment of the Clean Air Act Amendments of 1990 (CAAA), until the area attains the ozone standard.

2. Base Year Emissions Inventory

Under section 182(b)(1)(B), the baseline from which States determine the required reductions for ROP planning is the 1990 base year emissions inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile, off-road mobile, and biogenics. The EPA originally approved the Louisiana 1990 base year emissions inventory on March 15, 1995 (60 FR 13911).

Louisiana's December 15, 1995, submittal made a number of adjustments to the base year inventory. The EPA acted upon the revised 1990 base year inventory as part of its rulemaking on the 15% ROP Plan. In that rulemaking, however, the EPA failed to codify its approval of the revised base year inventory in the Code of Federal Regulations (CFR) (specifically, 40 CFR part 52). In this rulemaking, the EPA is taking final action to codify its approval of the revised base year inventory (in the context of the rulemaking on the 15% ROP Plan). It should be noted that, in the August 18, 1998, proposal, the EPA did not reopen or ask for comment on its March 15, 1995, approval of the base year inventory.

Louisiana's January 2, 1997, submittal made a number of additional revisions to the 1990 base year emissions inventory. The following table compares the revised 1990 base year VOC emissions cited in the January 2, 1997, submittal, with those cited in the approved 15% Plan rulemaking.

BATON ROUGE, LOUISIANA, 1990 BASE YEAR INVENTORY
[Ozone Seasonal VOC Emissions (Tons/Day)]

Plan submittal	Point source emissions	Area source emissions	Onroad mobile emissions	Nonroad mobile emissions	Biogenic emissions	Total
12/15/95	115.40	26.30	55.50	23.20	120.91	341.31
1/2/97	115.00	25.40	53.40	21.80	99.60	315.20
Difference	.40	.90	2.10	1.40	21.31	26.11

The bases for these changes to the inventory were discussed in detail in the EPA's proposed rulemaking.

The EPA is taking final action to approve the revised 1990 base year emissions inventory submitted on January 2, 1997.

Overall, these revisions to the 1990 base year inventory decrease the "1990 ROP inventory," which is the 1990 base year inventory less the biogenic emissions, for the Baton Rouge nonattainment area from 220.4 tons/day to 215.6 tons/day. The decrease of 4.8 tons/day in the 1990 ROP inventory reduces the 15% ROP Plan reductions requirement by .6 tons/day. Since the reductions in the approved 15% ROP Plan have remained unchanged, Louisiana added the .6 tons/day differential to the 15% Plan surplus reductions resulting in a total surplus of 3.2 tons/day available to be carried over to the Post-1996 ROP Plan. The EPA has determined this revised surplus to be acceptable for use in the Post-1996 ROP Plan.

3. Adjusted Base Year Inventory

Section 182(c)(2)(B) states that the rate-of-progress reductions must be achieved "from the baseline emissions described in subsection 182(b)(1)(B)." This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(B) defines baseline emissions (for the purposes of calculating each milestone VOC/nitrogen oxides (NOx) emissions reduction) as "the total amount of actual VOC or NOx emissions from all anthropogenic sources in the area during the calendar year of enactment." This section excludes from the baseline the emissions that would be eliminated by FMVCP regulations promulgated by January 1, 1990, and the RVP regulations promulgated by the time of enactment (at 55 FR 23666, June 11, 1990), which require maximum RVP limits for gasoline to be sold in nonattainment areas during the peak ozone season.

In the August 18, 1998, proposal, the EPA provided a detailed explanation of the methodology for calculating the FMVCP/RVP adjustment. The EPA is taking final action to approve the FMVCP/RVP adjustment factor and the inventories discussed above, as follows:

Emissions inventory	Tons/Day
A. 1990 Base Year Emissions Inventory.	315.2
B. 1990 Rate-of-Progress Inventory (Base Year—Biogenics)	215.6
C. Emissions Reductions from the Pre–1990 FMVCP and Phase II RVP Expected by 1999	24.4
D. 1990 Adjusted Base Year Inventory (B–C)	191.2

4. Required Rate-of-Progress Reductions

The next step is then to calculate the Post-1996 ROP reductions requirement. In order to do so, the 1990 adjusted base

year VOC inventory is multiplied by nine percent. Thus, the Post-1996 ROP reduction requirement is 17.2 tons/day (.09 × 191.2). The EPA has determined the State's calculation of the Post-1996 ROP reduction requirement to be acceptable.

5. Fleet Turnover Correction Term

In the absence of any new requirements of the CAAA, some decrease in motor vehicle emissions will occur automatically due to fleet turnover. States are not allowed to take credit for these reductions for ROP purposes. During the State's calculation of the 1996 target level of emissions, these FMVCP reductions, along with non-creditable RVP reductions that would occur between 1990 and 1996, were subtracted from the 1990 ROP inventory to calculate the 1990 adjusted base year inventory. This 1990 adjusted base year inventory was then used to calculate the required reductions and the 1996 target level of emissions.

Between 1996 and 1999, there will be some additional reductions in emissions due to fleet turnover that are not creditable. These additional, non-creditable reductions are referred to as the fleet turnover correction term. The fleet turnover correction term is the difference between the 1999 and 1996 FMVCP/RVP mobile source reductions, or 3.0 tons/day. The EPA has determined the fleet turnover correction term in the Baton Rouge Post-1996 ROP Plan to be acceptable.

6. Calculation of Target Level of Emissions

For the purpose of calculating the 1999 target, the 1996 target inventory (obtained from the 15% ROP Plan calculations) is used. The 1996 target inventory used by the State in this calculation was revised from the target inventory approved as part of the 15% ROP Plan rulemaking in order to account for the changes made to the 1990 base year inventory described in detail in the August 18, 1998, proposal. The EPA is taking final action to approve the State's revised 1996 target level of emissions of 163.8 tons/day.

The 1999 target level of emissions is the amount of VOC emissions that must be achieved in order for the nonattainment area to demonstrate that the 9% ROP requirement has been met. The 1999 target level used by the State in the Post-1996 ROP Plan is the revised 1996 target level (163.8 tons/day), less the 9% ROP reductions (17.2 tons/day), less the fleet turnover correction term (3.0 tons/day), or 143.6 tons/day. The EPA is taking final action to approve the State's 1999 target level of emissions of 143.6 tons/day.

7. Growth Calculations

a. Introduction. The EPA has interpreted the Act to require that States must provide for sufficient control measures in their ROP Plans to offset any emissions growth expected to occur after 1996. Therefore, to meet the ROP requirement, a State must provide for sufficient emissions reductions to offset projected growth in emissions in addition to the three percent annual average reduction of VOC emissions. Thus, an estimate of growth in emissions from 1996 to 1999 is required for determining the total amount of required reductions in the Post-1996 ROP Plan.

b. EPA Action. In the August 18, 1998, proposal, the EPA provided a detailed description of the methodology the State followed for projecting growth in each source category during the period 1996–1999.

The following Table summarizes the projected emissions growth by source category for the nonattainment area:

BATON ROUGE GROWTH, 1996–1999

Source category	Tons/Day
Point	0.2
Area	0.2
On-road Mobile	2.4
Non-road Mobile	0.2
Subtotal	3.0

BATON ROUGE GROWTH, 1996–1999—Continued

Source category	Tons/Day
Offset from Growth of 15% Plan Point Source Reductions	(0.2)
Total Growth in 9% Plan	2.8

The EPA has determined that the State's methodology for estimating emissions growth for the period 1996–1999 is acceptable.

8. Total Required Reductions

The total required reductions in the plan include the 9% ROP reductions, reductions to offset projected growth (1996–1999), and the FMVCP/RVP turnover correction reductions (1996–1999). These required reductions total 23.0 tons/day. The State's "share" of the required reductions consists of the 9% ROP reductions (17.2 tons/day) plus the growth offset (2.8 tons/day), or 20.0 tons/day. The FMVCP/RVP turnover correction reductions (3.0 tons/day) are the Federal reductions that are not creditable towards meeting the ROP/growth offset requirements.

9. Measures to Achieve the Required Reductions

a. Introduction. As described in the August 18, 1998, proposed rulemaking, the State relied on a combination of surplus emission reductions from the 15% ROP Plan, along with additional control measures to achieve the emissions reductions required for the Post-1996 ROP Plan. The EPA has determined that both the surplus reductions from the 15% ROP Plan and the emissions reductions claimed from the control measures in the Post-1996 ROP Plan are acceptable for meeting the 9% (net of growth) emissions reductions requirement. The reader is referred to the proposal and associated TSD for a detailed description of the control measures and their associated reductions, which are summarized below:

Louisiana 9 percent plan required reductions (Excluding RVP/FMVCP):	(TONS/DAY)
9% ROP Reduction	17.2
Growth	2.8
Total	20.0
REDUCTIONS IN PLAN:	
Federal Measures:	
FMVCP Tier 1 Standards	1.0
Small Engines Rule	1.1
Architectural and Industrial Maintenance Coatings Rule	1.1
Autobody Refinishing Rule	0.6

Louisiana 9 percent plan required reductions (Excluding RVP/FMVCP):	(TONS/DAY)
Consumer Products Rule	0.9
Other Sources:	
Surplus Reductions in 15% Plan	3.2
Barge Cleaner (Permit Modification)	0.8
Acetylene Plant (Agreed Order)	3.2
Glycol Dehydrator Controls	8.4
Vents to Flares	1.1
Total Reductions	21.4
SURPLUS REDUCTIONS	1.4

b. EPA Action. The EPA is taking final action to approve the emissions reductions claimed in the January 2, 1997, Post-1996 ROP Plan as creditable towards the 9% ROP requirements of section 182(C)(2)(B) of the Act. The EPA is also approving into the SIP the Borden Chemical and Plastics Reasonable Further Progress Agreed To Order. The barge cleaner permit modification was issued under a SIP-approved nonattainment new source review program and is, therefore, already part of the Louisiana SIP and Federally enforceable. In addition, the State's waste gas regulation (LAC 33:III.2115), which requires controls on glycol dehydrators and vent streams, has already been approved into the SIP.

B. Motor Vehicle Emissions Budgets

1. Introduction

As stated previously, section 176(c) of the Act, and the Federal Transportation Conformity Rule require States to establish motor vehicle emissions budgets in any control strategy SIP that is submitted for attainment and maintenance of the NAAQS. Louisiana submitted, in the January 2, 1997, Post-1996 ROP Plan, projected (1999) motor vehicle emissions budgets for VOC and NO_x for the 5-parish Baton Rouge ozone nonattainment area.

Specifically, for the 5-parish serious ozone nonattainment area, the State established the following VOC/NO_x mobile vehicle emissions budgets:

BATON ROUGE, LA 1999 MOTOR VEHICLE EMISSIONS BUDGETS

Pollutant	Budget (Tons/Day)
VOC	33.93
NOx	58.03

2. EPA Action

The EPA has determined that the State's methodology for projecting the 1999 motor vehicle VOC and NO_x emissions is acceptable. Therefore, the EPA is taking final action to approve the figures in the above table as the official 1999 MVEBs to be used for transportation conformity determinations.

C. Contingency Measures

1. Introduction

Under section 172(c)(9) of the Act, ozone nonattainment areas classified as moderate or above must submit contingency measures to be implemented if RFP is not achieved or if the standard is not attained by the applicable attainment date. The "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved in a timely manner and additional planning by the State is needed.

In the General Preamble, the EPA interpreted the Act to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their November 1993 submittals so that, upon implementation of such measures, additional emissions reductions of up to three percent of the emissions in the adjusted base year inventory (or a lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Additional contingency provisions are included in section 182(c)(9) for serious ozone nonattainment areas. These latter provisions are similar to the section 172(c)(9) requirements except that the focus in section 182 (Ozone Areas) is on meeting emissions reductions milestones (section 182(g)).

2. Point Source Emissions Banking

Louisiana identified, in both its 15% and Post-1996 ROP Plans submittals, the State's point source VOC/NO_x banking regulations (LAC 33:III sections 601, 603, 605, 607, 613, 615, 617, 619, 621, 623, and 625)[2] as the three percent contingency measure. These banking regulations are intended to meet the contingency measure requirements of both section 172(c)(9) and section 182(c)(9) of the Act. The adopted point source banking regulations were initially submitted to the EPA for approval in the December 15, 1995, 15% ROP Plan submittal. The EPA deferred taking action on the regulations in the context of the 15% ROP Plan approval until its rulemaking action on the Post-1996 ROP Plan/Attainment Demonstration SIP. (The rationale for "carving out" the contingency measures was explained in detail in the TSD to the August 18, 1998, proposed rulemaking, as well as the TSD to the 15% ROP Plan rulemaking.) The reader is referred to the EPA's proposal for an in-depth discussion of the point source banking regulations.

In the December 22, 1995, Post-1996 ROP Plan submittal, the State provided a table of the emissions reductions that had been banked by industry to date pursuant to the regulations. The State's contingency measure requirement is 5.7 tons/day of VOCs (three percent times the adjusted base year inventory of 191.2 tons/day). The VOC reductions "on deposit," 13.0 tons/day, are well in excess of the three percent requirement.

The EPA has determined that the State has met the contingency measures requirements by having adopted and

[2] It should be noted that, in the preamble discussion to its August 18, 1998, proposal (pp. 44200 and 44207), the EPA's description of the State's submission inadvertently left out references to certain sections of the point source banking regulations submitted by the State. The correct sections, however, were actually discussed (generally and/or specifically) elsewhere in the proposal/TSD and are correctly set out in the preamble to this final rule.

submitted the point source banking regulations, and demonstrating the bank has sufficient VOC credits "on deposit" and available for confiscation in the event of a missed milestone/failure to attain. Furthermore, the EPA has determined that the banking rules provide for expeditious implementation of the contingency measures consistent with the time frames identified in the General Preamble.

As mentioned in the August 18, 1998, proposal, Louisiana also submitted to the EPA, in the January 2, 1997, submittal, a correction to a typographical error in section 615, "Schedule for Submitting Applications." The EPA is taking final action to also approve this correction to the point source banking rules.

3. EPA Action

The EPA is taking final action to approve the already-banked VOC emissions reductions credits (totaling 5.7 tons/day) toward meeting the three percent contingency measure requirement pursuant to sections 172(c)(9) and 182(c)(9) of the Act.

The EPA has determined that the point source VOC/NO_x banking regulations are generally consistent with the Act, EPA policy/guidance and Federal regulations. Therefore, the EPA is taking final action to approve the State's banking regulations as meeting the requirements for SIP approval under part D and section 110 of the Act.

It should be noted that the scope of this final rulemaking is to approve the banked VOC emissions reductions as creditable toward the contingency measures pursuant to sections 172(c)(9) and 182(c)(9) of the Act, and to approve all of the point source banking regulations as an acceptable SIP revision pursuant to part D and section 110 of the Act. The EPA is not, however, approving the banking regulations as an economic incentive program (EIP) pursuant to the EPA's Economic Incentives Program Rules (59 FR 16690) and section 182(g) of the Act. (Since the State has not expressly submitted the point source banking regulations as a section 182(g) SIP revision, the EPA believes it beyond the scope of this rulemaking to act upon the banking regulations as an EIP.)

D. Additional Rule Submitted

The State elected to include regulation LAC 33:III.611, "Mobile Sources Emissions Reductions," in the January 2, 1997, submittal for the EPA's approval as part of the overall emissions banking program. However, the State is not taking any reduction credit in the contingency plan from this voluntary mobile source emissions reduction program. In fact, no vehicles have actually been scrapped to date under the program and, hence, no mobile emission reduction credits have been banked statewide as part of the vehicle scrappage program.

Since the State's submission of section 611, certain national policy issues have arisen surrounding the use of mobile source-generated emissions reductions credits for use by point sources. Pending resolution of these issues, the EPA is deferring taking action on the regulation at this time. The deferral will have no effect on either the Post-1996 ROP Plan or the Attainment Demonstration since the State is not relying on reductions from the vehicle scrappage program to meet the reductions target or demonstrate attainment. (A more in-depth discussion of the EPA's rationale for deferring action on the rule was provided in the TSD to the August 18, 1998, proposed rulemaking.)

E. Attainment Demonstration

1. Introduction

As stated previously, section 182(c)(2)(A) of the Act stipulates that serious and above ozone nonattainment areas must submit a revision to the SIP that includes a demonstration that the plan, as revised, will provide for attainment of the NAAQS for ozone by November 15, 1999. In addition to the 15% and 9% (net of growth) ROP reductions requirements, if the mandatory emission reductions are not sufficient to demonstrate attainment of the ozone NAAQS by November 15, 1999, emissions (VOCs and/or NO_x) must be further reduced until attainment is demonstrated through photochemical grid modeling.

For ozone nonattainment areas classified as serious or above, section 182(c)(2)(A) of the Act requires an attainment demonstration based on photochemical grid modeling, for which the Urban Airshed Model (UAM) is the EPA-approved model. See appendix W of 40 CFR part 51.

The following guidance documents establish the acceptable techniques for application of UAM to demonstrate attainment of the ozone NAAQS:

EPA's *Guideline on Air Quality Models (Revised)* (July 1986);

EPA's *Guideline for Regulatory Application of the UAM* (July 1991); and

EPA's final *Guidance on use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996).

The UAM model uses an inventory of pollutant emissions, together with air quality and meteorological data, as input to a system of algorithms incorporating chemistry and dispersion, in order to simulate an observed pollution episode. Once a "base case" is developed that meets the minimum performance criteria, projected future emissions are used as input to simulate air quality in the attainment deadline year. Various combinations of geographically uniform emission reductions are simulated to determine approximate attainment reduction targets. Planners design a control strategy to meet these targets, and then simulate it with UAM, including the spatially and temporally varying effects of the selected controls. Attainment is demonstrated when the modeled air quality with emission controls in effect is below the NAAQS throughout the geographical modeling domain.

The EPA's *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* allows States to use a "weight-of-evidence" determination if the modeled attainment test is not fully passed, showing that attainment of the NAAQS is still likely. (The reader is referred to the EPA's proposal for a detailed discussion of UAM modeling procedures and requirements.)

2. EPA Action

The EPA's review focused on the data sources used, technical judgments, and procedures followed in input preparation and performing quality assurance and diagnostics. The EPA also evaluated the model's base case performance, consistency of control measure simulation inputs with submitted control measures, adequacy of the demonstration of attainment of the NAAQS, and the consistency/completeness of the modeling documentation.

a. Episode Selection and Base Case Performance. As explained in the *Guideline for the Regulatory Application of the Urban Airshed Model*, episodes are chosen for modeling based on their high ozone levels, data availability and other criteria. Generally, episodes should be chosen that are approximately as severe as the area's design value, which is based on historical ozone highs. During a particular episode, the observed ozone peak may be higher or lower than the design value; but as long as it is relatively close, that episode can be accepted for use in an attainment demonstration.

The *Guideline for the Regulatory Application of the Urban Airshed Model* calls for a minimum of three primary episode days to be modeled. The EPA may allow areas to use just two episode days if they are based on a field study, since this provides substantially more complete data, and, hence, more confidence in model development procedures and results. In the case of the Baton Rouge demonstration, the State modeled three primary episode days.

The following three episodes were selected for use in the December 22, 1995, Baton Rouge Attainment Demonstration SIP submittal: August 15–16, 1989, May 24–25, 1990; and August 18–19, 1993.

Once the episodes were chosen, the modelers are required to simulate these observed pollution episodes using the urban airshed model. In conducting the Baton Rouge base case model performance evaluation, the State employed both graphical and statistical performance measures to gauge their success. (A discussion of the graphical and statistical tests used in the evaluation of the Baton Rouge modeling demonstration was provided in the EPA's August 18, 1998, proposal and associated TSD.) In the Baton Rouge base case simulations, the model performance for the August 15–16, 1989, and August 18–19, 1993, episodes was rated "good," and the model performance for the May 24–25, 1990, episode was rated "very good." The EPA has determined that the Baton Rouge episodes had acceptable performance and met the *Guideline* criteria.

b. Attainment Test. The *Guidance on use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996) identifies two approaches that the State can use for demonstrating attainment of the ozone NAAQS. One of the acceptable approaches is called the "Deterministic Approach," which consists of a deterministic test and an optional weight-of-evidence determination. The deterministic test is passed if predicted maximum ozone concentrations are less than or equal to 124 parts per billion (ppb) in all surface grid cells on all modeled primary episode days. If the test is not passed, a weight-of-evidence determination may be used to show that attainment of the NAAQS is still likely.

Meanwhile, the second acceptable approach is called the "Statistical Approach." This approach consists of two parts: a statistical test and a weight-of-evidence determination. The statistical test includes three benchmarks. The first benchmark limits the number of allowed exceedences, the second restricts the magnitude of an allowed exceedence, and the third requires a minimum level of improvement in air quality to be exceeded. If one or more of the benchmarks is failed, a weight-of-evidence determination may also be performed using corroborative information. If the corroborative information is consistent with the likelihood that a proposed strategy will lead to attainment of the ozone NAAQS by statutory dates, attainment has been demonstrated.

As discussed in detail in the EPA's August 18, 1998, proposal, the State elected to follow the "Statistical Approach," consisting of a statistical test and weight-of-evidence determination, for demonstrating attainment of the ozone NAAQS through UAM modeling.

c. Photochemical Grid Model Used. The State used UAM Version IV, an EPA-approved photochemical grid model, to develop the attainment demonstration for the Baton Rouge area. The State performed its modeling activities as outlined in the UAM modeling protocols and according to the EPA's *Guideline for Regulatory Application of the Urban Airshed Model.* (In advance of performing the UAM analyses, the State developed a specific protocol for conducting its modeling activities, which EPA reviewed and approved.)

The Baton Rouge modeling domain covers all or part of 20 parishes in Louisiana, including the Baton Rouge serious ozone nonattainment area consisting of East Baton Rouge, West Baton Rouge, Livingston, Iberville, and Ascension Parishes.

The EPA has determined that the State followed acceptable procedures to develop the meteorological and air quality inputs, base case emissions inventories, projection inventories, and future boundary conditions used in the UAM modeling. (The reader is referred to the EPA's proposal for a more in-depth discussion of the methodology the State followed in developing these model inputs.)

d. Demonstration of Attainment. The EPA's *Guideline for the Regulatory Application of the Urban Airshed Model* stipulates that, for the primary episode days modeled, there should be no predicted daily maximum ozone concentrations greater than 124 ppb anywhere in the modeling domain for each primary episode day modeled. However, in its subsequent *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996), the EPA revised the model test for demonstrating attainment of ozone NAAQS. (The revisions were intended to make the modeled attainment test more closely reflect the form of the NAAQS.) In the *Guidance*, the EPA recommended that either the "Statistical Approach" or "Deterministic Approach" should be used for the attainment demonstration of the ozone NAAQS. (These approaches were discussed in detail in the proposed rulemaking.)

As stated above, the State elected to use the "Statistical Approach," consisting of a statistical test with optional weight-of-evidence determination, to demonstrate attainment of the ozone NAAQS. The statistical test included the application of three benchmark tests. The weight-of-evidence determination entailed the use of supplementary analyses to determine whether attainment was likely, despite model results which did not pass the statistical test.

The State used the three selected episodes, all having good to very good base case model performance ratings, for demonstrating attainment of the ozone NAAQS. These episodes were modeled using the projected 1999 emission inventory, which included the emission controls to be implemented through 1999. The results of the various benchmark tests are discussed in detail in the August 18, 1998, proposed rulemaking.

e. Modeling Evaluation. The EPA has determined that the State's attainment demonstration for the Baton Rouge ozone nonattainment area fulfills the requirements of section 182(c)(2)(A) of the Act. The State adequately followed the EPA's guidance on the application of the UAM for demonstrating attainment of the ozone NAAQS. Following the "Statistical Approach," it demonstrated that two of the three episodes met or nearly met all the specified benchmark criteria. Furthermore, supplementary information provided by the State for consideration in the weight-of-evidence determination (i.e., mid-course review, severity of selected episodes, uncertainty in the boundary condition estimates, etc.) supported the modeled attainment demonstration.

The *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* also allows the use of normalized trend data, results from observational models and or other models and consideration of incremental cost/benefit estimates, etc., in a weight-of-evidence determination. In determining whether the State's "Statistical Approach" to demonstrating attainment was adequate, the EPA considered general trend data, which reflected reductions in monitored ozone values, precursor emissions, and total exceedence days since 1990.

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As stated previously under "Current SIP Submittals," the State, in its January 2, 1997, submittal, removed the emission reduction credits taken for the vehicle inspection and maintenance control measure included in the December 22, 1995 Post-1996 ROP Plan submittal, and replaced them with additional point source reductions. The January 2, 1997, submittal provided an analysis of how removal of the I/M reductions would impact the modeling results submitted in the December 22, 1995, attainment demonstration. The EPA reviewed the State's analysis and concurred that removal of the I/M reductions from the plan would not significantly alter the modeling results.

In summary, based on the results of the statistical test, the weight-of-evidence determination, and the I/M impact analysis, the EPA has determined that State adequately demonstrated the modeled control strategy would provide for attainment of the ozone NAAQS by the statutory attainment date.

f. Control Strategy Evaluation. The EPA has determined that the modeling results for Baton Rouge adequately demonstrate that the area could attain the ozone standard by 1999 through the implementation of a VOC-only control strategy consisting of the Federally enforceable 15 Percent and Post-1996 ROP VOC reductions (net of growth) from the 1990 base year levels. The reader is referred to the proposed rulemaking for a more in-depth discussion of the control strategy modeled.

The EPA is taking final action to approve Louisiana's Attainment Demonstration SIP submittals, dated December 22, 1995, and January 2, 1997, as meeting the requirements of section 182(c)(2)(A) of the Act for demonstrating attainment of the NAAQS for ozone by November 15, 1999. Through photochemical grid modeling, the State has demonstrated to the EPA's satisfaction that the VOC reductions in the 15% and Post-1996 ROP Plans (34.8 and 21.4 [3] tons/day, respectfully) are sufficient to demonstrate attainment of the ozone NAAQS by the statutory deadline.

III. Final Rulemaking Action

The EPA has reviewed the SIP submittals for consistency with the Act, applicable EPA regulations and EPA policy, and is approving the following under sections 110(k)(3), 301(a), and part D of the Act:

A. The Baton Rouge, Louisiana, Post-1996 Rate-of-Progress Plan, submitted December 22, 1995, and revised January 2, 1997, as meeting the requirements of section 182(c)(2)(B) of the Act to achieve a reduction in VOC emissions (net of growth) of 9 percent between 1996 and 1999.

B. The Baton Rouge, Louisiana, contingency plan, initially submitted as part of the 15% ROP Plan on December 15, 1995, and, subsequently, as part of the Post-1996 ROP Plan submitted December 22, 1995, and revised January 2, 1997. The EPA is taking final action to approve the contingency plan as meeting the requirements of sections 172(c)(9) and 182(c)(9) of the Act that moderate and above ozone nonattainment areas include contingency measures in their ROP Plan submittals. Specifically, the EPA is taking final action to approve the contingency-reserved VOC banked emissions reductions of 5.7 tons/day (achieved through the State's banking regulations), identified in a table in appendix T of the December 22, 1995, submittal, as creditable towards the 3 percent contingency requirements of sections 172(c)(9) and 182(c)(9) of the Act. In addition, the EPA is taking final action to approve the point source VOC and NO_x emissions reductions banking regulations (LAC 33:III sections 601, 603, 605, 607, 613, 615, 617, 619, 621, 623, and 625) submitted December 15, 1995, and revised January 2, 1997, as meeting the requirements for SIP approval under part D and section 110 of the CAAA.

C. The 1999 Motor Vehicle Emissions Budgets for on-road mobile VOC and NO_x emissions for the Baton Rouge 5-parish ozone nonattainment area submitted January 2, 1997, as meeting the requirements of section 176(c) of the Act and 40 CFR 51.452(b) of the Federal Transportation Conformity Rule.

D. The Baton Rouge, Louisiana Attainment Demonstration submitted December 22, 1995, and revised January 2, 1997, including the modeling analyses, as meeting the requirements of section 182(c)(2)(A) of the CAAA to provide for attainment of the ozone NAAQS by the applicable November 15, 1999, attainment date.

E. Revisions to the 1990 base year VOC emissions inventory submitted January 2, 1997 as meeting the requirements of section 182(a)(1) of the Act. In addition, the EPA is taking final action to codify the revisions to the 1990 base year emissions inventory submitted as part of the 15% ROP Plan approved October 22, 1996 (61 FR 54737).

F. The revision to the 1996 target level of VOC emissions submitted January 2, 1997, as meeting the requirements of part D and EPA guidance.

The EPA is deferring taking any action at this time on the State's accelerated vehicle retirement regulation (LAC 33:III.611) entitled, "Mobile Sources Emission Reductions," which was submitted to the EPA on January 2, 1997. Deferring action on this regulation has no effect on either the Baton Rouge Post-1996 ROP Plan or on the Baton Rouge Attainment Demonstration since the State took no credit in these plans for reductions from vehicle scrappage.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any new requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective August 2, 1999.

H. Petition for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 31, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52 of chapter I, title 40, CFR, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

2. In § 52.970, in the "EPA-Approved Louisiana Regulations in the Louisiana SIP" table in paragraph (c), chapter 6 is added to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) EPA approved regulations.

[3] The 21.4 tons/day in emissions reductions includes the 3.2 tons/day surplus reductions from the 15% ROP Plan carried over to the Post-1996 ROP Plan.

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EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
Chapter 6—Regulations on Control of Emissions Reduction Credits Banking				
Section 601	Background and Purpose	Aug. 1994, LR20:874	[July 2, 1999 and Federal Register cite].	
Section 603	Applicability	Aug. 1994, LR20:874	[July 2, 1999 and Federal Register cite].	
Section 605	Definitions	Aug. 1994, LR20:874	[July 2, 1999 and Federal Register cite].	
Section 607	Stationary Point Source Reductions.	Aug. 1994, LR20:877	[July 2, 1999 and Federal Register cite].	
Section 613	ERC Bank Balance Sheet	Aug. 1994, LR20:877	[July 2, 1999 and Federal Register cite].	
Section 615	Schedule for Submitting Applications.	Jul. 1995, LR21:681	[July 2, 1999 and Federal Register cite].	Approves original rule (adopted 8/94) and subsequent revision (adopted 07/95).
Section 617	Review and Approval of ERC Bank Balance Sheets.	Aug. 1994, LR20:878	[July 2, 1999 and Federal Register cite].	
Section 619	Registration of Emission Reduction Credit Certificates.	Aug. 1994, LR20:879	[July 2, 1999 and Federal Register cite].	
Section 621	Protection of Banked ERCs.	Aug. 1994, LR20:679	[July 2, 1999 and Federal Register cite].	
Section 623	Withdrawal, Use, and Transfer of Emission Reduction Credits.	Aug. 1994, LR20:880	[July 2, 1999 and Federal Register cite].	
Section 625	Application and Processing Fees.	Aug. 1994, LR20:880	[July 2, 1999 and Federal Register cite].	

3. In section 52.970, an entry in the "EPA-Approved Louisiana Source-Specific Requirements" table in paragraph (d) is added to read as follows:

(d) EPA-approved State source-specific requirements.

EPA APPROVED LOUISIANA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State approval/ effective date	EPA approval date	Comments
Borden Chemicals and Plastics in Baton Rouge.	Reasonable Further Progress Agreed To Order.	10/24/96	[July 2, 1999 and Federal Register cite].	Submitted as part of the Baton Rouge, LA Post–1996 ROP Plan

4. In section 52.970, an entry in the "EPA Approved Control Measures in the Louisiana SIP" table in paragraph (e) is added to read as follows:

(e) EPA approved nonregulatory and quasi-regulatory measures.

EPA APPROVED CONTROL MEASURES IN THE LOUISIANA SIP

Control measures	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Comments
Post–1996 ROP Plan (Including a Revised 1996 Target Level of VOC Emissions).	Baton Rouge, LA	01/02/97	[July 2, 1999 and Federal Register cite].	Originally submitted 12/22/95 and revised 01/02/97.
Attainment Demonstration for the 1-hour Ozone NAAQS.	Baton Rouge, LA	01/02/97	[July 2, 1999 and Federal Register cite].	Originally submitted 12/22/95 and revised 01/02/97.

EPA APPROVED CONTROL MEASURES IN THE LOUISIANA SIP—Continued

Control measures	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Comments
Contingency Plan	Baton Rouge, LA	01/02/97	[July 2, 1999 and Federal Register cite].	Submitted as part of the 15% ROP Plan on 12/14/95 and, subsequently, as part of the Post–1996 ROP Plan submitted on 12/22/95 and revised 1/2/97.
1999 Motor Vehicle Emission Budgets.	Baton Rouge, LA	01/02/97	[July 2, 1999 and Federal Register cite].	
Revised 1990 Base Year VOC Emissions Inventory.	Baton Rouge, LA	01/02/97	[July 2, 1999 and Federal Register cite].	See also 52.993.

5. Section 52.993 is amended by adding paragraphs (d) and (e) as to read as follows:

52.993 Emissions inventories.

* * * * *

(d) On December 15, 1995, the Governor of the State of Louisiana submitted a revision to the 1990 base year volatile organic compound (VOC) emissions inventory for the Baton Rouge, Louisiana ozone nonattainment area. The revised inventory was submitted as part of the revised Baton Rouge 15 Percent Rate-of-Progress Plan. This revision to the base year inventory modified the point source VOC emissions. The revisions satisfy the requirements of section 182(a)(1) of the Clean Air Act, as amended in 1990.

(e) On January 2, 1997, the Governor of the State of Louisiana submitted a revision to the 1990 base year volatile organic compound (VOC) emissions inventory for the Baton Rouge, Louisiana ozone nonattainment area. The revised inventory was submitted as part of the revised Baton Rouge Post–1996 Rate-of-Progress Plan. This revision to the base year inventory modified the point, area, non-road mobile, on-road mobile, and biogenic sources of VOC emissions. The revisions satisfy the requirements of section 182(a)(1) of the Clean Air Act, as amended in 1990.

[FR Doc. 99–16927 Filed 7–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 079–1079; FRL–6370–9]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: Because EPA received adverse comments, EPA is withdrawing the direct final rule for the approval of revisions to the Iowa State Implementation Plan. EPA published the direct final rule on May 13, 1999 (64 FR 25825). This approval pertained to a set of state rules recently submitted by the Iowa Department of Natural Resources. EPA stated in the direct final rule that if EPA received adverse or critical comments by June 14, 1999, EPA would publish a timely notice of withdrawal in the **Federal Register**. Therefore, due to receiving adverse comments within the comment period, EPA is withdrawing the direct final rule and will summarize and respond to the comments received and take final rulemaking action in a subsequent final rule. EPA will not institute a second comment period on this document.

DATES: The direct final rule published at 64 FR 25825 is withdrawn as of July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 24, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–16929 Filed 7–1–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–138; FCC 99–118]

Main Studio and Local Public Inspection Files for Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises and clarifies the Commission's rules regarding the main studio and local public inspection files of broadcast television and radio stations. The intended effect of this action is to amend the retention requirements as well as other required changes to the Commission's rules.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Policy and Rules Division, Mass Media Bureau (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *MO&O*, FCC 99–118, adopted May 25, 1999; released May 28, 1999. The full text of the Commission's *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th St. S.W., Washington, D.C, 20554. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Memorandum Opinion and Order

1. In the *Report and Order* (*"R&O"*), 63 FR 49487 (September 16, 1998), in this proceeding, we amended our rules regarding the main studio and local public inspection file for broadcast stations. In doing so, our goals were twofold: to strike an appropriate balance between ensuring that the public has

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reasonable access to each station's main studio and public file while minimizing regulatory burdens on licensees, and to adopt clear rules that are easy to administer and understand. Consistent with these goals, we provided broadcast licensees additional flexibility in locating their main studios, required the collocation of public files and main studios, and clarified and updated our rules regarding the required contents of the public inspection files. In addition, we adopted an accommodation that requires stations to make available, by mail upon telephone request, photocopies of documents in the public file, including our revised version of "The Public and Broadcasting."

2. We have received five partial or limited petitions for reconsideration of the *R&O* in this proceeding and one opposition to the petitions for reconsideration. In response to these petitions for reconsideration, we take this opportunity to affirm, revise, or clarify certain of our actions. We will modify the rules by amending the scope of the accommodation and by revising slightly and clarifying the document retention requirements. We also address other requested changes.

A. Accommodation

3. In the *R&O*, we amended section 73.1125 of our rules to allow a station to locate its main studio at any location that is within either the principal community contour of any station, of any service, licensed to its community of license or 25 miles from the reference coordinates of the center of its community of license, whichever it chooses. We also amended sections 73.3526 and 73.3527 of our rules to require all stations to locate their public files, which include their political files, at their main studios. Because these rule changes could result in a station's public file being located a greater distance from its community of license than previously permitted, as an accommodation, we also amended sections 73.3526 and 73.3527 to require all stations to make available, by mail upon telephone request, photocopies of documents in the public and political file. As adopted, the rules continue to provide that the station may require the person requesting the copies to pay the reasonable cost of photocopying in advance and require the station to pay postage. To facilitate requests for public file documents over the telephone, the new rules also require stations to provide callers, if they wish to receive one, a copy of the new edition of "The Public and Broadcasting" free of charge. We did not amend the requirements regarding program origination capability, staff presence or toll-free service.

4. One petitioner argues that some of the newly adopted provisions are unduly burdensome and should be substantially modified or deleted and that the Administrative Procedure Act, the Paperwork Reduction Act and the Regulatory Flexibility Act bar the Commission from lawfully adopting any of the new requirements. Another petitioner argues that the accommodation should be retained as adopted, and apply to all broadcasters stations equally.

5. *Discussion.* We will retain the accommodation with modifications as discussed below. We continue to believe that the accommodation is necessary and reasonable now that broadcasters have much more flexibility in locating their public files. We disagree with State Broadcasters that our *R&O* in this proceeding was contrary to the APA, the PRA or the RFA. The *R&O* was based on a thorough record developed after a full opportunity for comment on the proposed changes to the rules in question. Our decision reasonably met our stated goals of "balancing between ensuring that the public has reasonable access to each station's main studio and public file and minimizing the regulatory burdens on licensees." Our decision was also based on the "bedrock obligation" of each broadcast licensee to serve the needs and interests of its community of license. The PRA and RFA require agencies to ensure that they do not impose unnecessary burdens on members of industry, including small businesses and the public. However, neither the PRA nor the RFA requires any administrative agency to reduce burdens if to do so would undermine the agency's ability to fulfill the obligations of its originating statute. Pursuant to the PRA and RFA, we sought comment on the paperwork burdens and the regulatory burdens on small businesses in the *Notice of Proposed Rule Making* and received no comments. We also analyzed these burdens in the *R&O* and found that our actions properly balanced the needs of the entities involved and the public, and imposed no unnecessary burdens. In addition, the rules were approved by the Office of Management and Budget, which specifically analyzed any paperwork burdens.

6. At the time we adopted the *R&O*, we considered several different methods of accommodation and weighed the comparative burdens and public benefits associated with each. Our determination struck a reasonable balance among the competing proposals raised in the record. We considered such proposals as requiring courier, fax or e-mail delivery, or requiring stations to make their studio available at non-business hours by appointment and found that such proposals were not reasonable either because they would not serve the public universally or would unduly burden stations. We also considered a proposal to require stations either to provide transportation to requesters, or to transport the public file to them, and determined that such accommodations would be unreasonably burdensome to station owners. On the other hand, we considered such suggestions as allowing a licensee to choose the actual method of public access, and concluded that this approach would not assure reasonable accommodations for the public. We found that the accommodation furthers our stated goals of balancing public access with regulatory burden and ease and clarity of administration. We considered comments arguing, as does State Broadcasters in its Petition, that the accommodation could discourage stations from locating outside the community, and that it could, if not limited, result in frivolous or harassing requests. As we noted in the *R&O*, we believe that the rules as adopted address many of these concerns. For example, a requestor is entitled to "The Public and Broadcasting," which should provide adequate guidance to make an intelligent request for information. In addition, the rules regarding public file contents, as revised, will be much easier to understand and administer for both licensees and the public seeking information. Again, as we stated in the *R&O*, the person seeking documents from a station's public file will continue to be required to pay the reasonable expenses of photocopying, which should reduce the possibility for abusive and frivolous requests.

7. In response to concerns raised by various petitioners, we will nonetheless modify the accommodation in several respects as discussed. The modifications we adopt will more narrowly tailor the accommodation, and thereby lessen regulatory burdens without undermining the public's ability to acquire reasonable access to relevant information about a broadcast station.

8. *Geographic Limitation.* On reconsideration, we will revise sections 73.3526(c)(2) and 73.3527(c)(2) to require that only those stations whose public file is located at a main studio outside the city limits of the community of license be required to provide the accommodation. We believe that this narrowing of the accommodation is justified. Stations that remain in the community of license should be reasonably accessible to the public they serve. Indeed, we adopted the accommodation in the *R&O* in order to compensate for the fact that broadcasters may now move their public files to more distant locations outside the community of license. If a station chooses to locate its main studio and public file in its community of license under the new rules, the public file will be reasonably accessible just as before, and there should be no need for the accommodation. We will not, however, exempt from the accommodation stations whose public files are outside the community at the main studio pursuant to a waiver granted prior to our *R&O* in this proceeding. Under the new rule, these stations no longer require a waiver and thus should be treated in the same manner as other stations in the same circumstances.

9. We also will revise sections 73.3526(c)(2) and 73.3527(c)(2) to limit the required mailing area for documents requested by phone to the geographic service area of the station in question. Stations will not be required to provide this accommodation to persons outside this area. For a TV station, this area is defined by the area encompassed by the station's Grade B contour; for a radio station, it is the area within the station's protected service contour. This will clarify the scope of the accommodation requirement and minimize disputes over who is eligible for the accommodation. We nonetheless encourage, but will not require, stations to make the accommodation to persons living outside that immediate service area who may be able to view or listen to the station. We urge stations to act in good faith to accommodate viewers and listeners who reasonably claim to receive their signal even though they reside outside the relevant service contour.

10. We believe that narrowing the accommodation in this fashion is consistent with the underlying goals of this proceeding which focused on ensuring the continued access of local viewers and listeners of each station, even where a station relocates its main studio outside of its community of license. Given the limited purpose of the accommodation, we believe the accommodation should be tailored to the listeners and viewers that are served by the station. We acknowledge that, as MAP, *et. al.*, have pointed out, the accommodation, if not limited to a station's geographic service area, could offer collateral benefits, such as mail access to local citizens' attorneys who happen to be located outside the service area, or allowing citizens to compare performance of local broadcasters with distant broadcasters, or enabling national organizations and academics to collect information from broadcasters nationwide. Such considerations, however, are beyond the scope of this process and we do not address them here.

11. *Specific Guidelines.* In the *R&O* we granted stations the ability to require payment for copies prior to mailing them and noted that stations would be required to send a copy of "The Public and Broadcasting" free of charge to anyone requesting it. We declined to impose a numerical limit on accommodation requests a member of the public could make.

12. We decline to adopt the petitioners' proposals that we further delineate the types and amount of information stations are to give over the telephone. We reiterate our determination in the *R&O*. Therein, we gave an example of the type of telephone service we envisioned: stations, if asked, should describe to a caller the number of pages and time periods covered by a particular ownership report or children's television programming report, or the types of applications actually maintained in the station's public file and the dates they were filed with the FCC. As we stated, we also encourage stations to place the descriptions of their public files on the Internet. Again, we will not set a numerical limit on telephone requests. Particularly with the modifications we make to the accommodation today, we do not expect licensees to be unduly burdened by this requirement. Nor are we convinced that citizen requests for information will be made in bad faith to any significant extent, or that stations will be overwhelmed by such requests. A licensee, may, of course, seek a waiver or special relief from the Commission in the event such circumstances arise.

13. We also decline to adopt or recommend a specific form to be used by stations when fulfilling telephone requests. Stations may, of course, at their discretion, use forms to streamline the processing of requests and collection of associated charges. In addition, we will retain our original requirement that stations pay the cost of postage for mailing the documents requested by telephone. We believe this cost is reasonable considering the flexibility that the new rules grants to stations and the additional cost to the public of travelling to the more distant main studio location in order to view the file in person.

14. *Exempt Politicol File.* The *R&O* made no substantive change to the political file rules. The only change in procedure regarding the political file was that requests for the political file's contents were included in the accommodation just as any other aspect of the public file would be. Prior to the effective date of the rules, we granted a temporary and partial stay of the effective date of the accommodation provision only as it applied to requests to gain access to the contents of stations' political files. This effective date was stayed only until the end of the Fall 1998 election season, which occurred only days after the actual effective date of the rules.

15. We will grant petitioners' request and not require that stations extend the accommodation to requests for the political file. We believe that this change balances the needs of broadcasters with the needs of the public. A petitioner states that its experience shows that candidates or their representatives are the heaviest visitors to a station's public file. These persons may make daily or even more frequent requests for political file information during a campaign, because the information is in flux throughout each day of the campaign. As we recognized at the time we granted the temporary stay, a heavy volume of telephone calls could unduly disrupt a station's operations. This volume of telephone requests could occur in any election season. In exempting the political file from the accommodation, we also expect that candidates or their representatives, when seeking political file information in their professional capacities, are more likely to have greater resources and be more able to access the main studio and public file in person than would an average citizen. Since candidates or their representatives, rather than the general public, are the persons most likely to be affected by this exemption, we do not believe that the exemption will adversely affect the public interest.

B. Document Retention Requirements

16. *Applications.* In the *R&O*, the Commission amended sections 73.3526 and 73.3527 to provide that all applications be retained in a station's public file during the period each application is pending or, if granted pursuant to a waiver, during the period that the waiver remains in effect. Those rules had previously contained confusing requirements for retention which many parties requested we revise. In the *R&O* we revised the rule to include *all* applications, but we clarified and shortened the period of retention to the period during which an application remains pending. We also

changed the retention period of applications granted pursuant to a waiver to the period during which the waiver is in effect.

17. We affirm sections 73.3526 and 73.3527 as revised in the *R&O*. We are not persuaded by the argument that we should adhere to the spirit of the original public file proceeding in 1965 to require retention only of those applications that require local public notice. Members of the public may very well have an interest in reviewing all of a licensee's pending applications, even those not placed on local public notice. Moreover, our amendment to this rule to include all applications in the public file simplifies this rule greatly. We believe that the addition of some applications will not burden stations, because the number of additional applications is small, and inclusion of all applications relieves licensees and permitees of the need to seek counsel regarding the question of which applications need be kept. In addition, we amended this rule to change the retention period of applications to the period during which they are pending before the Commission or the courts. This shortens and clarifies the retention period which previously had required that applications be retained throughout the renewal period during which they were filed.

18. With respect to retaining applications granted pursuant to a waiver, we reaffirm our decision to require retention of all applications granted pursuant to a waiver for the duration of the waiver's applicability. As we stated in the *R&O*, we believe these applications must remain available to the public for the entire period the waiver is in effect to ensure the public can assist the FCC in evaluating licensee performance in light of the representations made in the application and waiver request. We also believe that the burden of retaining the application is outweighed by the need to keep an accurate and complete record of a station's operations. We decline to apply this requirement only to particular types of waivers. To do so could undermine the public's ability to examine licensee performance under the waiver, and could also unduly complicate what should be a straightforward and easy-to-apply requirement.

19. *Electronic Mail.* In the *R&O*, we amended our rules to require licensees to retain e-mail messages as well as traditional printed communications. We will modify this requirement. Section 73.3526(e)(9) was modified to extend the retention requirements to the same sort of e-mail communications as have historically applied to traditional mail communications. We recognize that personal e-mails in the workplace have become quite common, much more so than letters, and that our requirement may have had an overbroad result. To ensure that only e-mails regarding the operation of the station be retained, we will limit the e-mail retention requirement to e-mails sent to a publicly advertised e-mail address, or to station management, and we will specifically exclude the personal e-mails of staff members. We expect this exclusion of personal e-mail to avoid the possible overbroad effect of including e-mail sent to a lower level employee that might contain an inconsequential reference to station operation. We encourage stations to advertise e-mail addresses to which comments and suggestions may be sent, but we do not require this.

20. *Donors' Lists.* Section 73.3527(a)(8) of our rules requires that noncommercial educational stations maintain the lists of donors supporting specific programs. In the *R&O*, we considered but denied a petition asking us to delete this requirement from the public file. That petition argued that this provision was obsolete because it is rooted in the program log requirements that were deleted in 1980. This issue was again raised on reconsideration.

21. We disagree that this provision is obsolete. As we stated in the *R&O*, the donor list requirement is tied to our sponsorship identification requirements under Section 317 of the Act and section 73.1212 of our rules, which require noncommercial educational stations to acknowledge donors. The basic premise of these provisions is that the public is entitled to know by whom they are being persuaded. The donor list requirement for noncommercial licensees is related to the Commission's determination that noncommercial educational stations are permitted to limit their on-air program sponsorship announcements to major donors or underwriters only, but must maintain a complete donor list in their public files. Although donor lists originated as an optional alternative to logging, they were deliberately retained when the logging requirements were deleted, and stations retained their obligations to identify donors in accordance with section 73.1212. Parties had ample notice and opportunity to comment on this provision in this Docket, and their positions were given full consideration. The donor lists provide the only complete information regarding program sponsorship on noncommercial stations, and therefore will be retained. We note that the list for each program must be maintained for two years after broadcast of the program.

22. With respect to the definition of "donors supporting specific programs," we will apply the same definition as applies to "sponsors" under the sponsorship identification provisions. That is, we expect licensees under Section 317(a)(2)(c) of the Act to exercise "reasonable diligence" to obtain the requisite information to assure that a proper identification is made. We note in this regard that section 73.1212(e) requires licensees to disclose the "true identity" of those on whose behalf a payment is made. In making this determination, unless furnished with "credible, unrefuted evidence" that a sponsor is acting on behalf of a third party, the broadcaster may rely on the plausible assurances of the person paying for the time that they are the true sponsor.

23. *Letters concerning violent programming.* Section 73.1202 of our rules requires that licensees of commercial AM, FM and Television broadcast stations retain in their public files for three years all written comments and suggestions received from the public regarding station operation. Section 73.3526 implements this provision with similar language. There is no similar provision requiring licensees of noncommercial educational stations to retain such written correspondence. In the *R&O* we nonetheless required that all noncommercial television licensees include in their renewal applications a summary of any letters they receive regarding violent programming even though these licensees are not required to retain such letters themselves under our rules. We based this determination on Section 204(b) of the Telecommunications Act of 1996 ("1996 Act"). This section amended Section 308(d) of the Communications Act of 1934 to require that

> [e]ach applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (in accordance with Commission regulations) that comment on the applicant's programming, if any, and that are characterized by the commenter as constituting violent programming.

In the *R&O* we found that this requirement was appropriate in light of Congress' concern with violent programming, and would help ensure that the Commission and the public are kept informed of concerns raised by the public about such programming on both commercial and noncommercial stations.

24. A petitioner argues that since, under the Commission's rules, noncommercial stations are not required to maintain letters from the public, and the Commission has not revised this requirement, Section 308(d) does not contemplate a summary of letters to be filed by any noncommercial educational television licensee at renewal.

25. On reconsideration, we grant petitioner's request. Section 308(d) requires licensees to summarize only those letters maintained by licensees "in accordance with Commission regulations." In the *R&O*, we did not amend section 73.3527 to require noncommercial educational licensees to retain letters from the public regarding violent programming. Since noncommercial educational licensees are not required to maintain these letters under our rules, we will not require them to file a summary of letters received with their renewal, even if they voluntarily retain the letters they receive. Without such a limitation, noncommercial stations would be subject to the more onerous burden of summarizing letters received during the entire renewal term while commercial broadcasters would be required to summarize only those letters received during the last three years of their renewal term. We believe this is consistent with the plain meaning of the statute. We also note that reports regarding violent television programming have raised little concern about the programming aired by noncommercial educational television stations.

26. *Ownership Reports for Noncommercial Educational Stations.* The *R&O* made an editorial amendment to the public file rule for noncommercial educational stations, 47 CFR 73.3527, to add the requirement, previously omitted, that those stations retain in their public files, a copy of their most recently filed complete ownership report (FCC Form 323–E) "together with any subsequent supplemental report or statement filed with the FCC certifying that the current report is accurate. * * *" We made this change to reflect the same requirement in the rule governing ownership reports, 47 CFR 73.3615.

27. We will retain the rule as revised. In the Mass Media Streamlining *R&O*, we amended section 73.3615 to require noncommercial educational stations to file ownership reports with the same frequency as commercial stations are required to file. The requirement in section 73.3527 that noncommercial educational licensees retain in the public file the most recent, complete ownership report on file with the FCC for the station, and a certification that the current report is accurate, is fully consistent with this amendment to section 73.3615.

C. Miscellaneous Matters

28. *Issuance of "The Public and Broadcasting".* In the *R&O* we stated that the Commission's staff would issue a revised version of the broadcast manual, "The Public and Broadcasting." One petitioner asks that the Commission solicit public comment on this manual prior to issuing it.

29. We do not believe that it is necessary to solicit public comment on "The Public and Broadcasting." The manual is merely a summary of our existing policies and rules relating to broadcast stations, including the changes to the rules enacted in this docket. It will be revised from time to time and issued on the Commission's web page so that stations can keep the most updated version in their public files. We disagree that this document requires notice and comment. The manual will not effectuate any rule change, but merely provides a general summary of our rules and policies for the public.

30. *Official Source for City-Center Coordinates.* In the *R&O* we amended the rule governing main studio location to allow a station to locate its main studio at any location that is within either the principal community contour of any station, of any service, licensed to its community of license or 25 miles from the reference coordinates of the center of its community of license. For Commission licensing purposes as set forth in section 73.208 of our rules, a community's reference coordinates are generally the coordinates listed in the United States Department of Interior publication entitled "Index to the National Atlas of the United States" ("Atlas Index"). An alternative reference point, if none is listed in the Atlas Index, are the coordinates of the main post office. A petitioner argues that the Atlas Index is out-of-date and out-of-print and thus requires replacement.

31. We are not amending section 73.208(a)(1) at this time. We do not believe that this change is necessary at this time and is beyond the scope of this proceeding as it would affect the use of city-center coordinates for other licensing purposes. We do not anticipate many instances involving a discrepancy with city-center coordinates. In the event problems with community coordinates arise, we will address them on a case-by-case basis.

32. *Main Studio Issues.* One petitioner asks that we clarify that stations operating pursuant to a main studio or public file waiver prior to the *R&O* in this proceeding who are now in compliance with our rules, be relieved of special obligations placed on them as a condition of grant of the waiver. It cites to obligations such as regular visits to the community by station management, establishment of a Citizens Advisory Board to meet with station management twice a year, coverage of local events in programming, maintenance of the public file in the community and providing toll-free telephone service to the community which it admits are a restatement of a licensee's obligation under any circumstances. To address these concerns, we clarify that stations whose waivers are moot because their operations now are in compliance with the Commission's rules with respect to main studio location are no longer subject to any conditions placed on them by a previously granted waiver of the main studio or public file rules. These stations are, however, of course obligated to comply with all Commission rules, including those regarding toll-free telephone service and coverage of local issues, just as all other licensees.

33. Another petitioner filed a Petition for Clarification or Declaratory Ruling requesting that noncommercial educational stations that operate as satellite stations pursuant to a main studio waiver be allowed to locate their public files at the main studio of the main "feeder" station. In the *R&O*, we stated that all stations, including those operating pursuant to a main studio waiver, would be required to locate their public files at their main studios, wherever located. We hereby clarify that this includes noncommercial educational satellite stations operating under a main studio waiver. These stations must maintain their public files at the main studios of the stations at which their programming is originated, and must provide the accommodation to listeners or residents as required under the amended rules.

III. Administrative Matters

34. *Paperwork Reduction Act of 1995 Analysis.* The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

35. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *Notice of Proposed Rulemaking*, 62 FR 32061 (June 12, 1997), in this

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proceeding. The Commission sought written public comment on the expected impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. Based on the comments in response to the Notice, the Commission included a Final Regulatory Flexibility Analysis ("FRFA") into the *R&O*. While no petitioners seeking reconsideration of the *R&O* raised issues directly related to the FRFA, the Commission is amending the rules in a manner that may affect small entities. Accordingly, this Supplemental Regulatory Flexibility Analysis ("Supplemental FRFA") addresses those amendments and conforms to the RFA.

36. Need for Action and Objectives of the Rule: The need for and objectives of the modifications adopted in this *MO&O* are the same as those discussed in the Final Regulatory Analysis in the *R&O*. The main studio and public inspection file rules seek to ensure that members of the local community have access to the broadcast stations that are obligated under the FCC's rules to serve them. Our goals here are to relieve undue regulatory burdens on licensees while retaining their basic obligations to serve their communities of license, and adopt a rule that is clear and easy to administer.

B. Summary of Significant Issues Regarding FRFA Raised in Petitions for Reconsideration

37. No parties address the FRFA in their petitions for reconsideration, or any subsequent filings. We note, however, that State Broadcasters claim that the Regulatory Flexibility Act bars the Commission from lawfully adopting any of the new requirements. They argue that the burdens of the "new requirements" will violate the RFA, again because they do not provide an exemption for any broadcasters, particularly those who choose not to relocate their public files. Noting how they believe the accommodation provisions will particularly affect small broadcasters, they allege that the Commission has not limited the regulatory burdens placed on small businesses as required by the RFA, and therefore that the public file/political file requirements contradict the intent of the RFA. Our action today modifying the accommodation will alleviate some of the concerns expressed by State Broadcasters. We exempt broadcasters whose main studios and public files are located in the community of license, and narrow the scope of the mailing requirement of the accommodation to persons within the service area of the station. The first exemption will alleviate the burden on some small broadcasters and the second will relieve all broadcasters, including small broadcasters.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

38. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 4 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

39. As noted, an FRFA was incorporated into the *R&O*. In that analysis, the Commission described in detail the various kinds of small business entities that may be affected by these rules. In this *MO&O*, we address petitions for reconsideration filed in response to the *R&O*. In this Supplemental FRFA, we incorporate by reference the description and estimate of the number of small entities from the previous FRFA in this proceeding.

D. Description of Reporting, Recordkeeping and Other Compliance Requirements

40. The *MO&O* adopts modifications to the rules adopted in the *R&O*, which further modify existing recordkeeping requirements. The *MO&O* declines to repeal the accommodation. The *MO&O*, however, narrows the accommodation to require that only those stations whose public file is located at a main studio outside the city limits of the community of license provide the accommodation. It also revises the accommodation to limit the required mailing area for documents requested by phone to the geographic service area of the station in question. In addition, the item specifically exempts from the accommodation requests for documents from the political file.

41. Regarding document retention, the *MO&O* declines to adopt a requirement that stations retain only applications requiring local public notice. It also declines to delete the rules requiring noncommercial educational stations to retain donors' lists and ownership certifications of "no change." The *MO&O* amends the rule requiring retention of all e-mails pertaining to station operation and limits the retention requirement to e-mails pertaining to station operation sent to a publicly advertised e-mail address, or to station management, specifically excluding the personal e-mails of staff members.

42. The *MO&O* also declines to solicit public comment on "The Public and Broadcasting" prior to its issuance, and denies a request that we amend the rule designating the official source for city-center coordinates. In addition, the draft deletes the requirement in the *R&O* that noncommercial educational stations include with their renewal a summary of letters they received through the license term concerning violent programming. It clarifies that stations that were previously granted waivers and that now operate in compliance with the rules are no longer bound by any of the terms of the waiver. It further clarifies that stations operating under a main studio waiver, especially satellite noncommercial educational stations, are required to maintain their public files at their main studio at the station at which their programming originates and must comply with the terms of the accommodation as amended.

43. The *MO&O* restricts the application of the accommodation by geographic scope and volume of material. It reduces which materials are required to be kept in the public file, and clarifies the required retention period for public file materials. No special skills will be necessary to comply with these requirements. This reduces the burden on licensees, both by clearly defining what must be retained, and the period during which it must be retained.

Considered:

44. By narrowing the accommodation to require that only those stations whose public file is located at a main studio outside the city limits of the community of license provide the accommodation, the *MO&O* reduces burdens on small entities who choose not to relocate outside their communities of license. By limiting the accommodation to mailing to persons within the geographic service area of the station in question, the *MO&O* reduces burdens on all licensees, including small entities. In addition, the item specifically exempts from the accommodation requests for documents from the political file, which will reduce burdens.

45. Amending the rule to exclude personal e-mail of employees and restricting the retention requirement to e-mail sent to a publicized box or to station management reduces burdens on small entities. By relieving stations that were previously granted waivers and that now operate in compliance with the rules of the conditions of their waivers we reduce burdens on small entities who previously were required to take specific steps to accomplish community outreach to are no longer bound by any of the terms of the waiver. By clarifying that stations operating under a main studio waiver, especially satellite noncommercial educational stations, are required to maintain their public files at their main studio at the station at which their programming originates and must comply with the terms of the accommodation as amended, we reduce burdens on those stations of maintaining separate public files.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

46. None.

47. Report to Congress: The Commission will send a copy of the *MO&O*, including this SFRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *MO&O*, including SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Main Studio and Public Inspection File MO&O* and SFRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).131.

Ordering Clauses

48. Accordingly, *it is ordered that*, pursuant to the authority contained in Sections 154, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, and 307, 47 CFR 73.3526 and 73.3527 are amended, as set forth in the rule changes.

49. *It is further ordered that*, the rule changes set forth shall be effective 30 days after publication in the **Federal Register**.

50. *It is further ordered* that the Petitions for Reconsideration in this proceeding are granted to the extent described, and are otherwise denied.

51. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *MO&O*, including the Supplementary Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

52. *It is further ordered* that upon release of this *MO&O*, this proceeding is hereby terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. § 73.3526 is amended by revising paragraphs (c)(2), and (e)(9) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(c) * * *

* * * * *

(2) The applicant, permittee, or licensee who maintains its main studio and public file outside its community of license shall:

(i) Make available to persons within its geographic service area, by mail upon telephone request, photocopies of documents in the file (*see* § 73.3526(c)(1)), excluding the political file (*see* § 73.3526(e)(6)), and the station shall pay postage;

(ii) Mail the most recent version of "The Public and Broadcasting" to any member of the public that requests a copy; and

(iii) Be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and the number of pages included in the report.

Note to Paragraph (c)(2): For purposes of this section, geographic service area includes the area within the Grade B contour for TV, 1 mV/m contour for all FM station classes except .7 mV/m for Class B1 stations and .5 mV/m for Class B stations, and .5 mV/m contour for AM stations.

* * * * *

(e) * * *

* * * * *

(9) *Letters and e-mail from the public.* (i) All written comments and suggestions received from the public regarding operation of the station, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter. Letters and electronic mail messages shall be retained for a period of three years from the date on which they are received by the licensee.

(ii) For purposes of this section, written comments and suggestions received from the public include electronic mail messages transmitted via the internet to station management or an e-mail address publicized by the station. Personal e-mail messages sent to station employees need not be retained. Licensees may retain e-mails either on paper or in a computer file. Licensees who choose to maintain a computer file of e-mails may make the file available to the public either by providing the public with access to a computer terminal at the location of the public file, or providing the public with a copy of such e-mails on computer diskette, upon request. In the case of identical communications, licensees and permittees may retain one sample copy of the letter or electronic mail message together with a list identifying other parties who sent identical communications.

* * * * *

3. § 73.3527 is amended by revising paragraphs (c)(2), and (e)(9), and by revising the first sentence of paragraph (e)(4) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(c) * * *

* * * * *

(2) The applicant, permittee, or licensee who maintains its main studio and public file outside its community of license shall:

(i) Make available to persons within its geographic service area, by mail upon telephone request, photocopies of documents in the file (*see* § 73.3527(c)(1)), excluding the political file (*see* § 73.3527(e)(5)), and the station shall pay postage;

(ii) Mail the most recent version of "The Public and Broadcasting" to any member of the public that requests a copy; and

(iii) Be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a

particular report and the number of pages included in the report.

Note to Paragraph (c)(2): For purposes of this section, geographic service area includes the area within the protected service contour in a particular service: Grade B contour for TV, 1 mVm contour for all FM station classes except .7 mV/m for Class B1 stations and .5 mV/m for Class B stations, and .5 mV/m contour for AM stations.

* * * * *

(e) * * *

* * * * *

(4) *Ownership reports and related materials.* A copy of the most recent, complete ownership report filed with the FCC for the station, together with any subsequent statement filed with the FCC certifying that the current report is accurate, and together with all related material. * * *

* * * * *

(9) *Donor lists.* The lists of donors supporting specific programs. These lists shall be retained for two years from the date of the broadcast of the specific program supported.

* * * * *

[FR Doc. 99–16831 Filed 7–1–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–85; FCC 99–57]

Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the *Report and Order*, the Commission implemented provisions of the 1996 Telecommunications Act that reform several parts of Title VI of the Communications Act of 1934, including sections on effective competition to a cable system, small cable operator rules, uniform rate requirements, technical standards, and the sunset of the Commission's role in regulating rates on the cable service programming tier.

DATES: Effective August 31, 1999 except for sections 76.952 and 76.990 which contain information collection requirements that have not been approved by the Office of Management and Budget ("OMB"). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Written comments by the public on the information collection requirements are due August 2, 1999. Written comments must be submitted by OMB on the information collection requirements on or before August 31, 1999.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peggy Greene or Nancy Stevenson, Cable Services Bureau (202) 418–7200, TTY (202) 418–7172. For additional information concerning the information collections contained in this *Report and Order*, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in CS Docket No. 96–85, FCC 99–57, adopted March 25, 1999, and released March 29, 1999. The complete text of the *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service ("ITS, Inc."), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. In addition, the complete text of the *Report and Order* is available on the Internet at http://www.fcc.gov/Bureaus/Cable/Orders/1999/fcc99057.txt.

Paperwork Reduction Act

This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose new or modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this *Report and Order*, as required by the 1995 Act. Public comments are due August 2, 1999. Written comments must be submitted by OMB on or before August 31, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0706.

Title: Cable Act Reform.

Type of Review: Revision of existing collection.

Respondents: Business and for-profit entities; state, local and tribal governments.

Number of Respondents: 950.

Estimated Time per Response: 1–8 hours.

Total Estimated Annual Burden to Respondents: 3,900 hours.

Total Estimated Annual Cost to Respondents: $4,100.

Needs and Uses: The notice, filing and third-party disclosure requirements accounted for in OMB 3060–0706 serve a variety of purposes for subscribers, cable operators, franchising authorities and the Commission. For example, pursuant to section 76.952, franchising authority contact information is furnished on monthly billing statements and is used by cable subscribers when wanting to inquire about cable matters in their community. Franchising authorities have the option to not have this information furnished on billing statements if they so choose. The filing of a written request to the cable operator facilitates this option. Pursuant to section 76.990, a small cable operator may certify in writing to its franchising authority that it meets the criteria to qualify as a small operator. The information filed as part of the certification is reviewed by the franchising authority to determine whether the operator qualifies for deregulation as a small cable operator. Pursuant to section 76.1404, copies of contract information are filed with the Commission for a determination of whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration.

OMB Approval Number: 3060–0549.

Title: Cable Programming Services Complaints (FCC Form 329).

Type of Review: Revision of existing collection.

Respondents: Individuals; state, local and tribal governments.

Number of Respondents: 1,300.

Estimated Time per Response: 45 minutes.

Total Estimated Annual Burden to Respondents: 1,200 hours.

Total Estimated Annual Cost to Respondents: $3,200

Needs and Uses: The data are used by Commission staff to examine the reasonableness of a cable operator's rates for programming service or associated equipment prior to the March 31, 1999 sunset of CPST rate regulation. The filing of FCC Form 329 initiates an investigation of a cable systems's rates for cable programming service.

Synopsis of the Report and Order

The Commission's Report and Order implements provisions of the Telecommunications Act of 1996 ("1996 Act") that reform several parts of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). These are generally known as the "Cable Reform" provisions. The *Report and Order* also includes information about the sunset of the Commission's role in regulating rates on the cable service programming tier ("CPST"). The Cable Reform provisions include sections on effective competition to a cable system, small cable operator rules, uniform rate requirements, technical standards and subscriber notice.

2. *Key findings*:

• *CPST rate regulation sunset:* Pursuant to section 623 of the 1996 Act, rates for CPST services provided after March 31, 1999 will not be subject to Commission review and regulation. The Commission will continue to process complaints regarding rates for services provided prior to March 31, 1999.

• *Effective Competition:* The statute provides that a cable operator's rates are not regulated if the cable system is subject to effective competition. The 1996 Act added a new effective competition test addressing competition from local exchange carriers ("LECs"), LEC affiliates, or multichannel video programming distributors using LEC facilities. The Commission determined that effective competition will be found if a LEC's service offering substantially overlaps the incumbent cable operator's service in the same franchise area. Potential as well as actual LEC service can be considered. The 1996 Act also requires that the LEC's programming service be comparable to the incumbent cable operator's service. The Commission adopted the definition used for the competing provider test for effective competition, which specifies that comparable service must include at least 12 channels of video programming, including at least one hannel of nonbroadcast service. The *Report and Order* provides that all effective competition cases, other than petitions for reconsideration of LFA certifications to regulate rates, will be resolved as petitions for determinations of effective competition under the Commission's special relief procedures. This will ensure uniform procedures, including use of the public notice provisions. The Commission retained its rule for handling petitions for reconsideration of LFA certifications, which includes an automatic stay provision so that erroneous certifications can be addressed before the LFA starts regulating rates.

• *Small Cable Operators:* Under the statute, small cable operators meeting certain criteria are exempted from some rate regulation. In addition to cable programming services, the exemption applies to a basic service tier ("BST") that was the only service tier subject to regulation as of December 31, 1994 in any franchise area in which that operator services 50,000 or fewer subscribers. A small cable operator is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent (1%) of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission decided that the BST exemption is not lost if the operator created additional tiers of service after December 31, 1994. An affiliation exists when an entity owns an active or passive equity interest of 20% or more in the cable operator or holds de facto control over the operator. Purely passive investment, however, will not be treated as an affiliation. Implementing the Cable Reform provisions does not affect the Commission's small system cost of service rules. The *Report and Order* concludes that the Commission lacks the discretion to maintain an operator's small operator status once it no longer meets the eligibility requirements in the statute. The *Report and Order* allows operators losing their eligibility to maintain the rates prevailing prior to the loss of eligibility and to implement rate increases pursuant to the generally applicable rate regulations. To prevent cable operators from imposing large rate increases in anticipation of a change in status, the *Report and Order* requires cable operators to demonstrate that their rates were in effect for three months prior to the loss of small cable status.

• *Uniform Rate Requirement:* Under the statute, unless a cable operator is subject to effective competition, its rates must be uniform throughout the franchise area. The statute provides a limited exception for bulk discounts to multiple dwelling units ("MDUs") so that cable operators can respond to competition in individual MDUs by offering lower prices. The *Report and Order* concludes that a bulk discount is a volume discount available to all residents of the MDU. The operator can offer the discount directly to residents; negotiation about the rate with the MDU owner or manager is not required.

• *Technical Standards:* The 1996 Act retains the requirement that the Commission establish minimum technical standards for cable systems' technical operation and signal quality and adds that no state or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology. The *Report and Order* concludes that LFA oversight and enforcement of the Commission's technical standards is permitted but that LFAs cannot impose technical standards different from the Commission's technical standards. The *Report and Order* also finds that transmission technology includes, for example, an operator's use of digital or analog transmissions and its use of coaxial cable, fiber optic cable, or microwave facilities. The *Report and Order* also acknowledges the LFA's important role in determining local needs and access channel requirements, requiring institutional networks, reviewing an operator's qualifications, and managing public rights of way.

• *Subscriber Notice:* The 1996 Act provides that a cable operator may provide notice of service and rate changes using any reasonable written means at its sole discretion. The item concludes that Congress intended to limit the Commission's discretion in this area but did not completely eliminate the role of regulatory authorities. LFAs and the Commission retain the authority to determine that a particular mechanism is not reasonable.

Ordering Clauses

3. *Accordingly*, It is ordered that, pursuant to sections 4(i), 4(j), 303(r), as amended, 47 U.S.C. 154(i), 154(j), 303(r), and the Telecommunications Act of 1996, sections 301 and 302, the requirements and policies discussed in this *Report and Order*, *Are amended* as set forth below.

It is further ordered that the requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than 60 days after publication in the **Federal Register**.

5. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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List of Subject in 47 CFR Part 76

Cable Television.

Federal Communications Commission.

Shirley Suggs,

Chief, Publication Branch.

Rule Changes

For the reasons discussed in the preamble, The Federal Communications Commission amends 47 CFR Part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533. 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.701 is amended by adding a new note to paragraph (b) to read as follows:

§ 76.701 Leased access channels.

* * * * *

Note to paragraph (b): "Nudity" in paragraph (b) is interpreted to mean nudity that is obscene or indecent.

3. Section 76.901 is amended by adding a new paragraph (f) to read as follows:

§ 76.901 Definitions.

* * * * *

(f) *Small cable operator.* A small cable operator is an operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000. For purposes of this definition, an operator shall be deemed affiliated with another entity if that entity holds a 20 percent or greater equity interest (not including truly passive investment) in the operator or exercises de jure or de facto control over the operator.

Note 1 to paragraph (f): Using the most reliable sources publicly available, the Commission periodically will determine and give public notice of the subscriber count that will serve as the 1 percent threshold until a new number is calculated.

Note 2 to paragraph (f): For a discussion of passive interests with respect to small cable operators, see Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96–85, FCC 99–57 (released March 29, 1999).

Note 3 to paragraph (f): If two or more entities unaffiliated with each other each hold an equity interest in the small cable operator, the equity interests of the unaffiliated entities will not be aggregated with each other for the purpose of determining whether an entity meets or passes the 20 percent affiliation threshold.

4. Section 76.905 is amended by revising paragraph (g) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(g) In order to offer comparable programming as that term is used in this section, a competing multichannel video programming distributor must offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.

5. Section 76.907 is added to read as follows:

§ 76.907 Petition for a determination of effective competition.

(a) A cable operator (or other interested party) may file a petition for a determination of effective competition with the Commission pursuant to the Commission's procedural rules in § 76.7.

(b) The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined in § 76.905, exists in the franchise area.

Note to paragraph (b): The criteria for determining effective competition pursuant to § 76.905(b)(4) are described in Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96–85, FCC 99–57 (released March 29, 1999).

(c) If the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals. In addition, with respect to petitions filed seeking to demonstrate the presence of effective competition pursuant to § 76.905(b)(4), the Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.

6. Section 76.911 is amended by removing paragraph (b); redesignating paragraphs (c) through (e) as paragraphs (b) through (d); and by revising paragraphs (a) and (a)(1) to read as follows:

§ 76.911 Petition for reconsideration of certification.

(a) A cable operator (or other interested party) may challenge a franchising authority's certification by filing a petition for reconsideration pursuant to § 1.106. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in § 76.905. Sections 76.907(b) and (c) apply to petitions filed under this section.

* * * * *

§ 76.915 [Removed]

7. Section 76.915 is removed.

8. Add a note to § 76.934 to read as follows:

§ 76.934 Small systems and small cable companies

* * * * *

Note to § 76.934: For rules governing small cable operators, see § 76.990 of this subpart.

9. Section 76.950 is amended by revising paragraph (b) to read as follows.

§ 76.950 Complaints regarding cable programming service rates.

* * * * *

(b) This section shall not apply to cable programming services provided after March 31, 1999.

10. Section 76.952 is amended by revising paragraph (a) to read as follows:

§ 76.952 Information to be provided by cable operator on monthly subscriber bills.

(a) The name, mailing address and phone number of the franchising authority, unless the franchising authority in writing requests the cable operator to omit such information.

* * * * *

11. Section 76.956 is amended by revising paragraph (a) to read as follows:

§ 76.956 Cable operator response.

(a) Unless otherwise directed by the local franchising authority, a cable operator must file with the local franchise authority a response to the complaint. The response shall indicate when the cable operator received notice of the complaint. Service by mail is complete upon mailing. See § 1.47(f) of this chapter. The response shall include the information required by the appropriate FCC form, including rate cards, channel line-ups, and an explanation of any discrepancy in the figures provided in these documents and the rate filing. The cable operator must file its response with the local franchise authority via first class mail.

* * * * *

12. Section 76.961 is amended by revising paragraph (b) to read as follows:

§ 76.961 Refunds.

* * * * *

(b) The cumulative refund due subscribers shall be calculated from the date of the first complaint filed with the franchising authority until the date a cable operator implements a prospective rate reduction as ordered by the Commission pursuant to § 76.960. The Commission shall calculate refund liability according to the rules in effect for determining the reasonableness of the rates for the period of time covered by the complaint.

* * * * *

13. Section 76.984 is amended by removing the last sentence of paragraph (b); revising paragraph (c)(2), adding paragraph (c)(3) and adding notes 1 and 2 to paragraph (c)(3) to read as follows:

§ 76.984 Geographically uniform rate structure.

* * * * *

(c)(2) Any video programming offered on a per channel or per program basis.

(c)(3) Bulk discounts to multiple dwelling units shall not be subject to this section, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

Note 1 to paragraph (c)(3): Discovery procedures for predatory pricing complaints. Requests for discovery will be addressed pursuant to the procedures specified in § 76.7(f).

Note 2 to paragraph (c)(3): Confidential information. Parties submitting material believed to be exempt from disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552(b), and the Commission's rules, § 0.457 of this chapter, should follow the procedures in § 0.459 of this chapter and § 76.9.

14. Section 76.990 is added to read as follows;

§ 76.990 Small cable operators.

(a) Effective February 8, 1996, a small cable operator is exempt from rate regulation on its cable programming services tier, or on its basic service tier if that tier was the only service tier subject to rate regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.

(b) *Procedures.* (1) A small cable operator, may certify in writing to its franchise authority at any time that it meets all criteria necessary to qualify as a small operator. Upon request of the local franchising authority, the operator shall identify in writing all of its affiliates that provide cable service, the total subscriber base of itself and each affiliate, and the aggregate gross revenues of its cable and non-cable affiliates. Within 90 days of receiving the original certification, the local franchising authority shall determine whether the operator qualifies for deregulation and shall notify the operator in writing of its decision, although this 90-day period shall be tolled for so long as it takes the operator to respond to a proper request for information by the local franchising authority. An operator may appeal to the Commission a local franchise authority's information request if the operator seeks to challenge the information request as unduly or unreasonably burdensome. If the local franchising authority finds that the operator does not qualify for deregulation, its notice shall state the grounds for that decision. The operator may appeal the local franchising authority's decision to the Commission within 30 days.

(2) Once the operator has certified its eligibility for deregulation on the basic service tier, the local franchising authority shall not prohibit the operator from taking a rate increase and shall not order the operator to make any refunds unless and until the local franchising authority has rejected the certification in a final order that is no longer subject to appeal or that the Commission has affirmed. The operator shall be liable for refunds for revenues gained (beyond revenues that could be gained under regulation) as a result of any rate increase taken during the period in which it claimed to be deregulated, plus interest, in the event the operator is later found not to be deregulated. The one-year limitation on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(3) Within 30 days of being served with a local franchising authority's notice that the local franchising authority intends to file a cable programming services tier rate complaint, an operator may certify to the local franchising authority that it meets the criteria for qualification as a small cable operator. This certification shall be filed in accordance with the cable programming services rate complaint procedure set forth in § 76.1402. Absent a cable programming services rate complaint, the operator may request a declaration of CPST rate deregulation from the Commission pursuant to § 76.7.

(c) *Transition from small cable operator status.* If a small cable operator subsequently becomes ineligible for small operator status, the operator will become subject to regulation but may maintain the rates it charged prior to losing small cable operator status if such rates (with an allowance for minor variations) were in effect for the three months preceding the loss of small cable operator status. Subsequent rate increases following the loss of small cable operator status will be subject to generally applicable regulations governing rate increases.

Note to § 76.990: For rules governing small cable systems and small cable companies, see § 76.934.

15. Section 76.1401 is amended by removing paragraphs (a), (c), and (d) and by removing the designation from paragraph (b).

§ 76.1403 [Removed]

16. Section 76.1403 is removed.

17. Section 76.1603 is amended by revising paragraph (e) to read as follows:

§ 76.1603 Written notification of changes in rates and services.

* * * * *

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

* * * * *

[FR Doc. 99–16955 Filed 7–1–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 127
Friday, July 2, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

MERIT SYSTEM PROTECTION BOARD

5 CFR Part 1204

Availability of Official Information

AGENCY: Merit System Protection Board.

ACTION: Proposed rule; request for comments.

SUMMARY: The Merit System Protection Board proposes to amend its rules regarding the availability of official information to comply with the Electronic Freedom of Information Act Amendments of 1996, to update the fee schedule, and to add a time limit to ask for review by the Board's Chairman of an action or a failure to act under this part. Certain other changes are proposed to update the rules on the availability of official information for the benefit of the Board's customers, for consistency, and to comply with the President's Memorandum on Plain Language in Government Writing.

DATES: Comments must be received by August 31, 1999.

ADDRESSES: Send comments to Shannon McCarthy, Deputy Clerk of the Board, Merit System Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov or faxed to (202) 653–7130..

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231, 110 Stat. 3048) were enacted to ensure public access to agency records and information, improve public access to agency records and information, ensure agency compliance with statutory time limits, and maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government. The Board, therefore, proposes to amend its regulations implementing 5 U.S.C. 552 (the Freedom of Information Act) to accommodate the requirements of the amendments.

The Board also proposes to update its rules on computing and collecting fees charged requesters for services provided in processing requests for information to produce a more realistic schedule.

In addition, the Board proposes to update various rules to reflect changes in regional realignments of the Merit Systems Protection Board, to make other changes for consistency and grammatical reasons, and to comply with the President's Memorandum, "Plain Language in Government Writing," 34 Weekly Comp. Pres. Doc. 1010 (June 1, 1998).

Section-by-Section Guide to Proposed Changes

The following paragraphs are a section-by-section guide to the changes that would be made in 5 CFR part 1204 by the proposed amendment.

The authority citation for part 1204 would be amended to include Pub. L. 104–231.

The words "as amended" would be added after 5 U.S.C. 552 in section 1204.1 to show the updated citation.

Section 1204.2(a) would be amended to define "record" to match the definition in 5 U.S.C. 552(f)(2). Subsection (c) would be amended to include the term "video tape" as a form of a verbatim record. Subsection (d) would be amended to reflect the requirement of the amended 5 U.S.C. 552(a)(2)(D) to make records available for public inspection and copying, regardless of form or format, that the agency determines have become or are likely to become the subject of additional requests for mainly the same records and a general index of those records.

Section 1204.11(c) would be amended to extend the time to decide a request from 10 days to 20 days because of the amendment to 5 U.S.C. 552(a)(6)(A)(i). Section 1204.11(c)(1) would be amended to show the new requirement of 5 U.S.C. 552(a)(6)(B) allowing an extension for no more than 10 days if there are "unusual circumstances" as defined by the law. The section would require that: (a) written notice be given to the requester describing the "unusual circumstances" and stating a date on which a determination on the request will be made; and (b) the requester be given an opportunity to limit the range of the request in order to process the request within the time limit, or an opportunity to arrange another time frame for processing the request or a changed request. Section 1204.11(c)(2) would provide for a decision on the expedited processing of a request within 10 days if a "compelling need" is shown and for other cases determined by the Board as required by the amended 5 U.S.C. 552(a)(6)(E). The section would state that if the Board grants a request for expedited processing, it will process the request within 5 workdays from the date of the decision to grant the expedited request. If the Board decides that it requires the normal or additional time to process the request or if it decides that good cause for expedited processing has not been shown, it will give written notice to the requester and will inform the requester of the right to administrative and court review of the decision. The section would further require that proof of compelling need be made by a statement certified to be true to the best of the requester's knowledge and belief.

Section 1204.12(a) would be changed to show the increased estimated cost to the Board of processing Freedom of Information Act requests. The Board would continue to charge fees for services but it would not charge requesters a fee where the processing cost is less than $100 and would move the revised sentence to subsection (b).

Subsection (b)(1) would change the modifier of "employee" from "the" to "each" to show that more than one employee may work on a request. The direct costs to the Board and charged to a requester would be increased from the basic rate of pay of an employee's hourly rate of pay plus 16 percent to the rate of $5 per quarter hour spent by each Board employee. The statutory definition of the term "search" would be added to subsection (b)(2), along with a statement that the Board will make reasonable efforts to locate the records in electronic form or format except when the effort would significantly interfere with the operation of the Board's automated information system. Subsection (b)(3) would be amended to ensure that "electronically maintained information" is included among "documents" and that the amendment agrees with the amended 5 U.S.C. 552(a)(3)(B) by stating that the Board will make a reasonable effort to maintain its records informs or formats

that can be copied and will provide a copy in the form or format requested if the record can be copied in that form or format.

Subsection (d) would change the allowance which provides requesters the first hundred pages and the first two hours of duplication of search-time without charge to provide that the Board will not charge the requester if the fee for any request is less than $100 (the cost to the Board of processing and collecting the fee). To better represent the actual costs to the Board, subsection (e)(1) would change the rate charged for document searches from $3.75 for each quarter of an hour to a rate of $5 per quarter hour spent by each Board employee doing the search. Subsection (e)(2) would change the rate charged for computer searches from 90 cents per computer minute to $5 per quarter hour spent by each Board employee operating the computer equipment and/or developing a new inquiry or report. Subsection (e)(3) would show the actual cost of the reviewing employee's time for commercial use requests by changing the fee from $8.50 an hour to a rate equal to $5 per quarter hour spent by each reviewing employee. Subsection (e)(4) also would be amended to show actual costs to the Board by: (1) changing the photocopying cost from 10 cents a page to 20 cents a page; (2) changing the cost to copy a cassette tape from $5.75 to the direct cost not to exceed $15 per cassette tape; (3) adding that the direct cost to the Board to copy video tapes is not to exceed $20 a tape; and (4) changing the fixed costs charged to copy records on computer tapes and per diskette for records on computer diskette ($21 and $2.70, respectively) to $25 and $4 respectively, if it is feasible for the Board to copy records in the format requested. Because of the costs to the Board, the Board would charge a fee of $4 per page for each page showing the Board's seal and attestation for certified copies of the Board's records. Because of increased processing costs for requests, the Board would raise the amount exceeding which a requester will be notified on the estimated amount from $25 to $100. Section (d) would be eliminated because of the change in the minimal charge for a Board request.

Section 1204.13 would be amended to add subsections (a) and (b). Subsection (a) would add two items, a request for expeditious processing based on the requester's compelling need, and a request that records be provided in a specific electronic format to the list of requests that the Board may deny. To match the amended 5 U.S.C. 552(a)(6)(F), subsection (b) would provide that if the Board applies one or more of the exemptions under 5 U.S.C. 552(b), it will identify for the requester the specific exemption(s), provide an explanation in writing as to why the exemption(s) must be applied to withhold the requested information, and give an estimate of the amount of material that has been denied to the requester, unless providing such an estimate would harm an interest protected by the exemptions.

Section 1204.15 would be added to show longtime Board procedure. The section would indicate that requests for Board records that were created by another agency may, in certain circumstances, be discussed with that agency and that, in such instances, the Board will notify the requester.

Section 1204.21(a) would add to appealable decisions the Board's finding that it cannot reproduce electronically maintained information in the requester's preferred format, the Board's determination that it will not provide expedited processing of a request for information under this part, and any failure to decide a request for expedited processing within 10 workdays from the date of the request. Section 1204.21(b) would add a time limit of 10 workdays to file an appeal with the Board's Chairman.

Sections 1204.2(c), 1204.11(c), 1204.12(f)(1), and 1204.21(a) would correct the titles of the Board's judges and chief judges of field offices. Section 1204.2(d) and 1204.11(a) would show the Board's World Wide Web site address and section 1204.2(d). 1204.11(a), and 1204.21(b) would update the Board's headquarters' address. Sections 1204.12(b)(2): 1204.14(a), (b)(2), (c), (d)(1), (d)(2), (d)(3), and (f); and 1204.22 provide changes for clarity and grammatical correctness.

List of Subjects in 5 CFR Part 1204

Confidential business information, Freedom of information, Privacy.

Accordingly, the Board proposes to revise 5 CFR part 1204 to read as follows:

PART 1204—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—Purpose and Scope

Sec.
1204.1 Purpose.
1204.2 Scope.

Subpart B—Procedures for Obtaining Records under the Freedom of Information Act

1204.11 Requests for Board records.
1204.12 Fees.
1204.13 Denials.
1204.14 Requests for access to confidential commercial information.
1204.15 Records of other agencies.

Subpart C—Appeals

1204.21 Submission.
1204.22 Decision on appeal.

Authority: 5 U.S.C. 552 and 1204, Pub. L. 99–570, Pub. L. 104–231, and E.O. 12600.

Subpart A—Purpose and Scope

§ 1204.1 Purpose.

This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, by stating the procedures to follow when requesting information from the Board, and by stating the fees that will be charged for that information.

§ 1204.2 Scope.

(a) For the purpose of this part, the term "record" and any other term used in reference to information includes any information that would be a Board record subject to the requirements of 5 U.S.C. 552 when maintained by the Board in any format including an electronic format. All written requests for information that are not processed under part 1205 of the Board's regulations will be processed under this part. The Board may continue, without complying with this part, to furnish the public with the information it has furnished in the regular course of performing its official duties, unless furnishing the information would violate the Privacy Act of 1974, 5 U.S.C. 552a, or another law.

(b) When the subject of the record, or the subject's representative, requests a record from a Privacy Act system of records, as that term is defined by 5 U.S.C. 552a(a)(5), and the Board retrieves the record by the subjects name or other personal identifier, the Board will handle the request under the procedures and fees shown in 5 CFR part 1205. When a third party requests access to those records, without the written consent of the subject of the record, the Board will handle the request under this part.

(c) When a party to an appeal requests a copy of a tape recording, video tape, or transcript (if one has been prepared) of a hearing that the Board or a judge held under part 1201 or part 1209 of this chapter, the Board will handle the request under 5 CFR 1201.53. When someone other than a party to the appeal makes this request, the Board will handle the request under this part.

(d) In accordance with 5 U.S.C. 552(a)(2), the Board's final opinions and orders (including concurring and dissenting opinions), those statements of policy and interpretations adopted by

the Board and that are not published in the **Federal Register**, administrative staff manuals and instructions to staff that affect a member of the public, and agency records processed and disclosed in response to a FOIA request that the Board determines have been or are likely to become the subject of additional requests for basically the same records and a general index of those records, are available for public review and copying in the Board's Headquarters' Library, 1120 Vermont Avenue NW., Washington, DC 20419–0001, and on the Board's World Wide Web site at http://www.mspb.gov.

Subpart B—Procedures for Obtaining Records Under the Freedom of Information Act

§ 1204.11 Request for Board records.

(a) *Sending a request.* A person may request a Board record under this part by writing to the office that has the record. If the requestor believes that the records are located in a regional office, the request must be sent to that office. A list of the addresses of the Board's regional and field offices are in appendix II of 5 CFR part 1201 and on the Board's World Wide Web site at http://www.mspb.gov. Other requests must be sent to the Clerk of the Board, 1120 Vermont Avenue NW., Washington, DC 20419–0001. Requests sent under this part must be clearly marked "Freedom of Information Act Request" on both the envelope and the request.

(b) *Description.* A request must describe the records wanted in enough detail for Board employees to locate the records with no more than a reasonable effort. Whenever possible, a request must include specific information about each record, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if the request asks for records on cases decided by the Board, it must show the title of the case, the MSPB docket number, and the date of the decision.

(c) *Time limits and decisions.* If a request is not properly labeled or is sent to the wrong office, the time for processing the request will begin when the proper office receives it. Requests to the Board's headquarters will be decided by the Clerk of the Board. Requests to one of the regional or field offices will be decided by the Regional Director or Chief Administrative Judge. The Board will decide a request within 20 workdays after the appropriate office receives it, except under the conditions that follow:

(1) *Extension of time.* If "unusual circumstances" exist, the Board may extend the time for deciding the request by no more than 10 additional workdays. An example of unusual circumstances could be the need to find and retrieve records from regional or field offices or from federal records centers or the need to search, collect and or examine a large number of records which are demanded in a single request, or the need to talk to another agency with a substantial interest in the determination of the request. When the Board extends the time to decide the request, it will inform the requester in writing and describe the "unusual circumstances", and it will state a date on which a decision on the request will be made. If the "unusual circumstances" are such that the Board cannot comply with the request within the time limit, the Board will offer the requester an opportunity:

(i) To limit the request so that it may be processed within the time limit, or

(ii) To arrange with the Board a different time frame for processing the request or a changed request.

(2) *Expedited processing.* Where a requester shows a "compelling need" and in other cases determined by the Board, a decision whether to provide expedited processing of a request and notification of that decision to the requester will be made within 10 workdays of the date of the request. An example of a compelling need could be that a failure to obtain the records expeditiously could reasonably be expected to be a threat to the life or physical safety of a person or that there is urgency to inform the public about actual or alleged Federal Government activity by a person primarily engaged in distributing information. Where the Board approves expeditious processing, the Board will process the request within 5 workdays from the date of the decision to grant the expeditious processing. If, in order to fully satisfy the request, the Board requires the standard or additional processing time, or if it decides that good cause for expedited processing has not been made, it will provide written notice of its decision to the requester and will inform the requester of the right to administrative and court review of the decision. A showing of a compelling need must be made by a statement certified to be true to the best of the requester's knowledge and belief.

§ 1204.12 Fees.

(a) *General.* The Board will charge the requester fees for services provided in processing requests for information. Those fees will be charged according to the schedule in paragraph (d) of this section, and will recover the full allowable direct costs that the Board incurs. Fees may be charged for time spent searching for information, even if the Board fails to locate responsive records, and even if it determines that the information is exempt from disclosure.

(b) *Definitions.* (1) The term *direct costs* means the costs to an agency for searching for and copying (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of each employee performing work at the rate of $5 per quarter hour. Overhead expenses, such as costs of space and of heating or lighting the facility in which the records are stored, are not included in direct costs.

(2) The term *search,* as defined by 5 U.S.C. 552(a)(3)(D), means either manual or automated review of Board records to locate those records asked for, and includes all time spent looking for material in response to a request, including page-by-page or line-by-line identification of material within documents. Searches will be done in the most efficient and least expensive way to limit costs for both the Board and the requester. Searches may be done manually or by computer using existing programming. The Board will make a reasonable effort to search for the records in electronic form or format, except when such effort would interfere to a large extent with the operation of the Board's automated information system.

(3) The term *duplication* means the process of copying a document or electronically maintained information in response to a FOIA request. Copies can take the form of paper, microfilm, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided will be in a form or format requested if the record is readily reproducible by the Board in that form or format. The Board will make a reasonable effort to maintain its records in forms or formats that are reproducible.

(4) The term *review* includes the process of examining documents to determine whether any portion of them may be exempt from disclosure under the FOIA, when the documents have been located in response to a request that is for a commercial use. The term also includes processing any documents for disclosure, e.g., doing all that is necessary to edit them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues.

(5) The term *commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the Board will decide the use the requester will make of the documents requested. Also, where the Board has reasonable cause to doubt the use a requester will make of the records requested, or where that use is not clear from the request, the Board will seek additional clarification before assigning the request to a specific category.

(6) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(7) The term *noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is used above, and that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(8) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that concerns current events or that would be of current interest to the public.

(c) *Categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. To be included in the category of educational and noncommercial scientific institutions, requesters must show that the request is authorized by a qualifying institution and that they are seeking the records not for a commercial use, but to further scholarly or scientific research. To be included in the news media category, a requester must meet the definition in paragraph (b)(8) of this section and the request must not be made for a commercial use. To avoid commercial use charges, requesters must show that they should be included in a category or categories other than that of commercial use requesters. The Board will decide the categories to place requesters for fee purposes. It will make these determinations based on information given by the requesters and information otherwise known to the Board.

(d) The Board will not charge a requester if the fee for any request is less than $100 (the cost to the Board of processing and collecting the fee).

(1) When the Board receives a request:

(i) From a commercial use requester, it will charge fees that recover the full direct costs for searching for the information requested, reviewing it for release at the initial request stage, reviewing it after an appeal to determine whether other exemptions not considered before the appeal apply to it, and copying it.

(ii) From an educational and noncommercial scientific institution or, to the extent copying exceeds 100 pages, from a representative of the news media, it will charge fees only for the cost of copying the requested information.

(iii) From all other requesters, to the extent copying exceeds 100 pages and search time exceeds 2 hours, it will charge fees for the full direct cost of searching for and copying requested records.

(2) When the Board reasonably believes that a requester or group of requesters is attempting to divide a request into more than one request to avoid payment of fees, the Board will combine the requests and charge fees accordingly. The Board will not combine multiple requests on unrelated subjects from one requester.

(3) When the Board decides that charges for a request are likely to exceed $250, the Board will require the requester to pay the entire fee in advance before continuing to process the request.

(4) When a requester has an outstanding fee charge or has not paid a fee on time, the Board will require the requester to pay the full amount of the estimated fee in advance before the Board begins to process a new or pending request from that requester, and before it applies administrative time limits for making a decision on the new or pending request.

(e) *Fee schedule.* (1) Fees for document searches for records will be charged at a rate of $5 per quarter hour spent by each Board employee performing the search.

(2) Fees for computer searches for records will be $5 per quarter hour spent by each employee operating the computer equipment and/or developing a new inquiry or report.

(3) Fees for review at the initial administrative level to determine whether records or portions of records are exempt from disclosure, and for review after an appeal to determine whether the records are exempt on other legal grounds, will be charged, for commercial use requests, at a rate of $5 per quarter hour spent by each reviewing employee.

(4) Fees for photocopying records is 20 cents a page, the fee for copying audio tapes is the direct cost up to $15 per cassette tape; the fee for copying video tapes is the direct cost up to $20 per tape; and the fee for computer printouts is 10 cents a page. The fee for duplication of electronically maintained information in the requester's preferred format will be $21 for copying computer tapes and $4 for copying records on computer diskettes, if it is feasible for the Board to reproduce records in the format requested. Fees for certified copies of the Board's records will include a $4 per page charge for each page displaying the Board's seal and certification. When the Board estimates that copying costs will exceed $100, it will notify the requester of the estimated amount unless the requester has indicated in advance a willingness to pay an equal or higher amount.

(f) *Fee waivers.* (1) Upon request, the Clerk of the Board, Regional Director, or Chief Administrative Judge, as appropriate, will furnish information without charge or at reduced rates if it is established that disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." This decision will be based on:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information is likely to contribute to public understanding of the subject of the disclosure; and

(iv) The significance of the contribution the disclosure would make to public understanding of government operations or activities.

(2) If information is to be furnished without charge or at reduced rates, the requester must also establish that disclosure of the information is not primarily in the commercial interest of the requester. This decision will be based on:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) Whether the identified commercial interest of the requester is sufficiently large, in comparison with

the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(3) The requester must establish eligibility for a waiver of fees or for reduced fees. The denial of a request for waiver of fees may be appealed under subpart C of this part.

§ 1204.13 Denials.

(a) The Board may deny: a request for reduced fees or waiver of fees; a request for a record, either in whole or in part; a request for expeditious processing based on the requester's compelling need; or a request that records be released in a specific electronic format. The denial will be in writing, will state the reasons, and will notify the requester of the right to appeal.

(b) If the Board applies one or more of the exemptions provided under the FOIA to deny access to some or all of the information requested, it will respond in writing, identifying for the requester the specific exemption(s), providing an explanation as to why the exemption(s) to withhold the requested information must be applied, and providing an estimate of the amount of material that has been denied to the requester, unless providing such an estimate would harm an interest protected by the exemptions.

(c) The amount of information deleted will be indicated on the released portion of the record at the place in the record where the deletion is made, if technically feasible and unless the indication would harm an interest protected by the exemption under which the deletion is made.

§ 1204.14 Requests for access to confidential commercial information.

(a) *General.* Confidential commercial information provided to the Board by a business submitter will not be disclosed in response to a FOIA request except as required by this section.

(b) *Definitions.* (1) The term *confidential commercial information* means records provided to the government by a submitter that are believed to contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) The term *submitter* means any person or organization that provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Notice to business submitters.* The Board will provide a business submitter with prompt written notice of a request for its confidential commercial information whenever such written notice is required under paragraph (d) of this section. Exceptions to such written notice are at paragraph (h) of this section. This written notice will either describe the exact nature of the confidential information requested or provide copies of the records or parts of records containing the commercial information.

(d) *When initial notice is required.* (1) With respect to confidential commercial information received by the Board before January 1, 1988, the Board will give the business submitter notice of a request whenever:

(i) The information is less than 10 years old; or

(ii) The Board has reason to believe that releasing the information could reasonably be expected to cause substantial competitive harm.

(2) With respect to confidential commercial information received by the Board on or after January 1, 1988, the Board will give notice to the business submitter whenever:

(i) The business submitter has designated the information in good faith as commercially or financially sensitive information; or

(ii) The Board has reason to believe that releasing the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for commercially confidential information that was received by January 1, 1988, is required for a period of not more than 10 years after the date on which the information is submitted unless the business submitter requests, and provide justification for, a longer specific notice period. Whenever possible, the submitter's claim of confidentially must be supported by a statement or certification, by an officer or authorized representative of the company, that the information in question is confidential commercial information and has not been disclosed to the public.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Board will give a business submitter a reasonable period to provide a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act. In addition, in the case of Exemption 4, the statement must state why the information is considered to be a trade secret, or to be commercial or financial information that is privileged or confidential. Information a business submitter provides under this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f) *Notice of intent to release information.* The Board will consider carefully a business submitter's objections and specific grounds for claiming that the information should not be released before determining whether to release confidential commercial information. Whenever the Board decides to release confidential commercial information over the objection of a business submitter, it will forward to the business submitter a written notice that includes:

(1) A statement of the reasons for which the business submitter's objections to the release were not sufficient;

(2) A description of the confidential commerical information to be released; and

(3) A specified release date. The Board will forward the notice of intent to release the information a reasonable number of days, as circumstances permit, before the specified date upon which release is expected. It will forward a copy of the release notice to the requester at the same time.

(g) *Notice of Freedom of Information Act lawsuit.* Whenever a requester files a lawsuit seeking to require release of business information covered by paragraph (d) of this section, the Board will notify the business submitter promptly.

(h) *Exceptions to notice requirements.* The notice requirements of this section do not apply when:

(1) The Board decides that the information should not be released;

(2) The information lawfully has been published or otherwise made available to the public.;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The disclosure is required by an agency rule that:

(i) Was adopted after notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the FOIA; or

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that release of the information could reasonably be expected to cause substantial competitive harm.

(5) The information requested is not designated by the submitter as exempt from release according to agency regulations issued under this section, when the submitter has an opportunity to do so as the time of sending the information or a reasonable time thereafter, unless the agency has good reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter according to Board regulations appears obviously frivolous; except that, in such case, the Board must provide the submitter with written notice of any final administrative release decision within a reasonable period before the stated release date.

§ 1204.15 Records of other agencies.

Requests for Board records that were created by another agency may, in appropriate circumstances, be referred to that agency for discussion or processing. In these instances, the Board will notify the requester.

Subpart C—Appeals

§ 1204.21 Submission.

(a) A person may appeal the following actions, or failure to act by the Clerk of the Board, a Regional Director, or Chief Administrative Judge:

(1) A denial of access to agency records;

(2) A denial of a request for a waiver or reduced fees;

(3) A decision that it is technically not possible to reproduce electronically maintained information in the requester's preferred format;

(4) A denial of a request for expedited processing of information under this part; or

(5) A failure to decide a request for expedited processing within 10 workdays from the date of the request.

(b) Appeals must be filed with the Chairman, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419–0001 within 10 workdays from the date of the denial. Any appeal must include a copy of the initial request, a copy of the letter denying the request, and a statement of the reasons why the requester believes the denying employee erred.

§ 1204.22 Decision on appeal.

A decision on an appeal will be made within 20 workdays after the appeal is received. A decision not to provide expeditious processing of a request will be made within 15 workdays after the appeal is received. The decision will be in writing and will contain the reasons for the decision and information about the appellant's right to seek court review of the denial.

Dated: June 24, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–16841 Filed 7–1–99; 8:45 am]

BILLING CODE 7400–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1205

Privacy Act Regulations

AGENCY: Merit System Protection Board.

ACTION: Proposed rule; request for comments.

SUMMARY: The Merit System Protection Board proposes to amend its Privacy Act regulations to update its fee schedule, update certain information to conform to administrative changes, and to comply with the President's Memorandum on Plain Language in Government Writing.

DATES: Comments must be received by August 31, 1999.

ADDRESSES: Send comments to Shannon McCarthy, Deputy Clerk of the Board, Merit System Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov or faxed to (202) 653–7130.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: In order to be consistent with the amendments to our regulations (5 CFR 1204.11(c)) which were allowed by the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231, 101 Stat. 3048), the Board is proposing to change from 10 to 20 the number of workdays in which it will acknowledge a request for access to records in § 1205.12(a) and (a)(4). Section 1205.23 would retain the 10 workday time limit but would reflect the requirement that the Board acknowledge, rather than rule on a request for amendment of the record. The amendments would add to unusual circumstances in § 1205.12(a)(1) the circumstance where the Board must obtain requested records from a Federal Records Center.

These amendments would also update § 1205.16 of the Board's rules controlling the computation and collection of fees. Paragraphs (e) and (f) of § 1205.16 would be eliminated as redundant and paragraph (f) would be renamed. Section 1205.31 would add a time limit of 10 workdays to file an appeal of a denial of an amendment with the Board's Chairman.

In addition, the Board proposes to update the wording of its regulations to reflect the existence of field offices in addition to its regional offices and the chief administrative judges who handle certain responsibilities in those offices. Other changes would be made for consistency, to update zip codes, and to comply with the President's Memorandum, "Plain Language in Government Writing", 34 Weekly Comp. Pres. Doc. 1010 (June 1, 1998).

List of Subjects in 5 CFR Part 1205 Privacy.

Accordingly, 5 CFR part 1205 is proposed to be revised to read as follows:

PART 1205—PRIVACY ACT REGULATIONS

Subpart A—General Provisions

Sec.
1205.1 Purpose.
1205.2 Policy and Scope.
1205.3 Definitions.
1205.4 Disclosure of Privacy Act records.

Subpart B—Procedures for Obtaining Records

1205.11 Access to Board records.
1205.12 Time limits and determinations.
1205.13 Identification.
1205.14 Granting access.
1205.15 Denying access.
1205.16 Fees.

Subpart C—Amendment of Records

1205.21 Request for amendment.
1205.22 Action on request.
1205.23 Time limits.

Subpart D—Appeals

1205.31 Submitting appeal.
1205.32 Decision on appeal.

Authority: 5 U.S.C. 552a and 1204.

Subpart A—General Provisions

§ 1205.1 Purpose.

This subpart implements the Privacy Act of 1974, 5 U.S.C. 552a, ("the Act") by stating the procedures by which individuals may determine the existence of, seek access to, and request amendment of Board records concerning themselves, and by stating the requirements that apply to Board employees' use and disclosure of those records.

§ 1205.2 Policy and scope.

The Board's policy is to apply these regulations to all records that can be retrieved from a system of records under the Board's control by using an individual's name or by using a number, symbol, or other way to identify the individual. These regulations, however, do not govern the rights of the parties in adversary proceedings before the Board to obtain discovery from adverse

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parties; those rights are governed by part 1201 and part 1209 of this chapter. These regulations also are not meant to allow the alteration, either before or after the Board has issued a decision on an appeal, of evidence presented during the Board's adjudication of the appeal.

§ 1205.3 Definitions.

The definitions of 5 U.S.C. 552a apply to this part. In addition, as used in this part:

(a) *Inquiry* means a request by an individual regarding whether the Board has a record that refers to that individual.

(b) *Request for access* means a request by an individual to look at or copy a record.

(c) *Request for amendment* means a request by an individual to change the substance of a particular record by addition, deletion, or other correction.

(d) *Requester* means the individual requesting access to or amendment of a record. The individual may be either the person to whom the requested record refers, a legal guardian acting on behalf of the individual, or a representative designated by that individual.

§ 1205.4 Disclosure of Privacy Act records.

(a) Except as provided in 5 U.S.C. 552a(b), the Board will not disclose any personal record information from systems of records it maintains to any individual other than the individual to whom the record refers, or to any other agency, without the express written consent of the individual to whom the record refers, or his or her representative or attorney.

(b) The Board's staff will take necessary steps, in accordance with the law and these regulations, to protect the security and integrity of the records and the personal privacy interests of the subjects of the records.

Subpart B—Procedures for Obtaining Records

§ 1205.11 Access to Board records.

(a) *Submission of request.* Inquires or requests for access to records must be submitted to the appropriate regional or field office of the Board, or to the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419–0001. If the requester has reason to believe that the records are located in a regional or field office, the request must be submitted to that office. Requests submitted to the regional or field office must be addressed to the Regional Director or Chief Administrative Judge at the appropriate regional or field office listed in appendix II of 5 CFR part 1201.

(b) *Form.* Each submission must contain the following information:

(1) The name, address, and telephone number of the individual to whom the record refers;

(2) The name, address, and telephone number of the individual making the request if the requester is someone other than the person to whom the record refers, such as a legal guardian or an attorney, along with evidence of the relationship. Evidence of the relationship may consist of an authenticated copy of:

(i) The birth certificate of the minor child, and

(ii) The court document appointing the individual legal guardian, or

(iii) An agreement for representation signed by the individual to whom the record refers;

(3) Any additional information that may assist the Board in responding to the request, such as the name of the agency that may have taken an action against an individual, or the docket number of the individual's case;

(4) The date of the inquiry or request;

(5) The inquirer's or requester's signature; and

(6) A conspicuous indication, both on the envelope and the letter, that the inquiry is a "PRIVACY ACT REQUEST".

(c) *Identification.* Each submission must follow the identification requirements stated in § 1205.13 of this part.

(d) *Payment.* Records usually will not be released until fees have been received.

§ 1205.12 Time limits and determinations.

(a) *Board determinations.* The Board will acknowledge the request for access to records and make a determination on whether to grant it within 20 workdays after it receives the request, except under the unusual circumstances described below:

(1) When the Board needs to obtain the records from other Board offices or a Federal Records Center;

(2) When it needs to obtain and examine a large number of records;

(3) When it needs to consult with another agency that has a substantial interest in the records requested; or

(4) When other extenuating circumstances prevent the Board from processing the request within the 20-day period.

(b) *Time extensions.* When unusual circumstances exist, the Board may extend the time for making a determination on the request for no more than 10 additional workdays. If it does so, it will notify the requester of the extension.

(c) *Improper request.* If a request or an appeal is not properly labeled, does not contain the necessary identifying information, or is submitted to the wrong office, the time period for processing the request will begin when the correct official receives the properly labeled request and the necessary information.

(c) *Determining officials.* The Clerk of the Board, a Regional Director, or a Chief Administrative Judge will make determinations on requests.

§ 1205.13 Identification

(a) *In person.* Each requester must present satisfactory proof of identify. The following items, which are listed in order of the Board's prefcrence, are acceptable proof of the requester's identity when the request is made in person:

(1) A document showing the requester's photograph;

(2) A document showing the requester's signature; or

(3) If the items described in paragraphs (a)(1) and (2) of the section are not available, a signed statement in which the requester asserts his or her identity and acknowledges understanding that misrepresentation of identity in order to obtain a record is a misdemeanor and subject to fine of up to $5,000 under 5 U.S.C. 552a(i)(3).

(b) *By mail.* The identification of a requester making a request by mail must be certified by a notary public or equivalent official or contain other information to identify the requester. Information could be the date of birth of the requester and some item of information in the record that only the requester would be likely to know.

(c) *Parents of minors, legal guardians, and representatives.* Parents of minors, legal guardians, and representatives must submit identification under paragraph (a) or (b) of this section. Additionally, they must present an authenticated copy of:

(1) The minor's birth certificate, and

(2) The court order of guardianship, or

(3) The agreement of representation, where appropriate.

§ 1205.14 Granting access.

(a) The Board may allow a requester to inspect records through either of the following methods:

(1) It may permit the requester to inspect the records personally during normal business chorus at a Board office or other suitable Federal facility closer to the requester; or

(2) It may mail copies of the records to the requester.

(b) A requester seeking personal access to records may be accompanied by another individual of the requester's choice. Under those circumstances, however, the requester must sign a statement authorizing the discussion and presentation of the record in the accompanying individual's presence.

§ 1205.15 Denying access.

(a) *Basis.* In accordance with 5 U.S.C. 552a(k)(2), the Board may deny access to records that are of an investigatory nature and that are compiled for law enforcement purposes. Those requests will be denied only where access to them would otherwise be unavailable under Exemption (b)(7) of the Freedom of Information Act.

(b) *Form.* All denials of access under this section will be made in writing and will notify the requester of the right to judicial review.

§ 1205.16 Fees.

(a) No fees will be charged except for making copies of records.

(b) Photocopies of records duplicated by the Board will be subject to a charge of 20 cents a page.

(c) If the fee to be assessed for any request is less than $100 (the cost to the Board of processing and collecting the fee), no charge will be made to the requester.

(d) Fees for copying audio tapes and computer records will be charged at a rate representing the actual costs to the Board, as shown below.

(1) Audio tapes will be provided at a charge not to exceed $15 for each cassette tape.

(2) Computer printouts will be provided at a charge of 10 cents a page.

(3) Records reproduced on computer tapes, computer diskettes, or other electronic media, will be provided at the actual cost to the Board.

(e) The Board will provide one copy of the amended parts of any record it amends free of charge as evidence of the amendment.

Subpart C—Amendment of Records

§ 1205.21 Request for amendment.

A request for amendment of a record must be submitted to the Regional Director or Chief Administrative Judge of the appropriate regional or field office, or to the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419–0001, depending on which office had custody of the record. The request must be in writing, must be identified conspicuously on the outside of the envelope and the letter as a "PRIVACY ACT REQUEST," and must include the following information:

(a) An identification of the record to be amended;

(b) A description of the amendment requested; and

(c) A statement of the basis for the amendment, along with supporting documentation, if any.

§ 1205.22 Action on request.

(a) *Amendment granted.* If the Board grants the request for amendment, it will notify the requester and provide him or her with a copy of the amendment.

(b) *Amendment denied.* If the Board denies the request for amendment in whole or in part, it will provide the requester with a written notice that includes the following information:

(1) The basis for the denial; and

(2) The procedures for appealing the denial.

§ 1205.23 Time limits.

The Clerk of the Board, Regional Director, or Chief Administrative Judge will acknowledge a request for amendment within 10 workdays of receipt of the request in the appropriate office except under the unusual circumstances described in paragraphs (a)(1) through (a)(4) of § 1205.12 of this part.

Subpart D—Appeals

§ 1205.31 Submitting appeal.

(a) A partial or complete denial, by the Clerk of the Board, by the Regional Director, or by the Chief Administrative Judge, of a request for amendment may be appealed to the Chairman, Merit System Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419–0001 within 10 workdays from the date of the denial.

(b) Any appeal must be in writing, must be clearly and conspicuously identified as a Privacy Act appeal on both the envelope and letter, and must include:

(1) A copy of the original request for amendment of the record;

(2) A copy of the denial; and

(3) A statement of the reasons why the original denial should be overturned.

§ 1205.32 Decision on appeal.

(a) The Chairman will decide the appeal within 30 workdays unless the Chairman determines that there is good cause for extension of that deadline. If an appeal is improperly labeled, does not contain the necessary information, or is submitted to an inappropriate official, the time period for processing that appeal will begin when the Chairman receives the appeal and the necessary information.

(b) If the request for amendment of a record is granted on appeal, the Chairman will direct that the amendment be made. A copy of the amended record will be provided to the requester.

(c) If the request for amendment of a record is denied, the Chairman will notify the requester of the denial and will inform the requester of:

(1) The basis for the denial;

(2) The right to judicial review of the decision under 5 U.S.C. 552a(g)(1)(A); and

(3) The right to file a concise statement with the Board stating the reasons why the requester disagrees with the denial. This statement will become a part of the requestor's record.

Dated: June 24, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–16842 Filed 7–1–99; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF ENERGY

10 CFR Part 810

RIN No. 1992–AA24

Assistance to Foreign Atomic Energy Activities

AGENCY: Office of Arms Control and Nonproliferation, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations concerning unclassified assistance to foreign atomic energy activities. These amendments are designed to: make explicit DOE's export control jurisdiction over transfers of technology and services to foreign activities relating to production of special nuclear material (SNM) by means of accelerator-driven subcritical assembly systems (particle accelerators operating in conjunction with subcritical assemblies); revise the list of countries for which all assistance controlled by these regulations requires specific authorization; and substitute current addressees for submitting reports and requests. DOE is soliciting public comment on the proposed amendments within 60 days. Following consideration of submitted comments, DOE intends to publish a final rule on the amendments as promptly as possible.

DATES: Comments are due on or before August 31, 1999.

ADDRESSES: Written comments (3 copies) should be sent to: U.S. Department of Energy, Office of Arms Control and Nonproliferation, Nuclear Transfer and Supplier Policy Division, NN–43, NOPR, 1000 Independence Ave. S.W., Washington, DC 20585. Comments

should be identified on the outside of the envelope and on the documents themselves with the designation "Accelerators—Notice of Proposed Rulemaking." FAX comments will not be accepted. The administrative record on file will be located in the Department's Freedom of Information Reading Room, Room 1E–190, 1000 Independence Ave. S.W., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. Zander Hollander, Nuclear Transfer and Supplier Policy Division, NN–43, Office of Arms Control and Nonproliferation, U.S. Department of Energy, 1000 Independence Ave. S.W., Washington, DC 20585: Telephone (202) 586–2125; or Mr. Robert Newton, Office of General Counsel, GC–53, U.S. Department of Energy, 1000 Independence Ave. S.W., Washington, DC 20585: Telephone (202) 586–0806.

SUPPLEMENTARY INFORMATION:

1. Background

10 CFR Part 810 implements section 57b(2) of the Atomic Energy Act of 1954, as amended by section 302 of the Nuclear Non-Proliferation Act of 1978 (NNPA) (42 U.S.C. 2077). These sections require that U.S. persons who engage directly or indirectly in the production of SNM outside the United States be authorized to do so by the Secretary of Energy. Recent technological progress in accelerator-driven subcritical assembly systems has led to questions concerning the applicability of the Part 810 regulations to such activities. Most accelerator activity until now has been in fields of basic scientific research and development, such as detecting and identifying subatomic particles to better understand the structure of matter and the composition of the universe. The accelerator scientific community has been almost entirely an open one of free exchange of ideas and data, unrestricted publication of findings, and broad cooperation among scientists to build more powerful accelerators for more advanced experimentation. DOE scientists have been in the forefront of these activities and undoubtedly will remain so. DOE has no intention of limiting such scientific efforts, either by export control measures or otherwise. Yet, in recent years scientists have begun to develop accelerator-driven subcritical assembly systems that could be adapted to production of SNM. For example, DOE currently is pursuing accelerator production of tritium, which, while sometimes used in nuclear weapons, is not defined by the Atomic Energy Act as SNM. (The export of facilities, plants, equipment, and technology for production of tritium falls under the licensing authority of the Department of Commerce.) However, studies have shown that some accelerator-driven subcritical assembly systems are capable of producing significant quantities of plutonium or uranium-233, both of which are SNM as defined by the Act. Further, research and development is under way on transmutation of nuclear waste (ATW) by means of accelerator-driven subcritical assembly systems, which also may involve the processing of SNM. For these reasons, DOE takes the position that Part 810 applies to accelerator-driven subcritical assembly system technology as it does to other technologies for production of SNM, such as enrichment, reprocessing, and nuclear reactors. However, DOE intends Part 810 to apply to accelerator-driven subcritical assembly system activities only when the purpose is SNM production or when the activities would result in significant SNM production. While some accelerators devoted to basic scientific research and development activities may, technically, also be capable of configuration to produce SNM, DOE does not intend to exert export control authority on the basis of such capability.

In explicitly asserting its part 810 jurisdiction over accelerator-driven subcritical assembly system technology, DOE is guided by the following policy: specific authorization by the Secretary is required for the export to any country of technology or services for production of SNM by means of an accelerator-driven subcritical assembly system, or when a U.S. provider of assistance knows or has reason to know that an accelerator-driven subcritical assembly system will be used for the production or processing of SNM. When not publicly announced, such knowledge may come to the attention of the U.S. provider of assistance through contact with participants in such a project or may be brought to the provider's attention by the U.S. Government or another party. Assistance to components of the system also is considered within the scope of these regulations when the system is used to or is intended to produce SNM. In explicitly asserting jurisdiction over accelerator-driven subcritical assemblies, DOE believes specific authorization should be required only when the subcritical assembly is capable of continuous operation above five megawatts thermal, for those below this capability do not pose significant proliferation concern. This is the same threshold of control DOE applies to exports of assistance to research and test reactors.

DOE part 810 jurisdiction applies to assistance to foreign nationals, institutions, governments, and corporate or other entities when the objective is to produce SNM (plutonium or uranium-233) with an accelerator-driven subcritical assembly system, whether the assistance is given inside or outside the United States. However, DOE part 810 jurisdiction over assistance should not be construed as inhibiting a U.S. provider of assistance from participating in multinational or other non-U.S. accelerator activities when the intent is not to produce SNM, but rather for scientific, medical, or other non-SNM objectives. When a U.S. provider has no reason to believe that accelerator production of SNM is the objective, the U.S. provider needs no part 810 authorization. The same is true for U.S. hosts of foreign participation in scientific or other non-SNM accelerator activities in the United States. Therefore, unless intending to pursue accelerator-driven subcritical assembly system technologies for the production of SNM outside the United States or to allow foreign scientists to participate in such activities in the United States, members of the U.S. accelerator community—individual scientists, universities, commercial firms, research and development institutions, and other enterprises—will not require part 810 authorization.

The section 810.8 list of countries is being revised to include all non-nuclear-weapon states that do not have full-scope safeguards agreements with the IAEA and to reflect changes in world conditions since the last time the list was published. Since existence of an IAEA full-scope safeguards agreement is an important factor in making part 810 determinations, DOE believes applicants should be aware of which countries do not have such agreements.

2. Proposed Regulatory Changes

The following changes are proposed to be made to Part 810:

A. Section 810.3. Definitions. Definitions for "non-nuclear-weapon state," "accelerator-driven subcritical assembly system," "production accelerator," and "subcritical assembly" would be added.

B. Section 810.4. Communications. A new addressee for communications concerning these regulations would be given.

C. Section 810.5. Interpretations. The title of the DOE office providing advice would be changed.

D. Section 810.7. Generally authorized activities. Assistance to accelerator-driven subcritical assembly systems" and certain research and test reactors would be added to the exclusions from this general authorization.

E. Section 810.8. Activities requiring specific authorization. Specific authorization would be required for assistance relating to accelerator-driven subcritical assembly systems' capable of continuous operation above five megawatts thermal. In addition, the list of countries in this section would be revised and countries lacking full-scope safeguards agreements noted.

F. Section 810.13. Reports. The title of the office to which reports should be sent would be changed.

G. Section 810.16. Effective date and savings clause. The effective date would be changed but the savings clause would continue to state that the revision will not affect previously granted specific authorizations or generally authorized activities for which the contracts, purchase orders, or licensing arrangements are already in effect on the date of publication of the final rule; also, that persons engaging in activities generally authorized under the present regulations but requiring specific authorization under the revision must request such specific authorization within 90 days but may continue their activities until DOE acts on the request.

3. Statutory Requirements

Pursuant to section 57b of the Atomic Energy Act as amended by the NNPA, with the concurrence of the Department of State and after consultations with the Departments of Defense and Commerce, and the Nuclear Regulatory Commission, the Secretary of Energy has determined that to authorize this proposed revision of 10 CFR part 810 will not be inimical to the interests of the United States.

4. Public Comment

A. Interested persons are invited to participate in this rulemaking by submitting three (3) copies of their comments to the Director of the Nuclear Transfer and Supplier Policy Division at the address set forth in the **ADDRESSES** section of this notice. The deadline for receipt of comments is indicated in the **DATES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "Accelerators—Notice of Proposed Rulemaking."

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy marked confidential, as well as three (3) copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

B. Public Hearing. This notice of proposed rulemaking does not involve any significant issues of law or fact and the rule would be unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, pursuant to 42 U.S.C. 7191(c) and 5 U.S.C. 553, DOE is not scheduling a public hearing.

5. Procedural Matters

A. Review Under Executive Order 12866

This proposed rule has been determined not to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). In accordance with the requirements of the Executive Order, this notice of proposed rulemaking was not subject to review by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354 (42 U.S.C. 601–612) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. This action would have no such impact because the revisions only codify in the regulations existing DOE export control jurisdiction and U.S. Government obligations. DOE accordingly certifies that there will not be a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

C. Review under the National Environmental Policy Act

The proposed rule has been reviewed under the National Environmental Policy Act of 1969, Pub. L. 91–190 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–08), and the Department of Energy environmental regulations (10 CFR part 1021) and has been determined not to constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no environmental impact statement is required.

D. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policy makers in promulgating or implementing the regulation. The proposed rule will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a Federalism assessment is therefore unnecessary.

E. Review Under Executive Order 12988

With respect to review of existing regulations and promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effects, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the

required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

F. Paperwork Reduction Act

The information collections in this proposed rule are exempt from review by the Office of Management and Budget and from public comment for reasons of national security as provided for in Executive Orders 12035 and 12333 issued under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, D.C., June 23, 1999.

Rose Gottemoeller,

Assistant Secretary for Nonproliferation and National Security.

For reasons set forth in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

1. The authority citation for part 810 continues to read as follows:

Authority: Secs. 57, 127, 128, 129, 161, and 223, Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, 68 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2273); Sec. 104 of the Energy Reorganization Act of 1974, Pub. L. 93–438; Sec 301, Department of Energy Organization Act, Pub. L. 95–91.

2. Section 810.3 is amended by adding new definitions of "accelerator-driven subcritical assembly system," "non-nuclear-weapon state," "production accelerator," and "subcritical assembly," in alphabetical order, to read as follows:

§ 810.3 Definitions.

* * * * *

Accelerator-driven subcritical assembly system is a system comprising a "subcritical assembly" and a "production accelerator" and which is designed or used for the purpose of producing or processing special nuclear material (SNM) or which a U.S. provider of assistance knows or has reason to know will be used for the production or processing of SNM. In such a system, the "production accelerator" provides a source of neutrons used to effect SNM production in the "subcritical assembly."

* * * * *

Non-nuclear-weapon state is a country not recognized as a nuclear-weapon state by the NPT (i.e., states other than the United States, Russia, the United Kingdom, France, and China).

* * * * *

Production accelerator is a particle accelerator designed and/or intended to be used, with a subcritical assembly, for the production or processing of SNM or which a U.S. provider of assistance knows or has reason to know will be used for the production or processing of SNM.

* * * * *

Subcritical assembly is an apparatus containing source material or SNM designed or used to produce a nuclear fission chain reaction that is not self-sustaining.

* * * * *

3. Section 810.4, paragraph (a) is revised to read as follows:

§ 810.4 Communications.

(a) All communications concerning the regulations in this part should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Director, Nuclear Transfer and Supplier Policy Division, NN–43, Office of Arms Control and Nonproliferation. Telephone: (202) 586–2331.

* * * * *

4. Section 810.5, is revised to read as follows:

§ 810.5 Interpretations.

A person may request the advice of the Director, Nuclear Transfer and Supplier Policy Division (NN–43) on whether a proposed activity falls outside the scope of part 810, is generally authorized under § 810.7, or requires specific authorization under § 810.8; however, unless authorized by the Secretary of Energy in writing, no interpretation of these regulations other than a written interpretation by the General Counsel is binding upon the Department. When advice is requested from the Director, Nuclear Transfer and Supplier Policy Division, or a binding, written determination is requested from the General Counsel, a response normally will be made within 30 days and, if this is not feasible, an interim response will explain the delay.

5. In § 810.7, paragraph (h) is revised to read as follows:

* * * * *

§ 810.7 Generally authorized activities.

(h) Otherwise engaging directly or indirectly in the production of special nuclear material outside the United States in ways that:

(1) Do not involve any of the countries listed in § 810.8(a); and

(2) Do not involve production reactors, accelerator-driven subcritical assemblies systems, enrichment, reprocessing, fabrication of nuclear fuel containing plutonium, production of heavy water, or research reactors, or test reactors, as described in § 810.8(c) (1) through (6).

6. Section 810.8, is revised to read as follows:

§ 810.8 Activities requiring specific authorization.

Unless generally authorized by § 810.7, a person requires specific authorization by the Secretary of Energy before:

(a) Engaging directly or indirectly in the production of special nuclear material in any of the countries listed below. Countries marked with an asterisk (*) are non-nuclear-weapon states that do not have full-scope IAEA safeguards agreements in force.

Afghanistan
Albania
Algeria
Andorra *
Angola *
Armenia
Azerbaijan *
Bahamas *
Bahrain *
Belarus
Benin *
Botswana *
Burkina Faso *
Burma (Myanmar)
Burundi *
Cambodia *
Cameroon *
Cape Verde *
Central African Republic *
Chad *
China, People's Republic of
Colombia *
Comoros*
Congo*
Cuba*
Djibouti*
Equatorial Guinea*
Eritrea*
Gabon*
Georgia*
Guinea*
Guinea-Bissau*
Haiti*
India*
Iran
Iraq
Israel*
Kazakhstan
Kenya*
Kuwait*
Korea, People's Democratic Republic of
Kyrgyzstan*
Laos*
Liberia*
Libya
Macedonia*
Mali*
Marshall Islands*
Mauritania*
Micronesia*
Moldova*
Mongolia
Mozambique*
Niger*
Oman*
Pakistan*
Palau*
Panama*
Qatar*
Russia
Rwanda*
Sao Tome and Principe*
Saudi Arabia*
Seychelles*
Sierra Leone*
Somalia
Sudan
Syria
Tajikistan*
Tanzania*
Togo*
Turkmenistan*
Uganda*
Ukraine
United Arab Emirates*
Uzbekistan
Vanuatu*
Vietnam
Yemen*

(b) Providing sensitive nuclear technology for an activity in any foreign country.

(c) Engaging in or providing assistance in any of the following activities with respect to any foreign country.

(1) Designing production reactors, accelerator-driven subcritical assembly systems, or facilities for the separation of isotopes of source or special nuclear material (enrichment), chemical processing of irradiated special nuclear material (reprocessing), fabrication of nuclear fuel containing plutonium, or the production of heavy water;

(2) Constructing, fabricating, operating, or maintaining such reactors, accelerator-driven subcritical assembly systems, or facilities;

(3) Designing, constructing, fabricating, operating or maintaining components especially designed, modified or adapted for use in such reactors, accelerator-driven critical assembly systems, or facilities;

(4) Designing, constructing, fabricating, operating or maintaining major critical components for use in such reactors, accelerator-driven subcritical assembly systems, or production-scale facilities; or

(5) Designing, constructing, fabricating, operating, or maintaining research reactors, test reactors or accelerator-driven subcritical assembly systems' capable of continuous operation above five megawatts thermal.

(6) Training in the activities of paragraphs (c) (1) through (5) of this section.

7. In § 810.10 paragraph (a), is revised to read as follows:

§ 810.10 Grant of specific authorization.

(a) Any person proposing to provide assistance for which § 810.8 indicates specific authorization is required may apply for the authorization to the U.S. Department of Energy, Washington, DC 20585, Attention: Director, Nuclear Transfer and Supplier Policy Division, NN–43, Office of Arms Control and Nonproliferation.

* * * * *

8. In § 810.13, paragraph (g) is revised to read as follows:

§ 810.13 Reports.

* * * * *

(g) All reports should be sent to: U.S. Department of Energy, Washington, DC 20585, Attention: Director, Nuclear Transfer and Supplier Policy Division, NN–43, Office of Arms Control and Nonproliferation.

9. Section 810.16 is revised as follows:

§ 810.16 Effective date and savings clause.

These regulations are effective on [insert date of publication of final rule in the Federal Register]. Except for actions that may be taken by DOE pursuant to § 810.11, this revision does not affect the validity or terms of any specific authorizations granted under the previous regulations or generally authorized activities under the previous regulations for which the contracts, purchase orders, or licensing arrangements are already in effect. Persons engaging in activities that were generally authorized under the previous regulations but that require specific authorization under the revised regulations must request specific authorization within 90 days but may continue their activities until DOE acts on the request.

[FR Doc. 99–16800 Filed 7–1–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 29624]

High Density Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed interpretation; request for comments.

SUMMARY: This action requests comments on a proposed interpretation of the term "operator" as used to interpret the extra section provision of the FAA's High Density Rule. This proposed interpretation would permit one airline code-share partner to operate an extra section of a regularly scheduled flight of another code-share partner. It is intended to recognize the development of code-share arrangements in the aviation industry.

DATES: Comments must be submitted on or before July 12, 1999.

ADDRESSES: Comments regarding this action should be mailed, in triplicate, to Federal Aviation Administration, Office of the Chief Counsel. Attention: Rules Docket (AGC–10), Docket No. 29624, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 29624. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Air Traffic and Airspace Law Branch, Office of the Chief Counsel, AGC–230, Federal Aviation Administration 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this action by submitting such written data, views, or arguments, as they may desire. Comments should identify the regulatory docket and should be submitted in triplicate to the Rules Docket address specified above. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include a preaddressed, stampted postcard marked "Comments to Docket 29624." The postcard will be date stamped and mailed to the commenter.

Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed

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necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: JFK International Airport, LaGuardia Airport, O'Hare International Airport, Ronald Reagan Washington National (National) Airport, Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, by hour or half-hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot" for each IFR landing or takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970's.

On December 16, 1985, the Department of Transportation (Department) promulgated the "buy/sell" rule (14 CFR part 93, subpart S), a comprehensive set of regulations that provide for the allocation and transfer of air carrier and commuter slots (50 FR 52180; December 20, 1985). The two primary features of this rule were, first, that initial allocation would be accomplished by "grandfathering" existing slots to the carriers that currently held them, and second, that a relatively unrestricted aftermarket in slots would be permitted. As a result, effective April 1, 1986, slots used for domestic operations could be bought and sold by any party.

Current Requirements

14 CFR 93.123(b)(4) permits air carriers at LaGuardia, Newark, O'Hare and National Airports to conduct "extra section" operations of scheduled flights. Additionally, commuters are permitted to conduct extra section operations of scheduled flights at National Airport. An extra section is when an operator conducting a scheduled operation with a slot finds it necessary to use an additional aircraft to service passengers that cannot be accommodated on the original scheduled flight. Under these circumstances, the operator may conduct that additional flight or "extra section" without another slot.

The purpose of the extra section provision was to accommodate operations that an operator cannot precisely predict. Extra section operations are not scheduled operations and it would be impractical to obtain permanent slots for such operations. Regular scheduled operations do not have the same uncertainty and, these require slots. The extra section authority is available to any air carrier, or commuter operator at Washington National, with a slot for regularly scheduled operations. The extra section must: (1) Be non-scheduled; (2) serve passengers that cannot be accommodated on the original scheduled flight for which the operator has obtained an arrival or departure slot; and (3) depart no more than a few minutes before, on, or after the time at which the original flight was scheduled (46 FR 58306; November 27, 1981).

Historically, the FAA has interpreted the extra section provision as limited to aircraft operated by the operator who had the slot and conducted the scheduled operation. At the time this provision was promulgated, code-share agreements were not widely used. The FAA finds that the increasing use of code-share agreements in the aviation industry warrants a reexamination of this interpretation.

Proposed Interpretation

For purposes of the extra section provision codified in 14 CFR 92.123(b)(4), the FAA proposes to interpret the term "operator" to include the partners to a code-share agreement/alliance. As a result of this proposed interpretation, one code-share partner may conduct an extra section operation to an original scheduled flight of another code-share partner without the need for an additional slot. This interpretation does not change the requirement for the operator conducting the original scheduled operation to have a slot allocated under 14 CFR 93.123. This interpretation also does not affect any aspect of the Department's policy and regulations addressing code-share.

The FAA does not anticipate that this proposed interpretation would result in any operational impact at the airports since the regulations permit use of extra sections. Lastly, the FAA emphasizes that this proposed interpretation does not affect or in anyway modify the provisions of 14 CFR 93.123(c), which establishes the type of aircraft that may operate in air carrier and commuter slots at the high density traffic airports. The regulations governing slots do not permit the use of air carrier category aircraft in commuter slots. Specifically, at National Airport, only commuter equipment may be used to conduct extra sections of commuter operations when using a commuter slot.

The FAA requests comments on the above-proposed interpretation. The FAA finds that because there is an immediate need for this flexibility in extra section operations, the public interest supports a short comment period.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall proposed or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small business and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. This proposed interpretation has been reviewed as an interpretive rule in accordance with Executive Order 12866 and the Regulatory Flexibility Act of 1980. It is not a "significant regulatory action" as defined in the Executive Order or the Department of Transportation Regulatory Policies and Procedures.

The proposed interpretation would permit code share partners to operate extra sections at certain high density airports. Extra section operations are already permitted by the rule. This proposed interpretive rule would not impose any new or additional costs on code share partners.

Moreover, since the expected impact is minimal, this proposal does not warrant a full evaluation. This proposed interpretative rule is not considered significant under the regulatory procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, was enacted by U.S. Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a regulatory flexibility analysis if a proposed rule has a significant economic impact on a substantial number of small business entities.

The FAA is aware of only two air carriers regularly using extra sections in their daily operations ("shuttle operators"). These operators are not small entities. Moreover, while the resulting flexibility in the use of one partner's aircraft to support the operation of the other partner will result in some benefits to the affected air carriers and commuters, they are minimal when compare to the overall revenues derived from their operations. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Adminsitration certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination and requests that commenters provide supporting data or analyses.

International Trade Impact Analysis

The provisions of this proposed interpretive rule would have little or no impact of trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The proposed interpretive rule would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule when such a mandate would be "significant." A significant regulatory action under the Act is any provision in a Federal agency regulation that would result in an expenditure by State, local, and tribal governments, or by the private sector, in the aggregate of $100 million or more (adjusted annually for inflation) in any one year.

Since this proposed interpretive rule does not impose any cost, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

Issued in Washington, DC, on June 28, 1999.

Nicholas G. Garaufis,

Chief Counsel.

[FR Doc. 99–16807 Filed 7–1–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Extension of Time for Comments Concerning Trade Regulation Rule on Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Federal Trade Commission ("the Commission" or "FTC") has extended the date by which comments must be submitted concerning the review of its Trade Regulation Rule on Funeral Industry Practices ("Funeral Rule"). This document informs prospective comments of the change and sets a new date of August 11, 1999, for the end of the comment period.

DATES: Written comments will be accepted until the close of business on August 11, 1999. Notification of interest in participating in the public workshop must be submitted separately on or before August 11, 1999.

ADDRESSES: Written comments should be identified as "16 CFR part 453" and submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW, Washington, DC 20580. See **SUPPLEMENTARY INFORMATION** for future details.

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., N.W. Washington, DC 20580. In addition, comments will be posted ont he Internet at the FTC's web site: "*www.ftc.gov.*"

Notification on interest in participating in the Public Workshop-Conference should be submitted in writing on or before August 11, 1999, to Myra Howard, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Myra Howard, (202) 326–2047, or Mercedes Kelley, (202) 326–3665, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On May 5, 1999, the Commission published in the **Federal Register** a Request for Comment on its Funeral Industry Practices Rule ("Funeral Rule" or "Rule"), 16 CFR part 453, as part of its regulatory review program. 64 FR 24250. The Funeral Rule details a number of unfair and deceptive practices relating to providers of funeral goods and services, and sets forth preventive requirements in the form of price and information disclosures to ensure the funeral providers avoid engaging in the enumerated unfair or deceptive acts or practices. The **Federal Register** notice ("notice") posed thirty questions in all; some were general regulatory review questions, while others asked about material issues that are specific to the Funeral Rule and the funeral industry. The notice requested commenters to provide answers where possible, and specifically asked for data, surveys and empirical evidence to support comments submitted to the Commission. Pursuant to the **Federal Register** notice, the comment period currently ends on July 12, 1999.

Between June 11, 1999, and June 16, 1999, staff have received requests for a modest extension of the comment period from four separate organizations representing a variety of viewpoints on the Rule—the National Funeral Directors Association ("NFDA"), the American Association of Retired Persons ("AARP"), the Funeral and Memorial Societies of America, Inc. ("FAMSA"), and the Monument Builders of North America ("MBNA"). The parties indicated that additional time was required to prepare thorough, thoughtful responses to the questions contained in the **Federal Register** notice.

The Commission is mindful of the need to deal with this matter as expeditiously as possible. However, the Commission is also aware that some of the issues raised by the **Federal Register** notice are rather complex, and it welcomes as much substantive input as possible to facilitate its decisionmaking process. Accordingly, in order to provide sufficient time for these and other interested parties to prepare useful comments, the Commission has decided to extend the deadline for comments by thirty (30) days, until August 11, 1999.

Additional Comment Information

The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and public access, all written comments should also be submitted, if possible, in electronic form. To submit

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in electronic form, provide the comment on either a 5¼" or a 3½" computer disk. The disk should be labeled with the commenter's name and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format). Alternatively, the Commission will also accept comments submitted to the following E-Mail address: "FUNERAL@ftc.gov." Individual members of the public who will be filing comments need not submit multiple copies and need not submit their comments in electronic form.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–16767 Filed 7–1–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 514, and 558

[Docket No. 99N–1591]

Animal Drug Availability Act; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the animal drug regulations to implement the Veterinary Feed Directive (VFD) drugs section of the Animal Drug Availability Act (ADAA). A VFD drug is intended for use in animal feeds, and such use of the VFD drug is permitted only under the professional supervision of a licensed veterinarian. The proposed regulation would establish the requirements relating to the distribution and use of VFD drugs and animal feeds containing VFD drugs.

DATES: Written comments on this proposed rule must be submitted by September 30, 1999. Comments on the information collection provisions must be submitted by August 2, 1999.

ADDRESSES: Submit written comments on this proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments regarding the information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA. All comments must be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6651, e-mail: ggraber@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has determined that certain new animal drugs, vital to animal health, should be approved for use in animal feed, but only if such medicated feeds are administered under a veterinarian's order and supervision. This limitation is important for a number of reasons. For example, control of the usage of certain antimicrobials is critical to reducing unnecessary use of such drugs in animals and to slowing or preventing the development of bacterial resistance to antimicrobial drugs. In addition, safety concerns relating to, among other things, difficulty in diagnosing disease conditions and high toxicity may also require that the use of a drug in animal feed be limited to use by order and under the supervision of a licensed veterinarian.

Before the passage of the ADAA, the Federal Food, Drug, and Cosmetic Act (the act) provided FDA only two options for regulating the distribution of animal drugs: Over-the-counter (OTC) and prescription. Although prescription status affords certain controls, the regulation of animal drugs for use in medicated feeds under traditional prescription systems has proven unworkable. The prescription legend invokes the application of State pharmacy laws, and FDA usually defers to State law concerning dispensing of prescription drugs. Pharmacy laws in a significant number of States prohibit feed manufacturers from possessing and dispensing prescription animal drugs and medicated feed containing those drugs. Pharmacy laws in other States require the presence of a pharmacist at the feed manufacturing facility that uses prescription drugs in the manufacture of medicated feeds. As a practical matter, the application of State pharmacy laws to medicated feeds would burden State pharmacy boards and impose costs on animal feed manufacturers to such an extent that it would be impractical to make these critically needed new animal drugs available for animal therapy. After considerable deliberation with, and support from, the Coalition for Animal Health, and with support from State regulatory agencies, Congress enacted legislation in 1996 establishing a new class of restricted feed-use drugs that may be distributed without invoking State pharmacy laws. The ADAA (Pub. L. 104–250) amended the act to create section 504 (21 U.S.C. 354), VFD drugs.

Although statutory controls on the distribution and use of VFD drugs are similar to those for prescription animal drugs regulated under section 503(f) of the act (21 U.S.C. 353(f)), the proposed implementing VFD regulations are tailored to the unique circumstances relating to the distribution of animal feeds containing a VFD drug. This proposal would ensure the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost-effectively as possible. Unlike prescription drugs, VFD drugs would not be regulated by State pharmacy bodies. Historically, FDA has cooperated with State feed control offices in regulating the manufacture and use of medicated feeds. Investigations and inspections to measure compliance at FDA licensed feed manufacturing establishments are carried out by FDA or by State feed regulatory personnel commissioned by FDA. Most States maintain active inspection programs for medicated feed establishments that are not required to be licensed by FDA. We anticipate that State feed offices will continue assisting FDA by enforcing VFD regulations.

To date, one VFD drug has been approved; tilmicosin, an antimicrobial approved for administration via animal feed for control of swine respiratory diseases (§ 558.618 (21 CFR 558.618)). The regulation for tilmicosin, in addition to specifying the approved conditions of use, describes the information that the attending veterinarian must provide as part of the VFD form. At the time of publication of the final rule for VFD's, the regulation at § 558.618 will be amended, if needed, to be consistent with the final rule.

II. Discussion of the Proposed Rule

By amending part 558 (21 CFR part 558), the proposed rule would implement section 504 of the act, which created VFD drugs. Specifically, the proposed rule would amend § 558.3(b) by adding necessary definitions at § 558.3(b)(6) through (b)(11). The proposed rule would also redefine Category II drugs at § 558.3(b)(1)(ii) to include all VFD drugs, a reflection of our safety concerns for all medicated feeds containing VFD drugs. A proposed new § 558.6 would be added to list the requirements for the distribution and use of VFD drugs and feeds that contain VFD drugs.

A VFD drug is limited to use under a valid veterinary-client-patient relationship where the veterinarian assumes the responsibility for safe and effective use of the VFD and the client has agreed to follow the instructions of the veterinarian. Proposed § 558.6(a)(1) through (a)(4) lists the responsibilities of the veterinarian issuing a VFD.

The information required to be included in the VFD will vary from drug to drug. Proposed § 558.6(a)(5) describes information that may be required in a VFD. The specific VFD approval regulation will identify the information required in a VFD for a particular animal drug. FDA is particularly concerned that VFD drugs be used only in accordance with the approved uses.

The length of time a VFD may be valid (expiration date) and the number of refills or reorders, if any, that will be permitted will be specific to the VFD drug. As part of the VFD drug approval process, FDA will determine whether refills or reorders are allowed, and if so, the number of refills or reorders. We request your comment on this proposed approach and on how much latitude should be given the veterinarian in ordering use of VFD drugs consistent with the control over drug use as envisioned by the ADAA; i.e., should reorders be permitted and for what length of time should the order be valid? The American Association of Swine Practitioners (AASP) addressed this issue in a response dated January 20, 1997, to the ADAA advanced notice of proposed rulemaking in the **Federal Register** of November 21, 1996 (61 FR 59209) (Docket No. 96N–0411). The AASP stated that it is imperative that the rule allow flexibility in issuance and content of the VFD in order to be practical in its application to various types of production systems. For example, the AASP inquired whether a single VFD can be applicable to multiple groups of pigs when a farm's history predicts recurring disease outbreaks in the transition between production stages, such as postweaning.

As a practical matter, FDA anticipates that practicing veterinarians would not want to attempt to create their own practice-specific VFD's because of the time involved and the amount of specific information required. We expect VFD drug manufacturers to provide veterinarians with preprinted VFD's in triplicate. We are thus proposing to amend § 514.1(b)(9) (21 CFR 514.1(b)(9)) to require submission of a VFD format as a part of the new animal drug application (NADA) for each VFD drug.

Proposed § 558.6(b)(1), (b)(2), and (b)(3) describe the proper distribution and recordkeeping requirements for each of the three copies of the VFD. The client and the veterinarian each keep a copy, and the original is given to the distributor supplying the VFD feed to the client. Under proposed § 558.6(b)(4), to expedite delivery, a veterinarian may fax a VFD to the distributor provided the veterinarian immediately forwards the original to the distributor and a copy to the client. Proposed § 558.6(c) would require that the involved parties (veterinarian, distributor, and client) keep the VFD for 2 years after the date of issuance and make it available for inspection and copying by FDA.

In addition to facsimile transmission of VFD's, we are considering permitting the veterinarian to telephone or e-mail VFD orders to the distributor. This would facilitate rapid movement of VFD feeds when immediate personal contact among the veterinarian, client, and distributor is not practical, and the situation demands the VFD feed be fed immediately to the animals. This approach would require that the veterinarian provide complete VFD information to the feed distributor by telephone or electronic means. In the case of telephone orders, the distributor would be responsible for reducing the telephone order to writing and keeping this order in its files. The veterinarian would follow the telephone call with prompt issuance of a signed, written VFD to the distributor and a copy to the client. Even though use of either electronic transmission or telephone will require that the veterinarian followup with signed written copies to both distributor and client, there is still concern about telephone orders. A concern is that there will be less control over the distribution process when the required information is not initially in writing, and reliance is placed on the client or distributor for proper interpretation of oral instructions. We are seeking comments on the policy reflected in the proposed rule allowing only fascimile transmission of VFD's, and whether that policy should be changed to allow use of the telephone and e-mail for transmitting VFD orders. Specifically, we invite comments on how to ensure transmission of clear, complete, and secure information via telephone or electronic means, and on the mechanics of promptly providing a signed copy of the VFD to all involved parties while avoiding undue duplication of effort and paperwork.

Proposed § 558.6(d)(1) discusses the statutory requirement of ADAA that all distributors of medicated feed containing VFD drugs, whether feed manufacturers or other suppliers in the feed distribution chain, notify us of their intent to distribute such feed upon first engaging in distribution. A "distributor" is defined in proposed § 558.3(b)(9) as any person who distributes a medicated animal feed containing a VFD drug to a client who presents a VFD or to another distributor. The term "distributor" includes all entities marketing VFD feeds, from the manufacturer of such feed to all suppliers in the distribution chain. To assist us in maintaining an accurate data base of distributors, proposed § 558.6(d)(1)(iv) would require that distributors notify us within 30 days if they change business name or address. We regard this as an extension of § 558.6(d)(1) notification requirement, necessary to keep original notification information current.

To accommodate the many levels of distribution, proposed § 558.6(d)(2) would allow a distributor to ship medicated feeds containing a VFD drug to a consignee in the absence of a VFD. The regulations would only allow this if the consignee furnishes an "acknowledgment letter" affirming that it will only distribute medicated feed bearing or containing a VFD drug to a VFD holder or another distributor who furnishes a similar acknowledgment letter. Proposed § 558.6(d)(2) also is intended to ensure that all parties involved in distribution of VFD drugs understand the requirement of shipping medicated animal feeds containing VFD drugs only to consignees who have notified FDA. Proposed § 558.6(e)(ii) would require that distributors keep records of receipt and distribution of all medicated animal feeds containing VFD drugs. We believe that the usual and customary records of purchase and sales kept by distributors will satisfy this requirement. FDA would examine receipt and distribution records to verify compliance with these proposed regulations.

Proposed § 558.6(f) would specify the wording of a cautionary statement that is required by statute to be included in all labeling and advertising for VFD drugs and medicated feeds containing VFD drugs. This "cautionary" labeling requirement is exempt from the scope of the Paperwork Reduction Act (the PRA) because it is a "public disclosure of information originally supplied by the Federal Government for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

Under section 512(a)(1) of the act (21 U.S.C. 360b(a)(1)), an animal drug is unsafe unless it is approved and its labeling and use comply with the approval. In addition, section 512(a)(4) of the act, which allows for some extra-label use of animal drugs, specifically prohibits extra-label use in animal feed. This prohibits the extra-label use of VFD drugs in animal feed. Therefore, a VFD drug not used in accord with its approval would be an unapproved new animal drug and would be considered to be unsafe under section 512 of the act. Consequently, the VFD drug would be adulterated under section 501(a)(5) of the act (21 U.S.C. 351(a)(5)), and an animal feed bearing or containing such VFD drug would be adulterated under section 501(a)(6) of the act. A VFD drug and any feed bearing or containing a VFD drug would be considered to be misbranded under section 504(b) of the act if the labeling or advertising fails to contain the cautionary statements prescribed in these regulations or fails to conform to the approved conditions and indications for use.

In order to implement those provisions of the act prohibiting extra-label use and promotion of VFD drugs, and to clarify that reporting and recordkeeping requirements for labeling and promotional material under § 510.300 (21 CFR 510.300) are also applicable to VFD drugs, the proposed rule would revise § 510.300(a)(4) to add "or a veterinary feed directive drug" after "if it is a prescription new animal drug." This would require that promotional material for VFD drugs be submitted at the time of initial dissemination and publication in accord with § 510.300(a)(4) and (b)(3), respectively.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities if the rule may have a significant impact on a substantial number of small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

FDA concludes that this proposed rule is consistent with the principles set forth in the Executive Order and in these two statutes. We estimate that the present value of the proposed rule's annual compliance costs on industry in the first year would range from about $315,000 to $571,000. These costs will increase yearly as more VFD drugs are approved and should total about $2.8 million in year 10 (after amortization at a 7-percent discount rate). It is important to note that these costs will be incurred each year only if those using this new class of drugs believe that the accompanying health benefits outweigh these costs. As a result, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. We have further determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. Further, because this proposed rule makes no mandates on other government entities and will result in expenditures of less than $100 million by the private sector in any one year, we need not prepare additional analyses under the Unfunded Mandates Reform Act.

FDA is proposing to amend the animal drug regulations to reflect the creation of a new category of drugs for use in animal feeds, referred to as VFD drugs. A VFD drug is a drug intended for use in or on animal feed that is limited to use under the professional supervision of a licensed veterinarian. Certain drugs can be approved for feed use only if used under a veterinarian's supervision. Statutory creation of VFD drugs provides the agency with a means for controlling the distribution and use of certain animal drugs that is more practical and less burdensome to industry than the existing prescription system. The proposed new system would be as effective as the prescription drug system in controlling the distribution and use of VFD drugs, but with requirements tailored to the unique circumstances that exist for the distribution of medicated feeds. The most critical aspect of this system is the direct involvement of a veterinarian in the selection and use of the VFD drug. Thus, the proposal would maintain public health protection while enabling livestock producers to obtain needed drugs as efficiently and cost-effectively as possible.

A. Benefits

Quantifying the benefits of the new system for VFD drugs is difficult because it requires that the treatment benefits of each VFD drug be compared to the drug that it replaces in the treatment regimen. Because almost all of the VFD drugs are as yet unidentified, it is not possible to make these determinations. It is reasonable, however, to assume that because each VFD drug would be assigned the VFD classification during the drug approval process, each drug would have some safety or toxicity concerns that would prevent its approval as an OTC drug for use in feed. Because these drugs would otherwise have to be approved in a prescription drug form, the proposed VFD drug rules provide for greater availability and use. Moreover, because the rule does not require that a VFD drug be used in place of either OTC medicated feeds or prescription drugs in a nonfeed form, consumers (veterinarians and animal producers) are expected to use VFD drugs only where they believe that the VFD drug's benefits outweigh their costs.

B. Costs

Complying with the VFD drug provisions would impose some costs on industry and government. A percentage of these costs, however, or even an amount greater than the costs shown here, would be incurred independently of the VFD rules if the same animal drug and its approved indication for treatment were approved under the current animal drug approval system as a prescription drug intended for use other than in or on an animal feed. From a broader perspective, therefore, the rule may result in a decrease in net costs, or a net benefit to the industry, as the VFD drug rule requirements may be less costly than the prescription drug requirements.

The costs imposed by the VFD drug proposal are dependent on the number of drugs that would be approved each year as VFD drugs. Although it is difficult to predict this number, because the VFD drugs are a new creation, the agency estimates that the average number of animal drugs that would be approved as VFD drugs is about one per year. Likewise, the number of VFD's that will be issued annually is dependent on many factors, some of which are difficult to predict. For purposes of this analysis, however, the agency assumes that each VFD drug will be issued from 250,000 to 500,000 times each year. Due to the uncertainty surrounding this initial estimate, the agency invites comment on the appropriate number of times an average VFD drug will be issued annually.

The VFD system is intended to retain the existing distribution mechanisms for drugs intended for use in feeds and for medicated feeds while maintaining more control over the availability of certain animal drugs that are intended for use in animal feed and that raise safety issues. The major cost of compliance would result from the paperwork that would be necessary to track the VFD drugs and feeds. One of the cost components would be the cost of filing the VFD's by the veterinarian, distributor, and animal producer. The agency estimates that filing each VFD by the veterinarian, distributor, and animal producer or their records clerks will take only about 1 minute. The first year cost of this task is estimated to total $218,000 to $437,000 based on the hourly wages for records clerks and animal producers calculated from data in *Employment and Earning*, pp. 206 and 209, January 1996; and *Monthly Labor Review*, p. 76, September 1997. After the VFD drug system becomes more routine and the total number of VFD's issued increases with the years, it is likely that the compliance time per VFD will decrease.

Another first year cost is the requirement that VFD drug distributors notify FDA of their intent to distribute the drugs. The agency estimates that there will be up to 20,000 distributors over time, but that only about 25 percent of them will notify the agency in the first year. Based on agency estimates of 15 minutes to write the notification at a middle manager's wage of about $19 per hour, and 10 minutes for a GS–7 Government employee to process the notification, total notification costs in the first year are estimated at about $35,000. We cannot estimate the cost of the requirement that distributors notify us when they change their business name or address, but believe it to be negligible. The compliance cost of the VFD, whether by the VFD drug manufacturer or the veterinarian, is estimated at about $1,000 for the initial one page layout and $0.05 for each triplicate form. This amounts to $14,000 to $26,000 per year per VFD drug. The $1,000 cost for the layout (format) would be incurred by the VFD drug sponsor under the proposal in § 514.1(b)(9) to require submission of the format with the NADA. Storage costs for the normal three copies of the VFD previously mentioned, and fax copies if that form of transmission is used, amount to $25,000 to $50,000 in the first year, assuming that about 15,000 copies fit into a large file cabinet at about $500 per cabinet.

The final compliance cost concerns the acknowledgment letters written by the distributors of the VFD drugs. We estimate that about 5,000 letters will be written annually for the first 3 years and that each letter will take 15 minutes to prepare. At the middle manager's wage rate mentioned previously, we estimate this provision to cost only about $24,000 annually for the first 3 years.

In sum, FDA estimates the total first year compliance costs to be from about $315,000 to $571,000, including costs to both industry and government, or about $1.25 per VFD issued. FDA has not included the cost of the veterinarian's time to write and explain the VFD to the animal producer because it is very likely that a comparable amount of time would be spent by veterinarians counseling animal producers in other animal treatments in the absence of the VFD drug system. Regardless, the net effect of the entire VFD drug system is expected to be a net benefit, or decrease in net costs, as the consumers of these drugs will only use them if they expect a greater net benefit over currently available treatment alternatives.

In future years, compliance costs would increase for several reasons. First, distributor notifications would increase in the second year as an estimated 75 percent of those that do not notify us in the first year perform this obligation (this rate may be overestimated to the extent that it takes more years before all distributors begin to handle medicated feeds containing VFD drugs). Second, and more importantly, there may be, on average, about one more VFD drug approved in each succeeding year that would steadily increase the total issuance and filing costs. Compliance costs per VFD issued, however, would decrease slightly in the future because the one-time-only costs already would have been incurred.

The estimated total nondiscounted compliance costs in year 2 range from about $640,000 to $1,151,000. Discounting these costs at 7 percent per year results in a final second year cost estimate of about $598,000 to $1,076,000. At some year in the future, the increasing number of VFD's issued will reach a point at which issuances of the newly approved VFD's will be offset by the decreasing issuances of older VFD's as their sales volume decreases. Although the agency does not know in which year this will occur, it can be determined that the present value of the annual compliance costs will not continue to increase. The agency invites comment on all compliance cost estimates included in this analysis.

C. Regulatory Flexibility Analysis

The Small Business Administration (SBA) defines all manufacturers of drugs and prepared feeds for animals having 500 employees or fewer to be a small business. We have included feed distributors in this category also. FDA estimates that only about 2 percent of the affected facilities belong to large conglomerates with an overall employee count of higher than 500. Therefore, the remaining 98 percent of the affected facilities would be considered small businesses according to SBA's standards. SBA defines veterinary services for livestock as small businesses if annual revenues are less than $5 million. Because, according to the American Veterinary Medical Association, "Veterinary Market Statistics, 1997," large animal veterinarians earn about $60,000 per year on average, the agency assumes that virtually all large animal veterinary practices are small businesses. Likewise, most livestock production facilities would be considered small businesses by SBA, because SBA defines small business as those businesses with revenues under $500,000, except for beef cattle feedlots, for which the limit is $1.5 million. Consequently, the proposed rule would ultimately affect a substantial number of small businesses. The rule will not, however, have a significant effect on these small business, as the cost of the additional veterinary service and paperwork burdens are estimated at about $1.25 per VFD issued. Such costs would constitute an insignificant percentage of the revenue of the affected firms even if several VFD drugs are issued to a producer each year. Thus, in accordance with the Regulatory Flexibility Act, FDA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act requires (section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted

annually for inflation) in any one year. The publication of the proposal creating the VFD drug system is not expected to result in expenditures of funds by State, local, and tribal governments or the private sector in excess of $100 million annually. Therefore, FDA is not required to perform a cost/benefit analysis according to the Unfunded Mandates Reform Act.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in this section V with an estimate of the annual reporting and recordkeeping burden (Tables 1 and 2 of this document). Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Veterinary Feed Directives.

Description: The proposed rule implements provisions of the ADAA of 1996 (Pub. L. 104–250), which, by adding section 504 to the act, created a new class of animal drugs called VFD drugs. The proposed rule establishes regulatory requirements for the distribution and use of VFD drugs. VFD drugs are new animal drugs intended for use in or on animal feed whereby such use is permitted only under the professional supervision of a licensed veterinarian operating within the confines of a valid veterinarian-client-patient relationship.

The VFD ordered by the veterinarian must be issued in accordance with the format described under proposed § 558.6(a). We are proposing to amend the new animal drug regulations in § 514.1(b)(9) to require the VFD drug sponsor to submit such format as part of the NADA. The format may be used by the sponsor to produce forms in triplicate for use by the veterinarian or it may be supplied to the veterinarian for use in preparing a practice-specific form. Veterinarians are required to complete the VFD in triplicate, authorizing a client-recipient to obtain and use a medicated feed containing a VFD drug. The original copy of the VFD must be forwarded either by the veterinarian or the client-recipient to the distributor providing the VFD. In addition, the veterinarian issuing the VFD and the client-recipient of the VFD must retain a copy of each VFD for 2 years from date of issuance. Any person who distributes medicated feed containing VFD drugs must file with us a one time notification letter of intent to distribute, and retain a copy of each VFD serviced or each consignee's acknowledgment letter for 2 years. Distributors are also required to keep records of receipt and distribution of medicated animal feeds containing VFD drugs for 2 years. An acknowledgment letter must be provided to a distributor by a consignee who is not the ultimate user of the medicated feed containing a VFD drug. The acknowledgment letter affirms that the consignee will not ship such medicated animal feed to an animal production facility that does not have a VFD, and will not ship such feed to another distributor without receiving a similar acknowledgment letter. To maintain an accurate data base for distributors of VFD drugs, a distributor is required to notify us of any change in name or business address.

Certain capital costs are involved with respect to the reporting and recordkeeping requirements for VFD drugs. Specific details of cost estimates are found in section IV.B of this document. We estimate that approximately 375,000 VFD's will issue annually. The estimated cost for producing 375,000 VFD's in triplicate annually is $19,750 ($1,000 for the initial one-page layout and $0.05 for each triplicate form). For maintaining records of VFD's, the estimated cost is $37,500. This cost estimate is based on the fact that the veterinarian, client-recipient and distributor must each keep a copy of the VFD. Thus, a total of 1,125,000 copies of VFD's will be filed (375,000 VFD's x 3). We estimate that it will take 75 large file cabinets to store all copies of VFD's, assuming 15,000 copies can be stored in a large file cabinet. The estimated cost per file cabinet is $500, resulting in a total cost of $37,500 (75 cabinets x $500).

Description of Respondents: Veterinarians, distributors of animal feeds containing VFD drugs, and clients utilizing medicated feeds containing VFD drugs.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Sections	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Capital Costs
558.6(a)(3) through (a)(5)	15,000	25	375,000	0.25	93,750	$12,250
558.6(d)(1)(i) through (d)(1)(iii)	5,000	1	5,000	0.25	1,250	
558.6(d)(1)(iv)	100	1	100	0.25	25	
558.6(d)(2)	5,000	1	5,000	0.25	1,250	
514.1(b)(9)	1	1	1	3.0	3	
Total hours/cost					96,278	12,250

[1]There are no operating or maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Sections	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Capital Costs
558.6(c)(1) and (d)(2)(i)	112,500	10	1,125,000	.0167	18,788	$37,500
558.6(e)(ii)	5,000	75	375,000	.0167	6,263	
Total hours/cost					25,051	37,500

[1]There are no operating or maintenance costs associated with this collection of information.

To permit FDA to implement certain provisions of the VFD procedure, the OMB approved a portion of this collection of information under the emergency processing provisions of the PRA (5 CFR 1320.13), on a temporary basis, OMB control number 0910–0363. Estimates in the preceding burden chart have been changed from those in the emergency approval (62 FR 64847, December 9, 1997) based upon FDA's experience in implementing certain elements of the VFD procedure.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), FDA submitted to OMB the information collection provisions of this proposed rule for review. Interested persons are requested to send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing the burden, by August 2, 1999, to the Office of Information and Regulatory Affairs, (address above).

VI. Public Comments Procedures

On June 1, 1998, the President instructed all Federal agencies to ensure the use of "plain language" in all new documents. As part of this initiative, FDA has drafted the codified portion of this document using the principles of "plain language" set forth by the President. The agency seeks public comment on the clarity of this proposed rule.

FDA invites interested persons to submit comments regarding these proposed regulations to the Dockets Management Branch (address above). To ensure that public comments have maximum effect in developing the final regulations, FDA urges you to identify clearly the specific section or sections of the proposed regulation that each comment addresses. Comments should be confined to issues pertinent to the proposed rule and explain the reason for any recommended change. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will accept comments after the deadline September 30, 1999, but are not obligated to consider or include in the administrative record for the final rule those comments received after the close of the comment period. Received comments may be seen in the office above between 9 a.m. and 4:30 p.m., Monday through Friday.

List of Subjects

21 CFR part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 510, 514, and 558 be amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.300 [Amended]

2. Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect* is amended in paragraph (a)(4) by adding the phrase "or a veterinary feed directive drug," after the phrase "if it is a prescription new animal drug".

PART 514—NEW ANIMAL DRUG APPLICATIONS

3. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

4. Section 514.1 is amended by adding paragraph (b)(9) to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(9) *Veterinary feed directive (VFD).* Three copies must be submitted in the format described under § 558.6(a)(3), (a)(4), and (a)(5) of this chapter.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

6. Section 558.3 is amended by revising paragraph (b)(1)(ii) and by adding paragraphs (b)(6) through (b)(11) to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

* * * * *

(b) * * *

(1) * * *

(ii) Category II—These drugs require a withdrawal period at the lowest use level for at least one species for which they are approved, or are regulated on a "no-residue" basis or with a zero tolerance because of a carcinogenic concern regardless of whether a withdrawal period is required, or are a veterinary feed directive drug.

* * * * *

(6) A "veterinary feed directive (VFD) drug" is a drug intended for use in or on animal feed and which is limited by an approved application filed under section 512(b) of the Federal Food, Drug, and Cosmetic Act to use by the order and under the professional supervision of a licensed veterinarian.

(7) A "veterinary feed directive" is a written statement issued by a licensed veterinarian in the course of the veterinarian's professional practice that orders the use of a veterinary feed directive drug in or on an animal feed. This written statement authorizes the client (the owner of the animal or animals or other caretaker) to obtain and use the veterinary feed directive drug in or on an animal feed to treat the client's animals only in accordance with the Food and Drug Administration

approved directions for use. A veterinarian may issue a VFD only if a valid veterinarian-client-patient relationship exists, as defined in § 530.3(i) of this chapter.

(8) A "medicated feed" means a Type B medicated feed as defined in paragraph (b)(3) of this section or a Type C medicated feed as defined in paragraph (b)(4) of this section.

(9) For the purposes of this part, a "distributor' means any person who distributes a medicated feed containing a VFD drug to another distributor or to the client-recipient of the VFD.

(10) An "animal production facility" is a location where animals are raised for any purpose, but does not include the specific location where medicated feed is made.

(11) An "acknowledgment letter" is a written communication provided to a distributor by a consignee who is not the ultimate user of medicated feed containing a VFD drug. An acknowledgment letter affirms that the consignee will not ship such medicated animal feed to an animal production facility that does not have a VFD, and the consignee will not ship such feed to another distributor without receiving a similar written acknowledgment letter.

7. Section 558.6 is added to subpart A to read as follows:

§ 558.6 Veterinary feed directive drugs.

(a) What conditions must be met if I am a veterinarian issuing a veterinary feed directive?

(1) You must be appropriately licensed;

(2) You must issue a VFD only within the confines of a valid veterinarian-client-patient relationship (as defined in § 530.3(i) of this chapter) in accordance with the format described in paragraphs (a)(3), (a)(4), and (a)(5) of this section;

(3) You must complete the VFD in writing and sign it;

(4) You must produce the VFD in triplicate;

(5) You must include the following information in the VFD:

(i) Your name, address, and phone number and that of the client;

(ii) Identification and number of animals to be treated/fed the medicated feed, including identification of the species of animals, and the location of the animals;

(iii) Date of treatment and, if different, date of prescribing the VFD drug;

(iv) Approved indications for use;

(v) Name of the animal drug;

(vi) Level of animal drug in the feed, and the amount of feed required to treat the animals in paragraph (a)(5)(ii) of this section;

(vii) Feeding instructions with the withdrawal time;

(viii) Any special instructions and cautionary statements necessary for use of the drug in conformance with the approval;

(ix) Expiration date of the VFD;

(x) Number of refills (reorders) if necessary and permitted by the approval;

(xi) Your license number and the name of the State issuing the license; and,

(xii) The statement: "Extra-label use, (i.e., Use of this VFD feed in a manner other than as provided for in the VFD drug approval) is strictly prohibited."

(xiii) Any other information required by the VFD drug approval regulation.

(6) You must issue a VFD only for the approved conditions and indications for use of the VFD drug.

(b) What must I do with the VFD if I am a veterinarian?

(1) You must give the original VFD to the feed distributor (directly or through client);

(2) You must keep one copy of the VFD;

(3) You must give the client the second copy of the VFD;

(4) You may fax a VFD to the client or distributor, if you wish, provided you immediately forward the signed written original to the distributor and a copy to the client.

(c) What are the VFD recordkeeping requirements?

(1) The VFD must be kept by all involved parties (i.e., veterinarian, client, and VFD feed distributor) for a period of 2 years from date of issuance.

(2) The VFD must be made available by all involved parties for inspection and copying by FDA.

(3) VFD's transmitted by facsimile must be kept by all involved parties along with copies distributed by the veterinarian.

(d) What are the notification requirements if I am a distributor of animal feed containing a VFD drug?

(1) You must notify FDA only once, by letter, that you intend to distribute animal feed containing a VFD drug.

(i) The notification letter must include the complete name and address of each business site from which distribution will occur.

(ii) A responsible person from your firm must sign and date the notification letter.

(iii) You must submit the notification letter, prior to beginning your first distribution, to the Center for Veterinary Medicine, Division of Animal Feeds (HFV–220), 7500 Standish Pl., Rockville, MD 20855; and

(iv) You must notify the Center for Veterinary Medicine at the address provided in paragraph (d)(1)(iii) of this section within 30 days of any change in name or business address.

(2) If you are a distributor who ships an animal feed containing a VFD drug to another consignee-distributor in the absence of a valid VFD, you must obtain:

(i) An "acknowledgment letter," as defined in § 558.3(b)(11) of this chapter, from the consignee-distributor; and

(ii) A statement affirming that the consignee-distributor has complied with "Distributor Notification" requirements of paragraph (d)(1) of this section.

(e) What are the recordkeeping requirements if I am a distributor?

(1) You must keep information specified in paragraph (c)(1) or paragraph (d)(2)(i) of this section;

(2) You must keep records of receipt and distribution of all medicated animal feed containing a VFD drug;

(3) You must keep these records for 2 years from date of receipt and distribution; and

(4) You must make records available for inspection and copying by FDA.

(f) What cautionary statements are required for VFD drugs and animal feeds containing VFD drugs? All labeling and advertising must prominently and conspicuously display the following cautionary statement: "Caution: Federal law limits this VFD drug product to use under the professional supervision of a licensed veterinarian. Medicated feed bearing or containing a VFD drug may be fed to animals only when there exists a lawful veterinary feed directive issued by a licensed veterinarian in the course of the veterinarian's professional practice."

Dated: June 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–16857 Filed 7–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1908

[Docket No. CO–5]

Consultation Agreements: Proposed Changes to Consultation Procedures

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: OSHA proposes to revise its regulations for federally-funded on-site safety and health consultation visits to provide for greater employee involvement in site visits; to require that employees be informed of the results of these visits; to provide for the confidential treatment of information concerning workplace consultation visits; and to update its procedures for conducting consultation visits.

DATES: Written comments must be submitted on or before September 30, 1999.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket No. C–05, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Comments limited to 10 pages or fewer may also be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

Comments may also be submitted electronically through OSHA's Internet site at URL, http://www.osha/slc.gov/e-comments/e-comments-consult.html. Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the above address. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission. The entire record for the Proposed Changes to the Consultation Procedures is available for inspection and copying in the Docket Office, Docket C–05, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs-OSHA, Rm. N–3647, 200 Constitution Avenue NW, Washington DC 20210. Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

The OSHA On-Site Consultation Program

The Occupational Safety and Health Administration (OSHA), under cooperative agreements with agencies in 44 states, the District of Columbia, and several U.S. territories, administers and provides federal funding for an on-site consultation program which makes trained health and safety personnel available, at an employer's request and at no cost to the employer, to conduct worksite visits to identify occupational hazards and provide advice on compliance with OSHA regulations and standards. (In the remaining 6 states and 2 territories on-site consultation services are provided to small employers in the private sector as part of an OSHA-approved state plan funded by federal grants under section 23(g) of the Occupational Safety and Health (OSH) Act, rather than under cooperative agreements). Priority in providing on-site consultation visits is accorded to smaller employers in more hazardous industries. (Various OSHA directives currently specify that priority for consultation services be given to employers having not more than 250 workers at the site receiving the consultation, and no more than 500 workers nationwide). The consultation program was first authorized by Congressional appropriations action in 1974. On July 16, 1998, President Clinton signed into law the Occupational Safety and Health Administration Compliance Assistance Authorization Act (CAAA), Pub. L. 105–197, which codifies this important OSHA program as a new subsection 21(d) of the Occupational Safety and Health Act.

The OSHA on-site consultation program is administered in accordance with regulations at 29 CFR Part 1908. These regulations provide, among other things, rules and procedures for State consultants performing worksite visits. In the present **Federal Register** notice, OSHA proposes several revisions to these rules, and requests interested members of the public to submit any data, views, or arguments relevant to these proposed changes, during a 90-day public comment period.

II. Proposed Changes to 29 CFR 1908

Employee Walkaround Rights

Current consultation program regulations provide that employees, representatives of employees, and members of joint workplace safety and health committees may be allowed to accompany the consultant and the employer's representative during the on-site consultative visit "to the extent desired by the employer" [29 CFR 1908.6(c)(2)]. Although these regulations encourage, but do not require, the employer to accord "walkaround" rights to employee representatives, OSHA's procedures have for some time required that union representatives should be accorded walkaround rights during consultation visits to unionized workplaces. [*Consultation Policies and Procedures Manual*, TED 3.5B Chap.VI, p. VI–9 (1996)]. One of the goals established for OSHA by the National Performance Review in a 1995 report was to revise agency procedures to assure that employees are included in the consultation walkaround. [National Performance Review, *The New OSHA: Reinventing Worker Safety and Health* (May, 1995.)] Finally, the newly-enacted Compliance Assistance Authorization Act directs OSHA to require that states carrying out consultation visits "ensure that on-site consultations * * * include provision for the participation by employees."

OSHA strongly believes that active employee participation is essential to the success of any systematic effort to address health and safety issues in the workplace. Although the role of employees in consultation visits differs from their role in OSHA enforcement inspections, where employee representatives have statutory rights to participate both in the investigation and in subsequent enforcement litigation, there are many potential advantages to active employee involvement during a consultant's worksite visit. Employees often have firsthand knowledge of hazards in the workplace. Sometimes, employees are in a position to make valuable suggestions which can be of assistance in formulating the consultant's recommendations. OSHA also believes employee involvement during a consultation visit can be a stimulus to further employee involvement in an employer's ongoing health and safety effort.

In order to assure fuller participation by employees in the consultation process, OSHA is proposing to amend 29 CFR Part 1908 to expressly provide authorized employee representatives a right to accompany the consultant during the physical inspection of the workplace. Where there is no authorized employee representative, or if the representative cannot be determined, the consultant shall speak with a reasonable number of employees concerning matters of safety and health in the workplace. These general provisions are derived from the current employee walkaround provisions in 29 CFR Part 1903, OSHA's regulations on the conduct of enforcement visits. OSHA is further proposing that authorized employee representatives should be afforded the opportunity to participate in opening and closing conferences with the consultant (either separately or jointly with the employer).

Employee Notification of Hazards

The legislative history of the Compliance Assistance Authorization Act reflects a congressional expectation that in carrying out the mandate to provide for employee participation, information on hazards identified by the consultant and corrective actions proposed will be made available to

affected employees. [House Report 105–444 105th Cong., 2d Sess., 6–7]. The National Performance Review had earlier recommended that employees be furnished copies of the consultant's written report at the conclusion of each consultation visit. However, as is explained elsewhere in the present **Federal Register** notice, disclosure of the complete written report has traditionally been extremely limited. Present regulations protect the employer's right to keep the consultant's report confidential from OSHA enforcement officials [29 CFR 1908.7(a)(3); 1908.7(c)(3)]. It has also been the longstanding practice of state consultation agencies not to disclose these reports to anyone but the subject employer.

OSHA believes it is essential to an effective safety and health management system that employees be made aware of any significant hazards identified during the course of a consultation visit. At the same time, a consultation visit is a voluntary service provided to small employers who typically would be unable to afford the services of paid safety or health consultants. The visit is not an enforcement inspection which leads to the issuance of citations; involves the creation of inspection records, many of which will ultimately be subject to public disclosure; or has provisions that allow the employer to contest alleged violations. Consultation visits and subsequent reports reflect the best professional judgement of consultants, but the consultant's report of hazards does not have to meet all the legal standards required for the issuance of a citation for violation of OSHA regulations and/or the OSH Act. Further, the report often contains many details about business practices, processes and personnel not ordinarily made public by the employer. Moreover, the success of OSHA's consultation program depends to a great extent on the voluntary cooperation of employers who request its services; the confidentiality of the consultant's report has long been viewed by OSHA and state consultants as essential to continued participation by employers in this important program.

OSHA proposes to amend Part 1908 to require that a list of serious hazards and hazards addressed by OSHA rules that are identified by the consultant, the corrective action proposed, and the dates for completion of corrective action be forwarded to the employer at the same time the consultant's written report is furnished. OSHA also proposes that each employer be required to post this list in a prominent place that is readily observable by all affected employees, for 3 working days or until hazards are corrected, whichever is later. If an authorized employee representative has participated in the consultation visit, a copy of the posted list will be furnished directly to the authorized representative. At the same time, as discussed below, language would be added to 29 CFR part 1908 making clear that the full text of the consultant's written report to the employer remains confidential, and, except in certain unusual circumstances, can be disclosed to others only with the employer's consent.

Existing 29 CFR 1908.7(c), which deals with the effect of a prior consultation visit in the event of a subsequent OSHA enforcement inspection, is being updated. The current provision specifies at 1908.7(c)(3) that an employer is not required to furnish a copy of the consultant's written report to the compliance officer, except to the extent that disclosure of information in the report is required by 29 CFR 1910.20. The referenced regulation, OSHA's rule requiring that certain employee medical and exposure records be made available to employees and to OSHA, has been recodified at 29 CFR 1910.1020. Moreover, there are now a number of other provisions included in OSHA standards or regulations which require the sharing of safety- or health-related information which may in some instances be included in consultant's reports, [*see, e.g.* 29 CFR 1910.110(c)(3) (employee access to chemical process hazard analyses)]. Paragraph 1908.7(c) is therefore being updated to assure that information whose disclosure is specifically required by an OSHA standard or regulation must continue to be made available by the employer when such information has been included in a consultant's report.

Disclosure of Consultation-Related Information

1. Consultation Program Data

During the course of a consultation visit, the consultant gathers information and data about work processes, business practices, safety procedures, and accident or injury experience at an employer's workplace, all of which are needed in formulating advice for the employer on ways of complying with OSH Act requirements. Such information, gathered from employers during the course of a workplace consultation visit, is normally retained by the state consultation agency. OSHA regulations have always maintained the strict confidentiality of employer-specific consultation information from OSHA enforcement personnel, in order to assure employers who avail themselves of this service that their use of the consultation service will not be the basis for scheduling an OSHA enforcement inspection or for other enforcement-related purposes [29 CFR 1908.7(a)(3)].

Occasionally, non-enforcement federal OSHA personnel obtain access to confidential material during the course of evaluating state consultation programs or rendering program assistance. OSHA has had access to such information more frequently in recent years as the agency has begun to incorporate consultation program information in federal databases such as the Integrated Management Information System (IMIS.) Federally-collected management data includes, among other information, worksite-specific injury and illness rates for employers visited by consultants. In addition, some limited sharing of information with enforcement personnel is necessary to carry out the Safety and Health Achievement Recognition Program (SHARP), under which employers who successfully complete a consultation visit and satisfy certain other requirements may request an exemption from OSHA inspections [29 CFR 1908.7(b)(4)]. Lists of employers who have qualified for such an exemption must, of course, be made available to OSHA enforcement staff.

Consultation-related information retained by federal OSHA is generally subject to the federal Freedom of Information Act (FOIA), 5 U.S.C. 552. The FOIA provides that documents maintained by federal agencies must be disclosed upon request unless one of the nine exemptions listed in the Act applies. Exemption 4 of the FOIA exempts from disclosure "commercial or financial information obtained from a person [that is] privileged or confidential." Information that relates to an employer's business decision to engage a consultant, and workplace information reviewed by that consultant during the visit, certainly qualifies as "commercial" information as that term has been broadly construed by the courts. Information collected by consultants under 29 CFR 1908 is clearly "obtained from a person" within the meaning of FOIA.

OSHA believes such information also qualifies as "confidential", the remaining criterion for non-disclosure under Exemption 4. Federal court decisions establish that commercial information voluntarily submitted by a person to the government is "confidential" if it is the kind of information not customarily made public by the person from whom it was obtained. [*Critical Mass Energy Project* v. *NRC*, 975 F.2d 871 (*"Critical Mass III"*)(D.C. Cir.1992)]. Even if submission of the information was mandatory, the information qualifies as confidential under Exemption 4 if disclosure would impair the effectiveness of the government program under which the information was submitted. [*Critical Mass Energy Project* v. *NRC*, 931 F.2d 939, 944-45 (*"Critical Mass II"*)(D.C. Cir. 1990)].

As discussed above, 29 CFR Part 1908 provides that information about consultation visits must be kept confidential from OSHA enforcement personnel. The present regulation does not specifically address the broader issue of whether information concerning consultation visits to particular employers should be subject to public disclosure. However, as the federal grant agency and overall federal coordinator of the on-site consultation program, OSHA is well aware that state consultation providers have historically treated information about on-site consultation visits as a confidential business service to the employers who request it. OSHA believes that an employer's purely voluntary decision to invite a federally-funded consultant to evaluate conditions in his workplace, like the decisions made by other employers to retain paid, private sector health and safety consultants, is a decision an employer may, but should not be required to, disclose to the general public. OSHA's experience is that data and observations gathered by the consultant during the visit are also held in confidence by state agencies, in the same way a private consultant's recommendations would not ordinarily be made public by an employer.

Furthermore, a long-standing concern of consultation program administrators is that unwarranted publication of employer lists and other employer-specific program data will discourage many employers from availing themselves of this service. OSHA has long recognized the importance of preserving the confidentiality of employer-specific consultation program information, e.g., 42 FR 41386 at 41388 (August 16, 1977) (noting OSHA's policy that "the identity of employers receiving on-site consultation is not revealed").

Therefore, OSHA proposes to add a provision to existing Part 1908 specifying that consultation program information which identifies specific employers who have requested the services of a consultant under 29 CFR Part 1908 shall be kept confidential. This confidentiality requirement would not apply to the furnishing of certain types of employer specific data, such as the hazards identified and abatement suggested by the consultant, which must be provided to an employer's own workers and their representatives under the new consultation procedures in today's proposed rule. Because OSHA has an ongoing need for accurate and comprehensive consultation data to administer the consultation program and to evaluate its own performance and that of the states, OSHA retains a right of access to this data.

2. Consultant's Written Report

Every consultative visit under Part 1908 results in the preparation of a written report to the employer, documenting in detail the conditions observed by the consultant inside the workplace. Such reports can include descriptions not only of processes, methods and materials used in the employers's business but personnel and administrative information. Moreover, because of OSHA's emphasis on evaluating the quality of the employer's accident prevention programs, [*see* 1908.6(g) and 1908.7(b)(4)], many reports will also include critiques of employee and manager performance that relate to the effectiveness of the safety and health program. OSHA does not normally obtain a copy of the consultant's written report, and the employer is not required to furnish one should OSHA request to see it during a subsequent inspection [1908.7(c)(3)]. These reports have long been treated as confidential by state consultation agencies and by participating employers. As explained earlier in connection with consultation program data, state consultation agencies have advised OSHA that routine disclosure of these reports would adversely affect employer participation in the consultation program.

The proposed rule specifically recognizes the confidential nature of the consultant's written report and forbids the disclosure of the report except to the employer, and to OSHA upon request. OSHA retains the right to use a consultant's report in appropriate enforcement proceedings. Situations in which a consultation report might become relevant would include, among others, an enforcement action triggered by an employer's refusal to correct serious hazards identified by a consultant, or an investigation of false statements, or deliberately concealed hazards. Inquiries to OSHA's compliance staff during the preparation of the present proposed rule indicate that consultants' written reports have been used in extremely rare circumstances, probably no more than a half-a-dozen times in the last ten years, typically in cases involving serious accidents where there were allegations of employer bad faith. OSHA fully expects, based on past agency experience, that the enforcement cases in which it will be necessary to obtain and use consultant's reports developed under Part 1908 will continue to be extremely rare. OSHA intends to provide guidance concerning circumstances under which the Assistant Secretary may request a Consultant's written report, after discussion with the State. Finally, the access rights of employees and others to certain specific types of information identified by particular OSHA regulations and standards such as 1910.1020 will continue to apply to information incorporated in consultation reports. Under the proposed new regulation, as under existing Part 1908, the employer would of course be free to voluntarily disclose all or parts of the consultant's report.

The proposed changes to OSHA consultation regulations would be applicable only to information related to or generated by consultation visits scheduled or carried out under 29 CFR Part 1908. The OSHA consultation program is a unique federally-funded, state-administered consultation service. OSHA believes that the consultation program is carefully balanced to serve the objective of providing effective worker protection while at the same time affording a limited employer confidentiality as an incentive to employer participation. Because the OSHA consultation mechanism is a unique business service with numerous built-in compliance safeguards, the qualified confidentiality accorded to the consultant's written report and other employer-identifying information by the proposed regulation provides no basis for inferring a broader evidentiary privilege for employer audits or other self-evaluation materials.

Revisions Delineating the Relationship With OSHA Enforcement

Since its inception, OSHA has conducted the on-site consultation program independently from OSHA enforcement. Congress has endorsed OSHA's practice of independent management of the consultation program in the Compliance Assistance Authorization Act (CAAA), which specifies that "(a)ctivities under this section shall be conducted independently of any enforcement activity." Nevertheless, the need to assure that workers are fully protected,

as well as the practical demands of program administration, require some limited coordination between these two OSHA activities. Thus, for example, OSHA regulations have long provided that employers failing to correct serious hazards identified by consultants be referred to enforcement, 29 CFR 1908.7(f)(4), and also provide for a one-year exemption from general schedule programmed inspections for employers who complete a consultation visit and meet the requirements set forth in paragraph 1908.7(b)(4). Congress itself has implicitly recognized the importance of limited coordination between OSHA's consultation and enforcement activities by incorporating comparable requirements in the CAAA.

Because an effective balance between consultation and enforcement is extremely important to OSHA as well as being an issue of interest to most affected parties, OSHA's proposed revisions to Part 1908 address this relationship in detail. OSHA's strategic plan includes the consultation projects as full partners. It is therefore important for the agency to eliminate administrative procedures that would result in duplication of effort between compliance and cooperative programs.

One area of potential duplication of effort is in the conduct of general schedule inspections at sites that receive consultation service, and are working within established time frames to correct hazards identified by the consultant. Current OSHA procedures provide that general schedule compliance inspections shall not be conducted at worksites where a consultation visit is "in progress," a time period which presently is defined as "from the beginning of the opening conference through the end of the closing conference". [29 CFR 1908.7(b)(1)]. The agency believes that, for the working conditions, hazards or situations covered during the visit, the term "visit in progress" used in paragraph 1908.7(b) should extend from the date of the opening conference to the end of the correction due date agreed upon between the consultant and the employer, a redefinition reflected in the rule proposed today. This would avoid the duplication (and the burden to the small employer) of conducting an OSHA general schedule inspection on the heels of a consultation visit, while the employer is working to correct hazards. Proposed new language in part 1908 for employee notification about hazards and correction due dates, and OSHA's continuing obligation to perform certain types of inspections/investigations such as imminent danger, fatality or catastrophe, and complaint inspections, will ensure that adequate safeguards are in place for employee protection.

OSHA is also proposing to change paragraph 1908.7(b)(4), the Inspection Exemption Through Consultation (IETC), to reflect OSHA's current policy under the Safety and Health Achievement Recognition Program (SHARP). The SHARP policy, which has been in effect since 1995, also achieves one of the objectives of the Compliance Assistance Authorization Act. OSHA experience has shown that combining a national recognition program with an exemption program fosters a partnership that works for employees, employers, and for OSHA. SHARP achieves the unique objective of according national recognition and inspection exemption to small employers operating exemplary safety and health management systems at their worksites. The revised paragraph 1908.7(b)(4) incorporates the basic requirements of the SHARP and is consistent with the exemption program requirements outlined in the CAAA, now codified as section 21(d)(4) of the OSH Act. As an editorial matter, the generic term "recognition and exemption program" is used in the proposed regulation in lieu of terms like SHARP or IETC.

Consultation Programs and State Plans

The importance of recognition and exemption programs is also reflected in a proposed revision to paragraph 1908.1(c). That provision presently specifies that in states which administer OSHA-approved state plans, the provisions of Part 1908 which affect federal enforcement do not apply directly to state-administered enforcement programs, but the states must adopt enforcement provisions which are "at least as effective" as those of federal OSHA. The agency proposes to add specific requirements for recognition and exemption programs comparable to that outlined in the revised Part 1908 and mandated by section 21(d)(4) of the Act.

The recognition and exemption program involves coordination between two aspects of OSHA's program: the OSHA consultation service, which must conduct the consultation visit and employer evaluation specified in 21(d)(4); and OSHA's enforcement program, which honors the exemption from inspections granted to employers who successfully complete the relevant requirements. One potentially complicating factor in implementing the CAAA inspection exemption scheme is the division of work between federal OSHA and states which have assumed responsibility for various occupational safety and health issues under federally-approved state plans as provided by section 18 of the Act.

States may assume responsibility for occupational safety and health enforcement within their state by obtaining federal approval of a state plan under section 18 of the Act. Twenty-three states and two territories currently exercise enforcement responsibility under approved state plans. (A comprehensive listing of state plan states is set forth in 29 CFR Part 1952.) Enforcement programs under approved plans are not required to be identical to that of federal OSHA, but must be "at least as effective."

States that wish to carry out federally-funded on-site consultation services may do so by entering into cooperative agreements with OSHA under 29 CFR Part 1908 and section 21 of the Act. Many states which have entered into consultation agreements also separately administer a state enforcement program under a federally-approved state plan. Other states, however, have elected not to assume enforcement responsibility under a state plan, but only to conduct on-site consultation services within their state by entering into cooperative agreements under section 21 of the Act and Part 1908. Enforcement in these states is provided by federal OSHA. Finally, a few states and territories (currently Arizona; Indiana; Kentucky; Nevada; New Mexico; Washington; Puerto Rico; and the U.S. Virgin Islands) administer both enforcement and consultation service programs as part of their state plan.

As already discussed, exemption and recognition programs under section 21(d) of the Act serve the important purposes of conserving enforcement resources by diverting them away from sites which already are undergoing a comprehensive on-site safety and health review, and of worker protection by giving an incentive to small employers to undertake a program of hazard review and correction with participation by employees. Accordingly, the new paragraph 1908.1 would specify that every state providing a program of consultation services under a cooperative agreement pursuant to section 21(d) of the Act shall provide a recognition and exemption program which meets the criteria and procedures in paragraph 1908.7(b)(4). This basic program element must be provided in all states which provide consultation services under section 21(d) of the OSH Act and 29 CFR Part 1908, whether enforcement responsibility is carried out under a state plan or by federal OSHA.

States which elect to carry out both enforcement and consultation services under a state plan pursuant to section 18 of the Act, in lieu of a cooperative agreement under section 21(d), would not be directly bound by requirements in section 21(d) and 29 CFR Part 1908. However, some form of inspection exemption and recognition program is, in OSHA's judgment, an essential element in any state program which seeks to meet the "at least as effective as " criterion of section 18(c) of the Act. For this reason, the proposed 29 CFR 1908.1 specifies that the six states and two territories which provide on-site consultation services under the auspices of the OSHA-approved state plan, rather than a cooperative agreement, must provide these services in a manner "at least as effective as" the program established under Part 1908. In view of Congress' explicit reference in the CAAA to employee participation during consultation visits, OSHA will expect state plan-based consultation programs to offer comparable notice and participatory opportunities to those afforded under the proposed new Part 1908. Additionally, the proposed revisions to section 1908.1 specify that states providing on-site consultation under their state plan must either adopt the exemption and recognition program outlined in paragraph 1908.7(b)(4) or offer an "at least as effective" alternative.

Miscellaneous Editorial Changes

The definition of "employer" in 1908.2 is being modified to reflect recent congressional action amending OSH Act coverage to include the U.S. Postal Service. Definitions of various terms used in connection with the proposed program revisions discussed above, such as "recognition and exemption program," "full service consultation visit," and "list of hazards" are also proposed, as well as revised definitions of "serious" and "other than serious" hazards, which are reworded to remove references to OSHA's superseded Field Operations Manual. In section 1908.3, editorial changes have been made to more clearly set forth the existing rule that a state which administers a private-sector consultation program as part of an approved state plan under section 18 of the Act may not additionally administer a consultation program under Part 1908.

III. Preliminary Economic Analysis

The modifications to 29 CFR Part 1908 proposed today will not have any significant measurable economic impact either on employers or state consultation agencies. The OSHA on-site consultation program is entirely voluntary both for employers who seek this free service and for states which provide it. The proposal that consultation visits include an opportunity for employee participation would add slightly to the time spent by state consultants in conducting a visit. OSHA believes, however, that any additional demand on resources would be justified by the benefits of employee participation. A review of our data indicates that in fiscal year 1998, there was some form of employee participation in all consultation visits. Employers allowed participation which included opening and closing conferences, walkaround, and employee interviews, voluntarily. The data also indicates that 100 percent of all visits included employee participation in the walkaround. This new requirement is a codification of what already exists in practice, and will ensure that employees are afforded an opportunity to participate in all aspects of the consultation visit. The cost to employers in continuing to allow such participation is minimal. Employee participation will produce heightened awareness by the workforce and will result in a positive contribution to ensure a safer and healthier workplace. Further, employers receive these consultative services free of charge. Similarly, OSHA believes that the proposed amendment to require employers to post the list of serious hazards and hazards addressed by OSHA rules that are identified by the consultant, the corrective action proposed, and the dates for completion of corrective action will slightly increase the responsibilities of participating employers, but is offset by the value of greater employee participation in the consultation process and enhanced employee awareness. Finally, OSHA's proposal to specifically articulate in Part 1908 the agency's longstanding policy concerning public disclosure of employer-specific consultation information does not appear to impose any economic impact.

In terms of economic impact, the rule proposed today does not constitute a significant regulatory action, within the meaning of Executive Order 12866, because it does not have an annual effect on the economy of $100 million or more; materially affect any sector of the economy; interfere with the programs of other agencies; materially affect the budgetary impact of grant or entitlement programs; nor result in other adverse effects of the kind specified in the Executive Order. However, the rule raises novel legal and policy issues, and has been submitted to OMB for review under Executive Order 12866.

IV. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) [(5 U.S.C. 601 *et seq.*)], the Assistant Secretary hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The state agencies which have elected to furnish on-site consultation services under cooperative agreements with OSHA are not covered entities under the RFA. Since the consultation program is historically targeted to small, high-hazard workplaces, employers affected by the proposed regulation would tend to include a substantial number of small entities, but, as indicated in the foregoing discussion of regulatory impacts, the proposed rule should have virtually no measurable economic impact on employers.

V. Paperwork Reduction Act

This proposed regulation contains collection of information requirements. These collection of information requirements are identical to the collection of information requirements in the existing consultation agreement regulations, except that OSHA is proposing to add a new requirement for participating employers to post a list of serious hazards identified during the visit, the corrective action proposed by the consultant, and the correction due dates. Under the Paperwork Reduction Act of 1995, all collection of information requirements must be submitted to OMB for approval. The existing collection of information requirements had been approved by OMB under control number 1218–0110. However, these approvals were inadvertently allowed to lapse. Therefore, as a first step in its review of these regulations, OSHA on December 8, 1998 published in the **Federal Register** a request for public comment prior to requesting OMB reinstatement of these approvals [63 FR 67702]. The **Federal Register** notice on information collection for this rule closed without comment. It is currently undergoing review by OMB.

VI. Federalism

The proposed revisions to 29 CFR Part 1908 have been reviewed under Executive Order 12612, Federalism (52 FR 41685; October 30, 1987), which sets forth fundamental federalism principles, federalism policymaking criteria, and provides for consultation by federal agencies with state or local governments

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when policies are being formulated which potentially affect them.

Federal OSHA meets regularly with representatives of state-operated on-site consultation programs, both individually and at meetings of OSHCON (the National Association of Occupational Safety and Health Consultation Programs). OSHA additionally has established a Consultation Steering Committee on which both OSHA and the states are represented. OSHA also maintains extensive and frequent communications with its state plan partner agencies, both individual states and through the Occupational Safety and Health State Plan Association (OSHSPA), the association of state plan states. The proposed revisions to Part 1908 have been discussed with all affected states via OSHCON, the Consultation Steering Committee and the OSHSPA, and many state comments are already reflected in the proposal being issued today. The states will, of course, also have an opportunity to submit comments during the 90-day public comment period which opens today.

The revisions to 29 CFR Part 1908 proposed today are generally consistent with the requirements and procedures under which OSHA and the states have administered the consultation program for many years. Two of the procedural requirements which are being strengthened, employee participation rights and mandatory recognition and exemption programs, have been specifically identified by Congress as essential program elements in the recently-enacted Compliance Assistance Authorization Act. The remaining significant revision, which involves the confidentiality of reports and data generated by the consultation program, generally reflects the views historically held by states that this information should be kept confidential. However, the revisions also provide for certain limited use by OSHA of this information, a proposed provision which seeks to balance the states' need to minimize unwarranted disclosure of business information with OSHA's need for the data under certain circumstances. These issues have been extensively discussed with the states. OSHA has reviewed the proposed revisions and finds them to be consistent with the policymaking criteria outlined in Executive Order 12612. It should be noted that cooperative agreements pursuant to section 21 of the OSH Act, and state plans submitted and approved under section 18 of the Act, are entirely voluntary federal programs which do not involve imposition of an intergovernmental mandate [2 U.S.C. 1502, 658(5)].

VII. Public Participation

Interested persons including state consultation agencies, employers and employees who have experience with or an interest in the consultation program are invited to submit written data, views and arguments with respect to the proposed amendments to Part 1908 during a 90-day public comment period. OSHA is interested, among other things, in the experiences of State consultation agencies and other affected parties regarding the following matters:

—How would the requirements for employee participation and notification of hazards affect the willingness of employers to participate in the consultation program?

—What proportion of site visits by federally-funded consultants currently involve some form of employee participation? How many involve complete walkaround participation? What proportion of sites are union and nonunion?

—What types of trade secret or other confidential information are typically included in a consultant's report?

—Are the names of employers who request consultation usually publicly disclosed in your State? How is employer-specific information such as the consultant's report treated under State disclosure laws?

Would employers be less likely to request federally-funded consultation services if participation in this program is not confidential?

Comments must be received on or before _____[date], and must be submitted in quadruplicate to Docket No. _____, Docket Office, Room N–2625, U.S. Department of Labor-OSHA, 200 Constitution Ave., N.W., Washington, DC 20210. Comments under 10 pages long may be sent via telefax to (202) 219–5546 but must be followed by a mailed submission in quadruplicate. Written submissions must clearly identify the issue addressed and the position taken with regard to each issue. All comments submitted to the docket during this proceeding will be open for public inspection and copying at the location specified above. No hearing will be held on this proposal.

VIII. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under sections 7(c), 8, and 21(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 670) and Secretary of Labor's Order No. 6–96 (62 FR 111, January 2, 1997).

List of Subjects in 29 CFR Part 1908

Confidential business information, Occupational safety and health, Small business.

Signed this 24th day of June, 1999 in Washington, DC.

Charles N. Jeffress,

Assistant Secretary of Labor.

It is proposed to amend 29 CFR part 1908 as set forth below:

PART 1908—CONSULTATION AGREEMENTS

The authority citation for 29 CFR part 1908 would be revised to read as follows:

Authority: Secs. 7(c), 8, 21(d), Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 670) and Secretary of Labor's Order No. 6–96 (62 FR 111 January 2, 1997).

2. Section 1908.1 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 1908.1 Purpose and scope.

(a) This part contains requirements for Cooperative Agreements between States and the Federal Occupational Safety and Health Administration (OSHA) under sections 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) and section 21(d), the Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998 (which amends the Occupational Safety and Health Act), under which OSHA will utilize State personnel to provide consultative services to employers. Priority in scheduling such consultation visits shall be assigned to small businesses which are in higher hazard industries or have the most hazardous conditions at issue in the request. Consultation programs operated under the authority of a State plan approved under Section 18 of the Act (and funded under Section 23(g), rather than under a Cooperative Agreement) which provide consultative services to private sector employers, must be "at least as effective as" the section 21(d) Cooperative Agreement programs established by this Part. The service will be made available at no cost to employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment which are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from

exposure to hazardous workplace conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but off-site assistance may also be provided by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. At the worksite, the consultant will, within the scope of the employer's request, evaluate the employer's program for providing employment and a place of employment which is safe and healthful, as well as identify specific hazards in the workplace, and will provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified.

* * * * *

(c) States operating approved Plans under section 18 of the Act shall, in accord with section 18(b), establish enforcement policies applicable to the safety and health issues covered by the State Plan which are at least as effective as the enforcement policies established by this part, including a recognition and exemption program.

3. Section 1908.2 would be amended by revising the definitions of "Employee", "Employer", "Other-than-serious hazards", and "Serious hazard", and by adding the definitions of "List of Hazards", "Programmed inspection", "Programmed inspection schedule", and "Recognition and exemption program" to read as follows:

§ 1908.2 Definitions.

* * * * *

"Employee" means an employee of an employer who is employed in the business of that employer which affects interstate commerce.

"Employer" means a person engaged in a business who has employees, but does not include the United States (not including the United States Postal Service), or any State or political subdivision of a State.

* * * * *

"List of Hazards" means a list of serious hazards and hazards addressed by OSHA rules that are identified by the consultant, the corrective actions proposed by the consultant, and the correction due dates agreed upon by the employer and the consultant. Hazards addressed by OSHA rules shall be included in the list without regard to classification as "serious" or "other-than-serious." The List of Hazards will accompany the consultant's written report but is separate from the written report to the employer.

* * * * *

"Other-than-serious hazard" means any condition or practice which would be classified as an other-than-serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA field instructions or approved State Plan counterpart.

"Programmed inspection" means OSHA worksite inspections which are scheduled based upon objective or neutral criteria. These inspections do not include imminent danger, fatality/catastrophe, and formal complaints.

"Programmed inspection schedule" means OSHA inspections scheduled in accordance with criteria contained in the current OSHA field instructions or approved State Plan counterpart.

* * * * *

"Recognition and exemption program" means an achievement recognition program of the OSHA consultation services, which recognizes small employers who operate, at a particular work site, an exemplary program that results in the immediate and long term prevention of job related injuries and illnesses.

"Serious hazard" means any condition or practice which would be classified as a serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA field instructions or approved State Plan counterpart, except that the element of employer knowledge shall not be considered.

* * * * *

4. Section 1908.3 would be amended by revising paragraph (a) to read as follows:

§ 1908.3 Eligibility and funding.

(a) *State eligibility.* Any State may enter into an Agreement with the Assistant Secretary to perform consultation for private sector employers; except that a State having a Plan approved under section 18 of the Act is eligible to participate in the program only if that Plan does not include provisions for federally funded consultation to private sector employers as a part of its plan.

* * * * *

5. Section 1908.5 would be amended by revising paragraphs (a)(3) and (b)(1) to read as follows:

§ 1908.5 Requests and scheduling for onsite consultation.

(a) * * *

(3) *Scope of service.* In its publicity for the program, in response to any inquiry, and before an employer's request for a consultative visit may be accepted, the State shall clearly explain that the service is provided at no cost to an employer with Federal and State funds for the purpose of assisting the employer in establishing and maintaining effective programs for providing safe and healthful places of employment for employees, in accord with the requirements of the applicable State or Federal laws and regulations. The State shall explain that while utilizing this service, an employer remains under a statutory obligation to provide safe and healthful work and working conditions for employees. In addition, while the identification of hazards by a consultant will not mandate the issuance of citations or penalties, the employer is required to take necessary action to eliminate employee exposure to a hazard which in the judgment of the consultant represents an imminent danger to employees and to take action to correct, within a reasonable time, any serious hazards that are identified. The State shall emphasize, however, that the discovery of such a hazard will not initiate any enforcement activity, and that referral will not take place, unless the employer fails to eliminate the identified hazard within the established time frame. The State shall also explain the requirements for participation in the recognition and exemption program as set forth in § 1908.7(b)(4).

(b) *Employer requests.* (1) An on-site consultative visit will be provided only at the request of the employer, and shall not result from the enforcement of any right of entry under State law. When taking a request for assistance, the Project shall explain the employer's obligation to post the List of Hazards accompanying the consultant's written report.

* * * * *

6. Section 1908.6 would be amended by revising paragraphs (b), (c)(2), (d), (e)(7), (e)(8), and (f)(2); by redesignating (g) as (g)(1) and (h) as (h)(1); and by adding new paragraphs (g)(2), and (h)(2) as follows:

§ 1908.6 Conduct of a visit.

(a) * * *

(b) *Structured format.* An initial on-site consultative visit will consist of an opening conference, an examination of those aspects of the employer's safety and health program which relate to the scope of the visit, a walk through of the workplace, and a closing conference. An initial visit may include training and education for employers and employees, if the need for such training and education is revealed by the walk

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through of the workplace and the examination of the employer's safety and health program and if the employer so requests. The visit shall be followed by a written report to the employer. Additional visits may be conducted at the employer's request to provide needed education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards, or as necessary to verify the correction of serious hazards identified during previous visits. A compliance inspection may, in some cases, be the basis for a visit limited to education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards.

(c) * * *

(2)(i) A representative authorized by affected employees shall be afforded an opportunity to accompany the consultant and the employer's representative during the physical inspection of the workplace. Additional employees (such as representatives of a joint safety and health committee, if one exists at the worksite) may be permitted to accompany the consultant during the physical inspection, where the consultant determines that such additional representatives will further aid the visit.

(ii) If there is no authorized representative of employees, or if the consultant is unable with reasonable certainty to determine who is such a representative, the consultant shall confer with a reasonable number of employees concerning matters of occupational safety and health.

(iii) The consultant is authorized to deny the right to accompany under this section to any person whose conduct interferes with the orderly conduct of the visit.

(d) *Opening and closing conferences.* (1) The consultant shall attempt to inform all affected employees of the purpose of the consultation visit, and shall encourage a joint opening conference with employer and employee representatives. If there is an objection to a joint conference, the consultant shall conduct separate conferences with employer and employee representatives.

(2) In addition to the requirements of § 1908.6(c), the consultant shall, in the opening conference, explain to the employer the relationship between on-site consultation and OSHA enforcement activity and shall explain the obligation to protect employees in the event that certain hazardous conditions are identified.

(3) During the opening conference, the consultant shall emphasize the employer's obligation to post the List of Hazards accompanying the consultant's written report as described below in § 1908.6(e)(8).

(4) At the conclusion of the consultation visit, the consultant will conduct a closing conference with employer and employee representatives, jointly or separately. The consultant shall describe hazards identified during the visit, and other pertinent issues related to employee safety and health.

(e) * * *

(7) At the time the consultant determines that a serious hazard exists, the consultant shall assist the employer to develop a specific plan to correct the hazard, affording the employer a reasonable period of time to complete the necessary action. The State shall provide, upon request from the employer within 15 working days of receipt of the consultant's report, an opportunity for an expeditious informal discussion with the consultation manager regarding the period of time established for the correction of a hazard or any other substantive finding of the consultant.

(8) Upon receipt, the employer shall post the List of Hazards accompanying the consultant's written report, and notify affected employees when hazards are corrected. The List of Hazards shall be posted, unedited, in a prominent place where it is readily observable by all affected employees for 3 working days, or until the hazards are corrected, whichever is later. The consultation project shall make available a copy of the List of Hazards to the authorized representative of affected employees.

(f) * * *

(2) An employer must also take the necessary action in accordance with the plan developed under § 1908.6(e)(7) to eliminate or control employee exposure to any identified serious hazard, and meet the posting requirements of § 1908.6(e)(8). In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a followup visit, or take similar action.

* * * * *

(g) * * *

(2) Because the consultant's written report contains information considered confidential, and because disclosure of such reports would adversely affect the operation of the OSHA consultation program, the consultant's written report shall not be disclosed except to the employer for whom it was prepared and, upon request, to OSHA. OSHA may use information contained in the report in enforcement proceedings which result from an employer's failure to correct hazards identified during a consultation visit under this Part, or which involve misconduct relating to an employer's participation in the consultation program, or other enforcement proceedings to which the information is relevant.

(h) * * *

(2) Disclosure of consultation program information which identifies employers who have requested the services of a consultant would adversely affect the operation of the OSHA consultation program as well as breach the confidentiality of commercial information not customarily disclosed by the employer. Accordingly, such information shall be kept confidential. The State shall provide consultation program information requested by OSHA, including information which identifies employers who have requested consultation services. OSHA may use such information to administer the consultation program and to evaluate state and federal performance under that program, but information which identifies specific employers shall not otherwise be disclosed.

7. Section 1908.7 would be amended by revising paragraphs (a)(3), (b)(1), (b)(4), (b)(5), and (c)(3) to read as follows:

§ 1908.7 Relationship to enforcement.

(a) * * *

(3) The identity of employers requesting on-site consultation, as well as the file of the consultant's visit, shall not be forwarded or provided to OSHA for use in any compliance activity, except as provided for in § 1908.6(f)(1) (failure to eliminate imminent danger), § 1908.6(f)(4) (failure to eliminate serious hazards), § 1908.6(g)(2) (confidentiality of consultant's written report), § 1908.6(h)(2) (confidentiality of employer specific data), and § 1908.7(b)(4) (recognition and exemption program).

(b) *Effect upon scheduling.* (1) An on-site consultative visit already in progress will have priority over OSHA compliance inspections except as provided in § 1908.7(b)(2). The consultant and the employer shall notify the compliance officer of the visit in progress and request delay of the inspection until after the visit is completed. An on-site consultative visit shall be considered "in progress" in relation to the working conditions, hazards, or situations covered by the visit from the beginning of the opening conference through the end of the correction due dates and any extensions thereof. OSHA may, in exercising its authority to schedule compliance inspections, assign a lower priority to worksites where consultation visits are pending.

* * * * *

(4) The recognition and exemption program of the Occupational Safety and Health Administration (OSHA) consultation services provides incentives and support to smaller, high-hazard employers to work with their employees to develop, implement, and continuously improve the effectiveness of their workplace safety and health management system.

(i) *Programmed Inspection Schedule.* (A) When an employer requests participation in a recognition and exemption program, and undergoes a consultative visit covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that were identified during the course of the consultative visit within established time frames; has began to implement all the elements of an effective safety and health program; and agrees to request a consultative visit if major changes in working conditions or work processes occur which may introduce new hazards, OSHA's Programmed Inspections at that particular site may be deferred while the employer is working to achieve recognition and exemption status.

(B) Employers who meet all the requirements for recognition and exemption will have the names of their establishments removed from OSHA's Programmed Inspection Schedule for a period of not less than one year. The exemption period will extend from the date of issuance by the Regional Office of the certificate of recognition.

(ii) *Inspections.* OSHA will continue to make inspections in the following categories at sites that achieved recognition status and have been granted exemption from OSHA's Programmed Inspection Schedule; and at sites granted inspection deferrals as provided for under § 1908.7(b)(4)(i)(A):

(A) Imminent danger.

(B) Fatality/Catastrophe.

(C) Formal Complaints.

(5) When an employer requests consideration for participation in the recognition and exemption program under § 1908.7(b)(4), the provisions of § 1908.6(e)(7), (e)(8), (f)(3), and (f)(5) shall apply to other-than-serious hazards as well as serious hazards.

(c) * * *

(3) In the event of a subsequent inspection, the employer is not required to inform the compliance officer of the prior visit. The employer is not required to provide a copy of the state consultant's written report to the compliance officer, except to the extent that disclosure of information contained in the report is required by 29 CFR 1910.1020 or other applicable OSHA standard or regulation.

* * * * *

[FR Doc. 99–16592 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990625173–9173–01; I.D. 033199C]

RIN 0648–AL57

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 16B

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 16B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would establish size limits for banded rudderfish, lesser amberjack, cubera snapper, dog snapper, mahogany snapper, mutton snapper, schoolmaster, scamp, gray triggerfish, and hogfish; exclude banded rudderfish, lesser amberjack, and hogfish from the 20–fish aggregate (combined) reef fish bag limit; establish new bag limits for hogfish, speckled hind, warsaw grouper, and for banded rudderfish and lesser amberjack combined; and remove queen triggerfish from the listing of Gulf reef fish and from the applicable regulations. The intended effect of this rule is to conserve and manage the reef fish resources of the Gulf of Mexico.

DATES: Written comments must be received on or before August 16, 1999.

ADDRESSES: Comments on the proposed rule must be sent to Dr. Roy E. Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 16B, which includes an environmental assessment, and a regulatory impact review (RIR) should be sent to the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619; Phone: 813–228–2815; Fax: 813-225-7015; E-mail: gulf.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree at 727-570-5305; Fax: 727-570-5583.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 16B establishes more conservative bag and size limits for several reef fish species and improves consistency with Florida's regulations, thereby improving enforcement.

Measures for Minor Amberjack Species

The word "minor" used by the Council in the FMP is not intended to reflect on the significance of these measures but instead to refer to the species banded rudderfish and lesser amberjack. A 1996 NMFS stock assessment suggests that the number of young greater amberjack has decreased steadily since 1991. In addition, anecdotal information from anglers along Florida's Gulf coast suggests that greater amberjack have decreased in size and abundance in recent years. In response to this information, the Council developed Amendment 12 to the FMP that established a 1–fish bag limit for greater amberjack and Amendment 15 to the FMP that established a seasonal closure of the commercial fishery. Under the FMP, greater amberjack are also subject to minimum size limits of 28 inches (71.1 cm) fork length for the recreational fishery and 36 inches (91.4 cm) for the commercial fishery.

Juvenile greater amberjack, lesser amberjack, and banded rudderfish are difficult for the public to distinguish; consequently, misidentified juvenile greater amberjack may be landed as lesser amberjack or banded rudderfish, species that are currently unregulated. Therefore, the Council believes that additional protection for juvenile greater amberjack is warranted. The intent of this rule is to reduce the harvest of misidentified juvenile greater amberjack by limiting the harvest of these minor amberjack species.

The Council proposed in FMP Amendment 12 to apply an aggregate bag limit and a minimum size limit of 28 inches (71.1 cm) to greater amberjack, lesser amberjack, and banded rudderfish. These proposed

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measures would have effectively eliminated the recreational harvest of banded rudderfish and lesser amberjack because these species rarely, if ever, reach 28 inches (71.1 cm). Although the Council did not present this aspect of the measures as a deliberate, direct allocation, it would have operated as the functional equivalent of a direct allocation because the effect of the measures would have been to shift the allocation of these species from principally recreational to entirely commercial. NMFS, considering this allocation unfair and inequitable, disapproved this portion of Amendment 12 based on national standard 4 of the Magnuson-Stevens Act, which requires that allocations of fishing privilege be fair and equitable to all fishermen.

Amendment 16B proposes new bag and size limits that should reduce the harvest of banded rudderfish, lesser amberjack, and misidentified greater amberjack while continuing to allow a limited recreational harvest of banded rudderfish and lesser amberjack. The proposed rule would (1) establish a "slot limit" of 14 inches (35.6 cm) (minimum) to 22 inches (55.9 cm) (maximum) fork length for the commercial and recreational harvest of banded rudderfish and lesser amberjack and (2) establish a 5–fish aggregate bag limit for banded rudderfish and lesser amberjack and exclude both species from the 20–fish aggregate reef fish bag limit.

Species Not Listed in the Management Unit

Since its inception, the FMP has included two lists of reef fishes: one of species in the management unit and another of species in the fishery but not included in the management unit. The establishment of a list of species in the fishery not to be included in the management unit was originally intended for data collection purposes only; however, the existence of two lists has created confusion regarding which species are subject to the FMP's management measures and implementing regulations. Amendment 16B would eliminate the distinction in the FMP between these two lists and create a single list of "species in the reef fish FMP," which identifies the FMP's reef fish management unit species. Sand perch, dwarf sand perch, queen triggerfish, and hogfish are the only four reef fish species that are currently considered by the FMP to be species in the fishery but not in the management unit. Amendment 16B would include hogfish, dwarf sand perch, and sand perch in the FMP's management unit and remove queen triggerfish from the FMP and from the regulations implementing the FMP. This would allow Florida to regulate vessels registered in the State of Florida and fishing for queen triggerfish in the exclusive economic zone (EEZ) under Florida's more conservative management measures. Although queen triggerfish are found throughout the Gulf of Mexico, they are abundant only off Florida and are seldom landed outside Florida.

Size and Bag Limits Compatible with Florida's Regulations

Florida has established bag and size limits on several reef fish species for which there are either no corresponding limits in the EEZ or the Federal limits differ from the State limits. In response to a request from the Florida Marine Fisheries Commission (Commission) that the Council consider implementing size and bag limits consistent with those in Florida's waters, the Council proposes new consistent bag and size limits. In a November 3, 1994, letter, the Commission provided biological information that formed the basis for its request of Council. Based on the best scientific information available and on the precautionary approach to fisheries management, the Council believes that there is a need for greater protection for these species. The Council concluded that bag and size limits compatible with Florida's would be the most effective means of achieving this greater protection because compatible regulations would facilitate compliance and enforcement. Furthermore, the Council observes that, with the possible exception of gray triggerfish, Florida accounts for most of the recreational and commercial landings of these species. The Council believes that the proposed 12–inch (30.5–cm) minimum size limit for gray triggerfish is needed to respond to increasing effort directed toward the species and to anecdotal information that the stocks off Florida are declining and in need of regulation. The Council's belief is based on information provided by the Florida Marine Fisheries Commission and by a NMFS' assessment prepared for the South Atlantic Fishery Management Council.

The proposed rule would establish the following minimum size limits: Cubera snapper (12 inches (30.5 cm), total length (TL)); dog snapper (12 inches (30.5 cm), TL); mahogany snapper (12 inches (30.5 cm), TL); schoolmaster (12 inches (30.5 cm), TL); mutton snapper (16 inches (40.6 cm), TL); scamp (16 inches (40.6 cm), TL); gray triggerfish (12 inches (30.5 cm), TL); and hogfish (12 inches (30.5 cm), fork length). In addition, the proposed rule would establish a 5–fish bag limit for hogfish, exclude hogfish from the 20–fish aggregate reef fish bag limit, and clarify that sand perch and dwarf sand perch are excluded from the 20–fish aggregate bag limit. Sand perch and dwarf sand perch are often used as bait, and no evidence exists to suggest their stocks are in need of management.

Speckled Hind and Warsaw Grouper

The NMFS Office of Protected Resources has added speckled hind and warsaw grouper to the list of candidates for possible listing as threatened or endangered under the Endangered Species Act. Candidate status does not afford any additional protection for a species, but it does reflect a significant level of concern regarding a species' status. The proposed rule would establish a recreational bag limit of one speckled hind and one warsaw grouper per vessel. These new restrictions also would prohibit the sale of these species by the recreational sector because the FMP and existing regulations prohibit the sale of all reef fish subject to bag limits. The commercial harvest of warsaw grouper and speckled hind would continue and be limited by the deep-water grouper quota. The Council believes that, because warsaw grouper and speckled hind are usually caught in relatively deep water, the mortality rate of released fish is high; consequently, closure of the fishery would provide little additional protection. Furthermore, the Council believes that, because commercial vessels do not target these species and because the Council's intent is to eliminate targeted fishing of these species, additional restrictions on the commercial fishery are not needed.

Additional background and rationale for the measures discussed here are contained in Amendment 16B, the availability of which was announced in the **Federal Register** on April 14, 1999 (64 FR 18395). Written comments on Amendment 16B are solicited and must be received by June 14, 1999. Comments that are received by June 14, 1999, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its approval/disapproval decision on Amendment 16B. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 16B or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not determined that the amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 16B.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows.

The Gulf of Mexico Fishery Management Council (Council) prepared a Regulatory Impact Review (RIR) indicating that the proposed actions in Amendment 16B are not significant under E.O. 12866. The Council also determined, and NMFS concurs, that the proposed actions will not result in a significant impact on a substantial number of small entities. From an overall viewpoint, the RIR indicates that the measures will result in short-term commercial revenue losses that are minor but only partially quantified. The entities that will be affected by the proposed regulations consist of about 1,500 commercial reef fish vessels with permits and about 900 for-hire (charterboat and headboat) vessels with permits. All of these firms qualify as small business entities according to the Small Business Administration definitions. Because of the large number of species involved in the proposed regulations, it is clear that over 20 percent of the small entities engaged in commercial and for-hire businesses that have a dependency on the reef fish fishery will be impacted to some degree by the regulations in aggregate. However, the degree of impact will be small as is shown in the following discussion.

The annual aggregate reef fish gross revenues produced by the commercial harvesters is about $45 million. Although there is no definitive information available regarding the gross revenues generated by the for-hire businesses, an estimate can be obtained by assuming that these 900 businesses conduct an average of about 250 trips per year at an average cost to the customers of about $500 per trip. These estimates are considered to be reasonable, and if so, the aggregate annual gross revenues for the for-hire businesses would exceed $100 million. In any event, the size of gross revenue generated by the for-hire businesses is comparable to revenues generated by the commercial harvesters.

It is proposed that a slot size limit of 14 inches minimum and 22 inches maximum be set for banded rudderfish and lesser amberjack. This slot limit would likely reduce the annual level of commercial catches because a small portion of the historical catch is known to exceed 22 inches. Although the exact amount of the reduction cannot be estimated due to a lack of data, it is known that the total annual commercial revenue for the two species combined is about $62,000. Hence, even if these species were totally excluded from the commercial catch, and they will not be, the maximum effect would be a reduction in reef fish revenues of about one tenth of one percent.

The for-hire fishery also lands banded rudderfish and lesser amberjack, but data regarding the poundage involved are not conclusive. For example, the 1993 data indicate that up to 200,000 pounds may have been landed by the for-hire sector, but data for 1995 and 1996 indicate that current landings are less than 10,000 pounds per year. This may be explainable since the various amberjack species are very similar and the early data may include a large poundage of misidentified juvenile greater amberjack. Assuming that the more recent data are the most reliable because greater efforts toward species identification have been made recently, then the potential impacts on the for hire fishery are very small. Further, available data indicate that most of the for-hire catch currently falls within the proposed slot limit. Hence, available information indicates only a very small, but not fully quantified, effect on the for-hire sector. A 5–fish recreational bag limit is proposed for banded rudderfish and lesser amberjack. Recreational catch data collected since 1993 indicate that catches of banded rudderfish or lesser amberjack have never exceeded 3 fish per trip. Hence, the economic impact on the for-hire businesses is expected to be negligible.

The proposal to establish minimum size limits for cubera snapper, dog snapper, mahogany snapper, mutton snapper, schoolmaster, scamp, gray triggerfish and hogfish are proposed in order to bring Federal rules into compliance with size rules established by the state of Florida where most of the catch of these species occurs. With an exception in the case of scamp, these species are rarely caught in Federal waters. The proposed minimum size for scamp is 16 inches and because most of the catch of scamp in Federal waters consists of fish over 16 inches, the impact is expected to be very small. Another proposal will establish a 5–fish recreational bag limit for hogfish. The bulk of the recreational take of hogfish is by private recreational fishermen using spearguns; the for-hire industry accounts for only 1–3 percent of the total catch. Further, the catch of hogfish by any individual angler on a for-hire trip rarely exceeds five fish. Hence, the economic impact is expected to be negligible.

There is also a provision for a 1–fish bag limit for speckled hind and warsaw grouper. These species are thought to be highly overfished, and the current recreational catch of these two species is very small. The bag limits are proposed just as a precautionary measure in the event any particular angler might encounter an extraordinary assemblage of either species and the impact, if any, will be very small.

The provision to exclude banded rudderfish, lesser amberjack and hogfish from an existing 20–fish bag limit for species not otherwise regulated by a bag limit is being done for administrative purposes because these species will come under bag limits established by other proposals already discussed. Hence, this particular proposal has no impact.

The provision to remove queen triggerfish from the Reef Fish Fishery Management Plan is being suggested because the species is considered to be an ornamental species that is not normally targeted by commercial or recreational fishermen in Federal waters. The effect of the proposed regulation is to allow the state of Florida, which has jurisdiction for ornamental species, to enforce their existing laws with respect to catches that may occur in Federal waters. In any event, this species is rarely taken in Federal waters, and the expected economic impact is near zero.

The foregoing discussion establishes that the expected economic impacts of the proposed measures is very minor in the individual sense and in the aggregate. Hence, it is clear that there will not be a significant economic impact on a substantial number of small business entities engaged in the commercial harvesting of reef fish nor on the for-hire industry entities that depend on reef fish species for their livelihood.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 28, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, the last sentence in paragraph (g)(1) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(g) * * *

(1) * * * The provisions of this paragraph do not apply to the following species: dwarf sand perch, hogfish, and sand perch.

* * * * *

3. In § 622.37, the section heading, introductory text, and paragraph (d) are revised to read as follows:

§ 622.37 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (c)(3) of this section, a fish not in compliance with its size limit, as specified in this section, in or from the Caribbean, Gulf, South Atlantic, and/or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

* * * * *

(d) *Gulf reef fish*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—10 inches (25.4 cm), TL.

(iii) Cubera, dog, gray, mahogany, and yellowtail snappers and schoolmaster—12 inches (30.5 cm), TL.

(iv) Red snapper—15 inches (38.1 cm), TL.

(v) Mutton snapper—16 inches (40.6 cm), TL.

(2) *Grouper.* (i) Scamp—16 inches (40.6 cm), TL.

(ii) Black, red, and yellowfin groupers and gag—20 inches, (50.8 cm), TL.

(3) *Other Gulf reef fish species.* (i) Gray triggerfish—12 inches (30.5 cm), TL.

(ii) Hogfish—12 inches (30.5 cm), fork length.

(iii) Banded rudderfish and lesser amberjack—14 inches (35.6 cm), fork length (minimum size); 22 inches (55.9 cm), fork length (maximum size).

(iv) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i); and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

* * * * *

4. In § 622.39, the second and third sentences of paragraph (a)(1), and paragraphs (b)(1)(ii), (b)(1)(v), and (b)(2) are revised; and paragraphs (b)(1)(vii) and (b)(1)(viii) are added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(1) * * * Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip. * * *

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding jewfish and Nassau grouper—5 per person per day, but not to exceed 1 speckled hind and 1 Warsaw grouper per vessel per day.

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(viii) of this section and excluding dwarf sand perch and sand perch—20.

* * * * *

(vii) Banded rudderfish and lesser amberjack, combined—5.

(viii) Hogfish—5.

(2) *Possession limits.* A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

* * * * *

Table 3 of Appendix A to Part 622 [Amended]

5. In Table 3 of Appendix A to Part 622, the entry, "Queen triggerfish, *Balistes vetula*", is removed.

[FR Doc. 99–16916 Filed 7–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 062199A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting on July 13-15, 1999, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, July 13, 1999, at 9:30 a.m. and on Wednesday and Thursday, July 14-15, 1999, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone (207) 775-2331. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036; telephone: (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Tuesday, July 13, 1999

At the start of the meeting the Council Chairman and Executive Director will ask The Council for approval to form a Research Steering and Experimental Fisheries Committee. This group would identify and prioritize fishery management research needs in the Northeast region, including the one-percent TAC set-aside earmarked for sea scallop fishery research. A presentation of the Interspecies Committee Report will follow and will review discussions about: Managing fishing harvest capacity, including NMFS initiatives; strawman proposals for controlling latent effort; possible changes to the fishing year for Council fishery management plans; and outstanding issues for small vessel upgrading provisions. The morning session will conclude with a presentation of the annual Stock Assessment and Fishery Evaluation Report for the herring fishery.

In the afternoon, the Council will discuss Atlantic herring management and will consider the following actions: Approval of specifications for the 2000 fishing year, approval of an adjustment to the U.S. at-sea processing specification for the 1999 fishing year, and approval to develop a framework adjustment to the proposed Herring Fishery Management Plan (FMP) for the 2000 fishing year. The framework adjustment would change the FMP to include a possible adjustment to the timing of the fishing year, changes to reporting requirements for large domestic at-sea processing vessels, a modification to allow the specification of U.S. at-sea processing allocation by management area, and possible changes to other measures contained in the FMP. The Council will also discuss and may approve a control date for the herring fishery and development of a controlled access system.

Wednesday, July 14, 1999

The Council will continue to discuss herring agenda items until noon. An update on whiting management will follow. This update will include review, and possible approval, of written comments concerning NMFS' proposed disapproval of the limited access program submitted in Amendment 12 to the Northeast Multispecies FMP (whiting management program). The Council will also consider the following actions relating to small-mesh fisheries: Development of a New England Council Small Mesh Species FMP to include the management of whiting, red hake, and offshore hake; inclusion of a proposed whiting framework adjustment to modify the mesh size/possession limit program and to allow the use of net strengtheners in this FMP; and inclusion of northern shrimp management in the EEZ in the Small Mesh Species FMP. The Council will conclude the July 14 meeting with the Habitat Committee Report. The committee chairman will discuss the committee's recommendations concerning the designation of additional habitat areas of particular concern, measures to protect essential fish habitat (EFH), and modifications to existing EFH designations.

Thursday, July 15, 1999

The meeting will begin with reports from the Council Chairman; Executive Director; the Administrator, Northeast Region, NMFS; Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons; and representatives of the U.S. Coast Guard, the Atlantic States Marine Fisheries Commission, and the U.S. Fish and Wildlife Service. Next, the Groundfish Committee will review the development of Framework Adjustment 31 to the Northeast Multispecies FMP.

Although the Council will not take final action on the framework adjustment, they will discuss incorporating the Framework 31 proposals into the annual adjustment to the Northeast Multispecies FMP, an action that would not be formally considered by the Council until late fall 1999. The measures proposed for Framework 31 would have replaced the Georges Bank cod trip limit that would take effect on August 15 under Framework Adjustment 30 once it is implemented. Measures in Framework 31 would require vessels fishing in the Gulf of Maine (GOM) Trip Limit Exemption Program to stop fishing for a 30-day block of time each quarter, reduce the amount of gear fished by hook and gillnet vessels, and eliminate the "running clock" feature of the GOM cod trip limit. The "running clock" is a mechanism in the regulations that was developed to reduce discards by allowing vessels to land their GOM cod trip limit overages. Under the running clock provision, vessels with landings that exceed the trip limit must remain at the dock until the days-at-sea for that trip equate to the amount of cod landed. The Council will also consider development of a framework adjustment to the Northeast Multispecies FMP that would implement mid-season changes to the GOM cod fishery management program. Formal action on this issue would be scheduled for the August and September 1999 Council meetings.

During the afternoon portion of the meeting, the Mid-Atlantic Plans Committee will ask the Council to consider forwarding written comments to the Mid-Atlantic Fishery Management Council on the following issues: Proposals for the Tilefish FMP, mackerel fishery limited entry measures, coordinating the Atlantic Herring and Mackerel FMPs, and the status of the summer flounder rebuilding program. The Enforcement Committee will review progress on the development of enforcement guidelines for Council use during the development of management measures. The meeting will adjourn after the Council addresses any outstanding business.

Although other issues not contained in the agenda may come before the Council, the Council may not take final action on them without public notice or within 14 days prior to the meeting date, unless the purpose of taking final action on an issue not contained in the agenda is to address an emergency under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. In that case, public notice will be deemed to have been met by announcing the emergency action to the public in attendance at the Council meeting.

Special Accommodations

This meeting is accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 29, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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Notices

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Friday, July 2, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on July 30, 1999, at the City of South Lake Tahoe Chamber Office, 1900 Lake Tahoe Blvd., South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held July 30, 1999, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the City of South Lake Tahoe Chamber Office, 1900 Lake Tahoe Blvd., South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Juan Palma or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96250, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: [1] Subcommittee Reports; [2] Agency Briefing; [3] 20th Member Proposal; [4] Washoe Tribal Access; [5] 1–800 Cleanup Proposal; [6] Legislative Update; [7] Future Agenda Development; [8] Open Public Comment; and [9] Strategic Planning. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: June 18, 1999.

Bradley E. Powell,

Acting Regionol Forester.

[FR Doc. 99–16840 Filed 7–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of an Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 3550, Direct Single Family Housing Loans and Grants and its accompanying Handbooks.

DATES: Comments on this notice must be received by August 31, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Deputy Administrator, Single Family Housing, Rural Housing Service, 1400 Independence Avenue, SW, Mail Stop 0780, Washington, D.C. 20250–0780, telephone number (202) 720–5177.

SUPPLEMENTARY INFORMATION:

Title: Direct Single Family Housing Loans and Grants.

OMB Numbers: 0575–0166 and 0575–0172 (the Agency seeks to consolidate both packages into one information collection package).

Expiration Date of Approval: August 31, 1999.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS), through its direct single family housing loan and grant programs, provides financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, which will provide modest, decent, safe and sanitary housing to eligible individuals in rural areas. To assist a customer, they must provide the Agency with a standard housing application (used by government and private lenders), and provide documentation to support same. Documentation includes verification of income, financial information on assets and liabilities, etc. The information requested is comparable to that required by any private mortgage lender. To assist individuals in obtaining affordable housing, a borrower's house payment may be subsidized to an interest rate as low as 1%. The amount of subsidy is based upon the customer's household income. After receipt of this information, if the customer obtains a loan from RHS, they must update income information on an annual basis to renew the payment subsidy. The aforementioned information required by RHS is vital to be able to process applications for RHS assistance and make prudent loan underwriting and program decisions. It includes borrower financial information such as household income, assets and liabilities and monthly expenses. Without this information, the Agency is unable to determine if a customer would qualify for any services or if assistance has been granted to which the customer would not be eligible under current regulations and statutes. The Agency also encourages its customers to leverage our mortgage financing with that of other lenders to assist as many customers as possible within our limited resources. In many cases, another lender will leverage and participate with RHS in assisting the customer. In these cases, RHS and the other lender share documentation, with the customer's consent, to reduce duplication. Through our work with participating lenders, the Agency keeps abreast of information required by other lenders to ensure that RHS is not requiring unnecessary information. The Agency continually strives to ensure that information collection burden is kept to a minimum.

As mentioned, these loans are made directly by the Agency. RHS also services these loans for their term (33 or 38 years) and provides tools to assist the customer in becoming a successful homeowner. As discussed, payment subsidies are renewed on an annual basis. In addition, the Agency provides credit counseling and other services to its customers in an effort to assist them in becoming successful. The Agency offers many servicing tools including a moratorium (stop) on payments, modifications to payments subsidies to reflect changes in the customer's income, loan reamortization, payment workouts, etc. To obtain this assistance, the Agency must require certain information such as updated income and financial information, etc., to ensure the customer qualifies for the assistance, and is provided with the correct benefits based upon their circumstances.

Direct single family housing loans are only provided to customers who cannot obtain other credit for their housing needs. Customers are required by statute to refinance with another lender when they are financially able. To ensure the Agency meets its statutory responsibilities, existing customers may be requested to submit update income and financial information for the Agency to make a determination as to whether they can "graduate" to other credit. In addition, should a customer default on a loan which results in liquidation, the Agency needs updated income and financial information to settle any outstanding indebtedness.

The subject regulations and accompanying handbooks were completely reinvented and reengineered in 1996. Significant reductions in information collection requirements were made at that time. Since program funding has increased for these programs since that time and the Agency leverages loans with other lenders, meaning that more customers are affected by these information collection requirements, the Agency does not propose a reduction in burden.

Estimate of Burden: Public burden for this collection of information is estimated to range from 5 minutes to 3 hours per response.

Respondents: Applicants seeking direct single family housing loans and grants from the Agency and approximately 600,000 existing customers who have active loans and grants under the Section 502 and 504 programs.

Estimated Number of Respondents: 823,370.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 1,052,129 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, US Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 24, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–16845 Filed 7–1–99; 8:45 am]

BILLING CODE 3410–XV–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 2, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Cutting ond Assembly of FTESFB System for F–15

1560–01–458–2610 (#3B Fuel Tank)
1560–01–458–2593 (#2 Fuel Tank)
1560–01–458–6193 (Left Auxiliary Fuel Tank)
Robins Air Force Base, Georgia
NPA: Middle Georgia Easter Seal Society, Inc., Dublin, Georgia

Janitorial/Custodial

Agriculture Cotton Annex
14th and Independence Avenue, SW
Washington, DC
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Janitorial/Custodial

Herbert Hoover Building and White House Visitor's Center
14th & Constitution Avenue, N.W.
Washington, DC
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Janitorial/Custodial

Naval War College
Newport, Rhode Island
NPA: Newport County Chapter of Retarded Citizens, Inc., Middletown, Rhode Island

Recycling Service

March Air Reserve Base, California
NPA: Valley Resource Center for the Retarded, Inc., Perris, California

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodity to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List:

Pillowcase—Disposable
6532–01–125–3269

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–16919 Filed 7–1–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 2, 1999.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 14 and 21, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 26360 and 27752) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services

Air Force Personnel Center
Randolph Air Force Base, Texas

Janitorial/Custodial

U.S. Army Reserve Center
Lincoln, Rhode Island

Janitorial/Custodial

Naval and Marine Corps Readiness Reserve Center
Providence, Rhode Island

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–16920 Filed 7–1–99; 8:45 am]

BILLING CODE 6353–01–P

CENSUS MONITORING BOARD

Meeting

June 28, 1999.

AGENCY: Census Monitoring Board.

ACTION: Notice of closed meeting.

SUMMARY: This notice, in compliance with Pub. L. 105–119, sets forth the meeting date, time, and place for a closed meeting of the U.S. Census Monitoring Board. The meeting agenda will include a review of the paid advertising campaign Young & Rubicam Advertising has been contracted to produce on behalf of the U.S. Census Bureau. Unfortunately, due to space limitations, it is not possible to open this meeting to the public. The meeting will, however, remain "on the record" and a transcript of the proceedings will be produced and made available to the public upon request.

DATE: Thursday, July 8, 1999.

TIME: 11:00 a.m. to 3:00 p.m.

LOCATION: 285 Madison Avenue, New York City, New York.

FOR FURTHER INFORMATION CONTACT: Contact Estela Mendoza, Communications Director (Presidential Members), U.S. Census Monitoring Board, Phone (301) 457–9903, or Clark Reid, Communications Director (Congressional Members), U.S. Census Monitoring Board, Phone (301) 457–5088.

Mark R. Johnson,

Executive Director, Presidentiol Members.

[FR Doc. 99–16750 Filed 7–2–99; 8:45 am]

BILLING CODE 3510–07–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, July 9, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

1. Approval of Agenda
II. Approval of Minutes of June 18, 1999 Meeting
IV. Staff Director's Report
V. Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—The New York Report
VI. The Health Care Challenge:
  Acknowledging Disparity: Confronting Discrimination, and Ensuring Equality
  Part I: The Role of Government and Private Health Care Programs and Initiatives
  Part II: The Role of Federal Civil Rights Enforcement Efforts
VII. FY 2001 OMB Estimate
VIII. State Advisory Reports
  • Race Relations in Springfield (Missouri)
  • Equal Housing Opportunities in New York: An Evaluation of Section 8 Housing Programs in Buffalo, Rochester, and Syracuse (New York)
IX. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–17046 Filed 6–30–99; 3:03 pm]

BILLING CODE 6335–0–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Customer Input—Patent and Trademark Customer Surveys.

Form Numbers: Form numbers will be determined as applicable for the various surveys.

Agency Approval Number: 0651–0038.

Type of Request: Revision of a currently approved collection.

Burden: 2,349 hours per year.

Number of Respondents: 7,200 responses per year.

Avg. Hours Per Response: The PTO estimates that it will take approximately 15 minutes to complete the telephone surveys and face-to-face interviews, 30 minutes to complete mail surveys, five minutes to complete the questionnaires and comment cards, and 120 minutes to participate in a focus group.

Needs and Uses: The public uses the various types of surveys to express their opinions about the services and information products offered by the PTO and about the quality of the customer service that they received from the PTO. Additionally, these various surveys allow the public to offer their suggestions and comments concerning the PTO, its services, the information products, and customer service. Depending on the type of survey, the public can provide their comments on the spot to the interviewer or complete the survey at their own pace and mail their responses back to the PTO. The PTO uses the data collected from these surveys for strategic planning, allocation of resources, the establishment of performance goals, and the verification and establishment of service standards. The PTO also uses this data to assess customer satisfaction with PTO products and surveys, assess customer priorities in service characteristics, and identify areas where service levels differ from customer expectations.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, and farms.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Peter Weiss, (202) 395–3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Peter Weiss, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: June 29, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–16923 Filed 7–1–99; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

June 23, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67046, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 23, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 2, 1999, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Group I 200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,455,227,908 square meters equivalent.

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	753,436 kilograms.
218	11,944,011 square meters.
219	2,550,017 square meters.
226	11,578,933 square meters.
237	2,122,147 dozen.
239	3,232,383 kilograms.
300/301	2,402,082 kilograms.
313	44,287,403 square meters.
314	52,147,131 square meters.
317/326	22,652,850 square meters of which not more than 4,333,936 square meters shall be in Category 326.
331	5,498,352 dozen pairs.
333	104,087 dozen.
334	342,090 dozen.
335	407,714 dozen.
336	182,441 dozen.
338/339	2,450,643 dozen of which not more than 1,807,420 dozen shall be in Categories 338–S/339–S [12].
340	816,967 dozen of which not more than 416,495 dozen shall be in Category 340–Z [13].
341	721,781 dozen of which not more than 433,069 dozen shall be in Category 341–Y [14].
342	282,728 dozen.
345	135,484 dozen.
347/348	2,393,604 dozen.
350	172,191 dozen.
351	576,595 dozen.
352	1,693,329 dozen.
359–C	640,870 kilograms.
359–V	935,546 kilograms.
360	8,233,769 numbers of which not more than 5,616,225 numbers shall be in Category 360–P [15].
361	4,433,134 numbers.
362	7,465,447 numbers.
363	22,699,660 numbers.
369–D	4,933,438 kilograms.
369–H	5,284,190 kilograms.
369–L	3,523,365 kilograms.
410	1,048,999 square meters of which not more than 840,887 square meters shall be in Category 410–A [16] and not more than 832,958 square meters shall be in Category 410–B [17].
433	21,808 dozen.
434	13,999 dozen.
435	25,711 dozen.
436	15,840 dozen.
438	27,719 dozen.
440	39,601 dozen of which not more than 22,629 dozen shall be in Category 440–M [18].
442	41,920 dozen.
443	133,699 numbers.
444	217,262 numbers.
445/446	300,646 dozen.
447	72,040 dozen.
448	23,391 dozen.
607	3,435,763 kilograms.
611	5,696,514 square meters.
613	8,060,561 square meters.
614	12,666,594 square meters.
615	26,369,548 square meters.
617	18,424,137 square meters.
631	1,379,439 dozen pairs.
633	60,801 dozen.
634	661,475 dozen.
635	697,741 dozen.
636	580,143 dozen.
638/639	2,507,047 dozen.
640	1,414,506 dozen.
641	1,379,161 dozen.
642	354,435 dozen.
643	543,366 numbers.
644/844	3,851,093 numbers.
645/646	866,332 dozen.
647	1,602,696 dozen.
648	1,178,453 dozen.
649	984,561 dozen.
650	123,381 dozen.
651	801,368 dozen of which not more than 144,468 dozen shall be in Category 651–B [19].
652	2,941,091 dozen.
659–C	434,423 kilograms.
659–H	3,012,129 kilograms.
659–S	637,864 kilograms.
666	3,729,042 kilograms of which not more than 1,351,367 kilograms shall be in Category 666–C [20].
669–P	2,141,706 kilograms.
670–L	16,955,799 kilograms.
831	596,267 dozen pair.
833	30,659 dozen.
835	129,761 dozen.
836	295,767 dozen.
840	497.932 dozen.
842	285,011 dozen.
846	188,062 dozen.
847	1,322,643 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [21], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [22], as a group.	131,042,606 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [23], 224–O [24], 225, 227, 229, 369–O [25], 400, 414, 464, 465, 469, 600, 603, 604–O [26], 606, 618–622, 624–629, 665, 669–O [27] and 670–O [28], as a group.	271,627,808 square meters equivalent.
Sublevels in Group III	
224–V	3,836,642 square meters.
225	6,618,936 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	12,291,027 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.89.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[12] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[13] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[14] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[15] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[16] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[17] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[18] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[19] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[20] Category 666–C: only HTS number 6303.92.2000.

[21] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[22] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6990, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[23] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[24] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[25] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S)

[26] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[27] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[28] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–16922 Filed 7–1–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69055, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 21, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 2, 1999, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	10,146,499 square meters.
313–O [2]	16,406,636 square meters.
314–O [3]	58,723,731 square meters.
317–O [4]/617/326–O [5]	25,280,247 square meters of which not more than 4,167,829 square meters shall be in Category 326–O.
331/631	2,771,548 dozen pairs.
336/636	705,970 dozen.
338/339	1,300,780 dozen.
342/642	465,681 dozen.
345	465,839 dozen.
347/348	1,953,149 dozen.
359–S/659–S [6]	1,419,336 kilograms.
360	1,587,570 numbers.
361	1,587,570 numbers.
369–S [7]	1,041,484 kilograms.
433	12,141 dozen.
445/446	64,353 dozen.
448	23,653 dozen.
613/614/615	23,756,916 square meters.
618–O [8]	1,672,217 square meters.
625/626/627/628/629–O [9]	26,387,397 square meters.
638/639	1,666,025 dozen.
645/646	735,322 dozen.
647/648	3,871,257 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [10], 332, 333, 352, 359–O [11], 362, 363, 369–O [12], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [13], 464, 469pt. [14], 603, 604–O [15], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [16], 666, 669–O [17], 670–O [18], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [19], as a group.	111,553,181 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[7] Category 369–S: only HTS number 6307.10.2005.

[8] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[9] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[10] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010, 6211.12.8020 (Category 359–S); and 6406.99.1550 (Category 359pt.).

[12] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[13] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[14] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[15] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[16] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[17] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000, 6406.10.9040 (Category 669pt.).

[18] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[19] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–16921 Filed 7–1–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, § 10(a), that the Commodity Futures Trading Commission's Global Markets Advisory Committee ("GMAC") will conduct a public meeting on July 21, 1999, in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. headquarters, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. The meeting will begin at 2:00 p.m. and last until 5:00 p.m. The agenda will consist of the following:

Agenda

1. Introductory Remarks by Commissioner Barbara Pedersen Holum, Chairman, GMAC.

2. Presentation and discussion of a report of the Ad Hoc Subcommittee on Regulatory Parity.

3. Presentation and discussion of a report of the GMAC Subcommittee on Cross-Border Business Impediments.

4. International Organization of Securities Commission update.

5. New business.

The GMAC was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on the many complex and novel issues raised by the ever-increasing globalization of futures markets. The purposes and objectives of the GMAC are more fully set forth in its charter.

The meeting is open to the public. The Chairman of the GMAC, Commissioner Barbara Pedersen Holum, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Global Markets Advisory Committee, c/o Commissioner Barbara Pedersen Holum, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner Holum in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on June 28, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–16854 Filed 7–1–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 31, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy) (Personnel Support, Families and Education) Office of Family Policy, ATTN: Rebecca Posante, 4015 Wilson Blvd., Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Rebecca Posante at (703) 696–1702 ext 115.

Title, Applicable Form, and OMB Control Number: Exceptional Family Member Program Medical and Educational Summary Form; DD Form 2792, OMB Control Number 0704-[To be determined].

Needs and Uses: This information collection requirement is necessary to screen members of military families to determine if they have special medical or educational conditions so that these conditions can be taken into consideration when the service member is being assigned to a new location with his/her family. The information is used by the personnel system to identify special considerations necessary for future assignments. The DD Form 2792, Exceptional Family Member Program Medical and Educational Summary, associatd with this information collection, will also be used by civilian personnel offices to identify family members of civilian employees who have special needs in order to advise the civilian employee of the availability of services in the location where they will be potentially employed. Local and state school personnel will complete the educational portion of DD Form 2792 for children requiring special educational services.

Affected Public: Individuals or households; State, local or tribal government.

Annual Burden Hours: 3,188.

Number of Respondents: 12,757.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: tri-annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Military Departments of the Department of Defense screen all family members prior to a service member and Federal employee being assigned to an overseas location and to some assignments in the United States. DD Form 2792, Exceptional Family Member Program Medical and Educational Summary Form, will be completed for family members who have been identified with a special medical or educational need to document the medical or educational needs and service requirements. Their needs will be matched to the resources available at the overseas location to determine the feasibility of receiving appropriate services in that location. The information is used by the Military Service's personnel offices for purposes of assignment only. DD Form 2792 will also be completed for family members of civilian employees to document their special health or educational needs in order to advise the civilian employee of the availability of the needed services.

Dated: June 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–16839 Filed 7–1–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.330]

Office of Elementary and Secondary Education—Advanced Placement Incentive Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

SUMMARY: The Secretary invites applications for new awards for FY 1999 under the Advanced Placement Incentive Program and announces the deadline date for the transmittal of applications for funding under the program. This is a discretionary grant program.

Purpose of Program: One purpose of the Advanced Placement Incentive Program is to enable States to reimburse part or all of the cost of advanced placement test fees for eligible low-income individuals. In addition, a State educational agency (SEA) in a State in which no eligible low-income individual is required to pay more than a nominal fee to take advanced placement tests in core subjects may use grant funds for activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas. This program is authorized under title VIII, part B, of the Higher Education Amendments of 1998 (1998 Amendments) (20 U.S.C. 1070a–11, note).

SUPPLEMENTARY INFORMATION: In the March 11, 1999 **Federal Register** (64 FR 12154), the Secretary published a notice inviting applications for new awards for FY 1999 under the Advanced Placement Incentive Program. Under that competition, which closed on April 26, 1999, the Secretary has awarded approximately $2.8 million in grants of a total FY 1999 appropriation of $4 million for this program. In order to provide more States that are eligible for funds under section 810(d) of the 1998 Amendments (20 U.S.C. 1070a–11(d), note) an opportunity to apply, the Secretary hereby announces a supplemental FY 1999 grant competition for new awards under the Advanced Placement Incentive Program to carry out activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas. The Secretary also announces the deadline date for the transmittal of applications under this supplemental competition.

Who May Apply: SEAs in any State; including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau; in which no eligible low-income individual is required to pay more than a nominal fee to take advanced placement tests in core subjects. SEAs receiving grants under the competition that closed on April 26, 1999, may apply for additional funds under this supplemental competition, provided that they meet the eligibility criteria described above.

Deadline for Transmittal of Applications: August 16, 1999.

Deadline for Intergovernmental Review: September 15, 1999.

Applications Available: July 2, 1999.

Available Funds: $1,200,000.

Estimated Range of Awards: $50,000 to $1,200,000.

Estimated Average Size of Awards: $120,000.

Estimated Number of Awards: 10.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Requirements for Approval of Applications

In order to receive funding under this supplemental competition, an SEA must submit to the Department an application that contains the following:

(a) A description of the advanced placement test fees the State will pay on behalf of individual students;

(b) A description of the State's plan to disseminate information on the availability of test fee payments to eligible individuals through secondary school teachers and guidance counselors;

(c) The number of children in the State who were eligible to be counted

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under section 1124(c) of title I, part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 6333(c)), during the preceding State fiscal year;

(d) A description of the State's plan to evaluate the effectiveness of the program;

(e) An assurance that funds provided under this program will be used to supplement, and not supplant, other Federal, State, local, or private funds available to assist low-income individuals in paying for advanced placement testing;

(f) An assurance that no eligible low-income individual in the State will be required to pay more than a nominal fee to take advanced placement tests in core subjects; and

(g) A narrative that addresses the selection criteria described below.

Selection Criteria

The Secretary will use the following selection criteria to evaluate applications for funding under this supplemental competition. These criteria are taken from the Education Department General Administrative Regulations, as codified at 34 CFR 75.210. The maximum total score for all of the selection criteria is 100 points. The maximum score for each criterion is as follows:

(a) *Need for project*—10 points.

(b) *Significance*—5 points.

(c) *Quality of project design*—25 points.

(d) *Quality of project services*—25 points.

(e) *Quality of project personnel*—10 points.

(f) *Adequacy of resources*—10 points.

(g) *Quality of the management plan*—10 points.

(h) *Quality of the project evaluation*—5 points.

Allowable Activities

States receiving grants under this supplemental competition may use the grant funds to support activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas.

Applicable Statute and Regulations: Title VIII, part B of the 1998 Amendments (20 U.S.C. 1070a–11, note). The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77, 79, 80, 81, 82, 85, and 86.

The following definitions and other provisions are taken from the Advanced Placement Incentive Program statute, in title VIII, part B of the 1998 Amendments (20 U.S.C. 1070a–11, note). They are repeated in this application notice for the convenience of the applicant.

Definitions

As used in this section:

(a) The term "advanced placement test" includes only an advanced placement test approved by the Secretary of Education for the purposes of this program.

(b) The term "low-income individual" has the meaning given the term in section 402A(g)(2) of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1070a–11(g)(2)).

Note: Under section 402A(g)(2) of the HEA, as amended, the term "low-income individual" means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census (20 U.S.C. 1070a–11(g)(2)).

Information Dissemination

The SEA shall disseminate information regarding the availability of test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors.

Supplementation of Funding

Funds provided under this program must be used to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees.

For Applications or Information Contact: Frank B. Robinson, U.S. Department of Education, School Improvement Programs, 400 Maryland Avenue, SW, Room 3C153, Washington, DC 20202–6140. Telephone (202) 260–2669. Internet address: frank_robinson@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to this Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070a–11, note.

Dated: June 29, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–16861 Filed 7–1–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 19, 1999 6:30 p.m.—9:30 p.m.

ADDRESSES: College Hill Library, (Front Range Community College), 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will review and finalize its comments on the Transuranic Waste Storage Environmental Assessment.
2. The RFCAB will receive a presentation on and begin discussion of proposed caps over contaminated areas at Rocky Flats.
3. The Board will review and discuss the first draft of its "Vision" statement.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on June 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–16898 Filed 7–1–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL). Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, July 20, 1999, 8:00 a.m.–6:00 p.m. Wednesday, July 21, 1999, 8:00 a.m.–5:00 p.m.

ADDRESSES: The Miles & Virginia Willard Fine Arts Center, 498 A Street, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, INEEL CAB Facilitator Jason Associates Corporation, 477 Shoup Avenue, Suite 205 Idaho Falls, ID 83402, (208–522–1662) or visit the Board's internet homepage at *http://www.ida.net/users/cab;* or contact Mr. Charles Rice, INEEL CAB Chair, c/o Jason Associates Corporation.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda

Presentations and discussions on the following:

Meeting the new DOE–ID Site Manager, Beverly Cook

Selection rationale for the new Site contractor

Proposed Work Plan for the Remedial Investigation and Feasibility Study (RI/FS) for the soils at the Idaho Nuclear Technology Engineering Center (INTEC) Tank Farm

DOE's approach to closure of the Tank Farm

Stewardship planning activities for the INEEL

Preparation for the upcoming SSAB Seminar on Stewardship

Follow-up to the SSAB Seminar on Transportation

Election of a new Board member to fill a recent vacancy

Status reports on the following:

Spent fuel transfers to dry storage and the progress of the privatization project

Finalization of the following recommendations:

Draft Environmental Impact Statement (EIS) for Electrometallurgical Treatment for Na-Bonded Fuel

Supplement Analysis for the Surplus Plutonium Disposition Draft EIS

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda or visit the Internet site.

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL CAB Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling the Board's facilitator at (208) 522–1662.

Issued at Washington, DC on June 29, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–16899 Filed 7–1–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–564–000]

Coral Mexico Pipeline, LLC; Notice of Application for Presidential Permit and Natural Gas Act Section 3 Authorization

June 28, 1999.

Take notice that on June 18, 1999, Coral Mexico Pipeline, LLC (Coral Mexico), 1301 McKinney Street, Suite 700, Houston, Texas 77010, filed an application in Docket No. CP99–564–000 seeking a Presidential Permit, pursuant to Executive Orders Nos. 10485 and 12038, and a Natural Gas Act Section 3 authorization, pursuant to Part 153 of the Commission's Regulations, all as more fully described in Coral Mexico's application. The details of Coral Mexico's application are set forth

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in its filing, which is on file with the Commission and open to public inspection.

The text of this application may also be viewed at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for help). Any initial questions regarding the application should be directed to Lee S. Baskin, a company official, at the above address or by phone at (713) 230–7501.

Coral Mexico seeks authority to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Mexico in Hidalgo County, Texas for purposes of importing natural gas into the United States from Mexico and exporting gas from the United States to Mexico. The proposed facilities will consist of about 1,375 feet of 24-inch pipe and will connect existing and new natural gas pipeline facilities owned, or to be owned, by Pemex Gas y Petroquimica Basica in Mexico with about 97 miles of new intrastate pipeline that will extend from the International Boundary in Hidalgo County northward to Kleburg County, Texas. The proposed facilities will have a design capacity of about 300,000 MMcf/d.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1999 file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214, and the Commission's Regulations under the Natural Gas Act, 18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules of Practice and Procedure.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Coral Mexico to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–16901 Filed 7–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–565–000]

K N Interstate Gas Transmission Co.; Notice of Request Under Blanket Authorization

June 28, 1999.

Take notice that on June 21, 1999, K N Interstate Gas Transmission Co. (KNI), PO Box 281304, Lakewood, Colorado, 80228, filed in Docket No. CP99–565–000 a request pursuant to Section 157.211 of the Commission's Regulations under the Natural Gas Act [18 CFR 157.211] for authorization to construction and operate one new delivery point to provide service to the City of Broken Bow located in Custer County, Nebraska. Gas delivered through the proposed delivery point will be used by the City of Broken Bow for the generation of electricity, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Communications concerning this filing should be addressed to: Richard E. Kaup, Director, Certificates, K N Interstate Gas Transmission Co., PO Box 281304, Lakewood, CO 80228, (303) 763–3558.

Any person or the Commission's Staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules [18 CFR 385.214] a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act [18 CFR 157.205] a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–16902 Filed 7–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–282–001]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff and Shorten Protest Date

June 28, 1999.

Take notice that on June 25, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing tariff sheets in compliance with the Commission's June 16, 1999 "Order Approving Tariff Filing, Subject to Conditions," 87 FERC ¶ 61,298, which REGT desires to take effect July 1, 1999.

REGT states that these tariff sheets would institute Rate Schedule HFT to provide hourly firm transportation service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and Regulations. All such protests must be filed on or before July 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16904 Filed 7–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11549–001 Wisconsin]

Dunkirk Water Power Company, Inc.; Notice of Availability of Final Environmental Assessment

June 28, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the Dunkirk Hydroelectric Project, located on the Yahara River in Dane County, Wisconsin, and has prepared a final Environmental Assessment (FEA) for the project.

Copies of the FEA are available in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426 for public inspection. This filing may be viewed on the web at http://www.ferc.fed./us/online/rims.htm. For further information, contact Ed Lee at (202) 219–2809 or Susan O'Brien at (202) 219–2840.

David P. Boergers,

Secretary.

[FR Doc. 99–16903 Filed 7–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–168–003]

Alliance Pipeline L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Albert Lea Compressor Station Relocation Project and Request for Comments on Environmental Issues

June 28, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental assessment (EA) that will discuss the environmental impacts involved with Alliance Pipeline L.P.'s (Alliance) construction and operation of the Albert Lea Compressor Station at its new location in Freeborn Country, Minnesota.[1] This facility would consist of 31,200 horsepower (hp) of compression and other appurtenant facilities.

Summary of the Proposed Project

The Albert Lea Compressor Station was originally proposed by Alliance as part of the 874-mile-long Alliance Pipeline Project extending between Sherwood, North Dakota at the Canadian border, to the Chicago, Illinois area. The staff of the Commission prepared and issued the Alliance Pipeline Project Final Environmental Impact Statement in August 1998. The Commission issued a Certificate of Public Convenience and Necessity to Alliance by an Order issued on September 17, 1999.

Included in the Order was the approval of the construction and operation of the Albert Lea Compressor Station at pipeline milepost 558.6 in Freeborn County, Minnesota. However, Alliance was unable to reach an agreement with the landowner to purchase the property at the compressor station's original location. Therefore, Alliance decided to relocate the station, rather than use the right of eminent domain granted by the Commission's certificate. The currently proposed location is at pipeline milepost 560.0, approximately 1.4 miles southeast of its original location (see appendix 1).[2]

Land Requirements for Construction

Alliance has purchased a 17.2-acre parcel of land for the Construction of the proposed compressor station. Following construction, the fenced compressor station, site landscaping, and access road would occupy 10.8 acres. The remainder of the property would be leased for agricultural use in 2001.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Cultural resources.
- Erosion control and revegetation.
- Public safety.
- Air quality and noise.
- Land use and visual impacts.
- Alternative site locations.
- Endangered and threatened species.

We will also make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus your comments on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental

[1] Alliance's amended application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations. The original application in Docket No. CP97–168–000 was filed by Alliance on December 24, 1996.

[2] The appendices referenced in this notice are not being printing the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Review and Compliance Branch, PR–11.1;

• Reference Docket No. CP97–168–003; and

• Mail your comments so that they will be received in Washington, DC on or before July 26, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 99–16900 Filed 7–1–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 07, 1999 Through June 11, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–L65322–AK Rating EC2, Luck Lake Timber Sales Project, Implementation, Tongass National Forest, Thorne Bay Ranger District, Prince of Wales Island, AK.

Summary: EPA expressed environmental concerns related to the projects' potential environmental impacts and requested additional information on road construction, drinking water impacts, mitigation measures, and log transfer facility impacts.

ERP No. D–AFS–L65323–OR Rating EC2, Wolfmann Projects, Implementation, Blue River Landscape Strategy, Central Cascades Adaptive Management Area, Blue River Ranger District, Willamette National Forest, Lane County, OR.

Summary: EPA expressed environmental concerns about the limited information provided in the Monitoring plan, and a need for a cumulative effects analysis.

ERP No. D–AFS–L82017–ID Rating EC2, St. Joe Ranger District Noxious Weed Control Project, Implementation, Proposal from Control Noxious Weeds on 131 Sites, Idaho Panhandle National Forests, St. Joe Ranger District, Benewah, Latah and Shoshone Counties, Idaho.

Summary: EPA expressed environmental concerns about potential adverse water quality impacts from harvesting activities and related road construction. More detail on the noxious weed management plan should be included in the final EIS.

ERP No. D–FAA–B51017–MA Rating EO2, Logan Airside Improvements Planning Project (EOEA #10458), Construction and Operation of a new Unidirectional Runway 14/32, Centerfield Taxiway and Additional Taxiway Improvements, Boston Logan International Airport, Federal Funding, Airport Layout Plan and NPDES Permit, Boston, MA.

Summary: EPA expressed environment objections based on environmental justice issues and planning issues. EPA requested that the EIS look beyond airside improvements to resolve flight delay problems and consider the critical questions of whether the improvements will spur additional airport growth. EPA also suggested revisions to the noise impact modeling for the project.

ERP No. D–FRC–K05055–CA Rating EC2, Potter Valley Project, Protection and Maintenance of Fishery Resources, (FERC No. 22–110), Eel River, Lake and Mendocino County, CA.

Summary: EPA expressed concerns involving the long-term sustainability of the project, the range of alternatives analyzed, data gaps in the environmental impacts analysis, the scope and depth of the cumulative impacts analysis, and the relative weight given to various balancing factors used in the selection of a preferred alternative.

ERP No. DA–AFS–L65099–ID Rating EC2, Grade-Dukes Timber Sale, Proposal to Harvest and Regenerate Timber, Implementation, Cuddy Mountain Roadless Area, Payette National Forest, Weiser Ranger District, Washington County, Idaho.

Summary: EPA expressed environmental concerns about adverse impacts to water quality, limited quantitative data on aquatic conditions, and analysis of cumulative impacts from private lands.

Final EISs

ERP No. F–FRC–F03005–00, Vector Pipeline Project, Natural Gas Pipeline and Associated above ground Facilities Construction and Operation, Approval, Joliet, IL to Vector Canada at the International Border near St. Clair, MI, several counties, MI, IN, and IL.

Summary: EPA expressed environmental concerns regarding impacts of the project to forested upland and wetland areas and recommended additional mitigation measures to offset these impacts.

ERP No. F–NPS–B65007–VT, Marsh-Billings-Rockefeller National Historical Park, General Management Plan, Implementation, Woodstock, VT.

Summary: EPA had no objections to the project as described.

ERP No. FS–AFS–L67004–ID, Thompson Creek Molybdenum Project, Cyprus Mines Corporation, Custer County, ID.

Summary: EPA continues to have environmental concerns with the stability of the tailings impoundment, the potential for Acid mine drainage, adequacy of bonding and effectiveness of the reclamation plan.

Dated: June 29, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–16936 Filed 7–1–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed June 21, 1999 Through June 25, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990210, FINAL EIS, AFS, MT, Pinkham Timber Sales and Associated Activities, Implementation, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT, Due: August 02, 1999, Contact: Terry Chute (406) 296–2536.

EIS No. 990211, DRAFT EIS, IBR, CA, Programmatic—CALFED Bay-Delta Program, Develop and Implement Long-Term Comprehensive Plan to Restore Ecological Health and Improve Water Management, San Francisco Bay—Sacramento/San Joaquin River Bay-Delta, CA, Due: September 23, 1999, Contact: Rick Breitenbach (916) 657–2666.

EIS No. 990212, DRAFT SUPPLEMENT, COE, VA, Southeastern Public Service Authority of Virginia Regional Landfill Expansion Project, Revised Wetland Mitigation Plan and New Information on Waste Projections, COE Section 404 Permit Issuance, Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach, Isle of Wight and Southampton Counties, VA, Due: August 16, 1999, Contact: Pamela K. Painter (757) 441–7654.

EIS No. 990213, FINAL SUPPLEMENT, AFS, CO, Telluride Ski Area Expansion Project, Implementation, New/Additional Information, Special-Use-Permit and COE Section 404 Permit, Grand Mesa Uncompahgre and Gunnison National Forests, Norwood Ranger District, San Miguel County, CO, Due: August 02, 1999, Contact: Arthur Bauer (970) 327–4261.

EIS No. 990214, FINAL EIS, FHW, CT, I–95 at New Haven Harbor Crossing (Quinnipiac River Bridge) Improvement, from Interchange 43 southwest to Interchange 53 northeast, Funding, COE Section 10 and 404 Permits, U.S. Coast Guard Bridge Permit, New Haven, East and West Haven, CT, Due: August 02, 1999, Contact: Donald West (860) 659–6703.

EIS No. 990215, DRAFT EIS, FRC, WA, Warm Creek (No. 10865) and Clearwater Creek (No. 11485) Hydroelectric Project, Issuance of License for the Construction and Operation, Located in the Middle Fork Nooksack river (MFNR) Basin, WA, Due: August 16, 1999, Contact: Timothy Looney (202) 219–2852.

EIS No. 990216, DRAFT EIS, USN, ME, South Weymouth Naval Air Station, Disposal and Reuse, Norfolk and Plymouth Counties, ME, Due: August 16, 1999, Contact: Robert K. Ostermueller (610) 595–0759.

EIS No. 990217, DRAFT EIS, BLM, ID, Dry Valley Mine—South Extension Project, Construction of two New Open Pit Mine, Special-Use-Permit, COE Section 404 Permit, Public and Private Land Used, Caribou County, ID, Due: August 31, 1999, Contact: Jeff Cundick (208) 478–6354. The US Department of Agriculture's, Forest Service and the US Department of Interior's Bureau of Land management are Joint Lead Agencies for this Project.

EIS No. 990218, FINAL EIS, BLM, ID, Owyhee Resource Management Plan, Implementation, Lower Snake River District, Owyhee County, ID, Due: August 02, 1999, Contact: Wallace Evans (208) 373–3803.

EIS No. 990219, FINAL EIS, SFW, WI, Karner Blue Butterfly Habitat Conservation Plan State-wide, Application for an Incidental Take Permit, several counties, WI, Due: August 02, 1999, Contact: Lisa Mandel (612) 713–5343.

Dated: June 29, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–16937 Filed 7–1–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–878; FRL–6085–6]

Notice of Filing; Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–878, must be received on or before August 2, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION (CBI)." No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Tavano, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 214, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6411; e-mail: tavano.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or

amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–878] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF-878) and appropriate petition number. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Rohm and Haas Company

PP 7F4824

EPA has received a pesticide petition (PP 7F4824) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399 proposing, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerances for indirect or inadvertent residues of tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) and its metabolite RH-111,788 in or on the raw agricultural commodity (RAC) foliage of legume vegetables at 0.1 parts per million (ppm) and forage, fodder hay, and straw of cereal grains at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of tebufenozide in plants (grapes, apples, rice, and sugar beets) is adequately understood for the purpose of this tolerance. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage. Tebufenozide, the metabolite, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-[4-(1-hydroxyethyl) benzoyl, and sugar conjugates of the metabolite were detected in a confined rotation crop study.

2. *Analytical method.* Validated high performance liquid chromatographic (HPLC) analytical methods using ultraviolet (UV) or mass selective (MS) detection are employed for measuring residues of tebufenozide and its metabolite in grains, forage, fodder, stover, hay, and straw. The methods involve extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation (LOQ) of the method for all matrices is 0.02 ppm for tebufenozide and its metabolite.

3. *Magnitude of residues.* Field rotation crop residue trials were conducted and residues of tebufenozide and its metabolite were measured. Results of analyses showed that residues of tebufenozide and its metabolite will not exceed 0.1 ppm in forage of legumes and 0.5 ppm in forage, hay, or straw of cereal grains.

B. Toxicological Profile

1. *Acute toxicity—Acute toxicity studies with technical grade.* Oral LD_{50} in the rat is > 5 grams for males and females (Ms/Fs) - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligrams/kilograms (mg/kg) for Ms/Fs - Toxicity Category III; inhalation LD_{50} in the rat is > 4.5 milligrams/per liter (mg/L) Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5 mg - Toxicity Category IV. Tebufenozide is not a sensitizer.

2. *Genotoxicty.* Several mutagenicity tests were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

3. *Reproductive and developmental toxicity*—i. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group tebufenozide was administered on gestation days 6–15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/. day and a dose volume of 10 milliliters/kilograms (ml/kg). There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

ii. In a prenatal developmental toxicity study conducted in New Zealand white rabbits 20/group, tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity no-observed adverse effect level (NOAEL) was 1,000 mg/kg/day.

iii. In a 1993 2-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for Ms/Fs, respectively) and the lowest-observed adverse effect level (LOAEL) was 150 ppm (11.5/12.8 mg/kg/day for Ms/Fs, respectively) based on decreased body weight (bwt) gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for Ms/Fs, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for Ms/Fs, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for Ms/Fs, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for Ms/Fs, respectively).

iv. In a 1995 2-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in Ms/Fs, respectively), and the was 200 ppm (12.6/14.6 mg/kg/day in Ms/Fs), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in Ms/Fs), treatment-related findings included reduced parental bwt gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm. (12.6/14.6 mg/kg/day in Ms/Fs), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in Ms/Fs) based on decreased bwt on postnatal days 14 and 21.

4. *Subchronic toxicity.* In a 21–day dermal toxicity study, Crl: CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day limit dose (LTD) or the formulation 23.1% a.i. product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested (HDT) 1,000 mg/kg/ during the 21 day study. Based on these results, the NOAEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A LOAEL for systemic toxicity and dermal irritation was not established.

5. *Chronic toxicity*—i. In a 1–year dog feeding study with a LOAEL of 250 ppm, 9 mg/kg/day for Ms/Fs dogs based on decreases in red blood cells (RBC), HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/bwt ratio, and liver/bwt ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

ii. An 18–month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

iii. A 2–year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for Ms/Fs, respectively).

6. *Animal metabolism.* The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992 ^{14}C labeled in one of three positions (A-ring, B-ring or N-butylcarbon). The extent of absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioaccumulation. Absorption and excretion were rapid. A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be cleaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

7. *Metabolite toxicology.* The absorption and metabolism of tebufenozide were studied in a group of M/F bile-duct cannulated rats. Over a 72–hour period, biliary excretion accounted for 30% M to 34% F of the administered dose while urinary excretion accounted for about 5% of the administered dose and the carcass accounted for < 0.5% of the administered dose for both Ms/Fs. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% M to 39% F. The majority of the radioactivity in the bile (20% M to 24% F of the administered dose) was excreted within the first 6 hours post-dosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours post-dosing. A large amount 67% F to 70% M of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified, i.e. unabsorbed compound, nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primarily by oxidation of the benzylic carbons to alcohols, aldehydes, or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (F and/or M). Bile also contained the previously undetected (in the pharmacokinetics study) "A" ring ketone and the "B" ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite for > 5% of the total administered dose. Total bile

radioactivity accounted for about 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

C. Aggregate Exposure

1. *Dietary exposure—From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on walnuts at 0.1 ppm, apples at 1.0 ppm, pecans at 0.01 ppm and wine grapes at 0.5 ppm. Numerous section 18 tolerances have been established at levels ranging from 0.3 ppm in sugar beet roots to 5.0 ppm in turnip tops. Other tolerance petitions are pending at EPA with proposed tolerances ranging from 0.5 ppm in or on kiwifruit to 10 ppm in leafy and cole crop vegetables. The current petition requests establishment of tolerances due to indirect or inadvertent residues of tebufenozide and its metabolite in or on foliage of legume vegetables and forage, straw, and hay of cereal grains. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide and are presented in the following discussion.

2. *Food*—i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro- or systemic toxicity was observed in rats given a singie oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day LTD during gestation to pregnant rats or rabbits. This risk is considered to be negligible.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this chronic dietary (food) exposure assessment, Rohm and Haas used tolerance level residues for pecans, walnuts, wine, and sherry, imported apples and all other commodities with established or pending tebufenozide tolerances; and percent crop-treated (%CT) information on some of these crops. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure. The Novigen DEEM system was used for this chronic dietary exposure analysis. The subgroups listed below are the U.S. population (48 contiguous States); those for infants and children; and the other subgroups (adult) for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 contiguous States). The results are summarized below:

Groups	RfD (Percentage)
U.S. Population	10.0
All Infants (<1 year)	12.2
Nursing Infants (<1 year old)	5.7
Non-Nursing Infants (<1 year old)	15.0
Children (1-6 years old)	22.5
Children (7-12 years old)	14.1
Females (13 + years old, nursing)	10.1
U.S. Population (autumn season)	10.3
U.S. Population (winter season)	10.1
Non-Hispanic Blacks	10.4
Non-Hispanic Other than Black or White	11.0
Northeast Region	10.3
Southern Region	10.1
Western Region	10.5
Pacific Region	10.7

3. *Drinking water*—i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile. Under certain conditions, tebufenozide appears to have the potential to contaminate ground and surface water through runoff and leaching; subsequently potentially contaminating drinking water. There are no established Maximum Contaminant Levels (MCL) for residues of tebufenozide in drinking water and no Health Advisories (HA) have been issued for tebufenozide; therefore, these could not be used as comparative values for risk assessment. Therefore, potential residue levels for drinking water exposure were calculated previously by EPA using GENEEC (surface water) and SCIGROW (ground water) for human health risk assessment. Because of the wide range of half-life values (66-729 days) reported for the aerobic soil metabolism input parameter a range of potential exposure values were calculated. In each case, the worst case upper bound exposure limits were then compared appropriate chronic drinking water level of concern (DWLOC). In each case, the calculated exposures based on model data were below the DWLOC.

4. *Non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there is no chronic, short- or intermediate-term exposure scenario.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other

substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, Rohm and Haas has not assumed that tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*—i *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

ii. *Chronic risk.* Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, Rohm and Haas has concluded that dietary (food only) exposure to tebufenozide will utilize 10.0% of the RfD for the U.S. population. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's drinking water level of concern (DWLOC). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD.

iii. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risk does not exist.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, EPA previously considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

3. *Developmental toxicity studies*—i. *Rats.* In a developmental toxicity study in rats, the maternal (systemic) NOAEL was 250 mg/kg/day. The LOAEL was 1,000 mg/kg/day, based on decreased bwt and food consumption. The developmental (pup) NOAEL was 1,000 mg/kg/day (HGT)

ii. *Rabbits.* In a developmental toxicity study in rabbits, the maternal and developmental NOAELs were 1,000 mg/kg/day highest dose tested (HDT).

iii. *Reproductive toxicity study.* In a 1993 2-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for Ms and 0, 0.9, 12.8, or 171.1 mg/kg/day for Fs).The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for Ms/Fs, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for Ms/Fs, respectively) based on decreased bwt gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm (11.5/12.8 mg/kg/day for Ms/Fs, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for Ms/Fs, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for Ms/Fs, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for Ms/Fs, respectively).

In a 1995 2-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the

NOAEL was 25 ppm (1.6/1.8 mg/kg/day in Ms/Fs, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in Ms/Fs), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm (12.6/14.6 mg/kg/day in Ms/Fs), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased bwt on postnatal days 14 and 21.

iv. *Pre- and postnatal sensitivity.* The toxicology data base for tebufenozide is complete and includes acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity studies in rats. EPA determined that the data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

4. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

5. *Chronic risk.* Using the conservative exposure assumptions described above, Rohm and Haas has concluded that aggregate exposure to tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide from food will utilize from 10.0% of the RfD for the U.S. population to 22.5% of the RfD for children 1-6 years old. The potential for exposure to tebufenozide in drinking water does not exceed EPA's level of concern. There are currently no tebufenozide residential or non-dietary exposure scenarios. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD. Rohm and Haas concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide residues.

6. *Short- or intermediate-term risk.* Since no short- and intermediate-term toxicological endpoints were established by EPA, no acute aggregate risk exists.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for tebufenozide in rotation crops so no harmonization issues are required for this action.

2. Rohm and Haas Company

9F5077

EPA has received a pesticide petition (9F5077) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of tebufenozide (benzoic acid, 3,5-dimethyul-,1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on the RAC crop grouping, tree nuts, at 0.1 ppm and in or almond hulls at 25 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of tebufenozide in plants (grapes, apples, rice and sugar beets) is adequately understood for the purpose of this tolerance. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage.

2. *Analytical method.* Validated high performance liquid chromatographic (HPLC) analytical methods using ultraviolet (UV) or mass selective (MS) detection are employed for measuring residues of tebufenozide and its metabolite in nut meat and almond hulls. The methods involve extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation (LOQ) of the method for all matrices is 0.01 ppm for tebufenozide.

3. *Magnitude of residues.* Field residue trials were conducted in the representative nut crops pecans and almonds and residues of tebufenozide were measured in nut meat and almond hulls. Results of analyses showed that residues of tebufenozide will not exceed 0.1 ppm in nut meat and 25 ppm in almond hulls.

B. Toxicological Profile

1. *Acute toxicity.* Acute toxicity studies with technical grade. Oral LD_{50} in the rat is > 5 grams for Ms/Fs - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 mg/kg for Ms/Fs - Toxicity Category III; inhalation LD_{50} in the rat is > 4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5 mg - Toxicity Category IV. Tebufenozide is not a sensitizer.

2. *Genotoxicty.* Several mutagenicity tests were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

3. *Reproductive and developmental toxicity*—i. In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group), tebufenozide was administered on gestation days 6–15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

ii. In a prenatal developmental toxicity study conducted in New Zealand white rabbits 20/group, tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

iii. In a 1993 2-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for M/F, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for Ms/Fs, respectively) based on decreased bwt gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for M/F, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for M/F, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for Ms/Fs, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for Ms/Fs, respectively).

iv. In a 1995 2-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in Ms/Fs, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in Ms/Fs), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in Ms/Fs), treatment-related findings included reduced parental bwt gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm (12.6/14.6 mg/kg/day in Ms/Fs), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in Ms/Fs) based on decreased bwt on postnatal days 14 and 21.

4. *Subchronic toxicity.* In a 21-day dermal toxicity study, Crl: CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day limit dose (LTD) or the formulation 23.1% a.i. product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21–days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested (HDT) 1,000 mg/kg during the 21–day study. Based on these results, the NOAEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A LOAEL for systemic toxicity and dermal irritation was not established.

5. *Chronic toxicity*—i. In a 1 year dog feeding study with a LOAEL of 250 ppm, 9 mg/kg/day for Ms/Fs dogs based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/bwt ratio, and liver/bwt ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

ii. An 18-month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

iii. A 2-year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for Ms/Fs, respectively).

6. *Animal metabolism.* The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992 14C labeled in one of three positions (A-ring, B-ring or N-butylcarbon). The extent of absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioaccumulation. Absorption and excretion were rapid. A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be cleaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

7. *Metabolite toxicology.* The absorption and metabolism of tebufenozide were studied in a group of Ms/Fs bile-duct cannulated rats. Over a 72-hour period, biliary excretion accounted for 38% Ms to 34% Fs of the administered dose while urinary excretion accounted for about 5% of the administered dose and the carcass accounted for < 0.5% of the administered dose for both Ms/Fs. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% Ms to 39% Fs. The majority of the radioactivity in the bile (20% Ms to 24% Fs of the administered dose) was excreted within the first 6 hours post-dosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours post-dosing. A large amount (67% Fs to 70% Ms) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified, i.e. unabsorbed compound, nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primarily by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (Fs and/or Ms). Bile also contained the previously undetected (in the pharmacokinetics study) "A" ring ketone and the "B" ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for > 5% of the total administered dose. Total bile radioactivity accounted for about 17% of the total administered dose. No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

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C. Aggregate Exposure

1. *Dietary exposure—From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on walnuts at 0.1 ppm, apples at 1.0 ppm, pecans at 0.01 ppm and wine grapes at 0.5 ppm. Numerous section 18 tolerances have been established at levels ranging from 0.3 ppm in sugar beet roots to 5.0 ppm in turnip tops. Other tolerance petitions are pending at EPA with proposed tolerances ranging from 0.5 ppm in or on kiwifruit to 10 ppm in leafy and cole crop vegetables. The current petition requests establishment of tolerances in or on tree nuts and almond hulls. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide as follows.

2. *Food—*i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro- or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (LTD) during gestation to pregnant rats or rabbits. This risk is considered to be negligible.

ii. *Chronic exposure and risk.* The reference dose (RfD) used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this chronic dietary (food) exposure assessment, Rohm and Haas used tolerance level residues for nut crops, wine, and sherry, imported apples and all other commodities with established or pending tebufenozide tolerances; and percent crop-treated (%CT) information for some of these crops. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure. The Novigen DEEM system was used for this chronic dietary exposure analysis. The subgroups listed below are (i) the U.S. population (48 contiguous States); (ii) those for infants and children; and (iii) the other subgroups (adult) for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 contiguous States). The results are summarized below:

Groups	RfD (percentage)
U.S. Population	10.0
All Infants (< 1 year)	12.2
Nursing Infants (< 1 year old)	5.7
Non-Nursing Infants (< 1 year old)	15.0
Children (1-6 years old)	22.5
Children (7-12 years old)	14.1
Females (13 + years old, nursing)	10.1
U.S. Population (autumn season)	10.3
U.S. Population (winter season)	10.1
Non-Hispanic Blacks	10.4
Non-Hispanic Other than Black or White	11.0
Northeast Region	10.3
Southern Region	10.1
Western Region	10.5
Pacific Region	10.7

3. *Drinking water—*i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile. Under certain conditions tebufenozide appears to have the potential to contaminate ground and surface water through runoff and leaching; subsequently potentially contaminating drinking water. There are no established Maximum Contaminant Levels (MCL) for residues of tebufenozide in drinking water and no Health Advisories (HA) have been issued for tebufenozide therefore these could not be used as comparative values for risk assessment. Therefore, potential residue levels for drinking water exposure were calculated previously by EPA using GENEEC (surface water) and SCIGROW (ground water) for human health risk assessment. Because of the wide range of half-life values (66-729 days) reported for the aerobic soil metabolism input parameter a range of potential exposure values were calculated. In each case the worst case upper bound exposure limits were then compared to appropriate chronic drinking water level of concern (DWLOC). In each case the calculated exposures based on model data were below the DWLOC.

4. *Non-dietary exposure.* From non-dietary exposure. Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there is no chronic, short- or intermediate-term exposure scenario.

D. Cumulative Effects

Cumulative exposure to substances with common mechanism of toxicity. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, Rohm and Haas has not assumed that tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population—*i. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

ii. *Chronic risk.* Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, Rohm and Haas has concluded that dietary (food only) exposure to tebufenozide will utilize 10.0% of the RfD for the U.S. population. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's DWLOC. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD.

iii. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risk does not exist.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, EPA previously considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE safety factor.

3. *Developmental toxicity studies—*i. *Rats.* In a developmental toxicity study in rats, the maternal (systemic) NOAEL was 250 mg/kg/day. The LOAEL was 1,000 mg/kg/day, based on decreased bwt and food consumption. The developmental (pup) NOAEL was 1,000 mg/kg/day (HGT).

ii. *Rabbits.* In a developmental toxicity study in rabbits, the maternal and developmental NOAELs were 1,000 mg/kg/day (HDT).

iii. *Reproductive toxicity study.* In a 1993 2-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females. The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for Ms/Fs, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for Ms/Fs, respectively) based on decreased bwt, bwt gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for Ms/Fs, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for Ms/Fs, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for Ms/Fs, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively)

In a 1995 2-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in Ms/Fs, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in Ms/Fs), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in Ms/Fs), treatment-related findings included reduced parental bwt

gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm. (12.6/14.6 mg/kg/day in Ms/Fs), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in Ms/Fs) based on decreased bwt on postnatal days 14 and 21.

iv. *Pre- and postnatal sensitivity.* The toxicology data base for tebufenozide is complete and includes acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity studies in rats.

EPA determined that the data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

v. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

vi. *Chronic risk.* Using the conservative exposure assumptions described above, Rohm and Haas has concluded that aggregate exposure to tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide from food will utilize from 10.0% of the reference dose RfD for the U.S. population to 22.5% of the RfD for children 1-6 years old. The potential for exposure to tebufenozide in drinking water does not exceed EPA's level of concern. There are currently no tebufenozide residential or non-dietary exposure scenarios. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD. Rohm and Haas concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide residues.

vii. *Short- or intermediate-term risk.* Since no short- and intermediate-term toxicological endpoints were established by EPA, no acute aggregate risk exists.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for tebufenozide in nut crops so no harmonization issues are required for this action.

[FR Doc. 99–16768 Filed 7–1–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

June 24, 1999

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 2, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,650.

Estimated Time Per Response: 2 to 20 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, quarterly, semi-annual and annual reporting requirements.

Total Annual Burden: 73,975 hours.

Total Annual Cost: $12,465,000.

Needs and Uses: The Commission amended Part 63 of its rules in the Report and Order and Order referenced in IB Docket 95–118. When the Commission sought OMB approval of the information collections contained in the *Streamlining Order*, it inadvertently omitted the information collections associated with Sections 63.19 and 63.53(c). Before revising the rules, the information requested under Section 63.19 was authorized pursuant to Section 63.15(c) and 63.17 (approved by OMB under OMB Control Number 3060–0149). The information will be used by the Commission staff in carrying out its duties under the Communications Act. In the *Streamlining Order*, the Commission clarified its notification requirements for carriers that discontinue, reduce or impair service. The Commission will require non-dominant international carriers that seek to discontinue, reduce, or impair service to a community to: (1) Notify their customers in writing sixty days in advance; (2) send a copy of this notification at least sixty days in advance of their action to the Commission. The information collection is necessary for the Commission to maintain effective oversight of U.S. carrier operations. The information will serve the public interest by providing customers with sufficient time to find another international carrier if service is discontinued by their current carrier. In addition, the *Streamlining Order* requires that applicants submitting information or documents in Section 214 proceedings by accompanied by a certified translation in English. English translations of relevant documents that are submitted in foreign languages would save the Commission and other the time and resources needed to translate the documents. The information would eliminate the delays associated with translating the documents, and the Commission will be able to process Section 214 applications faster.

OMB Control Number: 3060–XXXX.

Title: Standard Labels for Charges Associated with Federal Regulatory Requirements/CMRS Carriers' Truth-in-Billing Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 3.099.

Estimated Time Per Response: .5 hours to 81 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 66,674 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission has ordered that common carrier must use standard industry-wide labels to display on telephone bills any line item charges associated with federal regulatory action. Uniform labelling will enable consumers to better understand the nature of the charges and to compare accurately the price of services offered by competing carriers. The Commission seeks public comment to determine what specific labels should be required.

In addition, the Commission seeks comment as to whether to continue an exemption from certain truth-in-billing requirements to CMRS carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16829 Filed 7–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1103; Report No. AUC–99–26–A (Auction No. 26)]

First Paging Service Spectrum Auction Scheduled for December 7, 1999; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: This document seeks comment on establishing reserve prices or minimum opening bids and other procedures for the first Paging service auction. The intended effect of this document is to provide the public with an opportunity to comment on proposed auction procedures for Auction No. 26.

DATES: Comments are due on or before June 30, 1999.[1] Reply comments are due on or before July 13, 1999.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Room TW–B204, 445 12th Street SW, Washington, DC 20554. Parties must also submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 4–A760, 445 12th Street, SW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Auctions Division: Lisa Hartigan, Operations, (202) 418–0660; Anne Napoli, Legal, (202) 418–0660, or Bob Reagle, Auctions Analysis, (717) 338–2801.

Commercial Wireless Division: Todd Slamowitz or Cyndi Thomas, Legal, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of Public Notice DA 99–1103, released on June 7, 1999. The complete text of this Public Notice, including Attachment A (Summary of Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids), which does not appear in this synopsis, is available for inspection and copying Monday through Friday from 9 a.m. to 4:30 p.m., in the Commission's Public Reference Room, located at 445 12th Street, SW, Room CY–A257, Washington, DC 20554. It can also be downloaded from the Commission's Auctions web site at http://www.fcc.gov/wtb/auctions. In addition, copies may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

Synopsis

1. By this Public Notice, the Wireless Telecommunications Bureau ("Bureau") announces the first in a series of auctions of Paging service licenses, scheduled to commence on December 7, 1999. As discussed in greater detail herein, the Bureau proposes that the first Paging auction be composed of 2,499 licenses in the 929 and 931 MHz bands (the "Upper Bands Auction"). These licenses, which are available in 51 geographic areas known as Major Economic Areas (MEAs), encompass the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico. In this Public Notice, we seek comment on this and other procedural issues relating to the Upper Bands Auction (Auction No. 26). Future public notices will include further details regarding application filing and payment deadlines, seminars, and other pertinent information for this auction. We will seek comment separately on procedural issues relating to the auction of licenses in the 35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz bands (collectively, the "Lower Bands Auctions").

I. Auction Sequence and License Groupings for the Paging Service Auctions

2. In Revision of Parts 22 and 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, FCC 99–98, 64 FR 33762, June 24, 1999 (*"Reconsideration Order"*), the Commission concluded that the upper bands licenses should be awarded in each of 51 Major Economic Areas (MEAs), and the lower bands licenses should be awarded in each of 175 Economic Areas (EAs). There are 12 channels in the 929 MHz band and 37 channels in the 931 MHz band, resulting in a total of 2,499 upper bands paging licenses. There is a significantly larger number of lower bands licenses (approaching 14,000); therefore, the Commission proposes to auction the upper bands licenses first and will seek comment on procedures and license groupings for the lower bands licenses at a later time. We seek comment on this proposal.

II. Reserve Price or Minimum Opening Bid for the Upper Bands Auction (Auction No. 26)

3. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because the Commission has received mutually exclusive applications for them), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve

[1] **Note:** This document was received by the Office of the Federal Register on June 28, 1999.

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price prior to the start of each auction. The Bureau was directed to seek comment on the methodology to be employed in establishing each of these mechanisms. Among other factors the Bureau should consider is the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors that reasonably could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

4. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the Bureau generally has the discretion to lower the amount later in the auction. In the event that a license is not sold in an auction, the Bureau also may lower the minimum opening bid or reserve price for that license in subsequent auctions. In anticipation of the first Paging service auction and in light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for the Upper Bands Auction, and retain discretion to lower the minimum opening bids. The Bureau believes that the use of minimum opening bids is an effective auctions practice which has been used successfully in prior Commission auctions. A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction. Specifically, the Bureau proposes the following formula for calculating minimum opening bids on a license-by-license basis in the Upper Bands Auction (Auction No. 26): $.001 x Pops (the result rounded to the nearest hundred for levels below $10,000, and rounded to the nearest thousand for levels above $10,000), with a minimum of no less than $2,500 per license.

5. This formula is intended to apply to all geographic paging licenses in the 929 and 931 bands, and was determined based upon the considerations explained above. The specific proposed minimum opening bids for each license are set forth in Attachment A of the complete Public Notice. Comment is sought on this proposal. If commenters believe that the formula proposed above for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the formula for minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the Paging service spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

III. Other Auction Procedural Issues

6. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding * * * an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *" Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment of a variety of auction-specific issues prior to the start of each auction. We therefore seek comment on the following issues relating to the Upper Bands Auction (Auction No. 26).

a. Information Available to Bidders During the Course of the Auction

7. In Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 97–59, 62 FR 11616, March 12, 1997 ("*Second Report and Order*") the Commission concluded that, due to the large number of licenses to be auctioned, the advantages of limiting the disclosure of information available to bidders during the course of the Paging auctions (*e.g.*, revealing only high bids and total number of bids on each license and withholding bidder identities) may help to speed the pace of the auctions. In the *Reconsideration Order*, 64 FR 33762, June 24, 1999, the Commission directed the Bureau to seek further comment on this issue. The Bureau tentatively concludes that it will be unnecessary to withhold bidder identities if the Paging licenses are auctioned in groups of approximately 2,500 or fewer licenses, as we have proposed to do with the Upper Band licenses. We seek comment on this tentative conclusion. In addition, we propose to disclose all information relating to the bids, including revealing all bids and withdrawals placed in each round, the identity of the bidder placing each bid or withdrawal, and the net and gross amounts of each bid or withdrawal during the Upper Bands Auction (Auction No. 26). We seek comment on this proposal.

b. Structure of Bidding Rounds, Activity Requirements, and Criteria for Determining Reductions in Eligibility

8. We propose to divide the Upper Bands Auction into three stages: Stage One, Stage Two and Stage Three, each characterized by increased activity requirements. The auction will start in Stage One. We propose that the auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below ten percent for three consecutive rounds of bidding in each Stage. However, we further propose that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

9. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of an auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver.

10. For the Uppers Bands Auction (Auction No. 26), we propose that, in each round of Stage One of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In each round of the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on at least 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9). In each round of Stage Three, a bidder desiring to maintain its current eligibility to required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the net round will be calculated by multiplying the current round activity by fifty forty-ninths (50/49). We seek comment on these proposals.

c. Minimum Accepted Bids

11. Once there is a standing high bid on a license, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that license can be raised. For the Upper Bands Auction (Auction No. 26), we will use a standard exponential smoothing methodology to calculate minimum bid increments, as we have done in several other auctions. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. We seek comment on this proposal.

12. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

13. The calculation of the percentage bid increment for each license in a given round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2.

Equations

$A_i = (C * B_i) + ((1 - C) * A_{-1})$

I_{i+1} = smaller of $((1 + A_i) * N)$ and M

Where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round $i - 1$), A_0 is 0

I_{i+1} = percentage bid increment for the next round (round i+1)

N = minimum percentage increment or bid increment floor

M = maximum percentage increment or bid increment ceiling

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_{i+1} from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C=0.5, N=0.1, M=0.2

Round 1 (2 new bids, high bid=$1,000,000)

1. Calculation of percentage increment for round 2 using exponential smoothing:
   $A_1 = (0.5 * 2) + (0.5 * 0) = 1$
   The smaller of $I_2 = (1+1) * 0.1 = 0.2$ or 0.2 (maximum percentage increment)
2. Minimum bid increment for round 2 using the percentage increment (I_2 from above)
   0.2 * $1,000,000 = $200,000
3. Minimum acceptable bid for round 2 = 1,200,000

Round 2 (3 new bids, high bid=2,000,000)

1. Calculation of percentage increment for round 3 using exponential smoothing:
   $A_2 = (0.5 * 3) + (0.5 * 1) = 2$
   The smaller of $I_3 = (1+2) * 0.1 = 0.3$ or 0.2 (maximum percentage increment)
2. Minimum bid in increment for round 3 using the percentage increment (I_3 from above)
   0.2 * $2,000,000 = $400,000
3. Minimum acceptable bid for round 3 = 2,400,000

Round 3 (1 new bid, high bid=2,400,000)

1. Calculation of percentage increment for round 4 using exponential smoothing:
   $A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$
   The smaller of $I_4 = (1+1.5) * 0.1 = 0.25$ or 0.2 (the maximum percentage increment)
2. Minimum bid increment for round 4 using the percentage increment (I_4 from above)
   0.2 * $2,400,000 = $480,000
3. Minimum acceptable bid for round 4 = 2,880,000

d. Initial Maximum Eligibility for Each Bidder

14. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license begin auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. With these guidelines in mind, we propose to calculate upfront payments for the Upper Bands Auction on a license–by–license basis, using the following formula: $.0008 * Pops (the result rounded to the nearest hundred for levels below $10,000 and to the nearest thousand for levels above $10,000) with a minimum of no less than $2,500 per license.

15. This formula is intended to apply to all geographic paging licenses in the 929 and 931 bands, and was determined based upon the considerations explained above. We seek comment on this proposal.

16. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which will define licenses on which bids may be placed. Eligibility cannot be increased during the auction. It is important that in calculating the upfront payment amount, an applicant determine the *maximum* number of bidding units it may wish to bid on (and/or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

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e. Activity Rule Waivers and Reducing Eligibility

17. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round begin below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

18. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility thereby meeting the minimum requirements.

19. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

20. A bidder may proactively use an activity rule waiver as a means to keep an auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

21. We propose that each bidder in the Upper Bands Auction (Auction No. 26) will be provided with five activity rule waivers that may be used in any round during the course of an auction as set forth above. We seek comment on this proposal.

f. Information Regarding Bid Withdrawal and Bid Removed

22. For the Upper Bands Auction (Auction No. 26), we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids submitted in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

23. Once a round closes, a bidder may no longer remove a bid. However, in any subsequent round, a high bidder may withdraw its standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. We seek comment on these bid removal and bid withdrawal procedures.

24. In Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 97–413, 63 FR 2315, January 15, 1998 (*"Part 1 Third Report and Order"*), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons, including to delay the close of an auction for strategic purposes. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

25. Applying this reasoning, we propose to limit each bidder in the Upper Bands Auction (Auction No. 26) to withdrawals in no more than two rounds during the course of each auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

g. Stopping Rule

26. In the *Reconsideration Order*, 64 FR 33762, June 24, 1999, the Commission upheld the hybrid simultaneous/license-by-license stopping rule that had been adopted for the paging auctions in the *Second Report and Order*, 62 FR 11616, March 12, 1997, but retained discretion for the Bureau to use another stopping rule after seeking further comment on this issue in the pre-auction process. The Bureau concludes that our proposal to conduct a series of auctions may eliminate the risk of unnecessarily protracted auctions, and likewise, the need for a hybrid stopping rule.

27. Therefore, for the Upper Bands Auction (Auction No. 26), the Bureau proposes to employ a simultaneous stopping approach. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. After the first such round, bidding close simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

28. We also seek comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in stage of the auction.

29. In addition, we propose that the Bureau retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual; and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver. We seek comment on this proposal.

30. Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

h. Information Relating to Auction Delay, Suspension or Cancellation

31. For the Upper Bands Auction (Auction No. 26), we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel any auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend an auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on hits proposal.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16762 Filed 7–1–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 90–119; DA–99–659]

Private Land Mobile Radio Service, Florida Area Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Telecommunications Bureau released this Public Notice amending the Florida Area Public Safety Regional Plan (Region 9 Plan). This action revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the Florida area. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.

FOR FURTHER INFORMATION CONTACT: Ghassan Khalek, Federal Communications Commission, Washington, DC, (202) 418–2771.

SUPPLEMENTARY INFORMATION: The full text of the Public Notice is as follows: By this Public Notice, the Commission announces that the Florida Area (Region 9) Radio Planning Committee's proposal to amend the Region 9 Public Safety Regional Plan is approved. The amendment, which revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the Florida area, reflects changes made as a result of its fourth window application process. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[1] The Region 9 Plan was originally adopted by the Commission on May 10, 1990.[2]

On December 28, 1998, the Commission issued a Public Notice (Report No. WT 98–46) inviting interested parties to file comments regarding a proposed amendment to the Region 9 Plan that was filed with the Commission on December 9, 1998. We have reviewed the Region 9 request. The amendment is a minor change to the Region 9 Plan. Further, we have received no comments in response to the Public Notice of December 28, 1998, referenced above. The amendment, is therefore, accepted and approved as submitted. The Secretary's office will place the amended Region 9 Plan in the official docket file where it will remain available to the public. Questions regarding this public notice may be directed to Ghassan Khalek, Wireless Telecommunications Bureau (202) 418–2771.

Federal Communications Commission.

Ramona E. Melson,

Acting Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–16830 Filed 7–1–99; 8:45 am]

BILLING CODE 6712–01–P

[1] Report and Order, General Docket No. 87–112, 53 FR 01022, 02/16/98, 3 FCC Rcd 905 (1987).

[2] Order, General Docket 90–119, 5 FCC Rcd 3067 (1990). The Region 9 Plan was subsequently revised on May 7, 1991, 6 FCC Rcd 2607 (1991), November 25, 1991, 56 FR 65258, 12/16/91, 6 FCC Rcd 7180 (1991), September 17, 1993, 58 FR 51347, 10/01/93, 8 FCC Rcd 7038 (1993), March 23, 1994, 59 FR 16209, 04/06/94, 9 FCC Rcd 1644 (1994), June 19, 1995, 60 FR 34247 06/30/95, 10 FCC Rcd 7167 (1995) and September 9, 1997, (Report No. WT 97–34).

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 99–230, FCC 99–148]

Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. On June 18, 1999, the Commission adopted a *Notice of Inquiry* to solicit information from the public for use in preparing the competition report that is to be submitted to Congress in December 1999. The *Notice of Inquiry* will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due by August 6, 1999, and reply comments are due by September 1, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Cable Services Bureau, (202) 418–7200 or TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* in CS Docket No. 99–230, FCC 99–148, adopted June 18, 1999, and released June 23, 1999. The complete

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text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service ("ITS, Inc."), (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of the Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. 548(g), requires the Commission to deliver an annual report to Congress on the status of competition in markets for the delivery of video programming. The *Notice of Inquiry* ("*NOI*") is designed to assist the Commission in gathering the information, data, and public comment necessary to prepare its sixth annual report on competition in markets for the delivery of video programming ("1999 Competition Report"). The Commission expects to use the information submitted by commenters to supplement publicly available information and relevant comments that have been filed in other Commission proceedings.

2. For the 1999 Competition Report, we request information and comment regarding the cable industry, existing and potential competitors in markets for the delivery of video programming, and the prospects for increasing competition in these markets. We seek information to update our assessment of the status of competition and on changes in the competitive environment since our *1998 Competition Report* was submitted to Congress. For this year's report, to the extent feasible, we ask parties to submit data and information that are current as of June 30, 1999. We also note that the information gathered in this report will present the first comprehensive picture of the state of competition in the video marketplace following the deregulation of rates for cable programming service tiers ("CPSTs") on March 31, 1999.

3. Markets for the delivery of video programming are served by video distributors using both wired and wireless technologies. Video distributors include multichannel video programming distributors ("MVPDs"), such as cable systems, direct broadcast satellite ("DBS") service, and home satellite dish ("HSD") service, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution service ("MMDS"), and instructional television fixed service ("ITFS"), as well as over-the-air broadcast television service.

4. Congress and the Commission have sought to eliminate barriers to competitive entry and establish market conditions that promote competition to foster more and better options for consumers at reasonable prices. For the 1999 Competition Report, we seek information and comment that will allow us to evaluate the status of competition in the video marketplace, its effect on the cable television industry, and prospects for increased competition. We are interested in evaluating the extent that consumers have choices among video programming distributors and delivery technologies and in comparing the various video distribution alternatives available to consumers in terms of video programming offerings, prices for programming services and associated equipment, and other services provided (*e.g.*, telephony, data access). We invite comment on the effect of recent statutory and regulatory changes on competition for the delivery of video services. We request information regarding existing or potential regulatory impediments that may deter entry or prevent expansion of competitive opportunities in video program delivery markets, including specific Commission rules, policies, or regulations that ought to be reexamined.

5. In recent *Competition Reports*, we presented case studies of local markets where cable operators faced actual competition from MVPD entrants. This year, we request information on the effects of actual and potential competition in these and other local markets where consumers have, or soon will have, a choice among MVPDs. In particular, we seek updated information on MVPD services in those areas included in our previous case studies to determine whether the initial effects of competition continue. We also ask commenters to provide specific data regarding other areas where head-to-head competition exists, or is expected to exist in the near future, between cable and other MVPDs, or among various types of MVPDs. We further request information about how competition has affected prices, service offerings, quality of service, and other relevant factors.

6. In addition to analyzing case studies, in the 1999 Competition Report, we want to present a broader picture of the current state of competition on a local, regional, and national basis. We ask commenters to assist us in this assessment of competitive alternatives available to consumers by providing detailed information on the types of competitive alternatives available, comparisons of the video and nonvideo services offered, and the prices charged for these service and associated equipment. We seek data on the number of television households that can choose between two, three, four, or more video programming distribution services and other information including: (a) The identity of the competitors; (b) the distribution technology used by each competitor; (c) the date that each competitor entered the market; (d) the location of the market, including whether it is predominantly urban or rural; (e) an estimate of the subscribership and market share for the services of each competitor; (f) a description of the service offerings of each competitor; (g) differentiation strategies each competitor is pursuing; and (h) the prices charged for the service offerings.

7. In the *1997 and 1998 Competition Reports*, we considered multiple dwelling units ("MDUs") a separate submarket. For the 1999 Competition Report, we would like to update our information on video delivery competition for and within MDUs. We request information regarding the choices that consumers have among MVPD services within a particular MDU, comparisons of the program offerings and prices charged by competing MVPDs serving an MDU, and comparisons of the program offerings and prices charged by MVPDs serving MDUs and competing MVPDs serving the same geographic area.

8. As in previous reports, we seek factual information and statistical data regarding the status of video programming distributors using different technologies, and changes that have occurred in the past year. In addition to statistical data on each of these delivery services, we seek information regarding: (a) The number of homes passed (for wired technologies) and the number of homes capable of receiving service (for wireless technologies); (b) the number of operators; (c) the identities of the ten largest operators (national market only); (d) the number of subscribers and penetration rates; (e) channel capacities and the number and types of channels offered; and (f) the number and types of services offered. In addition, we request financial information for each technology, including firm and industry revenues, in the aggregate and by sources (*e.g.*, subscriber revenues, advertising revenues, programming revenues); cash flow; changes in stock prices; investments; capital acquisition; and capital expenditures.

9. For each video programming distribution technology, we also request information describing: (a) Technological advances (*e.g.*, deployment of digital services) that make or may make the technology competitive; (b) the effort (including steps, costs and time) needed to increase the number of homes passed or capable of receiving service; (c) the effort (including steps, costs and time) needed to increase the number of channels and types of services offered; and (d) regulatory and judicial developments that affect the use of different technologies. In addition, in evaluating the extent of competition among various MVPDs' services or technologies, we seek information and analysis on the degree to which viewers or consumers consider the different types of MVPDs to be substitutes and on the extent to which customers have switched from one provider or technology to another one.

10. As in prior reports, we will provide updated information in the 1999 Competition Report on the structure of, and rivalry in, markets for the delivery of video programming. We intend to evaluate MVPD market concentration as we have done previously and, thus, seek data regarding current national subscribership levels of all MVPDs, whether these levels have changed since the *1998 Competition Report*, and, if so, how significantly. To the extent national concentration has increased or decreased for specific MVPDs, we ask commenters to discuss the reasons for such changes, including whether such changes are the results of merger and acquisition activity, marketing strategies, or other factors. We request data that will allow us to report on cable industry transactions, including information on mergers, acquisitions, consolidations, swaps and trades, cross-ownership, and other structural developments that affect distributors' delivery of video programming. We further request information regarding transactions involving noncable MVPDs that might affect competition in the video marketplace.

11. With respect to regional concentration (i.e., "clustering"), for cable and other MVPDs, we seek information on the geographic areas served by particular companies and comment regarding the effects industry consolidation and clustering have had on competition. We also ask commenters to discuss whether clustering has facilitated MVPDs' ability to provide increased or improved services, such as additional video and nonvideo services, lower prices, or better customer service.

12. In the 1999 Competition Report, we will update information on existing and planned programming services, with particular focus on those programming services that are affiliated with video programming distributors. We seek information and ask a variety of questions on programming services that are affiliated with cable operators, affiliated with non-cable video programming distributors and unaffiliated with any MVPD.

13. We also request information on the various program options offered by each MVPD technology, including exclusive program offerings, the number of channels available, and the comparability of the program options and packages available with each technology. We request data on the extent to which there are programming networks affiliated with noncable MVPDs and whether such programming networks are available to competing MVPDs. We ask whether there are certain programming services or specific classes of service that an MVPD needs to provide to subscribers in order to be successful. Further, we solicit information regarding increases in programming cost over the last year.

14. We are interested in how MVPDs package their programming, particularly the extent to which they offer discrete programming choices (i.e., service on an "a la carte" or individual channel basis) rather than programming service packages (i.e., tiers of programming services). We ask whether MVPDs offer "mini-tiers," "lifeline" basic tiers, or digital tiers and what are the technical, economic, legal, or other considerations related to offering customized programming packages. In addition, we ask whether MVPDs are offering video and nonvideo services together (i.e., bundled services) and how such combined services are offered and priced. We further solicit a variety of information regarding: (a) Local and regional channels; (b) public, educational, and governmental ("PEG") access channels; (c) leased access channels; (d) DBS channels used for "noncommercial programming of an educational or informational nature;" and (e) electronic programming guides ("EPGs") offered by cable operators and other MVPDs.

15. As in previous reports, we will continue to report on the effectiveness of our program access, program carriage, and channel occupancy rules that govern the relationships between cable operators and programming providers. We request comment on each of these rules, especially whether the coverage of the program access rules is appropriate and on any other issues of concern to video programming providers or MVPDs relating to the availability and distribution of programming.

16. In the *1998 Competition Report*, we addressed the deployment of digital technology and discussed recent activities to promote the commercial availability of the equipment used to access video programming and other services pursuant to the requirements of the Telecommunications Act of 1996. For this year's report, we seek updated information on system upgrades, particularly with respect to digital technology. We request information regarding multiple system operators ("MSOs") that have created digital tiers and the types of programming offered on these tiers. We seek similar information on upgrades and the deployment of advanced technologies to provide digital programming and other advanced services by MVPDs other than cable operators. We also request information on the feasibility and use of combined distribution technologies (e.g., DBS and SMATV). Moreover, we are interested in what role, if any, the ability to provide advanced services plays in attracting subscribers to video programming services and contributing to the competitiveness of an MVPD.

17. Another important aspect of technological development is the deployment of set-top boxes, integrated receiver/decoders, or receivers that facilitate or differentiate MVPD service offering. In this year's report, we plan to update the information provided in the *1998 Competition Report* regarding the certification of set-top boxes, including updated information on the progress of Cable Television Laboratories, Inc.'s OpenCable" process, and the availability of set-top boxes through retail outlets.

18. In last year's report, we also observed that the cable industry had begun the widespread deployment of cable modems and that CableLabs was in the process of finalizing its Data Over Cable Service Interface Specification ("DOCSIS") intended to provide manufacturers with a set of standards that will enable the production of interoperable cable modems. We seek information regarding the availability DOCSIS compliant modems and the extent to which consumers are buying rather than leasing modems.

Administrative Matters

Ex Parte

19. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

Comment Dates

20. Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419,

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interested parties may file comments on or before August 6, 1999, and reply comments on or before September 1, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

21. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be files. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

22. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appear in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington DC 20554. The Cable Services Bureau contact for this proceeding is Marcia Glauberman at (202) 418–7200, TTY (202) 418–7172, or at mglauber@fcc.gov.

23. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Marcia Glauberman, 445 12th Street, SW, Room 3–A738, Washington, DC 20554. Such a submission should be on 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case [CS Docket No. 99–230]), type of pleading (comment or reply comment), date of submission and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferable in a single electronic file. In addition commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036.

Ordering Clause

24. This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–16832 Filed 7–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, June 29, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's corporate and resolution activities, (2) matters relating to an administrative enforcement proceeding, and (3) reports from the Office of Inspector General.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Ms. Julie L. Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Federal Deposit Insurance Corporation.

Dated: June 29, 1999.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 99–16954 Filed 6–29–99; 4:01 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Brian Lee Houkom, Devils Lake, North Dakota; to acquire voting shares of Western State Agency, Inc., Devils Lake, North Dakota, and thereby indirectly acquire voting shares of Western State Bank, Devils Lake, North Dakota.

Board of Governors of the Federal Reserve System, June 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–16858 Filed 7–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Rome, MHC, Rome, New York; to become a bank holding company by acquiring 51 percent of the voting shares of Rome Bancorp, Inc., Rome, New York; and thereby indirectly acquire The Rome Savings Bank, Rome, New York.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Flo Corporation, Florence, Colorado; to acquire 100 percent of the voting shares of FAM Financial Services, Macksville, Kansas, and thereby indirectly acquire The Farmers and Merchants State Bank, Macksville, Kansas.

2. Rae Valley Financials, Inc., Petersburg, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Petersburg State Bank, Petersburg, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Regional Bancshares, Inc., McAllen, Texas, and Texas Regional Delaware, Inc., Wilmington, Delaware; to merge with Harlingen Bancshares, Inc., Harlingen, Texas, and thereby indirectly acquire H N Bancshares of Delaware, Inc., Harlingen, Texas, and Harlingen National Bank, Harlingen, Texas.

Board of Governors of the Federal Reserve System, June 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–16859 Filed 7–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. American Heartland Bancshares, Inc., Sugar Grove, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of American Heartland Bank and Trust, Sugar Grove, Illinois.

Board of Governors of the Federal Reserve System, June 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–16917 Filed 7–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Western State Agency, Inc., Devils Lake, North Dakota; to retain voting shares of Western State Insurance Agency, Inc., Devils Lake, North Dakota, and Towner Insurance Agency, Towner, North Dakota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–16860 Filed 7–1–99; 8:45 am]

BILLING CODE 6210–01–F

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FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. HSBC Holdings PLC, London, England; HSBC Finance (Netherlands) Limited, London, England; HSBC Holdings BV, Amsterdam, The Netherlands, to engage *de novo* through HSBC Asset Management Americas Inc., New York, New York, in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services for customers, pursuant to § 225.28(b)(7) of Regulation Y, and acting as an investment advisor and general partner for private investment limited partnerships that invest in assets in which a bank holding company is permitted to invest, see, *Dresdner Bank AG*, 84 Fed. reg. Bull. 361 (1998); *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., Rabobank Nederland*, 84 Fed. Res. Bull. 852 (1998).

Board of Governors of the Federal Reserve System, June 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–16918 Filed 7–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, July 7, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposed 2000–2001 Federal Reserve Board budget objective.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: June 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17010 Filed 6–30–99; 12:20 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, July 7, 1999, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's Operations Center.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17011 Filed 6–30–99; 12:20 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR G–202]

Aviation, Transportation, and Motor Vehicles; Correction

ACTION: Notice; correction.

In notice document 99–16502, beginning on page 34808, Tuesday, June 29, 1999, text was omitted; and, for ease of the reader, the document is being republished in its entirety.

Dated: June 29, 1999.

Sharon A. Kiser,

FAR Secretariat.

The document, as corrected, reads as follows:

[GSA Bulletin FPMR G–202]

Aviation, Transportation, and Motor Vehicles

TO: Heads of Federal agencies.

SUBJECT: Eliminating the Use of Standard Form (SF) 1169, U.S. Government Transportation Request (GTR).

1. *What is the purpose of this bulletin*? This bulletin notifies Federal agencies of the proposed elimination of Standard Form (SF) 1169, U.S. Government Transportation Request (GTR).

2. *When does this bulletin expire*? This bulletin will remain in effect until specifically canceled.

3. *What is the background*?

a. Currently, Federal Property Management Regulations (FPMR) (41 CFR part 101–41) require that SF 1169 be used to procure all passenger transportation services. For many years, the GTR has been recognized as the primary source document required to obtain passenger transportation services payable by the U.S. Government.

b. As we enter the 21st century, innovative ideas and methods are being applied to change the way the Government transacts its business. The General Services Administration (GSA) has already successfully:

(1) Implemented simplified travel regulations,

(2) Reduced the costs of administering travel programs, and

(3) Employed the use of a Government travel card to pay for travel expenses to reduce the Government's cash flow.

c. GSA is issuing the guidelines contained in this bulletin to inform agencies that, although a final decision has not been made, SF 1169 may become obsolete.

d. GSA's final review is anticipated by September 30, 2000.

e. Final action is anticipated early in the calendar year 2001.

4. *What are the guidelines*? To continue on the road of improvement, Federal agencies are encouraged to:

a. Focus attention on eliminating outdated methods of payment for passenger transportation services by adopting such payment methods as:

(1) Direct centrally billed accounts arranged through the Government travel card program,

(2) Direct charge to an employee's individual Government travel card, and

(3) Use of electronic fund payments.

b. Seek innovative ideas for ways to:

(1) Pay for passenger transportation services, and

(2) Eliminate the use of the GTR to the maximum extent possible.

5. *Why should the GTR be eliminated*? The GTR should be eliminated because:

a. Most travelers are not familiar with the form and process,

b. It is an accountable form and must be controlled,

c. The administrative burden of reconciling charges, unused tickets, and refund applications is significant,

d. The form and the process are outdated, and

e. There are better and more efficient ways for the Government to pay for commercial passenger transportation services.

6. *Why is elimination of SF 1169 in the interest of the Government*? If agencies can and will adopt best business practices for the payment of passenger transportation services, the Government can eliminate a significant administrative burden of processing and accounting for the GTR method of payment.

7. *Who should you contact for further information*? Jim Harte, Travel Team Leader, Travel and Transportation Management Policy Division (MTT), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone, (202) 501–0483; e-mail, jim.harte@gsa.gov.

Dated: June 22, 1999.

Becky Rhodes,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–16926 Filed 7–1–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2100]

Agency Emergency Processing Under OMB Review; Survey of Manufacturers of Computer-Controlled Potentially High Risk Medical Devices Regarding Year 2000 Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a survey of manufacturers of computer-controlled potentially high risk medical devices to ensure that they have properly assessed the Year 2000 (Y2K) status of their computer-controlled medical devices and developed and properly validated appropriate upgrades to correct any Y2K problem for those devices. On June 10, 1999, FDA testified before the Bennett-Dodd subcommittee on Y2K. The outcome of the hearing was directed by Congress to proceed as quickly as possible on the audit of these medical devices. Therefore, FDA is requesting OMB approval by July 9, 1999.

DATES: Submit written comments on the collection of information by July 6, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Stewart Crumpler, Center for Devices and Radiological Health (HFZ–340), 2094 Gaither Rd., Rockville, MD 20850, 301–594–4659, ext. 119.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. This information is needed immediately to respond to concerns from the General Accounting Office and others in the health care sector that FDA provide, as soon as possible, independent assurance that the manufacturers of computer-controlled potentially high risk medical devices have properly assessed the Y2K status of their computer-controlled medical devices and that they have developed and properly validated appropriate upgrades to correct any Y2K problem for those devices. The proposed study must be completed no later than September 6, 1999, in order to provide health care facilities and others with timely assurances that they need to complete their own assessments of their vulnerability to Y2K problems and to take corrective actions, if necessary, well in advance of January 1, 2000. In addition, if the data show previously undisclosed problems with manufacturers' Y2K assessments of computer-controlled potentially high risk devices, that information will allow the Government to undertake further actions, as necessary, to correct problems that might exist in order to protect the public health. It is vital that there be no Y2K failures of computer-controlled potentially high risk medical devices. The use of normal clearance procedures would not provide timely assurance that manufacturers are complying with the quality system regulations and, if problems are found, would not allow time to enact corrective actions in advance of January 1, 2000.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of

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FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Manufacturers of Computer-Controlled Potentially High Risk Medical Devices Regarding Year 2000 Status

Under section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*), a medical device is adulterated if not designed and manufactured in accordance with good manufacturing practices specified in the quality system regulations in 21 CFR part 820. Among other provisions, this regulation requires that manufacturers take action to correct an identified quality problem and to prevent its recurrence. This regulation also requires that devices be developed in accordance with specified design controls, including validation of the change. From inspectional experience for all types of devices and device issues, the Center for Devices and Radiological Health believes that the quality systems of manufacturers and the potential regulatory sanctions of the act are sufficient to ensure that manufacturers will take responsible action to correct serious Y2K problems in their devices. In addition to possible FDA enforcement action, manufacturers have very strong business and legal incentives to make sure any Y2K-related upgrade is safe and provides the correct performance needed for the device. These incentives include customer satisfaction and the potential liability that would result from an incorrect or inadequate upgrade to a product that results in harm to a patient. Also relevant is the added expense and adverse publicity associated with a device recall that would result when a problem in uncovered and corrections have to be implemented.

However, because of the unprecedented potential for adverse impact on medical devices by Y2K problems, FDA believes it is both necessary and prudent to validate these assumptions by conducting a limited survey of manufacturers of the types of medical devices that pose the greatest potential risk to patients. To this end, FDA has developed a list of computer-controlled potentially high risk medical devices, as well as a list of the manufacturers who produce these types of devices. FDA will survey a sample drawn from the list of manufacturers to ensure that manufacturers have: (1) Properly assessed the Y2K status of their computer-controlled medical devices; (2) identified all devices subject to a possible date related Y2K problem; (3) applied risk analyses to determine the appropriate remedial action to be undertaken; (4) validated any new hardware or software developed to fix the identified Y2K problem; and (5) properly communicated information on the Y2K remediation to affected customers. This applies to all devices still in use in health care facilities—both current production and any previously distributed devices.

A selected sample of the manufacturers of computer-controlled potentially high-risk medical devices will be asked to voluntarily participate in the survey. An FDA contractor employing experienced software quality engineers, or persons with similar qualifications, will schedule a survey at the manufacturer's site. During the survey, the FDA contractor will review the design records of the manufacturer, examining the adequacy of the firm's procedures for Y2K assessments and, if applicable, Y2K corrective actions. The survey will also provide reasonable assurance that Y2K assessment and, if applicable, remediation procedures have been consistently applied to all currently produced or previously manufactured high risk devices.

This survey is not intended to be comprehensive, but is intended to cover a representative sample of the manufacturers of computer-controlled potentially high risk medical devices. The results of the survey will provide a basis for continued confidence in manufacturers' capability to produce a supply of Y2K safe medical devices in compliance with the quality system regulation as well as confidence in the general accuracy of manufacturers' claims in the FDA operated Federal Y2K Biomedical Equipment Clearinghouse.

Respondents: Manufacturers of Computer-Controlled Potentially High Risk Medical Devices

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
80	1	80	43	3,440

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience in conducting field investigations and audits. In order to more sharply focus the agency efforts related to the possible impact of the Y2K date problem on medical devices, FDA has developed a list of types of computer-controlled, potentially high-risk medical devices that have the potential for the most serious consequences for the patient should they fail. Inclusion of a type of device on this list does not mean that all devices of this type have a date related problem (are Y2K noncompliant) or, if they are Y2K noncompliant, that they necessarily pose a significant risk to patients. Rather, this list includes those types of devices that could pose a risk to patients if the date-related failure affects the function or operation of the device. Using agency data bases, FDA then determined the manufacturers that produce these types of medical devices. The sample to be surveyed was drawn from this pool of manufacturers. FDA estimates that it will take manufacturers an average of 43 hours to prepare for and participate in the survey. This includes time to make records available to the surveyor at the manufacturer's site; participate in interviews and briefings, if necessary; and to review and respond to the surveyor's report, if desired. These estimates include allowance for variance in the number of high risk devices produced by a individual manufacturer.

Dated: June 29, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–16938 Filed 7–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2082]

National Starch and Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that National Starch and Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of food starch modified by amylolytic enzymes.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4674) has been filed by National Starch and Chemical Co., 10 Finderne Ave., Bridgewater, NJ 08807–0500. The petition proposes to amend the food additive regulations in § 172.892(i) *Food starch-modified* (21 CFR 172.892(i)) to provide for the safe use of food starch modified by amylolytic enzymes.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 17, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–16837 Filed 7–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2081]

Troy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Troy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of butanedioic acid, sulfo-1,4-diisodecyl ester, ammonium salt as a surface active agent in pressure sensitive adhesives.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition, HFS–215, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4678) has been filed by Troy Corp., c/o S. L. Graham & Associates, 1801 Peachtree Lane, Bowie, MD 20721. The petition proposes to amend the food additive regulations in § 175.125 Pressure-sensitive adhesives (21 CFR 175.125) to provide for the safe use of butanedioic acid, sulfo-1,4-diisodecyl ester, ammonium salt as a surface active agent in pressure sensitive adhesives.

The agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 17, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–16834 Filed 7–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3019–N]

Medicare Program; July 19, 1999 Open Town Hall Meeting To Discuss the Implementation of the Peer Review Organizations' (PROs) Sixth Round Contract Activities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting to provide an opportunity for national health care organizations, beneficiary advocates, and other interested parties to ask questions and raise issues regarding the August 1999 implementation of the Peer Review Organizations' (PROs) Sixth Round Contract activities. The meeting will also explore how the entire health care community can identify ways to collaborate on quality improvement projects that will raise the quality of care provided to Medicare beneficiaries. The agency views this new round of contracts as an opportunity to develop partnerships with the provider, practitioner, plan, purchaser and beneficiary communities. The meeting will address how PROs, health care organizations and Medicare beneficiaries can form partnerships in the following areas:

- National quality improvement projects;
- Local quality improvement projects;
- Quality improvement projects in conjunction with Medicare+Choice plans; and
- Inclusion of disadvantaged populations within each of the quality improvement projects.

The meeting will also address the Payment Error Prevention Program, which deals with reducing the occurrence of provider billing errors and consequent payment errors, including both over- and under-payment.

DATES: The meeting is scheduled for Monday, July 19, 1999 from 9 a.m. until 3 p.m., E.D.T.

ADDRESSES: The meeting will be held in the Health Care Financing Administration Main Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Donald Forgione, (410) 786–3504, Yvette Williams, (410) 786–6844.

SUPPLEMENTARY INFORMATION:

Background

The Town Hall meeting will provide an opportunity for organizations representing practitioners, providers, health plans, other purchasers, beneficiaries and other interested parties to ask questions and raise issues regarding the activities of the PRO Sixth Round Contract and how they can partner with PROs in achieving quality improvements for Medicare beneficiaries and improved payment accuracy. This Town Hall meeting provides an opportunity for information exchange concerning Request For Proposals (RFP) and the Payment Error Prevention Program (Task 4). RFP No. HCFA–99–00/ELM (March 1, 1999) Sec. C (3.1–3.4, pp. 17–30.

Task 1 concerns National Quality Improvement Projects and focuses on specific national health improvement clinical topics, acute myocardial infarction, heart failure, pneumonia,

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stroke/transient ischemic attack/atrial fibrillation, diabetes, and breast cancer. The PROs, in conjunction with their partners, will use standardized sets of quality indicators to identify the greatest opportunities to improve the care of Medicare beneficiaries.

Task 2 on Local Quality Improvement Projects directs each PRO to initiate local projects within its State in response to local interests, needs, and opportunities. HCFA is interested in broadening the PROs' experience in collaborating with providers, practitioners, plans, purchasers, and beneficiaries to improve the quality of care they deliver. We are also interested in the testing of quality indicators and intervention strategies that reflect care in settings other than acute-care hospitals and Medicare+Choice plans.

Task 3 on Quality Improvement Projects conducted in conjunction with Medicare+Choice Plans, requires the plans to implement quality improvement projects as part of the Quality Improvement System for Managed Care standards. Each Medicare+Choice plan must initiate two performance improvement projects annually. The Balanced Budget Act of 1997 (BBA) requires most M+C plans to have an agreement with the PRO to carry out all required review activities.

Task 4 on the Payment Error Prevention Program is a modified review activity that strives to identify opportunities for improvement in the billing process to reduce the occurrence of incorrect payments resulting from provider billing errors. Errors may include both over-billings and under-billings. The error rate would be the total dollars paid in error, either above or below the correct amount. PROs will conduct the Payment Error Prevention Program in two areas: unnecessary admissions and miscoded diagnosis-related group assignments.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

Registration

The Office of Clinical Standards and Quality will handle registration for the meeting. Individuals may register by sending a fax to the attention of Don Forgione, Yvette Williams, or Ida Sarsitis, in the Division of Contract Policy and Performance. Please provide your name, address, telephone number, e-mail, and fax number on your registration request.

Receipt of your fax will constitute confirmation of your registration. You will be provided with meeting materials at the time of the meeting. If there is no available seating for the Town Meeting, you will receive a notice that the meeting is at capacity.

For fax registration, the number is (410) 786–4005.

If you have questions regarding registration, please contact Don Forgione at (410) 786–3504 or Yvette Williams at (410) 786–6844. Inquiries via e-mail should be sent to DForgione@hcfa.gov or to YWilliams@hcfa.gov.

The agency will accept written questions or other statements (not to exceed four single-spaced, typed pages), preferably before the meeting, or up to 14 days after the meeting. Written submissions must be sent to: Health Care Financing Administration, ATTN: Steven Jencks, M.D., Director, Quality Improvement Group, Office of Clinical Standards and Quality, S3–01–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302) (42 CFR 462.167).

Dated: June 29, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–17025 Filed 7–1–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day; Proposed Collection: IHS Registered Nurses Recruitment and Retention Survey

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) provided an opportunity for public comment on the proposed agency information collection project. A notice was previously published in the **Federal Register** on December 24, 1998 (63 FR 71297), and 60 days were allowed for public comment. No public comment was received in response to the notice. As required by section 3507(a)(1)(D) of the Act, the proposed information collection has been submitted to the Office of Management and Budget (OMB) for review. The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to the OMB.

PROPOSED COLLECTION: *Title:* 09–17–0000, "IHS Registered Nurses Recruitment and Retention Survey." *Type of Information Collection Request:* New collection. *Form Number:* No reporting forms required. *Need and Use of Information Collection:* The information collected in the proposed survey will be used to determine which improvements made since 1984 have worked and what additional changes need to be made to continue to attract and retain registered nurses in the IHS, tribal, and urban (I/T/U) programs. The information collected in the survey will help to determine (1) the factors that lead to the initial decision to work in the Indian health program; (2) what aspects of the job do/did these employees like or dislike and why; (3) how environmental and personal factors, such as living on or near reservations, local or government housing, distance to shopping, schools (pre-school, elementary, and high school), social activities, child care facilities, location and size of non-Indian community, sex and race differences, etc., affect their decision to continue with or terminate IHS employment; and (4) how work-related issues and current changes, such as Indian preference, quality of other health care staff, local health care management practices, managed care, tribal self-governance and self-determination, etc., affect their decision to stay with or leave IHS employment. *Affected Public:* Individuals. *Type of Respondents:* Current I/T/U registered nurses.

Table 1 below provides the following information: types of data collection instruments, estimated number of respondents, number of responses per respondent, average burden hour per response, and total annual burden hour.

TABLE 1

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
Nursing Survey	600	1	600	1.00 (60 min)	600

*For ease of understanding, burden hours are also provided in actual minutes.

There are no capital costs, operating costs, or maintenance costs to report.

REQUEST FOR COMMENTS: Your written comments and/or suggestions are invited on one or more of the following points: (1) Whether the information collection activity is necessary to carry out an agency function; (2) whether the agency processes the information collected in a useful and timely fashion; (3) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (4) whether the methodology and assumptions used to determine the estimate are logical; (5) ways to enhance the quality, utility, and clarity of the information being collected; and (6) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, call non-toll free (301) 443–5938 or send via fax to (301) 443–2316, or send your e-mail requests, comments, and return address to: ihodahkw@hqe.ihs.gov.

COMMENT DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before August 2, 1999.

Dated: June 22, 1999.

Michel E. Lincoln,

Acting Director.

[FR Doc. 99–16838 Filed 7–1–99; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Transdisciplinary Tobacco Use Research Centers.

Date: July 27–29, 1999.

Time: 7:30 pm to 5:00 pm.

Agendo: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.339, Cancer Control, National Institutes of Health, HHS)

Dated: June 25, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16881 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Quick-Trails for Prostate Cancer Therapy.

Date: July 15, 1999.

Time: 7:30 am to 7:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 7801 Leesburg Pike, Falls Church, VA 22043.

Contact Person: Judy A. Mietz, PhD, Executive Secretary, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6130 Executive Boulevard/EPN–Room 609, Rockville, MD 20892–7410, 301/496–2378.

This notice is being published less than 15 days prior to the meting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 28, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–16890 Filed 7–1–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine Review Committee.

Date: July 14, 1999.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John D. Harding, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0820.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure. National Institutes of Health, HHS)

Dated: June 28, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16886 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given on the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel CHD in Polycystic Ovary Syndrome (SCHIPS).

Date: July 26, 1999.

Time: 8:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Valerie, L. Prenger, PhD, Health Scientist Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge Building II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 28, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–16894 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursaunt to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel U54 Grant Applications Review.

Date: July 26–27, 1999.

Time: 7:30 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, Phd, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS).

Dated: June 25, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16882 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–402.

Date: July 16, 1999.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–25S, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–B 02.

Date: July 19–20, 1999.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS25s, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–B 01.

Date: July 19, 1999.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS25s, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: June 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16883 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 20, 1999.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 20, 1999.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 26, 1999.

Time: 9 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact Person: Jean G. Noronha, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 29, 1999.

Time: 9 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 4, 1999.

Time: 11 pm to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean G. Noronha, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16884 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Pepper Centers.

Date: July 15, 1999.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Ave., Suite 502C, MD 20891 (Telephone Conference Call).

Contact Person: Arthur Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, A Population-Based, Multidisciplinary Study of Centenarians.

Date: July 19–20, 1999.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: William A. Kachadorian, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

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Name of Committee: National Institute on Aging Special Emphasis Penal, Excitatory Transmitters, Memory, Aging and Dementia.
Date: July 26–27, 1999.
Time: 6:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: William A. Kachadorian, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 25, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16885 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: July 29–30, 1999.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 28, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–16888 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, July 19, 1999, 9:00 AM to July 19, 1999, 2:00 PM, Double Tree Hotel, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on June 21, 1999, 64 FR 33107.

The meeting will be held at the same time but will now be at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: June 28, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–16889 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–06 01 S.
Date: July 26–27, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 02.
Date: August 6, 1999.
Time: 11:00 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6 AS 25, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 28, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16891 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 FF (05) Special Emphasis Panel.

Date: July 22–23, 1999.
Time: 8:00 am to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd. Bethesda, MD 20892–7003, 301–443–6106, vw21k@nih.gov.
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel August 10, 1999.
Time: 8:30 am to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Ronald Suddendorf, Phd, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 28, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–16892 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), Notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 (03)P.
Date: July 19–20, 1999.
Time: July 19, 1999, 7:30 pm to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Doubletree Guest Suites, 1300 Concorse Drive, Linthicum, Maryland 21090, MD 21090.
Contact Person: Lakshmanan Sankaran, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–8(03)P.
Date: August 2–4, 1999.
Time: August 2, 1999, 7:00 pm to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Vernon Manor Hotel, 400 Oak Street, Cincinnati, OH 45219.
Contact Person: Roberta J. Haber, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, MD 20892, (301) 594–8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 28, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–16893 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 29, 1999.
Time: 12:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 7, 1999.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037–1417.
Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 7, 1999.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 7–9, 1999.
Time: 7:00 p.m. to 12:01 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Garden Hotel, University Place, 3454 Forbes Avenue, Pittsburgh, PA 15213.
Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel (SSS–Z).
Date: July 8–9, 1999.

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Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.
Contact Person: Ron Manning, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. ZRG1–02(01)
Date: July 8–9, 1999.
Time: 8:00 a.m. to 12:45 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 8–9, 1999.
Time: 8:30 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Sandy Warren, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 8–9, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–SSS–D (01).
Date: July 8; 1999.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 8, 1999.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, Washington, DC 20036.
Contact Person: Robert Weller, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 8–9, 1999.
Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.
Contact Person: John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 8, 1999.
Time: 5:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–D (02).
Date: July 9, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 9, 1999.
Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 AARR–3 (01).
Date: July 9, 1999.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mohindar Poonian, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1168, poonianm@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 9, 1999.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Crystal City, 1489 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Garrett V. Keefer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 9, 1999.
Time: 1:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Calbert Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 9, 1999.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 9, 1999.
Time: 3:30 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alec S. Liacouras, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG–1 AARR–3 (02).
Date: July 10, 1999.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mohindar Poonian, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 28, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–16887 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: Prodrug Forms of the Anti-Cancer Agent 9-β-D-Arabinofuranosyl-2-Fluoroadenine as Therapeutics for the Treatment of Cancers and Leukemia

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH). Department of Health and Human Services, is contemplating the grant of a worldwide co-exclusive license to practice the invention embodied in U.S. Patent 4,357,324, issued November 2, 1982 and entitled "Prodrug Derivatives 9-β-D-arabinofuranosyl-2-fluoroadenine", to Ash Stevens, Inc., having a place of business in Detroit, Michigan. The patent rights in these inventions have been assigned to the United States of America.

A co-exlusive license had been granted to Schering AG and its U.S. affiliate, Berlex Laboratories, Inc. in January 1984. PHS intends to grant one additional co-exclusive license to these patent rights.

The field of use may be limited to the development of therapeutics for the treatment of cancers and leukemia.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before August 31, 1999 will be considered.

ADDRESSES: Requests for a copy of the patent, inquiries, comments, and other materials relating to the contemplated license should be directed to: Girish C. Barua, PhD., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7057, ext. 263; Facsimile: (301) 402–0220; E-mail' BaruaG@od.nih.gov.

SUPPLEMENTARY INFORMATION: This invention involves the preparation of the 5'-formate and the 5'-phosphate derivatives of 9-β-D-arabinofuranosyl-2-fluoroadenine as prodrug forms of the anti-cancer agent 9-β-D-arabinofuranosyl-2-fluoroadenine, known as F-ara-A. These derivatives are quite water soluble whereas F-ara-A itself is sparingly soluble in water or in any organic solvents. Delivery of these prodrug forms to mice with L1210 leukemia results in the formation of higher levels of the triphosphate of F-ara-A, the active form of the drug, in the target L1210 leukemia cells. These prodrug forms are much more active chemotherapeutically than 9-β-D-arabinofuranosyl, known as ara-A, and equivalent in activity to the combination of ara-A and 2-deoxycoformycin, known as 2'-dCF, an effective in vivo inhibitor of adenosine deaminase, a ubiquitous enzyme that destroys ara-A in vivo.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 The prospective co-exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 25, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–16895 Filed 7–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–26]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-

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impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 24, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–16585 Filed 7–1–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary for Water and Science; Notice of Intent To Contract for Hydroelectric Power Development at the Jordan Aqueduct, Reach 4, Flow Control Structure (Jordan Aqueduct) and at Jordanelle Dam, Features of the Central Utah Project (CUP), Utah

AGENCY: Office of the Assistant Secretary for Water and Science, Department of the Interior.

ACTION: Notice of intent to accept proposals, select one or more lessees, and contract for hydroelectric power development at Jordanelle Dam and Jordan Aqueduct.

SUMMARY: Current Federal policy encourages non-Federal development of electrical power resource potential on Federal water resource projects. The Department of the Interior (Interior), in consultation with the Department of Energy, Western Area Power Administration (Western), will consider proposals for non-Federal development of hydroelectric power at Jordanelle Dam and Jordan Aqueduct of the CUP, Utah. Interior is considering such hydroelectric power development under a lease of power privilege. No Federal funds will be available for such hydroelectric power development. Western would have the first opportunity to purchase and/or market the power that would be generated by such development under a lease of power privilege. The CUP is a Federal Bureau of Reclamation (Reclamation) project. This notice presents background information, proposal content guidelines, information concerning selection of one or more non-Federal entities to develop hydroelectric power at Jordanelle Dam and on the Jordan Aqueduct, and power purchasing and/or marketing considerations. Interested entities are invited to submit on one or both of these projects. That is, Interior will consider proposals by interested entities on only Jordanelle Dam, on only Jordan Aqueduct, or on both projects.

DATES: A written proposal and seven copies must be submitted on or before 5:00 p.m. (MST), on January 7, 2000, to: Mr. Ronald Johnston, Program Director, Central Utah Project Completion Act, Department of the Interior, 302 East 1860 South, Provo UT 84606–7317, Telephone: (801) 379–1103.

A proposal will be considered timely only if it is received in the office of the Program Director by or before 5:00 p.m. on the designated date. Interested entities are cautioned that delayed delivery to this office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

A copy of the proposal should also be sent at or about the time it is due at Interior to: Mr. Dave Sabo, CRSP Manager, Western Area Power Administration, 257 East 200 South, Suite 475, Salt Lake City UT 84111–0606.

FOR FURTHER INFORMATION: Contact Technical data may be obtained at the address and telephone number set forth below:

Mr. Ronald Johnston, Program Director, Central Utah Project Completion Act, Department of the Interior, 302 East 1860 South, Provo UT 84606–7317, Telephone: (801) 379–1103

Interior will be available to meet with interested entities only upon written request to the Program Director at the above address. Interior reserves the right to schedule a single meeting and/or visit to address at once the questions of all entities that have submitted questions or requested site visits.

Information related to Western's purchasing and/or marketing the power may be obtained at the address and telephone number set forth below:

Mr. Dave Sabo, CRSP Manager, Western Area Power Administration, 257 East 200 South, Suite 475, Salt Lake City UT 84111–0606, Telephone: (801) 524–6372

Information related to the operation and maintenance of Jordanelle Dam and Jordan Aqueduct may be obtained at the address and telephone number set forth below:

Mr. Rich Tullis, Central Utah Water Conservancy District, 355 West University Parkway, Orem UT 84058–7303, (801) 226–7122

Background Information

The CUP, Bonneville Unit, located in northern Utah, was authorized for construction, including hydroelectric power, by the Colorado River Storage Project (CRSP) Act of April 11, 1956 (ch. 203, 70 Stat. 105) (CRSP Act). The United States constructed Jordanelle Dam and Jordan Aqueduct under the CRSP Act. The Central Utah Project Completion Act (CUPCA), comprised of Titles II–VI of the Act of October 30, 1992 (106 Stat. 4600, Pub. L. 102–575) authorized the construction of other features of the Bonneville Unit. Section 208 of the CUPCA provides that power generation facilities associated with the CUP be developed and operated in accordance with the CRSP Act, which explicitly embodies all Reclamation law except as otherwise provided in the CRSP Act. The Central Utah Water Conservancy District (District), under its contracts with the United States, has certain operation, maintenance, replacement, and repayment responsibilities and obligations concerning the Bonneville Unit, which includes such responsibility for Jordanelle Dam and Jordan Aqueduct. The District has contracted with the Salt Lake County Water Conservancy District for the operation and maintenance of Jordan Aqueduct.

Interior, in consultation with Western, is considering hydroelectric power development at Jordanelle Dam and the Jordan Aqueduct through one or more leases of power privilege. A lease of power privilege is an alternative to Federal hydroelectric power development. A lease of power privilege grants to a non-Federal entity the right to utilize, consistent with CUP purposes, water power head or storage at and/or operationally in conjunction with the CUP, for non-Federal electric power generation and sale by the entity. Leases of power privilege have terms not to exceed 40 years. The general authority for lease of power privilege under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. §522) and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act). Interior will be the lead Federal agency for ensuring compliance with the

National Environmental Policy Act (NEPA) of any lease of power privilege considered in response to this notice. Leases of power privilege may be issued only when Interior, upon completion of the NEPA process, determines that the affected hydroelectric power sites are environmentally acceptable. Any lease of power privilege at either Jordanelle Dam or Jordan Aqueduct must accommodate existing contractual commitments related to operation and maintenance of such existing facilities. The lessee (i.e., successful proposing entity) would be required to enter into a contract with the District to coordinate operation and maintenance of any proposed hydropower developments with existing Federal features.

Western would have the first opportunity to purchase and/or market the power that would be generated under any lease of power privilege. Under this process, Western would either purchase and market the power as Salt Lake City Area—Integrated Projects (SLCA–IP) power or market the power independently by first offering it to preference entities and secondly to non-preference entities.

All costs incurred by the United States related to development and operation and maintenance under a lease of power privilege, including NEPA compliance and development of the lease of power privilege, would be the expense of the lessee. In addition, the lessee would be required to make annual payments to the United States for the use of a Government facility. This amount will be at least 1 mill per kilowatt-hour but not more than 3 mills per kilowatt-hour of generation, depending on the economic capability of the proposed hydropower development. Such annual payments to the United States would be deposited as a credit to the Upper Colorado River Basin Fund.

Proposal Content Guidelines

Interested parties should submit one or more proposals explaining in as precise detail as is practicable how the hydropower potential at each site would be developed. As noted, proposals may be submitted for one or both sites (i.e., Jordan Aqueduct or Jordanelle Dam or both). If proposals are submitted for both sites, they must be submitted as independent proposals. Factors which a proposal should consider and address include, but are not limited to, the following:

A. Provide all information relevant to the qualifications of the proposing entity to plan and implement such a project, including, but not limited to, information about preference status, type of organization, length of time in business, experience in funding, design and construction of similar projects, industry rating(s) that indicate financial soundness and/or technical and managerial capability, experience of key management personnel, history of any reorganizations or mergers with other companies, and any other information that demonstrates the interested entity's organizational, technical and financial ability to perform all aspects of the work. Include a discussion of past experience in operating and maintaining similar facilities and provide references as appropriate. The term "preference entity," as applied to a lease of power privilege, means an entity qualifying for preference under Section 9c of the 1939 Act, as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

B. Provide geographical locations and describe principal structures and other important features of the proposed development including roads and transmission lines. Estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Also describe seasonal or annual generation patterns. Include estimates of the amount of electrical energy that would be produced from each facility for each month of average, dry, and wet water years. If capacity and energy can be delivered to another location, either by the proposing entity or by potential wheeling agents, specify where capacity and energy can be delivered. Include concepts for power sales and contractual arrangements, involved parties and the proposed approach to wheeling if required.

C. Indicate title arrangements and the ability for acquiring title to or the right to occupy and use lands necessary for the proposed development(s), including such additional lands as may be required during construction.

D. Identify water rights applicable to the operation of the proposed development(s), the holder of such rights, and how these rights would be acquired or perfected.

E. Discuss any studies necessary to adequately define impacts on the CUP and the environment of the development. Describe any significant environmental issues associated with the development and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. Explain any proposed use of the hydropower development for conservation and utilization of the available water resources in the public interest.

F. Describe anticipated contractual arrangements with the entity or entities having operation and maintenance responsibility for the CUP feature(s) that are proposed for utilization in the hydropower development under consideration. Define how the hydropower development would operate in harmony with the CUP and existing applicable contracts related to operation and maintenance of CUP feature(s) being considered for modification.

G. Identify the organizational structure planned for the long-term operation and maintenance of any proposed hydropower development.

H. Provide a management plan to accomplish such activities as planning, NEPA compliance, lease of power privilege development, design, construction, facility testing, and start of hydropower production. Prepare schedules of these activities as is applicable. Describe what studies are necessary to accomplish the hydroelectric power development and how the studies would be implemented.

I. Estimate development cost. This cost should include all investment costs such as the cost of studies to determine feasibility, NEPA compliance, design, construction, and financing as well as the amortized annual cost of the investment; also, the annual operation, maintenance, and replacement expense for the hydropower development; lease payments to the United States; and expenses that may be associated with the CUP. If there are additional transmission or wheeling expenses associated with the development of the hydropower development, these should be included. Identify proposed methods of financing the hydropower development. An economic analysis should be presented that compares the present worth of all benefits and costs of the hydropower development.

Selection of Lessee

Interior, in consultation with Western, will evaluate proposals received in response to this published notice.

Interior will give more favorable consideration to proposals that (1) are well-adapted to developing, conserving, and utilizing the water and natural resources, (2) clearly demonstrate that the offeror is qualified to develop the hydropower facility and provide for long-term operation and maintenance, and (3) develop the hydropower potential economically. A proposal will be deemed unacceptable if it is inconsistent with CUP purposes, as

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determined by Interior. Interior will give preference to those entities that qualify as preference entities (as defined under PROPOSAL CONTENT GUIDELINES, item A.) provided that their proposal is at least as well-adapted to developing, conserving, and utilizing the water and natural resources as other submitted proposals and that the preference entity is well qualified. Preference entities would be allowed 90 days to improve their proposals, if necessary, to be made at least equal to a proposal(s) that may have been submitted by a non-preference entity.

Power Purchasing and/or Marketing Considerations

Western would have the first opportunity to purchase and/or market the power that would be generated by the project under a lease(s) of power privilege. Western will consult with Interior on such power purchasing and/or marketing considerations.

Western may market the power available from the project as part of its Salt Lake City Area Integrated Projects (SLCA/IP) or on a stand-alone basis, first to preference entities qualified under criteria established by Western and second to non-preference entities, by developing an individual marketing plan for this power. This marketing plan would be developed through a separate subsequent public process beginning with a notice in the **Federal Register** of Western's intent to market the power. The marketing plan would include all aspects of marketing the power, including assignment of power to qualified preference and/or non-preference entities, pricing, transmission, and delivery of power. Western would recover the costs it would incur in purchasing and/or marketing the power through the rates charged for the power. Firm power rates would be established through a public process, initiated by a notice in the **Federal Register**, separate from the marketing plan.

In the event Western elects to not purchase and/or market the power generated by the hydropower development or such a decision cannot be made prior to execution of the lease of power privilege, the lessee(s) would be responsible for marketing the power generated by the Project with priority given to preference entities as heretofore defined in PROPOSAL CONTENT GUIDELINES, item A.

Notice and Time Period To Enter Into Lease of Power Privilege

Interior will notify, in writing, all entities submitting proposals of Interior's decision regarding selection of the potential lessee(s). The selected potential lessee(s) will have five years from the date of such notification to enter into a lease(s) of power privilege for the site or sites identified in the proposal. Such lease(s) of power privilege will state whether and how Western will be involved in purchasing and/or marketing the power. Any excessive delay resulting from compliance with the provisions of Federal environmental laws or administrative review by a Federal agency, pertaining to the project, may extend the five year time period for a period equal to that of the delay. In the event of litigation related to the proposed project, the five year time period will be extended for a period equal to that of the delay, provided such litigation was initiated by parties other than the selected potential lessee(s) or its employees, officers, agents, assigns, shareholders, customers or persons or groups served by or in privity with the potential lessee(s).

Dated: June 28, 1999.

Ronald Johnston,

CUPCA Program Director, Department of the Interior.

[FR Doc. 99–16852 Filed 7–1–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. TE–011504–0

Applicant: Fred T. Sproul, Ramona, California.

The applicant requests a permit to take (collect; sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegoensis*) and Riverside fairy shrimp (*Streptocephaalus wootoni*) and remove and reduce to possession the San Diego mesa mint (*Pogogyne abramsii*), Otay mesa mint (*Pogogyne nudiscula*), San Diego button celery (*Eryngium aristulatum var. parishii*), Del Mar manzanita (*Arctostaphylos glandulosa ssp. crassifolia*), Orcutts spineflower (*Chorizanthe orcuttiana*), slender-horned spineflower (*Dodecahema leptoceres*), and Santa Ana woolly-star (*Eriastrum densifolium ssp. sanctorum*) in conjunction with presence or absence surveys and scientific studies throughout each species range in California, Arizona, and Nevada, for the purpose of enhancing their survival.

Permit No. TE–816204–0

Applicant: Douglas Kelt, University of California, Davis, California.

The permittee requests a permit amendment to take (radio collar, track with thread) the Stephen's kangaroo rat (*Dipodomis stephensi*) at the Southwestern Riverside County Multi-Species Reserve, Riverside County, California, in conjunction with scientific research for the purpose of enhancing its survival.

Permit No. TE–012137–0

Applicant: Department of the Army, Fort Hunter Liggett, California.

The applicant requests a permit to take (collect, sacrifice) Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjuntion with surveys located at Fort Hunter Liggett, California, for the purpose of enhancing their survival.

Permit No. TE–802094–0

Applicant: Carl J. Page, Cotati, California

The permittee requests an amendment to take (collect) the tidewater goby (*Eucyclogobius newberryi*) for age-class analysis throughout the species range for the purpose of enhancing its survival.

Permit No. TE–013717–0

Applicant: Marco Metzger, Riverside, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout each species' range for the purpose of enhancing their survival.

Permit No. TE–012929–0

Applicant: James R. Malcolm, Redlands, California

The applicant requests a permit to take (harass by survey, collect for captive propagation, handle, and release) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with presence and absence surveys and scientific research throughout the species' range for the purpose of enhancing its survival.

Permit No. TE–787645–0

Applicant: Thomas Olsen Associates, Hemet, California.

The permittee requests a permit amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with presence and absence surveys throughout the species' range in Arizona for the purpose of enhancing its survival.

Permit No. TE–807073–0

Applicant: Shiela Conant, Honolulu, Hawaii.

The applicant requests a permit to: take (capture, band, measure, draw blood, remove feathers, and release) the Layson finch (*Telespyza cantans*); take (capture, band, measure, draw blood, and release) the Nihoa millerbird (*Acrocephalus familiaris kingi*); and take (capture, band, measure, and release) the Nihoa finch (*Telespyza ultima*) in conjunction with scientific studies throughout each species' range for the purpose of enhancing their survival. Some of these activities were previously authorized under subpermit CONAS–10.

Permit No. TE–012136–0

Applicant: Oregon Department of Environmental Quality, Portland, Oregon.

The applicant requests a permit to take (harass by survey, electroshock) the Oregon chub (*Oregonichthys crameri*) in conjunction with monitoring programs throughout the species range in Oregon for the purpose of enhancing its survival.

Permit No. TE–012632–0

Applicant: Gwynne Corrigan, University of California, Santa Cruz, California.

The applicant requests a permit to take (capture, collect tissue samples) the blunt-nosed leopard lizard (*Gambelia silus*) in conjunction with genetic research in the San Joaquin Valley, California, for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before August 2, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: June 28, 1999.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–16851 Filed 7–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Giant Garter Snake for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of the Draft Recovery Plan for the Giant Garter Snake. This recovery plan includes the threatened giant garter snake (*Thamnophis gigas*). Additional species of concern that will benefit from recovery actions taken for the giant garter snake are also discussed in the draft recovery plan. The draft plan includes recovery criteria and measures for the giant garter snake.

DATES: Comments on the draft recovery plan must be received on or before August 31, 1999.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California (telephone (916) 979–2710). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Sacramento address.

FOR FURTHER INFORMATION CONTACT: Karen Miller, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The giant garter snake is an endemic species of wetlands in the Central Valley of California. Historically, giant garter snakes were found in the Sacramento and San Joaquin Valleys from the vicinity of Butte County southward to Buena Vista Lake, near Bakersfield in Kern County. Today, populations of the giant garter snake are found in the Sacramento Valley and isolated portions of the San Joaquin Valley. They historically inhabited natural wetlands and now occupy a variety of agricultural, managed, and natural wetlands including their waterways and adjacent uplands. This species is threatened by historic wetland habitat loss and resulting habitat fragmentation, and by continuing urban expansion.

The objective of this recovery plan is to delist the giant garter snake through implementation of a variety of recovery measures including (1) habitat protection; (2) public participation,

outreach and education; (3) habitat management and restoration; (4) surveying and monitoring; and (5) research.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 28, 1999.

Elizabeth H. Stevens,

California/Nevada Operations Manager, Sacramento, California.

[FR Doc. 99–16850 Filed 7–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–99–5440–A167–00; AZA 30933]

Arizona: Notice of Realty Action, Recreation and Public Purpose Act; Leases/Conveyances; La Paz County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The La Paz County, Arizona, Department of Community Development has filed an application pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, *et seq.*) for the lease/conveyance of public land for a justice court system facility at the following location:

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 22, SW¼SW¼NE¼.
The area described contains 10 acres.

The land described above is a part of public lands that are classified as suitable for lease/conveyance under the R&PP Act.

SUPPLEMENTARY INFORMATION: The County proposes to locate a new Justice Court facility to serve Justice of the Peace District #4. The new facility is needed to meet security concerns not adequately addressed in the layout of the present facility. In addition, the present facility makes compliance with the Americans with Disabilities Act problematic. The new facility will be designed to address this problem. Leases and conveyances, when issued, will contain the following terms, conditions and reservations to the United States:

1. The provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.
2. Rights-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations to be established by the Secretary of the Interior.
4. Those rights for a water production facility granted to the Town of Quartzsite (AZA 27765) under the Act of October 26, 1976 (43 U.S.C. 1761).
5. Those rights for a public road granted to the Town of Quartzsite AZA 27066) under the Act of October 26, 1976 (43 U.S.C. 1761).
6. Those rights for a public road granted to the Town of Quartzsite (AZA 27776) under the Act of October 26, 1976 (43 U.S.C. 1761).

APPLICATION COMMENTS: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance of the lands to the Field Manager, Yuma Field Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365. Comments should address the specific uses proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or nay other factor not directly related to the suitability of the land for justice court facilities.

FOR FURTHER INFORMATION CONTACT: Stephen Fusilier, Realty Specialist, at (520) 317–3296.

Dated: June 22, 1999.

Gail Acheson,

Field Manager.

[FR Doc. 99–16628 Filed 7–1–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–63025]

Realty Action: Modified-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Modified-Competitive Sale of Public Lands in White Pine County, Nevada.

SUMMARY: The below listed public land in Snake Valley, near Baker, White Pine County, Nevada has been examined and found suitable for sale utilizing modified-competitive procedures, at not less than the fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 and Section 209 of the Act of October 21, 1976; 43 U.S.C. 1761.

DATES: On or before August 16, 1999, interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Assistant Field Manager. Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Brenda Linnell, Realty Specialist, at the above address or telephone (775) 289–1808.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in White Pine County is being offered as a modified-competitive sale of public lands located;

Mount Diablo Meridian, Nevada

T. 14 N., R. 71 E.,
Section 30, Lots 9, 10, 12; SW¼NE¼SW¼
Containing 27.29 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filling fee for the conveyance of the available mineral interests. Unless otherwise provided by separate agreement with surface owner, permittee, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior. All cause of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against permittee, licensees and lessees of the United States; and the United States shall not be liable for the acts or omissions of its permittee, licensees and lessees.

The land will be offered for sale by sealed bid to be submitted at the BLM Ely Field Office at 702 North Industrial Way, Ely Nevada, 89301, during standard working hours starting at 7:30 am PDST on August 31, 1999 and ending 4:00 pm PDST on September 7, 1999. The sealed bids will be opened at 8:00 am PDST on September 8, 1999. This sale will be by modified-competitive procedures. Ms. Denys Koyle (designated bidder) will be given the opportunity to meet the highest bid received by sealed bid. Bid envelopes must be marked on the left front corner with serial number N–63025 and sale date. Bid must not be less than the appraised fair market value as specified in this notice. The Fair Market Value as determined by appraisal is $47,000.00. Each sealed bid shall be accompanied by a certified check, postal money order, or cashier's check made payable to the *Department of Interior:* BLM, for not less than 10 percent of the amount bid.

The terms and conditions applicable to this sale are:

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
2. All the oil and gas mineral deposits in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittees, licensees and lessees, the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

The patent will be subject to the following:

1. Those rights for underground telephone cable and appurtenances granted to Nevada Bell, its successors or assignees, by right-of-way No. N–4877. pursuant to the Act of March 4, 1911; (Stat. 1253) 43 U.S.C. 961. Right-of-way N–4877 expires November 4, 2020.
2. Those rights for U.S. Highway 50, granted to Nevada Department of Transportation, its successors or assignees, by right-of-way No. CC–023480, under Section 17 of the Act of November 9, 1921 (42 Stat. 212–216); 23 U.S.C., Sec. 18.
3. Those rights for an existing county road right-of-way for a dirt road, constructed under the provisions of R.S. 2477. The right-of-way width is 60 feet. This right-of-way is granted in perpetuity.
4. A 60 foot wide road right-of-way from Highway 50, north along the west side of Lot 10, allowing access to Lots 4 and 5, granted to White Pine County.
5. A 60 foot wide road right-of-way from Highway 50, north along the west side of Lot 9, allowing access to Lot 5, 6, and 7, granted to White Pine County.

Federal law requires all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the United States.

Under modified-competitive sale procedures, an apparent high bidder will be declared after the sealed bids are open. The apparent high bidder and the designated bidder (Ms. Denys Koyle) will be notified. The designated bidder will have 30 days from the date of the sale to exercise the preference consideration given to meet the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within specified time period, the apparent high bidder shall be declared high bidder. The total purchase price of the land shall be paid within 180 days of the date of the sale. The purchase price does not include the costs for publishing in the **Federal Register**. The purchaser will be required to reimburse the BLM for publishing cost, when remitting final payment for parcel.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: June 21, 1999.

Gene A. Kolkman,

Field Manager.

[FR Doc. 99–16843 Filed 7–1–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR.

A detailed assessment of the human remains was made by Oregon State Museum of Anthropology (OSMA) professional staff in consultation with representatives of the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, the Confederated Tribes of Grand Ronde, the Confederated Tribes of Siletz Indians, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, the Coquille Tribe of Oregon, the Klamath Indian Tribe of Oregon, and the Quartz Valley Indian Community of the Quartz Valley Reservation.

In 1935, human remains representing two individuals were recovered from Ecola Park near Indian Beach, Clatsop County, OR by a trail building crew and donated to OSMA by a donor whose name is withheld by OSMA. No known individuals were identified. No associated funerary objects are present.

Based on archeological context and skeletal morphology, these individuals have been determined to be Native American. Historic documents, ethnographic sources, and oral history indicate that Nehalem and Clatsop peoples have occupied the northern Oregon coast area since precontact times.

On an unknown date, human remains representing one individual from Astoria, OR were donated to OSMA by a donor whose name is withheld by OSMA. No known individual was identified. The four associated funerary objects include a bone bipoint, lithic debitage, and worked and unworked animal bones and teeth.

In 1950, human remains representing one individual from Astoria, OR were donated to OSMA by a donor whose name is withheld by OSMA. No known individual was identified. No associated funerary objects are present.

Based on probable archeological context and skeletal morphology, these individuals have been determined to be Native American. Historic documents, ethnographic sources, and oral history indicate that Lower Chinookan peoples have occupied the Astoria, OR area since precontact times.

In 1974, human remains representing two individuals were recovered from the Dunes site (35CLT27), Clatsop County, OR during legally authorized excavations conducted by Clatsop Community College archeology field school. In 1995, Clatsop Community College transferred these human remains to OSMA. No known individuals were identified. No associated funerary objects are present.

Based on archeological context and skeletal morphology, these individuals have been determined to be Native American. Historic documents, ethnographic sources, and oral history indicate that the Lower Chinookan peoples have occupied the northernmost Oregon coast area since precontact times.

Based on the above mentioned information, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, and the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation.

In 1960, human remains representing one individual were recovered from the Iron Gate 2 site, nine miles east of Hornbrook, Siskiyou County, CA during legally authorized excavations conducted by University of Oregon archeologists. No known individual was identified. No associated funerary objects are present.

In 1961, human remains representing one individual recovered during construction of the Iron Gate Dam, CA were curated at OSMA by the Sheriff's Office, Siskiyou County, CA. No known individual was identified. No associated funerary objects are present.

Historical documents, ethnographic sources, and oral history indicate that Shasta peoples have occupied the Siskiyou County, CA area since precontact times. Based on the archeological evidence and/or skeletal material, the individuals from Iron Gate Dam site and the Iron Gate 2 site are Native American.

Based on the above mentioned information, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, and the Quartz Valley Indian Community of the Quartz Valley Reservation.

In 1963, human remains representing three individuals from the Border Village site (35KL16) were recovered during legally authorized excavations conducted by University of Oregon archeologists. No known individuals were identified. The five associated funerary objects include a steatite pipe and fragments of an antler spoon.

Historical documents, ethnographic sources, and oral history indicate that Klamath-Modoc and Shasta-Takelma peoples have occupied the upper Klamath river area since precontact times. Based on archeological context, the individuals have been identified as Native American of probable Klamath-Modoc or Shasta Takelma cultural affiliation.

Based on the above mentioned information, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the five objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, the Klamath Tribe of Oregon, and the Quartz Valley Indian Community of the Quartz Valley Reservation.

At an unknown date, human remains representing one individual were placed in storage at the Museum by an unknown donor. No known individual was identified. No associated funerary objects are present.

Museum records show these remains were given a general provenience of "Oregon Coast". No other information exists regarding this individual.

Possibly during the 1940s, human remains representing six individuals were transferred to the Museum from the University of Oregon Medical School Crime Detection Laboratory. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Museum catalogs attribute these human remains to the Oregon coast.

In 1966, human remains representing one individual were catalogued in Museum collections. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American. Museum catalogs list a general provenience of the Oregon coast.

Based on the above mentioned information, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, the Confederated Tribes of Grand Ronde, the Confederated Tribes of Siletz Indians, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, and the Coquille Tribe of Oregon.

At an unknown date, human remains representing one individual were donated to the Museum by a donor whose name is withheld by OSMA. No known individual was identified. No associated funerary objects are present.

Accession records state the donor found these human remains near the Santiam River, OR.

In 1962, human remains representing one individual from the Linn 10 site, in the central Willamette Valley, Linn County, OR were recovered during legally authorized excavations conducted by University of Oregon archeologists. No known individual was identified. The approximately 56 associated funerary objects include copper, bone, and shell beads, flaked stone tools, groundstone tools, worked antler tools, and unworked shell and bone.

Historical documents, ethnographic sources, and oral history indicate that Kalapuya and Molalla peoples have occupied the central Willamette Valley since precontact times. Based on archeological context and/or skeletal morphology, these individuals have been identified as Native American of possible Kalapuya or Molalla cultural affiliation.

In 1932, human remains representing 40 individuals from site 35JA130 in Gold Hill, OR during legally authorized excavations conducted by University of Oregon archeologists. No known individuals were identified. The approximately 387 associated funerary objects include chipped and ground stone tools, large obsidian knives, arrow points, pine nut beads, and *glycymeris*, olive, and abalone shell beads and pendants.

In 1940, human remains representing one individual were donated to the Museum by a donor whose name is withheld by OSMA. No known individual was identified. No associated funerary objects are present. Accession notes give a general provenience of Caveman Bridge, Rogue River, OR; there is no other information with the remains.

Historical documents, ethnographic sources, and oral history indicate that the Takelma people have occupied the upper Rogue River Valley since precontact times. Based on archeological context and/or skeletal morphology, the individuals from site 35JA130 and Caveman Bridge have been identified as Native American of possible Takelma cultural affiliation.

In 1961, human remains representing one individual from the site of the North Eugene High School, Eugene, OR were recovered during legally authorized excavations conducted by University of Oregon archeologists. No known individual was identified. No associated funerary objects are present.

In 1966, human remains representing one individual from the Slate's Forest Mound site (35LIN20), Linn County, OR were recovered during legally authorized excavations conducted by University of Oregon archeologists. No known individual was identified. The approximately eight associated funerary objects include worked and unworked stone flakes, a stone chopper, and unmodified bone, shell, and rock.

In 1971, human remains representing approximately seven individuals from the Lynch site (35LIN36), Linn County, OR were recovered during legally authorized excavations conducted by University of Oregon archeologists. No known individuals were identified. The four associated funerary objects are projectile points.

In 1969, human remains representing approximately eight individuals from private land at Six Corners near the Tualatin River, OR were removed and donated to the Museum by a donor whose name is withheld by OSMA. No known individuals were identified. The approximately 32 associated funerary objects include copper, brass, and iron jewelry; shell and glass beads; copper buttons; woven hair; animal bones; sinew and cordage.

In 1966, human remains representing six individuals from the Lingo site (35LA29), Lane County, OR were recovered during legally authorized excavations conducted by the University of Oregon Field School. No known individuals were identified. The three associated funerary objects include a stone pestle, a beaver mandible, and a shell pendant.

In 1970, human remains representing three individuals from sites 35LIN45 and 35LIN50 in Linn County, OR were recovered during legally authorized excavations conducted by University of Oregon archeologists. No known individuals were identified. The 16 associated funerary objects include a bone bead, worked and unworked animal bones, and stone projectile points.

Historical documents, ethnographic sources, and oral history indicate that the Kalapuya people have occupied the southern Willamette Valley area since precontact times. Based on archeological context and/or skeletal morphology, the individuals from the North Eugene High School site, the Slate's Forest Mound site, the Lynch site, the Six Corners site, the Lingo site, and sites 35LIN45 and 35LIN50 have been identified as Native American of possible Kalapuya cultural affiliation.

In 1935, human remains representing two individuals, probably from Scott Lake near McKenzie Pass, OR were donated to the Museum by a donor whose name is withheld by OSMA. No known individuals were identified. No associated funerary objects are present.

In 1940, human remains representing one individual from a site near Crater Lake, OR were recovered during legally authorized excavations conducted by University of Oregon archeologists, including former Museum Director L.S. Cressman. No known individual was identified. No associated funerary objects are present.

In 1947, human remains representing one individual were donated to the Museum by a donor whose name is withheld by OSMA. No known individual was identified. No associated funerary objects are present. Accession records indicate these human remains were collected from a road cut located three miles towards Medford from Prospect, OR.

Historical documents, ethnographic sources, and oral history indicate that the Molalla people have occupied the Cascade Range and upper Rogue River valley since precontact times. Based on archeological context and/or skeletal morphology, the individuals from Scott Lake, Crater Lake, and from near Prospect, OR have been identified as Native American of possible Molalla cultural affiliation.

In 1947, human remains representing 41 individuals from Fuller Mound, Yamhill County, OR were donated to the Museum by a donor who collected these individuals and whose name is withheld by OSMA. No known individuals were identified. The approximately 35 associated funerary objects include worked whalebone and other animal bone tools; shell and glass beads; metal; a stone net sinker; unworked wood, bone, and shell; and an obsidian blade.

In 1947, human remains representing 19 individuals from the Fanning Mound, Yamhill County, OR were donated to the Museum by a donor who collected these individuals from the site and whose name is withheld by OSMA. No known individuals were identified. The five associated funerary objects include a stone pestle and worked bone.

In 1959, human remains representing five individuals were donated to the Museum by a donor whose name is withheld by OSMA. No known individuals were identified. No

associated funerary objects are present. Museum records show that the donor removed these remains from his father's nursery approximately five miles southwest of McMinnville, OR, east of Highway 18 on the west bank of the Yamhill River in Yamhill County.

In 1950, human remains representing two individuals were donated to the Museum by a donor whose name is withheld by OSMA. No known individuals were identified. No associated funerary objects are present. Accession records indicate these remains were removed from a "burial mound" in a field no far from the south bank of Muddy Creek, two miles east of Highway 99E between Halsey and Harrisburg, and a short distance northwest of the Rowland schoolhouse in Yamhill County, OR.

Historical documents, ethnographic sources, and oral history indicate that the Yamhill and Kalapuya peoples have occupied the Yamhill County area since precontact times. Based on archeological context and/or skeletal morphology, these individuals from Yamhill County have been identified as Native American of possible Yamhill or Kalapuya cultural affiliation.

In 1947, human remains representing one individual from Netarts Spit, OR were donated to the Museum from a donor who collected the remains and whose name is withheld by OSMA. No known individual was identified. The one associated funerary object is an obsidian point.

In 1956, human remains representing one individual from the Netarts Spit site (35TI1), Tillamook County, OR were recovered during legally authorized excavations conducted by University of Oregon archeologists. No known individual was identified. No associated funerary objects are present.

In 1991, human remains representing one individual from the Kilchis Point Village site, Tillamook County, OR were transferred from Portland State University to the Museum. No known individual was identified. No associated funerary objects are present.

Historical documents, ethnographic sources, and oral history indicate that the Tillamook people have occupied the north-central Oregon coast area since precontact times. Based on archeological context and/or skeletal morphology, these individuals from Tillamook County have been identified as Native American of possible Tillamook cultural affiliation.

Based on the above mentioned information, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of minimum of 143 individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the approximately 547 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Confederated Tribes of Grand Ronde and the Confederated Tribes of the Siletz Indians.

This notice has been sent to officials of the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, the Confederated Tribes of Grand Ronde, the Confederated Tribes of Siletz Indians, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, the Coquille Tribe of Oregon, the Klamath Indian Tribe of Oregon, and the Quartz Valley Indian Community of the Quartz Valley Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Melvin Aikens, Oregon State Museum of Anthropology, 1224 University of Oregon, Eugene, OR 97403-1224; telephone: (541) 346-5115, before [*thirty days after publication in the* **Federal Register**]. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of Grand Ronde may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the content of or determinations within this notice.

Dated: June 21, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–16849 Filed 7–1–99; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–409]

In the Matter of Certain CD-ROM Controllers and Products Containing the Same—II; Notice of Commission Decisions to Review Portions of One Initial Determination and All of a Second Initial Determination, and Schedule for the Filing of Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination (ID) issued on May 12, 1999, by the presiding administrative law judge (ALJ) in the above-captioned investigation finding that there was no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and to review in its entirety an ID (ALJ Order No. 15) issued on May 10, 1999, granting respondent United Microelectronics Corporation's (UMC's) motion for a summary determination terminating UMC from the investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 13, 1998, based on a complaint filed by Oak Technology, Inc. 63 FR 26625 (1998). The complainant named four respondents: MediaTek, UMC, Lite-On Technology Corp., and AOpen Inc. Actima Technology Corporation, ASUSTek Computer, Incorporated, Behavior Tech Computer Corporation, Data Electronics, Inc., Momitsu Multi Media Technologies, Inc., Pan-International Industrial Corporation, and Ultima Electronics Corporation were permitted to intervene.

In its complaint, Oak alleged that respondents violated section 337 by importing into the United States, selling for importation, and/or selling in the United States after importation

electronic products and/or components that infringe claims 1–5 and 8–10 of U.S. Letters Patent 5,581,715 ('715 patent). The presiding ALJ held an evidentiary hearing from January 11, 1999, to January 28, 1999.

On May 10, 1999, the ALJ issued an ID (Order No. 15) granting the motion of respondent UMC for a summary determination terminating respondent UMC from the investigation on the basis of a license agreement. On May 12, 1999, the ALJ issued his final ID finding that there was no violation of section 337. He found that there was no infringement of any claims at issue. He further found that the claims in issue of the '715 patent were invalid for on-sale bar under 35 U.S.C. 102(b), anticipation under 35 U.S.C. 102(a), obviousness under 35 U.S.C. 103, for indefiniteness under 35 U.S.C. 112(2), (6), and for derivation under 35 U.S.C. 102(f). The ALJ found that there was a domestic industry with respect to the '715 patent.

Complainant Oak filed a petition for review of Order No. 15 and respondent UMC and the Commission investigative attorney (IA) filed responses to Oak's petition for review of Order No. 15. Oak, respondents, and the IA filed a petitions for review of the final ID, and all parties subsequently responded to each other's petitions for review of the final ID.

Having examined the record in this investigation, including Order No. 15, the final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the ID's findings with respect to the preamble and the Digital Signal Processor (DSP) element. The Commission has determined to review the remainder of the final ID and Order No. 15 in its entirety.

While the Commission expects the parties to brief all of the issues being reviewed, the Commission is particularly interested in receiving answers to the following questions:

(1) With respect to the claimed memory means, please cite and discuss any Federal Circuit cases dealing with indefiniteness of an issued patent, which carries a presumption of validity, in the context of apparent confusion between the language of the claim and the content of the specification.

(2) Should the claimed error detection and correction means be interpreted as a means-plus-function element that necessarily includes two specific circuits, but which may include more circuit structure?

(3) If the claimed error detection and correction means is construed as a means-plus-function element—

(a) Is it possible under current Federal Circuit case law to satisfy the requirements for structural description under 35 U.S.C. 112 ¶ 6 by references to "circuits * * * commonly available as hardware used in many other applications?"

(b) Is there any evidence of record of commonly available hardware, at the time of the alleged infringement, for performing the error detection function by a cyclic redundancy check other than by a linear feedback shift register?

(c) Is common availability in hardware a prerequisite for determining whether the error detection circuitry in any accused device is an equivalent to a linear feedback shift register for purposes of section 112 ¶ 6 at the time of the alleged infringement?

(d) Does the MediaTek Error Detection Processor perform the identical function as the disclosed cyclic redundancy checker?

(e) At the time of the alleged infringement, would the MediaTek Error Detection Processor be considered an equivalent device under section 112 ¶ 6 for performing the claimed function?

(4) If the claimed error detection and correction means is not construed as a means-plus-function element, please discuss, to the extent the record will allow, whether the MediaTek Error Detection Processor, considering its operation from both a hardware and software standpoint, may be considered a cyclic redundancy checker?

(5) Under Federal Circuit case law, what is necessary to conclude that a feature of disclosed circuitry is directly linked to a claimed function in order to make it part of the "corresponding structure" under section 112 ¶ 6? In particular, could a patentee demonstrate this required linkage by showing, as a matter of logic, that the circuitry of the claimed means could not work without the feature in question, even though there is no explicit textual reference to the claimed function in the portion(s) of the specification dealing with that feature?

(6) Please discuss which features of the claimed host interface means should be included in the "corresponding structure" for purposes of construing this element.

(7) Please discuss, including all the engineering detail the record will allow, including timing relationships, signal characteristics, sequence of operations, and any other design parameters you deem relevant, how the claimed host interface means functions.

(8) With respect to the claimed host interface means—

(a) Does the preamble to claim 1 require that the host interface means directly connect to the IDE/ATA bus and have sufficient circuitry to support any IDE-based command set?

(b) Aside from expanding to eight registers and changing the addressing scheme, what design problems had to be solved to go from the Mitsumi daughterboard to the claimed invention? Where are the solutions to those problems reflected in the patent specification?

(c) What design problems of the host interface means, if any, would remain unsolved in view of the ATA or ATAPI specifications? To the extent you contend that design features of the host interface means are disclosed by the engineering information in these specifications, please cite specific references, at least to sections and preferably to page numbers, where the information may be found.

(9) With respect to the ALJ's obviousness analysis, what is the teaching, motivation, or suggestion to combine the references employed?

(a) If you contend that the teaching, motivation, or suggestion derives, in whole or in part, from "the nature of the problem," please discuss the extent to which Federal Circuit case law has extended this concept beyond simple mechanical contexts.

(b) If you contend that it derives, in whole or in part, from the teachings of pertinent references, please cite to the passages in the references in question that you contend furnish such a suggestion.

(c) If you contend that it derives, in whole or in part, from the knowledge of those of ordinary skill in the art of the importance of certain references, please be specific as to how all or portions of the references in any given combination were well known in the art prior to the invention and how a person of ordinary skill in the art would have known to combine material from other references in the combination that are not so well known.

(10) 35 U.S.C. 103 directs that the reference point for an obviousness analysis is "at the time the invention was made." In view of the evidence of a conception date no later than April 1993, what is the relevance under governing case law of the ATAPI standard, which was apparently available to no one before June 10, 1993?

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in

the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues under review, and on remedy, the public interest, and bonding. Such submissions should address the May 26, 1999, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on July 12, 1999. Reply submissions must be filed no later than the close of business on July 19, 1999. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45–210.51.

Copies of the public versions of the subject IDs, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: June 28, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16928 Filed 7–1–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 7, 1999 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–380–382 and 731–TA–797–804 (Final) (Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 19, 1999.)
5. Inv. No. AA1921–162 (Review) (Melamine from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 21, 1999.)
6. Outstanding action jackets:
   (1) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).
   (2) Document No. GC–99–057: Regarding Inv. No. 337–TA–412 (Certain Video Graphics Display Controllers and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 29, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16996 Filed 6–30–99; 12:10 pm]

BILLING CODE 7020–20–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 9, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–827 (Preliminary) (Nitrile Rubber from Korea)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 12, 1999.)
5. Inv. No. 731–TA–828 (Preliminary) (Bulk Acetylsalicylic Acid (Aspirin) from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 12, 1999.)
6. Outstanding action jackets:
   (1) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).
   (2) Document No. GC–99–057: Regarding Inv. No. 337–TA–412 (Certain Video Graphics Display Controllers and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: June 29, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–16997 Filed 6–30–99; 12:10 pm]

BILLING CODE 7020–20–P

DEPARTMENT OF JUSTICE

Justice Management Division; Information Resources Management/ Telecommunications Services Staff Meeting of the Global Criminal Justice Information Network Advisory Committee

AGENCY: Justice Management Division, Information Resources Management, Telecommunications Services, Justice.

ACTION: Notice of meeting of the Global Criminal Justice Information Network Advisory Committee.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Global Criminal Justice Information Network Advisory Committee will be held on July 27–28, 1999. The Committee will meet from 9 am–5 pm at the Hyatt Regency Washington Hotel, located at 400 New Jersey Avenue, NW, Washington, DC 20001. The Committee will meet to address the Global Initiative, as described in Initiative A07 "Access America: Reengineering Through Information Technology".

This meeting will be open to the public, and registrations will then be accepted on a space available basis. For information on how to register, contact Susan Ruyle, 901 E Street NW, Suite 510, Washington, DC 20530, or call (202) 353–8594. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the Designated Federal Employee (DFE).

If you need special accommodations due to a disability, please contact Sharon Collins at (202) 393–1306 at least seven (7) days prior to the meeting. Further information with reference to this meeting can be obtained from Kathy Albert, the DFE, 901 E Street NW, Suite 510, Washington, DC 20530, or call (202) 514–3337.

Dated: June 22, 1999.

Kathy Albert,

Global Network Coordinator, Telecommunications Services Staff, Information Resources Management, Justice Management Division, Department of Justice.

[FR Doc. 99–16906 Filed 7–1–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is here by given that a consent decree in *United States* v. *PP&L, Inc.*, Civil Action No. 4:CV–99–0922 (M.D. Pa.) was lodged with the court on June 7, 1999.

The proposed decree resolves claims of the United States against PP&L, Inc. under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, for response costs and actions at the MW Manufacturing Superfund Site in Valley Township, Montour County, PA. The decree embodies a *de minimis* settlement of PP&L's liability at the site and obligates the PP&L to reimburse to the United States $98,860 of response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *PP&L, Inc.*, Civil Action No. 4:CV–99–0922 (M.D. Pa.), DOJ Ref. #90–11–3–1049. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C 6973(d).

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 2005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16910 Filed 7–1–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 17, 1999, a proposed Consent Decree ("Consent Decree") in *United States* versus *Gene T. Jones, et al.*, Civil Action No. 98–C–1049–S was lodged with the United States District Court for the Northern District of Alabama.

In this action the United States sought the recovery of the United States' response costs regarding the Jones Tire and Battery Superfund Site ("the Site") in Birmingham, Alabama. In the Consent Decree, the Settling Defendants agree to pay to the United States $600,221.87 for past response costs related to the removal conducted by the Environmental Protection Agency. The Settling Defendants consist of the Site operator and 48 generator defendants. The United States also intends to dismiss without prejudice the remaining defendants from the action, thereby resolving the case in its entirety.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* versus *Gene T. Jones, et al.*, D.J. Ref. 90–11–2–986/1.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Alabama, 200 Robert Vance Federal Bldg., 1800 5th Ave. N, Room 200, Birmingham, AL 35203–2198, at U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from

the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $16.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16907 Filed 7–1–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 111 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on June 11, 1999, a proposed *De Minimis* Consent Decree in *United States* v. *BASF Corporation, successor to Cook Paint and Varnish Company.*, Civil Action No. 99–72978, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against BASF Corporation for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, BASF Corporation, successor to Cook Paint and Varnish Company, will pay $487,206 in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *BASF Corporation.*, D.J. Ref. 90–11–3–289/3.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. and at the Consent Decree Library, 120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16909 Filed 7–1–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a Consent Decree in *United States* v. *SPS Technologies, Inc.*, Civil Action No. 99–2702 (SMO) (D.N.J.) was lodged with the United States District Court for the District of New Jersey on June 11, 1999.

The proposed consent decree resolves claims asserted by the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), against SPS Technologies, Inc. ("Settling Defendant") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607. The claims sought to recover past response costs incurred at the DeRewal Chemical Co. site ("Site") in Kingwood Township, Hunterdon County, New Jersey. The United States alleged that the settling defendant was liable as the generator of the hazardous waste disposed of at the Site under Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(1). The Complaint states claims against the Settling Defendants under Section 107 of CERCLA, 42 U.S.C. 9607, for reimbursement of response costs. The proposed Consent Decree requires the Settling Defendant to reimburse the United States $800,000 in past response costs.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *SPS Technologies, Inc.*, Civil Action No. 99–2702 (SMO) (D.N.J.), DJ #90–11–3–06009.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, Newark, NJ 07102; at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, NY 10007–1866; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. When requesting a copy of the consent decree by mail, please enclose a check in the amount of $5.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 99–16908 Filed 7–1–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 23, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol. gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Contribution Operations.

OMB Number: 1205–0178.

Frequency: Quarterly.

Affected Public: State, Local, or Tribal govt.

Number of Respondents: 53.

Estimated Time Per Respondent: 8 hours and 30 minutes.

Total Burden Hours: 1,802.

Total Annualized capital/startup costs: $0.

Total annual costs (cooperating/maintaining systems or purchasing services): $0.

Description: Provides quarterly data on State agencies' volume and performance in wage processing, promptness of liable employer registration, timeliness of filing contribution and wage reports, extent of tax delinquency, and results of field audit program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–16870 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,006]

Ansewn Shoe Company, Bangor, ME; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on April 12, 1999, filed on behalf of workers at Ansewn Shoe Company, Bangor, Maine. The workers were engaged in employment related to the production of men's and women's leather shoes.

The investigation revealed that sales, production and employment at the subject firm have declined during the relevant periods.

A departmental survey was conducted with major customers. The survey revealed that major declining customers of Ansewn discontinued purchasing shoes from the subject firm while importing shoes from sources located overseas during the periods under investigation.

Aggregate U.S. imports of leather shoes increased in the twelve month period January 1997-December 1998 compared with the same twelve month period one year earlier. In 1998 imports were over 800% of the United States production.

Currently, there is a NAFTA-Transitional Adjustment Assistance investigation in progress for the workers of the subject firm. The identifying number is NAFTA–3051.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and women's leather shoes produced at Ansewn Shoe Company, Bangor, Maine contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Ansewn Shoe Company, Bangor, Maine, who became totally or partially separated from employment on or after March 19, 1999, through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 17th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16876 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,200 et al.]

Nabors Drilling USA, Inc., East Texas/North Louisiana District, Headquartered in Kilgore, TX, Including Bayard Drilling Technologies; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 28, 1998, applicable to workers of Nabors USA, Inc., East Texas/North Louisiana District, headquarters in Kilgore, Texas operating at various locations in Texas and Louisiana. The notice was published in the **Federal Register** on January 25, 1999 (64 FR 3721).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that Nabors Drilling USA purchased Bayard Drilling Technologies in April, 1999. New information show that some workers separated from employment at Nabors Drilling USA had their wages reported under a separate unemployment insurance (UI) tax account for Bayard Drilling Technologies, Oklahoma City, Oklahoma. The workers provide drilling services related to the exploration and production of crude oil and natural gas.

Based on these findings, the Department is amending the certification to include workers of Bayard Drilling Technologies.

The intent of the Department's certification is to include all workers of Nabor Drilling USA, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–35,200 is hereby issued as follows:

All workers of East Texas/North Louisiana District of Nabors Drilling USA, Inc., headquartered in Kilgore, Texas (TA–W–35,200), including Bayard Drilling Technologies operating at various locations in Texas (TA–W–35,200A), Louisiana TA–W–35,200B) and Oklahoma (TA–W–35,200D) who became totally or partially separated from employment on or after October 22, 1997 through December 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16872 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 598]

NANA Management Services and NANA/Colt Engineering, Anchorage, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at NANA Management Services and NANA/Colt Engineering, Anchorage, Alaska. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35, 598; NANA Management Services and NANA/Colt Engineering, Anchorage, Alaska (June 23, 1999)

Signed at Washington, DC this 25th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–16871 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,448 Franklin, Georgia; TA–W–35,448B Lyndhurst, New Jersey]

Private Line Group, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 19, 1999, applicable to workers of Private Line Group, Inc., Franklin, Georgia. The notice was published in the **Federal Register** on January 29, 1999 (64 FR 4712).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Lyndhurst, New Jersey location of Private Line Group, Inc. The Lyndhurst, New Jersey location provided administrative and support function services for Private Line Group's production facilities located in Franklin and Bowman Georgia. The workers produce men's coats and pants.

The intent of the Department's certification is to include all workers of Private Line Group, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Private Line Group, Inc., Lyndhurst, New Jersey.

The amended notice applicable to TA–W–35,448 is hereby issued as follows:

All workers of Private Line Group, Inc., Franklin, Georgia (TA–W–35,448), and Lyndhurst, New Jersey (TA–W–35,448B) who became totally or partially separated from employment on or after December 14, 1997 through January 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16875 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 792 et al.]

Texaco North American Production a/k/a Texaco Exploration and Production Inc., Texaco Worldwide Upstream Headquarters and Texaco Exploration and Production Technology Houston, TX; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on March 8, 1999, and filed by a company official on behalf of workers at Texaco North American Production, also known as Texaco Exploration and Production Inc., operating at various locations in the above cited states, and at Texaco Worldwide Upstream Headquarters and at Texaco Exploration and Production Technology, in Houston, Texas. The workers are engaged in employment related to the production of crude oil and natural gas.

The investigation revealed that revenues declined at the subject firm in 1998 compared with 1997, and also declined in January through February, 1999, compared with the same period of 1998. Employment also declined in 1999.

United States imports of crude oil increased absolutely and relative to domestic shipments and consumption in November through October, 1997–1998, compared with the same period one year earlier. In January through October, 1998, the ratio of imports to domestic shipments of crude oil was over 133 percent. U.S. imports of dry natural gas also increased in the November through October, 1997–1998 time period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with crude oil contributed importantly to the decline in sales or production and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Texaco North American Production (TNAP), also known as Texaco Exploration and Production Inc., operating in the following cited states,

TA–W–35,792A ALABAMA
TA–W–35,792B CALIFORNIA
TA–W–35,792C COLORADO
TA–W–35,792D ILLINOIS
TA–W–35,792E KANSAS
TA–W–35,792F LOUISIANA
TA–W–35,792G NEW MEXICO
TA–W–35,792H OKLAHOMA
TA–W–35,792I TEXAS (excluding Houston)
TA–W–35,792J UTAH
TA–W–35,792K WYOMING

and all workers of Texaco Worldwide Upstream Headquarters and of Texaco Exploration and Production Technology, in Houston, Texas, who were in support of the TNAP operations cited above, who became totally or partially separated from employment on or after March 1, 1998, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 7th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–16877 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 12, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 12, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of June 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/01/99]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,297	Woolrich, Inc (Comp)	Soperton, GA	05/21/1999	Men's shirts and women's blouses.
36,298	Beltex Corp (Comp)	Belmont, NC	05/18/1999	T-shirts.
36,299	ABB Power T&D Co., Inc (Wrks).	Bloomington, IN	05/11/1999	Electrical products.
36,300	Timet Kroll Production (Wrks)	Henderson, NV	05/18/1999	Sponge, ingot, slab & scrap.
36,301	Westchester Lace (UNITE)	North Bergen, NJ	04/30/1999	Lace and textiles.
36,302	Leather Co (The) (Wrks)	Philadelphia, PA	05/17/1999	Leather handles for luggage.
36,303	Monde Knitwear Ltd (Comp)	Middle Village, NY	05/18/1999	Knit outerwear.
36,304	Salco Knitting Mills (UNITE)	Brooklyn, NY	05/10/1999	Ladies suits.
36,305	Grand Haven Brass (Wrks)	Grand Haven, MI	05/13/1999	Bronze and metal castings.
36,306	Blount, Inc (Wrks)	Owatonna, MN	05/03/1999	Tree harvesting equipment.
36,307	Little Tikes Co (The) (Comp)	Shippensburg, PA	05/17/1999	Plastic childrens toys.
36,308	Amercord, Inc (Comp)	Lumber City, GA	05/13/1999	Steel wire.
36,309	Grainger Integrated (Comp)	Broussard, LA	05/14/1999	Tool crab administrators.
36,310	Holiday Products (Comp)	El Paso, TX	05/06/1999	Christman stocking, hats & santa suits.
36,311	Sew Crafters, LLC (Comp)	Royston, GA	05/07/1999	Coats and jackets.
36,312	Master Lock Co (Comp)	Milwaukee, WI	05/04/1999	Laminated padlocks.
36,313	Watlow System Integrators (Comp).	Decorah, IA	05/13/1999	Thermal devices.
36,314	Desmon Mills, Inc (Wrks)	Woonsocket, RI	05/13/1999	Wollen spun yarns.
36,315	Vesuvius USA (Wrks)	Zelienople, PA	05/13/1999	Alumina slide gate refractories.
36,316	Kellwood Co.—Sportswear (Comp).	Coffeeville, MS	04/28/1999	Men's denim jeans
36,317	Tubby's Auto Service, Inc (Comp).	Houston, TX	05/11/1999	Auto & rebuildable cars.
36,318	Rocky Mountain Steel Mill (Comp).	Pueblo, CO	05/07/1999	Tubular goods.
36,319	Unger and Fabrick (Wrks)	Los Angeles, CA	05/03/1999	Men's and women's shirts.
36,320	CAC, Inc (Comp)	Edmund, OK	05/13/1999	Oil and gas.
36,321	Blanche (UNITE)	New York, NY	05/11/1999	Lingerie.
36,322	Sheldon Welding & Steel (Comp).	Tioga, ND	05/05/1999	Steel fabrication.
36,323	Royce Hosiery Mills (Wrks)	Conover, NC	05/14/1999	Hosiery.
36,324	Sunset Time (Comp)	Pacoima, CA	05/11/1999	Clocks.
36,325	Fasco Motor Group (Comp)	Russellville, AR	05/07/1999	Fractional horsepower electric motors.
36,326	C and J Manufacturing (Comp)	Blytheville, AR	05/12/1999	Women's clothing.
36,327	Fisher-Rosemount Systems (Wrks).	Burnsville, MN	05/12/1999	RS3 distributed control systems.
36,328	Gulf Publishing Co (Comp)	Houston, TX	05/11/1999	Magazines—energy trade.
36,329	Picker X Ray (IBEW)	Solon, OH	05/13/1999	X-ray machines.
36,330	Allied Signal (PACE)	Metropolis, IL	05/11/1999	Uranium hexafluorid.
36,331	Victoreen, Inc (IAMAW)	Solon, OH	05/07/1999	Radiation monitoring equipment.

APPENDIX—Continued
[Petitions instituted on 06/01/99]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,332	S and S Chemical and Oil (Wrks).	Williston, ND	05/21/1999	Bulk salt and drilling mud.
36,333	Aluminum Co. of America (Wrks).	Alcoa Center, PA	05/15/1999	Hinge pillars.
36,334	Federal Mogul, Worldwide (Wrks).	Manila, AR	05/14/1999	Brake shoes and disc pads.
36,335	Brown and Root Industrial (Wrks).	Odessa, TX	05/03/1999	Gasoline, diesel fuel and jet fuel.
36,336	Collins and Aikman (Comp)	Homer, MI	05/13/1999	Automotive interior parts.
36,337	House of Ronnie (Wrks)	New York, NY	05/19/1999	Ladies and childrens.
36,338	Pillsbury Co., (The) (UFCW)	Blackwood, NJ	05/14/1999	Frozen, unbaked hoagie rolls.
36,339	National Tank Co (Comp)	Corpus Christi, TX	05/24/1999	Oil.

[FR Doc. 99–16878 Filed 7–1–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3063]

Logistix, Medical Division, Hillsboro, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), and investigation was initiated on March 30, 1999 in response to a petition filed on behalf of workers at Logistix, Medical Division, Hillsboro, Oregon.

Two of the petitioners were not employed at the subject firm location cited, therefore, the petition is not valid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of June 1999.

Linda Poole,

Program Monager, Office of Trade Adjustment Assistance.

[FR Doc. 99–16873 Filed 7–1–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03061]

Mark Steel Jewelry, Including Leased Workers of Employer Solutions Group of Utah, Spring City, Utah; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 10, 1999, applicable to all workers of Mark Steel Jewelry, located in Spring City, Utah. The notice was published in the **Federal Register** on June 3, 1999 (63 FR 29890).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that all workers of Mark Steel Jewelry had their wages reported under a separate unemployment insurance (UI) tax account at Employer Solutions Group of Utah. Workers from Employer Solutions Group of Utah produced jewelry at the Spring City, Utah location of Mark Steel Jewelry.

Based on these findings, the Department is amending the certification to include workers of Employer Solutions Group of Utah who were engaged in the production of jewelry at Mark Steel Jewelry, Spring City, Utah.

The intent of the Department's certification is to include all workers of Mark Steel Jewelry adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03061 is hereby issued as follows:

All workers of the Mark Steel Jewelry, including leased workers of Employer Solutions Group of Utah, Spring City, Utah engaged in employment related to the production of jewelry for Mark Steel Jewelry, Spring City, Utah who became totally or partially separated from employment on or after March 25, 1998 through May 10, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–16874 Filed 7–1–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276(a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefits information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 25th day of June 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–16604 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–11]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; OSHA Data Collection System (1218–0209)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the OSHA Data Collection System. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 31, 1999.

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 99–11, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 693–2350. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3644, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Barbara Bielaski at (202) 693–2444. For electronic copies of the OSHA Data Collection System information collection request, contact OSHA's WebPage on the Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

To meet many of OSHA's program needs, OSHA is proposing to continue its data initiative to collect occupational injury and illness data and information on number of workers employed and number of hours worked from establishments in portions of the private sector. OSHA will collect 1999 data from up to 80,000 employers required to create and maintain records pursuant to CFR Part 1904. These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of the data collection initiative is critical to OSHA's reinvention efforts and the data requirements tied to the Government Performance and Results Act (GPRA).

II. Current Actions

This notice requests public comment on an extension of the current OMB approval of the paperwork requirements for the OSHA Data Collection System.

Type of Review: Extension of currently approved collection.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Collection System.

OMB Number: 1218–0209.

Agency Number: ICR–99–11.

Affected Public: Business or other for-profit and State, Local or Tribal Government.

Cite/Reference/Form/etc.: OSHA Form 196A and OSHA form 196B.

Total Respondents: 80,000.

Frequency: Annually.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 35,000 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 29, 1999.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 99–16879 Filed 7–1–99; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

June 29, 1999.

TIME AND DATE: 10:00 a.m., Wednesday, July 21, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Morgan* v. *Arch of Illinois*, Docket No. LAKE 98–17–D (Issues include whether the miner's discrimination complaint should have been dismissed because it was untimely filed and whether substantial evidence supports the judge's dismissal of the miner's discrimination complaint.)

TIME AND DATE: The Commission meeting will commence following upon the conclusion of oral argument in *Morgan* v. *Arch of Illinois*, Docket No.

LAKE 98–17–D, which commences at 10:00 a.m. on Wednesday, July 21, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Morgan* v. *Arch of Illinois,* Docket No. LAKE 98–17–D (See oral argument listing, supra, for issues.)

TIME AND DATE: 10:00 a.m., Wednesday, July 28, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Hubb Corp., Docket No. KENT 97–302 (Issues include whether substantial evidence supports the judge's finding that Hubb's violations were or high gravity and whether the judge failed to make necessary findings when assessing the penalties against Hubb.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission's in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–17082 Filed 6–30–99; 3:40 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Proposed rule, entitled "Reporting Requirements for Nuclear Power Reactors," 10 CFR 50.

3. *The form number if applicable:* NRC Form 366, "Licensee Event Report (LER)."

4. *How often the collection is required:* Events involving reactors are reportable on occurrence.

5. *Who will be required or asked to report:* Holders of operating licenses for commercial nuclear power plants.

6. *An estimate of the number of responses:* 1,200 telephone reports per year under 10 CFR 50.72(b) (a reduction of 200) and 1200 written reports per year under 10 CFR 50.73(a) (a reduction of 400) for a total reduction of 600 reports per year.

7. *The estimated number of annual respondents:* 104.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:*

—1,800 hours to make 1,400 telephone notifications.

—60,000 hours to provide 1,200 written LERs.

—In addition, there is a one-time implementation burden of about 20,800 hours (or 6,933 hours per year over three years) to revise reporting procedures and conduct training.

—The total burden reduction is 13,367 hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applies.

10. *Abstract:* Sections 10 CFR 50.72 and 50.73 are being modified to: (1) Better align the reporting requirements with the NRC's current reporting needs; (2) reduce the reporting burden, consistent with the NRC's reporting needs; (3) clarify the reporting requirements where needed; and (4) maintain consistency with NRC actions to improve integrated plant assessments. NRC Form 366 is being modified to reflect changes in 10 CFR 50.73.

Submit, by August 2, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. The proposed rule indicated in "Reporting Requirements for Nuclear Power Reactors" is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by August 2, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0011 and –0104), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 23rd day of June 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–16935 Filed 7–1–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, July 12, 1999; 8:30 a.m., Tuesday, July 13, 1999.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: July 12 (Closed); July 13 (Open).

MATTERS TO BE CONSIDERED:

Monday, July 12—1:00 p.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–3, Periodicals Classification Change.
2. Rate Case Briefing.
3. Personnel Matters.
4. Compensation Issues.

Tuesday, July 13—8:30 a.m. (Open)

1. Minutes of the Previous Meetings, June 7–8, and June 21–22, 1999.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Quarterly Report on Service Performance.
4. Quarterly Report on Financial Results.
5. Environmental Program Update.
6. Capital Investment.
   a. Universal Transport System Prototype.
7. Tentative Agenda for the August 2–3, 1999, meeting in Seattle, Washington.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–17083 Filed 6–30–99; 3:43 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a new Privacy Act system of records, USPS 210.040, Contractor Records—Supplier and Contractor Records. The new system contains information about individuals and small businesses who have expressed an interest in or have entered into contracts with the Postal Service.

DATES: Any interested party may submit written comments on the proposed new system of records. This proposal will become effective without further notice on August 11, 1999, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to: Administration and FOIA, United States Postal Service, 475 L'Enfant Plaza SW RM 8141, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service has wide-ranging needs for goods and services resulting in contracts not only with large companies, but also with individuals and independently owned and operated businesses. The independently owned and operated businesses provide painting, lockbox installation, building repair, contract postal unit services, transportation, and a myriad of other goods and services.

In recent years, the Postal Service has increased its commitment to providing diverse suppliers, such as small businesses, with open access to contract opportunities. Most resulting supplier information collected is not covered by the Privacy Act. To the extent the Postal Service collects information about individuals and small business owners through open solicitations or issuance of contracts, it views that information as pertaining to the individual in an entrepreneurial, as opposed to personal, capacity. However, the Postal Service recognizes that some information, such as an address or a social security number, could be identifiable with both an individual and a business. For that reason, this system of records is established to cover such information.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 210.040

SYSTEM NAME:

Contractor Records—Supplier and Contractor Records, USPS 210.040.

SYSTEM LOCATION:

Purchasing and Materials offices (Headquarters Purchasing, Purchasing & Materials Service Centers, Topeka Purchasing Service Center, Major Facilities Purchasing, and National Mail Transportation Purchasing); Facilities offices (Headquarters Facilities, Major Facilities Office, Facilities Service Offices, and satellite offices); Distribution Network Offices; Administrative Service Offices at the 85 district offices; Maintenance Support staff doing repair and alteration work in the areas; and postal organizations that have received a special delegation of contracting authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Suppliers with whom the Postal Service contracts for the furnishing of supplies and equipment; mail transportation, construction, construction management, maintenance, architect and engineering, environmental, real estate, and other related services; and prospective suppliers and offerors of those goods and services.

Note: Records in this system that mention identifiable individuals consist primarily of proprietary or commercial information. However, some of the records in the system that pertain to individuals may reflect personal information. Only the records reflecting information about an individual are subject to the Privacy Act. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, fax number, e-mail address, social security number, tax identification number, socioeconomic status; information about business type and goods or services offered; contract number, dollar value of the contract, and related information; and proprietary proposal information and financial statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

Information in this system is used to make informed decisions in the contracting process and to provide information for administering contracts and financial recordkeeping, and upon which to base future purchasing decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. Solicitation mailing lists may be disclosed when, in the judgment of the contracting officer, a purchase is highly competitive and competition will not be harmed by the release, or to provide an opportunity for potential subcontractors seeking business.

2. To a federal, state, or local agency, financial institution, or other appropriate entity for the purpose of verifying an individual's or entity's eligibility or suitability for engaging in a transaction.

3. To any member of the public, a list of lessors of real or personal property to the Postal Service.

4. To any member of the public, a list of entities with whom the Postal Service transacts for goods or services, interests in real property, construction, financial instruments, or intellectual property.

5. To any member of the public, the identity of a successful offeror.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and various computer systems that track issued contracts, property lessors, and offerors of goods or services.

RETRIEVABILITY:

By name of individual or business; contract number; tax identification number/social security number; and leased facility (for lessor information).

SAFEGUARDS:

Paper records are accessible only by authorized postal employees and are secured in file cabinets in areas that are restricted during on-duty hours and are locked during non-duty hours. Access to automated records is restricted by computer security technology including the use of passwords. Access is granted on an official need-to-know basis.

RETENTION AND DISPOSAL:

(a) Contract Case Files—The case file is closed at the end of the fiscal year in which it becomes inactive and disposed of 6 years from that date.

(b) Unsuccessful Proposals—Disposed of 1 year after contract is awarded.

(c) Leased Real Estate files—The lease file is closed at the end of the calendar year in which the lease or rental agreement expires or terminates and disposed of 6 years and 3 months from that date.

(d) Computerized contractor, lessor, and prospective supplier information is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

VICE PRESIDENT, PURCHASING AND MATERIALS, UNITED STATES POSTAL SERVICE, 475 L'ENFANT PLAZA SW, WASHINGTON DC 20260–6200

VICE PRESIDENT, FACILITIES, UNITED STATES POSTAL SERVICE, 4301 WILSON BLVD STE 300, ARLINGTON VA 22203–1861

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the system manager(s). Inquiries must contain name and contract number or other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by records subjects.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–16925 Filed 7–1–99; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has sumitted the following proposal(s) for the collection of information to the office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Request for Medicare Payment.

(2) *Form(s) submitted*: G–740s,–HCFA–1500.

(3) *OMB Number*: 3220–0131.

(4) *Expiration date of current OMB clearance*: 08/31/1999.

(5) *Type of request*: Extension of a currently approved collection.

(6) *Respondents*: Individuals or households, business or other for-profit.

(7) *Estimated annual number of respondents:* See Justification (Item No. 12).

(8) *Total annual responses:* 1.

(9) *Total annual reporting hours:* 1.

(10) *Collection description*: The Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the Railroad Retirement System. The collection obtains the information needed by the United Healthcare Insurance Company, the RRB's carrier, to pay claims for services covered under Part B of the program.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–16844 Filed 7–1–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1806; File No. 803–132]

Goldman Sachs Asset Management, et al.; Notice of Application

June 25, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Advisers Act of 1940 ("Advisers Act").

APPLICANTS: (Goldman Sachs Asset Management ("GSAM") and Hirtle Callaghan Trust ("Trust").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 206A of the Advisers Act from section 205 of the Advisers Act and Advisers Act rule 205–1.

SUMMARY OF APPLICATION: Applicants request an order permitting GSAM to charge a performance fee based on the performance of that portion of a Trust portfolio managed by GSAM ("GSAM Account"). Applicants further request that the order permit them to compute the performance-related portion of the fee using changes in the GSAM Account's gross asset value rather than net asset value.

FILING DATES: The application was filed on June 22, 1998, and amended on December 21, 1998, and May 25, 1999.

HEARING OR NOTIFICATION OR HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with copies of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 20, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, Goldman Sachs Asset Management, One New York Plaza, New York, New York 10004. Applicant, The Hirtle Callaghan Trust, 575 East Swedesford Road, Wayne, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: Lori Price, Senior Counsel, at (202) 942–0531, or Jennifer Sawin, Special Counsel, at (202) 942–0532 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. GSAM is a separate operating division of Goldman Sachs & Co. ("Goldman Sachs"), an investment adviser registered with the SEC under the Advisers Act.

2. The Trust is an open-end management investment company registered with the SEC under the Investment Company Act of 1940. The Trust was organized by Hirtle, Callaghan & Co. ("Hirtle Callaghan"), an investment adviser registered with the SEC under the Advisers Act. The Trust is a series company that currently consists of seven separate investment portfolios. Shares of the Trust are available only to clients of Hirtle Callaghan or clients of financial intermediaries, such as investment advisers, that are acting in a fiduciary capacity with investment discretion and that have established relationships with Hirtle Callaghan.

3. Hirtle Callaghan serves as a "manager of managers" for the Trust. Pursuant to its agreement with the Trust, Hirtle Callaghan is not authorized to exercise investment discretion with respect to the Trust's assets. Hirtle Callaghan is responsible for monitoring the overall investment performance of the Trust's portfolios and the performance of the portfolio managers who manage the Trust's portfolios. Hirtle Callaghan also may from time to time recommend that the Trust's Board of Trustees retain additional portfolio managers or terminate existing portfolio managers. Authority to select new portfolio managers and reallocate assets among the portfolio managers, however, resides with the Trust's Board.

4. GSAM and Jennison Associates Capital Corp. ("Jennison") provide portfolio management services to the Growth Equity Portfolio ("Portfolio"), one series of the Trust. Pursuant to a portfolio management agreement, GSAM provides portfolio management services for a portion of the Portfolio's assets that the Trust's Board allocates to GSAM ("GSAM Account"). Each of GSAM and Jennison manages a separate portion of the Portfolio, each acting as though it were advising a separate investment company. Percentage limitations on investments are applied to each portion of the Portfolio without regard to investments in the other adviser's portion of the Portfolio. Each adviser receives a printout of portfolio positions from the Trust or its custodian that contains only information about the portion of the Portfolio assigned to it and not about the positions held by the Portfolio as a whole. Each adviser generally is responsible for preparing reports to the Trust and the Board only with respect to its discrete portion of the Portfolio.

5. Neither GSAM nor Goldman Sachs is affiliated with Hirtle Callaghan, the Trust, or Jennison.

6. GSAM's services to the Trust are limited to investment selection for the GSAM Account, placement of transactions for execution and certain compliance functions directly related to such services. GSAM does not act as a distributor or sponsor for the Trust or Portfolio. No member of the Trust's Board is affiliated with GSAM. GSAM currently receives a fee at the annual rate of 0.30 percent of the average daily net assets of the GSAM Account, payable monthly.

7. On November 12, 1997, the Trust's Board approved an amendment to the portfolio management agreement between GSAM and the Trust under which the existing fee structure would be replaced with a fee structure that includes a performance component. On January 13, 1998, the shareholders of the Portfolio approved the amendment to the agreement.[1]

8. Under the proposed fee arrangement, GSAM would receive an initial fee at the annual rate of 0.30 percent of the average daily net assets of the GSAM Account, payable quarterly, for each of the first three quarters following the date on which the proposed fee arrangement becomes effective. At the end of the fourth quarter, GSAM would begin to receive a base fee, payable quarterly, at an annual rate of 0.30 percent of the average daily net assets of the GSAM Account. The base fee would be increased or decreased by a Performance Component. The Performance Component would equal 25 percent of the amount by which the gross performance of the GSAM Account, during the 12 months immediately preceding the calculation date, exceeded or underperformed the sum of (i) the total return of the Russell 1000 Growth Index ("Index") plus (ii) 30 basis points. Gross performance does not give effect to the Portfolio's expenses, but does reflect the effect (*i.e.*, reducing performance) of all applicable brokerage and transaction costs. The maximum annual fee payable for any 12 month period would not exceed 50 basis points, and the minimum fee payable would be 10 basis points.[2]

Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into any investment advisory agreement that provides for compensation to the adviser on the basis of a share of capital gains or capital appreciation of a client's account.

2. Section 205(b) of the Advisers Act provides a limited exception to this prohibition, permitting an adviser to charge a registered investment company and certain other entities a fee that increases and decreases "proportionately with the investment performance of the investment company or fund over a specified period inr elation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the [SEC] by rule, regulation or order may specify."

3. Rule 205–1 requires that the investment performance of an investment company be computed based on the change in the net (of all expenses and fees) asset value per share of the investment company.

4. Applicants request exemptive relief from section 205 and rule 205–1 to permit them to charge the proposed fee (i) Applying the proposed fee only to the GSAM Account and not to the Portfolio as a whole, and (ii) computing the Performance Component measured by the change in the GSAM Account's gross asset value, rather than its net asset value. Applicants also request exemptive relief for GSAM and its affiliates[3] to enter into similar fee arrangements with other investment

[1] The proxy statement associated with this meeting specifically informed shareholders that, if approved by the shareholders, the proposed fee would not become effective until the first calendar quarter following receipt of assurances from the SEC that calculating the fee as proposed would not be viewed as inconsistent with the Advisers Act, and that there could be no guarantee that the SEC would give such assurances. The shareholders of the Portfolio also approved the current agreement between GSAM and the Trust, which was approved by the Trust's Board on September 12, 1997. The Trust's Board replaced another investment adviser with GSAM as a portfolio manager to the Portfolio on September 29, 1997.

[2] If application of the Performance Component would result in an annual fee at a rate lower than 10 basis points, the amount of any excess fee paid for the first year would be credited to the Portfolio in subsequent quarters before additional fee amounts would be payable to GSAM. If the portfolio management agreement between the Trust and GSAM is terminated, the Trust would not recoup any outstanding excess fees that had been paid in previous quarters.

[3] Affiliates in this context would include Goldman Sachs Funds Management, L.P., Goldman Sachs Asset Management International, and any other investment adviser that is both registered with the SEC under the Advisers Act and controls, is controlled by, or is under common control with, GSAM.

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companies, provided certain criteria are met.

5. Applicants state that Congress, in adopting and amending section 205 of the Advisers Act, and the SEC, in adopting rule 205–1, put into place safeguards designed to ensure that investment advisers would not take advantage of advisory clients.

6. Applicants assert that the SEC required that performance fees be calculated based on the net asset value of the investment company's shares to prevent a situation where an adviser could earn a performance fee even though investment company shareholders did not derive any benefit from the adviser's performance after the deduction of fees and expenses.

7. Applicants state that, unlike traditional performance fee arrangements, GSAM would not receive the Performance Component of its fee unless its management of the GSAM Account has resulted in performance in excess of the Index performance plus a "performance hurdle" equal to the 0.30 percent base fee. Applicants assert that increasing the performance of the Index by the 0.30 percent hurdle would have an effect similar to deducting GSAM's fees.[4] Applicants therefore argue that the Portfolio's shareholders will have protections similar to those contemplated by the net asset value requirement of rule 205–1.

8. Applicants suggest that Congress' concern, in enacting the safeguards of section 205, came about because the vast majority of investment advisers exercised a high level of control over the structuring of the advisory relationship. Applicants state that the proposed fee, however, was negotiated actively at arm's length between the parties. Applicants state that GSAM has little, if any, influence over the overall management of the Trust or the Portfolio beyond stock selection. Management functions of the Trust and the Portfolio reside in the Trust's Board. The Trust is directly and fully responsible for supervising the Trust's service providers and monitoring expenses of each of the Trust's portfolios. The Trust's Board is responsible for allocating the assets of the several portfolios among the portfolio managers. Neither GSAM nor any of its affiliates sponsored or organized the Trust or serves as a distributor or principal underwriter of the Trust. Neither GSAM nor any of its affiliates owns any shares issued by the Trust. No officer, director or employee of GSAM, nor any of its affiliates, serves as an executive officer or director of the Trust. Neither GSAM nor any of is affiliates is an affiliated person of Hirtle Callaghan or any other person who consults or provides investment advice with respect to the Trust's advisory relationships (except to the extent that such affiliation may exist by reason of GSAM or any of its affiliates serving as investment adviser to the Trust).

9. Applicants argue that the proposed fee arrangement satisfies the purpose of rule 205–1 because it was negotiated at arms-length and the Trust does not need the protections afforded by calculating a performance fee based on net assets. Applicants argue that the proposed fee arrangement is therefore consistent with the underlying policies of section 205 and rule 205–1 and that the exemption would be consistent with the protection of investors.

Applicants' Conditions

1. If the base fee changes, the performance hurdle will be changed to match the base fee.

2. To the extent GSAM, or an affiliate of GSAM, relies on the requested order with respect to advisory arrangements with other investment companies that it advises, these arrangements will meet the following requirements: (i) The investment advisory fee will be negotiated between GSAM, or the applicable affiliate of GSAM, and the investment company or its primary investment adviser; (ii) the fee structure will contain a performance hurdle that is, at all times, no lower than the base fee; (iii) neither GSAM nor any of its affiliates will serve as distributor or sponsor of the investment company; (iv) no member of the board of the investment company will be affiliated with GSAM or its affiliates; (v) neither GSAM nor any of its affiliates will organize the investment company; and (vi) neither GSAM nor any of its affiliates will be an affiliated person of any primary adviser to the investment company or of any other person who consults or provides advice with respect to the investment company's advisory relationships (except to the extent that GSAM and/or its affiliates may be affiliated with another portfolio manager by virtue of the fact that GSAM or the affiliate serves as a portfolio manager to the investment company or to another investment company).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16862 Filed 7–1–99; 8:45 am]

BILLING CODE 8010–01–M

[4] If the 0.30 percent fee changes, the performance hurdle also would be changed to match the fee.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27042]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 25, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 20, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be feild with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 20, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Insurance Corporation, Ltd. (70–9371)

Columbia Insurance Corporation, Ltd. ("CICL"), a wholly owned captive insurance subsidiary of Columbia Energy Group ("Columbia"), a registered holding company, and Columbia, both located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 45 and 54 under the Act.

By order dated October 25, 1996 (HCAR No. 26596), Columbia was authorized to form and capitalize CICL to engage in the reinsurance of predictable losses under the automobile and general liability and "all-risk" coverage.

CICL and Columbia now propose: (1) To expand their reinsurance activities to include all predictable risks [1] related to the business of the Columbia; (2) that Columbia establish one or more direct or indirect subsidiaries to engage in the proposed re-insurance activities; and (3) that Columbia provide additional support to CICL and the to-be-formed subsidiaries in the form of equity, guarantees, letters of credit or other credit support in an aggregate amount of up to $50 million at any one time outstanding.

CICL and Columbia state their proposal will be subject to certain safeguards. Specifically, CICL, and any subsidiaries to be formed to engage in the proposed reinsurance activities, propose to participate as reinsurers only: (1) Where a direct commercial insurer underwrites the risk; (2) for a permitted business activity engaged in by a member of the Columbia holding company system; (3) where captive reinsurance would be reasonably expected to save the Columbia member a portion of the risk premium it would otherwise have paid; and (4) where the captive reinsurer can obtain, as appropriate, excess or stop-loss coverage.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16863 Filed 7–1–99; 8:45 am]

BILLING CODE 8010–01–M

[1] CICL states that it will retain only that portion of the risk assumed from the primary insurer, a direct commercial insurer, that is relatively predictable on a basis of claim frequency and severity. CICL proposes to reinsure the more volatile/less predictable portion of the risk with other commercial insurers.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41557; File No. SR–Amex–99–09]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change Amending Amex Rule 901C To Allow Modified Equal-Dollar and Modified Capitalization Weighting Calculation Methodologies for Narrow-Based Index Options

June 24, 1999.

On March 1, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder.[2] The filing was amended on March 12, 1999 to provide additional information on modified weighting methodologies.[3] The proposed rule change would amend Commentary .02 to Amex Rule 901C to add modified equal-dollar weighting and modified capitalization weighting as acceptable weighting calculation methodologies for the construction of narrow-based index options.[4] Notice of the proposed rule change, as amended, was published in the **Federal Register** on April 20, 1999.[5] The Commission did not receive any comment letters on the filing. This Order approves the proposed rule change.

I. Introduction and Background

The Exchange proposes to amend Amex Rule 901C to add modified equal-dollar weighting and modified capitalization weighting as acceptable weighting calculation methodologies for the construction of narrow-based index options. Commentary .02 to Amex Rule 901C permits the Exchange to list options on stock industry index groups if the index meets certain criteria. Presently, the criteria require the index to be calculated using the capitalization, price, or equal-dollar weighting methodologies. Several other indexes which use a modified capitalization weighting methodology, however, including the Inter@ctive Week Internet Index, the Nasdaq-100 Index, and the Amex Eurotop 100 Index, were individually approved by the Commission as indexes that may underlie index options.[6] The Amex Mexico Index and the Amex Networking Index, which use a modified equal-dollar weighting index calculation methodology, were also approved by the Commission as indexes that may underlie index options.[7]

II. Description of the Proposal

The Exchange proposes to include modified capitalization and modified equal-dollar weighting calculation methodologies in Commentary .02 to Amex Rule 901C. Increasingly, the Exchange receives requests to construct new indexes using the modified capitalization or modified equal-dollar weighting methodologies to enable the proposed indexes to meet the generic criteria for narrow-based indexes, to provide for the timely trading of options on newly proposed indexes, or similar reasons. The Exchange wishes to accommodate these requests, and proposes to add these methodologies to the existing narrow-based criteria set forth in Commentary .02 of Amex Rule 901C that permits the listing of options on stock index groups pursuant to Rule 19b–4(e) under the Act.[8] Use of these methodologies should allow the Exchange greater flexibility in developing indexes and facilitate the listing of options on stock industry index groups that more accurately reflect the industry represented by the index.

Modified Capitalization Weighting

To determine an index value using the capitalization weighting calculation methodology, the following calculation applies: Multiplying the primary exchange regular way last sale price of each component security by the number of shares outstanding; adding the products; and dividing the result by the current index divisor. The index value for a modified capitalization weighted index is calculated in a similar manner. However, instead of using the actual number of shares outstanding, an adjusted number of shares outstanding is used in the calculation (*i.e.*, multiplying the primary exchange regular way last sale price of each component security by the adjusted number of shares outstanding; adding the products; and then dividing the result by the current index divisor). The modified capitalization weighting methodology uses an adjusted number of shares outstanding to prevent components with relatively large market capitalizations from representing an inordinately large portion of an index's value. For example, inclusion of a large

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Scott G. Van Hatten, Legal Counsel, Amex, to Nancy Sanow, Senior Special Counsel, Commission, dated March 11, 1999.

[4] The Exchange refers to narrow-based index options as options on a "stock index industry group." A stock index industry group is defined in the Amex Rules as a group of stocks representing a particular industry or related industries. *See* Amex Rule 900C(b)(1).

[5] Securities Exchange Act Release No. 41276 (April 12, 1999) 64 FR 19393.

[6] Securities Exchange Act Release No. 41124 (March 1, 1999) 64 FR 11520 (March 9, 1999) (File No. SR–Amex–99–04) (Inter@ctive Internet Index); Securities Exchange Act Release No. 40642 (November 5, 1998) 63 FR 63759 (November 16, 1998) (File No. SR–CBOE–98–43) (Nasdaq-100 Index); Securities Exchange Act Release No. 30463 (March 11, 1992) 57 FR 9284 (March 17, 1992) (File Nos. SR–Amex–90–25 and SR–Amex–91–01) (Amex Eurotop 100 Index).

[7] Securities Exchange Act Release No. 34500 (August 8, 1994) 59 FR 41534 (August 12, 1994) (File No. SR–Amex–94–20) (Amex Mexico Index); Securities Exchange Act Release No. 37017 (March 22, 1996) 61 FR 14168 (March 29, 1996) (File No. SR–Amex–96–03) (Amex Networking Index).

[8] 17 CFR 240.19b–4(e)

capitalization company in an index along with a number of smaller capitalization companies may result in the larger capitalization company's representation in the index exceeding 25% of the index's value. Thus, options on these indexes could not be listed on the Amex. However, since use of the modified capitalization methodology permits a reduction in the large capitalization company's representation in the index to an amount less than 25% of the index's value, the listing criteria of Amex rule 901C, Commentary .02(a)(7) are satisfied.

Modified Equal-Dollar Weighting

Use of the equal-dollar weighting calculation methodology to determine an index value is accomplished by establishing an initial dollar representation (*e.g.*, $100,000); determining the number of shares of each component representing this amount; and then multiplying the primary exchange regular way last sale price of each component security by its predetermined fixed number of shares. The equal-dollar weighted methodology can be used to provide more equitable representation of each component in a particular index. Modified equal-dollar weighting methodology is useful when the capitalization of companies within an index varies widely, by permitting larger capitalized companies to represent a larger portion of an index's value.

In effect, the modified equal-dollar weighting methodology is the mirror image of the modified capitalization weighting methodology. While the modified capitalization weighting methodology prevents large capitalization companies from skewing an index, the modified equal-dollar weighting methodology guards against small capitalized companies from doing so. Determining an initial index value for modified equal-dollar weighted indexes uses two or more fixed dollar values for different groups of the index components instead of using the same fixed dollar value for each component. In this way, the modified equal-dollar weighted method allows for similar component stocks to be weighted similarly, while differentiating among dissimilar groups (*e.g.*, large capitalization stocks versus small capitalization stocks). For example, a ten stock index, calculated under this method, that has five components with capitalizations of approximately $1 billion (or $5 billion in aggregate) and five components with capitalizations of approximately $500 million (or $2.5 billion in aggregate), allows the larger capitalization components to account for twice the amount of the smaller capitalized components, rather than having each component account for 10% of the index (as would be the case in a pure equal-dollar weighted index). Thus, the modified structure can be used to provide a more accurate representation of the market capitalization composition of the underlying industry for which the index is designed to measure.

III. Discussion

Under the Act, self-regulatory organizations ("SROs") like the Amex are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. This role has particular importance in the context of the listing of narrow-based stock index options under Rule 19b–4(e), since the Exchange is the only regulatory authority reviewing such securities before their trading begins. The Commission recently adopted new Rule 19b–4(e),[9] eliminating the requirement that an SRO file a proposal under Section 19(b)(3)(A) [10] to list and trade options on narrow-based indexes, provided that the SRO relying on Rule 19b–4(e) has generic listing criteria approved by the Commission and meets certain other requirements. With the approval of the proposed rule change, Amex will be permitted under Rule 19b–4(e) to introduce new options that are based on narrow-based stock indexes using modified capitalization or equal-dollar weightings, but without the Exchange having to file a proposal under Section 19(c)(3)(A) of the Act.

Pursuant to Section 19(b)(2) of the Act,[11] the Commission is required to approve an SRO's proposed rule change if the Commission determines that the proposal is consistent with the applicable statutory standards. The Commission finds that the proposal is consistent with the requirements of Section 6(b) of the Act [12] in general, and particularly furthers the objectives of Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade and further the protection of investors and the public interest by increasing flexibility in developing an index by allowing an index to more accurately reflect an underlying industry sector. This enhanced flexibility and accuracy should also foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system. As represented by the Exchange, modifying the capitalization amounts or dollar values of the securities underlying an index can prevent an individual stock from inappropriately skewing the performance of an entire index. The Commission therefore believes that market accuracy and transparency should be correspondingly enhanced by use of the modified capitalization and modified equal-dollar weighting methods, and approves them for use in the context of Commentary .02 to Amex Rule 901C concerning eligibility criteria for index components of a narrow-based stock index.

The Commission notes that the Exchange has represented that it will review the component weighings of indexes employing the modified capitalization weighting methodology quarterly, and if necessary, adjust them to ensure that the index continues to meet the weighting guidelines. In addition, the Exchange has further represented that adjustments will be made on an intra-quarterly basis, as necessary, to reflect corporate actions, share issuances and repurchases, and other events of significance.

With regard to the use of the modified equal-dollar weighting methodology, the Commission notes that the Exchange has represented that the number of shares of each component security will be examined and, if necessary, adjusted quarterly, so that the members of each weighting group are set to the appropriate index weight to ensure compliance with the criteria. The number of shares of each component stock in the index portfolio will remain fixed between quarterly reviews, except in the event of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In the event of a merger or consolidation of an issuer of a component stock, if the stock remains in the index, the number of shares of that security in the portfolio may be adjusted to the nearest whole share, to maintain the component's relative weight in the index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining components in the same weighting group will be calculated, and that amount invested in the stock of the new component to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure index continuity.

The Commission further notes that the Exchange has represented that the terms of any modified capitalization or modified equal-dollar weighting calculation methodology will be clearly defined, and will consist of objective standards that permits any newly developed narrow-based index initially to meet, and subsequently, to continue to be maintained, in accordance with the generic criteria set forth in Commentary .02 to Amex Rule 901C. In addition, the Exchange has represented that these terms will be discussed in marketing materials describing the index and in the Information Circulars the Exchange will distribute to members upon the launch of new index options.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the Act, and in particular, with Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposal, SR–Amex 99–09, be and hereby is approved.[15]

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16866 Filed 7–1–99; 8:45 am]

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[9] *See* Securities Exchange Act Release No. 40761 (December 8, 1998) 63 FR 70952 (December 22, 1998) (amending Rule 19b–4 with respect to rule filing requirements for SROs listing and trading a new derivative securities product).

[10] 15. U.S.C. 78s(b)(3)(A).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposal, the Commission has considered the rule's impact on efficiency, competitinn, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41562; File No. SR–Amex–99–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to Rule 1006

June 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 22, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1006 which governs disclaimers of liability relating to the Nasdaq-100 Index.® Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

Nasdaq-100 Index®

Rule 1006. The Nasdaq Stock Market, Inc. ("Nasdaq") has licensed the use of the Nasdaq-100 Index® for certain purposes in connection with trading in a particular series of Portfolio Depositary Receipts on the Exchange. Nasdaq *and its affiliates* [does] *do* not guarantee the accuracy and/or completeness of the Nasdaq-100 Index® or any data included therein. Nasdaq [and], the Exchange *and their affiliates* make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Nasdaq-100 Index or any data included therein in connection with the rights licensed or for any other use. Nasdaq [and], the Exchange *and their affiliates* make no express or implied warranties, and disclaim all warranties of merchantability or fitness for a particular purpose with respect to the Nasdaq-100 Index or any data included therein. Without limiting any of the foregoing, in no event shall Nasdaq [and], the Exchange *and their affiliates* have any liability for any lost profits or special, punitive, incidental, indirect, or consequential damages, even if notified of the possibility of such damages. In addition, Nasdaq [and], the Exchange *and their affiliates* shall have no liability for any damages, claims, losses or expenses caused by any errors or delays in calculating or disseminating the Nasdaq-100 Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 1999,[2] the Commission approved the listing and trading under Amex Rules 1000 *et seq.* of Nasdaq-100 Shares,℠ units of beneficial interest in the Nasdaq-100 Index® Trust, Series 1, a unit investment trust based on the Nasdaq-100 Index.® The Commission also approved in the Nasdaq-100 Shares Order Amex Rule 1006, which provides for disclaimers of liability with respect to the Nasdaq-100® by the Nasdaq and the Exchange in connection with the trading of Nasdaq-100 Shares. This provision is similar to other Exchange rules relating to disclaimers of liability with respect to Portfolio Depositary Receipts (*e.g.*, Amex Rule 1004 (S&P 500 Index) and Amex Rule 1005 (Dow Jones Indexes) as well as index options (*e.g.*, Amex Rule 902C). The Exchange is amending Amex Rule 1006 to state that the disclaimers of liability, specified in the rule, extend to affiliates of Nasdaq and the Exchange. The Exchange believes that such an amendment is appropriate to clarify and make explicit that the disclaimers of liability specified in Amex Rule 1006 also apply to affiliates of Nasdaq and Amex, which include the National Association of Securities Dealers, Inc. and NASD Regulation, Inc.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [3] in general and furthers the objectives of Section 6(b)(5) [4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) ("Nasdaq-100 Shares Order").

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from June 22, 1999, the date on which it is filed, and because the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[5] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–22 and should be submitted by July 23, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16869 Filed 7–1–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 240.19b–4(f)(6) (1999).

[6] 15 U.S.C. 78s(b)(3)(C).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41563; File Nos. SR–BSE–97–07 and SR–BSE–99–09]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

June 25, 1999.

On October 8, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR–BSE–98–07), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] to amend the depth measure calculations in its Specialist Performance Evaluation Program ("SPEP") pilot program. The Exchange submitted Amendment No. 1 to its proposed rule change (SR–BSE–98–07) on November 13, 1998.[3] Notice of the proposed rule change, as amended, was published on December 11, 1998, in the **Federal Register**, to solicit comment from interested persons.[4] On December 17, 1998, the Exchange submitted Amendment No. 2 to its proposal.[5] On December 28, 1998, the Commission noticed and granted accelerated approval of Amendment No. 2.[6] On June 10, 1999, the Exchange withdrew those portions of its proposed rule change relating to permanent approval of the SPEP pilot program and to the proposed changes to its depth measures.[7]

Pursuant to Section 19(b)(1) of the Act,[8] and Rule 19b–4 thereunder,[9] notice is hereby given that on June 10, 1999, the Exchange filed with the Commission the proposed rule change (SR–BSE–99–09), which requests that the Commission approve an extension of the SPEP pilot until March 31, 2000. The proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to this rule proposal.

I. Self-Regulatory Organization Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its SPEP pilot program until March 31, 2000.[10]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange regularly evaluates the performance of its specialists under the SPEP pilot program. Under the SPEP pilot, specialists are evaluated based on objective measures, such as turnaround time, price improvements, depth and added depth. Generally, any specialist who receives a deficient score in one or more objective measures may be required to attend a meeting with the Performance Improvement Action Committee or the Market Performance Committee.[11]

The current pilot program will expire on June 30, 1999. The Exchange seeks to extend its SPEP pilot until March 31, 2000, while the Exchange considers revising its depth measure calculations.[12]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden of Competition

The exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–99–09 and should be submitted by July 23, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to extend the SPEP pilot program until March 31, 2000, is consistent with the requirements of the Act and the rules and regulation thereunder. Specifically, the Commission finds that the amendment is consistent with Section 6(b)(5) of the Act,[14] which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes that the proposed nine-month extension of the pilot program should allow the Exchange to continue to assess specialist performance while allowing the Exchange adequate time to consider amending its two depth measure calculations.

The Commission finds good cause for granting the Exchanges' request for a nine-month extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The BSE's SPEP pilot assists the Exchange in conducting its evaluation. Therefore, the Commission believes good cause exists to approve the extension of the pilot program until March 31, 2000, on an accelerated basis. Accordingly, the Commission believes that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[15]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–BSE–99–09) is hereby approved on an accelerated basis until March 31, 2000.[17]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16868 Filed 7–1–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requested permanent approval of the SPEP pilot program and deleted its request for accelerated approval and retroactive implementation of the proposed rule change. *See* Rule 19b–4 filing, SR–BSE–98–07, dated November 6, 1998 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 40746 (December 3, 1998), 63 FR 68490 (December 11, 1998).

[5] In Amendment No. 2, the Exchange (1) requested an extension of the SPEP pilot program for a six-month period ending on June 30, 1999, or until the Commission approves the Exchange's proposal to make it permanent, whichever occurred first, and (2) made a technical change to its rule. *See* Letter From Karen A. Aluise, Vice President, Exchange, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 14, 1998 ("Amendment No. 2")

[6] Securities Exchange Act Release No. 40844 (December 28, 1998), 64 FR 1041 (January 7, 1999).

[7] *See* Letter from Karen A. Aluise, Vice President, Exchange, to Richard Strasser, Assistant Director, Division, Commission, dated June 9, 1999.

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] Telephone conversation between Karen A. Aluise, Vice President, Exchange, and Terri Evans, Attorney, Division, Commission, on June 17, 1999.

[11] *Id.*

[12] The Exchange plans on seeking permanent approval of the SPEP pilot at the same time that it submits its revised depth measure calculations. *Id.*

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41560; File No. SR–NASD–98–96]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Forms U–4 and U–5

June 25, 1999.

I. Introduction

On December 18, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] In its proposal, NASD Regulation seeks to amend disclosure question on Form U–4, The Uniform Application for Securities Industry Registration or Transfer, and Form U–5, The Uniform Termination Notice for Securities Industry Registration, (collectively "Proposed Forms") and to implement the World Wide Web-based Central Registration Depository ("Web CRD"). Notice of the proposal, as amended by Amendment No. 1, Amendment No. 2, and Amendment No. 3, was published in the **Federal Register** on April 30, 1999 ("Notice").[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (File No. SR–NASD–98–96).

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On April 28, 1999, NASDR filed Amendment No. 4 to the proposed rule change ("Amendment No. 4"). Notice of Amendment No. 4 was published in the **Federal Register** on May 13, 1999.[4] Amendment No. 4 clarifies the processing of Forms U–4 and U–5 during and after the period Web CRD becomes effective. On June 8, 1999, NASDR submitted Amendment No. 5 to the proposal. Amendment No. 5 makes technical, non-substantive, changes to the proposal.[5] On June 18, 1999, NASDR filed Amendment No. 6 to the proposal. Amendment No. 6 also makes technical, non-substantive, changes to the proposal.[6] The Commission received no comment letters on the filing. This order approves the proposal, as amended.

II. Description of the Proposal

As part of NASDR's efforts to modernize the Central Registration Depository ("CRD"), NASDR seeks to streamline the registration and termination process for individuals. NASDR proposes to amend Forms U–4 and U–5 so that these forms can be electronically submitted through the World Wide Web. Under the NASDR's proposal, an individual seeking registration will be required to fill out and submit an electronic Form U–4, which will be available on NASDR's website ("Proposed Form U–4").[7] Further, when an associated person terminates his association with a broker-dealer, the broker-dealer will be required to fill out and submit an electronic Form U–5, which will also be available on the NASDR's website ("Proposed Form U–5").[8] In addition, the NASD seeks to amend certain disclosure questions on Forms U–4 and U–5.

[4] *See* Securities Exchange Act Release No. 41371 (May 5, 1999), 64 FR 25945 (File No. SR–NASD–98–96).

[5] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 7, 1999. In Amendment No. 5, NASD Regulation changed the abbreviations of the American Stock Exchange from "ASE" to "AMEX" and the Pacific Stock Exchange from "PSE" to "PCX" on the Proposed Forms U–4 and U–5. Because this is a technical change, it does not need to be published for comment.

[6] *See* letter from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 18, 1999. In Amendment No. 6, NASDR further clarifies the processing of Forms U–4 and U–5 during the period Web CRD becomes effective. Because this is a technical change, it does not need to be published for comment.

[7] The address for NASDR's website is http://www.nasdr.com.

[8] *Id.*

Background

The NASD originally planned to implement a redesigned CRD in 1996. At that time, the NASD proposed a network-based system in which individuals and firms would electronically submit Forms U–4 and U–5 directly to the CRD. To accomplish this change, the NASD redesigned Forms U–4 and U–5. The Commission approved these forms in 1996 ("1996 Forms").[9]

However, following a technological reassessment in 1997, the NASD decided to abandon the network-based system. Instead, the NASD decided to create a web-based system where individuals and firms could electronically submit Forms U–4 and U–5 through the NASDR's World Wide Website. Because the network-based system was abandoned, the 1996 Forms could not be used. As a result, the NASD received Commission approval for Interim Forms U–4 and U–5 while Web CRD was being developed ("Interim Forms").[10] The Interim Forms, which are submitted on paper, included all of the substantive changes to the disclosure questions and some of the changes to instructions that were approved in the 1996 Forms. The Interim Forms are currently in effect.

Changes to the 1996 Forms

To accomplish the transition to Web CRD, the NASD now proposes certain formatting and technical changes to the 1996 Forms, which were the original proposed electronic forms. First, the Disclosure Reporting Pages ("DRPs") were reformatted. Due to the complexity of the data structure of the 1996 DRPs, NASDR felt that Web CRD would not be able to efficiently process the 1996 Forms without revisions.[11]

Second, the "other business activities" DRP on the 1996 Form U–4 was replaced with a separate attachment sheet, which also can be used to provide additional information about residential, employment or personal history. The other business activity section of Question 20B on the 1996 Form U–4 renumbered as Question 21. (All subsequent questions are likewise renumbered.) Correspondingly, the instructions to Question 21 on the Proposed Form U–4 list the types of information that must be provided on the attachment sheet, and request the information that would be reportable on the "other business activities" DRP.

Third, Sections 11 and 12 on the 1996 Form U–4 and Section 11 on the 1996 Form U–5 have been reformatted to ensure more accurate selections of registration categories. The Proposed Forms were reformatted to reduce erroneous requests for registrations that are not available for a particular self-regulatory organization ("SRO"). In addition, the instructions on the Proposed Forms clarify that CRD does not process Investment Adviser Representative and Agent of the Issuer registrations, even though the paper versions of the Proposed Forms contain boxes for such registrations. When an individual views the electronic version of the Proposed Forms on the Web CRD system, the boxes for these registrations will be shaded and the individual will not be allowed to select these options. The boxes for these registrations are included on the paper versions of the Proposed Forms solely for the convenience of states that wish to use the paper Proposed Forms for these registrations.

Fourth, the General Instructions on the Proposed Forms were changed. The General Instructions regarding the submission of documents on the 1996 Forms provide that documents are not required to be submitted, but that the individual may submit them because documents may be requested as part of the review process. The Proposed Forms amend this instruction slightly to conform to the current practice of the states and SROs by stating that, although documents are not generally required to be filed with the Forms, it may be necessary to provide them to clarify or support responses on the Forms.

Finally, the proposed Forms retain the definitions of "investigation" and "sales practice violations" that were adopted in the Interim Forms, with slight changes to function. The NASD believes these definitions are more precise than the corresponding definitions used in the 1996 Forms and generally have worked will in practice.

The Proposed Forms also contain DRP "pick lists" that will appear for users filing the forms electronically. The pick lists, which only appear in the DRP portions of the Proposed Forms, provide choices that an individual or firm must select when answering a question. For example, on the Proposed U–5 Customer Complaint DRP, when a firm clicks on the field for "Litigation Disposition," the following choices will appear on the screen: Decision for Applicant , Decision for Customer, Denied, Dismissed, Judgment (other than monetary), Monetary Judgment to Applicant, Monetary Judgment to Customer, No Action, Other, Settled, Withdrawn. Like every pick list on the Proposed Forms, the firm submitting the electronic DRP will be limited to one of the choices on the list. In all pick lists (except states of residence and types of judgments/liens), a firm or individual may select "Other" if none of the choices presented in the pick list is applicable.

[9] *See* Securities Exchange Act Release No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996) (File No. SR–NASD–96–19).

[10] *See* Securities Exchange Act Release No. 39322 (Nov. 13, 1997), 62 FR 62391 (Nov. 21, 1997) (File No. SR–NASD–97–98).

[11] For a detailed history of the development of Web CRD, Forms U–4 and U–5, and the procedures associated with filing the forms, refer to the Notice and Amendment No. 4. *See supra* Notes 3, 4.

Changes to the Disclosure Questions

In addition, four disclosure questions from the 1996 Forms are amended on the Proposed Forms. These substantive amendments involve: (1) An expansion of the Form U–4 question eliciting information on settled customer complaints to include those oral complaints involving sales practice allegations that are settled for $10,000 or more;[12] (2) a modification of the Form U–5 question eliciting information on customer complaints to make that reporting requirement consistent with the parallel question on the Form U–4 (effectively eliminating the reporting requirement for and permitting the archiving of customer complaints that are over 24 months old and are not otherwise reportable);[13] and (3) an expansion of the reporting requirement on the Form U–5 to include criminal or regulatory actions initiated on the basis of events that occurred while and individual was employed by the firm, even if the actions were initiated after the individual had been terminated.[14]

Transition Period and Afterward

From July 31 to August 15, 1999, the CRD system will not process Forms U–4 and U–5. This two week period (termed the "System Transition Period") is needed to complete the final data conversions from the current CRD system to the Web CRD system.[15] NASDR requests that August 1, 1999 be the effective date for the Proposed Forms.

Based on this effective date, NASDR *WILL NOT* accept *paper* Interim Forms U–4 and U–5 after July 29, 1999. However, firms that use the Firm Access Query System and firms that use the Electronic Filing Transfer system will be able to electronically submit pages one and two a forms U–4 and U–5 to NASDR through July 30, 1999.[16] In addition, NASDR *WILL NOT* accept Proposed Form U–4 until August 16, 1999, which is when the CRD system will again be operational. In practice, this means that NASDR *WILL NOT* accept new applications for registration from July 30 to August 16, 1999.

However, during the System Transition Period, NASDR *WILL* accept paper versions of the Proposed From U–5 provided these forms are submitted to report full termination (*i.e.*, a termination of an individual's registration with all SROs and jurisdictions). Additionally, during this period, NASDR will review all paper Proposed Forms U–5 reporting full termination and will provide notice to the appropriate regulators/jurisdictions if these forms contain disclosure information.

In addition, NASDR has developed a plan, which is based on the current Temporary Agent Transfer ("TAT") program, to allow registered representatives to transfer their registrations during the System Transition Period. During this period, NASDR will accept Transition TAT Requests for registered representatives who have left their previous employer within the last seven days and who have no reportable disclosure information. NASDR will only accept Transition TAT Requests for participating jurisdictions.[17]

After August 1, 1999 and continuing after the System Transition Period, NASDR also *WILL* accept paper versions of Part II of the "Internal Review DRP" in the Proposed Form U–5. The 1996 Form U–5 "Internal Review DRP" contains a Part II that allows a registered representative who has been terminated to provide a summary of the circumstances relating to an internal review disclosure submitted by the individual's former employer on the Form U–5. Once the Proposed Forms become effective, NASDR *WILL* accept paper submissions of this Part II information by a terminated registered representative and NASDR staff will enter the information on to the Web CRD system on behalf of the terminated registered representative.

After the System Transition Period (*i.e.*, August 16, 1999), when a firm amends a Form U–4 filing on Web CRD for the first time for an individual with disclosure information, a blank Page 3 of the Proposed Form U–4 will appear on the screen. A firm then will be required to fill out the entire Page 3 to reflect all currently reportable disclosure information, some or all of which may already have been reported to CRD.[18] Thereafter, a member will be able to retrieve the most recently filed electronic Page 3 of the Form U–4 and edit for submission, rather than filling out the blank Page 3 for each subsequent filing.

Beginning August 16, 1999, All Forms U–4 and U–5 Must Be Submitted Electronically

II. Discussion

The Commission finds that the proposal is consistent with the requirements of Section 15A[19] of the Act[20] and the rules and regulations thereunder that govern the NASD.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6)[22] which requires, among other things, that the rules of an association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

The Commission has determined to approve the Association's proposal implementing Web CRD and amending certain disclosure questions on Forms U–4 and U–5. The Commission believes that Web CRD will streamline the registration and termination process for individuals and firms. Under the NASDR's proposal, an individual

[12] Question 22i(2) on the Proposed U–4.

[13] Question 17 on the Proposed U–5.

[14] Questions 14 and 15 on the Proposed U–5.

[15] NASDR's Public Disclosure Program, which provides disciplinary and other information about NASD members and their associated persons, will continue to be available to the public and regulators during the System Transition Period. Regulators also will continue to have query access (*i.e.*, read only access) to the current CRD system during the System Transition Period.

[16] *See supra* Note 6.

[17] *See CRD/PD Bulletin*, June 1999, Volume 7, No. 2. This Bulletin contains detailed information about the transition to Web CRD.

[18] In Amendment No. 4, the NASDR stated that firms were already subject to this requirement. The Commission notes that under the Interim Form U–4, forms did *not* need to file a new Page 3 every time a firm amended an individual's U–4. While the Interim U–4 was effective, the instructions stated, "Information contained on Form U–4 must be kept current. As changes occur, the CRD should be updated by an amendment filing. Amendments are accomplished by filing the appropriate page(s) containing only the information in need of revision." *See* instructions under the section titled, "How to Use Form U–4."

[19] 15 U.S.C. 78o–3.

[20] Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The Commission notes that the forms provide SROs and states with a centralized, cost-effective, and efficient means of maintaining information on associated persons. Moreover, the impact on competition is negligible because all SROs currently use a version of Forms U–4 and U–5. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b).

[22] 15 U.S.C. 78o–3(b)(6).

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seeking registration will be required to fill out an electronic Form U–4, which will be available on NASDR's website, and submit it electronically. Further, when an associated person ends his association with a broker-dealer, the broker-dealer will be required to fill out an electronic Form U–5, which will also be available on the NASDR's website, and submit it electronically.

Further, the Commission believes that Web CRD will expedite the registration and termination process for individuals and firms. Under the proposal, firms and individuals will no longer rely on the mail system to transmit the forms to NASDR. Now, individuals and firms will electronically submit Forms U–4 and U–5 through the World Wide Web, which means NASDR should receive the forms more quickly. The Commission also believes that investors will benefit from the expedited registration and termination process because the faster NASDR receives the forms, the faster information on the forms can be disclosed to investors through the NASD's Public Disclosure Program ("PDP").

In addition, based on demonstrations of Web CRD, the Commission believes that the CRD system will be easier for regulators and SROs to use. For example, Form U–4 disclosure information will be in a format that is easier to understand than what is currently displayed in CRD. With Web CRD, regulators and SROs will be able to quickly access relevant information in an easy-to-read format.

Additionally, the Commission believes that the amended disclosure questions, coupled with the NASD's PDP, will provide the public with more information about an associated person's disciplinary history. The Commission believes that this information will help investors determine whether to conduct or continue to conduct business with particular associated persons. The Commission notes that disclosure of this additional information may serve as a deterrent to fraudulent activity as well.

Lastly, the Commission notes that the pick lists, even with the "Other" choice, will standardize individuals' and firms' responses to DRP questions. Previously, when an individual or firm responded to DRP questions on the Interim Forms U–4 and U–5, the individual or firm had the ability to write whatever he thought was appropriate. Now, when responding to a DRP question, an individual or firm is limited to the choices provided in the pick lists. Because future changes to the lists might affect individuals and firms' ability to respond to DRP questions, the Commission expects NASDR to file substantive changes to the pick lists.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NASD–98–96), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16865 Filed 7–1–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41561; File No. SR–OCC–99–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Use of Non-Equity Securities Options for Determining Margin and Clearing Fund Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 2, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to provide OCC with the flexibility to designate certain classes of stock fund options as non-equity securities options for purposes of determining margin and clearing fund requirements.[2]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will permit OCC to designate certain options on stock funds as non-equity options for purposes of margin and clearing fund calculations.[4] The American Stock Exchange lists and trades stock fund options on certain Standard & Poor's Depository Receipts ("SPDRs") and plans to trade options on World Equity Benchmark Shares ("WEBs") in the near future. OCC proposes to continue to treat stock fund options like stock options for the clearance and settlement purposes because stock fund options are settled through delivery of the underlying fund shares.

However, OCC believes that for margin and clearing fund purposes it would be more logical to treat some stock fund options like non-equity options because the value of the fund shares more closely correlates to the value of an underlying index. The proposed rule change will allow OCC to add such stock fund options to the permissible instruments used to offset index related positions. OCC believes that such flexibility will potentially allow OCC to prudently reduce the amount of margin and clearing fund collateral required to be deposited by clearing members.

Under the proposed rule change, OCC will have the discretion to designate classes of stock fund options as non-equity options for margin purposes in order to efficiently process these securities while effectively managing their risk. When classes of stock fund options are designated as non-equity securities options contracts, they will be subject to the margin requirements of rule 602 and will be included in the non-equity securities clearing fund.

When no such designation is made, they will be subject to the margin requirements of Rule 601. Stock fund options that do not correlate closely with any index will continue to be treated like stock options for margin purposes and will not be used to offset short positions relating to a particular index. However, under Rule 601(c) and Interpretation .02 to Rule 601, 30% of their value can be used to reduce a clearing member's equity margin requirement. Such stock fund options will be included in the stock clearing fund because they fall within the definition of "stock option contract" in Article 1 of OCC's By-Laws, which would be controlling in the absence of a designation. OCC intends to provide members its designation of the stock fund options for margin and clearing fund purposes in information memoranda made available to all clearing members.

Under the proposed rule change, OCC will amend the definition of "stock option contract" within the definition of "option contract" in Article 1 of the By-Laws to include stock fund shares. In addition, a provision will be added to the definition stating that for purposes of Article VIII of the By-Laws and Chapters VI and X of the Rules, OCC may designate certain stock fund options as non-equity securities option contracts. OCC is also adding introductions to Article VIII of the By-Laws and Chapters VI and X of the Rules which state that OCC may designate certain stock fund options as non-equity securities options contracts for purposes of those provisions. Finally, because fund shares are priced like stocks, new subsection (b)(6)(1) will be added to Rule 602 to define "marking price" for an index share to be its last reported sale price on its primary market.

OCC believes that the proposed rule changes are consistent with the requirements of the Section 17A of the Act[5] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in stock fund options by allowing OCC to treat such options like stock options for settlement purposes but like non-equity options for margin and clearing fund purposes, as appropriate.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any material impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act [6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the proposed rule change is consistent with this obligation because it should allow OCC to more accurately calculate the margin and clearing fund collateral required to be deposited by clearing members.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow OCC to immediately increase the accuracy of margin and clearing fund calculations for these hybrid exchange-traded fund share options.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–02 and should be submitted by July 23, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–99–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16864 Filed 7–1–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41555; File No. SR–PCX–99–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Requirement for Off-Floor Traders for Which the Exchange is the Designated Examining Authority To Successfully Complete the General Securities Representative Examination Series 7

June 24, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to require that qualified off-floor traders for which the PCX is the designated examining authority ("DEA") successfully complete the General Securities Representative Examination Series 7 ("Series 7 Exam"). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The complete text of the proposed rule change is included in OCC's filing, which is available for inspection and copying at the Commission's public reference room and through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] OCC previously amended its rules to accommodate options on instruments such as SPDRs and WEBs and to process, settle and margin them like options on equity securities. Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 [File No. SR–OCC–97–02]. In another filing, OCC introduced the term "stock fund shares" and replaced the term "common stocks" with the phrase "equity securities." Securities Exchange Act Release No. 40595 (October 23, 1998), 63 FR 58438 [File No. SR–OCC–98–08].

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 204.19b–4.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Series 7 Exam Requirement

PCX Rule 1.7(b)(9) currently provides that the Exchange may deny (or may condition) membership, or may prevent a natural person from becoming associated (or may condition an association) with a member, when an applicant, directly or indirectly, does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for. The Exchange is now proposing to amend PCX Rule 1.7(b)(9) to expressly require designated off-floor traders to successfully complete the Series 7 Exam. Specifically, the proposal provides that traders of member organizations for which the Exchange is the DEA must successfully complete the Series 7 Exam if the primary business of the member organization involves the trading of securities which is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker. The proposal further provides that the following are exempt from the requirement to successfully complete the Series 7 Exam: Exchange members who perform the function of a registered specialist, registered market maker or registered floor broker (pursuant to PCX Rules 5.27(a), 6.33 or 6.44, respectively) and associated persons of member firms who facilitate the execution of stock transactions for the accounts of options market makers.

For purposes of PCX Rule 1.7(b)(9), the term "trader" is defined as a person who is directly or indirectly compensated by an Exchange member organization and who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities. In addition, the term "primary business" is defined as greater than 50% of the member organization's business. The Exchange notes that registered specialists, registered market makers and registered floor brokers are required to pass written examinations of the Exchange pursuant to PCS Rules 5.27(c), 6.33 and 6.44, respectively.[3]

Attestation Requirement

The proposed rule change further provides that each member organization for which the Exchange is the DEA must complete, on an annual basis, and on a form prescribed by the Exchange, a written attestation as to whether the member organization's primary business is performing the function of a registered specialist, a registered market maker or a registered floor broker (pursuant to PCX Rules 5.27(a), 6.33 or 6.47, respectively).

Rule Application to Current Traders

Subsection (C) of the proposed rule provides that the requirement to complete the Series 7 Exam will apply to current Traders of member organizations that meet the criteria of subsection (A), above, as well as to future Traders of member organizations that meet the criteria of subsection (A), above, at a later date. It further provides that Traders of member organizations that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Exam within six months of notification by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and further the objectives of Section 6(b)(5),[5] in particular, in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] The Exchange notes that other exchanges have recently adopted (or have proposed to adopt) a similar Series 7 Exam requirement for off-floor traders. *See* Chicago Stock Exchange Rules, Art. VI, Rule 3, Interpretation and Policy .02; Securities Exchange Act Release No. 41306 (April 16, 1999), 64 FR 22665 (April 27, 1999) (notice of filing of proposed rule change of the Philadelphia Stock Exchange).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–16 and should be submitted by July 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16867 Filed 7–1–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3071]

Advisory Committee on International Economic Policy; Meeting Notice

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9:00 a.m. to 12:00 p.m. on Tuesday, July 14, 1999, in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and by Assistant Secretary of State for Economic and Business Affairs Alan P. Larson.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government. Topics for the July 14 meeting will be: Next Steps in on the Anti-Corruption Agenda; Biotechnology: Fostering a Science-based, Rules-based Approach; Upcoming Review of the U.S. Bilateral Investment Treaty Program; and Developments in Kosovo and South East Europe.

Members of the public may attend these meetings as seating capacity allows. Members of the media are welcome but discussions are off the record. Admittance to the Department of State Building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by phone at (202) 647–5968 or fax (202) 647–5713 (Attention: Sharon Rogers) by Friday, July 9, 1999. On the date of the meeting, persons who have registered should come to the "C" Street entrance. One of the following valid means of identification will be required for admittance: A U.S. driver's license with photo, a passport, or a U.S. Government ID.

For further information, contact Sharon Rogers, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 6828, Main State, Washington, DC 20520.

Dated: June 25, 1999.

William J. McGlynn,

Executive Secretary.

[FR Doc. 99–16914 Filed 7–1–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Pierce County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier II Environmental Impact Statement will be prepared for the proposed extension of the SR 167 freeway in Pierce County, Washington from SR 161 (Meridian Street North) in the city of Puyallup to the SR 509 freeway (east west road alignment) in the city of Tacoma.

FOR FURTHER INFORMATION CONTACT: Gene Fong, Division Administrator, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, WA 98501, telephone: (360) 753–9413; Don Nelson, Assistant Secretary, Environmental and Engineering Service Center, PO Box, 47323, Olympia, WA 98504, telephone: (360) 705–7101; and/or Gary Demich, P.E., Region Administrator, Olympic Region, Washington State Department of Transportation, 5720 Capitol Boulevard, PO Box 47440, Olympia, WA 98504, telephone: (360) 357–2605; and/or Dennis Engel, P.E., Project Engineer, Consultant Design Office, 6639 Capitol Boulevard, P.O. Box 47443, Olympia, WA 98504, telephone: (360) 570–6640.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Washington State Department of Transportation (WSDOT) will prepare a Tier II Environmental Impact Statement (EIS) to determine the most feasible alignment alternative of the SR 167 freeway which will meet purpose and need of the proposed project, while balancing environmental needs. The freeway extension will be approximately 9.7 kilometers (6.0 mile) in length. The freeway is expected to require six lanes including HOV lanes. The HOV lanes will be constructed when warranted.

The purpose of the project is to improve regional mobility of the transportation system to better serve multi-modal freight and passenger movement between SR 167, SR 410, and SR 512 and the Interstate 5 corridor and the new SR 509 freeway; reduce congestion and improve safety on the arterials and intersections in the study area. The proposed segment will provide system continuity between the SR 167 corridor and Interstate 5; and maintain or improve air quality in the corridor to ensure compliance with the current State Implementation Plan and requirements of the Clean Air Act.

There are a number of problems associated with the non-freeway segment of SR 167 through Puyallup and Fife to the Interstate 5 corridor/Port of Tacoma/Fife area. The non-freeway segment, which is an incomplete part of the north Pierce County freeway system as planned, is on the existing surface street system and includes a circuitous route through Puyallup on the existing inadequate SR 167, and Fife via Valley Avenue and 54th Avenue East. These existing, highly congested facilities serve as a major truck route for the Port of Tacoma. Several intersections along these routes operate at over capacity conditions during peak hours resulting in traffic backups and delays. The heavy truck traffic on the non-freeway segment also exacerbate the safety problem. Accident ratios, on the non-freeway segment of SR 167, are 20 to 70 percent high er than statewide averages for similar highways due to high level of congestion at intersections and intersecting driveways.

Tier I FEIS was completed in April 1999. The FHWA concurred with WSDOT in the selection of corridor Alternative 2 for completing State Route 167 from State Route 161 to State Route 509 and signed a Record of Decision in June 1999. A complete description of all alternative studied, including general design elements sufficient to compare alternatives and environmental impacts, is included in the Tier I FEIS (FHWA–WA–EIS–1993–2–F). This document is available for review at local libraries.

The Tier II EIS process will consist of performing engineering analyses on alternative alignments within the selected corridor to determine the negative environmental consequences and evaluate ways to avoid, minimize or mitigate for those consequences at the conclusion of the Tier II process. The do-nothing alternative will also be evaluated. Ultimately, the overall, environmentally preferred alternative will be identified and adopted as appropriate.

Two scoping meetings are planned on July 13, 1999, for agencies, organizations and the public. Time and location for the meetings will be announced by letters, local newspaper and/or through news letters. Subsequent to the scoping meetings, continued public involvement opportunities are included in the EIS public involvement plan. These include newsletters, community workshops, a project web site, bulletins, stakeholder interviews, paid media advertisements, and formation of Citizen Advisory Committee to ensure public information

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and to generate input in the project as it advances through the development/EIS process. A Partners Committee, made up of sponsoring agencies and municipalities in the area, has been formed to cooperatively deal with issues as they arise.

Announcements describing the proposed action and soliciting input on the project will be sent to the appropriate Federal, State, and local agencies, affected Indian Tribes, private organizations, and citizens who have previously expressed or are known to have an interest in this proposal. A series of open houses will be scheduled during the project development process as a part of the EIS public involvement plan. Input from these open houses and scoping meetings will be used to help identify the design alternatives for study in the EIS. A public hearing will be held after the release of the Draft EIS to receive public and agency comments. There will be public notice announcing the time and place of future meetings and the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues have been identified, comments and suggestion are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or WSDOT at the addresses and phone numbers provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultantion on Federal programs and activities apply to this program)

Issued on: June 25, 1999.

James Leonard,

Transportation and Environmental Engineer, FHWA Washington Division.

[FR Doc. 99–16853 Filed 7–1–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20947]

Francis Tedesco, Mark Tedesco, Frank Tedesco Trust, Francis Tedesco Trust and Mark Tedesco Trust—Acquisition—Red Apple Transit, Inc., Hoboken Transportation Company, Inc., Willow Bus Line, Inc., and Agresta Bus Company, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application.

SUMMARY: Applicants, Francis Tedesco, Mark Tedesco, Frank Tedesco Trust, Francis Tedesco Trust and Mark Tedesco Trust, noncarrier individuals who control several motor passenger carriers and a noncarrier, No. 22 Hillside Corp. (No. 22 Hillside), seek approval under 49 U.S.C. 14303 to acquire, through No. 22 Hillside, certain properties and the operating authorities of the following motor passenger carriers: Red Apple Transit, Inc. (Red Apple), Hoboken Transportation Company, Inc. (Hoboken), Willow Bus Line, Inc. (Willow), and Agresta Bus Company, Inc., d/b/a Red Apple Transit, Inc. (Agresta) (collectively referred to as the acquired carriers). Persons wishing to oppose the application must follow the rules at 49 CFR 1182. The Board has tentatively approved the transaction and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by August 16, 1999. Applicants may file a reply by August 31, 1999. If no comments are filed by August 16, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20947 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Applicants directly control Academy Bus Tours, Inc. (Academy Bus),[1] Academy Express, Inc. (Academy Express),[2] Academy Lines, Inc. (Academy Lines)[3] (the Academy companies), Asbury Park Transit Lines (Asbury),[4] Commuter Bus Line, Inc. (Commuter),[5] and No. 22 Hillside. Under the proposed transaction, applicants will indirectly acquire, through No. 22 Hillside, certain properties and the interstate and New Jersey intrastate operating authorities of Red Apple,[6] Hoboken,[7] and Willow,[8] and the New Jersey intrastate operating authority of Agresta.[9]

Applicants state that the aggregate gross operating revenues of the motor passenger carriers that they control exceeded $2 million in calendar year 1998. Applicants also state that No. 22 Hillside will continue to provide the same operations that were provided by the acquired carriers; that applicants will incur no debt in their acquisition so there will be no increase in fixed charges; and that the employees of the acquired carriers will be offered the opportunity to apply for positions with the motor passenger carriers controlled by applicants.

Applicants submit that the proposed transaction will benefit the traveling public. According to applicants, the frequency of schedules will be increased, giving the public a greater choice of buses, and the schedules will be coordinated with those of the other Academy companies, reducing the need for transfers and making passenger service more convenient. Applicants also submit that their motor passenger carriers have regularly scheduled safety training programs and employ a full-time safety director to supervise their operations. They operate fleets of approximately 600 buses, cooperate to make volume purchases of fuel, tires and other supplies, and operate two large garages in Secaucus and Hoboken, NJ, where their buses routinely are inspected, repaired and maintained. In addition, applicants have access to

[1] Academy Bus holds federally issued operating authority in Docket No. MC–165004 to provide passenger service and other regular-route operations principally between New York City and various points in New Jersey, Pennsylvania, and New York, and to conduct nationwide special and charter operations.

[2] Academy Express holds federally issued operating authority in Docket No. MC–145482 to provide passenger service between New York City and various points in New Jersey and to conduct nationwide special and charter operations.

[3] Academy Lines holds federally issued operating authority in Docket No. MC–106207 to provide passenger service and other regular-route operations principally between New York City and various points in New Jersey and Pennsylvania and to conduct nationwide special and charter operations.

[4] Asbury holds federally issued operating authority in Docket No. MC–1002 to provide passenger service between New York City and various points in New Jersey and to conduct nationwide special and charter operations.

[5] Commuter holds federally issued operating authority in Docket No. MC–162133 to provide passenger service between New York City and various points in New Jersey and to conduct nationwide special and charter operations.

[6] Red Apple holds federally issued operating authority in Docket No. MC–182453 to provide passenger service between New York City and various points in New Jersey.

[7] Hoboken holds federally issued operating authority in Docket No. MC–54000 to provide passenger service between New York City and various points in New Jersey.

[8] Willow holds federally issued operating authority in Docket No. MC–240453 to provide passenger service between New York City and various points in New Jersey.

[9] Agresta holds intrastate operating authority to provide passenger service in New Jersey.

financial resources and profess to possess management skills that will permit the operations by the acquired carriers to grow.

Applicants certify that: (1) the motor passenger carriers controlled by the applicants and Red Apple, Hoboken, and Willow hold satisfactory safety ratings from the U.S. Department of Transportation; (2) the carriers have the requisite liability insurance; (3) no carrier is domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application.[10] If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed to be vacated.

3. This decision will be effective on August 16, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (2) the U.S. Department of Transportation, Office of Motor Carriers–HIA 30, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024.

[10] Under 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

Decided: June 28, 1999.

By the Board.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16896 Filed 7–1–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub–No. 87X)]

Boston and Maine Corporation—Abandonment Exemption—in Rockingham and Hillsborough Counties, NH

Boston and Maine Corporation (B&M) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 5.78-mile line of railroad on the Manchester to Lawrence Branch between engineering station 2474+75 and engineering station 2780+36 in Rockingham and Hillsborough Counties, NH. The line traverses United States Postal Service Zip Codes 03101, 03103 and 03053.

B&M has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 1, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 12, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 22, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Robert B. Culliford, Esq., Boston and Maine Corporation, Law Department, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

B&M has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 7, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by July 2, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 25, 1999.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16792 Filed 7–1–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 1999 and ending on December 31, 1999 the prompt payment interest rate is 6.50 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from the http://www.publicdebt.treas.gov.

DATES: This notice announces the applicable interest rate for the July 1, 1999 to December 31, 1999 period.

FOR FURTHER INFORMATION CONTACT: Stephanie Brown, Debt Accounting Branch Manager, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5181, Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5166, Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3692, or Kavita Kalsy, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3682.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub.L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Pub.L. 95–563, 92 Stat. 2389 and the Prompt Payment Act of 1982 Sec. 2, Pub.L. 97–177, 96 Stat. 85 provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3902(a).

Therefore, notice is given that, the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning July 1, 1999 and ending on December 31, 1999, is 6.50 per centum per annum. This rate is determined pursuant to the above mentioned sections for the purpose of said sections.

Dated: June 29, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 99–16962 Filed 6–29–99; 4:45 pm]

BILLING CODE 4810–39–P

federal register

Friday
July 2, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 482

Medicare and Medicaid Programs; Hospital Conditions of Participation: Patients' Rights; Interim Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 482

[HCFA–3018–IFC]

RIN 0938–AJ56

Medicare and Medicaid Programs; Hospital Conditions of Participation: Patients' Rights

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment.

SUMMARY: This rule introduces a new Patients' Rights Condition of Participation (CoP) that hospitals must meet to be approved for, or to continue participation in, the Medicare and Medicaid programs. This interim final rule with comment sets forth six standards that ensure minimum protections of each patient's physical and emotional health and safety. These standards address each patient's right to notification of his or her rights; the exercise of his or her rights in regard to his or her care; privacy and safety; confidentiality of his or her records; freedom from restraints used in the provision of acute medical and surgical care unless clinically necessary; and freedom from seclusion and restraints used in behavior management unless clinically necessary.

The issue of patients' rights has been a longstanding concern for the Health Care Financing Administration. In December 1997, we published a proposed rule that introduced the proposed revision of all hospital CoPs, including a new Patients' Rights CoP. Work to finalize the complete revision of the hospital CoPs continues; however, the Patients' Rights CoP is being finalized separately in an accelerated time frame as recent reports have evidenced a pressing need for the codification and enforcement of these fundamental rights. Of particular concern is the danger posed to patient health and safety by violations of basic patients' rights, such as freedom from restraints and seclusion.

The Patients' Rights CoP, including the standard regarding seclusion and restraints, applies to all Medicare- and Medicaid-participating hospitals, that is, short-term, psychiatric, rehabilitation, long-term, children's, and alcohol-drug.

DATES: *Effective Date:* These regulations are effective on August 2, 1999.

Comment date: Comments on 42 CFR 482.13(e) (Standard: Restraint for acute medical and surgical care) and (f) (Standard: Seclusion and restraint for behavior management) will be considered if we receive them at the appropriate address as provided in the **ADDRESSES** section, no later than 5 p.m. on August 31, 1999. We will not consider comments on provisions of the regulation that remain unchanged from the December 19, 1997 proposed rule or on provisions that were changed based on our consideration of public comments.

ADDRESSES: Mail comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3018–IFC, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3018–IFC. Comments received timely will be available for public inspection as they are received generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Monique Howard, OTR (410–786–3869); Julie Moyers (410–786–6772); Anita Panicker, RN, LCSW (410–786–5646); or Rachael Weinstein, RN (410–786–6775).

I. Background

A. General

On December 19, 1997, we published a proposed rule entitled "Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval" at 62 FR 66726 to revise the entire set of conditions of participation (CoPs) for hospitals that are found at 42 CFR part 482. The CoPs are the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. These CoPs are intended to protect patient health and safety and to ensure that high quality care is provided to all patients. The State survey agencies (SAs), under contract with us, survey hospitals to assess compliance with the CoPs. The SAs conduct these surveys using the *State Operations Manual* (SOM) (HCFA Publication No. 7). The SOM contains the regulatory language of the CoPs as well as interpretive guidelines and survey probes that elaborate on regulatory intent and give in-depth detail about how to maintain compliance. The SOM also outlines the survey process and provides guidance for State administration of the survey program. Under § 489.10(d), the SAs determine whether hospitals meet the CoPs and make corresponding recommendations to us about the hospital's certification, (that is, whether the hospital has met the standards required to provide Medicare and Medicaid services and receive Federal and State reimbursement).

Under section 1865 of the Act and § 488.5 (Effect of JCAHO or AOA accreditation of hospitals), hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are not routinely surveyed for compliance by the SAs but are deemed to meet the requirements in the CoPs based on their accreditation.

B. Why a Patients' Rights CoP Is Needed

In recent years, State surveyors, patient advocacy groups, the media, and the general public have brought complaints about hospitals violating patients' rights to our attention. These violations have consisted of denying or frustrating a patient's access to care, denying a patient's full involvement in his or her treatment, disregarding a patient's advance directives, denying a patient's access to his or her medical records, or inappropriately using seclusion or restraints. Particularly within the past year, the public, media, and the Congress have grown increasingly concerned about the need to ensure basic protections for patient health and safety in hospitals, especially with regard to the use of restraints and seclusion. The Hartford Courant, a Connecticut newspaper, heightened public awareness of this issue with a series of articles in October 1998 citing the results of a study that identified 142 deaths from seclusion or restraints use in behavioral health treatment facilities over the past 10 years. The majority were adolescent deaths.

C. Intent To Examine Restraint and Seclusion in Other Settings

Federal regulations for nursing homes already stress the right to be free of restraints, and over the past 10 years, significant strides have been made in reducing inappropriate restraints used in this care setting. The Patients' Rights CoP will further extend these protections to another major provider of health care. However, this rule will not cover all care settings. As we finalized this rule, various stakeholders lobbied for a much broader application of the seclusion and restraint provisions. We are looking into the advisability of adopting a cross-cutting restraints and seclusion standard that would affect other kinds of health care entities with whom we have provider agreements and the inpatient psychiatric services for individuals under age 21 benefit. We are requesting comment on whether we should set forth the same requirements as promulgated in this rule or whether more stringent standards would be appropriate. For example, is the current standard for continual monitoring of patients in restraint adequate for children or should all restraints for children be monitored only by direct staff observation? In addition, we acknowledge that more stringent standards exist in the Medicaid requirements for restraint use in intermediate care facilities for the mentally retarded. We are requesting comments on whether we should consider the same requirements for the hospital setting. We plan to make a decision on our approach to restraints and seclusion across these other settings and services by the end of the winter.

Some patient advocates have asked that we go well beyond these entities and regulate care furnished by providers with whom we have no provider agreements or care provided in settings where we may lack statutory authority under the Social Security Act (the Act). Barring a legislative change, we cannot mandate a restraint and seclusion standard for those care settings or providers.

D. Conformance of Patients' Rights in Hospitals with the Consumer Bill of Rights and Responsibilities (CBRR)

In February 1998, President Clinton directed the Department of Health and Human Services (DHHS), among other departments, to bring our health care programs into compliance with the CBRR, as recommended by the Presidential Advisory Commission on Consumer Protection and Quality in the Health Care Industry. We are strongly committed to achieving this goal and are continuing to work to ensure that the important consumer protections articulated in the rights are available to our beneficiaries, whether Medicare or Medicaid, whether in managed care or fee-for-service settings.

We have endeavored to incorporate the protections of the Bill of Rights into the structures and operations of the providers and plans that provide care to our beneficiaries. Some of the rights included in the proposed section § 482.10 (now § 482.13) have direct correlates in the Consumer Bill of Rights, but other significant protections provided by the CBRR were not mentioned in the December 1997 proposed rule. Even though some of these protections currently exist due to requirements on hospitals that are not affected by the revisions to the CoPs, we have decided not to add new regulatory requirements to the Patients' Rights standard without subjecting them to a more public vetting than is provided by an interim final rule. We therefore ask for comment on the following additional consumer rights, which we believe would need to be incorporated in the CoPs in order to achieve compliance with the Bill of Rights:

- Information Disclosure: According to the Bill of Rights, consumers should receive the following information from health care facilities:
  - + Corporate form of the facility (that is, public or private; nonprofit or profit; ownership and management; affiliation with other corporate entities).
  - + Accreditation status.
  - + Whether specialty programs meet guidelines established by specialty societies or other appropriate bodies (for example, whether a cancer treatment center has been approved by the American College of Surgeons, the Association of Community Cancer Centers or the National Cancer Institute).
  - + Volume of certain procedures performed at each facility.
  - + Consumer satisfaction measures.
  - + Clinical quality performance measures.
  - + Procedures for registering a complaint and for achieving resolution of that complaint.
  - + The availability of translation or interpretation services for non-English speakers and people with communication disabilities.
  - + Numbers and credentials of providers of direct patient care (for example, registered nurses, other licensed providers, and other caregivers).
  - + Whether the facility's affiliation with a provider network would make it more likely that a consumer would be referred to health professionals or other organizations in that network.
  - + Whether the facility has been excluded from any Federal health programs (that is, Medicare or Medicaid).

In addition, although not specifically mentioned in the CBRR, patient safety necessitates that all hospitals should publicly disclose whether and when they provide emergency services.

- Protection of Whistleblowers: Hospitals should be prohibited from penalizing or seeking retribution against health care professionals or other health workers for advocating on behalf of their patients. Individuals would be assured of this right in the Patients' Rights section.
- Respect and Nondiscrimination: While the preamble discusses the applicable Federal and State laws that prohibit discrimination, an explicit patient right to nondiscrimination is not currently included and would be added to the Patients' Rights section.

E. Other Patients' Rights

The remainder of the hospital CoPs and other Federal requirements provide patients with additional rights that do not appear in the new Patients' Rights CoP. The fact that we have not explicitly stated or cross-referenced these rights in the final rule does not mean that they are not available to the patient, or that they are in any way less important than the rights that this rule establishes.

Some of these rights are stated elsewhere in law or regulation. For example, various the civil rights laws uphold the patient's right to be free of discrimination. When the hospital enters into a provider agreement with us, a condition of that agreement is that the hospital will abide by the principles and requirements of title VI of the Civil Rights Act, as implemented in regulation at 42 CFR part 80; section 504 of the Rehabilitation Act of 1973, as implemented by 45 CFR part 84; the Age Discrimination Act of 1975, as implemented by 45 CFR part 90; and other requirements of the Office for Civil Rights of DHHS (see 42 CFR 489.10, Basic requirements). These requirements span all of the provider types with whom we hold an agreement and provide individuals with important protections against discrimination. A second relevant example is the patient's right that springs from the anti-dumping regulations at § 489.24 (Special responsibilities of Medicare hospitals in emergency cases). The anti-dumping regulations prohibit Medicare-participating hospitals with emergency medical departments from refusing to examine or to treat medically unstable patients.

While these two examples are clear cut instances where patients' rights are already codified, less visible rights also exist. For example, since the hospital is required to have adequate nurse staffing

to provide nursing care to all patients as needed (see § 482.23, Condition of participation: Nursing services), one could argue that the patient is thereby afforded the right to receive adequate nursing services and care. Or, since the hospital is required to have dietary menus that meet the needs of the patients (see § 482.28, Condition of participation: Food and dietetic services), the patient has the right to a diet that meets his needs.

We considered an approach that would have grouped all conceivable patients' rights within this CoP; however, the practical value of this approach is questionable as these elements are codified elsewhere, and an approach that attempts to be all-inclusive often inadvertently omits key elements. We believe that it suffices to say that we expect the hospital to honor and promote all of the rights and protections that Federal law and the hospital CoPs offer. The rights codified by this rule either do not appear elsewhere, or, as evidenced by reports, require a special emphasis.

II. Legislation

Sections 1861(e) (1) through (8) of the Act define the term "hospital" and list the requirements that a hospital must meet to be eligible for Medicare participation. Section 1861(e)(9) of the Act specifies that a hospital must also meet such other requirements as the Secretary finds necessary in the interest of the health and safety of the hospital's patients. Under this authority, the Secretary has established in regulations at 42 CFR part 482 the requirements that a hospital must meet to participate in Medicare.

Section 1905(a) of the Act provides that Medicaid payments may be applied to hospital services. Regulations at § 440.10(a)(3)(iii) require hospitals to meet the Medicare CoPs to qualify for participation in Medicaid.

III. Provisions of the Proposed Regulations

In our December 19, 1997 proposed rule, we proposed revision of the Medicare hospital CoPs in concert with Vice President Gore's Reinventing Government (REGO) initiative. The REGO initiative emphasized lessening Federal regulation to eliminate unnecessary structural and process requirements, focus on outcomes of care, allow greater flexibility to hospitals and practitioners to meet quality standards, and place a strong emphasis on quality assessment and performance improvement.

In the proposed rule, we proposed setting forth a new Patients' Rights CoP in Medicare- and Medicaid-participating hospitals. The provisions of this CoP set forth minimum protections and promote patients' rights, including an individual's right to—(1) notification of his or her rights; (2) the exercise of his or her rights in regard to his or her care; (3) privacy and safety; (4) confidentiality; and (5) freedom from the use of seclusion or restraint of any form unless clinically necessary. In the preamble, we solicited comments on a more prescriptive approach to the use of restraints and seclusion and provided relevant examples.

Although we proposed codifying the new Patients' Rights CoP as § 482.10, in the final rule it is designated as § 482.13 to coordinate with the numbering system used in the current regulations. When the remaining hospital CoPs are finalized, we will renumber the standards in part 482.

Our commitment to the revision of the remaining hospital CoPs to focus on patient-centered, outcome-oriented care remains unchanged. We continue to work on analysis of the over 60,000 comments received on the proposed rule and will finalize the remaining hospital CoPs in the future.

IV. Comments and Responses

Of the 60,000 comments received on the December 1997 proposed rule, approximately 300 focused on the Patients' Rights CoP. Comments were received from hospitals, mental health treatment facilities, professional associations, accrediting bodies, SAs, patient advocacy groups, and members of the general public. Half of the comments, and the strongest opposition, came in response to the proposed fifth standard under Patients' Rights—seclusion and restraints. While many of the respondents did not favor prescriptive regulations that extended beyond the proposed regulations text, some welcomed more prescriptive language under the standard for seclusion and restraints.

A summary of the comments received on the five standards, major issues, and our responses follows.

A. Notice of Rights

We proposed that a hospital must inform each patient of his or her rights in advance of furnishing care and that the hospital must have a grievance process and indicate who the patient can contact to express a grievance.

Comment: Commenters indicated that what constitutes sufficient notification needs to be clarified. One commenter stated this requirement should be satisfied by providing written displays of patients' rights in the hospital lobby and in each patient's room, and in verbal or written form with initial and additional information included in the admission packet.

Response: We appreciate the suggestions of how and where patients' rights should be displayed or conveyed. However, hospitals will need flexibility to establish policies and procedures that effectively ensure that patients and their representatives have the information necessary to exercise their rights. These policies and procedures will need to address how, where, and when to notify patients of the full gamut of rights to which they are entitled under the Act. As hospitals assess the effectiveness of their proactive notification techniques, they need flexibility to continuously improve their performance in promoting patients' rights.

This CoP covers hospitals of varying sizes operating in a wide range of locations, serving diverse populations, with a variety of required notices; thus, flexibility and creativity to allow for the effective implementation of this requirement without undue burden is critical. Therefore, we are not including further prescriptive language detailing exactly where, how, when, and by whom this requirement must be carried out.

While we are committed to preserving flexibility on this point, we note that one method for efficiently handling aspects of this requirement may be to bundle notices with the existing information that must be provided to patients to fulfill Civil Rights requirements. The regulations implementing title VI of the Civil Rights Act of 1964, section 80.6(d), section 504 of the Rehabilitation Act of 1973 (45 CFR 84.8), and the Age Discrimination Act of 1975, section 91.32, require recipients of financial assistance from the DHHS to provide notice of their responsibility to comply with the appropriate nondiscrimination provisions and other pertinent requirements of the Office for Civil Rights. For a hospital that falls under this requirement, some patients' rights notices could be effectively posted next to these nondiscrimination notices. For some of the educational notices the patient will receive as part of the new Patients' Rights CoP, this public posting may be appropriate.

Comment: One commenter believed that the standards in the Patients' Rights CoP are generally reflected in common hospital practice; however, she objected to the general language that appeared at the beginning of the condition; specifically, the phrase, "A hospital must protect and promote each patient's rights." This commenter was concerned that the wording would be presented in isolation to juries during medical malpractice cases, and that it would be used to cover *all* legal and ethical rights. The commenter noted that a hospital staff person could not know or be responsible for providing this degree of information. The commenter suggested that the language be amended to read, "A hospital is responsible to have policies and procedures in place which protect and promote the patient's rights as reflected in the following standards."

Response: As stated earlier, we do expect the hospital to honor and promote each patient's rights, regardless of whether they appear in the Patients' Rights CoP. With respect to the commenter's concern that this statement will be taken in isolation and used in medical malpractice cases, we do not want to provide a foothold for frivolous cases. With that said, however, it could very well be that a patient who brings suit against a provider has a legitimate cause for concern or complaint because that provider failed to acknowledge his or her rights as established under these regulations. Such a case would generally require some substantiation and elaboration on specifically which right the provider failed to uphold. We are not persuaded that this language opens up an otherwise closed avenue for pursuing legal action. Accordingly, we are retaining this language.

Comment: One commenter noted that enumeration of the patient's rights is of little use if his or her only recourse is a grievance process that is controlled by the hospital. This commenter suggested adding a requirement that the patient also be notified that he or she could lodge a complaint with the State survey agency either after or during the course of the hospital stay, regardless of whether the patient decided to file a grievance with the hospital's system.

Response: The patient's right to file a complaint with or contact the accreditation body or the State to report an infraction on these rights is implicit; therefore, we do not believe it is necessary to add this to the regulations text. To address the commenter's concern, however, we will specify in the interpretive guidelines that patient notification of the grievance process must include the fact that the patient also may address his or her concerns to the State survey agency, regardless of whether he has first used the hospital's grievance process. Patients or residents of all Medicare-certified facilities have always had the ability to lodge complaints about the quality of care they receive with the State survey agency or HCFA, and nothing in this rule alters this opportunity. We will further specify that the patient be given a phone number and address for lodging a complaint with the SA.

Comment: Some commenters stated the proposed rule should account for the fact that in certain situations, the patient's age, condition, health problem, and emergency situation will inhibit the hospital's ability to notify the patient of his or her rights before the provision or discontinuation of care. Commenters believed that the rule should free hospital personnel from the responsibility of informing the patient of his or her rights if he or she is experiencing an emergency medical condition, is unconscious, or is at the hospital for a brief outpatient encounter.

Response: A hospital should make every effort to inform the patient of his or her rights before care provision or cessation of care. However, in some instances a patient's age, condition, health problem, or emergency situation does not allow the opportunity to communicate with the patient regarding his or her rights. For this reason, we are adding language to allow the hospital to communicate these rights to the patient's representative (as allowed under State law). In the absence of State law to cover particular health care decisions, the hospital may also communicate these rights to a legal representative whom the patient has appointed as an "ad hoc" decision maker in the event of temporary inability to make health care decisions. We still expect that as soon as the patient can be informed of his or her rights, the hospital will provide that information to the patient.

Comment: Some commenters stated that this discussion should be tailored to the patient's level of understanding or communication needs by using alternate means of communication (for example, audiotape, radio, sign language, and Braille, or other culturally competent vehicles), as necessary.

Response: Existing civil rights legislation (section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA)) emphasize the provision of effective aids, benefits, or services to individuals with disabilities. The ADA defines auxiliary aids and services as including qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed captioning, telecommunications devices for deaf persons, videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments; and qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments. Title VI of the Civil Rights Act of 1964 also requires recipients of certain public funds to serve persons who are "Limited English Proficient" (LEP). Translation of LEP documents, use of bilingual staff, and provision of interpreters are usually used to convey necessary information to LEP persons.

While we recognize the value of appropriate communication techniques, we do not offer further regulation in this area since existing laws ensure that appropriate attention will be given to providing information to those who require special accommodation based on their special needs.

Comment: Some commenters believed that the proposed rule needed to further define the patient's role and responsibility when being informed of his or her medical condition and that the standard should place more emphasis on discussion of prevention of complications and rehospitalization.

Response: The Patients' Rights CoP upholds the patient's right to full, informed involvement in his or her care. Under circumstances defined by State law, this right may also be exercised by the patient's legal representative on his or her behalf. We recognize that involvement in the plan of care and the choice of treatment option may be open to interpretation. We would like to clarify that this right to involvement in health care decisions cannot be equated with the ability to demand medically unnecessary treatments or care. The patient has the right to be informed of his or her status, to be involved in care planning and treatment, and to request and refuse treatment. The patient should be consulted about changes in care and treatment. Issues arising out of patient dissatisfaction with the hospital's response may be dealt with under the hospital's grievance process required under § 482.13(a); however, the patient may choose to lodge a complaint with the SA or accrediting body in addition to or instead of using the hospital's grievance system.

We agree that the patient's health and well-being are most likely affected by the degree of collaboration between the patient and physician. The patient should make every effort to bring medical problems to the attention of the physician in a timely fashion, provide information about his or her medical condition to the best of his or her knowledge, and work in a mutually respectful manner with the physician.

However, the patient's physical, mental, psychological, and emotional status may directly affect his or her ability to offer this degree of cooperation.

Comment: A commenter stated that a member of the interdisciplinary treatment team should document (in the medical record) that the patient's rights have been reviewed with the patient and whether the patient or his or her legal representative comprehends the information covered. A few commenters stated that social workers should notify patients of their rights at the time of the intake or screening interview.

Response: All of these suggestions have potential merit. However, as stated above, we believe it is necessary to provide the hospital with flexibility in developing policies and procedures that fulfill the requirement's intent, that is, to ensure that each patient's rights are protected.

Comment: A few commenters believed that no further details should be included in the regulation as more detail would add an unnecessary paperwork burden during the admission process while not guaranteeing improved quality of patient care.

Response: We have mandated neither the process that a hospital must use nor the extent to which these rights must be discussed as part of the admission process. In some cases, notification of these rights must occur later in the hospital stay to ensure that the patient's rights are protected. Hospitals will have the flexibility and accountability to determine how they can best ensure the protection of patients' rights.

Comment: A few commenters stated that the patient should be informed of the credentials, licensure, and professional qualifications, including certifications, of all personnel involved in his or her care through clear disclosure of this information on the hospital badge.

Response: We believe that this is an issue that hospitals should consider in developing their policies and procedures on notification of rights. We agree that it is important for patients to be aware of the identities of individuals who provide care in the hospital.

Comment: A few commenters suggested a patient should have the right to request care by a registered nurse (RN).

Response: Under the current hospital CoPs, hospitals are required to have 24-hour nursing services and an RN who supervises or evaluates the nursing care for each patient (§ 482.23(b)(3)). In addition, an RN must assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available (§ 482.23(b)(5)). We believe that the patient has a right to nursing care in hospitals; however, we disagree with the commenter's assertion of the patient's inherent right to request and receive the direct services of an RN. In rural areas where access to health care practitioners can be problematic, to mandate this requirement is impractical and burdensome. The current nursing services requirement provides for RN services for each patient through supervision of the nursing care provided. Existing regulations address and provide for the appropriate level of care in situations where a patient's condition warrants an RN's direct service.

Comment: One commenter agreed with our proposal that hospitals should have a formal grievance process for complaints and recommendations. However, we received more comments in opposition to this requirement. Those who opposed the provision believed it to be unnecessary, burdensome to establish, and limited in scope since it pertains only to patients' rights. A commenter noted that we did not specify how the hospital should plan to investigate complaints or the time frame within which hospitals would be required to respond to grievances.

Response: As we stated in the December 1997 proposed rule, whenever possible, we have attempted to adopt an outcome-oriented focus rather than establish process requirements. However, we believe that the establishment of a grievance process promotes patient empowerment in health care. We recognize that in and of itself this process may not be sufficient to resolve all potential sources of conflict. For example, in a situation where a patient disagrees with a course of treatment, the disagreement might be between the patient and an independent physician or health plan rather than with the hospital itself. Some issues may more logically be pursued under Medicare or Medicaid complaint processes or through a State mechanism. For example, hospitals already have procedures for referring Medicare beneficiaries' complaints about quality and concerns about premature discharge to peer review organizations for investigation and review. Whatever the type of concern, we expect that the hospital's grievance process will facilitate prompt, fair resolution. The grievance process should route each concern timely to the appropriate decision-making body. This expectation for coordination has been added to the text of the final rule.

As noted earlier, the interpretive guidelines will reiterate that the notification of a grievance process must include the fact that the patient has the right to file a complaint with the SA regardless of whether he or she chooses to use the hospital's process, and that he must be provided with the SA's phone number and address.

We considered the commenters' concerns about burden; however, to remain silent on general expectations for the grievance process could result in the absence of key ingredients that promote a meaningful, substantial process that addresses patients' concerns and promotes their rights. To promote the creation of an effective grievance process, in § 482.13(a)(2), we are establishing general elements that should be common to grievance processes across all hospitals. Development of more detailed strategies and policies to comply with the requirement will be left to the discretion of each hospital.

Exercise of Rights

B. We proposed That the Patient Has the Right To Be Informed of His or Her Rights and To Participate in the Development and Implementation of His or Her Plan of Care

Comment: Commenters stated that the patient should be informed if the treatment is experimental in nature and informed of the types of outcomes the hospital has encountered from the care. Commenters also suggested that the patient and his or her representative should be informed of the nature, expected outcome, and potential complications of treatment options that are going to be undertaken, as well as the potential outcomes if the treatment is refused.

Response: The hospital should foster an atmosphere that supports two-way communication with the patient regarding his or her care. We expect that the hospital will hold the responsible physician accountable for discussing all information regarding treatment, experimental approaches (hospitals are required to comply with 45 CFR part 46, protection of subjects of human research), and possible outcomes of care to promote quality care delivery. We believe it is unnecessary to codify the elements that must be discussed with a patient regarding development of his or her plan of care, or with whom among the hospital's staff or practitioners the patient must speak to develop that plan of care. Flexibility is necessary because discussions of treatment information will differ for each patient.

C. We Proposed That the Patient Has the Right To Make Decisions Regarding His or Her Care

Comment: Some commenters stated that the final rule should emphasize the patient participating fully in his or her care. Commenters believed that this could be achieved by allowing the patient to receive second opinions before starting a procedure that significantly differs from the pre-admission plan of treatment. These commenters stated that the final rule should require the patient to "sign-off on treatment options" and should acknowledge the patient's ability to refuse treatment and to refuse to participate in experimental research.

Response: We agree that the patient must be adequately informed of these options so that he or she can make educated decisions regarding his or her care. The requirement supports this emphasis and implicitly includes the commenters' concerns that a patient be able to refuse a certain treatment or participation in experimental research. However, in light of this comment, we decided to introduce a higher degree of specificity in the final rule. First, we noted that the patient's representative (as allowed under State law) can also exercise the right to make informed decisions on the patient's behalf. Second, we introduced a more detailed description of what the patient's right to make informed decisions entails. The patient has the right to be informed of his or her health status, to be involved in care planning and treatment (this includes pain management, as this aspect of treatment planning is often not discussed with patients), and to be able to request and refuse treatment. Abridgement of these patients' rights would be subject to the grievance process required by § 482.13(a). It is critical to note, however, that the standard does not provide the patient with the right to demand treatment or services that are not clinically or medically indicated.

D. We proposed that the patient has the right To Formulate Advance Directives and To Have Hospital Staff and Practitioners Who Provide Care in the Hospital Comply With These Directives

Comment: One commenter wanted the issue of advance directives to be addressed at the time of the patient's Medicare enrollment rather than at the time of an acute care admission. This commenter stated that, "Medicare beneficiaries could be required to designate their wishes with regard to 'do not resuscitate' (DNR) status and their surrogate healthcare decision-maker[s] as a condition of receiving the [Medicare] benefit. The CoP for the acute setting should address validating the beneficiary's 'pre-selected designations.'"

Response: Section 1866(f) of the Act contains the provider requirements concerning the acknowledgment and handling of advance directives. The implementing regulations appear at 42 CFR part 489, Provider Agreements and Supplier Approval; specifically, at §§ 489.100 through 489.104. When we developed the December 1997 proposed rule, we believed that it was appropriate to reference advance directives in the Patients' Rights CoP, consistent with other Medicare provider CoPs (for example, existing regulations for nursing homes and home health agencies). The regulations governing advance directives and their implementation are not directly affected or under debate in this rule. This rule is not the appropriate venue for addressing the more general issue of advance directives, which spans provider types and is not specific to the hospital CoPs.

Comment: A commenter stated that the language regarding advance directives should encourage increased communication about and access to palliative care for the terminally ill. Another commenter believed that detailed advance directives should apply to inpatients, but not outpatients.

Response: Regarding the commenter's concern that advance directives should apply to inpatients not outpatients, section 1866(f) of the Act and implementing regulations at § 489.102 require that the hospital give each individual (1) written information concerning an individual's rights under State law to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives, and (2) written policies of the provider or organization with respect to the implementation of advance directives. Section 1866(f)(2)(A) specifically notes that this information must be provided when an individual is admitted as an inpatient to a hospital; therefore, the hospital need not provide this information to those who are receiving outpatient services.

We appreciate the commenter's suggestion that the language about advance directives incorporate increased information about and access to palliative care for the terminally ill. However, neither the statute nor the existing regulations about advance directives discuss linking increased discussion of and access to palliative care with the advance directives requirement. Further, as noted earlier, the proposed rule did not contemplate amending the existing advance directives requirements. We do believe, however, that referencing the patient's right to formulate and have hospital staff comply with advance directives in the new Patients' Rights CoP will lead to increased communication regarding end-of-life decisions, pain management, and other palliative care.

Comment: One commenter believed that a hospital should be required to check and adhere to advance directives, including those pertaining to psychiatric emergencies, by incorporating the appropriate training to ensure patients are knowledgeably consenting and by including quality improvement efforts to study the issue.

Response: We believe that existing regulations at §§ 489.100, 489.102, and 489.104 already address these concerns. The final rule cross-references these citations and supports the existing regulatory expectation. However, the commenter touched upon a point that merits additional response: specifically, that advance directives are not limited to end-of-life decisions. In the mental health setting, a patient may form advance directives that relate to what should be done if he or she experiences a psychiatric crisis. In an advance directive, a person with a mental disorder leaves instructions as to his or her health care when he or she no longer has decision-making capacity. These instructions may include, for example, the name of the health care proxy, the name of the facility in which one wishes to receive services, the name of the provider from whom one wishes to receive treatment, names of medications and dosages that work best, and the methods to be used to de-escalate a crisis to avoid the use of seclusion and restraint. In the interpretive guidelines, we will further describe the aspect of advance directives that relates to psychiatric emergencies to place a greater emphasis on and encourage responsiveness to these situations.

E. Privacy and Safety

We Proposed That the Patient Has the Right to Privacy and To Receive Care in a Safe Setting

Comment: One commenter stated that language of the preamble that referred to the patient's respect, comfort, and dignity was not included in the regulations text.

Response: We believe that patient respect, dignity, and comfort are the foundation of the expectations outlined

by the regulation—freedom from all forms of abuse and harassment, the right to privacy, and the right to care provided in a safe setting. As we have noted earlier, these standards are intended to provide protection for the patient's physical and emotional health and safety. Respect, dignity, and comfort would be components of an emotionally safe environment. This point will be reinforced when we prepare corresponding interpretive guidelines to implement this final rule.

Comment: Commenters agreed with the concept of the patient's right to privacy but believed that the term "privacy" is broad and undefined. Some stated that "personal privacy" should be defined and a statement should be included to relieve hospitals of the responsibility of providing each patient with a private room, since "privacy" could be misinterpreted to mean that a patient has a right to a private room.

Response: We understand the commenters' concerns but are not including a description of "privacy" in the final rule. We intend to address the accommodation of privacy rights through the interpretive guidelines, as that venue permits a more thorough explanation of expectations.

We agree that "privacy" does not mean that each patient has a right to a private room. However, even if a patient is in a semiprivate room, the hospital should provide a patient with privacy by steps such as pulling curtains closed for exams and requesting visitors to leave the room when treatment issues are being discussed.

Comment: Some commenters believe "personal privacy" and "receive care in a safe setting" should not be combined since they are separate issues.

Response: We agree and have separated the two elements under the standard "Privacy and Safety."

F. We Proposed That the Patient Has the Right To Be Free From Verbal or Physical Abuse or Harassment

Comment: Some commenters wanted the word "free" to be replaced by "protected" and the phrase "from hospital staff" included in the standard. One commenter observed that patients can misinterpret hospital staff's helpful verbalizations as abusing and harassing. Commenters believed that this section should clarify that verbal warnings or physician contact with a patient, visitor, or employee, that are reasonably necessary to protect others from intimidation or threat of violence will not be construed as verbal or physical abuse. Other commenters wanted the regulation to express sensitivity to the fact that hospital personnel will not always be able to anticipate the potential for harassment and harm inflicted by another patient.

Response: While the patient is under the hospital's care and on its property, the hospital is responsible for ensuring the patient's health and safety and his or her physical, emotional, and psychological well-being. We recognize that there is always a chance a patient can misinterpret staff's intentions. We expect that hospital staff would intervene in a timely, appropriate manner to correct any misinterpretations in a timely, appropriate manner, if this situation were present.

In the final rule, we have amended the language to address all forms of abuse rather than just physical and verbal abuse. We recognize that any sort of abuse, including verbal, physical, psychological, sexual, and emotional, is unacceptable.

G. Confidentiality of Patient Records

We Proposed That the Patient Has the Right to Confidentiality of His or Her Clinical Records

Comment: A commenter stated that without specific language regarding privacy and confidentiality, research efforts may be stifled by the regulation.

Response: Presumably, the commenter is concerned that without a clear statement regarding the confidentiality of patient records, patients would be reluctant to participate in medical research if asked. We have maintained the proposed language regarding confidentiality; however, we agree with the commenter's assertion that patients need to have a clear understanding of how a hospital operationalizes this requirement. We will discuss this further in interpretive guidelines.

Comment: A commenter questioned whether the stated language is expressing a concern for each patient's ability to access his or her records or whether the language views a hospital's tendency to "systemically" frustrate individuals' legitimate attempts to gain access to medical records as a violation of the requirement.

Response: We believe it is each patient's inherent right to have access to his or her clinical record, as well as to have his or her clinical record kept confidential. We are setting forth this requirement in the final rule.

Comment: A few commenters noted that there was no definition provided for the term "reasonable" when it was used to describe the time frame within which the hospital must provide the patient with access to information in his or her records. They believed that this lack of specificity would make it difficult for JCAHO to determine hospitals' compliance with the standard. A few commenters believed that the regulation should state that the patient has a right to a copy of his or her records within 4 hours of an inpatient stay and within 48–72 hours for a patient who has been discharged. A few commenters believed that the regulations text should clearly account for the impact of variations in location of data, record complexity, urgency, and staff workload.

Response: Regarding the definition of "reasonable," we believe that "reasonable" means that the hospital (1) will not frustrate the legitimate efforts of individuals to gain access to their own medical records, and (2) will actively seek to meet these requests as quickly as its recordkeeping system permits. We have included these expectations in the regulations text at § 482.13(d)(2).

We agree with the commenters who asserted that we should account for the impact of various factors such as location of data, urgency, and staff workload. Rather than attempting to stipulate time frames within the regulation that would cover all possible combinations of factors, we are simply retaining the word "reasonable." We trust that if the patient believes that he is being subjected to unreasonable treatment as he tries to obtain a copy of his medical records, he will use the hospital's grievance process or will report difficulties to the SA or JCAHO. While setting a concrete time frame might provide a better measuring stick for performance, it would not adequately account for the kinds of variation that are apt to occur in different hospital settings.

Comment: Some commenters suggested that the rule be expanded to state, "In accordance with local and State laws, the patient has a right to confidentiality of his or her clinical and personal information and records and a right to a copy of his or her medical record or information in his or her medical record within a reasonable time frame."

Response: This comment could have several meanings. The idea of deferring to local and State law could apply to the confidentiality provision, the access requirement, the reasonable time frame, or all three. Specifically, it could be construed to mean that—

(1) "The patient's right to the confidentiality of his or her record is governed by State or local law (rather than Federal law)." Currently, DHHS's position on this point is to defer to State rules that are more protective of privacy than Federal rules whenever possible.

While our intention is that the Patients' Rights CoP protects record confidentiality to the greatest extent possible, we recognize that some disclosure may be necessary. For example, in the December 1997 proposed rule, we proposed under the revised Information Management CoP that the patient's medical information must be available to all authorized professional personnel providing medical care to the patient. If the patient's care is to be well integrated and planned, those who are providing the various professional services involved in the patient's treatment may need to review the patient's medical status and history. It is expected that there will be management choices and policies determining what uses and disclosures of patient information are authorized, and that there will be administrative, management, and technical safeguards to ensure that only persons using records for authorized purposes may have access to them. For example, the release of the patient's record may occur if the patient is transferred to another facility, to comply with the provisions of Federal law and State law (where State law is not inconsistent with Federal law), when allowed under third party payment contract, as approved by the patient, and when inspection by authorized agents of the Secretary is required for the administration of the Medicare program.

(2) "The patient's right to access his or her record should be governed by State and local law." A discussion of DHHS's position is in order. The general policy position of the DHHS on this topic is set out in "Confidentiality of Individually-identifiable Health Information, Recommendations of the Secretary of Health and Human Services, pursuant to section 264 of the Health Insurance Portability and Accountability Act of 1996," in which the Secretary recommended Federal legislation to protect the rights of patients with respect to their health information.

The policy recommended there is that the patient should be allowed to inspect and copy health information about himself or herself held by providers and payers, but that providers and payers could, in their discretion, withhold information from the patient under very narrowly defined circumstances:

- The information is about another person (other than a health care provider) and the holder determines that patient inspection would cause sufficient harm to another individual to warrant withholding.
- Inspection could be reasonably likely to endanger the life or physical safety of the patient or anyone else.
- The information includes information obtained under a promise of confidentiality (from someone other than a health care provider), and inspection could reasonably reveal the source.
- The information is held by an oversight agency and access by the patient could be reasonably likely to impede an ongoing oversight or law enforcement activity.
- The information is collected in the course of a clinical trial, the trial is in progress, an institutional review board has approved the denial of access, and the patient has agreed to the denial of access when consenting to participate.
- The information is compiled principally in anticipation of, or for use in, a legal proceeding.

DHHS's policy also provides that those holding these health care records be permitted to deny inspection if the information is used solely for internal management purposes and is not used in treating the patient or making any administrative determination about the patient, or if it duplicates information available for inspection by the patient.

The DHHS's policy sets forth the expectation that in general, patients should be able to see and copy their records, and that recordholders should only be able to deny access to the portion of the record that meets the aforementioned criteria. The recordholder should redact the portions allowed to be denied and should give the patient the rest of the information. The accompanying discussion of DHHS's policy recommendations supports patient access to his or her own records. At least 31 States explicitly provide this right by law.

While we acknowledge the provider's right to exercise judgment in the release of a patient's record in these narrow instances, we firmly believe that a patient cannot take an active, meaningful role in his or her health care decisions if he or she is not allowed to know what is happening to his or her own body or mind. If he or she cannot comprehend that information, then it should be available to his or her representative (as allowed under State law), who then acts on his or her behalf. The patient's right to be informed of his treatment, his health status, and his prognosis is just that—his inherent right, to be exercised by the individual or at his or his representative's (as allowed under State law) discretion. We believe that this right is best supported by giving the patient access to his or her own record in all but the most extreme cases.

(3) "The patient will receive his or her medical records within the time frame prescribed by State or local law." We would defer to either State or local guidance on this point.

The criteria we have set out above, that would describe circumstances that might limit access by patients to their hospital medical records, are not being incorporated into this final rule. Rather, we are raising them now as examples of the narrow areas in which providers should exercise discretion. Once we have reviewed the comments, we will consider whether further guidance is necessary.

Comment: One commenter stated the regulation should require records to be supplied at a fair market rate.

Response: Pricing must not create a barrier to the individual receiving his or her medical records. Records should be supplied at a cost not to exceed the community standard. If State law establishes a rate for the provision of records, State law should be followed. However, in the absence of State law, the rate charged by organizations such as the local library, post office, or a local commercial copy center that would be selected by a prudent buyer can be used as a comparative standard.

We are finalizing the requirement as proposed and believe that charging excessive fees for copies of a patient's medical record would constitute a violation of the Patients' Rights CoP as this practice could be used to frustrate the legitimate efforts of individuals to gain access to their own medical records. We expect that we would receive and investigate complaints if hospitals charged excessive fees for medical records.

Comment: Some commenters stated that consideration should be given to risk management issues involved in the release of incomplete medical records.

Response: We are unsure whether the commenter is referring to a closed record that may be incomplete or to a request for a copy of a current, open record that, until the patient is discharged, will be incomplete. In either situation, we believe it is a patient's inherent right to have access to his or her clinical record. A hospital may decide to provide a staff member to review the record with the patient as necessary to minimize misunderstandings and respond to concerns.

H. Seclusion and Restraint

(1) We Received Approximately 150 Comments Regarding the Proposal That Patients Have the Right To Be Free From the Use of Seclusion or Restraint, of Any Form, as a Means of Coercion, Convenience, or Retaliation by Staff

Comment: None of the commenters voiced an objection to the addition of this standard under Patients' Rights.

Response: Since we proposed the rule in 1997, interest in the use of seclusion and restraint and its consequences has increased markedly. Part of this heightened awareness is due to media attention devoted to this topic. One of the most controversial series of newspaper reports appeared in October 1998 in Connecticut's *Hartford Courant.* The articles cited the results of a study that identified 142 deaths from seclusion and restraint use in behavioral health treatment facilities, including psychiatric hospitals and psychiatric treatment units in general hospitals, over the past 10 years. Restraint use has also been covered in the broadcast media and has been investigated by the General Accounting Office. All of this attention has generated a great deal of concern for patient safety and well-being within the public, private, and regulatory sectors.

While we find the reports of deaths associated with restraint use disturbing, we are equally concerned with the impact that restraint use has on acute and long-term care patients. The prevalence of injuries and accidents involving restraint is difficult to gauge. If manufacturers learn of a death or serious injury caused by a medical device, they must report it to the Food and Drug Administration (FDA). Device user facilities (hospitals, nursing homes, outpatient treatment facilities, outpatient diagnostic facilities) must report a death of one of their patients caused by the medical device to FDA and the manufacturer, and a serious injury to the manufacturer only. No other entities are required to report to FDA or the manufacturer.

Research indicates that the potential for injury or harm with the use of restraint is a reality. In a 1989 article published in the Journal of the American Geriatrics Society, Evans and Strumpf pointed to an association between the use of physical restraint and death during hospitalization (Evans, LK and Strumpf, NE: Tying down the elderly: A review of the literature on physical restraint. J Am Geriatr Soc (1989) 37:65–74; also see Robbins, LJ, Boyko E, Lane, J, et al.: Binding the elderly: A prospective study of the use of mechanical restraint in an acute care hospital. J Am Geriatr Soc (1987) 35:290; Frengley, JD and Mion, LC: Incidence of physical restraints on acute general medical wards. J Am Geriatr Soc (1986) 34:565; Strumpf, NE and Evans, LK: Physical restraint of the hospitalized elderly: Perceptions of patients and nurses. Nursing Research (1998) 37:132.) The FDA estimates that at least 100 deaths from the improper use of restraints may occur annually. Mion et al. further noted that, "Some evidence exists that the use of physical restraints is not a benign practice and is associated with adverse effects, such as longer length of hospitalization, higher mortality rates, higher rates of complications, and negative patient reactions. Physical restraints have a detrimental effect on the psychosocial well-being of the patient" (see Mion et al.: A further exploration of the use of physical restraints in hospitalized patients. Jour Am Geriatr Soc (1989) 37:955; Schafer, A: Restraints and the elderly: When safety and autonomy conflict. Can Med Assoc J (1985) 132:1257–1260).

Research findings on the impact of restraints use have lead to research on and development of alternative methods for handling the behaviors and symptoms that historically prompted the application of restraint. However, various studies provide evidence that restraint is still being used when alternate solutions are available (see Donat, DC: Impact of a mandatory behavior consultation on seclusion/restraint utilization in psychiatric hospitals. J Behav Ther Exp Psychiatry (1998 March) 29:1, 13–9; Dunbar, J: Making restraint-free care work. Provider (1997 May) 75–76, 79; and Moss, RJ: Ethics of mechanical restraints. Hasting Center Report (1991 Jan-Feb) 21(1):22–25.)

While we acknowledge that in some emergency situations the use of restraint may be the least potentially harmful way to protect the individual's safety or that of others, the patient's right to be free from restraint is paramount. Restraint use should be the exception to the rule, not a standard practice. The question that arises is how we and the medical community, with the common goal of the well-being of each patient, can eliminate the inappropriate use of restraint and can ensure the safety and health of the patient in emergency situations where a restraint is applied. In considering how to achieve these goals, we refer to the article by Evans and Strumpf:

"* * * the consideration of the anticipated length of time in restraint, goals of care, and the likely outcome for the patient become extremely important questions to answer in those instances where restraints are contemplated or in use * * * Further, more attention to staff education regarding selection of appropriate restraints by type and size and their proper application and monitoring seems to be warranted if restraint-related accidental injuries and deaths are to be avoided." (J Am Geriatr Soc (1989) 37:70).

In its Safety Alert of July 15, 1992, the FDA echoed the need for training to decrease the incidence of deaths and injuries involving restraining devices. The FDA suggested that institutions provide in-service training for staff as regularly as possible, including a demonstration of proper application of restraint. Given the stated need for training if accidental injuries and deaths are to be avoided and the use of alternative measures promoted, we have added language to the final rule that will require a training program on restraint for staff. We have also noted that these training programs should review alternatives to restraint and seclusion, to teach skills so that staff who have direct patient contact are well equipped to handle behaviors and symptoms as much as possible without the use of restraints or seclusion.

In the final rule, we have added the word "discipline" to the standard statement to read, "The patient has the right to be free from the use of seclusion or restraint, of any form, as a means of coercion, discipline, convenience, or retaliation by staff." Discipline is not an acceptable reason for secluding or restraining a patient. In the treatment environment, it is impossible to distinguish between "discipline" and "punishment."

Another addition to the final rule are definitions of "physical restraint," "drug that is used as a restraint," and "seclusion." We believe that codifying the definitions of these terms will provide a clear legal basis for the enforcement of these standards.

We have decided upon a division of the restraint and seclusion standard in the final rule. As we began work on the final rule, we discovered a pattern of differences between an intervention used in the provision of acute medical and surgical care and one used to manage behavioral symptoms. This difference was situation-specific rather than necessarily linked to provider type. While the definition of "restraint" spans care settings, the circumstances and expected outcomes for restraints use vary.

In the final rule, we have attempted to differentiate between situations where a restraint is being used to provide acute-level medical and surgical care and those where restraint or seclusion is used to manage behavior.

This approach is similar to that adopted in existing standards that JCAHO has created for restraint and seclusion. When a restraint is applied in the course of acute medical and surgical care, the intervention is generally not undertaken because of an unanticipated outburst of severely aggressive or destructive behavior that poses an imminent danger to the patient and others. In medical and surgical care, a restraint may be necessary to ensure that an intravenous (IV) or feeding tube will not be removed, or that a patient who is temporarily or permanently mentally incapacitated will not reinjure him or herself by moving after surgery has been completed. Using a device such as an IV arm board to provide medication that, if skipped, would cause the patient considerable injury or harm may be the least restrictive intervention that accomplishes the necessary administration of the medication. The use of a restraint in this circumstance is necessary for the patient's well-being (to receive effective treatment) when less restrictive interventions, such as keeping the patient's arm free and mobile have been determined to be ineffective.

Depending on the patient's diagnosis and health status, whether the acute medical and surgical care patient requires constant monitoring while restrained or can be monitored and reassessed at regular intervals is a matter of clinical judgment. Additionally, seclusion is not an intervention selected to help with the provision of medical or surgical services; therefore, references to seclusion have been removed from the final standard that appears as subsection (e).

A critical point to remember is that these standards are not specific to the treatment setting, but to the situation the restraint is being used to address. For example, if a hospital has a wing for psychiatric patients where it uses restraint or seclusion to manage behavior, it must meet the restraint and seclusion behavior management standard for those patients.

The use of restraints or seclusion to manage behavior is an emergency measure that should be reserved for those occasions when an unanticipated, severely aggressive or destructive behavior places the patient or others in imminent danger. While different factors may precipitate this type of psychiatric, behavioral, and physical outburst for an individual patient, the need for rapid assessment and continuous monitoring is applicable in each case.

Accordingly, we are accepting commenters' suggestions to regulate the time frames within which certain actions must occur in the behavior management scenario. We are adopting the concept of time-limited orders that appears in JCAHO's 1999 Hospital Accreditation Standards. Specifically, the intent statement for standard TX.7.1.3.1.8 provides that written orders for restraint or seclusion for behavioral health patients are limited to 4 hours for adults, 2 hours for children and adolescents ages 9 to 17, or 1 hour for patients under age 9. These time frames were created for JCAHO's use by a committee of experts in the field. We stress, however, that these time frames represent the maximum time intervals for which each order can be written. Physicians or licensed independent practitioners may write orders for shorter increments of time. A licensed independent practitioner is any individual permitted by law and by the hospital to provide care and services, without direction or supervision, within the scope of the individual's license and consistent with individually granted clinical privileges. Additionally, under regulation, while the patient is being restrained or secluded, his or her status must be continually monitored, assessed, and reevaluated, with an eye toward releasing him or her from the restraint or seclusion at the earliest possible time. We believe that these factors will ensure that the patient is restrained or secluded for as brief a time as possible. In addition, we are requiring that if the restraint or seclusion order is written by a physician or licensed independent practitioner other than the "treating" physician, the treating physician must be consulted as soon as possible The "treating" physician is the physician who is responsible for the management and care of the patient. We believe that this is important because the "treating" physician may have information regarding the patient's history which may have a significant impact on the selection of restraint or seclusion as an intervention. For example, the patient may have a history of sexual abuse and restraints or seclusion may actually cause psychological harm.

JCAHO also states in its explanation of intent for standard TX.7.1.3.1.7 that each licensed independent practitioner best carries out his or her responsibility when he or she participates in daily reviews of restraints and seclusion use related to his or her patients. We are adopting a parallel philosophy by specifying in the regulation that an order for restraint or seclusion may only be renewed in the previously mentioned increments (4 hours for adults; 2 hours for patients ages 9 to 17; 1 hour for patients under 9) for up to a total of 24 hours—to that point, the practitioner must reevaluate his or her patient face-to-face before writing a new order. We believe that it is appropriate to recognize JCAHO's work in this area and maintain consistency between Federal and accreditation standards when possible.

In situations where a restraint must be used for behavior management, increased vigilance is required because of the heightened potential for harm or injury as the patient struggles or resists. Furthermore, there is an immediate need for assessment of what has triggered this behavior and for continuous monitoring of the patient's condition. To address the need for quick assessment of the condition, we are specifying that the physician or licensed independent practitioner see the patient face-to-face within 1 hour of the application of the restraint or the use of seclusion.

The standard for restraint use in the provision of acute medical and surgical services and the standard for restraints and seclusion use for behavior management are built on the same foundation; however, the behavior management standard contains more rigorous requirements for the timeliness of actions that must be taken by a physician or other licensed independent practitioner who is granted authority under State law and by the hospital to order restraints use or seclusion. The creation of two restraints standards does not represent any lessening in our commitment to restraint reduction and, as much as possible, elimination in both the provision of acute care and behavior management situations. The distinction does acknowledge, however, that it may not be reasonable to have identical standards for two very different situations. The absence of time frames for the acute care standard should not be construed as permission to restrain patients without timely interaction with the physician or other licensed independent practitioner who is permitted by the State and the hospital to order restraint. When restraint is used to provide acute medical or surgical care, we still expect the patient to be continually assessed, monitored, and reevaluated by hospital staff. The patient's care needs will dictate how frequently reassessment by a physician or other licensed independent practitioner is necessary. In any case, we expect the discontinuation of the restraint at the earliest possible time.

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(2) We Proposed That if Seclusion and Restraints Are Used (Including Drugs Used as Restraints), They Must be Used in Accordance With the Patient's Plan of Care, Used Only as a Last Resort, in the Least Restrictive Manner Possible, and Removed or Ended at the Earliest Possible Time

Comment: One commenter suggested that there needs to be better understanding of why seclusion and restraints are used, and development of efforts to reduce their use. However, this commenter did not believe further prescriptive Federal regulation is necessary.

Response: There is a need to understand why seclusions and restraints are used; however, the reasons behind the use of restraints have been studied and to some extent documented (see Strumpf NE and Evans, LK: Physical restraint of the hospitalized elderly: Perceptions of patients and nurses. Nursing Research (1988) 37:132–137; Evans LK and Strumpf NE: Tying down the elderly: A review of the literature on physical restraint. Jour Amer Geriatr Soc (1989) 37:65–74; Janelli, LM: Physical restraint use in acute care settings. J Nurs Care Qual (1995 Apr) 9(3) 86–92.) Various studies substantiate that restraints are being used when alternate solutions are available (see Donat, DC: Impact of a mandatory behavior consultation on seclusion/restraint utilization in psychiatric hospitals. J Behav Ther Exp Psychiatry (1998 March) 29:1, 13–9; Dunbar, J: Making restraint-free care work. Provider (1997 May) 75–76, 79; and Moss, RJ: Ethics of mechanical restraints. Hasting Center Report (1991 Jan–Feb) 21(1):22–25.)

While restraints reduction and education programs are underway and should be encouraged, we believe that it is critical to reinforce appropriate restraints reduction by acknowledging the patient's right to be free from restraints except when the use of a restraint is the least restrictive option that will provide the greatest benefit to the patient (that is, the risks associated with the use of the restraint are outweighed by the risk of not using it). When used to manage behavior, the use of restraint or seclusion is only an emergency measure and requires careful assessment and monitoring to ensure patient safety.

Comment: Some commenters suggested that this regulation display consistency between HCFA and JCAHO requirements.

Response: We understand and appreciate concerns about consistency between HCFA and JCAHO standards. As mentioned above, we have modified the final rule to introduce separate standards to address restraint or seclusion used for behavior management and restraint used in the provision of acute medical and surgical care. This change reflects the differing emphases contained within JCAHO's current requirements. As we further develop the guidelines, we will continue to work closely with JCAHO.

Comment: A number of commenters suggested that the terms "as a last resort" should be replaced with, "when medically indicated," or, "when medically necessary," or "when other appropriate measures have been found to be ineffective."

Response: We have replaced the term, "as a last resort" with "when other less restrictive measures have been found to be ineffective." We reaffirm that restraints use should not be a standard practice, and restraints should be used only when other less restrictive alternatives are ineffective to protect the safety of the patient or others.

Comment: A few comments suggested including "and hospital policy" after "patient's plan of care" to link patient care to the hospital requirements.

Response: To meet the restraint and seclusion requirements, hospitals may develop their own policies focusing on alternatives to seclusion and restraint, the underlying patient condition, and the discontinuation of seclusion or restraint as soon as possible. However, it seems redundant to require hospitals to then follow their own policies. Our primary concern is that the requirements of the regulation be met. Ensuring the connection between the regulations and standards of practice and smooth implementation is part of the hospital's responsibility to meet the CoPs. Accordingly, we are not adopting the commenter's suggestion.

Comment: One commenter suggested that less restrictive and more restrictive devices should be held to different standards.

Response: We do not want to apply unnecessary multiple standards when the overarching principle is that the patient has the right to be free from restraints, whether artificially or scientifically classed, that restrict normal movement or access to his or her body. We recognize the difference between an arm restraint applied to enable the provision of needed medication versus a posey vest or four point restraint; however, when their use is avoidable, we expect that the hospital will refrain from using any of these devices. When this intervention is absolutely necessary to the safety and well-being of the patient or others, the hospital does have the ability to use these devices.

We expect hospital policies and procedures regarding all use of restraints or seclusion to comply with the same fundamental standard: At the very least and before all else, the intervention should do no harm. Any intervention must be made in the context of an ongoing loop of assessment, intervention, evaluation, and reintervention. A corollary principle is that the greater the risks associated with an intervention, the more careful and thorough the assessment must be.

Comment: Seclusion and restraint should never be used simultaneously and should not cause physical pain to the patient.

Response: We are strengthening the final rule by specifying that physical restraints may not be used in combination with seclusion unless the patient is either (1) continually monitored face-to-face by an assigned staff member; or (2) is continually monitored by staff using both video and audio equipment. This monitoring must be in close proximity to the patient.

We agree that the use of a restraint should not harm or cause pain to the patient. We will address this topic in the interpretive guidelines. We believe that these concepts should be covered as part of the staff training in the proper use of seclusion and restraint.

A slightly different issue is the use of a drug as a restraint in combination with a physical restraint or seclusion. As acknowledged elsewhere in this preamble, drugs may be used for a variety of purposes and may have positive value as part of a well-planned therapeutic strategy. Some are appropriate given the individual's plan of care and specific situation. The regulation supports the patient's right to be free from drugs that are used to restrain the resident in the absence of medical symptoms or for the purpose of discipline, convenience, retaliation, or coercion; however, we do not wish to introduce regulations that might block the strides made to appropriately medicate patients who are, for example, in pain or clinically depressed.

Comment: A few commenters suggested that the requirement for patient records include alternative approaches attempted before the use of seclusion and restraints.

Response: Documentation included in the patient's medical record was discussed in the proposed rule of December 1997 at proposed § 482.120(a), the Information Management CoP. The proposed Information Management CoP requires

recording the diagnosis, comprehensive assessment and plan of care, evaluations, consent forms, notes on treatments, nursing, medications, reactions, a summary report with provisions for follow-up care, and any relevant reports. The CoP also requires that revisions to the plan of care be documented in the patient's record. Accordingly, as the general requirements are addressed in another section that will be addressed in the hospital CoP rule when it is published as final, we are not adopting the commenter's suggestion. However, we expect that the medical record will contain information on less restrictive measures that may have been considered before the selection of seclusion or restraint use. In the interpretive guidelines, however, we will go into further detail about the expectation surrounding the requirement that restraint or seclusion only be used after less restrictive interventions are shown to be ineffective. The interpretive guidance will describe what surveyors should look for in examining compliance with this standard.

Comment: Data showing the use of seclusion and restraints and any patient injuries incurred as a result should be reported.

Response: It is possible that States and localities may have requirements for reporting these incidents. Additionally, Federal law requires that deaths involving restraining devices be reported to the FDA, and that both deaths and serious injuries associated with restraint use be reported to the device's manufacturer. However, this reporting does not cover the situations where patients are suffocated or critically injured during physical holds. To be more inclusive, we are adding a § 482.13(f)(7) (under the behavior management standard) that requires each hospital to report to us any death that occurs while a patient is restrained or in seclusion, or where it is reasonable to assume that a patient's death is as result of restraint or seclusion. HCFA will track the reports of deaths from restraints or seclusion occurring in hospitals. HCFA will use this information to (1) authorize onsite investigations (complaint surveys) of these hospitals in accordance with the current complaint investigation process; and (2) inform the Federally-mandated Protection and Advocacy (P&A) entity in the respective State or territory. Protection and Advocacy programs are Congressionally authorized (in accordance with 42 U.S.C. 10101 *et.seq.*) to access facilities and to investigate abuse and neglect complaints. Furthermore, we are soliciting comment on the pros and the cons of requiring the reporting of serious injury or abuse related to the use of restraints or seclusion, as well as the type of injury or abuse that would be reported, and the process whereby these incidents would be reported.

Comment: Some commenters suggested the need for hospitals to develop and implement hospital-based performance and outcome measures for restraints and seclusion.

Response: We are not mandating the development of these standards at this time. However, we expect that a hospital, as part of its internal quality assessment and performance improvement program, will evaluate itself in patient care activities that have potential safety issues, including the use of restraints and seclusion.

Comment: Commenters stated the need to provide periodic educational sessions for hospital staff on the proper use of seclusion and restraint in compliance with HCFA guidelines.

Response: We agree. We are adding a requirement that as part of ongoing training, staff who have direct patient contact are trained in the proper and safe use of seclusion and restraints, as well as trained in techniques and alternatives to handle the symptoms, behaviors, and situations that have historically prompted restraint or seclusion. For example, topics of training could include cardiopulmonary resuscitation techniques, methods for appropriately positioning a restrained patient's head and body to ensure proper respiration and circulation, or methods for monitoring cardiovascular status. We will provide a more detailed description of safe, appropriate restraining techniques in the interpretive guidelines.

Research on restraints supports education as the key component in decreasing or eliminating the use of seclusion or restraints (see Stilwell, EM: Nurses' education related to use of restraints. (1991 Feb) 17(2) 23–6; Cruz, V: Research-based practice: Reducing restraints in acute care setting. (1997 Feb) 23(2)31–40; and Janelli, LM: Acute/critical care nurses' knowledge of physical restraints-implications for staff development. (1994 Jan–Feb) 10(1)6–11). As noted earlier, education may also be crucial in efforts to reducing and eliminating restraints-related injuries.

Comment: A commenter requested further clarification of the definition of "restraint," the types of restraints, and the types of situations where these measures should be used. Commenters wanted HCFA and the medical community to collaborate in developing these working definitions, giving consideration to differences in patient care issues that are age and population specific in acute care hospitals, behavioral health treatment facilities, and nursing homes. These commenters requested inclusion and clarification of when the use of side rails constitutes a restraint and a discussion of leather versus soft restraints.

Response: We have provided definitions of "physical restraint," "drug that is used as a restraint," and "seclusion" in the final rule and plan to provide further guidance in the interpretive guidelines in the SOM. To adequately respond to commenters' questions, we will respond in three parts.

1. Physical Restraint

The functional definition of "physical restraint" parallels existing guidance regarding restraints found in HCFA's SOM Appendix P (nursing home requirements). A restraint is a restraint regardless of setting. A posey vest is no less restrictive when applied in a hospital than when used in a nursing home.

Similarly, we are not categorizing varieties of physical restraints, such as soft versus leather. An object is a restraint by functional definition; that is, when it restricts the patient's movement and access to his or her body. Under this definition, all sorts of devices and practices could constitute a restraint. For example, tucking a patient's sheets in so tightly that he or she cannot move is restraining him or her. In that instance, a sheet is a restraint. One has to examine how the device or object is being used. Putting up side rails that inhibit the patient's ability to get out of bed when he or she wants to constitutes a restraint. In summary, we have adopted a functional definition that does not name each device and situation that can be used to inhibit an individual's movement simply because we believe that this approach is counterproductive. One could not possibly capture all scenarios or devices in regulation, and a functional approach promotes looking at individual situations. From our experience with nursing homes, we know that many people look for a clear-cut list of restraints. We believe that clinicians will agree, however, that each case is different. A device that acts as a restraint for one individual may not inhibit the movement of another. Accordingly, we have incorporated a definition that focuses on function for the individual.

Concerning leather and soft restraints, patient safety and comfort are primary

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considerations in selecting a restraining technique or device. We do not feel qualified to comment on one being preferable to the other, but would offer that restraints in general should be avoided as much as possible.

2. Drug Used as a Restraint

We have noted in the regulations text at § 482.13(e)(1) and § 482.13(f)(1) that a drug used as a restraint is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition. Before discussing the concepts behind this definition, we would point out that the language that precedes this definition clearly sets forth that the patient has the right to be free from seclusion or restraint, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. This right is provided under both the acute medical and surgical care provisions and the behavior management provisions.

Even when there are medical indications for the use of a drug as a restraint, we believe that the precautions outlined in the regulation are necessary to protect the patient. The definition contains a phrase that merits some discussion—"and is not a standard treatment for the patient's medical or psychiatric condition." As stated elsewhere, we do not want to unintentionally interfere with the administration of drugs that are part of a patient's therapeutic plan of care—for example, for a patient with a psychiatric diagnosis, a mood or behavior-affecting drug may be part of the patient's overall care plan. To address this consideration, we added language to address what we see as the primary point the standard hopes to address—not the drug that is being used as an integrated part of the care plan, but the drug that is not part of a standard treatment for the patient's medical or psychiatric condition.

3. Seclusion

The definition adopted, "the involuntary confinement of a person in a room or an area where the person is physically prevented from leaving," is an adaptation of JCAHO's definition.

Comment: We proposed a more prescriptive set of requirements for restraints and seclusion in the preamble to the proposed rule. Many commenters cited a potential burden, inefficiency of care, expense, and safety issues that may arise as a direct result of mandating physician consultation to evaluate for restraint utilization, to write orders every 2 hours for pediatric patients or every 6 hours for adult patients (instead of every 24 hours), to have face-to-face contact, and to have primary authority to initiate written orders for seclusion and restraints. A commenter pointed out that the proposed rule will exceed the current law in his State. In that State, seclusion and restraint orders may be issued by either a physician, Ph.D., licensed clinical psychologist, or master's prepared registered nurse. One commenter believed that frequency of assessment should be based on the patient's presenting factors. Many commenters believed the proposed rule would be restrictive and impractical, thereby encouraging false documentation and limiting the ability of the registered nurse in "sound clinical decision making."

Response: We acknowledge the perceived burden of a more prescriptive set of standards. As we explained above, in this rule we have attempted to differentiate between situations where a restraint is being used to provide acute-level medical and surgical care and those when restraint or seclusion is used to manage behavior.

To address the concerns about the burden of requiring all of these functions to be performed by the physician, as well as the comment that some States permit other licensed independent practitioners to order restraint and seclusion, we have changed the final regulation to indicate the possible involvement of these other types of professionals as permitted by State law and hospital policy. However, we are interested in receiving comments on whether we should adopt more restrictive requirements that would allow only physicians to order restraints or seclusion for behavior management.

We considered the other commenters' concerns about the restrictiveness and impracticality of the requirements, the adverse effect that the requirements might have on the RN's ability to make sound clinical judgments, and the potential for falsification of records. We disagree with these comments on several counts. First, the RN's decision-making skills and judgment are a cornerstone of good patient care. This rule is not curtailing the RN's role in patient care. Second, the standard for restraint use for acute medical and surgical care maintains flexibility. We have avoided being overly prescriptive in this standard because of the need for sound clinical judgment in meeting the patient's individual care needs. In the provision of acute medical and surgical care, we agree with the commenter who observed that patient assessment should be based on his or her presenting condition. (Earlier, we described the rationale for codifying a greater degree of specificity for the standard for restraint and seclusion in behavior management.) Regardless of the situation that is presented to the hospital, the nurse's observation and intervention in patient care remains critical. Concerning the falsification of records, we see no connection between the requirements we are establishing in this rule and an increase in the behavior.

Comment: A commenter wanted to prohibit PRN orders and mandate 15-minute checks on restrained patients. Some responders believed that there should not be a defined time limit for restraint use, while a few believed that this limit should be instituted. One commenter believed that patients under age 18 should be in seclusion or restraint for shorter periods than adults. One responder suggested a maximum of 16 hours.

Response: We agree that PRN orders should never be used with or as a part of seclusion and restraints, and this concept has been added to the final rule. The use of PRN orders for seclusion and restraints would allow a facility to indiscriminately seclude or restrain patients. As noted earlier, in the acute medical and surgical care standard, the need for monitoring continually versus periodic checks is a determination that will largely be correlated with the individual patient's diagnosis, treatment, and health status. Basically, the determination of frequency of monitoring must be made on an individual basis. However, we are mandating that restraints or seclusion be ended at the earliest possible time based on *continuous* assessment and reevaluation of the patient's condition. We expect that this assessment would include items such as vital signs, circulation, hydration needs, level of distress, and agitation. In interpretive guidance, we will specify what is meant by "continuous assessment and reevaluation of the patient."

In response to the commenter who believed in differentiating between the length of restraint for adults and patients under the age of 18, we have adopted JCAHO's approach to time-limited orders for restraints or seclusion. Concerning the comment that restraint should be limited to 16 hours, we understand the desire to put some sort of a cap on the amount of time that an individual can be restrained. However, we found no precedent for a 16-hour or any other time-specific cap, and we believe that it is clinically ill-advised to set an absolute maximum on how long an individual can be restrained. As discussed earlier, we have indicated that orders for physical restraint and seclusion may be renewed in the previously mentioned increments for up to a total of 24 hours. At that point, the physician or licensed independent practitioner who ordered the use of restraints or seclusion must see his or her patient in person to determine whether the issuance of a new order is appropriate. The requirement that patients who are restrained for behavioral purposes are continually assessed, monitored, and reevaluated, combined with the regulatory expectation that restraints use will be discontinued at the earliest possible time, should ensure that restrained patients are released as soon as they can commit to safety and no longer pose a threat to themselves or others.

While the regulation stresses the minimal use of restraint or seclusion, when these steps are necessary, the staff's training should provide a good groundwork for ensuring that staff know how to meet each patient's basic needs. As a result of their training, staff should be equipped to assess, monitor, and reevaluate each restrained patient as well as provide care to meet basic needs.

Comment: Suggestions were made that nurses should be allowed (1) to receive verbal or telephone orders from physicians who are prescribing restraint or seclusion orders and (2) to use ongoing assessment and a standardized restraint protocol.

Response: Current requirements at § 482.23(c)(2)(i) allow nurses to receive verbal or telephone orders. In addition, many States have laws regarding telephone orders. We agree that professional staff should be able to use standard seclusion or restraint protocols, in accordance with medical standards of practice and hospital policies and procedures that are consistent with these regulations. If a hospital and medical staff develop and authorize the use of this protocol for emergency situations, it would meet the requirement that restraints be used in accordance with the order of a physician or other licensed independent practitioner who is approved by the State and the hospital to issue this order. We will explain this further in interpretive guidelines. We expect that the nurse or other professional who initiates the protocol will contact the appropriate physician at the earliest possible time to obtain a verbal order for the restraint or seclusion intervention.

Comment: Provisions need to be made for the emergency application of restraints.

Response: We agree. Hospitals may develop an emergency protocol approved by the medical staff to be used in emergency situations in a manner consistent with these regulations.

Comment: Commenters stated that we are singling out the use of psychopharmacological drugs in the overall proposed rule. One commenter asked that references to psychopharmacological drugs be removed from the CoP.

Response: We agree that there is no need to specify "psychopharmacological" drugs and have removed the term. Any drug that alters mood, mental status, or behavior can be used as a restraint depending on the situation.

Comment: Many comments centered around linking the valid use of restraints (including drugs used as restraints) to the patient's plan of care and the hospital's policy.

Response: The use of restraints must be linked to the patient's modified plan of care, and we have put this language in the regulation. We refer to the "modified" plan of care to reinforce our expectation that restraint or seclusion should not be a standard response to a particular behavior or situation. The use of these interventions is an emergency measure that temporarily protects the safety of the patient and others; however, it is not a long-term solution for handling problematic behavior.

If restraints are used, their use must be in accordance with a physician's order (or other licensed independent practitioner's order, as noted earlier) and the patient's modified plan of care; used in the least restrictive manner possible; used in accordance with appropriate restraining techniques; use only when other appropriate measures have been found to be ineffective to protect the patient or others from harm; and ended at the earliest possible time. The patient's treating physician must be consulted as soon as possible, if the treating physician did not order the restraint. In addition, the condition of the restrained patient must be continually assessed, monitored, and reevaluated.

Comment: A commenter believed that no further details need to be included in the regulation as it only increases the paperwork burden for the hospital while not guaranteeing improved quality of patient care.

Response: We have adopted more prescriptive requirements based on recent public health concerns, as noted above. The paperwork aspect of both the acute medical and surgical restraint use and the behavior management restraints and seclusion are minimal. As other factors, such as the professionalism and training of staff, will affect patient outcomes, we agree that a detailed process does not necessarily in and of itself guarantee quality of care. However, we believe that we have established a framework in regulations that promotes the patient's right to be free of restraints and seclusion and protects him or her when their use is instituted.

Comment: One commenter asserted that particularly in psychiatric institutions, restraints and seclusion can be used to prevent patients from filing complaints or taking steps to initiate discharge. The commenter further noted that even those patients who are not in seclusion may effectively be prevented from using the phone to notify family or a primary physician of their hospitalization by an unscrupulous provider. To address this situation, the commenter recommended that we include the patient's right to request that a family member of his or her choice and his or her physician be notified promptly of his or her admission to the hospital.

Response: In the final rule, we have added a requirement that addresses this right.

General Comments

Comment: Recommendations were made for us to provide more guidance on the specific documentation hospitals are required to provide to surveyors to indicate compliance and, ultimately, for us to be aware of how these regulations may impact patient safety.

Response: We intend to issue interpretive guidance that will elaborate on the hospital's responsibilities, what the surveyors should evaluate to determine compliance with this requirement, and the extent to which the use of seclusion or restraints in each individual instance provides demonstrable evidence that the intervention is clearly tied to the individual patient's plan of care. Through our on-site survey presence in initial certification surveys, recertification surveys and the investigation of complaints, HCFA will monitor how well hospitals are meeting these new standards.

Comment: A commenter suggested the use of measurement and assessment processes that would identify opportunities to reduce the risk associated with restraint use through introducing preventive strategies, innovative alternatives, and process improvement.

Response: We think this is an excellent suggestion; however, we are not mandating specific measures or assessment protocols. We expect a hospital, through its quality assessment

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and performance improvement activities, to assess itself in this regard.

Comment: A commenter suggested including the right to nondiscriminatory treatment—which should include a prohibition against discrimination on the basis of mental or physical disability and socioeconomic status.

Response: As a result of their receipt of Federal funds, Medicaid-and Medicare-participating hospitals are already prohibited from discriminating on the basis of race, color, or national origin (under title VI of the Civil Rights Act of 1964), age (under the Age Discrimination Act of 1975), and disability (under section 504 of the Rehabilitation Act of 1973). In addition, the Americans with Disabilities Act protects persons with disabilities from discrimination.

The regulations governing the Medicare provider agreement recognize these protections and discuss them at § 489.10(b). Specifically, this section, entitled "Basic requirements," requires the provider to meet the applicable civil rights requirements of title VI of the Civil Rights Act of 1964, as implemented by 45 CFR part 80, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. Section 489.10(b) also requires compliance with section 504 of the Rehabilitation Act of 1973 (which provides protection against discrimination to qualified persons with disabilities), the Age Discrimination Act of 1975 (which provides protection against discrimination based on age), and other pertinent requirements of the Office for Civil Rights of the Department of Health and Human Services. Moreover, if a facility is funded under title VI or title XVI of the Public Health Service Act, it is prohibited from denying services to persons unable to pay for needed services if the persons are seeking emergency services and reside in the hospital service area or if those persons are eligible under the uncompensated services provision of the Act. The facility is also prohibited from discriminating based on method of payment.

V. Provisions of the Final Rule

For reasons specified in the preamble, we are codifying the Patients' Rights CoP within the current hospital CoPs under Subpart B—Administration at § 482.13. The six standards to the CoP will set forth minimum protections and will promote patients' rights. Changes have been made to strengthen the proposed regulation and are set forth as follows.

The first standard, Notice of Rights, states, "A hospital must inform each patient, or when appropriate, the patient's representative (as allowed under State law) of the patient's rights in advance of furnishing or discontinuing patient care whenever possible." This standard also requires that the hospital have a grievance process and indicate who the patient can contact to express a grievance. The minimum elements that must be common to all hospital grievance processes are specified.

The second standard, Exercise of Rights, provides the patient the right to participate in the development and implementation of his or her plan of care, and to request or refuse treatment. The Exercise of Rights standard sets forth the patient's right to make decisions regarding his or her care and the right to formulate advance directives and to have hospital staff and practitioners who provide care in the hospital comply with those directives, in accordance with § 489.100 (Definition), § 489.102 (Requirements for providers), and § 489.104 (Effective dates). We have added a requirement that the patient has the right to have a family member or representative of his or her choice and his or her physician notified promptly of his or her admission to the hospital.

The third standard, Privacy and Safety, has been changed so that "personal privacy" and "receive care in a safe setting" could be made into two separate elements under this standard as requested by commenters. The final regulation states that "The patient has the right to personal privacy," and, "The patient has the right to receive care in a safe setting." We have altered the requirement that the patient has the right to be free from verbal or physical abuse and harassment to state that the patient has the right to be free from all forms of abuse or harassment.

The fourth standard, Confidentiality and Patient Records, contains the provisions of the proposed rule; specifically, the right to the confidentiality of his or her record and the right to access information contained in his or her clinical records within a reasonable time frame. To this standard, we have added a requirement stating that the hospital must not frustrate the legitimate efforts of individuals to gain access to their own medical records and must actively seek to meet these requests as quickly as its recordkeeping system permits.

The fifth standard, Restraint for Acute Medical and Surgical Care, codifies the patient's right to be free from both physical restraints and drugs that are used as a restraint that are not medically necessary or are used as a means of coercion, discipline, convenience, or retaliation by staff. The rule defines "restraint," "physical restraint," and "drug used as a restraint." In accordance with commenters' suggestions, we removed the term "psychopharmacological" from the standard to acknowledge that a wide range of drugs may be used as a restraint.

The regulation states that a restraint can only be used when less restrictive interventions have been determined to be ineffective. It also acknowledges the ability of licensed independent practitioners authorized by the State and the hospital to write orders for restraints. The regulation states that the patient's treating physician must be contacted, as soon as possible, if the restraint is not ordered by the patient's treating physician. We have added language that mandates that restraints must never be written as a standing order, or on an as needed basis (that is, PRN). The final rule states that restraint use must be in accordance with a written modification to the patient's plan of care; in the least restrictive manner possible; in accordance with safe and appropriate restraining techniques; and selected only when other less restrictive measures have been found to be ineffective to protect the patient or others from harm. The standard regarding restraint use related to acute medical and surgical care also requires that the condition of the patient in restraints must be continually assessed, monitored, and reevaluated; the restriction of patient movement or activity by restraints be ended at the earliest possible time; and all direct care staff must have ongoing education and training in the proper and safe use of restraints.

The last standard, Seclusion and Restraint for Behavior Management, contains many of the same elements stated in the fifth standard (related to restraints used in acute medical and surgical care) but goes further by discussing the use of seclusion and provides specific requirements for the monitoring and evaluation of a secluded or restrained patient for behavior management.

This standard provides that seclusion or restraint for behavior management can only be used in emergency situations if it is needed to ensure the patient's physical safety, and less restrictive interventions have been determined to be ineffective. This standard also provides that seclusion or restraint use must be in accordance with the order of a physician or other licensed independent practitioner who is permitted by the State and hospital to order seclusion or restraint use. It also requires that the patient's treating physician be consulted, as soon as possible, if the restraint or seclusion is not ordered by the patient's treating physician. The final rule also states explicitly that the requirement for restraint or seclusion use for behavior management will be superseded by existing State laws that are more restrictive.

This standard provides that seclusion or restraints may not be ordered on a standing or PRN basis. The regulation requires a physician or other licensed independent practitioner to see and evaluate the need for restraint or seclusion within 1 hour after the initiation of this intervention.

The final rule sets limits for each written order for physical restraints or seclusion based on a patient's age. For adults, the written order is limited to 4 hours; for children and adolescents (age 9–17), the written order is limited to 2 hours; for patients under age 9, the written order is limited to 1 hour. The final rule states that the original order may only be renewed for up to a total of 24 hours. After the original order expires, a physician or licensed independent practitioner (if permitted by State law) must see and assess the patient before issuing a new order.

The final rule states that any restraint or seclusion use must be in accordance with a written modification to the patient's plan of care, implemented in the least restrictive manner possible, in accordance with appropriate restraining techniques, and selected only when less restrictive measures have been found to be ineffective to protect the patient or others from harm.

The standard discusses restraints and seclusion used in combination, and provides that they may not be used simultaneously unless the patient is continually visually monitored, in person, by an assigned staff member, or is continually monitored by staff by audio and video equipment. This audio and video monitoring must occur in close proximity to the patient. It also states that the condition of the patient who is in restraints or seclusion must continually be assessed, monitored, and reevaluated and that the restriction of patient movement or activity by seclusion or restraint use must be ended at the earliest possible time.

The rule also requires that all staff who have direct patient contact have ongoing training in both the proper and safe use of seclusion and restraints and alternative techniques and methods for handling the behaviors, symptoms, and situations that traditionally have been treated through restraint and seclusion. While we are not detailing the sorts of behaviors, symptoms, and situations here, we plan to further describe them in the interpretive guidelines that will implement this regulation.

Finally, the regulation requires the hospital to report to us any death that occurs while a patient is restrained or in seclusion, or where it is reasonable to assume that a patient's death is as a result of restraint or seclusion.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this rule as required by Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity.

The RFA (5 U.S.C. 601 through 612) requires agencies to analyze options for regulatory relief for small entities. Consistent with the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat most hospitals and most other providers, physicians, health care suppliers, carriers, and intermediaries as small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. Although the provisions of this interim final rule with comment do not lend themselves to a quantitative impact estimate, we do not anticipate that they would have a substantial economic impact on most Medicare-participating hospitals.

However, to the extent the rule may have significant effects on providers or beneficiaries, or be viewed as controversial, we believe it is desirable to inform the public of our projections of the likely effects of the proposals.

The Unfunded Mandates Reform Act of 1995 requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual mandated expenditure by State, local, and tribal governments, in the aggregate or by both the private sector, of $100 million. This rule has no mandated consequential effect on State, local, or tribal governments, or the private sector and will not create an unfunded mandate.

In December 1997, we proposed to revise all of the hospital CoPs in concert with Vice President Gore's REGO initiative. The REGO initiative emphasized lessening Federal regulation to eliminate unnecessary structural and process requirements, focus on outcomes of care, allow greater flexibility to hospitals and practitioners to meet quality standards, and to place a stronger emphasis on quality assessment and performance improvement.

Within this newly revised CoP, we proposed the establishment of a Patients' Rights CoP for hospitals that contains rights not addressed in the current provisions. We solicited comments on the Patients' Rights CoP and received strong support for its establishment. There was consensus among the public, mental health advocacy groups, media, and the Congress that we should move toward establishing such a CoP. This consensus was prompted by serious concern about improper care of patients in the hospital setting, with regard to all aspects of patient care, including the use of seclusion and restraint. These factors led us to set forth this final rule with comment to ensure the protections of patients' rights in the hospital setting, including the right to be free from the use of seclusion and restraint. We believe that this regulation will broaden the consumer's role in safeguarding and participating in his or her care.

Consumer protections are of vital importance in the hospital setting. The recent focus of efforts such as the formulation of the Consumer Bill of Rights and Responsibilities points to the public acknowledgment of the important role that each individual is called upon to play in his or her care. We believe that Medicare CoPs must foster each individual's rights as an informed consumer and decision maker. Accordingly, we are promoting the

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concepts in the Consumer Bill of Rights and Responsibilities, and we are asking the public for comments on incorporating additional consumer rights into the hospital CoPs in order to promote compliance with the Consumer Bill of Rights.

B. Anticipated Effects

1. Effect on Hospitals

Since the Patients' Rights CoP set forth below is a newly established CoP, we have no factual reports, studies, or data to aid in the development of cost or savings estimates. However, we believe most hospitals are already fulfilling many of the requirements of this regulation due to State requirements, and hospital policies and procedures, especially existing policies and procedures to meet the Life Safety Code and Physical Environment requirements of the current hospital CoP, which cover safe environment issues. Therefore, there may be no significant increase in burden to most hospitals.

Given the shift toward regulatory flexibility, for the most part, we are not prescribing the exact process hospitals must follow to meet the regulatory requirements regarding Patients' Rights. However, there are several provisions that will impact hospitals to a greater or lesser degree. Specifically, hospitals will have to establish policies and procedures necessary for compliance with this regulation: notification of rights, exercise of rights, privacy and safety, confidentiality, and patient access to records. Hospitals will have to develop a grievance process and ensure that staff are provided with ongoing education and training in the proper and safe use of seclusion and restraint application and techniques and alternative methods for handling behavior, symptoms, and situations that traditionally were treated through the use of restraints or seclusion. In addition, hospitals will have to report to the appropriate HCFA regional office any deaths that result from restraint or seclusion use for behavior management.

Regarding the grievance process, hospitals may use different approaches to effectively meet this CoP. We are setting forth the general elements that should be common to grievance processes across all hospitals, but we are not explicitly delineating strategies and policies to comply with the requirement. Also, we are setting forth more detailed, prescriptive requirements than were contained in the proposed rule for the use of seclusion and restraint for behavior management situations. Despite the potential burden associated with the implementation of some portions of this regulation, we believe that by recognizing and attending to patients' rights, hospitals may find improvements in patient collaboration and satisfaction with care, a reduction of patient-initiated lawsuits regarding care, and through the hospital's own grievance process, find a wealth of information to guide quality improvement efforts.

We expect hospitals to develop different approaches to compliance with the Patients' Rights CoP based on their varying resources and patient populations, differences in laws in various localities, and other factors. However, even in situations where the regulation could result in some immediate costs to an individual hospital (that is, developing and implementing a process to notify patients of their rights and allow patients to exercise their rights), we believe that the changes that the hospital would make would produce real long-term economic benefits to the hospital (that is, a reduction in lawsuits). It is important to note that because of the flexibility afforded hospitals to implement this regulation, the extent of the economic impact on individual hospitals will vary and is subject in large part to their decision-making. The impact will also vary according to each hospital's current policies and procedures and level of compliance with existing State law and regulations.

Overall, we believe that the benefits of complying with the Patients' Rights CoP will far outweigh the costs involved. We also note that with regard to the restraint and seclusion standards for both acute medical and surgical care and behavior management, there should be no significant additional burden for, at least, the 80 percent of Medicare-participating hospitals accredited by JCAHO since the requirements are modeled on JCAHO's standards for both their hospital accreditation program and their behavioral health care accreditation program. For the other 20 percent of hospitals that are nonaccredited, there may be some one-time costs associated with developing policies and procedures for restraint and seclusion use. However, we believe that the benefits far outweigh the costs because, from a risk management viewpoint, clear policies will protect the hospital from situations of inappropriate restraint and seclusion use and situations that may lead to patient injuries and death. There may be costs associated with developing training programs for staff regarding restraint and seclusion use and alternative interventions; however, we are not dictating how a hospital meets this requirement. Therefore, hospitals will be afforded the flexibility of deciding how to meet this requirement (for example, provide the training directly through "in-house" training, obtain a contractor to provide the training either at the hospital or off-site, etc.). We believe that the benefits associated with training staff far outweigh the costs involved since proper training will protect the hospital from situations of inappropriate restraint and seclusion use and situations that may lead to patient injuries and death.

Finally, hospitals will have to report to HCFA, through the appropriate HCFA regional office, any deaths that result from restraint or seclusion use for behavior management. We believe that the number of deaths related to restraint or seclusion use may be under reported in the United States; however, we have no concrete estimate of the number of deaths that occur per year. The *Hartford Courant*, a Connecticut newspaper, heightened public awareness of this issue with a series of articles in October 1998 citing the results of a study that identified 142 deaths from seclusion and restraint use in behavioral health treatment facilities over the past 10 years. However, this number includes deaths from seclusion and restraint use in more than just the hospital setting. There may be a small cost involved in making a telephone call to the HCFA regional offices; however, because we expect this regulation to reduce the number of deaths from restraint and seclusion use, the number of reports certainly will average less than one call per hospital per year. Therefore, we think the cost will be negligible.

2. Effect on Beneficiaries

The implementation of the Patients' Rights CoP will serve to protect not only Medicare and Medicaid beneficiaries but all patients receiving care in any of the 6,163 (4,734 accredited and 1,429 nonaccredited) Medicare-participating hospitals (that is, short-term, psychiatric, rehabilitation, long-term, children's, and alcohol-drug), including small rural hospitals. Our goal is to safeguard against the mistreatment of all patients in these facilities including, but not limited to, deaths due to inappropriate seclusion and restraint use, violation of patients' privacy and confidentiality in various aspects of the health care delivery process, and systematic frustration of the patient's efforts to acquire his or her medical record. We believe the patient will benefit from the hospital's focus on patients' rights. Through these protections, patient care can be delivered in an atmosphere of respect for an individual patient's comfort, dignity, and privacy. We also believe that implementation of the Patients' Rights CoP will lead to a reduction in the numbers of restraint-related injuries and deaths in hospitals.

3. Effect on Medicare and Medicaid Programs

We do not expect the implementation of the new Patients' Rights CoP to generate any significant cost to the Medicare or Medicaid programs. Also, we do not believe there will be any additional costs to the survey and certification program as compliance with this new CoP will either be reviewed through a routine, nonaccredited hospital survey, validation survey or as part of the existing complaint survey process for hospitals.

C. Alternatives Considered

We considered adding more prescriptive requirements regarding exactly where, how, when, and by whom "notification of rights" must be carried out. However, in the interest of flexibility and the recognition that this requirement will apply to hospitals of varying size, operating in wide ranges of localities, serving diverse populations, we did not adopt this approach. We considered very general regulations text language addressing the establishment of a hospital grievance process. However, based on public comment, we decided that to remain silent on general expectations for the grievance process could result in the absence of key ingredients that promote a meaningful, substantial process that addresses patients' concerns and promotes their rights. We believe that the establishment of a grievance process promotes patient empowerment in health care. To promote the creation of an effective grievance process, we are establishing general elements that should be common to grievance processes across all hospitals. Development of more detailed strategies and policies to comply with the requirement will be left to the discretion of each hospital.

We originally considered developing one set of very general requirements regulating restraint and seclusion use in all hospitals for all situations. However, based on public comments and recent concerns about restraint and seclusion use for behavior management situations, we concluded that one set of requirements did not afford patients with adequate protections. In addition, we noted that JCAHO has more prescriptive standards for behavioral health care accreditation than for hospital accreditation.

We considered recognizing only physicians as the individuals able to order restraints or seclusion. However, in recognizing that licensure and scope of practice are within a State's domain, and considering that other types of licensed independent practitioners provide a great deal of care in rural and frontier areas, we did not adopt that approach. However, we are requesting comment on whether we should adopt more restrictive requirements that would allow only physicians to order restraints or seclusion for behavior management.

Regarding the time frames in which a physician or licensed independent practitioner must see and assess a patient after initiation of restraints or seclusion for behavior management, we considered adopting the Pennsylvania Office of Mental Health policy of a ½ hour time frame. However, we recognized that this requirement might not be realistic for rural or frontier areas where it may be impossible to get a physician or licensed independent practitioner to the hospital in ½ hour. Therefore, we propose a 1 hour time frame and ask the public for comment.

We considered adopting more restrictive requirements for the maximum time frames for the length of an order for restraint and seclusion. However, since there was no supporting literature or studies, we decided to adopt the approach and time frames developed and articulated by JCAHO for its hospital accreditation and behavioral health care accreditation programs. These standards were developed by experts from the health care field and represent consensus on the approach and time frames for issues of seclusion and restraints. In addition, 80 percent of the Medicare- and Medicaid-participating hospitals are already subject to these requirements. Therefore, we believe it is reasonable to adopt requirements similar to those of JCAHO.

D. Conclusion

The new Patients' Rights CoP for hospitals sets forth six standards that ensure minimum protections of each patient's physical and emotional health and safety. These standards address each patient's right to (1) Notification of his or her rights; (2) the exercise of his or her rights in regard to his or her care; (3) privacy and safety; (4) confidentiality of his or her records; (5) freedom from restraints used in the provision of acute medical and surgical care unless clinically necessary; and (6) freedom from seclusion and restraints used in behavior management unless clinically necessary. The Patients' Rights CoP is a new requirement for hospitals. Therefore, we have prepared a voluntary analysis consistent with the analysis set forth by the RFA. We solicit public comments on the extent that any of the entities would be significantly economically affected by these provisions.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements summarized and discussed below.

Section 482.13 Condition of Participation: Patients' Rights

A hospital must inform each patient, or when appropriate, the patient's representative (as allowed under State law), of the patient's rights in advance of furnishing patient care whenever possible.

We anticipate that a hospital will provide a single "Notice of Patients" Rights" to each patient or his or her representative at the time of admission. As referenced in this regulation the disclosure notice must inform each patient of his or her right to (1) File a grievance and whom the patient can contact to file a grievance; (2) participate in the development and implementation of his or her plan of care; (3) make decisions regarding his or her care; (4) be informed of his or her status, involved in care planning and treatment, and the ability to refuse treatment; (5) formulate advance directives and to have hospital staff and practitioners who provide care in the hospital comply with these directives, in accordance with § 489.100, § 489.102, and § 489.104; (6) personal privacy; (7)

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receive care in a safe setting, free from verbal or physical abuse or harassment; (8) confidentiality of his or her clinical records and the ability to access information contained in his or her clinical records within a reasonable time frame; and (9) be free from restraints and seclusion of any form used as a means of coercion, discipline, convenience, or retaliation by staff.

The burden associated with this requirement is the time and effort necessary to disclose the notice requirements referenced above to each patient. We estimate that on average it will take each of the 6,097 estimated hospitals 8 hours to develop the required notice and that it will take each hospital 5 minutes to provide each notice, with an average of 5,515 notices provided per hospital on an annual basis. Therefore, the total annual burden associated with this requirement is 2,850,801 hours.

In its resolution of the grievance, a hospital must provide the patient with written notice of its decision that contains the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process, and the date of completion.

The burden associated with this requirement is the time and effort necessary to disclose the written notice to each patient who filed a grievance. We estimate that on average it will take each hospital 15 minutes to develop and disseminate the required notice. We further estimate that 6,097 hospitals will provide 55 notices on an annual basis, a total annual burden of 83,834 hours.

Hospitals will have to report to HCFA, through the appropriate HCFA regional office, any deaths that result from restraint or seclusion use for behavior management. The burden associated with this requirement is for hospitals to notify HCFA, via telephone call, of any deaths. Based upon current data, we estimate the number of reports to average less than 10 calls on an annual basis. Therefore, this requirement is not subject to the PRA, as defined under 5 CFR 1320.3(c).

Hospitals must maintain documentation that each of the standards and related requirements referenced in this regulation have been met. While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2) and 1320.3(b)(3) because this requirement is considered a usual and customary business practice; is required under State or local law; and is used to satisfy accreditation requirements.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in § 482.13. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and recordkeeping requirements, please mail the original and three copies directly to the following:

Health Care Financing Administration, Office of Information Services, Standards and Security Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke HCFA–3018–IFC.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, HCFA Desk Officer.

List of Subjects in 42 CFR Part 482

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV, part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

Subpart B—Administration

2. Section 482.13 is added to subpart B to read as follows:

§ 482.13 Condition of participation: Patients' rights.

A hospital must protect and promote each patient's rights.

(a) *Standard: Notice of rights.* (1) A hospital must inform each patient, or when appropriate, the patient's representative (as allowed under State law), of the patient's rights, in advance of furnishing or discontinuing patient care whenever possible.

(2) The hospital must establish a process for prompt resolution of patient grievances and must inform each patient whom to contact to file a grievance. The hospital's governing body must approve and be responsible for the effective operation of the grievance process and must review and resolve grievances, unless it delegates the responsibility in writing to a grievance committee. The grievance process must include a mechanism for timely referral of patient concerns regarding quality of care or premature discharge to the appropriate Utilization and Quality Control Peer Review Organization. At a minimum:

(i) The hospital must establish a clearly explained procedure for the submission of a patient's written or verbal grievance to the hospital.

(ii) The grievance process must specify time frames for review of the grievance and the provision of a response.

(iii) In its resolution of the grievance, the hospital must provide the patient with written notice of its decision that contains the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process, and the date of completion.

(b) *Standard: Exercise of rights.* (1) The patient has the right to participate in the development and implementation of his or her plan of care.

(2) The patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care. The patient's rights include being informed of his or her health status, being involved in care planning and treatment, and being able to request or refuse treatment. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate.

(3) The patient has the right to formulate advance directives and to have hospital staff and practitioners who provide care in the hospital comply with these directives, in accordance with § 489.100 of this part (Definition), § 489.102 of this part (Requirements for providers), and § 489.104 of this part (Effective dates).

(4) The patient has the right to have a family member or representative of his or her choice and his or her own physician notified promptly of his or her admission to the hospital.

(c) *Standard: Privacy and safety.* (1) The patient has the right to personal privacy.

(2) The patient has the right to receive care in a safe setting.

(3) The patient has the right to be free from all forms of abuse or harassment.

(d) *Standard: Confidentiality of patient records.* (1) The patient has the right to the confidentiality of his or her clinical records.

(2) The patient has the right to access information contained in his or her clinical records within a reasonable time frame. The hospital must not

frustrate the legitimate efforts of individuals to gain access to their own medical records and must actively seek to meet these requests as quickly as its recordkeeping system permits.

(e) *Standard: Restraint for acute medical and surgical care.* (1) The patient has the right to be free from restraints of any form that are not medically necessary or are used as a means of coercion, discipline, convenience, or retaliation by staff. The term "restraint" includes either a physical restraint or a drug that is being used as a restraint. A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the patient's body that he or she cannot easily remove that restricts freedom of movement or normal access to one's body. A drug used as a restraint is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition.

(2) A restraint can only be used if needed to improve the patient's well-being and less restrictive interventions have been determined to be ineffective.

(3) The use of a restraint must be—

(i) Selected only when other less-restrictive measures have been found to be ineffective to protect the patient or others from harm;

(ii) In accordance with the order of a physician or other licensed independent practitioner permitted by the State and hospital to order a restraint. This order must—

(A) Never be written as a standing or on an as needed basis (that is, PRN); and

(B) Be followed by consultation with the patient's treating physician, as soon as possible, if the restraint is not ordered by the patient's treating physician;

(iii) In accordance with a written modification to the patient's plan of care;

(iv) Implemented in the least restrictive manner possible;

(v) In accordance with safe and appropriate restraining techniques; and

(vi) Ended at the earliest possible time.

(4) The condition of the restrained patient must be continually assessed, monitored, and reevaluated.

(5) All staff who have direct patient contact must have ongoing education and training in the proper and safe use of restraints.

(f) *Standard: Seclusion and restraint for behavior management.* (1) The patient has the right to be free from seclusion and restraints, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. The term "restraint" includes either a physical restraint or a drug that is being used as a restraint. A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the patient's body that he or she cannot easily remove that restricts freedom of movement or normal access to one's body. A drug used as a restraint is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition. Seclusion is the involuntary confinement of a person in a room or an area where the person is physically prevented from leaving.

(2) Seclusion or a restraint can only be used in emergency situations if needed to ensure the patient's physical safety and less restrictive interventions have been determined to be ineffective.

(3) The use of a restraint or seclusion must be—

(i) Selected only when less restrictive measures have been found to be ineffective to protect the patient or others from harm;

(ii) In accordance with the order of a physician or other licensed independent practitioner permitted by the State and hospital to order seclusion or restraint. The following requirements will be superseded by existing State laws that are more restrictive:

(A) Orders for the use of seclusion or a restraint must never be written as a standing order or on an as needed basis (that is, PRN).

(B) The treating physician must be consulted as soon as possible, if the restraint or seclusion is not ordered by the patient's treating physician.

(C) A physician or other licensed independent practitioner must see and evaluate the need for restraint or seclusion within 1 hour after the initiation of this intervention.

(D) Each written order for a physical restraint or seclusion is limited to 4 hours for adults; 2 hours for children and adolescents ages 9 to 17; or 1 hour for patients under 9. The original order may only be renewed in accordance with these limits for up to a total of 24 hours. After the original order expires, a physician or licensed independent practitioner (if allowed under State law) must see and assess the patient before issuing a new order.

(iii) In accordance with a written modification to the patient's plan of care;

(iv) Implemented in the least restrictive manner possible;

(v) In accordance with safe appropriate restraining techniques; and

(vi) Ended at the earliest possible time.

(4) A restraint and seclusion may not be used simultaneously unless the patient is—

(i) Continually monitored face-to-face by an assigned staff member; or

(ii) Continually monitored by staff using both video and audio equipment. This monitoring must be in close proximity the patient.

(5) The condition of the patient who is in a restraint or in seclusion must continually be assessed, monitored, and reevaluated.

(6) All staff who have direct patient contact must have ongoing education and training in the proper and safe use of seclusion and restraint application and techniques and alternative methods for handling behavior, symptoms, and situations that traditionally have been treated through the use of restraints or seclusion.

(7) The hospital must report to HCFA any death that occurs while a patient is restrained or in seclusion, or where it is reasonable to assume that a patient's death is a result of restraint or seclusion.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance; Program No. 93.778, Medical Assistance Program)

Dated: May 24, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: June 9, 1999.

Donna E. Shalala,

Secretary.

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 301, and 602
Consolidated Returns—Limitations on the Use of Certain Losses and Deductions
Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group
Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups; Final Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8823]

RIN 1545–AU31

Consolidated Returns—Limitations on the Use of Certain Losses and Deductions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations regarding certain deductions and losses, including built-in deductions and losses, of members who join a consolidated group. The regulations provide rules for computing the limitation with respect to separate return limitation year (SRLY) losses, and the carryover or carryback of losses to consolidated and separate return years. The regulations also eliminate the application of the SRLY rules in certain circumstances in which the rules of section 382 of the Internal Revenue Code also apply.

DATES: *Effective Dates:* These regulations are effective June 25, 1999.

Applicability Dates: For dates of applicability, see the "Dates of Applicability" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Vogel, or Marie Milnes-Vasquez at (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this final rule has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1237.

The collection of information in this regulation is in § 1.1502–21(b)(3). This information is required to ensure that an election to relinquish a carryback period is properly documented, and will be used for that purpose. The collection of information is required to obtain a benefit (relating to the carryover of losses which would otherwise be carried back). The likely respondents are consolidated groups.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by August 31, 1999.

Comments are specifically requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; The accuracy of the estimated burden associated with the collection of information (see below); How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Estimated total annual reporting burden: 2,000 hours.

Estimated average annual burden hours per respondent: 15 minutes.

Estimated number of respondents: 8,000.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

On February 4, 1991, the Treasury and the IRS issued three notices of proposed rulemaking, CO–132–87 (56 FR 4194), CO–077–90 (56 FR 4183), and CO–078–90 (56 FR 4228), setting forth amendments to the rules regarding net operating losses, built-in deductions, and capital losses of consolidated groups. Those proposed regulations also included rules regarding the carryover and carryback of losses to consolidated return years and separate return years, and rules regarding the application of section 382 and 383 by consolidated groups and by controlled groups. A public hearing regarding the three sets of proposed regulations was held on April 8, 1991.

On June 27, 1996, the Treasury and the IRS published temporary regulations regarding the separate return limitation year (SRLY) limitation (TD 8677, 61 FR 33321). These regulations were substantially identical to the proposed regulations. A notice of proposed rulemaking cross-referencing the temporary regulations, the 1996 proposed SRLY regulations, was published in the **Federal Register** on the same day (CO–024–96, 61 FR 33393), and the proposed regulations published in 1991 were withdrawn. The Treasury and the IRS also published temporary regulations (TD 8678, 61 FR 33335) setting forth rules regarding the application of section 382 to affiliated groups of corporations filing consolidated returns, and controlled group losses (TD 8679, 61 FR 33391). Notices of proposed rulemaking cross-referencing these temporary regulations were published on the same day (CO–026–96, 61 FR 33395, and CO–025–96, 61 FR 33395), and the earlier proposed regulations published in 1991 were withdrawn.

On August 10, 1998, the Treasury and the IRS issued Notice 98–38 (1998–32 I.R.B. 4). The Notice requested comments about the advisability of adopting rules that would replace the existing SRLY rules with an approach modeled on section 382.

As companions to this Treasury decision, which adopts the 1996 proposed SRLY regulations with certain revisions and modifications, the Treasury and the IRS are also issuing final regulations relating to the application of sections 382 and 383 by members of consolidated and controlled groups. See TD 8824 and TD 8825 published elsewhere in this issue of the **Federal Register.**

On January 12, 1998, the Treasury and IRS issued temporary and proposed regulations governing the use of tax credits of a consolidated group and its members (TD 8751, 63 FR 1740). The Treasury and IRS intend to finalize those regulations at a later date.

Operation of the Proposed and Temporary Regulations

The 1991 proposed regulations generally retained the approach of the prior SRLY regulations in limiting a consolidated group's use of attributes arising in or attributable to a SRLY, but altered the manner in which the limitation is computed. While the pre-1991 regulations determined the limitation separately for each member (fragmentation), and under a year-by-year approach, the proposed regulations

introduced two new concepts: subgrouping and the cumulative register.

Subgrouping was added because fragmentation is in many ways inconsistent with the single entity approach to the use of losses under the consolidated return regulations. For example, if an entire consolidated group were acquired by another group, under the fragmentation approach, none of the losses of a former member of the target group could be used to offset income of another former member of the target group. However, had no acquisition occurred, those losses could have been used to offset income within the target group.

The 1991 proposed regulations also introduced the concept of a cumulative register to address certain issues resulting from the year-by-year approach. The prior SRLY regulations based the limitation on the SRLY member's annual contribution to the group's consolidated taxable income. The SRLY limitation was computed by taking the difference between the group's consolidated taxable income "with" the SRLY member and "without" the SRLY member. This resulted in certain anomalies. For example, if a SRLY member produced income in a tax year but the group as a whole did not have income, the SRLY loss could not be absorbed in that year. Because the member's contribution to income was not carried over to later years, the SRLY losses also could not be absorbed in a later year unless the member also contributed to the group's taxable income in that year.

The cumulative register, rather than looking to a member's contribution for the year, includes in the limitation computation a member's complete income history while it is a member of a consolidated group. The cumulative register is determined by aggregating a member's net contribution of income in excess of losses absorbed during the entire period the member was in the consolidated group. To the extent that the cumulative register for a member is positive, that member's SRLY net operating losses can be absorbed in a consolidated return year (provided the group otherwise has taxable income) even though the member might not have contributed to taxable income in that year. On the other hand, if the cumulative register is negative, the absorption of losses is precluded even though the member might have contributed to taxable income in that consolidated return year.

Much of the complexity of the SRLY rules results from the subgroup and cumulative register concepts. In fact, the preamble to the proposed SRLY regulations acknowledged that the subgrouping approach was more complex than the fragmentation approach and solicited comments about whether the benefits provided by subgrouping outweigh and justify the additional burdens required, and whether the fragmentation approach should be retained. 1991–1 C.B. 759. No comments received in response to this request advocated the elimination of subgrouping or the cumulative register, and it was ultimately decided that these principles would be retained.

Comments

Comments were received in response to the 1991 proposed regulations, the 1996 temporary regulations and Notice 98–38. Some comments addressed whether the SRLY rules should be retained. Other comments addressed issues about the technical operation of the proposed rules.

All of the comments were evaluated in finalizing these regulations. Several suggestions were adopted while others were not. This preamble describes some of the decisions that were made in finalizing the regulations.

Elimination or Retention of SRLY

The preliminary issue considered in finalizing these regulations was the extent, if any, to which the SRLY rules should be retained. The comments were divided about whether to retain or eliminate SRLY. Some commentators asserted that the amendment to section 382 in 1986 adequately addressed Congressional concerns regarding loss trafficking. Therefore, it was argued, the SRLY rules should be eliminated because they have become superfluous, add unwarranted complexity to the consolidated return system, and are easily avoided. Other commentators asserted that the SRLY rules should be retained because in their view, policing loss trafficking is incidental to SRLY's function of resolving a single entity/separate entity conflict in applying the consolidated return regulations. A third group suggested a middle position by urging the elimination of SRLY only in those circumstances in which the rules of section 382 also apply.

Arguments for Elimination of SRLY

Some commentators urged elimination of the SRLY rules (either in whole or in part) because, in their view, section 382 provides sufficient protection against loss trafficking transactions. They asserted that the rules of section 382 provide greater precision and predictability about the consequences of a transfer of tax losses, and that section 382 promotes neutrality between a buyer and seller of tax benefits in a more efficient and more equitable way than do the SRLY rules.

Section 382 and SRLY overlap to a large extent, and the rules applying section 382 to consolidated groups are even more complex than the SRLY rules. Thus, these commentators asserted that requiring a taxpayer to run the SRLY gauntlet in addition to the section 382 gauntlet is unwarranted because any additional revenue that might be gained from retaining a dual limitation is outweighed by the added complexity of the SRLY rules.

These commentators argued that the complexity of the SRLY rules is unwarranted because the impact of the SRLY rules is easily avoided by various "self-help" techniques. For example, taxpayers can contribute income-producing assets or built-in gain assets to the SRLY member to minimize the effect of a SRLY limitation. They also argued that the SRLY rules impose a meaningful limitation only in those cases in which, for regulatory or other reasons, loss corporations cannot be combined with other profitable businesses. Some commentators also argued that the SRLY rules improperly discriminate between stock and asset acquisitions. Other arguments urging the elimination of SRLY asserted that section 382 supercedes the SRLY rules as a Congressionally mandated rule for policing loss trafficking and that the SRLY rules are inconsistent with treating the consolidated group as a single entity.

Arguments for Retention of SRLY

Notwithstanding the substantial area of overlap between section 382 and SRLY, section 382 does not always apply when SRLY does. In fact, most commentators expressed concern about loss trafficking through carryback transactions (to which section 382 does not apply) and acknowledged the need for a rule to police those transactions. Many urged retention of the existing SRLY rules at least for that purpose. Moreover, some commentators speculated that elimination of the SRLY rules would likely present new unforeseen opportunities for trafficking in tax benefits.

Those commentators supporting retention of SRLY argued that the objectives of section 382 and SRLY differ. Section 382, which seeks to prevent loss trafficking, is based on the notion that the rate of loss utilization following a change in ownership should be based on the expected income generated if all of the assets were converted to tax-exempt debt

instruments. Accordingly, section 382 permits a fixed amount of income to be used each year to absorb a loss, regardless of the actual income contribution of the loss corporation. Moreover, under section 382 and in the absence of SRLY, the available loss can be used against any member's income. SRLY, on the other hand, makes actual income generation by the SRLY member the determinant of loss usage. Thus, SRLY assures that the loss attributes that arose outside of the consolidated group are not generally available to the other group members.

These commentators noted that the consolidated return system combines single and separate entity treatment. The ability to offset the income of one member with the losses of another member reflects single entity treatment of the consolidated group. But, when a corporation becomes a member of a consolidated group, it retains its separate existence and individual status, its own accounting methods, and its own separate attributes, including its losses that are carried from a separate return year to a consolidated return year. These aspects reflect treatment of each member of a consolidated group as a separate entity. The carryover of losses from separate return years reflects separate entity treatment, while the sharing of losses among the members of a consolidated group reflects single entity treatment. Thus, there is a conflict between single entity and separate entity treatment. Single entity treatment in computing consolidated taxable income is inconsistent with permitting a corporation's losses to straddle consolidated and separate return years when it enters or leaves a consolidated group. These commentators argued that the SRLY rules present a resolution of this conflict and protect the integrity of the consolidated return system by ensuring that attributes arising in a separate return year belong to, and remain with, the SRLY member, and attributes arising in a consolidated return year belong to the group.

Through these rules, according to these commentators, SRLY seeks to provide that the manner and extent to which a corporation's separate tax attributes are absorbed or utilized should not vary based on whether the corporation is inside or outside a consolidated group. Unlike in the case of section 382, the policy objectives underlying these rules do not hinge on whether the ownership of the corporation changes upon its entrance into or departure from the group.

Moreover, commentators urging the retention of SRLY pointed out that the rules of section 381 dictate the circumstances under which one corporation can use the tax attributes of another corporation. In certain reorganizations, section 381 allows the tax attributes of one corporation to be used by another corporation after an acquisition, but in those transactions generally stock basis is also lost. By contrast, in a taxable stock purchase where the stock takes a cost basis and the corporation retains its existence, including its underlying attributes, there is no policy reason for those attributes to be freely available to the purchaser. In essence, these commentators argued, the SRLY limitation prevents the benefits provided by section 381 in certain reorganization transactions from being extended to acquisitions and restructurings that do not involve the commingling of assets in one entity that section 381 transactions generally require. A consolidated group's acquisition of the stock of a corporation should not be treated the same way as an asset acquisition.

Notice 98–38

Notice 98–38 announced that the Treasury and the IRS were considering an approach that would model the SRLY limitation on the mechanism of section 382. One intended advantage of this approach was to reduce complexity in cases of overlap of the SRLY rules with section 382. In those cases, the SRLY limitation would be the same as the section 382 limitation, and consolidated groups would not need to make two computations to determine how much income could be used to absorb a loss. A second intended advantage was to address concerns that the impact of a SRLY limitation can be minimized by stuffing transactions (e.g., transferring income-producing assets to the loss corporation) which could not be used to affect the section 382 limitation.

Although many commentators favor the elimination of a separate SRLY limitation in the case where section 382 also applies, commentators did not favor adoption of the section 382 mechanism in cases where section 382 does not otherwise apply. Commentators argued that imposing a limitation based on section 382 in a case where section 382 would not otherwise apply would be inordinately burdensome. Because (absent an ownership change) the owners of a loss corporation held outside a consolidated group could engage in a stuffing transaction in order to increase that corporation's loss absorption, commentators argued that a SRLY limitation that could not be increased through stuffing transactions would violate the objective of providing that the extent of a corporation's loss absorption should not vary based on whether it is inside or outside a consolidated group.

In light of these concerns, the Treasury and the IRS decided not to impose a SRLY limitation based on the mechanism of section 382.

The Overlap Rule

The Treasury and the IRS believe that limitations on the extent to which a consolidated group can use attributes arising in a separate return limitation year remain necessary. However, the Treasury and the IRS remain concerned about complexity in applying the current SRLY rules, particularly with respect to situations where both the SRLY rules and section 382 apply. As described above, the SRLY limitation is based on the member's (or subgroup's) actual contribution to consolidated taxable income. The section 382 limitation is based on the expected income generation of the member (or subgroup) determined with reference to its value on the change date. On balance, the Treasury and the IRS believe that the simultaneous or proximate imposition of a section 382 limitation reasonably approximates a corresponding SRLY limitation. Accordingly, these regulations generally eliminate the SRLY limitation in circumstances in which its application overlaps with that of section 382.

In the majority of cases, the date on which a corporation becomes a member of a consolidated group (and thus subject to the SRLY rules) is also a "change date" as defined in section 382(j), determined as a result of an ownership change as defined in section 382(g). In this situation, under the temporary regulations, taxpayers must calculate two separate limitations for loss carryovers—the SRLY limitation and the section 382 limitation. The final regulations provide an overlap rule which eliminates the application of the SRLY rules in this situation. As a result, the final regulations remove the burden of determining two limitations, and simplify the loss limitation rules applicable to consolidated groups in most instances in which both the SRLY and the section 382 limitations would otherwise arise.

To address situations in which not all of an acquisition occurs simultaneously, the overlap rule also applies if the acquisition results in a corporation joining the consolidated group on a date other than the "change date", provided the transactions are separated by no more than six months. Additional rules have been included to prevent the inappropriate operation of the overlap rule in certain cases involving the acquisition of multiple corporations.

Net Operating Losses

Generally, to qualify for the net operating loss overlap rule, a corporation must become a member of a consolidated group (a SRLY event) within six months of the change date of an ownership change that gives rise to a section 382(a) limitation with respect to that carryover (a section 382 event). For net operating losses, an overlap also will generally include situations in which a net operating loss arises in the maximum six month period after the section 382 event but before the SRLY event.

For example, if a section 382 event occurs on April 1 and a SRLY event occurs on September 1, any losses that arise between April 1 and September 1 would not be subject to a section 382 limitation because they would be allocable to the post-change period. However, in the absence of the overlap rule, those losses would be subject to a SRLY limitation. The overlap rule of the final regulations eliminates the application of SRLY to those post-change losses. In cases of an acquisition of a single corporation, the elimination of SRLY has been determined to be an appropriate result and is a trade-off to promote simplicity in the consolidated return regulations.

The final regulations provide special overlap rules for subgroups. In general, the overlap rule applies to the subgroup and not separately to the members of the subgroup. However, the overlap rule does not apply unless the SRLY subgroup is coextensive with the section 382 loss subgroup. This rule is necessary because a section 382 subgroup limitation that is computed with respect to the expected income generation of a group of corporations does not reasonably approximate a limitation that would be based on the actual contribution to consolidated taxable income by a smaller number of corporations. In the reverse case, where the SRLY subgroup is larger than any corresponding section 382 loss subgroup or single new loss member, and particularly with respect to built-in losses, it is unclear in certain circumstances how the overlap rule could be applied. To address such circumstances in which a SRLY subgroup would otherwise be larger than the corresponding section 382 subgroup or single new loss member, the accompanying final regulations relating to the application of sections 382 and 383 provide for an election effectively to expand a newly-formed section 382 subgroup to conform with a SRLY subgroup.

For example, assume that the S consolidated group (composed entirely of S and T) has a $200 consolidated net operating loss, of which $100 is attributable to S and $100 is attributable to T. If the M group acquires the S group, S and T compose both a SRLY subgroup as well as a section 382 loss subgroup. Because the subgroups are coextensive, the overlap rule applies to eliminate the application of SRLY in the M group for the $200 consolidated net operating loss.

The overlap rule will not apply, however, if all the corporations included in a section 382 loss subgroup are not also included in a SRLY subgroup. For example, in Year 1, T joins the S group with a net operating loss carryover in a transaction that is not subject to section 382, and T does not subsequently have an ownership change. Under § 1.1502–96 (relating to the end of separate tracking), after five years, T's net operating loss becomes an attribute of the S group (also referred to as a "fold-in") for section 382 purposes. If the P group later acquires S in a transaction to which section 382 applies, the section 382 loss subgroup with respect to the T loss would include S and T, but for SRLY purposes there would be no subgroup. In this situation, the overlap rule would not apply, and the limitations under both SRLY and section 382 would continue to apply.

To preserve the effect of the elimination of SRLY under the overlap rule as corporations move from group to group, the final regulations also provide a special rule expanding the definition of SRLY subgroups. Under this rule, a SRLY subgroup includes a member carrying over a loss that was subject to the overlap rule in a former group, and all members of that former group who become a member of the current group at the same time as the loss member. The effect of this rule is to increase the number of circumstances in which SRLY subgroups and section 382 subgroups will be coextensive as corporations move from group to group. However, SRLY and section 382 subgroups may not be coextensive with respect to losses that were carried into a former group in a transaction to which the overlap rule does not apply. Subgroups may not be coextensive, as demonstrated above, if for purposes of section 382, such losses "fold-in" to the former group by virtue of an ownership change occurring more than six months after the SRLY event or because the loss member remains a member of the former group for at least five years.

Operating Rules

If the section 382 event occurs on the same date as the SRLY event or precedes the SRLY event, the overlap rule, and therefore the elimination of SRLY, is applicable to the tax year that includes the SRLY event. If the SRLY event precedes the section 382 event, the elimination of SRLY is delayed until the first tax year that begins after the section 382 event. The delay is necessary to ensure that an adequate limitation is always in effect for a net operating loss carryover.

For example, for a calendar year consolidated group, if the SRLY event occurs December 1, Year 1, but the section 382 event occurs on April 1, Year 2, it is necessary to maintain the application of the SRLY rules between such dates because otherwise no limitation would be applicable and the separate attributes could be freely absorbed during that period.

Built-in Losses

The overlap rule for built-in losses is very similar to the overlap rule for net operating losses. Generally, to qualify for the built-in loss overlap rule, a SRLY event must occur within six months of the change date of an ownership change that gives rise to a section 382(a) limitation that would apply to recognized built-in losses (a section 382 event). However, the overlap rule does not apply (even with respect to assets held on the date of the section 382 event) if assets are transferred to a corporation after the section 382 event and before the SRLY event that exceed the de minimis threshold of section 382(h). In that case, both the SRLY rules and the section 382 rules will apply. Even after the application of the overlap rule, the SRLY rules for built-in losses apply to asset acquisitions by an acquired corporation that occur after the latter or the SRLY event or section 382 event.

Special Subgroup Rule for Built-in Losses

The temporary regulations provide that, for purposes of built-in losses, a SRLY subgroup consists of those members that have been continuously affiliated for the 60-month period ending immediately before they become members of the group in which the loss is recognized. Generally, the final regulations maintain the subgroup rule provided by the temporary regulations. The final regulations, however, modify the subgroup rules to take account of the overlap rule. These modifications, in effect, conform the SRLY subgroup rules to adopt principles contained in

§§ 1.1502–91 through 1.1502–98 (regarding the application of section 382 to consolidated groups) where necessary to preserve the effect of an overlap transaction in a former group and to increase the number of SRLY and section 382 subgroups that are coextensive and eligible for future operation of the overlap rule as corporations move from group to group.

The final regulations provide that after a corporation joins a group in an overlap transaction, it is deemed to have been affiliated with the common parent of the acquiring group for 60 consecutive months. Those corporations that join the group in the same transaction, but that were not part of a subgroup eligible for the overlap rule, begin measuring the period of their affiliation immediately after joining the group, notwithstanding their actual affiliation history. This rule may prevent some corporations from subsequently qualifying as a SRLY subgroup, notwithstanding their actual affiliation history. For example, assume that after four years of affiliation, S and T join the P group without any net operating loss carryovers. S, which has a net unrealized built-in loss, and T, which has a net unrealized built-in gain, would not qualify as a SRLY subgroup with respect to their built-in items because they do not have the requisite affiliation history. Therefore, S and T are tested separately under section 382 and § 1.1502–15. The acquisition results in S becoming subject to section 382 (but owing to the overlap rule, not to the limitation contained in § 1.1502–15(a)). T is not subject to either. Because S joined the P group in a transaction subject to the overlap rule, it is deemed to have been affiliated with P for 60 consecutive months. T, however, is required to begin measuring its affiliation with P and S from the date it joined the group, notwithstanding its historic affiliation with S.

Other Substantive Changes

Predecessors and Successors

Material Difference Requirement

The temporary regulations provide that a reference to a corporation or member also includes, as the context may require, a reference to a successor or predecessor. See, § 1.1502–15T(e) and § 1.1502–21T(f). The definition of predecessor is provided in § 1.1502–1(f)(4). In general, a predecessor is any transferor of assets in a section 381(a) transaction. A predecessor also includes any transferor of assets in a transaction in which the basis of assets to the transferee (successor) is determined by reference to the transferor's basis, but only if there is a "material difference" between the basis and the value of assets. Thus the application of the predecessor rule to a section 351 transaction is dependent upon the specific assets transferred, and consequently a transferor in a section 351 transaction might not qualify as a predecessor. Also, in the case of such a section 351 transaction, the temporary regulations provided that there be a maximum of one predecessor to, or successor of, any member.

Commentators objected to the "material difference" requirement and suggested that a section 351 transferee should not be excluded from successor status solely because there was no material difference between the basis and value of the assets transferred. The final regulations eliminate both the material difference and the single predecessor-successor requirements.

CNOL Carrybacks

Section 1.1502–21T(b)(2)(B) of the temporary regulations provides an offspring rule which generally permits the common parent of a group to carryback a consolidated net operating loss (CNOL) attributable to a member that did not exist in the year to which the loss is carried, provided that the member has been a member of the group continuously since its organization. In that section, there is also a reference to the application of the predecessor and successor rule of § 1.1502–21T(f), which states that a reference to a member also includes references to a predecessor of the member, as the context may require.

Commentators were concerned that the combination of the predecessor and successor rule would deny any carryback in the case of a merger under section 368(a)(1)(A) and (a)(2)(D). For example, assume that P, the common parent of a consolidated group, forms Newco in Year 2 for the sole purpose of acquiring T, in a merger with and into Newco. In Year 3, there is a CNOL all of which is attributable to Newco. Newco appears to be within the scope of the offspring rule, and therefore a carryback to P's Year 1 consolidated return, a year before Newco's existence, would be permitted. However, because the merger is a transaction to which section 381(a) applies, Newco is also a successor to T. Under this analysis, Newco would not be considered to have been a member of the P group continuously since its organization, so a carryback to the P group's consolidated return year would not be permitted. Moreover, Newco would not be permitted to carryback the loss to any year of T. Thus, no carryback of Newco's loss would be permitted.

The Treasury and the IRS believe that the denial of any carryback in this situation is inappropriate. In general, a newly-formed group member should be permitted to carry back its contribution to the consolidated net operating loss, whether or not it is a successor to a corporation that was acquired by the group. Moreover, the Treasury and the IRS believe that rules providing for a carryback within—rather than outside—the group would be more administrable than rules requiring taxpayers to trace the assets of a newly-formed member to determine whether such corporation's contribution to the consolidated net operating loss should be carried back to the pre-consolidation years of an acquired corporation or back within the group. The Treasury and the IRS also considered whether to provide that all consolidated net operating losses should be carried back within the group, even if attributable to a corporation that was itself acquired from outside the group. Whether or not such a rule is appropriate, it was determined that such a change should not be adopted in final regulations. Accordingly, the final regulations provide that the offspring rule applies regardless of whether the newly-formed member is a successor to any other corporation.

Successor's Income

Section 1.1502–21T(f)(2) of the temporary regulations provides, "Except as the Commissioner may otherwise determine, any increase in the taxable income of a SRLY subgroup that is attributable to a successor is disregarded unless the successor acquires substantially all of the assets and liabilities of its predecessor and the predecessor ceases to exist." The rule was intended to prevent the subgroup from inappropriately affecting the determination of its taxable income either by removing assets that would generate losses or by bringing into the subgroup income generated by members outside the subgroup.

Some commentators stated that they did not understand whether the rule was intended to require the subgroup to disregard all income of the successor, or only that income of the successor in excess of that generated by the transferred assets. In the event that all the successor's income is disregarded, commentators argued that the rule produced unduly harsh results. A particularly sympathetic case is a divisive section 351 transaction. For example, if T, a member of a SRLY subgroup, formed T1, by contributing to it one of its businesses, and T1 produced net operating losses, those losses would be included in determining the taxable income of the subgroup. On the other hand, if T1 produced taxable income, that income would not be included in the subgroup's taxable income. If no transfer to T1 had occurred, and the business had remained in T, all of its income or loss, as the case may be, would be included in determining the subgroup's taxable income.

The Treasury and the IRS have determined that a broad rule disregarding all income contributed by the successor is necessary to avoid an unadministrable requirement that the successor's income be traced to particular assets, but that the rule should only be applied in more limited circumstances. Thus, the final regulations provide that the net positive income attributable to the successor generally is disregarded, but provide four exceptions to this rule: (A) The successor acquires substantially all of the assets and liabilities of its predecessor, and the predecessor ceases to exist; (B) the successor became a member of the SRLY subgroup at the time the subgroup was formed (e.g., the successor was organized before it and its affiliates joined the current group and thus qualifies in its own right as a subgroup member); (C) 100 percent of the stock of the successor is owned directly by corporations that were members of the SRLY subgroup when the subgroup was formed; or (D) the Commissioner determines otherwise. The IRS might, for example, publish a revenue ruling or other guidance expanding the list of exceptions if it is later determined that other circumstances should be excluded from the general rule. It is also anticipated that through the letter ruling process, the IRS will evaluate individual cases upon request and determine whether income attributable to a successor will be included in determining the subgroup's taxable income. See also § 1.1502–21(c)(2)(iv) of the regulations (an anti-abuse rule denying SRLY subgroup treatment in certain circumstances.)

Built-in Losses

Non-Corporate Transferors

Section 1.1502–15T(a) of the temporary regulations provides that solely for the purpose of determining the amount of, and the extent to which, a built-in loss is limited by the SRLY rules for the year in which it is recognized, a built-in loss is treated as a hypothetical net operating loss carryover or net capital loss arising in a SRLY, instead of as a deduction or loss in the year recognized.

Some commentators thought the rule was anomalous as applied to transfers of built-in loss assets by individuals. In their view, because a SRLY is defined only with respect to corporations (see § 1.1502–1(f)), it would be inappropriate to view a corporate transferee as a successor to a non-corporate transferor. Other commentators asserted that because the built-in loss concept is a subset of the SRLY limitations, the built-in loss rules should not apply to transfers by an individual or other non-corporate transferor to a member of a consolidated group in a section 351 transaction.

The temporary regulation does not base the determination of whether a corporation has built-in losses on any application of the predecessor and successor rule. If an asset enters the group with a built-in loss, in general, the temporary regulation deems the built-in loss to have arisen in a SRLY without regard to whether the asset was owned by a corporation when the built-in loss arose. Moreover, § 1.1502–15T(b)(2)(i) provides that in the case of an asset acquisition by a group, the assets and liabilities acquired directly from the same transferor pursuant to the same plan are treated as the assets and liabilities of a corporation that becomes a member of the group on the date of the acquisition. That corporation would generally be subject to the SRLY built-in loss rules when it becomes a member of the consolidated group. The Treasury and the IRS continue to believe that a separate tax attribute arising outside the consolidated group should not be freely absorbed within the group, regardless of where that separate attribute arose. Accordingly, these final regulations reaffirm that a built-in loss asset transferred to a group by a non-corporate transferor is subject to the SRLY rules. An example explains that for purposes of applying the SRLY limitation to that built-in loss, all of the items contributed by the acquiring member (and not just items attributable to that asset) to consolidated taxable income are taken into account.

Lonely Parent

Under § 1.1502–15T of the temporary regulations, the SRLY limitation on recognized built-in losses applies to a loss recognized by the group on an asset the common parent held prior to the formation of a group. In contrast, net operating loss carryovers of a corporation that becomes the common parent of a consolidated group are not subject to a SRLY limitation within the group under the so-called "lonely parent" rule (see § 1.1502–1(f)(2)(i)).

The final regulations conform the built-in loss rules to the net operating loss rules as applied in conjunction with the lonely parent rule. Therefore, a loss recognized by any member of the group on an asset that was held by the corporation that becomes the common parent when the group is formed is not subject to the SRLY rules. However, a built-in loss asset acquired by the common parent after the formation of the group remains subject to the SRLY limitation. An anti-abuse rule is also provided to apply the SRLY limitation to built-in loss assets transferred to a corporation prior to and in anticipation of the corporation becoming the common parent of a group.

For example, in Year 1, P, a stand alone corporation holds Asset 1, a built-in loss asset. In Year 3, P forms S but retains Asset 1. In Year 4, P sells Asset 1, recognizing a loss. Section 1.1502–15(f) of the final regulations provides that the loss is not subject to the SRLY limitation. Similarly if P transferred Asset 1 with an unrealized built-in loss to S, the SRLY limitation on built-in losses would not apply if S sold Asset 1 and recognized the loss. However if, after the formation of the P/S group, P acquired an asset with an unrealized built-in loss and sold the asset, recognizing that loss during the recognition period, a SRLY limitation would apply with respect to that loss.

Split Election Rule

Section 1.1502–21T(b)(3)(i) of the temporary regulations permits a consolidated group to waive the entire carryback period provided by section 172. This irrevocable election is not available on a member by member basis, but rather requires that the common parent waive the carryback period for all members of the group.

Some commentators suggested that the election be permitted on a member-by-member basis. The commentators expressed concern that requiring the whole group to waive the carryback period makes it difficult for sellers and purchasers to negotiate who gets the benefit of a post-acquisition loss. Because section 172 generally requires a carryback to the earliest year, absent the purchaser's waiver of the carryback, a seller could be required to disclose confidential tax information to the purchaser relating to the ability to use the loss carryback. In situations where such disclosure is a concern, an election to waive the loss carryback, available on a member by member basis, could ensure the separation of a particular purchaser and seller without requiring the group to waive the remaining

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amount of the consolidated net operating loss carryback.

The final regulations permit taxpayers to waive, with respect to all consolidated net operating losses attributable to a member, the portion of the carryback period for which the corporation was a member of another group. If an election is made for any member, all members acquired from the same group, in the same transaction, are required to make the election. The election must be made on the timely filed original return for the year of the acquisition.

Absorption of Losses

Section 1.1502–21T(b)(1) provides general rules concerning the absorption of losses within a consolidated group. Although the rules refer to section 382(l)(2)(B), commentators stated that the absorption rules were ambiguous with respect to establishing the priority of absorption of multiple losses carried from the same taxable year if only a portion of the losses were subject to limitation under section 382. The final regulations make clear that the rule of section 382(l)(2)(B) applies, and that losses limited by section 382 are absorbed before losses from the same taxable year that are not subject to a section 382 limitation, regardless of whether such losses are attributable to the same member.

A comment was also received requesting guidance on how to determine the amount of a subgroup member's net operating loss carryover that was absorbed so that it can determine how much of the loss it retains when it leaves the group. In response to this comment, the final regulations provide that within a subgroup, losses are absorbed on a pro rata basis. Thus, when a subgroup member leaves the group, its net operating loss carryover is treated as having been absorbed on a pro rata basis, determined by comparing its initial net operating loss carryover and the subgroup's initial net operating loss carryover.

Dates of Applicability

The final regulations generally are applicable for taxable years for which the due date (without extensions) of the consolidated return is after June 25, 1999. However, there are several special effective dates, including an effective date which addresses transitional issues relating to the adoption of the rule eliminating SRLY in the event of an overlap with section 382.

Generally, if a particular attribute would not have been subject to a SRLY limitation as of June 25, 1999 if these final regulations had always been in effect, and the overlap transaction occurred after the effective date of section 382 as amended by the 1986 Tax Reform Act, then the existing SRLY limitation will not apply in taxable years for which the due date (without extensions) of the consolidated return is after June 25, 1999 (but will not be eliminated retroactively with respect to earlier taxable years).

If an existing SRLY limitation for which the cumulative register began in a taxable year prior to a taxable year for which the due date (without extensions) of the consolidated return is after June 25, 1999 would not be eliminated by the overlap rule, that SRLY limitation continues to be applied without regard to the changes applicable to the definition of SRLY subgroups (so that a member or SRLY subgroup is not forced to alter the application of a SRLY limitation in midstream). However, when corporations enter a group in a new SRLY event occurring in a taxable year for which the due date (without extensions) of the consolidated return is after June 25, 1999, the regulations apply (with respect to any overlap transactions occurring after the effective date of section 382 as amended by the 1986 Tax Reform Act) as if the final regulations had always been in effect.

Thus, for example, and assuming that all corporations are on a calendar taxable year, if a corporation S joins the P group in an overlap transaction in 1996, and the first year for which this final regulation is effective is 1999, then any losses carried by S into the P group are subject to a SRLY limitation in 1996, 1997 and 1998. However, the losses are no longer subject to a SRLY limitation within the P group starting in 1999.

If, in the above example, the M group had acquired both P and S on January 1, 1998 in a non-overlap transaction, and S carried into the M group its losses arising before it joined the P group, then, in 1998, under the temporary regulations as then in effect, those S losses would have been subject to a SRLY limitation computed with reference only to S's cumulative register. Under the special transition rule, the new regulations would not operate in 1999 or thereafter to cause S and P to constitute a SRLY subgroup in the M group with respect to those S losses, even though P and S would otherwise qualify as a SRLY subgroup with respect to those losses under the new rules. However, if the X group acquires both P and S from M in or after 1999, P and S would constitute a SRLY subgroup with respect to those S loss carryovers.

Need for Immediate Guidance

Because the temporary regulations are not applicable for taxable years ending after June 26, 1999, it is necessary to implement these final regulations without delay to ensure continuity of treatment of certain attributes and to ensure that there is no period within which the treatment of such attributes is inconsistent with the temporary regulations and these final regulations. See section 7805(e)(2). Accordingly, it is impracticable and contrary to the public interest to issue this Treasury decision subject to the effective date limitation of section 553(d) of title 5 of the United States Code (if applicable).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated federal income tax returns that have carryover or carryback of certain losses from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have loss carryovers or carrybacks that are subject to the separate return limitation year rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was sent to the Small Business Administration for comment on its impact on small businesses.

Drafting Information. The principal author of these regulations is Jeffrey L. Vogel of the Office of Assistant Chief Counsel (Corporate), IRS. Other personnel from the Treasury and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for sections 1.1502–15T, 1.1502–21T, 1.1502–22T, and 1.1502–23T and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–12 also issued under 26 U.S.C. 1502. * * *

Section 1.1502–15 also issued under 26 U.S.C. 1502. * * *

Section 1.1502–22 also issued under 26 U.S.C. 1502.

Section 1.1502–23 also issued under 26 U.S.C. 1502. * * *

Par. 2. In the list below, for each section indicated in the left column, remove the wording indicated in the middle column, and add the wording indicated in the right column.

Affected section	Remove	Add
1.469–1(h)(2)	1.1502–21T (net operating losses (temporary)), and 1.1502–22T (consolidated net capital gain and loss (temporary)).	1.1502–21 (net operating losses), and 1.1502–22 (consolidated net capital gain and loss).
1.597–2(c)(5), first sentence	1.1502–15T, 1.1502–21T, and 1.1502–22T	1.1502–15, 1.1502–21, and 1.1502–22
1.597–2(c)(5), second sentence	1.1502–15T, 1.1502–21T or 1.1502–22T	1.1502–15, 1.1502–21 or 1.1502–22.
1.597–4(g)(3), fifth sentence	1.1502–15T, 1.1502–21T and 1.1502–22T	1.1502–15, 1.1502–21 and 1.1502–22.
1.597–4(g)(3), sixth sentence	1.1502–15T, 1.1502–21T, or 1.1502–22T	1.1502–15, 1.1502–21, or 1.1502–22.
1.904(f)–3(a), first sentence	(or § 1.1502–21T(b)	(or § 1.1502–21(b).
1.904(f)–3(b), first sentence	(or § 1.1502–22T(b)	(or § 1.1502–22(b).
1.1502–2(h)	1.1502–22T) (or, for consolidated return years to which § 1.1502–22T.	1.1502–22) (or, for consolidated return years to which § 1.1502–22.
1.1502–3T(c)(2)(iii), first sentence	1.1502–21T(c)(2)	1.1502–21(c)(2).
1.1502–3T(c)(2)(iii), second sentence	1.1502–21T(f)	1.1502–21(f).
1.1502–9(a), seventh sentence	§ 1.1502–21T(b)(2)	1.1502–21(b)(2).
1.1502–9(a), eighth sentence	1.1502–21T(b)(1)	1.1502–21(b)(1).
1.1502–11(a)(2)	§ 1.1502–21T	1.1502–21.
1.1502–11(a)(3)	§ 1.1502–22T	1.1502–22.
1.1502–11(a)(4)	§ 1.1502–23T	1.1502–23.
1.1502–11(b)(2)(iii) Example 1(c), last sentence	1.1502–21T	1.1502–21.
1.1502–11(b)(2)(iii) Example 2(d), last sentence	1.1502–21T and 1.1502–22T	1.1502–21 and 1.1502–22.
1.1502–12(b)	1.1502–15T	1.1502–15.
1.1502–13(c)(7)(ii) Example 10(d), first and second sentences.	S's net operating loss carryovers are subject to the separate return limitation year (SRLY) rules. See § 1.1502–21T(c).	P's acquisition of S is not subject to the overlap rule of § 1.1502–21(g), and S's net operating loss carryovers are subject to the separate return limitation year (SRLY) rules. See § 1.1502–21(c).
1.1502–13(g)(5) Example 4(b), fourth sentence	1.1502–15T (or § 1.1502–15A, as appropriate) (limitations on the absorption of built-in losses).	1.1502–15 (as appropriate).
1.1502–13(h)(2) Example 1(a), second sentence.	1.1502–21T(c)	1.1502–21(c).
1.1502–13(h)(2) Example 1(b), first sentence	1.1502–21T(c)	1.1502–21(c).
1.1502–13(h)(2) Example 2(a), last sentence	1.1502–15T	1.1502–15.
1.1502–13(h)(2) Example 2(b), second sentence.	1.1502–22T	1.1502–22.
1.1502–20(c)(4) Example 7(iii), first sentence	1.1502–21T	1.1502–21.
1.1502–20(g)(3) Example 1(i), second sentence	1.1502–21T	1.1502–21.
1.1502–20(g)(3) Example 2(i), fourth sentence	§ 1.1502–21A or 1.1502–21T	1.1502–21A or 1.1502–21.
1.1502–23A(a), third sentence	1.1502–21T(c) and 1.1502–22T(c), as provided in § 1.1502–15T(a).	(1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999 and 1.1502–22T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as provided in 1.1502–15T(a) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999) or (1.1502–21(c) and 1.1502–22(c), as provided in 1.1502–15(a), as applicable)).
1.1502–23A(b), first sentence	1.1502–21T(g)	1.1502–21(h) or 1.1502–21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–23A(b), second sentence	1.1502–21T(g) for effective dates of that section.	1.1502–21(h) or 1.1502–21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable for effective dates of these sections.
1.1502–26(a)(1) concluding text	1.1502–21T(e)	1.1502–21(e).
1.1502–32(b)(5)(ii) *Example 2* (b), third sentence.	1.1502–21T(b)	1.1502–21(b).
1.1502–41A(c), first sentence	1.1502–21T(g)	1.1502–21(h) or 1.1502–21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable

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Affected section	Remove	Add
1.1502–41A(c), second sentence	1.1502–21T(g) for effective dates of that section.	1.1502–21(h) or 1.1502–21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable for effective dates of these sections.
1.1502–42(f)(4)(i)(A)	1.1502–21T(b)	1.1502–21(b).
1.1502–43(b)(2)(iv)	1.1502–21T(a)	1.1502–21(a).
1.1502–43(b)(2)(v)	1.1502–22T(a)	1.1502–22(a).
1.1502–43(b)(2)(vi)(A)	1.1502–22T(a)	1.1502–22(a).
1.1502–43(b)(2)(vii)	1.1502–22T(b)	1.1502–22(b).
1.1502–43(b)(2)(viii)	1.1502–15T) and 1.1502–15T (SRLY limitation on built-in losses (temporary)).	1.1502–15) and 1.1502–15.
1.1502–44(b)(2)	§ 1.1502–21T	1.1502–21.
1.1502–44(b)(3)	§ 1.1502–22T	1.1502–22.
1.1502–47(h)(2)(i)	1.1502–21T	1.1502–21.
1.1502–47(h)(2)(ii)	1.1502–21T(e)	1.1502–21(e).
1.1502–47(h)(2)(iii),first sentence	1.1502–21T	1.1502–21.
1.1502–47(h)(2)(iv), first sentence	1.1502–21T	1.1502–21
1.1502–47(h)(3)(iii)	1.1502–21T(c)	1.1502–21(c).
1.1502–47(h)(4)(i), first sentence	1.1502–22T	1.1502–22.
1.1502–47(h)(4)(i), second sentence	1.1502–22T	1.1502–22.
1.1502–47(h)(4)(ii), first sentence	1.1502–22T	1.1502–22.
1.1502–47(h)(4)(ii), first sentence	1.1502–21T	1.1502–21.
1.1502–47(h)(4)(iii)	1.1502–22T(b)	1.1502–22(b).
1.1502–47(k)(5) introductory text	1.1502–22T	1.1502–22.
1.1502–47(l)(3)(i), second sentence	1.1502–21T	1.1502–21.
1.1502–47(m)(2)(ii), first sentence	1.1502–21T	1.1502–21.
1.1502–47(m)(2)(ii), first sentence	1.1502–22T	1.1502–22.
1.1502–47(m)(3)(i), first sentence	1.1502–21T and 1.1502–22T	1.1502–21 and 1.1502–22.
1.1502–47(m)(3)(vi)(A), second sentence	1.1502–21T(b) or 1.1502–79A(a)(3)(as appropriate).	1.1502–21(b)).
1.1502–47(m)(3)(vi)(A), second sentence	§ 1.1502–21T(b) or 1.1502–79A(a)(3)(as appropriate).	1.1502–21(b).
1.1502–47(m)(3)(vii)(A)	1.1502–21A(b)(3)(ii)	1.1502–21A(b)(3)(ii) or 1.1502–21(b).
1.1502–47(m)(3)(ix), last sentence	1.1502–15T	1.1502–15.
1.1502–47(q), last sentence	1.1502–21T	1.1502–21.
1.1502–55T(h)(4)(iii) (B)(*4*), first sentence	1.1502–21T(c)(2)	1.1502–21(c)(2).
1.1502–55T(h)(4)(iii) (B)(*4*), second sentence	1.1502–21T(f)	1.1502–21(f).
1.1502–78(a), first sentence	1.1502–21T(b), 1.1502–22T(b)	1.1502–21(b), 1.1502–22(b).
1.1502–79(a), second sentence	1.1502–21T(b)	1.1502–21(b).
1.1502–79(b), second sentence	1.1502–22T(b)	1.1502–22(b).
1.1502–79(c)(1)	1.1502–21T(b)	1.1502–21(b).
1.1502–79(d)(1)	1.1502–21T(b)	1.1502–21(b).
1.1502–79(e)(1)	1.1502–21T(b)	1.1502–21(b).
1.1502–91T(a)(2), last sentence	1.1502–21T(a)	1.1502–21(a) or 1.1502–21T(a) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–91T(c)(3) *Example* (b), first sentence	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–91T(d)(1)(iii)	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–91T(d)(6) *Example 1*(a), fourth sentence.	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–91T(d)(6) *Example 2*(a), fourth sentence.	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–91T(f)(2) *Example* (a), last sentence	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–92T(b)(2) *Example 3*(a), fourth sentence.	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–93T(e)	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–94T(a)(1)(i)	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–94T(b)(4) *Example 1*(c), last sentence	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.

Affected section	Remove	Add
1.1502–95T(b)(1)(i)	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–95T(b)(4) *Example 1* (a), sixth sentence	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–95T(c)(7) *Example 1* (a), fifth sentence	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–96T(a)(1) introductory text	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–96T(a)(2), first sentence	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–96T(a)(5), first sentence	1.1502–15T and 1.1502–21T	1.1502–15 and 1.1502–21 (or § 1.1502–15T in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999 and 1.1502–21T in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable).
1.1502–96T(b)(2)(ii)(A)	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–96T(b)(2)(ii)(B)	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–99T(c)(2)(i), fourth sentence	1.1502–21T(c)	1.1502–21(c) or 1.1502–21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–99T(c)(2)(ii)	1.1502–21T(b)	1.1502–21(b) or 1.1502–21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.
1.1502–100(c)(*2*)	§§ 1.1502–21A or 1.1502–21T	§ 1.1502–21A or 1.1502–21.
1.1503–2(d)(2)(i), last sentence	§ 1.1502–21A(c) or 1.1502–21T(c)	1.1502–21A(c) or 1.1502–21(c).
1.1503–2(d)(2)(ii), last sentence	§ 1.1502–21A(c) or 1.1502–21T(c)	1.1502–21A(c) or 1.1502–21(c).
1.1503–2(d)(4) *Example 1* (iv), last sentence	1.1502–22T(c)	1.1502–22(c).
1.1503–2(g)(2)(vii)(B)(*1*), second sentence	§ 1.1502–21A(c) or 1.1502–21T(c)	1.1502–21A(c) or 1.1502–21(c).
1.1503–2(g)(2)(vii)(B)(*2*), first sentence	§ 1.1502–21A(c) or 1.1502–21T(c)	1.1502–21A(c) or 1.1502–21(c).
1.1503–2(g)(2)(vii)(G) *Example 1*, ninth sentence.	§ 1.1502–21A(c) or 1.1502–21T(c)	1.1502–21A(c) or 1.1502–21(c).
1.1503–2(g)(2)(vii)(G) *Example 2*, last sentence	§§ 1.1502–21A(c) or 1.1502–21T(c)	§ 1.1502–21A(c) or 1.1502–21(c).
1.1503–2(h)(3), second sentence	§§ 1.1502–21A(c) or 1.1502–21T(c))	§ 1.1502–21A(c) or 1.1502–21(c).
1.1503–2A(f)(1)(i) introductory text	1.1502–21T(b)	1.1502–79A(a)(3).
1.1503–2A(f)(1)(i)(C)	1.1502–22T(b)	1.1502–22.
1.1503–2A(f)(2)(i), fourth sentence	1.1502–21T(c)	1.1502–21(c).
1.1503–2A(f)(2)(ii), last sentence	1.1502–21T(c)	1.1502–21(c).
301.6402–7(g)(2)(iii), first sentence	§ 1.1502–21T(b)	1.1502–21(b).
301.6402–7(g)(3) *Example* 2, second sentence	1.1502–21T	1.1502–21.
301.6402–7(g)(3) *Example* 2, third sentence	1.1502–21T(c)	1.1502–21(c).
301.6402–7(h)(1)(ii) *Example* (b), first sentence	1.1502–21T(b) and 1.1502–22T(b)	1.1502–21(b) and 1.1502–22(b).

Par. 3. Section 1.1502–1 is amended by revising paragraph (f)(4) to read as follows:

§ 1.1502–1 Definitions.

* * * * *

(f) * * *

(4) *Predecessor and successors.* The term *predecessor* means a transferor or distributor of assets to a member (the successor) in a transaction—

(i) To which section 381(a) applies; or

(ii) That occurs on or after January 1, 1997, in which the successor's basis for the assets is determined, directly or indirectly, in whole or in part, by reference to the basis of the assets of the transferor or distributor, but in the case of a transaction that occurs before June 25, 1999, only if the amount by which basis differs from value, in the aggregate, is material. For a transaction that occurs before June 25, 1999, only one member may be considered a predecessor to or a successor of one other member.

* * * * *

Par. 4. Section 1.1502–15 is added to read as follows:

§ 1.1502–15 SRLY limitation on built-in losses.

(a) *SRLY limitation.* Except as provided in paragraph (f) of this section (relating to built-in losses of the common parent) and paragraph (g) of this section (relating to an overlap with section 382), built-in losses are subject to the SRLY limitation under §§ 1.1502–21(c) and 1.1502–22(c) (including applicable subgroup principles). Built-in losses are treated as deductions or losses in the year recognized, except for the purpose of determining the amount of, and the extent to which the built-in loss is limited by, the SRLY limitation for the year in which it is recognized. Solely for such purpose, a built-in loss is treated as a hypothetical net operating loss carryover or net capital loss carryover arising in a SRLY, instead of as a deduction or loss in the year recognized. To the extent that a built-in loss is allowed as a deduction under

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this section in the year it is recognized, it offsets any consolidated taxable income for the year before any loss carryovers or carrybacks are allowed as a deduction. To the extent not so allowed, it is treated as a separate net operating loss or net capital loss carryover or carryback arising in the year of recognition and, under § 1.1502–21(c) or 1.1502–22(c), the year of recognition is treated as a SRLY.

(b) *Built-in losses*—(1) *Defined.* If a corporation has a net unrealized built-in loss under section 382(h)(3) (as modified by this section) on the day it becomes a member of the group (whether or not the group is a consolidated group), its deductions and losses are built-in losses under this section to the extent they are treated as recognized built-in losses under section 382(h)(2)(B) (as modified by this section). This paragraph (b) generally applies separately with respect to each member, but see paragraph (c) of this section for circumstances in which it is applied on a subgroup basis.

(2) *Operating rules.* Solely for purposes of applying paragraph (b)(1) of this section, the principles of § 1.1502–94(c) apply with appropriate adjustments, including the following:

(i) *Stock acquisition.* A corporation is treated as having an ownership change under section 382(g) on the day the corporation becomes a member of a group, and no other events (e.g., a subsequent ownership change under section 382(g) while it is a member) are treated as causing an ownership change.

(ii) *Asset acquisition.* In the case of an asset acquisition by a group, the assets and liabilities acquired directly from the same transferor (whether corporate or non-corporate, foreign or domestic) pursuant to the same plan are treated as the assets and liabilities of a corporation that becomes a member of the group (and has an ownership change) on the date of the acquisition.

(iii) *Recognized built-in gain or loss.* A loss that is included in the determination of net unrealized built-in gain or loss and that is recognized but disallowed or deferred (e.g., under § 1.1502–20 or section 267) is not treated as a built-in loss unless and until the loss would be allowed during the recognition period without regard to the application of this section. Section 382(h)(1)(B)(ii) does not apply to the extent it limits the amount of recognized built-in loss that may be treated as a pre-change loss to the amount of the net unrealized built-in loss.

(c) *Built-in losses of subgroups*—(1) *In general.* In the case of a subgroup, the principles of paragraph (b) of this section apply to the subgroup, and not separately to its members. Thus, the net unrealized built-in loss and recognized built-in loss for purposes of paragraph (b) of this section are based on the aggregate amounts for each member of the subgroup.

(2) *Members of subgroups.* A subgroup is composed of those members that have been continuously affiliated with each other for the 60 consecutive month period ending immediately before they become members of the group in which the loss is recognized. A member remains a member of the subgroup until it ceases to be affiliated with the loss member. For this purpose, the principles of § 1.1502–21(c)(2)(iv) through (vi) apply with appropriate adjustments.

(3) *Coordination of 60 month affiliation requirement with the overlap rule.* If one or more corporations become members of a group and are included in the determination of a net unrealized built-in loss that is subject to the overlap rule described in paragraph (g)(1) of this section, then for purposes of paragraph (c)(2) of this section, such corporations that become members of the group are treated as having been affiliated for 60 consecutive months with the common parent of the group and are also treated as having been affiliated with any other members who have been affiliated or are treated as having been affiliated with the common parent at such time. The corporations are treated as having been affiliated with such other members for the same period of time that those members have been affiliated or are treated as having been affiliated with the common parent. If two or more corporations become members of the group at the same time, but this paragraph (c)(3) does not apply to every such corporation, then immediately after the corporations become members of the group, and solely for purposes of paragraph (c)(2) of this section, the corporations to which this paragraph (c)(3) applies are treated as having not been previously affiliated with the corporations to which this paragraph (c)(3) does not apply. If the common parent has become the common parent of an existing group within the previous five year period in a transaction described in § 1.1502–75(d)(2)(ii) or (3), the principles of §§ 1.1502–91(g)(6) and 1.1502–96(a)(2)(iii) shall apply.

(4) *Built-in amounts.* Solely for purposes of determining whether the subgroup has a net unrealized built-in loss or whether it has a recognized built-in loss, the principles of § 1.1502–91(g) and (h) apply with appropriate adjustments.

(d) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this section are illustrated by the following examples:

Example 1. Determination of recognized built-in loss. (i) Individual A owns all of the stock of P and T. T has two depreciable assets. Asset 1 has an unrealized loss of $55 (basis $75, value $20), and asset 2 has an unrealized gain of $20 (basis $30, value $50). P acquires all the stock of T from Individual A during Year 1, and T becomes a member of the P group. P's acquisition of T is not an ownership change as defined by section 382(g). Paragraph (g) of this section does not apply because there is not an overlap of the application of the rules contained in paragraph (a) of this section and section 382.

(ii) Under paragraph (b)(2)(i) of this section, and solely for purposes of applying paragraph (b)(1) of this section, T is treated as having an ownership change under section 382(g) on becoming a member of the P group. Under paragraph (b)(1) of this section, none of T's $55 of unrealized loss is treated as a built-in loss unless T has a net unrealized built-in loss under section 382(h)(3) on becoming a member of the P group.

(iii) Under section 382(h)(3)(A), T has a $35 net unrealized built-in loss on becoming a member of the P group (($55)+$20=($35)). Assume that this amount exceeds the threshold requirement in section 382(h)(3)(B). Under section 382(h)(2)(B), the entire amount of T's $55 unrealized loss is treated as a built-in loss to the extent it is recognized during the 5-year recognition period described in section 382(h)(7). Under paragraph (b)(2)(iii) of this section, the restriction under section 382(h)(1)(B)(ii), which limits the amount of recognized built-in loss that is treated as pre-change loss to the amount of the net unrealized built-in loss, is inapplicable for this purpose. Consequently, the entire $55 of unrealized loss (not just the $35 net unrealized loss) is treated under paragraph (b)(1) of this section as a built-in loss to the extent it is recognized within 5 years of T's becoming a member of the P group. Under paragraph (a) of this section, a built-in loss is subject to the SRLY limitation under § 1.1502–21(c)(1).

(iv) Under paragraph (b)(2)(ii) of this section, the built-in loss would similarly be subject to a SRLY limitation under § 1.1502–21(c)(1) if T transferred all of its assets and liabilities to a subsidiary of the P group in a single transaction described in section 351. To the extent the built-in loss is recognized within 5 years of T's transfer, all of the items contributed by the acquiring subsidiary to consolidated taxable income (and not just the items attributable to the assets and liabilities transferred by T) are included for purposes of determining the SRLY limitation under § 1.1502–21(c)(1).

Example 2. Actual application of section 382 not relevant. (i) Individual A owns all of the stock of P, and Individual B owns all of the stock of T. T has two depreciable assets. Asset 1 has an unrealized loss of $25 (basis $75, value $50), and asset 2 has an unrealized gain of $20 (basis $30, value $50). P buys 55 percent of the stock of T in January of Year 1, resulting in an ownership change of T under section 382(g). During March of Year 2, P buys the 45 percent balance of the T stock, and T becomes a member of the P group.

(ii) Although T has an ownership change for purposes of section 382 in Year 1 and not Year 2, T's joining the P group in Year 2 is treated as an ownership change under section 382(g) solely for purposes of this section. Consequently, for purposes of this section, whether T has a net unrealized built-in loss under section 382(h)(3) is determined as if the day T joined the P group were a change date.

Example 3. Determination of a recognized built-in loss of a subgroup. (i) Individual A owns all of the stock of P, S, and M. P and M are each common parents of a consolidated group. During Year 1, P acquires all of the stock of S from Individual A, and S becomes a member of the P group. P's acquisition of S is not an ownership change as defined by section 382(g). At the beginning of Year 7, M acquires all of the stock of P from Individual A, and P and S become members of the M group. M's acquisitions of P and S are also not ownership changes as defined by section 382(g). At the time of M's acquisition of the P stock, P has (disregarding the stock of S) a $10 net unrealized built-in gain (two depreciable assets, asset 1 with a basis of $35 and a value of $55, and asset 2 with a basis of $55 and a value of $45), and S has a $75 net unrealized built-in loss (two depreciable assets, asset 3 with a basis of $95 and a value of $10, and asset 4 with a basis of $10 and a value of $20).

(ii) Under paragraph (c) of this section, P and S compose a subgroup on becoming members of the M group because P and S were continuously affiliated for the 60 month period ending immediately before they became members of the M group. Consequently, paragraph (b) of this section does not apply to P and S separately. Instead, their separately computed unrealized gains and losses are aggregated for purposes of determining whether, and the extent to which, any unrealized loss is treated as built-in loss under this section and is subject to the SRLY limitation under § 1.1502–21(c).

(iii) Under paragraph (c) of this section, the P subgroup has a net unrealized built-in loss on the day P and S become members of the M group, determined by treating the day they become members as a change date. The net unrealized built-in loss is the aggregate of P's net unrealized built-in gain of $10 and S's net unrealized built-in loss of $75, or an aggregate net unrealized built-in loss of $65. (The stock of S owned by P is disregarded for purposes of determining the net unrealized built-in loss. However, any loss allowed on the sale of the stock within the recognition period is taken into account in determining recognized loss.) Assume that the $65 net unrealized built-in loss exceeds the threshold requirement under section 382(h)(3)(B).

(iv) Under paragraphs (b)(1), (b)(2)(iii), and (c) of this section, a loss recognized during the 5-year recognition period on an asset of P or S held on the day that P and S became members of the M group is a built-in loss except to the extent the group establishes that such loss exceeds the amount by which the adjusted basis of such asset on the day the member became a member exceeded the fair market value of such asset on that same day. If P sells asset 2 for $45 in Year 7 and recognizes a $10 loss, the entire $10 loss is treated as a built-in loss under paragraphs (b)(2)(iii) and (c) of this section. If S sells asset 3 for $10 in Year 7 and recognizes an $85 loss, the entire $85 loss is treated as a built-in loss under paragraphs (b)(2)(iii) and (c) of this section (not just the $55 balance of the P subgroup's $65 net unrealized built-in loss).

(v) The determination of whether P and S constitute a SRLY subgroup for purposes of loss carryovers and carrybacks, and the extent to which built-in losses are not allowed under the SRLY limitation, is made under § 1.1502–21(c).

Example 4. Computation of SRLY limitation. (i) Individual A owns all of the stock of P, the common parent of a consolidated group. During Year 1, Individual A forms T by contributing $300 and T sustains a $100 net operating loss. During Year 2, T's assets decline in value to $100. At the beginning of Year 3, P acquires all the stock of T from Individual A, and T becomes a member of the P group with a net unrealized built-in loss of $100. P's acquisition of T is not an ownership change as defined by section 382(g). Assume that $100 exceeds the threshold requirements of section 382(h)(3)(B). During Year 3, T recognizes its unrealized built-in loss as a $100 ordinary loss. The members of the P group contribute the following net income to the consolidated taxable income of the P group (disregarding T's recognized built-in loss and any consolidated net operating loss deduction under § 1.1502–21) for Years 3 and 4:

	Year 3	Year 4	Total
P group (without T)	$100	$100	$200
T	60	40	100
CTI	160	140	300

(ii) Under paragraph (b) of this section, T's $100 ordinary loss in Year 3 (not taken into account in the consolidated taxable income computations above) is a built-in loss. Under paragraph (a) of this section, the built-in loss is treated as a net operating loss carryover for purposes of determining the SRLY limitation under § 1.1502–21(c).

(iii) For Year 3, § 1.1502–21(c) limits T's $100 built-in loss and $100 net operating loss carryover from Year 1 to the aggregate of the P group's consolidated taxable income through Year 3, determined by reference to only T's items. For this purpose, consolidated taxable income is determined without regard to any consolidated net operating loss deductions under § 1.1502–21(a).

(iv) The P group's consolidated taxable income through Year 3 is $60 when determined by reference to only T's items. Under § 1.1502–21(c), the SRLY limitation for Year 3 is therefore $60.

(v) Under paragraph (a) of this section, the $100 built-in loss is treated as a current deduction for all purposes other than determination of the SRLY limitation under § 1.1502–21(c). Consequently, a deduction for the built-in loss is allowed in Year 3 before T's loss carryover from Year 1 is allowed, but only to the extent of the $60 SRLY limitation. None of T's Year 1 loss carryover is allowed because the built-in loss ($100) exceeds the SRLY limitation for Year 3.

(vi) The $40 balance of the built-in loss that is not allowed in Year 3 because of the SRLY limitation is treated as a $40 net operating loss arising in Year 3 that is carried to other years in accordance with the rules of § 1.1502–21(b). The $40 net operating loss is treated under paragraph (a) of this section and § 1.1502–21(c)(1)(ii) as a loss carryover or carryback from Year 3 that arises in a SRLY, and is subject to the rules of § 1.1502–21 (including § 1.1502–21(c)) rather than this section. See also § 1.1502–21(c)(1)(iii) *Example 4.*

(vii) The facts are the same as in paragraphs (i) through (vi) of this *Example 4*, except that T has an additional built-in loss when it joins the P group which is recognized in Year 4. For purposes of determining the SRLY limitation for these additional losses in Year 4 (or any subsequent year), the $60 of built-in loss allowed as a deduction in Year 3 is treated under paragraph (a) of this section as a deduction in Year 3 that reduces the P group's consolidated taxable income when determined by reference to only T's items.

Example 5. Built-in loss exceeding consolidated taxable income in the year recognized. (i) Individual A owns all of the stock of P and T. During Year 1, P acquires all the stock of T from Individual A, and T becomes a member of the P group. P's acquisition of T was not an ownership change as defined by section 382(g). At the time of acquisition, T has a noncapital asset with an unrealized loss of $45 (basis $100, value $55), which exceeds the threshold requirements of section 382(h)(3)(B). During Year 2, T sells its asset for $55 and recognizes the unrealized built-in loss. The P group has $10 of consolidated taxable income in Year 2, computed by disregarding T's recognition of the $45 built-in loss and the consolidated net operating loss deduction, while the consolidated taxable income would be $25 if determined by reference to only T's items (other than the $45 loss).

(ii) T's $45 loss is recognized in Year 2 and, under paragraph (b) of this section, constitutes a built-in loss. Under paragraph (a) of this section and § 1.1502–21(c)(1)(ii), the loss is treated as a net operating loss carryover to Year 2 for purposes of applying the SRLY limitation under § 1.1502–21(c).

(iii) For Year 2, T's SRLY limitation is the aggregate of the P group's consolidated taxable income through Year 2 determined by

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reference to only T's items. For this purpose, consolidated taxable income is determined by disregarding any built-in loss that is treated as a net operating loss carryover, and any consolidated net operating loss deductions under § 1.1502–21(a). Consolidated taxable income so determined is $25.

(iv) Under § 1.1502–21(c), $25 of the $45 built-in loss could be deducted in Year 2. Because the P group has only $10 of consolidated taxable income (determined without regard to the $45), the $25 loss creates a consolidated net operating loss of $15. This loss is carried back or forward under the rules of § 1.1502–21(b) and absorbed under the rules of § 1.1502–21(a). This loss is not treated as arising in a SRLY (see § 1.1502–21(c)(1)(ii)) and therefore is not subject to the SRLY limitation under § 1.1502–21(c) in any consolidated return year of the group to which it is carried. The remaining $20 is treated as a loss carryover arising in a SRLY and is subject to the limitation of § 1.1502–21(c) in the year to which it is carried.

(e) *Predecessors and successors.* For purposes of this section, any reference to a corporation or member includes, as the context may require, a reference to a successor or predecessor, as defined in § 1.1502–1(f)(4).

(f) *Built-in losses recognized by common parent of group—(1) General rule.* Paragraph (a) of this section does not apply to any loss recognized by the group on an asset held by the common parent on the date the group is formed. Following an acquisition described in § 1.1502–75(d)(2) or (3), references to the common parent are to the corporation that was the common parent immediately before the acquisition.

(2) *Anti-avoidance rule.* If a corporation that becomes a common parent of a group acquires assets with a net unrealized built-in loss in excess of the threshold requirement of section 382(h)(3)(B) (and thereby increases its net unrealized built-in loss or decreases its net unrealized built-in gain) prior to, and in anticipation of, the formation of the group, paragraph (f)(1) of this section does not apply.

(g) *Overlap with section 382—*(1) *General rule.* The limitations provided in §§ 1.1502–21(c) and 1.1502–22(c) do not apply to recognized built-in losses or to loss carryovers or carrybacks attributable to recognized built-in losses when the application of paragraph (a) of this section results in an overlap with the application of section 382.

(2) *Definitions—*(i) *Generally.* For purposes of this paragraph (g), the definitions and nomenclature contained in section 382, the regulations thereunder, and §§ 1.1502–90 through 1.1502–99 apply.

(ii) *Overlap—*(A) An overlap of the application of paragraph (a) of this section and the application of section 382 with respect to built-in losses occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 382(a) limitation that would apply with respect to the corporation's recognized built-in losses (the section 382 event). Except as provided in paragraph (g)(3) of this section, application of the overlap rule does not require that the size and composition of the corporation's net unrealized built-in loss is the same on the date of the section 382 event and the SRLY event.

(B) For special rules in the event that there is a SRLY subgroup and/or a loss subgroup as defined in § 1.1502–91(d)(2) with respect to built-in losses, see paragraph (g)(4) of this section.

(3) *Operating rules—*(i) *Section 382 event before SRLY event.* If a SRLY event occurs on the same date as a section 382 event or within the six month period beginning on the date of the section 382 event, paragraph (g)(1) of this section applies beginning with the tax year that includes the SRLY event. Paragraph (g)(1) of this section does not apply, however, if a corporation that would otherwise be subject to the overlap rule acquires assets from a person other than a member of the group with a net unrealized built-in loss in excess of the threshold requirement of section 382(h)(3)(B) (and thereby increases its net unrealized built-in loss) after the section 382 event, and before the SRLY event.

(ii) *SRLY event before section 382 event.* If a section 382 event occurs within the period beginning the day after the SRLY event and ending six months after the SRLY event, paragraph (g)(1) of this section applies starting with the first tax year that begins after the section 382 event. However, paragraph (g)(1) of this section does not apply at any time if a corporation that otherwise would be subject to paragraph (g)(1) of this section transfers assets with an unrealized built-in loss to another member of the group after the SRLY event, but before the section 382 event, unless the corporation recognizes the built-in loss upon the transfer.

(4) *Subgroup rules.* In general, in the case of built-in losses for which there is a SRLY subgroup and the corporations joining the group at the time of the SRLY event also constitute a loss subgroup (as defined in § 1.1502–91(d)(2)), the principles of this paragraph (g) apply to the SRLY subgroup, and not separately to its members. However, paragraph (g)(1) of this section applies with respect to built-in losses only if—

(i) all members of the SRLY subgroup with respect to those built-in losses are also included in a loss subgroup; and

(ii) all members of a loss subgroup are also members of a SRLY subgroup with respect to those built-in losses.

(5) *Asset acquisitions.* Notwithstanding the application of this paragraph (g), paragraph (a) of this section applies to asset acquisitions by the corporation that occurs after the latter of the SRLY event and the section 382 event. See, paragraph (b)(2)(ii) of this section.

(6) *Examples.* The principles of this paragraph (g) are illustrated by the following examples:

Example 1. Determination of subgroup. (i) Individual A owns all of the stock of P, P1, and S. In Year 1, P acquires all of the stock of P1, and they file a consolidated return. In Year 3, P acquires all of the stock of S, and S joins the P group. Individual B, unrelated to Individual A, owns all of the stock of M and K, each the common parent of a consolidated group. Individual C, unrelated to either Individual A or Individual B, owns all of the stock of T.

(ii) At the beginning of Year 7, M acquires all of the stock of P from Individual A, and, as a result, P, P1, and S become members of the M group. At the time of M's acquisition of the P stock, P has a $15 net unrealized built-in loss (disregarding the stock of P1), P1 has a net unrealized built-in gain of $10, and S has a net unrealized built-in gain of $5.

(iii) During Year 8, M acquires all of the stock of T, and T joins the M group. At the time of M's acquisition of the T stock, T had an unrealized built-in loss of $15. At the beginning of Year 9, K acquires all of the stock of M from Individual B, and the members of the M consolidated group including P, P1, S, and T become members of the K group. At the time of K's acquisition of the M stock, M has (disregarding the stock of P and T) a $15 net unrealized built-in loss, P has a $20 net unrealized built-in loss (disregarding the stock of P1), P1 has a net unrealized built-in gain of $5, S has a net unrealized built-in loss of $35, and T has a $15 net unrealized built-in loss.

(iv) M's acquisition of P in Year 7 results in P, P1, and S becoming members of the M group (the SRLY event). Under paragraph (c) of this section, P and P1 compose a SRLY built-in loss subgroup because they have been affiliated for the 60 consecutive month period immediately preceding joining the M group. S is not a member of the subgroup because on becoming a member of the M group it had not been continuously affiliated with P and P1 for the 60 month period ending immediately before it became a member of the M group. Consequently, § 1.1502–15 applies to S separately from the P and P1 subgroup.

(v) Assuming that the $5 net unrealized built-in loss of the P/P1 subgroup exceeds the threshold requirement under section 382(h)(3)(B), M's acquisition of P resulted in an ownership change of P and P1 within the meaning of section 382(g) that subjects P and P1 to a limitation under section 382(a) (the section 382 event). Because, with respect to P and P1, the SRLY event and the change date of the section 382 event occur on the same date and because the loss subgroup and SRLY subgroup are coextensive, there is an overlap of the application of the SRLY rules and the application of the section 382.

(vi) S was not a loss corporation because it did not have a net operating loss carryover, or a net unrealized built-in loss, and therefore, M's acquisition of P did not result in an ownership change of S within the meaning of section 382(g). S, therefore is not subject to the overlap rule of paragraph (g) of this section.

(vii) M's acquisition of T resulted in T becoming a member of the M group (the SRLY event). Assuming that T's $15 net unrealized built-in loss exceeds the threshold requirement under section 382(h)(3)(B), M's acquisition of T also resulted in an ownership change of T within the meaning of section 382(g) that subjects T to a limitation under section 382(a) (the section 382 event). Because, with respect to T, the SRLY event and the change date of the section 382 event occur on the same date, there is an overlap of the application of the SRLY rules and the application of section 382 within the meaning of paragraph (g) of this section.

(viii) K's acquisition of M results in the members of the M consolidated group, including T, P, P1, and S, becoming members of the K group (the SRLY event). Because T, P, and P1 were each included in the determination of a net unrealized built-in loss that was subject to the overlap rule described in paragraph (g)(1) of this section when they each became members of the M group, they are deemed under paragraph (c)(3) of this section to have been continuously affiliated with M for the 60 month period ending immediately before becoming a member of the M group, notwithstanding their actual affiliation history. As a result, M, T, P, and P1 compose a SRLY built-in loss subgroup under paragraph (c)(2) of this section. K's acquisition of M is not subject to paragraph (g) of this section because it does not result in a section 382 event.

(ix) S, however, is not a member of the subgroup under paragraph (c)(2) of this section. Because S was not included in the determination of a net unrealized built-in loss that was subject to the overlap rule described in paragraph (g)(1) of this section when it joined the M group, S is treated as becoming an affiliate of M on the date it joined the M group. Furthermore, under paragraph (c)(3) of this section, S is deemed to have begun its affiliation with P and P1 on the date it joined the M group. Consequently, § 1.1502–15 applies to S separately to the extent its built-in loss is recognized with the recognition period.

Example 2. Post-overlap acquisition of assets. (i) Individual A owns all of the stock of P, the common parent of a consolidated group. B, an individual unrelated to Individual A, owns all of the stock of T. T has two depreciable assets. Asset 1 has an unrealized built-in loss of $25 (basis $75, value $50), and asset 2 has an unrealized built-in gain of $20 (basis $30, value $50). During Year 3, P buys all of the stock of T from Individual B. On January 1, Year 4, P contributes $80 cash and Individual A contributes asset 3, a depreciable asset, with a net unrealized built-in loss of $45 (basis $65, value $20), in exchange for T stock in a transaction that is described in section 351.

(ii) P's acquisition of T results in T becoming a member of the P group (the SRLY event) and also results in an ownership change of T, within the meaning of section 382(g), that gives rise to a limitation under section 382(a) (the section 382 event).

(iii) Because the SRLY event and the change date of the section 382 event occur on the same date, there is an overlap of the application of the SRLY rules and the application of section 382. Consequently, under paragraph (g) of this section, the limitation under paragraph (a) of this section does not apply to T's net unrealized built-in loss when it joined the P group.

(iv) Individual A's Year 4 contribution of a depreciable asset occurred after T was a member of the P group. Assuming that the amount of the net unrealized built-in loss exceeds the threshold requirement of section 382(h)(3)(B), the sale of asset 3 within the recognition period is subject to the SRLY limitation of paragraphs (a) and (b)(2)(ii) of this section.

Example 3. Overlap rule. (i) Individual A owns all of the stock of P, the common parent of a consolidated group. B, an individual unrelated to Individual A, owns all of the stock of T. T has two depreciable assets. Asset 1 has an unrealized loss of $55 (basis $75, value $20), and asset 2 has an unrealized gain of $30 (basis $30, value $60). On February 28 of Year 2, P purchases 55% of T from Individual B. On June 30, of Year 2, P purchases an additional 35% of T from Individual B.

(ii) The February 28 purchase of 55% of T is a section 382 event because it results in an ownership change of T that gives rise to a section 382(a) limitation. The June 30 purchase of 35% of T results in T becoming a member of the P group and is therefore a SRLY event.

(iii) Because the SRLY event occurred within six months of the change date of the section 382 event, there is an overlap of the application of the SRLY rules and the application of section 382, and paragraph (a) of this section does not apply. Therefore, the SRLY limitation does not apply to any of the $55 loss in asset 1 recognized by T after T joined the P group. See § 1.1502–94 for rules relating to the application of section 382 with respect to T's $25 unrealized built-in loss.

Example 4. Overlap rule-Fluctuation in value. (i) The facts are the same as in *Example 3*, except that by June 30, of Year 2, asset 1 had declined in value by a further $10. Thus asset 1 had an unrealized loss of $65 (basis $75, value $10), and asset 2 had an unrealized gain of $30 (basis $30, value $60).

(ii) Because paragraph (a) of this section does not apply, the further decrease in asset 1's value is disregarded. Consequently, the results are the same as in *Example 3*.

(h) *Effective date—*(1) *In general.* This section generally applies to built-in losses recognized in taxable years for which the due date (without extensions) of the consolidated return is after June 25, 1999. However—

(i) In the event that paragraphs (f)(1) and (g)(1) of this section do not apply to a particular built-in loss in the current group, then solely for purposes of applying paragraph (a) of this section to determine a limitation with respect to that built-in loss and with respect to which the SRLY register (consolidated taxable income determined by reference to only the member's (or subgroup's) items of income, gain, deduction or loss) began in a taxable year for which the due date of the return was on or before June 25, 1999, paragraph (c)(3) of this section shall not apply; and

(ii) For purposes of paragraph (g) of this section, only an ownership change to which section 382(a) as amended by the Tax Reform Act of 1986 applies shall constitute a section 382 event.

(2) *Prior periods.* For certain taxable years ending on or before June 25, 1999, see § 1.1502–15T in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.

§ 1.1502–15T [Removed]

Par. 5. Section 1.1502–15T is removed.

Par. 6. Section 1.1502–21 is added to read as follows:

§ 1.1502–21 Net operating losses.

(a) *Consolidated net operating loss deduction.* The consolidated net operating loss deduction (or CNOL deduction) for any consolidated return year is the aggregate of the net operating loss carryovers and carrybacks to the year. The net operating loss carryovers and carrybacks consist of—

(1) Any CNOLs (as defined in paragraph (e) of this section) of the consolidated group; and

(2) Any net operating losses of the members arising in separate return years.

(b) *Net operating loss carryovers and carrybacks to consolidated return and separate return years.* Net operating losses of members arising during a consolidated return year are taken into account in determining the group's CNOL under paragraph (e) of this section for that year. Losses taken into account in determining the CNOL may be carried to other taxable years (whether consolidated or separate) only under this paragraph (b).

(1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the

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principles of section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. Additional rules provided under the Internal Revenue Code or regulations also apply. See, e.g., section 382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See *Example 2* of paragraph (c)(1)(iii) of this section for an illustration of pro rata absorption of losses subject to a SRLY limitation.

(2) *Carryovers and carrybacks of CNOLs to separate return years*—(i) *In general.* If any CNOL that is attributable to a member may be carried to a separate return year of the member, the amount of the CNOL that is attributable to the member is apportioned to the member (apportioned loss) and carried to the separate return year. If carried back to a separate return year, the apportioned loss may not be carried back to an equivalent, or earlier, consolidated return year of the group; if carried over to a separate return year, the apportioned loss may not be carried over to an equivalent, or later, consolidated return year of the group. For rules permitting the reattribution of losses of a subsidiary to the common parent when loss is disallowed on the disposition of subsidiary stock, see § 1.1502–20(g).

(ii) *Special rules*—(A) *Year of departure from group.* If a corporation ceases to be a member during a consolidated return year, net operating loss carryovers attributable to the corporation are first carried to the consolidated return year, and only the amount so attributable that is not absorbed by the group in that year is carried to the corporation's first separate return year. For rules concerning a member departing a subgroup, see paragraph (c)(2)(vii) of this section.

(B) *Offspring rule.* In the case of a member that has been a member continuously since its organization (determined without regard to whether the member is a successor to any other corporation), the CNOL attributable to the member is included in the carrybacks to consolidated return years before the member's existence. If the group did not file a consolidated return for a carryback year, the loss may be carried back to a separate return year of the common parent under paragraph (b)(2)(i) of this section, but only if the common parent was not a member of a different consolidated group or of an affiliated group filing separate returns for the year to which the loss is carried or any subsequent year in the carryback period. Following an acquisition described in § 1.1502–75(d)(2) or (3), references to the common parent are to the corporation that was the common parent immediately before the acquisition.

(iii) *Equivalent years.* Taxable years are equivalent if they bear the same numerical relationship to the consolidated return year in which a CNOL arises, counting forward or backward from the year of the loss. For example, in the case of a member's third taxable year (which was a separate return year) that preceded the consolidated return year in which the loss arose, the equivalent year is the third consolidated return year preceding the consolidated return year in which the loss arose. See paragraph (b)(3)(iii) of this section for certain short taxable years that are disregarded in making this determination.

(iv) *Amount of CNOL attributable to a member.* The amount of a CNOL that is attributable to a member is determined by a fraction the numerator of which is the separate net operating loss of the member for the year of the loss and the denominator of which is the sum of the separate net operating losses for that year of all members having such losses. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the taxable year (whether or not absorbed by the member).

(v) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Offspring rule. (i) During Year 1, Individual A forms P and T, and they each file a separate return. P forms S on March 15 of Year 2, and P and S file a consolidated return. P acquires all the stock of T from Individual A at the beginning of Year 3, and T becomes a member of the P group. P's acquisition of T is not an ownership change within the meaning of section 382. P, S, and T sustain a $1,100 CNOL in Year 3 and, under paragraph (b)(2)(iv) of this section, the loss is attributable $200 to P, $300 to S, and $600 to T.

(ii) Of the $1,100 CNOL in Year 3, the $500 amount of the CNOL that is attributable to P and S ($200 + $300) may be carried to P's separate return in Year 1. Even though S was not in existence in Year 1, the $300 amount of the CNOL attributable to S may be carried back to P's separate return in Year 1 because S (unlike T) has been a member of the P group since its organization and P is a qualified parent under paragraph (b)(2)(ii)(B) of this section. To the extent not absorbed in that year, the loss may then be carried to the P group's return in Year 2. The $600 amount of the CNOL attributable to T is a net operating loss carryback to T's separate return in Year 1, and if not absorbed in Year 1, then to Year 2.

Example 2. Departing members. (i) The facts are the same as in *Example 1.* In addition, on June 15 of Year 4, P sells all the stock of T. The P group's consolidated return for Year 4 includes the income of T through June 15. T files a separate return for the period from June 16 through December 31.

(ii) $600 of the Year 3 CNOL attributable to T is apportioned to T and is carried back to its separate return in Year 1. To the extent the $600 is not absorbed in T's separate return in Year 1 or Year 2, it is carried to the consolidated return in Year 4 before being carried to T's separate return in Year 4. Any portion of the loss not absorbed in T's Year 1 or Year 2 or in the P group's Year 4 is then carried to T's separate return in Year 4.

Example 3. Offspring rule following acquisition. (i) Individual A owns all of the stock of P, the common parent of a consolidated group. In Year 1, B, an individual unrelated to Individual A, forms T. P acquires all of the stock of T at the beginning of Year 3, and T becomes a member of the P group. The P group has $200 of consolidated taxable income in Year 2, and $300 of consolidated taxable income in Year 3 (computed without regard to the CNOL deduction). At the beginning of Year 4, T forms a subsidiary, Y, in a transaction described in section 351. The P group has a $300 consolidated net operating loss in Year 4, and under paragraph (b)(2)(iv) of this section, the loss is attributable entirely to Y.

(ii) Even though Y was not in existence in Year 2, $300, the amount of the consolidated net operating loss attributable to Y, may be carried back to the P group's Year 2 consolidated return under paragraph (b)(2)(ii)(B) of this section because Y has been a member of the P group since its organization. To the extent not absorbed in that year, the loss may then be carried to the P group's consolidated return in Year 3.

(3) *Special rules*—(i) *Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraph (b)(3)(ii)(B) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502–21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." The statement must be signed by the common parent and filed with the group's income tax return for the consolidated return year in which the loss arises.

(ii) *Special elections*—(A) *Groups that include insolvent financial institutions.* For rules applicable to relinquishing the entire carryback period with respect to losses attributable to insolvent financial institutions, see § 301.6402–7 of this chapter.

(B) *Acquisition of member from another consolidated group.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502–21(b)(3)(ii)(B) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members]." The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member, and it must be signed by the common parent and each of the members to which it applies.

(iii) *Short years in connection with transactions to which section 381(a) applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a net operating loss may be carried.

(iv) *Special status losses.* [Reserved]

(c) *Limitations on net operating loss carryovers and carrybacks from separate return limitation years*—(1) *SRLY limitation*—(i) *General rule.* Except as provided in paragraph (g) of this section (relating to an overlap with section 382), the aggregate of the net operating loss carryovers and carrybacks of a member arising (or treated as arising) in SRLYs that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate consolidated taxable income for all consolidated return years of the group determined by reference to only the member's items of income, gain, deduction, and loss. For this purpose—

(A) Consolidated taxable income is computed without regard to CNOL deductions;

(B) Consolidated taxable income takes into account the member's losses and deductions (including capital losses) actually absorbed by the group in consolidated return years (whether or not absorbed by the member);

(C) In computing consolidated taxable income, the consolidated return years of the group include only those years, including the year to which the loss is carried, that the member has been continuously included in the group's consolidated return, but exclude—

(*1*) For carryovers, any years ending after the year to which the loss is carried; and

(*2*) For carrybacks, any years ending after the year in which the loss arose; and

(D) The treatment under § 1.1502–15 of a built-in loss as a hypothetical net operating loss carryover in the year recognized is solely for purposes of determining the limitation under this paragraph (c) with respect to the loss in that year and not for any other purpose. Thus, for purposes of determining consolidated taxable income for any other losses, a built-in loss allowed under this section in the year it arises is taken into account.

(ii) *Losses treated as arising in SRLYs.* If a net operating loss carryover or carryback did not arise in a SRLY but is attributable to a built-in loss (as defined under § 1.1502–15), the carryover or carryback is treated for purposes of this paragraph (c) as arising in a SRLY if the built-in loss was not allowed, after application of the SRLY limitation, in the year it arose. For an illustration, see § 1.1502–15(d), *Example 5.* But see § 1.1502–15(g)(1).

(iii) *Examples.* The principles of this paragraph (c)(1) are illustrated by the following examples:

Example 1. Determination of SRLY limitation. (i) Individual A owns P. In Year 1, Individual A forms T, and T sustains a $100 net operating loss that is carried forward. P acquires all the stock of T at the beginning of Year 2, and T becomes a member of the P group. The P group has $300 of consolidated taxable income in Year 2 (computed without regard to the CNOL deduction). Such consolidated taxable income would be $70 if determined by reference to only T's items.

(ii) T's $100 net operating loss carryover from Year 1 arose in a SRLY. See § 1.1502–1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, the $100 net operating loss carryover is subject to the SRLY limitation in paragraph (c)(1) of this section. The SRLY limitation for Year 2 is consolidated taxable income determined by reference to only T's items, or $70. Thus, $70 of the loss is included under paragraph (a) of this section in the P group's CNOL deduction for Year 2.

(iii) The facts are the same as in paragraph (i) of this *Example 1*, except that such consolidated taxable income (computed without regard to the CNOL deduction and by reference to only T's items) for Year 2 is a loss (a CNOL) of $370. Because the SRLY limitation may not exceed the consolidated taxable income determined by reference to only T's items, and such items aggregate to a CNOL, T's $ 100 net operating loss carryover from Year 1 is not allowed under the SRLY limitation in Year 2. Moreover, if consolidated taxable income (computed without regard to the CNOL deduction and by reference to only T's items) did not exceed $370 in Year 3, the carryover would still be restricted under paragraph (c) of this section in Year 3, because the aggregate consolidated taxable income for all consolidated return years of the group computed by reference to only T's items would not be a positive amount.

Example 2. Net operating loss carryovers. (i) In Year 1, Individual A forms P, and P sustains a $40 net operating loss that is carried forward. P has no income in Year 2. Individual A also owns T which sustains a net operating loss of $50 in Year 2 that is carried forward. P acquires the stock of T from Individual A during Year 3, but T is not a member of the P group for each day of the year. P and T file separate returns and sustain net operating losses of $120 and $60, respectively, for Year 3. The P group files consolidated returns beginning in Year 4. During Year 4, the P group has $160 of consolidated taxable income (computed without regard to the CNOL deduction). Such consolidated taxable income would be $70 if determined by reference to only T's items. These results are summarized as follows:

	Separate	Separate	Separate/affiliated	Consolidated
	Year 1	Year 2	Year 3	Year 4
P	$ (40)	$0	$ (120)	$90
T	0	(50)	(60)	70
CTI				160

(ii) P's Year 1, Year 2, and Year 3 are not SRLYs with respect to the P group. See § 1.1502–1(f)(2)(i). Thus, P's $40 net operating loss arising in Year 1 and $120 net operating loss arising in Year 3 are not subject to the SRLY limitation under paragraph (c) of this section. Under the principles of section 172, paragraph (b) of this section requires that the loss arising in Year 1 be the first loss absorbed by the P group in Year 4. Absorption of this loss leaves $120 of the group's consolidated taxable income available for offset by other loss carryovers.

(iii) T's Year 2 and Year 3 are SRLYs with respect to the P group. See § 1.1502–1(f)(2)(ii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's $50 net operating loss arising in Year 2 and $60 net operating loss arising in Year 3 are subject to the SRLY limitation. Under paragraph (c)(1) of this section, the SRLY limitation for Year 4 is $70, and under paragraph (b) of this section, T's $50 loss from Year 2 must be included under paragraph (a) of this section in the P group's CNOL deduction for Year 4. The absorption of this loss leaves $70 of the group's consolidated taxable income available for offset by other loss carryovers.

(iv) P and T each carry over net operating losses to Year 4 from a taxable year ending on the same date (Year 3). The losses carried over from Year 3 total $180. Under paragraph (b) of this section, the losses carried over from Year 3 are absorbed on a pro rata basis, even though one arises in a SRLY and the other does not. However, the group cannot absorb more than $20 of T's $60 net operating loss arising in Year 3 because its $70 SRLY limitation for Year 4 is reduced by T's $50 Year 2 SRLY loss already included in the CNOL deduction for Year 4. Thus, the absorption of Year 3 losses is as follows:

Amount of P's Year 3 losses absorbed = $120/($120 + $20) × $70 = $60.

Amount of T's Year 3 losses absorbed = $20/($120 + $20) × $70 = $10.

(v) The absorption of $10 of T's Year 3 loss further reduces T's SRLY limitation to $10 ($70 of initial SRLY limitation, reduced by the $60 net operating loss already included in the CNOL deductions for Year 4 under paragraph (a) of this section).

(vi) P carries its remaining $60 Year 3 net operating loss and T carries its remaining $50 Year 3 net operating loss over to Year 5. Assume that, in Year 5, the P group has $90 of consolidated taxable income (computed without regard to the CNOL deduction). The group's CTI determined by reference to only T's items is a CNOL of $4. For Year 5, the CNOL deduction is $66, which includes $60 of P's Year 3 loss and $6 of T's Year 3 loss (the aggregate consolidated taxable income for Years 4 and 5 determined by reference to T's items, or $66, reduced by T's SRLY losses actually absorbed by the group in Year 4, or $60).

Example 3. Net operating loss carrybacks. (i) P owns all of the stock of S and T. The members of the P group contribute the following to the consolidated taxable income of the P group for Years 1, 2, and 3:

	Year 1	Year 2	Year 3	Total
P	$100	$60	$80	$240
S	20	20	30	70
T	30	10	(50)	(10)
CTI	150	90	60	300

(ii) P sells all of the stock of T to Individual A at the beginning of Year 4. For its Year 4 separate return year, T has a net operating loss of $30.

(iii) T's Year 4 is a SRLY with respect to the P group. See § 1.1502–1(f)(1). T's $30 net operating loss carryback to the P group from Year 4 is not allowed under paragraph (c) of this section to be included in the CNOL deduction under paragraph (a) of this section for Year 1, 2, or 3, because the P group's consolidated taxable income would not be a positive amount if determined by reference to only T's items for all consolidated return years through Year 4 (without regard to the $30 net operating loss). The $30 loss is carried forward to T's Year 5 and succeeding taxable years as provided under the Internal Revenue Code.

Example 4. Computation of SRLY limitation for built-in losses treated as net operating loss carryovers. (i) Individual A owns P. In Year 1, Individual A forms T by contributing $300 and T sustains a $100 net operating loss. During Year 2, T's assets decline in value by $100. At the beginning of Year 3, P acquires all the stock of T from Individual A, and T becomes a member of the P group in a transaction that does not result in an ownership change under section 382(g). At the time of the acquisition, T has a $100 net unrealized built-in loss, which exceeds the threshold requirements of section 382(h)(3)(B). During Year 3, T recognizes its unrealized loss as a $100 ordinary loss. The members of the P group contribute the following to the consolidated taxable income of the P group for Years 3 and 4 (computed without regard to T's recognition of its unrealized loss and any CNOL deduction under this section):

	Year 3	Year 4	Total
P group (without T)	$100	$100	$200
T	60	40	100
CTI	160	140	300

(ii) Under § 1.1502–15(a), T's $100 of ordinary loss in Year 3 constitutes a built-in loss that is subject to the SRLY limitation under paragraph (c) of this section. The amount of the limitation is determined by treating the deduction as a net operating loss carryover from a SRLY. The built-in loss is therefore subject to a $60 SRLY limitation for Year 3. The built-in loss is treated as a net operating loss carryover solely for purposes of determining the extent to which the loss is not allowed by reason of the SRLY limitation, and for all other purposes the loss remains a loss arising in Year 3. Consequently, under paragraph (b) of this section, the $60 allowed under the SRLY limitation is absorbed by the P group before T's $100 net operating loss carryover from Year 1 is allowed.

(iii) Under § 1.1502–15(a), the $40 balance of the built-in loss that is not allowed in Year 3 because of the SRLY limitation is treated as a $40 net operating loss arising in Year 3 that is subject to the SRLY limitation because, under paragraph (c)(1)(ii) of this section, Year 3 is treated as a SRLY, and is carried to other years in accordance with the rules of paragraph (b) of this section. The SRLY limitation for Year 4 is the P group's consolidated taxable income for Year 3 and Year 4 determined by reference to only T's items and without regard to the group's CNOL deductions ($60 + $40), reduced by T's loss actually absorbed by the group in Year 3 ($60). The SRLY limitation for Year 4 is $40.

(iv) Under paragraph (c) of this section and the principles of section 172(b), $40 of T's $100 net operating loss carryover from Year 1 is included in the CNOL deduction under paragraph (a) of this section in Year 4.

Example 5. Dual SRLY registers and accounting for SRLY losses actually absorbed. (i) In Year 1, T sustains a $ 100 net operating loss and a $50 net capital loss. At the beginning of Year 2, T becomes a member of the P group in a transaction that does not result in an ownership change under section 382(g). Both of T's carryovers from Year 1 are subject to SRLY limits under this paragraph (c) and § 1.1502–22(c). The members of the P group contribute the following to the consolidated taxable income for Years 2 and 3 (computed without regard to T's CNOL deduction under this section or net capital loss carryover under § 1.1502–22):

	P	T
Year 1 (SRLY)		
Ordinary		(100)
Capital		(50)
Year 2		
Ordinary	30	60
Capital	0	(20)
Year 3		
Ordinary	10	40
Capital	0	30

(ii) For Year 2, the group computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group determines its ability to use its capital loss carryover before it determines its ability to use its ordinary loss carryover. Under section 1212, because the group has no Year 2 capital gain, it cannot absorb any capital losses in Year 2. T's Year 1 net capital loss and the group's Year 2 consolidated net capital loss (all of which is attributable to T) are carried over to Year 3.

(iii) Under this section, the aggregate amount of T's $100 net operating loss carryover from Year 1 that may be included in the CNOL deduction of the group for Year 2 may not exceed $60—the amount of the consolidated taxable income computed by reference only to T's items, including losses and deductions to the extent actually absorbed (i.e., $60 of T's ordinary income for Year 2). Thus, the group may include $60 of T's ordinary loss carryover from Year 1 in its Year 2 CNOL deduction. T carries over its remaining $40 of its Year 1 loss to Year 3.

(iv) For Year 3, the group again computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group has consolidated net capital gain (without taking into account a net capital loss carryover deduction) of $30. Under § 1.1502–22(c), the aggregate amount of T's $50 capital loss carryover from Year 1 that may be included in computing the group's consolidated net capital gain for all years of the group (here Years 2 and 3) may not exceed $30 (the aggregate consolidated net capital gain computed by reference only to T's items, including losses and deductions actually absorbed (i.e., $30 of capital gain in Year 3)). Thus, the group may include $30 of T's Year 1 capital loss carryover in its computation of consolidated net capital gain for Year 3, which offsets the group's capital gains for Year 3. T carries over its remaining $20 of its Year 1 loss to Year 4. The group carries over the Year 2 consolidated net capital loss to Year 4.

(v) Under this section, the aggregate amount of T's net operating loss carryover from Year 1 that may be included in the CNOL deduction of the group for Years 2 and 3 may not exceed $100, which is the amount of the aggregate consolidated taxable income for Years 2 and 3 determined by reference only to T's items, including losses and deductions actually absorbed (i.e., $60 of ordinary income in Year 2 plus $40 of ordinary income, $30 of capital gain, and $30 of SRLY capital losses actually absorbed in Year 3). The group included $60 of T's ordinary loss carryover in its Year 2 CNOL deduction. It may include the remaining $40 of the carryover in its Year 3 CNOL deduction.

(2) *SRLY subgroup limitation.* In the case of a net operating loss carryover or carryback for which there is a SRLY subgroup, the principles of paragraph (c)(1) of this section apply to the SRLY subgroup, and not separately to its members. Thus, the contribution to consolidated taxable income and the net operating loss carryovers and carrybacks arising (or treated as arising) in SRLYs that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section are based on the aggregate amounts of income, gain, deduction, and loss of the members of the SRLY subgroup for the relevant consolidated return years (as provided in paragraph (c)(1)(i)(C) of this section). For an illustration of aggregate amounts during the relevant consolidated return years following the year in which a member of a SRLY subgroup ceases to be a member of the group, see paragraph (c)(2)(viii) *Example 4* of this section. A SRLY subgroup may exist only for a carryover or carryback arising in a year that is not a SRLY (and is not treated as a SRLY under paragraph (c)(1)(ii) of this section) with respect to another group (the former group), or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group). A separate SRLY subgroup is determined for each such carryover or carryback. A consolidated group may include more than one SRLY subgroup and a member may be a member of more than one SRLY subgroup. Solely for purposes of determining the members of a SRLY subgroup with respect to a loss:

(i) *Carryovers.* In the case of a carryover, the SRLY subgroup is composed of the member carrying over the loss (the loss member) and each other member that was a member of the former group that becomes a member of the group at the same time as the loss member. A member remains a member of the SRLY subgroup until it ceases to be affiliated with the loss member. The aggregate determination described in paragraph (c)(1) of this section and this paragraph (c)(2) includes the amounts of income, gain, deduction, and loss of each member of the SRLY subgroup for the consolidated return years during which it remains a member of the SRLY subgroup. For an illustration of the aggregate determination of a SRLY subgroup, see paragraph (c)(2)(viii) *Example 2* of this section.

(ii) *Carrybacks.* In the case of a carryback, the SRLY subgroup is composed of the member carrying back the loss (the loss member) and each other member of the group from which the loss is carried back that has been continuously affiliated with the loss member from the year to which the loss is carried through the year in which the loss arises.

(iii) *Built-in losses.* In the case of a built-in loss, the SRLY subgroup is composed of the member recognizing the loss (the loss member) and each other member that was part of the subgroup with respect to the loss determined under § 1.1502–15(c)(2) immediately before the members became members of the group. The principles of paragraphs (c)(2) (i) and (ii) of this section apply to determine the SRLY subgroup for the built-in loss that is, under paragraph (c)(1)(ii) of this section, treated as arising in a SRLY with respect to the group in which the loss is recognized. For this purpose and as the context requires, a reference in paragraphs (c)(2) (i) and (ii) of this section to a group or former group is a reference to the subgroup determined under § 1.1502–15(c)(2).

(iv) *Principal purpose of avoiding or increasing a SRLY limitation.* The members composing a SRLY subgroup are not treated as a SRLY subgroup if any of them is formed, acquired, or availed of with a principal purpose of avoiding the application of, or increasing any limitation under, this paragraph (c). Any member excluded from a SRLY subgroup, if excluded with a principal purpose of so avoiding or increasing any SRLY limitation, is treated as included in the SRLY subgroup.

(v) *Coordination with other limitations.* This paragraph (c)(2) does not allow a net operating loss to offset income to the extent inconsistent with other limitations or restrictions on the use of losses, such as a limitation based on the nature or activities of members. For example, any dual consolidated loss

may not reduce the taxable income to an extent greater than that allowed under section 1503(d) and § 1.1503–2. See also § 1.1502–47(q) (relating to preemption of rules for life-nonlife groups).

(vi) *Anti-duplication.* If the same item of income or deduction could be taken into account more than once in determining a limitation under this paragraph (c), or in a manner inconsistent with any other provision of the Internal Revenue Code or regulations incorporating this paragraph (c), the item of income or deduction is taken into account only once and in such manner that losses are absorbed in accordance with the ordering rules in paragraph (b) of this section and the underlying purposes of this section.

(vii) *Corporations that leave a SRLY subgroup.* If a loss member ceases to be affiliated with a SRLY subgroup, the amount of the member's remaining SRLY loss from a specific year is determined by multiplying the aggregate of the unabsorbed net operating loss carryovers of the SRLY subgroup from that year by a fraction, the numerator of which is the net operating loss carryover for that year that the member leaving the subgroup had when it became a member of the group, and the denominator of which is the aggregate of the net operating loss carryovers of the members of the SRLY subgroup for that year when they joined the group. The unabsorbed net operating loss carryovers of the SRLY subgroup are those carryovers that have not been absorbed by the group as of the end of the taxable year in which the loss member leaves the group.

(viii) *Examples.* The principles of this paragraph (c)(2) are illustrated by the following examples:

Example 1. Members of SRLY subgroups. (i) Individual A owns all of the stock of P, S, T and M. P and M are each common parents of a consolidated group. During Year 1, P sustains a $50 net operating loss. At the beginning of Year 2, P acquires all the stock of S at a time when the aggregate basis of S's assets exceeds their aggregate value by $70 and S becomes a member of the P group. At the beginning of Year 3, P acquires all the stock of T, T has a $60 net operating loss carryover at the time of the acquisition, and T becomes a member of the P group. During Year 4, S forms S1 and T forms T1, each by contributing assets with built-in gains which are, in the aggregate, material. S1 and T1 become members of the P group. During Year 7, M acquires all of the stock of P, and the members of the P group become members of the M group for the balance of Year 7. The $50 and $60 loss carryovers of P and T are carried to Year 7 of the M group, and the value and basis of S's assets did not change after it became a member of the former P group. None of the transactions described above resulted in an ownership change under section 382(g).

(ii) Under paragraph (c)(2) of this section, a separate SRLY subgroup is determined for each loss carryover and built-in loss. In the P group, P's $50 loss carryover is not treated as arising in a SRLY. See § 1.1502–1(f). Consequently, the carryover is not subject to limitation under paragraph (c) of this section in the P group.

(iii) In the M group, P's $50 loss carryover is treated as arising in a SRLY and is subject to the limitation under paragraph (c) of this section. A SRLY subgroup with respect to that loss is composed of members which were members of the P group, the group as to which the loss was not a SRLY. The SRLY subgroup is composed of P, the member carrying over the loss, and each other member of the P group that became a member of the M group at the same time as P. A member of the SRLY subgroup remains a member until it ceases to be affiliated with P. For Year 7, the SRLY subgroup is composed of P, S, T, S1, and T1.

(iv) In the P group, S's $70 unrealized loss, if recognized within the 5-year recognition period after S becomes a member of the P group, is subject to limitation under paragraph (c) of this section. See § 1.1502–15 and paragraph (c)(1)(ii) of this section. Because S was not continuously affiliated with P, T, or T1 for 60 consecutive months prior to joining the P group, these corporations cannot be included in a SRLY subgroup with respect to S's unrealized loss in the P group. See paragraph (c)(2)(iii) of this section. As a successor to S, S1 is included in a subgroup with S in the P group, and because 100 percent of S1's stock is owned directly by corporations that were members of the SRLY subgroup when the members of the SRLY subgroup became members of the P group, its net positive income is not excluded from the consolidated taxable income of the P group that may be offset by the built-in loss. See paragraph (f) of this section.

(v) In the M group, S's $70 unrealized loss, if recognized within the 5-year recognition period after S becomes a member of the M group, is subject to limitation under paragraph (c) of this section. Prior to becoming a member of the M group, S had been continuously affiliated with P (but not T or T1) for 60 consecutive months and S1 is a successor that has remained continuously affiliated with S. Those members had a net unrealized built-in loss immediately before they became members of the group under § 1.1502–15(c). Consequently, in Year 7, S, S1, and P compose a subgroup in the M group with respect to S's unrealized loss. Because S1 was a member of the SRLY subgroup when it became a member of the M group and also because 100 percent of S1's stock is owned directly by corporations that were members of the SRLY subgroup when the members of the SRLY subgroup became members of the M group its net positive income is not excluded from the consolidated taxable income of the M group that may be offset by the recognized built-in loss. See paragraph (f) of this section.

(vi) In the P group, T's $60 loss carryover arose in a SRLY and is subject to limitation under paragraph (c) of this section. P, S, and S1 were not members of the group in which T's loss arose and T's loss carryover was not subject to the overlap rule described in paragraph (g) of this section with respect to the P group (the former group). Thus, P, S, and S1 are not members of a SRLY subgroup with respect to the T carryover in the P group. See paragraph (c)(2)(i) of this section. As a successor to T, T1 is included in a SRLY subgroup with T in the P group; and, because 100 percent of T1's stock is owned directly by corporations that were members of the SRLY subgroup when the members of the SRLY subgroup became members of the P group, its net positive income is not excluded from the consolidated taxable income of the P group that may be offset by the carryover. See paragraph (f) of this section.

(vii) In the M group, T's $60 loss carryover arose in a SRLY and is subject to limitation under paragraph (c) of this section. T and T1 remain the only members of a SRLY subgroup with respect to the carryover. Because T1 was a member of the SRLY subgroup when it became a member of the M group and also because 100 percent of T1's stock is owned directly by corporations that were members of the SRLY subgroup when the members of the SRLY subgroup became members of the M group, its net positive income is not excluded from the consolidated taxable income of the M group that may be offset by the carryover. See paragraph (f) of this section.

Example 2. Computation of SRLY subgroup limitation. (i) Individual A owns all of the stock of S, T, P and M. P and M are each common parents of a consolidated group. In Year 2, P acquires all the stock of S and T from Individual A, and S and T become members of the P group. For Year 3, the P group has a $45 CNOL, which is attributable to P, and which P carries forward. M is the common parent of another group. At the beginning of Year 4, M acquires all of the stock of P and the former members of the P group become members of the M group. None of the transactions described above resulted in an ownership change under section 382(g).

(ii) P's year to which the loss is attributable, Year 3, is a SRLY with respect to the M group. See § 1.1502–1(f)(1). However, P, S, and T compose a SRLY subgroup with respect to the Year 3 loss under paragraph (c)(2)(i) of this section because Year 3 is not a SRLY (and is not treated as a SRLY) with respect to the P group. P's loss is carried over to the M group's Year 4 and is therefore subject to the SRLY subgroup limitation in paragraph (c)(2) of this section.

(iii) In Year 4, the M group has $10 of consolidated taxable income (computed without regard to the CNOL deduction for Year 4). Such consolidated taxable income would be $45 if determined by reference to only the items of P, S, and T, the members included in the SRLY subgroup with respect to P's loss carryover. Therefore, the SRLY subgroup limitation under paragraph (c)(2) of this section for P's net operating loss carryover from Year 3 is $45. Because the M group has only $10 of consolidated taxable income in Year 4, however, only $10 of P's net operating loss carryover is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(iv) In Year 5, the M group has $100 of consolidated taxable income (computed without regard to the CNOL deduction for Year 5). Neither P, S, nor T has any items of income, gain, deduction, or loss in Year 5. Although the members of the SRLY subgroup do not contribute to the $100 of consolidated taxable income in Year 5, the SRLY subgroup limitation for Year 5 is $35 (the sum of SRLY subgroup consolidated taxable income of $45 in Year 4 and $0 in Year 5, less the $10 net operating loss carryover actually absorbed by the M group in Year 4). Therefore, $35 of P's net operating loss carryover is included in the CNOL deduction under paragraph (a) of this section in Year 5.

Example 3. Inclusion in more than one SRLY subgroup. (i) Individual A owns all of the stock of S, T, P and M. S, P and M are each common parents of a consolidated group. At the beginning of Year 1, S acquires all the stock of T from Individual A, and T becomes a member of the S group. For Year 1, the S group has a CNOL of $10, all of which is attributable to S and is carried over to Year 2. At the beginning of Year 2, P acquires all the stock of S, and S and T become members of the P group. For Year 2, the P group has a CNOL of $35, all of which is attributable to P and is carried over to Year 3. At the beginning of Year 3, M acquires all of the stock of P and the former members of the P group become members of the M group. None of the transactions described above resulted in an ownership change under section 382(g).

(ii) P's and S's net operating losses arising in SRLYs with respect to the M group are subject to limitation under paragraph (c) of this section. P, S, and T compose a SRLY subgroup for purposes of determining the limitation for P's $35 net operating loss carryover arising in Year 2 because, under paragraph (c)(2)(i) of this section, Year 2 is not a SRLY with respect to the P group. Similarly, S and T compose a SRLY subgroup for purposes of determining the limitation for S's $10 net operating loss carryover arising in Year 1 because Year 1 is not a SRLY with respect to the S group.

(iii) S and T are members of both the SRLY subgroup with respect to P's losses and the SRLY subgroup with respect to S's losses. Under paragraph (c)(2) of this section, S's and T's items cannot be included in the determination of the SRLY subgroup limitation for both SRLY subgroups for the same consolidated return year; paragraph (c)(2)(vi) of this section requires the M group to consider the items of S and T only once so that the losses are absorbed in the order of the taxable years in which they were sustained. Because S's loss was incurred in Year 1, while P's loss was incurred in Year 2, the items will be added in the determination of the consolidated taxable income of the S and T SRLY subgroup to enable S's loss to be absorbed first. The taxable income of the P, S, and T SRLY subgroup is then computed by including the consolidated taxable income for the S and T SRLY subgroup less the amount of any net operating loss carryover of S that is absorbed after applying this section to the S subgroup for the year.

Example 4. Corporation ceases to be affiliated with a SRLY subgroup. (i) Individual A owns all of the stock of P and M. P and S are members of the P group and the P group has a CNOL of $30 in Year 1, all of which is attributable to P and carried over to Year 2. At the beginning of Year 2, M acquires all of the stock of P, and P and S become members of the M group. P and S compose a SRLY subgroup with respect to P's net operating loss carryover. For Year 2, consolidated taxable income of the M group determined by reference to only the items of P (and without regard to the CNOL deduction for Year 2) is $40. However, such consolidated taxable income of the M group determined by reference to the items of both P and S is a loss of $20. Thus, the SRLY subgroup limitation under paragraph (c)(2) of this section prevents the M group from including any of P's net operating loss carryover in the CNOL deduction under paragraph (a) of this section in Year 2, and P carries the Year 1 loss to Year 3.

(ii) At the end of Year 2, P sells all of the S stock and S ceases to be a member of the M group and the P subgroup. For Year 3, consolidated taxable income of the M group is $50 (determined without regard to the CNOL deduction for Year 3), and such consolidated taxable income would be $10 if determined by reference to only items of P. However, the limitation under paragraph (c) of this section for Year 3 for P's net operating loss carryover still prevents the M group from including any of P's loss in the CNOL deduction under paragraph (a) of this section. The limitation results from the inclusion of S's items for Year 2 in the determination of the SRLY subgroup limitation for Year 3 even though S ceased to be a member of the M group (and the P subgroup) at the end of Year 2. Thus, the M group's consolidated taxable income determined by reference to only the SRLY subgroup members' items for all consolidated return years of the group through Year 3 (determined without regard to the CNOL deduction) is not a positive amount.

(ix) *Application to other than loss carryovers.* Paragraph (g) of this section and the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)" in paragraph (c)(2) of this section apply only to net operating loss carryovers and net capital loss carryovers, and not with respect to other tax attributes, such as credits. Accordingly, as the context may require, if another regulation references this section and such other regulation does not concern net operating loss carryovers or net capital loss carryovers, then such reference does not include a reference to such paragraph or phrase.

(d) *Coordination with consolidated return change of ownership limitation and transactions subject to old section 382*—(1) *Consolidated return changes of ownership.* If a consolidated return change of ownership occurred before January 1, 1997, the principles of § 1.1502–21A(d) apply to determine the amount of the aggregate of the net operating losses attributable to old members of the group that may be included in the consolidated net operating loss deduction under paragraph (a) of this section. For this purpose, § 1.1502–1(g) is applied by treating that date as the end of the year of change.

(2) *Old section 382.* The principles of § 1.1502–21A(e) apply to disallow or reduce the amount of a net operating loss carryover of a member as a result of a transaction subject to old section 382.

(e) *Consolidated net operating loss.* Any excess of deductions over gross income, as determined under § 1.1502–11(a) (without regard to any consolidated net operating loss deduction), is also referred to as the consolidated net operating loss (or CNOL).

(f) *Predecessors and successors*—(1) *In general.* For purposes of this section, any reference to a corporation, member, common parent, or subsidiary, includes, as the context may require, a reference to a successor or predecessor, as defined in § 1.1502–1(f)(4).

(2) *Limitation on SRLY subgroups*—(i) *General rule.* Except as provided in paragraph (f)(2)(ii) of this section, if a successor's items of income and gain exceed the successor's items of deduction and loss (net positive income), then the net positive income attributable to the successor is excluded from the computation of the consolidated taxable income of a SRLY subgroup.

(ii) *Exceptions.* A successor's net positive income is not excluded from the consolidated taxable income of a SRLY subgroup if—

(A) The successor acquires substantially all the assets and liabilities of its predecessor and the predecessor ceases to exist;

(B) The successor was a member of the SRLY subgroup when the SRLY subgroup members became members of the group;

(C) 100 percent of the stock of the successor is owned directly by corporations that were members of the SRLY subgroup when the SRLY subgroup members became members of the group; or

(D) The Commissioner so determines.

(g) *Overlap with section 382*—(1) *General rule.* The limitation provided in paragraph (c) of this section does not apply to net operating loss carryovers (other than a hypothetical carryover

described in paragraph (c)(1)(i)(D) of this section and a carryover described in paragraph (c)(1)(ii) of this section) when the application of paragraph (c) of this section results in an overlap with the application of section 382. For a similar rule applying in the case of net operating loss carryovers described in paragraphs (c)(1)(i)(D) and (c)(1)(ii) of this section, see § 1.1502–15(g).

(2) *Definitions*—(i) *Generally.* For purposes of this paragraph (g), the definitions and nomenclature contained in section 382, the regulations thereunder, and §§ 1.1502–90 through 1.1502–99 apply.

(ii) *Overlap.* (A) An overlap of the application of paragraph (c) of this section and the application of section 382 with respect to a net operating loss carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 382(a) limitation with respect to that carryover (the section 382 event).

(B) If an overlap described in paragraph (g)(2)(ii)(A) of this section occurs with respect to net operating loss carryovers of a corporation whose SRLY event occurs within the six month period beginning on the date of a section 382 event, then an overlap is treated as also occurring with respect to that corporation's net operating loss carryover that arises within the period beginning with the section 382 event and ending with the SRLY event.

(C) For special rules in the event that there is a SRLY subgroup and/or a loss subgroup as defined in § 1.1502–91(d)(1) with respect to a carryover, see paragraph (g)(4) of this section.

(3) *Operating rules*—(i) *Section 382 event before SRLY event.* If a SRLY event occurs on the same date as a section 382 event or within the six month period beginning on the date of the section 382 event, paragraph (g)(1) of this section applies beginning with the tax year that includes the SRLY event.

(ii) *SRLY event before section 382 event.* If a section 382 event occurs within the period beginning the day after the SRLY event and ending six months after the SRLY event, paragraph (g)(1) of this section applies starting with the first tax year that begins after the section 382 event.

(4) *Subgroup rules.* In general, in the case of a net operating loss carryover for which there is a SRLY subgroup and a loss subgroup (as defined in § 1.1502–91(d)(1)), the principles of this paragraph (g) apply to the SRLY subgroup, and not separately to its members. However, paragraph (g)(1) of this section applies—

(i) With respect to a carryover described in paragraph (g)(2)(ii)(A) of this section only if—

(A) All members of the SRLY subgroup with respect to that carryover are also included in a loss subgroup with respect to that carryover; and

(B) All members of a loss subgroup with respect to that carryover are also members of a SRLY subgroup with respect to that carryover; and

(ii) With respect to a carryover described in paragraph (g)(2)(ii) (B) of this section only if all members of the SRLY subgroup for that carryover are also members of a SRLY subgroup that has net operating loss carryovers described in paragraph (g)(2)(ii)(A) of this section that are subject to the overlap rule of paragraph (g)(1) of this section.

(5) *Examples.* The principles of this paragraph (g) are illustrated by the following examples:

Example 1. Overlap—Simultaneous Acquisition. (i) Individual A owns all of the stock of P, which in turn owns all of the stock of S. P and S file a consolidated return. In Year 2, B, an individual unrelated to Individual A, forms T which incurs a $100 net operating loss for that year. At the beginning of Year 3, S acquires T.

(ii) S's acquisition of T results in T becoming a member of the P group (the SRLY event) and also results in an ownership change of T, within the meaning of section 382(g), that gives rise to a limitation under section 382(a) (the section 382 event) with respect to the T carryover.

(iii) Because the SRLY event and the change date of the section 382 event occur on the same date, there is an overlap of the application of the SRLY rules and the application of section 382.

(iv) Consequently, under this paragraph (g), in Year 3 the SRLY limitation does not apply to the Year 2 $100 net operating loss.

Example 2. Overlap—Section 382 event before SRLY event. (i) Individual A owns all of the stock of P, which in turn owns all of the stock of S. P and S file a consolidated return. In Year 1, B, an individual unrelated to Individual A, forms T which incurs a $100 net operating loss for that year. On February 28 of Year 2, S purchases 55% of T from Individual B. On June 30, of Year 2, S purchases an additional 35% of T from Individual B.

(ii) The February 28 purchase of 55% of T is a section 382 event because it results in an ownership change of T, under section 382(g), that gives rise to a section 382(a) limitation with respect to the T carryover. The June 30 purchase of 35% of T results in T becoming a member of the P group and is therefore a SRLY event.

(iii) Because the SRLY event occurred within six months of the change date of the section 382 event, there is an overlap of the application of the SRLY rules and the application of section 382.

(iv) Consequently, under paragraph (g) of this section, in Year 2 the SRLY limitation does not apply to the Year 1 $100 net operating loss.

Example 3. No overlap—Section 382 event before SRLY event. (i) The facts are the same as in *Example 2* except that Individual B does not sell the additional 35% of T to S until September 30, Year 2.

(ii) The February 28 purchase of 55% of T is a section 382 event because it results in an ownership change of T, under section 382(g), that gives rise to a section 382(a) limitation with respect to the T carryover. The September 30 purchase of 35% of T results in T becoming a member of the P group and is therefore a SRLY event.

(iii) Because the SRLY event did not occur within six months of the change date of the section 382 event, there is no overlap of the application of the SRLY rules and the application of section 382. Consequently, the Year 1 net operating loss is subject to a SRLY limitation and a section 382 limitation.

Example 4. Overlap—SRLY event before section 382 event. (i) P and S file a consolidated return. S has owned 40% of T for 6 years. For Year 6, T has an net operating loss of $500 that is carried forward. On March 31, Year 7, S acquires an additional 40% of T, and on August 31, Year 7, S acquires the remaining 20% of T.

(ii) The March 31 purchase of 40% of T results in T becoming a member of the P group and is therefore a SRLY event. The August 31 purchase of 20% of T is a section 382 event because it results in an ownership change of T, under section 382(g), that gives rise to a section 382(a) limitation with respect to the T carryover.

(iii) Because the SRLY event occurred within six months of the change date of the section 382 event, there is an overlap of the application of the SRLY rules and the application of section 382 within the meaning of this paragraph (g).

(iv) Under this paragraph (g), the SRLY rules of paragraph (c) of this section will apply to the Year 7 tax year. Beginning in Year 8 (the year after the section 382 event), any unabsorbed portion of the Year 6 net operating loss will not be subject to a SRLY limitation.

Example 5. Overlap—Coextensive subgroups. (i) Individual A owns all of the stock of S, which in turn owns all of the stock of T. S and T file a consolidated return beginning in Year 1. B, an individual unrelated to A, owns all of the stock of P, the common parent of a consolidated group. In Year 2, the S group has a $200 consolidated net operating loss which is carried forward, of which $100 is attributable to S, and $100 is attributable to T. At the beginning of Year 3, the P group acquires all of the stock of S from Individual A.

(ii) P's acquisition of S results in S and T becoming members of the P group (the SRLY event). With respect to the Year 2 net operating loss carryover, S and T compose a SRLY subgroup under paragraph (c)(2) of this section.

(iii) S and T also compose a loss subgroup under § 1.1502–91(d)(1) with respect to the Year 2 net operating loss carryover. P's acquisition also results in an ownership change of S, the subgroup parent, within the meaning of section 382(g), that gives rise to a limitation under section 382(a) (the section 382 event) with respect to the Year 2 carryover.

(iv) Because the SRLY event and the change date of the section 382 event occur on the same date, there is an overlap of the application of the SRLY rules and the application of section 382 within the meaning of paragraph (g) of this section. Because the SRLY subgroup and the loss subgroup are coextensive, under paragraph (g) of this section, the SRLY limitation does not apply to the Year 2 $200 net operating loss.

Example 6. No Overlap—Different subgroups. (i) Individual B owns all of the stock of P, the common parent of a consolidated group. P owns all of the stock of S and all of the stock of T. Individual A owns all of the stock of X, the common parent of another consolidated group. In Year 1, the P group has a $200 consolidated net operating loss, of which $100 is attributable to S and $100 is attributable to T. At the beginning of Year 3, the X group acquires all of the stock of S and T from P and does not make an election under § 1.1502–91(d)(4) (concerning an election to treat the loss subgroup parent requirement as having been satisfied).

(ii) X's acquisition of S and T results in S and T becoming members of the X group (the SRLY event). With respect to the Year 1 net operating loss, S and T compose a SRLY subgroup under paragraph (c)(2) of this section.

(iii) S and T do not bear (and are not treated as bearing) a section 1504(a)(1) relationship. Therefore S and T do not qualify as a loss subgroup under § 1.1502–91(d)(1). X's acquisition of S and T results in separate ownership changes of S and T, that give rise to separate limitations under section 382(a) (the section 382 events) with respect to each of S and T's Year 1 net operating loss carryovers. See § 1.1502–94.

(iv) The SRLY event and the change dates of the section 382 events occur on the same date. However, paragraph (g)(1) of this section does not apply because the SRLY subgroup (composed of S and T) is not coextensive with a loss subgroup with respect to the Year 1 carryovers. Consequently, the Year 1 net operating loss is subject to both a SRLY subgroup limitation and also separate section 382 limitations for each of S and T.

Example 7. No Overlap—Different subgroups. (i) Individual A owns all of the stock of T and all of the stock of S, the common parent of a consolidated group. B, an individual unrelated to Individual A, owns all of the stock of P, the common parent of another consolidated group. In Year 1, T has a net operating loss of $100 that is carried forward. At the end of Year 2, S acquires all of the stock of T from Individual A. In Year 3, the S group sustains a $200 consolidated net operating loss that is carried forward. In Year 8, the P group acquires all of the stock of S from Individual A.

(ii) S's acquisition of T in Year 1 results in T becoming a member of the S group. The acquisition, however, did not result in an ownership change under section 382(g). As a result, T's Year 1 net operating loss is subject to SRLY within the S group. At the end of Year 7, § 1.1502–96(a) treats T's Year 1 net operating loss as not having arisen in a SRLY with respect to the S group. Section 1.1502–96(a), however, applies only for purposes of §§ 1.1502–91 through 1.1502–96 and § 1.1502–98 but not for purposes of this section. See § 1.1502–96(a)(5).

(iii) P's acquisition of S in Year 8 results in S and T becoming members of the P group (the SRLY event). With respect to the Year 1 net operating loss, S and T do not compose a SRLY subgroup under paragraph (c)(2) of this section.

(iv) S and T compose a loss subgroup under § 1.1502–91(d)(1) with respect to the Year 1 net operating loss carryover. P's acquisition of S results in an ownership change of the loss subgroup, within the meaning of section 382(g), that gives rise to a subgroup limitation under section 382(a) (the section 382 event) with respect to that carryover.

(v) The SRLY event and the change date of the section 382 event occur on the same date. However, under paragraph (g)(4) of this section, because the SRLY subgroup and the loss subgroup are not coextensive, T's Year 1 net operating loss carryover is subject to a SRLY limitation.

(vi) With respect to the Year 3 net operating loss carryover, S and T compose both a SRLY subgroup and a loss subgroup under § 1.1502–91(d)(1). Thus, paragraph (g)(1) of this section applies and the S group's Year 3 net operating loss carryover is not subject to a SRLY limitation.

Example 8. SRLY after overlap. (i) Individual A owns all of the stock of R and M, each the common parent of a consolidated group. B, an individual unrelated to Individual A, owns all of the stock of D. In Year 1, D incurs a $100 net operating loss that is carried forward. At the beginning of Year 3, R acquires all of the stock of D. In Year 5, M acquires all of the stock of R in a transaction that did not result in an ownership change of R.

(ii) R's Year 3 acquisition of D results in D becoming a member of the R group (the SRLY event) and also results in an ownership change of D, that gives rise to a limitation under section 382(a) (the section 382 event) with respect to D's net operating loss carryover.

(iii) Because the SRLY event and the change date of the section 382 event occur on the same date, there is an overlap of the application of paragraph (c) of this section and section 382 with respect to D's net operating loss. Consequently, under this paragraph (g), D's Year 1 $100 net operating loss is not subject to a SRLY limitation in the R group.

(iv) M's Year 5 acquisition of R results in R and D becoming members of the M group (the SRLY event), but does not result in an ownership change of R or D that gives rise to a limitation under section 382(a). Because there is no section 382 event, the application of the SRLY rules and section 382 do not overlap. Consequently, D's Year 1 $100 net operating loss is subject to a SRLY limitation in the M group.

(v) Because D's Year 1 net operating loss carryover was subject to the overlap rule of paragraph (g) of this section when it joined the R group, under § 1.1502–21(c)(2) the SRLY subgroup with respect to that carryover includes all of the members of the R group that joined the M group at the same time as D.

Example 9. Overlap—Interim losses. (i) Individual A owns all of the stock of P and S, each the common parent of a consolidated group. S owns all of the stock of T, its only subsidiary. B, an individual unrelated to Individual A, owns all of the stock of M, the common parent of a consolidated group. In Year 1, the S group has a $100 consolidated net operating loss. On January 1 of Year 2, P acquires all of the stock of S from Individual A. On January 1 of Year 3, M acquires 51% of the stock of P from Individual A. On May 31 of Year 3, M acquires the remaining 49% of the stock of P from Individual A. The P group, for the Year 3 period prior to June 1 had a $50 consolidated net operating loss, and under paragraph (h)(2)(iv) of this section, the loss is attributable entirely to S. Other than the losses described above, the P group does not have any other consolidated net operating losses.

(ii) In the P group, S's $100 loss carryover is treated as arising in a SRLY and is subject to the limitation under paragraph (c) of this section. A SRLY subgroup with respect to that loss is composed of S and T, the members which were members of the S group as to which the loss was not a SRLY.

(iii) M's January 1 purchase of 51% of P is a section 382 event because it results in an ownership change of S and T that gives rise to a section 382(a) limitation (the section 382 event) with respect to the Year 1 net operating loss carryover. The purchase, however, does not result in an ownership change of P because it is not a loss corporation under section 382(k)(1). M's May 31 purchase of 49% of P results in P, S, and T becoming members of the M group and is therefore a SRLY event.

(iv) With respect to the Year 1 net operating loss, S and T compose a SRLY subgroup under paragraph (c)(2) of this section and a loss subgroup under § 1.1502–91(d)(1). The loss subgroup does not include P because the only loss at the time of the section 382 event was subject to SRLY with respect to the P group. See § 1.1502–91(d)(1).

(v) Because the SRLY event and the change date of the section 382 event occur on the same date and the SRLY subgroup and loss subgroup are coextensive with respect to the Year 1 net operating loss carryover, there is an overlap of the application of the SRLY rules and the application of section 382 within the meaning of paragraph (g) of this section. Thus, the SRLY limitation does not apply to that carryover.

(vi) The Year 3 net operating loss, which arose between the section 382 event and the SRLY event, is a net operating loss described in paragraph (g)(2)(ii)(B) of this section because it is the net operating loss of a corporation whose SRLY event occurs within

the six month period beginning on the date of a section 382 event.

(vii) With respect to the Year 3 net operating loss, P, S, and T compose a SRLY subgroup under paragraph (c)(2) of this section. Because P, a member of the SRLY subgroup for the Year 3 carryover, is not also a member of a SRLY subgroup that has net operating loss carryovers described in paragraph (g)(2)(ii)(A) of this section (the Year 1 net operating loss), the Year 3 carryover is subject to a SRLY limitation in the M group. See paragraph (g)(4)(ii) of this section.

(h) *Effective date*—(1) *In general.* This section generally applies to taxable years for which the due date (without extensions) of the consolidated return is after June 25, 1999. However—

(i) In the event that paragraph (g)(1) of this section does not apply to a particular net operating loss carryover in the current group, then solely for purposes of applying paragraph (c) of this section to determine a limitation with respect to that carryover and with respect to which the SRLY register (consolidated taxable income determined by reference to only the member's or subgroup's items of income, gain, deduction or loss) began in a taxable year for which the due date of the return was on or before June 25, 1999, paragraph (c)(2) of this section shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)"; and

(ii) For purposes of paragraph (g) of this section, only an ownership change to which section 382(a), as amended by the Tax Reform Act of 1986, applies shall constitute a section 382 event.

(2) *SRLY limitation.* Except in the case of those members (including members of a SRLY subgroup) described in paragraph (h)(3) of this section, a group does not take into account a consolidated taxable year beginning before January 1, 1997, in determining the aggregate of the consolidated taxable income under paragraph (c)(1) of this section (including for purposes of § 1.1502–15 and § 1.1502–22(c)) for the members (or SRLY subgroups).

(3) *Prior retroactive election.* A consolidated group that applied the rules of § 1.1502–21T(g)(3) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, to all consolidated return years ending on or after January 29, 1991, and beginning before January 1, 1997, does not take into account a consolidated taxable year beginning before January 29, 1991, in determining the aggregate of the consolidated taxable income under paragraph (c)(1) of this section (including for purposes of § 1.1502–15 and § 1.1502–22(c)) for the members (or SRLY subgroups).

(4) *Offspring rule.* Paragraph (b)(2)(ii)(B) of this section applies to net operating losses arising in taxable years ending on or after June 25, 1999.

(5) *Waiver of carrybacks.* Paragraph (b)(3)(ii)(B) of this section (relating to the waiver of carrybacks for acquired members) applies to acquisitions occurring after June 25, 1999.

(6) *Prior periods.* For certain taxable years ending on or before June 25, 1999, see § 1.1502–21T in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.

§ 1.1502–21T [Removed]

Par. 7. Section 1.1502–21T is removed.

Par. 8. Section 1.1502–22 is added to read as follows:

§ 1.1502–22 Consolidated capital gain and loss.

(a) *Capital gain.* The determinations under section 1222, including capital gain net income, net long-term capital gain, and net capital gain, with respect to members during consolidated return years are not made separately. Instead, consolidated amounts are determined for the group as a whole. The consolidated capital gain net income for any consolidated return year is determined by reference to—

(1) The aggregate gains and losses of members from sales or exchanges of capital assets for the year (other than gains and losses to which section 1231 applies);

(2) The consolidated net section 1231 gain for the year (determined under § 1.1502–23); and

(3) The net capital loss carryovers or carrybacks to the year.

(b) *Net capital loss carryovers and carrybacks*—(1) *In general.* The determinations under section 1222, including net capital loss and net short-term capital loss, with respect to members during consolidated return years are not made separately. Instead, consolidated amounts are determined for the group as a whole. Losses included in the consolidated net capital loss may be carried to consolidated return years, and, after apportionment, may be carried to separate return years. The net capital loss carryovers and carrybacks consist of—

(i) Any consolidated net capital losses of the group; and

(ii) Any net capital losses of the members arising in separate return years.

(2) *Carryovers and carrybacks generally.* The net capital loss carryovers and carrybacks to a taxable year are determined under the principles of section 1212 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they were sustained, and losses carried from taxable years ending on the same date, and which are available to offset consolidated capital gain net income, generally are absorbed on a pro rata basis. Additional rules provided under the Internal Revenue Code or regulations also apply, as well as the SRLY limitation under paragraph (c) of this section. See, e.g., section 382(l)(2)(B).

(3) *Carryovers and carrybacks of consolidated net capital losses to separate return years.* If any consolidated net capital loss that is attributable to a member may be carried to a separate return year under the principles of § 1.1502–21(b)(2), the amount of the consolidated net capital loss that is attributable to the member is apportioned and carried to the separate return year (apportioned loss).

(4) *Special rules*—(i) *Short years in connection with transactions to which section 381(a) applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a net capital loss may be carried.

(ii) *Special status losses.* [Reserved]

(c) *Limitations on net capital loss carryovers and carrybacks from separate return limitation years.* The aggregate of the net capital losses of a member arising (or treated as arising) in SRLYs that are included in the determination of consolidated capital gain net income for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate of the consolidated capital gain net income for all consolidated return years of the group determined by reference to only the member's items of gain and loss from capital assets as defined in section 1221 and trade or business assets defined in section 1231(b), including the member's losses actually absorbed by the group in the taxable year (whether or not absorbed by the member). The principles of § 1.1502–21(c) (including the SRLY subgroup principles under § 1.1502–21(c)(2)) apply with appropriate adjustments for purposes of applying this paragraph (c).

(d) *Coordination with respect to consolidated return change of ownership limitation occurring in consolidated return years beginning before January 1, 1997.* If a consolidated return change of ownership occurred before January 1, 1997, the principles of § 1.1502–22A(d) apply to determine the amount of the aggregate of the net capital loss attributable to old members of the group (as those terms are defined in § 1.1502–1(g)), that may be included in the net capital loss carryover under paragraph (b) of this section. For this purpose, § 1.1502–1(g) is applied by treating that date as the end of the year of change.

(e) *Consolidated net capital loss.* Any excess of losses over gains, as determined under paragraph (a) of this section (without regard to any carryovers or carrybacks), is also referred to as the consolidated net capital loss.

(f) *Predecessors and successors.* For purposes of this section, the principles of § 1.1502–21(f) apply with appropriate adjustments.

(g) *Overlap with section 383*—(1) *General rule.* The limitation provided in paragraph (c) of this section does not apply to net capital loss carryovers ((other than a hypothetical carryover like those described in § 1.1502–21(c)(1)(i)(D) and a carryover like those described in § 1.1502–21(c)(1)(ii)) when the application of paragraph (c) of this section results in an overlap with the application of section 383. For a similar rule applying in the case of net capital loss carryovers like those described in §§ 1.1502–21(c)(1)(i)(D) and (c)(1)(ii), see § 1.1502-15(g).

(2) *Definitions*—(i) *Generally.* For purposes of this paragraph (g), the definitions and nomenclature contained in sections 382 and 383, the regulations thereunder, and §§ 1.1502–90 through 1.1502–99 apply.

(ii) *Overlap.* (A) An overlap of the application of paragraph (c) of this section and the application of section 383 with respect to a net capital loss carryover occurs if a corporation becomes a member of the consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 382 limitation with respect to that carryover (the section 383 event).

(B) If an overlap described in paragraph (g)(2)(ii)(A) of this section occurs with respect to net capital loss carryovers of a corporation whose SRLY event occurs within the six month period beginning on the date of a section 383 event, then an overlap is treated as also occurring with respect to that corporation's net capital loss carryover that arises within the period beginning with the section 383 event and ending with the SRLY event.

(C) For special rules in the event that there is a SRLY subgroup and/or a loss subgroup as defined in § 1.1502–91(d)(1) with respect to a carryover, see paragraph (g)(4) of this section.

(3) *Operating rules*—(i) *Section 383 event before SRLY event.* If a SRLY event occurs on the same date as a section 383 event or within the six month period beginning on the date of the section 383 event, paragraph (g)(1) of this section applies beginning with the tax year that includes the SRLY event.

(ii) *SRLY event before section 383 event.* If a section 383 event occurs within the period beginning the day after the SRLY event and ending six months after the SRLY event, paragraph (g)(1) of this section applies starting with the first tax year that begins after the section 383 event.

(4) *Subgroup rules.* In general, in the case of a net capital loss carryover for which there is a SRLY subgroup and a loss subgroup (as defined in § 1.1502–91(d)(1)), the principles of this paragraph (g) apply to the SRLY subgroup, and not separately to its members. However, paragraph (g)(1) of this section applies—

(i) With respect to a carryover described in paragraph (g)(2)(ii)(A) of this section only if—

(A) All members of the SRLY subgroup with respect to that carryover are also included in a loss subgroup with respect to that carryover; and

(B) All members of a loss subgroup with respect to that carryover are also members of a SRLY subgroup with respect to that carryover; and

(ii) With respect to a carryover described in paragraph (g)(2)(ii)(B) of this section only if all members of the SRLY subgroup for that carryover are also members of a SRLY subgroup that has net capital loss carryovers described in paragraph (g)(2)(ii)(A) of this section that are subject to the overlap rule of paragraph (g)(1) of this section.

(h) *Effective date*—(1) *In general.* This section generally applies to taxable years for which the due date (without extensions) of the consolidated return is after June 25, 1999. However—

(i) In the event that paragraph (g)(1) of this section does not apply to a particular net capital loss carryover in the current group, then solely for purposes of applying paragraph (c) of this section to determine a limitation with respect to that carryover and with respect to which the SRLY register (consolidated taxable income determined by reference to only the member's or subgroup's items of income, gain, deduction or loss) began in a taxable year for which the due date of the return was on or before June 25, 1999, the principles of § 1.1502–21(c)(2) shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)"; and

(ii) For purposes of paragraph (g) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986, applies and which results in a section 382 limitation shall constitute a section 383 event.

(2) *Prior periods.* For certain taxable years ending on or before June 25, 1999, see § 1.1502–22T in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.

§ 1.1502–22T [Removed]

Par. 9. Section 1.1502–22T is removed.

Par. 10. Section 1.1502–23 is added to read as follows:

§ 1.1502–23 Consolidated net section 1231 gain or loss

(a) *In general.* Net section 1231 gains and losses of members arising during consolidated return years are not determined separately. Instead, the consolidated net section 1231 gain or loss is determined under this section for the group as a whole.

(b) Example. The following example illustrates the provisions of this section:

Example. Use of SRLY registers with net gains and net losses under section 1231. (i) In Year 1, T sustains a $20 net capital loss. At the beginning of Year 2, T becomes a member of the P group. T's capital loss carryover from Year 1 is subject to SRLY limits under § 1.1502–22(c). The members of the P group contribute the following to the consolidated taxable income for Year 2 (computed without regard to T's net capital loss carryover under § 1.1502–22):

	P	T
Year 1 (SRLY)		
Ordinary		
Capital		(20)
Year 2		
Ordinary	10	20
Capital	70	0
§ 1231	(60)	30

(ii) Under section 1231, if the section 1231 losses for any taxable year exceed the section 1231 gains for such taxable year, such gains and losses are treated as ordinary gains or losses. Because the P group's section 1231

losses, $(60), exceed the section 1231 gains, $30, the P group's net loss is treated as an ordinary loss. T's net section 1231 gain has the same character as the P group's consolidated net section 1231 loss, so T's $30 of section 1231 income is treated as ordinary income for purposes of applying § 1.1502–22(c). Under § 1.1502–22(c), the group's consolidated net capital gain determined by reference only to T's items is $0. None of T's capital loss carryover from Year 1 may be taken into account in Year 2.

(c) *Recapture of ordinary loss.* [Reserved]

(d) *Effective date*—(1) *In general.* This section applies to gains and losses arising in the determination of consolidated net section 1231 gain or loss for taxable years for which the due date (without extensions) of the consolidated return is taxable years is after June 25, 1999.

(2) *Application to prior periods.* See § 1.1502–21(h)(3) for rules applicable to groups that applied the rules of this section to consolidated return years ending on or after January 29, 1991, and beginning before January 1, 1997.

§ 1.1502–23T [Removed]

Par. 11. Section 1.1502–23T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 13. In § 602.101, paragraph (b) is amended by removing the entry for § 1.1502–21T from the table and adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.1502–21	1545–1237
. . . . .	.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: June 18, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–16161 Filed 6–25–99; 1:27 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8824]

RIN 1545–AU32

Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations regarding the operation of sections 382 and 383 of the Internal Revenue Code of 1986 (relating to limitations on net operating loss carryforwards and certain built-in losses and credits following an ownership change) with respect to consolidated groups. The regulations include rules for determining whether a loss group or a loss subgroup has an ownership change, for computing a consolidated section 382 limitation or subgroup section 382 limitation, and for applying sections 382 and 383 to corporations that join or leave a group. The rules are necessary to provide guidance to such groups on the use of certain of their tax attributes.

DATES: *Effective Dates:* These regulations are effective June 25, 1999.

Applicability Dates: For dates of application and special effective date rules, see Effective Dates under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Lee A. Kelley at (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in these final regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1218.

The collections of information in this regulation are in §§ 1.1502–20(g)(4), 1.1502–95(e)(8), 1.1502–95(f), and 1.1502-96(e). This information is required to assure that a section 382 limitation is properly determined and applied in cases of corporations that become or cease to be members of a consolidated group. The collection of information in § 1.1502–98(e)(8) is mandatory. The other collections of information are required to obtain a benefit. The likely respondents are business or other for-profit institutions.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by August 31, 1999.

Comments are specifically requested concerning:

Whether the collection[s] of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection[s] of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Estimated total annual reporting burden: 662 hours.

The estimated annual burden per respondent varies from 15 to 25 minutes, depending on individual circumstances, with an estimated average of 20 minutes.

Estimated number of respondents: 12,054.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On February 4, 1991, the IRS and Treasury issued three notices of proposed rulemaking, CO–132–87 (56 FR 4194), CO–077–90 (56 FR 4183), and CO–078–90 (56 FR 4228), setting forth rules regarding the application of sections 382 and 383 by consolidated groups and by controlled groups, and regarding the use of built-in deductions and net operating losses and capital losses, including the carryover and carryback of separate return limitation year (SRLY) losses of members of consolidated groups. A public hearing regarding the three sets of proposed regulations was held on April 8, 1991.

On June 27, 1996, the IRS and Treasury published temporary regulations (TD 8678, 61 FR 33335) setting forth rules regarding the application of section 382 to affiliated groups of corporations filing consolidated returns. These regulations were substantially identical to the proposed regulations. A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** on the same day (CO–026–96, 61 FR 33391) and the proposed regulations published in 1991 were withdrawn. The IRS and Treasury also published temporary regulations regarding the SRLY limitation (TD 8677, 61 FR 33321), and controlled group losses (TD 8679, 61 FR 33313). Notices of proposed rulemaking cross-referencing these temporary regulations were published on the same day (CO–025–96, 61 FR 33395 and CO–024–96, 61 FR 33393) and the proposed regulations published in 1991 were withdrawn.

This Treasury decision adopts the 1996 proposed regulations regarding the application of section 382 to affiliated groups of corporations filing consolidated returns. The principal changes to those proposed regulations are described below.

As companions to this Treasury decision, the IRS and Treasury also are issuing final regulations relating to the application of sections 382 and 383 by members of controlled groups, and relating to the SRLY limitation. See TD 8823 and TD 8825 published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

A. Overview

1. Sections 382 and 383

Under section 382, if an ownership change occurs with respect to a loss corporation (as defined in section 382 and the regulations thereunder), the amount of the loss corporation's taxable income for a post-change year that may be offset by the net operating losses of the loss corporation arising before the ownership change is limited by an amount known as the section 382 limitation. The section 382 limitation for a taxable year of a loss corporation after an ownership change generally is equal to the fair market value of the corporation's stock immediately before the ownership change multiplied by the long-term tax exempt rate (a rate of return published periodically in the Internal Revenue Bulletin). See generally sections 382(b), (e), and (f). This limitation for a taxable year may be increased by certain items, such as an unused limitation from a prior taxable year and certain built-in gains recognized during the taxable year. See section 382(b)(2) and (h).

In general, an ownership change involves an increase of more than 50 percentage points in stock ownership by 5-percent shareholders during the testing period (usually the 3-year period ending on the date on which a loss corporation must make a determination whether it has had an ownership change). In determining whether an ownership change has occurred, all transactions occurring during the testing period that affect the stock ownership of any 5-percent shareholder whose percentage of stock ownership has increased as of the close of the testing date are taken into account. The determination of the percentage ownership interest of any shareholder is made on the basis of the ratio of the fair market value of the loss corporation stock owned by the shareholder to the total fair market value of the loss corporation's outstanding stock. Ordinarily, all stock of the loss corporation, except certain preferred stock described in section 1504(a)(4), is taken into account. These rules are contained in §§ 1.382–2 and 1.382–2T and relate to ownership changes of corporations without regard to whether the corporations file a separate return or join in filing a consolidated return.

2. General Description of Final Regulations

This document contains two sets of rules. The first set of rules, set forth in §§ 1.1502–91 through 1.1502–93, provide the tax treatment for net operating losses that arise in (and net unrealized built-in losses with respect to) years that are not separate return limitation years with respect to a consolidated group. (A separate return limitation year, or SRLY, generally is a taxable year of a subsidiary in which the subsidiary was not a member of the group). In general, these rules adopt a single entity approach to determine ownership changes and the section 382 limitations with respect to such losses.

These final regulations also extend the single entity approach to loss subgroups within consolidated groups. A loss subgroup generally consists of two or more corporations that continue to be affiliated with each other after leaving one group and joining another where at least one of the corporations carries over losses from the first group to the second group. Thus, the single entity approach under the final regulations can apply, for example, to a consolidated group's acquisition of another consolidated group or of a chain of subsidiaries from another group.

The second set of rules, set forth in §§ 1.1502–94 and 1.1502–95, applies to corporations that join or leave a consolidated group with respect to certain attributes (e.g., attributes other than those arising in a consolidated return year). In general, section 382 is applied separately with respect to those attributes because the attributes cannot be used by other members. Section 1.1502–96 contains miscellaneous rules.

In general, § 1.1502–98 provides that the rules contained in §§ 1.1502–91 through 1.1502–96 also apply for purposes of section 383, with adjustments to reflect that section 383 applies to credits and net capital losses.

B. Amendments to the Proposed Regulations

1. Definition of a Loss Subgroup, § 1.1502–91(d)

Under the proposed regulations, a loss subgroup is composed of members of one group (the former group) that become members of another consolidated group. In the case of a net operating loss carryover, the members of a group compose a loss subgroup if (i) They were affiliated with each other in another group, (ii) they bear a relationship to each other described in section 1504(a)(1) immediately after they become members of the group (the subgroup parent requirement), and (iii) at least one of the members carries over a net operating loss arising in a year that is not a SRLY (and is not treated as a SRLY under proposed § 1.1502–21(c)) with respect to the former group. In the case of a net unrealized built-in loss (NUBIL), the members of a group compose a loss subgroup if they (i) Have been continuously affiliated with each other for the 5 consecutive year period ending immediately before they become members of the group (the five-year affiliation requirement), (ii) meet the subgroup parent requirement, and (iii) have, in the aggregate, a NUBIL. A

member ceases to be included in a loss subgroup when it files a separate return, or when a member breaks the relationship described in section 1504(a)(1) to the loss subgroup parent, regardless of whether that member leaves the current group or remains in the consolidated group.

Retention of the Subgroup Percent Requirement in General

Commentators suggested that the final regulations should eliminate the subgroup parent requirement in order to provide a single subgroup definition for the SRLY limitation and for the section 382 limitation. Other commentators recommended eliminating the requirement following an ownership change of the loss subgroup.

Like a loss group, a loss subgroup has an ownership change if the loss subgroup parent has an ownership change (the parent change method). The parent change method, adopted for its administrative simplicity, looks only to ownership shifts of the parent corporation in determining whether the consolidated group (or loss subgroup) has an ownership change. Owner shifts of minority stock of subsidiary members are not taken into account. Application of the parent change method to loss subgroups eliminates the administrative burdens associated with a rule that would mandate separate tracking of the minority stock of each subgroup member for determining whether an ownership change of the loss subgroup has occurred.

The IRS and the Treasury have determined that, in circumstances where owner shifts of a loss subgroup must continue to be tracked, the parent change method should continue to apply for determining whether a subgroup has an ownership change. Accordingly, in general, these final regulations retain the subgroup parent requirement. Also, these final regulations retain the general rule that a member ceases to be a member of the loss subgroup on the first day that it ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent. The final regulations, however, provide an election to treat the subgroup parent requirement as satisfied, and provide certain exceptions for ceasing to be a member of a loss subgroup when a member breaks the relationship described in section 1504(a)(1) to the loss subgroup parent, but remains within the current consolidated group.

Election to Treat Subgroup Parent Requirement As Satisfied

The subgroup parent requirement may preclude subgroup treatment in instances where single entity principles make such treatment conceptually appropriate. For example, brother-sister corporations with net operating loss carryovers that are not SRLY losses with respect to the former group are not a loss subgroup even if the same acquirer acquires both corporations at the same time. However, single entity principles support treating the brother-sister corporations as a subgroup because they were affiliated with each other in the former group and remain affiliated in the current group.

To extend single entity treatment in such cases would require a mechanism other than the parent change method to track owner shifts of the loss subgroup. Some commentators suggested permitting the parent of the current group to designate the subgroup parent. Under this approach, such designation would be respected unless the designation is made with a principal purpose of avoiding an ownership change.

The IRS and the Treasury believe that the ability to designate the subgroup parent presents opportunities for avoiding or lessening the impact of section 382. Also, a principal purpose standard is not an effective mechanism for preventing inappropriate designations because the *only* purpose of such designation is to apply the ownership change rules of section 382.

The IRS and Treasury recognize, however, that it is appropriate to extend subgroup treatment to the extent that single entity principles support such treatment, and to the extent that subgroup treatment does not compromise the determination whether a subgroup has an ownership change. Also, the IRS and Treasury recognize that, in certain circumstances, taxpayers may prefer more stringent ownership change rules if they can obtain the benefit of subgroup treatment. Finally, the IRS and Treasury recognize that the ability of brother-sister corporations to constitute a section 382 subgroup may be necessary in order for section 382 subgroups to conform with SRLY subgroups, thus permitting application of the rule that eliminates a separate SRLY limitation where the application of SRLY and section 382 overlap. See §§ 1.1502–15(g), 1.1502–21(g) and 1.1502–22(g).

Accordingly, these final regulations provide that two or more corporations that become members of a consolidated group at the same time and that were affiliated with each other immediately before becoming members of the group are deemed to meet the subgroup parent requirement immediately after they become members of the group if the common parent of the acquiring group makes an election under § 1.1502–91(d)(4) with respect to those members. An election includes all corporations that become members of the current group at the same time and that were affiliated with each other immediately before they become members of the current group. The election applies solely for purposes of satisfying the subgroup parent requirement, and does not apply in determining whether members meet the other requirements for inclusion in a loss subgroup. Although the election applies solely for purposes of §§ 1.1502–91 through 1.1502–96 and § 1.1502-98, the election may affect whether a SRLY limitation overlaps with application of section 382.

If the common parent makes an election under § 1.1502-91(d)(4), each of the members with respect to which the election is made (and that is included in the loss subgroup) is treated as the loss subgroup parent for purposes of determining if the loss subgroup has an ownership change on, or after, becoming members of the current group. If, however, a member with respect to which the election is made has an ownership change upon (or after) ceasing to be a member of the current group, that ownership change does not cause an ownership change of a loss subgroup comprised of one or more of its members that remain members of the current group.

Exceptions for Ceasing To Be a Member of a Loss Subgroup When a Member Breaks the Section 1504(a)(1) Relationship With the Loss Subgroup Parent, § 1.1502–95(d)(1)

In general, under § 1.1502–95(d)(1)(ii), these final regulations provide that a member ceases to be a member of the loss subgroup on the first day that it ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent. Continued affiliation through a loss subgroup parent is central to the operation of the parent change method to loss subgroups.

Under certain circumstances, however, separate tracking of the loss subgroup parent terminates, eliminating the need for members to maintain a section 1504(a)(1) relationship through a loss subgroup parent. Section 1.1502–96(a) provides, in part, that ownership shifts of a loss subgroup cease to be separately tracked if there is an ownership change of the loss subgroup

within six months before, on, or after becoming members of the group, or if a period of five years elapses after becoming members of group during which time the loss subgroup does not have an ownership change (a fold-in event).

Also, an election under § 1.1502–91(d)(4) obviates the need for a section 1504(a)(1) relationship through a loss subgroup common parent because each member is separately tracked as if it were the loss subgroup parent.

In circumstances where the necessity of a section 1504(a)(1) relationship through a loss subgroup parent is eliminated, the IRS and the Treasury believe that a subgroup member should not cease to be a member of the subgroup solely because it ceases to bear such a relationship. Accordingly, these final regulations provide two exceptions to the general rule of § 1.1502–95(d)(1)(ii). The first exception applies to the members of the loss subgroup if an election under § 1.1502-91(d)(4) applies to them. The second exception applies to loss subgroup members following a fold-in event.

Members Excluded or Included From a Subgroup With a Principal Purpose of Avoiding a Limitation, § 1.1502–91(d)(5)

Proposed § 1.1502–91(d)(5) provides that corporations do not compose a loss subgroup if any one of them is formed, acquired, or availed of with a principal purpose of avoiding the application of, or increasing any limitation under, section 382. This rule does not apply solely because, in connection with becoming members of the group, the members of a group are rearranged to satisfy the subgroup parent requirement. The final regulations retain these provisions, and, in conformity with the anti-abuse rule for SRLY subgroups, provide that any member excluded from a loss subgroup, if excluded with a principal purpose of avoiding or increasing a section 382 limitation, is treated as included in the loss subgroup. This rule does not apply solely because a group does not rearrange members of a group to satisfy the subgroup parent requirement.

2. Definition of Loss Subgroup With a NUBIL, § 1.1502–91(d)(2)

Commentators criticized the five-year affiliation requirement for adding complexity to the regulations. For instance, the five-year affiliation requirement can cause application of section 382 and SRLY on a single entity basis with respect to members of a loss subgroup with a net operating loss carryover that arose within the former group (because an NOL loss subgroup does not require five years of affiliation), but on a separate entity basis for those same members with respect to built-in losses.

The IRS and Treasury have determined, however, that the five-year affiliation requirement is a necessary feature of the NUBIL subgroup rules. Just as the NOL subgroup rules apply only to loss carryovers that arise in (or have folded into) the former group, so should the NUBIL subgroup rules apply only to built-in losses that accrue within (or have folded into) the former group. Because an accurate method of determining economic accrual (*e.g.*, tracing) would present significant problems for tax administration and for compliance by taxpayers, the IRS and Treasury believe that the five-year affiliation requirement is the best available proxy for determining when built-in attributes arise.

Absent a five-year affiliation requirement, taxpayers could effectively traffic in net unrealized built-in losses without being subject to any limitation (other than one imposed under an applicable "principal purpose" anti-abuse rule). A selling group could acquire a new member with a NUBIG and sell both that recently-acquired NUBIG member and the member containing the desired NUBIL to the prospective buyer. To the extent that the NUBIG offset the NUBIL and the corporations were structured to satisfy the requirements for subgroup treatment, recognized built-in losses would escape any limitation and could be freely absorbed by the acquiring group.

Furthermore, the absence of a five-year affiliation requirement could be used to circumvent a SRLY limitation applicable to a NUBIL if built-in losses are recognized. For instance, if a member comes into a group with a NUBIL and without an ownership change, recognition of that NUBIL would be subject to a SRLY limitation during the following five years and the loss could not be freely absorbed by the income of the other members of the group. However, if all the members of the group were included in a NUBIL subgroup upon being acquired by a second group two years into that five-year period, that member's recognized built-in losses immediately thereafter would be subject either to a SRLY or section 382 limitation computed with respect to all the members of the former group (thus increasing the rate at which such losses can be utilized) or, in the event that the acquired corporations have an aggregate NUBIG, to no limitation whatsoever.

Some commentators contended that the five-year affiliation requirement (and the time period required for a fold-in event under § 1.1502–96(a)) should be reduced to three years, based on the duration of the testing period for an ownership change under section 382.

However, a five-year (rather than a three-year) affiliation requirement is necessary to ensure that taxpayers cannot shorten the five-year recognition period for the SRLY limitation, as described above. Also, the IRS and Treasury believe that the five-year recognition period for the SRLY limitation should be maintained because it mirrors the statutorily-mandated five-year recognition period of section 382(h)(7). In general, Treasury and the IRS believe that it is important to conform the application of section 382 and the SRLY rules where possible, particularly in the light of the rule eliminating application of SRLY where its application overlaps with that of section 382.

Moreover, the five-year affiliation requirement is consistent with Congress' indication in section 384(a) of the point at which it is appropriate for built-in attributes of a member to be treated as attributes of the group. Under certain circumstances, section 384(a) prevents the recognized built-in gain of one corporation from offsetting preacquisition losses of another corporation, if such gain is recognized within a five-year period following the acquisition date. Similarly, section 384(b) provides that section 384(a) does not apply to prevent the recognized built-in gain of one corporation from offsetting the preacquisition losses of another corporation if the gain corporation and the loss corporation were members of the same controlled group (as defined in section 384(b)(2)) for the five-year period ending on the acquisition date.

For these reasons, the final regulations do not reduce the duration of the affiliation requirement from five years to three years.

Commentators requested clarification that an acquiring group takes into account application of the fold-in rules of § 1.1502–96(a) in the former group in determining which members are included in a loss subgroup. A new example under § 1.1502–96(a)(3), and a cross-reference in a new § 1.1502–91(g)(3) to the fold-in rules, clarifies this treatment. Thus, a corporation whose NUBIL folded in to a former group is deemed to have a five-year affiliation with the common parent of that group (and is deemed to have affiliation histories with other group members). A special rule provides that the

corporation is not deemed to have been previously affiliated with another corporation that joined the former group at the same time, but was not taken into account in determining a NUBIL limitation, even if in fact the two corporations were previously affiliated.

3. Members Included—Determination Whether a Consolidated Group Has a NUBIL, § 1.1502–91(g)(2)(ii)

Proposed § 1.1502–91(g)(2)(i) provides, in part, that the members included in the determination whether a consolidated group has a NUBIG or NUBIL are all members of the group on the day the determination is made, other than a new loss member with a NUBIL, and members included in a NUBIL subgroup.

The IRS and Treasury have determined that the reasons for applying a five-year affiliation requirement to subgroups are equally relevant to groups. Accordingly, these final regulations provide that the members included in the determination whether a consolidated group has a NUBIL are the common parent and all other members that have been affiliated with the common parent for the five consecutive year period ending on the day that the determination is made.

In certain cases, a member (or loss subgroup) can join a consolidated group with a NUBIG, but have a NUBIL on the date the consolidated group determines whether it has a NUBIL. The IRS and Treasury have determined that, in such cases, it is appropriate for the built-in attribute of the member to be included in the group's determination because it is clear that such NUBIL arose when it was a group member. Accordingly, the final regulations include in the determination whether a group has a NUBIL any member that has a NUBIL on the date the determination is made, and that is neither a new loss member with a NUBIL nor a member of a NUBIL loss subgroup. The final regulations also include members in the group's determination whether the group has a NUBIL if such member(s) joined the consolidated group with a NUBIL, and, in the aggregate, have a NUBIG on the day that such determination is made.

4. Members Included—Determination Whether a Consolidated Group (or Loss Subgroup) With a Net Operating Loss Has a NUBIG, § 1.1502–91(g)(2)(i)

Proposed § 1.1502–93(c) provides that if a loss group (or loss subgroup) has a NUBIG, *any* recognized built-in gain of the loss group (or loss subgroup) is taken into account under section 382(h) in determining the consolidated section 382 limitation (or subgroup section 382 limitation) (emphasis added).

Commentators suggested that this provision, considered together with the five-year affiliation requirement, makes it unclear whether an NOL loss subgroup with members that do not satisfy the five-year affiliation requirement can use a NUBIG, if recognized, to increase the loss subgroup's section 382 limitation.

The IRS and Treasury have determined that the concerns forming the basis of the five-year affiliation requirement for determining whether a loss subgroup has a NUBIL do not extend to the determination whether a net operating loss carryover group (or loss subgroup) has a NUBIG. For example, unlike a NUBIL that can be eliminated by a NUBIG without an immediate tax cost, recognized built-in gains exact such a cost and, therefore, do not present the same planning opportunities. Accordingly, these final regulations provide that the members included in the determination whether an NOL loss group (or loss subgroup) has a NUBIG are all members of the group (or loss subgroup) on the day that the determination is made.

Section 1.1502–91(g)(2)(v) provides, in part, that in determining whether an NOL loss group has a NUBIG which, if recognized, increases the consolidated section 382 limitation, the group includes all of its members on the day the determination is made. However, for purposes of determining whether a group has a net unrealized built-in loss, not all members of the consolidated group may be included. Thus, a consolidated group may have recognized built-in gains that increase the amount of consolidated taxable income that may be offset by its pre-change net operating loss carryovers that did not arise (and are not treated as arising) in a SRLY, and also may have recognized built-in losses the absorption of which is limited. Similar results may obtain for loss subgroups. In such cases, § 1.1502–93(c)(2) prohibits the use of recognized built-in gains to increase the amount of consolidated taxable income that can be offset by recognized built-in losses.

5. Recognized Built-in Gain or Loss on the Disposition of an Intercompany Obligation of a Member, § 1.1502–91(h)(2)

Proposed § 1.1502–91(h)(2) provides that gain or loss recognized by a member on the disposition of stock of another member or of an intercompany obligation is treated as recognized built-in gain or loss under section 382(h)(2)(unless disallowed under § 1.1502–20 or otherwise), even though gain or loss on such stock or obligation is not included in the determination of the group's NUBIG or NUBIL immediately before the ownership change. The IRS and Treasury have determined that such treatment may lead to inappropriate results. For instance, if a bad debt deduction is treated as a recognized built-in loss, application of a section 382 limitation to that loss may prevent the proper offset of cancellation of indebtedness income against the bad debt deduction. Accordingly, § 1.1502–91(h)(2) of the final regulations treats gain or loss recognized on the disposition of an intercompany obligation as recognized built-in gain or loss only to the extent that the transaction gives rise to aggregate income or loss within the consolidated group.

6. Ownership Change Determination—The Parent Change Method, § 1.1502–92

Proposed § 1.1502–92 provides rules for determining an ownership change of a loss group (or a loss subgroup). A loss group (or loss subgroup) has an ownership change only if the common parent has an ownership change under the parent change method. Out of concern that taxpayers could exploit the parent change method's failure to account for minority shifts of stock, the proposed regulations adopted a supplemental change method that does take into account minority shifts of stock under certain circumstances.

Under the proposed regulations, the supplemental method applies if a person who is a 5-percent shareholder of the common parent (including any person acting pursuant to a plan or arrangement with such 5-percent shareholder) increases its percentage ownership both in the common parent and in any subsidiary of the group within the same testing period. In that event, the loss group (or loss subgroup) must also determine whether it had an ownership change under the rules for the parent change method by treating the common parent as though it had issued to the person who acquires (or is deemed to acquire) the subsidiary stock an amount of its own stock (by value) that equals the value of the subsidiary stock represented by the percentage increase in that person's ownership of the subsidiary (determined on a separate entity basis).

Section 1.1502–92(c), *Example 2* of the proposed regulations illustrates application of the supplemental change method. In *Example 2*, A owns all the stock of L, a loss group parent, and L owns all of the stock of L1. As part of a plan, A sells 49 percent of the L stock to B on October 7, Year 2, and L1 issues new stock representing a 20 percent ownership interest in L1 to the public on November 6, Year 2. The example concludes that "because the issuance of L1 stock to the public occurs in connection with B's acquisition of L stock pursuant to a plan," the supplemental change method applies to the public offering of L1 stock.

Commentators suggest that the "plan or arrangement" language sweeps too broadly, and that only plans to avoid section 382 should be subject to this rule. Commentators also contend that *Example 2* is beyond the scope of the operative rule because the facts do not demonstrate a plan or arrangement with a 5-percent shareholder.

The IRS and Treasury believe that it is appropriate to apply the supplemental change method to certain acquisitions of a loss group in which the plan is not between the 5-percent shareholder of the loss group parent and another person to increase their interests in the loss group. For example, if an individual buys 50 percent or less of the stock of a loss group parent, and as part of the same plan, causes a public offering out of a subsidiary, the supplemental change method should apply to that offering. (Conversely, the supplemental change method should not apply unless the 5-percent shareholder's increase in the stock of parent or subsidiary is related to the increase by another person because those increases are pursuant to the same plan.)

Accordingly, these final regulations provide that a 5-percent shareholder of the common parent (or loss subgroup parent) is treated as increasing its ownership interest in the stock of a subsidiary to the extent, if any, that the percentage ownership interest of another person or persons in the stock of the subsidiary is increased pursuant to a plan or arrangement under which the 5-percent shareholder increases its percentage ownership interest in the common parent (or loss subgroup parent).

To alleviate concerns that the supplemental change method is overly broad, the final regulations limit the scope of the supplemental change method through application of the rules of § 1.382–2T(k). The final regulations provide that the supplemental change method will apply if the common parent (or loss subgroup parent) has actual knowledge of the increase in the 5-percent shareholder's ownership interest in the stock of the subsidiary (or has actual knowledge of the plan or arrangement) before the date that the group's income tax return is filed for the taxable year that includes the date of that increase or, if, at any time during the testing period, the 5-percent shareholder of the common parent is also a 5-percent shareholder of the subsidiary (determined without regard to a deemed acquisition of subsidiary stock under the plan or arrangement rule) whose percentage increase in the ownership of the stock of the subsidiary would be taken into account in determining if the subsidiary has an ownership change. For purposes of determining the 5-percent shareholders of the subsidiary, the principles of § 1.382–2T(k), including the duty to inquire, apply to the common parent (or loss subgroup parent).

Several additional changes to the supplemental change method were made in response to comments. Section 1.1502–92(c)(4)(iii) clarifies that stock treated as issued under the supplemental change method is not treated as issued in testing periods that do not include the testing date on which the parent stock is deemed to be issued. Section 1.1502–92(c)(4)(ii) provides that stock is not treated as issued if a deemed issuance of parent stock would not cause the loss group (or loss subgroup) to have an ownership change before the day on which the subsidiary leaves the loss group (or loss subgroup).

To avoid retroactive changes in ownership, § 1.1502–92(c)(4)(v) provides that if the supplemental change method applies to an acquisition of subsidiary stock before the first date that the 5-percent shareholder increases its percentage ownership interest in the stock of the common parent (or loss subgroup parent), then the deemed issuance of stock is treated as occurring on the first such date. However, the value of the subsidiary stock is the value of such stock on the date it was acquired. In addition, § 1.1502–92(c)(4)(vi) provides that if two or more 5-percent shareholders are treated as increasing their percentage ownership interests pursuant to a single plan or arrangement described above, appropriate adjustments must be made so that the amount of stock treated as issued is not taken into account more than one time.

Commentators also requested that the supplemental change method apply only if the acquisitions of parent stock and subsidiary stock are with a principal purpose of avoiding or lessening the impact of section 382. The IRS and Treasury believe that if the same 5-percent shareholder increases in the stock of both a subsidiary and the common parent within the same testing period, the supplemental change method should apply without further evidence of an avoidance purpose. Similarly, a plan or arrangement under which a 5-percent shareholder and another person both increase their interests in the loss group is sufficient proof of an avoidance purpose that the supplemental change method properly applies without further inquiry.

7. Consolidated Section 382 Limitation, § 1.1502–93

Proposed § 1.1502–93 provides rules for computing the consolidated section 382 limitation following an ownership change of a loss group. The value of the loss group is the value, immediately before the ownership change, of the stock (including stock described in section 1504(a)(4)) of each member of the loss group, other than stock that is owned directly or indirectly by a member. Section 1.1502–93(b)(2) provides that this value is adjusted under any rule in section 382 (such as section 382(l)(1), relating to certain capital contributions) requiring an adjustment to value for purposes of computing the section 382 limitation. The section 382 limitation, as so determined, is further adjusted as required by section 382 and the regulations thereunder (such as section 382(m)(2), relating to a short taxable year). Similar rules apply in determining the section 382 limitation for a loss subgroup.

In response to comments, the final regulations make several clarifications with respect to circumstances that require an adjustment to the value of a loss group or loss subgroup.

Section 1.1502–93(b)(2)(i) provides that, for purposes of section 382(e)(2), redemptions and corporate contractions that do not effect a transfer of value outside of the loss group (or loss subgroup) are disregarded. For purposes of section 382(l)(1), capital contributions between members of the loss group (or loss subgroup) (or a contribution of stock to a member made solely to satisfy the loss subgroup parent requirement of §§ 1.1502–91(d)(1)(ii) or 1.1502–91(d)(2)(ii)), are not taken into account. Also, the substantial nonbusiness asset test of section 382(l)(4) is applied on a group (or subgroup) basis, and is not applied separately to its members.

Section 1.1502–93(b)(2)(ii) provides rules that apply to prevent duplication of value of the group (or loss subgroup) and to prevent duplication of the section 382 limitation. This section provides that appropriate adjustments must be made to the extent necessary to prevent any duplication of the value of the stock of a member, even though corporations that do not file

consolidated returns may not be required to make such an adjustment. In making these adjustments, the group (or loss subgroup) may apply the principles of § 1.382–8 (relating to controlled groups of corporations) in determining the value of a loss group (or loss subgroup) even if that section would not apply if separate returns were filed. Also, the principles of § 1.382–5(d) (relating to successive ownership changes and absorption of a section 382 limitation) may apply to adjust the consolidated section 382 limitation (or subgroup section 382 limitation) of a loss group (or loss subgroup) to avoid a duplication of value if there are simultaneous (rather than successive) ownership changes.

One commentator suggested that contributions of assets by the selling group to a departing member or loss subgroup generally should not be subject to section 382(l)(1). The IRS and Treasury have determined that, unlike transfers of stock or assets that do not effect a transfer of value into a loss subgroup, capital contributions that constitute a transfer of value into a loss group or to a departing member should continue to be subject to section 382(l)(1).

A new § 1.1502–93(c)(2) provides that appropriate adjustments must be made so that any recognized built-in gain of a member that increases more than one section 382 limitation (whether consolidated, subgroup, or separate) does not effect a duplication in the amount of consolidated taxable income that can be offset by pre-change net operating losses. In addition, recognized built-in gains may not increase the amount of consolidated taxable income that can be offset by recognized built-in losses.

8. Ceasing To Be a Member of a Consolidated Group (or Loss Subgroup), § 1.1502–95

Elective Apportionment of NUBIG

In general, the common parent of a consolidated group may elect to apportion all or part of each element (the value element and the adjustment element) of a consolidated section 382 limitation to a former member or loss subgroup. The proposed regulations do not provide that the common parent may elect to apportion all or part of a loss group's NUBIG.

Under section 382(h)(1)(A), if a consolidated group has a NUBIG immediately before an ownership change, the section 382 limitation for any recognition period taxable year is increased by the recognized built-in gain for such taxable year. This increase cannot exceed the NUBIG, reduced by recognized built-in gains for prior years ending in the recognition period.

Commentators suggest that, like the value element and the adjustment element of the consolidated section 382 limitation, the common parent should be able to apportion any part or all of the group's NUBIG to a departing member (or loss subgroup). The final regulations adopt this recommendation.

In general, § 1.1502–95(c)(2)(ii) provides that the amount of the loss group's NUBIG that may be apportioned to one or more former members that cease to be members during the same consolidated return year cannot exceed the loss group's excess, immediately after the close of that year, of net unrealized built-in gain over recognized built-in gain, determined under section 382(h)(1)(A)(ii) (relating to a limitation on recognized built-in gain). In general, NUBIG apportioned to a former member reduces the amount of NUBIG that the group can avail itself of in subsequent taxable years.

For purposes of determining the extent to which the former member's section 382 limitation can be increased by recognized built-in gains, the amount of NUBIG apportioned is treated as if it were an amount determined under section 382(h) with respect to the former member. The former member's five-year recognition period begins on the group's (or loss subgroup's) change date.

Default Apportionment of Zero Section 382 Limitation and NUBIG When a Member Ceases To Be a Member of a Group (or Loss Subgroup), § 1.1502–95(c)(2)(ii)

Section 1.1502–95(c)(1) provides that the common parent may elect to apportion all or any part of a consolidated section 382 limitation to a former member (or a loss subgroup) when the member or loss subgroup leaves the group. If the common parent does not make an apportionment of the applicable section 382 limitation(s) or of a NUBIG that the member recognizes during the recognition period, the former member or loss subgroup has a consolidated section 382 limitation of zero with respect to pre-change attributes (the zero default rule).

Commentators suggested that the zero default rule may be a trap for the unwary. For instance, under the proposed regulations, a subgroup member that ceases to bear a section 1504(a)(1) to the subgroup parent is subject to the zero default rule, even if that member remains within the current consolidated group.

The IRS and Treasury recognize that any default rule will benefit some taxpayers while operating to the detriment of others. For example, a default apportionment of a section 382 limitation or NUBIG based on the departing member's contribution to the group's net operating loss carryover could cause some apportioned limitation to go unused if that member becomes subject to a new section 382 limitation upon departing the group. By contrast, a rule providing that the default limitation is capped by the amount of any subsequent section 382 limitation, would be difficult to administer. Because the consequences of applying any default rule depend on the particular facts of a transaction, including the relative income generation of the departing and remaining members, the IRS and Treasury believe that the simplicity of the zero default rule makes the rule preferable to other alternatives.

Also, the IRS and the Treasury believe that the new exceptions to ceasing to be a member of a loss subgroup substantially reduce the likelihood that the zero default rule will yield unexpected results. For example, an acquisition of a loss subgroup typically will cause an ownership change of the loss subgroup. Following that ownership change, a member that remains within the current group now can break the section 1504(a)(1) relationship to the loss subgroup parent without ceasing to be a member of the loss subgroup. Accordingly, these final regulations retain the zero default rule when a member ceases to be a member of a group (or loss subgroup). The zero default rule also applies to a NUBIG.

Mandatory Apportionment of a Group's NUBIL to a Departing Member, § 1.1502–95(e)

In general, a group has a NUBIL if the adjusted bases of the assets of members included in such determination under § 1.1502–91(g) exceed their fair market value immediately before the change date. Similar rules apply to loss subgroups. Subject to the limitations of section 382(h)(2)(B), NUBILs recognized within the five year period beginning on the change date are subject to the consolidated section 382 limitation. The proposed regulations do not provide rules for apportioning a group's NUBIL to a former member (or loss subgroup). The IRS and Treasury believe that a mandatory apportionment of the group's NUBIL is necessary to ensure that the group's NUBIL, if recognized by the former member (or loss subgroup) during the recognition period, remains subject to the consolidated section 382 limitation. One commentator suggests that a former member (or loss group) should be apportioned a group's NUBIL only if and when a former member that had a separately computed NUBIL that contributed to the group's NUBIL departs the group, and the contributed built-in loss has not fully been recognized. Adjustments would reflect intragroup transfers of assets occurring between the change date and the date that the former member departs.

The IRS and Treasury believe that the suggested approach overemphasizes the location of assets with a NUBIG. For example, if a former member has a NUBIG determined on a separate entity basis, a recognized built-in loss of that member will not be limited, even if the former member is the first corporation to dispose of a built-in loss asset. The IRS and Treasury believe that subjecting the sale of built-in loss assets to the consolidated section 382 limitation, regardless of the location of built-in gain assets, more accurately reflects the NUBIL as a group attribute. Similarly, consistent with treatment of the NUBIL as a group attribute, the approach permits built-in gain to be sheltered by built-in loss only after the excess of built-in losses over built-in gains has been recognized. Accordingly, these final regulations adopt a model that apportions NUBIL based on the gross amount of built-in loss that the departing member contributed to the determination of the group's NUBIL.

In general, § 1.1502–95(f) provides that a departing member is allocated a portion of the group's (or loss subgroup's) NUBIL if, immediately after the close of the consolidated return year in which the departing member ceases to be a member, the amount of the loss group's (or loss subgroup's) excess of net unrealized built-in loss over recognized built-in loss (the remaining NUBIL balance) is greater than zero. In general, NUBIL apportioned to former members in prior taxable years is treated as recognized built-in loss in those years.

The amount of NUBIL allocated to a departing member is equal to the remaining NUBIL balance multiplied by a fraction. The numerator of the fraction is the amount of the built-in loss, taken into account on the change date, in the assets held by the departing member immediately after the member ceases to be a member of the loss group (or loss subgroup). The denominator of the fraction is the sum of the numerator, plus the amount of the built-in loss, taken into account on the change date, in the assets held by the group immediately after the close of the taxable year in which the departing member ceases to be a member. (Fluctuations in value of the assets between the change date and the date that the member ceases to be a member of the group (or loss subgroup), or the close of the taxable year in which the member ceases to be a member of the loss group, are disregarded.) In general, adjustments are made for gain or loss that has been recognized during the recognition period, and for assets that are transferred basis property. The amount of the NUBIL allocated to a former member generally is treated as previously recognized built-in loss for purposes of applying the limitation of section 382(h)(1)(B)(ii) to a loss group's taxable years beginning after the year in which the former member ceases to be a member.

For purposes of determining the amount of the former member's recognized built-in losses in any taxable year beginning after the former member ceases to be a member, the amount of the loss group's (or loss subgroup's) net unrealized built-in loss that is apportioned to the former member is treated as if it were an amount of net unrealized built-in loss determined under section 382(h)(1)(B)(i) with respect to such member, and that amount is not reduced under section 382(h)(1)(B)(ii) by the loss group's (or loss subgroup's) recognized built-in losses.

Subgroup principles apply to the allocation of a NUBIL. For example, if two or more members leave a loss group, and are members of a consolidated group, any allocation of the loss group's NUBIL is made on a subgroup basis. In general, the common parent may apportion all or any part of a consolidated section 382 limitation (or subgroup section 382 limitation) under § 1.1502–95(c) to a former member to which the group's NUBIL is allocated (or to a loss subgroup that includes that member).

9. Miscellaneous Rules, § 1.1502–96

Fold-in rules do not apply to NUBIGs, § 1.1502–96(a)

Proposed § 1.1502–96(a)(2) provides in part that, following a fold-in event described in § 1.1502–96(a)(1), the member's separately computed NUBIG or NUBIL is included in the determination whether the group has a NUBIG or NUBIL.

The IRS and Treasury believe that the "fold-in" of a member's NUBIG can lead to inappropriate results. For example, a consolidated group that acquires a corporation with a small net operating loss carryover and a large NUBIG can immediately offset the group's NUBIL with the NUBIG, if the member is acquired with an ownership change. Accordingly, the fold-in rules of § 1.1502-96(a) do not apply to include a member's separately computed NUBIG in determining whether a group has a NUBIL. A member's NUBIG is only included in such determination if the member is included under § 1.1502–91(g)(2).

Net Operating Loss Carryovers Reattributed Under § 1.1502–20(g)

Section 1.1502–20 of the regulations disallows a deduction for certain losses on the disposition of stock of a subsidiary. In general, under § 1.1502–20(g), the common parent can reattribute to itself net operating loss carryovers or capital loss carryovers attributable to the subsidiary in an amount not to exceed the disallowed loss. Section 1.1502–20(g) further provides that the common parent succeeds to the reattributed losses as if the losses were succeeded to in a transaction described in section 381(a). Also, any owner shift of the subsidiary (including any deemed owner shift resulting from section 382(g)(4)(D) or 382(l)(3)) in connection with the disposition is not taken into account under section 382 with respect to the reattributed losses. (§ 1.1502–20(g)(1)). The preamble to TD 8364 (56 FR 47379, September 19, 1991)(which added § 1.1502–20), states that clarification regarding the application of section 382 to reattributed losses would be provided in connection with finalizing §§ 1.1502–91 through 1.1502–99. The preamble states that, for example, it is anticipated that proposed § 1.1502–95 would be modified to permit the common parent to elect to retain all or part of a section 382 limitation that applies to reattributed SRLY losses.

A new § 1.1502–96(d) provides rules relating to reattributed losses. This section generally provides that §§ 1.1502–91 through 1.1502–96 and § 1.1502–98 apply to reattributed losses consistent with the provision of § 1.1502–20(g) that treats the common parent as succeeding to the losses in a transaction to which section 381(a) applies. For example, if the reattributed loss is a pre-change attribute subject to a section 382 limitation, it remains subject to that limitation following the reattribution. Section 1.1502–96(d)(4) provides rules that allow the common parent to elect to apportion to itself all or part of any separate section 382 limitation or subgroup section 382 limitation to which the reattributed loss is subject. The apportionment is made under the principles of the rules of § 1.1502–95(c), relating to the apportionment of a consolidated section 382 limitation to a member that leaves

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the group. In certain cases, the section 382 limitation applicable to the reattributed loss is zero unless an apportionment of such limitation is made to the common parent. The election to apportion a section 382 limitation is made as part of the election to reapportion the loss. See § 1.1502–20(g)(4), as amended by this document.

As previously set forth in § 1.1502–20(g), § 1.1502–96(d) adopts the general rule that any owner shift of the subsidiary (including any deemed owner shift resulting from section 382(g)(4)(D) or 382(l)(3))in connection with the disposition of the subsidiary's stock) is not taken into account under section 382 with respect to the reattributed losses. The final regulations, however, modify the general rule to provide that any owner shift with respect to the successor corporation that is treated as continuing in existence under § 1.382–2(a)(1)(ii) must be taken into account for such purpose if such owner shift is effected by the reattribution and any owner shift of the stock of the subsidiary not held directly or indirectly by the common parent would have been taken into account if such shift had occurred immediately before the reattribution. Such an owner shift may occur if the subsidiary has minority shareholders that, under § 1.382–2(a)(1)(ii), are treated as decreasing their ownership in the reattributed loss, while the shareholders of the common parent increase their ownership interests in that loss.

The final regulations provide that, in general, the value of the stock of the common parent is used to establish a section 382 limitation for the reattributed loss with respect to an ownership change upon, or after, the reattribution. These rules coordinate the determination of the value of that stock with the capital contribution rules of section 382(l)(1), and also require appropriate adjustments so that value is not improperly omitted or duplicated as a result of the reattribution.

Effective Dates

Sections 1.1502–91 through 1.1502–96 and 1.1502–98

Except as set forth below, §§ 1.1502–91 through 1.1502–96 and 1.1502–98 apply to testing dates that occur on or after June 25, 1999. Sections 1.1502–94 through 1.1502–96 also apply on any date on or after June 25, 1999 on which a corporation becomes a member of a group or on which a corporation ceases to be a member of a loss group (or a loss subgroup).

A transition rule for net unrealized built-in loss provides that a consolidated group may apply § 1.1502–91A(g) for the period ending on the day before June 25, 1999 to determine the earliest date that its testing period begins (treating the day before June 25, 1999 as the end of a taxable year.)

The election under § 1.1502–91(d)(4) to treat the subgroup parent requirement as satisfied is effective for corporations that become members of a consolidated group in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999. Section 1.1502–95(d)(2)(ii) (relating to exceptions to ceasing to be a member of loss subgroup) applies to corporations that cease to bear a section 1504(a)(1) relationship to a loss subgroup parent in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999.

The third sentence of § 1.1502–91(d)(5) (relating to members excluded from a loss subgroup) applies to corporations that become members of a consolidated group on or after June 25, 1999.

In the case of corporations that cease to be members of a loss group (or loss subgroup) before June 25, 1999, in a taxable year for which the due date of the income tax return (without extensions) is after June 25, 1999, §§ 1.1502–95 (a), (b), (c) and (f) apply to those corporations if the common parent makes the election described in the second sentence of (c)(1) of that section in the time and manner prescribed in paragraph (f) of that section.

Section 1.1502–96(d) applies to reattributions of net operating losses or net capital losses in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999; except that the election under § 1.1502–96(d)(5) (relating to an election to reattribute section 382 limitation) can be made with any election under § 1.1502–20(g)(4) to reattribute to the common parent a net operating loss or net capital loss that is timely filed on or after June 25, 1999.

Sections 1.1502–91A through 1.1502–96A and 1.1502–98A apply to any testing date on or after January 1, 1997, and before June 25, 1999. Sections 1.1502–94A through 1.1502–96A also apply on any date on or after January 1, 1997, and before June 25, 1999, on which a corporation becomes a member of a group or on which a corporation ceases to be a member of a loss group (or a loss subgroup). For periods before January 1, 1997, the transition rules in § 1.1502–99A(c) continue to apply.

The transition rules in § 1.1502–99A for periods ending before January 1, 1997 also are clarified to provide that a member that ceases to be a member of a group does not have a zero section 382 limitation with respect to pre-change net operating losses allocated to that member.

Need for Immediate Guidance

Because the temporary regulations are not applicable for taxable years ending after June 26, 1999, it is necessary to implement these final regulations without delay to ensure continuity of treatment of certain attributes and to ensure that there is no period within which the treatment of such attributes is inconsistent with the temporary regulations and these final regulations. See section 7805(e)(2). Accordingly, it is impracticable and contrary to the public interest to issue this Treasury decision subject to the effective date limitation of section 553(d) of title 5 of the United States Code (if applicable).

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated federal income tax returns that have net operating losses or other attributes that are subject to section 382. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have net operating losses or other attributes subject to section 382. Moreover, many of these corporations will not have ownership changes. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was sent to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of the final regulations is Lee A. Kelley of the Office of Assistant Chief Counsel (Corporate), IRS. Other personnel from the IRS and Treasury participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for sections 1.1502–91T, 1.1502–92T, 1.1502–93T, 1.1502–94T, 1.1502–95T, 1.1502–96T, 1.1502–98T, and 1.1502–99T, and adding entries in numerical order to read in part as follows:

Authority: 26 U.S. C. 7805 * * *

Section 1.1502–91 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–92 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–93 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–94 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–95 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–96 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–98 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–99 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502. * * *

Section 1.1502–91A also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–92A also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–93A also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–94A also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–95A also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–96A also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–98A also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502–99A also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502. * * *

Par. 2. In the list below, for each section indicated in the left column, remove the wording indicated in the middle column, and add the wording indicated in the right column.

Affected section	Remove	Add
1.1502–91T(a)(1), first sentence	§§ 1.1502–92T and 1.1502–93T	§§ 1.1502–92A and 1.1502–93A.
1.1502–91T(a)(1), third sentence	§ 1.1502–92T	§ 1.1502–92A.
1.1502–91T(a)(1), third sentence	§ 1.1502–93T	§ 1.1502–93A.
1.1502–91T(a)(3)	§§ 1.1502–94T and 1.1502–95T	§§ 1.1502–94A and 1.1502–95A.
1.1502–91T(b) introductory text	§§ 1.1502–92T through 1.1502–99T	§§ 1.1502–92A through 1.1502–99A.
1.1502–91T(b)(1)	§§ 1.1502–92T through 1.1502–99T	§§ 1.1502–92A through 1.1502–99A.
1.1502–91T(c)(2), second sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–91T(c)(3), Example (b), second sentence.	§ 1.1502–94T	§ 1.1502–94A.
1.1502–91T(d)(4), second sentence	§ 1.1502–94T	§ 1.1502–94A
1.1502–91T(d)(5), first sentence	§ 1.1502–95T(d)	§ 1.1502–95A(d).
1.1502–91T(d)(5), second sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–91T(e)(2), Example(b), third sentence	§ 1.1502–93T	§ 1.1502–93A.
1.1502–91T(f)(2), Example(b)(2), first sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–91T(f)(2), Example(b)(2), third sentence.	§ 1.1502–92T(a)(2)	§ 1.1502–92A(a)(2).
1.1502–91T(f)(2), Example(b)(2), fourth sentence.	§ 1.1502–93T	§ 1.1502–93A.
1.1502–91T(f)(2), Example(c), second sentence.	§ 1.1502–96T(c)	§ 1.1502–96A(c).
1.1502–91T(g)(1), last sentence	§ 1.1502–94T(c)	§ 1.1502–94A(c).
1.1502–91T(g)(1), last sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–91T(g)(2)(i)(A)	§ 1.1502–94T(a)(1)(ii)	§ 1.1502–94A(a)(1)(ii).
1.1502–91T(g)(2)(i)(B)	§ 1.1502–91T(d)(2)	§ 1.1502–91A(d)(2).
1.1502–91T(j), first sentence	§§ 1.1502–92T through 1.1502–99T	§§ 1.1502–92A through 1.1502–99A.
1.1502–92T(a), second sentence	§ 1.1502–94T	§ 1.1502–94A.
1.1502–92T(a), second sentence	§ 1.1502–96T(b)	§ 1.1502–96A(b).
1.1502–92T(b)(1)(i)(A)	§ 1.1502–91T(c)	§ 1.1502–91A(c).
1.1502–92T(b)(1)(i)(B)	§ 1.1502–91T(c)	§ 1.1502–91A(c).
1.1502–92T(b)(1)(ii), second sentence	§ 1.1502–95T(b)	§ 1.1502–95A(b).
1.1502–92T(b)(1)(ii)(A)	§ 1.1502–91T(d)	§ 1.1502–91A(d).
1.1502–92T(b)(1)(ii)(C)	§ 1.1502–91T(d)	§ 1.1502–91A(d).
1.1502–92T(b)(2) Example 1(a), sixth sentence	§ 1.1502–91T(c)(1)	§ 1.1502–91A(c)(1)
1.1502–92T(b)(2) Example 3(b), first sentence	§ 1.1502–91T(d)(1)	§ 1.1502–91A(d)(1).
1.1502–92T(b)(2) Example 4(b), first sentence	§ 1.1502–91T(d)(1)	§ 1.1502–91A(d)(1).
1.1502–92T(b)(3)(iii) Example 2(d), fourth sentence.	§ 1.1502–94T	§ 1.1502–94A.
1.1502–92T(b)(3)(iii) Example 3(a), seventh sentence.	§ 1.1502–91T(d)	§ 1.1502–91A(d).
1.1502–92T(b)(4), first sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–92T(b)(4), first sentence	§ 1.1502–96T(a)(2)	§ 1.1502–96A(a)(2).
1.1502–92T(b)(4), first sentence	§ 1.1502–96T(b)	§ 1.1502–96A(b).
1.1502–92T(b)(4), second sentence	§ 1.1502–96T(a) applies, see § 1.1502–96T(c)	§ 1.1502–96A(a) applies, see § 1.1502–96A(c).
1.1502–92T(e)(1)(ii)	§ 1.1502–96T(b)	§ 1.1502–96A(b).
1.1502–92T(e)(2), fifth sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–92T(e)(2), fifth sentence	§ 1.1502–91T(d)	§ 1.1502–91A(d).
1.1502–93T(a)(2)	§ 1.1502–95T(c)	§ 1.1502–95A(c).
1.1502–93T(b)(2), last sentence	§ 1.382–8T	§ 1.382–8.
1.1502–93T(b)(2), fourth sentence	§ 1.1502–91T(g)(2)	§ 1.1502–91A(g)(2).
1.1502–94T(a)(1)(i)	§ 1.1502–91T(d)(1)	§ 1.1502–91A(d)(1).
1.1502–94T(a)(1)(ii)	§ 1.1502–91T(d)(2)	§ 1.1502–91A(d)(2).
1.1502–94T(a)(3)	§ 1.1502–91T(d)	§ 1.1502–91A(d).
1.1502–94T(a)(3)	§§ 1.1502–92T and 1.1502–93T	§§ 1.1502–92A and 1.1502–93A.
1.1502–94T(a)(4), first sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–94T(a)(4), first sentence	§ 1.1502–96T(a)(2)	§ 1.1502–96A(a)(2).

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Affected section	Remove	Add
1.1502–94T(a)(4), first sentence	§ 1.1502–92T(b)(1)(i)	§ 1.1502–92A(b)(1)(i).
1.1502–94T(a)(4), first sentence	§ 1.1502–96T(b)	§§ 1.1502–96A(b).
1.1502–94T(a)(4), second sentence	§ 1.1502–96T(a) applies, see § 1.1502–96T(c)	§ 1.1502–96A(a) applies, see § 1.1502–96A(c).
1.1502–94T(a)(5)	§ 1.1502–96T(c)	§ 1.1502–96A(c).
1.1502–94T(b)(4) Example 1(b), first sentence	§ 1.1502–91T(d)	§ 1.1502–91A(d).
1.1502–94T(b)(4) Example 2(b),	§ 1.1502–91T(d)(1)	§ 1.1502–91A(d)(1).
1.1502–94T(b)(4) Example 2(d), first sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–94T(b)(4) Example 2(d), third sentence	§ 1.1502–91T(c)	§ 1.1502–91A(c).
1.1502–94T(b)(4) Example 3(b), first sentence	§ 1.1502–91T(d)(1)	§ 1.1502–91A(d)(1).
1.1502–94T(b)(4) Example 3(c), second sentence.	§§ 1.1502–96T(a) and 1.1502–91T(c)(2)	§§ 1.1502–96A(a) and 1.1502–91A(c)(2).
1.1502–94T(c), first sentence	§§ 1.1502–91T(g) and (h)	§§ 1.1502–91A(g) and (h) and 1.1502–93A(c).
1.1502–94T(c), second sentence	§ 1.1502–91T(g)(3)	§ 1.1502–91A(g)(3).
1.1502–94T(d), fifth sentence	§ 1.1502–96T(a)	§ 1.1502–96A(a).
1.1502–94T(d), sixth sentence	§ 1.1502–92T(e)(1)	§ 1.1502–92A(e)(1).
1.1502–95T(a)(3), paragraph heading	§§ 1.1502–91T through 1.1502–93T	§§ 1.1502–91A through 1.1502–93A.
1.1502–95T(a)(3)	§§ 1.1502–91T through 1.1502–93T	§§ 1.1502–91A through 1.1502–93A.
1.1502–95T(b)(1) introductory text, first sentence.	§§ 1.1502–91T through 1.1502–93T	§§ 1.1502–91A through 1.1502–93A.
1.1502–95T(b)(2) introductory text	§ 1.1502–92T	§ 1.1502–92A.
1.1502–95T(b)(4) Example(2)(a), second sentence.	§ 1.1502–92T	§ 1.1502–92A.
1.1502–95T(c)(2) introductory text	§ 1.1502–93T	§ 1.1502–93A.
1.1502–95T(c)(7) Example(1)(a), third sentence.	§ 1.1502–92T	§ 1.1502–92A.
1.1502–95T(d)(2) Example(1)(a), fifth sentence	§ 1.1502–92T	§ 1.1502–92A.
1.1502–95T(d)(2) Example(3)(a), fourth sentence.	§ 1.1502–92T(b)(1)(ii)	§ 1.1502–92A(b)(1)(ii).
1.1502–95T(e)(1) introductory text	§ 1.1502–95T	§ 1.1502–95A.
1.1502–96T(a)(2) introductory text, first sentence.	§ 1.1502–91T(c)(1)(i)	§ 1.1502–91A(c)(1)(i).
1.1502–96T(a)(2)(ii)	§ 1.1502–91T(c)	§ 1.1502–91A(c).
1.1502–96T(a)(3), second sentence	§ 1.1502–91T(f)(2)	§ 1.1502–91A(f)(2).
1.1502–96T(a)(5), first sentence	§§ 1.1502–91T through 1.1502–95T	§§ 1.1502–91A through 1.1502–95A.
1.1502–96T(a)(5), first sentence	§ 1.1502–98T	§ 1.1502–98A.
1.1502–96T(b)(1) introductory text, first sentence.	§ 1.1502–92T	§ 1.1502–92A.
1.1502–96T(b)(1) introductory text, first sentence.	§ 1.1502–91T(c)(1)	§ 1.1502–91A(c)(1).
1.1502–96T(b)(1) introductory text, first sentence.	§ 1.1502–91T(d)	§ 1.1502–91A(d).
1.1502–96T(b)(1) introductory text, second sentence.	§ 1.1502–95T(b)	§ 1.1502–95A(b).
1.1502–96T(b)(3), paragraph heading	*§§ 1.1502–91T, 1.1502–92T, and 1.1502–94T*	§§ 1.1502–91A, 1.1502–92A, and 1.1502–94A.
1.1502–96T(b)(3), first sentence	§ 1.1502–92T	§ 1.1502–92A.
1.1502–96T(b)(3), first sentence	§ 1.1502–92T	§ 1.1502–92A.
1.1502–96T(b)(3), second sentence	§ 1.1502–94T	§ 1.1502–94A.
1.1502–96(c), last sentence	§ 1.382–5T(d)	§ 1.382–5(d).
1.1502–98T, first sentence	§§ 1.1502–91T through 1.1502–96T	§§ 1.1502–91A through 1.1502–96A.
1.1502–98T, second sentence	§§ 1.1502–91T through 1.1502–96T	§§ 1.1502–91A through 1.1502–96A
1.1502–98T, third sentence	§ 1.1502–92T	§ 1.1502–92A.
1.1502–98T, third sentence	§ 1.1502–93T	§ 1.1502–93A
1.1502–99T(a), first sentence	Sections 1.1502–91T through 1.1502–96T and 1.1502–98T.	Sections 1.1502–91A through 1.1502–96A and 1.1502–98A.
1.1502–99T(a), second sentence	Sections 1.1502–94T through 1.1502–96T	Sections 1.1502–94A through 1.1502–96A.
1.1502–99T(b), first sentence	§§ 1.1502–91T through 1.1502–96T and 1.1502–98T.	§§ 1.1502–91A through 1.1502–96A and 1.1502–98A.
1.1502–99T(b), second sentence	§ 1.1502–92T(b)(1)(i)	§ 1.1502–92A(b)(1)(i).
1.1502–99T(b), third sentence	§ 1.1502–92T(b)(1)	§ 1.1502–92A(b)(1).
1.1502–99T(c)(1)(ii)	§§ 1.1502–91T through 1.1502–96T and 1.1502–98T.	§§ 1.1502–91A through 1.1502–96A and 1.1502–98A
1.1502–99T(c)(1)(iii), first sentence	§§ 1.1502–91T through 1.1502–96T and 1.1502–98T.	§§ 1.1502–91A through 1.1502–96A and 1.1502–98A.
1.1502–99T(c)(1)(iii), second sentence	§ 1.1502–92T	§ 1.1502–92A.
1.1502–99T(c)(2)(i), first sentence	§§ 1.1502–91T through 1.1502–96T and through 1.1502–98T.	§§ 1.1502–91A 1.1502–96A and 1.1502–98A.
1.1502–99T(c)(2)(i), first sentence	§ 1.1502–95T(c)	§ 1.1502–95A(c).
1.1502–99T(c)(2)(i), fifth sentence	§ 1.1502–91T(d)(2)(i)	§ 1.1502–91A(d)(2)(i).
1.1502–99T(c)(2)(ii)	§ 1.382–8T	§ 1.382–8.
1.1502–99T(c)(2)(ii)	§ 1.382–8T(h)	§ 1.382–8(h).
1.1502–99T(d)(1)	§ 1.1502–92T	§ 1.1502–92A.

Affected section	Remove	Add
1.1502–99T(d)(3)	§§ 1.1502–91T through 1.1502–96T and 1.1502–98T.	§§ 1.1502–91A through 1.1502–96A and 1.1502–98A.

Par. 3. Section 1.1502–20 is amended as follows:

1. Adding a sentence to the end of paragraph (g)(1).
2. Redesignating paragraph (g)(5) as paragraph (g)(4).
3. Paragraph (g)(4)(i)(A) is amended by removing ", and" and adding ";" in its place.
4. Paragraph (g)(4)(i)(B) is amended by removing the period at the end of the paragraph and adding "; and" in its place.
5. Adding a new paragraph (g)(4)(i)(C) immediately after paragraph (g)(4)(i)(B) and before paragraph (g)(4)(i) concluding text.
6. Redesignating paragraph (g)(4)(ii) as paragraph (g)(4)(iii).
7. Adding a new paragraph (g)(4)(ii).

The revisions and additions read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

* * * * *

(g) * * *

(1) * * * See § 1.1502–96(d) for rules relating to section 382 and the reattribution of losses under this paragraph (g).

* * * * *

(4)

(i) * * *

(C) If the common parent is reattributing to itself all or any part of a section 382 limitation pursuant to § 1.1502–96(d)(5), the information required by paragraph (g)(4)(ii) of this section.

* * * * *

(ii) *Reattribution of section 382 limitation.* The information required by this paragraph (g)(4)(ii) is a separate list for each subsidiary (or a separate list for two or more subsidiaries that are members of a loss subgroup whose pre-change subgroup losses are being reattributed) with respect to which an apportionment of a separate section 382 limitation or subgroup section 382 limitation is being made, setting forth—

(A) The name and E.I.N. of the subsidiary (or subsidiaries that were members of a loss subgroup);

(B) A statement entitled "THIS IS AN ELECTION UNDER § 1.1502–96(d)(5) TO APPORTION ALL OR PART OF [insert A SEPARATE or A SUBGROUP or BOTH A SEPARATE AND A SUBGROUP] SECTION 382 LIMITATION TO [insert name and E.I.N. of the common parent]";

(C) The date of the ownership change giving rise to the separate section 382 limitation or subgroup section 382 limitation that is being apportioned;

(D) The amount of the separate (or subgroup) section 382 limitation for the taxable year in which the reattribution occurs (determined without reference to any apportionment under this section or § 1.1502–95(c));

(E) The amount of each net operating loss carryover or capital loss carryover, and the year in which it arose, of the subsidiary (or subsidiaries) that is subject to the separate section 382 limitation or subgroup section 382 limitation that is being apportioned to the common parent, and the amount of the value element and adjustment element of that limitation that is apportioned to the common parent.

* * * * *

Par. 3a. Immediately following § 1.1502–79A, an undesignated centerheading is added to read as follows:

Regulations Applying Section 382 With Respect to Testing Dates (and Corporations Joining or Leaving Consolidated Groups) Before June 25, 1999

Par. 4. Section § 1.1502–90T is amended as follows:

1. Redesignating § 1.1502–90T as § 1.1502–90A [newly redesignated § 1.1502–90A will appear after the centerheading added in Par. 3a.]
2. Revising the section heading and the introductory text of newly designated § 1.1502–90A.
3. Redesignating the entries for § 1.1502–91T through § 1.1502–99T as § 1.1502–91A through § 1.1502–99A and revising the section headings.
4. Revising the entries for paragraph (a) of newly designated § 1.1502–99A.

The revisions read as follows:

§ 1.1502–90A Table of contents.

The following list contains the major headings in §§ 1.1502–91A through 1.1502–99A:

§ 1.1502–91A Application of Section 382 With Respect to a Consolidated Group Generally Applicable for Testing Dates Before June 25, 1999.

* * * * *

§ 1.1502–92A Ownership change of a loss group or a loss subgroup generally applicable for testing dates before June 25, 1999.

* * * * *

§ 1.1502–93A Consolidated section 382 limitation (or subgroup section 382 limitation) generally applicable for testing dates before June 25, 1999.

* * * * *

§ 1.1502–94A Coordination with section 382 and the regulations thereunder when a corporation becomes a member of a consolidated group generally applicable for corporations becoming members of a group before June 25, 1999.

* * * * *

§ 1.1502–95A Rules on ceasing to be a member of a consolidated group (or loss subgroup) generally applicable for corporations ceasing to be members before June 25, 1999.

* * * * *

§ 1.1502–96A Miscellaneous rules generally applicable for testing dates before June 25, 1999.

* * * * *

§ 1.1502–97A Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case. [Reserved].

§ 1.1502–98A Coordination with section 383 generally applicable for testing dates (or members joining or leaving a group) before June 25, 1999.

* * * * *

§ 1.1502–99A Effective dates.

* * * * *

§ 1.1502–99A Effective dates.

(a) Effective date.

(1) In general.

(2) Anti-duplication rules for recognized built-in gain.

* * * * *

Par. 5. Section 1.1502–91T is amended as follows:

1. Redesignating § 1.1502–91T as § 1.1502–91A.
2. Revising the section heading of newly designated § 1.1502–91A.
3. Amending paragraph (h)(2) by removing the words "or an intercompany obligation" and replacing them with "(or an intercompany obligation disposed of before June 25, 1999".

The revision reads as follows:

§ 1.1502–91A Application of section 382 with respect to a consolidated group generally applicable for testing dates before June 25, 1999.

* * * * *

Par. 6. Section 1.1502–92T is revised as § 1.1502–92A, and the section heading is revised to read as follows:

§ 1.1502–92A Ownership change of a loss group or a loss subgroup generally applicable for testing dates before June 25, 1999.

* * * * *

Par. 6a. Section 1.1502–93T is amended as follows:

1. Redesignating § 1.1502–93T as § 1.1502–93A.

2. Revising the section heading of newly redesignated § 1.1502–93A.

3. Adding a sentence at the end of paragraph (c).

The additions and revisions read as follows:

§ 1.1502–93A Consolidated section 382 limitation (or subgroup section 382 limitation) generally applicable for testing dates before June 25, 1999.

* * * * *

(c) * * * See § 1.1502–99A(a)(2) for a special rule relating to the application of § 1.502–93(c)(2) to consolidated return years for which the due date of the return is after June 25, 1999.

* * * * *

Par. 7. Section 1.1502–94T is amended as follows:

1. Redesignating § 1.1502–94T as § 1.1502–94A.

2. Revising the section heading of newly redesignated § 1.1502–94A.

3. Revising the last sentence of paragraph (b)(4), *Example 3*(b).

The revision reads as follows:

§ 1.1502–94A Coordination with section 382 and the regulations thereunder when a corporation becomes a member of a consolidated group) generally applicable for corporations becoming members of a group before June 25, 1999.

* * * * *

(b) * * *

(4) * * *

Example 3. * * *

(b) * * * See also § 1.1502–21T in effect prior to June 25, 1999, contained in 26 CFR Part 1, revised April 1, 1999, or § 1.1502–21, as applicable.

* * * * *

Par. 8. Redesignate § 1.1502–95T as § 1.1502–95A and revise the section heading to read as follows:

§ 1.1502–95A Rules on ceasing to be a member of a consolidated group generally applicable for corporations ceasing to be members before June 25, 1999.

* * * * *

Par. 9. Redesignate § 1.1502–96T as § 1.1502–96A and revise the section heading to read as follows:

§ 1.1502–96A. Miscellaneous rules generally applicable for testing dates before June 25, 1999.

* * * * *

Par. 10. Redesignate § 1.1502–97T as § 1.1502–97A and revise the section heading to read as follows:

§ 1.1502–97A Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case.

[Reserved].

* * * * *

Par. 11. Redesignate § 1.1502–98T as § 1.1502–98A and revise the section heading to read as follows:

§ 1.1502–98A Coordination with section 383 generally applicable for testing dates (or members joining or leaving a group) before June 25, 1999.

* * * * *

Par. 12. Section 1.1502–99T is amended as follows:

1. Redesignating § 1.1502–99T as § 1.1502–99A.

2. Revising the section heading.

3. Revising paragraph (a).

4. Amending paragraph (c)(2)(i) by removing the language "(relating to the apportionment" in the first sentence and adding "and (b)(2)(ii)(relating to the apportionment".

The revisions read as follows:

§ 1.1502–99A Effective dates.

(a) *Effective date*—(1) *In general.* Except as provided in § 1.1502–99(b), §§ 1.1502–91A through 1.1502–96A and 1.1502–98A apply to any testing date on or after January 1, 1997, and before June 25, 1999.

Sections 1.1502–94A through 1.1502–96A also apply on any date on or after January 1, 1997, and before June 25, 1999, on which a corporation becomes a member of a group or on which a corporation ceases to be a member of a loss group (or a loss subgroup).

(2) *Anti-duplication rules for recognized built-in gain.* Section 1.1502–93(c)(2)(relating to recognized built-in gain of a loss group or loss subgroup) applies to taxable years for which the due date for income tax returns (without extensions) is after June 25, 1999,

* * * * *

Par. 13. Sections 1.1502–90 through 1.1502–99 are added to read as follows:

§ 1.1502–90 Table of contents.

The following list contains the major headings in §§ 1.1502-91 through 1.1502–99:

§.1.1502–91 Application of section 382 with respect to a consolidated group.

(a) Determination and effect of an ownership change.
(1) In general.
(2) Special rule for post-change year that includes the change date.
(3) Cross-reference.
(b) Definitions and nomenclature.
(c) Loss group.
(1) Defined.
(2) Coordination with rule that ends separate tracking.
(3) Example.
(d) Loss subgroup.
(1) Net operating loss carryovers.
(2) Net unrealized built-in loss.
(3) Loss subgroup parent.
(4) Election to treat loss subgroup parent requirement as satisfied.
(5) Principal purpose of avoiding a limitation.
(6) Special rules.
(7) Examples.
(e) Pre-change consolidated attribute.
(1) Defined.
(2) Example.
(f) Pre-change subgroup attribute.
(1) Defined.
(2) Example.
(g) Net unrealized built-in gain and loss.
(1) In general.
(2) Members included.
(i) Consolidated group with a net operating loss.
(ii) Determination whether a consolidated group has a net unrealized built-in loss.
(iii) Loss subgroup with net operating loss carryovers.
(iv) Determination whether subgroup has a net unrealized built-in loss.
(v) Separate determination of section 382 limitation for recognized built-in losses and net operating losses.
(3) Coordination with rule that ends separate tracking.
(4) Acquisitions of built-in gain or loss assets.
(5) Indirect ownership.
(6) Common parent not common parent for five years.
(h) Recognized built-in gain or loss.
(1) In general. [Reserved]
(2) Disposition of stock or an intercompany obligation of a member.
(3) Intercompany transactions.
(4) Exchanged basis property.
(i) [Reserved]
(j) Predecessor and successor corporations.

§ 1.1502–92 Ownership change of a loss group or a loss subgroup.

(a) Scope.
(b) Determination of an ownership change.
(1) Parent change method.
(i) Loss group.
(ii) Loss subgroup.
(iii) Special rule if election regarding section 1504(a)(1) relationship is made.
(2) Examples.
(3) Special adjustments.
(i) Common parent succeeded by a new common parent.
(ii) Newly created loss subgroup parent.
(iii) Examples.
(4) End of separate tracking of certain losses.
(c) Supplemental rules for determining ownership change.
(1) Scope.
(2) Cause for applying supplemental rule.
(3) Operating rules.
(4) Supplemental ownership change rules.
(i) Additional testing dates for the common parent (or loss subgroup parent).
(ii) Treatment of subsidiary stock as stock of the common parent (or loss subgroup parent).
(iii) Different testing periods.

(iv) Disaffiliation of a subsidiary.
(v) Subsidiary stock acquired first.
(vi) Anti-duplication rule.
(5) Examples.
(d) Testing period following ownership change under this section.
(e) Information statements.
(1) Common parent of a loss group.
(2) Abbreviated statement with respect to loss subgroups.

§ 1.1502–93 Consolidated section 382 limitation (or subgroup section 382 limitation).

(a) Determination of the consolidated section 382 limitation (or subgroup section 382 limitation).
(1) In general.
(2) Coordination with apportionment rule.
(b) Value of the loss group (or loss subgroup).
(1) Stock value immediately before ownership change.
(2) Adjustment to value.
(i) In general.
(ii) Anti-duplication.
(3) Examples.
(c) Recognized built-in gain of a loss group or loss subgroup.
(1) In general.
(2) Adjustments.
(d) Continuity of business.
(1) In general.
(2) Example.
(e) Limitations of losses under other rules.

§ 1.1502–94 Coordination with section 382 and the regulations thereunder when a corporation becomes a member of a consolidated group.

(a) Scope.
(1) In general.
(2) Successor corporation as new loss member.
(3) Coordination in the case of a loss subgroup.
(4) End of separate tracking of certain losses.
(5) Cross-reference.
(b) Application of section 382 to a new loss member.
(1) In general.
(2) Adjustment to value.
(3) Pre-change separate attribute defined.
(4) Examples.
(c) Built-in gains and losses.
(d) Information statements.

§ 1.1502–95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

(a) In general.
(1) Consolidated group.
(2) Election by common parent.
(3) Coordination with §§ 1.1502–91 through 1.1502–93.
(b) Separate application of section 382 when a member leaves a consolidated group.
(1) In general.
(2) Effect of a prior ownership change of the group.
(3) Application in the case of a loss subgroup.
(4) Examples.
(c) Apportionment of a consolidated section 382 limitation.
(1) In general.
(2) Amount which may be apportioned.
(i) Consolidated section 382 limitation.
(ii) Net unrealized built-in gain.
(3) Effect of apportionment on the consolidated group.
(i) Consolidated section 382 limitation.
(ii) Net unrealized built-in gain.
(4) Effect on corporations to which an apportionment is made.
(i) Consolidated section 382 limitation.
(ii) Net unrealized built-in gain.
(5) Deemed apportionment when loss group terminates.
(6) Appropriate adjustments when former member leaves during the year.
(7) Examples.
(d) Rules pertaining to ceasing to be a member of a loss subgroup.
(1) In general.
(2) Exceptions.
(3) Examples.
(e) Allocation of net unrealized built-in loss.
(1) In general.
(2) Amount of allocation.
(i) In general.
(ii) Transferred basis property and deferred gain or loss.
(iii) Assets for which gain or loss has been recognized.
(iv) Exchanged basis property.
(v) Two or more members depart during the same year.
(vi) Anti-abuse rule.
(3) Effect of the allocation on the consolidated group.
(4) Effect on corporations to which the allocation is made.
(5) Subgroup principles.
(6) Apportionment of consolidated section 382 limitation (or subgroup section 382 limitation).
(i) In general.
(ii) Special rule for former members that become members of the same consolidated group.
(7) Examples.
(8) Reporting requirement.
(f) Filing the election to apportion the section 382 limitation and net unrealized built-in gain.
(1) Form of the election to apportion.
(2) Signing of the election.
(3) Filing of the election.
(4) Revocation of election.

§ 1.1502–96 Miscellaneous rules.

(a) End of separate tracking of losses.
(1) Application.
(2) Effect of end of separate tracking.
(i) Net operating loss carryovers.
(ii) Net unrealized built-in losses.
(iii) Common parent not common parent for five years.
(3) Continuing effect of end of separate tracking.
(i) In general.
(ii) Example.
(4) Special rule for testing period.
(5) Limits on effects of end of separate tracking.
(b) Ownership change of subsidiary.
(1) Ownership change of a subsidiary because of options or plan or arrangement.
(2) Effect of the ownership change.
(i) In general.
(ii) Pre-change losses.
(3) Coordination with §§ 1.1502–91, 1.1502–92, and 1.1502–94.
(4) Example.
(c) Continuing effect of an ownership change.
(d) Losses reattributed under § 1.1502–20(g).
(1) In general.
(2) Deemed section 381(a) transaction.
(3) Rules relating to owner shifts.
(i) In general.
(ii) Examples.
(4) Rules relating to the section 382 limitation.
(i) Reattributed loss is a pre-change separate attribute of a new loss member.
(ii) Reattributed loss is a pre-change subgroup attribute.
(iii) Potential application of section 382(l)(1).
(iv) Duplication or omission of value.
(v) Special rule for continuity of business requirement.
(5) Election to reattribute section 382 limitation.
(i) Effect of election.
(ii) Examples.
(e) Time and manner of making election under § 1.1502–91(d)(4).
(1) In general.
(2) Election statement.

§ 1.1502–97 Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case. [Reserved].

§ 1.1502–98 Coordination with section 383.

§ 1.1502–99 Effective dates.

(a) Effective date.
(b) Special rules.
(1) Election to treat subgroup parent requirement as satisfied.
(2) Principal purpose of avoiding a limitation.
(3) Ceasing to be a member of a loss subgroup.
(i) Ownership change of a loss subgroup.
(ii) Expiration of 5-year period.
(4) Reattribution of net operating loss carryovers under § 1.1502–20(g).
(5) Election to apportion net unrealized built-in gain.
(c) Testing period may include a period beginning before June 25, 1999.
(1) In general.
(2) Transition rule for net unrealized built-in losses.

§ 1.1502–91 Application of section 382 with respect to a consolidated group.

(a) *Determination and effect of an ownership change*—(1) *In general.* This section and §§ 1.1502–92 and 1.1502–93 set forth the rules for determining an ownership change under section 382 for members of consolidated groups and the section 382 limitations with respect to attributes described in paragraphs (e) and (f) of this section. These rules generally provide that an ownership change and the section 382 limitation are determined with respect to these attributes for the group (or loss subgroup) on a single entity basis and

not for its members separately. Following an ownership change of a loss group (or a loss subgroup) under § 1.1502–92, the amount of consolidated taxable income for any post-change year which may be offset by pre-change consolidated attributes (or pre-change subgroup attributes) shall not exceed the consolidated section 382 limitation (or subgroup section 382 limitation) for such year as determined under § 1.1502–93.

(2) *Special rule for post-change year that includes the change date.* If the post-change year includes the change date, section 382(b)(3)(A) is applied so that the consolidated section 382 limitation (or subgroup section 382 limitation) does not apply to the portion of consolidated taxable income that is allocable to the period in the year on or before the change date. See generally § 1.382–6 (relating to the allocation of income and loss). The allocation of consolidated taxable income for the post-change year that includes the change date must be made before taking into account any consolidated net operating loss deduction (as defined in § 1.1502–21(a)).

(3) *Cross-reference.* See §§ 1.1502–94 and 1.1502–95 for rules that apply section 382 to a corporation that becomes or ceases to be a member of a group or loss subgroup.

(b) *Definitions and nomenclature.* For purposes of this section and §§ 1.1502–92 through 1.1502–99, unless otherwise stated:

(1) The definitions and nomenclature contained in section 382 and the regulations thereunder (including the nomenclature and assumptions relating to the examples in § 1.382–2T(b)) and this section and §§ 1.1502–92 through 1.1502–99 apply.

(2) In all examples, all groups file consolidated returns, all corporations file their income tax returns on a calendar year basis, the only 5-percent shareholder of a corporation is a public group, the facts set forth the only owner shifts during the testing period, no election is made under paragraph (d)(4) of this section, and each asset of a corporation has a value equal to its adjusted basis.

(3) As the context requires, references to §§ 1.1502–91 through 1.1502–96 include references to corresponding provisions of §§ 1.1502–91A through 1.1502–96A. For example, a reference to an ownership change under § 1.1502–92 in § 1.1502–95(b) can include a reference to an ownership change under § 1.1502–92A.

(c) *Loss group*—(1) *Defined. A loss group is a consolidated group that*—

(i) Is entitled to use a net operating loss carryover to the taxable year that did not arise (and is not treated under § 1.1502–21(c) as arising) in a SRLY;

(ii) Has a consolidated net operating loss for the taxable year in which a testing date of the common parent occurs (determined by treating the common parent as a loss corporation); or

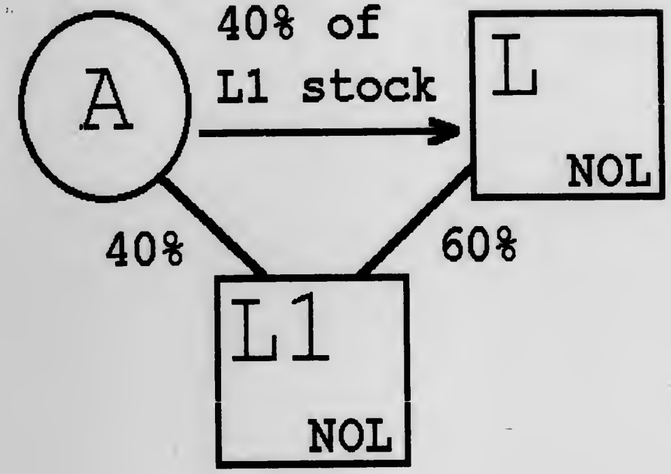
(iii) Has a net unrealized built-in loss (determined under paragraph (g) of this section by treating the date on which the determination is made as though it were a change date).

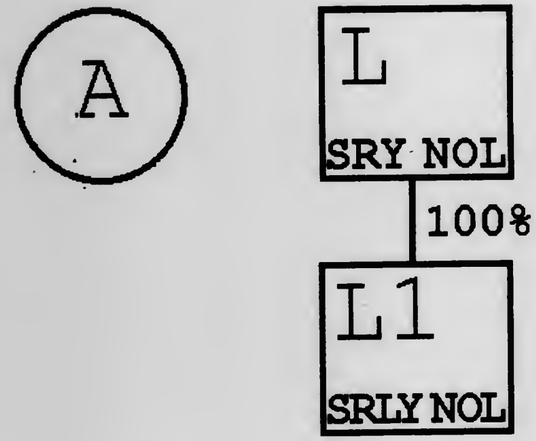
(2) *Coordination with rule that ends separate tracking.* A consolidated group may be a loss group because a member's losses that arose in (or are treated as arising in) a SRLY are treated as described in paragraph (c)(1)(i) of this section. See § 1.1502–96(a).

(3) *Example.* The following example illustrates the principles of this paragraph (c):

Example. Loss group. (i) L and L1 file separate returns and each has a net operating loss carryover arising in Year 1 that is carried over to Year 2. A owns 40 shares and L owns 60 shares of the 100 outstanding shares of L1 stock. At the close of Year 1, L buys the 40 shares of L1 stock from A. For Year 2, L and L1 file a consolidated return. The following is a graphic illustration of these facts:

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(ii) L and L1 become a loss group at the beginning of Year 2 because the group is entitled to use the Year 1 net operating loss carryover of L, the common parent, which did not arise (and is not treated under § 1.1502–21(c) as arising) in a SRLY. See § 1.1502–94 for rules relating to the application of section 382 with respect to L1's net operating loss carryover from Year 1 which did arise in a SRLY.

(d) *Loss subgroup*—(1) *Net operating loss carryovers.* Two or more corporations that become members of a consolidated group (the current group) compose a loss subgroup if—

(i) They were affiliated with each other in another group (the former group), whether or not the group was a consolidated group;

(ii) They bear the relationship described in section 1504(a)(1) to each other through a loss subgroup parent immediately after they become members of the current group (or are deemed to bear that relationship as a result of an election described in paragraph (d)(4) of this section); and

(iii) At least one of the members carries over a net operating loss that did not arise (and is not treated under § 1.1502–21(c) as arising) in a SRLY with respect to the former group.

(2) *Net unrealized built-in loss.* Two or more corporations that become members of a consolidated group compose a loss subgroup if they—

(i) Have been continuously affiliated with each other for the 5 consecutive year period ending immediately before they become members of the group;

(ii) Bear the relationship described in section 1504(a)(1) to each other through a loss subgroup parent immediately after they become members of the current group (or are deemed to bear that relationship as a result of an election described in paragraph (d)(4) of this section); and

(iii) Have a net unrealized built-in loss (determined under paragraph (g) of this section on the day they become members of the group by treating that day as though it were a change date).

(3) *Loss subgroup parent.* A loss subgroup parent is the corporation that bears the same relationship to the other members of the loss subgroup as a common parent bears to the members of a group.

(4) *Election to treat loss subgroup parent requirement as satisfied*—(i) *In general.* Solely for purposes of paragraphs (d)(1)(i) and (2)(ii) of this section, two or more corporations that become members of a consolidated group at the same time and that were affiliated with each other immediately before becoming members of the group are deemed to bear a section 1504(a)(1) relationship to each other immediately after they become members of the group if the common parent of that group makes an election under this paragraph (d)(4) with respect to those members. See § 1.1502–96(e) for the time and manner of making the election.

(ii) *Members included.* An election under this paragraph (d)(4) includes all corporations that become members of the current group at the same time and that were affiliated with each other immediately before they become members of the current group.

(iii) *Each member included treated as loss subgroup parent.* If the members to which this election applies are a loss subgroup described in paragraph (d)(1) or (2) of this section, then each member is treated as a loss subgroup parent. See § 1.1502–92(b)(1)(iii) for special rules relating to an ownership change of a loss subgroup if the election under this paragraph (d)(4) is made.

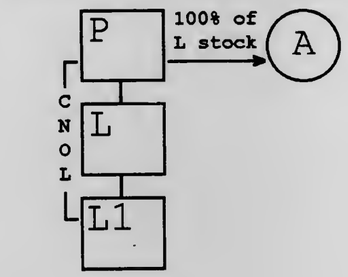
(5) *Principal purpose of avoiding a limitation.* The corporations described in paragraphs (d)(1) or (2) of this section do not compose a loss subgroup if any one of them is formed, acquired, or availed of with a principal purpose of avoiding the application of, or increasing any limitation under, section 382. Instead, § 1.1502–94 applies with respect to the attributes of each such corporation. Any member excluded from a loss subgroup, if excluded with a principal purpose of so avoiding or increasing any section 382 limitation, is treated as included in the loss subgroup. This paragraph (d)(5) does not apply solely because, in connection with becoming members of the group, the members of a group (or loss subgroup) are rearranged (or, in the case of the preceding sentence, are not rearranged) to bear a relationship to the other members described in section 1504(a)(1).

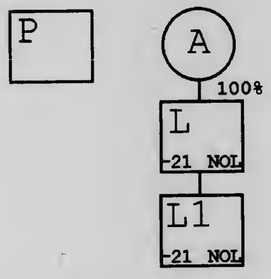
(6) *Special rules.* See § 1.1502–95(d) for rules concerning when a corporation ceases to be a member of a loss subgroup, and for certain exceptions that may apply if a member does not continue to satisfy the loss subgroup parent requirement within the current group. See also § 1.1502–96(a) for a special rule regarding the end of separate tracking of SRLY losses of a member that has an ownership change or that has been a member of a group for at least 5 consecutive years.

(7) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Loss subgroup. (i) P owns all the L stock and L owns all the L1 stock. The P group has a consolidated net operating loss arising in Year 1 that is carried to Year 2. On May 2, Year 2, P sells all the stock of L to A, and L and L1 thereafter file consolidated returns. A portion of the Year 1 consolidated net operating loss is apportioned under § 1.1502–21(b) to each of L and L1, which they carry over to Year 2. The following is a graphic illustration of these facts:

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(ii) (a) L and L1 compose a loss subgroup within the meaning of paragraph (d)(1) of this section because—

(A) They were affiliated with each other in the P group (the former group);

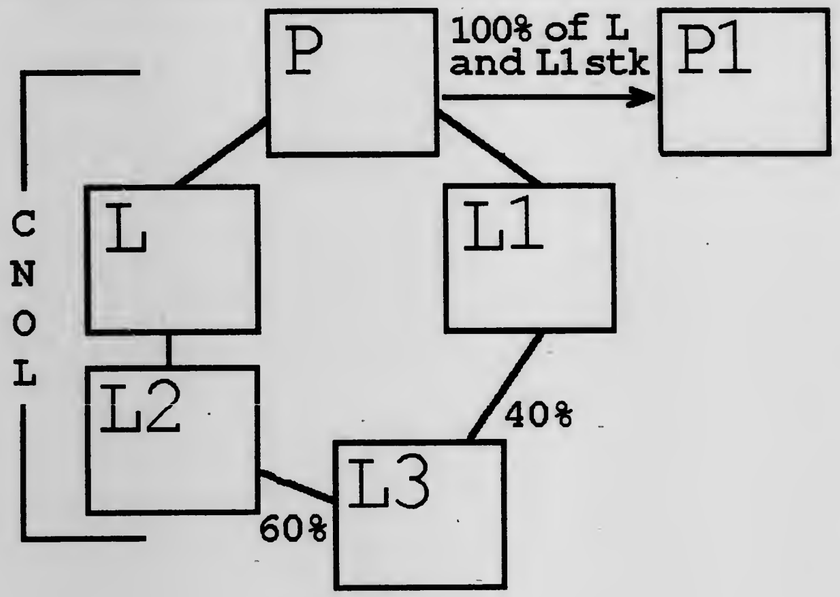
(B) They bear a relationship described in section 1504(a)(1) to each other through a loss subgroup parent (L) immediately after they became members of the L group; and

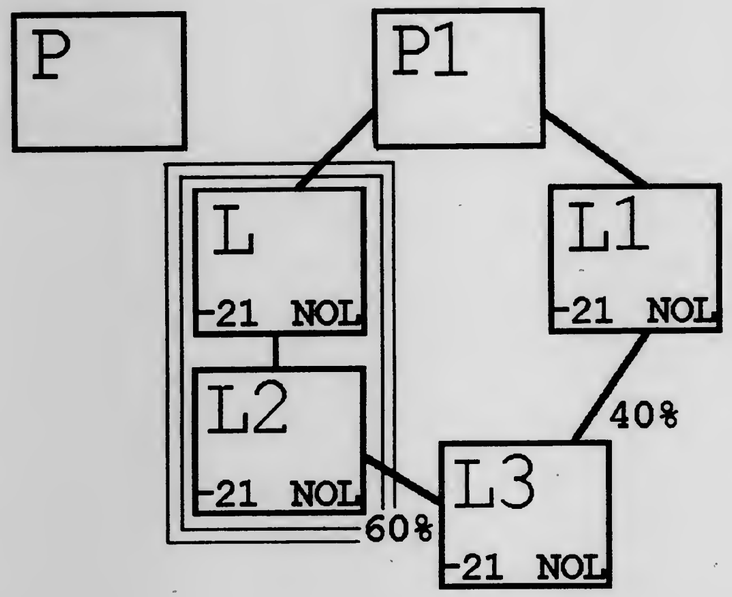
(C) At least one of the members (here, both L and L1) carries over a net operating loss to the L group (the current group) that did not arise in a SRLY with respect to the P group.

(b) Under paragraph (d)(3) of this section, L is the loss subgroup parent of the L loss subgroup.

Example 2. Loss subgroup—section 1504(a)(1) relationship. (i) P owns all the stock of L and L1. L owns all the stock of L2. L1 and L2 own 40 percent and 60 percent of the stock of L3, respectively. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. On May 22, Year 2, P sells all the stock of L and L1 to P1, the common parent of another consolidated group. The Year 1 consolidated net operating loss is apportioned under § 1.1502–21(b), and each of L, L1, L2, and L3 carries over a portion of such loss to the first consolidated return year of the P1 group ending after the acquisition. The following is a graphic illustration of these facts:

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(ii) L and L2 compose a loss subgroup within the meaning of paragraph (d)(1) of this section. Neither L1 nor L3 is included in a loss subgroup because neither bears a relationship described in section 1504(a)(1) through a loss subgroup parent to any other member of the former group immediately after becoming members of the P1 group.

Example 3. Loss subgroup—section 1504(a)(1) relationship. The facts are the same as in *Example 2*, except that the stock of L1 is transferred to L in connection with the sale of the L stock to P1. L, L1, L2, and L3 compose a loss subgroup within the meaning of paragraph (d)(1) of this section because—

(i) They were affiliated with each other in the P group (the former group);

(ii) They bear a relationship described in section 1504(a)(1) to each other through a loss subgroup parent (L) immediately after they become members of the P1 group; and

(iii) At least one of the members (here, each of L, L1, L2, and L3) carries over a net operating loss to the P1 group (the current group).

Example 4. Loss subgroup—elective section 1504(a)(1) relationship. The facts are the same as in *Example 2*, except that P1 makes the election under paragraph (d)(4) of this section. The election includes L, L1, L2, and L3 (even though L and L2 would compose a loss subgroup without regard to the election) because they become members of the current group (the P1 group) at the same time and were affiliated with each other in the P group immediately before they became members of the P1 group. As a result of the election, L, L1, L2, and L3 are treated as satisfying the requirement that they bear the relationship described in section 1504(a)(1) to each other through a loss subgroup parent immediately after they become members of the P1 group. L, L1, L2, and L3 compose a loss subgroup within the meaning of paragraph (d)(1) of this section.

(e) *Pre-change consolidated attribute*—(1) *Defined.* A pre-change consolidated attribute of a loss group is—

(i) Any loss described in paragraph (c)(1)(i) or (ii) of this section (relating to the definition of loss group) that is allocable to the period ending on or before the change date; and

(ii) Any recognized built-in loss of the loss group.

(2) *Example.* The following example illustrates the principle of this paragraph (e):

Example. Pre-change consolidated attribute. (i) The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. The L loss group has an ownership change at the beginning of Year 2.

(ii) The net operating loss carryover of the L loss group from Year 1 is a pre-change consolidated attribute because the L group was entitled to use the loss in Year 2 and therefore the loss was described in paragraph (c)(1)(i) of this section. Under paragraph (a)(2)(i) of this section, the amount of consolidated taxable income of the L group for Year 2 that may be offset by this loss carryover may not exceed the consolidated section 382 limitation of the L group for that year. See § 1.1502–93 for rules relating to the computation of the consolidated section 382 limitation.

(f) *Pre-change subgroup attribute*—(1) *Defined.* A pre-change subgroup attribute of a loss subgroup is—

(i) Any net operating loss carryover described in paragraph (d)(1)(iii) of this section (relating to the definition of loss subgroup); and

(ii) Any recognized built-in loss of the loss subgroup.

(2) *Example.* The following example illustrates the principle of this paragraph (f):

Pre-change subgroup attribute. (i) P is the common parent of a consolidated group. P owns all the stock of L, and L owns all the stock of L1. L2 is not a member of an affiliated group, and has a net operating loss arising in Year 1 that is carried over to Year 2. On December 11, Year 2, L1 acquires all the stock of L2, causing an ownership change of L2. During Year 2, the P group has a consolidated net operating loss that is carried over to Year 3. On November 2, Year 3, M acquires all the L stock from P. M, L, L1, and L2 thereafter file consolidated returns. All of the P group Year 2 consolidated net operating loss is apportioned under § 1.1502–21(b) to L and L2, which they carry over to the M group.

(ii)(a) L, L1, and L2 compose a loss subgroup because—

(1) They were affiliated with each other in the P group (the former group);

(2) They bear a relationship described in section 1504(a)(1) to each other through a loss subgroup parent (L) immediately after they became members of the L group; and

(3) At least one of the members (here, both L and L2) carries over a net operating loss to the M group (the current group) that is described in paragraph (d)(1)(iii) of this section.

(b) For this purpose, L2's loss from Year 1 that was a SRLY loss with respect to the P group (the former group) is described in paragraph (d)(1)(iii) of this section because L2 had an ownership change on becoming a member of the P group (see § 1.1502–96(a)) on December 11, Year 2. Starting on December 12, Year 2, the P group no longer separately tracked owner shifts of the stock of L1 with respect to the Year 1 loss. M's acquisition results in an ownership change of L, and therefore the L loss subgroup under § 1.1502–92(a)(2). See § 1.1502–93 for rules governing the computation of the subgroup section 382 limitation.

(iii) In the M group, L2's Year 2 loss continues to be subject to a section 382 limitation resulting from the ownership change that occurred on December 11, Year 2. See § 1.1502–96(c).

(g) *Net unrealized built-in gain and loss*—(1) *In general.* The determination whether a consolidated group (or loss subgroup) has a net unrealized built-in gain or loss under section 382(h)(3) is based on the aggregate amount of the separately computed net unrealized built-in gains or losses of each member that is included in the group (or loss subgroup) under paragraph (g)(2) of this section, including items of built-in income and deduction described in section 382(h)(6). Thus, for example, amounts deferred under section 267, or under § 1.1502–13 (other than amounts deferred with respect to the stock of a member (or an intercompany obligation) included in the group (or loss subgroup) under paragraph (g)(2) of this section) are built-in items. The threshold requirement under section 382(h)(3)(B) applies on an aggregate basis and not on a member-by-member basis. The separately computed amount of a member included in a group or loss subgroup does not include any unrealized built-in gain or loss on stock (including stock described in section 1504(a)(4) and § 1.382–2T(f)(18)(ii) and (iii)) of another member included in the group or loss subgroup (or an intercompany obligation). However, a member of a group or loss subgroup includes in its separately computed amount the unrealized built-in gain or loss on stock (but not on an intercompany obligation) of another member not included in the group or loss subgroup. If a member is not included in the determination whether a group (or subgroup) has a net unrealized built-in loss under paragraph (g)(2)(ii) or (iv) of this section, that member is not included in the loss group or loss subgroup. See § 1.1502–94(c) (relating to built-in gain or loss of a new loss member) and § 1.1502–96(a) (relating to the end of separate tracking of certain losses).

(2) *Members included*—(i) *Consolidated group with a net operating loss.* The members included in the determination whether a consolidated group described in paragraph (c)(1)(i) or (ii) of this section (relating to loss groups with net operating losses) has a net unrealized built-in gain are all members of the consolidated group on the day that the determination is made.

(ii) *Determination whether a consolidated group has a net unrealized built-in loss.* The members included in the determination whether a consolidated group is a loss group described in paragraph (c)(1)(iii) of this section are—

(A) The common parent and all other members that have been affiliated with the common parent for the 5 consecutive year period ending on the day that the determination is made;

(B) Any other member that has a net unrealized built-in loss determined under paragraph (g)(1) of this section on the date that the determination is made, and that is neither a new loss member described in § 1.1502–94(a)(1)(ii) nor a member of a loss subgroup described in paragraph (d)(2) of this section;

(C) Any new loss member described in § 1.1502–94(a)(1)(ii) that has a net unrealized built-in gain determined under paragraph (g)(1) of this section on the day that the determination is made; and

(D) The members of a loss subgroup described in paragraph (d)(2) of this section if the members of the subgroup have, in the aggregate, a net unrealized built-in gain on the day that the determination is made.

(iii) *Loss subgroup with net operating loss carryovers.* The members included in the determination whether a loss subgroup described in paragraph (d)(1) of this section (relating to loss subgroups with net operating loss carryovers) has a net unrealized built-in gain are all members of the loss subgroup on the day that the determination is made.

(iv) *Determination whether subgroup has a net unrealized built-in loss.* The members included in the determination whether a subgroup has a net unrealized built-in loss are those members described in paragraphs (d)(2)(i) and (ii) of this section.

(v) *Separate determination of section 382 limitation for recognized built-in losses and net operating losses.* In determining whether a loss group described in paragraph (c)(1)(i) or (ii) of this section (relating to loss groups that have net operating loss carryovers) has a net unrealized built-in gain which, if recognized, increases the consolidated section 382 limitation, the group includes, under paragraph (g)(2)(i) of this section, all of its members on the day the determination is made. Under paragraph (g)(2)(ii) of this section, however, for purposes of determining whether a group has a net unrealized built-in loss described in paragraph (c)(1)(iii) of this section, not all members of the consolidated group may be included. Thus, a consolidated group may have recognized built-in gains that increase the amount of consolidated taxable income that may be offset by its pre-change net operating loss carryovers that did not arise (and are not treated as arising) in a SRLY, and also may have recognized built-in losses the absorption of which is limited. Similar results may obtain for loss subgroups under paragraphs (g)(2)(iii) and (iv) of this section. See § 1.1502–93(c)(2) for rules prohibiting the use of recognized built-in gains to increase the amount of consolidated taxable income that can be offset by recognized built-in losses.

(3) *Coordination with rule that ends separate tracking.* See § 1.1502–96(a) for special rules relating to members (or loss subgroups) that have an ownership change within six months before, on, or after becoming a member of the group.

(4) *Acquisitions of built-in gain or loss assets.* A member of a consolidated group (or loss subgroup) may not, in determining its separately computed net unrealized built-in gain or loss, include any gain or loss with respect to assets acquired with a principal purpose to affect the amount of its net unrealized built-in gain or loss. A group (or loss subgroup) may not, in determining its net unrealized built-in gain or loss, include any gain or loss of a member acquired with a principal purpose to affect the amount of its net unrealized built-in gain or loss.

(5) *Indirect ownership.* A member's separately computed net unrealized built-in gain or loss is adjusted to the extent necessary to prevent any duplication of unrealized gain or loss attributable to the member's indirect ownership interest in another member through a nonmember if the member has a 5-percent or greater ownership interest in the nonmember.

(6) *Common parent not common parent for five years.* If the common parent has become the common parent of an existing group within the previous 5 year period in a transaction described in § 1.1502–75(d)(2)(ii) or (3), appropriate adjustments must be made in applying paragraph (g)(2)(ii)(A) of this section so that corporations that have not been members of the group for five years are not included. In such a case, references to the common parent in paragraph (g)(2)(ii)(A) of this section are to the former common parent. Thus, members of the group remaining in existence (including the new common parent) that have not been affiliated with the former common parent (or that have not been members of that group) for the five consecutive year period ending on the day that the determination is made are not included under paragraph (g)(2)(ii)(A) of this section. See, however, § 1.1502–96(a)(2) for special rules relating to members (or loss subgroups) that have an ownership change within six months before, on, or after the time that the member becomes a member of the group.

(h) *Recognized built-in gain or loss*—(1) *In general.* [Reserved].

(2) *Disposition of stock or an intercompany obligation of a member.* Gain or loss recognized by a member on the disposition of stock (including stock described in section 1504(a)(4) and § 1.382–2T(f)(18)(ii) and (iii)) of another member is treated as a recognized gain or loss for purposes of section 382(h)(2) (unless disallowed under § 1.1502–20 or otherwise), even though gain or loss on such stock was not included in the determination of a net unrealized built-in gain or loss under paragraph (g)(1) of this section. Gain or loss recognized by a member with respect to an intercompany obligation is treated as recognized gain or loss only to the extent (if any) the transaction gives rise to aggregate income or loss within the consolidated group.

(3) *Intercompany transactions.* Gain or loss that is deferred under provisions such as section 267 and § 1.1502–13 is treated as recognized built-in gain or loss only to the extent taken into account by the group during the recognition period. See also § 1.1502–13(c)(7) *Example 10.*

(4) *Exchanged basis property.* If the adjusted basis of any asset is determined, directly or indirectly, in whole or in part, by reference to the adjusted basis of another asset held by the member at the beginning of the recognition period, the asset is treated, with appropriate adjustments, as held by the member at the beginning of the recognition period.

(i) [Reserved]

(j) *Predecessor and successor corporations.* A reference in this section and §§ 1.1502–92 through 1.1502–99 to a corporation, member, common parent, loss subgroup parent, or subsidiary includes, as the context may require, a reference to a predecessor or successor corporation as defined in § 1.1502–1(f)(4). For example, the determination whether a successor satisfies the continuous affiliation requirement of paragraph (d)(2)(i) or (g)(2)(ii) of this section is made by reference to its predecessor.

§ 1.1502–92 Ownership change of a loss group or a loss subgroup.

(a) *Scope.* This section provides rules for determining if there is an ownership change for purposes of section 382 with respect to a loss group or a loss subgroup. See § 1.1502–94 for special rules for determining if there is an ownership change with respect to a new loss member and § 1.1502–96(b) for special rules for determining if there is an ownership change of a subsidiary.

(b) *Determination of an ownership change*—(1) *Parent change method*—(i) *Loss group.* A loss group has an ownership change if the loss group's common parent has an ownership change under section 382 and the regulations thereunder. Solely for

purposes of determining whether the common parent has an ownership change—

(A) The losses described in § 1.1502–91(c) are treated as net operating losses (or a net unrealized built-in loss) of the common parent; and

(B) The common parent determines the earliest day that its testing period can begin by reference to only the attributes that make the group a loss group under § 1.1502–91(c).

(ii) *Loss subgroup.* A loss subgroup has an ownership change if the loss subgroup parent has an ownership change under section 382 and the regulations thereunder. The principles of § 1.1502–95(b) (relating to ceasing to be a member of a consolidated group) apply in determining whether the loss subgroup parent has an ownership change. Solely for purposes of determining whether the loss subgroup parent has an ownership change—

(A) The losses described in § 1.1502–91(d) are treated as net operating losses (or a net unrealized built-in loss) of the loss subgroup parent;

(B) The day that the members of the loss subgroup become members of the group (or a loss subgroup) is treated as a testing date within the meaning of § 1.382–2(a)(4); and

(C) The loss subgroup parent determines the earliest day that its testing period can begin under § 1.382–2T(d)(3) by reference to only the attributes that make the members a loss subgroup under § 1.1502–91(d).

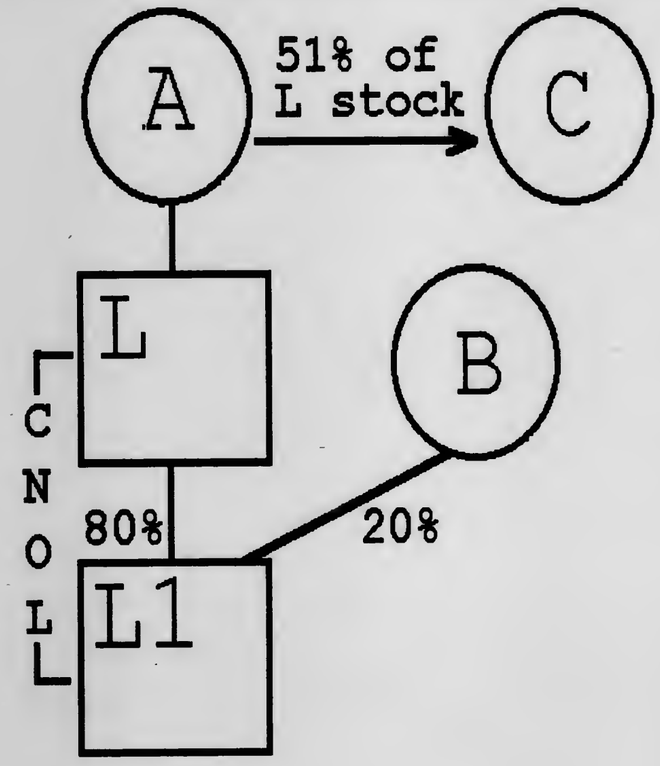
(iii) *Special rule if election regarding section 1504(a)(1) relationship is made*—(A) *Ownership change of deemed loss subgroup parent is an ownership change of loss subgroup.* If the common parent makes an election under § 1.1502–91(d)(4), each of the members in the loss subgroup is treated as the loss subgroup parent for purposes of determining whether the loss subgroup has an ownership change under section 382 and the regulations thereunder on or after the day the members become members of the group.

(B) *Exception.* Paragraph (b)(1)(iii)(A) of this section does not apply to cause an ownership change of a loss subgroup if a deemed loss subgroup parent has an ownership change upon (or after) ceasing to be a member of the current group.

(2) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. Loss group—ownership change of the common parent. (i) A owns all the L stock. L owns 80 percent and B owns 20 percent of the L1 stock. For Year 1, the L group has a consolidated net operating loss that resulted from the operations of L1 and that is carried over to Year 2. The value of the L stock is $1000. The total value of the L1 stock is $600 and the value of the L1 stock held by B is $120. The L group is a loss group under § 1.1502–91(c)(1) because it is entitled to use its net operating loss carryover from Year 1. On August 15, Year 2, A sells 51 percent of the L stock to C. The following is a graphic illustration of these facts:

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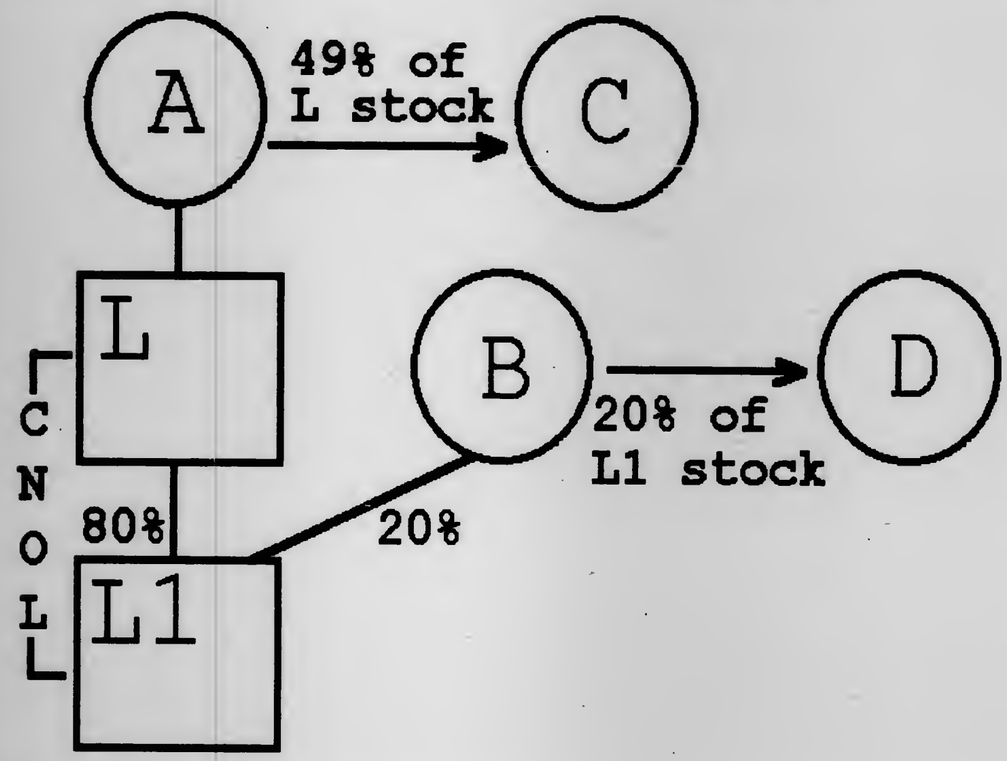


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(ii) Under paragraph (b)(1)(i) of this section, section 382 and the regulations thereunder are applied to L to determine whether it (and therefore the L loss group) has an ownership change with respect to its net operating loss carryover from Year 1 attributable to L1 on August 15, Year 2. The sale of the L stock to C causes an ownership change of L under § 1.382–2T and of the L loss group under paragraph (b)(1)(i) of this section. The amount of consolidated taxable income of the L loss group for any post-change taxable year that may be offset by its pre-change consolidated attributes (that is, the net operating loss carryover from Year 1 attributable to L1) may not exceed the consolidated section 382 limitation for the L loss group for the taxable year.

Example 2. Loss group—owner shifts of subsidiaries disregarded. (i) The facts are the same as in *Example 1*, except that on August 15, Year 2, A sells only 49 percent of the L stock to C and, on December 12, Year 3, in an unrelated transaction, B sells the 20 percent of the L1 stock to D. A's sale of the L stock to C does not cause an ownership change of L under § 1.382-2T nor of the L loss group under paragraph (b)(1)(i) of this section. The following is a graphic illustration of these facts:

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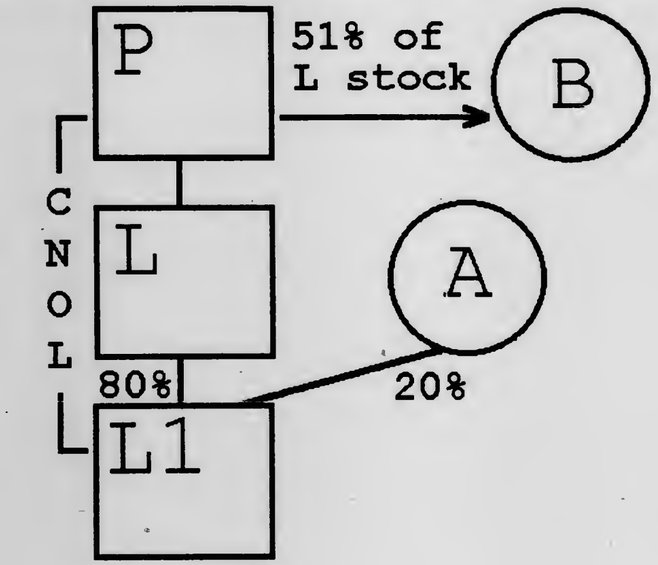


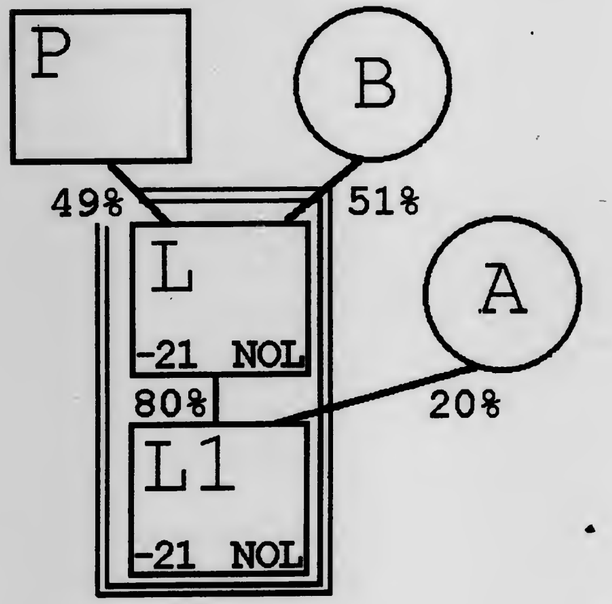
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(ii) B's subsequent sale of L1 stock is not taken into account for purposes of determining whether the L loss group has an ownership change under paragraph (b)(1)(i) of this section, and, accordingly, there is no ownership change of the L loss group. See paragraph (c) of this section, however, for a supplemental ownership change method that would apply to cause an ownership change if the purchases by C and D were pursuant to a plan or arrangement and certain other conditions are satisfied.

Example 3. Loss subgroup—ownership change of loss subgroup parent controls. (i) *P owns all the L stock. L owns 80 percent and A owns 20 percent of the L1 stock. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. On September 9, Year 2, P sells 51 percent of the L stock to B, and L1 is apportioned a portion of the Year 1 consolidated net operating loss under § 1.1502–21(b), which it carries over to its next taxable year. L and L1 file a consolidated return for their first taxable year ending after the sale to B. The following is a graphic illustration of these facts:*

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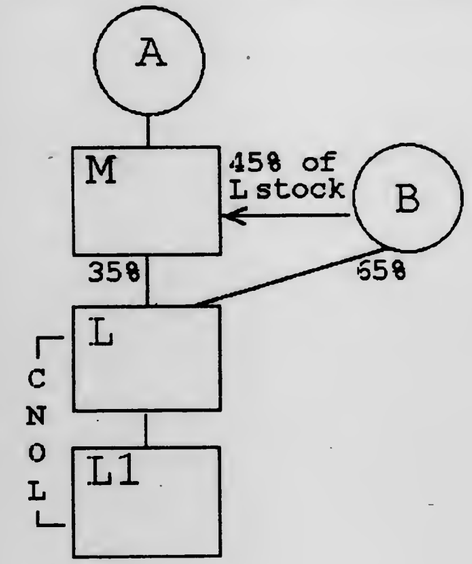


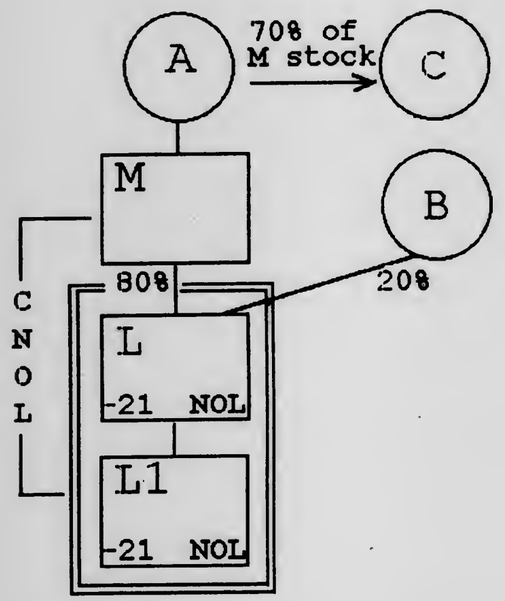
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(ii) Under § 1.1502–91(d)(1), L and L1 compose a loss subgroup on September 9, Year 2, the day that they become members of the L group. Under paragraph (b)(1)(ii) of this section, section 382 and the regulations thereunder are applied to L to determine whether it (and therefore the L loss subgroup) has an ownership change with respect to the portion of the Year 1 consolidated net operating loss that is apportioned to L1 on September 9, Year 2. L has an ownership change resulting from P's sale of 51 percent of the L stock to A. Therefore, the L loss subgroup has an ownership change with respect to that loss.

Example 4. Loss group and loss subgroup—contemporaneous ownership changes. (i) A owns all the stock of corporation M, M owns 35 percent and B owns 65 percent of the L stock, and L owns all the L1 stock. The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. On May 19, Year 2, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the Year 1 consolidated net operating loss, which they carry over to the M group's Year 2 and Year 3 consolidated return years. The M group has a consolidated net operating loss arising in Year 2 that is carried over to Year 3. On June 9, Year 3, A sells 70 percent of the M stock to C. The following is a graphic illustration of these facts:

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(ii) Under § 1.1502–91(d)(1), L and L1 compose a loss subgroup on May 19, Year 2, the day they become members of the M group. Under paragraph (b)(1)(ii) of this section, section 382 and the regulations thereunder are applied to L to determine whether L (and therefore the L loss subgroup) has an ownership change with respect to the loss carryovers from Year 1 on May 19, Year 2, a testing date because of B's sale of L stock to M. The sale of L stock to M results in only a 45 percentage point increase in A's ownership of L stock. Thus, there is no ownership change of L (or the L loss subgroup) with respect to those loss carryovers under paragraph (b)(1)(ii) of this section on that day.

(iii) June 9, Year 3, is also a testing date with respect to the L loss subgroup because of A's sale of M stock to C. The sale results in a 56 percentage point increase in C's ownership of L stock, and L has an ownership change. Therefore, the L loss subgroup has an ownership change on that day with respect to the loss carryovers from Year 1.

(iv) Paragraph (b)(1)(i) of this section requires that section 382 and the regulations thereunder be applied to M to determine whether M (and therefore the M loss group) has an ownership change with respect to the net operating loss carryover from Year 2 on June 9, Year 3, a testing date because of A's sale of M stock to C. The sale results in a 70 percentage point increase in C's ownership of M stock, and M has an ownership change. Therefore, the M loss group has an ownership change on that day with respect to that loss carryover.

Example 5—Deemed subgroup parent. (i) P owns all the stock of L and L1 and 80 percent of the stock of T. A owns the remaining 20 percent of the stock of T. L1 owns all the stock of L2. P1, which owns 60 percent of the stock of P, acquires, at the beginning of Year 2, the T, L, and L1 stock owned by P, and T, L, L1, and L2 become members of the P1 group. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. L, L1, and L2 are each apportioned a portion of the Year 1 consolidated net operating loss under § 1.1502–21(b), which they carry over to the P1 group's Year 2 and Year 3 consolidated return years. P1 makes the election described in § 1.1502–91(d)(4) to treat T, L, L1 and L2 as meeting the section 1504(a)(1) requirement of § 1.1502–91(d)(1)(ii). As a result of the election, T, L, L1 and L2 compose a loss subgroup and T, L, L1, and L2 are each treated as the loss subgroup parent for purposes of this paragraph (b). Because of P1's indirect ownership of T, L, L1, and L2 prior to P1's acquisition of the T, L, and L1 stock, P1's acquisition does not cause an ownership change of the loss subgroup.

(ii) On February 2, Year 3, L1 sells all of the stock of L2 to B. Although L2 is treated as a loss subgroup parent, the determination whether the loss subgroup comprised of T, L, and L1 has an ownership change under this paragraph (b) is made without regard to the sale of L2 because L2's ownership change occurred upon ceasing to be a member of the P1 group. See § 1.1502–95(b) to determine the application of section 382 to L2 when L2 ceases to be a member of the P1 group and the T, L, L1 and L2 loss subgroup.

(iii) On March 26, Year 3, A sells her 20 percent minority stock interest in T to C. C's purchase, together with the 32 percentage point owner shift effected by P1's acquisition of the T stock at the beginning of Year 2, causes an ownership change of T, and therefore of the loss subgroup comprised of T, L, and L1.

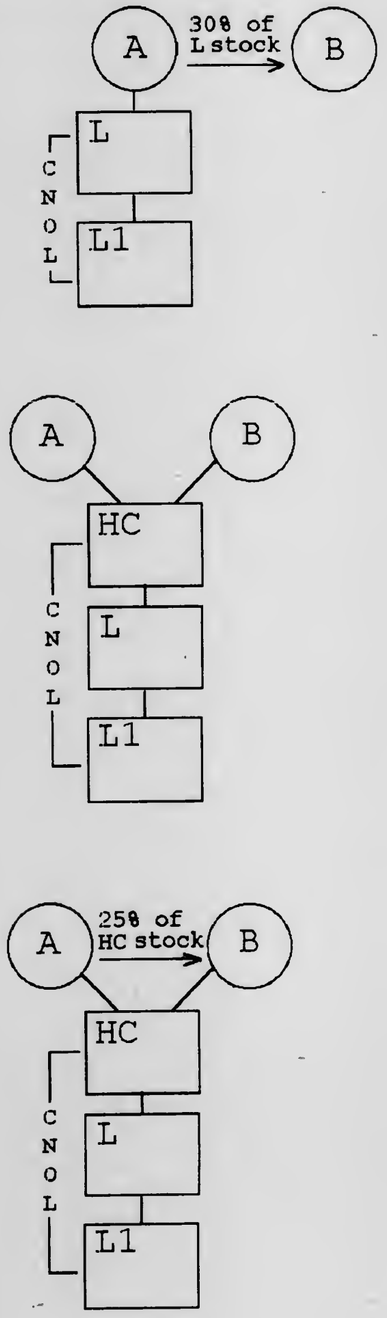
(3) *Special adjustments*—(i) *Common parent succeeded by a new common parent.* For purposes of determining if a loss group has an ownership change, if the common parent of a loss group is succeeded or acquired by a new common parent and the loss group remains in existence, the new common parent is treated as a continuation of the former common parent with appropriate adjustments to take into account shifts in ownership of the former common parent during the testing period (including shifts that occur incident to the common parent's becoming the former common parent). A new common parent may be a continuation of the former common parent even if, under § 1.1502–91(g)(2)(ii), the new common parent is not included in determining whether the group has a net unrealized built-in loss.

(ii) *Newly created loss subgroup parent.* For purposes of determining if a loss subgroup has an ownership change, if the member that is the loss subgroup parent has not been the loss subgroup parent for at least 3 years as of a testing date, appropriate adjustments must be made to take into account owner shifts of members of the loss subgroup so that the structure of the loss subgroup does not have the effect of avoiding an ownership change under section 382. (See paragraph (b)(3)(iii), *Example 3* of this section.)

(iii) *Examples.* The following examples illustrate the principles of this paragraph (b)(3):

Example 1. New common parent acquires old common parent. (i) A, who owns all the L stock, sells 30 percent of the L stock to B on August 26, Year 1. L owns all the L1 stock. The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 3. On July 16, Year 2, A and B transfer their L stock to a newly created holding company, HC, in exchange for 70 percent and 30 percent, respectively, of the HC stock. HC, L, and L1 thereafter file consolidated returns. Under the principles of § 1.1502–75(d), the L loss group is treated as remaining in existence, with HC taking the place of L as the new common parent of the loss group. The following is a graphic illustration of these facts:

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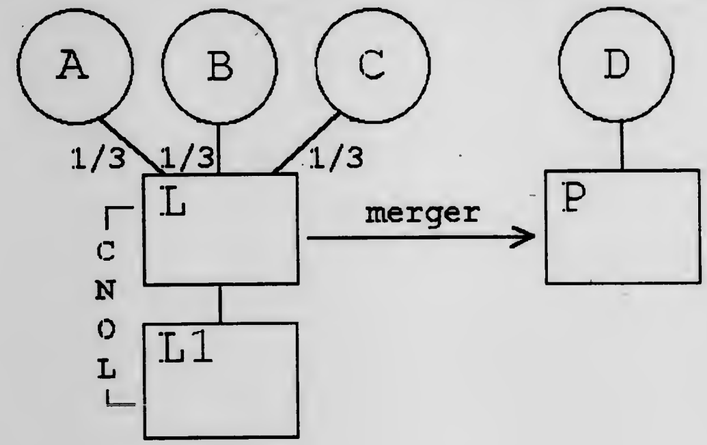


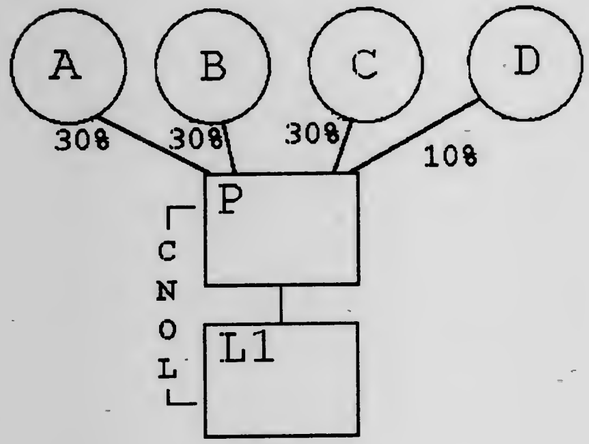
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(ii) On November 11, Year 3, A sells 25 percent of the HC stock to B. For purposes of determining if the L loss group has an ownership change under paragraph (b)(1)(i) of this section on November 11, Year 3, HC is treated as a continuation of L under paragraph (b)(4)(i) of this section because it acquired L and became the common parent without terminating the L loss group. Accordingly, HC's testing period commences on January 1, Year 1, the first day of the taxable year of the L loss group in which the consolidated net operating loss that is carried over to Year 3 arose (see § 1.382–2T(d)(3)(i)). Immediately after the close of November 11, Year 3, B's percentage ownership interest in the common parent of the loss group (HC) has increased by 55 percentage points over its lowest percentage ownership during the testing period (zero percent). Accordingly, HC and the L loss group have an ownership change on that day.

Example 2. New common parent in case in which common parent ceases to exist. (i) A, B, and C each own one-third of the L stock. L owns all the L1 stock. The L group has a consolidated net operating loss arising in Year 2 that is carried over to Year 3. On November 22, Year 3, L is merged into P, a corporation owned by D, and L1 thereafter files consolidated returns with P. A, B, and C, as a result of owning stock of L, own 90 percent of P's stock after the merger. D owns the remaining 10 percent of P's stock. The merger of L into P qualifies as a reverse acquisition of the L group under § 1.1502–75(d)(3)(i), and the L loss group is treated as remaining in existence, with P taking the place of L as the new common parent of the L group. The following is a graphic illustration of these facts:

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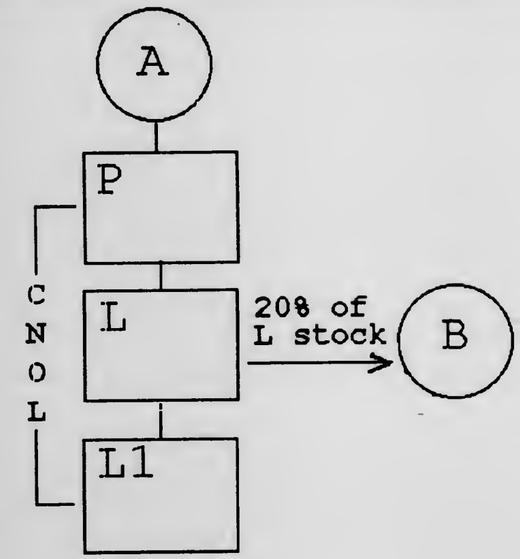
(ii) For purposes of determining if the L loss group has an ownership change on November 22, Year 3, the day of the merger, P is treated as a continuation of L so that the testing period for P begins on January 1, Year 2, the first day of the taxable year of the L loss group in which the consolidated net operating loss that is carried over to Year 3 arose. Immediately after the close of November 22, Year 3, D is the only 5-percent shareholder that has increased his ownership interest in P during the testing period (from zero to 10 percentage points).

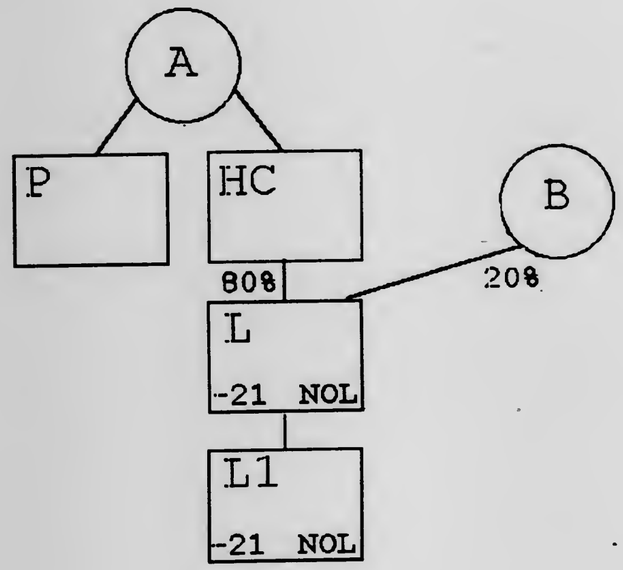
(iii) The facts are the same as in paragraph (i) of this *Example 2*, except that A has held 23⅓ shares (23⅓ percent) of L's stock for five years, and A purchased an additional 10 shares of L stock from E two years before the merger. Immediately after the close of the day of the merger (a testing date), A's ownership interest in P, the common parent of the L loss group, has increased by 6⅔ percentage points over A's lowest percentage ownership during the testing period (23⅓ percent to 30 percent).

(iv) The facts are the same as in (i) of this *Example 2*, except that P has a net operating loss arising in Year 1 that is carried to the first consolidated return year ending after the day of the merger. Solely for purposes of determining whether the L loss group has an ownership change under paragraph (b)(1)(i) of this section, the testing period for P commences on January 1, Year 2. P does not determine the earliest day for its testing period by reference to its net operating loss carryover from Year 1, which §§ 1.1502–1(f)(3) and 1.1502–75(d)(3)(i) treat as arising in a SRLY. See § 1.1502–94 to determine the application of section 382 with respect to P's net operating loss carryover.

Example 3. Newly acquired loss subgroup parent. (i) P owns all the L stock and L owns all the L1 stock. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 3. On January 19, Year 2, L issues a 20 percent stock interest to B. On February 5, Year 3, P contributes its L stock to a newly formed subsidiary, HC, in exchange for all the HC stock, and distributes the HC stock to its sole shareholder A. HC, L, and L1 thereafter file consolidated returns. A portion of the P group's Year 1 consolidated net operating loss is apportioned to L and L1 under § 1.1502–21(b) and is carried over to the HC group's year ending after February 5, Year 3. HC, L, and L1 compose a loss subgroup within the meaning of § 1.1502–91(d) with respect to the net operating loss carryovers from Year 1. The following is a graphic illustration of these facts:

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(ii) February 5, Year 3, is a testing date for HC as the loss subgroup parent with respect to the net operating loss carryovers of L and L1 from Year 1. See paragraph (b)(1)(ii)(B) of this section. For purposes of determining whether HC has an ownership change on the testing date, appropriate adjustments must be made with respect to the changes in the percentage ownership of the stock of HC because HC was not the loss subgroup parent for at least 3 years prior to the day on which it became a member of the HC loss subgroup (a testing date). The appropriate adjustments include adjustments so that HC succeeds to the owner shifts of other members of the former group. Thus, HC succeeds to the owner shift of L that resulted from the sale of the 20 percent interest to B in determining whether the HC loss subgroup has an ownership change on February 5, Year 3, and on any subsequent testing date that includes January 19, Year 2.

(4) *End of separate tracking of certain losses.* If § 1.1502–96(a) (relating to the end of separate tracking of attributes) applies to a loss subgroup, then, while one or more members that were included in the loss subgroup remain members of the consolidated group, there is an ownership change with respect to their attributes described in § 1.1502–96(a)(2) only if the consolidated group is a loss group and has an ownership change under paragraph (b)(1)(i) of this section (or such a member has an ownership change under § 1.1502–96(b) (relating to ownership changes of subsidiaries)). If, however, the loss subgroup has had an ownership change before § 1.1502–96(a) applies, see § 1.1502–96(c) for the continuing application of the subgroup's section 382 limitation with respect to its pre-change subgroup attributes.

(c) *Supplemental rules for determining ownership change*—

(1) *Scope.* This paragraph (c) contains a supplemental rule for determining whether there is an ownership change of a loss group (or loss subgroup). It applies in addition to, and not instead of, the rules of paragraph (b) of this section. Thus, for example, if the common parent of the loss group has an ownership change under paragraph (b) of this section, the loss group has an ownership change even if, by applying this paragraph (c), the common parent would not have an ownership change. This paragraph (c) does not apply in determining an ownership change of a loss subgroup for which an election under § 1.1502–91(d)(4) is made.

(2) *Cause for applying supplemental rule.* This paragraph (c) applies to a loss group (or loss subgroup) if—

(i) Any 5-percent shareholder of the common parent (or loss subgroup parent) increases its percentage ownership interest in the stock of both—

(A) A subsidiary of the loss group (or loss subgroup) other than by a direct or indirect acquisition of stock of the common parent (or loss subgroup parent); and

(B) The common parent (or loss subgroup parent);

(ii) Those increases occur within a 3 year period ending on any day of a consolidated return year or, if shorter, the period beginning on the first day following the most recent ownership change of the loss group (or loss subgroup); and

(iii) Either—

(A) The common parent (or loss subgroup parent) has actual knowledge of the increase in the 5-percent shareholder's ownership interest in the stock of the subsidiary (or has actual knowledge of the plan or arrangement described in paragraph (c)(3)(i) of this section) before the date that the group's income tax return is filed for the taxable year that includes the date of that increase; or

(B) At any time during the period described in paragraph (c)(2)(ii) of this section, the 5-percent shareholder of the common parent is also a 5-percent shareholder of the subsidiary (determined without regard to paragraph (c)(3)(i) of this section) whose percentage increase in the ownership of the stock of the subsidiary would be taken into account in determining if the subsidiary has an ownership change (determined as if the subsidiary was a loss corporation and applying the principles of § 1.382–2T(k), including the principles relating to duty to inquire).

(3) *Operating rules.* Solely for purposes of this paragraph (c)—

(i) A 5-percent shareholder of the common parent (or loss subgroup parent) is treated as increasing its ownership interest in the stock of a subsidiary to the extent, if any, that another person or persons increases its percentage ownership interest in the stock of a subsidiary pursuant to a plan or arrangement under which the 5-percent shareholder increases its percentage ownership interest in the common parent (or loss subgroup parent);

(ii) The rules in section 382(l)(3) and §§ 1.382–2T(h) and 1.382–4(d) (relating to constructive ownership) apply with respect to the stock of the subsidiary by treating such stock as stock of a loss corporation; and

(iii) In the case of a loss subgroup, a subsidiary includes any member of the loss subgroup other than the loss subgroup parent. (A loss subgroup parent is, however, a subsidiary of the loss group of which it is a member.)

(4) *Supplemental ownership change rules.* The determination whether the common parent (or loss subgroup parent) has an ownership change is made by applying paragraph (b)(1) of this section as modified by the following additional rules:

(i) *Additional testing dates for the common parent (or loss subgroup parent).* A testing date for the common parent (or loss subgroup parent) also includes—

(A) Each day on which there is an increase in the percentage ownership of stock of a subsidiary as described in paragraph (c)(2) of this section; and

(B) The first day of the first consolidated return year for which the group is a loss group (or the members compose a loss subgroup).

(ii) *Treatment of subsidiary stock as stock of the common parent (or loss subgroup parent).* The common parent (or loss subgroup parent) is treated as though it had issued to the person acquiring (or deemed to acquire) the subsidiary stock an amount of its own stock (by value) that equals the value of the subsidiary stock represented by the percentage increase in that person's ownership of the subsidiary (determined on a separate entity basis). Similar principles apply if the increase in percentage ownership interest is effected by a redemption or similar transaction.

(iii) *Different testing periods.* Stock treated as issued under paragraph (c)(4)(ii) of this section on a testing date is not treated as so issued for purposes of applying the ownership change rules of this paragraph (c) and paragraph (b)(1) of this section in a testing period that does not include that testing date.

(iv) *Disaffiliation of a subsidiary.* If a deemed issuance of stock under paragraph (c)(4)(ii) of this section would not cause the loss group (or loss subgroup) to have an ownership change before the day (if any) on which the subsidiary ceases to be a member of the loss group (or subgroup), then paragraph (c)(4) of this section shall not apply.

(v) *Subsidiary stock acquired first.* If an increase of subsidiary stock described in paragraph (c)(2)(i)(A) of this section occurs before the date that the 5-percent shareholder increases its percentage ownership interest in the stock of the common parent (or loss subgroup parent), then the deemed issuance of stock is treated as occurring on that later date, but in an amount equal to the value of the subsidiary stock on the date it was acquired.

(vi) *Anti-duplication rule.* If two or more 5-percent shareholders are treated as increasing their percentage ownership interests pursuant to the same plan or arrangement described in paragraph (c)(3)(i) of this section, appropriate adjustments must be made so that the amount of stock treated as issued is not taken into account more than once.

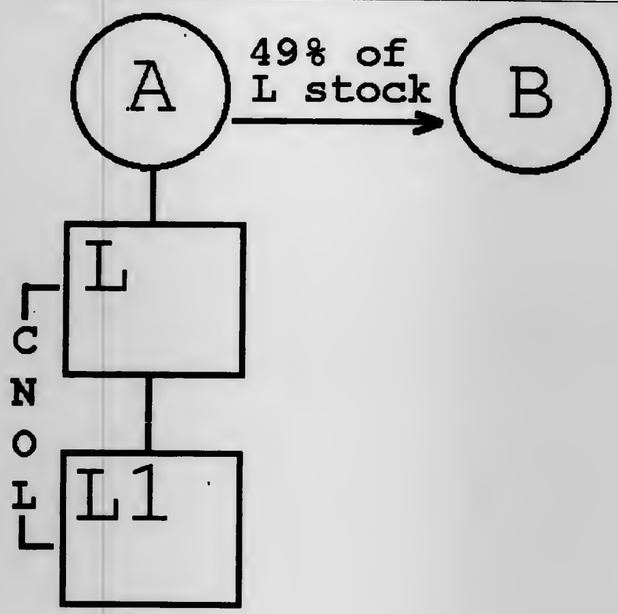
(5) *Examples.* The following examples illustrate the principles of this paragraph (c):

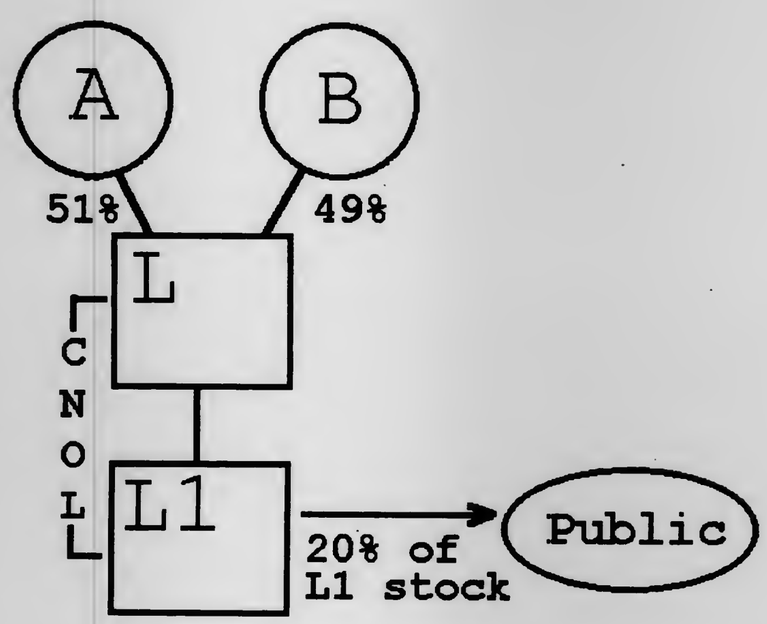
Example 1. Stock of the common parent under supplemental rules. (i) A owns all the L stock. L is not a member of an affiliated group and has a net operating loss carryover arising in Year 1 that is carried over to Year 6. On September 20, Year 6, L transfers all of its assets and liabilities to a newly created subsidiary, S, in exchange for S stock. L and S thereafter file consolidated returns. On November 23, Year 6, B contributes cash to L in exchange for a 45 percent ownership interest in L and contributes cash to S for a 20 percent ownership interest in S.

(ii) During the 3 year period ending on November 23, Year 6, B is a 5% shareholder of L and of S that increases its ownership interest in L and S during that period. Under paragraph (c)(4)(ii) of this section, the determination whether L (the common parent of a loss group) has an ownership change on November 23, Year 6 (or, subject to paragraph (c)(4)(iv) of this section, on any testing date in the testing period which includes November 23, Year 6), is made by applying paragraph (b)(1)(i) of this section and by treating the value of B's 20 percent ownership interest in S as if it were L stock issued to B. Because B is a 5% shareholder of both L and S during the 3 year period ending on November 23, Year 6, and B's increase in its percentage ownership in the stock of S would be taken into account in determining if S (if it were a loss corporation) had an ownership change, it is not relevant whether L has actual knowledge of B's acquisition of S stock.

Example 2. Plan or arrangement—public offering of subsidiary stock. (i) A owns all the stock of L and L owns all the stock of L1. The L group has a consolidated net operating loss arising in Year 1 that resulted from the operations of L1 and that is carried over to Year 2. On October 7, Year 2, A sells 49 percent of the L stock to B. As part of a plan that includes the sale of L stock, A causes a public offering of L1 stock on November 6, Year 2. L has actual knowledge of the plan. The following is a graphic illustration of these facts:

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(ii) A's sale of the L stock to B does not cause an ownership change of the L loss group on October 7, Year 2, under the rules of § 1.382–2T and paragraph (b)(1)(i) of this section.

(iii) Because the issuance of L1 stock to the public occurs as part of the same plan as B's acquisition of L stock, and L has knowledge of the plan, paragraph (c)(4) of this section applies to determine whether the L loss group has an ownership change on November 6, Year 2 (or, subject to paragraph (c)(4)(iv) of this section, on any testing date for which the testing period includes November 6, Year 2).

(d) *Testing period following ownership change under this section.* If a loss group (or a loss subgroup) has had an ownership change under this section, the testing period for determining a subsequent ownership change with respect to pre-change consolidated attributes (or pre-change subgroup attributes) begins no earlier than the first day following the loss group's (or loss subgroup's) most recent change date.

(e) *Information statements*—(1) *Common parent of a loss group.* The common parent of a loss group must file the information statement required by § 1.382–2T(a)(2)(ii) for a consolidated return year because of any owner shift, equity structure shift, or other transaction described in § 1.382–2T(a)(2)(i)—

(i) With respect to the common parent and with respect to any subsidiary stock subject to paragraph (c) of this section; and

(ii) With respect to an ownership change described in § 1.1502–96(b) (relating to ownership changes of subsidiaries).

(2) *Abbreviated statement with respect to loss subgroups.* The common parent of a consolidated group that has a loss subgroup during a consolidated return year must file the information statement required by § 1.382–2T(a)(2)(ii) because of any owner shift, equity structure shift, or other transaction described in § 1.382–2T(a)(2)(i) with respect to the loss subgroup parent and with respect to any subsidiary stock subject to paragraph (c) of this section. Instead of filing a separate statement for each loss subgroup parent, the common parent (which is treated as a loss corporation) may file the single statement described in paragraph (e)(1) of this section. In addition to the information concerning stock ownership of the common parent, the single statement must identify each loss subgroup parent and state which loss subgroups, if any, have had ownership changes during the consolidated return year. The loss subgroup parent is, however, still required to maintain the records necessary to determine if the loss subgroup has an ownership change. This paragraph (e)(2) applies with respect to the attributes of a loss subgroup until, under § 1.1502–96(a), the attributes are no longer treated as described in § 1.1502–91(d) (relating to the definition of loss subgroup). After that time, the information statement described in paragraph (e)(1) of this section must be filed with respect to those attributes.

§ 1.1502–93 Consolidated section 382 limitation (or subgroup section 382 limitation).

(a) *Determination of the consolidated section 382 limitation (or subgroup section 382 limitation)*—(1) *In general.* Following an ownership change, the consolidated section 382 limitation (or subgroup section 382 limitation) for any post-change year is an amount equal to the value of the loss group (or loss subgroup), as defined in paragraph (b) of this section, multiplied by the long-term tax-exempt rate that applies with respect to the ownership change, and adjusted as required by section 382 and the regulations thereunder. See, for example, section 382(b)(2) (relating to the carryforward of unused section 382 limitation), section 382(b)(3)(B) (relating to the section 382 limitation for the post-change year that includes the change date), section 382(h) (relating to recognized built-in gains and section 338 gains), and section 382(m)(2) (relating to short taxable years). For special rules relating to the recognized built-in gains of a loss group (or loss subgroup), see paragraph (c)(2) of this section.

(2) *Coordination with apportionment rule.* For special rules relating to apportionment of a consolidated section 382 limitation (or a subgroup section 382 limitation) or net unrealized built-in gain when one or more corporations cease to be members of a loss group (or a loss subgroup) and to aggregation of amounts so apportioned, see § 1.1502–95(c).

(b) *Value of the loss group (or loss subgroup)*—(1) *Stock value immediately before ownership change.* Subject to any adjustment under paragraph (b)(2) of this section, the value of the loss group (or loss subgroup) is the value, immediately before the ownership change, of the stock of each member, other than stock that is owned directly or indirectly by another member. For this purpose—

(i) Ownership is determined under § 1.382–2T;

(ii) A member is considered to indirectly own stock of another member through a nonmember only if the member has a 5-percent or greater ownership interest in the nonmember; and

(iii) Stock includes stock described in section 1504(a)(4) and § 1.382–2T(f)(18)(ii) and (iii).

(2) *Adjustment to value*—(i) *In general.* The value of the loss group (or loss subgroup), as determined under paragraph (b)(1) of this section, is adjusted under any rule in section 382 or the regulations thereunder requiring an adjustment to such value for purposes of computing the amount of the section 382 limitation. See, for example, section 382(e)(2) (redemptions and corporate contractions), section 382(l)(1) (certain capital contributions) and section 382(l)(4) (ownership of substantial nonbusiness assets). For purposes of section 382(e)(2), redemptions and corporate contractions that do not effect a transfer of value outside of the loss group (or loss subgroup) are disregarded. For purposes of section 382(l)(1), capital contributions between members of the loss group (or loss subgroup) (or a contribution of stock to a member made solely to satisfy the loss subgroup parent requirement of paragraph (d)(1)(ii) or (2)(ii) of this section), are not taken into account. Also, the substantial nonbusiness asset test of section 382(l)(4) is applied on a group (or subgroup) basis, and is not applied separately to its members.

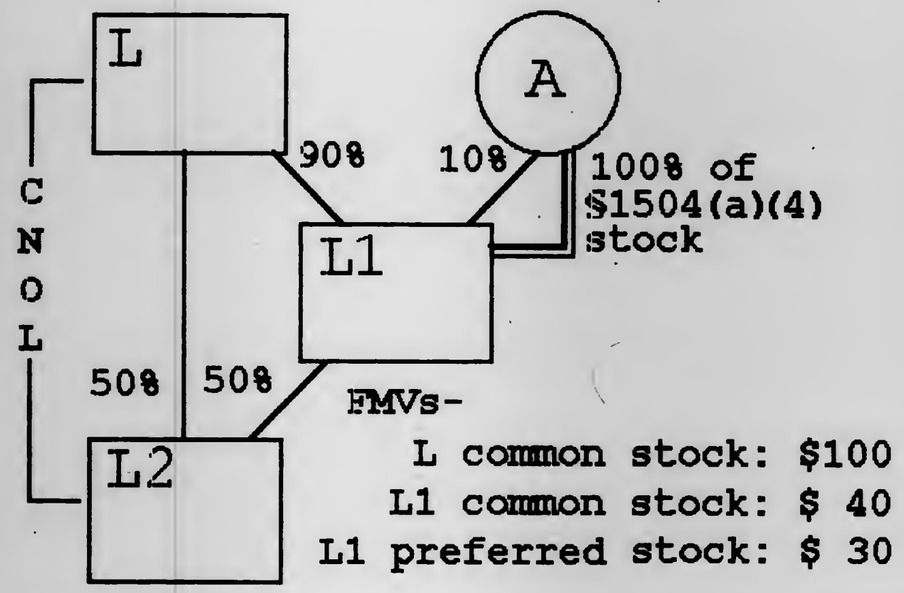
(ii) *Anti-duplication.* Appropriate adjustments must be made to the extent necessary to prevent any duplication of the value of the stock of a member, even though corporations that do not file consolidated returns may not be required to make such an adjustment. In making these adjustments, the group (or loss subgroup) may apply the principles of § 1.382–8 (relating to controlled groups of corporations) in determining the value of a loss group (or loss subgroup) even if that section would not apply if separate returns were filed. Also, the principles of § 1.382–5(d) (relating to successive ownership changes and absorption of a section 382 limitation) may apply to adjust the consolidated section 382 limitation (or subgroup section 382 limitation) of a loss group (or loss subgroup) to avoid a duplication of value if there are simultaneous (rather than successive) ownership changes.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. Basic case. (i) L, L1, and L2 compose a loss group. L has outstanding common stock, the value of which is $100. L1 has outstanding common stock and

preferred stock that is described in section 1504(a)(4). L owns 90 percent of the L1 common stock, and A owns the remaining 10 percent of the L1 common stock plus all the preferred stock. The value of the L1 common stock is $40, and the value of the L1 preferred stock is $30. L2 has outstanding common stock, 50 percent of which is owned by L and 50 percent by L1. The L group has an ownership change. The following is a graphic illustration of these facts:

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(ii) Under paragraph (b)(1) of this section, the L group does not include the value of the stock of any member that is owned directly or indirectly by another member in computing its consolidated section 382 limitation. Accordingly, the value of the stock of the loss group is $134, the sum of the value of—

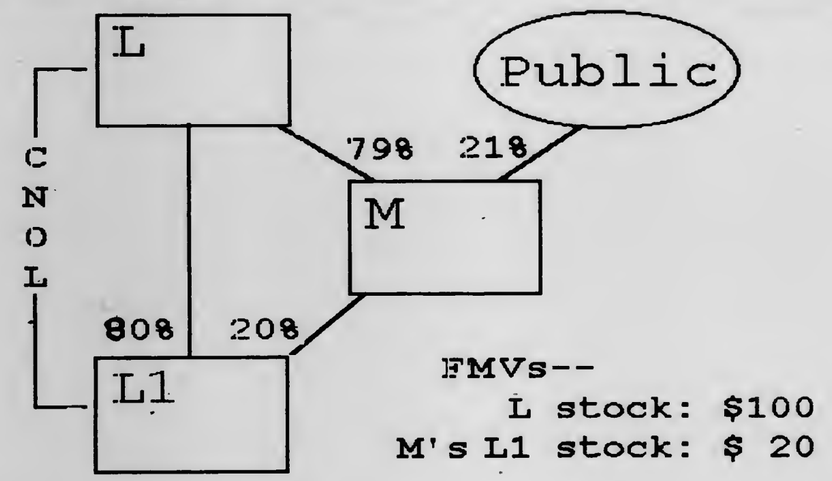
(a) The common stock of L ($100);

(b) The 10 percent of the L1 common stock ($4) owned by A; and

(c) The L1 preferred stock ($30) owned by A.

Example 2—Indirect ownership. (i) L and L1 compose a consolidated group. L's stock has a value of $100. L owns 80 shares (worth $80) and corporation M owns 20 shares (worth $20) of the L1 stock. L also owns 79 percent of the stock of corporation M. The L group has an ownership change. The following is a graphic illustration of these facts:

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(ii) Under paragraph (b)(1) of this section, because of L's more than 5 percent ownership interest in M, a nonmember, L is considered to indirectly own 15.8 shares of the L1 stock held by M (79% × 20 shares). The value of the L loss group is $104.20, the sum of the values of—

(a) The L stock ($100); and

(b) The L1 stock not owned directly or indirectly by L (21% × $20, or $4.20).

(c) *Recognized built-in gain of a loss group or loss subgroup*—(1) *In general.* If a loss group (or loss subgroup) has a net unrealized built-in gain, any recognized built-in gain of the loss group (or loss subgroup) is taken into account under section 382(h) in determining the consolidated section 382 limitation (or subgroup section 382 limitation).

(2) *Adjustments.* Appropriate adjustments must be made so that any recognized built-in gain of a member that increases more than one section 382 limitation (whether consolidated, subgroup, or separate) does not effect a duplication in the amount of consolidated taxable income that can be offset by pre-change net operating losses. For example, a consolidated section 382 limitation that is increased by recognized built-in gains is reduced to the extent that pre-change net operating losses of a loss subgroup absorb additional consolidated taxable income because the same recognized built-in gains caused an increase in that loss subgroup's section 382 limitation. In addition, recognized built-in gain may not increase the amount of consolidated taxable income that can be offset by recognized built-in losses.

(d) *Continuity of business*—(1) *In general.* A loss group (or a loss subgroup) is treated as a single entity for purposes of determining whether it satisfies the continuity of business enterprise requirement of section 382(c)(1).

(2) *Example.* The following example illustrates the principle of this paragraph (d):

Example. Continuity of business enterprise. L owns all the stock of two subsidiaries, L1 and L2. The L group has an ownership change. It has pre-change consolidated attributes attributable to L2. Each of the members has historically conducted a separate line of business. Each line of business is approximately equal in value. One year after the ownership change, L discontinues its separate business and the business of L2. The separate business of L1 is continued for the remainder of the 2 year period following the ownership change. The continuity of business enterprise requirement of section 382(c)(1) is met even though the separate businesses of L and L2 are discontinued.

(e) *Limitations of losses under other rules.* If a section 382 limitation for a post-change year exceeds the consolidated taxable income that may be offset by pre-change attributes for any reason, including the application of the limitation of § 1.1502–21(c), the amount of the excess is carried forward under section 382(b)(2) (relating to the carryforward of unused section 382 limitation).

§ 1.1502–94 Coordination with section 382 and the regulations thereunder when a corporation becomes a member of a consolidated group.

(a) *Scope*—(1) *In general.* This section applies section 382 and the regulations thereunder to a corporation that is a new loss member of a consolidated group. A corporation is a new loss member if it—

(i) Carries over a net operating loss that arose (or is treated under § 1.1502–21(c) as arising) in a SRLY with respect to the current group, and that is not described in § 1.1502–91(d)(1); or

(ii) Has a net unrealized built-in loss (determined under paragraph (c) of this section immediately before it becomes a member of the current group by treating that day as a change date) that is not taken into account under § 1.1502–91(d)(2) in determining whether two or more corporations compose a loss subgroup.

(2) *Successor corporation as new loss member.* A new loss member also includes any successor to a corporation that has a net operating loss carryover arising in a SRLY and that is treated as remaining in existence under § 1.382–2(a)(1)(ii) following a transaction described in section 381(a).

(3) *Coordination in the case of a loss subgroup.* For rules regarding the determination of whether there is an ownership change of a loss subgroup with respect to a net operating loss or a net unrealized built-in loss described in § 1.1502–91(d) (relating to the definition of loss subgroup) and the computation of a subgroup section 382 limitation following such an ownership change, see §§ 1.1502–92 and 1.1502–93.

(4) *End of separate tracking of certain losses.* If § 1.1502–96(a) (relating to the end of separate tracking of attributes) applies to a new loss member, then, while that member remains a member of

the consolidated group, there is an ownership change with respect to its attributes described in § 1.1502–96(a)(2) only if the consolidated group is a loss group and has an ownership change under § 1.1502–92(b)(1)(i) (or that member has an ownership change under § 1.1502–96(b) (relating to ownership changes of subsidiaries)). If, however, the new loss member has had an ownership change before § 1.1502–96(a) applies, see § 1.1502–96(c) for the continuing application of the section 382 limitation with respect to the member's pre-change losses.

(5) *Cross-reference.* See section 382(a) and § 1.1502–96(c) for the continuing effect of an ownership change after a corporation becomes or ceases to be a member.

(b) *Application of section 382 to a new loss member*—(1) *In general.* Section 382 and the regulations thereunder apply to a new loss member to determine, on a separate entity basis, whether and to what extent a section 382 limitation applies to limit the amount of consolidated taxable income that may be offset by the new loss member's pre-change separate attributes. For example, if an ownership change with respect to the new loss member occurs under section 382 and the regulations thereunder, the amount of consolidated taxable income for any post-change year that may be offset by the new loss member's pre-change separate attributes shall not exceed the section 382 limitation as determined separately under section 382(b) with respect to that member for such year. If the post-change year includes the change date, section 382(b)(3)(A) is applied so that the section 382 limitation of the new loss member does not apply to the portion of the taxable income for such year that is allocable to the period in such year on or before the change date. See generally § 1.382–6 (relating to the allocation of income and loss).

(2) *Adjustment to value.* Appropriate adjustments must be made to the extent necessary to prevent any duplication of the value of the stock of a member, even though corporations that do not file consolidated returns may not be required to make such an adjustment. For example, the principles of § 1.1502–93(b)(2)(ii) (relating to adjustments to value) apply in determining the value of a new loss member.

(3) *Pre-change separate attribute defined.* A pre-change separate attribute of a new loss member is—

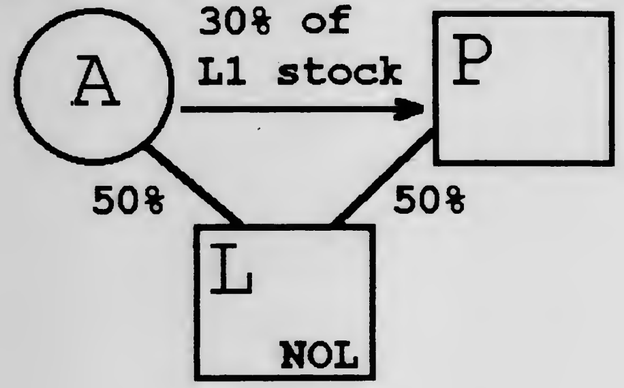
(i) Any net operating loss carryover of the new loss member described in paragraph (a)(1) of this section; and

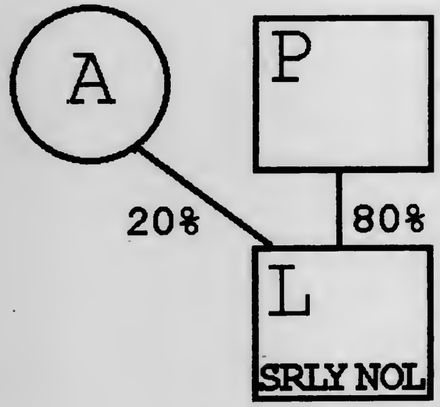
(ii) Any recognized built-in loss of the new loss member.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. Basic case. (i) A and P each own 50 percent of the L stock. On December 19, Year 6, P purchases 30 percent of the L stock from A for cash. L has net operating losses arising in Year 1 and Year 2 that it carries over to Year 6 and Year 7. The following is a graphic illustration of these facts:

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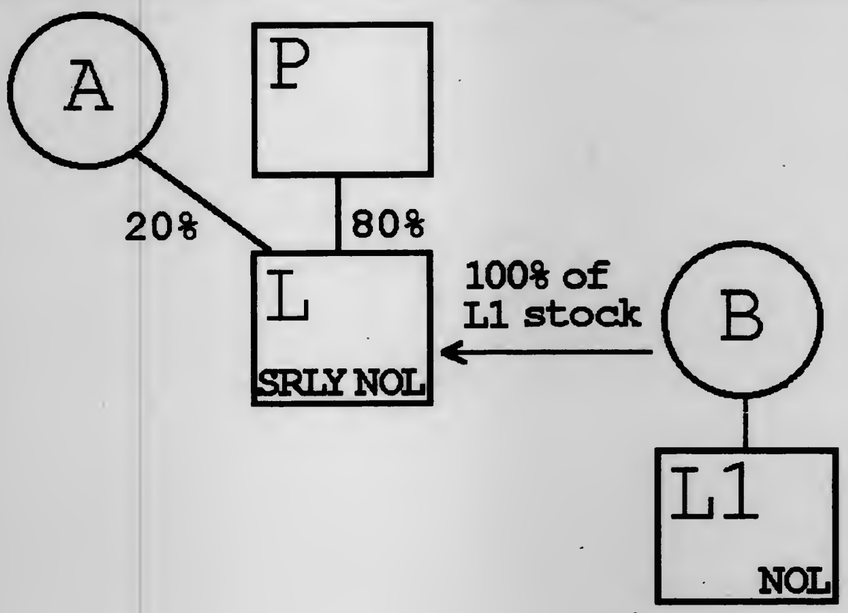
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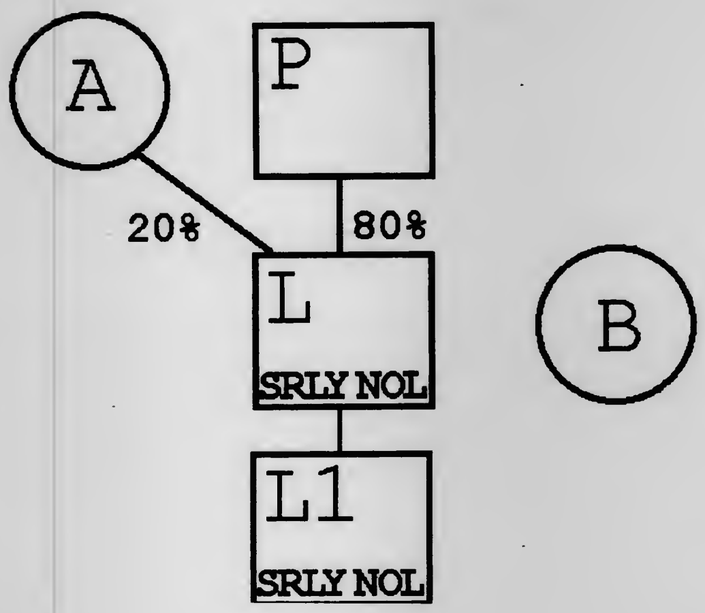
(ii) L is a new loss member because it has net operating loss carryovers that arose in a SRLY with respect to the P group and L is not a member of a loss subgroup under § 1.1502–91(d). Under section 382 and the regulations thereunder, L is a loss corporation on December 19, Year 6, that day is a testing date for L, and the testing period for L commences on December 20, Year 3.

(iii) P's purchase of L stock does not cause an ownership change of L on December 19, Year 6, with respect to the net operating loss carryovers from Year 1 and Year 2 under section 382 and § 1.382–2T. The use of the loss carryovers, however, is subject to limitation under § 1.1502–21(c).

Example 2. Multiple new loss members. (i) The facts are the same as in *Example 1*, and, on December 31, Year 6, L purchases all the stock of L1 from B for cash. L1 has a net operating loss of $40 arising in Year 3 that it carries over to Year 7. The following is a graphic illustration of these facts:

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(ii) L1 is a new loss member because it has a net operating loss carryover from Year 3 that arose in a SRLY with respect to the P group and L1 is not a member of a loss subgroup under § 1.1502–91(d)(1).

(iii) L's purchase of all the stock of L1 causes an ownership change of L1 on December 31, Year 6, under section 382 and § 1.382–2T. Accordingly, a section 382 limitation based on the value of the L1 stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L1's loss from Year 3.

(iv) L1's ownership change upon becoming a member of the P group is an ownership change described in § 1.1502–96(a). Thus, starting on January 1, Year 7, the P group no longer separately tracks owner shifts of the stock of L1 with respect to L1's loss from Year 3, and the P group is a loss group because L1's Year 3 loss is treated as a loss described in § 1.1502–91(c).

Example 3. Ownership changes of new loss members. (i) The facts are the same as in Example 2, and, on July 30, Year 7, C purchases all the stock of P for cash.

(ii) L is a new loss member on July 30, Year 7, because its Year 1 and Year 2 losses arose in SRLYs with respect to the P group and it is not a member of a loss subgroup under § 1.1502–91(d)(1). The testing period for L commences on August 1, Year 4. C's purchase of all the P stock causes an ownership change of L on July 30, Year 7, under section 382 and § 1.382–2T with respect to its Year 1 and Year 2 losses. Accordingly, a section 382 limitation based on the value of the L stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L's Year 1 and Year 2 losses. See § 1.1502–21(c) for rules relating to an additional limitation.

(iii) The P group is a loss group on July 30, Year 7, because it is entitled to use L1's loss from Year 3, and such loss is no longer treated as a loss of a new loss member starting the day after L1's ownership change on December 31, Year 6. See §§ 1.1502–96(a) and 1.1502–91(c)(2). C's purchase of all the P stock causes an ownership change of P, and therefore the P loss group, on July 30, Year 7, with respect to L1's Year 3 loss. Accordingly, a consolidated section 382 limitation based on the value of the P stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L1's Year 3 loss.

(c) *Built-in gains and losses.* As the context may require, the principles of §§ 1.1502–91(g) and (h) and 1.1502–93(c) (relating to built-in gains and losses) apply to a new loss member on a separate entity basis. See § 1.1502–91(g)(4). See § 1.1502–13 (including *Example 10* of § 1.1502–13(c)(7)) for rules relating to the treatment of intercompany transactions.

(d) *Information statements.* The common parent of a consolidated group that has a new loss member subject to paragraph (b)(1) of this section during a consolidated return year must file the information statement required by § 1.382–2T(a)(2)(ii) because of any owner shift, equity structure shift, or other transaction described in § 1.382–2T(a)(2)(i). Instead of filing a separate statement for each new loss member, the common parent may file a single statement described in § 1.382–2T(a)(2)(ii) with respect to the stock ownership of the common parent (which is treated as a loss corporation). In addition to the information concerning stock ownership of the common parent, the single statement must identify each new loss member and state which new loss members, if any, have had ownership changes during the consolidated return year. The new loss member is, however, required to maintain the records necessary to determine if it has an ownership change. This paragraph (d) applies with respect to the attributes of a new loss member until an event occurs which ends separate tracking under § 1.1502–96(a). After that time, the information statement described in § 1.1502–92(e)(1) must be filed with respect to these attributes.

§ 1.1502–95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

(a) *In general*—(1) *Consolidated group.* This section provides rules for applying section 382 on or after the day that a member ceases to be a member of a consolidated group (or loss subgroup). The rules concern how to determine whether an ownership change occurs with respect to losses of the member, and how a consolidated section 382 limitation (or subgroup section 382 limitation) and a loss group's (or loss subgroup's) net unrealized built-in gain or loss is apportioned to the member. As the context requires, a reference in this section to a loss group, a member, or a corporation also includes a reference to a loss subgroup, and a reference to a consolidated section 382 limitation also includes a reference to a subgroup section 382 limitation.

(2) *Election by common parent.* Only the common parent (not the loss subgroup parent) may make the election under paragraph (c) of this section to apportion a consolidated section 382 limitation (or subgroup section 382 limitation) or a loss group's (or loss subgroup's) net unrealized built-in gain.

(3) *Coordination with §§ 1.1502–91 through 1.1502–93.* For rules regarding the determination of whether there is an ownership change of a loss subgroup and the computation of a subgroup section 382 limitation following such an ownership change, see §§ 1.1502–91 through 1.1502–93.

(b) *Separate application of section 382 when a member leaves a consolidated group*—(1) *In general.* Except as provided in §§ 1.1502–91 through 1.1502–93 (relating to rules applicable to loss groups and loss subgroups), section 382 and the regulations thereunder apply to a corporation on a separate entity basis after it ceases to be a member of a consolidated group (or loss subgroup). Solely for purposes of determining whether a corporation has an ownership change—

(i) Any portion of a consolidated net operating loss that is apportioned to the corporation under § 1.1502–21(b) is treated as a net operating loss of the corporation beginning on the first day of the taxable year in which the loss arose;

(ii) The testing period may include the period during which (or before which) the corporation was a member of the group (or loss subgroup); and

(iii) Except to the extent provided in § 1.1502–96(d) (relating to reattributed losses), the day it ceases to be a member of a consolidated group is treated as a testing date of the corporation within the meaning of § 1.382–2(a)(4).

(2) *Effect of a prior ownership change of the group.* If a loss group has had an ownership change under § 1.1502–92 before a corporation ceases to be a member of a consolidated group (the former member)—

(i) Any pre-change consolidated attribute that is subject to a consolidated section 382 limitation continues to be treated as a pre-change loss with respect to the former member after it is apportioned to the former member and, if any net unrealized built-in loss is allocated to the former member under paragraph (e) of this section, any recognized built-in loss of the former member is a pre-change loss of the member;

(ii) The section 382 limitation with respect to such pre-change attribute is zero unless the common parent, under paragraph (c) of this section, apportions to the former member all or part of the consolidated section 382 limitation applicable to such attribute. The limitation applicable to a pre-change attribute other than a recognized built-in loss may be increased to the extent that the common parent has apportioned all or part of the loss group's net unrealized built-in gain to the former member, and the former member recognizes built-in gain during the recognition period;

(iii) The testing period for determining a subsequent ownership

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change with respect to such pre-change attribute (or such net unrealized built-in loss, if any) begins no earlier than the first day following the loss group's most recent change date; and

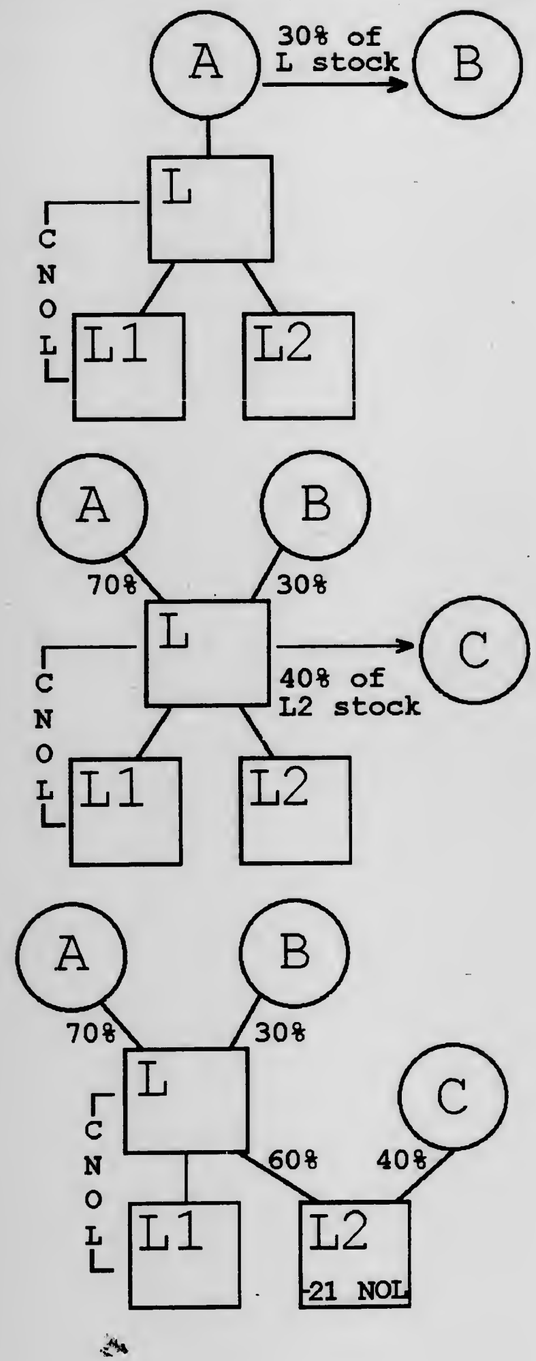
(iv) As generally provided under section 382, an ownership change of the former member that occurs on or after the day it ceases to be a member of a loss group may result in an additional, lesser limitation amount with respect to such losses.

(3) *Application in the case of a loss subgroup.* If two or more former members are included in the same loss subgroup immediately after they cease to be members of a consolidated group, the principles of paragraphs (b), (c) and (e) of this section apply to the loss subgroup. Therefore, for example, an apportionment by the common parent under paragraph (c) of this section is made to the loss subgroup rather than separately to its members. If the common parent of the consolidated group apportions all or part of a limitation (or net unrealized built-in gain) separately to one or more former members that are included in a loss subgroup because the common parent of the acquiring group makes an election under § 1.1502–91(d)(4) with respect to those members, the aggregate of those separate amounts is treated as the amount apportioned to the loss subgroup. Such separate apportionment may occur, for example, because the election under § 1.1502–91(d)(4) has not been filed at the time that the election of apportionment is made under paragraph (f) of this section.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. Treatment of departing member as a separate corporation throughout the testing period. (i) A owns all the L stock. L owns all the stock of L1 and L2. The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 3. On January 12, Year 2, A sells 30 percent of the L stock to B. On February 7, Year 3, L sells 40 percent of the L2 stock to C, and L2 ceases to be a member of the group. A portion of the Year 1 consolidated net operating loss is apportioned to L2 under § 1.1502–21(b) and is carried to L2's first separate return year, which ends December 31, Year 3. The following is a graphic illustration of these facts:

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(ii) Under paragraph (b)(1) of this section, L2 is a loss corporation on February 7, Year 3. Under paragraph (b)(1)(iii) of this section, February 7, Year 3, is a testing date. Under paragraph (b)(1)(ii) of this section, the testing period for L2 with respect to this testing date commences on January 1, Year 1, the first day of the taxable year in which the portion of the consolidated net operating loss apportioned to L2 arose. Therefore, in determining whether L2 has an ownership change on February 7, Year 3, B's purchase of 30 percent of the L stock and C's purchase of 40 percent of the L2 stock are each owner shifts. L2 has an ownership change under section 382(g) and § 1.382–2T because B and C have increased their ownership interests in L2 by 18 and 40 percentage points, respectively, during the testing period.

Example 2. Effect of prior ownership change of loss group. (i) L owns all the L1 stock and L1 owns all the L2 stock. The L loss group had an ownership change under § 1.1502–92 in Year 2 with respect to a consolidated net operating loss arising in Year 1 and carried over to Year 2 and Year 3. The consolidated section 382 limitation computed solely on the basis of the value of the stock of L is $100. On December 31, Year 2, L1 sells 25 percent of the stock of L2 to B. L2 is apportioned a portion of the Year 1 consolidated net operating loss which it carries over to its first separate return year ending after December 31, Year 2. L2's separate section 382 limitation with respect to this loss is zero unless L elects to apportion all or a part of the consolidated section 382 limitation to L2. (See paragraph (c) of this section for rules regarding the apportionment of a consolidated section 382 limitation.) L apportions $50 of the consolidated section 382 limitation to L2, and the remaining $50 of the consolidated section 382 limitation stays with the loss group composed of L and L1.

(ii) On December 31, Year 3, L1 sells its remaining 75 percent stock interest in L2 to C, resulting in an ownership change of L2. L2's section 382 limitation computed on the change date with respect to the value of its stock is $30. Accordingly, L2's section 382 limitation for post-change years ending after December 31, Year 3, with respect to its pre-change losses, including the consolidated net operating losses apportioned to it from the L group, is $30, adjusted for a short taxable year, carryforward of unused limitation, or any other adjustment required under section 382.

(c) *Apportionment of a consolidated section 382 limitation*—(1) *In general.* The common parent may elect to apportion all or any part of a consolidated section 382 limitation to a former member (or loss subgroup). The common parent also may elect to apportion all or any part of the loss group's net unrealized built-in gain to a former member (or loss subgroup).

(2) *Amount which may be apportioned—(i) Consolidated section 382 limitation.* The common parent may apportion all or part of each element of the consolidated section 382 limitation determined under § 1.1502–93. For this purpose, the consolidated section 382 limitation consists of two elements—

(A) The value element, which is the element of the limitation determined under section 382(b)(1) (relating to value multiplied by the long-term tax-exempt rate) without regard to such adjustments as those described in section 382(b)(2) (relating to the carryforward of unused section 382 limitation), section 382(b)(3)(B)(relating to the section 382 limitation for the post-change year that includes the change date), section 382(h)(relating to built-in gains and section 338 gains), and section 382(m)(2)(relating to short taxable years); and

(B) The adjustment element, which is so much (if any) of the limitation for the taxable year during which the former member ceases to be a member of the consolidated group that is attributable to a carryover of unused limitation under section 382(b)(2) or to recognized built-in gains under 382(h).

(ii) *Net unrealized built-in gain.* The aggregate amount of the loss group's net unrealized built-in gain that may be apportioned to one or more former members that cease to be members during the same consolidated return year cannot exceed the loss group's excess, immediately after the close of that year, of net unrealized built-in gain over recognized built-in gain, determined under section 382(h)(1)(A)(ii) (relating to a limitation on recognized built-in gain). For this purpose, net unrealized built-in gain apportioned to former members in prior consolidated return years is treated as recognized built-in gain in those years.

(3) Effect of apportionment on the consolidated group—(i) Consolidated section 382 limitation. The value element of the consolidated section 382 limitation for any post-change year ending after the day that a former member (or loss subgroup) ceases to be a member(s) is reduced to the extent that it is apportioned under this paragraph (c). The consolidated section 382 limitation for the post-change year in which the former member (or loss subgroup) ceases to be a member(s) is also reduced to the extent that the adjustment element for that year is apportioned under this paragraph (c).

(ii) *Net unrealized built-in gain.* The amount of the loss group's net unrealized built-in gain that is apportioned to the former member (or loss subgroup) is treated as recognized built-in gain for a prior taxable year ending in the recognition period for purposes of applying the limitation of section 382(h)(1)(A)(ii) to the loss group's recognition period taxable years beginning after the consolidated return year in which the former member (or loss subgroup) ceases to be a member.

(4) *Effect on corporations to which an apportionment is made*—(i) *Consolidated section 382 limitation.* The amount of the value element that is apportioned to a former member (or loss subgroup) is treated as the amount determined under section 382(b)(1) for purposes of determining the amount of that corporation's (or loss subgroup's) section 382 limitation for any taxable year ending after the former member (or loss subgroup) ceases to be a member(s). Appropriate adjustments must be made to the limitation based on the value element so apportioned for a short taxable year, carryforward of unused limitation. or any other adjustment required under section 382. The adjustment element apportioned to a former member (or loss subgroup) is treated as an adjustment under section 382(b)(2) or section 382(h), as appropriate, for the first taxable year after the member (or members) ceases to be a member (or members).

(ii) *Net unrealized built-in gain.* For purposes of determining the amount by which the former member's (or loss subgroup's) section 382 limitation for any taxable year beginning after the former member (or loss subgroup) ceases to be a member(s) is increased by its recognized built-in gain—

(A) The amount of net unrealized built-in gain apportioned to a former member (or loss subgroup) is treated as if it were an amount of net unrealized built-in gain determined under section 382(h)(1)(A)(i)(without regard to the threshold of section 382(h)(3)(B)) with respect to such member or loss subgroup, and that amount is not reduced under section 382(h)(1)(A)(ii) by the loss group's recognized built-in gain;

(B) The former member's (or loss subgroup's) 5 year recognition period begins on the loss group's change date;

(C) In applying section 382(h)(1)(A)(ii), the former member (or loss subgroup) takes into account only its prior taxable years that begin after it ceases to be a member of the loss group; and

(D) The former member's (or loss subgroup's) recognized built-in gain on the disposition of an asset is determined under section 382(h)(2)(A), treating references to the change date in that section as references to the loss group's change date.

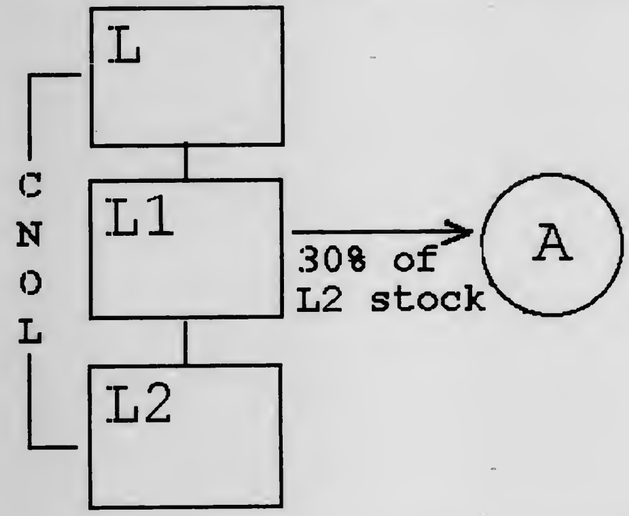
(5) *Deemed apportionment when loss group terminates.* If a loss group terminates, to the extent the consolidated section 382 limitation or net unrealized built-in gain is not apportioned under paragraph (c)(1) of this section, the consolidated section 382 limitation or net unrealized built-in gain is deemed to be apportioned to the loss subgroup that includes the common parent, or, if there is no loss subgroup that includes the common parent immediately after the loss group terminates, to the common parent. A loss group terminates on the first day of the first taxable year that is a separate return year with respect to each member of the former loss group.

(6) *Appropriate adjustments when former member leaves during the year.* Appropriate adjustments are made to the consolidated section 382 limitation for the consolidated return year during which the former member (or loss subgroup) ceases to be a member(s) to reflect the inclusion of the former member in the loss group for a portion of that year.

(7) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. Consequence of apportionment. (i) L owns all the L1 stock and L1 owns all the L2 stock. The L group has a $200 consolidated net operating loss arising in Year 1 that is carried over to Year 2. At the close of December 31, Year 1, the group has an ownership change under § 1.1502–92. The ownership change results in a consolidated section 382 limitation of $10 based on the value of the stock of the group. On August 29, Year 2, L1 sells 30 percent of the stock of L2 to A. L2 is apportioned $90 of the group's $200 consolidated net operating loss under § 1.1502–21(b). L, the common parent, elects to apportion $6 of the consolidated section 382 limitation to L2. The following is a graphic illustration of these facts:

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(ii) For its separate return years ending after December 31, Year 2, L2's section 382 limitation with respect to the $90 of the group's net operating loss apportioned to it is $6, adjusted, as appropriate, for any short taxable year, unused section 382 limitation, or other adjustment. For its consolidated return year ending December 31, Year 2 the L group's consolidated section 382 limitation with respect to the remaining $110 of pre-change consolidated attribute is $4 ($10 minus the $6 value element apportioned to L2), adjusted, as appropriate, for any short taxable year, unused section 382 limitation, or other adjustment.

(iii) For the L group's consolidated return year ending December 31, Year 2, the value element of its consolidated section 382 limitation is increased by $4 (rounded to the nearest dollar), to account for the period during which L2 was a member of the L group ($6, the consolidated section 382 limitation apportioned to L2, times 241/365, the ratio of the number of days during Year 2 that L2 is a member of the group to the number of days in the group's consolidated return year). See paragraph (c)(6) of this section. Therefore, the value element of the consolidated section 382 limitation for Year 2 of the L group is $8 (rounded to the nearest dollar).

(iv) The section 382 limitation for L2's short taxable year ending December 31, Year 2, is $2 (rounded to the nearest dollar), which is the amount that bears the same relationship to $6, the value element of the consolidated section 382 limitation apportioned to L2, as the number of days during that short taxable year, 124 days, bears to 365. See § 1.382–5(c).

Example 2. Consequence of no apportionment. The facts are the same as in *Example 1*, except that L does not elect to apportion any portion of the consolidated section 382 limitation to L2. For its separate return years ending after August 29, Year 2, L2's section 382 limitation with respect to the $90 of the group's pre-change consolidated attribute apportioned to L2 is zero under paragraph (b)(2)(ii) of this section. Thus, the $90 consolidated net operating loss apportioned to L2 cannot offset L2's taxable income in any of its separate return years ending after August 29, Year 2. For its consolidated return years ending after August 29, Year 2, the L group's consolidated section 382 limitation with respect to the remaining $110 of pre-change consolidated attribute is $10, adjusted, as appropriate, for any short taxable year, unused section 382 limitation, or other adjustment.

Example 3. Apportionment of adjustment element. The facts are the same as in *Example 1*, except that L2 ceases to be a member of the L group on August 29, Year 3, and the L group has a $4 carryforward of an unused consolidated section 382 limitation (under section 382(b)(2)) to the Year 3 consolidated return year. The carryover of unused limitation increases the consolidated section 382 limitation for the Year 3 consolidated return year from $10 to $14. L may elect to apportion all or any portion of the $10 value element and all or any portion of the $4 adjustment element to L2.

(d) *Rules pertaining to ceasing to be a member of a loss subgroup*—(1) *In general.* A corporation ceases to be a member of a loss subgroup on the earlier of—

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(i) The first day of the first taxable year for which it files a separate return; or

(ii) The first day that it ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent (treating for this purpose the loss subgroup parent as the common parent described in section 1504(a)(1)(A)).

(2) *Exceptions.* Paragraph (d)(1)(ii) of this section does not apply to a member of a loss subgroup while that member remains a member of the current group—

(i) If an election under § 1.1502–91(d)(4)(relating to treating the subgroup parent requirement as satisfied) applies to the members of the loss subgroup;

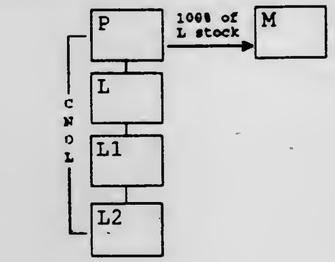
(ii) Starting on the day after the change date (but not earlier than the date the loss subgroup becomes a member of the group), if there is an ownership change of the loss subgroup within six months before, on, or after becoming members of the group; or

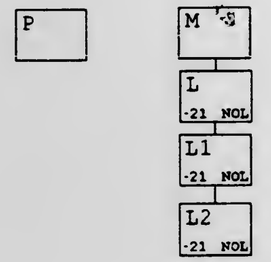
(iii) Starting the day after the period of 5 consecutive years following the day that the loss subgroup become members of the group during which the loss subgroup has not had an ownership change.

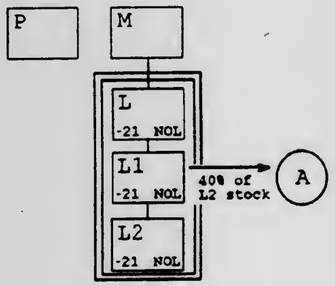
(3) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

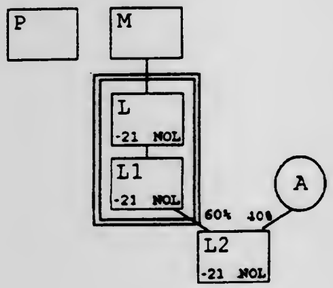
Example 1. Basic case. (i) P owns all the L stock, L owns all the L1 stock and L1 owns all the L2 stock. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. On December 11, Year 2, P sells all the stock of L to corporation M. Each of L, L1, and L2 is apportioned a portion of the Year 1 consolidated net operating loss, and thereafter each joins with M in filing consolidated returns. Under § 1.1502–92, the L loss subgroup has an ownership change on December 11, Year 2. The L loss subgroup has a subgroup section 382 limitation of $100. The following is a graphic illustration of these facts:

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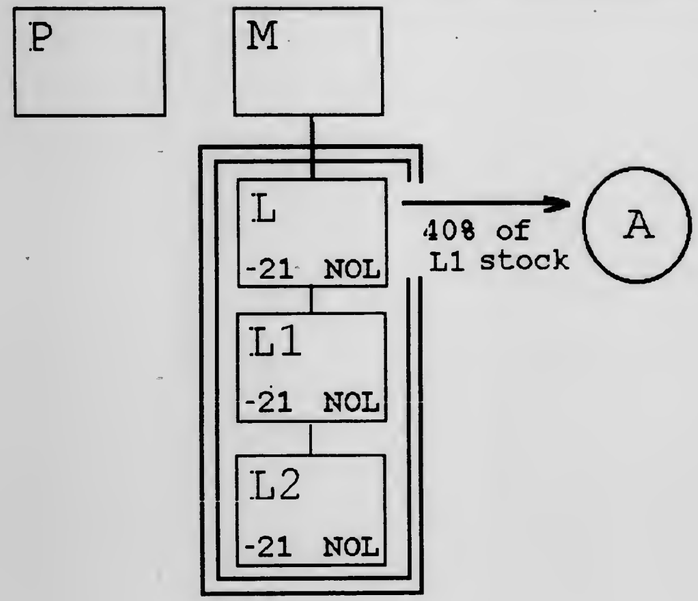


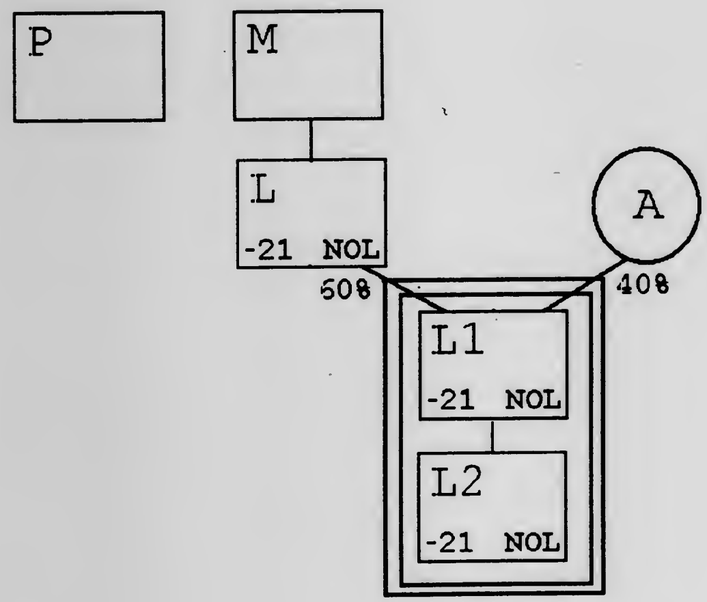
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(ii) On May 22, Year 3, L1 sells 40 percent of the L2 stock to A. L2 carries over a portion of the P group's net operating loss from Year 1 to its separate return year ending December 31, Year 3. Under paragraph (d)(1) of this section, L2 ceases to be a member of the L loss subgroup on May 22, Year 3, which is both (1) the first day of the first taxable year for which it files a separate return and (2) the day it ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent, L. The net operating loss of L2 that is carried over from the P group is treated as a pre-change loss of L2 for its separate return years ending after May 22, Year 3. Under paragraphs (a)(2) and (b)(2) of this section, the separate section 382 limitation with respect to this loss is zero unless M elects to apportion all or a part of the subgroup section 382 limitation of the L loss subgroup to L2.

Example 2. Formation of a new loss subgroup. The facts are the same as in *Example 1*, except that A purchases 40 percent of the L1 stock from L rather than purchasing L2 stock from L1. L1 and L2 file a consolidated return for their first taxable year ending after May 22, Year 3, and each of L1 and L2 carries over a part of the net operating loss of the P group that arose in Year 1. Under paragraph (d)(1) of this section, L1 and L2 cease to be members of the L loss subgroup on May 22, Year 3. The net operating losses carried over from the P group are treated as pre-change subgroup attributes of the loss subgroup composed of L1 and L2. The subgroup section 382 limitation with respect to those losses is zero unless M elects to apportion all or part of the subgroup section 382 limitation of the L loss subgroup to the L1 loss subgroup. The following is a graphic illustration of these facts:

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Example 3. Ownership change upon becoming members of the group. (i) A owns all the stock of P, and P owns all the stock of L1 and L2. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 3 and Year 4. Corporation M acquires all the stock of P on November 11, Year 3, and P, L1, and L2 thereafter file consolidated returns with M. M's acquisition results in an ownership change of the P loss subgroup under § 1.1502–92(b)(1)(ii).

(ii) P distributes the L2 stock to M on October 7, Year 4, and L2 ceases to bear the relationship described in section 1504(a)(1) to P, the P loss subgroup parent. However, under paragraph (d)(2) of this section, L2 does not cease to be a member of the P loss subgroup because the P loss subgroup had an ownership change upon becoming members of the M group and L2 remains in the M group.

Example 4. Ceasing to bear a section 1504 (a)(1) to the loss subgroup parent. (i) A owns all the stock of P, and P owns all the stock of L1 and L2. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 7. At the close of Year 2, X acquires all of the stock of P, causing an ownership change of the loss subgroup composed of P, L1 and L2 under § 1.1502–92(b)(1)(ii). In Year 4, M, which is owned by the same person that owns X, acquires all of the stock of P, and the M acquisition does not cause a second ownership change of the P loss subgroup.

(ii) P distributes the L2 stock to M on February 3, Year 6 (less than 5 years after the P loss subgroup became members of the M group) and L2 ceases to bear the relationship described in section 1504(a)(1) to P, the loss subgroup parent. Thus, the section 382 limitation from the Year 2 ownership change that applies with respect to the pre-change attributes attributable to L2 is zero except to the extent M elects to apportion all or part of the P loss subgroup section 382 limitation to L2.

Example 5. Relationship through a successor. The facts are the same as in *Example 3*, except that M's acquisition of the P stock does not result in an ownership change of the P loss subgroup, and, instead of P's distributing the stock of L2, L2 merges into L1 on October 7, Year 4. L1 (as successor to L2 in the merger within the meaning of § 1.1502–1(f)(4)) continues to bear a relationship described in section 1504(a)(1) to P, the loss subgroup parent. Thus, L2 does not cease to be a member of the P loss subgroup as a result of the merger.

Example 6. Reattribution of net operating loss carryover under § 1.1502–20(g). The facts are the same as in *Example 3*, except that, instead of distributing the L2 stock to M, P sells that stock to B, and, under § 1.1502–20(g), M reattributes $10 of L2's net operating loss carryover to itself. Under § 1.1502–20(g), M succeeds to the reattributed loss as if the loss were succeeded to in a transaction described in section 381(a). M, as successor to L2, does not cease to be a member of the P loss subgroup.

(e) *Allocation of net unrealized built-in loss*—(1) *In general.* This paragraph (e) provides rules for the allocation of a loss group's (or loss subgroup's) net unrealized built-in loss if a member ceases to be a member of a loss group (or loss subgroup). This paragraph (e) applies if—

(i) A loss group (or loss subgroup) has a net unrealized built-in loss on a change date; and

(ii) Immediately after the close of the consolidated return year in which the departing member ceases to be a member, the amount of the loss group's (or loss subgroup's) excess of net unrealized built-in loss over recognized built-in loss, determined under section 382(h)(1)(B)(ii) (relating to a limitation on recognized built-in loss), is greater than zero. (The amount of such excess is referred to as the remaining NUBIL balance.) In applying section 382(h)(1)(B)(ii) for this purpose, net unrealized built-in loss allocated to departing members in prior consolidated return years is treated as recognized built-in loss in those years.

(2) *Amount of allocation*—(i) *In general.* The amount of net unrealized built-in loss allocated to a departing member is equal to the remaining NUBIL balance, multiplied by a fraction. The numerator of the fraction is the amount of the built-in loss, taken into account on the change date under § 1.1502–91(g), in the assets held by the departing member immediately after the member ceases to be a member of the loss group (or loss subgroup). The denominator of the fraction is the sum of the numerator, plus the amount of the built-in loss, taken into account under § 1.1502–91(g) on the change date, in the assets held by the loss group (or loss subgroup) immediately after the close of the taxable year in which the departing member ceases to be a member. (Fluctuations in value of the assets between the change date and the date that the member ceases to be a member of the group (or loss subgroup), or the close of the taxable year in which the member ceases to be a member of the loss group, are disregarded.) Because the amount of built-in loss on the change date with respect to a departing member's assets is taken into account (rather than that member's separately computed net unrealized built-in loss on the change date), a departing member can be apportioned all or part of the loss group's net unrealized built-in loss, even if the departing member had a separately computed net unrealized built-in gain on the change date. Amounts taken into account under section 382(h)(6)(C) (relating to certain deduction items) are treated as if they were assets in determining the numerator and denominator of the fraction.

(ii) *Transferred basis property and deferred gain or loss.* For purposes of paragraph (b)(2)(i) of this section, assets held by the departing member immediately after it ceases to be a member of the group (or by other members immediately after the close of the taxable year) include—

(A) Assets held at that time that are transferred basis property that was held by any member of the group (or loss subgroup) on the change date; and

(B) Assets held at that time by any member of the consolidated group with respect to which gain or loss of the group member or loss subgroup member at issue has been deferred in an intercompany transaction and has not been taken into account.

(iii) *Assets for which gain or loss has been recognized.* For purposes of paragraph (b)(2)(i) of this section, assets held by the departing member immediately after it ceases to be a member of the group (or by other members immediately after the close of the taxable year) do not include assets with respect to which gain or loss has previously been recognized and taken into account during the recognition period (including gain or loss recognized in an intercompany transaction and taken into account immediately before the member leaves the group). Appropriate adjustments must be made if gain or loss on an asset has been only partially recognized and taken into account.

(iv) *Exchanged basis property.* The rules of § 1.1502–91(h) apply for purposes of this paragraph (e) (disregarding stock received from the departing member or another member that is a member immediately after the close of the taxable year).

(v) *Two or more members depart during the same year.* If two or more members cease to be members during the same consolidated return year, appropriate adjustments must be made to the denominator of the fraction for each departing member by treating the other departing members as if they had not ceased to be members during that year and as if the assets held by those other departing members immediately after they cease to be members of the group (or loss subgroup) are assets held by the group immediately after the close of the taxable year.

(vi) *Anti-abuse rule.* If assets are transferred between members or a member ceases to be a member with a principal purpose of causing or affecting the allocation of amounts under this paragraph (e), appropriate adjustments must be made to eliminate any benefit of such acquisition, disposition, or allocation.

(3) *Effect of allocation on the consolidated group.* The amount of the net unrealized built-in loss that is allocated to the former member is treated as recognized built-in loss for a prior taxable year ending in the recognition period for purposes applying the limitation of section 382(h)(1)(B)(ii) to a loss group's (or loss subgroup's) recognition period taxable years beginning after the consolidated return year in which the former member ceases to be a member.

(4) *Effect on corporations to which the allocation is made.* For purposes of determining the amount of the former member's recognized built-in losses in any taxable year beginning after the former member ceases to be a member—

(i) The amount of the loss group's (or loss subgroup's) net unrealized built-in loss that is allocated to the former member is treated as if it were an amount of net unrealized built-in loss determined under section 382(h)(1)(B)(i)(without regard to the threshold of section 382(h)(3)(B)) with respect to such member or loss subgroup, and that amount is not reduced under section 382(h)(1)(B)(ii) by the loss group's (or loss subgroup's) recognized built-in losses;

(ii) The former member's 5 year recognition period begins on the loss group's (or loss subgroup's) change date;

(iii) In applying section 382(h)(1)(B)(ii), the former member takes into account only its prior taxable years that begin after it ceases to be a member of the loss group (or loss subgroup); and

(iv) The former member's recognized built-in loss on the disposition of an asset is determined under section 382(h)(2)(B), treating references to the change date in that section as references to the loss group's (or loss subgroup's) change date.

(5) *Subgroup principles.* If two or more former members are members of the same consolidated group (the second group) immediately after they cease to be members of the current group, the principles of paragraphs (e)(1), (2) and (4) of this section apply to those former members on an aggregate basis. Thus, for example, the amount of net unrealized built-in loss allocated to those members is based on the assets held by those members immediately after they cease to be members of the current group and the limitation of section 382(h)(1)(B)(ii) on recognized built-in losses is applied by taking into account the aggregate amount of net unrealized built-in loss allocated to the former members and the aggregate recognized losses of those members in taxable years beginning after they cease to be members of the current group. If one or more of such members cease to be members of the second group, the principles of this paragraph (e) are applied with respect to those members to allocate to them all or part of any remaining unrecognized amount of net unrealized built-in loss allocated to the members that became members of the second group.

(6) *Apportionment of consolidated section 382 limitation (or subgroup section 382 limitation)*—(i) *In general.* For rules relating to the apportionment of a consolidated section 382 limitation (or subgroup section 382 limitation) to a former member, see paragraph (c) of this section.

(ii) *Special rule for former members that become members of the same consolidated group.* If recognized built-in losses of one or more former members would be subject to a consolidated section 382 limitation (or subgroup section 382 limitation) if recognized immediately before the member (or members) cease to be members of the group, an apportionment of that limitation may be made, under paragraph (c) of this section, to a loss subgroup that includes such member (or members), and the recognized built-in losses (if any) of that member (or members) will be subject to that apportioned limitation. If two or more of such former members are not included in a loss subgroup immediately after they cease to be members of the group (for example, because they do not have net operating loss carryovers or, in the aggregate, a net unrealized built-in loss), but are members of the same consolidated group, an apportionment of the consolidated section 382 limitation (or subgroup section 382 limitation) may be made to them as if they were a loss subgroup.

(7) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. Basic allocation case. (i) P owns all of the stock of L1 and L2. On September 4, Year 1, A purchases all of the P stock, causing an ownership change of the P group. On that date P has two assets (other than the L1 and L2 stock), asset 1 with an adjusted basis of $40 and a fair market value of $15 and asset 2 with an adjusted basis of $50 and a fair market value of $100. L1 has two assets, asset 3 , with a fair market value of $50 and an adjusted basis of $100, and asset 4, with an adjusted basis of $125 and a fair market value of $75. L2 has two assets, asset 5, with a fair market value of $150 and an adjusted basis of $100, and asset 6, with an adjusted basis of $90 and a fair market value of $40. Thus, the P loss group has a net unrealized built-in loss of $75.

(ii) On March 19, Year 3, P sells all of the L2 stock to M. At that time, asset 5, which has appreciated in value, has a fair market value of $250 and an adjusted basis of $100. Asset 6, which has declined in value, has an adjusted basis of $90 and a fair market value of $10.

(iii) On April 8, Year 3, P sells asset 1, and has a recognized built-in loss of $25 that is subject to the P group's section 382 limitation. On November 11, Year 4, L2 sells asset 6 for its then fair market value, $10, recognizing a loss of $80. On June 3, Year 5, L1 sells asset 4, recognizing a loss of $50.

(iv) Immediately after the close of Year 3, the P loss group's remaining NUBIL balance is $50 ($75 net unrealized built-in loss reduced by the $25 recognized built-in loss of P). The portion of the remaining NUBIL balance that is allocated to L2 is $17 (rounded to the nearest dollar). Seventeen dollars is the product obtained by multiplying $50 (the remaining NUBIL balance) by $50/$150. The numerator of the fraction ($50) is the amount of built-in loss in asset 6, taken into account on the change date under § 1.1502–91(g). The denominator ($150) is the sum of the numerator ($50) and the amount of built-in loss in assets 3 and 4, taken into account on the change date under § 1.1502–91(g) ($100). The built-in loss in asset 1 is not included in the denominator of the fraction because it is not held by the P group immediately after the close of Year 3.

(v) Seventeen dollars of L2's $80 loss on the sale of asset 6 is a recognized built-in loss and subject to a section 382 limitation of zero, unless P apportions some or all of the P group's consolidated section 382 limitation to L2 (adjusted for a short taxable year, carryover of unused limitation, or any other adjustment required under section 382).

(vi) Thirty-three dollars of L1's $50 loss on the sale of asset 4 is subject to the P group's consolidated section 382 limitation, reduced by the amount of such limitation apportioned to L2, and adjusted for any short taxable year, a carryforward of unused limitation, or other adjustment. (In applying section 382(h)(1)(B)(ii) with respect to Year 5, the P group's net unrealized built-in loss is reduced by P's $25 recognized built-in loss in Year 3 and the $17 of net unrealized built-in loss allocated to L2, thus limiting the P group's recognized built-in loss in Year 5 to $33.)

Example 2. Two members depart in the same year. The facts are the same as in *Example 1*, except that P sells all of the stock of L1 to C on November 1, Year 3. The amount of net unrealized built-in loss apportioned to L2 (rounded to the nearest dollar) is $17 ($50 remaining NUBIL balance × $50/$150). The amount of net unrealized built-in loss apportioned to L1 (rounded to the nearest dollar) is $33 ($50 remaining NUBIL balance × $100/$150).

(8) *Reporting requirement.* If a net unrealized built-in loss is allocated under this paragraph (e), the common parent must file a statement with its income tax return for the taxable year in which the former member(s) (or a new loss subgroup that includes that member) ceases to be a member. The statement must provide the name and employer identification number (E.I.N.)

of the departing member, the amount of remaining NUBIL balance for the taxable year in which the member departs, and the amount of the net unrealized built-in loss allocated to the departing member. The common parent must also deliver a copy of the statement to the former member on or before the day the group files its income tax return for the consolidated return year that the former member ceases to be a member. A copy of the statement must be attached to the first income tax return of the former member (or the first return in which the former member joins) that is filed after the close of the consolidated return year of the group of which the former member (or a new loss subgroup that includes that member) cease to be a member. This paragraph (e)(8) does not apply if the required information (other than the amount of remaining NUBIL balance) is included in a statement of election under paragraph (f) of this section (relating to apportioning a section 382 limitation).

(f) *Filing the election to apportion the section 382 limitation and net unrealized built-in gain*—(1) *Form of the election to apportion.* An election under paragraph (c) of this section must be made by the common parent. The election must be made in the form of the following statement: "THIS IS AN ELECTION UNDER § 1.1502–95 OF THE INCOME TAX REGULATIONS TO APPORTION ALL OR PART OF THE [insert THE CONSOLIDATED SECTION 382 LIMITATION, THE SUBGROUP SECTION 382 LIMITATION, THE LOSS GROUP'S NET UNREALIZED BUILT-IN GAIN, THE LOSS SUBGROUP'S NET UNREALIZED BUILT-IN GAIN, as appropriate] TO [insert name and E.I.N. of the corporation (or the corporations that compose a new loss subgroup) to which allocation is made]". The declaration must also include the following information, as appropriate—

(i) The date of the ownership change that resulted in the consolidated section 382 limitation (or subgroup section 382 limitation) or the loss group's (or loss subgroup's) net unrealized built-in gain;

(ii) The amount of the departing member's (or loss subgroup's) pre-change net operating loss carryovers and the taxable years in which they arose that will be subject to the limitation that is being apportioned to that member (or loss subgroup);

(iii) The amount of any net unrealized built-in loss allocated to the departing member (or loss subgroup) under paragraph (e) of this section, which, if recognized, can be a pre-change attribute subject to the limitation that is being apportioned;

(iv) If a consolidated section 382 limitation (or subgroup section 382 limitation) is being apportioned, the amount of the consolidated section 382 limitation (or subgroup section 382 limitation) for the taxable year during which the former member (or new loss subgroup) ceases to be a member of the consolidated group (determined without regard to any apportionment under this section);

(v) If any net unrealized built-in gain is being apportioned, the amount of the loss group's (or loss subgroup's) net unrealized built-in gain (as determined under paragraph (c) (2)(ii) of this section) that may be apportioned to members that ceased to be members during the consolidated return year;

(vi) The amount of the value element and adjustment element of the consolidated section 382 limitation (or subgroup section 382 limitation) that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of this section;

(vii) The amount of the loss group's (or loss subgroup's) net unrealized built-in gain that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of this section;

(viii) If the former member is allocated any net unrealized built-in loss under paragraph (e) of this section, the amount of any adjustment element apportioned to the former member that is attributable to recognized built-in gains (determined in a manner that will enable both the group and the former member to apply the principles of § 1.1502–93(c));

(ix) The name and E.I.N. of the common parent making the apportionment.

(2) *Signing of the election.* The election statement must be signed by both the common parent and the former member (or, in the case of a loss subgroup, the common parent and the loss subgroup parent) by persons authorized to sign their respective income tax returns. If the allocation is made to a loss subgroup for which an election under § 1.1502–91(d)(4) is made, and not separately to its members, the election statement under this paragraph (e) must be signed by the common parent and any member of the new loss subgroup by persons authorized to sign their respective income tax returns.

(3) *Filing of the election.* The election statement must be filed by the common parent of the group that is apportioning the consolidated section 382 limitation (or the subgroup section 382 limitation) or the loss group's net unrealized built-in gain (or loss subgroup's net unrealized built-in gain) with its income tax return for the taxable year in which the former member (or new loss subgroup) ceases to be a member. The common parent must also deliver a copy of the statement to the former member (or the members of the new loss subgroup) on or before the day the group files its income tax return for the consolidated return year that the former member (or new loss subgroup) ceases to be a member. A copy of the statement must be attached to the first return of the former member (or the first return in which the members of a new loss subgroup join) that is filed after the close of the consolidated return year of the group of which the former member (or the members of a new loss subgroup) ceases to be a member.

(4) *Revocation of election.* An election statement made under paragraph (c) of this section is revocable only with the consent of the Commissioner.

§ 1.1502–96 Miscellaneous rules.

(a) *End of separate tracking of losses*—(1) *Application.* This paragraph (a) applies to a member (or a loss subgroup) with a net operating loss carryover that arose (or is treated under § 1.1502–21(c) as arising) in a SRLY, or a member (or loss subgroup) with a net unrealized built-in loss determined at the time that the member (or loss subgroup) becomes a member of the consolidated group if there is—

(i) An ownership change of the member (or loss subgroup) within six months before, on, or after becoming a member of the group; or

(ii) A period of 5 consecutive years following the day that the member (or loss subgroup) becomes a member of a group during which the member (or loss subgroup) has not had an ownership change.

(2) *Effect of end of separate tracking*—(i) *Net operating loss carryovers.* If this paragraph (a) applies with respect to a member (or loss subgroup) with a net operating loss carryover, then, starting on the day after the earlier of the change date (but not earlier than the day the member (or loss subgroup) becomes a member of the consolidated group) or the last day of the 5 consecutive year period described in paragraph (a)(1)(ii) of this section, such loss carryover is treated as described in § 1.1502–91(c)(1)(i). The preceding sentence also applies for purposes of determining whether there is an ownership change with respect to such loss carryover following such change date or 5 consecutive year period. Thus, for example, starting the day after the change date (but not earlier than the day the member (or loss subgroup) becomes a member of the consolidated group) or the end of the 5 consecutive year period—

(A) The consolidated group which includes the new loss member or loss subgroup is no longer required to separately track owner shifts of the stock of the new loss member or subgroup parent to determine if an ownership change occurs with respect to the loss carryover of the new loss member or members included in the loss subgroup;

(B) The group is a loss group because the member's loss carryover is treated as a loss described in § 1.1502–91(c)(1)(i);

(C) There is an ownership change with respect to such loss carryover only if the group has an ownership change; and

(D) If the group has an ownership change, such loss carryover is a pre-change consolidated attribute subject to the loss group's consolidated section 382 limitation.

(ii) *Net unrealized built-in losses.* If this paragraph (a) applies with respect to a new loss member described in § 1.1502–94(a)(1)(ii) (or a loss subgroup described in § 1.1502–91(d)(2)) then, starting on the day after the earlier of the change date (but not earlier than the day the member (or loss subgroup) becomes a member of the group) or the last day of the 5 consecutive year period described in paragraph (a)(1)(ii) of this section, the member (or members of the loss subgroup) are treated, for purposes of applying § 1.1502–91(g)(2)(ii), as if they have been affiliated with the common parent for 5 consecutive years. Starting on that day, the member's (or the members of the loss subgroup's) separately computed net unrealized built-in loss is included in the determination whether the group has a net unrealized built-in loss, and there is an ownership change with respect to the member's separately computed net unrealized built-in loss only if the group (including the member) has a net unrealized built-in loss and has an ownership change. Thus, for example, starting the day after the change date (but not earlier than the day the member (or loss subgroup) becomes a member of the consolidated group), or the end of the 5 consecutive period

(A) The consolidated group which includes the new loss member or loss subgroup is no longer required to separately track owner shifts of the stock of the new loss member or subgroup parent to determine if an ownership change occurs with respect to the net unrealized built-in loss of the new loss member or members of the loss subgroup;

(B) The group includes the member's (or the loss subgroup members') separately computed net unrealized built-in loss in determining whether it is a loss group under § 1.1502–91(c)(1)(iii);

(C) There is an ownership change with respect to such net unrealized built-in loss only if the group is a loss group and has an ownership change; and

(D) If the group has an ownership change, the member's separately computed net unrealized built-in loss and its assets are taken into account in determining the group's pre-change consolidated attributes described in § 1.1502–91(e)(1) (relating to recognized built-in losses) that are subject to the group's consolidated section 382 limitation.

(iii) *Common parent not common parent for five years.* If the common parent has become the common parent of an existing group within the previous 5-year period in a transaction described in § 1.1502–75(d)(2)(ii) or (3), appropriate adjustments must be made in applying paragraphs (a)(2)(ii) and (3) of this section. In such a case, as the context requires, references to the common parent are to the former common parent.

(3) *Continuing effect of end of separate tracking*—(i) *In general.* As the context may require, a current group determines which of its members are included in a loss subgroup on any testing date by taking into account the application of this section in the former group. See the example in § 1.1502–91(f)(2). For this purpose, corporations that are treated under paragraph (a)(2)(ii) of this section as having been affiliated with the common parent of the former group for 5 consecutive years are also treated as having been affiliated with any other members that have been (or are treated as having been) affiliated with the common parent. The corporations are treated as having been affiliated with such other members for the same period of time that those members have been (or are treated as having been) affiliated with the common parent. If two or more corporations become members of the group at the same time, but paragraph (a)(1) of this section does not apply to every such corporation, then immediately after the corporations become members of the group, the corporations to which paragraph (a)(1) of this section applied are treated as not having been previously affiliated, for purposes of applying this paragraph (a)(3), with the corporations to which paragraph (a)(2)(ii) of this section did not apply.

(ii) *Example.* The following example illustrates the principles of this paragraph (a)(3):

Example. (i) L has owned all the stock of L1 for three years. At the close of December 31, Year 1, the M group purchases all the L stock, and L and L1 become members of the M group. Other than the stock of L1, L has one asset (the L loss asset) with a net unrealized built-in loss of $200 on this date. L1 has one asset with a net unrealized built-in gain of $50 (the L1 gain asset). L and L1 do not compose a loss subgroup because they do not meet the five year affiliation requirement of § 1.1502–91(d)(2)(i). L is a new loss member, and M's purchase of L causes an ownership change of L. At the close of December 31, Year 4, at a time when L1 has been affiliated with the M group for three years and has been affiliated with L for six years, the S group purchases all the M stock. On this date, the L loss asset has a net unrealized built-in loss of $300, the L1 gain asset has a net unrealized built-in gain of $80, and M, the common parent of the M group, has one asset with a net unrealized built-in gain of $200.

(ii) Paragraph (a)(1) of this section applies to L because L is a new loss member described in § 1.1502–94(a)(1)(ii) that has an ownership change upon becoming a member of the M group on December 31, Year 1. Accordingly, L is treated as having been affiliated with M for 5 consecutive years, and the L loss asset with a net unrealized built-in loss of $300 is included in the determination whether the M group has a net unrealized built-in loss.

(iii) The S group determines which of its members are included in a loss subgroup by taking into account application of paragraph (a) of this section in the M group. For this purpose, application of paragraph (a) of this section causes L to be treated as having been affiliated with M (or as having been a member of the M group) for 5 consecutive years as of January 1, Year 2. Therefore, the S group includes L in the determination whether the M subgroup acquired by S on December 31, Year 4, has a net unrealized built-in loss.

(iv) Because paragraph (a)(1) of this section applied to L when L became a member of the M group, but did not apply to L1, L is treated as not having been affiliated with L1 before L and L1 joined the M group. Also, L1 is not included in the determination whether the M subgroup has a net unrealized built-in loss because L1 has not been continuously affiliated with members of the M group for the five consecutive year period ending immediately before they become members of the S group. See § 1.1502–91(g)(2).

(4) *Special rule for testing period.* For purposes of determining the beginning of the testing period for a loss group, the member's (or loss subgroup's) net operating loss carryovers (or net unrealized built-in loss) described in paragraph (a)(2) of this section are considered to arise—

(i) In a case described in paragraph (a)(1)(i) of this section, in a taxable year that begins not earlier than the later of the day following the change date or the day that the member becomes a member of the group; and

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(ii) In a case described in paragraph (a)(1)(ii) of this section, in a taxable year that begins 3 years before the end of the 5 consecutive year period.

(5) *Limits on effects of end of separate tracking.* The rule contained in this paragraph (a) applies solely for purposes of §§ 1.1502–91 through 1.1502–95 and this section (other than paragraph (b)(2)(ii)(B) of this section (relating to the definition of pre-change attributes of a subsidiary)) and § 1.1502–98, and not for purposes of other provisions of the consolidated return regulations. However, the rule contained in this paragraph (a) does apply in §§ 1.1502–15(g), 1.1502–21(g) and 1.1502–22(g) for purposes of determining the composition of loss subgroups defined in § 1.1502–91(d). See also paragraph (c) of this section for the continuing effect of an ownership change with respect to pre-change attributes.

(b) *Ownership change of subsidiary*—(1) *Ownership change of a subsidiary because of options or plan or arrangement.* Notwithstanding § 1.1502–92, a subsidiary may have an ownership change for purposes of section 382 with respect to its attributes which a group or loss subgroup includes in making a determination under § 1.1502–91(c)(1) (relating to the definition of loss group) or § 1.1502–91(d) (relating to the definition of loss subgroup). The subsidiary has such an ownership change if it has an ownership change under the principles of § 1.1502–95(b) and section 382 and the regulations thereunder (determined on a separate entity basis by treating the subsidiary as not being a member of a consolidated group) in the event of—

(i) The deemed exercise under § 1.382–4(d) of an option or options (other than an option with respect to stock of the common parent) held by a person (or persons acting pursuant to a plan or arrangement) to acquire more than 20 percent of the stock of the subsidiary; or

(ii) An increase by 1 or more 5-percent shareholders, acting pursuant to a plan or arrangement to avoid an ownership change of a subsidiary, in their percentage ownership interest in the subsidiary by more than 50 percentage points during the testing period of the subsidiary through the acquisition (or deemed acquisition pursuant to § 1.382–4(d)) of ownership interests in the subsidiary and in higher-tier members with respect to the subsidiary.

(2) *Effect of the ownership change*—(i) *In general.* If a subsidiary has an ownership change under paragraph (b)(1) of this section, the amount of consolidated taxable income for any post-change year that may be offset by the pre-change losses of the subsidiary shall not exceed the section 382 limitation for the subsidiary. For purposes of this limitation, the value of the subsidiary is determined solely by reference to the value of the subsidiary's stock.

(ii) *Pre-change losses.* The pre-change losses of a subsidiary are—

(A) Its allocable part of any consolidated net operating loss which is attributable to it under § 1.1502–21(b) (determined on the last day of the consolidated return year that includes the change date) that is not carried back and absorbed in a taxable year prior to the year including the change date;

(B) Its net operating loss carryovers that arose (or are treated under § 1.1502–21(c) as having arisen) in a SRLY; and

(C) Its recognized built-in loss with respect to its separately computed net unrealized built-in loss, if any, determined on the change date.

(3) *Coordination with §§ 1.1502–91, 1.1502–92, and 1.1502–94.* If an increase in percentage ownership interest causes an ownership change with respect to an attribute under this paragraph (b) and under § 1.1502–92 on the same day, the ownership change is considered to occur only under § 1.1502–92 and not under this paragraph (b). See § 1.1502–94 for anti-duplication rules relating to value.

(4) *Example.* The following example illustrates paragraph (b)(1)(ii) of this section:

Example. Plan to avoid an ownership change of a subsidiary. (i) L owns all the stock of L1, L1 owns all the stock of L2, L2 owns all the stock of L3, and L3 owns all the stock of L4. The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. L has assets other than its L1 stock with a value of $900. L1, L2, and L3 own no assets other than their L2, L3, and L4 stock. L4 has assets with a value of $100. During Year 2, A, B, C, and D, acting pursuant to a plan to avoid an ownership change of L4, acquire the following ownership interests in the members of the L loss group: (A) on September 11, Year 2, A acquires 20 percent of the L1 stock from L and B acquires 20 percent of the L2 stock from L1; and (B) on September 20, Year 2, C acquires 20 percent of the stock of L3 from L2 and D acquires 20 percent of the stock of L4 from L3.

(ii) The acquisitions by A, B, C, and D pursuant to the plan have increased their respective percentage ownership interests in L4 by approximately 10, 13, 16, and 20 percentage points, for a total of approximately 59 percentage points during the testing period. This more than 50 percentage point increase in the percentage ownership interest in L4 causes an ownership change of L4 under paragraph (b)(2) of this section.

(c) *Continuing effect of an ownership change.* A loss corporation (or loss subgroup) that is subject to a limitation under section 382 with respect to its pre-change losses continues to be subject to the limitation regardless of whether it becomes a member or ceases to be a member of a consolidated group. See § 1.382–5(d) (relating to successive ownership changes and absorption of a section 382 limitation).

(d) *Losses reattributed under § 1.1502–20(g)*—(1) *In general.* This paragraph (d) contains rules relating to net operating carryovers that are reattributed to the common parent under § 1.1502–20(g). References in this paragraph (d) to a subsidiary are references to the subsidiary (or lower tier subsidiary) whose net operating loss carryover is reattributed to the common parent.

(2) *Deemed section 381(a) transaction.* Under § 1.1502–20 (g)(1), the common parent succeeds to the reattributed losses as if the losses were succeeded to in a transaction described in section 381(a). In general, §§ 1.1502–91 through 1.1502–95, this section, and § 1.1502–98 are applied to the reattributed net operating loss carryovers in accordance with that characterization. See generally, § 1.382–2(a)(1)(ii) (relating to distributor or transferor loss corporations in transactions under section 381), § 1.1502–(1)(f)(4) (relating to the definition of predecessor and successor) and § 1.1502–91(j) (relating to predecessor and successor corporations). For example, if the reattributed net operating loss carryover is a pre-change attribute subject to a section 382 limitation, it remains subject to that limitation following the reattribution. In certain cases, the limitation applicable to the reattributed loss is zero unless the common parent apportions all or part of the limitation to itself. (See paragraph (d)(4) of this section.)

(3) *Rules relating to owner shifts*—(i) *In general.* Any owner shift of the subsidiary (including any deemed owner shift resulting from section 382(g)(4)(D) or 382(l)(3)) in connection with the disposition of the stock of the subsidiary is not taken into account in determining whether there is an ownership change with respect to the reattributed net operating loss carryover. However, any owner shift with respect to the successor corporation that is treated as continuing in existence under § 1.382–2(a)(1)(ii) must be taken into account for such purpose if such owner shift is effected by the reattribution and an owner shift of the stock of the subsidiary not held directly or indirectly by the common parent would have been taken into account if such shift had occurred immediately before the reattribution. See paragraph (d)(3)(ii) *Example 2* of this section.

(ii) *Examples.* The following examples illustrate the principles of this paragraph (d)(3):

Example 1. No owner shift for reattributed loss. (i) P, the common parent of a consolidated group, owns 60% of the stock of L, and B owns the remaining 40%. L has a net operating loss carryover of $100 from year 1 that it carries over to Years 2, 3, and 4. At the beginning of Year 2, P purchases 40% of the L stock from B, which does not cause an ownership change of L. On December 31, Year 3, P sells all of the L stock to M. Pursuant to § 1.1502–20(g), P reattributes $10 of L's $100 net operating loss carryover to itself, and L carries $90 of its net operating loss carryover to its Year 4.

(ii) The sale of the L stock to M does not cause an owner shift that is taken into account in determining if there is an ownership change with respect to the $10 reattributed loss. Following the reattribution, § 1.1502–94(b) continues to apply to determine if there is an ownership change with respect to the $10 reattributed loss, until, under paragraph (a) of this section, the loss is treated as described in § 1.1502–91(c)(1)(i). In applying § 1.1502–94(b), the 40 percentage point increase by the P shareholders prior to the reattribution is taken into account. The sale of the L stock to M does cause an ownership change of L with respect to the $90 of its net operating loss that it carries over to Year 4.

Example 2. Owner shift for reattributed loss. The facts are the same as in *Example 1*, except that P only purchases 20% of the L stock from B and sells 80% of the L stock to M. L is a new loss member, and, under § 1.1502–94(b)(1), an owner shift of the stock of L not held directly or indirectly by the common parent (the 20% of L stock still held by B) would have been taken into account if such shift had occurred immediately before the reattribution. Following the reattribution, § 1.1502–94(b) continues to apply to determine if there is an ownership change with respect to the $10 reattributed loss, until, under paragraph (a) of this section, the loss is treated as described in § 1.1502–91(c)(1)(i). With respect to the $10 reattributed loss, the P shareholders have increased their percentage ownership interest by 40 percentage points. The P shareholders have increased their ownership interests by 20 percentage points as a result of P's purchase of stock from B, and, under § 1.382–2(a)(1)(ii), are treated as increasing their interests by an additional 20 percentage points as a result of the reattribution. (The acquisition of the L stock by M does not, however, effect an owner shift for the $10 of reattributed loss.) The sale of the L stock to M causes an ownership change of L with respect to the $90 of net operating loss that L carries over to Year 4.

(4) *Rules relating to the section 382 limitation—(i) Reattributed loss is a pre-change separate attribute of a new loss member.* If the reattributed net operating loss carryover is a pre-change separate attribute of a new loss member that is subject to a separate section 382 limitation prior to the disposition of subsidiary stock, the common parent's limitation with respect to that loss is zero, except to the extent that the common parent apportions to itself, under paragraph (d)(5) of this section, all or part of such limitation. A separate section 382 limitation is the limitation described in § 1.1502–94(b) that applies to a pre-change separate attribute.

(ii) *Reattributed loss is a pre-change subgroup attribute.* If the reattributed net operating loss carryover is a pre-change subgroup attribute subject to a subgroup section 382 limitation prior to the disposition of subsidiary stock, and, immediately after the reattribution, the common parent is not a member of the loss subgroup, the section 382 limitation with respect to that net operating loss carryover is zero, except to the extent that the common parent apportions to itself, under paragraph (d)(5) of this section, all or part of the subgroup section 382 limitation. See, however, § 1.1502–95(d)(3) *Example 6*, for an illustration of a case where the common parent, as successor to the subsidiary, is a member of the loss subgroup immediately after the reattribution.

(iii) *Potential application of section 382(l)(1).* In general, the value of the stock of the common parent is used to determine the section 382 limitation for an ownership change with respect to the reattributed net operating loss carryover that occurs at the time of, or after, the reattribution. For example, if the net operating loss carryover is a pre-change consolidated attribute, the value of the stock of the common parent is used to determine the section 382 limitation, and no adjustment to that value is required because of the deemed section 381(a) transaction. However, if the net operating loss carryover is a pre-change separate attribute of a new loss member (or is a pre-change attribute of a loss subgroup member and the common parent was not the loss subgroup parent immediately before the reattribution), the deemed section 381(a) transaction is considered to constitute a capital contribution with respect to the new loss member (or loss subgroup member) for purposes of section 382(l)(1). Accordingly, if that section applies because the deemed capital contribution is (or is considered under section 382(l)(1)(B) to be) part of a plan described in section 382(l)(1)(A), the value of the stock of the common parent after the deemed section 381(a) transaction must be adjusted to reflect the capital contribution. Ordinarily, this will require the value of the stock of the common parent to be reduced to an amount that represents the value of the stock of the subsidiary (or loss subgroup of which the subsidiary was a member) when the reattribution occurred.

(iv) *Duplication or omission of value.* In determining any section 382 limitation with respect to the reattributed net operating loss carryover and with respect to other pre-change losses, appropriate adjustments must be made so that value is not improperly omitted or duplicated as a result of the reattribution. For example, if the subsidiary has an ownership change upon its departure, and the common parent (as successor) has an ownership change with respect to the reattributed pre-change separate attribute upon its reattribution under paragraph (d)(3)(i) of this section, proper adjustments must be made so that the value of the subsidiary is not taken into account more than once in determinining the section 382 limitation for the reattributed loss and the loss that is not reattributed.

(v) *Special rule for continuity of business requirement.* If the reattributed net operating loss carryover is a pre-change attribute of new loss member and the reattribution occurs within the two year period beginning on the change date, then, starting immediately after the reattribution, the continuity of business requirement of section 382(c)(1) is applied with respect to the business enterprise of the common parent. Similar principles apply if the reattributed net operating loss carryover is a pre-change subgroup attribute and, on the day after the reattribution, the common parent is not a member of the loss subgroup.

(5) *Election to reattribute section 382 limitation*—(i) *Effect of election.* The common parent may elect to apportion to itself all or part of any separate section 382 limitation or subgroup section 382 limitation to which the net operating loss carryover is subject immediately before the reattribution. However, no net unrealized built-in gain of the member (or loss subgroup) whose net operating loss carryover is reattributed can be apportioned to the common parent. The principles of § 1.1502–95(c) apply to the apportionment, treating, as the context requires, references to the former member as references to the common parent, and references to the consolidated section 382 limitation as references to the separate section 382 limitation (or subgroup section 382 limitation) that is being apportioned. Thus, for example, the common parent can reattribute to itself all or part of the value element or adjustment element of the limitation, and any part of such

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element that is apportioned requires a corresponding reduction in such element of the separate section 382 limitation of the subsidiary whose net operating loss carryover is reattributed (or in the subgroup section 382 limitation if the reattributed loss is a pre-change subgroup attribute). Appropriate adjustments must be made to the separate section 382 limitation (or subgroup section 382 limitation) for the consolidated return year in which the reattribution is made to reflect that the reattributed net operating loss carryover is an attribute acquired by the common parent during the year in a transaction to which section 381(a) applies. The election is made by the common parent as part of the election to reattribute the net operating loss carryover. See § 1.1502–20(g)(4) for the time and manner of making the election.

(ii) *Examples.* The following examples illustrate the principles of this paragraph (d)(5):

Example 1. Consequence of apportionment. (i) P, the common parent of a consolidated group, purchases all of the stock of L on December 31, Year 1. L carries over a net operating loss arising in Year 1 to each of the next 5 taxable years. The purchase of the L stock causes an ownership change of L, and results in a separate section 382 limitation of $10 for L's net operating loss carryover based on the value of the L stock. On July 2, Year 3, P sells 30 percent of the L stock to A. Under § 1.1502–20(g), P elects to apportion to itself $110 of L's $200 net operating loss carryover. P also elects to apportion to itself $6 of the $10 value element of the separate section 382 limitation.

(ii) For the consolidated return years ending after December 31, Year 3, P's separate section 382 limitation with respect to the reattributed net operating loss carryover is $6, adjusted as appropriate for any short taxable year, unused section 382 limitation, or other adjustment. For the P group's consolidated return year ending December 31, Year 3, the separate section 382 limitation for L's net operating loss carryover is $8, the sum of $5 and $3. Five dollars of the limitation is the amount that bears the same relationship to $10 as the number of days in the period ending with the deemed section 381(a) transaction, 183 days, bears to 365. Three dollars of the limitation is the amount that bears the same relationship to $6 as the number of days in the period between July 3 and December 31, 182, bears to 365.

(iii) For L's taxable years ending after December 31, Year 3, L's separate section 382 limitation for its $90 of net operating loss carryover that was not reattributed to P is $4, adjusted as appropriate for any short taxable year, unused section 382 limitation, or other adjustment. For L's short taxable year ending December 31, Year 3, the section 382 limitation for its $90 of net operating loss carryover is $2, the amount that bears the same relationship to $4 (the portion of the value element that was not apportioned to P), as the number of days during the short taxable year, 182 days, bears to 365. See § 1.382–5(c).

Example 2. No apportionment required for consolidated pre-change attribute. (i) P, the common parent of a consolidated group, forms L. For Year 1, L has an operating loss of $70 that is not absorbed and is included in the group's consolidated net operating loss that is carried over to subsequent years. On January 1 of Year 3, A buys all of the P stock and the P group has an ownership change. The consolidated section 382 limitation based on the value of the P stock is $10.

(ii) On April 13 of Year 4, P sells all of the stock of L to B and, under § 1.1502–20(g), elects to reattribute to itself $45 of L's net operating loss carryover. Following the reattribution, the $45 portion of the Year 1 net operating loss carryover retains its character as a pre-change consolidated attribute, and remains subject to so much of the $10 consolidated section 382 limitation as P does not elect to apportion to L under § 1.1502–95(c).

(e) *Time and manner of making election under § 1.1502–91(d)(4)*—(1) *In general.* This paragraph (e) prescribes the time and manner of making the election under § 1.1502–91(d)(4), relating to treating two or more corporations as treating the section 1504(a)(1) requirement of § 1.1502–91(d)(1)(ii) and (d)(2)(ii) as satisfied.

(2) *Election statement.* An election under § 1.1502–91(d)(4) must be made by the common parent. The election must be made in the form of the following statement: "THIS IS AN ELECTION UNDER § 1.1502–91(d)(4) TO TREAT THE FOLLOWING CORPORATIONS AS MEETING THE REQUIREMENTS OF § 1.1502–91 (d)(1)(ii) AND (d)(2)(ii) IMMEDIATELY AFTER THEY BECAME MEMBERS OF THE GROUP." [List separately the name of each corporation, its E.I.N., and the date that it became a member of the group]. If separate elections are being made for corporations that became members at different times or that were acquired from different affiliated groups, provide a separate statement and list for each election.

(3) The election statement must be filed by the common parent with its income tax return for the consolidated return year in which the members with respect to which the election is made become members of the group. Such election must be filed on or before the due date for such income tax return, including extensions.

(4) An election made under this paragraph (e) is irrevocable.

§ 1.1502–97 Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case.

[Reserved]

§ 1.1502–98 Coordination with section 383.

The rules contained in §§ 1.1502–91 through 1.1502–96 also apply for purposes of section 383, with appropriate adjustments to reflect that section 383 applies to credits and net capital losses. Similarly, in the case of net capital losses, general business credits, and excess foreign taxes that are pre-change attributes, § 1.383–1 applies the principles of §§ 1.1502–91 through 1.1502–96. For example, if a loss group has an ownership change under § 1.1502–92 and has a carryover of unused general business credits from a pre-change consolidated return year to a post-change consolidated return year, the amount of the group's regular tax liability for the post-change year that can be offset by the carryover cannot exceed the consolidated section 383 credit limitation for that post-change year, determined by applying the principles of §§ 1.383–1(c)(6) and 1.1502–93 (relating to the computation of the consolidated section 382 limitation).

§ 1.1502–99 Effective dates.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, §§ 1.1502–91 through 1.1502–96 and § 1.1502–98 apply to any testing date on or after June 25, 1999. Sections 1.1502–94 through 1.1502–96 also apply to a corporation that becomes a member of a group or ceases to be a member of a group (or loss subgroup) on any date on or after June 25, 1999.

(b) *Special rules*—(1) *Election to treat subgroup parent requirement as satisfied.* Section 1.1502–91(d)(4), § 1.1502–91(d)(7), Example 4, § 1.1502–92(b)(1)(iii), § 1.1502–92(b)(2), Example 5, the last two sentences of § 1.1502–95(b)(3), § 1.1502–95(d)(2)(i), and § 1.1502–96(e)(all of which relate to the election under § 1.1502–91(d)(4) to treat the loss subgroup parent requirement as satisfied) apply to corporations that become members of a consolidated group in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999.

(2) *Principal purpose of avoiding a limitation.* The third sentence of § 1.1502–91(d)(5) (relating to members excluded from a loss subgroup) applies to corporations that become members of a consolidated group on or after June 25, 1999.

(3) *Ceasing to be a member of a loss subgroup*—(i) *Ownership change of a loss subgroup.* Section 1.1502–95(d)(2)(ii) and § 1.1502–95(d)(3), Example 3 apply to corporations that cease to bear a relationship described in section 1504(a)(1) to a loss subgroup parent in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999.

(ii) *Expiration of 5-year period.* Section 1.1502–95(d)(2)(iii) applies with respect to the day after the last day of any 5 consecutive year period described in that section that ends in a taxable year for which the due date of the income tax return (without extensions) is after June 25, 1999.

(4) *Reattribution of net operating loss carryovers under § 1.1502–20(g).* Section 1.1502–96(d) applies to reattributions of net operating loss carryovers (or capital loss carryovers) in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999; except that the election under § 1.1502–96(d)(5) (relating to an election to reattribute section 382 limitation) can be made with any election under § 1.1502–20(g)(4) to reattribute to the common parent a net operating loss or net capital loss that is timely filed on or after June 25, 1999.

(5) *Election to apportion net unrealized built-in gain.* In the case of corporations that cease to be members of a loss group (or loss subgroup) before June 25, 1999 in a taxable year for which the due date of the income tax return (without extensions) is after June 25, 1999, § 1.1502–95(a), (b), (c), and (f) apply to those corporations if the common parent makes the election described in the second sentence of paragraph (c)(1) of § 1.1502–95 in the time and manner prescribed in paragraph (f) of § 1.1502–95.

(c) *Testing period may include a period beginning before June 25, 1999*—(1) *In general.* A testing period for purposes of §§ 1.1502–91 through 1.1502–96 and 1.1502–98 may include a period beginning before June 25, 1999. Thus, for example, in applying § 1.1502–92(b)(1)(i)(relating to the determination of an ownership change of a loss group), the determination of the lowest percentage of ownership interest of any 5-percent shareholder of the common parent during a testing period ending on a testing date occurring on or after June 25, 1999 takes into account the period beginning before June 25, 1999, except to the extent that the period is more than 3 years before the testing date or is otherwise before the beginning of the testing period. See § 1.1502–92(b)(1).

(2) *Transition rule for net unrealized built-in loss.* A loss group (or loss subgroup) that has a net unrealized built-in loss on a testing date on or after June 25, 1999 may apply § 1.1502–91A(g) (and § 1.1502–96A(a) as it relates to § 1.1502–91A(g)) for the period ending on the day before June 25, 1999 to determine under § 1.382–2T(d)(ii)(A) the earliest date that its testing period begins (treating the day before June 25, 1999 as the end of a taxable year.) Thus, for example, if a consolidated group with no net operating losses has a net unrealized built-in loss determined under § 1.1502–91(g) on a testing date after June 25, 1999, but, under § 1.1502–91A(g), does not have a net unrealized built-in loss for the period ending on the day before June 25, 1999, the group's testing period begins no earlier than June 25, 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. In § 602.101, paragraph (b) is amended by removing the entry for § 1.1502–95T, revising the entry for § 1.1502–20, and adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–20	1545–1160 1545–1218
* * * * *	
1.1502–95	1545–1218
1.1502–96	1545–1218
1.1502–95A	1545–1218
* * * * *	

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: June 18, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–16162 Filed 6–25–99; 1:27 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8825]

RIN 1545–AU33

Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to limitations on net operating loss carryovers and certain built-in losses following an ownership change of a corporation. The regulations implement the statutory authority under section 382(m) of the Internal Revenue Code to prescribe regulations concerning short taxable years and controlled groups of corporations. Additional rules are adopted relating principally to corporations that cease to exist following a merger (or similar transaction) or that have two or more ownership changes. These final regulations replace temporary regulations that provided guidance on these topics.

DATES: *Effective Dates:* These regulations are effective June 25, 1999.

Applicability Dates: For dates of application and special transition rules, see Effective Dates under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Lee A. Kelley at 202–622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1434. Responses to this collection of information are required to obtain a benefit relating to the value of a controlled group member.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent is one quarter hour.

Comments concerning the accuracy of this burden estimate and suggestions for

reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503.

Books and records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

On February 4, 1991, the IRS and Treasury issued a notice of proposed rulemaking, CO–077–90 (56 FR 4183) (the 1991 controlled group proposed regulations), setting forth rules regarding the application of section 382 to controlled groups of corporations and to corporations that undergo a merger or similar transaction. The 1991 controlled group proposed regulations also related to the determination of the section 382 limitation following an ownership change in the case of short taxable year, and to the valuation of the stock of a loss corporation for purposes of determining the amount of the section 382 limitation. On the same day, the IRS and Treasury also issued proposed regulations relating to the application of section 382 to affiliated groups of corporations filing consolidated returns (CO–132–87, 56 FR 4194), and to the use of built-in deductions and net operating losses and capital losses, including the carryover and carryback of separate return year (SRLY) losses, of members of consolidated groups (CO–078–90, 56 FR 4228). A public hearing regarding the three sets of proposed regulations was held on April 8, 1991.

On June 27, 1996, the IRS and Treasury published temporary regulations (TD 8679, 61 FR 33313) (the 1996 controlled group temporary regulations) relating to section 382. Except for the addition of a provision relating to the effects of successive ownership changes, these regulations were substantially identical to the 1991 controlled group proposed regulations. A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** on the same day (CO–026–96, 61 FR 33391) (the 1996 controlled group proposed regulations) and the 1991 controlled group proposed regulations were withdrawn. No written comments were received on the 1996 controlled group proposed regulations and no public hearing was held. Also on June 27, 1996, the IRS and Treasury published temporary regulations relating to the application of section 382 to affiliated groups of corporations filing consolidated returns (TD 8678, 61 FR 33335) and the SRLY limitation (TD 8677, 61 FR 33321). Notices of proposed rulemaking cross-referencing these temporary regulations were published on the same day (CO–025–96, 61 FR 33395 and CO–024–96, 61 FR 33393), and the corresponding proposed regulations published in 1991 were withdrawn.

The 1996 controlled group proposed regulations are adopted as revised by this Treasury decision and the corresponding temporary regulations are removed. The final regulations are substantially the same as the 1996 controlled group proposed regulations, with one significant change relating to built-in losses of a member of a controlled group of corporations. This change is discussed below.

Under section 382, if an ownership change occurs with respect to a loss corporation (as defined in section 382 and the regulations thereunder), the amount of the loss corporation's taxable income for a post-change year that may be offset by the net operating loss carryovers arising before the ownership change are subject to a limitation known as the section 382 limitation. The section 382 limitation for a post-change taxable year of the loss corporation generally equals the fair market value of the stock of the corporation immediately before the ownership change multiplied by the long-term tax exempt rate (a rate of return published periodically in the Internal Revenue Bulletin).

In addition to net operating loss carryovers, the recognized built-in losses of corporations that have a net unrealized built-in loss on the ownership change date are also subject to the section 382 limitation. In general, a corporation has a net unrealized built-in loss on its ownership change date if the adjusted basis of its assets exceeds their fair market value, and such excess is greater than the threshold amount under section 382(h)(3)(B). In general, recognized built-in losses are losses with respect to assets held on the change date that are recognized within the 5-year period beginning on the ownership change date. The recognized built-in loss on an asset, however, is limited to the lesser of the loss recognized on its disposition or the amount by which the adjusted basis of the asset exceeded its fair market value on the change date.

Consistent with the proposed regulations, the final regulations require appropriate adjustments to the value of a loss corporation that is a member of a controlled group of corporations so that the same value is not included more than once in computing the section 382 limitations for the loss corporations that are members of the controlled group. In general, adjustments are required only when corporations are members of the same controlled group both when a pre-change loss arises and on the date of the ownership change. Thus, adjustments are required if a loss corporation is a component member of the same controlled group as another member (i) on December 31 of the taxable year in which a pre-change loss arises (or the change date, if earlier) and (ii) on the date that the loss corporation has an ownership change. If a loss corporation has pre-change losses that arise in different taxable years, the component members of the controlled group with respect to losses arising in each taxable year may differ. Therefore, as in the 1996 controlled group proposed regulations, the final regulations are applied by determining a controlled group with respect to each year's pre-change loss of the corporation (a controlled group loss).

To avoid duplication of value in connection with a controlled group loss, the value of the stock of each corporation that is a component member of the controlled group with respect to a controlled group loss is reduced by the value of the stock of other component members that it directly owns immediately before the ownership change. A second adjustment (more fully explained in the preamble to the 1991 controlled group proposed regulations) permits a lower tier member to elect to restore some or all of the previously reduced value to a member that directly owns its stock.

In identifying controlled group losses, the determination of the taxable year to which a net operating loss carryover is attributable usually presents no difficulty. The determination of the taxable year in which a net unrealized built-in loss accrues, however, is more problematic. To address some concerns in this area, the final regulations include an irrebutable presumption that certain built-in losses are attributable to the period before a particular taxable year. The presumption applies to a loss corporation that had an ownership change prior to the first day of the taxable year in question, and whose net unrealized built-in losses became subject to a section 382 limitation as a result of that ownership change. Under the presumption, any built-in loss in such an asset is considered to be attributable to a period prior to the taxable year in question to the extent of the built-in loss in that asset on the previous change date.

Effective Dates

Section 1.382–5 (relating to the section 382 limitation) generally applies to a loss corporation that has an ownership change to which section 382(a), as amended by the Tax Reform Act of 1986, applies. The rules in that section relating to successive ownership changes, however, apply to taxable years of a loss corporation beginning on or after January 1, 1997. Section 1.382–8 (relating to controlled groups of corporations) generally applies to a loss corporation that has an ownership change with respect to a controlled group loss on or after January 1, 1997. Transition rules are provided for members of controlled groups that have ownership changes before that date. The rules in § 1.382–1(a)(iv) (relating to separate tracking of certain loss corporations) apply to testing dates on or after January 29, 1991. The rules in § 1.382–2 (a) (4) and (a) (5) relating to successor or predecessor corporations in other than corporate reorganizations apply to testing dates on or after January 1, 1997.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. It has also been determined that section 553 of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information in this regulation is a statement of election that it is estimated will take less than one hour to prepare. The statement will be filed by electing corporations that are members of a controlled group of corporations (determined by applying a 50% common control requirement) both (1) when a net operating loss carryover (or certain other tax attributes) arises and (2) a member of the controlled group has an ownership change under section 382 of the Internal Revenue Code with respect to that net operating loss carryover (or other attribute). (An affiliated group of corporations that files a consolidated return is treated as a single corporation for this purpose, which reduces the number of potential filers.) Because the election is only filed with respect to an ownership change, it is unlikely that a corporation will file the election frequently. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Lee A. Kelley of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing entries for sections 1.382–5T and 1.382–8T and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.382–5 also issued under 26 U.S.C. 382(m). * * *

Section 1.382–8 also issued under 26 U.S.C. 382(m). * * *

Par. 2. Section 382–1 is amended by:

1. Revising the entry for § 1.382–2, paragraph (a)(1)(iv).
2. Adding an entry for § 1.382–2, paragraph (a)(1)(v).
3. Adding entries for § 1.382–2, paragraphs (a)(5) and (a)(6).
4. Removing the entries for § 1.382–2T, paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii).
5. The entry for § 1.382–4 is amended as follows:
   a. The entry for paragraph (b) is revised.
   b. Entries for paragraphs (b)(1) and (b)(2) are added.
6. Removing the entry for § 1.382–5.
7. Redesignating the entry for § 1.382–5T as § 1.382–5 and revising the section heading.
8. Removing the entry for § 1.382–8.
9. Redesignating the entry for § 1.382–8T as § 1.382–8, revising the section heading, and adding entries for paragraphs (b) (1) and (b) (2).

The revision and additions read as follows:

§ 1.382–1 Table of contents.

* * * * *

§ 1.382–2 General rules for ownership change.

(a) * * *

(1) * * *

(iv) End of separate accounting for losses and credits of distributor or transferor corporation.

(v) Application to other successor corporations.

* * * * *

(5) Successor corporation.

(6) Predecessor corporation.

* * * * *

§ 1.382–4 Constructive ownership of stock.

* * * * *

(b) Attribution from corporations, partnerships, estates and trusts.

(1) [Reserved].

(2) Limitation.

* * * * *

§ 1.382–5 Section 382 limitation.

* * * * *

§ 1.382–8 Controlled groups.

* * * * *

(b) * * *

(1) In general.

(2) Presumption regarding net unrealized built-in loss.

* * * * *

§ 1.1382–2 [Amended]

Par. 2a. Section 1.382–2 is amended by removing paragraph (a)(1)(iv).

Par. 3. Section 1.382–2T is amended as follows:

1. In paragraph (e)(2)(iv) *Example (2)*(ii), remove the reference "paragraph (f)(1)(ii)" and add "§ 1.382–2(a)(1)(iv)" in its place.
2. Paragraph (f)(1)(ii) is redesignated as paragraph (a)(1)(iv) of § 1.382–2.
3. Paragraph (f)(1) is revised.
4. Paragraphs (f)(4) and (f)(5) are redesignated as paragraphs (a)(5) and (a)(6) of § 1.382–2, respectively.
5. New paragraphs (f)(4) and (f)(5) are added.
6. In paragraph (h)(2)(i)(A), remove the language "and solely for purposes of determining whether a loss corporation has an ownership change".

The revision and additions read as follows:

§ 1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(f) *Definitions.* * * *

(1) *Loss corporation.* See section 382 and § 1.382–2(a)(1) for the definition of a loss corporation.

* * * * *

(4) *Successor corporation.* See § 1.382–2(a)(5) for the definition of *successor corporation.*

(5) *Predecessor corporation.* See § 1.382–2(a)(6) for the definitions of *predecessor corporation.*

* * * * *

Par. 4. Section 1.382–2 is amended as follows:

1. In the first sentence of paragraph (a)(1)(iii), remove the reference "§ 1.382–2T(f)(1)(ii)" and add "paragraph (a)(1)(iv) of this section" in its place.

2. In the first sentence of newly designated paragraph (a)(1)(iv), remove the reference "§ 1.382–2(a)(1)(iii)" and add " paragraph (a)(1)(iii) of this section" in its place.

3. In the first sentence of newly designated paragraph (a)(1)(iv), remove the reference "§ 1.382–2(a)(1)(ii)" and add "paragraph (a)(1)(ii) of this section" in its place.

4. In the last sentence of newly designated paragraph (a)(1)(iv), remove the reference "paragraph (f)(1)(ii)" and add "paragraph (a)(1)(iv)" in its place.

5. Paragraph (a)(1)(v) is added.

6. In the first sentence of paragraph (a)(3)(i), remove the reference "paragraph (f)(18)" and add "paragraph (a)(3)(i) and § 1.382–2T(f)(18)(ii) and (iii)" in its place.

7. In the last sentence of newly designated paragraph (a)(5), remove the reference "paragraph (f)(4)" and add "paragraph (a)(5)" in its place.

8. In the last sentence of newly designated paragraph (a)(6), remove the reference "paragraph (f)(5)" and add "paragraph (a)(6)" in its place.

The addition reads as follows:

§ 1.382–2 General rules for ownership change.

(a) * * *

(1) * * *.

(v) *Application to other successor corporations.* This paragraph (a)(1) also applies, as the context may require, to successor corporations other than successors in section 381(a) transactions. For example, if a corporation receives assets from the loss corporation that have basis in excess of value, the recipient corporation's basis for the assets is determined, directly or indirectly, in whole or in part, by reference to the loss corporation's basis, and the amount by which basis exceeds value is material, the recipient corporation is a successor corporation subject to this paragraph (a)(1). This paragraph (a)(1)(v) applies to any testing date occurring on or after January 1, 1997.

* * * * *

Par. 5. Section 1.382–4 is amended by revising paragraph (b) to read as follows:

§ 1.382–4 Constructive ownership of stock.

* * * * *

(b) *Attribution from corporations, partnerships, estates and trusts.* (1) [Reserved].

(2) *Limitation.* Section 1.382–2T(h)(2)(i)(A) applies solely for purposes of determining whether a loss corporation has an ownership change.

* * * * *

§ 1.382–5 [Removed]

Par. 6. Section 1.382–5 is removed.

Par. 7. Section 1.382–5T is redesignated as § 1.382–5 and amended as follows:

1. The section heading is revised.

2. In paragraph (e), the reference "§ 1.382–8T" is removed and "§ 1.382–8" is added in its place.

The revision reads as follows:

§ 1.382–5 Section 382 limitation.

* * * * *

§ 1.382–8 [Removed]

Par. 8. Section 1.382–8 is removed.

Par. 9. Section 1.382–8T is redesignated as § 1.382–8 and amended as follows:

1. The section heading is revised.

2. Redesignate paragraphs (b) introductory text, (b)(1) and (b)(2) as paragraphs (b)(1) introductory text, (b)(1)(i) and (b)(1)(ii), respectively.

3. A paragraph heading for newly designated paragraph (b)(1) is added.

4. Paragraph (b)(2) is added.

5. The first three sentences of paragraph (f) are revised.

6. The graphics of paragraph (g) *Example 1*(a) are revised.

7. The graphics of paragraph (g) *Example 2*(a) are revised.

8. Paragraph (g) *Example 4* is amended as follows:

a. In the last sentence of paragraph (a), remove the reference "§ 1.1502–92T(b)(1)(i)" and add "§ 1.1502–92(b)(1(i)" in its place.

b. In paragraph (b)(2), remove the reference "§ 1.1502–91T(c)" and add "§ 1.1502–91(c)" in its place.

c. In paragraph (c), remove the reference "§ 1.1502–93T" and add "§ 1.1502–93" in its place.

9. In the fifth sentence of paragraph (h)(1), remove the reference "§ 1.382–8T" and add "§ 1.382–8" in its place.

10. Paragraph (i) is added.

The additions and revisions read as follows:

§ 1.382–8 Controlled groups.

* * * * *

(b) *Controlled group loss and controlled group with respect to a controlled group loss*—(1) *In general.*

* * *

(2) *Presumption regarding net unrealized built-in loss.* For purposes of determining whether a net unrealized built-in loss of a loss corporation is attributable to a taxable year (the determination year) with respect to which the corporation is a component member of a controlled group, the built-in loss in a prior change date asset is deemed to be attributable to a period ending before the determination year. A prior change date asset is any asset held by the loss corporation at all times during the period beginning on the change date of its most recent ownership change after 1986 (the first change date), and ending on the first day of the determination year. The built-in loss in a prior change date asset is the amount by which the adjusted basis of the asset on the first change date exceeds the fair market value of the asset on that date. The principles of this paragraph (b)(2) also apply to items described in section 382(h)(6)(B).

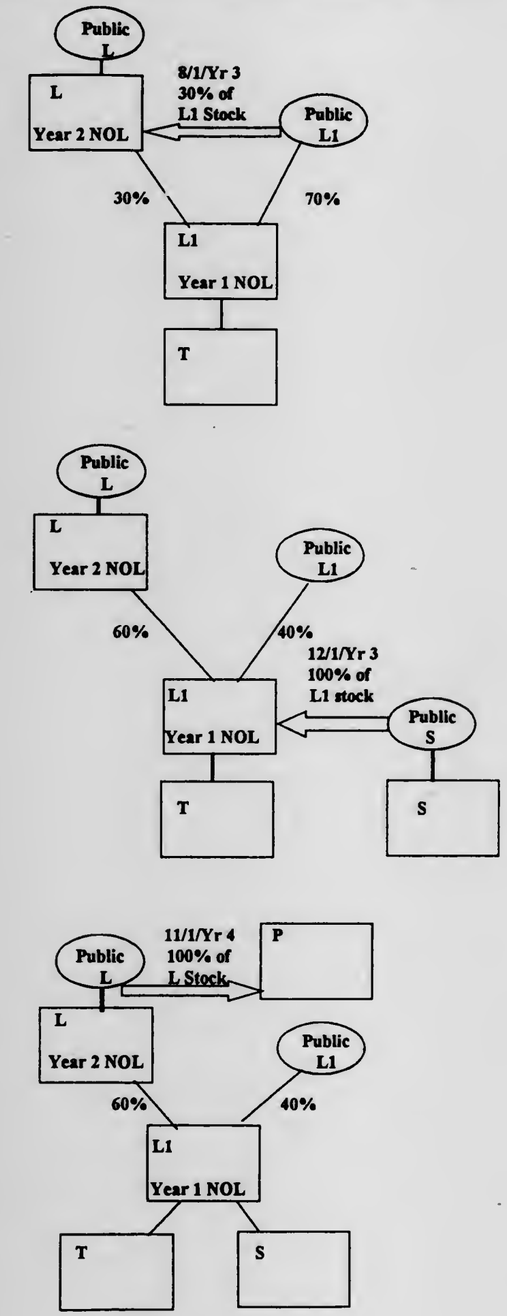
* * * * *

(f) *Coordination between consolidated groups and controlled groups.* Some or all of the component members of a controlled group may also be members of a consolidated group, and a controlled group loss may be subject to a consolidated section 382 limitation or subgroup section 382 limitation determined under § 1.1502–93. Except as otherwise provided in this paragraph (f) and §§ 1.1502–91 through 1.1502–99, § 1.1502–93 applies instead of this section when both sections, by their terms, are otherwise applicable. This section is applicable and may require an adjustment to value if a member of a consolidated group, a loss group, or loss subgroup (as those terms are defined in §§ 1.1502–1(h) and 1.1502–91) is also a component member of a controlled group with respect to a controlled group loss. * * *

(g) * * *

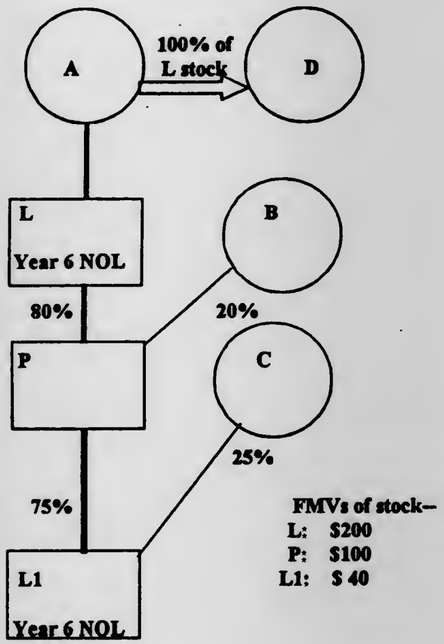
Example 1. * * * (a) * * *

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* * * * *

Example 2. * * * (a) * * *



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* * * * *

(i) *References to former temporary regulations.* As the context requires, a reference in this section to § 1.382–8 includes a reference to § 1.382–8T in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised as of April 1, 1999, a reference to §§ 1.1502–91, 1.1502–92, 1.1502–93, and §§ 1.1502–91 through 1.1502–99 includes a reference to §§ 1.1502–91A, 1.1502–92A, 1.1502–93A and §§ 1.1502–91A through 1.1502–99A.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph (b) is amended in the table by removing the entry for 1.382–8T and adding an entry in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.382–8	1545–1434
. . . . .	

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: June 18, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–16163 Filed 6–25–99; 1:27 pm]

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Part IV

Department of Health and Human Services

Administration for Children and Families

Announcement of Second Round of Applications and Competitive Funding Under the Office of Community Services' Fiscal Year 1999 Assets for Independence (IDA) Demonstration Program Priority Area 1.0; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–99–08]

Announcement of Second Round of Applications and Competitive Funding Under the Office of Community Services' Fiscal Year 1999, Assets for Independence (IDA) Demonstration Program, Priority Area 1.0

[This Announcement is Essentially the Same as the Announcement published January 27, 1999, as Modified by the Notice of Clarification published March 29, 1999]

AGENCY: Office of Community Services (OCS), ACF, DHHS.

ACTION: Announcement of second round of FY 1999 funding and availability of funds and request for second round of competitive applications under the Office of Community Services' Assets for Independence Demonstration Program.

SUMMARY: Initial screening of applications received pursuant to its Program Announcement of January 27, 1999 revealed serious deficiencies in a substantial number of applications, resulting in a fewer number of applications available for competitive review than originally anticipated. Consequently, after review of applications and award of grants under Priority Area 1.0 pursuant to the Announcement of January 27, there will remain FY 1999 funds available, and the Office of Community Services (OCS) is therefore announcing a second invitation to eligible entities to submit competitive grant applications for new demonstration projects under Priority Area 1.0 that will establish, support, and participate in the evaluation of Individual Development Accounts for lower income individuals and families. This announcement invites applications from new applicants as well as those entities who were notified that their original applications under round one were deficient, and from applicants who have been notified that their applications in the first round were not competitively selected for grant award, and who would like them reconsidered, or who choose to revise and resubmit their previous applications on the basis of reviewer comments. All potential applicants should be aware that it is the intention of the Office of Community Services to publish its FY 2000 Assets for Independence Program Announcement on or about August 16, 1999 with a closing date early in the year 2000.

DATES: To be considered for funding applications must be received by close of business on August 9, 1999. Applications received after that date will not be accepted for consideration. See Part VI of this Announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Richard Saul (202) 401–9341 or Sheldon Shalit (202) 401–4807, Department of Health and Human Services, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC, 20447.

In addition, this Announcement is accessible on the OCS WEBSITE at "http://www.acf.dhhs.gov/programs/ocs" under "funding opportunities".

The Catalog of Federal Domestic Assistance (CFDA) number for this Program is "93.602". The title is Assets for Independence Demonstration Program (IDA Program).

SUPPLEMENTARY INFORMATION: This program announcement consists of nine parts plus appendices:

Part I: Announcement of Second Round of IDA Applications.

Part II: Summary of Announcement Modifications Pursuant to the Notice of Clarification Published March 29, 1999.

Part III: Background Information: legislative authority, program purpose, CFDA number, and definition of terms.

Part IV: Program Objectives and Requirements: program priority areas, eligible applicants, project and budget periods, funds availability and grant amounts, project eligibility and requirements, non-Federal matching funds requirements, preferences, multiple applications, treatment of program income, and partnership with financial institutions.

Part V: The Project Description, Program Proposal Elements and Review Criteria: project summary; the review process, project goals, application brevity; proposal elements and review criteria; and funding reconsideration.

Part VI: Application Procedures: application materials, application development/availability of forms, application submission, intergovernmental review, initial OCS screening, application consideration.

Part VII: Instructions for Completing Application Forms: SF424, SF424A, SF424B.

Part VIII: Contents of Application and Receipt Process: content and order of program application, acknowledgement of receipt

Part IX: Post Award Information and Reporting Requirements: notification of grant award, attendance at evaluation workshops, reporting requirements, audit requirements, prohibitions and requirements with regard to lobbying, applicable Federal regulations.

Appendices: Application forms and required attachments.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including Program Announcements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number OMB–0970–0139 (expires 10/31/2000).

Part I. Announcement of Second Round of IDA Applications

The Office of Community Services is hereby announcing a second round of Applications for Priority Area 1.0 of the Assets for Independence Demonstration (IDA) Program. Because of serious deficiencies in a substantial number of applications received pursuant to its Program Announcement of January 27, 1999, OCS is not able to award all of the funds available in that funding cycle. Deficient Applications from the first round have been returned to applicants, as have those not selected for funding in the competitive review of first round applications. This Announcement affords these applicants, as well as new applicants who have not previously submitted applications for this program, the opportunity to submit new or revised applications for consideration. Only new Applicants or Applicants submitting applications under the first round who have received notification of being deficient or of not being selected for funding in the first round are eligible to submit applications pursuant to this Announcement. Applications should be prepared and will be reviewed in accordance with the requirements, program elements, and review criteria of this Announcement, which are the same as those in the Program Announcement published January 27, 1999, as modified by the Notice of Clarification published March 29, 1999.

In every case, each application submitted pursuant to this Announcement must include a newly completed, signed, and dated SF 424, "Application for Federal Assistance".

Part II. Summary of Announcement Modifications Pursuant to the Notice of Clarification Published March 29, 1999

In the clarifications and guidance of March 29 OCS sought to respond to the issues raised by all of the interested

parties. The clarifications of issues of interest to applicants for the Assets for Independence Demonstration Program were set forth in that Notice and have been incorporated as modifications into this Program Announcement. As noted above, the full text of these modifications, as well as a series of informative Q's and A's, may be found on the OCS website. The modifications to the original Program Announcement, and which have been incorporated into this Announcement, may be summarized as follows:

A. Custodial Accounts. Applicants are advised that grantees will have the option of establishing Individual Development Accounts (IDA's) either as Trusts or as Custodial Accounts. [See Part III. D. (5) under Definitions, and PART IV.G.(3) Establishment of Individual Development Accounts.]

B. "Non-Federal Share Agreements" must include a schedule of deposits that will assure that there will be at all times in a Demonstration Project's Reserve Fund sufficient non-Federal matching contribution funds to equal the maximum amount pledged as matching contributions under the "Savings Plan Agreements" for all IDA's then open (which may be less than the $2000 for each account stated in the Program Announcement as originally published). [See PART VI. D. (6) and PART IV. I. Non-Federal Matching Funds Requirements.]

C. The "Savings Plan Agreement", required under PART IV Section G(3)(n) of the Program Announcement as part of the instrument creating the IDA, should, under item #2, set the matching contribution rate for the account up to a total of not more than $2000 in Federal grant funds, during the project period, rather than a total of all match funds as stated in the Program Announcement as originally published. It should also include a new item 19 providing for withdrawal of savings if participant leaves the program. [See PART IV.G.(3)(n) Savings Plan Agreement.]

D. Project and Budget Periods. Applicants are advised that they may submit applications for project and budget periods of up to five years, but of at least three years' duration. [See PART IV.C. Project and Budget Periods under Priority Area 1.0]

E. Additional matching contributions. Applicants are advised that once the statutory requirement of equal matching contributions to IDA's from non-Federal sources and Federal grant funds is satisfied, additional matching contributions may be made from non-Federal sources or even from Federal sources such as TANF where the legislation or policies governing such programs so permit. In the case of TANF funds, such contributions would be limited to IDA's of TANF recipients. [See PART IV.G.(5) Deposits in Individual Development Accounts.]

F. Income Eligibility. The actual income limits from IRS tables for the Section 32 Earned Income Tax Credit are now set forth in PART IV.G.(a) Participant Eligibility.

G. Earned Income. The pertinent language from Section 911(d)(2) of the Internal Revenue Code, defining "earned income", is now set forth in PART IV.G.(5)(a) Matching Contributions.

Part III. Background Information

A. Legislative Authority

The Assets for Independence Demonstration Program (IDA Program) was established by the Assets for Independence Act (AFI Act), under Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285, 42 USC 604 Note).

B. Program Purpose

The purpose of the program is, in the language of the AFI Act: to provide for the establishment of demonstration projects designed to determine:

(1) The social, civic, psychological, and economic effects of providing to individuals and families with limited means an incentive to accumulate assets by saving a portion of their earned income;

(2) The extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

(3) The extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

C. The Catalog of Federal Domestic Assistance (CFDA) Number for This Program is 93.602

D. Definition of Terms

For the purposes of this Announcement:

(1) AFI Act means the Assets for Independence Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998) which authorizes this program.

(2) Eligible Individual means an individual who meets the income and net worth requirements of the program as set forth in PART IV, Section G(2)(a).

(3) Emergency Withdrawal means a withdrawal of only those funds, or a portion of those funds, deposited by the eligible individual (Project Participant) in an Individual Development Account of such Individual. Such withdrawal must be approved by the Project Grantee, must be made for an allowable purpose as defined in the AFI Act and under the Project Eligibility Requirements set forth in PART IV of this Announcement, and must be repaid by the individual Project Participant within 12 months of the withdrawal. [See PART IV, Section G(6)(b)]

(4) Household means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

(5) Individual Development Account means a trust or a custodial account created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible individual, or enabling the eligible individual to make an emergency withdrawal, but only if the written governing instrument creating the trust or custodial account meets the requirements of the AFI Act and of the Project Eligibility and Requirements set forth in this Announcement. [See PART IV, Section G(3) and (4).

(6) Net Worth of a Household means the aggregate market value of all assets that are owned in whole or in part by any member of the household, exclusive of the primary dwelling unit and one motor vehicle owned by a member of the household, minus the obligations or debts of any member of the household.

(7) Project Grantee means a Qualified Entity as defined in paragraph (10) below, which receives a grant pursuant to this Announcement.

(8) Project Participant means an Eligible Individual as defined in paragraph (2) above who is selected to participate in a demonstration project by a qualified entity.

(9) Project Year means, with respect to a funded demonstration project, any of the 5 consecutive 12-month periods beginning on the date the project is originally awarded a grant by ACF.

(10) Qualified Entity means an entity eligible to apply for and operate an assets for independence demonstration project, under Priority Area 1.0, as one or more not-for-profit 501(c)(3) tax exempt organizations, or a State or local government agency, or a tribal government, submitting an application jointly with such a not-for-profit organization. States eligible to apply under Priority Area 2.0 are deemed to be Qualified Entities.

(11) Qualified Expenses means one or more of the expenses for which payment

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may be made from an individual development account by a project grantee on behalf of the eligible individual in whose name the account is held, and is limited to expenses of (A) post-secondary education, (B) first home purchase, and/or (C) business capitalization, as defined below:

(A) Post-Secondary Educational Expenses means post-secondary educational expenses paid from an individual development account directly to an eligible educational institution, and includes:

(i) Tuition and Fees required for the enrollment or attendance of a student at an eligible educational institution.

(ii) Fees, Books, Supplies, and Equipment required for courses of instruction at an eligible educational institution.

(iii) Eligible Educational Institution means the following:

(I) Institution of Higher Education.—An institution described in Section 101 or 102 of the Higher Education Act of 1965.

(II) Post-Secondary Vocational Education School.—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any State (as defined in section 521(33) of such Act) as such sections are in effect on the date of enactment of this title.

(B) First-Home Purchase means qualified acquisition costs with respect to a principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due. Within this definition:

(i) Principal Residence means a main residence, the qualified acquisition costs of which do not exceed 100 percent of the average purchase price applicable to a comparable residence in the area.

(ii) Qualified Acquisition Costs means the cost of acquiring, constructing, or reconstructing a residence, including usual or reasonable settlement, financing, or other closing costs.

(iii) Qualified First-Time Homebuyer means an individual participating in the project involved (and, if married, the individual's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date on which a binding contract is entered into for purchase of the principal residence to which this subparagraph applies.

(C) Business Capitalization means amounts paid from an individual development account directly to a business capitalization account that is established in a Qualified Financial Institution and is restricted to use solely for qualified business capitalization expenses of the eligible individual in whose name the account is held. Within this definition:

(i) Qualified Business Capitalization Expenses means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(ii) Qualified Expenditures means expenditures included in a qualified plan, including but not limited to capital, plant, equipment, working capital, and inventory expenses.

(iii) Qualified Business means any business that does not contravene any law or public policy (as determined by the Secretary).

(iv) Qualified Plan means a business plan, or a plan to use a business asset purchased, which—

(I) Is approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

(II) Includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(III) May require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(12) Qualified Financial Institution means a Federally insured Financial Institution, or a State insured Financial Institution if no Federally insured Financial Institution is available.

(13) Qualified Savings of the Individual for the Period means the aggregate of the amounts contributed by an eligible individual to the individual development account of the individual during the period.

(14) Secretary means the Secretary of Health and Human Services, acting through the Director of the Office of Community Services.

(15) Tribal Government means a tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (24 U.S.C. 450b) or a Native Hawaiian organization, as defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).

(16) Trust Agreement means the instrument by which an Individual Development Account is established in the partnering Financial Institution as required in PART II Section G(3).

(17) Trustee means the Qualified Financial Institution responsible for management of the Individual Development Account pursuant to the Trust Agreement.

Part IV. Program Objectives and Requirements

A. Program Priority Areas

Of the two Program Priority Areas under this program, only applications under Priority Area 1.0, are invited by this Announcement, from Qualified Entities as described below and in Section G.

B. Eligible Applicants

Eligible applicants for the Assets for Independence Demonstration Program Priority Area 1.0 are one or more not-for-profit 501(c)(3) tax exempt organizations, or a State or local government agency, or a tribal government, submitting an application jointly with such a not-for-profit organization. Applicants must provide documentation of their tax exempt status. The applicant can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of their currently valid IRS tax exemption certificate. Failure to provide evidence of Section 501(c)(3) tax exempt status will result in rejection of the application.

C. Project and Budget Periods Under Priority Area 1.0

This announcement is inviting applications under Priority Area 1.0 for project and budget periods of up to five (5) years (but at least three (3) years). Grant actions, on a competitive basis, will award funds for the full project and budget periods of three to five years' duration. As noted below in Section E., subject to the availability of funds, grantees may be offered the opportunity to compete for supplementary funding in later years during the project.

Note: Applicants should be aware that OCS funds awarded pursuant to this Announcement will be from fiscal year (FY) 1999 funds and may not be expended after the end of a five year Project/Budget Period to support administration of the project or matching contributions to Individual Development Accounts which may be open at that time.

D. Project and Budget Periods for Projects Under Priority Area 2.0

(Not applicable)

E. Funds Availability and Grant Amounts Under Priority Area 1.0

Under this Program Announcement approximately $3.5 million in Fiscal Year 1999 funds is available under Priority Area 1.0 for funding commitments to approximately 14 projects, not to exceed $500,000 and

averaging a total of approximately $250,000 for the three- to five-year project. Applicants are reminded that grant awards are limited to the amount of committed non-Federal cash matching contributions, and are urged to make realistic projections of project needs over the duration of the project and propose project budgets accordingly. Draw-down of grant funds over the three- to five-year budget period will be permitted in amounts that will match non-Federal deposits into the Project Reserve Fund. (See Section I., below) As noted above, subject to availability of funds and the progress of individual demonstration projects, grantees may be offered the opportunity to compete for supplementary funding in later years during the project, if there were a determination that this would be in the best interest of the government.

F. Funds Availability and Grant Amounts Under Priority Area 2.0

(Not applicable)

G. Project Eligibility and Requirements Under Priority Area 1.0

To be eligible for funding under Priority Area 1.0, projects must be sponsored and managed by Qualified Entities and must meet the following requirements:

(1) Reserve Fund. A grantee, other than a State or local government agency or tribal government, must establish a Reserve Fund and maintain it in accordance with accounting regulations prescribed by the Secretary. (Note: Such regulations will be issued prior to grant awards and made available to grantees at the time of the award.)

(a) Amounts in the Reserve Fund. As soon after receipt as is practicable, such grantees shall deposit in such Reserve Fund the non-Federal matching contributions received pursuant to the "Non-Federal Share Agreement" or Agreements reached with the provider(s) of non-Federal matching contributions. Once such non-Federal funds are deposited in the Reserve Fund, grantees may draw down OCS grant funds in amounts equal to such deposits. Similarly, as soon after receipt as practical, such grantees shall deposit the income received from any investment made of those funds (see below).

(b) Use of Amounts in the Reserve Fund. Grantees shall use the amounts in such Reserve Fund as follows:

(A) At least 90.5% of the Federal grant funds in the Reserve Fund shall be used as matching contributions to Individual Development Accounts for Project Participants, matched by non-Federal contributions in accordance with Paragraph (5), below.

(B) At least 2% but no more than 9.5% of the Federal grant funds shall be used toward the expense of collecting and providing to the research organization evaluating the demonstration project the data and information required for the evaluation.

(C) Up to 7.5% of the Federal grant funds may be used for administration of the demonstration project and toward expenses of assisting project participants to obtain the skills (including economic literacy, budgeting, and business management skills), training, and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses.

(D) Up to 9.5% of the required matching non-Federal funds may be used for expenses outlined in Paragraphs (B) and (C), above, or other project-related expenses as agreed by the Applicant and the providing entity.

Note: If a grantee mobilizes matching non-Federal contributions in excess of the required 100 percent match, such non-Federal funds may be used however the grantee and provider of the funds may agree.

(c) Authority to Invest Funds. A grantee shall invest the amounts in its Reserve Fund that are not immediately needed for payment under paragraph (b), in a manner that provides an appropriate balance between return, liquidity, and risk, and in accordance with Guidelines which will be issued by the Secretary prior to making of grant awards and provided to grantees at the time of grant award.

(d) Use of Investment Income. Income generated from investment of Reserve Fund monies that are not allocated to existing Individual Development Accounts may be added by grantees to the funds committed to program administration, participant support, or evaluation data collection. As noted in Paragraph M, below, once funds have been committed as matching contributions to Individual Development Accounts, then any income subsequently generated by such funds must be deposited/credited to the credit of such accounts.

Note: No part of such income is to be considered as a Federal funds contribution subject to the $2000/$4000 limitations under Paragraph (5)(b), below.

(e) Joint Project Administration. If two or more qualified entities are jointly administering a project, none shall use more than its proportional share for the purposes described in subparagraphs (B) and (C), of paragraph (b).

(2) Eligibility and Selection of Project Participants.

(a) Participant Eligibility. Eligibility for participation in the demonstration projects is limited to individuals who are members of households eligible for assistance under TANF or of households whose adjusted gross income does not exceed the earned income amount described in Section 32 of the Internal Revenue Code of 1986 (taking into account the size of the household), and whose net worth as of the end of the calendar year preceding the determination of eligibility does not exceed $10,000, excluding the primary dwelling unit and one motor vehicle owned by a member of the household.

[**Note:** The most recent EITC Earned Income Guidelines which set the limits on annual income for eligibility in the IDA Program are as follows:

—For a household without a child: $10,030
—For a household with one child: $26,473
—For a household with more than one child: $30,095

Applicants are reminded that there is also an assets test for eligibility in the program.]

(b) Participant Selection. In keeping with the statutory preference in Section 405(d)(3) of the AFI Act for applications that target individuals from neighborhoods or communities that experience high rates of poverty or unemployment, grantees under Priority Area 1.0, in their selection of Project Participants, may restrict participation in such neighborhoods or communities targeted by their demonstration projects to individuals and households with lower incomes and net worth than set forth above, provided that they shall nonetheless select individuals that they determine to be best suited to participate in the demonstration project.

(3) Establishment of Individual Development Accounts. Grantees must create, through written governing instruments, either (a) Trusts, under this paragraph, or (b) Custodial Accounts described in Paragraph (4) below, which will be Individual Development Accounts on behalf of Project Participants. Trustees of Trusts must be Qualified Financial Institutions. Custodians of Custodial Accounts may be Qualified Financial Institutions, other insured financial institutions satisfactory to the Secretary, or Demonstration Project Grantees. In every case the participating insured financial institution and the Demonstration Project Grantee shall be parties to the written governing instruments creating the Trust or Custodial Account, which must contain the following provisions:

(a) No contribution will be accepted unless in cash or by check.

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Note: In accordance with U.S. Treasury Regulations and accepted commercial practice, electronic transfer of funds will be considered a cash payment for purposes of this Announcement.

(b) The assets of the trust will be invested in accordance with the direction of the Project Participant after consultation with the grantee and pursuant to the guidelines of the Secretary (which will be issued prior to the making of grant awards and made available to grantees at the time of grant award).

(c) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(d) In the event of the death of the Project Participant, any balance remaining in the trust shall be distributed within 30 days of the date of death to another Individual Development Account established for the benefit of an eligible individual as directed by the Participant in the Savings Plan Agreement under sub-paragraph (h), below; *provided,* that the Participant may at their option direct the disposition of any funds in the trust which were deposited in the trust by the Participant.

(e) Except in the case of the death of the Project Participant, amounts in the trust attributable to deposits by the grantee from grant funds and matching non-federal contributions, and any interest thereon, may be paid, withdrawn or distributed out of the trust only for the purpose of paying qualified expenses of the Project Participant (i.e. for post-secondary education expenses, first-home purchase, or business capitalization. See PART III Section D(11))

(f) The procedures governing the withdrawal of funds from the Individual Development Account, for both Qualified Expenses and Emergency Withdrawals, which comply with the provisions of Paragraph (6) Withdrawals from Individual Development Accounts, below.

(g) A provision, in accordance with the direction of the Project Participant, for the distribution within 30 days of any balance in the trust on the day following the death of such Participant, to another individual development account established for the benefit of an eligible individual. [Note that this will mean that each Project Participant must provide such direction at the time the Individual Development Account is established. Provision should be made by grantees for modification of such directions during the course of the project, in the event of changing circumstances.]

(h) A "Savings Plan Agreement" between the grantee and the Project Participant, which should include: (1) savings goals (including a proposed schedule of savings deposits by the Participant from earned income, which may be for a period of less than five years); (2) the rate at which participant savings will be matched (from one dollar to eight dollars for each dollar in savings deposited by Participant, up to a total of $2000 in Federal grant funds matched by an equal amount in non-Federal contributions during the project period); (3) the proposed qualified expense for which the Account is maintained, (4) any training or education related to the qualified expense which the Grantee agrees to provide and of which the Participant agrees to partake, (5) contingency plans in the event that the Participant exceeds or fails to meet projected savings goals or schedules, (6) any agreement as to investments of assets described in subparagraph (c), above, (7) provision for disposition of the funds in the trust (account) in the event of the Participant's death (see sub-Paragraph (d), above; (8) provision for amendment of the Agreement with the concurrence of both Grantee and Participant; and (9) a provision that should the Project Participant decide to leave the program, the grantee agrees that it will co-sign a withdrawal of the Participant's savings plus any income accrued thereon, with the understanding that the Participant thereby loses any right to receive matching contributions.

(4) Custodial Accounts.

Notwithstanding the provisions of Paragraph (3), above, Grantees may, in the alternative, create, through written governing instruments, Custodial Accounts which shall be Individual Development Accounts on behalf of Project Participants, except that they will not be trusts. As in the case of trusts established under paragraph (3), the written governing instruments of the accounts must contain the requirements outlined in subparagraphs (a) through (h) of that paragraph, with the following exceptions. Whereas trustees of the trusts created under Paragraph (3) must be Qualified Financial Institutions, the assets of the custodial account may be held by a bank or another "person" (or institution) who demonstrates to the satisfaction of the Secretary that the manner in which the account will be administered will be consistent with the provisions of the AFIA, and that the IDA's will be created and maintained as described in paragraph (3) and Section 404(5)(A) of the AFIA. In addition, in the case of a custodial account treated as a trust by reason of this paragraph, the custodian of such account may be the Project Grantee, provided that it can assure compliance with the requirements of Paragraph (3) above, and Section 404(5)(A) of the AFIA. These arrangements would place the "custodial" responsibilities with the grantee, and relieve financial institutions of trustee obligations. The Secretary has determined that the assets of any such accounts must be held in an insured financial institution and be subject to the provisions of Paragraph M, below, pertaining to agreements with applicants/grantees.

(5) Deposits in Individual Development Accounts.

(a) Matching Contributions. Not less than once every three months during the demonstration project grantees will make deposits into Individual Development Accounts, or into a parallel account maintained by the grantee, as matching contributions to deposits from earned income made by Project Participants during the period since the previous deposit.

Note: Deposits made by Project Participants shall be deemed to have been made from earned income so long as the Participant's earned income (as defined in Section 911(d)(2) of the Internal Revenue Code of 1986) during the period since the Participant's previous deposit in the account is greater than the amount of the current deposit. Section 911(d)(2) provides, in relevant part, "the term 'earned income' means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered". Matching contributions must be made to IDA's in equal amounts from Federal grant funds and the non-Federal public and private funds committed to the project as matching contributions, as described in Sections 405(c)(4) and 406(b)(1) of the AFI Act. Such matching contribution deposits by grantees may be from $0.50 to $4 in non-Federal funds and an equal amount in Federal grant funds, for each dollar of earned income deposited in the account by the Project Participant in whose name the account is established. Once such equal matching contribution deposits are made, grantees may make additional matching contributions to IDA's from other non-Federal sources, or other Federal sources such as TANF, where the legislation or policies governing such programs so permit. At the time matching contribution deposits are made, the grantee will also deposit into the Individual Development Account (or the parallel account) any interest or income that has accrued since the previous deposit on amounts previously deposited in or credited to that account.

(b) Limitations on Matching Contributions. Over the course of the five year demonstration, not more than $2,000 in Federal grant funds shall be provided through matching contributions to any one individual; and not more than $4,000 shall be provided to any one household.

(6) Withdrawals from Individual Development Accounts.

(a) Limitations. No earlier than six months after the initial deposit by a Project Participant in an Individual Development Account, funds may be withdrawn from such account, but only upon written approval of the Project Participant and of a responsible official of the project grantee, and only for one or more Qualified Expenses (as defined in Part III) or for an Emergency Withdrawal.

(b) Emergency Withdrawals. An Emergency Withdrawal may only be of those funds, or a portion of those funds, deposited in the account by the Project Participant, and for the following purposes:

(i) Expenses for medical care or necessary to obtain medical care for the Project Participant or a spouse or dependent of the Participant;

(ii) Payments necessary to prevent eviction of the Project Participant from, or foreclosure on the mortgage for, the principal residence of the Participant;

(iii) Payments necessary to enable the Project Participant to meet necessary living expenses (food, clothing, shelter—including utilities and heating fuel) following loss of employment.

(c) Reimbursement of Emergency Withdrawals. A Project Participant shall reimburse an Individual Development Account for any funds withdrawn from the account for an Emergency Withdrawal, not later than 12 months after the date of the withdrawal. If the Participant fails to make the reimbursement, the Project Grantee must transfer the funds deposited into the account or a parallel account from Federal and non-Federal matching contributions, and any income generated thereby, back to the Reserve Fund of the grantee, and use the funds to benefit other individuals participating in the demonstration project involved. Any remaining funds deposited by the Project Participant (plus any income generated thereby) shall be returned to such Project Participant.

(d) Transfers to Individual Development Accounts of Family Members. At the request of a Project Participant, and with the written approval of a responsible official of the grantee, amounts may be paid from an individual development account directly into another such account established for the benefit of an eligible individual who is—

(i) The Participant's spouse, or

(ii) Any dependent of the Participant with respect to whom the Participant is allowed a deduction under section 151 of the Internal Revenue Code of 1986.

H. Project Eligibility and Requirements Under Priority Area 2.0

(Not applicable)

I. Non-Federal Matching Funds Requirements

Grantees must provide at least one hundred percent of the OCS grant amount in cash non-Federal share for deposit to the Reserve Fund as matching contribution. Public sector resources that can be counted toward the minimum required match include funds from State and local governments, and funds from various block grants allocated to the States by the Federal Government providing the authorizing legislation for these grants permits such use. (Note, for example, that Community Development Block Grant (CDBG) funds may be counted as matching funds; whereas CSBG FUNDS, for example, may not.) To be considered for funding an Application must include a copy of a "Non-Federal Share Agreement" or Agreements in writing executed with the entity or entities providing the required non-Federal matching contributions, on letterhead of the entity and signed by a person authorized to make a commitment on behalf of the entity. Such Agreement(s) must include: (1) a commitment to provide the non-Federal funds contingent only on the grant award; (2) a schedule of deposits to the projects's Reserve Fund of at least ten percent of the total committed for the entire project at the start of each of the Project years, plus any additional amounts needed to assure that there are at all times in the Reserve Fund non-Federal matching contribution funds equal to the total amounts of such funds pledged as maximum matching contributions under the "Savings Plan Agreements" for all Individual Development Accounts then open and being maintained by the grantee as part of the demonstration project; and (3) a statement that up to 9.5 percent of the required non-Federal matching contribution funds it provides may be allocated from the Reserve Fund to the support of project administration, Participant support, data collection or other project-related expenses. (See Section G(1)(b), above, and PART VI, Section D(5)) Grantees are encouraged to mobilize additional resources, which may be cash or in-kind contributions, Federal or non-Federal, for support of project administration and assistance to Project Participants in obtaining skills, knowledge, and needed support services. (See Part V, Element IV).

Note: If a grantee mobilizes matching non-Federal contributions in excess of the required 100 percent match, such non-Federal funds may be used however the grantee and provider of the funds may agree. Grantees will be held accountable for commitments of such excess matching funds and additional resources proposed or pledged as part of an approved application even if over the amount of the required match.

J. Preferences

In accordance with the provisions of the AFI Act, in considering an application to conduct a demonstration project under Priority Area 1.0, OCS will give preference to an application that

(1) Demonstrates the willingness and ability of the applicant to select individuals for participation in the project who are predominantly from households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardians;

(2) Provides a commitment of non-Federal funds with a proportionately greater amount of such funds committed from private sector sources; and

(3) Targets individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities, public housing developments, Empowerment Zones and Enterprise Communities) that experience high rates of poverty or unemployment.

K. Multiple Applications

Qualified Entities may submit more than one application for different demonstration projects, but no more than one such application will be funded to the same Qualified Entity.

L. Treatment of Program Income

As noted in Section G(1)(d), above, income generated from investment of unallocated funds in the Reserve Fund may be added to the funds already committed from the Reserve Fund to program administration, participant support, or evaluation data collection. However, once funds have been committed as matching contributions to Individual Development Accounts, then any income generated by such funds must be deposited proportionately to the credit of such accounts.

Note: No part of such income is to be considered as a Federal funds contribution subject to the $2000/$4000 limitations under Section G(5)(b), above. (See also Sections G(1)(d) and G(5)(a), above).

M. Agreements With Partnering Financial Institutions

All applicants under Priority Area 1.0 must enter into agreements with one or

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more insured Financial Institutions, in collaboration with which Reserve Funds and Individual Development Accounts will be established and maintained. To be considered for funding, an Application under Priority Area 1.0 must include a copy of an Agreement or Agreements with one or more partnering Qualified Financial Institutions (or in the case of Individual Development Accounts established as Custodial Accounts, an insured financial institution satisfactory to the Secretary), which state(s) that the accounting procedures to be followed in account management will conform to Guidelines established by the Secretary (which will be issued prior to grant awards and made available to grantees at time of award), and under which the partnering Financial Institution agrees to provide data and reports as requested by the applicant. In the case of IDA's established as Trusts under Section G(3), above, the partnering financial institution must be a Qualified Financial Institution as defined in PART III Section D(12). In the case of IDA's established as Custodial Accounts, the partnering financial institution must be insured and must meet the requirements of Section G(4), above, to the satisfaction of the Secretary. The Agreement may also include other services to be provided by the partnering Financial Institution that could strengthen the program, such as Financial Education Seminars, favorable pricing or matching contributions provided by the Financial Institution, and assistance in recruitment of Project Participants.

Part V. The Project Description, Program Proposal Elements and Review Criteria

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Cross-referencing should be used rather than repetition. OCS is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

A. Project Summary

Applicants should provide a Project Summary of not more than one page which should be page 1 of the Project Narrative/Description.

B. Project Goals, Application Brevity

The ultimate goals of the projects to be funded under the Assets for Independence Demonstration Program are: (1) to achieve, through project activities and interventions, the creation of asset accumulation opportunities for recipients of Temporary Assistance for Needy Families (TANF) and other eligible individuals and families that can lead to economic self-sufficiency of members of the communities served through activities requiring one or more qualified expenses; (2) to support and make possible the evaluation of the effectiveness of these interventions and of the project design through which they were implemented; and (3) thus to make possible the replication of successful programs. As noted here, OCS intends to make the awards of all the above grants on the basis of brief, concise narrative project descriptions. The elements and format of these project descriptions, along with the review criteria that will be used to evaluate them, will be outlined in this Part.

In order to simplify the application preparation and review process, OCS seeks to keep grant proposals cogent and brief. Applications with project narratives (excluding appendices) of more than 30 letter-sized pages of 12 c.p.i. type or equivalent on a single side will not be reviewed for funding. Applicants should prepare and assemble their project description using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

C. Proposal Elements and Review Criteria for Applications Under Priority Area 1.0

Applications which pass the initial screening will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement. Scoring will be based on a total of 100 points.

The competitive review of proposals will be based on the degree to which applicants:

(1) Adhere to the requirements in Part IV and incorporate each of the Elements and Sub-Elements below into their proposals, so as to:

(2) Describe convincingly a project that will develop new asset accumulation opportunities for TANF recipients and other eligible individuals and families that can lead to a transition from dependency to economic self-sufficiency through activities requiring one or more qualified expenses; and

(3) Provide for the collection of relevant data to support the testing and evaluation of the project design, implementation, and outcomes so as to make possible replication of a successful program.

For each of the Project Elements or Sub-Elements below there is at the end of the discussion a suggested number of pages to be devoted to the particular element or sub-element. These are suggestions only; but the applicant must remember that the overall Project Narrative must not be longer than 30 pages.

Element I. Organizational Experience and Administrative Capability. (Total Weight of 0 to 20 points)

Sub-Element I(a) Experience and Staffing. (Weight of 0–10 points)

The applicant should cite its capability and relevant experience in developing and operating programs which deal with poverty problems similar to those to be addressed by the proposed project, including the provision of supportive services to TANF recipients and other low income individuals and families seeking to achieve economic stability and self-sufficiency, as well as with evaluations and data collection. Applications should identify applicant agency executive leadership in this section and briefly describe their involvement in the proposed project and provide assurance of their commitment to its successful implementation. The application should note and justify the priority that this project will have within the agency including the facilities and resources that it has available to carry it out.

Finally, the application must identify the two or three individual staff persons who will have the most responsibility for managing the project, coordinating services and activities for participants and partners, and for achieving performance targets. The focus should be on the qualifications, experience, capacity and commitment to the program of the key staff persons who will administer and implement the project. The person identified as Project Director should have supervisory experience, experience in working with financial institutions and budget related problems of the poor, and experience with the target population. Because this is a demonstration project within an already-established agency, OCS expects that the key staff person(s) would be identified, if not hired.

It is suggested that applicants use no more than 3 pages for this sub-Element, not counting actual resumes or position descriptions, which should be included in an Appendix to the proposal.

Sub-Element I(b) Ability to Assist Participants. (Weight of 0–10 points)

The experience and ability of the applicant in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through the development of assets. The application should cite the organization's experience in collaborative programming and operations which involve financial institutions and financial planning, budget counseling, educational guidance, preparation for home ownership, and self-employment training. The application should also cite the roles, responsibilities, and experience of any other organizations that will be collaborating with the Applicant to assist and support Project Participants in the pursuit of their goals under the project.

It is suggested that applicants use no more than 3 pages for this sub-Element. Any supportive materials or reports should be included in the Appendix to the proposal.

Element II. Sufficiency of the Project Theory, Design, and Plan (Total Weight of 0–40 points)

The degree to which the project described in the application appears likely to aid project participants in achieving economic self-sufficiency through activities requiring one or more qualified expenses.

OCS seeks to learn from the application why and how the project as proposed is expected to establish the creation of new opportunities for asset accumulation by eligible individuals and families that can lead to significant improvements in individual and family self-sufficiency through activities requiring one or more qualified expenses: for post-secondary education, home ownership, and/or qualified business capitalization.

Applicants are urged to design and present their project in terms of a conceptual cause-effect framework that makes clear the relationship between what the project plans to do and the results it expects to achieve.

Sub-Element II(a). Description of Target Population, Analysis of Need, and Project Assumptions. (Weight of 0–15 points)

The project design or plan should begin with identifying the underlying assumptions about the program. These are the beliefs on which the proposed program is built. They should begin with assumptions about the strengths and needs of the population to be served; about how the accumulation of assets will enable project participants to build on those strengths in their quest to achieve self-sufficiency; about what anticipated needs of the participants could be barriers to that achievement, and why and how the services or interventions proposed by the applicant are appropriate and will meet those needs and remove such barriers; and about the impact the proposed interventions will have on the project participants.

In other words, the underlying assumptions of the program are the applicant's analysis of the participant strengths and potential to be supported and their needs and problems to be addressed by the project, and the applicant's theory of how its proposed interventions will address those strengths and needs to achieve the desired result. Thus a strong application is based upon a clear description of the needs and problems to be addressed and a persuasive understanding of the causes of those problems.

In this sub-element of the proposal the applicant must precisely identify the target population to be served. The geographic area to be impacted should then be briefly described, citing the percentage of residents who are low-income individuals and TANF recipients, as well as the unemployment rate, and other data that are relevant to the project design.

The application should include an analysis of the identified personal barriers to employment, job retention and greater self-sufficiency faced by the population to be targeted by the project. (These might include such problems as illiteracy, substance abuse, family violence, lack of skills training, health or medical problems, need for childcare, lack of suitable clothing or equipment, or poor self-image.) The application should also include an analysis of the identified community systemic barriers which the project will seek to overcome. These might include lack of public transportation; lack of markets; unavailability of financing, insurance or bonding; inadequate social services (employment service, child care, job training); high incidence of crime; inadequate health care; or environmental hazards. Applicants should be sure not to overlook the personal and family services and support needed by project participants after they are on the job which will enhance job retention and advancement, and help to assure that benefits attainable through asset accumulation are not wasted by crises beyond the participants' control.

Note: In accordance with the legislative preferences set forth in Part IV Section I, above, the maximum score for this sub-Element in the review of applications under Priority Area 1.0 will only be given to applications which

(1) Demonstrate the willingness and ability of the applicant to select individuals for participation in the project who are predominantly from households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardians; and

(2) Target individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities, public housing developments, Empowerment Zones and Enterprise Communities) that experience high rates of poverty or unemployment.

Each of these preferences will be valued at 2 points in the proposal review, so that the absence of one will reduce the review score for the sub-Element by 2 points; the absence of both will reduce the review score by 4 points.

It is suggested that applicants use no more than 5 pages for this Sub-Element.

Sub-Element II(b). Project Approach and Design: Interventions, Outcomes, and Goals. (Weight of 0–20 points)

The Application should outline a plan of action which describes the scope and detail of how the proposed work will be accomplished and result in outcomes which will build on the strengths of the Program Participants and assist them to overcome the identified personal and systemic barriers to achieving self-sufficiency. In other words, what will the project staff do with the resources provided to the project and how will what they do (interventions) assist project participants to accumulate assets in Individual Development Accounts and use those assets for qualified expenses in a manner that will lead them to self-sufficiency?

In this sub-element the applicant should discuss all of the planned activities and interventions and should explain the reasons for taking the approaches proposed.

The application should include here a brief discussion of the following aspects of the proposed project:

(1) Plans for recruitment of participants into the program;

(2) Criteria for selection of participants from among the eligible target population;

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(3) The proposed rate(s) for matching contributions to Individual Development Accounts. (If more than one rate project-wide is proposed, the rationale should be provided);

(4) The provisions of the "Savings Plan Agreements" proposed to be made with Project Participants and included in the Trust Agreements establishing Individual Development Accounts. (A sample Savings Plan Agreement may be provided to satisfy this criterion.) [See Part IV, Section G(3)(g) of this Announcement]

(5) The role of partnering financial institutions in account management and data collection and reporting;

(6) The role of the applicant and partners in providing training, counseling, and other types of support to participants, including those activities documented as in-kind contributions to the project under Element IV, below; and

(7) Any plans included in the proposed project for crisis intervention activities that will be able to provide assistance to participants so as to avoid emergency withdrawals which might jeopardize continued participation in the project.

It is suggested that applicants use no more than 9 pages for this Sub-Element, not including any sample "Savings Plan Agreement", which if provided should be included in an Appendix.

Sub-Element II(c). Work Plan, Projections, Time Lines. (Weight of 0–5 points)

Applicant should provide quantitative quarterly projections of the activities to be carried out and such information as the projected number of participants to be enrolled, the number of Individual Development Accounts to be opened, the number and amount of deposits, and the number and types of services provided to participants. The plan should briefly describe the key project tasks, and show the timelines and major milestones for their implementation. Applicant may be able to use a simple Gantt or time line chart to convey the work plan in minimal space.

It is suggested that applicants use no more than 2 pages for this Sub-Element.

Element III. Evaluation Data: Adequacy of Plan for Providing Information for Evaluation. (Weight of 0–15 points)

Applicant should identify the kinds of data to be collected, maintained, and/or disseminated. The AFI Act makes provision for a national evaluation of the demonstration program as a whole, and sets aside 2% of the appropriated funds for its support. In addition, each grantee must spend at least 2% of its grant funds (but not more than 9.5%) for the collection of data needed to support the evaluation. This Element of the application will be judged on the adequacy of the plan for providing information relevant to an evaluation of the project.

Note: To achieve the maximum score for this Element in the review process, applications must include a statement that the applicant agrees to use the "MIS IDA" information system software developed by the Center for Social Development, or a comparable and compatible system, for the maintenance, collection, and transmission of data from the proposed project.

It is suggested that applicants use no more than 2 pages for this Element.

Element IV. Commitment of Non-Federal Funds and Additional Resources. (Weight of 0–15 points)

The aggregate amount of direct funds from non-federal public sector and from private sources that are formally committed to the project as matching contributions; and the mobilization of additional resources in support of project .

As noted below in Part VI, Paragraph D Initial OCS Screening, only applications which include written documentation of a commitment to the provision of a non-Federal share, in cash as distinguished from in-kind, of at least the amount of the total federal grant requested for the project will be considered for competitive review.

At the same time, OCS has determined that the strict legislative limitations on the use of Federal grant funds and of the minimum required non-Federal match (at least 90.5% of each must go toward matching deposits in Individual Development Accounts) mean that important training, counseling and support activities, critical to the success of a project, can only be supported by additional resources, both of the applicant itself and mobilized by the applicant in the community.

Consequently, applicants documenting only the required non-Federal 100% cash matching contributions to the project will receive no more than 8 points for this Element, subject to the Notation below regarding legislative preferences.

In this section the applicant should identify those additional resources, cash and in-kind, which will be dedicated to support of those activities and interventions identified in sub-Element II(b), such as training, counseling, and crisis intervention; and any staff activities described in Element III. Such resources may be existing programs of the applicant or a project partner, such as Family Development, Literacy classes, or Small Business Training, in which Project Participants will be enrolled as part of their efforts to achieve self-sufficiency. This Element will be judged in the review process on the adequacy of the mobilized resources to support the activities and interventions described in sub-Element II(b). The commitment of such resources to the project must be documented in writing and submitted as an Appendix to the Application. Because such additional resources are not part of the legislatively mandated non-Federal matching requirement, these additional resources may be of Federal or non-Federal origin, public or private, in cash or in-kind. Applicants are reminded that they will be held accountable for commitments of such additional resources even if over the amount of the required match.

Note: In accordance with the legislative preferences set forth in Part IV Section J, above, the maximum score for this Element, in the review of applications under Priority Area 1.0 only, will only be given to applications which provide a commitment of required non-Federal cash matching contributions with a proportionately greater amount of such funds committed from private sector as opposed to public sources. This preference will be valued at 2 points in the proposal review, so that the absence of such a commitment will reduce the review score for the Element by 2 points.

It is suggested that no more than 3 pages be used for this Element, not including any letters of commitment or partnership agreements, which should be put in an Appendix to the proposal.

Element V. Results or Benefits Expected: Significant and Beneficial Impacts. (Weight of 0–10 points)

The proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community and lead TANF recipients and other eligible individuals and families toward economic self-sufficiency. Results are expected to be quantifiable in terms of the number of Individual Development Accounts opened, their rate of growth, the number and size of withdrawals for each of the three qualified expenses, and the impact of the payment of those expenses on the participants' movement toward self-sufficiency.

Applicants should set forth their realistic goals and projections for attainment of these and other beneficial impacts of the proposed project.

Critical issues or potential problems that might affect the achievement of project objectives should be explicitly addressed, with an explanation of how they would be overcome, and how the objectives will be achieved notwithstanding any such problems.

It is suggested that no more than 3 pages be used for this Element.

D. Proposal Elements and Review Criteria for Application Under Priority Area 2.0

(Not applicable)

E. Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition based on the same review criteria be scheduled and applications remain ranked without final disposition, such applications will be entered into the rank order list for the new competition in accordance with their previous score. At the same time, such applicants will be informed of their opportunity instead to reapply for the new competition, if they so choose, and to the extent practical, in which case the previous application will be disregarded.

Part VI. Application Procedures

A. Application Development/ Availability of Forms

In order to be considered for a grant under this program announcement, an application must conform to the Program Requirements set out in Part IV and be prepared in accordance with the guidelines set out in Part V, above. It must be submitted on the forms supplied in the attachments to this Announcement and in the manner prescribed below. Attachments A through I contain all of the standard forms necessary for the application for awards under this OCS program. These attachments and Parts VI and VII of this Announcement contain all the instructions required for submittal of applications.

Additional copies may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION CONTACT:** at the beginning of this announcement. In addition, this Announcement is accessible on the Internet through the OCS Website for reading or downloading at "http://www.acf.dhhs.gov/programs/ocs" under "funding opportunities".

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace, debarment regulations and the Certification Regarding Environmental Tobacco Smoke, set forth in Attachments G, I and H.

Part V contains instructions for the substance and development of the project narrative. Part VII contains instructions for completing application forms. Part VIII, Section A describes the contents and format of the application as a whole.

B. Application Submission

(1) Number of Copies Required. One signed original application and four copies should be submitted at the time of initial submission. (OMB 0970–0139)

(2) Deadline. Applications shall be considered as meeting the announced deadline of August 9, 1999 if they are received on or before the deadline date. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of grants Management, Office of Child Support Enforcement, "Attention: IDA Program", 370 L'Enfant Promenade, SW., Washington, DC 20447.

Applications handcarried by applicants, applicant couriers, other representatives of the applicant, or by express or overnight delivery services shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EDT, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of grants Management, Office of Child Support Enforcement, Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: IDA Program". (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

(3) Late applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

(4) Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

C. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

Attachment J is a Single Point of Contact List for participating jurisdictions.

The following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. Applicants from these jurisdictions, for projects administered by federally recognized Indian Tribes, or which are States (under Priority Area 2.0) need take no action in regard to E.O. 12372. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions.

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally,

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SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of grants Management, Office of Child Support Enforcement, "Attention: IDA Program", 370 L'Enfant Promenade, SW, Washington, DC 20447.

D. Initial OCS Screening

Each application submitted under this program announcement will undergo a pre-review to determine that the application was received by the closing date and submitted in accordance with the instructions in this announcement.

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

The following requirements must be met by all applicants except as noted:

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF 424B) completed according to instructions published in Part VII and Attachments A, B, and C of this Program Announcement.

(2) A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be limited to 30 pages, typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (cpi) or equivalent. The Budget Narrative, Charts, exhibits, resumes, position descriptions, letters of support or commitment, Agreements with partnering organizations, and Business Plans (where required) are not counted against this page limit. It is strongly recommended that applicants follow the format and content for the narrative described in the program elements set out in Part V.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. Applicants must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(4) In the case of applications under Priority Area 1.0, application must contain documentation of the applicant's tax exempt status as required under Part IV, Section A.

(5) In the case of Application under Priority Area 1.0, the Application must include a copy of a "Non-Federal Share Agreement" or Agreements in writing executed with the entity or entities providing the required non-Federal matching contributions, on letterhead of the entity and signed by a person authorized to make a commitment on behalf of the entity. Such Agreement(s) must include: (1) a commitment to provide the non-Federal funds contingent only on the grant award; (2) a schedule of deposits to the project's Reserve Fund of at least ten percent of the total committed for the entire project at the start of each of the Project Years, plus any additional amounts needed to assure that there are at all times in the Reserve Fund non-Federal matching contribution funds equal to the total amounts pledged as maximum matching contributions under the "Savings Plan Agreements" for all Individual Development Accounts then open and being maintained by the grantee as part of the demonstration project; and (3) a statement that up to 9.5 percent of the required non Federal matching contribution funds it provides may be allocated from the Reserve Fund to the support of project administration, Participant support, data collection or other project-related expenses. (See PART IV Sections G(1)(b) and I.) Grantees are encouraged to mobilize additional resources, which may be cash or in-kind contributions, Federal or non-Federal, for support of project administration and assistance to Project Participants in obtaining skills, knowledge, and needed support services. (See Part V, Element IV).

Note: If a grantee mobilizes matching non-Federal contributions in excess of the required 100 percent match, such non-Federal funds may be used however the grantee and provider of the funds may agree. (See also Part IV, Section I)

(6) In the case of Application under Priority Area 1.0 the Application must include a copy of an Agreement between the Applicant and one or more Qualified Financial Institution(s), which states that the accounting procedures to be followed in account management will conform to Guidelines established by the Secretary (which will be issued prior to grant awards and provided to grantees at time of award), and under which the partnering financial institution will agree to provide data and reports as requested by the applicant.

E. Consideration of Applications Under Priority Area 1.0

Applications which pass the initial OCS screening will be reviewed and rated by an independent review panel on the basis of the specific review criteria described in Part V, above. The review criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the review criteria within the context of this program announcement. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; the amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

Since non-Federal reviewers will be used for review of applications under Priority Area 1.0, applicants may omit from the application copies (under Priority Area 1.0 only) which will be made available to the non-Federal reviewers, the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

F. Consideration of Applications Under Priority Area 2.0

(Not applicable)

Part VII. Instructions for Completing Application Forms

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments A and B) as modified by the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

A. SF–424—Application for Federal Assistance (Attachment A) Top of Page

Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form (third line from the top).

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. If applicant is a State, enter "A" in the box. If applicant is an Indian Tribe enter "K" in the box. If applicant is a non-profit organization enter "N" in the box.

Item 9. Name of Federal Agency—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.602. The title is "IDA Program".

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

I—Individual projects under Priority Area 1.0.

S—Statewide projects under Priority Area 2.0.

Item 13. Proposed Project—The project start date must begin on or before September 30, 1999; the ending date should be calculated on the basis of the 36- to 60-month Project Period.

Item 15a. This amount should be no greater than $500,000 for applications under Priority Area 1.0.

Item 15b–e. These items should reflect both cash and third-party, in-kind contributions for the Project Period.

B. SF–424A—Budget Information—Non-Construction Programs (Attachment B)

In completing these sections, the Federal Funds budget entries will relate to the requested OCS funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included in Non-Federal entries.

Sections A, B, and C of SF–424A should reflect budget estimates for each year of the Project Period.

Section A—Budget Summary

You need only fill in lines 1 and 5 (with the same amounts)

Col. (a): Enter "IDA Program" as Item number 1. (Items 2, 3, 4, and 5 should be left blank.)

Col.(b): Catalog of Federal Domestic Assistance number is 93.602.

Col. (c) and (d): not relevant to this program.

Column (e)—(g): enter the appropriate amounts in items 1. and 5. (Totals) Column e should not be more than $500,000 for applications under Priority Area 1.0; and in no case can it be more than the committed non-Federal matching cash contribution.

Section B—Budget Categories

(Note that the following information supersedes the instructions provided with the Form in Attachment C)

Columns (1)—(5): For each of the relevant Object Class Categories:

Column 1: Enter the OCS grant funds for the full 3- to 5-year budget period. With regard to Class Categories, at least 90.5 percent of OCS grant funds should be entered in "h. Other", representing the funds to be deposited in the Reserve Fund. At least 2 percent of OCS grant funds, for data collection, should be entered under "Other", "Contractual", and/or "Personnel" as appropriate. Up to 7.5 percent of OCS grant funds, which may be for project administration and support, should be entered in Class Categories as appropriate.

Columns 2, 3 and 4 are not relevant to this program.

Column 5: Enter the total federal OCS grant funds for the five year budget by Class Categories, showing a total of not more than $500,000.

Note: Only out-of-town travel should be entered under Category c. Travel. Local travel costs should be entered under Category h. Other. Costs of supplies should be included under Category e. "Supplies" is tangible personal property other than "equipment". "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000. Articles costing less should be included in "Supplies".

Section C—Non Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. In this context, "Non-Federal" resources mean other than the OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program or the Welfare-to-Work program, should be entered on these lines. Provide a brief listing of these "non-Federal" resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party cash or in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process under the Non-Federal Resources program element.

(**Note:** Even though non-Federal resources mobilized may go beyond the amount required as match under the IDA Program, grantees will be held accountable for any such cash or in-kind contribution proposed or pledged as part of an approved application. (See Part IV, Section I. and Part V, Element IV.)

Sections D, E, and F may be left blank by Applicants under Priority Area 1.0.

As noted in Part VIII, a supporting Budget Justification must be submitted providing details of expenditures under each budget category, with justification of dollar amounts which relate the proposed expenditures to the work program and goals of the project.

C. SF–424B Assurances: Non-Construction Programs

Applicants requesting financial assistance for a non-construction project

must file the Standard Form 424B, "Assurances: Non-Construction Programs." (Attachment C) Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. (See Attachments D and E) Applicants must sign and return the certification with their applications. Applicants should note that the Lobbying Disclosure Act of 1995 has simplified the lobbying information required to be disclosed under 31 USC 1352.

Applicants must make the appropriate certification on their compliance with the Drug-Free Workplace Act of 1988 and the Pro-Children Act of 1994 (Certification Regarding Smoke Free Environment). (See Attachments G and H) By signing and submitting the applications, applicants are attesting to their intent to comply with these requirements and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. (See Attachment I) By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. Copies of the certifications and assurances are located at the end of this announcement.

Part VIII. Contents of Application and Receipt Process

Application pages should be numbered sequentially throughout the application package, beginning with an Abstract of the proposed project as page number one; and each application must include all of the following, in the order listed below:

A. Content and Order of IDA Program Application

1. Table of Contents;
2. An Abstract of the project—very brief, not to exceed 300 words, that would be suitable for use in an announcement that the application has been selected for a grant award; which identifies the type of project(s), the target population, the applicant, partners, and the major elements of the work plan.
3. A completed Standard Form 424 (Attachment A) which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally; [Note: The original SF–424 must bear the original signature of the authorizing representative of the applicant organization];
4. A completed Budget Information-Non-Construction Programs (SF–424A) (Attachment B);
5. A narrative budget justification for each object class category included under Section B;
6. Proof of tax-exempt status;
7. *A project narrative,* limited to the number of pages specified below, which includes all of the required elements described in Part V. [Specific information/data required under each component is described in Part V Section C, Application Elements and Review Criteria.]
8. *Appendices,* which should include the following:

a. Filled out, signed and dated *Assurances—Non-Construction Programs* (SF–424B), Attachment C;

b. *Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements:* filled out, signed and dated form found at Attachment D;

c. *Disclosure of Lobbying Activities, SF–LLL:* Filled out, signed and dated form found at Attachment E, if appropriate (omit Items 11–15 on the SF LLL and ignore references to continuation sheet SF–LLL–A)

d. *Maintenance of Effort Certification* (See Attachment F);

e. Signed *Agreement* with partnering Financial Institution(s) (in the case of Application under Priority Area 1.0 only);

f. Signed *Agreements with providers of Required non-Federal matching contributions* (see Program Element IV);

g. Resumes and/or position descriptions;

h. Any letters from cooperating or partnering agencies in target communities. [Such letters are not part of the Narrative and should be included in the Appendices. These letters are therefore not counted against the page limitations of the Narrative.]; and

i. Single points of contact comments, if applicable.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip. The submission of bound plans, or plans enclosed in binders is specifically discouraged.

B. Acknowledgement of Receipt

Acknowledgment of Receipt—All applicants will receive an acknowledgement with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their Application, or a FAX number or e-mail address which can be used for acknowledgement. The assigned identification number, along with any other identifying codes, must be referenced in all subsequent communications concerning the Application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5103.

Part VII. Post Award Information and Reporting Requirements

A. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

B. Attendance at Evaluation Workshops

OCS hopes to sponsor one or more national evaluation workshops in Washington, D.C. or in other locations during the course of the five-year project. Project Directors will be expected to attend such workshops provided funds can be made available by OCS for expenses of attending.

C. Reporting Requirements

Grantees will be required to submit a semi-annual program progress and financial report (SF 269) covering the six months after grant award, and similar reports after conclusion of the first Project Year. Such reports will be due 60 days after the reporting period. Thereafter grantees will be required to submit annual program progress and financial reports (SF 269), as well as a final program progress and financial report within 90 days of the expiration of the grant.

D. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR Parts 74 (non-profit organization) and OMB Circular A–133.

E. Prohibitions and Requirements With Regard to Lobbying

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification.

The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H, for certification and disclosure forms to be submitted with the applications for this program.

F. Applicable Federal Regulations

Attachment K indicates the regulations which apply to all applicants/grantees under the Assets for Independence Demonstration Program.

Dated: June 16, 1999.

Donald Sykes,

Director, Office of Community Services.

Assets for Independence Demonstration Program

List of Attachments

Attachment A: Application for Federal Assistance

Attachment B: Budget Information—Non-Construction Programs

Attachment C: Assurances—Non-Construction Programs

Attachment D: Certification Regarding Lobbying

Attachment E: Disclosure of Lobbying Activities

Attachment F: Certification Regarding Maintenance of Effort

Attachment G: Certification Regarding Drug-Free Workplace Requirements

Attachment H: Certification Regarding Environmental Tobacco Smoke

Attachment I: Certification Regarding Debarment, Suspension and Other Responsibility Matters

Attachment J: E.O. 12372 State Single Point of Contact List

Attachment K: DHHS Regulations Applying to All Applicants/Grantees Under the Assets for Independence Demonstration program (IDA Program)

BILLING CODE 4184–01–P

Attachment A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4181–01–M

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BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories should in Lines a-k of section B.

Section A. Budget Summary Lines 1–4

Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, either on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more program require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4). Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C—Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict or interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal Assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.)

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Attachment D—Administration for Children and Families, U.S. Department of Health and Human Services

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or

attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) the undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184-01-M

Attachment E

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184-01-C

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to collection of information unless it displays a valid OMB Control Number. The valid OMB control number of this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Attachment F— Administration for Children and Families, U.S. Department of Health and Human Services

Certification Regarding Maintenance of Effort

In accordance with the applicable program statute(s) and regulation(s), the undersigned certifies that financial assistance provided by the Administration for Children and Families, for the specified activities to be performed under the _____ Program by _____ (Applicant Organization), will be in addition to, and not in substitution for, comparable activities previously carried on without Federal assistance.

Signature of Authorized Certifying Official

Title

Date

Attachment G—HHS CFR Title 45

Part 76, Appendix C: Drug-free Certification

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantee's attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substance Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

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Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

1. The grantee certifies that it will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

2. Establishing an ongoing drug-free awareness program to inform employees about—

1. The dangers of drug abuse in the workplace;

2. The grantee's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

1. Abide by the terms of the statement; and

2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is convicted—

1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (Street address, city, county, state, zip code).

Check } if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)—

1. The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer of other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Attachment H—Administration for Children and Families, U.S. Department of Health and Human Services

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also knows as the pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for any entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for impatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirement of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment I—HHS CFR Title 45

Part 76, Appendix A: Debarment Certification (Primary)

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

Certificotion Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitted this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. 1B).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment J—State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," Section 4, "the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development." This attached listing is the OFFICIAL OMB LISTING. This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

*OMB State Single Point of Contact Listing**

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, e-mail: jonis@ep.state.az.us

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning and Research/State Clearinghouse, 1400 10th Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. duPont Hi., Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W.—Suite 1200, Washington, D.C. 20005, Telephone: (202) 727–6537, FAX: (202) 727–1617, e-mail: charlesnic@yahoo.com or cnichols-ogmd@dcgov.org

Florida

Cherie L. Trainor, Coordinator, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438 or (850) 414–5495, FAX: (850) 414–0479, e-mail: cherie.trainor@dca.state.fl.us

Georgia

Debra S. Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901, e-mail: ssda@mail.opb.state.ga.us

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, telephone: (312) 814–6028, FAX: (312) 814–1800.

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapois, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849.

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489.

Maryland

Linda C. Janey, JD, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4491, FAX: (410) 767–4480, e-mail: Linda@mail.op.state.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764.

Missouri

Lois Pohl/Carol Meyer, Federal Assistance Clearinghouse, Office Of Administration, P.O. Box 809, Room 915, Jefferson Building, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395.

* In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC. DOES NOT HAVE A "STATE SINGLE POINT OF CONTACT." JURISDICTIONS WITHOUT "STATE SINGLE POINTS OF CONTACTS" INCLUDE: Alabama; Alaska; American Samoa; Colorado; Connecticut; Kansas; Hawaii, Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington.

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–6367, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4948

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Marsha Roth, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, North Carolina State Clearinghouse, Office of the Secretary of Administration, 116 West Jones Street, Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

Jim Boyd, North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Department 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2656, FAX: (401) 222–2083

South Carolina

Omegia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street, 12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645

Texas

Tom Adams, Single Point of Contact, State of Texas, Governor's Office of Budget and Planning, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711–2428, Telephone: (512) 463–1771, FAX: (512) 936–2681, e-mail: tadams@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telehpone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Judith Dryer, Chief Program Manager, West Virginia Development Office, Building #6, Room 645, State Capitol, Charleston, West Virginia 25305, Telephone: (304) 558–0350, FAX: (304) 558–0362

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capital, Room 124, Cheyenne, Wyoming 82002 FAX: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444 or (809) 723–6190, FAX: (809) 724–3270 or (809) 724–3103

Northern Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telpehone: (670) 664–2256, FAX: (670) 664–2272

Please direct all questions and correspondence about intergovernmental review to:

Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

Virgin Islands

Nellon Bowry, Director, Office of Managment and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to:

Daisey Millen, Telephone: (809) 774–0750 FAX: (809) 776–0069

If you would like a copy of this list faxed to your office, please call our publications office at: (202) 395–9068.

This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Attachment K—DHHS Regulations Applying to all Applicants/Grantees Under the Assets for Independence Demonstration Program (IDA Program)

Title 45 of the Code of Federal Regulations:

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (grants with subgrants to entities)
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance
Subpart F—Drug Free Workplace Requirements
Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

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federal register

Friday
July 2, 1999

Part V

Department of Housing and Urban Development

24 CFR Part 291
Disposition of HUD-Acquired Single Family Property; Officer Next Door Sales Program; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4277–I–02]

RIN 2502–AH37

Disposition of HUD-Acquired Single Family Property; Officer Next Door Sales Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends HUD's regulations that address the disposition of HUD-acquired single family properties to codify the policies and procedures concerning the Officer Next Door Sales Program (OND Sales Program). The OND Sales Program has been operating since August 11, 1997 as a temporary program. This interim rule establishes the OND Sales Program as a permanent part of HUD's single family property disposition program. Through the OND Sales Program, HUD makes HUD-acquired single family homes available to law enforcement officers for purchase at a discount from the list price. A home purchased through the OND Sales Program must be located in a HUD-designated Revitalization Area or HUD-approved exception area, and the law enforcement officer must agree to own and live in the home as his or her sole residence for a specified period of time. Governmental entities and private nonprofit organizations may also purchase homes through the OND Sales Program, if they intend to resell these homes directly to law enforcement officers under the terms and conditions of the OND Sales Program.

DATES: Effective Date: August 2, 1999.

Comments Due Date: August 31, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Single Family Asset Management Division, Office of Insured Single Family Housing, Room 9286, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

One of HUD's major goals is to use its resources in a manner that enhances the general well-being of American communities. A critical component of the Nation's housing policy is promoting safe neighborhoods. One means of furthering this policy is to create homeownership opportunities for law enforcement officers, charged with the responsibility of ensuring the safety and well-being of residents, in the communities they serve. A second means is to help promote safe neighborhoods by furthering the community policing efforts being made by numerous cities. In order to support these efforts, HUD developed the Officer Next Door Sales Program (OND Sales Program).

HUD initiated the OND Sales Program on August 11, 1997, through the issuance of HUD Notice H–97–51. On December 31, 1997, HUD issued Notice H–97–73, which expanded the definition of law enforcement officer in order to increase the number of law enforcement officers eligible to participate in the OND Sales Program. On January 12, 1998 (63 FR 1886) a notice was published in the **Federal Register** that described the OND Sales Program policies and procedures contained in HUD Notices H–97–51 and H–97–53.

Since 1997, the OND Sales Program has been operated as a temporary program under HUD's authority to make single family properties available under 24 CFR part 291 (entitled "Disposition of HUD-Acquired Single Family Property") and through a series of regulatory waivers authorized by the Assistant Secretary for Housing-Federal Housing Commissioner. Section 7(q) of the Department of Housing and Urban Development Act, as amended by section 106 of the Department of Housing and Urban Development Reform Act (42 U.S.C. 3535(q)), requires that HUD publish quarterly **Federal Register** notices of all regulatory waivers it has approved. The latest regulatory waiver issued by HUD regarding the OND Sales program was published on March 12, 1999 (64 FR 12676, 12678).

II. The OND Sales Program

Through the OND Sales Program, HUD makes HUD-acquired single family homes, located in HUD-designated Revitalization Areas or HUD-approved exception areas, available to law enforcement officers for purchase at a substantial discount from the list price. Currently the discount rate for the OND Sales Program is 50% off the list price.

In addition, by allowing selected homes to be purchased with mortgages insured by the Federal Housing Administration (FHA), HUD makes it possible for a law enforcement officer to purchase a home with a very low down payment. In order to qualify for this low down payment, a selected home must be eligible for FHA financing. Currently, law enforcement officers may purchase an FHA eligible home with an FHA-insured mortgage, through the OND Sales Program, with a downpayment of $100.

A law enforcement officer is defined, under the OND Sales Program, as (1) an individual who is employed full-time by a Federal, state, county, or municipal government and in carrying out such full-time employment is (2) sworn to uphold, and make arrests for violations of, Federal, state, county, or municipal law. A law enforcement officer, participating in the OND Sales program, must agree to own and live in the home as his or her sole residence for a set period of time. This period of time is called the owner-occupancy term. Currently, the owner-occupancy term is 3 years. The law enforcement officer must also agree to certify initially and once annually, for each year of the owner-occupancy term, that (1) he or she owns and lives in the home as his or her sole residence and that (2) he or she does not own any other residential real property other than the home purchased through the OND Sales Program.

In addition, law enforcement officers will have to agree to execute a second mortgage and note on the home. Under the second mortgage, the law enforcement officer will not be required to make any monthly payments, nor will any interest accrue. This second mortgage will have the same term as the owner-occupancy term. The amount of the second mortgage will be the difference between the list price of the home and the discounted selling price. The amount owed on the second mortgage will be reduced, according to a schedule established by HUD, periodically over the owner-occupancy term. At the end of the owner-occupancy term, the amount of the second mortgage will be zero. If a law enforcement officer fails to meet any of the continuing obligations of the OND Sales Program, he or she will owe HUD the amount due on the second mortgage. In addition, HUD may take one or more actions, including but not limited to: (1) issuance of a limited denial of participation for FHA programs, (2) referral to the HUD Inspector General for investigation, and (3) reporting to the law enforcement officer's employing agency.

Governmental entities and private nonprofit organizations may also purchase homes through the OND Sales Program, if they intend to resell these homes directly to law enforcement officers under the terms and conditions of the OND Sales Program. Governmental entities and private nonprofit organizations may participate in the OND Sales Program by either (1) assigning the sales contract to a qualified law enforcement officer before or at the time of closing or (2) participating in a three party closing with the qualified law enforcement officer.

III. For More Information About the OND Sales Program

Law enforcement officers, governmental entities, private nonprofit organizations, and other interested persons can receive more information about the OND Sales Program by calling (800) 217–6970 or by visiting HUD's Web site at http://www.hud.gov.

IV. Changes From the January 12, 1998 Federal Register Notice

This interim rule reflects the following changes to the OND Sales Program as it was described in the January 12, 1998 **Federal Register** notice:

A. Second Mortgage

To qualify to purchase a home through the OND Sales Program, a law enforcement officer must agree to execute a second mortgage and note. Previously, the OND Sales Program only required the inclusion of a covenant in the deed. If a law enforcement officer fails to meet the continuing obligations of the OND Sales Program, the amount of the second mortgage will be due and payable. The amount of the second mortgage will be reduced, according to a schedule established by HUD, periodically over the owner-occupancy term.

B. Initial and Annual Certification

In order to continue to be eligible for the OND Sales Program, a law enforcement officer must certify initially and once annually, for each year of the owner-occupancy term, that he or she continues to own and live in the home as his or her sole residence, and that the law enforcement officer does not own any other residential real property.

C. Multiple Homes

During the entire duration of the owner-occupation term, a law enforcement officer may not own any other residential real property other than the home purchased through the OND Sales Program.

D. Single-Unit Homes

Only single-unit homes are eligible for purchase through the OND Sales Program.

V. This Interim Rule

This interim rule establishes the OND Sales Program as a permanent part of HUD's single family property disposition program. Specifically, the interim rule creates a new subpart F in 24 CFR part 291 that codifies the policies and procedures concerning the OND Sales Program.

VI. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). For the following reasons, HUD finds that good cause exists to publiish this rule for effect without first soliciting public comment.

The OND Sales Program has been operating as a temporary program since August 11, 1997, using HUD's existing authority under the single family property disposition program regulations at 24 CFR part 291 and through the issuance of a series of waivers. In addition, HUD published the January 12, 1998 **Federal Register** notice publicizing the details of the OND Sales Program.

While this interim rule makes certain revisions to the OND Sales Program, the basic structure of the program remains principally unchanged from that published in the January 12, 1998 **Federal Register** notice. The primary purpose of this interim rule is to change the status of the OND Sales Program from a temporary program to a permanent part of HUD's single family property disposition program. The interim rule codifies the current policies and procedures concerning the OND Sales Program in a new subpart F in 24 CFR part 291. Accordingly, HUD has determined that it is unnecessary to solicit prior notice and comment before issuing this rule for effect.

Although HUD is issuing this rule for effect, it welcomes public comment on the amendments made by the rule. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. All public comments will be addressed in the final rule.

VII. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538)(UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing certifies that this interim rule would not have a significant economic impact on a substantial number of small entities.

This interim rule promotes safe neighborhoods by enabling law enforcement officers to purchase HUD-acquired single family homes at a significant discount. The interim rule places restrictions on the use of a home purchased through the Officer Next Door Sales Program, which affects the individual purchasing the home. The interim rule, however, does not place restrictions on any small entities involved in any transactions related to the Officer Next Door Sales Program.

While we have determined that this rule would not have a significant

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economic impact on a substantial number of small entities, we welcome any comments regarding alternatives to this rule that would meet our objectives, as described in this preamble, and would be less burdensome to small entities.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism") has determined that the policies contained in this interim rule do not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim rule codifies the procedures governing the OND Sales Program in a new subpart in HUD's single family property disposition program regulations. Through the OND Sales Program, HUD makes HUD-acquired single family homes available to law enforcement officers for purchase at a significant discount. As a result, this interim rule is not subject to review under the Order.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, 24 CFR part 291 is amended as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

2. Subpart F is added to read as follows:

Subpart F—Officer Next Door Sales Program

Sec.

291.500 What is the purpose of the Officer Next Door Sales Program?
291.510 How does the Officer Next Door Sales Program work?
291.520 How do I qualify to purchase a home through the Officer Next Door Sales Program?
291.530 Who qualifies as a law enforcement officer?
291.540 What is the owner-occupancy term?
291.550 What is the second mortgage?
291.560 May I purchase a multi-unit property through the Officer Next Door Sales Program if I plan to live in one of the units as my sole residence?
291.570 What continuing obligations apply to me if I purchase a home through the Officer Next Door Sales Program?
291.580 May governmental entities and private nonprofit organizations purchase homes through the Officer Next Door Sales Program?
291.590 How are the terms governmental entities and private nonprofit organization defined?

Subpart F—Officer Next Door Sales Program

§ 291.500 What is the purpose of the Officer Next Door Sales Program?

The purpose of the Officer Next Door Sales Program is to promote safe neighborhoods by encouraging law enforcement officers to purchase, and live in as their sole residence, homes located in economically distressed neighborhoods.

§ 291.510 How does the Officer Next Door Sales Program work?

(a) The Officer Next Door Sales Program enables a full-time law enforcement officer to purchase a HUD-acquired home located in a HUD-designated Revitalization Area or HUD-approved exception area:

(1) At a discount from the list price; and

(2) With a reduced downpayment, if:

(i) The home is eligible for an FHA-insured mortgage; and

(ii) The law enforcement officer chooses to finance the home through an FHA-insured mortgage, and is qualified to obtain such a mortgage.

(b) Under the Officer Next Door sales Program, all properties acquired by HUD (both those that are eligible for FHA mortgage insurance and those that are not eligible) located in HUD-designated Revitalization Areas are made available to interested law enforcement officers, government entities, and nonprofit organizations prior to listing the properties for sale to the general public. Purchasers must notify HUD of their geographic area of interest and will be given five (5) days to indicate their preliminary interest in a specific property as more fully explained in § 291.210(a).

§ 291.520 How do I qualify to purchase a home through the Officer Next Door Sales Program?

To qualify to purchase a home through the Officer Next Door Sales Program you must:

(a) Be a full-time law enforcement officer as described in § 291.530;

(b) Agree to own, and live in as your sole residence, the home for the entire duration of the owner-occupancy term;

(c) Agree to execute a second mortgage and note on the home as described in § 291.550 for the difference between the list price and the discounted selling price;

(d) Agree that you will not own any residential real property, other than the home you purchase through the Officer Next Door Sales Program, during the owner-occupancy period.

§ 291.530 Who qualifies as a law enforcement officer?

You qualify as a law enforcement officer, for the purposes of the Officer Next Door Sales Program, if you are:

(a) Employed full-time by a Federal, state, county, or municipal government; and

(b) In carrying out such full-time employment, you are sworn to uphold, and make arrests for violations of, Federal, state, county, or municipal law.

§ 291.540 What is the owner-occupancy term?

The owner-occupancy term is the number of years a participant in the Officer Next Door Sales Program must agree to own, and live in as their sole residence, a home purchased through the Officer Next Door Sales Program. The owner-occupancy term is determined by HUD.

§ 291.550 What is the second mortgage?

The second mortgage is a mortgage and note on the home you purchase through the Officer Next Door Sales Program. The amount of the second mortgage is the difference between the list price of the home and the discounted selling price. The second mortgage will have the same term as the owner-occupancy term. The amount of the second mortgage will be reduced, according to a schedule established by HUD, periodically over the owner-occupancy term. If you fail to meet any of the continuing obligations of the OND Sales Program, you will owe HUD the amount due on the second mortgage. At the end of the owner-occupancy term, the amount of the second mortgage will be zero.

§ 291.560 May I purchase a multi-unit property through the Officer Next Door Sales Program if I plan to live in one of the units as my sole residence?

No, only single-unit properties are eligible for the Officer Next Door Sales Program.

§ 291.570 What continuing obligations apply to me if I purchase a home through the Officer Next Door Sales Program?

To remain a participant in the Officer Next Door Sales Program you must, for the entire duration of the owner-occupancy term:

(a) Continue to own, and live in as your sole residence, the home you purchased through the Officer Next Door Sales Program;

(b) Not own any other residential real property other than the home you purchased through the Officer Next Door Sales Program; and

(c) Certify initially and once annually that paragraphs (a) and (b) of this section continue to be true.

§ 291.580 May governmental entities and private nonprofit organizations purchase homes through the Officer Next Door Sales Program?

Yes, governmental entities and private nonprofit organizations may purchase homes through the Officer Next Door Sales Program, if they intend to resell these homes directly to law enforcement officers under the terms and conditions of the Officer Next Door Sales Program. In order to participate, governmental entities and private nonprofit organizations must either:

(a) Assign the sales contract to a qualified law enforcement officer before, or at the time of, closing; or

(b) Participate in a three party closing with the qualified law enforcement officer.

§ 291.590 How are the terms governmental entities and private nonprofit organization defined?

The terms *Governmental entities and Private nonprofit organization* are defined in § 291.5 of this part.

Dated: June 8, 1999.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 99–16847 Filed 7–1–99; 8:45 am]

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Part VI

Department of Housing and Urban Development

24 CFR Part 200
Single Family Mortgage Insurance; Appraiser Roster Placement and Removal Procedures; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4429–P–01]

RIN 2502–AH29

Single Family Mortgage Insurance; Appraiser Roster Placement and Removal Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement one aspect of HUD's Homebuyer Protection Plan, which was launched on June 1, 1998. The Homebuyer Protection Plan consists, in part, of a number of reforms to the appraisal process for the purchase of single family properties financed with mortgages insured by the Federal Housing Administration (FHA) and certain manufactured homes under the FHA Title I program. This proposed rule would establish an independent removal procedure for HUD's Appraiser Roster. The Appraiser Roster lists appraisers who are eligible to perform FHA single family appraisals. This proposed rule would also codify the current placement procedure for the Appraiser Roster.

DATES: *Comments Due Date:* August 2, 1999.

ADDRESSES: Submit your comments about this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Your comments should refer to the above docket number and title. We do not accept facsimile (FAX) comments. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

a. HUD's Homebuyer Protection Plan

HUD launched the Homebuyer Protection Plan (the Plan) on June 1, 1998. Among other innovations, the Plan reforms the appraisal process for the purchase of single family properties financed with mortgages insured by the Federal Housing Administration (FHA) and certain manufactured homes under the FHA Title I program. One aspect of the appraisal process that is undergoing reform is HUD's Appraiser Roster. The Appraiser Roster lists appraisers who are eligible to perform FHA single family appraisals. Lenders must select an appraiser from this list for property appraisals involving the FHA single family mortgage insurance program. HUD maintains the Appraiser Roster because the success of the single family mortgage insurance program and HUD's ability to protect its financial interests begin with selecting qualified and knowledgeable appraisers.[1]

b. Appraiser Roster Reforms

The Appraiser Roster reforms that would be implemented by the Homebuyer Protection Plan protect homebuyers by ensuring accurate and complete appraisals of homes purchased through the FHA single family insurance program. An accurate and complete appraisal protects homebuyers by informing them, before they complete the purchase of a home, about any extensive repairs that may be needed to make the home habitable. It is important to note, however, that while HUD is committed to protecting homebuyers, the purpose of an FHA property appraisal is to determine the maximum insurable mortgage and to protect the FHA insurance funds. Consequently, the inclusion of an appraiser on the Appraiser Roster does not create or imply a warranty or endorsement to the prospective homebuyer or to any other organization or individual by HUD of the listed appraiser nor does it represent a warranty of the appraisal performed by the listed appraiser. The inclusion of an appraiser on the Appraiser Roster means only that a listed appraiser has met the qualifications and conditions, prescribed by the Secretary, for placement on the Appraiser Roster.

c. Placement Procedure

This proposed rule would codify in regulations the requirements for placement on the Appraiser Roster. These requirements are currently in place. This rule would merely codify existing practice. To be eligible for placement on the Appraiser Roster, an appraiser must be state-certified or state-licensed and must not be listed on either the General Services Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Voice Response System. In addition, the appraiser must also pass a HUD test on FHA appraisal methods and reporting.

To apply for placement on the Appraiser Roster, the appraiser must submit an application to HUD. To verify that the appraiser is eligible to perform HUD/FHA appraisals, HUD performs a detailed review of the appraiser's professional qualifications and checks for any negative information. If HUD's review of an appraiser's application demonstrates that the appraiser is qualified to be listed on the Roster, the appraiser is placed on the Roster. Appraisers that are listed on the Appraiser Roster are responsible for obtaining and complying with the HUD Appraiser Handbook (4150.2) (and any updates to the handbook) and all other instructions and standards issued by HUD.

d. Removal Procedure

An appraiser who is eligible to perform HUD/FHA appraisals is hired by the lender and, therefore, has a contractual responsibility to that lender. However, the appraiser also provides services for HUD programs and, therefore, the appraiser also has an obligation to perform appraisal services that meet HUD's standards and requirements. This dual responsibility of the appraiser is recognized in HUD's review and reporting requirements. The lender and appraiser must meet their respective obligations as prescribed by HUD. Failure to comply with appraiser obligations merits removal from the Appraiser Roster.

This proposed rule would establish an independent procedure by which an appraiser listed on HUD's Appraiser Roster may be removed from the Roster. HUD is proposing this independent removal procedure, in addition to HUD's existing debarment, suspension, and limited denial of participation remedies, in order to better safeguard the FHA insurance funds and to better protect homebuyers. The removal procedure would provide a less lengthy process that would be specifically targeted towards the Appraiser Roster and would fully protect appraisers' due process rights.

[1] In the future, HUD plans that the Appraiser Roster will be administered by HUD's Real Estate Assessment Center.

It should be noted that HUD had previously issued regulations that governed appraiser removal from the Roster at 24 CFR 267.8(d)(3). These regulations were revised during HUD's regulation streamlining in 1996. HUD had intended to retain a less formal procedure for removal from the Roster, but the procedure was not issued during the streamlining. This proposed rule would reinstate this less formal procedure. The procedure included in this proposed rule, however, would provide greater protection for appraisers than the procedure previously located at 24 CFR 267.8(d)(3).

This proposed rule would amend HUD's regulations at 24 CFR part 200 (entitled "Introduction to FHA Programs") to add a new subpart G (entitled "Appraiser Roster; Placement and Removal Procedures") covering the placement and removal of appraisers from the Roster. Subpart G (which would consist entirely of new § 200.200, entitled "Appraiser Roster; placement and removal procedures") would allow HUD to remove an appraiser from the Roster at any time for cause. Cause would include, but would not be limited to:

—Significant deficiencies in appraisals;
—Failing to maintain standing as a state-certified or state-licensed appraiser;
—Prosecution for committing, attempting to commit, or conspiring to commit fraud, misrepresentation, or any other offense that may reflect on the appraiser's character or integrity;
—Failing to perform appraisal functions in accordance with instructions and standards issued by HUD;
—Failing to comply with any agreement made between the appraiser and HUD or with any certification made by the appraiser;
—Being issued a final debarment, suspension, or limited denial of participation;
—Failure to maintain eligibility requirements for placement on the Appraiser Roster as described in new § 200.200 or any other instructions or standards issued by HUD; or
—Failure to comply with HUD-imposed education sanctions within the specified period for complying with such education sanctions.

The removal procedure proposed by this rule would be an independent removal procedure. The removal procedure would apply only to removal actions taken under § 200.200. The procedure would not apply in any way to removal actions taken under any other authority available to HUD, nor would the procedure set forth in § 200.200(d)(2) (entitled "Procedure for removal") be available to appraisers in debarment, suspension, or limited denial of participation actions. Furthermore, the proposed rule would require the automatic removal from the Appraiser Roster of an appraiser, if the appraiser has been issued a final debarment, suspension, or limited denial of participation. Under these circumstances, the procedure set forth in § 200.200(d)(2) would not be applicable.

Except in the above case, the removal procedure proposed by this rule would require HUD to give an appraiser written notice of a proposed decision to remove the appraiser from the Roster. This notice would include the reasons for the removal and the duration of the removal. The appraiser would then be given 20 days from the date of the removal notice to submit a written response. During this period, the appraiser would also have the right to request a conference. Requests for a conference would have to be in writing and submitted along with a written response.

Within 30 days of receiving a written response, or if the appraiser requests a conference, within 30 days of the completion of the conference, a HUD official, designated by the Secretary, would review the appraiser's appeal and send the appraiser a final decision either affirming, modifying, or cancelling the removal from the Appraiser Roster. The HUD official designated by the Secretary to review the appraiser's appeal would not be someone involved in HUD's initial removal decision nor would it be someone who reports to a person involved in that initial decision.

If the appraiser does not submit a written response within 20 days, the removal would become effective 20 days after the date of HUD's initial removal notice. If the appraiser submits a written response, and the removal decision is affirmed or modified, the removal would become effective on the date of HUD's notice affirming or modifying its initial removal decision.

The proposed addition of § 200.200 would not prohibit HUD from debarring, suspending, issuing a limited denial of participation, seeking a false claims action, taking such other action against an appraiser as provided for in 24 CFR part 24 (entitled "Government Debarment and Suspension and Governmentwide Requirements for Drug-Free Workplace (Grants)"), or from seeking any other remedy against an appraiser available to HUD by statute or otherwise. In some cases, where there is evidence that an appraiser is deficient in FHA appraisal requirements, HUD may require an appraiser to undergo professional training and retake the HUD test on FHA appraisal methods and reporting.

With respect to removing an appraiser from the Appraiser Roster, or taking other appropriate enforcement action against an appraiser, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121, 110 Stat. 847)("SBREFA") requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

II. Justification for 30-Day Public Comment Period

In accordance with HUD's regulations concerning rulemaking at 24 CFR part 10 (entitled "Rulemaking: Policy and Procedures"), it is HUD's policy that the public comment period for notices of proposed rulemaking should be 60 days. In the case of this proposed rule,

however, we have determined that there is good cause to reduce the public comment period to 30 days.

This proposed rule would implement part of the Homebuyer Protection Plan, which was launched on June 1, 1998. This Plan reforms FHA's single family home appraisal process and will benefit 800,000 families who obtain FHA-insured mortgage financing each year. One goal of the Plan is to provide these families with the best protection against bad appraisals ever available in the public or private sector.

In light of this important goal, HUD has previously made the public and members of affected industries, including appraisers, aware of the reforms outlined in the Homebuyer Protection Plan. For example, we provided, through HUD Press Release No. 98–206, a thorough overview of the Homebuyer Protection Plan on June 1, 1998. We also met routinely with industry representatives to discuss the details of the Plan and to seek comment and opinion regarding the Plan. While these meetings were held for discussion purposes only, and were not held to reach agreement on HUD policy, they served to make a significant number of affected parties aware of the changes HUD is proposing.

Finally, HUD has made a handbook available that describes the Plan in detail. This handbook has been widely available through the HUD Web Page (http://www.hud.gov/reac/reasfappr.html). Through these means, HUD has alerted appraisers of the changes that would be brought about by the Homebuyer Protection Plan, including the processes by which appraisers may be removed from HUD's Appraiser Roster.

Given the broad exposure of the reforms contained in the Homebuyer Protection Plan, and considering the importance of the Plan's efficient implementation, HUD has determined that a 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested parties to comment.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and are pending OMB approval. The information collection requirements were previously published for comment in a separate notice in the **Federal Register** on May 26, 1999 (64 FR 28502). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

This proposed rule would establish placement and removal procedures for HUD's Appraiser Roster. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852, codified as amended at 42 U.S.C. 4321–4347).

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would establish the procedure by which an appraiser, who has violated FHA single family mortgage insurance program requirements, may be removed from HUD's Appraiser Roster. Accordingly, to the extent that this proposed rule would impact small entities it will be as a result of actions taken by small entities themselves—that is, violation of single family program regulations and requirements.

Generally, HUD expects that the number of removal proceedings initiated under this proposed rule would be relatively low. For example, in fiscal year 1998, of the over 30,000 appraisers listed on the Appraiser Roster, HUD initiated enforcement proceedings against only 36 appraisers (most of these enforcement proceedings were Limited Denial of Participation proceedings).

Further, the proposed rule would provide several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants appraisers, selected for removal from the Appraiser Roster, with the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision.

While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this preamble, and would be less burdensome to small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons stated in the preamble, HUD proposes to amend 24 part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. Add subpart G, consisting of § 200.200, to read as follows:

Subpart G—Appraiser Roster; Placement and Removal Procedures

Sec.
200.200 Appraiser Roster; placement and removal procedures.

Subpart G—Appraiser Roster; Placement and Removal Procedures

§ 200.200 Appraiser Roster; placement and removal procedures.

(a) *Appraiser Roster.* HUD maintains a roster of appraisers, and a mortgagee must select an appraiser from this list for the appraisal of properties involving the FHA single family mortgage insurance program.

(b) *Disclaimer.* Since an appraisal is performed to determine the maximum insurable mortgage and to protect the FHA insurance funds, the inclusion of an appraiser on the Appraiser Roster does not create or imply a warranty or endorsement to a prospective homebuyer or to any other organization or individual by HUD of the listed appraiser nor does it represent a warranty of any appraisal performed by the listed appraiser. The inclusion of an appraiser on the Appraiser Roster means only that a listed appraiser has met the qualifications and conditions, prescribed by the Secretary, for inclusion on the Appraiser Roster.

(c) *Placement on the Appraiser Roster*—(1) *Application.* To apply for placement on the Appraiser Roster, you must submit an application to HUD.

(2) *Eligibility.* To be eligible for placement on the Appraiser Roster you must be a state-licensed or state-certified appraiser, pass a HUD test on FHA appraisal methods and reporting, and you must not be listed on:

(i) The General Services Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Voice Response System.

(d) *Removal from the Appraiser Roster.* HUD officials, as designated by the Secretary, may at any time remove a listed appraiser from the Appraiser Roster for cause under the provisions of this section. The provisions of this section apply only to removal actions taken under this section. These provisions do not apply to removal actions taken under any section in 24 CFR part 24 nor to any other remedy against an appraiser available to HUD by statute or otherwise.

(1) *Cause for removal.* Cause for removal under the provisions of this section include, but are not limited to:

(i) Significant deficiencies in appraisals;

(ii) Failure to maintain standing as a state-certified or state-licensed appraiser;

(iii) Prosecution for committing, attempting to commit, or conspiring to commit fraud, misrepresentation, or any other offense that may reflect on the appraiser's character or integrity;

(iv) Failure to perform appraisal functions in accordance with instructions and standards issued by HUD;

(v) Failure to comply with any agreement made between the appraiser and HUD or with any certification made by the appraiser;

(vi) Being issued a final debarment, suspension, or limited denial of participation;

(vii) Failure to maintain eligibility requirements for placement on the Appraiser Roster as set forth under this section or any other instructions or standards issued by HUD; or

(viii) Failure to comply with HUD-imposed education sanctions within the specified period for complying with such education sanctions.

(2) *Procedure for removal.* If you are a listed appraiser and HUD decides to remove you for cause from the Appraiser Roster under the provisions of this section, the following procedure applies to you unless you have been issued a final debarment, suspension, or limited denial of participation:

(i) You will be given written notice of your proposed removal. The notice will include the reasons for your proposed removal and the duration of your proposed removal.

(ii) You will have 20 days from the date of your notice of proposed removal to submit a written response appealing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with a written response.

(iii) Within 30 days of receiving your written response, or if you have requested a conference, within 30 days after the completion of your conference, a HUD official, designated by the Secretary, will review your appeal and will send you a final decision either affirming, modifying, or canceling your removal from the Appraiser Roster. HUD may extend this time upon giving you notice. The HUD official designated by the Secretary to review your appeal will not be someone involved in HUD's initial removal decision nor will it be someone who reports to a person involved in that initial decision.

(iv) If you do not submit a written response, your removal will be effective 20 days after the date of HUD's initial removal notice. If you submit a written response, and the removal decision is affirmed or modified, your removal or modification will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(3) *Automatic removal for issuance of final debarment, suspension, or limited denial of participation.* If you are a listed appraiser and you have been issued either a final debarment, suspension, or limited denial of participation, you will be automatically removed from the Appraiser Roster. The provisions of this section do not apply to you, and you may not appeal the removal action under the provisions of this section.

(e) *Compliance with HUD-issued instructions and standards.* All appraisers listed on the Appraiser Roster are responsible for obtaining and complying with the HUD Appraiser Handbook (4150.2) (and any updates to the handbook) and all other instructions and standards issued by HUD. The handbook can be obtained through the HUD Web Page (http://www.hud.gov/reac/reasfappr.html).

(f) *Education sanctions.* Where there is evidence that an appraiser is deficient in FHA appraisal requirements, HUD may require an appraiser to undergo professional training and retake the HUD test on FHA appraisal methods and reporting.

(g) *Re-application.* Appraisers removed from the Roster must re-apply to HUD in accordance with instructions provided by HUD.

(h) *Other action.* Nothing in this section prohibits HUD from taking such other action, against an appraiser, as provided under 24 CFR part 24, or from seeking any other remedy against an appraiser available to HUD by statute or otherwise.

Dated: June 10, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

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Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.
Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement and Small Entity Compliance Guide; Final Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 14, 15, 19, 26, 33, 52, and 53

[FAC 97–13; FAR Case 97–004]

RIN 9000–AH59

Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed to adopt the interim rules published in the **Federal Register** at 63 FR 35719, June 30, 1998; 63 FR 36120, July 1, 1998; 63 FR 52426, September 30, 1998; and 63 FR 71721, December 29, 1998, as final rules with changes. These amendments conform to a Department of Justice (DoJ) model for reform of affirmative action in Federal procurement. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995).

DATES: *Effective Date:* October 1, 1999.

Applicability Date: The policies, provisions, and clauses of this final rule are effective for all solicitations issued on or after October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Procurement Analyst, Federal Acquisition Policy Division, General Services Administration, at (202) 501–4764, or Mr. Charles Zuckerman, Office of the Director of Defense Procurement, Department of Defense, at (703) 697–0895. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755. Please cite FAC 97–13, FAR case 97–004.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA issued the following Federal Acquisition Circulars (FACs) to make amendments to the FAR concerning programs for small disadvantaged business concerns:

FAC 97–06, 63 FR 35719, June 30, 1998
FAC 97–07, 63 FR 36120, July 1, 1998
FAC 97–08, 63 FR 52426, September 30, 1998
FAC 97–07 Addendum, 63 FR 71721, December 29, 1998

These amendments conformed to the DoJ model for reform of affirmative action in Federal procurement. This rule revises and finalizes the above interim rules. The Councils received twenty-four letters containing 63 comments in response to the interim rules and considered them in the formulation of this final rule. The Councils made only one significant change to the rule, as follows:

FAC 97–07 Addendum amended the FAR to allow contractors acting in good faith to rely upon the self-representations of their subcontractors as to their status as small disadvantaged business concerns. The change provided an additional period of time for subcontractors to become certified under rules issued by the Small Business Administration. That time period is being extended to September 30, 1999. Accordingly, this final rule, which becomes effective on October 1, 1999, rescinds the change made by FAC 97–07 Addendum.

Also, the Councils made several clarifying amendments in this final rule, including removing all references to a list of SDBs to be maintained by the Small Business Administration and referring instead to SBA's PRO-Net database.

This rule was subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule provides preferences through which the Government may provide small business concerns benefits in Federal contracting. The Final Regulatory Flexibility Analysis (FRFA) is summarized as follows:

In *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995), the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decision-making. Following the decision, the Department of Justice (DoJ) published, at 61 FR 26042 (May 23, 1996), Proposed Reforms to Affirmative Action in Federal Procurement. This DoJ model was implemented in several parts: Small Business Administration (SBA) regulations; publication of the Department of Commerce price evaluation adjustments for use in Federal procurements; and interim FAR rules.

Four interim FAR rules established in the FAR three procurement mechanisms benefiting small disadvantaged businesses (SDBs). The first mechanism is a price evaluation adjustment of up to 10 percent in certain two-digit Standard Industrial Classification (SIC) Major Groups. The second mechanism is a source selection evaluation factor or subfactor for planned SDB participation in the performance of a contract. The third mechanism provides for a monetary incentive for subcontracting with SDBs.

We received one public comment that specifically addressed the Initial Regulatory Flexibility Analysis. That comment provided that the rule imposes a complicated tracking system and will not increase opportunities for small disadvantaged businesses. We made no changes to the rule based on this comment. While we recognize that the rule calls for more detailed reporting of SDB subcontractors in order to comply with the DoJ proposal, no alternatives to that reporting exist. The commenter provided no evidence to support the commenter's opinion that this rule will not increase opportunities for small disadvantaged businesses. It is our opinion that, to the contrary, this rule will increase opportunities for such firms, particularly in the award of prime contracts by civilian agencies that, unlike DoD, have not previously granted procurement preferences to SDBs.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Council will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–13, FAR Case 97–004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the rules being converted to a final rule contain reporting and recordkeeping requirements. OMB approved the information collections under OMB clearance numbers 9000–0007 through June 30, 2000, and 9000–0150 through June 30, 2000. This final rule does not affect those previously approved information collection requirements.

List of Subjects in 48 CFR Parts 1, 12, 14, 15, 19, 26, 33, 52, and 53

Government procurement.

Dated: June 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–13 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The policies, provisions and clauses of this final rule are effective for all solicitations issued on or after October 1, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: June 15, 1999

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

June 16, 1999.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

June 11, 1999.

Interim Rules Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rules amending 48 CFR parts 1, 12, 14, 15, 19, 26, 33, 52, and 53, which were published at 63 FR 35719, June 30, 1998; 63 FR 36120, July 1, 1998; 63 FR 52426, September 30, 1998; and 63 FR 71721, December 29, 1998, as final with the following changes:

1. The authority citation for 48 CFR parts 1, 12, 14, 15, 19, 26, 33, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

2. Amend section 19.001 to revise the definition "Small disadvantaged business concern" to read as follows:

19.001 Definitions.

* * * * *

Small disadvantaged business concern, as used in this part (except for 52.212–3(c)(2) and 52.219–1(b)(2) for general statistical purposes and 52.212–3(c)(7)(ii), 52.219–22(b)(2), and 52.219–23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business (SDB) concern in the database maintained by the Small Business Administration (PRO-Net); or

(2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as an SDB by the SBA prior to contract award.

* * * * *

3. Amend section 19.304 to revise paragraph (c)(1) to read as follows:

19.304 Disadvantaged business status.

* * * * *

(c) * * *

(1) If the apparently successful offeror has represented that it is currently certified as an SDB, the contracting officer may confirm that the concern is identified as a small disadvantaged business concern by accessing SBA's database (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

* * * * *

4. Amend section 19.703 to add two new sentences after the first sentence of paragraph (b) to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(b) * * * The clause at 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, requires the contractor to obtain representations of small disadvantaged status from subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at 52.219–22, Small Disadvantaged Business Status. The clause requires the contractor to confirm that a subcontractor representing itself as a small disadvantaged business concern is identified by SBA as a small disadvantaged business concern by accessing SBA's database (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility. * * *

5. Revise section 19.1102 to read as follows:

19.1102 Applicability.

(a) Use the price evaluation adjustment in competitive acquisitions in the authorized SIC Major Groups.

(b) Do not use the price evaluation adjustment in acquisitions—

(1) That are less than or equal to the simplified acquisition threshold;

(2) That are awarded pursuant to the 8(a) Program;

(3) That are set aside for small business concerns;

(4) That are set aside for HUBZone small business concerns;

(5) Where price is not a selection factor so that a price evaluation adjustment would not be considered (*e.g.*, architect/engineer acquisitions); or

(6) Where all fair and reasonable offers are accepted (*e.g.*, the award of multiple award schedule contracts).

6. Amend section 19.1103 to revise paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (b) to read as follows:

19.1103 Procedures.

(a) * * *

(2) An otherwise successful offer of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.402;

(3) An otherwise successful offer where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

(4) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution; or

(5) For DoD acquisitions, an otherwise successful offer of qualifying country end products (see DFARS 225.000–70 and 252.225–7001).

(b) Apply the factor to a line item or a group of line items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the price evaluation adjustment.

* * * * *

7. Amend section 19.1104 to revise the heading and the first sentence to read as follows:

19.1104 Contract clause.

Insert the clause at 52.219–23, Notice of Price Evaluation Adjustment for

Small Disadvantaged Business Concerns, in solicitations and contracts when the circumstances in 19.1101 and 19.1102 apply. * * *

8. Amend section 19.1202–3 to revise the introductory text to read as follows:

19.1202–3 Considerations in developing an evaluation factor or subfactor.

In developing an SDB participation evaluation factor or subfactor for the solicitation, agencies may consider

* * * * *

19.1202–4 [Amended]

9. In section 19.1202–4, remove paragraph (c).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

10. Revise section 26.304 to read as follows:

26.304 Solicitation provision.

Insert the provision at 52.226–2, Historically Black College or University and Minority Institution Representation, in solicitations exceeding the micro-purchase threshold, for research, studies, supplies, or services of the type normally acquired from higher educational institutions. For DoD, NASA, and Coast Guard acquisitions, also insert the provision in solicitations that contain the clause at 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Amend section 52.212–3 to revise the date of the provision and paragraph (c)(7)(i)(A) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Oct 1999)

* * * * *

(c) * * *
(7) * * *
(i) * * *

(A) It /__/ is, /__/ is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

* * * * *

12. Amend section 52.219–8 to revise the date of the clause and paragraph (c)(3) to read as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (Oct 1999)

* * * * *

(c) * * *

(3) *Small business concern owned and controlled by socially and economically disadvantaged individuals* and *small disadvantaged business concern* mean a small business concern that represents, as part of its offer that—

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

* * * * *

13. Amend section 52.219–9 to revise the date of the clause and paragraph (d)(5) to read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)

* * * * *

(d) * * *

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, HUBZone, small disadvantaged and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

* * * * *

14. Amend section 52.219–22 to revise the date of the provision and paragraph (b)(1)(i)(C) to read as follows:

52.219–22 Small Disadvantaged Business Status.

* * * * *

SMALL DISADVANTAGED BUSINESS STATUS (OCT 1999)

* * * * *

(b) * * *
(1) * * *
(i) * * *

(C) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net); or

* * * * *

15. Amend section 52.219–23 to revise the date of the clause and paragraphs (a)(1)(iii) and (b) to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (OCT 1999)

(a) * * *
(1) * * *

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net).

* * * * *

(b) *Evaluation adjustment.* (1) The Contracting Officer will evaluate offers by adding a factor of _____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment;

(ii) An otherwise successful offer of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see section 25.402 of the Federal Acquisition Regulation (FAR));

(iii) An otherwise successful offer where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

(iv) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution; and

(v) For DoD acquisitions, an otherwise successful offer of qualifying country end products (see sections 225.000–70 and 252.225–7001 of the Defense FAR Supplement).

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

* * * * *

16. Amend section 52.219–25 to revise the date of the clause and paragraph (a) to read as follows:

52.219–25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

* * * * *

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (OCT 1999)

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219–22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

* * * * *

[FR Doc. 99–16855 Filed 7–1–99; 8:45 am]

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DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small entity compliance guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97–13 which amends the Federal Acquisition Regulation (FAR). A Final Regulatory Flexibility Analysis (FRFA) has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. In addition, interested parties may obtain further information regarding this rule by referring to FAC 97–13, which precedes this document. This document is also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, at (202) 501–4225. For clarification of content, contact Victoria Moss, Procurement Analyst, General Services Administration, at (202) 501–4764.

Reform of Affirmative Action in Federal Procurement

FAC 97–13, FAR Case 97–004. FAR Parts 19, 26, and 52 are amended to rescind the changes made in FAC 97–07 Addendum and finalize interim rules published in FACs 97–06, 97–07, and 97–08. These rules establish in the FAR three procurement mechanisms benefiting small disadvantaged businesses (SDBs). The first mechanism is a price evaluation adjustment of up to ten percent in certain two-digit Standard Industrial Classification (SIC) Major Groups. The second mechanism is a source selection evaluation factor or subfactor for planned SDB participation in the performance of a contract. The third mechanism provides for a monetary incentive for subcontracting with SDBs.

Dated: June 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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Part VIII

The President

Proclamation 7206—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 7206 of June 30, 1999

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to section 502 of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2462), the President may designate countries as beneficiary developing countries and least-developed beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

2. Pursuant to section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries, are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

3. Pursuant to section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)), a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)) during the preceding calendar year.

4. Pursuant to section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)), the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount set forth in section 503(c)(2)(F)(ii) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(ii)).

5. Pursuant to section 503(d) of the 1974 Act (19 U.S.C. 2463(d)), the President may waive the application of the competitive need limitations in section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)) with respect to any eligible article of any beneficiary developing country if certain conditions are met.

6. Section 507(2) of the 1974 Act (19 U.S.C. 2467(2)) provides that in the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may provide that all members of such association other than members which are barred from designation under section 502(b) of the 1974 Act (19 U.S.C. 2462(b)) shall be treated as one country for purposes of title V of the 1974 Act.

7. Pursuant to section 502 of the 1974 Act, and having taken account of the eligibility criteria set forth therein, I have determined that Gabon and Mongolia should be designated as beneficiary developing countries for purposes of the GSP. Further, I have determined that the names of two previously designated beneficiary developing countries should be modified.

8. Pursuant to section 502 of the 1974 Act, and having taken account of the eligibility criteria set forth therein, I have determined that the suspension pursuant to Proclamation 6575 of June 25, 1993, of preferential treatment for Mauritania as a least-developed beneficiary developing country under the GSP should be ended.

9. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that certain beneficiary developing countries should not receive preferential tariff treatment under the GSP with respect to certain eligible articles imported in quantities that exceed the applicable competitive need limitation.

10. Pursuant to section 503(c)(2)(C) of the 1974 Act, I have determined that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A) of the 1974 Act.

11. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) should be waived with respect to certain eligible articles from certain beneficiary developing countries.

12. Pursuant to section 503(d) of the 1974 Act, I have determined that the competitive need limitations of section 503(c)(2)(A) of the 1974 Act should be waived with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act, that such waivers are in the national economic interest of the United States.

13. Pursuant to section 507(2) of the 1974 Act, I have determined that Cambodia should be added to the list of countries identified in general note 4(a) of the Harmonized Tariff Schedule of the United States (HTS) as members of the Association of South East Asian Nations (ASEAN) that shall be treated as one country for purposes of title V of the 1974 Act.

14. Section 604 of the 1974 Act (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide for the designation of Gabon and Mongolia as beneficiary developing countries under the GSP, and to modify the names of two previously designated beneficiary developing countries, general note 4(a) to the HTS is modified as provided in sections A(1), A(2) and A(3) of Annex I to this proclamation and general note 4(b) to the HTS is modified as provided in section B of Annex I to this proclamation.

(2) In order to provide for the addition of Cambodia to the list of members of ASEAN that shall be treated as one country for purposes of title V of the 1974 Act, general note 4(a) to the HTS is modified as provided in section A(4) of Annex I to this proclamation.

(3) In order to provide for the restoration of preferential treatment for Mauritania as a least-developed beneficiary developing country under the GSP, general note 4(a) to the HTS is modified as provided in section C(1) of Annex I to this proclamation and general note 4(b) to the HTS is modified as provided in section C(2) of Annex I to this proclamation.

(4) In order to provide that certain countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles should be designated as beneficiary developing countries with respect to such article or articles for purposes of the GSP, and that certain countries should not be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, general note 4(d) to the HTS is modified as provided in section D of Annex I to this proclamation and the Rates of Duty 1–Special subcolumn for the HTS subheadings enumerated in section E of Annex I to this proclamation is modified as provided in such section.

(5) A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing countries set forth in Annex II to this proclamation.

(6) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(7)(a) The modifications to the HTS made by Annex I to this proclamation shall be effective on the dates specified in such annex.

(b) The action taken in Annex II to this proclamation shall be effective on the date of signature of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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Annex I

Modifications to the Harmonized Tariff
Schedule of the United States ("HTS")

Section A

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1999, general note 4(a) to the HTS is modified by:

(1) deleting "Congo" from the list entitled "Independent Countries" and inserting "Congo (Brazzaville)" in lieu thereof.

(2) deleting "Zaire" from the list entitled "Independent Countries" and inserting in alphabetical order "Congo (Kinshasa)" in lieu thereof.

(3) adding in alphabetical order "Gabon" and "Mongolia" to the list entitled "Independent Countries".

(4) deleting "Members of the Association of South East Asian Nations (ASEAN) Eligible for GSP except Brunei Darussalam, Malaysia and Singapore" and the countries identified as members thereof from the list entitled "Associations of Countries (treated as one country)" and inserting in lieu thereof the following:

"Member Countries of the Association
of South East Asian Nations (ASEAN)

Currently qualifying:

Cambodia
Indonesia
Philippines
Thailand"

Section B

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1999, general note 4(b)(i) to the HTS is modified by deleting "Zaire" and inserting in alphabetical order "Congo (Kinshasa)" in lieu thereof.

Section C

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after September 1, 1999:

(1) general note 4(a) to the HTS is modified by adding in alphabetical order "Mauritania" to the list entitled "Independent Countries".

(2) general note 4(b)(i) to the HTS is modified by adding in alphabetical order "Mauritania".

Section D

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1999, general note 4(d) to the Harmonized Tariff Schedule of the United States ("HTS") is modified by:

(1) deleting the following subheadings and the country set out opposite such subheadings:

1604.15.00 Chile	7403.19.00 Chile
7403.13.00 Chile	8708.39.50 Brazil

(2) deleting the country set out opposite the following subheadings:

2825.30.00 South Africa
2841.90.10 South Africa
2907.29.25 South Africa
2909.50.40 Indonesia
3817.10.50 Indonesia
8531.20.00 Philippines

(3) adding, in numerical sequence, the following provisions and countries set out opposite them:

0712.90.30 Peru	2008.19.30 Pakistan
0713.33.20 El Salvador	2106.90.52 El Salvador
0713.90.60 India	2607.00.00 Peru
0714.20.10 Dominican Republic	3920.63.20 India
0802.31.00 India	5904.92.00 Guatemala
0805.90.00 Turkey	6814.90.00 India
0904.20.76 India	7113.20.29 India
0910.10.40 India	7114.19.00 Peru
1702.30.22 Argentina	7801.99.30 Dominican Republic
1703.90.50 Poland	8517.19.80 Indonesia
1806.10.22 Colombia	8517.90.24 Costa Rica
1806.20.22 Turkey	8540.12.10 India
2005.10.00 Turkey	

(4) adding, in alphabetical order, the country or countries set out opposite the following subheadings:

0710.29.30 Dominican Republic	3501.90.20 Dominican Republic
1604.14.50 Colombia	4412.92.50 Guyana
1701.91.05 India	7115.90.30 Colombia
1702.90.40 Brazil	7403.12.00 Russia

Section E

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1999, each enumerated article's preferential tariff treatment under the Generalized System of Preferences ("GSP") in the HTS is modified as provided in this section.

(1) For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.

1604.15.00	7403.19.00
7403.13.00	8708.39.50

(2) For the following provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof:

0712.90.30	0805.90.00	1806.10.22	2607.00.00	7114.19.00
0713.33.20	0904.20.76	1806.20.22	3920.63.20	7801.99.30
0713.90.60	0910.10.40	2005.10.00	5904.92.00	8517.19.80
0714.20.10	1702.30.22	2008.19.30	6814.90.00	8517.90.24
0802.31.00	1703.90.50	2106.90.52	7113.20.29	8540.12.10

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Application of Section 503(c)(2)(A) of the 1974 Act

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8531.20.00	Philippines
8708.39.50	Brazil

[FR Doc. 99-17145
Filed 7-1-99; 11:31 am]
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For pricing information on available 1998–1999 volumes consult the CFR checklist which appears every Monday in the Federal Register.

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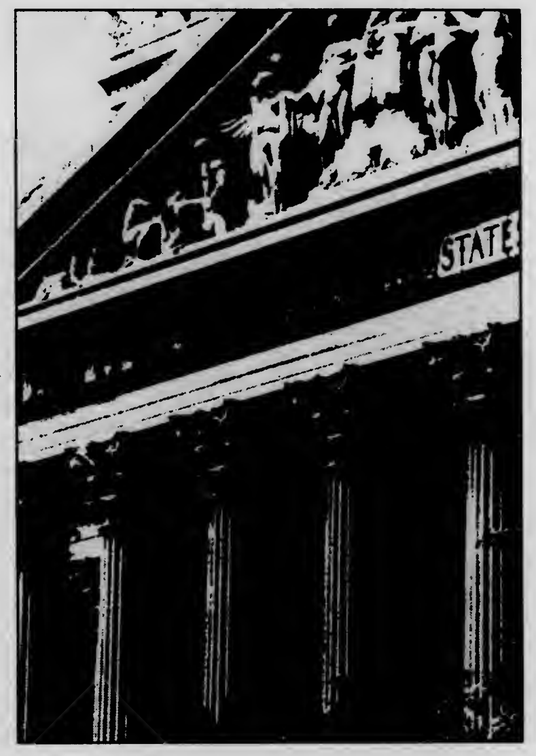
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106th Congress, 1st Session, 1999

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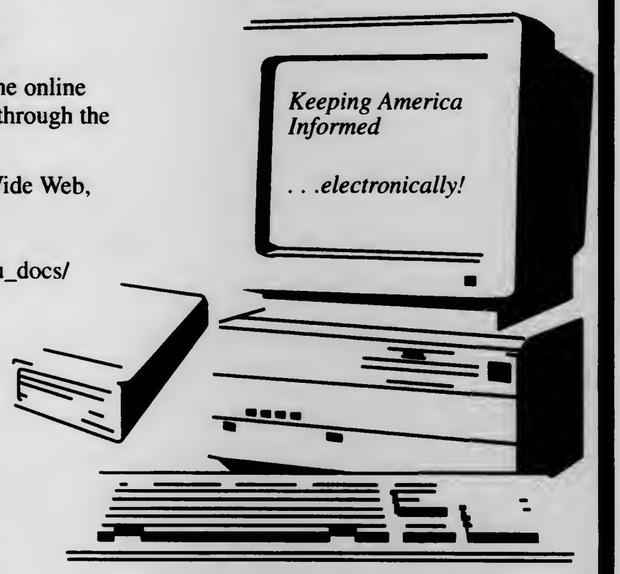
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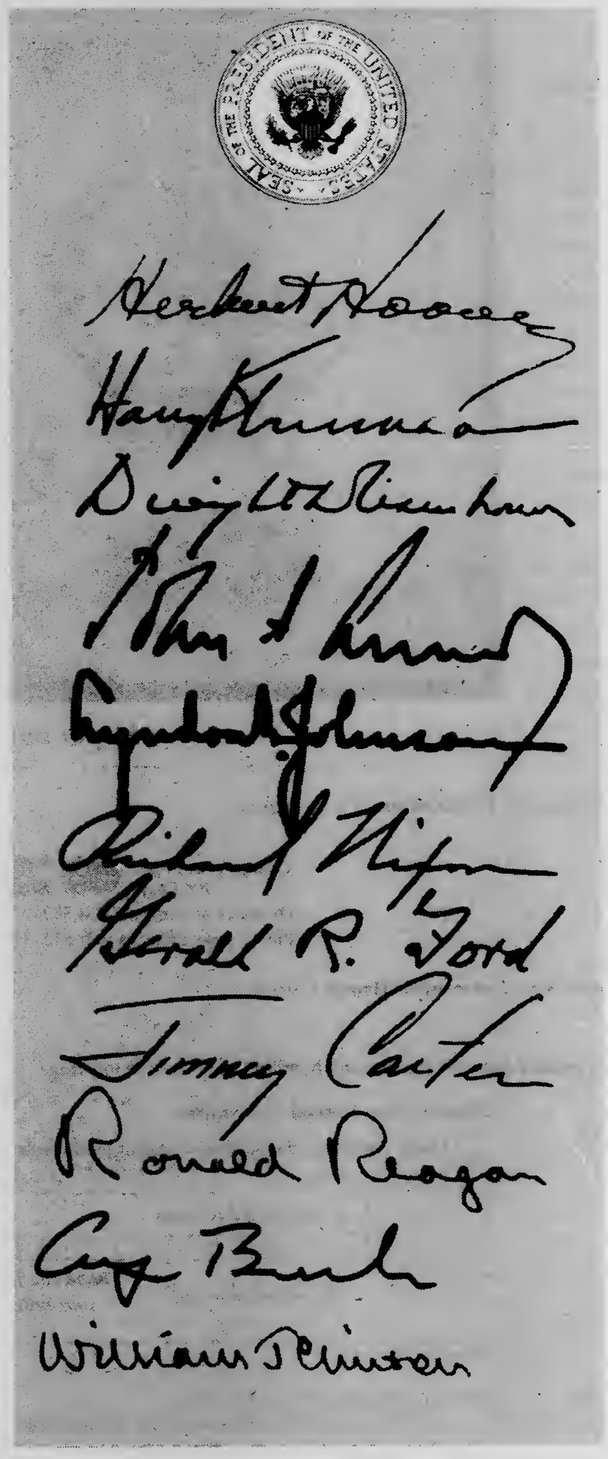
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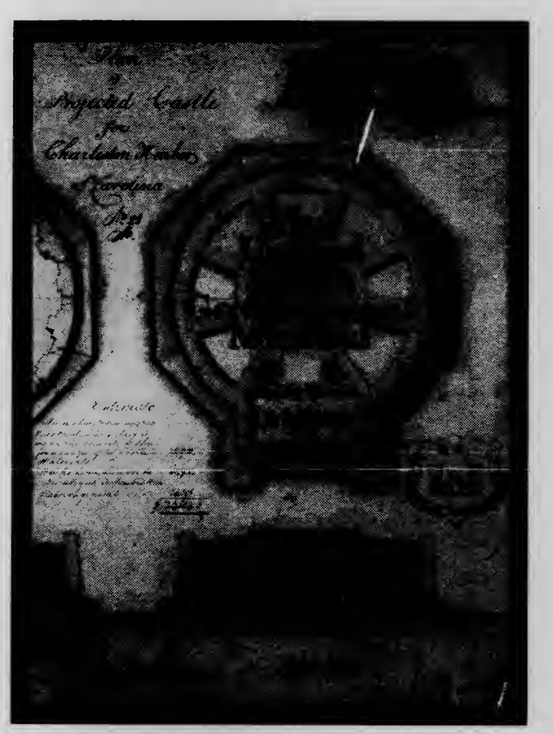
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206 AI63

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project

AGENCY: Office of Personnel Management.

ACTION: Interim regulation.

SUMMARY: OPM is issuing an interim regulation to implement the portion of the Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. This regulation specifies only the requirements that differ from existing FEHB Program regulations because of unique aspects of the demonstration project.

DATES: The effective date of this regulation is July 6, 1999. Comments must be received on or before September 7, 1999.

ADDRESSES: Comments must be sent to Abby L. Block, Chief, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, (202) 606–0004. You may submit comments and data by sending electronic mail (E-mail) to: *miwkaszyn@opm.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to implement the portion of the Defense Authorization Act for 1999, Public Law 105–261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans under the FEHB Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. DoD, with OPM concurrence, has selected eight geographic areas to serve as demonstration areas. The legislation requires that between 6 and 10 geographic areas be selected. No more than 66,000 individuals can participate in the demonstration project at any one time. Beneficiaries who are provided coverage under the demonstration project will not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under DoD's TRICARE program. Individuals who disenroll or cancel enrollment from the demonstration project are not eligible to reenroll in the demonstration project. OPM will establish separate risk pools for developing demonstration project enrollee premium rates. The Government contribution for demonstration enrollees will be paid by DoD and cannot exceed the amount that the Government would have contributed had the enrollee been enrolled as a regular FEHB enrollee in the same health benefits plan and level of benefits.

The legislation requires OPM and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. The first report is due by April 1, 2001; the second is due by December 31, 2002. The reports will focus on enrollee participation levels, impact on Medicare Part B enrollment, impact on premium rates and costs as compared to regular FEHB enrollees, impact on accessibility of care in military treatment facilities, impact on medical readiness and training in military treatment facilities, impact on the cost, accessibility, and availability of prescription drugs for DoD beneficiaries, and recommendations on eligibility and enrollment.

OPM has determined it necessary to specify certain differences from existing FEHB Program regulations because of the unique features of the demonstration project. This regulation amends Part 890 of title 5, Code of Federal Regulations (CFR) to authorize these differences. Should the program be extended beyond the three year demonstration project period, we will regulate to address any necessary changes to these provisions.

Waiver of Notice of Proposed Rule Making

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because FEHB Program carriers need the information contained in these regulations now to define policy parameters and operational requirements for the demonstration project in order to prepare and submit benefit and rate proposals. Carriers need sufficient time to implement changes necessary for enrollments to be effective January 1, 2000, as required by Public Law 105–261.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons set forth in the preamble, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 is revised to read as follows:

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Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

2. A new Subpart M is added to read as follows:

Subpart M—Department of Defense Federal Employees Health Benefits Program Demonstration Project

Sec.

890.1301 Purpose.
890.1302 Duration.
890.1303 Eligibility.
890.1304 Enrollment.
890.1305 Termination and cancellation.
890.1306 Government premium contributions.
890.1307 Data collection.
890.1308 Carrier participation.

Subpart M—Department of Defense Federal Employees Health Benefits Program Demonstration Project

§ 890.1301 Purpose.

The purpose of this subpart is to implement the portion of the Defense Authorization Act for 1999, Public Law 105–261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible Department of Defense (DoD) beneficiaries can enroll in health benefit plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years. The legislation requires the Office of Personnel Management (OPM) and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. OPM is authorizing certain differences from regular FEHB Program practices in order to ensure the successful implementation of the demonstration project. This subpart authorizes those differences.

§ 890.1302 Duration.

The demonstration project will run from January 1, 2000, through December 31, 2002.

§ 890.1303 Eligibility.

(a) Eligible enrollees must live within one of the demonstration areas and meet the definition of an eligible beneficiary in 10 U.S.C. 1108 (b). An eligible beneficiary under this subpart is—

(1) A member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c *et seq.*);

(2) An individual who is an unremarried former spouse of a member or former member described in section 1072(2)(F) or section 1072(2)(G) of title 10, United States Code;

(3) An individual who is—

(i) A dependent of a deceased member or former member described in section 1076(b) or 1076(a)(2)(B) of title 10, United States Code, or of a member who died while on active duty for a period of more than 30 days; and

(ii) A "member of family" as defined in section 8901(5) of title 5, United States Code; or

(4) An individual who is—

(i) A dependent of a living member or former member described in section 1076(b)(1) of title 10, United States Code, who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act, regardless of the member's or former member's eligibility for such hospital insurance benefits; and

(ii) A "member of family" as defined in section 8901(5) of title 5, United States Code.

(b) An eligible beneficiary may enroll in an FEHB plan under chapter 89 of title 5, United States Code, for self-only coverage or for self and family coverage. A self and family enrollment will include coverage of a dependent of the military member or former member who meets the definition of a "member of family" in section 8901(5) of title 5, United States Code. A self and family enrollment will not cover a person related to the beneficiary that does not qualify as a "member of family" (as defined in section 8901(5) of title 5, United States Code) of the military member or former member.

(c) A person eligible for coverage under this subpart shall not be required to satisfy any eligibility criteria specified in chapter 89 of title 5, United States Code, or in other subparts of this part (except as provided in paragraphs (a)(3), (a)(4), and (b) of this section) as a condition for enrollment in health benefit plans offered through the FEHB Program under the demonstration project.

(d) For purposes of determining whether an individual is a "member of family" under section 8901(5) of title 5, United States Code, for purposes of paragraph (a)(3) and (a)(4) of this section, a DoD member or former member described in section 1076(b) or 1076(a)(2)(B) of title 10, United States Code, shall only be deemed to be an employee under 8901(5) of title 5, United States Code, for the purpose of determining enrollment eligibility of a demonstration project dependent beneficiary.

(e) A person who is eligible to enroll in the FEHB Program as an employee as defined in section 8901(1) of title 5, United States Code, is not eligible to enroll in an FEHB plan under the demonstration project.

§ 890.1304 Enrollment.

(a) The 1999 health benefits open season for demonstration enrollees will be held concurrent with the open season for regular FEHB enrollees. Open seasons also will be held during the same period in the years 2000 and 2001. Eligible beneficiaries will be able to enroll for coverage, change enrollment tiers (e.g., self-only or self and family), or change health benefit plans or plan options during these periods.

(b) Demonstration project enrollees are required to pay associate membership dues if they enroll in open employee organization sponsored plans that are participating in the demonstration project.

(c) DoD will deny enrollment of eligible beneficiaries when the total number of beneficiaries and family members enrolled in the demonstration project reaches 66,000.

(d) Eligible beneficiaries can enroll only in health plans offered by health benefit carriers who are participating in the demonstration project.

(e) Beneficiaries and family members enrolled in the demonstration project are not eligible to obtain services from military treatment facilities or to enroll in a health care plan under the TRICARE Program.

(f) An eligible beneficiary enrolled in an FEHB plan under the demonstration project may change health benefits plans and coverage in the same manner as any other FEHB Program enrollee, except as provided for in this subpart.

§ 890.1305 Termination and cancellation.

(a) If a DoD enrolled beneficiary moves out of a demonstration area, the enrollment of the beneficiary and all family members will be terminated. If a beneficiary moves to an area located within a demonstration area, he or she will continue to be eligible to participate in the demonstration project. If the beneficiary was enrolled prior to the move in an HMO that does not serve the new demonstration area, the beneficiary will have an opportunity to select a new health plan offered by a carrier participating in the demonstration project in the new area. If the beneficiary was enrolled in a fee-for-service plan prior to the move and moves to another area that is within an existing demonstration area, the beneficiary can maintain his or her current coverage.

(b) If a DoD beneficiary disenrolls, cancels, or terminates enrollment for any reason, he or she will not be eligible to reenroll in the demonstration project. Once coverage ends, members have the right to revert back to all of the benefits to which they were entitled to under title 10 of the United States Code. Medicare covered members who had a Medigap policy prior to their enrollment in the demonstration project are entitled to reinstate that coverage under the conditions stated in section 1108(l) of title 10 United States Code.

(c) Demonstration project beneficiaries and members of family are eligible for Temporary Continuation of Coverage (TCC) under the conditions and for the durations described in subpart K or until the end of the demonstration project, whichever occurs first. The effective date of TCC for demonstration project beneficiaries or members of family will be the day after other coverage under this subpart ends. Beneficiaries or members of family selecting TCC must enroll in a health plan offered by a carrier participating in the demonstration project. If an individual enrolled in DoD TCC moves from a demonstration project area, coverage ends. Beneficiaries will be responsible for paying the entire DoD premium rate (OPM's approved net-to-carrier DoD rate plus 4 percent for contingency and administration reserves) plus 2 percent of this premium rate for administration of the program. DoD will make arrangements to collect premiums plus the 2 percent administrative charge from beneficiaries and forward them to OPM's Health Benefits Fund. OPM will establish procedures for receiving the 2 percent administrative payment into the Health Benefits Fund and making this amount available to DoD for administration of the program.

(d) Enrolled demonstration project beneficiaries are not eligible for the temporary extension of coverage and conversion opportunities described in subpart D of this part.

§ 890.1306 Government premium contributions.

The Secretary of Defense is responsible for the Government contribution for demonstration project enrolled beneficiaries. The Government contribution toward demonstration project premium rates will be determined in accordance with subpart E of this part.

§ 890.1307 Data collection.

Carriers will compile, maintain, and when requested by OPM or DoD report data on their plan's experience necessary to produce reports containing the following information and analysis:

(a) The number of eligible beneficiaries who elect to participate in the demonstration project.

(b) The number of eligible beneficiaries who elected to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate.

(c) The costs of health benefits charges and the costs (direct and indirect) of administering the benefits and services provided to eligible beneficiaries who elect to participate in the demonstration project as compared to similarly situated enrollees in the FEHB Program.

(d) Prescription drug costs for demonstration project beneficiaries.

§ 890.1308 Carrier participation.

(a) All carriers who participate in the FEHB Program and provide benefits to enrollees in the geographic areas selected as demonstration project areas must participate in the demonstration project, except as provided for in paragraphs (b), (c), and (d) of this section.

(b) Carriers who have less than 300 FEHB enrollees may, but are not required to, participate in the demonstration project.

(c) Carriers may, but are not required to, participate in the demonstration project if their service area overlaps a small portion (as determined by OPM) of a demonstration project geographic area.

(d) Carriers offering fee-for-service plans with enrollment limited to specific groups will not participate in the demonstration project.

[FR Doc. 99–16912 Filed 7–2–99; 8:45 am]

BILLING CODE 6325–01–U

RAILROAD RETIREMENT BOARD

20 CFR Part 220

Determining Disability

CFR Correction

In Title 20 of the Code of Federal Regulations, parts 1 to 399, revised as of Apr. 1, 1999, page 337, part 220, Apendix 3 is corrected by revising the second entry, in the second column under "JOB TITLE: MACHINIST" to read "<40 degrees abduction".

[FR Doc. 99–55521 Filed 7–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–093]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Triborough (125th Street) Bridge, mile 1.3, across the Harlem River in New York City, New York. This deviation from the regulations authorizes the bridge owner to keep the bridge in the closed position from August 2, 1999, through August 31, 1999, and from September 7, 1999, through October 6, 1999. This action is necessary to facilitate the removal and replacement of the bridge counterweight lift cables.

DATES: This deviation is effective from August 2, 1999, through August 31, 1999, and from September 7, 1999, through October 6, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Triborough (125th Street) Bridge, mile 1.3, across the Harlem River has vertical clearances of 54 feet at mean high water, and 59 feet at mean low water in the closed position. The current operating regulations listed at 33 CFR § 117.789(d) require the bridge to open on signal from 10 a.m. to 5 p.m., if at least four hours notice is given.

The bridge owner, the Triborough Bridge and Tunnel Authority (TBTA), requested a temporary deviation from the operating regulations for the Triborough (125th Street) Bridge in order to remove and replace the counterweight lift cables. During the process of this work the bridge can not be opened. Vessels that can pass under the bridge without an opening may do so at all times during the closed periods. This work is essential for public safety and the continued operation of the bridge. In accordance with 33 CFR § 117.35(c), this work will be performed

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with all due speed in order to return the bridge to normal operation as soon as possible.

This deviation to the operating regulations authorizes the TBTA to keep the Triborough (125th Street) Bridge, mile 1.3, across the Harlem River in New York City, New York, in the closed position for repairs from August 2, 1999, through August 31, 1999, and from September 7, 1999, through October 6, 1999.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 21, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–17054 Filed 7–2–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 173

[USCG 1998–3386]

RIN 2115–AF62

Adjustment of Fees for Issuing Numbers to Undocumented Vessels in Alaska

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard increases the fees it charges for issuing numbers to undocumented vessels in Alaska. It is doing this because the current fees do not cover its costs for issuing numbers to those vessels. This final rule brings the fees into full compliance with the general Federal statute on user fees, allowing the Coast Guard to fully recover its costs, and makes it more convenient for the public by offering additional methods to pay for this service.

DATES: This final rule is effective on September 1, 1999.

ADDRESSES: The comment received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1998–3386. They are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*. You may obtain a copy of this rule by calling the U. S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org* or at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, call or write Janice B. Giles, Program Development and Implementation Division, Office of Boating Safety, Coast Guard, telephone 202–267–0911, (email: jgiles@comdt.uscg.mil), or Sue Hargis, Seventeenth Coast Guard District (Alaska) Boating Safety Specialist, (907) 463–2297 (email: shargis@cgalaska.uscg.mil). For questions on viewing the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation. telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 1, 1999, we published a notice of proposed rulemaking (NPRM) entitled "Adjustment of Fees for Issuing Numbers to Undocumented Vessels in Alaska" in the **Federal Register** (64 FR 4816). We sent press releases concerning the proposed increase to all major newspapers in Alaska. We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

Title 33 of the Code of Federal Regulations (CFR), part 173, sets forth the requirements for issuing certificates of number to owners of vessels that are not documented, typically recreational boats. The Coast Guard's issuing numbers to undocumented vessels is unique to Alaska and the Seventeenth Coast Guard District; in all other parts of the nation, State or Territorial authorities act as the issuing authorities. We retain the responsibility for Alaska under Title 46 of the United States Code (U.S.C.), sub-section 12301(a), because the government of Alaska has not sought the approval of the Coast Guard for a State system of numbering vessels.

This final rule amends 33 CFR 173.85 so the charged fees cover the costs we incur for the number-issuing service we provide in Alaska. The increased fees affect those people who own undocumented vessels subject to 33 CFR 173.11 and who operate them principally in Alaska. This final rule also offers more methods for paying the fees.

The current $6 fee, set in 1972 (33 CFR 173.85), does not accrue to the Coast Guard. The money collected goes into the general fund of the U.S. Treasury as miscellaneous receipts of the Department of Transportation. Even if the money did accrue to us, it would cover barely 25 percent of the costs we incur for providing the service. The new fees will cover most, if not all, of these costs.

Under 46 U.S.C. 2110, the new fees will also be available to reimburse the Coast Guard for the full cost of accomplishing fee collection.

The development and application of a cost methodology came in for detailed discussion in the NPRM. That discussion rested on a contracted-for study of all user fees collected by the Coast Guard. A copy of the analysis is in the docket for this rulemaking. We adapted a system that employs Activity-Based Costing (ABC), which assigns costs to the activities required to produce a product, rather than to categories of expenses. All the fees we developed were rounded down to the nearest whole dollar, to simplify collection and accounting, and to conform to 46 U.S.C. 2110(a)(3). We must now set these fees in accordance with the criteria specified in 31 U.S.C. 9701 and Revised Circular A–25 of the Office of Management and Budget (OMB), which establishes guidelines for Federal agencies to assess fees for their services.

Discussion of Comment and Changes

In addition to publishing an NPRM, during February 1999 we published notices in local Alaskan newspapers: the Juneau Empire, Anchorage Daily News, Ketchikan Daily News, and Fairbanks News-Miner. We received only one comment on this rulemaking, which supported the fee increase.

Changes to 33 CFR 173.85. The three-year fee for an original or transferred certificate of number will increase from $6 to $24. The fee to renew a certificate of number will increase from $6 to $16. The fee for a duplicate certificate of number will increase from $1 to $9. The fee for replacing a lost or destroyed Validation Sticker will increase from $0.25 to $9. We may now accept payment of fees by check, money order, or major credit card (MasterCard or Visa), or in cash.

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Cost of Rule

For the owner of an undocumented vessel who needs to obtain an original or a transferred certificate of number, the increase in fees resulting from this final rule is a one-time increase of $18, or $6 a vessel a year. For the same owner who needs to obtain a renewal certificate, the increase is a one-time increase of $10, or $3.33 a vessel a year (See Table 1). The fees for duplicate certificates and replacement stickers arise "as needed" and are not subject to further analysis.

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Table 1: Transactions and associated fees

A/ Service provided	B/ Current fee (1972)	C/ New fee (1999)	D/ Increase	E/ Annual cost of increase (D/3 years)
Original certificate	$6	$24	$18	$6 yr.
Renewal certificate	$6	$16	$10	$3.33 yr.
Duplicate certificate	$1	$9	$8	$2.67 yr.
Replacement sticker	$0.25	$9	$8.75	$2.92 yr.

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To determine the fees set forth in this rulemaking, the Coast Guard adopted Activity-Based Costing (ABC), a methodology that assigns costs according to the activities required to produce an output. An alternative would have been to use the Consumer Price Index (CPI), an inflation index showing how prices change for goods such as food, housing, and medical care for a typical consumer. Although ABC and CPI are not directly related, it is useful to compare the two to make sure our fee increase is within the range most people would expect.

In 1972, we set the fee for an original certificate of number at $6.00. If we had accomplished routine adjustments based on the CPI between 1972 and 1998, the fee for an original certificate of number would have increased to $20.31 [1972 price × (1998 CPI/1972 CPI): $6.00 × (146.9/43.4) = $20.31]. As presented in Table 1, adjustments based on ABC yield a new fee for an original certificate of number of $24.00.

This comparison shows that the increase set forth by the Coast Guard to recover costs based on ABC is close to the increase that would have occurred had it been linked with the inflation rate for Alaska.

Under the general Federal statute on user fees, the Coast Guard must recover its costs for services provided to the public. Further, under 31 U.S.C. 9701 and Circular A–25, the Coast Guard must review these fees every two years to ensure full-cost recovery. Fees for issuing numbers to undocumented vessels in Alaska have gone unreviewed since 1972. The annual cost of the increases as outlined in this final rule and Table 1 is justified because of (1) the 17-year period between establishment and review of the fees and (2) the outcome of Coast Guard analysis using ABC.

Benefits of Rule

The fee increases will allow the Coast Guard both to recover its costs for issuing numbers to undocumented vessels and to maintain the service required by the general public. Full-cost recovery benefits the involved parties by (1) delivering service to owners of undocumented vessels in Alaska and (2) letting the Coast Guard meet Federal mandates on cost recovery.

This final rule will also increase convenience to the public by allowing more ways for them to make their payments.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this final rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because the effects of this final rule will be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Records of the Coast Guard indicate that as of December 31, 1997, there were 32,414 undocumented vessels numbered by the Coast Guard in Alaska. Of those 32,414 undocumented vessels, about 23 percent—7,107 vessels (4,945 commercial fishing vessels, 1,656 commercial passenger-carrying vessels, and 506 rental or livery vessels)—belong to commercial entities, some of which may qualify as small entities. The economic impact of this rule on these small entities, however, is minimal (see Table 2).

BILLING CODE 4910–15–U

Table 2: Annual cost of fee increase

Service provided	Proposed fee increase	Annual cost of increase
Original certificate	$18.00	$6.00/year
Renewal certificate	$10.00	$3.33/year
Duplicate certificate	$ 8.00	$2.67/year
Replacement sticker	$ 8.75	$2.92/year

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For the five years 1994 through 1998 inclusive, we analyzed the number of transactions recorded by the Seventeenth District for issuing original, renewal, and transfer certificates. We assessed the aggregate economic effects of the then-proposed rule across the fleet of undocumented vessels in Alaska (See Table 3). We consider five years long enough to accurately represent the number of transactions that will occur in the future. The data reflect the cost of the fee increase across the fleet of undocumented vessels. We estimate that 23% of these transactions may involve small entities. Therefore, the aggregate cost of the fee increase on small entities is $31,760.70 ($138,090 × 23%).

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Table 3: Aggregate cost of fee increase across the fleet

Service provided	Average transactions per year*	Cost per current fee	Cost per proposed fee	Difference
Original certificate	2,785	$16,710 ($6 x 2,785)	$66,840 ($24 x 2,785)	$50,130
Renewal certificate	8,796	$52,776 ($6 x 8,796)	$140,736 ($16 x 8,796)	$87,960
Total	**11,581**	**$69,486**	**$207,576**	**$138,090**

*Avg. transactions per year calculated from the five-year period, 1994-1998, inclusive.

BILLING CODE 4910-15-C

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this final rule so that they could better evaluate its effects on them and participate in the rulemaking. For clarification of the new fees, they can ask the Seventeenth Coast Guard District, Boat Registration Office, in person, by telephone or by e-mail as listed in **FOR FURTHER INFORMATION CONTACT**.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal enforcement. The Ombudsman will annually evaluate the enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this final rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The Coast Guard is complying with the general Federal statute on user fees, and with the specific Federal statute for services provided under Title 46 of the United States Code, subtitle II.

Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule will not impose an unfunded mandate.

Taking of Private Property

This final rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

We considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lC, the rule is categorically excluded from further environmental documentation. The rule merely adjusts the fees charged to owners of undocumented vessels for issuing vessel's numbers and validation stickers. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 173

Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 173 as follows:

PART 173–VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

1. Revise the citation of authority for Part 173 to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2110, 6101, 12301, 12302; OMB Circular A–25; 49 CFR 1.46.

2. Revise § 173.85 to read as follows:

§ 173.85 Fees levied by the Coast Guard.

a. In a State where the Coast Guard is the issuing authority, the fees for issuing certificates of number are:

(1) Original or transferred certificate of number and two validation stickers—$24.

(2) Renewed certificate of number and two validation stickers—$16.

(3) Duplicate certificate of number—$9.

(4) Replacement of lost or destroyed validation stickers—$9.

(b) Fees are payable by check or money-order made payable to the "U.S. Coast Guard"; by major credit card (MasterCard or Visa); or, when the owner applies in person, in cash.

Dated: June 24, 1999.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 99–17053 Filed 7–2–99; 8:45 am]

BILLING CODE 4910-15-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–005–ROP; FRL–6371–2]

Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, Revision to the 15 Percent Rate of Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making minor changes to its 1998 15 percent rate of progress federal implementation plan (1998 FIP) for the metropolitan Phoenix (Arizona) ozone nonattainment area. The 1998 FIP contains a demonstration that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress (ROP) requirement in the Clean Air Act. This action does not alter the basic conclusion in the 1998 FIP that the Phoenix metropolitan area has met the 15 percent ROP requirement as soon as practicable.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248, wicher.frances@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background Information

EPA is making minor changes to its 1998 15 percent rate of progress federal implementation plan (1998 15 percent ROP FIP or 1998 FIP) for the metropolitan Phoenix (Arizona) ozone nonattainment area. We proposed this action on March 26, 1999 at 64 FR 14659 (Reference 1).

Specifically, we are changing the control strategy (that is, the list of control measures) that makes up the basis for the 15 percent ROP demonstration for the Phoenix area by deleting the National Architectural Coatings Rule and adding phase II of Arizona's Clean Burning Gasoline (CBG) program to the control strategy in the 1998 FIP. Neither of these changes affects our basic conclusion in the 1998 15 percent ROP FIP that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress requirement in CAA section 182(b)(1) as soon as practicable. Therefore, we are not making any changes to the language in the Code of Federal Regulations noting that we have determined that the Phoenix area has demonstrated the 15 percent ROP. See 40 CFR 52.123(g). We are making these changes under our federal planning authority in CAA section 110(c).

We are also clarifying that the transportation conformity budget for the Phoenix ozone nonattainment area is 87.1 metric tons of VOC per ozone season average day.

We describe in detail the Clean Air Act's 15 percent ROP requirement, the 1998 FIP, and our proposed revisions to the 15 percent plan and the transportation conformity budget in the proposal and in the Technical Support Document (TSD) for this action (Reference 2). We also discuss in the proposal and the TSD our interpretation of the CAA section 172(c)(9) requirement for contingency measures and our policies for implementing this requirement. We will not repeat this information here. Readers interested in this information should consult the proposal and the TSD. We devote the majority of this preamble to summarizing our responses to the most significant comments received on the proposal.

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II. Summary of EPA's Response to Comments Received on the Proposal

We received three comment letters on the proposal. The Arizona Department of Environmental Quality (ADEQ) supported the revisions to the 15 percent ROP FIP as well as our interpretation of the Clean Air Act's contingency measure requirement. No response to ADEQ's letter is necessary.

The Maricopa Association of Governments (MAG) requested that we clarify certain issues regarding the revised transportation conformity budget. We have made the requested clarifications in the section on the conformity budget later in this preamble and discuss them more fully in section VI.B. of the TSD.

Finally, the Arizona Center for Law in the Public Interest (ACLPI) commented on the proposed revisions to the 15 percent ROP demonstration and our interpretation of the contingency measure requirement. A summary of our responses to ACLPI's most significant comments follows. We provide our complete responses to all of ACLPI's comments in section VI.A. of the TSD.

A. Comments on the Revisions to the 15 Percent ROP Demonstration

Comment: ACLPI contends that we have failed to propose additional control measures to make up the shortfall in the 15 percent ROP demonstration as we said we would do in our motion for voluntary remand in *Aspegren* v. *Browner*, No. 98–70824, a petition to review certain aspects of the 1998 FIP. ACLPI filed the petition on behalf of several Phoenix area residents in the U.S. Court of Appeals for the Ninth Circuit.

Response: The control strategy in the 1998 FIP included three proposed national rules for various categories of consumer and commercial products. When issued in September, 1998, the final rules resulted in slightly fewer emission reductions than we had estimated in the 1998 FIP.

In our motion for voluntary remand we stated that we would consider the effect of the final national rules on the 15 percent ROP demonstration for Phoenix, determine if additional control measures are needed to assure expeditious attainment of the 15 percent ROP goal in the area, and promulgate additional measures only if we determined that additional measures were needed. See *Aspegren*, paragraph 10, Motion for Voluntary Remand, October 29, 1998. As discussed below, we have done exactly that. Furthermore, the statement in our motion merely restates our Clean Air Act obligation under section 110(c) of the Act to demonstrate that the Phoenix area continues to meet, as expeditiously as practicable, the requirements of section 182(b)(1)(a) for a 15 percent ROP. That obligation, and moreover our authority, for this action are limited to making this demonstration and are not affected by statements of intent in our motion for voluntary remand.

We have evaluated the effect of the final national rules on the 15 percent ROP demonstration for the Phoenix area and determined that these rules result in a loss of 1 metric ton per day from the 15 percent ROP plan as of April 1, 1999. We have replaced these lost emission reductions in the ROP analysis by revising the control strategy in the 15 percent ROP plan to include emission reductions from the second phase of Arizona's Cleaner Burning Gasoline (CBG) program. The second phase of the CBG program did not go into effect until May 1, 1999, one month after the demonstration date in the 1998 FIP. Thus, with this revision, the demonstration date for the 15 percent ROP goal moves from April 1 to the CBG-phase II start date of May 1, 1999.

Even though there is now a shortfall as of the old April 1 demonstration date, the Clean Air Act does not require us to promulgate additional measures if we can still show that the 15 percent ROP goal is being met as expeditiously as practicable. We have, in fact, shown that May 1, 1999 is the most expeditious date by which the 15 percent ROP goal can now be met in the Phoenix area and that all the control measures necessary to meet this goal are already in place. See the proposal at page 14661. We, therefore, have met our Clean Air Act obligation.

Comment: ACLPI notes that in our revised FIP proposal we are giving additional credit to Arizona's CBG rule and claims that we stated in our 1998 FIP proposal that if we approved the CBG program in lieu of the federal reformulated gasoline program (RFG) we would give it the same amount of credit. ACLPI quotes language from the proposal (at page 3690) in which we stated that emission reductions from an approved CBG program that exceeded those from federal RFG "may be used by the State in any future rate-of-progress demonstrations." ACLPI claims that we do not explain this policy reversal to credit the CBG program with more emission reductions and that failure to provide an explanation is arbitrary, capricious and an abuse of discretion.

Response: We fully explain in the proposal for this rule the source of the additional reductions from the State's CBG program. See the proposal at page 14661. To summarize, in the 1998 FIP, we only credited phase I of the two-phased federal reformulated gasoline (RFG) program in the 15 percent ROP demonstration. See table 5 on page 3690 of the proposed 1998 FIP (Reference 3). Arizona's CBG program is also a two-phased program. Phase I of the State program was implemented last year, and for the purposes of the 1998 FIP, we considered it equivalent to phase I of the federal RFG program.

The second phase of the CBG program is similar to the more stringent phase II federal RFG program—a program we did not credit in the 1998 FIP. When phase II CBG went into effect on May 1, 1999, it generated an additional 2 metric tons per day (mtpd) in reductions over the reductions from phase I of the State program. Since we did not credit phase II of either the federal or State program in the 1998 FIP, this 2 mtpd reduction is new to the 15 percent ROP plan and does not duplicate reductions already accounted for in the plan. More simply, these are new reductions from a new program which first went into place in May, 1999.

The statement from the 1998 FIP proposal that ACLPI quotes was not a policy statement; rather it was simply intended to indicate to the State and others that any excess emission reduction credits could be used in future ROP demonstrations. As such, it is not a policy declaration from which we need to explain a deviation as required by the Court in the case cited by ACLPI (*Western States Petroleum Ass'n.* v. *EPA*, 87 F.3d 280 (9th Cir. 1996)). Further, it is still true that any excess reductions can be applied to future ROP demonstration.

Comment: ACLPI claims that we still fail to make the "as soon as possible" showing by refusing to consider other control measures that could be implemented to achieve the 15 percent milestone before May 1, 1999. ACLPI also notes that the issue will be moot by the time we finalize the proposed revisions to the FIP because May 1, 1999 will have passed.

Response: Contrary to ACLPI's claim, we did make the "as soon as practicable" demonstration in the proposed revision to the FIP. Our demonstration was simple because less than two months separated the proposal in mid-March, 1999 and the revised demonstration date of May 1, 1999. As we stated in the proposal at page 14661, "[t]his time period is so short that we cannot complete this rulemaking prior to May 1, 1999 and still provide an adequate period for the public to comment and then for sources to comply with any new rules." Based on this reasoning, we concluded that there are no other measures available for the Phoenix area that could meaningfully advance the date by which the 15 percent ROP is demonstrated. See the proposal at page 14662.

ACLPI fails to identify the "other control measures that could be implemented to achieve the 15 percent milestone before May 1, 1999" that it claims we are refusing to consider. Without this specific information, we are unable to determine the validity of their claim and cannot further respond to their comment. We believe, however, that we have considered all practicable and available controls and found none that could have advanced the May 1 demonstration date.

We agree with ACLPI that the issue is now moot because the May 1 date has passed.

B. ACLPI's Comments on the Section 172(c)(9) Contingency Measures

Comment: ACLPI disputes our position that the contingency measure requirement only pertains to nonattainment area plans as a whole and not specifically to the 15 percent ROP provision of the nonattainment plan. ACLPI states that our position ignores the plain language of the Act that section 172(c) applies to all nonattainment plan provisions.

Response: In the proposal and TSD, we respond to similar assertions made by ACLPI in its brief for the *Aspegren* petitioners. Please see page 14662 of the proposal and pages 20–22 of the TSD. We add the following to our previous response.

We do not agree that the contingency measure requirement in section 172(c)(9) pertains specifically to the 15 percent ROP requirement. We believe a better reading of the Act is that contingency measures are required as part of the overall nonattainment plan and not as a feature of each component part of that plan, such as the 15 percent ROP plan.

Under the CAA, a nonattainment plan is a compendium of elements that together provide for progress toward and expeditious attainment of the air quality standards in an area. Within an area's nonattainment plan, the section 172(c)(9) contingency measures serve as the first remedial step in addressing a failure of the area actually to make the required progress or to attain by the required date. Thus, we believe that a failure in any plan element that results in an area not making the required progress or not attaining triggers the contingency measures. In contrast, tying the contingency measures to a failure in a specific provision of the nonattainment plan—e.g., the 15 percent ROP provision—would too narrowly limit the conditions for their implementation, thereby weakening their remedial role in assuring an area's overall progress toward and expeditious attainment of the air quality standards.

A requirement for inclusion of contingency measures in the 15 percent ROP plan would make sense if a disapproval of the plan under section 182(b)(1)(A) for failure to provide for a 15 percent ROP triggered the contingency measures. It does not. The consequences of a 15 percent ROP plan disapproval are sanctions under section 179(a) and FIPs under section 110(c) unless the state revises the plan to make it approvable.

A requirement to include contingency measures in ROP plans would also make sense if the only way to ensure that states developed and submitted adequate contingency measures were to incorporate the requirement into another nonattainment area provision. Contingency measures, however, are a required submittal directly under the Act, and a state's failure to submit approvable contingency measures is by itself subject to the Act's sanctions and FIP provisions.

Contrary to ACLPI's contention, our position is supported by the plain language of section 172(c)(9). While the other subsections in section 172(c) begin with "such *plan provisions* shall * * *", section 172(c)(9) begins with "such *plan* shall. * * *" (emphasis added). "Such plan" refers to the overall nonattainment plan rather than an individual element or provision of it. This difference in language between the contingency measures requirement and the other requirements in section 172(c) emphasizes that the contingency measures serve to backstop the entire nonattainment plan and not just particular elements of it.

Moreover, our position is supported by the trigger for implementing contingency measures in section 172(c)(9) itself. The section 172(c)(9) contingency measures are not triggered by failures of the ROP or attainment plan to actually provide RFP or attainment; they are triggered by the failure of an area to actually make reasonable further progress or to attain by its required deadline.

This distinction between a plan's failure and an area's failure is not trivial. To determine if a plan succeeded or failed, one only reviews the current status of the measures and assumptions in that plan. In other words, the plan is evaluated in isolation without regard to other factors that may influence emissions and air quality in an area, such as economic and population growth and sources violating air quality rules.

In contrast, to determine if an area succeeded or failed to meet its ROP milestone, one determines if current emissions in the area are at or below the ROP target level. See *General Preamble* at page 13509. To do this, one looks at the current status of all in-place, real, permanent and enforceable controls—even those not relied on in or anticipated by the 15 percent ROP plan—and current socio-economic data to calculate a whole new inventory of actual emissions. In other words, all factors that influence emissions in an area are taken into account. The original ROP plan is referenced only to obtain the target emissions level. See the *General Preamble* at pages 13504 and 13518 (Reference 5).

The determination of whether an area attained or failed to attain is even more simple: only ambient air quality data is examined. The status of the attainment demonstration plan is not reviewed at all. See *General Preamble* at page 13506.

Because the trigger for implementing contingency measures in section 172(c)(9) is thus independent of the success or failure of any particular plan provision, it follows that the contingency measures are also independent of any particular plan provision. They are elements of the overall nonattainment plan, serving its purpose of "eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of these standards." Section 176(c)(1)(A) of the Clean Air Act.

We emphasize that the above discussion addresses only the circumstances for triggering contingency measures. Under the Act, states are required to implement the non-contingent provisions of their SIPs regardless of whether they meet a milestone or attain. If a state determines that a SIP measure is no longer needed to meet the Act's requirements, it must request and EPA must approve a SIP revision, consistent with section 110(l), to remove the measure before the state is relieved of its statutory obligation to implement it.

Comment: ACLPI continues to claim that EPA's guidance documents clearly recognize that contingency measures must be included in a 15 percent ROP plan submittal and asserts that our "attempt to reinterpret our guidance is unpersuasive." ACLPI provides, as an example, our explanation in the proposal that the term "rate-of-progress plan" in the EPA document *Guidance for Growth Factors* (Reference 4) is a

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compact reference to all the submittals due on November 15, 1993 and not just the 15 percent ROP plans. ACLPI also claims that we have ignored that this guidance document specifically defines the term "rate-of-progress plan" as that part of the SIP revision due November 15, 1993 "which describes * * * how the areas will achieve an actual [VOC] emissions reduction of at least 15 percent."

Response: The first paragraph of the Executive Summary in the *Guidance for Growth Factors* contains a short definition of "rate-of-progress plan." The full definition of the term is in Appendix A to the document. In Appendix A, the rate-of-progress plan is defined as "the *portion of the SIP revision due by November 15, 1993*, that describes how moderate and above ozone nonattainment areas plan to achieve the 15 percent VOC emissions reduction." (Emphasis added). This definition goes on to note that "[a]ll moderate intrastate areas that choose to utilize the EKMA [air quality model], are also required to include their attainment demonstration in this SIP revision."

This definition makes clear that the ROP plan is only a portion of a larger SIP revision due by November 15, 1993. It is also clear that another part of that SIP revision, separate from the ROP plan, is the attainment demonstration for certain moderate nonattainment areas.

With this definition in mind, we return to the Executive Summary. As noted by ACLPI in its comments, the attainment demonstration is also distinguished here from the rate-of-progress plan. However, right after this distinction is made, the following statement is made:

> States must submit their fully adopted rate-of-progress plans to EPA by November, 1993. Moderate ozone nonattainment areas not using [the Urban Airshed Model] must include an attainment demonstration *in their fully adopted rate-of-progress plans.*

(Emphasis added).

As a distinct requirement, these attainment demonstrations, cannot logically be in the ROP plans. Therefore, the term "rate-of-progress plan" as used in this statement cannot have the meaning given to it just a few paragraphs before in the Executive Summary and in Appendix A. The only meaning that does make sense here is the one we have suggested: it is a compact reference to all the submittals due on November 15, 1993.

Knowing that the exact meaning of the term "rate-of-progress plan" in the *Guidance for Growth Factors* is dependent on the context, we now evaluate the statement that ACLPI claims proves we consider contingency measures as a required element of 15 percent ROP plans. This statement is from the last paragraph of the Executive Summary of the *Guidance for Growth Factors:*

> In addition, this document describes the requirements for contingency measures that must be included in the rate-of-progress plans for moderate and above ozone nonattainment areas, and provides examples of possible contingency measures.

Read together with the very similar statement on attainment demonstrations discussed above, the clause "included in the rate-of-progress plans" is clearly intended to mean "a part of the overall set of plans submitted at the same time as the rate-of-progress plans" that is, submitted by November 15, 1993. Given this reading, this statement becomes consistent with every other piece of EPA guidance on the section 172(c)(9) contingency measures for ozone nonattainment areas: they were a separate and distinct part of the overall SIP submittal due in November, 1993.

EPA's basic guidance on ozone contingency measures is found in the *General Preamble* at page 13510 and in Chapter 9 of *Guidance for Growth Factors.* A close reading of this guidance discloses that the primary connection made between the requirement in section 182(b)(1)(A) for 15 percent ROP plans and the requirement in section 172(c)(9) for contingency measures is the identical submittal date. This guidance is clear that we consider the contingency measures to be a separate statutory requirement that we can act on independently from the 15 percent ROP plan.

EPA's purpose in issuing guidance is to provide the states and the general public with advance notice of how it will generally interpret the Act's requirements. See General Preamble at 13498. We actually apply these interpretations at the time we act on SIP revisions (or promulgate FIPs). Therefore, if there is any question about the meaning of EPA's guidance on 15 percent ROP plans and contingency measures, it can best be answered by reviewing just how we have applied the guidance in actual rulemakings on 15 percent ROP plans.

Nationally, we have taken final action on 32 separate 15 percent ROP plans (including the Phoenix FIP) in 24 different rulemakings. See Appendix B to the TSD for a complete listing. In 16 of these rulemakings (two-thirds of the total), we acted on the 15 percent ROP plans without concurrently acting on the contingency measures. If we considered the 15 percent ROP plan and the contingency measures elements of the same requirement, then we could not have acted on either without acting on both.

In the other 8 rulemakings, we did act on the contingency measures concurrently with the 15 percent plan. In many of these instances, the State voluntarily chose to use the excess emission reductions in its 15 percent ROP plan to satisfy its contingency measure requirement. For these rulemakings, we did look at the merits of the ROP plan, most specifically, at the claim of excess emission reductions, to determine the approvability of the contingency measures. Conversely, we did not look at the approvability of the contingency measures to determine the approvability of the 15 percent ROP plan. In all the other cases, we treated the contingency measures and the 15 percent ROP plans as strictly separate requirements and did not link the approvability of one to the presence or approvability of the other.

ACLPI dismisses this rulemaking record as "utterly irrelevant" and not negating our previous actions with respect to Arizona or the clear import of our guidance. We have already discussed our guidance and the fact that it does not require contingency measures in complete and approvable 15 percent plans. Since the guidance at issue is guidance applicable to every 15 percent plan in the country, the fact that we have consistently applied it to the same effect is clearly relevant to determining the appropriate interpretation of our guidance. Equally, neither of our two final actions on Arizona's 15 percent ROP plans—the 1998 FIP and today's action—have included contingency measures.

III. The New Transportation Conformity Budget For VOCS

Under EPA's conformity rule, we identify a transportation conformity budget whenever we approve any control strategy plan, such as the 15 percent ROP plan, into the SIP. See 40 CFR 93.118(e)(4)(iii). This requirement also applies when we promulgate a control strategy in a FIP as we are doing today.

We are identifying a transportation conformity budget for the Phoenix ozone nonattainment area of 87.1 metric tons of VOC per ozone season average day. The analysis supporting identification of this budget can be found in section V.B. of the TSD. This budget is for 1996 and reflects all on-road mobile source control measures that are included in the 15 percent ROP control strategy.

After the effective date of this action, all transportation actions taken in the Phoenix ozone nonattainment area that are required to show conformity to a budget under Clean Air Act section 176(c) and EPA's conformity rule in 40 CFR part 93 must conform to the budget established by this rule. This transportation conformity budget is based in part on a number of SIP-approved transportation control measures (TCMs)(including the Arizona's vehicle emission inspection program and the Cleaner Burning Gasoline program). Any future ozone conformity determinations must also demonstrate the expeditious implementation of these TCMs as well as any other SIP-approved TCMs for ozone.

Once effective, the transportation conformity budget established by this rule will be the only approved and applicable transportation conformity budget for ozone in the Phoenix nonattainment area. Previous ozone budgets, whether submitted by Arizona or promulgated by EPA in the 1998 FIP, will no longer be valid for transportation conformity determinations because we have not found any State-submitted budgets to be adequate for use under our conformity rule and because we are replacing the budget in the 1998 FIP.

IV. Statement of Final Action

Under our authority in CAA section 110(c) and for the reasons discussed in the March 26, 1999 proposal, EPA determines that the Phoenix metropolitan area has in place sufficient control measures to meet the 15 percent rate of progress requirement in CAA section 182(b)(1)(A) as soon as practicable. This determination is based on our analysis of the effect of the control measures listed in Table 2 of the proposal on emissions in the Phoenix area.

Consistent with CAA section 176(c) and 40 CFR part 93 and under our authority in section 110(c), we are also identifying a transportation conformity budget for the Phoenix ozone nonattainment area of 87.1 metric tons of VOC per ozone season average day.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure of $100 million or more in any one year by state, local, and tribal governments, in aggregate, or by the private sector. Section 203 requires EPA to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

This rule does not include a Federal mandate and will not result in any expenditures by State, local, and tribal governments or the private sector. Therefore, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it simply revises a demonstration based on previously established requirements and contains no additional requirements applicable to small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Applicability of Executive Order 13045: Children's Health Protection

This rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on State, local or tribal governments nor impose any enforceable duties on these entities. Accordingly, the requirements of

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section 1(a) of Executive Order 12875 do not apply to this rule.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This action neither creates a mandate nor imposes any enforceable duties on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. The National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This rule does not include any technical standards; therefore, EPA is not considering the use of any voluntary consensus standards.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: June 28, 1999.

Carol M. Browner,

Administrator.

References

1. 64 FR 14659–14665 (March 26, 1999); *Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, Revisions to the 15 Percent Rate of Progress Plan;* Proposed rule.

2. Air Division, U.S. EPA, Region 9, "Final Addendum to the Technical Support Document for the Notice of Final Rulemaking on the Clean Air Act Section 182(b)(1) 15 Percent Rate of Progress Requirement for the Phoenix Metropolitan Ozone Nonattainment Area," June 14, 1999.

3. 63 FR 3687–3693 (January 26, 1998); *Approval and Promulgation of Implementation Plans; Phoenix Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Bose Year Emission Inventory;* Proposed rule.

4. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate of Progress Plans,* Office of Air Quality Planning and Standards, U.S. EPA. EPA–452/R–93–002, March 1993.

5. 57 FR 13498 (April 16, 1992). *State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* General Preamble for future proposed rulemakings.

[FR Doc. 99–16932 Filed 7–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0018; UT–001–0019; UT–001–0020; FRL–6368–8]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Foreword and Definitions, Revision to Definition for Sole Source of Heat and Emissions Standards, Nonsubstantive Changes; General Requirements, Open Burning and Nonsubstantive Changes; and Foreword and Definitions, Addition of Definition for PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 26, 1999, EPA published a direct final and proposed rulemaking approving State Implementation Plan (SIP) revisions submitted by the Governor of the State of Utah. On July 11, 1994, the Governor submitted a SIP revision for the purpose of establishing a modification to the definition for "Sole Source of Heat" in UACR R307–1–1; this revision also made a change to UACR R307–1–4, "Emissions Standards." On February 6, 1996, a SIP revision to UACR R307–1–2 was submitted by the Governor of Utah which contains changes to Utah's open burning rules, requiring that the local county fire marshal has to establish a 30-day open burning window in order for open burning to be allowed in areas outside of nonattainment areas. Other minor changes are made in this revision to UACR R307–1–2.4, "General Burning" and R307–1–2.5, "Confidentiality of Information." In addition, on July 9, 1998, SIP revisions were submitted that would add a definition for "PM_{10} Nonattainment Area" to UACR R307–1–1. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective August 5, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202 and the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the state documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us", or "our" are used, we mean the Environmental Protection Agency (EPA).

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I. EPA's Final Action

We are approving the Governor's submittal of July 11, 1994, to revise the definition for "Sole Source of Heat" to define which households may continue burning during woodburning bans so that those households with small portable heaters still qualify under the definition of households for which wood or coal burning is the only source of heat. We are also approving a change made under "Emissions Standards," which moves section 4.13.3 D to section 4.13.3.E. We are approving the submittal of February 6, 1996, which made changes to Utah's open burning regulations (in "General Burning") to require that the local county fire marshal establish a 30-day window during which open burning activities may occur in areas outside of nonattainment areas during the spring and fall closed burning seasons. This applies to all areas in the State outside of Salt Lake, Davis, Weber, and Utah Counties where the state forester has permitted the local county fire marshal to establish the open burning window. Minor changes were also made to R307–1–2.4, "General Burning" as well as R307–1–2.5, "Confidentiality of Information." Lastly, we are approving the Governor's submittal of July 9, 1998, adding a definition for "PM_{10} Nonattainment Area" in R307–1–1.

II. Summary of SIP Revision

A. Review of Revisions

1. Review of the Changes to "Foreword and Definitions" Concerning the Definition for "Sole Source of Heat"

The residential woodburning regulation revision was developed by the Utah Division of Air Quality with input from local governments and the public. The Air Quality Board approved two changes to the woodburning rule at the December 9, 1993, hearing which were later submitted by the Governor on July 11, 1994. The revision to R307–1–1 changes the definition for "Sole Source of Heat." This change defines which households may continue burning during woodburning bans so that those households with small portable heaters still qualify under the definition of households for which wood or coal burning is the only source of heat. The second revision, which was made to the residential woodburning regulations under R307–1–4.13. specifies the actions which must be taken if contingency measures are implemented in the Salt Lake, Davis or Utah County nonattainment areas. These plans were requested to be withdrawn by the Governor in a November 9, 1998, letter to the Regional Administrator. We returned the portions of these plans with a letter to the Governor on January 29, 1999. However, a nonsubstantive change was made in this section as a result of the revision. This change moves section 4.13.3 D to section 4.13.3.E. For the purposes of ease and efficiency for the State, the revised sub-section number is being approved, and thus, there will be no section 4.13.3.D.

2. Review of the Changes to "General Requirements" Concerning Open Burning Regulations and Minor Changes to Rules

On February 6, 1996, the State of Utah submitted its revised open burning regulations in order to make them more consistent with Utah Code 65A–8–9. Utah made revisions to its open burning regulations for areas outside of nonattainment areas because they were found to be in conflict with Utah Code 65A–8–9. The Code prohibits open burning between June 1 and October 31, unless a permit has been issued, whereas the open burning regulations allowed burning between March 30 and May 30 and between September 15 and October 30 in areas outside of nonattainment areas. These changes were made under UACR R307–1–2.4.4.

The following are requirements for open burning under Utah Code 65A–8–9 which pertain to the rule change addressed by the SIP:

1. June 1 through October 31 of each year is to be a closed fire season throughout the State.

2. The state forester has jurisdiction over the types of open burning allowed with a permit during the closed fire season.

The open burning requirement that was previously in the Utah SIP pertaining to this rule change is as follows:

For areas outside of Salt Lake, Davis, Weber, and Utah Counties (nonattainment areas), open burning is allowed during the periods of March 30 through May 30 and September 15 through October 30 with a permit issued by the authorized local authority.

The open burning requirement that was adopted by the Utah Air Quality Board on September 6, 1995 is as follows:

For areas outside of the designated nonattainment areas, open burning is allowed during the March 30 through May 30 period and the September 15 through October 30 period if the local county fire marshal has established a 30-day window for such open burning to occur with a permit issued by the authorized local authority and the state forester has allowed for such permit to be issued.

Other minor changes were made to the open burning regulations as well. Section R307–1–2.4, "General Burning" has had numbers added to it to make it more consistent with Utah Code 19–2–114. Section R307–1–2.4.3.C is corrected to refer to Subsection R307–17–3 in place of section 4.13.3 of the regulations. More minor changes were also made throughout the open burning regulations to change capitalization and to correct references.

Minor changes were also made under R307–1–2.5, "Confidentiality of Information" including a changed statutory reference in R307–1–2.5.1.B. Additional changes were made to correct references and capitalization of section headings.

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3. Review of the Changes to "Foreword and Definitions" Concerning the Addition of a Definition for PM_{10} nonattainment Areas

On January 7, 1998, the Air Quality Board approved the addition of the definition for "PM_{10} Nonattainment Area." This revision was made to ensure that the currently designated nonattainment areas within the State for PM_{10} would be held to the same requirements after the pre-existing PM_{10} NAAQS were revoked as they were prior to the revocation of the NAAQS. Since this revision was made, the United States Court of Appeals for the District of Columbia Circuit ruled on May 14, 1999, in *American Trucking Associations, Inc.* v. *U.S. Environmental Protection Agency* (Nos. 97–1440 and 97–1441), to vacate our new standards for PM_{10}. We are now unable to approve any revocations of the old PM_{10} standard. Nonetheless, this definition can still be approved without a revocation of the PM_{10} standard because it reaffirms the designation status for the nonattainment areas, set forth in 40 CFR 81.345.

B. Procedural Background

The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA provides that each SIP revision be adopted after going through a reasonable notice and public hearing process prior to being submitted by a State. We have evaluated each of the above Governor's submittals and discuss them below.

1. July 11, 1994 Submittal

Copies of the proposed changes were made available to the public and the State held public hearings for the changes to "Foreword and Definitions" and "Emissions Standards" on October 5, 1993, October 6, 1993, October 7, 1993, and October 13, 1993. The changes to the State's rules were adopted by the Air Quality Board on December 9, 1993 and became effective on January 31, 1994; the revision was formally submitted by the Governor on July 11, 1994. We determined the submittal was complete on September 22, 1994. A portion of this revision included PM_{10} contingency plans which were requested to be withdrawn by the Governor in a November 9, 1998, letter to the Regional Administrator. We returned this portion of the submittal with a letter to the Governor on January 29, 1999.

2. February 6, 1996 Submittal

Copies of the proposed changes were made available to the public and the State held public hearings for the changes to "General Requirements" on July 14 (two separate hearings), 17, 18, and 19, 1995. The changes to the State's rule were adopted by the Air Quality Board on September 6, 1995 and became effective on October 31, 1995; the new open burning regulations, along with the other nonsubstantive changes to "General Requirements," were formally submitted by the Governor on February 6, 1996. We determined the submittal was complete on August 14, 1996.

3. July 9, 1998 Submittal

Copies of the proposed changes were made available to the public and the State held public hearings for the changes to "Foreword and Definitions" on December 16, 1997 and January 5, 1998. The changes to the State's rule were adopted by the Air Quality Board on January 7, 1998 and became effective on January 8, 1998; the new definition was formally submitted by the Governor on July 9, 1998. We determined the submittal was complete on October 16, 1998.

III. EPA's Response to Public Comments

The following discussion responds to the adverse comments that we received concerning the **Federal Register** direct final rule approving Utah's definition of "PM_{10} Nonattainment Area."

Comment: We received an adverse comment from the Utah Petroleum Association regarding the definition of "PM_{10} Nonattainment Area." They believe that we had no reason to approve the new definition for "PM_{10} Nonattainment Area" unless we intended to revoke the pre-existing PM_{10} standard for the nonattainment areas in Utah (Salt Lake County, Utah County, and Ogden City). The Utah Petroleum Association believes that we should either revoke the standard for these nonattainment areas at the same time as we approve this new definition or provide Utah with a commitment for a date in the future when the revocation will occur. They believe that we have no legal basis for approving this definition if we do not follow the above. If we cannot take one of these two actions, they believe that we should wait to approve this definition until we are able to do so. They also believe that if we cannot revoke the PM_{10} standard at the same time as we approve this definition or if we cannot commit to a date when the standard will be revoked, that the approval of the definition brings a result that is contrary to the intent of Utah in submitting the definition to us for approval into the SIP. The commentors cite Utah's explanation of this new definition to show that the State intended for the revocation to take place shortly after the approval of the definition. The State certified that adding the definition would enable them to guarantee that all rules that currently apply in the PM_{10} nonattainment areas would remain in place after the PM_{10} standard is revoked.

EPA's Response: The State adopted this definition so that all requirements applying in the PM_{10} nonattainment areas would remain in place once we revoked the PM_{10} standard in those areas. But, this definition can also be approved without a revocation of the PM_{10} standard because it simply reaffirms the designation status for the nonattainment areas contained in 40 CFR 81.345. With regard to the Utah Petroleum Association's assertion that we should only approve this definition at the same time as we revoke the standard, that action is not necessary for this definition to be effective. Furthermore, we were unable to revoke the PM_{10} standard at the time that the previous direct final rule for this action was published because we had not yet approved State revisions to nonattainment SIPs for Salt Lake County and Utah County.

Nor did the State intend for these two actions to occur at the same time. Contrary to the comment, the State did not request a simultaneous revocation and approval of this definition. The State has since requested a revocation for the nonattainment areas. However, after this action was published and the comment received, the United States Court of Appeals for the District of Columbia's Circuit ruled on May 14, 1999 to vacate our new standards for PM_{10}. We are now unable to approve any revocations of the old PM_{10} standard. Despite this, we have no reason not to act on the revision and believe we should not further delay the State's request for the "PM_{10} Nonattainment Area" definition to be federally approved.

The Utah Petroleum Association has asserted that we have no legal basis for approving the definition for "PM_{10} Nonattainment Area" absent a revocation for these areas. In truth, there are no legal requirements surrounding this definition because it does not impose any new requirements on the nonattainment areas. As already noted, this definition reaffirms the areas' designation status contained in 40 CFR 81.345.

IV. Background for the Action

On March 26, 1999, we published notices of direct final (64 FR 14620) and proposed rulemakings (64 FR 14665) for the State of Utah. The proposed

rulemaking specified that we would withdraw the direct final rule if adverse comments were filed on the rulemaking. The 30-day comment period concluded on April 26, 1999. During this comment period, we received a comment letter in response to rulemaking and the direct final rule was withdrawn in the **Federal Register** on May 11, 1999 (64 FR 25214).

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mondotes

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General

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of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 16, 1999.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(41) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(41) On July 11, 1994 the Governor of Utah submitted revisions to the Utah State Implementation Plan (SIP) to revise the definition for "Sole Source of Heat" under UACR R307–1–1, "Foreword and Definitions," to allow the exemption of those households with small portable heating devices from mandatory no-burn periods. This revision also made changes to the residential woodburning regulations under UACR R307–1–4.13.3 "No-Burn Periods," which specifies the actions which must be taken if contingency measures are implemented in the Salt Lake, Davis or Utah County nonattainment areas. These plans were requested to be withdrawn by the Governor in a November 9, 1998, letter to the Regional Administrator. EPA returned the portions of these plans with a letter to the Governor on January 29, 1999. A nonsubstantive change was made in this section as a result of the revision which moves section 4.13.3 D to section 4.13.3.E; this change was also approved by EPA. On February 6, 1996 the Governor of Utah submitted revisions to the Utah State Implementation Plan to revise Utah's open burning regulations, under UACR R307–1–2.4, to require that the local county fire marshal establish 30-day open burning windows during the spring and fall closed burning seasons in areas outside of Salt Lake, Davis, Weber, and Utah Counties as granted by the state forester. There were also minor changes made to the open burning regulations under UACR R307–1–2.4, "General Burning" and minor changes made to UACR R307–1–2.5 "Confidentiality of Information." On July 9, 1998 the Governor of Utah submitted revisions to the Utah SIP to add a definition for "PM_{10} Nonattainment Area," under UACR R307–1–1, "Foreword and Definitions."

(i) Incorporation by reference.

(A) UACR R307–1–1, a portion of "Foreword and Definitions," revision of definition for "Sole Source of Heat," as adopted by Utah Air Quality Board on December 9, 1993, effective on January 31, 1994.

(B) UACR R307–1–4, a portion of "Emissions Standards," as adopted by Utah Air Quality Board on December 9, 1993, effective on January 31, 1994.

(C) UACR R307–1–2, a portion of "General Requirements," open burning changes and nonsubstantive wording changes, as adopted by Utah Air Quality Board on September 6, 1995, effective on October 31, 1995.

(D) UACR R307–1–1, a portion of "Foreword and Definitions," addition of definition for "PM_{10} Nonattainment Area," as adopted by Utah Air Quality Board on January 7, 1998, effective on January 8, 1998.

(ii) Additional Material.

(A) July 20, 1998, fax from Jan Miller, Utah Department of Air Quality, to Cindy Rosenberg, EPA Region VIII, transmitting Utah Code 65A–8–9, regarding closed fire seasons.

(B) October 21, 1998, letter from Richard R. Long, Director, EPA Air and Radiation Program, to Ursula Trueman, Director, Utah Division of Air Quality, requesting that Utah withdraw the submitted Salt Lake and Davis County PM_{10} Contingency Measure SIP revisions, the Utah County PM_{10} Contingency Measure SIP revisions, and the Residential Woodburning in Salt Lake, Davis and Utah Counties PM_{10} Contingency Measure SIP revision.

(C) November 9, 1998, letter from the Governor of Utah, to William Yellowtail, EPA Region VIII Administrator, requesting that the submitted Salt Lake and Davis County and Utah County PM_{10} Contingency Measure SIP revisions and the Residential Woodburning in Salt Lake, Davis and Utah Counties PM_{10} Contingency Measure SIP revision be withdrawn.

(D) December 16, 1998, letter from Larry Svoboda, EPA Region VIII, to Ursula Trueman, Utah Department of Air Quality, clarifying revisions that were made to UACR R307–1–4.

(E) January 5, 1999, letter from Ursula Trueman, Utah Department of Air Quality, to William Yellowtail, EPA Region VIII Administrator, concurring on EPA's clarification of revisions that were made to UACR R307–1–4.

(F) January 29, 1999, letter from William Yellowtail, EPA Region VIII Administrator, to the Governor of Utah returning the Salt Lake and Davis County and Utah County PM_{10} Contingency Measure SIP revisions and the Residential Woodburning in Salt Lake, Davis and Utah Counties PM_{10} Contingency Measure SIP revision.

[FR Doc. 99–16931 Filed 7–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300863A; FRL–6069–3]

RIN 2070–AB78

Difenoconazole; Pesticide Tolerance; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: EPA is issuing a technical amendment to the regulation which established tolerances for the fungicide Difenoconazole, that published in the **Federal Register** on June 2, 1999. This amendment correctly revises 40 CFR 180.475.

DATES: This regulation is effective July 6, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–305–7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this action if you import commodities containing residues of Difenoconazole. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at *http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the* "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number [OPP–300863A]. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

III. What Does this Technical Correction Do?

This technical correction revises 40 CFR 180.475 which published in the **Federal Register** of June 2, 1999 (64 FR 29581) (FRL–6081–5), and inadvertently omitted certain commodities and should have reserved paragraph (c).

This correction to the pesticide tolerance is subject to the objection procedures in FFDCA section 408(g) and 40 CFR part 178.

IV. Why Is this Technical Correction Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As explained above, the correction contained in this action will simply correct by revising 180.475 to include the commodities that were inadvertently omitted. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment. For the same reasons, EPA also finds that there is "good cause" under FFDCA section 408(b)(2) to make this minor modification to the establishment of tolerances without notice and comment.

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

EPA's compliance with these statutes and Executive Orders for the June 2, 1999 final rule, which established tolerances for residues of the fungicide Difenoconazole in or on bananas, as discussed in the preamble for the final rule (64 FR 29581, at 29588).

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental Protection, Administrative Practice and Procedure, Agricultural Commodities, Pesticides and Pests, Reporting and Recordkeeping Requirements.

Dated: June 23, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

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PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.475 [Amended]

2. Section 180.475 is revised to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide difenoconazole (((2*S*,4*R*)/(2*R*,4*S*)/(2*R*,4*R*)/(2*S*,4*S*)) (1–((2–(2-chloro-4–(4-chlorophenoxy)phenyl)-4-methyl-1,3-dioxolan-2-yl)methyl)-1*H*–1,2,4-triazole) in or on the following raw agricultural commodities:

Commodity	Parts per million
Bananas[2]	0.2
Barley grain[1]	0.1
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat by-products	0.05
Eggs	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats, meat by-products	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, meat by-products	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, meat by-products	0.05
Milk	0.01
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, meat by-products	0.05
Rye, grain[1]	0.1
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat by-products	0.05
Wheat, forage	0.1
Wheat, grain	0.1
Wheat, straw	0.1

[1]There are no U.S. registrations on Barley, grain and Rye, grain as of April 12, 1995.
[2]There are no U.S. registrations on Bananas as of June 2, 1999.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) Indirect or inadvertent residues. [Reserved]

[FR Doc. 99–16961 Filed 7–2–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–105; RM–9295]

Radio Broadcasting Services; Madison, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266A to Madison, Indiana, as that community's second local FM transmission service in response to a petition for rule making filed on behalf of Madison Broadcasting Company. *See* 63 FR 37090, July 9, 1998. Coordinates used for Channel 266A at Madison are 38–49–15 NL and 85–18–46 WL. With this action, the proceeding is terminated.

DATES: Effective August 9, 1999. A filing window for Channel 266A at Madison, Indiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–105, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information

Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Channel 266A at Madison.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17065 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–69; RM–9468]

Radio Broadcasting Services; Buda and Giddings, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 268C1 from Giddings, Texas, to Buda, Texas, and modifies the license for Station KROX to specify operation on Channel 268C1 at Buda in response to a petition filed by LBJS Broadcasting Company, L.P. *See* 64 FR 12924, March 16, 1999. The coordinates for Channel 268C1 at Buda are 29–57–00 and 97–22–13. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–69, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Giddings and Channel 268C1 and adding Buda and Channel 268C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17066 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–63; RM–9398]

Radio Broadcasting Services; Shelby and Dutton, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 250C from Shelby, Montana, to Dutton, Montana, and modifies the construction permit for Station KLHK to specify operation on Channel 250C at Dutton in response to a petition filed by Shelby Media Association. *See* 64 FR 8786, February 23, 1999. The coordinates for Channel 250C at Dutton are 47–57–46 and 111–39–14. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–63, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 250C at Shelby and adding Dutton, Channel 250C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17068 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–222; RM–9407]

Radio Broadcasting Services; Lordsburg and Hurley, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of BBC Radio, substitutes Channel 288C1 for Channel 289C3 at Lordsburg, NM, reallots Channel 288C1 from Lordsburg to Hurley, NM, as the community's first local aural service, and modifies petitioner's construction permit (BPH–970725MO) to specify the alternate channel and new community of license. *See* 63 FR 69608, December 17, 1998. Channel 288C1 can be allotted to Hurley in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (5.9 miles) north, at coordinates 32–47–00 NL; 108–08–30 WL, to avoid a short-spacing to Channel 288B, El Porven, Chihuahua, Mexico, and to accommodate petitioner's desired transmitter site. Mexican concurrence in the allotment has been obtained since Hurley is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–222, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Hurley, Channel 288C1, and removing Channel 289C3 at Lordsburg.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17069 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–224; RM–9416]

Radio Broadcasting Services; Belfield, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 230C1 to Belfield, ND, as the community's first local aural service. *See* 63 FR 69608, December 17, 1998. Channel 230C1 can be allotted to Belfield in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 46–53–06 NL; 103–11–48 WL. Canadian concurrence in the allotment has been obtained since Belfield is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 9, 1999. A filing window for Channel 230C1 at Belfield will not be opened at this time. Instead, the issue of opening a filing window for

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this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–224, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Belfield, Channel 230C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17076 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–226; RM–9415]

Radio Broadcasting Services; Burlington, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 276C1 to Burlington, ND, as the community's first local aural service. *See* 63 FR 69608, December 17, 1998. Channel 276C1 can be allotted to Burlington in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 48–16–42 NL; 101–25–36 WL. Canadian concurrence in the allotment has been obtained since Burlington is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 9, 1999. A filing window for Channel 276C1 at Burlington will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–226, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Burlington, Channel 276C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17078 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–225; RM–9417]

Radio Broadcasting Services; Medina, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 222C to Medina, ND, as the community's first local aural service. *See* 63 FR 69608, December 17, 1998. Channel 222C can be allotted to Medina in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 46–53–36 NL; 99–17–54 WL. Canadian concurrence in the allotment has been obtained since Medina is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 9, 1999. A filing window for Channel 222C at Medina will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–225, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Medina, Channel 222C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17077 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–230; RM–9422]

Radio Broadcasting Services; Hazelton, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 280C to Hazelton, ND, as the community's first local aural service. *See* 63 FR 71415, December 28, 1998. Channel 280C can be allotted to Hazelton in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.4 kilometers (12.7 miles) north, at coordinates 46–38–05 NL; 100–25–40 WL, to avoid a short-spacing to Station KGIM-FM, Channel 279C1, Redfield, SD. Canadian concurrence in the allotment has been obtained since Hazelton is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 9, 1999. A filing window for Channel 280C at Hazelton will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–230, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Hazelton, Channel 280C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17079 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–231; RM–9421]

Radio Broadcasting Services; Gackle, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 256C to Gackle, ND, as the community's first local aural service. *See* 63 FR 71415, December 28, 1998. Channel 256C can be allotted to Gackle in compliance with the Commission's minimum distance separation requirements without a site restriction at coordinates 46–37–30 NL; 99–08–30. Canadian concurrence in the allotment has been obtained since Gackle is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 9, 1999. A filing window for Channel 256C at Gackle will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–231, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Gackle, Channel 256C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17080 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–232; RM–9420]

Radio Broadcasting Services; New England, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 239C to New England, ND, as the community's first local aural service. *See* 63 FR 71415, December 28, 1998. Channel 239C can be allotted to New England in compliance with the Commission's minimum distance separation requirements without a site restriction at coordinates 46–32–24 NL; 102–51–48. Canadian concurrence in the allotment has been obtained since New England is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 9, 1999. A filing window for Channel 239C at New England will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–232,

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adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding New England, Channel 239C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17081 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–45; RM–9401]

Television Broadcasting Services; El Dorado and Camden, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 49– from El Dorado to Camden, Arkansas, and modifies the authorization of Equity Broadcasting Corporation for Station KKYK–TV, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 64 FR 7848, February 17, 1999. The allotment of Channel 49– to Camden will provide a first local television transmission service to the community without depriving El Dorado of local television service. Coordinates used for Channel 49– at Camden are those of the presently authorized transmitter site for Station KKYK–TV at 33–16–19 NL and 92–42–11 WL. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–45, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Arkansas, is amended by adding Channel 49– at Camden.

3. Section 73.606(b), the Table of TV Allotments under Arkansas, is amended by removing Channel 49– at El Dorado.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17064 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 92–235; FCC 99–68]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document in PR Docket No. 92–235, addresses petitions for reconsideration of, and clarifies certain decisions made in, the *Second Report and Order* in PR Docket No. 92–235, 62 FR 18834, and, where necessary, makes appropriate modifications to the rules. Specifically, the Commission affirms the decision to limit the eligibility for the Public Safety Pool to those entities that were eligible under the former Public Safety Radio Services or Special Emergency Radio Service (SERS); and modifies the rules to provide that all frequencies—shared and exclusive—assigned to the former Power Radio Service, Petroleum Radio Service, Railroad Radio Service, and Automobile Emergency Radio Service must either be coordinated by the frequency coordinator responsible for the service in question prior to the adoption of the *Second Report and Order*, or be coordinated with that coordinator's prior written concurrence. The Commission also clarifies several aspects of the rules regarding the low power offset channels in the 450–470 MHz band.

DATES: Effective August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Ira Keltz or Michael Wilhelm of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418–0680 or via E-mail to "mayday@fcc.gov".

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Memorandum Opinion and Order* in PR Docket No. 92–235, FCC 99–68, adopted April 6, 1999, and released April 13, 1999. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov. The full text of the *Second Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, DC 20554. It is anticipated that the Reference Center will be relocated to the Commission's Portals Building, 445 12th St., SW., Room CY-A257, during the late spring or early summer of 1999. Accordingly, interested parties are advised to contact the FCC Reference Center at (202) 418–0270 to determine its location. The full text of the *Second Memorandum Opinion and Order* can also be downloaded at: http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc9968.txt or http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc9968.wp

Summary of the Second Memorandum Opinion and Order

1. The *Second Report and Order* consolidated twenty private land mobile radio (PLMR) services into two pools, a Public Safety Pool consisting of all former Public Safety Radio Services and the Special Emergency Radio Service (SERS), and an Industrial/Business Pool consisting of the former Industrial and Land Transportation Radio Services. It also established provisions designed to facilitate development of centralized trunked systems in the shared PLMR bands below 800 MHz, and adopted an approach for accommodating low power use of the 450–470 MHz band. The Commission received fifteen petitions for reconsideration or clarification of the *Second Report and Order*.

2. The Commission denies a request to expand the categories eligible for the Public Safety Pool to include central station alarm companies, because public safety spectrum is scarce, and the requested expansion would be inconsistent with the definition of public safety in 47 U.S.C. 337(f)(2).

3. The *Second Report and Order* concluded that any frequency in the Industrial/Business Pool could be coordinated by any frequency coordinator designated to coordinate any of the services consolidated into that pool, except that frequencies formerly assigned exclusively to the Power, Petroleum, and Railroad Radio Services could be coordinated only by the coordinators for those services. As requested by those coordinators, the *Second Memorandum Opinion and Order* expands that exception to include frequencies that formerly were shared by any of those services and any other Industrial or Land Transportation Radio Services (except 12.5 kHz and 6.25 kHz channels in the 450–470 MHz band). In the alternative, the power, petroleum, and railroad coordinators may determine that such frequencies may be coordinated by any other Industrial/Business coordinator, provided that written concurrence is first received from the power, petroleum, or railroad coordinator.

4. In addition, the *Second Memorandum Opinion and Order* expands the exception to include frequencies formerly assigned to the Automobile Emergency Radio Service (AERS), but denies requests for similar treatment of other frequencies, because only on the AERS are safety-related communications sufficiently frequent and potentially serious to merit such treatment, which is consistent with the definition of public safety in 47 U.S.C. 309(j)(2).

5. The Commission denies the request of the power and petroleum coordinators to suspend the acceptance of applications for frequencies adjacent to former power and petroleum channels, for there is no evidence of a serious adjacent channel interference problem.

6. After the Commission accepts a proposed channel plan designating specific narrowband (12.5 kHz) offset frequencies in the 450–470 MHz band for low power operations, it will begin accepting full power applications for other the other narrowband offset frequencies in that band. Existing low power licensees may relocate to the designated frequencies, or may remain on the non-designated frequencies, but only on a secondary, non-interference basis. Wideband (25 kHz) operation will be permitted on the designated frequencies only on a secondary basis (unless a waiver is granted).

7. The *Second Memorandum Opinion and Order* classifies as commercial mobile radio services (CMRS) all Industrial/Business Pool licensees that offer to the public for-profit service interconnected to the public switched telephone network. The eligibility requirements for the Industrial/Business Pool are the same as those for the former Business Radio Service (BRS), and BRS licensees that offered for-profit, interconnected service to the public were classified as CMRS. CMRS licensees are subject to part 20 of the Commission's rules and Title II of the Communications Act of 1934, as amended.

8. The *Second Memorandum Opinion and Order* defers to a later date consideration of a request to suspend acceptance of applications for frequencies that formerly were shared by the Power or Petroleum Radio Services and other Industrial or Land Transportation Radio Services, issues associated with the trunking of frequencies in systems which operate below 800 MHz, and the issue of potential interference to medical telemetry systems from PLMR stations operating in the 450–470 MHz band.

Regulatory Flexibility Act

Final Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the *Notice of Proposed Rule Making* and the *Further Notice of Proposed Rule Making* in PR Docket 92–235. The Commission sought written public comment on the rule making proposals in the *Notice* and *Further Notice*, including on the respective IRFAs. This present Supplemental Regulatory Flexibility Analysis (Supplemental FRFA) in this *Second Memorandum Opinion and Order* (*Second MO&O*) conforms to the RFA.

10. *Need for, and Objectives of, the Second MO&O.* Our objective is to increase spectrum efficiency and facilitate the introduction of advanced technologies into the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz private land mobile radio (PLMR) bands. The *Report and Order* in this proceeding modified the Commission's rules to resolve many of the technical issues which inhibited the use of spectrally efficient technologies in these frequency bands. It also stated the Commission's intent to consolidate the twenty existing radio service pools. The *Further Notice* in this proceeding proposed several methods of introducing market based incentives into the PLMR bands, including exclusivity. In the *Second R&O*, the Commission consolidated the radio service frequency pools and addressed related issues such as frequency coordination, trunking, and low power frequencies. This *Second MO&O* address petitions for reconsideration and clarification received in response to the *Second R&O*.

11. The Commission finds that the potential benefits to the PLMR community from the promulgation of rules for this purpose exceed any negative effects that may result. Thus, the Commission concludes that the public interest is served by modifying our rules to consolidate the PLMR services and increase the spectral efficiency of the PLMR bands.

12. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No reconsideration petitions were submitted in direct response to the previous FRFAs. The Commission has, however, reviewed general comments that may impact small businesses. Much of the impact on small businesses arises from the central decision in this proceeding—determining the number of frequency pools and the eligibility criteria for each pool. This affects small businesses in the following way. A smaller number of pools provides a greater number of frequencies available for small businesses that use PLMR systems to meet their coordination needs. Additionally, by creating fewer pools, frequency coordinators will now be subject to competition. Thus, small businesses that use PLMR systems can expect to pay lower prices for frequency coordination while receiving equivalent or better service. Finally, consolidating

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the PLMR services provides each frequency coordinator, which currently provides service only for a narrowly defined type of user, with the ability to expand its business base.

13. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *See* 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. 1992 Economic Census, U.S. Bureau of the Census, Table 6. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 such jurisdictions in the United States. U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments." This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. *Id.* The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

14. Estimates for PLMR Licensees. Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed, nor would it be possible to develop, a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz. *See* Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121. Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

15. Estimates for Frequency Coordinators. Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to spectrum frequency coordinators. Therefore, the Commission concluded that the closest applicable definition under SBA rules is Business Associations (SIC 8611). *See Second R&O*, 12 FCC Rcd at 14355. The SBA defines a small business association as an entity with $5.0 million or less in annual receipts. There are 18 entities certified to perform frequency coordination functions under Part 90 of our Rules. However, the Commission is unable to ascertain how many of these frequency coordinators are classified as small entities under the SBA definition. The Census Bureau indicates that 97% of business associations have annual receipts of $4.999 million or less and would be classified as small entities. The Census Bureau category is very broad, and does not include specific figures for firms that are engaged in the frequency coordination. Therefore, for the purposes of this Supplemental FRFA, the Commission estimates that almost all of the 18 spectrum frequency coordinators are small as defined by the SBA.

16. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The rules adopted in this *Second MO&O* do not have any general reporting or recordkeeping requirements for PLMR licensees. There are, however, a few compliance requirements. First, frequency coordinators, when recommending frequencies that were formerly allocated on a shared basis to the Petroleum Radio Service, must obtain the concurrence of the former Petroleum Radio Service frequency coordinator. While the Commission wants to remove as many requirements on the licensing process as possible, the Commission believes that this requirement is necessary in order to protect critical safety-related communications systems. The American Petroleum Institute, supported by several commenters, petitioned for protection of existing petroleum stations based upon coverage contours. Rather than institute a complex requirement based on the computation of coverage contours, the Commission believes that the goals of protecting these systems can be achieved through a simple concurrence requirement.

17. Second, the Commission is requiring each of the coordinators that have sole management authority over a group of frequencies to supply supporting reasons for denying any request for frequency coordination on those frequencies. The American Automobile Association petitioned for a clarification that would have held these coordinators to the same coordination procedures as previously were applicable under the former interservice sharing rules. The Commission believes that such procedures would be excessive under the new consolidated pool structure. Therefore, to guard against summary denials and to promote sharing to the greatest degree possible, the Commission believes that requiring the coordinators with sole management authority over certain frequencies to justify any denials of coordination on those frequencies will suffice.

18. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The Commission, in this *Second MO&O*, has considered petitions for reconsideration and clarification regarding its *Second R&O* in PR Docket No. 92–235, which consolidated the PLMR radio services below 512 MHz. In doing so, the Commission has adopted several proposals which minimize burdens placed on small entities. First, the Commission adopted a concurrence requirement on frequencies that were allocated to the former Petroleum Radio Service on a shared basis. Based on the need to provide additional protection to entities operating on these frequencies, concurrence is the simplest method of providing this protection. The alternative would be to require applicants and frequency coordinators, including those that are small businesses, to conduct complex and costly contour analyses. Second, the Commission did not expand the number of frequencies on which coordinators have sole management authority. This decision will ensure the continued benefits of consolidation. Namely, entities will have more frequency options than if more frequencies were restricted. The increase in frequency choices will provide a greater likelihood that licensees, including small entities, will share frequencies with fewer systems, enabling them to achieve more efficiency in their radio systems. Third, the Commission clarifies that a coordinator, at an applicant's request, who determines that the most appropriate frequency is one that is managed solely by another frequency coordinator can forward an application directly to that coordinator. The alternative would be to return applications which would foster inefficiency, add delays to the coordination process, and drive up costs. Fourth, the Commission clarifies and modifies the rules regarding designated low power frequencies to (1) allow existing users of low power systems that are not currently operating on designated low power frequencies to modify their operating frequency to one of the designated frequencies and obtain primary status while still using wideband equipment, and (2) allow new licensees on the designated low power frequencies, all of which are restricted to narrowband operations, to obtain authorizations for wideband equipment on a secondary basis. Many users and manufacturers of low power systems are small businesses and these actions allow for such entities to continue to use existing equipment and for manufacturers to deplete, rather than scrap, existing inventory. Fifth, the Commission amends the rules to require entities to operate in the semi-duplex mode when using former Taxicab Radio Service frequencies in metropolitan areas. Such action ensures that future authorizations on these channels will be compatible with existing taxicab users, many of which are small businesses. Sixth, the Commission amends the rules to extend until 2006, the date by which new licensees operating on the emergency medical (MED) channels must employ equipment capable of operating on all the newly created MED channels. Existing licensees on these channels are grandfathered using their existing radios. This provides relief to licensees, many of which are small businesses, which could not readily comply with the originally proposed rule because of lack of available equipment.

19. The Commission will send a copy of this *Second Memorandum Opinion and Order* including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Memorandum Opinion and Order*, including Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Memorandum Opinion and Order* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The authority citation for Part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, and 332, unless otherwise noted.

Section 90.20 is amended by removing the entry for 156.2475 MHz, adding entries for 151.0625 MHz, 151.0775 MHz, 151.1825 MHz, 151.1975 MHz, 151.3025 MHz, and 151.3175 MHz to paragraph (c)(3), revising the entries for 35.02 MHz, 151.070 MHz, 151.190 MHz, 151.310 MHz, 453.025 MHz, 453.03125 MHz 453.075 MHz, 453.0125 MHz, 453.125 MHz, 453.175 MHz, 458.025 MHz, 458.075 MHz, 458.125 MHz, 458.175 MHz, and 470 to 512 MHz of paragraph (c)(3), paragraphs (d)(66)(ii), (d)(66)(iii), and (d)(66)(iv) and adding new paragraphs (d)(66)(v), (d)(66)(vi) and (d)(77) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of stations(s)	Limitations	Coordinator
Megahertz:			
35.02	Mobile	12, 77	PS
• •	• • • •	• • •	
151.0625	do	27, 28	PH
151.070	do	28	PH
151.0775	do	27, 28	PH
• •	• • • •	• • •	
151.1825	do	27, 28	PO
151.190	do	28	PO
151.1975	do	27, 28	PO
• •	• • • •	• • •	
151.3025	do	27, 28	PO
151.310	do	28	PO
151.3175	do	27, 28	PO
• •	• • • •	• • •	
453.0125	Mobile	57, 77	PX
453.025	Central control, fixed base, or mobile	58, 59, 60, 61, 62	PM
453.03125	Base of mobiles	44,59,60,61,62	PM
• •	• • • •	• • •	
453.075	Central control, fixed base, or mobile	58, 59, 60, 61, 62	PM
• •	• • • •	• • •	
453.125	Central control, fixed base, or mobile	58, 59, 60, 61, 62	PM

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of stations(s)	Limitations	Coordinator
• • •	• • • • • •	• • •	
453.175	Central control, fixed base, or mobile	58, 59, 60, 61, 62	PM
• • •	• • • • • •	• • •	
458.025	Central control, fixed base, or mobile	58, 59, 61, 62, 63	PM
• • •	• • • • • •	• • •	
458.075	Central control, fixed base, or mobile	58, 59, 61, 62, 63	PM
• • •	• • • • • •	• • •	
458.125	Central control, fixed base, or mobile	58, 59, 61, 62, 63	PM
• • •	• • • • • •	• • •	
458.175	Central control, fixed base, or mobile	58, 59, 61, 62, 63	PM
• • •	• • • • • •	• • •	
470 to 512	Base or mobile	68.	

* * * * *

(d) * * *

(6) * * *

(ii) Except as provided in paragraphs (d)(66)(iv) and (v) of this section, mobile or portable stations licensed prior to July 6, 2000, must employ equipment that is both wired and equipped to transmit/receive, respectively, on each of the following MED frequency pairs with transmitters operated on the 468 MHz frequencies: MED–1, MED–2, MED–3, MED–4, MED–5, MED–6, MED–7, and MED–8.

(iii) Except as provided in paragraphs (d)(66)(v) and (vi) of this section, mobile or portable stations licensed on or after July 6, 2000, must employ equipment that is both wired and equipped to transmit/receive, respectively, on each of the following MED frequency pairs with transmitters operated on the 468 MHz frequencies: MED–1, MED–12, MED–2, MED–22, MED–3, MED–32, MED–4, MED–42, MED–5, MED–52, MED–6 MED–62, MED–7, MED–72, MED–8, and MED–82.

(iv) Except as provided in paragraphs (d)(66)(v) and (vi) of this section, mobile or portable stations licensed on or after January 1, 2006, must employ equipment that is both wired and equipped to transmit/receive, respectively, on each of these MED frequency pairs with transmitters operated on the 468 MHz frequencies.

(v) Portable (hand-held) units operated with a maximum output power of 2.5 watts are exempted from the multi-channel equipment requirements specified in paragraphs (d)(66)(ii), (d)(66)(iii), and (d)(66)(iv) of this section.

(vi) Stations located in areas above line A, as defined in § 90.7 will be required to meet multi-channel equipment requirements only for those frequencies up to the number specified in paragraphs (d)(66)(ii), (d)(66)(iii), and (d)(66)(iv) of this section that have been assigned and coordinates with Canada in accordance with the applicable U.S.-Canada agreement.

* * * * *

(77) Paging operations are not permitted on this frequency.

* * * * *

Section 90.22 is amended by revising the introductory text to read as follows:

§ 90.22 Paging operations.

Unless specified elsewhere in this part, paging operations may be authorized in the Public Safety Pool on any frequency except those assigned under the provisions of § 90.20(d)(77). Paging operations on frequencies subject to § 90.20(d)(77) authorized before August 17, 1974, may be continued only if they do not cause harmful interference to regular operations on the same frequencies. Such paging operations may be renewed indefinitely on a secondary basis to regular operations, except within 125 km (75 mi) of the following urbanized areas:

* * * * *

4. Section 90.35 is amended by revising the entries for 2292 kHz, 25.14 MHz, 30.66 MHz, 30.74 MHz, 30.82 MHz, 150.815 MHz through 150.9725 MHz, 151.490 MHz, 152.870 MHz, 153.035 MHz through 153.4025 MHz, 153.425 MHz through 153.4625 MHz, 153.485 MHz through 153.5225 MHz, 153.545 MHz through 153.5825 MHz, 153.605 MHz through 153.6425 MHz, 153.665 MHz through 153.6875 MHz, 157.470 MHz through 157.5225 MHz, 157.725 MHz, 158.145 MHz through 158.1825 MHz, 158.205 MHz through 158.2425 MHz, 158.265 MHz through 158.3325 MHz, 158.355 MHz through 158.3775 MHz, 158.415 MHz through 158.4375 MHz, 173.250 MHz, 173.300 MHz, 173.350 MHz, 173.39625, 451.175 MHz, 451.225 MHz, 451.275 MHz, 451.375 MHz, 451.425 MHz, 451.475 MHz, 451.525 MHz, 451.550 MHz, 451.575 MHz, 451.600 MHz, 451.625 MHz, 451.650 MHz, 451.675 MHz, 451.700 MHz, 451.750 MHz, 452.325 MHz, 452.375 MHz, 452.425 MHz, 452.475 MHz, 452.525 MHz through 452.61875 MHz, 452.775 MHz, 452.825 MHz, 452.875 MHz, 456.175 MHz, 456.225 MHz, 456.275 MHz, 456.375 MHz, 456.425 MHz, 456.475 MHz, 456.525 MHz, 456.550 MHz, 456.575 MHz, 456.600 MHz, 456.625 MHz, 456.650 MHz, 456.675 MHz, 456.700 MHz, 456.750 MHz, 457.325 MHz, 457.375 MHz, 457.425 MHz, 457.475 MHz, 457.775 MHz, 457.825 MHz, 457.875 MHz, 462.475 MHz, 462.525 MHz, 467.475 MHz, 467.525 MHz, 467.8375 MHz, 469.500 MHz, and 469.550 MHz of paragraph (b)(3), revising paragraphs (b)(2), (c)(6), and (c)(52), and adding paragraphs (c)(79), (c)(80) and (c)(81) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(2) Unless otherwise specified, coordination of frequencies in the Industrial/Business pool must be done in accordance with the following:

(i) Unless specified elsewhere in this part, frequencies without any coordinator specified in the Coordinator column of paragraph (b)(3) of this section may be coordinated by any frequency coordinator certified in the Industrial/Business Pool.

(ii) A letter symbol in the Coordinator column of the frequency table in paragraph (b)(3) of this section designates the mandatory certified frequency coordinator for the associated frequency in the table. However, any certified frequency coordinator in the Industrial/Business Pool may coordinate such frequency provided the prior written consent of the designated coordinator is obtained. Frequencies for which two coordinators are listed may be coordinated by either of the listed coordinators.

(iii) The letter symbols listed in the Coordinator column of the frequency table in paragraph (b)(3) of this section refer to specific frequency coordinators as follows:

IP—Petroleum Coordinator
IW—Power Coordinator
LR—Railroad Coordinator
I.A—Automobile Emergency Coordinator

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of stations(s)	Limitations	Coordinator
Kilohertz:			
2292	Base or mobile	4, 5, 7.	
• • •	• • • • • •	• • •	
Megahertz:			
25.14	do	3, 4	IP
• • •	• • • • • •	• • •	
30.66	do	4, 7.	
• • •	• • • • • •	• • •	
30.74	do	4, 7.	
• • •	• • • • • •	• • •	
30.82	do	4, 7	
• • •	• • • • • •	• • •	
150.815	do		LA
150.830	do	28, 29	LA
150.845	do		LA
150.8525	do	30	LA
150.860	do		LA
150.8675	do	30	LA
150.875	do		LA
150.8825	do	30	LA
150.890	do		LA
150.8975	do	30	LA
150.905	do		LA
150.920	do	28, 29	LA
150.935	do		LA
150.9425	do	30	LA
150.950	do		LA
150.9575	do	30	LA
150.965	do		LA
150.9725	do	30	LA
• • •	• • • • • •	• • •	
151.490	do	13, 32.	
• • •	• • • • • •	• • •	
152.465	do	79.	
• • •	• • • • • •	• • •	
152.870	do.		
• • •	• • • • • •	• • •	
153.035	do		IP
153.0425	do	30	IP
153.050	do	4, 7	IP
153.0575	do	4, 7, 30	IP
153.065	do		IP
153.0725	do	30	IP
153.080	do	4, 7	IP

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of stations(s)	Limitations	Coordinator
153.0875	do	4, 7, 30	IP
153.095	do		IP
153.1025	do	30, 80	IP
153.110	do	4, 7	IP
153.1175	do	4, 7, 30	IP
153.125	do		IP
153.1325	do	30	IP
153.140	do	4, 7	IP
153.1475	do	4, 7, 30	IP
153.155	do		IP
153.1625	do	30	IP
153.170	do	4, 7	IP
153.1775	do	4, 7, 30	IP
153.185	do		IP
153.1925	do	30	IP
153.200	do	4, 7	IP
153.2075	do	4, 7, 30	IP
153.215	do		IP
153.2225	do	30	IP
153.230	do	4, 7	IP
153.2375	do	4, 7, 30	IP
153.245	do		IP
153.2525	do	30	IP
153.260	do	4, 7	IP
153.2675	do	4, 7, 30	IP
153.275	do		IP
153.2825	do	30	IP
153.290	do	4, 7	IP
153.2975	do	4, 7, 30	IP
153.305	do		IP
153.3125	do	30	IP
153.320	do	4, 7	IP
153.3275	do	4, 7, 30	IP
153.335	do		IP
153.3425	do	30	IP
153.350	do	4, 7	IP
153.3575	do	4, 7, 30	IP
153.365	do		IP
153.3725	do	30	IP
153.380	do		IP
153.3875	do	30	IP
153.395	do		IP
153.4025	do	30	IP
•	•	•	•
153.425	do	80	IP, IW
153.4325	do	30, 80	IP, IW
153.440	do	80	IP, IW
153.4475	do	30, 80	IP, IW
153.455	do	80	IP, IW
153.4625	do	30, 80	IP, IW
•	•	•	•
153.485	do	80	IP, IW
153.4925	do	30, 80	IP, IW
153.500	do	80	IP, IW
153.5075	do	30, 80	IP, IW
153.515	do	80	IP, IW
153.5225	do	30, 80	IP, IW
•	•	•	•
153.545	do	80	IP, IW
153.5525	do	30, 80	IP, IW
153.560	do	30, 80	IP, IW
153.5675	do	30, 80	IP, IW
153.575	do	80	IP, IW
153.5825	do	30, 80	IP, IW

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of stations(s)	Limitations	Coordinator
•	•	•	•
153.605	do	80	IP, IW
153.6125	do	30, 80	IP, IW
153.620	do	80	IP, IW
153.6275	do	30, 80	IP, IW
153.635	do	80	IP, IW
153.6425	do	30, 80	IP, IW
•	•	•	•
153.665	do	80	IP, IW
153.6725	do	30, 80	IP, IW
153.680	do	80	IP, IW
153.6875	do	30, 80	IP, IW
•	•	•	•
157.470	Base or mobile	12	LA
157.4775	do	12, 30	LA
157.485	do	12	LA
157.4925	do	12, 30	LA
157.500	do	12	LA
157.5075	do	12, 30	LA
157.515	do	12	LA
157.5225	do	12, 30	LA
•	•	•	•
157.725	Base or mobile	79	
•	•	•	•
158.145	do		IP, IW
158.1525	do	30	IP, IW
158.160	do		IP, IW
158.1675	do	30	IP, IW
158.175	do	81	IP, IW
158.1825	do	30, 81	IP, IW
•	•	•	•
158.205	do	81	IP, IW
158.2125	do	30, 81	IP, IW
158.220	do	81	IP, IW
158.2275	do	30, 81	IP, IW
158.235	do	81	IP, IW
158.2425	do	30, 81	IP, IW
•	•	•	•
158.265	do	81	IP, IW
158.2725	do	30, 81	IP, IW
158.280	do		IP
158.2875	do	30	IP
158.295	do		IP
158.3025	do	30	IP
158.310	do	4, 7	IP
158.3175	do	4, 7, 30	IP
158.325	do		IP
158.3325	do	30	IP
•	•	•	•
158.355	Base or mobile		IP
158.3625	do	30	IP
158.370	do	4, 7	IP
158.3775	do	4, 7,	IP
•	•	•	•
158.415	do		IP

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INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of stations(s)	Limitations	Coordinator
158.4225	do	30	IP
158.430	do	4, 7	IP
158.4375	do	4, 7,	IP
• •	• •	• •	•
173.250	Base or Mobile		IP, IW
• •	• •	• •	•
173.300	Base or Mobile		IP, IW
• •	• •	• •	•
173.350	Base or Mobile		IP, IW
• •	• •	• •	•
173.39625	do	39, 40, 41, 44	
• •	• •	• •	•
451.175	do		IP, IW
• •	• •	• •	•
451.225	do		IP, IW
• •	• •	• •	•
451.275	do		IP, IW
• •	• •	• •	•
451.375	do		IP, IW
• •	• •	• •	•
451.425	do		IP, IW
• •	• •	• •	•
451.475	do		IP, IW
• •	• •	• •	•
451.525	do		IP, IW
• •	• •	• •	•
451.550	do	4, 7	IP
• •	• •	• •	•
451.575	do		IP, IW
• •	• •	• •	•
451.600	do	4, 7	IP
• •	• •	• •	•
451.625	do		IP, IW
• •	• •	• •	•
451.650	do	4, 7	IP
• •	• •	• •	•
451.675	do		IP, IW

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of stations(s)	Limitations	Coordinator
• •	• •	• •	•
451.700	do	4, 7	IP
• •	• •	• •	•
451.750	do	4, 7	IP
• •	• •	• •	•
452.325	do		LR
• •	• •	• •	•
452.375	do		LR
• •	• •	• •	•
452.425	do		LR
• •	• •	• •	•
452.475	do		LR
• •	• •	• •	•
452.525	do		LA
452.53125	do	33	LA
452.5375	do	30	LA
452.54375	do	33	LA
452.550	do		LA
452.55625	do	33	LA
452.5625	do	30	LA
452.56875	do	33	LA
452.575	do		LA
452.58125	do	33	LA
452.5875	do	30	LA
452.59375	do	33	LA
452.600	do		LA
452.60625	do	33	LA
452.6125	do	30	LA
452.61875	do	33	LA
• •	• •	• •	•
452.775	do		LR
• •	• •	• •	•
452.825	do		LR
• •	• •	• •	•
452.875	do		LR
• •	• •	• •	•
456.175	do		IP, IW
• •	• •	• •	•
456.225	do		IP, IW
• •	• •	• •	•
456.275	do		IP, IW
• •	• •	• •	•
456.375	do		IP, IW

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INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of stations(s)	Limitations	Coordinator
456.425	do		IP, IW
456.475	do		IP, IW
456.525	do		IP, IW
456.550	do		IP
456.575	do		IP, IW
456.600	do		IP
456.625	do		IP, IW
456.650	do		IP
456.675	do		IP, IW
456.700	do		IP
456.750	do		IP
457.325	do		LR
457.375	do		LR
457.425	do		LR
457.475	do		LR
457.775	do		LR
457.825	do		LR
457.875	do		LR

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of stations(s)	Limitations	Coordinator
462.475	do		IP, IW
462.525	do		IP, IW
467.475	do		IP, IW
467.525	do		IP, IW
467.8375	do	11, 12, 30, 35, 60.	
469.500	do	10, 34.	
469.550	do	10, 34.	

* * * * * * *

(c) * * *

(6) Frequencies may be assigned in pairs with the separation between base and mobile transmit frequencies being 5.26 MHz. A mobile station may be assigned the frequency which would normally be assigned to a base station for single frequency operation. However, this single-frequency operation may be subject to interference that would not occur to a two-frequency system. Base or mobile stations operating wholly within Standard Metropolitan Areas having 50,000 or more population (1950 Census) must be operated in the half-duplex mode.

* * * * *

(52) In Puerto Rico and the Virgin Islands only, this frequency is available to all stations operating in the Industrial/Business Pool and may be coordinated by any frequency coordinator certified in the Industrial/Business Pool.

* * * * *

(79) Frequencies may be assigned in pairs with the separation between base and mobile transmit frequencies being 5.26 MHz. A mobile station may be assigned the frequency which would normally be assigned to a base station for single frequency operation. However, this single-frequency operation may be subject to interference that would not occur to a two-frequency system. Base or mobile stations located 80.5 km (50 miles) or less from the center or any urbanized area of 600,000 or more population (U.S. Census of Population, 1970) must be operated in the half-duplex mode.

(80) Concurrence from the Petroleum Coordinator is required only for applications for this frequency that request authorization for transmitters in Arkansas, Louisiana, Oklahoma, or Texas.

(81) Concurrence from the Petroleum Coordinator is required only for applications for this frequency that request authorization for transmitters in Arkansas, Louisiana, Oklahoma, Oregon, Texas, or Washington.

5. Section 90.135 is amended by removing and reserving paragraph (b)(5), and by revising paragraph (a)(2) and by revising the first sentence in paragraph (d) to read as follows:

§ 90.135 Modification of license.

(a) * * *

(2) Change in the type of emission.

* * * * *

(d) In case of a change listed in paragraphs (b)(1) or (b)(2) of this section, the licensee must notify the Commission immediately. * * *

6. Section 90.173 is amended by revising paragraph (a) and by adding paragraph (j) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

(a) Except as indicated in paragraph (j) of this section, the frequencies which ordinarily may be assigned to stations in the services governed by this part are listed in subparts B, C and F of this part. Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

* * * * *

(j) Frequencies other than those listed in subparts B and C of this part may be assigned in the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz bands, provided the following conditions are met:

(1) Such applications must be accompanied by a showing of frequency coordination in accordance with the requirements of § 90.175;

(2) The frequencies must not be available in any other rule part of this chapter; and

(3) The authorized bandwidth of any system operating in accordance with this paragraph must not overlap spectrum available in other rule parts of this chapter unless that spectrum is also allocated in part 90.

* * * * *

7. Section 90.175 is amended by revising the first sentence of the

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introductory text and by revising paragraph (b) to read as follows:

§ 90.175 Frequency coordination requirements.

Except for applications listed in paragraph (i) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in § 90.135(a), or for operation at temporary locations in accordance with § 90.137 must include a showing of frequency coordination as set forth below. * * *

* * * * *

(b) *For frequencies between 25 and 470 MHz:* (1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(a)(2) recommending the most appropriate frequency. In addition, concurrence from the applicable frequency coordinator must be obtained on frequencies designated for such a requirement. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to minimize potential interference. In addition:

(2) On frequencies designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) and 90.35(b)(3), the applicable frequency coordinator shall provide a written supporting statement in instances in which coordination or concurrence is denied. The supporting statement shall contain sufficient detail to permit discernment of the technical basis for the denial of coordination or concurrence.

(3) In instances where a frequency coordinator determines that an applicant's requested frequency or the most appropriate frequency is one designated for coordination by a specific frequency coordinator as specified in §§ 90.20(c)(3) and 90.35(b)(3), that frequency coordinator may forward the application directly to the appropriate frequency coordinator. A frequency coordinator may only forward an application as specified above if consent is obtained from the applicant.

* * * * *

8. Section 90.187 is amended by revising paragraphs (b)(2)(i) and the second sentence of (b)(2)(ii) to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 MHz.

* * * * *

(b) * * *

(2) * * *

(i) Stations that have assigned frequencies (base and mobile) that are 15 kHz or less removed from proposed stations that will operate with a 25 kHz channel bandwidth; stations that have assigned frequencies (base and mobile) that are 7.5 kHz or less removed from proposed stations that will operate with a 12.5 kHz bandwidth; or stations that have assigned frequencies (base and mobile) 3.75 kHz or less removed from proposed stations that will operate with a 6.25 kHz bandwidth; and

(ii) * * * Alternatively, applicants may submit an engineering analysis based upon generally accepted engineering practices and standards that demonstrates that the service area of the trunked system does not overlap the service area of any existing station.

* * * * *

Section 90.207 is amended by revising the last sentence in paragraph (l) to read as follows:

§ 90.207 Types of emissions.

* * * * *

(l) * * * Authorization to use digital voice emissions is construed to include the use of F1D, F2D, G1D, or G2D emission subject to the provisions of § 90.233.

§ 90.211 [Removed]

10. Section 90.211 is removed.

11. Section 90.267 is amended by revising paragraph (a)(3) and by adding new paragraphs (b), (c), and (d) to read as follows:

§ 90.267 Assignment and use of frequencies in the 450–470 MHz band for low-power use.

(a) * * *

(3) Stations are limited to 2 watts output power.

* * * * *

(b) Unless specified elsewhere in this part, licensees as of August 5, 1999, licensed for operations with an emission designator wider than 11k25 on frequencies subject to the conditions of paragraph 90.20(d)(20) or paragraph 90.35(c)(30) that have been designated low-power channels pursuant to paragraph (a) of this section may obtain primary status with respect to co-channel licensees, by supplying their coordinates to the Commission. These licensees will continue to operate on a secondary basis with respect to adjacent channel licensees. Additionally, these licensees may continue to operate with an authorized bandwidth wider than 11.25 kHz on frequencies subject to the conditions of paragraph 90.20(d)(20) or paragraph 90.35(c)(30).

(c) Unless specified elsewhere in this part, licensees as of August 5, 1999, licensed for operations with an emission designator wider than 11k25 on frequencies subject to the conditions of paragraph 90.20(d)(20) or paragraph 90.35(c)(30) that have not been designated as low-power channels pursuant to paragraph (a) of this section that otherwise comply with the conditions of paragraph (a) of this section may obtain primary status with respect to co-channel licensees, by modifying their license to a designated low-power channel and supplying their coordinates to the Commission. These licensees will continue to operate on a secondary basis with respect to adjacent channel licensees. Additionally, these licensees may continue to operate with an authorized bandwidth wider than 11.25 kHz on frequencies subject to the conditions of paragraph 90.20(d)(20) or paragraph 90.35(c)(30).

(d) Applicants proposing to operate with an authorized bandwidth wider than 11.25 kHz on designated low-power frequencies that are subject to the conditions of paragraph 90.20(d)(20) or paragraph 90.35(c)(30) that otherwise meet the conditions of paragraph (a) of this section, may be licensed on a secondary, non-interference basis.

Section 90.311 is amended by revising the table in paragraph (a) to read as follows:

§ 90.311 Frequencies.

(a) * * *

Channel Assignment	Urbanized Area	General access pool	
		Base and mobile	Mobile
14	Boston, MA Chicago, IL Cleveland, OH Miami, FL New York/N.E. NJ Pittsburgh, PA	470.30625 to 472.99375	473.30625 to 475.99375

Channel Assignment	Urbanized Area	General access pool	
		Base and mobile	Mobile
15	Los Angeles, CA Chicago, IL Cleveland, OH Detroit, MI New York/N.E. NJ	470.05625 to 472.99375 476.30625 to 478.99375	473.05625 to 475.99375 479.30625 to 481.99375
16	Boston, MA Dallas/Fort Worth, TX Detroit, MI San Francisco/Oakland, CA	482.30625 to 484.99375	485.30625 to 487.99375
	Los Angeles, CA (Use is restricted to Public Safety Pool eligibles).	482.00625 to 484.99375	485.00625 to 487.99375
17	Houston, TX San Francisco/Oakland, CA Washington, DC/MD/VA	488.30625 to 490.99375	491.30625 to 493.99375
18	Pittsburgh, PA Washington, DC/MD/VA	494.30625 to 496.99375	497.30625 to 499.99375
19	Philadelphia, PA	500.30625 to 502.99375	503.30625 to 505.99375
20	Los Angeles, CA Philadelphia, PA	506.13125 to 508.99375 506.30625 to 508.99375	509.13125 to 511.99375 509.30625 to 511.99375

* * * * * * *

[FR Doc. 99–16959 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–U

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1615, 1632, and 1652

RIN 3206 AI67

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project; and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Interim regulation.

SUMMARY: OPM is issuing an interim regulation to implement the portion of the Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. This regulation specifies only the requirements that differ from existing FEHB Program regulations because of unique aspects of the demonstration project.

DATES: The effective date of this regulation is July 6, 1999. Comments must be received on or before September 7, 1999.

ADDRESSES: Comments must be sent to Abby L. Block, Chief, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, (202) 606–0004. You may submit comments and data by sending electronic mail (E-mail) to: *mwkaszyn@opm.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to implement the portion of the Defense Authorization Act for 1999, Public Law 105–261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans under the FEHB Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. DoD, with OPM concurrence, has selected eight geographic areas to serve as demonstration project areas. The legislation requires that between 6 and 10 geographic areas be selected. No more than 66,000 individuals can participate in the demonstration project at any one time. Beneficiaries who are provided coverage under the demonstration project will not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under DoD's TRICARE program. Individuals who disenroll or cancel enrollment from the demonstration project are not eligible to reenroll in the demonstration project. OPM will establish separate risk pools for developing demonstration project enrollee premium rates. The Government contribution for demonstration enrollees will be paid by DoD and cannot exceed the percentage that the Government would have contributed had the enrollee been enrolled as a regular FEHB enrollee in the same health benefits plan and level of benefits.

The legislation requires OPM and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. The first report is due by April 1, 2001; the second is due by December 31, 2002. The reports will focus on enrollee participation levels, impact on Medicare Part B enrollment, impact on premium rates and costs as compared to regular FEHB enrollees, impact on accessibility of care in military treatment facilities, impact on medical readiness and training in military treatment facilities, impact on the cost, accessibility, and availability of prescription drugs for DoD beneficiaries, and recommendations on eligibility and enrollment.

OPM has determined it necessary to specify certain differences from existing FEHB Program regulations because of the unique features of the demonstration project. This regulation amends chapter 16 of title 48, Code of Federal Regulations (CFR) to enumerate these differences.

When developing premium rates for demonstration project community-rated carriers, OPM will not use similarly sized subscriber group (SSSG) rating methodologies to determine the reasonableness of the carrier's demonstration project premium rates. We are not using SSSG's because we have learned from our consultations with community-rated carriers that

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there are no similar employer sponsored groups with which to compare. Instead we are benchmarking premiums against adjusted community-rates if available, Medigap offerings, or other similar products to determine reasonableness. We believe that these data will result in competitively developed premium rates.

We have determined the most cost effective and administratively efficient way for the federal government to track expenditures is to allow experience-rated carriers participating in the demonstration project to draw funds from their existing FEHB Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members. However, experience-rated carriers must account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier's service charge that will be allocated to the demonstration project.

Because of the way premiums are collected from enrollees and annuitants and the way the government distributes them to carriers, there will be a period between the effective date of demonstration project enrollees' coverage and the first payment of premium into experience-rated carriers' LOC accounts. DoD enrollments will become effective on January 1, 2000, and the first demonstration project premiums will be withheld from annuities on February 1, 2000. The enrollees' and Government's share of the premiums are due to OPM from DoD on the first day of each month thereafter through the conclusion of the demonstration project. However, since enrollees will be entitled to coverage for at least a month before the first premium payment, there won't be an opportunity for carriers to build a sufficient cash flow to cover the costs of the demonstration project group during this period. By allowing experience-rated carriers to draw on their existing LOC accounts in the same manner as for regular FEHB claims, this problem is addressed.

Since this is a start-up program with no specific experience, we have determined that experience-rated carrier risk must be mitigated in order to keep premiums as low as possible. Experience rated-carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM and they will perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. Experience-rated carrier costs in excess of the premiums will be reimbursed first from the carrier's demonstration project Contingency Reserve and then from OPM's Administrative Reserve. Any surplus after the final accounting will be paid by carriers to OPM's Administrative Reserve. Should the program be extended beyond the three year demonstration project period, we will regulate to address any necessary changes to these provisions.

We also have made minor editorial changes to clarify title 48, CFR.

Waiver of Notice of Proposed Rule Making

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because FEHB Program carriers need the information contained in these regulations now in order to have sufficient time to develop reserve accounts and premiums for enrollments to be effective January 1, 2000, as required by Public Law 105–261.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 48 CFR Parts 1615, 1632, and 1652

Government employees, Government procurement, Health insurance.

Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons set forth in the preamble, OPM is amending chapter 16 of title 48, CFR as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATIONS

1. The authority citation for 48 CFR Parts 1615, 1632, and 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1615—CONTRACTING BY NEGOTIATION

Subpart 1615.8—Price Negotiation

2. In § 1615.802 paragraph (e) is added to read as follows:

1615.802 Policy.

* * * * *

(e) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

(1) Similarly sized subscriber group (SSSG) rating methodologies will not be used to determine the reasonableness of a community-rated carrier's demonstration project premium rates. Carrier premium rates will not be adjusted for equivalency with SSSG rating methodologies. Carriers will benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) Community-rated carriers must propose premium rates with cost or pricing data and rating methodology, and experience-rated carriers must propose premium rates with cost data and rating methodology regardless of group size or annual premiums.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

3. In § 1632.170 paragraph (c) is added to read as follows:

1632.170 Recurring premium payments to carriers.

* * * * *

(c) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

(1) Carriers will create and maintain separate risk pools for demonstration project experience and regular FEHB experience for the purpose of establishing separate premium rates.

(2) OPM will create and maintain a demonstration project Contingency Reserve separate from the regular FEHB Contingency Reserve for each carrier participating in the demonstration project.

(3) Experience-rated carriers participating in the demonstration project will draw funds from their Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members. Experience-rated carriers will account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the experience-rated carrier's service charge that will be allocated to the demonstration project.

(4) Carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM. Experience-rated carriers will perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. Experience-rated carrier costs in excess of the premiums will be reimbursed first from the carrier's demonstration project Contingency Reserve and then from OPM's Administrative Reserve. Any surplus after the final accounting will be paid by experience-rated carriers to OPM's Administrative Reserve.

PART 1652—CONTRACT CLAUSES

Subpart 1652.2—Texts of FEHBP Clauses

4. Section 1652.215–70 is amended by removing "(JAN 1998)" from the clause heading and adding in its place "(JAN 2000)" and by adding a new paragraph (d) to read as follows:

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

* * * * *

(d) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the carrier's demonstration project premium rates. The Carrier's rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

5. Section 1652.216–70 is amended by removing "(JAN 1998)" from the clause heading and adding in its place "(JAN 2000)" and by adding a new paragraph (c) to read as follows:

1652.216–70 Accounting and price adjustment.

* * * * *

(c) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the Carrier's demonstration project premium rates. The Carrier's rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

6. Section 1652.216–71 is amended by revising the clause to read as follows:

1652.216–71 Accounting and allowable cost.

* * * * *

Accounting and Allowable Cost (FEHBAR 1652.216–71) (JAN 2000)

(a) *Annual Accounting Statements.* (1) The Carrier shall furnish to OPM an accounting of its operations under the contract. In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the FEHBP Experience-Rated Carrier and Service Organization Audit Guide (Guide).

(2) The Carrier shall have its Annual Accounting Statements and that of its underwriter, if any, audited in accordance with the Guide. The Carrier shall submit the audit report and the Annual Accounting Statements to OPM in accordance with the requirements of the Guide.

(3) Based on the results of the independent audit prescribed by the Guide and/or a Government audit, the Carrier shall adjust its annual accounting statements (i) By amounts found not to constitute actual, reasonable, allowable, or allocable costs; and/or (ii) to reflect prior overpayments or underpayments.

(4) The Carrier shall develop corrective action plans, in accordance with and as defined by the Guide, to resolve all audit findings.

(b) *Definition of costs.* (1) The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:

(i) On request, document and provide accounting support for the cost and justify that the cost is reasonable and necessary; and

(ii) Determine the cost in accordance with: (A) The terms of this contract, and (B) Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, the Carrier shall classify contract costs in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all actual, allocable, allowable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205–41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* The Carrier shall invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses. Investment expenses are those actual, allowable, allocable, and reasonable contract costs which are attributable to the investment of FEHBP funds, such as consultant or management fees.

(iv) *Other charges.* (A) *Mandatory statutory reserve.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, the Carrier shall return to the FEHBP a pro rata share based upon FEHBP's contribution to the total Carrier's set aside in accordance with FAR 31.201–5.

(B) *Premium taxes.* When the term "premium taxes" is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is

applicable to a broad range of business activity.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. The Carrier's chief executive officer and the chief financial officer shall sign the certificate.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

Certification of Accounting Statement Accuracy

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this reporting period in conformity with those guidelines.

2. The costs included in the statement are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation.

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement.

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: _____

Name of Chief Executive Officer: (Type or Print)

Name of Chief Financial Officer:

Signature of Chief Executive Officer:

Signature of Chief Financial Officer:

Date Signed:

Date Signed:

Underwriter:

Name and Title of Responsible Corporate Official:

(Type or Print:)

Signature of Responsible Corporate Official:

Date Signed:

(End of Certificate)

(d) Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

(1) The Carrier shall draw funds from its Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as it does for benefits costs incurred by regular FEHB members. The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier's service charge that will be allocated to the demonstration project.

(2) The Carrier shall submit a separate annual accounting statement and monthly incurred claims report for demonstration project experience.

(End of Clause)

7. Section 1652.232–71 is amended by removing "(Jan. 1999)" from the clause heading and adding in its place "(JAN 2000)," and adding a new paragraph (f) to read as follows:

1652.232–71 Payments—experience-rated contracts.

* * * * *

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

The Carrier will perform a final reconciliation of revenue and costs for the demonstration project group at the end of the demonstration project. Costs in excess of the premiums will be reimbursed first from the Carrier's demonstration project Contingency Reserve and then from OPM's Administrative Reserve. Any surplus after the final accounting will be paid by the Carrier to OPM's Administrative Reserve.

(End of Clause)

[FR Doc. 99–16913 Filed 7–2–99; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Rio Grande Silvery Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*), a species federally listed as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). This species, also referred to herein as silvery minnow or minnow, presently occurs only in the Rio Grande from Cochiti Dam downstream to the headwaters of Elephant Butte Reservoir, New Mexico, approximately five percent of its known historical range. Critical habitat overlays this last remaining portion of occupied range. It encompasses 262 kilometers (km) (163 miles (mi)) of the mainstem Rio Grande from the downstream side of the State Highway 22 bridge crossing the Rio Grande immediately downstream of Cochiti Dam, to the crossing of the Atchison Topeka and Santa Fe Railroad near San Marcial, New Mexico.

EFFECTIVE DATES: This rule becomes effective August 5, 1999.

ADDRESSES: You may inspect the complete file for this rule at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, New Mexico 87113, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, New Mexico Ecological Services Field Office (See **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, Texas. It is a stout silvery minnow with moderately small eyes and a small, slightly oblique mouth. Adults may reach 90 millimeters (mm) (3.5 inches (in)) in total length (Sublette *et al.* 1990). Its dorsal fin is distinctly pointed with the front of it located slightly closer to the tip of the snout than to the base of the tail. Life color is silver with emerald reflections. Its belly is silvery white; fins are plain; and barbels are absent (Sublette *et al.* 1990).

This species was historically one of the most abundant and widespread fishes in the Rio Grande Basin, occurring from Espanola, New Mexico, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, New Mexico, downstream to its confluence with the Rio Grande (Pflieger 1980). It is completely extirpated from the Pecos River and from the Rio Grande downstream of Elephant Butte Reservoir (Bestgen and Platania 1991). Throughout much of its historical range, decline of the silvery minnow may be attributed to modification of stream discharge patterns and channel drying because of impoundments, water diversion for agriculture, and stream channelization (Cook *et al.* 1992; Bestgen and Platania 1991).

In the Pecos River, the silvery Minnow was replaced by the closely related, introducted plains minnow (*H. placitus*) (Hatch *et al.* 1985; Bestgen *et al.* 1989; Cook *et al.* 1992). It is believed the plains minnow was introduced into the Pecos drainage during 1968, probably the result of the release of "bait minnows" that were collected from the Arkansas River drainage. The displacement that ensured was complete in less than one decade (Cowley 1979). The plains minnow may be more tolerant of modified habitats and, therefore, able to replace the silvery minnow in the modified reaches of the Pecos River. It is also believed that the two species hybridized. Habitat alteration and resulting flow modification could have also contributed to extirpation of the species in the Pecos River.

Decline of the species in the Middle Rio Grande probably began in 1916 when the gates at Elephant Butte Dam were closed. Construction of the dam signaled the beginning of an era of main stream Rio Grande dam construction that resulted in five major main stem dams within the minnow's habitat (Shupe and Williams 1988). These dams allowed manipulation and diversion of the flow of the river. Often this manipulation resulted in the drying of reaches of river and elimination of all fish. Concurrent with construction of the main stream dams was an increase in the abundance of non-native and exotic fish species as these species were stocked into the reservoirs created by the dams (Sublette *et al.* 1990). Once established, these species often completely replaced the native fish fauna (Propst *et al.* 1987). Development of agriculture and the growth of cities within the historical range of the Rio Grande silvery minnow resulted in a decrease in the quality of water that may have also adversely affected the range and distribution of the species.

Historically there were four other small native fish species that are now either extinct or extirpated from the middle Rio Grande; the silvery minnow is the only one surviving today and it has been reduced to only 5 percent of its historical range. Although the minnow is a hearty fish, capable of withstanding many of the natural stresses of the desert aquatic environment, the majority of the individual minnows live only one year. A healthy annual spawn is key to the survival of the species.

The minnow's range has been so greatly restricted that the species is extremely vulnerable to a single naturally occurring chance event. The minnow prefers shallow waters with a sandy and silty substrate that is generally associated with a meandering river that includes sidebars, oxbows, and backwaters. However, physical modifications to the Rio Grande over the last century, including the construction of dams and channelization of the mainstem, have altered much of the historical habitat for the minnow. Channelization has straightened and shortened mainstem river reaches, increased the velocity of the current, and altered riparian vegetation, instream cover, and substrate composition. The spring runoff triggers the minnow's spawn and the eggs produced drift in the water column. Diversion dams prevent the minnow from subsequently being able to move upstream as waters recede or as the minnow approaches inhospitable habitat such as Elephant Butte Reservoir, where the waters are cold, deep and stocked with non-native predatory fish.

During the irrigation season (March 1 to October 31), minnows often become stranded in the diversion channels where they may, although are unlikely to, survive for a while. As the water is used on the fields, the chance for survival of the minnow in the irrigation return flows in slim. Unscreened diversion dams also entrain both adult minnow, fry, and buoyant eggs. Perhaps even more problematic for the minnow are irrigation seasons in drought years, when most or all of the water may be diverted from the two lower-most segments of the river to meet irrigation and other needs. This diversion causes minnows to become stranded in dewatered segments of the river.

Historically, the silvery minnow was able to withstand periods of drought primarily by retreating to pools and backwater refugia, and swimming upstream to repopulate upstream habitats. However, when the river dries too rapidly and dams prevent upstream movement, the minnow becomes trapped in dewatered reaches and generally dies. This becomes particularly significant for the silvery minnow below San Acacia diversion dam, where approximately 70 percent of the current population lives. In the river reaches above (north of) San Acacia Dam, return flows from irrigation and other diversions are returned back into the mainstem of the river, which assures a fairly consistent flow. However, at San Acacia Dam, one irrigation diversions are made the return flows continue in off-river channels until they enter Elephant Butt Reservoir.

Furthermore, because the river is an aggrading system below San Acacia (i.e., the river bottom is rising due to sedimentation), the bed of the river is now perched above the bed of the 80 km (50 mile) low flow conveyance channel, which is immediately adjacent and parallel to the river channel. Because of this physical configuration, waters in the mainstem of the river tend to be drained into the low flow conveyance channel.

Seventy percent of the remaining minnow population resides between San Acacia diversion dam and the headwaters of elephant butte. In low water years in this reach, all the water in the stream may be diverted into the irrigation system or drained from the mainstem by the low flow conveyance channel. In effect, water is being conveyed to Elephant Butte reservoir through a bypass of the river in the San Acacia reach, resulting in a dry or drying Riverbed.

The designation of critical habitat for the Rio Grande silvery minnow includes 262 river-km (163 river-mi) in the Middle Rio Grande which are the last miles of habitat occupied by the species. The designation involves the mainstem of the Rio Grande or the active river channel including the water column, and its associated channel morphology. Land on either side of, but not within, the designated critical habitat, lies within the administrative boundaries of the Middle Rio Grande Conservancy District. Other landowners, sovereign entities, and managers include: the pueblos of Cochiti, San Felipe, Santo Domingo, Santa Ana, Sandia, and Isleta; the U.S. Bureau of Reclamation (BOR); the Service; the U.S. Bureau of Land Management; New Mexico State Parks Division; New Mexico Department of Game and Fish; New Mexico State Lands Department; and the U.S. Army Corps of Engineers (Corps). The communities of Algodones, Bernalillo, Rio Rancho, Corrales, Albuquerque, Bosque Farms, Los Lunas, Belen, and Socorro also border the length of critical habitat in the Middle Rio Grande Valley.

Previous Federal Action

On February 19, 1991, we mailed approximately 80 pre-proposal notification letters to the six Middle Rio Grande Indian pueblos, various governmental agencies, knowledgeable individuals, and the New Mexico Congressional delegation. The letter informed them of our intent to propose adding the Rio Grande silvery minnow to the Federal list of Endangered and Theratened Wildlife and Plants and solicited their comments and input. We were particularly interested in obtaining

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additional status information or information concerning threats. On May 22, 1991, a second informational letter was sent to the New Mexico Congressional delegation. Comments were received from the Service's Dexter, New Mexico, Fisheries Assistance Office; New Mexico Department of Game and Fish City of Albuquerque; Texas Parks and Wildlife Department; U.S. Department of the Interior, Office of Surface Mining; and the New Mexico Interstate Stream Commission. No commenters offered additional information concerning the status of the species or information concerning additional threats. Most commented that the range of the species had been severely reduced and that Federal listing should be considered. The response from the New Mexico interstate Stream Commission included a historical review of water development in the Middle Rio Grande Valley.

The Rio Grande silvery minnow was included in our Animal Notice of Review (56 FR 58804; November 21, 1991) as a Category 1 candidate species. At that time, a Category 1 candidate species was one for which we had on file substantial information on biological vulnerability and threats to support a proposal to list it as an endangered or threatened species.

On March 20, 1992, we held a meeting in Albuquerque, New Mexico, to explore with various interested governmental and private entities any existing or potential flexibility in water delivery schedules that might avoid de-watering the Rio Grande through the area containing the remaining habitat of the silvery minnow. We also requested that attendees provide any information that would add to the knowledge of the current distribution of the species. No New information concerning distribution, abundance, or threats to the species was provided. No flexibility in the management of water in the river or the timing or duration of flows was identified by any meeting participant.

We proposed to list the Rio Grande silvery minnow as an endangered species with critical habitat on March 1, 1993 (58 FR 11821). The comment period, originally scheduled to close on April 30, 1993, was extended until August 25, 1993 (58 FR 19220; April 13, 1993). This extension allowed us to conduct public hearings and to receive additional public comments. Public hearings were held in Albuquerque and Socorro, New Mexico, on the evenings of June 2 and 3, 1993, respectively.

After a review of all comments received in response to the proposed rule, we published the final rule to list the Rio Grande silvery minnow on July 20, 1994 (59 FR 36988). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time of listing the silvery minnow, we found that critical habitat was not determinable because there was insufficient information to perform the required analyses of the impacts of the designation.

We contracted for an economic analysis of the proposed critical habitat designation in September 1994. Individuals and agencies were notified of the award of the contract on September 30, 1994. On October 27, 1994, we held a meeting with the contractors, inviting representatives from the BOR and Corps, as the two Federal agencies with significant activities within the range of the silvery minnow and the proposed critical habitat; the pueblos of Cochiti, San Felipe, Isleta, Sandia, Santa Ana, and Santo Domingo; the Middle Rio Grande Conservancy District; the Rio Grande Compact Commission; the cities of El Paso, Texas and Albuquerque, New Mexico; the Elephant Butte Irrigation District; and the International Boundary and Water Commission. At the meeting, we and the contractors outlined the approach under consideration to determine if economic impacts arose from critical habitat designation and sought input to the process and participation from these entities. Following the meeting, a paper prepared by the consulting economists on their methodology for estimating economic effects of critical habitat designation was provided to all attendees.

On November 3, 1994, letters soliciting any information considered germane to the economic analysis were sent to attendees of the October 27, 1994, meeting. We scheduled two additional meetings to discuss and clarify any questions of the agencies and entities who were asked to provide information for the economic analysis. Non-Pueblo entities were invited to a June 21, 1995, meeting. At that meeting we reviewed the description and evaluation provided in the proposed rule of activities that might adversely modify critical habitat or that may be affected by such designation. To assist respondents in replying to our information request, the following topics identified in the proposed rule were discussed:

Any action that would lessen the amount of the minimum flow or would significantly alter the natural flow regime;

any activity that would extensively alter the channel morphology of the Rio Grande; and

any activity that would significantly alter the water chemistry in the Rio Grande.

Further, at that meeting we identified activities that may be affected by the designation to include construction, maintenance, and operation of diversion structures; use of the conveyance channel and other canals; and levee and dike construction and maintenance. As detailed below, we have since determined that activities likely to result in a finding of adverse modification of critical habitat for the silvery minnow are also likely to jeopardize the continued existence of the species.

On June 22, 1995, a meeting was held solely for Pueblo representatives to discuss the proposed critical habitat and the process to be employed in determining economic effects of the designation with the content identical to that of the earlier meeting. No Pueblo representative attended.

On July 5, 1995, potential respondent agencies and individuals were provided a copy of a previous report prepared on potential economic consequences of designating critical habitat for fish species in southern Oregon and northern California, in order to familiarize them with the type of approach to be utilized for the silvery minnow. On July 14, 1995, we sent a questionnaire to all known Federal entities in the area of proposed critical habitat seeking their input in developing information on the potential economic consequences of the proposed designation. The entities were specifically requested to evaluate two scenarios. The "no designation" scenario represented the conditions that would exist, given that the Rio Grande silvery minnow has been listed as an endangered species, but assuming there were no designations of critical habitat. The other was the "proposed designation" scenario, which represented conditions that would exist if proposed critical designation was made final. Any difference between activities was to be identified as the designation's impacts. Five Federal agencies did not respond to the questionnaire. Twelve responded that their actions would not change between

the two scenarios. One Federal agency, the BOR, responded that the designation of critical habitat for the silvery minnow in the middle Rio Grande Valley would have a limited impact on activities that it would conduct, authorize, permit, or fund over and above any impact derived from the listing of the species.

Following the compilation and assessment of responses, the draft economic analysis was prepared and provided to us on February 29, 1996. The draft document was then provided to all interested parties on April 26, 1996. That mailing included 164 individuals and agencies, all affected pueblos in the valley, all county commissions within the occupied range of the species, and an additional 54 individuals who had attended the public hearings on the proposed listing and who had requested that they be included on our mailing list. At that time we notified the public that, because of the Congressional moratorium and funding rescission on final listing actions and designations of critical habitat imposed by Public Law 104–6, no work would be conducted on the analysis or on the final decision concerning critical habitat. However, we solicited comments from the public and agencies on the economic analysis for use when such work resumed.

On April 26, 1996, the moratorium was lifted. Following the waiver of the moratorium, we reactivated the listing program that had been shut down for over a year and faced a national backlog of 243 proposed species' listings. In order to address that workload, we published our listing Priority Guidance (LPG) for the remainder of Fiscal Year (FY) 1996 (May 16, 1999; 61 FR 24722). That guidance prioritized all listing actions and identified the designation of critical habitat as the lowest priority upon which we would expend limited funding and staff resources. Subsequent revisions of the LPG for Fiscal Years 1997 (61 FR 64475) and for 1998/1999 (63 FR 25502) retained critical habitat as the lowest priority.

The processing of this final rule designating critical habitat for the minnow does not conform with our current LPG for FY 1998/1999. That guidance gives the highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priory (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. Our Southwest Region is currently working on Tier 2 actions; however, we are undertaking this Tier 3 action in order to comply with the court order in *Forest Guardians and Defenders of Wildlife* v. *Bruce Babbitt*, CIV 97–0453 JC/DIS, discussed below.

On February 22, 1999, the United States District Court for the District of New Mexico in *Forest Guardians and Defenders* ordered us to publish a final determination with regard to critical habitat for the Rio Grande silvery minnow within 30 days of that order. The deadline was subsequently extended by the Court to June 23, 1999. This final rule is issued to comply with that order and has been crafted within the time constraints imposed by the Court's orders. The draft economic analysis performed for the critical habitat designation was drafted in 1996 and represents data gathered from respondent entities about 4 years ago. We reviewed the content of that draft report in the context of Service policy, comments received from the public, and any other new information.

On April 7, 1999, we reopened the public comment period on the proposal to designate critical habitat and announced the availability of two draft documents, the draft Economic Analysis prepared in 1996, and a draft Environmental Assessment on the proposed action of designating critical habitat (64 FR 16890). Also on April 7, 1999, we mailed copies of the notice and the two draft documents to approximately 425 entities known to have an interest in the Rio Grande silvery minnow and its proposed critical habitat. The April 7, 1999, **Federal Register** notice also announced a public hearing to discuss and receive comments on the proposed designation. That hearing was held in Albuquerque, New Mexico, on April 29, 1999.

Parallel to the process of reviewing the critical habitat proposal and the economic consequences of the designation, we initiated recovery planning for the silvery minnow. The Interagency Cooperative Policy Statement, issued jointly by us and the National Marine Fisheries Service on July 1, 1994 (59 CFR 34272), identified the minimization of social and economic impacts caused by implementing recovery actions as a priority of both Services. The Rio Grande Silvery Minnow Recovery Team was appointed pursuant to this guidance and includes both species and babitat experts and community and private interest stakeholders. Many of the representatives of agencies, municipalities, and private interests that were involved in the proposal to list and in the analysis of critical habitat are recovery team members. The draft Final Rio Grande Silvery Minnow Recovery Plan has been prepared and is currently under review.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. With this final rule, critical habitat is being designated for the RIO Grande silvery minnow.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as "(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (i.e., the species is recovered and removed from the list of endangered and threatened species).

We are required to base critical habitat designations upon the best scientific and commercial data available (50 CFR 424.12) after taking into account economic and other impacts of such designation. In designating critical habitat for the Rio Grande silvery minnow, we have reviewed the overall approach to the conservation of the silvery minnow undertaken by the local, State, Tribal, and Federal agencies operating within the Middle Rio Grande Valley since the species' listing in 1994, and the identified steps necessary for recovery outlined in the draft Final Rio Grande Silvery Minnow Recovery Plan (in review). We have also reviewed available information that pertains to the habitat requirements of this species, including material received during the

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initial public comment period on the proposed listing and designation, the information received following the provision of the draft Economic Analysis to the public on April 26, 1996, and the comments and information provided during the 30-day comment period opened on April 7, 1999, including the public hearing.

Effect of Critical Habitat Designation

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a list species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The designation of critical habitat directly affects only Federal agencies, by prohibiting actions they fund, authorize, or carry out from destroying or adversely modifying critical habitat. Individuals, firms and other non—Federal entities are not affected by the designation of critical habitat so long as their actions do not require support by permit, license, funding, or other means from a Federal agency.

An understanding of the interplay of jeopardy and adverse modification standards is necessary to evaluate the likely outcomes of consultation under section 7, and to evaluate the environmental, economic and other impacts of any critical habitat designation. Implementing regulations (50 CFR part 402) define "jeopardize the continued existence of" (a species) and "destruction or adverse modification of" (critical habitat) in virtually identical terms. "Jeopardize the continued existence of" means to engage in an action "that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species." "Destruction or adverse modification" means a direct or indirect alteration that "appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species."

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Thus, for most species, actions likely to result in destruction or adverse modification of critical habitat are nearly always found to jeopardize the species concerned, and in most cases the existence of a critical habitat designation does not materially affect the outcome of consultation. This is often in contrast to the public perception that the adverse modification standard sets a lower threshold for violation of section 7 than the jeopardy standard. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not to jeopardize the species for which it is designated are extremely rare historically and none have been issued in recent years.

The duplicative nature of the jeopardy and adverse modification standards is true for the Rio Grande silvery minnow as well. Since the species was listed in 1994, there have been a number of consultations that included a determination of potential impacts to proposed critical habitat. Implementing regulations of the act found at 50 CFR 402.10 direct that each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. No additional restrictions resulted from these conferences. We do not anticipate that when the designation is finalized we will need to impose additional restrictions relative to critical habitat that were not previously in place due to the listing of the species.

In some cases, critical habitat may assist in focusing conservation activities by identifying areas that contain essential habitat features (primary constituent elements), regardless of whether they are currently occupied by the listed species. This alerts the public and land managing agencies to the importance of an area in the conservation of that species. Critical habitat also identifies areas that may require special management or protection.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined below) to an extent that the value of designated critical habitat for both the survival and recovery of the silvery minnow is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Because the area that is being designated as critical habitat represents the remaining 5 percent of its historical range and is currently occupied by the species, loss of habitat that would result in a finding of adverse modification would also significantly reduce the likelihood of survival and recovery of the species, which is the definition of jeopardy.

Federal activities that may be affected by critical habitat designation include construction, maintenance, and operation of diversion structures; management of the conveyance channel; and levee and dike construction and maintenance. Again, these types of activities have already been examined under consultation with us upon listing the species as endangered. No additional restrictions to these activities as a result of critical habitat designation are anticipated.

Recent consultations undertaken with the BOR and Corps have recognized and allowed for occasional drying of portions of the lower reaches of the minnow's occupied habitat. We anticipate that, in times of severe water shortages, similar actions must be permissible after the designation of critical habitat becomes final, as long as a managed reduction ion surface flows allows the minnow to remain in the water column and retreat upstream, minimizing mortality. However, any such circumstance would require consultation under section 7 of the Act, and adequate monitoring would be required to ensure that the action would not result in jeopardy to the species, adversely modify its critical habitat, or result in unpermitted taking of individuals. See the discussion on Primary Constituent Elements and our response to Issue 33, below.

The minnow does not need a large quantity of water to survive but it does need some water. The minnow requires habitat with sufficient flows through the irrigation season to avoid excessive mortality in downstream reaches, plus a spike in flow in the late spring or early summer to trigger spawning, and a relatively constant winter flow. Alterations of the primary constituent elements are evaluated to determine whether Federal activities are destroying or adversely modifying critical habitat; the identification of primary constituent elements for the minnow is not intended to create a high-velocity, deep flowing river. The minnow does not require such habitat characteristics.

Primary Constituent Elements

In identifying areas as critical habitat, 50 CFR 424.12 provides that we consider those physical and biological attributes that are essential to a species' conservation, and that may require special management considerations or protection. Such physical and biological features, as outlined in 50 CFR 424.12, include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring; and

Habitats that are protected from disturbances or are representative of the historical geographical and ecological distributions of a species.

Primary constituent elements of critical habitat required to sustain the Rio Grande silvery minnow include:

Stream morphology that supplies sufficient flowing water to provide food and cover needed to sustain all life stages of the species;

Water of sufficient quality to prevent water stagnation (elevated temperatures, decreased oxygen, carbon dioxide build-up, etc.); and

Water of sufficient quality to prevent formation of isolated pools that restrict fish movement, foster increased predation by birds and aquatic predators, and congregate pathogens.

All areas within the designated stretch of the Rio Grande are occupied by the Rio Grande silvery minnow. Areas within the designated stretch either contain, or are capable of containing, these primary constituent elements. Areas within the designated critical habitat that may not have minnows present at a given point in time are capable of supporting these constituent elements because habitat conditions can change rapidly in response to flows and other factors, such as the development of sand bars, shifting of islands within the channel, and creation and disappearance of pools.

Land Ownership

The area designated as critical habitat for the Rio Grande silvery minnow is the only area where the species has been collected in the recent past and where it is currently known to exist. Within this 160 mi (262 km) stretch of river, there are four identified reaches delineated to reflect the management of water and habitat. From its upstream end at the Highway 22 bridge to its downstream terminus at the railroad trestle, critical habitat is within the Cochiti, Angostura, Isleta, and San Acacia reaches.

Critical habitat for the silvery minnow includes only the active channel of the mainstem Rio Grande. Ownership of the channel itself is unclear. However, most of the land in the middle river valley that abuts critical habitat is within the administrative boundaries of the Middle Rio Grande Conservancy District. The Middle Rio Grande Conservancy District is the subdivision of the State of New Mexico which provides for irrigation, flood control, and drainage of the Middle Rio Grande valley in New Mexico, from Cochiti Dam downstream 150 mi (285 km) to the northern boundary of the Bosque del Apache del Apache National Wildlife Refuge. Within these 150 mi are also the lands of the communities of Algodones, Bernalillo, Corrales, Albuquerque, Los Lunas, Belen, Socorro, and a number of smaller incorporated and unincorporated communities. Within the upper third of the middle valley of the Rio Grande are six Indian pueblos: Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta. Approximately 45 river mi (86 km) of critical habitat run through Pueblo lands.

Summary of Economic and Other Impacts

The Act requires that we designate critical habitat after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from designation if the benefits of its exclusion outweigh the benefits of its inclusion in critical habitat, unless failure to designate the area would result in extinction of the species concerned. We utilized the draft economic analysis prepared for the proposed critical habitat designation, in addition to our assessment of other impacts, to assist in our determination of whether any incremental economic effects of designation exist beyond the effects of the listing. The draft economic analysis, along with comments and other information available to us, allowed us to assess the benefits of exclusion versus inclusion for the area identified in the proposed rule.

Regional Economic Profile

The study area for the draft economic analysis included the strip of land adjacent to the Rio Grande, stretching from the Santa Fe metropolitan area, at the northern edge of the proposed designation to the El Paso, Texas metropolitan area, lying about 150 miles downstream from the southern terminus of the proposed critical habitat designation. This area embraces the designated habitat area and the majority of the economic activity that directly interacts with resources potentially affected by the designation. This area includes nine counties in two states and four metropolitan areas: Santa Fe, Albuquerque, Las Cruces, and El Paso. Albuquerque and El Paso, each with a population of about 650,000, are considerably larger than the others.

Irrigated agriculture accounts for more than 80 percent of permitted water use in the Middle Rio Grande Valley. Total private-sector employment in the agricultural industry in 1993 was 14,078, about two percent of total employment in the study area. Agricultural employment is a higher percentage of total employment in the two non-metropolitan counties (Socorro and Sierra counties in the lower reaches of designated critical habitat) than in the metropolitan areas, and a higher percentage in the Las Cruces metropolitan area than in the other metropolitan areas. For the study area as a whole, growth in agricultural employment during the past decade did not keep pace with total employment. In 1993, proprietors and employees in the study area's agricultural industry earned income of about $269 million, or one percent of total income. Agricultural incomes in this area have grown more rapidly than incomes in other sectors during the past decade, largely because farm incomes were depressed throughout the nation in the early 1980s. Nonetheless, average earnings in the agricultural industry are approximately two-thirds of the overall average.

These data indicate that the agricultural industry, the resource-intensive industry primarily associated with the critical habitat of the silvery minnow, generally reflects the national trends for resource-intensive industries. In particular, the data indicate that nationwide this industry is a small component of the overall economy and it is not growing as rapidly as other sectors of the economy.

Although from a geographic perspective the landscape surrounding the critical habitat for the silvery minnow is predominantly non-metropolitan, the economy of the study area is highly concentrated in the area's four metropolitan centers: Santa Fe, Albuquerque, Las Cruces, and El Paso. Approximately 98 percent of the population in the study area resides in the counties that constitute the area's four metropolitan statistical areas. This percentage somewhat overstates the portion of the area's population that actually has a metropolitan residence, because these are large counties and each one contains both urban and non-urban residents.

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Economic Impacts and Effects

We reviewed and assessed the draft economic analysis report, which was based on questionnaires to Federal agencies. These questionnaires reported Federal agencies' own assessments of the extent to which they would alter their activities in response to critical habitat designation. Most agencies stated that the designation would have no effect. Only one agency, the BOR, indicated that it would alter its activities in response to the proposed designation of critical habitat for the minnow. Specifically, the BOR indicated that it would alter its river maintenance program in the proposed designated critical habitat area from just below Cochiti Dam to just above Elephant Butte Reservoir. Because of numerous uncertainties, however, the BOR was unable to give a specific estimate of the designation's potential impact on its river maintenance activities.

The BOR's response to the questionnaire was their own interpretation of the ramifications of avoiding adverse modification of critical habitat. However, we believe that if the identified activities had an impact on the silvery minnow significant enough to result in a finding of adverse modification of the minnow's critical habitat, we would also find that those activities would jeopardize the continued existence of the species in the absence of designated critical habitat. Thus, the designation of critical habitat should not require any change in the activities identified by the Bureau that were not already changed due to the listing of the minnow, and no economic effects should flow from the designation itself.

No Federal agency that commented during the April–May 1999, public comment period amended or added to its original response about impacts to its operations that would be caused by critical habitat. The BOR, in its May 7, 1999, comments, stated that the designation of critical habitat will likely have minimal impacts on that agency's Endangered Species Act-related activities.

In summary, although the draft economic analysis provided to us identified a perceived economic impact of critical habitat designation, we consider this potential economic impact to be a result of the minnow's listing, not critical habitat designation. In addition, the BOR's original estimate of economic impacts resulting from critical habitat designation discussed ceasing river maintenance; an unlikely occurrence. It is more likely that the Bureau would employ different design and construction techniques to accomplish river maintenance objectives. We have concluded that there are no incremental economic effects associated with the designation of critical habitat above and beyond the effects of listing the species as endangered. We have thus determined that there are no areas within the proposed designation where the benefits of exclusion can be shown to outweigh any benefits of inclusion.

Secretarial Order 3206

Secretarial Order 3206 was issued to clarify the responsibilities of the component agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce, when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, Tribal trust resources, or the exercise of American Indian Tribal rights. In keeping with the trust responsibility and government-to-government relationships, we recognize our responsibility to consult with affected tribes and provide written notice to them as far in advance as practicable of conservation restrictions that we consider necessary to protect listed species.

If a proposed conservation restriction is directed at a Tribal activity that could raise the potential issue of direct (directed) take under the Act, then meaningful government-to-government consultation shall occur, in order to strive to harmonize the Federal trust responsibility to Tribes, Tribal sovereignty, and the statutory missions of the Departments of the Interior and Commerce. In cases involving an activity that could raise the potential issue of an incidental take under the Act, Tribal notification shall include an analysis and determination that all of the following conservation standards have been met—(i) the restriction is reasonable and necessary for conservation of the species at issue; (ii) the conservation purpose of the restriction cannot be achieved by reasonable regulation of non-Indian activities; (iii) the measure is the least restrictive alternative available to achieve the required conservation purpose; (iv) the restriction does not discriminate against Indian activities, either as stated or applied; and (v) voluntary tribal measures are not adequate to achieve the necessary conservation purpose.

Below we have specifically assessed the designation of critical habitat with respect to the five factors listed in Secretarial Order 3206:

1. The designation of critical habitat is required by law. The initial inclusion of reaches of the Rio Grande within or adjacent to Pueblo boundaries was based solely on biology and the contribution of those reaches of the river to the conservation of the species. Moreover, as discussed previously, critical habitat designation will impose no additional restrictions on activities on Indian lands beyond the prohibitions already in place against jeopardy and unpermitted taking of the species.

2. In the process of designating critical habitat for the Rio Grande silvery minnow, specific biological criteria were applied to all potential river reaches. This critical habitat designation includes a continuous stretch of river that constitutes the remaining 5 percent of the historical range of the species, and that we consider essential to the silvery minnow's conservation. The contiguity of habitats within and among the different reaches of the Rio Grande and the importance of the linkage between upstream and downstream activities and habitats does not allow for the removal from designation of one river section from its adjacent upstream and downstream non-Indian counterparts without potentially decreasing the value of all sections. Additionally, because of the unique relationship existing between the pueblos and the non-Indian Middle Rio Grande Conservancy District (the District is obligated to deliver water to the pueblos; the pueblos are represented on the Board of the District), and the interdependence of Tribal and non-Tribal activities throughout the stretch of critical habitat lying within the District does not facilitate the separation of the two.

3. The critical habitat as designated encompasses the last remnant of habitat still occupied by the silvery minnow (approximately 5 percent of the species' historical habitat) and is considered the least amount available with which to achieve the survival and recovery of the species.

4. The designation of critical habitat does not discriminate against Indian activities, either as stated or applied. The identified threats to the habitat of the Rio Grande silvery minnow were based on range-wide information that neither discriminated against nor favored particular land owners. Any "restrictions" which might be derived from the designation would have to arise from the obligation, under the Act, of Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. As stated in 1 (above), critical habitat does not create additional restrictions because the areas are currently occupied, and no increased burdens have been identified.

5. Voluntary Tribal measures are not adequate to achieve the necessary conservation purpose. Tribal representation has been included in the Rio Grande Silvery Minnow Recovery Team and we continue to work with individual pueblos when requested to provide expertise in the rehabilitation and maintenance of aquatic habitats on Pueblo lands. Santa Ana Pueblo has taken a leadership role in forming a broad interest-based consortium, which is seeking funding for recovery projects for the silvery minnow. In addition, Santa Ana is also actively pursuing habitat restoration within the Santa Ana Pueblo boundaries. Both Sandia Pueblo (which is north of Albuquerque on the Rio Grande) and Isleta Pueblo (which is immediately south of Albuquerque on the Rio Grande) have enacted EPA-approved water quality standards as authorized under the Clean Water Act.

Because of the time constrains in rendering this final determination, we have had limited opportunity to engage in consultation with the pueblos adjacent to the designated critical habitat. However, on March 4, 1999, following the receipt of the court order, information was provided to Tribal representatives at the meeting of the Six Middle Rio Grande Basin Pueblos Coalition. Written comments to the proposed critical habitat designation for the Rio Grand silvery minnow were received from Sandia Pueblo (generally supporting the designation), Isleta Pueblo, and the Jicarilla Apache Tribe (both expressing concerns about the effects of the designation). On May 3, 1999, the Service's Regional Director, the Department of the Interior's Office of the Regional Solicitor, and staff met with representatives of and legal counsel for the Pueblo of Santa Ana to discuss critical habitat designation and solicit input from the Pueblo. We will continue to provide assistance to and cooperate with pueblos abutting critical habitat at their request.

Summary of Comments

Following the proposal to list the Rio Grand silvery minnow as an endangered species with critical habitat, we received comments from the public, scientific community, and management and regulatory agencies at the State and Federal levels concerning critical habitat. Additionally, following the provision of the draft Economic Analysis to the entities on our mailing list, we also received comments on the draft document and the economic impacts predicted by that document.

Finally, during the public comment period opened from April 7 to May 7, 1999, we received a total of 94 comments concerning the proposal, the draft Economic Analysis document, and the draft Environmental Assessment. Thirty-two comments were provided orally at the public hearing, and we received 62 written comments. All comments on critical habitat and the draft documents, both oral and written, received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. Issues that were addressed in the final rule to list the Rio Grande silvery minnow may be found in that publication (59 FR 36988).

Issue 1: Considerable discrepancy exists within the comments received related to geographical extent of the proposed designation. Some commenters stated that the extent of critical habitat proposed by the Service is inadequate to address survival and recovery of the species. Others asserted that there is no basis for excluding the river above Cochiti Reservoir (including the Colorado portions of the watershed) from designation. Still others recommended that additional reaches of the Rio Grande should be evaluated, such as the river between Elephant Butte and Caballo reservoirs and downstreams of Caballo Reservoir. Some commented that the reach of the Rio Grande below San Acacia, because of its known episodes of intermittency, should be removed from the proposal. Some commenters recommended that, because the reach upstream from San Acacia Cochiti Reservoir would appear to offer an opportunity to provide critical habitat for the silvery minnow without insurmountable adverse effects on water supply, that we do not designate as critical habitat the reach downstream from San Acacia. Some commenters stated that there were no east-west boundaries identified for critical habitat. Some commenters, misinterpreting the scale of the map prepared for critical habitat, interpreted the proposal to incorporate miles of terrestrial habitat bordering the river throughout the length of the Middle Rio Grande Valley.

Service Response: The areas finalized as critical habitat in this rule meet the designation criteria in 50 CFR part 424. This designation of critical habitat is based on the last remaining area still occupied by the species. The Service considers this area in need of special management and protection and essential for the conservation of the species. The area designated includes the mainstem of the Rio Grande (comprised of the active river channel including the water column), and its associated channel morphology. Although some actions on lands within the floodplain of the river may affect critical habitat, these areas are not included within the designation.

The river reach between San Acacia and Elephant Butte Reservoir is of primary importance because 70 percent of the population currently inhabits that reach. The river above Cochiti Dam was not a significant part of the species' historical range, is colder than the optimal temperature for silvery minnows, and is stocked with predatory non-native fish. The area between Elephant Butte and Caballo reservoirs is also stocked with non-native fish, and its channel morphology is not conductive to silvery minnows. Finally, the river below Caballo Reservoir is not currently occupied by the species. As we progress through the recovery process for the Rio Grande silvery minnow, we may identify areas below the Caballo Reservoir, or other areas, that are suitable for reintroduction. Those areas would first have to be examined to determine why the minnow no longer occurs there, what remedial action would be necessary to reestablish the species, and whether remediation is feasible. However, until we have this information, we believe that the habitat essential to the silvery minnow's conservation is that which we originally proposed. If information becomes available that confirms that additional areas are essential for the species' conservation, we can revise the critical habitat designation. In addition, under section 4 of the Act, persons can petition the Service to modify the designation.

Issue 2: The economic analysis for regional impacts must be able to assess the effects on regional income that result from changes in the natural resource supply such as water. An inter-industry general equilibrium resource assessment model that can account for true resource limits and interdependence in the regional economy should be utilized.

Service Response: Because any finding of adverse modification of critical habitat will also result in a finding of jeopardy to this species, we have determined that there are no incremental economic effects above and beyond any effects associated with the listing of this species. Therefore, we believe that there is no need for further economic analysis as suggested by these commentors.

Immediately following initiation of the draft economic analysis, we arranged a meeting for all interested

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agencies to meet with the consulting economists and to discuss the approach and methodology that was to be utilized in the determination of economic impacts. Those commenters who expressed their desire to interact with the economists were invited to the meeting. A second meeting was also held with agencies prior to the provision of the questionnaire; interested parties were invited to these meetings and also provided informational copies of the questionnaire that was sent to Federal entities for response.

Issue 3: We must evaluate the direct and indirect impacts of critical habitat. Indirect costs are associated with the societal implications on small communities in the middle Rio Grande valley dependent upon adequate flows from the Rio Grande to sustain the practice of irrigated agriculture. Designation of critical habitat could limit the ability of municipalities and other water providers in the middle valley to provide water to residents and affect the agricultural economy.

Service Response: As indicated in the proposal, the designation of critical habitat would affect only Federal agency actions that would adversely modify or destroy that habitat. As stated previously, actions that would destroy or adversely modify critical habitat would also result in jeopardy to the species. The draft economic analysis discussed the possibility that cessation or alternation of Federal actions in order to avoid jeopardy to the species or adverse modification or destruction of critical habitat might affect water availability to irrigators, cities, and other water rights holders. It also stated that complete cessation might have far reaching impacts on the viability of conveyance structures linked to and dependent upon the maintenance of the channel of the Rio Grande. The draft economic analysis further included the BOR's estimates of increased costs of river maintenance, and possible loss of water caused by an equivalent reduction in river maintenance capability as a worst case scenario based on the Bureau's interpretation of critical habitat.

In commenting on the draft report, the BOR has clarified that those actions under its control within the boundaries of critical habitat would not necessarily cease, rather the Bureau would likely employee different design and construction techniques to accomplish river maintenance objectives. Additionally, the BOR, in its commenting letter of May 7, 1999, said that the designation of critical habitat will likely have minimal impacts on that agency's Endangered Species Act-related activities.

Issue 4: The draft Economic Analysis is incomplete and flawed. The draft Environmental Assessment, relying on the conclusions of the economic analysis, is also flawed and inadequate. The Service should prepare a thorough economic analysis with necessary studies to adequately assess the requirements of the silvery minnow and the impact of the critical habitat designation. The Service is strongly encouraged to provide adequate time for public review and comment on studies to determine the impact of the critical habitat designation and a final rule should not be issued until this new information has been fully considered.

Service Response We have reviewed the draft economic analysis, draft Environmental Assessment, and all comments relieved on those documents and the proposal to designate critical habitat. We considered all comments in the final preparation of this designation. We believe that designation of critical habitat will have no incremental effects beyond those resulting from listing the species as endangered. The absence of impacts attributable to critical habitat designation is clearly and adequately explained in both this final rule and in the environmental assessment prepared for this action. Further, while we welcome and encourage additional studies on the biological requirements of the silvery minnow, we believe the best available information has been used in defining the primary constituent elements necessary for the species' conservation.

Issue 5: The Service should place the silvery minnow critical habitat designation on hold in order to establish a coordinating committee composed of interests above and below Elephant Butte Reservoir to develop a full-scale report on the existing data available on the silvery minnow, with several subcommittees, one of which would be charged with evaluation of the overall impact of the designation on other significant environmental interests.

Service Response: The Act does not allow the indefinite suspension of determination of critical habitat. It does, however, allow for a 1-year delay in designation if we find that critical habitat is not determinable. We stated in the final listing rule that we would need an additional year to determine the economic and other impacts of designation.

The Act requires that we determine the extent of critical habitat and the economic and other relevant impacts of such a determination using the best scientific and commercial information available at that time. We believe that considerable information is available on the silvery minnow, including numerous scientific studies on the species and on the hydrology of the Rio Grande. In addition, a recovery plan has been drafted by a team of experts and is currently under review. This recovery plan represents a compilation and analysis of the existing data on the species and its habitat. Within the constraints imposed by the Act and, in this instance, time constraints from the Court, we have attempted to contact all knowledgeable and interested entities to gather information for use in the determination of critical habitat and in the analysis of the economic and other relevant impacts that might arise from its designation.

Issue 6: The proposed rule provided no data or factors that were considered concerning economic and other impacts.

Service Response: The proposed designation of critical habitat was based solely on biological information concerning the needs and potential conservation of the silvery minnow. Economic data were not required for the proposal, nor were the economic data developed at the time the proposed rule was published. The economic analysis of impacts from the proposed designation was initiated in September 1994. The draft economic analysis was shared with all interested parties in April 1996, and its availability announced along with the reopening of the public comment period on the proposal in April 1999, giving interested parties ample opportunity to comment on the draft economic analysis.

Issue 7: An Environmental Impact Statement is required and must be provided before critical habitat can be designated.

Service Response: We have determined that an Environmental Impact Statement, as defined by the National Environmental Policy Act (NEPA) of 1969, need not be prepared in connection with actions under section 4 of the Endangered Species Act, including designation of critical habitat. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). However, the Tenth Circuit Court of Appeals ordered compliance with NEPA on critical habitat designation for two fish species in *Catron County Board of Commissioners* v. U.S. Fish and Wildlife Service, 75 F.3d 1429 (10th Cir. 1996). Based on that decision, in order to comply with NEPA, we have completed an Environmental Assessment to delineate those environmental, socio-economic, and other relevant impacts arising from this designation. That Environmental Assessment resulted in a Finding of No Significant Impact for this action. Under NEPA, an Environmental Impact Statement is not required in instances where a Finding of No Significant Impact is made on an Environmental Assessment.

Issue 8: Several commenters stated their concern that critical habitat would affect water rights. Other stated that while the proposed critical habitat is totally upstream of Elephant Butte. Reservoir, action taken in accordance with the proposal may decrease the amount and delivery of water available for use by the El Paso Water Utilities.

Service Response: We have determined that any alternations of BOR activities due to the prohibition against destruction or adverse modification of critical habitat would also be required under the prohibition of jeopardy to the species. Thus, there are no additional impacts of critical habitat designation. Further, neither the listing of the species nor designation of crucial habitat can or will determine State water rights.

Issue 9: The City of Albuquerque's wasterwater treatment facility discharges into the reach of the Rio Grande designated as critical habitat for the silivery minnow. To avoid significantly altering the water chemistry of the Rio Grande, the City of Albuquerque may have to remove the treated effluent entirely from the river, and to control and treat stormwater runoff.

Service Response: The City of Albuquerque is correct in stating that the Environmental Protection Agency (EPA), as the Federal agency issuing a permit for the City's wasterwater treatment plant under the National Pollutant Discharge Elimination System, would be required to ensure that its action would not destroy or adversely modify critical habitat for the silvery minnow. However, the EPA would be required to ensure that its proposed action would not likely jeopardize the continued existence of the species. Given the similarity of the definition of jeopardy and destruction or adverse modification, no additional restrictions will result from designation of critical habitat.

Issue 10: The designation of critical habitat will require continuous instream flow. The working of the primary constituent element to require a quantity of water sufficient to avoid isolated pools in the river equates to perennial bank to bank flows. The amount of water predicted for critical habitat is unobtainable.

Service Response: We have made no determination that continuous bank-to-bank flow is or will be a requirement to avoid jeopardy to the species or adverse modification of critical habitat. (See discussion above under *Effect of Critical Habitat Designation.*) As an evolutionary product of arid southwest river systems such as the Rio Grande, the silvery minnow has adapted to low flow and intermittent flow conditions. However, complete dewatering of extensive reaches of the only section of river where it now exists are of great concern, particularly when the impacts of dewatering are combined with the inability of the silvery minnow to access stillflowing reaches upstream of diversion dams.

We have made no prediction of the amount of water needed for maintenance of critical habitat. However, since the silvery minnow was listed and critical habitat proposed, the amount of water needed in low-water years to avoid jeopardy to the species ranged from about 17,000 to 58,000 acre-feet, depending upon specific yearly conditions of water use, climate, water availability, and response of the silvery minnow to those river conditions. We do not anticipate that flow management necessary to avoid destruction or adverse modification of critical habitat will be different than what is currently required to avoid jeopardizing the species.

Issue 11: The draft economic analysis displayed a bias against irrigated agriculture and flood control activities. It argues against irrigation subsidies even though society through its congressional representatives has made the decision that such subsidies provide important benefits to society.

Service Response: We disagree with the commenter's interpretation that the report's presentation of economic values and commitments identified for irrigated agriculture and flood control is biased against these activities. The report does not argue for or against subsidies of any kind, it merely notes their existence within the context of economic analysis. The costs and revenues from agriculture in the Rio Grande valley are a matter of record, not generated by the authors of the report, but taken from published data of the U.S. Department of Commerce, Bureau of Economic Analysis, and the New Mexico Cooperative Extension Service.

Issue 12: The draft Economic Analysis should have included some analysis to gauge the impacts if the United States' ability to comply with its treaty obligations to Mexico are compromised. Similarly, if the ability of New Mexico to deliver water to Elephant Butte is hampered, there will be drastic consequences for the water users in southern New Mexico and Texas.

Service Response: We believe that there are alternatives in the delivery of water that will allow the United States and the State of New Mexico to comply with compact and treaty obligations without either jeopardizing the continued existence of the species or destroying or adversely modifying critical habitat. Some commenters are concerned that if water is transported in the river channel instead of the conveyance structures, additional water will be lost. However, we do not believe that the accounting of water transport or carriage losses is of sufficient accuracy and precision; the loss of salvaged surface water could be a loss to only one reach of the river, to the overall system, or merely transported subsurface to Elephant Butte. A better understanding of the hydrology and a more precise accounting system would also aid in the management of flow of the river.

Issue 13: The amount of time and data available to agencies in responding to the economic questionnaire were insufficient to allow for more detailed reporting of economic effects.

Service Responses: The initial contact with the identified agencies that might have actions affected by the designation of critical habitat was in October 1994. Coordination by both ourselves and the consulting economists continued with the agencies to clarify information needs, to provide examples of questionnaires utilized in and reports produced by other economic impact assessments of critical habitat, and to exhaustively discuss what would be considered the components of critical habitat and how adverse modification to those components might be analyzed by the Service. These efforts continued for over seven months. In June 1995, another meeting was held with all involved agencies invited to discuss the process, the information needs, the questionnaire, and the assessment parameters. It was only after that extensive period of coordination that the questionnaire was sent to the agencies for their response. The requested response time was 30 days; based on the discussions and meetings of the preceding seven months, we do not believe that the response time was unreasonably brief.

Issue 14: The authors of the draft economic analysis cannot seriously consider the estimate of 4,000 acre-feet additional depletion to represent the actual impact of the designation of critical habitat.

Service Response: The authors of the draft report utilized the information provided to them from the Federal

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agencies who have been managing the Rio Grande for over 90 years. The quantity of 4,000 acre-feet was provided by the BOR. Although the BOR estimated that a potential loss of 4,000 acre feet of surface flow could be realized from the cessation of some of their river maintenance program, it is not known if this amount of water would be lost to the system entirely, or travel subsurface down the channel of the Rio Grande to arrive, in some quantity, at Elephant Butte Reservoir.

Issue 15: If critical habitat is declared there is a real possibility that the BOR will be unable to perform periodic maintenance on the Rio Grande upstream from Elephant Butte Reservoir.

Service Response: This concern was not voiced by the BOR. No data provided by the Bureau indicated that a complete cessation of periodic maintenance would occur if critical habitat were to be designated for the Rio Grande silvery minnow. We concur that river maintenance activities may need to be altered in order to avoid jeopardizing the species or destroying or adversely modifying critical habitat, but the resultant impacts in channel capacity, water conveyance efficiencies, or water conservation have not been provided by the Bureau for such alterations.

Issue 16: The New Mexico Interstate Stream Commission commented that the prior appropriation doctrine in New Mexico does, to some extent, protect instream flows. New Mexico State law and the Rio Grande Compact both ensure delivery of water downstream through the Middle Rio Grande Valley to water users in the Rio Grande Project south of Elephant Butte Dam.

Service Response: Both State law and the Rio Grande Compact require the delivery of water downstream. However, currently the water that is released during the irrigation season is native water plus any waters called for to meet irrigation, municipal, and industrial needs. Additional water to meet Compact deliveries are released during the non-irrigation months in accordance with instructions from the Compact Commission, which is composed of representatives from Colorado, New Mexico, and Texas. Alterations to this plan require consent of the Compact Commission. Release of additional Compact waters during the irrigation season would only be helpful to the minnow if the waters traveled down the riverbed. As discussed above, if water is not transported through the reach of river between San Acadia Dam and Elephant Butte Reservoir, increased water in the system may not result in increased wet habitat for the minnow.

Issue 17: Critical habitat should not be designated until such time as a recovery plan has been developed for the silvery minnow that includes a determination that such designation is necessary for survival and recovery of the species.

Service Response: A recovery plan has been drafted for the silvery minnow and the plan is being reviewed. Although we agree that it would be appropriate to make a detailed determination of habitat needs of listed species during the recovery planning process, the Endangered Species Act does not currently link the designation critical habitat to the development of the recovery plan. The Act requires that, to the maximum extent prudent and determinable, we designate critical habitat when it lists a species. If critical habitat is not considered determinable at the time a final rule is adopted to list a species, it must be designated "to the maximum extent prudent" within 1 additional year. There is no provision in the Act to delay designation of critical habitat until such time as a recovery plan is prepared. The timing of this designation also is in compliance with a court order.

Issue 18: The calculation of the value of the BOR's river maintenance program in the Middle Rio Grande is misleading. The river maintenance program has flood control and drainage purposes and benefits as well as water salvage benefits. The draft report did not evaluate the economic value of these benefits.

Service Response: The BOR did not provide estimates of the value of the benefits identified by the commenter, nor did they provide data that would have allowed us to estimate the value of those benefits. Therefore, economists were not able to include the value of those benefits in the draft economic analysis.

Issue 19: The BOR estimated that the proposed designation of critical habitat would cause the cost of continuing the current level of river maintenance in the Middle Rio Grande to increase by up to 40 percent. This would mean that if funding for river maintenance activities remains stable or declines, what river maintenance activities in the Middle Rio Grande would be decreased. Reclamation did not estimate what percentage reduction in the river maintenance program might occur.

Service Response: We assumed that if the Bureau estimated that costs might increase by 40 percent, an alternative scenario would be that activities might instead decrease by 40 percent. However, as discussed above, the Service has determined that any activities likely to result in destruction or adverse modification of critical habitat would also result in a finding of jeopardy to the species. Therefore, any changes in river maintenance activities are attributed to the listing of the silvery minnow, and are not a result of critical habitat designation.

Issue 20: The draft Economic Analysis does not appear to present facts regarding the values of benefits of designating critical habitat for the silvery minnow. The discussion of recreational fishing benefits does not apply to this section of the Rio Grande.

Service Response: In responding to the questionnaire, the BOR provided estimates of costs identified as resulting from the critical habitat designation, without the amelioration or perceived benefits. As stated previously, we have concluded that no additional restrictions will result from the designation of critical habitat. We also concur that recreational fishing in the mainstem of the Rio Grande within the boundaries of critical habitat is a minimal input to the regional economy. The draft Economic Analysis prepared for our use in determining effects presented some potential benefits to be derived from healthy riverine and riparian systems, but that draft did not quantify the benefits to be derived from designation; nor did it address any mitigative actions that might be employed or implemented to lessen the identified economic impacts.

Issue 21: The minnow has not done well in stretches of the river that have perennial flowing water and has done quite well in some places that are seasonally dry.

Service Response: Although we concur that the distribution of silvery minnow shows low members in areas now receiving flows year round (Cochiti and Albuquerque reaches) and high numbers in stretches of the river subject to low or no flows (Isleta and San Acacia reaches), we disagree with the conclusion that they are doing well in the seasonally dry reaches. The silvery minnows transported from upstream reaches to the Isleta and San Acacia stretches cannot regain the upstream habitat. They are blocked by the diversion dams. Their presence does not necessarily indicate that the species is doing well in the lower portions of the river. Their presence indicates that they are vulnerable to the dewatering of these important habitats.

Issue 22: It is not water depletion that threatens the silvery minnow, but the structural changes that have narrowed and confined the channel.

Service Response: We concur that it is not one action or factor that is solely responsible for the endangerment of the silvery minnow. The morphology of the channel, the quality of the water in the channel, and the provision of some flows to avoid dewatering are all important and, thus, have been identified as constituent elements of the species' critical habitat.

Issue 23: In order to justify the determination of no difference between critical habitat and listing, the Service should limit the components of critical habitat so that there is no difference between critical habitat and listing.

Service Response: We believe that the primary constituent elements identified for critical habitat—channel morphology, water quality, and water quantity—are the attributes needed in the river for the silvery minnow's survival and recovery. It is these attributes that we evaluate whether conducting section 7 consultation on the species with or without critical habitat.

Issue 24: Critical habitat in the Middle Rio Grande is dependent on restoring the low-velocity flows at locations within some reaches of the Middle Rio Grande. The required habitat for the recovery of the Rio Grande silvery minnow in the Middle Rio Grande does not include the entire 163-mile segment from Cochiti Dam to the headwaters of Elephant Butte Reservoir, nor does it include the entire cross section of the river at the locations designated for critical habitat. Only those reaches below the present, modified, or future diversion structures should be considered in arriving at locations designated for the critical habitat for this species.

Service Response: We concur that not every cross section of the river within the 163 miles of designated critical habitat may provide all constituent elements at any moment in time. However, within this relatively short reach of river, habitat conditions change in response to flows and other factors: sand bars develop, islands shift within the channel; pools are created and then filled in. The interconnectedness of the habitat is also vitally important to its value for the survival and recovery of the species. We believe that a continuum of habitat, rather than disjunct reaches, is the best way to maximize the probability of the species' survival and recovery.

Issue 25: The Service is rushing to designate critical habitat with inadequate information; both Secretary of the Interior Bruce Babbitt and Service Director Jamie Rappaport Clark conceded that the Service has insufficient information to declare critical habitat for the minnow and that additional time is required. Judge Conway granted additional time and may grant even more time if an environmental impact statement is required.

Service Response: The Act requires that, to the extent prudent, critical habitat be designated concurrently with a species' listing. Further, the Act requires that the designation be based on the best available information, even if the information is incomplete. Further, the court ordered us to make a determination concerning the designation of critical habitat within a specific time frame. This final rule, therefore, complies with both the Act and the court order. As we stated earlier, we have determined that an Environmental Impact Statement is not required for this action.

Although there is always additional information we would like to have concerning a species, there has been considerable research done on the Rio Grande silvery minnow and on the hydrology of the Middle Rio Grande. In addition, a recovery plan has been prepared and is currently being reviewed, which compiles and analyzes the existing data for the species. In the preparation of this final rule designating critical habitat for the minnow, we used the best scientific and commercial data available.

Issue 26: If it is the Fish and Wildlife Service's conclusion that there is little or no difference in benefit or effect between the No Action and Preferred Action alternatives, the Service should conclude that the designation of critical habitat for the Rio Grande silvery minnow is not needed at this time.

Service Response: This final rule complies with the Act and the court order that we make a final determination on critical habitat for the Rio Grande silvery minnow. A more complete discussion of the Service's view on this designation is found in *Effect of the Critical Habitat Designation* above.

Issue 27: The statement in the Economic Analysis that "If the designation will have no impact on the activities of Federal agencies, then it will have no economic impact" is not true. Although the designation of critical habitat only directly curtails the actions of Federal agencies, it does not follow that no private entities are affected by the Federal agencies' actions or lack thereof.

Service Response: We acknowledge that private entities could be affected if Federal actions are curtailed by the designation of critical habitat. However, the Federal agencies responded that critical habitat would not or would very minimally affect their actions. Thus, we believe that there will be no change from what has occurred in the Federal arena for the past 4 years since the species was listed and critical habitat proposed. Critical habitat, based on the responses received from the Federal agencies, will not "curtail" their actions. Critical habitat will have no incremental affect on their actions over and above that resulting from listing of the Rio Grande silvery minnow.

Issue 28: The economic report is not site-specific. An economic model that does not take local land and water use into account does not benefit the Fish and Wildlife Service.

Service Responses: The economic analysis was specific to the Middle Rio Grande Valley and utilized all information provided by the Federal, State, and local, and Native American respondents operating in the valley. Baseline information concerning the regional economy was provided that dealt specifically with the Middle Rio Grande.

Issue 29: Not only is the Fish and Wildlife Service's conclusion that Rio Grande silvery minnow population declines are due to habitat loss questionable, but the assertion that these declines are the result of agricultural dewatering between 1987 and 1992 are also suspect. Salt cedar and municipal and industrial water use could also be causative factors. The natural flow regime referenced in the proposed critical habitat designation has not existed since irrigation began in the basin over 800 years ago. The drying of the river for days, weeks, and months has been in place for at least 100 years.

Service Responses: As indicated in the proposed and final rules to list the Rio Grande silvery minnow, the species is no longer found in 95 percent of its historical range. This range-wide constriction predates the status of the species between 1987 and 1992 in the Middle Rio Grande Valley. We agree that many factors, in addition to diversions for agricultural use, that contribute to the dewatering of the river may be responsible for the imperiled status of the silvery minnow. The intensity of impact of diversions and water management has certainly grown with the ability to control the river. Diversions 800 years ago did not have the capacity to affect the river to the extent that modern management structures can . As management and manipulation of the river have intensified in the past 100 years, not only in the Middle Rio Grande Valley, but throughout the range of the silvery minnow, the species has been lost from 95 percent of its historical range. Moreover, the contraction in the

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minnows' range makes it must more vulnerable to adverse conditions locally, where previously it could have recolonized areas temporarily depopulated from areas where conditions were more favorable.

Issue 30: The Fish and Wildlife Service found an economic impact arising from critical habitat for the Mexican spotted owl. For the Rio Grande silvery minnow, it found no effect attributable to critical habitat. On what basis has the Fish and Wildlife Service's interpretation of critical habitat and its associated impacts been modified?

Service Response: There has been no modification, but we must judge the impacts of individual and specific critical designations based upon the case-specific information before us. The impacts can differ between species and habitats, based on the effects of designation on Federal activities. In the case of the Mexican spotted owl, effects were identified. In the case of the Rio Grande silvery minnow, we found no effects from designation. As we have gained more experience with critical habitat, it has become increasingly apparent that its designation has little, if any, influence on the outcome of section 7 consultations. This has been true of consultations involving the silvery minnow that included a conference on proposed critical habitat. We do not anticipate that the outcome of section 7 consultations will be materially changed upon final critical habitat designation.

Issue 31: The draft Environmental Assessment provides no clarification regarding whether or how the Service believes the designation of critical habitat will affect the BOR's operation of the San Juan-China Project and how such an action may impact trust resources, tribally-owned fee lands, or the exercise of tribal rights for the Jicarilla Apache Tribe.

Service Response: We have been working with the BOR to manage flows for the Rio Grande silvery minnow since the species was listed and critical habitat was proposed. Those management scenarios involved consideration of the San Juan-Chama Project. We do not anticipate a change in that process with the final critical habitat designation, nor do we foresee an impact on trust resources, tribally-owned fee lands, or the exercise of tribal, rights for the Jicarilla Apache.

Issue 32: The economic documents do not evaluate the economic impact of the constituent elements or of the various activities that may adversely affect critical habitat: channelization, impoundment, deprivation of substrate source and riparian destruction, and any activity that would significantly alter the water chemistry in the Rio Grande.

Service Response: The economic analysis evaluated the effect critical habitat designation could be expected to have on the activities mentioned in this comment. The analysis of impacts of a particular action on critical habitat under section 7 will take into account the effects of that action on the primary constituent elements. Any consultation on the effects of an action on the species would also consider the effects on habitat attributes identified as the primary constituent elements.

Issue 33: No attempt has been made to establish a relationship between abundance of Rio Grande silvery minnow and flow conditions.

Service Response: It is correct that specific flow amounts needed for numeric population goals have not been identified. However, data are available to describe habitats, including flow conditions where most Rio Grande silvery minnows have been found. Additionally, data are available to show that a spring pulse is necessary for reproduction of the silvery minnow, and flows sufficient to produce low-velocity habitats are required for the young to survive and be recruited into the population. Flows are necessary to provide habitat to allow survival of this year's fish to next year so that they can spawn and thus contribute to the population. Investigations have not yet been conducted to determine the specific volume of a spring pulse to trigger spawning or to determine the amount of water and its rate of flow to ensure the provision of habitats for the survival of the species.

Issue 34: The primary constituent elements of the critical habitat designation create hydrological operating criteria which add an entirely new component of regulation beyond those imposed by the listing of the minnow. In essence, the constituent elements require the entire length of the river designated as critical habitat to be wet from bank to bank at all times. Because of the carriage losses in the system, to attain a constant flow at San Marcial (just above Elephant Butte Reservoir) would require the release of a quantity of water upstream that would virtually destroy, rather than create habitat for the minnow, which tends to like low-flows over sandy river bottoms. The Service should also identify the source of the water to be used for the minnow.

Service Response: The minnow does not need a large quantity of water but it does need some water to survive. We agree that the minnow could be sustained with low flows in the summer and late spring. In the spring and summer, runoff generally triggers spawning. The primary constituent elements we have described are intended to require the provision of these low flows to create habitat throughout the existing range of the species, not to change the hydrography to a raging, high flowing river.

The Service has not stated the exact flow regime needed to sustain the minnow nor has it required a minimum cubic feet per second flow at any point in the river system. There are a multiplicity of variables to be taken into account at any given time on any point in the river and there may be an equal number of ways to solve the problem of ensuring adequate flows. Not only has the Recovery Team (which includes interested parties in addition to scientific experts) been meeting since the species was listed, but a number of different stakeholders continue to explore possible solutions to the problem. Potential solutions include establishing a conservation pool from which to draw in low-water years; conserving water which might then be used to support the minnow and other life in the river; creating and enhancing silvery minnow habitat upstream and increasing populations upstream; purchasing or leasing unused contract water for use in the mainstem; passing downstream during the irrigation season some of the water used to meet Compact deliveries; creating ways to get some flows returned to the mainstem of the river below the San Acacia Dam; and engaging in a full-scale water rights adjudication on the entire Rio Grande. To limit the methods of assuring the survival of the minnow—such as by requiring a stated minimum flow or a source of water—might not only have unintended consequences to the minnow and the ecosystem, but it might also prematurely limit development of other methods or combinations of methods for preventing jeopardy and adverse modification to the minnow and its critical habitat.

Required Determinations

Regulatory Planning and Review. In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. This final rule identifies the areas being designated as critical habitat for the silvery minnow. The designation will not have an annual economic effect of $100 million. Our summary of the economic impacts of designation is discussed earlier in this final rule. This rule will create inconsistencies with other agencies' actions. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues. Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Critical habitat regulations are issued under procedural rules contained in 50 CFR part 424.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. As explained previously in the final rule, the designation will not have economic effects above and beyond the listing of the species. This is because the prohibition against destroying or adversely modifying critical habitat is essentially duplicative of the prohibition against jeopardizing the continued existence of the species, and therefore there are no additional economic effects that are not already incurred by the listing of the species.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rue does not have an annual effect on the economy of $100 million or more. As explained in this rule, we do not believe that the designation will have economic effects above and beyond the listing of the species. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, because the designation will not have economic effects above and beyond the listing of the species. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The prohibition against destruction or adverse modification of critical habitat applies only to actions authorized, funded, or carried out by Federal agencies. Competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises are not affected by a final rule designating critical habitat for this or any other species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). This rule will not significantly affect small governments because this rule will not place additional burdens on small governments beyond any burdens that may have been a result of listing the species as endangered. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e. it is not a significant regulatory action under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This final rule will not "take" private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands, or to private lands if a Federal nexus exists (i.e., if a Federal agency authorizes or funds an action on private land). The regulatory impacts of this rule are small to non-existent and will not result in a taking of private property rights.

Federalism. This final rule will not affect the structure or role of states, and will not have direct, substantial, or significant effects on states as defined in Executive Order 12612. As previously stated, critical habitat is only applicable to Federal lands. Other lands only become subject to the provisions of critical habitat if a Federal nexus exists.

Civil Justice Reform. In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. The final designation of critical habitat for the Rio Grande silvery minnow has been reviewed extensively. Every effort has been made to ensure that the rule contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act. It is our position that, outside the Tenth Circuit, environmental analyses as defined by the National Environmental Policy Act of 1969, (NEPA) need not be prepared in connection with listing species under the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), *cert. Denied*, 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the Rio Grande silvery minnow, the Service, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), is to undertake a NEPA analysis for critical habitat designations. We have completed that analysis through an Environmental Assessment and Finding of No Significant Impact.

Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM2:

We understand that federally-recognized Indian Tribes maintain a Government-to-Government relationship with the United States. The 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, "Critical habitat shall not be designated in any such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands." The designation of critical habitat for the Rio Grande silvery minnow contains Tribal lands belonging to the pueblos of Cochiti, San Felipe, Santo Domingo, Santa Ana, Sandia, and Isleta.

On October 27, 1994, we held a meeting with the economic analysis contractors and invited Federal agencies, the pueblos of Cochiti, San Felipe, Isleta, Sandia, Santa Ana, and Santo Domingo, and other entities. At the meeting, the Service and our contractors outlined the approach under consideration to define the economic impacts of critical habitat designation and sought input to the process and participation from these entities. On June 22, 1995, a meeting was held solely for Pueblo representatives to discuss the proposed critical habitat and the process to be employed in determining economic effects of the designation with the content identical to that of the earlier meeting. No Pueblo representatives attended. Following the compilation and assessment of

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responses to questionnaires, we transmitted the draft analysis to the pueblos on April 26, 1996. Finally, on March 4, 1999, we met with Pueblo officials to discuss the impending designation of critical habitat. Thus, we have sought to consult with tribes on Government to Government basis.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** above).

Author: The primary author of this final rule is Jennifer Fowler-Propst (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—(AMENDED)

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Amend section 17.11(h) by revising the entry in the Critical habitat column of the entry for the minnow, Rio Grande silvery, under FISHES, to read "17.95(e)".

3. Section 19.95(e) is amended by adding critical habitat of the Rio Grande silvery minnow (*Hybognathus amarus*), in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) * * *

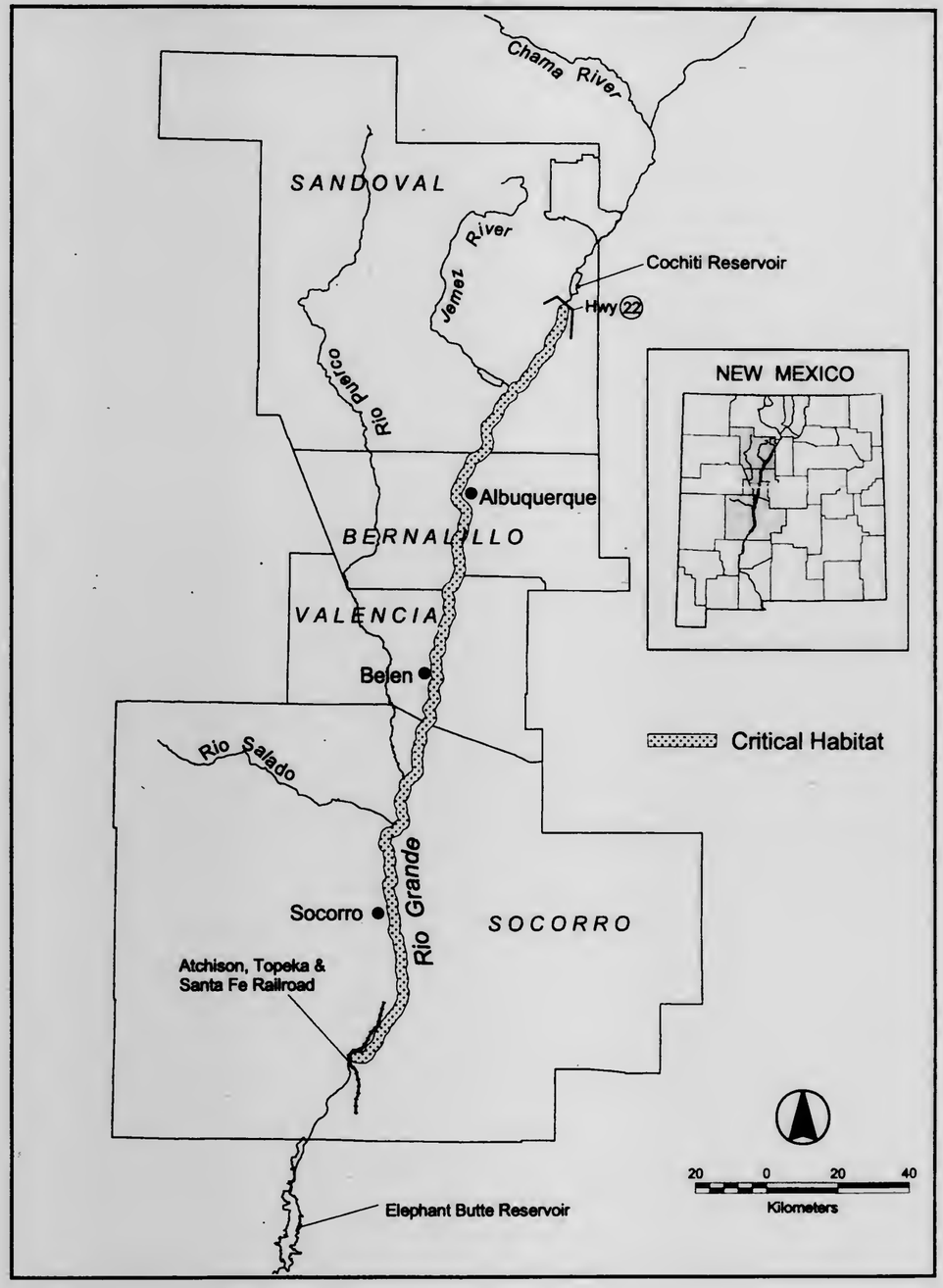
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RIO GRANDE SILVERY MINNOW (*Hybognathus Amarus*).

New Mexico: Socorro, Valencia, Bernalillo, and Sandoval Counties. Rio Grande from the downstream side of State highway 22 bridge crossing of the Rio Grande, immediately downstream of Cochiti Dam, NW¼ sec. 17, T. 16N., R. 15 E. of the New Mexico Meridian, extending downstream approximately 163 mi (260 km) to where the Atchison Topeka and Santa Fe Railroad crosses the river near San Marcial, Lat 33°40'50", long 106°59'30", Socorro County.

Primary constituent elements for the Rio Grande silvery minnow include stream morphology that supplies sufficient flowing water to provide food and cover needed to sustain all life stages of the species; water of sufficient quality to prevent water stagnation (elevated temperatures, decreased oxygen, carbon dioxide build-up, etc); and water of sufficient quantity to prevent formation of isolated pools that restrict fish movement, foster increased predation by birds and aquatic predators, and congregate pathogens.

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Dated June 22, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–16985 Filed 6–30–99; 10:26 am]

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Proposed Rules

Federal Register

Vol. 64, No. 128

Tuesday, July 6, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 72

RIN 3150–AF98

Reporting Requirements for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend the event reporting requirements for nuclear power reactors: to update the current rules, including reducing or eliminating the reporting burden associated with events of little or no safety significance; and to better align the rules with the NRC's needs for information to carry out its safety mission, including revising reporting requirements based on importance to risk and extending the required reporting times consistent with the time it is needed for prompt NRC action. Also, a draft report, NUREG–1022, Revision 2, is being made available for public comment concurrently with the proposed amendments.

DATES: Submit comments on or before September 20, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Electronic comments may be provided via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). From the home page, select "Rulemaking" from the tool bar at the bottom of the page. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum." This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, the transcripts of public meetings held, the draft regulatory analysis and the draft report NUREG–1022, Revision 2 may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking web site established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Dennis P. Allison, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, telephone (301) 415–1178, e-mail dpa@nrc.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 50.72 has been in effect, with minor modifications, since 1983. Its essential purpose is "* * * to provide the Commission with immediate reporting of * * * significant events where immediate Commission action to protect the public health and safety may be required or where the Commission needs timely and accurate information to respond to heightened public concern." (48 FR 39039; August 29, 1983).

Section 50.73 has also been in effect, with minor modification, since 1983. Its essential purpose is to identify "* * * the types of reactor events and problems that are believed to be significant and useful to the NRC in its effort to identify and resolve threats to public safety. It is designed to provide the information necessary for engineering studies of operational anomalies and trends and patterns analysis of operational occurrences. The same information can be used for other analytic procedures that will aid in identifying accident precursors." (48 FR 33851; July 26, 1983).

II. Rulemaking Initiation

Experience has shown a need for change in several areas. On July 23, 1998 (63 FR 39522) the NRC published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) to announce a contemplated rulemaking that would modify reporting requirements for nuclear power reactors. Among other things, the ANPR requested public comments on whether the NRC should proceed with rulemaking to modify the event reporting requirements in 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors," and 50.73, "Licensee event report system," and several concrete proposals were provided for comment.

A public meeting was held to discuss the ANPR at NRC Headquarters on August 21, 1998. The ANPR was also discussed, along with other topics, at a public meeting on the role of industry in nuclear regulation in Rosemont, Illinois on September 1, 1998. The public comment period on the ANPR closed on September 21, 1998. A comment from the Nuclear Energy Institute (NEI) proposed conducting "table top exercises" early in the development and review process to test key parts of the requirements and guidance for clarity and consistency. That comment was accepted and a third public meeting was held on November 13, 1998 to discuss issues of clarity and consistency in the contemplated approach. Transcripts of these meetings are available for inspection in the NRC Public Document Room or they may be viewed and downloaded electronically via the interactive rulemaking web site established by NRC for this rulemaking, as discussed above under the heading

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ADDRESSES. Single copies may be obtained from the contact listed above under the heading **FOR FURTHER INFORMATION CONTACT.**

III. Analysis of Comments

The comment period for the ANPR expired September 21, 1998. Twenty-one comment letters were received, representing comments from sixteen nuclear power plant licensees (utilities), two organizations of utilities, two States and one public interest group. A list of comment letters is provided below. The comment letters expressed support for amending the rules along the general lines of the objectives discussed in the ANPR. Most of the letters also provided specific recommendations for changes to the contemplated amendments discussed in the ANPR. In addition to the written comments received, the ANPR has been the subject of three public meetings as discussed above under the heading BACKGROUND, and comments made at those meetings have also been considered.

The resolution of comments is summarized below. This summary addresses the principal comments (i.e., comments other than those that are: minor or editorial in nature; supportive of the approach described in the ANPR; or applicable to another area or activity outside the scope of sections 50.72 and 50.73).

Comment 1: Several comments recommended amending 10 CFR 50.73 to allow 60 days (instead of the current 30 days) for submittal of Licensee Event Reports (LERs). They indicated that this would allow a more reasonable time to determine the root causes of events and lead to fewer amended reports.

Response: The comments are accepted for the reason stated above. The proposed rule would change the time limit to 60 days.

Comment 2: Two comments suggested a need to establish starting points for reporting time clocks that are clear and not subject to varied interpretations.

Response: The reporting guidelines in this area have been reviewed for clarity. Some editorial clarifications are proposed in section 2.5 of the draft of Revision 2 to NUREG–1022, which is being made available for public comment concurrently with the proposed rule, as discussed below under the heading "Revisions to Reporting Guidelines in NUREG–1022."

Comment 3: Many comments opposed adopting a check the box approach for human performance and other information in LERs (as was proposed in the ANPR, with the objective of reducing reporting burden). They indicated that adopting a check the box approach would result in substantial implementation problems, and recommended continuing to rely on the narrative description which provides adequate information. One comment opposed the idea of a check the box approach on the grounds that it would make LERs more difficult for the general public to understand. A few comments supported the check the box approach.

Response: The intent of the check the box approach was to reduce the effort required in reporting; however, the majority of comments indicate this would not be the case. Accordingly, the proposed rule does not reflect adoption of a check the box approach.

Comment 4: Several comments opposed codifying the current guidelines for reporting human performance information in LERs (i.e., adding the detailed guidelines to the rule, as was proposed in the ANPR). They recommended leaving the rule unchanged in this regard, indicating that sufficient information is being provided under the current rule and guidelines.

Response: The comments are partially accepted. The proposed rule would not codify the reporting guidelines (as proposed in the ANPR) for the reasons stated above.

However, the proposed rule would simplify the requirement. It is not necessary to specify the level of detail provided in the current rule. Accordingly, the amended paragraph would simply require a discussion of the causes and circumstances for any human performance related problems that contributed to the event. Details would continue to be provided in the reporting guidelines, as indicated in section 5.2.1 of the draft of Revision 2 to NUREG–1022. This draft report is being made available for public comment concurrently with the proposed rule, as discussed below under the heading "Revisions to Reporting Guidelines in NUREG–1022."

Comment 5: Several comments opposed codifying a list of specific systems for which actuation must be reported (by naming the systems in 10 CFR 50.72 and 50.73, as was proposed in the ANPR). They indicated that a system's contribution to risk can vary widely from plant to plant, which precludes construction of a valid universal list. They recommended that, instead, actuation be reported only for those systems that are specified to be engineered safety features (ESFs) in the final safety analysis report (FSAR).

Response: The proposed rule would include a list of systems for which actuation would be reported. However, the concern is recognized and public comment will be specifically invited on several alternatives to the proposed rule.

Comment 6: Several comments opposed changing the criteria in 10 CFR 50.72 and 50.73 which require reporting any event or condition that alone could have prevented the fulfillment of the safety function of structures or systems * * *. The change proposed in the ANPR would have substituted the phrase "alone or in combination with other existing conditions" for the word "alone" in this criterion. The comments indicated that this would add confusion, the rule as currently worded is sufficiently clear, and the need to consider other existing plant conditions in evaluating reportability is understood and uniformly implemented. They recommended leaving the rule unchanged in this regard.

Response: The comments are partially accepted. The requirement would not be changed by substituting the phrase "alone or in combination with other existing conditions" for the word "alone" in this criterion (as proposed in the ANPR).

However, the proposed amendments would change the rules by deleting the word "alone," so that they would require reporting "any event or condition that could have prevented fulfillment of the safety function of structures or systems * * *." This would simplify the wording, rather than making it more complicated. It is not intended to change the meaning of the requirement, but to make the meaning more apparent in the wording of the rule. The following points, which are relevant to this question, would continue to be made clear in the reporting guidelines. See section 3.2.7 of the draft of Revision 2 to NUREG–1022, which is being made available for public comment concurrently with the proposed rule, as discussed below under the heading "Revisions to Reporting Guidelines in NUREG–1022."

(1) It is not necessary to assume an additional random single failure in evaluating reportability. (If such an assumption were necessary, inoperability of a single train would generally be reportable under this criterion.)

(2) It is necessary to consider other existing conditions in determining reportability. (For example, if Train A fails at a time when Train B is out of service for maintenance, the event is reportable.)

(3) The event is reportable regardless of whether or not a system was called upon to perform its safety function. (For example, if an emergency core cooling system [ECCS] was incapable of performing its specified safety functions, the event is reportable even if there was no call for the ECCS function.)

(4) The event is reportable regardless of whether or not a different system was capable of performing the safety function. (For example, if the onsite power system failed, the event is reportable even if the offsite power system was available and capable of performing its safety functions.)

Comment 7: Several comments recommended changing 10 CFR 50.72 and 50.73 to exclude reporting an invalid actuation of an ESF. (An invalid actuation is one that does not result from a plant condition that warrants ESF initiation.)

Response: The comments are partially accepted. The proposed amendments would eliminate the requirement for *telephone* notification of an invalid actuation under 10 CFR 50.72. Invalid actuations are generally less significant than valid actuations because they do not involve plant conditions (e.g., low reactor coolant system pressure) conditions that would warrant system actuation. Instead, they result from other causes such as a dropped electrical lead during testing).

However, the proposed amendments would *not* eliminate the requirement for a *written* report of an invalid actuation under 10 CFR 50.73. There is still a need for reporting of invalid actuations because they are needed to make estimates of equipment reliability parameters, which in turn are needed to support the Commission's move towards risk-informed regulation. This is discussed further in a May 7, 1997 Commission paper, SECY–97–101, "Proposed Rule, 10 CFR 50.76, Reporting Reliability and Availability Information for Risk-significant Systems and Equipment," Attachment 3.

Comment 8: Several comments recommended changing 10 CFR 50.72 and 50.73 to limit certain reports to current events and conditions. That is, they recommended that an event or condition that could have prevented the fulfillment of the safety function of structures or systems * * * be reported:

(1) By telephone under 10 CFR 50.72(b)(2)(iii) only if it currently exists, and

(2) By written LER under 10 CFR 50.73(a)(2)(v) only if it existed within the previous two years.

For a "historical" event or condition of this type (i.e., one which might have been significant at one time but has since been corrected) there is less significance than there is for a current event and, thus, immediate notification under 50.72(b)(2)(iii) is not warranted. With regard to 50.73(a)(2)(v), two years encompasses at least one operating cycle. Considerable resources are expended when it is necessary to search historical records older than this to make past operability determinations, and this is not warranted by the lesser significance of historical events older than two years.

Response: The comments are partially accepted, for the reasons stated above. That is, under the proposed rules, an event or condition that could have prevented the fulfillment of the safety function of structures or systems * * * would be reported by telephone under 10 CFR 50.72(b)(2)(iii) only if it exists at the time of discovery. An event or condition that could have prevented the fulfillment of the safety function of structures or systems * * * would be reported by written LER under 10 CFR 50.73(a)(2)(v) only if it existed within the previous three years.

In addition, although not recommended in the comments, under the proposed rule an operation or condition prohibited by the plant's Technical Specifications would be reported under 50.73(a)(2)(i)(B) only if it existed within the previous three years. For this criterion as well, considerable resources are expended when it is necessary to search historical records older than three years to make past operability determinations, and this is not warranted by the lesser significance of historical events older than three years.

Three years is proposed, rather than two years as suggested in the comments, because the NRC staff trends plant performance indicators over a period of three years to ensure inclusion of periods of both shut down and operation.

Comment 9: Several comments opposed using the term risk-significant (or significant) in the absence of a clear definition.

Response: The term "significant" would be used in two criteria in the proposed rules. In the first criterion, sections 50.72 and 50.73 would require reporting an unanalyzed condition that significantly affects plant safety. In this context the term "significant" would be defined by examples, five of which are discussed below under the heading "Condition that is outside the design basis of the plant." In the second criterion, section 50.73 would require reporting when a component's ability to perform its safety function is significantly degraded and the condition could reasonably be expected to affect other similar components in the plant. Again, the term "significant" would be defined by examples, six of which are discussed below under the heading "Significantly degraded components."

Comment 10: Several comments recommended changing 10 CFR 50.72 and 50.73 to exclude reporting of an unanalyzed condition that significantly compromised plant safety on the basis that it is redundant to other reporting criteria.

Response: The comment is not accepted. Several types of worthwhile reports have been identified that could not readily be captured by other criteria as discussed further below under the heading "Condition that is outside the design basis of the plant."

Comment 11: Several comments recommended amending 10 CFR 50.72 and 50.73 to exclude reporting of a seriously degraded principal safety barrier on the basis that it is redundant to other reporting criteria.

Response: The comments are not accepted. This criterion captures some worthwhile reports that would not be captured by other criteria, such as significant welding or material defects in the primary coolant system. However, some clarifications are proposed in Section 3.2.4 of the draft reporting guidelines, to better indicate which events are serious enough to qualify for reporting under this criterion.

Comment 12: One comment recommended that, with regard to a condition or operation prohibited by the plant's Technical Specifications, reporting should be eliminated for violation of all administrative Technical Specifications.

Response: The comment is partially accepted. The proposed rule would eliminate reporting for Technical Specifications that are administrative in nature. The reporting guidelines would not change. As stated in the current reporting guidelines in NUREG–1022, Revision 1, failure to meet administrative Technical Specifications requirements is reportable only if it results in violations of equipment operability requirements, or had a similar detrimental effect on a licensee's ability to safely operate the plant. For example, operation with less than the required number of people on shift would constitute operation prohibited by the Technical Specifications. However, a change in the plant's organizational structure that has not yet been approved as a Technical Specification change would not. An administrative procedure violation or failure to implement a procedure, such as failure to lock a high radiation area door, that does not have a direct impact on the safe operation of the plant, is generally not reportable under this criterion.

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Comment 13: One comment recommended changing 10 CFR 50.73 to require that LERs identify: (1) How many opportunities to detect the problem were missed and (2) corrective actions to prevent future misses.

Response: No changes are proposed. If missed opportunities are identified and are significant to the event, they should be captured by the current requirements to provide a comprehensive description of the event and to describe corrective actions if they are significant to the event.

Comment 14: With regard to design issues, one comment recommended including language in the rules or their statements of considerations encouraging a voluntary report under 10 CFR 50.9 for a newly discovered design issue which is not otherwise reportable at the plant where first discovered (because the affected systems can still perform their specified safety functions) but which might have a significant impact on generic design issues at other plants.

Response: A statement encouraging submittal of voluntary LERs is included in the reporting guidelines. In addition, the guidelines would indicate that any significant degradation that could reasonably be expected to affect multiple similar components in the plant should be reported.

Comment 15: Several comments opposed placing a condition, related to systematic non-compliance, on the elimination of reporting of late surveillance tests (as proposed in the ANPR) under 10 CFR 50.73. The condition would be burdensome because licensees would need to track instances of missed surveillance tests in given time periods.

Response: The proposed rule does not contain this condition. Reporting for the purpose of identifying systematic non-compliance is not needed because NRC resident inspectors routinely review plant problem lists, and thus would be aware of any systematic non-compliance in this area if it occurs.

Comment 16: One comment recommended changing the rules to allow licensees to rely on notifications made to resident inspectors, which could eliminate the need to make a telephone notification via the emergency notification system (ENS) and/or submit a written LER, at least for some events or conditions. They indicated, for example, this should be adequate where the event is a decision to issue a news release.

Response: No changes are proposed. Telephone notifications to the NRC Operations Center, when required, are needed to ensure that the event can be promptly reviewed. This includes notification of the NRC Headquarters Emergency Officers and the Regional Duty Officer and consideration of whether to activate NRC incident response procedures. Written LERs, when required, are needed to ensure that events can be systematically reviewed for safety significance.

Comment 17: Some comments opposed amending 10 CFR 50.73 to require additional information regarding equipment availability for shutdown events (as proposed in the ANPR) to support staff probabilistic risk assessments (PRAs). They indicated that it is rare that sufficient information is not available in an LER.

Response: The proposed rule would require such information. Frequently, when shutdown events are subjected to a probabilistic risk analysis, it is necessary to call the plant to determine the status of systems and equipment. The proposed rule would eliminate much of that need.

Comment 18: Several comments recommended deleting 10 CFR 50.72(b)(2)(i), "Any event *found while the reactor is shut down,* that, had it been found while the reactor was in operation, would have resulted in the nuclear power plant, including its principal safety barriers, being seriously degraded or being in an unanalyzed condition that significantly compromises plant safety." The comments indicated that because the plant would be shutdown, there is no need for immediate NRC action.

Response: The requirement for telephone reporting would not be entirely eliminated because, if a principal safety barrier is significantly degraded or a condition that significantly affects plant safety exists; the event may be significant enough that the NRC would need to initiate actions [such as contacting the plant to better understand the event and/or initiating a special inspection or investigation] within about a day even if the plant is shutdown.

However, in the proposed rule this specific criterion would be combined with 10 CFR 50.72(b)(1)(ii), "Any event or condition *during plant operation* that results in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded or * * *" Also, the term "unanalyzed condition that significantly compromises plant safety" would be deleted. In combination with other changes, this would result in the following criterion for telephone notification "Any event or condition that results in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded."

Comment 19: Some comments recommended that the NRC use enforcement discretion during the rulemaking process to provide early relief with regard to reporting a condition outside the design basis of the plant and/or a late surveillance test (condition or operation prohibited by Technical Specifications).

Response: The current rules will continue to apply until final revised rules are issued and become effective. However in dispositioning any violation, the risk-and safety-significance of the violation will be an important consideration. Establishing an interim enforcement discretion policy would involve the same critical elements as developing the revised rule and guidance including a provision for public comment. This would complicate the rulemaking process, and essentially constitute a prediction of its final outcome, which may or may not turn out to be correct.

Comment 20: Several comment letters opposed the idea of tying enforcement criteria (i.e., violation severity levels) to reporting criteria. They indicated this could have an unintended adverse effect on reporting and the resources consumed because in matching an event with a reporting criterion, a licensee would essentially be forced to make a preliminary determination of severity level.

Response: The comments are not accepted. The proposed changes to the enforcement criteria, are discussed below under the heading "Enforcement."

Comment 21: As requested by the ANPR, a number of comments identified reactor reporting requirements other than sections 50.72 and 50.73 where changes are warranted.

Response: Comments regarding changes to reactor reporting requirements other than sections 50.72 and 50.73 will be addressed in a separate action. A Commission paper on that subject was submitted on January 20, 1999, SECY–99–022, "Rulemaking to Modify Reporting Requirements for Power Reactors" and the Commission issued a Staff Requirements Memorandum on March 19, 1999 directing the staff to proceed with planning and scheduling.

Comment 22: One comment recommended changing the required initial reporting time for some events to "* * * within 8 hours *or by the beginning of the next business day,*" instead of simply specifying "* * * within 8 hours." The comment indicated it does not appear that the NRC takes action on these events during non-business hours.

Response: The comment is not accepted. The NRC needs these reports in time to call the plant to find out more about the event and/or initiate a special inspection or an investigation, if warranted, within a day. Sometimes these actions are taken during non-business hours.

Comment 23: One comment recommended that an event or condition that could have prevented fulfillment of the safety function of structures or systems. * * * should be reportable only when the time limits of the TS are exceeded. It indicated that if the time limits are not exceeded the event is not significant enough to warrant reporting.

Response: The comment is not accepted. Generally, standard TS require commencement of shutdown within one hour if an important system, such as emergency ac power, is inoperable. However, the stated reason for allowing one hour before commencing the shutdown is to provide time to prepare for an orderly shutdown. Also, the condition might have lasted much longer than one hour before it was discovered. Finally, an event that results in a safety system failure (or inability to perform its function) is generally significant enough to warrant NRC review.

Comment 24: One comment from the State of Ohio recommended that, although rule changes are not necessary, emphasis should be placed on positive notification of State and local agencies of emergency conditions before calling the NRC.

Response: The comment is accepted. It arose from a weakness in the NRC's response to an event at the Davis-Besse plant. Because there were considerable difficulties in establishing telephone communications with the plant at the time of the event, NRC Operations Center personnel requested that the licensee remain on the line and said that the NRC would notify the State. However, the NRC did not do so in a timely manner. Training and procedure changes have been implemented to ensure this type of problem will not reoccur.

Comment 25: One comment letter, from the State of Illinois, stated the following: "In section 50.72 of the advance notice of proposed rulemaking, seven *non-emergency* events listed as (f), are proposed to be reported in eight hours instead of one hour. Of those seven events, six (specifically, (ii), (iii), (iv), (v), (vi), and (vii)) would probably be classified as emergency events under existing emergency plans at an Illinois site * * *. This will cause reporting confusion during an event at a time when clarity is necessary. These six events should all be reported as emergency events, not non-emergency events. EAL thresholds in licensee emergency plans should be required to reflect them clearly. All of these events would affect the State of Illinois' response and our emergency plans. NRC must reconsider the categories of non-emergency events in the context of the current guidance to licensees for classifying EALs to ensure there is a clear distinction between emergency and non-emergency reportable events."

Response: Section 50.72 has been reviewed, and appears to be clear in this regard. It indicates the following:

(1) Any declaration of an Emergency Class is reportable pursuant to 10 CFR 50.72(a)(1)(i) and (a)(3),

(2) The conditions listed in paragraph (b)(1), "One-hour reports," are reportable pursuant to paragraph (b)(1) *if not reported as a declaration of an Emergency Class under paragraph (a),* and

(3) The conditions listed in paragraph (b)(2), "Eight-hour reports, are reportable pursuant to paragraph (b)(2), *if not reported under paragraphs (a) or (b)(1).*

Comment 26: One comment letter, from the State of Illinois, opposed relaxing the required initial reporting time from 4 hours to 8 hours for the following types of events:

(i) Airborne radioactive release that results in concentrations over 20 times allowable levels in an unrestricted area;

(ii) Liquid effluent in excess of 20 times allowable concentrations released to an unrestricted area;

(iii) Radioactively contaminated person transported to an offsite medical facility for treatment;

(iv) News release or other government agency notification related to the health and safety of the public or onsite personnel, or protection of the environment.

The comment further indicated: "It is of paramount importance that those charged with regulating and monitoring the public impact of radiological releases are being kept informed of unplanned releases in a timely manner. Illinois law requires that we perform independent assessments, decide what actions may be necessary to protect the public, and assist in informing the public regarding any radiological risk. Should follow-up action to a release be necessary, then the less time that has elapsed, the better the state is able to respond in a timely and appropriate manner. We oppose any reduction in notification requirements for unplanned radiation releases from a site regardless of the source or quantity.

Timeliness is also important for items of obvious public interest. News of seemingly small events spreads quickly, particularly in local communities around the power plants. Delayed reporting of such events means that we will be unprepared to respond to queries from local officials, or the media, with a resultant loss of public confidence. Therefore, we also oppose any reduction in notification requirements for newsworthy events."

Response: In the interest of simplicity, the proposed amendments would maintain just three basic levels of required reporting times in 10 CFR 50.72 and 50.73 (1 hour, 8 hours, and 60 days). However, the concern is recognized and public comment is specifically invited on the question of whether additional levels should be introduced to better correspond to particular types of events, as discussed below under the heading "Required Initial Reporting Times." Also, if in a final rule the NRC should relax the time limit to 8 hours, a State would not be precluded from obtaining reports earlier than 8 hours.

Comment 27: Two comment letters addressed coordination with States. The comment letter from Florida Power & Light Company stated "The NRC's Public workshop on August 21, 1998, touched on a number of examples where opportunities exist to reduce reporting burdens. An industry representative commented that licensees sometimes have to report the same event to state agencies and the NRC provided one such example. FPL concurs with the recommendation that the time requirement for reporting an event to the NRC and to the state should be consistent wherever practical and possibly in some cases eliminated."

The comment letter from Northeast Nuclear Energy Company stated "Northeast Nuclear Energy Company agrees with extending the non-emergency prompt notifications to eight hours. This would help to eliminate unnecessary reports and retractions. However, it is necessary to have the individual states closely involved with the rule change since they may have requirements that are more restrictive or conflict with the proposed rulemaking. For example, in Connecticut all 10 CFR 50.72 reports require notification of the state within one hour."

Response: The ANPR specifically requested State input. In addition, a letter requesting input was sent to each State. Written comments were received from the State of Ohio and the State of Illinois. In addition, representatives

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from several States attended one of the public meetings on the ANPR. The NRC will continue to solicit State input as the rulemaking process proceeds.

Comment 28: One comment recommended eliminating two of the requirements for immediate followup notification during the course of an event, section 50.72(c)(2)(i), the results of ensuing evaluations or assessments of plant conditions, and section 50.72(c)(2)(ii), the effectiveness of response or protective measures taken. The comment indicated that the requirements continue to apply after the event and that they require reporting even if, for example, the result of a further analysis does not change the initial report.

Response: The comment is not accepted. The requirements for followup reporting apply only during the course of the event. Followup reports are needed while the event is ongoing. For example, if an analysis is completed during an ongoing event, and it confirms an earlier estimate of how long it will take to uncover the reactor core if electric power is not restored, that information may very well be useful for the purpose of evaluating the need for protective measures (evacuation).

Comment 29: One comment recommended clarifying the reporting requirements for problems identified by NRC inspectors.

Response: No changes are proposed. The current reporting guidelines include a paragraph making it clear that an event must be reported via telephone notification and/or written LER, as required, *regardless* of whether it had been discussed with NRC staff personnel or was identified by NRC personnel.

Comment 30: Several comments recommended changing the requirements in 50.46(a)(iii)(2) for reporting errors in or corrections to ECCS analyses.

Response: These comments will be addressed in a separate action (along with other comments on reporting requirements other than sections 50.72 and 50.73).

Comment 31: Some comments raised issues regarding plant-specific reporting requirements contained in Technical Specifications (or other parts of the operating license). One suggestion was that 10 CFR 50.72 and 50.73 should be changed to address these issues. Another suggestion was that a Generic Letter be issued indicating that the NRC would be receptive to requests for license amendments to eliminate specific reporting requirements.

Response: No changes are proposed for sections 50.72 and 50.73, which identify generic reporting requirements. It is not feasible or appropriate to address the specific reporting requirements contained in individual operating licenses in this format.

The idea of issuing a generic communication to specific requests for license amendments will be addressed (along with other comments on reporting requirements beyond the scope of sections 50.72 and 50.73) in a separate action.

Comment 32: One comment recommended that in section 50.72(b)(1)(v), the word "offsite" be added before "communications capability" to make it clear that what must be reported is a loss of communications with outside agencies, not internal plant communications systems.

Response: The comment is accepted. In the proposed rule the word "offsite" would be added.

Comment 33: Several comments suggested that the NRC should define its needs relative to the information provided in LERs.

Response: The essential purpose of the LER rule is to identify the types of reactor events and problems that are believed to be significant and useful to the NRC in its effort to identify and resolve threats to public safety. The rule is designed to provide the information necessary for engineering studies of operational anomalies and trends, and patterns analysis of operational occurrences. To this end, the information required in LERs is generally needed to understand the event, its significance, and its causes in order to determine whether generic or plant specific action is needed to preclude recurrence. Some further specific functions are discussed below.

It is necessary to identify and analyze events and conditions that are precursors to potential severe core damage, to discover emerging trends or patterns of potential safety significance, to identify events that are important to safety and their associated safety concerns and root causes, to determine the adequacy of corrective actions taken to address the safety concerns, and to assess the generic applicability of events.

The NRC staff reviews each LER to identify those individual events or generic situations that warrant additional analysis and evaluation. The staff identifies repetitive events and failures and situations where the frequency or the combined significance of reported events may be cause for concern. The NRC staff reviews past operating history for similar events and initiates a generic study, as appropriate, to focus upon the nature, cause, consequences and possible corrective actions for the particular situation or concern.

The NRC staff uses the information reported in LERs in confirming licensing bases, studying potentially generic safety problems, assessing trends and patterns of operational experience, monitoring performance, identifying precursors of more significant events, and providing operational experience to the industry.

The NRC determines whether events meet the criteria for reporting as an Abnormal Occurrence Report to Congress or for reporting to the European Nuclear Energy Agency (NEA).

The information from LERs is widely used within the nuclear industry, both nationally and internationally. The industry's Institute of Nuclear Power Operation (INPO) uses LERs as a basis for providing operational safety experience feedback data to individual utilities through such documents as significant operating experience reports, significant event reports, significant events notifications, and operations and maintenance reminders. U.S. vendors and nuclear steam system suppliers, as well as other countries and international organizations, use LER data as a source of operational experience data.

Comment 34: Some comments indicated that the licensing basis should be defined.

Response: No changes are proposed. The term "licensing basis" is not explicitly used in the event reporting rules or the draft reporting guidelines. It can come into play, via Generic Letter (GL) 91–18, "Information to Licensees Regarding two NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions and on Operability," in determining what the "specified safety function" of a system is. This relates to whether an event is reportable as an event or condition that could have prevented the fulfillment of the safety function of structures or systems * * * and/or an operation or condition prohibited by the plant's technical specification (TS). However, any unsettled details regarding exactly which commitments are included in the licensing basis (for example because of differences between the definitions in GL 91–18 and 10 CFR 54.3) are not of a nature that would change the determination of whether or not a system is capable of performing its specified safety functions (i.e., operable).

Comment 35: Several comments recommended conducting tabletop exercises (public meetings) early in the drafting process, involving licensees, inspectors, and headquarters personnel to discuss the draft amendments and associated and guidance.

Response: The Commission agrees. The recommended public meeting was held on November 13, 1998.

Comment 36: Several comments recommended conducting a workshop (public meeting) early during the public comment period to discuss the proposed rule and draft guidance.

Response: The Commission agrees. The recommended workshop has been added to the schedule.

Comment 37: Several comments recommended that the reporting guidelines be revised concurrently with the rules.

Response: The Commission agrees. Draft guidelines are being made available for comment concurrent with the proposed rules.

Comment 38: Several comment letters recommended reviewing enforcement criteria at the same time the rule is being developed to ensure consistent application of enforcement to reporting.

Response: The comment is accepted. The Enforcement Policy is being reviewed concurrently with development of the rule.

IV. Discussion

1. Objectives of Proposed Amendments

The purpose of sections 50.72 and 50.73 would remain the same because the basic needs remain the same. The objectives of the proposed amendments would be as follows:

(1) To better align the reporting requirements with the NRC's current reporting needs. An example is extending the required initial reporting times for some events, consistent with the need for timely NRC action. Another example is changing the criteria for reporting system actuations, to obtain reporting that is more consistent with the risk-significance of the systems involved.

(2) To reduce the reporting burden, consistent with the NRC's reporting needs. An example is eliminating the reporting of design and analysis defects and deviations of little or no risk-or safety-significance.

(3) To clarify the reporting requirements where needed. An example is clarifying the criteria for reporting design or analysis defects or deviations.

(4) To maintain consistency with NRC actions to improve integrated plant assessments. For example, reports that are needed in the assessment process should not be eliminated.

2. Section by Section Discussion of Proposed Amendments

General requirements [section 50.72(a)(5)]. The requirement to inform the NRC of the type of report being made (i.e., emergency class declared, non-emergency 1-hour report, or non-emergency 8-hour report) would be revised to refer to paragraph (a)(1) instead of referring to paragraph (a)(3) to correct a typographical error.

Required initial reporting times [sections 50.72(a)(5), (b)(1), (b)(2), and sections 50.73(a)(1) and (d)]. In the proposed amendments, declaration of an emergency class would continue to be reported immediately after notification of appropriate State or local agencies not later than 1-hour after declaration. This includes declaration of an Unusual Event, the lowest emergency class.

Deviations from technical specifications authorized pursuant to 10 CFR 50.54(x) would continue to be reported as soon as practical and in all cases within 1 hour of occurrence. These two criteria capture those events where there may be a need for immediate action by the NRC.

Non-emergency events that are reportable by telephone under 10 CFR 50.72 would be reportable as soon as practical and in all cases within 8 hours (instead of within 1 hour or 4 hours as is currently required). This would reduce the burden of rapid reporting, while still capturing those events where there may be a need for the NRC to contact the plant to find out more about the event and/or initiate a special inspection or investigation within about a day.

Written LERs would be due within 60 days after discovery of a reportable event or condition (instead of within 30 days as is currently required). Changing the time limit from 30 days to 60 days does not imply that licensees should take longer than they previously did to develop and implement corrective actions. They should continue to do so on a time scale commensurate with the safety significance of the issue. However, for those cases where it does take longer than thirty days to complete a root cause analysis, this change would result in fewer LERs that require amendment (by submittal of an additional report).

The Performance Indicator (PI) program and the future risk-based performance indicator program provide valued input to regulatory decisions (e.g. Senior Management Meetings). Adding 30 days to the delivery of data supplying these programs would result in the reduction in the currency and value of these indicators to senior managers. With respect to the Accident Sequence Precursor program, the additional 30 days will add a commensurate amount of time to each individual event assessment since Licensee Event Reports (LERs) are the main source of data for these analyses. The delivery date for the annual Accident Sequence Precursor report would also slip accordingly. The NRC staff would have to make more extensive use of Immediate Notifications (10 CFR 50.72) and event followup to compensate in part for the Licensee Event Report (LER) reporting extension.

In the interest of simplicity, the proposed amendments would maintain just three basic levels of required reporting times in 10 CFR 50.72 and 50.73 (1 hour, 8 hours, and 60 days). However public comment is specifically invited on the question of whether additional levels should be introduced to better correspond or particular types of events. For example, 10 CFR 50.72 currently requires reporting within 4 hours for events that involve low levels of radioactive releases, and events related to safety or environmental protection that involve a press release or notification of another government agency. These types of events could be maintained at 4 hours so that information is available on a more timely basis to respond to heightened public concern about such events. In another example, events related to environmental protection are sometimes reportable to another agency, which is the lead agency for the matter, with a different time limit, such as 12 hours. These types of events could be reported to the NRC at approximately the same time as they are reported to the other agency.

Operation or condition prohibited by TS [section 50.73(a)(2)(i)(B)]. The term "during the previous three years" would be added to eliminate written LERs for conditions that have not existed during the previous three years. Such a historical event would now have less significance, and assessing reportability for earlier times can consume considerable resources. For example, assume that a procedure is found to be unclear and, as a result, a question is raised as to whether the plant was ever operated in a prohibited condition. If operation in the prohibited condition is likely, the answer should be reasonably apparent based on the knowledge and experience of the plant's operators and/or a review of operating records for the past three years. The very considerable

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effort required to review all records older than three years, in order to rule out the possibility, would not be warranted.

In addition, this criterion would be modified to eliminate reporting if the technical specification is administrative in nature. Violation of administrative technical specifications have generally not been considered to warrant submittal of an LER, and since 1983 when the rule was issued the staff's reporting guidance has excluded almost all cases of such reporting. This change would make the plain wording of the rule consistent with that guidance.

Finally, this criterion would be modified to eliminate reporting if the event consisted solely of a case of a late surveillance test where the oversight is corrected, the test is performed, and the equipment is found to be functional. This type of event has not proven to be significant because the equipment remained functional.

Condition of the nuclear power plant, including its principal safety barriers, being seriously degraded [current sections 50.72(b)(1)(ii) and (b)(2)(i), replaced by new section 50.72(b)(2)(ii), and section 50.73(a)(2)(ii)]. Currently, 10 CFR 50.72(b)(1)(ii) and (b)(2)(i) provide the following distinction: a qualifying event or condition during operation is initially reportable in one hour; a condition discovered while shutdown that would have qualified if it had it been discovered during operation is initially reportable in four hours. The new 10 CFR 50.72(b)(2)(ii) would eliminate the distinction because there would no longer be separate 1-hour and 4-hour categories of non-emergency reports for this criterion. There would only be 8-hour non-emergency reports for this criterion.

Unanalyzed condition that significantly compromises plant safety [sections 50.72(b)(1)(ii)(A) and (b)(2)(i), and section 50.73(a)(2)(ii)(A); replaced by new section 50.72(b)(2)(ii)(B), and section 50.73(a)(2)(ii)(B)]. Currently, 10 CFR 50.72(b)(1)(ii)(A) and (b)(2)(i) provide the following distinction: a qualifying event or condition during operation is initially reportable in one hour; a condition discovered while shutdown that would have qualified if it had it been discovered during operation is initially reportable in four hours. The new 10 CFR 50.72(b)(2)(ii)(B) would eliminate the distinction because there would no longer be separate 1-hour and 4-hour categories of non-emergency reports for this reporting criterion. There would only be 8-hour non-emergency reports for this criterion.

In addition, the new 10 CFR 50.72(b)(2)(ii)(B) and 50.73(a)(2)(ii)(B) would refer to a condition that significantly affects plant safety rather than a condition that significantly compromises plant safety. This is an editorial change intended to better reflect the nature of the criterion.

Condition that is outside the design basis of the plant [current Section 50.72(b)(2)(ii)(B) and section 50.73(a)(2)(ii)(B)]. This criterion would be deleted. However, a condition outside the design basis of the plant would still be reported if it is significant enough to qualify under one or more of the following criteria.

If a design or analysis defect or deviation (or any other event or condition) is significant enough that, as a result, a structure or system would not be capable of performing its specified safety functions, the condition would be reportable under sections 50.72(b)(2)(v) and 50.73(a)(2)(v) [i.e., an event or condition that could have prevented the fulfillment of the safety function of structures or systems that are needed to: (A) Shut down * * *].

For example, during testing of 480 volt safety-related breakers, one breaker would not trip electrically. The cause was a loose connection, due to a lug that was too large for a connecting wire. Other safety related breakers did not malfunction, but they had the same mismatch. The event would be reportable because the incompatible lugs and wires could have caused one or more safety systems to fail to perform their specified safety function(s).

Another example is as follows. An annual inspection indicated that some bearings were wiped or cracked on both emergency diesel generators (EDGs). Although the EDGs were running prior to the inspection, the event would be reportable because there was reasonable doubt about the ability of the EDGs to operate for an extended period of time, as required.

If a design or analysis defect or deviation (or any other event or condition) is significant enough that, as a result, one train of a multiple train system controlled by the plant's TS is not capable of performing its specified safety functions, and thus the train is inoperable longer than allowed by the TS, the condition would be reportable under section 50.73(a)(2)(i)(B) [i.e., an operation or condition prohibited by TS].

For example, if it is found that an exciter panel for one EDG lacks appropriate seismic restraints because of a design, analysis or construction inadequacy and, as a result, there is reasonable doubt about the EDG's ability to perform its specified safety functions during and after a Safe Shutdown Earthquake (SSE) the event would be reportable.

Or, for example, if it is found that a loss of offsite power could cause a loss of instrument air and, as a result, there is reasonable doubt about the ability of one train of the auxiliary feedwater system to perform its specified safety functions for a certain postulated steam line breaks, the event would be reportable.

If a condition outside the design basis of the plant (or any other unanalyzed condition) is significant enough that, as a result, plant safety is significantly affected, the condition would be reportable under sections 50.72(b)(2)(ii)(B) and 50.73(a)(2)(ii)(B) [i.e., an unanalyzed condition that significantly affects plant safety].

As was previously indicated in the 1983 Statements of Considerations for 10 CFR 50.72 and 50.73, with regard to an unanalyzed condition that significantly compromises plant safety, "The Commission recognizes that the licensee may use engineering judgment and experience to determine whether an unanalyzed condition existed. It is not intended that this paragraph apply to minor variations in individual parameters, or to problems concerning single pieces of equipment. For example, at any time, one or more safety-related components may be out of service due to testing, maintenance, or a fault that has not yet been repaired. Any trivial single failure or minor error in performing surveillance tests could produce a situation in which two or more often unrelated, safety-grade components are out-of-service. Technically, this is an unanalyzed condition. However, these events should be reported only if they involve functionally related components or if they significantly compromise plant safety." [1]

"When applying engineering judgment, and there is a doubt regarding whether to report or not, the Commission's policy is that licensees should make the report." [2]

"For example, small voids in systems designed to remove heat from the reactor core which have been previously shown through analysis not to be safety significant need not be reported. However, the accumulation of voids that could inhibit the ability to adequately remove heat from the reactor core, particularly under natural circulation conditions, would constitute an unanalyzed condition and would be reportable." [3]

"In addition, voiding in instrument lines that results in an erroneous indication causing the operator to misunderstand the true condition of the plant is also an unanalyzed condition and should be reported." [4]

Furthermore, beyond the examples given in 1983, examples of reportable events would include discovery that a system required to meet the single failure criterion does not do so.

In another example, if fire barriers are found to be missing, such that the required degree of separation for redundant safe shutdown trains is lacking, the event would be reportable. On the other hand, if a fire wrap, to which the licensee has committed, is missing from a safe shutdown train but another safe shutdown train is available in a different fire area, protected such that the required separation for safe shutdown trains is still provided, the event would not be reportable.

If a condition outside the design basis of the plant (or any other event or condition) is significant enough that, as a result, a principal safety barrier is seriously degraded, it would be reportable under sections 50.72(b)(2)(ii)(A) and 50.73(a)(2)(ii)(A) [i.e., any event or condition that results in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded]. This reporting criterion applies to material (e.g., metallurgical or chemical) problems that cause abnormal degradation of or stress upon the principal safety barriers (i.e., the fuel cladding, reactor coolant system pressure boundary, or the containment) such as:

(i) Fuel cladding failures in the reactor, or in the storage pool, that exceed expected values, or that are unique or widespread, or that are caused by unexpected factors.

(ii) Welding or material defects in the primary coolant system which cannot be found acceptable under ASME Section XI, IWB–3600, "Analytical Evaluation of Flaws" or ASME Section XI, Table IWB–3410–1, "Acceptance Standards."

(iii) Steam generator tube degradation in the following circumstances:

(1) The severity of degradation corresponds to failure to maintain structural safety factors. The structural safety factors implicit in the licensing basis are those described in Regulatory Guide 1.121. These safety factors include a margin of 3.0 against gross failure or burst under normal plant operating conditions, including startup, operation in the power range, hot standby, and cooldown, and all anticipated transients that are included in the plant design specification.

(2) The calculated potential primary-to-secondary leak rate is not consistent with the plant licensing basis. The licensing basis accident analyses typically assume [for accidents other than a steam generator tube rupture (SGTR)] a 1 gpm primary-to-secondary leak rate concurrent with the accident to demonstrate that the radiological consequences satisfy 10 CFR Part 100 and GDC–19. In these instances, degradation which may lead to leakage above 1 gpm under accident conditions, other than a SGTR, would exceed the threshold. For some units, the staff has approved accident leakages above 1 gpm subject to updating the licensing basis accident analyses to reflect this amount of leakage and subject to risk implications being acceptable. [5]

(iv) Low temperature over pressure transients where the pressure-temperature relationship violates pressure-temperature limits derived from Appendix G to 10 CFR Part 50 (e.g., TS pressure-temperature curves).

(v) Loss of containment function or integrity, including containment leak rate tests where the total containment as-found, minimum-pathway leak rate exceeds the limiting condition for operation (LCO) in the facility's TS. [6]

Finally, a condition outside the design basis of the plant (or any other event or condition) would be reportable if a component is in a degraded or non-conforming condition such that the ability of a component to perform its specified safety function is significantly degraded and the condition could reasonably be expected to apply to other similar components in the plant. This new criterion is contained in section 50.73(a)(2)(ii)(C) as discussed below.

As a result, these proposed amendments would focus the reporting of conditions outside the design basis of the plant to the safety significant issues while reducing the number of reports under the current rules in order to minimize the reporting of less significant issues. In particular, the proposed amendments will help ensure that significant safety problems that could reasonably be expected to be applicable to similar components at the specific plant or at other plants will be identified and addressed although the specific licensee might determine that the system or structure remained operable, or that technical specification requirements were met. The proposed rules will provide that, consistent with the NRC's effort to obtain information for engineering studies of operational anomalies and trends and patterns analysis of operational occurrences, the NRC would be able to monitor the capability of safety-related components to perform their design-basis functions.

Significantly degraded component(s) [section 50.73(a)(2)(ii)(C)]. This new reporting criterion would require reporting if a component is in a degraded or non-conforming condition such that the ability of the component to perform its specified safety function is significantly degraded and the condition could reasonably be expected to apply to other similar components in the plant. It would be added to ensure that design basis or other discrepancies would continue to be reported if the capability to perform a specified safety function is significantly degraded and the condition has generic implications. On the other hand, if the degradations are not significant or the condition does not have generic implications, reporting would not be required under this criterion.

For example, at one plant several normally open valves in the low pressure safety injection system were routinely closed to support quarterly surveillance testing of the system. In reviewing the design basis and associated calculations, it was determined that the capability of the valves to open in the event of a large break loss-of-coolant accident (LOCA) combined with degraded grid voltage during a surveillance test was degraded. The licensee concluded that the valves would still be able to reopen under the postulated conditions and considered them operable. However, that conclusion could not be supported using the conservative standards established by Generic Letter 89–10. Pending determination of final corrective action, administrative procedures were implemented to preclude closing the valves. The event would be reportable because the

[1] 48 FR 39042, August 29, 1983 and 48 FR 33856, July 26, 1983.

[2] 48 FR 39042, August 29, 1983.

[3] 48 FR 39042, August 29, 1983 and 48 FR 33856, July 26, 1983.

[4] 48 FR 39042, August 29, 1983 and 48 FR 33856, July 26, 1983.

[5] In addition, if the extent of degradation is great (i.e., if many tubes are degraded or defective), a telephone notification and a written LER should be provided. The plant's TS typically provide specific requirements indicating when reporting is required (based on the number of tubes degraded or defective in terms of "percent inspected") and those requirements should be used to determine reportability.

[6] The LCO typically employs L_a, which is defined in Appendix J to 10 CFR Part 50 as the maximum allowable containment leak rate at pressure P_a, the calculated peak containment internal pressure related to the design basis accident. Minimum-pathway leak rate means the minimum leak rate that can be attributed to a penetration leakage path; for example, the smaller of either the inboard or outboard valve's individual leak rates.

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capability of a component to perform its specified safety functions was significantly degraded and the same condition could reasonably be expected to apply to other similar components.

In another example, during a routine periodic inspection, jumper wires in the valve operators for three valves were found contaminated with grease which was leaking from the limit switch gear box. The cause was overfilling of the grease box, as a result of following a generic maintenance procedure. The leakage resulted in contamination and degradation of the electrical components which were not qualified for exposure to grease. This could result in valve malfunction(s). The conditions were corrected and the maintenance procedures were changed. The event would be reportable because the capability of several similar components to perform their specified safety functions could be significantly degraded.

In a further example, while processing calculations it was determined that four motor operated valves within the reactor building were located below the accident flood level and were not qualified for that condition. Pending replacement with qualified equipment, the licensee determined that three of the valves had sufficiently short opening time that their safety function would be completed before they were submerged. The fourth valve was normally open and could remain open. After flooding, valve position indication could be lost, but valve position could be established indirectly using process parameter indications. The event would be reportable because the capability of several similar components to perform their specified safety functions could be significantly degraded.

An example of an event that would not be reportable is as follows. The motor on a motor-operated valve (MOV) burned out after repeated cycling for testing. This event would not be reportable because it is a single component failure, and while there might be similar MOVs in the plant, there is not a reasonable basis to think that other MOVs would be affected by this same condition. On the other hand, if several MOVs had been repeatedly cycled and then after some extended period of time one of the MOVs was found inoperable or significantly degraded because of that cycling, then the condition would be reportable.

Minor switch adjustments on MOVs would not be reported where they do not significantly affect the ability of the MOV to carry out its design-basis function and the cause of the adjustments is not a generic concern.

At one plant the switch on the radio transmitter for the auxiliary building crane was used to handle a spent fuel cask while two protective features had been defeated by wiring errors. A new radio control transmitter had been procured and placed in service. Because the new controller was wired differently than the old one, the drum overspeed protection and spent fuel pool roof slot limit switch were inadvertently defeated. While the crane was found to be outside its design basis, this condition would not be reportable because the switch wiring deficiency could not reasonably be expected to affect any other components at the plant.

Condition not covered by the plant's operating and emergency procedures [section 50.72(b)(2)(ii)(C), and section 50.73(a)(2)(ii)(C)]. This criterion would be deleted because it does not result in worthwhile reports aside from those that would be captured by other reporting criteria such as:

(1) An unanalyzed condition that significantly affects plant safety;

(2) An event or condition that could have prevented the fulfillment of the safety function of structures or systems that are needed to: shut down the reactor and maintain it in a safe shutdown condition; remove residual heat; control the release of radioactive material; or mitigate the consequences of an accident;

(3) An event or condition that results in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded;

(4) An operation or condition prohibited by the plant's TS;

(5) An event or condition that results in actuation of any of the systems listed in the rules, as amended;

(6) An event that poses an actual threat to the safety of the nuclear power plant or significantly hampers site personnel in the performance of duties necessary for the safe operation of the nuclear power plant.

Manual or automatic actuation of any engineered safety feature ESF [current sections 50.72(b)(1)(iv) and (b)(2)(ii), replaced by new sections 50.72(b)(2)(iv), and section 50.73(a)(2)(iv)]. Currently, sections 50.72(b)(1)(iv) and (b)(2)(ii) provide the following distinction: an event that results or should have resulted in ECCS discharge into the reactor coolant system is initially reportable within 1 hour; other ESF actuations are initially reportable within 4 hours. The new 10 CFR 50.72(b)(2)(iv) would eliminate this distinction because there would no longer be separate 1-hour and 4-hour categories of non-emergency reports for this criterion. There would only be 8-hour non-emergency reports for this criterion.

The new section 50.72(b)(2)(iv) would eliminate telephone reporting for invalid automatic actuation or unintentional manual actuation. These events are not significant and thus telephone reporting is not needed. However, the proposed amendments would not eliminate the requirement for a written report of an invalid actuation under 10 CFR 50.73. There is still a need for reporting of these events because they are used in making estimates of equipment reliability parameters, which in turn are needed to support the Commission's move towards risk-informed regulation. (See SECY–97–101, May 7, 1997, "Proposed Rule, 10 CFR 50.76, Reporting Reliability and Availability Information for Risk-significant Systems and Equipment," Attachment 3).

The term "any engineered safety feature (ESF), including the reactor protection system (RPS)," which currently defines the systems for which actuation must be reported in section 50.72(b)(2)(iv) and section 50.73(a)(2)(iv), would be replaced by a specific list of systems. The current definition has led to confusion and variability in reporting because there are varying definitions of what constitutes an ESF. For example, at some plants systems that are known to have high risk significance, such as emergency ac power, auxiliary feedwater, and reactor core isolation cooling are not considered ESFs. Furthermore, in many cases systems with much lower levels of risk significance, such as control room ventilation systems, are considered to be ESFs.

In the proposed amendments actuation would be reportable for the specific systems named in sections 50.72(b)(2)(iv) and 50.73(a)(2)(iv). This would result in *consistent* reporting of events that result in actuation of these *highly risk-significant systems.* Reasonable consistency in reporting actuation of highly risk-significant systems is needed to support estimating equipment reliability parameters, which is important to several aspects of the move towards more risk-informed regulation, including more risk-informed monitoring of plant performance.

The specific list of systems in the proposed rule would also eliminate reporting for events of lesser significance, such as actuation of control room ventilation systems.

The specific list of systems in the proposed rule is similar to the list of systems currently provided in the reporting guidelines in NUREG–1022, Revision 1, with some minor revisions. It is based on systems for which actuation is frequently reported, and systems with relatively high risk-significance based on a sampling of plant-specific PRAs (see Draft Regulatory Guide DG-1046, "Guidelines for Reporting Reliability and Availability Information for Risk-Significant Systems and Equipment in Nuclear Power Plants," particularly Tables C–1 through C–5).

This proposal to list the systems in the rule is controversial and public comment is specifically invited in this area. In particular, three principal alternatives to the proposed rule have been identified for comment:

(1) Maintain the status quo. Under this alternative, the rule would continue to require reporting for actuation of "any ESF." The guidance would continue to indicate that reporting should include *as a minimum* the system on the list.

(2) Require use of a plant-specific, risk-informed list. Under this alternative, the list of systems would be risk-informed, and plant-specific. Licensees would develop the list based on existing PRA analyses, judgment, and specific plant design. No list would be provided in the rule.

(3) Return to the pre-1998 situation (i.e., before publication of the reporting guidance in NUREG–1022, Revision 1). Under this alternative, the rule would continue to require reporting for actuation of "any ESF." The guidance would indicate that reporting should include those systems identified as ESF's for each particular plant (e.g., in the FSAR).

With regard to this third alternative, it may be noted that this approach has the advantage of clarity and simplicity. There would be no need to develop a new list, and this is the practice that was followed from 1984–1997 without creating major problems. However, the lists of ESFs are not based on risk-significance. For example, emergency diesel generators (EDGs) are known to be highly risk-significant; however, at six plants, the EDGs are not considered to be ESFs. Similarly, auxiliary feedwater (AFW), systems at pressurized water reactors (PWRs) are known to be highly risk-significant; however, at a number of plants these systems are not considered to be ESFs. Also, reactor core isolation cooling (RCIC) systems at boiling water reactors (BWRs) are known to be highly risk significant; however, at a number of plants these systems are not considered to be ESFs. In contrast, at many plants, systems with much lower levels of risk significance, such as control room ventilation systems, are considered to be ESFs.

*Event or condition that could have prevented fulfillment of the safety function of structures or systems that * * * [current sections 50.72(b)(1)(ii) and (b)(2)(i), replaced by new sections 50.72(b)(2)(v) and (vi), and sections 50.73(a)(2)(v) and (vi)]* The phrase "event or condition that alone could have prevented the fulfillment of the safety function of structures or systems.* * *" would be clarified by deleting the word "alone". This clarifies the requirements by more clearly reflecting the principle that it is necessary to consider other existing plant conditions in determining the reportability of an event or condition under this criterion. For example, if one train of a two train system is incapable of performing its safety function for one reason, and the other train is incapable of performing its safety function for a different reason, the event is reportable.

The term "at the time of discovery" would be added to section 50.72(b)(2)(v) to eliminate telephone notification for a condition that no longer exists, or no longer has an effect on required safety functions. For example, it might be discovered that some time ago both trains of a two train system were incapable of performing their safety function, but the condition was subsequently corrected and no longer exists. In another example, while the plant is shutdown, it might be discovered that during a previous period of operation a system was incapable of performing its safety function, but the system is not currently required to be operable. These events are considered significant, and an LER would be required, but there would be no need for telephone notification.

The phrase "occurring within three years of the date of discovery" would be added to section 50.73(a)(2)(v) to eliminate written LERs for conditions that have not existed during the previous three years. Such a historical event would now have less significance, and assessing reportability for earlier times can consume considerable resources. For example, assume that during a design review a discrepancy is found that affects the ability of a system to perform its safety function in a given specific configuration. If it is likely that the safety function could have been prevented, the answer should be reasonably apparent based on the knowledge and experience of the plant's operators and/or a review of operating records for the past three years. The very considerable effort required to review all records older than three years, in order to rule out the possibility, would not be warranted.

A new paragraph, section 50.72(b)(2)(vi) would be added to clarify section 50.72. The new paragraph would explicitly state that telephone reporting is not required under section 50.72(b)(2)(v) for single failures if redundant equipment in the same system was operable and available to perform the required safety function. That is, although *one train* of a system may be incapable of performing its safety function, reporting is not required under this criterion if that *system* is still capable of performing the safety function. This is the same principle that is currently stated explicitly in section 50.73(a)(2)(vi) with regard to written LERs.

Major loss of emergency assessment capability, offsite response capability, or communication capability [current section 50.72(b)(2)(v), new section 50.72(b)(2)(xiii)]. The new section would be modified by adding the word "offsite" in front of the term "communications capability" to make it clear that the requirement does not apply to internal plant communication systems.

*Airborne radioactive release * * * and liquid effluent release * * * [section 50.72(b)(2)(viii) and sections 50.73(a)(2)(viii) and 50.73(a)(2)(ix)].* The statement indicating reporting under section 50.72(b)(2)(viii) satisfies the requirements of section 20.2202 would be removed because it would not be correct. For example, some events captured by section 20.2202 would not be captured by section 50.72(b)(2)(viii). Also, the statement indicating that reporting under section 50.73(a)(2)(viii) satisfies the requirements of section 20.2203(a)(3) would be deleted because it would not be correct. Some events captured by section 20.2203(a)(3) would not be captured by section 50.73(a)(2)(viii).

The proposed extension of reporting deadlines to 8 hours in section 50.72 and 60 days in section 50.73 raises questions about whether similar changes should be made to Parts 20, 30, 40, 70, 72 and 76. The merits of such changes, which may vary for different types of licensees, will be addressed in separate actions.

Contents of LERs [sections 50.73(b)(2)(ii)(F) and 50.73(b)(2)(ii)(J)). Paragraph (F) would be revised to correct the address of the NRC Library.

Paragraph (J) currently requires that the narrative section include the following specific information as appropriate for the particular event:

"(1) Operator actions that affected the course of the event, including operator

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errors, procedural deficiencies, or both, that contributed to the event.

(2) For each personnel error, the licensee shall discuss:

(i) Whether the error was a cognitive error (e.g., failure to recognize the actual plant condition, failure to realize which systems should be functioning, failure to recognize the true nature of the event) or a procedural error;

(ii) Whether the error was contrary to an approved procedure, was a direct result of an error in an approved procedure, or was associated with an activity or task that was not covered by an approved procedure;

(iii) Any unusual characteristics of the work location (e.g., heat, noise) that directly contributed to the error; and

(iv) The type of personnel involved (i.e., contractor personnel, utility-licensed operator, utility non-licensed operator, other utility personnel)."

The proposed amendment would change section 50.73(b)(2)(ii)(J) to simply require that the licensee discuss the causes and circumstances for each human performance related problem that contributed to the event. It is not necessary to specify the level of detail provided in the current rule, which is more appropriate for guidance. Details would continue to be provided in the reporting guidelines, as indicated in section 5.2.1 of the draft of Revision 2 to NUREG–1022. This draft report is being made available for public comment concurrently with the proposed rule, as discussed below under the heading "Revisions to Reporting Guidelines in NUREG–1022."

Spent fuel storage cask problems [current sections 50.72(b)(2)(vii) and 72.16(a)(1), (a)(2), (b) and (c)]. Section 50.72(b)(2)(vii) would be deleted because these reporting criteria are redundant to the reporting criteria contained in sections 72.216(a)(1), (a)(2), and (b). Repetition of the same reporting criteria in different sections of the rules adds unnecessary complexity and is inconsistent with the current practice in other areas, such as reporting of safeguards events as required by section 73.71.

Also, a conforming amendment would be made to section 72.216. This is necessary because section 72.216(a) currently relies on section 50.72(b)(2)(vii), which would be deleted, to establish the time limit for initial notification. The amended section 72.216 would refer to sections 72.74 and 72.75 for initial notification and followup reporting requirements.

Assessment of Safety Consequences [section 50.73(b)(3)]. This section currently requires that an LER include an assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event. It would be modified by adding a requirement to also include the status of components and systems that "are included in emergency or operating procedures and could have been used to recover from the event in case of an additional failure in the systems actually used for recovery." This information is needed to better support the NRC's assessment of the risk-significance of reported events.

Exemptions [section 50.73(f)]. This provision would be deleted because the exemption provisions in section 50.12 provide for granting of exemptions as warranted. Thus, including another, section-specific exemption provision in section 50.73 adds unnecessary complexity to the rules.

3. Revisions to Reporting Guidelines in NUREG–1022

A draft report, NUREG–1022, Revision 2, "Event Reporting Guidelines, 10 CFR 50.72 and 50.73," is being made available for public comment concurrently with the proposed amendments to 10 CFR 50.72 and 50.73. The draft report is available for inspection in the NRC Public Document Room or it may be viewed and downloaded electronically via the interactive rulemaking web site established by NRC for this rulemaking, as discussed above under the heading **ADDRESSES.** Single copies may be obtained from the contact listed above under the heading "For Further Information Contact." In the draft report, guidance that is considered to be new or different is a meaningful way, relative to that provided in NUREG–1022, Revision 1, is indicated by redlining the appropriate text.

4. Reactor Oversight

The NRC is developing revisions to process for oversight of operating reactors, including inspection, assessment and enforcement processes. In connection with this effort, the NRC has considered the kinds of event reports that would be eliminated by the proposed rules and believes that the changes would not have a deleterious effect on the oversight process. Public comment is invited on whether or not this is the case. In particular, it is requested that if any examples to the contrary are known they be identified.

5. Reporting of Historical Problems

As discussed above, provisions would be added to sections 50.73(a)(2)(i)(B) and 50.73(a)(2)(v) to eliminate reporting of a condition or event that did not occur within three years of the date of discovery. (See the response to Comment 8, the discussion under the heading "Operation or condition prohibited by TS," and the discussion under the heading "Event or condition that could have prevented fulfillment of the safety function of structures or systems that * * *") Public comment is invited on whether such historical events and conditions should be reported (rather than being excluded from reporting, as proposed). Public comment is also invited on whether the three year exclusion of such historical events and conditions should be extended to all written reports required by section 50.73(a) (rather than being limited to these two specific reporting criteria, as proposed).

6. Reporting of Component Problems

As discussed above, a new reporting criterion would be added to require reporting if a component is in a degraded or non-conforming condition such that the ability of the component to perform its specified safety function is significantly degraded and the condition could reasonably be expected to apply to other similar components in the plant. (See the response to Comment 14 and the discussion under the heading "Significantly degraded component(s) [section 50.73(a)(2)(ii)(C)].") Public comment is invited on whether this proposed new criterion would accomplish its stated purpose—to ensure that design basis or other discrepancies would continue to be reported if the capability to perform a specified safety function is significantly degraded and the condition has generic implications. Public comment is also invited on whether the proposed new criterion would be subject to varying interpretations by licensees and inspectors.

7. Enforcement

The NRC intends to modify its existing enforcement policy in connection with the proposed amendments to sections 50.72 and 50.73. The philosophy of the proposed changes is to base the significance of the reporting violation on: (1) The reporting requirement, which will require reporting within time frames more commensurate with the significance of the underlying issues than the current rule; and (2) the impact that a late report may have on the ability of the NRC to fulfill its obligations of fully understanding issues that are required to be reported in order to accomplish its public health and safety mission, which in many cases involves reacting to reportable issues or events. As such, the NRC intends to revise the Enforcement Policy, NUREG–1600, Rev. 1 as follows:

(1) Appendix B, Supplement I.C—Examples of Severity Level III violations.

(a) Example 14 would be revised to read as follows—A failure to provide the required one hour telephone notification of an emergency action taken pursuant to 10 CFR 50.54(x).

(b) An additional example would be added that would read as follows—A failure to provide a required 1-hour or 8-hour non-emergency telephone notification pursuant to 10 CFR 50.72.

(c) An additional example would be added that would read as follows—A late 8-hour notification that substantially impacts agency response.

(2) Appendix B, Supplement I.D—Examples of Severity Level IV violations.

(a) Example 4, would be revised to read as follows—A failure to provide a required 60-day written LER pursuant to 10 CFR 50.73.

These changes in the Enforcement Policy would be consistent with the overall objective of the rule change of better aligning the reporting requirements with the NRC's reporting needs. The Enforcement Policy changes would correlate the Severity Level of the infractions with the relative importance of the information needed by the NRC.

Section IV.D of the Enforcement Policy provides that the Severity Level of an untimely report may be reduced depending on the individual circumstances. In deciding whether the Severity Level should be reduced for an untimely 1-hour or 8-hour non-emergency report the impact that the failure to report had on any agency response would be considered. For example, if a delayed 8-hour reportable event impacted the timing of a followup inspection that was deemed necessary, then the Severity Level would not normally be reduced. Similarly, a late notification that delayed the NRC's ability to perform an engineering analysis of a condition to determine if additional regulatory action was necessary would generally not be considered for disposition at a reduced Severity Level. Additionally, late reports filed in cases where the NRC had to prompt the licensee to report would generally not be subject to disposition at reduced Severity Level and the Severity Level for failure to submit a timely Licensee Event Report (LER) would not be reduced to a minor violation.

In accordance with Appendix C of the Enforcement Policy, " Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactor Licensees," the failure to file a 60-day LER would normally be dispositioned as a Non-Cited Violation (NCV). Repetitive failures to make LER reports indicative of a licensee's inability to recognize reportable conditions, such that it is not likely that the NRC will be made aware of operational, design and configuration issues deemed reportable pursuant to 10 CFR 50.73, will be considered for categorization at Severity Level III. This disposition may be warranted since such licensee performance impacts the ability of the NRC to fulfill its regulatory obligations.

8. Electronic Reporting

The NRC is currently planning to implement an electronic document management and reporting program, known as the Agency-wide Document Access and Management System (ADAMS), that will in general provide for electronic submittal of many types of reports, including LERs. Accordingly, no separate rulemaking effort to provide for electronic submittal of LERs is contemplated.

9. Schedule

The current schedule is as follows:

08/99—Conduct public workshop to discuss proposed rule and draft reporting guidelines (separate notice with workshop details will be published later this month).
August 5, 1999—Public comments due to OMB
September 7, 1999—Receive OMB approval
September 20, 1999—Public comments due to NRC
10/01/99—Provide final rule and guidelines to NRC staff rulemaking group
11/05/99—Provide final rule and guidelines to the formal concurrence chain
01/14/00—Provide final rule and guidelines to CRGR and ACRS
02/11/00—Complete briefings of CRGR and ACRS
03/10/00—Provide final rule and guidelines to Commission
04/07/00—Publish final rule and guidelines

10. State Input

Many States (Agreement States and Non-Agreement States) have agreements with power reactors to inform the States of plant issues. State reporting requirements are frequently triggered by NRC reporting requirements. Accordingly, the NRC seeks State comment on issues related to the proposed amendments to power reactor reporting requirements.

Plain Language

The President's Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

VI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to information collection and reporting requirements such as those contained in the proposed rule. Therefore, a backfit analysis has not been prepared. However, as discussed below, the NRC has prepared a regulatory analysis for the proposed rule, which examines the costs and benefits of the proposed requirements in this rule. The Commission regards the regulatory analysis as a disciplined process for assessing information collection and reporting requirements to determine that the burden imposed is justified in light of the potential safety significance of the information to be collected.

VII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room or it may be viewed and downloaded electronically via the interactive rulemaking web site established by NRC for this rulemaking, as discussed above under the heading **ADDRESSES.** Single copies may be obtained from the contact listed above under the heading "For Further Information Contact."

The Commission requests public comment on this draft analysis. Comments on the draft analysis may be

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submitted to the NRC as discussed above under the heading **ADDRESSES.**

VIII. Paperwork Reduction Act Statement

This proposed rule would amend information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for the currently existing reporting requirements in 10 CFR 50.72 and 50.73 is estimated to average about 790 hours per response (i.e., per commercial nuclear power reactor per year) including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. It is estimated that the proposed amendments would impose a one time implementation burden of about 200 hours per reactor, after which there would be a recurring annual burden reduction of about 200 hours per reactor per year. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection contained in the proposed rule and on the following issues:

Is the proposed information collection necessary for the proper performance of the NRC, including whether the information will have practical utility?

Is the estimate of burden accurate?

Is there a way to enhance the quality, utility, and clarity of the information to be collected?

How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing this burden, to the Information and Records Management Branch (T–5 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by Internet electronic mail to BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150AF98), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by August 5, 1999. Comments received after this date will be considered if it is practical to do so, but consideration cannot be ensured for comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

IX. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

X. Proposed Amendments

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, and Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50 and 10 CFR part 72.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(D.D.), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.72 is amended by revising paragraphs (a) and (b) to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

(a) *General requirements.*[7] (1) Each nuclear power reactor licensee licensed under § 50.21(b) or § 50.22 of this part shall notify the NRC Operations Center via the Emergency Notification System of:

(i) The declaration of any of the Emergency Classes specified in the licensee's approved Emergency Plan; [8] or

(ii) Of those non-Emergency events specified in paragraph (b) of this section.

(2) If the Emergency Notification System is inoperative, the licensee shall make the required notifications via commercial telephone service, other dedicated telephone system, or any other method which will ensure that a report is made as soon as practical to the NRC Operations Center.[9, 10]

(3) The licensee shall notify the NRC immediately after notification of the appropriate State or local agencies and not later than one hour after the time the licensee declares one of the Emergency Classes.

(4) The licensee shall activate the Emergency Response Data System (ERDS) [11] as soon as possible but not later than one hour after declaring an emergency class of alert, site area emergency, or general emergency. The ERDS may also be activated by the licensee during emergency drills or exercises if the licensee's computer system has the capability to transmit the exercise data.

(5) When making a report under paragraph (a)(1) of this section, the licensee shall identify:

(i) The Emergency Class declared; or

(ii) Either paragraph (b)(1), "One-Hour Report," or paragraph (b)(2) "Eight-Hour Report," as the paragraph of this section requiring notification of the Non-Emergency Event.

(b) *Non-emergency events*—(1) *One-Hour reports.* If not reported as a declaration of the Emergency Class under paragraph (a) of this section, the licensee shall notify the NRC as soon as practical and in all cases within one hour of the occurrence of any deviation from the plant's Technical Specifications authorized pursuant to § 50.54(x) of this part.

(2) *Eight-hour reports.* If not reported under paragraphs (a) or (b)(1) of this section, the licensee shall notify the NRC as soon as practical and in all cases within eight hours of the occurrence of any of the following:

(i) The initiation of any nuclear plant shutdown required by the plant's Technical Specifications.

(ii) Any event or condition that results in:

(A) The condition of the nuclear power plant, including its principal safety barriers, being seriously degraded; or

(B) The nuclear power plant being in an unanalyzed condition that significantly affects plant safety.

(iii) Any natural phenomenon or other external condition that poses an actual threat to the safety of the nuclear power plant or significantly hampers site personnel in the performance of duties necessary for the safe operation of the plant.

(iv)(A) Any event or condition that results in intentional manual actuation or valid automatic actuation of any of the systems listed in paragraph (b)(2)(iv)(B) of this section, except when the actuation results from and is part of a pre-planned sequence during testing or reactor operation.

(B) The systems to which the requirements of paragraph (b)(2)(iv)(A) of this section apply are:

(1) Reactor protection system (reactor scram, reactor trip);

(2) Emergency core cooling systems (ECCS) for pressurized water reactors (PWRs) including: high-head, intermediate-head, and low-head injection systems and the low pressure injection function of residual (decay) heat removal systems.

(3) ECCS for boiling water reactors (BWRs) including: high-pressure and low-pressure core spray systems; high-pressure coolant injection system; feedwater coolant injection system; low pressure injection function of the residual heat removal system; and automatic depressurization system.

(4) BWR isolation condenser system and reactor core isolation cooling system.

(5) PWR auxiliary feedwater system.

(6) Containment systems including: containment and reactor vessel isolation systems (general containment isolation signals affecting numerous valves and main steam isolation valve [MSIV] closure signals in BWRs) and containment heat removal and depressurization systems, including containment spray and fan cooler systems.

(7) Emergency ac electrical power systems, including: emergency diesel generators (EDGs) and their associated support systems; hydroelectric facilities used in lieu of EDGs at the Oconee Station; safety related gas turbine generators; BWR dedicated Division 3 EDGs and their associated support systems; and station blackout diesel generators (and black-start gas turbines that serve a similar purpose) which are started from the control room and included in the plant's operating and emergency procedures.

(8) Anticipated transient without scram (ATWS) mitigating systems.

(9) Service water (standby emergency service water systems that do not normally run).

(v) Any event or condition that at the time of discovery could have prevented the fulfillment of the safety function of structures or systems that are needed to:

(A) Shut down the reactor and maintain it in a safe shutdown condition;

(B) Remove residual heat;

(C) Control the release of radioactive material, or

(D) Mitigate the consequences of an accident.

(vi) Events covered in paragraph (b)(2)(v) of this section may include one or more procedural errors, equipment failures, and/or discovery of design, analysis, fabrication, construction, and/or procedural inadequacies. However, individual component failures need not be reported pursuant to this paragraph if redundant equipment in the same system was operable and available to perform the required safety function.

(vii) [Reserved]

(viii)(A) Any airborne radioactive release that, when averaged over a time period of 1 hour, results in concentrations in an unrestricted area that exceed 20 times the applicable concentration specified in appendix B to part 20, table 2, column 1.

(B) Any liquid effluent release that, when averaged over a time of 1 hour, exceeds 20 times the applicable concentration specified in appendix B to part 20, table 2, column 2, at the point of entry into the receiving waters (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases.

(ix) Any event that poses an actual threat to the safety of the nuclear power plant or significantly hampers site personnel in the performance of duties necessary for the safe operation of the nuclear power plant including fires, toxic gas releases, or radioactive releases.

(x) Any event requiring the transport of a radioactively contaminated person to an offsite medical facility for treatment.

(xi) Any event or situation, related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other government agencies has been or will be made. Such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials.

(xii) Any event that results in a major loss of emergency assessment capability, offsite response capability, or offsite communications capability (e.g., significant portion of control room indication, Emergency Notification System, or offsite notification system).

* * * * *

3. Section 50.73 is amended by revising sections (a), (b)(2)(ii)(F), (b)(2)(ii)(J), (b)(3), (d), and (e) and by removing and reserving paragraph (f) to read as follows:

§ 50.73 Licensee event report system.

(a) *Reportable events.* (1) The holder of an operating license for a nuclear power plant (licensee) shall submit a Licensee Event Report (LER) for any event of the type described in this paragraph within 60 days after the discovery of the event. Unless otherwise specified in this section, the licensee shall report an event regardless of the plant mode or power level, and regardless of the significance of the structure, system, or component that initiated the event.

(2) The licensee shall report:

(i)(A) The completion of any nuclear plant shutdown required by the plant's Technical Specifications.

(B) Any operation or condition occurring within three years of the date of discovery which was prohibited by the plant's Technical Specifications, except when:

(*1*) The technical specification is administrative in nature; or

[7] Other requirements for immediate notification of the NRC by licensed operating nuclear power reactors are contained elsewhere in this chapter, in particular §§ 20.1906, 20.2202, 50.36, 72.74, 72.75, and 73.71.

[8] These Emergency Classes are addressed in Appendix E of this part.

[9] Commercial telephone number of the NRC Operations Center is (301) 816–5100.

[10] [Reserved]

[11] Requirements for ERDS are addressed in Appendix E, Section VI.

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(2) The event consists solely of a case of a late surveillance test where the oversight is corrected, the test is performed, and the equipment is found to be capable of performing its specified safety functions.

(C) Any deviation from the plant's Technical Specifications authorized pursuant to § 50.54(x) of this part.

(ii) Any event or condition that resulted in:

. (A) The condition of the nuclear power plant, including its principal safety barriers, being seriously degraded;

(B) The nuclear power plant being in an unanalyzed condition that significantly affects plant safety; or

(C) A component being in a degraded or non-conforming condition such that the ability of the component to perform its specified safety function is significantly degraded and the condition could reasonably be expected to affect other similar components in the plant.

(iii) Any natural phenomenon or other external condition that posed an actual threat to the safety of the nuclear power plant or significantly hampered site personnel in the performance of duties necessary for the safe operation of the nuclear power plant.

(iv)(A) Any event or condition that resulted in manual or automatic actuation of any of the systems listed in paragraph (a)(2)(iv)(B) of this section, except when:

(1) The actuation resulted from and was part of a pre-planned sequence during testing or reactor operation; or

(2) The actuation was invalid and:

(i) Occurred while the system was properly removed from service; or

(ii) Occurred after the safety function had been already completed.

(B) The systems to which the requirements of paragraph (a)(2)(iv)(A) of this section apply are:

(1) Reactor protection system (reactor scram, reactor trip).

(2) Emergency core cooling systems (ECCS) for pressurized water reactors (PWRs) including: high-head, intermediate-head, and low-head injection systems and the low pressure injection function of residual (decay) heat removal systems.

(3) ECCS for boiling water reactors (BWRs) including: high-pressure and low-pressure core spray systems; high-pressure coolant injection system; feedwater coolant injection system; low pressure injection function of the residual heat removal system; and automatic depressurization system.

(4) BWR isolation condenser system and reactor core isolation cooling system.

(5) PWR auxiliary feedwater system.

(6) Containment systems including: containment and reactor vessel isolation systems (general containment isolation signals affecting numerous valves and main steam isolation valve [MSIV] closure signals in BWRs) and containment heat removal and depressurization systems, including containment spray and fan cooler systems.

(7) Emergency ac electrical power systems, including: emergency diesel generators (EDGs) and their associated support systems; hydroelectric facilities used in lieu of EDGs at the Oconee Station; safety related gas turbine generators; BWR dedicated Division 3 EDGs and their associated support systems; and station blackout diesel generators (and black-start gas turbines that serve a similar purpose) which are started from the control room and included in the plant's operating and emergency procedures.

(8) Anticipated transient without scram (ATWS) mitigating systems.

(9) Service water (standby emergency service water systems that do not normally run).

(v) Any event or condition occurring within three years of the date of discovery that could have prevented the fulfillment of the safety function of structures or systems that are needed to:

(A) Shut down the reactor and maintain it in a safe shutdown condition;

(B) Remove residual heat;

(C) Control the release of radioactive material; or

(D) Mitigate the consequences of an accident.

(vi) Events covered in paragraph (a)(2)(v) of this section may include one or more procedural errors, equipment failures, and/or discovery of design, analysis, fabrication, construction, and/or procedural inadequacies. However, individual component failures need not be reported pursuant to this paragraph if redundant equipment in the same system was operable and available to perform the required safety function.

(vii) Any event where a single cause or condition caused at least one independent train or channel to become inoperable in multiple systems or two independent trains or channels to become inoperable in a single system designed to:

(A) Shut down the reactor and maintain it in a safe shutdown condition;

(B) Remove residual heat;

(C) Control the release of radioactive material; or

(D) Mitigate the consequences of an accident.

(viii)(A) Any airborne radioactive release that, when averaged over a time period of 1 hour, resulted in airborne radionuclide concentrations in an unrestricted area that exceeded 20 times the applicable concentration limits specified in appendix B to part 20, table 2, column 1.

(B) Any liquid effluent release that, when averaged over a time period of 1 hour, exceeds 20 times the applicable concentrations specified in appendix B to part 20, table 2, column 2, at the point of entry into the receiving waters (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases.

(ix) Any event that posed an actual threat to the safety of the nuclear power plant or significantly hampered site personnel in the performance of duties necessary for the safe operation of the nuclear power plant including fires, toxic gas releases, or radioactive releases.

(b) * * *

(2) * * *

(ii) * * *

(F)(1) The Energy Industry Identification System component function identifier and system name of each component or system referred to in the LER.

(i) The Energy Industry Identification System is defined in: IEEE Std 803–1983 (May 16, 1983) Recommended Practice for Unique Identification in Power Plants and Related Facilities—Principles and Definitions.

(ii) IEEE Std 803–1983 has been approved for incorporation by reference by the Director of the Federal Register.

(2) A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies may be obtained from the Institute of Electrical and Electronics Engineers, 345 East 47th Street, New York, NY 10017. IEEE Std 803–1983 is available for inspection at the NRC's Technical Library, which is located in the Two White Flint North building, 11545 Rockville Pike, Rockville, Maryland; and at the Office of the Federal Register, 1100 L Street, NW, Washington, DC.

* * * * *

(J) For each human performance related problem that contributed to the event, the licensee shall discuss the cause(s) and circumstances.

* * * * *

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of systems or components that:

(i) Could have performed the same function as the components and systems that failed during the event, or

(ii) Are included in emergency or operating procedures and could have been used to recover from the event in case of an additional failure in the systems actually used for recovery.

* * * * *

(d) *Submission of reports.* Licensee Event Reports must be prepared on Form NRC 366 and submitted within 60 days of discovery of a reportable event or situation to the U.S. Nuclear Regulatory Commission, as specified in § 50.4.

(e) *Report legibility.* The reports and copies that licensees are required to submit to the Commission under the provisions of this section must be of sufficient quality to permit legible reproduction and micrographic processing.

(f) [Reserved]

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

4. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

5. Section 72.216 is revised to read as follows:

§ 72.216 Reports.

(a) [Reserved]

(b) [Reserved]

(c) The general licensee shall make initial and written reports in accordance with §§ 72.74 and 72.75.

Dated at Rockville, Maryland, this 25th day of June, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–16934 Filed 7–2–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–67–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 300 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 75–23–08 R5, which currently requires repetitively inspecting and replacing or repairing the exhaust system on certain Cessna Aircraft Company (Cessna) 300 and 400 series airplanes. The proposed AD would replace the inspections and replacements that are required by AD 75–23–08 R5 with inspections and replacements containing new simplified procedures for all 300 and 400 series airplanes (models affected by the current AD plus additional models). The proposed AD would also revise the inspection intervals and would require replacing certain unserviceable parts and removing the exhaust system for detailed inspections at regular intervals. The proposed AD is the result of numerous incidents and accidents relating to the exhaust systems on Cessna 300 and 400 series airplanes dating from the middle 1970's to the present, including six incidents since issuance of AD 75–23–08 R5 where exhaust problems were cited. The actions specified by the proposed AD are intended to detect and correct cracks and corrosion in the exhaust system, which could result in exhaust system failure and a possible uncontrollable in-flight fire with pilot and/or passenger injury.

DATES: Comments must be received on or before August 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–67–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. The FAA believes that the proposed regulation may have a significant economic impact on a substantial number of small businesses. Due to the urgent nature of the safety issues addressed, the FAA has been unable to complete a preliminary regulatory flexibility analysis prior to issuance of the NPRM. A final regulatory flexibility analysis will be completed before, or within 180 days of issuance of, the final rule. To assist in this analysis, the FAA is particularly interested in receiving information on the impact of the proposed rule on small businesses and suggested alternative methods of compliance that reduce or eliminate such impacts. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

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Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–67–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–67–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 75–23–08 R5, Amendment 39–5451, currently requires repetitively inspecting, using visual methods, the exhaust system on certain Cessna 300 and 400 series airplanes; and repairing or replacing any unserviceable parts.

Cessna and the FAA performed extensive investigation and found the following possible causes and effects of these exhaust problems:

—Significant vibration between the beam-mounted engine and the firewall-mounted turbocharger;
—Leaking exhaust gases, which can cause fuel line failure because the fuel lines behind the firewall overheat and rupture. (Most of these fuel lines cannot be isolated or shut-off);
—Reduced structural strength of the engine mount beams and canted bulkheads as a result of exposure to high heat, which could compromise the engine installation; and
—Structural failure of the wing or loss of flight control that results from an in-flight fire.

The FAA issued AD 75–23–08 and five subsequent revisions to this AD, including the current one referenced above, as an attempt to manage these problems through repetitive visual inspections.

Actions Since Issuance of Previous Rule

In the 20 plus years since the issuance of AD 75–23–08, failures of exhaust systems on Cessna 300 and 400 series airplanes have continued to occur and have contributed to fatalities. The FAA, the National Transportation Safety Board (NTSB), and Cessna have conducted numerous tests and analysis on the exhaust system configurations in an attempt to resolve the repeated problems and to alleviate these failures.

The FAA and the NTSB have issued several safety recommendations to provide guidance on how to alleviate problems with the exhaust systems on Cessna 300 and 400 series airplanes. From these recommendations, the FAA has developed new service information (included as an Appendix to this AD) and Cessna has revised the maintenance and service manuals. The FAA believes that this new information should help to reduce the confusion of the requirements in the current action and simplify the procedures.

A recent fatal accident has occurred involving a Cessna Model 421B airplane. While not implicated in the cause of the accident, the FAA and the NTSB have determined that the exhaust system on the accident airplane was in a condition of imminent catastrophic failure. The airplane records indicate that the exhaust system inspection and replacement requirements of AD 75–23–08 R5 had been accomplished.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to detect and correct cracks and corrosion in the exhaust system, which could result in exhaust system failure and a possible uncontrollable in-flight fire. Exposure to these conditions could cause injury to the pilot and passengers during flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna 300 and 400 series airplanes of the same type design, the FAA is proposing an AD to supersede AD 75–23–08 R5. The proposed AD would replace the inspections and replacements that are required by AD 75–23–08 R5 with inspections and replacements containing new simplified procedures for all 300 and 400 series airplanes (models affected by the current AD plus additional models). The proposed AD would also revise the inspection intervals and would require replacing certain unserviceable parts and removing the exhaust system for detailed inspections at regular intervals. Provisions of the proposed AD include:

—Prohibiting patch-type repairs; and
—Removing the exhaust system and sending it to a designated facility for metallic identification, airworthiness determinations, and repair or replacement of any unserviceable parts.

Service Information

In the future, Cessna may develop service information or additional maintenance and/or service manual revisions to address this issue. The FAA will issue alternative methods of compliance to this AD if the procedures are deemed acceptable to address the unsafe condition specified in the proposed AD.

Cost Impact

The FAA estimates that 6,500 airplanes in the U.S. registry would be affected by the proposed AD. The cost of the proposed inspections would be as follows at an average labor rate of approximately $60 per hour. The cost of any necessary repair depends on the extent of the rework and replacement needed based on the results of the proposed inspections.

—The proposed repetitive 50-hour time-in-service (TIS) visual inspections of the exhaust system would take approximately 3 workhours to accomplish, with a labor cost of $180 per airplane for each inspection;
—The proposed repetitive 100-hour TIS visual inspections of the removed tailpipes would take approximately 1 workhour per tailpipe to accomplish, with a labor cost of $120 per airplane for each proposed inspection;
—The proposed inspection of the engine beams and canted bulkheads, as a result of damage to the tailpipes, would take approximately 3 workhours to accomplish, with a labor cost of $180 per airplane;
—The proposed inspection of the fuel tubing behind the firewall, as a result of damage to the tailpipes, engine beams, and canted bulkheads, would take approximately 16 workhours to accomplish, with a labor cost of $960 per airplane;
—The proposed replacement of the fuel tubing, if necessary, would take approximately 30 workhours to accomplish, with a labor cost of $1,800 per airplane;
—The proposed 500-hour TIS proposed requirement of removing and shipping the exhaust system to an approved facility would take approximately 8 workhours, with a labor cost of $480. The cost of shipping the exhaust system to the facility and the inspections by the facility is estimated at $500;
—The proposed repetitive pressure test is estimated to take 1 workhour, with a labor cost of $60 per airplane; and
—The proposed V-band clamp replacement is estimated to take 1 workhour, with a labor cost of $60 per airplane.

The total cost impact on the U.S. operators for the proposed initial inspections is estimated to be $28,210,000, or $4,340 per airplane. The maximum expense for full exhaust parts replacement is estimated to be approximately $60,000 per airplane. These figures do not take into the account the costs of any repetitive inspections or repairs or replacements that would be necessary if the FAA adopted the proposed rule. The FAA has no way of determining the number of repetitive inspections an owner/operator will incur over the life of the airplane, or the extent of the repairs and replacements that may be necessary for any affected airplane.

Compliance Time of This AD

Certain repetitive inspections of the proposed AD are presented in both calendar time and hours time-in-service (TIS). The unsafe condition specified in the proposed AD is a result of the stress cracking and/or corrosion that results over time. Stress corrosion starts as a result of high local stress incurred through operation of the affected part (the exhaust systems). Corrosion can then develop regardless of whether the airplane is in operation. The cracks may not be noticed initially as a result of the stress loads, but could then progress as a result of corrosion. The stress incurred during flight operations (while in-flight) or temperature changes (either while in-flight or on the ground) could then cause rapid crack growth. In order to assure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time (whichever occurs first) is proposed.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, may have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA is currently conducting a Regulatory Flexibility Determination and Analysis and has considered alternatives to the proposed AD that could minimize the impact on small entities.

After careful consideration, the FAA determined that AD action is the best course of action to address the unsafe condition specified in this document; and (2) the situation does not warrant waiting for the completion of the Regulatory Flexibility Determination and Analysis before issuing the NPRM. When completed, a copy of the Regulatory Flexibility Determination and Analysis will be placed in the Docket file and can be obtained at the address specified in the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 75–23–08 R5, Amendment 39–5451, and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 97–CE–67–AD; Supersedes AD 75–23–08 R5, Amendment 39–5451.

Applicability: Models T310P, T310Q, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320–1, 335, 340, 340A, 321 (Navy OE–2), 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the compliance table in Figure 1 of this AD, unless already accomplished.

To detect and correct cracks and corrosion in the exhaust system, which could result in exhaust system failure and a possible uncontrollable in-flight fire with pilot and/or passenger injury, accomplish the following:

(a) The following paragraphs present the type of individuals who have the authority to accomplish the actions of this AD:

(1) *Repairs:* Required to be accomplished at an FAA-approved repair facility.

(2) *Replacements:* Required to be accomplished in accordance with the appropriate Cessna Service Manual and must be accomplished by a person holding a currently effective mechanic certificate with both an airframe and powerplant (A&P) rating or by an individual authorized to represent an FAA-approved repair station.

(3) *Visual inspections except for paragraphs (f) and (i) of this AD:* Required to be accomplished by a person holding a currently effective mechanic certificate with both an airframe and powerplant (A&P) rating.

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Figure 1 of Docket No. 97-CE-67-AD
Compliance Table

Letters in (*) correspond with AD paragraphs	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	Throughout the AD
Actions of AD 9*--**	*Visually inspect the exhaust system.*	*Remove the tailpipes and visually inspect for any crack, corrosion, hole, or distortion.*	*Visually inspect the outboard engine beams and canted bulkheads.*	*Perform the inspection and pressure test of the exhaust system.*	*Remove the exhaust system from the slip joints aft to all turbo-charger components in accordance with paragraph (f) of this AD.*	*Replace the V-band clamps.*	*Disassemble and inspect the slip joint for freedom of movement, and if it is seized or frozen, replace the part.*	*Remove the exhaust system from the slip joints aft to all turbo-charger components*	*If any damage is found on any component or part, repair or replace the damaged component or part in accordance with this AD.*
Compliance Time for Airplanes With Inconel Exhaust Systems	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS.	Not required.	Within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 500 hours TIS.	Not required.	Within the next 500 hours TIS after the effective date of this AD or within the next 2 years after the effective date of this AD, whichever occurs first.	Within the next 500 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 500 hours TIS.	Within the next 500 hours TIS, and thereafter at intervals not to exceed 5 years.	Within 2,200 hours TIS after the inspection required in paragraph (f) of this AD, and thereafter at intervals not to exceed 2,200 hours TIS.	Prior to further flight after damage is found.
Compliance Time for Airplanes With Stainless Steel or Mixed Exhaust Systems	Within the next 50 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 50 hours TIS or 6 calendar months, whichever occurs first.	Within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS or 12 calendar months, whichever occurs first. (see paragraph (c)(3) in the body of this AD).	Within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 500 hours TIS.	Within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS or 12 calendar months, whichever occurs first.	Within the next 500 hours TIS after the effective date of this AD or within the next 2 years after the effective date of this AD, whichever occurs first.	Within the next 500 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 500 hours TIS.	Within the next 500 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 5 years.	Within 2,200 hours TIS after the inspection required in paragraph (f) of this AD, and thereafter at intervals not to exceed 2,200 hours TIS.	Prior to further flight after damage is found.

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(b) At the compliance time specified in Figure 1 of this AD, visually inspect the exhaust system for burned areas, cracks, or looseness. If any area of the exhaust system shows damage as defined in the Appendix of this AD, prior to further flight, repair or replace the damaged part.

(c) At the compliance time specified in Figure 1 of this AD, remove the tailpipes and visually inspect for cracks, corrosion, holes, or distortion.

(1) If no crack, corrosion, hole, or distortion is found, continue to visually inspect at intervals indicated in Figure 1 of this AD.

(2) If a crack, corrosion, hole, or distortion is found during any inspection, prior to further flight, repair or replace the tailpipe.

(3) When a new tailpipe is installed after the effective date of this AD, terminate the 100-hour time-in-service (TIS) repetitive inspections required as specified in Figure 1 of this AD until the accumulation of 500 hours TIS or 5 years from the installation date, whichever occurs first, at which time continue the 100-hour TIS inspection intervals.

(d) At the compliance time specified in Figure 1 of this AD, visually inspect the outboard engine beam (adjacent to the tailpipe) and the canted bulkheads for signs of distress, chafing, corrosion, or cracking. Even though some airplanes may have stainless steel engine beams, carefully inspect the areas of contact between the engine beam and canted bulkhead for corrosion.

(1) If damage to the engine beams is found or there is evidence of overheating on the firewall, prior to further flight, replace the firewall and the aluminum fuel lines behind the firewall. Stainless steel fuel lines are available from the Cessna Aircraft Company. Replacement of the fuel lines behind the firewall may require removing and replacing the firewall or accomplishing major repair of the firewall.

(2) Prior to further flight, repair any distress, chafing, corrosion, or cracking on the engine beams or canted bulkheads in accordance with data provided by any individual or facility that is authorized by the FAA to perform the necessary repairs or provide the FAA-approved data to authorized personnel for repair of these items.

(e) At the compliance time specified in Figure 1 of this AD, inspect the exhaust system and perform a pressure test in accordance with the Appendix of this AD. If any condition as specified in the Appendix of this AD is found, prior to further flight, repair or replace the affected parts.

(f) At the compliance time specified in Figure 1 of this AD, remove the exhaust system from the slip joints and aft to all turbocharger-attached components and send to an FAA-approved manufacturing and repair facility that is authorized by the FAA to perform material and condition determinations, and prior to further flight, accomplish any necessary repairs on these items.

Note 2: The following repair facilities have been approved as of the effective date of this AD. A current list of FAA-approved facilities can be obtained from the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Attention: Paul O. Pendleton, Aerospace Engineer; telephone: (316) 946–4143; facsimile: (316) 946–4407:

Wall Colmony Corp., 4700 S.E. 59th St., Oklahoma City, OK 73135, (405) 672–1361

Knisley Welding Inc., 3450 Swetzer Road, Loomis, CA 95650, (916) 652–5891

Heliarc Welding Service, 3965 Newport St., 73135 Denver, CO 80207–73135, (303) 672–1361

Note 3: The FAA-approved manufacturing and repair facilities will perform the following and provide information to be utilized for future actions required by this AD:

- Determine the airworthiness of the exhaust system parts;
- Measure for the minimum acceptable material thickness of .025 inch;
- Determine the airworthiness of previous repairs (multi-seam welds and patch-type welds are not considered airworthy);
- Repair or replace all unserviceable parts (no multi-seam or patch-type weld repairs are permitted);
- Determine the material type of the exhaust system (i.e., Inconel or stainless steel); and
- Stamp the material type with an "I" for Inconel or "SS" for stainless steel, the name of the facility making the determination, and the date on the exhaust system.

(g) At the compliance time specified in Figure 1 of this AD, replace all V-band clamps per the appropriate Cessna Service Manual.

(h) At the compliance time specified in Figure 1 of this AD, disassemble and visually inspect the slip joint for freedom of motion. If the slip joint is seized or frozen, prior to further flight, replace the slip joint.

(i) At the compliance time specified in Figure 1 of this AD, remove the exhaust system from the slip joints and aft to all turbo-charger attached components, and send to any FAA-approved exhaust repair facility. The FAA-approved exhaust repair facility will inspect this portion of the exhaust system for serviceable condition and make any necessary repairs to these items. No patch-type or multi-seam weld repairs are permitted.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Isolation of the fuel cross feed lines behind the firewall may be required.

(k) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(2) Alternative methods of compliance approved in accordance with AD 75–23–08 R5 are not considered approved as alternative methods of compliance for this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(l) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(m) This amendment supersedes AD 75–23–08 R5, Amendment 39–5451.

Appendix to Docket No. 97–CE–67–AD—Visual Inspection

(a) Cleaning

In order to properly inspect the exhaust system, components must be clean and free of oil, grease, etc. If required, clean as follows:

(1) Spray engine exhaust components with a suitable solvent (such as Stoddard Solvent), allow to drain, and wipe dry with a clean cloth.

WARNING NEVER USE HIGHLY FLAMMABLE SOLVENTS ON ENGINE EXHAUST SYSTEMS. NEVER USE A WIRE BRUSH OR ABRASIVES TO CLEAN EXHAUST SYSTEMS OR MARK ON THE SYSTEM WITH LEAD PENCILS.

(2) Remove the heat shields from the turbocharger in accordance with the heat shield removal procedures in the appropriate Cessna Aircraft Service Manual.

(3) Remove shields around the exhaust bellows or slip joints, multi-segment "V" band clamps at joints, and other items that might hinder the inspection of the system. Removal of the "V" band clamps may not be necessary.

(4) Using crocus cloth, polish any suspect surfaces to verify that no cracks or pinholes exist in the material. Replace or repair any part where cracks or pinholes exist.

(b) Visual Inspection of Complete System

Note 1. Conduct this inspection when the engine is cool.

(1) Visually inspect exhaust stacks for burned areas, cracks, bulges, and looseness. Make sure the attach bolts are properly torqued, in accordance with the appropriate Cessna Aircraft Service Manual.

Note 2. During this inspection, pay special attention to the condition of the bellows and welded areas along the seams; the welded areas around the bellows; and the welded seams around the exhaust system components.

(2) Visually inspect the flexible connection between the waste-gate and overboard duct (when applicable) for cracks and security.

(3) Visually inspect the exhaust joint springs for correct compression. If the joint is disturbed or if the springs are obviously loose or frozen, proceed with the following inspection (see Figure 1 of this Appendix).

(i) Before removal of the exhaust joint springs, measure the installed length of each spring, and replace the springs compressed to less than .45 inch.

(ii) Remove all the springs and measure the free length. Replace any spring having a free length of less than .57 inch.

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Note 3. Add AN960–10 washers under the head of the joint bolts as required to obtain the correct dimension. During installation, the joint bolts should be tightened gradually and spring length checked frequently to prevent over-compression of the springs.

(iii) Reinstall the springs and measure the installed length. The length must be .51 inch (+.00, −.03 inch).

(4) If installed, visually inspect the slip joint(s) for bulges beyond the normal manufacturing irregularities of .03 inches and/or cracks. If any bulges and/or cracks are present, replace the bulged or cracked slip joint(s). (Refer to the appropriate Cessna Aircraft Service Manual) (See Figure 2 of this Appendix).

(c) Inspection of the Multi-Segment "V" Band Clamp(s) (Between Engine and Turbocharger)

(1) Using crocus cloth, clean the outer band of the multi-segment "V" band clamp(s). Pay particular attention to the spot weld area on the clamp(s).

(2) With the clamp(s) properly torqued, progress to the following actions:

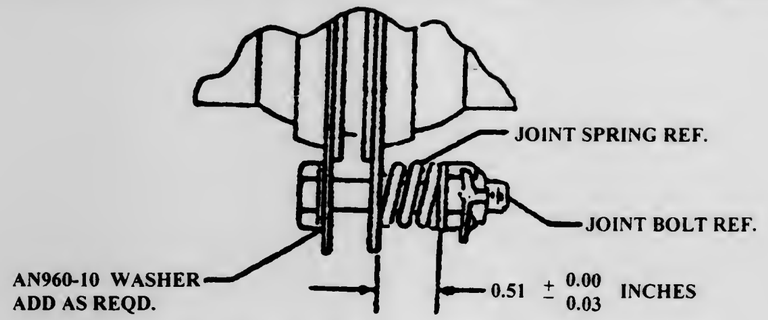
(i) Visually inspect the outer band in the area of the spot weld for cracks (see Figure 3 of this Appendix). If cracks are found, replace the clamp(s) with new multi-segment "V" band clamp(s).

(ii) Visually inspect the corner radii of the clamp inner segments for cracks (see Figure 3 of this Appendix). This inspection requires careful use of artificial light and inspection mirrors.

(iii) Visually inspect the flatness of the outer band, especially within 2 inches of the spot welded tabs that retain the T-bolt fastener. This can be done by placing a straight edge across the flat part of the outer band as shown in Figure 4 of this Appendix, then check the gap between the straight edge and the outer band. This gap should be less than 0.062 inch. If deformation exceeds the 0.062-inch limit, replace the clamp(s) with new multi-segment clamp(s). (See Figure 3 of this Appendix). See Cessna maintenance manual(s) and revisions for correct installation procedures.

(iv) Visually inspect the one-piece "V" band clamp (overboard exhaust to turbocharger) with a light and mirror, in the area of the clamp surfaces adjacent to the intersection of the "V" apex and bolt clips, and the entire length of the "V" apex of the clamp for signs of cracks or fractures. If cracks or fractures are visible, replace the clamp (see Figure 5 of this Appendix). See Cessna service manual(s) and revisions for correct installation procedures

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Typical Exhaust Joint Spring Installation

FIGURE 1 to the Appendix

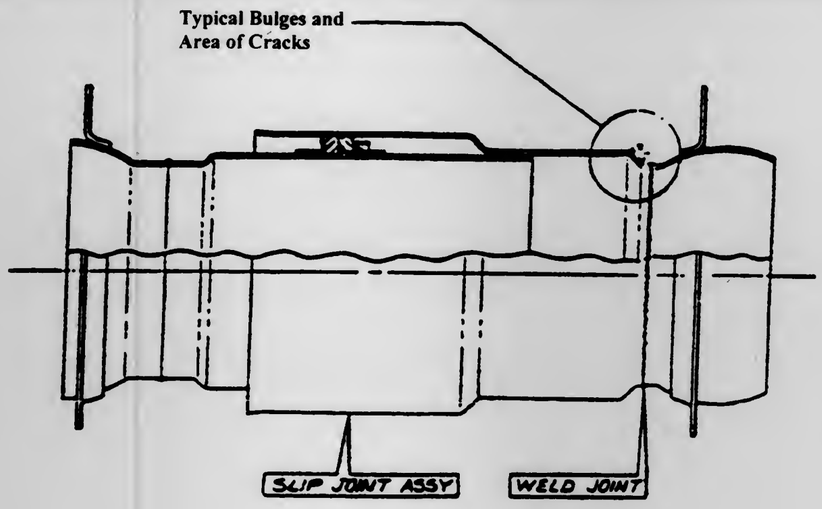
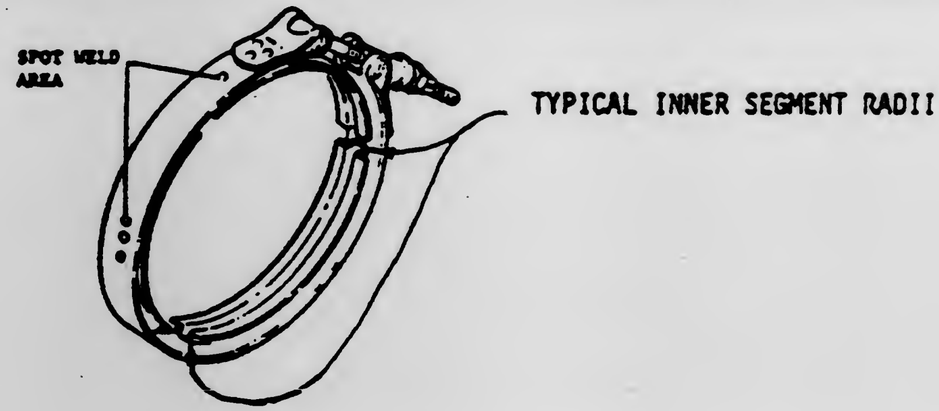


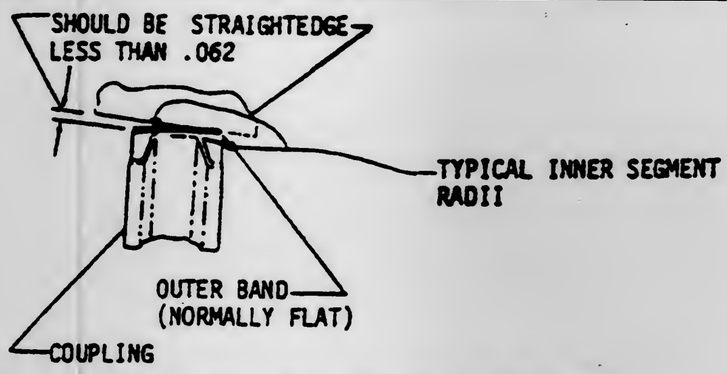
FIGURE 2 to the Appendix



Multi-Segment "V" Band Clamp

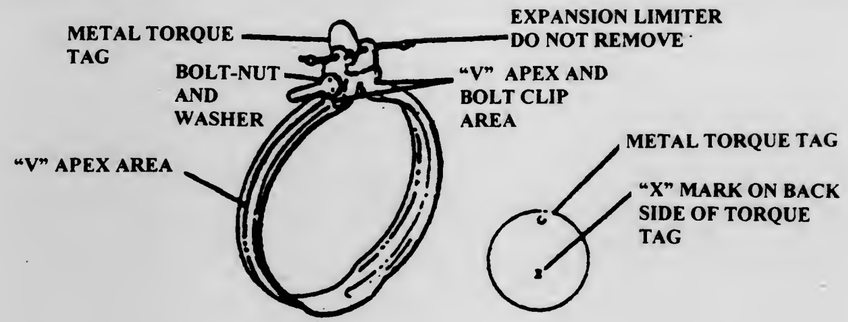
FIGURE 3 to the Appendix

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Multi-Segment "V" Band Clamp Outer Band Flatness Check

FIGURE 4 to the Appendix



One-Piece "V" Band Type Clamp

FIGURE 5 to the Appendix

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Inspection of the Exhaust System AFT of the Slip Joints

(a) Remove all top and bottom engine cowlings, as well as the under-nacelle inspection panels (on aircraft so-equipped). Remove the nacelle-mounted induction air filter canister, slip-joint heat shields, turbocharger heat shields, and any other readily-removable components that facilitate a better view of the exhaust system aft of the slip joints.

(b) Visually inspect each elbow pipe that runs from the slip joint to the wye duct. Carefully inspect the hard-to-see areas where the manifold passes through the canted bulkhead, beneath the clamp-on heat shields, and around the flange and V-band clamp, where it joins the wye. Use a flashlight and mirror to inspect the areas that cannot be seen directly.

(1) Look for evidence of exhaust stains, bulges, cracks, or pinholes.

(2) Exhaust stains or evidence of heat-induced corrosion on any portion of the engine mount beams or canted bulkhead should be grounds for removing the elbow pipe for closer inspection.

(3) Inspect for cracks, bulges, pinholes, or corrosion on the elbow (manifold) pipe, and if any of this damage is found, replace the elbow pipe.

(c) Visually inspect each wye duct beneath the turbo charger for leakage, stains, cracks, or pinholes, and, if damaged, repair or replace. Carefully inspect the hard-to-see area between the duct and firewall.

(1) Carefully inspect the turbo-charger and waste-gate flanges and welded seams between the ducts and the firewall for evidence of exhaust stains on the wye or the firewall, bulges, cracks, or pinholes.

(2) If exhaust stains, bulges, cracks or pinholes are found, repair or replace the damaged part.

Pressure Test

(a) Pressurize the exhaust system with air regulated to 20 PSI or below.

(b) Apply this air pressure to the tailpipe. Fabricate shop fixtures as required to accomplish this.

(c) Seal off the waste-gate pipe.

(d) Check the tailpipe, elbow pipes and the wye duct for leaks by spraying leak check fluid (bubbling) on these parts and looking for the appearance of bubbles. Some air leakage is normal at the joints and flanges, but none should be seen anywhere else.

(e) Pay special attention to any weld repairs, and various hard-to-see areas described previously.

(f) If the tailpipes, elbow pipes, or the wye ducts fail the pressure test, repair or replace the distressed component.

Issued in Kansas City, Missouri, on June 25, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16752 Filed 7–2–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–111]

RIN 2115–AE47

Drawbridge Operation Regulations; Debbies Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a supplemental change to the regulations governing the operation of the Monmouth County highway bridge, at mile 0.4, across Debbies Creek, at Manasquan, New Jersey.

The new proposal would continue to provide the current opening schedule, except that from January 1 through March 31, from 4:30 p.m. to 8 a.m., a 4-hour advance notice would be required. At all other times the bridge will continue to provide openings on signal. This change is intended to relieve the bridge owner of the burden of having a bridge tender staff the bridge during periods when there are few or no requests for openings, while still providing for the reasonable needs of navigation. In addition, the Coast Guard proposes enumeration and rewording of the current regulation to ensure clarity and consistency.

DATES: Comments must reach the Coast Guard on or before September 7, 1999.

ADDRESSES: You may mail comments to the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION: .

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–98–111) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Regulatory History

On January 22, 1999, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Debbies Creek, New Jersey" in the **Federal Register** (64 FR 3464). The Coast Guard received 10 letters commenting on the proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Monthmouth County highway bridge is owned and operated by the Board of Chosen Freeholders of the County of Monmouth (BCFCM) in New Jersey. Title 33 Code of Federal Regulations (CFR), § 117.715 requires the bridge to open on signal, except that, from Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need be opened only on the hour and the half hour if any vessels are waiting to pass.

The BCFMC has initially requested a change in the regulation by requiring a 24-hour advance notice for bridge openings from January 1 through March 31. Bridge logs from 1989 through 1997 revealed a total of 496 bridge openings in the months of January, February and March. During this period, bridge tenders received an average of approximately 18 bridge-opening requests per month. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believed that the initial proposal would more fairly balance the competing needs of vehicular and vessel traffic. However, the Coast Guard received 10 comments objecting to this proposal. Additionally, after further discussions with BCFCM, the Coast Guard has determined that since vessel use between January 1 and March 31 is primarily during the daylight hours, an alternative proposal should be considered. The Coast Guard also believes that enumeration and rewording would clarify the current regulation.

Discussion of Comments and Changes

The Coast Guard received 10 comments on the NPRM in opposition to a 24-hour advance notice for vessel openings from January 1 to March 31. Eight of the comments opposed the imposition of any changes to the current regulation as unreasonable and unfair. The remaining two comments suggested an advance notice for vessel openings be conducted from January 1 to March 31, between the hours of 4 p.m. to 8 a.m. All commenters generally indicated that a 24-hour advance notice would be an inconvenience and excessive due to the unpredictable weather conditions. The Coast Guard considered these comments and responded by suggesting that a supplemental alternative proposal be further analyzed and reissued as soon as possible.

Further review of the bridge logs from 1995 through 1997 revealed a total of 61 bridge openings for vessels from January 1 to March 31, from 4:30 p.m. to 8 a.m. During the same hours, bridge logs from 1989 to 1997 showed a total of 104 vessel openings. In view of these statistics, the Coast Guard is proposing a supplemental change to the regulation by reducing the advance notice call from 24 to 4 hours and requiring the 4-hour notice to be established from January 1 to March 31 between the hours of 4:30 p.m. and 8 a.m. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believes that the supplemental changes will more fairly balance the competing needs of vehicular and vessel traffic.

Discussion of Proposal

On January 22, 1999, the Coast Guard issued a Notice of Proposed Rulemaking to amend 33 CFR 117.715 by inserting a provision to require a 24-hour advance notice for bridge openings from January 1 through March 31.

Upon receiving opposition to this proposal and after further discussions with BCFCM, the Coast Guard now proposes to amend 33 CFR 117.715 by inserting a new provision requiring a 4-hour advance notice for bridge openings from January 1 through March 31, between the hours of 4:30 p.m. to 8 a.m. Additionally, to ensure clarity and consistency of the operating regulations, the text of the current 33 CFR 117.715 would be enumerated and reworded.

Regulatory Evaluation

This supplemental proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this supplemental proposed change to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard reached this conclusion based on the fact that the supplemental proposed change will not prevent mariners from transiting the bridge, but merely require mariners to plan their transits and to contact the bridge tender to provide the 4 hour advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard considered whether this supplemental proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this supplemental proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization may be impacted, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this supplemental proposed rule will economically affect it.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this supplemental proposed rule on State, local, and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1532) because it will not result in the expenditure of $100,000,000 in any one year by State, local, or tribal governments, in the aggregate, or the private sector.

Collection of Information

This supplemental proposed rule does not provide for a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this supplemental proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this supplemental proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this supplemental proposal and concluded that under figure 2–1, paragraph (32)(e) of the Commandant Instruction M16475.1C, this supplemental proposed rule is categorically excluded from further environmental documentation based on the fact that this is a promulgation of an operating regulation for a drawbridge. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposed to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–4587, 106 Stat. 5039.

2. Section 117.715 is revised to read as follows:

§ 117.715 Debbies Creek.

The draw of the Monmouth County highway bridge, mile 0.4 at Manasquan, shall open on signal, except as follows:

(a) From January 1 through March 31, from 4:30 p.m. to 8 a.m., the draw need open only if at least four-hours advance notice is given.

(b) From Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour if any vessels are waiting to pass.

(c) The owners of the bridge shall provide and keep in good legible

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condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

Dated: June 18, 1999.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Fifth Coast Guard District, Acting District Commander.

[FR Doc. 99–17055 Filed 7–2–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 412, 413, 419, 489, 498, and 1003

[HCFA–1005–4N]

RIN 0938–AI56

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for the fourth time on a proposed rule published in the **Federal Register** on September 8, 1998, (63 FR 47552). In that rule, as required by sections 4521, 4522, and 4523 of the Balanced Budget Act of 1997, we proposed to eliminate the formula–driven overpayment for certain outpatient hospital services, extend reductions in payment for costs of hospital outpatient services, and establish in regulations a prospective payment system for hospital outpatient services (and for Medicare Part B services furnished to inpatients who have no Part A coverage.)

DATES: The comment period is extended to 5 p.m. on July 30, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1005–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1005–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Health Care Financing Administration, Office of Information Services, Standards And Security Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke HCFA–1005–P

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Janet Wellham, (410) 786–4510.

SUPPLEMENTARY INFORMATION: On September 8, 1998, we issued a proposed rule in the **Federal Register** (63 FR 47552) that would do the following:

- Eliminate the formula–driven overpayment for certain hospital outpatient services.
- Extend reductions in payment for costs of hospital outpatient services.
- Establish in regulations a prospective payment system for hospital outpatient services, for partial hospitalization services furnished by community mental health centers, and for certain Medicare Part B services furnished to inpatients who have no Part A coverage.
- Propose new requirements for provider departments and provider-based entities.
- Implement section 9343(c) of the Omnibus Budget Reconciliation Act of 1986, which prohibits Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than a hospital unless the services are furnished under an arrangement with the hospital.
- Authorize the Department of Health and Human Services' Office of Inspector General to impose a civil money penalty against any individual or entity who knowingly presents a bill for nonphysician or other bundled services not provided directly or under such an arrangement.

The comment period for the proposed rule initially closed on November 9, 1998. Because of the scope of the proposed rule, hospitals and numerous professional associations requested more time to analyze the potential consequences of the rule. Therefore, we published a notice on November 13, 1998, (63 FR 63429), which extended the comment period until January 8, 1999. Because of further requests from hospitals and professional associations, we published another notice on January 12, 1999, (64 FR 1784) extending the comment period to March 9, 1999. Due to additional requests for more time to analyze the potential consequences of the proposed rule on March 12, 1999,(64 FR 12277) we again extended the comment period until June 30, 1999.

On June 30, 1999 we published a correction notice (64 FR 35258) in the **Federal Register** that corrects a number of technical and typographical errors contained in the September 8, 1998 proposed rule. The correction notice is entitled "Medicare Program; Prospective Payment System for Hospital Outpatient Services; Correction Notice." Due to the publication of the correction notice and our wish to provide potential commenters adequate time to analyze the potential consequences of the proposed rule, we are again extending the comment period to July 30, 1999.

Numerous hospital industry groups, in preparing to comment on the proposed rule, had asked for extensive information on the databases used to develop the proposed prospective payment system for hospital outpatient services. These requests included detailed programming specifications and analysis of individual proposed rates, including underlying data. Because the correction notice reflecting these corrected data was not published until June 30, 1999 and because these data will engender additional analysis by interested parties, we believe that further extending the current comment period is appropriate.

Published elsewhere in this issue of the **Federal Register** is a notice extending the comment period for the proposed rule published in the June 12, 1998, **Federal Register** in which we propose to rebase Medicare payment rates and update the list of approved procedures for ambulatory surgical centers (ASCs) (63 FR 32290). We are extending the comment period for the June 12, 1998, ASC proposed rule to be concurrent with the extended comment period for the September 8, 1998, hospital outpatient proposed rule because Medicare payments to ASCs are closely linked to the manner in which Medicare proposes to pay hospitals under a prospective payment system for surgical services furnished on an outpatient basis.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 24, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 30, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–17026 Filed 6–30–99; 2:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416 and 488

[HCFA–1885–6N]

RIN 0938–AH81

Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Procedures for Ambulatory Surgical Centers Effective October 1, 1998; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for the sixth time on a proposed rule published in the **Federal Register** on June 12, 1998, (63 FR 32290). In that rule we proposed to make various changes, including changes to the ambulatory surgical center (ASC) payment methodology and the list of Medicare covered procedures.

DATES: The comment period is extended to 5 p.m. on July 30, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1885–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1885–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890)).

For comments that relate to information collection requirements, mail a copy of comments to:

Health Care Financing Administration, Office of Information Services, Standards And Security Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke HCFA–1885–P

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Terri Harris, (410) 786–6830.

SUPPLEMENTARY INFORMATION: On June 12, 1998, we issued a proposed rule in the **Federal Register** (63 FR 32290) that would do the following:

- Update the criteria for determining which surgical procedures can be appropriately and safely performed in an ASC.
- Make additions to and deletions from the current list of Medicare covered ASC procedures based on the revised criteria.
- Rebase the ASC payment rates using cost, charge, and utilization data collected by a 1994 survey of ASCs.
- Refine the ratesetting methodology that was implemented by a final notice published on February 8, 1990, in the **Federal Register**.
- Require that ASC payment, coverage, and wage index updates be implemented annually on January 1 rather than having these updates occur randomly throughout the year.
- Reduce regulatory burden.
- Make several technical policy changes.

The proposed rule would also implement requirements of section 1833(i)(1) and (2) of the Social Security Act. We indicated that comments would be considered if we received them by August 11, 1998.

We received requests from numerous ASCs and professional associations for more time to analyze the potential consequences of the rule. We issued a notice in the **Federal Register** on August 14, 1998, (63 FR 43655) announcing extension of the public comment period to September 10, 1998.

On September 8, 1998, we published a proposed rule in the **Federal Register** entitled "Medicare Program; Prospective Payment System for Hospital Outpatient Services" (63 FR 47552). We received additional requests from ASCs and professional associations for more time to analyze the impact of the hospital outpatient proposed rule, and for a delay in the implementation of the ASC final rule to be concurrent with implementation of the hospital outpatient prospective payment system.

On October 1, 1998, we reopened the comment period for the June 12, 1998 ASC proposed rule until November 9, 1998, to coincide with the comment period for the September 8, 1998, hospital outpatient proposed rule. We also gave notice in the October 1, 1998, **Federal Register** (63 FR 52663) of a delay in the adoption of the provisions of the June 12, 1998 ASC proposed rule as a final rule to be concurrent with the adoption as final of the hospital outpatient prospective payment system as soon as possible after January 1, 2000. In the November 13, 1998 **Federal Register** (63 FR 63430), we further extended the comment period until January 8, 1999. In the January 12, 1999, **Federal Register** (64 FR 1785), we again extended the comment period until March 9, 1999. In the March 12, 1999 **Federal Register** (64 FR 12278), we again extended the comment period to June 30, 1999 due to further requests from the industry. On June 30, 1999, we published a correction notice (64 FR 35258) in the **Federal Register** that corrects a number of technical and typographical errors contained in the September 8, 1998 hospital outpatient PPS proposed rule. The correction notice is entitled "Medicare Program; Prospective Payment System for Hospital Outpatient Services; Correction Notice." Due to the publication of the correction notice and our wish to provide potential commenters to have adequate time to analyze the potential consequences of the proposed rule and because Medicare payments to ASCs are

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closely linked to the way Medicare proposes to pay hospitals under a prospective payment system for surgical services furnished on an outpatient basis, we find it appropriate to extend the current comment period. Therefore, we are again extending the comment period to July 30, 1999 to be concurrent with the hospital outpatient PPS proposed rule. Also published elsewhere in this issue of the **Federal Register** is a notice extending the comment period for the September 8, 1998 hospital outpatient proposed rule, (63 FR 47552) until July 30, 1999.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 24, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 30, 1999.

Donna E. Shalala

Secretary.

[FR Doc. 99–17027 Filed 6–30–99; 2:00 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–239; RM–9658]

Radio Broadcasting Services; Johannesburg and Edwards, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Adelman Communications, Inc., licensee of Station KEDD(FM) (formerly Station KRAJ(FM)), Channel 280B1, Johannesburg, California, requesting the substitution of Channel 280A for Channel 280B1 at Johannesburg, the reallotment to Channel 280A to Edwards, California, as that community's first local aural transmission service, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for this proposal are 34–59–40 NL and 117–59–32 WL. Additionally, as Edwards is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the Commission must obtain the concurrence of the Mexican government to this proposal.

DATES: Comments must be filed on or before August 16, 1999, and reply comments on or before August 31, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David M. Hunsaker and John C. Trent, Esqs., Putbrese, Hunsaker & Trent, P.C., 100 Carpenter Drive, Suite 100, P.O. Box 217, Sterling, VA 20167–0217

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–239, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17070 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–236, RM–9644]

Radio Broadcasting Services; Madisonville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Leon Hunt d/b/a Hunt Broadcasting proposing the allotment of Channel 267A at Madisonville, Texas. The channel can be allotted to Madisonville in compliance with the Commission's spacing requirements at coordinates 31–01–20 NL and 95–55–00 WL. There is a site restriction 8.09 kilometers (5.0 miles) north of the community.

DATES: Comments must be filed on or before August 16, 1999, and reply comments on or before August 31, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Leon Hunt, 102 West Main Street, Madisonville, Texas 77864.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–236, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17074 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–235, RM–9643]

Radio Broadcasting Services; Ingram, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Ingram Radio Broadcasting Company proposing the allotment of Channel 243A at Ingram, Texas. The channel can be allotted to Ingram in compliance with the Commission's spacing requirements at coordinates 30–04–30 NL and 99–14–06 WL. Concurrence of the Mexican government will be requested for the allotment of Channel 243A at Ingram, Texas.

DATES: Comments must be filed on or before August 16, 1999, and reply comments on or before August 31, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–235, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17073 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–234, RM–9645]

Radio Broadcasting Services; Hunt, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Hunt Radio Broadcasting proposing the allotment of Channel 260A at Hunt, Texas. The channel can be allotted to Hunt in compliance with the Commission's spacing requirements at coordinates 30–07–18 NL and 99–25–39 WL. Concurrence of the Mexican government will be requested for the allotment of Channel 260A at Hunt, Texas.

DATES: Comments must be filed on or before August 16, 1999, and reply comments on or before August 31, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–234, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17072 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–232; RM–9321]

Radio Broadcasting Services; Fort Bridger, WY and Hyrum, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by L. Topaz Enterprises, Inc., proposing the downgrade from Channel 256C1 to Channel 256C3 at Fort Bridger, Wyoming, the reallotment of Channel 256C3 from Fort Bridger to Hyrum, Utah, and the modification of the Station KNYN(FM)'s construction permit accordingly. Channel 256C3 can be allotted to Hyrum in compliance with the Commission's minimum

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distance separation requirements with a site restriction of 0.7 kilometers (0.4 miles) north at petitioner's requested site. The coordinates for Channel 256C3 at Hyrum are 41–38–35 North Latitude and 111–51–10 West Longitude. In accordance with the provisions of § 1.420(i) of the Commission's rules, we will not accept competing expressions of interest in the use of Channel 256C3 at Hyrum, or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 16, 1999, reply comments on or before August 31, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dale A. Ganske, President, 5546–3 Century Avenue, Middleton, Wisconsin 53562 (Petitioner); M. Kent Frandsen, PO Box 570, Logan, Utah 84321 (Assignee of Station KNYN(FM)).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–232, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17067 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–233, RM–9662]

Radio Broadcasting Services; Graham, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Graham Tollway Broadcasting Company proposing the allotment of Channel 253A at Graham, Texas. The channel can be allotted to Graham in compliance with the Commission's spacing requirements at coordinates 33–02–30 NL and 98–39–00 WL.

DATES: Comments must be filed on or before August 16, 1999, and reply comments on or before August 31, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Audrey P. Rasmussen, O'Connor & Hannan, L.L.P., 1919 Pennsylvania, Avenue, NW, Suite 800, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–233, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17071 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–237, RM–9663]

Radio Broadcasting Services; Medina, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Medina Radio Broadcasting Company proposing the allotment of Channel 296A at Medina, Texas. The channel can be allotted to Medina in compliance with the Commission's spacing requirements at coordinates 29–47–41 NL and 99–15–27 WL. There is a site restriction .9 kilometers (.6 miles) west of the community. Mexican concurrence will be requested for the allotment of Channel 296A at Medina.

DATES: Comments must be filed on or before August 16, 1999, and reply comments on or before August 31, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–237, adopted June 16, 1999, and released June 25, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the

Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17075 Filed 7–2–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 062399B]

RIN 0648–AK89

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 9 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 9)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Amendment 9 to the FMP for the coastal migratory pelagic resources of the Gulf of Mexico and South Atlantic; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils have submitted Amendment 9 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) for review, approval, and implementation by NMFS. The purpose of Amendment 9 is to enhance the socioeconomic benefits from the commercial quotas for Gulf group king mackerel and to assure a more equitable distribution of these benefits among fishery participants, to reduce the harvest of immature king mackerel and minimize the possibility of recreational king mackerel fishery allocation overruns, and to increase revenue and decrease waste in the king and Spanish mackerel fisheries. Amendment 9 is made available for public comment.

DATES: Written comments must be received on or before September 7, 1999.

ADDRESSES: Comments must be mailed to Mark Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 9, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), may be obtained from the Gulf of Mexico Fishery Management Council (Gulf of Mexico Council), Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619; Phone: 813–228–2815; Fax: 813–225–7015; E-mail: gulf.council@noaa.gov; or from the South Atlantic Fishery Management Council (South Atlantic Council), Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520; E-mail: safmc@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles or Steve Branstetter, NMFS, St. Petersburg, FL; Phone: 727–570–5305; Fax: 727–570–5583.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires Regional Fishery Management Councils to submit any proposed FMP or FMP amendment to NMFS for review, approval, and implementation. The Magnuson-Stevens Act also requires that NMFS, upon receiving such FMP or FMP amendment, immediately publish a document in the **Federal Register** stating that the FMP or FMP amendment is available for public review and comment.

Amendment 9 was prepared and submitted by the Gulf of Mexico and South Atlantic Councils. Amendment 9 contains 10 proposed conservation and management measures. For the commercial fisheries for Gulf group king mackerel in the eastern zone (the zone comprising both coasts of Florida), Amendment 9 proposes seven actions to: (1) Create two new subzones (northern and southern) for the commercial hook-and-line fishery in the Florida west coast subzone; (2) establish separate commercial hook-and-line fishery quotas for the proposed northern and southern subzones in the Florida west coast subzone; (3) reallocate the eastern zone commercial quota between the Florida east and west coast subzones to provide for commercial hook-and-line fishery quotas for the proposed new northern and southern Florida west coast subzones; (4) implement a moratorium on issuing any new gillnet endorsements for commercial vessel king mackerel permits in the run-around gillnet fishery in the proposed southern Florida west coast subzone; (5) establish eligibility criteria to reissue gillnet endorsements for commercial vessel king mackerel permits only to traditional fishermen in the run-around gillnet fishery in the proposed southern Florida west coast subzone; (6) restrict the transfer of gillnet endorsements for commercial vessel king mackerel permits in the run-around gillnet fishery in the proposed southern Florida west coast subzone only to the family members of vessel owners; and (7) restrict the operational area for vessels harvesting king mackerel under the run-around gillnet quota to the proposed southern Florida west coast subzone.

Amendment 9 also proposes three additional actions to: (1) Establish a 3,000–lb (1,361–kg) daily trip limit for the commercial vessels harvesting Gulf group king mackerel under the quota for the western zone (Texas through Alabama); (2) increase the minimum size limit from 20 inches to 24 inches (50.8 to 61.0 cm) fork length for both the Gulf and Atlantic groups of king mackerel; and (3) allow the sale of cut-off (damaged) fish from both the Gulf and Atlantic groups of king and Spanish mackerel as long as the cut-off fish meet or exceed the appropriate minimum size limit and are possessed within the established commercial trip limits.

The specific proposed management measures, their supporting rationale, and analyses of potential impacts are contained in Amendment 9. Amendment 9 is intended to enhance the socioeconomic benefits from the commercial quotas for Gulf group king mackerel and to assure a more equitable distribution of these benefits among fishery participants. Measures proposed for fisheries in the eastern zone would equitably distribute the quota among participants using hook-and-line gear and prevent expansion of the run-around gillnet sector while the Gulf of

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Mexico and South Atlantic Councils consider future management strategies. The proposal to establish a trip limit for the western zone is expected to prevent derby fishing, extend the harvest season, and increase the exvessel value of the catch. Proposals to increase king mackerel minimum size limits would reduce harvest of immature fish and the likelihood of overrunning recreational fishery allocations. The proposed measures regarding the possession and sale of cut-off (damaged) king and Spanish mackerel would increase fishery revenue, decrease wastage, and improve the accuracy of fishing mortality estimates.

Availability of and Opportunity to Comment on Amendment 9

NMFS has prepared a proposed rule to implement Amendment 9. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine if it is consistent with Amendment 9, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish a proposed rule in the **Federal Register** for public review and comment.

NMFS will consider comments received by September 7, 1999, whether specifically directed to Amendment 9 or its proposed rule in its decision to approve, disapprove, or partially approve Amendment 9. NMFS will not consider comments received after that date in this decision. NMFS will address all comments received on Amendment 9 or on its proposed rule during their respective comment periods in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17060 Filed 7–2–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 128

Tuesday, July 6, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for a new information collection, the Agricultural Economics and Land Ownership Survey.

DATES: Comments on this notice must be received by September 9, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: 1999 Agricultural Economics and Land Ownership Survey.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: The 1999 Agricultural Economics and Land Ownership Survey (AELOS) will be conducted by the National Agricultural Statistics Service. This national survey will obtain data to describe the economic status of the U.S. farm operations and farm households. Data collected will provide information on agricultural land ownership, financing, and inputs by farm operators and landlords. The AELOS is designed to provide data that are valid for each state and the U.S. as a whole. The AELOS will be conducted in 2000 for the 1999 calendar year. The last AELOS covered the 1988 calendar year. The respondent universe consists of two populations. First, is the official USDA farm population which is defined as "all establishments that sold or would have normally sold at least $1,000 of agricultural products during the year." Second are the landlords of farm operators selected for the survey. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 51 minutes per response.

Estimated Number of Respondents: 65,000.

Estimated Total Annual Burden on Respondents: 55,250 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, DC 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, June 14, 1999.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 99–16948 Filed 7–2–99; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Kentucky

AGENCY: Natural Resources Conservation Service (NRCS) in Kentucky, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Kentucky for review and comment.

SUMMARY: It is the intention of the NRCS in Kentucky to issue revised conservation practice standards: Agrichemical Handling Facility (Code 998), Filter Strip (Code 393), Manure Transfer (Code 634), Pond (Code 378), Riparian Forest Buffer (Code 391A), Roof Runoff Management System (Code 558), Sinkhole Protection (Code 725I), Stream Crossing (Code 576), Waste Field Storage (Code 749), Waste Storage Facility (Code 313), Waste Treatment Lagoon (Code 359), and Well Decommissioning (Code 351.)

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to David G. Sawyer, state conservationist, Natural Resources Conservation Service (NRCS), 771 Corporate Drive, Suite 110, Lexington, KY 40503–5479. Copies of the practice standards are made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made

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available for public review and comment. For the next 30 days the NRCS in Kentucky will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Kentucky regarding deposition of those comments and a final determination of change will be made.

David G. Sawyer,

State Conservationist, Natural Resources Conservation Service.

[FR Doc. 99–16777 Filed 7–2–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–602]

Final Results of Expedited Sunset Review: Aspirin From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: aspirin from Turkey.

SUMMARY: On March 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on aspirin from Turkey (64 FR 9970) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: July 6, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The product covered by this review is acetylsalicylic acid (aspirin) from Turkey, containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule, or similar forms for direct human consumption. This product is currently classifiable under the Harmonized Tariff Schedule ("HTS") of the United States item numbers 2918.22.10 and 3003.90.00.[1] The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

On July 1, 1987, the Department issued a final determination of sales at less than fair value with respect to imports of aspirin (acetylsalicylic acid) from Turkey.[2] The antidumping duty order on aspirin was issued by the Department on August 25, 1987, and, in the order, the dumping margins that were found in the final determination were confirmed.[3] Since the imposition of this order, the Department has conducted one administrative review.[4] The order remains in effect for all manufacturers and exporters of the subject merchandise.

This review covers all producers and exporters of aspirin from Turkey.

Background

On March 1, 1999, the Department initiated a sunset review of the antidumping order on aspirin from Turkey (64 FR 9970), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Rhodia on March 15, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Rhodia on March 31, 1999, within the 30-day deadline specified in the *Sunset Regulations* in section 351.218(d)(3)(i). Rhodia claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of the domestic like product.

Additionally, Rhodia stated that it was not a participant in either the original investigation nor the lone administrative review conducted by the Department. However, Rhodia stated that, of the four domestic producers originally involved in the investigation, two—Sterling Drug and Norwich-Eaton—have since ceased production of subject aspirin. The other two producers, Monsanto Chemical Company and Dow Chemical U.S.A., had their aspirin production taken over by Rhone-Poulenc S.A. Rhodia is the subsidiary of Rhone-Poulenc S.A. responsible for bulk aspirin production and is the successor in interest to Monsanto, which was the original petitioner.

We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Rhodia's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping when (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping when a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Rhodia argued that revocation of the order will likely lead to continuation or recurrence of dumping of aspirin from Turkey. Rhodia stated that compelling evidence supporting this conclusion includes: (1) The cessation of Turkish imports following the issuance of the order; (2) increased imports of bulk aspirin from other countries; (3) downward pricing pressure resulting from intense competition in the U.S. market from Chinese imports; and (4) continuing interest in the U.S. market by Turkish producers as evidenced by the temporary resumption of Turkish imports in 1997.

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Rhodia, citing data from the United States Census Bureau, argued that imports of Turkish aspirin declined significantly with the imposition of dumping duties in 1987. Specifically, Rhodia stated that, in 1987, the year immediately following imposition of the order, import volumes from Turkey declined dramatically, decreasing from 1.3 million pounds to just over 200,000 pounds. Rhodia stated that imports of aspirin from Turkey continued to decline until they completely ceased in 1990. Further, Turkish imports remained at zero until 1997 when imports rose to just over 5,000 pounds. The 1997 shipment, Rhodia argues, was the basis for the sole administrative review of the order, conducted for the 1996–1997 time period. Therefore, Rhodia argues, the decline and cessation of Turkish import volumes of bulk aspirin following the imposition of the antidumping duty order provides a strong indication that, absent an order, dumping would be likely to recur, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes. (*See* Substantive Response of Rhodia at 10.)

Additionally, Rhodia also argues that, because of the nature of the market for bulk aspirin, were Turkish producers to reenter the U.S. market, they would have to dump in order to compete. Rhodia argues that bulk aspirin is a commodity and, as such, competition is based primarily on price. Further, recent imports of bulk aspirin from other countries, most notably China, have increased and, as import volumes have increased, prices have fallen. Therefore, Rhodia argues that the only way that Turkish producers would realistically be able to reenter the U.S. market would be to meet the price competition posed by the low Chinese import prices.

Consistent with section 752(c) of the Act, the Department has considered whether dumping continued at any level above de minimis after the issuance of the order. In the administrative review covering the 1996–1997 period, the Department determined that no dumping margin existed for Atabay Kimya Sanayi ve Ticaret A.B. ("Atabay") (63 FR 34146, June 23, 1998) and, therefore, a cash deposit rate of zero was imposed for Atabay. Because neither Proces Kimya Sinayi ve Ticaret ("Proces"), one of the two companies examined in the original investigation, nor any other companies, other than Atabay, have been examined in the course of administrative review, the deposit rates for all companies, other than Atabay, continue to be the margins of dumping found in the original investigation—38.60 percent for Proces and 32.98 percent for all others. Therefore, we determine that although there was no dumping found for Atabay in the 1997 review period, the same cannot be said for other Turkish producers/exporters.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics on imports of the subject merchandise from pre-order 1986 to 1998 (as provided by the domestic industry and confirmed by the Department by United States Census Bureau IM146 data) demonstrate that imports of the subject merchandise declined dramatically immediately following the imposition of the order, and continued to decline until 1990 when imports ceased. The only imports of bulk aspirin from Turkey since 1990 involved just over 5,000 pounds in 1997. We agree with Rhodia that imports from Turkey have declined substantially since the imposition of the order in 1987 and, therefore, we determine that, although dumping was eliminated by Atabay, its export volumes have declined significantly since the issuance of the order.

As set forth in the *Sunset Policy Bulletin* (section II.A.3), and consistent with the SAA at 889–90 and the House Report at 63, the Department normally will find that revocation of the antidumping duty order likely will lead to continuation or recurrence of dumping when dumping margins continued at any level after the issuance of the order or when dumping was eliminated after the issuance of the order and import volumes of the subject merchandise declined significantly or ceased. With respect to Atabay, although dumping was eliminated in 1997, shipments of the subject merchandise have declined dramatically. Further, with respect to all

[1] In its substantive response, Rhodia noted that the written description of the scope of the order indicated that this product was covered under not only under HTS item number 2918.22.10, but also item number 3003.90.00. The Department agrees. Although this item number has not been previously included in the scope section of prior Department determinations in this case, we confirmed with the U.S. Customs Service that both HTS item numbers were appropriate (see Memo to File; Re: HTS Item Numbers for Aspirin). Therefore, we have included HTS item number 3003.90.00.

[2] *See Final Determination of Sales at Less Than Fair Value; Acetylsalicylic Acid From Turkey*, 52 FR 24492 (July 1, 1987).

[3] *See Acetylsalicylic Acid From Turkey; Antidumping Duty Order*, 52 FR 32030 (August 25, 1987).

[4] *See Acetylsalicylic Acid From Turkey; Final Results of Antidumping Duty Administrative Review*, 63 FR 34146 (June 23, 1998), and *Termination of Antidumping Duty Administrative Review; Acetylsalicylic Acid From Turkey*, 58 FR 11208 (February 24, 1993).

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other Turkish producers/exporters, antidumping duty deposit rates remain in effect and we have no reason to believe that dumping has been eliminated. On the basis of this analysis, in conjunction with the fact that respondent interested parties have waived their right to participate in this review before the Department, and, absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for two Turkish producers/exporters of the subject merchandise, Atabay and Proses, and for all other producers/exporters (52 FR 24492, July 1, 1987). The margins calculated in that determination were 27.35 percent for Atabay, 38.60 percent for Proses, and an "all others" rate of 32.98 percent. Atabay, as mentioned above, received a zero margin during the sole administrative review for the 1996–1997 review period (63 FR 34146, June 23, 1998). We note that, to date, we have not issued any duty absorption findings in this case.

In its substantive response, Rhodia argued that the Department, consistent with its *Sunset Policy Bulletin*, should provide the Commission with the company-specific and all others rates from the original investigation as the magnitude of the margin likely to prevail if the order were revoked. Alternatively, Rhodia suggested that the Department could conclude that higher margins would prevail if the order were revoked. In this case, Rhodia suggests that, using Turkish import and export statistics coupled with average U.S. import statistics, the Department could calculate a new margin of 63.14 percent.

Consistent with section II.B.1 of the *Sunset Policy Bulletin*, the Department finds that the rates from the original investigation are probative of the behavior of producers/exporters without the discipline of the order. As a result, the Department determines, absent argument and evidence to the contrary, that the margins from the original investigation are the ones most likely to prevail if the order were revoked. As such, we will report to the Commission the company-specific and all others rates contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Atabay Kimya Sanayi ve Ticaret	27.35
Proces Kimya Sanayi ve Ticaret	38.60
All Others	32.98

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17051 Filed 7–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Initiation of Antidumping Duty Investigation: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0176 or 482–2815, respectively.

INITIATION OF INVESTIGATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 as amended ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On June 7, 1999, the Department received a petition filed in proper form by Tree Top, Inc.; Knouse Foods Cooperative, Inc.; Green Valley Packers; Mason County Fruit Packers; and Coloma Frozen Foods, Inc., hereinafter collectively referred to as "the petitioners. On June 17 and 25, 1999, at the request of the Department, petitioners provided public summaries for certain business proprietary information contained in the petition. On June 23, 1999, petitioners supplied information relating to their standing as petitioners and on June 25, 1999, petitioners clarified their calculation concerning industry support of the petition.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain non-frozen apple juice concentrate ("NFAJC") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are both materially injuring and threatening material injury to an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated that they account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition (*see* "Determination of Industry Support for the Petition" section, below).

Scope of the Investigation

For purposes of this investigation, the product covered by the scope is non-frozen concentrated apple juice having a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter. Excluded from the scope of this investigation are: frozen concentrated apple juice, non-frozen concentrated apple juice fortified with vitamins or minerals, non-frozen concentrated apple juice that has been fermented, and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2009.70.20. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (62 FR 27323 February 26, 1997), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as: "the producers as a whole of a domestic like product." Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1] Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

In this case, the Department has determined that the petition and supplemental information contained adequate evidence of sufficient industry support; therefore, polling was not necessary. *See* Initiation Checklist dated June 28, 1999 (public versions on file in the Central Records Unit of the Department of Commerce, Room B–099). To the best of the Department's knowledge, the producers who support the petition account for more than 50 percent of the production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(b)(A), (C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

A potential respondent in this proceeding requested that the Department poll the U.S. industry to determine industry support and check the validity of petitioners' calculations of their percent of U.S. production. We addressed this respondent's concerns in the June 28, 1998 initiation checklist.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners have based U.S. price on export price ("EP") because information obtained by the petitioners indicates that PRC producers sold NFAJC outside the United States to unaffiliated importers in the United States prior to importation. As a basis for its EP calculation, the petitioners have used an invoice price for sale of the subject merchandise by an unaffiliated U.S. distributor to an unaffiliated purchaser in the United States in the last quarter of 1998. The petitioners calculated a net U.S. price by subtracting from the invoice price the U.S. distributor's markup, ocean freight, and insurance. The petitioners based the cost of ocean freight and insurance on the difference between the C.I.F. price and the F.A.S. price of NFAJC from the PRC as reflected in the IM–145 statistics published by the U.S. Bureau of the Census. The petitioners used the IM–145 statistics for the month in which the U.S. sale occurred for calculating ocean freight and insurance. Petitioners based the distributor's markup on an affidavit attesting to the standard distributor markup in the industry.

Because the PRC is considered a nonmarket economy (NME) country under section 771(18) of the Act, the petitioners based normal value (NV) on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. The petitioners selected India as the most appropriate surrogate market economy. For the factors of production, the petitioners relied upon the factor usage rates of what it claimed was the world's most efficient NFAJC producer.

The petitioners first derived a cost for apple juice and then, based on this cost,

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Portial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

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they derived a cost of apple juice concentrate. The cost of apples was based on the current price of juice apples in India as reported in a market research study included in the petition. Labor was valued using the methodology described by the Department in 19 CFR 351.408(c)(3). For energy, the petitioners used data from *Energy Prices & Taxes*, Fourth Quarter 1998, which shows 1995 electricity rates in India to be Rs. 2.1836 per kwh. They then adjusted this 1995 electricity rate for inflation based on the increase in the wholesale price index in India from 1995 to 1998 as reported in the IMF's *International Financial Statistics*. For natural gas, the petitioners obtained a price of US $1.96 per thousand cubic feet based on the first quarter 1999 report of Enron Corp., a large, publicly traded oil and gas company selling energy products in India. For processing agents, maintenance supplies, and miscellaneous costs, the petitioners used the costs of a U.S. producer because Indian values for these inputs were not reasonably available to them.

Selling, general, and administrative (SG&A) expenses, depreciation, and financial expenses were based on the 1997 financial statements of an Indian NFAJC producer. For packing costs, including drums, liners, and pallets, the petitioners used the costs of a U.S. NFAJC producer because Indian values for these inputs were not reasonably available to them.

Based on a comparison of EP to NV, as adjusted by the Department, the information in the petition and other information reasonably available to the Department indicates dumping margins of 51.69 and 65.64 percent. A description of the adjustments which the Department made to petitioners' calculations of export price and normal value are contained in the June 28, 1999 initiation checklist, a public version of which is available in the Central Records Unit, Room B-099, Main Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of NFAJC from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits and income, net sales volumes and values, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist.

Allegation of Critical Circumstances

The petitioners allege that critical circumstances exist with respect to imports of NFAJC from the PRC and have supported their allegations with the following information.

First, the petitioners claim that the importers knew, or should have known, that NFAJC from the PRC was being sold at less than normal value. Specifically, the petitioners allege that the margins calculated in the petition exceed the 25 percent threshold used by the Department to impute importer knowledge of dumping.

The petitioners also have alleged that imports have been massive over a relatively short period. Alleging that there was sufficient pre-filing notice of this antidumping petition, the petitioners contend that the Department should compare imports during June 1998–October 1998 to imports during November 1998–March 1999 for purposes of this determination. Specifically, petitioners supported this allegation with copies of a news article and a transcript of a television program. The new article appeared in the September 1998 edition of "The Great Lakes Fruit Grower News," which reported that the U.S. Apple Association was considering filing an antidumping action against NFAJC from the PRC. The television program, "The World Today," aired on CNN on October 5, 1998. The program also reported that the U.S. Apple Association was considering filing an antidumping action on NFAJC from the PRC. On October 6, 1998, the Associated Press Newswire carried a story that the apple industry planned to file an antidumping action on NFAJC from the PRC. Accordingly, the petitioners provided import statistics for the periods November 1998–March 1999 and June 1998–October 1998. Based on this comparison, imports of NFAJC from the PRC increased by 111 percent.

Although the ITC has not yet made a preliminary decision with respect to injury, the petitioners note that in the past the Department has also considered the extent of the increase in the volume of imports of the subject merchandise as one indicator of whether a reasonable basis exists to impute knowledge that material injury was likely. In this case, the petitioners allege that the increase in imports was more than double the amount considered "massive." Taking into consideration the foregoing, we find that the petitioners have alleged the elements of critical circumstances and supported them with information reasonably available for purposes of initiating a critical circumstances inquiry. For these reasons, we will investigate this matter further and will make a preliminary determination at the appropriate time, in accordance with section 735(e)(1) of the Act and Department practice (see Policy Bulletin 98/4 (63 FR 55364, October 15, 1998)).

Initiation of Antidumping Investigation

Based upon our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of NFAJC from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by November 15, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of the People's Republic of China. We will attempt to provide a copy of the public version of the petition to the exporters named in the petition.

International Trade Commission Notification

We have notified the ITC of our initiation of this investigation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by July 22, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of NFAJC from the PRC. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: June 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17050 Filed 7–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–831–801, A–822–801, A–447–801, A–451–801, A–485–601, A–821–801, A–842–801, A–843–801, A–823–801, A–844–801, A–122–605, A–588–609, A–580–605, A–559–601]

Solid Urea From Armenia, Solid Urea From Belarus, Solid Urea From Estonia, Solid Urea From Lithuania, Solid Urea From Romania, Solid Urea From Russia, Solid Urea From Tajikistan, Solid Urea From Turkmenistan, Solid Urea From Ukraine, Solid Urea From Uzbekistan, Color Picture Tubes From Canada, Color Picture Tubes From Japan, Color Picture Tubes From Korea (South), Color Picture Tubes From Singapore: Extension of Time Limit for Final Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of extension of time limit for final results of five-year ("sunset") reviews

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the sunset reviews on the antidumping duty orders on solid urea from Armenia, solid urea from Belarus, solid urea from Estonia, solid urea from Lithuania, solid urea from Romania, solid urea from Russia, solid urea from Tajikistan, solid urea from Turkmenistan, solid urea from Ukraine, solid urea from Uzbekistan, color picture tubes from Canada, color picture tubes from Japan, color picture tubes from Korea (South), and color picture tubes from Singapore. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of dumping. As a result of this extension, the Department intends to issue its final results of its sunset reviews of these orders no later than August 30, 1999.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith, Martha V. Douthit or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, D.C. 20230; telephone: (202) 482–6397, (202) 482–3207 or (202) 482–1560 respectively.

Extension of Final Results

The Department has determined that the sunset reviews of the antidumping duty orders on solid urea from Armenia, solid urea from Belarus, solid urea from Estonia, solid urea from Lithuania, solid urea from Romania, solid urea from Russia, solid urea from Tajikistan, solid urea from Turkmenistan, solid urea from Ukraine, solid urea from Uzbekistan, color picture tubes from Canada, color picture tubes from Japan, color picture tubes from Korea (South), and color picture tubes from Singapore are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the final results of these reviews until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.

Dated: June 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17052 Filed 7–2–99; 8:45 am]

BILLING CODE 3510–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Administrative Review.

SUMMARY: On March 4, 1999, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on stainless steel bar from Japan. This review covers one producer/exporter, Aichi Steel Corporation, during the period February 1, 1997, through January 31, 1998.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1690 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On March 4, 1999, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on stainless steel bar from Japan. *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Japan*, 64 FR 10445 (preliminary results). Al Tech Specialty Steel Corp., Dunkirk, N.Y., Carpenter Technology Corp., Reading, PA, Republic Engineered Steels, Inc., Massillon, OH, Slater Steels Corp., Fort Wayne, IN, Talley Metals Technology, Inc., Hartsville, SC, and the United Steel Workers of America, AFL-CIO/CLC, collectively petitioners in the less-than-fair-value (LTFV) investigation (hereafter petitioners), submitted their case brief on April 5, 1999. Aichi Steel Corporation (Aichi), respondent in this review, also submitted its case brief on April 5, 1999. The petitioners and Aichi submitted rebuttal briefs on April 12, 1999. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this review is stainless steel bar (SSB). For purposes of this review, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section

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along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, groves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties to this administrative review are addressed below.

Comment 1: Level of Trade

Aichi argues that the Department should find five different levels of trade for Aichi's home market. Aichi alleges that the Department found three levels of trade correctly—sales to trading companies, sales to distributors, and sales to end-users—but rejected the consignment/non-consignment distinction within the trading company and distributor levels of trade incorrectly. Aichi argues that, in rejecting this distinction, the Department did not appreciate that consignment is in itself a selling function that affects how Aichi markets its products.

The petitioners argue that the Department should continue to find only three levels of trade for Aichi's home market sales as it did in the preliminary results. According to the petitioners, the verified record demonstrates that the Department's preliminary decision—that only three levels of trade exist—was accurate and is supported by the record in this review. The petitioners contend that a close examination of Aichi's arguments reveals that there is no support to segregate the distributor and trading-company levels of trade into further consignment and non-consignment subcategories, since Aichi holds the title until the merchandise is sold for both consignment and non-consignment sales and Aichi receives payment for the goods only after they are sold to the final customer in both cases.

Department's Position: We do not find that consignment is in itself a selling function. The "consignment" relationship is not necessarily a distinct selling function and, even if it were a distinct selling function, such activities alone may not establish a separate level of trade. See, *e.g.*, *Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews*, 63 FR 48184, 48186 (Sept. 9, 1998) ("there was not a significant difference in selling functions between sales made through consignment agents and marketing agents, and as such we have made no level of trade distinction"); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 92, 97 (Jan. 4, 1999) ("channels of distribution do not qualify as separate levels of trade when the selling functions performed * * * are sufficiently similar"); *Certain Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 55 FR 12696 (Apr. 5, 1990) ("aside from claiming that flowers are sold to two different types of customers, *i.e.*, retailers and consignment wholesalers in the two markets, the respondent did not provide any evidence indicating that the difference in prices is attributable to different levels of trade"); *Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Costa Rica*, 52 FR 6852 (March 5, 1987) ("we have made no level of trade adjustment. The respondent did not demonstrate that expenses incurred in selling to retailers * * * would not have also been incurred in sales to [consignment] wholesalers"). Thus, the mere existence of a consignment relationship does not necessarily establish a distinct level of trade. There must be sufficient differences in selling functions performed between the consignment accounts and non-consignment accounts.

Based on our analysis of information on the record of this review, we determine, as we did in our preliminary analysis, that there are no differences with respect to selling functions between consignment and non-consignment sales. Specifically, there are no differences between consignment and non-consignment sales with respect to strategic and economic planning, market research, computer, legal, accounting, audit, business systems development assistance, personnel assistance, engineering services, research and development (R&D) technical programs, advertising, procurement and sourcing, sales calls/assistance and post-sale warehousing. As stated in the preliminary results, the distinction between consignment and non-consignment sales is that, in consignment-sales situations, Aichi permits the customer to take possession of the product without requiring that the customer pay for the product until the customer sells the merchandise to its downstream customer. This distinction, however, does not relate to the nature of the selling functions performed. Furthermore, Aichi has not presented evidence establishing any price differences between consignment and non-consignment sales.

Selling functions performed with respect to trading companies included strategic and economic planning, market research, computer, legal and business-systems development, engineering services and post-sale warehousing. In addition to these functions, other functions performed for sales to end-users included R&D technical programs, advertising, and sales calls/assistance. Distributors were also offered personnel training and manpower assistance in addition to the services offered to trading companies and end-users. Based on these differences, we found that the three types of home market customers constituted three different levels of trade.

We found that Aichi made export price (EP) sales of various models of merchandise through unaffiliated trading companies, a channel of distribution similar to the home market channel involving sales to trading companies. As with sales through the trading-company channel of distribution in the home market, Aichi performed only a few selling functions when selling merchandise to trading companies that exported the merchandise to the United States. Thus, we found that the level of trade for this U.S. channel of distribution was the same as the level of trade for the home market trading-company channel of distribution. Based on the information on the record, the Department determines that only three levels of trade exist in the home market. For a detailed discussion of the Department's position on Aichi's levels of trade, see the preliminary results, 64 FR at 10446.

Comment 2: Research and Development Costs

Aichi disagrees with the Department's inclusion of non-SSB-related R&D costs in the general and administrative expenses for the calculation of Aichi's cost of production. Aichi argues that the record shows that it maintains R&D costs by cost center and is thus able to distinguish the products for which it incurred R&D expenses. Aichi urges that, if a respondent records its R&D expenses on a product-specific basis and there is no evidence that this R&D may benefit the production of subject merchandise, under *Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21 (CIT 1995), *aff'd*, 117 F.3d 1386 (Fed. Cir. 1997), the Department must allocate such expenses according to the respondent's records.

The petitioners agree with the Department's calculation of Aichi's cost of production in the preliminary results. The petitioners assert that the simple fact that Aichi records its R&D expenses by cost center is not convincing evidence that there are true product-specific R&D expenses. They contend that Aichi's R&D expenses provide an overall benefit to all products, including the subject merchandise. Furthermore, the petitioners observe, Aichi's products share a single manufacturing process. Finally, the petitioners state that the record indicates that Aichi itself has merged subject and non-subject products in its R&D activities.

Department's Position: Based on our analysis of the information on the record, it is appropriate to allocate the R&D costs in question across Aichi's total cost of production. As discussed below, where evidence on the record suggests that costs associated with R&D projects serve to benefit subject merchandise, the Department has included such costs, regardless of whether the company's accounting system allocates those costs exclusively to non-subject merchandise. Thus, the existence of product-specific accounting records does not necessarily preclude a finding of cross-fertilization. See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors ("SRAMs") from the Republic of Korea*, 63 FR 8934, 8939 (Feb. 23, 1998) ("separate accounting * * * does not necessarily mean that cross-fertilization of scientific ideas does not occur"), and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors ("SRAMs") from Taiwan*, 63 FR 8909, 8925 (Feb. 23, 1998), where the Department found that, although respondent maintained product-specific R&D accounting records, allocation of all R&D across all products was appropriate, "given that scientific ideas developed in one semiconductor area can be and have been utilized in the development of other semiconductor products."

In order to substantiate its claim that certain R&D costs do not benefit subject merchandise, Aichi provided a list of R&D projects that it claims relate only to non-subject merchandise. Additionally, Aichi provided a breakdown of R&D costs by department. However, as detailed in the analyst's memorandum to file regarding R&D expenses (containing business proprietary information), dated June 23, 1999, Aichi has not submitted a breakdown of costs by project. Thus, as a preliminary matter, we are unable to determine the specific costs for each project to segregate project-specific costs. Therefore, even if we were to determine that some projects do not benefit the production of subject merchandise, we would not be able to segregate and exclude those project-specific costs.

Furthermore, based upon evidence in the record we have identified projects where R&D from one type of product could benefit another type of product. See the June 23, 1999, memorandum to file regarding R&D expenses. As such, because the record shows that at least some of the claimed projects may influence the production of subject merchandise and because we are unable to segregate the remaining projects, we have continued to include all R&D expenses in the cost of production.

Comment 3: Model-Match Error

Aichi argues that the Department should correct a clerical error in the model-match section of the calculations. Aichi asserts that, instead of matching first to contemporaneous sales, the Department first matched cost deviation (*i.e.*, matching to identical and similar physical characteristics) and level of trade (*i.e.*, matching to sales with similar functions) of the home market. As a result, Aichi contends, the identical or most similar home market model in the most contemporaneous month did not always match to each U.S. sale. Aichi argues that the Department should correct this error to comply with its well-established practice of matching contemporaneous sales as a higher matching priority than level of trade or cost deviation.

The petitioners argue that the Department conducted its model-match exercise correctly and that Aichi's suggested approach is not in accordance with the Department's long-standing practice. Citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews (AFBs)*, 62 FR 2081, 2128 (Jan. 15, 1997), and *Stainless Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 61 FR 47874, 47879 (Sept. 11, 1996), the petitioners argue that the appropriate model-match hierarchy is cost deviation first, level of trade second, and contemporaneity last.

Department's Position: We did not make a clerical error in our model-match exercise. Contrary to Aichi's assertion, pursuant to section 771(16) of the Act, it has been the Department's practice to compare the subject merchandise sold to the United States first to products with identical physical characteristics sold in the exporting-country market. See, e.g., AFBs, 62 FR at 2128 ("[a]fter selecting the most comparable product match according to the statute, we attempt to find contemporaneous sales of that product at the same level of trade, if possible"). When products sold to the United States do not have identical matches in the foreign market, the statute directs us to use similar merchandise which meets the requirements set forth under section 771(16)(B) of the Act. For the current review, when determining appropriate product comparisons for U.S. sales, we compared U.S. sales to contemporaneous home market sales of the comparison model that were physically "most similar" and which passed the twenty-percent difference-in-merchandise test. We use the results of the model-match exercise to find the "most similar" home market sale within our 90/60 day contemporaneity guideline. After disregarding below-cost sales, we may not find a contemporaneous sale of an identical or similar product. In such situations, we compare the U.S. sale to constructed value. This methodology is consistent with Department practice. See, e.g., *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 61 FR 56515, 56520 (November 1, 1996). Aichi's suggestion could lead us to selecting comparison sales which occurred in the same month as the U.S.

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sale but which are less similar than other sales within the 90/60 day contemporaneity guideline. This would not be consistent with the statute's direction to find the best physical comparison in the home market.

Comment 4: Model-Matching Criteria, Type

The petitioners argue that the Department should disregard the distinction Aichi made between hot-rolled SSB and hot-forged SSB within the first element of the model-match criteria, type. They contend that hot-forged products do not reflect a unique physical difference of the finished product. Therefore, they contend, both hot-rolled and hot-forged products should be considered to be hot-finished SSB as identified in the Department's questionnaire. In addition, the petitioners assert, the choice of alternative production processes and different costs is not reason enough for the establishment of different physical characteristics to use in selecting comparable products. In order to correct the respondent's inappropriate segregation of products by type of finish, the petitioners request that the Department consolidate hot-finished and hot-forged products and recalculate various costs affected by Aichi's segregation.

Aichi contends that the rolled/forged distinction warrants the identification of separate products for model-matching purposes. Aichi states that it uses the forging process to produce SSB when the dimensions or grades requested by the customer do not permit use of the rolling process. Therefore, Aichi argues, forging results in different physical characteristics. Aichi argues further that the cost-of-production information it submitted to the Department proves that cost differences exist between items produced using these two processes. For these reasons, Aichi requests that the Department compare home market and U.S. sales using all of the physical criteria Aichi identified in its response.

Department's Position: We find that it is appropriate to reflect the rolled/forged distinction of the products in our model-match methodology. In accordance with sections 771(16)(A) and (B) of the Act, we attempt to match the subject merchandise with products that are identical or similar in physical characteristics and that are approximately equal in commercial value. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea*, 64 FR 14865, 14872 (March 29, 1999) ("mooney viscosity" is an appropriate matching criterion because "it is an essential product characteristic that defines the grade" and "there are cost and price differences between th[e] two grades * * *"); *Extruded Rubber Thread from Malysia: Final Results of Antidumping Duty Administrative Review*, 62 FR 62547, 62558 (Nov. 24, 1997) (the Department found "color" to be an appropriate model-match criterion because the Department had used that criterion consistently in the investigation and following reviews and because color could "materially affect cost and be important to the customer and the use of the product"); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996) (the Department found "wheat quality" to be an appropriate matching criterion because there were differences in physical characteristics and because the cost was materially more for the segregated product).

Evidence on the record of this review demonstrates that the forging process results in meaningful differences in physical characteristics. In addition, certain cost differences exist between products manufactured using the rolling and forging process. Therefore, we have used Aichi's information on the forging process in our model-match methodology because it ensures that we make the best match.

Comment 5: Model-Matching Criteria, Shape

The petitioners contend that the Department should disregard Aichi's additional sub-codes for shape and consolidate the shape sub-codes accordingly for model-matching purposes. According to the petitioners, the Department's practice is to develop additional sub-coding for model-matching purposes only if there are physical differences, pricing differences as a result of physical differences, and market reactions to the physical differences. The petitioners contend that Aichi's sub-codes for shape do not meet this standard. In addition, the petitioners assert that Aichi does not distinguish between the shape differences that it submitted in its questionnaire response in the information that it maintains internally (*e.g.*, price-extras list) and disseminates externally (*e.g.*, Aichi product brochures). According to the petitioners, Aichi did not substantiate that additional sub-codes are required within the shape criteria. They request that the Department consolidate the shapes, as appropriate, and recalculate the various weighted-average costs to reflect the consolidation.

Aichi argues that the distinction between various shapes of flat bar in the response is justified and that the petitioners are confused about Aichi's codes. Aichi asserts that the relevant shape codes are those listed in the column "ShapeH" on page 5 of its Exhibit 2, Section B response. Aichi also states that, although it collapsed the square-bar products, the flat-bar distinctions it used are appropriate since the flat-bar products' physical characteristics differ, price differences are evident from the home market sales list, customers request different products, and Aichi has issued special brochures advertising some of these products. Therefore, Aichi contends, record evidence demonstrates that the flat-bar shape distinctions Aichi identified and segregated for model-matching purposes are justified.

Department's Position: It appears that the petitioners may have referred to the wrong variable in their analysis of the shape distinction. Notwithstanding this possibility, we disagree with Aichi that its additional segregation of products is warranted in matching models. As discussed in response to comment 4 above, the Department has discretion to select appropriate model-matching criteria which account for meaningful differences in physical characteristics, cost, and use. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996), Koyo Seiko v. *United States*, 66 F.3d 1204 (Fed. Cir. 1995) (Final Results of Adm. Rev.) (the Department has the discretion to "choose the manner in which "such or similar merchandise" shall be selected"), and Certain Cold-Rolled Carbon Steel Flat Products From Germany; Final Results of Antidumping Duty Administrative Review, 60 FR 65264, 65271 (Dec. 19, 1995) (the Department has the discretion to choose "such or similar" merchandise).

As such, it is also not necessary that the Department segregate every claimed difference in characteristics if those differences are not meaningful for matching purposes. See *Certain Cold-Rolled Carbon Steel Flat Products From Germany*, 60 FR at 65271 ("[b]asing its product matching criteria on commercially meaningful characteristics permits the Department to draw reasonable distinctions between products for matching purposes, without attempting to account for every possible difference inherent in certain classes or kinds of merchandise * * *. As such, the Department may define certain products as being "identical" within the meaning of section 771(16)(A), even though they contain minor differences * * *. Similarly, the Department need not account for every conceivable physical characteristic of a product in its hierarchy. Thus, as a range of products may be considered "identical" within the meaning of the statute"); *Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker From Mexico*, 55 FR 29244 (July 18, 1990) (the Department determined that products within same ASTM standard would be deemed "identical in physical characteristics to the merchandise sold in [the home market]"); *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 33041 (June 17, 1998) (Final Results of Adm. Rev.) (pickling, oiling and varnishing were only "packing treatments" and did not "transform the finished merchandise into a different product for purposes of merchandise comparison under 771(16)(A) and (B) of the Act").

With respect to Aichi's additional claimed shape distinction, upon reviewing the record, we find that the additional characteristics do not provide meaningful differences for matching purposes. Aichi's breakdown of flat bar segregates only minor differences in physical shape which do not affect our model-match comparison materially. See analyst's memorandum to file on the Issue of Model-Matching Criteria, Shape (containing business proprietary information), dated June 23, 1999. As we explained in *Circular Non-Alloy Steel Pipe and Tube from Mexico*, where the finishing process does not "transform the finished merchandise * * * for purposes of * * * [our] comparison," we generally will not distinguish such criteria (63 FR 33041 (June 17, 1998)). Thus, we have not accepted Aichi's additional claimed sub-codes for shape.

Comment 6: Warehousing Expenses

The petitioners argue that the Department should deduct home market warehousing expenses only for non-consignment and non-pre-sale-warehoused sales. They allege that the Department confirmed at verification Aichi's statement in its response that warehousing expenses do not apply to warehousing costs incurred on products prior to sale or to consignment sales. The petitioners comment that, in the preliminary results, the Department indicated that it intended to adjust the warehousing expenses, but it did not apply the warehousing expenses adjustment correctly and instead deducted warehousing expenses from consignment sales inadvertently.

Aichi argues that the Department should deduct warehousing expenses from all home market sales because, in accordance with 19 CFR 351.401(e)(2), the Department no longer makes the distinction between pre-sale and post-sale warehousing in granting this adjustment. The fact that warehousing occurred before sale date on consignment sales is irrelevant according to Aichi. Therefore, Aichi requests that the Department apply the warehousing adjustment to all home market sales.

Department's Position: In our preliminary results we added warehousing expenses to movement expenses on consignment sales unintentionally although we intended to add warehousing expenses to movement expenses for non-consignment sales. However, we did not confirm at verification, as the petitioners contend, that the warehousing expenses do not apply to products warehoused prior to sale. At verification we confirmed that, as Aichi stated in its Section B questionnaire response, page 36, the warehousing-expense adjustment applies only to non-consignment transactions. See analysts' Verification Report dated Dec. 21, 1998, in Room B099 of the main Commerce building. Furthermore, Aichi states that it has reported information to distinguish between invoice numbers for consignment sales and invoice numbers for sales involving pre-sale warehousing. In its questionnaire response, Section B, page 12 (May 12, 1998), Aichi provided information which indicates clearly that pre-sale warehousing did not occur on any consignment sales. We examined the home market database and found this to be the case. In addition, in Section A of its response, page 29, the respondent stated that it did not incur post-sale warehousing expenses for consignment sales. Therefore, in our calculations we have added warehousing expenses to the build-up of movement expenses for all sales except consignment sales, as we intended to do in the preliminary results of review.

Comment 7: Miscellaneous Programming Error

The petitioners contend that, in assigning exchange rates to all home market sales, the Department neglected to consolidate the home market dates of sale. It urges the Department to correct this error and provides a suggestion for doing so.

Aichi argues that, contrary to the petitioners' argument, there is no error in the Department's application of exchange rates. Although the Department introduces the exchange-rate database early in the computer program, Aichi states that it is appropriate that the Department never merges the exchange-rate database with the home market database and merges it with the U.S. sales database at a later stage in the program.

Department's Position: There was no error in our exchange-rate calculations. Since we do not merge the exchange-rate database with the home market database, no error occurs. Rather, we merge the exchange rates with the U.S. sales database at a later stage in the program. As a result, no change is necessary.

Final Results of Review

As a result of our analysis of the comments received, we determine a weighted-average margin of 6.62 percent for Aichi for the period February 1, 1997, through January 31, 1998.

The Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. We have calculated an exporter/customer-specific assessment value for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales examined.

Furthermore, the following deposit requirement shall be effective upon publication of this notice of final results of review for all shipments of SSB from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash-deposit rate for Aichi Steel Corporation will be 6.62 percent; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash-deposit rate will continue to be 61.47 percent, the "all-others" rate established in the LTFV investigation (59 FR 66930, December 28, 1994).

The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility

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under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 25, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17049 Filed 7–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–016. *Applicant:* Purdue University, BRWN/WTHR Chemistry Building, W. Lafayette, IN 47907–1393. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 3. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* The instrument is intended to be used to chemically characterize samples of geologic materials—both terrestrial and extraterrestrial—and meteoric water samples. Geologic samples will be quantified as received (i.e. as solids, either powdered, as polished slabs or as thin sections) or as solutions, after their acid dissolution. Water samples will be analyzed without further processing. In addition, the instrument will be used for educational purposes in undergraduate research. Application accepted by Commissioner of Customs: June 16, 1999.

Docket Number: 99–017. *Applicant:* The Burnham Institute, 10901 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Cryo Electron Microscope, Model Tecnai 12 Twin. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used for training postdoctoral scientists in the use of electron cryo-microscopy to examine tissue samples during research focusing on image reconstruction of actin filaments decorated with cytoskeletal proteins. All the projects will involve electron cryo-microscopy and image analysis, fitting of crystal structures to the em maps. Application accepted by Commissioner of Customs: June 18, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–17048 Filed 7–2–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

University of Connecticut, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 99–005. *Applicant:* University of Connecticut, Storrs, CT 06269–1020. *Instrument:* Fiber Electrode Manipulator System. *Manufacturer:* Thomas Recording, Germany. *Intended Use:* See notice at 64 FR 23056, April 29, 1999. *Reasons:* The foreign instrument provides: (1) capability to position seven microelectrodes for independent manipulation within a small volume of tissue (inter-electrode distances of 256 µm) and (2) microelectrodes having a maximum shaft diameter of only 80 µm. Advice received from: National Institutes of Health, June 8, 1999.

Docket Number: 99–008. *Applicant:* University of California, San Diego, La Jolla, CA 92093–0515. *Instrument:* Operant Testing System. *Manufacturer:* CeNeS Ltd., United Kingdom. *Intended Use:* See notice at 64 FR 27516, May 20, 1999. *Reasons:* The foreign instrument provides: (1) A 9-hole nosepoke panel to permit randomized positioning of stimuli in a 5-choice serial reaction time task for rats and (2) 4.0 cm-deep ports to minimize undesirable head orientation. Advice received from: National Institutes of Health, June 8, 1999.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–17047 Filed 7–2–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

June 29, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, special swing and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69057, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 8, 1999, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [2], 369–S [3], 369–O [4], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [5], 669–T [6], 669–O [7], 670–H [8] and 670–O [9], as a group.	617,719,704 square meters equivalent.
Sublevels in Group I	
225/317/326	41,139,054 square meters.
611	3,340,709 square meters.
619/620	15,205,500 square meters.
625/626/627/628/629	19,816,003 square meters.
Within Group I Subgroup	
604	224,360 kilograms.
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [10], 359–H/659–H [11], 359–O [12], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [13], 659–O [14], 831–844, and 846–859, as a group.	716,060,966 square meters equivalent.
Sublevels in Group II	
331	535,239 dozen pairs.
336	139,547 dozen.
338/339	990,141 dozen.
340	1,288,035 dozen.
345	119,356 dozen.
347/348	1,494,066 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [15].
435	26,636 dozen.
436	5,253 dozen.
438	29,652 dozen.
443	44,801 numbers.
444	63,807 numbers.
445/446	142,903 dozen.
638/639	6,495,826 dozen.
640	946,906 dozen of which not more than 281,710 dozen shall be in Category 640–Y [16].
642	889,729 dozen.
647/648	5,351,981 dozen of which not more than 5,088,804 dozen shall be in Categories 647–W/648–W [17].
Within Group II Subgroup	
342	169,016 dozen.
351	413,338 dozen.
447/448	21,865 dozen.
636	395,471 dozen.
651	438,722 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[10] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 ; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[11] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

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[12] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[15] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[16] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[17] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–16939 Filed 7–2–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Notice of Intent To Establish the Nonproliferation and National Security Advisory Committee

In accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, sections 101–6.1015(a), this notice of intent to establish the Nonproliferation and National Security Advisory Committee. This intent to establish follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101–6.10.

The purpose of the Committee is to provide the Secretary of Energy and the Assistant Secretary for Nonproliferation and National Security with advice, information, and recommendations on national research needs and priorities. The Committee will provide an organized forum for the scientific community to provide input to nonproliferation research and development programs.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints including representatives from universities, industry, and others who may significantly contribute to the deliberations of the Committee. Advance notice of all meetings of this Committee will be published in the **Federal Register**.

The establishment of the Nonproliferation and National Security Advisory Committee has been determined to be compelled by considerations of national security, essential to the conduct of Department of Energy business, and in the public interest.

Further information regarding this Committee may be obtained from Mr. Robert Waldron, Director of the Office of Research and Development, U.S. Department of Energy, Washington, D.C. 20585, phone (202) 586–2400.

Issued in Washington, D.C., on June 30, 1999.

James N. Solit,

Advisory Committee Management Officer

[FR Doc. 99–17024 Filed 7–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–147–A]

Application To Export Electric Energy; Aquila Energy Marketing Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Aquila Energy Marketing Corporation (AEM) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before July 21, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On June 19, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized AEM to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities owned and operated by Comision Federal de Electricidad (the national electric utility of Mexico), Central Power & Light Company, El Paso Electric Company, and San Diego Gas & Electric Company. That two-year authorization expired on June 19, 1999. On June 18, 1999, AEM filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional two-year term. AEM also has requested expedited processing of this application.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the AEM request to export to Mexico should be clearly marked with Docket EA–147–A. Additional copies are to be filed directly with Mr. David Stevenson, Aquila Energy Marketing Corporation, P.O. Box 11739, 10700 East 350 Highway, Kansas City, MO 64138, and Kathryn A. Flaherty, Blackwell Sanders Peper Martin, 13710 FNB Parkway, Suite 200, Omaha, NB 68154.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–147. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–147 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on June 28, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Cool & Power Systems, Office of Fossil Energy.

[FR Doc. 99–17020 Filed 7–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–148–A]

Application To Export Electric Energy; Aquila Energy Marketing Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Aquila Energy Marketing Corporation (AEM) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 5, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On August 13, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized AEM to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization will expire on August 13, 1999. On June 18, 1999, AEM filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional two-year term.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the AEM request to export to Canada should be clearly marked with Docket EA–148–A. Additional copies are to be filed directly with Mr. David Stevenson, Aquila Energy Marketing Corporation, P.O. Box 11739, 10700 East 350 Highway, Kansas City, MO 64138, and Kathryn A. Flaherty, Blackwell Sanders Peper Martin, 13710 FNB Parkway, Suite 200, Omaha, NB 68154.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–148. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–148 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on June 28, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–17021 Filed 7–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Albany Research Center; Inventions Available for Licensing

AGENCY: Department of Energy (DOE), Albany Research Center.

ACTION: Notice.

SUMMARY: The United States Department of Energy, Albany Research Center (ALRC) announces that the inventions listed below are available for licensing in accordance with 35 U.S.C. 207–209 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents rights have been retained on selected inventions to extend market coverage and may also be available for licensing. A copy of issued patents may be obtained by download from the U.S. Patent and Trademark Office Website, *http://www.uspto.gov/patft/index.html;* or for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

ADDRESSES: George J. Dooley, III, Director, U.S. Department of Energy, Albany Research Center, 1450 Queen Avenue SW, Albany, OR 97321–2198.

FOR FURTHER INFORMATION CONTACT: William Riley, Chief of Technology Transfer, U.S. Department of Energy, Albany Research Center, 1450 Queen Avenue, SW, Albany, Oregon 97321–2198; Telephone (541) 967–5851; OR Mark P. Dvorscak, Assistant Chief Counsel, Office of Intellectual Property Law, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Ave., Argonne, IL 60439; Telephone (630) 252–2393; E-mail:mark.dvorscak@ch.doe.gov.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR Part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for licensing has been announced in the **Federal Register**.

Issued Patents

Number and Title

5,593,593 Process for Removing Sulfate Anions from Waste Water
5,680,996 Gas Fluidized-Bed Stirred Media Mill
5,613,244 Process for Preparing Liquid Wastes
5,564,620 Forming Metal-Intermetallic or Metal-Ceramic Composites by Self-Propagating High-Temperature Reactions
5,560,420 Process for Casting Hard-Faced, Lightweight Camshafts and Other Cylindrical Products
5,799,238 Method of Making Multilayered Titanium Ceramic Composites
5,788,736 Recovery of Titanium Values from Titanium Grinding SWARF by Electric Furnace Smelting
5,259,862 Continuous Production of Granular or Powder Ti, Zr, and Hf or Their Alloy Products
5,265,664 Fixture for Forming Evaporative Pattern Casting (EPC) Process Patterns

Patent Applications Filed

Synergic System for Solvent Extraction of Germanium
Recovery of Titanium Values from Titanium Grinding SWARF by Electric Furnace Smelting
Process for Zinc Recovery from Organic Extractants with Carbon Dioxide

Dated: June 17, 1999.

George J. Dooley,

Director, ALRC.

[FR Doc. 99–17023 Filed 7–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Albany Research Center Intent To Grant Exclusive Patent License

AGENCY: Department of Energy (DOE), Albany Research Center (ALRC).

ACTION: Notice.

SUMMARY: Notice is hereby given of an intent to grant to MSE Technology Applications, Inc., of Butte, Montana, an exclusive license to practice the invention described in U.S. Patent No. 5, 560,420 titled "Process for Casting Hard-Faced, Lightweight Camshafts and Other Cylindrical Products." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated.

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of publication of this Notice the Deputy Chief Counsel, Office of Intellectual Property Law, Department of Energy, Chicago Operations Office, 9800 S. Cass Ave, Argonne, IL 60439, receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or (ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than September 7, 1999.

ADDRESSES: Deputy Chief Counsel, Office of Intellectual Property Law, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Ave, Argonne, IL 60439.

FOR FURTHER INFORMATION CONTACT: William Riley, Chief of Technology Transfer, Department of Energy, Albany Research Center, 1450 Queen Avenue, SW, Albany, Oregon 97321–2198; Telephone (541) 967–5851; E-mail: riley@alrc.doe.gov, or: Mark P. Dvorscak, Assistant Chief Counsel, Office of Intellectual Property Law, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Ave., Argonne, IL 60439; Telephone (630) 252–2393.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR § 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

MSE Technology Applications, Inc., of Butte, Montana, has applied for an exclusive license to practice the invention embodied in U.S. Patent Nos. 5, 560,420 and has a plan for commercialization of the invention.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Dated: June 17, 1999.

George J. Dooley, III,

Director, ALRC.

[FR Doc. 99–17022 Filed 7–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–345–001]

Arkansas Western Pipeline, L.L.C; Notice of Tariff Filing

June 29, 1999.

Take notice that on June 23, 1999, Arkansas Western Pipeline, L.L.C. (AWP L.L.C.) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets, with an effective date of June 22, 1999.

AWP L.L.C. asserts that the purpose of this filing is to replace the revised sheets filed by AWP L.L.C. on June 22, 1999 in this proceeding because the issuance and effective dates on such sheets were inadvertently omitted.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16979 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–348–000]

Arkansas Western Pipeline, L.L.C.; Notice of Tariff Filing

June 29, 1999.

Take notice that on June 23, 1999, Arkansas Western Pipeline, L.L.C. (AWP L.L.C.) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets, with an effective date of August 1, 1999.

AWP L.L.C. asserts that the purpose of this filing is to comply with Order No. 587–K.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16977 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–48–000]

East Tennessee Natural Gas Company; Notice of Refund Report

June 29, 1999.

Take notice that on June 25, 1999, East Tennessee Natural Gas Company (East Tennessee) tendered for filing a refund report of refunds issued pursuant to the Commission's April 29, 1998 Order Approving Settlement in Gas Research Institute (GRI) Docket No. RP97–149.

East Tennessee states that East Tennessee received a refund from GRI in the amount of $527,462.

East Tennessee states that it has refunded amounts to firm transportation customers that received non-discounted service during 1998 by adjustments to their June 1999 invoices.

East Tennessee states that copies of this filing have been mailed to each of East Tennessee's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16973 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–52–000]

Columbia Gulf Transmission Company; Notice of Refund Report

June 29, 1999.

Take notice that on June 25, 1999, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing a refund report to report on the refunding to its firm customers on June 10, 1999, of refunds it received from the Gas Research Institute (GRI) on May 28, 1999.

Columbia Gulf states that it made the refunds by crediting its customers' invoices on June 10, 1999.

Columbia Gulf states that a copy of this report is being provided to all recipients of a share of the refund and all state commissions whose jurisdiction includes the location of any recipient of a refund.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16980 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–351–000]

Florida Gas Transmission Company; Notice of Tariff Filing

June 29, 1999.

Take notice that on June 25, 1999, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1998:

Third Revised Sheet No. 140
Third Revised Sheet No. 650
Second Revised Sheet No. 651
Second Revised Sheet No. 652
Second Revised Sheet No. 653
Third Revised Sheet No. 654

FGT states that on September 1, 1994 it filed a Stipulation and Agreement of Settlement (Settlement) and pro forma tariff sheets setting forth procedures for the interruption of interruptible transportation and the curtailment of firm service during periods of diminished capacity on FGT's system. The Settlement was accepted and clarified by the Commission on January 12, 1995 (70 FERC ¶ 61,017.) The Commission issued an order on rehearing on June 2, 1995. (71 FERC ¶ 61,274.)

The Settlement, as approved and modified by the Commission, establishes procedures in subsections (g)

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and (h) of section 17.A.4. of the General Terms and Conditions of FGT's Tariff to review the Exempt Use classifications under FGT's curtailment plan. These procedures require that the Data Verification Committee (DVC) meet triennially. FGT states that the instant filing reflects the results of the DVC vote at the triennial meeting.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16965 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–353–000]

Florida Gas Transmission Company; Notice of Tariff Filing

June 29, 1999.

Take notice that on June 25, 1999, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date July 26, 1999:

Third Revised Sheet No. 16
First Revised Sheet No. 22I
Third Revised Sheet No. 28
Fifth Revised Sheet No. 37
Fifth Revised Sheet No. 45
First Revised Sheet No. 47E
Third Revised Sheet No. 61
First Revised Sheet No. 135A

FGT states that it is filing the revised tariff sheets to clarify, consistent with Commission policy, the specific types of transportation discounts that may be granted by FGT in a manner consistent with FERC-approved discounts on other pipelines. The revised tariff sheets modify the General Terms and Conditions (GTC) of FGT's Tariff which are applicable to the various throughput Rate Schedules, and add a reference to the provisions in the rate schedules. By including this additional language in the GTC, FGT seeks to avoid the need for filing individual discount agreements on the grounds that they contain "material deviations" from the pro forma service agreements, consistent with the Commission's rulings in Natural Gas Pipeline Company of America, 84 FERC ¶ 61,099 (1998) and subsequent orders. The identification of the types of discounts to which FGT and an individual shipper may agree will clarify FGT's flexibility to provide the services required to meet competitive market conditions.

In addition to its ability to agree to a basic discount from the stated maximum rates, FGT proposes to revise the GTC by adding additional language to reflect the various kinds of discounts it may give to meet competitive circumstances. For example,

FGT may provide a specified discounted rate:

(1) To certain specified quantities under the Service Agreement;

(2) If specified quantity levels are actually achieved or with respect to quantities below a specified level;

(3) To production reserves committed by the Shipper;

(4) During specified time periods;

(5) To specified points of receipt, points of delivery, supply areas, transportation paths or defined geographical areas; or

(6) In a specified relationship to the quantities actually transported (i.e., that the rates shall be adjusted in a specified relationship to quantities actually transported).

In all circumstances the discounted rate shall be between the maximum rate and minimum rate applicable to the service provided.

FGT further states these types of discounts are modeled after the same types of discounts that the Commission recently approved in Colorado Interstate Gas Company, 86 FERC ¶ 71,178 (1999); Wyoming Interstate Company, Ltd., 86 FERC ¶ 61,191 (1999); Panhandle Eastern Pipe Line Company, 86 FERC ¶ 61,117 (1999); Trunkline Gas Company, 86 FERC ¶ 61,118 (1999); Tennessee Gas Pipeline Company, 84 FERC ¶ 61,340 (1998); Eastern Shore Natural Gas Company, 85 FERC ¶ 61,048 (1998); ANR Pipeline Company, 85 FERC ¶ 61,333 (1998) and National Fuel Gas Supply Corporation, 85 FERC ¶ 61,126 (1998).

FGT submits that the proposed revisions are consistent with Commission policy and will provide FGT and its customers administrative flexibility and efficiency.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16967 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–46–000]

KN Interstate Gas Transmission Co.; Notice of Refund Report Filing

June 29, 1999.

Take notice that on June 24, 1999, KN Interstate Gas Transmission Co. (KNI) filed a refund report pursuant to the Commission's February 22, 1995 Order issued in Docket No. RP95–124–000.

KN states that the refund report shows the refund received by KNI from Gas Research Institute overcollections in the amount $413,712 and the pro rata allocation of that refund amount to KNI's eligible firm customers.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16971 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–022]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

June 29, 1999.

Take notice that on June 25, 1999, Koch Gateway Pipeline Company (Koch) filed with the Federal Energy Regulatory Commission (Commission) four (4) contracts for disclosure of recently negotiated rate transactions. As shown on the contracts, Koch requests an effective date of July 1, 1999.

Special Negotiated Rate Between Koch and Unocal Energy Trading, Inc.

Koch states that it has served copies of this filing upon each all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16978 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–50–000]

Mojave Pipeline Company; Notice of Report of GRI Refunds

June 29, 1999.

Take notice that on June 25, 1999, Mojave Pipeline Company (Mojave) submitted its Report of Gas Research Institute (GRI) Refunds for 1998 pursuant to subpart F of part 154 of the Commission's Regulations and ordering paragraph (C) of the Commission's order issued on February 22, 1995 at Docket No. RP95–124–000.

On May 28, 1999, Mojave received a refund from GRI for overcollections for calendar year 1998 in the amount of $314,625. On June 11, 1999, Mojave states that it refunded its eligible firm shippers as required by the February 22, 1995 order by crediting each shipper's applicable transportation invoice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16975 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–350–000]

Northern Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

June 29, 1999.

Take notice that on June 25, 1999, tendered for filing Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective july 26, 1999.

Sixth Revised Sheet No. 201
Second Revised Sheet No. 303

Northern states that the purpose of the filing is to modify the General Terms and Conditions of its Tariff to clarify, consistent with Commission policy, the types of discounts that Northern may agree to enter into with its shippers.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16964 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–349–000]

Northwest Pipeline Corporation; Notice of Tariff Filing

June 29, 1999.

Take notice that on June 23, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective August 1, 1999.

Fifth Revised Sheet No. 201
Sixth Revised Sheet No. 202
Second Revised Sheet No. 210–B
First Revised Sheet No. 210–C
Third Revised Sheet No. 225–C
First Revised Sheet No. 225–E
First Revised Sheet No. 225–F
First Revised Sheet No. 225–G
Original Sheet No. 225–H
Original Sheet No. 225–I
First Revised Sheet No. 232–F
First Revised Sheet No. 232–G
Second Revised Sheet No. 232–H
Fifth Revised Sheet No. 279
Fifth Revised Sheet No. 279–A
Third Revised Sheet No. 279–C
Fourth Revised Sheet No. 281
Seventh Revised Sheet No. 282

Northwest states that the purpose of this filing is to submit tariff sheets to incorporate the Version 1.3 standards promulgated by the Gas Industry Standards Board (GISB) on July 31, 1998 and adopted by the Commission pursuant to Order No. 587–K as section 284.10(b)(1) of the Commission's regulations.

Northwest states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16963 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–45–000]

Northwest Pipeline Corporation; Notice of Refund Report

June 29, 1999.

Take notice that on June 23, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing a report of Gas Research Institute (GRI) refunds made to its customers.

Northwest states that on May 28, 1999 it received a refund from the GRI in the amount of $2,315,734, representing an overcollection of the 1998 GRI Tier 1 funding target level set for Northwest by the GRI. On June 11, 1999, Northwest credited the GRI refund, pro rata, to its eligible firm customers who received nondiscounted transportation service during 1998.

Northwest states that a copy of this filing has been served upon Northwest's affected customers and intereste state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16970 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC99–79–000 and ER99–3151–000]

Public Service Electric and Gas Company, PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC; Notice of Filing

June 29, 1999.

Take notice that on June 24, 1999, Public Service Electric and Gas Company (PSE&G), PSEG Fossil LLC, PSEC Nuclear LLC, and PSEC Energy Resources & Trade LLC filed a supplement to their application. The supplement consisted of a copy of the application PSE&G had previously filed with the Nuclear Regulatory Commission in connection with the transfer of its interest in certain nuclear generating facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 9, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16969 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–47–000]

Questar Pipeline Company; Notice of Refund Report

June 29, 1999.

Take notice that on June 24, 1999, Questar Pipeline Company (Questar) tendered for filing a Gas Research Institute (GRI) Tier 1 Refund Report in compliance with the Commission's Opinion No. 18 issued November 12, 1997, in Docket No. RP97–149–002.

Questar states that on May 28, 1999, it received a $56,936 refund from GRI, representing an overcollection of the 1998 GRI Tier 1 funding target level set for Questar by GRI. Questar states that on June 11, 1999, in compliance with Opinion No. 418, it sent the GRI Tier 1 refund, pro rata, to it eligible firm shippers who received nondiscounted transportation service during 1998. Questar further states the GRI refund was exclusive of interest.

Questar further states that a copy of the refund report has been served upon its affected transportation customers who received a refund and the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16974 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–49–000]

Tennessee Gas Pipeline Company; Notice of Refund Report

June 29, 1999.

Take notice that on June 25, 1999, Tennessee Gas Pipeline Company (Tennessee) filed a refund report of refunds issued pursuant to the Commission's April 29, 1998 Order Approving Settlement in Gas Research Institute (GRI) Docket No. RP97–149.

Tennessee states that Tennessee received a refund from GRI in the amount of $2,221,561.

Tennessee states that it has refunded amounts to firm transportation customers that received non-discounted service during 1998 by adjustments to their June 1999 invoices.

Tennessee states that copies of this filing have been mailed to each of Tennessee's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16972 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–352–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 29, 1999.

Take notice that on June 25, 1999, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective July 26, 1999:

Fifteenth Revised Sheet No. 48
Twelfth Revised Sheet No. 96
Sheet No. 97

Transwestern states that the purpose of the filing is to modify the General Terms and Conditions of its Tariff to clarify, consistent with Commission policy, the types of discounts that Transwestern may agree to enter into with its shippers.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16966 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–51–000]

Transwestern Pipeline company; Notice of Report of Refund

June 29, 1999.

Take notice that on June 25, 1999, Transwestern Pipeline Company (Transwestern) tendered for filing a Report of Refund reflecting distribution of a GRI refund received on May 28, 1999 in the amount of $159,621, with Transwestern credited to its eligible firm shippers on June 11, 1999.

Transwestern states that it provided a credit to its eligible firm Shippers on a pro rata basis based on amounts paid by such shippers through GRI surcharges for 1998.

Transwestern states that copies of the filing were served upon all affected parties and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1999. Protests will be considered

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by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16976 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–354–000]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

June 29, 1999.

Take notice that on June 25, 1999, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective August 1, 1999.

Third Revised Sheet No. 33
Fourth Revised Sheet No. 37A
Fourth Revised Sheet No. 42

Tuscarora asserts that the purpose of this filing is to comply with Order No. 587–K, issued on April 2, 1999, in Docket No. RM96–1–011. Specifically, Tuscarora has revised Sections 2 and 4 of the General Terms and Conditions of its tariff to include the most recent version of the standards, Version 1.3. These standards establish rules for conducting business practices and electronic communication with interstate natural gas pipelines.

Tuscarora states that copies of this filing were mailed to customers of Tuscarora and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–16968 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–171–000, et al.]

Woodstock Hills, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 28, 1999.

Take notice that the following filings have been made with the Commission:

1. Woodstock Hills LLC

[Docket No. EG99–171–000]

Take notice that on June 18, 1999, Woodstock Hills LLC (Woodstock), 475 E. 4th Street, Cottonwood, Minnesota 56229, tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Also take notice that on June 21, 1999, Woodstock tendered for filing in the above referenced proceeding a signed copy of the Certificate of Mailing.

Woodstock will own and operate an approximate 10.2 megawatt windpowered electric generation facility (Facility) in Woodstock, Minnesota. Woodstock will sell the electric output of the Facility exclusively at wholesale. The Facility will be located in proximity to the transmission facilities of Northern States Power Company, and the Facility will include only those interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. HL Power Company Limited Partnership

[Docket No. EC99–89–000]

Take notice that on June 22, 1999, HL Power Company Limited Partnership (HLP), a California limited partnership, tendered for filing an application, pursuant to 18 CFR part 33, seeking authority under Section 203 of the Federal Power Act for the Sale of (i) a 60 KV electric transmission line used to deliver electric energy from the Honey Lake small power production facility, located in Lassen County, California, to a substation known as the Milwood Substation and (ii) the Milwood Substation, which includes various items of interconnection equipment and the parcel of real property upon which such equipment is located, all of which was constructed and is currently owned by HLP to Lassen County Municipal Utility District.

HLP has requested expedited consideration of the application in light of the fact that no changes in the rates charged by HLP will occur and that there will be no impact on the relevant competitive markets.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Renewables Limited Partnership

[Docket No. EG99–172–000]

Take notice that on June 18, 1999, West Texas Renewables Limited Partnership, a limited partnership formed under the laws of the State of Delaware, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status. West Texas Renewables Limited Partnership will be engaged directly and exclusively in the business of owning and operating a 6.6 MW wind generation facility (the Project) located in Howard County, Texas which will be an eligibility facility within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935, as amended. All of the electricity produced by the Project will be sold at wholesale to the Texas Utilities Electric Company, a Texas corporation (TU Electric) pursuant to a long-term contract.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Public Service Company of New Mexico

[Docket Nos. ER96–1551–005, OA96–202–000 and OA96–202–002]

Take notice that on June 22, 1999, Public Service Company of New Mexico (PNM), tendered for filing a Compliance Report regarding refunds to affected

ancillary services customers, for mandatory ancillary services fees collected (by PNM) in excess of PNM's proposed settlement agreement rate approved by the Federal Energy Regulatory Commission in its April 6, 1999 letter order. The affected customers are:

Aquila Power Company
Arizona Public Service Company
Citizen's Power Sales
Vitol Gas & Electric Company
Duke Energy Trading
Enron Power Marketing, Inc.
Electric Clearinghouse, Inc.
El Paso Electric Company
El Paso Energy Marketing
E Prime, Inc.
City of Gallup
Idaho Power Company
Illinova Energy Partners, Inc.
Kirtland Air Force Base
Los Alamos County
Reliant Energy Services
PacifiCorp Electric Operations
Public Service Company of Colorado
Salt River Project Agricultural Improvement and Power District
Southwestern Public Service Company
Tucson Electric Power Company
Texas-New Mexico Power Company
Williams Energy Services Company

Copies of the filing have been provided to all parties to this proceeding, and the filing is available for public inspection at PNM's offices in Albuquerque, New Mexico.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER99–1662–000]

Take notice that on June 23, 1999, Cinergy Services, Inc., acting as agent for and on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing an amended Service Agreement for firm point-to-point transmission service entered into between Cinergy and itself under Cinergy's Open Access Transmission Tariff.

Pursuant to the Commission's letter order dated May 24, 1999 in this proceeding, Cinergy's filing was amended to include a specific point of receipt and capacity reservation for the receipt/delivery point combination.

Cinergy states that it has served copies of its filing upon all parties of record in this proceeding.

Comment date: July 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy Corporation

[Docket No. ER99–2285–000]

Take notice that on June 23, 1999, Duke Energy Corporation (Duke), tendered for filing an amendment to its firm point-to-point transmission service agreement filed in the above-referenced docket.

Comment date: July 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Electric Clearinghouse, Inc. and Illinois Power Company

[Docket No. ER99–3322–000]

Take notice that on June 21, 1999, Electric Clearinghouse, Inc. (ECI) and Illinois Power Company (Illinois Power), jointly tendered for filing pursuant to Rule 205, 18 CFR 385.205, revisions to their respective rate schedules related to sales of energy and capacity at market-based rates to each other.

ECI and Illinois Power request waiver of the Commission's 60-day prior notice requirement in order to permit their respective revisions to become effective on June 22, 1999.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation

[Docket No. ER99–3326–000]

Take notice that on June 22, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated May 25, 1999 (the Service Agreement) between Constellation Power Source, Inc. (Constellation Power) and OVEC. The Service Agreement provides for non-firm transmission service by OVEC to Constellation Power. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

OVEC proposes an effective date of May 25, 1999 and requests waiver of the Commission's notice requirement to allow the requested effective date.

Copies of this filing were served upon the Public Service Commission of Maryland, the Public Service Commission of District of Columbia and Constellation Power.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy System

[Docket No. ER99–3327–000]

Take notice that on June 22, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for Carolina Power & Light Company, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is June 10, 1999, for the above mentioned Service Agreement in this filing.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Electric Power Company

[Docket No. ER99–3328–000]

Take notice that on June 22, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission Service entered into with PP&L EnergyPlus Company Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO-FERC Electric Tariff, Original Volume No.1, as supplemented.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER99–3329–000]

Take notice that on June 22, 1999, UtiliCorp United Inc. (UtiliCorp), tendered for filing a service agreement with Enron Power Marketing, Inc., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. TXU Energy Trading Company

[Docket No. ER99–3333–000]

Take notice that on June 22, 1999, TXU Energy Trading Company tendered for filing a Notice of Succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16. As a result of a name change, TXU Energy Trading Company is succeeding to the Rate Schedule No. 1 and Supplement No. 1 to Rate Schedule No. 1 of Enserch Energy Services, Inc., effective June 14, 1999.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Maine Electric Power Company

[Docket No. ER99–3334–000]

Take notice that on June 22, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service

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agreement for Long-Term Firm Point-to-Point Transmission Service entered into with Engage Energy US, L.P. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented. This service represents a reassignment of transmission rights currently held by Central Maine Power Company (CMP) under FERC Rate Schedule Vol. 1, Service Agreement No. 5.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Rocky Road Power, LLC

[Docket No. ER99–3335–000]

Take notice that on June 22, 1999, Rocky Road Power, LLC, tendered for filing a Power Purchase Agreement for short-term transactions between Rocky Road Power, LLC and Electric Clearinghouse, Inc., to be in effect as of May 24, 1999.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER99–3336–000]

Take notice that on June 23, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with TransAlta Energy Marketing (U.S.) Inc. (TransAlta) under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to TransAlta.

NUSCO requests that the Service Agreement become effective July 1, 1999.

Comment date: July 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER99–3337–000]

Take notice that on June 23, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Electric Clearinghouse, Inc., for Short-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on June 1, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: July 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Penobscot Hydro, LLC

[Docket No. ER99–3338–000]

Take notice that on June 23, 1999, Penobscot Hydro, LLC (Penobscot), tendered for filing with the Commission an executed Transitional Power Sales Agreement (TSA) between Penobscot and Bangor Hydro-Electric Company (Bangor) to replace the unexecuted agreement previously accepted for filing by the Commission on April 23, 1999, in this docket.

Comment date: July 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER99–3339–000]

Take notice that on June 23, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 19) to the ISO Tariff. Amendment No. 19, would modify the ISO Tariff to implement the ISO's New Generator Interconnection Policy, which sets forth the obligations and responsibilities of Generating Units requesting interconnection to the ISO Controlled Grid and the procedures and requirements for processing such interconnection requests.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: July 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Joe Bob Perkins

[Docket No. ID–3184–003]

Take notice that on June 23, 1999, Mr. Joe Bob Perkins, a former officer and director of El Dorado Energy, LLC, tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal from interlocking positions pursuant to Section 305(b) of the Federal Power Act, Section 45.5(b) of the Commission's Regulations, 18 CFR 45.5(b), and the Commission's Order in El Dorado Energy, LLC, 85 FERC ¶ 61,006 (1998).

Comment date: July 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–16981 Filed 7–2–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6371–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Construction Grants Delegation to States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Construction Grants Delegation to States Information Collection Request, EPA ICR No. 0909.06 and Control No. 2040–0095, current expiration date December 31, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 7, 1999.

ADDRESSES: Gajindar Singh, Office of Wastewater Management, Mail Code 4204, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by writing to the preceding address.

FOR FURTHER INFORMATION CONTACT: Gajindar Singh, Telephone Number: (202) 260–4266 /Facsimile Number: (202) 260–1827/E-mail: singh.gajindar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Comments: Comments shall be submitted to Gajindar Singh, Mail Code 4204, Environmental Protection Agency, Office of Wastewater Management, 401 M Street, SW, Washington, DC 20460. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. Comments may also be submitted electronically to *singh.gajindar@epamail.epa.gov.*

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the use of words "Construction Grants Comments." No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in Corel Word Perfect 8 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The record for this proposed ICR renewal has been established in the Office of Wastewater Management, Municipal Assistance Branch and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI. The record is available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at the Municipal Assistance Branch, Northeast Mall Room 2104–6, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, please call (202) 260–4266 to schedule an appointment.

Affected entities: Entities potentially affected by this action are States which administer elements of the construction grants program under a delegation agreement with EPA and municipalities which received construction grants from EPA.

Title: Construction Grants Delegation to States; OMB No. 2040 0095; EPA ICR No. 0909.06 expiring 12/31/99.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the Construction Grants Program Delegation to States, 40 CFR part 35 Subpart J; and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan Fund (SRF) program, collection activities for the Construction Grants Program must continue until program completion. The program includes reporting, monitoring and program requirements for municipalities and delegated States.

The information collection activities described in this ICR are authorized under section 205(g) of the Clean Water Act as amended, 33 U.S.C. 1251 *et seq.*, and under 40 CFR part 35 Subpart J. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of section 205(g) construction grant funds. The information is also needed to assure an adequate management overview of those State project review activities that are most important to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Managers at the State and Federal levels both rely on the information described in this ICR. State managers rely on the information for their own program and project administration. Federal managers rely on this information to assess, control, and predict the impacts of the construction grants program on the Federal Treasury and future budget requirements. Federal managers also use this information to respond to OMB and Congressional requests and to maintain fiscal accountability.

In addition, builders of wastewater treatment plants use the information discussed in this ICR. The builders of these plants assess and use the information in the Innovative/ Alternative Technology Data Base File to obtain technical information on innovative or alternative wastewater treatment systems.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Respondents: States and municipalities.

Estimated Number of Respondents: 31.

Frequency of Response: 91 per year.

Responses Per Respondent: 3.0 per year.

Estimated Total Annual Hour Burden: 5,678 hours.

Average Burden Hours Per Response: 62.4.

Estimated Total Annualized Cost Burden: $213,152.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 23, 1999.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 99–17031 Filed 7–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6371–4]

Agency Information Collection Activities Pesticides; Submission of EPA ICR No. 0601.06 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "FIFRA Section 29 Annual Report on Conditional Registrations," (EPA ICR No. 0601.06, OMB No. 2070–0026) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew

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for 3 years the existing approval for this ICR, which is scheduled to expire on June 30, 1999. A **Federal Register** document announcing the Agency's intent to seek OMB approval for this ICR and a 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on March 3, 1999 (64 FR 10290). EPA received several comments on this ICR during the comment period. Additional comments may be submitted on or before August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer by phone at 202–260–2740, or via e-mail at "farmer.sandy@epa.gov", or using the address indicated below. Please refer to EPA ICR No. 0601.06 and OMB Control No. 2070–0026.

ADDRESSES: Send comments, referencing EPA ICR No. 0601.06 and OMB Control No. 2070–0026, to the following addresses:

Ms Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, SW, Washington, DC 20460;

and to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 0601.06; OMB Control No. 2070–0026.

Current Expiration Date: Current OMB approval expires on June 30, 1999. EPA is currently seeking a 90 day extension, which will move the expiration date to September 30, 1999.

Title: FRA Section 29 Annual Report on Conditional Registrations

Abstract: EPA is responsible for the regulation of pesticides as mandated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). FIFRA section 29 requires the EPA Administrator to submit an annual report to Congress before February 16 of each year. The section 29 Report is to include the total number of applications for conditional registration filed under sections 3(c)(7)(B) and 3(c)(7)(C) of the Act during previous fiscal year. Of those applications approved, the report must also identify the Administrator's findings in each case, the conditions imposed and any modification of such conditions in each case, and the quantities produced of such pesticides. All of this information, except production volume data, is obtained from Agency files. EPA must rely on outside sources for this data. Therefore, EPA asks registrants with conditionally registered pesticides to provide production volume data from the preceding fiscal year.

Burden Statement: For each use of a conditional registration, EPA requires registrants to submit an annual report to the EPA on the amount (gallons or pounds) of the pesticide produced during the preceding fiscal year. Each October, OPP compiles all information on conditional registrations filed with the Agency during the previous fiscal year including initial conditions of registration and any modifications. Registrants with conditional registrations generally submit the required information automatically. However, if the production volume data has not been received within thirty days of the due date, then EPA will send a fax or phone the registrants requesting submittal of the annual pesticide volume information. EPA compiles the submitted data and internal information to prepare a section 29 Report. The Report includes: The number of conditional registrations, their conditions of registration, any changes in conditional registration status or conditions, and the conditionally registered pesticide production volume data. The Report also includes updated information to identify those conditional registrations that have been canceled or have attained full registration, and name changes of chemical firms.

The annual respondent burden for this collection includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this document. The annual public burden for the section 29 reporting information collection is estimated to average 1.4 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: Pesticide registrants with conditional registrations.

Estimated total number of potential Respondents: 30.

Frequency of Response: Annually.

Estimated total/average number of responses for each Respondents: 2.

Estimated total annual burden hours: 84.

Estimated total annual burden costs: $6,612.

Changes in Burden Estimates: The registrant burden estimate for this information collection has remained at 84 hours per year with the number of respondents reporting and number of conditional registrations each remaining the same. The individual burden per product for reporting has remained constant at 1.4 hours, while the burden per registrant has remained constant at 2.8 hours with two products per registrant.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: June 29, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–17033 Filed 7–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6371–2]

Notice of Open Meeting of the Environmental Financial Advisory Board on August 9–10, 1999

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in San Francisco, California on August 9–10, 1999. The meeting will be held at the World Trade Center, Ferry Building, in the International Room. The Monday, August 9 session will run from 9:00 a.m. to 5:00 p.m. and the August 10 session will begin at 8:30 a.m. and end at approximately 12:00 p.m.

EFAB is charted with providing analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to discuss progress with work products under EFAB's current strategic action agenda and to develop an action agenda to direct the Board's activities through 2000. Environmental financing topics expected to be discussed include: Clean Water Action Plan, environmental and multi-state revolving funds, cost-effective environmental management community-based environmental protection, brownfields redevelopment, international environmental financing, and small business access to capital.

The meeting is open to the public, but seating is limited. For further information, please contact Alecia Crichlow, EFAB Coordinator, U.S. EPA on (202) 564–5188, or Joanne Lynch, U.S. EPA on (202) 564–4999.

Dated: June 29, 1999.

Michael W.S. Ryan,

Comptroller.

[FR Doc. 99–17030 Filed 7–2–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00612; FRL–6090–4]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with *Burkholderia cepacia*: risk assessment of a biopesticide and possible human opportunistic pathogen; a consultation on protocol design to assess acute neurotoxicity following oral administration of pesticides; issues pertaining to the assessment of exposure to pesticides in residential and other non-occupational settings; higher tier ecological risk assessment for chlorfenapyr; and pesticide spray drift--review of proposed pesticide deposition curves. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact either Larry Dorsey or Paul Lewis at the address listed under "FOR FURTHER INFORMATION CONTACT" at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on Tuesday, July 20; Wednesday, July 21; Thursday, July 22; and Friday, July 23, 1999, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the hotel is: (703) 486–1111.

By mail, submit written comments (one original and 40 copies) to: The Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5805.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail. Additional information on electronic submissions can be found under Unit V. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey or Paul I. Lewis, Designated Federal Officials, FIFRA Scientific Advisory Panel (7101C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 117T, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5369; e-mail: dorsey.larry@ epa.gov or lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Meeting

This SAP meeting includes five distinct sessions. The first session will be the review of a risk assessment of a biopesticide and possible human opportunistic pathogen. Some microorganisms used for controlling pests may be opportunistic human pathogens, or closely related to opportunistic pathogens. Opportunistic pathogens are microbes that are capable of causing disease only in people who are immunocompromized or are otherwise especially susceptible. A critical issue concerns the pathogenic strains proposed for registration as biopesticides, since these strains are typically isolated from the environment, for example agricultural fields, rather than as clinical specimens. As such, these strains have no history of actually causing disease and may not be able to do so. Criteria for relatedness between clinical strains and biocontrol strains and the ability to predict pathogenicity of the biocontrol strains is therefore vital.

The Agency requests the SAP to address the sufficiency of current tests used to consider the risk from opportunistic pathogens to immunocompromized populations. *Burkholderia cepacia*, a biopesticide which may cause fatal infections with cystic fibrosis and chronic granulomatous disease, will be used as a test case to examine the adequacy of animal models, taxonomic criteria, and criteria using known virulence genes as predictors of the pathogenic potential of individual strains, as well as issues related to the importance of levels of exposure and the nature of susceptible populations.

The second session will be a consultation on a study protocol design to assess acute neurotoxicity studies following oral administration of pesticides. Recently, several acute neurotoxicity studies have been submitted to the Agency employing this protocol design. This novel design deviates from the standard Agency acute developmental neurotoxicity protocols. The primary difference is that the test substance is administered in the diet compared to being administered as a bolus dose in the standard Agency study design. The purpose of this session is to consult with the SAP regarding issues pertaining to this new design.

The third session will be a review of issues pertaining to the assessment of exposure to pesticides in residential and other non-occupational settings. When estimating aggregate exposure to a pesticide substance, the Agency includes exposures that may occur following use of the pesticide in residential or other non-occupational settings. This session will focus on several key issues that pertain to improving procedures for estimating exposure to pesticides from use in residential or other non-occupational settings and in revising its standard operating procedures for residential exposure assessments. The issues include: (1) Calculating percent dislodgeability of available pesticide residues from lawns, indoor surfaces, and pets; (2) use of choreographed activities as surrogates for estimating children's dermal exposure; (3) characterizing hand (or object)-to-mouth activities; (4) calculating exposure to pesticides that may result from track-in, drift, bathing or showering; and (5) calculating exposure from use of pesticides in schools, day-care centers, and other public places.

The fourth session concerns the review of the Agency's chlorfenapyr ecological risk assessment. In December, 1994, the Agency received a request for registration for the use of the pyrrole insecticide chlorfenapyr on cotton. The Agency is seeking SAP input regarding the use of available data to characterize the risk of chlorfenapyr use on cotton to birds in cotton agroenvironments. The Agency requests SAP comments on its assessment of avian risks and is seeking

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SAP suggestions for how the Agency might use probabilistic risk assessment techniques to improve its risk assessment. Specifically, the Agency is seeking guidance on the geographic scale of a probabilistic risk assessment. The SAP will be queried on what data on chlorfenapyr fate, residues, effects and cotton agroenvironments would be necessary to accommodate extrapolations of risks to scales beyond the treated agroenvironment to much larger scales.

The final session will be a review of pesticide spray drift data from ground hydraulic and orchard air blast applications. The purpose of this session is to examine the validity of an approach developed to place bounds on the Spray Drift Task Force data for ground hydraulic boom and orchard air blast spraying applications. Curves developed from bounds are intended to be used in environmental exposure assessments to estimate deposition over a range of distances, replacing the use of a fixed estimate. The proposed bounding method is intended to be adaptable to allow the addition of data from new or existing application methods.

II. Availability of Review Materials

A meeting agenda is currently available, and copies of EPA background documents for the meeting will be available no later than July 6, 1999. The meeting agenda and EPA primary background documents will be available on the EPA web site -- http://www.epa.gov/pesticides/SAP/ or may be obtained by contacting the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5805.

III. Written Comments and Oral Presentations at the Meeting

Members of the public wishing to submit comments should contact either Larry Dorsey or Paul Lewis at the address or the telephone number given under "FOR FURTHER INFORMATION CONTACT" to confirm that the meeting date and the agenda have not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to either Larry Dorsey or Paul Lewis, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify either Larry Dorsey or Paul Lewis and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

IV. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in "ADDRESSES" at the beginning of this document.

V. Public Docket and Submission of Electronic Comments

A public record has been established for this notice under docket control number "OPP–00612" (including comments and data submitted electronically). A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch at the address listed in "ADDRESSES" at the beginning of this document.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect in 5.1/6/7/8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–00612." Electronic comments may be filed online at many Federal Depository Libraries.

The official record for this notice, as well as the public version described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

List of Subjects

Environmental protection.

Dated: June 29, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–17005 Filed 7–2–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Notification of Performance of Bank Services.

Form Number: 6120/06.

OMB Number: 3064–0029.

Annual Burden:

Estimated annual number of respondents: 150.

Estimated time per response: ½ hour.

Average annual burden hours: 75 hours.

Expiration Date of OMB Clearance: July 31, 1999.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 5, 1999 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Form 6120/06 is used by insured state nonmember banks to notify the FDIC of the existence of a relationship with a bank service corporation as required by section 7 of the Bank Service Company Act (12 USC 1867).

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–17058 Filed 7–2–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1277–DR]

Iowa; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1277–DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 1999:

Chickasaw County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–17035 Filed 7–2–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1277–DR]

Iowa; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1277–DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: June 23, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 1999:

Montgomery County for Public Assistance.

Scott County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–17036 Filed 7–2–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Partially Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of partially open meeting.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: August 3–5, 1999.

Place: Building J, Room 103, National Emergency Training Center, Emmitsburg, Maryland.

Time: August 3, 1999, 1:30 p.m.–5:00 p.m. (Open Meeting); August 4, 1999, 8:30 a.m.–10:30 a.m. (Closed Meeting); August 4, 1999, 11:00 a.m.–9:00 p.m. (Open Meeting); August 5, 1999, 8:30 a.m.–12 noon (Open Meeting).

Proposed Agenda: August 3, 1999, Review National Fire Academy Program Activities. August 4, 1999 (Closed Meeting From 8:30 a.m.—10:30 a.m., to review Fiscal Year 1999, 2000, and 2001 budgetary and procurement recommendations.) August 4, 1999, 11:00 a.m.–9:00 p.m., and August 5, 1999, 8:30 a.m.–12 noon, Finish Review of National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public (except as noted above) with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before July 26, 1999.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

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Dated: June 24, 1999.
Richard A. Marinucci,
Acting Chief of Operations.
[FR Doc. 99–17034 Filed 7–2–99; 8:45 am]
BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of the Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Bayworld Int'l Corp., 1031 W. Manchester Blvd., #B, Inglewood, CA 90301, Officer: William Chao, President (Qualifying Individual)

Commercial Department Containers Caribe, Inc., 954 Ponce De Leon Avenue, CCND. Miramar Plaza, Suite 15–C, San Juan, PR 00907, Officers: Massimo Lolli, President (Qualifying Individual), Marco Orlandi, Vice President

DSL Transportation Services, Inc., 5011 Firestone Place, South Gate, CA 90280, Officers: Paul C. Grantham, Chief Executive Officer (Qualifying Individual), Darse Crandall, Executive Vice President

Newport Air Express Inc., 1231 West Broadway, Hewlett, NY 11557, Officers: Jerry Lo, Vice President (Qualifying Individual), Hang Wong, President

R.T. Express International, Inc., 1004 W. Hillcrest Blvd., Inglewood, CA 90301, Officers: Ricky Tong, President (Qualifying Individual), Ann Tong, Secretary

Sea Air Surface Distribution Inc., 4694 Coffee Port Road, Brownsville, TX 78521, Officer: Frank Parker, Jr., President (Qualifying Individual)

Ten-Fly Corporation, 17870 Castleton Street, Suite 122, City of Industry, CA 91748, Officer: Ellen Y. Yan, President (Qualifying Individual)

Trans Service Line (USA), Inc., 50 Broadway, Suite 1603, New York, NY 10004, Officers: Jean-Francois Pinson, President (Qualifying Individual), Richard K. Bernstein, Secretary

World Transportation Services, Inc., 2723 Yale Street, Houston, TX 77008, Officers: Pam Garifalos Holdrup, Secretary (Qualifying Individual), Jim Shaw, President

Worldwide Freight System Inc., 2801 NW 74 Avenue, Suite 225, Miami, FL 33122, Officers: Michael Liu, Vice President (Qualifying Individual), David Ting, Chairman

Merzario USA Inc., 17 Battery Place, #1630, New York, NY 10004, Officers: Giovanni Bisignani, Director, Claudion Quaranta, Exec. Vice President (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Straight Air Service (USA), Inc., 161–15 Rockaway Blvd., Rm. 213, Jamaica, NY 11434, Officer: Chan Joe Loong, Managing Director (Qualifying Individual)

Servitrans, Inc., 1116 Oliver Street, Houston, TX 77007, Officers: Rafael A. Struve, President, J. Gregorio Diaz, Vice President (Qualifying Individual)

Caribbean Freight Systems, Inc., 1484 N.W. 153rd Avenue, Pembroke Pines, FL 33028, Officers: Jose A. Espinosa, Jr., Director (Qualifying Individual) Peter Achim, Director

Sea Gate Logistics, Inc., 182–11 150th Road, Suite 205, Jamaica, NY 11413, Officers: Vi Hung Vuong, President (Qualifying Individual), Renbo Lee, Secretary

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

IGC, Inc., 7956 Clyo Road, Centerville, OH 45459, Officers: Ater Chokr, President, Patricia S. White, Corporate Secretary (Qualifying Individual)

Jones & Carroll Shipping, L.L.C., 1655 State Street, New Orleans, LA 70118, Officers: John Walker Jones, Jr., President (Qualifying Individual), Eleanor G. Carroll, Vice President

Global Logistics Services Company, 2063 South Atlantic Blvd., Suite 2–B, Monterey Park, CA 91754, Larry Li, Sole Proprietor

Dated: June 30, 1999.
Bryant L. VenBrakle,
Secretary.
[FR Doc. 99–16998 Filed 7–2–99;8:45 am]
BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9910075]

Shaw's Supermarkets, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Broyles, FTC/S–2105, 601 Pennsylvania Avenue, NW Washington, DC 20580, (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 28th, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of the Draft Complaint and Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from J Sainsbury plc, owner of Shaw's Supermarkets, Inc. ("Shaw's") and Star Markets Holdings, owner of Star Markets Company ("Star") (collectively "the Proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). The Proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anitcompetitive effects arising from Shaw's proposed acquisition of all of the outstanding voting stock of Star.

II. Description of the Parties and the Proposed Acquisition

Shaw's Supermarkets, Inc., a Massachusetts corporation headquartered in Bridgewater, Massachusetts, is a wholly owned subsidiary of J Sainsbury plc, a United Kingdom company. Shaw's operates 126 supermarkets in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. All of Shaw's supermarkets operate under the "Shaw's" trade name. Shaw's total sales for its 1998 fiscal year were approximately $2.8 billion. Shaw's is the second largest supermarket chain operating in Greater Boston. After the merger, Shaw's will become the number one supermarket chain in Greater Boston, controlling almost 40% of all supermarket sales.

Star is a Massachusetts corporation headquartered in Cambridge, Massachusetts. Star operates 53 supermarkets in Massachusetts, forty-nine under the "Star" trade name and four under the "Wild Harvest" trade name. Star also operates a wholesale food business that serves mostly small independent supermarket customers throughout New England and New York State. Star's wholesale customer base includes 11 supermarkets that contractually use the "Star Markets" trade name though Star has no ownership interest in them. Star's revenues for fiscal year 1998 are more than $1 billion, $966 million of which are from its retail operations. With its 53 supermarkets, Star is the third largest supermarket chains operating in Greater Boston.

On November 25, 1998, J Sainsbury plc, Star Markets Holdings, Inc., Star Markets Company, Inc. and certain stockholders of Star Markets Holdings Inc., entered into a Stock Purchase Agreement for J Sainsbury plc to acquire all of the outstanding voting securities of Star Markets Holdings, Inc. The value of the transaction is approximately $490 million.

III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (i.e., the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")), as well as an extensive inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at nearby supermarkets. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, limited assortment stores, convenience stores, specialty food stores (e.g., seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. The retail format and variety of items sold at these other stores are significantly different than that of supermarkets. None of these other retailers offer a sufficient quantity and variety of products to enable consumers to one-stop shop for food and grocery products.

The draft complaint alleges that the relevant sections of the country (i.e., the geographic markets) in which to analyze the acquisition are the areas in or near the following incorporated cities or towns in Massachusetts: (a) Waltham area that includes Waltham, Auburndale, Watertown, Newton, West Newton, Weston, and Lexington; (b) Quincy-Dorchester area that includes Quincy, N. Quincy, Milton, Dorchester, Boston, S. Boston, Braintree, and Weymouth; (c) Norwood area that includes Norwood, Walpole, Westwood, Dedham, Wrentham, and Sharon; (d) Milford area that includes Milford, Hopedale, Mendon, and Upton; (e) Salem-Lynn area that includes Salem, Lynn, Peabody, Swampscott, Danvers, Nahant, and Marblehead; (f) Norwell area that includes Norwell, Hanover, Rockland, Pembroke, Hanson, Scituate, Halifax, Hingham, Weymouth, Cohasset, and Hull; (g) Hudson-Stow area that includes Stow, Hudson, Sudbury, Marlborough, and Bolton; and (h) Saugus-Melrose-Stoneham area that includes Saugus, Melrose, Stoneham, and Wakefield.

J Sainsbury through its Shaw's subsidiary and Star Markets are actual and direct competitors in the all of the relevant markets.

The draft complaint alleges that the post-merger markets would all be highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or four-firm concentration ratios. The acquisition would substantially increase concentration in each market. The post-acquisition HHIs in the geographic markets range from 2205 points to 5136 points.

The draft complaint further alleges that entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

The draft complaint also alleges that Shaw's acquisition of all of the outstanding voting securities of Star, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supermarkets owned or controlled by Shaw's and supermarkets owned and controlled by Star; by increasing the likelihood that Shaw's will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the geographic markets alleged in the complaint.

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IV. The Terms of the Agreement Containing Consent Order ("the Proposed Consent Order")

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order Shaw's and Star must divest ten supermarkets, seven stores operating under the "Star Markets" trade name and three under the "Shaw's" trade name.

In the eight relevant markets, the Proposed Respondents will divest either all of the Shaw's or Star supermarkets to buyers who do not currently operate supermarkets in these markets. Divesting all of one party's assets in a particular market achieves the goals that the proposed consent order is designed to achieve—ensuring that the merger will not increase concentration in any relevant market and maintaining the number of firms in the market that existed before the merger.

Seven of the supermarkets to be divested are being sold to two experienced up-front buyers, firms that the Commission has pre-evaluated for their competitive and financial viability. The Commission's evaluation process consisted of analyzing the financial condition of the proposed acquirers and the locations of their current supermarkets to ensure that divestitures to them would not increase concentration or decrease competition in the relevant markets, as well as, determining that these purchasers are well qualified to operate the divested stores. The remaining three supermarkets are to be divested by the Proposed Respondents within three months of the date on which they signed the proposed consent agreement, to an acquirer approved by the Commission and in a manner approved by the Commission. Public comments may address the suitability of the designated up-front buyers to acquire supermarkets under the proposed consent order.

The following is a discussion of the two up-front buyers, Victory Super Markets ("Victory") and Foodmaster Super Markets, Inc. ("Foodmaster"). Victory, headquartered in Massachusetts and founded by the DiGeronimo family in 1923, will acquire five supermarkets from Shaw'—Shaw's Supermarket stores No. 193 in Waltham, No. 196 in North Quincy, and No. 122 in Norwood; and Star Markets Stores No. 169 in Milford, and No. 128 in Norwell, MA. Foodmaster, headquartered in Chelsea, Massachusetts, will acquire two supermarkets from Shaw's—Star Markets No.144 in Lynn and No. 129 in Swampscott.

The proposed consent order further requires Shaw's and Star to divest three additional supermarkets, Star Markets No. 152 in Stow, Star Markets No. 118 in Sudbury, and Star Markets No. 173 in Saugus to a proposed buyer that will be selected by Shaw's and approved by the Commission within three months of the date on which the Proposed Respondents sign the proposed consent agreement.

Paragraph II.A. of the proposed consent order requires that the divestiture to Victory must occur no later than the earlier of (1)20 days from when the merger is consummated, or (2) four months after the Commission accepts the agreement for public comment.[1] Paragraph II.B. of the proposed consent agreement requires that Shaw's divest the two supermarkets to Foodmaster within ten days of the date on which the proposed consent order becomes final. If Shaw's consummates the divestitures to Victory and Foodmaster during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Shaw's that Victory or Foodmaster is not an acceptable acquirer or that the asset purchase agreement with Victory or Foodmaster is not an acceptable manner of divestiture, then Shaw's must immediately rescind the transaction in question and divest those assets to another buyer within three months of the date the order becomes final. At that time, Shaw's must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a matter that receives the prior approval of the Commission. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture, a trustee that the Commission may appoint has the power to divest any assets that have not been divested to satisfy the requirements of the proposed consent order.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or sites identified in the order that Shaw's and Star have not divested to satisfy the requirements of the proposed consent order. In addition, the proposed order enables the Commission to seek civil penalties against Shaw's for non-compliance with the proposed consent order.

Among other requirements related to maintaining operations at the supermarkets identified for divestiture, the proposed consent order also specifically requires the Proposed Respondents to: (1) Maintain the viability, competitiveness and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair their marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve existing relationships with suppliers, customers, and employees; and (6) keep the supermarkets open for business and maintain the inventory at levels consistent with past practices.

The proposed consent order also prohibits Shaw's from acquiring, without providing the Commission with prior notice, any supermarkets, or any interest in any supermarkets, located in the county or counties that include the incorporated cities and towns in Massachusetts: Waltham, Auburndale, Watertown, Newton, West Newton, Weston, Lexington, Quincy, N. Quincy, Milton, Dorchester, Boston, S. Boston, Braintree, Hopedale, Mendon, Upton, Salem, Lynn, Peabody, Swampscott, Danvers, Nahant, Marblehead, Norwell, Hanover, Rockland, Pembroke, Hanson, Scituate, Halifax, Hingham, Cohasset, Hull, Stow, Hudson, Sudbury, Marlborough, Bolton, Saugus, Melrose, Wakefield, and Stoneham for ten years. These are the areas for which the supermarkets to be divested draw customers. The provisions regarding prior notice are consistent with the terms used in prior Orders. The proposed consent order does not, however, restrict the Proposed Respondents from constructing new supermarkets in the above listed areas; nor does it restrict the Proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

The proposed consent also prohibits Shaw's, for a period of ten years, from entering into or enforcing any agreement that restricts the ability of any person acquiring any location used as a supermarket, or interest in any location used as a supermarket on or after January 1, 1998, to operate a supermarket at that site if that site was a formerly owned or operated by Shaw's or Star Markets in any of the areas listed in the paragraph above. In addition, the Proposed Respondents are prohibited from removing fixtures or equipment from a store or property owned or leased by Shaw's in any of the cities or town listed above that is no longer operated as a supermarket, except (1) prior to a sale, sublease, assignment, or change in occupancy or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by the Proposed Respondents.

The Proposed Respondents are required to file compliance reports with the Commission, the first of which is due within thirty days of the date on which Proposed Respondents signed the proposed consent, and every thirty days thereafter until the divestitures are completed, and annually for ten years.

The proposed consent order also has a provision relating to the settlement agreement negotiated by the State of Massachusetts. If the State of Massachusetts fails to approve any divestiture that has not been completed, even though the parties are in compliance with the other provisions of the proposed consent agreement, the time period in which the divestiture must be completed will be extended 60 days during which the parties must exercise utmost good faith and best efforts to resolve the concerns of that particular state.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Victory and Foodmaster, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the propsed consent order in any way.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–16993 Filed 7–2–99;8:45 am]

BILLING CODE 6750–01–M

[1] Acceptance of the proposed consent agreement for public comment terminates the HSR waiting period and enables Shaw's to immediately acquire all of the outstanding voting securities of Star Markets.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Account Number: 4151–04]

Office of the Assistant Secretary for Planning and Evaluation; Cooperative Agreement With the Manpower Demonstration Research Corporation

AGENCY: Office of the Assistant Secretary for Planning and Evaluation (ASPE).

The Office of the Assistant Secretary for Planning and Evaluation's (ASPE) Office of Human Services Policy announces that it will award an unsolicited cooperative agreement to the Manpower Demonstration Research Corporation (MDRC) in support of the Project on Devolution and Urban Change.

The purpose of this cooperative agreement is to support research to understand the impacts of welfare reform and welfare to work programs on low-income individuals, families, and the communities in which they live, with an emphasis on urban areas.

ASPE will have substantial involvement in all stages of the project, including: identifying potential questions that could be answered using the data; prioritizing among them based on the available resources; determining appropriate methods of data analysis; reviewing draft papers and reports; and assisting in their dissemination.

The goal of ASPE in entering into this cooperative agreement is to improve our understanding of the impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in urban areas.

Authorizing Legislation

This cooperative agreement is authorized under Section 1110 of the Social Security Act (42 U.S.C. 1310). Section 5001 of the Balanced Budget Act of 1997, and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1999 (Pub. L. 105–277).

Background

Assistance will be provided to MDRC. No other applications are solicited. ASPE is committed to supporting high-quality research in the area of welfare policy, and has a particular interest in understanding the effects of welfare reform in urban areas. Most welfare reform studies to date have not been in large cities, and thus have not addressed the challenges posed by high levels of unemployment and by concentrated poverty. These questions are critical because caseloads have not declined as much in cities as in other parts of the country, and also because the lessons from urban areas may be applicable elsewhere in the case of an economic downturn.

ASPE believes that MDRC is uniquely qualified to work with ASPE to meet this goal for the following reasons:

1. The Project on Devolution and Urban Change presents a unique opportunity to learn about the implementation and impacts of welfare reform in four large urban areas—Cleveland, Philadelphia, I os Angeles, and Miami. MDRC has an ongoing working relationship with key officials in each city and has already obtained commitments from the state and local governments in these areas to provide extensive longitudinal administrative data for research purposes.

2. This project brings together data from an unusually wide array of sources: longitudinal administrative data for all families receiving AFDC/TANF or Food Stamps dating back to 1992; survey data; an implementation study; neighborhood indicators; an institutional study focusing on local service providers; and an ethnographic study of a limited number of families. This will allow the researchers to capture effects that might be missed in one approach, and to improve our understanding of the strengths and weaknesses of each approach. It is unlikely that this breadth of sources could be replicated. MDRC has assembled a multi-disciplinary team of distinguished researchers to collect and analyze this data.

3. This project leverages a substantial commitment of private sector funding. Of the total $20 million cost of the Project on Devolution and Urban Change, approximately $14 million has already been committed by private funders, with an additional $3 million informally promised. This funding allows for a breadth of research far beyond what could be purchased with the federal support alone.

4. MDRC is one of the pre-eminent institutions in the area of welfare and welfare-to-work research, having conducted projects in over 400 communities in 40 states. MDRC has developed a reputation for objective, high-quality work. This project will involve several of MDRC's senior researchers, as well as consultants who are recognized as leaders in their areas of concentration.

Approximately $800,000 is available in FY 1999 for a one-year project period of this cooperative agreement. A portion of this support is provided by the Administration for Children and Families, HHS, and the Economic

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Research Service, U.S. Department of Agriculture.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Ms. Elizabeth Lower-Basch, Office of Human Services Policy, ASPE, 200 Independence Ave. SW, Room 404E, Washington, DC, 20201 or telephone: 202 690–6808.

Dated: June 28, 1999.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–17009 Filed 7–2–99; 8:45 am]

BILLING CODE 4110–60–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Health Care Policy and Research (AHCPR) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and to provide recommendations to the Administrator, AHCPR, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Computer Decision Support Tools for Evidence Based Medicine", issued on April 28, 1999. The contract will constitute part of AHCPR's participation in the Small Business Innovation Research program.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: Agency for Health Care Policy and Research SBIR Topic 3000—"Computer Decision Support Tools for Evidence Based Medicine".

Date: July 27, 1999 (Closed to the public).

Place: Agency for Health Care Policy and Research, Conference Center, Conference Room B, 6010 Executive Boulevard, 4th Floor, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Kate Rickard, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852, 301–594–2431.

Dated: June 28, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–17056 Filed 7–2–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Health Care Policy and Research (AHCPR) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and to provide recommendations to the Administrator, AHCPR, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Development and Implementation of the National Measurements Clearinghouse (NMC). The RFP was published in the Commerce Business Daily on April 15, 1999.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candidad views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Health Care Policy and Research—"Development and Implementation of the National Measures Clearinghouse (NMC)".

Date: July 27, 1999 (Closed to the public).

Place: Agency for Health Care Policy and Research, Conference Room 2, 2101 East Jefferson Street, 6th Floor, Rockville, Maryland 20852

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Marge Keyes, Center for Quality Measurement and Improvement, Agency for Health Care Policy and Research, 2101 Executive Boulevard, Suite 502, Rockville, Maryland, 20852, 301–594–1824.

Dated: June 28, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–17057 Filed 7–2–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites; Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.–5 p.m., July 22, 1999. 8:30 a.m.–2:30 p.m., July 23, 1999.

Place: DoubleTree Hotel Spokane City Center, North 322 Spokane Falls Court, Spokane, Washington 99201, telephone 509/455–6285.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at Doe sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on the health effects subcommittee evaluations, Federal Task Order and request for proposal process, the National Academy of Science June 19th meeting, and agency updates. Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Leslie C. Campbell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation ATSDR, 1600 Clifton Road, NE M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR (28737), fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 1999.

Carolyn J. Russell,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. 99–16986 Filed 7–2–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2080]

Engelhard Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Engelhard Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a solution of 1-naphthalenesulfonic acid, 2-[(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[4-chloro-5-ethyl-2-sulfophenyl)azo]-6-hydroxy-, strontium salt (1:1) (C.I. Pigment Red 277) as a colorant for polymers intended for use in contact with food.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4667) has been filed by Engelhard Corp., 3400 Bank St., Louisville, KY 40212. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of a solution of 1-naphthalenesulfonic acid, 2-[(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[4-chloro-5-ethyl-2-sulfophenyl)azo]-6-hydroxy-, strontium salt (1:1) (C.I. Pigment Red 277) as a colorant for polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 11, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–16944 Filed 7–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

The Food and Drug Administration (FDA) is being restructured to create a more streamlined and efficient Office of the Commissioner that will provide leadership without compromising programmatic effectiveness. More specifically, the goals of this reorganization are to: Create an Office of the Commissioner (OC) for which the principal focus is to provide leadership in building effective, two-way communication between the agency and all of our stakeholders, including patients, consumers, Congress, the Administration, the regulated industry, health care professionals, and other scientific advisors and between agency management and employees; enable FDA to implement agency priorities and to develop agency policy with primary input from the Center Directors and the Associate Commissioner for Regulatory Affairs, and with legal advice from the Chief Counsel; streamline the OC to make the overall agency more effective and efficient with roles and responsibilities clearly delineated; and retain in OC only those staff functions which cannot be reasonably and more effectively performed in the Centers or the Office of Regulatory Affairs (ORA).

The new agency structure will consist of one Deputy Commissioner rather than the current four deputy structure. The Deputy Commissioner position will be established within the immediate OC. The Office of Operations will be abolished and the Center Directors and Associate Commissioner for Regulatory Affairs will report directly to the Commissioner. In addition, the Office of the Chief Counsel, Office of the Administrative Law Judge, and the Office of Equal Opportunity (OEO) (formerly titled the Office of Equal Employment and Civil Rights) will remain in OC. The OEO will assume the agency wide diversity program functions.

A new position will be established in the OC titled the Senior Associate Commissioner. The incumbent will head a new Office of the Senior

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Associate Commissioner (OSAC). This Office will be responsible for coordinating all activities within the OC as well as providing advisory committee oversight. This Office will include the Office of the Ombudsman, the Office of Executive Secretariat, the Office of Public Affairs (formerly in the Office of External Affairs (OEA)), the Office of Orphan Products Development (formerly in the Office of Operations (OO)), the Office of Internal Affairs, and the Office of Tobacco Programs (formerly in the Office of Policy (OP)).

The former Office of Policy will be abolished. A new position will be established in the OC titled the Senior Associate Commissioner for Policy, Planning and Legislation. The new Office of Policy, Planning, and Legislation will be comprised of a new Policy office, the Office of Legislation (formerly titled the Office of Legislative Affairs in the OEA), and the Office of Planning (formerly titled the Office of Planning and Evaluation from the Office of Management and Systems), which will include the Management Initiatives Staff.

The Office of External Affairs will be abolished. As a result of the growing importance of international policy and activities, a new Office of International and Constituent Relations will be established. The new Office of International and Constituent Relations will consist of a new Office of International Programs, the Office of Consumer Affairs, the Office of Women's Health and the Office of Special Health Issues, all formerly in the OEA.

The current incumbent's position will be retitled Deputy Commissioner for International and Constituent Relations. This position will be converted to Senior Associate Commissioner when vacated.

The Industry and Small Business Liaison Staff (formerly in the OEA) will be abolished and its staff reassigned; some of its meeting scheduling functions will be realigned to the Office of Public Affairs, OSAC. The Office of Health Affairs (formerly in the OEA) will be abolished. Some of its functions (health assessments, patent term restorations, and scheduling of controlled substances) will be realigned to the Center for Devices and Radiological Health. Responsibility for 21 CFR parts 16 and 12 hearings will be realigned to the Office of the Ombudsman, OSAC.

The Office of Management and Systems will remain relatively unchanged in function except that many of the transactional functions of management will be decentralized to the Centers. The Divisions of Personnel Operations I, II, and III will be decentralized. The Centers and ORA will be functionally responsible for processing their personnel actions. The Office of Human Resources and Management Services will continue to process OC personnel actions. As noted earlier, the Office of Planning and Evaluation will be realigned to the Office of Policy, Planning, and Legislation.

The position title Deputy Commissioner for Management and Systems will be retained until this position is vacated. At such time the position will be converted to Senior Associate Commissioner for Management and Systems.

Part D, Chapter DA, Office of the Commissioner, FDA, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 60 FR 56605, November 9, 1995, and in pertinent part at (56 FR 29484, June 27, 1991)) is amended to reflect the restructuring of FDA as follows:

Office of the Commissioner (DA): The Commissioner and Deputy Commissioner are responsible for the efficient and effective implementation of the FDA mission.

Office of the Chief Counsel (DAA): Subject to the professional supervision and control of the General Counsel, represents FDA in court proceedings and administrative hearings with respect to programs administered by FDA.

Provides legal advice and policy guidance for programs administered by FDA.

Acts as liaison to the Department of Justice and other Federal departments for programs administered by FDA.

Drafts or reviews all proposed and final regulations and **Federal Register** notices prepared by FDA.

Performs legal research and gives legal opinions on regulatory issues, actions, and petitions submitted to FDA.

Reviews proposed legislation affecting FDA that originates in the Department or on which Congress requests the views of the Department.

Provides legal advice and assistance to the Office of the Secretary on matters within the expertise of the Chief Counsel.

Office of Equal Opportunity (DAC): Advises and assists the Commissioner and other key agency officials on Equal Employment Opportunity (EEO) and Civil Rights activities which impact on policy development and execution of program goals.

Serves as the agency focal point and liaison with the Department, and other Federal agencies, State, and local governments, and other organizations regarding EEO and Civil Rights matters.

Develops and recommends policies and priorities designed to implement the intent of the Office of Personnel Management, Equal Employment Opportunity Commission, Office of Civil Rights, Department of Health and Human Services requirements under Executive Orders, regulations, EEO and Civil Rights legislation.

Provides leadership, direction, and technical guidance to the agency on EEO and Civil Rights matters.

Develops plans, programs, and procedures designed to ensure the prompt adjudication of complaints of alleged discrimination based on race, color, sex, age, religion, national origin, handicap, and sexual orientation.

Develops and oversees agency diversity initiatives and the diversity databank.

Provides alternative dispute resolution and mediation services as needed.

Develops and maintains training and technical assistance programs for agency EEO managers, counselors, special emphasis/program representatives, employees, supervisory personnel, and other key agency officials.

Examines the use and impact of administrative mechanisms on work assignments, pay systems, award systems, performance appraisal systems, promotion patterns, reorganization impacts, delegations of authority, management controls, information and documentation systems, and similar functions of management as they impact upon equal employment opportunities for all employees within the agency's representatives, and such other assistance as may be needed for EEO activities.

Develops, implements, and monitors the agency's Affirmative Action Plan and directs the agency's Affirmative Employment Program to achieve specific objectives.

Issues policies, publications and information dissemination services to agency employees including Commissioner Policy Statements, brochures, the EEO Counselors Manual, etc.

Develops labor-management partnerships on EEO matters.

Provides sign language interpreting services and manages the interpreting services contracts.

Office of the Administrative Law Judge (DAD): Schedules and conducts formal evidentiary public hearings under 21 CFR part 12, under the Federal Food, Drug, and Cosmetic Act, as amended, as well as other related laws and the Administrative Procedure Act (5 U.S.C. 511 *et seq.*).

Issues Initial Decisions containing findings of fact and conclusions of law based on the independent review and evaluation of all evidence of record in formal hearings.

Office of the Senior Associate Commissioner (DAF): Advises the Commissioner and other key agency officials on agency-level activities and issues that affect agency wide programs, projects, strategies, and initiatives.

Coordinates activities involving emergency or crises situations and resolves complex problems and issues related to agency programs that are sensitive and controversial that impact upon agency relations with other Federal agencies and foreign governments.

Oversees and directs the agency's ombudsman, public affairs, tobacco program, orphan products, executive secretariat, and advisory committee functions to ensure coherence in decisionmaking and the efficient operation of these functions internally and across agency jurisdictions.

Provides leadership and direction to assure the efficient and effective planning, performance, and evaluation of oversight activities.

Office of Executive Secretariat (DAFA): Coordinates identification of and expedites development and implementation of the agency's highest program priorities and initiatives for the Commissioner.

Develops and maintains management information necessary for monitoring the Commissioner's and agency's goals and priorities.

Advises the Commissioner and other key agency officials on all activities that affect agency wide programs, projects, and initiatives. Informs appropriate agency staff of the decisions and assignments made by the Commissioner and other key agency officials.

Ensures that materials in support of recommendations presented for the Commissioner's consideration are comprehensive, accurate, fully discussed, and encompass the issues involved.

Provides correspondence control for the Commissioner and controls and processes all agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warnings and bottleneck problems with executive correspondence.

Provides direct support to the Commissioner and other key agency officials, including briefing materials, background information for meetings, responses to outside inquiries, and maintenance and control of the Commissioner's working files.

Performs agency wide assignments involving complex problems and issues related to agency programs, strategies and activities, including preparation of special reports for the Department.

Coordinates the agency's communications with the Public Health Service (PHS), DHHS, and the White House including correspondence for the Assistant Secretary for Health and Secretarial signatures.

Office of Public Affairs (DAFB): Advises and assists the Commissioner and other key agency officials on all public information programs; acts as the focal point for disseminating news on FDA activities and as a liaison with PHS and the Department on public information programs.

Plans, develops, implements, and monitors policy and programs on agency media relations and consumer information and education programs conducted through the media, FDA's consumer affairs officers, and other communications sources.

Plans, develops, produces, and publishes agency publications and graphic arts materials.

Coordinates agency implementation of the Freedom of Information (FOI) Act and the Privacy Act.

Processes requests for information under FOI.

Executes FOI denial authority for the agency.

Press Relations Staff (DAFB–1): Advises and assists top level agency officials on print press matters involving mass media communications.

Plans, develops, and implements agency wide print media strategies for disseminating regulatory and educational material to the public through the mass media.

Serves as the agency focal point for preparing, clearing, and disseminating press releases and other print media statements representing agency policy and responding to media inquiries; maintains liaison with news media and pertinent publications.

Establishes policy for and coordinates all print media information activities, including news interviews and responses to inquiries; prepares position and policy statements for use by agency employees in responding to print media questions; tracks issues of potential interest to the media.

Coordinates the research and drafting of major public statements by the Commissioner including transmittal documents and supportive statements for use in transactions with the Department, other agencies, and the White House; provides editorial consultation and review for manuscripts, articles, and speeches written by the staff offices serving the Commissioner to ensure consistency of information and policy interpretation and maintains mailing lists for these documents.

Compiles, publishes, and distributes the weekly FDA Enforcement Report and the FDA Public Calendar; maintains the FDA Daily Clipping Service and FDA's electronic bulletin board; and coordinates the Daily Media Report.

Communications Staff (DAFB–2): Identifies consumer communication and educational requirements for the agency and creates, implements, and coordinates appropriate programs conducted through the media, agency consumer affairs officers, and other communication sources.

Plans, designs, produces, publishes, and disseminates audiovisual materials, exhibits, posters, publications, and periodicals, including *FDA Consumer*, *FDA Today*, and the *FDA Drug Bulletin*; participates in the planning and development of all publications and audiovisual aspects of communications programs directed at mass audiences.

Provides centralized agency graphic arts and editorial services for public information materials.

Acts as the public information liaison with the Department for all publications and audiovisual needs; provides prepublication clearance of publications, exhibits, and audiovisual materials in accordance with procedures established by the agency, PHS, the Department, Office of Management and Budget (OMB), and the White House.

Provides agency wide advice and consultation in the production of audiovisual materials; maintains centralized files of photographs and audiovisual materials for use by all agency components.

Freedom of Information Staff (DAFB–3): Establishes agency wide policy and provides overall direction and leadership for the Freedom of Information (FOI) program and Privacy Act program.

Serves as the agency expert and focal point for Headquarters and field personnel in the development and implementation of effective policies and procedures in accordance with the Freedom of Information Act, the Privacy Act, FDA regulations, and other relevant statutes.

Receives, reviews, controls, coordinates, and routes all FOI requests to the proper action office; designs and implements control mechanisms to

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ensure that FOI and Privacy Act inquiries are processed and responded to within established timeframes.

Reviews all recommendations for denials submitted by Headquarters and field FOI Officers. Determines the need for supplemental information and/or changes in the denial recommendation and coordinates required action with the submitting office.

Analyzes, compiles, and prepares reports on privacy and FOI activities in the agency for the annual reports to the Department and for other reporting requirements.

Maintains copies of agency manuals, indexes, and other records required to be on public display.

Operations Staff (DAFB–4): Directs the effective utilization of all management resources by coordinating the management, facilities, budget, and equipment resources for the Office of Public Affairs.

Reviews organizational, management, and administrative policies of the Office to appraise the efficiency and effectiveness of operations.

Identifies potential management problems and/or needs and plans, develops, and conducts management studies.

Broadcast Media Staff (DAFB–5): Advises and assists top level agency officials on electronic media matters involving mass media communications.

Plans, develops, and implements agency wide broadcast media strategies for disseminating regulatory and educational materials to the public through the mass media.

Serves as the agency focal point for preparing, clearing, and disseminating electronic media requests representing agency policy and responding to electronic media inquiries; maintains liaison with broadcast media contacts.

Establishes policy for and coordinates all broadcast media information activities, including on-camera interviews and response to media inquiries; prepares position and policy statements for use by agency employees in responding to broadcast media questions; tracks issues of potential interest to the media.

Plans and coordinates all broadcast media training for the agency.

Office of the Ombudsman (DAFC): Serves as the agency lead on issues involving the administrative processing of product applications for FDA regulated products.

Provides advice and guidance to the Commissioner and other key agency officials regarding premarket approval processes for all FDA regulated products including requirements pertaining to applications, petitions, amendments, and supplements; and product, processing, packaging, and emerging product technologies.

Investigates and resolves internally and externally generated complaints and disagreements regarding the administrative processing of various applications for products regulated by the agency as well as regarding the fair and even handed application of agency policy and procedures in this process.

Represents the Commissioner or other key agency officials and serves as the agency's principal authority and spokesperson to top level agency and departmental officials, regulated industry representatives, scientific and professional organizations and groups, and other professional, and consumer associations concerning critical and significant issues and activities related to FDA regulated products.

Office of Orphan Products Development (DAFD): Manages the implementation of the provisions of the Orphan Drug Act and its amendments and manages a program to encourage the development of drugs of limited commercial value for use in rare or common diseases and conditions.

Develops and communicates agency policy and makes decisions on approval of sponsor requests and incentives, under the Federal Food, Drug, and Cosmetic Act (the act), including orphan drug protocol assistance under section 525 of the act (21 U.S.C. 360aa), orphan drug designation under section 526 (21 U.S.C.360bb), orphan drug exclusivity under section 527 (21 U.S.C.360cc), and orphan drug grants and contracts to support clinical research and other areas of agency policy related to the development of products for rare disorders.

Represents the Commissioner or serves as the agency's principal authority and spokesperson to the PHS Orphan Products Board, other governmental committees, industry, professional and consumer associations, requesting agency participation in orphan product development activities.

Reviews investigational new drug and biologics applications and investigational device exemptions to locate the existence of products under investigational study that show evidence of effectiveness for rare or common diseases but lack commercial sponsorship. Assists sponsors, researchers, and investigators in communicating with agency regulatory officials and expediting solutions to problems in obtaining investigational or market approval status.

Manages an extramural program of clinical research to evaluate safety and effectiveness of orphan products by funding grants and contracts, requesting applications for funding, organizing peer review of applications, monitoring and guiding investigators, and evaluating study results.

Office of Tobacco Programs (DAFE): Serves as the FDA focal point to provide programmatic direction to agency personnel on tobacco matters related to compliance, outreach activities, and product review under the Federal Food, Drug, and Cosmetic Act as amended.

Provides advice, guidance, oversight, and coordination to a variety of substantive activities in response to the FDA's rule to regulate the sale and distribution of cigarettes and smokeless tobacco products.

Establishes and maintains partnerships with Congress, other Federal agencies (e.g., Center for Disease Control and Prevention, Substance Abuse and Mental Health Services Agency, and the National Institutes of Health, etc.), State and local authorities, consumer groups, industry, and other key stakeholders on matters related to cigarettes and smokeless tobacco products.

Designs and implements a regulatory program that specifically addresses cigarettes and smokeless tobacco products.

Provides oversight and coordination for compliance, surveillance, and education programs and develops and disseminates pertinent information related to the FDA's rule to regulate the sale and distribution of cigarettes and smokeless tobacco products.

Provides agency guidance and coordinates technical evaluation of complex, precedent setting regulatory and scientific issues for existing, new, and/or novel tobacco products.

Identifies, plans, and develops policies, strategies, guidelines, programs, research protocols, standards, and educational materials, in cooperation with appropriate agency personnel.

Develops and utilizes methods to evaluate the effectiveness of program operations.

Develops and implements guidelines to ensure advertising, marketing, and youth access restrictions.

Office of Internal Affairs (DAFF): Provides a centralized agency wide investigative resource for the Commissioner and top agency management.

Provides a centralized investigative liaison between FDA and the Office of the Inspector General (OIG).

Serves as a FDA investigative resource to conduct internal FDA investigations and to support OIG investigations.

Conducts special assignments relative to the functions of this Office as requested.

Office of International and Constituent Relations (DAG): Serves as the agency focal point for developing and maintaining international communications and programs.

Advises and assists the Commissioner on health issues that have an impact on policy, direction, and long-range program goals.

Advises and assists the Commissioner on consumer affairs issues. Serves as the agency focal point for coordinating information from the appropriate agency components about significant consumer affairs issues.

Office of International Programs (DAGA): Serves as the agency focal point for international matters.

Advises the Commissioner and other key agency officials on agency formulation and execution and cross cutting and precedent setting issues involving international matters.

Serves as the agency liaison with other U.S. Government components, international and foreign governments (including Washington, DC embassies) for policy formulation and execution impacting FDA and FDA regulated products.

Directs and monitors agency strategic planning, priority-setting, and resource allocation processes for agency international matters.

Provides support to agency program areas for international activities.

Serves as the focal point for the agency international visitor program.

Provides support and issues guidelines for the visiting scientist program.

Serves as the focal point for the agency international travel program.

Serves as the focal point for international-related training (external and internal).

Serves as the focal point for agency technical cooperation and assistance activities.

Serves as the agency focal point for information exchange on international matters to ensure consistency internally and externally.

Provides a focal point for contacts with foreign governments and international organizations (including Washington, DC embassies).

Serves as the agency focal point for planning and coordinating meetings involving international matters.

Office of Consumer Affairs (DAGB): Serves as the agency focal point for coordinating information from the Centers, the Office of Regulatory Affairs, and other agency components about significant or public interest issues; develops mechanisms to gather consumer views for use in developing agency policy on these issues; monitors the development of agency policy on these issues; apprises the Commissioner and other key agency officials on the impact of consumer involvement in resolving these issues.

Serves as the agency focal point for contacting and involving national consumer groups on agency public participation programs; analyzes consumer feedback at the national level to assess potential major health issues, to determine national trends in consumer concerns, and to compile a consumer perspective of agency regulatory policies and activities; informs other agency components of consumer trends.

Serves as the agency focal point for coordinating information from Centers, the Office of Regulatory Affairs, and other agency components about potential public participation opportunities and informs the consumer of these activities.

Designs and administers special community outreach projects to broaden agency interaction with special target audiences, including the economically and educationally disadvantaged and the minorities.

Administers consumer awareness and advocacy skills training programs designed to educate lay consumers and current/potential consumer representatives for advisory committees to enhance their participation in agency regulatory and decisionmaking processes.

Administers the agency selection process for consumer representatives on advisory committees and panels.

Office of Women's Health (DAGC): Serves as the principal advisor to the Commissioner and other key agency officials on scientific, ethical, and policy issues relating to women's health.

Provides leadership and policy direction for the agency regarding issues of women's health and coordinates efforts to establish and advance a women's health agenda for the agency.

Monitors the inclusion of women in clinical trials and the implementation of guidelines concerning the representation of women in clinical trials and the completion of gender analysis.

Identifies and monitors the progress of crosscutting and multidisciplinary women's health initiatives including changing needs, areas that require study, and new challenges to the health of women as they relate to FDA's mission.

Serves as the agency's liaison with other agencies, industry, and professional associations with regard to the health of women.

Office of Special Health Issues (DAGD): Serves as an information resource to FDA and provides advice to the Commissioner and other key agency officials on matters related to the acquired immune deficiency syndrome (AIDS), cancer, Alzheimer's Disease, and other special health issues.

Coordinates interactions between FDA and consumer and professional groups dealing with AIDS, cancer, Alzheimer's Disease, and other special health issues.

Serves as a liaison point to coordinate contacts between FDA and other Federal agencies to ensure effective coordination and communication on AIDS, cancer, Alzheimer's Disease, and other special health issues.

Provides internal coordination on FDA activities related to AIDS, cancer, Alzheimer's Disease, and other special health issues.

Assists in the planning, administration, development, and evaluation of FDA policies related to AIDS, cancer, Alzheimer's Disease, and other special health issues.

Office of Policy, Planning, and Legislation (DAH): Advises the Commissioner and other key agency officials on matters relating to agency policy, regulations development, legislative issues, and planning and evaluation activities.

Participates with the Commissioner in the formulation of the basic policies and operational philosophy, which guide the Agency in effectively implementing its responsibilities.

Oversees and directs the agency's legislative activities, including legislative needs, pending legislation, and oversight activities.

Oversees and directs the agency's rulemaking activities and regulations development system.

Serves as the agency focal point for developing and maintaining communications, policies, and programs with regard to regulations development.

Oversees and directs FDA's planning and evaluation activities, including the development of programs and planning strategies through analysis and evaluation of issues affecting policies and program performance.

Office of Policy (DAHA): Advises and assists the Commissioner, the Senior Associate Commissioner for Policy, Planning and Legislation and other key agency officials on matters relating to agency policy and regulations development.

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Serves as the agency focal point for developing broad agency policy.

Oversees, directs, and coordinates the agency's rulemaking activities and regulations development system.

Serves as the agency focal point for developing and maintaining communications, policies, and programs with regard to regulations development.

Initiates new and more efficient systems and procedures to accomplish agency goals in the rulemaking process.

Regulations Policy and Management Staff (DAHA–1): Serves as the agency focal point for developing and maintaining communications, policies, and programs with regard to regulations development. Directs, manages, and coordinates the agency's rulemaking activities and regulations development system. Initiates new and more efficient systems or procedures to accomplish agency goals in the rulemaking process.

Serves as the agency's focal point with the Department of Health and Human Services, Office of Managament and Budget, and other Federal agencies for policies and programs concerning regulations development.

Reviews proposed regulations, final regulations, and other agency documents to be published in the **Federal Register**. Ensures regulations are necessary; consistent with established agency policy; clearly written; enforceable; coordinated with other agency components, the Office of the General Counsel, and Federal, State, and local government agencies; appropriately responsive to public participation requirements and applicable executive orders; and responsive to any applicable requirements for assessment of economic and environmental effects.

Ensures that all regulations required by statute are issued.

Coordinates, with other agency components, the evaluation of existing regulations to determine whether they are efficiently and/or effectively accomplishing their intended purpose. Identifies regulations that require revision to correspond with current standards and those that should be revoked due to obsolescence. Makes recommendations for disposition of these regulations.

Arbitrates regulatory policy disagreements between agency components during the preparation of **Federal Register** documents.

Regulations Editorial Section (DAHA–11): FDA's official liaison with the Office of the Federal Register. Edits, processes, and prepares finished manuscript material for the issuance of agency proposed and final regulations and other documents published in the **Federal Register**.

Provides all **Federal Register** document development support functions (including cross-referencing, record retention, incorporation by reference, document tracking, and agency master print books of current CFR materials). Controls numbering and organization of agency codified material to insure proper structure of regulations being issued.

Policy Development and Coordination Staff (DAHA–2): Advises and assists the Senior Associate Commissioner for Policy, Planning, and Legislation concerning information that may affect current or proposed FDA policies.

Advises the Senior Associate Commissioner for Policy, Planning, and Legislation and other key agency officials on the formulation of broad agency regulatory policy.

Establishes procedures for agency policy formulation and monitors policy formulation activities throughout the agency.

Negotiates the resolution of policy issues involving more than one component of the agency.

Develops and coordinates the review and analysis of policy.

Initiates and participates in interagency discussions on agency regulations, plans, and policies to improve coordination of Federal regulations. When appropriate, assumes the lead in working with other Federal, State, or local agencies on a specific regulation or in developing an effective alternative regulatory approach.

Serves on agency task forces that are critical elements in the initiation, study, and resolution of priority policy issues.

Serves as the agency liaison for intergovernmental policy development.

Office of Planning (DAHB): Advises and assists the Commissioner and other key agency officials concerning the performance of the FDA planning and evaluation activities.

Develops program and planning strategy through analysis and evaluation of issues affecting policies and program performance.

Develops, installs, and monitors the agency wide planning system including the 5-year plan, strategic plan, and functional plans.

Conducts operations research, economic, and special studies as a basis for forecasting trends, needs, and major problems requiring solutions, and provides assistance and consultation in these areas to operating units.

Evaluates impact of external factors on FDA programs, including industry economics, consumer expectations, and prospective legislation. As necessary, recommends new programs or changes in existing programs and program priorities.

Develops FDA evaluation programs and systems to evaluate overall FDA program accomplishments against objectives and priorities, recommending changes as necessary.

Evaluates impact of FDA programs on consumer protection.

Manages the operation of the agency wide Evaluation Review Board.

Coordinates the evaluation reviews of FDA by external groups.

Planning Staff (DAHB–1): Directs the agency long-range planning processes, including strategic and program planning, and coordinates with the Department of Health and Human Services (DHHS) long-range planning process.

Prepares the FDA Forward Plan and Annual Report.

Assists and consults with agency components in their planning.

Analyzes base line data and determines importance of external factors, including consumer safety and regulatory expectations, which affect the agency.

Consults with and supports the Office of Management and Systems in preparation of the agency budget; consults with and supports the Office of Legislation in the preparation of legislative proposals.

Conducts special planning-related studies and critiques as requested.

Coordinates the agency functional (regulatory, research, etc.) planning processes and supports agency staff units in planning, design, preparation, coordination, and execution.

Represents the agency in departmental planning activities.

Conducts analysis of resource requests submitted by agency components in order to develop resource recommendations for the Commissioner, to support the planning process, and to fulfill DHHS requirements.

Designs and operates management communications systems.

Coordinates and presents an annual regulatory development plan.

Conducts the agency manpower management system.

Evaluation Staff (DAHB–2): Performs agency program and policy evaluations and analytical studies. Recommends alternative courses of action to increase effectiveness of agency allocation of resources and to improve program and project performance.

Performs analyses of significantly broad agency issues identified in the planning process. Recommends and/or

implements steps to resolve these issues.

Ensures that appropriate program evaluation activities are taken in agency components. Monitors and coordinates these efforts to assure uniqueness and a contribution to agency program goals.

Develops the annual evaluation plan for the agency and coordinates with DHHS.

Conducts special evaluation, analytical, and economic-related studies in support of agency policy development and in resolution of broad agency problems.

Evaluates impact of external factors on agency programs, including consumer expectations and prospective legislation.

Evaluates the impact of agency operations and policies on regulated industries and other agency constituents.

Evaluates Program Management System (PMS) projects to provide a basis for agency decisionmaking. Recommends PMS project selections for evaluation, conducts the evaluations, and provides written and/or oral reports to the Commissioner and/or program managers.

Approves survey methodology, design, and questionnaires within the agency prior to Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act; reviews Memoranda of Need, which require the collection of health research data and advises agency components on the planning and design of health research studies.

Advises international health organizations (e.g., World Health Organization) on the use of program evaluation to strengthen program operations in member countries.

Economics Staff (DAHB–3): Provides economic analyses as input to and support for decisions regarding agency policy issues.

Serves as the agency focal point for economic analysis assistance and consultation; provides economic analysis assistance to agency components for regulatory and other program functions.

Advises and assists the Commissioner and other key agency officials on a day-to-day basis concerning economic factors relating to current and proposed agency activities.

Provides a resource of economic research material for use by agency officials in preparing testimony before congressional committees and in developing replies to inquiries directed to the agency.

Conducts economic studies of FDA-related industries as a basis for forecasting trends, needs, and major problems affecting the agency.

Provides agency representation to Congress, OMB, DHHS, and others, as appropriate, on economic issues relating to agency regulations and other current and proposed actions.

Management Initiatives Staff (DAHB–4): Provides process expertise to agency components in designing consensus sessions with internal and external stakeholders.

Assists and consults with agency components on the design and execution of key program and process reinventions.

Assists and consults with agency scientific review components to enhance transparency, consistency, accountability, and continuous improvement of review processes.

Facilitates cross organizational sharing of key program and process improvements.

Serves as agency focal point on project management.

Maintains an agency team of interactive management practitioners.

Maintains and manages a facility for interactive management sessions for group problem-solving, action planning, consensus building, and redesign.

Office of Legislation (DAHC): Advises and assists the Commissioner and other key agency officials concerning legislative needs, pending legislation, and oversight activities that affect FDA.

Serves as the focal point for overall legislative liaison activities within FDA and between FDA, the Department, PHS, and other agencies; and analyzes the legislative needs of FDA and drafts or develops legislative proposals, position papers, and departmental reports on proposed legislation for approval by the Commissioner.

Advises and assists members of Congress and congressional committees and staffs in consultation with the Office of the Secretary, on agency actions, policies, and issues related to legislation which may affect FDA.

Congressional Affairs Staff I (DAHC–1): Serves as the agency focal point with Congress, the Department, PHS, and other agencies on all congressional and legislative issues and activities as they pertain to the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, the National Center for Toxicological Research, and cross cutting agency organizational components and issues.

Coordinates and prepares agency responses to congressional and legislative inquiries and other sensitive correspondence on various issues that affect the agency including proposed legislation, oversight, investigative, and constituent matters.

Initiates, coordinates, and provides indepth analyses of agency legislative needs and proposed and pending legislation by preparing supporting documents, legislative proposals, and position papers for the Commissioner, other agency officials, Congress, and OMB.

Develops and coordinates testimony for the agency and the Department for presentation to congressional committees; monitors hearings; and edits transcripts of agency testimony.

Provides information on the agency's legislative programs and proposals to consumers and regulated industry.

In collaboration with other FDA and Department offices, initiates and conducts appraisals of regulatory and scientific policies to resolve problems pertaining to FDA programs and policies under existing statutes.

Congressional Affairs Staff II (DAHC–2): Serves as the agency focal point with Congress, the Department, PHS, and other agencies on all congressional and legislative issues and activities as they pertain to the Center for Biologics Evaluation and Research, the Center for Drug Evaluation and Research, and the Center for Devices and Radiological Health.

Coordinates and prepares agency responses to congressional and legislative inquiries and other sensitive correspondence on various issues that affect the agency including proposed legislation, oversight, investigative, and constituent matters.

Initiates, coordinates, and provides indepth analyses of agency legislative needs and proposed and pending legislation by preparing supporting documents, legislative proposals, and position papers for the Commissioner, other agency officials, Congress, and OMB.

Develops and coordinates testimony for the agency and the Department for presentation to congressional committees; monitors hearings; and edits transcripts of agency testimony.

Provides information on the agency's legislative programs and proposals to consumers and regulated industry.

In collaboration with other FDA and Department offices, initiates and conducts appraisals of regulatory and scientific policies to resolve problems pertaining to FDA programs and policies under existing statutes.

Congressional Affairs Support Staff (DAHC–3): Receives, assigns, and tracks all congressional correspondence, reviews written responses for grammar, accuracy, completeness, and general

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quality and maintains congressional correspondence files.

Prepares briefing books for congressional hearings, assists in the preparation and finalization of testimony, researches information in response to congressional, department and interagency requests (verbal or written), responds to incoming calls from Congress (subject to knowledge of program area), and provides office automation support.

Office of Management and Systems (DAJ): Advises and assists the Commissioner and other key agency officials on various management and systems activities.

Ensures that the conduct of agency administrative and financial management activities, including budget, finance, personnel, organization, methods, grants and contracts, procurement and property, records, and similar support activities, effectively support program operations.

Coordinates the integration and development of management information systems.

Advises the Commissioner on management information systems policies.

Executive Management Staff (DAJ–1): Advises the Commissioner and other key agency officials in regard to administrative management matters for their components.

Provides a focal point for administrative activities for the Office of the Commissioner.

Develops, coordinates, and facilitates various administrative processes such as personnel, procurement, training, travel, and other pertinent areas as necessary.

Establishes and maintains liaison with administrative officers throughout the serviced components to keep abreast with current issues.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations or redelegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: June 28, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–17019 Filed 6–30–99; 12:55 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Compliance Program Guidance for the Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued Compliance Program Guidance for the Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry that has been developed by the Office of Inspector General in cooperation with, and with input from, the Health Care Financing Administration (HCFA), the Department of Justice (DOJ) and representatives of various trade associations and health care practice groups. The OIG has previously developed and published compliance program guidance focusing on hospitals, clinical laboratories, home health agencies, and third-party medical billing companies. We believe that the development and issuance of this compliance guidance will serve as a positive step towards promoting a higher level of ethical and lawful conduct throughout the entire health care industry.

FOR FURTHER INFORMATION CONTACT: Christine Pullifrone, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidances has been an important undertaking by the OIG in its effort to engage the health care community in combating fraud and abuse. In formulating this compliance guidance, the OIG has worked closely with HCFA, and has received input from interested parties and industry trade associations. The 4 previously-issued compliance program guidances focused on the hospital industry, home health agencies, clinical laboratories and third-party medical billing companies. The development of these types of compliance program guidances are based on our belief that a health care provider can efficiently use internal controls to monitor adherence to applicable statutes, regulations and program requirements.

Guidance for the DMEPOS Industry

On August 7, 1998, the OIG published a solicitation notice (63 FR 42409) seeking information and recommendations for developing guidance for the durable medical equipment, prosthetics, orthotics and supply (DMEPOS) industry. In response to that solicitation notice, the OIG received numerous comments from various parts of the industry and from their representatives. We carefully considered those comments, as well as consulted with DOJ, HCFA and the durable medical equipment regional carriers in developing a draft compliance program guidance for the DMEPOS industry. In an effort to ensure that all parties had a reasonable opportunity to provide input into a final product, the draft guidance for the DMEPOS industry was published in the **Federal Register** on January 28, 1999 (64 FR 4436) for further comment and recommendations.

Elements for an Effective Compliance Program

Through experience, the OIG has identified 7 fundamental elements applicable to an effective compliance program. They are:

- Implementing written policies, procedures and standards of conduct;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Enforcing standards through well-publicized disciplinary guidelines;
- Conducting internal monitoring and auditing; and
- Responding promptly to detected offenses and developing corrective action.

Using these 7 elements, the OIG has identified specific areas of DMEPOS industry operations that may prove to be vulnerable to fraud and abuse. Like previously-issued OIG compliance guidance, adoption of the Compliance Program Guidance for the Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry set forth below will be strictly voluntary.

A reprint of the newly-issued compliance program guidance follows:

Office of Inspector General's Compliance Program Guidance for the Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry (June 1999)

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues in its efforts to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist suppliers [1] of durable medical equipment,[2] prosthetics,[3] orthotics,[4] and supplies[5] (DMEPOS) and their agents and subcontractors (referred to collectively in this document as DMEPOS suppliers) develop effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State and private health plans.[6] The adoption and implementation of voluntary compliance programs significantly advance the prevention of fraud, abuse, and waste in these health care plans while at the same time further the fundamental mission of all DMEPOS suppliers, which is to provide quality items, service, and care to patients.

Within this document, the OIG first provides its general views on the value and fundamental principles of DMEPOS suppliers' compliance programs, and then provides the specific elements that each DMEPOS supplier should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines to be considered by a DMEPOS supplier interested in implementing a compliance program.

The OIG recognizes the size-differential that exists between operations of the different DMEPOS suppliers and organizations that compose the DMEPOS industry. Appropriately, this guidance is pertinent for all DMEPOS suppliers, regardless of size (in terms of employees and gross revenue); number of locations; type of equipment provided; or corporate structure. The applicability of the recommendations and guidelines provided in this document depends on the circumstances of each individual DMEPOS supplier. However, regardless of a DMEPOS supplier's size or structure, the OIG believes that every DMEPOS supplier can and should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures recommended within this guidance.

Fundamentally, compliance efforts are designed to establish a culture within a DMEPOS supplier that promotes prevention, detection, and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the DMEPOS supplier's ethical and business policies. In practice, the compliance program should effectively articulate and demonstrate the DMEPOS supplier's commitment to ethical conduct. Benchmarks that demonstrate implementation and achievements are essential to any effective compliance program. Eventually, a compliance program should become part of the fabric of routine DMEPOS supplier operations.

Specifically, compliance programs guide a DMEPOS supplier's owner(s), governing body (e.g., board of directors or trustees), chief executive officer (CEO), president, vice president(s), managers, sales representatives, billing personnel, and other employees in the efficient management and operation of a DMEPOS supplier. They are especially critical as an internal quality assurance control in the reimbursement and payment areas, where claims and billing operations are often the source of fraud and abuse, and therefore, historically have been the focus of Government regulation, scrutiny, prosecution and sanctions.

It is incumbent upon a DMEPOS supplier's owner(s), corporate officers, and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct. Employees, managers, and the Government will focus on the words and actions of a DMEPOS supplier's leadership as a measure of the organization's commitment to compliance. Indeed, many DMEPOS suppliers have adopted mission statements articulating their commitment to high ethical standards. A formal compliance program, as an additional element in this process, offers a DMEPOS supplier a further concrete method that may improve quality of service and reduce waste. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable Federal and State statutes, regulations, and Federal, State and private health care program requirements.

Implementing an effective compliance program requires a substantial commitment of time, energy, and resources by senior management and the DMEPOS supplier's governing body.[7] Superficial programs that simply have the appearance of compliance without being wholeheartedly adopted and implemented by the DMEPOS supplier or programs that are hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective and could expose the DMEPOS supplier to greater liability than no program at all. Although it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the long term benefits of implementing the program significantly outweigh the costs. Undertaking a voluntary compliance program is a beneficial investment that advances both the DMEPOS supplier's organization and the stability and solvency of the Medicare program.

A. Benefits of a Compliance Program

The OIG believes an effective compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, improving operational quality, improving the quality of health care services and reducing the cost of health care. Attaining these goals provides positive results to the DMEPOS supplier, the Government and individual citizens alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to Government and private payors, a DMEPOS supplier may gain numerous additional benefits by voluntarily implementing an effective compliance program. These benefits may include:

- The formulation of effective internal controls to assure compliance

[1] The term "supplier" is defined in this document as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered DMEPOS items and meets the Medicare supplier standards. *See* 42 CFR 424.57(a).

[2] The term "durable medical equipment" is applied in this document as defined in 42 U.S.C. 1395x(n).

[3] The term "prosthetics" and "prosthetic devices" are applied in this document as defined in 42 U.S.C. 1395x(s)(9) and (s)(8), respectively.

[4] The term "orthotics" is applied in this document as defined in 42 U.S.C. 1395x(s)(9).

[5] The term "supplies" includes home dialysis supplies and equipment as described in 42 U.S.C. 1395x(s)(2)(f); surgical dressings and other devices as described in 42 U.S.C. 1395x(s)(5); immunosuppressive drugs as described in 42 U.S.C. 1395x(s)(2)(j); and any other items or services designated by the Health Care Financing Administration (HCFA).

[6] The OIG recognizes that not every supplier provides durable medical equipment, prosthetics, orthotics and supplies. However, a compliance program incorporating the elements in this guidance can be used by all suppliers regardless of the items/services they provide.

[7] Recent case law suggests that the failure of a corporate Director to attempt in good faith to institute a compliance program in certain situations may be a breach of a Director's fiduciary obligation. *See, e.g., In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Ct. Chanc. Del. 1996).

with Federal and State statutes, rules, and regulations, and Federal, State and private payor health care program requirements, and internal guidelines;

- A concrete demonstration to employees and the community at large of the DMEPOS supplier's strong commitment to honest and responsible corporate conduct;
- The ability to obtain an accurate assessment of employee and contractor behavior relating to fraud and abuse;
- An increased likelihood of identification and prevention of criminal and unethical conduct;
- The ability to more quickly and accurately react to employees' operational compliance concerns and the capability to effectively target resources to address those concerns;
- Improvement of the quality, efficiency, and consistency of providing services;
- Increased efficiency on the part of employees;
- A centralized source for distributing information on health care statutes, regulations, policies, and other program directives regarding fraud and abuse and related issues;
- Improved internal communication;
- A methodology that encourages employees to report potential problems;
- Procedures that allow the prompt, thorough investigation of alleged misconduct by corporate officers, managers, sales representatives, employees, independent contractors, consultants, clinicians and other health care professionals;
- Initiation of immediate, appropriate, and decisive corrective action;
- Early detection and reporting, minimizing the loss to the Government from false claims, and thereby reducing the DMEPOS supplier's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion; [8] and
- Enhancement of the structure of the DMEPOS supplier's operations and the consistency between: any related entities of the DMEPOS supplier; different departments within the DMEPOS supplier; the DMEPOS supplier's different locations; and the DMEPOS supplier's separate business units (e.g., franchises, subsidiaries).

Overall, the OIG believes that an effective compliance program is a sound investment on the part of a DMEPOS supplier.

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud, abuse, and waste from the DMEPOS supplier's system. However, a sincere effort by the DMEPOS supplier to comply with applicable Federal and State statutes, rules, and regulations and Federal, State and private payor health care program requirements, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Given the diversity within the industry, there is no single "best" DMEPOS supplier compliance program.[9] The OIG understands the variances and complexities within the DMEPOS supplier industry and is sensitive to the differences among large national and regional DMEPOS supplier organizations, and small independent DMEPOS suppliers. However, elements of this guidance can be used by all DMEPOS suppliers, regardless of size (in terms of employees and gross revenue); number of locations; type of equipment provided; or corporate structure, to establish an effective compliance program. Similarly, a DMEPOS supplier or corporation that owns a DMEPOS supplier or provides DMEPOS supplies may incorporate these elements into its system-wide compliance or managerial structure. We recognize that some DMEPOS suppliers may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG's suggestions on how a DMEPOS supplier, regardless of size, can best establish internal controls and monitor its conduct to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages DMEPOS suppliers to develop and implement compliance elements that uniquely address the individual DMEPOS supplier's risk areas.

The OIG believes that input and support by individuals and organizations that will utilize the tools set forth in this document is critical to the development and success of this compliance program guidance. In a continuing effort to collaborate closely with the private sector, the OIG placed a notice in the **Federal Register** soliciting recommendations and suggestions on what should be included in this Compliance Program Guidance.[10] Further, the OIG published the draft Compliance Program Guidance for the DME, Prosthetics, Orthotics, and Supply Industry in the **Federal Register** for public comment.[11] In addition, we considered previous OIG publications, such as Special Fraud Alerts, Advisory Opinions,[12] the findings and recommendations in reports issued by OIG's Office of Audit Services and Office of Evaluation and Inspections, as well as the experience of past and recent fraud investigations related to DMEPOS suppliers conducted by OIG's Office of Investigations and the Department of Justice.

As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the statutes, rules, regulations, policies, and procedures of Federal, State, and private health plans occur. The OIG understands DMEPOS suppliers will need adequate time to react to these modifications and expansions and to make any necessary changes to their voluntary compliance programs. New compliance practices may eventually be incorporated into this guidance if the OIG discovers significant enhancements to better ensure an effective compliance program.

The OIG recognizes that the development and implementation of compliance programs in DMEPOS suppliers often raise sensitive and complex legal and managerial issues.[13] However, the OIG wishes to offer what it believes is critical guidance for providers who are sincerely attempting to comply with the relevant health care statutes and regulations.

At the end of each section, where applicable, the OIG has included ideas to help aid the small DMEPOS supplier in implementing the principles espoused in this guidance. There is no all inclusive definition of a small DMEPOS supplier. However, as previously mentioned, each DMEPOS supplier should tailor its compliance program according to its resources.

II. Compliance Program Elements

The elements proposed by these guidelines are similar to those of the other OIG Compliance Program Guidances [14] and the OIG's corporate integrity agreements.[15] The OIG believes that every DMEPOS supplier can benefit from the principles espoused in this guidance, which can be tailored to fit the needs and financial realities of a particular DMEPOS supplier.

The OIG believes that every effective compliance program must begin with a formal commitment [16] by the DMEPOS supplier's governing body to include *all* of the applicable elements listed below, which are based on the seven steps of the Federal Sentencing Guidelines.[17] The OIG recognizes full implementation of all elements may not be immediately feasible for all DMEPOS suppliers. However, as a first step, a good faith and meaningful commitment on the part of the DMEPOS supplier, especially the owner(s), governing body, president, vice president(s), CEO, and managing employees, will substantially contribute to the program's successful implementation. As the compliance program is implemented, that commitment should cascade down through the management to every employee of the DMEPOS supplier.

At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures that promote the DMEPOS supplier's commitment to compliance (e.g., by including adherence to the compliance program as an element in evaluating managers and employees) and address specific areas of potential fraud, such as the claims development and submission process, completing certificates of medical necessity (CMNs), and financial relationships with physicians and/or other persons authorized [18] to order DMEPOS;

(2) The designation of a compliance officer and other appropriate bodies, (e.g., a corporate compliance committee), charged with the responsibility for operating and monitoring the compliance program, and who report directly to the CEO and the governing body; [19]

(3) The development and implementation of regular, effective education and training for all affected employees; [20]

(4) The development of effective lines of communication between the compliance officer and all employees, including a process, such as a hotline or other reporting system, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and to protect callers from retaliation;

(5) The use of audits and/or other risk evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problem areas; [21]

(6) The development of appropriate disciplinary mechanisms to enforce standards and the development of policies addressing (i) employees who have violated internal compliance policies, applicable statutes, regulations, or Federal, State or private payor health care program requirements and (ii) the employment of sanctioned and other specified individuals; [22] and

(7) The development of policies to respond to detected offenses and to initiate corrective action to prevent similar offenses.

A. Written Policies and Procedures

Every compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability to the individual DMEPOS supplier. These policies, standards, and practices should be developed under the direction and supervision of the compliance officer and the compliance committee (if such a committee is practicable for the DMEPOS supplier) and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the DMEPOS supplier's agents and independent contractors who may affect billing decisions.[23]

[8] The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the DMEPOS supplier to demonstrate the operational effectiveness of a compliance program. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government within 30 days of detection, in certain circumstances will be subject to not less than double, as opposed to treble, damages. *See* 31 U.S.C. 3729(a). Thus, the ability to react quickly when violations of the law are discovered may materially help reduce a DMEPOS supplier's liability.

[9] This is particularly true in the context of DMEPOS suppliers, which include many small independent DMEPOS suppliers with limited financial resources, staff, and product lines as well as large DMEPOS supplier chains with extensive financial resources, staff, and product lines.

[10] *See* 63 FR 42409 (August 7, 1998), Notice for Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for the Durable Medical Equipment Industry.

[11] *See* 64 FR 4435 (January 28, 1999): Draft Compliance Program Guidance for the DME, Prosthetics, Orthotics, and Supply Industry.

[12] The OIG periodically issues Advisory Opinions responding to specific inquiries from members of the public and Special Fraud Alerts setting forth activities that raise legal and enforcement issues. Special Fraud Alerts and Advisory Opinions, as well as the regulations governing the issuance of Advisory Opinions, can be obtained on the Internet at http://www.dhhs.gov/progorg/oig, in the **Federal Register**, or by contacting the OIG's Public Information Desk at 202–619–1142.

[13] Nothing stated within this document should be substituted for, or used in lieu of, competent legal advice from counsel.

[14] *See* 63 FR 70138 (December 18, 1998) for the Compliance Program Guidance for Third Party Medical Billing Companies; 63 FR 42410 (August 7, 1998) for the Compliance Program Guidance for Home Health Agencies; 63 FR 45076 (August 24, 1998) for the Compliance Program Guidance for Clinical Laboratories, as revised; 63 FR 8987 (February 23, 1998) for the Compliance Program Guidance for Hospitals. These documents are also located on the Internet at http://www.dhhs.gov/progorg/oig.

[15] Corporate integrity agreements are executed as part of a civil settlement between a health care provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance program guidance.

[16] A formal commitment may include a resolution by the board of directors, owner(s) or president, where applicable. A formal commitment should include the allocation of adequate resources to ensure that each of the elements is addressed.

[17] *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(k). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

[18] In some instances, persons other than the treating physician (e.g., nurse practitioner, physician assistant, clinical nurse specialist) may be authorized to order DMEPOS for Medicare beneficiaries if permitted under State law and in accordance with HCFA policies. A DMEPOS supplier should be aware of any persons, other than the treating physician, who are authorized to order DMEPOS.

[19] The integral functions of the compliance officer and the corporate compliance committee in implementing an effective compliance program are discussed throughout this compliance program guidance. However, the OIG recognizes that the differences in the sizes and structures of DMEPOS suppliers will result in differences in the ways in which compliance programs are set up. It is important that a DMEPOS supplier structures its compliance program in such a way that the program facilitates implementation of the key functions of the corporate compliance officer and the corporate compliance committee discussed within this document. *See* section II.B and accompanying notes.

[20] Education and training programs for DMEPOS suppliers should be detailed and comprehensive. They should cover specific billing procedures, sales and marketing practices, as well as the general areas of compliance. *See* section II.C and accompanying notes.

[21] For example, spot-checking the work of coding and billing personnel periodically and conducting periodic post-payment claim review should be elements of an effective compliance program. *See* section II.E and accompanying notes.

[22] The term "Federal health care program" is applied in this document as defined in 42 U.S.C. 1320a–7b(f), and includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly in whole or in part, by the United States Government (i.e., via programs such as Medicare, Federal Employees' Compensation Act, Black Lung, or the Longshore and Harbor Worker's Compensation Act) or any State health plan (e.g., Medicaid, or a program receiving funds from block grants for social services or child health services). Also, for the purpose of this document, the term "Federal health care program requirements" refers to the statutes, regulations, rules requirements, directives, and instructions governing Medicare, Medicare, Medicaid, and all other Federal health care programs.

[23] According to the Federal Sentencing Guidelines, an organization must have established compliance standards and procedures to be followed by its employees and other agents in order

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In addition to these general policies, it may be necessary to implement individual policies for the different components of the DMEPOS supplier.

1. Standards of Conduct

The OIG recommends that the DMEPOS supplier develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the DMEPOS supplier's senior management,[24] including any related entities or affiliated providers operating under the DMEPOS supplier's control,[25] and other health care professionals (e.g., nurses, licensed pharmacists, physicians, and respiratory therapists). The standards of conduct should function in the same fashion as a constitution, i.e., as a foundational document that details the fundamental principles, values, and framework for action within the DMEPOS supplier. The standards should articulate the DMEPOS supplier's commitment to comply with all Federal and State statutes, rules, regulations and Federal, State and private payor health care program requirements, with an emphasis on preventing fraud and abuse. They should explicitly state the organization's mission, goals, and ethical principles relative to compliance and clearly define the DMEPOS supplier's commitment to compliance and its expectations for all DMEPOS supplier owners, governing body members, presidents, vice presidents, corporate officers, managers, sales representatives, employees, and, where appropriate, independent contractors and other agents. These standards should promote integrity, support objectivity, and foster trust. Standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and properly.

The standards should be distributed to, and comprehensible by, all affected employees (e.g., translated into other languages when necessary and written at appropriate reading levels). Further, to assist in ensuring that employees continuously meet the expected high standards set forth in the standards of conduct, any employee handbook delineating or expanding upon these standards should be regularly updated as applicable statutes, regulations, and Federal, State, and private payor health care program requirements are modified and/or clarified.[26]

When employees first begin working for the DMEPOS supplier, and each time new standards of conduct are issued, the OIG suggests employees be asked to sign a statement certifying that they have received, read, understood, and will abide by the standards of conduct. The employee's certification should be retained by the DMEPOS supplier in the employee's personnel file, and available for review by the compliance officer.

The OIG believes all DMEPOS suppliers, regardless of size, should operate professionally and ethically. The OIG recognizes that small DMEPOS suppliers may not have formal written standards of conduct. However, such unwritten standards of conduct (e.g., the manner in which the DMEPOS supplier conducts its business) should be relayed to each employee. Employees should attest, in writing, that they understand and will abide by these standards.

2. Written Policies for Risk Areas

As part of its commitment to compliance, the DMEPOS supplier should establish a comprehensive set of written policies and procedures that take into consideration the particular statutes, rules, regulations, and program instructions applicable to each function of the DMEPOS supplier.[27] In contrast to the standards of conduct, which are designed to be a clear and concise collection of fundamental standards, the written policies should articulate specific procedures personnel should follow.

Consequently, we recommend that the individual policies and procedures be coordinated with the appropriate training and educational programs with an emphasis on areas of special concern that have been identified by the OIG.[28] Some of the special areas of OIG concern include:[29]

- Billing for items or services not provided;[30]
- Billing for services that the DMEPOS supplier believes may be denied;[31]

to receive sentencing credit for an "effective" compliance program. The Federal Sentencing Guidelines define "agent" as "any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization." *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(d).

[24] The OIG strongly encourages high-level involvement by a DMEPOS supplier's owner(s), governing body, CEO, president, vice president(s), as well as other personnel, as appropriate, in the development of the standards of conduct. Such involvement should help communicate a strong and explicit organizational commitment to compliance goals and standards.

[25] E.g., pharmacies, billing services, and manufacturers.

[26] The OIG recognizes that not all statutes, rules, regulations, standards, policies, and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all affected employees' training. A DMEPOS supplier must decide whether additional educational programs should be targeted to specific categories of employees based on job functions and areas of responsibility.

[27] A DMEPOS supplier can conduct focus groups, composed of managers from various departments, to solicit their concerns and ideas about compliance risks that may be incorporated into the DMEPOS supplier's policies and procedures. Such employee participation in the development of the DMEPOS supplier's compliance program can enhance its credibility and foster employee acceptance of the program.

[28] A DMEPOS supplier's compliance program should require that the legal staff, compliance officer, or other appropriate personnel carefully consider any and all Special Fraud Alerts and Advisory Opinions issued by the OIG that relate to DMEPOS suppliers. *See* note 12. Moreover, the compliance program should address the ramifications of failing to cease and correct any conduct criticized in such a Special Fraud Alert or Advisory Opinion, if applicable to the DMEPOS supplier, or to take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, a DMEPOS supplier should take the steps described in section II.G regarding investigations, reporting, and correction of identified problems.

[29] The OIG Work Plan details the various projects the OIG currently intends to address in the fiscal year. It should be noted that the priorities in the Work Plan are subject to modification and revision as the year progresses and does not represent a complete or final list of areas of concern to the OIG. The Work Plan is currently available on the Internet at http://www.dhhs.gov/progorg/oig.

[30] Billing for items or services not provided involves submitting a claim representing that the DMEPOS supplier provided an item or service or part of an item or service that the patient did not receive. It may also include not fulfilling a contractual agreement, for example, when the DMEPOS supplier has agreed to service the rental equipment and does not fulfill this obligation.

[31] Billing for services that may be denied involves seeking reimbursement for a service that is not covered by Medicare or does not meet the Medicare coverage criteria as documented by the patient's current medical condition. *See* 42 U.S.C. 1395y(e)(1)(A). The OIG recognizes that DMEPOS suppliers cannot make medical necessity determinations and may not be aware if an item or service will be denied in every instance. However, civil money penalties (CMPs) and administrative sanctions may be imposed against any person who submits a claim for services "that [the] person knows or should know are not medically necessary." *See* 42 U.S.C. 1320a-7a(a). Such conduct may also result in liability under civil and criminal laws. HCFA does allow DMEPOS suppliers to submit claims when the DMEPOS supplier believes the item or service may not be covered, provided, however, that the supplier "note[s] on the claim [its] belief that the service is noncovered and that it is being submitted at the beneficiary's insistence." *See Medicare Carriers Manual*, section 3043. If the DMEPOS supplier believes the item or service may be denied for any reason (e.g., not covered, not medically necessary), the DMEPOS supplier may have the beneficiary sign a written notice accepting financial responsibility if the item or service is denied (*see Medicare Carriers Manual*, section 7300.5). The DMEPOS supplier should include modifier "GA" on the claim for such item or service. This modifier indicates the beneficiary has signed a written notice. If the beneficiary signed an advance written notice, the DMEPOS supplier may directly bill the beneficiary for the denied item or service. (See section II.A.3.i for further discussion on written notices). *See also* discussion in section II.A.3.a and accompanying notes.

- Billing patients for denied chargs without a signed written notice;[32]
- Duplicate billing;[33]
- Billing for items or services not ordered;[34]
- Using a billing agent whose compensation arrangement violates the reassignment rule;[35]
- Upcoding;[36]
- Unbundling items or supplies;[37]
- Billing for new equipment and providing used equipment;[38]
- Continuing to bill for rental items after they are no longer medically necessary;[39]
- Resubmission of denied claims with different information in an attempt to be improperly reimbursed;[40]
- Refusing to submit a claim to Medicare for which payment is made on a reasonable charge or fee schedule basis;[41]
- Inadequate management and oversight of contracted services, which results in improper billing;[42]
- Charge limitations;[43]
- Providing and/or billing for substantially excessive amounts of DMEPOS items or supplies;[44]
- Providing and/or billing for an item or service that does not meet the quality and standard of the DMEPOS item claimed;[45]
- Capped rentals;[46]
- Failure to monitor medical necessity on an on-going basis;[47]
- Delivering or billing for certain items or supplies prior to receiving a physician's order and/or appropriate CMN;[48]
- Falsifying information on the claim form, CMN, and/or accompanying documentation;[49]

[32] This includes, but is not limited to, billing the patient for items or services denied as not medically necessary by the payor, where there has been no written notice signed by the patient, the written notice has been inappropriately obtained or the written notice was drafted inappropriately. *See Medicare Carrier Manual*, section 7300.5A, regarding the requirements for written notice.

[33] Duplicate billing occurs when more than one claim for payment is submitted for the same patient, for the same service, for the same date of service (by the same or different DMEPOS supplier), or the same claim is submitted to more than one payor as primary Although duplicate billing can occur due to simple error (which does not create civil or criminal liability), fraudulent duplicate billing is often evidenced by systematic or repeated double billing, and creates liability under criminal, civil, and administrative law, particularly if any overpayment is not promptly refunded. *See* note 72.

[34] Billing for items or services not ordered involves seeking reimbursement for items or services provided, but not ordered by the treating physician or other authorized person.

[35] If a billing agent receives payment on behalf of a DMEPOS supplier, the billing agent's compensation may not be related in any way to the dollar amounts billed or collected. *See* 42 U.S.C. 1395u(b)(6); 42 CFR 424.73; *Medicare Carriers Manual*, section 3060.

[36] Upcoding involves selecting a code to maximize reimbursement when such code is not the most appropriate descriptor of the service (e.g., billing for a more expensive piece of equipment when a less expensive piece of equipment is provided).

[37] Unbundling items or supplies involves billing for individual components when a specific HCFA Common Procedure Coding System (HCPCS) code provides for the components to be billed as a unit (*e.g.*, providing a wheelchair and billing the individual parts of the wheelchair, rather than the wheeelchair as a whole).

[38] The DMEPOS supplier must indicate on the Medicare claim form, through the use of modifiers, whether the item provided is new or used. The modifier for providing new equipment is "NU." The modifies for providing used equipment is "UE." A knowing failure to correctly document the item provided would constitute falsifying information on the claim form and many constitute a violation of the False Claims Act. *See* 31 U.S.C. 3729.

[39] Once a rental item is no longer medically necessary, the DMEPOS supplier required to discontinue billing the payor for it. The OIG recognizes that DMEPOS suppliers cannot make medical necessity determinations and may not be aware that a rental item is no longer medically necessary for a particular patient. As a result, the OIG recommends that the DMEPOS supplier periodically contact the treating physician or other authorized person to ensure the rental item continues to be medically necessary. In addition, the OIG recommends that the DMEPOS supplier pick up such equipment from the patient in a timely manner. If the DMEPOS supplier bills for a rental item after it is no longer medically necessary, the DMEPOS supplier is financially responsible for that item and must remit any overpayments for that item. *See* 42 U.S.C. 1320a-7b(a)(3), which provides criminal penalties for failure to disclose an overpayment.

[40] This practice involves the DMEPOS supplier improperly changing information on a previously denied claim and continuing to resubmit the claim in an attempt to receive payment. For example, a DMEPOS supplier may submit a claim using the accurate HCPCS code for the item or service provided and the claim is subsequently denied. It is improper to change the HCPCS code to HCPCS code that the DMEPOS supplier believes is reimbursable, when such item or service was not provided.

[41] This practice involves a DMEPOS supplier not submitting a claim on behalf of the beneficiary for items or services that are Medicare benefits and are reimbursable under the Medicare program. *See* 42 U.S.C 1395w-4(g)(4).

[42] The OIG recommends that the DMEPOS supplier create internal mechanisms to ensure that the use of contractors does not lead to improper billing practices.

[43] A DMEPOS supplier should ensure that its billing personnel are informed of the different payment rules of all the Federal, State, and private health care programs it bills. The supplier should be aware that billing for items or services furnished substantially in excess of the supplier's usual charges may result in exclusion and other sanctions. *See* 42 U.S.C. 1320a-7(b)(6)(A). *See also* OIG Ad. Op. 98-8 (1998).

[44] This practice, which constitutes overulitization, involves providing and/or billing for substantially more items or supplies that are reasonable and necessary for the needs of each individual patient. The OIG recognizes that DMEPOS suppliers cannot make medical necessity determinations. The medical need for an item must be determined by the physician or other authorized person who is treating the patient. However, the DMEPOS supplier must ensure that the patient's condition meets coverage, payment and utilization criteria as established in the payor's medical policies. If the DMEPOS supplier is providing and/or billing for substantially excessive amounts of DMEPOS items or supplies, the DMEPOS supplier is financially responsible for remitting any overpayments relating to those items or supplies. The OIG recommends that if a DMEPOS supplier is providing and billing for a large number of items or supplies for the same patient, it may periodically want to contact the treating physician or other authorized person to confirm the medical necessity of the items or supplies. Such contact with the physician's office should be documented. The practice of billing for substantially excessive amounts of items or supplies may lead to exclusion from Federal health care programs and other sanctions. *See* 42 U.S.C. 1320a-7(b)(6)(B).

[45] This practice involves providing and/or billing for an item or service that does not meet the definition and/or requirement of the item or service ordered by the treating physician or other authorized person. Generally, such items are inferior in quality, and therefore do not meet the definition of what was ordered and/or billed. Sometimes this may mean that certin equipment was never cleared by the Food and Drug Administration, as required by law. This practice may lead to billing for items that are not reasonable and necessary. A DMEPOS supplier should ensure that the iterm or services it furnishes meet professionally recognized minimum standards of health care.

[46] *See* discussion in section II.A.3.k and accompanying notes.

[47] In order for a patient to continue to receive items or supplies (e.g., rental equipment, supplies for an on-going condition) and for the DMEPOS supplier to receive Medicare reimbursement, the patient must meet the medical necessity criteria for that specific item or supply on an on-going basis. The item or supply furnished by the DMEPOS supplier should be replaced or adjusted, in a timely manner, to reflect changes in the patient's condition. The OIG recognizes that a DMEPOS supplier cannot make medical necessity determinations and may not be aware when a patient's condition changes. However, if a DMEPOS supplier is billing for items or services that are no longer medically necessary, the supplier is financially responsible for remitting any overpayments relating to those items or services. The OIG recommends that if a DMEPOS supplier is providing the same items or supplies to a patient on a regular basis, it may periodically want to contact the treating physician or other authorized person to confirm that the items or supplies continue to be medically necessary. Such contact with the physician's office should be documented.

[48] This practice involves a DMEPOS supplier delivering to the patient, and/or billing the payor for, items or supplies that have not yet been ordered by the treating physician or other authorized person. Medicare requires written orders for certain items before delivery. *See*, e.g., 42 CFR 410.38.

[49] This practice invovles supplying false information to be included on the claim form, the CMN, or other accompanying documentation. The

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- Completing portions of CMNs reserved for completion only by the treating physician or other authorized person;[50]
- Altering medical records;[51]
- Manipulating the patient's diagnosis in an attempt to receive improper payment;[52]
- Failing to maintain medical necessity documentation;[53]
- Inappropriate use of place of service codes;[54]
- Cover letters that encourage physicians to order medically unnecessary items or services;[55]
- Improper use of the ZX modifier;[56]
- Routine waiver of deductibles and coinsurance;[57]
- Providing incentives to actual or potential referral sources (e.g., physicians, hospitals, patients, skilled nursing facilities, home health agencies or others) that may violate the anti-kickback statute or other similar Federal or State statute or regulation;[58]
- Compensation programs that offer incentives for items or services ordered and revenue generated;[59]
- Joint ventures between parties, one of whom can refer Medicare or Medicaid business to the other;[60]
- Billing for items or services furnished pursuant to a prohibited referral under the Stark physician self-referral law;[61]
- Improper telemarketing practices;[62]
- Improper patient solicitation activities and high-pressure marketing of noncovered or unnecessary services;[63]
- Co-location of DMEPOS items and supplies with the referral source;[64]
- Non-compliance with the Federal, State and private payor supplier standards;[65]
- Providing false information on the Medicare DMEPOS supplier enrollment form;[66]
- Not notifying the National Supplier Clearinghouse in a timely manner of changes to the information previously provided on the DMEPOS supplier enrollment form;[67]
- Misrepresenting a person's status as an agent or representative of Medicare;[68]
- Knowing misuse of a supplier number, which results in improper billing;[69]
- Failing to meet individual payor requirements;[70]

information reported on these documents should accurately reflect the patient's information, including medical information, and the items or services ordere by the treating physician or other authorized person and provided by the DMEPOS supplier. *See*, e.g., 18 U.S.C. 1035, which provides criminal penalties for falsifying information on such documentation.

[50] This practice involves not completing the CMN in compliance with Medicare regulations (i.e., sections B and D should never be completed by the supplier). Instructions for completing the CMN can be found on the back of the form. *See Medicare Carriers Manual*, section 3312, which provides instructions on how to complete the CMN and the CMPs that may be assessed for improper completion of the CMN. *See also* 42 U.S.C. 1395m(j)(2); section II.A.3.c and accompanying notes for further discussion on CMNs. Such conduct may also result in liability under civil and criminal laws.

[51] This practice involves falsifying information on a patient's medical records to justify reimbursement for an item or service.

[52] This practice involves altering the treating physician's or other authorized person's diagnosis in an attempt to receive reimbursement for a particular item or service. A DMEPOS supplier should not claim the patient has a particular medical condition in order to qualify for an item for which the patient would not otherwise qualify.

[53] This practice involves failing to ensure that the medical necessity documentation requirements for the item or service billed are properly met (*e.g.*, failing to maintain the physician orders or CMNs or failing to ensure that CMNs contain adequate and correct information). *See Medicare Carriers Manual*, section 4105.2 for evidence of medical necessity. *See also* sections II.A.3.b and II.A.3.c regarding physician orders and CMNs, respectively.

[54] This practice involves indicating on the claim form that the place of service is a location other than where the service was provided. For example, the patient resides in a skilled nursing facility (SNF) and a DMEPOS supplier submits a claim with the place of service as the patient's home. Provided that the DMEPOS items or services are ordered, provided, reasonable and necessary given the clinical condition of the patient, the items or services may be covered if the beneficiary resides at home. However, such items may not be covered if the beneficiary resides in a SNF. *See Medicare Carriers Manual*, section 2100.3 for the definition of a beneficiary's home.

[55] *See* discussion in section II.A.3.m.

[56] This practice involves the improper use of the ZX modifier, relating to maintaining medical necessity documentation. *See* discussion in section II.A.3.l.

[57] Throughout this document, the term "deductibles and coinsurance" refers to Medicare as well as to any other health insurance program requiring deductibles and coinsurance. *See* discussion in section II.A.3.j and accompanying notes.

[58] Examples of arrangements that may run afoul of the anti-kickback statute include practices in which a DMEPOS supplier pays a fee to a physician for each CMN the physician signs, provides free gifts to physicians for signing CMNs, provides inducements to beneficiaries, and/or provides items or services for free or below fair market value to providers or beneficiaries of Federal health care programs. *See* 42 U.S.C. 1320a–7a(a)(5); 42 U.S.C. 1320a–7b(b); 60 FR 40847 (August 10, 1995). *See also* discussion in section II.A.4 and accompanying notes.

[59] Compensation programs that offer incentives for items or services ordered or the revenue they generate may lead to the ordering of medically unnecessary items or supplies and/or the "dumping" of such items or supplies in a facility or in a beneficiary's home (e.g., mail order supply companies that continue to send the patient supplies when the supplies are no longer medically necessary).

[60] Equally troubling to the OIG is the proliferation of business arrangements that may violate the anti-kickback statute or other similar Federal and State statute or regulation. Such arrangements are generally established between those in a position to refer business, such as physicians, and those providing items or services, such as DMEPOS suppliers, for which a Federal health care program pays. Sometimes established as "joint ventures," these arrangements may take a variety of forms. The OIG currently has a number of investigations and audits underway that focus on such areas of concern. The OIG has also issued a Special Fraud Alert on Joint Venture Arrangements. This Special Fraud Alert can be found at 59 FR 65372 (December 19, 1994) or on the Internet at http://www.dhhs.gov/progorg/oig.

[61] Under the Stark physician self-referral law, if a physician (or an immediate family member of such physician) has a prohibited financial relationship with a DMEPOS supplier, the physician may not make a referral to the DMEPOS supplier and the DMEPOS supplier may not bill for furnishing DMEPOS items or supplies for which payment may be made under the Federal health care programs. *See* 42 U.S.C. 1395nn.

[62] *See* 42 U.S.C. 1395m(a)(17) or Pub.L. 103–432, section 132(a) for the prohibition on telemarketing. *See also* discussion in section II.A.5 and accompanying notes.

[63] The DMEPOS supplier should not utilize prohibited or inappropriate conduct to carry out its initiatives and activities designed to maximize business growth and patient retention. Many cases against DMEPOS suppliers have involved the DMEPOS supplier giving the beneficiary free gifts such as angora underwear, microwaves and air conditioners in exchange for providing and billing for unnecessary items. Any marketing information offered by the DMEPOS supplier should be clear, correct, non-deceptive, and fully informative. *See* discussion in section II.A.5 and accompanying notes.

[64] In this situation, a physician allows a DMEPOS supplier to stock inventory (the storage space may or may not be rented by the DMEPOS supplier) in a physician's office. When such items and supplies are dispensed to the patient, Medicare is then billed. Although such arrangements are not prohibited per se, the OIG believes that such arrangements may potentially raise anti-kickback and self-referral issues, particularly when the DMEPOS supplier pays the physician an amount above fair market value to rent the space.

[65] A DMEPOS supplier should have appropriate personnel acknowledge they have reviewed and will abide by the Medicare supplier standards. In addition, a DMEPOS supplier should ensure it is meeting individual State and private payor supplier standards. *See* 42 CFR 424.57 for the Medicare supplier standards.

[66] Criminal penalties may be imposed against an individual who knowingly and willfully makes or causes to be made any false statements or representations of a material fact in any application for any benefit or payment under a Federal health care program. *See* 42 U.S.C. 1320a-7b(a)(1). *See also* 31 U.S.C. 3729(a) ("any person who * * * knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government * * * is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person * * *")

[67] By signing the DMEPOS supplier enrollment application, a DMEPOS supplier certifies it will notify the Medicare contractor of any changes in its enrollment information within 30 days of the effective date of the change.

[68] It is unlawful for a DMEPOS supplier to represent itself as a Medicare representative. *See* 42 U.S.C. 1320b-10.

[69] This practice may involve, but is not limited to, using another DMEPOS supplier's billing number.

[70] A DMEPOS supplier should be aware of the requirements of any payor they bill, especially in those situations where there is a primary and secondary payor.

- Performing tests on a beneficiary to establish medical necessity;[71]
- Failing to refund overpayments to a health care program;[72]
- Failing to refund overpayments to patients;[73]
- Improper billing resulting from a lack of communication between the DMEPOS supplier, the physician, and the patient;[74]
- Improper billing resulting from a lack of communication between different departments within the DMEPOS supplier;[75] and
- Employing persons excluded from participation in Federal health care programs.[76]

A DMEPOS supplier's prior history of noncompliance with applicable statutes, regulations, and Federal, State or private health care program requirements may indicate additional types of risk areas where the DMEPOS supplier may be vulnerable and that may require policies and procedures to prevent recurrence.[77]

[71] *E.g.*, Medicare does not permit DMEPOS suppliers to perform oxygen tests (e.g., oximetry tests and arterial blood gas tests) to qualify patients for oxygen and oxygen supplies. *See Medicare Coverage Issues Manual*, section 60–4. *See also* discussion in section II.A.3.o.

[72] An overpayment is the amount of money received in excess of the amount due and payable under a health care program. Examples of overpayments include, but are not limited to, instances where a DMEPOS supplier is: (i) paid twice for the same service, for the same beneficiary; or (ii) paid for services that were provided but not ordered by the treating physician or other authorized person. The OIG strongly recommends that the DMEPOS supplier institute procedures to detect overpayments and to promptly remit such overpayments to the affected payor. *See* 42 U.S.C. 1320a-7b(a)(3). *See also* 18 U.S.C. 669 and 31 U.S.C. 3729(a)(7).

[73] If a patient is also due money when a DMEPOS supplier identifies an overpayment to a health care program, the DMEPOS supplier should make a prompt refund to the patient. *See* 42 U.S.C. 1395m(j)(4) on limitation of patient liability for non-assigned claims that are denied due to medical necessity. *See also* 42 U.S.C. 1395pp(h) on limitation of patient liability for assigned claims that are denied due to medical necessity.

[74] A lack of communication between the DMEPOS supplier, physician, and patient may result in the DMEPOS supplier inappropriately billing for items or supplies (e.g., supplies for an on-going condition or rental equipment that are no longer medically necessary). *See* discussion in section II.A.3.n.

[75] A lack of communication between the different departments of a DMEPOS supplier may result in the DMEPOS supplier filing incorrect claims and/or equipment delivery problems.

[76] This involves hiring or contracting with individuals or entities who have been excluded from participation in Federal health care programs or any other Federal procurement or non-procurement program. *See* section II.F.2.

[77] "Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct" and is a significant factor in the assessment of whether a compliance program is effective. See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(k)(iii).

Additional risk areas should be assessed by the DMEPOS supplier and incorporated into its written policies and procedures and training programs developed as part of its compliance program.

The OIG believes sound operating policies are essential to all DMEPOS suppliers, regardless of size. The OIG recommends that small DMEPOS suppliers focus on the risk areas most potentially problematic to its business operations. The OIG recognizes some small DMEPOS suppliers may not have the resources to independently develop a comprehensive set of written policies and procedures pertaining to such risk areas. In this case, the OIG recommends that the small DMEPOS supplier create a manual that is accessible to all employees. Such a manual should contain the specific statutes, regulations, and DMERC instructions and bulletins that address the DMEPOS supplier's identified risk areas. The goal of this manual is to provide employees direction so they can properly address any concerns/issues/questions that may arise.

3. Claims Development and Submission

a. Medical Necessity

The OIG recommends that the DMEPOS supplier's compliance program communicate to physicians and other persons authorized to order items and services that claims submitted for items and services will only be paid if the item or service is ordered, provided, covered, reasonable and necessary for the patient, given his or her clinical condition. The DMEPOS suppliers should take all reasonable steps to ensure they are not submitting claims for services that are not: (i) covered; (ii) reasonable; and (iii) necessary.[78] The DMEPOS suppliers must keep the treating physician's or other authorized person's signed and dated order or CMN on file for all DMEPOS items and services.[79] Upon a payor's request, the DMEPOS supplier must be able to provide documentation, such as physician orders, completed original CMNs,[80] proof of delivery, written confirmation of verbal orders and any other documentation to support the medical necessity of an item or service the DMEPOS supplier has provided and billed to a Federal or private health care program.[81] Because the DMEPOS supplier is responsible for producing documentation upon request, the DMEPOS supplier may want to send a written notice to its clients who write orders and refer patients concerning payors' documentation requirements.

As a preliminary matter, the OIG recognizes that physicians and other authorized persons must be able to order any items or services that they believe are appropriate for the treatment of their patients. However, Medicare and other Government and private health care plans will only pay for those services that are covered and that meet the appropriate medical necessity standards (e.g., ordered, provided, reasonable, necessary, and meeting criteria established by medical review policies). "No payment may be made under Part A or Part B for any expenses incurred for items or services * * * which are not reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body member."[82] Therefore, DMEPOS suppliers should be aware that Medicare may deny payment for an item or service that the treating physician or other authorized person believes is appropriate, but which does not meet the Medicare coverage criteria or where the documentation does not support that the item or service was reasonable and necessary for the patient. The OIG recommends that the DMEPOS supplier advise its clients that claims for items or services submitted for Federal, State or private payor reimbursement must meet program requirements[83] or the claims may be denied.

The DMEPOS supplier should take steps to ensure compliance with the applicable statutes, regulations and the requirements of Federal, State and private health plans. The OIG recognizes that DMEPOS suppliers do not and cannot treat patients or make medical necessity determinations. However, the DMEPOS supplier must take steps to ensure that the beneficiary's condition meets coverage, payment and utilization criteria established in medical policies before it submits a claim to Federal, State or private health plans. In order to help

[78] *See* note 31.

[79] *See Medicare Carrier Manual*, section 3312. *See also Medicare Carrier Manual*, section 4105.2 regarding what information must be included on the physician's order.

[80] An original CMN is that in which Section B was completed by the treating physician or other authorized person and contains the original signature of the treating physician or other authorized person.

[81] In order to ensure correct reimbursement, the payor may conduct a post-payment audit of a DMEPOS supplier's claims. Such audits may require that the DMEPOS supplier submit documentation to substantiate that the items or services were ordered by the treating physician or other authorized person, provided, covered, reasonable and necessary. *See* 42 CFR 424.5(a)(6).

[82] *See* 42 U.S.C. 1395y(a)(1)(A).

[83] *See* note 31.

ensure compliance, the OIG recommends that DMEPOS supplier personnel understand the coverage and payment criteria of each payor they bill. To help aid supplier personnel, the DMEPOS supplier's compliance officer may want to create a clear, comprehensive summary of the "medical necessity" standards or coverage criteria and applicable rules of the various Government and private plans. This summary should be disseminated and explained to the appropriate DMEPOS supplier personnel.

We also recommend that DMEPOS suppliers formulate internal control mechanisms through their written policies and procedures to ensure the medical necessity of the items or services they provide. Such policies and procedures may include periodic claim reviews, both prior and subsequent to billing for items and services. Such a procedure will verify that patients are receiving and the DMEPOS supplier is being paid for items and/or services that are ordered, provided, covered, reasonable and necessary. The DMEPOS supplier may choose to incorporate this claims review function into pre-existing quality assurance mechanisms.

b. Physician Orders

The DMEPOS supplier's written policies and procedures should state that the DMEPOS supplier will not bill for an item or service unless and until it has been ordered by the treating physician or other authorized person. For all Medicare reimbursed DMEPOS items or services, the DMEPOS supplier must receive a written order from the patient's treating physician or other authorized person. Such written order must be received prior to billing Medicare. When the DMEPOS supplier receives a verbal order, the DMEPOS supplier should document the verbal order and must have the treating physician or other authorized person confirm it in writing prior to billing.

The written policies and procedures should also state, for items requiring a written order prior to delivery, that the order must be received by the DMEPOS supplier before it delivers the equipment to the patient and before it bills the payor.[84]

c. Certificate of Medical Necessity[85]

For some DMEPOS items and services, the DMEPOS supplier must receive a signed CMN from the treating physician or other authorized person. Currently, CMNs are required for Medicare reimbursement for fourteen items.[86] The CMN must be retained in the DMEPOS supplier's records before it can submit a claim for payment to the Medicare program. Although faxed CMNs are permitted in order to submit the claim, the DMERCs have the authority to request the original CMN from the DMEPOS supplier at any time.[87]

Each CMN has four sections: A, B, C, and D. Section A may be completed by the DMEPOS supplier. Section B may not be completed by the DMEPOS supplier.[88] Section B may only be completed by the treating physician, a non-physician clinician involved in the care of the patient or a physician employee who is knowledgeable about the patient's treatment. If section B is completed by a physician's employee, the section must be reviewed by the treating physician or other person authorized to sign section D of the CMN[89] to ensure the information's accuracy. Section C must be completed by the DMEPOS supplier prior to the CMN being furnished to the treating physician or other authorized person for signature.[90] Section D is the attestation statement and may only be signed by the treating physician or other person authorized to sign section D.[91] The DMEPOS supplier's written policies and procedures on completing CMNs should reflect these standards.

The DMEPOS supplier should take all reasonable steps to ensure that each section of the CMN is completed in accordance with the above guidelines. The OIG recommends that the DMEPOS supplier's written policies and procedures, at a minimum, provide that the DMEPOS supplier:

- Does not forward blank CMNs to the treating physician or other authorized person for signature;
- Does not complete section B (Medical Necessity) of the CMN;
- Does not alter or add any information on the CMN after receiving the completed and signed CMN from the physician or other authorized person;[92]
- Does not sign the CMN for the treating physician or other authorized person;
- Does not urge physicians or other authorized persons to order equipment or supplies that exceed what is reasonable and necessary for the patient;
- Does not deliver an item that requires a written order from the treating physician or other authorized person prior to receiving the written order;[93]
- Does not submit a claim for DMEPOS items or services prior to receiving a written order or CMN from the treating physician or other authorized person;
- Does not submit a claim for DMEPOS items or services until the CMN is properly and correctly completed by the treating physician or other authorized person;
- Maintains completed and signed CMNs in its files;
- Consults with the treating physician or other authorized person who signed the CMN when there is a question on the order;
- Properly complete sections A and C of the CMN and then forward the CMN to the treating physician or other authorized person for his/her review, information, and signature; and
- Only submit claims for services that the treating physician or other authorized person attests in section D are ordered and medically necessary for the patient.

[84] *See* 42 CFR 410.38.

[85] As defined in 42 U.S.C. 1395m(j)(2)(B). *See also* OIG Special Fraud Alert regarding Physician Liability for Certifications in the Provision of Medical Equipment and Supplies and Home Health Services, 64 FR 1813 (January 12, 1999). Special Fraud Alerts are available on the OIG website.

[86] Items or services requiring CMNs are as follows: Home oxygen therapy (HCFA form 484); Hospital beds (HCFA form 841); Support surfaces (HCFA form 842); Motorized wheelchairs (HCFA form 843) (Section C continuation, HCFA form 854); Manual wheelchairs (HCFA form 844) (Section C continuation, HCFA form 854); Continuous positive airway pressure (CPAP) devices (HCFA form 845); Lymphedema pumps (pneumatic compression devices) (HCFA form 846); Osteogenesis stimulators (HCFA form 847); Transcutaneous electrical nerve stimulators (TENS) (HCFA form 848); Seat lift mechanisms (HCFA form 849); Power operated vehicles (HCFA form 850); Infusion pumps (HCFA form 851); Parenteral nutrition (HCFA form 852); and Enteral nutrition (HCFA form 853).

[87] *See* HCFA Program Memorandum B–99–23 (April 1999).

[88] A supplier who knowingly and willfully completes section B of the form is, at a minimum, subject to a CMP of up to $1,000 for each form or document completed in such manner. *See* 42 U.S.C. 1395m(j)(2). That supplier may also face civil and criminal liability.

[89] *See* HCFA Program Memorandum B–98–47 (November, 1998), which discusses who is authorized to sign section D of the CMN.

[90] A supplier who knowlingly and willfully fails to include, in section C, the fee schedule amount and the supplier's charge for the equipment or supplies being furnished may be subject to a CMP up to $1,000 for each form or document so distributed. *See* 42 U.S.C. 1395m(j)(2).

[91] Physicians or persons authorized to sign section D (see note 89), should only sign CMNs in which sections A-C are completed and correct. Signature and date stamps are not acceptable. *See Medicare Carriers Manual*, section 3312.

[92] There have been many investigations centering on DMEPOS suppliers who alter information in order to affect their reimbursement (e.g., altering diagnosis code, altering HCPCS code of service provided).

[93] *See* 42 U.S.C. 1395m(a)(11)(B). *See also* 42 CFR 410.38.

d. Billing

The DMEPOS supplier should provide in its written policies and procedures that it will only submit to Medicare or other Federal, State or private payor health care plans claims that are properly completed, accurate, and correctly identify the item or service ordered by the treating physician or other authorized person and furnished to the patient. Also, prior to submitting the claim, the DMEPOS supplier should take all reasonable steps to ensure the item or service being claimed was provided, covered, reasonable and necessary.

The written policies and procedures should also clarify that a DMEPOS supplier cannot submit bills or receive payment for drugs used in conjunction with DMEPOS, unless the DMEPOS supplier is licensed to dispense the drug.[94]

e. Selection of HCPCS Codes

The DMEPOS supplier's written policies and procedures should state that only the HCPCS code that most accurately describes the item or service ordered and provided should be billed. The OIG views knowing "upcoding" (i.e., the selection of a code to maximize reimbursement when such a code is not the most appropriate descriptor of the service) as raising, among other things, false claims issues under the Civil False Claims Act.[95] To ensure code accuracy, the OIG recommends that the DMEPOS supplier include a requirement in its policies and procedures that the codes be reviewed (random sample or certain codes) by individuals with technical expertise in coding before claims containing such codes are submitted to the affected payor. If a DMEPOS supplier has questions regarding the appropriate code to be used, it should contact the Statistical Analysis Durable Medical Equipment Carrier's (SADMERC) HCPCS coding help line.[96]

f. Valid Supplier Numbers

The DMEPOS supplier should ensure that appropriate personnel are knowledgeable in (1) completing the HCFA 855S supplier application;[97] and (2) complying with the Federal requirements of 42 CFR 424.57(e) for updating supplier number applications.

The written policies and procedures should state that the DMEPOS supplier should not bill any other Federal, State or private payor health care plan without obtaining the necessary billing numbers and that the billing numbers will be used correctly.[98]

Prior to applying for a valid supplier number, a DMEPOS supplier providing services to Medicare beneficiaries must meet the supplier standards.[99] The DMEPOS supplier should take all affirmative steps to ensure that no claims for Medicare reimbursement are submitted prior to the DMEPOS supplier being issued a valid supplier number by the National Supplier Clearinghouse. A DMEPOS supplier should not have more than one Medicare supplier number unless it is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.[100]

g. Mail Order Suppliers

We recommend that any DMEPOS supplier who engages in the mail order supply business clearly articulate its protocol for this segment of its business in the company's written policies and procedures.

Mail order supplies should only be delivered in accordance with the treating physician's or other authorized person's orders. Regularly shipping supplies without such orders may lead to providing supplies substantially in excess of the patient's needs.[101] We also recommend that the supplier utilize a tracking system so it will be able to determine whether or not the patient received the supplies and will be able to track the location of an item or supply at any given time.

h. Assignment

If a DMEPOS supplier accepts Medicare assignment, its written policies and procedures should state that it will not charge Medicare beneficiaries more than the amounts allowed under the Medicare fee schedule, including coinsurance and deductibles. If the beneficiary pays the DMEPOS supplier prior to the DMEPOS supplier submitting the claim, the DMEPOS supplier should ensure it is not charging the beneficiary more than the coinsurance on the allowed amount under the fee schedule. In the event that the DMEPOS supplier collects excess payments from a Medicare beneficiary, it should have mechanisms in place to promptly refund the overpayment to the beneficiary. The DMEPOS supplier should be knowledgeable about the Medicare rules and instructions for accepting assignment and receiving direct payment from beneficiaries for items or services.

If a DMEPOS supplier chooses not to accept Medicare assignment, it is still responsible for submitting claims to Medicare on behalf of beneficiaries.[102]

If the DMEPOS supplier chooses to utilize a billing agent, the DMEPOS supplier should ensure it is complying with all of the relevant statutes and requirements governing such an arrangement.[103] The OIG strongly recommends that the DMEPOS supplier coordinate closely with the billing company to establish compliance responsibilities. Once the responsibilities have been clearly delineated, they should be formalized in the written contract between the DMEPOS supplier and the billing agent. The OIG recommends that the contract enumerate those functions that are shared responsibilities and those that are the sole responsibility of either the billing agent or the DMEPOS supplier.

i. Liability Issues

The OIG recommends that DMEPOS suppliers avoid submitting claims for items or services that the DMEPOS supplier believes are not covered by Medicare. However, HCFA does permit a DMEPOS supplier to submit a claim for an item or service that the DMEPOS supplier believes is not covered if (i) the beneficiary insists that the DMEPOS supplier submit the claim, and (ii) the DMEPOS supplier notes on the claims its belief that the service is noncovered and that it is being submitted at the beneficiary's insistence (e.g., submitted for a Medicare determination of

[94] *See* Medicare Program Memoranda B–98–6 (February, 1998) and B–98–18 (May, 1998).

[95] *See* 31 U.S.C. 3729, which provides for the imposition of penalties of $5,000 to $10,000 per false claim, plus up to three times the amount of damages suffered by the Federal Government because of the false claim.

[96] The phone number for the SADMERC's HCPCS coding help line is 803–736–6809. The hours of operation are Monday through Friday from 9:00 am to 4:00 pm, EST. Based on the information provided by the DMEPOS supplier, the SADMERC will aid the DMEPOS supplier in choosing the most accurate code for the item or service ordered and supplied. However, the DMEPOS supplier should be aware that assigning a HCPCS code to an item or service does not necessarily guarantee reimbursement.

[97] By signing the certification statement on the enrollment application, the applicant agrees that he/she has read, understood, meets and will continue to meet the supplier standards and will be disenrolled from the program if any standards are not met or violated.

[98] E.g., if a DMEPOS supplier has more than one location, the supplier number of the location that filled the physician's or other authorized person's order will be used on the claim form.

[99] *See* 42 CFR 424.57.

[100] *See* 42 U.S.C. 1395m(j)(1)(D).

[101] *See* note 44.

[102] *See* 42 U.S.C. 1395w–4(g)(4).

[103] *See* 42 U.S.C. 1395u(b)(6); 42 CFR 424.73; *Medicare Carriers Manual*, section 3060. *See also* OIG Ad. Op. 98–1 (1998) and OIG Ad. Op. 98–4 (1998).

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coverage and/or to obtain a denial notice in order to bill other insurers).[104]

A DMEPOS supplier or Medicare beneficiary is not liable for payment on assigned claims where the beneficiary did not know, and could not reasonably have been expected to know, that the payment for such services would not be made.[105] However, when the DMEPOS supplier knew, or could have been expected to know, the items or services would be denied, the liability for improperly paid items or services rests with the DMEPOS supplier.[106]

In order to protect itself from financial responsibility in such situations (i.e., situations in which the beneficiary is insisting that a claim be submitted to Medicare notwithstanding the DMEPOS supplier's belief that Medicare does not cover the service), the DMEPOS supplier must inform the patient prior to furnishing the item or service of the DMEPOS supplier's belief that the claim to Medicare will be denied. In this situation, the DMEPOS supplier should ask the patient to sign a written notice.[107] The written notice must be in writing, must clearly identify the particular item or service, must state that the payment for the particular item or service likely will be denied, and must give the reason(s) for the belief that payment is likely to be denied. It is the beneficiary's decision whether or not to sign the written notice. If the beneficiary does sign the written notice, the DMEPOS supplier should: (1) include the appropriate modifier on the claim form; (2) maintain the written notice in its files; and (3) be able to produce the written notice to the DMERC, upon request.

If the DMEPOS supplier improperly bills the beneficiary, Medicare will indemnify the beneficiary for any payments the beneficiary made to the DMEPOS supplier, and collect the indemnification amount from the DMEPOS supplier as an overpayment.

Routine notices to beneficiaries that do no more than state that denial of payment is possible are not considered acceptable evidence of written notice. Notices should not be given to beneficiaries unless there is some genuine doubt regarding the likelihood of payment as evidenced by the reasons stated on the written notice. Giving notice for all claims, items or services is not an acceptable practice.

The OIG recommends that the DMEPOS supplier include the foregoing liability issues in its written policies and procedures.

j. Routine Waiver of Deductibles and Coinsurance

Routine waivers of deductibles and coinsurance may result in false claims, CMPs for inducements to beneficiaries, and violations of the anti-kickback statute or similar Federal or State statute or regulations.[108] In addition to the potential problems regarding kickbacks, false claims, and CMPs, the OIG has programmatic concerns when DMEPOS suppliers routinely waive deductibles and coinsurance. When DMEPOS suppliers forgive financial obligations for reasons other than genuine financial hardship of a particular patient, they may be inducing the patient to use items or services that are unnecessary, simply because they are free. Such usage may also lead to overutilization. DMEPOS suppliers are permitted to waive the Medicare coinsurance amounts for cases of financial need.[109] We recommend that the DMEPOS supplier develop and maintain written criteria documenting its policy for determining financial need and consistently apply this criteria to all cases.[110] A good faith effort must be made to collect deductibles and coinsurance.[111]

The DMEPOS supplier's written policies and procedures should state that it will not routinely waive deductibles and coinsurance for Medicare beneficiaries. The OIG recommends that such policies and procedures should include, but not be limited to, statements that DMEPOS supplier personnel are prohibited from: advertising an intent to waive deductibles or coinsurance for Medicare beneficiaries; advertising an intent to discount services for Medicare beneficiaries; or giving unsolicited advice to Medicare beneficiaries that they need not pay.

k. Capped Rentals

The DMEPOS supplier's written policies and procedures should address Government and private payor requirements when providing rental equipment to beneficiaries (e.g., the purchase option [112] and servicing and maintenance [113]). The DMEPOS supplier must offer a purchase option to beneficiaries during the 10th continuous rental month.[114] The DMEPOS supplier should clearly, accurately, and non-deceptively discuss the pros and cons of the different options with the beneficiary. If the beneficiary does not accept the purchase option, the DMEPOS supplier must continue to provide the item. After the 15th continuous month of receiving rental payments from Medicare, providing the item or service continues to be medically necessary, the DMEPOS supplier must continue to provide the item without charge to the beneficiary or Medicare.

However, the DMEPOS supplier may submit additional claims for the maintenance and servicing fees associated with the rental item.[115] The DMEPOS supplier should ensure it is performing basic safety and operational function checks after use by each patient, and is performing routine and preventative maintenance on equipment. The DMEPOS supplier must ensure it has qualified staff or contractors to service, set up, and instruct the patient on the proper use of the equipment. The DMEPOS supplier should ensure it maintains current service manuals for all the equipment it supplies. In addition, the OIG recommends that the DMEPOS supplier's policies and procedures establish an internal control system that allows the DMEPOS supplier to track the location of each piece of equipment at any given time.

The policies and procedures should also address the guidelines for determining continuous use and criteria for a new rental period.[116] If a beneficiary dies during a rental period, the DMEPOS supplier may receive the entire monthly rental payment.[117] However, if the DMEPOS supplier continues to bill for the item because it did not receive notice of the beneficiary's death until the following month, any payments received for rental items the month after the beneficiary dies are considered an overpayment and must promptly be refunded. The DMEPOS supplier should create internal mechanisms to ensure the correct rental month appears on the claim and the correct modifier is used.

In addition, the DMEPOS supplier should ensure it is not submitting claims for rental equipment when the beneficiary is residing in an institution. The OIG is aware that some DMEPOS suppliers bring DMEPOS items to beneficiaries residing in an institution, just prior to the beneficiary's discharge, in order to train the beneficiary on how to use the item or to fit the item for the beneficiary. Once the DMEPOS supplier has trained or fitted the beneficiary, the DMEPOS supplier should take the item and deliver it to the beneficiary's home on the date of discharge. As a result, the DMEPOS supplier should file the claim for this item with the date of delivery/date of service as the date the beneficiary is discharged from the institution. If the DMEPOS supplier delivers the item to the beneficiary in the institution prior to the beneficiary's discharge to be used by the beneficiary while in the institution, the item should be included in the institution's cost and the DMEPOS supplier should not submit the claim. The DMEPOS supplier may not submit the claim prior to the beneficiary's date of discharge.

l. ZX Modifier

The ZX modifier is used on the claim form to indicate that the DMEPOS supplier is maintaining medical necessity documentation in its files. Such documentation only needs to be submitted to the DMERC upon request.

The DMEPOS supplier should create internal mechanisms to ensure the proper use of the ZX modifier. Improper use of the modifier may result in the submission of false claims. The OIG recommends that the DMEPOS supplier's written policies and procedures address the DMEPOS supplier's protocol for using the ZX modifier.[118]

m. Cover Letters

Cover letters are commonly used by the DMEPOS supplier as a method of communication between the DMEPOS supplier and the treating physician or other authorized person. The cover letter is not a form required or regulated by the Government. As a result, the DMERCs do not base Medicare denials solely on what may be considered inappropriate use of cover letters. However, the OIG is concerned that cover letters may influence or direct a physician's or other authorized person's answers on the CMN, particularly the questions relating to the patient's medical condition.[119] It is the treating physician's or other authorized person's responsibility to determine both the medical need for, and the utilization of, health care services. The OIG encourages the DMEPOS supplier to include language in its cover letter to remind treating physicians and other authorized persons of their responsibilities in properly completing CMNs.

n. Communication

The OIG suggests that the DMEPOS supplier create mechanisms that increase the communication among treating physicians or other authorized persons who refer business to the DMEPOS supplier, the patients, and the DMEPOS supplier. We recommend that such mechanisms be included in the DMEPOS supplier's written policies and procedures. Such mechanisms may include: (i) the DMEPOS supplier periodically calling the patient to ensure the equipment is still being used and is operating properly; or (ii) periodically calling the treating physician to ensure the provided items continue to be medically necessary for a patient.

In addition, we recommend the DMEPOS supplier create mechanisms to ensure communication between different departments (e.g., sales and billing) in order to prevent the filing of incorrect claims.

o. Oxygen and Oxygen Equipment

The OIG recommends that the written policies and procedures for DMEPOS suppliers furnishing oxygen state that the DMEPOS supplier will ensure that initial claims for oxygen therapy include the written results of an arterial blood gas study or oximetry test (on the CMN) that has been ordered and evaluated by the patient's treating physician. Further, the written policies and procedures should provide for the DMEPOS supplier to maintain such test results and any other independent diagnostic treatment facility (IDTF) documents supporting the patient's medical necessity for the oxygen. The OIG recommends that the DMEPOS supplier have the IDTFs, from which it receives test results, submit, all raw test results to the treating physician for the physician's benefit, and not just a summary of the results. The written policies and procedures should provide that a DMEPOS supplier is not qualified to conduct the blood gas study or to prescribe the oxygen therapy.[120]

The OIG also recommends, for patient safety purposes, that the rental of oxygen include established maintenance safeguards and that steps are taken to ensure the equipment is properly maintained, as maintenance is included in the rental price of the equipment.

When submitting an oxygen or oxygen equipment claim for reimbursement, the DMEPOS supplier must ensure it is complying with the payment rules.[121]

4. Anti-Kickback and Self-Referral Concerns

The DMEPOS supplier should have policies and procedures in place with respect to compliance with Federal and State laws, including the anti-kickback statute, as well as the Stark physician self-referral law.[122] Such policies should provide that:

- All of the DMEPOS supplier's contracts and arrangements with actual or potential referral sources (e.g., physicians) are reviewed by counsel and comply with all applicable statutes and regulations, including the anti-kickback statute and the Stark physician self-referral law; [123]
- The DMEPOS supplier will not submit or cause to be submitted to health care programs claims for patients who were referred to the DMEPOS supplier pursuant to contracts or financial arrangements that were designed to induce such referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation or that otherwise violate the Stark physician self-referral law;

[104] *See Medicare Carriers Manual*, section 3043.
[105] *See* 42 U.S.C. 1395pp.
[106] *Id.*
[107] *See Medicare Carriers Manual*, section 7300.5.
[108] *See* 59 FR 31157 (December 19, 1994) or the OIG website at http://www.dhhs.gov/progorg/oig for the OIG Special Fraud Alert on Medicare Deductibles and Copayments. *See also* 31 U.S.C. 3729–3733; 42 U.S.C. 1320a–7a(a)(5); 42 U.S.C. 1320a–7b.
[109] *See Medicare Carriers Manual*, section 5520
[110] What constitutes "financial need" varies depending on the circumstances. However, the OIG believes it is important that a DMEPOS supplier make determinations of financial need on an individualized, case by case, basis in accordance with a reasonable set of income guidelines uniformly applied in all cases. The guidelines should be based on objective criteria and appropriate for the applicable locality. It is not appropriate to apply inflated income guidelines that result in waivers of copayments for persons not in genuine financial need.
[111] *See* 42 CFR 413.80; *Provider Reimbursement Manual*, Part I, sections 308 and 310.
[112] *See* 42 CFR 414.229(d).
[113] *See* 42 CFR 414.229(e).
[114] DMEPOS suppliers must offer beneficiaries the option of purchasing power-driven wheelchairs at the time the DMEPOS supplier first furnishes the item *See* 42 CFR 414.229(d)(1).
[115] *See* 42 CFR 414.229(e).
[116] *See* 42 CFR 414.230.
[117] *See Medicare Carriers Manual*, section 4105.3.
[118] *See* relevant DMERC supplier manual(s) for guidelines on proper use.
[119] Encouraging physicians or other authorized persons to order unwanted items or supplies may result in submitting claims for items or services that are not reasonable or necessary. The OIG is aware of instances where the DMEPOS supplier has copied the CMN, completed section B of the copy, and used this completed copy as its cover letter to physicians.
[120] *See Coverage Issues Manual*, section 60–4.
[121] *See* 42 CFR 414.226.
[122] Towards this end, the DMEPOS supplier should, among other things, obtain copies of all relevant OIG regulations, Special Fraud Alerts, and Advisory Opinions (these documents are located on the Internet at http://www.dhhs.gov/progorg/oig), and ensure that the DMEPOS supplier's policies reflect the guidance provided by the OIG. *See* 42 U.S.C. 1395nn(a) for the Stark physician referral laws. *See also* 42 U.S.C. 1320a–7b for prohibited activities under the anti-kickback statute.
[123] If the DMEPOS supplier questions an arrangement into which it may enter, it should consider asking the OIG for an Advisory Opinion regarding the anti-kickback statute of HCFA for an Advisory Opinion regarding Stark. *See* 62 FR 7350 (February 19, 1997) and 63 FR 38,311 (July 16, 1998) for instructions on how to submit an Advisory Opinion to the OIG. These instructions are also located on the Internet at http://www.dhhs.gov/progorg/oig. *See* 63 FR 1645 (January 9, 1998) on how to submit an Advisory Opinion to HCFA.

• A DMEPOS supplier does not offer a physician or other referral source more than fair market value for space rented to store items or supplies (i.e., consignment closet); and

• The DMEPOS supplier does not offer or provide gifts, free services, or other incentives or things of value to patients, relatives of patients, physicians, home health agencies, nursing homes, hospitals, contractors, assisted living facilities, or other potential referral sources for the purpose of inducing referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation.[124]

Further, the OIG recommends that the written policies and procedures should specifically reference and take into account the OIG's safe harbor regulations, which describe those payment practices that are immune from criminal and administrative prosecution under the anti-kickback statute.[125]

The OIG believes all DMEPOS suppliers, regardless of size, should be concerned with potential anti-kickback and Stark violations. As a result, all DMEPOS suppliers should be knowledgeable about, and compliant with, the anti-kickback statute, the Stark physician self-referral law and other relevant Federal and State statutes or regulations.

Although all DMEPOS suppliers are responsible for ensuring compliance with these provisions, the OIG recognizes that the small DMEPOS supplier may not have the resources to implement the suggestions in this section to the same extent as a large DMEPOS supplier. Therefore, the smaller DMEPOS supplier may need to employ a slightly different mechanism to ensure compliance. For example, the small DMEPOS supplier may want to choose a sample of contracts or financial arrangements to review on a periodic basis.

5. Marketing

Where marketing is permitted, the DMEPOS supplier's compliance program should require honest, straightforward, fully informative and non-deceptive marketing. It is in the best interest of patients, DMEPOS suppliers, physicians and health care programs that physicians or other persons authorized to order DMEPOS fully understand the services offered by the DMEPOS supplier, the items or services that will be provided when ordered, and the financial consequences for Medicare as well as other payors for the items or services ordered. The OIG recommends that if the DMEPOS supplier services a large number of non-English speaking patients, it should ensure that its marketing materials are available in those other languages. The DMEPOS supplier's written policies and procedures should ensure that its marketing information is clear, correct, and fully informative.

Salespeople must not offer physicians, patients or other potential referral sources incentives, in cash or in kind, for their business.[126] Similarly, they must not engage in any marketing activity that either explicitly or implicitly implies that Medicare beneficiaries are not obligated to pay their coinsurance or can receive "free" services.[127] In addition, DMEPOS suppliers must not promote items or services to patients or physicians that are not reasonable or necessary for the treatment of the individual patient. The OIG suggests that the DMEPOS supplier's written policies and procedures create internal mechanisms to avoid these situations.

With respect to marketing and sales, the OIG has a longstanding concern that percentage compensation arrangements for sales and marketing personnel may increase the risk of such persons violating the anti-kickback statute.[128] The OIG recommends that the DMEPOS supplier monitor its sales representatives on a regular basis (e.g., rotate sales staff or send a sales manager on some sales calls).

The DMEPOS suppliers are prohibited from making unsolicited telephone contacts to Medicare beneficiaries.[129] We suggest that the DMEPOS supplier's written policies and procedures reflect this prohibition.

The DMEPOS suppliers are also prohibited from using symbols, emblems, or names in reference to Social Security or Medicare in a manner that they know or should know would convey the false impression that an item is approved, endorsed, or authorized by the Social Security Administration, HCFA, or the Department of Health and Human Services or that the supplier has some connection with, or authorization from, any of these agencies.[130]

The OIG believes marketing strategies employed by all DMEPOS suppliers, regardless of size, should be clear, correct, honest, straightforward, non-deceptive and fully informative. In addition, all DMEPOS suppliers should inform their sales people of potential anti-kickback concerns, the telemarketing law, and the prohibition on inappropriately using references to Social Security and Medicare. Although the small DMEPOS supplier may not have extensive written policies and procedures, every DMEPOS supplier should ensure that its employees are clear on what is permitted and prohibited with regard to marketing.

6. Retention of Records

The DMEPOS supplier's compliance program should provide for the implementation of a records system. The DMEPOS supplier should ensure that records are maintained for the length of time required by Federal and State law and private payors, or by the DMEPOS supplier's record retention policies, whichever is longer. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval, and destruction of documents.[131] The three types of documents developed under this system should include: (1) all records and documentation (e.g., billing and claims documentation) required either by Federal or State law and the program requirements of Federal, State, and private health plans; (2) records listing the persons responsible for implementing each part of the compliance program; and (3) all records necessary to protect the integrity of the DMEPOS supplier's compliance process and confirm the effectiveness of the program.[132] The documentation necessary to satisfy the third requirement includes, but is not limited to: evidence of adequate employee training; reports from the DMEPOS supplier's hotline; results of any investigation conducted as a consequence of a hotline call; modifications to the compliance program; self-disclosure; all written notifications to physicians and payors; [133] and the results of the DMEPOS supplier's auditing and monitoring efforts.

All DMEPOS suppliers, regardless of size, must retain documents required by the health plans in which they participate. In case of a future Government investigation, the OIG recommends that all DMEPOS suppliers retain documents relating to the implementation of their compliance programs.

7. Compliance as an Element of a Performance Plan

The DMEPOS supplier's compliance program should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees. Employees should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors should:

• Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements applicable to their function;

• Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and

• Disclose to all supervised personnel that the DMEPOS supplier will take disciplinary action up to and including termination for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, the compliance officer or DMEPOS supplier management should include a policy that managers and supervisors will be sanctioned for failing to instruct adequately their subordinates or for failing to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations.

The OIG believes all DMEPOS suppliers, regardless of size, should ensure their employees understand the importance of compliance. If the small DMEPOS supplier does not have a formal performance evaluation structure, it should informally convey the employee's compliance responsibilities and the importance of these responsibilities.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every DMEPOS supplier should designate a compliance officer to serve as the focal point for compliance activities. The compliance officer should be a person of high integrity. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the DMEPOS supplier and the complexity of the task. When a compliance officer has other duties, the other duties should not be in conflict with the compliance goals.[134]

Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the DMEPOS supplier with direct access to the DMEPOS supplier's owner(s), president or CEO, governing body, all other senior management, and legal counsel.[135] The compliance officer should be highly enough placed in the company so that he or she can exercise independent judgment without fear of reprisal, and so that employees will know that bringing a problem to that person's attention is not a wasted exercise. The compliance officer should have sufficient funding and staff to fully perform his or her responsibilities. Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

• Overseeing and monitoring the implementation of the compliance program; [136]

• Reporting on a regular basis to the DMEPOS supplier's owner(s), governing body, CEO, president, and compliance committee (if applicable) on the progress of implementation, and assisting these components in establishing methods to improve the DMEPOS supplier's efficiency and quality of services, and to reduce the DMEPOS supplier's vulnerability to fraud, abuse, and waste;

• Periodically revising the program in light of changes in the organization's needs, and in the statutes, rules, regulations, and requirements of Federal, State, and private payor health care plans;

• Reviewing employees' certifications that they have received, read, understood, and will abide by the standards of conduct;

• Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeks to ensure that all appropriate employees and managers are knowledgeable of, and comply with, pertinent Federal, State and private payor health care program requirements;

• Ensuring independent contractors and agents who provide services (e.g., billing companies, delivery services and sources of referrals, i.e., physicians and others) to the DMEPOS supplier are aware of the requirements of the DMEPOS supplier's compliance program with respect to coverage, billing, marketing, and kickbacks, among other things;

• Coordinating personnel issues with the DMEPOS supplier's Human Resources/Personnel office (or its equivalent). The OIG recommends that the DMEPOS supplier check the List of Excluded Individuals/Entities,[137] and the General Services Administration's List of Parties Excluded from Federal Procurement and Nonprocurement Programs [138] to ensure employees and independent contractors have not been excluded or debarred from participating in Federal programs.[139] Depending upon State requirements or DMEPOS supplier policy, the Compliance Officer may also conduct a criminal background check of employees;

• Assisting the DMEPOS supplier's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;

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[124] *See* 42 U.S.C. 1320a–7a(a)(5), which provides for CMPs for improper inducements to beneficiaries.

[125] *See* 42 CFR 1001.952. Simply because an arrangement does not meet a safe harbor does not necessarily mean it is illegal.

[126] *See* anti-kickback statute discussion in section II.A.4.

[127] *See* discussion in section II.A.3.j.

[128] *See* e.g., 42 U.S.C. 1320a–7b(B); OIG Ad. Op. 98–10 (1998); section II.A.4.

[129] *See* 42 U.S.C. 1395m(a)(17), Pub.L. 103–432, section 132(a).

[130] *See* 42 U.S.C. 1320b–10.

[131] This records system should be tailored to fit the individual needs and financial resources of the DMEPOS supplier.

[132] The creation and retention of such documents and reports may raise a variety of legal issues, such as patient privacy and confidentiality. These issues are best discussed with legal counsel.

[133] This should include notifications regarding inappropriate claims and overpayments.

[134] E.g., companies should not choose a sales manager who may be pressured to achieve high sales, which might result in a conflict with compliance goals.

[135] The OIG believes that it is not advisable for the compliance function to be subordinate to the DMEPOS supplier's general counsel, comptroller or similar DMEPOS supplier financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the DMEPOS supplier make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[136] For DMEPOS supplier chains, the OIG encourages coordination with each DMEPOS supplier location through the use of a headquarter's compliance officer, communicating with parallel positions in each facility or regional office, as appropriate.

[137] The List of Excluded Individuals/Entities is an OIG-produced report available on the Internet at http://www.dhhs.gov/progorg/oig. It is updated on a regular basis to reflect the status of individuals and entities who have been excluded from participation in all Federal health care programs (individuals/entities excluded before August 5, 1997 were only excluded from participation in Medicare, Medicaid, Title V and Title XX programs). The DMEPOS supplier can download the List of Excluded Individuals/Entities and the subsequent monthly exclusion and reinstatement supplements or can use the online search feature.

[138] The List of Parties Excluded from Federal Procurment and Nonprocurement programs is a GSA-produced report available on the Internet at http://www.arnet.bov/epls.

[139] The OIG recognizes that a DMEPOS supplier cannot make medical necessity determinations and may not be aware when a patient's conditino changes. However, a DMEPOS supplier should be aware that if it submits a claim in which an excluded physician provided the referral, Medicare will deny payment.

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• Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action (e.g., making necessary improvements to DMEPOS supplier policies and practices, taking appropriate disciplinary action, etc.) with all DMEPOS supplier departments, independent contractors, and health care professionals;

• Developing policies and programs that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation; and

• Continuing the momentum of the compliance program and the accomplishment of its objectives long after the initial years of implementation.[140]

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, patient records (where appropriate), billing records, and DMEPOS supplier records concerning the marketing efforts of the DMEPOS supplier and the DMEPOS supplier's arrangements with other parties, including employees, home health agencies, skilled nursing facilities, and treating physicians or other authorized persons. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate the anti-kickback statute, as well as the Stark physician self-referral prohibition or other statutory or regulatory requirements.

In addition, the compliance officer should be copied on the results of all internal audit reports and work closely with key managers to identify aberrant trends in the coding and billing areas. The compliance officer should ascertain patterns that require a change in policy and forward these issues to the compliance committee to remedy the problem. The compliance officer should have full authority to stop the processing of claims that he or she believes are problematic until such time as the issue in question has been resolved.

The OIG believes all DMEPOS suppliers, regardless of size, should have a compliance officer or contact who possesses a high degree of integrity, is knowledgeable about the rules, regulations, and policies under which the DMEPOS supplier operates and has sufficient authority to exercise independent judgment. A small DMEPOS supplier may not have the need or the resources to hire/appoint a full time compliance officer. However, each DMEPOS supplier should have a person in its organization (this person may have other functional responsibilities) who can oversee the DMEPOS supplier's compliance with respect to applicable statutes, rules, regulations, and policies. The structure and comprehensiveness of the DMEPOS supplier's compliance program will help determine the responsibilities of each individual compliance officer.

2. Compliance Committee

The OIG recommends, where feasible, that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[141] When assembling a team of people to serve as the DMEPOS supplier's compliance committee, the DMEPOS supplier should include individuals with a variety of skills.[142] The OIG strongly recommends that the compliance officer manage the compliance committee. Once a DMEPOS supplier chooses the people that will accept the responsibilities vested in members of the compliance committee, the DMEPOS supplier must train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties.

The committee's responsibilities should include:

• Analyzing the organization's regulatory environment, the legal requirements with which it must comply,[143] and specific risk areas;

• Assessing existing policies and procedures that address these risk areas for possible incorporation into the compliance program;

• Working with appropriate DMEPOS supplier departments to develop standards of conduct and policies and procedures that promote allegiance to the DMEPOS supplier's compliance program;

• Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies, and procedures as part of its daily operations;[144]

• Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;

• Developing a system to solicit, evaluate, and respond to complaints and problems; and

• Monitoring internal and external audits and investigations for the purpose of identifying troublesome issues and deficient areas experienced by the DMEPOS supplier, and implementing corrective and preventive action.

The committee may also address other functions as the compliance concept becomes part of the overall DMEPOS supplier's operating structure and daily routine.

The compliance committee is an extension of the compliance officer and provides the organization with increased oversight. The OIG recognizes that small DMEPOS suppliers may not have the resources or the need to establish a compliance committee. However, when potential problems are identified, the OIG recommends that the small DMEPOS supplier create a "taskforce," if appropriate, to address the problem. The members of the taskforce may vary depending upon the issue.

[140] Periodic on-site visits of DMEPOS supplier operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, circulation of recent health care articles covering fraud and abuse, and innovative changes to compliance training are various examples of approaches and techniques the compliance officer can employ for the purpose of ensuring continued interest in the compliance program and the DMEPOS supplier's commitment to its policies and principles.

[141] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, billing, coding, marketing, and human resources, as well as employees and managers of key operating units. These individuals should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes to the DMEPOS supplier's policies and procedures as recommended by the committee. A compliance committee for a DMEPOS supplier that is part of another organization (e.g., home health agency) might benefit from the participation of officials from other departments in the organization, such as the accounting and billing departments.

[142] A DMEPOS supplier should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees of the DMEPOS supplier. The DMEPOS supplier's compliance committee members should also have significant professional experience working with billing, documentation, and auditing principles.

[143] This includes, but is not limited to, the civil False Claims Act, 31 U.S.C. 3729–3733; the criminal false claims statutes, 18 U.S.C. 287, 1001; the fraud and abuse provisions of the Balanced Budget Act of 1997, Pub.L. 105–33; the Health Insurance Portability and Accountability Act of 1996, Pub.L. 104–191; and compliance with the Medicare supplier standards, 42 CFR 424.57.

[144] With respect to national DMEPOS supplier chains, this may include fostering coordination and communication between those employees responsible for compliance at headquarters and those responsible for compliance at the individual supplier branches.

C. Conducting Effective Training and Education

1. Initial Training in Compliance

The proper education and training of corporate officers, managers, employees and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. In order to ensure the appropriate information is being disseminated to the correct individuals, the training should be separated into sessions. All employees should attend the general session on compliance, and employees whose job primarily focuses on submission of claims for reimbursement, or who are involved in sales and marketing, should receive additional training on these particular subjects. In addition, the OIG recommends that the DMEPOS supplier inform physicians, independent contractors, and significant agents that it has implemented a compliance program.

a. General Sessions

The OIG recommends, as part of its compliance program, that the DMEPOS supplier require all affected personnel to attend training on an annual basis, including appropriate training in Federal and State statutes, regulations and guidelines, HCFA manual instructions, DMERC medical review policies, the policies of private payors, and training in corporate ethics. The general training session should emphasize the DMEPOS supplier's commitment to compliance with these legal requirements and policies.

These training programs should include sessions highlighting the DMEPOS supplier's compliance program, summarizing fraud and abuse statutes and regulations, Federal, State and private payor health care program requirements, claim submission procedures and marketing practices that reflect current legal and program standards. The DMEPOS supplier must take steps to communicate effectively its standards and procedures to all affected employees (e.g., by requiring participation in training programs and disseminating publications that explain specific requirements in a practical manner).[145] DMEPOS suppliers may also wish to offer such training sessions to interested independent contractors and physicians. Managers of specific departments can assist in identifying areas that require training and in carrying out such training.[146] Training New employees should be targeted for training early in their employment.[147]

As part of the initial training, the standards of conduct should be distributed to all employees.[148] At the end of this training session, every employee should be required to sign and date a statement that reflects his or her knowledge of and commitment to the standards of conduct. This attestation should be retained in the employee's personnel file.

Further, to assist in ensuring that employees continuously meet the expected high standards of conduct, any employee handbook delineating or expanding upon these standards should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified.[149] The DMEPOS supplier should provide an additional attestation in the modified standards that stipulates the employee's knowledge of and commitment to the modifications.

b. Claim Development and Billing Training

In addition to specific training in the risk areas identified in section II.A.2, above, primary training to appropriate corporate officers, managers and other claim development and billing staff should include such topics as:

• Specific Government and private payor reimbursement principles;[150]

• Providing and billing DMEPOS items or services without proper authorization;

• Proper documentation of services rendered, including the correct application of official ICD–9 and HCPCS coding rules and guidelines;

• Improper alterations to documentation (e.g., patient records, CMNs);

• Compliance with the Federal, State and private payor supplier standards; and

• Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a DMEPOS supplier's billing and coding personnel, in that the pressure to meet business goals may render employees vulnerable to engaging in prohibited practices.

c. Sales and Marketing Training

In addition to specific training in the risk areas identified in section II.A.2, above, primary training to sales and marketing personnel should include such topics as:

• General prohibition on paying or receiving renumeration to induce referrals;

• Routine waiver of deductibles and/or coinsurance;

• Disguising referral fees as salaries;

• Offering free items or services to induce referrals;

• High pressure marketing of noncovered or unnecessary services;

• Improper patient solicitation; and

• Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a DMEPOS supplier's sales and marketing personnel, in that the pressure to meet business goals may render employees vulnerable to engaging in prohibited practices.

The OIG believes all DMEPOS suppliers, regardless of size, should ensure that their employees are well trained and are abiding by the applicable statutes, regulations, and policies. Each employee should know the procedures or who to consult when confronted with a particular situation.

2. Format of the Training Program

The OIG suggests that all relevant levels of personnel be made part of various educational and training programs of the DMEPOS supplier.[151]

[145] OIG publications such as Special Fraud Alerts, audit and inspection reports, and Advisory Opinions, as well as the annual OIG Work Plan, are readily available from the OIG and could be the basis for standards, educational courses and programs.

[146] Significant variations in functions and responsibilities of different departments may create the need for training materials that are tailored to the compliance concerns associated with particular operations and duties. Instructors may come from outside or inside the organization.

[147] Certain positions, such as those involving developing and submitting claims, as well as sales and marketing, create a greater organizational legal exposure, and therefore require specialized training. The DMEPOS supplier should fill such positions with individuals who have the appropriate educational background, training, experience, and credentials.

[148] Where the DMEPOS supplier has a culturally diverse employee base, the standards of conduct should be translated into other languages and written at appropriate reading levels.

[149] The OIG recognizes that not all standards, policies and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all employees' training. A DMEPOS supplier should determine the additional training to provide categories of employees based upon their job responsibilites.

[150] Government, in this context, includes the appropriate Medicare DMERC(s).

[151] In addition, where feasible, the OIG recommends that a DMEPOS supplier afford outside contractors and its physician clients the opportunity to participate in the DMEPOS supplier's compliance training and educational

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Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment obligations.[152] For example, as discussed above, employees involved in billing functions should be required to attend periodic training in applicable reimbursement coverage and documentation of records.[153]

A variety of teaching methods, such as interactive training and training in several different languages, particularly where a DMEPOS supplier has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable about the DMEPOS supplier's standards of conduct and procedures for alerting senior management to problems and concerns.[154] Targeted training should be provided to corporate officers, managers and other employees whose actions affect the accuracy of the claims submitted to the Government, such as employees involved in the coding, billing, sales, and marketing processes. All training materials should be designed to take into account the skills, knowledge and experience of the individual trainees. Given the complexity and interdependent relationships of many departments, it is important for the compliance officer to supervise and coordinate the training program.

The OIG recommends that attendance and participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee. The DMEPOS supplier should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

The OIG recognizes the format of the training program will vary depending upon the resources of the DMEPOS supplier. For example, a small DMEPOS supplier may want to create a video for each type of training session so new employees can receive training in a timely manner.

3. Continuing Education on Compliance Issues

It is essential that compliance issues remain at the forefront of the DMEPOS supplier's priorities. The OIG recommends that the DMEPOS supplier's compliance program address the need for periodic professional education courses for DMEPOS supplier personnel. In particular, the DMEPOS supplier should ensure that coding personnel receive annual professional training on the updated codes for the current year and have knowledge of the SADMERC's HCPCS coding helpline.[155]

In order to maintain a sense of seriousness about compliance in a DMEPOS supplier's operations, the DMEPOS supplier must continue to disseminate the compliance message. One effective mechanism for maintaining a consistent presence of the compliance message is to publish a monthly newsletter to address compliance concerns. This would allow the DMEPOS supplier to address specific examples of problems the company encountered during its ongoing audits and risk analyses, while reinforcing the DMEPOS supplier's firm commitment to the general principles of compliance and ethical conduct. The newsletter could also include the risk areas published by the OIG in its Special Fraud Alerts. Finally, the DMEPOS supplier could use the newsletter as a mechanism to address areas of ambiguity in the coding and billing process and/or its sales and marketing practices. The DMEPOS supplier should maintain its newsletters in a central location to document the guidance offered, and provide new employees with access to guidance previously provided.

The OIG believes it is important that all DMEPOS suppliers, regardless of size, maintain knowledgeable employees. The OIG recognizes that regularly sending employees to continuing education classes or publishing newsletters may not be feasible for small DMEPOS suppliers. Small DMEPOS suppliers may have their employees meet on a regular basis to discuss information in the DMERC's Medicare bulletin (e.g., coding changes, procedural changes, policy changes, etc.). Such regularly held meetings will help demonstrate the DMEPOS supplier's commitment to compliance.

D. Developing Effective Lines of Communication

1. Access to the Compliance Officer

An open line of communication between the compliance officer and DMEPOS supplier employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse, and waste. Written confidentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential fraud.[156] The compliance committee should also develop several independent reporting paths for an employee to report fraud, waste, or abuse so that such reports cannot be diverted by supervisors or other personnel.

The OIG encourages the establishment of a procedure for personnel to seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question regarding a DMEPOS supplier policy, practice or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies, practices, and procedures can be updated and improved to reflect any necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems.

2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines,[157] e-mails, written memoranda, newsletters, suggestion boxes, and other forms of information exchange to maintain these open lines of communication.[158] If the DMEPOS supplier establishes a hotline, the telephone number should be made readily available to all employees and independent contractors, possibly by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas.[159] Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, Federal, State or private payor health care program requirements, regulations, or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results.[160] Such information should be included in reports to the owner(s), governing body, CEO, president, and compliance committee.[161] Further, while the DMEPOS supplier should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

The OIG recognizes that protecting anonymity may be infeasible for small DMEPOS suppliers. However, the OIG believes all DMEPOS supplier employees, when seeking answers to questions or reporting potential instances of fraud and abuse, should know who to consult and should be able to do so without fear of retribution.

E. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes that an effective program should incorporate thorough monitoring of its implementation and regular reporting to the DMEPOS supplier's corporate officers.[162] Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and shared with the DMEPOS supplier's corporate officers and the compliance committee. The extent and frequency of the audit function may vary depending on factors such as the size of the DMEPOS supplier, the resources available to the DMEPOS supplier, the DMEPOS supplier's prior history of noncompliance, and the risk factors that are prevalent in a particular DMEPOS supplier.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, rules, regulations, and Federal, State and private payor health care program requirements. The audits should focus on the different departments within the DMEPOS supplier, including external relationships with third-party contractors. At a minimum, these audits should be designed to address the DMEPOS supplier's compliance with laws governing kickback arrangements, the physician self-referral prohibition, pricing, contracts, claim development and submission, reimbursement, sales and marketing. In addition, the audits and reviews should examine the DMEPOS supplier's compliance with the Federal, State and private payor supplier standards and the specific rules and policies that have been the focus of particular attention on the part of the Medicare DMERCs, and law enforcement, as evidenced by educational and other communications from OIG Special Fraud Alerts, Advisory Opinions, OIG audits and evaluations, and law enforcement's initiatives.[163] In addition, the DMEPOS supplier should focus on any areas of specific concern identified within that DMEPOS supplier and those that may have been identified by any entity, whether Federal, State, private or internal.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[164] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer and DMEPOS supplier management may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the DMEPOS supplier should take prompt steps to correct the problem.[165] Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor. The OIG recommends sending the payor the following information with the overpayment: (1) that the refund is being made pursuant to a voluntary compliance program; (2) a description of the complete causes and circumstances surrounding the overpayment; (3) the methodology by which the overpayment was determined; (4) the amount of the overpayment; and (5) any claim-specific information, reviewed as part of the self-audit, used to determine the overpayment (e.g., beneficiary health insurance claims number, claim number, date of service, and payment date). Inclusion of such information with the overpayment will aid the payor in making the adjustment and may prevent it from requesting additional information.

An effective compliance program should also incorporate periodic (at least annual) reviews of whether the

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programs, or develop their own programs that complement the DMEPOS supplier's standards of conduct, compliance requirements and other rules and practices.

[152] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. Additional training is required for specially fields such as billing, coding, sales and marketing.

[153] Appropriate coding and billing depends upon the quality and completeness of documentation. Therefore, the OIG believes that the DMEPOS supplier must foster an environment where interactive communication is encouraged.

[154] Post training tests can be used to assess the success of training provided and employee comprehension of the DMEPOS supplier's policies and procedures.

[155] *See* note 96.

[156] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. *See* 31 U.S.C. 3730(h). In many cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when a questionable, fraudulent, or abusive situation was brought to the attention of senior corporate officials.

[157] The OIG recognizes that it may not be financially feasible for a small DMEPOS supplier to maintain a telephone hotline dedicated to receiving calls solely on compliance issues. These companies may want to explore alternative methods, e.g., outsourcing the hotline or establishing a written method of confidential disclosure.

[158] In addition to methods of communication used by current employees, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of DMEPOS supplier policies and procedures.

[159] DMEPOS suppliers should also post in a prominent, available area the HHS-OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS-TIPS), in addition to any company hotline number that may be posted.

[160] To efficiently and accurately fulfill such an obligation, a DMEPOS supplier should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date that the potential problem was reported, the internal investigative methods utilized, the results of the investigation, any corrective action implemented, any disciplinary measures imposed, and any overpayments returned.

[161] Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

[162] Even when a DMEPOS supplier is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual DMEPOS supplier location must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent organization's senior staff and officers.

[163] *See also* section II.A.2.

[164] The OIG recommends that when a compliance program is established in a DMEPOS supplier, the compliance officer, with the assistance of department managers, should take a "snapshot" of operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This "snapshot," often used as part of benchmarking analyses, becomes a baseline for the compliance officer and other managers to judge the DMEPOS supplier's progress in reducing or eliminating potential areas of vulnerability.

[165] In addition, when appropriate, as referenced in section II.G.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

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program's compliance elements have been satisfied, e.g., whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs, and disciplinary actions, among other elements.[166] This process will verify actual conformance by all departments with the compliance program and may identify the necessity for improvements to be made to the compliance program, as well as the DMEPOS supplier's operations. Such reviews could support a determination that appropriate records have been created and maintained to document the implementation of an effective program.[167] However, when monitoring discloses that deviations were not detected in a timely manner due to program deficiencies, appropriate modifications must be implemented. Such evaluations, when developed with the support of management, can help ensure compliance with the DMEPOS supplier's policies and procedures.

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- Testing billing staff on their knowledge of reimbursement coverage criteria and official coding guidelines (e.g., present hypothetical scenarios of situations experienced in daily practice and assess responses);
- On-site visits to all facilities and locations;
- Ongoing risk analysis and vulnerability assessments of the DMEPOS supplier's operations;
- Assessment of existing relationships with physicians, and other potential referral sources;
- Unannounced audits, mock surveys, and investigations;
- Examination of the DMEPOS supplier's complaint logs;
- Checking personnel records to determine whether any individuals who have been reprimanded for compliance issues in the past are among those currently engaged in improper conduct;
- Interviews with personnel involved in management, operations, sales and marketing, claim development and submission, and other related activities;
- Questionnaires developed to solicit impressions of the DMEPOS supplier's employees;
- Interviews with physicians or other authorized persons who order services provided by the DMEPOS supplier;
- Interviews with independent contractors who provide services to the DMEPOS supplier;
- Reviews of medical necessity documentation (e.g., physicians orders, CMNs), and other documents that support claims for reimbursement;
- Validation of qualifications of physicians or other authorized persons who order services provided by the DMEPOS supplier;
- Evaluation of written materials and documentation outlining the DMEPOS supplier's policies and procedures; and
- Utilization/trend analyses that uncover deviations, positive or negative, for specific HCPCS codes or types of items over a given period.

The reviewers should:

- Possess the qualifications and experience necessary to adequately identify potential issues with the subject matter to be reviewed;
- Be objective and independent of line management;[168]
- Have access to existing audit and health care resources, relevant personnel, and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the owner(s), president, CEO, governing body, and members of the compliance committee on a regular basis, but not less than annually; and
- Specifically identify areas where corrective actions are needed.

We recommend that these audit reports be prepared and submitted to the compliance officer and senior management to ensure they are aware of the results. We suggest the reports specifically identify areas where corrective actions are needed. With these reports, DMEPOS supplier management can take whatever steps are necessary to correct past problems and prevent them from recurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

A DMEPOS supplier should document its efforts to comply with applicable Federal and State statutes, rules, and regulations, and Federal, State and private payor health care program requirements. For example, where a DMEPOS supplier, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency (including a Medicare DMERC) charged with administering a Federal health care program, the DMEPOS supplier should document and retain a record of the request and any written or oral response, including the identity and position of the individual providing the response. The DMEPOS suppliers should take the same steps when requesting advice from private payors. This step is extremely important if the DMEPOS supplier intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the DMEPOS supplier and third parties will help the organization document its attempts at compliance. In addition, the DMEPOS supplier should maintain records relevant to the issue of whether its reliance was "reasonable" and whether it exercised due diligence in developing procedures and practices to implement the advice.

The OIG recommends that all DMEPOS suppliers, regardless of size, conduct audits to ensure compliance with the applicable statutes, regulations and policies. The OIG recognizes that the small DMEPOS supplier may not have the resources to audit its operations to the extent suggested previously in this section. At a minimum, the OIG recommends that the small DMEPOS supplier conduct an internal audit. The DMEPOS supplier may choose to review a random sample of claims based on the risk areas it identified. We recommend that the DMEPOS supplier conduct an initial baseline audit and periodically conduct follow-up audits. If problems were identified in the baseline audit, the DMEPOS supplier may want to re-audit the same issue, at a later date, in order to measure the effectiveness of any corrective action(s) implemented as a result of the DMEPOS supplier's compliance program. The DMEPOS supplier should document the results of all audits it conducts. The DMEPOS supplier may want to use the OIG's Audit Process handbook to help design the audit.[169]

The extent of a DMEPOS supplier's audit should depend on the DMEPOS supplier's identified risk areas and resources. If the DMEPOS supplier comes under Government scrutiny in the future, the Government will assess whether or not the DMEPOS supplier developed a comprehensive audit based upon identified risk areas and resources. If the Government determines that the DMEPOS supplier failed to develop an adequate audit program, given its resources, the Government will be less likely to afford the DMEPOS supplier favorable treatment under its various enforcement authorities.

[166] One way to assess the knowledge, awareness, and perceptions of a DMEPOS supplier's employees is through the use of a validated survey instrument (e.g., employee questionnaires, interviews, or focus groups).

[167] Such records should include, but not be limited to, logs of hotline calls, logs of training attendees, training agenda and materials, and summaries of corrective action and improvements with respect to DMEPOS supplier policies as a result of compliance activities.

[168] The OIG recognizes that DMEPOS suppliers that are small in size and have limited resources may not be able to use internal reviewers who are not part of line management or hire outside reviewers.

[169] The Audit Process handbook can be downloaded from the OIG Office of Audit Services' webpage at http://www.hhs.gov/progorg/oas.

F. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. Discipline Policy and Actions

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, independent agents and other DMEPOS supplier employees who have failed to comply with the DMEPOS supplier's standards of conduct, policies and procedures, Federal and State statutes, rules, and regulations or Federal, State or private payor health care program requirements. It should also address disciplinary actions for those who have engaged in wrongdoing, which has the potential to impair the DMEPOS supplier's status as a reliable, honest, and trustworthy health care provider.

The OIG believes that the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers, independent agents and other DMEPOS supplier employees for failing to comply with the DMEPOS supplier's standards, policies, and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could include oral warnings, suspension, termination, or other sanctions, as appropriate. Each situation must be considered on a case-by-case basis to determine the appropriate sanction. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and specify those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by managers, while others may have to be resolved by the owner(s), president or CEO. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Personnel should be advised by the DMEPOS supplier that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate corporate officers, managers, and other DMEPOS supplier employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be subject to the same types of disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a DMEPOS supplier. The OIG believes that corporate officers, managers, and supervisors should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, statutes, rules, regulations and procedures.

The OIG believes all DMEPOS suppliers, regardless of size, should consistently apply the consequences of non-compliance. The OIG recognizes that small DMEPOS suppliers may not have a written document detailing the disciplinary actions for non-compliance. However, all employees should be clearly informed of such consequences.

2. New Employee Policy

For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, DMEPOS suppliers should conduct a reasonable and prudent background investigation, including a reference check,[170] as part of every such employment application. The application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a-7(i), or exclusion action. Pursuant to the compliance program, the DMEPOS supplier's policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded, or otherwise ineligible for participation in Federal health care programs (as defined in 42 U.S.C. 1320a-7b(f)).[171] In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that such employees should be removed from direct responsibility for, or involvement with, the DMEPOS supplier's business operations related to any Federal health care program. In addition, we recommend that the DMEPOS supplier remove such employee from any position(s) for which the employee's salary or the items or services rendered by the employee are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds.[172] If resolution of the matter results in conviction, debarment, or exclusion, then the DMEPOS supplier should remove the individual from direct responsibility for or involvement with all Federal health care programs. Similarly, if an independent contractor or a referring physician or other authorized person is debarred or excluded from participation in Federal health care programs, and the DMEPOS supplier is aware of it, the DMEPOS supplier should not involve that individual/entity in the Federal health care portion of its business.

The OIG believes all DMEPOS suppliers, regardless of size, should ensure that they do not employ or contract with anyone who has been debarred, excluded or is otherwise ineligible to participate in Federal health care programs.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. Violations and Investigations

Violations of a DMEPOS supplier's compliance program, failures to comply with applicable Federal or State statutes, rules, regulations or Federal, State or private payor health care program requirements, and other types of misconduct threaten a DMEPOS supplier's status as a reliable, honest and trustworthy health care provider. Detected but uncorrected misconduct can seriously endanger the mission, reputation, and legal status of the DMEPOS supplier. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the conduct in question to determine whether a material violation of applicable law, rules or program instructions or the requirements of the compliance program has occurred, and if so, take decisive steps to correct the

[170] See notes 137 and 138. Since the employees of DMEPOS suppliers have access to potentially vulnerable people and their property, DMEPOS suppliers should also strictly scrutinize whether they should employ individuals who have been convicted of crimes of neglect, violence or financial misconduct.

[171] Likewise, DMEPOS supplier compliance programs should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs. See notes 137 and 138.

[172] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

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problem.[173] As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan,[174] a report to the Government,[175] and the return of any overpayments, if applicable.

Where potential fraud or False Claims Act liability is not involved, the OIG recommends that the DMEPOS supplier promptly return any overpayments to the affected payor as they are discovered. However, even if the overpayment detection and return process is working and is being monitored by the DMEPOS supplier, the OIG still believes that the compliance officer needs to be made aware of these overpayments, violations, or deviations that may reveal trends or patterns indicative of a systemic problem.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents, such as submitted claims and CMNs. The DMEPOS supplier should consider engaging outside auditors or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed, the documents reviewed, and the results of the investigation (e.g., any disciplinary action taken and any corrective action implemented). Although any action taken as the result of an investigation will necessarily vary depending upon the DMEPOS supplier and the situation, DMEPOS suppliers should strive for some consistency by utilizing sound practices and disciplinary protocols.[176] Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation known to the DMEPOS supplier is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the DMEPOS supplier determines disciplinary action is warranted, it should be prompt and imposed in accordance with the DMEPOS supplier's written standards of disciplinary action.

The OIG believes all DMEPOS suppliers, regardless of size, should ensure that they are responsive to investigating allegations of potential misconduct.

2. Reporting

If the compliance officer, compliance committee or other management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil, or administrative law, then the DMEPOS supplier should promptly report the existence of misconduct to the appropriate Federal and State authorities[177] within a reasonable period, but not more than 60 days[178] after determining that there is credible evidence of a violation.[179] Prompt reporting will demonstrate the DMEPOS supplier's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.[180]

When reporting misconduct to the Government, a DMEPOS supplier should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, with advice of counsel, and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal, civil, or administrative violations have occurred, the appropriate Federal and State authorities[181] should be notified immediately.

The OIG believes all DMEPOS suppliers, regardless of size, should ensure that they are reporting the results of any overpayments or violations to the appropriate entity.

[173] Instances of non-compliance must be determined on a case-by-case basis. The existence, or amount, of a *monetary* loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries.

[174] Advice from the DMEPOS supplier's in-house counsel or an outside law firm may be sought to determine the extent of the DMEPOS supplier's liability and to plan the appropriate course of action.

[175] The OIG currently maintains a provider self-disclosure protocol that encourages providers to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The self-disclosure protocol is located on the OIG's web site at http://www.dhhs.gov/progorg/oig.

[176] The parameters of a claim review subject to an internal investigation will depend on the circumstances surrounding the issue(s) identified. By limiting the scope of an internal audit to current billing, a DMEPOS supplier may fail to identify major problems and deficiencies in operations, as well as be subject to certain liability.

[177] Appropriate Federal and State authorities include the Office of Inspector General, Department of Health and Human Services; the Criminal and Civil Divisions of the Department of Justice; the U.S. Attorney in the relevant district(s); and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as: the State Medicaid Fraud Control Unit; the Defense Criminal Investigative Service; the Department of Veterans Affairs; the Office of Inspector General, U.S. Department of Labor (which has primary criminal jurisdiction over FECA, Black Lung and Longshore programs); and the Office of Inspector General, U.S. Office of Personnel Management (which has primary jurisdiction over the Federal Employee Health Benefits Program).

[178] In contrast, to qualify for the "not less than double damages" provision of the False Claims Act, the report must be provided to the Government within thirty (30) days after the date when the DMEPOS supplier first obtained the information. *See* 31 U.S.C. 3729(a).

[179] The OIG believes that some violations may be so serious that they warrant immediate notification to governmental authorities, prior to, or simultaneous with, commencing an internal investigation, e.g., if the conduct: (1) is a clear violation of criminal law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws, rules or program instructions or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

[180] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. *See* 62 FR 67392 (December 24, 1997).

[181] *See* note 177.

3. Corrective Actions

As previously stated, the DMEPOS supplier should take appropriate corrective action, including prompt identification of any overpayment to the affected payor and the imposition of proper disciplinary action. If potential fraud or violations of the False Claims Act are involved, any repayment of the overpayment should be made as part of the discussion with the Government following a report of the matter to law enforcement authorities. Otherwise, the overpayment should be promptly refunded to the affected payor. The OIG recommends that the overpayment refund include the information as outlined in section II.E. Failure to disclose overpayments within a reasonable period of time could be interpreted as an intentional or knowing attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal or civil violation with respect to the DMEPOS supplier, as well as any individuals who may have been involved. For this reason, DMEPOS supplier compliance programs should emphasize that overpayments obtained from Medicare or other Federal health care programs should be promptly disclosed and returned to the payor that made the erroneous payment.

The OIG believes all DMEPOS suppliers, regardless of size, should take appropriate corrective action to remedy the identified deficiency.

III. Conclusion

Through this document, the OIG has attempted to provide a foundation to the process necessary to develop an effective and cost-efficient DMEPOS supplier compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual DMEPOS supplier, depending upon its size; number of locations; type of equipment provided; or corporate structure. The Federal and State health care statutes, rules, and regulations and Federal, State and private payor health care program requirements, should be integrated into every DMEPOS supplier's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. In particular, legislation has been passed that creates additional Medicare program participation requirements, such as requiring DMEPOS suppliers to purchase surety bonds and expanding the Medicare supplier standards.[182] As stated throughout this guidance, compliance is a dynamic process that helps to ensure that DMEPOS suppliers and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is OIG's hope that a voluntarily created compliance program will enable DMEPOS suppliers to meet their goals, improve the quality of service to patients, and substantially reduce fraud, waste, and abuse, as well as the cost of health care, to Federal State and private health insurers.

Dated: June 29, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–16945 Filed 7–2–99; 8:45 am]

BILLING CODE 4150–04–P

[182] *See* 63 FR 2926 (January 20, 1998).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4401–N–02]

Change in Effective Date in 1999 Notice for Designation of Difficult Development Areas Under Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document amends the Notice for the Designation of Difficult Development Areas, published December 9, 1998 (the 1999 Notice,) by extending 1998 eligibility for areas that were designated as 1998 Difficult Development Areas in the Notice published October 21, 1997 (the 1998 Notice) but were not designated as difficult development areas in the 1999 Notice. This amendment is limited to buildings described in section 42(h)(4)(B) of the Internal Revenue Code of 1986 (the Code) and located in a 1998 Difficult Development Area. The amendment is necessary because publication of the 1999 Notice three weeks prior to the effective date of the 1999 Notice did not provide adequate notice to affected entities. This Notice does not change the effective date in the 1999 Notice for (1) areas designated as Difficult Development Areas in the 1999 Notice that were not Difficult Development Areas in the 1998 Notice, or (2) that were Difficult Development Areas in both the 1998 Notice and the 1999 Notice.

FOR FURTHER INFORMATION CONTACT: With questions related narrowly to the issue of the effective date for areas that lost 1998 Difficult Development Area designations, Frederick J. Eggers, Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3080, e-mail Frederick J.__Eggers@hud.gov. With questions on how areas are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0426, e-mail Kurt G.__Usowski@hud.gov. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice is available electronically on the Internet (World Wide Web) at http://www.huduser.org/ under the heading "Data Available from HUDUser."

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1997 (62 FR 54732), HUD published in the **Federal Register** a Notice Designating Difficult Development Areas for calendar year 1998 (the 1998 Notice). The 1998 Notice provided that, in the case of a building described in section 42(h)(4)(B) of the Code, the list (of Difficult Development Areas) is effective if the bonds are issued and the building is placed in service after December 31, 1997.

On December 9, 1998 (64 FR 68116), HUD published in the **Federal Register** the Notice Designating Difficult Development Areas for calendar year 1999 (the 1999 Notice). The 1999 Notice provided that, in the case of a building described in section 42(h)(4)(B) of the Code, the list (of Difficult Development Areas) is effective if the bonds are issued and the building is placed in service after December 31, 1998.

Section 42(d)(5)(C) of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the area gross median income. All designated Difficult Development Areas in metropolitan statistical areas or primary metropolitan statistical areas (MSAs/PMSAs) may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in

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metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan counties. In the case of buildings located in designated Difficult Development Areas, eligible basis can be increased by up to 130 percent of what it would otherwise be. This means that the available Low-Income Housing Tax Credit also can be increased by up to 30 percent.

HUD typically issues a Notice in the **Federal Register** early in the last quarter of a calendar year designating Difficult Development Areas for the forthcoming calendar year. HUD uses a ranking procedure to select Difficult Development Areas subject to the 20 percent population cap. Because income and housing cost conditions change, new areas are added to the list of designated Difficult Development Areas each year and some old areas are dropped from the list. The list published on December 9, 1998, dropped 9 metropolitan areas and 35 nonmetropolitan counties from the list of Difficult Development Areas and added 3 metropolitan areas and 40 nonmetropolitan counties to the list of Difficult Development Areas.

Determination

HUD recognizes that, with every new designation of Difficult Development Areas, some metropolitan areas and nonmetropolitan counties lose their designation and rental projects planned in these areas lose their eligibility for the extra credit. State agencies and rental project developers have adjusted to a system in which the future availability of the extra credits is uncertain. HUD attempts to publish the designation Notice early enough to allow State agencies and developers to make informed decisions for the forthcoming year. HUD did not publish the 1999 Notice until December 9, 1998, because the Department had to revise the list after section 508 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998), changed the rules for designating Difficult Development Areas as the rules apply to two counties. The late publication of the 1999 Notice impeded the effectiveness of the Difficult Development Area feature of the Low-Income Housing Tax Credit. Accordingly, HUD has decided to amend the effective date published in the 1999 Notice.

This amendment extends Difficult Development Area designations in the 1998 Notice through August 20, 1999 for any building described in section 42(h)(4)(B) of the Code that was located in a Difficult Development Area in the 1998 Notice, but not in the 1999 Notice if the bonds are issued or the building is placed in service before August 20, 1999. Therefore, for example, a building described in section 42(h)(4)(B) of the Code that was located in a Difficult Development Area designated in the 1998 Notice, but not located in a Difficult Development Area designated in the 1999 Notice, would be deemed to be located in a Difficult Development Area if either the bonds are issued or the building is placed in service from January 1, 1998 through August 20, 1999.

This Notice is consistent with section 42(d)(5)(C)(iii)(II) of the Code, which limits the cumulative population of metropolitan Difficult Development Areas to 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas to 20 percent of the cumulative population of all nonmetropolitan counties. The 20 percent cap applies only to Difficult Development Area designations made by HUD for a particular year. The extension of time for the 1998 Difficult Development Areas does not reflect a determination by HUD that an aggregate population substantially in excess of 20 percent of the metropolitan or nonmetropolitan population should be treated as Difficult Development Areas for 1998. The notice is a ministerial administrative accommodation which may, for a limited period of time, result in an aggregate population slightly exceeding 20 percent of either the metropolitan or nonmetropolitan population being designated for that limited period of time. This temporary de minimis overlap of two separate Difficult Development Area designations, each of which complied with the 20 percent cap for the respective years in which those designations were made, is consistent with the statutory intent of the 20 percent limitation.

Moreover, HUD has consistently interpreted the 20 percent caps as permitting minimal overruns because it is impossible to determine whether the 20 percent cap has been exceeded, so long as the apparent excess is small, due to measurement error. *See* 62 FR 203. Despite the care and effort involved in a decennial census, the Census Bureau and users of census data recognize that the population counts for a given area are not precise. The actual extent of the measurement error is unknown. Thus, there can be errors in both the numerator and the denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variations above the 20 percent limit. Here, similarly, a strict application of the 20 percent cap would prevent the proposed accommodation and prevent the efficient administration of the statute.

Effective Date

This amendment is effective immediately.

A governmental unit continues to be obligated under § 42(m)(2) of the Code to ensure that the amount of credit attributable to a project affected by this Notice does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and a Finding of No Significant is not required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of Difficult Development Areas as required by section 42 of the Code, as amended, for use by political subdivisions of the States in allocating the Low-Income Housing Tax Credit. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates Difficult Development Areas as required under section 42 of the Code, as amended, for the use by political subdivisions of the States in allocating the Low-Income Housing Tax Credit. The notice also details the technical methodology used in making such designations.

Dated: July 1, 1999.

Andrew M. Cuomo,

Secretary.

[FR Doc. 99–17180 Filed 7–1–99; 2:55 pm]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Acceptance of Contribution for Geologic Mapping

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of acceptance of contributed funds.

SUMMARY: The U.S. Geological Survey (USGS) announces that it has accepted a contribution of $18,500 from the Yosemite Association towards the publication of a geologic map of the Tower Peak Quadrangle in Yosemite National Park. The USGS would be pleased to consider contributions from other sources for similar purposes.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Gautier, Chief Scientist, USGS Western Geologic Mapping Team, 345 Middlefield Road, Mail Stop 975, Menlo Park, CA 94023, Phone (650) 329–4909.

SUPPLEMENTARY INFORMATION: None.

Dated: May 27, 1999.

P. Patrick Leahy,

Chief Geologist, U.S. Geological Survey.

[FR Doc. 99–17042 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Approval of Petition for Reassumption of Exclusive Jurisdiction by the Chevak Traditional Council of Chevak, Alaska Over Indian Child Custody Proceedings Involving Indian Children Who Are Enrolled or Eligible for Enrollment With the Chevak Traditional Council of Chevak, Alaska and Who Reside or are Domiciled within the Native Village of Chevak, State of Alaska

AGENCY: Bureau of Indian Affairs, Interior, DOI.

ACTION: Notice.

SUMMARY: The Chevak Traditional Council of Chevak, Alaska has filed a petition with the Department of the Interior to reassume exclusive jurisdiction over Indian child custody proceedings involving Indian children who are enrolled or eligible for enrollment with the the Chevak Traditional Council of Chevak, Alaska and who reside or are domiciled within the Native Village of Chevak, Alaska.

The Assistant Secretary—Indian Affairs has reviewed the petition and determined that tribal exercise of jurisdiction is feasible and that the tribe has a suitable plan for exercising such jurisdiction. This notice constitutes the official approval of the Chevak Traditional Council of Chevak's petition by the Department of the Interior.

EFFECTIVE DATE: The Chevak Traditional Council of Chevak reassumes exclusive jurisdiction September 7, 1999.

FOR FURTHER INFORMATION CONTACT: The principal author of this document is Larry Blair, Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW, room 4603 MIB, Washington, DC 20240, (202) 208–2479.

SUPPLEMENTARY INFORMATION: The authority for the Assistant Secretary—Indian Affairs to publish this notice is contained in 25 CFR 13.14 and 209 DM 8. Section 108 of the Indian Child Welfare Act of 1978, Pub. L. 95–608, 92 Stat. 3074, 25 U.S.C. 1918, authorizes Indian tribes that occupy a reservation as defined in 25 U.S.C. 1903(10) over which a state asserts jurisdiction over Indian child custody proceedings, pursuant to Federal statute, to reassume jurisdiction over such proceedings.

To reassume such jurisdiction, a tribe must first file a petition in the manner prescribed in 25 CFR Part 13. Notice of receipt of this petition was published in the **Federal Register**, Vol 62, No. 71, page 1478, on January 10, 1997. The petition is then reviewed by the Department of the Interior using criteria set out in 25 CFR 13.12. If the Department finds that the tribe has submitted a suitable plan and that tribal exercise of jurisdiction is feasible, the petition is approved by publication in the **Federal Register**.

The geographic area subject to the reassumption of exclusive jurisdiction by the Chevak Traditional Council of Chevak, Alaska is the Native Village of Chevak.

Dated: June 28, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–16994 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Approval of Petition for Reassumption of Exclusive Jurisdiction by the Native Village of Barrow Over Indian Child Custody Proceedings Involving Indian Children who are Enrolled or Eligible for Enrollment With the Native Village of Barrow and who Reside or are Domiciled Within the Native Village of Barrow in the State of Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Native Village of Barrow, Alaska has filed a petition with the Department of the Interior to reassume exclusive jurisdiction over Indian child custody proceedings involving Indian children who are enrolled or eligible for enrollment with the Native Village of Barrow and who reside or are domiciled within the Native Village of Barrow in the State of Alaska.

The Assistant Secretary—Indian Affairs has reviewed the petition and determined that tribal exercise of jurisdiction is feasible and that the tribe has a suitable plan for exercising such jurisdiction. This notice constitutes the official approval of the Native Village of Barrow's petition by the Department of the Interior.

EFFECTIVE DATE: The Native Village of Barrow reassumes exclusive jurisdiction September 7, 1999.

FOR FURTHER INFORMATION CONTACT: The principal author of this document is Larry Blair, Bureau of Indian Affairs, Division of Social Services, 1849 C Street, N.W., room 4603 MIB, Washington, D.C. 20240. (202) 208–2479.

SUPPLEMENTARY INFORMATION: The authority for the Assistant Secretary—

Indian Affairs to publish this notice is contained in 25 CFR 13.14 and 209 DM 8. Section 108 of the Indian Child Welfare Act of 1978, Pub. L. 95–608, 92 Stat. 3074, 25 U.S.C. 1918, authorizes Indian tribes that occupy a reservation as defined in 25 U.S.C. 1903(10) over which a state asserts jurisdiction over Indian child custody proceedings, pursuant to Federal statute, to reassume jurisdiction over such proceedings.

To reassume such jurisdiction, a tribe must first file a petition in the manner prescribed in 25 CFR Part 13. Notice of receipt of this petition was published in the **Federal Register**, Vol 63, No. 213, page 59574, on November 4, 1998. The petition is then reviewed by the Department of the Interior using criteria set out in 25 CFR 13.12. If the Department finds that the tribe has submitted a suitable plan and that tribal exercise of jurisdiction is feasible, the petition is approved by publication in the **Federal Register**.

The geographic area subject to the reassumption of exclusive jurisdiction by the Native Village of Barrow is the Native Village of Barrow in the State of Alaska.

Dated: June 28, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–16995 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1310–00]

Continental Divide/Wamsutter II Natural Gas Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period for Draft Environmental Impact Statement.

SUMMARY: On April 30, 1999, the Bureau of Land Management (BLM) published a notice in the **Federal Register (Federal Register**, Vol. 64, No. 83, page 23349, April 30, 1999) announcing the availability of the Continental Divide/Wamsutter II Natural Gas Project Draft Environmental Impact Statement (DEIS) and providing 60 days for review and comment by the public.

The U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Wyoming Outdoor Council, the Wyoming Wildlife Federation, and Biodiversity Associates all have requested extension of the comment period. BLM has considered those requests and decided to extend that comment period for two weeks.

DATES: Written comments on the DEIS will be accepted until July 15, 1999.

ADDRESSES: Send written comments to: Clare Miller, Team Leader, Rawlins Field Office, Bureau of Land Management, 1300 N. Third Street, P.O. Box 2407, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Clare Miller, phone 307–328–4245, or Teresa Deakins, phone 307–352–0211.

Dated: June 29, 1999.

Bill G. Daniels,

Acting State Director.

[FR Doc. 99–16987 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–28673]

Public Land Order No. 7397; Opening of Land Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 90 acres of National Forest System land withdrawn by a Geological Survey Order which established the Bureau of Land Management's Power Site Classification No. 441. This action will permit consummation of a pending Forest Service land exchange and retain the waterpower rights to the United States. The land has been and will continue to be open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

By virtue of the authority vested in the Secretary of the Interior of the Interior by the act of June 20, 1920, Section 24, as amended,16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Regulatory Commission in DVCO–550–000, it is ordered as follows:

1. At 9 a.m. on August 5, 1999, the following described National Forest System land withdrawn by Geological Survey Order dated January 23, 1958, which established Power Site Classification No. 441, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–550–000, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

New Mexico Principal Meridian

Rio Grande National Forest

T. 40 N., R. 1 W.,
Sec. 19, NE¼NE¼, NE¼SW¼NE¼, N½NW¼SW¼NE¼, N½SE¼NW¼, SW¼SE¼NW¼ and W½SE¼SE¼NW¼.

The area described contains approximately 90 acres in Mineral County.

Dated: June 8, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–17043 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; SDM 42963 and SDM 43040]

Public Land Order No. 7398; Partial Revocation of Secretarial Orders Dated March 4, 1904 and April 9, 1914; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes two Secretarial orders insofar as they affect 51.62 acres of public lands withdrawn for the Bureau of Reclamation's Belle Fourche Reclamation Project. The lands are no longer needed for this purpose and the revocation is needed to permit disposal of the lands through exchange. This action will open 11.52 acres to surface entry and 40 acres to surface entry and mining, subject to temporary segregations of record. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated March 4, 1904 and April 9, 1914, which withdrew public lands for the Bureau of Reclamation's Belle Fourche Reclamation Project, are hereby revoked insofar as they affect the following described lands:

Black Hills Meridian, South Dakota

(a) T. 7 N., R. 8 E.,
Sec. 7, lot 6.
(b) T. 8 N., R. 6 E.,
Sec. 20, NE¼SE¼.

The areas described aggregate 51.62 acres in Butte and Meade Counties.

2. At 9 a.m. on August 5, 1999, the lands described in paragraph 1(a) and 1(b) will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on August 5, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on August 5, 1999, the lands described in paragraph 1(a) will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 8, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–17044 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 71437; WYW 71438; WYW 71439; WYW 71440; WYW 72565; WYW 72569; WYW 72573; WYW 72580; WYW 72587; WYW 72590; WYW 72591; WYW 72592; WYW 72593; WYW 72599; WYW 72600]

Public Land Order No. 7396; Partial Revocation of Secretarial Orders dated August 1, 1905, October 21, 1913, February 19, 1916, May 2, 1919, April 20, 1928, April 2, 1929, and August 30, 1956, and Revocation of Secretarial Orders dated May 18, 1923, December 30, 1926, October 25, 1930, December 20, 1946, September 19, 1947, June 14, 1951, and Public Land Order Nos. 3061, 3160, and 3292; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes 7 Secretarial orders partially, and 6 Secretarial orders and 3 public land orders in their entirety, insofar as they affect 132,051.32 acres of public lands withdrawn for the Bureau of Reclamation's Shoshone Reclamation Project. The lands are no longer needed for reclamation purposes. Of the lands included in the revocation, 556.10 acres are within other overlapping withdrawals and will remain closed to surface entry and mining, and 128,155.68 acres will not be opened to surface entry and mining until the Bureau of Land Management completes a planning review. The lands have been and will remain open to mineral leasing. The remaining 3,339.54 acres have been conveyed out of Federal ownership.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office (WY 921), P.O. Box 1828, Cheyenne, WY 82003–1828, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated August 1, 1905, October 21, 1913, February 19, 1916, May 2, 1919, May 18, 1923, December 30, 1926, April 20, 1928, April 2, 1929, October 25, 1930, December 20, 1946, September 19, 1947, June 14, 1951, and August 30, 1956, and Public Land Order Nos. 3061, 3292, and 3160, which withdrew public lands for the Bureau of Reclamation's Shoshone Reclamation Project, are hereby revoked insofar as they affect the following described lands:

(a) Sixth Principal Meridian

T. 52 N., R. 96 W.,
Tracts 40N and 40P;
Tracts 41N, 41P, 41R, and 41T;
Tracts 42O, 42Q, 42S, and 42U;
Tracts 105O, 105P, and Tracts 105U to 105Z, inclusive;
Tract 106;
Tracts 107A to 107H, inclusive;
T. 53 N., R. 96 W.,
Sec. 34, lots 1 and 2;
Sec. 35, lots 1 to 4, inclusive, NE¼NW¼, NW¼NE¼, E½NW¼NW¼, and W½NE¼NE¼;
Sec. 36, lots 1 to 4, inclusive;
Tracts 40A to 40M, inclusive, and Tract 40O;
Tracts 41A to 41M, inclusive, Tracts 41O, 41Q, and 41S;
Tracts 42A to 42M, inclusive, Tracts 42P, 42R, and 42T;
Tracts 43A to 43D, inclusive, Tracts 43G to 43N, inclusive, Tracts 43R, 43S, 43U, and 43W.
T. 51 N., R. 97 W.,
Sec. 5, lots 7 to 12, inclusive, and lot 19;
Sec. 6, lots 14, 24, 25, and lots 34 to 37, inclusive;
Sec. 7, lots 10, 11, 41, and 42;
Tracts 75E to 75G, inclusive, and Tracts 75J to 75P, inclusive;
T. 52 N., R. 97 W.,
Sec. 1, lots 12 to 17, inclusive, lots 22 to 24, inclusive, lots 40 to 42, inclusive, and S½;
Sec. 2, lots 12 to 17, inclusive, lots 22 to 24, inclusive, lots 40 to 42, inclusive, and S½;
Sec. 3, lots 13 to 19, inclusive, lots 22 to 25, inclusive, lots 39, 41, 42, SE¼, and E½SW¼;
Sec. 4, lots 5 to 8, inclusive;
Sec. 5, lots 6, 8, 11, 12, 13, and 16;
Sec. 6, lots 8 to 15, inclusive;
Sec. 9, lot 9 and lots 21 to 23, inclusive;
Sec. 10, lots 16, 25, 26, 27, 28, E½, E½W½, and SW¼NW¼;
Sec. 11;
Sec. 12, lots 11, 12, 26, 27, N½, and NW¼SW¼;
Sec. 13, lots 26 to 29, inclusive, NW¼NW¼, S½NW¼, and SW¼;
secs. 14 and 15;
Sec. 16, lots 13 to 16, inclusive, and S½S½;
Sec. 17, lots 6 to 9, inclusive, lots 11 and 30, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼, and S½SE¼;
Sec. 18, lots 10 to 14, inclusive, lots 24 and 35, SE¼NW¼, S½NE¼, SE¼, and E½SW¼;
Sec. 19, lots 9, 10, and lots 18 to 22, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 20, lots 14, 18, 25, 30, and 31, N½, and E½SE¼;
Sec. 21, lots 10, 11, 12, 23, 26, and 27, and N½;
Sec. 22, E½;
sec 23;
Sec. 24, lots 31 to 34, inclusive, NW¼NW¼, and NW¼SW¼;
Sec. 26, lot 34 and N½NW¼;
Sec. 27, lots 13, 14, lots 27 to 29, inclusive, and NE¼;
Sec. 28, lots 22, 32, and 33;

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Sec. 29, lots 4 and 33;
Sec. 31, lot 31;
Sec. 32, lots 24 to 27, inclusive, lots 30 to 34, inclusive, SW¼, and NW¼SE¼;
Sec. 33, lots 1, 4, 10, 11, 12, and 28, and S½N½;
Tracts 38K to 38M, inclusive;
Tract 42N;
Tracts 43Q, 43T, 43V, and 43X;
Tracts 64A to 64C, inclusive;
Tracts 65A to 65J, inclusive;
Tracts 66A to 66D, inclusive, Tracts 66G to 66N, inclusive, and Tracts 66Q to 66T, inclusive;
Tracts 73A to 73D, inclusive;
Tracts 74A to 74L, inclusive;
Tracts 75B to 75D, inclusive;
Tracts 84A to 84H, inclusive;
Tracts 85A to 85D, inclusive, and Tracts 85G to 85J, inclusive;
Tracts 86A to 86D, inclusive, Tracts 86G to 86N, inclusive, and Tracts 86Q to 86T, inclusive;
Tracts 87A to 87P, inclusive;
Tracts 88A to 88L, inclusive;
Tracts 95A to 95P, inclusive;
Tracts 96A to 96J, inclusive;
Tracts 97A to 97D, inclusive, and Tracts 97G to 97J, inclusive;
Tracts 99A to 99D, inclusive, Tracts 99G to 99N, inclusive, and Tracts 99Q to 99T, inclusive;
Tracts 103A to 103H, inclusive;
Tracts 106A and 106B.

T. 53 N., R. 97 W.,
Sec. 33, E½;
Sec. 34;
Sec. 35, lots 2 and 3;
Tracts 38A to 38J, inclusive;
Tracts 43E, 43F, 43O, and 43P.

T. 50 N., R. 98 W.,
Sec. 6, lots 9, 10, and lots 14 to 16, inclusive;
Tracts 85S, 85U, and 85W.

T. 51 N., R. 98 W.,
Sec. 1, lots 15, 16, and 25;
Sec. 12, lots 1, 14, and 27;
Sec. 20, lots 12, 21, and 22;
Sec. 21, lot 16;
Sec. 31, lots 28 and 30;
Sec. 32, lot 31;
Tracts 62A to 62K, inclusive;
Tracts 63B, 63D, 63F, 63H, and Tracts 63I to 63T, inclusive;
Tracts 64B, 64D, 64F, 64H, and Tracts 64I to 64T, inclusive;
Tracts 65A to 65H, inclusive, and Tracts 65J to 65N, inclusive;
Tracts 66B to 66D, inclusive;
Tracts 67A to 67H, inclusive, and Tracts 67K to 67M, inclusive;
Tract 69;
Tracts 70B, 70D, 70F, and Tracts 70H to 70T, inclusive;
Tracts 71B, 71D, 71F, and Tracts 71H to 71T, inclusive;
Tract 72;
Tracts 75H and 75I;
Tract 76;
Tract 77;
Tract 78;
Tracts 79B, 79D, 79F, and Tracts 79H to 79T, inclusive;
Tracts 80B, 80D, 80F, 80H, Tracts 80L to 80S, inclusive, and Tracts 80V to 80Y, inclusive;
Tracts 81A to 81D, inclusive, Tracts 81G to 81N, inclusive, and Tracts 81Q to 81T, inclusive;
Tracts 82A to 82D, inclusive, Tracts 82G to 82N, inclusive, and Tracts 82Q to 82T, inclusive;
Tracts 83A to 83D, inclusive, Tracts 83G to 83N, inclusive, and Tracts 83Q to 83T, inclusive;
Tracts 84A to 84D, inclusive, Tracts 84G to 84N, inclusive, and Tracts 84Q to 84T, inclusive;
Tracts 85A to 85D, inclusive, Tracts 85G to 85N, inclusive, Tracts 85R, 85T, and 85V;
Tracts 91B and 91C.

T. 52 N., R. 98 W.,

T. 50 N., R. 99 W.,
Tracts 72A, 72B, 72G, and 72H;
Tract 73;
Tract 75;
Tract 76 (including those lots of Tract in T. 51 N., R. 99 W.);
Tracts 77M and 77N;
Tracts 87N, 87P, 87R, and 87T;
Tracts 88P and 88R.

T. 51 N., R. 99 W.,
Sec. 2, lots 17, 18, 25, and 26;
Sec. 7, lots 6, 7, 14, 15, 29, and 30;
Sec. 10, lots 16 and 27;
Sec. 11, lots 8 to 10, inclusive, lots 13, 16, 17, 21, 22, 25, 26, and 30, SW¼SE¼, and S½SW¼;
Sec. 14, lots 1 to 5, inclusive;
Tracts 38B, 38D, 38F, 38H, and Tracts 38I to 38S, inclusive;
Tracts 39B, 39D, 39F, and Tracts 39H to 39T, inclusive;
Tracts 40B, 40D, 40F, and Tracts 40H to 40T, inclusive;
Tracts 41B, 41D, 41F, and Tracts 41H to 41T, inclusive;
Tracts 42A to 42P, inclusive;
Tracts 43A to 43P, inclusive;
Tracts 44A to 44P, inclusive;
Tracts 45A to 45F, inclusive;
Tracts 46A to 46H, inclusive, and Tract 46P;
Tracts 47A, 47E, 47H, 47I, and Tracts 47L to 47P, inclusive;
Tracts 48A to 48J, inclusive, Tracts 48O and 48P;
Tracts 49A to 49P, inclusive;
Tracts 51A to 51P, inclusive;
Tracts 53A to 53C, inclusive,
Tracts 53F to 53L, inclusive, and Tracts 53O to 53R, inclusive;
Tracts 54A to 54D, inclusive, Tracts 54G to 54N, inclusive, and Tracts 54Q to 54T, inclusive;
Tracts 55A to 55D, inclusive, Tracts 55G to 55N, inclusive, and Tracts 55Q to 55T, inclusive;
Tracts 56A to 56P, inclusive;
Tracts 57A to 57P, inclusive;
Tracts 58A to 58I, inclusive, and Tracts 58O to 58P, inclusive;
Tracts 59A to 59P, inclusive;
Tracts 60A to 60P, inclusive;
Tracts 61A to 61P, inclusive;
Tracts 62A to 62P, inclusive;
Tracts 63A, 63B, Tracts 63G to 63I, inclusive, and Tract 63P;
Tracts 64A to 64H, inclusive;
Tracts 65A to 65H, inclusive;
Tracts 66A to 66D, inclusive, and Tracts 66G to 66J, inclusive;
Tracts 69B, 69D, 69F, and Tracts 69H to 69T, inclusive;
Tracts 70B, 70D, 70F, 70I, Tracts 70M to 70T, inclusive, and Tracts 70W to 70Z, inclusive;
Tracts 80J and 80K;
Tracts 81O and 81P;
Tracts 82E, 82F, 82O and 82P;
Tracts 83E, 83F, 83O and 83P;
Tracts 84E, 84F, 84O and 84P;
Tracts 85E, 85F, and Tracts 85O to 85Q, inclusive;
Tracts 87A to 87M, inclusive, Tracts 87O, 87Q, and 87S;
Tract 88A, Tracts 88H to 88J, inclusive, Tracts 88O and 88Q.

T. 52 N., R. 99 W.,
Sec. 1, lots 5 to 13, inclusive, lot 16, lots 19 to 21, inclusive, lots 34 and 36, and NW¼SW¼;
Sec. 2, lots 5, 8, and 9, lots 12 to 20, inclusive, and S½;
Sec. 3, S½S½;
Sec. 4, S½S½;
Sec. 8, lot 1, N½SE¼, and SW¼SE¼;
Sec. 9, lots 1 to 3, inclusive, lots 12 to 14, inclusive, N½N½, SW¼NW¼, and NW¼SW¼;
Sec. 10, lots 1 to 4, inclusive, and N½N½;
Sec. 11, lots 1 to 4, inclusive, and N½N½;
Sec. 12, lots 6 and 7;
Sec. 17, lots 2, 3, 6, 8, 9, and 12, NW¼, W½NE¼, N½SW¼, and W½SE¼;
Sec. 18, lots 5 to 9, inclusive, lot 12, E½W½, NE¼, and N½SE¼;
Sec. 19, lots 8 to 12, inclusive, lots 14, 22, and 24;
Sec. 20, lots 1, 5, and 6;
Sec. 21, lots 5, 6, 25, and 26;
Tracts 38A, 38C, 38E, and 38G;
Tracts 39A, 39C, 39E, and 39G;
Tracts 40A, 40C, 40E, and 40G;
Tracts 41A, 41C, 41E, and 41G;
Tracts 43A to 43P, inclusive; Tracts 44A to 44P, inclusive;
Tracts 45A to 45P, inclusive; Tracts 46A to 46P, inclusive;
Tracts 48A to 48C, inclusive, Tracts 48H to 48M, inclusive, and Tracts 48R to 48T, inclusive;
Tracts 49B to 49D, inclusive,
Tracts 49G to 49N, inclusive, Tract 49Q, and Tracts 49S to 49U, inclusive;
Tracts 50E, 50F, and Tracts 50I to 50P, inclusive;
Tracts 51E, 51F, 51O, and 51P;
Tracts 52E, 52F, 52O, and 52P;
Tracts 53A to 53P, inclusive;
Tracts 54A to 54P, inclusive;
Tracts 55A to 55P, inclusive;
Tracts 56A to 56P, inclusive;
Tracts 57A to 57P, inclusive;
Tracts 58A to 58P, inclusive;
Tracts 59A to 59P, inclusive;
Tracts 60A to 60N, inclusive;
Tracts 61A to 61F, inclusive;
Tracts 62A to 62F, inclusive;
Tracts 64A to 64P, inclusive;
Tracts 65A to 65P, inclusive;
Tracts 66A to 66P, inclusive;
Tracts 67E, 67F, 67O, and 67P;
Tracts 68E, 68F, 68O, and 68P;
Tracts 69A, 69C, 69E, and 69G;
Tracts 70A, 70C, 70E, and 70H;
Tracts 71A to 71N, inclusive;
Tracts 72A to 72H, inclusive;

Tracts 73A to 73H, inclusive;
Tracts 74A to 74D, inclusive;
Tracts 75A to 75D, inclusive;
Tract 80, lot 1;
Tracts 82E, and 82F;
Tracts 92E, 92F, 92O, and 92P.

T. 51 N., R. 100 W.,
Sec. 1, lots 2 to 11, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼, and SW¼SE¼;
Sec. 2, lots 1 to 6, inclusive;
Sec. 12, lots 1, 2, 5, 6, NW¼NE¼, and SW¼NE¼;
Tracts 40A to 40D, inclusive;
Tracts 41A to 41D, inclusive;
Tracts 42A to 42D, inclusive;
Tracts 43A to 43D, inclusive;
Tracts 44A to 44D, inclusive;
Tracts 45A to 45D, inclusive;
Tracts 53D, 53E, 53M and 53N;
Tracts 54E, 54F, 54O and 54P;
Tracts 55E, 55F, 55O and 55P;
Tracts 66E and 66F;
Tracts 70K, 70L, 70U, and 70V.

T. 52 N., R. 100 W.,
Sec. 5, lots 8 to 11, inclusive;
Sec. 6, lots 1 to 3, inclusive;
Sec. 7, lots 1 to 5, inclusive, and E½NE¼;
Sec. 8, N½;
Sec. 9, lots 1 to 4, inclusive, N½, and NE¼SE¼;
Secs. 10, 11, 13, 14, 15;
Sec. 16, lots 1 to 7, inclusive;
Sec. 17, lots 3 and 4, S½SW¼, SW¼SE¼, and N½SW¼;
Sec. 18, lots 3, 4, N½SE¼, N½NE¼SW¼, S½NE¼SW¼, SE¼SW¼, and S½SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20, 21, and 22;
Sec. 23, NW¼, and N½NE¼;
Sec. 24, lots 1, and 3, N½NW¾, NE¼, SW¼, and W½SE¼;
Sec. 25, lots 2 to 7, inclusive, NW¼, and W½NE¼;
Sec. 26, lot 1, E½NE¼, and NW¼NE¼;
Secs. 27, 28, and 29;
Sec. 30, lots 1 to 4, inclusive, E½W½, and E½;
Sec. 31, lots 1 to 4, inclusive, E½, E½NW¼, and E½SW¼;
Sec. 32;
Sec. 33, N½, N½S½, and S½S½;
Sec. 34, NW¼, E½, N½SW¼, and S½SW¼;
Sec. 35, lots 3 and 4, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 36, lots 5 to 8, inclusive;
Tract 39;
Tracts 40Q to 40T, inclusive;
Tract 41Q;
Tract 43C;
Tracts 44A to 44P, inclusive;
Tracts 48D to 48G, inclusive, and Tracts 48N to 48Q, inclusive;
Tracts 49E, 49F, 49O, and 49P;
Tract 70J.

T. 53 N., R. 100 W.,
Sec. 7, lots 8, 12, 13, and 14, and E½SW¼ (formerly lots 4, 6, 7, 52, and SE¼SW¼);
Sec. 19, lots 7 and 8;
Sec. 30, lots 5 to 8, inclusive;
Sec. 31, lots 5 to 8, inclusive;
Sec. 33, lots 1 to 4, inclusive;
Tracts 40A to 40P, inclusive;
Tracts 41A, 41E, 41F, 41H, 41I, 41K to 41N, inclusive, and Tracts 41P;
Tracts 44A to 44L, inclusive, and Tracts 44N to 44P, inclusive;
Tracts 45A to 45P, inclusive;
Tracts 46A to 46P, inclusive;
Tracts 47A to 47P, inclusive.

T. 54 N., R. 100 W.,
Sec. 31, lots 6, 10, 11, and 37A;
Tracts 39A, 39D, 39E, and 39H;
Tracts 41A, 41G, 41H, and 41L;
Tracts 43B and 43E;
Tracts 58A to 58C, inclusive.

T. 52 N., R. 101 W.,
Sec. 1, lot 1;
Sec. 6, lots 2 to 4, inclusive;
Sec. 7, lots 1 to 3, inclusive, E½NW¼, W½NE¼, and SE¼NE¼;
Sec. 9, lots 2 to 4, inclusive;
Sec. 11, lots 1 to 6, inclusive;
Sec. 12, lots 1 to 4, inclusive, E½NE¼, and S½;
Sec. 13, SE¼;
Sec. 14, lots 1, 2, E½NW¼, NE¼, and S½;
Sec. 15, lots 1 to 6, inclusive;
Sec. 16, lots 1 to 6, inclusive, and E½SE¼;
Sec. 17, lots 1 to 5, inclusive, W½W½, and SE¼SW¼;
Sec. 20, E½;
Sec. 21, lots 1 to 4, inclusive, NW¼SW¼, NW¼, and NW¼NE¼;
Sec. 22, lots 1 to 7, inclusive, lot 65, and E½E½;
Sec. 23;
Sec. 24, E½NE¼, E½SW¼NE¼, E½SE¼, E½W½SE¼, NW¼NE¼, W½SW¼NE¼, and W½W½SE¼;
Sec. 25, E½;
Sec. 26;
Sec. 27, lots 1 to 7, inclusive, E½E½, and SW¼SE¼;
Sec. 28, lots 1 to 3, inclusive, NW¼NW¼, S½N½, and S½;
Sec. 29, NW¼NE¼, E½NE¼, and E½SE¼;
Sec. 32, E½NE¼ and NE¼SE¼;
Sec. 33, lot 3 and W½W½;
Sec. 36, lots 1 to 5, inclusive;
Tracts 46E and 46F;
Tract 55J.

T. 53 N., R. 101 W.,
Sec. 12, lot 6, and lots 36 to 38, inclusive, (formerly lots 6, 7, 13);
Sec. 36, lots 1 to 6, inclusive, and E½NE¼.

T. 52 N., R. 102 W.,
Sec. 1, SE¼SE¼ and S½NE¼SE¼;
Sec. 11, lots 1 and 2;
Sec. 12, E½NE¼;
Sec. 27, lot 2, S½, S½NW¼, and SW¼NE¼;
Sec. 28, lot 5, N½SE¼, S½NE¼, and SE¼SE¼.

The areas described aggregate 128,711.78 acres in Park and Big Horn Counties.

(b) Sixth Principal Meridian

T. 52 N., R. 96 W.,
Tracts 105K to 105N, inclusive, and Tracts 105Q to 105T, inclusive;
Tract 107I to 107N, inclusive;
Tract 108A and 108B.

T. 53 N., R. 96 W.,
Tract 37;
Tract 38A to 38E, inclusive, Tracts 38H, 38I, and 38L;
Tract 39A and Tracts 39D to 39F, inclusive.

T. 51 N., R. 97 W.,
Sec. 7, lots 9, 13, and 14.

T. 52 N., R. 97 W.,
Sec. 27, lot 26 and E½NW¼;
Tract 83.

T. 53 N., R. 97 W.,
Tract 37.

T. 51 N., R. 98 W.,
Tract 46, lots 2, 23, and 26;

T. 52 N., R. 101 W.,
Sec. 6, lot 1;
Sec. 9, lot 1.

The areas described aggregate 3,339.54 acres in Park and Big Horn Counties. The total areas described in 1(a) and 1(b) aggregate 132,051.32 acres in Park and Big Horn Counties.

2. Of the lands described in Paragraph 1(a), 556.10 acres are within overlapping withdrawals and will remain closed to surface entry and mining, and 128,155.68 acres will not be opened to surface entry and mining until a planning review and an analysis are completed to determine if any of the lands need special designation and protection or have exchange potential.

3. The lands described in Paragraph 1(b) have been conveyed out of Federal ownership and this is a record-clearing action only.

Dated: June 8, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–16946 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–1017, N–65608]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, DOI.

ACTION: Direct sale of reversionary interest in previously patented public land in Nye County, Nevada.

SUMMARY: The following described land in Nye County, Nevada, patented to the Nye County under provisions of the Recreation and Public Purposes Act, as amended, has been examined and found suitable for elimination of the reversionary clause in the patent, under provisions of section 203 and section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719).

Mount Diablo Meridian, Nevada

T. 2 N., R. 42 E.,
Tract 37;
Consisting of 11.71 acres, more or less.

The above-described interest in the land would be conveyed directly to the present owner of record, Nye County. This interest will not be conveyed until at least 60 days after the date of

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publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kathy Sladish, Land Law Examiner, Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV, 89820, (775) 635–4029.

SUPPLEMENTARY INFORMATION: The land was patented in 1990 for use as a hospital, museum and senior garden. The patent (number 27–90–0147) includes a clause providing for title to the land to revert to the United States if the approved plan of development is not followed. The land has been substantially altered to the point where management by the Bureau of Land Management would not be feasible. The land is not needed for any resource program and is not suitable for management by another Federal department or agency. It would be difficult and uneconomic to manage, if title reverted to the United States.

Nye County has requested full title to the subject parcel. This application to purchase the reversionary interest of the United States also constitutes an application for conveyance of the mineral interests. The applicant will be required to submit a $50.00 nonrefundable filing fee for conveyance of the mineral interest. Payment by Nye County of other fees associated with this transaction will also be required.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, pursuant to sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a supplemental patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation, or 270 days from date of this publication, which ever occurs first.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945);

2. A right-of-way for sewer line purposes, NEV–059832, and all appurtenances thereto, constructed by the United States through, over, or upon the land so patented, and the right of the United States, its agents or employees, to maintain, operate, repair or improve the same so long as needed or used for or by the United States.

And will be subject to:

1. Those rights for highway purposes granted to the Nevada Highway Department, its successors or assigns, by right-of-way NEV–057876, pursuant to the Act of August 27, 1958 (23 U.S.C. 317).

2. Those rights for power line purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by right-of-way N–4879, pursuant to the Act of March 4, 1911, as amended (formerly U.S.C. 961).

3. Those rights for power line purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by right-of-way N–51997, pursuant to the Act of October 21, 1976, (43 U.S.C. 1761).

4. Those rights for power line purposes which have been granted to Tonopah Public Utilities, its successors or assigns, by right-of-way N–52046, pursuant to the Act of October 21, 1976, (43 U.S.C. 1761).

5. All other valid existing rights.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Field Manager, Battle Mountain District, 50 Bastian Road, Battle Mountain, NV 89820. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: June 24, 1999.

M. Lee Douthit,

Associate Field Manager.

[FR Doc. 99–16947 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–7123–00–6067]

Samoa Dunes Recreation Area and Eureka Dunes Riding Area, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules.

SUMMARY: The primary purpose of these supplementary rules is the enhancement of public safety and the protection of natural resources within and around the public lands commonly known as the Samoa Dunes Recreation Area and Eureka Dunes Riding Area. Both areas have been designated for the primary use of off-highway vehicles. Potential safety hazards to pedestrians and off-highway vehicles were identified, mainly due to the poor visibility of off-highway vehicles utilizing the dunes, trails and roads of these areas. The use of whip masts and flags, to enhance off-highway vehicle visibility, would greatly reduce the potential for accidents involving off-highway vehicles. The supplementary rule requiring whip masts and flags has been worded to complement and be consistent with a similar Bureau of Land Management regulation being used at the Imperial Dunes Recreation Area, El Centro, California (**Federal Register**/Vol. 53, No. 192, page 38953, Tuesday, October 4, 1988) and a similar State regulation affecting the Pismo Dunes Recreation (14 CFR 4609.1(c)).

Also, off-highway vehicles have been willfully disregarding signs, fences and other similar interpretive/physical barriers erected to prevent off-highway vehicles from entering sensitive biological areas and adjacent areas of private property. The prohibition against vehicle barrier violations will serve to protect and preserve public and private property concerns.

In addition to the regulations contained in 43 CFR Part 8340, 8341, 8343, 8365 and 9268, the California Vehicle Code and additional supplementary rules established by the Arcata Field Office, the following supplementary rules shall apply to the Samoa Dunes Recreation Area and Eureka Dunes Riding Area:

1. *Safety flags, whips and masts:* All off-highway motor vehicles registered under California Vehicle Code Section 38010 or other off-road vehicles, as defined in 43 CFR 8340.0–5(a) shall be equipped with a whip, which is any pole, rod, mast or antenna, that is securely mounted on the vehicle and which extends at least eight (8) feet from the surface of the ground when the vehicle is stopped. When the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any attached flags. At least one whip attached to each vehicle shall have a solid red or orange colored safety flag with a minimum size of six (6) inches by twelve (12) inches and be attached within ten (10) inches to the top of the whip. Flags may be of pennant, triangle, square or rectangular shape. Club or other flags may be mounted below the safety flag or on a separate whip.

2. *Vehicle Barriers:* Taking any vehicle through, around, or beyond any structure, restrictive sign, recognizable barricade, fence, gate or traffic control barrier is prohibited. These actions affect approximately 412 acres of public land located in the Samoa Dunes Recreation Area and Eureka Dunes Riding Area (T.5N., R.1W., Section 31 and T.5N., R.1W., Section 30/31, Humboldt Meridian).

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bruce Cann, Outdoor Recreation Planner, or Michael Dodson, Law Enforcement Ranger, Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, California 95521, (707) 825–2300.

SUPPLEMENTARY INFORMATION: The authority for establishing supplementary rules is contained in 43 CFR 8365.1–6. Copies of these rules will be available in the Arcata Field Office. These rules will also be posted near and/or within the lands, sites or facilities affected in the Samoa Dunes Recreation Area and Eureka Dunes Riding Area. Violations of supplementary rules established under authority of 43 CFR 8365.1–6 are punishable by a fine not to exceed $10,000 and/or imprisonment not to exceed 12 months, under authority of 43 CFR 8360.7.

Daniel Averill,

Acting Arcata Field Manager.

[FR Doc. 99–16988 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

$670,000 in Funding Assistance for Non-Federal Acquisition of Civil War Battlefield Land

AGENCY: National Park Service, Interior.

ACTION: Availability of funding for acquisition of Civil War battlefield land.

SUMMARY: The National Park Service (NPS) announces the availability of $670,000 to assist States and local communities in acquiring for permanent protection lands, or interests in lands, at significant Civil War battlefield sites.

ADDRESSES: Funding proposals should be mailed to: Hampton Tucker, National Park Service, American Battlefield Protection Program, 1849 C Street, NW, NC–330, Washington, DC 20240, telephone (202) 343–3580.

FOR FURTHER INFORMATION: Hampton Tucker, National Park Service, American Battlefield Protection Program, 1849 C Street, NW, NC–330, Washington, DC 20240, telephone (202) 343–3580.

SUPPLEMENTARY INFORMATION: Under the 1999 Interior Appropriations Act (Public Law 105–83), Congress appropriated $8 million from the Land & Water Conservation Fund to assist non-Federal efforts to acquire and preserve Civil War battlefield lands. The Congress has assigned most of these funds to specific projects. It reserved $670,000 of the total and has asked the National Park Service to assign those funds. NPS seeks proposals from State and local governments—or from qualified non-profit historic preservation organizations acting through an agency of State or local government—for the non-federal acquisition of significant Civil War battlefield land. Project proposals are subject to the following requirements.

1. The 1999 Appropriations Act requires that these funds be matched on a two-for-one basis with non-federal dollars. That is, the federal dollars can pay for no more than one-third of the acquisition cost.

2. The purchase price must be supported by a qualified appraisal that has been approved by NPS as meeting the Uniform Appraisal Standards for Federal Land Acquisitions.

3. The battlefield land acquired with the assistance of these funds must be permanently protected from inappropriate development.

NPS will give priority to acquisition of land, or interests in land, within the "core" areas of Priority I and Priority II battlefields, as identified by the Congressionally-chartered Civil War Sites Advisory Commission (see list below). Among potential projects NPS will give highest priority to acquisition projects that can be completed within the immediate future.

Proposals should be submitted by August 20,1999, and must include:

1. A carefully drawn map (preferably on a U.S.G.S. Quadrangle Map) that sets out the boundaries of the battlefield and identifies within those boundaries the specific lands to be acquired.

2. The number of acres of land to be acquired.

3. A description of the battle-related events that occurred on the land.

4. A statement of whether the owner of the land to be acquired has indicated a willingness to sell the land.

5. A statement of the owner's asking price and/or the estimated fair market value of the land to be acquired.

6. A statement of how much federal assistance from this program the applicant is requesting.

7. A statement of how much matching share is already on hand or firmly pledged.

Priority I Civil War Battlefields

ALABAMA

Mobile Bay (Ft Morgan & Blakeley)

ARKANSAS

Prairie Grove

GEORGIA

Allatoona, Chickamauga Kennesaw Mountain, Ringgold Gap

KENTUCKY

Mill Springs, Perryville

LOUISIANA

Port Hudson

MARYLAND

Antietam, Monocacy, South Mountain

MISSISSIPPI

Brices Cross Roads, Chickasaw Bayou, Corinth, Port Gibson, Raymond, Vicksburg

MISSOURI

Byram's Ford, Fort Davidson, Newtonia

NEW MEXICO

Glorieta Pass

NORTH CAROLINA

Bentonville, Fort Fisher

OKLAHOMA

Honey Springs

PENNSYLVANIA

Gettysburg

SOUTH CAROLINA

Secessionville

TENNESSEE

Chattanooga, Fort Donelson, Spring Hill

VIRGINIA

Boydton Plank Road, Brandy Station, Bristoe Station, Cedar Creek, Chaffin's Farm/New Market Heights, Chancellorsville, Cold Harbor, Deep Bottom II, Fisher's Hill, Gaines' Mill, Glendale, Kernstown I, Malvern Hill, Manassas, Second Mine Run, North Anna, Petersburg, Richmond, Spotsylvania Court House, White Oak Road, Wilderness

WEST VIRGINIA

Harpers Ferry, Rich Mountain

Priority II Civil War Battlefields

ARKANSAS

Chalk Bluff, Devil's Backbone, Elkin's Ferry, Marks' Mills, Prairie D'an

COLORADO

Sand Creek

GEORGIA

Dalton I, Davis' Cross Road, Griswoldville, Kolb's Farm, Lovejoy's Station, New Hope Church, Resaca, Rocky Face Ridge

KENTUCKY

Cynthiana, Munfordville, Richmond

LOUISIANA

Fort De Russy, Irish Bend, LaFourche Crossing, Mansfield, Mansura

MARYLAND

Boonsborough

MISSISSIPPI

Big Black River Bridge, Champion Hill, Grand Gulf, Okolona, Snyder's Bluff

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MISSOURI

Carthage, Fredericktown, Lexington, Lone Jack, Newtonia

NEW MEXICO

Valverde

NORTH CAROLINA

Monroe's Cross Roads, Roanoke Island, Wyse Fork

OKLAHOMA

Chustenahlah

SOUTH CAROLINA

Grimball's Landing, Honey Hill

TENNESSEE

Brentwood, Fair Garden, Murfreesborough, Parker's Cross Roads, Thompson's Station

TEXAS

Sabine Pass II

VIRGINIA

Aquia Creek, Berryville, Buckland Mills, Cedar Mountain, Cool Springs, Cross Keys, Cumberland Church, Dinwiddie Courthouse, 1st Deep Bottom, Hampton Roads, Hatcher's Run, Haw's Shop, Lewis' Farm, Peebles' Farm, Piedmont, Port Republic, Port Walthall Junction, Ream's Station, Rice's Station, Sailor's Creek, Saltville, Suffolk (Hill's Point), Sutherland's Station, Swift Creek, Tom's Brook, Trevilian Station, Ware Bottom Church, White Oak Swamp

WEST VIRGINIA

Hoke's Run, Smithfield Crossing, Summit Point

Dated: June 30, 1999.

H. Bryan Mitchell,

Chief, American Battlefield Protection Program.

[FR Doc. 99–17041 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; National Capital Memorial Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the national Capital Memorial Commission (the Commission) will be held at 2:00 p.m., on Thursday, July 22, at the National Building Museum, Room 312, 5th and F Streets, NW, Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the agenda is expected to include the following:

I. Consultation: Memorial proponents will consult with the Commission on aspects of one authorized memorial:

(a) Site selection alternatives for the Benjamin Banneker Memorial along the L'Enfant Promenade.

II. The Commission will conclude preparation of a draft report on its review of the Commemorative Works Act of 1986. This report was required by the Subcommittee on National Parks, Historic Preservation, and Recreation, United States Senate Committee on Energy and Natural Resources. The Commission will review recommendations offered by the National Capital Planning Commission/ National Capital Memorial Commission/ Commission of Fine Arts Joint Task Force on Memorials which convened, in part, to assist in an evaluation of that Act.

The Commission was established by Public Law 99–652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and it environs.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Executive Secretary to the Commission, at (202) 619–7097.

Dated: June 28, 1999.

Joseph M. Lawler,

Acting Regional Director, National Capital Region.

[FR Doc. 99–16984 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 26, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 21, 1999.

Beth Boland,

Acting Keeper of the Nationol Register.

ALABAMA

Marshall County

Julia Street Memorial United Methodist Church, 302 Thomas Ave., Boaz, 99000855

ARIZONA

Yavapai County

Wingfield, Hank and Myrtle, Homestead, 806 E. Quaterhorse Ln., Camp Verde, 99000857

ARKANSAS

Pulaski County

Tuf Nut Historic Commericial District, 300–312 S. Rock St. and 423 E. Third St, Little Rock vicinity, 99000856

CONNECTICUT

Litchfield County

Plymouth Center Historic District, Roughly along Main, North, and South Sts., Cater, Hillside Ave., Ives Crossing, and Maple St., Plymouth, 99000858

New Haven County

Naugatuck Center Historic District, Roughly bounded by Fairview Ave., Hillside Ave., Terrace Ave., Water St. and Pleasant View St., Naugatuck, 99000859

FLORIDA

Hillsborough County

Old Tampa Children's Home, 3302 N. Tampa Ave., Tampa, 99000863

Palm Beach County

Ferndix Building,
401 Fern St., West Palm Beach, 99000861
Van Valkenburg, Grant House,
213 Rosemary Ave., West Palm Beach, 99000860

Polk County

Central Avenue School, 604 S. Central Ave., Lakeland, 99000865
Cleveland Court School, 328 E. Edgewood Dr., Lakeland, 99000862
Cox, John F., Grammar School, 1005 N. Massachusetts Ave., Lakeland, 99000864

MASSACHUSETTS

Berkshire County

Farnams Village Historic District, Farnams Rd., Lanesborough Rd., and Cheshire Rd., Cheshire, 99000866

NEW YORK

Columbia County

Peck House, NY 203, Chatham, 99000869

Dutchess County

Graham—Brush Log House, Church St., Pine Plains, 99000870

Nassau County

Clifton, (Roslyn Harbor, New York MPS) 355 Bryant Ave., Roslyn Harbor, 99000874
Greenridge—Arthur Williams House, (Roslyn Harbor, New York MPS) 875 Bryant Ave., Roslyn Harbor, 99000875
Mudge Farmhouse, (Roslyn Harbor, New York MPS) 535 Motts Cove Rd. S, Roslyn Harbor, 99000876
Smith, Stephen and Charles, House, (Roslyn Harbor, New York MPS) 450 Bryant Ave., Roslyn Harbor, 99000873
Willowmere, (Roslyn Harbor, New York MPS) 435 Bryant Ave., Roslyn Harbor, 99000872

NORTH CAROLINA

Onslow County

Yopps Meeting House, (Onslow County MPS) NC 172, jct. with Sneads Ferry Rd., Sneads Ferry vicinity, 99000868

Orange County

Carolina Inn, 211 Pittsboro St., Chapel Hill, 99000867

PENNSYLVANIA

Allegheny County

Whitehill— Gleason Motors, 5815 Baum Blvd., Pittsburgh, 99000878

Centre County

Philipsburg Historic District, Roughly bounded by East Presqueisle St., Hillcrest Dr., Oak, Railroad, Spruce and Laurel Sts., Philipsburg, 99000881

Franklin County

Rock Hill Farm, 12995 and 12755 Bain Rd., Mercersburg, 99000880

Northampton County

Weona Park Carousel, PA 512, Pen Argyl, 99000879

Warren County

Warren Historic District, Oil Industry Resources in Western Pennsylvania MPS) Roughly bounded by Comewango Cr., the Allegheny R., 7th Ave. and Laurel St., Warren, 99000877

TEXAS

Tarrant County

Our Mother of Mercy Catholic Church and Parsonage, 1100 and 1104 Evans Ave., Fort Worth, 99000882
Saint James Second Street Baptist Church, 210 Harding St., Fort Worth, 99000883

[FR Doc. 99–17040 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Director's Order Concerning the Establishment of a National Tourism Policy; Correction

June 4, 1999.

In FR doc. 99–13061 published in the **Federal Register** on May 24, 1999, on page 28009 under **FOR FURTHER INFORMATION CONTACT** the telephone number is corrected to read "202/208–6057."

Georgette Tolbert,

Director of Tourism, National Pork Service.

[FR Doc. 99–16983 Filed 7–2–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that four proposed consent decrees in the consolidated cases captioned *United States* v. *Cantrell, et. al.*, Civil Action No. C–1–97–981 (S.D. Ohio) and *United States* v. *Ohio Power Co., et al.*, Civil Action No. C–1–98–247 (S.D. Ohio), were lodged with the United States District Court for the Southern District of Ohio, Western Division, on June 21, 1999, pertaining to the Automatic Containers Superfund Site (the "Site"), located near Ironton, in Lawrence County, Ohio. The proposed consent decrees would resolve certain civil claims of the United States for recovery of more than $1.3 million in unreimbursed past response costs under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, against two defendants and 28 third-party defendants in the consolidated cases.

The first proposed consent decree, captioned "Partial Consent Decree with Settling Defendant Mansbach Realty Co. (d/b/a Mansbach Metal Co.) and Certain Third-Party Settling Defendants" would require Defendant Mansbach's payment of $585,000 (on its own behalf and on behalf of 24 so-called "Mansbach Supplier" Third-Party Defendants) in reimbursement of past CERCLA response costs the United States incurred in connection with the Site. (The following Mansbach Supplier Third-Party Defendants are Settling Defendants under that proposed consent decree: American Commercial Barge Line LLC (and its related corporate entity American Commercial Lines LLC); American Electric Power Service Corporation (and its related corporate entities Ohio Power Company and Indiana Michigan Power Company); Ashland Oil, Inc. (now known as Ashland Inc.); Baker Iron & Metal Co., Inc.; Merdie Boggs & Sons; Crounse Corporation; CSX Transportation, Inc. (in its own name and as successor by merger to Louisville and Nashville Railroad Company); E.I. du Pont Nemours and Company; General American Transportation Corporation; Helm Financial Corporation (and its related entities Helm-Atlantic Associates Limited Partnership, Helm-Pacific leasing, and HM Joint Venture); Ingram Industries, Inc.; The David J. Joseph Company; The Valley Line Company (formerly known as Mississippi Valley Barge Line Company); Norfolk Southern Railway Company; Nugent Sand Company; The Ohio River Company (and its related corporate entity Midland Enterprises Inc.); Progress Rail Services Corporation; Kentucky Electric Steel, Inc.; Ross Brothers Construction Co.; Sears, Roebuck and Co.; Superior Marine Ways, Inc.; and Union Tank Car Company.) The second proposed consent decree, captioned "Partial Consent Decree with Settling Defendant Oak Hill Foundry & Machine Works, Inc.," would provide for payment of an additional $91,000 by Defendant Oak Hill. The third proposed consent decree, captioned "Partial Consent Decree with Certain Third-Party Settling Defendants," would provide for payment of an additional $13,000 by Third-Party Defendants Muth Lumber Co., Crace Construction Co., and Lawrence County Medical Center. The fourth proposed consent decree, captioned "Partial Consent Decree with Setting Defendant City of Ironton, Ohio," would provide for payment of an additional $26,000 by the City. Taken together, the four proposed consent decrees would resolve claims against 30 parties in exchange for payment of $715,000, as provided by the proposed consent decrees.

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The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cantrell, et al.*, Civil Action No. C–1–97–981 (S.D. Ohio) and *United States* v. *Ohio Power Co., et al.*, Civil Action No. C–1–98–247 (S.D. Ohio), and DOJ Reference Nos. 90–11–3–1756 and 90–11–3–1756/1, and the proposed consent decree(s) which the comments address.

The proposed consent decrees may be examined at: (1) The Office of the Untied States Attorney for the Southern District of Ohio, 220 U.S. Courthouse, 100 East Fifth street, Cincinnati, Ohio 45202 (contact Gerald Kaminski (513–684–3711)); (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Mony Chabria (312–886–6842)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting copies, please refer to the referenced case and DOJ Reference Number, the proposed consents decree(s) requested, and enclose a check for the amount(s) described below, made payable to the Consent Decree Library. The cost for a copy of the "Partial Consent Decree with Settling Defendant Mansbach Realty Co. (d/b/a Mansbach Metal Co.) and Certain Third-Party Settling Defendants" and all appendices is $13.50 (54 pages at 25 cents per page reproduction costs). The cost for a copy of the "Partial Consent Decree with Settling Defendant Oak Hill Foundry & Machine Works, Inc." and all appendices is $6.25 (25 pages at 25 cents per page reproduction costs). The cost for a copy of the "Partial Consent Decree with certain Third-Party Settling Defendants" and all appendices is $6.75 (27 pages at 25 cents per page reproduction costs). The cost for a copy of the "Partial Consent Decree with Settling Defendant City or Ironton, Ohio" and all appendices is $6.25 (25 pages at 25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–16942 Filed 7–2–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Signature Flight Support Corporation, et al.; Public Comments and Plaintiff's Response

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that the Public Comment and Plaintiff's Response have been filed with the United States District Court of the District of Columbia in United States v. Signature Flight Support Corporation, Civ. Action No. 9900537 (RCL).

On March 1, 1999, the United States filed a civil antitrust Complaint alleging that Signature Flight Support Corporation's ("Signature") proposed acquisition of AMR Combs, Inc., ("Combs") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that Signature and Combs are fixed based operators (FBOs) located at various airports throughout the United States. Signature's acquisition of Combs would have eliminated its only FBO competitor at Bradley International Airport and at Palm Springs Regional Airport. The acquisition would have also significantly reduced the likelihood of entry of a third, independent FBO competitor at Denver Centennial Airport. As a result, the proposed acquisition would substantially lessen competition for FBO services at those airports in violation of section 7 of the Clayton Act.

Public comment was invited within the statutory 60-day comment period. The one comment received, and the response thereto, is hereby published in the **Federal Register** and filed with the Court. Copies of these materials may be obtained on request and payment of a copying fee.

Constance K. Robinson,

Director of Operations and Merger Enforcement, Antitrust Division.

Plaintiff's Response to Public Comment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) ("Tunney Act"), the United States hereby responds to the single public comment received regarding the proposed Final Judgment in this case.

I. Background

On March 1, 1999, the United States Department of Justice ("the Department") filed the Complaint in this matter. The Complaint alleges that Signature Flight Support Corporation's ("Signature") proposed acquisition of AMR Combs, Inc. ("Combs"), a wholly owned, indirect subsidiary of AMR Corporation, would violate section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Signature and Combs are fixed base operators (FBOs) located primarily at various airports throughout the United States. FBOs provide flight support services to general aviation customers. By acquiring the Combs FBO facilities, Signature would eliminate its sole FBO competitor at Bradley International Airport ("BDL") and at Palm Springs Regional Airport ("PSP"). In addition, Signature's proposed acquisition would significantly reduce the likelihood of entry by a third, independent FBO competitor at Denver Centennial Airport ("APA"). As a result, the Complaint alleges, the proposed acquisition would substantially lessen competition for FBO services at APA, BDL and PSP in violation of section 7 of the Clayton Act. 15 U.S.C. § 18.

Simultaneously with the filing of the Complaint, the Department filed the proposed Final Judgment and Stipulation signed by all the parties that allows for entry of the proposed Final Judgment following compliance with the Tunney Act. The Department also filed a Competitive Impact Statement ("CIS") on March 15, 1999, that was subsequently published in the **Federal Register** on March 26, 1999. The CIS explains in detail the provisions of the proposed Final Judgment, the nature and purposes of these proceedings, and the transaction giving rise to the alleged violation.

As the Complaint and the CIS explain, the merger as originally proposed was likely to reduce or eliminate competition in three specific markets for flight support services—the APA, BDL and PSP markets. The proposed Final Judgment is intended to prevent the expected lessening of competition the merger would cause in those markets.

As a remedy to competitive harm in the BDL and PSP markets for flight support services, the Department and Signature, Combs, and AMR agreed to divestiture of one of the FBO businesses at each airport. In addition, the parties agreed to remedy the competitive harm in the APA market for flight support services by transferring Signature's interest in a new FBO facility at APA to another FBO or by divesting the existing Combs FBO business to an independent and financially viable competitior. These remedies are intended to protect consumers by ensuring continued vigorous competition in each market.

The 60-day comment period for public comments expired on May 25, 1999. The Department had received only one comment, from Robert A. Wilson, President of Wilson Air Center, an FBO located at the Memphis International Airport in Memphis, Tennessee.[1]

II. Response to the Public Comment

Wilson opposes the Department's decision to permit Signature's acquisition of Combs subject to the divestiture of FBO facilities or interests in FBO facilities at APA, BDL and PSP. Wilson claims that the Department should have challenged the acquisition in another market that consists of the Memphis International Airport. The Wilson comment indicates that the Memphis International Airport market has only two FBO competitors: Combs and Wilson Air Center. According to Wilson, shortly before the announcement of the transaction between Signature and Combs, Combs had negotiated various agreements with the Memphis and Shelby County Airport Authority that he believes place Wilson Air Center at a competitive disadvantage. In Wilson's view, Signature's purchase of Combs is objectionable because it perpetuates what he considers to be anticompetitive agreements at the Memphis International Airport.

The Clayton and Sherman Acts, judicial precedent, and the Horizontal Merger Guidelines[2] govern the Department's review of mergers. The first step in the review is defining relevant product and geographic markets where the merging firms are actual or potential competitors. Once the relevant markets are identified, the analysis turns to the competitive implications of the proposed transaction's elimination of one of the firms. Signature and Combs did not compete with one another at the Memphis International Airport, and there was no indication that Signature planned to become an independent competitor at the airport. Since there was no actual or potential competition and thus, no substantial lessening of competition, that market would not be—and, in fact, was not—one that merited review. Instead, the Department identified three geographic markets were Signature and Combs were actual or potential competitors, and determined that, as a result of the acquisition, competition in those markets would be substantially lessened. Accordingly, the Department brought its case on the basis of those three markets, and obtained as relief divestitures designed to ensure continued competition in each market. In sum, the Wilson comment does not raise competition issues caused by the proposed acquisition.

III. The Legal Standard Governing the Court's Public Interest Determination

Once the Department moves for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e). In making that determination, the "court's function is not to determine whether the resulting array of rights and liabilities 'is one that will best serve society,' but only to confirm that the resulting 'settlement is within the reaches of the public interest.'" *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir. 1993) (citation omitted).[3] The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the proposed Final Judgment if it falls within the government's "rather broad discretion to settle with defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *accord United States* v. *Associated Milk Producers*, 534 F.2d 113, 117–18 (8th Cir. 1976).

Because Wilson argues for a different case than the one that the Department brought, and does not address the relief ordered by the proposed Final Judgment, the comment raises no issues relevant to this Tunney Act proceeding. The Tunney Act does not contemplate a judicial reevaluation of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case based on the facts and law before it at a particular time, like any other decision not to prosecute, "involves a complicated balancing of a number of factors which are peculiarly within [the government's] expertise." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985). Thus, the Court may not look beyond the Complaint "to evaluate claims that the government did not make and to inquire as to why they were not made." *Microsoft*, 56 F.3d at 1459; *see also Associated Mild Producers*, 534 F.2d at 117–18.

Similarly, the government has wide discretion within the reaches of the public interest to resolve potential litigation. *See, e.g., Western Elect.*, 993 F.2d at 1577; *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151–52 (D.D.C. 1982). The Supreme Court has recognized that a government antitrust consent decree is a contract between the parties to settle their disputes and differences, *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 235–38 (1975); *United States* v. *Armour & Co.*, 402 U.S. 673, 681–82 (1971), and "normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation." *Armour*, 402 U.S. at 681. This proposed Final Judgment has the virtue of bringing the public certain benefits and protection without the uncertainty and expense of protracted litigation. *Id.; Microsoft*, 56 F.3d at 1459.

Finally, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining appropriate antitrust remedies. Thus, defendants will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate. If the commenting party has a basis for suing the defendants, it may do so. The legal precedent discussed above holds that the scope of a Tunney Act proceeding is limited to whether entry of this particular proposed Final Judgment, agreed to by the parties as settlement of this case, is in the public interest.

IV. Conclusion

After careful consideration of the comment, the Department concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The Department will move the Court to enter the proposed Final Judgment after the public comment and this Response have been published in the **Federal Register**, as 15 U.S.C. § 16(d) requires.

Dated this 21st day of June, 1999.

[1] The comment is attached. The Department plans to public promptly the comment and this response in the Federal Register. The Department will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of final judgment once publication takes place.

[2] Federal Trade Commission and United States Department of Justice, Horizontal Merger Guidelines (1992, rev. 1997).

[3] The *Western Electric* decision concerned a consensual modification of an existing antitrust decree. The Court of Appeals assumed that the Tunney Act was applicable.

Respectfully submitted.

Nina B. Hale,

Salvatore Mass,

U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Suite 500, Washington, D.C. 20530, (202) 307–6351.

Certificate of Service

I, Marian Honus, hereby certify that, on June 21, 1999, I caused the foregoing document to be served on defendants Signature Flight Support Corporation, AMR Combs, Inc., and AMR Corporation by having a copy mailed, first-class, postage prepaid, to:

William Norfolk, Esq.,

Sullivan & Cromwell, 125 Broad Street, New York, NY 1004.

Eugene A. Burrus, Esq.,

AMR Corporation, P.O. Box 619616, MD 5675, Dallas Fort Worth Airport, TX 75261.

Marian Honus

May 21, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Department of Justice, Antitrust Division, 325 Seventh St., NW, Suite 500, Washington, DC 20530

RE: Comments of Wilson Air Center, LLC in Response to **Federal Register** Notice Regarding Proposed Final Judgment and Competitive Impact Statement: *United States of America* v. *Signature Flight Support Corporation, et al.*, **Federal Register** 58 (March 26, 1999)

Dear Mr. Fones: Wilson Air Center, LLC ("Wilson Air") is an independently owned Fixed Base Operation ("FBO") and is the only FBO other than AMR Combs, Inc. ("AMR") located at the Memphis International Airport, Memphis, Tennessee (the "Memphis Airport"). Wilson Air comments on the proposed acquisition insofar as it will impact FBO competition at the Memphis Airport as follows:

Wilson Air is opposed to the acquisition of AMR by Signature Flight Support Corporation ("Signature") because it will perpetuate agreements between AMR and the Memphis and Shelby County Airport Authority (the "Authority") which will give Signature an illegal competitive advantage for FBO customers at the Memphis Airport. The timing and substance of the recently executed anti-competitive agreements suggests that they were negotiated in anticipation of the instant sale to improperly increase the value of AMR's Memphis operation. If the proposed sale is implemented at the Memphis Airport such that Signature assumes the anti-competitive agreements that are in place, FBO competition at the Memphis Airport will be stifled and Wilson Air will be irreparably harmed.

The Anti-Competitive Agreements

The new lease between the Airport Authority and AMR was executed in late July or early August of 1998 but was made effective as of June 1, 1998 (the "Lease"). A copy of the AMR Lease is at EXHIBIT A. In the Lease, AMR procured terms which make it impossible for Wilson Air to fairly compete for customers. The Lease also directly violates the Federal Grant Assurances [1] which, as a contractual obligation for the receipt of Federal funding, mandate fair and equitable treatment of FBOs so that competition can be preserved at airports supported with Federal funds.

Disparate Lease Rates

The terms of the Lease which violate the Federal Grant Assurances create the anti-competitive environment which the Grant Assurances sought to prevent. The Lease includes disparate pricing terms.[2] At Paragraph 4 and in its Exhibit C, the Lease in 1998 granted to AMR property at rates far below the then existing market and far below rates which had been set for Wilson Air more than four (4) years earlier. More precisely, effective June 30, 1998, the Lease requires AMR to pay between $.0759 per square foot for "unimproved land" and $.0949 per square foot for "improved land." In the lease, AMR's base lease rental schedule increases incrementally through 2010. Even so, rates for "unimproved land" remain well below the rates paid by Wilson Air until after June 30, 1005. The rates charged to AMR are shown on Exhibit C to the Lease (EXHIBIT A). Moreover, it appears that AMR is paying nothing for the 13,500 square feet occupied by the General Aviation Building. In stark contrast Wilson Air, in a lease of more unimproved land negotiated in 1994 which extends through 2005, must pay $.12 per square foot. Wilson Air at that higher rate was required to build its entire facility from the ground up. A copy of Wilson Air's lease is at EXHIBIT B.

The disparate rates included in the Lease make it impossible for Wilson Air profitably to offer its current and prospective FBO tenants lease rates which are competitive with the lease rates offered by AMR. AMR has already used the disparate lease rates to procure for itself customers. As shown in Paragraph 8a of the sublease at EXHIBIT C, AMR as of July 17, 1998, subleased to Richard's Aviation, Inc. at the rate of $.0759 per square foot—four and one-half cents less than the Authority had leased unimproved land to Wilson Air. The inability of Wilson Air to enter match such a rate is obvious. And, as Paragraph IIB of the Notice states "(t)he largest source of revenues for an FBO is its fuel sales" and (g)eneral aviation customers generally buy fuel from the same FBO from which they obtain those other services (hangar rental, office space rental, etc.)". Thus, the reduced lease rates given to AMR preclude Wilson Air from competing for hangar tenants and for fuel customers. This Lease term restrains trade and commerce at the Memphis Airport as it relates to the two FBOs and appears to violate both Section 7 of the Clayton Act and Section 1 of the Sherman Act.

Disparity in Land Under Lease

Wilson Air currently has approximately 16 acres of land under lease. Through the Lease, AMR has increased the acreage held by it and has obtained an option for even more land.[3] At this same time, Wilson Air has repeatedly requested from the Authority and has been denied additional land on which to expand its operations. AMR's Lease grants AMR an option on three separate parcels totaling 13.53 acres (identified in the Lease as N, O and P). In the new Lease, as amended, the Authority grants AMR an option to these parcels for $.02 to $.03 per square foot. In addition, 15.45 more acres of new land were added to the new AMR lease.

These terms of the Lease are anti-competitive in that they give AMR approximately 3 times Wilson Air's acreage with which it can entice customers away from Wilson Air at rates well below what Wilson Air must pay the Airport Authority without worrying about running out of space to grow. Since AMR has more land than it can use, it can grant a sublease like the one at EXHIBIT C "at cost" knowing that it will get the customer's business for fuel.[4]

Additionally, the location of the land covered by the Lease also precludes Wilson Air access to valuable military fueling contracts. Due to space limitation, Wilson Air cannot bid on and receive military fueling contracts because Wilson Air does not have the available land to handle the type and size of military aircraft for fueling purposes. As with the rental rates, these lease terms appear to violate Section 7 of the Clayton Act and Section 1 of the Sherman Act.

From the documents produced to Wilson Act, it appears that AMR has been responsible for the maintenance and repair of the General Aviation Building ("GAB") for more than 15 years, but has evidently failed to meet those obligations. Rather than force AMR to comply with its maintenance and repair obligations, however, the Lease grants AMR rent incentives and abatements on the GAB property. Those Lease terms are far more favorable to AMR than the rent terms offered to Wilson Air for another building on the Memphis Airport even though the two buildings will be subject to the same type of FBO usage. Wilson Air has asked the Authority to lease to it a building known as the Northwest AirLink building (the "NWA"). The Authority ordered a 1995 appraisal which compared the NWA to more expensive off-airport commercial buildings and indicated an adjusted appraisal rental rate of $5.50 per square foot.

Instead of offering any incentives like those given to AMR, the Authority has demanded a $6.50 per square foot rental rate from Wilson Air. The NWA previously has not been used for general aviation tenants, but if Wilson Air rented the building, it would be used for general aviation tenants and general aviation related services. Again by contrast, the Authority in the Lease has abated rent through 2010 on the GAB to AMR while simultaneously demanding that Wilson Air pay $6.50 per square foot for use of the NWA property.[5] Both buildings require the expenditure of substantial funds for improvements and will experience the same or similar uses.

This unequal treatment as to office square precludes Wilson Air from effectively competing for tenants which would require use of such facilities.

In addition to the Lease, AMR and the Authority negotiated two separate "letter agreements" which granted AMR month-to-month leases on 3.21 acres and 6.09 acres of improved (closed) runway and taxilane property respectively. The December 16, 1997 letter agreement and the July 27, 1998, letter agreement are at EXHIBITS E and F. The Authority has now acknowledged that while Wilson Air was being told that no additional land was available to Wilson Air, the Authority was giving AMR the free use of this valuable acreage. Thus, the Authority allowed AMR to use land at no cost, while denying land to Wilson Air and requiring it to pay full rent for all land used.[6]

A portion of this land now lies within one of the option parcels granted to AMR and as recently as May 11, 1999, AMR (already operating at the Memphis Airport under the "Signature" name) has used the land without paving rental fees. This is another indicia of the manner in which Wilson Air has been hurt by the anti-competitive agreements between the Authority and AMR. These anti-competitive agreements will persist unless Signature is precluded from assuring these agreements at the Memphis Airport.

Wilson Air submits that permitting Signature to move forward with the acquisition of AMR's rights at the Memphis Airport will violate the Competitive Impact Statement and the spirit of the Proposed Final Judgment in the subject suit. Wilson Air further asserts that the Authority's pending assignment of the AMR lease terms to Signature as required by the AMR Lease will perpetuate the anti-competitive environment between FBO's at the Memphis Airport.

Accordingly, Wilson Air requests that the Department of Justice consider the above in determining whether to support the entry of the Final Judgment in the above-cited suit. Alternatively, Wilson Air requests that Department of Justice expand its investigation into the anti-competitive aspects of the sale of AMR to Signature Flight Support Corporation to include consideration of the AMR Lease at the Memphis Airport.

Very truly yours,

Wilson Air Center, LLC

Robert A. Wilson,

President.

RAW/kaw

Enclosures

Exhibits A, B, C, D, & E can be obtained from the Document Office, U.S. Department of Justice, 325 7th Street, N.W., Room 215, Washington, D.C. 20530, or (202) 514–2481.

[1] The Grant Assurances set out fully at Section 47107 of 49 United State Code under the heading Economic Nondiscrimination provide that "(e)ach fixed-base operator shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar use of such airport * * " Id. At Para. 22(c). Paragraph 23 of the Grant Assurances, entitled Exclusive Rights, goes on to state that an airport authority sponsor"* * * will permit no exclusive right for the use of the airport by any person providing * * * aeronautical services to the public." The Memphis Airport between 1994 and 2008 has and is scheduled to receive $119,380,000 in federal grant funds from the Federal Aviation Administration. As such, Memphis Airport is a federally assisted airport operation and must comply with the Federal Grant Assurances which are incorporated into the Authority's grant funding contracts with the FAA

[2] The Authority has asserted that the Lease is merely an extension of AMR's 1979 Lease and an accommodation for giving up other land. The many substantial discrepancies between the Lease and AMR's 1979 lease show that it is indeed a new document and not an extension of the old lease. Other documents exchanged between AMR and the Authority further rebut this claim.

[3] AMR had approximately 20 acres under its 1979 lease of the south complex. A copy of that lease is at EXHIBIT D.

[4] Paragraph 37 of the sublease at EXHIBIT C tied that sublease to a "fuel agreement." Wilson Air, despite request, has never seen that "fuel agreement." After voicing its concerns, Wilson Air was advised that Paragraph 37 of the Lease was amended to prohibit exclusive fueling agreement being entered into by AMR and its subtenants and customers.

[5] A 1997 airport appraisal of the GAB indicated a minimum $.75 per square foot rental on the building prior to renovation.

[6] Apparently, AMR is still using the old AMR north complex, an additional approximate 12 acre site at a different location on the airport, to service tenants, even though Wilson Air Center has been advised that this site has been designated for use for FedEx Corporation expansion.

[FR Doc. 99–16943 Filed 7–2–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Immigration Bond.

On June 29, 1999, the Department of Justice, Immigration and Naturalization Service (INS) published a notice in the **Federal Register** at 64 FR 34862, notifying the public that it had submitted a reinstatement with change of a previously approved information collection using emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The notice failed to specify the requested date of OMB approval. Therefore, the INS requests OMB approval by July 9, 1999. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval should be received prior to July 9,1999 and must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503.

Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for "sixty days" from September 7, 1999. During the 60-day regular review, all comments and suggestions or questions regarding additional information, to include instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement with change of a previously approved collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–352. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information will be

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used by the Service to determine eligibility release of a detained alien on bond, and will collect information of the obligor of the bond who is taking the responsibility of the released alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes or (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 1, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–17146 Filed 7–1–99; 12:37 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1997–99]

Announcement of a Change of Address for the Houston Asylum Office

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of a change of address for the Houston Asylum Office.

SUMMARY: This notice announces a change of address for the Houston Asylum Office. On March 1, 1999, both the physical office location and mailing address for correspondence and delivery of packages changed. The public telephone and facsimile (FAX) numbers have also changed. The new addresses and telephone and Fax numbers are listed in the supplementary information section of this notice. Asylum applicants are to continue to appear for interviews at the address shown on their interview appointment notice. This notice is necessary to ensure that correspondence and packages are properly routed to the correct address and that individuals can contact the office telephonically. Since Match 1, 1999, the Immigration and Naturalization Service has continued to accept correspondence sent to the former address and will continue to accept and forward correspondence to the correct address until November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Supervisory Asylum Officer, or Marta Rothwarf, Asylum Officer, Office of International Affairs, Immigration and Naturalization Service, 425 I Street, NW, ULLICO Bldg., Third Floor, Washington, DC 20536, telephone (202) 305–2663.

SUPPLEMENTARY INFORMATION: On March 1, 1999, the Houston Asylum Office moved to a new location. All parties are to use the following addresses and telephone numbers when sending correspondence or packages, or to contact the asylum office. Asylum applicants are to continue to appear for interviews at the address shown on their interview appointment notice.

What Is the New Mailing Address for the Houston Asylum Office?

Correspondence must be mailed to the Houston Asylum Office at the following address: U.S. Immigration and Naturalization Service, Houston Asylum Office, P.O. Box 670626, Houston, TX 77267–0626.

What Is the Actual Physical Address for the Houston Asylum Office?

Federal Express, United Parcel Service, or Express Mail packages must be delivered to the following address: U.S. Immigration and Naturalization Service, Houston Asylum Office, 16630 Imperial Valley Drive, Suite 200, Houston, TX 77060.

What Are the New Telephone and FAX Numbers for the Houston Asylum Office?

Telephone: (281) 774–5992.

FAX: (281) 774–4830.

What Are the Hours of Operation for the Houston Asylum Office?

The office is open Monday through Friday, from 7 a.m. to 4 p.m.

What Happens if Correspondence Is Sent to the Former Address?

Correspondence that is sent to the former address will be accepted and forwarded to the correct address by the Service until November 3, 1999. After November 3, 1999, correspondence will be returned to the sender as undeliverable.

Dated: June 18, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–16958 Filed 7–2–99; 8:45 am]

BILLING CODE 4410–10–M

PAROLE COMMISSION

Sunshine Act Meeting

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Michael J. Gaines, Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately nine-thirty a.m. on Tuesday, June 29, 1999, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide three appeals from the National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Michael J. Gaines, Edward F. Reilly, Jr., and John R. Simpson.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: June 30, 1999.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 99–17147 Filed 7–1–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized;

collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of administrative and survey data on Unemployment Insurance (UI) exhaustees.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 7, 1999.

ADDRESSES: Anissa Holm, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210, phone: (202) 208–5915 x201 (this is not a toll-free number), fax (202) 219–8506 (this is not a toll-free number), e-mail aholm@doleta.gov.

FOR FURTHER INFORMATION CONTACT: Anissa Holm, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210, phone: (202) 208–5918 x201 (this is not a toll-free number), fax (202) 219–8506 (this is not a toll-free number), e-mail aholm@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

As part of its mandate under Section 906 of the Social Security Act to establish a continuing and comprehensive program of research to evaluate the unemployment compensation system, the U.S. Department of Labor, Employment and Training Administration (ETA), is conducting a study of Unemployment Insurance (UI) exhaustees. This study is intended to examine the extent to which recent changes in the U.S. labor market have affected the composition of UI recipients who exhaust benefits and have influenced their postexhaustion labor market experiences. A further objective of the study is to explore recipients' experiences with the delivery of reemployment services and examine whether changes in the workforce development system have affected these experiences.

To meet these objectives, the study will: (1) Identify the factors that explain why recipients exhaust their UI benefit entitlements; (2) examine the labor market experiences of exhaustees and nonexhaustees; (3) assess the extent of recipients' participation in education, training, and reemployment services; (4) determine how patterns in recipient characteristics, labor market experiences, and participation in reemployment services have changed over time, especially over the past decade, and (5) consider the implications of the findings for UI benefit and reemployment services policies.

II. Current Actions

To examine these issues, ETA is planning to collect administrative records on UI and reemployment service receipt for random samples of UI recipients drawn from 25 States. ETA is also planning to collect survey data from a subsample of UI exhaustees and, for comparison purposes, a subsample of nonexhaustees. The survey will collect data items unavailable from administrative records. These data include detailed information on background characteristics of sample members, including the characteristics of their pre-UI jobs; information on their employment and earnings and job characteristics following receipt of UI; and information on their use of education, training, and reemployment services.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: New.

Agency: United States Department of Labor, Employment and Training Administration.

Title: Study of Unemployment Insurance Exhaustees.

Agency Number: 1205.

Affected Public: Individuals, State governments.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
State administrative data request	25	One time	25	80 hours	2,000
UI recipient survey	4,000	One time	4,000	35 minutes	2,333
Totals			4,025		4,333

Total Burden Cost: $580,089.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information request; they will also become a matter of public record.

Dated: June 29, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–17008 Filed 7–2–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA's Procurement Policies, Practices, and Initiatives; Notice of Mmeeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons or firms concerning NASA's procurement policies, practices, and initiatives. The purpose of the meeting is to have an open discussion between NASA's Associate Administrator for Procurement, industry, and the public.

DATES: August 12, 1999, from 9:00 to 11:00AM

ADDRESSES: The meeting will be held at the NASA—Ames Research Center, Space Science Auditorium, Bldg. 245, 2nd Floor, North Warehouse Road, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Michael R. Basta, NASA—Ames Research

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Center, P.O. Box 1000, Mail Stop 241–1, Code JAB, Moffett Field, CA 94035–1000, (650) 604–4010.

SUPPLEMENTARY INFORMATION: Format: There will be a presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed, including NASA policies used in the award and administration of contracts; this forum will be similar to one held recently at Kennedy Space Center in Florida.

Admittance: Doors will open at a half-hour prior to the presentation. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 90 persons; therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Initiatives: In addition to the general discussion mentioned above, NASA invites comments or questions relative to its ongoing Procurement Initiatives, some of which include but are not limited to the following:

Risk-Based Acquisition Management

This initiative seeks to integrate the principles of risk management throughout the acquisition process by purposefully considering the various aspects of risk when developing the acquisition strategy, selecting sources, choosing contract type, structuring fee incentives, and conducting contractor surveillance.

Consolidated Contracting Initiative.

The CCI initiative emphasizes developing, using, and sharing contracts to meet Agency objectives.

Performance Based Contracting

This initiative is focused on structuring an acquisition around the purpose of the work to be performed rather than using broad, imprecise statements or prescribing of how the work is to be performed.

Profit/Fee Initiative

This initiative will assess the effectiveness of the Agency's profit/fee practices as a means for motivating and rewarding contractor performance.

In addition, it will investigate other, non-traditional ways to motivate contractor performance.

Tom Luedtke,

Associate Administrator for Procurement.

[FR Doc. 99–17037 Filed 7–2–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

June 30, 1999.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on March 22–23, 1999.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC. A portion of the morning and afternoon sessions on July 15–16, 1999, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on July 15, 1999 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9:00–10:30 a.m.
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Federal/State Partnership—Room 507
11:30 a.m until Adjourned
Research Programs—Room M07
Education Programs—Room M07

(Closed to the Public)

Discussion of Specific Grant Applications and Programs before the Council

9:00–11:30 a.m.
Research Programs—Room M07
Education Programs—Room M07
10:30 a.m. until Adjourned
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Federal/State Partnership—Room 507
1:30–2:30 p.m.
National Humanities Medals Meeting—Room 430

The morning session on July 16, 1999 will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set forth below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports

A. Opening Remarks and Presentations
B. Staff Report
C. Reports on Policy & General Matters
1. Overview
2. Research Programs
3. Education Programs
3. Preservation and Access and Challenge Grants
4. Public Programs
5. Federal/State Partnership
6. National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Nancy E. Weiss, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 99–16960 Filed 7–2–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Computational Infrastructure and Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Computational Infrastructure & Research (#1185).

Date and Time: September 9–10, 1999, 8:30 am to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Charles H. Koelbel, Program Director, Advanced Computational Research Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning Software proposals submitted to NSF for financial support.

Agenda: To review and evaluate Proposals in the Advanced Computational Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 30, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–17006 Filed 7–2–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209).

Date and Time: July 15–16, 1999, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1295, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mr. Guy Guthridge, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Artist & Writers proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 30, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–17007 Filed 7–2–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Changes, Tests and Experiments, and Updating of Final Safety Analysis Reports (10 CFR Parts 50 and 72).

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Information is required to be collected when changes, tests or experiments are made by the licensee; reporting of these changes is required every two years. Updating the final safety analysis report (FSAR) is required every two years for independent spent fuel storage installations (ISFSIs) and for power reactor facilities.

5. *Who will be required or asked to report:* Reports are submitted by licensees of production or utilization facilities licensed under 10 CFR Part 50 and by licensees and certificate holders for ISFSIs and spent fuel storage casks, pursuant to 10 CFR Part 72.

6. *An estimate of the number of responses:* The annual number of responses is estimated as 112 reports.

7. *The estimated number of annual respondents:* The total number of respondents under Part 50 is 175 reactor licensees. In addition, there are 18 respondents subject to Part 72. Since the reporting for these respondents is on a two-year cycle, the annual number of respondents is 112.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* The total number of hours annually is estimated at 377,160 hours (an increase of 37,300 hours)—54,770 hours (a decrease of 180 hours) for reporting; 269,316 hours (a decrease of 15,594 hours) for recordkeeping. This total estimate also includes an annualized one-time burden of 53,069 hours for implementation of the revisions to the rule through procedures and training of personnel. The hours needed depend upon the number and complexity of changes that a licensee chooses to make. The hours needed for a power reactor respondent are estimated to be significantly greater than those for a spent fuel storage cask certificate holder or ISFSI licensee.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The NRC is revising requirements pertaining to changes, tests, and experiments, and for updating of final safety analysis reports. The purpose of the rulemaking is to clarify requirements and to allow more flexibility for certain changes that a licensee can make without receiving prior NRC approval.

Submit, by August 5, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance packages are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by August 5, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0011 and 3150–0132), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 25th day of May, 1999.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–17018 Filed 7–2–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–64 issued to the Power Authority of the State of New York (the licensee) for operation of the Indian Point Nuclear Generating Unit No. 3 (IP3) located in Westchester County, New York.

The proposed amendment would extend the allowed outage time (AOT) for the 32 Emergency Diesel Generator (EDG) and its Fuel Oil Storage Tank (FOST) from 72 hours to 7 days on a one-time basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed License amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed License amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The EDGs and their associated fuel oil systems are not part of any accident initiation; therefore, there is no increase in the probability of an accident. At a minimum, two EDGs are still available with sufficient fuel oil supply to mitigate IP3 design basis accidents. The minimum safeguards equipment can still be powered even if the 32 EDG is assumed to be lost due to single failure. This has been verified by EDG loading calculation, IP3–CALC–ED–00207, "480V Bus 2A, 3A, 5A & 6A and EDGs 31,32 and 33 Accident Loading." With the 32 EDG available and aligned for automatic start capability (although declared inoperable) during this 32-FOST outage, further backup to the 31 and 33 EDGs is provided. By the design of the overall EDG fuel oil system, the 32 EDG fuel oil day tank is able to be supplied with sufficient fuel oil supply from either the 31 or 33 FOSTs in order to support operation of the 32 EDG, if necessary.

To support fuel oil needs of all three EDGs, if necessary, the FSAR [final safety analysis report] describes that additional fuel oil supplies are available on the Indian Point site and locally near the site. Further EDG fuel oil supplies are maintained in the New Rochelle-Mount Vernon, NY area, about 40 miles from IP3. Overall, the EDGs are designed as backup AC power sources in the event of a Loss of Offsite Power (LOOP). The proposed AOT does not change the conditions or minimum amount of safeguards equipment assumed in the safety analysis for design basis accident mitigation, since a minimum of 2 EDGs is assumed. No changes are proposed as to how the EDGs provide plant protection. Additionally, no new modes of overall plant operation are proposed as a result of this change. A PRA [probabilistic risk assessment] evaluation determined that the conditional core damage probability (CCDP) for this scenario will be less than the threshold value of 1 E–6. Therefore, the proposed one-time license amendment to TS [Technical Specification] 3.7.B.1 does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed License amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce any new overall modes of plant operation or make any permanent physical changes to plant systems necessary for effective accident mitigation. The minimum required EDG operation remains unchanged by removal of this single FOST [Fuel Oil Storage Tank] for repair. Additionally, added requirements to minimize risk associated with loss of offsite power also support this one-time extended AOT. Also, as previously stated, the EDGs and FOSTs are not part of any accident initiation. Therefore, the proposed one-time license amendment to TS 3.7.B.1 does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed License amendment involve a significant reduction in a margin of safety?

No. The proposed License amendment does not involve a significant reduction in a margin of safety. The minimum safeguards loads can be maintained available if needed for design basis accident mitigation with 2 EDGs operable combined with their respective FOSTs. The 32 EDG will be available and aligned for automatic start capability (though declared inoperable) during this outage. The additional fuel oil needed to support 3 EDGs in this condition is available as indicated in the present design and licensing basis. The FSAR describes that this fuel can be provided from the Indian Point site, local sources and from a source about 40 miles away to support the additional 30,026 gallons TS required fuel oil already existing at the Buchanan substation. Therefore, sufficient fuel oil will be available for potential events that could occur during this 7-day AOT. The PRA evaluation for the case of maintaining the 32 EDG available (though declared inoperable) with its FOST out for repair indicates an acceptable safety margin below the risk-informed threshold of 1E–6.

The 480VAC electrical distribution system can be fed from a number of TS independent 13.8kV and 138kV offsite power sources to minimize reliance of IP3 on EDG power sources during the extended AOT requested. Additional requirements to minimize risk associated with the potential for loss of offsite power sources within this TS change also ensure that this extended AOT does not involve a significant reduction in safety margin. On this basis, the proposed one-time license amendment to TS 3.7.B.1 does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received maybe examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 5, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10601. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one ccontention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. David E. Blabey, 10 Colombus Circle, New York, New York, 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 4, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Whiite Plains Public Library, 100 Martine Avenue, White Plains, New York, 10601.

Dated at Rockville, Maryland, this 29th day of June 1999.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17017 Filed 7–2–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company, Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, for operation of the Palo Verde Nuclear Generating Station (Palo Verde, or the licensee), Units 1, 2, and 3, located in Maricopa County, Arizona.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Updated Final Safety Analysis Report (UFSAR). Under the proposed exemption, the licensee would submit revisions to the UFSAR, common to all three units, to the NRC no later than 24 calendar months from the previous revision. The licensee also requested that the exemption apply to (1) revisions made to the quality assurance program (which has been incorporated into the UFSAR) pursuant to 10 CFR 50.54(a)(3), (2) the safety evaluation summary reports for facility changes made under 10 CFR 50.59 pursuant to 10 CFR 50.59(b)(2), and (3) the reports of changes to the Technical Specification (TS) Bases.

The proposed action is in accordance with the licensee's application for exemption dated June 9, 1998, as supplemented by letter dated December 21, 1998.

The Need for the Proposed Action

The proposed action is needed to reduce undue regulatory burden for units that share a common UFSAR regarding the requirements of Section 50.71(e)(4). Section 50.71(e)(4) requires licensees to submit updates to their UFSAR annually or within 6 months after each refueling outage provided that the interval between successive updates does not exceed 24 months. Since all three Palo Verde units share a common UFSAR, the licensee must update the same document annually or within 6 months after a refueling outage for each unit. The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months.

The Commission reduced the burden, in part, by permitting a licensee to submit its FSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common FSAR. Rather, the Commission stated, "With respect to the concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis" (57 FR 39355) . Allowing the exemption would maintain the UFSAR current within 24 months of the last revision. Submission of the quality assurance program changes and the 10 CFR 50.59 design change report with the UFSAR revision, as permitted by 10 CFR 50.54(a)(3) and 10 CFR 50.59(b)(2), respectively, also would not exceed a 24-month interval. In addition, submission of the TS Bases changes made in accordance with TS 5.5.14 would not exceed a 24-month interval.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action is administrative in nature and unrelated to plant operations.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with this action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with this action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The proposed action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of Palo Verde Nuclear Generating Station, Units 1, 2, and 3, dated February 1982 (NUREG–0841).

Agencies and Persons Contacted

In accordance with its stated policy, on May 13, 1999, the staff consulted with the Arizona State official, Mr. Audbry Godwin of the Arizona Radiation Protection Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 9, 1998, as supplemented by letter dated December 21, 1998, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Dated at Rockville, Maryland this 25th day of June 1999.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Section 2, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17016 Filed 7–2–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Clearance of a Revised Information Collection: RI 30–2 and RI 30–44

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for clearance of a revised information collection. RI 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits. RI 30–44, Annuitant's Report of Income—Followup, is sent to annuitants whose returned RI 30–2 forms are unusable or damaged.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

We estimate 21,000 RI 30–2 forms and 260 RI 30–44 forms are completed annually. The RI 30–2 takes approximately 35 minutes to complete for an estimated annual burden of 12,250 hours. The RI 30–44 takes approximately 5 minutes to complete for an estimated annual burden of 22 hours. The total annual estimate burden is 12,272.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before September 7, 1999.

ADDRESSES: Send or deliver comments to—Dennis A. Matteotti, Acting Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–16989 Filed 7–2–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 20–63]

Submission for OMB Review; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 20–63, Survivor Annuity Election for a Spouse, is used by the Civil Service Retirement System (CSRS) to provide information about the amount of annuity payable after a survivor reduction and to obtain a survivor benefits election from annuitants who are eligible to elect to provide survivor benefits for a spouse. Using RI 20–63 the annuitant may elect the survivor benefit, decline to make the election, or ask for information about electing less than the maximum survivor benefit.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,400 RI 20–63 forms and 200 cover letters are completed per year. It is estimated to take approximately 45 minutes to complete the form with a burden of 1,800 hours and 10 minutes to complete the letter, which gives a burden of 34 hours. The total burden for RI 20–63 is 1,834 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before September 7, 1999.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–16991 Filed 7–2–99; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

[RI 25–49]

Submission for OMB Review; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. To verify that adult student annuitants are entitled to payments, OPM needs to know that a full-time enrollment has been maintained. RI 25–49, Verification of Full-Time School Attendance, is used for this purpose.

Approximately 10,000 RI 25–49 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before August 5, 1999.

ADDRESSES: Send or deliver comments to—

Dennis A. Matteotti, Acting Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney,

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Management Analyst, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–16990 Filed 7–2–99; 8:45 am]

BILLING CODE 6325–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41572; File No. SR–CTA/CA–99–01]

Consolidated Tape Association; Notice of Filing of Fourth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Third Charges Amendment to the Restated Consolidated Quotation Plan

June 28, 1999.

Pursuant to Rule 11Aa3–2 [1] of the Securities Exchange Act of 1934 ("Act"),[2] notice is hereby given that on June 14, 1999, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants ("Participants") [3] filed with the Securities and Exchange Commission ("Commission") or "SEC") amendments to the Restated CTA Plan and CQ Plan. The amendments propose (1) to modify the fees payable by vendors of the Network A market information in respect of nonprofessional subscriber services, (2) to introduce pay-for-use rates into the Network A rate schedules following a pilot test that commenced in November 1997, (3) to grant each vendor of a pay-for-use service the ability to limit its monthly pay-for-use obligation for each of its customers that qualifies as a nonprofessional subscriber, and (4) to establish an enterprise arrangement pursuant to which broker-dealers would enjoy a maximum monthly obligation of $500,000 for aggregate monthly Network A market data fees incurred for interrogation services (both display-device and pay-per-use) that it provides to its officers, partners and employees and to its nonprofessional, brokerage-account customers.

Pursuant to Rule 11Aa3–2(c)(1), the CTA and CQ Participants submitted this notice of proposed amendments to two effective national market system plans.[4] The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2

1. Nonprofessional Subscriber Service Rates

The participants under the Plans that make Network A last sale information and Network A quotation information available (the "Network A Participants") impose on vendors a monthly fee of $5.25 for each nonprofessional subscriber to whom the vendor provides a Network A market data display service. These amendments proposed to reduce that monthly fee from $5.25 for each nonprofessional subscriber to (i) $1.00 for each of the first 250,000 nonprofessional subscribers to whom a vendor provides a Network A display service during the month and (ii) $.50 for each additional nonprofessional subscriber.

The objective of the proposed plan amendments is to encourage the proliferation of those services and the widespread dissemination of Network A market data. The Network A Participants also believe that reductions in the nonprofessional subscriber rates respond to the growing number of broker-dealers and vendors that wish to provide on-line services to their customers, which services may, for example, enable their customers to price portfolios with real-time information and to receive "dynamically updated" services, such as real-time ticker displays.

For the nonprofessional subscriber rates (rather than the much higher professional subscriber rates) to apply to any of its subscribers, a vendor must make certain that the subscriber qualifies as a nonprofessional subscriber,[5] subject to the same criteria that have applied since 1983, when the Network A Participants first established a reduced rate for nonprofessional subscribers.

Only those nonprofessional subscribers that actually gain access to at least one real-time Network A quote or price during the month will be charged the proposed fees by the Network A Participants.

2. Pay-for-Use Rates

Since November 1997, the Network A Participants have conducted a pilot program [6] pursuant to which vendors provide services that account for the use of market data on the basis of one cent per quote packet.[7] Vendors that have contracted to provide a usage-based service are required to pay one-cent for every quote packet that they make available, whether to professional or nonprofessional subscribers. The fee is an alternative to the other fee that the Network A Participants have historically charged professional and nonprofessional subscribers.

Based on their experience with the one-cent-per-quote fee and their extensive consultation with vendors and member organizations, the Network A Participants are proposing to modify the one-cent fee and to make the modified fee part of the Network A rate schedule.

Under the modified rates, each vendor would pay:

i. Three-quarters of one cent ($0.0075) for the first 20 million quote packets that it distributes during a month;

ii. One-half of one cent ($0.005) for the next 20 million quote packets that it distributes during that month (*i.e.*, quote packets 20,000,001 through 40,000,000 million); and

iii. One-quarter of one cent ($0.0025) for every quote packet in excess of 40 million that it distributes during that month.

The Network A Participants believe that the proposed pay-for-use fees may motivate additional market data vendors and broker-dealers to provide pay-for-use services, thereby making real-time market data even more readily available to investors through those channels.

3. Interplay of Nonprofessional-Subscriber and Pay-for-Use Rates

The Network A Participants further propose to reduce the cost exposure of vendors and broker-dealers by permitting them to limit the amount due from each nonprofessional subscriber each month. The vendors and broker-dealers would be eligible to pay the lower of either the aggregate pay-per-use fees that would apply to the subscriber's usage during the month or the monthly $1.00 first-tier nonprofessional subscriber fee. The Network A Participants propose to offer this flexibility to each subscriber that qualifies as a nonprofessional subscriber and that has agreed to the terms and conditions that apply to the receipt of market information as a nonprofessional subscriber.

For ease of administration, the Network A Participants propose to allow each vendor and broker-dealer to apply the $1.00 fee for any month in which each nonprofessional subscriber retrieves 134 or more quote packets during the month, without regard to the marginal per-quote rate that the vendor or broker-dealer pays that month (*i.e.*, three-quarters, one-half or one-quarter cent per quote packet). In addition, each vendor may reassess each month to determine which fee is more economical, the per-quote fee or the nonprofessional subscriber fee.

4. Enterprise Arrangement

In response to input from the brokerage community, the Network A Participants propose to introduce an enterprise arrangement and to make it available to United States-registered broker-dealers. The concept would apply to the devices that those broker-dealers use internally and to those broker-dealers' distribution of market data to their securities-trading customers. It would not apply to broker-dealers that make market data available to non-brokerage customers.

The enterprise arrangement would limit the aggregate amount that United States-registered broker-dealers would be required to pay in any month to (i) the receipt and use of market data by its officers, partners and employees and those of its affiliates, and to (ii) the pay-for-use and monthly display-device interrogation services that it or its United States-registered broker-dealer affiliates provide to their nonprofessional, brokerage-account customers (*i.e.*, customers that qualify as nonprofessional subscribers and that have opened a trading account pursuant to an applicable brokerage account agreement). Fees not eligible for inclusion in the enterprise arrangement's monthly payment limitation are (i) pay-for-use and display device fees payable by (A) professional subscribers and (B) nonprofessional subscribers that do not have brokerage accounts with the broker-dealer or its United States-registered broker-dealer affiliates, (ii) access fees, and (iii) program classification charges.

The enterprise arrangement's maximum monthly payment through the end of calendar year 2000 shall be $500,000. Thereafter, the Network A Participants propose to increase that maximum on an annual basis in an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent.

The proposal responds to broker-dealer input suggesting that CTA develop an enterprise-wide approach to pricing. CTA anticipates that like other proposals, this one will encourage new and additional uses of real time data by making the cost less expensive and more predictable.

In addition, the Network A Participants propose to make some minor, non-substantive changes to the form of Schedules A–1 and A–2 of Exhibit E to both the CTA Plan and the CQ Plan.

* * * * *

This amendment furthers the objectives of the national market system regarding the dissemination of last sale information delineated in Sections 11A(a)(1)(C), 11A(a)(1)(D) and 11A(a)(3)(B) of the Act.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendments to the CTA and CQ Network A rate schedules by means of their execution of the amendments. The rate changes would become effective on the first day of the month that follows the month in which the Commission approves the proposed plan amendments.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Network A Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plans

In accordance with Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants has approved the fee reductions.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) and the text of the amendments.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 (Solely in its Application to the Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

See Item I(A).

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Section 11A of the Act requires that the Commission assure fair competition among brokers and dealers and assure

[1] 17 CFR 240.11Aa3–2.

[2] 15 U.S.C. 78s(b)(1).

[3] The amendments were executed by each Participant in each of the Plans. The Participants include American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

[4] The CTA and CQ Plans have been designated as effective transaction reporting plans pursuant to Exchange Act Rule 11Aa3–1(b).

[5] A "nonprofessional subscriber" shall receive the information solely for his personal, non-business use. The subscriber shall not furnish the information to any other person. See NYSE and ASE Application and Agreement for the Privilege of Receiving Last Sale Information & Bond Last Sale Information as a Nonprofessional Subscriber, for the qualifications necessary to be classified as a nonprofessional subscriber.

[6] *See* Securities Exchange Act Rel. No. 39370 (November 26, 1997), 62 FR 64414 (December 5, 1997).

[7] A "quote packet" refers to any data element, or all data elements, relating to a single issue. Last sale price, opening price, high price, low price, volume, net change, bid, offer, size, best bid and best offer all exemplify data elements. "IBM" exemplifies a single issue. An index value constitutes a single issue data element.

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the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.[8] Another provision in this section authorizes the Commission to prescribe rules to assure that all persons may obtain this market data on terms that are "not unreasonably discriminatory."

Based on these standards, the Commission requests comment on whether the tiered fee structure applicable to users is unreasonably discriminatory.

1. The usage-based fee is structured as a fee per user with decreases for larger numbers of users. Will this tiered fee structure have an effect on competition among broker-dealers?

2. Will these volume discounts inure to the benefit of retail investors equally regardless of the broker-dealer they choose?

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by July 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16953 Filed 7–2–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78k–1(a)(1)(C)(i) and (ii).

[9] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41558; File No. SR–CBOE–99–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Changes to the Firm Quote Rule

June 24, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 8.51, Trading Crowd Firm Disseminated Market Quotes, to expand the categories of orders entitled to firm quote treatment and to specify to what extent multiple orders entered by the same beneficial owner at the same time will be entitled to firm quote treatment. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 8.51 to expand the categories of orders entitled to firm quote protection and to specify to what extent multiple orders entered by the same beneficial owner and represented at a trading station at approximately the same time will be entitled to firm quote protection.

Currently, Rule 8.51(a) states that "non-broker-dealer customer" orders up to the specified size (currently 10 contracts) are entitled to be executed at the offer (bid) which is displayed when a buy (sell) customer reaches the trading station where the particular option class is located for trading.[3] The Exchange is proposing to expand the category of orders entitled to this protection such that, with one exception, all orders would be entitled to the firm quote treatment under Rule 8.51(a). The firm quote requirement would not apply to orders of individuals who trade in the account of a market-maker or specialist on the Exchange or on another exchange, which account is exempt from the provisions of Regulation T of the Board of Governors of the Federal Reserve System pursuant to Section 7(c)(2) of the Act.[4] This exception would exclude not only market-maker accounts but also customer accounts of market-makers or specialists. In other words, the proposal would apply to orders of broker-dealers (other than those acting as market-makers) regardless of whether they are agency or proprietary orders. The appropriate Floor Procedure Committee would have the authority to determine not to extend firm quote treatment to broker-dealer orders in a particular class of options under its jurisdiction.

In proposing this change, the Exchange believes that extending the firm quote treatment to broker-dealer orders will provide an incentive to broker-dealers to send their orders to the Exchange because they will be assured that their order will be executed at the displayed bid or offer, as appropriate. Currently, CBOE trading crowds and specialists or crowds on other exchanges have the option to trade a broker-dealer order at the displayed quote or to change the displayed bid (offer) to reflect that the previously displayed bid (offer) is no longer available. This "trade or fade" policy is codified in paragraph (b) of Rule 8.51.

The Exchange is also proposing to amend Rule 8.51 to deny the firm quote protection to those orders or portions of orders for the same class of options (whether for the same or different series) that are entered by the same beneficial owner and that are represented at the trading station at approximately the same time and that cumulatively exceed the firm quote requirement for that particular class of options. For example, assume the firm quote requirement in option ABC is ten contracts and that a broker-dealer simultaneously sends orders to the floor broker in a crowd to by ten at-the-money call options in each of three different series for that class ABC. The floor broker will likely represent each of these three orders one after another. Under the proposed new paragraph (a)(3) of Rule 8.51, only the first of these three orders would be entitled to firm quote protection. The crowd would be required to trade the other two ten lot orders at the displayed market or to change that market pursuant to the terms of the "trade or fade" policy set forth in paragraph (b) of the Rule.

The Exchange believes that customers or broker-dealers can attempt to circumvent the limits of the firm quote protection by submitting orders at the same time that are in many respects economically very similar. If the market-makers in a crowd were required to fill each of these orders at the displayed quotes without the possibility of refreshing those quotes they would essentially be responsible for honoring the displayed quotes in the crowd at a level beyond the intended protection and would be subjected to undue risk. The potential risk will be even greater than it is today with the expansion in the category of orders that will be entitled to firm quote protection. In addition, the potential risk will be increased if the firm quote limit were to be raised. The Exchange recently submitted a filing with the Commission proposing to expand the allowable firm quote limit up to 50 contracts. The Exchange believes that providing for limits on the extension of the firm quote protection in cases where multiple orders for the same class of options are submitted at approximately the same time is the best way to ensure the viability of the expansion of the firm quote protection that the Exchange has proposed in both this filing (with respect to an expansion in the category of orders entitled to the firm quote guarantee) and in SR–CBOE–98–53 (with respect to an expansion in the allowable firm quote contract limit).

The Exchange also proposes to amend paragraph (b) of Rule 8.51 and Interpretation .06 to make them consistent with the change in the categories of orders now subject to the firm quote guarantee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[5] in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–99–21 and should be submitted by July 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16949 Filed 7–2–99; 8:45 am]

BILLING CODE 8010–01–M

[3] *But see* Securities Exchange Act Release No. 40957 (January 20, 1999), 64 FR 4485 (January 28, 1999) (File No. SR–CBOE–98–53, proposing to raise the number of contracts guaranteed under the firm quote rule to the RAES contract limit).

[4] Section 7(c)(2) of the Act specifies those categories of persons that are exempt from the requirements of Regulation T with respect to the arrangement, extension or maintenance of credit to finance securities transactions. Among those persons exempted are members of national securities exchanges or registered broker-dealers who arrange or maintain credit to finance their activities as market makers.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–41571; File No. SR–NASD–99–22)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Limited Usage Service Fees

June 28, 1999.

On April 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7010 to eliminate its Limited Usage Service Fee.

The proposed rule change was published for comment in the **Federal Register** on May 28, 1999.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

Nasdaq is proposing to amend NASD Rule 7010 to eliminate its Limited Usage

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41432 (May 20, 1999), 64 FR 29075.

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Service Fee.[4] Currently, professional market participants may obtain, through an approved portable quotation device, Nasdaq Level I and Last Sale Information on up to 250 Nasdaq securities for a monthly fee of $6.00. The fee currently has approximately 95 subscribers and has never exceeded 200 users during its existence. In light of this low participant usage and the burdens associated with administering the Limited Usage Service, Nasdaq has determined to discontinue this service and its related fee. Nasdaq notes that the information provided through the Limited Usage Service will still be widely available to professionals through numerous other mediums and vendors.

The Commission finds that the proposed rule change is consistent with the requirements of the Act[5] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds the proposal is consistent with the requirements of sections 15A(b)(5)[6] and (6)[7] because the proposed rule change is designed to provide for the equitable allocation of reasonable fees among those using the NASD's facilities or systems and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–99–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16951 Filed 7–2–99; 8:45 am]

BILLING CODE 8010–01–M

[4] This fee was established on a pilot basis on January 3, 1984. *See* Securities Exchange Act Release No. 20522 (January 3, 1984), 49 FR 1440 (January 11, 1984).

[5] The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The Commission finds that the proposed rule change increases efficiency by refining the fee structure and lessening confusion about available services. The Commission also finds that the proposed rule change is not discriminatory and does not impinge on competition because the information provided through the Limited Usage Service is still widely available through other mediums. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41568; File No. SR–NASD–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No.7 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities

June 28, 1999.

I. Introduction

On March 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (a) Implement, on a pilot basis, new Primary Nasdaq Market Maker ("PMM") standards for all Nasdaq National Market ("NNM") securities; (b) extend the NASD's Short Sale Rule pilot until November 1, 1998; and (c) extend the suspension of existing PMM standards until May 1, 1998. On March 30, 1998, the Commission issued notice of the filing and approved, on an accelerated basis, the portions of the filing extending the NASD's Short Sale Rule pilot and the suspension of existing PMM standards.[3] The Short Sale Rule pilot and the suspension of existing PMM standards was subsequently extended until June 30, 1999.[4]

On June 22, 1999, Nasdaq proposed to (1) continue to suspend the current PMM standards until December 31, 1999, and (2) extend the NASD's Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) until December 31, 1999.[5]

Background

Presently, NASD Rule 4612 provides that a member registered as a Nasdaq market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards. The implementation of the SEC Order Handling Rules and what some perceive as a concurrent move toward a more order-driven, rather than a quote-driven, market raised questions about the continued relevance of those PMM standards. As a result, such standards were suspended beginning in early 1997.[6] Currently, all market makers are designated as PMMs.

Since February 1997, Nasdaq has worked to develop PMM standards that are more meaningful in what may be an increasingly order-driven environment and that better identify firms engaged in responsible market making activities deserving of the benefits associated with being a PMM, such as being exempt from NASD Rule 3350, the NASD's Short Sale Rule. The NASD now proposes to extend the current suspension of the existing PMM standards.

In light of a substantial number of comments on the proposed new PMM standards, Nasdaq staff in August 1998 convened a subcommittee to develop new standards. Nasdaq expects that it will file an amendment to SR–NASD–98–26 to incorporate the new PMM standards that currently are being developed by the subcommittee, or in the alternative, that it will withdraw SR–NASD–98–26 and will submit the new PMM standards as a new filing.

For the reasons discussed below, the Commission has determined to grant accelerated approval to Nasdaq's request, in Amendment No. 7, to continue to suspend the current PMM standards and to extend the NASA's Short Sale Rule Pilot until December 31, 1999.

II. Proposed Rule Change

In the current amendment, Nasdaq is proposing to extend the Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) and the suspension of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998).

[4] *See* Exchange Act Release No. 41195 (March 19, 1999) 64 FR 14778 (March 26, 1999).

[5] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated June 21, 1999.

[6] *See* Exchange Act Release No. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997) (approving temporary suspension of PMM standards); Exchange Act Release No. 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997) (extending suspension through April 1, 1998); Exchange Act Release No. 39818 (March 30, 1998) 63 FR 16841 (April 6, 1998) (extending suspension through May 1, 1998); Exchange Act Release No. 39936 (April 30, 1998); 63 FR 25253 (May 7, 1998) (extending suspension through July 1, 1998); Exchange Act Release No. 40140 (June 26, 1998) 63 FR 36464 (July 6, 1998) (extending suspension through October 1, 1998); Exchange Act Releese No. 40485 (September 24, 1998) 63 FR 52780 (October 1, 1998) (extending suspension through March 31, 1999); Exchange Act Release No. 41195 (March 19, 1999) 64 FR 14778 (March 26, 1999) (extending suspension through June 30, 1999).

existing PMM standards to allow more time to refine the PMM standards.

The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

NASD Rule 3350

(a)–(k) No Changes.

(l) This Rule shall be in effect until [June 30, 1999] *December 31, 1999.*

III. Discussion

After careful consideration, the Commission has found, for the reasons set forth below, that the extension of the Short Sale Rule pilot and the suspension of the existing PMM standards until December 31, 1999, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 15A(b)(6)[7] of the Exchange Act. Section 15A(b)(6) requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade. The Commission finds that continuation of the Short Sale Rule pilot and the continued suspension of the current PMM standards will maintain the status quo while the Commission and the NASD review the operation of revised PMM standards. Because the Commission's ultimate stance on the Short Sale Rule may be affected, in part, by the operation of revised PMM standards, it is reasonable to keep the Short Sale Rule pilot in place while work continues on the PMM standards. Furthermore, it is judicious, in the short term, to avoid reintroducing the previous PMM standards prior to the implementation of a new PMM pilot.

In finding that the suspension of the existing PMM standards is consistent with the Exchange Act, the Commission reserves judgment on the merits of the NASD's Short Sale Rule, any market maker exemptions to that rule, and the proposed new PMM standards. The Commission recognizes that the Short Rule already has generated significant public comment. Such commentary, along with any further comment on the interaction of the Short Sale Rule with the proposed new PMM standards, will help guide the Commission's evaluation of the Short Sale Rule and new PMM standards. During the PMM pilot period, the Commission anticipates that the NASD will continue to address the Commission's questions and provide the Commission staff with any relevant information about the practical effects and the operation of the revised PMM standards and possible interaction between those standards and the NASD's Short Sale Rule.

The Commission finds good cause for approving the extension of the Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to the Nasdaq market and confusing to market participants to reintroduce the previous PMM standards for a brief period prior to implementing a new PMM pilot.

IV. Solicitation of Comments

Inerested persons are invited to submit written data, views, and arguments concerning Amendment No. 7, including whether the proposed Amendment is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–26 and should be submitted by July 27, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[8] that Amendment No. 7 to the proposed rule change, SR–NASD–98–26, which extends the NASD Short Sale Rule pilot and the suspension of the current PMM standards to December 31, 1999, be and hereby is approved on an accelerated basis.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16952 Filed 7–2–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] In approving Amendment No. 7, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(F).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41567; File No. SR–PCX–99–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Fines for Damage of Exchange Property

June 28, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 21, 1999, the Exchange filed Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 10.13 to include fines for the intentional or reckless use and/or damage of Exchange equipment. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 10.13, governing Minor Rule Plan violations, to include fines for the intentional or reckless use and/or damage of Exchange equipment. First, if there is abuse of property but no property damage is involved, the Exchange proposes fines of $100, $250, and $500 for the first, second, and third violations respectively.

Second, for abuse of equipment where property damage is involved, the Exchange proposes fines of $500, $750, and $1,000 for the first, second, and third violations respectively, plus the cost to repair or replace the equipment. The Exchange proposes these fines to cover costs of repairing or replacing equipment resulting from intentional or reckless use by Members. In addition, the Exchange proposes these fines to deter intentional or reckless use and subsequent damage of equipment.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)[3] of the Act in general and furthers the objectives of section 6(b)(4)[4] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other person using its facilities.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder[7] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) the PCX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–19 and should be submitted by July 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16950 Filed 7–2–99; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 5, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7040.

SUPPLEMENTARY INFORMATION:

Title: Secondary Market Assignment and Disclosure.

Form No: 1088.

Frequency: On Occasion.

Description of Respondents: Secondary Market Participants.

Annual Responses: 5,000.

Annual Burden: 7,500.

Dated: June 18, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–17000 Filed 7–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0317]

BCC Capital Corp.; Notice of License Surrender

Notice is hereby given that BCC Capital Corporation ("BCC"), 280 Park Avenue, New York, New York 10017, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). EDCLP was licensed by the U.S. Small Business Administration on September 24, 1976.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 6, 1999, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

United States Small Business Administration.

Dated: June 28, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17002 Filed 7–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0355]

European Development Capital Limited Partnership; Notice of License Surrender

Notice is hereby given that European Development Capital Limited Partnership ("EDCLP"), 280 Park Avenue, New York, New York 10017, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). EDCLP was licensed by the U.S. Small Business Administration on May 3, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 6, 1999, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Small Business Administration.

Dated: June 28, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17001 Filed 7–2–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–04–C–00–BLI) To Impose Only, Impose and Use and Use Only the Revenue From a Passenger Facility Charge (PFC) at Bellingham International Airport, Submitted by the Port of Bellingham, Bellingham International Airport, Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only, impose and use and use only PFC revenue at Bellingham International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 5, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW; Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Sibold, Director of Aviation, at the following address: Port Of Bellingham, 4201 Mitchell Way, Bellingham, WA 98226.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bellingham International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary E. Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–04–C–00–BLI) to impose only, impose and use and use only PFC revenue at Bellingham International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 24, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Bellingham, Bellingham International Airport, Bellingham, Washington, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 23, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: March 1, 2004.

Total requested for use approval: $1,445,000.

Brief description of proposed project: Impose Only: Terminal rehabilitation and expansion; Impose and Use: Terminal design; Use only: Alpha taxiway pullout on north.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bellingham International Airport.

Issued in Renton, Washington on June 24, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–16957 Filed 7–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5604 Notice 1]

Orion Bus Industries Inc.; Receipt of Application for Determination of Inconsequential Noncompliance

Orion Bus Industries, Inc. (Orion) of Oriskany, New York, has applied to be exempted from the notification and remedy requirements of the 49 U.S.C. Chapter 301 "Motor Vehicle Safety because of a noncompliance with Federal Motor Vehicle Safety Standard

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(FMVSS) No. 205 Glazing Materials." The basis of the application is that the noncompliance is inconsequential to motor vehicle safety. Orion has filed an appropriate report pursuant to 49 CFR Part 573 "Defect and Noncompliance Information Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Orion submitted the following information in accordance with the requirements of 49 CFR Part 556, "Exemption for Inconsequential Defect or Noncompliance."

Vehicles Involved

Orion II, Orion V and Orion VI transit buses manufactured between January 17, 1996, and November 30, 1998, equipped with non-opening fixed glass windows. The serial numbers of the affected vehicles fall within the range: Orion II—005917 through 6058, Orion V—32516 through 34054 and Orion VI—40006 through 40315.

Description of the Noncompliance

Certain Orion II, Orion V, and Orion VI transit buses were equipped with fixed glass non-sliding windows which were not marked as required by S6 of FMVSS No. 205, specifically Section 6 of ANSI Z26 as incorporated by reference. They also were not marked with the symbol "DOT" or the manufacturer's code mark as required by S6.2 of FMVSS No. 205. The window glazing is marked with architectural code numbers by mistake. The windows meet the performance requirements of FMVSS No. 205.

Number of Vehicles

Five hundred and ten (510) vehicles as of November 30, 1998 potentially contain the noncompliance.

Supporting Information

Although the glazing does not meet the requirements of Section S6, FMVSS No. 205, the glazing has been tested and complies to AS–3, AS–2 and AS–1 of ANSI Z26.1 as required for the application. The window supplier has three different plant locations, two of which specialize in building-type windows and the third one in vehicle windows. Whenever the plant specializing in vehicle windows gets backed up with orders, the window supplier sends its excess orders, to one of the other plants for completion. The employee sandblasting the logos at one of the building glass plants did not realize this was motor vehicle glass and put architectural codes on all windows.

There are a total of eighteen different parts numbers affected. The windows in question are used on both the curb side and road side of the bus as well as at the rear of the vehicle. On the curb side the windows are used in the front and rear doors as well as passenger windows. The door glass ranges in size from 6" x 32" to 18" x 34" and the side and rear passenger windows range from 18" x 34" to 34" x 34". The only front facing glass is used for destination signs and is a separate piece mounted above the front windshield. All windows in this application were purchased from Barber Glass Industries Inc., 485 Southgate Drive, Guelph, Ontario, Canada N1G 3W6, Phone 519–824–2399 and Fax 519–824–1493. (DOT 522 is its Manufacturer Identification Number).

Orion argues that:

Barber Glass has stated that if a person used the architectural codes sandblasted on the bus windows in error to go to a glass shop to replace a broken bus window the glass they would get would meet the required ANSI A26.1 safety glass requirements listed in FMVSS 205. They would not however, be able to match the window tint as vehicle windows use different vinyls for their tinting purposes and would have to specify automotive glass to get the matching window tints.

Orion Bus Industries, Inc. believes that, based upon the above information, the noncompliance described above is inconsequential as it relates to motor vehicle safety.

Interested persons are invited to submit written data, views and arguments on the petition of Orion, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 5, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: June 28, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–16956 Filed 7–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33774]

Chicago SouthShore & South Bend Railroad—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Chicago SouthShore & South Bend Railroad (CSS) over CSXT's Barr Subdivision between the connection with CSS at milepost BI241.4, at Miller, IN, and CSXT's connection with Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT) at milepost BI248.8, at Pine Junction, IN, a distance of approximately 7.4 miles.

The transaction is scheduled to be consummated on or shortly after June 30, 1999.

The purpose of the trackage rights is to permit CSS to interchange certain traffic with B&OCT at Barr Yard, thereby promoting operating efficiencies.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33774, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on (1) Rose-Michele Weinryb, Esq., Chicago SouthShore & South Bend Railroad, 1350 New York Ave., NW., Suite 800, Washington, DC 20005–4797, and (2) Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 28, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–16897 Filed 7–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination; Alliance Assurance Company of America, American Mercury Insurance Company, Boston Old Colony Insurance Company, GIGNA Indemnity Insurance Company, CIGNA Insurance Company of the Midwest, Continental Reinsurance Corporation, European Reinsurance Corporation of America, Illinois National Insurance Co., Insurance Company of North America, Kansas City Fire and Marine Insurance Company, London Assurance of America, Inc. (The), Mid-Century Insurance Company, Phoenix Assurance Company of New York, Providence Washington Insurance Company, Sea Insurance Company of America (The), Sun Insurance Office of America Inc., Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch, Transcontinental Insurance Company, Transportation Insurance Company and Valley Forge Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety and/or reinsurer on Federal bonds is terminated effective June 30, 1999.

The Companies were last listed as an acceptable sureties and/or reinsurers on Federal bonds at 63 FR 36080, July 1, 1998.

With respect to any bonds currently in force with above listed Companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 28, 1999.

Michael C. Salapka,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–17012 Filed 7–2–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Glens Falls Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 15 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7116.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to Glens Falls Insurance Company, of Wilmington, Delaware, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 63 FR 36093, July 1, 1998.

With respect to any bonds currently in force with Glens Falls Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 28, 1999.

Judith R. Tillman,

Acting Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 99–17015 Filed 7–2–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Nobel Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 14 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to Nobel Insurance Company of Dallas, TX, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1999.

The Company was last listed as an acceptable surety on Federal bonds at 63 FR 36101, July 1, 1998.

With respect to any bonds currently in force with Nobel Insurance Company bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bond that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://

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www.fms.treas.gov/c570/index.html) A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 28, 1999.

Judith R. Tillman,

Acting Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 99–17014 Filed 7–2–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Development at the James H. Quillen Veterans Affairs Medical Center, Mountain Home, TN

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to award.

SUMMARY: The Secretary of the Department of Veterans Affairs has designated the Department of Veterans Affairs James H. Quillen Veterans Affairs Medical Center in Mountain Home, Tennessee, as a site for an Enhanced-Use lease development for a co-generation energy center. The Department intends to award an Enhanced-Use lease of real property for a term not-to-exceed 35 years to Energy Systems Group, Inc., a developer/operator.

FOR FURTHER INFORMATION CONTACT: Robert B. Eidson, Capital Assets Manager, Office of the Director (00B), James H. Quillen VA Medical Center, Mountain Home (Johnson City), TN 37684, (423)–926–1171, extension 7112.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161, *et seq.*, specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: June 24, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99–16982 Filed 7–2–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 128

Tuesday, July 6, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Third Quarter of 1999

Correction

In notice document 99–16388, beginning on page 34630 in the issue of Monday, June 28, 1999, make the following correction:

On page 34631, in the first column, in the table under the heading "RUS rate (0.000)" for the year 2013, "5.875" should read "4.875".

[FR Doc. C9–16388 Filed 7–2–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL 6308-6]

RIN 2060-AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Nonhandheld Engines At or Below 19 Kilowatts

Correction

In the issue of Wednesday, June 30, 1999, on page 35256, in the first column, in the correction of rule document 99-6175, in the second line, § 90.706, "(b)(7)" should read § 90.706 "(b)(1)".

[FR Doc. C9–6175 Filed 7–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1992-99]

RIN 1115-AF47

Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens

Correction

In the issue of Tuesday, June 22, 1999, on page 33346, in the second column, in the correction of rule document 99-15032, in the second line, The correction should read by removing "§ 214.2(j)(1(iv)" and adding "§ 214.2(j(1)(vi)".

[FR Doc. C9–15032 Filed 7–2–99; 8:45 am]

BILLING CODE 1505–01–D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 62
Federal Plan Requirements for Hospital/ Medical/Infectious Waste Incinerators Constructed on or Before June 20, 1996; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6365–8]

RIN 2060–AI25

Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed On or Before June 20, 1996

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 15, 1997, EPA adopted emission guidelines for existing hospital/medical/infectious waste incinerator(s) (HMIWI). Sections 111 and 129 of the Clean Air Act (Act or CAA) require States with existing HMIWI subject to the emission guidelines to submit plans to EPA that implement and enforce the emission guidelines. Indian tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. State plans were due from States with HMIWI subject to the emission guidelines on September 15, 1998. If a State or Tribe with existing HMIWI does not submit an approvable plan within 2 years after promulgation of the emission guidelines (September 15, 1999), sections 111(d) and 129 of the Act require EPA to develop, implement, and enforce a Federal plan for HMIWI in that State/Tribal area. In this action the EPA proposes a Federal plan to implement emission guidelines for HMIWI located in States and Indian country without effective State or Tribal plans. This Federal plan will most likely be an interim action for many of these areas because when a State/Tribal plan becomes effective, the Federal plan will no longer apply to HMIWI covered by such plan.

DATES: *Comments.* You must submit comments on this proposal on or before September 7, 1999.

Public Hearings. The EPA will hold public hearings, if requested. Requests must be received by August 5, 1999. See the ADDRESSES section of this preamble for information on requesting a public hearing. You can obtain the date and location of the public hearing(s) by calling (919) 541–5420 or by E-mailing to banker.lalit@epa.gov after August 5, 1999.

ADDRESSES: *Comments.* Send your comments on this proposal (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention docket number A–98–24, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. You may also submit your comments electronically by following the instructions in the **SUPPLEMENTARY INFORMATION** section of this preamble.

Docket. Docket numbers A–98–24 and A–91–61 contain the supporting information for this proposed rule and the supporting information for EPA's promulgation of emission guidelines for existing HMIWI, respectively. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW., Washington, D.C. 20460, or by calling (202) 260–7548. The docket is located in Room M–1500, Waterside Mall (ground floor, central mall). The fax number for the Center is (202) 260–4000 and the E-mail address is A-and-R-Docket@epa.gov. A reasonable fee may be charged for copying. In addition to the docket, you can find an electronic copy of this document at the EPA/STAPPA/ALAPCO Unified Air Toxics Website (http://www.epa.gov/ttn/uatw/129/hmiwi/rihmiwi.html).

Public Hearings. The public hearing(s) will be held in the respective EPA Regional Office covering the State from which a request was received. If you wish to speak at a public hearing you should notify Mr. Lalit Banker, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5420.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposal, contact Mr. Lalit Banker at (919) 541–5420, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (banker.lalit@epa.gov). If you have technical questions, contact Mr. Rick Copland at (919) 541–5265, Combustion Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (copland.rick@epa.gov). If you have questions regarding the implementation of this Federal plan, contact your EPA Regional Office. Regional Office contacts are provided in **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: *Regulated Entities.* If you own or operate an existing HMIWI and are not already subject to an EPA-approved and effective State or Tribal plan, you may be covered by this proposed action. Existing HMIWI are those that commenced construction, modification, or reconstruction on or before June 20, 1996. Regulated categories and entities include those listed in Table 1.

TABLE 1.—REGULATED ENTITIES[a]

Category	Examples of regulated entities
Industry	Hospitals, nursing homes, research laboratories, other health care facilities, commercial waste disposal companies.
Federal Government	Armed services, public health service, Federal hospitals, other Federal health care facilities.
State/local/Tribal Government	State/county/city hospitals and other health care facilities.

[a] This table is not intended to be exhaustive, but rather, provides a guide for the public regarding entities likely to be regulated by this proposed Federal plan. This table lists the types of entities that EPA is aware of that could potentially be regulated. Other types of entities not listed in the table could also be affected. Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by the standards or emission guidelines for HMIWI, you should carefully examine the applicability criteria in subpart HHH.

Electronic submittal of comments. You may submit comments and data on this proposed rule via E-mail. Send E-mail submittals to A-and-R-Docket@epa.gov. You may file E-mail comments at most Federal Depository Libraries. Do not submit confidential business information through E-mail. You may also submit comments and data on diskettes in WordPerfect 5.1 or 6.1 file format or ASCII file format. Electronic comments must avoid the use of special characters or any form of encryption. Identify all comments and data for this proposal, whether in paper form or electronic form, by docket number A–98–24.

EPA Regional Office Contacts. Table 2 is a listing of EPA Regional Office contacts who can answer questions regarding implementation of this Federal plan.

TABLE 2.—EPA REGIONAL CONTACTS FOR HMIWI

Region	Regional contact	Phone/Fax	States and protectorates
I	John Courcier, courcier.john@ epa.gov	617–918–1659; 617–918–1505 (fax)	CT, ME, MA, NH, RI, VT.
II	Christine DeRosa, derosa.christine@ epa.gov.	212–637–4022; 212–637–3901 (fax)	NJ, NY, Puerto Rico, Virgin Islands.
	Ted Gardella, gardella.anthony@epa.gov	212–637–3892; 212–637–3901 (fax).	
III	James B. Topsale, topsale.jim@epa.gov	215–814–2190; 215–814–2114 (fax)	DE, DC, MD, PA, VA, WV.
IV	Scott Davis, davis.scottr@epa.gov	404–562–9127; 404–562–9095 (fax)	AL, FL, GA, KY, MS, NC, SC, TN.
V	Ryan Bahr, bahr.ryan@epa.gov	312–353–4366; 312–886–5824 (fax)	IN.
	Charles Hatten, hatten.charles@epa.gov	312–886–6031; 312–886–5824 (fax)	WI.
	Mark Palermo, palermo.mark@ epa.gov	312–886–6082; 312–886–5824 (fax)	IL, OH.
	Victoria Hayden, hayden.victoria@ epa.gov.	312–886–4023; 312–886–5824 (fax)	WI.
	Doug Aburano, aburano.douglas@ epa.gov.	312–353–6960; 312–886–5824 (fax)	MN.
VI	Mick Cote, cote.mick@epa.gov	214–665–7219; 214–665–7263 (fax)	AR, LA, NM, OK, TX.
VII	Wayne Kaiser, kaiser.wayne@epa.gov	913–551–7603; 913–551–7844 (fax)	IA, KS, MO, NE.
	Ward Burns, burns.ward@epa.gov	913–551–7960; 913–551–7844 (fax)	
VIII	Meredith Bond, bond.meredith@epa.gov	303–312–6438; 303–312–6064 (fax)	CO, MT, ND, SD, UT, WY.
IX	Patricia Bowlin, bowlin.patricia@epa.gov	415–744–1188; 415–744–1076 (fax)	AZ, CA, HI, NV, American Samoa, Guam.
X	Catherine Woo, woo.catherine@epa.gov	206–553–1814; 206–553–0110 (fax)	AK, ID, OR, WA.

Preamble Outline

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I. Background

A. HMIWI Regulations

On September 15, 1997, EPA promulgated emission guidelines for existing HMIWI under authority of sections 111 and 129 of the Act. *See* 62 FR 48348 (to be codified at 40 CFR part 60, subpart Ce, §§ 60.30e through 60.39e). To make these emission guidelines enforceable, States with existing HMIWI were required to submit to EPA within 1 year following promulgation of the emission guidelines a State plan that implements and enforces the emission guidelines. States without any existing HMIWI were required to submit to the Administrator a letter of negative declaration certifying that there are no HMIWI in the State. No plan is required for States that do not have any HMIWI.

As discussed in section I.D. of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover HMIWI in Indian country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no HMIWI are located in the Tribal area. No plan is required for Tribes that do not have any HMIWI.

Sections 111 and 129 of the Act and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan to cover existing HMIWI located in States that do not have an approved plan. Furthermore, EPA plans to develop, implement, and enforce a Federal plan for Indian country until Tribes receive approval to administer their own programs. Hospital/medical/infectious waste incinerators located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to the Federal plan until a State or Tribal plan that includes these HMIWI is approved and effective. Today's action proposes the HMIWI Federal plan.

B. Who This HMIWI Federal Plan Affects

This proposed HMIWI Federal plan would affect existing HMIWI for which construction commenced on or before June 20, 1996. HMIWIs would be subject to this Federal plan if any of the following is true on the effective date of the Federal plan:

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(1) The State or Tribal plan has not become effective;[a]

(2) The State or Tribal plan was in effect but was subsequently vacated in whole or in part; or

(3) The State or Tribal plan was in effect but was subsequently revised such that it is no longer as protective as the emission guidelines.

The specific applicability of this plan is described in proposed §§ 62.14400 through 62.14403 of subpart HHH.

The Federal plan would become effective 30 days after final promulgation. Once an approved State or Tribal plan is in effect, the Federal plan would no longer apply to HMIWI covered by such plan.

C. Implementing Authority

The EPA Regional Administrators will be the delegated authority for implementing the HMIWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator. Table 2 under **SUPPLEMENTARY INFORMATION** lists the names and addresses of the EPA Regional Office contacts and the States that they cover.

D. HMIWI Federal Plan and Indian Country

The term "Indian country," as used in this preamble, means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The HMIWI Federal plan would apply throughout Indian country to ensure that there is not a regulatory gap for existing HMIWI in Indian country. However, Indian tribes now have the authority under the Act to develop Tribal plans in the same manner that States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the Act for which EPA is authorized to treat Tribes in the same manner as States. *See* 63 FR 7254 (Final Rule for Indian Tribes: Air Quality Planning and Management, (Tribal Authority Rule)) (codified at 40 CFR part 49). As of March 16, 1998, the effective date of the Tribal Authority Rule, EPA has had authority under the Act to approve Tribal programs such as Tribal plans to implement and enforce HMIWI emission guidelines.

1. Tribal Implementation

Section 301(d) of the Act authorizes the Administrator to treat an Indian tribe as a State under certain circumstances. The Tribal Authority Rule, which implements section 301(d) of the Act, identifies provisions of the Act for which a Tribe should be treated as a State. *See* 40 CFR 49.3 and 49.4. Under the Tribal Authority Rule, a Tribe is treated as a State for purposes of this Federal plan. If a Tribe meets the criteria below, EPA can delegate to an Indian tribe authority to implement the Federal plan in the same way it can delegate authority to a State:

(1) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(2) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(4) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgement, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Act and all applicable regulations. *See* 40 CFR 49.6.

2. EPA Implementation

The Act also provides EPA with the authority to administer Federal programs in Indian country. This authority is based in part on the general purpose of the Act, which is national in scope. Section 301(a) of the Act provides EPA broad authority to issue regulations that are necessary to carry out the functions of the Act. The EPA believes that Congress intended for EPA to have the authority to operate a Federal program when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the Act.

Section 301(d)(4) of the Act authorizes the Administrator to directly administer provisions of the Act to achieve the appropriate purpose where Tribal implementation is not appropriate or administratively not feasible. The Agency's interpretation of its authority to directly implement Clean Air Act programs in Indian country is discussed in more detail in the proposed Federal Operating Permits Rule, *see* 62 FR 13747 (March 21, 1997), and in the Tribal Authority Rule. *See* 63 FR at 7262–7263.

Many Tribes may have delayed development of air quality regulations and programs pending promulgation of the Tribal Authority Rule. As mentioned previously, Tribes may, but are not required to, submit an HMIWI plan under section 111(d) of the Act.

3. Applicability in Indian Country

The Federal plan would apply throughout Indian country except where a State or Tribal plan has been explicitly approved by EPA to cover an area of Indian country. This approach is consistent with that in the proposed Federal Operating Permits Rule cited above where the rationale is discussed in detail. The EPA requests comments on applying the HMIWI Federal plan in Indian country as described here.

E. HMIWI Federal Plan and Compliance Schedules

The emission guidelines require the HMIWI owner or operator to come into compliance with the State or Tribal plan within 1 year after approval of such plan, or within 1 year after promulgation of the Federal plan (whichever applies). *See* 40 CFR 60.39e(b). However, if the State or Tribal plan contains measurable and enforceable increments of progress, the HMIWI may be allowed up to 3 years after approval of the plan (but in no case later than September 15, 2002) to come into compliance. *See* 40 CFR 60.39e(c).

This proposed Federal plan contains measurable and enforceable increments of progress that allow sources up to 3 years after promulgation of the Federal plan to comply (but in no case later than September 15, 2002.) The increments of progress are discussed in section II.E of this preamble.

1. Due Within 1 Year of Promulgation

Except under the special circumstances that are discussed below, HMIWI that are planning to shut down rather than comply with the requirements of the Federal plan must do so by the date 1 year after the Federal plan is promulgated. In addition, according to § 60.39e(e) of subpart Ce, all HMIWI that continue to operate 1 year after the Federal plan promulgation date must comply with the operator training and qualification requirements and the inspection requirements of the plan within 1 year. This includes HMIWI that comply within 1 year, as well as those that have been granted an extension beyond the 1 year compliance date (i.e., HMIWI with extended retrofit schedules and HMIWI granted an extension pursuant to § 60.39e(d) of subpart Ce).

2. Special Provisions of § 60.39e(d)

The Federal plan may contain provisions allowing HMIWI that are planning to shut down the opportunity to petition the State, Tribe, or EPA for an extension beyond the 1-year compliance date. *See* 40 CFR 60.39e(d). This proposed Federal plan contains provisions for granting and denying petitions for an extension beyond the 1-year compliance deadline (but no later than September 15, 2002). An example of a facility that might petition the enforcement authority for such an extension is a facility installing an onsite alternative waste treatment technology. It is possible that installation cannot be completed within 1 year, and the facility has no feasible waste disposal options other than onsite incineration while the alternative technology is being installed.

The requirements for a petition under the Federal plan, which are set forth at proposed § 62.14471 of subpart HHH, are the same as the requirements listed at § 60.39e(d) of subpart Ce, except that EPA proposes a specific date of 90 days following promulgation of the Federal plan by which petitions must be submitted to EPA under the Federal plan. This time frame, which is more than 2 years after promulgation of the emission guidelines and more than 9 months from today's proposal, should give sources sufficient time to examine their waste disposal options and to prepare the necessary documentation to justify their need for an extension. This time frame also gives EPA sufficient time to grant or deny the petition before the 1-year compliance deadline arrives.

F. Status of State Plan Submittals

Sections 111(d) and 129(b)(2) of the Act, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), authorize EPA to develop and implement a Federal plan for HMIWI located in States with no approved and effective State plan. The EPA has received final State plans from New York, Delaware, Louisiana, Georgia, Alabama, North Dakota, Montana, and Colorado. The EPA has received draft State plans from Puerto Rico, Maryland, West Virginia, Pennsylvania, Iowa, Ohio, Indiana, Minnesota, Illinois, Michigan, South Dakota, Utah, Washington, and Wyoming. Other States are making significant progress on their State plans and EPA expects many State plans to be approved before this Federal plan is final.

The EPA anticipates letters of negative declaration from New Mexico and Oregon. The EPA is not aware of any Indian tribes that are developing Tribal plans.

The preamble of the final Federal plan will list States and Tribes that have an EPA-approved plan in effect on the date the final Federal plan is signed by the EPA Administrator. As Regional Offices approve State plans, they will also, in the same action, amend the appropriate subpart of 40 CFR part 62 to codify their approvals.

The EPA will maintain a list of State plan submittals and approvals on the Unified Air Toxics Website at http://www.epa.gov/ttn/uatw/129/hmiwi/rihmiwi.html. The list will help HMIWI owners or operators determine whether their HMIWI is affected by a State plan, a Tribal plan, or the Federal plan. Hospital/medical/infectious waste incinerator owners and operators can also contact the EPA Regional Office for the State in which their HMIWI is located to determine whether there is an approved and effective State plan in place.

II. Required Elements of the HMIWI Federal Plan

Because the EPA is proposing a Federal plan to cover HMIWI located in States or Tribes where plans are not in effect, this proposal includes the same elements as are required for State plans: (1) Identification of legal authority and mechanisms for implementation; (2) inventory of HMIWI; (3) emissions inventory; (4) emission limits; (5) compliance schedules; (6) public hearing; (7) testing, monitoring, inspection, reporting, and recordkeeping; (8) waste management plan; (9) operator training and qualification; and (10) progress reporting. See 40 CFR part 60 subparts B and C and sections 111 and 129 of the Act. Docket item II–B–3 in docket A–98–24 identifies each element and indicates where it is addressed. Each element is described below as it relates to the proposed HMIWI Federal plan.

A. Legal Authority and Enforcement Mechanism

A State or Tribal plan must demonstrate that the State or Tribe has the legal authority to adopt and implement the emission guidelines. 40 CFR 60.26. In its plan, the State or Tribe must identify the enforcement mechanism for implementing the emission guidelines, such as a State or Tribal rule.

1. EPA's Legal Authority in States

Section 301(a) of the Act provides the EPA with broad authority to write regulations that carry out the functions of the Act. Sections 111(d) and 129(b)(3) of the Act authorize the EPA to develop a Federal plan for States that do not submit approvable State plans.

2. EPA's Legal Authority in Indian Country

Section 301(a) provides EPA with the authority to administer Federal programs in Indian country. Section 301(d)(4) of the Act authorizes the Administrator to directly administer provisions of the Act where Tribal implementation of those provisions is not appropriate or administratively not feasible. See section I.D. of this preamble for a more detailed discussion of EPA's authority to administer the HMIWI Federal plan in Indian country.

The EPA is proposing this Federal regulation under the legal authority of the Act to implement the emission guidelines in those States and areas of Indian country not covered by an approved plan. As discussed in section IV of this document, implementation and enforcement of the Federal plan may be delegated to Tribal, State, or local agencies when requested by a State, Tribal, or local agency, and when EPA determines that such delegation is appropriate.

B. Inventory of Affected HMIWI

A State or Tribal plan must include an inventory of HMIWI affected by the emission guidelines. 40 CFR 60.25(a). Consistent with this requirement, docket number A–98–24, item II–B–1 contains an inventory of all the HMIWI EPA is aware of that will be covered by this proposed Federal plan.

This inventory was initially created in 1995 in connection with development of the HMIWI emission guidelines. In late 1998, EPA gave States an opportunity to submit updates to the 1995 list. Many States responded and in most cases, EPA was able to incorporate these updates. However, EPA recognizes that this list may not be complete. Therefore, sources subject to this Federal plan would include, but would not be limited to, the HMIWI listed in docket A–98–24, item II–B–1. States, Tribes, or individuals with corrections to the Federal plan inventory are invited to submit their corrections during the comment period for this proposal.

Hospital/medical/infectious waste incinerators that are located in a State

[a] The effective date of a State or Tribal plan from EPA's perspective (a State and Tribe may have an earlier effective date) is 30 days after the State or Tribal plan approval is published in the **Federal Register** if the approval is via the regular regulatory procedure of proposal with opportunity for comment followed by promulgation. If the approval is by direct final rule making, the effective date of the State/Tribal plan is 60 days after the approval is published in the **Federal Register** if no adverse comments are received.

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or Tribal area with an approved and effective plan, but that are not covered by such plan (for example, because they were inadvertently omitted from the coverage of the plan and the plan fails to contain language that would include inadvertently omitted HMIWI), would automatically be covered by the Federal plan. There will be no need to reopen the Federal plan to add such HMIWI.

C. Inventory of Emissions

A State plan must include an emissions estimate for HMIWI subject to the emission guidelines. 40 CFR 60.25(a). The pollutants to be inventoried are dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), nitrogen oxides (NO_X), carbon monoxide (CO), and sulfur dioxide (SO_2). For this proposal, EPA has estimated the emissions from each HMIWI that would be covered by the Federal plan for the nine pollutants regulated by the Federal plan. This emissions inventory is included in item II–B–1 in docket A–98–24.

Pollutant emissions are expressed in kilograms per year (kg/yr) for most pollutants and grams per year (g/yr) for dioxins/furans. The emissions inventory is based on available information about the HMIWI and emission factors developed for purposes of calculating nationwide air impacts of the emission guidelines. Refer to the emissions estimates memorandum in docket A–98–24 (item II–B–1) for the complete emissions inventory and details on the calculations.

D. Emission Limits

A State plan must include emission limits. 40 CFR 60.24(a). Section 129(b)(2) of the Act requires these emission limits to be "at least as protective as" those in the emission guidelines. The emission limits in this proposed HMIWI Federal plan are the same as those contained in the emission guidelines.

The HMIWI source category is divided into three subcategories based on waste burning capacity: Small (≤200 pounds per hour [lb/hr]), medium (>200 to 500 lb/hr), and large (>500 lb/hr). Separate emission limits apply to each subcategory of existing HMIWI. Small HMIWI that meet certain "rural criteria" are allowed to meet less stringent emission limits. The numerical emission limits and additional requirements are summarized in section VI of this preamble.

E. Increments of Progress

Increments of progress are required for HMIWI that need more than 1 year from State plan approval to comply, or in the case of the Federal plan, more than 1 year after promulgation of the final Federal plan. 40 CFR 60.24(e)(1). Increments of progress are necessary in order to ensure that HMIWI needing more time to comply are making progress toward meeting the emission limits. This proposed HMIWI Federal plan includes as its compliance schedule the same five increments of progress from 40 CFR 60.21(h), as required by 40 CFR 60.24(e)(1), along with defined and enforceable dates for completion of each increment.

1. How EPA Determined the Compliance Schedule

The increments of progress and the time proposed for their completion are based on case studies conducted by EPA of eight HMIWI that completed retrofits of the types of controls needed to meet the subpart Ce emission limits. These case studies are documented in docket A–98–24, item II–A–1. Based on these case studies, it appears that some HMIWI may need more than 1 year to retrofit with controls. Using the schedules from the case studies as a basis, the EPA determined the proper intervals for each of the subpart B increments.

To ensure compliance, the five increments of progress proposed for the Federal plan are the minimum increments of progress allowed by subpart B, *see* 40 CFR 60.21(h), and are found at proposed § 62.14470(b) of subpart HHH. The following increments would apply to all HMIWI, regardless of category or size, that require longer than 1 year after the promulgation date of this Federal plan to comply:

(1) Submit final control plan;

(2) Award contracts for control systems or process modifications or orders for purchase of components;

(3) Begin onsite construction or installation of the air pollution control device(s) or process changes;

(4) Complete onsite construction or installation of the air pollution control device(s) or process changes; and

(5) Final compliance.

Subpart Ce suggests additional increments of progress, however, the EPA is proposing not to include additional increments of progress. By not imposing additional increments of progress, EPA hopes to minimize burden on the industry that could result with more increments. EPA, however, solicits comment on whether additional increments are warranted.

2. Owner/Operator Responsibilities

The HMIWI owner or operator is responsible for meeting each of the five increments of progress for each HMIWI unit no later than the applicable compliance date. The owner or operator must notify EPA as each increment of progress is achieved, as well as when any is missed. The notification must identify the increment and the date the increment is achieved (or missed). If an owner or operator misses an increment deadline, the owner or operator must also notify EPA when the increment is finally achieved. The owner or operator must mail the notification to the applicable EPA Regional Office within 10 business days after the increment date defined in the Federal plan. (See Table 1 under the **FOR FURTHER INFORMATION CONTACT** section of this document for a list of Regional Offices.)

The definition of each increment of progress, along with its proposed completion date, follows.

Submit Final Control Plan. To meet this increment, the owner or operator of each HMIWI must submit a plan that describes, at a minimum, the air pollution control devices and/or process changes that will be employed so that each HMIWI complies with the emission limits and other requirements. A final control plan is not required for units that will be shut down.

Completion date: September 15, 2000.

Award Contract. To award a contract means the HMIWI owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the owner or operator. The EPA anticipates that the owner or operator may award a number of contracts to complete the retrofit. To meet this increment of progress, the HMIWI owner or operator must award a contract or contracts to initiate onsite construction, to initiate onsite installation of air pollution control devices, and/or to incorporate process changes. The owner or operator must mail a copy of the signed contract(s) to EPA within 10 business days of entering the contract(s).

Completion date: April 15, 2001.

Begin Onsite Construction. To begin onsite construction, installation of air pollution control devices, or process change means to begin any of the following:

(1) Installation of an air pollution control device in order to comply with the final emission limits as outlined in the final control plan;

(2) Physical preparation necessary for the installation of an air pollution control device in order to comply with the final emission limits as outlined in the final control plan;

(3) Alteration of an existing air pollution control device in order to comply with the final emission limits as outlined in the final control plan;

(4) Alteration of the waste combustion process to accommodate installation of an air pollution control device in order to comply with the final emission limits as outlined in the final control plan; or

(5) Process changes identified in the final control plan in order to meet the emission standards.

Completion date: December 15, 2001.

Complete Onsite Construction. To complete onsite construction means that all necessary air pollution control devices or process changes identified in the final control plan are in place, onsite, and ready for operation on the HMIWI.

Completion date: July 15, 2002.

Final Compliance. To be in final compliance means to incorporate all process changes or complete retrofit construction in accordance with the final control plan and to connect the air pollution control equipment or process changes such that if the HMIWI is brought on line all necessary process changes or air pollution control equipment will operate as designed.

Completion date: September 15, 2002.

The EPA believes this compliance schedule is achievable and necessary based on the following:

(1) When determining completion dates for the increments of progress, EPA applied the maximum amount of time that most HMIWI in the case study needed in order to comply;

(2) Since September 15, 1997 when the emission guidelines were promulgated, HMIWI owners and operators have known that they would need to make process changes or install controls by September 15, 2002; and

(3) The EPA believes that a compliance schedule with enforceable increments of progress is necessary to ensure final compliance by September 15, 2002.

3. Failure to Comply

If an HMIWI does not achieve final compliance by September 15, 2002, this proposed Federal plan would require the HMIWI to shut down by September 15, 2002, complete the retrofit while not operating, and be in compliance upon restarting. Shut down is necessary in order to avoid being out of compliance and subject to possible enforcement action.

F. Waste Management Plan Requirements

Under the emission guidelines, State plans must require owners and operators of HMIWI to develop waste management plans in compliance with 40 CFR 60.55c. *See* 40 CFR 60.35e. The proposed HMIWI Federal plan includes the same requirement (see proposed 40 CFR 62.14430 and 62.14431 of subpart HHH).

G. Testing, Monitoring, Inspection, Recordkeeping, and Reporting Requirements

Under the emission guidelines, State plans must include the testing, monitoring, recordkeeping, and reporting requirements set forth at 40 CFR 60.37e and 60.38e of subpart Ce. The proposed HMIWI Federal plan includes virtually the same requirements (see proposed 40 CFR 62.14450 through 62.14455 and §§ 62.14460 through 62.14465 of subpart HHH).

Minor changes are proposed to the testing and monitoring requirements to clarify the meaning of those requirements and to insert some text that was inadvertently omitted from the emission guidelines. Subpart Ce specifies a 3-hour rolling average when monitoring maximum charge rate. While this is correct for continuous and intermittent HMIWI, it is not correct for batch HMIWI. For batch HMIWI, the requirement is proposed to be a daily average, consistent with the definition of maximum charge rate for batch units.

H. Operator Training and Qualification Requirements

Under the emission guidelines, State plans must include the operator training and qualification requirements set forth at 40 CFR 60.53c. *See* 40 CFR 60.34e. The proposed HMIWI Federal plan includes these requirements as well (see proposed 40 CFR 62.14420 through 62.14425 of subpart HHH).

I. Record of Public Hearings

A State must provide opportunity for public participation in adopting the State plan. *See* 40 CFR 60.23(c). In adopting any HMIWI Federal plan, the EPA will hold public hearing(s) at appropriate Regional Offices, if requested. A record of the public hearing(s), if any, will appear in the docket.

J. Progress Reports

Under the emission guidelines, States or Tribes with approved and effective plans must send annual progress reports to the appropriate Regional Office to show their progress toward implementation of the emission guidelines. 40 CFR 60.25(e). Under the Federal plan, the EPA Regional Offices will prepare these progress reports. States or Tribes that have been delegated the authority to implement and enforce this Federal plan would also be required to submit annual progress reports to the appropriate EPA Regional Office.

Appendix D of 40 CFR part 60 requires reporting of emissions data to the Aerometric Emissions Information Retrieval System Facility Subsystem (AIRS). These reports can be combined with the State implementation plan report required by 40 CFR 51.321 in order to avoid double reporting. Under the proposed Federal plan, EPA Regional Offices would report AIRS emissions data. If a State or Tribe has been delegated the authority to implement and enforce the Federal plan, the State or Tribe would report emissions data to AIRS.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emission information; and (6) copies of technical reports on any performance testing and monitoring.

III. HMIWI That Have or Will Shut Down

A. Inoperable Units

In cases where an HMIWI has shut down and does not intend to restart, the HMIWI may be left off the source inventory in a State, Tribal, or this Federal plan if it is rendered inoperable. The HMIWI owner/operator may do the following to render an HMIWI inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, and/or (4) remove burners or fuel supply.

B. HMIWI That Have Shut Down

Hospital/medical/infectious waste incinerators that are known to have already shut down (but are not known to be inoperable) are included in the source inventory of this proposed Federal plan. Such units must also be identified in any State or Tribal plan submitted to EPA.

1. Restarting Before September 15, 2002

If the owner or operator of an inactive HMIWI plans to restart before September 15, 2002, the owner or operator would be required to submit a control plan for the HMIWI and bring the HMIWI into compliance with the applicable compliance schedule. Final compliance is required for all pollutants and all HMIWI no later than September 15, 2002. (See section II.E for the discussion on compliance schedules and increments of progress.)

2. Restarting After September 15, 2002

Under this proposed Federal plan, a control plan would not be needed for inactive HMIWI that restart after September 15, 2002. However, before restarting, such HMIWI would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications upon restarting. Performance testing to demonstrate compliance would be required within 180 days after restarting. There would be no need to show that the increments of progress have been met since these steps would have occurred before restart while the HMIWI was shut down and not generating emissions. An HMIWI that operates out of compliance after September 15, 2002 would be in violation of the Federal plan and subject to enforcement action.

IV. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the Act, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates HMIWI in States or Tribal areas that do not have approved plans in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. *See* section 101(a)(3) of the Act. Consistent with that overall determination, Congress established sections 111 and 129 of the Act with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Also, in section 111(d) of the Act, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, EPA strongly encourages States to submit approvable plans. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to carry out the emission guidelines, but also have the "insider" knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

The EPA also believes that Indian tribes are the primary parties responsible for regulating air quality within Indian country. See EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984, reaffirmed in 1994 in a memorandum entitled "EPA Indian Policy," signed by Carol M. Browner, Administrator of EPA, dated March 14, 1994).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian tribe intends to take delegation of the Federal plan, the State or Indian tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian tribe must explain how it meets the criteria for delegation. *See generally* "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). In order to obtain delegation, an Indian tribe must also establish its eligibility to be treated in the same manner as a State (section I.D. of the preamble). The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A Memorandum of Agreement (MOA) between the State or Tribe and the EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian tribe, EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, the EPA will retain and will not transfer authority to a State or Tribe to approve the following items:

(1) Alternative site-specific operating parameters established by facilities using HMIWI controls other than a wet scrubber or dry scrubber followed by a fabric filter; and

(2) Alternative methods of demonstrating compliance.

Hospital/medical/infectious waste incinerator owners or operators who wish to establish alternative operating parameters or alternative methods of demonstrating compliance should submit a request to the Regional Office Administrator with a copy to the appropriate State or Tribe.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to States, Tribes, and local agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

1. State or Tribe Submits a Plan After HMIWI Located in the Area Are Subject to the Federal Plan

After HMIWI in a State or Tribal area become subject to the Federal plan, the State, Tribal, or local agency may still adopt and submit a plan to EPA. If EPA determines that the State or Tribal plan is as protective as the emission guidelines, EPA will approve the State or Tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the HMIWI covered in the State or Tribal plan would remain subject to the Federal plan until a State or Tribal plan covering those HMIWI is approved and effective.

Upon the effective date of a State or Tribal plan, the Federal plan would no longer apply to HMIWI covered by such plan and the State, Tribal, or local agency would implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State Takes Delegation of the Federal Plan

State, Tribal, or local agencies may assume implementation of this Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State, Tribal, or local agencies to agree to undertake, on EPA's behalf, administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. These functions could include administration and oversight of compliance reporting and recordkeeping requirements, HMIWI inspections, and preparation of draft notices of violation. The EPA would retain responsibility for bringing enforcement actions against sources violating Federal plan provisions.

V. Title V Operating Permits

Section 502(a) of the Act requires sources "subject to standards or regulations under section 111" to obtain title V operating permits. *See also* 40 CFR 70.3(a)(2) and 71.3(a)(2). Because EPA is proposing this Federal plan under sections 111 and 129 of the Act, sources subject to this Federal plan must obtain title V permits. Those title V permits must assure compliance with all applicable requirements for the source, including all applicable requirements of this Federal plan. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Under section 129(e) of the Act, owners or operators of HMIWI subject to this Federal plan must operate pursuant to a title V permit no later than 36 months after promulgation of the HMIWI emission guidelines (i.e., by September 15, 2000), or by the effective date of the State, Tribal, or Federal title V permit program that covers the area in which the unit is located, whichever is later. If an owner or operator is required to obtain a title V permit for the first time by virtue of being subject to the Federal plan, the owner or operator must submit a complete title V permit application by the applicable permit deadline (i.e., by September 15, 2000) or the effective date of the State, Tribal, or Federal operating permits program, whichever is later.[b]

An earlier permit deadline may apply if an HMIWI is subject to title V for another reason. For example, an HMIWI might already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the Act. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and §§ 70.2 and 71.2 (defining major source for purposes of title V). An HMIWI might also already be subject to title V if it is subject to some other earlier promulgated standard under section 111 or 112 of the Act. *See* 40 CFR 70.3(a)(2) and (3), 71.3(a)(2) and (3). If an owner or operator is already subject to title V by virtue of some other requirement and has submitted a timely and complete permit application but the title V permit has not yet been released by the permitting authority, then the owner or operator should supplement its title V application by including the applicable requirements of the Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b).

If an owner or operator of an HMIWI is already subject to title V by virtue of some other requirement on the effective date of this Federal plan and already possesses a title V permit with a remaining term of 3 or more years, then the owner or operator will receive from its permitting authority a notice of intent to reopen the title V permit to include the requirements of the Federal plan in accordance with the procedures established in 40 CFR 70.7(f) or 71.7(f). An owner or operator of an HMIWI with a title V permit having a remaining term of less than 3 years on the effective date of this Federal plan need not modify its title V permit, as a matter of Federal law, to include the Federal plan requirements until that permit is renewed.[c] However, the owner or operator remains subject to, and must act in compliance with, the Federal plan requirements.

Owners or operators of combustors that burn only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste and co-fired combustors, as defined in this proposed Federal plan, must comply only with certain recordkeeping and reporting requirements set forth in the proposed Federal plan. *See* proposed § 62.14400. They are not subject to the other substantive emissions control-related requirements of the Federal plan as long as they comply with the recordkeeping and reporting requirements set forth as conditions for their exemption. Owners and operators of these sources are not required to obtain title V operating permits as a matter of Federal law if the only reason they would potentially be subject to title V is these nonemissions control-related recordkeeping and reporting requirements. *See* proposed § 62.14480. The EPA interprets the CAA and the regulations at parts 70 and 71 to mean that these sources are "not subject to standards or regulations under section 111" for purposes of title V permitting. *See* CAA section 502(a) and 40 CFR 70.3(a)(2) and 71.3(a)(2). Therefore, these sources would not be required to apply for title V permits on the basis of the applicability of recordkeeping and reporting requirements necessary to qualify for exemption from the substantive emissions control-related requirements of this proposed Federal plan. However, owners and operators of sources that burn only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste, and co-fired combustors, that do not comply with the recordkeeping and reporting requirements necessary to qualify for exemption from the other requirements of the Federal plan would become subject to those other requirements and would have to obtain title V permits. Moreover, if, in the future, EPA promulgates regulations subjecting any of these sources to substantive requirements other than these recordkeeping and reporting requirements, these sources could become subject to title V at that time.

Section 502(a) of the Act requires title V permits of listed sources, including any source "subject to standards or regulations under section 111 * * *." *See also* 40 CFR 70.3(a)(2) and 71.3(a)(2). The EPA reads the recordkeeping and reporting requirements of this proposed Federal plan, which are simply conditions for exemption from the other substantive emissions control-related requirements of the Federal plan, not to be requirements that would make a source "subject to" a section 111 standard (here the HMIWI Federal plan) within the

[b] Section 503(d) of the Act and 40 CFR 70.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete permit application, even if the source has not yet received a final title V operating permit from the permitting authority. To this end, the application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* proposed 40 CFR 62.14481 and 40 CFR 70.5(a)(2) and 71.5(a)(2).

[c] *See* CAA section 502(b)(6); 40 CFR 70.7(f)(1)(I) and 71.7(f)(1)(I). The CAA authorizes State, Tribal and Federal operating permit programs to require permits to be reopened and modified to incorporate the requirements of the Federal plan when fewer than 3 years remaining on a source's permit, however, so permitting authorities could reopen permits sooner than required by Federal law. Such reopenings should be completed no later than 18 months after promulgation of the applicable requirement. Any sources in this situation may wish to consult their operating permit program regulations or permitting authorities to determine whether revisions to their permits are necessary to incorporate the Federal plan requirements.

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meaning of these statutory and regulatory provisions. Accordingly, HMIWI that comply with the recordkeeping and reporting requirements necessary for their exemption from the other substantive emissions control-related requirements of the Federal plan are not "subject to" the Federal plan solely for purposes of being required to obtain a title V permit. Hospital/medical/ infectious waste incinerators that are subject to Federal plan requirements other than these recordkeeping or reporting conditions as well as HMIWI that fail to comply with any of the conditions for exemption from these other substantive emissions control-related Federal plan requirements are subject to title V permitting under section 502(a).

It is worth noting that section 502(a) of the Act also provides a mechanism for the Administrator to "promulgate regulations to exempt" one or more source categories from title V permitting requirements, if EPA finds that compliance with such requirements is "impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such regulations." The EPA is *not* invoking this mechanism to justify its conclusion that the HMIWI discussed above are not required to obtain title V permits. These HMIWI have not been "exempted" from title V within the meaning of the last sentence of section 502(a), and the Agency does not purport to have made the statutory showing of impracticability, infeasibility or unnecessary burden for these sources. Rather, the Agency believes that the recordkeeping and reporting requirements with which these HMIWI must comply are not the type of requirements that make them "subject to" a standard or regulation under section 111 within the meaning of the first sentence of section 502(a). In EPA's view, HMIWI in this unique position do not even meet the threshold criteria for sources required to obtain title V permits under section 502(a) of the Act.

In addition to being consistent with the governing statutory provisions, EPA believes this approach is sound and environmentally protective. Where HMIWI have only recordkeeping and/or reporting obligations designed to show they are not subject to the other requirements of the Federal plan, EPA does not believe that it makes sense to compel them to obtain title V permits based upon a possible technical argument that in that minimal sense they are subject to the subpart for purposes of section 502(a) of the Act. Moreover, because these HMIWI may well not currently be covered by applicable Federal requirements other than this Federal plan's recordkeeping and reporting requirements, a contrary approach would lead to the paradoxical and unreasonable result that these HMIWI would be obtaining title V permits whose sole requirements were conditions demonstrating their exemption from the other substantive requirements of the Federal standard that triggered the need to obtain a permit.

In addition to the likely bareness of these HMIWI title V permits, the applicability and compliance provisions these HMIWI must meet are simpler than the usual applicable requirements in a title V permit. Therefore, the multiple, sometimes complex applicability determinations so integral to the title V permit issuance process are accomplished here through simple notifications to EPA (or delegated EPA Regional Office, State, or Tribe). While title V permits are important in helping States and Tribes, EPA, sources, and the public assure compliance with a source's Clean Air Act obligations, the Agency does not believe this objective would be significantly advanced by these sources obtaining title V permits, particularly not to a degree that would outweigh the time, resources, expense and permit fees associated with the permit process in this instance. The EPA believes the approach described herein comports with the Act and Federal regulations, represents a sensible solution to these uniquely situated sources, and affords the environmental protection demanded by the law.

VI. Owner/Operator Responsibilities

The proposed HMIWI Federal rule (40 CFR part 62, subpart HHH) which will implement this Federal plan includes emission limits, monitoring and performance testing requirements, inspection requirements (for small rural HMIWI only), waste management plan requirements, operator training and qualification requirements, and recordkeeping and reporting requirements. These emission standards and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Ce). The requirements are summarized in this section.

A. Applicability

The HMIWI Federal plan would apply to existing HMIWI that are not covered by an approved and effective State or Tribal plan or are located in a State or Tribal area that has incorrectly submitted a negative declaration. An existing HMIWI is an HMIWI for which construction commenced on or before June 20, 1996. Hospital/medical/ infectious waste incinerators for which construction commenced after June 20, 1996 or modification commenced after March 16, 1998 are not subject to the Federal plan; they are new sources and are subject to the 40 CFR part 60 subpart Ec New Source Performance Standards (NSPS). An HMIWI is defined as any device that combusts any amount of medical/infectious waste or hospital waste. The terms "medical/infectious waste" and "hospital waste" are defined in proposed § 62.14490 of subpart HHH.

Incinerators that burn only pathological, low-level radioactive, or chemotherapeutic waste (all defined in proposed § 62.14490 of subpart HHH) are required to notify EPA of an exemption claim and keep records of the periods of time when only pathological, low-level radioactive, or chemotherapeutic waste is burned. However, these HMIWI are not subject to the other substantive requirements of the Federal plan during periods when they burn such wastes provided that they comply with the applicable notification and recordkeeping requirements. Existing incinerators, processing operations, or boilers that cofire hospital waste and/or medical/ infectious waste with other fuels or wastes and combust 10 percent or less combined medical/infectious and hospital waste by weight (on a calendar quarter basis) are also not subject to the other substantive requirements of the Federal plan provided they file an exemption claim and keep records of the amounts of each fuel and waste burned. Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is exempt from the Federal plan, as are municipal waste combustors subject to 40 CFR part 60 subparts Cb, Ea, or Eb. Finally, pyrolysis units (as defined at 40 CFR 62.14490 of subpart HHH) and cement kilns firing hospital waste and/or medical/ infectious waste are also not subject to this Federal plan.

The HMIWI source category is divided into small (≤200 lb/hr), medium (>200 to 500 lb/hr), and large (>500 lb/hr) subcategories based on waste burning capacity. Waste burning capacity is determined either by the maximum design capacity or by the "maximum charge rate" established during the most recent performance test. In other words, a source may change its size designation by establishing an enforceable "maximum charge rate" lower than its design capacity. For example, a "medium" unit with a design capacity of 250 lb/hr may establish a maximum charge rate of 200 lb/hr and be considered a "small" unit for purposes of the Federal plan. Separate requirements apply to each subcategory of existing HMIWI.

B. Emission Limits

Table 1 of subpart HHH provides the emission limits for existing HMIWI covered by the proposed Federal plan. In addition to the emission limits presented in Table 1, all HMIWI are subject to a 10 percent stack opacity limitation. Stack opacity will be determined using EPA Reference Method 9.

The Federal plan contains alternative emission limits for small HMIWI that meet the following "rural criteria": (1) The small HMIWI is located at least 50 miles from the nearest Standard Metropolitan Statistical Area (SMSA) boundary; and (2) the small HMIWI burns no more than 2,000 pounds of hospital waste and medical/infectious waste per week. For this Federal plan, the list of areas comprising each SMSA as of June 30, 1993 (defined by the Office of Management and Budget (OMB)) will be used to determine whether a small HMIWI meets the "rural criteria." The list of areas comprising each SMSA is presented in OMB Bulletin No. 93–17 entitled "Revised Statistical Definitions for Metropolitan Areas." This document is available for public inspection and copying at EPA's Air and Radiation Docket and Information Center (docket A–91–61, item IV–J–125). See the **ADDRESSES** section at the beginning of this preamble for the telephone number and location of the docket. In addition, OMB Bulletin No. 93–17 is available at: http://www.census.gov/population/estimates/metro-city/93mfips.txt, or from National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650 (document number PB 93–192–664). The alternative emission limits for small HMIWI that meet the rural criteria are provided in Table 1 of subpart HHH.

C. Additional Requirements

This section presents the other major provisions of the Federal plan for HMIWI. With the exception of the emission limits referenced above and the compliance and performance testing requirements and the inspection requirements described in this section, HMIWI that meet the small rural criteria are to comply with the same additional requirements as all other existing HMIWI. This section does not attempt to show all requirements of the Federal plan. The regulatory text of subpart HHH contains a full and comprehensive statement of the requirements of the proposed Federal plan.

The proposed Federal plan contains operator training and qualification requirements for all HMIWI. Each facility would be required to have at least one trained and qualified operator on duty or on-call. The trained and qualified operator must pass an HMIWI operator training course and meet qualification requirements. Also, each facility would be required to develop site-specific HMIWI operating procedures. Employees involved with HMIWI operation must review the site-specific operating information annually.

The proposed Federal plan would require all facilities to develop a waste management plan that identifies the feasibility and approach of separating certain components of the healthcare waste stream in order to reduce the amount of toxic emissions from incinerated waste.

The compliance and performance testing requirements in the proposed Federal plan differ for small rural HMIWI and for all other HMIWI. Small rural HMIWI would be required to conduct an initial performance test to determine compliance with the PM, CO, CDD/CDF, and Hg emission limits and opacity limit, and establish operating parameters. In addition, small rural HMIWI would be required to conduct annual tests to determine compliance with the opacity limit.

The compliance and performance testing requirements in the proposed Federal plan would require facilities with small non-rural, medium, and large HMIWI to conduct an initial performance test to determine compliance with the PM, CO, CDD/CDF, HCl, Pb, Cd, and Hg emission limits and opacity limit, and establish operating parameters. These HMIWI would also be required to conduct annual performance tests to determine compliance with the PM, CO, and HCl emission limits and opacity limit. The proposed Federal plan would allow facilities to conduct performance tests for PM, CO, and HCl every third year if the previous three performance tests demonstrate that the facility is in compliance with the emission limits for PM, CO, and HCl.

The proposed Federal plan contains monitoring requirements for all HMIWI. Each facility would be required to install and maintain equipment to continuously monitor operating parameters including secondary chamber temperature, waste feed rate, bypass stack, and air pollution control device (APCD) operating parameters as appropriate. The proposed Federal plan would require facilities to obtain monitoring data at all times during HMIWI operation.

In addition, the proposed Federal plan contains reporting and recordkeeping requirements for all HMIWI. Facilities would be required to maintain records for 5 years of results from the initial performance test and all subsequent performance tests, operating parameters, inspections (small rural HMIWI only), and operator training and qualification. Facilities would be required to submit the results of the initial performance test and all subsequent performance tests, and to submit reports on emission rates or operating parameters that have not been recorded or which exceeded applicable limits.

A summary of dates for compliance with the Federal plan for HMIWI is presented in Table 3.

TABLE 3.—COMPLIANCE TIMES UNDER THE FEDERAL PLAN FOR ALL HMIWI

Requirement	Compliance time
Operator training and qualification	Within 1 year after promulgation of the Federal plan (for HMIWI that continue to operate beyond 1 year after promulgation).
Waste management plan	Within 60 days after initial performance test.
Final compliance with emission limits	Within 1 year after promulgation of the Federal plan or by September 15, 2002 if the source is granted an extension.
Initial performance test	Within 180 days after achieving final compliance.
Repeat performance test	Within 12 months following initial performance test and annually thereafter.[a]
Parameter monitoring	Continuously, upon completion of initial performance test.
Inspection (small rural HMIWI only)	Within 1 year after promulgation of the Federal plan (for HMIWI that continue to operate beyond 1 year after promulgation.
Recordkeeping	Continuously, upon completion of initial performance test.

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TABLE 3.—COMPLIANCE TIMES UNDER THE FEDERAL PLAN FOR ALL HMIWI—Continued

Requirement	Compliance time
Reporting	Within 60 days after initial performance test; annually for subsequent reporting requirements; semiannually, if noncompliance.

[a] Facilities may conduct performance tests for PM, CO, and HC1 every third year if the previous three performance tests demonstrate that the facility is in compliance with the emission limits for PM, CO, and HC1.

VII. Administrative Requirements

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Orders 12866, 12875, 13045, and 13084, Unfunded Mandates Reform Act, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and the National Technology Transfer and Advancement Act. Since today's proposed rule merely implements the emission guidelines promulgated on September 15, 1997 (codified at 40 CFR part 60, subpart Ce) as they apply to HMIWI and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements in the preamble to the 1997 rule promulgating the emission guidelines (62 FR 48347–48379, September 15, 1997).

A. Docket

The docket is intended to be an organized and complete file of the administrative records compiled by EPA. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with proposed and promulgated standards and their preambles, the contents of the docket (with limited exceptions) will serve as the record in the case of judicial review. See section 307(d)(7)(A) of the Act.

As discussed above, a docket has been prepared for this action pursuant to the procedural requirements of section 307(d) of the Act. 42 U.S.C. 7607(d). Docket number A–91–61 contains the technical support for the September 15, 1997 emission guidelines. Docket number A–98–24 contains additional supporting information for this proposed rule.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1899.01) and a copy may be obtained from Ms. Sandy Farmer by mail at OP Regulatory Information Division, U. S. Environmental Protection Agency (2137), 401 M Street, SW., Washington, DC 20460; by E-mail at farmer.sandy@epa.gov; or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on September 15, 1997.[d] The burden estimate includes the burden associated with State/Tribal plans as well as the burden associated with today's proposed Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by EPA, a State/Tribal plan becomes Federally enforceable. Therefore, it is important to estimate the full burden associated with the State/Tribal plans and the Federal plan. As State/Tribal plans are approved, the Federal plan burden will decrease, but the overall burden of the State/Tribal plans and the Federal plan will remain the same.

The information collected would be used by EPA to ensure that the HMIWI regulatory requirements are implemented and are complied with on a continuous basis. Records and reports would be necessary to enable EPA to identify existing HMIWI that may not be in compliance with the HMIWI regulatory requirements. Based on reported information, EPA would decide which units should be inspected and what records or processes should be inspected. The records that owners and operators of existing HMIWI maintain would indicate to EPA whether personnel are operating and maintaining control equipment properly.

Based on the inventory of HMIWI used to develop the emission guidelines, the HMIWI regulatory requirements (i.e., the State/Tribal plans and Federal plan) are projected to affect approximately 2,373 existing HMIWI in the United States or protectorates. A number of State plans are expected to be approved within the year following Federal plan promulgation. When a State plan is approved, the Federal plan will no longer apply to HMIWI covered in that State plan.

The estimated average annual burden for industry for the first 3 years after the promulgation of the emission guidelines would be 133,404 hours annually at a cost of $5,858,292 per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annual burden, over the first 3 years, for the regulatory agencies (State and Federal) would be 10,984 hours at a cost of $438,736 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a regulatory agency. This includes the time needed to do the following: review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting and validating information; process, maintain, and disclose information; amend previously applicable instructions and requirements to reflect new HMIWI State or Federal plan requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

Send comments on the Agency's need for this information, the accuracy of the burden estimates provided, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, OP Regulatory Information Division, U. S. Environmental Protection Agency (2137), 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision on the ICR between 30 and 60 days after today's request for comment, a comment to OMB is best assured of having its full effect if OMB receives it by August 5, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

[d] In promulgating the September 15, 1997 rule setting the NSPS and emission guidelines, EPA assessed only the ICR requirements associated with the NSPS. *See* 62 FR at 48373–74.

C. Executive Order 12866

Under Executive Order 12866, 58 FR 51735, (October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1997 emission guidelines to be significant and the rules were reviewed by OMB in 1997. *See* 62 FR 48374. The Federal plan proposed today would simply implement the 1997 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1997 emission guidelines. Therefore, this regulatory action is considered "not significant" under Executive Order 12866.

D. Executive Order 12875

Under Executive Order 12875, 58 FR 58093 (October 26, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or Tribal governments. The rule does not impose any enforceable duties on these entities. Moreover, this Federal plan simply implements the 1997 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1997 emission guidelines. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 19885 (April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because (1) it is not an economically significant regulatory action as defined by Executive Order 12866, and (2) it is based on technology performance and not on health or safety risks.

F. Executive Order 13084

Under Executive Order 13084, 63 FR 27655 (May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The Federal plan proposed today does not significantly or uniquely affect communities of Indian Tribal governments. The proposed Federal plan would not impose any enforceable duties on those governments. Moreover, this Federal plan simply implements the 1997 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1997 emission guidelines. Thus, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and

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timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

An unfunded mandates statement was prepared and published in the preamble to the September 15, 1997 NSPS and emission guidelines. See 62 FR at 48374–78. The EPA has determined that the proposed HMIWI Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1997 emission guidelines. Therefore, the requirements of the UMRA do not apply to this proposed rule.

H. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.*, requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1997 HMIWI emission guidelines rulemaking, EPA estimated that small entities would not be affected by the promulgated emission guidelines and standards, and therefore, a regulatory flexibility analysis was not required. *See* 62 FR at 48378–79. This proposed Federal plan would not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that this Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104–113, section 12(d), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply because the proposed Federal plan would implement an existing rule to which NTTAA did not apply. In addition, the emission guidelines, which the Federal plan is based on, does not require new technology or impose new technical standards.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 17, 1999.

Carol M. Browner,

Administrator.

40 CFR part 62 is proposed to be amended as follows:

PART 62—[AMENDED]

1. The Authority citation for part 62 continues to read as follows:

Authority: 42 U.S.A. 7401–7642.

2. Amend § 62.13 by adding paragraph (c) to read as follows:

§ 62.13 Federal Plans

* * * * *

(c) The substantive requirements of the hospital/ medical/infectious waste incinerator Federal plan are contained in subpart HHH of this part. These requirements include emission limits, compliance schedules, testing, monitoring and reporting and recordkeeping requirements.

* * * * *

3. Amend part 62 by adding subpart HHH consisting of §§ 62.14400 through § 62.14499 as follows:

Subpart HHH—Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996

Sec.

Applicability

62.14400 Am I subject to this subpart?
62.14401 How do I determine if my HMIWI is covered by an approved and effective State or Tribal plan?
62.14402 If my HMIWI is not listed on the Federal plan inventory, am I exempt from this subpart?
62.14403 What happens if I modify an existing HMIWI?

Emission Limits

62.14410 Are there different emission limits for different locations and sizes of HMIWI?
62.14411 What emission limits apply to my HMIWI?
62.14412 What stack opacity requirements apply?
62.14413 When do the emission limits and stack opacity requirements apply?

Operator Training and Qualification 62.14420

Am I required to have a trained and qualified operator?
62.14421 How does an operator become trained and qualified?
62.14422 What are the requirements for a training course that is not part of a State-approved program?
62.14423 What are the qualification requirements for operators who do not participate in a State-approved program?
62.14424 What documentation must I maintain onsite?
62.14425 When must I review the documentation?

Waste Management Plan

62.14430 Must I prepare a waste management plan?
62.14431 What must my waste management plan include?
62.14432 When must my waste management plan be completed?

Inspection Requirements

62.14440 Which HMIWI are subject to inspection requirements?
62.14441 When must I inspect my small rural HMIWI?
62.14442 What must my inspection include?
62.14443 When must I do repairs?

Compliance, Performance Testing, and Monitoring Requirements

62.14450 What are the testing requirements for small rural HMIWI?

62.14451 What are the testing requirements for HMIWI that are not small rural?
62.14452 What test methods and procedures must I use?
62.14453 What must I monitor?
62.14454 How must I monitor the required parameters?
62.14455 What if my HMIWI goes outside of a parameter limit?

Reporting and Recordkeeping Requirements

62.14460 What records must I maintain?
62.14461 For how long must I maintain records?
62.14462 Where must I keep the records?
62.14463 What reporting requirements must I satisfy?
62.14464 When must I submit reports?
62.14465 Who must sign all submitted reports?

Compliance Schedule

62.14470 When must I comply with this subpart if I plan to continue operation of my HMIWI?
62.14471 When must I comply with this subpart if I plan to shut down?
62.14472 When must I comply with this subpart if I plan to shut down and later restart?

Permitting Obligation

62.14480 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act and implementing regulations?
62.14481 When must I submit a title V permit application for my HMIWI?

Definitions

62.14490 Definitions.

Delegation of Authority

62.14495 WHAT AUTHORITIES WILL BE RETAINED BY THE EPA ADMINISTRATOR?

TABLE 1 OF SUBPART HHH OF PART 62—EMISSION LIMITS FOR SMALL RURAL, SMALL, MEDIUM, AND LARGE HMIWI

TABLE 2 OF SUBPART HHH OF PART 62—TOXIC EQUIVALENCY FACTORS

TABLE 3 OF SUBPART HHH OF PART 62—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES

Subpart HHH—Federal Plan Requirements for Hospital/ Medical/ Infectious Waste Incinerators Constructed On or Before June 20, 1996

Applicability

§ 62.14400 Am I subject to this subpart?

(a) You are subject to this subpart if paragraphs (a) (1), (2), and (3) of this section are all true:

(1) You own or operate an HMIWI that is not covered by an EPA approved and effective State or Tribal plan;

(2) Construction of the HMIWI commenced on or before June 20, 1996; and

(3) You do not meet any of the exemptions in paragraph (b) of this section:

(b) The following exemptions apply:

If you...	And you...	And you...	Then you...
(1) Own or operate an HMIWI that combusts only pathological waste, low-level radioactive waste, and/or chemothera-peutic waste (all defined in 40 CFR 62.14490).	Notify the EPA Administrator (or delegated enforcement authority) of an exemption claim.	Keep records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste is combusted.	Are not subject to the other requirements of this subpart during periods when only pathological, low-level radioactive, and/or chemotherapeutic wastes are combusted.
(2) Own or operate a co-fired combustor (defined in 40 CFR 62.14490).	Notify the EPA Administrator (or delegated enforcement authority) of an exemption claim and you provide an estimate of the relative weight of hospital waste, medical/infectious waste, and other fuels and/or wastes to be combusted.	Keep records on a calendar quarter basis of the weight of hospital waste and medical/infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.	Are not subject to the other requirements of this subpart.
(3) Own or operate a combustor that must have a permit under Section 3005 of the Solid Waste Disposal Act.	.....	.....	Are not subject to this subpart.
(4) Own or operate a combustor which meets the applicability requirements of 40 CFR part 60 subpart Cb, Ea, or Eb (standards or guidelines for certain municipal waste combustors).	.....	.....	Are not subject to this subpart.
(5) Own or operate a pyrolysis unit (defined in 40 CFR 62.14490) processing hospital waste and/or medical/infectious waste.	.....	.....	Are not subject to this subpart.
(6) Own or operate a cement kiln firing hospital waste and/or medical/ infectious waste.	.....	.....	Are not subject to this subpart.

§ 62.14401 How do I determine if my HMIWI is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of all States and Tribal areas with approved Clean Air Act section 111(d)/ 129 plans in effect. However, this part is only updated once a year. Thus, if this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if approval occurred since publication of the most recent version of this part.

§ 62.14402 If my HMIWI is not listed on the Federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart include, but are not limited to, the inventory of sources listed in docket A–98–24 for the Federal plan.

§ 62.14403 What happens if I modify an existing HMIWI?

(a) If you commenced modification (defined in § 62.14490) of an existing HMIWI after March 16, 1998, you are subject to 40 CFR part 60, subpart Ec (40 CFR 60.50c through 60.58c) and you are not subject to this subpart, except as provided in paragraph (b) of this section.

(b) If you made physical or operational changes to your existing HMIWI solely for the purpose of complying with this subpart, these changes are not considered a modification, and you are not subject to 40 CFR part 60, subpart Ec (40 CFR 60.50c through 60.58c). You remain subject to this subpart.

Emission Limits

§ 62.14410 Are there different emission limits for different locations and sizes of HMIWI?

Yes, there are different emission limits for small rural, small, medium, and large HMIWI. To determine the size category of your HMIWI, consult the definitions in § 62.14490.

§ 62.14411 What emission limits apply to my HMIWI?

You must operate your HMIWI in compliance with the emission limit requirements for your HMIWI size category listed in Table 1 of this subpart.

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§ 62.14412 What stack opacity requirements apply?

Your HMIWI (regardless of size category) must not discharge into the atmosphere from the stack any gases that exhibit greater than 10 percent opacity (6-minute block average).

§ 62.14413 When do the emission limits and stack opacity requirements apply?

The emission limits and stack opacity requirements of this subpart apply at all times except during periods of startup, shutdown, or malfunction, provided that no hospital waste or medical/infectious waste is charged to your HMIWI during periods of startup, shutdown, or malfunction.

Operator Training and Qualification

§ 62.14420 Am I required to have a trained and qualified operator?

You must have a fully trained and qualified HMIWI operator, either at your facility or able to be at your facility within 1 hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.

§ 62.14421 How does an operator become trained and qualified?

(a) The HMIWI operator can obtain training and qualification through a State-approved program or as provided in paragraph (b) of this section.

(b) If there are no State-approved training and qualification programs available or if your operator does not want to participate in a State-approved program, then your operator must complete a training course that includes the requirements in § 62.14422 and satisfy the qualification requirements in § 62.14423.

§ 62.14422 What are the requirements for a training course that is not part of a State-approved program?

A training course must include:

(a) Twenty-four hours of training that includes all of the following subjects:

(1) Environmental concerns, including pathogen destruction and types of emissions;

(2) Basic combustion principles, including products of combustion;

(3) Operation of the type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(4) Combustion controls and monitoring;

(5) Operation of air pollution control equipment and factors affecting performance (if applicable);

(6) Methods to monitor pollutants (continuous emission monitoring systems and monitoring of HMIWI and air pollution control device operating parameters) and equipment calibration procedures (where applicable);

(7) Inspection and maintenance of the HMIWI, air pollution control devices, and continuous emission monitoring systems;

(8) Actions to correct malfunctions and conditions that may lead to malfunction;

(9) Bottom and fly ash characteristics and handling procedures;

(10) Applicable Federal, State, and local regulations;

(11) Work safety procedures;

(12) Prestartup inspections; and

(13) Recordkeeping requirements.

(b) An examination designed and administered by the instructor; and (c) Reference material distributed to the attendees covering the course topics.

§ 62.14423 What are the qualification requirements for operators who do not participate in a State-approved program?

(a) Operators who do not participate in a State-approved program must satisfy paragraphs (a)(1) and (2) of this section:

(1) The operator must complete a training course that satisfies the requirements in § 62.14422; and

(2) The operator must have either 6 months experience as an HMIWI operator, 6 months experience as a direct supervisor of an HMIWI operator, or completion of at least two burn cycles under the observation and supervision of two qualified HMIWI operators.

(b) The operator's qualification is valid after paragraphs (a)(1) and (2) of this section are completed.

(c) To remain qualified, the operator must complete and pass an annual review or refresher course of at least 4 hours covering, at a minimum, the following:

(1) Update of regulations;

(2) Incinerator operation, including startup and shutdown procedures;

(3) Inspection and maintenance;

(4) Responses to malfunctions or conditions that may lead to malfunction; and

(5) Discussion of operating problems encountered by attendees.

(d) If the operator's qualification lapses, he or she must renew it by one of the following methods:

(1) For a lapse of less than 3 years, complete and pass a standard annual refresher course described in paragraph (c) of this section;

(2) For a lapse of 3 years or more, complete and pass a training course with the minimum criteria described in § 62.14422.

§ 62.14424 What documentation must I maintain onsite?

(a) You must maintain the following at the facility:

(1) Summary of the applicable standards under this subpart;

(2) Description of basic combustion theory applicable to an HMIWI;

(3) Procedures for receiving, handling, and charging waste;

(4) Procedures for startup, shutdown, and malfunction;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the HMIWI and associated air pollution control systems within the standards established under this subpart;

(7) Procedures for responding to malfunction or conditions that may lead to malfunction;

(8) Procedures for monitoring HMIWI emissions;

(9) Reporting and recordkeeping procedures; and

(10) Procedures for handling ash.

(b) You must keep the information listed in paragraph (a) of this section in a readily accessible location for all HMIWI operators. This information, along with records of training, must be available for inspection by the EPA or its delegated enforcement agent upon request.

§ 62.14425 When must I review the documentation?

(a) You must establish a program for reviewing the information listed in § 62.14424 annually with each HMIWI operator (defined in § 62.14490).

(b) You must conduct your initial review of the information listed in § 62.14424 within [date 6 months after publication of the final rule] or prior to assumption of responsibilities affecting HMIWI operation, whichever date is later.

(c) You must conduct subsequent reviews of the information listed in § 62.14424 annually.

Waste Management Plan

§ 62.14430 Must I prepare a waste management plan?

Yes. All HMIWI owners or operators must have a waste management plan.

§ 62.14431 What must my waste management plan include?

Your waste management plan must identify both the feasibility of, and the approach for, separating certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste. The waste management plan you develop may address, but is not limited to, paper, cardboard, plastics, glass, battery, or metal recycling, or purchasing recycled or recyclable products. Your waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. When you develop your waste management plan it should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emission reductions expected to be achieved, and any other potential environmental or energy impacts they might have. In developing your waste management plan, you must consider the American Hospital Association publication entitled "An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities." This publication (AHA Catalog No. 057007) is available for purchase from the American Hospital Association (AHA) Service, Inc., Post Office Box 92683, Chicago, Illinois 60675–2683.

§ 62.14432 When must my waste management plan be completed?

As specified in § 62.14463 and § 62.14464, you must submit your waste management plan with your initial report, which is due 60 days after your initial performance test.

Inspection Requirements

§ 62.14440 Which HMIWI are subject to inspection requirements?

Only small rural HMIWI (defined in § 62.14490) are subject to inspection requirements.

§ 62.14441 When must I inspect my small rural HMIWI?

(a) You must inspect your small rural HMIWI by [date 1 year after publication of final rule].

(b) You must conduct inspections as outlined in § 62.14442 annually (no more than 12 months following the previous annual equipment inspection).

§ 62.14442 What must my inspection include?

At a minimum, you must do the following during your inspection:

(a) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation, and clean pilot flame sensor as necessary;

(b) Check for proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;

(c) Inspect hinges and door latches, and lubricate as necessary;

(d) Inspect dampers, fans, and blowers for proper operation;

(e) Inspect HMIWI door and door gaskets for proper sealing;

(f) Inspect motors for proper operation;

(g) Inspect primary chamber refractory lining, and clean and repair/replace lining as necessary;

(h) Inspect incinerator shell for corrosion and/or hot spots;

(i) Inspect secondary/tertiary chamber and stack, and clean as necessary;

(j) Inspect mechanical loader, including limit switches, for proper operation, if applicable;

(k) Visually inspect waste bed (grates), and repair/seal, as necessary;

(l) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;

(m) Inspect air pollution control device(s) for proper operation, if applicable;

(n) Inspect waste heat boiler systems to ensure proper operation, if applicable;

(o) Inspect bypass stack components;

(p) Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and

(q) Generally observe that the equipment is maintained in good operating condition.

§ 62.14443 When must I do repairs?

You must complete any necessary repairs within 10 operating days of the inspection unless you obtain written approval from the EPA Administrator (or delegated enforcement authority) establishing a different date when all necessary repairs of your HMIWI must be completed.

Compliance, Performance Testing, and Monitoring Requirements

§ 62.14450 What are the testing requirements for small rural HMIWI?

(a) If you operate a small rural HMIWI (defined in § 62.14490), you must conduct an initial performance test for PM, opacity, CO, dioxin/furan, and Hg using the test methods and procedures outlined in § 62.14452.

(b) After the initial performance test is completed or is required to be completed under § 62.14470, whichever date comes first, if you operate a small rural HMIWI you must determine compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods listed in § 62.14452.

(c) The 2,000 lb/wk limitation for small rural HMIWI does not apply during performance tests.

(d) The EPA Administrator may request a repeat performance test at any time.

§ 62.14451 What are the testing requirements for HMIWI that are not small rural?

(a) If you operate an HMIWI that is not a small rural HMIWI, you must conduct an initial performance test for PM, opacity, CO, dioxin/furan, HCl, Pb, Cd, and Hg using the test methods and procedures outlined in § 62.14452.

(b) After the initial performance test is completed or is required to be completed under § 62.14470, whichever date comes first, you must:

(1) Determine compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods listed in § 62.14452.

(2) Determine compliance with the PM, CO, and HCl emission limits by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods listed in § 62.14452. If all three performance tests over a 3-year period indicate compliance with the emission limit for a pollutant (PM, CO, or HCl), you may forego a performance test for that pollutant for the next 2 years. At a minimum, you must conduct a performance test for PM, CO, and HCl every third year (no more than 36 months following the previous performance test). If a performance test conducted every third year indicates compliance with the emission limit for a pollutant (PM, CO, or HCl), you may forego a performance test for that pollutant for an additional 2 years. If any performance test indicates noncompliance with the respective emission limit, you must conduct a performance test for that pollutant annually until all annual performance tests over a 3-year period indicate compliance with the emission limit.

(c) The EPA Administrator may request a repeat performance test at any time.

§ 62.14452 What test methods and procedures must I use?

You must use the following test methods and procedures to conduct performance tests to determine compliance with the emission limits:

(a) All performance tests must consist of a minimum of three test runs conducted under representative operating conditions;

(b) The minimum sample time must be 1 hour per test run unless otherwise indicated in this section;

(c) You must use EPA Reference Method 1 of 40 CFR part 60, appendix A to select the sampling location and number of traverse points;

(d) You must use EPA Reference Method 3, 3A, or 3B of 40 CFR part 60, appendix A for gas composition analysis, including measurement of oxygen concentration. You must use EPA Reference Method 3, 3A, or 3B of 40 CFR part 60, appendix A simultaneously with each reference method;

(e) You must adjust pollutant concentrations to 7 percent oxygen using the following equation:

$C_{adj} = C_{meas} (20.9–7)/(20.9–\%O_2)$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis at standard conditions

(20.9–7) = 20.9 percent oxygen—7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis at standard conditions, percent.

(f) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 5 or 29 of 40 CFR part 60, appendix A to measure particulate matter emissions;

(g) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 9 of 40 CFR part 60, appendix A to measure stack opacity;

(h) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 10 or 10B of 40 CFR part 60, appendix A to measure the CO emissions;

(i) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 23 of 40 CFR part 60, appendix A to measure total dioxin/furan emissions. The minimum sample time must be 4 hours per test run. If you have selected the toxic equivalency standards for dioxin/furans under § 62.14411, you must use the following procedures to determine compliance:

(1) Measure the concentration of each dioxin/ furan tetra- through octa-congener emitted using EPA Reference Method 23;

(2) For each dioxin/furan congener measured in accordance with paragraph (i)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 2 of this subpart;

(3) Sum the products calculated in accordance with paragraph (i)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(j) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 26 of 40 CFR part 60, appendix A to measure HCl emissions. If you have selected the percentage reduction standards for HCl under § 62.14411, compute the percentage reduction in HCl emissions ($\%R_{HCl}$) using the following formula:

$$(\%R_{HCl}) = \left(\frac{E_i - E_o}{E_i}\right) \times 100$$

Where:

$\%R_{HCl}$ = percentage reduction of HCl emissions achieved;

E_i = HCl emission concentration measured at the control device inlet, corrected to 7 percent oxygen (dry basis at standard conditions); and

E_o = HCl emission concentration measured at the control device outlet, corrected to 7 percent oxygen (dry basis at standard conditions).

(k) Except as provided in paragraph (l) of this section, you must use EPA Reference Method 29 of 40 CFR part 60, appendix A to measure Pb, Cd, and Hg emissions. If you have selected the percentage reduction standards for metals under § 62.14411, compute the percentage reduction in emissions ($\%R_{metal}$) using the following formula:

$$(\%R_{metal}) = \left(\frac{E_i - E_o}{E_i}\right) \times 100$$

Where:

$\%R_{metal}$ = percentage reduction of metal emission (Pb, Cd, or Hg) achieved;

E_i = metal emission concentration (Pb, Cd, or Hg) measured at the control device inlet, corrected to 7 percent oxygen (dry basis at standard conditions); and

E_o = metal emission concentration (Pb, Cd, or Hg) measured at the control device outlet, corrected to 7 percent oxygen (dry basis at standard conditions).

(l) If you are using a continuous emission monitoring system (CEMS) to demonstrate compliance with any of the emission limits under § 62.14411 or § 62.14412, you must:

(1) Determine compliance with the appropriate emission limit(s) using a 12-hour rolling average, calculated each hour as the average of the previous 12 operating hours (not including startup, shutdown, or malfunction). Performance tests using EPA Reference Methods are not required for pollutants monitored with CEMS.

(2) Operate a CEMS to measure oxygen concentration, adjusting pollutant concentrations to 7 percent oxygen as specified in paragraph (e) of this section.

(3) Operate all CEMS in accordance with the applicable procedures under appendices B and F of 40 CFR part 60.

(m) Use of the bypass stack during a performance test will invalidate the performance test.

§ 62.14453 What must I monitor?

(a) If your HMIWI is a small rural HMIWI, or your HMIWI is equipped with a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and wet scrubber:

(1) You must establish the appropriate maximum and minimum operating parameters, indicated in Table 3, as site-specific operating parameters during the initial performance test to determine compliance with the emission limits; and

(2) After the date on which the initial performance test is completed or is required to be completed under § 62.14470, whichever comes first, your HMIWI must not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in Table 3 and measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours), at all times except during startup, shutdown, malfunction, and performance tests.

(b) If your HMIWI is not a small rural HMIWI, and you are using an air pollution control device other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under § 62.14411, you must petition the EPA Administrator for site-specific operating parameters to be established during the initial performance test and you must continuously monitor those parameters thereafter. You may not conduct the initial performance test until the EPA Administrator has approved the petition.

§ 62.14454 How must I monitor the required parameters?

(a) You must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in Table 3 of this subpart such that these devices (or methods) measure and record values for the operating parameters at the frequencies indicated in Table 3 of this subpart at all times except during periods of startup and shutdown. For charge rate, the device must measure and record the date, time, and weight of each charge fed to the HMIWI. This must be done automatically, meaning that the only intervention from an operator during the process would be to load the charge onto the weighing device. For batch HMIWI, the maximum charge rate is measured on a daily basis (the amount of waste charged to the unit each day).

(b) For all HMIWI except small rural HMIWI, you must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack, including the date, time, and duration of such use.

(c) For all HMIWI except small rural HMIWI, if you are using controls other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under § 62.14411, you must install, calibrate (to manufacturers' specifications), maintain, and operate the equipment necessary to monitor the site-specific operating parameters developed pursuant to § 62.14453(b).

(d) You must obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data must be obtained for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that your HMIWI is combusting hospital waste and/or medical/infectious waste.

§ 62.14455 What if my HMIWI goes outside of a parameter limit?

(a) Operation above the established maximum or below the established minimum operating parameter(s) constitutes a violation of established operating parameter(s). Operating parameter limits do not apply during startup, shutdown, malfunction, and performance tests.

(b) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is a small rural HMIWI,

And your HMIWI	Then you are in violation of
Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The PM, CO, and dioxin/furan emission limits.

(c) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is equipped with a dry scrubber followed by a fabric filter:

And your HMIWI	Then you are in violation of
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emission limit.
(2) Operates above the maximum fabric filter inlet temperature (3-hour rolling average), above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), and below the minimum dioxin/furan sorbent flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emission limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum HCl sorbent flow rate (3-hour rolling average) simultaneously.	The HCl emission limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum Hg sorbent flow rate (3-hour rolling average) simultaneously.	The Hg emission limit.
(5) Uses the bypass stack (except during startup, shutdown, or malfunction)	The PM, dioxin/furan, HCl, Pb, Cd, and Hg emission limits.

(d) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is equipped with a wet scrubber:

And your HMIWI	Then you are in violation of
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emission limit.
(2) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum pressure drop across the wet scrubber (3-hour rolling average) or below the minimum horsepower or amperage to the system (3-hour rolling average) simultaneously.	The PM emission limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), below the minimum secondary chamber temperature (3-hour rolling average), and below the minimum scrubber liquor flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emission limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum scrubber liquor pH (3-hour rolling average) simultaneously.	The HCl emission limit.
(5) Operates above the maximum flue gas temperature (3-hour rolling average) and above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) simultaneously.	The Hg emission limit.
(6) Uses the bypass stack (except during startup, shutdown, or malfunction)	The PM, dioxin/furan, HCl, Pb, Cd, and Hg emission limits.

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(e) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is equipped with a dry scrubber followed by a fabric filter and a wet scrubber:

And your HMIWI	Then you are in violation of
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emission limit.
(2) Operates above the maximum fabric filter inlet temperature (3-hour rolling average), above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), and below the minimum dioxin/furan sorbent flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emission limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum scrubber liquor pH (3-hour rolling average) simultaneously.	The HCl emission limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum Hg sorbent flow rate (3-hour rolling average) simultaneously.	The Hg emission limit.
(5) Uses the bypass stack (except during startup, shutdown, or malfunction)	The PM, dioxin/furan, HCl, Pb, Cd, and Hg emission limits.

(f) You may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that your HMIWI is not in violation of the applicable emission limit(s). You must conduct repeat performance tests pursuant to this paragraph using the identical operating parameters that indicated a violation under paragraph (b), (c), (d) or (e) of this section.

(g) If you are using a CEMS to demonstrate compliance with any of the emission limits in Table 1 of this subpart or § 62.14412, and your CEMS indicates compliance with an emission limit during periods when operating parameters indicate a violation of an emission limit under paragraphs (b), (c), (d), or (e) of this section, then you are considered to be in compliance with the emission limit. You need not conduct a repeat performance test to demonstrate compliance.

(h) You may conduct a repeat performance test in accordance with § 62.14452 at any time to establish new values for the operating parameters.

Reporting and Recordkeeping Requirements

§ 62.14460 What records must I maintain?

You must maintain the following:

(a) Calendar date of each record;

(b) Records of the following data:

(1) Concentrations of any pollutant listed in Table 1 and/or measurements of opacity;

(2) The HMIWI charge dates, times, and weights and hourly charge rates;

(3) Fabric filter inlet temperatures during each minute of operation, as applicable;

(4) Amount and type of dioxin/furan sorbent used during each hour of operation, as applicable;

(5) Amount and type of Hg sorbent used during each hour of operation, as applicable;

(6) Amount and type of HCl sorbent used during each hour of operation, as applicable;

(7) Secondary chamber temperatures recorded during each minute of operation;

(8) Liquor flow rate to the wet scrubber inlet during each minute of operation, as applicable,

(9) Horsepower or amperage to the wet scrubber during each minute of operation, as applicable;

(10) Pressure drop across the wet scrubber system during each minute of operation, as applicable;

(11) Temperature at the outlet from the wet scrubber during each minute of operation, as applicable;

(12) The pH at the inlet to the wet scrubber during each minute of operation, as applicable;

(13) Records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the time frame established by the EPA Administrator or delegated enforcement authority, as applicable;

(14) Records indicating use of the bypass stack, including dates, times, and durations; and

(15) If you are complying by monitoring site-specific operating parameters under § 62.14453(b), you must monitor all operating data collected.

(c) Identification of calendar days for which data on emission rates or operating parameters specified under paragraphs (b)(1) through (15) of this section were not obtained, with an identification of the emission rates or operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken;

(d) Identification of calendar days, times and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar days for which data on emission rates or operating parameters specified under paragraphs (b)(1) through (15) of this section exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating parameters, as applicable.

(g) Records showing the names of HMIWI operators who have completed review of the documentation in § 62.14424 as required by § 62.14425, including the date of the initial review and all subsequent annual reviews;

(h) Records showing the names of the HMIWI operators who have completed the operator training requirements, including documentation of training and the dates of the training;

(i) Records showing the names of the HMIWI operators who have met the criteria for qualification under § 62.14423 and the dates of their qualification; and

(j) Records of calibration of any monitoring devices as required under § 62.14454.

§ 62.14461 For how long must I maintain records?

You must maintain the records specified under § 62.14460 for a period of at least 5 years.

§ 62.14462 Where must I keep the records?

You must maintain all records specified under § 62.14460 onsite in either paper copy or computer-readable format, unless an alternative format is approved by the EPA Administrator.

§ 62.14463 What reporting requirements must I satisfy?

You must report the following to the EPA Administrator (or delegated enforcement authority):

(a) The initial performance test data as recorded under § 62.14450(a) or § 62.14451(a) (whichever applies);

(b) The values for the site-specific operating parameters established pursuant to § 62.14453, as applicable;

(c) The waste management plan as specified in § 62.14431;

(d) The highest maximum operating parameter and the lowest minimum operating parameter for each operating parameter recorded for the calendar year being reported, pursuant to § 62.14453, as applicable;

(e) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded pursuant to § 62.14453 for the calendar year preceding the year being reported, in order to provide a summary of the performance of the HMIWI over a 2-year period;

(f) Any information recorded under § 62.14460(c) through (e) for the calendar year being reported;

(g) Any information recorded under § 62.14460(c) through (e) for the calendar year preceding the year being reported, in order to provide a summary of the performance of the HMIWI over a 2-year period;

(h) The results of any performance test conducted during the reporting period;

(i) If no exceedances or malfunctions occurred during the calendar year being reported, a statement that no exceedances occurred during the reporting period;

(j) Any use of the bypass stack, duration of such use, reason for malfunction, and corrective action taken; and

(k) Records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the time frame established by the EPA Administrator (or delegated enforcement authority).

§ 62.14464 When must I submit reports?

(a) You must submit the information specified in § 62.14463(a) through (c) no later than 60 days following the initial performance test.

(b) You must submit an annual report to the EPA Administrator (or delegated enforcement authority) no more than 1 year following the submission of the information in paragraph (a) of this section and you must submit subsequent reports no more than 1 year following the previous report (once the unit is subject to permitting requirements under title V of the Clean Air Act, you must submit these reports semiannually). The annual report must include the information specified in § 62.14463(d) through (k), as applicable.

(c) You must submit semiannual reports containing any information recorded under § 62.14460(c) through (e) no later than 60 days following the end of the semiannual reporting period. The first semiannual reporting period ends 6 months following the submission of information in paragraph (a) of this section. Subsequent reports must be submitted no later than 6 calendar months following the previous report.

§ 62.14465 Who must sign all submitted reports?

All reports must be signed by the facilities manager (defined in § 62.14490).

Compliance Schedule

§ 62.14470 When must I comply with this subpart if I plan to continue operation of my HMIWI?

If you plan to continue operation of your HMIWI, then you must follow the requirements in paragraph (a) or (b) of this section depending on when you plan to come into compliance with the requirements of this subpart.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by [date 1 year after publication of final rule], then you must complete the requirements of paragraphs (a)(1) through (a)(4) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of final rule].

(2) You must achieve final compliance by [date 1 year after publication of final rule]. This includes incorporating all process changes and/or completing retrofit construction, connecting the air pollution control equipment or process changes such that the HMIWI is brought on line, and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14450(a) (for small rural HMIWI) or § 62.14451(a) (for HMIWI that are not small rural HMIWI) within 180 days after the date when you are required to achieve final compliance under paragraph (a)(2) of this section.

(4) You must submit an initial report including the results of the initial performance test and the waste management plan no later than 60 days following the initial performance test (see § 62.14463 and § 62.14464 for complete reporting and recordkeeping requirements).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after [date 1 year after publication of final rule], but before September 15, 2002, then you must complete the requirements of paragraphs (b)(1) through (b)(4) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of final rule].

(2) You must demonstrate that you are taking steps towards compliance with the emission limits in the subpart by completing the increments of progress in paragraphs (b)(2)(i) through (b)(2)(v) of this section. You must submit notification to the EPA Administrator (or delegated enforcement authority) within 10 business days of completing (or failing to complete by the applicable date) each of the increments of progress listed in paragraphs (b)(2)(i) through (b)(2)(v) of this section. Your notification must be signed by your facilities manager (defined in § 62.14490).

(i) You must submit a final control plan by September 15, 2000. Your final control plan must, at a minimum, include a description of the air pollution control device(s) or process changes that will be employed for each unit to comply with the emission limits and other requirements of this subpart.

(ii) You must award contract(s) for onsite construction, onsite installation of emission control equipment, or incorporation of process changes by April 15, 2001. You must submit a signed copy of the contract(s) awarded.

(iii) You must begin onsite construction, begin onsite installation of emission control equipment, or begin process changes needed to meet the emission limits as outlined in the final control plan by December 15, 2001.

(iv) You must complete onsite construction, installation of emission control equipment, or process changes by July 15, 2002.

(v) You must achieve final compliance by September 15, 2002. This includes incorporating all process changes and/or completing retrofit construction as described in the final

control plan, connecting the air pollution control equipment or process changes such that the HMIWI is brought on line, and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14450(a) (for small rural HMIWI) or § 62.14451(a) (for HMIWI that are not small rural HMIWI) within 180 days after the date when you are required to achieve final compliance under paragraph (b)(2)(v) of this section.

(4) You must submit an initial report including the result of the initial performance test and the waste management plan no later than 60 days following the initial performance test (see § 62.14463 and § 62.14464 for complete reporting and recordkeeping requirements).

§ 62.14471 When must I comply with this subpart if I plan to shut down?

If you plan to shut down, then you must follow the requirements in either paragraph (a) or (b) of this section depending on when you plan to shut down.

(a) If you plan to shut down by [date 1 year after publication of final rule] rather that come into compliance with the requirements of this subpart, then you must shut down by [date 1 year after publication of final rule] to avoid coverage under any of the requirements of this subpart.

(b) If you plan to shut down rather than come into compliance with the requirements of this subpart, but are unable to shut down by [date 1 year after publication of final rule], then you may petition EPA for an extension by following the procedures outlined in paragraphs (b)(1) through (b)(3) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by [date 90 days after publication of final rule]. Your request must include:

(i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shut down while [date 1 year after publication of final rule] does not provide sufficient time for shut down. Your documentation must include an evaluation of the option to transport your waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

(ii) Documentation of incremental steps of progress, including dates for completing the increments of progress, that you will take towards shutting down. Some suggested incremental steps of progress towards shut down are provided as follows:

If you. . .	Then your increments of progress could be. . .
Need an extension so you can install an onsite alternative waste treatment technology before you shut down your HMIWI.	—Date when you will enter into a contract with an alternative treatment technology vendor, —Date for initiating onsite construction or installation of the alternative technology, —Date for completing onsite construction or installation of the alternative technology, and —Date for shutting down the HMIWI.
Need an extension so you can acquire the services of a commercial medical/infectious waste disposal company before you shut down your HMIWI.	—Date when price quotes will be obtained from commercial disposal companies, —Date when you will enter into a contract with a commercial disposal company, and —Date for shutting down the HMIWI.

(2) You must shut down no later than September 15, 2002.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of the final rule].

§ 62.14472 When must I comply with this subpart if I plan to shut down and later restart?

If you wish to shut down and later restart, then you must follow the compliance times in paragraph (a) or (b) of this section depending on when you restart.

(a) If you plan to shut down and restart prior to September 15, 2002, then you must:

(1) Meet the compliance schedule outlined in § 63.14470(a) if you restart prior to [date 1 year after publication of the final rule]; or

(2) Meet the compliance schedule outlined in § 62.14470(b) if you restart after [date 1 year after publication of the final rule]. Any missed increments of progress need to be completed prior to or upon the date of restart.

(b) If you plan to shut down and restart after September 15, 2002, then you must complete the requirements of paragraphs (b)(1) through (b)(4) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart before restarting your HMIWI.

(2) You must achieve final compliance upon restarting your HMIWI. This includes incorporating all process changes and/or completing retrofit construction, connecting the air pollution control equipment or process changes such that the HMIWI is brought on line, and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14450(a) (for small rural HMIWI) or § 62.14451(a) (for HMIWI that are not small rural HMIWI) within 180 days after the date when you restart.

(4) You must submit an initial report including the results of the initial performance test and the waste management plan no later than 60 days following the initial performance test (see § 62.14463 and § 62.14464 for complete reporting and recordkeeping requirements).

Permitting Obligation

§ 62.14480 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act and implementing regulations?

This subpart requires you to obtain an operating permit under title V of the Clean Air Act and implementing regulations ("title V permit") unless you are only subject to the recordkeeping and reporting requirements listed at §§ 62.14400(b)(1) or (b)(2). Also, if you own or operate a unit described in §§ 62.14400(b)(3), (b)(4), (b)(5) or (b)(6), you are not subject to any requirements of this subpart; therefore, this subpart does not require you to obtain a title V permit.

§ 62.14481 When must I submit a title V permit application for my HMIWI?

You must submit a title V permit application in time for it to be determined or deemed complete by no later than September 15, 2000 or by the effective date of a title V permit program in the State or Tribal area in which the unit is located, whichever is later. (An earlier deadline may apply if your HMIWI is also subject to title V's permitting requirements because of some other triggering requirement.) A "complete" title V permit application is one that has been approved by the appropriate permitting authority as complete under section 503 of the Clean Air Act and 40 CFR parts 70 and 71. It is not enough to have submitted a title V permit application by September 15, 2000 because the application must be determined or deemed complete by the permitting authority by that date for your HMIWI to operate after that date in compliance with Federal law.

Definitions

§ 62.14490 Definitions.

Batch HMIWI means an HMIWI that is designed such that neither waste charging nor ash removal can occur during combustion.

Biologicals means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining thereto.

Blood products means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

Body fluids means liquid emanating or derived from humans and limited to blood; dialysate; amniotic, cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

Bypass stack means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Co-fired combustor means a unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

Continuous emission monitoring system or *CEMS* means a monitoring system for continuously measuring and recording the emissions of a pollutant.

Continuous HMIWI means an HMIWI that is designed to allow waste charging and ash removal during combustion.

Dioxins/furans means the combined emissions of tetra- through octa-chlorinated dibenzo-para-dioxins and dibenzofurans, as measured by EPA Reference Method 23.

Dry scrubber means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gases in the HMIWI exhaust stream forming a dry powder material.

Fabric filter or *baghouse* means an add-on air pollution control system that removes particulate matter (PM) and nonvaporous metals emissions by passing flue gas through filter bags.

Facilities manager means the individual in charge of purchasing, maintaining, and operating the HMIWI or the owner's or operator's representative responsible for the management of the HMIWI. Alternative titles may include director of facilities or vice president of support services.

High-air phase means the stage of the batch operating cycle when the primary chamber reaches and maintains maximum operating temperatures.

Hospital means any facility which has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuing medical supervision.

Hospital/medical/infectious waste incinerator or HMIWI or HMIWI unit means any device that combusts any amount of hospital waste and/or medical/infectious waste.

Hospital/medical/infectious waste incinerator operator or *HMIWI operator* means any person who operates, controls or supervises the day-to-day operation of an HMIWI.

Hospital waste means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

Infectious agent means any organism (such as a virus or bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

Intermittent HMIWI means an HMIWI that is designed to allow waste charging, but not ash removal, during combustion.

Large HMIWI means:

(1) Except as provided in paragraph (2) of this definition;

(i) An HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour; or

(ii) A continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or

(iii) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.

(2) The following are not large HMIWI:

(i) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or

(ii) A batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction the operator must operate within established parameters as much as possible, and monitoring of all applicable operating parameters must continue until all

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waste has been combusted or until the malfunction ceases, whichever comes first.

Maximum charge rate means:

(1) For continuous and intermittent HMIWI, 110 percent of the lowest 3-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.

(2) For batch HMIWI, 110 percent of the lowest daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.

Maximum design waste burning capacity means:

(1) For intermittent and continuous HMIWI;

$C = P_V \times 15{,}000/8{,}500$

Where:

C = HMIWI capacity, lb/hr

P_V = primary chamber volume, ft^3

15,000 = primary chamber heat release rate factor, Btu/ft^3 /hr

8,500 = standard waste heating value, Btu/lb;

(2) For batch HMIWI;

$C = P_V \times 4.5/8$

Where:

C = HMIWI capacity, lb/hr

P_V = primary chamber volume, ft^3

4.5 = waste density, lb/ft^3

8 = typical hours of operation of a batch HMIWI, hours.

Maximum fabric filter inlet temperature means 110 percent of the lowest 3-hour average temperature at the inlet to the fabric filter (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the dioxin/furan emission limit.

Maximum flue gas temperature means 110 percent of the lowest 3-hour average temperature at the outlet from the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the mercury (Hg) emission limit.

Medical/infectious waste means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in paragraphs (1) through (7) of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in part 261 of this chapter; household waste, as defined in § 261.4(b)(1) of this chapter; ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in § 261.4(a)(1) of this chapter.

(1) Cultures and stocks of infectious agents and associated biologicals, including:Cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

(2) Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

(3) Human blood and blood products including:

(i) Liquid waste human blood;

(ii) Products of blood;

(iii) Items saturated and/or dripping with human blood; or

(iv) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

(4) Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

(5) Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

(6) Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

(7) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

Medium HMIWI means:

(1) Except as provided in paragraph (2) of this definition;

(i) An HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(ii) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(iii) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

(2) The following are not medium HMIWI:

(i) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or

(ii) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day or less than or equal to 1,600 pounds per day.

Minimum dioxin/furan sorbent flow rate means 90 percent of the highest 3-hour average dioxin/furan sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the dioxin/furan emission limit.

Minimum Hg sorbent flow rate means 90 percent of the highest 3-hour average Hg sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the Hg emission limit.

Minimum hydrogen chloride (HCl) sorbent flow rate means 90 percent of the highest 3-hour average HCl sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the HCl emission limit.

Minimum horsepower or amperage means 90 percent of the highest 3-hour average horsepower or amperage to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the applicable emission limits.

Minimum pressure drop across the wet scrubber means 90 percent of the highest 3-hour average pressure drop across the wet scrubber PM control device (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM emission limit.

Minimum scrubber liquor flow rate means 90 percent of the highest 3-hour average liquor flow rate at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with all applicable emission limits.

Minimum scrubber liquor pH means 90 percent of the highest 3-hour average liquor pH at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the HCl emission limit.

Minimum secondary chamber temperature means 90 percent of the highest 3-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, CO, or dioxin/furan emission limits.

Modification or *Modified HMIWI* means any change to an HMIWI unit after March 16, 1998, such that:

(1) The cumulative costs of the modifications, over the life of the unit, exceed 50 per centum of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or

(2) The change involves a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under section 129 or section 111.

Operating day means a 24-hour period between 12:00 midnight and the following midnight during which any amount of hospital waste or medical/infectious waste is combusted at any time in the HMIWI.

Operation means the period during which waste is combusted in the incinerator excluding periods of startup or shutdown.

Particulate matter or PM means the total particulate matter emitted from an HMIWI as measured by EPA Reference Method 5 or EPA Reference Method 29.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Primary chamber means the chamber in an HMIWI that receives waste material, in which the waste is ignited, and from which ash is removed.

Pyrolysis means the endothermic gasification of hospital waste and/or medical/infectious waste using external energy.

Secondary chamber means a component of the HMIWI that receives combustion gases from the primary chamber and in which the combustion process is completed.

Shutdown means the period of time after all waste has been combusted in the primary chamber. For continuous HMIWI, shutdown must commence no less than 2 hours after the last charge to the incinerator. For intermittent HMIWI, shutdown must commence no less than 4 hours after the last charge to the incinerator. For batch HMIWI, shutdown must commence no less than 5 hours after the high-air phase of combustion has been completed.

Small HMIWI means:

(1) Except as provided in paragraph (2) of this definition;

(i) An HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour; or

(ii) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or

(iii) A batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.

(2) The following are not small HMIWI:

(i) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour;

(ii) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.

Small rural HMIWI means a small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burns less than 2,000 pounds per week of hospital waste and medical/infectious waste.

Standard conditions means a temperature of 20°C and a pressure of 101.3 kilopascals.

Standard Metropolitan Statistical Area or *SMSA* means any areas listed in OMB Bulletin No. 93–17 entitled "Revised Statistical Definitions for Metropolitan Areas" dated June 30, 1993. This information can also be obtained from the nearest Metropolitan Planning Organization.

Startup means the period of time between the activation of the system and the first charge to the unit. For batch HMIWI, startup means the period of time between activation of the system and ignition of the waste.

Wet scrubber means an add-on air pollution control device that utilizes an alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Delegation of Authority

§ 62.14495 What authorities will be retained by the EPA Administrator?

The following authorities will be retained by the EPA Administrator and not transferred to the State or Tribe:

(a) The requirements of § 62.14453(b) establishing operating parameters when using controls other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber.

(b) Alternative methods of demonstrating compliance under 40 CFR 60.8.

TABLE 1 OF SUBPART HHH OF PART 62.—EMISSION LIMITS FOR SMALL RURAL, SMALL, MEDIUM, AND LARGE HMIWI

Pollutant	Units (7 percent oxygen, dry basis at standard conditions)	Emission limits			
		HMIWI size			
		Small rural	Small	Medium	Large
Particulate matter.	Milligrams per dry standard cubic meter (grains per dry standard cubic foot).	197 (0.086)	115 (0.05)	69 (0.03)	34 (0.015)
Carbon monoxide.	Parts per million by volume	40	40	40	40

TABLE 1 OF SUBPART HHH OF PART 62.—EMISSION LIMITS FOR SMALL RURAL, SMALL, MEDIUM, AND LARGE HMIWI—Continued

Pollutant	Units (7 percent oxygen, dry basis at standard conditions)	Emission limits			
		HMIWI size			
		Small rural	Small	Medium	Large
Dioxins/furans	Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet).	800 (350) or 15 (6.6)	125 (55) or 2.3 (1.0)	125 (55) or 2.3 (1.0)	125 (55) or 2.3 (1.0)
Hydrogen chloride.	Parts per million by volume or percent reduction.	3,100	100 or 93%	100 or 93%	100 or 93%
Sulfur dioxide	Parts per million by volume	55	55	55	55
Nitrogen oxides	Parts per million by volume	250	250	250	250
Lead	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction.	10 (4.4)	1.2 (0.52) or 70%	1.2 (0.52) or 70%	1.2 (0.52) or 70%
Cadmium	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction.	4 (1.7)	0.16 (0.07) or 65%	0.16 (0.07) or 65%	0.16 (0.07) or 65%
Mercury	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction.	7.5 (3.3)	0.55 (0.24) or 85%	0.55 (0.24) or 85%	0.55 (0.24) or 85%

TABLE 2 OF SUBPART HHH OF PART 62.—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

TABLE 3 OF SUBPART HHH OF PART 62.—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES

Operating parameters to be monitored	Minimum frequency		HMIWI			
	Data measurement	Data recording	Small rural HMIWI	HMIWI [1] with dry scrubber followed by fabric filter	HMIWI [1] with wet scrubber	HMIWI [1] with dry scrubber followed by fabric filter and wet scrubber
Maximum operating parameters:						
Maximum charge rate	Once per charge	Once per charge	✔	✔	✔	✔

TABLE 3 OF SUBPART HHH OF PART 62.—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES—Continued

Operating parameters to be monitored	Minimum frequency		HMIWI			
	Data measurement	Data recording	Small rural HMIWI	HMIWI [1] with dry scrubber followed by fabric filter	HMIWI [1] with wet scrubber	HMIWI [1] with dry scrubber followed by fabric filter and wet scrubber
Maximum fabric filter inlet temperature.	Continuous	Once per minute		✔		✔
Maximum flue gas temperature	Continuous	Once per minute			✔	✔
Minimum operating parameters:						
Minimum secondary chamber temperature.	Continuous	Once per minute	✔	✔	✔	✔
Minimum dioxin/furan sorbent flow rate.	Hourly	Once per hour		✔		✔
Minimum HCl sorbent flow rate	Hourly	Once per hour		✔		✔
Minimum mercury (Hg) sorbent flow rate.	Hourly	Once per hour		✔		✔
Minimum pressure drop across the wet scrubber or minimum horsepower or amperage to wet scrubber.	Continuous	Once per minute			✔	✔
Minimum scrubber liquor flow rate	Continuous	Once per minute			✔	✔
Minimum scrubber liquor pH	Continuous	Once per minute			✔	✔

[1] Does not include small rural HMIWI.

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Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF21

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (the Service), propose to remove the bald eagle (*Haliaeetus leucocephalus*), from the List of Endangered and Threatened Wildlife in the lower 48 States of the United States. We propose this action because the available data indicate that this species has recovered. The recovery is due in part to habitat protection and management actions initiated under the Endangered Species Act. It is also due to reduction in levels of persistent organochlorine pesticides such as DDT occurring in the environment. Section 4(g) of the Act requires the Service to monitor recovered species for at least 5 years following delisting. This rule describes our proposed post-delisting monitoring plan for bald eagles. Removal of the bald eagle as a threatened species under the Act will not affect the protection provided under the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and many other state laws.

DATES: Comments from all interested parties concerning the proposal to delist the bald eagle in the lower 48 States must be received by October 5, 1999. Public hearing requests must be received by August 20, 1999.

Comments from all interested parties on the collection of information from the public during the 5-year monitoring period will be considered if received on or before September 7, 1999. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, your comments should be received by OMB by August 5, 1999.

ADDRESSES: Send your comments and other information concerning the proposal to delist the bald eagle in the lower 48 States to: Jody Gustitus Millar, Bald Eagle Recovery Coordinator, U.S. Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, IL 61201 or comments may be sent through our web site at www.fws.gov/r3pao/eagle.

Also send your comments and suggestions on specific information collection requirements to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jody Gustitus Millar, Bald Eagle Recovery Coordinator at the above address, telephone 309/793–5800 ext. 524, or refer to our website at www.fws.gov/r3pao/eagle.

SUPPLEMENTARY INFORMATION:

Background

The bald eagle, *Haliaeetus leucocephalus*, is well known as our Nation's symbol. Its large and powerful appearance is distinguished by its white head and tail contrasting against its dark brown body. Though once endangered, the bald eagle population in the lower 48 States has increased considerably in recent years. Regional bald eagle populations in the northwest, Great Lakes, Chesapeake Bay, and Florida have increased 5-fold in the past 20 years. Bald eagles are now repopulating areas throughout much of the species' historic range that were unoccupied only a few years ago.

Note: Unless otherwise noted with specific citations, the following life history information is derived from our 5 recovery plans for the bald eagle and from Gerrard and Bortolotti (1988), see References.

The bald eagle ranges throughout much of North America, nesting on both coasts from Florida to Baja California, Mexico in the south, and from Labrador to the western Aleutian Islands, Alaska in the north. The earliest known record of a bald eagle comes from a cave in Colorado. Deposits from that cave are dated at 670,000 to 780,000 years old (Dr. Steve Emslie, University of North Carolina, pers. comm. 1998). An estimated quarter to a half million bald eagles lived on the North American continent before the first Europeans arrived.

Haliaeetus leucocephalus (literally, sea eagle with a white head) is the only species of sea eagle native to North America. It was first described in 1766 as *Falco leucocephalus* by Linnaeus. This South Carolina specimen was later renamed as the southern bald eagle, subspecies *Haliaeetus leucocephalus leucocephalus* (Linnaeus) when Townsend identified the northern bald eagle as *Haliaeetus leucocephalus alascanus* in 1897 (Peters 1979). By the time the bald eagle was listed throughout the lower 48 States under the Endangered Species Act in 1978, the subspecies were no longer recognized by ornithologists (American Ornithologists Union 1983).

The bald eagle is a bird of aquatic ecosystems. It frequents estuaries, large lakes, reservoirs, major rivers, and some seacoast habitats. Fish is the major component of its diet, but waterfowl, seagulls, and carrion are also eaten. The species may also use prairies if adequate food is available. Bald eagle habitats encompass both public and private lands.

Bald eagles usually nest in trees near water, but are known to nest on cliffs and (rarely) on the ground. Nest sites are usually in large trees along shorelines in relatively remote areas that are free of disturbance. The trees must be sturdy and open to support a nest that is often 5 feet wide and 3 feet deep. Adults tend to use the same breeding areas year after year, and often the same nest, though a breeding area may include one or more alternate nests. A 35-year old nest at Vermilion, Ohio, measured 8½ feet across at the top and 12 feet deep before it blew down in 1925 (Herrick 1932). In winter, bald eagles often congregate at specific wintering sites that are generally close to open water and offer good perch trees and night roosts.

Bald eagles are long-lived. The longest living bald eagle known in the wild was reported near Haines, Alaska as 28 years old (Schempf 1997). Bald eagles from Arizona are known to have exceeded 12 years of age (Hunt et al. 1992). In captivity, bald eagles may live 40 or more years.

It is presumed that once they mate, the bond is long-term, though documentation is limited. Variations in pair bonding are known to occur. If one mate dies or disappears, the other will accept a new partner. The female bald eagle usually weighs 10 to 14 pounds in the northern sections of the continent and is larger than the male, which weighs 8 to 10 pounds. The wings span 6 to 7 feet. The northern birds are larger and heavier than southern birds, with the largest birds in Alaska and Canada, and the smallest in Arizona or Florida.

Bald eagle pairs begin courtship about a month before egg-laying. In the south, courtship occurs as early as September, and in the north, as late as May. The nesting season lasts about 6 months. Incubation lasts approximately 35 days and fledging takes place at 11 to 12 weeks of age. Parental care may extend 4 to 11 weeks after fledging (Wood, Collopy, and Sekerak 1998). The fledgling bald eagle is generally dark brown except the underwing linings which are primarily white. Between fledging and adulthood, the bald eagle's

appearance changes with feather replacement each summer. Young dark bald eagles may be confused with the golden eagle, *Aquila chrysaetos*. The bald eagle's distinctive white head and tail are not apparent until the bird fully matures, at 4 to 5 years of age.

As they leave their breeding areas, some bald eagles stay in the general vicinity while most migrate for several months and hundreds of miles to their wintering grounds. Young eagles may wander randomly for years before returning to nest in natal areas.

Northern bald eagles winter in areas such as the Upper Mississippi River, Great Lakes shorelines and river mouths in the Great Lakes area. For mid-continent bald eagles, wintering grounds may be the southern States, and for southern bald eagles, whose nesting occurs during the winter months, the non-breeding season foraging areas may be Chesapeake Bay or Yellowstone National Park during the summer. Eagles seek wintering (non-nesting) areas offering an abundant and readily available food supply with suitable night roosts. Night roosts typically offer isolation and thermal protection from winds. Carrion and easily scavenged prey provide important sources of winter food in terrestrial habitats far from open water.

The first major decline in the bald eagle population probably began in the mid to late 1800s. Widespread shooting for feathers and trophies led to extirpation of eagles in some areas. Shooting also reduced part of the bald eagle's prey base. Big game animals like bison, which were seasonally important to eagles as carrion, were decimated. Waterfowl, shorebirds and small mammals were also reduced in numbers. Carrion treated with strychnine, thallium sulfate and other poisons were used as bait to kill livestock predators and ultimately killed many eagles as well. These were the major factors, in addition to loss of nesting habitat from forest clearing and development, that contributed to a reduction in bald eagle numbers through the 1940s.

In 1940, the Bald Eagle Protection Act (16 U.S.C. 668–668d) was passed. This law prohibits the take, possession, sale, purchase, barter, or offer to sell, purchase or barter, transport, export or import, of any bald eagle, alive or dead, including any part, nest, or egg, unless allowed by permit (16 U.S.C. 668(a)). "Take" includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb (16 U.S.C. 668c; 50 CFR 22.3). The Bald Eagle Protection Act and increased public awareness of the bald eagle's status resulted in partial recovery or at least a slower rate of decline of the species in most areas of the country.

In the late 1940s, shortly after World War II, the use of dichloro-diphenyl-trichloroethane (DDT) and other organochlorine compounds became widespread. Initially, DDT was sprayed extensively along coastal and other wetland areas to control mosquitos (Carson 1962). Later it was used as a general crop insecticide. As DDT accumulated in individual bald eagles from ingesting prey containing DDT and its metabolites, reproductive success plummeted. In the late 1960s and early 1970s, it was determined that dichlorophenyl-dichloroethylene (DDE), the principal breakdown product of DDT, accumulated in the fatty tissues of the adult female bald eagles. DDE impaired calcium release necessary for normal egg shell formation, resulting in thin shells and reproductive failure.

In response to this decline, the Secretary of the Interior, on March 11, 1967 (32 FR 4001), listed bald eagles south of the 40th parallel as endangered under the Endangered Species Preservation Act of 1966 (16 U.S.C. 668aa–668cc). Bald eagles north of this line were not included in that action primarily because the Alaskan and Canadian populations were not considered endangered in 1967. On December 31, 1972, DDT was banned from use in the United States by the Environmental Protection Agency. The following year, the Endangered Species Act of 1973 (the Act) (16 U.S.C. 1531–1544) was passed.

Nationwide bald eagle surveys, conducted in 1973 and 1974 by us, other cooperating agencies, and conservation organizations, revealed that the eagle population throughout the lower 48 States was declining. We responded in 1978 by listing the bald eagle, *Haliaeetus leucocephalus*, throughout the lower 48 States as endangered except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was designated as threatened (43 FR 6233, February 14, 1978). Sub-specific designations for northern and southern eagles were dropped.

The Act contains provisions for listing, protection, and recovery of imperiled species. An endangered species is defined under the Act as a species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as any species that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The Act and its implementing regulations prohibit the take of any listed species. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these acts. It also prohibits shipment in interstate commerce in the course of commercial activity, or sale or offer for sale in interstate or foreign commerce. The Act requires review of all activities funded, permitted or conducted by Federal agencies to consider impacts to endangered and or threatened species. The purpose of the Act is to restore endangered and threatened animals and plants to the point where they are again viable, self-sustaining components of their ecosystems.

To facilitate the recovery of the bald eagle and the ecosystems upon which it depends, we divided the lower 48 States into 5 recovery regions. Separate recovery teams composed of experts in each geographic area prepared recovery plans for their region. The teams established goals for recovery and identified tasks to achieve those goals. Coordination meetings were held regularly among the 5 teams to exchange data and other information.

What Are the Five Recovery Regions Established for the Bald Eagle and the Dates of Their Approved Recovery Plans?

Recovery region	Date of recovery plan	States
Chesapeake Bay	1982, rev. 1990	Virginia east of the Blue Ridge Mountains, Delaware, Maryland, the eastern half of Pennsylvania, the "panhandle" of West Virginia, and the southern two-thirds of New Jersey.
Pacific	1986	Idaho, Nevada, California, Oregon, Washington, Montana, and Wyoming.
Southeastern	1984, rev. 1989	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and eastern Texas.

Recovery region	Date of recovery plan	States
Southwestern	1982	Oklahoma and Texas west of the 100th meridian, New Mexico, Arizona, and that area of California bordering the Lower Colorado River.
Northern States	1983	All remaining 25 States and parts thereof.

Recovery Accomplishments

The Service and other Federal, State, tribal, and local cooperators from across the Nation have funded and carried out many of the tasks described within the recovery plans. Annual expenditures for the recovery and protection of the bald eagle by public and private agencies have exceeded $1 million each year for the past decade (Service records). State fish and wildlife agencies have played a vital role in restoring eagles to areas from which they were extirpated or in which their numbers were greatly reduced. These activities include conducting annual surveys of breeding and productivity, purchasing lands for the protection of bald eagle habitat, reintroduction and habitat management programs, and public outreach.

A partial survey conducted by the National Audubon Society in 1963 reported on 417 active nests in the lower 48 States, with an average of 0.59 young produced per nest. Surveys we coordinated in 1974 resulted in a population estimate of 791 occupied breeding areas for the lower 48 States.

Breeding and productivity surveys have been conducted annually on a State-by-State basis since the early 1980s. Data collection methods vary somewhat from State to State but generally include surveys by aircraft or visits to the site each year during the breeding season to determine the number of occupied breeding areas, and a second survey just before fledging to count the number of young produced at the site. Some States conduct the surveys themselves with agency personnel, others collate data from partners (including cooperating agencies), while some data is collected by personal interviews with reliable sources. Though the data collection methods may vary, most States agree that the data provided to us is a minimum number.

Since the development and implementation of the recovery plans, the bald eagle's population growth has exceeded most of the goals established in the various plans. In 1994, our cooperators reported about 4,450 occupied breeding areas with an estimated average young per occupied territory of 1.16. Compared to surveys conducted in 1974, the number of occupied breeding areas in 1994 in the lower 48 States had increased by 462 percent (Figure 1). Between 1990 and 1994, there was a 47 percent increase.

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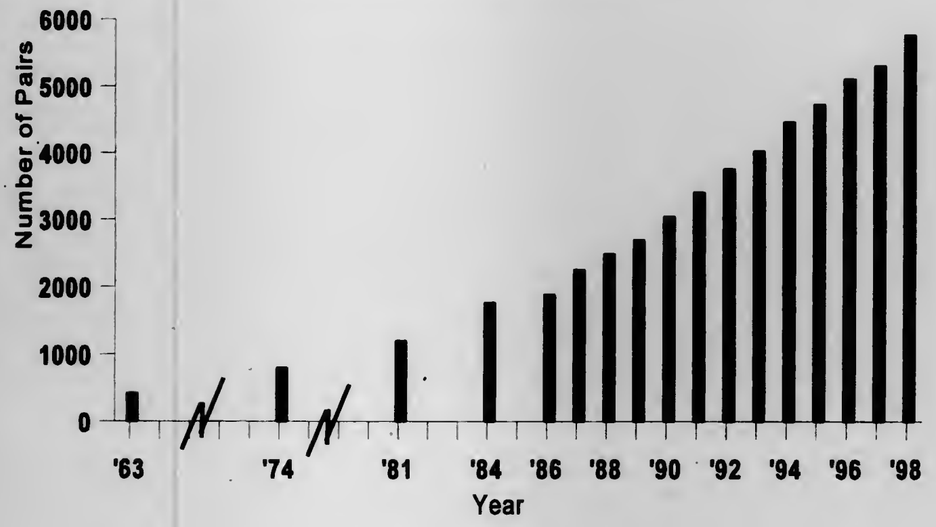


Figure 1. Number of bald eagle pairs in lower 48 states from 1963 through 1998.

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The bald eagle was reclassified in 1995 from endangered to threatened as a result of the significant increase in numbers of nesting pairs, increased productivity and expanded distribution (60 FR 36000, July 12, 1995).

Recovery continues to progress at an impressive rate. In the past 10 years, the bald eagle's nesting population has increased at an average rate of about 8 percent per year (Figure 1). The current nesting population in the lower 48 States constitutes more than a tenfold increase from the known population level in 1963. We estimate that the breeding population exceeded 5,748 occupied breeding areas in 1998. The bald eagle population has essentially doubled every 7 to 8 years during the past 30 years.

Recovery has been broadly distributed throughout the bald eagle's range. In 1984, 13 states had no nesting pairs of bald eagles. By 1998, all but 2 of the lower 48 States supported nesting pairs. In 1984, the 6 States of Florida, Wisconsin, Michigan, Minnesota, Washington and Oregon contained 73 percent of all nesting pairs in the lower 48 States. By 1998, these six States had a reduced share of 56 percent of all nesting pairs, due to increased nesting in other states. Much of the greater distribution of nesting sites is due to reoccupancy of vacant nesting habitat where competition for nest sites is minimal and an adequate prey base exists.

An expanding population requires the successful production of young. Reproduction has generally met or exceeded target values established by recovery teams nationally for the past 10 years. Certain geographically restricted areas still have contamination threats, such as southern California, the Columbia River, along the Great Lakes and parts of Maine (see *E.* under the Summary of Factors Affecting the Species section). Because the adults are long-lived, a minimum of 0.7 young per occupied breeding area is necessary to maintain a stable population (Sprunt, *et al.* 1973). With a national average of more than one fledgling per occupied breeding area since 1990, the eagle population continues to increase in overall size and maintain a healthy reproductive rate.

Recovery within recovery regions has also been successful. Recovery plans and objectives were designed to guide and measure recovery efforts. They are intended to be general goals rather than absolute numeric targets. We discuss recovery goals for the 5 regions and the bald eagle's attainment of those goals discussed below.

What Are the Goals for Bald Eagle Recovery in Each Recovery Region and What Has Been Achieved?

Chesapeake Recovery Region

Delisting Goals: Sustain 300–400 pairs with an average productivity of 1.1 young per active nest over 5 years with permanent protection of sufficient habitat to support this nesting population and enough roosting and foraging habitat to support population levels commensurate with increases throughout the Atlantic coastal area.

Achievements: Numeric delisting goals were met in 1996 with more than 300 occupied breeding areas estimated since 1992 and average productivity of 1.1 young per occupied breeding area. In 1998, 538 occupied breeding areas were estimated with an average productivity of 1.21. Habitat protection work continues.

Protecting bald eagle habitat remains a concern in the Chesapeake Recovery Region. The area contains large, expanding human population centers contributing to rapid development pressures and high land values that can conflict with bald eagle habitat needs. However, since 1990, occupied breeding areas for the bald eagle have doubled in the Chesapeake Recovery Region. This increase is greater than that found in any other recovery region. This indicates that adequate habitat is still available for an increasing population of bald eagles despite land development pressures. The Endangered Species Act has been a key factor in protecting eagle habitat in the Chesapeake area, particularly through the application of buffer zones around nest trees.

Northern States Recovery Region

Delisting Goals: 1,200 occupied breeding areas distributed over a minimum of 16 states with an average annual productivity of at least 1.0 young per occupied nest.

Since reclassification, the Northern States Recovery Team has reconvened to review the plan. The team supported the numerical goals established in 1983 but emphasized continued habitat protection concerns.

Achievements: Delisting goals were met in 1991 with 1,349 occupied breeding areas distributed over 20 States and an estimated average productivity since 1991 of greater than 1.0. In 1998 the estimated number of occupied breeding areas for the Northern States Recovery Region exceeded 2,204. Some of the most rapidly expanding areas of bald eagle nesting are in states with the majority of their lands held in private ownership. For example, between 1990 and 1998, the bald eagle population in Iowa increased from 8 to 83 occupied breeding areas. In this same period, Missouri has gone from 11 to 45 occupied breeding areas; Illinois increased from 8 to 43 occupied breeding areas; and Oklahoma has gone from 0 to 26 occupied breeding areas. The Northern States Recovery Region includes large tracts of federally owned land that is prime bald eagle habitat. The three States with the largest bald eagle populations in the Northern States Recovery Region (Minnesota, Wisconsin, and Michigan) contain large proportions of public land, and eagle numbers did not quite double during the same 8-year span. Thus, habitat on private property has proven to be very important for the continued expansion of the bald eagle population in this region.

Pacific Recovery Region

Delisting Goals: A minimum of 800 nesting pairs with an average reproductive rate of 1.0 fledged young per occupied breeding area, and an average success rate for occupied breeding areas of not less than 65% over a 5 year period are necessary for recovery. Attainment of breeding population goals should be met in at least 80% of management zones. Wintering populations should be stable or increasing.

Achievements: Numeric delisting goals have been met since 1995. Productivity has averaged about 1.0 young per occupied breeding area since 1990. The average success rate for occupied breeding areas has exceeded 65 percent for the past five years. For 1998, six of the seven Pacific region States reported an average success rate of 75 percent. However, the plan goal for distribution among management zones is not yet fully achieved for all areas. The number of occupied breeding areas exceeded 800 in 1990 and has continued to increase. In 1998, 1,480 occupied breeding areas were estimated. Twenty-eight of 37 (76%) management zone targets have been met. The zone targets were based on a best estimate for each area at the time, and several management zones that still lack nesting bald eagles may not contain preferred habitat. Of the 28 zones where target levels have been met, at least 11 have more than doubled the established goal. Wintering populations have been tracked in the Pacific and many other States using the mid-winter bald eagle surveys. However, wintering populations are difficult to assess because concentrations are dependent on weather and food supply and thus can be quite variable from year to year.

Southeastern Recovery Region

Delisting goals: Consider delisting if the recovery trend continues for 5 years after reclassification goals are met. Develop the criteria for delisting when the species is reclassified from endangered to threatened.

After the reclassification to threatened in 1995, the Southeastern States Bald Eagle Recovery Team reconvened to

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consider criteria for delisting. The most recent recommendations of the recovery team are to achieve an average of 1,500 occupied breeding areas over the most recent 3-year period, with an average production of greater than 0.9 young per occupied breeding area over the same 3 year period, and 8 of 11 states meeting their nesting and productivity goals.

Achievements: Reclassification goals have been met and exceeded from 1991 through the most current data year of 1998. At the current rate of increase, the team expects the southeastern region to exceed 1,500 pairs in 1999 and meet the newly recommended delisting criteria by the year 2000. Production since 1991 averaged 1.17 young per occupied territory, exceeding the goal of greater than 0.9. In 1998, 1,485 occupied breeding areas were estimated with a productivity of 1.15 per occupied breeding area. Newly revised individual state goals are expected to be met by 6 of 11 States by the year 2000.

Southwestern Recovery Region

Delisting Goals: None given. Reclassification Goals: 10–12 young per year over a 5-year period; population range has to expand to include one or more river drainages in addition to the Salt and Verde Systems.

Achievements: 40 occupied breeding areas were reported for 1998 with 36 of those in Arizona and 4 in New Mexico. Productivity was estimated at 0.63 per occupied breeding area. Breeding has expanded beyond the Salt and Verde Systems into the Gila, Bill Williams, and San Carlos River systems in Arizona and the Rio Grande in New Mexico. The number of breeding pairs has more than doubled in the last 15 years.

Bald eagle recovery team members met in 1996 and discussed delisting criteria for the region. Potential reduction of support for the Arizona Nestwatch Program is a significant regional concern. Since the 1980's, the Nestwatch Program has rescued 48 eagles and eggs, and documented 52 cases of fishing line or tackle posing a threat to the nesting eagles and eaglets. At least 15 percent of the bald eagle production is due to the assistance provided by Nestwatch volunteers and staff. The State of Arizona is working with us and other partners to develop a Conservation Agreement which would insure the longevity of the Nestwatch Program.

Previous Federal Action

On July 12, 1995, we published the final rule to reclassify the bald eagle from threatened in 5 States and endangered in the remaining lower 48 States, to threatened throughout the lower 48 States (60 FR 36000). With that action, the Service recognized one population of bald eagles in the lower 48 States. Previous to that action, the proposed rule to reclassify the bald eagle was published on July 12, 1994, (59 FR 35584) and an advanced notice of a proposed rule was published on February 7, 1990 (55 FR 4209). Listing actions are discussed in the Background section.

Summary of Factors Affecting the Species

Section 4 of the Act and the regulations (50 CFR part 424) promulgated to implement its listing provisions, set forth the procedures for listing, reclassifying, and delisting species on the Federal lists. A species will be listed if the Secretary of the Interior determines that one or more of 5 factors listed in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened for one of the following reasons: (1) Extinction; (2) recovery; or (3) original data for classification of the species were in error.

The bald eagle is proposed for delisting due to recovery. Discussion of the 5 listing factors and their application to the recovery of the bald eagle are discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Nesting and wintering habitats are both critical to the continued survival of the bald eagle. Based on increasing population trends, neither nesting nor wintering habitats appear to be limiting, and there are no indications that availability of these habitats will limit the bald eagle population in the near future. Bald eagle habitat on Federal lands will remain protected under the regulatory mechanisms listed in factor D below, though to a lesser degree. Activities on private lands involving a Federal action will be subject to many of the laws listed in factor D. With the knowledge of habitat management gained through the recovery process, we expect that federal actions that result in a loss of habitat will be at an acceptable level and will not affect the population's stability.

B. Over-Utilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no legal commercial or recreational use of bald eagles. We consider future legal and enforcement measures sufficient to protect the bald eagle from illegal activities, including trade. We exercise very strict control over the use of bald eagles or their parts for scientific, educational, and Native American religious activities. To respond to the religious needs of Native Americans, we have established the National Eagle and Wildlife Property Repository in Commerce City, Colorado, which serves as a collection point for dead eagles. As a matter of policy, all Service units transfer salvaged bald eagle parts and carcasses to this center. Members of Federally recognized tribes can obtain a permit from us authorizing them to receive and possess whole eagles, parts, or feathers from the repository for religious purposes. After removal from protection under the Endangered Species Act, we will still issue permits for limited exhibition and educational purposes, selected research work, and other special purposes consistent with the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d). We will not issue these permits if the status of the bald eagle will be adversely effected.

C. Disease or Predation

Predation is not a significant problem for bald eagle populations. Incidents of mortality due to territorial disputes have been reported by National Wildlife Health Research Center pathologists based on examination of carcasses.

Diseases such as avian cholera, avian pox, aspergillosis, tuberculosis, Mexican chicken bug, and botulism may affect individual eagles, but are not considered to be a significant threat to the population. According to the National Wildlife Health Research Center in Madison, Wisconsin, only 2.7 percent of bald eagles submitted to the Center between 1985 and 1990 died of infectious disease. Its widespread population distribution generally helps to protect the bald eagle from these catastrophic events.

From 1994–1999, 58 eagles died at man-made lakes in Arkansas from apparent avian brain lesion syndrome (also referred to as vacuolar myelinopathy), and more recently, the disease has been detected in eagles in North Carolina. At present, this is a poorly understood disease and is present in other avian species (primarily coots and recently found in several species of waterfowl) in the southeast. While a toxic agent is suspected in the deaths of the eagles and other avian species, cooperative efforts are underway to determine the prevalence of this disease and its origin. Although these mortalities can have a localized impact on bald eagles, there is currently no evidence that the overall recovery of the population is affected.

D. The Inadequacy of Existing Regulatory Mechanisms

After removal from the list of species protected by the Act, the bald eagle remains fully protected by the following Federal wildlife laws in the United States. We believe these laws and related State statutes are adequate to protect and sustain a recovered bald eagle population.

The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) prohibits without specific authorization take, possession, selling, purchase, barter, offer to sell, purchase, or barter, transport, export or import, of any bald or golden eagle, alive or dead or any part, nest or egg thereof. Use of bald eagles for falconry is prohibited. Take under this act is defined as "to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" (50 CFR 22.3).

The Migratory Bird Treaty Act (16 U.S.C. 703–711) prohibits, without specific authorization, the possession, transport, or take of any migratory bird (including bald eagles), their parts, nests or eggs. Take prohibitions under this statute includes actions to pursue, hunt, take, capture, kill, possess, sell, barter, purchase, ship, export or import protected species.

The Lacey Act (16 U.S.C. 3372 and 18 U.S.C. 42–44) among other provisions, makes it unlawful to export, import, transport, sell, receive, acquire, or purchase any bald eagle, (1) taken or possessed in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law or (2) to be taken, sold, or transported in interstate or foreign commerce, in violation of any law or regulation of any State or in violation of any foreign law.

In addition to Federal laws governing the taking of bald eagles within the United States, international agreements govern the transport of bald eagles across international borders. International trade in bald eagles to and from the United States is strictly regulated. The Convention on International Trade in Endangered Species (CITES) is an international treaty for the regulation of trade in species threatened with extinction and those that may become threatened if trade is not regulated. The bald eagle is currently listed under Appendix I of CITES, and, as a result, international trade in bald eagles not otherwise prohibited is restricted by the United States and 145 other signatory nations.

Section 101 (a) of the Clean Water Act (33 U.S.C. 1251–13287) states that the objective of this law is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters and provides the means to assure the "protection and propagation of fish, shellfish, and wildlife" (section 101 (a)(2)). This statute contributes in a significant way to the protection of bald eagles and their food supply through provisions for water quality standards, protection from the discharge of harmful pollutants, contaminants (section 303(c), section 304(a), and section 402) and discharge of dredge or fill material into all waters, including wetlands (section 404).

Another important regulatory mechanism affecting bald eagles is the requirement that pesticides be registered with the Environmental Protection Agency. Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), the Environmental Protection Agency requires environmental testing of new pesticides. Testing the effects of pesticides on representative wildlife species before the pesticide is registered is specifically required. It is meant as a safeguard to avoid the type of environmental catastrophe that occurred from organochlorine pesticides which led to the listing of this species.

The Federal Land Policy and Management Act (43 U.S.C. 1701–1784) requires that public lands be managed to protect the quality of scientific, ecological, and environmental qualities and to preserve and protect certain lands in their natural condition to provide food and habitat for fish and wildlife.

The Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) requires that Federal agencies sponsoring, funding, or permitting activities related to water resource development projects request review of these actions by us and the State natural resources management agency. These comments must be given equal consideration with other project purposes.

The National Environmental Policy Act (42 U.S.C. 4321–4370d) requires the Federal agencies to evaluate the potential effects of their proposed actions on the human environment and requires the preparation of an environmental impact statement whenever projects may result in significant impacts. Federal agencies must identify adverse environmental impacts of their proposed actions and develop alternatives that undergo the scrutiny of other public and private organizations as a part of their decision making process.

Recovery actions developed under the Endangered Species Act have provided the baseline of knowledge for management of bald eagles. Recommendations for management and protection of bald eagles will continue to be made in accordance with all applicable environmental laws.

Removal of the bald eagle from the Federal list of endangered and threatened species will not affect its status under State laws as a threatened or endangered species or suspend any other legal protections provided by State law. States may have more restrictive laws protecting wildlife, and these will not be affected by this Federal action. Also, some States may choose to remove the bald eagle from their list of threatened and endangered species.

Finally, the Endangered Species Act remains an important regulatory mechanism should an unexpected decline in bald eagle numbers occur. In the event that a significant decrease in the bald eagle population occurs, we could relist the species through normal or emergency procedures as a threatened or endangered species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Bald eagles are subject to direct and indirect mortality from a variety of human related activities. Intentional shooting, poisoning, and smuggling still occur, as well as deaths due to electrocution and strikes by wind turbines. Death and reproductive failure resulting from exposure to pesticides and secondary lead poisoning are well documented.

In recent years, the use of harmful chemicals known to impair reproduction in bald eagles has declined throughout the United States. A few areas still exist where concentrations of these chemicals impair reproductive success. However, these areas are geographically restricted and have not prevented recovery of the population nationally. There is no evidence to indicate that the use of harmful organochlorines in Latin America impact the bald eagle since the eagle's southern range is not known to extend south of northern Mexico.

The pesticide DDT came into widespread use after World War II. DDT ingested through the eagle's diet of fish, waterfowl, gulls, and other prey resulted in egg shell thinning. As a result, many eggs broke when incubated by the parent, while others suffered embryonic mortality and failed to hatch. By the early 1960s, recruitment had dropped and population numbers plummeted. In response to human health risks associated with DDT it was banned from

use in 1972. Reductions in DDT levels in freshwater fish over time have coincided with a steady increase in bald eagle numbers (Figure 2).

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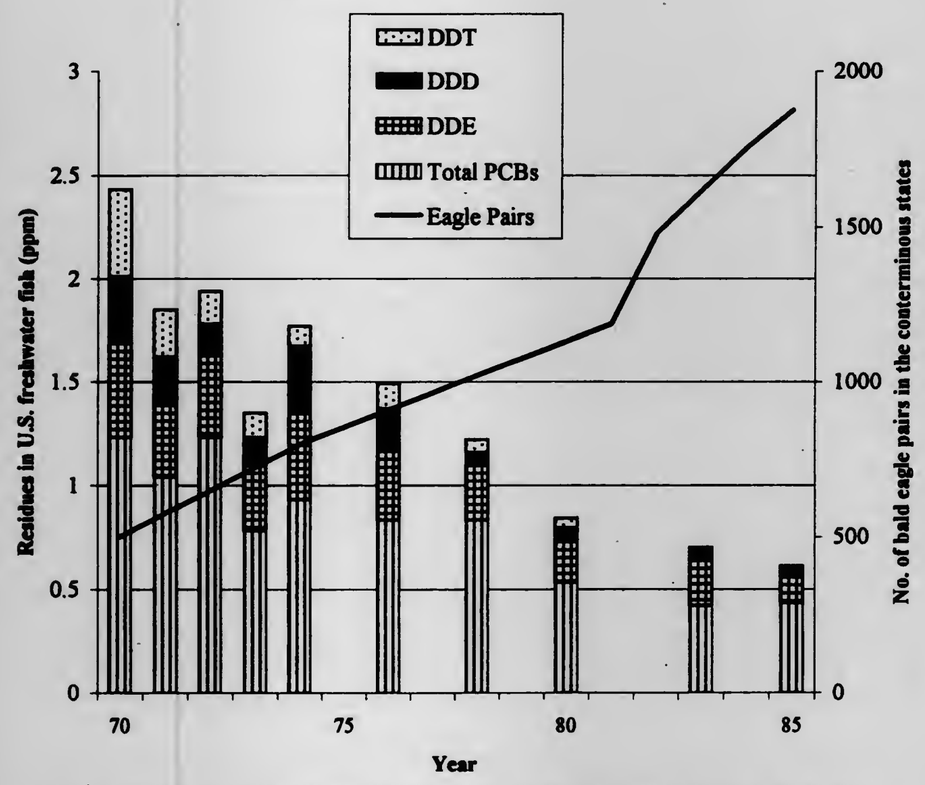


Figure 2. Mean concentrations of DDT and its primary metabolites, DDE and DDD, and of total polychlorinated biphenyls (PCBs) in fish, 1970-86. Also shown are the estimated number of bald eagle pairs in the conterminous United States during the same period. (From: Schmitt and Bunck 1995).

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By 1976, registrations of dieldrin, heptachlor, chlordane, and other toxic persistent pesticides, were canceled for all but the most restricted uses in the United States. Most uses of PCBs were restricted in 1977 and continued to be phased out during the 1980s (Schmitt and Bunck 1995).

During the 1970s, the Service implemented a monitoring program to examine the long-term trends in the presence of pesticides and other harmful chemicals in fish and wildlife (Schmitt and Bunck 1995). Fish, starlings and duck wings were collected nationwide between 1972 and 1985. The program tracked a downward trend of DDT concentrations in fish, starlings, and duck wings paralleled by declining DDE (a degradation product of DDT) concentrations in bald eagle eggs and increasing eagle eggshell thickness (Wiemeyer *et al.* 1993). Concentrations of other persistent insecticides such as heptachlor, dieldrin, endrin, and chlordane were also documented as declining nationally in fish, starlings and duck wings.

While there has been a national decline in concentrations of these harmful organochlorine compounds, some areas of the country still harbor high concentrations and reproduction of bald eagles in these areas is depressed. For instance, the Channel Islands area of southern coastal California continues to have severe problems related to DDE impacts to bald eagle productivity (Garcelon 1994, Sharpe and Garcelon 1999). The Palos Verdes Shelf is contaminated from historic releases from a nearby manufacturing plant. Bald eagles in the Channel Islands are present only through reintroduction efforts. Wiemeyer *et al.* (1993) found that addled bald eagle eggs collected from the Klamath Basin and Cascade Lakes region in Oregon ranked second (behind Maine) in DDE concentrations among the fifteen States sampled, indicating potential residual problems. Coastal areas which were sprayed for mosquitos and for cotton and orchard pests still have higher concentrations of DDE than other lands (Schmitt and Bunck 1995). DDE concentrations along the Great Lakes remain a concern for that area.

Residues of PCBs, which are persistent and toxic much like DDT, have also declined throughout the United States (Figure 2). They remain a problem in some areas, most notably the Great Lakes. Atmospheric transport and the internal cycling of contaminants already present in these lakes will likely keep PCB concentrations elevated (Schmitt and Bunck 1995). Bowerman (1993) has documented lower reproduction among eagles nesting along the coasts of the Great Lakes in Michigan compared to those nesting further inland. The severity of the problem along the Great Lakes coast apparently is being compensated for by eagles produced from the interior of the State seeking territories along the Great Lakes coast. Michigan's bald eagle population has increased, though at a slower rate than other states with major bald eagle populations.

High concentrations of mercury cause a variety of neurological problems in bald eagles. Flight and other motor skills can be significantly altered. High mercury concentrations may also reduce the hatching rate of eggs. Concentrations of mercury in fish declined significantly from 1969 through 1974 as a result of restriction on its uses, but concentrations have not changed appreciably since 1974. Recent findings have highlighted the importance of atmospheric transport in the maintenance of elevated concentrations and the accumulation of mercury in certain areas, such as Lake Champlain and the Florida Everglades (Schmitt and Bunck 1995).

The most important source of lead affecting bald eagles is waterfowl wounded with lead shot. The requirement in 1991 to use non-toxic shot for waterfowl hunting has greatly reduced the threat of lead poisoning to bald eagles.

New chemicals are entering the environment and though they may not be as persistent as their predecessors, many are toxic and their breakdown products are poorly understood. Maintaining a contaminant profile of bald eagles nationwide will be an integral part of our monitoring program. It will serve as a safeguard to reduce the possibility of population level effects from harmful contaminants.

The shooting of bald eagles was prohibited in 1918 with the Migratory Bird Treaty Act, and again in 1940 with the Bald Eagle Protection Act (golden eagles were added in 1962). Large-scale mortality from unregulated shooting, like that which occurred early in this century, has been significantly reduced. Hunter education courses routinely include bald eagle identification material to educate hunters about bald eagles and the protections that the species is afforded. Although some illegal shooting of eagles is likely to occur, this is no longer considered a significant threat to the survival of species.

Other causes of mortality to individual eagles continue to occur. Many electrical power lines have been configured to reduce electrocution to raptors, though electrocutions still occur. Problem power lines still need to be identified and modified to prevent electrocutions. Areas where road-killed animals are left near the highway can result in car collisions with bald eagles, particularly in winter when eagles feed on carrion more frequently. Efforts to reduce these mortalities are being undertaken locally.

Human disturbance of bald eagles is a continuing threat which may increase as numbers of bald eagles increase and human development continues to expand into the rural areas. Numerous studies have documented that most bald eagles will flush from the nest site if disturbed by human presence. If the disturbance occurs frequently, nesting can fail, and the adults may or may not nest again. Through the Endangered Species Act recovery process, management guidelines have been developed for bald eagle nesting and wintering sites in various portions of the species' range. Specific conservation measures and recommendations have also been developed through the section 7 consultation process to reduce disturbance at feeding sites. In areas throughout the country, land management practices have been successfully modified to reduce human disturbance to bald eagles. We will make these guidelines readily available to agencies and the public to promote their widespread use.

Human-related impacts will continue after the bald eagle is removed from protection under the Endangered Species Act, and may increase locally with the continued growth of the eagle population and subsequent conflicts with expanding human activities. However, through remaining statutes, knowledge gained and partnerships developed in the recovery process, many of these conflicts can be avoided or minimized.

Conclusion of Recovery Analysis and Status Review

Due to the wide distribution of the bald eagle, we established five recovery regions to outline recovery planning goals and needs on a regional basis leading to the development of five separate recovery plans for the species. The five plans, originally developed in the 1980s, described a variety of numerical target levels for breeding pairs and productivity for different regions to measure recovery success and to set criteria for reclassification and/or delisting. In 1994, after the implementation of the five recovery plans and steady increases in the population, the status of the bald eagle was reviewed. The analysis included an assessment of known movement and migratory patterns among and between recovery regions, and concluded that a rangewide status of "threatened" for a single population of bald eagles throughout the lower 48 States was appropriate. The bald eagle was then formally reclassified as a threatened species on that basis in 1995. Treating the bald eagle as a single listed population is consistent with our 1996 "Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act" (61 FR 4722).

This proposal is based on an internal status review of bald eagle recovery achievements conducted in 1998 and 1999, including an assessment of long-term nesting and productivity data (U.S. Fish and Wildlife Service, 1999, unpublished data), coordination with States and Tribes, an analysis of the five listing factors, and the definition of a "threatened" species under the Act. Decisions regarding the status of the overall bald eagle population as listed, take into consideration all of the regional recovery plan goals and established criteria, but ultimately address the status and the degree of remaining threats on a rangewide level.

Bald eagle recovery goals have generally been met or exceeded for the species on a rangewide basis. There is no sizeable area in the lower 48 states where we have not seen substantial increases in eagle numbers. Conversely, there is no sizeable area where eagle numbers continue to decline. We believe the surpassing of recovery targets over broad areas and on a regional basis, and the continued increase in eagle numbers since reclassification, effectively compensates for any local shortfall in meeting targets in a few recovery sub-areas or units.

Recovery planning for wide ranging species such as the eagle, involves

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assumptions about habitat suitability and carrying capacity over large areas. In practice, the response of a species to management protections and subtle differences in habitat quality should be expected to vary across a large landscape, in this case involving many States and physiographic regions. Although we acknowledge that not every sub-area recovery target has been met for each plan, we conclude that recovery as outlined for the species as a whole, has been achieved.

We have reviewed the best available scientific and commercial data and conclude the following:

(1) A widespread reduction in use of persistent pesticides and their adverse effects on the bald eagle is evident.

(2) Other threats are not currently of sufficient magnitude, individually or collectively, to place the species at risk of extinction.

(3) Sufficient knowledge has been gained through the recovery process to properly manage the bald eagle in the future.

(4) Widespread trends in the population indicate that the bald eagle has recovered and no longer in danger of extinction nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

For these reasons we propose to remove the bald eagle from the List of Endangered and Threatened Wildlife.

Effects of This Rule

This rule as proposed will remove the protection afforded the bald eagle under the Endangered Species Act. The provisions of the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act including prohibitions on the taking of bald eagles will remain in place. Bald eagles are prohibited for use in falconry under provisions of the Bald and Golden Eagle Protection Act (50 CFR 22.24). These and other laws affecting bald eagles are discussed in factor D above. This rule will not affect the bald eagle's status as a threatened or endangered species under State laws or suspend any other legal protections provided by State law. States may have more restrictive laws protecting wildlife, and these will not be affected by this Federal action. However, this rule may prompt some States to remove protection for the bald eagle under their endangered species laws.

Future Conservation Measures

Section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, monitor species for at least 5 years after removal from the list of endangered and threatened species. If evidence acquired during this monitoring period shows that the bald eagle should be relisted to prevent it from becoming threatened with extinction, we may use the normal or emergency listing authority, as appropriate, provided for by the Act. At the end of the 5-year monitoring period, we intend to coordinate with our partners regarding bald eagle monitoring and will review all available information to determine if relisting is appropriate.

Monitoring Plan

The bald eagle was listed under the Act in 1978. Since that time bald eagle nesting and productivity have been monitored throughout the lower 48 States. The monitoring has provided us with information regarding the status and health of the bald eagle population. At a minimum, monitoring included a census of the number of occupied breeding areas, defined as a pair defending a nesting territory in nesting season, and the number of young produced, which has been censused near the age of fledging. This effort has produced an excellent data set and forms the basis of this delisting proposal. If the historic population monitoring effort is continued following bald eagle delisting, we believe that monitoring for contaminants may be the only additional effort needed.

In preparation of this rule, we requested each State to indicate its intentions regarding post-delisting monitoring should this rule become final. More than 80 percent of all States in the lower 48 intend to continue the same monitoring effort for at least 5 years post-delisting. Many of our Federal partners have also indicated a willingness to continue bald eagle monitoring.

As a result of the strong support from our partners, we will work to ensure that nationwide monitoring of bald eagle nesting continue annually for the 5 years following delisting. The monitoring will be the same as it has been through the time the bald eagle has been listed following the guidelines set forth in the recovery plans. It includes the following:

(1) Number of Occupied Breeding Areas. We will work with partners to monitor numbers of occupied breeding areas in each state annually and collate the data. This will continue the extensive data set that has been developed over the past 20 years.

(2) Number of Young Produced. This requires a second visit to the nesting site near time of fledging. Number of young fledged is an important indicator of reproductive health and may act as an early warning for problems such as disease, contaminant effects, lack of adequate habitat, disturbance, etc.

(3) Contaminant Analysis and Archiving. We are proposing to examine contaminant effects on reproduction by collecting addled eggs from those areas having past problems and where present or suspected problems occur. The eggs would be taken every year for the first 5 years, and possibly a reduced number of collections would be made thereafter. Collections should be taken from the same immediate nest site area. We are also proposing to sample blood from a small subset of nesting pairs covering a broad geographic range and a broad range of human influences. All eggs and blood will be archived by freezing at −80°C. In the event contamination or poisoning is suspected, archived samples will be withdrawn and properly analyzed by Service-approved laboratories. In addition, a subset of the egg samples will be analyzed each year for organochlorines which are known to adversely impact bald eagle reproductive success. A subset of blood samples will be analyzed where contaminant exposure is suspected.

Five-Year Post-Delisting Assessment

(4) At the end of 5 years post-delisting, we will review the most current bald eagle data set for the lower 48 States, assess the results and make this information available to the public. We will also consult with States and other partners to determine the need for future monitoring efforts which may include consideration of national or regional monitoring protocols.

(5) At the end of 5 years post-delisting, we will also consider evidence of any factors significantly affecting the population which may indicate that a serious decline is occurring and that relisting should be considered. These factors include but are not limited to the following: a) contaminant-related concerns which result in mortality or effects on breeding activities; b) declining numbers of occupied breeding areas; c) declining reproduction; and d) significant changes in distribution.

Public Comments Solicited

We request comments on three aspects of this proposed rulemaking:

A. Proposed Delisting

We are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Send your comments to the Service's bald eagle recovery coordinator (see **ADDRESSES** section). We are particularly seeking comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) Additional information concerning the range, distribution, and population size of this species;

(3) Current or planned activities in the range of this species and their possible impacts on this species;

(4) Data on population trends;

(5) Information and comments pertaining to the proposed monitoring program contained in this proposal.

The final decision on this proposal for the bald eagle will take into consideration comments and additional information we receive during this comment period.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and sent to the Service's bald eagle recovery coordinator (see **ADDRESSES** section).

B. Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following.

(1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the proposal?

(2) Does the proposal contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposal (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could the Service do to make the proposal easier to understand?

(See **ADDRESSES** section)

C. Paperwork Reduction Act

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3501 *et seq.*) require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and record keeping activities (see 5 CFR 1320.8(d)). We intend to collect information from the public during the 5-year monitoring period following delisting of the bald eagle. A description of the information collection burden and the comments requested on this collection are included in the Paperwork Reduction Act section below.

Paperwork Reduction Act

Simultaneous with publication of this proposed delisting rule, we have submitted an application for information collection approval from OMB. We may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

Section 4(g) of the Endangered Species Act requires that all species that are delisted due to recovery be monitored for a minimum of 5 years. A general description of the information that will be collected during the monitoring period was provided above in the Monitoring section of this proposal.

We intend to collect information from States, researchers and land managers associated with a variety of organizations and agencies. Some of the information gathered will be part of already ongoing State, Federal, or private monitoring programs. We will also use information from other study areas where appropriate data are available.

The information collected will allow us to detect any failure of the species to sustain itself following delisting. If during this monitoring period we determine that the species is not sufficiently maintaining its recovered status, we could relist the species as endangered or threatened under the Endangered Species Act.

We estimate approximately 60 respondents to requests for information on the status of the bald eagle per year. Different respondents may provide one or more types of information. A total of 125 burden hours per year is estimated for these 60 respondents.

OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities (see 5 CFR 1320.8(d)). Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology. Send comments on information collection to OMB and the Service's Information Collection Clearance Officer (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining the Service's reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author. The primary author of this proposed rule is Jody Gustitus Millar, U.S. Fish and Wildlife Service, Rock Island Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201-4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entry for "Eagle, bald, *Haliaeetus leucocephalus*" under "BIRDS" from the List of Endangered and Threatened Wildlife.

§ 17.41 [Amended]

3. Section 17.41 is amended by removing and reserving paragraph (a).

Dated: June 21, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–16924 Filed 7–2–99; 8:45 am]
BILLING CODE 4310–55–P

federal register

Tuesday
July 6, 1999

Part IV

Environmental Protection Agency

40 CFR Parts 260, 261, 264, etc. Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261 264, 265, 268, 270 and 273

[FRL–6371–3]

RIN 2050–AD93

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule adds hazardous waste lamps to the federal list of universal wastes regulated under the Resource Conservation and Recovery Act (RCRA). Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. The Agency has concluded that regulating spent hazardous waste lamps as a universal waste under 40 CFR Part 273 will lead to better management of these lamps and will facilitate compliance with hazardous waste requirements. Today's final rule, which streamlines the Subtitle C management requirements for hazardous waste lamps, also supports energy conservation efforts.

EFFECTIVE DATE: This final rule is effective on January 6, 2000.

ADDRESSES: The official record for this rulemaking is identified as Docket F–99–FLEF–FFFFF and is in the EPA RCRA docket, located in the RCRA Information Center (RIC) at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from the regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund/EPCRA/UST Hotline at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C. metropolitan area, call (703) 412–9810. For technical information about this rule, contact Marilyn Goode of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M St. SW., Washington DC 20460, phone 703–308–8800, or E-mail goode.marilyn@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Availability

This rule is available on the Internet. Using a World Wide Web (WWW) browser, type http://www.epa.gov/epaoswer/osw/hazwaste.htm#id.

Official Record

The official record for this action is kept in a paper format. The official record is maintained at the address in the **ADDRESSES** section at the beginning of this document.

Outline of Today's Document

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D. Universal Waste Rule
E. Energy Efficient Lighting Programs
F. Notice of Data Availability
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B. Health Effects on Children
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B. Why the Universal Waste Approach is Preferable to a Conditional Exclusion for Spent Mercury-Containing Lamps
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I. Background

Under Subtitle C of the Resource Conservation and Recovery Act (RCRA) the Environmental Protection Agency (EPA) has promulgated regulations governing the nation's hazardous waste management program. These regulations are found at parts 260 through 279 of title 40 of the Code of Federal Regulations. These regulations first define which materials are considered solid wastes and then identify wastes that are hazardous and thus subject to RCRA hazardous waste requirements. Requirements are then set forth for hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDs). On May 11, 1995, EPA finalized streamlined requirements for collecting certain widely dispersed hazardous wastes under the Universal Waste Rule, codified in 40 CFR part 273. Today's rule extends the scope of that rule by adding hazardous waste lamps.

A. Current Regulations

Any person who generates a solid waste, as defined in 40 CFR 261.2, must determine whether or not the solid waste is a hazardous waste, either because the waste is listed as a hazardous waste in subpart D of 40 CFR part 261 or because the waste exhibits one or more of the characteristics of hazardous waste, as provided in subpart C of 40 CFR part 261. Data available to EPA, including studies conducted by the Agency, indicate that many fluorescent and high intensity discharge (HID) lamps exhibit the toxicity characteristic (TC) for mercury because of the use of that compound in producing these lamps. Some HID and other types of lamps may also exhibit the toxicity characteristic for lead, principally because of the use of lead solder. Before today's rulemaking (except as explained in the next paragraph), generators of spent lamps that exhibited hazardous waste characteristics were subject to the RCRA Subtitle C hazardous waste management requirements. Generators were subject to all applicable requirements of 40 CFR parts 260 through 268, including the on-site management, pre-transport, and manifesting requirements of part 262.

Spent hazardous waste lamps sent for reclamation are considered spent materials (rather than sludges or by-products) and are therefore solid wastes. A spent material is "any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing" (40 CFR 261.1(c)(1)). Generators of solid wastes (including spent lamps) are thus responsible for determining whether the wastes are hazardous (through testing or through their knowledge of the material).

However, even though waste lamps are considered solid and hazardous wastes if they exhibit hazardous waste characteristics, not all generators of these spent lamps have had to manage the lamps as hazardous waste. Under RCRA Subtitle C, there are different requirements for generators of hazardous waste depending on the amount of hazardous waste generated in a calendar month. Conditionally-exempt small quantity generators (CESQGs) (i.e., generators of less than 100 kilograms of hazardous waste in a calendar month) are not subject to RCRA Subtitle C hazardous waste management standards and may choose to send their wastes to a municipal solid waste landfill or other facility approved by a state for the management of industrial or municipal non-hazardous wastes (40 CFR 261.5). Generators of more than 100 kilograms and less than 1,000 kilograms in a calendar month are subject to the RCRA hazardous waste management standards, but are allowed to comply with certain reduced regulatory requirements (40 CFR 262.34). Generators of more than 1,000 kilograms of hazardous waste in a calendar month are required to comply fully with federal hazardous waste regulations. Household generators of waste lamps may be exempt from hazardous waste management requirements under 40 CFR 261.4(b)(1). Also, several states already regulate waste lamps as universal wastes under their authorized state hazardous waste programs.

B. Proposed Rule

On July 27, 1994 (59 FR 38288), EPA proposed two approaches for controlling the management of spent lamps, specifically mercury-containing lamps. Mercury-containing lamps include fluorescent, high pressure sodium, mercury vapor, and metal halide lamps. In that notice, the Agency requested comment on whether either approach was appropriate for protecting human health and the environment from potential releases of mercury. The two management options proposed by EPA were less stringent than the existing federal regulations. Both regulatory alternatives provide streamlined requirements for certain waste management activities in lieu of regulating spent mercury-bearing lamps under the full RCRA Subtitle C management standards.

The first regulatory alternative proposed by EPA was a conditional exclusion from hazardous waste regulation for waste mercury-containing lamps. Under the proposed conditional exclusion, waste mercury-containing lamps could be disposed in a municipal landfill provided the landfill was permitted by a state with an EPA-approved municipal solid waste landfill permitting program or managed at a mercury reclamation facility permitted, licensed, or registered by a state. The second regulatory alternative included in the proposed rule was to add waste mercury-containing lamps to the universal waste program, which consists of streamlined regulations designed to address the management of certain widely generated hazardous wastes. EPA also solicited comment on whether to add other types of spent hazardous waste lamps (e.g., lamps that are hazardous waste because they fail the TC for other constituents, such as lead) to the universal waste program.

C. The Toxicity Characteristic

Under section 3001 of the Resource Conservation and Recovery Act (RCRA), EPA is charged with defining which solid wastes are hazardous by identifying characteristics that indicate hazardous waste and by listing particular solid wastes as hazardous wastes. On May 19, 1980, the Agency promulgated the Extraction Procedure Toxicity Characteristic (EPTC) to determine the toxicity of waste. The EPTC regulated eight metals, four insecticides, and two herbicides. On March 29, 1990, in response to section 3001(g) of RCRA, which was added by the Hazardous and Solid Waste Amendments (HSWA) of 1984, the Agency replaced the Extraction Procedure with the Toxicity Characteristic Leaching Procedure (TCLP). Like the EPTC, the TCLP is used to determine the toxicity of waste. Although regulatory levels for the metals (including mercury) remained the same as originally promulgated in 1980, the promulgation of the Toxicity Characteristic resulted in additional wastes becoming regulated as hazardous due to the new leaching procedure (the TCLP) and to the addition of regulatory levels for more waste constituents.

In the 1994 proposal on spent lamps, the Agency did not propose, or request comment on, regulatory language that would modify or amend the current hazardous waste toxicity characteristic provisions published in 40 CFR 261.24. However, EPA noted that the Agency was conducting long-term studies on the fate and transport of TC metals in ground water, and that the TC regulatory levels for mercury may be changed when that work is completed. The proposed rule also requested submission of any municipal solid waste leachate or groundwater data to support this separate effort. Because of the extreme complexity of mercury chemistry in the environment and because scientific knowledge about the environmental fate and transport of mercury continues to evolve, this work is still ongoing.

The most recent data available to the Agency demonstrate greater mobility than previously thought. These data include updated groundwater modeling, as well as field data collected by the Agency in reviewing the hazardous characteristics generally, the TCLP test,

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and Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) Records of Decision (RODs) from municipal solid waste landfills. As explained in more detail in responses to comments and elsewhere in the record, these data expand upon and corroborate data cited in the proposal that mercury can migrate from municipal solid waste landfills in harmful concentrations and reach human drinking water sources located over a mile from the landfill in significant concentrations, i.e., concentrations exceeding allowable mercury in drinking water. Thus, actual site data from recent and on-going studies support the Agency's conclusion that mercury is present in significant concentrations in both leachate and groundwater at non-hazardous waste landfill sites, including municipal solid waste landfills, and has migrated off-site to drinking water sources (in some instances in concentrations exceeding Federal drinking water standards). This conclusion is sufficient to warrant continued regulation of spent lamps containing mercury as hazardous waste.

Even though EPA did not re-open issues related to the appropriateness of the TCLP for evaluating the toxicity of mercury-bearing waste in this proposal, the Agency is clarifying that the recent opinion of the D.C. Circuit in *Columbia Falls Aluminum Company* v. *EPA*, 139 F.3d 914 (D.C. Cir. 1998) ("*Columbia Falls*"), does not affect the use of the TCLP to determine whether spent waste lamps exhibit the toxicity characteristic and, therefore, should be regulated as hazardous wastes under RCRA Subtitle C.

Columbia Falls presented unique and limited circumstances which do not apply to the question of using the TCLP for determining whether spent lamps are hazardous wastes. In the context of *Columbia Falls*, EPA had established treatment standards for spent aluminum potliners (hazardous waste code K088), and the treatment standards used the TCLP to measure the performance of the treatment technology in mitigating the hazard presented by several hazardous constituents found in the waste, including arsenic and fluoride. In the case of *Columbia Falls*, all of the commercial treatment capacity for the waste (K088) was provided by a single facility, and all of the treatment residue from this single process was disposed at a single location in a dedicated monofill.[1] Notwithstanding that the treatment process was able to achieve the treatment standards for arsenic and fluoride as measured by the TCLP (i.e., the treatment residue, when tested with the TCLP, never exceeded the regulatory levels), actual *leachate* from the single disposal site contained significantly higher levels of these two constituents. EPA had not offered any substantive explanation for continued use of the TCLP to measure performance of the treatment process for these constituents after the disparities between the predicted leaching using the TCLP and the actual performance in the field became known. Under these circumstances, the court held that it was arbitrary and capricious to continue to use the TCLP to establish treatment standards for spent potliner wastes because it bore no rational relationship to what was actually occurring.

None of these circumstances applies to the question of using the TCLP to determine the toxicity of spent lamps and, therefore, whether such lamps are hazardous wastes in the first place. With respect to mercury, the TCLP has not been shown in this case to under predict mercury leachate concentrations for 100 percent of the wastes to which the test applies.

First, there is no question that it is reasonable to model a disposal environment where lamps are disposed with municipal solid waste, since most lamps are disposed in municipal solid waste landfills, or would be if they were not hazardous wastes. The grinding feature of the TCLP protocol is likewise reasonable, since there is no dispute that lamps will be crushed after they are landfilled. The dilution/attenuation feature of the TCLP is likewise a reasonable approximation of fate and transport of mercury which escapes from the lamp matrix. There is no chemical reason why such mercury would be immobile. The mercury itself is primarily the divalent form which can form mobile salts or soluble mercury acetate upon exposure to acidic municipal solid waste (a phenomenon modeled by the pH and acid of the simulated leachate in the TCLP test (see Memorandum To the Docket from Gregory Helms entitled "Solubility of Mercury Salts," dated June 18, 1999).

Second, as explained in more detail in responses to comments and other materials in the record, mercury has proven mobile in municipal solid waste landfill environments, migrating in leachate to contaminate ambient groundwater at concentrations exceeding the federal maximum contaminant levels (MCLs) used for drinking water (see EPA's "Summary of Mercury Damage Incidents from CERCLA Records of Decisions (RODs)," June 9, 1999, and chart entitled "Maximum Mercury Concentration Observed in Leachate from Landfill Cells," June 11, 1999.) Mercury contamination from municipal solid waste leachate exceeding MCLs has actually been found in groundwater drinking wells over a mile from the landfill (well past the 500 feet used in the TC for fate and transport assumptions). These concentrations are within an order of magnitude, or within the same order of magnitude, as predicted in the TC. *Id.* Thus, the reasonableness of using the TC to evaluate the hazardousness of these wastes is firmly supported by empirical data.

[1] 62 FR 1993 (Jan. 14, 1997).

D. Universal Waste Rule

On February 11, 1993, EPA proposed streamlined hazardous waste management requirements for collecting and managing certain widely generated hazardous wastes (58 FR 8102). The Agency finalized the Universal Waste Rule on May 11, 1995 (60 FR 25492). The final rule promulgated streamlined hazardous waste management regulations for hazardous waste batteries, certain hazardous waste pesticides, and mercury-containing thermostats. Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. These standards serve to encourage environmentally sound collection and proper management of these hazardous wastes.

The universal waste regulations apply to handlers and transporters of universal wastes. Handlers include universal waste generators and collection facilities. The regulations distinguish between "large quantity handlers of universal waste" (those who handle more than 5,000 kilograms of total universal waste at one time) and "small quantity handlers of universal waste" (those who handle 5,000 kilograms or less of universal waste at one time). The 5,000 kilogram accumulation criterion applies to the quantity of all universal wastes accumulated.

Universal waste handlers who generate or manage items designated as universal waste are exempt from certain requirements routinely applied to hazardous waste management and instead are subject to the management standards under part 273. These include streamlined standards for storing universal waste, labeling and marking waste or containers, preparing and sending shipments of universal wastes off-site, employee training, and response to releases. Large quantity handlers of universal waste (LQHUW) also must provide notification of universal waste management to the appropriate EPA Region (or state director in authorized states), obtain an EPA identification number, and retain for three years records of off-site shipments of universal waste. Small quantity handlers of universal waste (SQHUW) are not required to manifest wastes, notify the EPA region, or keep records of universal waste shipments.

Transporters of universal waste also are subject to less stringent requirements than the full Subtitle C hazardous waste transportation regulations. Universal waste transporters must comply with all applicable Department of Transportation (DOT) regulations and ensure transportation of universal waste to a universal waste handler or a destination facility. Transporters may store universal waste at a transfer facility for ten days or less and must contain any releases of universal waste. Transporters of universal waste do not have to comply with RCRA hazardous waste manifest requirements.

Destination facilities are those facilities that treat, dispose, or recycle universal wastes. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities and must receive a RCRA permit for such activities. Hazardous waste recycling facilities that do not store hazardous wastes prior to recycling may be exempt from permitting under federal regulations (40 CFR 261.6(c)(2)).

In the universal waste proposal, the Agency did not propose to include spent fluorescent lamps in the universal waste regulations because further investigation into the issue was necessary. However, EPA requested comment on several questions related to fluorescent lamps (58 FR 8110). First, EPA requested comment on the risks posed by these lamps in landfills or municipal waste combustors. Second, EPA requested information on the risks of current or developing mercury recovery technologies. The Agency received a number of comments in response to these questions. Some commenters supported including waste lamps in the Universal Waste Rule, and other commenters suggested other regulatory alternatives for managing these lamps. The comments addressing the management of waste mercury-containing lamps that were received in response to the universal waste proposed rule are addressed in the background documents for today's rulemaking.

E. Energy Efficient Lighting Programs

Prior to publication of the proposed rule, the Agency initiated a review of the potential risks represented by waste mercury-containing lamps and began to analyze the contribution of such lamps to total mercury emissions to the environment. The Agency undertook this evaluation in part because of the importance of promoting energy efficiency. The use of energy-efficient lighting can reduce mercury emissions from coal-burning power plants as well as reduce emissions of carbon dioxide and sulfur oxide. Energy-efficient lighting in all U.S. commercial floor space currently illuminated by less efficient fluorescent lamps would save an estimated 35 to 40 billion kilowatt hours of electricity annually. This saving would result in reduced emissions of mercury, carbon dioxide, sulfur dioxide and nitrogen dioxide, some of which are projected to cause greenhouse effects.

Replacing energy inefficient lighting systems with energy efficient lighting systems requires the use and eventual disposal of spent mercury-containing lamps. It was suggested that requiring the management of spent lamps in accordance with the full Subtitle C hazardous waste management requirements could discourage participation in energy efficient lighting programs, since facilities might avoid or postpone replacement of lamps because of potential disposal costs. If this were true, streamlined management standards for spent mercury-containing lamps could decrease the costs associated with managing the lamps and promote greater participation in energy-efficient lighting programs. However, as discussed below, the Agency has found that the cost of these programs appears to be largely independent of the regulatory options chosen by EPA.

F. Notice of Data Availability

On July 11, 1997 (62 FR 37183), the Agency made available to the public additional data on mercury emissions from managing spent lamps. The information provided as part of the Notice of Data Availability (NODA) consisted of an electronic model and a report that assessed mercury emissions from the management of waste mercury-containing lamps under different regulatory approaches. The report, titled "Mercury Emissions From the Disposal of Fluorescent Lamps," discusses the methodology, data and assumptions used in developing the *Mercury Emissions Model*. The report describes inputs used in the model for estimating potential mercury emissions during waste management and disposal activities (such as lamp properties, lamp disposal rates, and lamp mercury emissions rates from specific waste management practices). It also discusses inputs for estimating energy savings from using high-efficiency T8 lamps, and the effects on mercury emissions from electric utilities. The report estimates mercury emissions under baseline conditions (i.e., management of mercury-containing lamps in compliance with full hazardous waste requirements) and under other regulatory options, including the conditional exclusion and universal waste approaches proposed. These estimates include annual and cumulative emissions from disposal of mercury-containing lamps, and net mercury emissions.

The Agency received thirty-five public comments on this NODA, about twenty of which presented substantive information on the model. The Agency has reviewed these comments in great detail and revised the model and report, as appropriate. The Agency also has prepared a comprehensive response to comment document addressing each substantive issue. The revised model, report, and response to comment document are available in the RCRA docket established for this action. A brief summary of the major public comments and the Agency's responses is presented below.

Many commenters raised concerns about the model's Subtitle D landfill emissions rates. Several commenters believed the Agency should not have rounded the high emissions rate of 0.8 percent to one percent. EPA believes this is a valid concern and has revised the model to include the original 0.8 percent emissions rate.

Some commenters raised concerns that EPA had misinterpreted data from the State of Florida on its recycling emissions estimates. EPA has carefully reviewed available recycling emissions data and revised the model's central and low emissions factors for divalent mercury emissions. EPA revised the central estimate from three percent to 1.09 percent and the low estimate from one percent to 0.07 percent.

Various commenters believed that the model should clearly distinguish between CESQG and non-CESQG lamp mercury emissions. These commenters pointed out that CESQG lamp emissions are outside the scope of the rulemaking effort. The Agency agrees with this concern and has revised the model to segregate non-CESQG from CESQG lamp emissions.

Some commenters believed that higher spent lamp management costs would discourage certain building owners from conducting lighting upgrades. These commenters were concerned with the model assumption

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that upgrades are independent of policy options. In response to the comments, EPA revisited its assumptions and performed additional calculations on the impact of disposal costs on a lighting upgrade's internal rate of return (IRR). The Agency has found that, holding all other lamp operating costs constant, the cost of lamp disposal has minimal impacts on an upgrading project's IRR. At a $0.50/lamp transportation and recycling cost, the IRR for a typical project over ten years is 51 percent. At a $1.00/lamp transportation and recycling cost, the IRR was 50 percent—only a slight decrease in IRR despite a 100 percent increase in waste management costs. For these reasons, EPA continues to believe that the decision to use T8 lamps is independent of the Agency's policy options.

A number of commenters indicated that the model underestimated lamp recycling rates under the baseline and overestimated the rate of Subtitle C landfilling. Commenters suggested that the national lamp recycling rate is approximately ten percent and that Subtitle C landfilling of lamps is near three percent. EPA believes these estimates may be reasonable, and has revised the baseline's recycling rate to ten percent and reduced the Subtitle C disposal rate to about two percent.

The Agency also conducted an internal review of the model and made additional revisions. First, the Agency revised the model assumptions regarding the effectiveness of pollution control equipment at municipal waste combustor (MWC) emissions from 80 to 95 percent. This revision has the effect of decreasing the MWC high emission factor for divalent mercury from 30 percent to 16 percent. Second, EPA revised the disposal trees under the baseline and options to account for the fact that some CESQGs voluntarily recycle their spent lamps.

II. Relationship to Other Agency Activities

A. Report to Congress on Mercury

As required by the Clean Air Act (CAA) Amendments of 1990, on December 19, 1997, the Agency issued the Mercury Study Report to Congress. The study estimates the quantity of mercury emissions to the air from a number of human activities, estimates the health and environmental impacts associated with these mercury emissions, and describes the technologies available to control mercury emissions from these sources.

The report estimates that annual anthropogenic U.S. emissions of mercury in 1994–1995 were 158 tons. Approximately 87 percent of these mercury emissions came from combustion sources. Approximately 1 percent of mercury emissions are estimated to come from spent mercury-containing lamps.

The report found that anthropogenic emissions of mercury to the air rival or exceed natural inputs. Recent estimates place the annual amounts of mercury released into the air by human activities at between 50 and 75 percent of the total yearly input to the atmosphere from all sources. Some of the air emissions are deposited on land and water within several hundred miles of the source. The remainder enters global circulation, from which it may be deposited on land or water at great distances from the source. Mercury deposited on land or water may be re-emitted and reenter the global circulation to be redeposited elsewhere. When mercury enters water bodies, either through direct deposition or through run-off of mercury deposited on land, a series of transformations occur resulting in conversion of some of the mercury into a methylated form which is more toxic and more conducive to bioaccumulation in fish.

While the report does not quantify the risk from mercury exposure, it concludes that there is cause to seek further reductions in mercury releases and exposures to mercury. The report recommends that cost-effective opportunities to deal with mercury during the product life cycle (rather than just at the point of disposal), should be pursued. The Agency believes that today's rule furthers that goal by including provisions related to management prior to disposal.

In addition, on February 19, 1998, EPA and the Department of Agriculture issued the Clean Water Action Plan, which describes important actions EPA and other federal agencies will take to reduce exposure to toxic pollutants (especially mercury) in the nation's water and fish. Mercury is identified as a pollutant of concern in 60 percent of state-issued fish consumption advisories. The Clean Water Action Plan outlines several important Agency actions aimed at reducing the exposure of people and wildlife to mercury-contaminated fish.

B. Health Effects on Children

In April 1997 President Clinton signed Executive Order 13045 (62 FR 19885), "Protection of Children From Environmental Health Risks and Safety Risks," requiring each federal agency to assess risks that disproportionately affect children, including risks from mercury. Mercury is a toxic, bioaccumulative pollutant. The primary health effects are on the neurological development of children exposed through fish consumption and fetuses exposed through their mothers' consumption of fish. Given equivalent exposure, children absorb more mercury as a percentage of their body weight than do adults. Children are, therefore, more susceptible to the negative health effects of mercury emissions. The results of EPA's analyses (as presented in Modification of the Hazardous Waste Program: Hazardous Waste Lamps—Economic Assessment) indicate that it is likely that emissions from regulated mercury-containing lamps will decrease somewhat as a result of today's final rule. Therefore, it is likely that children may experience a marginal benefit from this action due to these decreased emissions.

III. Rationale for Including Hazardous Waste Lamps in the Scope of the Universal Waste Rule

A. Why Management Controls Are Necessary for Spent Mercury-Containing Lamps

In today's rule, the Agency's primary objective is to promulgate regulations for management of hazardous waste lamps that both protect human health and the environment and are efficient and effective in doing so. EPA believes that management controls for spent mercury-containing lamps are necessary to minimize releases of mercury to the environment during accumulation and transport, to ensure safe handling of such lamps, and to keep spent mercury-containing lamps out of municipal waste management facilities (both landfills and solid waste incinerators). Studies reveal that significant threats of mercury releases from managing spent lamps result from incineration and from breakage during storage and transport. In addition, data available to the Agency show that mercury can be found in municipal landfill leachate, and EPA remains concerned that landfill releases may pose threats over the long term. For these reasons, the Agency has concluded that some management controls are essential for these wastes.

Mercury is easily volatilized; it can be dispersed widely through the air and transported thousands of miles. It undergoes complex chemical and physical changes as it cycles among air, land, and water. Humans, plants, and animals may be exposed to mercury and accumulate it during this cycle, potentially resulting in ecological and human health impacts. The primary health effects from mercury are on the neurological development of children exposed through fish consumption and on fetuses exposed through their mother's consumption of fish.

Because of its low boiling point, elemental mercury is largely vaporized during municipal waste combustion and, without the use of control technologies specific to mercury, passes out of the municipal waste combustor into the atmosphere with the flue gas. On December 19, 1995, EPA's Office of Air Quality Planning and Standards (OAQPS) promulgated standards for new municipal waste combustors of a certain capacity (60 FR 65387). However, combustors at smaller plants would not be affected by the standards, nor do the standards address the problem of mercury emissions from lamp breakage.

When spent mercury-containing lamps break, the elemental mercury inside becomes available for evaporation, adsorption, or reaction. For example, a study performed by Research Triangle Institute (RTI) estimated emissions from lamps after breakage to be about 6.8 percent of the total mercury content of the broken lamp. The National Electrical Manufacturers Association (NEMA) estimated emissions from lamp breakage to be in the range of 1 percent of the mercury content of the broken lamp. The Electric Power Research Institute's (EPRI) measurements of mercury emissions from uncovered broken lamps totaled 2.8 percent of the total mercury content of the lamp.

Mercury may also be released to the environment as a result of lamp crushing operations. Available studies show that emission percentages from drum top crushing range from 10 to 100 percent of the total elemental mercury in the lamps, depending on the operating conditions and supplemental controls used.

To address these concerns, today's rule moves spent hazardous waste lamps into the universal waste regulatory program. Comments from stakeholders and from other regulatory agencies (especially state solid and hazardous waste authorities) support EPA's conclusion that this approach offers the most effective way to ensure environmentally protective management of these wastes.

B. Why the Universal Waste Approach is Preferable to a Conditional Exclusion for Spent Mercury-Containing Lamps

Although EPA has determined that spent mercury-containing lamps can safely be subject to management requirements that are less stringent than those of full Subtitle C (see discussion in Part III.C below), the Agency does not believe that its proposed conditional exclusion approach would sufficiently protect human health and the environment. It is clear to the Agency that mercury poses an environmental threat and that man-made sources of mercury emissions should be reduced or, where inevitable, managed properly. EPA therefore gave considerable weight to actions that would minimize mercury emissions to the environment while encouraging the collection and environmentally-sound management of spent lamps. The Agency is convinced that the universal waste approach is the best way to further these goals. EPA agrees with those commenters to the proposed rule who stated that the conditional exclusion approach would reduce the quantities of spent mercury-containing lamps that would be recycled, increase disposal of the lamps in municipal landfills, and increase the amount of mercury released to the environment due to increased breakage of lamps during storage, transport, and landfilling. The Agency's analysis predicts that uncontrolled mercury emissions under the conditional exclusion approach are likely to be somewhat greater than under the universal waste approach promulgated in today's rule (see the Economic Assessment discussed in section VII.B of today's preamble).

A principal reason for this conclusion is that some substantive and relatively detailed controls for managing spent mercury-containing lamps are necessary for protection of human health and the environment, although these controls can be structured in a much more simplified and streamlined way than the full Subtitle C management system. The Agency believes that such controls would be difficult to implement and to enforce using a conditional exclusion approach. Such an approach could be appropriate if the regulated universe was less numerous and varied, or more sophisticated about Subtitle C requirements. However, since handlers of spent mercury-containing lamps are widely varied, diffuse, and often not knowledgeable about RCRA regulations, it would be very difficult to monitor compliance and enforce controls such as those included in today's rule if these handlers were completely outside of the Subtitle C universe and the controls were implemented only as conditions for maintaining the exclusion. The Agency believes that the packaging standards and prohibition on treatment included in today's rule are important for preventing potential mercury emissions during storage and transport. Controls of this type can best be implemented through a universal waste-type approach where handlers are operating within a simple, streamlined management system with some limited oversight rather than completely outside of any regulatory structure.

A further reason for selecting the universal waste approach was the Agency's desire to promote further reductions in the quantity of mercury in spent lamps, which will lead to a reduction in total emissions of mercury to the environment. The conditional exclusion approach would have provided less incentive to reduce or eliminate the presence of mercury in lamps, since under that approach spent mercury-containing lamps would not have been classified as hazardous waste.

With respect to mercury, the most significant source reduction achievement has been the reduction and elimination of mercury from alkaline batteries. Although these batteries are still a significant contributor of mercury to municipal solid waste, this contribution is dropping dramatically. Spent mercury-containing lamps are one of the next highest sources of mercury in the municipal solid waste stream, possibly accounting for as much as 3.8 percent of all mercury now going to municipal landfills. Opportunities exist to further reduce mercury content in both standard 4-foot fluorescent lamps and the increasingly popular compact fluorescent lamps.

Commenters on the proposed rule stated that advances in lamp technology have resulted in a 14 percent reduction in lamp mercury content from 1985 to 1990. These commenters also pointed out that projections show an additional 35 percent decline in future mercury levels. Some manufacturers have made considerable progress in reducing levels of mercury in fluorescent lamps. Many commenters urged EPA to continue to encourage industry in these efforts.

The Agency believes that today's final rule will encourage lamp manufacturers to continue reducing or eliminating the amount of mercury used to manufacture lamps. Because mercury-bearing lamps that fail the TCLP are still considered to be hazardous wastes under the universal waste rule, lamp producers will have an incentive to design lamps with a mercury content below the level that will cause the lamps to fail the TCLP. If lamp manufacturers aggressively pursue source reduction, the contribution of mercury to the environment from lamps will continue to decrease over time.

EPA also notes that under the universal waste rule, handlers and destination facilities must comply with the substantive requirements of the

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Land Disposal Restrictions (LDR) provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). These include (1) a prohibition on accumulating prohibited wastes directly on the land; (2) a requirement to treat waste to meet treatment standards before disposal; (3) a prohibition on dilution; and (4) a prohibition on accumulation except for purposes of accumulating quantities sufficient for proper recovery, treatment, or disposal. Since mercury can be found in municipal landfill leachate and releases remain a concern (especially for the long term), the Agency believes that compliance with the substantive requirements of the LDR program is still necessary to minimize risks from managing spent mercury-containing lamps (studies on the movement of mercury in a variety of land disposal settings are ongoing). Again, the Agency believes that controls of this type are best implemented through a simple, streamlined regulatory approach such as the universal waste rule rather than as a conditional exclusion.

A further reason for today's rule finalizing the universal waste approach is that this approach will provide more consistency between federal and state regulations governing the management of spent hazardous waste lamps. Currently, several states have added mercury-containing lamps to their universal waste programs and others have proposed to do so in the near future. By placing hazardous waste lamps within the federal universal waste rule, EPA hopes to encourage additional states to regulate spent lamps as universal waste and therefore promote greater consistency in regulatory approaches across state borders. This will improve waste management efficiency and reduce compliance costs for waste handlers engaged in interstate commerce.

C. Why Relief From Full Subtitle C Requirements is Warranted Both for Mercury-Containing Hazardous Waste Lamps and Other Hazardous Waste Lamps

Although some controls for management of spent lamps are necessary for protection of human health and the environment, for several reasons the Agency believes that these controls can be successfully applied in a more simple, streamlined system than the full Subtitle C program, and that such an approach is appropriate both for mercury-containing hazardous waste lamps and any other spent lamps that are hazardous.

The Agency believes that relief from full Subtitle C requirements for handlers of hazardous waste lamps is justified (whether the lamps are hazardous because they exhibit the toxicity characteristic for mercury or another constituent, such as lead). First, the principal reason for this belief is that the full Subtitle C regulatory structure is not appropriate for the universe of people handling these materials, and adequate protections can be applied in the more appropriate structure of the universal waste rule. Many handlers of hazardous waste lamps are office buildings, retail establishments, and other building managers, most of whom are not familiar with or equipped to comply with the full Subtitle C regulatory structure. This structure was initially developed with industrial hazardous wastes in mind, and is most appropriate for these materials and for the types of facilities that generate these wastes. The streamlined universal waste structure is more appropriate for the numerous, widely varied universe of spent lamp handlers who are not familiar with or easily able to comply with the full hazardous waste regulatory structure.

In addition, the final universal waste rule included a number of factors to be used to evaluate whether candidate wastes are appropriate to be added to the universal waste regulations. The factors were designed to determine whether regulating a particular hazardous waste under the streamlined standards of the universal waste program would improve overall management of the waste. The factors, which are codified at 40 CFR 273.81, include: (a) The waste must be a hazardous waste generated by a wide variety of generators; (b) the waste, or category of waste, should not be exclusive to a particular industry or group of industries, but generated by a wide variety of establishments; (c) the waste should be generated by a large number of generators and generated frequently, but in relatively small quantities; (d) systems to be used for collecting the waste should ensure close stewardship of the waste; (e) the risks posed by the waste during accumulation and transport should be relatively low compared to the risks posed by other hazardous waste, and specific management standards would be protective of human health and the environment during accumulation and transport; (f) regulation of the waste, or category of wastes, under the universal waste rule should result in the diversion of the waste from management with non-hazardous waste streams (i.e., the municipal solid waste stream); (g) regulation of the waste as a universal waste should improve implementation of and compliance with the hazardous waste regulatory program and/or (h) other factors that may be appropriate.

As the Agency noted in the preamble to the final universal waste rule (60 FR 25513), not every factor must be met for a waste to be appropriately regulated under the universal waste system. However, consideration of all the factors should result in a conclusion that regulating a particular hazardous waste under 40 CFR part 273 will improve waste management. After evaluating spent hazardous waste lamps in the context of the regulatory criteria for adding wastes to the universal waste rule, EPA has determined that on balance, these wastes are highly appropriate for inclusion in the regulatory scheme of 40 CFR part 273. The results of the Agency's evaluation of how these wastes meet the universal waste factors are described below.

A. Spent lamps are often hazardous because they exhibit the characteristic of toxicity by exceeding the regulatory level for mercury or another constituent (most frequently lead).

B. Spent hazardous waste lamps are generated by a wide variety of generators, including retail establishments, manufacturing establishments and office buildings.

C. Spent hazardous waste lamps are generated frequently by a large number of generators; in fact, a large percentage of all office buildings, retail establishments, and manufacturing facilities generate such lamps. Spent lamps are often generated in relatively small quantities.

D. The packaging standards included in today's rule and increased recycling will encourage close stewardship of the waste.

E. The Agency is convinced that the requirements of the universal waste program can be highly effective in mitigating risks posed by breakage of hazardous waste lamps during storage and transport. The universal waste requirements for proper packaging and handling of the lamps to avoid breakage during accumulation and transport should prevent releases of mercury or lead to the environment before recycling or other management, which will make the risks posed during accumulation and transport extremely low.

F. The Agency believes that managing hazardous waste lamps under the universal waste program will result in diversion of at least some of this waste from management in the municipal waste stream. EPA believes that the streamlined requirements of today's rule will encourage all handlers of spent lamps (whether hazardous or not) to manage them under the requirements of part 273. Under the current RCRA regulatory scheme, the management of a waste differs based on the source of the waste. Wastes (including spent lamps) generated by consumers in their homes are not regulated under Subtitle C when discarded, because they are excluded from the definition of hazardous waste under 40 CFR 261.4(b)(1). Similarly, many spent lamps are largely exempt from the hazardous waste regulations because they are generated by conditionally exempt small quantity generators (CESQGs). Spent lamps generated by households and CESQGs are not distinguishable from those generated by fully regulated generators. Because the waste looks the same, spent lamps that would be more protectively managed in the hazardous waste system are entering municipal solid waste landfills or combustors instead. The simplified regulations will provide an incentive for individuals and organizations to collect the unregulated portions of the waste stream and manage them using the same systems developed for the regulated portion, thereby removing spent mercury or lead-containing lamps from the municipal waste stream and minimizing the amount of hazardous constituents going to municipal landfills and combustors.

G. Finally, managing hazardous waste lamps under the universal waste program will improve implementation of and compliance with the hazardous waste regulatory program. Generation of hazardous waste lamps by facilities which otherwise generate no hazardous waste is widespread. Currently, if a mercury or lead-containing lamp is a hazardous waste, it must be managed under Subtitle C regulation. If more than 100 kilograms of hazardous waste (including spent lamps) are generated in a calendar month, generators are subject to full Subtitle C requirements for storage, packaging, manifesting, and record keeping. Many facilities are therefore required to undergo significant technical and paperwork burdens largely or solely because they replace or upgrade used hazardous waste lamps. These generators may not be in compliance with RCRA regulations because they are unfamiliar with the requirements. EPA believes that the streamlined requirements of the universal waste program will give such "episodic" generators a more accessible starting point for good environmental management. If regulatory requirements are simpler, the compliance rate will improve, more hazardous waste lamps will be handled properly, and more spent lamps will be sent for recycling (or to other Subtitle C facilities) instead of going to solid waste landfills or to municipal waste combustors. Improved management will therefore lead to a reduction in the total amount of hazardous waste emissions to the environment.

In summary, considering these factors, the Agency finds that the universal waste approach is highly appropriate for this waste stream, and that it is in fact exactly this type of waste that the universal waste system was designed for. The Agency believes that the universal waste approach promulgated in today's rule will improve management of hazardous waste lamps, will improve implementation of the hazardous waste regulatory program, and will adequately protect human health and the environment from the risks posed by management of this waste stream.

IV. Summary of Final Rule

A. Waste Covered by Today's Rule

Today's rule adds hazardous waste lamps (waste lamps that are hazardous due to exhibiting one or more of the characteristics of hazardous waste) to the federal universal waste rule. In the proposed mercury-containing lamps rule, the Agency provided definitions for "electric lamp" and "mercury-containing lamp." In response to comments received on the proposed definitions, and to reduce potential confusion regarding the scope of the final rule, in today's final rule the Agency is finalizing a single definition of "lamp" or "universal waste lamp." In addition, in the applicability section of today's rule, the Agency is clarifying that all hazardous waste lamps fall within the scope of the universal waste rule.

B. Summary of Management Requirements for Universal Waste Lamps

Today's final rule for hazardous waste lamps ensures consistency with the universal waste rule. Today's rule adds subsections to §§ 273.13 and 273.33 of the existing universal waste rule, specifically addressing requirements for hazardous waste lamps. New § 273.13(d) includes lamp handling requirements for small quantity handlers of universal waste, and new § 273.33(d) provides lamp handling requirements for large quantity handlers of universal waste lamps. Management standards for transporters of universal waste lamps are the same as those applicable to transporters of other types of universal waste. Destination facilities (e.g., recycling facilities and treatment and disposal facilities) remain subject to all applicable hazardous waste permitting and management requirements under RCRA.

The universal waste management requirements for different participants handling hazardous waste lamps are summarized below. A discussion of the public comments that the Agency received in response to the management requirements for spent lamps contained in the proposed rule is found in Section V of this preamble, along with EPA's responses to comments received on the proposed requirements.

1. Categories of Participants in the Universal Waste System

There are four categories of participants in the universal waste management system: small quantity handlers of universal waste (SQHUW), large quantity handlers of universal waste (LQHUW), transporters, and destination facilities. When the proposed spent lamps rule was published, the Agency chose to categorize the lamps in a manner that was consistent with the proposed universal waste rule. Both proposed rules classified regulated persons managing universal waste into one of four types: generators, consolidation points, transporters, or destination facilities. When the final universal waste rule was published, the Agency modified the four categories. The transporter and destination facility categories were retained essentially as proposed. However, the generator and consolidation point categories were merged to create two new categories of participants: small quantity handlers of universal waste (SQHUWs) and large quantity handlers of universal waste (LQHUWs). In today's final rule, the Agency is categorizing handlers of hazardous waste lamps in a manner consistent with the existing universal waste regulations.

2. Small and Large Quantity Handlers

The term "universal waste handler" is defined under existing 40 CFR 273.6 as a generator of universal waste or the owner or operator of a facility (including all contiguous property) that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. The definition of "universal waste handler" does not include: (1) A person who treats (except under the provision of §§ 273.13(a) or (c), or §§ 273.33(a) or (c)), disposes of, or recycles universal waste; or (2) a

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person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility. Persons who treat, recycle, or dispose of universal waste remain subject to all applicable hazardous waste regulations as discussed below in Section IV.F. Transporters of universal waste are regulated as discussed below in Section IV.E.

There are two types of entities that are considered handlers of universal waste lamps. The first is a person who generates the lamps, i.e., the person who used the lamps, then determined that they are no longer usable and thus should be discarded. Contractors who remove universal waste lamps from service are considered handlers and co-generators of the waste. The second type of handler is a person who receives universal waste lamps from generators or other handlers, consolidates the lamps, and then sends the lamps on to other universal waste handlers, recyclers, or treatment and disposal facilities. Facilities that accumulate universal waste lamps but do not treat, recycle, or dispose of them are handlers of the lamps. Each separate location, (e.g., generating location or collecting location) is considered a separate handler.

Whether a universal waste handler is a SQHUW or LQHUW depends on the amount of universal waste being accumulated at any time. A small quantity handler of universal waste is defined under 40 CFR 273.6 as a universal waste handler who accumulates 5,000 kilograms or less of universal waste (i.e., batteries, pesticides, thermostats, or lamps, calculated collectively) at any time. A large quantity handler of universal waste is defined under 40 CFR 273.6 as a universal waste handler who accumulates 5,000 kilograms or more of total universal waste (i.e., batteries, pesticides, thermostats, or lamps, calculated collectively) at any time. The 5,000 kilogram accumulation cut-off level refers to the total quantity of all universal waste handled on-site, regardless of the category of universal waste.

On occasion, SQHUWs may accumulate greater than 5,000 kilograms of universal waste on-site at any one time, thus requiring them to comply with the LQHUW regulations. A large quantity handler of universal waste retains this designation for the remainder of the calendar year in which more than 5,000 kilograms of universal waste was accumulated at any given time. A handler may re-evaluate his status as a LQHUW in the following calendar year.

3. Universal Waste Transporters

Under 40 CFR 273.6, the definition of a universal waste transporter is "a person engaged in the off-site transportation of universal waste by air, rail, highway, or water." Persons meeting the definition of universal waste transporter include those persons who transport universal waste from one universal waste handler to another, to a destination facility, or to a foreign destination. These persons are subject to the universal waste transporter requirements of subpart D of part 273.

The proposed regulations for transporters of hazardous waste lamps were designed to be consistent with the proposed universal waste rule. Since the proposed regulations for universal waste transporters were not modified significantly in the final rule, today's requirements for universal waste lamps are essentially identical.

4. Universal Waste Destination Facilities

The definition of "destination facility," found in 40 CFR 273.6, is "a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of §§ 273.13 and 273.33 of this chapter (40 CFR part 273). A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste." Persons meeting the definition of destination facility are subject to the universal waste destination facility requirements of Subpart E of Part 273.

Like the regulations for transporters, the final regulations for destination facilities have changed very little from the proposed rule.

C. Management Requirements for Small and Large Quantity Handlers of Universal Waste Lamps

As mentioned above, the universal waste rule includes different requirements for small and large quantity handlers of universal wastes. Small quantity handlers are those who accumulate 5,000 kilograms or less of all universal waste categories combined at their location at any time. The requirements for small quantity handlers of universal waste are located in subpart B of part 273. Large quantity handlers are those who accumulate more than 5,000 kilograms of all universal waste categories combined at any time. The requirements for large quantity handlers of universal waste are located in subpart C of part 273.

Both small and large quantity handlers must follow specified requirements when handling universal waste lamps. 40 CFR 273.13 specifies packaging standards for waste lamps to prevent breakage of spent lamps during accumulation, storage, and transport of universal waste lamps. Handlers of universal waste lamps must label each universal waste lamp or container holding the lamps with the words "Universal Waste—Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)."

In addition, the final rule requires that spent lamps be managed in a way that prevents releases of mercury or other hazardous constituents to the environment during accumulation, storage, and transport. Handlers may accumulate universal waste lamps for one year. If the lamps are stored for longer than one year, the handler must be able to demonstrate that such accumulation is solely for the purpose of accumulating such quantities of universal waste as are necessary to facilitate proper recovery, treatment, or disposal. (Handlers are not required to notify EPA or the authorized state of storage for longer than one year.)

The requirements for responding to releases applicable to small and large quantity handlers of universal wastes (including universal waste lamps) are found in §§ 273.17 and 273.37. Today's rule does not amend these sections. All handlers of universal waste lamps must immediately contain any releases from the lamps and must handle the residues according to all applicable regulatory requirements. The Agency notes that any releases of universal waste not cleaned up could constitute illegal disposal and could incur enforcement action under RCRA. In addition, any releases of hazardous substances (universal wastes are hazardous wastes, and thus are hazardous substances) must be reported under CERCLA if they are above reportable quantity thresholds.

The employee training requirements for small and large handlers of universal waste are found in §§ 273.16 and 273.36. The Agency today is applying these standards to handlers of universal waste lamps. Large quantity handlers must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures related to their responsibilities during normal facility operations and emergencies. Small quantity handlers must inform all employees that handle or have responsibilities for managing universal waste lamps of proper handling and emergency procedures appropriate to such lamps. The Agency believes that basic employee training is necessary to ensure that employees are specifically familiar with waste lamp handling procedures. Training that is required under other programs (such as OSHA or RCRA) will generally fulfill the part 273 training requirements.

Small quantity handlers are not required to notify EPA of their universal waste management activities and need not obtain an EPA identification number. However, large quantity handlers must notify EPA (or the authorized state) of their universal waste activities and they must obtain an EPA identification number, if they do not already have one.

The Agency has decided to adopt the off-site shipment provisions included in the final universal waste rule for hazardous waste lamps in order to remain consistent with the current universal waste regulations. Handlers of universal waste are prohibited from sending universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination. Handlers who transport universal waste off-site themselves are considered universal waste transporters and must comply with the universal waste transporter requirements. Universal wastes being offered for off-site transportation that meet the Department of Transportation (DOT) definition of hazardous material must comply with the applicable DOT requirements. Large quantity handlers must track waste lamp shipments by maintaining records documenting shipments received by and sent from the facility.

Handlers of universal waste must also comply with requirements for rejected shipments of universal waste. To prevent or limit rejected shipments, facilities that offer universal waste for shipment off-site must ensure, before the shipment is sent, that the receiving facility (another universal waste handler or destination facility) will agree to receive the load. If the shipment is rejected, the handler must take the waste back or agree with the receiving facility on a destination facility to which the shipment will be sent. If a handler rejects a shipment or a portion of a shipment, the handler must contact the originating handler to discuss re-shipment of the load. The handler may send the shipment back to the originating handler or send the shipment to a destination facility agreed upon by both handlers. If a handler receives a shipment containing hazardous waste that is not universal waste, the handler must notify the EPA Regional office of the illegal shipment and receive instruction on further management of the waste. If the handler receives a shipment containing non-hazardous, non-universal waste, the handler may manage the waste according to applicable federal, state, or local solid waste regulations.

D. Effect of Today's Rule on Conditionally-Exempt Small Quantity Generators

Under the universal waste system, conditionally-exempt small quantity generators (CESQGs) can choose to manage their universal waste lamps in accordance with either the CESQG regulations under 40 CFR 261.5 or as universal waste under part 273 (40 CFR 273.8(a)(2)). In addition, handlers and destination facilities that mix universal waste lamps from CESQGs with other universal waste regulated under part 273 are required to manage the combined waste as universal waste under part 273 (40 CFR 273.8(b)).

As discussed in the proposal, hazardous waste lamps that are managed as universal waste under 40 CFR part 273 do not have to be included in a facility's determination of hazardous waste generator status (40 CFR 261.5(c)(6)). Therefore, if a generator manages such lamps under the universal waste system and does not generate any other hazardous waste, that generator is not subject to other Subtitle C hazardous waste management regulations, such as the hazardous waste generator regulations in part 262. A generator that generates more than 100 kilograms of hazardous waste in addition to universal waste lamps would be regulated as a small or large quantity hazardous waste generator and would be required to manage all hazardous wastes not included within the scope of the universal waste rule in accordance with all applicable Subtitle C hazardous waste management standards, depending on the amount of other hazardous waste generated.

E. Requirements for Transporters of Universal Waste Lamps

Transporters of universal waste lamps are subject to the requirements of subpart D of part 273. Under the universal waste system, hazardous waste manifests need not accompany off-site shipments of universal waste. Transporters of universal wastes must, however, comply with any applicable Department of Transportation (DOT) requirements. The Agency notes that the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) define a hazardous waste as any material that is subject to the Uniform Hazardous Waste Manifest Requirements of U.S. EPA, specified in 40 CFR part 262. Since shipments of universal waste are not required to be accompanied by a manifest, universal wastes are not considered "hazardous wastes" under DOT regulations. Therefore, for any universal waste shipments, transporters of universal waste must decide if the waste falls under any of the other DOT hazard classes to determine if compliance with the DOT requirements for "hazardous materials" under 49 CFR parts 171 through 180 is required. If the waste material does not meet the definition in the HMR for hazardous waste or any other hazardous material, its shipping description on shipping papers will not include a hazard class or identification number shown in the HMR.

Transporters may store universal waste lamps for up to ten days at a transfer facility during the course of transportation. A transporter storing universal waste lamps for more than ten days at one location must comply with the appropriate universal waste handler requirements in managing the wastes accumulated at the site, in addition to complying with the applicable universal waste transporter requirements. Universal waste transporters must transport a shipment of universal waste to a small quantity handler, large quantity handler, or a destination facility.

Today's final rule adopts the release response requirements promulgated in the universal waste rule for transporters of universal waste lamps. These requirements are found in § 273.54. The release response requirements have been adopted essentially as proposed and remain consistent with the current requirements for all universal waste transporters.

F. Requirements for Destination Facilities

A destination facility is a facility that treats, disposes of, or recycles universal wastes. The requirements for destination facilities are found under subpart E of part 273. Under the universal waste rule, destination facilities are subject to all hazardous waste management requirements applicable to permitted or interim status hazardous waste treatment, storage and disposal facilities under parts 264 and 265, as well as applicable standards in parts 268 and 270. Facilities that recycle universal waste lamps without accumulating the lamps before they are recycled are subject to the recycling requirements of § 261.6(c)(2).

G. Import and Export Requirements

The proposed rule for spent lamps did not include provisions for the importation of lamps. Several

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commenters on the universal waste proposal pointed out that the Agency did not address the issue of imports. The Agency's intent was that once universal waste entered the United States, it should be subject to the same standards as any other universal waste. The final universal waste regulations therefore included import requirements in § 273.70. Under today's rule, the same requirements apply to universal waste lamps. Universal waste lamps that are imported from another country must be managed, upon entry into the country, in compliance with the appropriate universal waste requirements for transporters, handlers, or destination facilities, depending on the universal waste management activities conducted within the United States. To determine whether a handler importing universal waste is a small or large quantity handler, the universal waste imported from a foreign country is counted toward the quantity of waste accumulated as would any other universal waste. In addition, handlers managing universal waste that is imported from an Organization for Economic Cooperation and Development (OECD) country are subject to the requirements of 40 CFR part 262 subpart H.

The proposed provisions for exports of spent lamps were equivalent to the proposed provisions for exports of universal waste in the universal waste proposal. The requirements for handlers sending universal wastes (including spent hazardous waste lamps) to a foreign destination are found in § 273.20 for small quantity handlers and § 273.40 for large quantity handlers. Handlers exporting universal wastes are subject to the same provisions as generators of hazardous waste in subparts E and H of part 262. The exporting requirements for transporters of universal wastes to a foreign destination are found in § 273.56. Transporters may only accept shipments of universal wastes bound for foreign destinations that conform to the EPA Acknowledgment of Consent. They must ensure delivery of the universal waste to the facility designated by the person initiating the shipment.

The Agency notes that on April 12, 1996 (61 FR 16290), EPA revised the final universal waste regulations on importing and exporting of universal waste to reflect the Organization for Economic Cooperation and Development (OECD) Council Decision Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations (March 30, 1992). These revised regulations are today adopted for universal waste lamps.

H. Land Disposal Restriction Requirements

The proposed spent lamps rule did not include specific provisions on land disposal restrictions (LDR) requirements. However, the proposed and final universal waste regulations included a provision that exempted generators, transporters, and facilities that consolidated universal waste from the notification requirements in 40 CFR 268.7 and the storage prohibition in § 268.50. Destination facilities are subject to the full LDR program.

Pursuant to the LDR provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA), hazardous wastes listed or identified in accordance with RCRA section 3001 cannot be land disposed until they meet treatment standards (established by EPA), which are sufficient to minimize the short-and long-term threats potentially posed by land disposal. The regulations for the LDR program in 40 CFR part 268 apply to persons who generate or transport hazardous waste, as well as hazardous waste treatment, storage, and disposal facilities, unless they are specifically excluded from regulation in parts 261 or 268. Universal waste, as hazardous waste, remains subject to the requirements of the LDR program.

The applicability of the LDR requirements to universal waste lamps remains the same as the existing requirements for universal waste. Universal waste handlers and transporters must comply with the substantive requirements of the LDR program but are not required to comply with the administrative requirements (e.g., notification to all handlers of applicable treatment standards). The Agency believes that because of the unique nature of universal wastes (i.e., the wastes and treatment standards are easily identifiable), the substantive requirements would be sufficient to ensure that the goals of the LDR program are met for universal waste managed under part 273.

Destination facilities are required to comply with all of the part 268 LDR requirements for universal waste, including both the substantive and administrative requirements. Therefore, all universal waste must be treated or disposed of in compliance with LDR treatment standards, and the appropriate documentation regarding such compliance must be maintained by the destination facilities.

V. Discussion of Comments Received in Response to Proposed Rulemaking and Agency's Response

The following section describes the principal comments the Agency received in response to the proposed rulemaking on mercury-containing lamps. Complete comments and the Agency's responses are located in the docket for this rulemaking.

A. Universe of Lamps Covered Under the Final Rule

1. Summary of Proposed Scope and Definition

The Agency proposed to include within the scope of the universal waste rule those spent mercury-containing lamps that are hazardous because they exhibit the characteristic of toxicity. Common types of electric lamps that may contain sufficient concentrations of mercury (or other constituents) to cause them to be hazardous include, but are not limited to, incandescent, fluorescent, high intensity discharge, and neon lamps. In the proposed rule, the Agency also proposed definitions for "electric lamp" and "mercury-containing lamp" and requested comment on these definitions.

In addition, the Agency requested comment on whether the universal waste approach should address all types of spent lamps that fail the toxicity characteristic. The Agency also requested comment on whether and how frequently other types of spent lamps (such as incandescent and neon lamps) fail the toxicity characteristic test or exhibit other characteristics.

2. Summary of Comments Received

The Agency received a significant number of comments on the proposed definitions of "electric lamp" and "mercury-containing lamp." Many commenters requested that EPA clarify which type of lamps would be included within the scope of the final rule. Other commenters provided suggestions on the types of lamps to include within the definition. Many commenters confirmed that mercury-containing lamps include, but are not limited to, fluorescent lamps, mercury vapor lamps, high pressure sodium vapor lamps, and metal halide lamps.

Many commenters concurred with EPA's findings that mercury lamps consistently fail the toxicity characteristic test for mercury. A few commenters stated that many types of spent mercury-containing lamps (especially HID lamps and incandescent lamps) also frequently exhibit the toxicity characteristic for lead, generally because of lead soldered bases and

leaded glass. These commenters generally supported adding all hazardous waste lamps to the universal waste scheme, because they all fit within the universal waste criteria and it would be more convenient to have the same management requirements for all spent lamps. However, a few other commenters opposed adding lamps other than mercury-containing lamps to the universal waste system, mainly because the Agency lacked data on the effects of other constituents. One commenter claimed to have tested incandescent bulbs at one of its facilities and determined that all the bulbs failed the test for lead, and many failed for cadmium as well.

Some commenters believed that spent fluorescent lamps do not exhibit the toxicity characteristic for mercury under certain circumstances. One commenter, who conducted its own testing of fluorescent light bulbs, stated that test results were highly variable and concluded that the test results on lamps are inconclusive. Some commenters stated that the percentage of lamps that pass the test is rising and will continue to rise due to new technologies employed in lamp manufacturing.

Many commenters said that spent mercury-containing lamps meet the established criteria to be classified as a universal waste, and that managing lamps under the universal waste system will encourage recycling and keep lamps out of the municipal solid waste combustors and landfills. Commenters also stated that the universal waste system for lamps will provide a more consistent national management approach, since many states regulate lamps under regulatory programs that are more stringent than the proposed conditional exclusion option. Many states are also currently adding lamps to the scope of their universal waste programs or have already done so.

3. Agency's Response to Comments and Summary of Promulgated Standards

To simplify the proposed definitions, and in response to comments, the Agency is today finalizing a single definition of "lamp" or "universal waste lamp" which is derived from the proposed definitions of "electric lamp" and "mercury-containing lamp."

The Agency agrees with those commenters who believed that all hazardous waste lamps would be appropriately included in the universal waste program. These lamps appear to meet all of the criteria for inclusion in the universal waste rule (see Section III.C above), and EPA does not believe that the presence of other hazardous constituents (principally lead) in spent lamps should preclude such lamps from being managed as universal wastes. Hazardous waste batteries (including lead-acid batteries) are already part of the universal waste scheme, in part because EPA determined that the environmental risks associated with collection and transportation of these materials was relatively low and can be successfully controlled with the universal waste standards. Lead in hazardous waste lamps is largely found in endcaps and in the glass. Lead is not volatile or widely dispersible in the case of lamp breakage, and EPA also notes that the packaging requirements in today's rule will minimize breakage. For these reasons, the Agency is including all waste lamps that exhibit a characteristic in today's rulemaking.

With respect to incandescent lamps, we note that most of these lamps are generated by households or small facilities. Waste lamps that are household waste remain excluded from hazardous waste regulation under 40 CFR 261.4(b)(1). Facilities that generate less than 100 kilograms of hazardous waste in a calendar month, including any hazardous waste lamps that are not managed as universal waste, qualify as conditionally exempt small quantity generators subject to reduced regulation under 40 CFR 261.5. Spent lamps that do not exhibit any hazardous waste characteristic are not subject to Subtitle C regulation.

EPA also notes that waste lamps must be solid waste (i.e., discarded) before they are considered hazardous wastes and thus subject to regulation under RCRA. Section 273.5(c) describes when lamps become wastes. A used lamp becomes a waste on the date that it is discarded. An unused lamp becomes a waste on the date a handler decides to discard it.

B. Requirements for Handlers of Universal Waste Lamps

1. Prohibition on Treatment

a. Summary of Proposed Provision. The Agency requested comments on the same prohibitions for generators and consolidation points that were proposed in the February 11, 1993 universal waste proposal. The Agency had proposed that generators of hazardous waste lamps and consolidation points managing hazardous waste lamps be prohibited from diluting or disposing of the lamps and from treating them except in response to releases.

The Agency requested comments on management practices for lamps, the risks posed by these practices, and appropriate technical controls to minimize these risks which would not inhibit collection and proper management. The Agency requested comment on whether requirements should be included in the final rule to minimize mercury emissions during storage and transport of the lamps.

The definition of treatment under RCRA (40 CFR 260.10) includes any method, technique or process designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from, or render such waste non-hazardous or less hazardous, safer to transport, store or dispose of, amenable for recovery, or storage, or reduced in volume. The crushing of spent mercury-containing lamps clearly falls within this definition. The Agency therefore requested comment on whether generators or consolidation points should be allowed to crush lamps intentionally to minimize volume for storage or shipment and which, if any, standards should be imposed to protect against mercury releases during crushing or the subsequent management of crushed lamps.

b. Summary of Comments Received. Several commenters stated that the Agency should maintain its proposed prohibition on waste treatment, including lamp crushing. These commenters said that lamp crushers are a significant source of mercury emissions and that many lamp recyclers prefer to receive whole lamps. Other commenters stated that generators should be allowed to separate, consolidate, and crush their own lamps. Many commenters supported allowing crushing if it were safely performed, and some commenters stated that crushing is necessary to reduce storage and transportation costs. Information submitted to the Agency on drum top crushing systems for lamps indicates that there is a wide range of air emissions of mercury from these units, depending on the type of controls, and that in some units emissions of mercury exceed the OSHA limit of 0.05 mg/m^3.

c. Agency's Response to Comments and Summary of Promulgated Standards. The Agency is adopting for universal waste lamps the prohibitions in the final universal waste rule promulgated on May 11, 1995. In general, as explained in the preamble to the universal waste rule (60 FR 25519), the Agency does not believe that universal waste handlers, who are not required to comply with the full Subtitle C management standards, should treat universal wastes. Therefore, under today's rule, both small and large quantity handlers of universal waste

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lamps are prohibited from diluting or treating universal waste lamps except by responding to releases as provided in §§ 273.17 and 273.37. Prohibitions for small quantity handlers are found in § 273.11 and for large quantity handlers in § 273.31. The prohibition against treatment includes a prohibition of crushing of lamps. EPA is particularly concerned that uncontrolled crushing of universal waste lamps in containers meeting only the general performance standards of the universal waste rule would not sufficiently protect human health and the environment. As stated earlier, the prevention of mercury emissions during collection and transport is one of the principal reasons that the Agency selected the universal waste approach. Allowing uncontrolled crushing would be inconsistent with this goal.

The Agency is aware that a number of states have already added spent lamps to their universal waste programs. Available information indicates that some of these state programs prohibit crushing of spent lamps, but that at least some state programs may allow crushing under regulatory requirements designed to control emissions of hazardous constituents, particularly mercury. The Agency believes that some state programs may include standards for controlling emissions from mercury-containing lamps during crushing that could be equivalent, per RCRA Section 3006, to the federal prohibition.

Therefore, EPA will consider authorization of state programs that include provisions for controlling treatment or crushing of universal waste lamps, where the state program application includes a demonstration of equivalency to the federal prohibition. Factors the Agency would expect such an application to address include the effectiveness of technical requirements in controlling emissions of hazardous constituents, the level of interaction of regulated entities with the regulatory agency to ensure compliance with control requirements, and other factors demonstrating that the state regulatory program would be equivalent to the federal treatment prohibition.

2. Notification Requirement

a. Summary of Proposed Provision. The Agency proposed a notification requirement for generators and consolidation points (i.e., handlers of universal waste lamps) storing more than 35,000 spent lamps. The Agency proposed a numerical rather than a weight limit because lamp packaging (the cardboard boxes in which new replacement lamps are shipped) may constitute a large proportion of the total weight of a shipment or stored quantity of lamps. In addition, industry practice is generally to count lamps by number rather than by weight, calculated by multiplying the number of boxes of lamps in storage or in a shipment by the number of lamps per box. Since a full truckload of fluorescent lamps consists of approximately 35,000 lamps, the Agency proposed that universal waste handlers storing 35,000 lamps or more at any time be required to send a written notification of universal waste lamp storage to the applicable EPA Regional Administrator (or authorized state director) and obtain an EPA Identification Number.

b. Summary of Comments Received. The Agency received only a few comments on the proposed quantity limit for the notification requirement. One commenter suggested increasing the limit to 80,000 lamps. About half the commenters supported the general notification requirement for generators and consolidation points. Other commenters stated that the notification requirement was unnecessary and burdensome since generators may already possess an EPA identification number.

c. Agency's Response to Comments and Summary of Promulgated Standards. In the interest of consistency with the final universal waste rule, the Agency has decided that the 5,000 kilogram limit for the accumulation of all universal wastes will apply to all universal waste handlers (i.e., handlers of batteries, pesticides, mercury thermostats, and lamps). As explained in the preamble to that rule, the Agency believes that the total amount of universal waste at a handler's site is a better indicator of potential risk than the quantity of individual universal wastes being accumulated and handled at that site. EPA has determined that the 5,000 kilogram limit is appropriate for facilities handling universal waste lamps. The Agency believes that it is just as practical to set the notification requirement on the basis of a quantity (or weight) of waste accumulated as on the total number of items generated. Handlers can weigh the amount of waste as easily as they can count the total number of individual light bulbs accumulated, and can also subtract the weight of the packaging.

In response to commenters who said that the notification requirement will be burdensome, the Agency points out that those generators who have already notified EPA of their hazardous waste management activities are not required by the universal waste rule or today's final rule to re-notify EPA or obtain a new identification number. Prior to today's rulemaking, many lamps that are hazardous waste were required to be managed in accordance with all applicable Subtitle C hazardous waste management standards, including the RCRA notification provisions. Therefore, the notification requirement in today's rule is a new requirement only for generators of universal waste lamps that have never generated more than 100 kg of hazardous waste in a calendar month, but now accumulate more than 5,000 kg of universal waste lamps.

3. Prevention of Releases/Packaging Requirements

a. Summary of Proposed Provision. The Agency proposed that generators and consolidation points be required to manage hazardous waste lamps in a manner that minimizes lamp breakage. The proposal required that unbroken lamps be contained in packaging that will minimize breakage during normal handling conditions, and broken lamps be contained in packaging that will minimize releases of lamp fragments and residues.

The Agency requested comment on appropriate management controls for handlers of spent mercury-containing lamps that would minimize potential releases of mercury during collection, accumulation, storage and transport. Approaches suggested by the Agency included requiring performance standards for packaging to minimize lamps breakage. EPA expected that the packaging in which new replacement lamps are shipped from the manufacturer would frequently be reused to store and transport removed, used lamps. The Agency also suggested that requirements could be imposed on storing and transporting spent lamps that are inadvertently broken to prevent further mercury emissions. For example, 55-gallon steel drums or any enclosed container could be used to hold broken lamps for transportation to a recycling facility or a disposal site.

b. Summary of Comments Received. A number of commenters, including both lamp manufacturers and mercury lamp recycling facilities, supported container or packaging standards to minimize lamp breakage during accumulation, storage, and transport. Lamp recycling facilities in particular voiced a preference for spent lamps to be stored and transported in packaging that protects the spent lamps from potential breakage. Commenters representing recycling facilities pointed out that proper packaging will prevent releases of mercury to the environment before the lamps arrive at recycling facilities. These commenters stated that lamp recycling facilities prefer to receive intact, unbroken lamps so that the lamps can be crushed in a closed, controlled environment at the recycling facility to allow for the capture and recycling of the available mercury. In addition, commenters pointed out that broken lamps and potential releases of mercury can endanger the safety of employees at the recycling facility. Commenters representing both lamp manufacturers and lamp recyclers recommended that intact lamps be stored in original cartons or specially designed containers (e.g., fiber containers with closed lids) that will protect the spent lamps from breakage. Commenters pointed out that unintentionally broken lamps should be stored and transported in closed drums or other puncture-proof containers that are sealed and properly labeled.

Although many commenters supported the promulgation of packaging or container requirements to reduce lamp breakage and reduce mercury emissions during storage and transport, other commenters stated that mercury emissions from broken lamps do not pose a threat to human health and the environment and that therefore protective package may not be necessary.

c. Agency's Response to Comments and Summary of Promulgated Standards. The Agency agrees with the commenters who stated that universal waste lamps should be stored and packaged in a way that minimizes lamp breakage. Recent studies (such as that performed by the Research Triangle Institute) show that significant releases of mercury during storage and transport can occur as a result of lamp breakage. EPA therefore disagrees with those commenters who stated that breakage presents no threat to human health and the environment. Today's final rule adds a subsection (d) for universal waste lamps to the universal waste management §§ 273.13 and 273.33 for small quantity handlers and large quantity handlers respectively. The Agency believes that these standards generally satisfy the concerns of commenters for environmental protection. The packaging provisions generally resemble the universal waste packaging requirements for mercury-containing thermostats.

The final rule requires universal waste handlers to manage universal waste lamps in a way that prevents releases of the lamps or the components of the lamps to the environment. Spent lamps must be packed to minimize breakage and packaging materials must be designed to contain potential releases due to breakage during transport. Universal waste lamps must be stored in containers or packages that remain closed, are structurally sound, adequate to prevent breakage, compatible with contents of lamps, and lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. Examples of acceptable packaging could include placing the lamps evenly spaced in double or triple-ply cardboard containers with closed lids. Handlers also must contain any universal waste lamps that show evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. An example of such containment could include placing unintentionally broken lamps in closed wax fiberboard drums.

The Agency points out that in addition to these container and packaging provisions, universal waste handlers, including handlers of universal waste lamps, must comply with the provisions of 40 CFR 273.17 and 273.37 for responding to releases of universal waste. Handlers of universal waste must immediately contain all releases of universal waste and any residues from universal wastes. In addition, universal waste handlers must determine whether any material resulting from a release is a hazardous waste and, if so, must manage the hazardous waste in compliance with all applicable provisions of 40 CFR parts 260 through 268, as well as all other applicable statutory provisions.

4. Accumulation Time

a. Summary of Proposed Provision. In the proposed spent mercury-containing lamps rule, the Agency proposed to limit the time period in which handlers may accumulate such lamps on-site to one year following the date that a lamp becomes a waste. In addition, the Agency proposed several alternative ways to demonstrate compliance with this provision, and solicited comment on the alternatives. The proposed regulations required that generators and consolidation points either mark the container, mark the individual lamps, maintain an inventory system, or place lamps in a specific storage area while identifying the earliest date a lamp was placed in that area.

b. Summary of Comments Received. Generally, most commenters supported the proposed one-year storage time limitation and compliance demonstration requirements. A few commenters stated that each lamp should be dated as soon as it is removed from the lamp fixture to verify compliance with the one-year time limit. Some commenters stated that the one year storage limit was too long and increased the probability of broken lamps. These commenters suggested reducing the time limit to 180 days, 90 days, or 10 days. Other commenters stated that the one-year limit was too restrictive and did not allow for proper recovery, treatment, or disposal. One commenter suggested that a provision be included for case-by-case extensions to the storage time limit if necessary.

c. Agency's Response to Comments and Summary of Promulgated Standards. In today's rule, the Agency has decided to adopt the accumulation time limit requirements in the universal waste rule (§§ 273.15 and 273.35) for small and large quantity handlers of spent lamps. These requirements are similar to the provisions for the accumulation time limit in the proposed spent mercury-containing lamps rule. However, to remain consistent with the universal waste rule, handlers of universal waste lamps are allowed accumulation for more than one year if such accumulation is solely for accumulating such quantities of universal waste as are necessary to facilitate proper recovery, treatment, or disposal. For any accumulation longer than one year, the handler must be able to prove that such accumulation is solely for accumulating quantities necessary to facilitate proper recovery, treatment, or disposal (it is assumed that any accumulation up to one year is for this purpose). Notification to the EPA Regional Administrator of extended storage is not required; however, authorized states may have more stringent requirements.

The final rule requires that handlers of universal waste lamps comply with one of the following measures to demonstrate compliance with the accumulation time limit: mark the container holding the lamp, mark the individual lamp, maintain an inventory system, place the lamps in a specific storage area marked with the earliest date a lamp is placed in the area identified, or use any other method which demonstrates the length of time that the lamp has been accumulated from the date the lamp becomes a waste or is received.

In response to comments requesting a different accumulation time, the Agency believes that this issue was addressed in the final universal waste rule (60 FR 25526). In that rule, the Agency recognized that one year may not be sufficient for some handlers to accumulate enough universal waste to properly recover, treat, or dispose of the waste. By allowing accumulation for longer than one year, certain facilities will have the additional time they need

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to facilitate proper recovery, treatment, or disposal. However, for any accumulation longer than one year, the burden of proof is on the handler to demonstrate that such accumulation is solely for accumulating quantities necessary to facilitate proper recovery, treatment, or disposal. Although the Agency agrees with commenters that it is possible to send spent lamps to a management facility in a shorter period of time, there does not appear to be a strong environmental justification for such a requirement.

Also in response to comments received, the Agency is not modifying the proposed demonstration requirement to show compliance with the accumulation time limit (40 CFR 273.15 and 273.35). Labeling each individual tube with the date that it is removed from the fixture is an acceptable means of identifying the accumulation time. However, the Agency believes that the other measures for showing compliance with the accumulation time limit are adequate and impose a smaller burden, particularly upon small quantity handlers.

5. Tracking of Shipments

a. Summary of Proposed Provision. The Agency requested comment on several ways to track off-site shipments of waste lamps. One suggested approach required the use of a hazardous waste manifest (and thus a hazardous waste transporter) for shipments from the last consolidation point to the destination facility. However, no manifests or other records (or hazardous waste transporters) would be required for shipments from generators to consolidation points or from generators to destination facilities. This approach is the same as that presented in the universal waste proposal. Another approach suggested by the Agency was to require that persons initiating and receiving shipments of spent lamps retain shipping papers documenting all shipments. The last approach suggested was requiring that persons claiming an exemption from the hazardous waste manifesting requirements must keep documentation to show that they qualified for such an exemption (specific shipment records need not be retained). In the proposed spent mercury-containing lamps rule, the Agency stated that because of the large volume of lamp shipments, such shipments are more likely than other universal wastes to be made directly from the generator to the destination facility. Records would be available for such shipments because destination facilities are already required under the hazardous waste regulations to maintain records, including the description and quantity of each hazardous waste received.

b. Summary of Comments Received. Some commenters opposed any tracking and recordkeeping requirements for the shipment of spent lamps. Several commenters said that the use of manifests for generators and consolidation points is not necessary to track the transportation of spent lamps, and that this requirement would create an unnecessary cost burden. These commenters believed that the increased costs and administrative burden of using manifests and hazardous waste transporters would discourage the collection of universal waste and would inhibit removal of these wastes from solid waste landfills and incinerators. Commenters suggested that the documentation requirements for generators and consolidation points should be flexible. However, many commenters, including some of those who opposed manifests, supported some form of tracking requirement to document the transport of universal wastes. These commenters argued that a less burdensome tracking requirement would not inhibit participation in collection programs. Further benefits might include reduction of liability for persons managing universal waste, increased enforceability of the universal waste system, and decreased potential for abuse of the streamlined universal waste requirements. Some commenters supported stringent tracking requirements, and a few stated that all consolidation points should be required to accompany lamp shipments with a manifest to protect generators from potential liability. One commenter stated that receiving facilities should keep documentation of all shipments received until the facility closes.

c. Agency's Response to Comments and Summary of Promulgated Standards. In the final universal waste rule, the Agency decided to require tracking only for large quantity handlers of universal waste. EPA believed that tracking was needed only in cases where facilities are handling larger quantities of universal waste, thus posing potentially greater environmental risk. The Agency decided not to impose these requirements on small quantity handlers of universal waste because it agreed with those commenters who said that the administrative burden of tracking would discourage retail establishments, service centers, and other "front line" collectors managing small quantities of waste from participating in collection programs, thus undermining the goal of the universal waste program. In addition, because these operations accumulate smaller quantities of universal wastes, they will generally pose less risk than facilities accumulating larger quantities.

EPA believes that these arguments apply with equal force to handlers of universal waste lamps. In today's rule, the Agency is therefore adopting the universal waste tracking requirements in part 273 for such lamps. The tracking provisions for small and large quantity handlers of universal waste are found in §§ 273.19 and 273.39, respectively. The universal waste rule includes a recordkeeping requirement to track waste shipments arriving at and leaving from large quantity handlers. Large quantity handlers are required to keep records of each shipment of universal waste lamps received and keep records of each shipment of lamps sent off-site. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The Agency believes that standard business records that are normally kept by businesses will fulfill this requirement. Records must be retained for at least three years from the date of receipt of a shipment of lamps or the date a shipment of lamps leaves the facility. Small quantity handlers are not required to keep records of shipments of universal waste lamps. The Agency believes that these requirements provide consistency with the current universal waste rule and adequately respond to concerns raised by commenters on the proposed rule, including those commenters requesting flexibility in recordkeeping requirements.

C. Storage Time Limitation for Transporters of Universal Waste Lamps

1. Summary of Proposed Provision

The proposed regulations for transporters of mercury-containing lamps were designed to be consistent with the proposed universal waste rule. The Agency proposed to allow transporters of universal waste lamps to store spent lamps for up to ten days at a transfer facility during the course of transportation. A transporter storing spent lamps for more than ten days at one location would have to comply with the appropriate universal waste handler requirements in managing the wastes accumulated at the accumulation site, in addition to complying with the applicable universal waste transporter requirements.

2. Summary of Comments Received

In response to the proposed universal waste rule, the Agency received comments from two commenters who argued for a longer storage time limit for transporters. In addition, one commenter argued that the Agency should limit the total transportation time allowed for a waste to reach its destination, rather than impose a time limit for storing the waste during transport. The commenters, however, provided little information to justify a longer in-transit storage time limit. The Agency proposed the same accumulation time limit for transporters of universal waste lamps in the proposed rulemaking on mercury-containing lamps. The transporter accumulation time limit in the proposed universal waste rule was not significantly changed in the final universal waste rule, except to clarify that if the waste is stored for greater than 10 days, the transporter is subject to the standards for small or large quantity handlers.

3. Agency's Response to Comments and Summary of Promulgated Standards

Today's final rule adopts the storage time limit standards for transporters of universal waste lamps as promulgated in the universal waste rule. Under 40 CFR 273.53 of the universal waste regulations, transporters can store universal waste at a transfer facility for ten days or less. If the ten day limit is exceeded, the transporter becomes a universal waste handler and must comply with the applicable small or large quantity handler requirements under subparts B or C of part 273 while storing the universal waste. The Agency chose to retain the proposed 10-day accumulation limit for transporters of universal waste, consistent with the limit for transfer facilities handling other types of hazardous waste. In response to the commenter requesting that the Agency limit total transport time, rather than set a limit on the accumulation time at transfer facilities, EPA does not believe that a limit on total transportation time is practicable because of the extreme variation in the time needed to deliver shipments to different parts of the country. It is generally in the economic self-interest of transporters to make deliveries as quickly as possible. Delays in transport usually imply the likelihood of storage, so a limit on such storage seems the most efficient way to protect human health and the environment.

D. Destination Facility Requirements/ Lamp Recycling Facilities

1. Summary of Proposed Provision

Today's rule does not amend the existing standards for destination facilities receiving universal waste. Destination facilities remain subject to full subtitle C regulation, including all applicable requirements of parts 264, 265, 266, 268, 270, and 124. A recycling facility that does not store universal waste lamps before recycling them must comply with § 261.6(c)(2).

The existing requirements for destination facilities (i.e., hazardous waste treatment, storage, and disposal (TSD) facilities, or recycling facilities that do not store hazardous waste before recycling) are found in subpart E of part 273. Subpart E requires that destination facilities remain subject to full subtitle C regulation. These provisions are the same as those proposed in the proposed spent mercury-containing lamps rule.

The proposed spent mercury-containing lamps rule required that destination facilities recycling hazardous waste lamps prior storage must comply with 40 CFR 261.6(c)(2), which requires that facilities recycling universal waste obtain an EPA identification number. If a recycling facility stores hazardous waste lamps before recycling or performs treatment other than recycling, the facility is subject to full subtitle C hazardous waste management regulations, including the RCRA permitting requirements.

2. Summary of Comments Received

The Agency received many comments addressing the regulation of mercury lamp recycling facilities. Some commenters stated that mercury lamp recyclers are a potential threat to the environment because these facilities lack substantive regulation. A number of commenters suggested that the Agency implement standards for recycling facilities, and suggested best management practices that would reduce releases of mercury into the environment from these facilities.

3. Agency's Response to Comments and Summary of Promulgated Standards

Today's rule does not amend the existing standards for recycling facilities receiving universal waste. In general, destination facilities, including recycling facilities, remain subject to full hazardous waste regulation. A recycling facility that does not store universal waste lamps prior to recycling the lamps is subject only to 40 CFR 261.6(c)(2).

The Agency believes that changing requirements for destination facilities (including lamp recyclers) is beyond the scope of today's regulation, which addresses the generation and collection of universal waste lamps rather than final treatment, disposal, or recycling. EPA believes that with adequate state oversight, universal waste lamps can be safely recycled, allowing the mercury and other economically viable materials to be reclaimed. Safe recycling should ensure that residuals from recovery operations are managed in accordance with all applicable solid and hazardous waste management requirements. Residuals that exhibit a characteristic of hazardous waste must be managed as hazardous waste.

The Agency received no comments concerning the provisions for universal waste destination facilities, other than those addressing lamp recycling facilities. Therefore, today's rule does not amend the existing standards for treatment and disposal facilities receiving universal waste. Treatment and disposal facilities that receive universal waste lamps are subject to the same standards that apply to permitted or interim status hazardous waste treatment, storage, and disposal facilities. These standards include notification requirements, general facility standards, unit-specific management standards, and permitting requirements. The Agency notes that facilities that store universal waste lamps, but do not treat, dispose, or recycle them, are considered handlers and not destination facilities.

E. Sunset Provision

1. Summary of Proposed Provision

In the proposed lamps rule, the Agency requested comments on whether to include a three to five-year sunset provision in the final rule. A sunset provision would require EPA to re-evaluate the effectiveness of the universal waste system in addressing the disposal of lamps after three to five years. At that time, the Agency could decide whether fewer controls or more controls were needed to maintain the safe management of lamps.

2. Summary of Comments Received

More than half of the comments received generally supported a three to five year sunset provision. Commenters stated that a sunset provision would allow the Agency to examine any new information on lamp management and the fate and transport of mercury, and re-evaluate options as necessary.

Other commenters did not support the proposed three to five year sunset provision. Commenters stated that a sunset provision or other deadline was not necessary and that the Agency already had the authority to re-evaluate the rule at any time.

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3. Agency's Response to Comments and Summary of Promulgated Standards

Today's final rule does not include a sunset provision. The Agency believes that the data and information provided to the Agency, along with the Agency's own studies and analyses (available in the docket for this rulemaking) provide adequate evidence of the behavior of mercury in the environment and potential releases of mercury to support today's final rule. The Agency notes, however, that if additional information about the behavior of mercury becomes available in the future, the Agency may re-evaluate the standards promulgated in today's final rule.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA hazardous waste program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that State. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated or enacted, the State was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized State until the State adopted the federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the federal program. See also 40 CFR 271.1(I). Therefore, authorized States can, but do not have to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Effect on State Authorization

Today's rule is not promulgated pursuant to HSWA. Therefore the rule is applicable on the effective date only in those States that do not have final RCRA authorization. Today's rule is also less stringent than the current federal program. Because States are not required to adopt less stringent regulations, they do not have to adopt the universal waste regulations for spent lamps. A number of States have added spent lamps to their universal waste programs or are in the process of doing so. While these actions are specifically allowed under the universal waste rule, if a State's standards for spent lamps are less stringent than those in today's rule, the State will need to amend its regulations to make them equivalent to today's standards and pursue authorization.

As noted earlier, EPA recognizes that States have been proactive in adopting universal waste standards for spent lamps. Some of these standards allow crushing of lamps under certain conditions. Although today's rule does not provide for crushing, EPA believes that State programs could have standards for crushing which will be equivalent to the federal rules and thus appropriate for authorization. EPA also believes that this flexibility will allow for a minimal level of disruption to existing State programs. The Agency will determine at the time of authorization whether a State regulation that allows crushing is equivalent to the federal standard.

C. Interstate Transport

Due to the fact that not all States will choose to seek authorization for today's rulemaking, there may be only a few destination facilities that will accept and manage universal waste lamps. The Agency believes that it is important to explain how the regulations will apply because interstate transportation will be necessary for these wastes.

First, a waste which is subject to the universal waste regulations may be sent to a State, or through a State, where it is not a universal waste and where it would be subject to the full hazardous waste regulations. In this scenario, for the portion of the trip through the originating State, and any other States where the waste is a universal waste, neither a transporter with an EPA identification number per 40 CFR 263.11 (hazardous waste transporter) nor a manifest would be required. However, for the portion of the trip through the receiving State, and any other States that do not consider the waste to be a universal waste, the transporter must have a manifest, and must move the waste in compliance with 40 CFR Part 263. In order for the final transporter and the receiving facility to fulfill their requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22; 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a State where the waste is not a universal waste. The receiving facility must then sign the manifest and send a copy to the initiating facility. EPA recommends that the initiating facility note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the wastes are covered under the universal waste regulations in the initiating State but not in the receiving facility's State.

Second, a hazardous waste generated in a State which does not regulate it as a universal waste may be sent to a State where it is a universal waste. In this scenario, the waste must be moved by a hazardous waste transporter while the waste is in the generator's State or any other States where it is not a universal waste. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving State and any other States that regulate the waste as a universal waste would not require a manifest and need not be conducted by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility (see 40 CFR 262.23 and 262.42). EPA recommends that the generator note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the waste is covered under the universal waste regulations in the receiving facility's State but not in the generator's State.

Third, a waste may be transported across a State in which it is subject to the full hazardous waste regulations although other portions of the trip may be from, through, and to States in which it is covered under universal waste regulations. Transport through the State must be conducted by a hazardous waste transporter and must be accompanied by a manifest. In order for the transporter to fulfill its requirements concerning the manifest (Subpart B of Part 263), the initiating facility must complete a manifest as required under the manifest procedures and forward it to the first transporter to travel in a State where the waste is not a universal waste. The transporter must deliver the manifest to, and obtain the signature of, either the next transporter or the receiving facility.

As noted previously, States are not required to adopt today's rule. However, EPA strongly encourages them to do so. As more States add spent lamps in their universal waste program, not only will this assist in achieving the most benefits of the universal waste program, it will also reduce the complexity of interstate transport of these universal wastes.

VII. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, the Agency has determined that today's final rule is a significant regulatory action because this final rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record. Although this rule is not "economically significant", the Agency has prepared the supporting analysis: Modification of the Hazardous Waste Program: Hazardous Waste Lamps—Final Economic Assessment (Economic Assessment). The findings from this analysis are presented below.

B. Economic Assessment

The Economic Assessment conducted in support of today's final rule analyzed impacts associated with this final universal waste action, plus the primary alternative of promulgating a conditional exclusion for lamps. Although the final rule includes all hazardous waste lamps in the universal waste program, this Economic Assessment addresses only mercury-containing fluorescent lamps. The Agency estimates that non-fluorescent lamps represent approximately 0.8 to 1.7 percent of the total universe of lamps addressed under today's rulemaking. The comparatively negligible proportion of other hazardous waste lamps is not expected to appreciably affect the impact estimates presented in this analysis.

Fluorescent lamps contain a small amount of mercury that emits light when stimulated with electrical current. When a fluorescent lamp breaks, the mercury in the lamp is released into the environment and may cause health risks, primarily through consumption of fish. Neurotoxicity is the health effect of greatest concern for humans; death, reduced reproductive success, impaired growth and development, and behavioral abnormalities are effects of concern to fish, birds, and mammals. Lamp mismanagement scenarios indicate that, without government intervention, market failures will likely lead to disposal activities resulting in unnecessarily high releases of mercury to the environment.

Prior to today's final action, spent lamps that failed the toxicity characteristic leaching procedure (TCLP) test were automatically considered hazardous wastes under RCRA and subject to full Subtitle C management requirements, unless the lamps are generated by a household or a conditionally-exempt small quantity generated. EPA recognized the confusion and mismanagement patterns historically associated with maintaining spent hazardous waste lamps within the Subtitle C system. The Agency is taking today's final action of adding spent lamps to the scope of universal waste regulations in an effort to streamline the current regulations governing the management of such lamps, increase lamp management efficiency, and ultimately to cause a potential reduction in aggregate mercury emissions. The Agency's final action of adding spent lamps to the scope of the universal waste system, however, is not expected to completely determine how these lamps will be managed in individual states. States already have the option of including lamps within their universal waste programs. Furthermore, states that have not chosen to adopt universal waste programs, or have not included lamps within their universal waste programs, are not obligated to do so in response to EPA's decision.

The universal waste regulations include requirements for the proper packaging of spent lamps, storage of spent lamps, EPA notification, and responses to releases. EPA selected this action over the other proposed option which would have been based on a conditional exclusion (CE). The CE would have excluded spent mercury-containing lamps from regulation as hazardous waste. The addition of spent lamps to the universal waste regulations is considered a deregulatory action and imposes fewer requirements on generators and transports of spent lamps than the hazardous waste management standards under RCRA Subtitle C. The proposed conditional exclusion would have been deregulatory as well.

The Economic Assessment conducted in support of today's final rule analyzed impacts associated with the final universal waste action, plus the primary alternative of promulgating a conditional exclusion for lamps. Two different compliance scenarios are examined in the baseline, and under each option in an effort to incorporate alternative management practices. The first (high) compliance scenario assumes 100 percent compliance under all regulatory schemes. The second (low) compliance scenario assumes 20 percent compliance under a scenario where handlers of spent mercury-containing lamps are subject to full Subtitle C, 80 percent compliance under the universal waste option, and 90 percent compliance under the conditional exclusion option. The reader should refer to the report: Mercury Emissions From The Disposal of Fluorescent Lamps—Revised Model, Final Report, for a detailed discussion of estimated compliance rates. This report is available in the RCRA docket established for today's action.

The total national annualized costs of compliance and disposal under the baseline are estimated at $80.01 million

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and $54.37 million under the high and low compliance scenarios, respectively. Under the universal waste final action these costs are projected at $78.52 million under the high compliance scenario and $56.14 million for the low compliance scenario. In the high compliance scenario, the costs under full Subtitle C and universal waste are close because transportation and disposal costs, which account for approximately 76 percent of total costs, are virtually the same. Under the low compliance scenario, costs under the universal waste final action are higher than under the full Subtitle C baseline because of the higher compliance rate assumed under the universal waste scheme. While costs could increase for some non-exempt entities under the universal waste approach, this would be the result of non-compliance in the baseline. These costs would not appropriately be attributable to this rulemaking. Compliance and disposal costs under the conditional exclusion option also were examined. Aggregate annualized costs under the conditional exclusion option are estimated at $73.90 million and $52.60 million for the high and low compliance scenarios, respectively.

The Economic Assessment also examined economic impacts on affected facilities. EPA's final universal waste action is projected to result in cost savings to affected generators under the high compliance scenario. Adverse impacts on generators, therefore, are not anticipated. However, actual costs to some generators may increase under the low compliance scenario. The magnitude of the potential cost increase under this scenario, however, would not result in meaningful impacts on affected generators. In addition to generators, the Assessment also examined potential economic impacts on consolidation and recycling facilities. The Agency found that few, if any, spent fluorescent lamp consolidation facilities exist at present or are likely to exist in the future as independent economic entities. Impacts on consolidated facilities dedicated to spent fluorescent lamps, therefore, were not examined. Recycling facilities may benefit indirectly due to today's final, which may result in additional revenues for firms owning or operating recycling facilities.

The Economic Assessment projected changes in total nationwide mercury emissions resulting from the universal waste final action and the conditional exclusion option. Average annual emissions corresponding to the management of spent mercury-containing fluorescent lamps (four-foot equivalents) were projected over the 1998 through 2007 period. Under the high compliance scenario, average annual baseline emissions were estimated at 790.4 kilograms. Emissions under the universal waste final action were projected at 790.5 kilograms, resulting in an incremental increase of 0.1 kilograms, or 0.013 percent above the baseline. Emissions under the conditional exclusion option are projected at 798.4 kilograms, or 1.012 percent beyond the baseline. Under the low compliance scenario, average annual baseline emissions are estimated at 822 kilograms. The universal waste final action is projected to result in average annual emissions of 819.2 kilograms. This is a reduction of 2.8 kilograms, or 0.341 percent. Emissions under the conditional exclusion option increase by 10.5 kilograms, or 1.277 percent beyond the baseline.

The examination of cost-effectiveness may help put the above emission increments into perspective. Cost-effectiveness allows for the direct comparison of costs, or cost savings on a per kilogram basis. Under the high compliance scenario, shifting from the baseline to the universal waste final action is projected to result in cost savings of $10.5 million per additional kilogram of mercury emitted. This implies that it would be very expensive, on a per kilogram basis, to keep emissions low by holding to a high compliance baseline. Under the low compliance scenario, shifting from the baseline to the universal waste final action is projected to result in a cost increase of $0.63 million per kilogram of mercury reduced. Furthermore, today's final action is projected to cut emissions by over thirteen kilograms per year compared to the conditional exclusion option, at a cost of approximately $0.27 million per kilogram.

For more information on the cost and emissions impacts associated with today's final rule see the EPA report: Modification of The Hazardous Waste Program: Hazardous Waste Lamps—Economic Assessment. This report is available from the RCRA docket established for this action.

C. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an Agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The small entity analysis conducted for today's final action indicates that the addition of spent lamps to the universal waste system would generally result in savings to affected entities relative to baseline requirements. Under the full compliance scenario, the rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated. Costs could increase for entities that are not complying with current requirements, but even these costs (which are not properly attributable to the current rulemaking) would not be expected to result in significant impacts on a substantial number of small entities. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. Consequently, the Agency has determined that preparation of a formal Regulatory Flexibility Analysis is unnecessary.

For more information on small entity impacts potentially associated with today's final rule see the EPA report: Modification of the Hazardous Waste Program: Hazardous Waste Lamps—Regulatory Flexibility Screening Analysis. This report is available from the RCRA docket established for this action.

D. Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995 "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report", and the National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population,

regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA conducted a qualitative analysis of the environmental justice issues under this final rule. Potential environmental justice impacts are identified consistent with the EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda. In addition, public comments received on the 1994 proposal that relate to environmental justice were reviewed for this analysis.

As mentioned before, the primary concern regarding management of spent mercury-containing lamps is the air emissions as a result of crushing and accidental breakage during transport, lamp management, or disposal. Mercury air emissions can have human health effects through direct contact or indirect human contact by consuming fish and shellfish, or through contamination of drinking water (perhaps from inadequate disposal measures).

From a direct exposure standpoint, the transient nature of mercury air emissions results in less concern to the location of minority and low-income populations than might be expected. Since atmospheric mercury can travel thousands of miles (and beyond U.S. borders), an environmental justice analysis does not require a detailed geographic analysis. However, populations immediately surrounding transportation, incineration, recycling, crushing, or disposal facilities may be exposed to a higher concentration of emissions than those populations living further away. If these types of facilities are located more often in communities characterized by low-income or minority populations, there may be disproportionate impacts to those populations from the promulgation of today's final rule. If the location of such facilities is random with respect to race or income, disproportionate impacts could be said not to exist. The low compliance scenario is examined for the environmental justice analysis.

Of the indirect exposure pathways, the ingestion of mercury-contaminated fish and shellfish has been shown to be of the highest concern due to mercury's propensity to bioaccumulate in the aquatic environment. This can present an environmental justice issue since the bulk of subsistence fisher populations consist of low-income people. These subsistence fisher populations rely on locally-caught fish as an inexpensive source of protein or due to cultural reasons. However, since today's rule is expected to improve compliance, and thus adequate management of mercury-containing lamps, it is expected that there will be a positive impact on these populations, with less mercury available to contaminate aquatic environments.

No disproportional impacts for low-income or minority communities are expected as a result of the final action for the following reasons:

(1) The environmental impact of the final universal waste action is small. The 10-year modeling period projects a net decrease in emissions (low compliance scenario) at approximately 30 kilograms under the universal waste final action. The conditional exclusion option would have shown an increase (approximately 105 kg) in mercury emissions over 10 years. In either case, the wide distribution of mercury emissions is unlikely to create significant impacts on any particular community.

(2) The distribution of the municipal waste combustors and recycling facilities throughout minority and/or low income counties in the United States does not suggest any distributional pattern around communities of concern. Lamps crushing, legal or illegal, is difficult to measure because any building in any area is a potential source. Specific impacts on low income or minority communities, therefore, are undetermined. The Agency believes that emissions during transportation would not be a major contributor to communities of concern through which lamps may be transported. Any lamps broken during transport would be contained in the packaging. The Agency recognizes, however, the potential for some increased risk to transportation workers. Overall, no disproportional impacts to minority and/or low income communities are expected.

For more information on the environmental justice analysis conducted in support of today's final rule see the EPA report: Modification of the Hazardous Waste Program: Hazardous Waste Lamps—Economic Assessment. This report is available from the RCRA docket established for this action.

E. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, though OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

F. Executive Order 13045—Children's Health

"Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must: Evaluate the environmental health or safety effects of the planned rule on children; and explain the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency. We believe this final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) because it is intended to be deregulatory. However, an analysis of the potential effects of this action on children's health in the spirit of the Executive Order and consistent with the Agency's ongoing concern with children's health, is included in section II of today's preamble.

G. Regulatory Issues—Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with "federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

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Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA established any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that today's final rule imposes no enforceable duty on any State, local or tribal government or the private sector. This final rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Act generally excludes from the definition of "federal intergovernmental mandate" (in sections 202, 203, and 205) duties that arise from participation in a voluntary federal program. Adopting today's final action, because it is less stringent, is optional. The universal waste final action, therefore, could be interpreted as voluntary and not subject to the Unfunded Mandates Analysis requirement. Furthermore, today's final action is deregulatory and will not impose incremental costs in excess of $100 million to the private sector, or to state, local, or tribal governments in the aggregate.

H. Paperwork Reduction Act

The Information Collection Request (ICR) detailing the information collection requirements associated with today's rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A copy of the ICR document (ICR No. 1699.02) may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov.icr. The information requirements are not effective until OMB approves them.

The information requirements established for this action, and identified in the Information Collection Request (ICR) supporting today's final rulemaking, are largely a self-implementing process. This process will ensure that: (i) Handlers of lamp wastes are held accountable to the universal waste requirements; and (ii) state inspectors can verify compliance when needed. For example, the universal waste standards require LQHUWs and SQHUWs to demonstrate the length of time that the lamp waste has been accumulated from the date it was received or became a waste. The standards also require LQHUWs and destination sites to keep records of all shipments received and sent. Further, the standards require waste handlers to notify EPA when needed (e.g., notification of illegal shipment).

EPA will use the collected information to ensure that lamp waste is being managed in a protective manner. These data aid the Agency in tracking lamp waste shipments and identifying improper management practices. In addition, information kept in facility records helps handlers and destination sites to ensure that they and other facilities are managing lamp wastes properly. Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on the public disclosure of information, contain provisions for confidentiality. However, no questions of a sensitive nature are included in any of the information collection requirements associated with today's action.

EPA has carefully considered the burden imposed upon the regulated community by the regulations. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that hazardous waste lamps are being managed in a manner protective of human health and the environment.

The aggregate burden to respondents over the three-year period covered by this ICR is estimated at 385,461 hours, with a cost of approximately $15,247,245. The aggregate burden to the Agency is estimated at 5,583 hours, with a cost of $320,910. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

I. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that

significantly or uniquely affect their communities."

EPA has determined that the requirements of Executive Order 13084 do not apply to today's final rule because the rule does not significantly or uniquely affect Indian tribal governments or communities. Furthermore, the rule does not impose any enforceable duties on these entities, and is not likely to impose substantial direct compliance costs on tribal governments and their communities.

J. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

VIII. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective six months from the date of publication.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Recycling, Reporting and recordkeeping, Waste treatment or disposal.

40 CFR Parts 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Parts 264 and 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 273

Environmental protection, Hazardous materials, Packaging and containers.

Dated: June 28, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, parts 260 261, 264, 265, 268, 270 and 273, are amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by adding in alphabetical order the definition of "Lamp" and by revising the definition of "Universal Waste" to read as follows:

§ 260.10 Definitions.

* * * * *

Lamp, also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

* * * * *

Universal Waste means any of the following hazardous wastes that are managed under the universal waste requirements of part § 273 of this chapter:

(1) Batteries as described in § 273.2 of this chapter;

(2) Pesticides as described in § 273.3 of this chapter;

(3) Thermostats as described in § 273.4 of this chapter; and

(4) Lamps as described in § 273.5 of this chapter.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

4. Section 261.9 is amended by revising paragraphs (b) and (c), and adding paragraph (d) to read as follows:

§ 261.9 Requirements for universal waste.

* * * * *

(b) Pesticides as described in § 273.3 of this chapter;

(c) Thermostats as described in § 273.4 of this chapter; and

(d) Lamps as described in § 273.5 of this chapter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart A—General

6. Section 264.1 is amended by revising paragraphs (g)(11)(ii) and (g)(11)(iii) and adding a new paragraph (g)(11)(iv) to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(11) * * *

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(ii) Pesticides as described in § 273.3 of this chapter;
(iii) Thermostats as described in § 273.4 of this chapter: and
(iv) Lamps as described in § 273.5 of this chapter.
* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

7. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

Subpart A—General

8. Section 265.1 is amended by revising paragraphs (c)(14)(ii) and (c)(14)(iii) and adding a new paragraph (c)(14)(iv) to read as follows:

§ 265.1 Purpose, scope and applicability.
* * * * *
(c) * * *
(14) * * *
(ii) Pesticides as described in § 273.3 of this chapter;
(iii) Thermostats as described in § 273.4 of this chapter; and
(iv) Lamps as described in § 273.5 of this chapter.
* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

10. Section 268.1 is amended by revising paragraphs (f)(2) and (f)(3) and adding a new paragraph (f)(4) to read as follows:

§ 268.1 Purpose, scope, and applicability.
* * * * *
(f) * * *
(2) Pesticides as described in § 273.3 of this chapter;
(3) Thermostats as described in § 273.4 of this chapter; and
(4) Lamps as described in 40 CFR 273.5.
* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

11. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

12. Section 270.1 is amended by revising paragraphs (c)(2)(viii)(B) and (c)(2)(viii)(C) and adding a new paragraph (c)(2)(viii)(D) to read as follows:

§ 270.1 Purpose and scope of these regulations.
* * * * *
(c) * * *
(2) * * *
(viii) * * *
(B) Pesticides as described in § 273.3 of this chapter;
(C) Thermostats as described in § 273.4 of this chapter; and
(D) Lamps as described in § 273.5 of this chapter.
* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

13. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

Subpart A—General

14. Section 273.1 is amended by revising paragraphs (a)(2) and (a)(3) and adding a new paragraph (a)(4) to read as follows:

§ 273.1 Scope.
(a) * * *
(2) Pesticides as described in § 273.3;
(3) Thermostats as described in § 273.4; and
(4) Lamps as described in § 273.5.
* * * * *

15. Section 273.2 is amended by revising paragraphs (a)(1), (b)(2), and (b)(3) to read as follows:

§ 273.2 Applicability—batteries.
(a) * * *
(1) The requirements of this part apply to persons managing batteries, as described in § 273.9, except those listed in paragraph (b) of this section.
* * * * *
(b) * * *
(2) Batteries, as described in § 273.9, that are not yet wastes under part 261 of this chapter, including those that do not meet the criteria for waste generation in paragraph (c) of this section.
(3) Batteries, as described in § 273.9, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in part 261, subpart C of this chapter.
* * * * *

16. Section 273.3 is amended by revising paragraph (a) introductory text to read as follows:

§ 273.3 Applicability—pesticides.
(a) *Pesticides covered under this part 273.* The requirements of this part apply to persons managing pesticides, as described in § 273.9, meeting the following conditions, except those listed in paragraph (b) of this section:
* * * * *

17. Section 273.4 is amended by revising paragraph (a) to read as follows:

§ 273.4 Applicability—mercury thermostats.
(a) *Thermostats covered under this part 273.* The requirements of this part apply to persons managing thermostats, as described in § 273.9, except those listed in paragraph (b) of this section.
* * * * *

18. Section 273.5 is revised to read as follows:

§ 273.5 Applicability—Lamps.
(a) *Lamps covered under this part 273.* The requirements of this part apply to persons managing lamps as described in § 273.9, except those listed in paragraph (b) of this section.
(b) *Lamps not covered under this part 273.* The requirements of this part do not apply to persons managing the following lamps:
(1) Lamps that are not yet wastes under part 261 of this chapter as provided in paragraph (c) of this section.
(2) Lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in part 261, subpart C of this chapter.
(c) *Generation of waste lamps.* (1) A used lamp becomes a waste on the date it is discarded.
(2) An unused lamp becomes a waste on the date the handler decides to discard it.

§ 273.6 [Redesignated as § 273.9]

§§ 273.6 and 273.7 [Reserved]

19. Section 273.6 is redesignated as § 273.9 and §§ 273.6 and 273.7 are added and reserved.

20. Section 273.8 is added to read as follows:

§ 273.8 Applicability—household and conditionally exempt small quantity generator waste.
(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this part:
(1) Household wastes that are exempt under § 261.4(b)(1) of this chapter and

are also of the same type as the universal wastes defined at § 273.9; and/or
(2) Conditionally exempt small quantity generator wastes that are exempt under § 261.5 of this chapter and are also of the same type as the universal wastes defined at § 273.9.
(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this part must manage the commingled waste under the requirements of this part.

21. Newly designated § 273.9 is amended by adding, in alphabetical order, the definition of "Lamp" and revising the definitions of "Large Quantity Handler of Universal Waste," "Small Quantity Handler of Universal Waste" and "Universal Waste" to read as follows:

§ 273.9 Definitions.
* * * * *
Lamp, also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.
* * * * *
Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, thermostats, or lamps, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.
* * * * *
Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more total of universal waste (batteries, pesticides, thermostats, or lamps, calculated collectively) at any time.
* * * * *
Universal Waste means any of the following hazardous waste that are subject to the universal waste requirements of this part 273:
(1) Batteries as described in § 273.2
(2) Pesticides as described in § 273.3
(3) Thermostats as described in § 273.4; and
(4) Lamps as described in § 273.5.
* * * * *

Subpart B—Standards for Small Quantity Handlers of Universal Waste

22. Section 273.10 is revised to read as follows:

§ 273.10 Applicability.
This subpart applies to small quantity handlers of universal waste (as defined in 40 CFR 273.9).

23. Section 273.13 is amended by adding a new paragraph (d) to read as follows:

§ 273.13 Waste Management.
* * * * *
(d) *Lamps.* A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
(1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
(2) A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

24. Section 273.14 is amended by adding a new paragraph (e) to read as follows:

§ 273.14 Labeling/marking.
* * * * *
(e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

Subpart C—Standards for Large Quantity Handlers of Universal Waste

25. Section 273.30 is revised to read as follows:

§ 273.30 Applicability.
This subpart applies to large quantity handlers of universal waste (as defined in § 273.9).

26. Section 273.32 is amended by revising paragraphs (b)(4) and (b)(5) as follows:

§ 273.32 Notification.
* * * * *
(b) * * *
(4) A list of all the types of universal waste managed by the handler (e.g., batteries, pesticides, thermostats, lamps);
(5) A statement indicating that the handler is accumulating more than 5,000 kg of universal waste at one time and the types of universal waste (e.g., batteries, pesticides, thermostats, and lamps) the handler is accumulating above this quantity.

27. Section 273.33 is amended by adding a new paragraph (d) to read as follows:

§ 273.33 Management.
* * * * *
(d) *Lamps.* A large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
(1) A large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
(2) A large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

28. Section 273.34 is amended by adding a new paragraph (e) to read as follows:

§ 273.34 Labeling/marking.
* * * * *
(e) Each lamp or a container or package in which such lamps are

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contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

Subpart D—Standards for Universal Waste Transporters

29. Section 273.50 is revised to read as follows:

§ 273.50 Applicability.

This subpart applies to universal waste transporters (as defined in § 273.9).

Subpart E—Standards for Destination Facilities

30. Section 273.60 is amended by revising paragraph (a) to read as follows:

§ 273.60 Applicability.

(a) The owner or operator of a destination facility (as defined in § 273.9) is subject to all applicable requirements of parts 264, 265, 266, 268, 270, and 124 of this chapter, and the notification requirement under section 3010 of RCRA.

* * * * *

Subpart G—Petitions to Include Other Wastes Under 40 CFR Part 273

31. Section 273.81 is amended by revising paragraph (a) to read as follows:

§ 273.81 Factors for petitions to include other wastes under this part 273.

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in subpart D of part 261 of this chapter, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in subpart C of part 261 of this chapter. (When a characteristic waste is added to the universal waste regulations of this part 273 by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste in § 260.10 of this chapter and § 273.9 will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries).) Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of this part 273;

* * * * *

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July 6, 1999

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 16, 101, and 115

Food Labeling: Safe Handling Statements: Labeling of Shell Eggs; Shell Eggs: Refrigeration of Shell Eggs Held for Retail Distribution; Proposed Rule

Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rule to Require Refrigeration of Shell Eggs at Retail and Safe Handling Labels; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 101, and 115

[Docket Nos. 98N–1230, 96P–0418, and 97P–0197]

RIN 0910–AB30

Food Labeling: Safe Handling Statements: Labeling of Shell Eggs; Shell Eggs: Refrigeration of Shell Eggs Held for Retail Distribution

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food-and Drug Administration (FDA) is proposing to require safe handling statements on labels of shell eggs that have not been treated to destroy *Salmonella* microorganisms. The agency is also proposing to require that, when held by retail establishments, shell eggs be stored and displayed under refrigeration at a temperature of 7.2 °C (45 °F) or less. FDA is taking these actions because of the number of outbreaks of foodborne illnesses and deaths caused by *Salmonella* Enteritidis that are associated with the consumption of shell eggs that have not been treated to destroy this pathogen. These actions complement regulations of the Food Safety and Inspection Service (FSIS) that require that shell eggs be stored and transported at a temperature of 7.2 °C (45 °F) or less and that the consumer containers of shell eggs be labeled to indicate that refrigeration is required. FDA's proposal also responds, in part, to petitions from Rose Acres Farm, Inc., and the Center for Science in the Public Interest (CSPI). FDA expects that by requiring this information, consumers will be able to take measures to protect themselves from illness or deaths associated with consumption of shell eggs that have not been treated to destroy *Salmonella* Enteritidis.

DATES: Written comments by September 20, 1999. See section VII for the proposed effective date of a final rule based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of this proposed rule are available on the Internet at "http://www.fda.gov/cfsan".

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Epidemiology of Salmonellosis

Salmonella microorganisms are ubiquitous, and are commonly found in the digestive tracts of animals, especially birds and reptiles. Human illnesses are usually associated with ingesting food or drink contaminated with *Salmonella*, although infection may also occur person to person by the fecal-oral route where personal hygiene is poor and by the animal to man route.

The disease salmonellosis results from an intestinal infection with *Salmonella* microorganisms and is characterized by diarrhea, fever, abdominal cramps, headache, nausea, and vomiting. Symptoms of salmonellosis usually begin within 6 to 72 hours after consuming a contaminated food or liquid and last for 4 to 7 days. Most healthy people recover without antibiotic treatment. However, the infection can spread to the bloodstream, and then to other areas of the body such as the bone marrow or the meningeal linings of the brain, leading to severe and fatal illness (Ref. 1). This spreading phenomenon of salmonellosis is more likely in children, the elderly, and persons with weakened immune systems. In addition, about 2 percent of those who recover from salmonellosis may later develop recurring joint pains and arthritis (Ref. 2).

Salmonellosis is a serious health concern. It is a notifiable disease, i.e., physicians are required to report cases (i.e., single occurrences of illness) to the local health departments. These cases are then, in turn, reported to state health departments, which report the annual totals to the Centers for Disease Control and Prevention (CDC). However, these reports are made only if there are test results identifying the *Salmonella* microorganism that caused the illness.

In a 1979 to 1980 epidemiological study, CDC estimated that about 45 percent of those persons from whom *Salmonella* isolates[1] were reported were hospitalized for their illness and that 1.3 percent of them died from complications associated with the illness (Ref. 3). Very similar proportions were found in a 1984 to 1985 study. Using these proportions, CDC estimated that, in 1988, the approximately 43,000 reported cases represented a minimum of 19,000 hospitalizations and 500 deaths. Reported cases likely represent only a small portion of the actual number of illnesses that occur because: (1) Ill individuals do not always seek care by medical professionals, especially if the symptoms are not severe; (2) medical professionals may not establish the cause of the illness but simply treat the symptoms; and (3) medical professionals do not always report *Salmonella* cases to CDC. It is estimated that the actual number of cases per year may be 20-fold to 100-fold greater than the number of reported cases. Therefore, the number of actual cases of salmonellosis in 1988 was estimated to be from 800,000 to 4 million (Ref. 4). In 1996, there were 39,027 confirmed cases[2] of human salmonellosis reported to the CDC.

CDC surveillance data list close to 600 different *Salmonella* serotypes (a group of related microorganisms distinguished by their antigens) that have caused illness in the United States. The three serotypes most frequently reported as causing illness are *Salmonella* Enteritidis (SE), *S.* Typhimurium, and *S.* Heidelberg (Ref. 5). These microorganisms are found in poultry and eggs.

Since 1976, SE-associated cases of salmonellosis have increased and have been found throughout the country. SE accounted for only about 5 percent of the number of all reported *Salmonella* isolates in 1976. In 1985, 1990, 1994, 1995, 1996, and 1997, SE constituted 9.8 percent, 20.6 percent, 26 percent, 24.7 percent, 24.5 percent, and 22.9 percent, respectively, of all *Salmonella* isolates. Currently, SE is one of the most predominant reported serotypes. There were 7,924 SE isolates reported in 1997 (Ref 7).

CDC surveillance data show that the overall rates of isolation[3] of SE increased 680 percent during the period between 1976 to 1994 (Ref. 6). Initially, the increases in the United States largely occurred in the Northeast. Later, the increase spread throughout the country. While the trends for the years 1990 to 1994 show a 21 percent decrease in the SE isolation rate in the Northeast, the rate increased approximately 300 percent for the Pacific region.

In 1985, the States reported 26 SE-related outbreaks (i.e., occurrences of 2 or more cases of a disease related in time and place) to CDC but 77 outbreaks were reported by 1989. In 1996, there were 51 reported SE outbreaks (Ref. 9). From 1985 through 1996, there have been a total of 660 SE-related outbreaks reported to CDC. Associated with these outbreaks, there have been 25,935 reported cases of illness, 2,508 reported hospitalizations, and 77 reported deaths. Deaths have occurred in all years of this time period. In 1997, there were 44 reported outbreaks (Ref. 10). Many SE outbreaks were attributed to food served in commercial establishments, such as restaurants and other commercial food service establishments, hospitals, nursing homes, schools, prisons, private gatherings, and ships, with the implicated food containing undercooked eggs (Ref. 11). Although most deaths linked to reported SE-related outbreaks in recent years have occurred among the elderly in hospitals and nursing homes (Ref. 3), salmonellosis can be fatal to an otherwise healthy person if a sufficient dose is ingested, and proper treatment is not administered (Ref. 12).

Until the mid-1980's, eggs were not associated with many *Salmonella* outbreaks. Since the mid-1980's, however, the number of egg-associated salmonellosis outbreaks have increased. Shell eggs are now the predominant source of SE-related cases of salmonellosis in the United States where a food vehicle is identified (Ref. 13). From 1985 to 1993, consumption of eggs was associated with 83 percent of SE-related outbreaks where a food vehicle was identified (Ref. 14). Recent data indicate that egg-associated SE outbreaks still represent a significant portion of the total number of all SE outbreaks reported to CDC. In 1996, 1997, and 1998, 60 percent, 70 percent, and 58 percent of the SE outbreaks reported to CDC implicated foods containing eggs (Ref. 14A).[4]

The Foodborne Diseases Active Surveillance Network (FoodNet[5]), an active surveillance system for foodborne pathogens, recently reported a 44 percent decrease in the isolation rate for SE (2.5 to 1.4 per 100,000 U.S. population) from 1996 to 1998 (Ref. 14B). This decrease is substantial; however, the results are preliminary and the reasons for this decrease are under investigation. Implementation of egg quality assurance programs that included microbiological testing and egg diversion may have contributed to this reported decrease. However, the reported decrease may also be explained by a decline in the presence of *Salmonella* isolated from poultry and meat products because of recently implemented HACCP programs, or by some combination of egg quality assurance and meat/poultry HACCP program. In any event, FDA believes that the incidence of SE is still too high and that additional measures can and should be put in place with respect to shell eggs to reduce the incidence even further.

B. Salmonella Contamination of Eggs

Having evolved to protect the developing chick embryo, an egg provides a uniquely inhospitable environment for *Salmonella* and other bacterial contaminants. An egg's natural defenses are both mechanical and chemical. Mechanically, there are four barriers that must be overcome for bacteria to reach the nutrient-rich yolk where they can rapidly multiply: (1) The shell, (2) the two membranes (inner and outer) between the shell and the albumin (egg white), (3) the albumin, and (4) the vitellin (yolk) membrane that holds the yolk. Additionally, when laid, the egg shell is covered on the outside by the cuticle, a substance similar to the shell membrane. When the cuticle dries, it seals the egg's pores, thereby inhibiting initial bacterial penetration. Consequently, a fresh egg is fairly resistant to invasive bacteria. However, the cuticle is generally removed along with debris on the surface of the shell during the cleaning process employed to prepare eggs for commercial sale. Thus, this outermost defense is generally not available to protect against trans-shell penetration of bacteria.

The albumin is probably the most formidable defense against microorganisms that have entered an egg. In a fresh egg, the albumin has a high viscosity that both anchors the yolk in the center of the egg and inhibits movement of microorganisms toward the yolk. Chemical defenses of the albumin include: (1) A very alkaline pH (>9), (2) low available nitrogen, and (3) proteins that have an anti-bacterial effect, specifically, ova-transferrin and lysozyme. If, however, conditions occur that allow SE to transverse the mechanical and chemical barriers in an egg and reach the nutrient rich yolk, the microorganisms may then increase in number.

Until recently, *Salmonella* contamination of shell eggs was thought most likely to be by trans-shell penetration of bacteria present in the egg's environment. The surface of an egg can become contaminated with any microorganism that is excreted by the laying flocks. In addition, contact with nesting materials, dust, feedstuff, shipping and storage containers, human beings and other creatures may be a source of shell contamination. The likelihood of trans-shell penetration increases with the length of time that the eggs are in contact with contaminating materials.

While environmental contamination is still a route for *Salmonella* contamination, it has recently been found that an egg's contents can become contaminated with SE before the egg is laid. Though the mechanism is still not well understood, SE will infect the ovaries and oviducts of some egg laying hens, permitting "transovarian" contamination of the interior of the egg while the egg is still inside the hen (Refs. 15 and 16). The site of contamination is usually the albumin.

It is believed that only a small number of hens in an infected flock shed SE at any given time and that an infected hen

[1] When a physician sees a patient and suspects that the patient has a case of salmonellosis, the physician may obtain a patient's specimen (e.g., stool) for analysis. The specimen is sent to the laboratory to be tested to identify and confirm any *Salmonella* that may be present. Thus, the laboratory obtains the actual isolate of *Salmonella*.

[2] A case of illness is confirmed as salmonellosis only if an isolate is confirmed by a laboratory as being *Salmonella*. Thus, although all cases may not be confirmed, all confirmed cases are associated with isolates of *Salmonella*.

[3] Rates of isolation are the number of reported isolates divided by 100,000 total population.

[4] The total number of SE outbreaks implicating eggs is equal to the total number of SE outbreaks minus the number of outbreaks where the vehicle is unknown or where the implicated food is one other than eggs, i.e., chicken or turkey.

[5] FoodNet is a collaborative project among CDC, FSIS, FDA, and 8 sites in the U.S. where foodborne disease data are being collected. To identify cases of foodborne illness, surveillance personnel contact clinical laboratories weekly or monthly to obtain data on numbers of cases.

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may lay many uncontaminated eggs (Refs. 15 and 17). Nonetheless, it has been estimated that of the 47 billion shell eggs consumed annually as shell eggs, 2.3 million are SE-positive, exposing a large number of people to the risk of illness (Ref. 8). FDA believes that it is this transovarian contamination that is responsible for the increased number of SE-related salmonellosis cases described in section I.A of this document.

C. Infectious Dose

In general, the greater the numbers of microorganisms ingested, the greater the likelihood of disease. The likelihood of disease is also affected by the virulence of the microorganism and the susceptibility of the host (Ref. 18). However, there is evidence that the infectious dose (i.e., amount of microorganisms capable of causing disease) for SE can be very low. For example, in a 1994 outbreak attributed to consumption of SE-contaminated ice cream, the highest level of contamination found in the implicated ice cream was only six microorganisms per half-cup (65 gram) serving (Ref. 19). Another report showed that by using a different method of determining levels of SE in the implicated ice cream, the infective dose per serving was 25 microorganisms (Ref. 20). These reports indicate that low level contamination of foods with SE, and thus, low doses, can lead to illness. It is generally believed that SE-contaminated eggs initially contain only a few microorganisms (less than 20 microorganisms (Ref. 21)). Thus, the small number of microorganisms that initially may contaminate the egg may be sufficient to cause illness.

D. Inappropriate Handling of Eggs by Consumers and Other Food Preparers

SE outbreak investigations show that outbreaks commonly occur when foods prepared with SE-contaminated eggs are not appropriately handled by consumers or other food preparers. Common practices inappropriate for foods containing SE-contaminated eggs include temperature abuse (i.e., failing to keep the eggs and foods prepared with eggs refrigerated) and inadequate cooking. Pooling eggs to prepare a large volume of an egg-containing food that is subsequently temperature abused or inadequately cooked can cause illness in large numbers of people if any of the eggs were initially contaminated with SE.

Temperature abuse gives SE the opportunity to multiply, thereby increasing the number of viable microorganisms ingested, especially when eggs are consumed raw. Temperature abuse and consumption of raw eggs were associated with an SE outbreak at a catered wedding reception in New York, where Caesar salad dressing was implicated as the cause of SE illnesses. The Caesar salad dressing was made with 18 raw shell eggs, left unrefrigerated for 2 hours at the catering establishment, held in an unrefrigerated truck until delivered, and served at the reception 4½ hours later (Ref. 6).

Incomplete cooking of eggs (as in soft-boiled eggs or sunny-side up eggs) also allows ingestion of viable microorganisms if any of the eggs were initially contaminated. Incomplete cooking of eggs was associated with an SE outbreak in Tennessee, where the consumption of Hollandaise sauce served in a restaurant was linked to SE illnesses. Review of the food handling practices showed that the sauce had been prepared from eggs that were pooled, incompletely cooked, and served more than one hour after preparation (Ref. 12). Another outbreak of SE illness in an Indiana nursing home was linked to the consumption of baked eggs. The baked eggs were prepared by pooling 180 Grade A raw shell eggs, mixing with a whisk, and baking in a single pan at 204 °C (400 °F) for 45 minutes to 1 hour. Investigators believed that inadequate cooking occurred because the mixture was not stirred while baked (Ref. 6).

FDA is also aware that many consumers eat foods containing raw or undercooked eggs. An FDA survey indicated that 53 percent of respondents (total 1,620) ate foods containing raw eggs at some time (Ref. 22). Raw egg-containing foods mentioned in this survey included cookie batter, homemade ice cream, homemade eggnog, Caesar salad, frosting, homemade shakes, homemade Hollandaise sauce, and homemade mayonnaise. The Menu Census Survey (1992 to 1995) (Refs. 23 and 24) showed that frosting accounted for 53 percent and salad dressing 19 percent of occasions when raw egg-containing products were consumed.

The 1996 to 1997 Food Consumption and Preparation Diary Survey (Ref. 24) showed that 27 percent of all egg dishes consumed were undercooked (described as being runny or having a runny yolk or runny white). On average, each person consumed undercooked eggs 20 times a year. Within those groups at risk, women over 65 and children under 6 consumed undercooked eggs 21 times a year and 8 times a year, respectively. Moreover, consumer focus group research showed that many participants did not realize that certain foods such as chocolate mousse or key lime pie may contain raw or undercooked eggs, and, therefore, are potentially hazardous (Ref. 25).

E. Current Commercial Practices for Handling Eggs

Egg production facilities are either "in-line" facilities or "off-line" facilities. An in-line facility integrates laying, packing, and processing at one location. Freshly laid eggs go directly into a processing system where they are cleaned, sorted, and packed for distribution. An "off-line" facility receives eggs from laying facilities at other locations. Generally eggs are cleaned before they are packed. Typically, U.S. processors use hot water (43 to 49 °C (110 to 120 °F)) to wash eggs. After the eggs are washed, they are dried with forced ambient air and then packed. At the time that eggs are packed, the internal temperatures are often in the 21 to 27 °C (70 to 80 °F) range. Most processors hold packed eggs in coolers at an ambient temperature of 7 to 16 °C (45 to 60 °F).

Currently, eggs are held at various temperatures for various times prior to purchase by the consumer. The U.S. Department of Agriculture (USDA) estimates the following times and temperatures in the distribution of shell eggs: (1) 2 to 72 hours at temperatures of 7.2 to 32 °C (45 to 90 °F) at the processor, (2) 1 to 24 hours at temperatures of 7.2 to 32 °C (45 to 90 °F) during transportation, (3) 0 to 60 days at temperatures of 4 to 32 °C (40 to 90 °F) at retail (Ref. 8). These data indicate that, especially at retail, eggs are being held, for long periods of time, at temperatures that will not inhibit growth of SE. Currently, 37 States and the District of Columbia require ambient temperatures of 7.2 °C (45 °F) or less for egg storage and handling at retail. The other States either require ambient temperatures of 16 °C (60 °F) or less (i.e., the temperature required under USDA grading standards) or have no temperature requirements for egg storage and handling at retail.

These ambient temperatures, however, do not correlate to the internal temperature of the egg. The internal temperature of the egg when the eggs are transported ranges between 10 and 27 °C (50 and 80 °F), depending on the egg's temperature at the time of packing, the way the eggs are packaged, how the crates are packed and stacked, and the length of time they are in the cooler before they are shipped (Ref. 26).

F. Limiting the Numbers of Salmonella Microorganisms in Eggs

Because studies suggest that infectious dose for SE can be low, FDA believes that the ideal solution to this public health problem would be to adopt measures to eliminate viable SE in shell eggs, either through preventing transovarian and trans-shell contamination or through processing to destroy viable SE in shell eggs, with distribution safeguards to prevent subsequent recontamination. However, FDA has tentatively concluded that eliminating viable SE in shell eggs in either of these two ways is not yet practicable. Other measures that can limit SE and inform consumers how to avoid the risks posed by SE are, however, practicable and thus FDA is proposing in this regulation to put such measures in place. The agency has also, jointly with USDA, published an advance notice of proposed rulemaking (ANPRM) (63 FR 27502, May 19, 1998; "the 1998 ANPRM") that requests comments on farm-to-table actions that will decrease the food safety risks associated with shell eggs.

As mentioned previously, although fresh shell eggs provide a particularly inhospitable environment for *Salmonella* and other microorganisms to multiply, the chemical and physical barriers against bacterial movement and growth degrade over a period of time. Consequently, as a result of degradation, SE and other bacteria, if present, are better able to move into the nutrient rich yolk, which provides a favorable environment for growth of SE.

Studies demonstrate that the rate of this degradation is time and temperature related. C. J. Kim et al. (Ref. 27) found that SE inoculated into the albumin of whole shell eggs multiplied to high numbers if the inoculated eggs were not properly refrigerated. This study examined the growth of SE inoculated into the albumin of shell eggs in numbers ranging from approximately 2 to 200,000 organisms per egg and held for 10, 20, or 30 days at 1 of 5 different temperatures from 4 °C (39 °F) to 27 °C (81 °F).

The investigators in this study found that, of the variables studied, temperature was the most important in determining the growth of SE (Ref. 27). Furthermore, they found that the growth response was directly proportional to the temperature at which the inoculated eggs were held. The study demonstrated that SE inoculated in shell eggs can multiply to substantial levels if held at 10 °C (50 °F) or higher for up to 30 days. The authors concluded that "because the number of SE present at the time an infected egg is laid is probably very low, egg storage at 4 °C (39 °F) could be expected to result in a smaller risk to the public health than higher storage temperatures" (Ref. 27). Thus, although albumin is inhibitory to *Salmonella*, these experiments show that SE inoculated into shell egg albumin, even at low levels, can multiply to substantial levels if held at 10 °C (50 °F) or higher for a significant period of time.

A subsequent study by Humphrey et al., (Ref. 21), of 5,700 eggs from flocks naturally infected with SE, appears to show that albumin is seeded with SE during passage of the egg through the oviduct. These SE microorganisms remain dormant even in eggs stored at room temperature (21 °C (70 °F)) for 2 to 3 weeks. However, after that period of time, nutrients or factors that negate the inhibitory properties of albumin appear to leak out of the yolk, possibly because of changes in the yolk membrane. These substances obtain levels close to the yolk in a sufficiently high concentration to support large populations of SE.

In a study of laying hens that were experimentally infected with SE, R. K. Gast and C. W. Beard (Ref. 28) also found that infected hens can produce eggs with SE contaminated contents. Their study indicates that transovarian infection followed by limited room temperature storage (25 °C (77 °F)) resulted in contamination of the yolk membrane or albumin, or both, but not the contents of the yolk. In the Gast and Beard experiments, all eggs were held at room temperature for 4 days before sampling. Although the number of microorganisms per egg was not measured, indirect evidence, such as the higher recovery frequency of SE from egg contents when incubated in broth for 48 hours versus 24 hours, suggests that the number of microorganisms per egg was low after holding the eggs for 4 days at room temperature.

Clay and Board (Ref. 29), by inoculating SE into the air cell of eggs, were able to show that the movement of the microorganism from the shell membrane to albumin and to the yolk was associated with aging related changes in the egg structure. These changes, such as changes in the relative densities of the albumin and yolk and enlargement of the air cell, result in movement of the yolk towards the inoculated SE during storage. These changes have the effect of bringing the yolk closer to the contaminated shell membranes when the egg is incubated in a position with the air cell uppermost. These investigators found that gross contamination of the albumin with SE was inhibited when the eggs were stored at 4 °C (39 °F) although the microorganism was viable throughout 30 days of storage. However, storage of eggs at 4 °C (39 °F) or 10 °C (50 °F) for 20 days followed by an increase in temperature to 25 °C (77 °F) led to generalized infection of the egg contents. Clay and Board state that their observations suggest that refrigerated storage of eggs should be a part of a protective barrier between the laying flock and the consumer, and to be effectively realized, refrigerated storage would have to be imposed shortly after the egg is laid and continue until immediately before cooking and consumption.

T. J. Humphrey (Ref. 30) studied the effect of storage temperatures of 8, 10, 12, and 15 °C (46, 50, 54, and 59 °F) on *Salmonella* growth in artificially inoculated eggs. No growth was observed after 3 weeks at 8 °C (46 °F). Growth of SE phage type 4 and 13a was observed at 10, 12, and 15 °C (50, 54, and 59 °F). SE phage 8 showed no growth at temperatures below 12 °C (54 °F).

Bradshaw et al. (Ref. 30A) studied the effect of storage temperatures on the growth of SE inoculated into the yolks of shell eggs. The inoculated yolks were incubated at 37, 15.5 and 7 °C (99, 59, and 45 °F). They observed no significant growth when the eggs were held at 7 °C (45 °F) for up to 94 days.

FDA finds that the scientific evidence on the growth of SE in eggs shows that control of storage temperature of shell eggs can effectively prevent the multiplication of any SE that may be present. While there is some debate about the precise optimum storage temperature for eggs, the research cited previously clearly indicates that refrigerating shell eggs at 8 °C (46 °F) and 7.2 °C (45 °F) or less greatly extends the time that an egg can maintain its defenses against movement of contaminating bacteria such as *Salmonella* to the nutrient rich yolk, and, therefore, substantially reduces the likelihood that any SE that is present will be able to increase in numbers. Moreover, there is evidence that cooling eggs reduces the heat resistance of SE microorganisms, making any microorganisms that may be present in an egg more likely to be killed when the egg is less than completely cooked (Refs. 30 and 31). Thus, FDA believes that sustained refrigeration of eggs plays an important role in reducing the likelihood that any SE present will reproduce.

Although continued refrigeration of eggs reduces likelihood of outgrowth of any SE that may be present, another measure a consumer may take to reduce the likelihood of consuming contaminated eggs is to thoroughly cook eggs. CDC reports that thorough cooking normally kills *Salmonella* that may be present in eggs (Ref. 32). However, some

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cooking techniques commonly used for eggs or egg-containing foods do not thoroughly cook the eggs. For example, eggs that are liquid or runny after light cooking (e.g., soft boiled eggs, and sunny-side up eggs) can still contain viable *Salmonella* microorganisms. FDA's Food Code (a model code that is published by FDA and intended for adoption by States and local authorities for governing food retail and food service establishments) requires that raw eggs that are broken and prepared in response to a consumer's order be cooked at 63 °C (145 °F) for 15 seconds. Other raw eggs are required to be cooked 15 seconds at 68 °C (155 °F) (Ref. 33).

G. Current Efforts

FDA and the Food Safety and Inspection Service (FSIS) of the USDA share Federal authority to regulate eggs for safety. FDA has jurisdiction over the safety of foods (except meat and poultry) generally, including shell eggs, under section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, *et seq.*) and under the Public Health Service Act (PHS Act) (42 U.S.C. 201 *et seq.*).

USDA has primary responsibility for implementing the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). Under the EPIA, FSIS, and USDA's Agricultural Marketing Service (AMS) share responsibility to inspect processed egg products and to ensure proper distribution of eggs that are cracked or otherwise unsuitable for sale as whole shell eggs.

Federal agencies are working cooperatively with egg producers and others to enhance the safety of eggs that are sold to consumers. USDA's Extension Service, FSIS, AMS, and FDA all provide educational material on egg production methods that enhance food safety. FDA and FSIS work with States to encourage uniformity among state laws in retail and food service establishments through adoption of the Food Code. In addition, FDA, which has responsibility for investigating reports of SE outbreaks from foods in interstate commerce, performs trace backs to identify the source of the implicated eggs, environmentally tests flocks, diverts eggs from SE positive flocks, collects flock data to help track the spread of SE among layer flocks, and encourages better quality control.

In recent years, several programs have been created for the purpose of controlling the spread of SE on farms. One such program, the National Poultry Improvement Plan (NPIP), a cooperative Federal-State program sponsored by USDA's Animal Plant Health Inspection Service (APHIS), was developed to provide assistance to breeders and hatcheries in keeping flocks free of egg-transmitted diseases. In 1989, the NPIP developed an SE control program to reduce the prevalence of SE in hatching eggs and chicks through sanitation and other control measures. Another APHIS-sponsored joint Federal, State, and academic program, the *Salmonella* Enteritidis Pilot Program, was started in Pennsylvania in 1992. The objectives of the program were to develop effective and efficient procedures for monitoring SE and effective and efficient ways to prevent SE from contaminating eggs. The findings from the pilot program were incorporated into the Pennsylvania Egg Quality Assurance Program (PEQAP). The success of the PEQAP was indicated by a study, conducted in 1995, that demonstrated a decline in the number of SE-positive samples in houses that had been in the program from 1992 to 1995 (Ref. 34). Other programs have been developed to address the spread of SE to eggs, such as California's Egg Quality Assurance Plan, the New England Risk Reduction Program for SE, the United Egg Producers' Five Star Program, and the United States Animal Health Association's Best Management Practices for a *Salmonella* Enteritidis Reduction Program For Egg Producers.

A spent hen and liquid egg survey conducted by USDA in 1991 and repeated in 1995 showed that, despite the efforts described previously, the nation-wide prevalence of SE-positive flocks and the incidence of SE in shell eggs increased (Ref. 35). Because of the number of human illnesses and deaths attributable to SE in shell eggs, FDA and USDA are concerned that the current regulatory program for shell eggs is not adequate. Consequently, FDA and USDA are looking at ways of addressing the "farm to table" safety of shell eggs. FDA and FSIS recently have taken several steps to address the issue of reducing the risk of SE associated with shell eggs.

For example, in 1990, FDA reclassified eggs as a "potentially hazardous food" in the Food Code. The 1999 Food Code stipulates that potentially hazardous foods, including eggs, be maintained at 5 °C (41 °F) or less (Ref. 33). However, because of the number of illnesses associated with eggs and the fact that not all States have adopted this aspect of the Food Code, FDA tentatively concludes that stronger measures are necessary regarding handling of shell eggs.

On November 18 to 20, 1996, FDA and FSIS sponsored a 3-day technical conference that provided a forum for discussion on temperature control interventions and verification techniques in the transportation and storage of meat, poultry, seafood, and eggs and egg products. FSIS and FDA also published a joint ANPRM (61 FR 59372, November 22, 1996) soliciting information on issues related to ensuring the safety of potentially hazardous foods during transportation and storage. Comments to that document are being analyzed.

In addition, in December 1996, FSIS began a science based risk assessment for shell eggs and egg products. This project was conducted by a multidisciplinary team of scientists from academia and USDA. The project goals were to provide an understanding of egg-associated foodborne disease, assist in evaluating farm to table risks and ways to reduce risks, and verify additional data needs. The final report was issued June 12, 1998.

On September 3, 1997, FDA and FSIS jointly held a public meeting to review the current science, including technological and safety factors, relating to shell eggs and egg products and to identify intervention options that are most effective in reducing the public health risk in a cost-effective manner. Experts from industry, academic, regulatory, and consumer sectors presented information on illnesses and the epidemiology of outbreaks arising from shell eggs and foods containing raw and undercooked eggs; current concerns with emerging pathogens; procedures for processing eggs; and new and existing technology to control pathogens in shell eggs and egg products. Comments from this meeting were considered in the risk assessment project.

In addition, FDA and USDA recently published in the **Federal Register** an ANPRM seeking to identify farm-to-table actions that will decrease the food safety risks associated with shell eggs. Information gathered from the foregoing measures will be considered as part of the two agencies' approaches for a comprehensive program to address the safety of shell eggs from farm to table. Because rulemaking to address a comprehensive program will likely take considerable time, FDA believes that it can meet an immediate goal of reducing the risk of foodborne illness from SE by ensuring that shell eggs at retail are held at appropriate temperatures and by providing safe handling statements for shell eggs. In addition, as stated in section II.A of this document, USDA published a final rule in the **Federal Register** of August 27, 1998 (63 FR 45663), amending its regulations to require that shell eggs packed for consumer use be stored and transported at an ambient temperature that does not exceed 7.2 °C (45 °F) and that containers of shell eggs be labeled to indicate that refrigeration is required. Both FDA and FSIS will consider actions based on comments to the ANPRM to address issues other than labeling and refrigeration of eggs while held for retail distribution.

H. Petitions to the Agency

FDA received a petition from Rose Acres Farms, Inc., (filed November 4, 1996, Docket No. 96P–0418) requesting, among other things, that the agency amend § 101.17 (21 CFR 101.17) by adding a requirement that shell eggs bear a label statement that informs consumers of safe handling practices for the product. In support of its request, the petition contended that practically all SE outbreaks and deaths have involved mishandling of eggs. The petition stated that, therefore, reducing practices such as temperature abuse or inadequately cooking eggs would virtually eliminate the problem. The petition also asserted that some egg producers may not wish voluntarily to include safe handling information on their labels because they fear their competitors may not include the same information, and, therefore, their product would seem less safe by comparison. However, if FDA required safe handling instructions on all cartons of shell eggs, then no producer would be at a competitive disadvantage. The petition suggested the following label statement: "Keep refrigerated and cook thoroughly before eating. Use pasteurized egg products for any recipe which does not require that the eggs be thoroughly cooked."

FDA also received a petition from CSPI (filed May 14, 1997, Docket No. 97P–0197) requesting, among other things, that the agency require that the carton of shell eggs bear a label statement cautioning consumers that eggs may contain harmful bacteria, and that consumers should not eat raw or undercooked eggs. In support of its request, CSPI stated that SE in eggs is a serious health problem and that illnesses caused by SE in the United States have increased. CSPI further stated that consumers have no way of knowing that an egg is contaminated because eggs that are contaminated with SE have a normal appearance. The petition suggested the following label statement: "Caution: Eggs may contain illness-causing bacteria. Do not eat raw. Cook until yolk is firm."

The petition also requested, among other measures, that the agency require that eggs be refrigerated to an internal temperature of 5 °C (41 °F) as soon as possible and kept at that temperature at all points up to and including the point of retail sale. This temperature, according to CSPI, will ensure that SE cannot multiply.

USDA/FDA received approximately 73 responses to the 1998 ANPRM, each containing one or more comments. Responses were received from egg farmers, egg packers, associations for the egg industry, other trade associations, consumers, consumer interest groups, animal interest groups, academia, State government agencies, and foreign government agencies. Many of these comments addressed issues not relevant to this proposed rule, e.g., implementation of national standards for QA programs, implementation of HACCP, transportation of shell eggs, sell-by and expiration dates for shell eggs, housing and forced molting of chickens, repacking of eggs, and exportation of SE-contaminated into other countries. FDA will not address those comments in this proposed rule. There were, however, several comments that did raise issues relevant to this proposed rule such as the extent of the SE problem, refrigeration of shell eggs, and safe handling instructions on consumer packages of shell eggs. Although most of these comments supported the approach proposed in this document, some comments suggested different approaches than those in this proposal. These latter comments are addressed below in the appropriate sections of this document.

II. The Proposal to Require Refrigeration of Shell Eggs in Retail Establishments

A. Rationale for Proposal

As noted previously, the incidence and geographical distribution of egg-associated SE illnesses have made SE a significant public health concern. As discussed in section I.F of this document, one currently practicable measure that can limit the number of viable SE present in shell eggs is refrigeration, because it helps to maintain the effectiveness of the egg's natural defenses against SE and slows the growth rate of SE. Many of the comments to the 1998 ANPRM maintained that refrigeration of eggs is an essential measure to inhibit the growth of SE. Although there is the potential for SE to be present in shell eggs in infective doses regardless of adequate handling, temperature abuse increases the likelihood for the growth of any microorganisms present, thus increasing the risk of illness.

As noted previously, USDA has the responsibility of implementing the EPIA. Amendments to the EPIA in 1991 (Pub. L. 102–237) require that shell eggs packed for consumers be stored and transported under refrigeration at an ambient temperature (i.e., the air temperature maintained in an egg storage facility or transport vehicle) not to exceed 45 °F and that the egg containers be labeled to indicate that refrigeration is required. FSIS has amended its regulations to require that no shell egg handler shall possess any shell eggs that are packed in containers destined for the ultimate consumer unless they are stored and transported under refrigeration at an ambient temperature of no greater than 45 °F (7.2 °C). In its regulation, FSIS defines an egg handler as any person, excluding the ultimate consumer, who engages in any business in commerce that involves buying or selling any eggs or processing any egg products, or otherwise using any eggs in the preparation of human food. FSIS defines an ultimate consumer as any household consumer, restaurant, institution, or other party who has purchased or received shell eggs or egg products for consumption. This regulation is effective August 27, 1999.

Once the amendments to the EPIA are implemented, requirements will be in place for the refrigeration of packed shell eggs up to the point of retail distribution except that egg producers with a flock of 3,000 hens or less are exempt from this requirement. However, without the continued refrigeration of shell eggs up to the time the eggs are cooked, there would be an opportunity for the egg's defenses to degrade and growth of SE to occur. FSIS's regulation does not require the ultimate consumer to maintain shell eggs under refrigeration. Consequently, the failure to refrigerate shell eggs in facilities such as restaurants and institutions could result in SE outgrowth. Therefore, to ensure that shell eggs are maintained under refrigeration throughout retail distribution up until they are cooked, FDA tentatively concludes that it should propose requirements that shell eggs throughout retail distribution be kept refrigerated until they are cooked. Without these requirements, the effectiveness of refrigeration in any part of the farm-to-table continuum would not be maximized.

B. Legal Authority for FDA to Require Refrigeration of Shell Eggs

FDA is proposing these regulations under both the PHS Act and the act. FDA's legal authority to require refrigeration of eggs at retail derives from the provisions of sections 311, 361,

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and 368 of the PHS Act (42 U.S.C. 243, 264, and 271) that relate to communicable disease. The PHS Act authorizes the Department of Health and Human Services (DHHS) to make and enforce such regulations as "are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States * * * or from one State * * * into any other State" (section 361(a) of the PHS Act (42 U.S.C. 264(a))).

Salmonellosis is a communicable disease that can be caused by SE-contaminated eggs. Temperature abuse can lead to the multiplication of SE in shell eggs, and thereby, increase the likelihood of illness if the eggs are not thoroughly cooked. Therefore, the agency tentatively concludes that a regulation to require refrigeration is necessary to prevent the spread of communicable disease.

Although the egg market is largely regional, it involves significant shipment of eggs from State to State. Moreover, shipment of SE-contaminated eggs from one State to another has contributed to the geographical spread of disease outbreaks in the U.S. human population. For example, eggs from Pennsylvania were implicated in an outbreak of SE infection reported in Asbury Park, NJ, involving at least 47 persons, and eggs from Maryland were implicated in an outbreak in Livonia, NY, where 12 patrons of a restaurant reported gastroenteritis illness linked to consumption of omelets made from pooled grade A eggs (Ref. 36). As discussed in section I.D of this document, an SE outbreak at a wedding reception in New York was associated with the consumption of Caesar salad dressing. Eggs used to make the dressing were traced to a Pennsylvania producer (Ref. 6).

FDA tentatively concludes that a regulation to require refrigeration of shell eggs at retail (proposed § 115.50(b)) also should apply to eggs that are not shipped across State lines by producers or retailers because there have been SE outbreaks that were associated with such eggs (Ref. 37). Therefore, the agency believes a regulation to require refrigeration of eggs produced and sold within a State would reduce the risk of illness. In addition, the agency tentatively concludes that the spread of salmonellosis among States from SE-contaminated eggs cannot be fully controlled without extending the refrigeration requirement to sales within one State. FDA believes that consumers who shop across State borders may purchase SE-contaminated shell eggs from one State and carry the eggs across State lines. Thus, FDA is concerned that if it does not require refrigeration of shell eggs that are laid, processed, and sold in one State, the regulations will not prevent the introduction of SE contaminated eggs into other States and, thus, will not prevent the introduction of salmonellosis from one State to another.

The agency also notes that in the normal course of business, many food service establishments, e.g., restaurants, serve out-of-State customers, e.g., truck drivers, tourists, and others who regularly travel for work. The agency is concerned that if these out-of-State consumers become ill with salmonellosis from SE-contaminated eggs purchased through intrastate commerce, the disease could spread from one State to another. For these reasons, the agency tentatively concludes that refrigeration should also be required on all shell eggs to prevent the spread of a communicable disease among States.

FDA's legal basis to require refrigeration of shell eggs also derives from sections 402(a)(4), and 701(a) of the act (21 U.S.C. 342(a)(4) and 371(a)). Under section 402(a)(4) of the act, a food is adulterated if it is prepared, packed, or held in insanitary conditions whereby it may have been contaminated with filth or may have been rendered injurious to health. Under section 701(a) of the act, FDA is authorized to issue regulations for efficient enforcement of the act. Thus, a regulation that prohibits food from being held under insanitary conditions would provide for efficient enforcement.

FDA has traditionally not conducted enforcement activities in retail establishments. The agency has, instead relied on State and local authorities to provide enforcement at the retail level. Nonetheless, the agency has been active in the retail arena in a number of ways. First and foremost, FDA participates in the Conference on Food Protection which is the cooperative body responsible for making recommendations to FDA concerning the Food Code. FDA also publishes the Food Code. In addition, FDA interacts with State and local regulatory agencies in a number of ways to coordinate retail enforcement efforts. Within FDA, the Division of Federal-State Relations, located in the Office for Regulatory Affairs, in the Office of the Commissioner, was created to enhance interactions between Federal, State, and local officials. The Division of Federal-State Relations serves as the focal point for providing cohesive and uniform food policies to State associations and cooperating State and local officials. Retail food specialists work with State and local retail food regulatory agencies to assist them, when the Code has been adopted, in implementing the Food Code and to ensure through standardization of local and State health officials that the Food Code criteria are uniformly applied. Retail food specialists are located in FDA regional offices. Some districts may have partnership agreements with States. Goals of these partnerships include increasing staff proficiency, improving consistency of enforcement activities, and empowering cooperating organizations. This may also include assisting with implementation of retail food programs. FDA has structured the proposed regulation to take into account the traditional sharing of responsibilities of food safety at retail, augmented by a clear quantitative Federal standard for temperature control.

Under the PHS Act, the Federal, State, and local governments have a long tradition of cooperation, and the PHS Act specifically recognizes cooperation between the Federal government and State and local governments as an important tool for public health officials. Previously, in the area of food safety, FDA has used those portions of the PHS Act (e.g., sections 310 and 311 (42 U.S.C. 242n and 243)) that focus on Federal assistance to the States. Indeed, the Conference on Food Protection and the Model Food Code are a result of Federal/State/Local cooperation and Federal assistance to the States and localities under the PHS Act. However, section 311 of the PHS Act not only recognizes Federal assistance to the States, it also recognizes that the States and localities may be able to assist the Federal Government. This section provides in part: "The Secretary is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this chapter which such authorities may be able and willing to provide."

FDA believes that, under sections 311 and 361 of the PHS Act, there are several ways the agency could accept assistance from the States in the enforcement of the egg refrigeration regulation. For example, FDA could accept State and local assistance in the inspection of retail establishments and then use those inspections as the basis for detention and diversion or destruction under proposed § 115.50(f) (as discussed in section II.C of this document) or as the basis for an enforcement action under the act. Another option would be to authorize

the States and localities to conduct inspections and enforce the refrigeration requirement through the administrative enforcement remedies set out in proposed § 115.50(f) (as discussed in section II.C of this document), while FDA could hear appeals, with judicial review available after FDA's decision. FDA also believes it could follow the example set out in the Nutrition Labeling and Education Act, which allows the States, if certain conditions are met, to bring an action to enforce various food labeling provisions in the act. See 21 U.S.C. 337; 21 CFR 100.2. Finally, FDA believes that section 311 of the PHS Act, in conjunction with section 361 of the PHS Act, authorizes the agency to issue a regulation that would allow States and localities to enforce the refrigeration regulation themselves.

After examining these options, FDA is concerned that all except the last option (allowing States and localities to enforce the regulation themselves) would prove too cumbersome, especially in light of the straightforward requirement at issue. Although a few comments maintained that the regulatory responsibility of egg handling and preparation in retail establishments remains at the State and local level, other comments supported a federal-State cooperative approach. FDA agrees that a cooperative approach would be the most effective means to enforce the refrigeration requirement. Therefore, FDA has tentatively concluded to propose to allow agencies of those States and localities that are able and willing under section 311 of the PHS Act, and that are authorized to inspect or regulate retail establishments, to enforce the refrigeration regulation along with FDA. FDA has tentatively concluded that this option will allow for the most effective and efficient use of Federal, State, and local food safety resources because it recognizes that States and localities, more than FDA, currently do this kind of enforcement. Accordingly, proposed § 115.50(e) provides that those States and localities that are able and willing are authorized under sections 311 and 361 of the PHS Act to enforce proposed § 115.50(b) as set out in proposed § 115.50(f). With respect to the hearing procedures, the proposed regulation recognizes that many States and localities already have administrative procedures in place for hearings by allowing them to use a similar hearing process as long as that process satisfies basic due process requirements.

FDA recognizes that some of these approaches are new approaches to the enforcement of food safety regulations, and accordingly is soliciting, and will carefully review, comments on this aspect of this proposed regulation. FDA is particularly interested in comments on how State, local, and Federal food safety authorities can best interface to ensure effective and efficient implementation and enforcement of food safety standards.

C. Proposed Refrigeration Requirements at Retail

FDA is proposing in new § 115.50 to require that shell eggs held for retail distribution be promptly placed under refrigeration and be stored and displayed under refrigeration at an ambient temperature not greater than 7.2 °C (45 °F) while held at the retail establishment.

The evidence discussed in section I.A of this document shows that shell eggs have been vehicles for salmonellosis. USDA's proposed requirement for refrigeration of shell eggs includes storage at the producer and storage during transportation, but does not include storage or holding at all retail establishments. FDA tentatively finds that the weight of the available evidence on the growth of SE in eggs shows that this microorganism can multiply to high levels in eggs if the eggs are not properly refrigerated during their shelf-life. Failure to refrigerate shell eggs during retail handling of shell eggs provides favorable conditions for degradation of the egg's defenses, movement of SE to the yolk, and subsequent multiplication of SE. Therefore, FDA tentatively concludes that it is necessary to require that eggs at retail be held at temperatures that will help maintain the natural defenses of the egg and limit the growth and reproduction of SE.

As discussed in section I.F of this document, research indicates that SE multiplies at temperatures of 10 °C (50 °F) and above but that multiplication of SE is inhibited at lower temperatures, e.g., 8 °C (46 °F), 7.2 °C (45 °F), and 4 °C (39 °F). Therefore, the agency tentatively concludes that it should require a refrigeration temperature lower than 10 °C (50 °F) to ensure the safety of shell eggs. As noted as follows in this section, the Food Code recommends that potentially hazardous foods be maintained at a temperature of 5 °C (41 °F). A temperature of 5 °C (41 °F) not only inhibits the growth of *Salmonella*, but also, inhibits the growth of *Listeria monocytogenes*, which has been shown to grow at 7.2 °C (45 °F). The agency also notes that, as required under the Egg Products Inspection Act, USDA has amended its regulations to require that shell eggs packed for consumer use be stored and transported at an ambient temperature of 7.2 °C (45 °F). Based upon the data discussed in section I.F of this document, FDA tentatively concludes that 7.2 °C (45 °F), i.e., the same temperature required by USDA under the EPIA for the storage and transportation of shell eggs, is sufficient to protect the public health. Because eggs cool down only slightly faster at 5 °C (41 °F) than at 7.2 °C (45 °F), the lower temperature would have a negligible effect on the SE risk.

FDA notes that it is proposing an ambient and not an internal temperature requirement for shell eggs displayed and stored in retail establishments. The majority of comments to the 1998 ANPRM supported refrigeration of shell eggs throughout the distribution chain from packer to consumer. Most of these comments supported a requirement for an ambient temperature of 7.2 °C (45 °F). A few of these comments encouraged the agency to consider an internal temperature requirement of 7.2 °C (45 °F) or ambient or internal temperature requirements of 5 °C (41 °F), which, it was asserted, would result in an additional margin of safety.

As discussed in section I.F, research indicates that refrigeration of shell eggs at 7.2 °C (45 °F) greatly extends the time that an egg can maintain its natural defenses, and, thus, inhibit the growth of SE. FDA acknowledges that an internal temperature of 5 °C (41 °F) or 7.2 °C (45 °F) would also achieve this goal. However, FDA believes that a uniform requirement for an internal temperature would be difficult to monitor. As discussed in section I.E of this document, the internal temperature of eggs when they are transported depends on the temperature of the eggs when they are packed, the way the eggs are packaged, how the crates are packed and stacked, and the length of time they are in the cooler before they are shipped. Further, according to one comment to the 1998 ANPRM, transportation of eggs in refrigerated trucks do not provide cooling, but rather maintain the temperature of the eggs. Moreover, it may be impracticable for egg retailers to determine the internal temperatures of shell eggs. Therefore, the agency tentatively concludes that, to provide a level playing field for all egg retailers, it is appropriate to propose an ambient temperature requirement for the display and storage of shell eggs at retail. FDA requests comment on its tentative conclusion.

The agency notes that some States or localities may have temperature requirements lower than 7.2 °C (45 °F). The agency does not intend that this proposed regulation would, when finalized, preempt the requirements of

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the Food Code or other State or local requirements that require a lower temperature. The proposed regulation would, however, preempt any State or local requirements that allow a temperature greater than 7.2 °C (45 °F).

The agency notes that the proposed temperature for storage of shell eggs addresses growth of SE in shell eggs, whereas the temperature required by the Food Code addresses all pathogens that may be present in different types of potentially hazardous foods. Thus, in addressing holding temperatures for potentially hazardous foods generally, the Food Code requires a temperature for retail storage that will prevent or slow the growth of most pathogens, including cold-tolerant pathogens such as *L. monocytogenes*. As previously discussed in this section, the agency tentatively concludes that a maximum storage temperature of 7.2 °C (45 °F) will be effective in inhibiting the growth of SE that may be present in shell eggs. FDA notes that a requirement that shell eggs be stored at 7.2 °C (45 °F) or less does not preclude retailers from maintaining shell eggs at lower refrigeration temperatures. In fact, the agency would encourage it. Moreover, it may be most practicable for establishments to have one requirement for a maximum refrigeration temperature for all potentially hazardous foods. FDA requests comment on the safety implications in the difference between the proposed temperature requirement of 7.2 °C (45 °F) for storage of shell eggs at retail and the refrigeration temperature of 5 °C (41 °F), recommended in the Food Code.

Because failure to refrigerate shell eggs would provide conditions for SE to multiply, the agency tentatively concludes that failure to refrigerate eggs would constitute insanitary conditions that may render the product injurious to health. Accordingly, the agency is proposing that failure of responsible individuals in a retail establishment to comply with the requirements of § 115.50(b) will render the shell eggs adulterated under section 402(a)(4) of the act.

Some shell eggs now available for retail sale have been pasteurized in the shell (in-shell pasteurized) prior to packing and distribution to destroy any *Salmonella* that may have been present in the egg (e.g., *Salmonella* in the egg due to transovarian contamination). FDA is proposing in § 115.50(c) that these eggs be exempt from the refrigeration requirement. However, such pasteurization would not prohibit the in-shell pasteurized egg from subsequently becoming contaminated with harmful microorganisms, if the egg were to come in contact with *Salmonella* or other potentially hazardous microorganisms during distribution and retail sale. The scientific evidence indicates that it is possible for *Salmonella* as well as other potentially harmful microorganisms to pass through the pores of the egg shell and reach the egg yolk, which can then support subsequent growth of the microorganisms, especially when adequate refrigeration is not provided (Ref. 38). Because this proposed regulation addresses the control of SE in shell eggs that are contaminated by transovarian transmission, the agency considers pasteurization an effective means to kill SE that may be present inside the egg when it is laid. Thus, the scope of this proposed regulation does not extend to contamination of eggs other than by transovarian transmission. FDA expects that manufacturers of this premium product would ensure its continued safety. Therefore, although this proposal would not require the refrigeration of in-shell pasteurized shell eggs or any shell eggs that have been otherwise processed to destroy *Salmonella*, because such eggs would not be expected to contain transovarian transmitted *Salmonella*, FDA recommends that such eggs be refrigerated by retail establishments.

In addition, FDA notes that shell eggs that have been processed to destroy *Salmonella* are still considered to be potentially hazardous foods under provisions in the Food Code in part because they are raw eggs that are capable of supporting the growth of SE. Because these eggs are considered potentially hazardous foods, State and local regulations established under the recommendations in the Food Code may have specific refrigeration requirements for these eggs in retail establishments that this regulation would not preempt.

As discussed in section II.B of this document, the agency tentatively concludes that the spread of salmonellosis among States from SE-contaminated eggs cannot be fully controlled without extending the refrigeration requirement to all eggs. Accordingly, FDA is proposing in § 115.50(d) that the requirements of this section are applicable to all shell eggs.

As previously noted, FDA is proposing these regulations under both the act and the PHS Act. Failure to comply with the refrigeration requirement in proposed § 115.50 would render the eggs adulterated under section 402(a)(4) of the act. Enforcement of adulteration regulations under the act is conducted under sections 301 to 304. However, section 361 of the PHS Act authorizes the Secretary, and by delegation FDA, to issue regulations that provide for the destruction of articles and for other measures that are judged by the Secretary to be necessary to carry out and enforce communicable disease regulations. FDA tentatively concludes that the shell egg refrigeration regulation can be most efficiently and effectively enforced through administrative procedures. Accordingly, FDA is proposing procedures in § 115.50(f) under which FDA may order the diversion or destruction of shell eggs that have been held in violation of the regulations. Under proposed § 115.50(f), FDA may issue to the person holding the shell eggs a written order that the product be diverted or destroyed. The proposed regulations would provide for diversion for processing in accordance with the EPIA because FDA tentatively concludes that it may be possible to produce safe egg products from shell eggs that have been held in violation of the regulation. Because the EPIA requires pasteurization of egg products, any *Salmonella* present would be eliminated. The written order would identify the shell eggs that are affected, and the grounds for issuing the order and would provide that, unless the order is appealed, either by filing a written appeal or by requesting a hearing, the shell eggs must be diverted or destroyed within 10-working days of receipt of the order.

In addition, authority for the enforcement of section 361 of the PHS Act is provided for in part under section 368 of the PHS Act. Under section 368(a) of the PHS Act any person who violates a regulation prescribed under section 361 of the PHS Act may be punished by imprisonment for up to 1 year. Individuals may also be punished for violating such a regulation by a fine of up to $100,000 if death has not resulted from the violation or up to $250,000 if death has resulted (18 U.S.C. 3559 and 3571(b)). Organizations may be fined up to $200,000 per violation not resulting in death and $500,000 per violation resulting in death (18 U.S.C. 3559 and 3571(c)). In addition, Federal district courts have jurisdiction to enjoin individuals and organizations from violating regulations implementing section 361 of the PHS Act.

III. The Proposal for Shell Egg Labeling

A. Rationale for Shell Egg Labeling Proposal

As discussed in section I.D of this document, data from SE outbreaks show that outbreaks commonly occur when contaminated eggs are mishandled by consumers or other food preparers. Furthermore, consumption data

establish that some consumers eat raw or undercooked eggs.

The CSPI petition contends that the increase in the incidence of foodborne illness has likely occurred, at least in part, because consumers do not realize that partial cooking of raw eggs (e.g., soft-boiled, sunny-side-up) or egg-containing foods will not prevent illnesses. In addition, the petition from Rose Acres Farm, Inc., contends that practically all SE outbreaks and deaths associated with eggs occurred because of mishandling of the eggs.

As discussed previously, FDA believes that it will be difficult for the industry to rapidly design and implement a program that will produce *Salmonella*-free eggs. However, as discussed in section I.F of this document, in the meantime, there are measures that can reduce risks to consumers: Refrigeration, which lengthens the effectiveness of the eggs' natural defenses against SE and slows the growth rate of SE, and thorough cooking, which kills viable SE that may be present. Many comments to the 1998 ANPRM maintained that proper handling of shell eggs is an important measure that could reduce the incidence of foodborne illness. According to a few of the comments, the majority of outbreaks occur because of improper handling of eggs, e.g., pooling and incomplete cooking by food preparers. Most comments to the 1998 ANPRM that addressed labeling supported labeling cartons of eggs with instructions for proper handling. Although some comments supported the use of short messages, such as "keep refrigerated," others supported safe handling instructions that also included instructions on proper cooking of eggs.

The agency is concerned that unless consumers and food preparers are advised about both the risks presented by eggs contaminated with SE and the ways they can reduce these risks, consumers, particularly those at greatest risk, could suffer serious illness or death from the consumption of raw or undercooked eggs and egg-containing foods. Accordingly, FDA tentatively concludes that there is an immediate need to require label statements that inform consumers of the public health risks associated with consumption of raw or improperly cooked shell eggs and provide safe handling instructions.

B. Legal Authority for FDA to Require Label Statements

FDA is proposing these regulations under both the act and the PHS Act. FDA's legal authority under the act to require label statements on food products derives from sections 201(n), 403(a)(1), and 701(a) of the act (21 U.S.C. 321(n), 343(a)(1), and 371(a)). FDA's legal basis to require safe handling instructions on shell eggs also derives from the provisions of sections 311, 361, and 368 of the PHS Act that relate to communicable disease. Under section 403(a)(1) of the act, a food is misbranded if its labeling is false or misleading in any particular. Section 201(n) of the act provides that in determining whether labeling is misleading, the agency shall take into account not only representations made about the product, but also the extent to which the labeling fails to reveal facts that are material in light of such representations made or suggested in the labeling or material with respect to consequences that may result from use of the product under conditions of use prescribed in the labeling or under customary or usual conditions of use. Section 701(a) of the act authorizes FDA to issue regulations for the efficient enforcement of the act. FDA previously has relied on these authorities when it required label warning statements to alert consumers to the potential hazards of certain ingredients of foods and dietary supplements, e.g., protein products (49 FR 13679, April 6, 1984) and iron-containing dietary supplements (62 FR 2218, January 15, 1997). Likewise, the agency is relying on these authorities in proposing to require label statements on shell eggs not processed to destroy all viable *Salmonella*.

As discussed previously, it is well documented that shell eggs may contain *Salmonella*, especially transovarian transmitted SE, which can result in serious, life-threatening illness. The risk is greatest for children, the elderly, and persons who are immune compromised (Ref. 18). Therefore, the agency tentatively concludes that information disclosing the risk of foodborne illness associated with consumption of raw or undercooked shell eggs is material information that must be given to consumers at the point of purchase.

However, the consequences that may result from consumption of SE-contaminated eggs may be reduced or eliminated by proper handling techniques that first limit the number of SE microorganisms and then kill those microorganisms. Thus, consumers have effective ways, other than avoidance of shell eggs, to reduce the risk of illness from consumption of SE-contaminated shell eggs. In light of this, the agency tentatively concludes that information on safe handling practices that consumers can use to protect themselves from illness is material information about the product that must be included in its labeling to ensure that the product is not misbranded.

As discussed in section II.B of this document, the PHS Act authorizes the Secretary of DHHS to make and enforce regulations that prevent the introduction, transmission, or spread of communicable disease from State to State. As discussed in that section, temperature abuse of shell eggs can lead to the multiplication of SE in shell eggs, and thus, increase the likelihood of illness if the eggs are not thoroughly cooked. The agency tentatively concludes that, in addition to a refrigeration requirement, a regulation requiring safe handling instructions that inform consumers to properly refrigerate and cook shell eggs (as fully discussed in section III.D of this document) is also necessary to prevent the spread of communicable disease.

FDA tentatively concludes that a regulation to require label statements that provide safe handling instructions on shell eggs (proposed § 101.17(h)(1)) also should apply to eggs that are not shipped across State lines by producers or retailers (proposed § 101.17(h)(6)). As noted in section II.B of this document, there have been outbreaks of salmonellosis associated with such eggs. Therefore, FDA is concerned that if it does not require safe handling instructions on shell eggs that are laid, processed, and sold in one State, consumers will not have material information that would inform them of ways to handle and cook eggs to prevent illness. Thus, without the inclusion of all eggs in the scope of this proposed regulation, FDA could not ensure that consumers who purchase eggs laid, processed, and sold in one State would have information that would help protect them from the risk of salmonellosis. In addition, as discussed in section II.B of this document, the agency believes that consumers who shop across State borders may purchase SE-contaminated shell eggs from one State and carry them across State lines. Therefore, without the inclusion of all eggs in the scope of this proposed regulation, the agency would be hampered in preventing the spread of salmonellosis from one State to another. The agency tentatively concludes that safe handling instructions should be required on all shell eggs to prevent the interstate spread of a communicable disease from one State to another. FDA requests comment on its tentative conclusion.

Failure to comply with the requirements of proposed § 101.17(h) would render the food misbranded under section 403(a)(1) of the act and would violate regulations issued under

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section 361 of the PHS Act. As discussed in section II.C of this document, enforcement of regulations is conducted under sections 301 to 304 of the act. Section 361 of the PHS Act authorizes FDA to issue those regulations that are necessary to enforce communicable disease provisions of the statute. Thus, the agency is proposing procedures in § 101.17(h)(8) that it may use to order the relabeling, diversion, or destruction of shell eggs that do not comply with the regulation. Under proposed § 101.17(h)(8)(i)(A), FDA may issue to the person holding the shell eggs a written order that the product must be relabeled, diverted, or destroyed. As also discussed in section II.C of this document, violations of the PHS Act are subject to injunctions and criminal prosecutions.

As discussed in section II.B of this document, FDA has examined several options on how the agency could accept assistance from the States and localities in enforcement of the refrigeration provision of this proposed regulation. The agency has considered similar options on how it could accept State and local enforcement assistance of the labeling provision. Because this proposed labeling requirement would affect shell eggs that laid, processed, and sold in one State, the agency believes that it would be an efficient use of resources for State and local agencies to assist in enforcing the labeling regulations. Moreover, FDA believes that sections 311 and 361 of the PHS Act authorize the agency to issue a regulation that would allow States and localities to enforce the labeling regulation themselves. Therefore, the agency has tentatively concluded that it should allow State and local regulators that are able and willing under section 311 of the PHS Act, and are authorized to regulate the labeling of shell eggs within their States or localities, to enforce the requirement for safe handling instructions. Accordingly, proposed § 101.17(h)(7) provides that those States and localities that are able and willing are authorized under sections 311 and 361 of the PHS Act to enforce proposed § 101.17(h)(1) as set out in proposed § 101.17(h)(7). With respect to the hearing procedures, the proposed regulation recognizes that many States and localities already have administrative procedures in place for hearings allowing them to use a similar hearing process as long as that process satisfies basic due process requirements.

C. Covered Products

As discussed in section II.C of this document, technology to process shell eggs in a manner to destroy SE in the egg would significantly reduce or eliminate the risk of transovarian transmitted SE, and would thereby render the label statements unnecessary. Accordingly, FDA is proposing in § 101.17(h)(4) that shell eggs that have been, before distribution to consumers, specifically processed to destroy all viable *Salmonella* be exempt from the labeling requirements.

The standards of identity for liquid, dried, and frozen egg white, egg yolk, and whole egg products (21 CFR part 160) require that these products be pasteurized or otherwise treated to destroy all viable *Salmonella* microorganisms. Further, the agency expects that the standardized egg product ingredients in any nonstandardized egg product, such as scrambled egg mixes, would also be pasteurized or otherwise treated to destroy all viable *Salmonella* microorganisms. FDA has no information about the existence of egg products that have not been pasteurized or otherwise treated to destroy all viable SE and other *Salmonella*. However, the agency specifically requests data or other information that suggests that such products are commercially available. Should such products exist, FDA tentatively concludes that any final label statement required for shell eggs also be applicable to these products as well.

The safe handling statement is intended to inform consumers of ways that they may safely handle eggs to reduce their risk of foodborne illness. Likewise, the use of the safe handling statement on cartons of shell eggs that are not for direct sale to consumers, e.g., shell eggs that are to be labeled or repacked at a site other than originally processed or are shipped for use in food service establishments such as schools, hospitals, and restaurants also serves to inform repackers and food preparers of the safe handling procedures. However, FDA tentatively concludes that the same goal of conveying the safe handling labeling to repackers and food preparers could also be accomplished by customary trade practices. For example, the safe handling statement could be included on an invoice or product specifications sheet. Accordingly, FDA is proposing in § 101.17(h)(5) that the safe handling statement for shell eggs that are not for direct sale to consumers, e.g., those that are to be repacked or labeled at a site other than where originally processed or are sold for use in food service establishments may be provided on cartons or in labeling, e.g., invoices or bills of lading in accordance with the practice of the trade. FDA requests comment on whether allowing this practice will accomplish its intended goal.

D. Essential Elements of Specific Label Statements

Consumer research available to the agency indicates that when consumers generally believe that a product is safe, messages that note that the product is unsafe without providing information on the nature of the hazard are likely to confuse or frighten them (Ref. 25). This research also indicates that certain elements may be essential in label statements to effectively inform consumers of a potential hazard (Ref. 25). Recently, the agency has used such consumer research to develop effective warning labels. For example, the agency used such information to craft a warning statement for iron-containing supplements in § 101.17(e). As discussed in the final rule requiring that iron-containing supplements bear a warning statement (62 FR 2218), the agency found that elements essential for an effective warning statement for these products included an informational statement that describes the nature and magnitude of the hazard and a handling instruction on how to avoid the hazard. In addition, because the hazard associated with iron-containing products was associated with accidental overdose rather than ordinary conditions of use, essential elements for this warning statement also included a provisional statement that describes situations that require mitigation and an instructional statement that describes what action to take under those circumstances.

In determining what information is essential in the proposed statement, FDA tentatively concluded, based on the continued predominance of SE in foodborne outbreaks, that consumers may not know that there is a food safety hazard associated with shell eggs. Consumption data indicating that some consumers eat raw or undercooked eggs reinforce this tentative conclusion (Refs. 22 to 24). Therefore, FDA tentatively concludes that it is essential that the label statement describe the potential hazard, i.e., that eggs may contain pathogens known to cause serious, life-threatening illness.

In addition, the young, elderly, and persons with immune deficiencies are more susceptible to foodborne illness than others (Ref. 18) but may not realize that they are particularly at risk for serious illness from a food long recognized to be a safe and inexpensive source of good nutrition. These people, especially, along with their caregivers, need the information necessary to make informed decisions about avoiding,

reducing, or eliminating the risk of salmonellosis from eggs and egg-containing foods. Therefore, FDA tentatively concludes that the information needed by consumers about the potential hazard should also include information about the at-risk groups, so that they or their caregivers are aware of their greater risk.

In some circumstances in which the agency has required a label statement to inform consumers of consequences that could result from consumption of a product, FDA has presumed that consumers' reaction to a label statement would be a decision whether to avoid the product. For example, in its recent rulemaking to require a label statement on juice products that have not been processed to control pathogenic microorganisms, FDA stated its belief that it was implicit in its description of the hazard that at-risk groups could avoid the hazard by not consuming the product (63 FR 20486 at 20489, April 24, 1998). Consistent with this belief, one comment to the 1998 ANPRM opposed "warning labels" stating that eggs are potentially harmful because the statement would alarm consumers and would reduce egg consumption. However, as previously discussed, the consequences that may result from consumption of SE-contaminated eggs may be reduced or eliminated by proper handling techniques. Failure to make clear that there is a way other than avoidance to reduce this risk could imply to consumers that, similar to their options when faced with other label statements, their only available option is to avoid the product. Therefore, FDA tentatively concludes that an instructional statement that describes measures (i.e., safe handling practices) that consumers can take to reduce or eliminate the risk associated with consumption of SE-contaminated eggs should be an essential element of the label statement. Because temperature has been reported to play a role in suppressing the growth of *Salmonella* microorganisms (see discussion in section I.F of this document), and because thorough cooking kills SE (see discussion in section I.F of this document), FDA also tentatively concludes that the safe handling instructional statement should advise that eggs be refrigerated until they are ready to be cooked and that eggs be thoroughly cooked before they are eaten.

Because the more likely option for consumers who are presented with a label statement that describes a hazard is avoidance, FDA believes that a linking statement that clarifies that the recommended safe handling practices are measures that consumers can take to reduce or eliminate the risk is important to alleviate a potential misperception that avoidance is their only option. Therefore, FDA tentatively concludes that a linking statement that relates the informational statement to the instructional statement is an essential element of the label statement. These essential elements are similar to those contained in other required label statements in § 101.17.

FDA's consumer research on label statements for iron-containing products also shows that the first sentence of a label statement is likely to influence a consumer's decision to continue reading the remainder of the statement (Ref. 25). Moreover, as a result of the safe handling instructions that appear on raw meat and poultry under rulemaking conducted by FSIS (59 FR 14528, March 28, 1994), consumers are already accustomed to reading information about the risk before reading the safe handling practices that can reduce or eliminate the risk. Accordingly, FDA tentatively concludes that the first sentence of the label statement should be an informational statement about the potential hazard to consumers.

Applying the essential elements described previously, FDA crafted examples of label statements. The agency notes that some of the examples of acceptable label statements incorporate language suggested by Rose Acres Farms, Inc., and CSPI. These examples illustrate some of the variations in label statements developed by applying the essential elements. Four such examples are provided as follows:

SAFE HANDLING INSTRUCTIONS: Shell eggs may contain harmful bacteria known to cause serious illness, especially in children, the elderly, and persons with weakened immune systems. For your protection, keep eggs refrigerated and cook eggs and foods containing eggs thoroughly before eating.

SAFE HANDLING INSTRUCTIONS: Shell eggs may contain harmful bacteria known to cause serious illness, especially in children, the elderly, and persons with weakened immune systems. For your protection, keep eggs refrigerated and cook eggs until yolks are firm.

SAFE HANDLING INSTRUCTIONS: Eggs may contain illness-causing bacteria. The risk of life-threatening illness is greatest for children, the elderly, and persons with weakened immune systems. For your protection, keep eggs refrigerated until cooked, and cook eggs thoroughly until yolks are firm.

SAFE HANDLING INSTRUCTIONS: Some shell eggs have been found to contain harmful bacteria known to cause life-threatening illness, especially in children, the elderly, and persons with weakened immune systems. Consumers may protect themselves by keeping eggs refrigerated until cooked, by cooking eggs until the yolk is firm, and by cooking foods containing eggs thoroughly.

In order to evaluate the label statements developed through use of the essential elements and to test the effectiveness of such examples in informing consumers of the risks associated with shell eggs and of the safe handling practices that may be used to mitigate the risks, FDA conducted focus group research to evaluate consumer understanding of several possible safe handling instructions.

Six focus groups were conducted to test possible safe handling statements (Ref. 39). All participants examined and discussed five safe handling statements, including the four examples presented previously. The participants had some awareness of the potential dangers associated with eating eggs, and most were concerned about the safety of the eggs that they were purchasing. They were aware that the main food safety hazard posed by eggs was *Salmonella* contamination. Most of the participants kept their eggs refrigerated. However, many of them reported that they ate foods containing raw eggs, e.g., cookie batter, cake batter, homemade ice cream, and Caesar salad. The participants stated that most of the time they were aware when the foods they ate contained raw eggs, although some were surprised that Caesar salad could contain raw eggs. Generally, the participants were aware that they should thoroughly cook eggs, although they often cooked eggs according to their personal tastes, e.g., sunny-side up.

The participants were generally positive toward the idea of handling instructions on egg packages. Although many of them were already aware of the information presented in the handling statements, they saw the handling statements as useful reminders. To some of the participants, however, some of the information in the handling statements was new. Further, the participants appreciated the fact that with relatively simple steps they could be confident that their eggs were likely to be safe to eat. In addition, many participants thought that egg producers would not object to placing information presented in the example statements on the labels of egg cartons if all egg producers had to do so.

There were some discussions about certain words in the messages that the

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groups thought were unnecessary, e.g., "shell" eggs, and "refrigerated until cooked." However, participants generally understood the messages and found them to be informative and not misleading. Further, they liked messages that were clear and easy to read.

While the label statements that were tested effectively informed the consumers of the potential hazard associated with the consumption of eggs, the agency did not test all conceivable variations of label statements incorporating the required information. Previous focus group research (i.e., for juice warning labels) indicated that minor wording differences may lead to confusion among consumers. The results of that research led the agency to prescribe the language of the label statement on juice products to ensure that consumers would not be misled (63 FR 37030, July 8, 1998). Similarly, the agency believes that it is also appropriate to prescribe the language of the safe handling statement on eggs. Therefore, the agency tentatively concludes that prescribing the language of each of the essential elements will be the most effective way to ensure that consumers are not misled and will correctly understand the safe handling instructions. This will ensure that consumers know of the risks of consuming raw or undercooked eggs and that they know the measures they can take to protect themselves. In addition, a prescriptive label statement is consistent with label statements for other food products.

FDA believes that a regulation requiring a label statement on cartons of shell eggs must be sufficiently clear to allow the regulated industry to determine that its labeling complies with that regulation. Furthermore, the regulation should establish a so-called "level playing field" for all products covered by the regulation by requiring that each product's labeling provide the same information. FDA tentatively concludes that prescribing the specific language for a label statement for shell eggs would accomplish these two goals, as well as ensure a message to consumers that is not confusing, misleading, or otherwise ineffective.

Accordingly, based on information from the focus groups, FDA is proposing in § 101.17(h)(1) to require that the label of shell eggs bear the following statement:

SAFE HANDLING INSTRUCTIONS: Eggs may contain harmful bacteria known to cause serious illness, especially in children, the elderly, and persons with weakened immune systems. For your protection: keep eggs refrigerated; cook eggs until yolks are firm; and cook foods containing eggs thoroughly before eating.

The agency notes that the language in the first sentence of this prescribed label statement for eggs is similar to the label statement that FDA recently required for some juice products. As discussed in the final rule requiring warning statements on juice products that have not been processed to control pathogenic microorganisms (63 FR 37030 at 37045), FDA concluded that the term "serious illness" is an accurate description of the hazard caused by foodborne microorganisms that may be present in juice. The agency based its conclusion on results of focus group research which indicated that the term "serious illness" was understood and conveyed a strong message without being too extreme. Participants of the focus group research viewed such terms as "life threatening" or "death" less credible.

Also in that final rule, FDA recognized that the terms children and elderly are not precise. Rather, they are terms chosen by the Council for Agricultural Science and Technology to reflect groups that, in general, have incompletely developed or declining immune systems. Because the exact ages at which a child's immune systems is fully developed and at which an elderly person's immune system has declined are not precisely defined, FDA concluded that it had no basis to specify particular ages for these at-risk groups nor to use terms other than "children" or "elderly."

Several comments to the 1998 ANPRM expressed concerns about the suggested language that would appear in a proposed label statement. The issues raised in these comments were among those issues considered when FDA developed this proposed rule.

The agency requests comments on other aspects of the proposed safe handling statement and whether it effectively conveys information necessary to adequately inform consumers of measures that they can take to ensure the safety of the food. The agency tentatively concluded that the cooking instructions in the safe handling statement, i.e., "cook eggs until yolks are firm and cook foods containing eggs thoroughly" is adequate to inform consumers of ways to prepare eggs in order to reduce the risk of illness. The agency notes that part of the cooking instruction, i.e., "cook eggs until yolks are firm," is one way to describe proper cooking of an egg when consumed as an egg dish. For example, it is expected that when an egg, e.g. fried egg, is cooked until the yolk is firm, then the white would be sufficiently cooked.

For other foods that contain eggs, the safe handling statement must convey to consumers that the food should be cooked thoroughly. Focus group research showed that although many consumers are aware that foods that contain raw or undercooked egg whites only, e.g., meringue, can be a potential health hazard, many did not. However, the reason some consumers were unaware of the potential health risk was that they were unaware that foods like meringue may contain raw egg whites. When informed that such foods may contain raw egg whites, consumers understood the health risk. Thus, the agency tentatively concludes that there is no reason to believe that, when informed of the risk of illness associated with raw or undercooked eggs, consumers would differentiate the potential health risk based on what part of the egg is consumed. Therefore, FDA tentatively concluded that the part of the statement that instructs consumers to cook foods containing eggs thoroughly, would address foods that include any component of the egg, e.g., whole egg, egg white, or egg yolk. The agency requests comments on its tentative conclusion that this statement adequately instructs consumers on the safe handling instruction for foods containing eggs. Comments should include data or a rationale to provide a basis for the agency to adopt alternate phrasing.

As previously discussed, certain subpopulations are at greatest risk of serious illness and death caused by SE. For example, many deaths have occurred in nursing homes (Ref. 3). Because certain consumers, especially those at greatest risk, may want to avoid the risk altogether by avoiding the product, the agency requests comment on whether it should require a statement that the product should not be used for certain purposes, e.g., "use pasteurized eggs for recipes requiring raw or partially cooked eggs." The agency also requests comment on whether it should require an explicit instruction to avoid the product for at-risk consumers or for individuals (e.g., parents, nursing home staff) who are responsible for preparing foods for at-risk consumers.

As discussed in section II.A of this document, FSIS amended its regulations to require that shell eggs packed for consumer use be stored and transported at an ambient temperature that does not exceed 7.2 °C (45 °F) and that the containers of such eggs be labeled to indicate that refrigeration is required. The labeling statement proposed in this document, if finalized, will permit uniform label statements with the FSIS rule. Consequently, this safe-handling statement would replace the label currently required by FSIS.

In the **Federal Register** of February 24, 1997 (62 FR 8248), FDA published a notice, entitled "Guidance on Labeling of Foods That Need Refrigeration by Consumers" ("the Refrigeration Guidance"). In that document, FDA noted that refrigeration is only one of many barriers (e.g., acidification, preservatives, and reduced water activity) that can be used to control microbial risks. However, for many foods (classified as "Group A foods"[6]), refrigeration is the only practicable barrier to reduce or retard pathogenic growth. The agency also noted that Group A foods, including shell eggs, are potentially hazardous foods, that, if subject to temperature abuse, will support the growth of infectious or toxigenic microorganisms that may be present. Growth of these microorganisms would render the food unsafe (62 FR 8248). As stated in that document, FDA concluded that the appropriate label statement for Group A foods is "IMPORTANT Must be kept refrigerated to maintain safety."

In the Refrigeration Guidance document, FDA stated that most consumers seem to understand that foods displayed only in the refrigerated sections of grocery stores such as dairy products, eggs, cold cuts, fresh meats, poultry and seafood, must be refrigerated to maintain quality. Further, the agency stated that, although it is unlikely that consumers are aware of the hazards that temperature abuse can present, it is likely that consumers will refrigerate these products in the absence of labeling. Therefore, the agency did not specifically address these products in the document. However, the agency concluded that the fact that the foods are refrigerated provides no evidence of the effectiveness of the "keep refrigerated" label. Although the guidance provided in that document was specifically directed toward products that appeared to be shelf stable or ones for which consumers seemed to not understand the importance of a "keep refrigerated" statement, the agency did not specifically exclude any foods from the guidance.

In light of information regarding outbreaks of SE associated with the temperature abuse of eggs and egg-containing products, FDA tentatively concludes that it is important that consumers be informed of the need for refrigeration of shell eggs. Further, the agency believes that the "keep refrigerated" statement in the suggested safe handling instructions in the proposed label statement conveys the same message as the label statement in the Refrigeration Guidance. Because the proposed linking statement, i.e., "for your protection," shows that there are measures that consumers can take to reduce or eliminate the risk of foodborne illness, the agency believes that it is implicit in the proposed safe handling instructions that refrigeration helps to maintain the safety of shell eggs. Thus, FDA tentatively concludes that there is no need for both statements in labeling of shell eggs.

Focus group participants responded favorably to a graphic format that used bullets for the safe handling instructions. FDA encourages the use of such a presentation. However, the agency recognizes that all egg cartons may not be able to accommodate this format and, therefore, FDA is not proposing to require it. The agency requests comment on this tentative decision. The agency also requests comments on whether graphics would enhance the visibility of the statement.

The agency notes that, under FSIS regulations (7 CFR 317.2 and 381.125), the safe handling statements that are currently required on raw meats and poultry include graphic illustrations. As discussed in the FSIS final rule (59 FR 14528), participants in consumer research indicated that safe handling instructions accompanied with graphics were preferred to those without graphics. As previously discussed in this section, FDA conducted its own consumer focus group research to evaluate consumer understanding of several safe handling labeling statements for shell eggs. Based on its focus group research, the agency tentatively concluded that the safe handling statement that it is proposing is adequate and effectively informs consumers of the risks associated with the consumption of shell eggs and of measures they can take to reduce their risk of foodborne illness. Therefore, the agency tentatively concludes that additional information, including graphic illustrations, is not necessary to convey the safe handling instructions to consumers. However, although FDA is not proposing to require graphic illustrations in the safe handling statement for shell eggs, the agency encourages use of illustrations similar to those used on raw meat and poultry on the cartons of shell eggs. While the agency did not specifically test the graphic illustrations with the consumer focus groups, the agency believes that, because graphic illustrations have been on meat and poultry product labels for some time, consumers have become familiar with these kinds of symbols. The agency requests comment on whether graphics should be required as part of the safe handling statement for shell eggs.

The agency has solicited specific comments on various aspects of this proposal as well as additional requirements. Any comments supporting additional requirements should include data, information, or a rationale in support of the position advocated. FDA will consider such comments and depending on the administrative record that is developed through the rulemaking process, may adopt as part of a final rule additional requirements. The agency notes, however, that it does not intend that this proposed regulation would, if finalized, preempt any State or local requirements for additional safe handling labeling, e.g., graphics, as long as it does not conflict with Federal requirements.

The agency notes that current regulations in § 101.17 use the terms "warning" or "notice." As previously discussed, FDA has presumed that consumers' reaction to a warning statement about the possible presence of harmful bacteria in eggs would be a decision whether to avoid the product. The term "notice" could be used, but does not draw attention to the important fact that there are ways to reduce or eliminate the risks of foodborne illness other than avoidance of the product. The agency tentatively concludes, therefore, that the required elements of the label statement are best described as "safe handling instructions." In light of this fact, the agency is proposing in this rulemaking to amend the title of § 101.17 to include the use of the term "safe handling statements."

E. Placement and Prominence of Label Statements

Section 403(f) of the act requires mandatory label information to be prominently placed on the label with such conspicuousness (compared with other words, statements, designs, or devices, in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of use. Two comments to the

[6] Group A foods as defined in the Refrigeration Guidance are potentially hazardous foods, which if subjected to temperature abuse, will support the growth of infectious or toxigenic microorganisms that may be present. They have the following characteristics: (1) A pH of >4.6, (2) a water activity of >0.85, (3) do not receive a thermal or other process in the final package that is adequate to destroy foodborne pathogens that can grow under conditions of temperature abuse, and (4) have no barriers built into the product formulation that would prevent the growth of foodborne pathogens that can grow under abuse conditions.

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1998 ANPRM requested that FDA provide flexibility in any food labeling statement, e.g., placement of the statement could occur on the inside of the carton, or elsewhere on the package, as long as it is conspicuous. The comments argued that existing federal regulations already require certain label information, such as grading information and nutrition labeling. In addition, the comments maintained that many States also require additional information on egg cartons such as product codes and sell-by dates. Moreover, one comment contended that some States may require certain information in type sizes of 10-point type or 3/8 inch. Thus, the comment argued, there is limited label space for additional information. One comment requested that FDA consider allowing the use of a modified format for small packages (packages of less than a dozen eggs) similar to that permitted for nutrition labeling. The comment questioned whether federal requirements would duplicate or preempt State requirements. One comment stated that some States require the phrase "Keep refrigerated at or below 45 °F." Another comment estimated that approximately 40 percent of egg cartons on the market carry some form of "warning label." The comment pointed out that prior to the beginning of 1998, only 10 percent of the cartons on the market bore safe handling instructions. The comment requested that if existing safe handling instructions meet or exceed federal requirements, FDA should allow manufacturers to retain such labels. The issues raised in these comments were among those considered by FDA as it developed this proposed rule.

In the past, FDA has generally determined that the information panel is the appropriate location for label statements that are required by § 101.17. As discussed in the agency's rulemaking requiring label statements on iron-containing dietary supplements (62 FR 2218), consumer focus group studies indicated that the label statement need not be placed on the principal display panel (PDP) to be effective in informing consumers of the hazard. Participants in the focus group reasoned that the front of the product was used for marketing purposes, and consumers were used to looking at the "back of products" for nutrition and factual information including label statements such as warning messages. Thus, the agency required that the warning statement for iron-containing supplements appear on the information panel, the portion of the label where most mandatory information is located. The agency tentatively concludes that for label statements on shell eggs, the requirement for prominence and conspicuousness would similarly be met if the statements appeared on the information panel. However, the agency would not object to firms placing the label statement on the PDP, since the PDP would provide even more prominence. Accordingly, FDA is proposing to require in § 101.17(h)(2) that the label statement appear either on the information panel or on the PDP.

The requirement in the act for prominent display means that the label statement must appear in a manner that makes the statement readily observable and likely to be read. The agency notes that 21 CFR 101.2(c) requires that mandatory information appearing on the PDP and information panel, including information required by § 101.17, appear prominently and conspicuously in a type size no less than 1/16 inch. The agency also notes that 21 CFR 101.15(a) provides that information required on the label appear uncrowded and with sufficient contrast to background material. The agency has concluded that it is not necessary to repeat these requirements for prominence and conspicuousness in the proposed regulation and, therefore, is not including them in this proposal.

Current agency regulations that require a label "warning" statement (e.g., the statement required by § 101.17(e) on iron-containing dietary supplements in solid oral dosage form) or a label "notice" statement (e.g., the statement required by § 101.17(d)(3) on protein products that are not covered by the requirements of § 101.17(d)(1) and (d)(2)) require that the identifying term "WARNING" or "NOTICE" be capitalized and immediately precede the language of the applicable label statement. Likewise, consistent with these examples, the agency is proposing in § 101.17(h)(1) to require that the capitalized words "SAFE HANDLING INSTRUCTIONS" immediately precede the message of the label statement.

Previous agency regulations that require cautionary information on labels, e.g., on products containing aspartame (39 FR 27317, July 26, 1974), utilized bold type to make the information more prominent. In addition, FDA regulations on nutrition labeling (21 CFR 101.9(d)(1)(iv)) require that certain nutrient information in the Nutrition Facts panel be in bold type to provide more prominence. Therefore, consistent with these examples, the agency is proposing in § 101.17(h)(2) to require that the words "SAFE HANDLING INSTRUCTIONS" be in bold type to help alert the consumer that there is new and critically important information about the egg product.

The agency notes that experience has shown that the prominence of some labeling information may be enhanced by the use of a box around the information. The agency's experience with the new nutrition label has been that the box surrounding the nutrition information greatly increases the prominence of the information. In addition, consumer focus group research has shown that boxes around important messages help consumers to distinguish the message from other information (Ref. 25). Therefore, the agency tentatively concludes that the use of a box around the label statement for shell eggs will similarly increase the prominence of the message by setting it off, thereby enhancing the likelihood that consumers will notice and read the message. Accordingly, FDA is including in the proposal a requirement (proposed § 101.17(h)(3)) that the label statement be set off in a box by use of hairlines.

The agency requests comments on the prominence and placement of the proposed label statement and whether the proposal provides sufficient flexibility to accomodate the many types of egg cartons in the marketplace. FDA is particularly interested in comments on whether other measures, e.g., color enhancement, are necessary to focus the consumer's attention on the label statement.

IV. Analysis of Impacts

A. Benefit/Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million; adversely affecting some sector of the economy in a material way; or adversely affecting jobs or competition. A regulation is also considered a significant regulatory action under Executive Order 12866 if it raises novel, legal, or policy issues. Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requiring cost-benefit and other analyses, a significant rule is defined in section 1531 (a) as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year * * *." Finally, the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

FDA tentatively finds that this proposed rule is economically significant under Executive Order 12866. FDA has determined that this proposed rule, based on the median estimate of cost contained in the economic analysis, does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Furthermore, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1995 (Pub. L. 104–121) it has been determined that this proposed rule would be a major rule for the purpose of congressional review.

This section summarizes the preliminary regulatory impact analysis of the proposed rule. The full analysis and a list of references is available in a separate document entitled "Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rule to Require Refrigeration of Shell Eggs at Retail and Safe Handling Labels" (PRIA/IRFA) published elsewhere in this issue of the **Federal Register.**

One comment to the 1998 ANPRM suggested that FDA consider mandatory sell-by dates, prohibition of re-packaging, and mandatory pasteurization of shell eggs intended for at-risk consumers (such as residents of nursing homes). Several comments stated that in-shell pasteurization was costly; according to one comment, pasteurization equipment would cost $1.5 million. Several comments stressed the cost and difficulty of placing the safe handling statement on egg cartons, which are already crowded with printing. In one comment, a carton manufacturer estimated that designing and producing new plates for all of its egg cartons would cost about $2 million.

1. Regulatory Options

FDA considered several regulatory options for dealing with SE in shell eggs. The options considered include: (1) No new regulatory action, (2) labeling only, (3) refrigeration at 7.2 °C (45 °F) only, (4) refrigeration at 5 °C (41 °F), (5) Hazard Analysis Critical Control Point (HACCP) for shell eggs, (6) in-shell pasteurization, (7) longer compliance periods, and (8) limited retail sell-by period.

FDA believes that relying on current safeguards (option 1) would not greatly reduce the number of illnesses from SE in shell eggs. Even though the benefits from either labeling alone or refrigeration alone (options 2 and 3) exceed the costs, the combined benefits of refrigeration and labeling (the proposed rule) are much greater than either taken separately. FDA found that option 4 (refrigerate shell eggs at 5 °C (41 °F) in retail establishments and institutions) would not have a significant additional effect on SE in shell eggs, but would increase costs substantially. FDA believes that a HACCP-like program (option 5) is currently not feasible. However, FDA is evaluating whether in the future, a HACCP-like program including possibly in-shell pasteurization, may be necessary to further ensure the safety of shell eggs. In-shell pasteurization (option 6) would greatly reduce SE, but FDA believes other interventions between farm and table could reduce SE at lower cost. The main disadvantage of longer compliance periods for the labeling provision (option 7) is that the option would delay the realization of the benefits of the rule. Finally, FDA finds that limiting the retail sell-by period to 30 days (option 8) would have small public health benefits but could impose substantial costs.

2. Benefits

Benefits from the proposed rule to require a safe handling label and the refrigeration of shell eggs at 7.2 °C (45 °F) come from reducing SE-related illness. The basic model for estimating benefits is: "marginal health benefits = baseline risk (number of SE illnesses related to shell eggs) x expected reduction in the number of illnesses brought about by the proposed rule x health cost per illness".

FDA used the results of the USDA SE risk assessment for one estimate of the baseline risk and the CDC *Salmonella* surveillance data for another estimate of the baseline. FDA also used the risk assessment model to estimate the expected reduction in illnesses attributed to the proposed rule. The design of the USDA SE risk assessment model allowed FDA to estimate the number of illnesses prevented by comparing the baseline number of illnesses with the number of illnesses under the provisions of the proposed rule. The range (5th to 95th percentile) of estimated annual illnesses prevented for the USDA SE risk assessment baseline was 12,000 to 407,000, with a median of 66,000. The range (5th to 95th percentile) of estimated illnesses prevented for the CDC surveillance baseline was 7,000 to 107,000, with a median of 25,000.

FDA calculated the health cost per illness prevented by classifying SE illnesses into the following outcomes based on severity: Mild, moderate, and severe acute gastrointestinal illnesses; resolved and chronic reactive arthritis; and death. FDA then multiplied the estimated monetary health cost per type of illnesses by the number of illnesses prevented of each type. Total health benefits from the proposed rule were calculated as follows:

total health benefits = (number of mild cases prevented x $ per case) + (number of moderate cases prevented x $ per case) + (number of severe-acute cases prevented x $ per case) + (number of resolved cases of arthritis prevented x $ per case) + (number of chronic cases of arthritis prevented x $ per case) + (number of deaths x $ per death)

The baseline risk, the expected reduction in risk, and the health costs per illness are all uncertain. FDA therefore estimated a distribution of possible health benefits for the proposed rule, with the distribution based on the probability distributions associated with the main uncertainties. The range (5th to 95th percentile) of estimated annual benefits for the USDA SE risk assessment baseline was $87 million to $6.6 billion, with a median of $700 million. The range (5th to 95th percentile) of estimated annual benefits for the CDC surveillance baseline was $50 million to $1.7 billion, with a median of $300 million. The benefits are large, although FDA estimates that 95 percent of shell eggs are already held at ambient temperatures of 7.2 °C (45 °F) or less.

3. Costs

The costs of the proposed rule are the sum of the costs of changes in manufacturing practices—labeling and refrigeration and changes in consumer practices—egg preparation and consumption.

a. *Labeling.* The costs of labeling are the sum of administrative compliance, inventory disposal, and label redesign costs. FDA calculated labeling costs with the following model: "labeling cost = ($ administrative costs per firm x

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number of affected firms) + ($ value of cartons manufactured x disposal percentage of carton inventory) + (number of affected labels x $ redesign cost per label)".

FDA estimated the total labeling cost for a 6-month compliance period to be a one-time cost of approximately $18 million. The total cost included administrative costs of $280,000, inventory disposal costs of $3 million, and label redesign costs of $15 million.

b. *Refrigeration.* FDA estimated the refrigeration costs to be the cost of the additional equipment required for all establishments to maintain an ambient temperature of 7.2 °C (45 °F). FDA calculated the cost by multiplying the estimated number of establishments that would require new (or upgraded) equipment by the cost of equipment. Both the number of establishments affected and the cost of equipment are uncertain. FDA estimated the number of establishments that would require new equipment by assuming that no establishments in States that had adopted the Food Code and an uncertain fraction—with one-third the most likely value—of establishments in States that had not adopted the Food Code would require new equipment. FDA used industry sources to obtain estimates of the range of costs of new or additional equipment necessary to meet the refrigeration provision of the proposed rule. The estimated costs per establishment ranged from close to zero for small equipment upgrades to $6,000 for a large new refrigerator.

FDA estimated a distribution of possible refrigeration costs for the proposed rule. The range (5th to 95th percentile) of estimated one-time refrigeration costs was $7 million to $228 million, with a median of $31 million.

c. *Changes in consumer practices.* FDA estimated the annual costs to consumers of changing the way eggs are prepared and consumed as follows:

cost of changes in consumer practices = annual number of eggs consumed x baseline fraction of eggs consumed undercooked x fractional reduction in undercooked eggs in response to safe handling label x $ value of undercooking one egg

The cost to consumers is uncertain. The range (5th to 95th percentile) of annual costs was $2 million to $20 million, with a median of $10 million. The cost of changes in consumer practices is an annual recurring cost of the proposed rule.

4. Summary of Benefits/Cost Analysis

Table 1 of this document shows the median estimated benefits and costs of the proposed rule.

TABLE 1.—MEDIAN ANNUAL ESTIMATED BENEFITS AND COSTS OF THE PROPOSED RULE (IN MILLIONS OF DOLLARS)

Incidents of Benefit and Cost Analysis	First Year	All Other Years
Median estimated benefits (USDA SE risk assessment baseline)	$700	$700
Median estimated benefits (CDC surveillance baseline)	$300	$300
Median estimated costs	$60	$10

B. Small Entity Analysis

1. Introduction

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities.

2. Economic Effects on Small Entities

a. *Number of small entities affected.* The proposed rule would affect many small entities, including egg processors, grocery stores and other stores including roadside stands, restaurants and other food service establishments. FDA has not been able to determine how many of the 669 egg processors registered with the USDA are small businesses (Ref. 40). Egg processors generally fall into two industrial classifications: Poultry slaughtering and processing (standard industrial classification (SIC code 2015)) and whole poultry and poultry products (SIC code 5144). The two classifications roughly correspond to in-line and off-line processors. In-line processors package the eggs at the egg laying facility. Off-line processors ship the eggs to packers.

The Small Business Administration (SBA) defines in-line egg processors (SIC code 2015–03) to be small businesses if they employ 500 or fewer people. According to a search in Dun's Market Identifiers (Ref. 41), 25 in-line egg processing firms would be defined as small. SBA defines off-line processors (SIC code 5144) to be small if they employ 100 or fewer people. Dun's Market Identifiers did not have a subcategory for egg processors. For the entire category of poultry and poultry products (SIC code 5144), 80 percent of establishments employ fewer than 100 workers. If the same proportion holds for the subcategory composed of egg processors, then 470 firms would be classified as small.[7] FDA estimated the total number of small egg processors to be 495 (= 25 + 470).

The refrigeration provision would affect small establishments that are not currently refrigerating at 7.2 °C (45 °F). The SBA defines grocery stores (SIC code 5411) to be small if annual gross revenue is less than $20 million. Other food stores (SIC codes 5431, 5451, and 5499), which include fruit and vegetable markets, dairy product stores, and miscellaneous food stores, are small if annual sales are less than $5 million. Restaurants are small if annual sales are less than $5 million; institutions are small if sales are less than $15 million.

As set out in Table 2 of this document, FDA estimates that the number of small establishments affected by the proposed refrigeration provision would be 25,400. The number of establishments (small and large) currently not keeping eggs at an ambient temperature of 7.2 °C (45 °F) is approximately 44,400, which includes 10,700 grocery and other food stores, 24,000 restaurants, and 9,700 institutions (see the PRIA/IRFA document elsewhere in this issue of the **Federal Register**). FDA assumed that the proportion of small establishments affected by the refrigeration provision would be the same as the fraction of institutions for the entire industry in that category. According to SBA size standards for small entities, 71 percent of grocery and other food stores and 54 percent of restaurants are small. Institutions are more complicated, because they cut across SIC codes. FDA assumed that 50 percent of institutions serving eggs are small. The agency asks for comments on this assumption. FDA estimated the number of small establishments affected by the

[7] The estimated total number of in-line establishments is 134, but 52 are branches of firms. If the total number of in-line firms is 82 (= 134 - 52), and the number of processors is 669, then 587 firms are off-line processors. If 80 percent are small, then 470 off-line (= 0.8 x 587) processors are small.

refrigeration provision by multiplying the fraction in each category defined to be small by the total number of establishments affected. Table 2 of this document shows the number of small entities likely to be affected by the refrigeration provision of the proposed rule.

TABLE 2.—NUMBER OF SMALL ENTITIES LIKELY TO BE AFFECTED BY THE REFRIGERATION PROVISION OF THE PROPOSED RULE

Category	Number of Small Establishments Currently Storing Eggs Above 45 °F (7 °C)
Grocery and other stores	7,600
Restaurants	13,000
Institutions	4,800
Total	25,400

b. *Costs to small entities.* Redesigning the label accounts for most of the estimated additional labeling costs for small processors. For a 6-month compliance period, redesign costs would be $1,000 per stockkeeping unit (SKU) for pulp cartons and $500 per SKU for foam cartons. The cost of the labeling provision borne by small processors will vary with the number of SKU's. The average number of SKU's per processor for the industry is 30; FDA assumes that the output of small processors falls in the range of 2 to 20 SKU's. Additional redesign costs could therefore be as high as $20,000 per processor (= 20 x $1,000).

Refrigeration costs vary across establishments, depending on the age of current refrigerators, the planned replacement cycle, and whether the small establishments is currently keeping eggs at or below 7.2 °C (45 °F). Additional refrigeration costs for small retailers would average $633, with $700 the most likely value. FDA assumed that the proportion of additional refrigeration costs borne by small entities would be the same as the proportion of small entities in each category of establishments. The cost of the refrigeration provision to small entities is shown in Table 3 of this document. The agency requests comments on the effect of the refrigeration provision on roadside stands and the practices they follow in marketing eggs.

TABLE 3.—COSTS TO SMALL ENTITIES OF THE REFRIGERATION PROVISION OF THE PROPOSED RULE

Category	Total Costs to Small Entities	Mean Cost per Small Entity
Grocery and other stores	$4.8 million	$633
Restaurants	$8.2 million	$633
Institutions	$3.1 million	$633

3. Regulatory Options

a. *Exemption for small entities.* The burden on small entities would be lifted if they were exempt from the provisions of the proposed rule. Most of the entities affected by this proposed rule, however, are small. Thus, exempting small entities from its provisions would effectively negate the rule.

b. *Longer compliance periods.* Lengthening the labeling compliance period from 6 months to 18 months and lengthening the refrigeration compliance period from the proposed rule's effective date to 12 months after the effective date would provide regulatory relief (cost reduction) to small entities. In order to estimate the regulatory relief from lengthening the refrigeration compliance period, the agency assumed that the cost reduction would equal the interest (discounted at 7 percent per year) on the cost of refrigeration equipment over the extension of the compliance period. If the compliance period were extended by 12 months, the interest on the cost of equipment would be over $1 million (= $16.1 x 0.07). For the most likely equipment cost of $700 per small establishment, the interest saving would be about $50 (=0.07 x $700).

In order to estimate the regulatory relief to small retail entities from a longer labeling compliance period, FDA estimated that total industry costs would fall by $11 million if the compliance period were extended from 6 months to 18 months (see the PRIA/IRFA document elsewhere in this issue of the **Federal Register**). Most of the relief to small businesses would come from the reduced costs of redesigning the carton label. For pulp cartons, extending the compliance period to 18 months would reduce redesign costs from $1,000 (for a 6-month compliance period) to $500 per SKU. For foam cartons, extending the compliance period to 18 months would reduce redesign costs from $500 (for a 6-month compliance period) to $100 per SKU.

Although lengthening the compliance periods would provide some regulatory relief to small entities, they make up such a large part of the affected industries that longer compliance periods would significantly delay the full public health benefits of the proposed rule.

4. Description of Recordkeeping and Recording Requirements

The Regulatory Flexibility Act requires a description of the recordkeeping and recording required for compliance with this rule. This rule does not require the preparation of a report or a record.

5. Worst Case to Small Entities

The greatest impact to a small retail establishment as a consequence of the refrigeration provision would be to cause the entity to bear the entire cost for the purchase of a new refrigerator. The agency estimates that the cost of a new refrigerator is between $2,500 and $6,000 (see the PRIA/IRFA document published elsewhere in this issue of the **Federal Register**). In order to estimate the worst possible outcome for a small entity, FDA assumed that some small retail establishment would purchase a new refrigerator at the maximum estimated cost of $6,000. If the latter

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cost were amortized over a 10-year period (using a discount rate of 7 percent) then the approximate annual expense would be $850 per year for 10 years. According to Dun and Bradstreet, 85 percent of all grocery stores have annual sales of less than $20 million, and 71 percent of all restaurants have annual sales of less than $5 million (Ref. 41). Among the smallest 10 percent of these establishments, the average sales volume is $100,000 per year for a grocery store and $50,000 per year for a restaurant. Therefore, the additional expense of $850 per year amounts to approximately 1 to 2 percent of average sales volume per year. Grocery stores and restaurants typically have profit margins on sales of 1 to 5 percent, so a reduction of the profit margin by 40 to 100 percent would be the worst-case outcome for the smallest entities in retail.

The worst case to a small entity attributable to the labeling provision would occur if a small packer were unable to pass along any of the cost to its customers. As shown previously, FDA estimated that the redesign cost to a small processor could be as high as $20,000. If the one-time cost could be amortized over a 10-year period at an annual discount rate of 7 percent, the small packer would incur an additional annual expense of approximately $3,000. FDA has not estimated the annual sales revenues of the smallest egg packers and is therefore unable to compare the estimated amortized cost to annual profits. FDA requests comments on this relationship.

6. Summary of Small Entity Analysis

FDA estimated that the labeling provisions could impose costs of up to $20,000 on 495 small processing establishments. The refrigeration provision would impose estimated costs of $633 per small entity on approximately 25,400 small establishments. FDA finds that, under the Regulatory Flexibility Act, this proposed rule would have a significant economic impact on a substantial number of small entities.

V. Executive Order 12612: Federalism

FDA has examined the effects of the two requirements in this proposal, i.e., refrigeration of shell eggs at retail and safe handling labeling of shell eggs, on the relationship between the Federal Government and the States, as required by Executive Order 12612 on "Federalism." The agency concludes that preemption of State or local rules that establish requirements for refrigeration of shell eggs that would be less stringent than Federal law is consistent with this Executive Order. The agency also concludes that the preemption of State or local rules that establish requirements for safe handling instructions on shell eggs that would not include, at a minimum, the language required by the Federal law is also consistent with this Executive Order.

Section 3(b) of Executive Order 12612 recognizes that Federal action limiting the discretion of State and local governments is appropriate "where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope." The constitutional basis for FDA's authority to regulate the safety and labeling of foods is well established.

Section 4(a) of Executive Order 12612 expressly contemplates preemption when there is a conflict between the exercise of State and Federal authority under Federal statute. Moreover, section 4(b) of the Executive Order authorizes preemption of State law in the Federal rulemaking context when there is "firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the * * * agency the authority to issue regulations preempting State law." State and local laws and regulations that would impose less stringent requirements for refrigeration of shell eggs held for retail distribution would undermine the agency's goal of ensuring that shell eggs are properly refrigerated to prevent the growth of SE, and, thus, reduce the risk of foodborne illness. Similarly, State and local requirements for safe handling labeling that do not include, at a minimum, the language required by Federal law would undermine the agency's effort to provide consumers with material information that would inform them how to properly handle and cook eggs so as to reduce their risk of foodborne illness. FDA believes that a single temperature requirement will ensure that all shell eggs for retail distribution would meet minimal standards to ensure safety. The agency also believes that consistent safe handling instructions are necessary so consumers can find essential information in a message that is not confusing or misleading.

The proposed rule would establish national minimum standards with respect to refrigeration and labeling of shell eggs. However, the refrigeration requirements of this proposed rule do not preempt State and local laws, regulations, and ordinances that establish more stringent requirements with respect to the refrigeration requirements, e.g., lower storage temperature requirements. In addition, the labeling provisions of this proposed rule do not preempt State and local laws, regulations, and ordinances that require additional safe handling instructions, e.g., graphics, on shell eggs that do not conflict with the proposed Federal requirements.

As required by the Executive Order, States and local governments will be given, through this notice of proposed rulemaking, an opportunity to participate in the proceedings to preempt State and local laws (section 4(e) of Executive Order 12612). In addition, under the Order, appropriate officials and organizations will be consulted before this proposed action is implemented (section 3(a) of Executive Order 12612).

The agency concludes that the policy proposed in this document has been assessed in light of the principles, criteria, and requirements in Executive Order 12612; that this policy is not inconsistent with that Order; that this policy will not impose additional costs and burdens on the States; and that this policy will not affect the ability of the States to discharge traditional State governmental functions.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(j) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Effective Date

FDA is proposing that any final rule that may be issued based upon this proposal become effective 180 days after its publication in the Federal Register. However, because FDA believes that it is in the best interest of all consumers for manufacturers to label shell eggs as soon as possible, the agency urges manufacturers and packers of shell eggs to label their products with safe handling statements consistent with this proposal immediately. FDA recognizes that it is possible that the requirements for the label statements in the final rule may be different from those in the proposal. However, to encourage manufacturers to use the label statements as soon as possible, the agency advises that it intends to allow the continued use of any label that complies with the proposed regulation and is printed prior to date of publication of any final rule resulting from this proposal until that inventory is depleted.

VIII. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather the proposed safe handling instructions would be a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

IX. Comments

Interested persons may, on or before September 20, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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40. FDA memorandum, Peter Vardon to the Record, October 7, 1998.

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List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 101

Administrative practice and procedure, Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 115

Administrative practice and procedure, Eggs, Refrigeration.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Services Act, and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR chapter I be amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Section 16.5 is amended by adding paragraph (a)(4) to read as follows:

§ 16.5 Inapplicability and limited applicability.

(a) * * *

(4) A hearing on an order for relabeling, diversion, or destruction of shell eggs under section 361 of the Public Health Service Act (42 U.S.C. 264), §§ 101.17(h) and 115.50 of this chapter.

* * * * *

PART 101—FOOD LABELING

3. The authority citation for 21 CFR part 101 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

4. Section 101.17 is amended by revising the section heading and by adding paragraph (h) to read as follows:

§ 101.17 Food labeling warning, notice, and safe handling statements.

* * * * *

(h) *Shell eggs.* (1) The label of shell eggs shall bear the following statement:

SAFE HANDLING INSTRUCTIONS: Eggs may contain harmful bacteria known to cause serious illness, especially in children, the elderly, and persons with weakened immune systems. For your protection: keep eggs refrigerated; cook eggs until yolks are firm; and cook foods containing eggs thoroughly.

(2) The label statement required by paragraph (h)(1) of this section shall appear prominently and conspicuously, with the words "SAFE HANDLING INSTRUCTIONS" in bold type, on the information panel or the principal display panel of the container.

(3) The label statement required by paragraph (h)(1) of this section shall be set off in a box by use of hairlines.

(4) Shell eggs that have been, before distribution to consumers, specifically processed to destroy all viable *Salmonella* shall be exempt from the requirements of this paragraph (h).

(5) The safe handling statement for shell eggs that are not for direct sale to consumers, e.g., those that are to be repacked or labeled at a site other than where originally processed, or are sold for use in food service establishments, may be provided on cartons or in labeling, e.g., invoices or bills of lading in accordance with the practice of the trade.

(6) The requirements of this section are applicable to all shell eggs.

(7) Under sections 311 and 361 of the Public Health Service Act (PHS Act), any State or locality that is willing and able to assist the agency in the enforcement of paragraphs (h)(1) through (h)(5) of this section, and is authorized to inspect or regulate establishments handling packed shell eggs, may in its own jurisdiction, enforce paragraphs (h)(1) through (h)(5) of this section through inspections under paragraph (h)(9) of this section and through administrative enforcement remedies identified in paragraph (h)(8) of this section until FDA notifies the State or locality in writing that such assistance is no longer needed. When providing such assistance, a State or locality may follow the hearing procedures set out in paragraphs (h)(8)(ii)(C) through (h)(8)(ii)(D) of this section, substituting, where necessary, appropriate State or local officials for designated FDA officials or may utilize comparable State or local hearing procedures if such procedures satisfy due process.

(8) This paragraph (h) is established under authority of both the Federal Food, Drug, and Cosmetic Act (the act) and the PHS Act. Under the act, the agency can enforce the food misbranding provisions under 21 U.S.C. 331, 332, 333, and 334. However, 42 U.S.C. 264 provides for the issuance of implementing enforcement regulations; therefore, FDA has established the following administrative enforcement procedures for the relabeling, diversion, or destruction of shell eggs and informal hearings under the PHS Act:

(i) Upon finding that any shell eggs are in violation of this section, an authorized FDA representative or State or local representative in accordance with paragraph (h)(7) of this section may order such eggs to be relabeled under the supervision of said representative, diverted, under the supervision of said representative for processing in accordance with the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), or destroyed by or under the supervision of an officer or employee of the FDA, or, if applicable, of the State or locality, in accordance with the following procedures:

(A) *Order for relabeling, diversion, or destruction under the PHS Act.* Any district office of the FDA or any State or locality acting under paragraph (h)(7) of this section, upon finding shell eggs held in violation of this regulation, may serve upon the person in whose possession such eggs are found a written order that such eggs be relabeled with the required statement in paragraph (h)(1) of this section before further distribution. If the person chooses not to relabel, the district office of the FDA or, if applicable, the appropriate State or local agency may serve upon the person a written order that such eggs be diverted (from direct consumer sale, e.g., to food service) under the supervision of an officer or employee of the issuing entity, for processing in accordance with the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*)) or destroyed by or under the supervision of the issuing entity, within 10-working days from the date of receipt of the order.

(B) *Issuance of order.* The order shall include the following information:

(*1*) A statement that the shell eggs identified in the order are subject to relabeling, diversion for processing in accordance with the Egg Products Inspection Act, or destruction;

(*2*) A detailed description of the facts that justify the issuance of the order;

(*3*) The location of the eggs;

(*4*) A statement that these eggs shall not be sold, distributed, or otherwise disposed of or moved except as provided in paragraph (h)(8)(i)(E) of this section;

(*5*) Identification or description of the eggs;

(*6*) The order number;

(*7*) The date of the order;

(*8*) The text of this entire section;

(*9*) A statement that the order may be appealed by written appeal or by requesting an informal hearing;

(*10*) The name and phone number of the person issuing the order; and

(*11*) The location and telephone number of the responsible office or agency and the name of its director.

(C) *Approval of director.* An order, before issuance, shall be approved by the director of the office or agency issuing the order. If prior written approval is not feasible, prior oral approval shall be obtained and confirmed by written memorandum as soon as possible.

(D) *Labeling or marking of shell eggs under order.* An FDA, State, or local representative issuing an order under paragraph (h)(8)(i)(A) of this section shall label or mark the shell eggs with official tags that include the following information:

(*1*) A statement that the shell eggs are detained in accordance with regulations issued under section 361(a) of the PHS Act (42 U.S.C. 264(a)).

(*2*) A statement that the shell eggs shall not be sold, distributed or otherwise disposed of or moved except, after notifying the issuing entity in writing, to:

(*i*) Relabel, divert them for processing in accordance with the Egg Products Inspection Act, or destroy them; or

(*ii*) Move them to another location for holding pending appeal.

(*3*) A statement that the violation of the order or the removal or alteration of the tag is punishable by fine or imprisonment or both (section 368 of the PHS Act, 42 U.S.C. 271).

(*4*) The order number and the date of the order, and the name of the government representative who issued the order.

(E) *Sale or other disposition of shell eggs under order.* After service of the order, the person in possession of the shell eggs that are the subject of the order shall not sell, distribute, or otherwise dispose of or move any eggs subject to the order unless and until the notice is withdrawn after an appeal except, after notifying FDA's district office or, if applicable, the State or local agency in writing, to:

(*1*) Relabel, divert, or destroy them as specified in paragraph (h)(8)(iv) of this section; or

(*2*) Move them to another location for holding pending appeal.

(ii) The person on whom the order for relabeling, diversion, or destruction is served may either comply with the order or appeal the order to the regional food and drug director.

(A) *Appeal of a detention order.* Any appeal shall be submitted in writing to the FDA District Director in whose district the shell eggs are located within 5-working days of the issuance of the order. If the appeal includes a request for an informal hearing, the hearing shall be held within 5-working days after the appeal is filed or, if requested by the appellant, at a later date, which shall not be later than 20-calendar days after the issuance of the order. The order may also be appealed within the same period of 5-working days by any other person having an ownership or proprietary interest in such shell eggs. The appellant of an order shall state the ownership or proprietary interest the appellant has in the shell eggs.

(B) *Summary decision.* A request for a hearing may be denied, in whole or in part and at any time after a request for a hearing has been submitted, if the regional food and drug director or his or her designee determines that no genuine and substantial issue of fact has been raised by the material submitted in connection with the hearing or from matters officially noticed. If the regional food and drug director determines that a hearing is not justified, written notice of the determination will be given to the parties explaining the reason for denial.

(C) *Informal hearing.* Appearance by any appellant at the hearing may be by mail or in person, with or without counsel. The informal hearing shall be conducted by the regional food and drug director or his designee, and a written summary of the proceedings shall be prepared by the regional food and drug director.

(*1*) The regional food and drug director may direct that the hearing be conducted in any suitable manner permitted by law and this section. The regional food and drug director has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct an informal fair, expeditious, and impartial hearing, and to enforce the requirements concerning the conduct of hearings.

(*2*) Employees of FDA will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present oral or written information relevant to the hearing. The party requesting the hearing may then present oral or written information relevant to the hearing. All parties may conduct reasonable examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(*3*) The hearing shall be informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but any party may comment upon or rebut any information and views presented by another party.

(*4*) The party requesting the hearing may have the hearing transcribed, at the party's expense, in which case a copy of the transcript is to be furnished to FDA. Any transcript of the hearing will be included with the regional food and drug director's report of the hearing.

(*5*) The regional food and drug director shall prepare a written report of the hearing. All written material presented at the hearing will be attached to the report. Whenever time permits, the regional food and drug director may give the parties the opportunity to review and comment on the report of the hearing.

(*6*) The regional food and drug director shall include as part of the report of the hearing a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue, and shall include a recommended decision, with a statement of reasons.

(D) *Written appeal.* If the appellant appeals the detention order but does not request a hearing, the regional food and drug director shall render a decision on the appeal affirming or revoking the detention within 5-working days after the receipt of the appeal.

(E) *Regional Food and Drug Director decision.* If, based on the evidence presented at the hearing or by the appellant in a written appeal, the regional food and drug director finds that the shell eggs were held in violation of this section, he shall affirm the order that they be relabeled, diverted under the supervision of an officer or employee of the FDA for processing under the Egg Products Inspection Act, or destroyed by or under the supervision of an officer or employee of the FDA; otherwise, the regional food and drug director shall issue a written notice that the prior order is withdrawn. If the regional food and drug director affirms the order he shall order that the

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relabeling, diversion, or destruction be accomplished within 10-working days from the date of the issuance of his decision. The regional food and drug director's decision shall be accompanied by a statement of the reasons for the decision. The decision of the regional food and drug director shall constitute final agency action, reviewable in the courts.

(F) *No appeal.* If there is no appeal of the order and the person in possession of the shell eggs that are subject to the order fails to relabel, divert, or destroy them within 10-working days, or if the demand is affirmed by the regional food and drug director after an appeal and the person in possession of such eggs fails to relabel, divert, or destroy them within 10-working days, the FDA district office, or, if applicable, the State or local agency may designate an officer or employee to divert or destroy such eggs. It shall be unlawful to prevent or to attempt to prevent such diversion or destruction of the shell eggs by the designated officer or employee.

(9) Persons engaged in handling or storing packed shell eggs for retail distribution shall permit authorized representatives of FDA to make at any reasonable time such inspection of the establishment in which shell eggs are being held, including inspection and sampling of the labeling of such eggs as may be necessary in the judgment of such representatives to determine compliance with the provisions of this section. Inspections may be made with or without notice and will ordinarily be made during regular business hours.

5. New part 115 is added to read as follows:

PART 115—SHELL EGGS

Subpart A—General Provisions

Sec.

115.50 Refrigeration of shell eggs held for retail distribution.

Authority: 21 U.S.C. 342, 371; 42 U.S.C. 243, 264, 271.

Subpart A—General Provisions

§ 115.50 Refrigeration of shell eggs held for retail distribution.

(a) For purposes of this section a "retail establishment" is an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption directly to consumers.

(b) Except as provided in paragraph (c) of this section, shell eggs held for retail distribution:

(1) Shall promptly be placed under refrigeration as specified in paragraph (b)(2) of this section upon receipt at a retail establishment; and

(2) Shall be stored and displayed under refrigeration at an ambient temperature not greater than 7.2 °C (45 °F) while held at a retail establishment.

(c) Shell eggs that have been specifically processed to destroy all viable *Salmonella* shall be exempt from the requirements of paragraph (b) of this section.

(d) The requirements of this section are applicable to all shell eggs.

(e) Under sections 311 and 361 of the Public Health Service Act (PHS Act), any State or locality that is willing and able to assist the agency in the enforcement of paragraph (b) of this section, and is authorized to inspect or regulate retail establishments. may. in its own jurisdiction, enforce paragraph (b) of this section through inspections under paragraph (g) of this section and through administrative enforcement remedies identified in paragraph (f) of this section until FDA notifies the State or locality in writing that such assistance is no longer needed. When providing assistance under paragraph (f) of this section, a State or locality may follow the hearing procedures set out in paragraphs (f)(2)(iii) through (f)(2)(v) of this section, substituting, where necessary, appropriate State or local officials for designated FDA officials or may utilize comparable State or local hearing procedures if such procedures satisfy due process.

(f) This section is established under authority of both the Federal Food, Drug, and Cosmetic Act (the act) and the PHS Act. Under the act, the agency can enforce the food adulteration provisions under 21 U.S.C. 331, 332, 333, and 334. However, 42 U.S.C. 264 provides for the issuance of implementing enforcement regulations; therefore, FDA has established the following administrative enforcement procedures for the diversion or destruction of shell eggs and for informal hearings under the PHS Act:

(1) Upon finding that any shell eggs have been held in violation of this section, an authorized FDA representative or a State or local representative in accordance with paragraph (e) of this section may order such eggs to be diverted, under the supervision of said representative, for processing in accordance with the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) or destroyed by or under the supervision of an officer or employee of the FDA, or, if applicable, of the state or locality in accordance with the following procedures:

(i) *Order for diversion or destruction.* Any district office of FDA or any State or local agency acting under paragraph (e) of this section, upon finding shell eggs held in violation of this regulation, may serve upon the person in whose possession such eggs are found a written order that such eggs be diverted, under the supervision of an officer or employee of the issuing entity, for processing in accordance with the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) or destroyed by or under the supervision of said district office, within 10-working days from the date of receipt of the order.

(ii) *Issuance of order.* The order shall include the following information:

(A) A statement that the shell eggs identified in the order are subject to diversion for processing in accordance with the Egg Products Inspection Act or destruction;

(B) A detailed description of the facts that justify the issuance of the order;

(C) The location of the eggs;

(D) A statement that these eggs shall not be sold, distributed, or otherwise disposed of or moved except as provided in paragraph (g)(4) of this section;

(E) Identification or description of the eggs;

(F) The order number;

(G) The date of the order;

(H) The text of this entire section;

(I) A statement that the order may be appealed by written appeal or by requesting an informal hearing;

(J) The name and phone number of the person issuing the order; and

(K) The location and telephone number of the office or agency and the name of its director.

(iii) *Approval of District Director.* An order, before issuance, shall be approved by the Food and Drug Administration (FDA) District Director in whose district the shell eggs are located. If prior written approval is not feasible, prior oral approval shall be obtained and confirmed by written memorandum as soon as possible.

(iv) *Labeling or marking of shell eggs under order.* An FDA, State or local agency representative issuing an order under paragraph (g)(1) of this section shall label or mark the shell eggs with official tags that include the following information:

(A) A statement that the shell eggs are detained in accordance with regulations issued under section 361(a) of the PHS Act (42 U.S.C. 264(a)).

(B) A statement that the shell eggs shall not be sold, distributed or otherwise disposed of or moved except, after notifying the issuing entity in writing, to:

(*1*) Divert them for processing in accordance with the Egg Products Inspection Act or destroy them; or

(*2*) Move them to an another location for holding pending appeal.

(C) A statement that the violation of the order or the removal or alteration of the tag is punishable by fine or imprisonment or both (section 368 of the PHS Act, 42 U.S.C. 271).

(D) The order number and the date of the order, and the name of the government representative who issued the order.

(v) *Sale or other disposition of shell eggs under order.* After service of the order, the person in possession of the shell eggs that are the subject of the order shall not sell, distribute, or otherwise dispose of or move any eggs subject to the order unless and until the notice is withdrawn after an appeal except, after notifying FDA's district office or, if applicable, the State or local agency in writing, to:

(A) Divert or destroy them as specified in paragraph (f)(1)(i) of this section; or

(B) Move them to another location for holding pending appeal.

(2) The person on whom the order for diversion or destruction is served may either comply with the order or appeal the order to the regional food and drug director in accordance with the following procedures:

(i) *Appeal of a detention order.* Any appeal shall be submitted in writing to FDA's District Director in whose district the shell eggs are located within 5-working days of the issuance of the order. If the appeal includes a request for an informal hearing, the hearing shall be held within 5-working days after the appeal is filed or, if requested by the appellant, at a later date, which shall not be later than 20-calendar days after the issuance of the order. The order may also be appealed within the same period of 5-working days by any other person having an ownership or proprietary interest in such shell eggs. The appellant of an order shall state the ownership or proprietary interest the appellant has in the shell eggs.

(ii) *Summary decision.* A request for a hearing may be denied, in whole or in part and at any time after a request for a hearing has been submitted, if the regional food and drug director or his or her designee determines that no genuine and substantial issue of fact has been raised by the material submitted in connection with the hearing or from matters officially noticed. If the regional food and drug director determines that a hearing is not justified, written notice of the determination will be given to the parties explaining the reason for denial.

(iii) *Informal hearing.* Appearance by any appellant at the hearing may be by mail or in person, with or without counsel. The informal hearing shall be conducted by the regional food and drug director or his designee, and a written summary of the proceedings shall be prepared by the regional food and drug director.

(A) The regional food and drug director may direct that the hearing be conducted in any suitable manner permitted by law and this section. The regional food and drug director has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct an informal fair, expeditious, and impartial hearing, and to enforce the requirements concerning the conduct of hearings.

(B) Employees of FDA will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present oral or written information relevant to the hearing. The party requesting the hearing may then present oral or written information relevant to the hearing. All parties may conduct reasonable examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(C) The hearing shall be informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but any party may comment upon or rebut any information and views presented by another party.

(D) The party requesting the hearing may have the hearing transcribed, at the party's expense, in which case a copy of the transcript is to be furnished to FDA. Any transcript of the hearing will be included with the regional food and drug director's report of the hearing.

(E) The regional food and drug director shall prepare a written report of the hearing. All written material presented at the hearing will be attached to the report. Whenever time permits, the regional food and drug director may give the parties the opportunity to review and comment on the report of the hearing.

(F) The regional food and drug director shall include as part of the report of the hearing a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue, and shall include a recommended decision, with a statement of reasons.

(iv) *Written appeal.* If the appellant appeals the detention order but does not request a hearing, the regional food and drug director shall render a decision on the appeal affirming or revoking the detention within 5-working days after the receipt of the appeal.

(v) *Regional Food and Drug Director decision.* If, based on the evidence presented at the hearing or by the appellant in a written appeal, the regional food and drug director finds that the shell eggs were held in violation of this section, he shall affirm the order that they be diverted, under the supervision of an officer or employee of the FDA for processing under the Egg Products Inspection Act or destroyed by or under the supervision of an officer or employee of the FDA; otherwise, the regional food and drug director shall issue a written notice that the prior order is withdrawn. If the regional food and drug director affirms the order he shall order that the diversion or destruction be accomplished within 10-working days from the date of the issuance of his decision. The regional food and drug director's decision shall be accompanied by a statement of the reasons for the decision. The decision of the regional food and drug director shall constitute final agency action, reviewable in the courts.

(vi) *No appeal.* If there is no appeal of the order and the person in possession of the shell eggs that are subject to the order fails to divert or destroy them within 10-working days, or if the demand is affirmed by the regional food and drug director after an appeal and the person in possession of such eggs fails to divert or destroy them within 10-working days, FDA's district office or appropriate State or local agency may designate an officer or employee to divert or destroy such eggs. It shall be unlawful to prevent or to attempt to prevent such diversion or destruction of the shell eggs by the designated officer or employee.

(g) *Inspection.* Persons engaged in retail distribution of shell eggs shall permit authorized representatives of FDA to make at any reasonable time such inspection of the retail establishment in which shell eggs are being held, including inspection and sampling of such eggs and the equipment in which shell eggs are held and any records relating to such equipment or eggs, as may be necessary in the judgement of such representatives to determine compliance with the provisions of this section. Inspections may be made with or without notice and will ordinarily be made during regular business hours.

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Dated: June 10, 1999.
Jane E. Henney,
Commissioner of Food and Drugs.
Donna E. Shalala,
Secretary of Health and Human Services.
[FR Doc. 99–17122 Filed 7–1–99; 11:12 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 101, and 115

[Docket No. 99N–1307]

RIN 0910–AB30

Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rule to Require Refrigeration of Shell Eggs at Retail and Safe Handling Labels

AGENCY: Food and Drug Administration, HHS.

ACTION: Preliminary regulatory impact analysis and initial regulatory flexibility analysis.

SUMMARY: The Food and Drug Administration (FDA) is publishing both the preliminary regulatory impact analysis prepared under Executive Order 12866 and the initial regulatory flexibility analysis prepared under the Regulatory Flexibility Act on the proposed rule (published elsewhere in this issue of the **Federal Register**) to require shell eggs to contain safe handling statements and to be stored and displayed under refrigeration at 7.2 °C when held by retail establishments. FDA is issuing the proposed rule because of the large number of illnesses and deaths caused by *Salmonella enteritidis* (SE) associated with shell eggs that have not been treated to destroy the pathogen. The proposed rule is intended to ensure that consumers will have the information necessary to protect themselves from eggs contaminated with SE and to ensure that eggs will be held at retail at temperatures that discourage pathogen growth.

DATES: Submit written comments on the analysis of the proposed rule by September 20, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket numbers found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Clark Nardinelli, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–8702.

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I. Preliminary Regulatory Impact Analysis

A. Introduction

FDA has examined the economic implications of the proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive effects; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: (1) Having an annual effect on the economy of $100 million, (2) adversely affecting a sector of the economy in a material way, (3) adversely affecting competition, or (4) adversely affecting jobs. A regulation is also considered a significant regulatory action under Executive Order 12866 if it raises novel legal or policy issues.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), requiring cost-benefit and other analyses, in section 1531(a) defines a significant rule as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year." The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: (1) An annual effect on the economy of $100 million; (2) a major increase in costs or prices; (3) significant effects on competition, employment, productivity, or innovation; or (4) significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In the **Federal Register** of May 19, 1998 (63 FR 27502), USDA and FDA published an advance notice of proposed rulemaking (ANPRM) entitled "*Salmonella* Enteritidis in Eggs." Among other things, this ANPRM solicited public comment on what regulations might be required to reduce the public health risk of SE in shell eggs. USDA received approximately 73 responses to this ANPRM, each containing one or more comments. Responses were received from egg farmers, egg packers, associations for the egg industry, other trade associations, consumers, consumer interest groups, animal interest groups, academia, State government agencies, and foreign government agencies. Included in these responses were several comments concerning the economic implications raised by the approaches discussed in the ANPRM. One comment suggested that FDA consider mandatory sell-by dates, prohibition of re-packaging, and mandatory pasteurization of shell eggs intended for at-risk consumers (such as residents of nursing homes). Several comments stated that in-shell pasteurization was costly; according to one comment, pasteurization equipment would cost $1.5 million. Several comments stressed the cost and difficulty of placing the safe handling statement on egg cartons, which are already crowded with printing. In one comment, a carton manufacturer estimated that designing and producing new plates for all of its egg cartons would cost about $2 million. One comment suggested allowing existing safe handling labels. Several comments advocated some form of HACCP for shell eggs. Comments regarding the regulatory impact of the proposed rule are addressed below.

B. Failure of the Existing Regime

The proposed rule addresses the handling and preparation of shell eggs by retail establishments and consumers, and should reduce the illnesses and deaths that can occur from consumption of eggs contaminated with SE.

Private markets operate within the framework of legal institutions. The tort system of the common law evolved, in part, to provide remedies to injuries suffered in transactions in private markets. Under this system, if a defective product injures someone, then the injured person may recover damages from the producer of the defective product. The recovery of damages requires the injured person to prove that his/her injuries were caused by the producer's product. However, regardless of the legal theory chosen (negligence, warranty, or strict liability), to recover damages the injured person must be able to link his/her injury to the specific product of a specific producer.

In most instances, consumers experiencing illness from food consumption do not recognize the illness as foodborne or are unable to link the illness to consumption of a particular food. This inability to connect illness and food exists because many symptoms do not occur immediately after consumption of the product. The proposed rule addresses the inability of the tort system to address adequately the mishandling of eggs by retailers and the failure to provide consumers with information needed to reduce SE-related illnesses.

The proposed refrigeration provision addresses the possible market failure (because illnesses are not easily traced to processors) that occurs when eggs are not held at appropriate temperatures at retail and consumers are put at greater risk from SE-contaminated eggs. The increased risk resulting from SE-contaminated eggs that are not held at appropriate temperatures in retail establishments can lead to involuntary health effects for consumers who do not know about the temperature abuse or do not know about the associated increased risk from SE. Indeed, retailers may be as poorly informed as consumers about the SE-related health effects from temperature abused eggs. Because both retailers and consumers may be ignorant or uncertain about the risk, the implicit contract between consumers and retailers does not incorporate the potential harm to consumers caused by the hidden health risk associated with shell eggs. Furthermore, the uncertainty and ignorance may persist about the risk—despite the occurrence of illnesses—because of the long time lapse between the purchase of the SE-contaminated eggs and the onset of SE-related illnesses.

By requiring safe handling statements, the proposed rule will provide information about the potential adverse health effects of SE-contaminated eggs. The information will persuade some consumers to change potentially risky handling practices and thereby reduce the number of illnesses associated with SE in shell eggs. The proposed labeling provision helps correct the failure of the existing regime that occurs when consumers lack relevant information about the safe handling (refrigeration and thorough cooking) of eggs. Because this information is associated with a negative characteristic of the product, and this negative characteristic is not easily differentiated among egg products, processors have little incentive to make this information available to consumers. Without the relevant information, some consumers may not properly refrigerate or may not adequately cook eggs, and some may consume foods containing raw eggs. Information about shell eggs is not complete if people do not know the potential health risks associated with SE-contaminated eggs. The lack of information places consumers, especially the young, the elderly, and persons with immune deficiencies, at a greater health risk.

C. Regulatory Options

1. No New Regulatory Action

Under this option, FDA would rely on current regulations, publicizing risks, voluntary changes in behavior, and current or enhanced State and local enforcement activity to bring about a reduction in illnesses caused by SE in shell eggs. State and local governments that adopt and enforce the 1999 Food Code as issued by FDA will meet the goals of the proposed refrigeration rule. Adopting the Food Code as issued by FDA will also reduce undercooking of eggs in restaurants, which will accomplish part of the goals of the proposed labeling provision. The 1999 Food Code requires raw shell eggs to be cooked 15 seconds at 63 °C (145 °F) if prepared for immediate service in response to a consumer's order. Other raw eggs are required to be cooked 15 seconds at 68 °C (155 °F). Because the 1999 Food Code has not been adopted everywhere and because billions of shell eggs are prepared in the home, the coverage of this option would be less than with the proposed rule.

The threat of litigation might also help bring about the goals of the proposed rule. If victims could sue sellers of SE-contaminated eggs for damages, the incentives to retailers to eliminate SE from shell eggs would increase. Creating incentives for individual retailers to refrigerate eggs, however, may not create incentives for all retailers. Furthermore, the effectiveness of litigation is questionable because the link between the consumption of SE-contaminated eggs and illnesses may be difficult to establish for outbreaks and is nearly impossible to establish for sporadic cases. Moreover, if the link could be established it is not clear whether retailers would be held liable, although new techniques such as deoxyribonucleic acid (DNA) finger printing may someday make it possible to link cases to individual retailers.

2. Labeling Provision Only

The agency could require that egg cartons contain the instructions to food handlers to "keep refrigerated", "cook until yolks are firm", and "cook foods containing eggs thoroughly" described in the context of the microbial hazard and the persons at risk. Requiring the safe handling label alone would place the burden of reducing risk from SE-contaminated eggs solely on food handlers, which includes consumers, restaurants, and institutions. If food handlers follow good sanitation practices and eggs are cooked thoroughly, the risk of salmonellosis

from SE-contaminated shell eggs can be virtually eliminated. FDA believes that the safe handling label will improve cooking practices but will not eliminate SE. The additional safeguard of proper refrigeration is therefore needed to slow the growth of SE and thereby reduce the risk of illness from mishandling. The median estimated annual benefits from labeling only are $261 million for the U.S. Department of Agriculture (USDA) SE risk assessment baseline and $124 million for the Centers for Disease Control and Prevention (CDC) surveillance baseline; the costs from labeling only are $28 million in the first year, with a recurring annual cost of $10 million.[1]

3. Refrigeration Provision Only

The agency could require that retailers refrigerate shell eggs to 7.2 °C (45 °F), without also requiring safe handling labeling. Refrigeration at less than 10 °C (50 °F) slows the growth of SE. Because the level of *Salmonella* that initially contaminates eggs is usually low, refrigeration following laying should keep the numbers of pathogens low until the egg reaches the consumer. Retail refrigeration is particularly important because it occurs later in the flow of eggs from farm to table and, therefore, it can play an important role in postponing yolk membrane breakdown and the consequent rapid growth of SE. Even if SE can be attenuated by refrigeration, some illnesses may still occur because small numbers of SE can cause illness. Moreover, improper storage by consumers after proper retail refrigeration could result in rapid growth of SE. The median estimated benefits from refrigeration alone are $387 million for the USDA SE risk assessment baseline and $211 million for the CDC surveillance baseline; refrigeration alone would impose a one-time cost of $31 million.

4. Refrigerate at 5 °C (41 °F)

Instead of requiring an ambient temperature of 7.2 °C (45 °F) for egg-containing refrigerators at retail, FDA could require an ambient temperature of 5 °C (41 °F), the internal temperature for potentially hazardous foods in the 1999 Food Code. Although current studies show *Salmonella* growth at ambient temperatures under 50 °F is significantly slowed, the advantage of a lower standard is that eggs will cool down slightly faster. FDA could require those establishments to reduce ambient temperatures to 5 °C (41 °F), with a 5-year compliance period. FDA estimated the present value of the total cost of reaching 5 °C (41 °F) in 5 years to be $65 million.[2] Because eggs cool down only slightly faster at 5 °C (41 °F)than at 7.2 °C (45 °F), the lower temperature would not generate additional benefits.

5. Implement a HACCP-Style System for Shell Eggs

The agency could require that a Hazard Analysis and Critical Control Point (HACCP) system be implemented at any or all levels of the shell egg production and distribution chain. In order to match the coverage of the proposed rule, the HACCP-style rule would have to be limited to the same set of establishments covered by the safe handling label. The advantage of a full farm-to-table HACCP is that it could eliminate, reduce, or control SE and other hazards at the source and keep them out throughout the egg processing chain. The disadvantage is that the technological knowledge needed to identify the critical control points and remedial steps to eliminate SE from shell eggs is incomplete. FDA believes that a HACCP-like program, possibly including in-shell pasteurization, is currently not feasible. However, FDA is evaluating whether a HACCP-like program in the future may be necessary to further ensure the safety of eggs.

6. In-Shell Pasteurization

The agency could require that all eggs be pasteurized. Pasteurization of shell eggs should practically eliminate SE. The time and temperatures required to pasteurize shell eggs, however, are close to the combination that will cook the eggs. Successful in-shell pasteurization on a large scale is therefore likely to be quite costly. Currently, pasteurized shell eggs sell for approximately $0.30 more per dozen than regular shell eggs (Ref. 1). Assuming that average cost remained constant with the increased output, to pasteurize all 47 billion shell eggs sold each year (around 4 billion dozen) would cost approximately $1.2 billion per year. In addition to the annual costs, the changeover to pasteurization would require large capital costs. Another potential disadvantage is that pasteurization might lead some consumers to erroneously believe that other safety measures, such as refrigeration and avoiding cross-contamination, might no longer be necessary. Because pasteurization eliminates competing microorganisms, recontamination after pasteurization might lead to rapid growth of SE. Finally, FDA believes that other interventions between farm and table could reduce the risk at lower cost.

7. Longer Compliance Periods

FDA is giving firms 180 days to meet the labeling and refrigeration provisions of this proposed rule. Lengthening the compliance period for labeling to 18 months would reduce labeling costs by allowing some of the changes to be incorporated into planned label changes. Total labeling costs, as shown in Table 14 of this document, fall from $18 million to $7 million if the compliance period is extended to 18 months. Total refrigeration costs fall by about $2 million, which is the difference (at a 7 percent discount rate) in the capital costs of refrigeration in 6 months and refrigeration in 18 months. The total cost savings from extending the compliance period to 18 months, then, are approximately $13 million. One disadvantage would be that a longer compliance period would delay the realization of the public health benefits of the proposed rule. Those benefits substantially exceed $13 million per year. As shown in Table 9 of this document, estimated median annual benefits are $300 million for the CDC surveillance baseline and $700 million for the SE risk assessment baseline.

8. Limit the "Sell By" Period

The agency could introduce a "sell by" date. Limiting the "sell by" period, which is the time within which retailers must sell shell eggs, would limit the SE growth period, thereby reducing the potential dose of SE when it is already in the egg. The disadvantage of this option is that it could not take the place of the proposed refrigeration or labeling provisions. Introducing a "sell by" provision without the proposed refrigeration provision would not necessarily prevent the growth of SE in the egg. Moreover, introducing the shortened "sell by" provision without the labeling provision would not inform consumers that they should still refrigerate and cook eggs thoroughly. Proper refrigeration is important because it will prevent the rapid growth of SE beyond the "sell by" date. The benefit of a "sell by" provision is it would reduce the likelihood of membrane breakdown and shorten the time for growth should breakdown occur. FDA estimated the benefits from a limited "sell by" period by calculating the reduction in average retail storage time if all eggs were sold within 30 days (the USDA period used for pull dating). The benefits of a limited retail storage time are $1.3 million for the USDA SE risk assessment baseline and $600,000 for the CDC surveillance baseline.

The limited shelf life would impose the additional cost of reducing the egg supply, which raises the price of eggs to consumers. If limiting the shelf life were to reduce the egg supply by 5 percent, the additional cost would be approximately $150 million. If limiting the shelf life were to reduce the egg supply by 15 percent, the additional cost would be approximately $450 million.

Other options could reduce the storage time of eggs. A "use by" date on the label might lead more people to consume eggs before membrane breakdown occurs. If the storage time in retail establishments, institutions, and homes is reduced by 1 percent, the USDA SE risk assessment model generates about a 0.5 percent decrease in the number of illnesses.

D. Coverage

1. Establishments

Table 1 of this document lists the establishments covered by the proposed rule. FDA expects that the initial costs of labeling will fall on egg processors, until ultimately the costs are passed on to consumers. Refrigeration will affect the entire retail sector, including noncommercial establishments.

TABLE 1.—COVERAGE BY ESTABLISHMENT

Establishment	Affected by Safe Handling Labeling	Affected by Refrigeration at 7.2 °C (45 °F)
Grocery stores	No	Yes
Restaurants	No	Yes
Health food stores	No	Yes
Roadside stands	Yes	Yes
Convenience stores	No	Yes
Prisons	No	Yes
Nursing homes	No	Yes
Schools	No	Yes
Hospitals	No	Yes
Military	No	Yes
Shell egg packers	Yes	No
Transportation	No	No
Farm	No	No

2. Products

Table 2 of this document lists the products covered by the two provisions of the proposed rule.

TABLE 2.—COVERAGE BY PRODUCT

Product	Affected by Safe Handling Labeling	Affected by Refrigeration at 7.2 °C (45 °F)
Shell eggs in cartons	Yes	Yes
Bulk shell eggs in cases	Yes	Yes
Egg products[1]	No	No[1]

[1] Egg products include pasteurized egg products and other eggs treated to remove pathogens. The USDA regulates these products.

E. Benefits

The benefits of the proposal come from reducing the incidence of SE-related illness. FDA will estimate health benefits with the following model of marginal benefits (MB):

MB = R x M x V

where:

R = the baseline risk. In this case, the baseline risk is the estimate of the annual incidence of SE-related illnesses associated with shell egg consumption, proportionally broken down by severity of health effects.

M = the expected marginal reduction in the number of SE-related illnesses attributable to the two provisions of the proposed rule.

V = the cost per type of SE-related illness, including personal utility losses (pain and suffering, productivity) and direct medical expenditures.

The refrigeration and labeling provisions will reduce but not eliminate the consumption of contaminated shell eggs. Requiring refrigeration at all retail outlets and requiring labeling that states that the product should be kept refrigerated, however, should decrease the number of eggs that suffer temperature abuse in retail establishments and in homes. The labeling rule will also generate health benefits by reducing the consumption of raw or undercooked eggs.

In order to estimate the reduction in cases of SE-related illnesses likely to be brought about by the proposed rule, FDA relied mainly on the USDA's *Salmonella Enteritidis* Risk Assessment (Ref. 2). Indeed, FDA could not have carried out the following assessment of benefits without the USDA SE risk assessment. FDA slightly modified the risk assessment in light of data that have become available since the completion of the final version of the model, but the analysis closely followed that of the USDA SE risk assessment team. FDA estimated the benefits of its proposed rule by combining the USDA SE risk assessment's estimated reductions in illnesses with FDA's estimates of the health cost per illness.

1. The Shell Eggs and Egg Products Risk Assessment Model

The USDA's *Salmonella Enteritidis* Risk Assessment uses a farm-to-table model of the production and consumption of eggs. The model consists of five parts: (1) Egg

[1] The two baselines are explained in section I.E.1 of this document.

[2] FDA estimated that 236,500 retail establishments hold eggs at ambient temperatures greater than 5 °C (41 °F). FDA assumed that the mean and median additional cost per establishment of moving to 5 °C to be $3,500 in current dollars. FDA also assumed that establishments would have 5 years beyond the 7.2 °C compliance period to reach 5 °C, that refrigerators last 20 years, and that additional costs would be zero for those establishments already planning to replace refrigerators within 5 years. The $65 million therefore represents the discounted (at 7 percent) additional costs of refrigeration from 5 to 20 years after the labeling and the 7.2 °C provisions would take effect.

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production, (2) shell egg processing and distribution, (3) egg products processing and distribution, (4) food preparation and consumption, and (5) public health outcomes.

Because the proposed rule will not affect the number of shell eggs contaminated with SE, FDA did not directly use the first three parts of the model. FDA estimated the effects of the proposed rule by introducing the provisions of the proposed rule into the preparation and consumption part of the model and then calculating the changes in public health outcomes.

The presence of SE in the raw egg is not sufficient to ensure that people will become ill from eating contaminated eggs. If the eggs are continuously refrigerated from the time they leave the processor up until the time they are cooked, and if they are thoroughly cooked, then the risk assessment model predicts that the SE will not multiply before cooking and cooking will eliminate the surviving pathogens. The large number of outbreaks and sporadic cases identified—and the larger number thought to occur—suggest that the conditions for pathogen kill-off are not being met. In 1996, the CDC's surveillance found 9,566 confirmed SE isolates, or 25 percent of the 39,000 confirmed cases of salmonellosis (Ref. 3). In 1997, the CDC's surveillance found 7,924 confirmed SE isolates, or 23 percent of the 34,608 confirmed cases of salmonellosis (Ref. 3). From 1988 through 1992, SE accounted for more than 40 percent of all bacterial foodborne outbreaks with known etiology and about 33 percent of all outbreaks with known etiology (Ref. 4).

The two requirements of this proposed rule form part of a farm-to-table approach to shell egg safety. These requirements address the table end of the hazard. Although they will lead to lower pathogen counts, reduced pathogen strength, and reduced pathogen consumption, they will not eliminate SE in shell eggs.

The baseline for the cases of salmonellosis prevented is the number of illnesses attributable to shell eggs before the proposed rule. The USDA SE risk assessment estimated the number of illnesses with a full farm-to-table model. The first stage of the model estimated the number of infected eggs laid with a simulation that incorporated the estimates of the number of infected flocks and the likelihood of frequency of infected eggs in an infected flock. The next stage of the model took the estimated number of infected raw shell eggs and estimated the number of infected eggs likely to be consumed. The model followed the eggs through possible paths from the farm to the table. Depending on how processors, transporters, and cooks treated the infected eggs, the SE could be killed, remain stagnant, multiply, or (if pooled) spread to other eggs. The last stages of the model used a dose-response function to estimate the number and severity of illnesses caused by SE in shell eggs. All stages of the model used computer simulations to generate ranges and distributions rather than point estimates. FDA generated a modified USDA SE risk assessment baseline by substituting more recent data on the proportion of establishments not refrigerating shell eggs at 7.2 °C (45 °F).

The CDC surveillance baseline estimated the distribution of illnesses based on the number of confirmed cases as indicated by SE isolates reported to CDC. The CDC surveillance baseline estimated the number of illnesses as actual reported cases plus estimated unreported cases.

Table 3 of this document shows the results of three Monte Carlo simulations for the baseline estimates of SE-related illnesses caused by shell eggs. All simulations used the Microsoft Excel version of the Palisade@Risk® quantitative risk assessment software. The first simulation, shown in part a of Table 3 of this document, is the baseline result of the SE risk assessment team model. The second simulation is the baseline model with 95 percent rather than 90 percent probability that shell eggs are refrigerated at 7.2 °C (45 °F) in retail establishments and institutions. FDA modified the original model because the agency had more recent information (see the next paragraphs) on the number of establishments not refrigerating shell eggs at 7.2 °C (45 °F). Part b of Table 3 of this document presents the results of the simulation based on the more recent information.

Part c of Table 3 of this document presents the third baseline estimation, which is the result of estimating the number of cases directly from CDC *Salmonella* surveillance data. FDA used the same procedure as the USDA SE risk assessment team to estimate the number of SE cases from surveillance data. The data collected by the CDC *Salmonella* surveillance project show that from 1988 through 1997 the number of SE isolates ranged from a low of 6,578 in 1992 to a high of 10,201 in 1995, with about 8,400 per year on average. The USDA SE risk assessment estimated the probability that an isolate would be reported to be 0.01431. With 8,400 isolates reported and a probability of reporting equal to 0.01434, FDA simulated a distribution for all SE illnesses, including those caused by foods other than shell eggs (not shown in Table 3 of this document).[3] The USDA SE risk assessment assumed that shell eggs accounted for 20 to 100 percent of all illnesses from SE. FDA assumed that shell eggs accounted for approximately 10 to 60 percent of all illnesses from SE.[4] The assumption that 10 to 60 percent of all SE illnesses came from the consumption of shell eggs, combined with the estimated number of illnesses, generated the estimates shown in part c of Table 3 of this document.

All three baselines in Table 3 of this document are estimates of the current incidence of SE from shell eggs. FDA estimated the health benefits of the proposed rule based on the baselines in parts b and c of Table 3 of this document. The baselines, however, could change before the proposed rule takes effect. Other Federal or State regulations, consumer education, and voluntary SE eradication by farms or processors could reduce the baseline number of SE illnesses. If such a reduction were to occur before or at the same time as the proposed rule took effect, then FDA would be using a baseline that was too high and, therefore, would over-estimate health benefits from the proposed rule. FDA recognizes the potential bias, but believes that changes in the baseline number of illnesses are likely to be small or negligible before the proposed rule takes effect.

[3] FDA simulated the number of SE illnesses not reported with a negative binomial distribution. The simulation calculated the total number of illnesses (reported and not reported) as: Number reported + Negative binomial (number reported + 1, frequency of reporting) = 8,400 + NEGATIVE BINOMIAL (8,401, 0.01434).

[4] According to the results of outbreak analyses for the years 1988 through 1992, eggs were the food vehicle in 64 percent of the SE outbreaks for which the food vehicle could be identified (Ref. 4). Therefore, FDA assumed that 60 percent represented the maximum fraction of cases attributable to eggs. More than half of the SE outbreaks, however, did not have a known food vehicle. If outbreaks with unknown vehicles are added to the total, then eggs accounted for only 29 percent of all SE outbreaks (including outbreaks with known and unknown vehicle) from 1988 through 1992. Furthermore, the causes of outbreaks may not be the same as the causes of sporadic cases. FDA believes that shell eggs may be less important cause of sporadic SE cases than of SE outbreaks. Many outbreaks have been linked to the pooling of large numbers of eggs in nursing homes and other institutional settings. Because pooling eggs would have little effect on the probability of a sporadic case occurring, eggs are not likely to account for as large a proportion of sporadic cases as of outbreaks. FDA believes it plausible that eggs account for only one-third as high a fraction of all SE cases as of outbreaks. For a lower bound on the fraction of cases caused by eggs, FDA multiplied the fraction of all outbreaks caused by eggs (29 percent) by the relationship between the egg fraction of all cases and the egg fraction of outbreaks (one-third). Therefore, FDA estimated that 10 percent represented the minimum fraction of SE cases attributable to eggs.

TABLE 3.—THREE BASELINE ESTIMATES OF SE FROM SHELL EGGS

	5th percentile	Median	Mean	95th percentile
a. *USDA SE Risk Assessment*				
Illnesses	126,374	504,082	661,633	1,742,592
Arthritis	3,631	14,864	19,994	55,915
Deaths	68	301	391	1,050
b. *USDA SE Risk Assessment as Modified by FDA*				
Illnesses	115,645	416,156	569,231	1,508,814
Arthritis	3,372	12,548	17,175	48,594
Deaths	66	250	354	985
c. *CDC Surveillance Model*				
Illnesses	63,884	189,599	191,511	319,275
Arthritis	1,330	5,533	5,727	12,202
Deaths	37	122	115	197

2. Cases of Salmonellosis Prevented

FDA cannot precisely estimate the number of cases likely to be prevented by the proposed rule; therefore, the agency used a range of cases prevented to estimate the benefits of the proposed rules. For the refrigeration provision, FDA used the USDA SE risk assessment model (as modified by FDA) to determine the effects of eliminating virtually all temperature abuse in retail and institutional establishments. In the simulation of the model, the number of illnesses fell as the proportion of establishments assumed to be holding eggs at 7.2 °C (45 °F) or less increased from 95 percent to virtually 100 percent.

FDA used a study of changes in consumer behavior as a result of the USDA safe handling label for meat to estimate the effects of the safe handling label for shell eggs. The Food Marketing Institute (Ref. 5) found that 59 percent of shoppers were aware of the USDA safe handling labels for meat. Of those aware of the labels, 43 percent changed their behavior as a result of the labels. Of those who changed their behavior, the changes ranged from 1 percent (use of antibacteria soap to wash hands) to 41 percent (washing or disinfecting counters, cooking areas, and utensils after contact with meat). The behavioral changes most similar to what the proposed rules aim to bring about for shell eggs were the 19 percent increase in proper cooking of meats and the 7 percent increase in proper refrigeration. If the meat cooking and refrigeration results indicate the likely effects of the proposed label for eggs, then the likelihood that shell eggs will be undercooked or consumed raw will decline by approximately 5 percent (= 59 percent x 43 percent x 19 percent) and the likelihood that consumers will fail to properly refrigerate eggs will decline by approximately 2 percent (= 59 percent x 43 percent x 7 percent).[5]

The USDA SE risk assessment model treats proper cooking as a kill step for SE. Whatever the baseline, if undercooking falls by 5 percent, so will the number of illnesses, all else the same. The effects of retail refrigeration come early in the life of the egg. The effects of the safe-handling label come later in the life of the egg than refrigeration, so the effects of proper cooking in reducing illnesses will be net of the effects of refrigeration. Safe cooking will reduce the number of illnesses remaining—after the effect of refrigeration—by 5 percent.

In separate simulations, FDA used the USDA SE risk assessment model to estimate the effects of the labeling provision, the refrigeration provision, and the proposed rule combining the provisions. In another simulation, FDA estimated the effects of including a "sell by" date on the label or some equivalent policy to reduce retail storage time. If the "sell by" date were 30 days after receiving the eggs, the average retail storage time would be reduced by 6 percent (Ref. 2).[6] FDA used 6 percent as the potential shortening of average retail storage time. FDA did not include shortened storage time in the simulations that estimated the effects of the proposed rule.

FDA estimated policy effects for both the modified SE risk assessment and the surveillance baselines. FDA first simulated the possible regulatory approaches in the modified USDA SE risk assessment model. The simulations generated distributions of the number of illnesses prevented by those approaches. The results are shown in part a of Table 9 and part a of Table 10 of this document. The CDC surveillance baseline began with the final result—a distribution of the number and severity of illnesses. No farm-to-table steps entered the model. The CDC surveillance model could not estimate how the illnesses occurred; the model only produced an estimate of the number of illnesses. Because the CDC surveillance baseline was not an outcome of a model, FDA could not directly estimate effects with the surveillance baseline. Instead, FDA assumed that the policy effects would be proportionally the same for both the CDC surveillance and the USDA SE risk assessment baselines. The estimated effects of the proposed rule on the surveillance baseline, then, equaled the percentage effects from the SE risk assessment applied to the CDC baseline.[7] The results are shown in part

[5] The sample size was 1,007. The reduction in undercooked eggs likely to be brought about by safe handling instructions rested on several assumptions. The most important assumptions were that: (1) The 5 percent reduction in unsafe cooking practices and the 2 percent reduction in unsafe refrigeration practices implied by the survey results for the USDA meat handling labels accurately reflected people's practices in their home, (2) the results for home food handlers would hold for restaurant food handlers, (3) the results for the meat label would hold for egg labels, (4) the change in behavior would extend to raw eggs as well as undercooked eggs, and (5) the sample of 1,007 consumers was reasonably representative (Ref. 5). The greatest uncertainty in extrapolating from the meat handling results is in assuming that the effects will hold for those products that contain raw eggs. Cookie dough, cake and brownie batter, egg nog, and other homemade products are major sources of the consumption of raw eggs, but the desire to consume them also appears to be deeply ingrained among consumers.

[6] In the risk assessment, retail storage time for eggs is a truncated exponential distribution, with the unconstrained (that is, nontruncated) expected storage time equal to 7 days, minimum storage equal to 0, and maximum equal to 60. If the maximum is changed to 30, mean storage time falls by 6 percent.

[7] Comparing the illnesses prevented in Tables 9 and 10 of this document with the appropriate baseline in Table 3 of this document can

Continued

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b of Table 9 and part b of Table 10 of this document.

3. Health Benefits From Preventing Salmonellosis

The health benefits associated with preventing salmonellosis are: (1) Lessening the loss of productivity, (2) the reduction in pain and suffering, and (3) the reduced expenditures on medical treatment. In order to quantify the losses suffered by victims of salmonellosis, it is first necessary to develop an index to measure the losses associated with pain, suffering, mobility, and other problems associated with becoming ill. FDA estimated the utility losses caused by pain and suffering with a symptom-problem health utility index. Lost productivity was indirectly estimated by measures of body movement, physical location, and functional state. FDA estimated medical costs directly. The symptoms of salmonellosis vary by serotype and the immune status of the victim. Diarrhea, nausea, vomiting, fever, and headache lasting from 1 day to 1 week or more characterize a typical case of salmonellosis. Mild cases last 1 to 3 days, moderate cases last 2 to 12 days, and severe cases last 11 to 21 days (Ref. 6). Some acute cases are followed by post-*Salmonella* reactive arthritis, with symptoms that include pain and possible functional disability (Ref. 7, 31, and 32). Moreover, some acute cases lead to death, especially among elderly victims.

Tables 4 through 7 of this document contain descriptions of the health effects associated with salmonellosis. Table 4 of this document lists the codes associated with salmonellosis of varying levels of severity. Tables 5 and 6 of this document explain the codes.

TABLE 4.—HEALTH EFFECTS AND SYMPTOMS OF ILLNESSES ASSOCIATED WITH SALMONELLOSIS

Severity	Functional Status	Symptom-Problem Complex Code
Mild	MOB(4) + PAC(3) + SAC(3)	9
Moderate	MOB(4) + PAC(3) + SAC(3)	9
Severe—acute	MOB(2) + PAC(1) + SAC(1)	9
Reactive arthritis, resolved in 4 months	MOB(5) + PAC(3) + SAC(3 and 4)	7
Reactive arthritis—chronic, intermittent, waxing and waning, or unremitting	MOB(5) + PAC(3) + SAC(3 and 4)	7

Table 5.—DESCRIPTION OF FUNCTIONAL STATUS CODES (USED TO MEASURE PRODUCTIVITY LOSS)

Function Status Code	Scale	Weight or Utility Loss
Mobility (MOB)		
5	No limitations	0.000
4	Did not drive car; other limitations	0.062
2	In hospital	0.090
Physical Activity (PAC)		
4	No limitations	0.000
3	Walked with physical limitations	0.060
1	In bed or wheelchair	0.077
Social Activity (SAC)		
5	No limitations	0.000
4	Limited in other activities	0.061
3	Limited in primary activity	0.061
2	Performed self-care	0.061
1	Help with self-care	0.106

TABLE 6.—DESCRIPTION OF SYMPTOM-PROBLEM COMPLEX CODES (USED TO MEASURE LOSS FROM PAIN AND SUFFERING)

Symptom-Problem Complex	Description	Utility Weight
9	Sick or upset stomach, vomiting, or diarrhea (watery bowel movements)	0.290
7	Pain, stiffness, numbness, or discomfort of neck, hands, feet, arms, legs, ankles, or several joints together	0.299

FDA estimated the health loss per day for the different levels of illness severity by summing the lost productivity (as measured by functional status) and the loss from pain and suffering (as measured by the symptom-problem index). These losses per day can be interpreted as the difference between 1 day of perfect health and 1 day of suffering the productivity loss and pain and suffering associated with one of the health conditions. The numerical scale is based on the notion of a quality-adjusted life day. The quality-adjusted life day for a day of perfect health equals 1; the quality-adjusted life day for death equals 0. For illnesses, the quality-adjusted life day falls between 0 and 1. A day spent suffering a mild case of salmonellosis has a quality-adjusted life day equal to 0.527 (= 1 – 0.473).

The loss of utility per illness equals the daily loss multiplied by the duration of the illness. For example, mild salmonellosis lasts 1 to 3 days. The total utility losses for a mild case lasting 2 days equal 2 x 0.473 = 0.946, or about 1 quality-adjusted life day. The resolved cases of post-*Salmonella* reactive arthritis may last 1 day to 4 months (Ref. 7). FDA assumed that chronic cases of reactive arthritis last for the rest of the victim's life. FDA used a distribution for the age of onset for salmonellosis, based on FoodNet results for 1996 and 1997 (Ref. 8). FDA also used a distribution for the age of onset for reactive arthritis. FDA combined the two distributions to generate a single distribution for the length of time that post-*Salmonella* reactive arthritis would be expected to last.

approximate the percentage effects. FDA also independently estimated the proportional effects of the proposed rule. In that simulation, the mean fraction of baseline illnesses prevented was 19 percent, the median was 15 percent, the 5th percentile was 6 percent, and the 95th percentile was 49 percent.

TABLE 7.—UTILITY LOSSES FROM SALMONELLOSIS

Severity	Functional Utility per Day	Symptom-Problem Utility Weight per Day	Total Utility Loss per Day	Duration (days per year)	Utility Losses per Case per Year	Medical Costs per Case per Year
Mild	0.183	0.290	0.473	1 to 3	0.473 to 1.419	0
Moderate	0.183	0.290	0.473	2 to 12	0.946 to 5.676	$800
Severe—acute	0.273	0.290	0.563	11 to 21	6.193 to 11.823	$9,100
Reactive arthritis—resolved	0.121	0.299	0 to 0.42	1 to 121	0 to 50.4	$100
Reactive arthritis—chronic	0.121	0.299	0 to 0.42	365	0 to 153.3	$400

FDA assumed that the most likely value of a quality-adjusted life day was $630, a value derived from the statistical estimate of the benefit for a small reduction in the probability of death, commonly called the value of a statistical life. If the value of a statistical life is $5 million, and the average discounted number of life years (in the studies that generated this estimate) lost is 21.8, then the value of a single quality-adjusted life day is ($5 million ÷ 21.8) ÷ 365 = $630.[8] The value of utility losses for nonfatal cases of acute salmonellosis would therefore equal the losses of quality-adjusted life days multiplied by $630.

The value of a quality-adjusted life day is highly uncertain. Therefore, FDA used a distribution, not a point estimate, to value the utility losses from salmonellosis. FDA based the distribution on a most likely value, a minimum, and a maximum. The most likely value, as shown previously, was $630. FDA based the minimum value of a quality-adjusted life day on the average daily gross domestic product per person, which was approximately $80 per day in 1997 (($8 trillion ÷ 268 million) ÷ 365) (Ref. 9). FDA believes that the gross domestic product per person understates willingness to pay, because most studies of the value of a statistical life indicate that people are willing to pay more than their average earnings to avoid all of the costs associated with illnesses. FDA used gross domestic product per person as a strict lower bound, because it is not plausible that people on average would be willing to pay less than the value of output per person. FDA based the maximum value of a quality-adjusted life day on the literature on the value of a statistical life. In a survey of the literature on the value of a statistical life, the most plausible upper-bound estimate was approximately $8.4 million in 1997 prices (Ref. 10). The upper-bound value of a quality-adjusted life day would, therefore, be about $1,000 (($8.4 million ÷ 21.8) ÷ 365).

In addition to utility losses (lost productivity, pain, and suffering), salmonellosis leads to direct medical expenditures. The medical costs of acute salmonellosis vary from nothing for a mild case to more than $9,000 for severe cases (Ref. 11). The medical costs for chronic cases vary from $100 for resolved cases to $400 per year for long-lasting cases (Ref. 12).

The total health costs per case are the sum of utility losses (which include productivity and pain and suffering) and medical expenditures. The total costs of SE illnesses would be the costs per case of each severity multiplied by the number of illnesses of each severity. For chronic illnesses that are not resolved, the utility losses and medical costs stretch indefinitely into the future. FDA calculated the present value of chronic medical expenditures and utility losses with a discount rate of 7 percent. For example, medical costs for reactive arthritis of $400 per year take a present value of $5,400 for cases that last 44 years. The annual costs of reactive arthritis are the net present value of the costs of new cases.

FDA based the distribution of cases by severity on the FoodNet results for diarrheal illness, which indicate that 92 percent of victims do not seek medical attention (Ref. 8). The FoodNet population survey could not determine the causes of diarrhea for people who did not seek treatment. *Salmonella* accounts for a large portion of isolates of the people who do seek medical treatment for diarrhea and is therefore assumed to account for a large portion of all diarrheal illness. FoodNet used the fraction of all victims who seek medical attention Consistent with the FoodNet approach, FDA assumed that 92 percent of victims of salmonellosis do not seek medical treatement. FDA assumed that these cases were mild. Also, the agency assumed that 15 percent of those who sought medical attention for SE would be hospitalized (Ref. 8).[9] Of those who were hospitalized, about 5 percent would die. The case-fatality rate simulated by the model equaled the probability of hospitalization multiplied by the conditional probability of death given hospitalization. In most simulations it was around 0.05 to 0.06 percent.[10] The proportion of acute cases that lead to post-salmonellosis reactive arthritis has been estimated at 2 to 3 percent (Ref. 13) and 6.4 percent (Ref. 7). The USDA SE risk assessment used a 2 to 4 percent range, with the mean equal to 3 percent. FDA used the same mean, but with a 0 to 6 percent range, reflecting the continued wide uncertainty associated with reactive arthritis after acute

[8] FDA calculated the discounted life expectancy based on 36 years lost, which was approximately the loss in the injury studies used to estimate the value of a statistical life. The workers were around 40 years old. The rate of time preference used to discount the years if life lost was 3 percent, often identified as the pure rate of time preference. If 36 years are continuously discounted at 3 percent per year, the result is 21.8 years.

[9] FDA revised the USDA SE risk assessment's distribution of illnesses by severity in light of FoodNet results (Ref. 8). The FoodNet results were not available at the time the risk assessment was carried out. The revisions to the USDA SE risk assessment, however, were small. FDA used 92 percent as the fraction of illnesses that are mild, compared with 94 percent in the USDA SE risk assessment. The USDA SE risk assessment assumed that 10 percent were hospitalized. FoodNet found that 15 percent of all persons with foodborne pathogens (and sought medical care) were hospitalized. Because the FoodNet data were more recent, FDA assumed that 15 percent of those who consulted physicians for SE illness were subsequently hospitalized.

[10] Many sources (Ref. 13) state that about 0.1 percent of cases of salmonellosis lead to death. The SE risk assessment, however, generated lower case-fatality rates for SE. Because the result was specific to SE, FDA used the lower estimate generated by the SE risk assessment. FoodNet has not generated enough cases to compute a meaningful case-fatality rate for SE illnesses.

salmonellosis. FDA estimated the distribution of cases by severity for reactive arthritis based on an outbreak study (Ref. 7). The lost quality-adjusted life days for post *Salmonella* reactive arthritis are also uncertain. With only one study of severity, FDA did not have sufficient information to justify a point estimate; therefore, the agency used a range of 0 to 0.42 for the daily loss of quality-adjusted life days.

Most of the deaths attributed to SE are elderly persons. Of the 27 deaths linked to foodborne SE disease outbreaks from 1988 through 1992, 23 fatalities (85 percent) occurred in nursing homes (Ref. 4). To estimate benefits from preventing deaths, FDA assumed that the probability that the victim was age 75 or older was 80 percent. The loss of quality-adjusted life years is much less for victims age 75 and older than for victims from rest of the population. The use of the same value for the benefits of preventing fatalities among the general population and preventing fatalities among those age 75 and older (especially the nursing home population) would therefore not be appropriate. FDA assumed that the average loss of discounted quality-adjusted life years would be about 6 for victims age 75 and older and about 26 for other victims.[11]

4. Total Health Benefits

FDA estimated the effects of the proposed rule by combining the distribution of effects on the number of illnesses with the distribution of monetary values associated with the illnesses prevented. The calculations involved two steps. In the first step FDA used the USDA SE risk assessment model to estimate the number of illnesses prevented. In the second step, FDA estimated the health benefits associated with preventing those illnesses. The uncertainties associated with several important parts of the formula led FDA to use Monte Carlo computer simulations to estimate the total health benefits of the proposed rule.[12]

In the Monte Carlo simulation, the computer repeatedly calculated health benefits based on the following formula:

total health benefits = (number of mild cases prevented x $ per case) + (number of moderate cases prevented x $ per case) + (number of severe-acute cases prevented x $ per case) + (number of resolved cases of arthritis prevented x $ per case) + (number of chronic cases of arthritis prevented x $ per case) + (number of deaths prevented x $ per death)

Instead of calculating the total health benefits once, based on single estimates for each value in the formula, the simulation calculated the health benefits over and over again. Each calculation (or iteration) used different values, with the values drawn from probability distributions. The probability distributions used in the simulation are shown in Table 8 of this document.[13]

TABLE 8.—DISTRIBUTIONS USED TO ESTIMATE THE MONETARY VALUE OF CASES OF SALMONELLOSIS PREVENTED

Variable	Distribution	Source
Number of illnesses prevented	Cumulative	Ref. 2
Number of mild illnesses	Binomial (number of illnesses, 0.92)	Ref. 8
Number of moderate illnesses	Binomial (number at least moderate, 0.85)	Ref. 8
Number of severe, acute illnesses	Binomial (number at least severe, 0.95)	Ref. 2
Number of deaths	Residual	Ref. 2
Value of a quality-adjusted life day ($)	Beta-Pert (80, 630, 1,000)	See text
Fraction of illnesses resulting in reactive arthritis	Beta-Pert (0, 0.03, 0.06)	See text
Fraction of reactive arthritis cases resolved	Beta (10, 19)	Ref. 7
Quality-adjusted life day lost per day of reactive arthritis	Uniform (0, 0.42)	Ref. 15
Duration of mild illnesses	Uniform (1,3)	Ref. 6
Duration of moderate illnesses	Uniform (2, 12)	Ref. 6
Duration of severe illnesses	Uniform (11, 21)	Ref. 6
Duration of resolved reactive arthritis	General (1, 121; uniform (2,7), uniform (8,28), uniform (29,120); 0.2222, 0.6666, 0.1111)	Ref. 7
Duration of chronic reactive arthritis	Normal (35, 3.5)	Refs. 8 and 16
Distribution of deaths between elderly and general population of deaths that are old people	Binomial (number of deaths, 0.8)	Ref. 4
Discounted years of life lost per death of elderly victims	6.2	See text
Discounted years of life lost per death of other victims	26.4	See text

Each simulation calculated health benefits 1,000 times. FDA simulated the effects of the proposed rule, the separate effects of the refrigeration and labeling components of the proposed rule, and the effects of a decline in retail storage time. Tables 9 and 10 of this document present the 5th percentile, mean, median, and 95th percentile simulated health benefits.

[11] FDA divided victims into 2 age groups, those age 75 and over and all others. FDA then assumed that within the 2 categories of those age 75 and over and all other, the age of vitims of fatal SE illnesses was the same as the age of victims of all cases of salmonellosis in the 1996 through 1997 FoodNet data base. The average age of salmonellosis victims under age 75 was about 24, for an estimated average years of life lost of 53. If 53 years of life lost are discounted at 3 percent per year, the result is 26 discounted years lost. The average age of salmonellosis victims age 75 and over was about 82, for an estimated average years of life lost of 7. The discounted years of life lost (at 3 percent per year) is 6.

[12] The simulations all used Latin Hypercube sampling, which first sorts the samples in stratified groups and then samples equally from each group. The one-stage simulations contained 1,000 iterations. The two-stage simulations used 50 uncertainty iterations, then 50 simulations of 500 iterations each.

[13] The agency seiected distributions based on the underlying data or common assumptions about the variables being modeled. The main innovations were the use of Beta and Beta-Pert distributions. The Beta distribution is part of the Bernoulli family of distributions and is closely related to the Binomial. The Binomial gives the distribution of the number of successes (s) in n trials if the probability of success in each trial is p. The Beta shows the distribution of the value of p when s successes occur in n trials. The Beta-Pert distribution is a Beta distribution that has been rescaled to run between values other than 0 and 1. The Beta-Pert uses a minimum, maximum, and most likely value to generate a distribution running from the minimum to the maximum, with a mean equal to (minimum + (4 x most likely) + maximum) ÷ 6. In contrast to the Triangular, which has a mean of (minimum + most likely + maximum) ÷ 3, the Beta-Pert is less sensitive to extreme values and generates more outcomes close to the mean. For those reason, the agency used the Beta-Pert rather than the triangular when only the minimum, most likely, and maximum values were given. For discussions of the nature and use of these distributions in Monte Carlo simulation see Ref. 14.

TABLE 9.—TOTAL ANNUAL HEALTH BENEFITS FROM THE REDUCTION IN SALMONELLOSIS ATTRIBUTABLE TO THE PROPOSED SHELL EGG RULES: USDA *Salmonella* ENTERITIDIS RISK ASSESSMENT BASELINE AND CDC SURVEILLANCE BASELINE

Variable	5th Percentile	Median	Mean	95th Percentile
a. Modified USDA SE Risk Assessment Baseline				
Illnesses prevented	12,369	65,801	115,848	407,064
Mild	11,391	60,479	106,580	374,192
Moderate	831	4,484	7,878	27,900
Severe	142	747	1,321	4,685
Arthritis—resolved	147	588	1,171	4,453
Arthritis—chronic	468	1,146	2,313	8,317
Death	6	39	69	246
Health benefits	$86.7 million	$703 million	$1,700 million	$6,610 million
b. CDC Surveillance Baseline				
Illnesses prevented	7,032	25,132	36,937	107,230
Mild	6,476	23,092	33,982	98,607
Moderate	475	1,691	2,511	7,286
Severe	80	284	421	1,235
Arthritis—resolved	47	240	382	1,182
Arthritis—chronic	95	488	714	2,073
Death	3	16	22	66
Health benefits	$49.2 million	$303 million	$501 million	$1,679 million

TABLE 10.—TOTAL ANNUAL HEALTH BENEFITS FROM THE REDUCTION IN SALMONELLOSIS ATTRIBUTABLE TO THE VARIOUS REGULATORY APPROACHES: USDA *Salmonella* ENTERITIDIS RISK ASSESSMENT BASELINE AND CDC SURVEILLANCE BASELINE

Variable	5th Percentile	Median	Mean	95th Percentile
Reduced Retail Storage Time				
a. Modified USDA SE Risk Assessment Baseline				
Illnesses prevented	0	162	3,000	13,9[illegible]8
Health benefits (millions)	0	$1.3	$29.8	$139
b. CDC Surveillance Baseline				
Illnesses prevented	0	88	997	4,998
Health benefits (millions)	0	$0.6	$2.1	$71.2
Refrigeration to 7.2 °C (45 °F) Only				
a. Modified SE Risk Assessment Baseline				
Illnesses prevented	997	34,791	86,512	340,387
Health benefits (millions)	$9.6	$387	$1,260	$5,500
b. CDC Surveillance Baseline				
Illnesses prevented	548	15,812	27,447	94,317
Health benefits (millions)	$3.2	$163	$372	$1,476
Labeling only				
a. Modified SE Risk Assessment Baseline				
Illnesses prevented	6,500	23,097	32,191	84,147
Health benefits (millions)	$43.8	$261	$444	$1,460
b. CDC Surveillance Baseline				
Illnesses prevented	3,339	10,008	10,531	17,672

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TABLE 10.—TOTAL ANNUAL HEALTH BENEFITS FROM THE REDUCTION IN SALMONELLOSIS ATTRIBUTABLE TO THE VARIOUS REGULATORY APPROACHES: USDA *Salmonella* ENTERITIDIS RISK ASSESSMENT BASELINE AND CDC SURVEILLANCE BASELINE—Continued

Variable	5th Percentile	Median	Mean	95th Percentile
Health benefits (millions)	$20.2	$103	$150	$421

5. Additional Benefits

a. *Reduced risk from other pathogens.* Refrigeration and thorough cooking may reduce the risk from pathogens other than SE in eggs. These other product-pathogen combinations include other serotypes of *Salmonella* in eggs and pathogenic organisms in other foods. Because other foods are often stored in the same refrigerator cases as shell eggs, refrigerating shell eggs at 7.2 °C (45 °F) will reduce the ambient temperature for all foods stored in the same case. If some of these other foods are ready-to-eat potentially hazardous foods, the requirement to refrigerate at 7.2 °C (45 °F) may generate additional health benefits by reducing the illnesses associated with those products.

b. *Fewer recalls.* The rule could lead to fewer recalls. Although FDA had no recalls of shell eggs in the most recent year, recalls that might have occurred in the future could be prevented by the proposed rule.

6. Uncertainty of Estimated Benefits

As Table 9 of this document shows, the range of potential benefits from the proposed rule is wide. With the USDA SE risk assessment baseline, the 95th percentile benefits are 75 times the 5th percentile benefits. With the CDC surveillance baseline, the 95th percentile benefits are 35 times the 5th percentile benefits. However they are calculated, the estimated benefits from the proposed rule are uncertain.

The uncertainty comes from many sources. Some uncertainty comes from the ordinary variation of known factors. For example, the duration and severity of the illnesses associated with acute salmonellosis vary. The age of victims also varies. Many of the estimated factors affecting the size of health costs, such as the division of deaths between the elderly and younger people, the severity of reactive arthritis, and the number of illnesses that progress from mild salmonellosis to more serious illnesses can vary from year to year. Because of this ordinary variability, it is impossible to generate a single number representing the effects of the proposed rule. As the variable factors change, the effects of the proposed rule change.

The wide range of outcomes shown in Table 9 of this document, however, is not generated solely by the variability of known factors such as ages of victims and severity of illness. Much of the range in Table 9 of this document comes from uncertainty about the values of several elements of estimated health benefits. Fundamental uncertainty exists in that the agency does not know and may never know some of those values. The principal fundamental uncertainties associated with the benefit assessment are:

- Uncertainty about the baseline number of illnesses associated with SE in shell eggs,
- Uncertainty about the proportion of cases of salmonellosis that lead to reactive arthritis,
- Uncertainty about the number of illnesses likely to be prevented by the proposed rule, and
- Uncertainty about the monetary value of illnesses caused by SE in shell eggs.

The effects of these uncertainties can be characterized with a series of figures.[14] In Figure 1 of this document, the agency shows how the distribution of estimated health benefits changes when the baseline distribution of estimated SE illnesses associated with shell eggs changes. As the figure shows, there is much overlap, but the USDA SE risk assessment baseline leads to higher estimated benefits than does the CDC surveillance baseline. The figure also shows that even if the agency knew which distribution the USDA SE risk assessment or the CDC surveillance was the appropriate baseline, large uncertainty would remain. The ranges of outcomes for each baseline distribution cover several billion dollars.

As FDA acquires more information, the uncertainties caused by the agency's lack of knowledge of the incidence of reactive arthritis caused by salmonellosis, the effectiveness of the proposed rule, and the monetary value of the illnesses caused by SE may be reduced but will not be eliminated. Better estimates of the incidence of arthritis are likely to become available in the future, but some uncertainty will remain. The agency will never precisely know the effectiveness of the rule or the average monetary value of preventing a case of salmonellosis. The uncertainty about the effects of policy stem from the many other factors that affect the number of illnesses, including other policies, changes in consumer behavior (perhaps because of education), changes in the pathogen itself, and possible technological changes in processing and other sectors of the industry. All of these changes will affect the baseline distribution of estimated illnesses and, therefore, change the distribution of estimated effects of the proposed rule. The other remaining uncertainty, the monetary value of preventing a case, is based on estimates of the average person's willingness to pay to avoid a small increase in the probability of illness, injury, or death. FDA believes that although it is possible to identify a range of plausible values for the willingness to pay, the true average willingness to pay is probably unknowable.

FDA illustrates the effects of the principal uncertainties in Figures 2 and 3 of this document. In Figure 2 of this document, the uncertainties are assumed away. In other words, Figure 2 of this document is constructed on the assumption that FDA knows the correct baseline, knows the incidence of post-*Salmonella* reactive arthritis, knows the effectiveness of the proposed rule, and knows the value of a statistical life year. If FDA knew those values, one possible distribution of health benefits would be that shown in Figure 2 of this document. In this figure, the values of the main uncertain variables are fixed.[15]

The problem with Figure 2 of this document is that FDA does not know if the selected values of the uncertain variables (which were chosen randomly from the distributions of possible values) are correct. Different values for the principal uncertainties would generate different distributions. Ten values for the uncertain variables would generate 10 different distributions, not one as in Figure 2 of this document. Figure 3 of this document contains the distribution illustrated in Figure 2 of this document, as well as nine others—four more from the CDC surveillance baseline and five from the USDA SE risk assessment baseline. The agency does not know which of the 10 distributions pictured in Figure 3 of this document is correct. Indeed, the correct distribution could be another one entirely. In Figure 4 of this document, 100 different values of the uncertain variables generate 100 different simulated distributions of health benefits. The best estimate of health benefits is somewhere in the thick mass of Figure 4 of this document, but it is impossible to tell where.

The uncertainty does not mean that nothing can be concluded about the benefits of the proposed rule. The distributions shown in Figures 3 and 4 of this document tend to be of two types: (1) Narrow distributions concentrated in the low end of the benefits scale, and (2) wide distributions encompassing everything from small benefits to enormous benefits. The narrow distributions bunched at the low end of the scale represent large health benefits. For example, the 5th percentile benefits from the CDC surveillance baseline are, as shown in Table 9 of this document, approximately $50 million per year—a large health benefit. The distributions shown in Figures 1 through 4 of this document suggest that although there is some small probability of small benefits, most of the values generated by the simulations represent large public health benefits.

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[14] The next several paragraphs and the figures are based on Ref. 14.

[15] The values for the baseline illnesses, incidence of reactive arthritis, effectiveness of the proposed rule, and the monetary value of preventing illnesses were randomly selected and then fixed for the simulation illustrated in Figure 2 of this document.

Figure 3. Uncertainty of Health Benefits: 10 Simulations

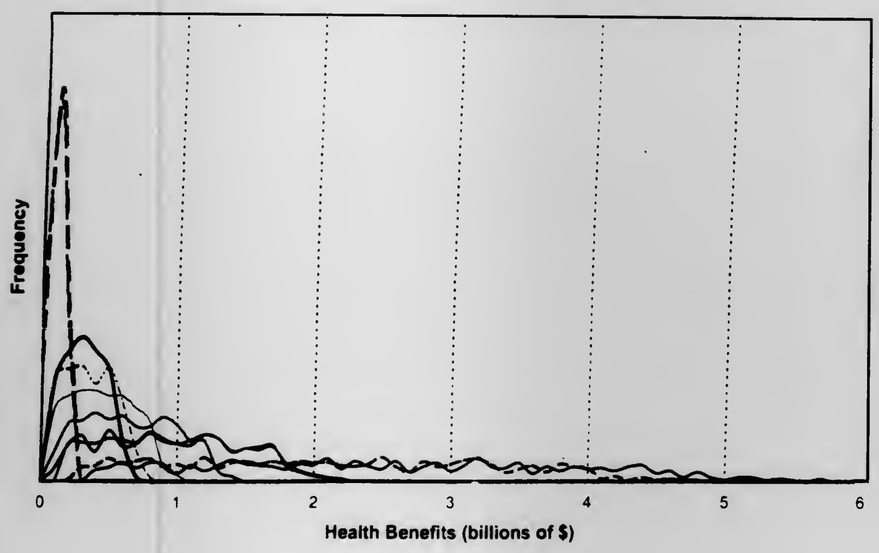
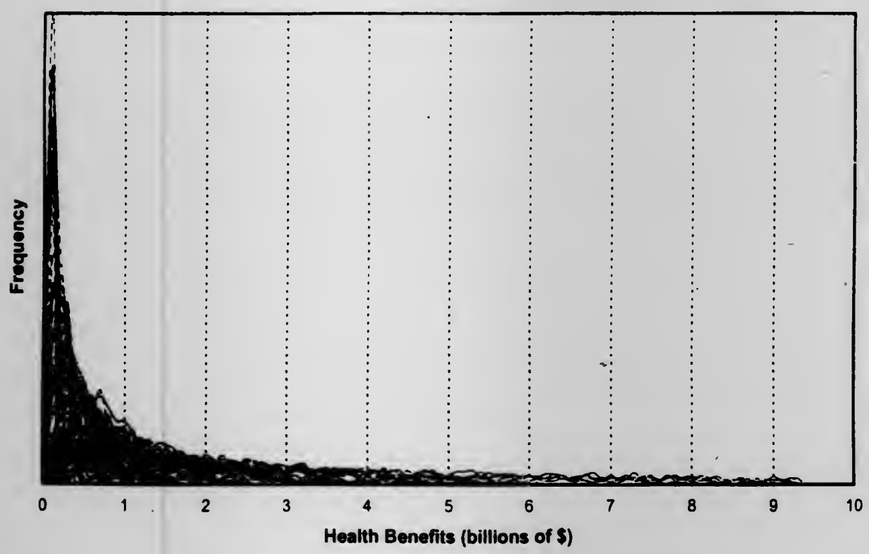


Figure 4. Uncertainty of Health Benefits: 100 Simulations



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F. Costs

The costs of the proposed rule include the redesign of egg cartons, the other costs necessary to add the safe handling label to egg cartons, the additional equipment and energy costs to achieve the specified refrigeration temperatures for shell eggs, and the costs of changes in consumer practices resulting from the safe handling label.

1. Types of Establishments Covered

The labeling provision and the refrigeration provision will affect different parts of the food industry.

a. *Labeling provision coverage.* The labeling provision covers shell eggs sold in labeled cartons or in cases for bulk sale. The labeling provision would affect all egg packers, processors, and distributors (hereinafter collectively referred to as "packers"). There are 669 packers registered with USDA (Ref. 17).

b. *Refrigeration provision coverage.* The refrigeration provision covers all retail establishments that sell or otherwise provide eggs as products to consumers (such as grocery stores selling cartons of eggs) or that use shell eggs in the production of other products sold or provided to consumers (such as hospitals providing prepared eggs to patients). These retail establishments include grocery stores, restaurants, health food stores, convenience stores, other retail establishments, as well as such institutions as prisons, nursing homes, schools, hospitals, and the military establishments.

2. Cost Estimates by Requirement and Type

a. *Egg container labels.* The proposed labeling provision requires shell egg containers to have a safe handling statement. The cost of the proposed provision may be estimated by measuring the additional costs either where they first occur—at the carton manufacturers—or at the segments of the industry that bear the costs of relabeling. Because the egg industry, which includes egg producers, carton manufacturers, egg distributors, and retailers is competitive, the carton manufacturers will likely pass some or all of the costs of relabeling on to packers.[16] The cost of relabeling if measured correctly will be the same no matter where in the carton market they are measured; therefore, the agency used the most readily accessible cost information for its estimates, which came from the carton manufacturers. It is irrelevant for purposes of cost estimation that packers are covered by the rule and carton manufacturers are not, because the costs are the same wherever measured.

The agency assumed that the carton manufacturer's additional costs or relabeling would be for administration, inventory disposal, and label redesign. The one-time costs include the costs of replacing existing printing plates (if the planned useful life of plates expires after the start of the compliance period), the loss of existing carton inventory (if the inventory does not meet label requirements at the start of the compliance period), and an additional administrative expense to interpret and execute the firm's compliance with the rule. The agency does not expect any firms in the industry to shut down as a consequence of the rule, because the increased costs from the rule are one-time costs that are not expected to be large enough to make shutting down the best option.

FDA calculated labeling costs with the following formula:

labeling costs = ($ administrative costs per firm x number of affected firms) + ($ value of cartons manufactured x disposal percentage of carton inventory) + ($ redesign cost per label x number of affected labels)

FDA calculated, separately, each of the three costs: Administrative, inventory disposal, and label redesign.

i. *Administrative costs.* To estimate the administrative costs, the agency used the following formula:

$AC = A \times F$

where:

AC = administrative costs.

A = administrative costs per firm.

F = number of firms in the industry.

Administrative costs include the firm's additional management and other overhead expenses needed to implement the proposed rule. Total administrative cost for the industry will be the administrative cost per firm multiplied by the number of firms that manufacture egg cartons. The Food Serving and Packaging Institute supplied information on the number of carton manufacturers (Ref. 19). Table 11 of this document shows FDA's estimates of the administrative cost per firm for different compliance periods. Administrative costs tend to decrease with the length of the compliance period, because longer compliance periods allow carton producers more time to incorporate the mandated label changes into regularly planned design, equipment, and personnel changes. In addition, fewer overtime hours would be required and possibly a lower level of management would be involved. Industry sources provided the agency with estimates of the cost per firm for a 12 month-compliance period (Refs. 19 through 24). FDA inferred the amounts shown for the 6-month and 18-month compliance periods from the estimate for the 12-month compliance period. The agency assumed that a firm would require more hours with a shorter compliance period, and fewer hours with a longer compliance period.

TABLE 11.—ADMINISTRATIVE COSTS (ESTIMATED FOR CARTON MANUFACTURERS)

Compliance Period	6 Months	12 Months	18 Months
Number of firms	8	8	8
Cost per firm	$35,000	$25,000	$15,000
Total	$280,000	$200,000	$120,000

[16] If both segments of the egg industry are competitive, the measured costs of carton manufactures could equal the costs borne by packers. Competition is a reasonable assumption for the packers because there are at least 669 firms in the industry. Competition may also be assumed for the carton manufacturers because their segment of the industry is contestable, meaning that it is a market with the potential for firm entry and exit. The economic theory of contestable markets suggests that when there is relatively free entry and exit into the market, prices will be set just high enough to cover the additional costs of production caused by the rule. The carton manufacturing industry four-firm concentration ratio is 85 percent, which is high. Despite a high concentration ratio, carton-manufacturing firms will still set carton prices at competitive levels or risk entry from new competitors. Anecdotal evidence exists that a new carton manufacturing firm did attempt to enter the market a few years ago (Ref. 18). It failed to be profitable and left the market shortly after entering, implying that the existing industry structure is competitive. The agency does not expect existing firms in the industry to exit as a consequence of the rule, because the increased costs from the rule are one-time costs. The remaining question is how those one-time costs will be split between carton manufacturers and packers. Although the question is important from the standpoint of the distribution of the burden of labeling costs, it does not affect the size of those costs.

ii. *Inventory disposal costs.* To estimate the inventory disposal costs, the agency used the following formula:

ID = IV x I

where:

ID = inventory disposal costs.

IV = total value of egg cartons manufactured annually.

I = lost carton stock as a percent of industry volume.

Inventory disposal costs are the costs of discarding otherwise useable carton inventory that does not comply with the new rule. The agency estimated inventory disposal costs by multiplying the total dollar value of the cartons produced annually by an estimate of the percentage of stock left over after the proposed rule would take effect.

Many egg packers have carton turnover rates of once or twice a week, while other firms turn over their carton stock once or twice a year. Egg packers, whatever their rate of turnover, never hold a large number of cartons in inventory. Inventory disposal costs tend to decrease with longer compliance periods, because longer compliance periods allow packers to use up their carton inventory. Based on information provided by industry sources, the agency estimated the likely percentage of stock remaining for three compliance periods: 6 months, 12 months, and 18 months (Refs. 19 through 24). Table 12 of this document shows FDA's estimate of the inventory disposal costs.

TABLE 12.—INVENTORY DISPOSAL COSTS

Compliance Period	6 Months	12 Months	18 Months
Total industry volume	$150,000,000	$150,000,000	$150,000,000
Lost stock as percent of industry	2 percent	1 percent	0.5 percent
Total inventory disposal cost	$3,000,000	$1,500,000	$750,000

iii. *Label redesign costs.* To calculate the label redesign costs the agency used the following formula:

LRC = $ per SKU x SKU's

where:

LRC = label redesign cost.

$ per SKU = cost per stock keeping unit.

SKU's = number of stock keeping units.

Label redesign costs are associated with the redesign of the carton's printed label that would be needed to incorporate the proposed safe handling statement. FDA estimated the costs by multiplying the number of affected separable labels on cartons or containers, referred to as stock keeping units (SKU's), by the estimated cost per SKU. The total number of SKU's for the industry is about 20,000 (Refs. 19 through 24). Although the labels affected would only be those without safe handling statements consistent with the proposed rule, the agency assumed that because the proposed rule requires specific language, no existing statements would be acceptable. Therefore, the agency estimated the costs based on the assumption that all labels would be changed.

Label redesign costs decrease with a longer compliance period, partly because the carton's design, printing plates, and other capital investments must be changed periodically regardless of regulatory initiatives. If the compliance period were as long as the useful life of the existing carton design, the label redesign costs of the proposed rule would be greatly reduced.

Redesign costs are lower, the more surface area on the carton, and are higher, the less surface area on the carton. Surface area is a major problem for labeling egg cartons, because of the relative absence of large, flat surfaces suitable for labels. When the surface area is not large enough to accommodate the proposed safe handling statement, the costs of redesign may also include redesigning the carton itself. Surface area is a significant issue for pulp paper carton manufacturers, because virtually all pulp paper cartons are "view style" cartons. View style cartons have a significantly reduced printable area. The additional cost of carton redesign to the pulp paper sector of the industry would put it at a competitive disadvantage. The alternative to pulp paper as carton material is foam. Foam cartons can more easily accommodate the proposed safe handling statement than can pulp paper cartons and, therefore, the cost of redesign would be less for foam cartons. The agency estimated the costs to redesign the labels per SKU, for both the pulp paper and foam carton segments of the industry, from information provided by industry sources (Refs. 19 through 24). Table 13 of this document shows a summary of the estimated costs for the foam carton segment of the industry for three compliance periods. Table 13a of this document shows the estimated costs for the pulp paper segment for three compliance periods. Table 13b of this document shows the total cost for both segments of the industry for the three compliance periods.

TABLE 13.—FOAM CARTON LABEL REDESIGN COSTS

Compliance Period	6 Months	12 Months	18 Months
Cost per SKU	$500	$250	$100
SKU's	10,000	10,000	10,000
Subtotal foam carton	$5,000,000	$2,500,000	$1,000,000

TABLE 13a.—PULP PAPER CARTON LABEL REDESIGN COSTS

Compliance Period	6 Months	12 Months	18 Months
Cost per SKU	$1,000	$750	$500
SKU's	10,000	10,000	10,000
Subtotal pulp paper carton label redesign	$10,000,000	$7,500,000	$5,000,000

TABLE 13b.—TOTAL INDUSTRY LABEL REDESIGN COSTS

Compliance Period	6 Months	12 Months	18 Months
Subtotal foam carton label redesign	$5,000,000	$2,500,000	$1,000,000
Subtotal pulp paper carton label redesign	$10,000,000	$7,500,000	$5,000,000
Total label redesign cost	$15,000,000	$10,000,000	$6,000,000

iv. *Summary of costs to incorporate safe handling labeling.* Table 14 of this document summarizes the estimated costs to incorporate safe handling statements on egg cartons.

TABLE 14.—ESTIMATED TOTAL INDUSTRY COSTS TO INCORPORATE SAFE HANDLING STATEMENTS

Compliance Period	6 Months	12 Months	18 Months
Total administrative costs	$280,000	$200,000	$120,000
Total inventory disposal costs	$3,000,000	$1,500,000	$750,000
Total label redesign costs	$15,000,000	$10,000,000	$6,000,000
Total labeling costs	$18,000,000	$12,000,000	$7,000,000

b. *Refrigeration costs.* The refrigeration provision of the proposed rule requires retailers to refrigerate shell eggs at 7.2 °C (45 °F) or less within 6 months from the date of publication of the final rule. The refrigeration provision potentially generates two additional costs to retailers: (1) An additional one-time capital cost to replace existing refrigeration equipment if the existing equipment is unable to cool to the proposed temperature, and (2) the cost of the additional energy needed to achieve and maintain the lower cooling temperature.

i. *Equipment costs to refrigerate at 7.2 °C (45 °F).* FDA used the following formula to estimate the additional equipment costs to refrigerate eggs at 7.2 °C (45 °F):

C = R x $ per R

where:

C = cost to refrigerate at 7.2 °C (45 °F).

R = number of retailers that would incur an additional cost.

$ per R = cost per retailer.

The baseline number of establishments affected was the number of retailers that were not already required to refrigerate at 7.2 °C (45 °F) by State or local requirements, and who did not have refrigerators cooling at 7.2 °C (45 °F).

The number of establishments and the additional refrigeration cost per establishment were both uncertain. The agency did not know: (1) How many and which retail establishments sell eggs, (2) the temperature at which the eggs are refrigerated in the establishments that sell eggs, (3) the age and temperature capability of the refrigerators, or (4) the price of refrigerators and components. FDA used ranges for the uncertain values and then estimated costs with Monte Carlo computer simulations similar to those described in section I.E of this document.

To estimate the total number of retail establishments likely to be affected by the refrigeration provision, the agency first determined the number of establishments in each State with data from Dun's Market Identifiers (Ref. 25).[17] If a State had already adopted the 1997 Food Code as issued by FDA or a similar code that required refrigeration to the proposed temperature, FDA assumed that there would be no additional equipment costs attributable to the proposed rule. The agency assumed that retailers in States with a refrigeration rule that met or exceeded the Federal requirement would incur no additional equipment costs.

Table 15 of this document illustrates how the agency estimated the number of establishments likely to be affected by the requirement to refrigerate eggs at 7.2 °C (45 °F). Column A of Table 15 of this document lists each State. Column B shows the maximum allowable refrigeration temperature for each State, where there is a State requirement.[18] Column C shows the total number of grocery or similar stores per State. Using Standard Industrial Classification (SIC) categories, the retail establishments included in this column are grocery stores (SIC 5411), poultry stands (SIC 5144), fruit and vegetable markets (SIC 5431), and dairy products stores (SIC 5451). Column D shows the number of grocery or similar stores that would be required to lower their refrigeration temperatures because of the proposed Federal provision. The agency assumed that between 0 and 100 percent of all establishments without a 7.2 °C or lower refregeration requirement, with 33 percent the most likely value, would be required to reduce their refrigeration temperatures.[19] FDA combined the estimated number of establishments refrigerating at 7.2 °C in States without a requirement with the number of establishments in the 37 States (and the District of Columbia) with such a requirement, the result was that 95 percent of all establishments were estimated to refrigerate shell eggs at 7.2 °C or less. The agency based the assumption on the belief that most establishments in States that did not have a refrigeration rule would nevertheless refrigerate eggs at 7.2 °C (45 °F) or less. FDA assumed that these establishments would either be required to refrigerate by a local rule or would choose to refrigerate at 7.2 °C (45 °F) in order to satisfy consumer demand. The agency seeks comments on this assumption. Column E shows the total number of restaurants (eating places) (SIC 5812) per State. Column F shows the number of restaurants that would be required to lower their refrigeration temperatures because of the proposed rule. The agency assumed that the most likely fraction of restaurants that would be required to lower their temperature would also be 33 percent of the total restaurants in those States without a State requirement. Column G shows the total number of institutions that serve eggs to consumers in each State. Institutions include prisons, military establishments, hospitals, nursing homes, public and private schools grades kindergarten through 12, colleges, and universities. Column H

[17] See Table 15 of this document.

[18] If a State has no temperature requirement, FDA used 100 as the default value.

[19] In the calculations shown in Table 15 of this document, FDA used a Beta-pert distribution (0,33,1). For an explanation (see Ref. 14).

shows the number of institutions that would be required to lower refrigeration temperatures because of the proposed rule. Column I shows the total number of retailers, including grocery stores, restaurants, and institutions in each State. Column J shows the total number of retailers that would be required to lower their refrigeration temperatures because of the proposed rule.

TABLE 15.—ESTIMATED EFFECTS OF REFRIGERATION PROVISION BY STATE

A	B	C	D	E	F	G	H	I	J
State	State Temp. Requirement	Total Grocery Stores	Affected Grocery Stores	Total Restaurants	Affected Restaurants	Total Institutions	Affected Institutions	Total Retail	Total Affected Retail
AL	45	4,142	0	5,957	0	2,443	0	12,542	0
AK	100	327	126	971	375	664	257	1,962	759
AZ	60	1,990	769	6,970	2,695	1,760	681	10,720	4,145
AR	45	2,341	0	3,702	0	1,883	0	7,926	0
CA	41	16,230	0	57,209	0	14,880	0	88,319	0
CO	45	1,733	0	7,260	0	2,369	0	11,362	0
CT	45	2,192	0	6,317	0	1,870	0	10,379	0
DE	41	467	0	1,340	0	375	0	2,182	0
DC	45	516	0	1,651	0	390	0	2,557	0
FL	41	10,223	0	27,256	0	5,629	0	43,108	0
GA	41	6,287	0	12,229	0	3,454	0	21,970	0
HI	45	596	0	2,187	0	450	0	3,233	0
ID	45	790	0	2,017	0	917	0	3,724	0
IL	41	5,916	0	19,158	0	7,358	0	32,432	0
IN	45	3,023	0	8,692	0	3,740	0	15,455	0
IA	45	2,214	0	4,783	0	2,755	0	9,752	0
KS	60	1,595	617	4,183	1,617	2,637	1,020	8,415	3,254
KY	45	3,550	0	5,806	0	2,449	0	11,805	0
LA	45	4,317	0	6,630	0	2,737	0	13,684	0
ME	100	1,396	540	2,328	900	1,143	442	4,867	1,882
MD	45	2,982	0	8,162	0	2,442	0	13,586	0
MA	45	3,467	0	11,819	0	3,609	0	18,895	0
MI	40	5,716	0	14,321	0	5,632	0	25,669	0
MN	45	2,795	0	6,561	0	3,022	0	12,378	0
MS	41	3,332	0	3,806	0	11,726	0	18,864	0
MO	60	3,440	1,330	7,876	3,045	3,998	1,546	15,314	5,921
MT	41	642	0	1,589	0	1,318	0	3,549	0
NE	45	1,186	0	2,515	0	2,239	0	5,940	0
NV	100	704	272	2,431	940	652	252	3,787	1,464
NH	100	866	335	2,407	931	846	327	4,119	1,593
NJ	60	5,619	2,173	15,234	5,890	4,133	1,598	24,986	9,661
NM	100	1,419	549	2,801	1,083	1,187	459	5,407	2,091
NY	45	14,757	0	35,667	0	8,207	0	58,631	0
NC	45	6,635	0	11,316	0	3,559	0	21,510	0
ND	41	883	0	984	0	894	0	2,761	0
OH	45	5,988	0	17,434	0	6,886	0	30,308	0
OK	60	2,741	1,060	4,877	1,886	3,071	1,187	10,689	4,133
OR	45	2,204	0	6,088	0	1,951	0	10,243	0
PA	45	7,868	0	19,864	0	7,006	0	34,738	0
RI	41	642	0	2,033	0	614	0	3,289	0
SC	45	3,827	0	6,315	0	1,888	0	12,030	0
SD	41	570	0	1,236	0	1,043	0	2,849	0
TN	100	5,264	2,035	8,634	3,338	2,954	1,142	16,852	6,516
TX	41	15,307	0	31,907	0	10,488	0	57,702	0
UT	41	956	0	2,911	0	1,060	0	4,927	0
VT	100	719	278	1,064	411	564	218	2,347	908
VA	45	4,872	0	10,483	0	3,229	0	18,584	0
WA	45	3,467	0	10,438	0	3,085	0	16,990	0
WV	100	1,703	658	2,349	908	1,414	547	5,466	2,114
WI	40	2,635	0	7,688	0	3,931	0	14,254	0
WY	45	309	0	926	0	586	0	1,821	0
Total		183,360	10,743	448,382	24,022	163,137	9,676	794,879	44,440

The agency assumed that each retailer not already in compliance with a State or local refrigeration rule would incur additional equipment costs in order to comply with the proposed rule. The agency also assumed that each retail establishment would have only one refrigerator that would be affected by the proposed rule. The equipment cost would be either the cost to replace old refrigerator components before the end of the component's useful life or the cost to purchase a new refrigerator after deducting the remaining useful value of the old refrigerator. Not all current refrigerators or refrigerator components such as compressors and coils are capable of cooling to the proposed lower temperatures. Older cooling equipment may not be able to achieve lower cooling temperatures, or if able to do so cannot maintain a uniform temperature. Many older compressors lack sufficient horsepower (compressor power) and many older refrigeration coils lack the surface area for sufficient heat exchange. Attempting to meet the temperature requirements of the proposed rule with under-capacity refrigerators in a multishelf display case can cause both under-cooling and over-cooling of the products (Ref. 26). Excessively cold temperatures for products located at the top of display shelves can occur when the bottom shelves are targeted to meet the temperature requirement; excessively warm temperatures can occur at the bottom if the top shelves are targeted to meet the temperature requirement. Furthermore, products must be cooled to an even lower temperature than the proposed rule to ensure that at the end of the defrost cycle, when there is no cooling, the refrigerator does not exceed the allowable temperature. Maintaining a uniformly cool temperature in display cases, then, is not feasible when refrigerator components lack sufficient capacity. Because attempting to maintain the temperature with insufficient cooling capacity can adversely affect the safety, quality, and shelf life of the food products, some establishments would be forced to purchase new refrigerators or components.

All commercial refrigerators eventually wear out and have to be replaced. The cost of replacement resulting from the proposed rule only occurs if replacement becomes necessary before the planned end of the useful life of the existing equipment. Commercial refrigeration industry sources say that the useful life of a commercial refrigerator can be as long as 20 years, although on average commercial refrigerators last about 10 years (Ref. 27). The life of the refrigerator matters, because the longer the useful life of existing refrigerators, the greater will be the foregone capital cost borne by firms compelled to replace them. It follows that the longer the compliance period, the smaller will be the useful life left at the time of replacement and the smaller will be the cost borne by firms.

Retailers whose equipment could not reach the proposed safe cooling temperature and who were not planning to purchase a refrigerator or components during the compliance period would be forced to make a one-time purchase of refrigerators or components. The difference between the planned capital replacement cost without the proposed rule and the capital cost with the proposed rule would be the equipment cost of the refrigeration provision (the new equipment cost minus the salvage value of the old equipment). It would be a one-time cost, because all future purchases would occur at the end of the useful life of the refrigerator and not in response to the proposed rule.

The agency assumed that only one refrigerator per retailer would be potentially affected by the provision, because even the largest retail outlets (such as supermarkets) rarely have more than one refrigerator or display case exclusively devoted to selling eggs. Some large grocery stores might have more than one refrigerator containing eggs such as when eggs are displayed in island refrigerators for marketing purposes or in display cases in the dairy section. The agency assumed that for every retailer with more than one refrigerator devoted to eggs, there would be one, probably a smaller retailer, who did not sell eggs.

The agency assumed that additional equipment costs per affected establishment varied from close to 0 to approximately $6,000. This range of estimated equipment costs combined two separate ranges, one for small equipment costs and one for large equipment costs. The small equipment costs ranged from 0 to $1,000, with $700 the most likely value. The large equipment costs ranged from $1,000 to $6,000, with $4,000 the most likely value. FDA assumed that equipment expenditures would be highly correlated with the size of establishment, so that small firms would have small equipment costs and large firms would have large equipment costs. With 80 percent of establishments classified as small, the assumption that costs and establishment size were correlated led to the assumption that 80 percent of refrigeration costs would fall in the small range and 20 percent would fall in the large range.[20] FDA recognized, however, that the correlation would likely not be perfect; some small firms could have large equipment costs and some large firms could have small equipment costs.

FDA estimated total equipment costs with a Monte Carlo simulation of 1,000 calculations (or iterations). Each calculation consisted of an estimate of the number of affected establishments multiplied by an estimate of the equipment cost per establishment. The 5th percentile, median, mean, and 95th percentile of simulated total equipment costs are shown in Table 16 of this document.

TABLE 16.—TOTAL ANNUAL EQUIPMENT COSTS TO REFRIGERATE TO 7.2 °C (45 °F)

5th Percentile	Median	Mean	95th Percentile
$7,000,000	$31,000,000	$56,000,000	$228,000,000

ii. *Energy costs.* The additional energy costs likely to be caused by the proposed rule appear to be negligible, because new commercial refrigerators are significantly more energy efficient than older refrigerators. As retailers replace their existing equipment to comply with the rule, the agency expects retailers to adopt energy-efficient technologies, which will reduce their energy consumption by approximately the amount of additional energy used to lower their existing refrigeration temperature to 7.2 °C (45 °F). FDA therefore assumed that the proposed rule would lead to no additional energy costs.

iii. *Shares of estimated refrigeration costs by type of establishment.* The shares of total refrigeration costs by type of establishment are shown in Table 17 of this document. FDA assumed that equipment costs accounted for all refrigeration costs of the proposed rule.

[20] In the simulation used to estimate total equipment costs, the distributions of small and large equipment costs were characterized as Beta-pert distributions with small costs distributed as Beta-Pert (0,700,1000) and large costs distributed as Beta-pert (1000,4000,6000). The two distributions were combined with a discrete distribution that assumed that the probability that costs were small was 0.8 and the probability that costs were large was 0.2. The full distribution for the simulation was: Discrete ((Beta Pert (0,700,1000),,Beta-Pert (1000,4000,6000)), (0.8, 0.2)).

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TABLE 17.—REFRIGERATION COST SHARES BY TYPE OF ESTABLISHMENT

Type of Establishment	Share of Total Refrigeration Cost (in percent)
Grocery stores	25
Restaurants	54
Institutions	21

iv. *Comparison with other studies of estimated refrigeration costs.* The agency found only two studies, by Dunn and Madison (Ref. 28) and by Madison (Ref. 29), that have estimated the costs of a similar proposed refrigeration rule. Dunn and Madison estimated the statewide impact from lowering the refrigeration requirement from 55 °F to 45 °F. They assumed that the statewide average refrigeration temperature before the proposed rule was 55 °F. They estimated the most likely cost to egg packers to reduce refrigerator temperatures from 55 °F to 45 °F to be $0.05 per dozen eggs, but that the cost could be as low as $0.02 per dozen. The smaller cost held when the eggs were produced from larger flocks and were cooled in refrigerators with larger capacity. The estimates were based on the cost to modify the existing cooling systems to increase cooling capacity. Although egg packers and not retailers incurred the additional costs, the agency believes that the costs to one segment of the industry would be passed on to a downstream segment and would be nearly equal on a per carton basis.[21]

The Dunn and Madison estimates can be compared to the agency's estimate of the cost to refrigerate eggs at 7.2 °C (45 °F). The higher estimate of refrigeration costs (Refs. 28 and 29) of $0.05 per dozen eggs equals $0.08 per dozen eggs in current (1998) dollars. The lower estimate of refrigeration costs (Refs. 28 and 29) of $0.02 per dozen eggs equals $0.032 per dozen eggs in current (1998) dollars. The agency multiplied both the lower and the higher estimates of cost per dozen eggs by the agency's estimate of the total number of eggs sold at retail in States without a current refrigeration rule.

For the comparison with the Dunn and Madison estimates, FDA assumed that there were no regional or State differences in consumption per person of shell eggs across the country. The agency got the number of shell eggs produced and consumed nationwide from the USDA Economics Research Service (Ref. 30). The agency assumed that the national consumption of eggs equaled to the national production of eggs after subtracting for net exports, breakers, and diverted eggs. FDA further assumed that a State's share of the national consumption of eggs equaled the State's share of national population. Table 18 of this document shows the resulting estimate of the number of affected eggs sold in States that do not currently meet the proposed refrigeration provision.

TABLE 18.—STATE EGG CONSUMPTION

State	State Temperature Requirement	Number of Eggs Consumed (Millions)
Alabama	45	
Alaska	None	106
Arizona	60	691
Arkansas	45	
California	41	
Colorado	45	
Connecticut	45	
Delaware	41	
District of Columbia	45	
Florida	41	
Georgia	41	
Hawaii	45	
Idaho	45	
Illinois	41	
Indiana	45	
Iowa	45	
Kansas	60	455
Kentucky	45	
Louisiana	45	
Maine	None	223
Maryland	45	
Massachusetts	45	
Michigan	40	
Minnesota	45	
Mississippi	41	
Missouri	60	936
Montana	41	
Nebraska	45	
Nevada	None	239
New Hampshire	None	200
New Jersey	60	1,405

[21] The costs could be passed on if all segments of the industry were competitive.

TABLE 18.—STATE EGG CONSUMPTION—Continued

State	State Temperature Requirement	Number of Eggs Consumed (Millions)
New Mexico	None	285
New York	45	
North Carolina	45	
North Dakota	41	
Ohio	45	
Oklahoma	60	579
Oregon	45	
Pennsylvania	45	
Rhode Island	41	
South Carolina	45	
South Dakota	41	
Tennessee	None	906
Texas	41	
Utah	41	
Vermont	None	103
Virginia	45	
Washington	45	
West Virginia	None	327
Wisconsin	40	
Wyoming	45	
Total[1]		6,500

[1] Rounded

The agency used the following formula to calculate the cost to refrigerate at 7.2 °C (45 °F) using Dunn and Madison's estimated average cost per dozen eggs:

$$RC = DE \times \$ \text{ per } D$$

where:

RC = cost to refrigerate to 7.2 °C (45 °F).

DE = total number of eggs (in dozens) in States where eggs not currently refrigerated to 7.2 °C (45 °F).

$ per D = cost per dozen eggs to refrigerate to 7.2 °C (45 °F).

The agency estimated that 6.5 billion eggs were not refrigerated at 7.2 °C (45 °F) (see Table 18 of this document). The number of dozens not refrigerated at 7.2 °C (45 °F) would therefore be 540 million (= 6.5 billion ÷ 12). The high estimated cost of refrigeration would be about $43 million (= 540 million dozen eggs x $0.08 per dozen). The low estimated cost of refrigeration would be about $17 million (= 540 million dozen eggs x $0.032 per dozen).

Table 19 of this document compares FDA's estimate of the costs of refrigeration with estimates based on Dunn and Madison's high and low average refrigeration cost per dozen eggs. As the table shows, FDA's median estimate of total refrigeration costs fall between Dunn and Madison's high and low estimates.

TABLE 19.—COMPARATIVE SUMMARY OF COSTS FROM THE REFRIGERATION PROVISION (MILLIONS)

Method	FDA (Median)	Dunn and Madison (High)	Dunn and Madison (Low)
7.2 °C (45 °F)	$31	$43	$17

c. *Changes in consumer practices.* A safe handling label will not by itself lead to safer eggs. The changes people make in response to the label lead to safer eggs. In the calculation of benefits from the safe handling label, FDA assumed that some people would respond to the proposed safe handling label by cooking eggs more thoroughly or by switching away from foods that require raw or undercooked eggs. FDA recognizes that if people for reasons of safety reduce their consumption of foods they would have otherwise preferred, they bear the costs of changing their preparation and consumption practices. If it were possible to do so, many people would be willing to pay more to continue to be able to eat the unsafe food, supposing it could be made safe. The extra willingness to pay is the measure of the cost of changing consumer practices when consumers are unable to purchase or prepare a safe version of the preferred food.

The agency calculated the cost of changing consumer practices with the following formula:

$$CS = E \times UP \times \Delta UP \times \$ \text{ per } U$$

where:

CS = annual cost of changing consumer practices.

E = total eggs consumed per year.

UP = baseline percentage of total eggs that were not cooked thoroughly before the rule.

ΔUP = percentage reduction in eggs that are not cooked thoroughly because of the rule.

$ per U = value of undercooking one egg.

The estimated number of eggs consumed was 46.8 billion. Based on results of the Food Consumption and Preparation Survey, the USDA SE risk assessment used a distribution with a most likely value of 33 percent to estimate the baseline percentage of eggs that were not cooked thoroughly before the proposed rule.[22] FDA estimated the percentage reduction of consumption of undercooked eggs as a distribution, with a most likely value of about 5 percent.[23] The agency assumed that $0.025 (= $0.30 ÷ 12), the cost per egg for in-shell pasteurization, would be the upper bound that consumers would be willing to pay for safe handling. The agency assumed that the lower bound cost would be 1/25th of the upper bound

[22] The minimum was 27 percent and the maximum was 46 percent. The distribution used in the simulation was Beta-Pert (0.27, 0.33, 0.46).

[23] FDA used a Beta distribution to characterize the reduction in undercooking. The Beta distribution (50,959) was based on survey results for the USDA safe handling label for meat (Ref. 5). FDA used the same survey to estimate the benefits of the proposed safe handling label.

cost, or $0.001. The agency further assumed that the value to consumers of one undercooked egg would vary uniformly between the lower bound ($0.001) and the upper bound ($0.025)[24]

Because of the uncertainty associated with the calculation, the agency estimated the costs of changing consumer practices with a Monte Carlo simulation. Table 20 of this document shows the results of the 1,000 calculations of the annual cost of changes in consumer practices brought about by the proposed rule.

TABLE 20.—ESTIMATED ANNUAL COST OF CHANGES IN CONSUMER PRACTICES ATTRIBUTABLE TO THE PROPOSED SAFE HANDLING LABEL

Variable	5th Percentile	Median	Mean	95th Percentile
Annual cost to consumers	$2,000,000	$10,000,000	$10,000,000	$20,000,000

G. Summary of Benefits and Costs

The agency estimated the median annual benefits of this proposed rule to be about $300 million for the CDC surveillance baseline model and about $700 million for the USDA SE risk assessment baseline model. The estimated median costs to refrigerate shell eggs at 7.2 °C (45 °F) were $31 million in the first year. The agency estimated the cost to incorporate safe handling statements as $18 million for a 6-month compliance period. The median estimated cost of changing consumer practices was $10 million per year. Therefore, the agency estimated the total cost of the proposed rule in the first year to be about $60 million. After the first year, the only continuing cost would be reduced consumer satisfaction, which recurs year after year as long as consumers have a preference for undercooked eggs. FDA concludes that the effects of the proposed rule would be economically significant under Executive Order 12866. The proposed rule, based on the median estimate of cost contained in the economic analysis, would not be significant under the Unfunded Mandates Reform Act.

TABLE 21.—MEDIAN ANNUAL ESTIMATED BENEFITS AND COSTS OF THE PROPOSED RULE (IN MILLIONS OF $)

	First year	All other years
Median estimated benefits (USDA SE risk assessment baseline)	$700	$700[1]
Median estimated benefits (CDC surveillance baseline)	$300	$300[1]
Median estimated costs	$60	$10

[1] The benefits remain high after the first year if no other interventions affect SE in shell eggs. If other Federal or State regulations, consumer education, and producer initiatives reduce the baseline incidence of SE illness from shell eggs, then the benefits from the proposed rule will decline over time. The decline will be roughly proportional to the decline in baseline incidence of SE illness from shell eggs.

II. Initial Regulatory Flexibility Analysis

A. Introduction

FDA has examined the economic implications of these proposed rules as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities.

B. Economic Effects on Small Entities

1. Number of Small Entities Affected

The proposed rule would affect many small entities, including egg processors, grocery stores, restaurants, and other food service establishments. Of the 669 egg processors registered with the USDA, FDA has not been able to determine how many are small businesses (Ref. 17). Egg processors generally fall into two industrial classifications: Poultry slaughtering and processing (SIC code 2015) and whole poultry and poultry products (SIC code 5144). The two classifications roughly correspond to in-line and off-line processors. In-line processors package the eggs at the egg laying facility. Off-line processors ship the eggs to packers.

The Small Business Administration (SBA) defines in-line egg processors (SIC code 2015–03) to be small businesses if they employ 500 or fewer people. According to a search in Dun's Market Identifiers (Ref. 25), 25 in-line egg processing firms would be defined as small. SBA defines off-line processors (SIC code 5144) to be small if they employ 100 or fewer people. Dun's Market Identifiers did not have a subcategory for egg processors. For the entire category of poultry and poultry products (SIC code 5144), 80 percent of establishments employ fewer than 100 workers. If the same proportion holds for the subcategory composed of egg processors, then 470 firms would be classified as small.[25] FDA estimated the total number of small egg processors to be 495 (= 25 + 470).

The refrigeration provision would affect small establishments that are not currently refrigerating at 7.2 °C (45 °F). The SBA defines grocery stores (SIC code 5411) to be small if annual gross revenue is less than $20 million. Other food stores (SIC codes 5431, 5451, and 5499), which include fruit and vegetable markets, dairy product stores, and miscellaneous food stores, are small if annual sales are less than $5 million. Restaurants are small if annual sales are less than $5 million; institutions are small if sales are less than $15 million.

As set out in Table 22 of this document, FDA estimated that the number of small establishments affected by the proposed refrigeration provision would be 25,400. The number of establishments (small and large) currently not keeping eggs at an ambient temperature of 7.2 °C (45 °F) is approximately 44,400, which includes 10,700 grocery and other food stores, 24,000 restaurants, and 9,700 institutions (see Table 15 of this document). FDA assumed that the proportion of small establishments affected by the refrigeration provision would be the same as the fraction of institutions for the entire industry in that category. According to SBA size standards for small entities, 71 percent of grocery and other food stores and 54 percent of restaurants are small. Institutions are more complicated because they cut across SIC codes. FDA assumed that 50 percent of institutions serving eggs are small. The agency asks for comments on this assumption. FDA estimated the number of small establishments affected by the refrigeration provision by multiplying the fraction in each category defined to be small by the total number of establishments affected. Table 22 of this document shows the number of small entities likely to be affected by the refrigeration provision of the proposed rule.

[24] In the simulation, the value of an undercooked egg was characterized as a uniform distribution: Uniform ($0.001, $0.025).

[25] The estimated total number of in-line establishments is 134, but 52 are branches of firms. If the total number of in-line firms is 82(=134—52), and the number of processors is 669, then 587 firms are off-line processors. If 80 percent are small, then 470 off-line (=0.8 x 587) processors are small.

TABLE 22.—NUMBER OF SMALL ENTITIES LIKELY TO BE AFFECTED BY THE REFRIGERATION PROVISION OF THE PROPOSED RULE

Category	Number of Small Establishments Currently Storing Eggs Above 7.2 °C (45 °F)
Grocery and other stores	7,600
Restaurants	13,000
Institutions	4,800
Total	25,400

2. Costs to Small Entities

Redesigning the label accounts for most of the estimated additional labeling costs for small processors. For a 6-month compliance period, redesign costs would be $1,000 per SKU for pulp cartons and $500 per SKU for foam cartons. The cost of the labeling provision borne by small processors will vary with the number of SKU. The average number of SKU's per processor for the industry is 30; FDA assumes that the output of small processors falls in the range of 2 to 20 SKU's. Additional redesign costs could therefore be as high as $20,000 per processor (= 20 x $1,000).

Refrigeration costs vary across establishments, depending on the age of current refrigerators, the planned replacement cycle, and whether the small establishments is currently keeping eggs at or below 7.2 °C (45 °F). Additional costs of refrigeration for small retailers would average $633 per establishment, with $700 the most likely cost. FDA assumed that the proportion of additional refrigeration costs borne by small entities would be the same as the proportion of small entities in each category of establishments. Table 23 of this document shows the estimated total cost of the refrigeration provision to small entities. The agency requests comments on the effect of the refrigeration provision on roadside stands.

TABLE 23.—COSTS TO SMALL ENTITIES OF THE REFRIGERATION PROVISION OF THE PROPOSED RULE

Category	Total Costs to Small Entities	Mean Cost per Small Entity
Grocery	$4.8 million	$633
Restaurants	$8.2 million	$633
Institutions	$3.1 million	$633
Total	$16.1 million	$633

C. Regulatory Options

1. Exemption for Small Entities

The burden on small entities would be lifted if they were exempt from the provisions of the proposed rule. Most of the entities affected by this proposed rule, however, are small. Thus, exempting small entities from its provisions would effectively negate the rule.

2. Longer Compliance Periods

Lengthening the labeling compliance period from 6 months to 18 months and lengthening the refrigeration compliance period from the proposed rule's effective date to 12 months after the effective date would provide regulatory relief (cost reduction) to small entities. In order to estimate the regulatory relief from lengthening the refrigeration compliance period, the agency assumed that the cost reduction would equal the interest (discounted at 7 percent per year) on the cost of refrigeration equipment over the extension of the compliance period. If the compliance period were extended by 12 months, the interest on the cost of equipment would be over $1 million (= $16.1 x 0.07). For the most likely equipment cost of $700 per small establishment, the interest saving would be about $50 (= 0.07 x $700).

In order to estimate the regulatory relief to small retail entities from a longer labeling compliance period, FDA first estimated the decline in total industry costs and then multiplied it by the small business share of total costs. Total industry costs would fall by $11 million if the compliance period for labeling were extended from 6 months to 18 months (see Table 14 of this document). Most of the relief to small businesses would come from the reduced costs of redesigning the carton label. For pulp cartons, extending the compliance period to 18 months would reduce redesign costs from $1,000 (for a 6-month compliance period) to $500 per SKU. For foam cartons, extending the compliance period to 18 months would reduce redesign costs from $500 (for a 6-month compliance period) to $100 per SKU.

Although lengthening the compliance periods would provide some regulatory relief to small entities, they make up such a large part of the affected industries that longer compliance periods would significantly delay the full public health benefits of the proposed rule.

D. Description of Recordkeeping and Recording Requirements

The Regulatory Flexibility Act requires a description of the recordkeeping and recording required for compliance with this rule. This rule

does not require the preparation of a report or a record.

E. Worst Case to Small Entities

The greatest impact to a small retail establishment as a consequence of the refrigeration provision would be to cause the entity to bear the entire cost for the purchase of a new refrigerator. The agency estimates that the cost of a new refrigerator is between $2,500 and $6,000. In order to estimate the worst possible outcome for a small entity, FDA assumed that some small retail establishment would purchase a new refrigerator at the maximum estimated cost of $6,000. If the latter cost were amortized over a 10-year period (using a discount rate of 7 percent) then the approximate annual expense would be $850 per year for 10 years. According to Dun and Bradstreet, 85 percent of all grocery stores have annual sales of less than $20 million, and 71 percent of all restaurants have annual sales of less than $5 million (Ref. 25). Among the smallest 10 percent of these establishments, the average sales volume is $100,000 per year for a grocery store and $50,000 per year for a restaurant. Therefore, the additional expense of $850 per year would be approximately 1 to 2 percent of average sales volume per year. Grocery stores and restaurants typically have profit margins on sales of 1 to 5 percent, so a reduction of the profit margin by 40 to 100 percent would be the worst-case outcome for the smallest entities in retail.

The worst case to a small entity attributable to the labeling provision would occur if a small packer were unable to pass along any of the cost to its customers. As shown previously, FDA estimated that the redesign cost to a small processor could be as high as $20,000. If the one-time cost could be amortized over a 10-year period at an annual discount rate of 7 percent, the small packer would incur an additional annual expense of approximately $3,000. FDA did not estimate the annual sales revenues of the smallest egg packers and, therefore, it was unable to compare the estimated amortized cost to annual profits. FDA requests comments on this relationship.

F. Summary

FDA estimated that the labeling provisions could impose costs of up to $20,000 on 495 small processing establishments. The refrigeration provision would impose estimated average costs of $633 per small entity (and up to $6,000) on approximately 25,400 small establishments. FDA finds that, under the Regulatory Flexibility Act, this proposed rule would have a significant economic impact on a substantial number of small entities.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of telephone conversation between Marilyn Balmer, FDA, and Peter Vardon, FDA, September 4, 1998.
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13. Council for Agricultural Science and Technology (CAST), Food-Borne Pathogens: Risks and Consequences. Ames, Iowa: Council for Agricultural Science and Technology, Task Force Report No. 122, September 1994.
14. Vose, D., Quantitative Risk Analysis: A Guide to Monte Carlo Simulation Modeling, New York: Wiley, 1996.
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16. Adams, P. F., and M. A. Marano, Current Estimates from the National Health Interview Survey, 1994, Series 10: Data from the National Health Survey No. 193, Hyattsville, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, December 1995.
17. Memorandum of facsimile transmission from Gale Mason, USDA, to Peter Vardon, FDA, February 25, 1998.
18. Memorandum of conversation between Carlton Lofgren, McAnally Enterprises, and Peter Vardon, FDA, January 21, 1998.
19. Letter from Richard B. Norment, Food Serving and Packaging Institute, to Peter Vardon, FDA, February 23, 1998.
20. Memorandum of telephone conversation between Norman Patterson, Dalco Packaging Corp., and Peter Vardon, FDA, January 28, 1998.
21. Memorandum of telephone conversation between Norman Patterson, Dalco Packaging Corp., and Peter Vardon, FDA, February 4, 1998.
22. Memorandum of telephone conversation between Barbara Walters and Alan Andrews, Tenneco Packaging Co., and Peter Vardon, FDA, January 15, 1998.
23. Memorandum of telephone conversation between Alan Andrews, Tenneco Packaging Co., and Peter Vardon, FDA January 30, 1998.
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IV. Request for Comments

Interested persons may, on or before September 20, 1999, submit to the Dockets Management Branch (address above) written comments regarding this preliminary regulatory impact analysis and initial regulatory flexibility analysis. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 10, 1999.

Jane E. Henney

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

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Part VI

Department of Education

William D. Ford Federal District Loan Program; Notice

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DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of the annual updates to the income contingent repayment plan formula.

SUMMARY: The Secretary announces the annual updates to the income percentage factors for 1999. Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay their student loans under the income contingent repayment plan, which bases the repayment amount on the borrower's income and family size, loan amount, and interest rate. Each year, the formula for calculating a borrower's payment is adjusted to reflect changes due to inflation. This Notice contains updated sample income contingent repayment amounts for single and married or head-of-household borrowers at various income and debt levels. These updates are effective from July 1, 2000 to June 30, 2001.

FOR FURTHER INFORMATION CONTACT: Donald Watson, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Direct Loan Program borrowers may choose to repay their Direct Loans under the income contingent repayment plan. The attachment to this Notice provides updates to four sources of information used to calculate the borrower's monthly payment amount: examples of how the calculation of the monthly ICR repayment amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts.

We have updated the income percentage factors to reflect changes based on inflation. We have revised the income percentage factor table by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change in the Consumer Price Index for all Urban Consumers from December 1998 to December 1999. Further, we provide examples of monthly repayment amount calculations and two charts. the charts show sample repayment amounts for single, and married or head of household borrowers at various income and debt based on the updated income percentage factors.

The updated income percentage factors, at any given income, may cause a borrower's payments to be slightly lower than they were in prior years. This updated amount more accurately reflects the impact of inflation on a borrower's current ability to repay.

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(Catalog of Federal Domestic Assistance Number 84.268 William D. Ford Federal Direct Loan Program)

(*Program Authority:* 20 U.S.C. 1087 *et seq.*)

Dated: June 30, 1999.

Greg Woods,

Chief, Operating Officer.

Attachment—Examples of the Calculations of Monthly Repayment Amounts

Example 1. This example assumes you are a single borrower with $15,000 in Direct Loans, the interest rate being charged is 8.25 percent, and you have an adjusted gross income (AGI) of $23,912.

Step 1: Determine your annual payments based on what you would pay over 12 years using standard amortization. To do this, multiply your principal balance by the constant multiplier for 8.25 percent interest (0.1315449). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (See the constant multiplier chart below to determine the constant multiplier you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 × $15,000 = $1,973.17

Step 2: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to your income (if your income is not listed, you can calculate the applicable income percentage factor by following the instructions under the interpolation heading below):

- 80.33 × $1,973.18 ÷ 100 = $1,585.06

Step 3: Determine 20 percent of your discretionary income. Because you are a single borrower, subtract the poverty level for a family of one, as published in the **Federal Register** on March 18, 1999 (64 FR 13428), from your income and multiply the result by 20%:

- $23,912 − $8,240 = $15,672
- $15,672 × 0.20 = $3,134.40

Step 4: Compare the amount from step 2 with the amount from step 3. The lower of the two will be your annual payment amount. In this example, you will be paying the amount calculated under step 2. To determine your monthly repayment amount, divide the annual amount by 12.

- $1,585.06 ÷ 12 = $132.09

Example 2. In this example, you are married. You and your spouse have a combined AGI of $30,035 and are repaying your loans jointly under the income contingent repayment plan. You have no children. You have a Direct Loan balance of $10,000, and your spouse has a Direct Loan balance of $15,000. Your interest rate is 8.25 percent.

Step 1: Add you and your spouse's Direct Loan balances together to determine your aggregate loan balance.

- $10,000 + $15,000 = $25,000

Step 2: Determine the annual payment based on what you would pay over 12 years using standard amortization. To do this, multiply your aggregate principal balance by the constant multiplier for 8.25 percent interest (0.1315452). (See the constant multiplier chart to determine the constant multiplier you should use for the interest rate on your loan. If your exact interest rate is not listed, choose the next highest rate for estimation purposes.)

- 0.1315449 × $25,000 = $3,288.62

Step 3: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to you and your spouse's income (if you and your spouse's aggregate income is not listed, you can calculate the applicable income percentage factor by following the instructions under the interpolation heading below):

- 87.61 × $3,288.63 ÷ 100 = $2,881.17

Step 4: Determine 20 percent of your aggregate income. To do this, subtract the poverty level for a family of 2, as published in the **Federal Register** on March 18, 1999 (64 FR 13428), from your aggregate income and multiply the result by 20 percent:

- $30,035 − $11,060 = $18,975
- $18,975 × 0.20 = $3,795

Step 5: Compare the amount from step 3 with the amount from step 4. The lower of the two will be your annual payment amount. You and your spouse's will be paying the amount calculated under step 3.

To determine your monthly repayment amount, divide the annual amount by 12.

- $2,881.17 ÷ 12 = $240.10

Interpolation: If your income does not appear on the income percentage factor table, you will have to calculate the income percentage factor through interpolation. For example, assume you are single and your income is $30,000.

Step 1: Find the interval between the closest income listed that is less than your income of $30,000 and the closest income listed that is greater than your income of $30,000.

Step 2: Subtract these numbers (for this discussion, we will call the result the "income interval"):

- $30,035 − $23,912 = $6,123

Step 3: Find the interval between the two income percentage factors that are given for these incomes (for this discussion, we will call the result, the "income percentage factor interval"):

- 88.77% − 80.33% = 8.44%

Step 4: Subtract the income shown on the chart that is immediately less than $30,000 from your income of $30,000:

- $30,000 − $23,912 = $6,088

Step 5: Divide the result by the number representing the income interval:

- $6,088 ÷ $6,123 = 0.9943

Step 6: Multiply the result by the income percentage factor interval:

- 0.9943 × 8.44% = 8.39%

Step 7: Add the result to the lower income percentage factor used to calculate the income percentage factor interval for $30,000 in income:

- 8.39% + 80.33% = 88.72%

The result is the income percentage factor that will be Used to calculate the monthly repayment amount under the Income contingent repayment plan.

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Income Percentage Factors

(Based on Annual Income)

Single		Married/ Head of Household	
Income	% Factor	Income	% Factor
7,851	55.00%	7,851	50.52%
10,803	57.79%	12,389	56.68%
13,901	60.57%	14,765	59.56%
17,070	66.23%	19,302	67.79%
20,096	71.89%	23,912	75.22%
23,912	80.33%	30,035	87.61%
30,035	88.77%	37,668	100.00%
37,669	100.00%	45,304	100.00%
45,304	100.00%	56,757	109.40%
54,450	111.80%	75,842	125.00%
69,721	123.50%	102,563	140.60%
98,747	141.20%	143,439	150.00%
113,223	150.00%	234,390	200.00%
201,670	200.00%		

CONSTANT MULTIPLIER CHART FOR 12-YEAR AMORTIZATION

Interest Rate	Annual Constant Multiplier
7.00%	0.1234057
7.25%	0.1250107
7.46%	0.1263678
7.50%	0.1266272
7.75%	0.1282550
8.00%	0.1298943
8.25%	0.1315449
8.38%	0.1324076
8.50%	0.1332067
8.75%	0.1348796
9.00%	0.1365637

Sample First-Year Monthly Repayment Amounts for a Single Borrower at various Income and Debt Levels

Income	Initial Debt																								
	$2,500	$5,000	$ 7,500	$ 10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$ 1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13
10,000	16	29	29	29	29	29	29	29	29	29	29	29	29	29	29	29	29	29	29	29	29	29	29
12,500	16	33	49	65	71	71	71	71	71	71	71	71	71	71	71	71	71	71	71	71	71	71	71
15,000	17	34	51	69	86	103	113	113	113	113	113	113	113	113	113	113	113	113	113	113	113	113	113
17,500	18	37	55	73	92	110	129	147	154	154	154	154	154	154	154	154	154	154	154	154	154	154	154
20,000	20	39	59	79	98	118	138	157	177	195	196	196	196	196	196	196	196	196	196	196	196	196	196
22,500	21	42	65	85	106	127	148	169	190	212	238	238	238	238	238	238	238	238	238	238	238	238	238
25,000	22	45	67	90	112	135	157	179	202	224	279	279	279	279	279	279	279	279	279	279	279	279	279
30,000	24	49	73	97	122	146	170	195	219	243	292	340	363	363	363	363	363	363	363	363	363	363	363
35,000	26	53	79	105	132	158	184	211	237	263	316	369	421	446	446	446	446	446	446	446	446	446	446
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	529	529	529	529	529	529	529	529	529
45,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	603	613	613	613	613	613	613	613
50,000	29	58	87	116	145	174	203	233	262	291	349	407	465	523	581	639	696	696	696	696	696	696	696
55,000	31	62	92	123	154	185	215	246	277	308	369	431	492	554	615	677	738	779	779	779	779	779	779
60,000	32	64	95	127	159	191	223	254	286	318	382	445	509	572	636	700	763	827	863	863	863	863	863
65,000	33	66	99	131	164	197	230	263	296	329	394	460	526	591	657	723	789	854	920	946	946	946	946
70,000	34	68	102	136	169	203	237	271	305	339	407	474	542	610	678	746	813	881	949	1029	1029	1029	1029
75,000	35	69	104	139	174	208	243	278	313	347	417	486	556	625	695	764	833	903	972	1042	1113	1113	1113
80,000	36	71	107	142	178	213	249	285	320	356	427	498	569	640	711	782	854	924	996	1067	1138	1196	1196
85,000	36	73	109	146	182	218	255	291	328	364	437	510	582	655	728	801	874	946	1019	1092	1163	1238	1279
90,000	37	74	112	149	186	223	261	298	335	372	447	521	596	670	745	819	894	968	1043	1117	1192	1266	1340
95,000	38	76	114	152	190	228	266	305	343	381	457	533	609	685	761	838	914	990	1066	1142	1218	1294	1371
100,000	39	78	117	156	195	233	272	311	350	389	467	545	622	700	778	856	934	1012	1089	1167	1245	1323	1401

Sample repayment amounts are based on an interest rate of 8.25%.

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Income	Sample Five-Year Monthly Repayment Amounts for a Married or Head-of-household Borrower at various Income and Debt Levels — Family Size = 3 — Initial Debt																							
	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$90,000	$95,000	$100,000
$ 1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12,500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13,000	16	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19
17,500	18	35	53	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60
20,000	19	38	57	76	94	102	102	102	102	102	102	102	102	102	102	102	102	102	102	102	102	102	102	102
22,500	20	60	60	80	100	120	140	144	144	144	144	144	144	144	144	144	144	144	144	144	144	144	144	144
25,000	21	42	64	85	106	127	149	170	185	185	185	185	185	185	185	185	185	185	185	185	185	185	185	185
30,000	24	48	72	96	120	144	168	192	216	240	269	269	269	269	269	269	269	269	269	269	269	269	269	269
35,000	26	53	79	105	131	157	184	210	236	262	315	315	315	315	315	315	315	315	315	315	315	315	315	315
40,000	27	55	83	110	137	164	192	219	247	274	329	329	329	329	329	329	329	329	329	329	329	329	329	329
45,000	27	55	82	110	137	164	192	219	247	274	329	342	342	342	342	342	342	342	342	342	342	342	342	342
50,000	28	57	85	114	142	171	199	228	256	285	342	355	396	396	396	396	396	396	396	396	396	396	396	396
55,000	30	59	89	118	148	178	207	237	266	296	355	414	430	449	449	449	449	449	449	449	449	449	449	449
60,000	31	61	92	123	154	184	215	246	276	307	368	430	491	503	503	503	503	503	503	503	503	503	503	503
65,000	33	64	95	127	159	191	223	255	286	318	382	446	509	523	536	556	556	556	556	556	556	556	556	556
70,000	33	66	99	132	165	198	231	264	297	329	395	461	527	543	556	576	596	610	610	610	610	610	610	610
75,000	34	68	102	136	170	204	238	273	307	341	409	477	545	563	576	596	616	636	656	663	663	663	663	663
80,000	35	70	105	140	175	210	244	279	314	349	419	489	559	582	596	616	636	656	676	696	716	716	716	716
85,000	36	71	107	143	179	214	250	286	322	357	429	500	572	602	616	636	656	676	696	716	736	769	769	769
90,000	37	73	110	146	183	219	256	292	329	365	438	511	584	622	636	656	676	696	716	736	756	822	822	822
95,000	37	75	112	149	187	224	261	299	336	373	448	523	597	642	656	676	696	716	736	756	776	875	875	875
100,000	38	76	114	152	191	229	267	305	343	381	457	534	610	662	676	696	716	736	756	776	796	928	928	928

Sample repayment amounts are based on an interest rate of 8.25%.

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federal register

Tuesday
July 6, 1999

Part VII

The President

Proclamation 7207—To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to Products of Mongolia and To Implement an Agreement To Eliminate Tariffs on Certain Pharmaceuticals and Chemical Intermediates

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Presidential Documents

Title 3—

The President

Proclamation 7207 of July 1, 1999

To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to Products of Mongolia and To Implement an Agreement To Eliminate Tariffs on Certain Pharmaceuticals and Chemical Intermediates

By the President of the United States of America

A Proclamation

1. The United States has had in effect a bilateral Agreement on Trade Relations with Mongolia since 1991 and has provided normal trade relations treatment to the products of Mongolia since that time. I have found Mongolia to be in full compliance with the freedom of emigration requirements of title IV of the Trade Act of 1974 (the "Trade Act") (19 U.S.C. 2432).

2. Pursuant to section 2424(b)(1) of Public Law 106–36, and having due regard for the findings of the Congress in section 2424(a) of said Law I hereby determine that title IV of the Trade Act (19 U.S.C. 2431–2441) should no longer apply to Mongolia.

3. On November 13, 1998, members of the World Trade Organization (WTO), including the United States and 21 other major trading countries, announced in the WTO an agreement to eliminate tariffs on certain pharmaceuticals and chemical intermediates that were the subject of reciprocal duty elimination negotiations during the Uruguay Round of Multilateral Trade Negotiations (the "Uruguay Round"). A similar agreement between the United States and 16 other major trading countries eliminating tariffs on enumerated pharmaceuticals and chemical intermediates was implemented for the United States on April 1, 1997, by Proclamation 6982, adding such goods to the scope of the agreement on pharmaceutical products reached at the conclusion of the Uruguay Round and reflected in Schedule XX–United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade (1994) (Schedule XX).

4. Section 111(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3521(b)) authorizes the President to proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX for products that were the subject of reciprocal duty elimination negotiations during the Uruguay Round, if the United States agrees to such action in a multilateral negotiation under the auspices of the WTO, and after compliance with the consultation and layover requirements of section 115 of the URAA (19 U.S.C. 3524). Section 111(b) also authorizes the President to proclaim such modifications as are necessary to reflect such duty treatment in Schedule XX by means of rectifications thereof.

5. On April 29, 1999, pursuant to section 115 of the URAA, the United States Trade Representative (USTR) submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate ("the Committees") that sets forth the proposed tariff eliminations, together with the advice received from the appropriate private sector advisory committee and the United States International Trade Commission regarding the proposed tariff eliminations. During the 60-day period thereafter, the USTR consulted with the Committees on the proposed actions.

6. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

7. Pursuant to section 111(b) of the URAA, I have determined that Schedule XX should be modified to reflect the implementation by the United States of the multilateral agreement on certain pharmaceuticals and chemical intermediates negotiated under the auspices of the WTO. In addition, I have determined that the pharmaceuticals appendix to the HTS should be modified to reflect the duty eliminations provided in such agreement, and to make certain minor technical corrections in the identification of particular products in order to ensure that products are accorded the intended duty treatment.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 2424(b)(2) of Public Law 106–36, section 111(b) of the URAA, and section 604 of the Trade Act, do hereby proclaim that:

(1) Nondiscriminatory treatment (normal trade relations treatment) shall be extended to the products of Mongolia, which shall no longer be subject to title IV of the Trade Act.

(2) The extension of nondiscriminatory treatment to the products of Mongolia shall be effective as of the date of signature of this proclamation.

(3) In order to implement the multilateral agreement negotiated under the auspices of the WTO to eliminate tariffs on certain pharmaceutical products and chemical intermediates, and to make technical corrections in the tariff treatment accorded to such products, the HTS is modified as set forth in the Annex to this proclamation.

(4) Such modifications to the HTS shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex for the respective actions taken.

(5) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

Billing code 3195–01–P

ANNEX

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

The Harmonized Tariff Schedule of the United States (HTS) is modified as provided herein, effective on the dates set forth for each annex section.

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1999, the following products are to be accorded duty-free treatment:

1. For subheadings 2905.22.50, 2910.30.00, 2921.43.40, 2922.19.20, 2924.29.05, and 2933.39.20, the Rates of Duty 1-Special subcolumn is modified by inserting, in alphabetical order, the symbol "K" in the parentheses following the "Free" rate of duty in such subcolumn for each such subheading.

2. The Pharmaceutical Appendix to the HTS is modified as provided below:

(a). Table 1 of the Appendix is modified by adding the following new INNs, in alphabetical order, in the "Product" column and their CAS numbers in the "CAS No." column:

Product	CAS Number	Product	CAS Number
abacavir	136470-78-5	eperezolid	165800-04-4
abafungin	129639-79-8	eplerenone	107724-20-9
abarelix	183552-38-7	eptifibatide	148031-34-9
abiraterone	154229-19-3	fabesetron	129300-27-2
acreozast	123548-56-1	fandofloxacin	164150-99-6
agomelatine	138112-76-2	faralimomab	167816-91-3
alatrofloxacin	157182-32-6	fasidotril	135038-57-2
alinastine	154541-72-7	fasoracetam	110958-19-5
almotriptan	154323-57-6	felvizumab	167747-20-8
almurtide	61136-12-7	fexofenadine	83799-24-0
amelometasone	123013-22-9	fidarestat	136087-85-9
amlintide	122384-88-7	filaminast	141184-34-1
apedoline	135003-30-4	flibanserin	167933-07-5
arcitumomab	154361-48-5	follitropin beta	150490-84-9
aripiprazole	129722-12-9	fomivirsen	144245-52-3
arofylline	138145-07-8	forasartan	145216-43-9
aseripide	153242-02-5	foropafant	136468-36-5
asimadoline	153205-46-0	frovatriptan	158747-02-5
atiprimod	123018-47-3	fudosteine	13189-98-5
atizoram	135637-46-6	fulvestrant	129453-61-8
atliprofen	108912-17-0	furomine	142996-66-5
atreleuton	154355-76-7	gacyclidine	68134-81-6
aviptadil	40077-57-4	ganaxolone	38398-32-2
avitriptan	151140-96-4	gatifloxacin	160738-57-8
avorelin	140703-49-7	gavestinel	153436-22-7
avotermin	182212-66-4	glaspimod	134143-28-5
barnaquimast	135779-82-7	glufosfamide	132682-98-5
basiliximab	179045-86-4	hemoglobin crosfumaril	142261-03-8
becaplermin	165101-51-9	ibutamoren	159634-47-6
bectumomab	158318-63-9	icopezil	145508-78-7
belaperidone	156862-51-0	igovomab	171656-50-1
beloxepin	135928-30-2	indinavir	150378-17-9
bepotastine	125602-71-3	indisetron	141549-75-9
bibepcitide	153507-46-1	infliximab	170277-31-3
biricodar	159997-94-1	insulin aspart	116094-23-6
bronaugeserin	132810-10-7	insulin glargine	160337-95-1
brasofensine	171655-91-7	interferon alfacon-1	118390-30-0
brinzolamide	138890-62-7	iocanlidic acid (123 I)	74255-17-7
carafiban	177563-40-5	ioflupane (123 I)	155798-07-5
cariporide	159138-80-4	iometopane (123 I)	136794-86-0
cedelizumab	156586-90-2	ipamorelin	170851-70-4
ceftizoxime alapivoxil	135821-54-4	iroplact	154248-96-1
celgosivir	121104-96-9	israpafant	117279-73-9
cemadotin	159776-69-9	ivabradine	155974-00-8
cerivastatin	145599-86-6	keliximab	174722-30-6
cetermin	157238-32-9	lagatide	157476-77-2
cevimeline	107233-08-9	landiolol	133242-30-5
chorionadotropin alfa	177073-44-8	lanepitant	170566-84-4
cizolirtine	142155-43-9	lasinavir	175385-62-3
clenoliximab	182912-58-9	ledoxantrone	113457-05-9
clevidipine	166432-28-6	lefradafiban	149503-79-7
clevudine	163252-36-6	levocetirizine	130018-77-8
colesevelam	182815-43-6	levosalbutamol	34391-04-3
dabelotine	118976-38-8	licostinel	153504-81-5
daicotidine	120958-90-9	linetastine	159776-68-8
danaparoid sodium	83513-48-8	linezolid	165800-03-3
danipiestim	161753-30-6	lintitript	136381-85-6
dapitant	153438-49-4	lintuzumab	166089-32-3
deciopramide	891-80-1	lirexapride	145414-12-6
delitibant	140661-97-8	lodenosine	110143-10-7
dexefaroxan	143249-88-1	lotrafiban	171049-14-2
dexsotalol	30236-32-9	lumefantrine	82186-77-4
donepezil	120014-06-4	lurtotecan	149882-10-0
dronedarone	141626-36-0	mazokalim	164178-54-5
droxinavir	159910-86-8	melagatran	159776-70-2
dutasteride	164656-23-9	meluadrine	134865-33-1
ecenofloxacin	162301-05-5	mespiperone (11 C)	94153-50-1
edrecolomab	156586-89-9	metesind	138384-68-6
efavirenz	154598-52-4	milacainide	141725-10-2
elacridar	143664-11-3	milameline	139886-32-1
eldacimibe	141993-70-6		
eletriptan	143322-58-1		
elinafide	162706-37-8		
embusartan	156001-18-2		
emoctakin	142298-00-8		
eniluracil	59989-18-3		
enlimomab pegol	169802-84-0		
ensaculin	155773-59-4		

Annex (con.)
-2-

Section A (con.)
2. (con.)
(a). (con.)

Product	CAS Number	Product	CAS Number
milfasartan	148564-47-0	ritonavir	155213-67-5
milodistim	137463-76-4	rituximab	174722-31-7
minalrestat	129688-50-2	rivastigmine	123441-03-2
minodronic acid	127657-42-5	rizatriptan	144034-80-0
miproxifene	129612-87-9	robalzotan	169758-66-1
mitiglinide	145375-43-5	roflumilast	162401-32-3
mivobulin	122332-18-7	rosiglitazone	122320-73-4
moxifloxacin	151096-09-2	roxifiban	170902-47-3
moxilubant	146978-48-5	rupatadine	158876-82-5
nagrestipen	166089-33-4	sabcomeline	159912-53-5
nateglinide	105816-04-4	samarium (153 Sm) lexidronam	154427-83-5
nelfinavir	159989-64-7	sampatrilat	129981-36-8
nelzarabine	121032-29-9	saredutant	142001-63-6
nepadutant	183747-35-5	scopinast	145574-90-9
nepafenac	78281-72-8	seocalcitol	134404-52-7
nepaprazole	156601-79-5	sevelamer	52757-95-6
nepicastat	173997-05-2	sibrafiban	172927-65-0
nerelimomab	162774-06-3	sildenafil	139755-83-2
nifekalant	130636-43-0	silperisone	140944-31-6
nolatrexed	147149-76-6	sinapultide	138531-07-4
nolpitantium besilate	155418-06-7	sinitrodil	143248-63-9
nonacog alfa	113478-33-4	sipatrigine	130800-90-7
oberadilol	114856-44-9	sitafloxacin	127254-12-0
omapatrilat	167305-00-2	sivelestat	127373-66-4
omiloxetine	176894-09-0	soretolide	130403-08-6
opanixil	152939-42-9	sulcsomab	167747-19-5
opratonium iodide	146919-78-0	sunepitron	148408-65-5
oprelvekin	145941-26-0	taltirelin	103300-74-9
orazipone	137109-78-5	talviraline	169312-27-0
orbofiban	163250-90-6	targinine	17035-90-4
osanetant	160492-56-8	tasonermin	94948-59-1
osutidine	140695-21-2	tazomeline	131987-54-7
pagoclone	133737-32-3	technetium (99m Tc) nofetumomab merpentan	165942-79-0
palinavir	154612-39-2	technetium (99m Tc) pintumomab	157476-76-1
palonosetron	135729-56-5	technetium (99mTc) apcitide	178959-14-3
pamaqueside	150332-35-7	temiverine	173324-94-2
pamiteplase	151912-42-4	temocaprilat	110221-53-9
paricalcitol	131918-61-1	terbogrel	149979-74-8
pegmusirudin	186638-10-8	tererstigmine	147650-57-5
peldesine	133432-71-0	ticolubant	154413-61-3
pelubiprofen	69956-77-0	tifacogin	148883-56-1
pemetrexed	137281-23-3	tilnoprofen arbamel	159098-79-0
perifosine	157716-52-4	tivirapine	137332-54-8
pexiganan	172820-23-4	tobicillin	151287-22-8
pibutidine	103922-33-4	trafermin	131094-16-1
pifonakin	112721-39-8	trastuzumab	180288-69-1
pleconaril	153168-05-9	trecovirsen	148998-94-1
pralmorelin	158861-67-7	tresperimus	160677-67-8
pramlintide	151126-32-8	upenazime	95268-62-5
pranazepide	150408-73-4	urokinase alfa	99821-47-3
pregabalin	148553-50-8	valganciclovir	175865-60-8
prucalopride	179474-81-8	valnemulin	101312-92-9
pumaprazole	158364-59-1	valspodar	121584-18-7
quetiapine	111974-69-7	vatanidipine	116308-55-5
quilostigmine	139314-01-5	vedaclidine	141575-50-0
raltitrexed	112887-68-0	vinflunine	162652-95-1
ranelic acid	135459-90-4	xaliproden	133354-02-8
rapacuronium bromide	156137-99-4	xemilofiban	149820-74-6
resocortol	76675-97-3	ziconotide	107452-89-1
retigabine	150812-12-7	zinostatin stimalamer	123760-07-6
revatropate	149926-91-0	zolmitriptan	139264-17-8"
rifalazil	129791-92-0		
rismorelin	146706-68-5		

(b). Table 2 of the Appendix is modified by adding the following chemical or INN derivative names in alphabetical order:

"BENZOATE MONOBENZOATE
DIFUMARATE TETRAISOPROPYL"
DIPIVOXIL

(c). Table 3 of the Appendix is modified by adding the following product names, in alphabetical order, along with their CAS numbers:

Product	CAS Number
"(S)-but-3-yn-2-ol	2914-69-4
2-(4-fluorobenzyl)thiophene	63877-96-3
5-amino-N,N'-bis[2-acetoxy-1-(acetoxymethyl)ethyl]-2,4,6-triiodoisophthalamide	148051-08-5
5-amino-N,N'-bis(2,3-dihydroxypropyl)-2,4,6-triiodoisophthalamide	76801-93-9
(S)-alpha-chloroformylethyl acetate	36394-75-9
diethyl dipropylmalonate	6065-63-0
5-methyl-N-[4-(sulfamoyl)phenethyl]pyrazine-2-carboxamide	33288-71-0
(5aR,11bS)-9,10-dimethoxy-2-propyl-4,5,5a,6,7,11b-hexahydrobenzo[f]thieno[2,3-c]-quinoline hydrochloride	178357-37-4
methyl N-(phenoxycarbonyl)-L-valinate	153441-77-1
(+)-6-fluoro-1-methyl-4-oxo-7-(piperazin-1-yl)-4H-[1,3]thiazeto-[3,2-a]quinoline-3 -carboxylic acid	112984-60-8
methyl 3-amino-4,6-dibromo-o-toluate	119916-05-1
4,6-dibromo-3-fluoro-o-toluic acid	119916-27-7
7-bromo-1-cyclopropyl-6-fluoro-5-methyl-4-oxo-1,4-dihydroquinoline-3-carboxylic acid	119916-34-6

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Product	CAS Number
2-mercapto-5-(trifluoromethyl)anilinium chloride	4274-38-8
2-(3-bromophenoxy)tetrahydropyran	57999-49-2
6-chloro-5-(2-chloroethyl)indol-2(3H)-one	118289-55-7
6-chloroindol-2(3H)-one	56341-37-8
6-methoxy-1,2,3,4-tetrahydro-1-naphthone	1078-19-9
N-[N-(tert-butoxycarbonyl)-L-alanyl]-L-alanine hydrate	90303-36-9
2,2'-dithiodibenzonitrile	33174-74-2
2-ethoxy-5-[(4-methylpiperazin-1-yl)sulfonyl]benzoic acid	194602-23-8
1-methyl-4-4-nitro-3-propylpyrazole-5-carboxamide	139756-01-7
(S)-2-(4-fluorophenyl)-3-methylbutyric acid	55332-37-1
[3-(benzimidazol-2-yl)propyl]methylamine	64137-52-6
7-chloro-5-(2-fluorophenyl)-1H-1,4-benzodiazepin-2(3H)-one	2886-65-9
2-bromo-4'-chloro-2'-(2-fluorobenzoyl)acetanilide	1584-62-9
2'-benzoyl-2-bromo-4'-chloroacetanilide	41526-21-0
(RS)-aerinohydrazide hydrochloride	55810-71-1
2,3,4-trihydroxybenzaldehyde	2144-08-3
dimethyl chloromalonate	28868-76-0
4,6-dichloro-5-(2-methoxyphenoxy)-2,2'-bipyrimidinyl	150728-13-5
4-tert-butylbenzenesulfonamide	6292-59-7
methyl 3-[(methoxycarbonylmethyl)sulfamoyl]thiophene-2-carboxylate	106820-83-7
methyl 4-hydroxy-2-methyl-2H-thieno[2,3-e][1,2]thiazine-3-carboxylate 1,1-dioxide	59804-25-0
tert-butyl (1S,9S)-6,10-dioxo-9-phthalimidooctahydropyridazo[1,2-a][1,2]diazepine-1-carboxylate	106928-72-7
ethyl (R)-2-hydroxy-4-phenylbutyrate	90315-82-5
1-benzyl hydrogen (S)-4-phthalimidoglutarate	88784-33-2
(S)-1-(benzyloxycarbonyl)hexahydropyridazine-3-carboxylic acid	65632-62-4
methyl [(1S,2R)-1-benzyl-3-[(3S,4aS,8aS)-3-(tert-butylcarbamoyl)decahydro-2-isoquinolyl]-2-hydroxypropyl]carbamate	178680-13-2
(3S,4aS,8aS)-2-[(2R,3S)-3-amino-2-hydroxy-4-phenylbutyl]-N-tert-butyldecahydroisoquinoline-3-carboxamide	
136522-17-3	
4-[(S)-3-amino-2-oxopyrrolidin-1-yl]benzonitrile hydrochloride	175873-08-2
ethyl 3-(3-[(S)-1-[4-(N'2-hydroxyamidino)phenyl]-2-oxopyrrolidin-3-yl]ureido)propionate	175873-10-6
4-[2-(p-tolyl)-3-(trifluoromethyl)-1H-pyrazol-1-yl]benzenesulfonamide	169590-42-5
4-hydrazonobenzenesulfonamide hydrochloride	17852-52-7
4'-amidinosuccinanilic acid hydrochloride	149177-92-4
ethyl (S)-3-aminopent-4-ynoate hydrochloride	154772-45-9
11-alpha-hydroxy-7-alpha-(methoxycarbonyl)-3-oxopregn-4-ene-21,17-alpha-carbolactone	192704-56-6
11-alpha-hydroxy-3-oxopregna-4,6-diene-21,17-alpha-carbolactone	73726-56-4
4-(5-methyl-3-phenylisoxazol-4-yl)benzenesulfonamide	181695-72-7
5-methyl-3,4-diphenyl-4,5-dihydroisoxazol-5-ol	181696-73-1
N-[4-(5-methyl-3-phenylisoxazol-4-yl)phenylsulfonyl]propionamide, sodium salt	198470-85-8
phivaloyloxymethyl 7-[(Z)-2-[2-(tert-butoxycarbonylamino)thiazol- 4-yl]pent-2-enamido)-3-(carbamoyloxymethyl)-3-cephem-4-carboxylate	105889-80-3
benzhydryl 6-(4-methylbenzamido)penicillanic acid 4-oxide	77887-68-4
benzhydryl 7-[(Z)-2-[2-(tert-butoxycarbonylamino)thiazol-4-yl]-4-(3-methylbut-2 -enyloxycarbonyl)but-2-enamido]-3-cephem-4-carboxylate	174761-17-2
N-(2-quinolylcarbonyl)-L-asparagine	136465-98-0
methyl N-(methoxycarbonyl)-L-phenylalaninate	41844-71-7
N-[(2,6-diisopropylphenoxy)sulfonyl]-2-(2,4,6-triisopropylphenyl)acetamide	166518-60-1
(2S,3S)-3-methyl-2-(3-oxo-2,3-dihydro-1,2-benzisothiazol-2-yl)valeric acid	177785-47-6
(1S,4R)-1-azabicyclo[2.2.1]heptan-3-one O-[(Z)-(3-methoxyphenyl)ethynyl]oxime--maleic acid (1:1)	180050-34-4
N-[(R)-8-methyl-4-oxo-1-phenyl-3,4,6,7-tetrahydro[1,4]diazepino[6,7,1-hi]indol-3- yl]isonicotinamide	179024-48-7
4-acetamido-2'-aminobenzanilide	112522-64-2
N,N'-bis[3-(ethylamino)propyl]propane-1,3-diamine tetrahydrochloride	156886-85-0
ethyl 5-(but-3-enyl)thiophene-2-carboxylate	208337-82-0
ethyl 5-[(3R)-3,4-dihydroxybutyl]thiophene-2-carboxylate	208337-83-1
ethyl 5-[(3R)-4-amino-3-hydroxybutyl]thiophene-2-carboxylate	208337-84-2
ethyl 5-[(3R)-4-(tert-butoxycarbonylamino)-3-hydroxybutyl]thiophene-2-carboxylate	186521-38-0
ethyl 5-[(3R)-4-(tert-butoxycarbonylamino)-3-(mesyloxy)butyl]thiophene-2-carboxylate	186521-39-1
ethyl 5-[(3S)-3-(acetylthio)-4-(tert-butoxycarbonylamino)butyl]thiophene-2-carboxylate	186521-40-4
dimethyl 2-[(S)-1-(tert-butoxycarbonylaminomethyl)-2- (5-ethoxycarbonyl-2-thienyl)propylthio] malonate	186521-41-5
methyl (S)-6-[2-[5-ethoxycarbonyl)-2-thienyl]ethyl]-3-oxo-1,4-thiazinane-2-carboxylate	186521-42-6
ethyl (6S)-6-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl] thiophene-2-carboxylate	186521-44-8
(6S)-6-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl]thiophene-2-carboxylic acid	186521-45-9
diethyl N-[5-[2-((6S)-2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl)-ethyl]-2-thenoyl]-L-glutamate	177575-19-8
4-chloropyridine hydrochloride	7379-35-3
4-phenoxypyridine	4783-86-2
4-(4-pyridyloxy)benzenesulfonic acid	192329-80-9
4-(4-pyridyloxy)benzenesulfonyl chloride hydrochloride	192330-49-7
(3S)-2,2-dimethyl-1,4-thiazinane-3-carboxylic acid	84915-43-5
(3S)-2,2-dimethyl-4-[4-(4-pyridyloxy)phenylsulfonyl]-1,4-thiazinane-3-carboxylic acid	192329-83-2
2-amino-6-bromo-8-methylquinazolin-4(1H)-one	147149-89-1
3-acetoxy-o-toluic acid	168899-58-9
(4R,5R)-4,5-bis(mesyloxymethyl)-1,3,2-dioxathiolane 2,2-dioxide	208338-09-4
(2R,3R)-1,4-bis(mesyloxy)butane-2,3-diol	1947-62-2
3,7,11-trimethyldodeca-1,6,10-trien-3-ol	7212-44-4
(6E,10E,14E)-3,7,11,15-tetramethylhexadeca-1,6,10,14-tetraen-3-ol	1113-21-9
methyl 4-amino-5-nitro-o-anisate	59338-84-0
methyl 5-(ethylsulfonyl)-o-anisate	62140-67-4
methyl 5-sulfamoyl-o-anisate	33045-52-2
3-methoxy-5-sulfamoyl-o-anisic acid	66644-80-2
1-benzylpiperidine-4-carbaldehyde	22065-85-6
((E)-3-[(6R,7R)-7-amino-2-carboxylato-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-en-3-yl]allyl)-(carbamoylmethyl)(ethyl)methylammonium	160115-08-2
[4-(3-methoxypropoxy)-3-methyl-2-pyridyl]methanol	118175-10-3
(Z)-2-(5-amino-1,2,4-thiadiazol-3-yl)-2-[(fluoromethoxy)imino]acetic acid	116833-10-4
2-(ethylmethylamino)acetamide	116833-20-6
4-chloro-2-[(Z)-(methoxycarbonyl)methoxyimino]-3-oxobutyric acid	84080-70-6
2-(5-ethyl-2-pyridyl)ethenol	5223-06-3
2-(4-aminophenoxymethyl)-2,5,7,8-tetramethyl-4-oxochroman-6-yl acetate	107186-37-4
chloromethyl pivalate	18997-19-8
7-ethyl-3-[2-(trimethylsilyloxy)ethyl]indole	186453-89-8
5-amino-2,4,6-triiodoisophthalic acid	35453-19-1
4-hydroxyindole	2380-94-1
thiazolone-2,4-dione	2295-31-0
2-bromo-3-methylthiophene	14282-76-9
5-methyluracil	65-71-4

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Product	CAS Number
thymidine	50-89-5
3-methyl-4-(2,2,2-trifluoroethoxy)-2-pyridylmethanol	103577-66-8
3-(cyanoimino)-3-piperidinopropiononitrile	56489-00-7
N-acetyl-3-(3,4-dimethoxyphenyl)-DL-alanine	27313-65-1
2,5,7,8-tetramethyl-2-(4-nitrophenoxymethyl)-4-oxochroman-6-yl acetate	107188-34-1
methyl 4-(bromomethyl)-m-anisate	70264-94-7
9-bromononyl 4,4,5,5,5-pentafluoropentyl sulfide	148757-89-5
2-(phenylthio)aniline	1134-94-7
4,4,5,5,5-pentafluoropentan-1-ol	148043-73-8
methyl (S)-2-amino-4-(1H-tetrazol-5-yl)butyrate	127105-49-1
(3-chloro-4-fluorophenyl)[7-methoxy-6-(3-morpholinopropoxy)quinazolin-4-yl]amine	184475-35-2
5-hydroxy-1,2,3,4-tetrahydro-1-naphthone	28315-93-7
(R)-1-chloro-2,3-epoxypropane	51594-55-9
methyl 4-acetamido-o-anisate	4093-29-2
4-acetamido-5-chloro-o-anisic acid	24201-13-6
methyl (1S,2S)-1-benzyl-3-chloro-2-hydroxypropylcarbamate	176972-62-6
ethyl 2-chloronicotinate	1452-94-4
ethyl 6-chloronicotinate	49608-01-7
6-hydroxynicotinic acid	5006-66-6
6-chloronicotinic acid	5326-23-8
1-acetylpiperazine	13889-98-0
8-azaspiro[4.5]decane-7,9-dione	1075-89-4
(S)-3-[4-[[2,7-dimethyl-4-oxo-1,4-dihydroquinazolin-6-yl]methyl](prop-2-ynyl)amino]-4-fluorobenzamido)- 4-(1H-tetrazol-5-yl)butyric acid	153537-73-6
SC-56736	116636-33-6
SC-70635	193700-61-5
6,7-dichloro-2,3-dimethylquinoxalin-5-ylamine	178619-89-1
4-(2-methyl-1H-imidazo[4,5-c]pyridin-1-yl)benzoic acid	132026-12-1
methyl(4'-nitrophenethyl)amine hydrochloride	166943-39-1
2-chloroethyl 4-nitrophenyl ether	3383-72-0
(2RS,3SR)-2-(2,4-difluorophenyl)-3-(5-fluoropyrimidin-4-yl)-1-(1H-1,2,4-triazol-1-yl)butan-2-ol (1R,4S)-2-oxobornane-10-sulfonic acid (1:1)	188416-34-4
6-ethyl-5-fluorocytosin-4(1H)-one	137234-87-8
diphenyl[(S)-pyrrolidin-3-yl]acetonitrile hydrobromide	194802-27-2
(2,3-dihydrobenzofuran-2-yl)acetic acid	69999-16-2
cyclohexylammonium 1-((S)-2-(tert-butoxycarbonyl)-3-(2-methoxyethoxy)propyl)-cyclopentanecarboxylate	167944-94-7
cis-4-(ethoxycarbonyl)cyclohexylammonium tosylate	67298-45-0
5-bromo-3-((R)-1-methylpyrrolidin-2-ylmethyl)indole	143322-57-0
meso-3-benzyl-6-nitro-3-azabicyclo[3.1.0]hexane	151980-16-1
diethyl (6-chloro-9H-carbazol-2-yl)methylmalonate	712284-65-4
beta-cyclodextrin sulfobutyl ethers, sodium salts	182410-00-0
N,N-diisopropylpyrrolidine hydrochloride	7250-97-1
6,7-bis(2-methoxyethoxy)quinazolin-4(1H)-one	179688-29-0
ethyl 3,4-dihydroxybenzoate	3943-89-3
3-[(Z)-1-(4-(2-dimethylaminoethoxy)phenyl)-2-phenylbut-1-enyl]phenol	83647-29-4
2-(1-(tert-butoxycarbonyl) 4-piperidyl)acetic acid	157688-46-5
4-pyridylacetic acid hydrochloride	66822-91-9
a,a,a-trifluoro-4-nitro-o-toluidine	393-11-3
methyl 1-(2,3,5-tri-O-acetyl-beta-D-ribofuranosyl)-1H-1,2,4-triazole-3-carboxylate	39625-10-5
N'a-(tert-butoxycarbonyl)-N'w-nitro-L-arginine	2188-18-3
N'a-(tert-butoxycarbonyl)-N-methoxy-N-methyl-N'w-nitro-L-argininamide	136676-34-4
(2S,3S)-3-amino-2-ethoxy-N-nitropyridine-1-carboximidine hydrochloride	182253-77-6
(S)-O-(4-nitrobenzyl)-N-(tert-butoxycarbonyl)hydrazone	122802-28-1
phenyl (4-(4-hydroxyphenyl)piperazin-1-yl)phenylcarbamate	184177-61-9
(3S,5S)-2-(2,4-difluorophenyl)-5-(1H-1,2,4-triazol-1-ylmethyl)tetrahydrofuran-3-yl]methyl 4-chlorobenzenesulfonate	175712-02-4
8-chloro-11-(4-piperidylidene)-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridine	100643-71-8
2-hydroxy-2-methyl-4'-nitro-3'-(trifluoromethyl)propionanilide	52808-63-8
5-ethyltetrazole	40187-51-7
8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-one	312591-41-9
1-nitro-4-(1,2,2,2-tetrachloroethyl)benzene	4714-32-3
3-chloropropyltrimethylammonium chloride	5407-04-5
3-(diisopropylamino)aniline hydrochloride	81872-27-2
2-[1-(mercaptomethyl)cyclopropyl]acetic acid	162518-66-6
3-(4-bromobenzyl)-2-butyl-4-chloro-1H-imidazol-5-ylmethanol	151015-31-6
4-chloro-1-methylpiperidine hydrochloride	5382-23-0
methyl 2-((S)-3-((E)-3-[2-(7-chloro-2-quinolyl)vinyl]phenyl)-3-hydroxypropyl)benzoate	181138-72-0
methyl 2-((S)-((E)-2-(7-chloro-2-quinolyl)vinyl)phenyl)-3-oxopropyl)benzoate	149968-11-8
2-(2-ethyl-2H-1,2,3-triazol-4-yl)phenylboronic acid	143722-25-2
(3aS,8aR)-3-[(2R,4S)-2-benzyl-4,5-epoxyvaleryl]-2,2-dimethyl-3,3a,8,8a-tetrahydro-2H-indeno[1,2-d]oxazole	159512-24-4
N-[(4S,6S)-6-methyl-7,7-dioxo-5,6-dihydro-4H-thieno[2,3-b]thiopyran-4-yl]acetamide	147098-63-7
N-[(4S,6S)-6-methyl-7,7-dioxo-2-sulfamoyl-5,6-dihydro-4H-thieno[2,3-b]thiopyran-4-yl] acetamide	147200-03-1
5-fluorouracil	66-22-8
N'1-methyl-1H-pyrazole-1-carboxamidine hydrochloride	59194-35-3
(S)-tetrahydrofuran-3-ol	86087-23-2
ethyl 4,6-dichloro-3-formylindole-2-carboxylate	153436-86-2
3-oxoandrost-4-ene-17-beta-carboxylic acid	302-97-6
alpha,alpha,alpha,alpha',alpha',alpha'-hexafluoro-2,5-xylidine	328-93-8
(±)-2-azabicyclo[2.2.1]hept-5-en-3-one	61865-48-3
(1R,4S)-2-azabicyclo[2.2.1]hept-5-en-3-one	79200-56-9
(1S,4R)-4-(2-amino-6-chloro-9H-purin-9-yl)cyclopent-2-enyl]methanol hydrochloride	172015-79-1
N-(2-amino-4,8-dichloropyrimidin-5-yl)formamide	171857-03-9
4-fluorobenzyl 4-(methylthio)phenyl ketone	87483-20-2
2-amino-3-pyridyl methyl ketone	65328-85-2
6-methoxy-1H-purin-2-ylamine	20535-83-5
1-(beta-D-arabinofuranosyl)pyrimidine-2,4(1H,3H)-dione	3083-77-0
(2R)-4-methyl-2-[(S)-2,2-dimethyl-5-oxo-1,3-dioxolan-4-yl]valeric acid	157518-70-2
(S)-2-amino-3,3-dimethyl-N-2-pyridylbutyramide	171764-07-1
3-nitro-4-pyridone	5435-54-1
2,6-difluorobenzylamine	69385-30-4
L-ribose	24256-59-4
(5,6-dichloro-1H-benzimidazol-2-yl)isopropylamine	176161-55-0
(R)-2-amino-2-ethylhexan-1-ol	151851-75-1
3-methylenecyclobutanecarbonitrile	15760-35-7
4-tert-butylbenzyl 2-((2R,3S)-3-((R)-1-(tert-butyldimethylsilyloxy)ethyl)- 2-[(1R,3S)-3-methoxy-2-oxocyclohexyl]-4-oxoazetidin-1-yl)-2-oxoacetate	159593-17-6
methyl (3aR,4R,7aR)-2-methyl-4-[(1S,2R)-1,2,3-triacetoxypropyl]-3a,7a-dihydro-4H-pyrano-[3,4-d]oxazole-6-carboxylate	78850-37-0
(4S,5R,6R)-5-acetamido-4-amino-6-[(1R,2R)-1,2,3-trihydroxypropyl]-5,6-dihydropyran-2 -carboxylic acid	130525-82-1

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Product	CAS Number
pyrazole-1-carboxamidine hydrochloride	4023-02-3
2-acetoxy-5-acetylbenzyl acetate	24085-06-1
(R)-1,2,3,4-tetrahydropapaverine hydrochloride	54417-53-7
trans-2-chloro-3-[4-(4-chlorophenyl)cyclohexyl]-1,4-naphthoquinone	153977-22-1
1,3-dichloroacetone	534-07-6
3,5-dimethylpiperidine	35794-11-7
2,6-diaminopyrimidin-4-ol	56-06-4
1-(2-chloroethyl)piperidinium chloride	2008-75-5
diethyl L-glutamate hydrochloride	1118-89-4
tert-butyl (1R,4S)-4-(hydroxymethyl)cyclopent-2-enylcarbamate	168960-18-7
2-butyl-1,3-diazaspiro(4.4)non-1-en-4-one hydrochloride	151257-01-1
tert-butyl 2-[[1-(2-aminothiazol-4-yl)-2-(benzisothiazol-2-ylthio)-2-oxoethylidene] aminooxy]-2-methylpropionate	89604-92-2
bis[(isopropyloxycarbonyloxy)methyl [(R)-2-(6-amino-9H-purin-9-yl) -1-methylethoxy]methyl phosphonate--fumaric acid (1:1)	202138-50-9
(R)-[2-(6-amino-9H-purin-9-yl)-1-methylethoxy]methylphosphonic acid	147127-20-6
(R)-propylene carbonate	16606-55-6
6-amino-9H-purin-9-ylethanol	707-99-3
(R)-2-(6-amino-9H-purin-9-yl)-1-methylethanol	14047-28-0
chloromethyl isopropyl carbonate	35180-01-9
diethyl (tosyloxy)methylphosphonate	31618-90-3
(R)-3-chloropropane-1,2-diol	57090-45-6
(S)-[(trityloxy)methyl]oxirane	129940-50-7
(S)-2-(2-amino-5-chlorophenyl)-4-cyclopropyl-1,1,1-trifluorobut-3-yn-2-ol	154598-58-0
10,10-bis[(2-fluoro-4-pyridyl)methyl]anthrone	160588-45-4
(S)-N-[(1S,2R)-3-[(1,3-benzodioxol-5-ylsulfonyl)(isobutyl)amino]-1-benzyl-2-hydroxypropyl]-3,3-dimethyl-2-(sarcosylamino)butyramide	183556-68-5
(4R,5S,6S,7R)-1-[(3-amino-1H-indazol-5-yl)methyl]-4,7-dibenzyl-3-butyl-5,6-dihydroxyhexahydro-2H-1,3-diazepin-2-one	188978-02-1
(2S)-N-[(1R)-1-(1,3-benzodioxol-5-yl)butyl]-3,3-diethyl-2-(4-[(4-methylpiperazin-1-yl)-carbonyl]phenoxy)-4-oxoazetidine-1-carboxamide	157341-41-8
2-(piperazin-1-yl)pyrimidine	20980-22-7
4-bromo-2,2-diphenylbutanenitrile	39186-58-8
bromomethylcyclopropane	7051-34-5
cyclobutanecarboxylic acid	3721-95-7
2-phenyl-2-pyridylacetonitrile	5005-36-7
5-methyl-2,3,4,5-tetrahydro-1H-pyrido[4,3-b]indol-1-one	122852-75-9
4-(2-methyl-2-phenylhydrazino)-5,6-dihydro-2-pyridone	139122-76-2
4,5,6,7-tetrahydrothieno(3,2-c)pyridine hydrochloride	28783-41-7
methyl 2-(2-chlorophenyl)-2-(4,5,6,7-tetrahydrothieno(3,2-c)pyridin-5-yl)acetate hydrochloride	130209-90-4
2-bromo-2-(2-chlorophenyl)acetic acid	141109-25-3
disodium (2S,3R)-2-hydroxy-3-isobutylsuccinate	157604-22-3
7-amino-3-(2-furoylthiomethyl)-3-cephem-4-carboxylic acid	80370-59-8
methyl 5-chloro-o-anisate	33924-48-0
4-((4-mesylamino)phenyl]-4-oxobutyric acid	100632-57-3
benzyl (3-fluoro-4-morpholinophenyl)carbamate	168828-81-7
(3R)-3-((S)-1-(methylamino)ethyl]pyrrolidine	155322-92-2
(4-carboxybutyl)triphenylphosphonium bromide	17814-85-6
(3aS,9aS,9bR)-3a-methyl-6-[2-(2,5,5-trimethyl-1,3-dioxan-2-yl)ethyl]-1,2,4,5,8,9,9a,9b-octahydro-3aH-cyclopenta[a]naphthalene-3,7-dione	88128-61-4
2-amino-2',5-dichlorobenzophenone	2958-36-3
21-chloro-16-alpha-methylpregna-1,4,9(11)-triene-3,20-dione	151265-34-8
3,20-dioxopregna-1,4,9(11),16-tetraen-21-yl acetate	37413-91-5
uracil	66-22-8
tetrabutylammonium (6-iodo-1H-purin-2-yl)amide	156126-48-6
(1S,2S,3S)-2,3-bis(benzoyloxymethyl)cyclobutanol	132294-17-8
5-methyluridine	1463-10-1
benzyl (1-carbamoyl-2-hydroxypropyl)carbamate	91558-42-8
5,8-dihydro-1-naphthol	27673-48-9
potassium (R)-N-(3-ethoxy-1-methyl-3-oxoprop-1-enyl)-2-phenylglycine	961-69-3
triethylaniline	33881-72-0
1-[4-(2-methylaminoethoxy)[14C]phenyl)]-1,2-diphenylbutan-1-ol	82407-94-1
o-chlorothiophenol	6320-03-2
cytidine 5'-(dihydrogen phosphate)	63-37-6
2-[benzyl(methyl)amino]ethyl acetoacetate	54527-65-0
2-methyl-1-nitrosoindoline	85440-79-5
inosine 5'-disodium phosphate	4691-65-0
4-[1-hydroxy-2-(methylamino)ethyl]phenol--L-tartaric acid (2:1)	16589-24-5
4-phenylpiperidin-4-ol	40807-61-2
1-(4-benzyloxyphenyl)-2-(4-hydroxy-4-phenyl-1-pipendyl)propan-1-one	188591-61-9
7-chloro-2-(4-methoxy-2-methylphenyl)-2,3-dihydro-5H-pyridazino[4,5-b]quinoline-1,4,10- trione, sodium salt	170142-29-7
N'-[N-methoxycarbonyl-L-valyl]-N-[(S)-3,3,3-trifluoro-1-isopropyl-2-oxopropyl]- L- prolinamide	182073-77-4
3-methyl hydrogen 7-chloro-1,4-dihydro-4-oxoquinoline-2,3-dicarboxylate	170143-39-2
(S)-N-[5-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-1H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl} -2-thenoyl]-L-glutamic acid	177575-17-6
(S)-2,2-dimethyl-N-hydroxy-4-[4-(4-pyridyloxy)phenylsulfonyl]-1,4-thiazinane-3 -carboxamide	192329-42-3
urate oxidase	9002-12-4
(Z)-1-[3-(3-chloro-4-cyclohexylphenyl)prop-2-enyl]hexahydro-1H-azepine hydrochloride	139592-99-7
(Z)-N-[3-(3-chloro-4-cyclohexylphenyl)prop-2-enyl]-N-ethylcyclohexylamine hydrochloride	132173-07-0
trans-2'-fluoro-4-hydroxychalcone O-((Z)-2-(dimethylamino)ethyl)oxime--fumaric acid (2:1)	130580-02-8
N',N'-diethyl-2-methyl-N-(6-phenyl-5-propylpyridazin-3-yl)propane-1,2-diamine--fumaric acid (2:3)	137733-33-6
2-[[1-(7-chloro-4-quinolyl)-5-(2,6-dimethoxyphenyl)-1H-pyrazol-3-yl]carbonylamino]-adamantane-2-carboxylic acid	146362-70-1
(S)-N-[4-(4-acetamido-4-phenyl-1-piperidyl)-2-(3,4-dichlorophenyl)butyl]-N- methylbenzamide--fumaric acid (1:1)	176381-97-8
N'-((2R,3S)-5-chloro-3-(2-chlorophenyl)-1-[(3,4-dimethoxyphenyl)sulfonyl]-3-hydroxy-2,3-dihydro-1H-indol-2-ylcarbonyl)-L-prolinamide	150375-75-0
1-(6-chloro-2-pyridyl)-4-piperidylamine hydrochloride	77145-61-0
ethyl ((7S)-7-[((2R)-2-(3-chlorophenyl)-2-hydroxyethyl]amino)-5,6,7,8-tetrahydro-2 -naphthyloxy)-acetate hydrochloride	121524-09-2
methyl O-2-deoxy-6-O-sulfo-2-(sulfoamino)-alpha-D-glucopyranosyl-(1,4)-O-beta-D-glucopyranuronosyl-(1,4)-O-2-deoxy-3,6-di-O-sulfo-2-(sulfoamino)-alpha-D- -glucopyranosyl-(1,4)-2-O-sulfo- alpha-L-idopyranuronosyl-(1,4)-2-deoxy-2-(sulfoamino)-6-(hydrogensulfate)-alpha-D-glucopyranoside, decasodium salt	114870-03-0
3-[[4-(4-amidinophenyl)thiazol-2-yl][1-(carboxymethyl)-4-piperidyl]amino]propionic acid	180144-61-0
ethyl 3-((4-[4-(N-ethoxycarbonylamidino)phenyl]thiazol-2-yl)[1-(ethoxycarbonylmethyl)-4 -piperidyl]amino) propionate	190841-79-3
(S)-1-[2-[3-(3,4-dichlorophenyl)-1-(3-isopropoxyphenacyl)-3-piperidyl]ethyl]-4-phenyl-1 -azoniabicyclo-[2.2.2]octane chloride	153050-21-6
5-(4-chlorophenyl)-1-(2,4-dichlorophenyl)-4-methyl-N-piperidino-1H-pyrazole-3 -carboxamide	168273-06-1
(R)-N-(1-(3-[1-benzoyl-3-(3,4-dichlorophenyl)-3-piperidyl]propyl)-4-phenyl-4-piperidyl)-N-methyl-	

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Product	CAS Number
acetamide hydrochloride	173050-51-6
dibenzyl 1-(2,4-difluorophenyl)-2-(1H-1,2,4-triazol-1-yl)-1-(1H-1,2,4-triazol-1-ylmethyl)ethyl phosphate	194802-25-0
(S)-2-[3-[(2-fluorobenzyl)sulfonylamino]-2-oxo-2,3-dihydro-1-pyridyl]-N-(1-formyl-4-guanidinobutyl)acetamide	179524-67-5
4-[4-(4-[(3R,5R)-5-(2,4-difluorophenyl)-5-(1H-1,2,4-triazol-1-ylmethyl)tetrahydrofuran-3-ylmethoxy]phenyl)piperazin-1-yl]phenyl]-1-[(1S,2S)-1-ethyl-2-hydroxypropyl]-1,2,4-triazol-5(4H)-one	171228-49-2
4-(4-[(11R)-3,10-dibromo-8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-yl]piperidinocarbonylmethyl)piperidine-1-carboxamide	193275-84-2
4-(4-[(11S)-3,10-dibromo-8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-yl]piperidinocarbonylmethyl)piperidine-1-carboxamide	193275-85-3
N-(1-ethyl-1,4-diphenylbut-3-enyl)cyclopropanecarboxamide	137246-21-0
(1S,3S,4S)-1-azabicyclo[2.2.1]heptan-3-ol	142034-92-2
(±)-1-azabicyclo[2.2.1]heptan-3-one	21472-89-9
ethyl [3-(4-bromo-2-fluorobenzyl)-7-chloro-2,4-dioxo-1,2,3,4-tetrahydroquinazolin-1-yl] acetate	112733-28-5
2,6-diisopropylphenyl sulfamate	92050-02-7
diethyl (1-cyano-3-methylbutyl)malonate	189038-82-4
2-imino-1,3-thiazol-4-one	556-90-1
3,5-di-tert-butyl-4-hydroxybenzaldehyde	1620-98-0
N-(biphenyl-2-yl)-4-[(2-methyl-4,5-dihydro-1H-imidazo[4,5-d][1]benzazepin-6-yl)carbonyl]benzamide	79528-39-3
3-(aminomethyl)-5-methylhexanoic acid	128013-69-4
2-(2,4,6-triisopropylphenyl)acetic acid	4376-85-1
N,N'-(dithiobis(o-phenylenecarbonyl))bis-L-isoleucine	182149-25-3
(1R,4S)-1-azabicyclo[2.2.1]heptan-3-one	142034-87-7
3-amino-7-methyl-5-phenyl-1H-1,4-benzodiazepin-2(3H)-one	70890-50-5
1-ethyl-1,4-diphenylbut-3-enylamine	129140-12-1
sodium 1,2,3-triazole-5-thiolate	59032-27-8
(3-ethynylphenyl)(6,7-bis(2-methoxyethoxy)quinazolin-4-yl]amine hydrochloride	183319-69-9
1-[(1S,2S)-2-hydroxy-2-(4-hydroxyphenyl)-1-methylethyl]-4-phenylpiperidin-4-ol methanesulfonate trihydrate	189894-57-3
(5R,6S)-6-phenyl-5-(4-(2-pyrrolidinoethoxy)phenyl]-5,6,7,8-tetrahydro-2-naphthol--(-) -tartaric acid (1:1)	190791-29-8
1-[(S)-3-(acetylthio)-2-methylpropionyl]-L-proline	84838-55-7
4'-benzyloxy-2-[(1-methyl-2-phenoxyethyl)amino]propiophenone hydrochloride	35205-50-6
5-(3-dimethylaminopropyl)-10,11-dihydrodibenzo[a,d]cyclohepten-5-ol	1159-03-1
2-aminoethylisothiuronium	100-36-7
isopropyl (Z)-7-[(1R,2R,3R,5S)-3,5-dihydroxy-2-[(E)-(3R)-3-hydroxy-4-[3-(trifluoromethyl)phenoxy] but-1-enyl]-cyclopentyl]hept-5-enoate	157283-68-6
21-benzyloxy-9-alpha-fluoro-11-beta,17-alpha-dihydroxy-16-alpha-methylpregna-1,4 -diene-3,20-dione	150587-07-6
pilocarpine	92-13-7
atropine	51-55-8
4-nitrobenzyl (4R,5R,6S)-3-(diphenoxyphosphoryloxy)-6-[(R)-1-hydroxyethyl]-4-methyl-7-oxo-1-azabicyclo[3.2.0]hept-2-ene-2-carboxylate	90776-59-3
2-aminopropane-1,3-diol	534-03-2
methyl 4-(bromomethyl)benzoate	2417-72-3
2-butylimidazole-5-carbaldehyde	68282-49-5
ethyl hydrogen (2-thienylmethyl)malonate	143468-96-6
4-(2-butyl-5-formylimidazol-1-ylmethyl)benzoic acid	152146-59-3
2,6-dichloro-4-methylnicotinonitrile	875-35-4
3,5-diacetamido-2,4,6-triiodobenzoic acid dihydrate	50978-11-5
2,2,2-trifluoroethanol	75-89-8
13-ethyl-17-alpha-hydroxy-18,19-dinorpregn-4-en-20-yn-3-one oxime	53016-31-2
estropipate	7280-37-7
4-(4-cyclohexyl-2-methyloxazol-5-yl)-2-fluorobenzenesulfonamide	180200-68-4
17-alpha-hydroxy-3,20-dioxopregna-4,9(11)-diene- 21-yl acetate	7753-60-8
hemocyanins, megathura crenulata, reaction products with 1-O-[O-2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)-O-(N-acetyl-alpha-neuraminosyl)-(2,3)]-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranose	195993-11-4
1-[28-[O-D-apio-beta-D-furanosyl-(1,3)-O-beta-D-xylopyranosyl-(1,4)-O-6-deoxy-alpha-L-mannopyranosyl)-(1,2)-4-O-[5-(5-alpha-L-arabinofuranosyloxy-3-hydroxy-6-methyloctanoyloxy)-3-hydroxy-6-methyloctanoyl]-6-deoxy-beta-D-galactopyranosyloxy]-16-alpha-hydrox	141256-04-4
1-O-[O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-[O-beta-D-galactopyranosyl-(1,3)-2 -acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)]-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranosyl]ceramide	104443-62-1
1-O-[O-2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)-O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranosyl]ceramide	104443-57-4
N-[(1R,2R)-1-[O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-2-acetamido-2-deoxy-beta-D- galactopyranosyl-(1,4)-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranosyloxymethyl]-2-hydroxy-3-formylpropyl]stearamide	196085-62-8
fenfebene	155773-66-1
codeine phosphate hemihydrate	41444-62-6
trans-1-benzoyl-4-phenyl-L-proline	120851-71-0
5-methyluridine hemihydrate	25954-21-6
5'-benzoyl-2',3'-didehydro-3'-deoxythymidine	122567-97-9
3',5'-anhydrothymidine	38313-48-3
4'-benzyloxycarbonyl-4'-demethylepipodophyllotoxin	23363-33-9
2,3,4,6-tetra-O-benzyl-1-O-(trimethylsilyl)-D-D-glucose	80312-55-6
2,3,4,6-tetra-O-benzyl-D-glucose	4132-28-9
6-iodo-1H-purin-2-ylamine	19890-23-4
(1R,2R,3S)-2-amino-9-[2,3-bis(benzoyloxymethyl)cyclobutyl]-9H-purin-6-one	156126-83-3
(1RS,2RS,3SR)-2,3-bis(benzoyloxymethyl)cyclobutylamine	151807-53-3
(1RS,2RS,3RS)-2,3-bis(benzoyloxymethyl)cyclobutanol	127759-90-4
(1R,2R,3S)-9-[2,3-bis(benzoyloxymethyl)cyclobutyl]-6-iodo-9H-purin-2-ylamine	156126-89-3
(2S,3S)-2,3-bis(benzoyloxymethyl)cyclobutanone	132294-16-7
(S)-5-(1,3-dioxolan-4-yl)-2-aminovaleric acid	170242-34-9
N,N'-bis(trifluoroacetyl)-DL-homocystine	105698-54-1
(S)-2-(acetylthio)-3-phenylpropionic acid--dicyclohexylamine (1:1)	157521-26-1
methyl (4S,7S,10aS)-4-amino-5-oxooctahydro-7H-pyrido[2,1-b][1,3]thiazepine-7-carboxylate	167304-98-5
4'-(2-butyl-4-exo-1,3-diazaspiro[4.4]non-1-en-3-ylmethyl)biphenyl-2-carbonitrile	138401-24-6
DL-5-(1,2-dithiolan-3-yl)valeramide	3206-73-3
4-(4-methoxyphenyl)butan-2-one	104-20-1
tetraisopropyl methylenediphosphonate	1660-95-3
(S)-1,2,3,4-tetrahydroisoquinoline-3-carboxylic acid	74163-81-8
(S)-N-tert-butyl-1,2,3,4-tetrahydroisoquinoline-3-carboxamide hydrochloride	149057-17-0
(S)-N-tert-butyl-1,2,3,4-tetrahydroisoquinoline-3-carboxamide sulfate	186537-30-4
(3S)-tetrahydrofuran-3-yl (1S,2R)-3-[(4-aminophenylsulfonyl)(isobutyl)amino]-1-benzyl-2-hydroxypropylcarbamate	181814-49-9
6-benzyl-1-(ethoxymethyl)-5-isopropylpyrimidine-2,4(1H,3H)-dione	149950-60-7
(2R,5S)-4-amino-5-fluoro-1-[2-(hydroxymethyl)-1,3-oxathiolan-5-yl]pyrimidin-2(1H)-one	143491-57-0
3'-azido-2',3'-dideoxy-5-methylcytidine hydrochloride	108895-45-0

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Product	CAS Number
(2R,4R)-4-(2,6-diamino-9H-purin-9-yl)-1,3-dioxolan-2-ylmethanol	145514-04-1
(4R,5S,6S,7R)-1,3-bis(3-aminobenzyl)-4,7-dibenzyl-5,6-dihydroxyhexahydro-2H-1,3-diazepin-2-one dimethanesulfonate	177932-89-7"

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 1, 1997, the following technical corrections are made to the enumerated subheading:

1. For subheading 2918.13.50, the Rates of Duty 1-Special subcolumn is modified by inserting, in alphabetical order, the symbol "K" in the parentheses following the "Free" rate of duty in such subcolumn.

2. The Pharmaceutical Appendix to the HTS is modified by adding to Table 3 of the Appendix the following product, with the product name inserted in alphabetical order in the "Product" column and its Chemical Abstracts Service (CAS) registry number in the "CAS No." column:

"1-{N2-[(S)-1-ethoxycarbonyl-3-phenylpropyl]-N6-trifluoroacetyllsyl}proline	103300-91-0"

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1995, the following technical corrections are made to the enumerated subheadings:

For subheadings 2904.90.47, 2917.39.30, 2918.29.20, 2935.00.05, and 3402.20.10, the Rates of Duty 1-Special subcolumn is modified by inserting, in alphabetical order, the symbol "K" in the parentheses following the "Free" rate of duty in such subcolumn for each such subheading.

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Restored annual leave; Year 2000 (Y2K) computer conversion; comments due by 7-14-99; published 6-14-99

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Pilatus Aircraft Ltd.; comments due by 7-14-99; published 6-14-99
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Insurer reporting requirements:
Insurers required to file reports; lists; comments due by 7-13-99; published 5-14-99

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Practice before Internal Revenue Service; general review of regulations; comments due by 7-15-99; published 6-15-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 435/P.L. 106–36

Miscellaneous Trade and Technical Corrections Act of 1999 (June 25, 1999; 113 Stat. 127)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1999
5 Parts:			
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700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
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*50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
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Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

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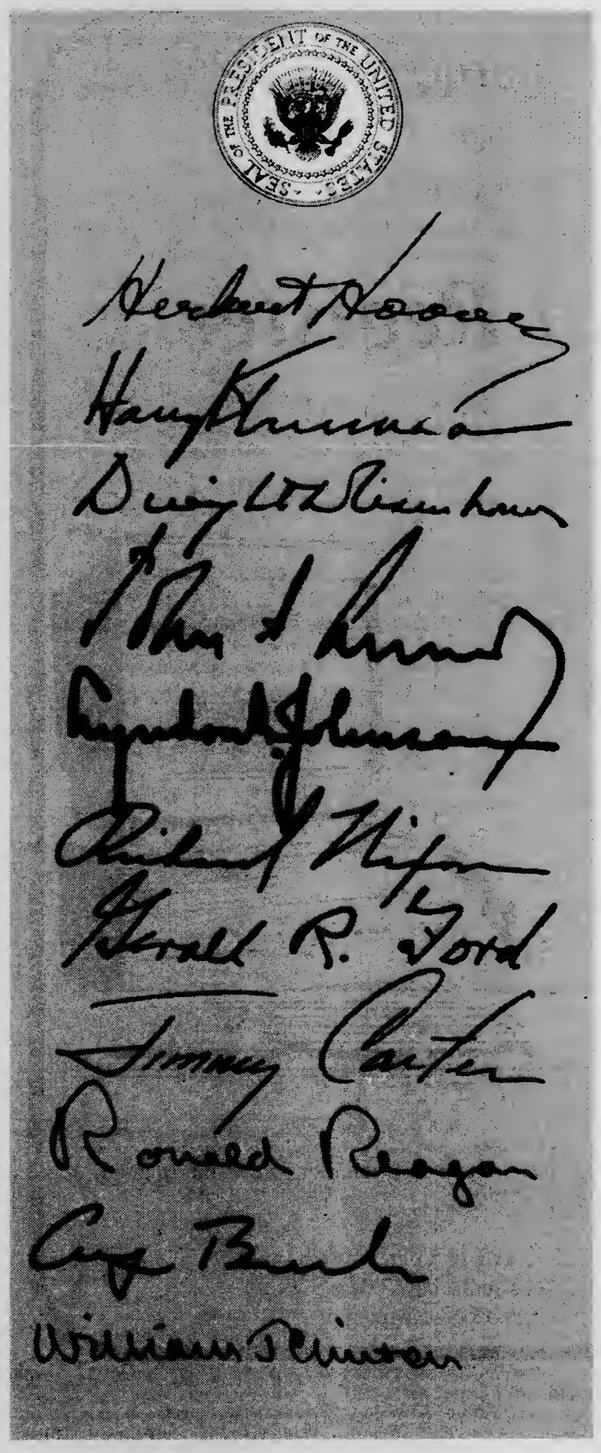
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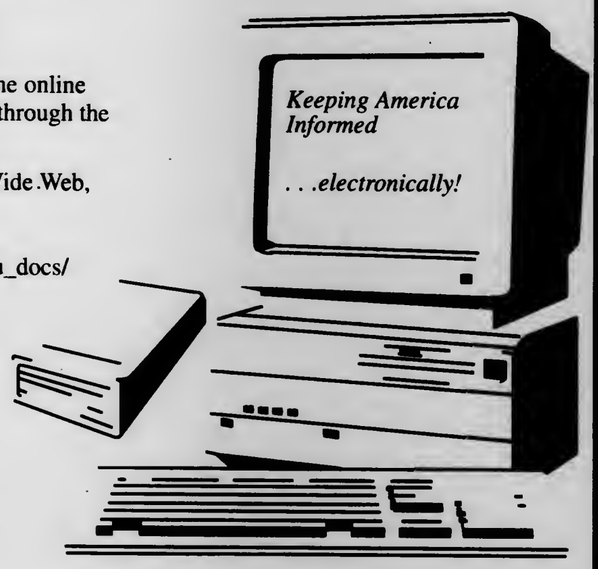
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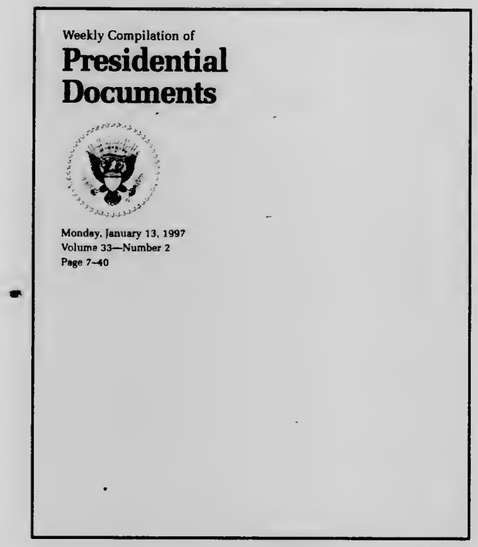
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Federal Register
Vol. 64, No. 129
Wednesday, July 7, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

[INS No. 1796–96]

RIN 1115–AE53

Canadian Border Boat Landing Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: Immigration and Naturalization Service (Service) published an interim rule in the **Federal Register** on September 11, 1997, which amended the regulations to clarify and standardize procedures for the application, issuance, and use of Form I–68, Canadian Border Boat Landing Card. This rule adopts the interim rule as final with two minor changes. The first change clarifies that a Visa Waiver Pilot Program (VWPP) national participating in the I–68 program need not obtain or have a visa, provided that he or she is in possession of a valid unexpired I–94W and the Form I–68. This change is consistent with the requirements for entry into the United States by a VWPP participant. The second change provides that the Form I–68 is valid for 1 year regardless of the length of validity of an applicant's Form I–94 or I–94W.

DATES: This final rule is effective August 6, 1999.

FOR FURTHER INFORMATION CONTACT:
Jennifer Sava, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4057, Washington, DC 20536, telephone (202) 307–1942.

SUPPLEMENTARY INFORMATION:

Background

In general, the Service regulations at 8 CFR 235.1(a) require that an application for entry into the United States must be made in person to an Immigration Officer at a U.S. port-of-entry (POE) at a time when the port is open for inspection. However, 8 CFR 235.1(e) provides an exception to this requirement by providing for participation in the Canadian Border Boat Landing Permit (I–68) program, which allows certain persons who enter the United States by small boat to be inspected once per year, and thereafter enter from time to time for recreational purposes without further inspection.

On August 7, 1995, the Service published a final rule in the **Federal Register** at 60 FR 40064, establishing a fee of $16 per individual with a family cap of $32 for applying to participate in the I–68 program. A family was described in that rule as a husband, wife, unmarried children under 21 years of age, and the parents of either husband or wife residing at the same address.

During the past several years, members of the boating community and members of Congress have expressed concern regarding the I–68 program. Specifically, they were concerned that the enrollment and enforcement criteria and procedures vary from district office to district office and that the permit is sometimes difficult to obtain. The imposition of a fee for the permit also sparked concern.

In an effort to improve the I–68 program, the Service met with members of the boating community, other Federal inspection and enforcement agencies, congressional staffers, and representatives of the Canadian Government on August 13, 1996, in Alexandra, Virginia. Numerous suggestions for improving the program were received and were incorporated into an interim rule that was published in the **Federal Register** on September 11, 1997, at 62 FR 47749.

The interim rule amended the regulations to allow:

(1) Boaters to enter the United States for pleasure for brief visits which do not exceed 72 hours in duration to travel within 25 miles of the shoreline area along the northern border of the United States.

(2) Persons who are renewing a valid permit to do so by mail;

(30 Persons who are enrolled in one of the Service's Alternative Inspection programs to be automatically included in the I–68 program without requiring an additional application or fee; and

(4) The inclusion in the program of landed immigrants of Canada, who are not citizens of British Commonwealth Countries, provided they are nationals of a country designated for participation in the VWPP and are in possession of a valid, unexpired passport issued by their country of nationality, an unexpired United States visa, and a valid multiple entry I–94 to the United States.

The interim rule included a request for comments by November 10, 1997. The Service received one response concerning several issues in the interim rule. The following is a discussion of the comment and the Service's response.

Discussion of Comment

Fees

The commenter wanted to abandon the cost associated with obtaining the Form I–68. Under the Federal User Fee Statute, 31 U.S.C. 9701, and the Office of Management and Budget Circular A–25, User Charges, reasonable charges should be imposed to recover the full cost to the Federal Government of rendering certain services that provide a specific benefit to the recipient of those services. Accordingly, the fee for the I–68 will be retained in the final rule.

Difficulty in Obtaining Permit

The commenter states that obtaining the permit is difficult. The Service disagrees. Each boating season, in order to make this benefit easily available, inspectors travel to boat shows, marinas, and other gatherings to issue the Form I–68. In addition, the Service's districts mount publicity campaigns to educate boaters about these requirements. The Service has further reduced this burden by allowing a person to renew a valid permit by mail. Application forms are available by mail to the public. Applicants may call 1–800–870–3676 to obtain Form I–68. The I–68 application forms are also available at the INS Home Page on the World Wide Web at http://www.ins.usdoj.gov. Further, the Service has reduced the burden on the public by considering those persons who are enrolled in one of the Service's Alternative Inspections programs such

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as the Immigration and Naturalization Service's Passenger Accelerated Service System (INSPASS), the Dedicated Commuter Lane (DCL), or an Automated Permit Port (APP) program to be automatically included in the I–68 program without requiring an additional application or fee.

Using a Cost-Free Telephone Reporting Requirement

The commenter also suggested the use of a cost-free telephone reporting system for boaters entering the United States. Telephonic inspections, which are allowed by Customs Service regulations to satisfy their reporting requirements, are not authorized by Service Regulations. The Service requires that every person entering the United States must be inspected in a manner that includes face-to-face interaction with an immigration officer or verification of biometric information of the applicant for admission. The Service has developed a videophone reporting system which meets these requirements that may serve as an alternative to the I–68 program. The purpose of the videophone inspection program is to facilitate international border crossing by providing a convenient and cost effective means of reporting to the Service. The Service has implemented videophones at several sites in New York, Michigan, Ohio, and Pennsylvania. The Service may consider expansion to other sites after this reporting system for boaters is evaluated, and if it is shown to be efficient.

Changes in the Final Rule

In reviewing the interim rule, the Service has determined that the requirement that I–68 program participants who do not share a common nationality with Canadian nationals, but who are nationals of designated VWPP countries, must have a unexpired visa, is not consistent with the general admission requirements for VWPP nationals seeking admission into the United States as VMPP participants. The VWPP allows nationals from designated countries, who are otherwise admissible, to visit the United States for up to 90 days for business or pleasure without obtaining a nonimmigrant visa. To be eligible to participate in the I–68 program as a landed Canadian immigrant who is also a VWPP national, the alien must first apply for admission as a VWPP alien at a designed 24/hour staffed Class A POE. If admitted to the United States under the VWPP at a land border POE, the alien will be issued a multiple entry, arrival/departure Form I–94W. At any time during the 90-day validity period of the I–94W, the VWPP national may enter the United States pursuant to the Canadian Boat Landing Program provided that he or she is in possession of the valid, endorsed, unexpired I–94W, as well the Form I–68. The interim rule stated that Form I–68 shall not be valid for a period longer than the validity of the applicant's Form I–94. The final rule has been amended, however, to state that Form I–68 is valid for 1 year in all cases. It should be noted that once the Form I–94 or I–94W expires, the applicant must once again formally apply for admission at a staffed Class A POE.

Alternatively, a landed immigrant of Canada who is a national of a VWPP country may apply for a nonimmigrant visa, such as a B–2 which is issued to temporary visitors for pleasure, rather than apply for admission under the VWPP. The visa, if approved, would authorize a period of stay in the United States longer than that allowed under the VWPP. Such an alien may participate in the Canadian Boat Landing Program provided that he or she is in possession of the unexpired visa, a valid Form I–94, and a Form I–68 upon each subsequent entry under the program.

Accordingly, the final regulation has been amended to clarify that an I–68 participant who is a VWPP national, but who was not previously admitted under the VWPP and issued a multiple entry I–94W, must be in possession of a non-immigrant visa each time he or she uses the Canadian Boat Landing Program to enter the United States. Regardless of whether such a landed immigrant has been admitted via the VWPP or on a nonimmigrant visa, he or she must be in possession of a Form I–68, valid passport, and a valid, unexpired multiple entry Form I–94 or I–94W.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule merely finalizes an interim rule which was published in the **Federal Register** on September 11, 1997. The interim rule was developed and issued after the Service conducted meetings with members of the boating community, other Federal inspection and enforcement agencies, congressional staffers, and representatives of the Canadian Government. The intent of the interim and this final rule are to simplify the application process, and standardize the issuance and use of Form I–68. This final rule imposes no additional burden on applicants or small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements. This information collection (Form I–68) was previously approved for use by the Office of Management and Budget (OMB) under the OMB control number 1115–0065.

List of Subjects in 8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Passports and visas.

Accordingly, the interim rule amending 8 CFR part 235 which was published at 62 FR 47749 on September 11, 1997, is adopted as a final rule with the following changes:

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 235.1 is amended by:

a. Revising the third sentence in paragraph (e) introductory text;

b. Revising paragraph (e)(1)(v);

c. Revising paragraph (e)(4); and by

d. Revising paragraph (e)(5)(ii), to read as follows:

§ 235.1 Scope of examination.

* * * * *

(e) * * * Landed immigrants of Canada who do not share a common nationality with nationals of Canada, but who are nationals of a designated country listed in § 217.2(a) of this chapter (Visa Waiver Pilot Program) must be in possession of a valid, unexpired passport issued by his or her country of nationality, and an unexpired multiple entry Form I–94 or I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form, and a valid unexpired United States visa (if the alien is not in possession of a valid unexpired Form I–94W). * * *

(1) * * *

(v) A landed immigrant of Canada who does not have a common nationality with nationals of Canada, but who is a national of a designated country listed in § 217.2(a) of this chapter (Visa Waiver Pilot Program) must also present his or her passport, a valid unexpired multiple entry Form I–94 or I–94W and valid, unexpired nonimmigrant visa if he or she is not in possession of a valid, unexpired multiple entry Form I–94W. Such a landed immigrant of Canada may apply for admission simultaneously with the I–68 application and thereby obtain a Form I–94 or I–94W.

* * * * *

(4) *Validity.* Form I–68 shall be valid for 1 year from the date of issuance, or until revoked or violated by the Service.

(5) * * *

(ii) Participants must be in possession of any authorization documents issued for participation in this program or another Service Alternative Inspections program (INSPASS or PORTPASS). Participants over the age of 15 years and who are not in possession of an INSPASS or PORTPASS enrollment card must also be in possession of a photographic identification document issued by a governmental agency. Participants who are landed immigrants of Canada and do not have a common nationality with nationals of Canada, but who are nationals of a designated country listed in § 217.2(a) of this chapter must also be in possession of proper documentation as described in paragraph (e) of this section.

* * * * *

Dated: June 30, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–17101 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–63–AD; Amendment 39–11218; AD 99–14–07]

RIN 2120–AA64

Airworthiness Directives; Dassault Model 2000, 900EX, and Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Falcon 2000 series airplanes; and certain Dassault Model 900EX, and Mystere Falcon 900 series airplanes, that requires repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary; repetitive replacement of the inboard flap jackscrews with new jackscrews; repetitive measurement of the screw/nut play to detect discrepancies; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent jamming of the flap jackscrews, which could result in the inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane.

EFFECTIVE DATE: August 11, 1999.

ADDRESSES: Information pertaining to this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dassault Model Falcon 2000 series airplanes; and certain Dassault Model 900EX, and Mystere Falcon 900 series airplanes was published in the **Federal Register** on May 3, 1999 (64 FR 23552). That action proposed to require repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary; repetitive replacement of the inboard flap jackscrews with new jackscrews; repetitive measurement of the screw/nut play to detect discrepancies; and corrective action, if necessary.

Explanation of Changes Made to This Final Rule

In the applicability paragraph of the proposed rule, the FAA inadvertently transposed the serial numbers for Falcon 900EX and Mystere Falcon 900 series airplanes. Therefore, the applicability paragraph of the final rule has been revised to read, "All Model Falcon 2000 series airplanes; Falcon 900EX series airplanes, serial numbers 04 and subsequent; and Mystere Falcon 900 series airplanes, serial numbers 161 and subsequent; certificated in any category."

For clarification purposes, the FAA also has revised "NOTE 2" of the final rule by changing all references to the "Airplane Flight Manual (AFM)" to correctly reference the "Airplane Maintenance Manual (AMM)."

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has

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determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

The FAA estimates that 159 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required operational test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational test required by this AD on U.S. operators is estimated to be $9,540, or $60 per airplane, per test cycle.

It will take approximately 8 work hours per airplane to accomplish the required flap jackscrew replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $21,200 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $3,447,120, or $21,680 per airplane, per replacement cycle.

It will take approximately 8 work hours per airplane to accomplish the required measurement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the measurement required by this AD on U.S. operators is estimated to be $76,320, or $480 per airplane, per measurement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–14–07 Dassault Aviation [Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)]: Amendment 39–11218. Docket 99–NM–63–AD.

Applicability: All Model Falcon 2000 series airplanes; Falcon 900EX series airplanes, serial numbers 04 and subsequent; and Mystere Falcon 900 series airplanes, serial numbers 161 and subsequent; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the flap jackscrews, which could result in inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Operational Test

(a) Within 5 flight cycles after the effective date of this AD: Perform an operational test of the flap asymmetry detection system to ensure that the system is functioning correctly, in accordance with the procedures specified in Falcon 2000 Airplane Maintenance Manual (AMM) 27–502, dated November 1995; Falcon 900 AMM 27–502, dated January 1995; or Falcon 900EX AMM 27–502, dated September 1996, as applicable. Prior to further flight, repair any discrepancy detected in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent). Repeat the operational test thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Repetitive Replacement

(b) Prior to the accumulation of 1,000 total flight cycles on the inboard flap jackscrews, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Replace the inboard flap jackscrews with new jackscrews in accordance with the procedures specified in Falcon 2000 AMM 27–510, dated November 1995; Falcon 900 AMM 27–521, dated December 1998; or Falcon 900EX AMM 27–510, dated September 1996, as applicable. Repeat the replacement thereafter at intervals not to exceed 1,000 flight cycles.

Repetitive Inspection

(c) Prior to the accumulation of 1,000 total flight cycles on the outboard and center flap jackscrews, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the outboard and center flap jackscrews to detect discrepancies, in accordance with the procedures specified in Falcon 2000 AMM, Temporary Revision (TR) 27–504, dated October 1998; Falcon 900 AMM, TR 27–514, dated February 1999; or Falcon 900EX AMM, TR 27–514, dated February 1999, as applicable.

Note 2: The AMM revisions required by paragraph (c) of this AD may be accomplished by inserting a copy of the TR's into the applicable AMM. When these TR's have been incorporated into the general revisions of the AMM, the general revisions may be inserted into the AMM, provided that the information contained in the general revisions is identical to that specified in the TR's.

(1) If the measurement is greater than 0.014 inch, prior to further flight, replace the discrepant flap jackscrew with a new jackscrew in accordance with the procedures specified in Falcon 2000 AMM 27–510, dated November 1995; Falcon 900 AMM 27–521, dated December 1998; or Falcon 900EX AMM 27–510, dated September 1996, as applicable. Repeat the inspection thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

(2) If the measurement is less than or equal to 0.014 inch, repeat the measurement thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 1999–038–008(B), dated January 27, 1999 (for Falcon 2000 series airplanes); and 1999–082–024(B) dated February 24, 1999 (for Falcon 900 and Mystere Falcon 900EX series airplanes).

(f) This amendment becomes effective on August 11, 1999.

Issued in Renton, Washington, on June 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17061 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–112–AD; Amendment 39–11215; AD 99–08–02 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects and clarifies an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires a one-time inspection to detect discrepancies of the center fuel tank wiring and components, and corrective action, if necessary; and a one-time electrical bonding test of the center fuel tank components, and rework, if necessary. For certain airplanes, the existing AD also requires a one-time insulation resistance test and a one-time inspection to detect discrepancies of the wiring and components of the fuel quantity indication system (FQIS), and corrective actions, if necessary; replacement of certain FQIS probes with certain newer probes; a system adjustment and system operational test; and modification (installation of a flame arrestor) of the inlet line of the scavenge pump of the center fuel tank. This amendment corrects an inadvertent omission to reference a specific section of the appropriate service information, and clarifies certain other requirements. This amendment is prompted by a comment received subsequent to issuance of the existing final rule, requesting clarification of certain requirements of the existing AD. The actions specified in this AD are intended to prevent ignition sources and consequent fire/explosion in the center fuel tank.

DATES: Effective May 11, 1999.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 11, 1999 (64 FR 16625, April 6, 1999).

FOR FURTHER INFORMATION CONTACT: Dionne Stanley, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On March 29, 1999, the FAA issued AD 99–08–02, amendment 39–11106 (64 FR 16625, April 6, 1999), applicable to certain Boeing Model 747 series airplanes, to require a one-time visual inspection to detect discrepancies of the center fuel tank wiring and components, and corrective action, if necessary; and a one-time electrical bonding test of the center fuel tank components, and rework, if necessary. For certain airplanes, that AD also requires a one-time insulation resistance test and a one-time visual inspection to detect discrepancies of the wiring and components of the fuel quantity indication system (FQIS), and corrective actions, if necessary; replacement of certain FQIS probes with certain newer probes; a system adjustment and system operational test; and modification (installation of a flame arrestor) of the inlet line of the scavenge pump of the center fuel tank. That action was prompted by design review and testing results obtained in support of an accident investigation. The actions required by that AD are intended to prevent ignition sources and consequent fire/explosion in the center fuel tank.

Actions Since Issuance of AD 99–08–02

Since the issuance of AD 99–08–02, the FAA has become aware of certain errors in Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998. That service bulletin is cited as the source of service information for paragraph (b) of that AD, which requires replacement of "series 3" (or earlier series) FQIS probes with new "series 4" (or subsequent series) probes. The term "probes," as used in the AD, applies generically to either "tank units" or "compensators." The intent of the requirement of AD 99–08–02 to replace "series 3" (or earlier series) FQIS probes is to purge the Boeing Model 747 fleet of those FQIS probes (both tank units and compensators) that utilize a knurled surface terminal block, which contribute to the chafing problem.

The Background and Reason sections of Alert Service Bulletin 747–28A2208 state that "series 3" or earlier FQIS tank units and compensators have a knurled surface. With respect to the tank units, Figure 5 of the Accomplishment Instructions of that alert service bulletin recommends replacement of "series 3" (or earlier) configurations with "series 4" (or later) configurations. However, with respect to the compensators, Figure 5 recommends removal of series 1, 2, 3, 4, 11, 12, 13, or 14 configurations of certain compensator part numbers and replacement with series 1, 5, 6, 15, or 16 of certain other compensator part numbers. Because of inconsistencies in Alert Service Bulletin 747–28A2208 that were included in AD 99–08–02, paragraph (b) of this AD has been revised to clarify that the replacement of FQIS probes (tank units and compensators) with new or serviceable components be accomplished in accordance with Figure 5 of the alert service bulletin.

Clarification of Inspection Types

In paragraphs (a) and (b) of this AD, the FAA has added a definition of the type of inspection required by those paragraphs.

Clarification of Note 2

Clarification of NOTE 2 of AD 99–08–02 may be helpful to operators required to comply with the paragraph (a) of AD 99–08–02. Actions performed in accordance with Boeing Service Bulletin 747–28–2205, dated June 27, 1997, accomplished prior to the effective date of this AD, are considered acceptable for compliance only with the corresponding

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applicable actions specified in this AD. This excludes actions that are not described in that bulletin, such as inspection and testing of the body fuel tank components that are described in Revision 1 of Boeing Service Bulletin 747–28–2205. Additionally, the requirements of this AD to repair and to replace apply equally to discrepancies detected under either version of Boeing Service Bulletin 747–28–2205. NOTE 2 of this AD has been revised accordingly.

Clarification of Note 3

Airplanes affected by paragraph (b) of AD 99–08–02 include only certain Boeing Model 747–100, –200, –300, –SP, and –SR series airplanes, but no –400 series airplanes. NOTE 3 of that AD exempts airplanes affected by paragraph (b) from accomplishing steps 1, 2, and 4 through 9 in Figure 11 of Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998 [the source of service information for accomplishment of paragraph (a) of that AD]; the only step required is step 3. However, since the issuance of AD 99–08–02, the FAA has determined that step 3 applies only to Boeing Model 747–400 airplanes'—which are not affected by the requirements of paragraph (b). Therefore, step 3 has been included with the steps that are exempt from the requirement to accomplish the inspection in NOTE 3 of this final rule. This change is for clarification purposes only and does not affect the actual implementation of the requirements of that AD.

Clarification of Affected Airplanes for Paragraph (c)

Operators should note that paragraph (c) of AD 99–08–02 identifies certain airplanes by their line "positions." In the context of the service information cited for paragraph (c), the term "line positions" refers to airplane line numbers, rather than manufacturer's tracking numbers for production airplanes. To clarify the identity of the affected airplanes, paragraph (c) of this AD identifies those airplanes by line "numbers."

Clarification of the Applicability of the AD

Although the Summary page of Boeing Service Bulletin 747–28A2208, dated May 14, 1998, does not have the Boeing Model 747–SR listed in the Effectivity section, the Effectivity listing in the text of that service bulletin does list the appropriate applicable airplane identification numbers, which include Boeing Model 747–100, –200, –300, SP, and SR series airplanes. No change to this AD is necessary because paragraph (b) of the AD requires action for "those airplanes listed in Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998," which does include all of the appropriate airplanes. This information is provided for clarification so that no confusion would exist due to the inconsistency identified in the Boeing service bulletin. There is no change to this final rule as a result of this clarification.

Action is taken herein to clarify these requirements of AD 99–08–02 and to correctly add the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains May 11, 1999.

Since this action only corrects and clarifies the current requirements, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11106 (64 FR 16625, April 4, 1999), and by adding a new airworthiness directive (AD), amendment 39–11215, to read as follows:

99–08–02 R1 Boeing: Amendment 39–11215. Docket 99–NM–112–AD. Revises AD 99–08–02, Amendment 39–11106.

Applicability: Model 747 series airplanes having line numbers 1 through 1124 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition sources and consequent fire/explosion in the center fuel tank, accomplish the following:

Fuel Tank Inspection and Bonding Test

(a) For those airplanes listed in Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998: Within 24 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with the service bulletin.

(1) Perform a one-time visual inspection of the center fuel tank wiring and components to detect discrepancies (damage, disbonding, and incorrect installation). For the purposes of this AD, a visual inspection is considered to be a general visual inspection, which is defined as: "A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light and may require removal or opening of access panels or doors. Stands, ladders, or platforms, may be required to gain proximity to the area being checked." If any discrepancy is detected, prior to further flight, repair the discrepant component, or replace it with a new or serviceable component. And

(2) Perform a one-time electrical bonding test of the center fuel tank components. If any measured resistance exceeds the limits specified by the service bulletin, prior to further flight, rework the discrepant component.

Note 2: Actions performed in accordance with Boeing Service Bulletin 747–28–2205, dated June 27, 1997, accomplished prior to the effective date of this AD, are considered acceptable for compliance only with the corresponding applicable actions specified in this AD. This excludes certain actions that are not described in that bulletin, such as inspection and testing of the body fuel tank components that are described in Revision 1 of Boeing Service Bulletin 747–28–2205. Regardless of which version of the service bulletin is used to detect any discrepancies, the repair and replacement requirements of this AD apply.

Note 3: Airplanes required to accomplish paragraph (b) of this AD are exempt from accomplishing steps 1 through 9 in Figure 11 of Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998.

FQIS Testing and Probe Replacement

(b) For those airplanes listed in Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998: Within 24 months after the effective date of this AD, perform a one-time insulation resistance test of the fuel quantity indication system (FQIS), a one-time visual inspection of the FQIS wiring and components to detect discrepancies (chafing damage to the wiring and incorrect configuration of the terminal blocks), replacement of FQIS probes (tank units and compensators) with new or serviceable components in accordance with Figure 5 of the alert service bulletin, and system adjustment and system operational test; in accordance with the alert service bulletin. For the purposes of this AD, a visual inspection is considered to be a general visual inspection, which is defined as: "A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light and may require removal or opening of access panels or doors. Stands, ladders, or platforms, may be required to gain proximity to the area being checked." If any discrepancy is detected, prior to further flight, perform corrective actions in accordance with the alert service bulletin.

Note 4: For airplanes on which steps 1 through 9 in Figure 11 of Boeing Service Bulletin 747–28–2205, dated June 27, 1997, or Revision 1, dated April 16, 1998, were accomplished prior to the effective date of this AD, steps 1 through 6 in Figure 16 of Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998, are not required.

Flame Arrestor Installation

(c) For airplanes having line numbers 1 through 971 inclusive: Within 24 months after the effective date of this AD, install a flame arrestor in the inlet line of the electrical motor-operated scavenge pump of the center fuel tank, in accordance with Boeing Alert Service Bulletin 747–28A2210, dated May 14, 1998.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(d)(2) Alternative methods of compliance, approved previously in accordance with AD 99–08–02, amendment 39–11106, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998; Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998; and Boeing Alert Service Bulletin 747–28A2210, dated May 14, 1998. This incorporation by reference was approved previously by the Director of the Federal Register as of May 11, 1999 (64 FR 16625, April 6, 1999). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) The effective date of this amendment remains May 11, 1999.

Issued in Renton, Washington, on June 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17062 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–2]

Revision of Class E Airspace; Yakutat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Yakutat, AK. The establishment of three Standard Instrument Approach Procedures (SIAP) to runway (RWY) 02, RWY 11, and RWY 29 at Yakutat, AK, made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Yakutat, AK.

EFFECTIVE DATES: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.ctr.van-Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On April 20, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Yakutat, AK, was published in the **Federal Register** (64 FR 19312). The proposal was necessary due to the establishment of three SIAP to RWY 02, 11, and 29 at Yakutat, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as airport surface areas are published in paragraph 6002 and the Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Yakutat, AK, through the establishment of three VOR instrument approaches to RWY 02, 11, and 29. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this action is to provide adequate controlled airspace for IFR operations at Yakutat, AK.

The FAA has determined that these regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AAL AK E2 Yakutat, AK [Revised]

That airspace extending upward from the surface within the area bounded by
Lat. 59° 41′ 01″ N., long. 139° 46′ 55″ W.
to
Lat. 59° 31′ 00″ N., long. 139° 29′ 21″ W.
to
Lat. 59° 24′ 35″ N., long. 139° 27′ 13″ W.
to
Lat. 59° 20′ 14″ N., long. 139° 36′ 38″ W.
to
Lat. 59° 34′ 20″ N., long. 140° 01′ 32″ W.
to the point of beginning.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Yakutat, AK [Revised]

Yakutat VORTAC
(Lat. 59° 30′ 39″ N., long. 139° 38′ 53″ W.)
That airspace extending upward from 700 feet above the surface within the area bounded by
Lat. 59° 47′ 42″ N., long. 139° 58′ 48″ W.
to
Lat. 59° 37′ 33″ N., long. 139° 40′ 53″ W.
then along the 7-mile radius of the Yakutat VORTAC clockwise to
Lat. 59° 28′ 54″ N., long. 139° 25′ 35″ W.
to
Lat. 59° 20′ 16″ N., long. 139° 10′ 20″ W.
to
Lat. 59° 02′ 49″ N., long. 139° 47′ 45″ W.
to
Lat. 59° 30′ 15″ N., long. 140° 36′ 43″ W.
to the point of beginning; and that airspace extending upward from 1,200 feet above the surface within the area bounded by lat. 59° 53′ 20″ N., long. 139° 58′ 13″ W. to Yakutat VORTAC 118° radial 23 DME then along the Yakutat VORTAC 118° radial to 41 DME then clockwise along the 41 mile radius of the Yakutat VORTAC to the Yakutat VORTAC 298° radial then southeast along the 298° radial to the Yakutat VORTAC 298° radial 25 DME to the point of beginning, and within 5.6 miles each side of the Yakutat VORTAC 118° radial to 65 miles southeast of the VORTAC excluding Control 1487L and the Gulf of Alaska Low Class E airspace areas.

* * * * *

Issued in Anchorage, AK, on June 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–17167 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–3]

Revision of Class E Airspace; Atqasuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Atqasuk, AK. The establishment of two Standard Instrument Approach Procedures (SIAP) to runway (RWY) 06 and RWY 24 at Atqasuk, AK, have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Atqasuk, AK.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.ctr.van-Haastert@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On April 20, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Atqasuk, AK, was published in the **Federal Register** (64 FR 19313). The proposal was necessary due to the establishment of SIAPs to RWY 06 and RWY 24 at Atqasuk, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Atqasuk, AK, through the establishment of two VOR instrument approaches to RWY 06 and RWY 24. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Atqasuk, AK.

The FAA has determined that these regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Atqasuk, AK [Revised]

Atqasuk Airport
(Lat. 70° 28′ 02″ N., long. 157° 26′ 09″ W.)
That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Atqasuk Airport.

* * * * *

Issued in Anchorage, AK, on June 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–17168 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–9]

Revision of Class E Airspace; Adak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Adak, AK. The upcoming decommission of the military Nondirectional Beacon (NDB) and commission of the new NDB/Distance Measuring Equipment (DME), along with the establishment of Global Positioning System (GPS) and NDB/DME instrument approaches at Adak, AK, have made this action necessary. Additionally, the Class E airspace descriptions at Adak, AK, have been consolidated into one description. The intended effect of this action is to update the airspace descriptions and provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Adak, AK.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.ctr.van-Haastert@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On April 20, 1999 a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Adak, AK, was published in the **Federal Register** (64 FR 19314). The proposal was necessary due to the following: (1) the Naval Air Facility (NAF) Adak ceased active military airfield operations on March 31, 1997; (2) the military tower closed and the airfield converted to an uncontrolled airport; (3) the airspace around Adak, AK, has been modified to reflect remaining navigational aids and new requirements; (4) the Adak military NDB and military Tactical Air Navigational Aid (TACAN) will be decommissioned; (5) a new FAA NDB/DME (Mount Moffett NDB/DME) will be commissioned; and (6) two new instrument approach procedures, NDB/DME and GPS, have been developed for runway (RWY) 23.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 in FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace areas designated as an extension to a Class D or Class E surface area are published in FAA Order 7400.9F, paragraph 6004, and paragraph 6005 lists the Class E airspace areas designated as an 700/1200 foot transition area. The Class E airspace listed in this document as a surface area or extension to a surface area will be revoked and removed in the Order. The Class E airspace designations listed in this document as 700/1200 foot transition areas will be revised and published in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Adak, AK, due to the following: (1) the NAF Adak ceased active military airfield operations; (2) the military tower closed and the airfield converted to an uncontrolled airport; (3) the airspace around Adak, AK, has been modified to reflect remaining navigational aids and new requirements; (4) the Adak military NDB and military TACAN will be decommissioned; (5) a new FAA NDB/DME (Mount Moffett NDB/DME) will be commissioned; and (6) two new instrument approach procedures, NDB/DME and GPS, have been developed for RWY 23.

The FAA has determined that these regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

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Paragraph 6002 Class E airspace areas designated as surface areas for an airport

* * * * *

AAL AK E2 Adak, AK [Revoked]

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

AAL AK E4 Adak, AK [Revoked]

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Adak, AK [Revised]

Adak Airport, AK
(Lat. 51° 52′ 41″ N., long. 176° 38′ 45″ W.)
Mount Moffett NDB
(Lat. 51° 52′ 19″ N., long. 176° 40′ 34″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Adak Airport and within 5.2 miles northwest and 4.2 miles southeast of the 061° bearing of the Mount Moffett NDB extending from the 7-mile radius to 11.5 miles northeast of the Adak Airport; and that airspace extending upward from 1,200 feet above the surface within 11-mile radius of the Adak Airport, and within 16 miles of the Adak Airport extending clockwise from the 033° bearing to the 081° bearing of the Mount Moffett NDB.

* * * * *

Issued in Anchorage, AK, on June 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–17169 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–5]

Establishment of Class E Airspace; Palmer, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Palmer, AK. The establishment of a Global Positioning System (GPS) instrument approach at the Palmer Municipal Airport made this action necessary. The Palmer Municipal Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal will provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Palmer, AK.

EFFECTIVE DATES: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Durand, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On April 20, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Palmer, AK, was published in the **Federal Register** (64 FR 19316). The proposal was necessary due to the establishment of a GPS instrument approach at Palmer, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace listed in this document will be published in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Palmer, AK, through the establishment of a GPS instrument approach. The Palmer Municipal Airport status will change from VFR to IFR. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Palmer, AK.

The FAA has determined that these regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Palmer, AK [New]

Palmer Municipal Airport, AK
(Lat. 61°35′41″ N., long. 149°05′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Palmer Municipal Airport.

* * * * *

Issued in Anchorage, AK, on June 28, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–17170 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Recordkeeping

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On May 27, 1999, the Commodity Futures Trading Commission ("Commission") published a rule in the **Federal Register** (64 FR 28735) announcing final amendments to the recordkeeping obligations imposed in Regulation 1.31. The Commission's rule provided that all the amendments would become effective on June 28, 1999. Recently the Commission learned that recordkeepers using only electronic storage media may need additional time to finalize arrangements with third party technical consultants necessary to meet the new condition imposed in section (b)(4) of amended Regulation 1.31.[1] In order to avoid undue hardship for these recordkeepers, and in view of the alternative safeguards protecting the Commission's right to timely access to required records stored electronically, the Commission has decided to extend the effective date of § 1.31(b)(4)'s requirements until September 27, 1999.

DATES: Effective July 7, 1999, 17 CFR 1.31(b)(4) is stayed until September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Edson G. Case, Counsel, or Laurie Plessala Duperier, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

Under the authority of 7 U.S.C. 12a(5), 17 CFR 1.31(b)(4) is stayed until September 27, 1999.

Issued in Washington, D.C. on June 30, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–17004 Filed 7–6–99; 8:45 am]

BILLING CODE 6351–01–M

[1] Section (b)(4) of the amended regulation requires recordkeepers who use only electronic storage media to preserve some or all of their required records to enter into an arrangement with a third party technical consultant. This arrangement must provide that the technical consultant will have access to and the ability to download information from the recordkeeper's electronic storage media to a medium acceptable under amended Regulation 1.31. The technical consultant must also file an undertaking to provide the Commission with access to the recordkeeper's required records under specified conditions.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8793]

RIN 1545–AW38

Payment by Credit Card and Debit Card; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to temporary regulations that were published in the **Federal Register** on Tuesday, December 15, 1998 (63 FR 68995) relating to the payment of taxes by credit card and debit card.

DATES: This correction is effective January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mitchel S. Hyman, (202) 622–3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are subject to this correction are under section 6311 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8793) contain an error that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR Part 301 is corrected by making the following correcting amendment:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6311–2T (c) (2) is amended by revising the first sentence to read as follows:

§ 301.6311–2T Payment by credit card and debit card (temporary).

* * * * *

(c) * * *

(2) *Liability of financial institutions.* If a taxpayer has tendered a payment of internal revenue taxes by credit card or debit card, and the credit card or debit card transaction has been guaranteed expressly by a financial institution, and the United States is not duly paid, the United States shall have a lien for the guaranteed amount of the transaction upon all the assets of the institution making such guarantee. * * *

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–17063 Filed 7–6–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–99–034]

Drawbridge Operation Regulations; Mullica River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Green Bank drawbridge across Mullica River, Mile 18.0, at Atlantic County and Burlington County, New Jersey. Beginning at 6 a.m. August 15, 1999, and continuing until 6 p.m. November 13, 1999, the bridge will only open for the passage of recreational and commercial vessels on the hour and half hour. This temporary deviation is needed to test the effects of such a schedule on navigation and vehicular traffic transiting over and under the bridge.

DATES: This deviation is effective from 6 a.m. August 15, 1999, until 6 p.m. November 13, 1999. Comments must be received by December 13, 1999.

ADDRESSES: Comments should be mailed to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments will become a part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 757–398–6222.

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Request for Comments

The Coast Guard encourages interested parties to comment on this temporary deviation. You may submit written data, views, or arguments relating this schedule during the test period. Persons submitting comments should include their names and addresses, identify this temporary deviation (CGD05–99–034) and the particular part of this deviation to which each comment applies, and the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. The Coast Guard plans no public hearing. You may request a public hearing by writing to the Commander, Fifth Coast Guard District, at the address under **ADDRESSES**. The request should include reasons why a hearing would be helpful. If the Coast Guard decides to hold a public hearing, we will announce the hearing in a separate notice in the **Federal Register.**

The drawbridge across Mullica River is owned and operated by Atlantic County, New Jersey. On September 3, 1998, the Coast Guard received a letter from Atlantic County requesting a temporary deviation from the normal operation of the bridge. They wanted to test a proposed change to the current regulations for the Green Bank Drawbridge by changing the opening schedule to openings on the hour and half hour for recreational and commercial vessels. The current regulation at Title 33, Code of Federal Regulations Section 117.731a(b), requires the draw to open on signal, except from April 1 through November 30, from 11 p.m. to 7 a.m., and from December 1 through March 31, at all times, a four-hour notice is required.

The temporary deviation will change the periods of opening on signal to openings on the hour and half hour for a period of 90 days. The temporary deviation will not alter sections 117.731a (b) and (c), of the Code of Federal Regulations, which states that the draw need not open unless at least a four-hour notice is given from April 1, through November 30, 11 p.m. to 7 a.m. and December 1 through March 31, at all times. The draws shall open as soon as possible during periods when four-hour notice is required for vessels in distress, public vessels of the United States, and state and local vessels used for public safety purposes.

Following the temporary deviation, the Coast Guard will review drawbridge logs and vehicular traffic counts to determination how the opening schedule met the needs of navigation and vehicular traffic.

Beginning August 15, 1999, and continuing until November 13, 1999, this deviation requires the bridge to open for recreational and commercial vessels on the hour and half hour, 24 hours a day. The four hour minimum notification period for vessels seeking to transit between the hours of 11 p.m. and 7 a.m. remains in effect during the deviation period.

Dated: June 24, 1999.

Thomas E. Bernard,

Captain, Coast Guard, Fifth Coast Guard District, Acting District Commander.

[FR Doc. 99–17188 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–011]

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Florida Avenue bascule span drawbridge across the Inner Harbor Navigational Canal, mile 1.7 at New Orleans, Orleans Parish, Louisiana. This deviation allows the draw of the Florida Avenue bascule span drawbridge to remain closed to navigation daily from 8 a.m. until noon and from 1 p.m. until 5 p.m. from September 23, 1999 through November 6, 1999. This temporary deviation will allow for replacement of the damaged fender system, an extensive but necessary maintenance operation. Presently, the draw opens on signal at all times.

DATES: This deviation is effective from 8 a.m. on September 23, 1999 through 5 p.m. on November 6, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

The Florida Avenue bascule span drawbridge across the Inner Harbor Navigation Canal, mile 1.7, in New Orleans, Louisiana has a vertical clearance of one foot above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, small ships, fishing vessels, sailing vessels and other recreational craft. The Board of Commissioners of the Port of New Orleans requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work, involving removing portions of the existing damaged fender system, driving new pilings and replacing the timbers. This work is essential for continued safe transit of vessels through the bridge.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the draw of the Florida Avenue bascule span drawbridge to remain closed to navigation from 8 a.m. until noon and from 1 p.m. until 5 p.m. daily from September 23, 1999 through November 6, 1999. In the event of an approaching tropical storm or hurricane, the draw will return to normal operation within 12 hours notice from the Coast Guard. Presently, the draw opens on signal at any time.

Dated: May 7, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 99–17184 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–030]

RIN 2115–AA97

Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on western Long Island Sound for the Koechlin Wedding Fireworks Display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of western Long Island Sound.

DATES: This rule is effective from 8:30 p.m. until 10 p.m. on July 24, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 10, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, New York, in the **Federal Register** (64 FR 24982). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Because of the date the Application for Approval of Marine Event was received, there was insufficient time to promulgate both a NPRM and a final rule that would be effective at least 30 days after it was published. The Coast Guard did publish an NPRM with a 30-day comment period, but this did not leave sufficient time to publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to the pubic interest since immediate action is needed to prevent traffic from transiting a portion of western Long Island Sound, and provide for the safety of life on navigable waters. And the pubic was notified of this event when the NPRM was published in the Local Notice to Mariners on May 19, 1999.

Background and Purpose

On March 9, 1999, Bay Fireworks submitted on Application for Approval of a Marine Event for a fireworks display on western Long Island Sound. This regulation establishes a temporary safety zone on all waters of western Long Island Sound within a 360-yards radius of the fireworks, barge in approximate position 40°56'33"N, 073°41'25"W (NAD 1983), about 400 yards east of Milton Point, Rye, New York. The zone is in effect from 8:30 p.m. until 10 p.m. on Saturday July 24, 1999. There is no rain date for this event. The zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit to the east of the zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made before the event by Local Notice to Mariners and marine information broadcasts. The Coast Guard limited the comment period for this NPRM to 30 days because the zone is only for a one-and-a-half-hour-long local event and it should have negligible impact on vessel transits.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking.

It made no changes to the proposed rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of western Long Island Sound during the event, the effect of this regulation will not be significant, for several reasons: that vessels will be restricted from the areas for a minimal time, that they may safely transit to the east of the zone, and that advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine-information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed under *Regulatory Evaluation*, above the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U..C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal, governments, or the private sector.

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Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g). 6.04–1. 6.04–6. 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–030 to read as follows:

§ 165.T01–030 Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, New York.

(a) *Location.* The following area is a safety zone: All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°56′33″N, 073°41′25″W (NAD 1983), approximately 400 yards east of Milton Point, Rye, New York.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on July 24, 1999. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 23, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–17189 Filed 7–6–99: 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–106]

RIN 2115–AA97

Technical Amendments to USCG Regulations to Update RIN Numbers: Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to six Notices of Proposed rulemakings (NPRMs) and two Final rules. This action corrects the RIN accounting string for each document to read RIN 2115–AA97.

DATES: This correction notice is effective July 7, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Waterways Oversight Branch of Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, room 205, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard published the following regulations in the **Federal Register** with the incorrect RIN accounting numbers: 1. December 22, 1998, NPRM entitled Security Zone: Dignitary Arrival/Departure New York, NY in the **Federal Register** (63 FR 70707) (CGD01–98–006). 2. February 24, 1999, NPRM entitled Safety Zone: Port of New York/New Jersey Fleet Week (64 FR 9107) (CGD01–98–170). 3. May 10, 1999, NPRM entitled Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, NY (64 FR 24982) (CGD01–99–030). 4. May 10, 1999, NPRM entitled Safety Zone: PricewaterhouseCooper LLP Fireworks, Hudson River, Manhattan, NY (64 FR 24985) (CGD01–99–037). 5. May 10, 1999, NPRM entitled Safety Zone: Hastings-on-Hudson Fireworks, Hudson River, New York (64 FR 24983) (CGD01–99–041). 6. May 10, 1999, NPRM entitled Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY (64 FR 24987) (CGD01–99–042). 7. May 10, 1999, final rule entitled Security Zone: Dignitary Arrival/Departure New York, NY (64 FR 24947) (CGD01–99–006). 8. May 10. 1999, Final rule entitled Safety Zone: Port of New York/New Jersey Fleet Week (64 FR 24945) (CGD01–99–170).

Need for Correction

As published, the NPRMs and Final rules contain the incorrect RIN accounting Data. This notice corrects the RIN Data for each document to read "RIN 2115–AA97".

Correction of Publication

Accordingly, the following publications RIN Data are corrected to read "RIN 2115–AA97":

1. December 2, 1998, NPRM entitled Security Zone: Dignitary Arrival/Departure New York, NY in the **Federal Register** (63 FR 70707) (CGD01–98–006).

2. February 24, 1999, NPRM entitled Safety Zone: Port of New York/New Jersey Fleet Week (64 FR 9107) (CGD01–98–170).

3. May 10, 1999, NPRM entitled Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, NY (64 FR 24982) (CGD01–99–030).

4. May 10, 1999, NPRM entitled Safety Zone: PricewaterhouseCooper LLP Fireworks, Hudson River, Manhattan, NY (64 FR 24985) (CGD01–99–037).

5. May 10, 1999, NPRM entitled Safety Zone: Hastings-on-Hudson Fireworks, Hudson River, New York (64 FR 24983) (CGD01–99–041).

6. May 10, 1999, NPRM entitled Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY (64 FR 24987) (CGD01–99–042).

7. May 10, 1999, Final rule entitled Security Zone: Dignitary Arrival/Departure New York, NY (64 FR 24947) (CGD01–98–006).

8. May 10, 1999, Final rule entitled Safety Zone: Port of New York/New Jersey Fleet Week (64 FR 24945) (CGD01–98–170).

Dated: June 23, 1999.

R.E. Bennis,

Captain, Coast Guard Captain of the Port, New York.

[FR Doc. 99–17185 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–102]

RIN 2115–AA97

Safety Zone: Royal Handel Fireworks, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Boston Inner Harbor in a four-hundred (400)-yard radius around a fireworks barge located off the Coast Guard Integrated Support Command Boston at position 42 22.116 N, 71 02.816 W (NAD 1983) Boston, MA. This safety zone prevents entry into or movement within this portion of Boston Harbor. It is necessary to protect the boating public from the dangers posed by a fireworks display.

DATES: This rule is effective from 8:30 p.m. until 10:30 p.m., Wednesday, August 4, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commerical Street, Boston, MA, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223-3000.

SUPPLEMENTARY INFORMATION: .

Regulatory History

Pursuant to 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this regulation. Good cause exists for not publishing an NPRM. Conclusive information about this event was not provided to the Coast Guard until May 7, 1999, making it impossible to draft or publish an NPRM and provide adequate time for comments to be submitted. Publishing an NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

On May 7, 1999, the Royal Handel Fireworks Show of Boston, MA, filed a marine-event permit with the Coast Guard to hold a fireworks program over the waters of Boston Harbor, Boston, MA. This regulation establishes a safety zone on the waters of Boston Harbor in a four-hundred (400)-yard radius around a fireworks barge located off the Coast Guard Integrated Support Command, Boston, MA, at position 42°22.116′N, 71°02.816′W (NAD 1983). The safety zone is in effect from 8:30 p.m. until 10:30 p.m. on Wednsday, August 4, 1999. This safety zone prevents entry into or movement within this portion of Boston Harbor. It is necessary to protect the boating public from the dangers posed by a fireworks display.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulations to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary since the safety zone will be limited in duration, marine advisories will be made in advance of the implementation of the safety zone, and the safety zone will not restrict the entire harbor, allowing traffic to continue without obstruction.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) shall businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16457.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recorkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46 Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.2.

2. Add temporary section 165.T01–102 to read as follows:

§ 165.T01–102 Safety Zone: Fireworks, Boston, MA.

(a) *Location.* The following area is a safety zone: all waters of Boston Harbor in a four-hundred (400)-yard radius around a fireworks barge located off of the Coast Guard Integrated Support Command, Boston, MA. at position 42°22.166′N, 71°02.816′W (NAD 1983).

(b) *Effective Date.* This secton is effective from 8:30 p.m. until 10:30 p.m., Wednesday, Aug 4, 1999.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP of the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard partrol personnel comprise commissioned, warrant, and petty officers of the U.S. Coast Guard.

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(3) The general regulations covering safety zones in section 165.23 of this part apply.

Dated: June 24, 1999.

M.A. Skordinski,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–17187 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–15–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201–204, 211, 251, 253, 259–260

Copyright Rules and Regulations: Copyright, Compulsory Licenses, Copyright Arbitration Royalty Panel

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; Technical amendments.

SUMMARY: The Copyright Office is making non-substantive housekeeping amendments to its regulations to update them and to correct minor errors.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office periodically reviews its regulations as published in the Code of Federal Regulations (CFR) to correct minor or typographical errors in the published text. The Office has identified minor errors in the currently published rules. The following sections are amended to correct these errors: §§ 201.11(d)(1), 201.11(e)(6), 201.11(e)(7), 201.11(h)(2)(i), 201.17(d)(1), 201.17(h)(4)(iii), 201.17(k), 201.18(a)(1), 201.19(a)(1), 201.19(a)(2), 201.19(a)(4), 201.19(e)(4)(i), 201.19(e)(7)(iii), 201.19(f)(3)(viii), 201.27(c), 201.27(e)(1), 201.28(e)(4)(i), 201.29(e)(3), 201.35(a), 201.36(b)(1), 201.36(c), 201.37(a), 201.37(b)(1), 202.3(b)(7)(ii), 202.17(f)(2), 202.20(c)(2)(vii)(D)(*3*), 202.20(c)(2)(vii)(D)(*4*), 202.20(c)(2)(vii)(D)(*5*), 202.20(c)(2)(xi)(A)(2), 202.23(c)(1), 202.23(c)(2), 202.23(d), 203.3(g), 204.4(a), 204.5(a), 204.7(a), 204.8(a), 211.4(e), 211.5(c)(2), 211.5(d), 251.54(e), 251.56(a), 251.56(b), 253.3(e)(4), 253.8(b)(1)(ii)(D), and 260.2(c)(2). Typographical errors are corrected in §§ 201.1(b), 201.3(c), 201.3(c)(5), 201.10(b)(1)(v), 201.10(e)(2), 201.17(e)(2)(i), 201.17(j)(3)(iv)(A), 201.18(a)(3), 201.19(c)(4), 201.28(c)(4), 202.22(a), 202.22(c)(1), 203.4(f)(2), 251.58(b), 253.8(b)(1)(i)(A), 259.3(a)(5), 260.2(c)(1)(v), and 260.7.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Claims, Copyright.

37 CFR Part 203

Freedom of information.

37 CFR Part 204

Privacy.

37 CFR Part 211

Mask work protection.

37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Part 253

Noncommercial educational broadcasting, Copyright.

37 CFR Part 259

Claims, Copyright, Digital audio recording devices and media.

37 CFR Part 260

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Rule

Accordingly, 37 CFR Chapter II is amended by making the following corrections and amendments.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.1 [Amended]

2. Section 201.1(b) is amended by removing "SE.," and adding in its place "SE,".

§ 201.3 [Amended]

3. Section 201.3 is amended in the Table, in the column entitled "Fees" in paragraph (c)(5) by removing "10" and adding "10[1]" in paragraph (c)(8) by removing "10" and adding "10[2]", and by removing the word "issue" in footnote 1 and adding "issues".

4. Section 201.3(c)(5) is amended by removing the word "series" and adding in its place "serials".

§ 201.10 [Amended]

5. Section 201.10(b)(1)(v) is amended by removing the word "aurhor's" and adding in its place "author's".

6. Section 201.10(e)(2) is amended by removing the word "describling" and adding in its place "describing".

§ 201.11 [Amended]

7. Section 201.11(d)(1) is amended by removing "Licensing Division, United States Copyright Office, Library of Congress, Washington, DC 20557" and adding in its place "Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557–6400".

8. Section 201.11(e)(6) is amended by removing "of 17.5 cents per subscriber, on in the case of syndex-proof superstations as defined in 37 CFR 258.2, 14 cents (or in lieu thereof, the arbitrated rate, if applicable)" and adding in its place "prescribed in § 258.3 of this chapter".

9. Section 201.11(e)(7) is amended by removing "of six (6) cents per subscriber (or, in lieu thereof, the arbitrated rate, if applicable)" and adding in its place "prescribed in § 258.3 of this chapter".

10. Section 201.11(h)(2)(i) is amended by removing the phrase "Cable operators" and adding in its place "Satellite carriers".

§ 201.17 [Amended]

11. Section 201.17(d)(1) is amended by removing "Licensing Division, United States Copyright Office, Library of Congress, Washington, DC 20557" and adding in its place "Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557–6400".

12. Section 201.17(e)(2)(i) is amended by removing "'owner"' and adding in its place "owner".

13. Section 201.17(h)(4)(iii) is amended by adding "(65)" after "sixty-five".

14. Section 201.17(j)(3)(iv)(A) is amended by removing "paragraph must" and adding in its place "paragraph) must".

15. Section 201.17(k) is amended by removing all material after the phrase "United States Code." beginning with "Any such entity".

§ 201.18 [Amended]

16. Section 201.18(a)(1) is amended by removing the phrase "as amended by Pub. L. 94–553,".

17. Section 201.18(a)(3) is amended by removing "coowners" and adding the word "co-owners" in its place.

§ 201.19 [Amended]

18. Sections 201.19(a)(1), (a)(2), and (a)(4) are amended by removing the phrase "section 115(c)(3)" and adding in its place "section 115(c)(5)" and by removing the phrase "as amended by Pub. L. 94–553,".

19. Section 201.19(c)(4) is amended by removing "nine month" and adding in its place "nine-month".

20. Sections 201.19(e)(4)(i) and (e)(7)(iii) are amended by removing the phrase "as amended by Pub. L. 94–553,".

21. Section 201.19(f)(3)(viii) is amended by removing the phrase "as amended by Pub. L. 94–553,".

§ 201.27 [Amended]

22. Section 201.27(c) is amended by "Licensing Division of the Copyright Office, Washington, DC 20557" and adding in its place "Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557–6400".

23. Section 201.27(e)(1) is amended by removing the phrase "of or the" and adding in its place "or if the".

§ 201.28 [Amended]

24. Section 201.28(c)(4) is amended by removing the phrase "two month" and adding in its place "two-month".

25. Section 201.28(e)(4)(i) is amended by removing "U.S." and adding in its place "of the United States".

§ 201.29 [Amended]

26. Section 201.29(e)(3) is amended by removing "Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557–6400" and adding in its place "Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557–6400".

§ 201.35 [Amended]

27. Section 201.35(a) is amended by removing the phrase "as amended by Pub. L. 104–39, 109, Stat. 336".

§ 201.36 [Amended]

28. Section 201.36(b)(1) is amended by removing "section 114(f)(1)" and adding in its place "section 114(f)(1)(A)"; by removing "section 114(f)(4)(A)" and adding in its place "section 114(f)(1)(C)(i)"; by removing "section 114(f)(2)" and adding in its place "section 114(f)(1)(B)"; and by removing "section 114(f)(4)(B)" and adding in its place "section 114(f)(1)(C)(ii)".

29. Section 201.36(c) is amended by removing "section 114(f)(1)" and adding in its place "section 114(f)(1)(A)"; by removing "section 114(f)(4)(A)" and adding in its place "section 114(f)(1)(C)(i)"; by removing "section 114(f)(2)" and adding in its place "section 114(f)(1)(B)"; and by removing "section 114(f)(4)(B)" and adding in its place "section 114(f)(1)(C)(ii)".

§ 201.37 [Amended]

Section 201.37(a) is amended by removing the phrase "as amended by Pub. L. 104–39, 109 Stat. 336,".

Section 201.37(b)(1) is amended by removing "section 114(f)(1)" and adding in its place "section 114(f)(1)(A)"; by removing "section 114(f)(4)(A)" and adding in its place "section 114(f)(1)(C)(i)"; by removing "section 114(f)(2)" and adding in its place "section 114(f)(1)(B)"; and by removing "section 114(f)(4)(B)" and adding in its place "section 114(f)(1)(C)(ii)".

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

32. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 202.3 [Amended]

33. Section 202.3(b)(7)(ii) is amended by removing the phrase "this § 202.3(b)(7)" and adding in its place "paragraph (b)(7) of this section".

§ 202.17 [Amended]

34. Section 202.17(f)(2) is amended by adding the phrase "of this section" after "(f)(1)" and after "(f)(1)(iii)".

§ 202.20 [Amended]

35. Section 202.20(c)(2)(vii)(D)(3) is amended by removing the word "this" and adding in its place "of this section" after "paragraph (c)(2)(vii)(D)".

36. Section 202.20(c)(2)(vii)(D)(4) is amended by adding the phrase "of this section" at the end of the paragraph.

37. Section 202.20(c)(2)(vii)(D)(5) is amended by removing the phrase "(6) or (7) immediately below" and adding in its place "paragraphs (c)(2)(vii)(D)(6) or (7) of this section".

38. Section 202.20(c)(2)(xi)(A)(2) is amended by removing the word "below" and adding in its place "of this section".

§ 202.22 [Amended]

39. Section 202.22(a) is amended by removing the word "copywright" and adding in its place "copyright".

40. Section 202.22(c)(1) is amended by removing the word "itle" and adding in its place "Title".

§ 202.23 [Amended]

41. Section 202.23(c)(1) is amended by adding the phrase "of this section" after "paragraph (b)".

42. Section 202.23(c)(2) is amended by removing the phrase "37 CFR".

43. Section 202.23(d) is amended by removing the phrase "37 CFR" and adding in its place "§§ ".

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

44. The authority citation for part 203 continues to read as follows:

Authority: 17 U.S.C. 702; 5 U.S.C. 552, as amended.

§ 203.3 [Amended]

45. Section 203.3(g) is amended by adding "–6000" after "20559".

§ 203.4 [Amended]

46. Section 203.4(f)(2) is amended by removing the word "requestor" and adding in its place "requester".

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

47. The authority citation for part 204 continues to read as follows:

Authority: 17 U.S.C. 702; 5 U.S.C. 552(a).

§ 204.4 [Amended]

48. Section 204.4(a) is amended by adding "–6000" after "20559".

§ 204.5 [Amended]

49. Section 204.5(a) is amended by adding "–6000" after "20559".

§ 204.7 [Amended]

50. Section 204.7(a) is amended by adding "–6000" after "20559".

§ 204.8 [Amended]

51. Section 204.8(a) is amended by adding "–6000" after "20559".

PART 211—MASK WORK PROTECTION

52. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

§ 211.4 [Amended]

53. Section 211.4(e) is amended by adding the phrase "of this section" after "paragraph (c)(2)".

§ 211.5 [Amended]

54. Section 211.5(c)(2) is amended by adding the phrase "of this section" after "paragraph (b)(2)(i)".

55. Section 211.5(d) is amended by adding "–6000" after "20559".

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

56. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

§ 251.54 [Amended]

57. Section 251.54(e) is amended by removing the word "directly" after "arbitrators".

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§ 251.56 [Amended]

58. Section 251.56(a) is amended by removing the number "60" and adding the number "90" in its place.

59. Section 251.56(b) is amended by removing the phrase "the order" and adding in its place the phrase "the Librarian shall have an additional 30 days to issue the order which".

§ 251.58 [Amended]

60. Section 251.58(b) is amended by removing "30 day" and adding in its place "30-day".

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

61. The authority citation for part 253 continues to read:

Authority: 17 U.S.C. 118, 801(b)(1), and 803.

§ 253.3 [Amended]

62. Section 253.3(e)(4) is amended by removing the word "or" after the word "author".

§ 253.8 [Amended]

63. Section 253.8(b)(1)(i)(A) is amended by removing the symbol "]" after "64.78".

64. Section 253.8(b)(1)(ii)(D) is amended by removing the word "semin" before the word "reproduced".

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

65. The authority citation for part 259 continues to read:

Authority: 17 U.S.C. 1007(a)(1).

§ 259.3 [Amended]

66. Section 259.3(a)(5) is amended by removing "1001(6)" each place it appears and adding in its place "1001(6)]".

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

67. The authority citation for part 260 continues to read:

Authority: 17 U.S.C. 114, 801(b)(1).

§ 260.2 [Amended]

68. Section 260.2(c)(1)(v) is amended by removing the word "licensee" and adding in its place "Licensee".

69. Section 260.2(c)(2) is amended by removing the phrase "as are in" and adding in its place "as set forth in".

§ 260.7 [Amended]

70. Section 260.7 is amended by removing the phrase "three year" and adding in its place "three-year".

Dated: June 29, 1999.

David O. Carson,

General Counsel.

[FR Doc. 99–16940 Filed 7–6–99; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 212

[Docket No. RM99–4]

Design Protection for Vessel Hulls

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations; Request for comments.

SUMMARY: The Copyright Office is adopting interim regulations to implement the registration process for original designs of vessel hulls protected under chapter 13 of the Copyright Act. The Office is requesting interested parties to comment on the regulations. The immediacy of the adoption is required to enable the Copyright Office to begin the registration process for vessel hull designs and implement the law, which became effective on October 28 of last year.

DATES: Effective date is July 1, 1999. Comments should be submitted no later than August 6, 1999. Reply comments are due no later than September 7, 1999.

ADDRESSES: An original and 10 copies of comments and reply comments should be mailed to: Office of the General Counsel, Copyright Office, PO Box 70400, Southwest Station, Washington, DC 20024. If delivered by hand, copies should be brought to: Office of the Copyright General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Senior Attorney, Office of the General Counsel, Copyright Office, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

As part of the amendments made to the Copyright Act by the Digital Millennium Copyright Act (DMCA), Pub. L. 105–304, Congress enacted design protection for vessel hulls. Chapter 13 of the Copyright Act creates certain exclusive rights for owners of original designs of vessel hulls provided that registration of the design is made within two years after the date on which the design is first made public. Registration is to be made at the Copyright Office, in accordance with regulations established by the Register of Copyrights.

The Register is issuing the interim regulations contained in this notice to implement the registration process for vessel hull designs. Ordinarily, the administrative process would commence with publication of proposed regulations, followed by a period of public comment, and later publication of final regulations. The Register has determined, however, that interim regulations need to be adopted at this time in order to begin the registration process for vessel hull designs. The need for expedited regulations is evident from two circumstances. First, section 504 of the DMCA requires the Register, in conjunction with the Patent and Trademark Office, to submit a report to Congress evaluating the effects of design protection for vessel hulls within one year of passage of the DMCA. In order to submit a meaningful report to Congress, it is necessary to begin the registration process immediately; otherwise, there will be little to discuss regarding the effects of chapter 13.

Second, the Office has received a growing number of public inquiries regarding registration, particularly as the boating industry prepares its new designs for summer display to dealers and distributors. The Office also acknowledges that the right to commence an infringement action brought by an owner of a vessel hull design is contingent upon first obtaining a certificate of registration. 17 U.S.C. 1321(a). The Register, therefore, concludes that it is appropriate to adopt interim regulations at this time, and request public comment on these regulations. After the Copyright Office reviews the comments, final regulations will be issued.

Interim Regulations

The interim regulations are codified at part 212 of 37 CFR. The highlights of these regulations are discussed briefly below.

1. Fees

The basic application fee is $75. The Copyright Office considers this to be an introductory fee until such time as we can determine the cost to the Office of the registration process. This principle applies to the other fees described in § 212.2 as well. The Office will adjust the fees, if necessary, in accordance with the provisions of 17 U.S.C. 1316.

An important aspect of the basic fee is that it applies to registration of one vessel hull design only. Multiple designs, whether submitted on a single or multiple application forms, require payment of the $75 fee for each design registered.

2. Registration of Claims for Protection of Eligible Designs

Section 212.3 prescribes the essential requirements for registration of a vessel hull design.

The application form that must be used by all applicants seeking to register a vessel hull design is the Form D–VH, available from the Copyright Office. Copies of the form may also be printed or downloaded from the Copyright Office website (http://www.loc.gov/copyright/ forms/formdvh.pdf). The required elements of a registration application are a completed form D–VH, deposit material identifying the design or designs for which registration is sought, and the appropriate fee prescribed in § 212.2. Applications may only be made by the owner or owners of a design, or their authorized representatives or agents.

Section 212.3(e) contains the requirements for submission of deposit material identifying the design or designs that are submitted for registration. The Copyright Office will accept either drawings or photographs identifying a design. It is important that the exact requirements of paragraph (e) with respect to character, quality, and submission of the photographs or drawings be satisfied. First, the photographs or drawings must adequately depict the design to establish the basis of the claim and to enable the Office to examine the claim. A court would be justified in denying a claim for infringement of an aspect of a design that was not adequately revealed in the deposit material accompanying the application. Second, the requirements of paragraph (e) must be met to enable the Copyright Office to reproduce the depictions of the design on the certificate of registration, as required by the statute. A registration cannot be made if the depictions of the design cannot be reproduced on the certificate.

Section 121.3(f) provides the requirements for submitting claims for multiple designs. Section 1310(j) of title 17 provides that "[m]ore than one design may be included in the same application under such conditions as may be prescribed by the [Register]." 17 U.S.C. 1310(j). In order to prevent confusion in examining a single application for multiple designs, the Office is limiting the circumstances under which a single application for multiple designs may be submitted. Paragraph (f) provides that a single application may be submitted for more than one design provided that each of the designs is embodied in the same make and model of the vessel and all other information apart from the type or style and description of the design is the same. If the information (apart from the type or style of the design and the description of the design) in any of the spaces on Form D–VH is different for one or more designs, then multiple application forms must be used. Thus, for example, if a particular make and model of a vessel manufactured by a company contains multiple designs created by the same designer, then a single application may be used (provided, of course, that the information in the remaining spaces of Form D–VH is the same). If, however, the designers for each design are different, then separate application forms must be used for each design.

The $75 application fee applies to each design submitted for registration, regardless of whether the designs appear on a single or multiple applications.

As permitted by 17 U.S.C. 1312(b), the Register is adopting a written declaration for Form D–VH in lieu of the oath required by 17 U.S.C. 1312(a). The written declaration eliminates the need for applicants to have the completed application form notarized. All applicants are advised to read the written declaration carefully before signing as there are criminal penalties for false statements. 17 U.S.C. 1327; 18 U.S.C. 1001.

Section 212.3(h) addresses priority claims—i.e., where an applicant has sought protection for the same design in another country prior to seeking registration in the United States. The paragraph requires the applicant to identify the country, filing date and serial number of the foreign application, and to provide a certified copy of the application and a translation of the application. In addition, if requested by the Copyright Office, the applicant must submit proof that the foreign country in which the prior application was filed extends protection to U.S. citizens that is similar to the protection contained in chapter 13 of title 17. If the protection is not similar, then no credit can be given to the prior application under 17 U.S.C. 1311.

Section 212.3(i) provides that the effective date of a registration is the date of its publication by the Copyright Office, and paragraph (j) provides that publications will be made on the Copyright Office's website.

3. Affixation and Placement of Design Notice

Section 212.4 prescribes the elements, affixation and placement of the design notice required by 17 U.S.C. 1306. The elements of a proper design notice are those prescribed in the statute and repeated in paragraph (b) of this section regulation, and the affixation and location of the design notice is anywhere on the vessel that would give "reasonable notice" that the design is protected as the vessel passes through the normal channels of commerce.

Section 212.4(d) describes locations on a vessel where placement of a design notice would indeed give reasonable notice. These locations are by no means the only acceptable locations, but are offered as guidance and a "safe harbor" for what would constitute reasonable notice of design protection.

4. Recordation of Distinctive Identification

Section 1306 of title 17 provides that a distinctive identification of an owner of a design may be used in a design notice provided that the distinctive identification is first recorded with the Copyright Office. Section 212.5 of the interim regulations provides the requirements for recording a distinctive identification with the Copyright Office. A suggested format for the recordation is posted on the Copyright Office website.

5. Recordation of Transfers and Other Documents

Section 1320 of title 17 of the United States Code provides that assignments, grants, conveyances and mortgages of rights in registered designs may be recorded in the Copyright Office. Section 212.6 provides that such documents shall be recorded in the same manner as documents pertaining to copyrights, as set forth in section 201.4.

6. Effective Date of Regulations

The effective date of the interim regulations is July 1, 1999. The immediacy of the effective date is required to enable the Copyright Office to begin the registration process for vessel hull designs and implement the law, which became effective on October 28 of last year. The Office will adopt final regulations following receipt of public comment on these interim regulations and based on its experience with registrations made under the interim regulations.

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Cancellation of Registrations

Section 1313(c) of title 17 provides that "[a]ny person who believes he or she is or will be damaged by a registration under this chapter may, upon payment of the prescribed fee, apply to the [Register] at any time to cancel the registration on the ground that the design is not subject to protection under this chapter." 17 U.S.C. 1313(c). Upon receipt of such application, the Register must provide the owner of the design with the request for cancellation and "the owner shall have a period of 3 months after the date on which such notice is mailed to present arguments to the (Register) to support the validity of the registration." *Id.* The Register is granted authority to establish regulations by which the opposing parties may "appear and be heard in support of their arguments," and is directed to cancel the registration if she determines that "the design is not subject to protection under this chapter." *Id.*

Because the Copyright Office is just beginning the registration process with publication of these interim regulations, there is no need to adopt cancellation regulations at this time.

The Copyright Office welcomes information or comment as to the registration and cancellation process.

List of Subjects in 37 CFR Part 212

Design, Fees, Registration, Vessel hulls.

Interim Regulations

In consideration of the foregoing, the Register of Copyrights adds part 212 on an interim basis as follows:

PART 212—PROTECTION OF VESSEL HULL DESIGNS

Sec.

212.1 Scope.
212.2 Fees.
212.3 Registration of claims of protection of eligible designs.
212.4 Affixation and placement of design notice.
212.5 Recordation of distinctive identification of vessel hull designer.
212.6 Recordation of transfers and other documents.

Authority: 17 U.S.C. chapter 13.

§ 212.1 Scope.

The provisions of this part apply to the protection and registration of original designs of vessel hulls under chapter 13 of title 17, United States Code. Design protection and registration under this part are separate from copyright protection and registration. Copyright registration is governed by the provisions of part 202 of this subchapter.

§ 212.2 Fees.

The following fees or charges are established by the Register of Copyrights for services related to designs:

(a) For filing an application for registration of one design: $75;

(b) For filing an application for registration of more than one design: $75, plus $75 for each design beyond the first;

(c) For each page of deposit material identifying the design beyond the third page: $20;

(d)(1) For special handling of an application for registration of a design: $500;

(2) For special handling of each additional design in an application for registration of multiple designs: $50;

(e) For corrections or omissions in the certificate of registration: $65;

(f) For recordation of a distinctive identification of an owner: $50;

(g) For providing an additional certificate of registration: $25;

(h) For providing any other certification of Copyright Office records: $65 per hour;

(i) For preparing a search report: $65 per hour;

(j) For expediting a request for certification or search of Office records, the appropriate fees set out in § 201.3(d).

§ 212.3 Registration of claims for protection of eligible designs.

(a) *Limitations.* Protection is not available for, and an application for registration will not be accepted for:

(1) An otherwise eligible design made public prior to October 28, 1998;

(2) An otherwise eligible design made public on a date more than two years prior to the filing of an application for registration under this section;

(3) A design ineligible for any of the reasons set forth in 17 U.S.C. 1302.

(b) *Required elements of application.* An application is considered filed with the Copyright Office on the date on which the following three items have been received by the Copyright Office:

(1) Completed Form D–VH;

(2) Deposit material identifying the design or designs for which registration is sought; and

(3) The appropriate fee.

(c) *Application by owner of design.* An application for registration under this section may be made only by the owner or owners of the design, or by the duly authorized agent or representative of the owner or owners of the design.

(d) *Application form.* Registration must be made on Form D–VH. Forms are available from the Copyright Office and may be reprinted from the Copyright Office's website (http://www.loc.gov/copyright/forms/formdvh.pdf).

(e) *Deposit material.*—(1) *In General.* Identification of the design to be registered may be made in the form of drawings or photographs. No more than two drawings or photographs of the design may appear on a single sheet. Applicants may submit up to three 8½″ × 11″ sheets containing drawings or photographs as part of the basic $75 application fee. The fee for each additional sheet beyond three is $20 per sheet. No combinations of drawings and photographs may be submitted on a single sheet. The drawings or photographs that accompany the application must reveal those aspects of the design for which protection is claimed. The registration extends only to those aspects of the design which are adequately shown in the drawings or photographs.

(2) *Views.* The drawings or photographs submitted should contain a sufficient number of views to make an adequate disclosure of the appearance of the design, i.e. front, rear, right and left sides, top and bottom. While not required, it is suggested that perspective views be submitted to show clearly the appearance and shape of the three dimensional designs.

(3) *Drawings.* (i) Drawings must be in black ink on white 8½″ × 11″ unruled paper. A drawing of a design should include appropriate surface shading which shows clearly the character and contour of all surfaces of any 3-dimensional aspects of the design. Surface shading is also necessary to distinguish between any open and solid areas of the design. Solid black surface shading is not permitted except when used to represent the black color as well as color contrast.

(ii) The use of broken lines in drawings depicting the design is understood to be for illustrative purposes only and forms no part of the claimed design. Structure that is not part of the design, but that is considered necessary to show the environment in which the design is used, may be represented in the drawing by broken lines. This includes any portion of the vessel hull in which the design is embodied or applied that is not considered part of the design. When the claimed design is only surface ornamentation to the vessel hull, the vessel hull in which it is embodied must be shown in broken lines.

(iii) When broken lines are used, they should not intrude upon or cross the depiction of the design and should not be of heavier weight than the lines used in depicting the design. Where a broken line showing of environmental structure must necessarily cross or intrude upon the representation of the design and obscure a clear understanding of the design, such an illustration should be included as a separate figure, in addition to other figures which fully disclose the subject matter of the design.

(4) *Photographs.* High quality black and white or color photographs will be accepted provided that they are mounted on plain white 8½″ × 11″ unlined paper and do not exceed two photographs per sheet. Photographs must be developed on double weight photographic paper and must be of sufficient quality so that all the details of the design are plainly visible and are capable of reproduction on the registration certificate, if issued.

(f) *Multiple claims.*—(1) *In general.* Claims for more than one design may be filed in one of two ways. If multiple designs are contained on a single make and model of a vessel hull (and therefore, the information in Space 1 of Form D–VH—the make and model of the vessel that embodies the design—is the same for each of the designs), a single application form may be used for all designs, provided that the information in spaces 3 through 9 is the same for each of the designs. If multiple designs are contained on more than one make and model of a vessel, or the information in spaces 3 through 9 is not the same for each of the multiple designs, then separate applications must be used for each design.

(2) *Single application.* Where a single application for multiple designs is appropriate, a separate Form D–VH/CON must be used for each design beyond the first appearing on Form D–VH. Each Form D–VH/CON must be accompanied by deposit material identifying the design that is the subject of the Form D–VH/CON, and the deposit material must be attached to the Form D–VH/CON. The Form D–VH and all the Form D–VH/CONs for the single application must be submitted together.

(3) *Multiple applications.* Where multiple applications for more than one design are required, a Form D–VH must be completed for each design. Deposit material identifying the design must accompany each application. Multiple applications may be filed separately.

(4) *Fees.* The $75 basic application fee applies to each design submitted, regardless of whether a single application or multiple applications are used.

(g) *Written declaration.* In lieu of the oath required by 17 U.S.C. 1312(a), the application shall contain a written declaration, as permitted by 17 U.S.C. 1312(b), signed by the applicant, or the applicant's duly authorized agent or representative. If the design has been made public with the design notice prescribed in 17 U.S.C. 1306, the written declaration shall also describe the exact form and position of the design notice. The written declaration shall read as follows:

> The undersigned, as the applicant or the applicant's duly appointed agent or representative, being hereby warned that willful false statements are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this application or any resulting registration, hereby declares to the best of his/her knowledge and belief:
>
> (1) That the design has been fixed in a useful article;
>
> (2) That the design is original and was created by the designer(s), or employer if applicable, named in the application;
>
> (3) That those aspects of the design for which registration is sought are not protected by a design patent;
>
> (4) That the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and
>
> (5) That the applicant is the person entitled to protection and to registration under chapter 13 of title 17, United States Code.

(h) *Priority claims.* An applicant seeking the benefit of 17 U.S.C. 1311 because the applicant has, within the previous 6 months, filed an application for protection of the same design in a foreign country, must provide:

(1) Identification of the filing date of the foreign application;

(2) Identification of the foreign country in which the application was filed;

(3) The serial number or any other identifying number of the foreign application;

(4) A certified copy of the foreign application;

(5) A translation of the foreign application and a statement, signed by the translator, that the translation is accurate, if the foreign application is in a language other than English; and

(6) If requested by the Copyright Office, proof that the foreign country in which the prior application was filed extends to designs of owners who are citizens of the United States, or to applications filed under chapter 13 of title 17, United States Code, similar protection to that provided under chapter 13 of title 17, United States Code.

(i) *Effective date of registration.* The effective date of registration is the date of publication of the registration by the Copyright Office.

(j) *Publication of registration.* Publication of registrations of vessel hull designs shall be made on the Copyright Office website (http://www.loc.gov/copyright/vessels).

§ 212.4 Affixation and placement of design notice.

(a) *General.* (1) This section specifies the methods of affixation and placement of the design notice required by 17 U.S.C. 1306. Sections 1306 and 1307 govern the circumstances under which a design notice must be used and the effect of omission of a design notice. A notice deemed acceptable under this part shall be considered to satisfy the requirements of section 1306 that it be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce. As provided in that section, the examples specified in this part shall not be considered exhaustive of the methods of affixation and locations giving reasonable notice of the claim of protection in the design.

(2) The acceptability of a design notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such a manner and position that, when affixed, it may be viewed upon reasonable examination. There is no requirement that a design notice be permanently embossed or engraved into a vessel hull or deck, but it should be affixed in such a manner that, under normal conditions of use, it is not likely to become unattached or illegible.

(b) *Elements of a design notice.* If the design has been registered, the registration number may be included in the design notice in place of the year of the date on which protection for the design commenced and the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner. The elements of a design notice shall consist of:

(1) The words "Protected Design", the abbreviation "Prot'd Des.", or the letter "D" within a circle, or the symbol *D*;

(2) The year of the date on which protection for the design commenced; and

(3) The name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

(c) *Distinctive identification.* Any distinctive identification of an owner may be used for purposes of paragraph (b)(3) of this section if it has been recorded by the Register of Copyrights pursuant to § 212.5 before the design

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marked with such identification is registered.

(d) *Acceptable locations of notice.* The following are acceptable means of affixing and placement of a design notice:

(1) In close proximity to the hull identification number required by 33 CFR 181.23;

(2) In close proximity to the driver's console such that it is in plain view from the console;

(3) If the vessel is twenty feet in length or less and is governed by 33 CFR 183.21, in close proximity to the capacity marking; and

(4) In close proximity to the make and/or model designation of the vessel.

§ 212.5 Recordation of distinctive identification of vessel hull designer

(a) *General.* Any owner of a vessel hull may record a distinctive identification with the Register of Copyrights for purposes of using such distinctive identification in a design protection notice required by 17 U.S.C. 1306. A distinctive identification of an owner may not be used in a design notice before it has first been recorded with the Register.

(b) *Forms.* The Copyright Office does not provide forms for the use of persons recording distinctive identifications of ownership of a vessel hull. However, persons recording distinctive identifications are encouraged to use the suggested format available on the Copyright Office website (http://www.loc.gov/copyright/vessels).

(c) *Recording distinctive identifications.* Any distinctive identification of an owner of a vessel hull may be recorded with the Register of Copyrights provided that a document containing the following is submitted:

(1) The name and address of the owner;

(2) A statement of the owner that he/she is entitled to use the distinctive identification;

(3) A statement or depiction of the identification; and

(4) A recordation fee of $50.

(d) The document should be mailed to: Dept. D–VH, Vessel Hull Registration, P.O. Box 71380, Washington, DC 20024–1380.

§ 212.6 Recordation of transfers and other documents

The conditions prescribed in § 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to design protection of vessel hulls under 17 U.S.C. chapter 13.

Dated: June 24, 1999.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

Librarian of Congress.

[FR Doc. 99–16828 Filed 7–6–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 430

[FRL–6372–9]

RIN 2040–AD05

Amendment to the Effluent Limitations Guidelines and Standards for the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category: Final Rule; OMB Approvals Under the Paperwork Reduction Act: Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This action promulgates an amendment to the effluent limitations guidelines and standards under the Clean Water Act for the pulp, paper and paperboard point source category. The amendment affects only existing direct discharging mills in the Bleached Papergrade Kraft and Soda Subcategory that choose to enroll in the Voluntary Advanced Technology Incentives Program (VATIP). EPA established the VATIP as part of the final Pulp and Paper "Cluster Rules" on April 15, 1998. Today's amendment adds a component to the VATIP. This amendment requires a plan (referred to as the "Milestones Plan") specifying research, construction, and other activities leading to achievement of the VATIP effluent limitations with accompanying dates for achieving these milestones. The purpose of the Milestones Plan is to provide the permitting authority with mill-specific information upon which to base permit requirements reflecting reasonable interim milestones. In compliance with the Paperwork Reduction Act (PRA), this action also makes a technical amendment to the table in Part 9 that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Pulp, Paper, and Paperboard Point Source Category. EPA is amending Part 9 to include the OMB control number for the Milestones Plan requirement being promulgated today and the OMB control number for the information collection requirements associated with the best management practices regulations promulgated last year as part of the Cluster Rules.

DATES: The effective date of these amendments is August 6, 1999. For compliance dates, see the **SUPPLEMENTARY INFORMATION** section under the heading "Compliance Dates."

ADDRESSES: The public record (excluding confidential business information) for this rulemaking is available for review at the EPA's Water Docket, 401 M Street, SW, Washington DC, 20460. For access to docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Perez, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460; call (202) 260–2275 or e-mail: perez.mark@epa.gov. Information is also available from the EPA pulp and paper website: http://www.epa.gov/OST/pulppaper.

SUPPLEMENTARY INFORMATION:

Overview

This preamble describes the legal authority for the amendment to Part 430, background information on the VATIP, and the rationale for the Milestones Plan. It also discusses the technical amendment to Part 9.

Regulated Entities

Entities potentially regulated by the amendment to Part 430 are those existing, direct discharging mills that chemically pulp wood fiber using kraft or soda methods to produce bleached papergrade pulp and/or bleached paper or paperboard, if they choose to enroll in the VATIP. Entities affected by the technical amendment to Part 9 are those operations that chemically pulp wood fiber using kraft, sulfite, or soda methods to produce bleached papergrade pulp and/or bleached paper/paperboard, insofar as today's technical amendment means the mills in Subparts B and E are now required to comply with the information collection requirements contained in 40 CFR 430.03 (subject to the deadlines in 40 CFR 430.03(j)). Regulated categories and entities include:

Category	Rule	SIC code	NAICS code	Examples of regulated entities
Industry	Amendment to Part 430	2611, 2621	32211, 322121	Existing, direct discharging Bleached Papergrade Kraft and Soda mills that choose to enroll in the Voluntary Advanced Technology Incentives Program.
Industry	Amendment to Part 9	2611, 2621	32211, 322121	Mills that chemically pulp wood fiber using kraft, sulfite, or soda methods to produce bleached papergrade pulp and/or bleached paper/paperboard.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by today's actions. This table lists the types of entities that EPA is now aware could potentially be regulated by today's actions. Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by today's actions, you should carefully examine the applicability criteria in Section 430.20 of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of today's actions to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

In accordance with 40 CFR 23.2, today's rule shall be considered promulgated for the purposes of judicial review at 1 pm Eastern Time on July 21, 1999. Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's amendment to the effluent limitations guidelines and standards already codified at 40 CFR Part 430 is available in the United States Court of Appeals by filing a petition for review within 120 days from the date of promulgation of this amendment. Under section 509(b)(2) of the CWA, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Compliance Dates

Existing, direct dischargers presently enrolled or intending to enroll in the Voluntary Advanced Technology Incentives Program must comply with the requirements of this amendment by October 5, 1999, or by the date the discharger applies for a National Pollutant Discharge Elimination System (NPDES) permit containing limitations and conditions based on 40 CFR 430.24(b), whichever is later.

I. Legal Authority

This regulation establishes requirements for submitting a Milestones Plan by existing, direct discharging mills that choose to enroll in the Voluntary Advanced Technology Incentives Program (VATIP). This amendment to Part 430 is promulgated under the authority of Sections 301, 304, 308, 402, and 501 of the Clean Water Act, as amended, (33 U.S.C. 1311, 1314, 1318, 1342, and 1361), and Section 112 of Clean Air Act, as amended (42 U.S.C. 7412). The technical amendment to Part 9 is promulgated under the authority of 7 U.S.C 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. # 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

II. The Milestones Plan Amendment

A. Background on the Voluntary Advanced Technology Incentives Program

EPA promulgated effluent limitations guidelines and standards for the Bleached Papergrade Kraft and Soda (Subpart B) subcategory of the pulp, paper and paperboard point source category on April 15, 1998 (40 CFR Part 430). Those regulations are commonly referred to as the Cluster Rules. In Section 430.24 of the final rule, EPA created the Voluntary Advanced Technology Incentives Program (VATIP), whereby participating mills agree to accept enforceable effluent limitations and conditions in their National Pollutant Discharge Elimination System (NPDES) permits that are more stringent than the baseline Best Available Technology Economically Achievable (BAT) limitations that would otherwise apply, in exchange for regulatory-and enforcement-related rewards and incentives.

The VATIP effluent limitations for existing, direct discharging mills are specified in 40 CFR 430.24(b). EPA established the VATIP for Subpart B to encourage direct discharging mills to move beyond baseline BAT technologies toward the "mill of the future," which EPA believes will have a minimum impact on the environment. The development of increasingly more advanced process technologies that minimize the discharge of wastewater and wastewater pollutants is a critical step toward the Clean Water Act's ultimate goal of eliminating the discharge of pollutants into the Nation's waters. Therefore, the VATIP promotes EPA's statutory goal and establishes limitations that act as a beacon to show what is possible. (EPA also established an incentives program for new direct discharging sources, see 40 CFR 430.25(c), but today's amendment does not apply to that program.)

Existing, direct discharging mills that enroll in the VATIP can choose among three different levels of ultimate performance requirements, expressed as Tier I, Tier II, or Tier III. Tier III is the most stringent of the tiers. Each BAT Tier is made up of an array of increasingly more stringent effluent limitations in the form of enforceable milestones. See, e.g., 40 CFR 430.24(b)(2). Each tier culminates in the ultimate performance requirements of that particular tier. See 40 CFR 430.24(b)(4)(I). EPA is providing incentives that include additional time for achieving those requirements. Mills enrolled at BAT Tier I have until April 15, 2004 to achieve their ultimate VATIP effluent limitations. For Tier II, the date is April 15, 2009, and for Tier III the date is April 15, 2014. See 40 CFR 430.24(b)(4)(ii). For further details on the incentives associated with this voluntary program, see Section IX of the preamble to the Cluster Rules (63 FR 18504, 18593–611 (April 15, 1998)) and The Voluntary Advanced Technology Incentives Program Technical Support Document (DCN 14488 in the rulemaking record).

In order to facilitate achievement of the ultimate VATIP limitations required by this program, today's rule requires all existing mills participating in the VATIP to submit a Milestones Plan to the NPDES permitting authority detailing, for each enrolled fiber line,

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the strategy the mill will follow to develop and implement the technologies or processes it intends to use to achieve the VATIP limitations associated with the chosen incentive tier. EPA proposed this amendment at the same time it promulgated the Cluster Rules, including the VATIP. See 63 FR 18796 (April 15, 1998).

B. Rationale for the Milestones Plan

The Milestones Plan described in this amendment to 40 CFR 430.24 is intended to provide information to the permitting authority for its use in developing interim limitations and/or permit conditions under 40 CFR 430.24(b)(2). The purpose of those limitations and conditions, identified as Best Professional Judgment Milestones in the current regulation, is to ensure that existing mills enrolled in the VATIP will make reasonable progress toward the achievement of the interim and ultimate Voluntary Advanced Technology BAT limitations codified at 40 CFR 430.24(b)(3) and (4). The Milestones Plan required by today's rule is not itself enforceable, but rather serves as the basis for the Best Professional Judgment Milestones limitations and conditions, which are enforceable. EPA intends that an individualized Milestones Plan for each existing mill enrolled in the VATIP will provide sufficient flexibility to the mill and the permitting authority so that the Best Professional Judgment Milestones limitations and conditions in the NPDES permit can reflect the unique situation at that mill.

C. Description of the Milestones Plan

The Milestones Plan requirement is codified at 40 CFR 430.24(c). The Milestones Plan, which must address each fiber line enrolled in the VATIP, must describe each envisioned new technology component or process modification the mill intends to implement in order to achieve the applicable Voluntary Advanced Technology BAT limits. See 40 CFR 430.24(c)(1). In addition, the Milestones Plan must include a master schedule showing the sequence of implementing the new technologies and process modifications and identifying critical path relationships within the sequence. See 40 CFR 430.24(c)(2).

The Milestones Plan must include for each new technology or process modification, a schedule that identifies the anticipated initiation and completion dates of construction, installation and operational "shakedown" period associated with the technology components or process modifications and, when applicable, the anticipated dates of initiation and completion of associated research, process development, and mill trials. EPA expects research, process development, and mill trials to be undertaken for those technologies or process modifications that are not commercially available or demonstrated on a full-scale basis at the time the plan is developed. The Milestones Plan must also include the anticipated dates that the technologies and processes identified in the Milestones Plan will be fully operational, including the appropriate anticipated magnitude of reductions in effluent quantity and anticipated improvements in effluent quality associated with each technology and process modification implemented as measured at the bleach plant (for bleach plant, pulping area and evaporator condensates flow and BAT parameters other than Adsorbable Organic Halides (AOX)) and at the end of the pipe (for AOX), and the dates the discharger expects those reductions and improvements to be achieved. See 40 CFR 430.24(c)(3). The anticipated reductions in effluent quantity and improvement in effluent quality described in the Milestones Plan will assist the permitting authority in establishing interim milestones.

The plan also must include contingency plans in the event that any of the technologies or processes specified in the Milestones Plan need to be adjusted or alternative approaches developed to ensure that the VATIP limitations are achieved by the dates specified in 40 CFR 430.24(b). See 40 CFR 430.24(c)(4). EPA believes that contingency planning is appropriate because mills may decide to employ innovative or untested technologies and processes to achieve the VATIP limitations, and EPA wants to ensure that achievement of those limitations will not be delayed in the event certain preliminary approaches prove to be unsuccessful. Indeed, the time periods specified for complying with the ultimate Tier II and Tier III VATIP limitations specifically took into account the uncertainties surrounding some of the associated technologies and processes. See 63 FR at 18605. The Milestones Plan must be signed by the responsible corporate officer as defined in 40 CFR 122.22. See 40 CFR 430.24(c)(5).

Mills at all Tier levels are encouraged to provide, as an appendix to the Milestones Plan, vendor documentation or preliminary studies. Mills enrolling in either Tier II or III levels are also encouraged to provide feasibility studies, research proposals and reports, and literature on minimum effluent technology. Mills enrolling in the Tier III level are additionally encouraged to provide literature on closed cycle technology.

D. Permit Writers' Responsibilities

EPA expects the permitting authority to use the information contained in these Milestones Plans, as well as its own best professional judgment, to establish enforceable narrative or numeric limitations and/or special permit conditions that reflect these interim milestones. EPA also expects permit writers to include reopener clauses in the permits to adjust these limitations and conditions as appropriate to reflect the results of research, process development, mill trials, and contingencies the permit writer gathers during periodic review of the mill's progress in implementation of the Milestones Plan.

E. Changes Since Proposal

EPA received comments on the proposed Milestones Plan regulation indicating that a mill may wish to claim as Confidential Business Information (CBI) the technologies or processes by which it intends to achieve the interim and ultimate VATIP limitations. EPA agrees that this situation could occur. Therefore, although not required to do so, because Part 2 controls in any case, EPA is including language in the final rule in Section 430.24(c) specifically indicating that a mill can claim all or part of the Milestones Plan as confidential. To assert such claims, the discharger would need to follow procedures set forth in 40 CFR Part 2 and 40 CFR 122.7. Such claims would then be handled pursuant to 40 CFR Part 2 when EPA is the permitting authority and pursuant to applicable state rules and regulations governing CBI when states are the permitting authorities.

Today's final regulation also requires mills asserting a CBI claim to prepare a public summary of the confidential portion of the plan and to submit that summary to the permitting authority along with the Milestones Plan. This requirement would allow the public, on request, to obtain information about the mill's progress in achieving its VATIP limitations.

Today's final regulation also corrects an inadvertent omission that occurred in the proposal. In the preamble to the proposed rule, EPA described the proposed rule as including a requirement for mills to describe in the Milestones Plan the anticipated reductions in effluent quantity and improvements in effluent quality as measured at the bleach plant (for bleach plant, pulping area and evaporator condensates flow and BAT parameters other than Adsorbable Organic Halides (AOX)) and at the end of the pipe (for AOX). See 63 FR at 18798. EPA intended to include this provision in the proposed regulatory text as well as in the preamble, but did not do so. Today's final regulation incorporates this provision at Section 430.24(c)(3). In the final regulation, EPA is also clarifying that the requirement to include contingency plans in the Milestones Plan is a stand-alone requirement rather than simply a facet of the milestone schedules, as may have been implied by the proposal. This provision is now set forth at 40 CFR 430.24(c)(4). EPA is also making minor additional changes to enhance clarity. The burden estimates developed by EPA for these provisions under the Paperwork Reduction Act reflected the requirements as promulgated today rather than as set forth in the proposed regulatory text.

III. The Technical Amendments to Part 9

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by the Office of Management and Budget (OMB) for various regulations. Today's amendment updates the table to list the information requirements promulgated under today's Milestones Plan amendment, as well as the information requirements for direct and indirect dischargers associated with the best management practices (BMPs) promulgated as part of the Pulp and Paper Cluster Rules, which appeared in the **Federal Register** on April 15, 1998. See 63 FR 18504. The affected regulations are codified at 40 CFR 430.24(c) (the Milestones Plan) and 40 CFR 430.03 (BMPs). The OMB control number for 40 CFR 430.24 is 2040–0202 and 40 CFR 430.03 is 2040–0207.

EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR Part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting and/or recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR Part 1320.

These ICRs were previously subject to public notice and comment prior to OMB approval. See 63 FR 71634 (Dec. 28, 1998) (BMPs); 63 FR 57294 (Oct. 27, 1998) (Milestones Plan). As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

As a result of today's technical amendment pertaining to BMPs, EPA is now authorized under the Paperwork Reduction Act to conduct or sponsor the information collection requirements in 40 CFR 430.03. Similarly, all dischargers subject to those requirements now are required to comply with them, consistent with the deadlines set forth in 40 CFR 430.03(j). The substantive BMP provisions covered by the OMB control number are 40 CFR 430.03(c), (d), (e), (f), (g), (h), and (I).

IV. Administrative Requirements for the Amendment to Part 430

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* as amended by the Small Business Regulatory Enforcement Fairness Act, EPA generally is required to prepare a regulatory flexibility analysis describing the impact of a regulatory action on small entities as part of the rulemaking. The RFA defines "small entity" to mean a small business, small organization or small governmental jurisdiction. Under section 605(b) of the RFA, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities because there are no small entities subject to the rule. At the time EPA published the Cluster Rule, EPA had determined that there were only three mills in Subpart B that were owned by small businesses (where small businesses are defined as firms employing no more than 750 workers) (63 FR 18504, 18611–12 (April 15, 1998)). EPA has since determined that there are no longer any small businesses in Subpart B because these mills are no longer owned by firms with fewer than 750 employees. The mills that were owned by small firms have been bought by larger firms or are owned by companies that have increased in size.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0202.

These information collection activities consist of a Milestones Plan to be submitted by facilities that enroll in the Voluntary Advanced Technology Incentives Program (VATIP) to the NPDES permitting authority. This Milestones Plan specifies research, construction, and other activities leading to achievement of the VATIP effluent limitations with accompanying dates for achieving these milestones. The purpose of the Milestones Plan is to provide the permitting authority with mill-specific information upon which to base permit requirements reflecting reasonable interim milestones. A facility may submit their Milestones Plan to the NPDES permitting authority as confidential business information (CBI), however, the mill must prepare and submit to the NPDES permitting authority a summary of the plan for public release.

EPA estimates 56, 154, and 328 hours for the preparation and submittal of the

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Milestones Plan for mills enrolling in Tier I, Tier II, and Tier III of the VATIP, respectively. The Agency anticipates 14 mills to enroll in Tier I, 13 mills to enroll in Tier II, and 2 mills to enroll in Tier III.

Estimating $65 and $100 per hour for process engineering time and senior management time, respectively (labor plus overhead), mills will incur a one-time cost burden of $3,990 for enrollment in Tier I, $11,120 for enrollment in Tier II, and $23,840 for enrollment in Tier III. These estimates include vendor documentation or preliminary studies at all Tier levels and additional feasibility studies, research proposals and reports, and literature at Tier II and III levels.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with previously applicable instructions and requirements; train personnel to be able to respond to the collection of information; search data sources; complete and review the collection of information and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor a collection of information, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for PRA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA published a notice of proposed rulemaking for today's amendment at 63 FR 18796 (April 15, 1998). Today's rule contains no Federal mandates (under the provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. The VATIP, which now requires the submission of a Milestones Plan, is a voluntary program. The UMRA excludes from the definition of "Federal private sector mandate" duties that arise from participation in a Federal voluntary program. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule does not affect any small governments. The rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 12875, Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's amendment to Part 430 does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's amendment to Part 430 does not create a mandate on tribal governments. It does not impose any enforceable duties or substantial direct compliance costs on them. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12898

Executive Order 12898 directs Federal agencies to "determine whether their programs, policies, and activities have disproportionally high adverse human health or environmental effects on minority populations and low-income populations." (Sec. 3–301 and Sec. 3–302). This rule will not have any adverse health or environmental effects on those populations.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule initiated after April 21, 1997, or proposed after April 21, 1998, that (1) is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets these criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's amendment to Part 430 is not subject to Executive Order 13045 because the Notice of Proposed Rulemaking was published before April 21, 1998, and because it is not an economically significant rule as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, an explanation when the Agency decides not to use available and potentially applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

V. Administrative Requirements for the Technical Amendments to Part 9

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the technical amendment to Part 9 is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, the technical amendment does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The technical amendment also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This portion of today's rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined under Executive Order 12866. Further, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. Today's technical amendment is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying requirements is discussed above for the Milestones Plan and, for the BMP requirements in the **Federal Register** Final Rule publishing those requirements. See 63 FR at 18611–16 (April 15, 1998).

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and the technical amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. Section 804(2). This rule will be effective August 6, 1999.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 430

Environmental protection, Pulp and paper products industry, Reporting and recordkeeping requirements, Water pollution control.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations, parts 9 and 430, are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1, the table is amended by adding entries in numerical order under the indicated heading "Pulp, Paper, and Paperboard Point Source Category" and by removing the entry for "430.24–430.27" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
. . . . .	
Pulp, Paper, and Paperboard Point Source Category:	
. . . . .	
430.03	2040–0207

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40 CFR citation	OMB control No.
. . . . .	.
430.24(a)	2040–0033
430.24(b)	2040–0033 2040–0202
430.24(c)	2040–0202
430.24(d)	2040–0033
430.24(e)	2040–0033
430.25–430.27	2040–0033
. . . . .	.

PART 430—THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

1. The authority citation for part 430 continues to read as follows:

Authority: Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, as amended, (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361), and Section 112 of Clean Air Act, as amended (42 U.S.C. 7412).

2. Section 430.24 is amended by revising paragraph (b)(2) and adding paragraph (c) to read as follows:

§ 430.24 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

* * * * *

(b) * * *

(2) Best Professional Judgment Milestones: Narrative or numeric limitations and/or special permit conditions, as appropriate, established by the permitting authority on the basis of his or her best professional judgment that reflect reasonable interim milestones toward achievement of the effluent limitations specified in paragraphs (b)(3) and (b)(4) of this section, as applicable, after consideration of the Milestones Plan submitted by the discharger in accordance with paragraph (c) of this section.

* * * * *

(c) All dischargers enrolled or intending to enroll in the Voluntary Advanced Technology Incentives Program must submit to the NPDES permitting authority a Milestones Plan covering all fiber lines enrolled or intended to be enrolled in that program at their mill by October 5, 1999 or the date the discharger applies for an NPDES permit containing limitations and conditions based on paragraph (b) of this section, whichever is later. Mills may claim all or part of the Milestones Plan as confidential business information (CBI) in accordance with 40 CFR Part 2 and 40 CFR 122.7. If a mill claims all or part of the plan as CBI, the mill must prepare and submit to the NPDES permitting authority a summary of the plan for public release. The Milestones Plan must include the following information:

(1) A description of each anticipated new technology component or process modification that the discharger intends to implement in order to achieve the limitations in paragraphs (b)(3) and (b)(4) of this section;

(2) A master schedule showing the sequence of implementing the new technology components or process modifications and identifying critical path relationships within the sequence;

(3) A schedule for each individual new technology component or process modification that includes:

(i) The anticipated initiation and completion dates of construction, installation and operational "shakedown" period associated with the technology components or process modifications and, when applicable, the anticipated dates of initiation and completion of associated research, process development, and mill trials;

(ii) The anticipated dates that the discharger expects the technologies and process modifications selected to achieve the limitations specified in paragraphs (b)(3) and (b)(4) of this section to be operational on a full-scale basis; and

(iii) The anticipated magnitude of reductions in effluent quantity and the anticipated improvements in effluent quality associated with each technology and process modification implemented as measured at the bleach plant (for bleach plant, pulping area and evaporator condensates flow and BAT parameters other than Adsorbable Organic Halides (AOX)) and at the end of the pipe (for AOX), and the dates the discharger expects those reductions and improvements to be achieved;

(4) Contingency plans in the event that any technology or process specified in the Milestones Plan need to be adjusted or alternative approaches developed to ensure that the limitations specified in paragraphs (b)(3)and (b)(4) of this section are met; and

(5) A signature by the responsible corporate officer as defined in 40 CFR 122.22.

* * * * *

[FR Doc. 99–17207 Filed 7–6–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–92–1–7368; FRL–6342–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The EPA is revising the format of 40 Code of Federal Regulations (CFR) part 52 for materials submitted by Texas that are incorporated by reference (IBR) into the State Implementation Plans (SIPs). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA. This format revision will primarily affect the "Identification of plan" of 40 CFR 52.2270, as well as the format of the SIP materials that will be available for public inspection at the EPA Region 6 office, the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC., and the Office of the Federal Register. The sections of 40 CFR 52.2270 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review and 40 CFR 52.2271 through 52.2309 remain unchanged. The EPA has determined that good cause exists for issuing this rule without public comment.

EFFECTIVE DATE: This action is effective July 7, 1999.

ADDRESSES: The SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733;
Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and
Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L) at the above Region 6 address or at (214) 665–7354.

SUPPLEMENTARY INFORMATION:

Background

Each State is required by section 110(a)(1) of the Clean Air Act (Act), to have a SIP that contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards. The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA pursuant to 110(k) of the Act, after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans) of 40 CFR. The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the State is enforcing the regulations. It also allows EPA to take enforcement action, or the public to bring citizen suits, should a State not enforce its SIP-approved regulations.

The SIP is an active or changing document which can be revised by the State as necessary to address the unique air pollution problems in the State as long as changes are not contrary to Federal law. Therefore, EPA, from time to time, must take action to incorporate into the SIP, revisions of the State program which may contain new and/or revised regulations. Regulations approved into the SIP are then incorporated by reference into part 52. Pursuant to 110(h)(1) of the Act and as a result of consultations between EPA and the Office of Federal Register, EPA revised the procedures May 22, 1997 (62 FR 27968), for incorporating by reference federally-approved SIPs and began the process of developing: (1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51, (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

Content of Revised IBR Document

The new SIP compilations contain the federally-approved portion of State regulations and source specific permits submitted by each State agency. These regulations and source-specific permits have all been approved by EPA through previous rulemaking actions in the **Federal Register**. The SIP compilations are stored in 3-ring binders and will be updated primarily on an annual basis.

If no significant changes are made for any State to the SIP during the year, an update will not be made during that year. If significant changes occur during the year, an update could be done on a more frequent basis, as applicable. Typically, only the revised sections of the compilation will be updated. Complete resubmittals of a State SIP compilation will be done on an as-needed basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains the source-specific permits that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these States. The regional EPA offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 6 EPA Office developed and will maintain the compilations for Texas. A copy of the full text of the State's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center. The EPA is beginning the phasing in of SIP compilations for individual States, and expects to complete the conversion of the revised "Identification of plan" format and IBR documentation for all states by May 1999. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Act.

Revised Format of the "Identification of Plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section of 40 CFR 52.2270. The EPA is including additional information which will more clearly identify the provisions that constitute the enforceable elements of the SIP.

The revised "Identification of plan" section will contain five subsections: (a) Purpose and scope; (b) Incorporation by reference; (c) EPA approved regulations; (d) EPA approved source-specific permits; and (e) EPA approved nonregulatory provisions, such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

Enforceability and Legal Effect

This change to the procedures for incorporation by reference announced today will not alter in any way the enforceability or legal effect of approved SIP materials, including both those approved in the past or to be approved in the future. As of the effective date of the final rule approving a SIP revision, all provisions identified in the **Federal Register** document announcing the SIP approval will be federally enforceable, both by EPA under section 113 of the Act and by citizens under section 304 of the Act, where applicable. All revisions to the applicable SIP are federally enforceable as of the effective date of EPA approval even if they have not yet been incorporated by reference. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of Plan" section, previously appearing in the CFR as the first or second section of part 52 for each State subpart.

Notice of Administrative Change

Today's action constitutes a "housekeeping" exercise to ensure that federally approved State plans are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA Regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that today's rule falls under the "Good Cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding good cause, authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is unnecessary since the codification only reflects existing law. Immediate revision to the CFR benefits the public by removing outdated citations.

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Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because the SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due the nature of the Federal-State relationship under the Act, preparations of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

The EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions approving each individual component of Texas SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization action for Texas.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 29, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is redesignated as § 52.2299 and the section heading and paragraph (a) are revised to read as follows:

§ 52.2299 Original identification of plan section.

(a) This section identifies the original "Texas Air Pollution Control Implementation Plan" and all revisions submitted by Texas that were federally approved prior to December 31, 1998.

* * * * *

3. A new § 52.2270 is added to read as follows:

§ 52.2270 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for Texas under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section with an EPA approval date prior to December 31, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraph (c) of this section with EPA approval dates after December 31, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of December 31, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 6 EPA Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460; or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(c) EPA approved regulations.

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
Chapter 101—General Rules				
Section 101.1	Definitions	08/16/93	08/19/97, 62 FR 44083	Ref 52.2299(c)(102).
Section 101.1 Table I	Definitions—Major Source/ Major Modification Emission Thresholds.	05/08/92	09/27/95, 60 FR 49781	Ref 52.2299(c)(97).
Section 101.1 Table II	Definitions—List of Synthetic Organic Chemicals.	12/03/82	06/26/85, 50 FR 26362	Ref 52.2299(c)(61). Note: 52.2299(c) (97)(i)(O) only changed the table # from Table I to Table II.
Section 101.2	Multiple air Contaminant Sources or Properties.	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.3	Circumvention	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.4	Nuisance	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.5	Traffic Hazard	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.6	Notification Requirements for Major Upset.	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.7	Notification Requirements for Maintenance.	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.8	Sampling	12/11/73	01/27/82, 47 FR 03767	Ref 52.2299(c)(33).
Section 101.9	Sampling Ports	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.10	Emission Inventory Requirements.	10/15/92	08/26/94, 59 FR 44036	Ref 52.2299(c)(82).
Section 101.11	Exemptions from Rules and Regulations.	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.12	Board Seal	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.13	Use and Effect of Rules	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.14	Sampling Procedures and Terminology.	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.15	Petition for Variance	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.16	Effect of Acceptance of Variance or Permit.	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.17	Transfers	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).

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EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
Section 101.18	Remedies Cumulative	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.19	Severability	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7).
Section 101.20	Compliance with Environmental Protection Agency Standards.	05/09/75 07/26/85	06/01/77, 42 FR 27894 06/24/92, 57 FR 28093	Rule 23 Ref, 52.2299(c)(10) Section 101.20(3), Ref 52.2299(c)(73). (1) and (2) NOT IN SIP.
Section 101.21	The National Primary and Secondary Air Quality Standards.	05/09/75	06/01/77, 42 FR 27894	Ref 52.2299(c)(10).
Section 101.22	Effective Date	07/20/81	04/22/82, 47 FR 17285	Ref 52.2299(c)(31).
Section 101.30	Conformity of General and State Actions to State Implementation Plans.	11/22/94 and 08/21/97	03/11/98, 63 FR 11833	Ref 52.2299(c)(106).
Section 101. Rule 16	Invoking Jurisdiction	04/13/73	6/22/73, 38 FR 16568	Ref 52.2299(c)(7). Not in current Texas General Rules.
Section 101. Rule 19	Initiation of Review	04/13/73	06/22/73, 38 FR 16568	Ref 52.2299(c)(7). Not in current Texas General Rules.
Chapter 111 (Reg 1)—Control of Air Pollution from Visible Emissions and Particulate Matter				
Part A—Outdoor Burning				
Section 111.101	General Prohibition	06/16/89	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Section 111.103	Exceptions to Prohibition of Outdoor Burning.	06/16/89	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Section 111.105	General Requirements for Allowable Outdoor Burning.	06/16/89	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Section 111.107	Responsibility for Consequences of Outdoor Burning.	06/16/89	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Part B—Visible Emissions				
Section 111.111	Requirements for Specified Sources.	06/18/93	05/08/96, 61 FR 20734	Ref 52.2299(c)(94).
Section 111.113	Alternative Opacity Limitations.	06/16/89	05/08/96, 61 FR 20732	Ref 52.2299(c)(94).
Part C—Incineration				
Section 111.11	Single-Chamber Incinerator.	01/22/74	07/26/82, 47 FR 32126	Ref 52.2299(c)(44).
Section 111.12	Approval of Incinerators	01/22/74	07/26/82, 47 FR 32126	Ref 52.2299(c)(44).
Part E—Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots				
Section 111.141	Geographic Areas of Application and Date of Compliance.	10/25/91	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Section 111.143	Materials Handling	06/16/89	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Section 111.145	Construction and Demolition.	10/25/91	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Section 111.147	Roads, Streets, and Alleys	10/25/91	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Section 111.149	Parking Lots	06/16/89	01/18/94, 59 FR 02534	Ref 52.2299(c)(79).
Part F—Particulate Matter				
Section 111. Rule 105.1	Allowable Emission Limits	01/28/72	05/31/72, 37 FR 10895	Ref 52.2299(b).
Section 111. Rule 105.2	Ground Level Concentrations.	01/28/72	05/31/72, 37 FR 10895	Ref 52.2299(b).
Section 111. Rule 105.3	Emission Limits from Solid Fossil Fuel Fired Steam Generators.	01/28/72	05/31/72, 37 FR 10895	Ref 52.2299(b).
Part G—Particulate Matter From Agricultural Processes				
Section 111.71	Applicability of Rules	01/08/82	02/25/83, 48 FR 08073	Ref 52.2299(c)(50).

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
Section 111.72	Process Weight Method	01/22/74	07/26/82, 47 FR 32126	Ref 52.2299(c)(44).
Section 111.73	Alternate Method	01/22/74	07/26/82, 47 FR 32126	Ref 52.2299(c)(44).
Section 111.74	Failure to Select Alternate Method.	01/22/74	07/26/82, 47 FR 32126	Ref 52.2299(c)(44).
Section 111.75	Severability of Rules	01/22/74	07/26/82, 47 FR 32126	Ref 52.2299(c)(44).
Section 111.76	Compliance	01/22/74	07/26/82, 47 FR 32126	Ref 52.2299(c)(44).
Part H—Exemptions				
Section 111.81	Exemption Policy	01/08/82	02/25/83, 48 FR 08073	Ref 52.2299(c)(50).
Section 111.82	Requirements for Exemption.	01/08/82	02/25/83, 48 FR 08073	Ref 52.2299(c)(50).
Section 111.83	Extension of Exemption	01/08/82	02/25/83, 48 FR 08073	Ref 52.2299(c)(50).
Part I—Compliance				
Section 111.92	Compliance Dates	01/08/82	02/25/83, 48 FR 08073	Ref 52.2299(c)(50). Note: NOT in current State Regulation.
Chapter 112 (Reg 2)—Control of Air Pollution From Sulfur Compounds				
Section 112.1	Definitions	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.2	Compliance, Reporting, and Recordkeeping.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.3	Net Ground Level Concentrations.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.4	Net Ground Level Concentrations—Exemption Conditions.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.5	Allowable Emission Rates—Sulfuric Acid Plant Burning Elemental Sulfur.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.6	Allowable Emission Rates—Sulfuric Acid Plant.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.7	Allowable Emission Rates—Sulfur Recovery Plant.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.8	Allowable Emissions Rates from Solid Fossil Fuel-Fired Steam Generators.	09/18/92	02/18/97, 62 FR 07163	Ref 52.2299(c)(101).
Section 112.9	Allowable Emission Rates—Combustion of Liquid Fuel.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.14	Allowable Emission Rates—Nonferrous Smelter Processes.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.15	Temporary Fuel Shortage Plan Filing Requirements.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.16	Temporary Fuel Shortage Plan Operating Requirements.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76).
Section 112.17	Temporary Fuel Shortage Plan Notification Procedures.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76)
Section 112.18	Temporary Fuel Shortage Plan Reporting Requirements.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76)
Section 112.19	Application for Area Control Plan.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76)
Section 112.20	Exemption Procedure	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76)
Section 112.21	Allowable Emission Rates Under Area Control Plan.	09/18/92	08/30/93, 58 FR 45456	Ref 52.2299(c)(76)
Section 112.41 to 112.47	Control of Sulfuric Acid	05/12/89		NOT in SIP but is a part of the EPA approved Texas 111(d) Plan

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EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
Section 112.51 to 112.59 ..	Control of Total Reduced Sulfur (TRS).	05/12/89	.....	NOT in SIP but is a part of the EPA approved Texas 111(d) Plan.
Chapter 113 (Reg 3)—Control of Air Pollution From Toxic Materials				
Subchapter B—Lead from Stationary Sources				
Nonferrous Smelters in El Paso County				
Section 113.31	Maintenance and Operation of Control Equipment.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.32	Areas Accessible to the General Public.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114)
Section 113.33	Control of Fugitive Dust	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.34	Materials Handling and Transfer.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.35	Smelting of Lead	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.36	Smelting of Copper and Zinc.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.37	Lead Emissions Limits for Stacks.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Lead Smelters in Dallas County				
Section 113.41	Maintenance and Operation of Control Equipment.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.42	Storage of Lead-Containing Materials.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.43	Transport of Materials	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.44	Fugitive Emissions from Lead Processes.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.45	Battery or Lead Reclaiming Operations.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.46	Lead Emission Limits for Reverberatory Furnaces and Blast Furnaces.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.47	Control of Fugitive Dust	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.48	Additional measures to Reduce lead Emissions.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Compliance and Control Plan Requirements				
Section 113.61	Compliance with Other Rules in El Paso County.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.62	Dates for Control Plan Submission and for Final Compliance in El Paso County.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.63	Control Plan Procedure in El Paso County.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.64	Reporting Procedure in El Paso County.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.65	Compliance with Other Rules in Dallas County.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.66	Dates for Control Plan Submission and for Final Compliance in Dallas County.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.67	Control Plan Procedure in Dallas County.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Section 113.68	Reporting Procedure in Dallas County.	08/21/97	10/23/98, 63 FR 56083	Ref 52.2299(c)(114).
Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles				
Section 114.1	Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.	09/30/85	02/09/89, 54 FR 06287	Ref 52.2299 (c)(66).

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
Section 114.3	Vehicle Emissions Inspection and Maintenance Program.	11/12/93	08/22/94, 59 FR 43046	Ref 52.2299 (c)(87).
Section 114.5	Exclusions and Exceptions	09/30/85	02/09/89, 54 FR 06287	Ref 52.2299 (c)(66).
Section 114.13	Oxygenated Fuels	10/23/92	09/12/94, 59 FR 46766	Ref 52.2299 (c)(84).
Section 114.27	Transportation Conformity	11/06/94	11/08/95, 60 FR 56246	Ref 52.2299 (c)(96). No action taken on a portion of 30 TAC 114.27(c) that contains provisions of 40 CFR 51.448.
Texas Department of Transportation Regulation—31 TAC Chapter 17—Vehicle Titles and Registration				
Section 17.80	Vehicle Emissions Verification System.	11/09/93	08/22/94, 59 FR 43046	Ref 52.2299 (c)(87)(i)(F).
CHAPTER 115 (REG 5)—CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS				
Subchapter A—Definitions				
Section 115.010	Definitions	11/10/93	05/22/97, 62 FR 27964	Ref 52.2299 (c)(104).
Section 115.010 Table 1 ...	Definitions: Synthetic Organic Chemicals.	11/10/93	05/22/97, 62 FR 27964	Ref 52.2299 (c)(104).
Subchapter B—General Volatile Organic Compound Sources				
Section 115.112 to 115.119.	Storage of Volatile Organic Compounds.	05/08/92	03/07/95, 60 FR 12438	Ref 52.2299 (c)(88).
Section 115.121 to 115.129.	Vent Gas Control	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299 (c)(104).
Section 115.131 to 115.139.	Water Separation	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299 (c)(104).
Section 115.140 to 115.149.	Industrial Wastewater	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299 (c)(104).
Section 115.152 to 115.159.	Municipal Solid Waste Landfills.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299 (c)(104).
Subchapter C—Volatile Organic Compound Transfer Operations				
Section 115.211 to 115.219.	Loading and Unloading of Volatile Organic Compounds.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299 (c)(104).
Section 115.220*	Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicles Fuel Dispensing Facilities in Bexar County.	03/30/79	11/10/82, 47 FR 50866	Ref 52.2299(c)(48). The number 220* was created to avoid duplicate sections numbers in the SIP. There is no section 115.220 in the current SIP approved codification.
Section 115.221 to 115.229.	Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicles Fuel Dispensing Facilities.	05/05/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.234 to 115.239.	Control of Volatile Organic Compound Leaks from Transport Vessels.	05/05/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.241 to 115.249.	Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities.	05/05/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104.)
Section 115.252 to 115.259.	Control of Reid Vapor Pressure of Gasoline.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Subchapter D—Petroleum Refining and Petrochemical Processes				
Section 115.311 to 115.319.	Process Unit Turnaround and Vacuum-producing Systems in Petroleum Refineries.	05/08/92	03/07/95, 60 FR 12438	Ref 52.2299(c)(88).
Section 115.322 to 115.329.	Fugitive Emission Control in Petroleum Refineries.	05/08/92	03/07/95, 60 FR 12438	Ref 52.2299(c)(88).

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
Section 115.332 to 115.339.	Fugitive Emission Control in Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Processes.	05/08/92	03/07/95, 60 FR 12438	Ref 52.2299(c)(88).
Section 115.342 to 115.349.	Fugitive Emission Control in Natural Gas/Gasoline Processing Operations.	05/08/92	03/07/95, 60 FR 12438	Ref 52.2299(c)(88).
Section 115.352 to 115.359.	Fugitive Emission Control in Petroleum Refining and Petrochemical Processes.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Subchapter E—Solvent-Using Processes				
Section 115.412 to 115.419.	Degreasing and Clean-up Processes.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.421 to 115.429.	Surface Coating Processes.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.432 to 115.439.	Graphic Arts (Printing) by Rotogravure and Flexographic Processes.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.442 to 115.449.	Offset Lithographic Printing	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Subchapter F—Miscellaneous Industrial Sources				
Section 115.512 to 115.519.	Cutback Asphalt	05/08/92	03/07/95, 60 FR 12438	Ref 52.2299(c)(88).
Section 115.531 to 115.539.	Pharmaceutical Manufacturing Facilities.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.541 to 115.549.	Degassing or Cleaning of Stationary, Marine, and Transport Vessels.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.552 to 115.559.	Petroleum Dry Cleaning Systems.	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Subchapter G—Consumer-Related Sources				
Section 115.600 to 115.619.	Consumer Products	05/04/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Subchapter J—Administrative Provisions				
Section 115.901 to 115.916.	Alternate Means of Control	07/13/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.920 to 115.923.	Early Reductions	07/13/94	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.930 to 115.940.	Compliance and Control Plan Requirements.	11/10/93	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Section 115.950	Standard Permits	11/10/93	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
Chapter 116 (Reg 6)—Control of Air Pollution By Permits For New Construction Or Modification				
Section 116.01.	Permit Requirements	09/20/91	09/27/95, 60 FR 49788	Ref 52.2299(c)(97).
Section 116.02.	Responsibility for Obtaining Permit or Exemption.	07/26/85	09/27/95, 60 FR 49788	Ref 52.2299(c)(97).
Section 116.03	Consideration for Granting a Permit to Construct and Operate.	08/16/93	08/19/97, 62 FR 44087	Ref 52.2299(c)(102). Note: (a)(9), (11), (12), and (c)(2), (c)(3)(d) and (e) NOT in SIP.
Section 116.04	Special Conditions	06/10/83	08/13/84, 49 FR 32181 Ref 52.2299(c)(59)..	
Section 116.05	Representation in Application for Permit or Exemption.	08/11/89	09/27/95, 60 FR 49788	Ref 52.2299(c)(97).
Section 116.06	Exemptions	03/27/75	08/13/82, 47 FR 35193	Ref 52.2299(c)(36).
Section 116.07	Request for Exemptions	03/27/75	08/13/82, 47 FR 35193	Ref 52.2299(c)(36).
Section 116.08	Local Air Pollution Control Agencies.	03/27/75	08/13/82, 47 FR 35193	Ref 52.2299(c)(36).

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
Section 116.10	Public Notification and Comment Procedure.	10/16/92	09/27/95, 60 FR 49788	Ref 52.2299(c)(97).
Section 116.11	.Permit Fees	08/16/93	08/19/97, 62 FR 44083	Ref 52.2299(c)(102). Note: 116.11(b)(1)–(4) NOT in SIP.
Section 116.14	Compliance History Requirements.	10/16/92	09/27/95, 60 FR 49788	Ref 52.2299(c)(97).
Subchapter A—Definitions				
Section 116.010	General Definitions	08/16/93	08/19/97, 62 FR 44087	Ref 52.2299(c)(102).
Subchapter B—New Source Review Permits Permit Fees				
Section 116.141	Determination of Fees	08/16/93	08/19/97, 62 FR 44083	Ref 52.2299(c)(102) Note: 141(b) NOT in SIP.
Prevention of Significant Deterioration Review				
Section 116.160	Prevention of Significant Deterioration Review Requirements.	03/01/95	08/19/97, 62 FR 44083	Ref 52.2299(c)(102).
Section 116.161	Source Located in an Attainment Area with Greater than De Minimis Impact.	08/16/93	08/19/97, 62 FR 44083	Ref 52.2299(c)(102).
Section 116.162	Evaluation of Air Quality Impacts.	08/16/93	08/19/97, 62 FR 44083	Ref 52.2299(c)(102).
Section 116.163	Prevention of Significant Deterioration Permit Fees.	08/16/93	08/19/97, 62 FR 44083	Ref 52.2299(c)(102).
Chapter 117 (Reg 7)—Control Of Air Pollution From Nitrogen Compounds				
Section 117. Rule 701	Gas Fired Steam Generating Units.	08/08/72	03/02/76, 42 FR 08967	Ref 52.2299(c)(5).
Section 117. Rule 702	Nitric Acid Manufacturing	08/08/72	03/02/76, 42 FR 08967	Ref 52.2299(c)(5).
Section 117. Rule 703	Compliance with Rule 701 and 702.	08/08/72	03/02/76, 42 FR 08967	Ref 52.2299(c)(5).
CHAPTER 118 (REG 8)—CONTROL OF AIR POLLUTION EPISODES				
Section 118.1	Generalized Air Pollution Episodes.	04/14/89	09/06/90, 55 FR 36632	Ref 52.2299(c)(71).
Section 118.2	Provisions Governing Generalized Episode Control.	07/17/87	09/06/90, 55 FR 36632	Ref 52.2299(c)(71).
Section 118.3	Localized Air Pollution Episodes.	07/17/87	09/06/90, 55 FR 36632	Ref 52.2299(c)(71).
Section 118.4	Hearings	07/17/87	09/06/90, 55 FR 36632.	Ref 52.2299(c)(71).
Section 118.5	Emission Reduction Plan	04/14/89	09/06/90, 55 FR 36632.	Ref 52.2299(c)(71).
Section 118.6	Texas Air Pollution Episode Contingency Plan and Emergency Management Center.	07/17/87	09/06/90, 55 FR 36632	Ref 52.2299(c)(71).

(d) [Reserved]

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA APPROVED STATUTES IN THE TEXAS SIP

Title/Subject	State approval/submittal date	EPA approval date	Comments
Texas Clean Air Act (Article 4477–5), Vernon's Texas Civil Statutes.	01/28/72	05/31/72, 37 FR 10895	As amended by S.B. 48 of 1969.
Article 698d Air Pollution, Penal Code of Texas, 1925.	01/28/72	05/31/72, 37 FR 10895	As amended by S.B. No. 5 of 1969.
House Bill 322	01/28/72	05/31/72, 37 FR 10895	As passed by the 62nd Legislature of Texas, amending the Texas Clean Act regarding permits for construction or modification of facilities.

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EPA APPROVED STATUTES IN THE TEXAS SIP—Continued

Title/Subject	State approval/submittal date	EPA approval date	Comments
Texas Clean Air (Tex. Rev. Civ. Stat. Ann. Art. 4477–5) as amended June 13, 1979.	07/23/81	12/15/81, 46 FR 61125	Ref 52.2299(c)(29).
Air Pollution (Tex. Rev. Civ. Stat. Ann. Art. 4477–5b) as amended January 1, 1974.	07/23/81	12/15/81, 46 FR 61125	Ref 52.2299(c)(29).
Texas Administrative Procedure and Texas Register Act.	07/23/81	12/15/81, 46 FR 61125	Ref 52.2299(c)(29).
(Tex. Rev. Civ. Stat. Ann. Art. 6252–13a) effective January 1, 1976.	07/23/81	12/15/81, 46 FR 61125	Ref 52.2299(c)(29).
Texas Open Record Act (Tex. Rev. Civ. Stat. Ann. Art. 6252–17a) as amended May 27, 1975.	07/23/81	12/15/81, 46 FR 61125	Ref 52.2299(c)(29).
Standards of Conduct of State Officers and Employees (Tex. Rev. Civ. Stat. Ann. Art. 6252–9b) effective January 1, 1974.	07/23/81	12/15/81, 46 FR 61125	Ref 52.2299(c)(29).
Department of Public Safety and Texas Air Control Board Rules and Regulations, Texas Vehicle Inspection Act Article XV.	11/9/84	06/26/85, 50 FR 26362	Ref 52.2299(c)(61).
Documentation to Authorize and Support the Implementation and Enforcement of the Texas Vehicle parameter Inspection and Maintenance Program, Appendix X, containing the following documents:			
A. Senate Bill 1205	11/9/84	06/26/85, 50 FR 26362	Ref 52.2299(c)(61).
B. Letters of Commitment from Texas Department of Public Safety City of Houston Police Department and Harris County Sheriff.	11/9/84	06/26/85, 50 FR 26362	Ref 52.2299(c)(61).
C. Parameter Vehicle Emission Inspection and Maintenance Rules and Regulations for Official Vehicle Inspection Stations and Certified Inspectors, July 1, 1984.	11/9/84	06/26/85, 50 FR 26362.	Ref 52.2299(c)(61).
Texas Motor Vehicle Laws, 1981–1982—Rules and Regulations for Official Vehicle Inspection Stations and Certified Inspectors, November 11, 1983, Sections A,B,C, pages C–1, C–16, C–17, C–18, C–26, C–27, and C–28, D, and E pages E–1, E–6, E–7, E–8, and E–9.	11/9/84	06/26/85, 50 FR 26362	Ref 52.2299(c)(61).
VIMTCM, Appendix AJ, Excerpted Senate Bill 725, section 35(d) and (g) effective September 1, 1985; and House Bill 1593 sections 21 and 22 effective June 18, 1987.	09/30/85 and 12/21/87	02/09/89, 54 FR 06287	Ref 52.2299(c)(66).
Texas Clean Air Act (TCAA), Texas Health and Safety Code Ann. (Vernon 1992), Section 382.0365, "Small Business Stationary Source Assistance Program", enacted by the Texas 1991 legislative session and effective September 1, 1991.	11/13/92	08/19/94, 59 FR 42759	Ref 52.2299(c)(85).
Legal opinion letter dated October 15, 1992 from Kirk P. Watson, Chairman, TACB, to Mr. B.J. Wynne, III, Regional Administrator, EPA Region 6, regarding the composition of the Small Business Compliance Advisory Panel of Texas.	11/13/92	08/19/94, 59 FR 42759	Ref 52.2299(c)(85).

EPA APPROVED STATUTES IN THE TEXAS SIP—Continued

Title/Subject	State approval/submittal date	EPA approval date	Comments
House Bill 1969, an act relating to motor vehicle registration, inspections, and providing penalties amending:			
(1) Sections 382.037 and 382.038 of the Texas Health and Safety Code;	11/12/93 and 03/09/94	08/22/94, 59 FR 43046	Ref 52.2299(c)(87).
(2) Section 2 Chapter 88, General Laws, Acts of the 41st legislature, 2nd called session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes);	11/12/93 and 03/09/94	08/22/94, 59 FR 43046	Ref 52.2299(c)(87).
(3) Title 116, Article 6675b–4, 6675b–4A, and 6675b–4B;	11/12/93 and 03/09/94	08/22/94, 59 FR 43046	Ref 52.2299(c)(87).
(4) Section 141(d), and section 142(h), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Civil Statutes);	11/12/93 and 03/09/94	08/22/94, 59 FR 43046	Ref 52.2299(c)(87).
(5) Section 4.202, County Road and Bridge Act (Article 6702–1, Vernon's Texas Civil Statutes). Signed by the Governor on 01/08/93, effective 08/30/93.	11/12/93 and 03/09/94	08/22/94, 59 FR 43046	Ref 52.2299(c)(87).
Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act, sections 382.017, 382.037, 382.038, effective September 1, 1991.	11/12/93 and 03/09/94	08/22/94, 59 FR 43046	Ref 52.2299(c)(87).
Order No. 93–23, as adopted November 10, 1993, and Order No. 94–02 as adopted February 16, 1994.	11/12/93 and 03/09/94	08/22/94, 59 FR 43046	Ref 52.2299(c)(87).
Texas Civil Statutes, Articles 6675a–1 to 6675b–2 and 6687–1. (Vernon 1993).	11/12/93 and 03/09/94	08/22/94, 59 FR 43046	Ref 52.2299(c)(87).

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
Public Hearings	Statewide	02/08/72	05/31/72, 37 FR 10895	Ref 52.2299(c)(1).
HydroCarbon Emission Data.	Statewide	05/02/72	05/31/72, 37 FR 10895	Ref 52.2299(c)(2).
Source Surveillance	Statewide	05/03/72	05/31/72, 37 FR 10895	Ref 52.2299(c)(2).
Minor Revisions	Statewide	07/31/72	10/28/72, 37 FR 23092	Ref 52.2299(c)(4).
Attainment Date Corrections.	Statewide	11/10/72	02/08/73, 38 FR 03600	Ref 52.2299(c)(6).
Classification Revisions for PM, SOx, and CO.	Statewide	03/21/75	04/18/77, 42 FR 20131	Ref 52.2299(c)(9).
Administrative Revisions	Statewide		04/20/77, 42 FR 20463	Ref 52.2299(c)(11).
Air Quality Surveillance Plan.	Statewide	08/02/76	04/18/77, 42 FR 20131	Ref 52.2299(c)(12).
Air Quality Surveillance Plan.	Statewide	08/12/77	03/07/78, 43 FR 09276	Ref 52.2299(c)(13).
Administrative Revisions to Section X.	Statewide		07/06/77, 42 FR 34518	Ref 52.2299(c)(14).
Administrative Revisions to Section IX.	Statewide	08/14/78	04/11/79, 44 FR 21644	Ref 52.2299(c)(16).
Board Order No. 78–6	Corpus Christi, TX	07/24/78	09/24/79, 44 FR 55005	Ref 52.2299(c)(17) (see 52.2275)
Draft inspection/maintenance legislation and study schedule.	Harris County	04/13/79	12/18/79, 44 FR 74831	Ref 52.2299(c)(18).
Adopted inspection/maintenance legislation and administrative revisions.	Harris County	08/09/79	12/19/79, 44 FR 74831	Ref 52.2299(c)(19).
Plan Revisions (Part D requirements).	Statewide	04/13/79	03/25/80, 45 FR 19244	Ref 52.2299(c)(20).
Administrative Revisions to Transportation Control.	Statewide	08/09/79	03/25/80, 45 FR 19244	Ref 52.2299(c)(21).

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EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
Transportation Control Measures for Harris County.	Harris County	12/28/79	08/06/80, 45 FR 52148	Ref 52.2299(c)(24).
Board Order No. 78–8	General Portland, Inc., New Braunfels, Comal County, TX.	09/13/78	08/28/81, 46 FR 43425	Ref 52.2299(c)(26). (See 52.2276).
Administrative Revision to Section I.	Statewide	07/23/81	11/13/81, 46 FR 55970	Ref 52.2299(c)(28).
Administrative Revision to Section V.	Statewide	07/23/81	12/15/81, 46 FR 61125	Ref 52.2299(c)(29).
Plan Revisions for Intergovernmental Consultation and Composition.	Statewide	04/13/79	03/29/82, 47 FR 13143	Ref 52.2299(c)(32).
Texas Lead SIP and Board Order No. 82–11.	Statewide excluding Dallas and El Paso areas.	06/12/80	10/04/83, 48 FR 45248	Ref 52.2299(c)(41).
Texas Air Pollution Emergency Episode Contingency Plan.	Statewide	05/18/82	10/07/82, 47 FR 44261	Ref 52.2299(c)(42).
Administrative Revision to Section XII.	Statewide	07/06/82	10/25/82, 47 FR 47247	Ref 52.2299(c)(47).
Administrative Revision to Section III.	N/A	08/17/82	03/31/83, 48 FR 13428	Ref 52.2299(c)(51).
Administrative Revision to Section IX.	Statewide	06/22/83	11/07/83, 48 FR 51153	Ref 52.2299(c)(52).
Lead Plan for Dallas County, TX.	Dallas County, TX	04/6/84	08/15/84, 49 FR 32580	Ref 52.2299(c)(54).
Revisions to Lead Plan for Dallas County, TX.	Dallas County, TX	07/16/84	08/15/84, 49 FR 32580	Ref 52.2299(c)(55).
Lead Plan for El Paso County.	El Paso County, TX	06/20/84	08/13/84, 49 FR 32190	Ref 52.2299(c)(56).
Alternative Emission Control Plan for Exxon Baytown Refinery.	Baytown, TX	03/18/83	07/10/85, 50 FR 26992	Ref 52.2299(c)(60) (Board Order No. 83–2).
Plan for Ozone Attainment in Harris County.	Harris County, TX	12/09/82, 01/03/84, 03/18/85.	06/26/85, 50 FR 26362	Ref 52.2299(c)(61).
Alternative Emission Reduction Plan for Continental Can Company, Longview, TX.	Gregg County, (Longview), TX.	07/25/85	05/05/89, 54 FR 19373	Ref 52.2299(c)(64).
Revision to Lead Plan for El Paso County and Board Order No. 87–14.	El Paso County, TX	10/26/87	05/06/88, 53 FR 16263	Ref 52.2299(c)(65).
Ozone Attainment Plan for Dallas and Tarrant Counties.	Dallas and Tarrant Counties, TX.	09/30/85 and 12/21/87	02/09/89, 54 FR 06287	Ref 52.2299(c)(66).
Vehicle Inspection and Maintenance and Transportation Control Measures (VIMTCM), Appendix AG.	Dallas and Tarrant Counties, TX.	08/28/85	02/09/89, 54 FR 06287	Ref 52.2299(c)(66).
VIMTCM, Appendix AK, Portions 1 through 6.	Dallas and Tarrant Counties, TX.	12/18/87	02/09/89, 54 FR 06287	Ref 52.2299(c)(66).
VIMTCM, Appendix AM, Sections 1, 2, and 3.	Dallas and Tarrant Counties, TX.	12/18/87	02/09/89, 54 FR 06287	Ref 52.2299(c)(66).
VIMTCM, Appendix AN	Dallas and Tarrant Counties, TX.	12/18/87	02/09/89, 54 FR 06287	Ref 52.2299(c)(66).
Part II of the Visibility Protection Plan and Board Order No. 87–15.	Big Bend and Guadalupe Mountain National Parks.	09/18/87	02/23/89, 54 FR 07770	Ref 52.2299(c)(67).
Alternative Emission Reduction Plan (Bubble) for E.I. DuPont de Nemours & Company's Sabine River Works, Orange, TX.	Orange County, TX	03/12/82	04/13/90	Ref 52.2299(c)(70).
Revisions to Texas Air Pollution Episode Contingency Plan.	Statewide	10/02/87	09/06/90, 55 FR 36634	Ref 52.2299(c)(71).
Revisions to Ozone Attainment Plan for Dallas and Tarrant Counties.	Dallas and Tarrant Counties, TX.	03/05/90	08/03/90, 55 FR 31587	Ref 52.2299(c)(72).

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
Revisions for Prevention of Significant Deterioration and Board Orders No. 85–07, 87–09, and 88–08.	Statewide	12/11/85, 10/26/87, 09/29/88.	06/24/92, 57 FR 28098	Ref 52.2299(c)(73).
Board Order No. 90–07	Tarrant County	06/22/90	10/12/90, 55 FR 41525	Ref 52.2299(c)(74).
Board Order No. 92–19	Statewide	09/18/92	08/30/93, 58 FR 45457	Ref 52.2299(c)(76).
Revision for Prevention of Significant Deterioration and Board Order No. 90–13.	Statewide	12/14/90	09/09/94, 59 FR 46557	Ref 52.2299(c)(78).
Revision addressing PM–10 nonattainment area requirements for El Paso and Board Orders 89–03 and 91–15.	El Paso, TX	11/05/91	01/18/94, 59 FR 02535	Ref 52.2299(c)(79).
City of El Paso, TX, Ordinance, Title 9.	El Paso, TX	12/11/90	01/18/94, 59 FR 02535	Ref 52.2299(c)(79).
Board Order No. 92–16	Ozone nonattainment areas.	10/16/92	04/15/94, 59 FR 17943	Ref 52.2299(c)(81).
Board Order No. 92–20	Ozone nonattainment areas.	08/20/92	08/26/94, 59 FR 44039	Ref 52.2299(c)(82).
Revision for the El Paso CO nonattainment area and Board Order No. 92–15.	El Paso County, TX	09/18/92	09/12/94, 59 FR 46766	Ref 52.2299(c)(84).
Small Business Stationary Source Technical and Environmental Compliance Assistance Program.	Statewide	11/13/92	08/19/94, 59 FR 42759	Ref 52.2299(c)(85).
Board Order No. 92–22	Statewide	11/06/92	08/19/94, 59 FR 42759	Ref 52.2299(c)(85).
Board Order No. 92–04	N/A	05/08/92	03/07/95, 60 FR 12438	Ref 52.2299(c)(88).
Board Order No. 92–16	N/A	10/16/92	03/07/95, 60 FR 12438	Ref 52.2299(c)(88).
Revision to Modify SLAMS and NAMS Monitoring Systems and Board Order No. 93–24.	Statewide	11/10/93	10/04/94, 59 FR 50504	Ref 52.2299(c)(90).
Employer Trip Reduction Program and Board Order No. 92–14.	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.	11/13/92	03/07/95, 60 FR 12442	Ref 52.2299(c)(91).
Revision limiting SO2 by agreed orders 94–09 through 94–22.	Certain Nonpermitted facilities in Harris County.	08/03/94	03/06/95, 60 FR 12125	Ref 52.2299(c)(93).
Revision addressing visible emissions with Board Orders 89–03, 90–12, 92–19, and 93–06.	Statewide	08/21/89, 01/29/91, 10/15/92, and 08/04/93.	05/08/96, 61 FR 20732	Ref 52.2299(c)(94).
Alternative Emission Reduction (Bubble) for Shell Oil Company's Deer Park manufacturing complex.	Deer Park, TX	07/26/93	06/19/95, 60 FR 31915	Ref 52.2299(c)(95).
Transportation Conformity and Board Order No. 94–40.	Areas designated nonattainment and areas subject to a maintenance plan.	10/12/94	11/08/95, 60 FR 56244	Ref 52.2299(c)(96).
Revision to Permitting Regulations and Board Orders No. 85–07, 87–09, 87–17, 88–08, 89–06, 90–05, 91–10, 92–06, 92–18, and 93–17.	Statewide	07/26/85, 07/17/87, 12/18/87, 07/15/88, 08/11/89, 05/18/90, 09/20/91, 05/08/92, 10/16/92, 08/16/93.	09/27/95, 60 FR 49781	Ref 52.2299(c)(97).
Alternate Control Strategy for Bell Helicopter Textron, Inc..	Ft Worth, TX, Plant 1 facility.	04/18/96	05/30/97, 62 FR 29297	Ref 52.2299(c)(100).
Revisions to the Plan concerning Sulfur Dioxide in Milam County.	Rockdale, TX	10/15/92 and 09/20/95	09/30/97, 61 FR 49685	Ref 52.2299(c)(101).

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
TNRCC Order No. 93–20, 94–06, 94–26, 94–0676–SIP.	The four ozone nonattainment areas in TX.	11/10/93, 05/04/94, 07/13/94, 11/09/94.	05/22/97, 62 FR 27964	Ref 52.2299(c)(104).
15% ROP Plan	Beaumont/Port Arthur ozone nonattainment area.	08/09/96	02/10/98, 63 FR 6659	Ref 52.2299(c)(107).
15% ROP Plan	Dallas/Ft Worth, El Paso, and Houston/Galveston ozone nonattainment areas.	08/09/96	11/10/98, 63 FR 62943	Ref 52.2299(c)(113) See also 52.2309.

[FR Doc. 99–17032 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL188–1a; FRL–6371–5]

Approval of Hospital/Medical/Infectious Waste Incinerator State Plan for Designated Facilities and Pollutants: Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving Illinois' State Plan for Hospital/Medical/Infectious Waste Incinerators (HMIWI), submitted on May 28, 1999. The State Plan adopts and implements our Emissions Guidelines (EG) applicable to existing HMIWIs. Our approval means that we find the State Plan meets Clean Air Act (Act) requirements. Once effective, our approval makes the State Plan federally enforceable.

DATES: This rule is effective on September 7, 1999, unless EPA receives adverse written comments by August 6, 1999. If adverse written comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. You can inspect copies of the State Plan submittal at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend you contact Mark J. Palermo, Environmental Protection Specialist at (312) 886–6082 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION: The supplemental information is organized in the following order:

I. What is EPA approving in this action?
II. The HMIWI State Plan Requirement.
  What is an HMIWI State Plan?
  Why are we requiring Illinois to submit an HMIWI State Plan?
  Why do we need to regulate HMIWI emissions?
  What criteria must an HMIWI State Plan meet to be approved?
III. The Illinois HMIWI State Plan.
  Where are the Illinois HMIWI State Plan requirements codified?
  Who is affected by the State Plan?
  Who is exempt from the State Plan?
  What does the State Plan require?
  When must the State Plan requirements be met?
  What must you do to obtain an extended compliance schedule?
  What must you do if you intend to permanently shut down?
  What are the permit application deadlines?
  What else does the State Plan include?
  What public review opportunities were provided?
IV. Review and Approval of the Illinois HMIWI State Plan.
  Why is the Illinois HMIWI State Plan approvable?
V. EPA Rulemaking Action.
VI. Administrative Requirements.
  A. Executive Order 12866
  B. Executive Order 12875
  C. Executive Order 13045
  D. Executive Order 13084
  E. Regulatory Flexibility Act
  F. Unfunded Mandates
  G. Submission to Congress and the Comptroller General
  H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act
  J. Petitions for Judicial Review

I. What Is EPA Approving in This Action?

We are approving the May 28, 1999, Illinois State Plan which implements the requirements of sections 111(d) and 129 of the Act for existing HMIWIs. This approval, once effective, will make the Illinois HMIWI rules included in the plan federally enforceable.

II. The HMIWI State Plan Requirement.

What is an HMIWI State Plan?

An HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

Why Are We Requiring Illinois To Submit an HMIWI State Plan?

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when we published the Emissions Guidelines (EG) for HMIWIs on September 15, 1997 (see 62 FR 48348). The EG is codified under 40 CFR part 60, subpart Ce.

Under section 129, we are required to promulgate EGs for several types of existing solid waste incinerators. These EGs establish the Maximum Achievable Control Technology (MACT) standards that States must adopt to comply with the Act. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in State Plans.

The intent of the State Plan requirement is to reduce several types of air pollutants associated with waste incineration.

Why do we need to regulate HMIWI emissions?

The State Plan establishes control requirements which reduce the following emissions from HMIWIs: particulate matter, sulfur dioxide, hydrogen chloride, nitrogen oxides, carbon monoxide, lead, cadmium, mercury, dioxin, and dibenzofurans.

These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

What criteria must an HMIWI State Plan meet to be approved?

The criteria for approving an HMIWI State Plan is summarized in the following table:

Requirement	Elements
Sections 111(d) and 129: State Plan must be at least as protective as the EG ..	—Applicability —Emission Limits —Compliance Schedules —Performance Testing —Monitoring/Inspection —Operator Training/Certification —Waste Management Plan —Recordkeeping/Reporting
40 CFR part 60, subpart B: Criteria for an approvable section 111(d) plan	—Demonstration of Legal Authority —Enforceable Mechanism —Evidence of public hearing —Source and Emission Inventories —State Progress Report Commitment
Section 129(e): Title V permit requirement	State Plans must ensure that affected HMIWI facilities submit Title V permit applications to the State by September 15, 2000.

We issued a guidance document describing in more detail the requirements for an approvable HMIWI State Plan, entitled "Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for Section 111(d)/129 State Plans," published November 1997. Illinois used this document to develop its State Plan.

III. The Illinois HMIWI State Plan

Where are the Illinois HMIWI requirements codified?

Illinois' State Plan requirements for HMIWIs are codified at 35 Ill. Adm. Code 229. The rule was adopted on May 6, 1999, and became effective on May 15, 1999. The rule was published in the Illinois Register, volume 23, issue 22, p. 6477, on May 28, 1999.

Who is affected by the State Plan?

Consistent with the EG, Illinois' HMIWI rules cover existing HMIWIs, with the exception of certain exempt HMIWIs, which only need to meet certain recordkeeping and certification requirements. Also, hospitals which send HMIWI waste to an off-site HMIWI are covered by waste management plan requirements. The Illinois HMIWI applicability criteria and associated requirements are summarized in the table below.

Category	Requirements
HMIWI for which construction commenced on or before June 20, 1996.	Subject to control requirements specified in the EG.
Co-fired combustor	Not subject to control requirements specified in the EG but: Must have permit condition limiting operation to co-fired combustor status; and, Must keep records on weight of wastes or fuels burned on a calendar quarter basis.
HMIWIs which combust only these wastes: —pathological	Not subject to control requirements specified in the EG but: Must keep records on a calendar quarter basis demonstrating that only exempt wastes are burned; and,
—low-level radioactive —chemotherapeutic	Must provide State and EPA certification that the HMIWI burns only these wastes.
Hospitals that send waste to an off-site HMIWI	Not subject to control requirements specified in the EG but: Must meet certain waste management plan requirements.

For an HMIWI to be considered a "co-fired combustor," it must be subject to an enforceable permit condition limiting combustion of hospital or medical infectious waste to 10% or less of total waste burned, by weight, on a calendar quarter basis. For purposes of the co-fired combustor exemption, pathological waste, chemotherapeutic waste, and low-level radioactive wastes are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

HMIWIs which combust pathological wastes, low-level radioactive waste, or chemotherapeutic wastes part of the time can be exempt from control requirements during those periods if it notifies the IEPA pursuant to this operating scenario in its CAAPP application.

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Who is exempt from the State Plan?

Incinerators that would otherwise meet the HMIWI definition are completely exempt from the rule if they meet any of the following criteria:

You are exempt if:
You are a combustor required to have a permit under section 3005 of the Solid Waste Disposal Act, 42 U.S.C. 6925;
You are a municipal waste combustor subject to 40 CFR part 60, subparts Cb, Ea or Eb;
You are a pyrolysis unit (i.e., a unit that uses endothermic gasification to treat hospital waste or medical/infectious waste in order to render such waste harmless);
You are a cement kiln firing hospital waste or medical/infectious waste; or, You are an HMIWI subject to the New Source Performance Standards (NSPS) for HMIWIs, 40 CFR part 60, subpart Ec.

What does the State Plan require?

If you are an HMIWI subject to control requirements under the Illinois HMIWI rule, you must comply with the requirements summarized below:

SUMMARY OF THE ILLINOIS HMIWI CONTROL REQUIREMENTS

Emission Limitations	
Separate limits are established for four categories of HMIWIs: —small —medium —large —rural	—Dioxins/furans. —Hydrogen chloride —Sulfur dioxide. —Oxides of nitrogen. —Lead. —Cadmium. —Mercury. —Particulate matter. —Opacity. —Carbon monoxide.
Compliance provisions	—Performance testing. —Operating parameter monitoring. —Operating parameter compliance. —Inspection requirements (rural HMIWIs). —Recordkeeping and reporting.
Operator provisions	—Training. —Certification. —On-site Operator Manual.
Permit	—Must apply for a CAAPP permit.

Waste Management Plan Requirements
(Requirements vary depending upon the type of facility)

Hospitals Using On-Site Incinerators	Submit a plan that identifies ways to reduce the amount and toxicity of incinerated waste, and provides an implementation schedule where feasible. Submit the plan at the same time the initial performance test results are reported. Submit annual waste management progress reports. Update the plan every five years coinciding with issuance or renewal of a CAAPP permit.
Hospitals Transporting Waste Off-Site to an HMIWI.	By September 15, 2000, conduct an assessment of current waste management program and identify ways to reduce volume and toxicity of incinerated waste. Submit annual waste management progress reports.
HMIWIs Accepting Waste Generated Off-Site	Provide information to customers annually on available ways to reduce the amount and toxicity of incinerated waste. Submit a plan on how and what information will be distributed. Submit plan at the same time the initial performance test results are reported.
Other HMIWIs	Submit a plan that identifies ways to reduce the amount and toxicity of incinerated waste, and provides an implementation schedule where feasible. Submit the plan at the same time the initial performance test results are reported. Update the plan every 5 years to coincide with the issuance or renewal of a CAAPP permit.

The Illinois rule also prescribes various criteria and considerations in developing the plan, and specifies the components which the plan must include.

When must the State Plan requirements be met?

Under the Illinois HMIWI rule, a subject HMIWI must be in compliance with the rule requirements by September 15, 2000, and must conduct an initial performance test by that date, unless the source requests an extended compliance schedule. Any HMIWI requesting an extended schedule must demonstrate compliance by September 15, 2002, or must cease operation of the HMIWI until compliance with the rule is achieved.

Notwithstanding an extended schedule, however, the Illinois rule requires, consistent with the EG, compliance with the rule's operator training and certification provisions by September 15, 2000.

What must you do to obtain an extended compliance schedule?

HMIWIs seeking an extended compliance schedule must submit a CAAPP application, on or before November 15, 1999, which requests an extended compliance schedule. In accordance with EG requirements, this compliance schedule must include documentation supporting the need for an extension, a final control plan for the HMIWI, and incremental steps to be taken toward compliance, which, at a minimum, include the increments of progress listed below.

Increments of progress	Due date
Finalize all contracts for the purchase of either pollution control equipment, process modification or control system	February 29, 2000
Begin process modifications or construction/installation of air pollution control devices for the HMIWI	November 30, 2000
Complete either the process modifications or the installation/construction of the new air pollution control equipment	August 31, 2001
Initial start-up of the retrofitted HMIWI	January 15, 2002
Complete the initial performance test in accordance with rule requirements	Within 180 days of initial start-up

What must you do if you intend to permanently shut down?

For all HMIWIs that intend to permanently shut down, the source must notify IEPA of that intent by November 15, 1999, and take certain affirmative steps, described in the rule, to demonstrate that the HMIWI has been rendered permanently inoperable by September 15, 2000.

What are the permit application deadlines?

The Illinois HMIWI rule requires all HMIWIs subject to the rule's emission limits to operate pursuant to CAAPP permit by September 15, 2000. All HMIWIs which are currently not required to obtain CAAPP permits must apply for an CAAPP permit by September 15, 2000, unless the source is seeking an extended compliance schedule. To avail themselves of the extended compliance schedule described above, sources must submit their CAAPP application requesting the extension by November 15, 1999.

HMIWIs that currently have CAAPP permits have special deadlines to make revisions incorporating the HMIWI rule requirements, depending upon how much time is remaining in the CAAPP permit term.

What else does the State Plan include?

The State Plan includes a demonstration of legal authority to implement the EG, documentation of public hearing, comment, and response, a source and emissions inventory, and provision for State progress reports to EPA. These materials were submitted to satisfy the section 111(d) requirements under 40 CFR part 60, subpart B.

What public review opportunities were provided?

The Illinois Pollution Control Board held public hearings on the HMIWI State Plan on January 21, 1999, in Chicago, Illinois, and February 3, 1999, in Springfield, Illinois. Illinois also accepted and formally responded to written public comments on its rule.

IV. Review and Approval of the Illinois HMIWI State Plan.

Why is the Illinois HMIWI State Plan approvable?

We compared the Illinois HMIWI rule 35 Ill.Adm.Code 229 against our HMIWI EG. We find the Illinois rule to be at least as protective as the EG. Also, the Illinois State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Illinois HMIWI State Plan.

V. EPA Rulemaking Action.

We are approving, through direct final rulemaking action, Illinois' section 111(d)/129 State Plan for HMIWIs. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective September 7, 1999 without further notice unless EPA receives relevant adverse written comment by August 6, 1999. Should the Agency receive such comments, it will publish a timely withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 7, 1999.

VI. Administrative Requirements.

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

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C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, versus *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Paperwork Reduction Act

This action does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Hospital/medical/infectious waste incinerators, Reporting and recordkeeping requirements.

Dated: June 23, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart O—Illinois

2. A new center heading and sections 62.3340, 62.3341, and 62.3342 are added to read as follows:

* * * * *

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Hospital / Medical Infectious Waste Incinerators

§ 62.3340 Identification of plan.

Illinois submitted, on May 28, 1999, a State Plan for implementing the Emission Guidelines affecting Hospital/Medical Infectious Waste Incinerators (HMIWI). The enforceable mechanism for this plan is 35 Ill. Adm. Code 229. The rule was adopted by the Illinois Pollution Control Board on May 6, 1999. The rule became effective on May 15, 1999, and was published in the Illinois Register on May 28, 1999 at 23 Ill. Reg. 6477

§ 62.3341 Identification of sources.

The Illinois State Plan for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI) applies to all HMIWIs for which construction commenced either on or before June 20, 1996.

§ 62.3342 Effective Date.

The effective date of the Illinois State Plan for existing Hospital/Medical/ Infectious Waste Incinerators is September 7, 1999.

[FR Doc. 99–17028 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–54; FCC 98–348]

1998 Biennial Review—Part 76 Cable Television Service Pleading and Complaint Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This rule announces the effective date of the rules published on February 10, 1999. Those rules amended the Commission's rules regarding procedures for filing petitions and complaints pursuant to part 76.

EFFECTIVE DATE: Sections 76.6, 76.7, 76.8, 76.9, 76.10, 76.61, 76.914, 76.1003, 76.1302, and 76.1513 published at 64 FR 6565 (February 10, 1999) are effective on July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: On June 18, 1999, the Office of Management and Budget ("OMB") approved the amendments to the procedural rules in 47 CFR part 76 pursuant to OMB Control No. 3060–0888. Accordingly, the rules in Sections 76.6, 76.7, 76.8, 76.9, 76.10, 76.61, 76.914, 76.1003, 76.1302, and 76.1513 will be effective on July 15, 1999.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17233 Filed 7–6–99; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1809, 1815, 1827, 1832, 1845, 1852, 1871, and 1872

Miscellaneous Administrative Revisions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule makes the following administrative changes to the NASA FAR Supplement (NFS): conform the current coverage on regulatory maintenance to reflect that the NFS is available from NASA only in electronic format; correct referenced addresses and document titles; correct section numbering; clarify that FAR 52.227–11, Alternate IV, is not used in NASA contracts; and correct an editorial error in a recent final rule.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Code HK, Washington, DC 20546, telephone: (202) 358–0478; email: *thomas.otoole@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA has made the NFS available to the public on a subscription basis through the Government Printing Office. However, NASA has determined that it is more efficient and economical to provide the NFS only through electronic means. This approach ensures greater accuracy, wider dissemination, and immediate implementation of changes. The official NASA-maintained version of the NFS is available at http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm. In addition, the instructions in a recent final rule (64 FR 19925) revising NASA's MidRange procurement procedures directed revision of the second sentence of section 1871.602. The third, rather than the second, sentence should have been revised.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for comments is not required. However, comments from small business entities concerning the affected NFS coverage will be considered in accordance with 5 U.S.C. 610. Such comments may be submitted separately and should cite 5 U.S.C. 601, *et seq.*

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in CFR Parts 1801, 1804, 1809, 1815, 1827, 1832, 1845, 1852, 1871, and 1872

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1801, 1804, 1809, 1815, 1827, 1832, 1845, 1852, 1871, and 1872 are amended as follows:

1. The authority citation for 48 CFR Parts 1801, 1804, 1809, 1815, 1827, 1832, 1845, 1852, 1871, and 1872 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1801.105–1, paragraph (a) is revised to read as follows:

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1801.105–1 Publication and code arrangement.

(a) The single official NASA-maintained version of the NFS is on the Internet (http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm).

* * * * *

1801.105–3 and 1801.105–370 [Removed]

3. Sections 1801.105–3 and 1801.105–370 are removed.

4. Section 1801.270 is revised to read as follows:

1801.270 Amendment of the NFS.

(a) The NFS is amended by publishing changes in the **Federal Register**. These changes are then incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NFS.

(b) Compliance with a revision to the NFS shall be in accordance with the PN containing the revision. Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the acquisition.

5. Sections 1801.270–1, 1801.270–2, 1801.270–3, and 1801.270–4 are removed.

PART 1804—ADMINISTRATIVE MATTERS

6. Section 1804.202 is revised to read as follows:

1804.202 Agency distribution requirements.

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for AeroSpace Information (CASI), Attention: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076–1320.

PART 1809—CONTRACTOR QUALIFICATIONS

7. Section 1809.200 is revised to read as follows:

1809.200 Scope of subpart.

This subpart prescribes policies and procedures to be followed in the use of qualified products lists for acquisition of parts consistent with the policies of NASA Policy Directive 8730.2, NASA Parts Policy.

PART 1815—CONTRACTING BY NEGOTIATION

8. Section 1815.670 is revised to read as follows:

1815.670 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

9. In section 1827.303, paragraph (a)(5) is added to read as follows:

1827.303 Contract clauses.

(a) * * *

(5) Alternate IV to 52.227–11 is not used in NASA contracts. See instead 1827.303–70(a).

* * * * *

PART 1832—CONTRACT FINANCING

10. In section 1832.906, the first sentence in paragraph (a) is revised to read as follows:

1832.906 Contract financing payments.

(a) Except as authorized in 1832.908, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. * * *

* * * * *

PART 1845—GOVERNMENT PROPERTY

11. Section 1845.406 is redesignated as 1845.407, and the existing section 1845.407 is redesignated as 1845.406.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. In section 1852.235–70, the date and paragraph (d) are revised to read as follows:

1852.235–70 Center for AeroSpace Information.

* * * * *

Center for Aerospace Information

July 1999

* * * * *

(d) When the contract requires the delivery of reports or data to CASI, a reproducible copy and a printed or reproduced copy of such reports or data shall be concurrently submitted to: Center for AeroSpace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, Maryland 21076–1320.

(End of clause)

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

13. Section 1871.602 is revised to read as follows:

1871.602 Specifications for MidRange procurements.

BVS refines the traditional approach to preparing specifications. BVS envisions that the requirement will focus on the end result that is to be achieved and will serve as a statement of the Government's baseline requirements. The offeror will be guided in meeting the Government's needs by a separate set of value characteristics which establish what the Government considers to be valuable in an offer beyond the baseline requirement. These value characteristics will be performance based and will permit the selection of the offer which provides better results for a reasonable marginal increase in price.

PART 1872—ACQUISITIONS OF INVESTIGATIONS

§ 1872.303 [Amended]

14. In section 1872.303, the reference in paragraph (b) to "(See NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs)" is revised to read "(see NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs)".

§ 1872.305 [Amended]

15. In section 1872.305, the reference in paragraph (c) to "Acquisition" is revised to read "Procurement".

[FR Doc. 99–17038 Filed 7–6–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1833

NASA FAR Supplement; Protests to the Agency

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has a mandatory solicitation provision required to be inserted in all solicitations which informs potential bidders or offerors to whom Agency protests may be submitted. The provision provides that potential bidders or offerors may submit a protest directly to the Contracting Officer or alternatively to the Deputy Associate Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review of the protest. Based on our experience with protests submitted to the Agency, we are amending NASA regulations to address whether or not there is any appeal from or reconsideration of Agency protest decisions within NASA. This final rule also addresses whether or not NASA will continue to consider an Agency protest that is related to pending judicial proceedings or where the protester has filed a protest on the same procurement with the United States General Accounting Office prior to receipt of an Agency protest decision. The effect of this additional information is to give potential bidders or offerors a better understanding of NASA's process for considering protests to the Agency.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Dave Beck, NASA Headquarters, Code HK, Washington, DC 20546–0001, email: dbeck@hq.nasa.gov, telephone: (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule was published in the **Federal Register** on April 12, 1999 (64 FR 17603). No comments were received. The final rule adopts the proposed rule without change.

Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there are few protests of NASA procurements.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NASA FAR Supplement do not impose any new recordkeeping or information collection requirements, or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1833

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR part 1833 is amended as follows.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 1833 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1833.1—Protests

2. Section 1833.103 is amended by revising the section heading, redesignating paragraph (b) as paragraph (f) and adding paragraph(c), paragraph (d) introductory text, and paragraph (d)(4) to read as follows:

1833.103 Protests to the agency. (NASA supplements paragraphs(c), (d) and (f).)

(c) An independent review under the provision at 1852.233–70 is available as an alternative to a protest to the contracting officer, but not as an appeal of a protest decision. All independent reviews shall be conducted by the Deputy AssociateAdministrator for Procurement or designee. Such reviews are different from the Ombudsman Program described at 1815.7001.

(d) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the United States GeneralAccounting Office prior to receipt of an Agency protest decision.

(4) When a potential bidder or offeror submits an Agency protest to NASA to the contracting officer or alternatively requests an independent review, the decision of the contracting officer or the independent review official shall be final and is not subject to any appeal or reconsideration within NASA.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233–70.

[FR Doc. 99–17039 Filed 7–6–99; 8:45 am]

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Proposed Rules

Federal Register
Vol. 64, No. 129
Wednesday, July 7, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 99–037–1]

Environmental Impact Statement for the Importation of Unmanufactured Solid Wood Packing Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Identification of regulatory alternatives and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement in connection with regulations we are considering proposing regarding the importation of unmanufactured solid wood packing material. This notice identifies potential regulatory alternatives and issues that we plan to analyze in the environmental impact statement and requests public comment to further delineate the scope of the alternatives and issues.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 7, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–037–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–037–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Sweeney, Environmental Protection Officer, Environmental Analysis and Documentation, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237; (301) 734–7681; or e-mail: Nancy.E.Sweeney@usda.gov.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is considering amending the regulations on the importation of logs, lumber, and other unmanufactured wood articles to decrease the risk of solid wood packing material (e.g., crates, dunnage, wooden spools, pallets, packing blocks) introducing exotic plant pests into the United States. Under the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331, *et seq.*), we are required to consider the potential environmental effects from the regulations under consideration. The purpose of this notice is to inform the public of our intent to prepare an environmental impact statement (EIS) and to solicit public comments on the scope of the environmental issues to be analyzed in the EIS.

The regulations in 7 CFR 319.40–1 through 319.40–11 (referred to below as the regulations) are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles, including solid wood packing material (SWPM). Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of SWPM. These and other plant pests that could be carried by imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

On September 18, 1998, we published an interim rule in the **Federal Register** (63 FR 50100–50111, Docket No. 98–087–1) to require that SWPM from China be heat treated, fumigated, or treated with preservatives prior to arrival in the United States. We took this action because a number of recent incidents, including the introduction of the Asian longhorned beetle, demonstrate that China is the largest source of exotic plant pests in SWPM imported into the United States. The interim rule became effective on December 17, 1998. We amended the interim rule in a second interim rule effective and published in the **Federal Register** on December 17, 1998 (63 FR 69539–69543, Docket No. 98–087–4). The second interim rule made minor revisions regarding three documents in order to better coordinate the requirements of the rule with the United States Customs Service's electronic Automated Broker Interface system and entry operations procedures.

On January 20, 1999, we published an advance notice of proposed rulemaking in the **Federal Register** (64 FR 3049–3052, Docket No. 98–057–1) to seek information and develop regulatory options on the general problem of plant pests in SWPM imported from any country. In the notice, we requested public comment on what actions would be most effective and appropriate to further reduce the risk of SWPM introducing exotic plant pests into the United States. We received 102 comments in response to the advance notice of proposed rulemaking.

We are now considering proposing regulations to address the problem of SWPM introducing exotic plant pests into the United States. We intend to prepare an EIS to inform the public and APHIS decisionmakers of the potential environmental effects from various regulatory alternatives. We are requesting public comments to help us identify potential regulatory alternatives and significant environmental issues that should be analyzed in the EIS.

We have identified five alternatives that we plan to consider in the EIS, as follows:

- Take no additional regulatory action (i.e., maintain the current requirements for importing SWPM, including finalizing the requirements established by the September 18 and December 17 interim rules concerning importing SWPM from China);
- Apply the same requirements concerning SWPM from China to SWPM from the rest of the world (i.e., require SWPM imported from any part of the world to be heat treated, fumigated, or treated with preservatives prior to arrival in the United States);
- Impose restrictions—either treatment or ban—on a country-by-country basis based on pest risk assessments;
- Prohibit the importation of SWPM in any form from any country;
- Prohibit the importation of SWPM except for types of SWPM that are intended for extended, multiple shipment use and are: 100 percent free of bark, either kiln dried to an industrial standard or heat treated to a minimum of 71.1 °C for 75 minutes, and marked so as to be easily identifiable.

We specifically requested comments on some of these alternatives in the advance notice of proposed rulemaking. All of the alternatives were addressed or identified in comments submitted in response to the advance notice of proposed rulemaking. We would like comments on these alternatives and on other alternatives that should be analyzed in the EIS.

We will analyze the potential effects of each regulatory alternative on the human environment, including possible risks to human health, and the potential effects on forests, biodiversity, and nontarget species in the United States. We are also interested in comments that identify other issues that should be analyzed in the EIS. Potential issues include identification of treatment methods other than those currently approved in the regulations (currently approved treatments are heat treatment, heat treatment with moisture reduction, surface pesticide treatment, methyl bromide fumigation, and preservative treatment) and the ability to effectively monitor compliance with potential alternatives.

Comments regarding the proposed scope of the EIS are welcome and will be fully considered. When the draft EIS is completed, a notice announcing its availability and an invitation to comment on it will be published in the **Federal Register**.

Done in Washington, DC, this 30th day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17155 Filed 7–6–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB05

Load Forecasts

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to revise requirements for borrower load forecasts and load forecast work plans (historically referred to as power requirements studies and power requirements study work plans). The proposed changes would reduce the level of detail required in load forecasts filed by small power supply borrowers and their members and by distribution borrowers unaffiliated with a large power supply borrower. The proposed changes also would give borrowers greater flexibility in preparation of load forecasts required to be submitted to RUS.

DATES: Written comments must be received by RUS or carry a postmark or equivalent by September 7, 1999.

ADDRESSES: Written comments should be addressed to Georg A. Shultz, Chief, Energy Forecasting Branch, Electric Staff Division, Rural Utilities Service, U. S. Department of Agriculture, 1400 Independence Ave., SW., Room 1246–SBldg., STOP 1569, Washington, DC 20250–1569. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Georg A. Shultz, Chief, Energy Forecasting Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1246–SBldg., STOP 1569, Washington, DC 20250–1569, telephone number: (202) 720–1920, fax: (202) 720–7491, E-mail: gshultz@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and (3) in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(e)) administrative appeal procedures, if any are required must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to RUS' electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the proposed rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 0572–0032.

Send questions or comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW, Room 4034–SBldg., STOP 1522, Washington, DC 20250–1522.

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments, or the private sector. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural

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Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation which may require consultation with state and local offices. A final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) determined that RUS loans and loan guarantees were not covered by Executive Order 12372.

Background

The Rural Utilities Service (RUS) makes and guarantees loans to furnish and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (RE Act). Under the RE Act, RUS may make or guarantee a loan only if the Administrator determines that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. Most borrowers apply for a new loan to meet system needs every two to three years. The security for these loans is generally a first lien on the borrower's electric system, evidenced through the filing of a mortgage. In order to determine the feasibility of a new loan and whether borrowers will have sufficient revenues to repay existing loans, RUS requires most borrowers to file load forecasts, historically called "power requirements studies" by RUS, containing current and detailed information and analyses on existing and expected future loads. Detailed information from the load forecasts are used in RUS' independent analysis and oversight of borrower systems.

RUS regulations on the preparation and approval of power requirements studies and power requirements work plans, contained at 7 CFR part 1710, subpart E, were last revised in 1992, at 57 FR 1053 and 57 FR 4513. Since then, the business and regulatory environment in the electric industry has undergone rapid change. State regulatory agencies, power supply systems, power pools, and other entities are modifying their power planning processes and requirements in the light of competitive changes in the industry. Even greater transformations lie ahead as many states move to adopt retail competition. In the years since the existing regulations were adopted, both RUS and our borrowers have gained greater familiarity with the development and use of load forecasts, and supporting analyses and data and the experience and sophistication of RUS financed systems have increased.

In response to changes in the industry and the Administration's ongoing commitment to improving customer service, RUS has amended a number of its regulations and practices involving its oversight of borrower systems to update and streamline these requirements. This proposed regulation is part of RUS' continuing effort to improve customer service.

This proposed rule implements recommendations to modify load forecast requirements which arose out of the RUS strategic planning process. The proposed changes simplify the procedure and minimize the detail of information RUS needs for loan feasibility determinations. The proposed revisions to the existing rule balance RUS' continuing need to maintain current up-to-date load forecast information for electric borrowers with its goal of reducing regulatory requirements and burdens on borrowers.

In the usual course of business, all prudent utilities engage in a continuing planning process incorporating objective load forecasts in order to provide reliable electric service for their existing and future customers. Borrowers submit their load forecasts and load forecast work plans to RUS in order to provide the necessary support for RUS approval of loans and a basis for RUS to monitor future borrower performance for loan security purposes. The proposed rule would modify the existing requirements and reduce the number of borrower systems required to maintain current load forecasts on file with RUS. The proposed changes would allow borrowers greater flexibility in preparation of the load forecasts and supporting information submitted to RUS. The proposed changes will reduce burdens on both borrowers and the RUS electric program.

Summary of Proposed Changes

Definitions

The proposed rule makes several conforming changes to the definitions in 7 CFR part 1710, subpart A. The terms "load forecast" and "load forecast work plan" are added to conform with overall electric industry usage of these terms. The terms "power requirement study" and "power requirement study work plan" will continue to be defined in 7 CFR part 1710, subpart A, since these terms continue to be used in other subparts. The term "load forecast" has the same definition as "power requirements study" and the term "load forecast work plan" has the same definition as "power requirement study work plan." The terms "approved load forecast" and "approved load forecast work plan" have been added to clarify those load forecasts and load forecast work plans that RUS has determined are current for RUS purposes and have been approved by RUS pursuant to 7 CFR part 1710, subpart E.

Requirements to File Load Forecasts and Load Forecast Work Plans

Load forecasts are one of four primary documents required to be submitted in support of applications for RUS loans and loan guarantees (§ 1710.152). Load forecasts aid in RUS analysis of feasibility for loan approval and RUS review of loan security. RUS has required the larger power supply borrowers and their member systems to maintain an approved load forecast and approved load forecast work plan. As a result, approved load forecasts for these borrower's systems are in place and allow more expeditious review of requests for RUS assistance.

Under both the existing regulations and the proposed rule changes, whether and when a borrower must maintain an approved load forecast or approved load forecast work plan is generally determined by the value of the borrower's assets or total utility plant and whether a borrower is affiliated with a power supply borrower that is required to maintain an approved load forecast and approved load forecast work plan.

Under existing regulations, power supply borrowers with total assets over $300 million and distribution borrowers that own generation and transmission plant valued at over $300 million are required to maintain an approved load forecast and an approved load forecast work plan. Other RUS borrowers with total assets over $300 million must maintain an approved load forecast and submit it to support requests for RUS financing, approval of long-term power contracts, and other actions. Power supply borrowers with total assets over $300 million and their member power supply and distribution borrowers must coordinate their load forecasts in accord with an approved load forecast work plan.

The proposed rule uses total utility plant instead of total assets to determine these thresholds. Use of total utility plant instead of total assets conforms with other RUS requirements and relates directly to the borrowers utility plant which is used to service the loads. The proposed rule would raise the threshold from $300 million to $500 million for borrowers required to maintain an approved load forecast and approved load forecast work plan on an ongoing basis. All power supply borrowers with total utility plant of less than $500 million (and their affiliated members that are RUS borrowers) will no longer be required to maintain and update load forecasts on a periodic basis. These borrowers will be required to have an approved load forecast when they apply for new financing and under certain other circumstances. This change is proposed to reduce the number of borrowers required to submit load forecasts on a routine basis and to closely monitor borrowers with large loans made or guaranteed by RUS.

The existing regulations provide that power supply borrowers with total assets of less than $300 million that are not members of any other power supply borrower with total assets over $300 million are not required to maintain an approved load forecast or approved load forecast work plan on an ongoing basis. However, these power supply borrowers must have an approved load forecast to support a request for any loan or loan guarantee over $25 million or more than ten percent of the borrower's total utility plant, whichever is smaller, and for RUS approval of a long-term power contract. The proposed rule would raise from $25 million to $50 million the loan value requiring an approved load forecast by power supply borrowers not otherwise required to maintain an approved load forecast.

The existing regulations provide that distribution borrowers with total assets of less than $300 million that are not affiliated with a power supply borrower are not required to maintain an approved load forecast or approved load forecast work plan. On an ongoing basis, these smaller unaffiliated distribution borrowers must have an approved load forecast for loans of $3 million or 10 percent of utility plant, whichever is smaller. Under the proposed rule, the minimum loan application for distribution borrowers that would require an approved load forecast would be $3 million or 5 percent of total utility plant, whichever is greater. These changes are being proposed to reduce burdens on small borrowers with minimal outstanding loans made or guaranteed by RUS.

Requirements for Load Forecasts

The proposed rule revises requirements for the contents of load forecasts and approval criteria to give borrowers and RUS greater flexibility in compliance with RUS regulations. Changes in the electric utility industry are likely to dramatically alter utility planning and forecasting practices. RUS recognizes that, in addition to complying with RUS requirements, borrowers need to prepare load forecast and planning documents for a variety of other external reporting purposes such as for state utility commissions, regional reliability planning, or to comply with terms of power supply agreements. To reduce burdens on borrowers, where practicable, RUS will accept load forecasts prepared for those other purposes as long as the information and analyses needed by RUS are included and are compatible with RUS applications. As is the practice at present, RUS expects that borrowers will continue to consult with RUS during the preparation and review of their load forecasts to resolve any uncertainties.

Under the existing rules, all borrower load forecasts must meet the same requirements for scope, content, and supporting analysis and models, unless waived by RUS. Under the proposed rule, load forecasts and supporting data submitted by small distribution borrowers that are unaffiliated with large power supply borrowers would not have to meet the same standards as forecasts submitted by large power supply borrowers and their members.

RUS does not believe reducing the load forecasting filing requirements will lead to any reduction in borrower's attention to the importance of load forecasting in their overall financial and system planning needed to assure reliable, affordable service for their customers. Borrowers will continue to conduct load forecasting as part of prudent utility practice in the ordinary course of business.

Confidentiality of Load Forecasts and Supporting Information

Restructuring of the electric power industry will likely increase the potential competitive harm to a borrower from the disclosure of commercially sensitive and confidential business information in the load forecast. RUS understands that borrowers may consider the information contained in the load forecasts and supporting data as commercially valuable, proprietary and confidential business information. RUS will not release information contained in the load forecast except as provided by law pursuant to 7 CFR part 1, The Freedom of Information Act (5 U.S.C. 552). When, in the course of responding to a Freedom of Information Act request, RUS cannot readily determine whether the information obtained from the borrower is privileged or confidential business information, RUS will obtain and consider the views of the borrower concerning the information and provide the borrower an opportunity to object to any decision to disclose the information. Borrowers should be aware that in order for RUS to withhold release of information it must be determined that such release will result in substantial harm to the borrower.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, RUS proposes to amend 7 CFR chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. Section 1710.2(a) is amended by revising and adding the following definitions in alphabetical order:

§ 1710.2 Definitions and rules of construction.

* * * * *

Approved load forecast means a load forecast that RUS has determined is current for RUS purposes and has been approved by RUS' pursuant to 7 CFR part 1710, subpart E.

Approved load forecast work plan means a load forecast work plan that RUS has determined is current for RUS' purposes and has been approved pursuant to 7 CFR part 1710, subpart E.

* * * * *

Load forecast means the thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity.

Load forecast work plan means the plan that contains the resources, methods, schedules, and milestones to be used in the preparation and maintenance of a load forecast.

* * * * *

Power requirements study (PRS) has the same meaning as load forecast.

* * * * *

PRS work plan has the same meaning as load forecast work plan.

* * * * *

3. Revise paragraph 1710.152(a) to read as follows:

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§ 1710.152 Primary support documents.

* * * * *

(a) *Load forecast.* The load forecast provides the borrower and RUS with an understanding of the borrower's future system loads, the factors influencing those loads, and estimates of future loads. The load forecast provides a basis for projecting annual electricity (kWh) sales and revenues, and for engineering estimates of plant additions required to provide reliable service to meet the forecasted loads. Subpart E of this part contains the information to be included in a load forecast and when an approved load forecast is required.

* * * * *

4. Revise subpart E of part 1710 to read as follows:

Subpart E—Load Forecasts

Sec.

1710.200 Purpose.
1710.201 General.
1710.202 Requirement to prepare a load forecast-power supply borrowers.
1710.203 Requirement to prepare a load forecast-distribution borrowers.
1710.204 Filing requirements for borrowers that must maintain a current RUS approved load forecast on an ongoing basis.
1710.205 Minimum requirements for all borrower load forecasts.
1710.206 Requirements for load forecasts prepared pursuant to RUS approved load forecast work plans.
1710.207 RUS approval criteria for approval of load forecasts by distribution borrowers not required to maintain a current load forecast on an ongoing basis.
1710.208 RUS approval criteria for load forecasts submitted by all power supply borrowers and by distribution borrowers required to maintain a current load forecast on an ongoing basis.
1710.209 Requirements for load forecast work plans.
1710.210 Waiver of requirements or approval criteria.
1710.211—1710.249—[Reserved]

Subpart E—Load Forecasts

§ 1710.200 Purpose.

This subpart contains RUS policies for the preparation, review, approval and use of load forecasts and load forecast work plans. A load forecast is a thorough study of a borrower's electric loads and the factors that affect those loads in order to estimate, as accurately as practicable, the borrower's future requirements for energy and capacity. The load forecast of a power supply borrower includes and integrates the load forecasts of its member systems. An approved load forecast, if required by this subpart, is one of the primary documents that a borrower is required to submit to support a loan application.

§ 1710.201 General.

(a) The policies, procedures and requirements in this subpart are intended to implement provisions of the loan documents between RUS and the electric borrowers and are also necessary to support approval by RUS of requests for financial assistance.

(b) Notwithstanding any other provisions of this subpart, RUS may require any power supply or distribution borrower to prepare a new or updated load forecast for RUS approval or to maintain an approved load forecast on an ongoing basis, if such documentation is necessary for RUS to determine loan feasibility, or to ensure compliance under the loan documents.

§ 1710.202 Requirement to prepare a load forecast—power supply borrowers.

(a) A power supply borrower with a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financial assistance. The borrower must also maintain an approved load forecast work plan. The borrower's approved load forecast must be prepared pursuant to the approved load forecast work plan.

(b) A power supply borrower that is a member of another power supply borrower that has a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financial assistance. The member power supply borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower. The approved load forecasts must be prepared pursuant to the RUS approved load forecast work plan.

(c) A power supply borrower that has total utility plant of less than $500 million and that is not a member of another power supply borrower with a total utility plant of $500 million or more must provide an approved load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee which exceeds $50 million. The borrower is not required to maintain on an ongoing basis either an approved load forecast or an approved load forecast work plan.

§ 1710.203 Requirement to prepare a load forecast—distribution borrowers.

(a) A distribution borrower that is a member of a power supply borrower with a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financial assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower. The distribution borrower's load forecast must be prepared pursuant to the approved load forecast work plan of its power supply borrower.

(b) A distribution borrower that is a member of a power supply borrower which is itself a member of another power supply borrower that has a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financial assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower. The distribution borrower's approved load forecast must be prepared pursuant to the approved load forecast work plan of the power supply borrower with total utility plant in excess of $500 million.

(c) A distribution borrower that is a member of a power supply borrower with a total utility plant of less than $500 million must provide an approved load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee that exceeds $3 million or 5 percent of total utility plant, whichever is greater. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower. The borrower is not required to maintain on an ongoing basis either an approved load forecast or an approved load forecast work plan.

(d) A distribution borrower with a total utility plant of less than $500 million and that is unaffiliated with a power supply borrower must provide an approved load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee which exceeds $3 million or 5 percent of total utility plant, whichever is greater. The borrower is not required to maintain on an ongoing basis either an approved load forecast or an approved load forecast work plan.

(e) A distribution borrower with a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financing assistance. The borrower must also maintain an approved load forecast work plan. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower.

§ 1710.204 Filing requirements for borrowers that must maintain an approved load forecast on an ongoing basis.

(a) *Filing of load forecasts and updates.* A power supply or distribution borrower required to maintain an approved load forecast on an ongoing basis under § 1710.202 or § 1710.203 may elect either of the following two methods of compliance:

(1) Submitting a new load forecast to RUS for review and approval at least every 36 months, and then submitting updates to the load forecast to RUS for review and approval in each intervening year; or

(2) Submitting a new load forecast to RUS for review and approval not less frequently than every 24 months.

(b) *Extensions.* RUS may extend any time period required under this section for up to 3 months at the written request of the borrower's general manager. A request to extend a time period beyond 3 months must be accompanied by a written request from the borrower's general manager, an amendment to the borrower's approved load forecast work plan incorporating the extension, a board resolution approving the extension request and any amendment to the approved load forecast work plan, and any other relevant supporting information. RUS may extend the time periods contained in this section for up to 24 months.

§ 1710.205 Minimum approval requirements for all load forecasts.

(a) *Documents required for RUS approval of a borrower's load forecast.* The borrower must provide the following documents to obtain RUS approval for a load forecast:

(1) The load forecast and supporting documentation;

(2) A memorandum from the borrower's general manager to the board of directors recommending that the board approve the load forecast and its uses; and

(3) A board resolution from the borrower's board of directors approving the load forecast and its uses.

(b) *Contents of load forecast.* All load forecasts submitted by borrowers for approval must include:

(1) A narrative describing the borrower's system, service territory, and consumers;

(2) A narrative description of the borrower's load forecast including future load projections, forecast assumptions, and the methods and procedures used to develop the forecast;

(3) Projections of usage by consumer class, number of consumers by class, annual system peak demand, and season of peak demand for the number of years agreed upon by RUS and the borrower;

(4) A summary of the year-by-year results of the load forecast in a format that allows efficient transfer of the information to other borrower planning or loan support documents;

(5) The load impacts of a borrower's demand side management activities, if applicable;

(6) Graphic representations of the variables specifically identified by management as influencing a borrower's loads; and

(7) A database that tracks all relevant variables that might influence a borrower's loads.

(c) *Formats.* RUS does not require a specific format for the narrative, documentation, data, and other information in the load forecast, provided that all required information is included and available. All data must be in a tabular form that can be transferred electronically to RUS computer software applications. RUS will evaluate borrower load forecasts for readability, understanding, filing, and electronic access. If a borrower's load forecast is submitted in a format that is not readily usable by RUS or is incomplete, RUS will require the borrower to submit the load forecast in a format acceptable to RUS.

(d) *Document retention.* The borrower must retain its latest approved load forecasts, and supporting documentation until RUS approval of its next load forecast. Any approved load forecast work plan must be retained as part of the approved load forecast.

(e) *Consultation with RUS.* The borrower must designate and make appropriate staff and consultants available for consultation with RUS to facilitate RUS review of the load forecast work plan and the load forecast when requested by RUS.

(f) *Correlation and consistency with other RUS loan support documents.* If a borrower relies on an approved load forecast or an update of an approved load forecast as loan support, the borrower must demonstrate that the approved load forecast and the other primary support documentation for the loan were reconciled. For example, both the load forecast and the financial forecast require input assumptions for wholesale power costs, distribution costs, other systems costs, average revenue per kWh, and inflation. Also, a borrower's engineering planning documents, such as the construction work plan, incorporate consumer and usage per consumer projections from the load forecast to develop system design criteria. The assumptions and data common to all the documents must be consistent.

(g) *Coordination.* Power supply borrowers and their members that are subject to the requirement to maintain an approved load forecast on an ongoing basis are required to coordinate preparation of their respective load forecasts, updates of load forecasts, and approved load forecast work plan. A load forecast of a power supply borrower must consider the load forecasts of all its member systems.

§ 1710.206 Approval requirements for load forecasts prepared pursuant to approved load forecast work plans.

(a) *Contents of load forecasts prepared under an approved load forecast work plan.* In addition to the minimum requirements for load forecasts under § 1710.205, load forecasts developed and submitted by borrowers required to have an approved load forecast work plan shall include the following:

(1) Scope of the load forecast. The narrative shall address the overall approach, time periods, and expected internal and external uses of the forecast. Examples of internal uses include providing information for developing or monitoring demand side management programs, supply resource planning, load flow studies, wholesale power marketing, retail marketing, cost of service studies, rate policy and development, financial planning, and evaluating the potential effects on electric revenues caused by competition from alternative energy sources or other electric suppliers. Examples of external uses include meeting state and Federal regulatory requirements, obtaining financial ratings, and participation in reliability council, power pool, regional transmission group, power supplier or member system forecasting and planning activities.

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(2) Resources used to develop the load forecast. The discussion shall identify and discuss the borrower personnel, consultants, data processing, methods and other resources used in the preparation of the load forecast. The borrower shall identify the borrower's member and, as applicable, member personnel that will serve as project leaders or liaisons with the authority to make decisions and commit resources within the scope of the current and future work plans.

(3) A comprehensive description of the database used in the study. The narrative shall describe the procedures used to collect, develop, verify, validate, update, and maintain the data. A data dictionary thoroughly defining the database shall be included. The borrower shall make all or parts of the database available or otherwise accessible to RUS in electronic format, if requested.

(4) A narrative for each new load forecast or update of a load forecast discussing the methods and procedures used in the analysis and modeling of the borrower's electric system loads as provided for in the load forecast work plan.

(5) A narrative discussing the borrower's past, existing, and forecast of future electric system loads. The narrative must identify and explain substantive assumptions and other pertinent information used to support the estimates presented in the load forecast.

(6) A narrative discussing load forecast uncertainty or alternative futures that may determine the borrower's actual loads. Examples of economic scenarios, weather conditions, and other uncertainties that borrowers may decide to address in their analysis include:

(i) Most-probable assumptions, with normal weather;

(ii) Pessimistic assumptions, with normal weather;

(iii) Optimistic assumptions, with normal weather;

(iv) Most-probable assumptions, with severe weather;

(v) Most-probable assumptions, with mild weather;

(vi) Impacts of wholesale or retail competition; or

(vii) New environmental requirements.

(7) A summary of the forecast's results on an annual basis. Include alternative futures, as applicable. This summary shall be designed to accommodate the transfer of load forecast information to a borrower's other planning or loan support documents. Computer-generated forms or electronic submissions of data are acceptable. Graphs, tables, spreadsheets or other exhibits shall be included throughout the forecast as appropriate.

(8) A narrative discussing the coordination activities conducted between a power supply borrower and its members, as applicable, and between the borrower and RUS.

(b) *Compliance with an approved load forecast work plan.* A borrower required to maintain an approved load forecast work plan must also be able to demonstrate that both it and its RUS borrower members are in compliance with its approved load forecast work plan for the next load forecast or update of a load forecast.

§ 1710.207 RUS criteria for approval of load forecasts by distribution borrowers not required to maintain an approved load forecast on an ongoing basis.

Load forecasts submitted by distribution borrowers that are unaffiliated with a power supply borrower, or by distribution borrowers that are members of a power supply borrower that has a total utility plant less than $500 million and that is not itself a member of another power supply borrower with a total utility plant of $500 million or more must satisfy the following minimum criteria:

(a) The borrower considered all known relevant factors that influence the consumption of electricity and the known number of consumers served at the time the study was developed;

(b) The borrower considered and identified all loads on its system of RE Act beneficiaries and non-RE Act beneficiaries;

(c) The borrower developed an adequate supporting data base and considered a range of relevant assumptions; and (d) The borrower provided RUS with adequate documentation and assistance to allow for a thorough and independent review.

§ 1710.208 RUS criteria for approval of all load forecasts by power supply borrowers and by distribution borrowers required to maintain an approved load forecast on an ongoing basis.

All load forecasts submitted by power supply borrowers and by distribution borrowers required to maintain an approved load forecast must satisfy the following criteria:

(a) The borrower objectively analyzed all known relevant factors that influence the consumption of electricity and the known number of customers served at the time the study was developed;

(b) The borrower considered and identified all loads on its system of RE Act beneficiaries and non-RE Act beneficiaries;

(c) The borrower developed an adequate supporting database and analyzed a reasonable range of relevant assumptions and alternative futures;

(d) The borrower adopted methods and procedures in general use by the electric utility industry to develop its load forecast;

(e) The borrower used valid and verifiable analytical techniques and models;

(f) The borrower provided RUS with adequate documentation and assistance to allow for a thorough and independent review; and

(g) In the case of a power supply borrower required to maintain an approved load forecast on an ongoing basis, the borrower adequately coordinated the preparation of the load forecast work plan and load forecast with its member systems.

§ 1710.209 Approval requirements for load forecast work plans.

(a) In addition to the approved load forecast required under §§ 1710.202 and 1710.203, any power supply borrower with a total utility plant of $500 million or more and any distribution borrower with a total utility plant of $500 million or more must maintain an approved load forecast work plan. RUS borrowers that are members of a power supply borrower with a total utility plant of $500 million or more must cooperate in the preparation of and submittal of the load forecast work plan of their power supply borrower.

(b) An approved load forecast work plan establishes the process for the preparation and maintenance of a comprehensive database for the development of the borrower's load forecast, and load forecast updates. The approved load forecast work plan is intended to develop and maintain a process that will result in load forecasts that will meet the borrowers' own needs and the requirements of this subpart. An approved work plan represents a commitment by a power supply borrower and its members, or by a large unaffiliated distribution borrower, that all parties concerned will prepare their load forecasts in a timely manner pursuant to the approved load forecast work plan and they will modify the approved load forecast work plan as needed with RUS approval to address changing circumstances or enhance the usefulness of the approved load forecast work plan.

(c) An approved load forecast work plan for a power supply borrower and its members must cover all member systems, including those that are not borrowers. However, only members that are borrowers, including the power supply borrower, are required to follow the approved load forecast work plan in preparing their respective load forecasts. Each borrower is individually responsible for forecasting all its RE Act beneficiary and non-RE Act beneficiary loads.

(d) An approved load forecast work plan must outline the coordination and preparation requirements for both the power supply borrower and its members.

(e) An approved load forecast work plan must cover a period of 2 or 3 years depending on the applicable compliance filing schedule elected under § 1710.204.

(f) An approved load forecast work plan must describe the borrower's process and methods to be used in producing the load forecast and maintaining current load forecasts on an ongoing basis.

(g) Approved load forecast work plans for borrowers with residential demand of 50 percent or more of total kWh must provide for a residential consumer survey at least every 5 years to obtain data on appliance and equipment saturation and electricity demand. Any such borrower that is experiencing or anticipates changes in usage patterns shall consider surveys on a more frequent schedule. Power supply borrowers shall coordinate such surveys with their members. Residential consumer surveys may be based on the aggregation of member-based samples or on a system-wide sample, provided that the latter provides for relevant regional breakdowns as appropriate.

(h) Approved load forecast work plans must provide for RUS review of the load forecasts as the load forecast is being developed.

(i) A power supply borrower's work plan must have the concurrence of the majority of the members that are borrowers.

(j) The borrower's board of directors must approve the load forecast work plan.

(k) A borrower may amend its approved load forecast work plan subject to RUS approval. If RUS concludes that the existing approved load forecast work plan will not result in a satisfactory load forecast, RUS may require a new or revised load forecast work plan.

§ 1710.210 Waiver of requirements or approval criteria.

For good cause shown by the borrower, the Administrator may waive any of the requirements applicable to borrowers in this subpart if the Administrator determines that waiving the requirement will not significantly affect accomplishment of RUS' objectives and if the requirement imposes a substantial burden on the borrower. The borrower's general manager must request the waiver in writing.

§§ 1710.211–1710.249 [Reserved]

Dated: June 29, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–17113 Filed 7–6–99; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM–40–27]

State of Colorado and Organization of Agreement States; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated May 10, 1999, filed by the Officers of the Organization of Agreement States and the State of Colorado (petitioners). The petition has been docketed by the Commission and has been assigned Docket No. PRM–40–27. The petitioners are requesting that the NRC regulations governing small quantities of source material be amended to eliminate the exemption for source material general licensees from the requirements that specify standards of protection against radiation and notification and instruction of individuals who participate in licensed activities. Current NRC regulations exempt source material general licensees from these requirements. The petitioners believe that no basis exists for exempting these licensees from compliance with radiation safety standards if a licensee can exceed currently specified dose limits or create areas where individuals may be exposed to significant levels of radiation.

DATES: Submit comments by September 20, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1999, the Nuclear Regulatory Commission received a petition for rulemaking submitted by the Officers of the Organization of Agreement States and the State of Colorado (petitioners). The petitioners believe that the NRC should restrict the exemption from 10 CFR parts 19 and 20 for general licensees that appears at 10 CFR 40.22(b).

The petitioners contend that any licensee who has the potential to exceed any dose limits or who generates a radiation area as defined in 10 CFR part 20 should be required to meet the radiation protection and worker notification requirements in both Parts 19 and 20. To do this, NRC would have to amend its regulations pertaining to source material general licensees in 10 CFR part 40. Specifically, 10 CFR 40.22(b) would have to be amended to revoke the exemption from 10 CFR parts 19 and 20 for source material general licensees who could exceed public dose limits or dose equivalent limits for an embryo/fetus, would require personnel monitoring, or would require posting of a radiation area. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–40–27. The NRC is soliciting public comment on the petition for rulemaking.

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Discussion of the Petition

The petitioners believe that the NRC regulations codified at 10 CFR 40.22(b) provide a blanket exemption for source material general licensees from the radiation protection and associated worker protection requirements codified at 10 CFR parts 19 and 20. Currently, 10 CFR 40.22(b) reads as follows:

(b) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in paragraph (a) of this section are exempt from the provisions of parts 19, 20, and 21, of this chapter to the extent that such receipt, possession, use or transfer are within the terms of such general license: Provided, however, That this exemption shall not be deemed to apply to any such person who is also in possession of source material under a specific license issued pursuant to this part.

As proposed by the petitioners, 10 CFR 40.22(b) would read:

(b) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in paragraph (a) of this section are exempt from the provisions of parts 19, 20, and 21, of this chapter to the extent that such receipt, possession, use or transfer are within the terms of such general license: Provided, however, That this exemption shall not be deemed to apply to any such person:

(1) Who is also in possession of source material under a specific license issued pursuant to this part;

(2) Whose use of source material could exceed the occupational dose limits in § 20.1201 through § 20.1208;

(3) Whose use of source material would require the use of personnel monitoring under § 20.1502 (a), (b), or (c); or

(4) Whose operation requires posting under § 20.1902.

The petitioners note that 10 CFR part 20 specifies basic radiation standards, consistent with national and international guidance, that apply to specific and most general licensees to provide the framework in which a licensee can perform safe operations, prevent employees and the public from exceeding dose limits, and maintain all radiation exposures As Low As Reasonably Achievable (ALARA). The petitioners also note that 10 CFR part 19 contains provisions to protect and inform individuals who participate in licensed activities that "apply to *all persons* who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in parts 30 through 36, 39, 40, 60, 61, 70, or part 72 of this chapter * * *." (Emphasis added.)

The petitioners believe that generally licensed quantities of source material may not have been regarded as a health and safety hazard when the exemption for source material licensees was enacted. However, the petitioners contend that after the exemption became effective, industry experience has revealed that source material general licensees can expose workers to levels of radiation that require monitoring, dispose of radioactive materials in a manner that would not be acceptable for other licensees, produce contamination that exceeds release limits, and potentially exceed public dose limits to individuals other than those working at their facilities.

The petitioners further contend that no basis exists for exempting source material general licensees from compliance with part 20 requirements pertaining to dose limits or posting of radiation areas. The petitioners believe that if a radiation hazard exists that would require most licensees to implement corrective measures, all licensees who create similar hazards should be required to eliminate the hazard. The petitioners also state that any individual who uses radioactive materials and the general public should be protected from unsafe and unnecessary exposure to radiation resulting from licensed activities. The petitioners believe that individuals who participate in licensed activities who may receive exposures that exceed the public dose limits in 10 CFR part 20 should be instructed as to their rights as radiation workers and the necessary procedures for safe usage of radioactive materials.

The petitioners believe the NRC exemption for source material general licensees permits potentially hazardous radioactive materials to be transported into States without the knowledge or control of State radiation control programs. The petitioners cite two cases that they believe illustrate the problem with the blanket exemption in 10 CFR 40.22(b) granted for source material general licensees. In January 1999, the Colorado Radiation Control Program was notified that a dumpster had activated a radiation alarm at a landfill. The dumpster had been used for construction debris resulting from a remodeling project after a source material general licensee had vacated the facility.

After exposure levels on the dumpster exterior measured 4.9 mR/hr (1.3*u*C/kg-hr), an investigation revealed that it was a source material general licensee who was responsible for the radioactive material. According to the petitioners, further investigation found the licensee ensured that its procurement did not exceed the 150-pound (68kg) per year limit specified in 10 CFR 40.22(a), had vacated the building with contamination [calculated at 734 mrem/year (7.34mSv/yr)] that exceeded the 25 mrem (250 *u*Sv) annual limit for release for uncontrolled use, and had significant levels of exposure to thorium and its daughters at its current facility. The petitioners state that under the exemption in 10 CFR 40.22(b), this and all other licensees who use similar quantities of source material are exempt from the health and safety requirements contained in part 20.

The petitioners also cite a 1994 Environmental Protection Agency (EPA) enforcement action against Broomer Research, Inc., of Islip, Long Island, New York found as a result of an Internet search. EPA identified significant levels of radionuclides in the sludge from a plant where thorium fluoride was used in the manufacture of optical lenses. The petitioners do not believe that these cited cases are unique and are concerned that only one of the suppliers of thorium fluoride identified in an Internet search has provided a list of its Colorado customers as requested.

The petitioners also contend that waste disposal by these general licensees creates exposure hazards and believe that general licensees who possess source material do not view waste disposal as an issue because this waste is only "Generally Licensed" and can be disposed of as common trash. Disposal of radioactive waste is controlled for specific licensees by the requirements in 10 CFR part 20 that prohibit disposal as common trash or dilution of waste in order for it to pass undetected through monitoring alarms at landfills, unless specifically authorized by regulation or license condition. The petitioners are concerned that when radioactive waste from source material licensees is transferred, those who receive the waste may be unaware of any hazard and subject to potential exposure, and may pass the hazard to another waste handler who is also unaware of the potential exposure.

The petitioners considered three other regulatory alternatives to restricting the exemption for source material general licensees that included taking no action, separately licensing each entity who uses source material and could exceed part 20 exposure limits, and removing the exemption for all source material general licensees. The petitioners determined that taking no action is unacceptable because it allows general licensees to ignore basic radiation protection standards and provides no protections to radiation workers.

The petitioners also determined that issuing a license to each source material general licensee would involve more expense than amending the regulations and would be unworkable because these types of licensees often go in and out of business. Also, the petitioners believe it would be inappropriate to apply conditions to each source material general licensee absent a rulemaking process and that the NRC would not be able to easily determine the scope of activities for each licensee. Lastly, the petitioners determined that removing the exemption in 10 CFR 40.22(b) for all source material general licensees would be inappropriate because many of these licensees use only small quantities of source material and pose very minimal risks to employees and the public.

The Petitioner's Conclusions

The petitioners conclude that 10 CFR 40.22(b) provides a blanket exemption for source material general licensees from the radiation protection and worker notification and instruction requirements contained in 10 CFR parts 19 and 20. The petitioners also conclude that no basis for this exemption exists because it allows these licensees to exceed currently specified dose limits, create areas where individuals may be exposed to significant levels of radiation, and dispose of radioactive waste in ways that are not permitted for other licensees. The petitioners request that the exemption in 10 CFR 40.22(b) be restricted as detailed in their petition for rulemaking to exclude source material general licensees who could exceed public dose limits or dose equivalent limits for an embryo/fetus or would require personnel monitoring or posting of a radiation area.

Dated at Rockville, Maryland, this 29th day of June, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–17190 Filed 7–6–99; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Pre-Disaster Mitigation Loans

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to amend its disaster loan program regulations to implement a pilot program authorized by Congress in 1999. The authorization covers 5 fiscal years (from 2000 to 2004) and will allow SBA to make low interest, fixed rate loans to small businesses to use mitigation measures in support of Project Impact, a formal mitigation program established by the Federal Emergency Management Agency (FEMA).

DATES: Submit comments on or before August 6, 1999.

ADDRESSES: Comments should be mailed to Bernard Kulik, Associate Administrator, Office of Disaster Assistance, Small Business Administration, 409 Third Street, S.W., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, 202–205–6734.

SUPPLEMENTARY INFORMATION: SBA proposes to amend part 123 of its regulations regarding disaster loans. The proposed amendments would allow small businesses to obtain low interest, fixed rate loans to use mitigation measures in support of Project Impact. In response to the problems of increasing costs and personal devastation caused by disasters, Congress has authorized a pilot program for 5 fiscal years from 2000 through 2004. The Administration has launched an approach to emergency management that moves away from the current reliance on response and recovery to an approach that emphasizes preparedness. SBA supports this approach and proposes offering pre-disaster mitigation loans to assist with disaster preparedness. SBA proposes to provide such loans to small businesses within Project Impact communities identified by FEMA. Currently, SBA disaster loans may be used only to repair or replace what was destroyed or damaged by disaster and provide an additional 20 percent for mitigation measures. Therefore, to promote preparedness, SBA proposes to amend this section of its regulations to provide pre-disaster mitigation loans for small businesses. Such pre-disaster mitigation loans will allow small businesses to install mitigation devices that may prevent future damage.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule is not a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 2 of that Order.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Revise § 123.107 to read as follows:

§ 123.107 What is mitigation?

Mitigation means specific measures taken by you to protect against recurring damage in similar future disasters. Examples include retaining walls, sea walls, grading and contouring land, relocating utilities and modifying structures. Pre-disaster mitigation is addressed in §§ 123.400 through 123.407. The money that you can borrow for mitigation is limited to the lesser of the cost of mitigation, or 20 percent of your loan to repair or replace your damaged primary residence and personal property. SBA will not accept a request for a loan increase for mitigation filed after final disbursement of your original loan unless you can show that your request was late because of substantial reasons beyond your control.

3. Add an undesignated centerheading and §§ 123.400 through 123.407 to read as follows:

Pre-disaster Mitigation Loans

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123.400 What is a pre-disaster mitigation loan?
123.401 What types of mitigating measures are eligible for a pre-disaster mitigation loan?
123.402 Is my business eligible to apply for a pre-disaster mitigation loan?
123.403 When would my business not be eligible to apply for a pre-disaster mitigation loan?
123.404 How much can my business borrow with a pre-disaster mitigation loan?
123.405 What is the interest rate on a pre-disaster mitigation loan?
123.406 How do I apply for a pre-disaster mitigation loan and which loans will be funded?
123.407 What happens if my pre-disaster mitigation loan application is denied or withdrawn?

Pre-disaster Mitigation Loans

§ 123.400 What is a pre-disaster mitigation loan?

Congress has authorized a pilot program for 5 fiscal years from 2000 through 2004 for SBA to make low interest, fixed rate loans to small businesses to use mitigation measures in support of Project Impact, a formal mitigation program established by the Federal Emergency Management Agency (FEMA).

§ 123.401 What types of mitigating measures are eligible for a pre-disaster mitigation loan?

Mitigation means specific measures taken by you to protect your real property or leasehold improvements from future disasters in Project Impact communities. If you are a landlord, the measures must be for protection of commercial rather than residential real property. Additionally, SBA will consider providing a pre-disaster mitigation loan for relocation if your commercial real property is located in a SFHA (Special Flood Hazard Area) and you relocate outside the SFHA but remain in the same Project Impact community. If the mitigation measures involved a flood hazard, the applicant small business must be located in an existing structure in a SFHA. The local Project Impact coordinator will confirm that your proposed project is in accordance with specific Project Impact priorities and goals of that community. SBA will verify each project to determine if the project will accomplish the desired mitigation results.

§ 123.402 Is my business eligible to apply for a pre-disaster mitigation loan?

Most small business concerns located in a FEMA Project Impact community are eligible to apply for a pre-disaster mitigation loan. Your small business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your small business must have been in existence for at least one year prior to submitting an application for this loan.

§ 123.403 When would my business not be eligible to apply for a pre-disaster mitigation loan?

Your business is not eligible for a pre-disaster mitigation loan if it fits into any of the categories in § 123.101, § 123.201, and § 123.301. Your business (together with its affiliates) must be small (as defined in part 121 of this chapter) and SBA must determine that the business and its owners do not have the financial resources to fund the mitigation measures without undue hardship.

§ 123.404 How much can my business borrow with a pre-disaster mitigation loan?

Pre-disaster mitigation loans are limited to $50,000 for each borrower together with its affiliates. Program funds will be allocated on a first come, first served filing basis. SBA will consider mitigation measures in excess of $50,000 if the business can show that the excess cost can be funded from other sources.

§ 123.405 What is the interest rate on a pre-disaster mitigation loan?

Your pre-disaster mitigation loan will have an interest rate of 4 percent per annum or less.

§ 123.406 How do I apply for a pre-disaster mitigation loan and which loans will be funded?

(a) Each State, the District of Columbia, Puerto Rico, and the Virgin Islands have at least one Project Impact community. Only those small businesses located in the Project Impact communities are eligible to apply for a pre-disaster mitigation loan. At the beginning of each fiscal year, SBA will publish a notice of the pre-disaster mitigation declaration in the **Federal Register** identifying the type of assistance available, the application filing deadline and locations for obtaining and filing loan applications. Additionally, SBA will use FEMA and the local media to inform potential loan applicants where to obtain loan applications. SBA will not accept any applications after the announced deadline unless SBA reopens the application filing period.

(b) Complete an SBA pre-disaster mitigation loan application package and attach a written statement from the local Project Impact coordinator that the project is in accordance with the specific priorities and goals of the local community. SBA will have a 30-day application filing period of November 1 through November 30 of each fiscal year. Additional application periods may be announced each year depending on availability of funds.

(c) Upon acceptance of a completed application package by the SBA Disaster Area Office, that office will notify the Office of Disaster Assistance (ODA) of the acceptance. Each application will be processed (approval, decline, or withdrawal) by the Area Office and that office will notify ODA of the action. ODA will then notify each Area Office of which completed approval actions to fund based on the date the completed application package was received and availability of loan funds.

§ 123.407 What happens if my pre-disaster mitigation loan application is denied or withdrawn?

(a) If your loan application is denied refer to § 123.13. Additionally, if your application is accepted for reconsideration or appeal, SBA will reflect the date of reconsideration or appeal as the date the application was received.

(b) If your loan application is withdrawn, the date of reacceptance will be considered as the date the application was received.

Dated: June 29, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–16999 Filed 7–6–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–87–AD]

RIN 2120–AA64

Airworthiness Directives; Precise Flight, Inc. Model SVS III Standby Vacuum Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all U.S. owners and operators of aircraft equipped with Precise Flight, Inc. Model SVS III standby vacuum systems installed in accordance with the applicable supplemental type certificate (STC) or through field approval. The proposed AD would require incorporating revised operating limitations for the affected standby vacuum systems into the airplane flight manual (AFM), and repetitively inspecting the push-pull cable, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, etc.). The proposed AD would also require immediately correcting any discrepancy found and conducting a function test of the vacuum system after the inspections. This AD results from reports of shuttle valve failure and standby vacuum system malfunction on aircraft. The actions specified by the proposed AD are intended to detect and correct problems with the standby vacuum system before failure or malfunction and to provide operating procedures for the pilot regarding the use and limitations of this system.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–87–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Precise Flight, Inc., 63120 Powell Butte Road, Bend, Oregon 97701; telephone: (800)–547–2558. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 227–2596; facsimile: (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–87–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–87–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of problems on aircraft equipped with Precise Flight, Inc. Model SVS III standby vacuum systems. In particular, the reports show 14 incidents of failed shuttle control valves and 2 accidents where improper use of the standby vacuum system was a factor. Other parts of the standby vacuum system that could fail include the saddle fittings, vacuum lines, and the push-pull cables.

The standby vacuum system is intended to provide emergency vacuum power for aircraft instruments when the primary vacuum system fails. The design of the Precise Flight, Inc. Model SVS III standby vacuum system is such that it may not be able to provide sufficient power to maintain altitude and operate the vacuum instruments.

Failure of the standby vacuum system in instrument flight rules (IFR) can lead to the pilot making incorrect decisions based on the data received from the instruments with consequent loss of control of the aircraft.

The Precise Flight, Inc. Model SVS III standby vacuum systems are installed on aircraft through a supplemental type certificate (STC) or through field approval. The Applicability section of the proposed AD lists the applicable STC's and aircraft that could have these standby vacuum systems installed. This list is not meant to be exhaustive nor does it include all aircraft with the system installed through field approval.

Relevant Service Information

Precise Flight, Inc. has issued the following:

—Airplane Flight Manual Supplements (AFMS) for Standby Vacuum Systems (each document corresponds with the Applicable STC), which include operating procedures for the pilot regarding the use and limitations of the Model SVS III standby vacuum system; and

—Precise Flight Instructions for Continued Airworthiness (Section 3.3 of Installation Report No. 50050), Revision 25, dated August 26, 1996, which specifies procedures for inspecting the push-pull cables, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, etc.); immediately correcting any discrepancy found; and conducting a function test of the vacuum system after each inspection.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the above-referenced service information, the FAA has determined that AD action should be taken to detect and correct problems with the standby vacuum system before failure or malfunction and to provide operating procedures for the pilot regarding the use and limitations of this system.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in aircraft equipped with Precise Flight, Inc. Model SVC III standby vacuum systems, the FAA is proposing AD action. The proposed AD would require incorporating revised operating limitations for the affected standby vacuum systems into the airplane flight manual (AFM), and repetitively inspecting the push-pull cable, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, etc.). The proposed AD would also require immediately correcting any discrepancy found and conducting a function test of the vacuum system after each inspection.

Compliance Time of the Proposed AD

The compliance times of the proposed AD are presented in calendar time. Although malfunction or failure of the standby vacuum systems is only unsafe while the aircraft is in flight, the condition is not a direct result of repetitive aircraft operation. The unsafe

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condition could exist on a standby vacuum system installed on an aircraft with only 50 hours time-in-service (TIS), but may not develop on another standby vacuum system installed on an aircraft until 1,000 hours TIS. The inspection compliance times are proposed to coincide with annual inspections so as to allow the owner/operator of the aircraft to have the proposed action accomplished at a time when he/she had already scheduled maintenance activities.

Cost Impact

The FAA estimates that 10,000 standby vacuum systems would be affected by the proposed AD, that it would take approximately 3 workhours per vacuum system to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,800,000, or $180 per airplane.

These figures only take into account the costs of the initial inspection and initial functional test of the standby vacuum systems; subsequent inspections and functional tests and any corrective actions are not included in the cost impact. The FAA has no way of determining the number of repetitive inspections and functional tests each airplane owner/operator will incur over the life of an airplane incorporating one of the affected standby vacuum systems. The FAA also has no way of determining the number of standby vacuum systems that would require corrective action based on the inspection results.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Precise Flight, Inc.: Docket No. 98-CE-87-AD.

Applicability: Model SVS III standby vacuum systems, installed on, but not limited to, the aircraft listed in the following chart. These systems can be installed either in accordance with the applicable supplemental type certificate (STC) or through field approval:

Affected STC	Make and model airplanes
SA2160NM	Raytheon Beech Models 23, A23, A23A, A23–19, 19A, B19, B19A, A23–24, B23, C23, A24, A24R, B24R, C24R, 35, A35, B35, C35, D35, E35, F35, G35, 35R, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, 36, A36, A36TC, B36TC, 4S(YT–34), A45(T–34A, B–45), D45(T–34B), and 77 Series.
SA2161NM	Raytheon Beech Model V35B.
SA2162NM	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, A150L, 150M, 152, A152, A150K, A150M, 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F (USAFT–41A), 172G, 172H(USAFT–41A), 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 175, 175A, 175B, 175C, P172D, R172E (USAFT–41B, USAFT41–3, and USAFT–41D), R172F (USAFT–41D and USAFT–41C), R172G (USAFT–41D), R172H (USAFT–41D), R172J, R172K, 172RG, 177, 177A, 177B, 177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182RG, T182, T182RG, T182R, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 188, 188A, 188B, A188, A188B, T188C, 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D. TP206E, U206–A, U206–B, U206–C, U206–D, U206–E, U206–F, U206–G, TU206–A, TU206–B, TU206–C, TU206–D, TU206–E, TU206–F, TU206–G, 207, 207A, T207, T207A, 210, 210A, 210B, 210C, 210D, 210E, 210F, 210–5 (205), 210–5A (205A), T210F, 210G, T–210G, 210H, T–210H, 210J, 205P, T–210J, 210K, T–210K, T210L, 210L, 210M, T210M, 210N, P210N, T210N, 205T, 210R, P210R, 205U, T210R, 210–5, 210–5A, 305A (USAF 0–1A), 305C (USAF 0–1E), 305D (USAF 0–1F), 305F, 305B (USAF T0–1D), 305E (0–1D or 0–1F), and 321 (Navy 0E–2).
SA2163NM	Cessna Model U206G.
SA2164NM	Cessna Model 180Q.
SA2166NM	Cessna Model 177.
SA2167NM	The New Piper Aircraft, Inc. (Piper) Models L–14, PA–12, PA–12S, PA–14, PA–15, PA–16, PA–16S, PA–17, PA–18, PA–18A, PA–18S, PA–18–105 (Special), PA–18S–105(SP), PA–18–125 (Army L–21A), PA–18AS–125, PA–18S–125, PA–18–135, PA–18A–135, PA–18AS–135, PA–18S–135, PA–18–150, PA–18A–150, PA–18AS–150, PA–18S–150, PA–19 (Army L–18C), PA–19S, PA–20, PA–20S, PA–20–115, PA–20S–115, PA–20–135, PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160, PA–24, PA–24–250, PA–24–260, PA–24–400, PA–25, PA–25–235, PA–25–260, PA–32–260, PA–32RT–300, PA–32RT–301T, PA–32–300, PA–32RT–300T, PA–32–301, PA–32S–300, PA–32R–301, PA–32–301T, PA–32R–300, PA–32R–301T, PA–28–140, PA–28–141, PA–28–150, PA–28–151, PA–28–160, PA–28S–160, PA–28–180, PA–28R–180, PA–28S–180, PA–28–235, PA–28S–235, PA–28–181, PA–28–161, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28–236, PA–28RT–201, PA–28RT–201T, PA–28–201T, PA–36–285, PA–36–300, PA–36–375, PA–38–112, and PA–46–31OP.
SA2168NM	Mooney Models M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20M , and M22.
SA2683NM	Aerocar, Inc. Model I.

Affected STC	Make and model airplanes
	Aerodifusion, S.L. Model Jodel D–1190S.
	Aeromere, S.A. Model Falco F.8.L.
	Aeronautica Macchi S.P.A. Models AL60, AL60–B, AL60–F5, and AL60–C5.
	Aeronautica Macchi & Aerfer Model AM–3.
	Aeronca Inc. Models 15AC and S15AC.
	Aerospatiale Model TB20 Trinidad.
	Arctic Aircraft Co., Inc. Models S–1A, S–1A–65F, S–1A–85F, S–1A–90F, S–1B1(Army L–67 XL–6), and S–1B2.
	Avions Mudry et Cie Model CAP 10B.
	American Champion Models (Bellanca, Aeronca) 7AC, 7ACA, S7AC (L–16A), 7BCM (L–16B), 7CCM, 7DC, S7DC, 7EC, S7EC, 7ECA, 7FC, 7GC, 7GCA, 7GCCA, 7GCB, 7GCBA, 7GCBC, 7HC, 7JC, 7KC, 7KCAB, 8KCAB, 8GCBC, 11AC, S11AC, 11BC, S11BC, 11CC, and S11CC.
	Bellanca Aircraft Corporation Models 14–9, 14–9L, 14–12F–3, 14–13, 14–13–2, 14–13–3, 14–13–3W, 14–19, 14–19–2, 14–19–3A, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, and 17–31ATC.
	Biemond, C. Model Teal CB1.
	Board, G.R. Models Columbia XJL–1 and Bolkow Jr.
	Clark Aircraft, Inc. Models 12 and 1000.
	Falcon Aircraft Corporation Model F–1.
	Flug und Fahrzeugwerke AG Model AS 202/15 "Brand".
	Found Brothers Model FBA–2C
	Fuji Heavy Industries Models FA–200–160, FA–200–180, and FA–200–180AO.
	Funk Aircraft Model Funk C.
	Kearns, Edward Scott (Garcia, Henry S.) Model (Emigh) Trojan A–2.
	Swift Museum Foundation, Inc. Model (Globe) GC–1A, GC–1B.
	Goodyear Aircraft Model GA–22A.
	Great Lakes Aircraft Model 2T–1A–1 and 2T–1A–2.
	Grumman American Models G–164, G–164A, G–164B, AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, and AA–5B.
	Commander Aircraft (Gulfstream) Models 112, (112A, 112B, 112TC, 112TCA, 114, and 114A.
	Helio Enterprises Models H–250, H–295 (USAF U–10D), H–391 (USAF YL–24), H–395 (SAF L–28A), H–395A, HT–295, and H–700.
	Prop-Jets, Inc. (Interceptor Corp., Aero Commander, Meyers) Models 200, 200A, 200B, 200C, and 200D.
	C. Itoh Aircraft Maintenance & Engineering Co. LTD. Model N–62.
	Jamieson Corporation Model J–2–L1B.
	Jodel, Avion Models D–140–B, DR–1050, D–1190, and 150.
	Lake Models C–1, C–2–IV, LA–4, LA–4–200, and LA–4–250.
	Luscombe Aircraft Corp. Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F, and 11A.
	Maule Aerospace Technology Corp. Models Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4–180C, M–4–180S, M–4–210, M–4–201C, M–4–210S, M–4–210T, M–4–220S, M–4–220T, M–5–180C, M–5–200, M–5–210C, M–5–210TC; M–T–220C, M–5–235, M–5–235C, M–6–180, M–6–235, M–7–235, MX–7–180, MX–7–235.
	Messerschmitt–Bolkow Models BO–209–150.
	FV&RV, BO209–160 FV&RV, BO–209, and 150OFF.
	Nardi S.A. Model FN–333.
	Jimmie Thompson Enterprise (Navion Rangemaster Aircraft Corporation) Models Navion (L–17A).
	Navion A (L–17B, L–17C), Navion B, D, E, F, G, and H.
	White International Ltd. Models (Pitts) S–1S, S–1T, S–2, and S–2A.
	Procaer S.P.A. Models F 15/B, F 15/C, and F 15/E.
	Gulfstream Aerospace Corporation (Rockwell) Models 111, 112, 112B, 112TC, 112TCA, and 114.
	Aermacchi S.p.A Models S.205, S.205–18F, S.205–18/R, S.205–20/F, S.205–20/R, S.205–22/R, S.208, S.208A, F.260, and F.260B.
	Socata Groupe Aerospatiale Models Rallye Series MS880B, MS885, MS892–A–150, MS892E–150, MS893A, MS893E, MS894A, MS894E, TB9,TB10, and TB21.
	Stinson Models 108–2 and 108–3.
	Sud Aviation Models Gardan GY.80–1500, GY.80–160, and GY.80–180.
	Taylorcraft Aircraft Company Models F19, F21, and F21A.
	Univair Aircraft Corporation (Forney) Models F–1, F–1A, (ERCO)E, 415D, (ALON)A–2, A20a, (Mooney)M10, (Mooney) (ERCO) 415–C, and 415–CD.
	Augustair, Inc. (Varga Aircraft Corporation) Models 2150, 2150A, and 2180.

Note 1: The above list includes the aircraft where the Precise Flight, Inc. Model SVS III standby vacuum systems could be installed through STC. This list is not meant to be exhaustive nor does it include all aircraft with the systems installed through field approval.

Note 2: This AD applies to any aircraft with a standby vacuum system installed that is identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct problems with the standby vacuum system before failure or malfunction and to provide operating procedures for the pilot regarding the use and limitations of this system, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, accomplish whichever (paragraph (a)(1) or (a)(2) below) of the following that applies:

(1) For airplanes with the affected standby vacuum system installed in accordance with the applicable STC, incorporate the applicable Precise Flight, Inc. Airplane Flight Manual Supplement (AFMS) for Standby Vacuum Systems (each document corresponds with the applicable STC as

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presented in the chart below) into the Airplane Flight Manual (AFM), including installing all placards specified in these AFMS's; or insert a copy of the Appendix to this AD into the AFM, including installing all placards specified in the Appendix:

Applicable STC	AFMS Date
SA2160NM	May 7, 1998.
SA2161NM	August 6, 1998.
SA2162NM	August 6, 1998.
SA2163NM	August 6, 1998.
SA2164NM	August 6, 1998.
SA2166M	August 6, 1998.
SA2167NM	August 6, 1998.
SA2168NM	August 6, 1998.
SA2683NM	August 6, 1998; or.

(2) For airplanes with the affected standby vacuum system installed through field approval, insert the Appendix to this AD into the AFM, including installing all placards specified in the Appendix.

(b) Within the next 12 calendar months after the effective date of this AD, and thereafter at intervals specified in the following paragraphs, inspect the push-pull cable, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, etc.). Accomplish these inspections in accordance with Precise Flight Instructions for Continued Airworthiness (Section 3.3 of Installation Report No. 50050), Revision 25, dated August 26, 1996.

(1) Reinspect the push-pull cable, vacuum lines, and saddle fittings at intervals not to exceed 12 calendar months; and

(2) Reinspect the shuttle valve at intervals not to exceed 24 calendar months.

(c) Prior to further flight after each inspection required by paragraph (b) of this AD, accomplish the following in accordance with Precise Flight Instructions for Continued Airworthiness (Section 3.3 of Installation Report No. 50050), Revision 25, dated August 26, 1996.

(1) Correct any discrepancy found; and

(2) Conduct a function test of the vacuum system and assure proper function.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW, Renton, Washington 98055–4065. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Precise Flight, Inc., 63120 Powell Butte Road, Bend, Oregon 97701; or may examine this/these document(s) at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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Appendix to Docket No. 98–CE–87–AD

System Description

A Precise Flight Standby Vacuum System may be installed to provide a temporary vacuum system in the event of a primary vacuum failure. The Standby Vacuum System operates on the differential between the intake manifold and ambient air pressure and is directed through a shuttle valve system to drive your flight instruments.

I. Operating Limitations

A. Instructions

1. The Standby Vacuum System is for emergency or standby use only and not for dispatch purposes.

2. Vacuum powered add/or Vacuum gyro directed autopilot operation may be unreliable when the Standby Vacuum System is the sole source of vacuum. Vacuum powered or vacuum gyro directed autopilot should be OFF when operating with a failed primary vacuum system.

3. The Supplemental Vacuum System is not designed to operate pneumatic de-ice systems. DO NOT operate a pneumatic de-ice system when operating with a failed primary vacuum system.

4. Above 10,000 ft. pressure altitude, engine power settings may have to be significantly reduced to provide adequate vacuum power for proper gyro instrument operation.

5. The following placards are required to be in full view of pilot:

B. Placards

Placard to be located on the push/pull control cable.

Placard to be located around the LED for the pump inop warning light.

Placard to be placed in front and in full view of the pilot.

STANDBY VACUUM SYSTEM EQUIPPED: FOR OPERATING INSTRUCTIONS AND LIMITATIONS SEE SUPPLEMENT IN OWNERS MANUAL OR PILOTS OPERATING HANDBOOK

One of the following placards must be placed in full view of the pilot near the instrument vacuum indicator after appropriate entries have been made.

APPROXIMATE STANDBY VACUUM AVAILABLE—ALTITUDE-POWER CHART FOR AIRCRAFT WITH CONSTANT SPEED PROPELLER—MAXIMUM CONTINUOUS RPM.

Press alt. (Ft.)	RPM	Man. pressure	SVS vacuum in Hg. Min.
2000	Max. Cont.		
4000	Max. Cont.		
6000	Max. Cont.		
8000	Max. Cont.		
10,000	Max. Cont.		

APPROXIMATE STANDBY VACUUM AVAILABLE—ALTITUDE-POWER CHART FOR AIRCRAFT WITH A FIXED PITCH PROPELLER

Press alt. (Ft.)	RPM	SVS vacuum in Hg min.
2000		
4000		
6000		
8000		
10,000		

II. Operating Procedures

A. Normal Procedures

1. Ground Check

a. Cycle the Standby Vacuum Control Knob Out—ON—, and return Control Knob IN—OFF—position.

2. Before Takeoff

a. Idle Engine at low speed, momentarily pull the standby vacuum knob out—ON—and check vacuum gauge. Normally, the vacuum reading will be slightly higher. After checking system push Standby Vacuum System knob IN—OFF—. Check that vacuum gauge has returned to the previous reading.

3. Enroute

a. Regularly check vacuum gauge and monitor warning light for proper vacuum system operation.

B. Emergency Procedures

1. Primary Vacuum Failure Warning Light Illuminates

a. Pull the Standby Vacuum System knob OUT -ON- and adjust throttle setting as required to maintain adequate vacuum for the primary instruments—Suction Gauge Reading in the Green Arc—If necessary descend to a lower altitude to obtain a larger differential between manifold and ambient pressure. Vacuum power must be closely monitored by checking the vacuum gauge frequently.

b. The SVS is not designed for continued IFR flight. Immediate steps should be taken to return to VFR conditions or to land. If this is not possible, IFR flight should be continued only as long as necessary to return to VFR conditions or land the airplane.

WARNING: FAILURE OF THE VACUUM SYSTEM STILL CONSTITUTES AN EMERGENCY SITUATION REGARDLESS OF THE INSTALLATION OF THE SVS. IT MAY NOT BE POSSIBLE TO MAINTAIN A SAFE ALTITUDE AND MAKE USE OF THE SVS. IN SUCH A SITUATION THE AIRPLANE MUST BE FLOWN USING NON-VACUUM POWERED INSTRUMENTS.

c. If descent is impractical:

• Periodically and temporarily reduce power as required to provide adequate vacuum to the aircraft primary instruments.

• Reapply power as required, while comparing vacuum driven gyros against the Turn and Bank Indicator, Turn Coordinator, VSI and/or other flight instruments.

• When an obvious discrepancy is noted between the vacuum driven instruments and other flight instrumentation. Periodically and temporarily reduce power as required to provide adequate vacuum to the aircraft primary instruments.

III. Performance

No change.

Issued in Kansas City, Missouri, on June 25, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–16911 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–13–AD]

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS332C, L, and L1 helicopters. This proposal would require inspecting and replacing certain bolts that secure the hoist arm lower fitting. This proposal is prompted by a report of a failure of the bolts that secure the hoist arm lower fitting during a factory load test. The actions specified by the proposed AD are intended to prevent failure of the bolts that secure the hoist arm lower fitting, separation of components from the helicopter, impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS332C, L, and L1 helicopters. The DGAC advises of the failure during a load test of certain incorrect bolts that were used to secure the hoist arm lower fittings.

Eurocopter France has issued Telex No. 00069, dated November 3, 1998, for Model AS 332C, L, and L1 helicopters that are not modified in accordance with modification AMS 0722955 to inspect each bolt that secures the hoist arm lower fitting to ensure that the correct bolt, part number (P/N) 22201BE080020L, is installed rather than the incorrect bolt, P/N 22201BC080017L. The DGAC classified this Telex as mandatory and issued AD 98–487–072(A), dated December 2, 1998, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS332C, L, and L1 helicopters of the same type design registered in the United States, the proposed AD would require inspecting the bolts that secure the hoist arm lower fitting and replacing each incorrect bolt, P/N 22201BC080017L, with an airworthy bolt, P/N 22201BE080020L.

The FAA estimates that four helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours to inspect and replace the bolts per helicopter, and that the average labor rate is $60 per work hour. Required parts would cost approximately $50 for four bolts. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $560.

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The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 99–SW–13–AD.

Applicability: Model AS332C, L, and L1 helicopters, that are not modified in accordance with modification AMS 0722955, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to the next use of the hoist, unless accomplished previously.

To prevent failure of the bolts that secure the hoist arm lower fitting, separation of components from the helicopter, impact with the main or tail rotors, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the four bolts that secure the hoist arm lower fitting.

(b) Inspect each bolt as follows:

(1) Measure each bolt shank from beneath the bolt head to the shank end;

(2) Determine the part number (P/N) of the bolt; and

(3) Determine what engraved marking is present on the bolt head.

(c) Each bolt, P/N 22201BE080020L, inspected in accordance with paragraph (b), measuring 20 mm in length and having "BE" engraved on the bolt head may be reinstalled if otherwise airworthy.

(d) Any bolt inspected in accordance with paragraph (b), not measuring 20 mm in length and having "BC" or letters other than "BE" engraved on the bolt head must be replaced. Replace with an airworthy bolt, P/N 22201BE080020L, that measures 20 mm in length and has "BE" engraved on the bolt head.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 98–487–072(A), dated December 2, 1998.

Issued in Fort Worth, Texas, on June 28, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–17176 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–58–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100 and -300 series airplanes. This proposal would require modification of certain hydraulic systems that provide hydraulic pressure for the control of the rudder and for the main landing gear brakes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent damage to certain hydraulic system components in the number 2 engine nacelle, which could result in loss of the number 1 and number 2 hydraulic systems, and consequent reduced controllability of the airplane.

DATES: Comments must be received by August 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Anthony Gallo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7510; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–58–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100 and –300 series airplanes. TCA advises that it has received reports of hydraulic system damage in the number 2 engine nacelle caused by in-flight, fuel-fed engine fires; and in one incident, the complete hull of the airplane was lost. In each incident, the fire was caused by leaking and igniting fuel. However, the source of the fuel leak in each incident was a different source, as was the source of ignition.

Investigation revealed that the hydraulic system did not cause the fire in any of the incidents, however, the damage from the fires resulted in a total loss of hydraulic pressure in both hydraulic systems 1 and 2. These hydraulic systems supply hydraulic power for the control of the rudder and for the main landing gear (MLG) brakes. Further investigation revealed that the location of the number 2 standby power unit (SPU) and certain hydraulic components of the parking brake system (i.e., parking brake accumulator, charging valve, and viewing gauge) may have contributed to the hydraulic system damage. Such damage, if not corrected, could result in loss of the number 1 and number 2 hydraulic systems, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued the following service bulletins which describe procedures for modification of certain hydraulic systems that provide hydraulic pressure for the control of the rudder and for the main landing gear brakes:

Bombardier Service Bulletin S.B. 8–32–128, Revision 'C,' dated March 27, 1998, describes procedures for modification of the parking brake accumulator and charging valve of the parking brake system. This service bulletin is divided into two parts, A and B, respectively.

Part A of the Accomplishment Instructions (Bombardier Modification 8/1982) is applicable to airplanes on which Bombardier Modification 8/1152 has been installed. Part A of the Accomplishment Instructions describes procedures for relocation of the parking brake charging valve from the number 2 engine nacelle to the right-hand wing root, modification of the wing root and installation of a new front access panel, support, cleat, and associated hydraulic tubes.

Part B of the Accomplishment Instructions (Bombardier Modifications 8/1152 and 8/1982) is applicable to airplanes on which Bombardier Modification 8/1152 has not been installed. Part B of the Accomplishment Instructions describes procedures for relocation of the parking brake accumulator, charging valve, and viewing gauge; and installation of a new support assembly, panel assembly, viewing port, and tube assemblies in the right-hand wing root.

Bombardier Service Bulletin S.B. 8–29–23, dated December 6, 1996, describes procedures for relocation of the number 2 SPU of the number 2 engine nacelle to the rear fuselage; and installation of a new support assembly, hydraulic isolation valve, tube assemblies, wiring, circuit breaker, caution indicator, and associated relays.

Bombardier Service Bulletin S.B. 8–29–29, dated February 27, 1998, describes procedures for installation of a hydraulic rudder isolation system that involves installation of two new hydraulic isolation valves, electrical wiring, caution lights, and tube assemblies. Accomplishment of Service Bulletin S.B. 8–29–29 is an alternative to the modification described in Service Bulletin S.B. 8–29–23.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. TCA has approved these service bulletins and issued Canadian airworthiness directives CF–96–25R1, dated January 16, 1997, and CF–96–25R2, dated September 10, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 148 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes identified in Bombardier Service Bulletin S.B. 8–32–128, Revision 'C,' it would take between 15 and 40 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the

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operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be between $133,200 and $355,200, or between $900 and $2,400 per airplane.

For airplanes identified in Bombardier Service Bulletin S.B. 8–29–23, it would take approximately 346 work hours per airplane to accomplish the proposed relocation, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,072,480, or $20,760 per airplane.

For airplanes identified in Bombardier Service Bulletin S.B. 8–29–29, it would take approximately 120 work hours per airplane to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $1,065,600, or $7,200 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 97–NM–58–AD.

Applicability: Model DHC–8–100 and –300 series airplanes having serial numbers 003 through 405; except those airplanes on which Bombardier Modifications 8/1152 and 8/1982 have been installed, and on which either Bombardier Modification 8/1983 or 8/2781 has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to certain hydraulic system components in the number 2 engine nacelle, which could result in loss of the number 1 and number 2 hydraulic systems, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify certain hydraulic systems that provide hydraulic pressure for the control of the rudder and for the main landing gear brakes by accomplishing the requirements of paragraph (a)(1) or (a)(2), as applicable, in accordance with Bombardier Service Bulletin S.B. 8–32–128, Revision 'C,' dated March 27, 1998.

(1) For all airplanes on which Bombardier Modification 8/1152 has been installed: Accomplish Part A of the Accomplishment Instructions of the service bulletin.

(2) For all airplanes on which Bombardier Modification 8/1152 has not been installed: Accomplish Part B of the Accomplishment Instructions of the service bulletin.

(b) Within 18 months after the effective date of this AD, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) Relocate the number 2 standby power unit (SPU) of the number 2 hydraulic system in accordance with Bombardier Service Bulletin S.B. 8–29–23, dated December 6, 1996; or

(2) Install a hydraulic rudder isolation system in the number 1 and number 2 hydraulic systems in accordance with Bombardier Service Bulletin S.B. 8–29–29, dated February 27, 1998.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directives CF–96–25R1, dated January 16, 1997, and CF–96–25R2, dated September 10, 1998.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17177 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–27–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace model BAe 146 and Avro 146–RJ series airplanes. This proposal would require installation of modified roller sub-assemblies in both the main landing gear (MLG) door lock and the MLG uplock. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the roller sub-assemblies, which could result in failure of the MLG to retract and lock after takeoff, or to deploy properly for landing.

DATES: Comments must be received by August 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–27–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that a report has been received indicating that the roller sub-assembly fitted in the main landing gear (MLG) door lock cracked and broke into segments. A roller sub-assembly of the same type is also fitted in the MLG uplock, and cracks have been reported in that location also. Dowty Hydraulics has established that the cracks were initiated during the manufacturing process. Modified rollers, which use a different manufacturing assembly process, are now available. Cracked or broken roller assemblies, if not corrected, could result in failure of the MLG to retract and lock after takeoff, or to deploy properly for landing.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.32–150–70656A, dated December 1, 1998, which describes procedures for installation of modified roller sub-assemblies in both the MLG door lock and the MLG uplock. Accomplishment of the actions specified in the service bulletin are intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–12–98, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would be provided at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $32,400, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative,

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on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 99–NM–27–AD.

Applicability: All Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the roller sub-assemblies in both the main landing gear (MLG) door lock and the MLG uplock, which could result in failure of the MLG to retract and lock after takeoff, or to deploy properly for landing, accomplish the following:

Modification

(a) Install a modified roller sub-assembly in the MLG door lock unit and the MLG uplock unit, in accordance with British Aerospace Service Bulletin SB.32–150–70656A, dated December 1, 1998, at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD.

(1) For airplanes that have accumulated 30,000 total flight cycles or more as of the effective date of this AD: Within six months after the effective date of this AD.

(2) For airplanes that have accumulated 26,000 or more, but fewer than 30,000 total flight cycles as of the effective date of this AD: Within 12 months after the effective date of this AD.

(3) For airplanes that have accumulated 22,000 or more, but fewer than 26,000 total flight cycles as of the effective date of this AD: Within 18 months after the effective date of this AD.

(4) For airplanes that have accumulated fewer than 22,000 total flight cycles as of the effective date of this AD: Within 18 months after the accumulation of 22,000 total flight cycles.

(b) As of the effective date of this AD, no person shall install on any airplane a MLG door lock assembly, part number 200898001 or 200898002, or a MLG uplock assembly, part number 200885001 or 200885002.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 005–12–98.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17178 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–332–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd. (IAI), Model 1124 and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all IAI Model 1124 and 1124A series airplanes. This proposal would require installation of an independent circuit breaker and associated wiring changes for the hydraulic low pressure warning lights. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent loss of the hydraulic low pressure warning lights. Low pressure in the hydraulic system can result in reduced controllability of the airplane.

DATES: Comments must be received by August 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–332–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–332–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–332–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on all IAI Model 1124 and 1124A series airplanes. The CAAI advises that it is possible to lose the hydraulic low pressure warning lights on these airplanes if there is a malfunction of the nosewheel steering circuit. On all applicable models the nosewheel steering circuit and the hydraulic low pressure warning electrical circuit are connected to the same circuit breaker. Thus, if there is a failure of the steering circuit that causes the circuit breaker to trip, the low pressure hydraulic warning light will not function. Such a failure within the nosewheel steering circuit, if not corrected, could result in unknown low pressure in the hydraulic system. Low pressure in the hydraulic system can result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Israel Aircraft Industries, Ltd. (IAI), has issued 1124-Westwind Alert Service Bulletin 1124–29A–140, dated August 15, 1998, which describes procedures for installation of a three-ampere circuit breaker on the overhead circuit breaker panel and associated wiring changes. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this alert service bulletin as mandatory and issued Israeli airworthiness directive 29–98–09–01, dated September 23, 1998, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 218 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $142 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $109,436, or $502 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries, Ltd.: Docket 98–NM–332–AD.

Applicability: All Model 1124 and 1124A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

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subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the hydraulic low pressure warning lights which could result in unknown low pressure in the hydraulic system and consequent reduced controllability of the airplane accomplish the following:

(a) Within 400 hours time-in-service or 1 year after the effective date of this AD, whichever occurs first: Install an independent circuit breaker and associated wiring changes for the hydraulic low pressure warning lights, in accordance with IAI 1124-Westwind Alert Service Bulletin 1124–29A–140, dated August 15, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 29–98–09–01, dated September 23, 1998.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17179 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–39]

Proposed Modification of Class D Airspace; Belleville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action to modify Class D airspace at Belleville, IL. This action would amend the effective hours of the Class D surface area to coincide with the airport traffic control tower (ATCT) hours of operation for Scott AFB/MidAmerica Airport. The purpose of this action is to clarify when two-way radio communication with the ATCT is required.

DATES: Comments must be received on or before August 23, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–39, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–39." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Belleville, IL, by amending the effective hours to coincide with the ATCT hours of operation for Scott AFB/MidAmerica Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1997); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Com., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AGL IL D Belleville, IL [Revised]

Scott AFB/MidAmerica Airport, IL
(Lat. 38°32′41″ N., long. 89°50′01″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within an 4.8-mile radius of the Scott AFB/MidAmerica Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois, on July 18, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–17171 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–2]

Proposed Modification of Class E Airspace; Mojave, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace area at Mojava, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SLAP) to Runway (RWY) 4 and GPS RWY 22 at Mojave Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 4 and GPS RWY 22 SIAP to Mojave Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Mojave Airport, Mojave, CA.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–2, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWP–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Mojave, CA. The establishment of a GPS RWY 4 and GPS RWY SIAP at Mojave Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS approach procedures at Mojave Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 4 and GPS RWY 22 SIAP at Mojave Airport, Mojave, CA. Class E airspace

designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 171.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an estahished body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1997); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREA; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AWP CAE5 Mojave, CA [Revised]

Mojave Airport, CA
(Lat. 35°03′30″N, long. 118°09′03″W)
Edward AFB, CA
(Lat. 34°54′18″N, long. 117°53′01″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Mojave Airport, excluding the portion within the Edwards AFB, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on June 22, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–17172 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57 and 75

RIN 1219–AB19

Safety Standards for Self-Rescue Devices in Underground Coal and Underground Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is considering revising its safety standards for self-rescue devices based on MSHA's continuing evaluation of self-rescue devices and the public comments received during the recent Self-Rescue Conference held in Beckley, West Virginia. Self-rescue breathing devices, used in underground mines for over 25 years, have saved lives. The devices are subjected to harsh in-mine use conditions and are stored in a rugged mining environment. The rule would help assure that the devices will function as intended whenever they are needed in mine emergencies.

DATES: Submit comments on or before August 6, 1999.

ADDRESSES: Send comments to MSHA, Office of Standards, Regulations, and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203. You are encouraged to submit comments on a computer disk or via e-mail to comments@msha.gov along with an original hard copy or via telefax to: 703–235–5551.

FOR FURTHER INFORMATION CONTACT: Carol Jones, Acting Director, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Miners wear breathing apparatus known as self-rescue devices to exit a mine during emergencies such as fires, explosions, or other incidents which contaminate the environment. There are two types of self-rescue devices used in underground mines. A filter self-rescue device (FSR) removes hazardous carbon monoxide through filtration of the mine air. A self-contained self-rescue device (SCSR) is a closed-circuit breathing apparatus that isolates the users' lungs providing breathable air. Because an SCSR functions in a closed circuit, all contaminants in the surrounding mine air can be eliminated from the air the miner is breathing.

MSHA and the National Institute for Occupational Safety and Health (NIOSH) held a joint self-rescue conference in Beckley, West Virginia on June 15 and 16, 1999. The conference provided an opportunity for an exchange of information between the agencies, self-rescuer manufacturers, mining industry representatives and labor representatives on a range of topics involving self-rescue devices. The participants addressed a number of significant self-rescue device issues. The discussion also raised additional questions for the Agency to consider. Following the conference, MSHA personnel met to consider the issues raised and the views expressed at the conference.

With this advance notice of proposed rulemaking (ANPRM), we are requesting the mining community to comment on issues developed at the conference and other issues raised by MSHA. It is our hope that by hearing the views of the mining community early in our rulemaking process we can formulate a workable approach to addressing self-rescuer issues that will best protect the safety of miners.

We have already announced in the Semiannual Regulatory Agenda published in April, 1999 that we intend to develop a proposed rule to address self-rescue devices. We will consider the comments we receive as a result of this ANPRM in developing the proposed rule.

II. Issues We Ask You To Consider in Your Comments

1. There have been some instances where self-rescue devices were not donned properly in an emergency. In addition, there are studies which show that a person's ability to retain the knowledge and skills necessary to properly don a self-rescuer decreases significantly over time.

a. How can we enhance training to assure that miners will be able to effectively don their self-rescuer?

b. Is annual training appropriate? Would quarterly or semiannual training be better? Should the training be held in conjunction with fire fighting and evacuation drills?

c. Is the content of the current training appropriate? Should training include: expectations when wearing self-rescuers; donning procedures for all types of self-rescuers present in the mine; ways to maximize the useful life of a self-rescuer during an emergency; and effective techniques for transferring from one unit to another?

d. Should miners be trained using a breathing-resistance simulator, for example, a mouthpiece?

2. Some of the concerns with self-rescue devices were discovered only after the units were deployed in mines. The self-rescue devices are subjected to harsh in-mine use conditions and stored in a rugged environment that could contribute to a device not functioning as intended.

a. How can we ensure that miners continue to have confidence in self-rescue devices so that they will be used successfully in an emergency?

b. How should we improve the reliability of self-rescue devices?

c. What should we do to reasonably ensure that all devices function as intended?

d. Should the current service life requirements be modified?

e. If the allowable service life is reduced, would 5 years be an appropriate service life? If not, what would be an acceptable service life?

f. Should manufacturers periodically examine all of their self-rescue devices deployed in mines, including both external and internal components? How often? Should manufacturers certify that the examinations and tests have been conducted?

g. Should manufacturers develop and perform nondestructive tests that can be used in the field to detect degradation of self-rescuers?

h. Should mine operators be required to conduct more frequent examinations? If so, how frequent?

i. NIOSH and MSHA, in the long-term field evaluation program, work with mine operators to periodically obtain and test self-rescue devices that are deployed in mines. How should the sampling and testing methodology in this program be improved?

j. How should we involve interested parties in the early stages of problem identification and the subsequent problem resolution?

3. International Standards

Self-rescuer manufacturers sell their products in international markets. Yet, each country has its own approval criteria which limits the potential for a free market.

a. Should NIOSH/MSHA have as a goal to integrate international standards into the self-rescuer device approval process?

b. Are there other approaches to inspection of self-rescue devices or to service life issues that other countries implement and that we should consider for our nation's mines?

c. Should we allow the use of self-rescue devices that are approved by other countries?

4. There have been questions about the interpretation of the existing rule as it relates to storage plans and how the rule is being applied in the various MSHA Districts.

a. Are there areas of the rule which should be clarified?

b. Should the rule explicitly require the cache of additional self-rescuers in accordance with a plan that MSHA approves?

c. Should MSHA require operators applying for a storage plan to submit any additional information, such as the travel distance and time to the storage cache?

5. Over the years questions have come up concerning the distance from the miner that self-rescuers are stored in coal mines and the ability of the miners to reach the devices in a timely manner in the event of an emergency.

a. What should be the appropriate time necessary to reach the stored units?

b. Should we reduce the permitted travel time to caches?

c. Should we require the use of short-term duration SCSRs (anything less than 60 minutes) in lieu of using a FSR to reach a cache?

d. Where escape will take longer than 1 hour, should the standard for coal mines be revised to require caches of an adequate number of self-rescue devices to allow all miners to escape to the surface or a safe location?

e. MSHA and NIOSH, in conjunction with the MSHA state grants program, conducted a series of studies at various underground mines which determined the effect of heart rate as an indicator of workload during a mine escape. Should MSHA take this data into account in determining the location of these additional escape devices?

6. The devices currently required in metal and nonmetal mines are FSRs. SCSRs can be successfully used in a wider variety of mine emergencies than FSRs, and therefore are considered superior to FSRs. In 1987, MSHA began to require SCSRs in certain category V-A gassy metal and nonmetal mines (§ 57.22315).

a. Should SCSR requirements be expanded to other mines such as gassy metal and nonmetal mines categories I through V (approximately 20 mines and 4,800 miners), the group of metal and nonmetal mines that have the highest risk of fire and explosion from methane?

b. If expanded to these mines, should SCSR cache provisions be excluded where there are refuge chambers in metal and nonmetal mines?

III. Impact

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations, and propose regulations on the basis that the benefits justify the costs. Regulatory agencies also are required to base decisions on the best reasonably obtainable scientific, technical, economic, and other data and information concerning the need for and the consequences of the proposed regulations.

We are exploring the development of a proposed rule addressing self-rescue devices. We anticipate that the benefit would be the prevention of fatalities which may occur if these devices are not used or not used as intended.

IV. Public Participation

We request comments on the specific issues addressed in this ANPRM. You are encouraged to be as specific as possible in addressing the issues and in suggesting alternatives. We also request that you include specific examples and cost estimates where possible to support your rationale. This will assist us in evaluating and analyzing your comments.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground mining.

Dated: June 29, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–17092 Filed 7–6–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–094]

RIN 2115–AA97

Safety Zone: Staten Island Fireworks, Lower New York Bay and Raritan Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish two temporary safety zones for Staten Island fireworks displays located on Lower New York Bay and Raritan Bay. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in a portion of Lower New York Bay and in one of Raritan Bay.

DATES: Comments must reach the Coast Guard on or before August 23, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–094), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–094) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The fireworks programs are being sponsored by the Borough of Staten Island. This proposed rule would establish two temporary safety zones. First, in all waters of Lower New York Bay within a 360-yard radius of the fireworks barge located in approximate position 40°35′11″N, 074°03′42″W (NAD 1983), about 350 yards east of South Beach, Staten Island. The safety zone would be in effect from 8:30 p.m. until 10 p.m. on August 28, 1999. The rain date for this event would be August 29, 1999, at the same time and place. Second, in all waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30′04″N, 074°15′35″W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595). The safety zone would be effective from 8:30 p.m. until 10 p.m. on September 4, 1999. The rain date of this event would be September 5, 1999, at the same time and place. The safety zones would prevent vessels from transiting a portion of lower New York Bay and Raritan Bay in the vicinity of the Raritan River Cutoff, Ward Point Bend (West). The safety zones are needed to protect boaters from the hazards associated with fireworks launched from two barges in the area. Marine traffic would still be able to transit through Lower New York Bay during the event off South Beach on September 4, 1999. Marine traffic would still be able to transit through the eastern 140 yards of the 230-yard wide Ward Point Bend (West) during the event on September 4, 1999. Traffic that could not transit through the closed Raritan River Cutoff would transit through Ward Point Bend (West) by using South Amboy Reach, Great Beds Reach, Ward Point Secondary Channel, and Ward Point Bend (East). Additionally, vessels would not be precluded from mooring at or getting underway from any marinas or piers at Perth Amboy, New Jersey, during the display in the Raritan River Cutoff. Public notifications will be made before the event by the Local Notice to Mariners and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 45 days because the proposed safety zones are only for one-and-a-half-hour-long local events.

Discussion of Proposed Rule

The proposed safety zones are for Staten Island Summer fireworks displays held on Lower New York Bay and Raritan Bay. These events will be held on August 28, 1999, on Lower New York Bay and on September 4, 1999, on Raritan Bay. If the events are cancelled for inclement weather, then the events will be held on the following day. This rule is being proposed to provide for the safety of life on navigable waters during the events and to give the marine community the opportunity to comment on these events.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard Expects the economic impact of this proposed rule to be so minimal that a full regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from and zone and on the facts that vessels would not be precluded from getting under way, or mooring at, the marinas and piers in Perth Amboy, New Jersey; that marine traffic could still be able to transit through Lower New York Bay during the display on August 28, 1999; that marine traffic would safely transit to the east of the zone on September 4, 1999; and that advance notifications which will be made to be local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Colleciton of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–094 to read as follows:

§ 165.T01–094 Safety Zone: Staten Island Fireworks, Lower New York Bay and Raritan Bay.

(a) *Safety Zone A:*

(1) *Location.* All waters of Lower New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°35′11″ N., 074°03′42″ W. (NAD 1983), about 350 yards east of South Beach, Staten Island.

(2) *Effective period.* This paragraph (a) is effective from 8:30 p.m. until 10 p.m. on August 28, 1999. If the event is canceled for inclement weather, then this paragraph is effective from 8:30 p.m. until 10 p.m. on August 29, 1999.

(b) *Safety Zone B:*

(1) *Location.* All waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30′04″ N., 074°15′35″ W. (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595).

(2) *Effective period.* This paragraph (b) is effective from 8:30 p.m. until 10 p.m. on September 4, 1999. If the event is canceled for inclement weather, then this paragraph is effective from 8:30 p.m. until 10 p.m. on September 5, 1999.

(c) *Effective Period.* This section is effective from 8:30 p.m. on August 28, 1999, until 10 p.m. on September 5, 1999.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 23, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–17186 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE039–1021; FRL–6372–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware Enhanced Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This action proposes approval of revisions to the enhanced motor vehicle inspection and maintenance (I/M) SIP submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). Because EPA has determined that the conditions of its May 19, 1997 conditional approval of Delaware's enhanced I/M SIP have now been satisfied, this action proposes to remove those conditions and to grant full approval of the enhanced I/M SIP.

DATES: Written comments must be received on or before August 6, 1999.

ADDRESSES: Written comments may be mailed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Jill Webster, (215) 814–2033, or by e-mail at Webster.Jill@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

A. What is today's action?
B. Why is EPA taking this action?
C. Why did Delaware make these changes?

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D. What are the new changes to Delaware's I/M program?
E. How did EPA review Delaware's submittal?
F. How did Delaware satisfy the deficiencies identified in the conditional approval?
G. What are the specifics of the new I/M program changes?
H. What is the process for EPA approval of this action?
I. Where can I get additional background information on this action?
J. How this document complies with the Federal Administrative Requirements for Proposed Rulemaking.

A. What is Today's Action?

On May 19, 1997, EPA conditionally approved Delaware's enhanced Inspection and Maintenance (I/M) program. On June 16, 1998, Delaware submitted a SIP revision to satisfy the conditions established in the May 19, 1997 conditional approval. Because EPA has determined that Delaware has satisfied all of the conditions of its May 19, 1997 conditional approval, EPA is proposing to approve the June 16, 1998 SIP revision submittal together with additional I/M SIP revisions submitted by DNREC on May 24, 1999.

B. Why is EPA Taking This Action?

EPA is proposing approval because Delaware has submitted an enhanced I/M SIP that meets the requirements of the I/M rule as found in 40 CFR 51.350 through 51.373 (the I/M rule). EPA believes that Delaware's I/M SIP submittal satisfies the deficiencies imposed in the May 19, 1997 conditional approval rule. Furthermore, EPA has determined that recent changes made by Delaware to its enhanced I/M program also meet the requirements of the I/M Rule.

C. Why did Delaware Make These Changes?

Delaware revised its I/M SIP to improve air quality and to meet requirements of the 1990 Clean Air Act Amendments (the Act) for an enhanced I/M program. The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Both Kent and New Castle counties, are part of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. The DNREC submitted a revised SIP to EPA on February 17, 1995 that included enhancements to their I/M program. The intent of the revisions was to meet the requirements of the Act and the I/M rule. The submittal consisted of Regulation Numbers 26 and 33 of the Delaware Regulations Governing the Control of Air Pollution.

EPA identified numerous deficiencies of the February 17, 1995 submittal. On May 19, 1997, EPA granted Delaware a conditional approval of the program, contingent upon Delaware's commitment to submit a revised enhanced I/M SIP by June 18, 1998 correcting the deficiencies identified in EPA's conditional approval. On June 16, 1998, Delaware submitted Regulation 31-Low Enhanced Inspection and Maintenance Program, for the purpose of addressing the program deficiencies. Regulation 31 replaced Regulation 26 for Kent and New Castle counties. Regulation 33 was rescinded and also replaced by Regulation 31.

D. What are the New Changes to Delaware's I/M Program?

Delaware has also made new changes to its enhanced I/M program. Delaware has adopted regulations that incorporate Low Emitter Profile (LEP) modeling, expanded model year exemptions, and a two-speed idle test. The LEP modeling is commonly referred to as "clean screening". These revisions were submitted to EPA on May 24, 1999.

E. How did EPA Review Delaware's Submittal?

First, EPA reviewed the June 16, 1998 SIP revision submittal to verify that Delaware's enhanced I/M program satisfied the conditions imposed in the May 19, 1997 conditional approval. Second, EPA reviewed the new program changes submitted on May 24, 1999 to verify that Delaware's enhanced I/M program still conformed to requirements of the Act and the I/M rule.

F. How did Delaware Satisfy the Deficiencies Identified in the Conditional Approval?

As previously explained, EPA had identified various deficiencies of Delaware's I/M program. Most of these deficiencies related to insufficient administrative requirements and lack of supporting documentation. On June 16, 1998 and on May 24, 1999, DNREC submitted revisions to its conditionally approved enhanced I/M program. EPA used the "Inspection and Maintenance Program SIP Requirements Checklist" as a guideline for performing a detailed review of both the June 16, 1998 and May 24, 1999 submittals. The checklist is part of the technical support document (TSD) for this rulemaking. The details of the checklist review are not outlined in this notice, but are available in the TSD. The TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. This document will briefly describe the conditions satisfied by Delaware.

Table 1. briefly describes how Delaware satisfied the I/M requirement. The table also identifies the location in the Delaware submittal that contains the required information.

TABLE 1.

Deficiency	Corrective action taken by Delaware	Location in SIP submittal
Required provisions covering all requirements of Applicability, 40 CFR 51.350, including ZIP codes for all covered areas and statement by authorized Delaware official that the program requirement will not sunset.	Delaware Regulation 31 includes ZIP codes for all covered areas and letter from Secretary of the Delaware Department of Natural Resources & Environmental Control, Christophe A.G. Tulou, stating that the program will stay in place throughout attainment and maintenance period for ozone.	Delaware Regulation 31, section 1 and Appendix 1(d).
Did not submit modeling that demonstrated meeting the performance standard by failing to include provisions for an on-road testing program; Enhanced I/M Performance Standard 40 CFR 51.351.	Submittal included modeling that demonstrated meeting the performance standard with the new program changes, and included an on-road testing program.	Delaware Regulation 31, section 2; Plan for Implementation, section 2 and Appendix 2(b).
Insufficient network type description and a long term program evaluation; Network Type and Program Evaluation 40 CFR 51.353.	Delaware Regulation 31 includes network type description and the Plan for Implementation includes program evaluation description.	Delaware Regulation 31, section 3 and Appendix 3(a)(7); Plan for Implementation, section 3.

TABLE 1.—Continued

Deficiency	Corrective action taken by Delaware	Location in SIP submittal
Did not submit a resource Budget Plan and other requirements of Adequate Tools and Resources 40 CFR 51.354.	The Plan for Implementation includes resource budget plan necessary for program operation.	Plan for Implementation, section 4, Appendix 4(a), and Appendix 4(b).
Insufficient description of test frequency other requirements of Test Frequency and Convenience 40 CFR 51.355.	Delaware Regulation 31 describes the test frequency in detail, as well as how testing and short wait times are insured.	Delaware Regulation 31, section 4 and Plan for Implementation, section 5.
Lack of description of vehicles covered by the program and other requirements of Vehicle Coverage 40 CFR 51.356.	Delaware Regulation 31 provides the necessary description of vehicle coverage and the Plan for Implementation provides estimation of special exemptions.	Delaware Regulation 31, section 5 and Appendix 5(f). Plan for Implementation, section 6.
Insufficient detail regarding test procedures and evaporative test standards; Test Procedures and Standards 40 CFR 51.357.	Delaware Regulation 31 includes appropriate test procedures and standards*.	Delaware Regulation 31, section 6, Appendix 6(a), Appendix 6(a)(5), and Appendix 6(a)(8).
Lack of detail regarding test equipment, including specifications and other requirements of Test Equipment 40 CFR 51.358.	The Plan for Implementation includes all pertinent equipment specifications and other necessary equipment information.	Plan for Implementation, section 8 and Appendix 8(a).
Did not submit all necessary equipment calibration procedures and quality control measures; Quality Control 40 CFR 51.359.	The Plan for Implementation includes all necessary quality control and calibration procedures.	Plan for Implementation, section 9, Appendix 9(a)(1), Appendix 9(c), and Appendix 9(c).
Lack of necessary waiver requirement of minimum expenditure of at least $450, adjusted annually to reflect changes in the Consumer Price Index (CPI) and other requirements of Waivers & Compliance via Diagnostic Inspection 40 CFR 51.360.	Delaware Regulation 31 includes the necessary waiver expenditure requirement of minimum $450 adjusted annually to reflect changes in CPI compared to 1989**.	Delaware Regulation 31, section 7 and Appendix 7(a). Plan for Implementation, section 10.
Insufficient detail regarding Delaware's registration denial process and how it's linked with the inspection process; Motorist Compliance Enforcement 40 CFR 51.360.	Delaware Regulation 31 provides sufficient detail regarding Delaware's registration denial system and motorist compliance.	Delaware Regulation 31, section 8 and Appendix 8 (a). Plan for Implementation, section 11, Appendix 11(b), Appendix 11(c)(1).
Lack of detailed description of Delaware's quality assurance program including details of auditing procedures, inspector training, and fraud prevention as well as other requirements of Quality Assurance 40 CFR 51.363.	The Plan for Implementation details all of Delaware quality assurance procedures and all necessary quality assurance requirements.	Plan for Implementation, section 9, Appendix 9 (a)(1), Appendix 9(b), and Appendix 9(c).
Lack of detail regarding enforcement against stations, contractors, and inspectors; Enforcement Against Contractors, Stations, and Inspectors 40 CFR 51.364.	Delaware Regulation 31 provides sufficient detail of enforcement and disciplinary actions to be taken with regard to stations, contractors, and inspectors.	Delaware Regulation 31, section 9 and Appendix 9(a).
Submittal did not include data collection procedures or provisions for data collection and other requirements of Data Collection 40 CFR 51.365.	The Plan for Implementation details all data collection procedures and data collected.	Plan for Implementation, section 15.
Submittal did not include data analysis and reporting procedures required in Data Analysis and Reporting 40 CFR 51.366.	The Plan for Implementation details data analysis and reporting procedures.	Plan for Implementation, section 16.
Lack of description of Inspector training and training course; Inspector Training and Licensing or Certification 40 CFR 51.367.	The Plan for Implementation contains an overview of Inspector training and other requirements of inspector certification.	Plan for Implementation, section 17 and Appendix 17.
Submittal did not include measures/provisions that will be implemented to protect the consumer and provide for public awareness; Public Information and Consumer Awareness 40 CFR 51.368.	The Plan for Implementation describes Delaware's process for consumer protection and public education.	Plan for Implementation, section 18 and Appendix 18.
Submittal did not include a description of the steps Delaware will take to ensure effective repairs, as well as other requirements of Improving Repair Effectiveness 40 CFR 51.369.	The Plan For Implementation provides Delaware's procedures for ensuring repair effectiveness.	Delaware Regulation 31, section 10. Plan for Implementation, section 19.
Submittal did not include methods for ensuring that vehicles subject to emission related recalls receive necessary repairs prior to completing emission test/registration; Compliance with Recall Notices 40 CFR 51.368.	EPA advised Delaware to reserve this section in Regulation 31 Delaware will supplement the reserved section, subsequent to EPA issuing guidance with regard to recalls. EPA believes that by reserving compliance with recalls in the SIP, Delaware has satisfied this condition for the purpose of this rulemaking.	Delaware Regulation 31, section 11 and Plan for Implementation, section 20.
Lack of provisions for implementing an on-road testing program and other requirements of On-Road Testing 40 CFR 51.371.	Delaware Regulation 31 and the Plan for Implementation sufficiently provides for an on-road testing program.	Delaware Regulation 31, section 12 and Plan for Implementation, section 21.

*The two-speed idle test that Delaware will implement varies slightly from the EPA test procedure. The length of preconditioning is shortened as compared to EPA guidance. EPA has previously approved this test procedure change in other areas.

**Delaware will implement a waiver of $450 January 1, 2000. Delaware will not meet the requirement to implement a full waiver amount of $450, plus CPI adjustment until January 1, 2001.

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G. What are the Specifics of the New I/M Program Changes?

LEP Modeling (Clean Screening)

As previously stated, Delaware has also promulgated new program changes to alleviate long motorist wait times. Delaware incorporated provisions that allow clean screening when motorists must wait more than 60 minutes for an inspection.

What is LEP modeling (clean screening) and how does it work? LEP modeling is the exemption of some vehicles based upon historical emissions test performance. The LEP model flags certain makes, model years, and engine families as likely low emitting vehicles. During busy hours of operations, the Delaware Division of Motor Vehicles (DMV) may exempt vehicles that the LEP model predicts to be low emitting. Clean screening exemptions will only occur when motorists must wait more than 60 minutes for an inspection. And the DMV will only exempt, by LEP modeling, a predetermined number of vehicles on an annual basis.

Additional information about the methodology of the LEP model is contained in a dKC del la Torre report titled "Assessment of Alternative I/M Test Scenario," February 6, 1998. A copy of that report is in the rulemaking docket of this proposed rulemaking and is available for public inspection. Additional information regarding Delaware's process for LEP modeling (clean screening) and pertinent regulatory requirements, are also found in the TSD.

Delaware plans to implement LEP modeling provisions starting January 1, 2000.

Model Year Exemption Expansion and 2-Speed Idle Test

Delaware will expand the model year exemptions to the five newest model years. The implementation date of the exemption expansion is September 1, 1999. After this date, the newest five model year vehicles will be exempt from the emissions inspection process.

Delaware will also change the exhaust test that will be performed on 1981 and newer vehicles. The new test type will be a two-speed idle test. The two-speed idle test will measure vehicle emissions at idle speed and at 2500 rpm. Vehicles that are older than 1981 will continue to be tested with the current idle test. Delaware will implement the new test procedure on November 1, 1999.

H. What is the Process for EPA Approval of This Action?

EPA's review of this material indicates that Delaware has met their commitment to address the conditions identified in the February 5, 1997 conditional approval. EPA is proposing to approve the Delaware SIP revision for the Low Enhanced Inspection and Maintenance Program, which was submitted on June 16, 1998. EPA is also proposing to approve additional revisions to the I/M program, submitted on May 24, 1999. EPA is soliciting public comments on its proposed approval that Delaware's June 16, 1998 submittal satisfies the conditions imposed in the May 19, 1997 conditional approval and its proposed approval of additional revisions to the I/M program, submitted on May 24, 1999. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. We will address all comments in a subsequent final rule. There will be no second comment period, so those wishing to comment must do so before the comment period closes.

I. Where can I Get Additional Background Information on This Action?

EPA proposed conditional approval of Delaware's Low Enhanced Inspection and Maintenance Program in a **Federal Register** action dated February 5, 1997, (62 FR 5361). We conditionally approved the program in a **Federal Register** action, dated May 19, 1997 (62 FR 27195).

J. How This Document Complies With the Federal Administrative Requirements for Proposed Rulemaking

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action, proposing to approve Delaware's I/M SIP, approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action to propose approval of Delaware's enhanced I/M SIP.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–17210 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL188–1b; FRL–6371–6]

Approval of Hospital/Medical/Infectious Waste Incinerator State Plan for Designated Facilities and Pollutants: Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve Illinois' State Plan for Hospital/Medical/Infectious Waste Incinerators (HMIWI), submitted on May 28, 1999. The State Plan adopts and implements our Emissions Guidelines (EG) applicable to existing HMIWIs. Our approval means that we find the State Plan meets Clean Air Act (Act) requirements. In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before August 6, 1999.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION:

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: June 23, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–17029 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300885; FRL–6088–4]

RIN 2070–AB18

N-Acyl sarcosines and Sodium N-acyl sarcosinates; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an exemption from the requirement of a tolerance for residues of *N*-acyl sarcosines [*N*-oleoyl sarcosine (CAS Reg. No. 110–25–8); *N*-stearoyl sarcosine (CAS Reg. No. 142–48–3); *N*-lauroyl sarcosine (CAS Reg. No. 97–78–9); *N*-myristoyl sarcosine (CAS Reg. No. 52558–73–3); *N*-cocoyl sarcosine mixture (CAS Reg. No. 68411–97–2); and sodium *N*-acyl sarcosinates [*N*-methyl-*N*-(1-oxo-9-octodecenyl) glycine (CAS Reg. No. 3624–77–9); *N*-methyl-*N*-(1-oxooctadecyl) glycine (CAS Reg. No. 5136–55–0); *N*-methyl-*N*-(1-oxododecyl) glycine (CAS Reg. No. 137–16–6); *N*-methyl-*N*-(1-oxotetradecyl glycine (CAS Reg. No. 30364–51–3); and *N*-cocoyl sarcosine sodium salt mixture (CAS Reg. No. 61791–59–1)] when used as inert ingredients (surfactants) in pesticide formulations containing glyphosate. EPA is proposing this regulation on its own initiative.

DATES: Written comments should be submitted to EPA on or before September 7, 1999.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epa.gov. Follow the instructions under Unit V. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given in this unit, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Amelia M. Acierto, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8377, acierto.amelia@epa.gov.

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Food Quality Protection Act of 1996 (FQPA), EPA proposed that exemptions from the requirement of a tolerance be established for residues of *N*-acyl sarcosines [*N*-oleoyl sarcosine, *N*-stearoyl sarcosine, *N*-lauroyl sarcosine, *N*-myristoyl sarcosine, *N*-cocoyl sarcosine mixture] and sodium *N*-acyl sarcosinates [*N*-methyl-*N*-(1-oxo-9-octodecenyl) glycine; *N*-methyl-*N*-(1-oxooctadecyl) glycine; *N*-methyl-*N*-(1-oxododecyl)glycine; *N*-methyl-*N*-(1-oxotetracdecyl)glycine; and *N*-cocoyl sodium salt mixture], in response to a pesticide petition (PP 4E4417) submitted by Hampshire Chemical Company, 55 Hayden Avenue, Lexington, MA 02173 pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e). EPA published the proposed rule in the **Federal Register** of July 24, 1996 (61 FR 38423). There were no comments received in response to the proposed rule.

This document represents an EPA-initiated proposal to establish tolerance exemptions for the above noted substances to include the Agency's determination of safety for the tolerance exemptions in view of the FQPA amendments to section 408 of FFDCA. EPA is proposing this regulation on its own initiative pursuant to section 408(e)(1)(B) of FFDCA.

I. Risk Assessment and Statutory Authority

New section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food commodity) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." These include exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

II. Risk Assessment and Statutory Findings

N-acyl sarcosines and sodium *N*-acyl sarcosinates form a large class of chemical compounds where the acyl group is derived from fatty acids such as lauric, oleic and stearic acid and/or derived from the combined fatty acids of coconut oil. *N*-acyl sarcosine and sodium *N*-acyl sarcosinates are metabolized by humans to sarcosine and the corresponding fatty acids. Sarcosine is ubiquitous in biological materials and is present in such foods as egg yolks, turkey, ham, vegetables, legumes, etc.

Sarcosine is reported to be formed from dietary intake of choline and from the metabolism of methionine and is rapidly degraded to glycine, which, in addition to its importance as a constituent of protein, plays a significant role in various physiological processes as a prime metabolic source of components of living cells such as glutathione, creatine, purines and serine. The concentration of sarcosine in blood serum of normal human subjects is reported to be 1.59 + 1.08 micromoles per liter.

Based upon the proposed use as an inert ingredient in glyphosate formulations, dietary (food) exposure to *N*-acyl sarcosines and/or sodium *N*–acyl sarcosinates would not be expected to exceed the theoretical maximum residue concentration (TMRC) of glyphosate to the U.S. population of 0.03 mg/kg/day. Dietary exposure to *N*-acyl sarcosines and/or sodium *N*-acyl sarcosinates at or below these levels would not result in any increases in the normal sarcosine blood serum concentrations found in humans.

Taking into account the proposed use in glyphosate formulations, the Agency has concluded with reasonable certainty that residues of *N*–acyl sacosines and/or the sodium *N*-acyl sarcosinates in drinking water would be negligible, and that no harm will result from aggregate exposure to *N*-acyl sacosines and/or the sodium *N*-acyl sarcosinates.

III. Cumulative Exposure to Substances with Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether *N*-acyl sarcosines and sodium *N*-acyl sarcosinates have a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, N-acyl sarcosines and sodium *N*-acyl sarcosinates do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that *N*-acyl sarcosines and sodium *N*-acyl sarcosinates have a common mechanism of toxicity with other substances.

A. Aggregate Risks and Determination of Safety

Based upon the ubiquitous presence of sarcosine in human tissue and the fact that *N*-acyl sarcosines are readily metabolized to the *N*-acyl sarcosines and their salts, the Agency believes that exposure to this chemical will not pose a dietary risk under any forseable circumstances to the U.S. population, including infants and children. The Agency has arrived at this conclusion because of the inconsequential increases in dietary exposure resulting from its use as an inert ingredient in glyphosate formulations. EPA concludes that there is a reasonable certainty of no harm from the establishment of this tolerance exemption.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects in calculating a dose level that accounts for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through the use of margin of exposure analysis or through using uncertainty factors (safety) in calculating a dose level that poses no appreciable risk to humans.

Due to the ubiquitous nature of sarcosine in human tissue and food, EPA has not used a safety factor analysis in assessing the risk of *N*-acyl sarcosines and sodium *N*-acyl sarcosinates. For the same reason, application of the additional safety factor for infants and children would not be appropriate.

B. Other Considerations

1. *Endocrine disruptors.* There are no reports of any estrogenic and other adverse effects to human population as a result of the use of *N*-acyl sarcosines and/or sodium *N*-acyl sarcosinates.

2. *Analytical enforcement methodology.* The Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for *N*-acyl sarcosines and sodium *N*-acyl sarcosinates.

C. Existing Tolerances

No existing tolerances or exemptions from the requirement of a tolerance have been issued for *N*-acyl sarcosines and/or sodium *N*-acyl sarcosinates as pesticide chemicals in the United States.

D. International Residue Limits

No CODEX maximum residue levels have been established for *N*-acyl sarcosines and/or sodium *N*-acyl sarcosinates.

E. Conclusion

Therefore, based on the information and data considered, EPA is proposing an exemption from the requirement of a tolerance be established for residues of *N*-acyl sarcosines and sodium *N*-acyl sarcosinates when used as inert ingredients (surfactants) in pesticide formulations containing glyphosate at a concentration not to exceed 10% weight of the formulation.

IV. Comments

Under FFDCA section 408(e)(2), EPA must provide for a public comment period before issuing a final tolerance or tolerance exemption under section 408(e)(1). The public comment period is to be for 60 days unless the Administrator for good cause finds that it is in the public interest to reduce that comment period.

V. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300885] (including comments and data submitted electronically as described in this unit). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300885]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VI. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This action proposes an exemption from the tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

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In addition, this proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create an unfunded Federal mandate on State, local, or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 15 U.S.C. 321(q), 346(a) and 371.

2. By adding new § 180.1207 to read as follows:

§ 180.1207 N-acyl sarconsines and sodium N-acyl sarcosinates; exemption from requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the following substances when used as inert ingredients (surfactants) at levels not to exceed 10% in pesticide formulations containing glyphosate:

Name	CAS Reg. No.
N-acyl sarcosines.	
N-oleoyl sarcosine	110–25–8
N-stearoyl sarcosine	142–48–3
N-lauroyl sarcosine	97–78–9)
N-myristoyl sarcosine	52558–73–3
N-cocoyl sarcosine mixture	68411–97–2
Sodium *N*-acyl sarcosinates.	
N-methyl-*N*-(1-oxo-9-octodecenyl) glycine	3624–77–9
N-methyl -*N*-(1-oxooctadecyl) glycine	5136–55–0
N-methyl-*N*- (1-oxododecyl) glycine	137–16–6
N-methyl-*N*-(1-oxotetradecyl glycine	30364–51–3
N-cocoyl sarcosine sodium salt mixture	61791–59–1

[FR Doc. 99–16933 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 27 and 73

[WT Docket No. 99–168; FCC 99–97]

Service Rules for the 746–764 and 776–794 MHz Bands and Revisions to the Commission's Rules Regarding Wireless Communications Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes new service rules for commercial licensing in the 746–764 and 776–794 MHz bands that have been reallocated from use solely for the Broadcasting service. These proposed service rules include provisions for application licensing, technical and operating rules and competitive bidding. This action is another step in the Commission's program to implement sections of the Balanced Budget Act of 1997 which direct the Commission to complete reallocation of this spectrum by December 31, 1997, and commence competitive bidding for the commercial licenses of the reallocated spectrum after January 1, 2001. This document contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The general public and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Comments are due on or before July 19, 1999 and reply comments are due on or before August 13, 1999. Written comments by the public and by other Government agencies on the proposed information collections are due September 7, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained in the NPRM should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Legal Information: Stan Wiggins, 202–418–1310. Technical Information: Ed Jacobs, 202–418–1310. For additional information concerning the information collections contained in the NPRM, contact Les Smith at 202–418–0217, or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the NPRM in WT Docket No. 99–168, FCC 99–97, adopted May 13, 1999, and released June 3, 1999. The complete text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857–3800, CY–B400, 445 12th Street, S.W., Washington, D.C. 20054.

Introduction; Background

1. This Notice of Proposed Rulemaking (NPRM) proposes new service rules for commercial licensing in the 746–764 MHz and 776–794 MHz bands that have been reallocated from use solely for the Broadcasting service. These proposed service rules include provisions for application licensing, technical and operating rules, and competitive bidding. The revised spectrum allocation in the Reallocation Report and Order [1] provided for the potential provision of Fixed, Mobile, and Broadcasting services on these bands. This NPRM seeks comment on the degree of flexibility that should be afforded new licensees using this spectrum, and the technical and other service rules that should govern the range of services enabled. This NPRM also seeks comment on methods to assure continued protection of existing full service television stations that will continue to operate on these bands during the transition to digital television (DTV).[2] This NPRM is a further step in the Commission's proceeding to comply with section 337 of the Communications Act.[3] That section directs the Commission to complete the reallocation of this spectrum by December 31, 1997, and authorizes competitive bidding for commercial licenses on the reallocated spectrum after January 1, 2001. The Balanced Budget Act also expanded the Commission's competitive bidding authority to comprise mutually exclusive broadcast licenses, and the Commission recently implemented that authority in the Competitive Bidding (Broadcast) Order.[4]

Service Rules

A. In General

1. Permitted Services.

2. The NPRM first seeks comment on whether our service rules should permit a licensee to use the 746–764 MHz and 776–794 MHz spectrum bands for any use permitted within the United States Table of Frequency Allocations contained in part 2 of the Commission's Rules (*i.e.*, Fixed, Mobile, and Broadcasting services),[5] subject to international requirements and coordination.[6]

3. The Commission's allocation and designation decisions retained Broadcast services in the Table of Allocations, and so preserved the potential for service rules that would enable the full range of commercial broadcast services to the public. The extent to which the potential flexibility established for these bands by revisions to the Table of Allocations will ultimately be implemented by the service rules will respect the requirements stated in section 303(y) of the Communications Act, that such flexibility must not establish harmful interference, or discourage investment and development of new technologies. In accord with past Commission practice, inclusion of specific services in the Table of Allocations does not necessarily entail that service rules will be drafted to accommodate each such service, or that even flexible service rules will enable provision of the full range of allocated services.

4. The NPRM also states the Commission's continued interest in broader aspects of spectrum management. While the allocations involved here were specifically mandated by the Balanced Budget Act, commenters are encouraged to consider how innovative service rules developed for such a flexible use allocation might maximize the uses made of this spectrum. There is clear potential in this context for new technologies to affect the extent to which service rules effectively provide for flexible use. Thus, the NPRM seeks comment on how the Commission's rules might provide for such developments. Commenters who consider this issue should address what impact their suggested approaches would have on broadcasters also using the band, both during the transition to DTV and to the extent the service rules may provide for new broadcast services.

5. Whether the service rules developed will provide for sharing between broadcast and fixed and mobile wireless services, including the prospect of audio, video, or data services that may not closely resemble existing broadcasting configurations, depends in part on the resolution of several issues

[1] See *63 FR 0669, February 10, 1998.*

[2] See *Memorandum Opinion and Order, 63 FR 63798, November 17, 1998.*

[3] section 3004 of the Balanced Budget Act of 1997, which added 47 U.S.C. 337(a) and 337(b).

[4] See *First Report and Order, 63 FR 48615, September 11, 1998, recon.*, 64 FR 24523, May 7, 1999.

[5] The United States Table of Frequency Allocations is at 47 CFR 2.106. *See generally* 47 CFR part 2, Frequency Allocations and Ratio Treaty Matters; General Rules and Regulations. 00

[6] Section 303(y)(1) of the Communications Act, 47 U.S.C. 303(y)(1), limits the Commission's authority to allocate spectrum so as to provide flexibility of use to situations in which "such use is consistent with international agreements to which the United States is a party."

The NPRM uses the term "sharing" to refer to the use of spectrum bands by a variety of services, under licensing rules that accord each licensee exclusive use of specific spectrum blocks. The NPRM does not consider in this context the sharing of specific spectrum blocks.

that are not raised by flexible use allocations of narrower scope. These issues include the managing of interference between technically dissimilar services (at least in the familiar configurations of broadcast and wireless service), and the development and application of regulatory mechanisms suited to the range of services on these bands. To the extent that commenters suggest that the technical service rules enable services that closely resemble existing broadcast services, we start from the presumption that such services would be fully subject to part 73 of our Rules. The Commission asks that commenters consider whether there are any reasons that particular elements of part 73 should not similarly be applied to such services when provided on these spectrum blocks. Other prospective licensees might offer services that more closely resemble the existing fixed and mobile wireless services provided on other spectrum bands. As an initial matter the Commission would expect such services are more appropriately regulated by the framework of part 27.

6. Another respect in which broadcast and non-broadcast services operate in different regulatory contexts are the distinctive approaches to accessibility. The NPRM asks whether and how these differing accessibility requirements should affect the development of service rules for these spectrum bands. Additionally, the NPRM seeks comment on the implications of the Commission's service rule proposals, including technical and regulatory aspects, for the implementation of third generation wireless technology in this spectrum.

7. The full flexibility of use being considered for these bands may also require the Commission to develop auction procedures that recognize and reconcile the characteristic regulatory elements of broadcast and wireless licenses, and perhaps consider distinctive approaches.[7] In developing service rules for the commercial spectrum involved here, and determining the extent to which they can or should accommodate both familiar broadcast services and innovative services that would be licensed under parts 73 and 27 of the Commission's Rules, we are required by section 303(y) of the Communications Act to find that such a flexible approach: (1) would not result in harmful interference among users, (2) would not deter investment in communications services and systems, or technology development, and that (3) the allocation would be in the public interest. The Commission recognizes that proposals involving such a range of services make it especially important that our consideration of proposed "flexible use" allocations, mandated by section 303(y) of the Act, examine the elements of that statutory review in light of the specific factual considerations raised by the scope of these proposals.

8. In broad terms, the NPRM initially proposes to permit licensees to determine the services they will provide within their assigned spectrum and geographic areas, subject to the service rules, and to subject these licensees generally to part 27 of the Commission's Rules, which governs Wireless Communications Service.[8] Exceptions to this approach, if any, would arise from modifications the Commission may adopt to reflect: (1) the particular circumstances of this spectrum; and (2) statutory and other public interest requirements, gathered in part 73 of our Rules, that govern broadcasting. Thus, the NPRM asks whether broadcast services on these bands, to whatever extent they are subject to part 73 in other respects, can or should be subject to the part 27 licensing framework to facilitate the administrative coordination of these varied uses. Commenters are also invited to address whether broadcast services, if provided in the context of spectrum blocks governed generally by part 27, should be subject to different rules than now apply under part 73 to broadcast licensees.[9] Broadcast use of this spectrum in any case would necessarily be subject to broadcast-specific statutory provisions. The NPRM requests comment on the type of services that could be offered in this commercial spectrum, and on our proposal generally to subject the spectrum to part 27 and, when applicable, to other parts of the rules, including part 73. The Commission also seeks comment on alternative provisions that may minimize the economic impact of the proposals, if any, on small entities.

9. The NPRM seeks specific comment on whether this approach is consistent with the elements of section 303(y)(2) of the Communications Act. For example, section 303(y)(2)(B) of the Act addresses the possibility that too broad an approach to flexibility in spectrum use may have the undesired effect of deterring investments needed to provide communications services and develop new technologies on the newly allocated spectrum. The NPRM solicits comments from interested parties concerning what restrictions, if any, should be placed on licensee flexibility in order to ensure that the needed investments are made. Where commenters suggest that the Commission restrict how spectrum may be used by a licensee, the Commission is particularly interested in detailed quantitative analyses of the anticipated economic trade-offs between flexibility and investment that led to the proposed constraints. The NPRM also seeks specific comment on ways to ensure that the technical rules for the 746–764 MHz and 776–794 MHz bands satisfy the requirement of section 303(y)(2)(C), that flexible use allocations not result in harmful interference among users.

10. Finally, the NPRM seeks comment on the extent to which, consistent with the statute, the spectrum bands involved here can and should be available for private mobile and private fixed radio services. Commenters in this proceeding who are interested in bidding on these bands in order to provide private mobile or private fixed services, functioning as a Band Manager or through some other mechanism, should address the range of issues raised by the Balanced Budget Notice (64 FR 23571, May 3, 1999) in this regard.

11. The NPRM tentatively finds that making the spectrum available for flexible commercial use under part 27 of the rules is in the public interest because it will contribute to technological and service innovation, the creation of new jobs for the American workforce, the fostering of national economic growth, and the enhancement of opportunities for all Americans to utilize, and realize the benefits of, the national telecommunications infrastructure. The NPRM seeks comment on this tentative finding.

12. The Commission seeks to develop service rules that are not based on a Commission prediction of how these bands will ultimately be used, but instead reflect a record that enables the Commission to establish maximum practicable flexibility. The Commission will determine whether implementing the full range of allocated services is practicable on the basis of the record developed with regard to both technical rules, and to the application of policies and rules that are governed by the classification of the service in legal and administrative terms.

[7] The procedures for broadcast auctions are set forth by public notice prior to the individual auction, 47 CFR 73.5001. General procedures for wireless auctions are specified in part 1 of the Commission's Rules, 47 CFR part 1.

[8] For wireless services, a part 27 licensee could also be subject to part 22 if providing public mobile services, to part 90 if providing private land mobile services, and to part 101 if providing fixed microwave services. For broadcasting services, a part 27 licensee could be subject to part 73.

[9] See 47 CFR 73.1001 through 73.4280.

2. Spectrum for Each License

13. The NPRM requests comment on the appropriate amount of spectrum to be provided for each licensee in the two 18 megahertz spectrum blocks, and on the viability of licensees competing with existing fixed and mobile service providers. The NPRM further seeks comment on whether the spectrum should be licensed as one large block, or broken down into two or more bandwidths, and whether there should be a mixture of spectrum blocks.

14. The NPRM also seeks comment on the minimum spectrum blocks needed to enable competitive commercial services. Spectrum blocks of 1 or 2 megahertz may be sufficient to provide for paging and other messaging services, and the higher bound of our estimates of licensees affected is based on the pairs of 1 megahertz blocks as the minimum. Blocks of 6 or 9 megahertz may enable mobile voice service, analog or digital video services, or point-to-point microwave service. Existing analog and digital television broadcasters use 6 megahertz spectrum blocks, and the lower bound of our estimate of affected licensees is based on the use of 6 megahertz blocks as a minimum. Commenters should also consider the relationship between the amount of spectrum per license and the ability to coordinate operations with other licensees in this spectrum, including the protection of existing broadcast operations in this band during the transition to DTV.[10]

15. The Commission tentatively concludes that this spectrum should be licensed on a paired basis. While broadcasting would not require paired spectrum, it is essential that the spectrum be paired to enable a viable commercial mobile service. The separation of the 746–764 MHz and 776–794 MHz bands by 30 megahertz of spectrum is optimal for paired, two-way operations. The NPRM requests comment on whether the amount of spectrum for each license would affect the decision to license paired spectrum, and specifically whether a decision to license blocks large enough for conventional broadcast service should affect the decision to license paired spectrum. The NPRM particularly asks commenters to address how spectrum block issues relate to the specific findings required by review of flexible use allocations pursuant to section 303(y) of the Act. The NPRM thus requests comment on how the number of licensees and spectrum blocks established could affect the investment in and deployment of new services and technologies using these frequencies, and the extent to which new services offered in this spectrum would compete with other services. Whatever initial licensing approach is chosen, the Commission proposes to permit parties to bid for multiple licenses.

3. Size of Service Areas for Geographic-Area Licensing

16. Part 27 spectrum is licensed based on one of two kinds of service areas. Spectrum in the C and D frequency blocks is licensed using the 12 Regional Economic Area Groupings (REAGs). Spectrum in the A and B frequency blocks is licensed using the 52 Major Economic Areas (MEAs). REAGs and MEAs are based on the 172 Economic Areas (EAs) defined by the U.S. Department of Commerce, as modified by the Commission. The Commission has, however, licensed other wireless services occupying spectrum near the newly allocated commercial spectrum using other service areas. The NPRM requests comment on the type of service area or areas that should be used to license the 746–764 MHz and 776–794 MHz bands. (The Commission has used the Economic Areas in this summary to develop estimates of affected licensees, but has not specifically proposed any service area approach in the NPRM.)

17. The NPRM also seeks comment on how the possible use of this spectrum for broadcasting might affect our decision on service areas generally, and specifically on how the Commission could apply the concept of a broadcast station's serving the needs and interests of its community of license to a part 27 service area, depending on our geographic area and spectrum block choices. The relation between the geographic service area and the size of spectrum blocks is especially germane to the sharing of these bands between Commercial Mobile Radio Service (CMRS) and conventional broadcast services, which operate using significantly different power levels. The NPRM seeks comment on how such sharing would affect the overall relation between service areas, spectrum channelization, and power levels, compared to service rules that would constrain or preclude broadcast use.

18. The NPRM also seeks comment on procedures that would allow prospective bidders to bid on combinations or groups of licenses in a single bid, and to enter multiple alternative bids within a single bidding round, as well as alternatives that would rely on licensing by geographic area, by community of license, or by some combination of these approaches.

B. Licensing Rules

1. Regulatory Status

19. As noted, the NPRM seeks comment on whether to apply the existing licensing framework for part 27 services to the 746–764 MHz and 776–794 MHz bands. The Communications Act applies requirements to broadcasters or common carriers that are not applied to other licensees. The licensing framework for part 27 permits applicants to request common carrier status as well as non-common carrier status for authorization in a single license, rather than require the applicant to choose between common carrier and non-common services, and the Commission proposes that licensees in these redesignated spectrum bands similarly be authorized to provide a variety or combination of fixed and mobile, common carrier and non-common carrier, and broadcast services. The Commission tentatively concludes that this approach, as applied to the range of fixed and mobile wireless services, is likely to achieve efficiencies in the licensing and administrative process. The possible further inclusion of broadcasting service appears more problematic in this regard, and the NPRM seeks comment on the effect that enabling such services would have on the licensing and administrative process. In order to fulfill our enforcement obligations and ensure compliance with the statutory requirements of Titles II and III of the Communications Act, the Commission proposes to require applicants to identify whether they seek to provide common carrier services, broadcast service, or other service as permitted by the final Rules in this proceeding. The NPRM additionally seeks comment on the need to modify any appropriate form(s) for an applicant seeking to provide broadcast service, either solely or in conjunction with other services under a single license.

20. Under the existing part 27 framework, the Commission does not require applicants to describe the services they seek to provide beyond designating their regulatory status. The NPRM proposes that applicants and licensees in this 36 megahertz of commercial spectrum similarly be required only to indicate the regulatory status of any services they choose to provide. The NPRM also proposes that licensees must notify the Commission within 30 days of service changes that alter the regulatory status of their services. When the change results in the

[10] Commission records indicate that as of November 1998, there were 105 full power TV licensees and 1232 low power and translator TV licensees operating on these bands.

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discontinuance, reduction, or impairment of the existing service, a different approach may apply. The NPRM also seeks comment regarding whether the inclusion of broadcast services may sometimes require the Commission to modify this approach. Conventional broadcast licensees are subject to different ownership rules and attribution standards than wireless licensees.

2. Eligibility; Spectrum Aggregation

21. Sections 27.12 and 27.302 of the Commission's Rules impose no restrictions on eligibility, other than the foreign ownership restrictions set forth in section 310 of the Communications Act. Thus, the NPRM proposes that there be no restrictions on eligibility for a license in the 746–764 MHz and 776–794 MHz bands. The NPRM seeks comment on whether opening this spectrum to as wide a range of applicants as possible will encourage entrepreneurial efforts to develop new technologies and services, while helping to ensure the most efficient use of this spectrum. Commenters also should address whether the Commission's proposed policy of universal eligibility should apply to broadcasting on these spectrum bands.[11] The NPRM also asks whether there are any reasons not to apply part 73 multiple ownership rules to part 27 licensees providing conventional broadcasting services.

22. Another example of broadcast-specific eligibility issues involves character qualifications. While the character qualification standards applied to broadcasters have provided guidance in common carrier proceedings, they are not directly applicable to that context. The NPRM seeks comment on whether there is any reason that conventional broadcasters who share spectrum with Part 27 wireless services, including wireless common carrier offerings, should not be governed by the existing standards applied to part 73 licensees. The Commission also seeks comment on whether there is any reason the Commission cannot apply our current rules to decide whether an entity that has been disqualified from holding a conventional part 73 broadcasting license pursuant to the character qualification rules should be eligible to provide non-broadcasting services pursuant to a part 27 license.

23. Currently, part 27 services do not count against the spectrum cap on CMRS spectrum licensees. The 746–764 MHz and 776–794 MHz bands may be used for mobile services that are comparable to the cellular, broadband Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) spectrum for which the CMRS cap was devised. While the Commission does not propose a spectrum cap for part 27 services generally, the NPRM seeks comment on whether these commercial spectrum bands, if used to provide CMRS, should count against the 45 megahertz spectrum cap that applies to certain CMRS licensees. If the CMRS spectrum cap is applied to this spectrum, the NPRM seeks comment on whether the spectrum cap should be adjusted in any way. The NPRM also seeks comment on whether there should be any restriction on the amount of spectrum that any one licensee may obtain in the 746–764 MHz and 776–794 MHz bands in the same licensed geographic service area. Commenters addressing this aggregation issue should consider the varying bandwidth requirements of the different types of services that could use the 36 megahertz of commercial spectrum.

3. Foreign Ownership Restrictions

24. Sections 310(a) and 310(b) of the Communications Act (47 U.S.C. 310(a) and (b)) impose foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. Section 27.12 of the Commission's Rules,[12] which implements section 310 of the Act, would by its terms apply to applicants for licenses in the 746–764 MHz and 776–794 MHz bands. An applicant requesting authorization only for non-common carrier or non-broadcast services would be subject to section 310(a), but not to the additional prohibitions of section 310(b). An applicant requesting authorization for broadcast or common carrier services would be subject to both sections 310(a) and 310(b).

25. The statutory foreign ownership restrictions will be applicable to the extent the restrictions apply to a particular service being offered in this commercial spectrum. In response to the World Trade Organization (WTO) Basic Telecommunications Agreement, the Commission recently liberalized its policy for applying its discretion with respect to foreign ownership of common carrier radio licensees under section 310(b)(4).[13] The Commission now presumes that ownership by entities from countries that are WTO members serves the public interest. Ownership by entities from countries that are not WTO members continues to be subject to the "effective competitive opportunities" test established by the Commission.

26. In the filing of an application under the Multipoint Distribution Service (MDS), Satellite, and Local Multipoint Distribution Service (LMDS) rules, the Commission requires any applicant electing non-common carrier status to submit the same information that common carrier applicants submit to address the alien ownership restrictions under section 310(b) of the Act.[14] The NPRM proposes to follow the same approach in the case of applicants for licenses in the 746–764 MHz and 776–794 MHz spectrum. Broadcasters, common carriers, and non-common carriers would not be subject to varied reporting obligations, but would all be required to file changes in foreign ownership information to the extent required by part 27 of the Commission's Rules. By establishing parity in reporting obligations, however, the Commission would not establish a single substantive standard for compliance. The Commission does not and would not disqualify an applicant requesting authorization exclusively to provide non-common carrier and non-broadcast services from obtaining a license simply because its citizenship information would disqualify it from a common carrier or broadcast license. The NPRM requests comment on this proposal.

4. Performance Requirements

27. Section 27.14(a) of the Commission's Rules requires Wireless Communications Service (WCS) licensees to provide "substantial service" to their service area within 10 years of being licensed; a failure to meet this requirement results in forfeiture of the license and the licensee's ineligibility to regain it. The Commission has stated that the construction requirement provides licensees with the flexibility to offer the full range of services under the allocations table, and to accommodate new and innovative services. The Commission proposes generally to subject licensees in the 36 megahertz of commercial spectrum to the same standard, and we propose and seek comment on the following "safe harbors" for the 746–764 MHz and 776–794 MHz bands: (1) For a licensee that chooses to offer fixed services or point-to-point services, the construction of four permanent links per one million people in its licensed service area at the 10-year renewal mark would constitute substantial service; (2) For a licensee that chooses to offer mobile services or point-to-multipoint services, a demonstration of coverage to 20 percent of the population of its licensed service area at the 10-year renewal mark would constitute substantial service. The NPRM also seeks comment on the distinct issues raised by applying this proposal to potential broadcast use of the spectrum. Broadcast permittees operating pursuant to part 73 are required to construct their facilities within three years. The NPRM requests comment on whether there are any reasons not to apply the part 27 construction rules to broadcasters on these bands.

28. The Commission tentatively concludes that the existing part 27 build-out requirements applied to wireless licensees, and the part 73 construction requirements applied to Broadcast permittees, fulfill the Commission's obligations under section 309(j)(4)(B) of the Act to establish performance requirements for licenses obtained by competitive bidding. The Commission also tentatively concludes that the auction rules that we propose to apply to these services, together with the service rules that we are proposing and our overall competition and universal service policies, constitute effective safeguards and performance requirements for licensing this spectrum. The Commission would reserve the right to review our construction requirements in the future if we receive complaints related to section 309(j)(4)(B), or if a reassessment is warranted because spectrum is being warehoused or otherwise is not being used despite demand. The Commission also will reserve the right to impose additional, more stringent construction requirements on licenses in the future in the event of actual anticompetitive or universal service problems. The NPRM solicits comment on these proposals and views regarding performance requirements.

5. Disaggregation and Partitioning of Licenses

29. The NPRM next proposes to permit licensees in the 746–764 MHz and 776–794 MHz bands to partition their service areas and to disaggregate their spectrum. The Commission tentatively concludes that geographic partitioning and spectrum disaggregation can result in efficient spectrum use and economic opportunity for a wide variety of applicants, including small business, rural telephone, minority-owned, and women-owned applicants, as required by section 309(j)(4)(C) of the Communications Act. The Commission also tentatively concludes that this proposed approach will provide a means to overcome entry barriers through the creation of smaller licenses that require less capital, thereby facilitating greater participation by rural telephone companies and other smaller entities, many of which are owned by minorities and women.

30. Section 27.15 of the Commission's Rules provides that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their licenses. The part 27 rules permit: (1) geographic partitioning of any service area defined by the partitioner and partitionee, (2) spectrum disaggregation without restriction on the amount of spectrum to be disaggregated, and (3) combined partitioning and disaggregation. The NPRM requests comment on the Commission's proposal that licensees in the 746–764 MHz and 776–794 MHz bands be similarly eligible to partition service areas and disaggregate spectrum.

31. Pursuant to § 27.15, the partitioning licensee must include with its request a description of the partitioned service area and a calculation of the population of the licensed geographic service area, and the partitioned service area. Section 27.15 also contains provisions against unjust enrichment. The NPRM proposes to adopt these provisions, as well as the remaining provisions governing partitioning and disaggregation in § 27.15, for licensees in the 746–764 MHz and 776–794 MHz bands.

32. The NPRM proposes to allow parties to partitioning agreements to choose between two options for satisfying the construction requirements. Under the first option, the partitioner and partitionee would each certify that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee fails to meet its substantial service requirement during the relevant license term, the non-performing licensee's authorization would be subject to cancellation at the end of the license term. Under the second option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire market. If the partitioner fails to meet the substantial service standard during the relevant license term, however, only its license would be subject to cancellation at the end of the license term. The partitionee's license would not be affected by that failure.

33. The NPRM similarly proposes to allow parties to disaggregation agreements to choose between two options for satisfying the construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option, both parties' performance will be evaluated at the end of the relevant license term and both licenses could be subject to cancellation. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to cancellation.

6. License Term; Renewal Expectancy

34. Part 27 of the Commission's Rules limits license terms to 10 years from the date of original issuance or renewal. Section 27.14(c) establishes a right to a renewal expectancy. The Communications Act, however, states that the license term for a broadcast station shall not exceed eight years, and specifies renewal criteria for broadcast stations.[15] The NPRM seeks comment on the appropriate license term for all licensees in the proposed 746–764 MHz and 776–794 MHz bands, including those potentially offering broadcast service. The NPRM further seeks comment on whether it would be appropriate to have different license terms, depending on the type of service offered by the licensee, and on the distinctions between the statutory and part 73 renewal criteria for conventional broadcast stations and our part 27 renewal expectancy criteria for, *e.g.*, datacasting and other wireless services. The NPRM additionally seeks comment on how the Commission should administer such an approach, particularly if licensees provide more than one service in their service area, or decide to change the type of service they plan to offer.

35. The NPRM proposes, in the event that a license is partitioned or disaggregated, that any partitionee or disaggregatee be authorized to hold its

[11] *See, e.g.*, 47 CFR 73.3555. The Commission has underway a review of its broadcast ownership rules. *See* 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98–35, Notice of Inquiry, 63 FR 15353, March 31, 1998.

[12] 47 CFR 27.12; *see also* 47 CFR 27.302.

[13] The Commission's rules for broadcast licenses, which are not covered by the WTO Basic Telecommunications Agreement, were not amended.

[14] *See* 47 U.S.C. 310(b).

[15] 47 U.S.C. 307(a).

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license for the remainder of the original licensee's term, and that the partitionee or disaggregatee may obtain a renewal expectancy on the same basis as other part 27 licensees (or, if subject to part 73, on the same basis as other part 73 licensees). The NPRM further proposes that all licensees meeting the substantial service requirement will be deemed to have met this facet of the renewal expectancy requirement regardless of which of the part 27 construction options the licensees chose. The Commission tentatively concludes that this approach is appropriate because a licensee, through partitioning, should not be able to confer greater rights than it was awarded under the terms of its license grant. The NPRM also seeks comment on whether a non-broadcast renewal applicant involved in a comparative renewal proceeding should include at a minimum the showing in § 27.14(c) of the Commission's Rules to claim a renewal expectancy, and similarly, what showing a broadcast renewal applicant should include to claim the renewal expectancy established by section 309(k) of the Act.

7. Public Notice

36. Sections 309(b) and 309(d) of the Communications Act require public notice for initial applications and substantial amendments filed by broadcasters or radio common carriers. These requirements state that no such application shall be granted earlier than 30 days following the issuance of public notice by the Commission, and that the Commission may not require petitions to deny such applications to be filed earlier than 30 days following the public notice. The same provision also grants the Commission the authority to impose public notice requirements for other licenses, even though public notice is not required by the statute. However, the administrative procedures for spectrum auctions adopted by section 3008 of the Balanced Budget Act of 1997 permit the Commission to shorten notice periods in the auction context to a five-day petition to deny period and a seven-day public notice period, notwithstanding the provisions of section 309(b) of the Communications Act.[16] The Commission tentatively concludes that services in the 746–764 MHz and 776–794 MHz spectrum will be auctionable services, so that the seven-day public notice period is applicable. We note, however, that in the Part 1 Second Further Notice the Commission has sought comment on whether longer periods should be generally applicable for some services.[17]

37. In light of the potential for sharing of this spectrum between broadcast and wireless services, and the differences between their regulatory requirements, the NPRM seeks comment on whether the Commisison should exercise our statutory discretion to require a minimum period of 15 days for public notice of applications of wireless common carriers and broadcast stations, in instances where the Commission's Rules establish a notice requirement, and a minimum period of 10 days for the filing of petitions to deny the applications of wireless common carriers and broadcast stations. Commenters should address whether imposing a 15-day notice requirement would be an undue burden on such applicants, and whether it would be administratively useful by enabling the Commisison to ensure that any applicant filing for both common carrier and non-common carrier authorizations in a single license is in compliance with (1) the licensing requirements for common carriers and broadcasters established in Title III of the Communications Act; and (2) any related requirements the Commission may adopt. Commenters also should address whether the Commission should allow all licensees to make subsequent status changes under reduced notification requirements.

C. Operating Rules

38. The NPRM proposes to subject licensees in the 746–764 MHz and 776–794 MHz bands to the part 27 rules that govern operations, except for modifications that the Commission may adopt for this spectrum as a result of this proceeding. The NPRM seeks comment generally on the applicability of these rules to this spectrum. Additionally, the NPRM seeks comment on whether any operating rules contained in other parts of the Commission's Rules should be adopted for the 746–764 MHz and 776–794 MHz bands. The NPRM further asks commenters to suggest any alternatives to such regulations governing a licensee's operations in order to minimize the potential significant economic impact, if any, from such rules on small entities.

1. Applicability of General Common Carrier Obligations

39. Title II of the Communications Act imposes a variety of obligations on the operations of common carriers that are not otherwise imposed on wireless communications services. There are a number of statutory operational requirements that apply generally to common carriers concerning the filing of tariffs, maintaining of records, liabilities, and discontinuance of service, among others. The Commission has previously forborne from applying many of those requirements in certain situations, and section 10 of the Communications Act (47 U.S.C. 160) directs the Commission to forbear from additional provisions of the Communications Act when specific criteria are satisfied.

40. The NPRM thus seeks comment in this context on whether the Commission should exercise our authority under section 10 of the Act to forbear from applying to non-CMRS licensees of this spectrum the specific Title II requirements that the Commission previously has determined to forbear from applying to CMRS licensees. Specifically, the NPRM seeks comment on application of each of the three elements of the forbearance standards specified by section 10 of the Act, in the context of services in the 746–764 MHz and 776–794 MHz bands. Under the first two parts of the test, the NPRM requests comment on the definition of "consumer," what information the Commission should consider when performing these evaluations, and examples of applying these tests in order to evaluate whether forbearance would be appropriate. With respect to the third condition, the NPRM seeks comment on the appropriate market that would apply to fixed, common carrier licensees in the 746–764 MHz and 776–794 MHz bands. The NPRM notes that the Commission has not forborne from regulation of fixed wireless services in service rule proceedings for the 24, 28, and 39 GHz bands. The NPRM therefore also asks commenters to address how, if at all, that should affect the Commission's forbearance decisions in this proceeding.

41. Because it may take longer for the Commission to conduct this forbearance analysis than to adopt service rules for the 746–764 MHz and 776–794 MHz bands, the NPRM proposes during the interim: (1) to adopt a discontinuance provision that is consistent with the common carrier obligations set forth in subpart E of part 1 and in part 61 through part 64 of the Commission's Rules; and (2) to apply other parts of the Commission's Rules to ensure compliance of fixed common carriers with Title II of the Communications Act.

42. Section 214(a) of the Communications Act requires that no common carrier may discontinue, reduce, or impair service without Commission approval. The NPRM proposes that if a fixed, common carrier part 27 licensee voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must obtain prior authorization as provided under § 63.71 of the Commission's Rules, but an application would be granted within 30 days after filing if no objections were received. The NPRM additionally proposes that if a non-common carrier part 27 licensee voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must give written notice to the Commission within seven days. The NPRM also proposes, however, that neither a fixed common carrier, nor non-common carrier part 27 licensee, need surrender its license for cancellation if discontinuance is a result of a change in status from common carrier to non-common carrier or the reverse.

43. The NPRM further proposes that if the service provided by a fixed common carrier part 27 licensee is involuntarily discontinued, reduced, or impaired for a period exceeding 48 hours, the licensee must promptly notify the Commission, in writing, as to the reasons for the discontinuance, reduction, or impairment of service, including a statement indicating when normal service is to be resumed. The NPRM proposes that when normal service is resumed, the licensee must promptly notify the Commission. The NPRM seeks comment on these proposals.

44. Section 312(g) of the Communications Act provides that the license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period. In addition, § 3.1750 of the Commission's Rules states that a licensee of a broadcast station shall notify the Commission of permanent discontinuance of operation at least two days before operation is discontinued. The NPRM asks whether any considerations may suggest that the Commission should adopt different provisions for broadcast services provided over this spectrum under part 27.

2. Equal Employment Opportunity

45. Part 27 does not include an explicit Equal Employment Opportunity (EEO) provision. Nor do parts 24 (PCS) or 26 (General Wireless Communications Service). The NPRM notes that there are specific EEO provisions for fixed service providers in parts 21 and 101, including both common carrier and non-common carrier LMDS licensees;[18] and for common carrier mobile service providers in parts 22 and 90, though these latter provisions do not apply to PMRS providers because they are not common carriers. In addition, part 25 contains EEO rules for entities that use an owned or leased fixed satellite service facility to provide more than one channel of video programming directly to the public,[19] and part 73 contains rules for broadcasters.[20]

46. The Commission has initiated a rulemaking on our part 73 EEO rules,[21] and in the present proceeding, seeks comment on whether there are any reasons not to apply part 73 EEO rules to conventional broadcasters operating in these spectrum bands and licensed under part 27. As to non-broadcast services on these bands, the NPRM seeks comment on whether the Commission should include a separate EEO provision in part 27 and, if so, which of the Commission's EEO rules we should adopt. Commenters should address the advisability of having different EEO requirements depending on the service a licensee provides. Commenters who support the adoption of EEO requirements should comment on what statutory authority should be invoked to support these requirements and how these rules should be tailored.

D. Technical Rules

47. The general provisions of part 27 include rules related to equipment authorization, frequency stability, antenna structures and air navigation, international coordination, environmental requirements, quiet zones, and disturbance of AM broadcast antenna patterns. The NPRM seeks comment on applying these rules to the spectrum that is the subject of this NPRM, and specifically on any rules that would be affected by the Commission's proposal to apply elements of the part 27 framework, whether separately or in conjunction with part 73 requirements, to conventional broadcast services. The NPRM also seeks comment on proposals to adopt the rules concerning in-band interference control, out-of-band and spurious emission limits, special considerations for use of channels 66 and 67, and Radiofrequency (RF) safety requirements. The NPRM proposes that all of these technical rules would apply to all licensees in the 746–764 MHz and 776–794 MHz bands, including licensees who acquire their licenses through partitioning or disaggregation.

1. In-Band Interference Control

48. The Commission does not have reliable information at this time on the technical parameters for services that will be provided in the 746–764 MHz and 776–794 MHz bands. Our allocation and designation decision permits the range of uses in the Allocation Table, and we also cannot be certain what wireless services will be operating in adjacent spectrum. A broad range of technologies may share this spectrum, and the nature of the services and technologies can affect the potential for interference between licensees using the same spectrum in adjacent service areas. The Commission is particularly interested in potential interference issues should the range of uses extend to full power broadcast service.

49. While the Commission has considered a range of approaches to managing interference in other service rule proceedings, these spectrum bands present an additional consideration. Section 337(d)(1) requires the Commission to establish "interference limits at the boundaries of the spectrum block and service area." One possible interpretation of this provision is that the Commission is directed to adopt field strength limits, or some similarly generic requirement, even if it considers that a coordination approach establishes sufficient, and more flexible, protection against interference.

50. The Commission tentatively concludes that either a coordination or field strength method, when properly applied, can provide a satisfactory means of controlling harmful interference or determining the interaction between systems, although there may be reasons to prefer one method over the other in the 746–764 MHz and 776–794 MHz bands. Even with a boundary limit, some degree of coordination and joint planning between bordering licensees appears likely to be needed to ensure efficient use across the boundary.

51. Parties are therefore asked to provide their analysis of the advantages and disadvantages of both approaches, or approaches that combine a boundary limit and a coordination procedure.

[16] 47 U.S.C. 309(j) nt 3.

[17] 63 FR 770, January 7, 1998.

[18] *See, e.g.*, 47 CFR 101.311.

[19] 47 CFR 25.601.

[20] Section 73.2080 of the Commission's Rules was struck down as unconstitutional as respects the outreach portions of the Commission's EEO program requirements for broadcast stations, and remanded to the Commission for a determination whether the non-discrimination rule is within its statutory authority. *See* Lutheran Church-Missouri Synod v. FCC, Case No. 97–1116, 141 F3rd 344, *reh'g denied*, 154 F.3d 487 (D.C. Cir 1998).

[21] Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98–204, and Termination of the EEO Stream-lining Proceeding, MM Docket No. 96–16, Notice of Proposed Rulemaking, 63 FR 66104, December 1, 1998.

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Comments should address the advantages of different approaches in managing the electromagnetic environment at geographic boundaries in the 746–764 MHz and 776–794 MHz bands, the kinds of incentives each may create for undesirable strategic or anti-competitive behavior, and the effects on licensee costs.

52. The NPRM also seeks comment regarding whether to permit licensees in adjacent service areas to coordinate their operations and agree to an alternative field strength along their shared border. The NPRM invites comment on this approach to control of interference in the context of the 746–764 MHz and 776–794 MHz bands, both generally and if used in conjunction with power flux density or field strength standards. If commenters suggest that power flux densities or field strength standards should be established as interference limits, in conjunction with a coordination process, they should propose specific values for such limits. Commenters should also address any special considerations that might be appropriate in an environment where disparate services might be using the same spectrum in adjacent service areas.

53. Regarding whether a general coordination approach should be used, comments are invited on specific aspects of procedures. While § 101.103 of the Commission's Rules can serve as a useful framework for coordination in the 746–764 MHz and 776–794 MHz bands, our objective is to ensure that licensees receive protection from harmful interference with the minimum regulation necessary. If a general coordination approach is adopted, the Commission tentatively concludes that the coordination concepts of § 101.103 generally should be applied to licensees in the 746–764 MHz and 776–794 MHz bands and should be incorporated into part 27 of the Rules for these bands. The NPRM seeks comment on the best way to effect this incorporation, including comment on which provisions of § 101.103 may be appropriate for incorporation into part 27. For purposes of the Commission's considering a coordination approach for the 746–764 MHz and 776–794 MHz bands, the NPRM seeks comment on what the appropriate distance should be to trigger this coordination, and whether there should be any other criteria, in addition to distance to the service area boundary, that would trigger a need to coordinate.

54. The NPRM seeks comment on what, if any, limits for equivalent isotopically radiated power (EIRP) are necessary or appropriate under either a coordination or field strength limit approach. Transmitters used in the private land mobile service, celluiar radio service, and fixed microwave services typically employ substantially different output powers. The substantial differences between these services, however, are minor in comparison to the output powers of full power broadcast services. Accordingly, if commenters believe that power limits are necessary, they should comment as to what those limits should be and the basis for the suggested limits. The NPRM also solicits views as to whether the Commission should establish limits on output power for all transmitters, or just mobile equipment.

55. Finally, § 27.64 of the Commission's Rules states generally that part 27 stations operating in full accordance with applicable Commission rules and the terms and conditions of their authorizations are normally considered to be non-interfering, and provides for Commission action, after notice and hearing, to require modifications to eliminate significant interference. In view of the variety of services that might be provided by part 27 licensees on these bands, the NPRM solicits comment on whether the Commission should apply this rule to these spectrum bands. The NPRM also seeks comment regarding whether interference protection can be guaranteed and whether § 27.64 of the Rules, if retained, should be changed to direct adjacent service area licensees to cooperate to eliminate or ameliorate interference. The Commission also seeks comment on whether the Commission should apply any changes with respect to § 27.64 to the 2.3 GHz band.

2. Out-of-Band and Spurious Emission Limits

56. Generally, different types of technical parameters would be used to limit out-of-band and spurious emissions to ensure interference protection of services outside the licensee's assigned spectrum, depending on whether the system involves fixed, mobile, or other communications. Because the Commission may permit licensees in the 746–764 MHz and 776–794 MHz bands to use the spectrum for the various services in the Table of Allocations, it would appear we should develop technical operating parameters that can accommodate the several types of communications.

57. In addition to the characteristics of different technical approaches, section 337(d)(4) of the Act emphasizes the importance of avoiding harmful interference from television broadcasters to public safety licensees in adjacent bands. Section 337(d)(4) refers explicitly to the spectrum bands reallocated and reserved for public safety services, and we have already adopted service rules for the public safety bands. The potential for new broadcasting services on the commercial 746–764 MHz and 776–794 MHz bands, however, raises the further issue of whether a more stringent approach to interference may be required on the commercial bands, to ensure that public safety licensees in adjacent bands do not experience harmful interference. The NPRM therefore seeks comment on the relation of section 337(d)(4) to protection of public safety licensees from interference caused by broadcast services that may be permitted to operate on the 36 megahertz of commercial spectrum.

58. The NPRM proposes to require licensees in the proposed commercial spectrum to attenuate the power below the transmitter power (P) by at least 43 + 10 $\log_{10}$(P) watts or 80 decibels, whichever is less, for any emission on all frequencies outside the licensee's authorized spectrum. To implement sharing between conventional broadcast and other commercial services, different interference limits may be indicated. The NPRM requests comment on this proposal and any other emission limits that commenters believe are appropriate.

3. RF Safety

59. Section 27.52 of the Commission's Rules subjects licensees and manufacturers to the RF radiation exposure requirements specified in §§ 1.1307(b), 2.1091, and 2.1093 of the Commission's Rules, which list the services and devices for which an environmental evaluation must be performed. Routine environmental evaluations for RF exposure are required by applicants desiring to use the following types of transmitters: (1) fixed operations, including base stations and radiolocation transmitters, when the effective radiated power (ERP) is greater than 1,000 watts; (2) all portable devices; and (3) mobile devices, if the ERP of the station, in its normal configuration, will be 1.5 watts or greater.

60. With regard to RF safety requirements, the NPRM proposes to treat services and devices in the 746–764 MHz and 776–794 MHz bands in a comparable manner to other services and devices that have similar operating characteristics. The Commission tentatively concludes that the requirements in § 27.52, adopted for licensees in the 2.3 GHz band, will apply to the same extent to licensees in the 746–764 MHz and 776–794 MHz bands. Guidance on acceptable methods of evaluating compliance with the Commission's exposure limits is contained in OET Bulletin No. 65.[22]

61. The NPRM proposed to adopt the 1,000 watts ERP threshold for operation in the 746–764 MHz and 776–794 MHz bands to recognize the flexibility with respect to use, power, location, and other factors that will presumably be accorded licensees operating in these bands. The NPRM also proposed to modify §§ 1.1307(b), 2.1091, and 2.1093 of the Commission's Rules to include services and devices applicable to the 746–764 MHz and 776–794 MHz bands. The NPRM invites comment on these proposals and any alternatives.

4. Special Considerations for Use of Channels 65, 66 and 67

62. In the Public Safety Spectrum Second Notice on the use of channels 63, 64, 68, and 69 by Public Safety Services,[23] the Commission sought comment on the potential for interference to GLONASS[24] and GPS[25] satellites from public safety systems operating in the 794–806 MHz band (TV channels 68–69). In the present context, as with public safety systems, the second harmonic transmissions of commercial services operating on TV channels 65–67 fall within the bandwidth identified by NTIA as being used by the GPS (1563.42–1587.42 MHz). Therefore, the use of the 776–794 MHz band by commercial services raises many of the same concerns. NTIA recommends that stringent standards be adopted to ensure that equipment operating in these bands does not cause radio frequency interference to the Global Navigation Satellite System (GNSS) when used for precision approach and landing. The Commission recognizes that this issue will be of critical importance to both navigation and commercial interests, and therefore we desire to obtain as complete a record as possible before making a decision. The Commission believes that additional information is needed before we arrive at a final decision with respect to this matter.

63. Of particular concern is the impact of imposing the standards recommended by NTIA on the design of commercial equipment. NTIA specifically advocates that out-of-band emissions be limited to -70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband emissions, and -80 dBW/700 Hz EIRP for narrowband emissions, and that these limits be applied to all spurious emissions, including second harmonics in the 1559–1610 MHz range. These limits are based on international recommendations by RTCA and ETSI specifically for mobile earth terminals in the Mobile Satellite Service (MSS). Full power broadcast use of this spectrum could pose additional difficulties for the GNSS system. Because conventional full power broadcast stations would operate at power levels several orders of magnitude larger than those used by commercial fixed and mobile stations, additional attenuation of out-of-band emissions may be required to protect the GNSS systems. NTIA has recommended, in this case, that an emission limit of -110 dB below the average transmitter power should be included as the proposed unwanted emission limit, including harmonics, for DTV transmitters operating in the 746–764 MHz and 776–794 MHz bands. NTIA notes that the current DTV mask • requires that emissions, including harmonics that are more than 6 MHz from the channel edge, must be attenuated by this amount. It believes that this value is consistent with the current harmonic suppression levels that can be achieved by television transmitters, and will protect GNSS precision approach landing operations.

64. The Commission is committed to ensuring that the GNSS is protected adequately against interference. We note that the standard recommended by NTIA is necessary only to protect the GNSS band at 1559–1605 MHz. Based on the information before us at this time, we tentatively propose to adopt the NTIA recommended emissions limits, but to apply them only to emissions that fall within the GNSS band. Outside the 1559–1605 MHz GNSS band, we propose that the standard addressed earlier in the section on out-of-band spurious emissions (i.e., 43 + 10 log P) would apply. The Commission believes that it is imperative that all parties fully understand the need for and ramifications of the NTIA proposed standard on use of the 700 MHz band for commercial wireless services. Therefore, the NPRM requests comment on the standard recommended by NTIA to protect GNSS operations. The NPRM also invites comment as to whether extenuating conditions such as low antenna height, propagation losses, body suppression of signals, and wall attenuation should be taken into account in calculating the out-of-band emission requirements. In addition, the Commission is interested in obtaining a better understanding of the levels of radio energy that currently exist in the GNSS spectrum as a result of spurious emissions from other communications systems and electronic equipment.

65. The Commission observes that stringent out-of-band emissions limits are generally more difficult to meet for mobile and hand-held transmitters than for base and control stations or for fixed service stations. The standard recommended by NTIA would require approximately 85–90 dB suppression for typical full-power mobile equipment, and approximately 75–80 dB for handhelds and portables.[26] The NPRM expresses concern about whether the proposed emissions standard would severely curtail the availability of the 36 MHz of spectrum designated by Congress for commercial use, and requests factual data and technical information as to the impact this proposal may have on the use of the 700 MHz band for commercial wireless services. The NPRM also seeks information on how the proposed emmissions standard may affect the equipment cost, size, weight and battery life of handheld or portable equipment. Global Mobile Personal Communications via Satellite (GMPCS) terminals have been proposed to meet the same standard proposed in the NPRM. The NPRM invites comment as to whether it is feasible for commercial fixed and mobile equipment to meet the same standards as these commercial mobile satellite systems. The NPRM solicits suggestions as to any and all alternative approaches or measures that the Commission can take to alleviate the impact of the proposed standard.

E. Competitive Bidding

1. Statutory Requirements

66. Section 337 of the Communications Act requires that the licenses for this proposed commercial spectrum be granted through

[22] OET Bulletin No. 65 (Edition 97–01) was issued on August 25, 1997. It is available for downloading at the FCC Web Site: www.fcc.gov/oet/rfsafety. Copies of OET Bulletin No. 65 also may be obtained by calling the FCC RF Safety Line at (202) 418–2464.

[23] Second Notice of Proposed Rulemaking, in WT Docket No. 96–86, 62 FR 60199, November 7, 1997 (Public Safety Spectrum Second Notice).

[24] GLONASS is the Russian Federation Global Orbiting Navigation Satellite System which will use the 1598–1605 MHz portion of the Radionavigation-Satellite Service (space-to-Earth) allocation at 1559–1610 MHz, when the GLONASS system reaches its final frequency configuration after 2005.

[25] GPS (Global Positioning System) is also in operation, and it will be the United States component of the Global Navigation Satellite System (GNSS). GPS utilizes the lower portion of the Radionavigation-Satellite Service (space-to-Earth) allocation from 1559–1610 MHz on a primary basis, and is maintained by the United States Department of Defense.

[26] For the purposes of the GLONASS standard, the Commission has assumed the narrowband limit of -80 dBW/700 Hz would be sufficient for commercial services bandwidths of up to 150 kHz.

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competitive bidding. Section 337(a)(2) directs how the commercial segment of the spectrum between 746 megahertz and 806 megahertz is to be assigned: "6 megahertz of that spectrum for commercial use [is] to be assigned by competitive bidding pursuant to section 309(j)." Section 337(b)(2) further directs the Commission to "commence competitive bidding for the commercial licenses created pursuant to subsection (a) after January 1, 2001." The proposed commercial spectrum therefore is not to be licensed for public safety radio services, which are excluded from spectrum auction authority by section 3002 of the Communications Act.

67. Although this spectrum is dedicated by statute for commercial rather than public safety licenses, the issue arises whether public safety entities might successfully bid for and be licensed to use the spectrum. The Commission is concerned that the exclusion from our statutory auction authority might: (1) preclude us from licensing a public safety entity that participated in an auction of commercial spectrum; or (2) nullify or otherwise adversely affect our authority to license the spectrum involved through competitive bidding, if public safety entities participate in such an auction.

68. The Commission has not previously addressed the issue whether public safety entities are prohibited from participation as bidders in an auction process. The Commission believes that such participation, subject to the same bidding and service rules applicable to commercial applicants, cannot compromise the Commission's auction authority where, as here, that authority has been directly conferred by statute. We are considering in a separate proceeding the broader issue of exemption from our general auction authority of some public safety services. In light of the importance attached by the Congress to ensuring the availability of reallocated spectrum to public safety uses, however, the Commission believes these commercial bands should be open to application by any public safety entities that are qualified and prepared to bid under the same rules applied to commercial applicants. The NPRM therefore requests comment on what effect the changes in Commission auction authority, made by section 3002 of the Communications Act have on: (a) the possible participation of public safety entities in an auction of commercial spectrum, and on (b) their eligibility to obtain a license through the subsequent acquisition of spectrum initially assigned by auction.

69. The Communications Act (at 47 U.S.C. 309(j)(3)) also directs the Commission to provide for the "design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round." The Commission has contracted for the development of such procedures. The NPRM seeks comment on whether the auction of these spectrum bands, especially if our service rules provide for broadcast services, may present a suitable context for combinatorial procedures. Commenters should consider: (a) whether, absent the application of combinatorial rules, the existing standardized auction rules in Part 1 are adequate for the juxtaposition of broadcast and wireless bidding entities; or (b) whether modifications of standardized Part 1 auction rules, to facilitate participation by entities interested in providing broadcast service, are desirable. The Commission is especially interested in comment on how, absent combinatorial rules, our auction methodology should recognize the divergence between geographic licensing applied to wireless spectrum bands, and the focus on communities of license in the assignment of broadcast spectrum.

2. Incorporation by Reference of Part 1 Standardized Auction Rules

70. The NPRM proposes to conduct the auction for initial licenses in the 746–764 MHz and 776–794 MHz bands in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's Rules, which are substantially consistent with the bidding procedures that have been employed in previous Commission auctions. Specifically, the NPRM proposes to employ the part 1 rules governing designated entities, application issues, payment issues, competitive bidding design, procedure and timing issues, and anti-collusion, subject to possible modification. The NPRM seeks comment on this proposal, and on whether any of the part 1 rules would be inappropriate in an auction for these spectrum blocks, especially with regard to possible inclusion of broadcast services in our auction methodology.

3. Provisions for Designated Entities

71. The Communications Act provides that, in developing competitive bidding procedures, the Commission shall consider various statutory objectives and consider several alternative methods for achieving them.[27]

a. Small Business Definitions. 72. In the Competitive Bidding Second Memorandum Opinion and Order, the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.[28] The Part 1 Third Report and Order,[29] while it standardizes many auction rules, continues a service-by-service approach to defining small businesses. For the 36 megahertz of commercial spectrum, the NPRM proposes to define a small business as any firm with average annual gross revenues for the three preceding years not in excess of $40 million.

73. The Commission observes that the capital costs of operational facilities in the 746–764 MHz and 776–794 MHz bands are likely to vary widely based on the services provided. Accordingly, the NPRM proposes to adopt small business size standards that afford licensees the greatest flexibility. Thus, in addition to our proposal to adopt the general small business standard used in broadband PCS, 2.3 GHz, and 39 GHz service rules, the NPRM also proposes to adopt the definition for very small businesses used for 39 GHz licenses and for the PCS F Block licenses, namely, businesses with average annual gross revenues for the three preceding years not in excess of $15 million.

74. The NPRM seeks comment on the use of these standards, with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered, and the spectrum allocated to each license. For the proposed definitions of small business and very small business, the NPRM proposes to include the entity's affiliates and controlling interests when determining eligibility by gross revenue criteria. In discussing these issues, commenters are requested to address the expected capital requirements for services in the 746–764 MHz and 776–794 MHz bands. Commenters also are invited to compare these proposals with other services for which the Commission has established auction procedures, as a basis for their comments regarding the appropriate definitions for small and very small businesses. The NPRM also seeks comment on whether the proposed designated entity provisions, if adopted and applied to the services in these bands, would be sufficient to promote participation by businesses owned by minorities and by women, and participation by rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority-owned and women-owned businesses, they are also invited to address how such provisions should be crafted to meet the relevant standards of judicial review.[30] In all other respects, the Commission proposes to apply the competitive bidding procedures that the Commission adopted in the Part 1 Third Report and Order, subject to (1) any modifications the Commission may adopt in response to the Second Further Notice and (2) pending petitions for reconsideration of the Part 1 Third Report and Order.

[27] See 47 U.S.C. 309(j)(3), 309(j)(4).

[28] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Second Memorandum Opinion and Order, 59 FR 44272, August 26, 1994.

[29] See 63 FR 2315, January 15, 1999.

[30] See Adarand Constructors v. Peña, 515 U.S. 200 (1995); United States v. Virginia, 518 U.S. 515 (1996).

III. Protection of Television Services

A. Background

75. The NPRM discusses technical requirements for protecting incumbent broadcast licensees and planned DTV allotments against interference. The Commission tentatively concludes that the factors and considerations examined in the Public Safety Spectrum Report and Order[31] are equally relevant with respect to the use of the 746–764 MHz and 776–794 MHz bands for commercial mobile services.[32] Thus, the NPRM proposes to adopt the same criteria to protect TV and DTV operations from commercial mobile operations that were adopted in the Public Safety Spectrum Report and Order.[33] The Commission tentatively concludes that the sharing criteria applicable to mobile service base stations would be sufficient to protect TV and DTV operations from fixed service operations also, but seeks comment on this tentative conclusion. With respect to protection of TV and DTV operations from new broadcast operations on these frequencies, however, the Public Safety Spectrum Report and Order provides no guidance, since broadcasting stations and services are not permitted on the public safety frequencies. A different approach or criteria may therefore be appropriate, depending on the types of broadcasting services permitted.

B. Protection of TV Stations

76. The Commission concluded in the Public Safety Spectrum Report and Order that the use of a 40 dB D/U signal ratio for co-channel operations and a 0 dB D/U signal ratio for adjacent channel operations was supported by our experience using this standard to protect TV service from interference from land mobile operations in the New York metropolitan area without serious adverse consequences, and that the Commission would, therefore, adopt such standards for calculating geographic separation requirements. The Commission concluded that the 40 dB D/U signal ratio is a reasonable value that will provide sufficient TV protection, as required by the Balanced Budget Act of 1997.[34] Co-channel land mobile base station transmitters would be limited to producing a maximum signal strength at the hypothetical TV Grade B contour 40 dB below 64 dBu, or 24 dBu. The Commission also adopted a 0 dB D/U signal ratio for adjacent channel operations. Adjacent channel land mobile transmitters would be limited to a maximum signal that can equal the TV Grade B signal of 64 dBu at the TV station Grade B contour, defined here as 87.7 km (55 miles).[35] The Commission tentatively concludes in this NPRM that the same criteria should be applied to commercial mobile and fixed operations in the 746–764 MHz and 776–794 MHz bands. The NPRM thus proposes to adopt rules similar to those reflected in § 90.545 of the Commission's Rules,[36] with the following proposed modification. Because the Commission is not proposing any specific antenna height or transmitter power limitations for part 27 licensees, part 27 licensees who propose to operate stations with antenna heights or transmitter powers that exceed those specified in § 90.545(b) must provide to the Commission for approval a detailed technical analysis demonstrating that the required interference protection criteria are met prior to placing such stations into operation. The NPRM invites comment as to the appropriate criteria that should be used to protect TV broadcasting against interference from fixed operations.

C. Protection of DTV Stations

77. In the Public Safety Spectrum Second Notice, the Commission noted that its proposals were based on protecting analog TV, and asked for comments on the appropriate D/U signal ratios that should be applied to protect DTV. After examining the record, the Commission decided to apply similar criteria, adopted in the Public Safety Spectrum Report and Order for protecting reception of analog TV stations, to protecting DTV reception.[37] Since the Commission allocated DTV channels to replicate existing TV station service areas, it allowed public safety stations to provide the same field strength at the equivalent Grade B contour of the DTV station as they do for an analog TV station, and adjust the D/U ratio accordingly. The Commission therefore provided for a TV station to have protection ratios of 40 dB for co-channel and 0 dB for adjacent channel at its 64 dBμ field strength contour. The equivalent ratios for a DTV station that has a Grade B signal strength contour of 41 dBμ are 17 dB and -23 dB, respectively.

78. In making this determination, the Commission noted that in the DTV Sixth Report and Order it had specified a minimum geographic separation of 250 kilometers (155 miles) between: (1) DTV stations and (2) the city-center in areas where there are existing land mobile co-channel operations. Section 90.305(a) of the Commission's Rules provides that maximum facility land mobile base stations can be located up to 80.5 km (50 mi) from the city-center of one of the specified cities. Consequently, under the geographic separation adopted in the DTV Sixth Report and Order, a maximum facility land mobile base station could choose to locate its station as close as 169.5 km (250 km–80.5 km), or 105 mi. At this distance, the land mobile base station would provide a co-channel signal at the DTV station's 88.5 km (55 mi) equivalent Grade B contour that would provide less than a 40 dB D/U protection ratio to a DTV receiver. Thus, the Commission's decision to require 700 MHz land mobile systems to

[31] 63 FR 58685, November 2, 1998.

[32] This would include consideration of TV stations outside this spectrum, i.e., on Channel 59. The adjacent channel protection criteria proposed to be established herein would apply equally to Channel 59 stations, and new licensees in the Channel 60 spectrum block will need to recognize the existence of such adjacent channel use in designing their systems and services. Moreover, use of Channel 59 may change as DTV service is relocated to the core digital channels. Any interference or protection criteria involvng different uses of Channel 59 would necessarily be established in a later proceeding.

[33] To the extent that our pending reconsideration of that Order results in subsequent changes to the rules adopted in that proceeding, those changes may need to be reflected as they apply or are relevant here.

[34] See 47 U.S.C. 337(d).

[35] See 47 CFR 73.610.

[36] 47 CFR 90.545.

[37] A TV station's hypothetical Grade B contour is plotted based on a 64 dBμ signal strength using the F(50,50) curve. See 47 CFR 73.699. A DTV station's equivalent contour is based on a 41 dBμ signal strength using the F(50,90) curve. See 47 CFR 73.625.

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provide signal ratios for DTV stations that will allow approximately the same separation distance as we did for analog TV stations represented a reasonable balance between the needs of both DTV stations and public safety entities.

79. The Commission tentatively concludes that the same criteria should be applied to commercial mobile and fixed operations in the 746–764 MHz and 776–794 MHz bands. The NPRM thus proposes to adopt rules similar to those reflected in § 90.545 of the Commission's Rules, with the following proposed modification. Part 27 licensees who propose to operate stations with antenna heights or transmitter powers that exceed those specified in § 90.545(b) must provide to the Commission for approval a detailed technical analysis demonstrating that the required interference protection criteria are met, prior to placing such stations into operation.

D. TV Protected Service Contour Alternatives

80. In the Public Safety Spectrum Report and Order the Commission found that a geographic separation distance table based on a standard 88.5 km Grade B service contour (equivalent Grade B for DTV) would be the most convenient form. Limiting TV/land mobile separation to distances specified in a table, however, may prevent public safety entities from fully utilizing the spectrum in a number of major metropolitan areas until after the transition period. Thus, the Commission allowed public safety applicants to select one of three ways to meet the TV/DTV protection requirements: (1) utilize the geographic separation specified in the Table; (2) submit an engineering study to justify other separations, which is subject to Commission approval; or (3) obtain concurrence from any applicable TV/DTV station. The NPRM proposes that these same alternatives be available to Part 27 licensees and seeks comment on this approach.

81. Also, in the Public Safety Spectrum Second Notice the Commission requested comment on whether the size of the reference TV contour should be increased because some TV stations have facilities exceeding those upon which the 88.5 km (55 mi) contour was based. The Commission stated that a TV station with parameters of 5 megawatts with an antenna height above average terrain (HAAT) of 610 meters could have a Grade B contour distance of 107 km (66.5 mi). In order to protect certain TV/DTV stations, which have extremely large contours due to unusual height situations, the Commission incorporated an additional factor that must be used by all public safety base, control, and mobile stations to protect these few TV/DTV stations and afford the land mobile stations the necessary protection from the TV/DTV stations. The NPRM proposes that this additional factor also be applicable to all Part 27 licensees operating in these bands. The NPRM thus proposes to adopt a rule similar to that reflected in § 90.545(c)(2)(iii) of the Commission's Rules[38] to address this situation.

E. Other Issues

82. In the DTV Sixth Report and Order,[39] the Commission raised the possibility that, in negotiating among themselves for changes in allotments and assignments, TV licensees could include agreements for compensation. The NPRM proposes to permit new licensees in this spectrum similarly to reach agreements with licensees of protected TV stations, including holders of construction permits, compensating them for converting to solely DTV transmission before the end of the DTV transition period, accepting higher levels of interference than those allowed by the protection standards, or otherwise accommodating new licensees in these bands.

83. Finally, because the NPRM proposes to license this spectrum for broadcasting, as well as for the fixed and mobile uses, comment is also requested on interference protection standards for any new broadcast operations that may be licensed in this spectrum.[40] The NPRM further requests comment on whether the Commission should establish standards for geographic separations between any TV broadcasting in this spectrum, authorized pursuant to this or a successor rulemaking proceeding, and from current analog TV or new DTV stations authorized before this proceeding; whether the Commission should treat any broadcast licenses on a case-by-case basis; or whether there are other approaches we should use to consider interference to and from broadcast operations.

V. Administrative Matters

A. Ex Parte Presentations

84. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the "Sunshine Agenda" period, provided they are disclosed under the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

D. Pleading Dates

85. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415, 1.419) interested parties may file comments on or before July 19, 1999, and reply comments on or before August 13, 1999. Comments and reply comments should be filed in WT Docket No. 99–168. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy to Stan Wiggins, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554.

86. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and a reference to WT Docket No. 99–168. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your E-Mail address>."

87. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th Street, S.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Services, Inc., (202) 857–3800, CY–B400, 445 12th Street, S.W., Washington, D.C. 20054.

B. Initial Regulatory Flexibility Analysis

88. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

[38] *See* 47 CFR 90.545(c)(2)(iii).

[39] 62 FR 26684, May 14, 1997.

[40] Stations transmitting broadcast signals are likely to produce interference effects to analog TV and DTV stations that differ from those of land mobile or fixed stations.

Initial Regulatory Flexibility Analysis Statement

A. Need for, and Objectives of, the Proposed Rules

89. This rulemaking is being initiated to adopt certain service, licensing, and competitive bidding rules for the 746–764 and 776–794 MHz segments of the 746–806 MHz band. The Congress directed the Commission, in the Balanced Budget Act of 1997, to allocate 36 megahertz of this band for commercial use, and to license that spectrum by competitive bidding. In the Reallocation Report and Order, the Commission reallocated 36 megahertz of this band to commercial use and determined that the potential range of commercial services would include all services permitted under the U.S. Table of Allocations—Fixed, Mobile, and Broadcasting services. In this NPRM, we propose to license the 746–764 MHz and 776–794 MHz commercial bands under a flexible framework established in part 27 of the Commission's Rules. We expect that provisions of part 27 will be modified to reflect the particular characteristics and circumstances of services offered through the use of spectrum on these bands. These modifications may also reference or incorporate rules in other parts of the Commission's Rules, such as part 73 governing broadcast services. We believe that this flexible approach will encourage new and innovative services and technologies in this band without significantly limiting the range of potential uses for this spectrum.

90. Our objectives for the NPRM are: (1) to auction licenses for these commercial spectrum blocks as directed by the Balanced Budget Act; (2) to accommodate the introduction of new uses of spectrum and the enhancement of existing uses; (3) to implement the section 303(y) requirement that flexible use allocations not create harmful interference or discourage investment; (4) to facilitate the awarding of licenses to entities that value them the most. The Commission seeks to develop a regulatory plan for these commercial spectrum blocks that will allow for efficient licensing and intensive use of the band, eliminate unnecessary regulatory burdens, enhance the competitive potential of the band, and provide a wide variety of radio services to the public.

B. Legal Basis for Proposed Rules

91. The proposed action is authorized under sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 317, 324, 331, 332 and 336 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 317, 324, 331, 332, 336.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

92. For the purposes of this NPRM, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act,[41] unless the Commission has developed one or more definitions that are appropriate to its activities.[42] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[43]

93. The proposals in this NPRM affect applicants who wish to provide services in the 746–764 and 776–794 MHz bands. Pursuant to 47 CFR 24.720(b), the Commission has defined "small entity" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA. With respect to applicants for licenses in the 746–764 and 776–794 MHz bands, we propose to use the small entity definition adopted in the Broadband PCS proceeding.

94. The Commission, however, has not yet determined or proposed how many licenses will be awarded, nor will it know how many licensees will be small businesses until the auction is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. In view of this uncertainty regarding the number of entities that will be granted licenses in the 746–764 and 776–794 MHz bands, we have assumed, for purposes of our evaluations and conclusions in the IRFA, that all of the prospective licenses are small entities, as that term is defined by the SBA or our proposed definitions for these bands. We invite comment on this analysis.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

95. Entities interested in acquiring spectrum in the 746–764 and 776–794 MHz bands will be required to submit license applications, and high bidders will be required to apply for their individual licenses. The proposals under consideration in this item also include requiring commercial licenses to make showings that they are in compliance with construction requirements, file applications for license renewals, and make certain other filings as required by the Communications Act and Commission regulations. In addition to the general licensing requirements of parts 27 and 73 of the Commission's Rules, other parts may be applicable to commercial licensees, depending on the nature of service provided. We request comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

96. We have reduced burdens wherever possible. With specific regard to the potential for use of these bands by dissimilar services such as broadcast and commercial fixed and mobile, we have sought comment on different approaches to minimizing the burdens of interference management, consistent with the statutory mandate to protect both public safety uses and television service. To minimize any negative impact, we have also proposed certain incentives for the benefit of small entities. These provisions include partitioning and spectrum disaggregation. We have also sought comment on combinatorial auction procedures, which may enable small entities to participate in the licensing

[41] 15 U.S.C. 632.

[42] *See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

[43] 15 U.S.C. 632.

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process with more flexibility. The regulatory burdens we have retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner, and generally apply existing regulatory procedures to the new licensees expected to occupy these bands. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

97. None.

VI. Ordering Clauses

98. Accordingly, *it is ordered* that these actions are taken pursuant to sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 317, 324, 331, 332 and 336 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 317, 324, 331, 332, 336.

99. *It is further ordered* that notice is hereby given of the proposed regulatory changes described in this NPRM, and that comment is sought on these proposals.

100. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1980).

Paperwork Reduction Act

101. This NPRM contains a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the possible information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Written comments must be submitted by the public and by other Agencies on the proposed information collections on or before September 7, 1999. Comments should address: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number:

Title: Service Rules for the 746–764 and 764–794 MHZ Bands and Revisions to Part 27.

Form No.: FCC Forms 175, 301, 302, 346, 347, 601, and 603 will almost surely be affected either by revision to the form or revision of the number of respondents subject to the requirement. Other FCC Forms may also be modified or the number of respondents increased, depending on the final rules adopted in this proceeding.

Type of Review: New Collection.

Respondents: Business and other for-profit and non-profit institutions.

Number of Respondents: The Commission expects a range of between 1,056 and 3,168 respondents.

Estimated Time Per Response: Between 4 hours and thirty minutes (cumulative figure based on the time to fill out several of the wireless universal service forms rather than any one form) and 115 hours and 12 minutes. (based on the time to fill out several broadcast forms rather than any one form). Note these estimates are not based on the time needed to complete any individual form, but are cumulative figures.

Needs and Uses: This Notice of Proposed Rulemaking seeks comment on the service rules and auction procedures to be developed for the licensing of spectrum bands recently allocated to fixed and mobile wireless use, as well as broadcasting. The service rules will encompass a variety of technical and interference provisions, as well as substantive policy deriving from both statutory and regulatory requirements. In the latter regard, the rules will need to consider the requirements applicable to common carrier and non-common carrier services, and the broadcast-specific requirements established in the Communications Act and by Commission regulations. In recognizing the potential convergence of the wireless and broadcast regulatory contexts, the service rules will address a wide range of requirements, such as license eligibility and attribution of ownership interests. The primary effect of these rules will be to enable licensing of these spectrum bands, and thus to expand the number of licensees affected by existing regulatory requirements, including both service rules and auction procedures. The initial burden estimate that follows is developed from that premise, and relies on the straightforward extension of paperwork burdens associated with existing Commission licensing requirements to entities that will bid in the auction and, if successful, obtain licenses on these spectrum bands. Assumptions about the number of entities that will be licensed on this spectrum to provide particular categories of service are necessarily speculative, because the proposed service rules would not determine the extent to which these bands may be used for specific service applications, or the method of spectrum use adopted by licensees. The burden estimate was instead developed to specify in terms that describe the potential range of paperwork burdens associated with different uses of the spectrum. Depending on the record developed, especially with regard to new services and technologies on these bands, the Commission may, for example, develop and implement auction procedures that vary from existing broadcast or wireless procedures. Other existing requirements may be altered, depending on the record developed and the types of service expected to be licensed. Disclosure of ownership interests germane to eligibility determinations, compliance with existing Commission reporting requirements for EEO obligations, and statutory accessibility and political broadcast requirements suggest, but do not exhaust, the range of requirements potentially affected. A more thorough listing of those requirements is contained in the synopsis of the full text of the NPRM, as well as in the NPRM itself. The NPRM seeks comment on means by which to minimize the effect of any paperwork burdens arising from the accommodation of divergent technical and regulatory requirements for these different services. The Commission generally expects that such burdens will, overall, not exceed existing burdens for established services, excepting the proposed requirement that licensees apprise the Commission of changes in service offerings that entail changes in their regulatory status. In developing an initial burden estimate, the Commission has assumed that the bands will initially be licensed to 176 geographic areas, based on Department of Commerce Economic Areas (EAs), following Commission practice.[44] The Commission has assumed, solely for the purpose of preparing its estimate of affected entities, that licensing in each geographic area will be exclusively based on either a broadcast or non-broadcast structure. Under the conventional broadcast structure, each geographic area would include six spectrum blocks, each occupying six megahertz. That assumed emphasis on broadcast services generates the following burden estimate. Assuming 176 licensed areas, and 6 licensees per area, broadcast licensing burdens would be extended to approximately 1056 licensees. For a nonbroadcast structure, again using the EA figure of 176 licensed areas but assuming 18 licensees per area, based on each licensee implementing a paired wireless service using 1 MHz in each direction, the expected number of licensees affected would be about 3,168.

[44] *See* 47 CFR 26.102 and 27.6.

List of Subjects

47 CFR Part 27

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements.

47 CFR Part 73

Communications equipment, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17143 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 99–5891]

RIN 2127–AH14

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: The agency is issuing this document to obtain information that will help NHTSA determine whether Safety Standard No. 213, "Child Restraint Systems," should be amended in response to a petition for rulemaking from Kathleen Weber of Ann Arbor, Michigan. The petition concerns the availability of child booster seats for older children (ages about 4 and older) that can be used in older cars whose rear seats are equipped with only lap belts instead of both lap and shoulder belts. To make it easier for child restraint manufacturers to produce child restraints for these children, the petition asks that Standard 213 be amended such that compliance tests of booster seats may be conducted with a top tether attached.

In the past, many drivers did not attach tethers when they used tether-equipped child restraints in vehicles that lack user-ready tether anchorages. Given that the vehicles in question lack user-ready tether anchorages, the agency seeks comments on the extent to which vehicle drivers would attach the booster seat's top tether. The agency also seeks comments on the extent to which currently available vests, harnesses, and other restraint systems (e.g., shoulder belt retrofits) address the problem raised by the petitioner. Comments are requested on the feasibility of redesigning boosters such that the restraints can meet Standard 213's requirements when attached to the vehicle with only a lap belt, and without the use of a tether.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 7, 1999.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202–366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC., 20590.

SUPPLEMENTARY INFORMATION:

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APPENDIX B-NHTSA TEST PROGRAM

I. Background

On December 4, 1997, Ms. Kathleen Weber of the University of Michigan Child Passenger Protection Research Program, submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems" (49 CFR 571.213). The petition, which NHTSA granted on January 30, 1998, concerns the manufacture of booster seats that can be used by families using pre-1989 model year vehicles. These vehicles have only lap belts in rear seating positions.

a. *The Booster Seats in Question Became Unavailable After Upgrade to Standard 213*

Booster seats are designed for children who have outgrown a convertible or toddler child restraint system. They are generally designed for children who are about 4 to 8 years old. There are two main types of booster seats currently produced. One type is called a "shield booster" due to use of a shield-like barrier to restrain the upper torso of a child in a crash. Shield boosters attach to the vehicle by the vehicle's lap belt (Type I belt) or lap belt portion of a lap and shoulder belt (Type II belt). The other type of booster is called a "belt-positioning seat," which is a booster designed to use both portions of a vehicle's Type II belt to restrain the child. A belt-positioning seat is not directly attached to the vehicle seat, but is held in place by the child's mass and the vehicle's Type II belt, which is strapped over the child's lap and torso, just as the Type II belt is used to restrain an adult occupant. A belt-positioning seat must not be used with a vehicle's lap belt alone, since the seat lacks structure or an internal belt to restrain the child's upper torso.

Shield booster seats, which are capable of being used with only a vehicle's lap belt, were available in the past, but became unavailable for children weighing over 18 kilograms (kg) (approximately 40 pounds, lb) subsequent to an upgrade that NHTSA made to the standard pursuant to the Intermodal Surface Transportation Efficiency Act ("ISTEA") of 1991 (Pub. L. 102–240). That Act directed NHTSA to initiate rulemaking on a number of safety matters, including child booster seat safety (section 250). The legislative

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history for the directive indicated that its impetus was a study [1] that found that shield booster seats then manufactured could not adequately restrain test dummies representative of the children for whom manufacturers typically recommended for the seats. In the study, the boosters could not adequately restrain a 22 kg (48 lb) test dummy (representing a 6-year-old) when dynamically tested under Standard 213. The boosters were ineffective at limiting head excursions to within the requirements of Standard 213, and two of the boosters failed structurally. The boosters also failed to prevent the ejection of a 9 kg (20 lb) test dummy (representing a 9-month-old child) in the dynamic test. These phenomena were observed notwithstanding the recommendation of some booster seat manufacturers that their seats were suitable for children weighing from 9 up to 32 kg (20 up to 70 lb).[2]

In response to this study and to the ISTEA directive, NHTSA amended Standard 213 to permit the manufacture of belt-positioning seats, which were considered to be a new, superior type of booster seat (59 FR 37167, July 21, 1994). Belt-positioning boosters were believed to be better able than shield boosters at accommodating a wider range of child sizes. These boosters have since replaced shield boosters in the marketplace, as many commenters to the rulemaking, including the petitioner for this document, Kathleen Weber, had hoped they would. NHTSA also incorporated the 6-year-old and 9-month-old dummies into the standard's compliance test protocols, to ensure a more thorough evaluation of the ability of a child restraint to adequately restrain children recommended for the restraint, as compared to testing done with only the 3-year-old dummy. Beginning in September 1996, any child restraint recommended for children weighing over 18 kg (40 lb) must be able to comply with the standard when tested with the 6-year-old child dummy (60 FR 35126, July 6, 1995; 60 FR 63651, December 12, 1995).

Comments from manufacturers and others on the proposal to use the 6-year-old dummy in compliance tests did not indicate that shield boosters manufactured at the time of the rulemaking could not comply. To the extent there were any shield boosters that could not pass the standard's requirements with the 6-year-old dummy, NHTSA anticipated that manufacturers might (1) design their seats to achieve compliance (such as by raising the height of the shield relative to the child's torso), (2) relabel shield boosters as being suitable for children weighing less than 18 kg (and thus avoid testing with the 6-year-old dummy), or (3) replace production of shield boosters with belt-positioning boosters. While the latter two responses to the final rule have occurred, manufacturers have not redesigned shield boosters to pass Standard 213 with the 6-year-old dummy. Thus, the shield boosters manufactured today are not recommended for use by children over 18 kg (40 lb).

b. Petitioner Seeks To Make Boosters Available by Allowing Them To Be Tethered in Compliance Test

Petitioner does not want to see the renewed sale of shield booster seats, because she does not believe the restraints provide adequate upper torso restraint. Instead, the petitioner suggests that Standard 213 be amended to allow—

"hybrid" toddler/booster restraints (forward facing with internal harness/high-back belt-positioning booster) to be used by a (20 kg) 45 lb child in the toddler mode with its internal harness and installed with a lap belt and top tether strap.

The petitioner is referring to child restraints that can be used with a Type I (lap) belt and with a Type II (lap/shoulder) belt. An example of such a seat is Century's Breverra booster car seat, which is recommended for children 14 to 27 kg (30 to 60 lb). The Breverra has a removable 5-point harness system. When used with children weighing up to 18 kg (40 lb), the Breverra is used with the 5-point harness, and the restraint is secured to the vehicle seat by either a Type I or Type II belt. (In vehicles equipped with Type II belt systems, a locking clip may be required for proper installation of the restraint.) This configuration (using the restraint system with children weighing up to 18 kg (40 lb), and restraining them with the internal 5-point harness) is what the petitioner refers to as the "toddler mode." The Breverra is also designed for use as a belt-positioning seat with children 14 to 27 kg (30 to 60 lb). Parents are instructed to remove the 5-point harness from the booster seat, and to use the car's Type II belt to restrain the child. Because seats such as the Breverra are designed for use both as a "toddler seat" and as a "belt-positioning booster seat," petitioner refers to them as "hybrid" restraints.

Petitioner seeks to permit hybrid restraints to be certified as meeting the standard when recommended for children up to 20 kg (45 lb) in the toddler mode (using the 5-point harness, attached to the vehicle by lap belt). Currently, restraints recommended for children up to 20 kg are tested with the 6-year-old dummy. Hybrid restraints cannot meet the head excursion limit, untethered, when tested with the 6-year-old dummy in the toddler mode (using the 5-point harness). Presumably, they can meet it tethered.

A number of parties have written to NHTSA in support of the petition, including Safe Ride News and SafetyBeltSafe (both reiterated the views of the petitioner). The American Academy of Pediatrics (AAP) said that a high-back booster would help in physically restraining young toddlers who can easily escape from Type II belts. The National Transportation Safety Board (NTSB) expressed concern that the lack of child restraints for older children complicates efforts to encourage states to enact legislation to require children to ride in the back seat. However, NTSB did not support measures that required use of a tether or retrofitting a vehicle with a rear seat shoulder belt (these approaches, and others, are discussed further below). NTSB hoped that NHTSA will "work with the child restraint manufacturers to expedite efforts to provide child restraint systems for children who have outgrown their convertible restraint systems to be used with lap-only belts."

c. The Safety Concern Is That Tethers Often Were Not Used in Vehicles Lacking a User-Ready Tether Anchorage, Even by Parents Who Were Aware of the Importance of Attaching the Tether

Tether use in vehicles not originally equipped with tether anchorages has been very low in this country. Because of the low use rate for tethers, NHTSA amended Standard 213 in 1986 to require tethered child restraints to pass the 48 kph (30 mph) test without attaching a tether (51 FR 5335). NHTSA amended the standard because surveys that had been conducted for the agency consistently showed that tethered restraints were used in those vehicles without the tether strap attached more than 80 percent of the time. Seventy-eight (78) percent of persons not using the tether strap knew that its use was necessary for their child's protection, but still did not attach the tether. Given the low level of tether strap use in vehicles lacking a user-ready tether anchorage and the high level of awareness that the strap must be used,

[1] Calspan Corporation (DOT HS 807 297, May 1988). A detailed discussion of this study can be found in Appendix A to today's document.

[2] Because at that time only a 3-year-old dummy was used in Standard 213's compliance test, the boosters could meet the standard when tested with that dummy and were thus certified as complying with the standard.

the agency did not believe that a tether strap could continue to be permitted as a device necessary for the adequate protection of children.

Child restraint harnesses and vests were not affected by the rulemaking. This is because the potential for misuse of harnesses and vests seemed to be significantly less than for tethered child seats. With child harnesses and vests, it would be obvious to parents that if the tether were not attached, the child would be completely unrestrained in a crash. NHTSA also noted that its data on the non-use and misuse of tethers did not study the extent to which the tethers are improperly used on harnesses and vests. To date, harnesses and vests are tested with the tether strap secured.

d. The Recent Regulation Requiring User-Ready Tether Anchorages to Improve Tether Use Will Not Apply to Vehicles Manufactured Before September 1999

To promote higher tether use, NHTSA has recently issued a final rule that requires vehicle manufacturers to install factory-installed, user-ready tether anchorages (with hardware) in new vehicles, beginning September 1, 1999.[3] We believe, as do Canada and Australia, that tether use improves when factory installed tether anchorages are provided on vehicles as standard equipment. However, the requirement for user-ready tether anchorages applies to vehicles manufactured on or after September 1, 1999, and will not apply to the vehicles that are the subject of the petition (older vehicles with only lap belts in rear seating positions).

II. Issues

The agency seeks comments that will help it to assess whether NHTSA should amend Standard 213 to permit booster seats, and possibly other child restraint systems, to be tethered in determining compliance with the head excursion requirements, and possibly with other requirements as well.

NHTSA notes that the circumstances that gave rise to the petition are diminishing. Vehicles manufactured in 1989 and after are required to have Type II (lap and shoulder) belts installed in rear outboard seating positions, enabling the use of belt-positioning booster seats, with the Type II belts, for children weighing more than 18 kg. Pre-1989 vehicles are at the root of the issue, because they typically have no Type II (lap and shoulder) belts in the rear seats. However, these vehicles are steadily declining in number and eventually will be replaced by vehicles with rear seat Type II belts.

This document sets forth below a number of requests for comments and data. For easy reference, the requests are numbered consecutively. In providing a comment on a particular matter or in responding to a particular question, commenters should provide any relevant factual information to support their conclusions, including but not limited to cost and statistical data, and the source of such information.

Question 1. How Likely Are Tethers To Be Used in Vehicles That Lack User-Ready Tether Anchorages?

Tether use in vehicles not originally equipped with tether anchorages has been very low in this country. Are there data that show that tether use in vehicles not originally equipped with a tether anchorage will be greater than it has been in the past?

The petitioner's approach would delete the head excursion requirement when the seat is tested untethered with the 6-year-old dummy, i.e., in the manner that data show the seat is likely to be used in a vehicle that did not have an originally-installed tether anchorage. NHTSA conducted testing at our Vehicle Research and Test Center (VRTC) in March 1998, to evaluate the performance of various types of child restraints in limiting the amount of head excursion of the 6-year-old dummy. The test program is discussed in Appendix B, and a test report has been placed in the general reference docket for Standard 213, NHTSA–99–5426. Our testing showed that untethered seats were unable to meet the head excursion requirement. The seats generally allowed between 795 and 851 mm (31.29 and 33.52 inches) of head excursion. Nonuse of the tether will affect the possible advantages of petitioner's suggested change.

Question 2: Is a Child Better Off in an Untethered Booster or Seated Directly on the Vehicle Seat and Restrained by a Lap Belt? Are There Alternative Approaches?

NHTSA's March 1998 testing program showed head excursions of the 6-year-old dummy of up to 851 mm (33.52 inches) for untethered restraints. Data are unavailable for head excursions for dummies restrained only by a lap belt.

A preliminary study conducted by NHTSA, based on data from the Fatality Analysis Reporting System (FARS) from 1988 through the first 6 months of 1997, compared the experience of unrestrained rear seat occupants to some children using a lap belt only and to other children using both lap and shoulder belts. The study found that for children ages 5–14, use of a lap belt only while seated in a back outboard seat of a car is 38 percent effective in reducing fatalities and use of a back seat lap/shoulder belt is 52 percent effective in reducing fatalities. The study shows that these children appear to derive the greatest incremental benefit from using back seat lap/shoulder belts rather than just a lap belt when compared to the other age and sex groups evaluated in the study. In comparison, NHTSA estimates that child restraints are potentially 71 percent effective in reducing the likelihood of death.[4]

The same study also showed that, based on FARS and Multiple Cause of Death (MCOD) data from 1988–1994, children ages 5–14 do not have an increased risk of abdominal injuries compared to occupants in other age groups. Lap belted and lap/shoulder belted children have abdominal injury rates slightly higher than unrestrained children in frontal crashes (12 and 15 per 100, respectively as compared to 9 per 100 for unrestrained). These rates are at or below the injury rate of lap belted and lap/shoulder belted occupants of all ages in frontal crashes. However, the same data indicate that the head injury rate for children ages 5–14 in the back seat in frontal crashes restrained by a lap belt only is double that (50 versus 25 per 100) of those children restrained with a lap and shoulder belt (and thus provided with upper torso protection similar to what could be expected through the use of child restraint systems).

Head excursions beyond that limited by Standard 213 reduce the level of performance now required by 213. However, some believe that using a lap belt without an upper torso restraint could result in "seat belt syndrome," which refers to bruising across the abdomen, internal injuries and lower spine fractures which, allegedly, are caused mainly by a lap belt that is used incorrectly or that moves off the child's pelvis during a crash. Are children restrained only by a lap belt experiencing seat belt syndrome? Should we reduce the protection required in the standard against head

[3] The rule also amended Standard 213 to add a 720 millimeter (mm) (28 inch) head excursion limit for forward-facing child restraints, which manufacturers may meet by attaching a tether. The existing 813 mm (32 inch) head excursion requirement will also have to be met, with the tether unattached, to maximize head protection even when the tether is not attached by a consumer.

[4] Kahane, Charles J. (1986), *An Evaluation of the Effectiveness and Benefits of Safety Seats*. U.S. Department of Transportation, National Highway Traffic Safety Administration, DOT HS 806 889, p. 305. The agency believes that this figure remains valid.

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impacts to broaden the protection against seat belt syndrome?

If there were no head excursion limit when a booster seat is tested untethered with the 6-year-old dummy, this would seem to require no more of booster seats than what is expected when the dummy is seated directly on the vehicle seat and restrained by just a lap belt. An alternative approach could be to increase Standard 213's head excursion limit from 813 mm (32 inches) to 838 mm (34 inches) when testing a booster seat untethered with the 6-year-old dummy. Under that approach, there would be a limit to head excursion, even in the untethered condition. Comments are requested on this approach.

Question 3: Should the Test That Evaluates Child Restraint Performance Without Attaching the Tether Be Deleted for All Restraints, Not Just Hybrid Toddler/Booster Restraints? Should the Test Be Deleted When Testing With Dummies Other Than the 6-Year-Old?

If a tether were permitted to be attached when testing with the 6-year-old dummy, should tethers be attached with testing with the 3-year-old as well, such as when testing convertible child restraints (which are usually recommended for children from birth to 18 kg (40 lb))? The agency believes that deleting the test for these other restraints and in tests with other dummies is inadvisable at this time, in the absence of data indicating whether tethers would be properly used. However, what reasons would justify distinguishing between tether use rates among hybrid boosters and other types of child seats or otherwise justify why a tether could be attached for some restraints and not for others?

Question 4: Why Are Shield Boosters No Longer Manufactured for Children Weighing over 18 kg (40 lb)?

In the March 1998 test program at VRTC, the agency tested four currently available types of shield booster seats with the 6-year-old dummy. Two units of one of these shield boosters were tested, and in each instance, they appeared to meet all performance criteria of Standard 213, including the head injury criterion (HIC), chest acceleration limits, and the head and knee excursion limits. Yet, the booster was recommended for use by children only up to 18 kg (40 lb). NHTSA later tested 3 other available shield-type booster seats using the 6-year-old dummy and found that each exceeded the 813 mm (32 inch) head excursion limit of Standard 213.

NHTSA requests information, particularly from child restraint manufacturers, concerning the reasons why shield boosters are no longer marketed for children weighing more than 18 kg (40 lb), especially with respect to those boosters that appear to meet all performance criteria of Standard 213. Were some manufacturers unable to certify that the seats would meet Standard 213's requirements when tested with the 6-year-old dummy? If they did so conclude, was it solely the head excursion requirement, or other requirements as well? Were there test failures, and if so, what were the margins of failure? Can shield boosters be redesigned to achieve compliance with the standard? Why have manufacturers not redesigned these boosters to achieve compliance?

Question 5: What Is the Feasibility of Redesigning Hybrid/Toddler Booster Restraints Such That the Restraint Can Be Certified for Use With Older Children, Without the Use of a Tether?

NTSB hoped that NHTSA will "work with the child restraint manufacturers to expedite efforts to provide child restraint systems for children who have outgrown their convertible restraint systems to be used with lap-only belts." NHTSA requests comments on the feasibility of designing a hybrid booster seat such that the booster can meet the current requirements of Standard 213 in the "toddler mode" when tested with the 6-year-old dummy, and when attached to the standard seat assembly with just a lap belt and without a tether.

Question 6: Is the Suggested Amendment Warranted When There Are Products Now Available for Older Children That May Perform Better Than a Tethered Seat at Limiting Head Excursion?

E–Z–On Products, Inc., manufactures vest and harness restraint systems for use with a lap belt and tether. Vests and harnesses are "child restraint systems" under Standard 213 and are certified as meeting all requirements of the standard.

The vest and harness systems employ a top tether to meet Standard 213's requirements. As explained above, Standard 213 permits a tether on a vest or harness system (both are referred to as "harnesses" in the standard) to be attached in the 48 km/h (30 mph) test, but does not allow a tether to be attached on a conventional child restraint system (such as a convertible child restraint or a high-back booster, such as the Breverra). The reason for the different treatment is because it is more obvious that a tether needs to be attached with vests and harnesses than it is with conventional child seats. If a tether were not used for a vest or harness, it would be clear to the parent that the child's upper torso would have no restraint.

The E–Z–On Vest is designed to slip over the child, with a back zipper closure. The vest is custom-made, using the child's waist measurement. E–Z–On's Universal Harness is in the shape of an upside down "Y." There are two straps at the bottom of the upside down "Y" with loops at each end, that the lap belt is threaded through. The upper part of the upside down "Y" has a tether hook which attaches to the vehicle's tether anchor. E–Z–On has informed NHTSA that its vest and harness systems are readily available through its distributors. A vest or harness can be shipped to the consumer within 2 weeks. The price of the vest is approximately $73 to $95, a cost comparable to that of convertible seats. The harness costs approximately $45.

NHTSA's March 1998 test program at VRTC evaluated the performance of various types of child restraints, including vests and harnesses, hybrid boosters and convertible restraints, in limiting the amount of head excursion of the 6-year-old dummy (see Appendix B). In brief, the tethered vest and harness performed much better than the tethered hybrid booster or tethered convertible restraint at limiting head excursion. Test data for the tethered restraints were as follows:

TABLE 1.—Summary of Sled Test Results for Tethered Restraints

Restraint configuration	HIC	3 ms chest clip (G)	Head excursion (mm)	Knee excursion (mm)	Test No.
FMVSS No. 213 limit	1000	60	813	914	
Century Breverra Contour/5-pt. Harness Lap Belt w/Top Tether	332	38.9	760.22	904.49	UMP03
Century Breverra Contour/5-pt. Harness Lap Belt w/Top Tether	307	40.5	718.82	880.62	UMP05
E–Z ON 86–Y Harness Lap Belt w/Top Tether	463	52.5	495.30	540.26	UMP07

TABLE 1.—Summary of Sled Test Results for Tethered Restraints—Continued

Restraint configuration	HIC	3 ms chest clip (G)	Head excursion (mm)	Knee excursion (mm)	Test No.
E–Z ON 103Z Vest Lap Belt w/Top Tether	702	59.3	558.29	635.76	UMP08
E–Z ON 86–Y Harness Lap Belt w/Top Tether	461	52.9	473.71	539.75	UMP09
Britax Roundabout Lap Belt w/Top Tether	270	42.3	622.55	798.83	UMP11
Britax Roundabout Lap Belt w/Top Tether	303	43.4	574.04	736.09	UMP13
Britax Elite Lap Belt w/Top Tether	554	51.2	640.08	782.32	UMP15
Britax Elite Lap Belt w/Top Tether	614	58.9	580.39	719.84	UMP17

Based on this test program, NHTSA believes that vests and harnesses could address petitioner's concerns and those of the other parties. The E–Z–On Vest, with a back zipper closure, could address AAP's desire for a product that can restrain young toddlers who have reached 18 kg (40 lb), but who are too immature behaviorally to use Type II belts. There may be perceived drawbacks to vests and harnesses. A vest may not be as convenient as a hybrid booster. The vest wraps around the child's torso and has to be unclipped from the tether mounting strap to be placed on a child. Also, vests and harnesses do not "look like" traditional child restraint systems so they might not be as readily accepted by some consumers as a tethered hybrid seat might be. Yet, owners of older vehicles who are seeking any product to fix a perceived problem concerning their youngsters may be more motivated to accept a harness than consumers generally.

NTSB did not support measures that required use of a tether, given the high non-use rates of tethers in this country. Yet, the likelihood that parents will attach the tether on a harness could be higher than that for conventional child seats, given that it would be more obvious to a parent that the tether has to be attached on a vest or harnesses than on a restraint such as a hybrid booster, which would be designed to be used both with and without a tether, depending on the size of the child occupant.

While the hybrid booster might be preferred by some consumers over a vest or harness because of the expectations of consumers as to what a child restraint system ought to look like, an untethered hybrid booster does not restrict head excursion as well as a tethered vest or harness.

Question 7: Would Adoption of the Suggested Amendment Inappropriately Encourage Some Parents To Position Restraints in the Center Rear Seating Position?

Petitioner only addressed the need of consumers with pre-1989 cars, but adoption of the suggested amendment could also affect the preference of parents who wish to install a booster seat in the center rear position. The center rear position typically has only a Type I (lap) belt, not a Type II (lap and shoulder) belt system. Some of these parents may welcome having booster seats that can be used in the center rear seat with only a Type I belt. However, optimal performance of the restraint is dependent on attachment of the tether. An untethered seat in the center rear seat is not likely to perform as effectively as an untethered belt-positioning booster used at the outboard seating position with a Type II belt system. Would the suggested amendment encourage consumers to move belt-positioning seats from outboard seating positions to the center rear seat? How likely will consumers attach a tether[5] when using the seat with children weighing more than 18 kg (40 lb)?

Question 8: What Is the Feasibility of Retrofitting a Rear Seat Shoulder Belt in Pre-1989 Vehicles?

Retrofitting vehicles with a rear seat shoulder belt is another option. While this approach is more expensive than installing a tether anchorage (assuming there are structural elements for the tether anchorage already in the vehicle), a shoulder belt can benefit children who have completely outgrown a child restraint, and can also benefit adults, seated in the rear. Many vehicle manufacturers offer shoulder belt kits for rear seating positions, although availability and cost of these kits vary widely. Because of the long term benefits associated with this option as described above, we have suggested this approach to many consumers who have contacted the agency in search of alternatives. The majority of these consumers were unaware that vehicle manufacturers offered such retrofit kits, and were generally very receptive to having the retrofit kits installed in their vehicles. A minority expressed reservations given the disproportionate cost of the retrofit kit parts and installation when compared to the limited value of their older vehicle.

[5] Our March 1999 final rule excludes belt-positioning seats from the head excursion limit that requires a tether on the child restraint. Thus, a belt-positioning seat that is not also a hybrid toddler seat might not even have a tether.

III. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential

business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(2) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(3) On that page, click on "search."

(4) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1999–1234," you would type "1234." After typing the docket number, click on "search."

(5) On the next page, which contains docket summary information for the docket you selected, click on the desired comments.

You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Appendix A—Calspan Study

Both of the rules that amended Standard 213 to permit the manufacture of belt-positioning booster seats and to adopt new test dummies into the standard for compliance tests responded to sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240), which directed NHTSA to initiate rulemaking on a number of safety matters, including child booster seat safety (§ 2503). The legislative history for the directive indicated that the directive evolved in large part from the findings of a study entitled, "Evaluation of the Performance of Child Restraint Systems," performed for NHTSA by the Calspan Corporation (DOT HS 807 297, May 1988). Congress believed that the study showed that some booster seats "may not restrain adequately a child in a crash . . . ." Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 83, 102d Cong., 1st Sess. 6, 18 (1991). Concerns about shield boosters had arisen from the recommendations by child restraint manufacturers about which children could appropriately use a particular booster. Particular designs or models of boosters were typically recommended for a broad range of children, often for children weighing from 9 to 32 kg (20 to 70 lb). At the time of the study, such a child restraint was tested for compliance with Standard 213 with just the 3-year-old (15 kg) (33 pound) dummy. So tested, these restraints met Standard 213. However, there were questions whether the boosters could provide adequate protection for children at the extremes of the weight ranges that had been recommended by the manufacturer as being suitable for the restraint, i.e., those ranging from nine-month-old infants (average weight 9 kg) to 6-year-old (22 kg) and older children.

In the Calspan program, the nine-month-old infant and the 6-year-old child dummies were used in addition to the 3-year-old dummy. The Calspan research program tested all 11 models of booster seats that were on the market during the summer of 1987. In tests with the 6-year-old dummy, Standard 213's 813 mm (32 inch) head excursion limit was exceeded by 10 out of 11 booster seat models, with measurements in the range from 813 to 899 mm (32.0 to 35.4 inches). One model ejected the dummy.

Following the Calspan study, NHTSA conducted additional research on boosters. Nine booster seats were tested with the three dummies used in the Calspan study. The seats met the performance measures of Standard 213 when tested with the 3-year-old dummy. However, 7 of 9 allowed excessive head excursions with the 6-year-old dummy, and two of the seats also had structural failures with the dummy. "Evaluation of Booster Seat Suitability for Children of Different Ages and Comparison of Standard and Modified SA103C and SA106C Child Dummies," VRTC–89–0074, February 1990.

Appendix B—NHTSA Test Program

NHTSA developed and conducted a test program at VRTC from March 16–20, 1998, to evaluate the performance of various types of child restraints in restricting the amount of head excursion of the 6-year-old dummy. In developing this test program, NHTSA asked child restraint manufacturers and the NTSB for suggestions as to which approaches and products should be evaluated. One objective of this test program was to obtain baseline information on the dynamic performance of a "typical" shield-type booster seat, tested with the 6-year-old dummy while secured to the vehicle seat by a lap belt only. It is the presumed inability of this type of seat to meet the 813 mm (32 inch) head excursion requirement of Standard 213 that has apparently resulted in child restraint manufacturers limiting these restraints to use for children weighing no more than 18 kg (40 lb). Pre-test discussions with restraint manufacturers confirmed that Standard 213's head injury criterion (HIC), chest acceleration, and knee excursion parameters did not pose concerns when testing this type of restraint with the 6-year-old dummy. Rather, because of the increase in height and weight of the 6-year-old dummy as compared to the 3-year-old dummy—1168 versus 965 mm standing height (46 versus 38 inches), and 22 versus 15 kg in weight (48 versus 33 lb)—the shield portion of the restraint apparently does not provide adequate upper torso restraint to limit the head excursion within acceptable limits when subjected to Standard 213's dynamic test. NHTSA chose the Cosco Grand Explorer as a representative shield-type booster for this baseline test.

The test program also evaluated a representative high-back belt-positioning booster seat, utilizing its internal 5-point harness, secured to the vehicle seat by a lap belt and a top tether. This represents the specific configuration recommended in the Weber petition. NHTSA chose the Century Breverra, which comes with an optional top tether, as a representative seat for the test program.

NHTSA also tested a few convertible seats. Pre-test conversations with restraint manufacturers indicated that there may be some convertible restraints that are equipped with tethers that may also perform adequately when attached to the vehicle seat with a lap belt only, when restraining the 6-year-old dummy. Not all convertibles are equipped with a top tether strap, and not all convertible seats will be able to accommodate the 6-year-old dummy. Britax Child Safety, Inc. indicated that they currently manufacture two convertible restraints, the "Roundabout" which comes with a standard top tether, and the "Elite" which comes with an optional top tether attachment, which they felt would perform satisfactorily in a crash test with the 6-year-old dummy with the restraint secured to the vehicle seat by a lap belt and top tether. Accordingly, NHTSA included each of these convertible restraints in the subject test program.

Currently, the only commercially available products that are marketed specifically for children weighing over 18 kg (40 lb) and secured with a lap belt only are the Y-harness and vest systems produced by E–Z On Products. Both of these systems require the use of a top tether. The Y-harness system consists of two shoulder straps which extend from the top tether anchorage, with looped ends to allow the vehicle lap belt to be routed through and fastened over the pelvic area. Similarly, the tether strap is attached to the vest system by attaching the two snap hooks on end of the tether strap to rings located on the shoulders of the vest, and the vehicle lap belt is threaded through the web loops on the bottom of each side of the vest. Both the Y-harness and the vest systems were included in the test program for evaluation.

The dynamic sled tests were conducted at NHTSA's Vehicle Research and Test Center, (VRTC), and were based on the test conditions and procedures prescribed in S6 of Standard No. 213. However, it must be emphasized that this test program was intended for research only and did not precisely replicate compliance testing. The VRTC tests evaluated the ability of the restraints at limiting head excursion, HIC, chest acceleration, and knee excursion. The test conditions were fixed throughout the sled test series, with the only variable being the particular restraint being tested and its attachment method (i.e. tethered or untethered). With the exception of the baseline test utilizing the Cosco Grand Explorer shield booster seat, each restraint was tested in each attachment configuration on two separate sled runs to enhance the repeatability of the test results. Two Cosco Grand Explorer restraints were tested, but on the same sled run versus separate sled runs as with the other restraints.

All tests were conducted using the 6-year-old dummy, and each of the restraints—whether tethered or untethered—was attached to the vehicle test seat using a lap belt only. Standard 213's limits are as follows: HIC—1000; chest acceleration—60g; head excursion—813 mm (32 inches); and knee excursion—914 mm (36 inches). The full test results are provided in Table 2. It is important to note that in each of the tests conducted, values for both the HIC and chest acceleration parameters were typically significantly below the established limits prescribed in Standard 213 and that none exceeded the maximum allowable limits.

TABLE 2.—SUMMARY OF SLED TEST RESULTS FOR ALL RESTRAINTS

Restraint configuration	HIC	3 ms chest clip (G)	Head excursion (mm)	Knee excursion (mm)	Test No.
FMVSS No. 213 limit	1000	60	813	914	
Cosco Grand Explorer Lap Belt w/Sm. Shield	424	32.9	697.74	614.17	UMP01
Cosco Grand Explorer Lap Belt w/Sm. Shield	417	32.2	748.79	660.15	UMP02
Century Breverra Contour/5-pt. Harness Lap Belt w/ Top Tether	332	38.9	760.02	904.49	UMP03
Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether	273	30.8	851.41	925.83	UMP04
Century Breverra Contour/5-pt. Harness Lap Belt w/ Top Tether	307	40.5	718.82	880.62	UMP05
Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether*	243	50.2	NA	NA	UMP06
E–Z ON 86–Y Harness Lap Belt w/Top Tether	463	52.5	495.30	540.26	UMP07
E–Z ON 103Z Vest Lap Belt w/Top Tether	702	59.3	558.29	635.76	UMP08
E–Z ON 86–Y Harness Lap Belt w/Top Tether	461	52.9	473.71	539.75	UMP09
E–Z ON 103Z Vest Lap Belt w/Adj. CAM-Wrap	315	35.9	713.23	597.92	UMP10
Britax Roundabout Lap Belt w/Top Tether	270	42.3	622.55	798.83	UMP11
Britax Roundabout Lap Belt; No Top Tether	477	39.3	810.26	895.60	UMP12
Britax Roundabout Lap Belt w/Top Tether	303	43.4	574.0	736.09	UMP13
Britax Roundabout Lap Belt; No Top Tether	425	36.1	794.77	864.36	UMP14
Britax Elite Lap Belt w/Top Tether	554	51.2	640.08	782.32	UMP15
Britax Elite Lap Belt; No Top Tether	377	39.2	820.17	867.66	UMP16
Britax Elite Lap Belt w/Top Tether	614	58.9	580.39	719.84	UMP17
Britax Elite Lap Belt; No Top Tether	377	43.1	821.69	878.08	UMP18
Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether (Repeat of UMP06).	299	31.2	843.79	917.96	UMP19 (Repeat of UMP06)

*HIC based on head contact w/CRS as dummy slipped out of failed 5-pt. harness.

While NHTSA anticipated that shield-type boosters could not meet the 32-inch head excursion limit of the standard when tested with the 6-year-old dummy, test results showed that when tested in this configuration, the Cosco Grand Explorer shield booster seats used for the baseline testing satisfactorily limited head excursion to under 762 mm (30 inches) in both instances. In addition, knee excursion was measured to be 254 to 279 mm (10–11 inches) below the 914 mm (36 inch) limit. These test results are in direct contrast with the Calspan and VRTC studies (see Appendix A, *supra*) conducted in support of NHTSA's ISTEA rulemakings on booster seats.

Following conduct of the baseline test with the shield-type booster seat, the agency tested the hybrid boosters and the convertible seats both with and without the top tether strap. In the tethered configuration, head excursion was measured to be below 762 mm (30 inches), and knee excursion was measured to be below the 914 mm (36 inch) limit (although only marginally so in one instance (904.49 mm) (35.61 inches)). However, in each of the test runs conducted using the untethered configuration, head and knee excursions beyond the respective 813 and 914 mm (32 and 36 inch) limits were measured, with marginal reductions in both the HIC and chest acceleration parameters. It should be noted that a total of three test runs was conducted using the untethered configuration, as the test dummy slipped out of the child restraint during the second test run due to a failure of the 5-point harness, voiding the measurement of head and knee excursion. Interestingly, a comparison between the untethered shield-type booster used in the baseline testing and the tethered hybrid booster (forward facing with internal harness/high-back belt-positioning booster) indicates that the untethered shield booster performs marginally better (on average) with respect to limiting head excursion and significantly better with respect to limiting knee excursion than the hybrid booster.

Two convertible restraints were evaluated in the same manner, first with a top tether strap attached and then without. In the tethered configuration, the Britax Roundabout limited head excursion to 622.3 and 574.04 mm (24.5 and 22.6 inches) in the two tests performed, well below the 813 mm (32 inch) limit prescribed in the standard and also well below the results observed in the baseline test with the shield-type booster. Knee excursion measurements were also well below the established limit. However, whereas the untethered hybrid toddler/booster restraint configuration resulted in unacceptable head and knee excursions, the untethered Roundabout configuration limited both head and knee excursion within acceptable limits (although only marginally

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with respect to head excursion in the first test at 810.26 mm (31.90 inches)). Additionally, while the untethered hybrid toddler/booster restraint tests resulted in reduced HIC and chest acceleration measurements, the untethered Roundabout tests resulted in reduced chest acceleration measurements but increased HIC values.

The second convertible restraint, the Britax Elite, demonstrated similar results. In the tethered configuration, head excursion was limited to 640.08 and 580.39 mm (25.2 and 22.85 inches) in the two tests performed, again well below the 813 mm limit prescribed in the standard and also well below the results observed in the baseline test with the shield-type booster. Knee excursion measurements were also well below the established limit. However, each of the tests conducted in the untethered configuration resulted in head excursion measurements that marginally (820.02 and 821.69 mm) (32.29 and 32.35 inches) exceed the 813 mm limit, while knee excursion measurements remained within acceptable limits.

The two different E–Z On products, the Y-harness and the vest, are the only products currently marketed for children over 18 kg (40 lb) that do not require the use of a shoulder harness to attach to the vehicle. Both of these systems require the use of a tether. Test results show that the Y-harness system dramatically limited head excursion to 495.3 and 473.71 mm (19.5 and 18.65 inches) on the two tests, or approximately 33 percent below the 813 mm limit prescribed in the standard, and significantly below the other tethered systems. Knee excursion was also limited to values well below established limits.

E–Z On markets two different styles of the vest system. The first is an adjustable vest, which can be adjusted for fit as the child grows via three different zipper locations on the back of the vest. This was not used in this test program, as the vest, when configured in its smallest size, was still too large to properly fit the 6-year-old test dummy. E–Z On also manufactures sized vests, provided to the consumer based on anatomical measurements of the child as provided to E–Z On. NHTSA utilized a fitted vest in this testing program, although it should be noted that the vest provided by the manufacturer for this testing was very tight on the 6-year-old dummy, and the next larger size would likely have provided a better fit. The E–Z On vest system was tested utilizing a top tether strap. The head and knee excursion values were both well below established limits. The chest acceleration was 59.3 g, marginally below the limit of 60 g. This high value for chest acceleration may be partially attributable to the very snug fit of the vest on the test dummy.

Given the excessive head excursion measured in 17 of the 20 tests performed in the Calspan and VRTC studies, combined with the assumption that child restraint manufacturers are not currently marketing shield-type booster seats for children over 18 kg due to an inability to meet the head excursion requirement when testing with the 6-year-old dummy, NHTSA chose to include only one representative shield-type booster seat (the Cosco Grand Explorer) to serve as a baseline test for the current test program. However, given the favorable results with respect to both head and knee excursion parameters seen with this seat as noted above, NHTSA conducted a second set of testing to evaluate three other currently available shield-type booster seats (the Gerry Double Guard, Evenflo Sidekick, and Fisher Price T-Shield). As before, each seat was tested twice, on separate test runs, to enhance the repeatability of the test results. In each instance, the measured head excursion significantly exceeded the 813 mm (32 inch) limit of Standard 213, ranging from 876.3 to 1016 mm (34.5 to 40.0 inches). Full test results are provided in Table 3. These results more closely parallel those recorded in the earlier tests conducted by Calspan and VRTC. Physical examination of each of the four shield-type booster seats tested in this test program revealed no obvious, discernable variations in construction, i.e., height of the shield, etc., that would explain the difference in performance of the Cosco Grand Explorer versus the others with respect to head excursion.

TABLE 3.—ADDITIONAL SHIELD BOOSTER TESTS

Restraint configuration	HIC	3 ms chest clip (G)	Head excursion (mm)	Knee excursion (mm)	Test No.
FMVSS No. 213 limit	1000	60	813	914	
Gerry Double Guard Lap Belt w/sm. Shield	748	35.8	979.9	825.5	UMP21
Evenflo Sidekick Lap Belt w/sm. Shield	721	37.8	873.8	762.0	UMP22
Fisher Price T-Shield Lap Belt w/sm. Shield	349	26.1	927.1	767.1	UMP23
Evenflo Sidekick Lap Belt w/sm. Shield	820	35.9	876.3	749.3	UMP24
Gerry Double Guard Lap Belt w/sm. Shield	780	34.6	1016	838.2	UMP25
Fisher Price T-Shield Lap Belt w/sm. Shield	525	31.5	955.0	784.9	UMP26

Issued on June 29, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–17235 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 64, No. 129
Wednesday, July 7, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

National Drought Policy Commission

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Commission meeting and public hearing and request for comments.

SUMMARY: The National Drought Policy Act of 1998 (Pub. L. 105–199) and Departmental Regulation No. 1042–131 established the National Drought Policy Commission (Commission). The Farm Service Agency (FSA) was identified to provide support to the Commission. The Commission shall conduct a thorough study and submit a report to the President and Congress on national drought policy. This notice seeks comments on issues that the Commission should address and recommendations that the Commission should consider as part of its report. The first meeting of the Commission will be held July 22, 1999, and the first public hearing will be held July 23, 1999. All meetings are open to the public; however, seating is limited and available on a first-come basis.

DATES: The Commission will meet on July 22, 1999, from 10:00 a.m. to 4:00 p.m. in the Williamsburg Room, Jamie L. Whitten Building, 12th and Jefferson Drive, SW, Washington, DC. All times noted are Eastern Daylight Time. The first part of the meeting will be devoted to the organization of the Commission. The remainder of the meeting will be dedicated to informational presentations and committee business.

The Commission will conduct a public hearing on July 23, 1999, from 9:00 a.m. to 5:00 p.m. in the Jefferson Auditorium, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC. Anyone wishing to make an oral presentation to the Commission must contact the Executive Director, Leona Dittus, in writing (by letter, fax or internet) no later than 12 noon, July 16, 1999, in order to be included on the agenda. Presenters will be approved on a first-come basis. The request should identify the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. Thirty-five copies of any written presentation material shall be given to the Executive Director by all presenters no later than the time of the presentation for distribution to the Commission and the interested public. Oral presentations will be limited to 5 minutes. Those wishing to testify, but who are unable to notify the Commission office by July 16, 1999, will be able to sign up as a presenter the day of the hearing (July 23) between 9:00 a.m. and 11:30 a.m. These presenters will testify on a first-come, first-served basis and comments will be limited based on the time available and the number of presenters. Written statements will be accepted at the meeting, or may be mailed or faxed to the Commission office. Comments must be received by September 17, 1999.

ADDRESSES: Comments and statements should be sent to Leona Dittus, Executive Director, National Drought Policy Commission, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 6701–S, STOP 0501, Washington, DC 20250–0501.

FOR FURTHER INFORMATION CONTACT: Leona Dittus, Executive Director, National Drought Policy Commission, at the address above or telephone (202) 720–3168; FAX (202) 720–4293; internet Leona_Dittus@WDC.FSA.USDA.GOV.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to provide advice and recommendations to the President and Congress on the creation of an integrated, coordinated Federal policy, designed to prepare for and respond to serious drought emergencies. Tasks for the Commission include developing recommendations that will (a) better integrate Federal laws and programs with ongoing State, local, and tribal programs (b) improve public awareness of the need for drought mitigation, prevention, and response and (c) determine whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency, and, if so, identify the agency. The Commission will be chaired by the Secretary of Agriculture or his designee, and a Vice Chair shall be selected from among the members who are not Federal officers or employees. In the absence of the Chair, the Vice Chair will act in his stead. Administrative staff support essential to the execution of the Commission's responsibilities shall be provided by USDA, FSA.

Commission members specifically cited in Public Law 105–199 include the Secretaries of Agriculture, Interior, Army, and Commerce, the Director of the Federal Emergency Management Agency, and the Administrator of the Small Business Administration; two persons nominated by the National Governors' Association, a person nominated by the National Association of Counties, and a person nominated by the Conference of Mayors. Those four members are to be appointed by the President. Six additional Commission members have been appointed by the Secretary of Agriculture, in coordination with the Secretary of the Interior and the Secretary of the Army. The six at-large members represent groups acutely affected by drought emergencies, such as the agricultural production community, the credit community, rural and urban water associations, Native Americans, and fishing and environmental interests.

If special accommodations are required, please contact Leona Dittus, at the address specified above, by COB July 16, 1999.

Signed at Washington, DC on July 1, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–17216 Filed 7–6–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice, Comment and Appeal of Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On June 2, 1998, the Forest Service published a listing of the newspapers that would be used by all Ranger Districts, Forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all

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decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notice for public comment and notice of decisions subject to the provisions of 36 CFR part 215. That notice was to inform interested members of the public which newspapers would be used to publish the legal notice for public comment and decision. This allows the public to receive constructive notice of decisions, to provide clear evidence of timely notice, and to achieve consistency in administering the appeal process. There is no change to the listing of newspapers published in the June 2, 1998 **Federal Register** (63 FR 29971).

FOR FURTHER INFORMATION CONTACT: Roger Ogden, Acting Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208–3623, phone: (503) 808–2426.

Dated: June 29, 1999.

Roy Roosevelt,

Acting Deputy Regional Forester.

[FR Doc. 99–17126 Filed 7–6–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request is being submitted under the emergency processing procedures of the Paperwork Reduction Act.

Agency: Technology Administration.

Title: National Medal of Technology.

Agency Form Number: None.

OMB Approval Number: 0692–0001.

Type of Request: Revision of a currently approved collection—Emergency Clearance Request.

Burden: 2,550 hours.

Needs and Uses: The National Medal of Technology is the highest honor bestowed by the President to America's leading innovators. The Medal is given to individuals, teams, or companies for accomplishments in the innovation, development, commercialization, and management of technology, as evidenced by the establishment of new or significantly improved products, processes, or services. This collection is being revised to include a "new" nomination category for "environmental technology." The information provided is used by the Nomination Evaluation Committee in determining the merit and eligibility of nominees.

Affected Public: Individuals and companies.

Frequency: Annually.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Peter Weiss, (202) 395–3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by July 9, 1999, to Peter Weiss, OMB Desk Officer, 725 17th Street, NW, Washington, DC 20501.

Dated: June 30, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–17138 Filed 7–6–99; 8:45 am]

BILLING CODE 3510–18–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–814, A–428–816, A–405–802, C–412–815, C–428–817]

Certain Cut-to-Length Carbon Steel Plate From Finland, Germany and the United Kingdom: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Intent To Revoke Orders In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty and countervailing duty reviews, and intent to revoke orders in part.

EFFECTIVE DATE: July 7, 1999.

SUMMARY: On May 12, 1999, the Department of Commerce (the Department) received a request on behalf of Bethlehem Steel Corporation and U.S. Steel Group—A Unit of USX Corporation (Bethlehem & U.S. Steel), petitioners in these cases, for changed circumstances antidumping (AD) and countervailing duty (CVD) reviews and an intent to revoke in part the AD and CVD orders with respect to specific cut-to-length carbon steel plate from Germany and the United Kingdom and the AD order with respect to specific cut-to-length carbon steel plate from Finland. A telephone conversation on May 17, 1999, with counsel on behalf of all other petitioners (Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and WCI Steel Inc.) confirmed petitioners' lack of interest in the continuation of the AD and CVD orders with respect to the subject merchandise defined in the Scope of the Review section below (See Memorandum to the File).

Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig (AD reviews on Finland and the United Kingdom), James Doyle or Becky Hagen (AD review on Germany), Robert Copyak (CVD reviews on Germany and the United Kingdom), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3833, (202) 482–0159, (202) 482–1102, or (202) 482–2209, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351.

Background

On August 17, 1993, the Department published the CVD orders on certain cut-to-length carbon steel plate from Germany and the United Kingdom (58 FR 43756 and 43748, respectively). On August 19, 1993, the Department published the AD orders on certain cut-to-length carbon steel plate from Finland, Germany and the United Kingdom (58 FR 44165, 44170, and 44168, respectively).

On May 12, 1999, Bethlehem Steel and U.S. Steel, petitioners, requested partial revocation of the AD and CVD orders pursuant to section 751(d)(1) of the Act, with respect to specific carbon steel plate imports from the United Kingdom, Germany and Finland described below.

Scope of the Review

The products covered by these AD/CVD orders constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispostive.

Merchandise covered by these changed circumstances reviews and partial revocations are shipments of certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2.

Initiation and Preliminary Results of Changed Circumstances AD and CVD Reviews, and Intent To Revoke Orders in Part

At the request of the petitioners, in accordance with sections 751(d)(1) and 751(b)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating changed circumstances reviews of certain cut-to-length carbon steel plate from Finland, Germany and the United Kingdom to determine whether partial revocation of the AD and CVD orders is warranted with respect to the cut-to-length carbon steel plate subject to these requests. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act and sections 351.222(g)(1)(i) and 351.221(c)(3) of the Department's regulations, we are initiating these changed circumstances reviews and have determined that expedited action is warranted. Our decision to expedite these reviews stems from the domestic industry's lack of interest in applying the AD and CVD orders to the specific carbon steel plate covered by these requests.

Based on the expression of no interest by petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in continued application of the AD and CVD orders to the plate subject to these requests. Therefore, we are notifying the public of our intent to revoke, in part, the AD and CVD orders as they relate to imports of plate described above from Finland, Germany and the United Kingdom.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of these changed circumstances reviews, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which these reviews were initiated, or within 45 days if all parties agree to our preliminary determinations. *See* section 351.216(e) of the Department's regulations.

If final revocation occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation and to refund, with interest, any estimated AD and CVD duties collected for all unliquidated entries of the specific carbon steel plate covered by these requests from Finland, Germany and the United Kingdom. The current requirement for a cash deposit of estimated AD and CVD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of these changed circumstances reviews.

This initiation of review and notice are in accordance with sections 751(b) of the Act (19 U.S.C. 1675(b)) and 19 CFR 351.216, 351.221, and 351.222.

Dated: June 25, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17221 Filed 7–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate From Sweden: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioners, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping finding on stainless steel plate from Sweden. The review covers two manufacturer/exporters of the subject merchandise to the United States, Avesta Sheffield AB ("Avesta") and Uddeholm Tooling AB and its sales subsidiaries (collectively, "Uddeholm"). Uddeholm's sales affiliate in the United States is Bohler-Uddeholm Corporation ("BUS") and its sales affiliate in Canada is Uddeholm Limited, Canada ("BCA"). The period of review is June 1, 1997 through May 31, 1998. We preliminarily determine that sales have been made below normal value ("NV"). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties based on the difference between constructed export price ("CEP") and NV.

Interested parties are invited to comment on these preliminary results. Parties which submit argument in this proceeding are requested to submit with the argument: (1) A statement of the

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issue, and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan or Jonathan Lyons, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–4243 or 482–0374, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1998).

Background

The Department of the Treasury published an antidumping finding on stainless steel plate from Sweden on June 8, 1973 (38 FR 15079). The Department of Commerce published a notice of "Opportunity To Request Administrative Review" of the antidumping finding for the 1997–1998 review period on June 10, 1998 (63 FR 31717). On June 10, 1998, the petitioners, Allegheny Ludlum Steel Corp., G.O. Carlson, Inc., and Lukens, Inc., filed a request for review of Uddeholm and Avesta. We initiated the review on July 28, 1998 (63 FR 40258). On October 8, 1998, December 1, 1998, February 22, 1999, and April 12, 1999, we received responses from Uddeholm to the Department's original and supplemental questionnaires.

The review covers the period June 1, 1997 through May 31, 1998. The Department is conducting this review in accordance with section 751 of the Act, as amended. Section 751(a)(3) provides that the Department may extend the deadline for issuing its preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days. *See* also 19 CFR 351.213(h)(2). On January 11, 1999, the Department extended the time limit for these preliminary results to June 30, 1999. *See Stainless Steel Plate from Sweden; Extension of Time Limits for Antidumping Duty Administrative Review*, 64 FR 3683 (January 25, 1999).

Scope of the Review

Imports covered by this review are shipments of stainless steel plate which is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting. Stainless steel plate is classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7219.11.00.00, 7219.12.00.05, 1209.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 8219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7219.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Facts Available

On September 2, 1998, Avesta informed the Department that it was unable to participate in the 1997–1998 administrative review. Avesta claimed that, because a key facility had closed and staff that had participated in prior reviews were no longer employed by the company, it would not be "feasible, financially or practically," for the company to participate.

Section 776(a)(2)(A) of the statute and 19 CFR 351.308 mandate use of facts available in several circumstances, including when a respondent withholds requested information. Further, section 776(b) of the Act authorizes the Department to use an adverse inference in selecting from the facts otherwise available where the respondent has "not acted to the best of its ability to comply with a request for information."

Because Avesta has declined to respond to the Department's questionnaire, we must rely on the facts otherwise available. Further, the Department finds that an adverse inference is warranted because Avesta has not acted to the best of its ability in responding to the Department's request for information. Avesta failed to provide any explanation as to why the loss of employees or the closing of a facility prevents its responding to the Department's questionnaire. Moreover, Avesta failed to identify specific problems in complying with our request, to seek the Department's assistance or to suggest alternatives that would allow the Department to collect the necessary information, as required by section 782(c)(1). Rather, the company appears to have made a business decision not to devote the necessary resources to provide the Department with the information needed to conduct the review.

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. In accordance with section 776(b)(3) of the Act, we have selected as facts available the highest previous margin in this case from segments conducted by the Department, which is Avesta's margin from the 1995–1996 administrative review.

Information from prior segments of the proceeding constitutes secondary information. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) explains that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. (See H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994).)

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), where the Department disregarded the highest margin as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

The dumping margin we have selected for Avesta as facts available in this review is a rate calculated in a prior segment of the proceeding; therefore, we deem it to be reliable. Moreover, because the margin selected was actually calculated for Avesta based on information submitted by the company in the prior review, we deem it to be relevant. Therefore, the requirements of section 776(c) of the Act have been met.

Because we have based Avesta's dumping margin entirely on facts available, the analysis below addresses only sales made by Uddeholm.

Verification

As provided in section 782(i) of the Act, we verified information provided by Uddeholm using standard verification procedures, including on-site examination of relevant sales and financial records and selection of original documentation containing relevant information. Our verification results are outlined in the proprietary and public versions of the verification report.

Date of Sale

For both its third-country market and U.S. sales, Uddeholm reported the earlier of either the date of invoice or the date of shipment as the date of sale. Uddeholm stated that this methodology best reflects the date on which the material terms of sale are established. In the normal course of business, invoices are issued upon shipment of merchandise to the customer. In rare instances, merchandise is shipped prior to invoicing. Invoices on these shipments are issued on the next business day. Due to the unique nature of the subject merchandise and its applications, orders for merchandise are processed and shipped within a week of the customer's order, and in many instances within 1–2 business days. Orders are primarily placed via phone or fax to the sales departments, and usually result in Uddeholm's generating a work order for their merchandise processing and operations division. Most orders are immediately filled from inventory and sized to the customer's specifications. Uddeholm records the terms of sale (price and quantity) when the merchandise is shipped and the invoice is issued, which generally occurs on the same day. In addition, the Department verified that there are no sales contracts, long-term orders, or extended delivery agreements between Uddeholm and its customers. Therefore, we preliminarily determine that invoice date is the most appropriate date of sale in accordance with § 351.401(i) of the Department's regulations.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents, covered by the description in the Scope of Investigation section, above, and sold in Canada during the period of review (POR) are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on five characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: specification, process, thickness, finish, and form. We used thickness ranges reported by the respondent, as requested by the Department. Where there were no sales of identical merchandise in the third-country market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping questionnaire and reporting instructions.

Fair Value Comparisons

To determine whether sales of stainless steel plate from Sweden to the United States were made at less than normal value, we compared NV to the CEP, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Constructed Export Price (CEP)

In accordance with section 772 (b) of the Act, we treated all of Uddeholm's sales to the United States as CEP sales because the merchandise was first sold to unaffiliated U.S. purchasers, after importation, by an affiliated seller in the United States. There were no export price sales during the period of review.

We based CEP on the packed ex-warehouse or delivered price to unaffiliated customers in the United States. In accordance with section 772 (c)(2) of the Act, we made adjustments, where applicable, for international and ocean freight, U.S. inland freight, U.S. brokerage and handling expenses, U.S. customs duties, early payment discounts, rebates, warehousing, and marine insurance. In accordance with sections 772(d)(1) and (2) of the Act, we made deductions for selling expenses, warranty expenses, credit expenses, and cutting and grinding expenses.

To arrive at the CEP, the gross unit price was further reduced by an amount for profit pursuant to section 772(d)(3) of the Act. In accordance with section 772 (f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and third-country markets, less all expenses associated with those sales. We then allocated profit to the expenses deducted under sections 772(d)(1) and (2), based on the ratio of total U.S. expenses to total expenses for both the U.S. and third-country markets.

Normal Value

A. Home Market Viability

In order to determine whether there were sufficient sales of stainless steel plate in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of subject merchandise to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Since Uddeholm's aggregate volume of home market sales was less than five percent of its U.S. sales of the subject merchandise, we did not base NV for Uddeholm on its home market sales.

B. Comparison Market Selection

In selecting the appropriate third-country market on which to base NV for Uddeholm, we analyzed sales to Uddeholm's three largest third-country markets. In accordance with § 351.404(e) of the Department's regulations, we chose the Canadian market as the most appropriate comparison market for NV. Canada constituted Uddeholm's largest third-country market, and merchandise sold in the Canadian market was identical to the subject merchandise sold in the United States. For a more detailed discussion of third-country market selection, *see Analysis Memorandum for 3rd Country Comparison Market*, dated May 28, 1999.

We calculated NV based on sales to unaffiliated third-country market customers. We made adjustments for physical differences in the merchandise, where necessary, in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with section 773(a)(6)(B)(ii) of the Act, we made adjustments to NV for international freight, third-country inland freight, third-country inland insurance, third-country customs duties, and warehousing expenses. We also adjusted NV for direct selling expenses, including imputed credit expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Finally, we made an adjustment to NV for early payment discounts, in accordance with § 351.401(c) of the Department's regulations.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the third-country market.

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In accordance with section 777(A) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Level of Trade

In accordance with section 773(a)(7) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine the stages in the marketing process and selling functions along with the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

The Department requested information concerning the selling functions associated with each phase of marketing, or the equivalent, in Uddeholm's Canadian and U.S. markets. The NV level of trade is based on sales by Uddeholm's affiliate, BCA, to unaffiliated customers in Canada. The information submitted by Uddeholm indicates that BCA performs the same selling functions for all customers in the Canadian market. Therefore, we preliminarily determine that the Canadian sales were made at a single level of trade. The CEP level of trade is based on the constructed sales to Uddeholm's affiliate, BUS, i.e., after the deductions required under 772(d) of the Act. The information submitted indicates that at the CEP level of trade Uddeholm performs fewer and different selling functions than it does at the NV level of trade. Therefore, we preliminarily determine that there is a single level of trade in the United States—the CEP level of trade—which is different from the level of trade in Canada. For a more detailed discussion of level of trade *see Analysis Memorandum to the File regarding Level of Trade for Uddeholm*, dated June 22, 1999.

As evidenced by the record, the U.S. and Canadian sales are at different levels of trade and the Canadian level of trade—sales by an affiliated distributor—is at a more advanced stage of distribution than the U.S. CEP level of trade—sales by the producer to an affiliated distributor. However, we do not have data available that would be an appropriate basis for calculation of a level of trade adjustment. Therefore, in accordance with section 773(a)(7)(B) of the Act, we have preliminarily determined to make a CEP offset.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period June 1, 1997 through May 31, 1998:

Uddeholm—7.30 percent
Avesta—29.36 percent

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with § 351.212(b) of the Department's regulations, we have calculated an importer-specific ad valorem assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total entered value of the sales used to calculate these duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of stainless steel plate from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for reviewed firms will be the rates established in the final results of administrative review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106, in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 4.46%.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17222 Filed 7–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 99–00002.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to DecoArt, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1999).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Artists acrylic paints and decorative finishes manufactured or distributed by DecoArt, Inc.

2. Services

All services related to the export of Products.

3. Technology Rights

All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, service marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and sui generis forms of protection for databases and computer programs.

4. Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: Professional services in the area of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with custom requirements; insurance and financing; bonding; warehousing; export trade promotion; legal assistance; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

DecoArt, Inc. may engage in the following activities with respect to Export Markets:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Markets;

3. Enter into, terminate, amend or enforce exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets, provided that DecoArt, Inc. does not enter into more than one agreement, for its entire product line or any portion thereof, in any given territory in the Export Markets pursuant to which its distributors, foreign buyers, and/or sales representatives are prohibited from carrying the products of DecoArt, Inc.'s competitors, and such prohibition only applies to: (1) Those products of DecoArt, Inc.'s competitors that directly compete with the product line or portion thereof to be sold under the agreement; and (2) the territory covered by the agreement;

4. Enter into, terminate, amend or enforce exclusive or non-exclusive licensing agreements regarding its Products, Services, or Technology Rights with Export Intermediaries or other persons selling its Products in Export Markets;

5. Enter into, terminate, amend or enforce exclusive or non-exclusive sales agreements with Export Intermediaries, or other persons selling its Products for the transfer of title to Products, Services, and/or Technology Rights in Export Markets;

6. Enter into, terminate, amend or enforce exclusive or non-exclusive pricing and/or consignment agreements for the sale and shipment of its Products and Services to Export Markets;

7. Allocate export sales, export orders and/or divide Export Markets, among Export Intermediaries, or other persons for the sale, licensing and/or transfer of title to its Products, Services, and/or Technology Rights;

8. Enter into, terminate, amend or enforce territorial and customer restraints on Export Intermediaries, or other persons regarding the sale, licensing and/or transfer of title to its Products, Services, and/or Technology Rights for sale in Export Markets;

9. Enter into, terminate, amend or enforce exclusive or non-exclusive agreements for the tying of its Products and Services, the setting of prices, and/or the distribution, shipping or handling of its Products or Services in the Export Markets;

10. Terminate, amend or enforce contractual or other relationships with Export Intermediaries or other persons who refuse to agree or adhere to restraints on their activities related to the export of its Products;

11. Enter into, terminate, amend or enforce agreements to invest in overseas warehouses for the purpose of storing exported Products until transferred to the foreign purchaser;

12. To invest in overseas facilities for the purpose of making minor product or packaging modifications necessary to insure compatibility of the Product with the requirements of the foreign market;

13. Represent U.S. Suppliers of its Products at trade shows and solicit agents and distributors for its Products in the Export Markets;

14. Refuse to quote prices for, or to market or sell, Products or Services to

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an Export Market or Markets, or to distributors, buyers and/or sales representatives who directly or indirectly market or sell to an Export Market or Markets;

15. Sell, or offer to sell Products at different prices for direct or indirect sale to an Export Market or Markets as compared to prices for direct or indirect sale to domestic markets; and

16. Affix labels or other forms of identification to Products which identify the Products and indicate whether such Products are for direct or indirect sale only in an Export Market or Markets.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, DecoArt, Inc. will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. DecoArt, Inc. will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303 (a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells any Product and/or a Service.

A copy of this Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, l4th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: June 30, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–17103 Filed 7–6–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 990608155-9155-01]

RIN 0693-ZA31]

Technical Advisory Committee Report: Requirements for Key Recovery Products

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Department of Commerce seeks public comment on "Requirements for Key Recovery Product," encompassing technical recommendations prepared by the "Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure." The Committee was established by the Department to provide technical advice on an encryption key recovery standard for use by Federal agencies to provide for the continued government access to encrypted information in the event of the unavailability (e.g., loss due to unavailability of critical personnel) of the encryption/decryption key(s). The Committee held its final meeting in November, 1998, and subsequently delivered its work to the Secretary of Commerce. Notwithstanding the availability of opportunities for public input to the Committee's activities, the Committee's technical report and significance makes them worthy of additional public discussion and comment. Comments are also sought as to actions that the Department may wish to take as it contemplates using this report as the basis for a Federal key recovery standard.

DATES: Comments should be submitted no later than November 4, 1999.

REPORT AVAILABILITY AND ADDRESSES: The report is available electronically from the Committee's homepage at < http://csrc.nist.gov/tacdifipsfkmi/ ≤. Electronic comments on the report may be sent to Key-recovery@nist.gov.

A hard copy of the report is available by request from NIST, Information Technology Laboratory, Attention: Review of Key Recovery Committee Report, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899-8930. Written comments may also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Executive Secretary, Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, telephone 301-975-3696.

SUPPLEMENTARY INFORMATION: The "Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure" was chartered by the Department of Commerce in 1996 to seek industry recommendations on technical specifications for accomplishing the recovery of keys used for encryption (as opposed to keys used solely for digital signatures, which should not be recoverable, since a new signature key pair is normally created in event of loss). The Committee was comprised of 24 members drawn from the private sector with expertise in computer systems, telecommunications, banking, security, research and other pertinent areas. Its activities were augmented by liaisons from various Federal agencies, who provided input and perspective to the Committee as to the security and functional key recovery requirements of Federal agencies. Twelve meetings of the Committee were held between December 1996 and November 1998. The progress that the Committee made on various drafts of its report may be seen on the Committee's electronic homepage at <htt://csrc.nist.gov/tacdfipsfkmi/>.

In June 1998, the Committee delivered an interim work product to the Secretary, requested additional time to complete its work, and suggested that work on detailed implementation guidance be initiated, noting that such guidance will be essential to the successful deployment of any key recovery system (since many aspects of key recovery system security [e.g., integration of key recovery products into an application/operational system or usage policy] were outside the scope of the Committee's work). The Committee also urged pursuit of conformance testing based upon the model employed for Federal Information Processing Standard (FIPS) 140.1, Security of Cryptographic Modules. In response to the request for additional time, the Department extended the charter of the Committee through the end of 1998 and urged the Committee to use the remaining time to complete its review of the document, resolve inconsistencies and address any remaining issues.

Because this technical input was requested in anticipation of developing a FIPS on key recovery, the format of the Committee's report parallels that of a FIPS. However, since the Committee was chartered only to address technical issues, some areas (e.g., "applicability" and "waiver process") contained in a FIPS were not addressed by the Committee. The Committee noted in their draft that text for these sections would have to be supplied at a later date by the government.

In delivering its report to the Secretary, the Committee noted that its members did not "have time to verify the consistency and completeness of the document as a whole" and stated that these are crucial. Therefore, the submission of public comments on the consistency and completeness of the document is particularly encouraged.

The Committee's report is divided into two major sections, an "announcement section" and a "specifications section." The first section is fairly pro forma and contains, among other items, a brief explanation of the document, an index, list of appropriate applications, notes on implementations, and a glossary. Qualifications on the use of conforming products are also discussed. The second section contains the detailed specifications of the document and is divided into four chapters: (1) Overview, (2) Key Recovery Model, (3) Security Requirements, and (4) Assurance Requirement. Four appendices are included: (A) Key Recovery Technique (B) Examples, (C) Key Recovery Block, and (D) Certificate Extensions.

The key recovery model utilized by the Committee throughout its document describes five key recovery functions: (1) Key Recovery Information Generation, (2) Key Recovery Information Delivery, (3) Function Key Recovery Information Validation, (4) Key Recovery Requestor and (5) Key Recovery Agent. For each of these functions, one or more security levels is defined and functional and security requirements provided. For each security level(s) of a function, a corresponding assurance level is then specified with appropriate requirements.

Dated: June 30, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–17234 Filed 7–6–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for Draft Environmental Impact Statement (DEIS) for the Introduction of the V–22 to the Second Marine Aircraft Wing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of public hearing.

SUMMARY: The Department of the Navy, United States Marine Corps has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) to evaluate the introduction of the V–22 aircraft to the Second Marine Aircraft Wing in eastern North Carolina. In accordance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality regulations, this notice announces the dates and locations of public hearings for the DEIS.

DATES: Comments must be postmarked by August 9, 1999.

The meeting dates are:

1. July 19, 1999, 3:00p.m. to 8:00p.m., Jacksonville, NC.
2. July 20, 1999, 3:00p.m. to 8:00p.m., Havelock, NC.
3. July 21, 1999, 3:00p.m. to 8:00p.m., Atlantic, NC.
4. July 22, 1999, 3:00p.m. to 8:00p.m., Pollocksville, NC.

ADDRESSES: Address written comments to Commander, Atlantic Division, Naval Facilities Engineering Command, Attn: Mr. James Haluska (Code 2033JH), 1510 Gilbert Street, Norfolk, Virginia 23511; Fax: (757) 322–4894.

The meeting locations are:

1. Jacksonville, NC—Jacksonville City Hall, Meeting Room A, 211 Johnson Boulevard, Jacksonville, NC;
2. Havelock, NC—Havelock City Hall, 1 Hatteras Avenue, Havelock, NC;
3. Atlantic, NC—Marine Corps Outlying Landing Field Atlantic, Building 7017, Administration & Housing, Airfield Road, Atlantic, NC;
4. Pollocksville, NC—Pollocksville Elementary School, 300 Trent Street, Pollocksville, NC.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this notice may be obtained by contacting Mr. James Haluska, (757) 322–4889 or Lt. Col. Blackiston, Community Plans and Liaison Officer, MCAS Cherry Point, (919) 466–4196.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR 1500–1508), the Department of the Navy, United States Marine Corps has prepared a Draft Environmental Impact Statement (DEIS) to assess the potential environmental effects of introducing the V–22 "Osprey," a new type of tiltrotor aircraft, to the Second Marine Aircraft Wing (2d MAW) which operates from several Marine Corps air stations located along the East Coast of the United States. The DEIS has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. In addition, copies of the DEIS have been distributed to the following libraries for public review: Carteret County Public Library, 210 Turner Street, Beaufort, NC; Craven-Pamlico-Carteret Regional Library, 400 Johnson Street, New Bern, NC; Godwin Memorial Library, College Street, New Bern, NC; Havelock-Craven County Public Library, 300 Miller Boulevard, Havelock, NC; Onslow County Public Library, 58 Doris Avenue East, Jacksonville, NC; and Pamlico County Library, Bayboro, NC. A limited number of single copies of the DEIS are available upon request by contacting Mr. James Haluska at (757) 322–4889.

The introduction of the V–22 to the 2d MAW is part of a Corps-wide process of replacing two existing weapons systems, the CH–46E and CH–53D medium-lift helicopters currently used by the USMC MAWs, with a new weapon system. The USMC relies on a veteran fleet of CH–46Es and CH–53Ds for medium-lift operations, such as the delivery of troops and equipment in amphibious assault operations. These aircraft are nearing the end of their lifecycle, cannot travel great distances, and are not well equipped for night or adverse weather operations. The V–22 is capable of vertical/short takeoffs and landings, significantly greater flight distances at a faster speed, and with a greater payload than the helicopters it would replace. The proposed action, therefore, is to replace the CH–46 assets of the 2d MAW with the V–22 on a one-to-one basis. (Currently, the 2d MAW has no CH–53D assets. These are all located in MCB Hawaii.) Replacement of a weapons system such as the CH–46 involves more than just a substitution of a new system for an old one. It includes replacement or renovation of the facilities used to house and maintain the system. It also includes development within the USMC of the skills needed to employ the new weapons system during wartime.

The CH–46E aircraft are near the end of their operating life. The USMC must continue to have the capability of supporting combat forces, by lifting personnel and equipment into and out

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of confined sites quickly, at any time, under any conditions, in remote and/or hostile environments. The political conditions of the post-Cold War era have led to the realization by the DOD that future threats to American security, particularly the nation's economic health, are increasingly linked to the stability of other regions of the world. The current US defense strategy is to address sources of regional conflict and instability with a visible, forward presence, and an effective response to crises.

The Marine Corps will conduct public hearings starting Monday, July 19 to Thursday, July 22, 1999 for those individuals who would like to provide comments on the DEIS. These hearings will be open sessions and will allow individuals to review the data presented in the DEIS and at displays provided for the hearing. Department of the Navy representatives will be available during the hearing to answer questions and/or clarify information related to the DEIS and to assist those who wish to comment. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. In the interest of available time and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker will be asked to limit their comments to three (3) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed or faxed to Mr. James Haluska at the address listed in the **ADDRESSES** section of this notice. Equal weight will be given to both oral and written statements. All written comments postmarked by August 9, 1999 will become a part of the official public record and will be responded to in the Final Environmental Impact Statement.

Dated: July 1, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternote Federal Register Liaison Officer.

[FR Doc. 99–17149 Filed 7–6–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 7, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 30, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of the Magnet Schools Assistance Program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEA or LEAs.

Reporting and Recordkeeping Hour Burden:

Resondents: 2,387

Burden Hours: 1,517

Abstract: This package is to request clearance for an evaluation of the Magnet Schools Assistance Program (MSAP). The purpose is to provide information to ED and Congress about the success of the MSAP in meeting its statutory goals. The evaluation is using information reported in MSAP applications and performance indicators and gathering new data from all %& MSAP projects funded in 1998. A particular emphasis of the evaluation is the projects' progress in improving student achievement and achieving desegregation.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address vivian_reese@ed.gov or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or should be electronically mailed to the internet address jackie—montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17115 Filed 7–6–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy Efficiency and Renewable Energy; Closed-Loop Biomass Co-Firing

AGENCY: U.S. Department of Energy.

ACTION: Supplemental Announcement 13 to the Broad Based Solicitation for Financial Assistance Applications DE-PS36–99GO10383.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Closed-Loop Biomass Co-firing. Financial assistance award(s) issued under this Supplemental Announcement will be cooperative agreements.

DATES: The solicitation will be issued on or about July 6, 1999.

ADDRESSES: Copies of the Solicitation once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html.

SUPPLEMENTARY INFORMATION: DOE is soliciting Applications to develop and validate co-firing technology using a "closed-loop" feedstock supply. Respondents are encouraged to form appropriate consortia or other business arrangements with the agricultural community, industry, power producers, or other applicable organizations for the conduct of this venture. These arrangements are intended to demonstrate how cooperative efforts can lead to sustaining, economically beneficial, biomass power generation. "Closed-loop" refers to operations that specifically plant, grow, harvest, use, and regrow, at the same production site, any biomass fuel or feedstock in a sustainable, permanent manner that is in whole or in part used for an energy application. "Biomass", for the purpose of this Supplemental Announcement, means organic matter derived through the process of photosynthesis. "Co-firing", for the purpose of this Supplemental Announcement, refers to the combustion of biomass and coal, excluding lignite, for power production. Successful Applicants should demonstrate an approach to the integration and successful application of a "closed-loop" feedstock supply system and a technically viable co-firing boiler system for power production. The overall objective of selected projects is to successfully demonstrate the viability of co-firing "closed-loop" agricultural biomass as a supplemental fuel for power production. To meet this objective, successful applicants will: (1) determine the optimum parameters for low-cost, high-performance co-firing of "closed-loop" biomass fuels with coal of natural gas for power production through pilot-scale biomass co-firing tests; and (2) validate the operational viability of co-firing biomass with coal through a full-scale demonstration. Awards under this Supplemental Announcement will be Cooperative Agreements with a term of up to two years. Subject to funding availability, the total DOE funding available under this Supplemental Announcement will be approximately $1,500,000. DOE anticipates selecting one application for award under this Supplemental Announcement. A minimum cost share of 50% of total project costs is required in order to be considered for award under this Supplemental Announcement. Solicitation Number DE-PS36–99GO10383, in conjunction with this Supplemental Announcement 13, will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. Issuance of the solicitation is planned for July 6, 1999, with responses due on August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Ruth E. Adams, Contracting Officer, at 303–275–4722, e-mail ruth_adams@nrel.gov, or Robert Martin, Project Officer, at 303–275–4763, e-mail robert_martin@nrel.gov.

Issued in Golden, Colorado, on June 29, 1999.

Matthew A. Barron,

Acting, Procurement Director, GO.

[FR Doc. 99–17198 Filed 7–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy Efficiency and Renewable Energy; Co-Firing Biomass With Lignite

AGENCY: U.S. Department of Energy.

ACTION: Supplemental Announcement 14 to the Broad Based Solicitation for Financial Assistance Applications DE-PS36–99GO10383

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Co-firing Biomass with Lignite. Financial assistance award(s) issued under this Supplemental Announcement will be cooperative agreements.

DATES: The solicitation will be issued on or about July 6, 1999.

ADDRESSES: Copies of the Solicitation once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html.

SUPPLEMENTARY INFORMATION: DOE is requesting public, private, and business proponents of biomass energy to undertake cost-shared projects that demonstrate the viability of co-firing biomass with lignite coal for power production. Respondents are encouraged to form appropriate consortia or other business arrangements with biomass producers, industry, power producers, research institutions, or other applicable organizations for the conduct of this venture. These arrangements are intended to demonstrate how cooperative efforts can lead to sustaining, economically beneficial, power generation using lignite and biomass feedstock. The overall objective of selected project(s) is to successfully demonstrate the viability of co-firing biomass with lignite for power production. To meet this objective, successful applicants will: (1) Determine the optimum parameters for low-cost, high-performance co-firing of biomass with lignite through pilot-scale co-firing tests; and (2) validate the viability of co-firing biomass with lignite through a full-scale demonstration. Awards under this Supplemental Announcement will be Cooperative Agreements with a term of up to two years. Subject to funding availability, the total DOE funding available under this Supplemental Announcement will be approximately $1,000,000. DOE anticipates selecting one application for award under this Supplemental Announcement. A minimum cost share of 50% of total project costs is required in order to be considered for award under this Supplemental Announcement. Solicitation Number DE–PS36–99GO10383, in conjunction with this Supplemental Announcement 14, will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. Issuance of the solicitation is planned for July 6, 1999, with responses due on August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Ruth E. Adams, Contracting Officer, at 303–275–4722, e-mail ruth_adams@nrel.gov, or Robert Martin, Project Officer, at 303–275–4763, e-mail robert_martin@nrel.gov.

Issued in Golden, Colorado, on June 29, 1999.

Matthew A. Barron,

Acting Procurement Director, GO.

[FR Doc. 99–17199 Filed 7–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Open Meeting

AGENCY: Department of Energy.

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SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Task Force on Fusion Energy

DATES AND TIMES: Friday, July 9, 1999, 9 a.m.–11:30 a.m.

ADDRESSES: Crowne Plaza Hotel, Lafayette Park Room, 14th and K Streets, NW, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on Fusion Energy is to review the Department of Energy's plans for research and development of four fusion related technologies—pulsed-power, lasers, ion drivers, and magnetic fusion—and to provide advice to the Secretary of Energy Advisory Board on how to structure the Department's fusion *energy* programs, both inertial and magnetic. The findings and recommendation of the Task Force on Fusion Energy are to comment on the goals and objectives of the Department's fusion energy related programs, provide a critique of the current development strategies, suggest changes in the overall fusion energy roadmap, and recommended funding levels. The purpose of this meeting will be to discuss the draft findings and recommendations of the Task Force on Fusion Energy.

Tentative Agenda

Friday, July 9, 1999

9–9:10 a.m.—Opening Remarks, Introductions & Objectives—Dr. Richard Meserve, Task Force Chairman
9:10–9:30 a.m.—Overview: Draft Findings and Recommendations of the Task Force on Fusion Energy—Dr. Richard Meserve
9:30–10 a.m.—Fusion Energy Program Comments on the Draft Findings and Recommendations—Dr. N. Anne Davies, Associate Director, Office of Fusion Energy Sciences
10–10:30 a.m.—Inertial Confinement Fusion Program Comments on the Draft Findings and Recommendations—To Be Announced, Office of Defense Programs
10:30–10:45 a.m.—Break
10:45–11:30 a.m.—Public Comment Period
11:30 a.m.—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Task Force on Fusion Energy may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on July 1, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Monagement Officer.

[FR Doc. 99–17196 Filed 7–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Laboratory Operations Board.

DATES AND TIMES: Thursday, July 15, 1999, 8:30 a.m.–2:30 p.m.

ADDRESSES: Thomas Jefferson National Accelerator Facility, ARC Building Auditorium, 12000 Jefferson Avenue, Newport News, Virginia 23606.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Thursday, July 15, 1999

8:30–9 a.m.—Opening Remarks—Co-Chairs: E. Moniz & J. McTague
9–9:30 a.m.—Status Reports
9:30–10 a.m.—Report on Technology Portfolio Analysis and Roadmaps
10–10:15 a.m.—Break
10:15–11 a.m.—Presentation on the Positive Results of Performance Based Management
11–12 p.m.—Discussion of the New Field Management Structure
12–1 p.m.—Lunch Break
1–2 p.m.—Discussion of New Work Plan
2–2:30 p.m.—Public Comment Period
2:30 p.m.—Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation

The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Newport News, Virginia the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading

Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Information on the Laboratory Operations Board may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on July 1, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Monagement Officer.

[FR Doc. 99–17197 Filed 7–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–324–002]

Blue Lake Gas Storage Company; Request for Waiver

June 30, 1999.

Take notice that on June 4, 1999, Blue Lake Gas Storage Company (Blue Lake), tendered for filing a request to waiver the interactive web site requirements set forth in Commission Order Nos. 587–G and 587–I. Blue Lake states that it has only one firm customer, an affiliate, which contracts for Blue Lake's full storage capacity. According to the filing, this customer has advised Blue Lake that it has no need, now or in the future, to be able to transact business with the Blue Lake on the Internet. In the alternative, Blue Lake requests an extension of time to implement the interactive web site requirements until a Part 284 customer requests that Blue Lake offer transactions via the web site.

Blue Lake states that copies of its filing have been served upon each person designated on the official service list compiled by the Secretary of the Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17106 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–570–000]

Colorado Interstate Gas Company; Request Under Blanket Authorization

June 30, 1999.

Take notice that on June 28, 1999, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a prior notice request with the Commission in Docket No. CP99–570–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the Maximum Allowable Operating Pressure (MAOP) at an existing delivery lateral in El Paso County, Colorado, under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

CIG proposes to increase the MAOP at an existing delivery lateral used to serve the city of Colorado Springs, Colorado, from 717 psig to 820 psig. CIG states that is would also replace its North Colorado Springs lateral, a 10-inch diameter lateral approximately 2,000 feet in length, under Part 157.208 of the Commission's Regulations. CIG further states that because the lateral's age (constructed in the 1930s) and its proximity to major residential growth (Northeast Colorado Springs), plus serving as a major delivery point to the city of Colorado Springs, CIG intends to replace the lateral under the automatic provisions of its blanket certificate this summer. CIG states that the increase in the meter's MAOP would match the mainline MAOP delivering natural gas to the North Colorado Springs lateral.

Any questions regarding the application should be directed to James R. West, Manager, Certificates, at (719) 520–4679, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17104 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–54–000]

Colorado Interstate Gas Company; Filing of Refund Report

June 30, 1999.

Take notice that on June 25, 1999, Colorado Interstate Gas Company (CIG) filed a refund report pursuant to Docket No. RP92–133–001. CIG states that this filing and refund were made to comply with the Commission's Order dated August 28, 1992. Refunds were paid by CIG on June 11, 1999.

CIG states that the report summarizes refunds made by CIG to its customers for the period January 1, 1998 through December 31, 1998, pursuant to Docket No. RP92–133–001.

CIG states that copies of CIG's filing have been served on CIG's transportation customers, interested state commissions, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

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www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17110 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–53–000]

Southern Natural Gas Company; Refund Report

June 30, 1999.

Take notice that on June 25, 1999 Southern Natural Gas Company (Southern) tendered for filing a Refund Report reflecting its refund of certain amounts to its eligible firm shippers. These amounts represent a flow-through of refunds received from the Gas Research Institute (GRI).

The report states that Southern refunded $2,694,294 to its eligible shippers on June 11, 1999, which represents the amount received from GRI as required by the Commission's Order dated February 22, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17111 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–326–001]

Steuben Gas Storage Company; Request for Waiver

June 30, 1999.

Take notice that on June 4, 1999, Steuben Gas Storage Company (Steuben) tendered for filing a request to waive the interactive web site requirements set forth in Commission Order Nos. 587–G and 587–I. Steuben states that its three firm customers are all Part 157 customers, and have not expressed interest in carrying out transactions through the Internet. In the alternative, Steuben requests an extension of time to implement the interactive web site requirements until a Part 284 customer requests that Steuben offer transactions via its web site.

Steuben states that copies of its filing have been served upon each person designated on the official service list compiled by the Secretary of the Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17105 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–156–006]

Viking Gas Transmission Company; Filing

June 30, 1999.

Take notice that on June 1, 1999, Viking Gas Transmission Company (Viking) filed for an extension of implementation dates for computer-related capacity release GISB standards.

Viking requests the Commission to grant Viking an extension of time to June 1, 2000, to implement the computer-related capacity release GISB standards. Viking says it needs additional time to test and to implement its capacity release computer components. Viking further requests temporary waiver until June 1, 2000, to comply with all other computer-related GISB standards.

Any person desiring to protest said filing should file a protest with the Federal Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 8, 1999. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–17150 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–55–000]

Wyoming Interstate Company, LTD; GRI Refund Report

June 30, 1999.

Take notice that on June 25, 1999, Wyoming Interstate Company Ltd. (WIC) tendered for filing a refund report pursuant to Docket RP92–133–001. WIC states that the filing and refund were made to comply with the Commission's Order dated August 28, 1992.

On June 11, 1999, WIC states that it refunded to its transportation customers their respective share of the refunds received from GRI. WIC states that the report summarizes the refunds made by WIC to its transportation customers on June 11, 1999.

WIC states that copies of the filing have been served upon WIC's transportation customers, interested state commissions and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 8, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17109 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions to Intervene and Protests

June 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11666–000.

c. Date filed: January 27, 1999.

d. Applicant: Aces Wild Farm.

e. Name of Project: Wright Forge Pond Project.

f. Location: On the Winnetuxet River, near the Town of Pympton, Plymouth County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms. Patricia Altaffer-Pina, Aces Wild Farm, 59 Parsonage Road, Plympton, Massachusetts 02367, (781) 585–3243.

i. FERC Contact: Michael Spencer, Michael. Spencer@FERC.fed.us, (202) 219–2846.

j. Deadline for filing motions to intervene and protest: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be field with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of the following: (1) an existing 10-food-high, 150-foot-long rockfill dam; (2) a pond with a surface area of 7 acres and a gross storage of 1.9 million cubic feet; (3) an 18-inch-diameter, 12-foot-long penstock; (4) a powerhouse containing two generating units with a combined capacity of 5,000 kW and an estimated average annual generation of 26 GWh; (5) a concrete pad tailrace from the powerhouse to the Winnetuxet River; and (6) a 400-foot-long transmission line. The dam is owned by the Town of Plympton, at address P.O. Box 97 Plympton, MA 02367.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in the item h above.

Prelimianry Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional

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copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17107 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

June 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: P–2588–004.

c. Date filed: July 10, 1998.

d. Applicant: City of Kaukauna.

e. Name of Project: Little Chute Hydroelectric Project.

f. Location: On the Fox River in the Village of Combined Locks, Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Peter D. Prast, P.E. General Manager, Kaukauna Electric & Water Department, 777 Island Street, P.O. Box 1777, Kaukauna, Wisconsin 54130.

i. FERC Contact: Any questions on this notice should be addressed to Steve Kartalia, E-mail address stephen.kartalia@ferc.fed.us, or telephone (202) 219–2942.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time. Scoping meetings and a site visit were held on May 26, 1999. Representatives of the Wisconsin Department of Natural Resources (WDNR) and the U.S. Fish and Wildlife Service (FWS) attended the site visit and the daytime meeting. The WDNR indicated that its water quality certificate, issued October 29, 1998, adequately addresses WDNR concerns. The FWS stated that the comments made in its November 28, 1997 letter, are still applicable. No one attended the evening meeting. At the meetings, no additional issues or alternatives were identified beyond those summarized in our Scoping Document 1 and no written comments were received prior to the deadline for submitting scoping comments; therefore, a second scoping document has not been prepared.

l. Description of Project: The project consists of the following existing facilities: (1) an integral intake powerhouse, located at the right abutment of the United States Army Corps of Engineers' Little Chute Dam, containing three units with a total installed capacity of 3,300 kW; (2) connections to three 2.4/12-kV single phase transformers and a 12-kV transmission line 1.25 miles long; and (3) other appurtenances.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see order No. 533 issued May 8, 1999, 56 FR 23108, May 20, 1991) that all comments recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17108 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–1–001]

Public Access to Information and Electronic Filing; Comment Period on Staff Issue Paper on Electronic Filing

June 30, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of comment period on staff issue paper on electronic filing.

SUMMARY: The Federal Energy Regulatory Commission Staff (Staff) held a technical conference on electronic filings on June 24, 1999. Prior to the conference, Staff posted on its web site an issue paper containing Staff's analysis and preliminary recommendation on various electronic filing issues. At the conference, Staff stated that additional comments on the issue paper may be filed on or before July 15, 1999. This notice provides interested persons with an opportunity to file these comments.

DATES: Comments must be filed by close of business on July 15, 1999.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 42–29, Washington, D.C. 20426, (202) 501–8145, FAX: (202) 208–2425, E–Mail: brooks.carter@ferc.fed.us.

Wilbur Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 91–17, Washington, D.C. 20426, (202) 208–0953.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be assessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management Systems (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981, Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's. Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect may be purchased from the Commission's copy contractor, RVJ International, RVJ International, Inc., is located in the Public Reference Room 888 First Street, N.E., Washington, DC 20426.

DEPARTMENT OF ENERGY

Notice of Comment Period on Staff Issue Paper on Electronic Filing

Take notice that the Federal Energy Regulatory Commission (Commission) will allow comments to be filed on a staff issue paper on electronic filing issues on or before July 15, 1999. Staff posted the issue paper on the Commission's web site 10 days in advance of the Commission's June 24, 1999, Technical Conference on electronic filing. Staff announced at the conference that it would allow comments to be filed on the issue paper and is herein providing formal notice that any person interested in this docket may file comments, regardless of whether they participated in the technical conference.

The issue paper contains Staff's analyses and preliminary recommendations for major electronic filing issues, including:

(1) Filing Formats
(2) Citation
(3) Record Retention
(4) Official Filing Date
(5) Electronic Filing Authentication and Verification (Signatures)
(6) Document Content Standards (for Electronic Submissions)
(7) Electronic Filing Phase 1 Profile

The recommendations are Staff's preliminary recommendations and do not constitute a proposal by the Commission. These preliminary recommendations are based in part on an analysis of comments received in response to a request for comments issued in Docket No. PL98–1–000 on May 13, 1998. They are available on the Commission's web site (http://www.ferc.fed.us/efi/efi.htm). Through this link, interested persons can access all information pertinent to Docket No. PL98–1, including comments and materials from all previous technical conferences.

At the conference, Staff also demonstrated prototype screens for electronic filing. Interested persons may access the prototype at *http://itdevl.ferc.fed.us/*. There is a message board where interested persons can post comments on the prototype, including any suggested changes. Comments posted on the message board are viewable by anyone accessing the system. It is not necessary to formally submit message board comments to the Commission unless you want your comments included in the formal record of this proceeding.

Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues referenced in this notice, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. on July 15, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 and should refer to Docket No. PL98–1–001.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. PL98–1–001; the name of the filing entry; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submission, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. PL98–1–001. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgement to the sender's E-Mail address upon

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receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address *brooks.carter@ferc.fed.us.*

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE., Washington, D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Home Page using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17112 Filed 7–6–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6367–6]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer to its contractors, ERG, Inc. and Science Applications International Corporation (SAIC) Confidential Business Information (CBI) that has been or will be submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than July 19, 1999.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract No. 68–C5–0032, ERG., Inc. will support the Office of Water in developing and effluent guidelines rule for industrial laundries. As part of this effort, the contractor ERG., Inc. has conducted numerous site visits at industrial laundries, and implemented a national survey dealing with the demographics of materials handled by industrial laundries, including their major customers, the types and volumes of materials they launder, the technologies used to launder the incoming materials, and the concentration and volumes of discharges to the air, surface waters and landfills. Also, associated with this effort has been the development of economic and environmental impacts for this industry.

Similarly, under EPA Contract 68–W–98–025, SAIC, Inc. will support the Office of Solid Waste in developing a proposed rule for solvent-contaminated shop towels, wipes and rags that could affect an impact both generation facilities, such as printers and furniture manufacturers, and industrial laundries. As part of this effort, supporting data will be provided by the Office of Water and their contractor.

The industrial laundry industry is quiet sensitive to having EPA reveal facility specific information that could jeopardize their competitive position. As a result, a considerable amount of facilities where site visits were conducted claimed CBI. The purpose of our visits is to better understand the relationship between the types and quantities of sludges generated by an industrial laundry as a function of (1) Incoming materials, particularly solvent-contaminated shop towels, and (2) the types of technologies industrial laundries might use to either remove RCRA hazardous solvents prior to the laundering process, such as centrifuges or hydraulic presses, or other technologies a laundry might employ to treat hazardous solvents during the laundering process, such as steam stripping. Therefore, RCRA CBI may be claimed by an industrial laundry facility because we are collecting data associated with the above, including performance and cost data associated with pretreatment and treatment technologies, and sludge characterization data.

In accordance with 40 CFR 2.305(h) (see 42 U.S.C. 6927(b)), EPA has determined that ERG, Inc. and SAIC, Inc. require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing its review of materials submitted, ERG. Inc. and SAIC, Inc. will return all CBI to EPA.

EPA will authorize ERG, Inc. and SAIC, Inc. access to RCRA CBI under the conditions and terms in EPA's "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." Prior to transferring CBI to ERG, Inc. and SAIC, Inc. EPA will review and approve its security plans and ERG, Inc. and SAIC, Inc. will sign non-disclosure agreements.

Dated: June 30, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–17201 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6372–1]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The EPA has made a proposed determination that reductions in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in Diamond Bar, California are a result of non-selective reductions in expenditures. This determination, when final, will permit the SCAQMD to be awarded financial assistance for FY–99 by EPA, under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by August 6, 1999.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Valerie Cooper, Grants and Program Integration Office (Air–8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: Valerie Cooper, Grants and Program Integration Office (Air–8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1237.

SUPPLEMENTARY INFORMATION: Under the authority of section 105 of the CAA, EPA provides financial assistance (grants) to the SCAQMD, whose jurisdiction includes Los Angeles and Orange Counties in southern California, to aid in the operation of its air pollution control programs. In FY–98, EPA awarded the SCAQMD $4,784,837, which represented approximately 6.7% of the SCAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–99 section 105 grant application the SCAQMD projected MOE of $62,073,222. This amount represents a shortfall of $6,707,597 from the actual FY–98 MOE of $68,780,819. In order for the SCAQMD to be eligible to be awarded its FY–99 grant, EPA must make a determination under section 105(c)(2).

The SCAQMD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the "unit of Government" for section 105(c)(2) purposes. The SCAQMD submitted documentation to EPA which shows that over the last six years emission reductions brought on by a combination of regulated and voluntary emission reductions and actions to minimize fee increases on businesses have reduced fee revenues from stationary sources from a high of $66,914,362 in 1991–1992 to approximately $51,750,000 in 1998–1999. As a result, the SCAQMD has instituted hiring/salary freezes, furloughs, and layoffs, has reduced its equipment purchases and contract expenditures, and has instituted new programs to reduce costs such as permit streamlining, computer-assisted permit processing, and privatization efforts.

Therefore, the SCAQMD's MOE reduction resulted from a loss of fee revenues due to circumstances beyond its control. EPA proposes to determine that the SCAQMD's lower FY–99 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SCAQMD to be awarded financial assistance for FY–99.

This document constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by August 6, 1999 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by August 6, 1999. If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Valerie Cooper at the above address.

Dated: June 28, 1999.

Kenneth Bigos,

Acting Director, Air Division, Region 9.

[FR Doc. 99–17208 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34142A; FRL–6091–2]

Organophosphate Pesticide: Cadusafos; Availability of Revised Risk Assessment and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessment and related documents for one organophosphate pesticide, cadusafos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34142A, must be received by EPA on or before September 7, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34142A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply To Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessment and submitting risk management comments on cadusafos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies Of This Document Or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain

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electronic copies of the revised risk assessment and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34142A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

III. How Can I Respond To This Action?

A. How And To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–34142A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. PIRIB is open 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34142A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To The Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action Is EPA Taking In This Notice?

EPA is making available for public viewing the revised risk assessment and related documents for one organophosphate, cadusafos. These documents have been developed as part of the pilot public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the cadusafos preliminary risk assessment, which where released to the public on September 9, 1998 (63 FR 48213) (FRL–6030–2), through a notice in the **Federal Register**.

As part of the pilot public participation process, EPA and USDA may hold public meetings (called Technical Briefings) to provide interested stakeholders with opportunities to become more informed about revised organophosphate risk assessment. During the Technical Briefings, EPA describes the major points (e.g. risk contributors), use data that were used (e.g. data from USDA's Pesticide Data Program (PDP)), and discusses how public comments impacted the assessment. USDA provides ideas on possible risk management. Stakeholders have an opportunity to ask clarifying questions, and all meeting minutes are placed in the OPP public docket. Technical Briefings may not be held for chemicals that have limited use patterns or low levels of risk concern. Cadusafos is not registered for use in the United States, and it's use pattern is limited to an import tolerance on bananas. Therefore, no Technical Briefing is planned. In cases where no Technical Briefing is held, the Agency will make a special effort to communicate with interested stakeholders in order to better ensure their understanding of the revised assessment and how they can participate in the organophosphate pilot public participation process. EPA has a good familiarity with the stakeholder groups associated with the use of cadusafos who may be interested in participating in the risk assessment/risk management process, and will contact them individually to inform them that no Technical Briefing will be held. EPA is willing to meet with stakeholders to discuss the cadusafos revised risk assessment. Minutes of all meetings will be docketed.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for cadusafos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before September 7, 1999 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 30, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–17213 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6373–6]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of one hundred and sixty-eight (168) *de minimis* parties for response costs incurred and to be incurred at the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

DATES: Comments must be provided on or before August 6, 1999.

ADDRESS: Comments should be addressed to Suzanne Canning, Docket Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, and should refer to the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Michael H. Frankel (3RC41), 215/814–2665, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

SUPPLEMENTARY INFORMATION: Notice of *de minimis* Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 122(i)(1), notice is hereby given of a proposed administrative settlement concerning the Malvern TCE Superfund Site, in East Whiteland Chester County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice. This agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee. A list of the parties who have executed binding certifications of their consent to participate in this settlement is available from U.S. EPA at the address listed above.

The one hundred and sixty-eight (168) settling parties collectively have agreed to pay $3,774,954.00 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Monies collected from the *de minimis* parties will be applied towards past and future response costs incurred by EPA or PRPs performing work at or in connection with the Site. The settlement includes a 50% premium to cover the risk of cost overruns or increased costs to address conditions at the Site previously unknown to EPA but discovered after the effective date of the Consent Order.

EPA is entering into this agreement under the authority of Sections 107 and 122(g) of CERCLA, 42 U.S.C. 9607 and 9622(g). Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with potentially responsible parties in connection with the Malvern TCE Superfund Site, each of whom is responsible for .75 percent or less of the volume of hazardous substance sent to the Site.

EPA issued a draft settlement proposal to the *de minimis* parties on December 16, 1998, and invited comments and challenges to the volumetric ranking. By April 5, 1999, the *de minimis* parties submitted executed certifications to the draft settlement proposal.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from Michael H. Frankel, U.S. Environmental Protection Agency, Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, Pennsylvania, 19103 or by contacting Michael H. Frankel at (215) 814–2665.

Dated: June 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 99–17211 Filed 7–6–99; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

The Drug Free Communities Advisory Commission: Meeting

SUMMARY: In accordance with the Drug-Free Communities Act, a meeting of the Drug Free Communities Advisory Commission will be held on July 20, 1999 in the 5th floor conference room of the Office of National Drug Control Policy, located at 750 17th Street NW. Washington, DC 20530. The meeting will commence at 8:30 am, break for lunch at 12:00 pm and resume at 1:15 pm for the afternoon session, ending at 5:00 pm. The agenda will include a discussion on grantee activities, status of grant awards, the status of training and technical assistance and an update on program evaluation and promoting coalitions. There will be an opportunity for public comment from 2:30 pm until 3:00 pm.

FOR FURTHER INFORMATION: Please direct any questions to Edward Jurith, General Counsel, (202) 395–6709, Office of National Drug Policy, Executive Office of the President, Washington, DC 20503.

Signed at Washington, DC this 30th day of June, 1999.

Edward H. Jurith,

General Counsel.

[FR Doc. 99–17118 Filed 7–6–99; 8:45 am]

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FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 8, 1999, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—June 10, 1999 (Open and Closed)

B. New Business

Regulations

1. Release of Information [12 CFR Part 602]

2. Response to Regulatory Burden [12 CFR Parts 612, 614, and 618]

3. Loan Policies and Operations; Participations [12 CFR Part 614]

Other

—Pacific Coast ACA Reorganization Request

***Closed Session**

A. Report.

—OSMO Report.

Dated: July 1, 1999.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[FR Doc. 99–17256 Filed 7–1–99; 4:38 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 28, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 7, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0703.

Title: FCC Form 1205 Determining Costs of Regulated Cable Equipment and Installation.

Form Number: FCC form 1205.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; state, local and tribal governments.

Number of Respondents: 4,000.

Estimated Time Per Response: 4–12 hours.

Frequency of Response: Recordkeeping requirement; on occasion filing requirement.

Total Annual Burden: 50,800 hours.

Total Annual Costs: $906,000.

Needs and Uses: Information derived from FCC Form 1205 filings is used to facilitate the review of equipment and installation rates. This information is then reviewed by each cable system's respective local franchising authority. Section 76.923 records are kept by cable operators in order to demonstrate that charges for the sale and lease of equipment and for installation have been developed in accordance with the Commission's rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17140 Filed 7–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 29, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 7,

1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0648.

Title: Section 21.902 Frequency interference.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1824.

Estimated Time Per Response: 1.25 hours to 4.25 hours.

Frequency of Response: Third party disclosure; reporting, on occasion.

Total Annual Burden: 456.25 hours.

Total Annual Costs: $491,250.

Needs and Uses: Section 21.902(b)(5) requires that respondents engineer the MDS station to limit the calculated free space power flux density at the boundary of the protected service area (PSA). As an alternative, the respondent may obtain the written consent of the entity authorized for the adjoining area when the calculated free space power flux density exceeds the standard. Section 21.902(g)(2) requires applicants with 35 mile PSA to notify in writing the holders of authorizations for adjoining basic trading areas (BTA) or PSAs of application filings for modified station licenses, provided the proposed facility would produce an unobstructed signal path to any location within the adjoining BTA or PSA. This service must include a copy of the application and occur on or before the date the application is filed with the Commission. Section 21.902(i) requires each applicant for a new station or modified MDS station, or amendment thereof, to provide notice of its application to cochannel and adjacent-channel authorized ITFS stations within 50 miles. The ITFS study must be prepared and served on the affected ITFS station, but is not required to be filed as part of the MDS application. Each applicant is required to file a written notice with the Commission before the 30th day after the applicant or amendment is initially filed with the Commission. This notice must contain the items specified in Section 21.902(i)(4).

Section 21.902(i)(6) requires that a petition to deny filed by an ITFS licensees contain specific information. The requirements contained in Section 21.902(c), (f), (g), (j) and (k) have OMB approval under separate control numbers. The data are used to ensure that no harmful interference is caused to other authorized stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17141 Filed 7–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 29, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 7, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0543.

Title: Section 21.913 Signal booster stations.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 250.

Estimated Time Per Response: 0.5 hours per written consent; 2.5 hours per certification. This includes 0.5 hours for the licensee to convey its desire to install a low power booster station and 2 hours for a consulting engineer to prepare the certification.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 125.

Total Annual Cost: $90,000.

Needs and Uses: Section 21.913(e) requires that each applicant for an MDS signal booster station obtain written permission from the licensee of each MDS, ITFS and OFS station whose signal is retransmitted. Section 21.913(g) permits an MDS or ITFS licensee to install and commence operation of low power signal booster stations without a formal application. Licensees seeking to install a low power signal booster station must, however, submit a certification demonstrating compliance with the various components of Sections 21.913(g). This certification must be submitted within 48 hours of installation of the booster station. The written consent statements are attached to the FCC 304 and are used by FCC staff in the processing of the application to verify that the applicant has permission to retransmit the signal of other licensees' stations. The certification data are used by FCC staff to verify that the licensee has complied with guidelines to use the certification process and that the booster would not cause objectionable interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17142 Filed 7–6–99; 8:45 am]

BILLING CODE 6712–01–P

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 29, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0532.

Title: Scanning Receiver Compliance Exhibit (Sections 2.1033(b)(11)) and 15.121).

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households, Not-for-profit institutions; Business or other for-profit entities; and State, Local or Tribal Government.

Number of Respondents: 40.

Estimated time per response: 1 hour (avg.).

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 40.

Total Annual Cost: $2,000.

Needs and Uses: The collection of information contained in Part 2 are made necessary by revision of Section 2.1033(b)(11) of the Commission Rules governing regulations for scanning receivers. The Commission will require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning, control and filtering circuitry are inaccessible, and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. In addition, the Commission will require that the manufacturer submit information with any application for certification that: describes the testing method used to determine compliance with the 38 dB image rejection ratio, contains a statement assessing the vulnerability of the scanning receiver to modification, describes the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and describes the design steps taken to make tuning, control and filtering circuitry inaccessible. Moreover, the Commission will require that a label be affixed to the scanning receiver, similar to the following:

WARNING: MODIFICATION OF THIS DEVICE TO RECEIVE CELLULAR RADIOTELEPHONE SERVICE SIGNALS IS PROHIBITED UNDER FCC RULES AND FEDERAL LAW.

OMB Control Number: 3060–0878.

Title: Wireless E911 Rule Waivers For Handset-Based Approaches to Phase II Automatic Location Identification (ALI) Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and State, Local, or Tribal Government.

Number of Respondents: 50.

Estimated Time per Response: 40 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,000 hours.

Total Annual Cost: None.

Needs and Uses: The information filed as part of a petition for waiver will be used to ensure timely compliance with the Commission's E911 regulations, provide the Commission with current information on the status of ALI technology, and thus ensure the dependability and responsiveness of critical E911 services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17139 Filed 7–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee

June 28, 1999.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Technological Advisory Council (TAC) was established to provide technical advice to the Federal Communications Commission (FCC) and to make recommendations on the issues and questions presented to it by the FCC. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons that the charter for the Technological Advisory Council (TAC) has been amended to reflect minor changes in phrasing and a minor change in the original charter filing date from November 30, 1998 to December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Stagg Newman, Designated Federal Officer of the Technological Advisory Council, 445 12th St. S.W., Room 7-A325, Washington, D.C. 20554; telephone (202) 418–2046. Press Contact, Audrey Spivak, Office of Public Affairs, 202–418–0512, aspivak@fcc.gov.

SUPPLEMENTARY INFORMATION:

Technological Advisory Council Charter

A. The Committee's Official Designation

The official designation of this federal advisory committee is the "Technological Advisory Council" ("TAC").

B. The Committee's Objective and Scope of its Activity

Rapid advances in technology have resulted in innovations in how telecommunications services are provided to, and are accessed by, users of those services. Many of these advances are increasing the rate of convergence among categories of services that have traditionally been viewed as distinct, such as cable television services, telephony, data services, and Internet services. Regulations must be examined in light of these technology advances, and the Federal Communications Commission ("FCC") must remain abreast of new developments in technology so that it can effectively fulfill its responsibilities under the Communications Act. The purpose of the TAC is to provide technical advice to the Federal Communications Commission and to make recommendations on the issues and questions presented to it by the FCC. The TAC will address questions referred to it by the FCC Chairman, or by the FCC Chief Technologist or Chief Engineer. The questions referred to the TAC will be directed to technological and technical issues in the field of communications.

C. Period of Time Necessary for the Committee to Carry Out its Purpose

Initially, the TAC shall convene for a period that terminates two (2) years from the date on which the charter was filed. Not later than eighteen (18) months from the original date of filing of this Charter, the TAC shall report as to whether this Charter should be renewed and, if so, the period of time for which such a renewal should be granted.

D. Official to Whom the Committee Reports

Chairman, Federal Communications Commission.

E. Agency Responsible for Providing Necessary Support

The Federal Communications Commission will provide the facilities and staff support necessary to conduct meetings in Washington, D.C. Private sector members of the committee will serve without any government compensation, and will not be entitled to travel expenses, per diem or subsistence allowances.

F. Description of the Duties for Which the Committee is Responsible

The duties of the TAC will be to gather data and information and perform those analyses that are necessary to respond to the questions referred to it. In addition, as noted above, not later than six (6) months prior to the termination of this Charter, the Council shall provide a recommendation as to whether the Council's charter should be renewed and, if so, for what period.

G. Estimated Annual Operating Costs in Dollars and Staff Years

Annual operating costs associated with supporting the TAC's functions are estimated to be $100,000 and one full-time regular government employee.

H. Estimated Number and Frequency of Committee Meetings

The Council will meet two to three times per year, with the possibility of more frequent meetings by informal subcommittees.

I. Committee's Termination Date

The Council will terminate two years from the date on which this charter was filed, unless renewed before that date for an additional term.

J. Membership

Members will be selected to balance the expertise and viewpoints that are necessary to address effectively the new technology issues that will be referred to the TAC. Members will be recognized experts in their fields and, for private sector companies, individuals who hold technical executive positions such as Chief Technical Officer or Senior Technical Manager.

Members should be prepared to attend two to three meetings per year in Washington D.C. and are responsible for all associated expenses. The TAC will maintain a website and members are expected to be able to devote some time each week to electronic deliberations. As members of a collegial federal advisory committee, members should be prepared for vigorous debate with their peers on TAC as well as with FCC Commissioners and staff.

Members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities who are, or will, be regulated by or who have interests before the FCC.

K. Date Original Charter Filed

December 11, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17232 Filed 7–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 20, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Dominick Louis DeNaples, Dunmore, Pennsylvania, and Louis Anthony DeNaples, Moscow, Pennsylvania; both to acquire voting shares of First National Community Bancorp, Inc., Dunmore, Pennsylvania, and thereby indirectly acquire voting shares of First National Community Bank, Dunmore, Pennsylvania.

Board of Governors of the Federal Reserve System, June 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17128 Filed 7–6–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

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standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Premier Bancshares, Inc., Atlanta, Georgia; to acquire 100 percent of the voting shares of Bank Atlanta, Decatur, Georgia.

Board of Governors of the Federal Reserve System, June 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17129 Filed 7–6–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 20, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Doral Financial Corporation, San Juan, Puerto Rico; to engage *de novo* through its subsidiary, Doral Bank, FSB, New York, New York, in the operation of a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than July 30, 1999.

2. National Westminster Bank Plc, London, England; to engage *de novo* through its subsidiary, Greenwich Capital Markets, Inc., Greenwich, Connecticut, in underwriting and dealing to a limited extent in all types of debt securities, see *J.P. Morgan & Co., Incorporated*, 75 Fed. Res. Bull. 192 (1989).

Board of Governors of the Federal Reserve System, June 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17130 Filed 7–6–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request Entitled American Customer Satisfaction Index Under Emergency Review by the Office of Management and Budget (OMB)

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for approval of a new information collection entitled American Customer Satisfaction Index.

SUMMARY: The General Services Administration has submitted an emergency processing information collection request to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). OMB approval has been requested by July 6, 1999. The proposed information collection activity is designed to support the customer satisfaction policies outlined in Executive Order 12862, "Setting Customer Service Standards", and to establish a means to consistently measure and compare customer satisfaction among high-impact agencies within the Executive Branch. GSA serves as the Executive Agent for this initiative and has selected the American Customer Satisfaction Index (ACSI) through a competitive procurement process as the vehicle for obtaining the required information. The ACSI is a cross-industry, cross-agency methodology for obtaining comparable measures of customer satisfaction. Along with other economic objectives—such as employment and growth—the quality of output (goods and services) is a part of living standards. Like other objectives, it is subjected to systematic and uniform measurement.

DATES: Submit comments on or before September 7, 1999.

ADDRESSES: Comments concerning this notice should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and may also be submitted to James L. Dean, Director, Committee Management Secretariat, Room 5228, 1800 F Street, NW, Washington, DC 20405, or e-mail to James.Dean@gsa.gov.

FOR FURTHER INFORMATION CONTACT: James Dean, Director, Committee Management Secretariat, General Services Administration at (202)273–3563, or by e-mail to James.Dean@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this Notice is to consult with and solicit comments from the public and affected agencies concerning the proposed collection of information under the ACSI to help improve the quality of goods and services available to the American people.

B. Annual Reporting Burden

Respondents: 8,060; annual responses: 8,060; average hours per response: .17; burden hours; 2,284.

Copy of Proposal

A copy of this proposal may be obtained by contacting James Dean at the above address.

Dated: June 30, 1999.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–17158 Filed 7–6–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain

a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. HHS Acquisition Regulations—HHSAR Part 352 Solicitation Provisions and Contract Clauses—0990–0130—Extension—The Key Personnel clause in HHSAR 352.27–5 requires contractors to obtain approval before substituting key personnel which are specified in the contract. Respondents: State or local governments, Businesses or other for-profit, non-profit institutions, Small businesses; Total Number of Respondents: 1921; Frequency of Response: one time; Average Burden per Response: 2 hours; Estimated Annual Burden: 3842 hours.

2. HHS Acquisition Regulations HHSAR Part 370 Special Programs Affecting Acquisitions—0990–0129—Extension—HHSAR Part 370 establishes requirements for the accessibility of meetings, conferences, and seminars to persons with disabilities; establishes requirements for Indian Preference in employment, training and subcontracting opportunities. Respondents: State or local governments, Businesses or other for-profit, non-profit institutions, Small businesses; Burden Information about Accessibility of Meetings—Annual Number of Respondents: 335; Annual Frequency of Response: one time; Average Burden per Response: 10 hours; Total Annual Burden: 3,350 hours—Burden Information about Indian Preference—Annual Number of Respondents: 932; Annual Frequency of Response: one time; Average Burden per Response: 8 hours; Total Annual Burden: 7,456—Total Burden: 10,806 hours.

3. Application for Waiver of the Two-year Foreign Residence Requirement of the Exchange Visitor Program—0990–0001—Extenstion—The application is used by institutions (colleges, hospitals, etc.) to request a favorable recommendation to the USIA for waiver of the two-year Foreign Residence Requirement of the Exchange Visitor Program on behalf of foreign visitors working in areas of interest to HHS. Respondents: Individuals, State or local governments, Businesses or other for-profit, non-profit institutions; Total Number of Respondents: 200; Frequency of Response: one time; Average Burden per Response: 6 hours; Estimated Annual Burden: 1200 hours.

4. Recordkeeping Requirements for Government Owned/Contractor Held Property and Report of Accounting Personal Property (HHS–565)—0990–0015—Extension—The recordkeeping requirements are needed to assure accountability and control for government owned/contractor held property for HHS contracts. Form 565 is used to report all accountable personal property purchased or fabricated by contractors and billed to HHS. Respondents: state or local governments, business or other for-profit, non-profit institutions, small business; Burden Information for Form HHS–565: Annual Number of Respondents: 3,600; Annual Frequency of Response: one time; Average Burden per Response: 30 minutes; Total Annual Burden: 1,800 hours. Burden Information for Recordkeeping Requirements: Annual Number of Responses: 4,500; Average Burden per Response: 30 minutes; Total Annual Burden: 2250 hours. Total Burden: 4050 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201. Written comments should be received within 60 days of this notice.

Dated: June 30, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–17100 Filed 7–6–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Assistant Secretary for Planning and Evaluation; Cooperative Agreement With the National Campaign to Prevent Teen Pregnancy

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces that it will award a sole source cooperative agreement to the National Campaign to Prevent Teen Pregnancy (the National Campaign).

The purpose of this cooperative agreement is to assist, collaboratively with the National Campaign in the development of a teen pregnancy prevention technical assistance guide for states and local communities. This agreement will also assist in supporting a series of technical assistance meetings aimed at teaching state and community representatives how best to use the guide.

Authorizing Legislation

This cooperative agreement is authorized under Section 241 of the Public Health Service Act.

Background

Assistance will be provided to the National Campaign to Prevent Teen Pregnancy. No other applications are solicited. ASPE is responsible for coordinating the Department's National Strategy to Prevent Teen Pregnancy. In this role, ASPE convenes and chairs an interdepartmental workgroup on teen pregnancy prevention and completes a yearly Report to Congress on the progress of the National Strategy. ASPE believes that the Campaign is uniquely qualified to work with ASPE to develop teen pregnancy prevention technical assistance for the following reasons:

1. The National Campaign to Prevent Teen Pregnancy is a nonpartisan organization dedicated to integrating a broad spectrum of perspectives in addressing the issue of teen pregnancy prevention. The National Campaign was initiated in 1996 as a result of President Clinton's challenge that "parents and leaders across the country join together in a national campaign against teen pregnancy to make a difference." In response to the President's call, a group of private citizens created the National Campaign, a nonprofit effort led by a distinguished board. The National Campaign's work is conducted through four task forces and a small staff. The task forces are comprised of experts in a wide variety of fields related to teen pregnancy prevention. The mission of the National Campaign is to prevent teen pregnancy by supporting values and stimulating actions that are consistent with a pregnancy-free adolescence. Its chief goal is to reduce the teenage pregnancy rate by one-third by the year 2005.

2. The National Campaign staff has been working with states and local communities over the last three years. In the course of their work in states, and during daily phone calls they receive in their Washington office. Staff has fielded hundreds of requests for technical assistance. This has led the National Campaign to identify the need for a "tool kit" to support the implementation of successful teen pregnancy prevention programs. Staff used the questions most often asked by

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grass-roots leaders to guide the choice of topics for this tool kit.

3. The Campaign's Research and Evaluation Task Force is uniquely positioned to provide the best research-based information available on teen pregnancy prevention strategies. The Campaign's State and Local Action Task Force has a unique ability to test the materials for the user-friendliness and applicability at the grassroots level. The State and Local Action Task force will also be highly instrumental in the dissemination of the tool kit.

Approximately $115,000 is available fiscal year 1999 for this cooperative agreement.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Mrs. Sonia Chessen, ASPE, U.S. DHHS, 200 Independence Avenue, SW. Room 450–G. Washington, DC 20201 or telephone (202) 690–8471.

Dated: June 25, 1999.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–17099 Filed 7–6–99; 8:45 am]

BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Center for Short-Term Policy Research on Welfare Outcome (ASPE); Notice Applications for Short-Term Policy Research, Correction

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE), Office of the Secretary (OS), HHS.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of June 11, 1999, the Office of the Assistant Secretary for Planning and Evaluation (ASPE) announced the availability of funds and invited applications for short-term policy research. The document contained an incorrect web site reference, an ambiguous statement regarding the purpose of the grants, and contradictory information on the length of application.

FOR FURTHER INFORMATION CONTACT: Audrey Mirsky-Ashby, 202–401–6640.

Correction

In the **Federal Register** issue of June 11, 1999, in FR Doc. 99–14795 on page 31587 in the second column, correct the first sentence of the second paragraph under **Mailing address** to read:

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web page: *http://aspe.hhs.gov* (see section on available grants and contracts).

On page 31588, correct the second sentence under Part II, Purpose and Responsibilities to read:

These grants are meant to supplement the variety of other welfare reform outcomes research that ASPE has previously funded, including the welfare leavers grants that were previously funded (see the web site at http://aspe.os.dhhs.gov/hsp/isp/98grants.htm for a description of these grants).

On page 31591, in the first column, correct the first sentence of the Length of Application section to read:

In no case shall an application for the ASPE grant (excluding the resumes, appendices and other appropriate attachments) be longer than twenty-five single-spaced pages.

On page 31591, correct the first part of item number 8 in the last column to read:

Project Narrative Statement, organized in five sections, addressing the following topics (limited to twenty-five (25) single spaced pages):

Dated: June 29, 1999.

Ann M. Segal,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–17163 Filed 7–6–99; 8:45 am]

BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Hanford Health Projects Inter-Tribal Council; Public Meeting

Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee.

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9 a.m.–4:30 p.m., July 21, 1999.

Place: DoubleTree Hotel Spokane City Center, North 322 Spokane Falls Court, Spokane, Washington 99201, telephone 509/455–6285.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105. 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including a presentation and discussion on the DOE Richland Indian Office, Columbia River Pathways study, update on tribal cooperative agreements, and agency updates.

Matters to be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include updating tribal members of the cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Leslie C. Campbell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR (28737), fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–17148 Filed 7–6–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Using Genetic Information to Prevent Disease and Improve Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

NAME: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Using Genetic Information to Prevent Disease and Improve Health, Program Announcement #99117, meeting.

TIMES AND DATES: 5–5:45 p.m., July 19, 1999 (Open), 5:45–9 p.m., July 19, 1999 (Closed), 9 a.m.–4 p.m., July 20, 1999 (Closed).

PLACE: Marriott Courtyard, 1236 Executive Park Drive, Atlanta, GA. Telephone 404/728–0708.

STATUS: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

MATTERS TO BE DISCUSSED: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99117.

Due to administrative delays, this notice is published less than fifteen days prior to the meeting.

CONTACT PERSON FOR MORE INFORMATION: Marta Gwinn, M.D., M.P.H., CDC, Office of Genetics and Disease Prevention, 4770 Buford Hwy., m/s K28, Atlanta, Ga. 30341–3724. Telephone 770/488–3235, e-mail mlg1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 30, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–17272 Filed 7–2–99; 11:41 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting

Name: Progress and Proposed Future Activities of the NIOSH Childhood Agricultural Injury Prevention Initiative—Public meeting.

Time and Date: 10 a.m.–4 p.m., September 22, 1999.

Place: Hyatt Regency Washington, One Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC 20001, telephone 202/737–1234.

Status: Open to the public, limited by space available. The meeting room accommodates approximately 50 people.

Purpose: The purpose of the meeting is to seek public comments on the progress and proposed future activities of the Childhood Agricultural Injury Prevention Initiative implemented by NIOSH in October 1996.

The problem of children being injured while living, working, or visiting agricultural work environments (primarily farms) has been recognized for several decades. The most recent data suggest about 100 youths under the age of 20 die on farms each year and more than 100,000 farm-related injuries occur to the same age group. Many individuals and groups have advocated for the prevention of agricultural injuries inflicted upon youths, and media attention has been generated on the issue, but until recently a national coordinated effort to address the problem has not existed. In late 1994, a core of 42 individuals from both the public and private sectors formed the National Committee for Childhood Agricultural Injury Prevention (NCCAIP). The Committee had broad stakeholder representation, including researchers, farmers, agricultural groups, safety and health professionals, and government officials. Over a 16-month period, the members of the committee reviewed relevant information from previous reports, developed new recommendations based on current injury data along with other scientific evidence, and refined and prioritized recommendations to be clearly understood and acted upon by relevant individuals and agencies.

In April 1996, NCCAIP published a report entitled Children and Agriculture: Opportunities for Safety and Health, A National Action Plan to promote the health and safety of children exposed to agricultural hazards. The National Action Plan recommends leadership, surveillance, research, education, and public policy. The plan specifically recommended that NIOSH serve as the lead federal agency in preventing childhood agricultural injury. Due in large part to the efforts by NCCAIP to raise awareness and concern about childhood agricultural injury issues, in October 1996, NIOSH began implementing a Childhood Agricultural Injury Prevention Initiative. To date, NIOSH has undertaken a number of activities, both intramurally and extramurally, to address the recommendations in the National Action Plan.

Matters to be Discussed: The agenda for the meeting includes an overview of progress to date and proposed future activities to be implemented by NIOSH, and time for individuals to provide oral comments to NIOSH on the initiative.

Contact Persons for Additional Information: Technical information may be obtained from David Hard, Ph.D., NIOSH, CDC, 1095 Willowdale Road, M/S P–1133, Morgantown, West Virginia, 26505, telephone 304/285–6068, e-mail address: dlh6@cdc.gov.

Persons wishing to attend or make a presentation at the meeting (limited to 10 minutes), should respond by August 27, 1999 to Diane Miller, NIOSH Docket Office, Education and Information Division, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio, 45226. A copy of the document which includes a summary of progress to date and proposed future activities for the initiative will be available after July 15, 1999 through the NIOSH web site at *http://www.cdc.gov/niosh* or by written or e-mail request to the NIOSH docket office.

Persons interested in providing written comments on this document should submit comments by August 27, 1999 to Diane Miller at the above address. Comments or presentation requests may also be submitted by e-mail to: niocindocket@cdc.gov as WordPerfect 6.0/6.1, 8.0, or ASCII files.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–17125 Filed 7–6–99; 8:45 am]

BILLING CODE 4160–19–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Bureau; Advisory Committee on Head Start Research and Evaluation; Meeting

AGENCY: Administration for Children, Youth and Families, ACF, DHHS.

ACTION: Notice of meeting; Advisory Committee on Head Start Research and Evaluation.

SUMMARY: The 1998 Head Start Reauthorization (42 U.S.C. 9844(g); section 649(g)(1) of the Head Start Act, as amended) called on the Secretary of Health and Human Services to form an independent panel of experts (i.e., an Advisory Committee) to offer advice concerning research designs that would provide a national analysis of the impact of Head Start Programs. The July 26–27, 1999 meeting will be the last of three meetings of the Advisory Committee that will culminate in a report to the Secretary due September 30, 1999.

DATES: July 26, 1999, 9 a.m.–5 p.m. and July 27, 1999, 9 a.m.–5 p.m.

PLACE: Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: This meeting is open to the public and is barrier free. Meeting records will also be open to the public and will be kept at the Switzer Building located at 330 "C" Street, SW, Washington, DC 20447. The Head Start Bureau also intends to make material related to this meeting available on the Head Start web site http://www2.acf.dhhs.gov/programs/hsb. An interpreter for the deaf and hearing impaired will be available upon advance request by calling Ellsworth Associates at 703/821–3090 (ext. 282).

FOR FURTHER INFORMATION CONTACT: Deborah Roderick Stark at 301/889–0430 for substantive information. ACF Office of Public Affairs at 202/401–9215 for press inquiries. Ellsworth Associates at 703/821–3090 (ext. 282) for logistical information.

Dated: July 1, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–17237 Filed 7–6–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0268]

Guidance for Industry on Container Closure Systems for Packaging Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Container Closure Systems for Packaging Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Documentation." This guidance provides recommendations on the container closure systems information that applicants should provide to the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) in support of new drug applications, abbreviated new drug applications, biologics license applications, and supplements to these applications.

DATES: Written comments may be submitted at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of the guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

W. Mike Adams, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7310, or

John D. Finkbohner, Center for Biologics Evaluation and Research (HFM–676), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301827–3031.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Container Closure Systems for Packaging Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Documentation." This guidance provides recommendations on the container closure system information that applicants should provide to CDER or CBER for initial applications and supplements. In addition, the document provides guidance on qualification and quality control of packaging components used for particular dosage forms and routes of administration, including the following: Drug products for injection and ophthalmic drug products, liquid-based oral and topical drug products and topical delivery systems, solid oral dosage forms and powders for reconstitution, and other dosage forms. This guidance supersedes the agency's "Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics," issued February 1987.

This Level 1 guidance is being issued consistent with FDA's good guidance practice (62 FR 8961, February 27, 1997). In the **Federal Register** of July 15, 1997 (62 FR 37925), FDA announced the availability of a draft version of this guidance. The July 1997 document gave interested persons an opportunity to submit comments through September 15, 1997. On September 5, 1997, in response to requests from the public, the agency extended the comment period until November 14, 1997 (62 FR 46980). All comments received during the comment period have been carefully reviewed and incorporated in this revised guidance where appropriate. As a result of public input during the comment period, the final guidance is clearer and more concise than the draft version. The guidance represents the agency's current thinking on submitting information in drug applications on container closure systems used in packaging human drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–17157 Filed 7–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1082–N]

Medicare Program; July 22, 1999, Meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City Metropolitan Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee (the CPAC) and the Area Advisory Committee (AAC) for the Kansas City metropolitan area on July 22, 1999. The CPAC and the Kansas City metropolitan area AAC will meet both independently and in a joint session.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to create the CPAC to make recommendations on demonstration area designation and appropriate research designs for the project. The BBA also requires the Secretary to appoint AACs in the demonstration sites to advise on the implementation of the project. CPAC and AAC meetings are open to the public.

DATES: The CPAC is scheduled to meet on July 22, 1999, from 10 a.m. until 4 p.m., c.d.s.t. The Kansas City metropolitan area AAC is scheduled to meet on July 22, 1999, from 8:30 a.m. until 5:30 p.m. Both committees will meet together in a joint session from 12 noon until 4 p.m.

ADDRESSES: The meeting will be held at the Kansas City Airport Marriott, 775 Brasilia, Kansas City, MO, 64153, (816) 464–2200.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard C4–14–17, Baltimore, MD 21244–1850, (410) 786–6451 (for information about the CPAC). Richard P. Brummel, Deputy Regional Administrator, Health Care Financing Administration, Richard Bolling Federal Building, Room 235, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5233 (for information about the Kansas City metropolitan area AAC).

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to meet periodically and make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research designs for implementing the project. The CPAC has previously met on May 7, 1998, June 24 and 25, 1998, September 23 and 24, 1998, October 28, 1998, January 6, 1999, and May 13, 1999.

The CPAC consists of 15 individuals who are independent actuaries, experts in competitive pricing and the administration of the Federal Employees Health Benefit Program, representatives of health plans, insurers, employers, unions, and beneficiaries. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, Health Care Financing Administration; John Bertko, Actuary Principal, Reden & Anders, Ltd.; Dave Durenberger, Vice President, Public Policy Partners; Gary Goldstein, M.D., former CEO, The Oschner Clinic; Samuel Havens, Healthcare Consultant and Chairman of Health Scope/United; Margaret Jordan, President and CEO, The Margaret Jordan Group; Chip Kahn, President, The Health Insurance Association of America; Cleve Killingsworth, President, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, Senior Fellow, The Brookings Institution; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President, Service Employees International Union, AFL–CIO; and Jay Wolfson, Director, Florida Health Information Center, University of South Florida. The chairperson of the CPAC is James Cubbin and the co-chairperson is Robert Berenson, M.D. In accordance with section 4012(a)(5) of the BBA, the CPAC will terminate on December 31, 2004.

Section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) in each demonstration site to advise the Secretary on the implementation of the project. The CPAC has designated the Kansas City metropolitan area and Maricopa County in Arizona as the initial demonstration sites. The Kansas City metropolitan area AAC has previously met on March 26, 1999, April 8, 1999, April 22, 1999, and May 12, 1999. The Maricopa County AAC has previously met on March 31, 1999, April 20, 1999, May 18 and 19, 1999, and June 7 and 8, 1999. Additional meetings for the Maricopa County AAC are scheduled for June 30 and July 1, 1999.

The Kansas City metropolitan area AAC consists of 17 members who represent health plans, providers, and Medicare beneficiaries. The members of the Kansas City metropolitan area AAC are: E.J. Holland, Jr., Assistant Vice President for Corporate Benefits, Sprint; Robert Bonney, Vice President, Managed Care, St. Luke's Shawnee Mission PHO; Hazel Borders, beneficiary; Richard Brown, President and CEO, Health Midwest; Cynthia Finter, President and Executive Director, Kaiser Permanente, Kansas City Region; Tresia Franklin, Director of Benefits Administration, Hallmark Cards, Inc.; Alan Freeman, CEO, Cass Medical Center; Herman Johnson, beneficiary, John Kennedy, Senior Vice President of Blue Cross and Blue Shield of Kansas City; Mike Oxford, Executive Director, Topeka Independent Living Resource Center; Jean Rumbaugh, Vice President, Government Programs, HealthNet; Kathleen Sebelius, Kansas Insurance Commissioner; Zarina Shockley-Sparling, Executive Director, Humana, Inc.; Jan Stallmeyer, R.N., President, Principal Health Care of Kansas City, Inc.; Charles Van Way III,

M.D., Metropolitan Medical Society; Barry Wilkinson, President (retired), Heavy Construction Workers Labor Local 663; and Esther Wolf, Associate, School of Social Welfare, University of Missouri at Kansas City. The chairperson of the Kansas City metropolitan area AAC is E.J. Holland, Jr.

The agendas for the July 22, 1999, meetings will include the following:

- The CPAC will meet to review the status and any pending issues from the Maricopa County AAC and Kansas City metropolitan area AAC, as well as review preliminary information on future demonstration site selection.
- The Kansas City metropolitan area AAC will discuss and develop a communication and outreach plan for Kansas City beneficiaries and providers, discuss and decide how to measure potential disruption in the Kansas City market due to competitive pricing, and discuss and decide a schedule for implementation of the demonstration.
- In a joint session from 12 noon to 4 p.m., the CPAC and the Kansas City metropolitan area AAC will meet to discuss and decide how to measure possible beneficiary disruption in the Kansas City market due to competitive pricing.

Individuals or organizations that wish to make 5-minute oral presentations on the CPAC agenda issues should contact Sharon Arnold, CPAC Executive Director, by 12 noon, July 15, 1999, to be scheduled. A written copy of the oral remarks should be submitted to the executive director no later than 12 noon, July 15, 1999. Anyone who is not scheduled to speak may submit written comments to the executive director by 12 noon, July 17, 1999.

Individuals or organizations that wish to make 5-minute oral presentations on the Kansas City metropolitan area AAC agenda issues should contact Richard Brummel, Kansas City Deputy Regional Administrator, by 12 noon, July 15, 1999, to be scheduled. A written copy of the oral remarks should be submitted to the Kansas City Deputy Regional Administrator no later than 12 noon, July 15, 1999. Anyone who is not scheduled to speak may submit written comments to the Kansas City Deputy Regional Administrator by 12 noon, July 17, 1999.

The number of oral presentations may be limited by the time available. This meeting is open to the public, but attendance is limited to the space available.

(Sec. 4012 of the Balanced Budget Act of 1997, Pub. L. 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 30, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–17161 Filed 7–6–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Status, Behaviors, and Health Service Perceptions of Non-College Educated and College Educated African American Women (Pilot Study)—NEW

The Office of Minority and Women's Health (OMWH) in the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA) awarded funding for a pilot study which will develop information about the design of a sample appropriate to determine the health status, behaviors, and health service perceptions of African American women who are: (1) College educated, and (2) low income, non-college educated. The pilot study will be used to evaluate the interview instrument and to discover the practical issues and feasibility of sampling low income African American women from the databases of community health centers in three test locations. The goal is to assess the instrument, the sample sources, the procedures, and the response rates and to determine the extent to which data can be collected in a systematic and comprehensive manner. The pilot study is the first step in a much larger nationwide effort to build a significant data set containing detailed information on health status, health indicators, and health behaviors of African American women.

The burden estimate for the pilot study is as follows:

Respondent	Number of respondents	Responses per respondent	Total responses	Hours per response (minutes)	Total hour burden
College educated	60	1	60	40	40
Non-college educated	180	1	180	40	120
Total	240		240		160

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 30, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–17089 Filed 7–6–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Statement of Mission, Organization, Functions and Delegation of Authority

Part G, of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, as amended at 60 FR 56606, November 9, 1995, and most recently amended at 61 FR 67048, December 19, 1996, is amended to reflect a realignment of the Aberdeen Area Indian Health Service (AAIHS). The changes are as follows:

Delete the functional statements for the AAIHS in their entirety and replace with the following:

Section GFA–00, Aberdeen Area Indian Health Service-Mission. The Aberdeen IHS provides a comprehensive health services delivery system for American Indians and Alaska Natives (AI/AN) with opportunity for maximum tribal involvement in developing and managing programs to meet their health needs. The goal of the Aberdeen Area IHS is to raise the health level of the AI/AN people to the highest possible level.

Section GFA–10, Functions. Office of the Director (GFAA). Provides overall direction and leadership for the AAIHS in accomplishing the mission of the Indian Health Service (IHS) by organizing the administrative and clinical activities in ways that are determined to appropriately deal with the epidemiological, social, cultural, geopolitical, and other such demographics peculiar to the service population.

Office of the Administrative Support (GFAAB). (1) Plans, coordinates, implements, and evaluates the administrative management support activities of the Aberdeen Area; (2) advises the Area Director on all matters relating to Area management and administrative support activities; (3) provides guidance to the Area on financial management activities, including program policy interpretation in budget formulation and execution, preparation of program planning and budgeting data and financial management of grants and contracts; (4) participants and advises the Area Director on the allocation of the Area's personnel management resources and funding resources; (5) interprets policy and provides direction in the conduct of the Area's procurement, contracting and grants activities; and (6) maintains necessary liaison with various components of the IHS and Health Resources and Services Administration (HRSA) in furtherance of the AAIHS management activities.

Division of Financial Resources (GFAAB1). (1) Provides Area staff services in all financial management activities, current and long-range budget formulations and implementation, and establishes and maintains an approved financial accounting system; (2) provides all services necessary for preparation of formal budget estimates; (3) examines and analyses reports in order to project funds; (4) evaluates, examines, analyzes, and processes all accounting transactions to the various allowances and appropriations; (5) provides for posting documents to ADP input to generate the detailed allowance and general ledger reports for management use; and (6) provides all services for planning, directing, and coordinating the voucher examining functions.

Budget Services Branch (GFAAB11). Provides direction for the organization, coordination of execution of budget operations.

Payroll Staff (GFAAB111). Provides payroll services to the Aberdeen and Bemidji Areas including processing bi-weekly payroll, and payroll error corrections.

Accounting Branch (GFAAB12). Provides accounting services for the Aberdeen and Bemidji Areas concerned with the maintenance of accounting ledgers and records for the Health Accounting System (HAS).

Accounts Payable Staff (GFAAB121). (1) Provides fiscal accounting services for the Aberdeen and Bemidji Areas concerned with the maintenance of accounting ledgers and records for the HAS; and (2) provides services involving complex auditing and examining procedures of voucher payments including the Aberdeen and Bemidji Areas.

Reports and Reconciliation Staff (GFAAB122). Provides services to reconcile general and subsidiary ledgers

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605 as amended November 6, 1995, as last amended at 64 FR 31282, June 10, 1999). This notice reflects the reorganization of the Bureau of Health Professions (RP), Division of Vaccine Injury Compensation (RP9).

Section RP–20—Function

Delete the functional statement in its entirety and replace with the following:

Division of Vaccine Injury Compensation

The Division of Vaccine Injury Compensation (DVIC), on behalf of the Secretary of Health and Human Services (HHS), administers all statutory authorities related to the operation of the National Vaccine Injury Compensation Program (VICP). Specifically: (1) Evaluates petitions for compensation filed under the VICP through medical review and assessment of compensability for all complete claims; (2) processes awards for compensation made under the VICP; (3) promulgates regulations to revise the Vaccine Injury Table; (4) provides professional and administrative support to the Advisory Commission on Childhood Vaccines (ACCV); (5) develops and maintains all automated information systems necessary for program implementation; (6) provides and disseminates program information; and (7) promotes safer childhood vaccines.

Section RP–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date thereof have been continued in effect in them or their successors pending further redelegations.

This reorganization is effective upon the date of signature.

Dated: June 24, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–17088 Filed 7–6–99; 8:45 am]

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that are affected by allotment, appropriations, and expenditures.

Division of Acquisition and Grants Management (GFAAB2). (1) Plans, develops, evaluates, and coordinates operations of procurement, contracting, grants management, property (real and personal), supply management, office services, communications and transportation, and leases and awards pursuant to Public Law 93–638, Self-Determination contracts, Public Law 93–437 (Indian Health Care Improvement Act); (2) provides technical consultation, coordination and evaluation to all awards/administrative services operations at field location; (3) develops policies and procedures, in conjunction with the Division of Financial Resources, regarding property and supply funding requirements of field installations; and (4) assists Service Units in planning and developing staffing assignments and in the development of effective administrative service functions.

Contract Services Branch (GFAAB21). (1) Provides Area assistance in planning, developing, evaluation, consultation, and operations of contracting and grants management pursuant to Public Law 93–638, Self-Determination contracts; and (2) plans, develops, evaluates, and coordinates awards, acquisition planning process for small purchases and commercial contracts for the Aberdeen and Bemidji Areas.

Division of Personnel Management (GFAAB3). Responsible for advising on and providing assistance and services on all aspects of human, organizational, and manpower resources which includes, but not necessarily limited to: (1) The administration and management of the Personnel Management program designed to obtain, develop, and retain an effective and efficient workforce to accomplish the delivery of health care services to the Indian population; (2) the management and control of manpower and organizational resources to assure that an efficient and economical structure exists; (3) the provisions of personnel management advisory service and assistance to Tribal governments and urban Indian health care organizations to achieve the objectives of Indian Self-Determination; and (4) coordination and liaison of overall payroll functions for the Aberdeen and Bemidji Areas.

Staffing and Placement Branch (GFAAB31). (1) Provides staffing and placement services for filling of vacancies for all general schedule and civil service positions in the Aberdeen Area; and (2) provides personnel services to all Area employees including advice on retirement, health benefits, direct deposit, life insurance, etc., in the Aberdeen and Bemidji Areas.

Position Classification Branch (GFAAB32). Responsible for classification and position management activities for the Aberdeen and Bemidji Areas by providing sound advice pertaining to classification of positions and position management.

Employee Relations Branch (GFAAB33). (1) Provides advice to management and employees in all areas of employee relations including grievances, removals, suspensions, retirements, and performance plans for general schedule and merit pay employees; (2) provides for employee development activities and training activities for all employees in the Aberdeen Area; and (3) provides feedback to management on all employee development and training activities which includes evaluation of training courses and seminars.

Division of Property and Supply (GFAAB4). (1) Provides Area staff assistance in planning, developing, evaluation, consultation regarding property and supply funding requirements of field installations; (2) plans, develops evaluates, and coordinates the Directives and Delegations Control Program for the Aberdeen Area; (3) plans, develops, coordinates, evaluates a comprehensive property management program including quarters management, real and personal property management, motor vehicle management and tort claims; (4) plans, develops, coordinates, and evaluates a supply management program for the Aberdeen and Bemidji Areas; and (5) provides supply support and technical assistance to all facilities at the Service Units.

Office Services Branch (GFAAB41). (1) Responsible for various management services, such as planning, developing, and operation of the forms management, records management, space management, mail and communications management, and duplication programs; (2) responsible for property custodial and accountability, inventories, and procurement of equipment and supplies for the Area office; and (3) responsible for the distribution of accountable forms.

Division of Information Systems and Technology (FGAAB5). (1) Provides the Aberdeen Area with technical assistance in planning, designing, testing, implementation, operation, and management of the Automated Data Processing systems (ADP), which includes both computer and word processing systems; (2) responsible for those activities which deal with the planning, procurement, and installation of all ADP equipment and software; (3) responsible for the coordination and development of various long-range and short-range Area ADP plans; (4) provides assistance and guidance in identifying Area and Service Unit ADP needs; (5) provides training on technical aspects of computer and word processing systems; (6) develops and establishes policies and procedures regarding Area office ADP equipment, management, and operations; (7) responsible for assisting in the establishment of policies and procedures regarding the security of hardware, software, and information; (8) represents the Area at agency ADP planning meetings; and (9) provides the Area office staff with ADP services (i.e., operations, programming, and consultation).

Office of Environmental Health and Engineering (GFAAC). (1) Provides overall administration and direction for Sanitation and Facilities Construction Program, Facilities Management Program, and Environmental Health Services Program, and (2) advises the Area Director on all matters relating to Environmental Health and Engineering activities.

Division of Sanitation and Facilities Construction (GFAAC1). (1) Has responsibility for implementation of P.L. 86–121, Indian Sanitation Facility Act; (2) manages the construction and maintenance of sanitation facilities; (3) coordinates activities with IHS staff, BIA, HUD, and Tribes; and (4) provides training and consultation to Area staff and tribal organizations on sanitation construction activities.

Division of Facilities Management (GFAAC2). (1) Responsible for maintenance of IHS owned facilities in the Aberdeen Area, reviewing physical plant requirements and improvement programs to meet Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and Medicare/Medicaid standards, and developing a planned program of physical plant improvements and preventative maintenance; (2) engineering and contracting services available from Engineering Services in Seattle are utilized in performing various physical plant inspections, making available certain architectural/engineering services contracts for maintenance and improvement design accomplishment; (3) assisting in review to insure code and standards compliance; and (4) developing facility master plans and new facility designs.

Division of Environmental Health Services (GFAAC3). (1) Evaluates environmental health conditions, maintains proper sanitary conditions through inspection, evaluation, and educational techniques; (2) stimulates community interest in developing water supplies and sewage disposal facilities and follows up construction projects to teach Indian families proper maintenance, care, and repair of such facilities; (3) stresses community injury control by training, education, and working with Tribal groups; and (4) provides consultation on safety programs concerning the Public Health Service (PHS) Federal installations within the Aberdeen Area, and on all environmental aspects of hospitals, health centers, clinics, boarding schools, day schools, jails, and nursing homes.

Office of Tribal Health Activities (GFAAD). (1) Serves as a focal point for Area staff contact with tribal governments and liaison with other Federal and State agencies; (2) implements and manages technical assistance activities to Tribal community health development programs, developing and implementing the Area's contracts and grants response system for Public Law 93–638, coordination of Tribal training activities and special Indian Health projects; (3) provides Area staff services and technical assistance in planning, developing, evaluation, and operation of Tribal Health Programs and projects; (4) conducts feasibility studies and determines eligibility of tribal proposals for contracting or grant funding; and (5) identified Tribal training needs, arranges for appropriate training, and coordinates project officer activities for the Aberdeen Area.

Office of Health Programs (GFAAE). (1) Plans, coordinates, implements, directs, and evaluate the Area Health Care Program; (2) advises the Area Director on all matters related to health care program operations including clinical services and preventative health and tribal programs; (3) provides for the evaluation of clinical services, preventative health and tribal programs; (4) monitors and reviews health care operations including coordinating the reviews by Medicare/Medicaid and JCAHO survey teams and other health professional review teams; (5) identified additional program resources required and/or realignment of existing resources to achieve effective and efficient program operation; (6) directs established routine health care program operations within the Area through the Service Unit directors; and (7) assures that all health care services delivered in the Area are of the highest quality compatible with resources available.

Physician Recruitment Staff (GFAAE1). Responsible for planning, developing, coordinating, implementing, directing, and evaluating a nationwide and international recruitment and retention program to assure a cadre of qualified health professionals in the Aberdeen Area.

Division of Hospital and Clinics (GFAAE12). (1) Responsible for direction, coordination, and evaluation of hospital and clinical health service activities for the Aberdeen Area; and (2) develops program policy and provides input into operational decisions as this relates to nursing services, pharmacy services, optometry services, and medical records services.

Nursing Services Staff (GFAAE121). (1) Develops, coordinates, and administers an Area wide nursing program; (2) recommends and participates in the formulation of procedures, policies and programs essential to providing nursing care; and (3) assists in recruitment of qualified nurses.

Pharmacy Services Staff (GFAAE122). (1) Responsible for program content and administration of the area wide pharmacy program; and (2) the Pharmacy Branch consists of a full range of clinical pharmacy services for outpatients and inpatients.

Optometry Services Staff (GFAAE123). (1) Coordinates and implements an area wide optometry program and provides consultation to field staff in regards to the program; and (2) assists in the recruitment of qualified individuals.

Medical Records Staff (GFAAE124). (1) Develops, coordinates, implements an Area wide medical records program; and (2) provides consultation to Area medical staff in regards to the program and ensures that the program meets JCAHO requirements.

Division of Field Health (GFAAE2). (1) Responsible for direction, coordination, and evaluation of field health service activities within the Aberdeen Area; and (2) develops program policy and provides input into operational decisions relating to Community Health Nursing, Alcoholism, Health Education, Nutrition and Dietetics, Dental services, Audiology Services and Substance Abuse.

Community Health Nursing Staff (GFAAE21). (1) Provides comprehensive community health nursing services with primary focus on the prevention of illness and promotion and maintenance of health; and (2) coordinates services with Tribal officials and Tribal health programs.

Nutrition and Dietetics Staff (GFAAE22). (1) Provides guidance, coordination, and consultation for the Nutrition and Dietetics program; and (2) provides consultation to Service Unit staff on nutrition and dietetics matters.

Health Education Staff (GFAAE23). (1) Coordinates planning, development, and implementation of health education services and programs; and (2) provides consultation to Service Unit staff on health education matters.

Audiology Staff (GFAAE24). (1) Coordinates and implements an area wide audiology program and provides consultation to field staff in regards to the program; and (2) assists in the recruitment of qualified individuals.

Dental Services Branch (GFAAE25). (1) Provides coordination, monitoring, and consultation to assure oral disease prevention and health promotion activities in the Aberdeen Area; (2) monitors contract dental services; and (3) works with environmental health and engineering to assure that optimal levels of fluoride exists in community water supplies.

Substance Abuse Branch (GFAAE26). Provides direction,coordination, and consultation to the Area in regards to the Area alcoholism program, tribal alcoholism programs and adolescent programs.

Division of Epidemiology (GFAAE3). (1) Responsible for the collection of epidemiologic information and directs the development or periodic revision of an epidemiologic description of each Indian community served by the Aberdeen Area; and (2) establishes standards for communicable disease, environmental emergency, and outbreak reporting for the Area and participates in environmental emergency and outbreak control efforts, and educates Area and Tribal personnel in the uses of epidemiology.

Health Promotion/Disease Prevention Staff (GFAAE31). Responsible for assessing, planning, directing, coordinating and evaluating the health promotion and disease prevention program throughout the Aberdeen Area.

Information Resources Branch (GFAAE32). (1) Responsible for management, oversight, and evaluation of internal automated information systems (e.g., financial accounting, report management, manpower analysis, statistical data gathering and some casting, etc.) to appraise the impact they have on overall area operations; and (2) recommend alternative situations that would change or improve the effectiveness of services being provided.

Planning and Legislation Branch (GFAAE33). (1) Responsible for Area wide leadership in and serving as principle advisor on the development of strategic plans, strategies and innovative directions for the Area in relation to Indian's health needs and program

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management and on their strategic implications for Area legislation, regulations, policies, and operations; (2) coordinating the development of Area positions on national issues in the field of Indian Health; (3) assisting in discharging the Area's responsibilities in the formulation, evaluation, and related work concerning legislation and regulations; (4) assessing and interpreting Department policies and procedures, and in maintaining systems for their implementation and dissemination; (5) coordinating the formulation of and participating in executing Area wide executive policy, providing consultation and guidance to the Area in program and management policy development, interpretation and application and maintaining the documentation and issuance system for the Area; and (6) negotiating solutions to intra-department problems of Area organization.

Division of Managed Care (GFAAE4). (1) Manages the Contract Health Care and Medicare/Medicaid resources accordance with program regulations; (2) collects and analyzes fiscal and logistical data as to its impact on the overall health program; (3) provides interpretive reports, coordinates, advises, and supports the Area and Service Unit staff on the availability of financial resources in relation to their program; and (4) manages, plan, coordinates, implements, and evaluates the Aberdeen Area Business Office.

Division of Medical Care Evaluation (GFAAE5). Conducts and coordinates a medical care evaluation program which includes Improving Organizational Performance, Risk Management, Hospital and Health Center Accreditation by the JCAHO or Certification by Health Care Financing Administration.

Social Services/Mental Health Branch (GFAAE51). Administers, supervises, and maintains a social services/mental health program offering case work therapy and counseling services and crisis intervention, individual therapy, and substance abuse therapy.

Aberdeen Area Service Units: Quentin Burdick Service Unit (GFAAWA); Cheyenne River Service Unit (GFAAWB); Crow Creek Service Unit (GFAAWC); Ft. Totten Service Unit (GFAAWD); Lower Brule Service Unit (GFAAWE); Minne Tohe Service Unit (GFAAWG); Pine Ridge Service Unit (GFAAWH); Rapid City Service Unit (GFAAWJ); Rosebud Service Unit (GFAAWK); Sisseton Service Unit (GFAAWL); Standing Rock Service Unit (GFAAWM); Winnebago/Omaha Service Unit (GFAAWN); Yankton Service Unit (GFAAWP); Regional Treatment Center (GFAAWT).

Aberdeen Area Service Units

(1) Plans, develops, and directs health programs within the framework of IHS policy and mission; (2) promotes activities to improve and maintain the health and welfare of the service population; (3) delivers quality health services; (4) coordinates Service Unit activities and resources with those of other governmental and nongovernmental programs; and (5) participates in the development and demonstration of alternative means and techniques of health services management and health care.

Section GFA–20, Aberdeen Area IHS-Delegations of Authority. All delegations and redelegations of authority made to officials in the Aberdeen Area IHS that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further redelegation.

Dated: June 25, 1999.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 99–17159 Filed 7–6–99; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Preventing Problem Behavior Among Middle School Students

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 26, 1999, pages 3955–3956 and allowed 60 days for public comment. No public comments were received. The purpose of this notice to allow an additional 30 days for public comment. The National Institute of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Preventing Problem Behavior Among Middle School Students.

Type of Information Collection Request: Revision, OMB Number 0925–0436, Expiration Date 9/30/99.

Need and Use of Information Collection: The purpose of this study is to test the efficacy of a comprehensive program of interventions that include participatory classroom curriculum, parent education and enhanced school environment. Middle schools in one school district in Maryland were assigned to either a special intervention treatment condition or usual education (control) condition. The intervention is sequentially structured with curricula implemented in each grade of middle school. Classroom-administered questionnaires were administered to all middle schools prior to the intervention to establish baseline levels of the variables of interest, including substance use, school misconduct, parent and peer influences, and school climate. Data is collected annually after the completion of the grade level intervention. Information about parenting style will be collected on a sample of parents of participating student using telephone interviews.

As of the expiration of the current OMB approval, data will have been collected on one cohort of middle school students annually throughout middle school (6–8 grade) and two years of data collection on the second cohort of student (grades 6 and 7). Completion of the study as proposed includes collecting data on the second cohort in grade 8 and follow-up measurement of both cohorts in grade 9. Data will also be collected on a sample of parents.

Frequency of Response: Occasional.

Affected Public: Individuals or households; State, Local or Tribal Government.

Type or Respondents: Children and their parents. The annual reporting burden follows: Estimated number of respondents: 1450; Estimated Number of Responses per Respondent: 1.3; Average Burden Per Response (hrs.): .75; and Estimated Total Annual Burden Hours Requested: 988. The Annualized Cost to Respondents (based on $10.00 per hour): $9.883. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments:

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technical collection techniques for other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact, Dr. Bruce Simons-Morton, Chief, Prevention Research Branch, Division of Epidemiology, Statistics and Prevention Research, National Institutes of Child Health and Human Development, 6100 Executive Blvd., Room 7B05, Bethesda, MD 20892–7510, or call non-toll free number (301) 496–1126 or E-mail your request, including your return address to bm79K@nih.gov.

COMMENT DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 29, 1999.

Michael H. Rosenthal,

Acting Executive Officer, NICHD.

[FR Doc. 99–17229 Filed 7–6–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of Either Diagnostics or Therapeutics for Bone Metastasizing Cancers Including Breast and Prostate Cancer

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of an opportunity for a Cooperative Research and Development Agreement.

SUMMARY: The National Institute of Dental and Craniofacial Research (NIDCR), Craniofacial Developmental Biology and Regeneration Branch, has developed technology in the area of the metastasis of breast and prostate cancer to bone and wishes to further develop that technology. Therefore, the NIDCR seeks an agreement with a pharmaceutical or biotechnology company to develop diagnostics and therapeutics related to osteonectin and/or its receptor on metastatic cancer cells.

The spread of tumor cells (metastasis) to distant organs is the leading cause of morbidity and death in cancer. In order to spread, tumor cells must detach from the primary tumor, enter the circulation, and attach to organs able to support their further growth. To enter and exit the circulation, tumor cells must degrade tissue and matrix barriers, but the underlying mechanism for the organ specific metastasis of prostate and breast cancer to bone is not understood. For instance, it is not clear whether these calls only invade and grow in bone, or whether they invade many tissues but survive mainly in bone. NIDCR scientists have found that chemoinvasion of different prostate and breast cancer cell lines through basement membrane is several fold greater in response to bone extracts than to extracts from other tissues. Control studies showed that invasion of melanoma and fibrosarcoma cells is not stimulated by bone extracts. The bone extracts and partially purified materials had no effect on prostate cancer cell growth (in-vitro or in-vivo). The active factor from bone which promoted prostate cell invasion was purified and shown to be a glycosylated derivative of osteonectin. Moreover, osteonectin was found to specifically induce matrix metalloprotease activity in both breast and prostate cancer cells, which both invade bone. No induction was observed with three non bone metastasizing cell lines (3T3, HT1080 and B16F10). More recently, a cellular receptor for osteonectin, which is elevated on breast and prostate cancer cells but not on melanoma or 3T3 cells, has been identified. Experiments with subcutaneously implanted minipumps containing osteonectin have demonstrated that prostate cancer cells preferentially metastasize to the site of the implant and form tumors, whereas control pumps containing saline or a non active bone fraction did not show this activity. These data suggest that invasion of bone by prostate cancer cells is mediated by osteonectin.

A CRADA partner is sought to participate in the development of antibodies or diagnostic tools to quantitate the osteonectin receptor, as it may be a marker for tumors that are metastasic to bone. If the receptor is elevated on metastatic cells, then antagonists can be developed to block its occupancy and inhibit metastasis to bone. The collaboration could also explore whether serum levels of osteonectin may provide a new and early diagnostic tool to detect metastasis of breast and prostate cancer cells. Improvement in the understanding of the mechanisms by which breast and prostate cancer cell metastasize to bone could provide an opportunity to develop diagnostic and therapeutic reagents.

The proposed duration of the CRADA is two (2) years.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Jacob A. Donkersloot, Sc.D., Technology Development Coordinator, NIDCR, tel: (301) 496–4216, fax: (301) 402–0396 or David A. Steffes, J.D., Technology Development and Commercialization Branch, National Cancer Institute, tel: (301) 496–0477, fax: (301) 402–2117.

DATES: Interested parties should submit a one page statement of interest addressing the collaborator's ability to fulfill its collaborative responsibilities. The statement of interest should be submitted in writing on or before September 7, 1999.

SUPPLEMENTARY INFORMATION: A "Cooperative Research and Development Agreement" or "CRADA" is the anticipated joint agreement to be entered into by the NIDCR pursuant to the Federal Technology Transfer Act of 1986 as amended by the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113 (Mar. 7, 1996)) and by Executive Order 12591 of October 10, 1987.

The CRADA objective is the rapid publication of research results and the timely commercialization of improved diagnostics and/or therapeutics in the areas of breast and prostate cancer metastasis to bone.

Under a CRADA, the NIDCR can contribute facilities, staff, materials, and expertise to the effort. The NIDCR cannot contribute funding. The CRADA collaborator receives an exclusive option to negotiate an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA in a pre-determined field of use and may qualify as a co-inventor of new technology developed under the CRADA.

Background information, including reprints of this announcement and issued patents, is available from the above-referenced address. Patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement.

CRADA proposals will be evaluated under the following criteria:

—Corporate research and development competencies

—Demonstrated abilities to productively collaborate in research programs

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—The nature of resources to be contributed to the collaboration
—Key staff expertise, qualifications and relevant experience
—Willingness to assign technical staff to on-site collaborative efforts
—Ability to effectively commercialize new discoveries

The roles of the Craniofacial Developmental Biology and Regeneration Branch for the proposed CRADA are as follows:

1. Provide project coordination for the overall development and testing.
2. Further develop and refine animal models to study bone metastasis and the role of osteonectin for testing of the therapeutics.
3. Provide further characterization of the cellular receptor for osteonectin.
4. Provide in-vitro testing of biological activity of possible therapeutics with various cell lines.
5. Provide in-vitro testing of receptor-based diagnostics.
6. Jointly publish research results.

The roles of the Collaborator under the proposed CRADA are as follows:

1. Provide project coordination for the overdevelopment and testing.
2. Develop and provide antibodies or other tools for diagnostic purposes based on the cellular receptor. This may also include peptide mimetics or other reagents based on the binding site on osteonectin for its cellular receptor.
3. Determine if the level of osteonectin in serum is a possible diagnostic tool and develop an easy and reliable assay for osteonectin.
4. Develop therapeutics for cancer metastasis based either on matrix metalloprotease activity, receptor antagonists or other acceptable treatments for patients.
5. Jointly publish research results.

Dated: June 25, 1999.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, NCI.

[FR Doc. 99–17120 Filed 7–6–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Postdoctoral Research Training.

Date: July 8, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room B, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Irene B. Glowinski, Scientific Review Administrator, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17226 Filed 7–6–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel P01 grant application review.

Date: July 26–27, 1999.

Time: 7:30 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Inn and Conference Center, UMUC, University Boulevard at Adelphi Road, College Park, MD 20742.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17227 Filed 7–6–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 8–9, 1999.

Time: 7:00 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Nancy Shinowara, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892, (301) 435–1173. shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 11–12, 1999.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 20191.

Contact Person: Anthony D. Carter, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 12–13, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037–1417.

Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel SSS–9.

Date: July 12–13, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (16).

Date: July 12, 1999

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 12–13, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Houston Baker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–1175, bakerh@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–SSS–8 (57).

Date: July 12–13, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Nadarajen A. Vydelingum, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel SSS–W (22).

Date: July 12–13, 1999.

Time: 8:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 12, 1999.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Calbert Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, dhindsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Surgery, Radiology and Bioengineering IRG.

Date: July 12–13, 1999.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, ebradley@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 13, 1999.

Time: 8:00 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Grand Hyatt, 1000 H Street, NW, Washington, DC 20001.

Contact Person: Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group Geriatrics and Rehabilitation Medicine.

Date: July 13–14, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: to review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel SSS–W (23).

Date: July 13, 1999.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhinsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

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Date: July 13, 1999.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant application.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, zimmerng@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Partnerships Special Emphasis Panel.
Date: July 14, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: David T. George, National Heart Lung and Blood Institute, Review Branch, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (301) 435–0280, georged@nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–BDCN–6 (02)B.
Date: July 14, 1999
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: Jay Cinque, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 14, 1999.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Camil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 14, 1999.
Time: 2:00 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge, MD 20892, (Telephone Conference Call).
Contact Person: Everett E. Sinnett, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1016, ev_sinnettnih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel PSV.
Date: July 14–16, 1999.
Time: 7:00 pm to 1:00 am.
Agenda: to review and evaluate grant applications.
Place: Houston Marriott Medical Center, 6580 Fannin Street, Houston, TX 77030.
Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17228 Filed 7–6–99; 8:45 am]

BILING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences; National Toxicology Program; Request for Comments on Chemicals Nominated to the National Toxicology Program (NTP) for Toxicological Studies—Recommendations by the Interagency Committee for Chemical Evaluation and Coordination (ICCEC) for Study, No Studies, or Deferral To Obtain Additional Information

Summary

The National Toxicology Program (NTP) routinely solicits, accepts and reviews for consideration nominations from Federal agencies, industry, the public, and other interested parties for toxicological studies to be undertaken by the Program. Nominations undergo several levels of review before toxicological studies are designed and implemented. The Interagency Committee for Chemical Evaluation and Coordination (ICCEC) serves as the first level of review for NTP nominations. At the June 1, 1999 meeting of the ICCEC, 13 nominations were reviewed. As part of an effort to earlier inform the public and obtain input into the selection of chemicals for evaluation, the NTP routinely seeks public input on (1) chemicals nominated to the Program for toxicological studies, and (2) testing recommendations made by the ICCEC. This announcement outlines the process for nomination and selection of agents for NTP study, presents the recommendations of the ICCEC from the June 1, 1999 meeting, and requests comment on these recommendations or the submission of additional information to be considered in the evaluation of these nominations.

Background

The nomination and selection for study of chemicals and agents with the highest potential for adversely impacting public health are essential to the success of the NTP. From its inception, the NTP has had an open nomination process. Nominations are solicited from a variety of sources in academia, Federal and State regulatory and health agencies, industry, and unions, as well as from environmental groups and the general public. Particular assistance is sought with the selection of studies that permit testing of hypotheses to enhance the predictive ability of NTP studies, address mechanisms of toxicity, or identify significant gaps in knowledge of the toxicity of chemicals or classes of chemicals. Chemicals are selected for study based upon two broad criteria: (1) those chemicals of greatest concern for public or occupational health and (2) chemicals for which toxicological data is needed to fill major knowledge gaps, address mechanisms of toxicity, and reduce uncertainty in risk assessment by aiding species-to-species extrapolation and understanding dose-response relationships. Chemicals may be studied for a variety of health-related effects, including but not limited to, reproductive and developmental toxicity, genotoxicity, immunotoxicity, metabolism and disposition, as well as carcinogenicity. The possible public health consequences of exposure remain the over-riding factor in the decision to study a particular chemical or agent. Selections for government testing are based on the principle that responsible industries will evaluate their own chemicals or agents for health and environmental effects as mandated by Congress under legislative authorities. Increased efforts continue to be focused on: (1) improving the quality of the nominations of chemicals,

environmental agents, or issues for study; (2) broadening the base and diversity of nominating organizations and individuals; and (3) increasing nominations for endpoints of toxicity other than carcinogenesis.

Nominated chemicals are first reviewed by a multi-disciplinary NIEHS committee to determine whether the nominated agent has undergone adequate toxicological testing or has been previously considered by the NTP. For chemicals not eliminated from consideration or deferred at this stage, the available literature is examined in detail to prepare Toxicological Summaries which evaluate and summarize the relevant data for each chemical. Included in each Toxicological Summary are chemical and physical information, production levels, use and exposure categories and levels, regulatory status, toxicological effects, and rationale for the nomination. The Toxicological Summaries are distributed to the Interagency Committee for Chemical Evaluation and Coordination (ICCEC), composed of representatives from the Agency for Toxic Substances and Disease Registry, Consumer Product Safety Commission, Department of Defense, Environmental Protection Agency, Food and Drug Administration's National Center for Toxicological Research, Occupational Safety and Health Administration, National Cancer Institute, National Institute of Environmental Health Sciences, National Institute for Occupational Safety and Health, and the National Library of Medicine. ICCEC members are assigned as reviewers for each chemical after consideration of the nature of its uses and exposure so that, to the extent possible, appropriate regulatory concerns will be addressed. Members are requested to identify their agency's interests, if any, in the chemical, and to search databases unique to their agencies for further information on the nominated chemicals and structurally related substances. During the evaluation process, the NTP works actively with regulatory agencies and interest groups to supplement the information about chemicals nominated and to ensure that the chemical selection process meets regulatory agency needs.

At its meeting to consider the nominated chemicals, the ICCEC assigns testing priorities, and also may make recommendations for study in addition to those requested by the nominator. Summaries of the ICCEC recommendations and any public comments received on these chemicals are then presented to the NTP Board of Scientific Counselors (the Program's external scientific advisory committee) for review and comment in an open public session. The ICCEC recommendations, NTP Board of Scientific Counselors recommendations, and public comments are incorporated into recommendations that are then submitted to the NTP Executive Committee, the Federal interagency policy oversight body. For each chemical nominated for the various types of studies, the NTP Executive Committee reviews and approves action to move forward to test, defer testing, or remove from testing consideration, and recommends testing priorities. The selection of a chemical or agent by the Executive Committee does not automatically commit the NTP to its evaluation. The priority of the chemicals and the proposed studies are assessed during the nomination process and reassessed during the study design process. During any of these stages, a chemical or study may be withdrawn if applicable research data is identified, higher priority studies are identified, or if a study proves impractical. A broad range of regulatory and toxicological concerns are addressed during the nomination and selection process through the participation of representatives from Federal agencies concerned with public health issues. In addition, representatives from non-government organizations, including industry, labor, and public interest, sit on the NTP Board of Scientific Counselors, and thus have input into chemical selection decisions.

Following Executive Committee action, each selected chemical is assigned to an NIEHS, FDA, or NIOSH staff scientist (project leader) who assesses the data compiled during the chemical evaluation process and other information obtained from detailed searches of the published literature and public comments. The project leader also consults with industrial or commercial sources on such issues as mode of production, uses, worker exposure, planned or ongoing testing, and availability of the chemical for study. The project leader together with a study design team develops a study plan to address the research needs. The study plan is reviewed and modified as necessary before being carried out via the most appropriate mechanisms. Results of toxicological studies of selected chemicals are routinely peer-reviewed. The results are published as NTP Technical Reports and/or in the open scientific literature. Test results are also available from the NTP subsequent to peer-review but prior to publication.

Request for Comment

At their meeting on June 1, 1999, the ICCEC reviewed 13 agents nominated for NTP study. For 9 of these agents, metabolism, toxicity, or carcinogenicity studies were recommended, no additional study was recommended for 2 chemicals, and studies of 2 other chemicals were deferred pending receipt of additional data from other organizations or from related studies anticipated or in progress by the NTP, or information on production, exposure, and use patterns. Additionally, the ICCEC reviewed 7 chemicals recommended for study in previous ICCEC meetings. Following review of initial NTP studies and additional data received from the public or elsewhere, these 7 chemicals were withdrawn as priority candidates for study.

Chemicals with CAS numbers, nomination source, types of studies under consideration, and rationale and other information are given in the attached tables. Interested parties are encouraged to provide comments or supplementary information on the chemicals and recommendations that appear in this announcement. The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies, as well as information on current production levels, human exposure, use patterns, or environmental occurrence for any of the chemicals listed in this announcement. To provide comments or information, please contact Dr. William Eastin at the address given below by September 7, 1999.

Contact may be made by mail to: Dr. William Eastin, NIEHS/NTP, P. O. Box 12233, Research Triangle Park, North Carolina 27709; by telephone at (919) 541–7941; by FAX at (919) 541–3687; or by email at eastin@niehs.nih.gov. The URL for the NTP homepage is http://ntp-server.niehs.nih.gov.

Dated: June 24, 1999.

Samuel H. Wilson,

Deputy Director, NIEHS.

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Attachment—Chemicals Nominated to the NTP for Study, and Testing Recommendations made by the ICCEC on June 1, 1999

Chemical [CAS Number]	Nominated by	ICCEC recommendations	Study rationale; other information
Chemicals Recommended for Testing			
Aloe vera gel [8001–97–6] [94349–62–9]	NCI	—Cell transformation assay —Phototoxicity —Tumor promotion in Tg.AC mice	—Widespread use as a dietary supplement and cosmetic. —Inadequate toxicity information.
Ammonium molybdate [12027–67–7] [12054–85–2] [13106–76–8]	NCI	—*In vitro* chromosome aberration assay —*In vitro* micronucleus assay —Subchronic toxicity (inhalation studies)	—Representative soluble molybdenum compound. —Potential for worker and general population exposure. —Inadequate toxicity information.
5,6-Benzoflavone [6051–87–2]	NCI	—Toxicological characterization —Reproductive toxicity —Carcinogenicity	—Potential use as chemopreventive agent. —Lack of industry sponsorship. —Testing dependent on confirmation from nominator that recommended studies are needed for further development as therapeutic agent.
1,3-Dichloro-2-butene [926–57–8]	NIEHS	—Toxicological characterization —Metabolism studies —Carcinogenicity (inhalation studies)	—High production industrial chemical with potential for worker exposure. —Structural similarity to known carcinogen. —Inadequate toxicity information.
Ginseng and ginsenosides [50647–08–0]	NCI	—Genotoxicity —Reproductive toxicity —Neurotoxicity —Carcinogenicity	—Widespread use as a dietary supplement. —Inadequate toxicity information. —Subchronic testing will determine if ginseng or a specific ginsenoside will be subject to carcinogenicity testing.
Indole-3-carbinol [700–06–1]	NCI	—Reproductive toxicity —Toxicological characterization —Carcinogenicity	—Widespread and rapidly increasing use as a dietary supplement. —Potential use as chemopreventive agent.
Kava kava extract [9000–38–8] [84696–40–2]	NCI	—Genotoxicity —Reproductive toxicity —Neurotoxicity —Subchronic toxicity —Carcinogenicity	—Widespread use as a dietary supplement. —Reported human toxicity. —Inadequate toxicity information.
Milk thistle extract [84604–20–6]	NCI	—Genotoxicity —Metabolism studies —Reproductive toxicity —Subchronic toxicity	—Widespread use as a dietary supplement. —Reported hepatoprotective and anti-carcinogenic action. —Inadequate toxicity information.
3-Picoline [108–99–6]	NIEHS	—Subchronic toxicity —Carcinogenicity (pending results of subchronic studies)	—High production industrial chemical with potential for worker and general population exposure. —Inadequate toxicity information.
Chemicals for Which No Testing is Recommended			
1-Bromo-3-chloropropane [109–70–6]	NIEHS	—Toxicological characterization —Carcinogenicity	—Available data indicate low toxicity. —Low potential for human exposure.
N,N-Diethylhydroxylamine [3710–84–7]	NCI	—Subchronic toxicity	—Available data indicate low toxicity. —Low potential for human exposure.
Chemicals Deferred for Additional Information			
1,3,5-Triazine-1,3,5 (2H,4H,6H)-triethanol [4719–04–4]	NCI	—Carcinogenicity	—Reconsider as part of class study of formaldehyde-releasing compound.
s-Trioxane [110–88–3]	NIEHS	—Toxicological characterization —Carcinogenicity	—Reconsider as part of class study of formaldehyde-releasing compounds.
Chemicals to be Withdrawn from Consideration			
Arsenic Trioxide [1327–53–3]	NIEHS; Private Individual	—Mechanistic studies —Carcinogenicity	—Lack of an appropriate animal model for human carcinogenicity.
2,3-Butanedione [431–03–8]	NCI	—Genotoxicity —Metabolism studies —Carcinogenicity	—Rapid and near complete metabolism to carbon dioxide.
t-Butylcatechol [98–29–3]	NCI/FDA	—Toxicological characterization —Metabolism studies —Carcinogenicity	—Toxicity in subchronic studies at doses as high as 12,500 ppm in the diet was limited to forestomach lesions.
Camphor [464–49–3] [76–22–2]	NCI	—Teratogenicity —Reproductive toxicity —Carcinogenicity	—Teratogenicity studies completed —Toxicity in subchronic dermal studies limited to hyperplasia at the site of application.
Fluasterone [112859–71–9]	NCI	—Toxicological characterization —Carcinogenicity	—Difficulty in obtaining sufficient material for study. —Industry sponsor has responsibility for toxicological evaluation of this chemical if pursued as a chemotherapeutic agent.
Luminol [521–31–3]	Private Individual	—Toxicological characterization —Carcinogenicity	—Lack of absorption from skin. —Rapid metabolism and elimination of oral doses as nontoxic metabolites.
Propylene Glycol Monomethyl Ether [107–98–2]	NCI	—Carcinogenicity	—Availability of industry-sponsored reproductive toxicity and carcinogenicity studies.

[FR Doc. 99–17119 Filed 7–6–99; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840, (formerly: Bayshore Clinical Laboratory)
Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

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Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745
Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (formerly: Jewish Hospital of Cincinnati, Inc.)
American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers)
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, PO. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416
Doctors Laboratory, Inc., PO. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., PO. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,*14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702 / 800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023
Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199 / 800–752–1835 (formerly: Methodist Medical Center Toxicology Laboratory)
Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (formerly: Cedars Medical Center, Department of Pathology)
LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 120919–672–6900 / 800–833–3984 (formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515 / 800–223–6339 (formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.) Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986 (formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512 / 800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (formerly: NorthWest Toxicology, Inc.)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376 / 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733 / 800–574–2474 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311 / 800–288–7293 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200 / 800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7996
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379 / 800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 800–877–7484 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379 / 800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St. Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower, Level Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300 / 800–492–0800 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The following laboratory voluntarily withdrew from the Program on June 23, 1999:

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–17162 Filed 7–6–99; 8:45 am]

BILLING CODE 4160–20–U

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" June 9, 1994, 59 FR 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Special Emphasis Panel I; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in July 1999.

A summary of the meeting and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (6) and 5 U.S.C. App. 2, section 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: July 12–14, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: July 12–13, 1999, 8:30 a.m.–5:00 p.m.; July 14, 1999, 8:30 a.m.–adjournment.

Panel: Substance Abuse and Mental Health Services Administration Conference Grants PA 98–090.

Contact: Peggy Thompson, Room 17–89, Parklawn Building, Telephone: 301–443–9912 and FAX: 301–443–3437.

Dated: June 30, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–17090 Filed 7–6–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4446–N–03]

Proposed Information Collection: Comment Request; Urban Homesteading Program, Semi-Annual Progress Report

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 7, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia E. Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Franklin Price, (202) 708–2094 EXT. 4572 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

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Title of Proposal: Urban Homesteading Program, Semi-Annual Progress Report.

OMB Control Number, if applicable: 2506–0042.

Description of the need for the information and proposed use: The information is needed to assist HUD in determining if Local Urban Homesteading Agencies (LUHAs) are meeting the requirements of HUD's Urban Homesteading Program—Section 810 of the Housing and Community Act of 1974 (P.L. 93–383 as amended), and HUD's requirements published at 25 CFR 590. Under these requirements, LUHAs are required to supply data and make available records necessary for HUD's monitoring of the LUHSs' local homesteading programs to determine whether the LUHAs are making reasonable progress in moving properties through the stages of the homesteading process, including acquisition, homesteader selection, conditional conveyance, rehabilitation, and final conveyance. The monitoring process will allow HUD to determine if all property provided to the LUHAs with Section 810 funding are ultimately accounted for and used by the LUHAs as required by the statute and regulation.

Agency form numbers, if applicable: HUD–40063–A.

Members of affected public: State and local governments, public housing authorities and non profit organizations which have agreements with HUD to operate as Local Urban Homesteading Agencies under the Section 810 Homesteading Program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Total hours needed to collect information, 350 (200 for record-keeping and 150 for response to report [only 75 percent of the respondents need to submit report, i.e., 100 respondents × two reports per year × 75 percent × 1 hour per response = 150]. Number of respondents—100; frequency of responses—semi-annually; hours per response—1.

Status of the proposed information collection: Reinstatement of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 29, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–17224 Filed 7–6–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–29]

Submission for OMB Review: Customer-Survey of Households Living in Federally Assisted Units

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: HUD recently developed and tested a cost-effective mail survey instrument for assessing resident satisfaction with and rating of, housing units assisted through HUD programs. This survey, which elicits renter ratings of their housing, provided high response rates and high levels of agreement with independent condition ratings by professional inspectors. HUD plans to implement this survey as an ongoing tool to assess customer ratings of housing assisted through the Section 8 Certificate and Voucher programs. For limited evaluative or comparison purposes, HUD may also use this survey to assess resident ratings of other Federal housing assistance programs. This survey will allow HUD to provide feedback to help local housing agencies improve their Section 8 programs, and it will help HUD to focus its monitoring and technical assistance resources where program performance most needs improvement. It will provide HUD's policy, program, and budget managers with improved measures for tracking national housing conditions over time. The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0170) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (a) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 29, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Section 8 Housing Quality Standards Mail Survey.

Office: Policy Development and Research.

OMB Approval Number: 2528–0170.

Description of the need for the information and its proposed use: HUD recently developed and tested a cost-effective mail survey instrument for assessing resident satisfaction with, and rating of, housing units assisted through HUD programs. This survey, which elicits renters ratings of their housing, provided high response rates and high levels of agreement with independent condition ratings by professional inspectors. HUD plans to implement this survey as an ongoing tool to assess customer ratings of housing assisted through the Section 8 Certificate and Voucher programs. For limited evaluative or comparison purposes, HUD may also use this survey to assess resident ratings of other Federal housing assistance programs. This survey will allow HUD to provide feedback to help local housing agencies improve their Section 8 programs, and it will help HUD to focus its monitoring and technical assistance resources where program performance most needs improvement. It will provide HUD's policy, program, and budget managers with improved measures for tracking national housing conditions over time.

Form Number: None.

Respondents: Individuals or Households and State, Local, or Tribal Government.

Frequency of Submission: Reporting and Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	187,000		1		0.25		46,725

Total Estimated Burden Hours: 46,725.

Status: Reinstatement, with change.

Contact: Laurent V. Hodes, HUD, (202) 708–5537, ext. 5736, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–17223 Filed 7–6–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–30]

Submission for OMB Review: Funding Availability Under the Department of Housing and Urban Development's Lead-Based Paint Hazard Control and Other Related Grant Programs

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement for the Notices of Funding Availability for the grant programs within the HUD Office of Lead Hazard Control has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 30, 1999.

David S. Cristy,

Director, Information Technology Capital Planning Staff.

Title of Proposal: Notices of Funding Availability Under the Department of Housing and Urban Development's Lead-Based Paint Hazard Control and other related grant programs—This is a modification of an existing, approved reporting requirement.

Office: Lead Hazard Control.

OMB Approval Number: None.

Description of the Need for the Information and its Proposed Use: Title X of the Housing and Community Development Act of 1992 requires HUD to provide grants to states and local governments to address and reduce the lead-based paint and other hazards in privately owned housing. Grant applications are required for this process.

Form Number: None.

Respondents: Business or other for-profit State, Local, or Tribal Government not-for-profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application	80		1		100		8,000
Grant	23		1		24		552

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Total Estimated Burden Hours: 8,552.
Status: New Collection.
Contact: Dana Bres, HUD, (202) 755–1785 ext. 117, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–17225 Filed 7–6–99; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science

[FES 99–25]

Central Utah Project Completion Act; Diamond Fork System, Bonneville Unit, Central Utah Project

AGENCIES: The Department of the Interior (Department); the Central Utah Water Conservancy District (CUWCD); and the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

ACTION: Notice of availability of the Final Supplement to the Final Environmental Impact Statement (FS–FEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department, CUWCD, and the Mitigation Commission, have issued a joint Final Supplement to the Final Environmental Impact Statement (FS–FEIS) for the Diamond Fork System, Bonneville Unit, Central Utah Project. The FS–FEIS addresses potential impacts related to construction and operation of the features proposed for completing the Diamond Fork System. The FS–FEIS is intended to satisfy disclosure requirements of the National Environmental Policy Act (NEPA) and will serve as the NEPA compliance document for contracts, agreements and permits that would be required for construction and operation of the Diamond Fork System. The Department, CUWCD, and Mitigation Commission will use the FS–FEIS and other relevant materials to plan actions and make decisions.

SUPPLEMENTARY INFORMATION:

Background

The Diamond Fork System is one of six systems of the Bonneville Unit of the Central Utah Project that would develop central Utah's water resources for irrigation, municipal and industrial supply, fish and wildlife, and recreation. It was first identified in the Bonneville Unit Final EIS in 1973, described in detail in the Diamond Fork Power System Final EIS in 1984, and in the Diamond Fork System Final Supplement to the Final EIS in 1990. The Diamond Fork System has been modified over the years and has been partially constructed. Additional modifications to the System were proposed in the Spanish Fork Canyon—Nephi Irrigation System (SFN) Draft EIS in 1998. A notice was published in the **Federal Register** on October 14, 1998, announcing the Department, CUWCD, and Mitigation Commission's intent to discontinue planning of the SFN system and to prepare the Diamond Fork FS–FEIS.

Proposed Action

The Proposed Action would: (1) Maintain the statutorily mandated minimum flows in Diamond Fork Creek and Sixth Water Creek; (2) implement the Department's environmental commitments on the Diamond Fork Pipeline from the 1995 Record of Decision; (3) meet the CUWCD's Municipal and Industrial water contractual commitments to Salt Lake, Utah and Wasatch counties; and (4) provide the Mitigation Commission the opportunity and flexibility for future restoration of aquatic and riparian habitat in Sixth Water and Diamond Fork creeks to protect water quality and threatened species in Diamond Fork Creek. The Diamond Fork System would be completed by constructing a series of tunnels and pipelines to convey water through the mountainous terrain of Diamond Fork Canyon and various Diamond Fork drainage tributary canyons in the Uinta National Forest. The features would include Tanner Ridge Tunnel, Diamond Fork Siphon, Red Mountain Tunnel, Red Hollow Pipeline, Diamond Fork Creek Outlet, Spanish Fork River Outlet from Diamond Fork Pipeline, modifications to Spanish Fork River diversion dams if necessary, and other appurtenant facilities.

No Action Alternative

Implementation of the No Action Alternative under the FS–FEIS would complete the Diamond Fork System if a decision were made not to proceed with future development of the Bonneville Unit through the Utah Lake Drainage Basin Water Delivery System. The features of the No Action Alternative would include Three Forks Dam and Reservoir, Diamond Fork Pipeline Extension, and Spanish Fork River Outlet.

Public Involvement

Participation has occurred throughout the EIS process. There have been numerous open houses, public meetings, and mail-outs to solicit comments and ideas. Comments received through the process have been considered. A Notice of Intent to prepare the FS–FEIS was published October 14, 1998, in the **Federal Register** (98–27483). Publication of the Record of Decision will occur no sooner than 30 days from the date of this notice.

FOR FURTHER INFORMATION: Additional copies of the FS–FEIS or information on matters related to this notice can be obtained on request from: Ms. Nancy Hardman, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058, Telephone: (801) 226–7187, Fax: (801) 226–7150.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058
Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, Utah 84101
Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW, Washington, D.C. 20240
Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606

Dated: July 1, 1999.

Ronald Johnston,
CUPCA Program Director, Department of the Interior.

[FR Doc. 99–17144 Filed 7–6–99; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Draft Environmental Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice informs the public that the comment period for the Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement for Little Pend Oreille National Wildlife Refuge is extended.

DATES: Comments must be received by the new deadline of July 31, 1999 at the address below.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Little Pend Oreille National Wildlife Refuge, 1310 Bear Creek Rd., Colville, WA 99114, telephone (509) 684–8384; E-mail: FWS1Public_Comments_LPO@fws.gov; fax number (509) 684–8381.

FOR FURTHER INFORMATION CONTACT: Lisa Langlier, Refuge Manager, (509) 684–8384.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service published in the **Federal Register** of May 5, 1999 (Vol. 64, No. 86, page 24168), that comments were to be received on or before June 30, 1999. In response to public interest, the Service decided to provide more time for public comments. The new deadline for public comment is now extended to July 31, 1999.

Dated: June 21, 1999.

Thomas J. Dwyer,
Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–17102 Filed 7–6–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Nonferrous Metals Surveys.
Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonferrous and related metals. This information will be published as monthly, quarterly, and annual reports for use by Government agencies, industry, and the general public.
Bureau form number: Various (32 forms).
Frequency: Monthly, Quarterly, and Annual.
Description of respondents: Producers and consumers of nonferrous and related materials.
Annual Respones: 6,633.
Annual burden hours: 4,453.
USGS clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,
Chief Scientist, Minerals Information Team.

[FR Doc. 99–17086 Filed 7–6–99; 8:45 am]
BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact between the Comanche Indian Tribe and the State of Oklahoma, which was executed on July 12, 1990.

DATES: This action is effective July 7, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 25, 1999.

Kevin Gover,
Assistant Secretary—Indian Affairs

[FR Doc. 99–17116 Filed 7–6–99; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VI to the Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of Siletz Indians of Oregon and the State of Oregon, which was executed on April 29, 1999.

DATES: This action is effective July 7, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 25, 1999.

Kevin Gover,
Assistant Secretary—Indian Affairs.

[FR Doc. 99–17117 Filed 7–6–99; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF JUSTICE

Executive Office of Immigration Review; Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review: Immigration practitioner appeal form from an adverse decision of an adjudicating official, Executive Office for Immigration Review.

Office of Management and Budget approval is being sought for the

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information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 3, 1999, at 64 FR 23685, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until August 6, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper information of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Miminize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection: (1) Type of Information Collection: New Collection of Information.

(2) Title of the Form/Collection: Immigration Practitioner Appeal Form from an Adverse Decision of an Adjudicating Official, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–45, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The Information on Form EOIR–45 will be used by immigration practitioners to appeal an adverse decision of an Adjudicating Official in a disciplinary proceeding to the Board of Immigration Appeals, Executive Office for Immigration Review.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses per year at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 50 annual burden hours.

If additional information is required contact: Mr. Robert D. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 1, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–17217 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; Immigration Practitioner Complaint Form, Executive Office for Immigration Review.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 3, 1999, at 64 FR 23685, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until August 6, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New Collection of Information.

(2) Title of the Form/Collection: Immigration Practitioner Complaint Form, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–44, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The Information on Form EOIR–44 will be used to determine whether or not, assuming the truth of the factual allegations raised therein, the Office of the General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 500 responses per year at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 1, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–17218 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Existing Collection in Use Without an OMB Control Number; Comment Request

ACTION: Notice of information collection under review; notice of entry of appearance as attorney or representative before the Immigration Court, Executive Office for Immigration Review.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 3, 1999, at 64 FR 23684, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until August 6, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Existing Collection in Use Without an OMB Control Number.

(2) Title of the Form/Collection: Notice of Entry of Appearance as Attorney or representative Before the Immigration Court, Executive Office for Immigration

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–28: Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: the information collected on EOIR–28 will be used (i) to determine whether or not a responding attorney or representative is duly authorized to represent aliens before the Immigration Court, (ii) to provide the responding represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative as required by law, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 77,000 responses per year at 6 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 7,700 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 1, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–17219 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Existing Collection in Use Without an OMB Control Number; Comment Request

ACTION: Notice of information collection under review; notice of entry of appearance as attorney or representative before the Immigration Court, Executive Office for Immigration Review.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 3, 1999, at 64 FR 23684, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until August 6, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the

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proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Existing Collection in Use Without an OMB Control Number.

(2) Title of the Form/Collection: Notice of Entry of Appearance as Attorney or representative Before the Immigration Court, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–28, Executive Office for immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information collected on EOIR–28 will be used: (i) To determine whether or not a responding attorney or representative is duly authorized to represent aliens before the Immigration Court, (ii) to provide the responding represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative as required by law, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for immigration Review of such representation.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 77,000 responses per year at 6 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 7,700 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 1, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–17220 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 21, 1999, American Radiolabeled Chemicals, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Meperidine (9230)	II
Metazocine (9240)	II
Morphine (9300)	II
Oxymorphone (9652)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 7, 1999.

Dated: June 23, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–17097 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002 (a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 1, 1999, Applied Science Labs, Inc., A Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import these controlled substances for the manufacture of reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later then August 6, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958 (a), 21 U.S.C. 823 (a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 23, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–17095 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 27, 1999, Damocles10, 3529 Lincoln Highway, Thorndale, Pennsylvania 19372, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine-N-oxide (9053)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Codeine (9050)	II
Morphine (9300)	II

The firm plans to manufacture the listed controlled substances for the purpose of deuterium labeled internal standards for distribution to analytical laboratories.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 7, 1999.

Dated: June 23, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–17096 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated February 23, 1999, and published in the **Federal Register** on March 5, 1999, (64 FR 10724), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenide (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxphene, bulk (non-dosage forms) (9273).	II

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Ganes Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Ganes Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 23, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–17094 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By notice dated March 19, 1999, and published in the **Federal Register** on April 9, 1999, (64 FR 17417), Roberts Laboratories, Inc., 4 Industrial Way East, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of propiram (9649), a basic class of controlled substance listed in Schedule I.

The firm plans to import the propiram for product development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Roberts Laboratories, Inc. to import propiram is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roberts Laboratories, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 23, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc 99–17093 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 4, 1999, Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indian 46250, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 7, 1999.

Dated: June 8, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–17098 Filed 7–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before September 7, 1999.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE, Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Karin G. Kurz, BLS Clearance Officer. See Addresses section.

SUPPLEMENTARY INFORMATORY:

I. Proposed Collection

Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Point of Purchase Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

II. Background

The purpose of this survey is to develop and maintain a timely list of retail, wholesale, and service establishments where urban consumers shop for specified items. This information is used as the sampling universe for selecting establishments at which prices of specified items are collected and monitored for use in calculating the Consumer Price Index (CPI). The survey has been ongoing since 1980 and also provides expenditure data that allow items that are priced in the CPI to be properly weighted.

III. Current Actions

Since 1997, the survey has been administered quarterly and entirely via a computer-assisted telephone interview, as opposed to the previous practice of an annual personal-visit interview. This revised collection methodology is more flexible and creates the possibility of introducing new products into the CPI in a timelier manner. Furthermore, the cost efficiency of telephone interviewing permits data collection in all sampling areas each year, rather than the previous practice of collecting data in only 20 percent of all sampling areas each year. The revised sample design results in an overall CPI market basket that is more reflective of the current prices encountered, and the establishments visited, by urban consumers.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Point of Purchase Survey.

OMB Number: 1220–0044.

Affected Public: Individuals and households.

Total Respondents: 17,827 (three-year annual average).

Frequency: Quarterly.

Total Responses: 67,200 annually.

Average Time Per Response: 11 minutes.

Estimated Total Burden Hours: 12,320 annually.

Total Burden Cost: (capital/startup): $0.

Total Burden Cost: (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 30th day of June 1999.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 99–17131 Filed 7–6–99; 8:45 am]

BILLING CODE 4510–24–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, July 15, 1999 at the Embassy Suites Hotel, Chevy Chase Pavilion. The meeting is tentatively scheduled for 10:00 a.m. to 4:30 p.m.

The Commission will discuss recommendations on graduate medical education and payments to teaching hospitals in preparation for its forthcoming report to the Congress.

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99–17230 Filed 7–6–99; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend and Revise a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 2682 (January 15, 1999), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, N.W. Room 10235, Washington, D.C. 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–306–1125 X2017.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: National Science Foundation Science Honor Awards.

OMB Control Number: 3145–0035.

Summary of Collection: The National Science Foundation (NSF) administers several honorary awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the NSF Vannevar Bush Award, and the NSB Public Service Award.

Use of the Information: The Foundation has the following honor award programs:

- *President's National Medal of Science.* Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that "(t)he President shall * * * award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as * * * appropriate."

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would "receive recommendations made by any other nationally representative scientific or engineering organization." On the basis of those recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980. The Committee agreed that such a form standardized the nomination format, benefiting the nominator, making the Committee's review process more efficient and permitted better staff work in a shorter period of time. Form NSF–1122 will be used to further standardize the nomination procedures, thus continuing to allow for more effective committee review, and permitting better staff work in a shorter period of time.

The Committee has established the following guidelines for selection of candidates:

1. The total impact of an individual's work on the present state of physical, biological, mathematical, engineering or social and behavioral sciences is to be the principal criterion.
2. Achievements of an unusually significant nature in relation to the potential effects of such achievements on the development of scientific thought.
3. Unusually distinguished service in the general advancement of science and engineering, when accompanied by substantial contributions to the content of science at some time.
4. Recognition by peers within the scientific community.
5. Contributions to innovation and industry.
6. Influence on education through publications, students, etc.
7. Must be a U.S. citizen or permanent resident who has applied for citizenship.

Nominations remain active for a period of four years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the Committee.

Nomination forms should be typewritten, single-spaced using a font no smaller than 12 characters per inch. Renominations may be submitted via an updated nomination form.

- **Alan T. Waterman Award.** Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86) and authorized NSF to "establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering" to mark the 25th anniversary of the National Science Foundation and to our honor its first

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Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $500,000 over a three-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Pub. L. 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form latter to solicit these nominations. In 1980, a nomination form (NSF 1123) was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendations to the Director, NSF, and the National Science Board (NSB). HSF Form 1124 is used for this purpose.

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more then five years beyond receipt of the PhD. degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innovation, and significant impact on the field.

• **Vannevar Bush Award.** The NSB established the Vannevar Bush Award in 1980 to honor the Dr. Bush's unique contributions to public service. The annual award recognizes an individual who, through public service activities in science and technology, has made an outstanding "contribution toward the welfare of mankind and the Nation."

The Vannevar Bush Award Committee is periodically established by the NSB to solicit nominations from selected scientific engineering educational societies. Candidates must be a senior stateperson who is an American citizen and who meets two or more of the following criteria.

1. Who has distinguished him/herself through public service activities in science and technology.

2. Who has pioneered the exploration, charting and settlement of new frontiers in science, technology, education and public service.

3. Whose leadership and creativity have inspired others to distinguished careers in science and technology.

4. Who has contributed to the welfare of the Nation and mankind through activities in science and technology.

5. Whose leadership and creativity have helped mold the history of advancements in the Nation's science, technology, and education.

Nomination submissions should be in letter format, accompanied by a complete biography and a brief citation summarizing the nominee's scientific or technological contributions to our national welfare in promotion of the progress of science. Nominations remain active for three years, including the year of nomination.

• **Public Service Award.** The NSB established the Public Service Award in November 1996. This annual award recognizes people and organizations who have increased the public understanding of science or engineering. The award may be given to an individual and to a group (company, corporation, or organization), but not to members of the U.S. Government.

Eligibility includes any individual or group (company, corporation or organization) that has increased the public understanding of science or engineering. Members of the U.S. Government are not eligible for consideration.

Candidates for the individual and group (company, corporation or organization) award must have made contributions to public service in areas other than research, and should meet one or more of the following criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation and its communication to the public.

2. Encouraged others to help raise the public understanding of science and technology.

3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.

4. Contributed to the development of broad science and engineering policy and its support.

5. Influenced and encouraged the next generation of scientist and engineers.

6. Achieved broad recognition outside the nominee's area of specialization.

7. Fostered awareness of science and technology among broad segments of the population.

Nomination Procedures

1. Prepare a summary of the nominee's activities as they relate to the selection criteria. Include the nominator's name, address and telephone number, and the name, address, and telephone number, and the name, address, and telephone number of the nominee, as well as the nominee's vita, if appropriate (no more than three pages).

2. The selection committee recommends the most outstanding candidate(s) for each category to the NSB, which approves the awardees.

3. Nominations remain active for a period of three years, including the year of nomination. After that time, candidates must be renominated for them to be considered by the selection committee.

4. Nominations should be mailed or faxed to the NSB Public Service Award Advisory Committee. Electronic mail does not protect confidentiality and should not be used for this purpose. Facsimile copies should be followed up by the original, signed document in order for the nomination to be reviewed by the selection committee.

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Estimated Number of Responses per Award. 137 responses, broken down as follows: For the President's National Medal of Science, 45; for the Alan T. Waterman Award, 60; for the Vannevar Bush Award, 12; for the Public Service Award, 20.

Estimate of Burden: These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, it is estimated that each submission is averaged to be 8 hours per respondent for each program. If the nominator is thoroughly familiar with the scientific background of the nominee, time spent to complete the nomination may be considerably reduced.

Estimated Total Annual Burden on Respondents: 1,242 hours, broken down by 450 hours for the President's National Medal of Science (10 hours per 45 respondents); 600 hours for the Alan T. Waterman Award (10 hours per 60 respondents); 72 hours for the Vannevar Bush Award (6 hours per 12 respondents); and 120 hours for the Public Service Award (6 hours per 20 respondents).

Frequency of Responses: Annually.

Dated: July 1, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 99–17183 Filed 7–6–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension

2. *The title of the information collection:*

10 CFR Part 74—Material Control and Accounting of Special Nuclear Material

NUREG 1065, Rev. 2—Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low Enriched Uranium Facilities

NUREG/CR 5734—Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities

NUREG 1280, Rev. 1—Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment

3. *The form number if applicable:* N/A

4. *How often the collection is required:* Submission of the fundamental nuclear material control plan is a one-time requirement which has been completed by all current licensees. Specified inventory and material status reports are required annually or semiannually. Other reports are submitted as events occur.

5. *Who will be required or asked to report:* Persons licensed under 10 CFR Parts 70 or 72 who possess and use certain forms and quantities of special nuclear material.

6. *An estimate of the number of annual responses:* 14

7. *The estimated number of annual respondents:* 14

8. *The number of hours needed annually to complete the requirement or request:* The total number of hours needed annually to complete the reporting and recordkeeping requirements is 5,323 (223 hours for reporting and 5,100 hours for recordkeeping).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* No.

10. *Abstract:* 10 CFR Part 74 establishes requirements for material control and accounting of special nuclear material, and specific performance-based regulations for licensees authorized to possess and use strategic special nuclear material, or to possess and use, or produce, special nuclear material of low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material control and accounting of special nuclear material and to satisfy obligations of the United States to the International Atomic Energy Agency (IAEA). Submission or retention of the information is mandatory for persons subject to the requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 6, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0123), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 30th day of June, 1999.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–17194 Filed 7–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Pilot Program Evaluation Panel

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Notice of establishment of the Pilot Program Evaluation Panel (PPEP).

SUMMARY: Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC) announces the Establishment of the Pilot Program Evaluation Panel (PPEP). The Nuclear Regulatory Commission has determined that establishment of the Panel is necessary and is in the public interest in order to obtain advice and recommendations on a revised regulatory oversight process for commercial nuclear power plants. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

The NRC has developed a revised regulatory oversight process for commercial nuclear power plant licensees as described in Commission paper SECY 99–007, "Recommendations For Reactor Oversight Process Improvements," dated January 8, 1999, and SECY–99–007A, "Recommendations For Reactor Oversight Process Improvements (Follow-up to SECY–99–007)," dated March 22, 1999. These Commission papers describe the scope and contents for performance indicator reporting, a new risk-informed baseline inspection program, a new streamlined assessment process, and a new enforcement policy. Commission paper SECY-99–007A also described a pilot program that would be performed at two sites per region to exercise these new oversight processes prior to full implementation.

The PPEP will function as a management-level, cross-disciplinary oversight group to independently monitor and evaluate the results of the pilot effort. The PPEP will meet periodically during the pilot program to review the implementation of the oversight processes and the results generated by the PI reporting, baseline inspection, assessment, and enforcement activities. These meetings will be publically announced in advance, open to the public, and all material reviewed placed in the public document room. A meeting summary will be prepared following each meeting to document the results of the meeting

The PPEP will evaluate the pilot program results against established

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success criteria. For those success criteria that are intended to measure the effectiveness of the processes, and that generally do not have a quantifiable performance measure, the PPEP will serve as an "expert panel" to review the results and evaluate how well the success criteria were met. At the end of the pilot program, the PPEP members will provide an evaluation as to whether each of the success criteria have been met. This report will include both the consensus view of the panel, along with the dissenting views of any of the panel members. The staff will use the PPEP evaluation to determine the need for any additional process development or improvements prior to full implementation.

The Panel membership will including participants from NRC headquarters and regional management, a representative from the Nuclear Energy Institute, pilot plant licensee management representatives, a representative from the Union of Concerned Scientists (a public interest group), and a representative from the Illinois Department of Nuclear Safety.

The establishment of the Panel is effective on June 30, 1999 with the filing of its charter with the Commission and with the standing committees of Congress having legislative jurisdiction over the NRC.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–415–1963.

Dated: June 30, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–17191 Filed 7–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit 1; Notice of Receipt and Availability for Comment of Post-Shutdown Decommissioning Activities Report

The U.S. Nuclear Regulatory Commission (the Commission) is in receipt of and is making available for public comment, the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1), located in Waterford, Connecticut.

Millstone Unit 1 has been shut down since November 4, 1995, and the reactor has been defueled since November 19, 1995. By letter dated July 21, 1998, Northeast Nuclear Energy Company (the licensee) certified to the Commission that power operations at Millstone Unit 1 had been permanently ceased and fuel had been permanently removed from the reactor vessel. By letter dated June 14, 1999, the licensee submitted its PSDAR to the Commission in accordance with the requirements of Title 10 of the *Code of Federal Regulations*, Section 50.82.

In the PSDAR, the licensee has identified the planned decommissioning activities and schedule for the Millstone Unit 1 facility, provided an estimate of expected costs, and discussed the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities are bounded by the appropriate previously issued environmental impact statements. The licensee has chosen to decontaminate and dismantle selected portions of the facility and leave other portions in a safe storage status until decommissioning programs are developed for Unit 2 and Unit 3. The licensee stated, however, that it is conceivable that upon further evaluation, it may be preferable to decontaminate and dismantle Unit 1 without placing portions of the facility in safe storage. The licensee is also evaluating the feasibility of constructing an independent spent fuel storage facility on site until the fuel can be permanently transferred offsite to a Department of Energy facility.

The PSDAR is available for public inspection at the Commission's public document room located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut. The NRC has also placed the PSDAR on the Internet at [http://www.nrc.gov/OPA/reports/ms1061499.htm] (cover letter) and [http://www.nrc.gov/OPA/reports/1061499a.htm] (attached report).

The Commission will schedule a public meeting in the vicinity of the Millstone Unit 1 facility to solicit public comments on the Millstone Unit 1 PSDAR. A notice will be placed in the **Federal Register** and in the local media announcing the date, time, and location of the public meeting.

Comments regarding the Millstone Unit 1 PSDAR should be submitted in writing to Mr. Louis L. Wheeler, Senior Project Manager, Mail Stop O11 D–19, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, within 30 days after the date of this notice.

Dated at Rockville, Maryland, this 29th of June 1999.

For the Nuclear Regulatory Commission.

Louis L. Wheeler,

Senior Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning Division of Licensing Project Manager, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17192 Filed 7–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455]

Commonwealth Edison Company; Byron Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would delete license conditions which have been satisfied, revise others to delete parts which are no longer applicable or to revise references, and make editorial changes.

The proposed action is in accordance with the licensee's application dated March 14, 1997.

The Need for the Proposed Action

The NRC, as part of the original licensing process or subsequent licensing actions, may impose certain conditions on the license. The conditions are listed as part of an attachment to the license. In many cases, these conditions require certain actions by the licensee which, once completed, are no longer applicable. In order to simplify the licenses for Byron, Units 1 and 2, the licensee has proposed to delete license conditions which have been satisfied, revise others to delete parts which are no longer applicable or to revise references, and make editorial changes.

Description of the Proposed Change

The licensee proposed to modify Unit 1 license condition 2.C.(1), "Maximum Power Level," to delete references to Attachment 1 to the Unit 1 operating

license. Attachment 1 describes preoperational tests, startup tests and other items that shall be completed as specified as a condition of the license.

The licensee proposed to delete Unit 1 license condition 2.C.(3), "Post-Fuel-Loading Initial Test Program (Section 14, SER [Safety Evaluation Report])," which states: "Any changes to the Initial Test Program described in Section 14 of the FSAR [Final Safety Analysis Report] made in accordance with the provisions of 10 CFR 50.59 shall be reported in accordance with 50.59(b) within one month of such change."

The licensee proposed to delete Unit 1 license condition 2.C.(4), "Seismic and Dynamic Qualification (Section 3.10, SSER [Supplemental Safety Evaluation Report] #5)*," which states: "Prior to startup following the first refueling outage, the licensee shall completely qualify the Westinghouse 7300 Process Protection System (ESE–13), for both Nuclear Steam Supply System and Balance of Plant applications, including any hardware changes, if found necessary." The licensee also proposed to delete a related item from license condition 2.D. License condition 2.D. lists exemptions from 10 CFR Part 50 that were granted with the initial licensing. License condition 2.D.(b) identifies an exemption to General Design Criterion-2 (GDC–2) of Appendix A, which was granted to allow operation with license condition 2.C.(4).

The licensee proposed to delete Unit 1 license condition 2.C.(5), "Equipment Qualification (Section 3.11, SSER #5, SSER #6)," which states: "All electrical equipment within the scope of 10 CFR 50.49 must be environmentally qualified by November 30, 1985."

The licensee proposed to delete Unit 1 license condition 2.C.(7), "Control Room Human Factors (Section 18.2, SSER #4)," which states: "Unless the staff determines that the test results do not support the change, the licensee shall, prior to startup following the first refueling outage, move the range and volume controls for the SOURCE RANGE nuclear instrument on Unit 1 from the nuclear instrumentation cabinet 1PM07J to the main control board 1PM05J."

The licensee proposed to delete Unit 1 license condition 2.C.(8), "TMI Item 11.F.1,Iodine/Particulate Sampling (Section 11.5, SSER #5)," which states: "Prior to startup following the first refueling outage, the licensee shall demonstrate that the operating idoline/particulate sampling system will perform its intended function."

The licensee proposed to delete Unit 1 license condition 2.C.(9), "Emergency Response Capability (NUREG–0737, Supplement #1)," which states: "The licensee shall complete the emergency response capabilities as required by Attachment 2 to this license, which is incorporated into this license." Attachment 2 lists the following five separate emergency response issues.

Number 1, "Detailed Control Room Design Review (DCRDR)," which states: "The license shall submit the final summary report for the DCRDR by December 1, 1986."

Number 2, "Regulatory Guide 1.97, Revision 2 Compliance," which states: "The licensee shall submit by March 1, 1987, a preliminary report describing how the requirements of Regulatory Guide 1.97, Revision 2 have been or will be met. The licensee shall submit by September 1, 1987, the final report and a schedule for implementation (assuming the NRC approves the DCRDR by March 1, 1987)."

Number 3, "Upgrade Emergency Operating Procedures (EOPs)," which states: "The licensee shall submit a Procedures Generation Package within 3 months of NRC approval of Westinghouse Owners Group (WOG) Emergency Procedure Guidelines (EPG) Revision 1. The licensee shall implement the upgraded EOPs based on WOG EOPs Revision 1 within 12 months of NRC approval of WOG EPG Revision 1."

Number 4, "Emergency Response Facilities," which states: "The licensee shall implement the Emergency Response Facility meteorological A-model by January 1, 1986."

Number 5, "Safety Parameter Display System (SPDS)," which states: "The licensee shall have SPDS operational by March 30, 1985."

The licensee proposed to delete Unit 1 license condition 2.C.(10), "Reliability of Diesel-Generators (Section 9.5.4.1, SER, SSER #5)*," which states: "Prior to startup following the first refueling outage, the controls and monitoring instrumentation on the local control panels shall be dynamically qualified for their location or shall be installed on a free standing floor mounted panel in such a manner (including the use of vibration isolation mounts as necessary) that there is reasonable assurance that any induced vibrations will not result in cyclic fatigue for the expected life of the instrument."

The licensee proposed to delete Unit 1 license condition 2.C.(11), "Generic Letter 83–28 (Required Actions Based on Generic Implications of Salem ATWS [anticipated transient without scram] Events)," which states: "The licensee shall submit responses to and implement the requirements of Generic Letter 83–28 on a schedule which is consistent with that given in its letters dated November 5, 1983, February 29, 1984, June 1, 1984 and October 10, 1984."

The licensee proposed to delete Unit 1 license condition 2.C.(12), "Formal Federal Emergency Management Agency Finding," which states: "In the event that the NRC finds that the lack of progress in completion of the procedures in the Federal Emergency Management Agency's final rule, 44 CFR Part 350, is an indication that a major substantive problem exists in achieving or maintaining an adequate state of emergency preparedness, the provisions of 10 CFR Sections 50.54(s)(2) will apply."

The licensee proposed to delete Unit 1 license condition 2.C.(13), "Control Room Ventilation System (Section 6.5.1, SSER #5, SSER #6)*," which states: "Prior to July 1, 1985, the licensee shall incorporate modifications, as necessary, to ensure that the control room ventilation system may be used during an accident to protect operators within the criteria specified in 10 CFR 50, Appendix A, General Design Criteria 19."

The licensee proposed to delete Unit 1 license condition 2.C.(14), "Turbine Missiles (Section 3.5.1.3, SSER #5)," which states: "The licensee shall volumetrically inspect all three low pressure turbine rotors by mevery third refueling outage, until a turbine system maintenance program based on the manufacturer's calculations of missile generation probabilities is approved by the staff."

The licensee proposed to delete Unit 1 license condition 2.C.(15), "Operating Staff Experience Requirements (Section 13.1.2.1, SSER #5)," which states: "The licensee shall have a licensed senior operator on each shift who has had at least six months of hot operating experience on a similar type plant, including at least six weeks at power levels greater than 20 percent of full power, and who has had start-up and shutdown experience, except as follows. For those shifts where such an individual is not available on the plant staff, an advisor shall be provided who has had at least four years of power plant experience, including two years of nuclear plant experience, and who has had at least one year of experience on shift as a licensed senior operator at a similar type facility. Use of advisors who were licensed only at the RO [reactor operator] level will be evaluated on a case-by-case basis. Advisors shall be trained on plant procedures, technical specifications and plant systems, and shall be examined on these

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topics at a level sufficient to assure familiarity with the plant. For each shift, the remainder of the shift crew shall be trained as to the role of the advisors. These advisors shall be retained until the experience levels identified in the first sentence above have been achieved. The NRC shall be notified at least 30 days prior to the date that the licensee proposes to release the advisors from further service."

The licensee proposed to revise Unit 1 license condition 2.D. to delete the list of exemptions from 10 CFR Part 50 and replace it with a statement that no exemptions from 10 CFR Part 50 are required.

The licensee proposed to modify Unit 2 license condition 2.C.(1), "Maximum Power Level," to delete references to Attachment 1 to the Unit 1 operating license. Attachment 1 describes preoperational tests, ventilation tests and fire barrier sealing that shall he completed as specified as a condition of the license. Attachment 1, Item A., required that preoperational tests and test deficiencies documented in licensee letters dated November 3, 1986, and January 14, 1987, be completed in accordance with the licensee's schedule commitments.

The licensee proposed to revise Unit 2 license condition 2.C.(2), "Technical Specifications and Environmental Protection Plan," to delete references to Attachment 2.

The licensee proposed to delete Unit 2 license condition 2.C.(3), "Initial Test Program," which states: "Any changes to the Initial Startup Test Program described in Chapter 14 of the FSAR made in accordance with the provisions of 10 CFR 50.59 shall be reported in accordance with 50.59(b) within one month of such change."

The licensee proposed to delete Unit 2 license condition 2.C.(4), "Regulatory Guide 1.97, Revision 2 Compliance," which states: "The licensee shall submit by March 1, 1987, a preliminary report describing how the requirements of Regulatory Guide 1.97, Revision 2 have been or will be met. The licensee shall submit by September 1, 1987, the final report and a schedule for implementation (assuming the NRC approves the DCRDR by March 1, 1987)."

The licensee proposed to revise Unit 2 license condition 2.D. to delete the list of exemptions from 10 CFR Part 50 and replace it with a statement that no exemptions from 10 CFR Part 50 are required.

The licensee also proposed certain editorial changes.

Environmental Impacts of the Proposed Action

The Commission has completed its environmental evaluation of the proposed action and concludes that the proposed amendment would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Byron Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 28, 1999, the staff consulted with the Illinois State official, Mr. Frank Niziolek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 14, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Dated at Rockville, Maryland, this 29th day of June 1999.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17193 Filed 7–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses of Broad Scope, dated April 1999

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1556, Volume 11, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses of Broad Scope," dated April 1999.

ADDRESSES: Copies of NUREG–1556, Vol. 11, may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION, CONTACT: Ms. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7874, e-mail: slm2@nrc.gov.

SUPPLEMENTARY INFORMATION: On September 16, 1998 (63 FR 49615), NRC announced the availability of draft NUREG–1556, Volume 11, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses of Broad Scope," and requested comments on it. This draft NUREG report was the eleventh program-specific guidance developed to support an improved materials licensing process. The NRC staff considered all the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG–1556, Volume 11, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in Draft Regulatory Guide DG–0005 dated October 1994. Included in this guidance is a new option for Type A licensees of broad scope to have increased flexibility to make changes in some program areas and revise some procedures previously approved by NRC without amendment of the license. This option is discussed in detail in Chapter 1 of this document. Draft NUREG–1556, Volume 11, is not intended to be used alone. Because broad-scope licensees may be involved in many different program areas (e.g., medicine, research and development, manufacturing and distribution, etc.), this document frequently refers the user to other more program-specific guidance documents in the NUREG–1556 series.

Electronic Access

NUREG–1556, Volume 11, will also be available electronically approximately 1 month after publication of this notice by visiting NRC's Home Page (http://www.nrc.gov) and choosing "Nuclear Materials," and then "NUREG–1556, Volume 11."

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 29th day of June, 1999.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 99–17195 Filed 7–6–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Postal Facility Visit

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission visit.

SUMMARY: Postal Rate Commission staff will tour the main postal facility in San Diego, CA to observe mail processing and related operations.

DATES: The tour is scheduled for Tuesday, July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268–0001, 202–789–6820.

Dated: June 30, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–17114 Filed 7–6–99; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41573; File No. SR–CBOE–99–23]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Fees for Delayed Submission of Trade Information

June 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 8, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE. The Exchange has designated the proposed rule change as one satisfying the requirements of paragraph (f)(6) of Rule 19b–4 under the Act,[2] which renders the proposal effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 2.30 relating to fees for delayed submission of trade information. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CBOE Rule 2.30 to provide that the appropriate Clearing Procedure Committee ("Committee") may determine, with due notice, the date when certain time reductions will go into effect for delayed submission of trade match information. Under the current rule, approved by the Commission in November 1998,[4] trade match submission time is reduced in three phases from two (2) hours down to one (1) hour over a period of six months. The rule states that the first time reduction will go into effect on January 1, 1999, and will require timely trade submission to be within ninety (90) minutes of execution. The next reduction was scheduled to go into effect on April 1, 1999, and would require timely trade submission to be within seventy five (75) minutes of execution. Finally, from July 1, 1999, forward, the Exchange would have required that timely trade submission be within one (1) hour of execution.

Due to a discrete system problem affecting the trade match system since the inception of this Rule, the Exchange has applied an exception under CBOE Rule 2.30(f)(1)(C)(ii), Extenuating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4(f)(6).

[3] Pursuant to Rule 19b–4(f)(6), the Exchange has represented that the proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(f)(6) under the Act. *Id.*

[4] *See* Securities Exchange Act Release No. 40729 (November 30, 1998), 63 FR 67956 (December 9, 1998).

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Circumstances, which excepts members from incurring a fee for delayed trade submission. The Exchange notified its membership of this exception in January 1999. Since that time, the Exchange has waived any fees that members would have incurred for delayed submission of trade information. Also, since January, the Exchange continued to believe that these systems problems would be corrected imminently and the fee would be reinstated on the time schedule as stated in the Rule.

The Exchange now believes that this systems problem is corrected, and would like to begin charging the fee to members. The Exchange feels strongly, however, that members should not be held to the 75 minute time allotment which is to be in effect under the Rule because the 90 minutes time allotment for delayed trade submission was never in effect. The Exchange would like to go back to the original time schedule of phasing in the reduction, but without the dates stated in the Rule. The Exchange proposes to allow the appropriate Committee, with appropriate notice to the membership, to determine when the reductions go into effect. The Exchange proposes that the Committee give the membership 30 days notice to phase in the three reductions, and that the Committee mandate each reduction to be not less than three months in duration. The first reduction will go into effect as soon as possible after this rule filing is operative, and notice will be given in the form of a regulatory circular that will go out to the membership with 30 days notice. In the meantime, the Exchange does not intend to hold the membership to the standards of the Rule pending effectiveness of this proposed change. CBOE states this proposed change will give the Committee the flexibility to best manage the time reductions and delayed implementation of the next phase if unforeseen circumstances occur.

2. Statutory Basis

The Exchange finds that the proposed rule change is consistent with Section 6(b)[5] of the Act in general and further the objectives of Section 6(b)(5)[6] in particular in that it will promote just and equitable principles of trade, protect investors and the public interest, and remove impediments to and perfect the mechanisms of a free and open market.[7]

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In reviewing this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b-4 thereunder.[9] Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until July 8, 1999, 30 days from June 8, 1999, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submission should refer to File No. SR–CBOE–99–23 and should be submitted by July 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17153 Filed 7–6–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b-4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41569; File No. SR–CHX–99–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to a Specialist Assignment Fee for Nasdaq/National Market Securities

June 28, 1999.

Purusant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 11, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "the Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule to provide for an increase, from $500 to $2000, of the Specialist Assignment Fee charged upon approval of an Exchange specialist's application to serve as the CHX specialist for a Nasdaq/National Market ("Nasdaq/NM") issue. The text of the proposed change is as follows.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Additions are in *italics;* deletions are in brackets.

* * * * *

MEMBERSHIP DUES AND FEES

* * * * *

(b) Registration Fee.

Specialist Assignment: There shall also be an assignment fee of $500 [per issue] *for each Dual Trading System issue and a $2,000 assignment fee for each NASDAQ/NM issue* upon the approval by the Committee on Specialist Assignment and Evaluation of an application of a member or member organization to act as specialist in *an issue* [security]. However, *for Dual Trading System issues,* this fee shall be applicable in competitive assignments only.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to partially defray the incremental costs of the Exchange's program whereby CHX specialists trade Nasdaq/NM issues (the "OTC/UTP Program"). At present, the only costs recovered by the Exchange in connection with the OTC/UTP Program are certain technology costs, including the costs associated with procuring hardware and software dedicated exclusively to the OTC/UTP Program.[3] Given the rapid expansion of the Exchange's OTC/UTP Program, and the corresponding demands on the Exchange's financial and other resources to support such growth, the Executive Committee of the Exchange has determined that an increase in the Specialist Assignment Fee for Nasdaq/NM issues constitutes the best means of ensuring that the OTC/UTP product line generates revenue sufficient to support further anticipated growth, without placing the financial burden of such growth on the Exchange or those Exchange members that are not part of the OTC/UTP Program. The Exchange believes that the relatively modest proposed increase is reasonable given the financial opportunities generated by serving as a CHX specialist in Nasdaq/NM issues.

The CHX Rules expressly authorize the Exchange to "* * * fix and impose other charges or fees to be paid to the Exchange by members and member organizations * * * for the use of equipment or facilities. * * *"[4] Proceeding under this authority, the Exchange's Executive Committee, meeting on May 26, 1999, determined that increasing the Specialist Assignment Fee to $2,000 per Nasdaq/NM issue constituted a reasonable increase and an appropriate means of ensuring that specialist continuity is retained. The Exchange represents that all specialist firms involved in the OTC/UTP Program were represented at the May 28, 1999, meeting of the Exchange's OTC Committee discussing the proposed increase, and no objection was raised.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with and furthers the objections of Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees, and other change among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received. As set forth above, however, the Exchange did present the proposed rule change at a meeting of the Exchange's OTC Committee, which includes representatives of all specialist firms that participate in the OTC/UTP Program. The OTC Committee meeting also is open to any Exchange member that wishes to attend. No objections to the proposed rule change were articulated at such meeting.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.[7] At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–05, and should be submitted by July 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17154 Filed 7–6–99; 8:45 am]

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[3] The Commission notes a related recent rule change filed by CHX in this regard, charging OTC/UTP specialists for new technology and dedicated equipment. See Securities Exchange Act Release No. 41526 (June 15, 1999).

[4] Art. XIV, Rule 7(a).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19B-4(f)(2). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41575; File No. SR–NASD–99–28]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Rule 1140

June 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDR. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR proposes to amend and implement Rule 1140 to require electronic filing of Form U–4, the Uniform Application for Securities Industry Registration or Transfer, and the Form U–5, the Uniform Termination Notice for Securities Industry Termination (collectively "Forms") and to make other conforming changes. Additions are italicized; deletions are bracketed.

1140. Electronic Filing Rules

(a) Filing Requirement.

All forms required to filed by *Article IV, Sections 1, 7, and 8, and Article V, Section 2 and 3, of* the NASD By-Laws shall be filed through an electronic process or such other process the Association may prescribe to the Central Registration Depository.

(b) Supervisory Requirements

(1) In order to comply with the supervisory procedures requirement in Rule 3010 [of the Conduct Rules], each member [must] *shall* identify a Registered Principal(s) or corporate officer(s) who has a position of authority over registration functions, to be responsible for supervising the electronic filing of appropriate forms pursuant to this Rule.

(2) The Registered Principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to this Rule [will] *shall* be required to acknowledge, electronically, that he is filing this information on behalf of the [firm] *member* and the [member firm's] *member's* associated persons.

(c) Form U–4 Filing Requirements

(1) Initial and transfer electronic application filings [will] *shall* be based on a signed Form U–4 provided to the [firm] *member* by the applicant. As part of the [member firm's] *member's* recordkeeping requirements, it [must] *shall* retain the applicant's signed Form U–4 and make it available upon regulatory request.

(2) [Amendments to the disclosure information in Item 22 can be filed electronically without obtaining the associated person's signature on Form U–4. The member will be required to provide the associated persons with a copy of the amended disclosure information that was filed. In providing this material to the associated person, the firm must obtain the written acknowledgement [sic] that the information has been received and reviewed. The member must maintain this acknowledgement in its books and records and must make it available upon regulatory request.]

Fingerprint Cards

Upon filing an electronic Form U–4 on behalf of an applicant for registration, a member shall promptly submit a fingerprint card for the applicant. NASD Regulation may make a registration effective pending receipt of the fingerprint card. If a member fails to submit a fingerprint card within 30 days after NASD Regulation receives the electronic Form U–4, the person's registration shall be deemed inactive. In such case, NASD Regulation shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. NASD Regulation shall administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Services and the Rule 1030 Series. Upon application and a showing of good cause, the Association may extend the 30-day period.

(d) Form U–5 Filing Requirements

Initial filings and amendments of Form U–5 [will] *shall* be [done] *submitted* electronically. As part of the [member firm's] *member's* recordkeeping requirements, it [must] *shall* make [them] *such records* available upon regulatory request.

(e) *Third Party Filing*

A member may employ a third party to file the required forms electronically on its behalf[, if the member and the third party have executed the Association's Broker-Dealer Agent-Filing Addendum to CRD Subscriber Agreement].

* * * * *

Rule 3010. Supervision

* * * * *

(e) Qualifications Investigated

Each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association. Where an applicant for registration has previously been registered with the Association, the member shall obtain from the [Firm Access Query System (FAQS)] *Central Registration Depository* or from the applicant a copy of the Uniform Termination Notice of Securities Industry Registration (Form U–5) filed with the Association by such person's most recent previous NASD member employer, together with any amendments thereto that may have been filed pursuant to Article IV, Section 3 of the Association's By-Laws. The member shall obtain the Form U–5 as required by this Rule no later than sixty (60) days following the filing of the application for registration or demonstrate to the Association that it has made reasonable efforts to comply with the requirement. A member receiving a Form U–5 pursuant to this Rule shall review the Form U–5 and any amendments thereto and shall take such action as may be deemed appropriate.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 15, 1996, the Commission approved NASD Rule 1140.[3] The purpose of this rule was to require members to file Form U–4 and U–5 electronically on a redesigned Central Registration Depository ("CRD") system then under development. That system used network-based architecture and proprietary software developed by the NASD. In 1997, NASDR determined to proceed with a new approach to the CRD system that will permit members to submit CRD filings electronically via NASDR's World Wide Web site ("Web CRD"),[4] rather than using network-based architecture and proprietary software to submit such filings.[5] As a result, Rule 1140 has never been implemented.

The purpose of the proposed rule change is to amend Rule 1140 to make it consistent with the newly developed Web CRD and to implement the Rule on the planned date of deployment of Web CRD, which is August 16, 1999.[6] First, current paragraph (c)(2) is deleted. As approved in 1996, this provision would have permitted a firm to amend disclosure information in Item 22 of the Form U–4 without obtaining the registered person's signature if the firm provided a copy of the filing to the registered person and obtained and maintained a record of an acknowledgment by the registered person. NASDR has not provided for such a practice in the initial release of the Web CRD system in August 1999. NASD may consider providing for such a practice in the future.[7]

Second, a new paragraph (c)(2) would be added to the Rule to address the continued submission of paper fingerprint cards in the Web CRD electronic filing environment. This amendment is necessary because it is not feasible at this time to implement electronic filing of fingerprint cards. In Web CRD, firms will: (1) include a barcode number from the fingerprint card in an electronic Form U–4 filing; and (2) undertake to submit the fingerprint card by mail or delivery service.[8] The amended rule would authorize NASDR to make a registration effective pending receipt of the fingerprint card. The rule also would be amended to authorize NASDR to place a person in an inactive status if NASDR does not receive the fingerprint card within 30 days of the filing of a Form U–4. This will enable NASDR to address those instances in which fingerprint cards (which are required by NASD and SEC rules[9]) are not submitted in a timely fashion.[10]

Paragraph (e) of Rule 1140 also is amended. This paragraph permits members to use a service bureau for filing the Forms if the member and the service bureau have executed a Filing Addendum to the CRD Subscriber Agreement. The reference to the Agreement is deleted because such agreements, which were necessary to protect the NASD's proprietary software, are not necessary in the Web CRD environment because proprietary software is not used. As with other electronic filings required under the NASD Rules, members may use a service bureau to submit electronic filings, but the member will remain ultimately responsible for the timeliness and content of the filings. NASDR is working with service bureaus to make sure they are prepared to provide this service to members. Other grammatical changes have been made to the Rule.

In 1996, the NASD Board had intended to provide a one-year transition during which the NASD would continue to process paper filings for firms with 50 or fewer registered representatives. The NASDR Board has reconsidered this issue and determined that a transition period is not necessary. Web CRD, unlike the earlier system, does not require a firm to purchase any special hardware or software; members will have low-cost access to the system through NASDR's Web site.[11] NASDR also has been working closely with end-users (*i.e.*, broker-dealers, states, self-regulatory organizations, and the Commission) to prepare them for Web CRD. To familiarize end-users with the system and how it will operate, NASDR has conducted several successful pilot programs during 1998 and early 1999 in preparation for the deployment of Web CRD in August 1999. In addition, NASDR has conducted conferences nationwide to provide end-users with an opportunity to familiarize themselves with Web CRD.[12] NASDR also is providing current CRD users with periodic updates discussing the features and functionality of Web CRD through the *CRD/PD Bulletin* and *Web CRD Update*, publications that are available in hard copy and on NASDR's Web site. Also, beginning in February 1999, NASDR began providing current CRD users with Web CRD user accounts and passwords. End-users will have an opportunity to practice accessing and working in the Web CRD system in July 1999 prior to deployment the following month. Furthermore, NASDR has prepared Web-base tutorials (accessible through NASDR's Web site) for all end-

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37439 (July 15, 1996), 61 FR 37950 (July 22, 1996).

[4] The address for NASDR's website is http://www.nasdr.com.

[5] Web CRD is designed to support electronic filing of Forms U–4, U–5, U–6, BD, and BDW via NASD Regulation's World Wide Web site. Ultimately, NASD Regulation expects that all filings for both broker-dealers and their associated persons will be submitted exclusively through electronic means. All Forms U–4 and U–5 (*i.e.*, the uniform securities industry applications for registration and termination, respectively) will be submitted electronically upon deployment of Web CRD on August 16, 1999. *See* Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (April 30, 1999) (notice of filing of File No. SR–NASD–98–96); Securities Exchange Act Release No. 41560 (June 25, 1999) (order approving File No. SR–NASD–98–96, which implemented Web CRD and amended certain disclosure questions).

[6] NASDR also revised Forms U–4 and U–5 that are designed to be used with the new Web CRD system. These Forms become effective on August 1, 1999. For a description of the transition period from July 31 to August 16, 1999, *see* Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (April 30, 1999) (notice of filing of File No. SR–NASD–98–96) and Securities Exchange Act Release No. 41560 (June 25, 1999) (order approving File No. SR–NASD–98–96, which implemented Web CRD and amended certain disclosure questions).

[7] The current practice of permitting administrative information on pages 1 and 2 of Form U–4 to be amended without obtaining the registered person's signature will be continued in Web CRD. This practice was approved in the Commission's 1996 order. *See* Securities Exchange Act Release No. 37439 (July 15, 1996); 61 FR 37950 (July 22, 1996).

[8] A person submitting the electronic Form U–4 filing will be asked to enter the barcode on the fingerprint cards into a designated field on the screen; the screen will also contain language indicating that, by entering the barcode, the filer is representing that he is or will be submitting the hard copy fingerprint cards by mail or delivery service.

[9] *See* NASD Rule 1013(a)(1)(C) and 17 CFR 240.17f–2.

[10] Web CRD will have a mechanism that will enable firms to identify individuals whose paper fingerprint cards have not been delivered to NASDR within the 30-day period.

[11] Electronic filing in Web CRD will be simpler for broker-dealers because it requires only that a broker-dealer have access to an Internet browser (*e.g.*, Internet Explorer, Netscape) and to the Internet through an account with an Internet Service Provider (*e.g.*, Microsoft Network, MCI WorldCom, America OnLine). Accordingly, electronic filing can be accomplished with significantly less difficulty and at a lower cost than possible under the earlier CRD redesign approach, which required that firms subscribe to proprietary software and, in most cases, upgrade their computer hardware. In addition, members are already required to have an electronic mail account and to be able to access NASDR's Web site for the purpose of updating their Firm Contact Questionnaire. *See* NASD By-Laws Article IV, Section 3.

[12] 1999 Conferences have been held in Los Angeles, CA (April 7–8); Atlanta, GA (April 14–15); Washington, DC (April 20–21); New York, NY (April 29–30 and May 21); and Chicago, IL (May 4–5).

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users that explain how to navigate and use the system.

Rule 3010 also is amended to remove a reference to the Firm Access Query System (FAQS), a system that currently permits members to view certain information in the CRD for the purpose of investigating applicants for employment. Upon deployment of Web CRD, FAQS will be obsolete; members will use Web CRD to conduct qualifications investigations and will have access to all of the same information that was available to them under FAQS.

NASDR proposes to make Rule 1140, as amended, effective for all members on August 16, 1999. The effective date will be announced at least 30 days in advance in a Notice To Members.

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[13] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASDR believes that the proposed rule change will make processing of Forms U–4 and U–5 more efficient, will allow members and regulators to have quicker access to information contained in those filings, and facilitate oversight of securities industry firms and their personnel.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–28 and should be submitted by July 28, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act[14] and the rules and regulations thereunder applicable to the NASD.[15] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6)[16] which requires, among other things, that the rules of an association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

The Commission has determined to approve the changes to the NASD rules that would require electronic filing. The Commission believes that electronic filing will streamline the registration and termination process for individuals and firms. Under the NASDR's proposal, an individual seeking registration will be required to fill out an electronic Form U–4, which will be available on NASDR's website, and submit it electronically. Further, when an associated person ends his association with a broker-dealer, the broker-dealer will be required to fill out an electronic Form U–5, which will also be available on the NASDR's website, and submit it electronically.

In addition, under the proposal, firms and individuals will no longer rely on the mail system to transmit the forms to NASDR. Now, individuals and firms will electronically submit Forms U–4 and U–5 through the World Wide Web, which means NASDR should receive the forms more quickly. The Commission also believes that investors will benefit from the expedited registration and termination process because the faster NASDR receives the forms, the faster information on the forms can be disclosed to investors through the NASD's Public Disclosure program.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notes that NASD Rule 1140, in substantive form, was approved by the Commission in 1996.[17] The Commission also notes that the rule is currently in the NASD Manual, but is not in effect. Further, this proposal's companion filing,[18] which implemented Web CRD and amended disclosure questions on Forms U–4 and U–5, received no comments when it was submitted for the requisite notice and comment period. The NASD will implement this proposal simultaneously with the companion filing . Accelerated approval will provide the NASD lead time to issue a Notice to Members explaining how the process will work. Thus, the Commissions finds no reason to delay the effectiveness of a rule that has been previously approved and will serve to facilitate an important investor benefit—Web CRD. The Commission finds, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 15A[19] of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–99–28)—is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17152 Filed 7–6–99; 8:45 am]

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[13] 15 U.S.C. 78*o*–3(b)(6).

[14] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capitol formation. The Commission notes that electronic filing provides SROs and states with an efficient means of receiving and maintaining information on associated persons. Moreover, the impact on competition is negligible because all NASD member firms will be subject to the electronic filing requirement. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78*o*–3.

[16] 15 U.S.C. 78*o*3(b)(6).

[17] *See supra* note 3.

[18] *See supra* note 5.

[19] 15 U.S.C. 78*o*–3.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34–41570; File No. SR–NYSE–99–11]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Definition of Volatile Days in the Specialist Capital Utilization Measure

June 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 19, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change amending the definition of "volatile days" used in the NYSE's specialist capital utilization measure. The Exchange amended its proposal on May 4, 1999.[3] The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to revise the definition of volatile days used in the NYSE's specialist capital utilization measure.[4] The specialist capital utilization measure is designed to measure specialist dealer participation to assist in cushioning price movements during days when there is general market volatility or significant price movements in individual stocks ("volatile days"), as well as during non-volatile periods. As discussed more fully below, the specialist capital utilization measure provides two definitions of volatile days: (1) days when the range between the highest and lowest values of the S&P 500 Stock Price Index ("S&P 500 Index") equals or exceeds 1% of the previous closing value ("1% Days"); and (2) each stock's 10% most volatile days (a percentage calculated by comparing a day's high/low range to the opening price) ("10% Days"). The NYSE proposes to revise the 1% Days component of this definition by defining volatile days to include days when the range between the S&P 500 Index's highest and lowest values equals or exceeds 2%, rather than 1%, of the previous closing value. The 10% Days definition will remain the same.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. In December 1993, the NYSE developed the specialist capital utilization measure as an objective measure of specialist performance that recognizes the importance of dealer participation, particularly in volatile markets, when such participation contributes to maintaining liquid and orderly markets.[5] The specialist capital utilization measure derives two capital utilization percentages for each eligible stock[6] traded by a specialist unit: (1) a percentage calculated by dividing the average daily dollar value of the unit's stabilizing purchases and sales in a stock by the average daily total dollar value of shares traded in the unit's stocks; and (2) a percentage calculated by dividing the average daily dollar value of the unit's stabilizing plus reliquifying[7] trades by the average daily total dollar value of shares traded in the unit's stocks. These two percentages are calculated separately for base periods (*i.e.*, non-volatile periods) and volatile periods, so that the performance of a unit relative to other units can be compared as to volatile and non-volatile market conditions. As noted above, the NYSE currently defines volatile periods as (1) days when the range between the highest and lowest values of the S&P 500 Index equals or exceeds 1% of the previous closing value ("1% Days"); and (2) each stock's 10% most volatile days (a percentage calculated by comparing a day's high/low range to the opening price) ("10% Days").

To compare a specialist unit's capital utilization with other units, the specialist capital utilization measure separates stocks into three broad groupings.[8] Specialist units are then placed into three tiers based on their capital utilization percentages for each of the three groupings of stocks. Within each grouping, a Floor-wide mean capital utilization percentage is calculated. A unit would be in Tier 1 if its capital utilization percentage is more

[1] 15 U.S.C. 78s(b)(1).

[2] 15 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director of Market Regulation ("Division"), Commission, dated May 4, 1999 ("Amendment No. 1"). Amendment No. 1 provides further details regarding the Exchange's specialist capital utilization measure and offers additional reasons to support approval of the proposal on an accelerated basis.

[4] The specialist capital utilization measure is contained in the NYSE's Allocation Policy and Procedures ("Allocation Policy"), which governs the allocation of equity securities to NYSE specialist units. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy, including the Specialist Performance Evaluation Questionnaire, objective performance measures (*e.g.*, the capital utilization measure), and the Allocation Committee's professional judgment. *See* Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142 (November 3, 1994) (order approving revisions to the NYSE's Allocation Policy). The specialist capital utilization measure focuses on a specialist unit's use of its own capital in relation to the total dollar volume of trading activity in the unit's stocks. For a detailed discussion of the specialist capital utilization measure, *see* Securities Act Release Nos. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993) ("December 1993 Order"); and 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) ("June 1995 Order").

[5] The Commission approved the capital utilization measure on a one-year pilot basis, and subsequently approved three extensions of the pilot program. *See* Securities Exchange Act Release Nos. 33369, *supra* note 4; 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30, 1995); 35926, *supra* note 4 (extending pilot through September 10, 1996); and 37668 (September 11, 1996), 61 FR 49371 (September 19, 1996) (extending pilot through January 10, 1997). The Commission approved the pilot program on a permanent basis on January 10, 1997. *See* Securities Exchange Act Release No. 38158 (January 10, 1997), 62 FR 2704 (January 17, 1997) ("January 1997 Order").

[6] The following stocks are not included: foreign stocks, preferred stocks, warrants, when issued stocks, IPOs (for the first 60 days), closed-end funds, stocks selling for $5 and under, stocks with less than 2,000 shares average daily trading volume and stocks with more than one class of stock. *See* June 1995 Order, *supra* note 4.

[7] A reliquifying transaction is one in which the specialist reduces a position in a specialty stock by selling part of a long position on a zero-minus tick, or purchasing to cover part of a short position on a zero-plus tick. *See* December 1993 Order, *supra* note 4.

[8] The three broad groupings are: (1) stocks included in the top 200 stocks in the S&P 500 Stock Index and other stocks that are at least as active (based on average daily dollar value of shares traded); (2) the remainder of the S&P 500 and any stocks among the 500 most active on the Exchange; and (3) all other stocks traded on the Exchange. *See* June 1995 Order, *supra* note 4.

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than 1.1 standard deviations above the mean.[9] A unit would be in Tier 2 if its capital utilization percentage is within 1.1 standard deviations of the mean. A unit would be in Tier 3 if its capital utilization percentage is more than 1.1 standard deviations below the mean. The tiers are presented to the Allocation Committee for each specialist unit applying for a new listing and are a factor in allocating newly-listed stock.

The Tiers are presented to the Allocation Committee for each specialist unit applying for a new listing and are one factor among several in allocating newly-listed stock. Allocation decisions are based on the professional judgment of the Allocation Committee in applying specific criteria. A Tier I classification would indicate to the Committee that the unit's value-added dealer participation was well above the average for all specialist units, whereas a Tier III classification would indicate that the unit's value-added dealer participation was below the average for all specialist units.[10]

Proposal. According to the NYSE, market volatility has increased substantially since the capital utilization measure was introduced. For instance, the Exchange notes that while 1% Days occurred on 27% of the trading days in 1994, 1% Days occurred on 70% of the trading days in 1998. As a result, the NYSE believes that 1% Days are now more characteristic of usual market conditions.

The Exchange proposes to revise the 1% Day component of its definition of volatile days to better distinguish between volatile and base periods in light of increasing overall market volatility since the NYSE introduced the capital utilization measure. Specifically, the Exchange proposes to amend its definition of volatile days to include days when the range between the S&P 500 Index's highest and lowest values equals or exceeds 2% of the previous closing value. The NYSE believes that raising the percentage from 1% to 2% will bring the capital utilization measure's definition of volatile days back in line with the frequency of overall market volatility that existed in 1993. According to the NYSE, a 2% daily price movement in the S&P 500 Index will provide approximately the same number and percentage of volatile days in 1998 as the 1% daily price movement provided in 1994 (*i.e.*, 55 versus 67 days, or 22% versus 27%).

In addition, the NYSE believes that the revised definition of volatile days will reinforce the Exchange's expectation that specialists provide "value-added" dealer participation during periods of unusual price movements, and maintain the emphasis given to the capital utilization measurement in particularly volatile markets. The NYSE notes that the use of a 2% standard for volatile days also will coinside with the recent revision of NYSE Rule 80A, which limits the entry of index arbitrage orders in any component stock of the S&P 500 Index when there is a movement in the Dow Jones Industrial Average of an amount that approximates 2% of its value.[11]

The 10% Days definition will remain unchanged.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[12] of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file No. SR–NYSE–99–11 and should be submitted by July 28, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5)[13] of the Act.[14] Specifically, the Commission finds the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to facilitate transactions in securities. Further, the Commission finds that the proposal is consistent with Section 11(b)[15] of the Act and Rule 11b-1[16] under the Act, which allow securities exchanges to promulgate rules relating to specialists to ensure fair and orderly markets. Specifically, the Commission believes that amending the definition of volatile days in the capital utilization measure to include days when the range between the S&p 500 Index's highest and lowest values equals or exceeds 2% of the previous closing value will help to maintain the effectiveness of the capital utilization measure as an objective measure of specialist performance, thereby protecting investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. The NYSE implemented objective measures of specialist performance, like the capital utilization measure, to help ensure that specialists fulfill the obligations imposed on them by the NYSE and by the Act and rules thereunder to maintain fair and orderly markets in designated securities.[17] The Commission believes that performance-based stock allocation could provide an incentive for specialists to improve their performance or maintain superior performance.[18]

The Commission continues to believe, as it has concluded previously, that capital utilization is a relevant measure of specialist performance because if indicates the extent to which a specialist unit commits capital to and participates in the market for its securities, thereby contributing to market liquidity.[19] According to the NYSE, market volatility has increased substantially since the NYSE implemented the specialist capital utilization measure in 1993. The NYSE notes, for example, that 1% Days occurred on 27% of the trading days in 1994, and on 70% of the trading days in 1998. As a result, the NYSE believes that the 1% Days definition of volatility is now more characteristic of usual market conditions. The 2% Days definition is designed to better distinguish between volatile and non-volatile days in light of the increased overall market volatility since 1993. According to the NYSE, the 2% Days definition would have provided approximately the same number and percentage of volatile days in 1998 as the 1% Days definition provided in 1994 (*i.e.*, 55 days versus 67 days or 22% versus 27%).

The Commission believes that the proposed rule change will ensure that the definition of volatile days is meaningful in light of current market conditions. Accordingly, the Commission believes that the proposed rule change will make the definition of volatile day consistent with the spirit of the rule adopted in 1993, when the NYSE implemented the specialist capital utilization measure, and will ensure that the capital utilization measure continues to function effectively as an indication of specialist performance.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register.** The Commission believes accelerated approval should help maintain the relative proportion of volatile periods to base periods comparable to that which existed when the capital utilization measure was adopted, thereby preserving the original intent of the performance measure.

It is therefore ordered, pursuant to Section 19(b)(2)[20] of the Act, that the proposed rule change (SR–NYSE–99–11), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17151 Filed 7–6–99; 8:45 am]

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[9] A standard deviation is a statistical measure of the distance from the mean.

[10] Telephone call between Don Siemer, Director, Market Surveillance, NYSE, and Anitra T. Cassas, Division, Commission, on June 21, 1999.

[11] *See* Securities Exchange Act Release No. 41041 (February 11, 1999), 64 FR 8424 (February 19, 1999).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78k(b).

[16] 17 CFR 240.11b–1.

[17] *See, e.g.*, 17 CFR 240.11b–1; NYSE Rule 104.

[18] *See* January 1997 Order, *supra* note 4.

[19] *See* December 1993 Order, *supra* note 4.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #3075]

Overseas Presence Advisory Panel (OPAP); Closed Meeting

The Department of State announces a meeting of the Overseas Presence Advisory Panel on Tuesday, July 20, 1999, from 9:00 a.m. to 1:00 p.m. at the U.S. Department of State. Pursuant to Section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b [c] [1], it has been determined that the meeting will be closed to the public. The Panel is charged with advising the Secretary of State with respect to the level and type of representation required overseas in light of new foreign policy priorities, a heightened security situation and extremely limited resources. The agenda includes a discussion of sensitive information relating to the Panel's final draft report of ongoing findings and recommendations concerning Embassies and Consulates overseas; this would include, but not be limited to, intelligence and operational policies, and security aspects of all the U.S. Government agencies the Department of State supports abroad.

FOR FURTHER INFORMATION CONTACT: Mrs. Marilyn Shapiro, Overseas Presence Advisory Panel, Department of State, Washington, DC 20520; phone: 202–647–6427.

Dated: June 29, 1999.

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99–17181 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 25, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5869.
Date Filed: June 22, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0260 dated 22 June 1999; Mail Vote 010–Resolution 010p; TC2 Within Europe Special Passenger Amending Resolution from Belgium; Intended effective date: 1 July 1999.

Docket Number: OST–99–5870.
Date Filed: June 22, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR 0076 dated 18 June 1999; Expedited North Atlantic USA-Europe Expedited Resolutions 002kk 015n; PTC12 USA–EUR 0077 dated 22 June 1999; Correction to PTC12 USA–EUR 0076 dated 18 June 1999; Intended effective date: 1 August 1999.

Docket Number: OST–99–5874.
Date Filed: June 23, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0345 dated 25 June 1999; Mail Vote 014–Resolution 010r; TC3 Special Passenger Amending Resolution Within South Asian Subcontinent; Intended effective date: 8 July 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–17132 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 25, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5868.
Date Filed: June 21, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 19, 1999.

Description: Application of Continental Airlines, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q, applies for renewal of segments 1, 2, 4, 5, 6, 7, 8, 9 and 10 of its Route 561 certificate authority. Continental also applies to amend Route 561 to award Continental authority to provide scheduled air transportation of persons, property and mail between Houston and Ixtapa/Zihuatenejo, Merida, Tampico and San Jose del Cabo; between Cleveland and Cancun and between Newark and Cozumel. Continental asks for authority to integrate its amended Route 561 certificate authority with its existing certificate and exemption authority, asks that the authority become effective immediately for a five-year period.

Docket Number: OST–99–5871.

Date Filed: June 22, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 20, 1999.

Description: Application of American Airlines, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q, applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail between points in the United States, on the one hand, and Shanghai, Guangzhou, Beijing, and two additional points in the People's Republic of China to be selected by the United States. American also applies for the allocation of 10 weekly U.S.-China frequencies. Finally, American requests route integration with its other certificates and exemptions to conduct foreign air transportation.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–17133 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Research and Special Programs Administration

Department-Wide Program Evaluation of the Hazardous Materials Transportation Program (HM Program Evaluation)

AGENCY: Office of Inspector General (OIG) and Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of meetings and request for comments.

SUMMARY: The Department of Transportation (DOT) is announcing a series of three HM Program Evaluation Focus Group Meetings to discuss issues with interested stakeholders concerning DOT's hazardous materials safety programs and to request comments form parties unable to attend the series of meetings. Each meeting will concentrate on a specific topic and likely involve six to ten members pre-selected from the hazardous materials community for each focus group. Other interested parties are invited to observe each meeting and will be given the opportunity to ask questions and raise issues. Focus Group Meeting #1 will focus on the "Effectiveness and Adequacy of DOT's Hazardous Materials Regulatory Program." Focus Group Meeting #2 will focus on the "Effectiveness of DOT's Approach for Gaining Compliance." Focus Group Meeting #3 will focus on "Measuring DOT's Performance in Hazardous Materials Safety." This action is in support of the internal DOT-wide Program Evaluation of the Hazardous Materials Transportation Programs (HM Program Evaluation) which DOT announced in the **Federal Register** on March 9, 1999. The HM Program Evaluation will document and assess the effectiveness of DOT's hazardous materials transportation safety programs in order to improve safety and environmental protection. Your participation in these HM Program Evaluation Focus Group Meetings and responses to the issues raised in this notice and during the meetings will assist DOT in identifying issues that the HM Program Evaluation team may address and evaluate as it continues its efforts.

DATES: *Comment Date:* Comments must be received on or before August 27, 1999.

Public Meeting Dates: Public meetings will be held on July 22, 1999, August 11, 1999, and August 17, 1999. Meetings are scheduled from 9 a.m. to 4:00 p.m.

ADDRESSES: *Written Comments:* Address written comments to HM Program Evaluation Team, U.S. Department of Transportation, 400 Seventh Street, SW, Room 2438, Washington, DC 20590–0001. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. You may also submit comments by e-mail at: "9.awa-dot-hmpe@faa.gov".

Public Meetings: The July 22, 1999 meeting will be held in Room 2230 of the DOT Headquarters Building (Nassif Building) 400 Seventh Street, SW, Washington, DC 20590–0001. The August 11, 1999, meeting will be held in the Illinois/Minnesota Rooms of the FAA Building, 2300 East Devon Avenue, Des Plaines, IL. The August 17, 1999, meeting will be held in Room 2230 of the DOT Headquarters Building (Nassif Building) 400 Seventh Street, SW, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Jackie A. Goff, 202–493–0326, or George Whitney, 202–366–4831, Co-Chairs, HM Program Evaluation Team, U.S. Department of Transportation; Room 2438, 400 Seventh Street SW, Washington, DC 20590–0001. For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Ms. Goff or Mr. Whitney. If you are unable to attend one or more of these meetings or wish to provide additional comments, we welcome your written responses no later than August 27, 1999. If you would like your comments considered during a specific meeting for which you will be unable to attend, your comments should be received by the team at least 5 working days prior to that specific meeting and sent to the DOT address provided above or e-mailed to: *"9.awa-dot-hmpe@faa.gov"*.

I. Background

On March 9, 1999, DOT published a Notice in the **Federal Register** (64 FR 11528) announcing the initiation of an internal Department-wide Program Evaluation of the Hazardous Materials Transportation Programs (HM Program Evaluation). In that Notice it was announced that the HM Program Evaluation team is staffed by 10 full-time persons, including at least one full-time person from the OIG and RSPA and each of the following Operating Administrations: The United States Coast Guard (USCG); the Federal Aviation Administration (FAA); The Federal Highway Administration (FHWA); and the Federal Railroad Administration (FRA).

The HM Program Evaluation team is examining the Federal hazardous materials transportation law, the program structure defined by the delegation of authority within DOT, and assessing program delivery. The HM Program Evaluation is intended to allow DOT to determine the effectiveness of the current hazardous material programs, including the division of responsibilities across and within modes, and the allocation of resources dedicated to specific functions. The HM Program Evaluation is also focusing on cross-modal issues and will include an analysis and critique of DOT's current program intervention tools including regulation, education, training,

outreach, inspection, and enforcement. This will position DOT to potentially increase safety and environmental protection when hazardous materials are in commerce.

The scope of the HM Program Evaluation is limited to those activities covered by 49 CFR Part 106 (Rulemaking Procedures), Part 107 (Hazardous Materials Program Procedures), and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180. International shipments of hazardous materials are also included in the scope of the HM Program Evaluation to permit a review of the International Maritime Dangerous Goods Code (IMDG) and the International Civil Aviation Organization's Technical Instructions on the Transportation of Dangerous Goods by Air (ICAO), both of which are authorized by HMR as alternative standards for many of the requirements in the HMR for shipments destined for export or that are being imported. The team will be examining whether the current programs are achieving the stated purpose of the Federal hazardous materials transportation law.

II. HM Program Evaluation Meetings and Issues

DOT's intent is to use information gathered during three focus group meetings to further develop issues for consideration by the HM Program Evaluation team. We anticipate that each focus group will consist of approximately six to ten pre-selected individuals from the hazardous materials community. To maximize the benefits of the focus groups, they will be comprised of individuals having expertise in hazardous materials transportation who are likely to be affected by the outcome of the HM Program Evaluation. Our aim is that members of the focus groups will be representative of the community of shippers, carriers, packaging manufacturers, hazmat employees, enforcement personnel, emergency responders, trade associations, labor representatives and other interested parties involved with the transportation of hazardous materials. In addition to the focus group members, other interested parties are invited to observe at each focus group meeting. They will have an opportunity to raise issues and ask questions. The issues to be discussed during the three different focus groups are outlined below.

Focus Group Meeting #1, Washington, DC, July 22, 1999: "Effectiveness and Adequacy of DOT's Hazardous Materials Regulatory Program"

Focus Group Meeting #1 will focus primarily on issues involving the effectiveness and adequacy of DOT's regulatory program. Rulemaking procedures for the hazardous materials program are in 49 CFR Part 106. These procedures address petitions for rulemaking, advance notices and notices of proposed rulemaking, final rules, interim final rules, and direct final rules. In addition to these procedural rules, the rulemaking process is governed by a variety of statutes and Executive Orders. Procedures concerning exemptions to regulations are in 49 CFR Part 107. Exemptions authorize the regulated industry to perform functions that are not otherwise authorized by the Hazardous Materials Regulations. The regulatory scheme requires that the agency must find that the exemption establishes a level of safety at least equal to that required by the regulation. If the regulations do not establish a level of safety, the agency must find that the exemption is consistent with the public interest.

In Focus Group Meeting #1, we are interested in determining how well DOT's hazardous materials regulatory system is minimizing risk. The hazardous materials regulatory system is designed to reduce the risks associated with the transportation of hazardous material shipments. Reduction of risk is the major way in which DOT improves the overall level of safety in the transportation system. Questions related to this issue include:

- Based on your experiences with the regulatory system for hazardous materials (domestic and international), can you identify areas in which deficiencies exist that increase the risk of shipping hazardous materials?
- How would you describe your experiences in attempting to comply with the regulations contained in 49 CFR in terms of their ease of use and your perception that you take the required actions to reduce the risk of hazardous materials in transportation?
- What, if any, measures could DOT implement that would lower the risk that hazardous materials may pose while in the transportation system?

Another aspect that has the potential to impact the safety of the transportation system is the act of shipping or transporting undeclared hazardous materials (undeclared or "hidden" shipments are shipments offered for transportation, or subsequently transported, that are not identified as hazardous materials as required by regulation). DOT is generally only made aware of an undeclared shipment of hazardous materials after a related accident or incident occurs or if it is otherwise reported to DOT. Questions related to this issue include:

- To what extent are you aware of any problems associated with undeclared shipments of hazardous materials?
- What detection methods, if any, have you implemented to recognize potential shipments of undeclared hazardous materials?
- What prevention methods would you offer to DOT to reduce the practice of shipping or transporting undeclared shipments?
- Are undeclared shipments a result of ignorance or willfulness? Please describe.
- What is your experience concerning undeclared shipments occurring within the different modes of transportation (air, highway, rail and water)?
- Do you believe that either the risk level or volumes of activities associated with undeclared shipments is equal among the modes? Please describe.

An important segment of the Hazardous Materials Regulations is hazard communication. Hazard communication under the HMR is addressed in five components: Shipping papers, marking, labeling, placarding, and emergency response information. Questions related to this issue include:

- To what extent does the current regulatory system provide adequate hazard communication information on shipments in transit?
- Are there other sources of information that provide hazard communication information and could they become the basis for an industry standard? For example, is there other information or documents in use related to hazardous materials in transit besides the information provided on a shipping paper that could be standardized or combined in one document?

The regulatory system permits the establishment of exceptions and exemptions that are intended to safely and efficiently expedite the movement of certain hazardous materials. Questions related to this issue include:

- Do exceptions and exemptions complicate the understanding of the regulations?
- Do exceptions and exemptions achieve an adequate level of safety?
- How would you recommend that DOT achieve its intended goal of safely and efficiently moving hazardous materials differently given the industry need for and benefit of these alternatives?

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• What do you see as the major enforcement or emergency response concerns related to DOT's use of exceptions and exemptions?

Focus Group Meeting #2, Chicago, IL, August 11, 1999: "Effectiveness of DOT's Approach for Gaining Compliance"

Focus Group Meeting #2 will focus primarily on issues involving reducing violations, means of intervention, and improving compliance with the regulations. To improve the level of compliance by industry DOT focuses its efforts at a variety of intervention points in the transportation system, including activities at the packaging, manufacturer, offeror and transporter stages. Intervention methods include regulations, education, training, outreach, inspection and enforcement. With respect to intermodal shipments, more than one modal administration has the opportunity to intervene with the same shipment as it passes from one mode of transportation to another.

DOT engages in numerous activities to provide information and improve awareness of and compliance with the safety requirements. These outreach activities include: Publishing notices in the **Federal Register**; issuing press releases; using Internet web pages; conducting training seminars and public meetings; participating in stakeholder conferences; and distributing pamphlets, brochures, videos, and CD ROMS.

In Focus Group Meeting #2, we are interested in determining how effective DOT's approach is for reducing violations and increasing compliance. Questions related to this issue include:

• Historically, compliance inspection data reveal that placarding and shipping paper deficiencies are the most cited violations. How would you recommend that DOT increase compliance in these areas?

• Based on your experiences with DOT, please comment on which of DOT's intervention methods are most effective (regulations, education, training, outreach, inspection and enforcement). Why?

• Where do you believe DOT's intervention could be most effective (at the packaging, manufacturer, offeror or transporter stages) and what intervention approach should DOT employ?

• What are your observations and experiences regarding the depth and quality of DOT's compliance inspections? Please be specific, if possible, in your comments with respect to individual operating administrations within DOT (USCG, FAA, FHWA, FRA, and RSPA).

• Are DOT inspectors helpful in providing compliance assistance and in explaining non-complying conditions? If possible, please be modal specific.

• What current DOT outreach efforts (e.g., informational pamphlets, seminars, classroom training and on-site assistance) do you have experience with and which are the most effective?

• What other, if any, DOT outreach activities do you suggest?

DOT's efforts to influence the level of compliance with the HMR involve use of the civil penalty assessment process including notices of probable violation, final orders, administrative law judge hearings, ticketing, and alternative means of dispute resolution, including alternatives to traditional enforcement. Questions related to this issue include:

• Do you believe civil penalties are effective in gaining compliance?

• Can you recommend ways to improve the civil penalty program?

• What are your major concerns about the process DOT uses for determining the penalty amounts in relationship to a violation of the HMR?

The HMR include training requirements which are intended to ensure employees are competent to fulfill their roles; however, the adequacy of the scope or frequency of the required training is unknown. DOT has observed that many shippers and carriers employ the services of third-party trainers (i.e., non-governmental parties who provide training on the HMR). Questions related to this issue include:

• Do you believe the existing training standards are adequate to ensure all personnel responsible for the safe transportation of hazardous materials understand the pertinent requirements of the HMR?

• If not, how would you modify the training or employee competency requirements to improve this aspect of the safety scheme?

DOT currently uses a variety of approaches to work with state personnel to gain compliance with the HMR. These approaches include: (1) Providing funding to states to increase compliance with the HMR through the deployment of wide-scale inspections and enforcement activities; (2) using a mix of Federal and state inspectors in some of DOT's operating administrations; and (3) conducting inspections and other activities using only Federal DOT inspectors. Questions related to this issue include:

• How effective are DOT's different approaches of using Federal and/or state personnel as an intervention practice?

• Please explain if, and why, one approach is better than another.

Domestic and foreign shipper practices have the potential to significantly affect hazardous materials safety and influence the level of compliance with the HMR. Deficiencies discovered by modal inspectors are typically tracked back to the original shipper to rectify the deficiency. Such corrective follow up is more difficult for import shipments. Effective outreach overseas is a challenge. Questions related to this issue include:

• If you are an importer of hazardous materials, how frequently do you receive hazardous materials that do not comply with the regulations?

• To the extent that there are non-complying shipments, what do you believe is the major reason (ignorance or willfulness)? Please describe.

Focus Group Meeting #3, Washington DC, August 17, 1999: "Measuring DOT's Performance in Hazardous Materials Safety"

Focus Group Meeting #3 will focus primarily on issues involving DOT's performance measures as it relates to minimizing the risk of hazardous materials transportation. In this meeting, we are concerned about DOT's performance with regard to reducing HM safety risks and in determining the best measures of success.

In DOT's Performance Plan for Fiscal Year 2000, the primary hazardous materials safety performance goal is to reduce the number of serious HM incidents in transportation (to 411 or fewer in the year 2000 from a peak of 464 in 1996.) DOT defines a serious hazardous materials incident as one that involves a fatality or major injury due to a hazardous material, closure of a major transportation artery or facility or evacuation of six or more persons due to the presence of a hazardous material, or a vehicle accident or derailment resulting in the release of a hazardous material.

Trends in serious incidents in the past decade have been fairly stable—averaging about 407 per year since 1990. In a typical year, serious hazardous materials incidents account for 10–15 deaths (with the notable exception of 1996, when the ValueJet crash resulted in 110 deaths,) and fewer than 300 major injuries. Because of the inherent risk in handling and transporting hazardous materials, there are limits to how far the number of incidents could be reduced. Furthermore, serious incidents often require mitigation measures that are mode specific and might not benefit all hazardous materials operations.

There are safety advocates who maintain that *any* unintentional release, large enough to be reportable, is a flag indicating safety risks or flaws in operating and handling procedures. Minimizing these releases, many experts argue, should be the goal of the regulatory agencies. Looking at all reported hazardous materials incidents—serious and non-serious—there has been an overall decline since the high of 16,000 in 1983, with the numbers fluctuating between fewer than 10,000 in 1990 to under 14,000 last year. Assessing changes in the total number of incidents to be used as a measure of effectiveness in conjunction with close integration of the incident reporting system in the entire process of hazardous materials intervention—from training, inspection, and enforcement—could be used by DOT to identify the underlying causes of many incidents.

In Focus Group Meeting #3, we are interested in gauging DOT's success and in developing appropriate measures or candidate measures. Questions related to this issue include:

• Are serious incidents the best measure of our success in reducing risk in hazardous materials transportation?

• Is the goal of reducing the number of serious incidents by a targeted amount the best alternative?

• Would trends in all unintentional releases of hazardous materials be a better indicator of how well we have succeeded in controlling the risk of hazardous materials in transportation?

• How can we best measure the success of the hazardous materials program? How would you evaluate the overall effectiveness of the hazardous materials intervention program in addressing the level of risk hazardous materials pose in transportation?

Issued in Washington, DC on June 30, 1999.

Jackie A. Goff,

Co-Chair, Hazardous Materials Program Evaluation Team.

George Whitney,

Co-Chair, Hazardous Materials Program Evaluation Team.

[FR Doc. 99–17175 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 7, 1999. 64 FR 17055–17056.

DATES: Comments must be submitted on or before August 6, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION: .

Federal Aviation Administration (FAA)

Title: Special Federal Aviation regulation (SFAR) 36, Department of Major Repair Data.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0507.

Forms(s): N/A.

Affected Public: Aircraft maintenance. Commercial Aviation, Aircraft Repair Stations, Air Carriers, Air Taxi, and Commercial Operators.

Abstract: SFAR 36 allows authorized certificate holders to approve aircraft product and articles for return to service after accomplishing major repairs using data developed by the holder that have not been directly approved by the FAA.

Estimated Annual Burden Hours: 530 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC. on June 29, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–17085 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–186 meeting to be held July 26–30, 1999, starting at 9:00 a.m. The meeting will be held at National Lucht-& Ruimtevaartlaboratorium (National Aerospace Laboratory), 1059 CM Amsterdam, The Netherlands.

The agenda will include: July 26: Working Group (WG)–1, Conflict Detection and Resolution. July 27–28: WG–1, Conflict Detection and Resolution; WG–4, Application Technical Requirements.

Joint RTCA SC–186/EUROCAE WG–51 Plenary Session, July 29–30, 9:00 a.m.–5:00 p.m.: Chairman's Introductory Remarks; (2) Review of the Meeting Agenda; (3) Review and Approval of the Relevant Meeting Minutes; (4) Status of Actions; (5) SC–186 Activity Report and Committee Roadmap; (6) WG–51 Report; (7) 1090 Minimum Operational Performance Standards (MOPS) Development; (8) VDL4 MOPS Development; (9) SC–186/WG–1 Report; (10) SC–186/WG–4 Report; (11) Automatic Dependent Surveillance Minimum Avaition System Performance Standard—Status and Plans (12) WG–51/SC–186 Applications Templates; (13) Safe Flight 21 Update; (14) EUROCONTROL ADS Programme; (15) Future Work Programme; (16) Date, Place and Time of Next Meeting; (17) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statement at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http:www/rtca/org (web site). Members of the public may preesent a written statement to the committee at any time.

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Issued in Washington, DC, on June 30,1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–17174 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 30, 1999 (64 FR 23385).

DATES: Comments must be submitted on or before August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 C.F.R. Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 C.F.R. 1320.5, 1320.8(d)(1), 1320.12. On April 30, 1999, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 64 FR 23385. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been reevaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Supplemental Qualifications Statement for Railroad Safety Inspector Applicants.

OMB Control Number: 2130–0517.

Type of Request: Revision of a currently approved collection.

Affected Public: Individuals or Households.

Form(s): FRA–F–120.

Abstract: The Supplemental Qualifications Statement for Railroad Safety Inspector Applicants is an information collection instrument used by FRA to gather additional background data so that FRA can evaluate the qualifications of applicants for the position of Railroad Safety Inspector. The questions cover a wide range of general and specialized skills, abilities, and knowledge of the five types of railroad safety inspector positions.

Annual Estimated Burden Hours: 6,000 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, N.W., Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Marie S. Savoy,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 99–17231 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–5920]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime Labor, Training and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–5755 or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: U.S. Merchant Marine Academy Application for Admission.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0010

Form Number: KP 2–65.

Expiration Date of Approval: 12–31–2000

Summary of Collection of Information: The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Application for Admission). These items are completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy and are reviewed by staff members of the Academy.

Need and Use of the Information: The collected information is necessary to select the best qualified candidates for the U. S. Merchant Marine Academy.

Description of Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Annual Responses: 2500

Annual Burden: 5 hours

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments maybe submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy, of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Dated: July 1, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 99–17200 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–18–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5914]

Decision That Nonconforming 1991–1998 Honda VT600 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1991–1998 Honda VT600 motorcycles are eligible for importation.

SUMMARY: This document announces the decision by NHTSA that 1991–1998 Honda VT600 motorcycles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1991–1998 Honda VT600), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective July 7, 1999.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) petitioned NHTSA to decide whether 1991–1998 Honda VT600 motorcycles are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA–98–4864 on Wednesday, December 16, 1998 (63 FR 69357) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from American Honda Motor Co., Inc. ("Honda"), the United States representative of the vehicles' manufacturer. In this comment, Honda stated that the headlights on non-U.S. certified 1991–1998 Honda VT600 motorcycles do not conform to Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* because they have an asymmetrical beam for right hand traffic. Honda also stated that vehicle identification numbers assigned to non-U.S. certified 1991–1998 Honda VT600 motorcycles contain only eleven digits, and therefore do not conform to the requirements of 49 CFR part 565.

NHTSA accorded Champagne an opportunity to respond to Honda's comment. In its response, Champagne stated that it will modify the headlights on non-U.S. certified 1991–1998 Honda VT600 motorcycles to comply with Standard No. 108. Additionally, Champagne stated that it will address the vehicle identification number issue raised by Honda by utilizing the eleven digit VIN assigned by the original manufacturer of the vehicles as a substitute for the U.S. VIN, as permitted by 49 CFR 565.5(a).

NHTSA believes that Champagne's response adequately addresses the issues that Honda has raised regarding the petition. NHTSA further notes that Honda has not contended that non-U.S. certified 1991–1998 Honda VT600 motorcycles are incapable of being readily altered to comply with applicable motor vehicle safety standards, and that the modifications described by Champagne, which have been performed with relative ease on thousands of motor vehicles imported over the years, would not preclude non-U.S. certified 1991–1998 Honda VT600 motorcycles from being found capable of being so altered.

NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–294 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that non-U.S. certified 1991–1998 Honda

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VT600 motorcycles are substantially similar to 1991–1998 Honda VT600 motorcycles originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 1, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17164 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5913]

Receipt of Petition for Decision that Nonconforming 1993 Mercedes-Benz 320CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Mercedes-Benz 320CE passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993 Mercedes-Benz 320CE passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1993 Mercedes-Benz 320CE passenger cars are eligible for importation into the United States. The vehicles which Wallace believes are substantially similar are 1993 Mercedes-Benz 300CE passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1993 Mercedes-Benz 320CE to the 1993 Mercedes-Benz 300CE, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the 1993 Mercedes-Benz 320CE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1993 Mercedes-Benz 300CE, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1993 Mercedes-Benz 320CE is identical to the 1993 Mercedes-Benz 300CE with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the 1993 Mercedes-Benz 320CE complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlight and front sidemarker assemblies; (b) installation of U.S.-model taillight lenses; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Inscription of the required warning statement in the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 208 *Occupant Crash Protection:* (a) Replacement of the driver's seat belt latch and installation of a safety belt warning system that conforms to the standard; (b) replacement of the driver's and passenger's side air and knee bolster with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with Type II seat belts at the front and rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative cannister.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard found in 49 CFR part 541.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm.) It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 1, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17165 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5912]

Receipt of Petition for Decision That Nonconforming 1991–1997 Honda VFR 750 and 1998–1999 Honda VFR 800 Motorcycles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1997 Honda VFR 750 and 1998–1999 Honda VFR 800 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1997 Honda VFR 750 and 1998–1999 Honda VFR 800 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because: (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1991–1997 Honda VFR 750 and 1998–1999 Honda VFR 800 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1991–1997 Honda VFR 750 and 1998–1999 Honda VFR 800 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991–1997 Honda VFR 750 and 1998–1999 Honda VFR 800 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1997 Honda VFR 750 and 1998–1999 Honda VFR 800 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991–1997 Honda VFR 750 and 1998–1999 Honda VFR 800 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model head lamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicles to meet the requirements of 49 CFR part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

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All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 1, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17166 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5607; Notice 2]

Qvale Automotive Group SrL; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

For the reasons given below, we are granting the application by Qvale Automotive Group, SrL of Modena, Italy ("Qvale"), for an exemption until March 31, 2001, from the automatic restraint requirements of Federal Motor Vehicle Safety Standard No. 208 Occupant Crash Protection. Qvale applied for the exemption on the basis that "compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard." 49 CFR 555.6(a).

We published a notice of receipt of the application on May 5, 1999 (64 FR 24216), and received no comments in response.

The discussion that follows is based on information contained in Qvale's application.

Why Qvale Needs a Temporary Exemption

Qvale is an Italian corporation, formed in January 1998. It is controlled by an American corporation owned by the Qvale family of San Francisco, California, which was also formed in January 1998. The American corporation does business as DeTomaso Automobiles, Ltd.

DeTomaso Modena SpA, a small manufacturer of automobiles which produces less than 100 motor vehicles a year, developed a convertible passenger car, the Bigua, but was financially unable to produce it. Qvale has obtained the worldwide rights to manufacture and sell the Bigua under the name DeTomaso Mangusta. As of March 1999, Qvale had invested more than $7,000,000 in the Mangusta project, and anticipates an additional investment of $3,000,000 by the time production begins in September 1999.

When the project began in early 1998, Qvale expected that a Ford Mustang air bag system could be easily integrated into the Mangusta, because DeTomaso Modena had anticipated that the U.S. would be the primary market for the car. However, it has developed that significant re-engineering will be required to incorporate an inflatable restraint system that complies with S4.1.5.3 of Standard No. 208. Qvale believes that it will be able to manufacture a conforming car beginning in May 2000, but says that it needs an exemption so that it may sell the Mangusta in the United States, beginning in November 1999, to generate funds under its business plan. It has asked to be exempted through March 31, 2001, to allow for unforeseen problems during development. The applicant intends to retrofit exempted vehicles with air bag systems when they become available. It anticipates sales of 200–250 Mangustas under the exemption.

Why Compliance Would Cause Qvale Substantial Economic Hardship

Neither Qvale nor its American parent has had any income or sales since their inception in January 1998. Qvale had a net loss of $685,000 for 1998, with a negative cash flow of $511,000. If an exemption is not granted and U.S. sales do not begin until May-June 2000, the company anticipates total net losses of approximately $4,800,000 in 1999 with a total negative cash flow of over $3,000,000. Even with an exemption that would permit U.S. sales to begin in November 1999, Qvale expects a net loss for 1999 of $4,124,025 and a negative cash flow of $2,502,025. In fact, even with an exemption, Qvale anticipates net losses through at least 2001 though the cash flow would become positive in 2000 and increase slightly in 2001.

Qvale's U.S. parent has already hired a sales and distribution staff, and would suffer losses of $1,800,000 if it cannot begin sales of the Mangusta in November 1999.

How Qvale Has Tried To Comply With the Standard in Good Faith

Qvale's production plan involves the use of the 4.6L Ford Cobra V–8 engine as well as a significant number of Ford parts including the air bag system. Ford's parts division, Visteon, is the prime subcontractor responsible for the interior and air bags. Isis Automotive, an engineering company in the United Kingdom, has been chosen as the safety engineering project manager.

It was anticipated that the Ford air bag system could be integrated into the Mangusta but the final chassis engineering that had continued during the Fall of 1998 indicated otherwise. Visteon found it necessary to redesign the dashboard, including the passenger side air bag door in order to make the Mangusta commercially viable, but is not able to furnish the redesigned interior parts until the Summer of 1999. Without these parts, an air bag system cannot be properly tested. In addition, the construction of 10 pre-production prototypes necessary for safety testing has been delayed until July 1999 because of problems with the prototype manufacturer (an outside supplier) and ongoing design changes. Finally additional time is needed to organize the supplier and engineering personnel and resources necessary for the air bag system development work (e.g., laboratory testing and sensor calibration).

Because of these factors, Qvale's plans to incorporate an air bag system have been delayed from September 1999 to May or June 2000.

Why Exempting Qvale Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

Qvale believes that the small number of vehicles that will be produced under an exemption will have no discernable effect upon safety. It intends to equip all of its U.S. vehicles with manual three point belts, and will meet the injury criteria specified in S4.1.5.3 when tested with belted dummies. The company will affix a label to the instrument panel informing occupants of the exemption and the need to fasten their safety belts. Qvale plans to re-engineer its air bag system so that it may be installed as a retrofit in exempted vehicles. Mangustas will comply with all other applicable Federal motor vehicle safety standards.

In Qvale's opinion, an exemption would permit the availability in the U.S. of the Mangusta's "high technology, light weight TRM composite body." The success of the project will have a beneficial effect upon Visteon, a division of Ford Motor Company, as well as employment elsewhere in the U.S. of sales and service personnel.

Our Finding That Compliance Would Cause Substantial Economic Hardship to a Manufacturer That Has Tried in Good Faith To Comply With Standard No. 208

It is manifest that Qvale has already invested considerable sums in its attempt to make the Bigua/Mangusta a viable commercial product, taking over the project from DeTomaso Automobili who lacked the financial resources to bring it to market. By the time production is scheduled to begin in September 1999, Qvale will have committed $10,000,000 to the enterprise. While denial of an exemption would not cause the failure of Qvale, it would result in total net losses of $4,800,000 before a car conforming to Standard No. 208 could be produced in 2000, as compared with total net losses of $4,124,025 with an exemption that would permit cars to be sold in the United States as of November 1999. Although an added loss of $700,000 may not appear significant in the overall context of an investment of $10,000,000, we note that Qvale cannot begin to generate any income at all until it is able to sell the Mangusta. Under the best of circumstances, the company anticipates net losses through 2001.

From Qvale's application, we surmise that DeTomaso Automobili intended to equip the Bigua with a Ford Mustang air bag system, but that its own financial difficulties prevented it from fully assessing its suitability to the vehicle's design. Since beginning the project early in 1998, Qvale has reviewed these efforts and determined that "significant re-engineering" is required to incorporate a conforming automatic restraint system. With its compliance project partners, Visteon and Isis, Qvale is working towards a conformance date less than a year away, May 2000. To allow for unanticipated difficulties it has asked for an exemption of 10 months past the anticipated date that the Mangusta will comply.

After reviewing these arguments, we find that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with Standard No. 208.

Our Finding That an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

We note with approval Qvale's intent to retrofit exempted vehicles with air bag systems when they become available for the estimated 200–250 Mangustas that will be sold under an exemption. We also note that the Mangusta will comply with all other applicable Federal motor vehicle safety standards.

Qvale is owned by a new American company which is hiring a sales and distribution staff for marketing the Mangusta in the United States. The principal subcontractor responsible for the engine, interior, air bags, and other parts, is also an American corporation.

After reviewing these arguments, we find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety.

Grant of NHTSA Temporary Exemption No. 99–8

For the reasons expressed above, Qvale Automotive Group, SrL, is hereby granted NHTSA Temporary Exemption No. 99–8, from S4.1.5.3 of 49 CFR 571.208 *Occupant Crash Protection*, expiring April 1, 2001.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: July 1, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–17236 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143; Notice No. 99–8]

Advisory Guidance; Transportation of Batteries and Devices That Contain Batteries

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory guidance.

SUMMARY: RSPA has become aware of several incidents that recently occurred where heat generated by batteries or devices that contain batteries have caused smoke and/or the initiation of a fire while the device or article was being transported in commerce. This suggests that some persons engaged in the offering of batteries and such devices for transportation may not be fully aware of the requirements and prohibitions of the Hazardous Materials Regulations (HMR) applicable to such devices. This advisory guidance is to remind anyone offering for transportation or transporting such devices that electrical storage devices or articles that contain batteries are forbidden from transportation unless properly packaged as to be protected from such an occurrence.

FOR FURTHER INFORMATION CONTACT: Eric Nelson, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: RSPA has been made aware of several incidents in which batteries or other devices that contain batteries have short-circuited or otherwise functioned in such a manner so as to generate heat, smoke, or initiate a fire while being transported in commerce. This advisory guidance is intended to remind persons offering for transportation, or personally transporting any battery or electrical device of their responsibility under the Hazardous Materials Regulations (49 CFR parts 171–180) that any battery or electrical device that could create sparks or generate heat may only be offered for transportation or transported when adequately protected from such an occurrence.

I. Background

In May, 1994, while being delivered to a handling agent by road, a shipment of small lithium batteries destined for Gatwick airport in London, England, was found emitting smoke from a Unit Loading Device. The shipment consisted of batteries, approximately the size of a dime and about 5mm high, which had been tossed loosely in a box. The batteries apparently short-circuited when exposed battery terminal tabs came into contact with other batteries, and subsequently started a fire that significantly damaged the shipment. The UK Civil Aviation Authorities investigated the incident. The shipper was fined £1200 with £300 additional costs being paid.

In February, 1996, 106 packaged lawnmowers with an electrical battery installed were offered to an air carrier for transportation. While in an air cargo facility, and after being transported on two separate flights, smoke was discovered coming from one of the boxes. Air cargo personnel determined that an installed battery was dislodged and short-circuited, causing the wiring, plastic housing, and battery to burn and melt. The air carrier immediately took action to locate the other packages, which were in the process of being transported to other destinations throughout the United States. The air carrier returned three airborne flights and two taxiing aircraft to the airport, and held 11 flights preparing to depart until all 106 packages were accounted for. Approximately 50 of the 106 lawnmower batteries short-circuited, and several burned sufficiently to char

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the packaging in which they were being shipped.

A November, 1997 incident involved a fiberboard box packaging containing non-spillable, wet electric storage batteries offered to an air carrier for transportation. The shipment was picked up by a messenger service for delivery to the air carrier's cargo facility. The package was discovered burning prior to air transport, the probable cause of which was short-circuiting of the battery caused by storage of cables directly on top of the battery. The short-circuit generated enough heat to ignite nearby combustible materials.

RSPA has become aware of several other occurrences of passenger baggage that have been discovered smoldering or burning as a result of battery short-circuits. These batteries include camcorder, camera, or other dry-cell general use batteries that have short-circuited because of coming into contact with keys or other metallic items packed in proximity to the batteries. When such a short-circuit occurs, the temperature of the device or battery can quickly rise to a point that causes leakage of the battery or ignites nearby combustibles such as packaging materials or suitcase linings.

Based on these and other reports, RSPA is concerned that some persons offering for transportation or transporting batteries or devices that contain batteries may not be fully aware of the applicable provisions of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). During air transport, leakage from batteries, smoke and/or fire in cargo compartments can pose a grave risk to transportation safety.

The serious potential risks posed to flight safety by batteries and devices that contain batteries, in particular where the battery is not otherwise subject to regulation, is specifically addressed by RSPA and the International Civil Aviation Organization (ICAO). On March 5, 1999, RSPA published in the **Federal Register** (64 FR 10742) a final rule in Docket No. RSPA–98–4185 (HM–215C) that amended the Hazardous Material Table to add, among other things, special provision 130 to the entry, Battery, dry, not subject to the requirements of this subchapter. This special provision, codified at § 172.102, identifies conditions that must be met before dry batteries that are not otherwise subject to the HMR may be offered for transportation or transported in commerce. It reads as follows:

"130. Batteries, dry are not subject to the requirements of this subchapter only when they are offered for transportation in a manner that prevents the dangerous evolution of heat (for example, by the effective insulation of exposed terminals)."

In addition, § 173.21 (c) specifies that electrical devices that are likely to create sparks or generate a dangerous quantity of heat, unless packaged in a manner that precludes such an occurrence, may not be offered for transportation in commerce.

In the 1999/2000 edition of the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods, the following prohibitive statement appears in relation to electric storage batteries not listed in the Dangerous Goods List (Table 2–14) or otherwise subject to the provisions of, the Technical Instructions:

"Any electrical battery or battery-powered device having the potential of dangerous evolution of heat that is not prepared so as to prevent a short circuit (e.g., in the case of batteries, by the effective insulation of exposed terminals; or, in the case of equipment, by disconnection of the battery and protection of exposed terminals) is forbidden from transport." (Special Provision A123, pg. 2–12–8)

II. Requirements for the Transportation of Electrical Devices

Where the HMR permit batteries to be offered for transportation, either separately or installed in equipment, batteries must be protected against short circuits. The following discusses types of batteries which are regulated by the HMR. *Wet batteries:* Batteries, wet, filled with acid, UN 2794, and Batteries, wet, filled with alkali, UN 2795, are those that contain corrosive battery fluid, and are subject to the packing requirements of § 173.159. *Wet "non-spillable" batteries:* Batteries, wet, nonspillable, UN 2800, are wet batteries which are capable of withstanding leakage of battery fluid when subjected to vibration and pressure differential tests, as specified in § 173.159(d)(3). These batteries are excepted from all other requirements of the HMR, provided they meet the requirements of § 173.159 (d)(1), (d)(2), and (d)(3). *Batteries containing sodium:* Batteries, containing sodium, UN 3292, are batteries that contain a material that, by contact with water, are liable to become spontaneously flammable or give off flammable or toxic gas at a rate greater than 1 liter per kilogram of the material per hour. These batteries are subject to the packaging requirements of § 173.189. *Lithium batteries:* Lithium batteries, UN 3090, and Lithium batteries, contained in equipment, UN 3091, are batteries which contain lithium substances that react dangerously with water. Regulated batteries contain, for liquid cathodes, more than 0.5 grams of lithium per cell, or containing an aggregate of over 1.0 gram of lithium or lithium alloy, and batteries which contain solid cathodes, 1.0 gram of lithium or lithium alloy per cell, or an aggregate of over 2.0 grams of lithium or lithium alloy. These batteries are subject to the packaging requirements of § 173.185. Certain lithium batteries are not subject to the requirements of the HMR provided they meet the requirements of § 173.185(c). *Batteries containing potassium hydroxide solids:* Batteries, dry, containing potassium hydroxide solid, UN 3028, are those which contain corrosive solids, and are subject to the packaging requirements of § 173.213.

Dry batteries that are not otherwise subject to the requirements of the HMR are batteries such as rechargeable camera, cell phone, and dry carbon and alkaline batteries which are commonly used by consumers. These batteries are otherwise excepted from requirements of the HMR when offered for transportation or transported in commerce provided the battery is packaged in a manner that prevents the generation of a dangerous quantity of heat that may result from short-circuiting. For the purpose of § 173.21 (c), "dangerous quantity of heat" is considered, in part, to be a sufficient amount of energy to cause leakage of the battery contents, smoke or fire, or personal injury.

Even without a short-circuit condition existing, a component in circuitry connected to a battery may become heated to a point where combustion is initiated in the component itself, or in near-by combustible materials, even if the battery or the device in which the battery is installed functions normally. RSPA has become aware of several incidents in which devices that contain batteries, although shipped in compliance with § 173.159, have produced dangerous quantities of heat while in transportation in commerce. RSPA is evaluating the conditions surrounding these incidents.

An example is a November 1997 incident in which a device known commonly as an Uninterruptible Power Source was offered to an air carrier for transportation in commerce. An Uninterruptible Power Source, a device consisting of a battery with associated circuitry, is used both to provide electrical surge protection to computers and to supply emergency power to computers in the event of a loss of normal power. After being transported on at least one flight, the power source, packed in a fiberboard box, was discovered burning and smoking at a cargo sort facility. A subsequent investigation revealed that the burning initiated in a printed circuit board, with the source of energy being a battery within the device.

Another example of a condition of a component in circuitry connected to a battery may become heated to a point where combustion is initiated in the component itself, or in near-by combustible materials, even when the device functions normally is a properly operating, high-intensity flashlight used by scuba divers. Such devices, packed in checked baggage and unintentionally activated (i.e., by movement of the on/off switch to the "on" position), have started fires in passenger baggage.

Airline passengers and persons who offer such electrical devices for transportation as carry on baggage, checked baggage, or as cargo, are responsible for assuring that appropriate means are taken to protect against dangerous levels of heat from inadvertent activation or short-circuit of the electrical device in transportation. Individuals who carry any battery-powered electrical device in their luggage should take care not to pack it in a manner that may lead to a short-circuit by contact with keys or other metallic articles, or its inadvertent activation while in transportation. To address this potential risk, the HMR contains an overriding provision in § 173.21, Forbidden materials and packages. Materials forbidden by § 173.21 may not be offered for transportation, or transported in commerce. This section extends the forbidden designation beyond materials specifically identified in the Hazardous Materials Table or elsewhere in the HMR, to various additional general categories including:

"Electrical devices which are likely to create sparks or generate a dangerous quantity of heat, unless packaged in a manner which precludes such an occurrence."

Any electrical device, even one not otherwise subject to the HMR (either by specific exception from the HMR, or because the device and its power source contains no material meeting the definition of a hazardous material), is forbidden from being offered for transportation, or transported, if the device is likely to produce sparks or a dangerous quantity of heat.

III. Reminder to Offerers and Transporters

Any persons who offers or transports a battery or an electrical device with an installed battery, including power sources, lights or torches, power tools, and other related articles are encouraged to carefully review this guidance, to examine all of their procedures, and where necessary, to take measures to prevent potential incidents in transportation. While evaluating whether such devices are likely to produce sparks or generate a dangerous quantity of heat, environmental conditions normally encountered in transportation must be taken into account, including temperature, humidity, vibration, impacts from rough handling and other relevant factors. In addition, the possibility of product manufacturing variations such as contamination, spacings, and loose parts should be taken into account.

Persons are reminded that the offering for transportation of any forbidden material in violation of the HMR subjects the offerer to enforcement action, including, but not limited to, significant civil penalties and appropriate judicial remedies. Furthermore, a willful violation of the HMR, or the reckless offering of a material for transportation in violation of the HMR, is subject to criminal penalties of up to 5 years in prison and/or fines.

Issued in Washington, DC, on June 28, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–17123 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–60–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Egyptian Art in The Age of the Pyramids"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the additional cultural objects to be included in the "Egyptian Art in The Age of the Pyramids," imported from abroad for temporary exhibition in the United States are for exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with a foreign lender. I also determine that the exhibition or display of the listed objects at the Metropolitan Museum of Art from September 13, 1999 to January 9, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or other information, please contact Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981. The address is Room 700 U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: June 29, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–17091 Filed 7–6–99; 8:45 am]

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federal register

Wednesday
July 7, 1999

Part II

Department of Education

Office of Postsecondary Education—William D. Ford Federal Direct Loan Program; Notice

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education—William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of deadline for submission of loan records and promissory notes.

SUMMARY: This notice establishes the deadline for the submission of all William D. Ford Federal Direct Loan (Direct Loan) Program electronic loan records and promissory notes to the Secretary for the 1997–1998 academic year (Year 4).

DEADLINE DATES FOR SUBMISSION OF RECORDS: Institutions that participated in the Direct Loan Program during academic year 1997–1998 (Year 4) must submit all electronic loan records and promissory notes associated with Direct Loans made during that year to the Secretary no later than August 2, 1999.

SUPPLEMENTARY INFORMATION: An institution that participates in the Direct Loan Program is required under 34 CFR 685.300(b)(6) to comply with all requirements established by the Secretary relating to loans made under that program. The Secretary has the authority under this provision to establish a deadline by which all required electronic records and promissory notes for a particular academic year must be final, complete, accurate, and submitted to the Secretary.

The Secretary believes that establishing an annual deadline for the submission of all electronic records (both initial and adjusted or revised records) and promissory notes is necessary to protect the rights of borrowers, and to protect the United States from unreasonable financial risks. Under 34 CFR 685.309(a), schools that participate in the Direct Loan Program are required to establish and maintain proper administrative and fiscal accounting procedures. The establishment of an annual submission deadline promotes compliance with this requirement. An annual deadline also enables the Secretary to close out the processing of Direct Loan Program cash records for an academic year and makes it easier for the Secretary to determine that Direct Loan funds were disbursed appropriately to student and parent borrowers. Further, an annual deadline enables the Secretary to conduct program reviews of Direct Loan schools more efficiently, since all Direct Loan records submitted to the Secretary by the deadline are final.

The annual submission deadlines established in this notice are separate from the 30-day requirement for the regular submission of initial electronic records and promissory notes. Under 34 CFR 685.301(d), Direct Loan schools that participate under Origination Option 1 or Origination Option 2 must submit loan origination records, promissory notes, and disbursement records no later than 30 days after the date the disbursements are made. Schools that participate under Standard Origination must submit initial and subsequent disbursement records to the Secretary no later than 30 days after the date of each disbursement.

In some cases, institutions may need to adjust or revise electronic records that were previously submitted to the Secretary within the regular 30-day time period. The annual submission deadline established in this notice is the date by which all electronic records (whether adjusted/revised or initial) and promissory notes for the 1997–1998 academic year (Year 4) must be submitted to and accepted by the Secretary. If initial records and promissory notes have not been submitted before the annual deadline, the annual submission deadline supersedes the regular 30-day requirement under 34 CFR 685.301(d). Therefore, any initial records or promissory notes for the 1997–1998 academic year must be submitted to the Secretary by the annual submission deadline, even if that date is earlier than the regular 30-day deadline.

Any electronic record or promissory note for the 1997–1998 academic year that is submitted to the Secretary after the annual submission deadline will be rejected. This includes any record or promissory note that was previously submitted, but rejected, on or before the submission deadline. Records and promissory notes that have been rejected and remain incomplete or inaccurate by August 2, 1999 may result in institutional, rather than Federal, responsibility for the loan or portion of the loan.

FOR FURTHER INFORMATION CONTACT: Jon Utz, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–3272. Telephone (202) 708–8242. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to this Document

You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.268, William D. Ford Federal Direct Loan Program)

(**Program Authority:** 20 U.S.C. 1087a *et seq.*)

Dated: July 1, 1999.

Greg Woods,

Chief Operating Officer for the Office of Student Financial Assistance.

[FR Doc. 99–17134 Filed 7–6–99; 8:45 am]

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federal register

Wednesday
July 7, 1999

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 553

Inmate Personal Property; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 553

[BOP–1051–F]

RIN 1120–AA46

Inmate Personal Property

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on inmate personal property to allow for the standardization of authorized personal property lists at Bureau institutions and to facilitate procedures for the transportation of personal property due to inmate transfer or release. In addition, this document clarifies the status of personal property items previously authorized which are subsequently determined to pose a threat to the security, good order, or discipline of the institution. This amendment is intended to provide for the more efficient and secure operation of the institution.

EFFECTIVE DATE: August 6, 1999.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on inmate personal property (28 CFR part 553, subpart B). A proposed rule on this subject was published in the **Federal Register** on April 1, 1996 (61 FR 14440).

Background of Inmate Personal Property

Current regulations governing inmate personal property specify that, consistent with the mission of the institution, each Warden shall identify in writing that personal property which may be retained by an inmate (see 28 CFR 553.10). Because of variations among institution lists, when inmates transfer between institutions not all property authorized at the sending institution may be considered authorized at the receiving institution. Any unauthorized property is mailed at government expense to another party of the inmate's choice.

Purpose of the Amended Regulations

In order to alleviate this problem, the Bureau is implementing a standardized list of property which would be authorized for retention at all institutions. The Warden retains the discretion to authorize additional items for retention at his or her institution. Typically, these additional items will be government-issued or perishable. Consequently, § 553.10 is being amended to refer to the standardized list and to additions authorized by the Warden. Under this new procedure, less personal property being transferred between institutions will be subject to rejection by the receiving institution. Property authorized for retention by the Warden in addition to the standardized list will be identified as such. Under the revised regulations, the inmate would be responsible for the cost of remailing items not authorized by the receiving institution.

Both the standardized list and the additional items authorized by the Warden may include numerical limits on specific types of property (for example, two pairs of athletic shoes). Such numerical limits reduce the reliance in the previous regulations on the amount of storage as a determining factor in the retention of personal property (former § 553.11(a)(1) had stated "Staff may allow an inmate to retain that authorized property which the inmate may neatly and safely store in the designated area"). Revised § 553.11 now includes reference to possible numerical limitations along with the procedures for notifying inmates of such limits.

The provisions for storage space in new paragraph (b) contain a clear statement that authorized personal property is to be stored in the designated area. Specific provisions in the former regulations as to the requirement to store special purchase items, commissary items, correspondence, and reading materials have been removed to reduce redundancy. New paragraphs (c) through (h) now focus on limitations other than those imposed by space constraints. With respect to clothing, new paragraph (c) provides that civilian clothing (i.e., clothing not issued to the inmate by the Bureau or purchased by the inmate from the commissary) ordinarily is not authorized for retention by the inmate. This is in keeping with the standardized list of personal property. The regulations formerly allowed for some variation (former § 553.11(b), "Staff may allow an inmate to retain that clothing, whether civilian (at institutions where authorized) or institution * * *"). Under new paragraph (c), such civilian clothing possessed by current inmates could be retained no later than the effective date of the revised regulation. As proposed, paragraph (c) identified November 1, 1997 as the planned implementation date. In this final rule, the implementation date has been adjusted to allow for a thirty day delay following publication in the **Federal Register**. New paragraphs (d) and (e) are unchanged and are being republished here for ease of review. New paragraph (f) is merely being redesignated from former paragraph (g) and is also being republished for ease of review.

Section 553.14 has been revised to address more completely procedures for the shipment or disposal of property due to inmate transfer and release. The revised procedures allow for more flexibility in shipping property. Because of the use of a standardized list, the Bureau expects that there would be substantially reduced need for remailing any property which is not authorized by the receiving institution.

Response to Public Comments

Comments on the proposed rule were received from inmates, members of the general public, and other interested parties. The majority of inmate comments consisted of form letters from inmates at various institutions. A summary of the comments and the Bureau's response follow.

1. Appropriateness and Adequacy of Bureau Issue Clothing

Several inmates expressed concern that the new rule would deny them access to clothing appropriate for particular climates and environments. In particular, several inmates at one institution complained that the coats they are issued are not warm enough for the cold temperatures during winter months. One inmate preferred a particular type of coat which he had at a former institution. The Bureau notes that the Warden of each institution is responsible for determining the type of coat which will be issued at the Warden's institution. While this determination naturally is based upon factors such as average temperatures at the institution, security or budgetary constraints may make it not practicable to please everyone's preference. In those instances, however, where the inmate is unsatisfied by the selection at the institution the inmate may use the Administrative Remedy Program to seek appropriate accommodation. Monitoring inmate requests submitted under the Administrative Remedy Program further provides the Bureau with information which can be used to evaluate whether general adjustments in such determinations are necessary.

One commenter suggested that the amount of issued undergarments was not appropriate for inmates, and that personal undergarments should be allowed to supplement the provided totals. In consideration of this concern, the Bureau will amend the issued property list to include ten (10) pairs of undergarments (bras and panties) for female inmates, and ten (10) pairs of underwear (boxers or briefs) for male inmates.

Several female inmates requested that personal sleepwear be allowed because the issued sleepwear is not appropriate for larger-sized women. The Bureau responds that institution commissaries are able to special order particular sizes of clothing for inmates with special needs. Several female inmates commented that the material of the sleepwear provided was too sheer and almost see-through. The Bureau responds that institution commissaries may order different nightshirts if the material is deemed to be too sheer. Inmates unsatisfied with either the size or material may use the Administrative Remedy Program to seek a further solution, as noted above. As a further adjustment, however, the Bureau has chosen to include a bathrobe as part of an inmate's government-issued property.

One commenter noted that the proposed rule only allowed for white clothing, which might be inappropriate for inmates, especially female inmates, with dark pigmentation. In response, Bureau commissaries will now be authorized to issue undergarments, t-shirts and sweat suits in neutral tones (i.e., tan).

Several female inmates commented that the list of personal property seems to favor male inmates more than female inmates. The Bureau responds that this is not the intention of the personal property rule. The Bureau has completed a review of the government issue list with consideration of gender differences and has amended the list as appropriate (for example, with respect to undergarments and hats).

2. Behavior, Education and Recreation of Inmates

Several inmates commented that this rule imposes severe personal property restrictions on inmates who follow all prison regulations and strive to act responsibly. Several inmates commented that personal property privileges are incentives for inmates to behave. These commenters argue that without the privileges, a major incentive for good behavior is removed. One commenter suggested that property restrictions be used to punish infractions of prison rules. The Bureau notes that restrictions on inmate personal property are necessary for the security and orderly running of the institution. The revised regulations leave much of the former property list intact. Inmates are still allowed to retain several items of personal property which may be shipped upon transfer.

Several commenters suggested that the new rule limits the educational opportunities of inmates by restricting the amount of allowed books to five. The Bureau responds that inmates still retain access to institution libraries and to correspondence courses. The limit of five books has been instituted as a practical means of ensuring that the amount of the inmate's personal property will not exceed storage space available at the institution.

One commenter noted that the list of personal property items to be shipped at the inmate's expense includes most of the recreational and hobbycraft items that inmates have been allowed to possess at institutions. The commenter stated that he did not understand the reason for removing items which occupy the time of inmates and contribute to their rehabilitation. The Bureau finds merit in this comment and accordingly shall allow approved recreational and hobbycraft items to be shipped at the government's expense except to the extent that the amount of material exceeds allocated space for the shipment.

One inmate commented that the Bureau and sentencing court represented life in a low-security camp as including the privilege of wearing personal clothing. Previously, under § 553.11(b) staff may allow an inmate to retain civilian clothing at institutions where authorized. The determination to allow retention of civilian clothing (and presumably the wearing of civilian clothing) was always at the discretion of the Bureau and was not an entitlement of the inmate. As noted in the proposed rule, the provisions on civilian clothing were revised and ordinarily would not be authorized for retention at any institution in keeping with the standardized list of property. General conditions of incarceration in a low-security camp otherwise serve as sufficient motivation for continued positive institutional adjustment of qualified inmates.

3. Financial Impact of These Restrictions

One inmate commented that it made financial sense to let inmate families and friends donate needed clothing to offset the Bureau's costs, and one inmate commented that allowing personal property would not create any additional costs for the Bureau. The Bureau notes, however, that allowing such a volume of clothing into institutions would put an undue strain on the institution staff who inspect incoming packages. The presence of civilian clothing within the institution may give rise to the appearance of favoritism based upon an inmate's social or economic status. This appearance could serve to encourage disruptive behavior and thus compromise the security and good order of the institutions.

Several inmates commented about high commissary prices and how this policy would result in the commissary being able to turn a higher profit. The Bureau responds that institution commissaries purchase reasonably priced clothing and then use a standard markup to reach the commissary price. This markup will not change to take advantage of the new personal property rule. Fluctuations in price are normally due to changes in the unit cost. One possible benefit from the use of a standardized personal property list is the cost savings benefit from higher volume single source orders. The Bureau further points out that any profits generated by the commissary are used to support institution programming and programs designed for the inmate's benefit (for example, inmate organization or recreational activities).

One inmate commented that the prices in the commissary are too high to be able to afford desired items. The Bureau notes that all required clothing and personal care items are provided to inmates through government issue. Additional items may be acquired with funds from the inmate's commissary account. The Bureau has no control over how many external sources of money an inmate has access to while in prison. Inmates with few outside sources are given the opportunity to work in order to earn commissary funds.

One inmate commented that the Financial Responsibility Program also limits the ability of inmates to purchase commissary items. The Bureau responds that inmates who owe financial debts imposed as part of the sentence must take care of those obligations. Citizens who are not incarcerated must pay their debts before being able to spend money on discretionary items, and inmates are not exempt from this responsibility.

Several inmates commented that the new rule will impose higher costs on them and their families because now commissary items will have to be repurchased each time an inmate transfers institutions. The Bureau

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responds that under the new personal property list, Wardens may allow some items to be retained. However, the new lists provide notice to inmates about what property is allowed, and thus inmates can plan to use their commissary money to purchase items that are retainable if they will be unable to purchase new items that are non-transferrable.

One inmate commented that the federal deficit could be offset and that other federal budget cuts could be avoided if the Bureau avoided spending money on issuing clothing to prisoners by letting inmates possess personal clothing. The Bureau responds that the potential security risks which would be created by letting all inmates have personal clothing outweigh any conjectural budgetary relief such a measure might create.

4. Necessity and Philosophy of the Policy

Several commenters questioned the necessity of this new rule. One commenter suggested that other alternatives to serve the Bureau's purposes have not been tried yet. Another commenter stated that avoiding tort claims and promoting uniformity did not sufficiently justify the new property restrictions. The Bureau disagrees. Standardization of inmate personal property at all institutions reduces the potential for the accumulation of property which would not be transferrable to other institutions. This would further reduce costs for remailing of items.

One commenter questioned how the Bureau could justify not classifying this rule as a "significant regulatory action" since it impacts approximately 100,000 people in federal custody. As noted below, the Bureau affirms that the rule does not have a significant impact upon a substantial number of small entities. Under the Act "small entities" has the same mean as "small businesses, organizations, or small governmental jurisdictions".

Several commenters expressed concern that the new rules would remove the flexibility Wardens have to run individual institutions. One commenter suggested that the rule does not take into consideration the differences between security levels. Another inmate stated that the rule does not allow for accommodations of institution or individual needs. Another commenter worried that the new rule was vague enough to allow for too many arbitrary interpretations at the institution level. Wardens retain the authority to allow for additional items at their institutions. Because these items are identified as being approved for local use only, the inmate's choice to purchase the item is an informed one in light of the item's disposition consequent to the inmate's subsequent transfer from the institution.

5. Premature Implementation of the Policy

Several inmates complained that the policy has already been implemented at some institutions even though it was only a proposed rule. The Bureau responds that under the previous regulations the Warden had explicit authority to identify personal property limits for the institution. In any event, any specific complaints may be addressed through the Administrative Remedy Program.

6. Psychological Impact on Inmates

Several inmates and interested parties expressed concern that the new property rule would have a severe adverse psychological impact on inmates. Several commenters noted that personal clothing contributes to a person's self-esteem, dignity, sense of self-worth, and identity. One commenter hypothesized that the denial of personal clothing would be so degrading as to actually harden inmates even more against society. As noted above, the Bureau believes that the presence of civilian clothing within the institution may instead lead to disruptive behavior.

Several commenters remarked upon recent statutory restrictions on the provisioning of certain amenities (weight training equipment and premium cable television channels). Several commenters worried that the combination of statutory restrictions and the revised personal property regulations would cause some inmates to lose interest in life. One commenter worried that the combination of all of the restrictions would make the maintenance of order in the institution significantly more difficult for institution staff. The mandatory statutory restrictions alluded to by the commenters are outside the scope of this rulemaking. With respect to the standardized list, the Bureau believes that its use will improve orderly operation at the institution.

7. Security Issues

One inmate suggested that inmates should be allowed to share clothing without generating an incident report. The "sharing" of clothing qualifies as a prohibited act because such would constitute the possession of property not issued to or authorized for possession by the inmate. Determinations pertaining to prohibited acts are resolved under the Bureau's inmate discipline regulations (see 28 CFR part 541).

Several inmates commented that removing all personal clothing would promote stealing among inmates. The Bureau believes that such is not the case.

One inmate speculated that the purpose of the new property restrictions was to alleviate gang participation. The commenter suggested that gang members have several ways of keeping track of each other, and so the property restrictions are not necessary. As noted above, a purpose of the revised regulations is to alleviate inefficiencies caused by the transfer of personal property between institutions when institutions have different lists of authorized property.

One commenter asked why hooded sweatshirts were prohibited, but wool hats were allowed. This question is not particularly relevant to the final rule at issue here. However, the Bureau responds that there are enough differences between a hooded sweatshirt and a separate hat to make them a security risk, particularly the potential for hiding small items in the hood.

8. Shipping, Storage and Transfer Issues

Several commenters expressed concern over the Bureau abandoning all shipping costs after the effective date of the revised regulations. For purposes of the proposed rulemaking, § 553.14(b) identified November 1, 1997 as the implementation date of the provision. In this final rule, the implementation date in § 553.14(b) has been adjusted to allow for a thirty day delay following publication of the final rule in the **Federal Register**.

One inmate suggested that Bureau allow each inmate a specific amount of materials which can be shipped at institution expense. The Bureau notes that the assumption by the inmate of shipping costs only pertains to excess material not authorized by the receiving institution. The Bureau is still responsible for the cost of shipping authorized property as identified on the standardized list. One inmate worried what would happen to materials whose owners could not afford to ship. Section 553.14(c) specifies that such property would be disposed of through approved methods, including destruction of the property. However, pursuant to § 553.13(b)(2)(iii), the Warden or designee may authorize the institution to pay the cost of mailings where the inmate has insufficient funds and no likelihood of new funds being received.

Several inmates expressed concern over the two box storage limit set for inmate property. One inmate stated that inmates serving long or life sentences can easily accumulate more than two boxes worth of property. Another inmate reported that there is confusion over whether issued items can be stored in a locker instead of the boxes. The two box storage limit refers to the means of transporting approved non-government issued items for inmates who are transferring to another institution. These boxes therefore are not used in place of lockers at the institution. The Bureau has deemed that the dimensions of the boxes are sufficient to transport approved non-government issued items which have been identified on the standardized list as acceptable at all institutions.

Several inmates express dissatisfaction with the list of items which can be transferred. Inmates complained that pajamas, extra underwear, visitation clothes, and recreational and hobby craft items are not transferable. Several inmates complained that items available for purchase in the commissaries are not transferable (e.g. fans). As noted above, some of these items would be authorized for shipment at the expense of the inmate. In any event, through implementation of a standardized property list, inmates would be aware of how commissary purchased items would be treated when the inmate transfers to another institution.

Clarification of Contraband Items

In adopting the regulations as final, the Bureau is clarifying the status of personal property items previously authorized which are subsequently determined to pose a threat to the security, good order, or discipline of the institution. The term "contraband" is defined in 28 CFR 500.1(h). For the sake of consistency, the Bureau is revising § 553.12 to refer to this definition. Because circumstances pertinent to the identification of threats to security, good order, or discipline can change, revised § 553.12 also notes that a property item can be found to pose a threat to institution security, good order, or discipline subsequent to an initial determination that it did not pose such a threat. The introductory text of § 553.10 has also been amended in conformance by qualifying ("ordinarily") the description of authorized property. The procedures for handling contraband in § 553.13(b)(2)(iii) are being revised to allow for the institution to bear the cost of mailing such personal property items.

Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 553

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), part 553 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 553—INMATE PROPERTY

1. The authority citation for 28 CFR part 553 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 553.10 is amended by revising the first and the last sentences to read as follows:

§ 553.10 Purpose and scope.

It is the policy of the Bureau of Prisons that an inmate may possess ordinarily only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate. * * * Consistent with the mission of the institution, each Warden shall identify in writing that personal property which may be retained by an inmate in addition to that personal property which has been approved by the Director for retention at all institutions.

3. Section 553.11 is revised to read as follows:

§ 553.11 Limitations on inmate personal property.

(a) *Numerical limitations.* Authorized personal property may be subject to numerical limitations. The institution's

Admission and Orientation program shall include notification to the inmate of any numerical limitations in effect at the institution and a current list of any numerical limitations shall be posted on inmate unit bulletin boards.

(b) *Storage space.* Staff shall set aside space within each housing area for use by an inmate. The designated area shall include a locker or other securable area in which the inmate is to store authorized personal property. The inmate shall be allowed to purchase an approved locking device for personal property storage in regular living units. Staff may not allow an inmate to accumulate materials to the point where the materials become a fire, sanitation, security, or housekeeping hazard.

(c) *Clothing.* Civilian clothing (i.e., clothing not issued to the inmate by the Bureau or purchased by the inmate from the commissary) ordinarily is not authorized for retention by the inmate. Civilian clothing which previously had been approved for retention may not be retained after August 6, 1999. Prerelease civilian clothing for an inmate may be retained by staff in the Receiving and Discharge area during the last 30 days of the inmate's confinement.

(d) *Legal materials.* Staff may allow an inmate to possess legal materials in accordance with the provisions on inmate legal activities (see § 543.11 of this chapter).

(e) *Hobbycraft materials.* Staff shall limit an inmate's hobby shop projects within the cell or living area to those projects which the inmate may store in designated personal property containers. Staff may make an exception for an item (for example, a painting) where size would prohibit placing the item in a locker. This exception is made with the understanding that the placement of the item is at the inmate's own risk. Staff shall require that hobby shop items be removed from the living area when completed, and be disposed of in accordance with the provisions of part 544, subpart D, of this chapter.

(f) *Radios and Watches.* An inmate may possess only one approved radio and one approved watch at a time. The inmate must be able to demonstrate proof of ownership. An inmate who purchases a radio or watch through a Bureau of Prisons commissary is ordinarily permitted the use of that radio or watch at any Bureau institution if the inmate is later transferred. If the inmate is not allowed to use the radio or watch at the new institution, the inmate shall be permitted to mail, at the receiving institution's expense, the radio or watch to a destination of the inmate's choice. Where the inmate refuses to provide a mailing address, the radio and/or watch may be disposed of through approved methods, including destruction of the property.

(g) *Education Program Materials.* Education program materials or current correspondence courses may be retained even if not stored as provided in paragraph (b) of this section.

(h) *Personal Photos.* An inmate may possess photographs, subject to the limitations of paragraph (b) of this section, so long as they are not detrimental to personal safety or security, or to the good order of the institution.

4. Section 553.12 is revised to read as follows:

§ 553.12 Contraband.

(a) Contraband is defined in § 500.1(h) of this chapter. Items possessed by an inmate ordinarily are not considered to be contraband if the inmate was authorized to retain the item upon admission to the institution, the item was issued by authorized staff, purchased by the inmate from the commissary, or purchased or received through approved channels (to include approved for receipt by an authorized staff member or authorized by institution guidelines).

(b) For the purposes of this subpart, there are two types of contraband.

(1) Staff shall consider as hard contraband any item which poses a serious threat to the security of an institution and which ordinarily is not approved for possession by an inmate or for admission into the institution. Examples of hard contraband include weapons, intoxicants, and currency (where prohibited).

(2) Staff shall consider as nuisance contraband any item other than hard contraband, which has never been authorized, or which may be, or which previously has been authorized for possession by an inmate, but whose possession is prohibited when it presents a threat to security or its condition or excessive quantities of it present a health, fire, or housekeeping hazard. Examples of nuisance contraband include: personal property no longer permitted for admission to the institution or permitted for sale in the commissary; altered personal property; excessive accumulation of commissary, newspapers, letters, or magazines which cannot be stored neatly and safely in the designated area; food items which are spoiled or retained beyond the point of safe consumption; government-issued items which have been altered, or other items made from government property without staff authorization.

5. In § 553.13, paragraph (b)(2)(iii) is amended by revising the second and third sentences to read as follows:

§ 553.13 Procedures for handling contraband.

* * * * *

(b) * * *

(2) * * *

(iii) * * * The Warden or designee may authorize the institution to pay the cost of such mailings when the item had not been altered and originally had been permitted for admission to the institution or had been purchased from the commissary, or where the inmate has insufficient funds and no likelihood of new funds being received. Where the inmate has established ownership of a contraband item, but is unwilling, although financially able to pay postage as required, or refuses to provide a mailing address for return of the property, the property is to be disposed of through approved methods, including destruction of the property.

* * * * *

6. Section 553.14 is revised to read as follows:

§ 553.14 Inmate transfer between institutions and inmate release.

(a) Except as provided for in paragraphs (a)(1) through (3) of this section, authorized personal property shall be shipped by staff to the receiving institution.

(1) The Warden ordinarily shall allow an inmate transferring to another institution to transport personal items determined necessary or appropriate by staff and, if applicable, legal materials for active court cases.

(2) The Warden may require or allow an inmate who is transferring to another institution under furlough conditions to transport all the inmate's authorized personal property with him or her.

(3) An inmate who is being released or who is transferring to a Community Corrections Center may arrange to ship personal property at the inmate's expense. The inmate is responsible for transporting any personal property not so shipped.

(b) If the inmate's personal property is not authorized for retention by the receiving institution, staff at the receiving institution shall arrange for the inmate's excess personal property to be mailed to a non-Bureau destination of the inmate's choice. The inmate shall bear the expense for this mailing.

(c) Whenever the inmate refuses to provide a mailing address for return of the property or, when required, refuses to bear the expense of mailing the property, the property is to be disposed of through approved methods, including destruction of the property.

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Part IV

The President

Executive Order 13129—Blocking Property and Prohibiting Transactions With the Taliban

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Presidential Documents

Title 3—

The President

Executive Order 13129 of July 4, 1999

Blocking Property and Prohibiting Transactions With the Taliban

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)("IEEPA"), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the actions and policies of the Taliban in Afghanistan, in allowing territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Ladin and the Al-Qaida organization who have committed and threaten to continue to commit acts of violence against the United States and its nationals, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

(a) all property and interests in property of the Taliban; and

(b) all property and interests in property of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General:

(i) to be owned or controlled by, or to act for or on behalf of, the Taliban; or

(ii) to provide financial, material, or technological support for, or services in support of, any of the foregoing,

that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked.

Sec. 2. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

(a) any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to this order is prohibited, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of the Taliban or persons designated pursuant to this order;

(b) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, software, technology (including technical data), or services to the territory of Afghanistan controlled by the Taliban or to the Taliban or persons designated pursuant to this order is prohibited;

(c) the importation into the United States of any goods, software, technology, or services owned or controlled by the Taliban or persons designated

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pursuant to this order or from the territory of Afghanistan controlled by the Taliban is prohibited;

(d) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited; and

(e) any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby directed to authorize commercial sales of agricultural commodities and products, medicine, and medical equipment for civilian end use in the territory of Afghanistan controlled by the Taliban under appropriate safeguards to prevent diversion to military, paramilitary, or terrorist end users or end use or to political end use.

Sec. 4. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, corporation, or other organization, group, or subgroup;

(c) the term "the Taliban" means the political/military entity headquartered in Kandahar, Afghanistan that as of the date of this order exercises de facto control over the territory of Afghanistan described in paragraph (d) of this section, its agencies and instrumentalities, and the Taliban leaders listed in the Annex to this order or designated by the Secretary of State in consultation with the Secretary of the Treasury and the Attorney General. The Taliban is also known as the "Taleban," "Islamic Movement of Taliban," "the Taliban Islamic Movement," "Talibano Islami Tahrik," and "Tahrike Islami'a Taliban"

(d) the term "territory of Afghanistan controlled by the Taliban" means the territory referred to as the "Islamic Emirate of Afghanistan," known in Pashtun as "de Afghanistan Islami Emarat" or in Dari as "Emarat Islami-e Afghanistan," including the following provinces of the country of Afghanistan: Kandahar, Farah, Helmund, Nimruz, Herat, Badghis, Ghowr, Oruzghon, Zabol, Paktiha, Ghazni, Nangarhar, Lowgar, Vardan, Faryab, Jowlan, Balkh, and Paktika. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby authorized to modify the description of the term "territory of Afghanistan controlled by the Taliban"

(e) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. (a) This order is effective at 12:01 a.m. Eastern Daylight Time on July 6, 1999.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
July 4, 1999.

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Annex

Mohammed Omar (Amir al-Mumineen [Commander of the Faithful]);

[FR Doc. 99–17444
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531, 550, and 591

RIN 3206–AF38

Pay Administration (General); Lump-Sum Payments for Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing final regulations to establish a uniform Governmentwide policy for calculating lump-sum payments for accumulated and accrued annual leave for employees who separate from the Federal service.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102–378, October 2, 1992) added section 5553 to title 5, United States Code, to give the Office of Personnel Management (OPM) regulatory authority for the administration of lump-sum payments for accumulated and accrued annual leave. Under 5 U.S.C. 5551 and 5552, an agency must make a lump-sum payment for annual leave when an employee separates from the Federal service or enters on active duty in the armed forces and elects to receive a lump-sum payment. The lump-sum payment must equal the pay the employee would have received had he or she remained employed until expiration of the period of annual leave. Section 6306 of title 5, United States Code, provides that when an employee is reemployed in the Federal service prior to the expiration of the period of annual leave (i.e., the lump-sum leave period), he or she must refund the portion of the lump-sum payment that represents the period between the date of reemployment and the expiration of the lump-sum period. An agency must recredit to the employee an amount of annual leave equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

OPM acknowledges that some of these regulatory provisions involve items not expressly provided for by statute. However, OPM would emphasize in this regard that an administrative agency may determine matters within its expertise that have not been specifically addressed by statute. Indeed, administrative agencies formulate policy and make appropriate rules as needed to carry out their regulatory responsibilities consistent with statutory authority. *See Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843 (1984) and *United States* v. *Grimaud*, 220 U.S. 506, 517 (1911), as cited in Davis, K., *Administrative Law Treatise, Third Edition*, § 2.6, pp. 70–71. The construction of a statute by those charged with its administration is entitled to great deference, particularly when that interpretation has been followed over a long period of time. *United States* v. *Clark, 454 U.S. 555, 565 (1982) and Rosete* v. *OPM, 48 F.3d 514, 518-519 (Fed. Cir. 1995).*

On July 29, 1997, OPM published proposed regulations (62 FR 40475) to establish a Governmentwide policy for calculating lump-sum payments for accumulated and accrued annual leave for employees who separate from Federal service. OPM received comments from 7 agencies, 1 labor organization, 1 employee association, and 4 individuals, for a total of 13 comments. The majority of the agencies and the labor organization agreed that regulations are needed to provide consistency throughout the Federal Government. The labor organization stated that the development of one set of rules will ensure that employees are aware of the lump-sum payment policy and are familiar with their rights to receive payment for unused annual leave when they separate from the Federal service. The labor organization further stated that the adoption of one Governmentwide policy eliminates inequities that necessarily result from agency-specific policies. A summary of the comments received and the changes made in the regulations is presented below.

Employees Eligible for a Lump-Sum Payment

The proposed regulations stated that an agency must not make a lump-sum payment for accumulated or accrued annual leave to an employee whom the agency determines to be in a continuing employment program under which the employee is required to work a mixed tour of duty (i.e., the employee works full-time or part-time for a limited portion of the year and intermittently for the remainder). Since an employee working intermittent duty cannot accrue or use leave, the proposed regulations required the agency to hold any accrued leave in abeyance during the time the employee is working intermittent duty and to recredit the annual leave when the employee returns without a break in service to full-time or part-time employment. In addition, the proposed regulations required the agency to hold in abeyance any of the employee's fractional pay periods for leave accrual purposes and recredit the pro-rata leave as provided in § 630.204 when the employee returns to full-time or part-time employment.

One agency recommended that the final regulations allow each agency the discretion to determine whether to pay a lump-sum payment for annual leave when an employee changes to intermittent duty or to hold the employee's accrued annual leave in abeyance until he or she returns to a part-time or full-time position. The agency disagrees with the proposed regulations and believes that requiring an agency to hold leave in abeyance results in additional leave being available for use during periods of part-time and full-time employment when the agency needs its employees at work the most. The agency believes mission requirements, staffing needs, and sources of available funds vary greatly from one organization to another and that applying the same rule universally may have a negative financial impact on one or more agencies or organizations. In addition, the agency stated that the proposed rule would eliminate the financial cushion (i.e., lump-sum payment) that many employees working mixed tours of duty have become

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accustomed to receiving during non-work periods.

Another agency commented on the administrative burden of paying lump-sum payments during short periods of intermittent work. The agency requested approval to hold accrued annual leave in abeyance so that an employee would have annual leave available at the beginning of his or her part-time or full-time employment. Under this approach, an employee also would not lose any fractional hours of creditable service for purposes of leave accrual when the employee's tour changes to intermittent.

Upon further review, we believe it would be in the best interest of the Government to permit more flexibility. Therefore, § 550.1203(i) of the final regulations permits each agency to prescribe its own policy for paying lump-sum payments for employees on mixed tours of duty. Each agency's policy must ensure that employees are treated in a fair and equitable manner. In developing its policy, we encourage each agency to consider the likelihood that an employee will return to work, as well as the agency's mission requirements and staffing needs.

An agency requested clarification as to whether an employee on a mixed tour of duty is entitled to continue to accrue leave on a prorated basis during periods of intermittent employment. If an employee is assigned intermittent duty and does not have an established regular tour of duty each week, he or she cannot accrue or use leave during the intermittent period. (See 5 U.S.C. 6301(2).)

A commenter requested clarification about entitlement to a lump-sum payment when an employee who had annual leave restored under 5 U.S.C. 6304(d)(3) transfers to a component of the Department of Defense (DOD) that is not undergoing closure or realignment. Section 1611 of Pub. L. 104–201 (September 23, 1996), added paragraph (c) to 5 U.S.C. 5551 to require DOD to pay a lump-sum payment to an employee for any unused annual leave that was restored under 5 U.S.C. 6304(d)(3) when the employee (1) transfers to a position in any other department or agency of the Federal Government or (2) moves to a position within DOD not located at an installation undergoing closure or realignment. The entitlement to a lump-sum payment for affected DOD employees became effective on September 23, 1996, and applies only to employees transferring from a DOD component undergoing closure or realignment at the time of transfer. Further questions on this provision should be directed to DOD's Civilian Personnel Management Service, Field Advisory Services, 1400 Key Boulevard, Arlington, VA 22209–5144 (telephone: (703) 696–6301).

The proposed regulations stated that when an employee enters active duty, any annual leave previously restored under 5 U.S.C. 6304(d) may not remain to the employee's credit and may be paid in a lump-sum payment. An agency commented that this statement is confusing, since 5 U.S.C. 6304(d)(2) requires an agency to make a lump-sum payment for restored annual leave when an employee enters on active duty. We agree and have revised § 550.1203(c) of the final regulations to require an agency to make a lump-sum payment for any annual leave previously restored under 5 U.S.C. 6304(d) when an employee enters active duty. The agency may not recredit the restored leave when the employee returns to Federal service.

Employees Not Eligible for a Lump-Sum Payment

Under the proposed regulations, if an employee transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code (e.g., a position in the U.S. Postal Service), and only a portion of his or her accumulated and accrued annual leave may be transferred, the losing agency would hold in abeyance the annual leave that could not be transferred. The agency would then recredit the annual leave that had been held in abeyance once the employee is reemployed without a break in service in a position to which his or her accumulated and accrued annual leave may be transferred. An agency suggested that OPM seek a statutory change in 5 U.S.C. 5551 to allow for the immediate lump-sum payment of any annual leave in excess of the amount accepted by the gaining agency (e.g., the U.S. Postal Service). The agency believes this change would preclude the need for establishing and tracking a separate leave account for non-transferrable leave and result in quicker settlement of the matter for the employee. The agency stated that this change would, in effect, be identical to the lump-sum payment provisions in 5 U.S.C. 5551(c) for employees affected by base realignment or closure (Pub. L. 104–201).

We agree with the substance of the agency's recommendation, but have determined that this can be accomplished by regulation rather than legislation. Therefore, § 550.1203(f) of the final regulations provides that when an employee transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, the losing agency must make a lump-sum payment under § 550.1205 for the amount of annual leave that cannot be transferred to the gaining agency. This does not apply to an employee transferring to an excepted position under 5 U.S.C. 6301(2)(x)–(xiii), (e.g., a member of the Senior Executive Service who accepts a Presidential appointment).

Under the proposed regulations, an employee who was concurrently employed in more than one part-time position in more than one agency, and who separated from one of the part-time positions, would have had the annual leave that accrued in the agency from which he or she separated transferred to the current employing agency. An agency recommended that the agency pay a lump-sum payment to an employee who separates from any of the part-time appointments. The agency believes the annual leave should not be transferred because (1) such transfer would place a financial burden on the gaining agency in terms of a future lump-sum payment if the employee later separates from Federal service, (2) the employee would receive an unintended increase or loss in the value of annual leave if the multiple part-time appointments are at different grades or levels, and (3) the employee may be absent for extended periods in the gaining agency and/or may be forced to forfeit annual leave in excess of the maximum annual leave limitation.

We agree that these are all important factors for employees to consider when separating from a part-time position. However, the law provides that an employee is entitled to a lump-sum payment only when he or she separates from Federal service (or goes on military duty) or when unused annual leave cannot be transferred or credited at a gaining agency. Since an employee who is employed in a second part-time position is not separated from Federal service and could have his or her accumulated annual leave transferred to a gaining agency, he or she is not entitled to a lump-sum payment. Therefore, OPM made no changes in § 550.1203(h)(4) of the final regulations.

Projecting the Lump-Sum Leave Period

An agency asked whether "use or lose" or restored annual leave should be included in the projected lump-sum leave period if the leave is scheduled to be forfeited within a few days after separation. The answer is yes. Under 5 U.S.C. 5551, an employee is entitled to receive a lump-sum payment for accumulated and currently accrued annual leave to which an employee is entitled by statute on the date of separation. This includes all "use or lose" and restored annual leave to the employee's credit on the date of separation. Annual leave that has not yet been forfeited must be included in a lump-sum payment.

The proposed regulations required an agency to project the lump-sum leave period so that annual leave restored under 5 U.S.C. 6304(d) in a separate leave account must be used before using any accumulated annual leave in the employee's regular annual leave account. This was done so that if an employee returned to Federal service prior to the expiration of the lump-sum leave period, the restored annual leave would have already been used and would not be recredited to the employee. We have revised the proposed regulations on recrediting annual leave so that there is no longer any requirement to identify restored annual leave and recredit it upon reemployment. Therefore, § 550.1204(c) of the final regulations does not require agencies to project the lump-sum leave period so that restored annual leave is used before using regular annual leave.

Section 550.1204(a) of the final regulations states that the period of leave used for calculating the lump-sum payment may not be extended by compensatory time off earned under 5 U.S.C. 5543 and §§ 550.114(d) or 551.531 or by credit hours accumulated under an alternative work schedule under 5 U.S.C. 6126. The employee association expressed concern that agencies may misinterpret this regulation to mean that they do not have to pay a separating employee for any earned compensatory time off or credit hours. Section 550.1204(a) merely ensures that compensatory time off and credit hours, which are not types of leave under chapter 63 of title 5, United States Code, are not identified and included in the calculation of a lump-sum payment for annual leave. Since agencies are responsible for ensuring that compensatory time off and credit hours (credit hours not in excess of 24 hours) remaining to an employee's credit at the time of separation are paid separately as part of a final salary payment under existing law and regulations, we do not believe any change is necessary. (See §§ 550.114(d) and 551.531(d) and 5 U.S.C. 6126.)

Pay Received Prior to Separation

Throughout the regulations, we use the phrases "immediately prior to separation, death, or transfer" and "immediately prior to the date the employee becomes/became eligible for a lump-sum payment under § 550.1203" interchangeably. An agency recommended that OPM consistently use the phrase "immediately prior to the date the employee becomes/became eligible for a lump-sum payment under § 550.1203" throughout the regulations. The agency believes this change would eliminate any confusion and ensure coverage of all intended employees, including those who choose to receive a lump-sum payment upon entering active duty in the armed forces. We agree and have modified the final regulations as suggested.

Calculating the Lump-Sum Payment

Under 5 U.S.C. 5551, a lump-sum payment must equal the pay an employee would have received had he or she remained in Federal service until expiration of the period of annual leave (excluding any differential under section 5925 and any allowance under section 5928). The term "pay" is not further defined in law. In the final regulations, we have interpreted this term to mean the pay the employee would have received on a biweekly basis had he or she remained in Federal service on annual leave. For example, an employee's rate of basic pay, any applicable locality payment, and availability pay for law enforcement officers (where applicable) are included in a lump-sum payment, while hazardous duty pay, environmental differentials, and Sunday premium pay are excluded. Also excluded are allowances that are paid in addition to a rate of basic pay for the sole purpose of encouraging an employee to remain in Government service, such as retention allowances and physicians comparability allowances.

Under § 550.1205(a) of the final regulations, an agency calculates a lump-sum payment by multiplying the number of hours of accumulated and accrued annual leave by the employee's applicable hourly rate of pay, including the types of pay listed in § 550.1205(b). An algebraically equivalent method that an agency may also use is to multiply the weeks of annual leave by the employee's applicable weekly rate of pay.

One agency believes the phrase "including types of pay" could be misconstrued and recommended it be changed to "plus other applicable types of pay" so as to limit the additional types of pay to those applicable to the employee. To clarify our intent, we have revised § 550.1205(a) to state that a lump-sum payment must be calculated by multiplying the number of hours of accumulated and accrued annual leave by the applicable hourly rate of pay, including other applicable types of pay listed in § 550.1205(b).

For an employee on an uncommon tour of duty (as defined in § 630.201), an agency may choose to calculate the lump-sum payment based on the applicable weekly rate and convert the annual leave balance to a 40-hour workweek basis. For example, to determine the number of weeks to use in computing a lump-sum payment for an employee who normally works an uncommon tour of duty of 72 hours each week, the agency may convert the employee's annual leave balance from a 72-hour workweek basis to a 40-hour workweek basis by multiplying the total hours of annual leave by the fraction 40/72 and dividing the result by 40.

The proposed regulations listed the types of basic pay that must be included in a lump-sum payment. An agency suggested that OPM include a retained rate authorized under 5 U.S.C. 5363 and 5 CFR part 536, subpart B, in the list. We agree and have added a retained rate of pay to the list in § 550.1205(b)(1)(i). In addition, we have added supervisory differentials paid under 5 U.S.C. 5755 to the list of the types of pay to be included in a lump-sum payment, since an employee who was receiving such a differential would have received supervisory differential payments on a biweekly basis had he or she remained in Federal service on annual leave. (See § 550.1205(b)(7).)

General Pay Adjustments

The proposed regulations stated that in the case of a Federal Wage System (FWS) employee, a lump-sum payment must include the rate of pay established under 5 U.S.C. 5343. In addition, such an employee would receive any applicable adjustments in prevailing rates that become effective during the lump-sum leave period if the employee separated after issuance of an official order to conduct a wage survey for his or her applicable wage area. The lump-sum payment would be adjusted to reflect the increased prevailing rate beginning on the effective date of the rate adjustment. Since a prevailing rate employee who separated from Federal service prior to the issuance of an official order to conduct a wage survey in his or her applicable wage area would not be entitled to the FWS pay adjustment in that wage area for that year, we proposed that the FWS pay adjustment should not be included in the employee's lump-sum payment for annual leave.

An agency recommended that prevailing rate employees be treated the same as General Schedule employees under § 550.1205(b)(2). Only those pay adjustments approved before the date of separation must be included in a lump-

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sum payment. The agency noted that because FWS surveys are ordered 9 weeks before the survey results take effect, the agency would have to establish temporary payroll files whenever a retroactive recomputation of a lump-sum payment would be necessary.

We agree that the proposed regulations were unnecessarily complicated with respect to inclusion of pay adjustments after separation and would have caused administrative burdens for the agencies, including the need for additional individual calculations of lump-sum payments. Because of the concerns we received from agencies about the complexity in determining an employee's entitlement to a pay adjustment in his or her lump-sum payment after the employee separates from Federal service, we have simplified the final regulations. Section 550.1205(b)(2) and (3) provide that lump-sum payments for all covered Federal employees must include any general pay adjustment and locality pay adjustment that becomes effective during the employee's lump-sum leave period. The lump-sum leave period is the employee's annual leave projected forward for all workdays the employee would have worked if he or she had remained in Federal service, including holidays (even though they are typically nonworkdays) as required by 5 U.S.C. 5551(a), until the expiration of the employee's accumulated and accrued annual leave. The lump-sum payment will be adjusted to reflect the increased rate on and after the effective date of the pay schedule adjustment. We do not believe these changes to simplify the calculation of lump-sum payments will significantly increase costs for Federal agencies, since many employees separate after the official approval or authorization of a pay adjustment and/or do not have large amounts of accumulated and accrued annual leave that extend beyond the effective date of a pay adjustment.

Night Differential and Night Pay

Under § 550.1205(b)(5)(i) of the final regulations, a lump-sum payment includes a night differential under 5 U.S.C. 5343(f) for regularly scheduled nonovertime hours at the percentage rate received by a prevailing rate employee for the last full workweek immediately prior to the date the employee becomes eligible for a lump-sum payment. An agency recommended that the night differential be based on the average received during a 12-week period, since a single week could reflect an unusual or anomalous situation. Under 5 U.S.C. 5343(f), a night differential for a prevailing rate employee is considered part of basic pay and is included in all regularly scheduled nonovertime periods of night shift duty, including periods of paid leave. The language in OPM's proposed regulations was adopted from the Federal Wage System (FWS) Operating Manual. The FWS Operating Manual comprises long-standing policies, practices, and recommendations adopted by the Federal Prevailing Rate Advisory Committee, a labor and management committee that reports to the Director of OPM. The FWS Operating Manual states that a night shift differential is included in a lump-sum payment and is paid at the percentage rate received by the employee for the last full workweek immediately prior to separation. Therefore, OPM made no changes in § 550.1205(b)(5)(i).

The proposed regulations provided that a lump-sum payment includes night pay under 5 U.S.C. 5545 for regularly scheduled nonovertime hours based on the average amount of night pay received by a General Schedule (GS) employee during the 12 workweeks immediately prior to the date the employee becomes eligible for a lump-sum payment. Two agencies objected to including night pay in a lump-sum payment, since night pay is not considered part of basic pay for GS employees. In addition, the agencies noted that 5 U.S.C. 5545(a)(2) prohibits the payment of night pay for any hours of leave between 6 a.m. and 6 p.m. whenever the total amount of leave in the pay period equals or exceeds 8 hours. The agencies believe the proposed regulations would result in an employee receiving more than he or she would have received had he or she remained in Federal service. One agency objected to the requirement for 12-week averaging, since such a requirement would force timekeepers to compute an average amount of night pay manually. The same agency recommended that OPM treat night pay for GS employees the same as night differentials for prevailing rate employees by calculating the amount of night pay to be included in a lump-sum payment based on the rate the employee received for regularly scheduled nonovertime hours in the workweek immediately prior to becoming eligible for a lump-sum payment.

We agree that night pay is not part of basic pay for GS employees and that the proposed regulations would have provided such employees with a greater benefit than they would have received if they had remained in Federal service. Therefore, the final regulations do not include night pay for GS employees among the types of pay that must be included in a lump-sum payment.

Sunday Premium Pay

The proposed regulations provided that a lump-sum payment includes Sunday premium pay for nonovertime hours on Sunday based on the average amount of Sunday premium pay received by the employee during the 12 workweeks immediately prior to the date the employee became eligible for a lump-sum payment. An agency recommended that Sunday premium pay be excluded from a lump-sum payment because it is not considered part of basic pay for retirement purposes. Two agencies recommended that the amount of Sunday premium pay included in a lump-sum payment be based solely on the employee's workweek immediately prior to eligibility for a lump-sum payment. Another agency added that if OPM wishes to use an average amount received during a 12-week period, the computation should be based on the average number of hours worked on Sunday rather than on the amount of Sunday premium pay received. The agency noted that the actual amount of Sunday premium pay received during an earlier work period could have been paid at a lower rate if, for example, an employee received a within-grade increase or promotion during the latter part of the 12-week period.

Section 636 of the Treasury and General Government Appropriations Act, 1998 (Pub. L. 105–61, October 10, 1997), permanently restricts the payment of Sunday premium pay for all employees Governmentwide who are paid from appropriated funds and who do not actually perform work on Sunday. In addition, section 624 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277, October 21, 1998), expanded the permanent restriction on the payment of Sunday premium pay to cover employees who are paid from any Act (including payments from revolving funds). Consistent with these laws, we removed Sunday premium pay from the types of pay that must be included in a lump-sum payment.

Overtime Pay

Under the proposed regulations, a lump-sum payment included overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA), for overtime work that is regularly scheduled during an employee's established uncommon tour of duty (as defined in § 630.201 and established under § 630.210) for which the employee receives standby duty pay under 5 U.S.C. 5545(c)(1) if the uncommon tour of duty was applicable to the employee immediately prior to the date the employee became eligible for a lump-sum payment. The lump-sum payment included the amount of FLSA overtime pay for regularly scheduled overtime work ordered or approved at the time the employee became eligible for a lump-sum payment. (This provision applied to most firefighters and some emergency medical technicians.)

On June 18, 1997, OPM issued an Interagency Advisory Group Memorandum that encouraged agencies to include in a lump-sum payment all FLSA overtime pay for overtime hours that are regularly scheduled during an employee's established uncommon tour of duty if the uncommon tour of duty was in effect for the employee immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. OPM based this advice on the results of two lawsuits—*James Calhoun* v. *The United States* (Fed. Cl. No. 95–840C, December 21, 1995) and *Theodore Abbott, et al.*, v. *The United States* (Fed. Cl. No. 90–756C, January 31, 1994). In these cases, the Federal Government conceded that FLSA overtime pay for regularly scheduled overtime hours that occur during an uncommon tour of duty must be included in an employee's lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551.

Two agencies disagreed with the inclusion of FLSA overtime pay in a lump-sum payment. One suggested that hours of work that are used for the purpose of determining entitlement to FLSA overtime pay should not be used for determining entitlement to other payments under title 5, United States Code. The other agency believes such inclusion would be contrary to the intent of Congress' prohibition on the payment of premium pay during periods of paid leave. An employee association agreed with the inclusion of FLSA overtime pay, but suggested that the amount be based on the average number of hours worked during the preceding 12 weeks.

On October 21, 1998, legislation was enacted that changes the method of computing basic pay, overtime pay, and other entitlements for Federal firefighters who are classified in the GS–081 classification series (Fire Protection and Prevention) and who have regular tours of duty averaging at least 53 hours per week (or 106 hours biweekly). (See section 628 of the Treasury and General Government Appropriations Act, 1999, as incorporated in Division A, section 101(h) of Pub. L. 105–277, October 21, 1998.) The new law eliminates the use of standby duty pay for firefighters and provides that firefighters are paid solely on an hourly rate basis using a special "firefighter hourly rate." Both FLSA-covered (nonexempt) and FLSA-exempt firefighters will receive time-and-one-half overtime pay for all overtime hours—i.e., hours in excess of 53 hours per week (or 106 hours biweekly).

On November 23, 1998, OPM issued interim regulations (63 FR 64589) that included a revised definition of "uncommon tour of duty" in § 630.201(b)(2) to incorporate a reference to firefighters compensated under the new law. Also, a new paragraph (c) was added to § 630.210 to require that agencies establish an uncommon tour of duty for leave purposes for firefighters with regular tours of duty that generally consist of 24-hour shifts. An agency may also establish an uncommon tour of duty under § 630.210(a) for leave purposes for firefighters with a regular tour of duty that includes a basic 40-hour workweek, plus regularly scheduled overtime hours. Existing regulations (§ 550.1306(c)) require that in computing a lump-sum payment for firefighters with an uncommon tour of duty established under § 630.210 for leave purposes, an agency must use the rates of pay for the position held by the firefighter that apply to hours in that uncommon tour of duty, including regular overtime pay for such hours.

As a result of these changes, a new paragraph (iv) has been added to § 550.1205(b)(5) of the final regulations to provide that overtime pay for overtime hours within a firefighter's regular tour of duty is used in computing a lump-sum payment for annual leave, since those overtime hours are part of an uncommon tour of duty established under § 630.210 for leave purposes. Section 550.1205(b)(6) continues to apply to an employee who receives FLSA overtime pay for overtime work that is regularly scheduled during an established uncommon tour of duty as defined in § 630.201(b)(1), for which the employee receives standby duty pay under 5 U.S.C. 5545(c)(1) (e.g., emergency medical technicians).

We believe the amount of overtime pay to be included in a lump-sum payment should reflect the amount the employee would have received had he or she remained employed in the Federal service. In addition, it is not our intent to require agencies to establish new methodologies for calculating overtime pay for lump-sum payment purposes. Therefore, in response to agency comments that overtime pay in a lump-sum payment for firefighters should be limited to the normal amount of overtime work performed in each pay period—i.e., after meeting the overtime weekly standard of 53 hours (or 106 hours biweekly), we have added a sentence to §§ 550.1205(b)(5)(iv) and 550.1205(b)(6) of the final regulations to state that a lump-sum payment must be calculated using the same methodology used by the employing agency to calculate the firefighter's entitlement to regular overtime pay for the pay period immediately prior to the date the firefighter became eligible for a lump-sum payment. Therefore, if an agency calculates overtime on a biweekly basis, the amount of overtime pay to be included in a lump-sum payment will be determined after the employee meets the overtime standard of 106 hours each biweekly pay period. If an agency calculates overtime pay on a weekly basis, the amount of overtime pay to be included in a lump-sum payment will be determined after the employee meets the overtime standard of 53 hours each week.

Sample Calculation

The following example shows how an agency should calculate the overtime pay component of a lump-sum payment for a firefighter with an uncommon tour of duty established under § 630.210(c). In the example, a firefighter who normally works 144 hours each pay period (three 24-hour tours of duty in each administrative workweek) separates at the end of a pay period with 400 hours of accumulated and accrued annual leave. The firefighter receives a "firefighter hourly rate" (as established in 5 CFR 550.1303) for all 400 hours of annual leave, plus ½ of the "firefighter hourly rate" for all overtime hours in the employee's uncommon tour of duty. The agency determines the firefighter's entitlement to overtime pay based on a 106-hour biweekly overtime standard. Thus, in each full 144-hour biweekly pay period, the firefighter is entitled to overtime pay for 38 regularly scheduled overtime hours (144 − 106 = 38) within his or her uncommon tour of duty.

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EXAMPLE OF LUMP-SUM PAYMENT FOR A FIREFIGHTER

Projecting the lump-sum leave period for 400 hours of annual leave.	Pay Period 1=144 hours ... Annual leave remaining: 256 hours. (400–144=256)	Pay Period 2=144 hours ... Annual leave remaining: 112 hours. (256–144=112)	Pay Period 3=112 hours ... Annual leave remaining: ... 0 hours (112–112=0)	Total=400 hours of annual leave.
Firefighter hourly rate	144 hours	144 hours	112 hours	400 hours.
Firefighter overtime rate	38 hours	38 hours	6 hours	82 hours.

Although each agency has the right to establish the work schedules of its employees, this authority may not be used to change an employee's work schedule just prior to separation or retirement for the sole purpose of circumventing OPM's regulation requiring agencies to include FLSA overtime pay in a lump-sum payment. We have added a provision to §§ 550.1205(b)(5)(iv) and 550.1205(b)(6) to prevent such an outcome.

Air Traffic Controllers

An employee recommended that OPM include the "5 percent operational differential" or "controller pay" for Federal Aviation Authority Air Traffic Controllers in the calculation of lump-sum payments. Pub. L. 104–50 (November 15, 1995), authorized the Administrator of the Federal Aviation Administration (FAA) to develop and implement a personnel management system that addresses the unique demands on that agency's workforce. The compensation provisions in title 5, United States Code, no longer apply to FAA employees, and OPM has no authority to prescribe regulations for lump-sum payments to FAA employees.

Refund of a Lump-Sum Payment

Under 5 U.S.C. 6306, when an employee who receives a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service prior to the end of the period covered by the lump-sum payment, the employee must refund to the employing agency an amount equal to the payment covering the period between the date of reemployment and the expiration of the lump-sum period. This rule applies whether an employee is reemployed in a position covered by chapter 63 of title 5, United States Code, or under a different formal leave system. The refund is based on the pay used to compute the lump-sum payment; e.g., an employee who received a lump-sum payment based on the pay for a GS–11 position must refund the lump-sum payment based on the same GS–11 pay, even if he or she is reemployed at a lower or higher grade level. The refund is deposited in the Treasury of the United States to the credit of the employing agency.

In the final regulations, § 550.1206(a) states that an agency may permit an employee to refund a lump-sum payment for annual leave in installments. If an agency permits the lump-sum to be paid in installments, the employee must pay the refund in full within 1 year after the date of reemployment. A component of an agency recommended that the agency require a full refund of a lump-sum payment before an employee returns to the Federal Government. The component further advised that if this cannot be implemented, employees should be required to sign an installment agreement before entering on duty. OPM's regulations at § 550.1206(a) provide agencies with discretionary authority to establish a policy for refunding lump-sum payments for annual leave. The only restriction is that the lump-sum refund must be paid in full within 1 year after the date of reemployment. Agencies may establish internal policies to require an employee to sign an installment agreement for refunding a lump-sum payment. In addition, we have added a statement that an agency may not waive the refund of a lump-sum payment.

We recently received inquiries about whether a refund for a lump-sum payment is required from a retired Federal employee who is reemployed under a temporary appointment of less than 90 days. If an employee retires from the Federal Government and is immediately reemployed on the next work day, he or she is not entitled to a lump-sum payment because this is not a separation from Federal service. However, if an employee retires from the Federal Government and has a break in service of 1 or more workdays, he or she is entitled to a lump-sum payment. If an annuitant is reemployed in the Federal Government prior to the expiration of the lump-sum period in a temporary appointment of less than 90 days, he or she must refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period. In addition, the reemploying agency must recredit to the reemployed annuitant an amount of leave equal to the leave represented by the refund, and the employee may use the recredited leave during the temporary appointment. We added a new paragraph (e) to § 550.1206 of the final regulations to reflect these outcomes, which are required by law.

Recredit of Annual Leave

The final regulations include a new § 550.1207, Recredit of Annual Leave. Paragraphs (b), (c), (d), (g) and (h) of § 550.1206 of the proposed regulations were moved to the new § 550.1207 and renumbered.

An agency requested clarification of the proposed regulations, which provided that if any part of a lump-sum refund reflects annual leave restored under 5 U.S.C. 6304(d), the annual leave must be restored in a separate account using the expiration date originally established for using the restored annual leave. If the expiration date originally established for using the restored annual leave occurs before the date of reemployment, a refund is required for all of the unexpired portion, but none of the restored annual leave may be recredited. The agency does not believe this is the intent of the law. Another agency asked whether a refund must reflect all remaining annual leave, including "use or lose" annual leave, and whether the "use or lose" annual leave should be recredited to the employee's leave account. A third agency recommended that an employee should not be required to pay back any portion of a lump-sum payment that reflects leave that cannot be recredited to the employee's leave account.

OPM's proposed regulations were intended to ensure that an employee's leave would be treated the same upon reemployment as it would have been treated had the employee remained employed. Restored annual leave and leave in excess of the maximum limitation in 5 U.S.C. 6304(b) would be subject to forfeiture if the employee did not use the leave within the time periods prescribed. However, when an employee who receives a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service prior to the end of the period covered by the

lump-sum payment, the employee must refund to the employing agency an amount equal to the payment covering the period between the date of reemployment and expiration of the projected lump-sum period. (See 5 U.S.C. 6306.) In addition, an amount of annual leave equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period must be recredited to the employee by the employing agency.

Thus, both the lump-sum refund and the recredit of annual leave are based on the date of reemployment and the end of the lump-sum period, not the amount or type of leave included in the lump-sum payment. We believe the intent of the law is to recredit any and all annual leave that is equivalent to the refund of the lump-sum payment. In addition, former OPM guidance stated that restored annual leave included in a lump-sum payment is not subject to refund and may not be recredited if the employee is reemployed prior to the expiration of the lump-sum leave period. (See attachment to former FPM Letter 630–22, January 11, 1974).

Therefore, we have revised § 550.1206(a) of the final regulations to provide that an agency should not include restored annual leave in a lump-sum refund and must subtract restored annual leave from the lump-sum leave period if an employee is reemployed prior to the expiration of the lump-sum leave period. In addition, we have revised § 550.1207(a)(3) to provide that an agency will not recredit restored annual leave to an employee if the employee is reemployed prior to the expiration of the lump-sum leave period.

The proposed regulations provided that if annual leave recredited to an employee is in excess of the maximum annual leave limitation established under 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, for the position in which reemployed, and the employee was subject to a higher maximum annual leave limitation in the former position, the employee's maximum annual leave limitation must be determined based on the amount of annual leave to be recredited. Two agencies expressed concern that this provision would allow an employee's maximum annual leave limitation to be set below the 240-hour maximum limitation established by 5 U.S.C. 6304(a). Another agency noted that there were no rules for setting an employee's personal leave ceiling when the amount of annual leave to be recredited is in excess of the maximum limitation for the position in which reemployed and the maximum annual leave limitation for the former position is less than the current maximum annual leave limitation.

The proposed regulations would have applied only when the annual leave to be recredited was in excess of the maximum annual leave limitation for the position in which reemployed *and* the employee was subject to a *higher* maximum annual leave limitation in the former position. Therefore, it would be impossible to set the employee's maximum annual leave limitation below the 240-hour maximum limitation established by 5 U.S.C. 6304(a). If the amount of annual leave the agency is to recredit is less than or equal to the maximum annual leave limitation for the position in which the employee is reemployed, § 550.1207(b) of the final regulations requires the agency to set the employee's maximum annual leave limitation at the maximum annual leave limitation for the position in which the employee is reemployed.

In response to these comments and additional questions we have received, we have clarified (§ 550.1207(c) and (d)) of the final regulations as follows.

First, if the amount of annual leave to be recredited is more than the maximum annual leave limitation for the new position, and the employee's former maximum annual leave limitation was established under 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the amount of annual leave to be recredited.

EXAMPLES OF RECREDITING ANNUAL LEAVE

Annual leave to be recredited	Former maximum leave ceiling	New maximum leave ceiling	New personal leave ceiling
300	360	240	300
400	360	240	400
900	1000*	240	900
1200	1000*	720 (SES)	1200

*SES Personal Leave Ceiling established under § 630.306(d).

Second, if the amount of annual leave to be recredited is more than the maximum annual leave limitation for the new position, and the employee's former maximum annual leave limitation was established under an authority other than 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the employee's former maximum annual leave limitation.

EXAMPLE OF RECREDITING ANNUAL LEAVE UPON TRANSFER FROM USPS

Annual leave to be recredited	Former maximum leave ceiling	New maximum leave ceiling	New personal leave ceiling
540	440*	240	440

*Maximum Annual Leave Limitation for U.S. Postal Service.

Under 5 U.S.C. 6304(c), an employee's personal leave ceiling will be reduced if more annual leave is used than earned in a leave year until it equals the maximum annual leave limitation established for the position in which reemployed. In addition, an employee must use the annual leave earned in a leave year or it becomes subject to forfeiture at the end of the leave year.

Income Taxes and Deductions

Under 5 U.S.C. 5551, a lump-sum payment for annual leave is considered pay for income tax purposes. A number of agencies requested guidance on whether a nonforeign area cost-of-living

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allowance (COLA) that is included in a lump-sum payment is subject to income tax. Under section 912 of title 26, United States Code, a COLA paid under 5 U.S.C. 5941(a)(1) to an employee stationed in a nonforeign area outside of the contiguous United States (48 States) is not included as gross income and is not subject to income tax. OPM posed the agencies' question to the Internal Revenue Service (IRS).

In a letter to OPM dated March 12, 1998, IRS stated that a nonforeign area COLA authorized under 5 U.S.C. 5941(a)(1) that is paid in connection with a lump-sum payment for annual leave is not subject to Federal income tax. Therefore, in calculating an employee's taxable Federal income for a lump-sum payment for annual leave, agencies must first subtract any nonforeign area COLA authorized under 5 U.S.C. 5941(a)(1). Similarly a post allowance in a foreign area authorized under 5 U.S.C. 5924(1) is not subject to Federal income tax, and the agency must subtract it from a lump-sum payment when determining taxable Federal income. However, nonforeign area post differentials authorized under 5 U.S.C. 5941(a)(2) that are included in a lump-sum payment for annual leave are included as gross income and are subject to Federal income tax.

An agency asked about the treatment of lump-sum payments in relation to deductions for the Federal Insurance Contributions Act (FICA) and Medicare. The agency stated that some types of pay included in a lump-sum payment are subject to deductions for FICA/Medicare, while others are not. The agency requested clarification as to whether the lump-sum payment should be considered as one separate payment or whether each type of pay should be considered separately when computing deductions for FICA/Medicare. The agency also requested that OPM state in the regulations that (1) if a lump-sum payment is repaid in the same calendar year, the employee is required to pay back the gross amount of the lump-sum payment, minus Federal and State income taxes and FICA/Medicare; and (2) if the employee repays the lump-sum payment in a subsequent year, he or she must repay the gross amount reduced only by FICA/Medicare. The agency stated that IRS has ruled that corrections of earnings for Federal, State, or local withholding taxes cannot be made for a prior year.

OPM referred these questions and comments to IRS. In a letter to OPM dated April 22, 1998, IRS responded that it is appropriate to divide a lump-sum payment into that portion (i.e., different types of pay) that is subject to FICA taxes and that which is not. In addition, IRS stated that repayment of a lump-sum payment made in the same year it is paid affects the treatment of Federal income tax withholding and FICA taxes, but that a repayment in a subsequent year affects only FICA taxes. IRS stated that employers should refer to Publication 15, Circular E, Employers Tax Guide, for additional information on Federal employment tax consequences and reporting requirements. General information on Federal income tax forms and instructions can be found on the Internet at http://www.irs.ustreas.gov/prod/forms_pubs/index.html. Any questions on State and local tax implications should be referred to the appropriate State and local taxing authority.

OPM received a comment from the labor organization recommending that employees be afforded some flexibility in choosing when to receive their lump-sum payment. The labor organization encouraged OPM to permit employees to defer a lump-sum payment for a reasonable period of time so that their tax liability may be mitigated. We referred this comment to IRS. In its letter to OPM dated April 22, 1998, IRS advised that such a choice would result in the lump-sum being included for income tax purposes in the taxable year it is first made available, without regard to whether an employee chose to receive it immediately or defer the payment.

Effective Date of Regulations

The final regulations apply only to lump-sum payments made by an agency on or after the effective date of the final regulations. The final regulations on lump-sum payments for annual leave are not retroactive. The issuance of retroactive regulations is neither the preferred nor usual method for rulemaking. See *Alaskan Arctic Gas Pipeline* v. *United States*, 831 F.2d 1043, 1045-8 (Fed. Cir. 1987). Retroactivity in rulemaking is permissible where Congress has expressly authorized it in law, but that is not the case here. See *Landgraf* v. *USI Film Products*, 511 U.S. 244, 255–257 (1984). This is a new rule that standardizes inconsistent agency practices. The determinations made by agencies prior to the effective date of the final regulations are not subject to change based on the provisions of the final regulations.

Two agencies requested additional time to implement the final rules in order to modify their payroll systems and operating procedures. We agree. The final regulations will become effective *60 days* after the date of publication in the **Federal Register**. The delayed effective date will also provide additional time for those agencies responsible for pay authorities outside of title 5 to review their policies and issue regulations for the administration of lump-sum payments for annual leave.

Miscellaneous Comments

The components of two large agencies commented that any pay excluded from retirement basic pay should also be excluded from lump-sum payments for annual leave. In effect, this would limit a lump-sum payment to basic pay and certain types of premium pay, such as annual premium pay under 5 U.S.C. 5545(c)(1) and (2) and 5545a. One of the agencies stated that it would support a final regulation limiting lump-sum payments to basic pay, excluding FLSA overtime pay. In addition, an individual commented that a lump-sum payment should not be adjusted to include any extra pay or benefits such as Sunday premium pay, night pay, or any general pay adjustments or within-grade increases that become effective after the employee separates from Federal service.

Under 5 U.S.C. 5551, a lump-sum payment "must equal the pay (excluding any differential under section 5925 and any allowance under section 5928) the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave." Issuing final regulations to limit lump-sum payments to those that are basic pay for retirement purposes would be contrary to the lump-sum payment law.

The labor organization recommended that OPM consider approaches to expedite lump-sum payments to employees. In addition, the labor organization recommended that OPM simplify and expedite the process of recrediting annual leave when employees are reemployed in the Federal service. Agencies are responsible for administering lump-sum payments, consistent with the law and OPM's regulations. A universal rule is not feasible, since it cannot possibly accommodate the requirements and complexities of the numerous agency payroll systems that administer lump-sum payments.

An agency asked whether implementation of the final regulations on lump-sum payments would be subject to collective bargaining and inquired about the date by which such bargaining must be completed. Certain provisions may be subject to collective bargaining—e.g., whether an agency permits employees to refund a lump-sum payment in installments. Additional questions on this matter should be addressed to the agency's labor relations office.

An agency commented that agencies responsible for administering other kinds of pay outside of title 5 should be permitted the greatest latitude possible and that each agency should decide whether its regulations should be consistent with OPM's regulations. In contrast, another agency recommended that such agencies not be permitted to determine the types of pay to be included in a lump-sum payment because this would result in the exact situation that OPM is trying to correct—i.e., inconsistent payment practices and inequities among Federal employees.

Under 5 U.S.C. 5553, OPM has regulatory authority for the administration of lump-sum payments for annual leave. Section 550.1205(c) delegates authority to the head of each agency to determine other kinds of pay authorized in statutes outside of title 5 that should be included in a lump-sum payment. We continue to believe such agencies are in the best position to determine the types of pay under their authority that should be included in a lump-sum payment consistent with 5 U.S.C. 5551, 5552, and 6306. If inconsistencies and inequities arise, OPM will reconsider the delegation of these authorities.

Conforming Amendments

In many parts of title 5, Code of Federal Regulations, there are existing references to lump-sum payments for annual leave. Because there is now a new subpart on lump-sum payments in part 550, there is no further need for these separate references. Therefore, we are removing these references and reserving the following sections: § 531.304(d) (special law enforcement officer adjusted rate of pay), § 531.606(d) (locality rate of pay), § 531.703(c) (continued rate of pay), and § 550.186(c) (availability pay). In § 591.210(c)(1) (allowances and differentials in nonforeign areas), we are deleting the last sentence. However, the references to lump-sum payments for annual leave in part 532 will need to be reviewed by the Federal Prevailing Rate Advisory Committee before we make any similar changes.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management
Janice R. Lachance,
Director.

Accordingly, OPM is amending parts 531, 550, and 591 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

2. In § 531.304, paragraph (d) is revised to read as follows:

§ 531.304 Administration of special law enforcement adjusted rates of pay.

* * * * *

(d) A special law enforcement adjusted rate of pay is paid only for those hours for which a law enforcement officer is in a pay status.

* * * * *

3. In § 531.606, paragraph (d) is revised to read as follows:

§ 531.606 Administration of locality rates of pay.

* * * * *

(d) A locality rate of pay is paid only for those hours for which an employee is in a pay status.

* * * * *

4. In § 531.703, paragraph (c) is revised to read as follows:

§ 531.703 Administration of continued rates of pay.

* * * * *

(c) A continued rate of pay is paid only for those hours for which an employee is in a pay status.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

5. The authority citation for Subpart A of Part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545b, 5548, 5553, and 6101(c); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

§ 550.186 [Amended]

6. In § 550.186, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

7. Subpart L is added to part 550 to read as follows:

Subpart L—Lump-Sum Payment for Accumulated and Accrued Annual Leave

Sec.

550.1201 Purpose, applicability, and administration.
550.1202 Definitions.
550.1203 Eligibility.
550.1204 Projecting the lump-sum leave period.
550.1205 Calculating a lump-sum payment.
550.1206 Refunding a lump-sum payment.
550.1207 Recrediting annual leave.

Subpart L—Lump-Sum Payment for Accumulated and Accrued Annual Leave

Authority: 5 U.S.C. 5553, 6306, and 6311.

§ 550.1201 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement sections 5551, 5552, and 6306 of title 5, United States Code, and must be read together with those sections. Sections 5551 and 5552 provide for the payment of a lump-sum payment for accumulated and accrued annual leave when an employee:

(1) Separates from Federal service; or

(2) Enters on active duty in the armed forces and elects to receive a lump-sum payment for accumulated and accrued annual leave. Section 6306 requires that when an employee is reemployed in the Federal service prior to the expiration of the lump-sum period, he or she must refund an amount equal to the pay covering the period between the date of reemployment and the expiration of the period of annual leave (i.e., the lump-sum leave period).

(b) *Applicability.* This subpart applies to—

(1) Any employee who separates, dies, or transfers under the conditions prescribed in § 550.1203; and

(2) Any employee or individual employed by a territory or possession of the United States who enters on active

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duty in the armed forces and who elects to receive a lump-sum payment for accumulated and accrued annual leave.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

§ 550.1202 Definitions.

In this subpart—

Accumulated and accrued annual leave means any annual leave accumulated and accrued, as these terms are defined in § 630.201 of this chapter, plus any annual leave credited to an employee under 5 U.S.C. 6304(c) and § 630.301(d) of this chapter and any annual leave restored under 5 U.S.C. 6304(d). Accumulated and accrued annual leave does not include annual leave received by a leave recipient under the voluntary leave transfer or leave bank programs established under subchapters III and IV of chapter 63 of title 5, United States Code, or annual leave advanced to an employee under 5 U.S.C. 6302(d).

Administrative workweek has the meaning given that term in § 610.102 of this chapter.

Agency means—

(1) An executive agency and a military department as defined in sections 105 and 102 of title 5, United States Code, respectively; and

(2) A legislative or judicial agency or a unit of the legislative or judicial branch of the Federal Government that has positions in the competitive service.

Employee has the meaning given that term in 5 U.S.C. 2105.

Lump-sum payment means a final payment to an employee for accumulated and accrued annual leave.

Mixed tour of duty means a condition of employment for positions in which a fluctuating workload requires an employee to work full-time or part-time for a limited portion of the year and on an intermittent basis for the remainder of the year.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

Transfer means the movement of an employee to another position without a break in service of 1 workday or more.

§ 550.1203 Eligibility.

(a) An agency must make a lump-sum payment for accumulated and accrued annual leave when an employee—

(1) Separates or retires from the Federal service;

(2) Dies; or

(3) Transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, and his or her accumulated and accrued annual leave cannot be transferred, except as provided in paragraphs (c), (d), and (e) of this section.

(b) The Department of Defense (DOD) must make a lump-sum payment to an employee who has unused annual leave that was restored under 5 U.S.C. 6304(d)(3) when he or she transfers from a DOD installation undergoing closure or realignment to a position in any other department or agency of the Federal Government or moves to a position within DOD not located at an installation undergoing closure or realignment.

(c) An employee who enters on active duty in the armed forces may elect to receive a lump-sum payment for accumulated and accrued annual leave or may request to have the annual leave remain to his or her credit until return from active duty. However, an agency must make a lump-sum payment for any annual leave previously restored under 5 U.S.C. 6304(d) when the employee enters active duty. The agency may not recredit the restored leave when the employee returns to Federal service.

(d) An employee who transfers to a position in a public international organization under 5 U.S.C. 3582 may elect to retain accumulated and accrued annual leave to his or her credit at the time of transfer or receive a lump-sum payment for such annual leave under 5 U.S.C. 3582(a)(4). However, the agency must make a lump-sum payment for any annual leave previously restored under 5 U.S.C. 6304(d) when the employee transfers to the public international organization. The agency may not recredit the leave under these circumstances.

(e) An agency must make a lump-sum payment to an employee who transfers to a position excepted from subchapter I of chapter 63 of title 5, United States Code, by 5 U.S.C. 6301(2)(x)–(xiii) for any annual leave restored under 5 U.S.C. 6304(d) upon transfer to an excepted position. However, the agency may not make a lump-sum payment for any annual leave in the employee's regular leave account upon transfer to the excepted position. The agency must hold such annual leave in abeyance for recredit if the employee is subsequently reemployed without a break in service in a position to which his or her accumulated and accrued annual leave may be transferred. If the employee later becomes eligible for a lump-sum payment under the conditions specified in this section, the current employing agency must make a lump-sum payment for the annual leave held in abeyance. The agency must compute the lump-sum payment under § 550.1205(b) based on the pay the employee was receiving immediately before the date of the transfer to the position excepted by 5 U.S.C. 6301(2)(x)–(xiii). An employee who elects to retain his or her leave benefits upon accepting a Presidential appointment, as permitted by 5 U.S.C. 3392(c), is not entitled to receive a lump-sum payment.

(f) In the case of an employee who transfers to a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, and to which only a portion of his or her accumulated and accrued annual leave may be transferred, the agency must make a lump-sum payment for any remaining annual leave that cannot be transferred. The agency must compute the lump-sum payment under § 550.1205(b) based on the pay the employee was receiving immediately before the date of the transfer to the position not covered by subchapter I of chapter 63 of title 5, United States Code. This does not apply to an employee transferring to an excepted position covered by paragraph (e) of this section.

(g) An agency must make a lump-sum payment for accumulated and accrued annual leave to an employee in a missing status (as defined in 5 U.S.C. 5561(5)) on or after January 1, 1965, or the employee may elect to have such leave restored in a separate leave account under 5 U.S.C. 6304(d)(2) upon his or her return to Federal service. The agency must compute the lump sum payment under § 550.1205(b) based on the rate of pay in effect at the time the annual leave became subject to forfeiture under 5 U.S.C. 6304(a), (b), or (c).

(h) An agency may not make a lump-sum payment for accumulated or accrued annual leave to—

(1) An employee who transfers between positions covered by subchapter I of chapter 63 of title 5, United States Code;

(2) An employee who transfers to a position not covered by subchapter I of chapter 63 of title 5, United States Code, but to which all of his or her accumulated and accrued annual leave may be transferred;

(3) An employee who transfers to the government of the District of Columbia or the U.S. Postal Service;

(4) A nonappropriated fund employee of the Department of Defense or the Coast Guard who moves without a break in service of more than 3 days to an appropriated fund position within the Department of Defense or the Coast Guard, respectively, under 5 U.S.C. 6308(b); or

(5) An employee who is concurrently employed in more than one part-time position and who separates from one of the part-time positions. Instead, the former employing agency must transfer the employee's accumulated and accrued annual leave to the current agency (if the part-time positions are in different agencies) or credit the employee's annual leave account in the current position (if the part-time positions are in the same agency).

(6) An employee who elects to retain his or her leave benefits upon accepting a Presidential appointment, as permitted by 5 U.S.C. 3392(c).

(i) An agency must establish a policy for determining when an employee in a continuing employment program with a mixed tour of duty will receive a lump-sum payment for annual leave. The agency may choose to pay an employee a lump-sum payment when he or she is assigned intermittent duty or hold the employee's annual leave in abeyance during intermittent duty and recredit it when the employee returns without a break in service to full-time or part-time employment. If the agency decides to hold the employee's annual leave in abeyance, it must also hold in abeyance the credit for any fractional pay period earned and recredit the annual leave on a pro rata basis, as provided in § 630.204 of this chapter, when the employee returns to full-time or part-time employment. In developing its policy, each agency must consider the likelihood that the employee will return to work, as well as the agency's mission requirements and staffing needs. The agency's policy must ensure that employees are treated in a fair and equitable manner.

§ 550.1204 Projecting the lump-sum leave period.

(a) A lump-sum payment must equal the pay an employee would have received had he or she remained in the Federal service until the expiration of the accumulated and accrued annual leave to the employee's credit. The agency must project the lump-sum period leave beginning on the first workday (counting any holiday) occurring after the date the employee becomes eligible for a lump-sum payment under § 550.1203 and counting all subsequent workdays and holidays until the expiration of the period of annual leave. The period of leave used for calculating the lump-sum payment must not be extended by any holidays under 5 U.S.C. 6103 (or applicable Executive or administrative order) which occur immediately after the date the employee becomes eligible for a lump-sum payment under § 550.1203; annual leave donated to an employee under the leave transfer or leave bank programs under subparts I and J of part 630 of this chapter; compensatory time off earned under 5 U.S.C. 5543 and § 550.114(d) or § 551.531(d) of this chapter; or credit hours accumulated under an alternative work schedule established under 5 U.S.C. 6126.

(b) For employees whose annual leave was held in abeyance immediately prior to becoming eligible for a lump-sum payment, the agency must project the lump-sum payment beginning on the first workday occurring immediately after the date the employee becomes eligible for a lump-sum payment under § 550.1203, consistent with paragraph (a) of this section.

§ 550.1205 Calculating a lump-sum payment.

(a) An agency must compute a lump-sum payment based on the types of pay listed in paragraph (b) of this section, as in effect at the time the affected employee becomes eligible for a lump-sum payment under § 550.1203 and any adjustments in pay included in paragraphs (b)(2), (3), and (4) of this section. The agency must calculate a lump-sum payment by multiplying the number of hours of accumulated and accrued annual leave by the applicable hourly rate of pay, including other applicable types of pay listed in paragraph (b) of this section, or by using a mathematically equivalent method, such as multiplying weeks of annual leave by the applicable weekly rate of pay. If the agency calculates a lump-sum payment using weekly rates, the number of weeks of annual leave must be rounded to the fourth decimal place (e.g., 0.4444). The agency must convert an annual rate of pay to an hourly rate of pay by dividing the annual rate of pay by 2,087 (or 2,756 for firefighters, if applicable) and rounding it to the nearest cent, counting one-half cent and over as the next higher cent.

(b) The agency must compute a lump-sum payment using the following types of pay and pay adjustments, as applicable:

(1) The greatest of the following rates of pay:

(i) An employee's rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law or a special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1465, or a retained rate of pay under subpart B of part 536 of this chapter;

(ii) A locality rate of pay under subpart F of part 531 of this chapter or similar provision or law, where applicable;

(iii) A special law enforcement adjusted rate of pay under subpart C of part 531 of this chapter, where applicable, including a rate continued under § 531.307 of this chapter; or

(iv) A continued rate of pay under subpart G of part 531 of this chapter.

(2) Any statutory adjustments in pay or any general system-wide increases in pay, such as adjustments under sections 5303, 5304, 5305, 5318, 5362, 5363, 5372, 5372a, 5376, 5382, or 5392 of title 5, United States Code, that become effective during the lump-sum leave period. The agency must adjust the lump-sum payment to reflect the increased rate on and after the effective date of the pay adjustment.

(3) In the case of a prevailing rate employee, the agency must include in the lump-sum payment the scheduled rate of pay under 5 U.S.C. 5343, 5348, or 5349 and any applicable adjustments in rates that are determined under 5 U.S.C. 5343, 5348, or 5349 that become effective during the lump-sum leave period. The agency must adjust the lump-sum payment to reflect the increased prevailing rate on and after the effective date of the rate adjustment.

(4) A within-grade increase under 5 U.S.C. 5335 or 5343(e)(2) if the employee has met the requirements of § 531.404 or § 532.417 of this chapter prior to the date the employee becomes eligible for a lump-sum payment under § 550.1203.

(5) The following types of premium pay (to the extent such premium pay was actually payable to the employee):

(i) Night differential under 5 U.S.C. 5343(f) for nonovertime hours at the percentage rate received by a prevailing rate employee for the last full workweek immediately prior to separation, death, or transfer;

(ii) Premium pay under 5 U.S.C. 5545(c) or 5545a if the employee was receiving premium pay for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must base the lump-sum payment on the percentage rate received by the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. In cases where the amount of premium pay actually payable in the final pay period was limited by a statutory cap, the agency must base the lump-sum payment on a reduced percentage rate that reflects the actual amount of premium pay the employee received in that pay period; and

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(iii) Overtime pay under 5 U.S.C. 5545b and § 550.1304 of this chapter for overtime hours in an employee's uncommon tour of duty (as defined in § 630.201 of this chapter), established in accordance with § 630.210 of this chapter. The uncommon tour of duty must be applicable to the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must calculate overtime pay using the same methodology it used to calculate the employee's entitlement to overtime pay as provided in § 550.1304 of this chapter in the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. An agency may not change an employee's work schedule for the sole purpose of avoiding or providing payment of premium pay under § 550.1205(b)(5)(i)–(iv) in a lump-sum payment.

(6) Overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA), for overtime work that is regularly scheduled during an employee's established uncommon tour of duty, as defined in § 630.201(b)(1) of this chapter and established under § 630.210(a) of this chapter, for which the employee receives standby duty pay under 5 U.S.C. 5545(c)(1). The agency must include FLSA overtime pay in a lump-sum payment if an uncommon tour of duty was applicable to the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. The agency must calculate FLSA overtime pay using the same methodology it used to calculate the employee's entitlement to FLSA overtime pay for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203. An agency may not change an employee's work schedule for the sole purpose of avoiding or providing payment of FLSA overtime pay in a lump-sum payment.

(7) A supervisory differential under 5 U.S.C. 5755 based on the percentage rate (or dollar amount) received by the employee for the pay period immediately prior to the date the employee became eligible for a lump-sum payment under § 550.1203.

(8) A cost-of-living allowance and/or post differential in a nonforeign area under 5 U.S.C. 5941 if the employee's official duty station is in the nonforeign area when he or she becomes eligible for a lump-sum payment under § 550.1203.

(9) A post allowance in a foreign area under 5 U.S.C. 5924(1) and the *Standardized Regulations* (Government Civilians, Foreign Areas) if the employee's official duty station is in the foreign area when he or she becomes eligible for a lump-sum payment under § 550.1203.

(c) The head of an agency must prescribe regulations or standards for the inclusion of any other kinds of pay authorized in statutes other than title 5, United States Code, in a lump-sum payment. Such regulations or standards must be consistent with 5 U.S.C. 5551, 5552, 6306, and other applicable provisions of law.

(d) A lump-sum payment may not include any other pay not specifically listed in paragraph (b) of this section, except as provided in paragraph (c) of this section.

(e) An employee may not earn leave for the period covered by a lump-sum payment.

(f) A lump-sum payment is not subject to deductions for retirement under the Civil Service Retirement System or the Federal Employees' Retirement System established by chapters 83 and 84 of title 5, United States Code, respectively; health benefits under the Federal Employees Health Benefits program established by chapter 89 of title 5, United States Code; life insurance under the Federal Employees' Group Life Insurance program established by chapter 87 of title 5, United States Code; and savings under the Thrift Savings Plan established by subchapter III of chapter 84 of title 5, United States Code.

(g) For a reemployed annuitant who becomes eligible for a lump-sum payment under § 550.1203, the agency must compute the lump-sum payment using the annuitant's pay before any reductions required under § 831.802 of this chapter.

(h) A lump-sum payment is subject to garnishment under parts 581 and 582 of this chapter and to administrative offset (for recovery of debts to the Federal Government) under 31 U.S.C. chapter 37.

§ 550.1206 Refunding a lump-sum payment.

(a) When an employee who received a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service prior to the end of the period covered by the lump-sum payment, the employee must refund to the employing agency an amount equal to the pay included in the lump-sum payment under § 550.1205(b) that covers the period between the date of reemployment and the expiration of the lump-sum leave period, except as provided in paragraphs (b) and (c) of this section. The agency must compute the refund based on the pay used to compute the lump-sum payment under § 550.1205(b). However, annual leave restored under 5 U.S.C. 6304(d) that was included in a lump-sum payment is not subject to refund if an agency reemploys the employee prior to the expiration of the lump-sum leave period. The agency must subtract such restored annual leave from the lump-sum leave period before calculating the refund. An agency may permit an employee to refund the lump-sum payment for annual leave in installments, but may not waive collection. If an agency permits the lump-sum refund to be paid in installments, the employee must refund the lump-sum payment in full within 1 year after the date of reemployment.

(b) An employee who is reemployed in a position listed in 5 U.S.C. 6301(2)(ii), (iii), (vi), or (vii) is not required to refund a lump-sum payment under paragraph (a) of this section.

(c) An employee who is reemployed in a position that has no leave system to which annual leave can be recredited is not required to refund a lump-sum payment under paragraph (a) of this section, except that individuals reemployed as Presidential appointees must refund a lump-sum payment and the annual leave will be held in abeyance, as provided in § 550.1207(e).

(d) An individual first hired by the District of Columbia government on or after October 1, 1987, who received a lump-sum payment upon separation from the District of Columbia government and who is employed by the Federal Government prior to the expiration of the lump-sum leave period must refund the lump-sum payment, and the agency must recredit the annual leave under § 550.1207.

(e) An employee who retired from the Federal Government and received a lump-sum payment under § 550.1203 of this chapter, and who is reemployed under a temporary appointment of less than 90 days prior to the expiration of the lump-sum leave period, is required to refund the lump-sum payment, and the agency must recredit the annual leave under § 550.1207. The employee may use the recredited annual leave during the temporary appointment.

§ 550.1207 Recrediting annual leave.

(a) When an employee pays a full refund to an agency under § 550.1206(a), the agency must recredit to the employee an amount of annual leave equal to the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period. The recredited annual leave is available for use by the employee on and after the date the annual leave is recredited. The agency must recredit annual leave as follows:

(1) When an employee is reemployed in the Federal service in a position covered by subchapter I of chapter 63 of title 5, United States Code, the employing agency must recredit an amount of annual leave equal to the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period.

(2) When an employee is reemployed in the Federal service in a position that is not covered by subchapter I of chapter 63 of title 5, United States Code, but is covered by a different leave system, the employing agency must recredit to the employee an amount of annual leave representing the days or hours of work (including holidays) remaining between the date of reemployment and the expiration of the lump-sum period, as determined under § 630.501(b) of this chapter. If the unexpired period of leave covers a larger amount of leave than can be recredited under the different leave system, the employee must refund only the amount that represents the leave that can be recredited.

(3) When an employee is reemployed prior to the expiration of the lump-sum leave period, the agency may not recredit to the employee the annual leave restored under 5 U.S.C. 6304(d) that was included in a lump-sum payment. The agency must subtract such restored annual leave from the lump-sum leave period before it determines the amount of annual leave to recredit under paragraph (a)(1) of this section.

(b) Any annual leave the agency recredits to the employee under paragraph (a) of this section is subject at the beginning of the next leave year to the maximum annual leave limitation established by 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, for the position in which the employee is reemployed, except as provided in paragraphs (c) and (d) of this section.

(c) If the amount of annual leave to be recredited under paragraph (a) of this section is more than the maximum annual leave limitation for the position in which reemployed, and the employee's former maximum annual leave limitation was established under 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the amount of annual leave to be recredited under paragraph (a) of this section. The new maximum annual leave limitation is subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equal to or less than the maximum annual leave limitation for the position in which reemployed.

(d) If the amount of annual leave to be recredited under paragraph (a) of this section is more than the maximum annual leave limitation for the position in which the employee is reemployed, and the employee's former maximum annual leave limitation was established under an authority other than 5 U.S.C. 6304(a), (b), (c), or (f), as appropriate, the agency must establish the employee's new maximum annual leave limitation on the date of reemployment as a personal leave ceiling equal to the employee's former maximum annual leave limitation. The new maximum annual leave limitation is subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equal to or less than the maximum annual leave limitation for the position in which reemployed.

(e) When an employee is reemployed in a position listed in 5 U.S.C. 6301(2)(x)–(xiii), the agency must recredit and hold in abeyance the amount of annual leave that would have been recredited under paragraph (a) of this section. The agency must include unused annual leave in a lump-sum payment when the employee becomes eligible for a lump-sum payment under § 550.1203. If the employee transfers from a position listed in 5 U.S.C. 6301(2)(x)–(xiii) to a position covered by subchapter I of chapter 63 of title 5, United States Code, or to a position under a different formal leave system to which his or her annual leave can be recredited, the employing agency must recredit the annual leave to the employee's credit as provided in paragraph (a) of this section.

(f) An agency must document the calculation of an employee's lump-sum payment as provided in § 550.1205(b) so as to permit the subsequent calculation of any refund required under § 550.1206(a) and any recredit of annual leave required under this section.

PART 591—ALLOWANCES AND DIFFERENTIALS

8. The authority citation for subpart B of part 591 continues to read as follows:

Subpart B—Cost-of-Living Allowance and Post Differential-Nonforeign Areas

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., 338.

§ 591.210 [Amended]

9. In § 591.210, the last sentence of paragraph (c)(1) is removed.

[FR Doc. 99–16992 Filed 7–7–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 99–051–1]

Brucellosis in Cattle; State and Area Classifications; Kansas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Kansas from Class A to Class Free. We have determined that Kansas meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Kansas.

DATES: This interim rule was effective July 1, 1999. We invite you to comment on this docket. We will consider all comments that we receive by September 7, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–051–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–051–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS,

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APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708; or e-mail: Valerie.E.Ragan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactor cases found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Kansas was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Kansas, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Kansas from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Kansas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Kansas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Kansas from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Kansas, as well as buyers and importers of cattle from this State.

There are an estimated 37,000 cattle herds in Kansas that will be affected by this rule. About 98 percent of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $4 per head.

Therefore, we believe that changing the brucellosis status of Kansas will not have a significant economic effect on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding "Kansas," immediately after "Iowa,".

3. In § 78.41, paragraph (b) is amended by removing "Kansas,".

Done in Washington, DC, this 1st day of July 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17357 Filed 7–7–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–35–AD; Amendment 39–11216; AD 99–14–06]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers. This action requires initial and repetitive inspections of Torx head blade root lag screws for torque values and breakage, and, if any screws are found broken or with insufficient torque, replacement of all screws with new lag screws. In addition, this AD requires replacement of certain model Torx head blade root lag screws with improved, hexagonal head blade root lag screws. This amendment is prompted by reports of broken Torx head blade root lag screws. The actions specified in this AD are intended to prevent blade root lag screw breakage, which could result in propeller blade separation and loss of control of the airplane.

DATES: Effective July 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: "propeller@aol.com". This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers. The LBA advises that they have received reports of broken Torx head blade root lag screws found during routine teardowns. The investigation revealed that the screws broke due to insufficient torque. This condition, if not corrected, could result in blade root lag screw breakage, which could result in propeller blade separation and loss of control of the airplane.

MT-Propeller Entwicklung GMBH has issued Service Bulletin (SB) No. 17–A, dated March 5, 1999, that specifies procedures for inspections for Torx head blade root lag screws for torque values and breakage, and replacement of Torx head blade root lag screws, part number (P/N) A–550–85 (4mm thread pitch), with improved, hexagonal head blade root lag screws, P/N A–983–85. The LBA classified this SB as mandatory and issued airworthiness directives (ADs) 1999–081/2 and 1999–082/2 in order to assure the airworthiness of these propellers in Germany.

This propeller model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, the AD requires initial and repetitive inspections of Torx head blade root lag screws for torque values and breakage, and, if any screws are found with insufficient torque or are broken, replacement of all screws with new lag screws. In addition, this AD requires replacement of Torx head blade root lag screws, P/N A–550–85 (4mm thread pitch), with improved, hexagonal head blade root lag screws, P/N A–983–85. The actions would be required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments

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submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–35–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–14–06 MT-Propeller Entwicklung GMBH: Amendment 39–11216. Docket 99–NE–35–AD.

Applicability: MT-Propeller Entwicklung GMBH Model MTV–9–B–C propellers with serial numbers (S/Ns) starting with 98 or less, equipped with CL250–27 or CL260–27 blades with S/Ns starting with letter "A" through "P", equipped with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), or P/N A–550–85 (4mm thread pitch); and Model MTV–3–B–C propellers with S/Ns starting with 98 or less, equipped with L250–21 blades with S/Ns starting with letter "A" through "P", equipped with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), or A–550–85 (4mm thread pitch). These propellers are installed on but not limited to Sukhoi SU–26, SU–29, SU–31; Yakovlev YAK–52, YAK–54, YAK–55, and Technoavia SM–92 airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent blade root lag screw breakage, which could result in propeller blade separation and loss of control of the airplane, accomplish the following:

(a) For propellers with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), perform initial and repetitive inspections of Torx head blade root lag screws for torque values and breakage, and, if necessary, replace with new lag screws, in accordance with MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 17–A, dated March 5,1999, as follows:

(1) Initially inspect within 50 hours time-in-service (TIS), or within 2 months after the effective date of this AD, whichever occurs first.

(2) Thereafter, inspect at intervals not to exceed 100 hours TIS, or within 12 months, whichever occurs first.

(3) Prior to further flight, if any Torx head blade root lag screws are found broken or with torque less than 64 foot-pounds, replace all Torx head blade root lag screws with new lag screws.

(b) For propellers with Torx head blade root lag screws, P/N A–550–85 (4mm thread pitch), perform a one-time inspection of Torx head blade root lag screws for torque values and breakage, and, if necessary, replace with lag screws, in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5,1999, as follows:

(1) Inspect within 50 hours TIS, or within 2 months after the effective date of this AD, whichever occurs first.

(2) Prior to further flight, if any Torx head blade root lag screws are found broken or with torque less than 64 foot-pounds, replace all Torx head blade root lag screws with improved, hexagonal head blade root lag screws, P/N A–983–85.

(c) For propellers with Torx head blade root lag screws, P/N A–550–85 (4mm thread pitch), within 100 hours TIS, or within 12 months after the effective date of this AD, replace all Torx head blade root lag screws, P/N A–550–85, with improved, hexagonal head blade root lag screws, P/N A–983–85, in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5,1999.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

(f) The actions required by this AD shall be performed in accordance with the following MT-Propeller Entwicklung GMBH SB:

Document No.	Pages	Date
17–A	1–3	March 5, 1999
Total pages: 3.		

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: "propeller@aol.com". Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on July 23, 1999.

Issued in Burlington, Massachusetts, on June 23, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–16745 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990701179–9179–01]

RIN 0694–AB90

Expansion of License Exception CIV Eligibility for "Microprocessors" Controlled by ECCN 3A001

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements. Consistent with technological changes, this interim rule adjusts the License Exception CIV eligibility level for microprocessors controlled by Export Control Classification Number (ECCN) 3A001 from a composite theoretical performance (CTP) of equal to or less than 1200 million theoretical operations per second (MTOPS) to a CTP of equal to or less than 1900 MTOPS. License Exception CIV is available for exports and reexports to civil end-users for civil end-uses in Country Group D:1.

BXA will continue review of the technical levels for microprocessors and will adjust levels in the future, as needed, to account for changes in technology.

DATES: This rule is effective July 8, 1999. Comments on this rule must be received on or before August 9, 1999.

ADDRESSES: Written comments should be sent to Patricia Muldonian, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAA, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close on August 9, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 799) is amended as follows:

PART 774—[AMENDED]

1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004;

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30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 60 FR 42767, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 61 FR 42527, 3 CFR, 1996 Comp., p. 298; Notice of August 13, 1997, 62 FR 43629, 3 CFR, 1997 Comp. p. 306; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp. p. 294.

Supplement No. 1 to Part 774—[Amended]

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended by revising the License Exceptions section to read as follows:

3A001—Electronic components, as follows (see List of Items Controlled).

* * * * *

License Exceptions

LVS: N/A for MT
$1500: 3A001.c
$3000: 3A001.b.1, b.2, b.3, .d, .e and .f
$5000: 3A001.a, and .b.4 to b.7
GBS: Yes, except 3A001.a.1.a, b.1, b.3 to b.7, .c to .f
CIV: Yes, except 3A001.a.1, a.2, a.3.a (for processors with a CTP greater than 1900 Mtops), a.5, a.6, a.9, a.10, and a.12, .b, .c, .d, .e, and .f

* * * * *

Eileen M. Albanese,

Acting Assistant Secretary for Export Administration.

[FR Doc. 99–17355 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 980427104–8227–02; I.D. 120597B]

RIN 0648–AK29

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Certification of Bycatch Reduction Devices; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to prescribe additional procedures for the testing and certification of bycatch reduction devices (BRDs) for use in penaeid shrimp trawls in the exclusive economic zone (EEZ) in the South Atlantic. The use of BRDs in all such trawls became mandatory under the final rule implementing Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). This rule completes implementation of the Testing Protocol for BRD Certification and includes a paragraph providing details on the testing and certification procedures. It also adds four previously omitted measures to the list of measures that may be implemented or modified through the framework procedures contained in Amendment 2 for adjusting management measures. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirement associated with this rule and publishes the OMB control number for this collection. The testing and certification procedures prescribed by this rule are intended to foster the development of alternative BRDs that meet the bycatch reduction criterion for Spanish mackerel and weakfish, while minimizing inconvenience to fishermen and/or loss of shrimp. The addition of management measures that may be adjusted via the framework procedures is intended to fully implement the amendment's provisions for enhancing the ability of the South Atlantic Fishery Management Council (Council) and NMFS to react in a timely manner to changes in the fishery or to new data.

DATES: This rule is effective July 8, 1999, except that the amendment to § 622.48(h) is effective August 9, 1999.

ADDRESSES: Comments regarding the collection-of-information requirement associated with this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of the *Bycatch Reduction Device Testing Protocol Manual* should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The shrimp fishery in the EEZ of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 3, 1998, NMFS published and requested comments on a proposed rule (63 FR 30174) to implement the measures that are now incorporated in this final rule. The background and rationale for the proposed rule and associated measures are contained in the preamble to the proposed rule and are not repeated here.

Comments on the Proposed Rule

No comments on the proposed rule were received.

Changes From the Proposed Rule

In § 622.41(g)(3)(ii), the exemption language is revised to be more precise and to be consistent with similar provisions elsewhere in the regulations.

In the appendix containing an additional paragraph from the Testing Protocol for BRD Certification, NMFS changes the mandatory language requiring state directors to collect, review, and submit information to NMFS. NMFS has reviewed the administrative record and finds this change is consistent with the Council's intent and with OMB's collection-of-information approval based on the Testing Protocol Manual.

In addition, NMFS revises that paragraph to more accurately reflect the information that may be collected based on the manual's data collection forms approved by OMB.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, Department of Commerce, has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the AA, determined that the measures implemented by this rule are necessary for the conservation and management of the shrimp fishery off the southern Atlantic states and that the measures are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA—namely, the BRD certification process, consisting of an application for the testing of a new BRD, the testing itself, and the submission of the test results. This collection of information has been approved by OMB under OMB control number 0648–0345. The public reporting burden for this collection of information is estimated at 151 hours per application, testing, and submission of results. The estimate of the public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of the data requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

The revisions in §§ 622.7(bb), 622.41(g)(1) and (g)(3), and the addition to the uncodified appendix containing the Testing Protocol for BRD Certification are essential for implementation of a procedure for testing alternative BRDs that, if certified, could result in improved finfish bycatch reduction and/or reduction in shrimp loss. At minimum, any BRD certified via this testing procedure would increase the approved BRD options available to participants in the fishery. This would give participants greater choice in selecting an approved BRD that is optimal for their particular fishing operation. Timely implementation of this rule will expedite BRD testing and potential certifications of additional BRDs which is in the best interest of the affected public. Accordingly, under 5 U.S.C. 553(d)(3), the AA, for good cause, finds that it would be unnecessary and contrary to the public interest to delay for 30 days the effective date of these measures.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 1, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table, in paragraph (b), under 50 CFR, the following entry is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
. . . . .	
50 CFR	
. . . . .	
622.41(g)(3)	–0345
. . . . .	

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 622.7, paragraph (aa) is added, and paragraph (bb) is reserved to read as follows:

§ 622.7 Prohibitions.

* * * * *

(aa) Falsify information submitted on the testing of a BRD or the results of such testing, as specified in § 622.41(g)(3)(i).

(bb) [Reserved]

5. In § 622.41, the first sentence of paragraph (g)(1) is revised and paragraph (g)(3) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) * * *

(1) * * * Except as exempted in paragraph (g)(3)(ii) of this section, on a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed. * * *

* * * * *

(3) *Certification of BRDs*—(i) A person who seeks to have a BRD certified for use in the South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit to the RD the results of the test conducted and recorded in accordance with the Testing Protocol for BRD Certification, which along with forms and procedures, is included in the *Bycatch Reduction Device Testing Protocol Manual* which is available from the SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, and from the RD. A BRD that meets the certification criterion, as determined under the Testing Protocol for BRD Certification, will be added to the list of certified BRDs in paragraph (g)(2) of this section.

(ii) A penaeid shrimp trawler that is authorized to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the Testing Protocol for BRD Certification is granted a limited exemption from the BRD requirement specified in paragraph (g)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

* * * * *

6. In § 622.48, paragraph (h) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(h) *South Atlantic shrimp.* BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, and times and locations when the use of BRDs is required.

* * * * *

7. The Testing Protocol for BRD Certification published as an uncodified appendix to the final rule implementing Amendment 2 to the FMP on April 16, 1997 (62 FR 18536) is amended by

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adding the following paragraph at the end thereof:

Appendix—Testing Protocol for BRD Certification

Note: This Appendix will not appear in the code of Federal Regulations.

* * * * *

Before conducting any certification test, or series of tests, in state waters, a person must meet any applicable state requirements for notification and approval. Persons planning to conduct certification tests in both state waters and the EEZ have two options. The person may submit an application for certification testing in the EEZ directly to the RD. Alternatively, if state approval is required, a person may submit the required application to conduct BRD testing in the EEZ to the appropriate state director or designee, and the state could forward copies to the RD for concurrent approval for EEZ waters. Under either option, the application to conduct BRD testing in the EEZ must identify the sponsor of the tests and include the information solicited by the Vessel Information Form and the Gear Specification Form. Once the RD determines that the application is complete and all applicable regulations are satisfied, the RD will issue the applicant a letter of authorization to conduct BRD testing in the EEZ.

[FR Doc. 99–17372 Filed 7–7–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 227

RIN 1010–AC51

Change to Delegated State Audit Functions

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations to allow States which choose to assume audit duties to do so for less than all of the Federal mineral leases within the State or leases offshore of the State.

EFFECTIVE DATES: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Ms. Shirley Burhop, State and Indian Compliance Division, Royalty Management Program (RMP).

I. Background

This rule amends regulations governing the delegation of royalty management duties to States. Section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1735, gives MMS the authority to delegate audit functions to States. Currently, 10 States have entered into the delegation agreements authorized by Section 205.

Regulations in 30 CFR part 227 implementing the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Pub. L. 104–185, as corrected by Pub. L. 104–200, expanded the duties that States could assume. Those regulations at 30 CFR 227.101 prescribed that if a State wanted MMS to delegate the audit function to the State, then the State was required to audit all Federal mineral leases within that State and all 8(g) leases offshore of the State. We intended that States perform other delegable functions authorized by RSFA for *all* leases within that State and in all 8(g) leases offshore of the State. However, we do not believe it is either necessary or desirable in the case of the audit function. Typically auditing is done on a sampling basis, *i.e.* not all leases are audited.

This change allows States which are now delegated audit authority under FOGRMA to continue that audit authority without significantly altering their staffing, funding, or other operations. By removing the requirement that they exercise audit authority over all Federal mineral leases within the State, the States will again be able to work with us in those cases where State resources do not allow the State to cover their entire audit universe. Thus, the State will designate the limits of its audit activity each year through an annual audit work plan. This wording change will also enable the MMS to continue to assist a State in its audit efforts when necessary.

II. Statutory Authority

Authority for this change is granted by FOGRMA, 30 U.S.C. 1735, as amended by RSFA, Pub. L. 104–185, August 13, 1996, as corrected by Pub. L. 104–200. Authority regarding solid mineral leases, geothermal leases, and 8(g) leases is granted by Pub. L. 102–154.

III. Comments on Proposed Rule

The proposed rulemaking provided a 60-day public comment period which ended April 12, 1999. MMS received comments from one oil and gas trade association commenter during the comment period. We reviewed and analyzed the comments pertaining to this final rulemaking, and did not revise the language of the final rule. The specific comments are addressed below:

Comment—Regarding the Analysis section of the proposed rule preamble, the commenter questioned how a State could take on delegated functions without adequate staffing or funding. The commenter stated that "the language in the proposed rule controverts the Delegation regulations," as stated at 30 CFR 227.103.

Response—The final rule enables States to perform delegated audit functions for some or all Federal leases within their State rather than being required to assume responsibility for all such leases. Our intent is to enable those States which face staffing and funding limitations to take on delegated audit duties to the extent they can perform such duties with available resources. Current regulations at 30 CFR 227.101 (1998) require a State to have the resources to audit its entire lease universe in order to take on any delegated audit duties.

IV. Procedural Matters

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Requesting States may incur additional costs for delegation responsibilities. However, these direct costs will be fully reimbursed by the Federal Government in accordance with their annual, approved audit plan each year. This rule change does not require the States to file any additional information or fees.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. States with delegated audit authority must follow the policies of the Department. States will coordinate their audit actions with the Bureau of Land Management and MMS.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. Audits of Federal leases within State boundaries will be individually budgeted through an annual work plan proposal the State prepares and MMS approves. This is a process we have used effectively since 1985 and will continue under the rule.

(4) This rule does not raise novel legal or policy issues. We have had authority to delegate audit duties to States since 1983. Historically, States have audited as much of the Federal lease universe as practical for each State and MMS audited the remainder. We expect these circumstances of operation to continue under this rule.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The major impact of the rule will be on State governments, which are not small entities. There will be some effect on the oil and gas companies which are subject to audit, as various audit staffs, including MMS's Compliance Divisions, State delegations, and Indian Tribal delegations, may now audit Federal and Indian leases located within a particular State's boundaries. This is no change from the way in which MMS and delegated States and Tribes have audited companies in the past. As has been done in the past, MMS will continue to coordinate audit efforts of the various entities which might be involved in any particular audit in order to minimize disruptions to the companies being audited.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. States would initially incur the expense of delegated audit functions and MMS would later reimburse them. The maximum economic impact for audit delegation is estimated to be $5.5 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The audit of Federal leases is not a function which generates impacts on costs or prices to individuals or areas. States will review royalty calculation and payments to enforce existing Federal lease terms and royalty policies. States will conduct the audits as efficiently and economically as possible in accordance with Departmental policies.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The laws providing for the delegation of audit duties, FOGRMA and RSFA, do not provide for any other entity, except tribal governments, to conduct these duties.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The rule does not change valuation requirements, impose additional royalty collections or require new reporting forms. This rule merely gives State governments the option to conduct audits and investigations on less than all of the Federal mineral leases within State boundaries or section 8(g) leases on the OCS. The Federal Government will fully reimburse States for the costs they incur to conduct the audits and investigations in accordance with the State's annual, approved audit plan. We expect those costs to be no more than $5.5 million per year. County, local, or tribal governments will not perform the delegable audit functions on behalf of State governments; therefore, they will not be impacted by this rule.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have a significant takings implication. States seeking audit delegation from year to year will propose the level of effort they can expend auditing Federal leases. This method of operation will give States first choice in cooperatively planning annual work with MMS. This rule does not represent a governmental action capable of interference with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule allows States to continue to audit selected leases within legal boundaries. It does not alter roles, rights or responsibilities of States conducting delegated audits. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an additional information collection approval under the Paperwork Reduction Act of 1995. There is currently in place an approved information collection titled Delegation of Authority to States, OMB Control Number 1010–0088, which expires on June 30, 2000.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is proceeded by the symbol "§ " and a number heading; for example:

§ 227.101 What royalty management functions may MMS delegate to a State?

(5) Is the description of the rule in the "Supplementary Information" section of this preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule

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easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also E-mail your comments to this address: Exsec@ios.doi.gov.

List of Subjects in 30 CFR Part 227

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 19, 1999.

Sylvia V. Baca,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 227 is amended as follows:

PART 227—DELEGATION TO STATES

1. The authority citation for part 227 continues to read as follows:

Authority: 30 U.S.C. 1735; 30 U.S.C. 196; Pub. L. 102–154.

2. Revise § 227.101 to read as follows:

§ 227.101 What royalty management functions may MMS delegate to a State?

(a) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for all such Federal oil and gas leases to you under this part:

(1) Receiving and processing production or royalty reports;

(2) Correcting erroneous report data; and

(3) Performing automated verification.

(b) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for some or all of the Federal oil and gas leases to you under this part:

(1) Conducting audits and investigations; and

(2) Issuing demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees or their designees, and entering into tolling agreements under section 115(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(c) If there are oil and gas leases offshore of your State subject to section 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337 (g), or solid mineral leases or geothermal leases on Federal lands within your State, MMS may delegate authority to conduct audits and investigations for some or all such Federal leases.

[FR Doc. 99–17238 Filed 7–7–99; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–043–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program ("Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to its statutes pertaining to the Land Reclamation Committee to satisfy a required program amendment at 30 CFR 920.16(l). The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2153. E-Mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79449). You can find later actions on conditions of approval and program amendments at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Proposed Amendment

By letter dated August 22, 1997 (Administrative Record No. MD–578.00), Maryland submitted a proposed amendment to its program pursuant to SMCRA in response to a required amendment at 30 CFR 920.16(l). Maryland is revising the 1997 Laws of Maryland, Chapter 223 (House Bill 245), at section 15–204(a)(4) to require that Land Reclamation Committee (LRC) members recuse themselves from proceedings that may affect their direct or indirect financial interests.

We announced receipt of the proposed amendment in the September 19, 1997, **Federal Register** (62 FR 49183), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 20, 1997.

During our review of the amendment, we identified concerns with Maryland's submission. In a letter dated January 29, 1998 (Administrative Record No. MD–578–06), we informed Maryland that it must amend its program to require that LRC members file a statement of employment and financial interests. Since Maryland did not take further action, it was not necessary to reopen the comment period.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment. Any revisions we do not specifically discuss below concern nonsubstantive wording changes and paragraph notations to reflect organizational changes resulting from this amendment.

30 CFR 920.16(l) required Maryland to amend its program to require members of the LRC to: (1) recuse themselves from proceedings that affect their direct financial interest and (2) file a statement of employment and financial interest. In response, Maryland proposed to revise Chapter 223, 1997 Laws of Maryland, at section 15–204(a)(4) to require that LRC members recuse themselves from proceedings that may affect their direct or indirect financial interests. We find that the proposed revision is no less effective than the Federal regulation at 30 CFR 705.4(d) and satisfies the first part of the required amendment at 30 CFR 920.16(l).

In its submittal letter, Maryland stated that it is presently requiring that LRC members file a Federal OSM employment and financial interest statement. Maryland did not, however, provide supporting documentation. We find that Maryland's program is less effective than the Federal regulations at 30 CFR 705.11(a) and 705.17(a).

IV. Summary and Disposition of Comments

Public Comments

We solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(I), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The U.S. Department of Labor, Mine Safety and Health Administration and the U.S. Department of the Army, Army Corps of Engineers, concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Maryland proposed to make in this amendment pertains to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

V. Director's Decision

Based on the above findings, we approve Maryland's proposed amendment as submitted on August 22, 1997. As discussed above, Maryland's proposed revision satisfies the first part of the required amendment at 30 CFR 920.16(l). However, the second part of the amendment has not been satisfied. Therefore, Maryland continues to be required to amend its program to require each member of the Land Reclamation Committee to file a statement of employment and financial interest to be no less effective than 30 CFR 705.11(d). We are removing the required amendment at 30 CFR 920.16(l) to the extent that Maryland has amended its program to require that LRC members recuse themselves from proceedings affecting their financial interests.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 23, 1999.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

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Original amendment submission date	Date of final publication	Citation/description
August 22, 1997	July 8, 1999	Chapter 223, 1997 Laws of Maryland, Section 15–204(a)(4).

3. Section 920.16 is amended by revising paragraph (l) to read as follows:

§ 920.16 Required program amendments.

* * * * *

(l) By July 10, 2000, Maryland must amend its program to be no less effective than 30 CFR 705.11(a) and 705.17(a) by requiring each member of the Land Reclamation Committee to file a statement of employment and financial interest.

[FR Doc. 99–17296 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–37–1–7392a; FRL–6372–7]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We, the EPA, are approving a revision to the New Mexico State Implementation Plan (SIP) that contains the transportation conformity rule for Albuquerque/Bernalillo County. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revision enables the Albuquerque/Bernalillo County Air Quality Control Board (AQCB) to implement and enforce the Federal transportation conformity requirements in the Albuquerque/Bernalillo County area level per 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. Our approval action streamlines the conformity process and allows direct consultation among agencies at the local levels. Our final approval action is limited to 40 CFR part 51, subpart T and 40 CFR part 93, subpart A (Transportation Conformity). We approved the SIP revision sent under 40 CFR part 51, subpart W (conformity of general Federal actions) on September 13, 1996 (61 FR 48407).

We approve this SIP revision under sections 110(k) and 176 of the Clean Air Act (Act). We have given our rationale for approving this SIP revision in this action.

DATES: This rule is effective on September 7, 1999 without further notice, unless EPA receives adverse comment by August 9, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Pollution Control Division, Albuquerque Environmental Health Department, City of Albuquerque, One Civic Plaza, Albuquerque, New Mexico 87102, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: We have outlined the contents of this notice below for your reading convenience:

I. Background
A. What is a SIP?
B. What is the Federal approval process for a SIP?
C. What is transportation conformity?
D. Why must the State send a transportation conformity SIP?
E. How does transportation conformity work?

II. Approval of the Albuquerque/Bernalillo County Transportation Conformity Rule
A. What did the State send?
B. What is EPA approving today and why?
C. How did the AQCB satisfy the interagency consultation process (40 CFR 93.105)?
D. Why did the AQCB exclude the grace period for new nonattainment areas (40 CFR 93.102(d))?
E. What parts of the rule are excluded?

III. Opportunity for Public Comments

IV. Administrative Requirements

I. Background

A. What is a SIP?

The states under section 110 of the Act must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The Act under section 109 established these ambient standards which currently includes six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to us, the EPA, for approval and incorporation into the federally enforceable SIP.

Currently, each state has a federally approved SIP which protects air quality and has emission control plans for nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the federally enforceable SIP. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to us for inclusion in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice, and request additional public comment on the action. If anyone sends adverse comments, we must consider the comments before a final action.

We incorporate all state regulations and supporting information (sent under section 110 of the Act) into the federally approved SIP after our approval action. We maintain records of such SIP actions in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans. The Government does not reproduce the text of the federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

D. Why Must the State Send a Transportation Conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register**, and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. The State Governor sent a transportation conformity SIP on December 19, 1994, in behalf of Albuquerque/Bernalillo County Air Quality Control Board (AQCB). We approved this SIP on November 8, 1995 (60 FR 56241). We revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. How Does Transportation Conformity Work?

The Federal or State transportation conformity rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

II. Approval of the Albuquerque/Bernalillo County Transportation Conformity Rule

A. What Did the State Send?

On December 9, 1998, the Governor of New Mexico in behalf of AQCB sent a SIP revision that includes the Albuquerque/Bernalillo transportation conformity and consultation rule. The AQCB adopted this SIP revision on May 13, 1998, after appropriate public participation and interagency consultation.

B. What is EPA Approving Today and Why?

We are approving the Albuquerque/Bernalillo County transportation conformity rule that the Governor of New Mexico sent us on December 9, 1998, except for New Mexico Administrative Code (NMAC) Title 20, Chapter 11, Part 03, sections I.2.3, II.2.4, II.7.3—7.6, II.16.5, II.18.1.B, II.19.1.A, and II.22.2. The rationale for exclusion of these sections are discussed in section II–E of this action. The AQCB has adopted the Federal rules in verbatim form except for the interagency consultation section (40 CFR 93.105) and the grace period for new nonattainment areas (40 CFR 93.102(d)). We will discuss the reasons for exclusion of these two sections later in this document.

The Federal Transportation Conformity Rule required the states to adopt a majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the state's rules apply equally to nonfederal as well as Federal entities. The AQCB's transportation conformity rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception of those sections mentioned above.

We have evaluated this SIP revision and have determined that the AQCB has fully adopted the Federal Transportation Conformity Rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. Also, the AQCB has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, we are approving this SIP revision.

Our approval action does not include general conformity (40 CFR part 51, subpart W). We approved the Albuquerque/Bernalillo County general conformity SIP on September 13, 1996 (61 FR 48407).

C. How Did the AQCB Satisfy the Interagency Consultation Process (40 CFR 93.105)?

Our rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts by meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for

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the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The AQCB developed its own consultation rule based on the elements in 40 CFR 93.105, and excluded this section from its rule. As a first step, the AQCB established an *ad hoc* multi-agency committee that included representatives from the State air quality agency, State DOT, USDOT, MPOs, EPA, the local air quality agency, local transportation agencies, and local transit operators. The AQCB served as the lead agency in coordinating the multi-agency efforts for developing the consultation rule. The committee met approximately biweekly and drafted consultation rules by considering the elements in 40 CFR 93.105 and 23 CFR part 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the Albuquerque/Bernalillo County and is codified under 20 NMAC 11.03.II.3. We have determined that the AQCB adequately included all elements of 40 CFR 93.105 in their rule and it meets the EPA SIP requirements.

D. Why Did the AQCB Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The AQCB excluded 40 CFR 93.102(d) from its rule. This section allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. However, Sierra Club challenged this section of the rule arguing that allowing a 12 month grace period was unlawful under the Act. On November 4, 1997, the United Sates Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency*, No. 96.1007, cited EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the AQCB has excluded this section from its rule. We agree with the AQCB's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

E. What Parts of the Rule Are Excluded?

We promulgated the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, No. 97–1637. The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 40 CFR 93.121(a)(1), and 40 CFR 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 40 CFR 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the NEPA process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse,

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate,

(c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval,

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's (Albuquerque/Bernalillo County's) SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections.

We believe that the AQCB has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. If the court had issued its ruling before adoption and SIP submittal by the AQCB, we believe the AQCB would have removed these unlawful sections from its SIP. The AQCB has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time and disapprove the entire transportation conformity SIP.

The AQCB will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, we believe that it would be reasonable to exclude the corresponding sections of the AQCB rules from this SIP approval action. As a result, we are not taking any action on 20 NMAC 11.03, sections I.2.3, II.2.4, II.7.3–7.6, II.16.5, II.18.1.B, II.19.1.A, and II.22.2 of the Albuquerque/Bernalillo County transportation rules. The conformity determinations affected by these sections must comply with the relevant requirements of the statutory provisions of the Clear Air Act underlying the court's decision on these issues. EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA amendment of the Federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in the Albuquerque/Bernalillo County area should comply with the requirements of the revised Federal rule until corresponding provisions of the State's conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on September 7, 1999 without further notice unless we receive adverse comment by August 9, 1999. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation—air quality planning, Volatile organic compounds.

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Dated: June 9, 1999.

W.B. Hathaway,

Acting Regional Administrutor, Region 6.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart GG—New Mexico

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.1620(c) is amended by adding the following citation and part 3 entry to the end of the first table to read as follows:

§ 52.1620 Identification of Plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
•	•	•	•	•
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board (AQCB)				
Part 03	Transportation Conformity.	07/01/98	July 8, 1999. 64 FR 36790.	(1) No action is taken on sections I.2.3., II.2.4, II.7.3–7.6, II.16.5, II.18.1.B, II.19.1.A, and II.22.2. and (2) this rule supersedes Regulation 42 codified under Albuquerque-Bernalillo County, Air Quality Control Regulations.

[FR Doc. 99–17204 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–56–1–7391a; FRL–6372–6]

Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We, the EPA, are approving a revision to the Texas State Implementation Plan (SIP) that contains the transportation conformity rule. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level per 40 Code of Federal Regulations (CFR) part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. Our approval action streamlines the conformity process and allows direct consultation among agencies at the local levels. Our final approval action is limited to 40 CFR part 51, subpart T and 40 CFR part 93, subpart A (Transportation Conformity). We approved the SIP revision sent under 40 CFR part 51, subpart W (conformity of general Federal actions) on March 11, 1998 (63 FR 11833).

We approve this SIP revision under sections 110(k) and 176 of the Clean Air Act (Act). We have given our rationale for approving this SIP revision in this action.

DATES: This rule is effective on September 7, 1999, without further notice, unless EPA receives adverse comment by August 9, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Mobile Source Division, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1943.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

We have outlined the contents of this document below for your reading convenience:

I. Background
A. What is a SIP?
B. What is the Federal approval process for a SIP?
C. What is transportation conformity?
D. Why must the State send a transportation conformity SIP?
E. How does transportation conformity work?
II. Approval of the State Transportation Conformity Rule
A. What did the State send?
B. What is EPA approving today and why?
C. How did the State satisfy the interagency consultation process (40 CFR 93.105)?
D. Why did the State exclude the grace period for new nonattainment areas (40 CFR 93.102(d))?
E. What parts of the rule are excluded?
III. Opportunity for Public Comments
IV. Administrative Requirements

I. Background

A. What is a SIP?

The states under section 110 of the Act must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The Act under section 109 established these ambient standards which currently includes six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to us, the EPA, for approval and incorporation into the Federally enforceable SIP.

Currently, each state has a federally approved SIP which protects air quality and has emission control plans for nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to us for inclusion in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice, and request additional public comment on the action. If anyone sends adverse comments, we must consider the comments before a final action.

We incorporate all state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP after our approval action. We maintain records of such SIP actions in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The Government does not reproduce the text of the Federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

D. Why Must the State Send a Transportation Conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. The State of Texas sent a transportation conformity SIP on November 6, 1994, and we approved this SIP on November 8, 1995 (60 FR 56244). We revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. How Does Transportation Conformity Work?

The Federal or State transportation conformity rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning Organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

II. Approval of the State Transportation Conformity Rule

A. What did the State Send?

On December 10, 1998, the Governor of Texas sent a SIP revision that includes the State's transportation conformity and consultation rule. The Texas Natural Resource Conservation Commission (TNRCC) adopted this SIP revision on November 18, 1998, after appropriate public participation and interagency consultation.

B. What is EPA Approving Today and Why?

We are approving the Texas transportation conformity rule that the Governor of Texas sent us on December 10, 1998 except for the incorporation by reference of sections 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 92.124(b) of 40 CFR into 30 Texas Administrative Code (TAC) 114.26(c). The rationale for exclusion of these sections are discussed in Section II.E of this action. The TNRCC has adopted the Federal rules by "incorporation by reference" except for the interagency consultation section (40 CFR 93.105) and the grace period for new nonattainment areas (40 CFR 93.102(d)). We will discuss the reasons for exclusion of these two sections later in this document.

"Incorporation by Reference" (IBR) means that the State adopted the Federal rules without rewriting the text of the Federal rules but by referring to them for inclusion as if they were printed in the state regulation. The Federal Transportation Conformity Rule required the states to adopt majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the State's rules apply equally to nonfederal entities as well as Federal entities. The TNRCC Transportation Conformity Rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception of those sections mentioned above.

We have evaluated this SIP revision and have determined that the State has fully adopted the Federal transportation conformity rules as described in 40 CFR

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part 51, subpart T and 40 CFR part 93, subpart A. Also, the TNRCC has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, we are approving this SIP revision.

Our approval action does not include general conformity (40 CFR part 51, subpart W). We approved the Texas general conformity SIP on March 11, 1998 (63 FR 11833).

C. How did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

Our rule requires the States to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The State developed its own consultation rule based on the elements in 40 CFR 93.105, and excluded this section from IBR. As a first step, the State established an ad hoc multiagency committee that included representatives from the State air quality agency, State DOT, USDOT, MPOs, EPA, the local air quality agency, local transportation agencies, and local transit operators. The State air quality agency served as the lead agency in coordinating the multiagency efforts for developing the consultation rule. The committee met approximately biweekly and drafted consultation rules by considering the elements in 40 CFR 93.105 and 23 CFR part 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the State of Texas and is codified under section 114.260(d) of the State rule. We have determined that the State adequately included all elements of 40 CFR 93.105 and meets the EPA SIP requirements.

D. Why did the State Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The State excluded 40 CFR 93.102(d) from its IBR. Section 93.102(d) allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. The Sierra Club challenged this section of the rule arguing that allowing a 12-month grace period was unlawful under the Act. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency*, No. 96–1007, cited EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the State has excluded this section from its rule. We agree with the State's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

E. What Parts of the Rule are Excluded?

We promulgated the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, No. 97–1637. The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the Federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse,

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate,

(c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval,

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections.

We believe that the TNRCC has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. If the court had issued its ruling before adoption and SIP submittal by the TNRCC, we believe the TNRCC would have removed these sections from its IBR. The TNRCC has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time.

The TNRCC will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, we believe that it would be reasonable to exclude the corresponding sections of the state rules from this SIP approval action. As a result, we are not taking any action on the IBR of sections 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b) of 40 CFR at 30 TAC 114.260(c) under the State conformity rule. The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the court's decision on these issues. EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA amendment of the federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in Texas should comply with the requirements of the revised Federal rule until corresponding provisions of the Texas conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on Septmber 7, 1999, without further notice unless we receive adverse comment by August 9, 1999. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E. O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

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Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: June 9, 1999.

W. B. Hathaway,

Acting Regional Administrator, Region 6.

Title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

Subpart SS—Texas

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671 *et seq.*

2. In § 52.2270 the table in paragraph (c) is amended by removing section 114.27 and adding section 114.260 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
.	.	.	.	.
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
.	.	.	.	.
Section 114.260	Transportation Conformity.	12/10/98	July 8, 1999, 64 FR 36794.	1. No action is taken on the portions of 30 TAC 114.260 that contain 40 CFR 93.102(c), 93.104(d) ,93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b). 2. TNRCC order (Docket No.98–0418 RUL) November 23, 1998.
.	.	.	.	.

[FR Doc. 99–17202 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300892; FRL–6090–3]

RIN 2070–AB78

Fosetyl-Al; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the fungicide fosetyl-Al (aluminum tris(O-ethyl phosphonate)) in or on the raw agricultural commodities bananas at 3.0 parts per million (ppm), blueberries at 40 ppm, grapes at 10 ppm, and macadamia nuts at 0.20 ppm. Rhone-Poulenc Ag Company and the Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 8, 1999. Objections and requests for hearings must be received by EPA on or before September 7, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300892], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300892], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or

ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300892]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7740; e-mail: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 7,1998 (63 FR 36s681) (FRL–5795–6) and January 29, 1999 (64 FR 4650) (FRL–6055–8), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP#5E4434, 5E4559, 7E4872) for tolerances by Interregional Research project Number 4 (IR–4), New Jersey Agricultural Research Station, Rutgers University, New Brunswick, New Jersey 08903, and pesticide petition (PP#8E4969) for a tolerance by Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. These notices included summaries of the petitions prepared by Rhone-Poulenc Ag Company, the registrant. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.415 be amended by establishing tolerances for the fungicide fosetyl-Al, in or on bananas at 3.0 ppm, blueberries at 40 ppm, grapes at 10 ppm, and macadamia nuts at 0.20 ppm. Since the tolerance for blueberries expired on December 31, 1998, after the notice of filing was published in the **Federal Register**, this rule re-establishes the blueberry tolerance, with an expiration date of December 31, 2000. Registration for use of fosetyl-Al on grapes will be limited to areas east of the Rocky Mountains, based on the geographical representation of the residue data submitted. Persons seeking geographically broader registration should contact the Registration Division at the address provided above.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961), (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fosetyl-Al and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances of fosetyl-Al on bananas at 3.0 ppm, blueberries at 40 ppm, grapes at 10 ppm, and macadamia nuts 0.20 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fosetyl-Al are discussed in this unit.

[Technical grade fosetyl-Al has low acute oral (IV), dermal (III), and inhalation (III) toxicity. It is non-irritating to the skin (IV) and severely irritating to the eyes (I). It is not a skin sensitizer. There were no acute neurotoxicity tests performed. The acute oral LD_{50} for rats is >5,000 milligrams per kilogram (mg/kg), the acute dermal LD_{50} for rats is >3,000 mg/kg, and the acute inhalation LC_{50} for rats is 1.73 milligrams per liter (mg/l).

The subchronic toxicity studies included a 21-day dermal toxicity study in rats whose no observed adverse effect level (NOAEL) was greater than the limit dose of 1,000 milligrams per kilogram per day (mg/kg/day). The NOAEL was 1,500 mg/kg/day, the highest dose tested (HDT) and the lowest observed adverse effect level (LOAEL) was >1,500 mg/kg/day. The other subchronic studies were two 3-month oral toxicity studies, one using dogs and the other using rats. Treatment-related effects included slightly increased medullary hematopoiesis in the spleen of rats and decreased serum potassium in dogs, both at LOAELs of 1,250 mg/kg/day. The NOAELs were 482 and 250 mg/kg/day in rats and dogs, respectively.

The following chronic toxicity and/or carcinogenicity studies were performed. In a chronic toxicity feeding study using dogs, the NOAEL of 250 mg/kg/day was based on testicular degeneration (spermatocytic and/or spermatidic giant cells in the lumen of the seminiferous tubules) at the LOAEL of 500 mg/kg/day. In a combined chronic toxicity/carcinogenicity study using rats, the NOAEL of 400 mg/kg/day was based on urinary bladder pathology (tumors) and increased urine protein at the LOAEL of 1,500 mg/kg/day. In a carcinogenicity study in mice, the NOAEL of 409 mg/kg/day was based on a slight increase in white blood cells at the LOAEL of 1,672 mg/kg/day. There was no evidence of carcinogenicity in the mouse. The Agency classified fosetyl-Al as a Group C carcinogen (possible human carcinogen). A subsequent review concluded that fosetyl-Al was not amenable to classification using the current Agency guidelines and determined that the tumors produced in rats occurred under extremely high doses, under conditions not anticipated to occur outside of the experimental lab. Therefore, it was concluded that fosetyl-Al is not likely to pose a carcinogenic hazard to humans.

Results from five acceptable mutagenicity studies indicate that fosetyl-Al was not mutagenic in bacterial or cultured mammalian cells and did not cause DNA damage in bacterial or primary rat hepatocytes.

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Therefore, the available data indicate that fosetyl-Al is not a mutagen.

In a developmental toxicity study using rats, maternal toxicity occurred at four times the limit dose. The maternal LOAEL was 4,000 mg/kg/day, based on decreased mean body weights and body weight gain, and increased maternal mortality, and the NOAEL was 1,000 mg/kg/day (limit dose). The developmental LOAEL was also 4,000 mg/kg/day, based on decreased litter and mean fetal body weight, increased resorptions, malformations, and skeletal variations, and the developmental NOAEL was 1,000 mg/kg/day (limit dose). In a developmental toxicity study using rabbits there was no evidence of developmental toxicity at the HDT of 500 mg/kg/day, so the NOAEL is considered to be 500 mg/kg/day and the LOAEL was not established. In this same study the maternal LOAEL was 250 mg/kg/day, based on decreased mean body weight, and the NOAEL was 125 mg/kg/day. A three-generation reproductive toxicity study using rats did not indicate any concern for pre- or post-natal effects in offspring or for reproductive effects. The parental/systemic LOAEL was 600 mg/kg/day, based on decreased body weight gains of the F_{2b} generation, and urinary tract changes in adults, and the parental/systemic NOAEL was 300 mg/kg/day. In this same study the reproductive (offspring) LOAEL was 600 mg/kg/day, based on decreased litter and pup body weight (day 8) in both matings of each generation, and the reproductive (offspring) NOAEL was 300 mg/kg/day. The *in utero* (developmental) NOAEL in this study was >1,200 mg/kg/day (the HDT). Therefore, there was no evidence of increased sensitivity due to prenatal or postnatal exposure to fosetyl-Al.

A dermal absorption factor is required only for long-term dermal risk assessment due to the selection of an oral value. The Agency estimated a dermal absorption factor of 17% based on the ratio of the oral LOAEL (250 mg/kg/day), and the dermal LOAEL (1500 mg/kg/day) in rabbits. Two metabolism studies using rats were evaluated. The first study showed that fosetyl-Al technical was rapidly metabolized to carbon dioxide (60%, recovered in exhaled air), and phosphite (phosphorous acid) (29 to 30%, excreted in the urine and feces). The second study examined metabolism of the phosphite metabolite, showing most of it to be excreted in the urine (59–65%) and feces (30 to 32%).

Overall, the quality of the toxicology data base is good and the confidence in the hazard and dose responses is high. There are no toxicology data gaps.

B. Toxicological Endpoints

1. *Acute toxicity.* No appropriate endpoint attributable to a single dose exposure was identified in acute oral toxicity studies. Therefore, an acute Reference Dose (RfD) was not established.

2. *Short-and intermediate-term toxicity.* In the 21-day dermal toxicity study using rats, no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications. Therefore, no endpoint value is calculable.

3. *Chronic toxicity.* EPA has established the chronic RfD for fosetyl-Al at 2.5 mg/kg/day. This RfD is based on testicular degeneration (spermatocytic and/or spermatidic giant cells in the lumen of the seminiferous tubules) in 2 of 6 rats. The endpoint was observed in the 2-year chronic toxicity using dogs. In this study the NOAEL was 250 mg/kg/day and the uncertainty factor was set at 100. The FQPA factor was determined to be 1× because:

(1) The toxicology data base is complete.

(2) there is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity studies,

(3) a developmental neurotoxicity study is not required,

(4) food exposure estimates are unrefined (that is, tolerance level residues and 100% crop treated assumed) and likely result in an overestimate of the actual food exposure,

(5) the Agency models used for ground and surface drinking water exposure estimates produce upper-bound concentration estimates,

(6) the current residential use pattern is not of concern since no potential hazard was identified for short- or intermediate-term exposure (no risk assessment is required) and long-term exposure is not expected with this use. As a result of the 1x FQPA factor, the chronic population adjusted dose (CPAD) is the same as the RfD.

4. *Carcinogenicity.* The Agency has determined that fosetyl-Al is unlikely to pose a cancer hazard to humans because the effects produced in rats occurred at extremely high doses, under conditions not anticipated to occur outside of the laboratory. Therefore, under the expected exposure conditions for this use, fosetyl-Al is unlikely to pose a carcinogenic risk to humans.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.415) for residues of fosetyl-Al in or on a variety of raw agricultural commodities. These tolerances range from 0.1 part per million (ppm) on caneberries, fresh ginseng root, and pineapple to 100 ppm on the leafy vegetables (except brassica vegetables) group. A time-limited tolerance for blueberries at 40 parts per million expired on December 31, 1998. Risk assessments were conducted by EPA to assess dietary exposures from fosetyl-Al as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established, and there is no expectation of acute risk.

ii. *Chronic exposure and risk.* Food exposure for various subgroups of the U.S. population was estimated through the use of the Dietary Exposure Evaluation Model (DEEM) software. The DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1991 nationwide Continuing Surveys of Food Intake by Individuals. As the risk estimate was low for even the most highly exposed subpopulation, no anticipated residues were used. The Agency assumed 100% crop treated and tolerance level residues for all crops with tolerances as well as for the crops which are being evaluated in this action (i.e., bananas, grapes, and macadamia nuts). The most highly exposed group, children (1–6 years), is at 6% of the chronic CPAD. Of the female subgroups, females (13+/nursing) has the highest exposure at 4% of the CPAD. The exposure for the U.S. population is 3% of the CPAD. Foods that contribute most to the exposure are: lettuce, apples, tomatoes, broccoli, celery, strawberries, spinach, and cabbage.

The Agency does not consider the chronic dietary food risk to exceed the Agency's level of concern.

iii. *Short- and intermediate-term exposure and risk.* Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value was calculated and there is no expectation of short- or intermediate-term risk.

iv. *Cancer exposure and risk.* Carcinogenicity risk assessments are required for a food-use pesticide if a toxicological study has indicated the possibility of cancer occurring as a result of an exposure (usually chronic).

The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

2. *From drinking water.* A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxicological endpoint, drinking water consumption, and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments.

i. *Acute exposure and risk.* No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established, and there is no expectation of acute risk.

ii. *Chronic exposure and risk.* Of all of the crops for which fosetyl-Al is registered, its use on turf produces the highest estimated environmental concentrations (EECs). As a result, the EECs generated from use on turf are the ones used for comparison with the DWLOCs in this risk assessment. For surface water, the Agency's Generic Estimated Environmental Concentration (GENEEC) model has provided a 56-day EEC of 9 µg/L. As no data were available on the aerobic aquatic metabolism of fosetyl-Al (a GENEEC input), the aerobic soil metabolism half-life of 3 hours (0.125 day) was multiplied by a factor of 2 to use as a GENEEC input. Multiplying by 2 to account for a change in medium (aerobic soil to aerobic aquatic conditions) is a standard practice for surface water modeling in the absence of data when the pesticide is stable to hydrolysis. For ground water, the Screening Concentration in Ground Water (SCI-GROW2) model-derived concentration of 4.6×10^{-3} micrograms per liter (µg/L) can be used for chronic risk assessment. For this risk assessment, the surface water EEC of 9 µg/L was compared with the DWLOCs to determine whether or not fosetyl-Al residues in drinking water result in an unacceptable dietary exposure. The surface water EEC was chosen because it exceeds the ground water EEC.

Fosetyl-Al is not expected to reach ground or surface water under most conditions. Even if it reaches surface water, it is expected to degrade rapidly. In ground water, it could persist because of potentially low microbial content. Biodegradation is the only apparent means of fosetyl-Al dissipation. Fosetyl-Al rapidly degrades in both aerobic and anaerobic soil to degradates that are widespread in nature (Al^{+3}, phosphate, and ethanol). Under almost all uses, the degradation is expected to be so rapid that fosetyl-Al will not have time to move in soil, despite being highly soluble in water (120 µg/L) and potentially mobile in soil. As it is stable to abiotic hydrolysis, fosetyl-Al could persist in pristine receiving waters with low microbial content.

Parent fosetyl-Al is the only compound included in EFED's assessment. At this time the Agency has no reason to believe that there are toxicologically significant degradates to be included in the risk assessment.

The modeling results lead to the following maximum water exposures and the following DWLOCs for the U.S. population and three appropriate subgroups:

1. For the U.S. population the maximum water exposure would be 2.42 mg/kg/day and the DWLOC would be 85,000 µg/L.

2. For the females (13+) subgroup, the maximum water exposure would be 2.40 mg/kg/day and the DWLOC would be 72,000 µg/L.

3. For the infants/children subgroup, the maximum water exposure would be 2.34 mg/kg/day and the DWLOC would be 23,000 µg/L.

4. For the non-Hispanic other than Black or White subgroup, the maximum water exposure would be 2.40 mg/kg/day and the DWLOC would be 84,000 µg/L.

The Agency therefore concludes that the residues in water, as estimated by the models, are not a significant contribution to aggregate exposure.

iii. *Short- and intermediate-term toxicity.* Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value is calculable and therefore no risk analysis can be performed.

iv. *Cancer exposure and risk.* The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

3. *From non-dietary exposure.* Fosetyl-Al is currently registered for use on the following residential non-food sites: lawn, turf, and ornamental plants.

i. *Acute exposure and risk.* No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD could not be calculated, and there is no expectation of acute risk.

ii. *Chronic exposure and risk.* Long-term (chronic) exposure is not expected for residential uses. In addition, the Agency does not consider incidental hand-to-mouth ingestion by toddlers a concern since chronic exposure via this route is highly unlikely and because fosetyl-Al has a relatively short half-life.

iii. *Short- and intermediate-term exposure and risk.* Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value is calculable and therefore no risk analysis can be performed.

iv. *Cancer exposure and risk.* The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fosetyl-Al has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fosetyl-Al does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fosetyl-Al has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

D. Aggregate Risks and Determination of Safety for the U.S. Population

1. *Acute risk.* No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not

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established, and their is no expectation of acute risk.

2. *Chronic risk.* Chronic risk estimates associated with exposure to fosetyl-Al in food and water do not exceed HED's level of concern. The DEEM chronic exposure analysis showed that for the U.S. general population, 3% of the CPAD is occupied by dietary (food) exposure. For the most highly exposed subgroup, children 1–6 years old, 6% of the CPAD is occupied by dietary (food) exposure. The estimated average concentrations of fosetyl-Al in surface and ground water are less than HED's DWLOC for fosetyl-Al as a contribution to chronic aggregate exposure. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fosetyl-Al residues.

3. *Short-and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value is calculable and therefore no risk analysis can be performed.

4. *Aggregate cancer risk for the U.S. population.* The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fosetyl-Al residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.* The Agency has determined that the FQPA factor should be 1x because:

1. The toxicology data base is complete.

2. There is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity studies.

3. A developmental neurotoxicity study is not required.

4. Food exposure estimates are expected to be unrefined (that is, tolerance level residues and 100% crop treated assumed) and will likely result in an overestimate of the actual dietary exposure.

5. The Agency models used for ground and surface drinking water exposure estimates produce upper-bound concentration estimates.

6. The current residential use pattern is not of concern since no potential hazard was identified for short- or intermediate-term exposure (no risk assessment is required) and long-term exposure is not expected with this use. As a result of the 1x FQPA factor, the CPAD is the same as the RfD.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Acute risk.* No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established, and there is no expectation of acute risk.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fosetyl-Al from food will utilize up to 6 percent of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fosetyl-Al in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- and intermediate-term risk.* Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value is calculable and therefore no risk analysis can be performed.

5. *Aggregate cancer risk for U.S. population.* The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, this risk assessment is not appropriate.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fosetyl-Al residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood. The residue of concern is parent fosetyl-Al. This conclusion was based on the results of metabolism studies performed on the following commodities: pineapples, grape vines, tomatoes , citrus, and apples. Residues of fosetyl-Al are not systemic; therefore, residues will be on the surface of plants. There are no feed items associated with preexisting tolerances or with bananas, grapes, or macadamia nuts; therefore, the nature of the residue in animals is not germane to this action. Section 40 CFR 180.6(a)(3) applies to this action. That is, it is not possible to establish with certainty whether finite residues will be incurred in animal commodities, but there is no reasonable expectation of finite residues.

B. Analytical Enforcement Methodology

Adequate methodology is available for enforcement of the proposed tolerances in/on bananas, blueberries, grapes, and macadamia nuts.

The gas chromatography/flame photometric detection, phosphorous-specific (GC/FPD-P) method is adequate to enforce the proposed tolerances on bananas and grapes. This method is an adaptation of the tolerance enforcement method for fosetyl-Al on pineapples (Pesticide Analytical Method (PAM) II, Food and Drug Administration, June 1986). The limit of quantitation (LOQ) and limit of detection (LOD) for the method are 0.10 and 0.05 ppm, respectively.

Method SOP–90113, dated 6/8/90 (a modified version of Rhone-Poulenc method 163) is used for the blueberry analysis. The method has been approved for publication in PAM II.

A modification of the GC/FPD-P method is adequate to enforce the proposed tolerance on macadamia nuts. This method is similar to the banana method in the extraction, derivitization, separation, and detection steps. Because of the macadamia nut matrix, more-involved cleanup steps are necessary.

Given the similarity of the macadamia nut method, an Agency pesticide method validation (PMV) will not be required. The LOQ and LOD for the method were not specified.

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

1. *Bananas.* With bananas, seven field trials were conducted in Central and South America, from Mexico to Ecuador. These locations represent the climatic regions where bananas are grown for export to the United States. Over 96% of the bananas imported into the U.S. come from these countries. Bananas received two types of treatment: foliar and tree injection. In addition, bagged and unbagged samples were treated. The unbagged samples receiving foliar applications were the only ones with appreciable residues. Fourteen samples were treated at the 0.9x rate. Ten of these samples had quantifiable residues. The average of these ten samples was 0.58 ppm. Residues ranged up to 1.99 ppm. Four samples were treated at the 1.8x rate. The mean for these samples was 0.69 ppm. Residues ranged from 0.38 to 1.22 ppm. Of the unbagged samples receiving injection treatments (0.9x rate, 18 samples total), all samples had residue levels at or below the LOQ of 0.10 ppm. Four unbagged samples received a 1.8x injection treatment. Residue levels were below the LOQ for all four of these samples, as well. Of the 28 bagged samples, 26 had residue levels which were below the LOQ. The other 2 had residues which were slightly over the LOQ (0.11 and 0.13 ppm). A residue decline study was also performed. Mean residues (2 samples at each PHI) in the foliar-treated unbagged samples declined as follows: 0-day pre-harvest interval (PHI), 0.35 ppm; 3-day PHI, 0.22 ppm; 7-day PHI, 0.27 ppm; and 14-day PHI, <0.10 ppm. The Agency has a high level of confidence in the data.

2. *Blueberries.* Sufficient data to support a permanent tolerance for residues of fosetyl-Al in/on blueberries have not yet been submitted by the registrant. However, one study that was performed on blueberries in Michigan was submitted. This study showed a maximum residue of 32.7 ppm of fosetyl-Al in blueberries 30 days after an application of fosetyl-Al at the maximum label rate of 4 lb. active ingredient per acre and supports the time-limited tolerance of 40 ppm in/on blueberies. Two additional acceptable magnitude of residue studies must be submitted before the time-limited tolerance can be converted to a permanant tolerance.

3. *Grapes.* Four field trials were conducted in regions east of the Rocky Mountains, 2 to 3 specimens being collected from each plot. Five additional field trials were conducted west of the Rocky Mountains, three specimens being collected from each of these plots. Although the registration is for regions east of the Rocky Mountains, the tolerance was set at a level (10 ppm) that took into account the higher values which were obtained in the field trials that were performed west of the Rocky Mountains. The petitioner proposed a tolerance of 10 ppm because in extreme drought conditions residues will be higher. Although drought conditions are rare east of the Rocky Mountains, they are still possible. Among the 10 samples from the eastern field trials, one had a residue level below the LOQ of 0.50 ppm and the others had residues ranging from 0.52 to 2.45 ppm. The mean residue levels of these samples was 1.2 ppm. Among the 15 samples from the western field trials, residues ranged from 1.7 to 18 ppm. The Agency has a high level of confidence in the submitted field trial data.

4. *Macadamia nuts.* Despite the fact that only 2 field trials were performed and storage stability was poor, fosetyl-Al is not highly systemic and macadamia nuts have hard, impervious shells. As a result, no residues were expected to be detected, and none were found. Although limited residue data were provided, the Agency is confident that residues will not exceed a 0.20 ppm tolerance. The registrant initially requested that this tolerance be set at 0.3 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican international residue limits established for fosetyl-Al; therefore, the magnitude of the residue is not of concern for this action.

E. Rotational Crop Restrictions

None of the crops affected by this rule is grown in rotation with other crops. Therefore, rotational crop restrictions are unnecessary.

IV. Conclusion

Therefore, tolerances are established for residues of fosetyl-Al in or on bananas at 3.0 ppm, blueberries at 40 ppm, grapes at 10 ppm, and macadamia nuts at 0.20 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 7, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator

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determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300892] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 30, 1999.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

2. By revising § 180.415 to read as follows:

§ 180.415 Aluminum tris (O-ethylphosphonate); tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Avocados	25	None
Bananas	3.0	None
Blueberries	40	12/31/00
Brassica (cole) leafy vegetables group.	60	None
Caneberries	0.1	None
Citrus	0.5	None
Cucurbit vegetables group.	15	None
Ginseng root, fresh.	0.1	None
Hops, dried	45	None
Leafy vegetables (except brassica vegetables) group.	100	None
Macadamia nuts.	0.20	None
Pineapple	0.1	None
Pineapple fodder.	0.1	None
Pineapple forage.	0.1	None
Pome fruit	10	None
Onions, dry bulb.	0.5	None
Strawberries	75	None
Tomatoes	3	None

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the fungicide aluminum tris (*O*-ethylphosphonate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus	0.1
Grapes	10

(d) *Indirect or inadvertent residues.* *[Reserved]*

[FR Doc. 99–17351 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–F–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–300]

Organization and Delegation of Powers and Duties; Delegations to the Commandant, United States Coast Guard and Administrator, Maritime Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation delegates to the Commandant, United States Coast Guard, authority to implement new ownership requirements for eligibility of vessels measuring less than 100 feet to receive a fishery endorsement to operate in certain fisheries. The Secretary also delegates the authority to assess penalties for fishery endorsement violations to the Commandant, United States Coast Guard. The authority to issue and implement regulations for vessels 100 feet and greater is delegated to the Administrator, Maritime Administration. This rule adds two new paragraphs to 49 CFR 1.46 and 1.66 to reflect these delegations of authority.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, SW., Washington, DC 20590; or Ms. Blane Workie, Office of the General Counsel, C–50, (202) 366–9314, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The American Fisheries Act (Public Law 105–277) ("the Act") amends current law regarding the ownership requirements for eligibility of a vessel to receive a fishery endorsement to operate in certain fisheries and under certain terms and conditions. The Secretary delegates to the Coast Guard the authority to issue and administer regulations implementing the new requirements for vessels measuring less than 100 feet. Regulations affecting vessels measuring 100 feet and greater will be developed and administered by the Maritime Administration. The Act requires the publication of these regulations by April 1, 2000.

The Act also outlines procedures for implementation and penalties for non-compliance. The Secretary delegates to the Coast Guard the authority to assess penalties for willful noncompliance with the new requirements under the American Fisheries Act because the Coast Guard has current authority, resources, and expertise to assess penalties.

The delegations should be made to the Commandant and to the Maritime Administrator as provided in this amendment to 49 CFR part 1 because the Coast Guard and the Maritime Administration have the requisite expertise, capability, and responsibility for the duties prescribed in the American Fisheries Act. Indeed, the Coast Guard is currently administering documentation requirements for vessels under 100 feet and has resources in place to effectively carry out the American Fisheries Act. Additionally, the Maritime Administration has a long history of administering certain maritime laws that require detailed scrutiny of ownership and control issues as they relate to U.S. citizenship requirements. The Maritime Administration's oversight of the new requirements for vessels 100 feet and greater is a natural extension of its current administration of citizenship enforcement.

We publish this rule as a final rule, effective on the date of publication. Since this amendment relates to departmental management, organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the

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amendment expedites the ability of the Coast Guard and the Maritime Administration to ensure that vessels meet new eligibility requirements for fishery endorsements, the Secretary finds good cause under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, amend part 1 of title 49, Code of Federal Regulations, to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Amend section 1.46, by adding new paragraph (sss), to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(sss) Carry out the functions and exercise the authorities vested in the Secretary by sections 203(b), 203(d), and 213(g) of division c, title II, Public Law 105–277, which relate to ownership and control requirements for vessel fishery endorsements for vessels measuring less than 100 feet; and by 203(f) of division c, title II, Public Law 105–277.

3. Amend section 1.66, by adding new paragraph (dd), to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(dd) Carry out the functions and exercise the authorities vested in the Secretary by sections 202(b), 203(b), 203(g), and 213(g) of division c, title II, Public Law 105–277, which relate to ownership and control requirements for vessel fishery endorsements for vessels measuring 100 feet and greater.

Issued in Washington, DC this 28th day of June, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–17306 Filed 7–7–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 177 and 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases (Chlorine)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petition for reconsideration; limited stay of implementation date; correction; request for comments.

SUMMARY: On May 24, 1999, RSPA published a final rule to revise regulations applicable to the transportation and unloading of liquefied compressed gases. The revisions included new inspection, maintenance, and testing requirements for cargo tank discharge systems; revised attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia; and revised requirements for cargo tank emergency discharge control equipment to provide a clear performance standard for passive emergency discharge control equipment that shuts down unloading operations without human intervention. The revised requirements also provide for a remote capability for certain cargo tanks to enable a person attending the unloading operation to shut off the flow of product when away from the motor vehicle during delivery. This document responds to a petition for reconsideration, delays implementation of one provision of the final rule as it applies to chlorine unloading operations, and corrects an instruction in the final rule.

DATES: *Effective Dates:* This final rule is effective July 8, 1999. The effective date for the final rule published on May 24, 1999, remains July 1, 1999. *Implementation Date:* The implementation date for § 177.840(t) as it applies to chlorine cargo tanks is delayed until January 1, 2000.

Comment Date: Submit comments on or before September 7, 1999.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Identify the docket number RSPA–97–2718 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System on the Internet at "http://dms.dot.gov" or by fax to (202) 366–3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, you can review comments by accessing the docket management system through the DOT home page (http://dms.dot.gov).

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, (202) 366–8553; or Nancy Machado, Office of the Chief Counsel, Research and Special Programs Administration, (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

On May 24, 1999, the Research and Special Programs Administration (RSPA; "we") published a final rule under Docket No. RSPA–97–2718 (HM–225A) (64 FR 28030). The final rule revised regulations applicable to the transportation and unloading of liquefied compressed gases. The revisions include new inspection, maintenance, and testing requirements for cargo tank discharge systems, including delivery hose assemblies, and revised unloading attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia to take account of certain unique operating characteristics.

Further, the final rule revised requirements for cargo tank emergency discharge control equipment to provide a clear performance standard for passive emergency discharge control equipment that shuts down unloading operations without human intervention. The revised requirements also provide for a remote capability for certain cargo tanks to enable a person attending the unloading operation to shut off the flow of product when unloading duties require the person to be away from the motor vehicle during delivery.

The final rule allows two-years for development and testing of emergency discharge control technology. After two years, newly manufactured MC 331 cargo tank motor vehicles must be equipped with emergency discharge control equipment that conforms to the performance standards; MC 330, MC 331 and certain nonspecification cargo tank motor vehicles already in service must be retrofitted at their first scheduled pressure test after the two-year period. These revisions are intended to reduce the risk of an unintentional release of a liquefied compressed gas during unloading, assure prompt detection and control of an unintentional release, and make the regulatory requirements easier to understand and comply with.

II. Negotiated Rulemaking Process

The May 24, 1999 final rule was developed through a negotiated rulemaking. In a negotiated rulemaking, representatives of interests affected by a regulation meet as an advisory committee to discuss the safety issues and to identify potential solutions. The group attempts to reach consensus on a proposed solution and prepares a recommendation for a notice of proposed rulemaking to be made by the agency. This process is intended to give parties the opportunity to find creative solutions, improve the information data base for decisions, produce more acceptable rules, enhance compliance, and reduce the likelihood of court challenges.

For this rulemaking, in addition to the Department of Transportation (DOT), the negotiated rulemaking committee consisted of persons who represent the interests affected by this rulemaking, including businesses that transport and deliver liquefied petroleum gases, anhydrous ammonia and other liquefied compressed gases; manufacturers and operators of cargo tanks and vehicle components; and state and local public safety and emergency response agencies.

From the beginning, our goal has been an open and inclusive process that would enable anyone with an interest in the rulemaking to provide information and to comment on proposals. The document announcing our intention to establish a negotiated rulemaking committee (63 FR 30572; June 4, 1998) listed those interests that we believed should be represented on the Committee and invited commenters to identify other interests that should also be represented. The document identified the Compressed Gas Association and National Tank Truck Carriers as organizations that should be included on the Committee to represent the interests of manufacturers and transporters of liquefied compressed gases other than liquefied petroleum gas and anhydrous ammonia. We received no comments suggesting that additional representation should be considered.

Once the Committee was established, interested parties who were not selected for membership were invited to attend Committee meetings, which were open to the public, and to caucus with Committee members representing their interest on the Committee. Interested parties could also address the Committee, submit written comments on issues of concern, and participate in the informal work groups that were established by the Committee to address certain technical issues and draft regulatory text. Representatives of the Chlorine Institute participated in several meetings of the negotiated rulemaking committee. They were provided with draft rulemaking documents and encouraged to provide us with comments and suggestions to address any concerns. Their suggestion to incorporate the Chlorine Institute's Pamphlet 57 entitled "Emergency Shut-off Systems for Bulk Transfer of Chlorine" into the HMR was adopted, as were several suggestions for changes to the draft to reflect the unique nature of chlorine unloading operations. These suggestions were part of the notice of proposed rulemaking (NPRM) published on March 22, 1999 (64 FR 13856).

The Chlorine Institute submitted formal comments on the NPRM on April 21, 1999. On April 28, 1999, we met informally with representatives of the Chlorine Institute to clarify their comments and to discuss alternatives for addressing their concerns. All but one of the comments submitted by the Chlorine Institute were accommodated in the May 24 final rule.

III. Petition for Reconsideration

On June 17, 1999, the Chlorine Institute filed a petition for reconsideration and motion for partial stay of the final rule. (The petition for reconsideration and motion for partial stay of the final rule is reprinted as Appendix A to this final rule. The attachments to the Chlorine Institute's petition can be reviewed by accessing the Docket Management System through the DOT home page (*http://dms.dot.gov*) or in person at the Dockets Management System at the address indicated above.) The Chlorine Institute seeks reconsideration of two provisions of the May 24, 1999 final rule as they apply to cargo tanks used to transport and deliver chlorine. Specifically, the Chlorine Institute requests reconsideration of the requirement in § 173.315(n)(2) for emergency discharge control equipment that operates without human intervention to be certified by a Design Certifying Engineer (DCE). In addition, the Chlorine Institute seeks reconsideration and a stay of the requirement in § 177.840(t) that, until a chlorine cargo tank is equipped with emergency discharge control equipment that conforms to requirements in the final rule, the qualified person attending the unloading operation must remain within arm's reach of a means to stop the flow of product.

IV. Petition Partially Denied

In § 173.315(n), the May 24, 1999 final rule established emergency discharge control system requirements for cargo tanks in liquefied compressed gas service. Cargo tanks transporting materials that are poisonous by inhalation, including chlorine, are required to be equipped with a means to automatically stop product flow without human intervention within 20 seconds of an unintentional release caused by a complete delivery hose separation, also referred to as a passive shut-down capability. This section also makes clear that the design for a passive shut-down capability, including systems installed prior to July 1, 2001, must be certified by a DCE. The certification must consider any specifications of the original component manufacturer and must explain how the passive shut-down capability operates. It must also outline the parameters (e.g., temperature, pressure, types of product) within which the passive shut-down capability is designed to operate. All components of the discharge system that are integral to the design must be included in the certification.

The Chlorine Institute asserts that the May 24, 1999 final rule imposes a "new, unnecessary and wholly unjustified set of additional regulatory requirements" for cargo tanks used to transport and deliver chlorine. The Chlorine Institute states that, because chlorine is unloaded by pressure rather than by pump, the emergency discharge control system on chlorine cargo tanks, of which an excess flow valve is a key component, has operated successfully for 40 years. In light of its "flawless" unloading experience, the Chlorine Institute states that there is no possible benefit to requiring the emergency discharge control system on a chlorine cargo tank to be certified by a DCE. The Chlorine Institute also notes that the excess flow valve used on chlorine cargo tanks was extensively tested in the 1960s before it was put into widespread service. According to the Chlorine Institute, test results (included with the petition as an appendix) indicate that there will always be sufficient internal pressure in the cargo tank to assure that the excess flow valve will operate. The Chlorine Institute continues, "Given the fact that the excess flow valve was designed many years ago, there is considerable doubt that the valve itself could or

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would be certified by a 'Design Certifying Engineer' who would have had no part in its design. While the design certification requirement may make sense in some circumstances, it plainly makes no sense in the chlorine situation, and would add nothing to the safety of chlorine unloading."

The Chlorine Institute asserts that excess flow valves have functioned successfully in chlorine cargo tanks since the 1960s and that tests conducted before they were placed in widespread service demonstrate that an excess flow valve will close at a pressure well below the pressure differential that would be experienced in a complete hose separation during unloading. However, the requirement in the May 24 final rule is for certification of the emergency discharge control system, of which the excess flow valve is only one component. System certification was a key issue in the HM–225A negotiated rulemaking. As individual component manufacturers noted, an excess flow valve is only required to close if its flow rating, as established by the manufacturer, is exceeded. Manufacturers of excess flow valves who participated in the negotiated rulemaking advised that, in addition to restrictions in downstream piping caused by pumps, other variables may restrict the circumstances under which an excess flow valve will operate. Such variables include other restrictions in the discharge system (e.g., branching, elbows, reductions in pipe diameter), low operating pressures, or a partially closed valve downstream from the excess flow valve, all of which restrict the rate of flow through the excess flow valve. For this reason, the final rule included the requirement that the entire emergency discharge control system rather than individual components of the system be certified to meet the new performance standard. All components of the discharge system that are integral to the design must be included in the certification. Further, the certification must specify the parameters (e.g., temperature, pressure, types of product) within which the system is designed to operate.

Because of the requirement that the entire emergency discharge control system rather than individual components of that system be certified, the May 24 final rule recognizes that component manufacturers may be reluctant to provide a performance certification for a system of which their component is only a part. Thus, the final rule requires that the certification be provided by a DCE, who may be employed by a cargo tank manufacturer, a component manufacturer, a cargo tank owner or operator, or a third party. The DCE need not have had any part in the actual design of the emergency discharge control system being certified. Rather, the DCE is expected to review design specifications and test results and to conduct any additional tests deemed necessary to verify that the system operates as designed within the parameters specified for its operation. The design for each type of emergency discharge control system is certified once by a DCE; provided the system is installed according to the certification, the single DCE certification serves for all cargo tanks equipped with that type of system.

The Chlorine Institute proposes that we remove cargo tanks unloading chlorine by pressurization from the May 24 final rule requirements. This part of the petition for reconsideration is denied. We recognize that unintentional releases of liquefied compressed gases as a result of complete hose separations during unloading are infrequent occurrences. However, an unintentional release of a gas that is poisonous by inhalation, such as chlorine, which is a PIH Hazard Zone B material, may have very serious consequences if it is not controlled quickly. The requirement in the May 24 final rule for a passive shut-down capability on chlorine cargo tanks is designed to address potential risks to public safety associated with low-probability/high consequence events. The Chlorine Institute has not provided sufficient information to justify its request for an exception from this requirement.

As an alternative, the Chlorine Institute suggests that RSPA clarify that, "by virtue of [its] 40 years of flawless operation" and based on the results of tests conducted on railroad tank car systems in the 1960s, the chlorine excess flow valve is certified within the meaning of the May 24 final rule. This part of the petition for reconsideration is also denied.

We do not believe that DOT certification of components or systems installed on cargo tanks is either appropriate or necessary. The principle of cargo tank design certification by a DCE is well-established in the HMR, and this method for independent certification of compliance with the cargo tank regulations works well.

Further, certification of the excess flow valve would not meet the requirements for certification established in the May 24 final rule. First, the rule requires certification of emergency discharge control systems, not individual components of those systems. Second, the certification must include a description of each emergency discharge control system and the parameters within which the system is designed to operate. Neither of these requirements is satisfied by the Chlorine Institute's proposal.

V. Petition Partially Granted and Request for Comments

Section 177.840(t) of the May 24, 1999 final rule requires that, until a cargo tank in chlorine service is equipped with emergency discharge control equipment in conformance with the final rule, the qualified person attending the unloading operation must remain within arm's reach of a means to stop the flow of product. The Chlorine Institute notes that chlorine is unloaded from a valve located on top of the cargo tank. To be within arm's reach of a means to shut down unloading, a person must "perch precariously atop than [sic] tank for the several hours necessary to complete the unloading process."

The May 24 final rule requires chlorine being unloaded from cargo tanks after July 1, 2001 to comply with procedures set forth in section 3 of the Chlorine Institute's Pamphlet 57. (This provision does not apply to unloading of cargo tanks that are equipped with emergency discharge control systems certified in accordance with § 173.315(n) of the May 24 final rule.) Facilities equipped for unloading in conformance with Pamphlet 57 have a remote location from which the unloading operation can be shut down in the event of an unintentional release or other emergency. For these facilities, the requirement to be within arm's reach of a means to shut down unloading is met when the person attending the unloading operation is within arm's reach of the remote shut-down location. However, not all facilities are equipped for unloading in conformance with Pamphlet 57.

We agree with the Chlorine Institute that additional time is necessary to consider alternatives to the requirement in § 177.840(t) that the person attending a chlorine cargo tank be within arm's reach of a means to shut down the unloading operation. Therefore, the petition for a stay of the implementation date of this provision of the May 24 final rule is granted. The implementation date for § 177.840(t), as it applies to chlorine unloading at facilities that do not conform to Pamphlet 57, is delayed to January 1, 2000. During that time, we will consider viable alternatives that may be proposed by interested parties for monitoring the unloading of chlorine from cargo tanks that are not equipped with an emergency discharge control system certified in conformance with § 173.315(n) of the May 24 final rule.

In addition, we are requesting comments on issues raised in the Chlorine Institute's petition for reconsideration. Specifically, we wish to know:

(1) How many cargo tanks are affected by the transition provision in § 177.840(t) as it applies to chlorine unloading?

(2) How many facilities at which unloading of cargo tanks is performed by carrier personnel are not yet equipped for unloading in conformance with Pamphlet 57?

(3) How many unloading operations are conducted at such facilities each year?

(4) Are there other ways to conduct chlorine unloading operations that will achieve an equivalent level of safety as required by § 177.840(t)?

(5) Are all cargo tanks engaged in transporting chlorine fitted with the same piping configuration, or are there significant differences?

(6) What other issues should we consider in resolving this issue?

VI. Correction

In the May 24, 1999 final rule, instruction 19 incorrectly redesignated several paragraphs in § 180.407. This redesignation is corrected in this final rule.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

RSPA did not prepare a regulatory evaluation for this final rule addressing the delay in implementation of the transition provision affecting monitoring of chlorine unloading operations. However, a final regulatory evaluation was prepared in support of the final rule published on May 24, 1999. The final regulatory evaluation is available for review in the public docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under item (ii) above and preempts state, local, or Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. Thus, RSPA lacks discretion in this area, and preparation of a Federalism assessment is not warranted. The effective date of Federal preemption for these requirements is October 6, 1999.

C. Executive Order 13084

This final rule has not been analyzed in accordance with the principles and criteria in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because revised rules and regulations in this final rule are not expected to significantly or uniquely affect communities of Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. RSPA conducted this assessment for the final rule published May 24, 1999. The delay in implementation for the transition provision on monitoring unloading operations from chlorine cargo tanks does not change the conclusions reached in that assessment. Thus, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

This final rule imposes no new information collection burdens. The requirements for information collection included in the May 24, 1999 final rule are approved by the Office of Management and Budget under OMB control number 2137–0595. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

F. Regulotion Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN containing in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This final rule does not mandate business process changes or require modifications to computer systems. Because this rule apparently does not affect organizations' ability to respond

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to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements.

I. Environmental Assessment

RSPA did not perform an environmental assessment of this final rule. RSPA did conduct an environmental assessment for the final rule published May 24, 1999. The delay in implementation for the transition provision on monitoring unloading operations from chlorine cargo tanks does not change the conclusions reached in that assessment.

List of Subjects

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR parts 177 and 180 as follows:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

1. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53

2. In § 177.840, in paragraph (t) the last sentence is revised to read as follows:

§ 177.840 Class 2 (gases) materials.

* * * * *

(t) * * * For chlorine cargo tanks unloaded after December 31, 1999, the qualified person must remain within arm's reach of a means to stop the flow of product except for short periods when it is necessary to activate controls or monitor the receiving container.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

3. In rule document 99–12860, beginning on page 28030 in the issue of Monday, May 24, 1999, make the following correction:

§ 180.407 [Corrected]

On page 28051, column 2, in amendatory instruction 19., beginning in the second line, correct "existing paragraphs (h)(4) through (h)(8) are redesignated as paragraphs (h)(5) through (h)(9), respectively" to read "existing paragraph (h)(4) is redesignated as paragraph (h)(5)".

Issued in Washington, DC on June 29, 1999, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Administrator.

Appendix A to the Preamble

Expedited Consideration Requested

Before the United States Department of Transportation, Research and Special Programs Administration

Docket No. RSPA–97–2718 (HM–225A)

Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases

Motion for Partial Stay of the Final Rule and Petition of the Chlorine Institute, Inc. for Reconsideration and Clarification of the Final Rule

I. Introduction

Pursuant to the provisions of 49 CFR § 106.35, the Chlorine Institute, Inc., hereby files this Motion for Partial Stay and Petition for Reconsideration and Clarification of the final rule issued in this docket.

The final rule issued on May 24, 1999, (64 F.R. 28030) creates a new, unnecessary, and wholly unjustified set of additional regulatory requirements for MC 330 and MC 331 cargo tank motor vehicles when unloading chlorine. These new regulatory requirements are unsupported by the record of this docket, and ignore 40 years of flawless chlorine unloading experience. The Chlorine Institute, Inc. submits that these requirements should either be withdrawn, or so modified as to remove their more onerous provisions.

II. Background of the Rulemaking

Section 178.337–11(a)(1)(i) of Title 40 CFR provides that with respect to cargo tank motor vehicles used to transport chlorine, as well as other compressed gases:

Each internal self-closing stop valve and excess flow valve must automatically close if any of its attached hoses are sheared off or if any attached hoses or piping are separated.

In it final rule in Docket HM–225 issued August 18, 1997, RSPA noted that "efforts undertaken by the affected industries (not including the chlorine industry) to achieve increased efficiency in the unloading of hazardous materials by the installation of pumps on specification MC 330 and MC 331 cargo tank motor vehicles prevent emergency discharge control systems from operating properly under all temperatures and pressures routinely encountered during normal conditions or transportation." (62 F.R. 44039) In the same document, RSPA noted that the problems encountered by MC 330 and MC 331 cargo tank motor vehicles using pumps to unload did not exist when pressure, rather than pumps, were employed. Thus, RSPA held:

Unloading systems that employ pressure rather than a pump to unload such as a gas compressor mounted on specification MC 330 and MC 331 cargo tank motor vehicles should not be affected by the problem identified with unloading of liquefied compressed gases by use of pumps, provided the operating pressure of the compressor, the flow rate of product through valves, piping, and hose, and the setting of the emergency feature conform to requirements in § 178.337–11(a)(1)(v). Vehicles unloaded by pressure and conforming to the requirements of § 178.337–11(a)(1) are not subject to the temporary regulations specified in § 171.5. (62 F.R. 44039)

Throughout the HM–225A rulemaking procedures that followed the HM–225 final rule, there was never any doubt but that chlorine is unloaded under pressure within the meaning of the HM–225 final rule. Further, there never has been any question but that the excess flow valves used on MC 330 and MC 331 cargo tank motor vehicles transporting chlorine (CI Drawings 101 and 104) comply fully with § 178.337–11(a)(1)(v). In addition, the Chlorine Institute is unaware of, and the record herein fails to disclose, a single incident in the 40 years these valves have been in use in chlorine service where such excess flow valve has failed to operate properly.

III. The Final Rule

While the HM–225 and HM–225A rulemaking procedures focused almost entirely on the failures of pump unloading systems involving liquefied petroleum gas and anhydrous ammonia, the final rule places regulatory requirements on pressure unloading chlorine cargo tank motor vehicles as well. It is not surprising therefore that the final rule is ill-considered and erroneous as it applies to chlorine unloading.

The final rule impacts chlorine motor vehicle unloading in two fundamental respects. First, the new section 173.351(n)(2) requires that a "Design Certifying Engineer" certify that the excess flow valve so long and so successfully used on MC 330 and MC 331 cargo tank motor vehicles is, in fact properly designed and will operate within the necessary parameters to satisfy the rule.

Secondly, section 177.840(t) requires that until the chlorine cargo tank transfer system is certified, a qualified person must be within arms length of the chlorine cargo tank's valve located on the top of the cargo tank. Thus, the qualified person must perch atop the tank to meet the requirement. It must be noted, of course, this requirement does not apply when the tank is being unloaded after the tank has been separated from the motive power unit and that unit has left the facility.

With respect to the design certification requirement for chlorine cargo tanks, the final rule is wholly unwarranted. With respect to the arms length requirement, it is not only unwarranted, it creates an unsafe condition while only partially attaining its ill-considered objective.

IV. Reasons for Reconsidering the Final Rule

As noted above, the problems that gave rise to the HM–225 rules, and ultimately to this docket, have nothing to do with the unloading of chlorine. Chlorine, unloaded by pressure rather than by pump, has not been released during the unloading process. The excess flow valves have operated successfully for 40 years, and there is no allegation that chlorine cargo tank vehicles equipped with those valves do not comply fully with § 178.336–11(a)(1)(i).

What possible benefit, therefore, follows from a certification by a "Design Certifying Engineer" that the valve will properly operate when it has properly operated for 40 years? The answer, of course, is none.

In addition to its flawless operation, the excess flow valve used on chlorine cargo tank motor vehicles was extensively tested in the 1960's before it was put into widespread service. As the materials attached hereto as Appendix A demonstrate, the excess flow valve, peer CI Drawings 101 and 104 will close at a pressure of 9 psig, a value well below the pressure differential that would be experienced in a complete hose separation during unloading. Since, as previously noted, chlorine is unloaded by pressurizing the tank, there will always be sufficient internal pressure to ensure that the excess flow valve will operate as required.

Given the fact that the excess flow valve was designed many years ago, there is considerable doubt that the valve itself could or would be certified by a "Design Engineer" who would have had no part of its design. While the design certification requirement may make sense in some circumstances, it plainly makes no sense in this chlorine situation, and would add nothing to the safety of chlorine unloading.

The arms length requirement discussed above suffers from two major flaws. First, the majority of chlorine MC 330 and MC 331 tanks are unloaded after the motive power has been detached and has left the receiving facility. Thus, under sections 171.8, 177.834, and 178.337–11, the detached tank is no longer a cargo tank within the meaning of the Hazardous Materials Regulations, and is no longer subject to the provisions of the final rule.

Of greater importance is the fact that, unlike propane and ammonia tanks, the chlorine tank is unloaded from a valve located atop the tank. Accordingly, for a person to be within arms length of the valve during unloading he or she must perch precariously atop the tank for the several hours necessary to complete the unloading process. This requirement reflects the fact that the chlorine tank was never really considered during the rulemaking process, and appears in the final rule unexpectedly and inappropriately. Further, since the arms length provisions of the final rule become effective on July 1, 1999, a serious safety issue is present.

In view of the safety concerns raised with respect to chlorine unloading, the final rule should be stayed insofar as it would require persons to stand atop chlorine MC 330 or MC 331 cargo tank motor vehicles during chlorine unloading.

V. Proposed Solution

The Chlorine Institute participated in this rulemaking in only a minor way for the reasons described above. The Institute has no desire to complicate this matter to any degree greater than is necessary to overcome the obvious and serious problems discussed herein. Thus, the Institute proposed to resolve the problems created by the final rule in the simplest and least disruptive way possible.

The genesis of the problems raised by the final rule is the requirement that the chlorine excess flow valve be certified by a "Design Certifying Engineer." A clarification of the final rule by RSPA that acknowledges that the chlorine excess flow valve, by virtue of the materials attached in Appendix A, and by virtue of the 40 years of flawless operation, has been certified within the meaning of the rule would eliminate all problems associated with implementation of the rule.[1]

To be sure, such a clarification would not deal with the obvious problem that the rules should never have addressed pressurized unloading in the first place. But, at least it would eliminate the serious practical problems facing the industry as a result of the ill-advised inclusion of the chlorine in the rulemaking process, and would remove the requirement for a qualified person to perch atop a cargo tank for the minimum period of three necessary to unload a chlorine cargo tank.

VI. Conclusion

In view of the foregoing, the Institute submits that the final rule be modified so as to remove cargo tanks and cargo tank motor vehicles unloading chlorine by pressurization from the requirements of the rule. In the alternative, the Institute requests that RSPA clarify the final rule so as to determine that chlorine excess flow valves in use on MC 330 and MC 331 chlorine cargo tank motor vehicles have been certified within the meaning of the rule.

In addition, inasmuch as the arms length requirements of the rule become effective on July 1, 1999, and enforcement of those provisions could cause serious risks to persons unloading chlorine, the Institute moves that those requirements be stayed while this petition is reviewed by RSPA.

Respectfully submitted,

Paul M. Donovan,

LaRoe, Winn, Moerman & Donovon, 3900 Highwood Court, N.W., Washington, DC 20007, (202) 298–8100, Attorney for Petitioner.

Dated at Washington, DC, June 17, 1999.

[FR Doc. 99–17124 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–60–P

[1] It must be noted, of course, that the excess flow valve discussed herein is designed to, and does operate in the event of a complete separation of the unloading hose. In this regard it fully satisfies the provisions of 49 CFR § 178.337–11(a)(1)(1). Chlorine Institute Pamphlet 57 referenced by RSPA in this rule, contains a system for dealing with incidents that do not involve a complete separation and therefore do not trigger the requirements of § 178.337–11(a)(1)(i).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. 99–5928]

RIN 2127–AH10

Tire Identification and Recordkeeping; Tire Identification Symbols

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: NHTSA's tire identification and recordkeeping regulation requires new tire manufacturers and tire retreaders to mark a tire identification number on one sidewall of each tire they produce. The number is composed of the manufacturer's or retreader's identification code, a tire size symbol, an optional descriptive code, and the date of manufacture, which includes the date of retreading. The date is reflected in the last 3 digits of the number.

In response to petitions for rulemaking, the agency is amending the regulation to require the date to be expressed in 4 digits instead of the currently required 3, and to reduce the minimum size of the digits from the currently required minimum of 6 millimeters (mm) (¼ inch) to 4 mm (5/32 inch). The 4-digit date code will permit better traceability of tires during recalls and allow easier identification of older tires. Reducing the size of the date code from 6 mm to 4 mm will relieve manufacturers and retreaders of the burden they might otherwise incur by having to redesign their tire molds to accommodate the additional digit, without significantly affecting the readability of the date code digits. Finally, these amendments will enhance harmonization by bringing the U.S. tire date code requirements into harmony with the new United Nations' Economic Commission for Europe regulation and the International Organization for Standardization recommended practice.

DATES: *Effective date*: The amendments in this final rule become effective July 2, 2000. Optional early compliance is permitted, commencing on the date of publication of this final rule in the **Federal Register**.

Petitions for reconsideration of this final rule must be received by this agency not later than September 7, 1999.

ADDRESSES: Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400

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Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Scott, Safety Standards Engineer, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–8525; fax (202) 493–2739.

SUPPLEMENTARY INFORMATION:

A. Background.

Section 574.5 of Title 49, Code of Federal Regulations, Tire identification requirements, sets forth the methods by which new tire manufacturers and new tire brand name owners identify their tires for use on motor vehicles. The section also sets forth the methods by which tire retreaders and retreaded tire brand name owners identify tires for use on motor vehicles. The purpose of these requirements is to facilitate the notification of tire purchasers if their tires were found to be defective or not in compliance with applicable Federal motor vehicle safety standards.

Section 574.5 requires each new tire manufacturer and each tire retreader to mold a Tire Identification Number (TIN) into or onto one sidewall of each tire produced, in the manner and location specified in the section and as depicted in the regulation. The TIN is composed of four groups of letters and/or numbers:

(1) The first group of two or three symbols, depending on whether the tire is new or retreaded [1], represents the manufacturer's identification mark assigned to such manufacturer by NHTSA in accordance with § 574.6;

(2) The second group of no more than two symbols represents the tire size for new tires or, for retreaded tires, the retread matrix in which the tire was processed. If no matrix was used, the second group represents a tire size code;

(3) The third group, consisting of no more than four symbols, may, at the option of the manufacturer, be used as a descriptive code for identifying significant characteristics of the tire. If the tire was produced for a brand name owner, the third grouping must identify such brand name owner; and

(4) The fourth group, composed of three symbols, identifies the week and year of manufacture. The first two symbols identify the week of the year, starting with "01" to represent the first full week of the calendar year, and the third symbol represents the year. For example, "218" would represent the 21st week of 1998.

[1] New tire manufacturers are assigned a 2-digit identification mark, while tire retreaders are assigned a 3-digit identification mark.

NHTSA originally proposed the requirement for a TIN in response to the May 22, 1970 amendments to the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) [2]. Those amendments required, among other things, that manufacturers and brand name owners of new and retreaded motor vehicle tires maintain records of the names and addresses of the first retail purchasers of tires in order to facilitate notification of those purchasers if the tires were found to be defective or noncompliant.

The agency believed that an essential element of an effective defect or noncompliance notification system for tire purchasers was an effective method of tire identification. Accordingly, on July 23, 1970, we published a Notice of Proposed Rulemaking (NPRM) (35 FR 11800) proposing to establish a tire identification system. The proposed system provided a means of identifying the manufacturer of the tire, the DOM, the tire size and, at the option of the manufacturer, additional information to further describe the type or other significant characteristics of the tire. The proposed TIN was composed of four groups of symbols: the first group contained the manufacturer's identification mark which would be assigned by NHTSA; the second group identified the tire size by a two-symbol code; the third group of four symbols identified the tire's DOM, the first two symbols of which would indicate the week, and the last two the year; and the fourth grouping reflected the manufacturer's optional description of the tire. The symbols were to be a minimum of 1/4 inch high and were to appear on both sidewalls of the tire.

In a final rule published on November 10, 1970 (35 FR 17257), the agency revised the requirements proposed in the NPRM in response to the suggestions of various commenters. We reversed the order of the manufacturer's optional information and the DOM, so that the latter would appear in the fourth grouping and the manufacturer's optional information would appear in the third grouping. We also provided that the TIN need only appear on one sidewall, and that the symbols need only be 5/32 inch high on tires with a bead diameter of less than 13 inches or less than 6 inches cross section width. Many commenters requested that the date code be expressed in alpha-numeric form in order to reduce the date symbol to two digits. NHTSA declined to adopt the alpha-numeric system because it could be confusing to the public and because retreaders may not be able to easily determine the age of the casing to be retreaded. In order to shorten the stencil plate, however, we reduced the date code group from four digits to three.

[2] The National Traffic and Motor Vehicle Safety Act of 1966, Pub. L. 89–563, was originally codified at 15 U.S.C. 1581 *et seq.* However, it was recodified in 1995 and is now found at 49 U.S.C. 30101 *et seq.*

B. The Petitions

(1) *Rubber Manufacturers Association* (RMA). The RMA is the primary national trade association for the finished rubber products industry in the U.S. The RMA petitioned the agency to amend 49 CFR 574.5 to permit a 4-digit date code and to reduce the size of the lettering from 6 mm (1/4 inch) to 4 mm (5/32 inch).

The RMA explained that the ISO Technical Committee 31 on tires recommended the approval of a 4-digit DOM code, beginning in January 2000. RMA further stated that the United Nations' Economic Commission for Europe (ECE) has also authorized the use of a 4-digit date code commencing in January 2000. RMA suggested that if a 4-digit date code were adopted, the first 2 digits would represent the week and the last 2 the year of manufacture. For example, 0100 would mean the first full week of January 2000. RMA further suggested that an appropriate phase-in period be allowed during which use of either the 3 or 4 digit date code would be permitted. In order to avoid having to modify existing molds, RMA suggested that the addition of the fourth digit be offset by reducing the minimum size of the digits from 6 mm (1/4 inch) to 4 mm (5/32 inch), regardless of tire size. Finally, RMA stated that such modification would bring the U.S. requirements into harmony with the ECE regulation and the recommendation by the committee of the International Organization for Standardization (ISO), and would allow better traceability and identification of older tires.

(2) *European Tyre and Rim Technical Organisation* (ETRTO). Based in Brussels, Belgium, the ETRTO is the European standardization authority for the establishment and promulgation of interchangeability standards for pneumatic tires, rims, and valves. The ETRTO submitted a petition for rulemaking, nearly identical to that of the RMA, which cited the ECE regulations and the ISO recommendations and suggested amending § 574.5 to permit a 4-digit date code effective in January 2000. The first 2 digits would represent the week and the last 2 would represent the year of manufacture. Again, in order to avoid modification of existing tire molds, ETRTO requested reduction of the height of the digits from 6 mm (1/4 inch) to 4 mm (5/32 inch), regardless of tire size. ETRTO also asserted that the requested amendments would bring U.S. requirements into line with the ECE regulations and ISO recommendations, and that the amendments would allow better traceability of tires and identification of old tires.

C. Notice of Proposed Rulemaking

NHTSA granted the petitions and published an NPRM on October 19, 1998 (63 FR 55832), proposing to amend the date of manufacture grouping in the TIN to increase the digits in the group from 3 to 4. We also proposed to reduce the minimum size of the numbers in the date code from 6 mm (1/4 inch) to 4 mm (5/32) inch. An effective date of January 1, 2000 was proposed. We stated in the NPRM that we believed that these proposed amendments to the date code would permit better traceability of tires in the event of a recall and would enhance harmonization of the date code with the ECE and ISO regulation and practice.

D. Comments on the NPRM

The agency received comments from CIMS of Akron, OH, which provides tire identification services to the tire and retread industries; Advocates for Highway and Auto Safety (Advocates), of Washington, DC; Consumer Federation of America (CFA), also of Washington, DC; two comments from the International Tire and Retreaders Association, Inc. (ITRA), of Louisville, KY, a member organization representing companies in the tire and transportation industries; and the Oliver Rubber Company for the Tread Rubber and Tire Repair Materials Manufacturer's Group (TRMG), a trade association composed of companies that manufacture tread rubber for use in retreading tires, repair materials for use in repairing tires, and related products and services. Significant issues submitted by the commenters are summarized as follows:

(1) Increasing the DOM Digits From 3 to 4

All commenters on this issue supported adding a fourth digit to the date code. CIMS stated that this would help eliminate some confusion in trying to determine the actual date of manufacture of a tire. ITRA and TRMG both fully supported the proposal to increase the number of digits from 3 to 4. ITRA stated that the new markings would give a clear understanding of the actual decade in which the tire was produced and eliminate any confusion that was brought about as a result of the old markings. TRMG also fully supported the proposal to increase the number of digits from 3 to 4, stating that the new markings would clearly show the decade in which the tire was produced and eliminate any confusion that has occurred with the present system.

(2) Reducing the Size of the Numbers

ITRA was concerned about the reduction in the size of the numbers insofar as assuring that 4 mm would be a minimum size rather than a specifically-required size, thus allowing molded or branded numbers to be of a larger size when considered necessary. ITRA also indicated support for the proposal to permit use of the 4-digit date code prior to its mandatory compliance date.

TRMG, whose members are also members of ITRA, supported the comments of ITRA and urged that the proposed 4 mm size be a minimum size, thereby permitting the use of larger sizes when necessary or desirable.

Advocates opposed our proposal to reduce the size of the numbers, arguing that we are proposing to reduce the size of the digits by 1/3 while the number of older people in the United States is increasing. Advocates stated that, as people age, they tend to experience a wide variety of visual pathologies such as cataracts, glaucoma, macular degeneration, and other degradations of static acuity, which is especially common among older people with diabetic-related disorders. Advocates stated that hundreds of thousands of people may have excellent static acuity of 20/20 Snellen, yet have extraordinarily poor contrast vision or Contrast Sensitivity Function (CSF). Thus, Advocates asserted that because tire sidewall information consists of letters and numerals in black-on-black relief, the lowest possible contrast conditions, reduction in the size of the numerals will result in a significant portion of the population being unable to read the date code. Advocates further suggested that the proposal was not consistent with the philosophy underlying the Americans With Disabilities Act (ADA).

CFA asserted that the TIN figures should be increased in size rather than decreased. CFA urged NHTSA to develop more pronounced ways to display information on tire sidewalls, thereby making it easier for consumers who know about it to use it or attract the attention of those that are not aware of it. CFA argued that NHTSA needs to require safety and performance information to be prominently and clearly displayed in order to encourage the marketplace, rather than regulation, to produce safer and better performing products. In closing, CFA stated that it concurs with the positions taken by Advocates, summarized above.

Although CIMS did not specifically oppose reduction of the size of the numbers, it commented that "(e)xperience would tell whether this keeps the same readability or decreases it if the change is made."

(3) Marking the TIN on Both Sidewalls

CIMS suggested that the TIN be marked on both sidewalls, citing as an example a particular tire recall in which many dealers were required to raise the vehicle on a hoist in order to check the TIN that appeared on the inside of the mounted tire. CIMS asserted that although the industry sought to limit the TIN to one sidewall to avoid the cost and safety considerations of changing it each week on both sides of the tire, it would be easier both for the purchaser of the tire and the tire dealer in the event of a recall. CIMS argued that registration percentages are too low, resulting in many recalled tires remaining in service, possibly because the purchaser did not receive the notification because it was too difficult for anyone to check the TIN.

(4) Keep Current Requirements for Retreads

CIMS stated that NHTSA did not solicit comments or information with respect to the problems of retreaders. CIMS pointed out that many retreaders are small businesses and that any changes could result in increased costs to them. CIMs argued that retreaded tires are not kept in the pipeline as long as new tires, therefore it seems unnecessary for retreaders to incur the additional cost of this change. Even if this change would result in only a minor materiel charge, CIMS asserted that there would be a significant retooling charge to retreaders and suppliers. Finally, CIMS stated that retreaders who still use hand-punched tins would have to change their dies to add the additional digit when they punch in the TIN. CIMS stated that this would increase costs, including increased labor costs.

E. Discussion

(1) 4-Digit Date Code

NHTSA continues to believe that a 4-digit date code would aid in the identification of tires during recall campaigns. As discussed in the Background section above, we originally proposed a 4-digit date code for the TIN, but in response to suggestions of

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commenters, reduced the code from 4 digits to 3 in order to shorten the stencil plate to conserve sidewall space. The 3-digit code presented no identification problems during the 1970's because the requirement was new and tires with date codes were obviously built in that decade. There still were no problems in the 1980's because it was easy to distinguish between the newly popular radial tires and the bias-ply tires of the 1970's.

In the 1990's, however, the physical differences between radial tires produced in the previous decade were not readily apparent. One could not be sure, therefore, in which decade a given tire was produced. Accordingly, we believe that in order to avoid any further confusion as to when a tire was produced, the time has come to add a 4th digit to the date code. As stated in the Comments section above, all commenters on the issue, as well as the petitioners, RMA and ETRTO, support adding a 4th digit to the date code. NHTSA has decided to require that a 4th digit be added to the date code grouping of the TIN so that the week of manufacture will be expressed in the first 2 digits and the year of manufacture will be expressed in the last 2 digits.

(2) Reducing Digit Size

As discussed in section A(1) above, the agency established a defect and noncompliance notification system in accordance with amendments to the Safety Act of May 22, 1970. Thus, in our NPRM of July 23, 1970, we explained that the amendments to the Safety Act required tire manufacturers, retreaders, and brand name owners to maintain records of the names and addresses of new and retreaded tire purchasers "*in order to facilitate notification to that purchaser in the case of defective tires or tires that do not comply with an applicable Federal motor vehicle safety standard*" (35 FR 11800) (emphasis added). We also explained that the tire identification system that we proposed in that NPRM was intended to provide "a suitable method of identifying the tires involved." Id.

Advocates and CFA opposed reducing the size of the numbers in the TIN on the basis that such reduction would make it more difficult for consumers to see, especially those with visual pathologies. These commenters, however, did not provide any data showing that drivers cannot read 4 mm figures. Moreover, our experience to date with 4mm figures on tires suggests that figures of that size do not present a problem. For those familiar with font sizes, 4 mm is approximately the equivalent of font size 16 in Windows 95, which is approximately double the font size used in this **Federal Register** and also approximately double the size of the letters found on a U.S. quarter. By way of another example, the Uniform Tire Quality Grading Standards (UTQGS) (49 CFR § 575.104) are intended to establish a tire grading system for consumer information, and the size of the tire grades marked on the tire sidewalls has always been 4 mm (5/32 inch). In the nearly 25 years since establishment of the UTQGS, we have not received a single complaint that those letters and numbers were too small to read. In addition, Part 574 permits tires of less than 13-inches in diameter or those of less than 6-inches cross section width to have a letter/number size of 4 mm, again with no complaints.

We would also like to discuss the following point suggested by Advocates, as follows:

> Given the public philosophy that underlies the Americans with Disabilities Act , *i.e.* to increase the accommodation of a wide array of Americans whose needs are not met by current practices involving, among other things, the task of visual detection and comprehension, Advocates believes that NHTSA has offered a proposed amendment without any foundation in the administrative record of this rulemaking.
>
> Advocates letter of December 17, 1998 to U. S. DOT Docket Management, page 5.

> Title II of the Americans with Disabilities Act of 1990 (ADA) provides: No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. 42132.

The primary benefit provided by the TIN is that tires subject to recall notices can be identified and replaced. The change in the size of the numbering does not deny persons with poor vision this benefit because even if the person has difficulty seeing the date code, dealers and repair personnel will still be able to identify the tires and effectuate the recall. The ADA does not prescribe a particular type size for information provided by government agencies. The nearest comparison is in the aviation consumer protection context where restriction on airfares are required to be in 10 or 12-point type, depending on the size of the advertisement. See *Morales* v. *TWA*, 504 U.S. 374 (1992). The size of the date code numbers prescribed in this rule is the equivalent of 16-point type, approximately 25 percent larger than 12-point type.

While it is unclear how many people have inadequate static acuity or impaired CSF that would make it difficult to read 4 mm numbers, a person so impaired can be reasonably accommodated through the use of a magnifying glass or by simply asking repair personnel to check the tire numbers against any recall notices. The U.S. Supreme Court recently held that a physical impairment must be evaluated in light of corrective measures such as eyeglasses. See *Sutton* v. *United Airlines*, ___ U.S. ___ (1999). It is therefore unclear at this time whether persons with inadequate static acuity or impaired CSF that would make it difficult for them to see the 4 mm numbers have a disability covered by the ADA.

(3) Marking the TIN on Both Sidewalls

Although this issue is beyond the scope of our proposals in the NPRM, we wish to discuss the issue anyway. The agency addressed the issue of marking the TIN on both sidewalls in the final rule of November 10, 1970 (35 FR 17257) in which we established the TIN. We originally proposed in the NPRM of July 23, 1970 (35 FR 11800) that the TIN be marked on both sidewalls. Many tire manufacturers responded by suggesting that the TIN be marked on only one sidewall because first of all, one sidewall was sufficient for recordkeeping purposes. Secondly, the commenters stated that marking the TIN on both sidewalls would create a serious safety hazard for the factory machine operators in that they would have to work inside the jaws of each open tire press in order to position identification plates on both sidewalls. Some manufacturers further commented that its unions had objected to their members working under such hazardous conditions. We were persuaded by the manufacturers' comments and decided that since first purchasers receive direct notification from the manufacturer by certified mail in the event of a recall and because of the production hazards involved, the TIN need be marked on only one sidewall of the tire. We believe that our rationale in the November 10, 1970 final rule remains valid.

(4) Keep Current Requirements for Retreads

As noted in greater detail below, the agency believes that increasing the DOM code from 3 digits to 4 will not result in any cost increases or other burden for either the new and retread tire industries. Further, although there are still some small businesses retreading tires, the retread tire industry in general has in recent years experienced considerable consolidation, so that many of today's retreaders are franchisees. Finally, we note that ITRA, RMA, and ETRTO all supported both adding the 4th digit and decreasing the size of the digits from 6 mm to 4 mm. ITRA is an international trade association representing those segments of the transportation industry that manufacture, sell, repair, service, recycle, or use new or retreaded tires, as well as those individuals or suppliers that furnish equipment, materiel, or services to the transportation industry. As explained above, the RMA is the primary national trade association for the finished rubber products industry in the U.S., and the ETRTO is the European standardization authority for the establishment and promulgation of interchangeability standards for pneumatic tires, rims, and valves. None of these associations expressed any reservations with respect to the impact of these amendments on tire retreaders. Further, CIMS provided no backup data to support its assertions. We believe, therefore, that the concerns expressed in CIMS" comments are not representative of those of the tire retreading industry in general and do not justify our creating different marking systems for new and retreaded tires.

(5). Harmonization With National, Regional and International Requirements

Although no commenters addressed this issue, harmonization remains one of the agency's goals, particularly in those instances in which NHTSA can raise the level of its standards through harmonizing with a higher non-U.S. requirement. We already know that the European community and Japan will require the 4-digit, 4 mm date code commencing January 1, 2000. The agency believes that harmonizing our date code requirements with those of Europe and Japan makes sense, since it also is to our advantage by making the dates of manufacture of tires easier to ascertain for the agency as well as the industry. In addition, by not harmonizing our requirements with theirs, needless additional costs could be incurred by both domestic and foreign tire manufacturers who export tires into and out of the United States. Thus, the agency believes that adding a 4th digit to the date code and reducing the minimum size of the digits to 4 mm is consistent with our goal of higher safety through upward harmonization.

F. Agency Decision.

For the reasons enumerated in the Discussion section above, the agency has decided to amend 49 CFR 574.5 to change the date of manufacture grouping in the tire identification number, also known as the date code, which is the fourth grouping of digits. Effective July 2, 2000, the number of digits in the date code will be increased from 3 to 4, the first 2 digits representing the week of manufacture and the last 2 digits representing the year of manufacture. Thus, the numbers 0100 would represent the first full week of January 2000. In addition, the minimum size of those digits is reduced from 6 mm (¼ inch) to 4 mm (5/32 inch) for all tire sizes in order to fit within the tire molds currently utilized by tire manufacturers. Early compliance with these requirements will be permitted effective upon publication of this rule in the **Federal Register**.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review*.

NHTSA has analyzed the impact of this rulemaking action and has determined that it is not "significant" within the meaning of the DOT's regulatory policies and procedures. This action amends the tire identification number required by 49 CFR 574.5 to be marked on all tires sold in the United States. Specifically, this proposal increases the number of digits in the date of manufacture grouping of the tire identification number from 3 to 4, and permits a reduction in the size of those digits so that the 4 digits will fit within the same "plug" in the tire molds in which the currently-required 3 digits fit. That permits tire manufacturers and retreaders to use the same molds that they do now, thereby relieving them of the necessity of absorbing the costs of constructing new molds. Date codes are changed weekly by manufacturers and with an approximately 1-year phase-in period, manufacturers will have ample opportunity to phase-in the new 4-digit date code without having to redesign their tire molds. For these reasons, the agency believes that implementation of the amendments herein will not result in any increased costs to tire manufacturers, distributors, dealers, or consumers. Accordingly, the agency has concluded that preparation of a full regulatory evaluation is not warranted.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this rulemaking action will not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments implemented herein will primarily affect manufacturers and retreaders of motor vehicle tires. The Small Business Administration (SBA) regulation at 13 CFR Part 121 defines a small business as a business entity which operates primarily within the United States (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies*, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories*, prescribes a small business size standard of 750 or fewer employees.

The amendments promulgated in this rulemaking action merely increase the number of digits in the date of manufacture symbol in the tire identification number from 3 digits to 4, and permit a reduction in the size of those digits from 6 mm (¼ inch) to 4 mm (5/32 inch). The purpose of these changes is to make tires more easily traceable in the event of a defect or noncompliance, to allow easier identification of old tires, and to harmonize U.S. requirements with those of the European Community and Japan. These amendments were requested by the trade organizations that represent the major tire manufacturers in both the U. S. and Europe. In particular, the reduction in the size of the digits will be beneficial so that tire manufacturers would be spared the expense of designing and making new tire molds. NHTSA believes, therefore, that the amendments promulgated herein will not impose any increased costs or other burdens on tire manufacturers, most, if not all, of which would not qualify as small businesses under SBA guidelines. Further, these amendments will not result in any increase in costs for small retreaders and other small businesses or consumers. Accordingly, we believe that there will be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For those reasons, the agency has not prepared a regulatory flexibility analysis.

C. Executive Order No. 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria of E.O. 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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D. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action will have no significant impact on the quality of the human environment.

E. Paperwork Reduction Act

The amendments requiring tire manufacturers to designate the date of manufacture of their tires in 4 digits instead of the currently required 3 and to reduce the size of the digits from 6 mm to 4 mm relate to third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. These amendments create no additional information collection requirements since the amendments merely make a slight change to the format of existing requirements.

The information collection requirements for 49 CFR Part 574 have been submitted to and approved by OMB pursuant to the provisions of the Paperwork Reduction Act , 44 U.S.C. 3501, *et seq.* This collection of information authority for tire information and recordkeeping has been assigned control number 2127–0503, which expires August 31, 2000.

F. Civil Justice Reform

This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

List of Subjects in 49 CFR Part 574

Labeling, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 574 is amended as follows:

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

1. The authority citation for part 574 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 574.5 is amended by revising paragraph (d) and Figures 1 and 2 to read as follows:

§ 574.5 Tire identification requirements.

* * * * *

(d) *Fourth grouping.* For tires produced or retreaded on and after July 2, 2000, the fourth grouping, consisting of four numerical symbols, must identify the week and year of manufacture. The first two symbols must identify the week of the year by using "01" for the first full calendar week in each year, "02" for the second full calendar week, and so on. The final week of each year may include not more than 6 days of the following year. The third and fourth symbols must identify the year. Example: 3197 means the 31st week of 1997, or the week of August 3 through 9, 1997; 0198 means the first full calendar week of 1998, or the week of January 4 through 10, 1998. The symbols signifying the date of manufacture must be not less than 4 mm (5/32 inch) in height and shall immediately follow the optional descriptive code (paragraph (c) of this section). If no optional descriptive code is used, the symbols signifying the date of manufacture must be placed in the area shown in Figures 1 and 2 for the optional descriptive code.

BILLING CODE 4910–59–P

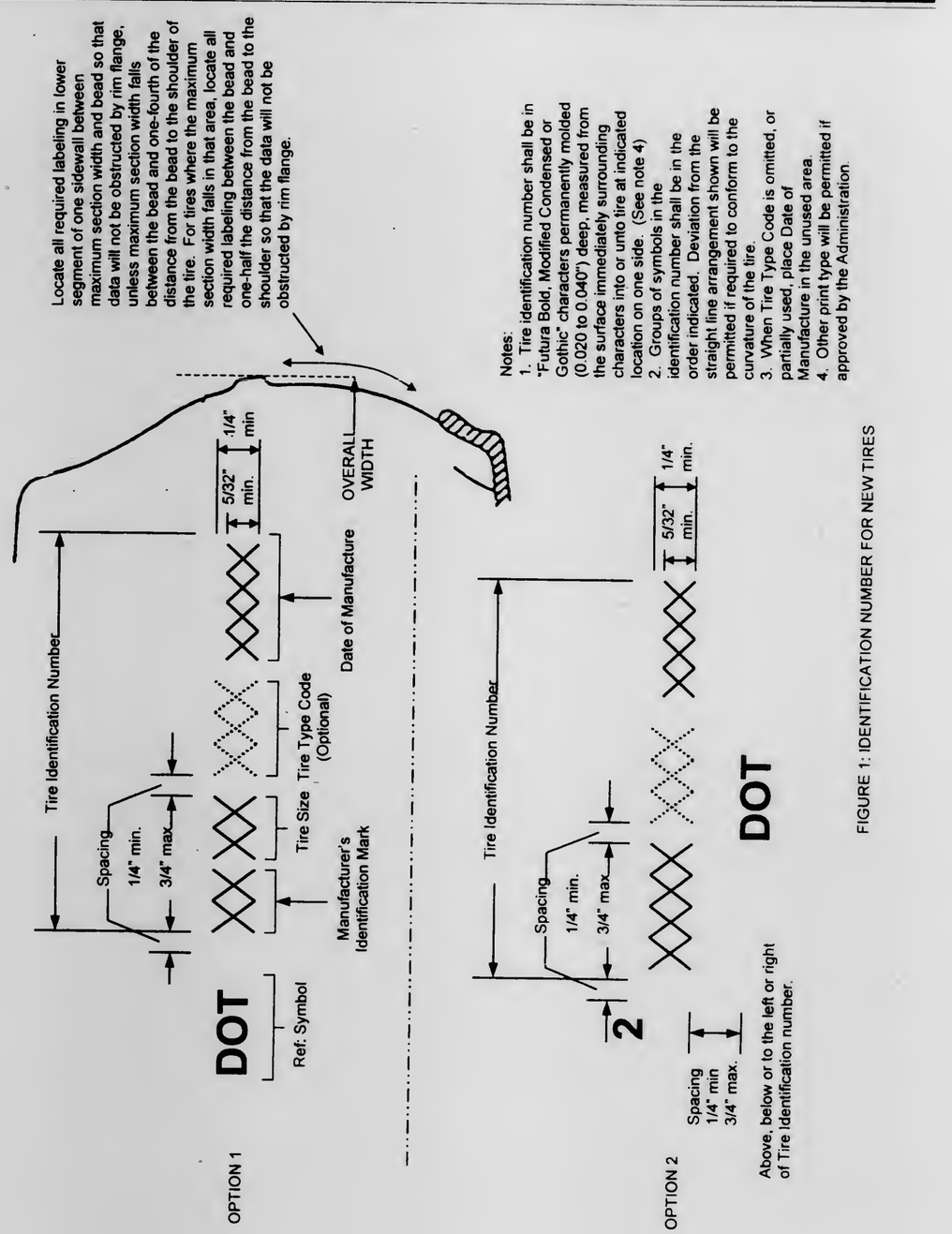
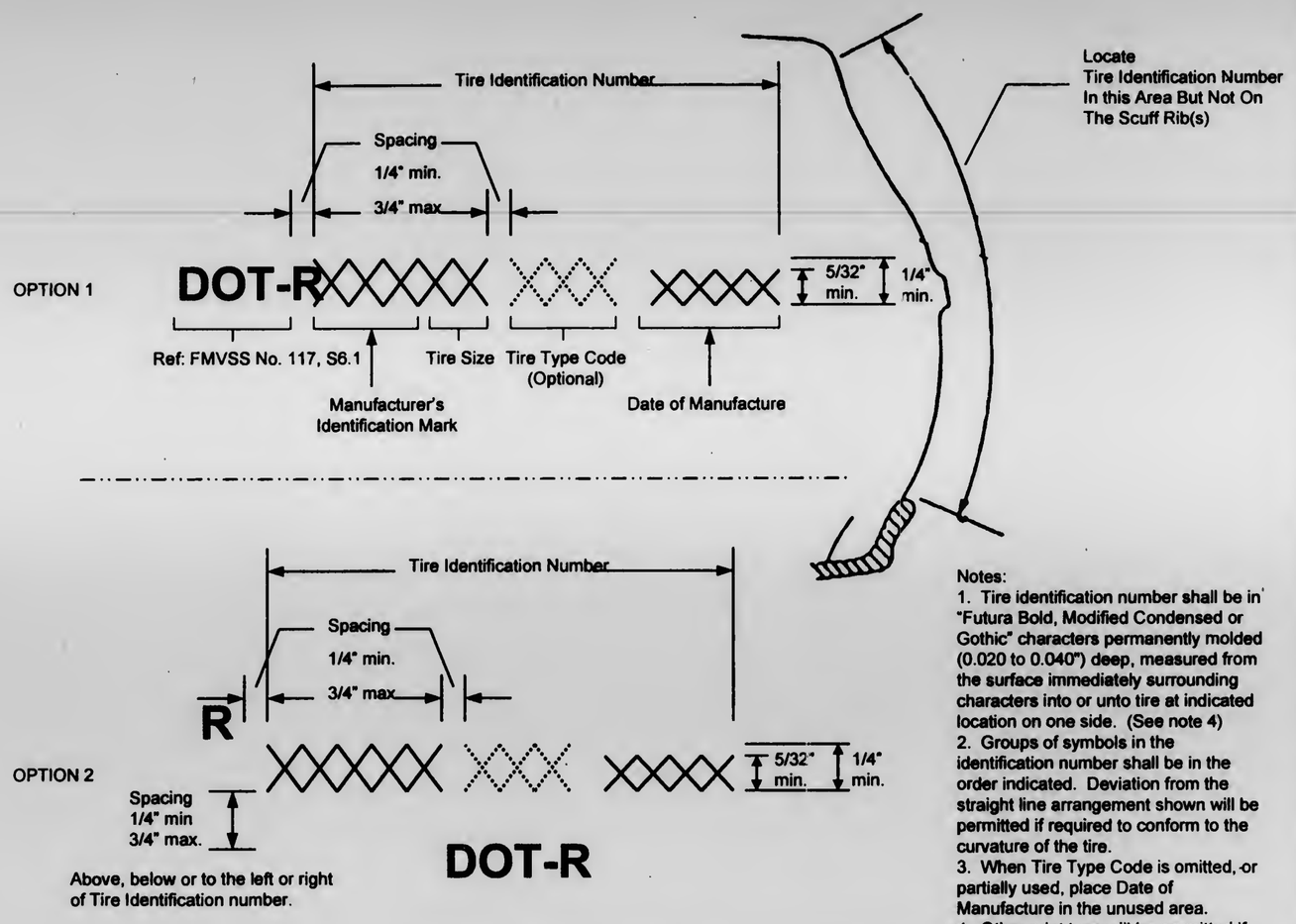


FIGURE 1: IDENTIFICATION NUMBER FOR NEW TIRES

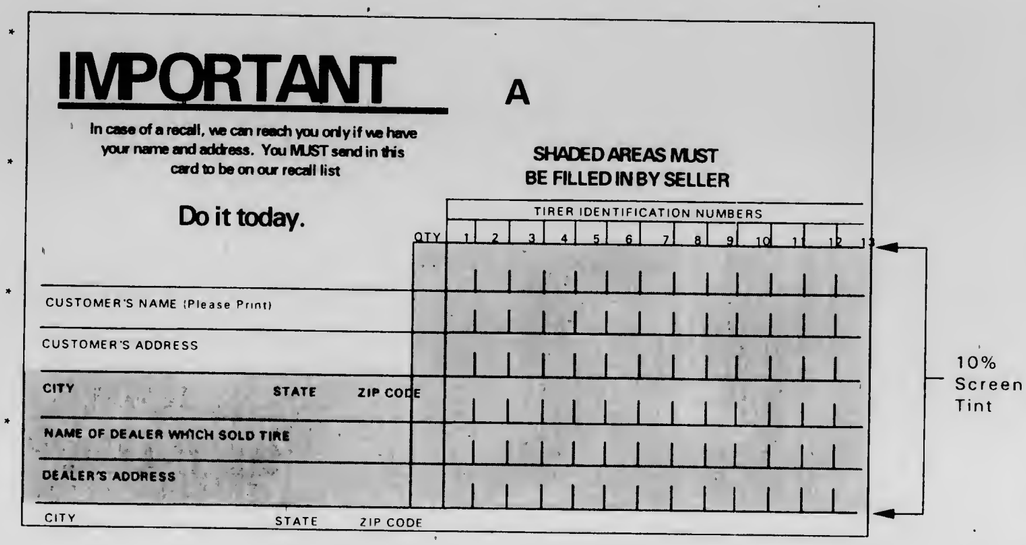


Notes:
1. Tire identification number shall be in "Futura Bold, Modified Condensed or Gothic" characters permanently molded (0.020 to 0.040") deep, measured from the surface immediately surrounding characters into or unto tire at indicated location on one side. (See note 4)
2. Groups of symbols in the identification number shall be in the order indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.
3. When Tire Type Code is omitted, or partially used, place Date of Manufacture in the unused area.
4. Other print type will be permitted if approved by the Administration.

FIGURE 2. IDENTIFICATION NUMBER FOR RETREADED TIRES

3. Section 574.7 is amended by revising Figures 3a and 4, to read as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.



A- Preprinted tire manufacturer's name - unless the manufacturer's name appears on the reverse side of the form

Figure 3a - Registration form for independent distributors and dealers - tire identification number side

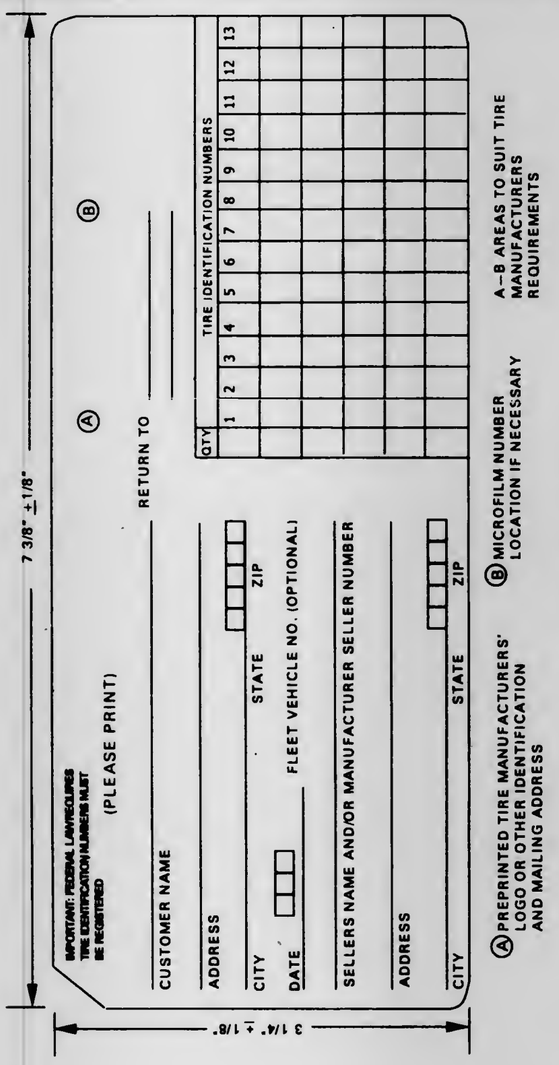


FIG 4 - UNIVERSAL FORMAT

Issued on: July 2, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–17402 Filed 7–7–99; 8:45 am]

BILLING CODE 4810–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333; I.D. 062999D]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to trip limits in the Pacific Coast groundfish limited entry, fixed gear daily trip limit fishery for sablefish, and in the open access fisheries for sablefish and widow rockfish. These actions, which are authorized by the Pacific Coast groundfish fishery management plan (FMP), are intended to help the fisheries achieve optimum yield (OY).

DATES: Effective 0001 hours local time (l.t.) July 2, 1999, unless modified, superseded or rescinded, until the effective date of the 2000 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through July 23, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its June 22 through 25, 1999, meeting in Portland, OR. All of the changes are increases to current cumulative trip limits. The adjusted trip limits are calculated to provide a year-long fishing opportunity. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the cumulative trip limits will be made as necessary.

Limited Entry, Fixed Gear Daily Trip Limit Fishery for Sablefish

Currently the limited entry, fixed gear (or "nontrawl") daily trip limit fishery for sablefish north of 36° N. lat. is managed with a 2-month cumulative trip limit of 2,400 lb (1,089 kg), which was set in place at the beginning of 1999 (64 FR 1316, January 8, 1999 as amended at 64 FR 16862, April 7, 1999). No more than 300 lb (136 kg) of sablefish may be landed per day.

The best available information at the June Council meeting indicated that 68 mt, (18 percent of the 379–mt set aside for the daily trip limit portion of the fishery and 15 percent of the 2,516 mt limited entry nontrawl sablefish allocation), had been landed through May 31, 1999. Fishers present at meetings of the Groundfish Management Team and Groundfish Advisory Panel indicated that this low rate of landings may be due to several factors, including poor winter weather, unusual La Nina ocean conditions, and fishers shifting effort to target higher-priced non-groundfish species. If the fishery were to continue under current landings limits, the fleet would not harvest the 379–mt of sablefish set aside for this fishery in 1999 and therefore, the fishery would not achieve OY. For this reason, the Council recommended that the current 2-month cumulative trip limit be increased to 4,200 lb (1,905 kg) for the period of July 1 through August 31, 1999. The Council further recommended converting the 2-month cumulative trip limits to monthly cumulative trip limits of 2,100 lb (953 kg), beginning September 1, 1999. Managing this fishery under monthly cumulative limit periods during the later portion of the year will give the Council greater flexibility, should it need to make inseason adjustments following its September and November meetings. [Note: The 2-month cumulative trip limit periods for sablefish caught in the limited entry, fixed gear fishery are not the same as for the limited entry trip limits for other species.]

Open Access Fisheries for Sablefish and Widow Rockfish

The open access fishery for sablefish north of 36° N. lat. is managed similarly to the limited entry, fixed gear daily trip limit fishery. A 300–lb (136 kg) daily limit, which counts toward a 2-month cumulative trip limit of 1,800 lb (816 kg), was established at the beginning of 1999 (64 FR 1316, January 8, 1999 as amended at 64 FR 16862, April 7, 1999).

The best available information at the June Council meeting indicated that 42 mt, or 10 percent of the 423–mt open access 1999 sablefish allocation, had been landed through May 31, 1999. The possible reasons for the low rates of landings in this fishery are similar to those for sablefish in the limited entry daily trip limit fishery. If the fishery were to continue under current landings limits, the open access fleet would not harvest its 423–mt sablefish allocation and, therefore, the fishery would not achieve OY. For this reason, the Council recommended that the current 2-month cumulative trip limit be increased to 3,000 lb (1,361 kg) for the period of July 1 through August 31, 1999. The Council further recommended converting the 2-month cumulative trip limits to monthly cumulative trip limits of 1,500 lb (680 kg), beginning September 1, 1999. Managing this fishery under monthly cumulative limit periods during the later portion of the year will give the Council greater flexibility, should it need to make inseason adjustments following its September or November meetings.

Widow Rockfish

Currently, the open access fishery for widow rockfish is managed with a 1-month cumulative trip limit of 2,000 lb (907 kg). The best available information at the June Council meeting indicated that the open access fishery had landed 15 mt, or 8 percent of its 184 mt widow rockfish allocation through May 31, 1999. If the fishery were to continue under the current widow rockfish cumulative monthly limit, it would not harvest its 1999 widow rockfish allocation by the end of the year and, therefore, the fishery would not achieve OY. The Council expected that raising the widow rockfish cumulative trip limit during summer months, when open access fishery participation is strongest, would increase the likelihood that the fishery would harvest its widow rockfish allocation before the end of the year. For this reason, the Council recommended increasing the open access widow rockfish monthly cumulative limit to 8,000 lb (3,629 kg), beginning July 1, 1999.

NMFS Action

For the reasons stated previously, NMFS concurs with the Council's recommendations and announces the following changes to the 1999 annual management measures (64 FR 1316, January 8, 1999) and as amended at 64 FR 16862, April 7, 1999). The annual

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management measures are modified as follows:

1. In section IV, under B. *Limited Entry Fishery*, paragraph B.(6)(d)(ii)(A) is revised to read as follows:

B. Limited Entry Fishery

* * * * *

(6) * * *

(d) * * *

(ii) * * *

(A) *North of 36° N. lat.* The daily trip limit, which applies to sablefish of any size, is in effect north of 36° N. lat. until the closed periods before or after the regular season as specified at 50 CFR 660.323(a)(2), between the end of the regular season and the beginning of the mop-up season, and after the mop-up season. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00' N. lat. is 300 lb (136 kg), which counts toward a cumulative trip limit of 4,200 lb (1,905 kg) per 2-month period (July 1 through August 31, 1999) except during the regular season. The 2-month periods in 1999 are: January 1–February 28, March 1–April 30, May 1–June 30, and July 1–August 31. Beginning September 1, the cumulative trip limit is converted from 2-month periods to 1-month periods, and the daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00' N. lat. of 300 lb (136 kg) counts toward cumulative trip limit of 2,100 lb (953 kg) per calendar month except during the mop-up season.

* * * * *

2. In section IV, under C. *Trip limits in the Open Access Fishery*, paragraphs C.(1)(b), C.(2)(a), C.(2)(a)(i), and C.(2)(b) are revised to read as follows:

C. Trip Limits in the Open Access Fishery

* * * * *

(1) * * *

(b) *Widow rockfish.* The cumulative monthly limit for widow rockfish coastwide is 8,000 lb (3,629 kg) per vessel.

* * * * *

(2) * * *

(a) *Hook-and-line, pot, setnet and trammel net.* The following trip limits apply to all open access gear, except for exempted trawl gear.

(i) *North of 36°00' N. lat.* North of 36°00' N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 3,000 lb (1,361 kg) for the period of July 1 through August 31, 1999. Beginning September 1, the daily trip limit for sablefish counts toward a cumulative trip limit of 1,500 lb (680 kg) per calendar month.

(ii) * * *

(b) *Exempted trawl gear.* (i) *Sablefish taken by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumber with exempted trawl gear.* North of 36°00' N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 1,800 lb (816 kg) per 2-month period. South of 36°00' N. lat., the daily trip limit for sablefish is 350 lb (159 kg) per day. [Note: All sablefish taken by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumber with exempted trawl gear may not exceed and counts against the 300 lb (136 kg) per trip limit for groundfish specified below at paragraph IV.C.(6).]

(ii) *Sablefish taken by vessels engaged in fishing for pink shrimp with exempted trawl gear.* North of 36°00' N. lat., the cumulative trip limit for sablefish is 1,800 lb (816 kg) per 2-month period. South of 36°00' N. lat., the daily trip limit for sablefish is 350 lb (159 kg) per day, which may not be multiplied by the number of days in the trip. [Note: All sablefish taken by vessels engaged in fishing for pink shrimp with exempted trawl gear may not exceed and counts against the 500 lb (227 kg) per day and 2,000 lb (907 kg) per trip limit for groundfish specified below at paragraph IV.C.(7).]

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impractical. It would be impractical because the cumulative trip limit period began July 2, 1999, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY.

NMFS also finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), because such a delay would be contrary to the public interest. This action should be implemented at the beginning of the cumulative trip limit period to avoid confusion and maximize the potential that fishers will harvest the allocation. For these reasons good cause exists to waive the 30-day delay in effectiveness.

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17325 Filed 7–2–99; 4:01 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 062599B]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason transfer.

SUMMARY: NMFS allocates 8 metric tons (mt) of the 1999 Atlantic bluefin tuna (BFT) Reserve to the Purse Seine category, creating a adjusted Purse Seine category quota of 260 mt and a adjusted Reserve quota of 35 mt for the 1999 fishing season. This action is being taken following input received by the Highly Migratory Species Advisory Panel (AP), as prescribed by management measures adopted in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP), and is consistent with the criteria for BFT quota transfers as specified in 50 CFR 635.27.

DATES: Effective July 2, 1999, until May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed by the Secretary of Commerce under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Tunas Convention Act. The authority to issue regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. Within NMFS, daily responsibility for management of Atlantic Highly Migratory Species (HMS) fisheries rests with the Office of Sustainable Fisheries, and is

administered by the HMS Management Division.

Based on the 1998 revised stock assessment, parties at the 1998 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted a 20-year west Atlantic BFT rebuilding program, beginning in 1999 and continuing through 2018. ICCAT has adopted an annual total allowable catch (TAC) of 2,500 mt whole weight (ww) of west Atlantic BFT inclusive of dead discards, to be applied annually until such time as the TAC is changed based on advice from the Standing Committee on Research and Statistics. The annual landing quota allocated to the United States was increased by 43 mt ww to 1,387 mt ww.

Regulations at 50 CFR 635.27, subdivide the U.S. BFT quota recommended by ICCAT among the various domestic fishing categories.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the FMP that was adopted and made available to the public in April 1999. The FMP and the implementing regulations establish percentage quota shares for the ICCAT recommended U.S. BFT landing quota for each of the domestic fishing categories. For the Purse Seine category, NMFS adopted a cap on the amount of quota the category could be allocated, establishing a quota percentage share for the Purse Seine category of 18.6 percent of the overall U.S. BFT landings quota, or 250 mt, whichever is less. If the percentage of the total ICCAT recommended annual landings quota allocated to the Purse Seine category exceeds 250 mt, the amount over 250 mt shall be allocated to the Reserve.

The ICCAT recommended 1999 U.S. BFT landings quota is 1,387 mt, 18.6 percent of which is 258 mt. Thus, for 1999, the Purse Seine category was allocated 250 mt of the 18.6 percent of the overall U.S. BFT landings quota, and the additional 8 mt were allocated to the Reserve. An additional 2 mt Purse Seine category under-harvest from 1998 was added to the category's quota for 1999, for a total 1999 Purse Seine category quota of 252 mt (64 FR 29806, June 3, 1999).

In both the FMP, and the final HMS consolidated regulations, NMFS noted that the AP had not had an opportunity to fully address the Purse Seine category cap in light of the 1999 BFT quota increase from ICCAT. Therefore, NMFS indicated it would hold the additional 8 mt for 1999 in the Reserve until after the AP had discussed the issue. NMFS also indicated that if the agency decided, after receiving input from the AP, that it would not retain the cap, the FMP would be modified through its framework provisions.

The AP met in Silver Spring, MD on June 10 and June 11, 1999, and discussed the Purse Seine category cap. After extensive discussion, a clear majority favored removal of the cap. The AP provided information and advice to NMFS on the issue of fairness in the context of allocation to the Purse Seine category. Among the points used by the AP in support of removing the cap were the following: (1) Adopting a cap on one category and not others is not fair and equitable, (2) adopting a cap on the only category in the fishery which is managed using limited access does not promote limited access, and (3) adopting a cap on the Purse Seine category's BFT quota allocation may cause purse seine vessels to increase fishing effort on yellowfin tuna, which is an important commercial and recreational species for vessels in other Atlantic tunas permit categories, and for which there is an ICCAT recommendation in place to limit effective fishing effort.

As part of NMFS' consideration of the issue of transferring quota from the reserve, NMFS must also consider the quota transfer criteria as described at 50 CFR 635.27(a)(7), which state that NMFS has the authority to allocate any portion of the Reserve to any category or categories of the fishery after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock, (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made, (3) the projected ability of the particular gear segment to harvest the additional amount of BFT tuna before the anticipated end of the fishing season, (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded, (5) the effects of the transfer on BFT rebuilding and overfishing, and (6) the effects of the transfer on accomplishing the objectives of the FMP.

NMFS has determined that the transfer of the 8 mt from the Reserve to the Purse Seine category is consistent with the quota transfer criteria, especially since the Purse Seine category targets and lands BFT of a larger size than the other domestic fishing categories to which the Reserve may be allocated, and, thus, would not have a negative impact of stock rebuilding. In addition, the FMP established a separate School Reserve for the Angling category (18 additional mt for 1999), which, along with strict quota monitoring in the commercial fisheries, means that a Reserve of 35 mt for the 1999 fishing year is sufficient.

After considering the AP's input and the quota transfer criteria described here, NMFS has decided to immediately transfer the 8 mt from the Reserve to the Purse Seine category, and is preparing a proposed rule to address the Purse Seine category cap issue under the framework authority of the FMP.

Quota Adjustment

NMFS is transferring 8 mt of the Reserve to the Purse Seine category. Following this transfer, the Reserve is reduced to 35 mt, and the Purse Seine category quota is increased to 260 mt for the 1999 fishing year.

Classification

This action is taken under 50 CFR 635.27(a)(7). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 *et seq.*

Dated: July 2, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17322 Filed 7–2–99; 4:01 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990630178–9178–01; I. D. 062499A]

RIN 0648–XA31

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 1999 Bank-Specific Harvest Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Bank-specific harvest guidelines for the Northwestern Hawaiian Islands (NWHI) crustacean fishery for 1999.

SUMMARY: NMFS announces the 1999 bank-specific harvest guidelines for the NWHI crustacean fisheries. The previously announced total NWHI-wide harvest guideline of 243,100 lobsters (spiny and slipper lobster combined) is allocated among the four NWHI lobster fishing grounds as follows: Necker Island, 54,600 lobsters; Gardner

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Pinnacles, 27,690 lobsters; Maro Reef, 89,570 lobsters; and the other remaining lobster banks combined, 71,240 lobsters. The intent of this action is to prevent overfishing and achieve the objectives of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

DATES: Effective July 2, 1999.

ADDRESSES: Copies of background material pertaining to this action may be obtained from Alvin Z. Katekaru, Fishery Management Specialist, Pacific Islands Area Office (PIAO), NMFS, 2570 Dole St., Honolulu, HI 96822 or Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808–973–2937.

SUPPLEMENTARY INFORMATION: During 1998, the Western Pacific Fishery Management Council (Council) and NMFS, under FMP framework procedures, implemented a bank-specific harvest guideline program for the NWHI lobster fishery to prevent the potential risk of fishermen over-exploiting the lobster resources at Necker Island, Gardner Pinnacles, and Maro Reef. That program was for only one season, July 1 through December 31, 1998. At its meeting in December 1998, the Council recommended the establishment of four NWHI lobster fishing grounds consisting of Necker Island, Gardner Pinnacles, Maro Reef, and the other remaining NWHI lobster banks combined. Also, the Council recommended that the Regional Administrator, in consultation with the Council, be authorized to allocate the annual NWHI-wide harvest guideline among the four fishing grounds. On April 8, 1999, the Council requested the Regional Administrator to initiate rulemaking to establish a permanent bank-specific harvest allocation program for the NWHI lobster fishery.

Under a separate rule, appearing in today's **Federal Register**, NMFS established a permanent bank-specific harvest allocation program. On March 11, 1999, NMFS announced in the **Federal Register** (64 FR 12092) the 1999 NWHI-wide harvest guideline of 243,100 lobsters, spiny and slipper lobsters combined, based on an estimated total exploitable lobster population of 1,870,000. Subsequently, NMFS Southwest Fisheries Science Center scientists calculated exploitable population estimates for Necker Island, Gardner Pinnacles, Maro Reef, and the other remaining lobster banks combined. By applying the FMP-specified constant harvest rate of 13 percent to the exploitable population estimates for each of the four fishing grounds, the Regional Administrator determined the 1999 harvest guideline for Necker Island to be 54,600 lobsters; Gardner Pinnacles, 27,690 lobsters; Maro Reef, 89,570 lobsters; and all the other remaining NWHI lobster banks combined, 71,240 lobsters. The Regional Administrator will close each fishing ground when its harvest guideline is estimated to be reached.

The PIAO will monitor landings and issue timely reports of the level of cumulative catch information and of the amount of the harvest guideline remaining for each fishing ground. Fishermen are advised to contact the PIAO (see **ADDRESSES**) periodically to stay abreast of any changes and of the progress of the fishery toward attaining the bank-specific harvest guideline of each of the fishing grounds. When the harvest guidelines of all the fishing grounds are attained, the Regional Administrator will close the entire NWHI lobster fishery. Under the procedures in 50 CFR 660.50(b), NMFS will announce the date upon which the harvest guideline will be reached and when the fishery will be closed.

Classification

This action is authorized by 50 CFR part 660 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, (AA) finds that because this action merely announces bank-specific harvest guidelines resulting from nondiscretionary application of the objective harvest guideline formula in Amendment 9 to the FMP, no useful purpose would be served by providing prior notice and opportunity for public comment. Accordingly, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive as unnecessary the requirement to provide prior notice and opportunity for public comment. The AA also finds that there is good cause to waive the 30-day delay in effectiveness for this rule under 5 U.S.C. 553 (d)(3). In order to insure the health of the lobster resources in the NWHI by preventing the potential for overexploiting those resources at any of the major fishing grounds (Necker Island, Gardner Pinnacles, or Maro Reef) this fishing season, this action must be in effect as soon as practicable after the season opening on July 1, 1999. Therefore, delaying this action would be contrary to the public interest and unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17324 Filed 7–2–99; 4:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990630177–9177–01; I.D. 051099A]

RIN 0648–AK61

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; Bank-specific Harvest Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment under the framework procedures of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region. This rule divides the Northwestern Hawaiian Islands (NWHI) lobster fishery into four fishing grounds and allows the Southwest Regional Administrator, NMFS (Regional Administrator) to allocate the annual NWHI harvest guideline among these grounds for the 1999 season and beyond. Also, this final rule allows a lobster vessel carrying an operational NMFS-certified vessel monitoring system (VMS) unit to be within the boundary of a fishing grounds immediately after it is closed, provided the vessels is making steady progress to an open fishing grounds or back to port. This rule is intended to protect the lobster resources at each fishing ground, to provide better data on stocks, and to conserve the resource.

DATES: Effective July 2, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) for this action are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to Pacific Islands Area Office, NMFS, 2570 Dole Street, Honolulu, HI, 96822–2396 and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds at 808–522–8220 or Alvin Z. Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS, at 808–973–2985.

SUPPLEMENTARY INFORMATION: This rule divides the NWHI lobster fishery into four fishing grounds: Necker Island, Gardner Pinnacles, Maro Reef, and all the remaining lobster banks combined, for the purpose of allocating the annual NWHI lobster harvest guideline among them. Also, the rule authorizes the Regional Administrator, in consultation with the Western Pacific Fishery Management Council (Council), to allocate the annual NWHI-wide lobster harvest among the four lobster fishing grounds. Under this final rule, the harvest of lobster and the possession of lobster traps on board a permitted lobster vessel will be prohibited within a lobster fishing ground when the harvest guideline allocation is determined to have been taken, unless the vessel has on board an operational NMFS-certified VMS unit and is making steady progress to another fishing ground that is open, or is returning to port. Also, vessels with a VMS unit will not be subject to a specified time by which their lobsters must be landed. Vessels not carrying an operational VMS unit will be required to land their lobsters within a specified time period, to be announced by the Regional Administrator, following closure of the fishery, as provided by current regulations (50 CFR 660.50).

The preamble of the proposed rule contained descriptions of the alternatives considered, as well as the reasons for adopting the preferred alternative; those reasons are not repeated here. (64 FR 29834, June 3, 1999). This final rule is intended to help prevent localized depletion of the lobster populations at Necker Island, Gardner Pinnacles, and Maro Reef; to promote broader distribution of fishing effort among the remaining NWHI fishing grounds; to obtain better data on the lobster stocks, which would allow for the specification of additional fishing grounds as new information becomes available; and to conserve the resource. The intent of the VMS provision is to encourage lobster vessels to carry a VMS unit to allow NMFS to monitor their location on a real-time basis.

No comments were received on the proposed rule. Therefore, the final rule is unchanged from the proposed rule, with the exception of one technical change. The proposed rule incorrectly referenced a proposed change to § 660.48(a)(7) when the change actually intended was to § 660.48(a)(8). The final rule makes the necessary correction.

In a separate rule, appearing in today's *Federal Register*, NMFS announces the allocation of the 1999 harvest guideline of 243,100 lobsters among each of the four fishing grounds.

Classification

The Assistant Administrator for Fisheries, NOAA, for good cause, waives the 30-day delay in effectiveness for this rule under 5 U.S.C. 553(d)(3) in order to ensure the health of the lobster resource in the NWHI by preventing the potential for severe depletion of the lobster population at any of the major fishing grounds: Necker Island, Gardner Pinnacles, and Maro Reef, this fishing season. The rule should be in effect by July 1, when the fishing season starts, or as soon as possible thereafter. The allocation of the harvest guideline itself does not require action by any fisherman; rather it directs when the Regional Administrator must close each of the four fishing grounds. All participants will be provided actual notification of this rule. Therefore, delaying implementation of this rule would be contrary to the public interest and unnecessary.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an EA/RIR/IRFA and a FRFA as part of the regulatory impact review. No public comments were received on the initial regulatory flexibility analysis (summarized in the *Federal Register* on June 3, 1999, at 64 FR 29834). A summary of the FRFA follows. The final rule establishes four fishing grounds: Necker Island, Gardner Pinnacles, Maro Reef, and all the remaining lobster fishing banks combined, for the purpose of allocating the annual NWHI lobster harvest guideline among them. It is intended to protect the lobster resources at each fishing ground, to provide better data on stocks, and to conserve the resource. The preambles to the proposed and final rules provide more details on the need for, and objectives of, this rule. The final rule applies to the 12 individuals who have been issued the 15 permits in the NWHI limited entry crustacean fishery. All participants in this fishery are small entities. No new reporting or recordkeeping requirements are required by the rule. This action embodies several steps taken to minimize the economic impact of the chosen measure on small entities. First, the alternative implemented by this final rule will result in long-term economic benefits to the fishery. Second, any vessel with an operational NMFS-certified VMS unit on board is not required to land lobsters by a specified time (thereby allowing flexibility in the vessel's activities). Also, any vessel so equipped may transit across a closed lobster fishing ground when it is making steady progress to another fishing ground that is open or it is returning to port. The reason for choosing the alternative implemented by this rule is that it will best allow for the attainment of the objectives of protecting lobster at each fishing ground, of providing better data, and of conserving the resource. The Council considered operating the fishery under a single annual harvest guideline, but rejected this alternative because it would not provide a means of limiting localized depletion. The Council considered Necker-Maro-Gardner (only) bank-specific harvest guidelines but rejected this alternative primarily because it would not afford bank-specific protection to other NWHI banks, if needed. The Council considered general area-specific harvest guidelines and full bank-specific harvest guidelines but rejected these alternatives because a lack of data for making these types of allocations may lead to mis-specified harvest guidelines.

Based on the experience of the 1998 fishery which was managed under an nearly identical rule, participants are expected to fish at the Necker Island, Maro Reef, and Gardner Pinnacles fishing grounds until each closes. Some fishing is expected to take place on the other remaining lobster grounds in the NWHI (Table 1 of the RIR/IRFA and FRFA). However, average catch per unit of effort rates are expected to be lower than those at Necker Island, Gardner Pinnacles, and Maro Reef, and the entire NWHI harvest may not be taken (22 percent of the total harvest guideline was not taken in 1998). This will lead to lower average gross revenues, as well as to slightly higher travel costs, compared to the same harvest guidelines unallocated among banks (Table 2 of the RIR/IRFA and FRFA). However, this rule should result in long-term economic benefits to the fishery as the resource increases with improved fisheries management. A copy of the

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FRFA is available from the Council (see **ADDRESSES**).

This rule contains a collection-of-information requirement regarding VMS use and is subject to the Paperwork Reduction Act. (PRA). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. The collection of this information has been approved by OMB, under OMB control number 0648–0307. This rule's collection-of-information burden is only for those persons who wish to voluntarily use a VMS unit in the fishery. The collection is to query through the VMS system a vessel to learn of its location before and after the start of the season or closure of a fishing ground, which is automatic with no action required by the vessel operator, except to verify the VMS unit is operating. The burden associated with this collection is estimated to require a response time of .033 seconds. Permit holders whose vessels are not equipped with VMS would have the option of installing new VMS in order to participate under this regulatory option for the opening and closing of the lobster season and transitting between fishing grounds. Send comments regarding the collection-of-information burden or any other aspect of the information collection to NMFS and OMB (see **ADDRESSES**).

An informal consultation under the Endangered Species Act was concluded on June 7, 1999, to determine whether the effect on Hawaiian monk seals from the fishery managed under this action is likely to be adverse. As a result, the Regional Administrator determined that fishing activities conducted under this rule are not likely to affect adversely endangered or threatened species or critical habitat.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 660.12 is amended by adding the definition of "Lobster grounds", in alphabetical order, to read as follows:

§ 660.12 Definitions.

* * * * *

Lobster grounds refers, singularly or collectively, to the following four areas in Crustaceans Permit Area 1 that shall be used to manage the lobster fishery:

(1) *Necker Island Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24°00′ N. lat., 164° 00′ W. long.; 23°00′ N. lat., 164°00′ W. long.; and 23°00′ N. lat., 165°00′ W. long.

(2) *Gardner Pinnacles Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20′ N. lat., 168°20′ W. long.; 25°20′ N. lat., 167° 40′ W. long.; 24°20′ N. lat., 167°40′ W. long.; and 24°20′ N. lat., 168°20′ W. long.

(3) *Maro Reef Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40′ N. lat., 171°00′ W. long.; 25°40′ N. lat., 170° 20′ W. long.; 25°00′ N. lat., 170°20′ W. long.; and 25°00′ N. lat., 171°00′ W. long.

(4) *General NWHI Lobster Grounds*—all waters within Crustaceans Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

* * * * *

3. Section 660.42 is amended by adding new paragraphs (a)(1)(vi) and (a)(13) to read as follows:

§ 660.42 Prohibitions.

* * * * *

(a) * * *

(1) * * *

(vi) In a lobster grounds after closure of that grounds as specified in § 660.50(b).

* * * * *

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 660.50(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

* * * * *

4. Section 660.48 is amended by revising paragraph (a)(8) to read as follows:

§ 660.48 Gear restrictions.

(a) * * *

(8) A vessel whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS may transit Crustaceans Permit Area 1, including Crustaceans Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 660.50, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

* * * * *

5. Section 660.50 is amended by revising paragraph (a) introductory text, paragraphs (b)(1), (b)(3) and (b)(4), and adding new paragraph (b)(5) to read as follows:

§ 660.50 Harvest limitation program.

(a) *General.* Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

* * * * *

(b) *Harvest guideline.* (1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FMP after consultation with the Council.

* * * * *

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 660.48(a)(8).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the over-all harvest guideline for Crustaceans Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustaceans Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

* * * * *

[FR Doc. 99–17323 Filed 7–2–99; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 64, No. 130
Thursday, July 8, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0044]

RIN 0910–AA59

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit additional comments on three particularly controversial issues raised by FDA's proposed rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body ("structure/function claims"). This meeting is intended to provide the public an additional opportunity to provide focused comment on these issues in a manner that will assist FDA in evaluating appropriate policies and approaches. FDA is also reopening, until August 4, 1999, the comment period for the proposed rule, to allow interested persons to comment on the issues raised in this document.

DATES: The meeting will be held on August 4, 1999, from 8 a.m. to 6 p.m. Submit written comments on or before August 4, 1999.

ADDRESSES: The meeting will be held at the Jefferson Auditorium, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or via e-mail to "FDADockets@oc.fda.gov". Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Barclay, Office of Policy, Planning, and Legislation (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of April 29, 1998 (63 FR 23624), FDA published a proposed rule on the types of claims that could be made for dietary supplements without prior authorization by FDA. Under Federal Food, Drug, and Cosmetic Act (the act), as amended by the Dietary Supplement Health and Education Act of 1994 (DSHEA), a dietary supplement may carry a statement that describes "the role of a nutrient or dietary ingredient intended to affect the structure or function in humans" or that "characterizes the documented mechanism by which [the supplement] acts to maintain such structure or function." These types of claims are referred to as structure/function claims. However, a permitted structure/function statement "may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases." These types of claims are referred to as "disease claims."

In the April 29, 1998, proposal, FDA stated its belief that the line between structure/function claims and disease claims was not always clear and that clarifying criteria were needed. The proposed rule was intended to help identify disease claims; claims that did not qualify as disease claims would be considered acceptable structure/function claims. The proposal contained a definition of "disease," based upon current definitions of the term in medical and legal dictionaries. This definition differed from a definition of "disease or health-related condition" already found in FDA's regulations implementing the health claims provisions of the Nutrition Labeling and Education Act (NLEA). FDA proposed to conform the definition of "disease or health-related condition" in the health claims regulation to the proposed new definition of "disease." The proposal also contained 10 criteria for identifying disease claims.

FDA received over 100,000 comments on the proposed rule. Most of the comments objected to the proposed definition of disease or to some or all of the criteria for identifying disease claims. Although the comments raised many issues, three issues received particular attention: (1) Whether FDA should retain the definition of "disease or health-related condition" issued for NLEA health claims, rather than issue a new definition of "disease"; (2) whether certain common conditions associated with natural states, such as hot flashes associated with menopause, or premenstrual syndrome associated with the menstrual cycle, should be considered "diseases"; and (3) whether dietary supplements may carry implied disease claims. Because of the degree of controversy surrounding these issues, FDA believes that further public discussion focused on the three issues would be useful. FDA is therefore holding a public meeting to obtain further input on how to develop appropriate rules or policies that are consistent with the intent of DSHEA and with protection of the public health.

II. Scope of Discussion

The scope of the meeting will be limited to the three issues discussed in this notice. A brief discussion of each of the issues with specific questions on which FDA would like input follows.

A. Definition of Disease

In 1993, FDA issued regulations implementing the health claims provisions of NLEA. NLEA requires food manufacturers, including dietary supplement manufacturers, to obtain prior FDA authorization for any labeling statement that characterizes the relationship between a nutrient in the food to a "disease or a health-related condition" (section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)). The phrase "disease or health-related condition" was defined in those regulations as: damage to an organ, part, structure, or system of the body such that it does not function properly (e.g., cardiovascular disease), or a state of health leading to such dysfunctioning (e.g., hypertension); except that diseases resulting from essential nutrient deficiencies (e.g., scurvy, pellagra) are not included in this definition * * * § 101.14(a)(6) (21 CFR 101.14(a)(6)).

In the proposed rule on structure/function claims, FDA proposed a new definition of "disease":

any deviation from, impairment of, or interruption of the normal structure or function of any part, organ, or system (or combination thereof) of the body that is manifested by a characteristic set of one or more signs or symptoms, including laboratory or clinical measurements that are characteristic of a disease.

FDA's proposed definition of disease was based on current medical and legal definitions of the term. FDA stated in the preamble to the proposed rule that the agency did not want to make use of the older health claims definition of "disease or health-related condition" because its use of the term "damage" could be interpreted to limit the definition to serious or long-term diseases, and might exclude conditions that are medically understood to be diseases, such as depression or migraine headaches.

A very large percentage of the comments received on the proposal objected to the new definition of disease. Among the principal objections were that: (1) The new definition is too broad, sweeping in many minor deviations or abnormalities that are not diseases; and (2) Congress should be presumed to have been aware of the 1993 definition of "disease or health-related condition" and to have intended FDA to use that definition. Almost all of the comments from the dietary supplement industry and from individuals recommended that FDA return to the 1993 definition. Comments from health professional groups tended to support the new definition of disease as more consistent than the NLEA definition with a medical understanding of disease.

FDA seeks further input on the appropriate definition of disease. To help focus comments on this issue for the public meeting, the agency seeks input on the following questions: (1) What are the consequences, with respect to the range of permissible structure/function claims, of adopting: (a) The 1993 definition in § 101.14(a)(6), or (b) the definition in the proposed rule? (2) If FDA were to retain the 1993 definition, does the reference to "damage" exclude any conditions that are medically understood to be diseases? Please provide examples. (3) If it does not exclude any such conditions, is the 1993 definition otherwise consistent with current medical definitions of disease? (4) If it does exclude conditions that are medically understood to be diseases, could it be revised in a way that would include such conditions?

B. Common Conditions Associated With Natural States

The proposed rule stated that natural states such as aging, menopause, pregnancy, and the menstrual cycle, were not themselves diseases, but could be associated with abnormal conditions that were diseases. FDA proposed to treat as a disease claim a statement that a product had an effect on a condition associated with a natural state if the condition presented "a characteristic set of signs or symptoms recognizable to health care professionals or consumers" as an "abnormality" (see proposed § 101.93(g)(2)(iii)). FDA provided as examples of such abnormal conditions the following: Toxemia of pregnancy, premenstrual syndrome, hot flashes, and presbyopia, decreased sexual function; and Alzheimer's disease associated with aging.

Many comments strongly objected to classifying common conditions associated with natural states as diseases. While no one argued that toxemia of pregnancy or Alzheimer's disease are not diseases, a very large number of comments contended that premenstrual syndrome, hot flashes, and decreased sexual function associated with aging are so common that they should be considered neither abnormal nor diseases.

To help focus comments on this issue for the public meeting, FDA seeks input on the following questions: (1) If FDA were to treat some conditions associated with natural states as diseases (e.g., toxemia of pregnancy and Alzheimer's disease) but not others (e.g., hot flashes, common symptoms associated with the menstrual cycle, and decreased sexual function associated with aging), what would be an appropriate principle for distinguishing the two groups? (2) For example, would it be appropriate to consider the severity of the health consequences if the condition were to go without effective treatment? (3) If so, how should "severity" be defined?

C. Implied Disease Claims

FDA proposed to treat both express and implied disease claims as disease claims that could not be made for dietary supplements without prior FDA review (either as health claims or as drug claims). Many comments objected, arguing that Congress intended to include implied disease claims within the category of structure/function claims that do not require prior FDA review.

Most of the comments contended that Congress intended to prohibit only express disease claims, which, according to the comments, are limited to claims that explicitly refer to a specific disease. For example, "for the treatment of lung cancer" would be an express disease claim because it uses the term "cancer." According to the comments, implied disease claims are those that do not explicitly mention a specific disease. Implied disease claims may, however, refer to identifiable characteristics of a disease from which the disease itself may be inferred. There are many possible ways to imply treatment or prevention of disease, from listing the characteristic signs and symptoms of the disease to providing images of people suffering from the disease. As defined by the comments, the last 9 of the 10 criteria proposed by FDA for identifying disease claims could be considered methods of implying disease treatment or prevention.

Many comments argued with particular energy that dietary supplements should be allowed to claim to alleviate the characteristic signs or symptoms of a disease. Few comments offered examples of the types of implied disease claims they believed should be permitted. Applying the principle that dietary supplement labeling should be allowed to list the signs and symptoms of a disease, "shrinks tumors of the lung" or "prevents development of malignant tumors" would be permitted claims because they refer to the remedial effect of a product on a defining symptom of cancer, but do not mention the name of the disease itself. Similarly, while "treatment of epilepsy" would be prohibited as an express disease claim, "prevention of seizures" would be acceptable as an implied disease claim. "Treatment of hay fever" would be prohibited as an express disease claim, while "relief of sneezing, runny nose, and itchy watery eyes caused by exposure to pollen or other allergens" would be permitted as an implied disease claim.

The comments argued that Congress' intent to permit implied disease claims can be seen in at least three provisions of DSHEA. First, the Findings section of DHSEA refers to the relationship between dietary supplements and disease prevention. Second, section 403(r)(6) of the act states that structure/function statements may not "claim" to treat or prevent disease, and this term should be read to refer only to express claims. Third, DSHEA requires structure/function claims to be accompanied by a disclaimer that "this product is not intended to diagnose, treat, cure, or prevent any disease." According to the comments, Congress understood that specific disease treatment or prevention effects can also be described as effects on the structure

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or function of the body, and resolved the tension by requiring the disclaimer. Many comments also argued generally that DSHEA was intended to promote the free-flow of truthful information about dietary supplements, and that prohibiting implied disease claims is contrary to this legislative goal.

FDA had proposed to treat both express and implied claims as disease claims on two grounds. First, the agency has always exercised authority over both express and implied claims under section 201(g)(1)(B) of the act (21 U.S.C. 321(g)(1)(B)) , and believed that Congress would have explicitly authorized implied claims if it intended to change the agency's longstanding interpretation of the statute. The sections of DSHEA cited by the comments do not contain such an express authorization. Second, FDA believed that most disease treatment or prevention claims, including claims about serious and life-threatening diseases, can be described in a manner that will be easily understood by consumers without express reference to the name of the disease (e.g., "shrinks tumors of the lung"). If dietary supplements were permitted to make implied disease claims, the burden would be on consumers to evaluate the validity of claims about dietary supplements marketed for serious and life-threatening diseases. In addition, dietary supplements could be given an unfair advantage over prescription and over-the-counter drugs in the marketplace that are required to establish their safety and effectiveness for disease treatment and prevention.

In the proposed rule, FDA asked for comment on a specific type of implied disease claim: A claim that a dietary supplement prevents or treats abnormal or unhealthy conditions or clinical measurements that are not themselves diseases but are markers of, or risk factors for, diseases, e.g., "lowers cholesterol." FDA proposed to treat such claims as disease claims, but to permit claims that a product maintains healthy function, e.g., "helps maintain a healthy cholesterol level." Most of the comments argued that consumers do not perceive a distinction between claims that a product treats or prevents abnormal function, and claims that the product maintains healthy function. Comments from dietary supplement manufacturers and some consumer groups argued that both types of claims should be permitted, while comments from health professional groups, groups devoted to specific diseases, and other consumer groups tended to argue that neither type of claim should be permitted.

FDA seeks further input on whether dietary supplements should be permitted to carry implied disease claims without prior review, either as health claims or as drug claims. To help focus comments on this issue for the public meeting, the agency seeks input on the following questions: (1) If such claims should be permitted, how should FDA correctly draw the line between what constitutes a prohibited express claim and what constitutes a permitted implied claim? (2) If such claims should be permitted, what are representative examples of the types of implied disease claims that should be permitted without prior review? (3) Are the examples mentioned in this notice appropriate structure/function claims? (4) Is a claim that a product "maintains healthy function" an implied disease claim in all cases? If not, under what circumstances is such a claim not an implied disease claim?

III. Registration and Requests to Make Oral Presentations

If you would like to attend the meeting, you must register with the contact person (address above) by July 16, 1999, by providing your name, title, business affiliation, address, telephone, and fax number. To expedite processing, registration information may also be faxed to 301–594–6777. If you need special accommodations due to disability, please inform the contact person when you register.

FDA intends to invite representatives from industry, health professional groups, and consumer groups to participate in panel discussions on the three issues discussed previously during the first portion of the meeting. Presentations by members of the public will be permitted during the second portion of the meeting, as time permits. If, in addition to attending, you wish to make an oral presentation during the meeting, when you register to attend you must so inform the contact person and submit: (1) A brief written statement of the general nature of the arguments you wish to present, (2) the names and addresses of the persons who will give the presentation, and (3) an indication of the approximate time that you request to make your presentation. Depending upon the number of people who register to make presentations, we may have to limit the time allotted for each presentation. We anticipate that, if time permits, those attending the meeting will have the opportunity to ask questions during the meeting.

IV. Comments

Interested persons may, on or before August 4, 1999, submit written comments to the Dockets Management Branch (address above). You may also send comments to the Dockets Management Branch via e-mail to "FDADockets@oc.fda.gov". You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

You may request transcripts of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Website "http://www.fda.gov".

Dated: July 2, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–17424 Filed 7–6–99; 12:26 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57, 72 and 75

RIN 1219–AA74; 1219–AB11

Diesel Particulate Matter Exposure of Underground Coal and Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rules; corrections.

SUMMARY: This document corrects errors in the preamble discussions to the proposed rule on diesel particulate matter exposure of underground coal miners, and the proposed rule on diesel particulate matter exposure of underground metal and nonmetal miners. Specifically, this document corrects errors in the Diesel Emission Control Estimator formula in the proposed Appendix to Part V of both preambles; and corrects certain titles in proposed Figures V–1 through V–5 of the metal and nonmetal preamble, and proposed Figure V–5 of the coal preamble.

DATES: Written comments on these clarifications and corrections must be submitted on or before July 26, 1999.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send your comments to MSHA. Clearly identify comments as such and send them—

(1) By mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to *comments@msha.gov.*

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances: MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION: On April 9, 1998 (63 FR 17492), MSHA published a proposed rule addressing diesel particulate matter exposure of underground coal miners. On October 29, 1998 (63 FR 58104), the agency published a proposed rule addressing diesel particulate matter exposure of underground metal and nonmetal miners. These proposals seek to reduce the risks to underground coal and metal and nonmetal miners, respectively, of serious health hazards associated with exposure to high concentrations of diesel particulate matter (dpm). DPM is a very small particle in diesel exhaust. Underground miners are exposed to far higher concentrations of this fine particulate than any other group of workers.

After publication of both proposed rules, MSHA realized that the Diesel Emission Control Estimator formula in Appendix to Part V: Diesel Emission Control Estimator was incorrect. The formula did not contain the unit conversion factors of 60 minutes/hour and 1000 µg/mg. Also, the formula did not contain the "Ts" unit factor, which represents the total shift length, hours. However, the spreadsheet supplied by MSHA performs the calculations correctly because it contains these units.

This document corrects these errors by including the conversion factors, and the "Ts" unit in the Diesel Emission Control Estimator formula. Additionally, the Agency is taking this opportunity to correct certain titles in proposed Figures V–1 through V–5 of the metal and nonmetal preamble, and proposed Figure V–5 of the coal preamble. These titles are being corrected because the specific units of measurement are misstated. Below are these corrections.

I. Corrections to Proposed Rule on Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners (63 FR 58104)

[Figure V–1]:

1. On page 58198, Figure V–1, section 1, line 1, "MEASURED OR ESTIMATED IN MINE DP EXPOSURE (µg/m3)" should read "MEASURED OR ESTIMATED DPM CONCENTRATION (µg/m^3)".

2. On page 58198, Figure V–1, section 2, line 18, "AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)" should read "AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)".

[Figure V–2]:

1. On page 58199, Figure V–2, section 1, line 1, "MEASURED OR ESTIMATED IN MINE DP EXPOSURE (µg/m^3)" should read "MEASURED OR ESTIMATED DPM CONCENTRATION (µg/m^3)".

2. On page 58199, Figure V–2, section 2, line 18, "AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)" should read "AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)".

[Figure V–3]:

1. On page 58200, Figure V–3, section 1, line 1, "MEASURED OR ESTIMATED IN MINE DP EXPOSURE (µg/m3)" should read "MEASURED OR ESTIMATED DPM CONCENTRATION (µg/m^3)".

2. On page 58200, Figure V–3, section 2, line 18, "AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)" should read "AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)".

[Figure V–4:]

1. On page 58201, Figure V–4, section 1, line 1, "MEASURED OR ESTIMATED IN MINE DP EXPOSURE (µg/m3)" should read "MEASURED OR ESTIMATED DPM CONCENTRATION (µg/m^3)".

2. On page 58201, Figure V–4, section 2, line 21, "AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)" should read "AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)".

[Figure V–5]:

1. On page 58205, Figure V–5, section 1, line 1, "MEASURED OR ESTIMATED IN MINE DP EXPOSURE (µg/m3)" should read "MEASURED OR ESTIMATED DPM CONCENTRATION (µg/m^3)".

2. On page 58205, Figure V–5, section 2, line 18, "AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)" should read "AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)".

3. On page 58205, Figure V–5, section 3, line 4, Column B, "73 cfm/hp" should read "173 cfm/hp".

4. On page 58206, second column, line 3, "E(a)=(DPM(m) – I)x{Q(I)/35200}/[Sum(Hp(I)xTo(I))]" should read "E(a)=(DPM(m) – I)xTs x Q(I) x 1.7/ [10^6 x Sum (Hp(I) x To(I))]".

5. On page 58206, second column, line 12, "To(I) = Individual engine operating times, hours" should read "Ts = Total shift length, hours".

6. On page 58206, second column, line 14, insert the following before beginning of paragraph: "To(I) = Individual engine operating times, hr; "1.7 = The metric conversion factor that converts cfm to m^3/hr, 1.7"; "10^6 – The conversion factor that converts gm to µg".

7. On page 58206, third column, line 9, "DPM(a) = {[[Sum (E(I) x Hp(I) x To(I))] x 35,300/Q(I)] + I} x [Ts/8]" should read "DPM(a) = [(E(a) x Sum Hp(I) x 10^6/1.7 x Q(I)) + I] x Ts/8".

8. On page 58206, third column, line 12, "35,300 is a metric conversion factor" should be deleted.

9. On page 58206, third column, line 16, "E(I) = Individual engine emission rates, gm/hp-hr" should read "E(a) = is the quantity calculated for section 2, Column B, the average engine emission rate, gm/hp-hr".

10. On page 58206, third column, line 19, "To(I) = Operating time hours" should be deleted.

11. On page 58206, third column, line 23, insert the following before the beginning of paragraph: "1.7 = The metric conversion factor that converts cfm to m^3/hr, 1.7"; "10^6 = The conversion factor that converts gm to µg".

12. On page 58207, first column, line 71, "DPM(c) = {Sum[(E(I) x Hp(I) x To(I)) x (35300/Q(I)) x (1 – R(o)) x (1 – R(f)) x (1 – R(e))] x [Q(I)/Q(f)]} + I" should read "DPM(c) = {(10^6/Ts) x Sum[E(I) x Hp(I) x To(I) x (1 – R(o)) x (1 – R(f)) x (1 – R(e))] / 1.7 x Q(f)} + I".

13. On page 58207, second column, insert before line 17, "Ts = Total shift length, hours".

14. On page 58207, second column, after line 21 and before the section heading, "VI. Impact Analysis," insert the following: "Note: The factor 1.7 to convert Q in cfm to m^3/hr is determined as follows: 1 cu ft = [(2.54 cm/in)^3 x (12 in)^3/cu ft)/[(100 cm)^3/m^3] = 0.028317 m^3; 1 min = 1/60 hr; 1 cfm = 1.7 m^3/hr; 1 gm = 10^6 µg; Thus Q(m^3/hr) = 1.7 x Q (cu ft/min) and E(µg/hp-hr) = 10^6 x E(gm/hp-hr)".

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II. Corrections to Proposed Rule on Diesel Particulate Matter Exposure of Underground Coal Miners (63 FR 17492)

[Figure V–5]:

1. On page 17567, Figure V–5, section 1, "MEASURED OR ESTIMATED IN MINE DP EXPOSURE (µg/m3)" should read "MEASURED OR ESTIMATED DPM CONCENTRATION (µg/m^3)".

2. On page 17567, Figure V–5, section 2, line 18, "AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)" should read "AVERAGE, TOTAL SHIFT, ENGINE EMISSION RATE (gm/hp-hr)".

3. On page 17569, first column, line 19, "E(a)=(DPM(m)-I) x (Q(I)/35200)/ [Sum(Hp(I) x To (I))]" should read "E(a)=(DPM(m)-I) x Ts x Q(I) x 1.7/ [10^6 x Sum (Hp(I) x To(I))]".

4. On page 17569, first column, line 29, "To(I) = Individual engine operating times, hours" should read "Ts = Total shift length, hours".

5. On page 17569, first column, after line 30 and before line 31, insert the following before beginning of paragraph: "To(I) = Individual engine operating times, hr"; "1.7 = The metric conversion factor that converts cfm to m^3/hr, 1.7"; "10^6 = The conversion factor that converts gm to µg".

6. On page 17569, second column, line 19, "DPM(a) = {[[Sum (E(I) x Hp(I) x To(I))] x 35,300/Q(I)} + I} x [Ts/8]" should read "DPM(a) = [(E(a) x Sum Hp(I) x 10^6/1.7 x Q(I)) + I] x Ts/8".

7. On page 17569, second column, line 22, "35,300 is a metric conversion factor" should be deleted.

8. On page 17569, second column, line 26, "E(I) = Individual engine emission rates, gm/hp-hr" should read "E(a) = is the quantity calculated for section 2, Column B, the average engine emission rate, gm/hp-hr".

9. On page 17569, second column, line 30, "To(I) = Operating time hours" should be deleted.

10. On page 17569, second column, after line 33 and before line 34, insert the following before the beginning of paragraph: "1.7 = The metric conversion factor that converts cfm to m^{3}hr, 1.7"; "10^6 = The conversion factor that converts gm to µg".

11. On page 17570, first column, line 19, "DPM(c) = {Sum[(E(I) x Hp(I) x To(I)) x (35300/Q(I)) x (1-R(o)) x (1-R(f)) x (1-R(e))] x [Q(I)/Q(f)]} + I" should read "DPM(c)= {(10^6/Ts) x Sum[E(I) x Hp(I) x To(I)x (1-R(o)) x (1-R(f)) x (1-R(e))] / 1.7 x Q(f)} + I'.

12. On page 17570, first column, insert in line 41, "Ts = Total shift length, hours".

13. On page 17570, first column, after line 47 and before the section heading, "VI. Impact Analysis": insert the following: "Note: The factor 1.7 to convert Q in cfm to m^3 / hr is determined as follows: 1 cu ft = ((2.54 cm/in)^3 x (12 in)^3/cu ft)/[(100 cm)^3/m^3] = 0.028317 m^3; 1 min = 1/60 hr; 1 cfm = 1.7 m^3/hr; 1 gm = 106 µg; Thus Q(m^3/hr) = 1.7 x Q (cu ft/min) and E(µg/hp-hr) = 10^6 x E(gm/hp-hr)".

II. Close of Rulemaking Records

The post-hearing comment periods for both proposed rules will close concurrently on July 26, 1999. Commenters are encouraged to submit their comments on or before that date. This will allow the public 15 months from the date of publication to comment on the underground coal proposal, and nine months to comment on the metal and nonmetal proposal.

Dated June 30, 1999.

J. Davitt McAteer

Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–17326 Filed 7–6–99; 9:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–124–FOR]

Pennsylvania Regulatory Program

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on certain parts of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted on December 18, 1998, with revisions submitted on June 1, 1999. The comment period is being reopened for changes that deal with effluent limitations in 25 PA Code Chapter 87, Subchapter F and Chapter 88, Subchapter G. Specifically, these changes include the deletion of the definition of "best professional judgement" at 25 PA Code 87.202 and 25 Pa Code 88.502, and the deletion of subsections 25 PA Code 87.207 (b) and 25 PA Code 88.507 (b). Both §§ 87.207(b) and 88.507(b) are titled, "Treatment of Discharges" and require operator treatment of preexisting discharges which are not encountered during mining or implementation of the abatement plan with the effluent limits established by best professional judgement. The amendment is intended to revise the State program to be consistent with the counterpart Federal provisions.

DATES: Written comments must be received by 4:00 p.m. on July 23, 1999.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below.

Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, Post Office Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments, can be found in the July 30, 1982, **Federal Register** (47 FR 33079). Subsequent actions concerning the Pennsylvania program amendments are identified at 30 CFR 938.15.

II. Discussion of the Proposed Amendment

The Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program pursuant to remining and reclamation, postmining discharges, and water supply protection/replacement in a letter dated December 18, 1998 (Administrative Record No. PA–853.01). This proposed amendment was published in the **Federal Register** on March 12, 1999 (64 FR 12269). The comment period for this proposal closed on April 12, 1999. During OSM's review of this proposal, PADEP submitted changes to supplement the original submission. These changes were described in a letter dated June 1, 1999 (Administrative Record No. 853.11). In that letter, PADEP indicated that the December 18, 1998, submission proposed to remove approved program language in 25 PA Code Chapters 87–90 dealing with effluent limits for discharges from areas disturbed by coal mining activities. The deletion of the definitions of the term "best professional judgement" from 25 PA Code 87.202 and 88.502 and deletion of 25 PA Code 87.207(b) and 88.507(b) are a supplement to this proposal. OSM is opening the public comment period to allow comment on these additional proposed deletions to the approved Pennsylvania program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments identified above. Specifically, OSM is seeking comments on the proposed changes to Pennsylvania's regulations that were submitted on June 1, 1999 (Administrative Record No. PA–853.11). Comments should address whether the proposed changes satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–17295 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 212

[Docket No. RM 99–4A]

Design Protection for Vessel Hulls

AGENCY: Copyright Office, Library of Congress.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 1313(c) of title 17 permits a party damaged by the registration of a vessel hull design to request cancellation of the design. The Copyright Office is requesting interested parties to comment on the process and procedures that should be adopted for the cancellation of registrations of vessel hull designs.

DATES: Comments should be submitted no later than August 6, 1999. Reply comments are due no later than September 7, 1999.

ADDRESSES: An original and 10 copies of comments and reply comments should be mailed to: Office of the General Counsel, Copyright Office, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If delivered by hand, an original and 10 copies should be brought to: Office of the Copyright General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Senior Attorney, Office of the General Counsel, Copyright Office, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: As part of the amendments made to the Copyright Act by the Digital Millennium Copyright Act, Public Law 105–304, Congress enacted design protection for vessel hulls. Chapter 13 of the Copyright Act creates certain exclusive rights for owners of original designs of vessel hulls provided registration of the design

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is made within two years after the date on which the design is first made public. Registration of designs is made at the Copyright Office.

The Copyright Office has adopted interim regulations, effective July 1, 1999, implementing the registration system for vessel hull designs. The interim regulations did not, however, address procedures for cancelling registrations upon petition of an interested party. This Notice of Inquiry seeks public comment as to what type of process and procedures the Copyright Office should adopt for the cancellation of registrations. Persons submitting comments are invited to combine those comments with the comments they submit relating to the interim regulations, which are due on the same date.

Section 1313(c) of title 17 provides that "[a]ny person who believes he or she is or will be damaged by a registration under this chapter may, upon payment of the prescribed fee, apply to the [Register] at any time to cancel the registration on the ground that the design is not subject to protection under this chapter." 17 U.S.C. 1313(c). Upon receipt of such application, the Register must provide the owner of the design with the request for cancellation and "the owner shall have a period of 3 months after the date on which such notice is mailed to present arguments to the [Register] to support the validity of the registration." *Id.* The Register is granted authority to establish regulations by which the opposing parties may "appear and be heard in support of their arguments," and is directed to cancel the registration if she determines that "the design is not subject to protection under this chapter." *Id.*

Because the Copyright Office has just published interim regulations creating the registration process for vessel hull designs and has yet to make a registration, it was not necessary to immediately adopt cancellation regulations. The Office is now seeking comment on the appropriate structure and procedures for cancelling registrations. In considering a process, commenters should bear in mind that the fees for cancellation proceedings will be set at a level designed to recover the actual cost of the proceedings.

The Office specifically seeks comment to the following inquiries. First is the issue of who should conduct a cancellation proceeding. Should the proceeding be conducted by staff of the Copyright Office, and, if so, should it be conducted by staff of the Examining Division or by attorneys in the General Counsel's Office? Or, should the Office hire an administrative law judge ("ALJ") (preferably one with knowledge of vessel designs) to conduct the hearings and make findings of fact? If an ALJ is the preferable choice, how should the ALJ be paid? Should the ALJ's findings be given presumptive validity, or should the Register be empowered to make her own findings?

Second, how extensive should the proceeding be to consider the petition? The statute prescribes that the owner must be given 3 months to respond to the petition. Should additional written arguments be permitted in addition to the initial petition and the owner's response? What type of submissions should be permitted, and what should the time be? Should the parties be confined to presenting their arguments in written format, or should oral hearing be allowed as well? How extensive should such hearings be? Should they be conducted in accordance with the Administrative Procedure Act requirements for formal hearings, or according to some other less formal format?

Third, what should be the fee charged by the Copyright Office for such a proceeding? Because the registration fee is relatively modest, and because the fee for cancellation proceedings is likely to be considerably greater, should the obligation to pay for cancellation proceedings be shared by the party seeking cancellation and the party who obtained the registration? Should the fee be fixed, or should it be assessed in whole or in part based on the amount of time the presiding officer actually expends in reviewing the submissions and conducting the proceeding? Does the Office have authority to assess fees in that manner?

The Office welcomes responses to these inquiries, as well as any other information or comment as to the cancellation process.

Dated: July 1, 1999.

David O. Carson,

General Counsel.

[FR Doc. 99–17364 Filed 7–7–99; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–37–1–7392b; FRL–6372–8]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to approve a revision to the New Mexico State Implementation Plan (SIP) that contains transportation conformity rule for Albuquerque/Bernalillo County. If we approve this transportation conformity SIP revision, the Albuquerque/Bernalillo County Air Quality Control Board will be able to implement and enforce the Federal transportation conformity requirements at the State level per 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. Our proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. Our proposed approval is limited to 40 CFR part 51, subpart T and 40 CFR part 93, subpart A (Transportation Conformity). We approved the SIP revision for conformity of general Federal actions (under 40 CFR part 51, subpart W) on September 13, 1996 (61 FR 48407).

We are proposing to approve this SIP revision under sections 110(k) and 176 of the Clean Air Act. We have given our rationale for the proposed approval and other information in the Final Rules section of this **Federal Register.**

In the "Rules and Regulations" section of **Federal Register**, we are approving the State's SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time.

DATES: We must receive your comments on this proposed rule in writing, by August 9, 1999.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Pollution Control Division, Albuquerque Environmental Health Department, City of Albuquerque, One Civic Plaza, Albuquerque, New Mexico 87102, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

If you wish to obtain additional information, you should read the Direct Final Rule which is located in the Rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: June 10, 1999.

W. B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 99–17205 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–56–1–7391b; FRL–6372–5]

Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to approve a revision to the Texas State Implementation Plan (SIP) that contains transportation conformity rules. If we approve this transportation conformity SIP revision, the State will be able to implement and enforce the Federal transportation conformity requirements at the State level per 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws. Our proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. Our proposed approval is limited to 40 CFR part 51, subpart T and 40 CFR part 93, subpart A (Transportation Conformity). We approved the SIP revision for conformity of general Federal actions (under 40 CFR part 51, subpart W) on March 11, 1998 (63 FR 11833).

We are proposing to approve this SIP revision under sections 110(k) and 176 of the Clean Air Act. We have given our rationale for the proposed approval and other information in the Final Rules section of this **Federal Register.**

In the "Rules and Regulations" section of **Federal Register**, we are approving the State's SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: We must receive your comments on this proposed rule in writing, postmarked by August 9, 1999.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1749.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: If you wish to obtain additional information, you should read the Direct Final rule which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: June 9, 1999.

W.B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 99–17203 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket No. MARAD–1999–5915]

RIN 2133–AB39

Administrative Waivers of the Coastwise Trade Laws for Eligible Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Maritime Administration (MARAD, or we, our or us) is seeking public comment on a proposed rule to implement Title V of the Coast Guard Authorization Act of 1998. The new law authorizes the Secretary of Transportation to waive the U.S.–build and other requirements of the Passenger Services Act and Section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with appropriate endorsement for employment in the coastwise trade as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. This administrative process will improve the responsiveness of the Federal Government in meeting the needs of many vessel-operating small businesses.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 7, 1999.

ADDRESSES: You should mention the docket number that appears at the top of this document. You should submit your written comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket. You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m., EDT. Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: You may call Michael Hokana, Office of Ports and Domestic Shipping, Maritime Administration, at (202) 366–0760, or you may write to him at the following address: MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: By this notice of proposed rulemaking, MARAD seeks public comment on an implementation plan for its Small Passenger Vessel Waiver Administration Program and related information collection requirements. Title V of the Coast Guard Authorization Act of 1998 (Public Law 105–383) authorizes the Secretary of Transportation to grant waivers of certain requirements for the smallest of passenger vessels (those carrying twelve or fewer passengers) to operate in the coastwise trade.

Within the Department of Transportation there are two agencies with responsibilities related to the coastwise trade laws. The Coast Guard issues the vessel documents and endorsements that authorize vessels to engage in the coastwise trade. However, the Secretary of Transportation has delegated to MARAD the authority to process applications for waivers of the coastwise laws and to determine the effect of waivers of the coastwise trade laws on United States vessel builders and United States-built vessel coastwise trade businesses. We are outlining the procedures to be followed in processing applications for waivers, or revoking waivers previously granted. Upon grant of a waiver, MARAD will notify the applicant and the Coast Guard. Thereafter, you may register the vessel so waived with the Coast Guard under the Coast Guard's normal procedures, provided the vessel is otherwise eligible.

Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign-built or foreign rebuilt small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Additionally, vessels requested for consideration must be greater than three (3) years old. We will not grant waivers in instances where such waiver activity will have an unduly harmful impact on U.S. shipyards or U.S.-flag ship operators. Specifically, and in order to meet the public comment provisions of Title V, it is our intention to publish waiver requests for comment in the **Federal Register**. After a period of time to evaluate comments and assess the impact that the proposed waivers will have on the U.S.-flag shipping and shipbuilding industry, we will issue a determination.

In assessing the adverse effect of grant of a particular waiver, we may consider sales of vessels of the same type and size and for the same trade by domestic shipbuilders. As an example, the grant of a waiver for a motor vessel might not have an adverse effect on sales by a builder of sailboats. As for adverse effects on coastwise trade businesses, we may look at the type of service and geographic location of the applicant and the objector. An intended service providing day trips for whale watching might not affect a service providing weeklong trips on a sailing ship. A charter service in Maine might not affect a charter service in California. Each decision will be made on the facts of the individual circumstances, including the degree of competition in a proposed market.

We do not have the authority to waive citizenship requirements for vessel ownership and documentation. The Coast Guard will ascertain whether the shipowner is qualified as a citizen to register a vessel. In addition, the Coast Guard, not MARAD, will determine whether a particular vessel will be considered a small passenger vessel or an uninspected passenger vessel. However, we may refuse to process an application if the vessel is not the type eligible for a waiver. Prospective applicants for a coastwise trade law waiver may wish to consult with the Coast Guard prior to initiating the waiver application process with MARAD.

Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances where a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, substantially changes that service and the vessel is employed other than as a small passenger vessel or an uninspected passenger vessel and the vessel is having an unduly harmful impact on U.S. vessel builders or persons who employ U.S.-built vessels in the domestic trade. The procedure for revocation of a MARAD waiver will include the publication of a notice in the **Federal Register** seeking public comments on the proposed revocation. Secondly, we will determine the extent of the allegedly detrimental activity and, if an undue impact is found, we will issue a formal letter of waiver revocation with an appropriate grace period. This determination will be sent to the Coast Guard for revocation of the vessel's coastwise endorsement.

MARAD's decisions to grant or deny a waiver and to revoke or not revoke a waiver will not be final until after time for review has expired. Applicants and persons who submitted comments in response to a **Federal Register** notice may petition the Maritime Administrator to review a waiver determination, or request the Maritime Administrator not to review a waiver determination. Relatively short time periods are provided for this review process.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number that appears at the top of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit/.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, MAR–220, 400 7th Street, SW, Washington, DC 20590. In addition, you should submit two copies, *from which you have deleted the claimed confidential business information*, to Docket Management at the address given above under **ADDRESSES**. When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will The Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Room are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on "search." On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "MARAD–1999–1234," you would type "1234." After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket that you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket, as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

May I Comment on MARAD?s Use of Plain Language?

This NPRM is one of our first published rulemaking documents under the plain language directives. We welcome any comments and suggestions on the use and effectiveness of plain language techniques in this document or other suggestions on improving our use of plain language.

Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This rule is not an economically significant regulatory action under section 3(f) of E.O. 12866, because it would not have an effect on the economy of $100 million or more. We do not anticipate that a preliminary regulatory evaluation will be prepared.

Federalism

MARAD has analyzed this notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), MARAD must consider whether a notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. Based on a review of this proposed rule, MARAD certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because this regulation does not impose any significant burdens on small entities, and we do not expect that a substantial number of small entities will be applicants.

Environmental Assessment

This rule would not significantly affect the environment because the small number and small size of vessels admitted to U.S. registry under this waiver program would have little or no effect on the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This proposed rulemaking establishes a new requirement for the collection of information. The Office of Management and Budget (OMB) will be requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501, et seq.).

In accordance with the Paperwork Reduction Act this document announces MARAD's intentions to request approval for three years of information collection to allow processing of applications for waivers. Copies of this request may be obtained from the Division of Domestic Shipping at MAR–832 Room 7201, 400 7th Street, SW, Washington, DC 20590.

Title of Collection: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels, 46 CFR Part 388.

Type of Request: New request for information collection.

OMB Control Number: 2133–NEW.

Form Number: None.

Expiration Date of Approval: Three years following approval by the Office of Management and Budget.

Summary of Collection of Information: Persons desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application. No form or particular format will be required for the application. However, a minimal amount of information about the applicant and the vessel proposed for a waiver will be necessary to properly make the determinations required to grant a waiver.

Need for and Use of the Information: The information collected will be used to process applications for waiver of the coastwise trade laws for small passenger vessels. Without the information it would be impossible to know who wants a waiver and whether they qualify for a waiver.

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Description of Respondents: Owners of small passenger vessels.

Annual Responses: Responses will be a one-time requirement of up to approximately 100 respondents per year.

Annual Burden: 100 hours.

Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Consultation and Coordination with Indian Tribal Governments

MARAD believes that regulations evolving from this NPRM would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

Impact on Business Processes and Computer Systems (Year 2000)

Many computers that use two digits to keep track of dates may, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modification to computer systems. Because the NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in the NPRM.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 388

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements.

Accordingly, the Maritime Administration proposes to add a new Part 388 to 46 CFR chapter II, subchapter J, to read as follows:

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS

Sec.
388.1 Purpose.
388.2 Definitions.
388.3 Applications; fees.
388.4 Criteria for grant of a waiver.
388.5 Criteria for revocation of a waiver.
388.6 Process.
388.7 Sunset provision.

Authority: 46 App. U.S.C. 1114(b); Public Law 105–383, 112 Stat. 3445 (46 U.S.C. 12106 note); 49 CFR 1.66.

§ 388.1 Purpose.

This part prescribes regulations implementing the provisions of Title V of Public Law 105–383, 112 Stat. 3445, which grants the Secretary of Transportation authority to review and approve applications for waiver of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more, built or rebuilt outside the United States, and grants authority for revocation of those waivers.

§ 388.2 Definitions.

For the purposes of this part:

(a) *Coastwise Trade Laws* include:

(1) The Coastwise Endorsement Provision of the Vessel Documentation Laws, (46 U.S.C. 12106);

(2) The Passenger Services Act, section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289); and

(3) The Jones Act, section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(b) *Eligible Vessel* means a vessel of five or more tons that is either a small passenger vessel or an uninspected passenger vessel that—

(1) Was not built in the United States and is at least 3 years of age; or

(2) If rebuilt, was rebuilt outside the United States at least 3 years before the certification requested would become effective.

(c) *Secretary* means the Secretary of Transportation.

(d) The terms, *small passenger vessel, uninspected passenger vessel* and *passenger for hire* have the meaning given such terms by section 2101 of title 46, United States Code.

§ 388.3 Applications; fees.

(a) You may apply in writing to the Secretary, Maritime Administration (MARAD), MAR–120 Room 7210, 400 7th St., SW, Washington, DC 20590, for an administrative waiver of the coastwise laws of the United States for an Eligible Vessel to carry no more than twelve passengers for hire. The application need not be in any particular format, but must be signed and contain the following information:

(1) Name of vessel and owner for which waiver is requested.

(2) Size, capacity and tonnage of vessel (state whether tonnage is measured pursuant to 46 U.S.C. 14502, or otherwise, and if otherwise, how measured).

(3) Intended use for vessel, including geographic region of intended operation and trade.

(4) Date and place of construction and (if applicable) rebuilding. (If applicant is unable to determine origins of vessel, foreign construction will be assumed).

(5) Name, address, and telephone number of applicant and vessel owner (if different from applicant).

(6) A statement on the impact this waiver will have on other commercial passenger vessel operators, including a statement describing the operations of existing operators.

(7) A statement on the impact this waiver will have on U.S. shipyards.

(b) You must enclose an application fee for each waiver requested, in the form of a check for $300, made out to the order of "Treasurer of the United States."

§ 388.4 Criteria for grant of a waiver.

(a) *General criteria.* (1) A waiver of the foreign build and/or foreign rebuild prohibition in the coastwise trade laws will be granted for an Eligible Vessel if we determine that the employment of the vessel in the coastwise trade will not unduly adversely affect—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States in that business.

(2) We may evaluate the expected impact of the proposed waiver on the basis of the information received from all sources, including public comment, internal investigation and analysis, and any other sources of information deemed appropriate.

(b) *Impact on U.S. shipbuilders.* We may use the following criteria to determine the effect on U.S. shipbuilders: Whether a potentially impacted U.S. vessel builder has a history of construction of similar vessels, or can demonstrate the capability and capacity to build a similar vessel, for use in the same geographic region of the United States, as the proposed vessel of the applicant.

(c) *Impact on coastwise trade operators.* We may use the following criteria to determine the effect on existing operators of U.S.-built vessels in coastwise trade:

(1) Whether the proposed vessel of the applicant and the vessel(s) of an existing operator(s) (or the vessel(s) of an operator that can demonstrate it has taken definite steps to begin operation):

(i) Are of similar size;

(ii) Are of similar characteristics;

(iii) Would provide similar commercial service; and

(iv) Would operate in the same geographic area.

(2) The number of similar vessels operating or proposed to operate in the same market with the same or similar itinerary, relative to the size of the market.

§ 388.5 Criteria for revocation of a waiver.

(a) We may revoke a waiver previously granted under this part if we determine that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement, and—

(1) The vessel is employed other than as a small passenger vessel or an uninspected passenger vessel; or

(2) The employment of the vessel unduly adversely affects—

(i) United States vessel builders; or

(ii) The coastwise trade business of any person who employs vessels built in the United States.

(b) We may evaluate the effects of the employment of the waived vessel in the coastwise trade on the basis of the information received from all sources, including public comment, internal investigation and analysis, and any other sources of information deemed appropriate.

§ 388.6 Process.

(a) *Initial process.* We will review each application for completeness as received. We will notify the applicant if additional information is necessary or if the application does not meet the initial eligibility requirements for a waiver. All applications that pass the initial screening will be available for public inspection in the Department of Transportation Docket Room following publication in the **Federal Register**. We will publish a notice of such applications in the **Federal Register**. Interested parties will be given an opportunity to comment on whether introduction of any of the proposed vessels would adversely affect them. In the absence of duly filed objections to an application, and in the absence of undue market impact on vessel operators or vessel builders otherwise discovered by us, we will assume that there will be no adverse effect. If an objection to an application is received, additional information may be sought from the objector. The applicant will be given a sufficient amount of time to respond. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and all available information or may, as a matter of discretion, hold a hearing on the application. The decision will be communicated to the applicant, commenters and the Coast Guard. If the Maritime Administration grants a waiver, the applicant must thereafter contact the Coast Guard to obtain the necessary documentation for domestic operation, provided the vessel and its owner otherwise qualify.

(b) *Revocation.* We may, upon the motion of an interested party, or upon our own motion, publish a notice in the **Federal Register** proposing to revoke a waiver granted under this part. We may request additional information from any respondent to the notice. The Director, Office of Ports and Domestic Shipping, will then either make a decision based on the written submissions and additional publicly available information or may, as a matter of discretion, refer the request for revocation to a hearing. The Maritime Administration will communicate its decision to the applicant and the Coast Guard. If MARAD revokes a waiver, the Coast Guard shall revoke the vessel's coastwise endorsement.

(c) *Review of determinations.* (1) The decisions by the Director, Office of Ports and Domestic Shipping, to grant a waiver, deny a waiver or revoke a waiver will not be final until after time for discretionary review by the Maritime Administrator has expired. Applicants and persons who submitted comments in response to a **Federal Register** notice may petition the Maritime Administrator to review a waiver, waiver denial, or waiver revocation within five (5) days of such determination. Each petition for review should state the petitioner's interest and the reasons review is being sought, clearly pointing out any alleged errors of fact or misapplied points of law. Within three (3) days of submission of a petition for review, applicants for a waiver and persons who submitted comments in response to a **Federal Register** notice may request the Maritime Administrator not to review a waiver, waiver denial or waiver revocation.

(2) Such petitions and responses may be sent by facsimile to the Secretary, Maritime Administration, at (202) 366–9206. To the extent possible, each petitioner or respondent should send a copy of their petition or response to other interested parties by facsimile at the same time the submission is made to MARAD. The Maritime Administrator will decide whether to take review within two (2) days following the time for submission of a request that the Maritime Administrator not take review. If the Maritime Administrator takes review, the determination by the Director, Office of Ports and Domestic Shipping, will be stayed until final disposition. If review is not taken, the determination by the Director, Office of Ports and Domestic Shipping, will become final two (2) days after the time for submission of requests that the Maritime Administrator not take review. If the last day of a time limit falls on a Saturday, Sunday or Federal holiday, the time is extended to the next business day. In the absence of any petition for review, the determination by the Director, Office of Ports and Domestic Shipping, will become final within ten (10) days. The Secretary, MARAD, may extend any of the time limits for good cause shown.

§ 388.7 Sunset provision.

We will grant no waivers after September 30, 2002, unless the statutory authority to grant waivers is extended beyond that date. Any waiver granted prior to September 30, 2002 will continue in effect until otherwise invalidated or revoked under chapter 121 of title 46, United States Code.

By order of the Maritime Administrator.

Dated: June 30, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–17045 Filed 7–7–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Notice of 6-month Extension on the Proposed Rule to List the Contiguous United States Distinct Population Segment of the Canada Lynx as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of deadline.

SUMMARY: We (the U.S. Fish and Wildlife Service) extend for not more than 6 months the time to make a decision on the proposal to list the contiguous United States distinct population segment of the Canada lynx (*Lynx canadensis*) as a threatened species. The new deadline for final action on the proposed rule to list the contiguous United States population segment of the Canada lynx is extended from July 8, 1999, to January 8, 2000. We will use the 6-month extension to obtain and review new information anticipated to be forthcoming in a scientific report on the Canada lynx from the U.S. Forest Service's Rocky Mountain Research Station.

DATES: We intend to reopen the public comment period to accept comment on the science report when it becomes available and will soon announce the dates of the new public comment period in the **Federal Register**.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor at the above address, or telephone 406/449–5225; facsimile 406/449–5339.

SUPPLEMENTARY INFORMATION:

Background

Within the timeframes established under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), a final determination of whether or not to list the contiguous United States distinct population segment of the Canada lynx is due by July 8, 1999. The proposed listing of the Canada lynx was a result of a settlement agreement between the U.S. Fish and Wildlife Service and the plaintiffs, Defenders of Wildlife *et al.*, on February 12, 1998. This agreement required the publication of a proposed rule to list the Canada lynx in the contiguous United States. The proposed rule to list this population segment as threatened was published in the **Federal Register** on July 8, 1998 (63 FR 36994).

If there is substantial disagreement regarding the sufficiency or accuracy of the available data, the Act allows for a 6-month extension of a final listing determination for the purpose of soliciting additional data. We are extending for 6 months the deadline for the final determination to list the lynx. The new deadline for a final listing determination is extended from July 8, 1999, to January 8, 2000.

The scientific basis for our findings and conclusions in the proposed rule have been questioned by many of the 14 affected State wildlife agencies that responded during the public comment period. These State wildlife agencies have expertise and historical knowledge of lynx biology within their respective jurisdictions and dispute the accuracy of our assessment of the status and/or threats to the lynx. The information challenged by the State agencies included our assessment of the effects on lynx populations of forestry practices, past overharvesting, and competition with other species. They also disputed our assessment of the lynx population's status within the individual states. Additionally, we received comments from professional societies similarly disputing the assessment of status and threats.

Subsequent to the 1998 settlement agreement, the U.S. Forest Service's Rocky Mountain Research Station assembled a team of scientists to prepare a scientific report on the Canada lynx. This "science report" will be a comprehensive compilation and assessment of historic and current lynx occurrence records and distribution, scientific literature, lynx and prey ecology, habitat correlations, and threats to the continued existence of lynx in the contiguous United States. The science report will be the only comprehensive assessment of lynx in the contiguous United States, besides the Service's proposed rule. The science report will undergo scientific peer review prior to release. The science report is anticipated to be finalized by late July 1999.

Given the serious concerns expressed by the States and scientists with expertise in the field of lynx biology questioning our assessment of the status and threats to the lynx in the proposed rule, and our assessment of preliminary information from the Science Team that may cause us to reconsider some of the conclusions on status and threats in the proposed rule, we conclude that there is substantial scientific disagreement regarding the sufficiency and accuracy of the available data relevant to a final determination of whether or not to list the lynx. The additional time we need to adequately address these issues is not anticipated to appreciably impact the lynx.

We have reason to believe the forthcoming science report will represent significant new and important information critical to helping resolve ongoing substantial scientific disagreement regarding the status of lynx and the presence and magnitude of threats facing its continued existence in the contiguous United States. Therefore, we are using the provision in section 4(b)(6)(B)(i) of the Act to extend for a period of 6 months the deadline for a final listing determination for the lynx.

The 6-month extension will enable us to receive and evaluate the new information in the science report, allow time for public comment on the science report, assess the public comments received, and integrate this information into the final listing decision. The extension will enable us to make a sound final determination using the best available scientific and commercial data, within the legal mandates of the Act and the Administrative Procedure Act.

This report is expected to be an important contribution to the best scientific and commercial data available and may strengthen the biological basis for making a final listing determination for the Canada lynx. The public comment period will be reopened to receive both the science report and accept public comments on the report. The opening of the public comment period will be announced in the **Federal Register** when the availability of the science report is known. At that time, instructions for obtaining a copy of the science report also will be announced.

Author. The author of this document is Lori H. Nordstrom (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: June 30, 1999.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–17246 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 64, No. 130
Thursday, July 8, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 1, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Demand Side Management and Integrated Resource Plan.

OMB Control Number: 0572–0105.

Summary of Collection: The Rural Electrification Loan Restructuring Act of 1993, Public Law 103–129, (RELRA), signed into law by President Clinton on November 1, 1993, amended the Rural Electrification Act of 1936, 7 U.S.C. 901 et seq (RE Act) to permit the Rural Utilities Service (RUS) to make loans for Demand Side Management (DSM), energy conservation programs, and on-grid and off-grid renewable energy systems. DSM and energy conservation programs have become increasingly important to electric utilities as they seek ways to make their existing systems more efficient and reduce the need for new capacity. RUS will collect information using an RUS-approved integrated resource plan (IRP) and the loan application.

Need and Use the Information: RUS will collect information to determine the eligibility of applicants for loans and loan guarantees under the RE Act; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; ensure that borrowers use loan funds for purposes consistent with the statutory goals of the RE Act; and obtain information on the progress of rural electrification, as required by the RE Act.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 3.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 24.

National Agricultural Statistics Service

Title: Stock Report.

OMB Control Number: 0535–0007.

Summalry of Collection: The National Agricultural Statistics Service's primary function is to prepare and issue current official State and National estimates of crop and livestock production. As part of this function, estimates are made for stocks of grain (including rice) oilseeds, potatoes, peanuts, hops, and dry beans. Grain and oilseed stocks in all positions (on-farm and off-farm) are estimated quarterly. Grain stocks estimates are one of the most important National Agricultural Statistics Service (NASS) estimates, which are watched closely by growers and industry groups. General authority for data collection is granted under U.S. Code Title 7, Section 2204. This statue specifies that the Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists. "The Hop Growers of America provides the data collection for much of the production information but, because of sensitivity issues, stocks and price information are best collected by an impartial third party-NASS. NASS collects the stocks data because there is a high degree of competition among the brewers, dealers, and growers. NASS will collect information using stock reports.

Need and Use of the Information: NASS will collect information to administer farm program legislation and make decisions relative to the export-import programs. Estimates of stocks provide essential statistics on supplies and contribute to orderly marketing. These estimates are used by farmers and agribusiness firms in their production and marketing decisions. In the absence of such information feeding would continue at an ultimately unsustainable rate, causing more drastic adjustment to be necessary near the end of the crop marketing year.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 12,590.

Frequency of Responses: Reporting: Monthly; quarterly; semi-annually; annually.

Total Burden Hours: 14,683.

Risk Management Agency

Title: General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions.

OMB Control Number: 0563–0055.

Summary of Collection: Section 533 of the 1998 Research Act requires the Federal Crop Insurance Corporation (FCIC) to publish regulations on how FCIC will provide a final agency determination in response to certain inquiries. Sec. 533 provides if FCIC does not respond in the time established by this regulation, the interpretation of the requested is considered correct for the crop year. It becomes necessary for the requester, or respondent, to identify himself so he can be provided a response and also to state his interpretation of the regulation for which he is seeking a final agency interpretation.

Need and Use of the Information: The requesters name and address will be used to allow FCIC to provide a response to the requester (respondent). The requesters detailed interpretation of the regulation is required to comply with the requirements of Sec. 533 of the 1998 Research Act and to clearify the boundaries of the request to FCIC. FCIC would not be able to comply with the statutory mandates of Sec. 533 of the 1998 Research Act is the requested information was not collected with each submission.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 45.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 78.

Food and Nutrition Service

Title: Evaluation of Asset Accumulation Initiatives.

OMB Control Number: 0584–NEW.

Summary of Collection: This evaluation of programmatic options to promote saving among food stamp households was originally undertaken in response to a provision of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). This legislation directs the Secretary of Agriculture to test, under limited circumstances, a modified food stamp policy. This data collection focuses on state and local initiatives that provide savings opportunities to populations that include a substantial proportion of food stamp households. Special purpose savings are targeted to low income populations. Often special purpose savings accounts legislation has been enacted in the context of state welfare initiatives. Twenty five states included Individual Development Account (IDA's) in welfare reform plans for Transitional Assistance to Needy Families (TANF) recipients. The Food and Nutrition Service (FNS) will collect information through telephone interviews to use in evaluating these asset accumulation initiatives.

Need and Use of the Information: FNS will collect information on the status of special-purpose account programs nationwide. An in-depth examination of the ways in which the programs are structured, how they operate, salient issues involved in their establishment and operation, and the response of the target populations will be studied. The information will be used by FNS to assess the desirability of relaxing asset accumulation rules via special-purpose accounts. It will also provide FNS with useful information regarding the operational feasibility of such programs.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 100.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 180.

Cooperative State Research, Education, and Extension Service

Title: Application for Authorization to Use the 4–H Name and/or Emblem

OMB Control Number: 0524–0034

Summary of Collection: Use of the 4–H Name and/or Emblem is authorized by an Act of Congress, (Pub. L. 772, 80th Congress, 645, 2nd Session). Use of the 4–H Name and/or Emblem by anyone other than the 4–H Clubs and those duly authorized by them, representatives of the Department of Agriculture, the Land-Grant colleges and universities, and person authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary has delegated authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) to authorize others to use the 4–H Name and Emblem. Therefore, anyone requesting authorization from the Administrator to use the 4–H Name and Emblem is asked to describe the proposed use in a formal application. CSREES will collect information using form CSREES–01 Application for Authorization to Use the 4–H Club Name or Emblem.

Need and Use of the Information: CSREES will collect information on the name of individual, partnership, corporation, or association; organizational address, name of authorized representative; telephone number; proposed use of the 4–H Name or Emblem; and plan for sale or distribution of product. The information collected by CSREES will be used to determine if those applying to use the 4–H name and emblem are meeting the requirements and quality of materials, products and/or services provided to the public. If the information is not collected, it would not be possible to ensure that the products, services, and materials meet the high standards of 4–H, its educational goals and objectives.

Description of Respondents: Not-for-profit institutions; individuals or households; business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: Other (every 3 years).

Total Burden Hours: 20.

Farm Service Agency

Title: General Regulations Governing the Peanut Warehouse Storage Loan and Handler Operations—7 CFR 1446.

OMB Control Number: 0560–0014.

Summary of Collection: The U.S. Department of Agriculture provides price support to peanuts producers in the United States to their income and assure an adequate supply of peanuts for domestic use. In return for the guaranteed prices, limitations are placed on the amount of peanuts being produced and sold for domestic edible use. The Federal Agriculture Improvement and Reform Act of 1996 (The 1996 Act) revised the peanut program applicable to the peanut price support program for the 1996 through 2002 crop years. Regulations at 7 CFR Part 1446 have been amended to restrictions on transfer of peanuts from additional loan to quota loan. Commodity Credit Corporation (CCC) contract for warehouse storage and related services. For handlers of contract additional peanuts, CCC uses the information to determine the amount of shrink allowed, the type of supervision required, the amount of export obligation and the amount of export disposition credit. The Farm Service Agency (FSA) collects information using forms.

Need and Use of the Information: FSA collects information on the name and address of warehouses, the examiner's report on the condition of the warehouse and of the stock stored therein and any corrections that need to be made, and the warehouse operator's actions to correct the conditions, if needed. If the information is not collected, the administration of the Peanut Price Support Program would be impaired and the Act would not be implemented as required by Congress.

Description of Respondents: Farms; not-for-profit institutions; individuals or households; Federal Government.

Number of Respondents: 25,800.

Frequency of Responses: Recordkeeping; reporting: On occasion; Monthly; Annually.

Total Burden Hours: 28,752.

Agricultural Marketing Service

Title: Tobacco Report.

OMB Control Number: 0581–0004.

Summary of Collection: The authority for the collections of information on Form TB–26, Tobacco Stocks Reports, is Public Law No. 661, commonly known as the Tobacco Statistics Act (7 U.S.C. 501–508) enacted in 1929. The Act directs the Secretary to collect statistics on the quantities of leaf tobacco held by dealers and manufacturers in the United

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States and Puerto Rico. The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to collect, tabulate, and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality and condition of such products in various positions in the marketing channel, utilization of sub-products shipment, and unloads. The Agricultural Marketing Service will collect information using forms TB–26, Tobacco Stocks Report, and TB–39, Quarterly Report of Manufacture and Sales of Snuff, Smoking, and Chewing Tobacco.

Need and Use of the Information: AMS will collect information on the total supply of unmanufactured tobacco available to domestic manufacturers and to monitor the size, growth, or decline of the market. The data is required for the calculation of production quotas for individual types of tobacco under the Agricultural Adjustment Act of 1938. Without the information USDA would not be able to disseminate marketing information as directed and authorized in the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 81.

Frequency of Responses: Reporting; quarterly.

Total Burden Hours: 298.

Agricultural Marketing Service

Title: Almonds Grown in California, Marketing Order 981.

OMB Control Number: 0581–0071.

Summary of Collection: Marketing Order No. 981 (7 CFR Part 981), regulates the handling of almonds grown in California and emanates from enabling legislation (the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stats. 31, as amended; 7 U.S.C. 601–674). This legislation, hereinafter referred to as the act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. Regulations apply to almonds shipped within and outside of the production area to any market, except those specifically exempt. The Order also authorizes the establishment of production research and marketing research and development projects, including paid advertising. California accounts for all of the U.S. almond production, approximately 70% of which is exported. The Agricultural Marketing Service (AMS) will collect information using several forms submitted by growers and handlers.

Need and Use of the Information: AMS will collect information so industry statistics may be published, for program compliance reasons and to determine industry support for programs or changes thereto and determine qualifications. Without the information the Board would not be able to carry out the purposes of the Act and the Order.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 7,658.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly.

Total Burden Hours: 2,638.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–17255 Filed 7–7–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2000 Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2000 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $130.00 per license.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at warsack@usda.gov.

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.36 provides for the issuance of licenses to import certain dairy articles which are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Licensing Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture and the U.S. Customs Service.

The Regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this Regulation.

The Regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2000 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1999 has been determined to be $335,352 and the estimated number of licenses expected to be issued is 2,582. Of the total cost, $173,357 represent staff and supervisory costs directly related to administering the licensing system during 1999; $50,320 represents the total computer costs to monitor and issue import licenses during 1999; and $111,675 represents other miscellaneous cost, including travel, postage, publications, forms, a new FAX machine, and an ADP system contractor.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2000 calendar year, in accordance with 7 CFR 6.33, will be $130.00 per license.

Issued at Washington, DC the 30th day of June, 1999.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 99–17358 Filed 7–7–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet July 22, 1999, 10:30 a.m., Herbert C. Hoover Building, Room 3733, 14th Street between

Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers and comments by the public.
3. Presentation on status of Western Group discussions at the Ad Hoc Group negotiations regarding protocol for the Biological Weapons Convention (BWC).
4. Discussion of comments provided on draft documents on Declaration Format and Triggers for the BWC.

Executive Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the materials should be forwarded prior to the meeting to the address below: Ms. Lee Ann Carpenter, BXA MS: 3876, U.S. Department of Commerce, 15 St. & Pennsylvania Ave., N.W., Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: July 1, 1999.

Lee Ann Carpenter,

Committee Liaison Officer

[FR Doc. 99–17356 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: July 8, 1999.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide ("PPD-T aramid") from the Netherlands in response to requests by respondent, Akzo Nobel Aramid Products, Inc. and Aramid Products V.o.F. ("Akzo") and petitioner, E.I. DuPont de Nemours and Company. This review covers sales of this merchandise to the United States during the period June 1, 1997, through May 31, 1998, by Akzo. The results of the review indicate the existence of dumping margins for the above period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; Telephone: (202) 482–1775.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on PPD–T aramid from the Netherlands on June 24, 1994 (59 FR 32678). On June 10, 1998, we published in the **Federal Register** (63 FR 31717) a notice of "Opportunity to Request an Administrative Review" of this order covering the period June 1, 1997, through May 31, 1998.

In accordance with 19 CFR 351.213(b), Akzo and petitioner requested that we conduct an administrative review for the aforementioned period. On July 28, 1998, the Department published a notice of "Initiation of Antidumping Review" (63 FR 40258). The Department is now conducting this administrative review pursuant to section 751 of the Act.

Scope of Review

The products covered by this review are all forms of PPD–T aramid from the Netherlands. These consist of PPD–T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber, and floc. Tire cord is excluded from the class or kind of merchandise under review. This merchandise is currently classifiable under the *Harmonized Tariff Schedule of the United States* ("*HTSUS*") item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The *HTSUS* item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the normal value ("NV") and export price ("EP") or constructed export price ("CEP") of each entry of subject merchandise. *See* Section 751(a)(2)(A). Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review ("POR"). *See Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 48826 (1993) (the Department did not consider ESP (now CEP) entries which were sold after the

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POR). The Court of International Trade ("CIT") has upheld the Department's practice in this regard. *See The AD Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States*, 914 F. Supp. 535, 544–45 (CIT 1995).

Comparisons to NV

In accordance with section 771(16) of the Act, we considered all products covered by the Scope of the Review which were sold by the respondent in the home market during the POR to be foreign like products for purposes of product comparisons to U.S. sales. Where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the constructed value ("CV") of the product sold in the home market during the comparison period.

Furthermore, pursuant to section 777A(d)(2) of the Act, where there were home market sales that passed the cost of production ("COP") test, as discussed below, we compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in sections 772(b), (c), and (d) of the Act, because all sales to the first unaffiliated purchaser in the United States took place after importation.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. Where appropriate, we reduced these prices to reflect rebates. In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses, e.g., credit expenses, and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions for movement expenses (international freight, brokerage and handling, U.S. duties, domestic inland freight, and insurance) in accordance with section 772(c)(2) of the Act. Finally, we also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because Akzo's aggregate volume of the home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV on home market sales.

We calculated NV based on packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments for discounts and rebates. Where applicable we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(a)(6) of the Act, where applicable, we made deductions from the starting price for inland freight and inland insurance. In addition, we made a circumstances of sale adjustment for imputed credit expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Prices were reported net of value added taxes ("VAT") and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and the subject merchandise.

We derived the CEP offset amount from the amount of the indirect selling expenses on sales in the home market. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted from CEP under section 772(d) of the Act.

Cost of Production Analysis

In the most recently completed administrative review of Akzo, we disregarded sales found to be below the COP. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period. Thus, pursuant to section 773(b) of the Act, we initiated a COP investigation of Akzo in the instant review.

In accordance with section 773(b)(3) of the Act, we calculated the weighted average COP, by model, based on the sum of the cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general and administrative expenses and packing costs in accordance with section 773(b)(3) of the Act. We used the home market sales data and COP information provided by Akzo in its questionnaire responses.

After calculating a weighted-average COP, we tested whether home market sales of PPD-T aramid were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts, rebates, and indirect selling expenses.

Pursuant to section 773(b)(2)(C), where less than 20 percent of Akzo's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." In accordance with section 773(b)(2)(B) and (D) where 20 percent or more of home market sales of a given product during the POR were at prices less than the COP, we found that such sales were made in substantial quantities within an extended period of time. Because the sales prices would not permit recovery of all costs within a reasonable period of time, we disregarded those below-cost sales and used the remaining above-cost sales to determine NV in accordance with section 773(b)(1). For those models of PPD-T aramid for which there were no home market sales available for matching purposes, we compared CEP to CV.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Akzo's cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses ("SG&A"), and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by Akzo in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We used the costs of materials, fabrication, and SG&A as reported in the CV portion of Akzo's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of Akzo's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of Akzo's questionnaire response. See *Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of the home market selling expenses weighted by the respective quantities sold. For actual profit, we first calculated the difference between the home market sales value and home market COP for all home market sales in the ordinary course of trade, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

We derived the CEP offset amount from the amount of the indirect selling expenses on sales in the home market. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted from CEP under section 772(d) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the transaction between the exporter to the importer for which we construct the import price.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997) ("*South Africa Final*").

In the present case, we were not able to compare U.S. CEP sales to HM sales at the same level of trade. First we compared the CEP to the HM sales to determine whether a level-of-trade adjustment was appropriate, in accordance with the principles discussed above. For purposes of our analysis, we examined information regarding the distribution systems in both the United States and the Netherlands markets, including the selling functions, classes of customer, and selling expenses. Upon consideration of the above mentioned factors, the Department determined that there is one level of trade and one channel of distribution in the home market (direct to end users) and a different level of trade in the U.S. market (sales to an affiliated distributor). However, the data available do not provide an appropriate basis to determine a level of trade adjustment. Further, we determined that Akzo's NV sales to end-users/converters in the home market, as well as CV, are at a more advanced stage of distribution than CEP sales. As a result, the Department has preliminarily determined to grant Akzo an adjustment to NV in the form of a CEP Offset.

For a detailed description of our level-of-trade analysis for these preliminary results, see the June 30, 1999, *Analysis Memorandum* to The File, on file in the Import Administration's Central Records Unit (Room B–099) of the main Commerce building.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996). Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See *South Africa Final*. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate, in accordance with established practice. Therefore, for purposes of the current review, we have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales based on the methodology discussed above.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Exporter/manufacturer	Weighted-Average Margin (percent)
Akzo	3.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for Akzo's entries of the subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties on Akzo's entries of the merchandise subject to the review.

Cash Deposit Requirements

To calculate the cash-deposit rate for Akzo in this administrative review, we divided the total dumping margins for Akzo by the total net value of Akzo's sales during the review period. Furthermore, the following deposit rates will be effective upon publication of the

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final results of this administrative review for all shipments of aramid fiber from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Akzo will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 66.26 percent, the "All Others" rate established in the LTFV investigation. See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From The Netherlands*, 59 FR 32678–01 (June 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

June 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17395 Filed 7–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–614–801]

Fresh Kiwifruit From New Zealand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on fresh kiwifruit from New Zealand in response to a request by the respondent, the New Zealand Kiwifruit Marketing Board, the sole exporter of the subject merchandise to the United States. The review covers the period June 1, 1997, through May 31, 1998.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John P. Maloney, Jr., Office 2, AD/CVD Enforcement Group I, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2613 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the current regulations at 19 CFR part 351 (April 1998).

Background

On June 10, 1998, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on fresh kiwifruit from New Zealand (63 FR 31717).

In accordance with 19 CFR 351.213(b)(1), on June 29, 1998, the New Zealand Kiwifruit Marketing Board (NZKMB) requested an administrative review of the antidumping duty order covering the period June 1, 1997, through May 31, 1998. NZKMB also requested revocation of the antidumping order, in accordance with 19 CFR 351.222(b)(1). On July 28, 1998, the Department initiated an administrative review for NZKMB (63 FR 40258).

On July 21, 1998, the California Kiwifruit Commission (the petitioner) submitted a letter objecting to NZKMB's request for revocation. The petitioner argued that NZKMB failed to satisfy the regulatory requirements for seeking revocation and urged the Department to reject NZKMB's revocation request in this administrative review. Subsequently, on September 23, 1998, NZKMB withdrew its request for revocation of the antidumping duty order at the conclusion of this review.

On August 20, 1998, the Department issued the antidumping questionnaire to NZKMB. NZKMB submitted responses to sections A through D of the antidumping questionnaire on October 19, 1998 and February 22, 1999. The Department issued its supplemental questionnaires and received responses to the questionnaires in April 1999.

During May 1999, the Department conducted verifications of the sales and cost responses of NZKMB and individual kiwifruit growers. On June 24, 1999, NZKMB submitted revised sales and cost of production databases incorporating changes resulting from the verifications.

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of Review

The product covered by this review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit are not covered under the scope of this review. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 0810.90.20.60. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the information provided by NZKMB. We used standard verification procedures, including on-site inspection of the respondent's facilities and examination of relevant sales and financial records. Based on the Department's verification findings, we made certain changes to the sales and cost data submitted by the respondent used to calculate the preliminary margin. Our verification results are outlined in the verification reports placed in the case file.

Normal Value Comparisons

To determine whether sales of fresh kiwifruit to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for NZKMB, as specified in the "Constructed Export Price" and "Normal Value" sections of this notice.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were sold in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

NZKMB claimed that it made home market sales at two levels of trade based on the channel of distribution (i.e., sales to a distributor on a consignment basis and direct sales to wholesale or retail customers). In the U.S. market, NZKMB reported only CEP sales made through one channel of distribution and claimed one level of trade (the CEP level of trade). NZKMB argued that a CEP offset is warranted in this case because neither of its two claimed home market levels of trade is similar to the U.S. CEP level of trade, and the home market levels are more remote from the factory than the CEP level. Accordingly, we have performed an analysis of the information on the record to determine whether a LOT adjustment, or in the alternative, a CEP offset, is warranted.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between NZKMB and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, exclusive of economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine whether the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade.

Based on an analysis of the information on the record, we found that NZKMB made sales in the home market at one LOT, with two types of sales within that level: sales through a distributor and direct sales to wholesale or retail customers. We examined the selling functions performed for both types of sales and found that NZKMB, and its marketing subsidiary Zespri, performed minimal selling functions for both types of sales in the home market. Through its packhouse and coolstore providers, NZKMB provides quality checking services supporting all home market sales. In addition, Zespri provides some advertising and customer support for home market sales to its distributor. However, for sales made to its distributor, which constitute the vast majority of home markets sales, the distributor handles the bulk of the services and selling functions after delivery from the coolstore, and Zespri "does not provide technical advice, warranty services, freight or delivery arrangements, direct advertising support to the distributor (except for general brand-enhancement advertising), or any other sales support services." See NZKMB's October 19, 1998, submission at page A–17. Similarly, for the few direct sales to its customers, NZKMB maintains the fruit in coolstore until sale and provides quality control through its coolstore providers, but Zespri provides no subsequent sales support activities besides general advertising and customer support. Given the minimal level of reported selling functions for both types of sales in the home market, we preliminarily determine that the selling functions for both sales types are sufficiently similar to justify only one LOT in the home market.

Because all U.S. sales were CEP sales, the LOT for such sales is the level of the constructed sale from the exporter to the importer. We examined the selling functions performed by NZKMB and Zespri for U.S. CEP sales and preliminarily determine that they are made at the same LOT as home market sales. As with home market sales, NZKMB provides quality checking services in support of U.S. sales through their packhouse and coolstore providers. In addition, Zespri staff in New Zealand provide some support for U.S. sales including promotional information and strategic advice on sales and marketing tactics. See NZKMB verification report memorandum for Louis Apple from James Maeder and John Maloney, dated June 14, 1999. The majority of selling function support for U.S. sales occurs in the United States, performed by Zespri's affiliated North American selling agent, and are not considered for comparison purposes. Thus, similar to home market sales, Zespri performs a limited number of selling functions in New Zealand in support of the constructed U.S. CEP sales, including the quality and condition checking services performed for all kiwifruit sales. Furthermore, a comparison between the reported indirect selling expenses in New Zealand for U.S. sales and the reported indirect selling expenses for home market sales indicated no substantial quantitative difference in the level of selling functions. As a result, we find that the quantity and quality of selling functions performed by NZKMB and Zespri in support of the constructed U.S. sales are comparable to the selling functions performed in support of home market sales. Therefore, our analysis of the chains of distribution and selling functions performed for all sales in the home market and CEP sales in the U.S.

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market indicates that both are made at the same stage in the marketing process.

Because of the analogous levels of selling functions and stages in the chains of distribution between home market sales and constructed U.S. sales, we find that sales in both markets were made at the same LOT. Therefore, no LOT adjustment or CEP offset is warranted in this case.

Constructed Export Price

For all U.S. sales made by NZKMB, we used CEP, in accordance with section 772(b) of the Act, because the sales were made to the first unaffiliated party in the United States after importation. We calculated CEP based on packed F.O.B. (ex-New Zealand coolstore) and delivered prices. We made deductions, where appropriate, for foreign inland freight (coolstore to port), pre-sale warehousing expenses, transportation insurance expenses (including inland and marine insurance), foreign brokerage and handling expenses, ocean freight, U.S. brokerage and handling, U.S. inland freight, U.S. coolstore expenses, and U.S. Customs fees, in accordance with section 772 (c)(2)(A) of the Act.

In accordance with sections 772(d)(1) and (2) of the Act, we made additional deductions, where appropriate, for commissions, credit expenses, direct advertising expenses, U.S. indirect selling expenses, U.S. inventory carrying costs, and U.S. repacking costs. We also made an adjustment for profit, in accordance with section 772(d)(3) of the Act. Finally, we increased the U.S. price to account for post-sale price adjustments not reflected in the gross price.

Normal Value

In order to determine whether there were sufficient sales of kiwifruit in the home market to serve as a viable basis for calculating NV, we compared the volume of NZKMB's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that NZKMB had a viable home market during the period of review (POR) (*i.e.*, June 1, 1997 through May 31, 1998). Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that NZKMB had made home market sales at prices below the cost of production (COP) in this review because the Department had disregarded sales below the COP in the most recently completed administrative review. *See Fresh Kiwifruit from New Zealand: Final Results of Antidumping Duty Administrative Review*, 61 FR 46438 (September 3, 1996) (Kiwifruit Third Review). Therefore, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether the respondent made home market sales during the POR at prices below the COP. We followed the Department's determinations in the original investigation and the prior administrative reviews that, in comparing NV to COP, the reseller's or exporter's acquisition prices are irrelevant because section 773(b) of the Act requires that the Department look at the actual COP of the subject merchandise. Accordingly, we used the costs incurred by kiwifruit growers, the actual producers of the subject merchandise, to calculate the COP.

Due to the large number of growers from which the NZKMB purchased kiwifruit during the POR, the Department determined that sampling was both administratively necessary and methodologically appropriate to calculate a representative cost of producing the subject merchandise for purposes of this administrative review. *See* section 777A of the Act. We selected the sample of kiwifruit growers by first geographically segregating farms into two regions: the Bay of Plenty region and the non-Bay of Plenty region. In selecting the sample of twenty growers, we selected sixteen growers representing the Bay of Plenty region and four from the non-Bay of Plenty region in order to accurately reflect the relative proportion of kiwifruit production from each of the two regions. Because the Department's purpose is to estimate the average unit cost per tray of exported kiwifruit, as a second step, we have assigned selection probabilities to the growers on the basis of the volume of kiwifruit each grower submitted to the NZKMB for export. We sent the COP/CV questionnaires through the NZKMB to the twenty selected kiwifruit growers and received responses to the Department's questionnaire from all twenty selected growers. We verified the COP/CV data provided by four of the twenty selected growers.

We calculated each grower's cultivation cost by summing all costs for the 1997–1998 kiwifruit season. These costs included cost of materials, farm labor, farm overhead, and packing. We allocated the cultivation cost on a per-tray equivalent basis over the total number of tray equivalents submitted by each grower to the NZKMB. A tray equivalent is a standard unit of measurement for kiwifruit which represents the amount of kiwifruit which can fit into a standard packing tray. We adjusted these per-tray costs to reflect fruit loss and then added the NZKMB's G&A and interest expenses to the farm's average cost per tray.

The orchard set-up costs for all growers were amortized over twenty years as was done in prior reviews. Where growers purchased an established orchard, the acquisition price of the farm was treated as the set-up cost.

Except as follows, we relied on the COP data submitted on June 24, 1999, which incorporates the revised COP data of the three verified growers based on information obtained at verification. With respect to the COP and packing data provided by the remaining growers that were not verified, we adjusted their reported COP and packing data to reflect the adjusted COP and packing amounts of the three verified growers, based on our findings at the verifications. Specifically, for each of the three growers we verified, we calculated the difference between the reported COP and packing expense and the revised COP and packing expense based on the verification findings. We then increased the COP and packing expense amounts reported by the remaining, unverified growers by the average percentage difference between the revised and reported COPs and packing amounts of the three verified growers. *See* Preliminary Results Calculation Memorandum dated June 30, 1999. We then calculated a simple average COP and packing expense from the sampled growers' individual COPs and packing expenses, as revised. The total COP was calculated on a New Zealand dollar per single-layer tray (NZ$/SLT) equivalent basis. We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, and direct and indirect selling expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, pursuant to section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of NZKMB's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of NZKMB's sales of a given product were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that all of NZKMB's home market sales were at prices less than COP. We, therefore, disregarded all home market sales and based NV on CV in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, profit and U.S. packing costs. Section 773(e)(2)(B) of the Act states that in the absence of above-cost sales of a foreign like product, SG&A and profit shall be based on (i) expenses and profit of the respondent's other products, or (ii) the expenses and profit of other producers subject to the antidumping investigation or review, or (iii) any other reasonable method. The first two alternatives are not available in this case, since NZKMB sells no other products and there are no other New Zealand exporters subject to this review. Therefore, we must rely on "other reasonable" methods. In this case, NZKMB earned no profits on home market sales and we have no other information on the record with respect to profit earned in the home market. Therefore, consistent with the methodology used in the most recent prior review of this proceeding, as facts available, we used the profits realized at the grower level. In this instance, we used the average profit of the twenty sampled growers as the profit figure in our margin calculations. With respect to selling expenses, we have used the selling expenses associated with the home market sales. *See Fresh Kiwifruit from New Zealand: Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 47440 (September 9, 1997).

In comparing CEP to CV, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and advertising expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. With respect to commissions, where applicable, we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, including inventory carrying costs, up to the amount of the U.S. commission, in accordance with 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period June 1, 1997, through May 31, 1998:

Manufacturer/exporter	Percent margin
New Zealand Kiwifruit Marketing Board	4.66

Interested parties may request a hearing within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs not later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total entered value of the examined sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of fresh kiwifruit from New Zealand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for NZKMB will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 98.60 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17394 Filed 7–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1442 or (202) 482–3813, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Preliminary Determination

We preliminarily determine that live cattle from Canada are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on December 22, 1998. *See Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico*, 63 FR 71886 (December 30, 1998) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

On January 20, 1999, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the product under investigation are materially injuring the United States industry.

On March 1, 1999, after considering comments from interested parties on the issue of respondent selection, the Department selected the following companies as respondents in this investigation: Cor Van Raay Farms Ltd. and Butte Grain Merchants Ltd. (Cor Van Raay); Pound Maker Agventures, Ltd. (Pound Maker); Riverside Feeders Ltd. and Grandview Cattle Feeders Ltd. (Riverside/Grandview); Jameson, Gilroy and B & L Livestock Ltd. (JGL); Groenenboom Farms, Ltd. (Groenenboom); and Schaus Land and Cattle Company (Schaus) (collectively "respondents"). *See Selection of Respondents*, below. On March 2, 1999, the Department issued an antidumping questionnaire to the selected respondents.[1]

The respondents submitted their initial responses to the questionnaire in March, April and May 1999. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses. We received timely responses to these questionnaires.

Immediately prior to the date of this determination (on June 29th and 30th), the respondents filed revised U.S., home market, and cost databases. Our initial examination of this information indicates that, for at least one company, the antidumping rate calculated using such data may differ significantly from the rates listed below. We will examine this data further and, if we find that the errors corrected result in a rate that differs substantially from the rates as calculated for this preliminary determination, we may issue an amended preliminary determination for any such company.

Period of Investigation

The period of investigation (POI) is October 1, 1997, through September 30, 1998. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition (*i.e.*, November 12, 1998).

Scope of Investigation

The scope of this investigation covers all live cattle except (1) imports of dairy cows for the production of milk for human consumption and (2) purebred or other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is classifiable as statistical reporting number 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS), with the exception of 0102.90.40.72 and 0102.90.40.74. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding (including issues of model matching, cost of production, and the segmented nature of the cattle industry), and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that given our resources, we would be able to investigate the six producers/exporters with the greatest export volume, as identified above. For a more detailed discussion of respondent selection in this investigation, *see* Memorandum from Gary Taverman to Richard W. Moreland, (March 1, 1999) (Respondent Selection Memorandum).

Collapsing Determinations

The Department's regulations provide for the treatment of affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.[2] In identifying a significant potential for the manipulation of price or production, the Department may consider such factors as: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

[2] *See* 19 CFR 351.401(f)(1).

between the affiliated producers.[3] These factors are illustrative, and not exhaustive.

In this investigation, we have preliminarily determined to collapse (1) Riverside/Grandview with affiliates Vander Heyden Ranches and VanVaerenbergh Farms, (2) Pound Maker with affiliates Dale Blair and Blair Stock Farms, and (3) JGL with affiliates M&T Feedlot and Kirk Sinclair. For a detailed discussion of this collapsing determination, requiring reference to business proprietary information, *see* Memorandum from the Team to Richard Moreland, dated June 30, 1999, regarding Collapse of Affiliated Parties.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondents that fit the definition of the scope of the investigation and were sold in the comparison market during the POI fall within the definition of the foreign like product. For slaughter cattle, we have relied on three criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: type, breed, and gender. For feeder cattle we have included a fourth matching criterion of weight band, given the impact of weight on price for sales of this type of cattle.

We have determined that it is generally not possible to match across type, breed, or gender, because there are significant differences among products that cannot be accounted for by means of a difference-in-merchandise adjustment. *See, e.g.*, letter from the Canadian Cattlemen's Association to the Department of Commerce, dated January 20, 1999, at 5 (noting that for these categories, the different products "are characterized by significant differences in market structure (both demand and supply) and in market pricing," such that "[s]ales comparisons cutting across these proposed categories would produce distorted results and should not be permitted.") *See also* letter from the Ranchers-Cattlemen Action Legal Foundation (R-Calf, the petitioner) to the Department of Commerce, dated June 8, 1999 (R-Calf letter), at 11. However, the record indicates that such a distortion does not arise with respect to products of different weight bands. *See* R–Calf letter at 10–11. Therefore, for sales of feeder cattle (for which there are variations in weight bands), in situations where an identical match is not possible we have sought to compare feeder cattle of different weight bands, with a difference-in-merchandise adjustment.

Fair Value Comparisons

To determine whether sales of live cattle from Canada were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs and CEPs for comparison to POI weighted-average normal values.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

Consistent with these definitions, we found that all the respondents made EP sales during the POI. These sales are properly classified as EP sales because they were made by the exporter or producer to unaffiliated customers in the United States prior to the date of importation.

We also found that Schaus made CEP sales during the POI. These sales involved cattle exported as feeder cattle, which were custom fed at unaffiliated U.S. feedlots and then sold to unaffiliated U.S. customers. Because the sales were made by the respondent after the date of importation, the sales are properly classified as CEP sales.

For all respondents, we calculated EP and CEP, as appropriate, based on prices charged to the first unaffiliated customer in the United States.

All six respondents made at least some sales on a spot-price basis. For such sales, where invoices were issued to the U.S. customer before the date of shipment, we have relied on the date of invoice as the date of sale, since that is the date on which the material terms of sale were established. Where invoices were issued after the date of shipment, or not issued at all, we have relied on the date of shipment as the date of sale, since it is the Department's practice not to rely on a date later than the date of shipment as the date of sale.

Three of the respondents also made sales to the United States pursuant to futures contracts. For such sales, we based the date of sale on the "lock-in" date (*i.e.*, the date on which the respondent, pursuant to the terms of the contract, accepted the future delivery price indicated by the Chicago Mercantile Exchange Board on that day in question), since that was the date on which the essential terms of sale were established.

As the starting U.S. price, we relied on either the gross unit price shown on sales invoices (for live-weight sales) or the net price shown on settlement reports (for dressed-weight sales).[4] In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate. These included foreign inland freight, international freight, brokerage, and customs duties.

Section 772(d)(1) of the Act provides for additional adjustments to the CEP. We reduced the CEP by the amount of credit expenses and further manufacturing expenses. Section 772(d)(3) of the Act requires that the CEP be adjusted for the profit allocated to CEP selling expenses. As described below, we made such an adjustment in the case of Schaus, the only respondent to have made CEP sales.

We made company-specific adjustments as follows:

Cor Van Raay

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including international freight, U.S. customs duty, and miscellaneous movement charges.

Groenenboom

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including international freight and transit insurance.

JGL

We based EP on delivered and FOB prices to unaffiliated customers in the United

[3] *See* 19 CFR 351.401(f)(2).

[4] For sales made on a live-weight basis, the price charged for each animal is based on the weight of the animal prior to slaughter. For sales made on a dressed-weight basis, the price charged for each animal is based on the weight of the animal after slaughter, and takes into account adjustments for grade and yield.

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States. We made deductions from the starting price, where appropriate, for movement expenses, including international freight, U.S. inland freight, insurance, feed expenses, yard insurance, straw expenses, and loading expenses.

Pound Maker

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, including international freight, U.S. customs duty, transit insurance and brokerage expenses.

Riverside/Grandview

We based EP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including freight from the respondent's facility to the customer, U.S. customs duty, and brokerage and handling expenses.

Schaus

We based EP and CEP on delivered and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including freight from the respondent's facility to the customer, U.S. customs duty, and export processing fees. In addition to these adjustments, for CEP sales, in accordance with section 772(d)(1) of the Act, we adjusted the CEP by the amount of direct selling expenses and revenues (*i.e.*, credit expenses and interest revenue). In accordance with section 772(d)(2) of the Act, we reduced the CEP by the amount of further manufacturing expenses. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

All respondents had viable home markets for live cattle, and they reported home market sales data for purposes of the calculation of normal value.

Adjustments made in deriving the normal values for each company are described in detail in *Calculation of Normal Value Based on Home Market Prices* and *Calculation of Normal Value Based on Constructed Value*, below.

B. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that live cattle sales made in Canada were made at prices below the cost of production (COP). *See Initiation Notice*, 63 FR at 71889. As a result, the Department has conducted investigations to determine whether the respondents made sales in their respective home markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for live cattle, based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses. We relied on the COP data submitted by each respondent in its cost questionnaire response, except in specific instances where the submitted costs were not appropriately quantified or valued, or otherwise required adjustment, as discussed below:

Cor Van Raay

We adjusted the reported COP to account for differences in cost associated with the gender of the cattle. Since Cor Van Raay did not differentiate its reported costs by gender, but other respondents did, as facts available we based the gender adjustment on the average gender-related cost difference reported by other respondents.

Groenenboom

We adjusted the reported COP to account for differences in cost associated with the gender of the cattle. Since Groenenboom did not differentiate its reported costs by gender, but other respondents did, as facts available we based the gender adjustment on the average gender-related cost difference reported by other respondents.

Pound Maker

We adjusted the denominator used in the G&A expense rate calculation by removing cost of sales amounts which did not appear on Pound Maker's financial statements.

Riverside/Grandview

We adjusted the reported COP to account for differences in cost associated with the gender of the cattle. Since Riverside/Grandview did not differentiate its reported costs by gender, but other respondents did, as facts available we based the gender adjustment on the average gender-related cost difference reported by other respondents. We also adjusted financial expenses to exclude offsets for a disaster claim and custom work, and to include a payout penalty assessed by a lender and imputed interest expenses on non-interest bearing loans from shareholders.

Schaus

We adjusted the reported COP to exclude offsets for various income items not associated with the production of the subject merchandise.

2. Valuation of Resale Merchandise

Respondents JGL and Schaus had sales not only of their own-produced cattle, but also of cattle that they purchased and resold without additional value added.

Consistent with our practice regarding the cost of resales of subject merchandise, we requested cost of production data from certain of JGL's suppliers. *See* Memorandum to Richard W. Moreland from Gary Taverman and Neal Halper, April 8, 1999 (Reporting Methodology Memorandum) at 5–7.[5] At the same time, given the nature of the industry and the manner in which costs are maintained, we determined to rely on JGL's own costs as a surrogate for supplier costs where appropriate, and also to request a complete listing of JGL's acquisition costs as an alternative source of cost data. *Id.* at 6 ("[U]pon receipt and analysis of the section D response, we may determine that JGL's own production costs are an appropriate surrogate for resale costs, to the extent that JGL produces cattle that are comparable to those involved in straight resales.") and 7 ("Given that this approach might not yield cost data for all combinations of type, breed, gender, and weight of cattle sold by respondents, we would propose also to obtain a complete listing of acquisition costs, as a possible alternative basis for calculation of cost of production.") (at footnote 13).

While we have received the cost data requested from JGL's suppliers, we are continuing to analyze this information and have determined not to use such costs for this preliminary determination. We note that the reported supplier costs, which pertain to feeder cattle, have in most instances not been provided on a weight-band specific basis (*see Product Comparisons* section, above, regarding comparisons of feeder cattle on a weight-band specific basis and matching across weight bands). Other aspects of the cost data contained in these responses also require further analysis, including issues raised by the petitioners regarding alleged

[5] *See also, Fresh and Chilled Atlantic Salmon From Norway, Final Results of Antidumping Duty Administrative Review*, 61 FR 65522, 65525 (December 13, 1996); *Elemental Sulphur From Canada, Final Results of Antidumping Finding Administrative Review*, 61 FR 8239, 8250 (March 4, 1996).

inadequacies in these supplier submissions.[6] While we do not agree with the petitioners that alleged deficiencies in the supplier responses (*e.g.*, hay costs associated with grazing cattle, and family labor costs) require the determination of respondent JGL's resale costs based on application of adverse facts available,[7] particularly given the information provided by JGL with respect to its own feeder costs and acquisition prices, we intend to closely scrutinize the reporting of such supplier costs in supplemental questionnaires and at verification of JGL and the supplier firms. If, based on the results of verification and of our analysis of the information provided by the suppliers, we determine that such firms have not cooperated to the best of their ability, we may determine such supplier costs based on the facts available for the final determination.

Accordingly, we are determining the costs of cattle resold by JGL using JGL's own costs as a surrogate, where available, and are otherwise relying on the acquisition price paid by JGL.[8]

For Schaus, consistent with the methodology described above with respect to JGL, we have valued resold cattle using Schaus' cost of production for own-produced cattle as a surrogate for the costs incurred by Schaus' suppliers, or where such data were not available, we have relied on the acquisition price paid by Schaus for cattle to be resold. For the final determination, we will consider whether it would be more appropriate to rely on other cost data, such as the cost data reported by the JGL suppliers, as a surrogate for the costs incurred by Schaus' suppliers.

3. Test of Home Market Sales Prices

We compared the adjusted weighted-average COP for each respondent to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities[9] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Act. Because we compared prices to the POI average COP, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of live cattle, more than 20 percent of the home market sales of all six respondents were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act. For those U.S. sales of live cattle for which there were no comparable home market sales in the ordinary course of trade, we compared EPs or CEPs to the constructed value in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value* section, below.

C. Calculation of Normal Value Based on Home Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test.

Cor Van Raay

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses (inland freight from the respondent's facility to the customer). In addition, we made COS adjustments for direct expenses (*i.e.*, credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act.

Groenenboom

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses (inland freight from the respondent's facility to the customer, plus insurance). In addition, we made COS adjustments for direct expenses, including credit expenses, Alberta Cattle Commission Fees, branding fees, banking fees, and grading fees, in accordance with section 773(a)(6)(C)(iii) of the Act.

JGL

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for billing adjustments and movement expenses (including inland freight from the respondent's facility to the customer, freight insurance, feed expenses, yard insurance, straw expenses, and loading expenses). In addition, we made COS adjustments for direct expenses and revenues, including credit expenses, branding inspection fees, veterinary fees, and miscellaneous expenses, as well as interest revenue, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act.

Pound Maker

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses (inland freight from the respondent's facility to the customer). In addition, we made COS adjustments for direct expenses (*i.e.*, credit expenses, checkoff fees, brand inspection fees and commission expenses), in accordance with section 773(a)(6)(C)(iii) of the Act.

Riverside/Grandview

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses (inland freight from the respondent's facility to the customer). In addition, we made circumstance-of-sale (COS) adjustments for direct expenses (*i.e.*, credit expenses, brand inspection fees and transit fees), in accordance with section 773(a)(6)(C)(iii) of the Act.

[6] See letter from R-Calf to the Department, June 28, 1999.

[7] The petitioners maintain that JGL's resale costs should be valued based on information in the petition published by the Government of Manitoba. *Id.* at 2–5.

[8] We have examined the acquisition prices reported by JGL in comparison with the costs of feeder cattle on the record for this company and do not find reason to believe that the prices paid by JGL are distortive as a surrogate for supplier costs for the preliminary determination.

[9] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

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Schaus

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for billing adjustments and movement expenses (including inland freight from the respondent's facility to the customer). In addition, we made COS adjustments for direct expenses and revenues, including credit expenses and interest revenue, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on the constructed value. Accordingly, for those models of live cattle for which we could not determine the normal value based on comparison market sales, either because (1) there were no sales of a comparable product or (2) all sales of comparison products failed the COP test, we based normal value on the constructed value.

Section 773(e)(1) of the Act provides that the constructed value shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the *Calculation of COP* section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to constructed value for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses to, constructed value. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from constructed value.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The normal value level of trade is that of the starting-price sales in the comparison market or, when normal value is based on constructed value, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether normal value sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and under section 772(d) of the Act.

In this investigation, we found that the respondents perform minimal selling functions in the United States and home markets. With respect to each respondent's EP sales, we found a single level of trade in the United States, and a single, identical level of trade in the home market. It was thus unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices. One respondent, Schaus, also made CEP sales. For this respondent, we found that the adjusted CEP level of trade was essentially the same as that of the single home market level of trade, such that no level-of-trade adjustment or CEP offset was necessary.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of live cattle from Canada, except for Pound Maker (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin percentage
Cor Van Raay	4.49
Groenenboom	3.90
JGL	3.94
Pound Maker	[1] 0.18
Riverside/Grandview	6.81
Schaus	5.43
All Others	4.73

[1] deminimis.

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely under facts available under section 776 of the Act, from the calculation of the "all others" rate. Accordingly, we have excluded the *de minimis* dumping margin for Pound Maker from the calculation of the "all others" rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For this investigation, case briefs must be submitted no later than August 6, 1999. Rebuttal briefs must be filed no later than August 13, 1999. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a hearing is requested, it will be held on August 18, 1999, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than September 13, 1999 (*i.e.*, 75 days after the date of issuance of this notice).

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: June 30, 1999.

Richard W. Moreland

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17392 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1997–1998 Antidumping Duty Administrative Review and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1997–1998 administrative review and partial recission of review.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1997, through May 31, 1998. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3). Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith or James Breeden, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0189 and (202) 482-1174, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (April 1998).

Background

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). The Department notified interested parties of the opportunity to request an administrative review of this order on June 10, 1998 (63 FR 31717). On June 30, 1998, the petitioner, The Timken Company, requested that the Department conduct an administrative review. Thus, in accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 28, 1998 (63 FR 40258).

On September 21, 1998, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the *Separate Rates Determination* section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation and to companies listed in the initiation notice for which we were able to obtain addresses.

We received responses to the questionnaire from the following six companies: Luoyang Bearing Corp. (Group) ("Luoyang"), Wafangdian Bearing Factory ("Wafangdian"), Zhejiang Machinery Import & Export Company ("Zhejiang"), China National Machinery Import & Export Corporation ("CMC"), Wanxiang Group Corporation ("Wanxiang"), and Premier Bearing & Equipment ("Premier").

On October 28 and December 4, 1998, the petitioner made requests to rescind the review with respect to Wafangdian, Zhejiang, Wanxiang, and CMC. While the petitioner's rescission requests were made more than 90 days after initiation, 351.213(d)(1) of our regulations provides that we may extend that deadline, and it is our practice to do so where it poses no undue burden on the parties or the Department. Therefore, in accordance with 351.213(d)(1) of our regulations, we have rescinded the review regarding these companies (for a complete discussion of this decision see the Memorandum from Team to Richard Moreland, "Partial Rescission of Review," dated February 19, 1999). CMC objected to the rescission on the grounds that it requested a review when requesting revocation. However, CMC's request for revocation was submitted

after the anniversary month and, therefore, cannot constitute a timely request for review. Thus, CMC's request was not considered.

In addition, during April, May, and October, 1998, Triumph Express Service Int'l Limited, Shanghai United Bearing, Transunion International Company, Ltd., China Resources Transportation & Godown Co., Ltd., Scanwell Consolidators, Ltd., and Chin Jun Industrial, Ltd. reported no shipments of subject merchandise to the United States during the period of review ("POR"), June 1, 1997, through May 31, 1998. We independently confirmed with the Customs Service that there were no shipments from these companies. Therefore, in accordance with 351.213(d)(3) of our regulations, we preliminarily conclude that there were no shipments from these companies to the United States and are rescinding the review with respect to these companies.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under this policy, exporters in nonmarket economies ("NMEs") are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (see *Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC, we determined that Luoyang should receive a separate rate (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998) ("*TRBs X*")). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to Luoyang's exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have continued to assign Luoyang a separate rate.

Premier is a privately owned Hong Kong trading company. Because we have determined that this firm, rather than its PRC-based suppliers, is the proper respondent with respect to its sales of TRBs to the United States, no separate-rates analysis of Premier's suppliers is necessary. See the *United States Sales* section, below.

Separate-Rate Determinations for Non-Responsive Companies

We have preliminarily determined that those companies for which we initiated a review and which did not respond to the questionnaire should not receive separate rates. See the *Use of Facts Otherwise Available* section, below.

Use of Facts Otherwise Available

We preliminarily determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for all companies which did not respond to our requests for information. Furthermore, we preliminarily determine that Premier did not demonstrate that it cooperated to the best of its ability in providing certain information, and we have applied adverse facts available to calculate a portion of Premier's margin.

1. *Companies that did not respond to the questionnaire:* Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action ("SAA") provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

We have preliminarily assigned a margin of 33.18 percent to those companies for which we initiated a review and which did not respond to the questionnaire. This margin, calculated for sales by Xiangfan Machinery Import & Export (Group) Corp. during the 1996–97 review, represents the highest overall margin calculated for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 33.18 percent rate is corroborated. As noted in the *Separate Rates Determination* section above, we have also preliminarily determined that the non-responsive companies should not receive separate rates. Therefore, the facts available for these companies form the basis for the PRC rate, which is 33.18 percent for this review.

2. *Premier:* Premier, a Hong Kong-based reseller of TRBs, claims that it attempted to obtain factors-of-production data for the models it sold in the United States from its suppliers. Premier provided factors data from two suppliers for some models which it sold to the United States. However, only one supplier's set of factors data was usable as Premier was unable to answer supplemental questions relating to the second supplier's set of factors data. For other models sold in the United States, Premier stated that it was unable to provide factors data from any of its PRC suppliers. Instead, Premier provided factors data from another PRC producer of the same models. For the remaining models sold in the United States by Premier, no factors data were reported.

As in prior reviews, we have preliminarily determined that there is little variation in factor utilization rates among the TRB producers from which we have received factors-of-production data (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review*, 63 FR 37339, 37342 (July 10, 1998) ("*Preliminary TRBs X*")). Therefore, for the models for which we have such information, we are using, as facts available, the factors data provided by Premier, including information from manufacturers which did not supply Premier during the POR, in order to calculate normal value.

For the models for which no factors data was reported, we have preliminarily determined that Premier has not demonstrated that it cooperated to the best of its ability in responding to our antidumping duty questionnaire. While Premier has stated that it attempted to obtain factors data from its PRC-based suppliers, it has not provided sufficient evidence on the record to support this claim. For example, Premier did not provide copies of the letters it sent to all of its suppliers requesting information, nor has it provided copies of letters from all of its suppliers responding to Premier's request. In addition, Premier submitted contradictory information about its suppliers. Given that this is the eleventh review of the antidumping duty order on TRBs from the PRC and that Premier has participated in several reviews, Premier has been on notice of the Department's requirements on this matter. Because the missing factors of production amount to a substantial portion of Premier's response, we are using adverse facts available for such missing data.

Thus, with respect to Premier's U.S. sales for which no corresponding factors data were reported, we are applying, as adverse facts available, a margin of 25.56 percent, the highest overall margin ever applicable to Premier. This approach is consistent with our final results in the prior review (*see TRBs X* 63 FR 63857). As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 25.56 percent rate is corroborated.

United States Sales

Premier reported that it maintains inventories of TRBs in Hong Kong and sells TRBs worldwide. Therefore, its PRC-based suppliers have no knowledge when they sell to this firm that the shipments are destined for the United States. Since Premier is the first party to sell the merchandise to the United States, we have calculated United States price of this merchandise based on Premier's sales.

For sales made by Premier and Luoyang, we based the U.S. sales on export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the constructed export price methodology was not indicated by other circumstances.

We calculated EP based on the FOB, CIF, or C&F port price to unaffiliated purchasers, as appropriate. From this price we deducted amounts, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We valued the deduction for foreign inland freight using surrogate data (Indian freight costs). (We selected India as the surrogate country for the reasons explained in the *Normal Value* section of this notice.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using the surrogate data (amounts charged by international providers). When marine insurance and ocean freight were provided by market economy companies, we deducted the values reported by the respondents for these services.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production methodology if: (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of NV under section 773(a) of the Act. The Department has treated the PRC as an NME in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC tapered roller bearing industry is a market-oriented industry. Consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, except as noted below, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and § 351.408(c) of our regulations.

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Although Premier is a Hong Kong company, we also calculated NV for it based on factors-of-production data. We did not use Premier's third-country sales in calculating NV because its PRC-based suppliers knew at the time of sale that the subject merchandise was destined for exportation. Section 773(a)(3)(A) of the Act provides that under such conditions NV may be determined in the country of origin of the subject merchandise. Accordingly, we calculated NV for Premier on the basis of PRC production inputs and surrogate country factor prices.

Under the factors-of-production methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We chose India as the most comparable surrogate on the basis of the criteria set out in § 351.408(b) of our regulations. *See* Memorandum to Susan Kuhbach from Jeff May: "Tapered Roller Bearings ("TRBs") from the People's Republic of China ("PRC"): Nonmarket Economy Status and Surrogate Country Selection," dated January 8, 1999, for a further discussion of our surrogate selection. We selected Indonesia as a second-choice surrogate based on the same criteria. We note that, in past reviews of this and other orders, we have found that both India and Indonesia are significant producers of TRBs (*see Preliminary TRBs X*, 63 FR 37342, and *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, From Romania; Preliminary Results of Antidumping Administrative Review*, 63 FR 11217–01 (March 6, 1998)).

We used publicly available information from India to value the various factors of production with the exception of the following: hot-rolled alloy steel bars for the production of cups and cones, cold-rolled steel rods used in the production of rollers, and steel scrap from the production of cups, cones, and rollers. To value hot-rolled alloy steel bars for the production of cups and cones we used publicly available Japanese export prices to Indonesia. To value cold-rolled steel rods used in the production of rollers we used publicly available Indonesian import data. We used these data because we found the Indian data for those inputs to be unreliable. (*See* Memorandum to Susan Kuhbach: "Selection of a Surrogate Country and Steel Value Sources," dated June 30, 1999 ("Steel Values Memorandum").)

We valued the factors of production as follows (for a complete description of the factor values used, *see* the Memorandum to Susan Kuhbach: "Factors of Production Values Used for the Preliminary Results," dated June 30, 1999):

1. *Steel Inputs.* For hot-rolled alloy steel bars used in the production of cups and cones, consistent with *TRBs X* (63 FR 63845), we used a weighted average of Japanese export values to Indonesia from the Harmonized Tariff Schedule ("HTS") category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. For cold-rolled steel rods used in the production of rollers, we used Indonesian import data under Indonesian tariff subheading 7228.50000 obtained from *Badan Pusat Statistik, Republik Indonesia.* For cold-rolled steel sheet for the production of cages, we used Indian import data under Indian tariff subheading 7209.4200 obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports.* (For further discussion of selection of steel value sources, *see* Steel Values Memorandum.)

As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs X*). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory (*see Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997), and *Sigma Corporation* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997)).

One producer in this review purchased steel sheet from a market economy supplier and paid for the steel with market economy currency. Thus, in accordance with section 351.408(c)(1) of our regulations, we valued the steel input using the actual price reported for directly imported inputs from a market economy. Two producers purchased imported steel bar from a trading company in the PRC. We have not used the trading company prices and instead used a surrogate to value that steel.

We valued scrap recovered from the production of cups, cones, and rollers using Indonesian import statistics from HTS category 7204.29000. Scrap recovered from the production of cages was valued using import data from the Indian tariff subheading 7204.4100.

2. *Labor.* Section 351.408(c)(3) of our regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate on Import Administration's internet website at www.ita.doc.gov/import_admin/records/wages.

3. *Overhead, SG&A Expenses, and Profit.* For factory overhead, we used information obtained from the fiscal year 1997–98 annual reports of six Indian bearing producers. We calculated factory overhead and selling, general and administrative ("SG&A") expenses (exclusive of labor and electricity) as percentages of direct inputs (also exclusive of labor) and applied these ratios to each producer's direct input costs. For profit, we totaled the reported profit before taxes for the six Indian bearing producers and divided it by the total calculated cost of production ("COP") of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. *Packing.* We calculated the packing costs as a percentage of COP for each respondent based on the information submitted in the 1996–97 review. This ratio was applied to the respondents' COP for the current review to derive a company-specific packing expense. *See* Memorandum from Susan Kuhbach to the File: "Valuation of Packing," dated February 12, 1999.

5. *Electricity.* We used a simple average of 1995 regional electricity prices in India for large industries as reported in *India's Energy Sector*, published by the Centre for Monitoring Indian Economy Pvt. Ltd. (September 1996). We adjusted the value to reflect inflation using the WPI.

6. *Inland Freight.* We valued truck freight using a rate derived from the April 20, 1994 issue of *The Times of India*. We adjusted the rate to reflect inflation using the WPI. We valued rail freight using rates published by the Indian Railway Conference Association in 1995. We calculated an average rate per kilometer and adjusted the rate to reflect inflation using the WPI.

7. *Ocean Freight.* We calculated a value for ocean freight based on 1996 rate quotes from Maersk Inc. Because the information obtained was from a period contemporaneous with the POR, no adjustments were necessary.

8. *Marine Insurance.* We calculated a value for marine insurance based on the CIF value of the TRBs shipped. We obtained the rate used through queries we made directly to an international marine insurance provider.

9. *Brokerage and Handling.* We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Viraj Impoexpo in the antidumping investigation of *Stainless Steel Wire Rod from India* (63 FR 48184, September 9, 1998). Because this information is contemporaneous with the current POR, no adjustments were necessary.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 1997, through May 31, 1998:

Manufacturer/exporter	Margin (percent)
Luoyang	0.98
Premier	23.61
PRC Rate	33.18

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. The Department will publish the final results of this administrative review subsequently, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to EP sales for these preliminary results, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with de minimis rates, i.e., less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.12 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under § 351.402(f) of our regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17393 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062999B]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting(s).

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee, Scup Monitoring Committee, Black Sea Bass Monitoring Committee, and Bluefish Monitoring Committee will hold public meetings.

DATES: On July 20, 1999, the Black Sea Bass Monitoring Committee will begin meeting at 10:00 a.m. The Scup Monitoring Committee will meet from 2:00–5:00 p.m. On July 21, 1999, the Summer Flounder Monitoring Committee will meet from 8:00 a.m. until noon. The Bluefish Monitoring Committee will meet from 1:00–4:00 p.m.

ADDRESSES: These meetings will be held at the Sheraton International Hotel, Baltimore-Washington International Airport, 7032 Elm Road, BWI Airport, Baltimore, MD 21240, telephone: 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 2000 commercial management measures, commercial quotas, and recreational harvest limits for summer flounder, scup, and black sea bass. The Bluefish Monitoring Committee will meet to recommend commercial management measures, recreational management measures, and a commercial quota for bluefish for 2000.

Although other issues not contained in this agenda may come before these committees for discussion, in acccordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17370 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–22–F

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062999A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a joint public meeting of its Groundfish Committee and Groundfish Advisory Panel on July 22, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on July 22, 1999, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street (Route 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422.

SUPPLEMENTARY INFORMATION: The committee and its advisors will discuss further development of a framework adjustment to the Northeast Multispecies Fishery Management Plan (FMP) to address management of the Gulf of Maine cod fishery. The adjustment would be implemented by February, 2000 and carry through the 2000–2001 fishing year. The Council may provide further guidance to the committee on this action at its July 13–15 meeting in Portland, ME.

Additionally, the committee and panel will review the timeline for Amendment 13 to the FMP and outline specific management proposals for a stock-rebuilding program, including but not limited to days-at-sea management, gear reductions and area management. The meeting agenda also will include a review of the technical responses to questions raised by the committee at its June 17 meeting about the scientific basis for the current cod stock boundary delimitation.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17371 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on a Request that the United States Consult with Mexico and Canada Concerning a Certain Lyocell Staple Fiber

July 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for consultations on a certain lyocell staple fiber.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The purpose of this notice is to advise the public that CITA has been petitioned to initiate consultations with Mexico and Canada under Section 7(2) of Annex 300–B of the North American Free Trade Agreement (NAFTA) for the purpose of amending the NAFTA rules of origin to permit the use of non-North American lyocell staple fiber classified in HTS subheading 5504.90.0000 of the Harmonized Tariff Schedule of the United States in NAFTA originating goods.

There will be a 30-day comment period beginning on July 8, 1999 and extending through August 9, 1999. Anyone wishing to comment or provide data or information regarding domestic production or availability of lyocell staple fiber classified in HTS subheading 5504.90.0000 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute a "foreign affairs function of the United States."

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17312 Filed 7–7–99; 8:45 am]

BILLING CODE 3510–DR–F

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., August 2, 1999.

PLACE: Naval Medical Center San Diego, 34800 Bob Wilson Drive, San Diego, CA 02134–5000.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m.—Meeting—Board of Regents

(1) Approval of Minutes—May 14, 1999
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: July 2, 1999.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17503 Filed 7–6–99; 3:31 pm]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Invitation to comment on the proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 7, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 1, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Office of Special Education and Rehabilitative Services (OSERS) Peer Review Qualifications Statement.
Frequency: Biennially.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden: Responses: 5,000 Burden Hours: 1,250.
Abstract: In order for OSERS to conduct a review of its discretionary grant applications, it must be able to select qualified reviewers. This selection is based on the information from the OSERS Peer Reviewer Qualifications Statement that is entered into the OSERS Peer Review System. The potential peer reviewers come from the rehabilitation and special education fields.

Requests for copies of this information collection should be addressed to Vivian Reese, U. S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance

Type of Review: Revision.
Title: Federal Direct Stafford/Ford Loan and/or Federal Direct Unsubsidized Stafford/Ford Loan Borrower Promises to Repay His or Her Loan.
Frequency: On occasion.
Affected Public: Individuals or households, State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 1,828,224 Burden Hours: 1,828,224.
Abstract: This form is the means by which a Federal Direct Stafford/Ford Loan and/or Federal Direct Unsubsidized Stafford/Ford Loan borrower promises to repay his or her loan.

Requests for copies of this information collection should be addressed to Vivian Reese, U. S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically mail him at internet address joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: The Program for North American Mobility in Higher Education (A Special Focus Competition of FIPSE).
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Burden: Responses: 80 Burden Hours: 2,400.
Abstract: The Program for North American Mobility in Higher Education is a competition grant program which supports institutional cooperation and student exchange among the countries of the U.S., Mexico and Canada. Funding supports the participation of U.S. institutions and students in trilateral consortia of institutions of higher education. Funding will be multi-year, with projects lasting up to four years.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically mail him at internet address joe—schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17262 Filed 7–7–99; 8:45 am]

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DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by July 6, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 7, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: July 1, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program: Repayment Plan Selection.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to select a repayment plan for their loan(s).

Additional Information: The Department is making minor changes on this form in order to eliminate redundant or potentially confusing language and make this form easier to understand. These improvements will help the public save time and avoid confusion.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden: Responses: 2,650,000. Burden Hours: 874,500.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *vivian__reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically mail him at internet address joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17264 Filed 7–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by July 8, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 7, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: July 1, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Case Service Report.

Abstract: As required by Section 13 of the Rehabilitation Act, the data are submitted by State VR agencies each year. The data contain personal and program-related characteristics, including economic outcomes of persons with disabilities whose case records are closed.

Additional Information: The Form RSA–113 collection provides ongoing information on the national vocational rehabilitation (VR) program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 81.

Burden Hours: 3,645.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *vivian__reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Quarterly Cumulative Caseload Report.

Abstract: State vocational rehabilitation (VR) agencies who administer vocational programs provide key caseload indicator data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. These data are used for program planning, management, budgeting and general statistical purposes.

Additional Information: The RSA–113 collection provides ongoing information on the national VR program.

Frequency: Quarterly.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 81.

Burden Hours: 324.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *vivian__reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17265 Filed 7–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Invitation to submit comments.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 1, 1999.

Patrick Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: IEA Civics Education Project—Pilot Test and Full Scale.

Frequency: One time.

Affected Public: Individuals or households, State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 3,900. Burden Hours: 3,150.

Abstract: The Civics Education Project is a multi-national project coordinated by the International Association for the Evaluation of Educational Achievement (IEA). Through this project, a student assessment will be administered to 14

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year olds to assess their civics knowledge, skills, attitudes and actions.

Request for copies of this information collection request should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Vocational and Adult Education

Type of Review: Extension.

Title: Adult Education and Family Literacy Act State Plan (P.L. 105–220).

Frequency: Annually.

Affected Public: State, local or Tribal Gov't.

Reporting and Recordkeeping Burden: Responses: 59. Burden Hours: 7,375.

Abstract: The Adult Education and Family Literacy State Plan submission describes information requirements for an application for Federal education assistance.

Request for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian Reese @ed.gov*, or should be faxed to 202–708–9346.

For questions, regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17263 Filed 7–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.200]

Graduate Assistance in Areas of National Need (GAANN) Inviting Applications for new Awards for Fiscal Year (FY) 2000

Purpose of Program: This program provides fellowships in areas of national need through academic departments and programs of institutions of higher education to assist graduate students with excellent records who demonstrate financial need and plan to pursue the highest degree available in their course of study.

Eligible Applicants: Academic departments and programs of institutions of higher education that meet the requirements in 34 CFR 648.2.

Deadline for Transmittal of Applications: October 4, 1999.

Deadline for Intergovernmental Review: December 3, 1999.

Applications Available: July 16, 1999.

Available Funds: $18,054,000. The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

Estimated Range of Awards: $126,875—$750,000.

Estimated Average Size of Awards: $138,000 per year.

Estimated Number of Awards: 130.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations in 34 CFR part 648.

SUPPLEMENTARY INFORMATION:

Stipend Level: The Secretary has determined that the maximum fellowship stipend for academic year 1999–2000 is $15,000, which is equal to that provided by the National Science Foundation (NSF) graduate fellowships. Should the NSF increase its graduate fellowship stipends for the academic year 2000–2001, we will make a parallel increase in GAANN fellowship stipends.

Institutional Payment: The Secretary estimates that the institutional payment for academic year 1999–2000 is $10,375. The Secretary will adjust the institutional payment prior to the issuance of grant awards based on the Department of Labor's projection in December 1999 of the Consumer Price Index for the year 2000.

Priorities

Absolute Priority—Under 34 CFR 75.105(c)(3) and 34 CFR 648.33, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

A project funded under this priority must propose to provide fellowships in one or more of the following areas of national need: Biology, Chemistry, Computer and Information Sciences, Engineering, Geological and Related Sciences, Mathematics, and Physics.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1—Applications from interdisciplinary programs for projects designed to involve academic fields in two or more of the designated areas of need.

Invitational Priority 2—Applications from geological science programs for projects that will train Ph.D. students for careers in the field of computational earth science.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Cosette H. Ryan, Graduate Assistance in Areas of National Need Program, U.S. Department of Education, International Education and Graduate Program Service, 400 Maryland Avenue, SW., Suite 600–B, Portals Building, Washington, DC 20202–5247. Telephone: (202) 260–3608. The e-mail address for Ms. Ryan is cosette_ryan@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternate format, (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov.fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1135–1135ee.

Dated: July 1, 1999.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–17245 Filed 7–7–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Thursday, July 29, 1999, 10:30 a.m. to 5:30p.m.; and Friday, July 30, 1999, 8 a.m. to 12:30 p.m.

ADDRESSES: Embassy Suites Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, S.W. Washington DC 20585, Telephone Number 202.586.0126, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Thursday, July 29, 1999

Welcome remarks
Status of Nuclear Energy's FY 2000 Budget
Status of Nuclear Energy Research Initiative
DOE Laboratory Update—
Review of Program Scoping Plan for the Fast Flux Test Facility

Friday, July 30, 1999

Report of NERAC Subcommittees
Use of Radioisotopes in Cancer Therapy
Public comment period

Public Participation: The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on July 1, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–17363 Filed 7–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–355–000]

Baltimore Gas and Electric Company; Notice of Request for Limited Waiver

July 2, 1999.

Take notice that on June 28, 1999, pursuant to Rule 207(a)(5) of the rules and regulations of the Commission, 18 CFR 385.207(a)(5), Baltimore Gas and Electric Company (BG&E) tendered for filing a request for a 17-month Limited Waiver of the Commission's "shipper must have title" policy. BG&E asserts that the request addresses certain pipeline storage and transportation services that BG&E must retain to implement a gas supplier choice program for all customers on BG&E's system. Specifically, BG&E states that waiver of the "shipper must have title" policy is necessary for BG&E to maintain its pipeline storage capacity contracts and the associated no-notice flexibility, while simultaneously providing marketers with the opportunity to purchase storage commodity for injection into their allocated portion of BG&E's pipeline storage.

BG&E requests that the Commission act on this request no later than July 30, 1999, so that the waiver may take effect on November 1, 1999, the date BG&E's expanded residential customer choice program becomes effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before July 12, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17303 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–571–000]

Clear Creek Storage Company, L.L.C.; Application for Blanket Certificate

July 1, 1999.

Take notice that on June 29, 1999, Clear Creek Storage Company, L.L.C. (Clear Creek), 180 East 100 South, Post Office Box 45601, Salt Lake City, Utah 84111, filed in Docket No. CP99–571–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA), an application for a blanket certificate of public convenience and necessity authorizing Clear Creek to engage in any of the activities specified in 18 CFR 157.208 through 157.218. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Clear Creek is a Utah limited liability corporation that is owners by two non-pipeline natural gas companies, Questar Energy Trading Company (QET) (75%) and Montana Power Ventures Inc. (MPV) (25%), which have subscribed to

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all the planned storage capacity in the Clear Creek storage reservoir. Clear Creek states that the storage capacity of the project will be used by its owners to support their respective efforts to buy and market natural gas and to manage their individual portfolios of natural gas supplies and customer demands. Clear Creek states that QET and MPV will each store their own gas and have rights to injections and withdrawals in proportion to their respective ownership shares in Clear Creek.

Any persons desiring to be heard or to protest said filing should apply on or before July 22, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practices and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely field, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Clear Creek to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17253 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2609–000 and EL99–71–000]

First Energy Operating Companies; Notice of Initiation of Proceeding and Refund Effective Date

July 2, 1999.

Take notice that on February 26, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–71–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–71–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 99–17301 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–568–000]

Koch Gateway Pipeline Company; Notice of Application for Abandonment

July 1, 1999.

Take notice that on June 25, 1999, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77521–1478, filed an application pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations requesting permission and approval to permanently abandon in place six 1,000 horsepower reciprocating compressor units and appurtenant facilities located at its Magasco Compressor Stations Site in Sabine County, Texas, which have been inactive, on a temporary basis, since the Commission granted such authorization in Docket No. CP97–538–000.[1] The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Kyle Stephens, Director of Certificate, Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas 77251–1478, (713) 544–7309.

[1] 80 FERC ¶61,287 (1997).

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17252 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2898–000, ER99–2908–000, ER99–2869–000, ER99–2699–000, ER99–3076–000]

PECO Energy Company; Notice of Filing

July 1, 1999.

Take notice that on June 22, 1999, PECO Energy Company (PECO), tendered for filing amendments to the Description of Transaction section also providing information clarifying unbundled pricing of the transaction

agreements filed in the above-referenced dockets.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17304 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–569–000]

Texas Eastern Transmission Corp. and National Fuel Gas Supply Corp.; Notice of Application

July 2, 1999.

Take notice that on June 25, 1999, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77251–1642 and National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–569–000, a joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing (i) Texas Eastern to abandon by sale to National Fuel its undivided ownership interest in certain jointly owned facilities; (ii) National Fuel to acquire Texas Eastern's undivided ownership interest in the jointly owned facilities; and (iii) Texas Eastern to abandon a certificated transportation service for National Fuel, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/ on line/rims.htm (call 202–208–2222 for assistance).

Texas Eastern seeks authorization to abandon by sale to National Fuel, its undivided interest in the jointly owned facilities extending from the International Border at Lewiston, New York to East Aurora, New York known as the Niagara Spur Loop Line (NSLL), for from Ellisburg, Pennsylvania to Leidy, Pennsylvania Known as the Ellisburg to Leidy Line (ELL). National Fuel seeks authorization to acquire Texas Eastern's undivided ownership interest in the NSLL and ELL. Texas Eastern and National Fuel have negotiated and entered into a Facilities Sale Agreement for the NSLL and ELL facilities dated June 22, 1999. In addition, Texas Eastern seeks authorization to abandon certificated transportation service it currently provides for National Fuel via Texas Eastern's Capacity in the ELL under Texas Eastern's FERC Gas Tariff Original Volume No. 2 Rate Schedule X–136.

Any questions regarding the application should be directed to either S.E. Tillman at (713) 627–5113, Texas Eastern Transmission Corporation, P.O. Box 1642, Houston, Texas 77251–1642, or David W. Reitz at (716) 857–7949, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203.

Any person desiring to be heard or making any protest with reference to said application should on or before July 23, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed and with Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in ad subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's rules of practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to interve is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern or National Fuel to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17300 Filed 7–7–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–018]

Virginia Power Company; Notice of Settlement Meeting

July 2, 1999.

a. *Date and Time and Meeting:* July 20, 1999, 9:00 am to 3:00 pm.

b. *Place:* Littleton Community Center, Oak Street Extension, Littleton, NC (Contact: Nancy Hux, North Carolina Power) at (252) 535–6178.

c. *FERC Contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770) 452–3778.

d. *Purpose of the Meeting:* Settlement meeting associated with the relicensing of the Roanoke Rapids and Lake Gaston Project (P–2009).

e. *Proposed Agenda:* (This is the same Settlement meeting described in Virginia Power Company's letter Dated June 18, 1999, to all parties).

(1) Review of draft minutes and action items from May 13, 1999 meeting.

(2) Report of the Drafting Committee (DC) an its meetings and recommendations of decision, rules, and the role of the DC.

(3) Reports on the status of the technical studies and the status of the additional study requests.

(4) Report on cumulative impact assessment and adaptive/cooperative management.

(5) Presentation of Kerr Reservoir Storage Account.

(6) Wrap up.

f. All interested parties, are invited to attend this meeting as participants.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17302 Filed 7–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission, Dept. of Energy.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: June 28, 1997, 64 FR 34652.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 30, 1997, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item CAG–12 on the Agenda scheduled for the June 30, 1999 meeting.

Item No./Docket No. and Company

CAG–12—RP98–117–000, K N Interstate Gas Transmission Company

David P. Boergers,

Secretary.

[FR Doc. 99–17519 Filed 7–6–99; 3:53 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6374–6]

Agency Information Collection Activities: Continuing Collection; Comment Request; Clean Water Needs Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Clean Water Needs Survey, EPA, ICR No. 0318.08 OMB, ICR Control No. 2040–0050. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 7, 1999.

ADDRESSES: To obtain a copy of this ICR, please contact Sandra Perrin, Office of Wastewater Management, U.S. EPA (Mailcode 4204), 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sandra Perrin (202) 260–7382, Fax (202) 260–0116, E-Mail peerin, sandra@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are States, District of Columbia, Puerto Rico, Virgin Island and Pacific Territories (maximum 56).

Title: Clean Water Needs Survey, (OMB Control No. 2040–0050; EPA ICR No. 318.08) expiring 12/31/99.

Abstract: The Needs Survey is required by sections 205(a) and 516(b)(1) of the Clean Water Act (CWA). It is a biennial inventory of publicly owned wastewater treatment works (POTWs) in the United States as well as an estimate of how many POTWs are needed to be built. The Survey is a joint effort of the States, EPA Headquarters (Office of Wastewater Management (OWM)) and EPA Regions. The Survey records costs associated with a broad range of water quality and public health problems eligible for funding from the State Revolving Fund program under Title VI of the CWA. This includes the collection and treatment of municipal wastewater, the control of combined sewer overflows, storm water management, and control of non point source runoff. The States provide this information to EPA. EPA achieves national consistency in the final results through the application of uniform guidelines and validation techniques. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual burden estimate for State respondents in the 1996 Survey was 13,888 hours. This was decreased in 1998 to 1275 hours because EPA was modernizing its data base and no survey was conducted. We are estimating 375 hours per respondent for the 2000 survey. With 56 respondents, the total burden is estimated at 21,000 hours for the 2000 Survey which reflects an increase in the burden over 1996 for information collection for Combined Sewer overflows (CSO) and Nonpont Source/ Stormwater along with an increase the number of POTWs. Since 1988 the Needs Survey has been completely automated allowing the States to perform direct on-line updates of their data and to obtain quick feedback on EPA Headquarters review of the updates. The main objectives of the 1996 Survey was to update the cost estimates of traditional categories of POTWs, as well as to provide improve information on needs for CSO and NPS needs. There are no capital/startup costs or operation and maintenance costs for respondents. The main objectives of the 2000 data collection effort will be to develop data on pollution problems eligible for funding from the State Revolving fund program including Non Point Source(s). To minimize the reporting burden, the Surveys have been computerized since 1988 and EPA will continue to use the computerized data base approach. Frequency is determine by the Congress under the Clean Water Act. No confidential information is used, nor is sensitive information protected from release under the Public Information Act used. Burden means the total time, effort, or financial resources expended by person to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 29, 1999.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 99–17346 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6374–5]

Agency Information Collection Activities, OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1903.01; The 1999 National Survey of Local Emergency Planning Committees; was approved 06/21/99; OMB No. 2050–0162, expires 06/30/2002.

EPA ICR No. 1286.05; Used Oil Management Standards Recordkeeping and Reporting Requirement; in 40 CFR part 266; was approved 06/21/99; OMB No. 2050–0124; expires 06/30/2002.

Extensions of Expiration Dates

EPA ICR No. 1626.05; National Recycling and Emissions Reduction Program; in 40 CFR part 82, subpart F; OMB No. 2060–0256; on 06/08/99 OMB extended the expiration date through 12/31/99.

EPA ICR No. 0664.05; NSPS for Bulk Gasoline Terminals; in 40 CFR part 60, subpart XX; OMB No. 2060–0006; on 06/22/99 OMB extended the expiration date through 08/31/99.

EPA ICR No. 1764.01; National Volatile Organic Compound Emission Standards for Consumer Products; in 40 CFR part 59, subpart C; OMB No. 2060–0348; on 06/22/99 extended the expiration date through 12/31/99.

EPA ICR No. 0226.14; National Pollutant Elimination System Permit Application Requirements—Forms 2A and 2S (Final Rule); in 40 CFR parts 122 and 501; OMB No. 2040–0086; on 06/25/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1842.01; Notice of Intent of Stormwater Discharges Associated with Construction Activity under an NPDES General Permit; in 40 CFR part 122; OMB No. 2040–0188; on 06/25/99 extended the expiration date through 09/30/99.

EPA ICR No. 0168.06; National Pollutant Discharge Elimination System and Sewage; in 40 CFR parts 123 and 501; OMB No. 2040–0057; on 06/25/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 0597.06; Maximum Residue Limit (MRL) Petitions on Food/ Feed Crops and New Inert Ingredients; in 40 CFR parts 177, 180, 185 and 186; OMB No. 2070–0024; on 06/28/99 OMB extended the expiration date through 12/31/99.

Actions Withdrawn

EPA ICR No. 1865.01; Evaluation of Jobs Through Recycling Grants Projects; on 06/29/99 EPA withdrew this collection from OMB review.

EPA ICR No. 1866.01; Chlorinated Aliphatics Industry Study; on 06/29/99 withdrew this collection from OMB review.

Dated: July 1, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–17345 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6374–3]

Agency Information Collection Activities; Pesticides; Submission of EPA ICR No. 0595.07

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501*et seq.*), this document announces that the Information Collection Request (ICR) entitled: "Notice of Pesticide Registration by States to Meet a Special Local Need, Section 24(c)" [EPA ICR No. 0595.07; OMB No. 2070–0055], has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, involves a collection activity that is currently approved and is scheduled to expire on September 30, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. A **Federal Register** document announcing the Agency's intent to seek OMB approval for this ICR and provide a 60 day comment period opportunity, was issued on January 20, 1999 (64 FR 3086,). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: farmer.sandy@epa.gov" or download a copy of the ICR on the internet at http://www.epa.gov/icr/icr.htm and refer to

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EPA ICR No 0595.07 and OMB Control No. 2070–0055.

ADDRESSES: Send comments, referencing EPA ICR 0595.07 and OMB Control No. 2070–0055, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, SW, Washington, DC 20460;
and to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

This document applies to any state exercising authority to register additional uses of federally registered pesticides for distribution and use within the state to meet a special local need pursuant to FIFRA section 24(c). The term "state" includes a state. the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands and American Samoa. Potentially affected categories include:

Category	NAICS code	SIC codes	Examples of potentially affected entities
State agencies/governments	923120	9431	State Agencies issuing state registration for additional uses of federally registered pesticides to be used within the state.
Organic Chemical Manufacturers	325320	286	Pesticide Registrants.
Inorganic Chemical Manufacturers	325320	287	Pesticide Registrants.
Agricultural Grower Groups	813910	100/200	Agricultural Grower Groups that provide information to support additional uses of federally registered pesticides within a state.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Information Collection Activity or ICR Does This Notice Apply To?

The final ICR package for the following information collection activity has been submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA is asking OMB to approve this ICR for three years.

Title: Notice of Pesticide Registration by States to Meet a Special Local Need, Section 24(c).

ICR Numbers: EPA ICR No.0595.07; OMB No. 2070–0055.

ICR Status: This ICR involves a collection activity that is currently approved. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** documents for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: EPA is responsible for the regulation of pesticides as mandated by FIFRA. However, FIFRA section 24(c) also authorizes States to register additional uses of federally registered pesticides for distribution and use within their borders to meet a special local need (SNL). A state-issued registration under FIFRA section 24(c) is deemed a federal registration, for the purposes of the pesticide's use within the State's boundaries. A State must notify EPA, in writing, of any action it takes, i.e., issues, amends, or revokes, a state-registration. To support a special need registration all applicants must submit to the State basic pesticide product information including:

(1) Name and address of the applicant and any other person whose name will appear on the labeling or in the directions for use.

(2) The name of the pesticide product, and, if the application is for an amendment to a federally registered product the EPA registration number of that product,

(3) A copy of the proposed labeling, including all claims made for the product as well as directions for its use to meet the special local need, consisting of:

(i) For a new product, a copy of the complete proposed labeling; or,

(ii) For an additional use of a federally registered product, a copy of proposed supplemental labeling and a copy of the labeling for the federally registered product.

(iii) If a State classifies for restricted use a product or use, which is not required to be so classified under FIFRA, supplemental labeling for the product or use containing additional appropriate precautions, and a statement that the product or use is for restricted use within the State may be required.

(4) The complete formula of the product, if the application is for a new product registration.

(5) Any other information that is required to be reviewed prior to registration.

Once a state issues a SLN registration, the label of the pesticide product must contain:

(1) A statement identifying the State where registration is to be valid.

(2) The special local need registration number assigned by the State.

(3) For an additional use of a federally registered product, the State must require that at the time of sale, labeling from the federally registered product be accompanied by supplemental labeling.

To ensure that the States do not issue any registrations that might conflict with other requirements in FIFRA, or with section 408 or 409 of the Federal Food Drug, and Cosmetic Act (FFDCA) which require that a tolerance exist for any pesticide used on a food or feed commodity. FIFRA section 24 (c)(3) allows the EPA to determine whether or not a State issued registration is inconsistent with the FFDCA or if the use of a pesticide registered by the State constitutes an imminent hazard. To make such a determination the EPA requires States to submit EPA Form 8570–25:

(1) Within ten working days from the date a State issues, amends or revokes a registration, the State is required to notify the EPA, in writing, of the action. Notification of State registrations, or amendments thereto, shall include:

(i) Effective date of the registration or amendment,

(ii) Confidential statement of the formula of any new product, and

(iii) A copy of the draft labeling reviewed and approved by the State, provided that labeling previously approved by the Administrator as part of a federal registration need not be submitted.

(2) Notification of State registrations or amendments shall be supplemented by the State sending to the EPA a copy of the final printed labeling approved by the State within 60 days after the effective date of the registration or amendment.

(3) Notification of revocation of a registration by a State shall indicate the effective date of revocation, and shall state the reasons for revocation.

(4) The Agency may request, when appropriate, that a State submit any data used by the State to determine that unreasonable adverse effects will not be caused.

The Agency has 90 days to determine whether the SLN registration should be disapproved. If the SLN is disapproved, the State is responsible for notifying the affected registrant.

Burden: Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information: and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 12.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: States.

Estimated Total Number of Potential Respondents: 349.

Frequency of Response: Determined by the state.

Estimated Total Annual Burden Hours: 24,604.

Estimated Total Annual Burden Costs: $2,360,287.

III. Are There Changes in the Estimates From the Last Approval?

Yes. The overall respondent burden hours associated with this collection has decreased from 38,775 to 24,604.5 hours per year. This change is due to the decrease of the number of applications made by the states since the renewal of the last ICR from 550 to 349. Costs have increased due to current labor rates as supplied by the Bureau of Labor Statistics. No regulatory changes have been made in the requirements for Section 24(c) applications.

IV. What Is the Next Step in the Process for This ICR?

After providing a 30 day opportunity for additional comments from the public, OMB will review and take action on the Agency's request. Periodically, EPA publishes a notice in the **Federal Register** listing recent OMB actions on the Agency's ICR submittals. If you have any questions about this ICR or the approval process, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: July 1, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–17348 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6371–9]

Notice of Approval of Extension of Prevention of Significant Air Quality Deterioration (PSD) and New Source Review (NSR) Permit to Muht-Hei, Inc. (NSR 4–4–10, SD 92–02)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 3, 1999 the Environmental Protection Agency issued an extension of the prevention of significant deterioration/new source review (PSD/NSR) permit to the applicant named above. Extension of the PSD/NSR permit grants approval to Muht-Hei, Inc. to construct and operate a solid waste landfill on the tribal lands of the Campo Band of Mission Indians.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; please address the request to: Steve Branoff (AIR–3), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1290.

SUPPLEMENTARY INFORMATION: On October 18, 1996, EPA issued a PSD/NSR permit to Mid-American Waste Systems, Inc. for the construction and operation of a solid waste landfill on the tribal lands of the Campo Band of Mission Indians. The 1996 permit specified that this permit would expire if construction did not commence within 18 months after its issuance. Prior to the date of permit expiration, Muht-Hei, Inc. applied to EPA for a transfer of ownership of the proposed project, and for an extension of the PSD/NSR permit. EPA has extended the approval to construct and operate the proposed landfill to the new owners for a period of 18 months from May 3, 1999 until November 2, 2000.

The PSD/NSR permit requires the application of Lowest Achievable Emission Rate (LAER) for emissions of volatile organic compounds (VOCs), and Best Available Control Technology (BACT) for fine particulate matter (PM_{10}). The permit also requires Muht-Hei to provide emission offsets for all direct and fugitive emissions of VOCs. LAER requirements for this permit include construction of the landfill with low permeability composite liners, installation and maintenance of a landfill gas (LFG) collection system, and destruction of all collected LFG in a flaring system that will achieve a minimum VOC destruction removal efficiency (DRE) of 99.6% by weight.

BACT requirements for particulate emissions include paving, vacuum-sweeping, and watering of roads. In addition, the LFG flare is subject to certain emission limits, including allowable emission rates as follows: 0.06 lbs/mmBtu of NO_X, 0.15 lbs/mmBtu of CO, and 0.005 lbs/mmBtu of PM_{10}.

DATES: The issuance of a PSD/NSR permit is reviewable under section 307(b)(1) of the Clean Air Act and 40 CFR 124.19(f)(1) in the Ninth Circuit Court of Appeals. A petition for review must be filed by September 7, 1999. EPA did not receive an appeal to the Administrator or the Environmental Appeals Board for review of this permit decision within thirty (30) days from the date the final permit was issued.

Dated: June 28, 1999.

Kenneth Bigos,

Acting Director, Air Division, Region 9.

[FR Doc. 99–17209 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6374–4]

Contractor Access to Confidential Business Information (CBI); Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, Ann Arbor, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with 40 CFR 2.301(h)(2), EPA has determined that one contractor requires access to Confidential Business Information (CBI). This access is under the terms of the

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contract. The contractor and contract are the Science Applications International Corporation (SAIC) with EPA Contract 68–W–99–002, Task Order 05.

DATES: SAIC will have access to this data from until September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Parsons, U.S. Environmental Protection Agency, OMS/VPCD, 2000 Traverwood, Ann Arbor, Michigan, 48105–2195 is the contact person for Contract 68–W–99–002, Task Order 05.

SUPPLEMENTARY INFORMATION: The Science Applications International Corporation (SAIC) as the prime contractor and Dyncorp and Indus as subcontractors, will have access to Confidential Business Information (CBI) to develop and maintain the Certification and Fuel Economy Information System (CFEIS) under EPA's new Mission Oriented Systems Engineering Support (MOSES) II contract, Task Order 05. CFEIS handles the information flow associated with the certification process and its companion fuel economy process. Production problems referred for analysis often entail access to CBI data. Their address (applies to prime and all subcontractors): Science Applications International Corporation (SAIC) @EPA's Systems Development Center (SDC) 200 N. Glebe Road Suite 300, Arlington, VA 22203 Phone: 703–292–6000, Fax 703–292–6388.

Dated: June 29, 1999.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–17349 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404LS–US/PB–402404–LS; FRL–6068–6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Authorization of the Upper Sioux Community's and Lower Sioux Indian Community's Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: On April 14, 1998, both the Upper Sioux Community (Upper Sioux) and Lower Sioux Indian Community (Lower Sioux) submitted applications for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 404 of the Toxic Substances Control Act (TSCA). Notice of the Upper Sioux and Lower Sioux applications, a solicitation for public comment regarding the applications, and background information supporting the applications were published in the **Federal Register** of October 2, 1998. Today's notice announces the approval of the Upper Sioux and Lower Sioux Indian Communities' applications, and the authorization of the Upper Sioux and Lower Sioux Communities' lead-based paint program to apply on the Upper Sioux and Lower Sioux Reservations respectively effective May 7, 1999, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: Lead-based paint activities program authorization was granted to the Upper Sioux and Lower Sioux Indian Communities effective on May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Emma Avant, Project Officer, Environmental Protection Agency, Region V, DT-8J, 77 West Jackson Blvd., Chicago, IL 60604, telephone: (312) 886–7899, e-mail address: avant.emma@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Title IV of TSCA, Lead Exposure Reduction, 15 U.S.C. 2681-2692, and regulations promulgated thereunder, States and Tribes that choose to apply for lead-based paint activities program authorization must submit a complete application to the appropriate Regional EPA office for review. Complete, final applications will be subject to a public comment period, and reviewed by EPA within 180 days of receipt. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement, section 404(b) of TSCA. As determined by EPA's review and assessment, the Upper Sioux and Lower Sioux's applications successfully demonstrated that the Tribes' lead-based paint activities programs achieve the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of Upper Sioux and Lower Sioux's applications. EPA announced solicitation for public comment regarding the applications in the **Federal Register** of October 2, 1998 (63 FR 53051) (FRL–6018–9).

II. Federal Overfiling

TSCA section 404(b), 15 U.S.C. 2684(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), 15 U.S.C. 2684(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: June 23, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region V.

[FR Doc. 99–17316 Filed 7–7–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–1319]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 30, 1999, the Commission released a public notice announcing the July 20, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6–A320, Washington, D.C. 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: July 2, 1999.

The meeting to be held on Tuesday, July 20, 1999, from 8:30 a.m. until 5:00 p.m., and on Wednesday, July 21, 1999, from 8:30 a.m. until 10:00 a.m. is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

It has been determined that the portion of the meeting to be held on Wednesday, July 21, 1999, from 10:00 a.m. until 12:00 p.m. will be closed to the general public. In response to NANC Chairman Alan Hasselwander's request, FCC Chairman William E. Kennard determined, after review by the General Counsel, that this portion of the July 21, 1999, meeting of the NANC may be closed to the public." In making this determination, Chairman Kennard stated:

> Given that the NANC's review, at the meeting, of the proposal by Lockheed Martin to provide number pooling administration is likely to involve disclosure of "trade secrets and commercial or financial information obtained from a person and privileged or confidential," that portion of the NANC meeting is subject to the Government in the Sunshine Act's (GISA) allowance for closure of meetings otherwise required to be open to the public. *See* GISA Section 552b(c)(4). Under the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988) (FACA), the requirement that Federal Advisory Committee meetings be open to the public is, therefore, not applicable to the above-specified portion of the July 21, 1999, meeting of the NANC.

Proposed Agenda

Tuesday, July 20, 1999

1. Approval of June 22–23, 1999, meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report.
3. Industry Numbering Committee (INC) Report. Discussion of obligation of code holders to resellers requirement to report forecast data.
4. Numbering Resource Optimization (NRO) Working Group Report.
5. Cost Recovery Working Group Report. Discussion business arrangement between North American Numbering Plan Administrator (NANPA) in the role of number pooling administrator and the Number Portability Administration Center (NPAC).
6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

Wednesday, July 21, 1999

1. Steering Group Report.
2. Other Business.

Session closed to the public. Discussion of Lockheed Martin IMS CIS response to the Thousand Block Pooling Administrator Requirements Document. Non-disclosure agreement must be signed by NANC members and or their alternates prior to attending the closed-door session.

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Federal Communications Commission.

Anna M. Gomez,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–17405 Filed 7–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–010071–028
Title: Cruise Lines International Association
Parties:
American Hawaii Cruises
Bergen Line, Inc.
Carnival Cruise Lines
Celebrity Cruises, Inc.
Commodore Cruise Line
Costa Cruise Lines
Crystal Cruises
Cunard
Delta Queen Steamboat Co. ("Delta Queen")
Disney Cruise Line
First European Cruises
Holland America Line
Mediterranean Shipping Cruises
Norwegian Cruise Line
Orient Lines, Inc.
Premier Cruises
Princess Cruises
Radisson Seven Seas Cruises
Regal Cruises
Royal Caribbean International
Royal Olympic Cruises
Seabourn Cruise Line
Silversea Cruises
Windstar Cruises
Snyopsis: The proposed amendment updates the addresses of various Agreement members and deletes Delta Queen as a party to the Amendment. It also makes technical changes concerning travel industry related technology and adds a provision for arbitration clause covering both member lines and sellers of travel.

Agreement No.: 203–011527–003
Title: Independent Carriers Alliance
Parties:
Cho Yang Shipping Co., Ltd. ("Cho Yang")
Montemar S.A. d/b/a/ Pan American Independent Line
DSR—Senator Lines
Hanjin Shipping Co., Ltd.
Di Gregorio Navegacao Ltda.
Zim Israel Navigation Company Ltd.
Synopsis: The proposed amendment would revise the Agreement's withdrawal provisions to permit Cho Yang to resign from the Agreement on less than the present six month advance notice period. As presently contemplated, Cho Yang's resignation would become effective on December 10, 1999.

Agreement No.: 217–011548–002
Title: Hanjin/Sinotrans Slot Charter Agreement
Parties:
Hanjin Shipping Co., Ltd.
China National Foreign Trade Transportation Corp. (Sinotrans)
Synopsis: The proposed modification changes the address of Sinotrans, changes the name of the contact person at each company, and provides for the automatic renewal of the agreement each year.

Agreement No.: 203–011574–006
Title: Pacific Islands Discussion Agreement
Parties:
P&O Nedlloyd Limited
South Seas Steamship Line
Polynesia Line, Ltd.
South Pacific Container Line
FESCO Ocean Management Limited d/b/a/ FESCO Australia North America Line
Synopsis: The proposed amendment would clarify the authority of the parties to discuss and agree upon voluntary guidelines relating to the terms and procedures of their individual service contracts.

Agreement No.: 203–011637–001
Title: MLL/TMG/Columbus/Maruba Cooperative Working Agreement
Parties:
Columbus Line
Maruba S.C.A.
Mexican Line Limited
Transportation Maritime Grancolombiana, S.A.
Synopsis: The proposed Amendment clarifies Article 5(e) of the Agreement by providing that no party may be required to disclose terms of its service contracts other than those required to be published. It also adds a new Article 5(f) which authorizes the parties to adopt voluntary service contract guidelines, and makes other nonsubstantive changes to Article 5.

Agreement No: 207–011649–001
Title: Joint Operating Agreement Between Interocean Lines, Inc. and Trinity Shipping Line, S.A.
Parties:
Interocean Lines, Inc.
Trinity Shipping Line, S.A.
Synopsis: The proposed amendment provides for the automatic extension of the Agreement for additional six-month periods beyond the initial term of the Agreement.

Agreement No.: 217–011664
Title: Maersk/OOCL Space Charter Agreement
Parties:
A.P. Moller-Maersk Line
Orient Overseas Container Line
Synopsis: The proposed agreement would authorize Maersk to charter space to OOCL and for the parties to agree on administrative matters in the trade from ports and points in California to ports and points in Northern Europe.

Agreement No.: 224–201080
Title: Port of Oakland-COSCO Marine Terminal use Agreement
Parties:
City of Oakland, Board of Port Commissioners
China Ocean Shipping (Group) Company
Synopsis: The proposed agreement provides for the nonexclusive use of certain facilities at the Charles P. Howard Terminal. The agreement runs through April 30, 2004.

By Order of the Federal Maritime Commission.

Dated: July 2, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–17314 Filed 7–7–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Personnel, Federal Maritime Commission, 800 North Capital Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Harold J. Creel, Jr.,

Chairman.

The Members of the Performance Review Board Are

1. Ming Chen Hsu, Commissioner
2. John A. Moran Commissioner
3. Delmond J.H. Won, Commissioner
4. Norman D. Kline, Chief Administrative Law Judge
5. Frederick M. Dolan, Jr., Administrative Law Judge
6. Thomas Panebianco, General Counsel
7. Bryant L. VanBrakle, Secretary
8. Edward P. Walsh, Managing Director
9. Bruce A. Dombrowski, Deputy Managing Director
10. Vern W. Hill, Director, Bureau of Enforcement
11. Sandra L. Kusumoto, Director, Bureau of Administration
12. Florence A. Carr, Director, Bureau of Economics and Agreement Analysis
13. Austin L. Schmitt, Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–17290 Filed 7–7–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY:

Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Effective Date: Comments must be submitted on or before September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

A copy of the proposed forms and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statements, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revisions, of the following reports:

1. Report title: Applications for Subscription to, Adjustment in Holding of, and Cancellation of Federal Reserve Bank Stock.

Agency form numbers: FR 2030, 2030a, 2056, 2086, 2086a, 2086b, and 2087.

OMB control number: 7100-0042.

Frequency: On occasion.

Reporters: National, State Member, and Nonmember Banks.

Annual reporting hours: 952 (FR 2030: 47; FR 2030a: 13; FR 2056: 860; FR 2086: 1; FR 2086a: 30; FR 2087: 1).

Estimated average hours per response: 0.5 (for each form).

Number of respondents: 1,901 (FR 2030: 93; FR 2030a: 26; FR 2056: 1,719; FR 2086: 2; FR 2086a: 60; FR 2087: 1). Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. §§ 222, 248, 282, 287, 288, and 321 and 12 C.F.R. §§ 209.1, 209.3, 209.5(b), 209.7, and 209.8]. Upon request from an applicant, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. §§ 552(b)(4) and (6)).

Abstract: These applications must be submitted to Federal Reserve Banks by organizing and existing member commercial banks requesting the issuance, adjustment, or cancellation of Federal Reserve Bank stock. National banks, chartered by the Comptroller of the Currency, are required to become members of the Federal Reserve System. State-chartered commercial banks may elect to become members if they meet the requirements established by the Board of Governors of the Federal Reserve System. When a bank receives approval for membership in the Federal Reserve System, the bank agrees to certain conditions of membership which are contained in an approval letter sent to the bank by the Federal Reserve Bank in the District where the bank is located. In addition to the conditions of membership, the bank also is advised by

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the Reserve Bank that it must subscribe to the capital stock of the Federal Reserve Bank of its District in an amount equal to 6 percent of the bank's paid-up capital and surplus, including reserve for dividends payable in common stock, pursuant to Section 5 of the Federal Reserve Act and Regulation I. However, the bank is required to make payment for only 50 percent of the subscription, which is recorded as paid-in capital on the Reserve Bank's balance sheet. The remaining 50 percent is subject to call by the Board of Governors of the Federal Reserve System. On December 31, 1998, there were 3,401 Federal Reserve member banks, and their consolidated paid-in capital at the twelve Federal Reserve Banks was $5.6 billion.

These applications are necessary in order to obtain account data on the bank's capital and surplus and to document its request to increase or decrease its holdings of Federal Reserve Bank stock. Another purpose of the applications is to verify that a request has been duly authorized and to prevent unauthorized requests for issuance or cancellation of Federal Reserve Bank stock.

Current Actions: The most significant changes would be (1) revising the items included in the capital stock and surplus section on the FR 2056, (2) combining the FR 2086a and FR 2086b, and (3) adding an optional field to each of the applications for the institution's ABA number. On the FR 2056, the capital and surplus would be reported as shown on the institution's most recent Report of Condition (instead of on the date of the application). Also, the capital stock section would include common stock, preferred stock (including sinking fund preferred stock), and paid-in surplus less the aggregate of retained earnings, gains(losses) on securities available-for-sale, and foreign currency translation gains or losses, if such aggregate is a deficit. Finally, information on "reserve for dividends payable in common stock" would be deleted.

The FR 2086a would be used for all member banks converting or merging into nonmember banks. This application would now include national banks converting into nonmember banks and therefore the FR 2086b application would be eliminated.

The Certificate of Issuance of Federal Reserve Bank Stock would be eliminated from the FR 2030, FR 2030a, and FR 2056 applications and the Certificate of Cancellation of Federal Reserve Bank stock would be eliminated from the FR 2056, FR 2086, FR 2086a, and FR 2087 applications. Also, minor clarifications would be made to all of the applications to improve consistency and make filing of the applications more expeditious and user-friendly.

2. Report title: Applications for Membership in the Federal Reserve System.

Agency form numbers: FR 2083, 2083A-2083E.

OMB control number: 7100-0046.

Frequency: On occasion.

Reporters: Commercial banks and certain mutual savings banks.

Annual reporting hours: 2,805 burden hours.

Estimated average hours per response: 35.5 hours.

Number of respondents: 79. Small businesses are affected.

General description of report: This information collection is required [12 U.S.C. §§ 321, 322 and 333]. The information in the application is not confidential; however, parts may be given confidential treatment at the applicant's request [5 U.S.C. § 552(b)(4)].

Abstract: The application for membership is a required one-time submission, pursuant to Section 9 of the Federal Reserve Act, that collects the information necessary for the Federal Reserve Board to evaluate the statutory criteria for admission of a new or existing bank to membership in the Federal Reserve System. This application provides managerial, financial, and structural data.

Current Actions: The Federal Reserve proposes to (1) revise the application to conform with changes to Regulation H, (2) combine the FR 2083B, C, and D, which are filed by mutual savings banks, into one application and (3) replace Section IV of the application with a reference to the Interagency Biographical and Financial Report (FR 2081c; OMB No. 7100-0134).

With respect to the Regulation H changes, the instructions would be revised as follows: the "Preparation of Application" section would be updated regarding examination and Reserve Bank consultation and would define those institutions that qualify for expedited treatment and the "Public Notification" section would be eliminated. On the FR 2083E, which would be renamed the FR 2083C, references to capital stock would be revised to capital stock and surplus. Capital stock and surplus includes Tier 1 and Tier 2 capital, as calculated under the risk-based capital guidelines, plus any allowance for loan and lease losses not already included in Tier 2 capital.

The FR 2083B, C, and D would be combined in an effort to streamline the applications and Section IV would be replaced with FR 2081c for consistency purposed. Also, the Federal Reserve would incorporate several formatting changes to all of the applications to improve consistency and clarify the information to be reported.

Board of Governors of the Federal Reserve System, July 1, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–17267 Filed 7–7–99; 8:45am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY

Background. Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

Agency form number: unnum Reg B.

OMB Control number: 7100-0201.

Frequency: Event-generated.

Reporters: State Member Banks.

Annual reporting hours: 123,892 hours.

Estimated average hours per response: Notification: 2.50 minutes; Credit history reporting: 2 minutes; Monitoring: 30 seconds; Appraisal report upon request: 5 minutes; Notice of right to appraisal: 15 seconds; Recordkeeping of self-test: 2 hours; Recordkeeping of corrective action: 8 hours.

Number of respondents: Notification, Credit history reporting, Monitoring, Appraisal report upon request, and Notice of right to appraisal 988; Recordkeeping of self-test 45; Recordkeeping of corrective action 11. Small businesses are affected.

General description of report: This information collection is mandatory (15 USC 1691b(a)(1) and Public Law 104-208, § 2302(a)). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (80 of the Freedom of Information Act (5 USC 522(b)).

Abstract: The act and regulation prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. Creditors are subject to various mandatory, event-generated disclosure requirements, notification provisions, credit history reporting, and monitoring rules. Creditors are also required to retain records for twelve or twenty-five months as evidence of compliance.

Board of Governors of the Federal Reserve System, July 1, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–17268 Filed 7–7–99; 8:45am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. B&L Bank ESOP, Lexington, Missouri; and Erwin Oetting, Jr., Norman Vialle, and Steve Oliaro, all of Lexington, Missouri, as Trustees; to acquire voting shares of Lexington B&L Financial Corp., Lexington, Missouri, and thereby indirectly acquire voting shares of Lafayette County Bank of Lexington/Wellington, Lexington, Missouri.

Board of Governors of the Federal Reserve System, July 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17270 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 30, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. AmSouth Bancorporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of First American Corporation, Nashville, Tennessee, and thereby indirectly acquire First American National Bank, Nashville, Tennessee.

In connection with this application, AmSouth Bancorporation also has applied to acquire First American Federal Savings Bank, Dalton, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and to acquire First American Community

Board of Governors of the Federal Reserve System, July 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17334 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1999.

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Development Corporation, Nashville, Tennessee, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of Regulation Y.

In addition, AmSouth Bancorporation and First American corporation each have applied to acquire up to 19.9 percent of the other's voting shares pursuant to stock options granted in connection with the proposal. The options would terminate on consummation of the proposal.

2. Synovus Financial Corporation, Columbus, Georgia; to merge with Merit Holding Corporation, Tucker, Georgia, and thereby indirectly acquire Mountain National Bank, Tucker, Georgia, and Charter Bank and Trust Company, Marietta, Georgia.

Board of Governors of the Federal Reserve System, July 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17269 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to acquire 100 percent of the voting shares of Delaware Bancshares, Inc., Jay, Oklahoma, and thereby indirectly acquire The Delaware County Bank, Jay, Oklahoma.

Board of Governors of the Federal Reserve System, July 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17333 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-16703) published on page 35660 of the issue for Thursday, July 1, 1999.

The Federal Reserve Bank of Chicago heading in paragraph A. and the entry for HSBC Holdings plc, London, United Kingdom, HSBC Finance, Netherlands, London, England, HSBC Holdings BV, Amsterdam, Netherlands, and a newly established intermediate holding company, (USHoldco, New York, New York) are corrected to read as follows

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. HSBC Holdings plc, London, United Kingdom (HSBC Holdings), HSBC Finance, Netherlands, London, England, HSBC Holdings BV, Amsterdam, Netherlands, and a newly established intermediate holding company (USHoldco, New York, New York), to acquire all of the voting shares of Republic New York Corporation, New York, New York (RNYC), and thereby acquire the following bank subsidiaries of RNYC: Republic National Bank of New York, New York, New York (Republic Bank), and Republic Bank California, National Association, Beverly Hills, California. Following these transactions, HSBC would merge RNYC with and into HSBC Americas, Inc., Buffalo, New York, a bank holding company that is the current parent of HSBC Bank USA, Buffalo, New York. RNYC would survive this merger and be renamed HSBC USA. HSBC Holdings and its subsidiaries (collectively HSBC) may form one or more intermediate bank holding companies to facilitate these transactions.

In connection with the proposed transaction, HSBC has provided notice to acquire all of the nonbank subsidiaries of RNYC and to engage, directly or indirectly through such nonbank subsidiaries, in a variety of nonbanking activities that previously have been determined to be permissible for bank holding companies. HSBC also would continue to control all its existing bank and nonbank subsidiaries. The nonbanking companies that HSBC proposes to acquire are listed in the notice filed with the Board and include Republic Bank Delaware, National Association, Wilmington, Delaware; Republic New York Securities Corporation, New York, New York (RNYSC); Republic Business Credit Corporation, New York, New York. The nonbanking activities of the companies to be acquired also are listed in the notice and include extending credit and servicing loans, pursuant to 12 CFR 225.28(b)(1); performing functions or activities that may be performed by a trust company, pursuant to 12 CFR 225.28(b)(5); providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, pursuant to 12 CFR 225.28(b)(7); and underwriting and dealing in government obligations and money market instruments, engaging in certain investing and trading activities as principal, and buying and selling bullion and related activities, pursuant to 12 CFR 225.28(b)(8).

In connection with the proposed transaction, HSBC also has applied to acquire an option to purchase up to 19.9 percent of the outstanding shares of RNYC common stock. This option would expire upon consummation of the merger.

Comments on this application must be received by July 26, 1999.

Board of Governors of the Federal Reserve System, July 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17335 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. FNB Financial Services Corporation, Reidsville, North Carolina; to acquire Black Diamond Savings Bank, FSB, Norton, Virginia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than July 30, 1999.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa, and Southwest Partners, Inc., Des Moines, Iowa; to engage *de novo* through a joint venture subsidiary, United Mortgage Group, San Diego, California, in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17271 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to engage *de novo* through its subsidiary, Old Kent Securities Corporation, Grand Rapids, Michigan, in acting as investment or financial advisor, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage services, "riskless principal," and private placement services, pursuant to § 225.28(b)(7)(i), (ii) and (iii) of Regulation Y; underwriting and dealing in obligations that state member banks of the Federal Reserve System are authorized to underwrite and deal in under 12 U.S.C. 24 and 335 ("bank-eligible securities"), and engaging in investing and trading activities, pursuant to §§ 225.28(b)(8)(i) and (ii) of Regulation Y; underwriting and dealing to a limited extent in all types of debt and equity securities other than shares of open-end investment companies (mutual funds); See, *J.P. Morgan & Co. Incorporated et al.*, 75 Fed. Res. Bull. 192 (1989); and providing administrative and other shareholder services to mutual funds; see, *Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993); *State Street Boston Corporation*, 81 Fed. Res. Bull. 297 (1995); *Barclays PLC*, 82 Fed. Res. Bull. 158 (1996); *The Governor and Company of the Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996).

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa, and Southwest Partners, San Diego, California; to engage *de novo* through a joint venture subsidiary, Gold Coast Mortgage, San Diego, California, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17336 Filed 7–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The FTC has submitted the information collection requirements contained in five Commission rules and one administrative category to OMB for review and clearance under the Paperwork Reduction Act (44 USC 3501 *et seq.*) (PRA). On January 8, 1999, the FTC solicited comment concerning these information collection requirements, providing the information specified in 5 CFR 1320.5(a)(iv). 64 FR 1203. The FTC received no comments. The current OMB clearances for four of the five rules and the one administrative category expire on September 30, 1999. The current OMB clearance for the HSR Form and Rules expires on August 31, 1999. The FTC has requested that OMB extend these paperwork clearances for a period of three years.

DATES: Comments must be filed on or before August 9, 1999.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to Elaine W. Crockett, Attorney, Office of the General

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Counsel, Room 598, 600 Pennsylvania Avenue, NW 20580. Telephone: (202) 326–2453. Fax: (202) 326–2477. E-mail: ecrockett@ftc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed extensions of the information requirements should be addressed to Elaine W. Crockett at the address listed above.

SUPPLEMENTARY INFORMATION:

1. Title: FTC Hart-Scott-Rodino ("Permerger Notification") Rules and form, 16 CFR Parts 801–803—(OMB Control Number 3084–0005)—Extension

The Antitrust Improvements Act Notification and Report Form ("Report Form" or "Form") implements the notification requirements contained in the Premerger Notification Rules, 16 CFR 801–803 (1998) and Section 7A of the Clayton Act, 15 USC 18a. Under the Act and its associated rules, certain parties contemplating acquisitions of a specified size must notify the FTC and the Antitrust Division of the Department of Justice ("the enforcement agencies") and wait for 30 days (or, in the case of cash tender offer, 15 days) before consummating the transaction. The FTC has established the Report Form as the means for accomplishing the notification mandated by the Act. The Report Form provides the enforcement agencies with the information needed to make prompt, preliminary determinations of the antitrust implications of the reported transactions.

On June 14, 1994, the FTC published a **Federal Register** Notice in which it proposed certain changes to the Report Form. 59 FR 30545. At that time, the FTC requested comments on any paperwork burdens imposed by those changes. *Id.* at 30588. Based on comments received in response to the Notice, as well as other input from interested parties, the enforcement agencies are continuing their review of the Report Form. Any future proposal to change the Form as a result of this review will include a request for comments on any paperwork burdens imposed by the proposal.

This request is for an extension of the Rules and the Form as they currently exist. This notice proposes no amendments or changes to the Rules or the Form, nor does it address any of the changes proposed in 1994. The purpose of this notice is simply to comply with those PRA requirements that will allow the Report Form to be used in its current format pending any amendments to the Rules or Form.

Estimated Annual Burden Hours

The total estimated burden associated with completing and filing the Form is 260,443 hours (based on fiscal year 1997 figures). We have estimated that, depending on a number of different factors, it takes anywhere from 8 to 160 hours to complete and file the Form.[1] The average, based on historical experience, is approximately 39 hours. In certain circumstances, only an index or copies of filings made with another regulatory agency are required to be submitted to the FTC in lieu of the Form ("index filing"). We have estimated that 2 hours is needed to comply with the filing requirements in these instances. The enforcement agencies received notice of 3622 transactions in 1997, of which 59 were reported to other regulatory agencies. Thus the total 1997 burden was (3517 transactions × 39 hours) + (59 transactions × 2 hours), or 260,443 hours. The increase from the 1994 estimated burden of 107,985 hours (when last calculated for OMB clearance) is solely a function of the increase in filing since 1994. Although the number of reported transactions totaled 3,622 in 1997, because of variations in the number of fillings received for these transactions is approximately 6,734.[2]

Estimated Labor Costs

Using the burden hours estimated above, the total cost associated with the Rule and Form would be approximately $78,132,000 (260433 hours × $300 hour). To verify this cost estimate, staff conducted an informal survey of actual billings by several antitrust practitioners for preparation of the Form.[3] These estimates, based on the type and complexity of each filing[4] closely approximated our estimate, based on burden hours. This information is summarized below. Only the first category, the index filing, has been terminated on an hourly fee basis. The remaining figures are calculated on the following basis:

6734 filings minus 59 index filings = 6675

Index filing: 59 × $600 (2 hours @ $3.00/hr) + $35400

Simple filings ([35% × 6675] × $2000) + 4,672,000

Moderately complex filings ([60% × 6675] × $15,000) = 60,075,000

Very complex filings ([5% × 6675] × $50,000) = 16,700.000

Total = $81,482,400

This estimate is comparable to, although slightly higher than, our estimate of $78,132,000. We conservatively have adopted the $81,482.400 estimate as the total annual labor cost.

Esimated Capital or Other Non-Labor Costs

The Rule imposes no current start-up costs and minimal capital costs. The rule first took effect in 1979, so law firms and companies already have incurred any necessary start-up costs associated with filing the Form. Moreover, law firms already have access, for other business purposes, to the ordinary office equipment needed for compliance, and the Rule has no consequential effect on the cost of operating and maintaining that equipment.

[1] These factors include the extent of the filing person's United States operations; the number of different industries in which the filing person is engaged; the firm's prior experience and familiarity with the premerger notification program; the existence of horizontal overlays or vertical relationships in the businesses in which the parties to the transaction derive revenue, and the organizational structure and recordkeeping system of the reporting entities.

[2] For example, of the 3622 transactions reported, 164 were joint ventures, (c)(6) transactions or (c)(8) transactions; only one filing is required for each transaction. If the remaining 3458, approximately 80 percent, or 2766, require two filings per transaction: one each from the acquiring person and the acquired person. The other 20 percent (692) represent certain transactions for which the consideration given is voting stock. A typical example of these transactions is the acquisition of company B's voting stock by company A. As payment for the B stock, A will give the B shareholders certain shares of company A stock. A shareholder of B will acquire an amount of company A stock that will require the B shareholder to submit a separate filing as an acquiring person. For HSR purposes, the company A/company B filings make up transactions, and the B shareholder/company A filings comprise a second transaction. However, company A generally needs to submit only one filing for the two transactions. Therefore the two transactions require three filings, computed as 1.5 filings per transaction. (The 1.5 figure is a slight overestimation, since in some cases more than one shareholder of company B has a fling obligation as an acquiring person. Each shareholder's notification is treated as a separate transactions, and company A's filing as an acquiring person serves as the acquired party's filing for each of the shareholder transactions. Thus, for example, four transactions—a primary transaction with three related shareholder transactions—may have a total of only five filings.)

[3] The $45,000 Hart-Scott-Rodino filing fee is not included in these cost estimates because the fee does not fall within either of the two cost categories defined by OMB: (1) Total hour burden and annualized costs of hour burden (labor), and (2) non-labor costs, consisting of total capital and start-up costs and total operation and maintenance costs. *See* OMB Instructions for Completing OMB Form 83–I.

[4] The survey was based on number of filings because each side to transaction is represented by a different law firm. Therefore, practitioners do not have cost information relating to an entire transaction.

2. Title—Negative Option Plans by Sellers in Commerce ("Negative Option Rule") 16 CFR Part 425—(OMB Control Number 3084–0104)—Extension

The Negative Option Rule protects consumers who participate in negative option plus (*e.g.*, record or book "clubs"), contractual arrangements whereby a seller periodically ships merchandise to subscribers without an affirmative order by the subscriber. The Rule requires sellers to send an advance notice to subscribers describing merchandise offered for sale. The subscriber may instruct the seller, in accordance with the terms of the plan, to refrain from shipping the merchandise. The Rule also requires that promotional materials disclose the terms of membership clearly and conspicuously, and establish procedures for the administration of such "negative option" plans.

Estimated Annual Burden Hours

The Rules's estimated annual burden is approximately 14,375 hours per day. We estimate that approximately 175 existing clubs spend about 75 hours each to comply with the Rule's disclosure requirements, for a total of 13,125 per year (175 clubs × 75 hours).

We have revised the number of hours from 125 to 75 hours per year for each existing club to comply with the information collection requirements contained in the Rule. These clubs should be familiar with the Rule, which has been in effect since 1974, so their "burden" of compliance has diminished over the years. Also, comments provided to the FTC indicate that a substantial portion of the existing clubs likely would not make these disclosures absent any regulatory requirement because the Rule has assisted in fostering long-term relationships with consumers.

In addition, approximately 10 new clubs come into existence each year. These clubs spend about 125 hours complying with the Rule, making the total hours that new clubs spend per year 1,250 (10 new clubs × 125 hours). For new clubs, we have retained the estimate of approximately 125 hours to comply with the rule (including start up-time). The total of 14,375 hours per year for both existing and new clubs is a reduction from 15,000 burden hours that the FTC estimated in 1995.

Estimated Labor Costs

Total labor costs are approximately $367,697 per year. According to the Bureau of Labor Statistics, the average compensation for advertising managers is $27.88 per hour. Compensation for clerical personnel is approximately $10.00 per hours. Assuming that managers perform the bulk of the work, while electric personnel perform some associated tasks, such as placing advertisements and responding to inquiries about offering or prices, the total cost to the industry for the Rule's paperwork requirements would be approximately $367,497 (65 hours managerial time × 175 existing negative option plans × $27.88 per hour = $317,135) plus (10 hours clerical time × 175 existing negative option plans × $10.00 per hour - $17,500) plus (115 hours managerial time × 10 new negative option plans × $27.88 per hour = $32,062) plus (10 hour clerical time × 10 new negative option plans × $10.00 = $1,000).

Estimated Capital or Other Non-Labor Costs

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the capital and start-up costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are *de minimis*. Negative option clubs already have access to the ordinary office equipment necessary for compliance with the Rule.

Similarly, the Rule imposes few, if any, printing and distribution costs. the required disclosures generally constitute only a small addition to the materials that a prospective subscriber sends to the seller to solicit enrollment in a negative option plan. Because printing and distribution costs are incurred anyway to market the product, inserting the required disclosures constitutes only a *de minimis* incremental expense.

3. Title: Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR part 432—(OMB Control Number 4084–0105)—Extension

The Amplifier Rule assists consumers by requiring disclosure of four performance characteristics whenever representations are made concerning power output, power band or power frequency, and distortion characteristics of home audio equipment. The Rule also specifies the test conditions to be used to obtain the FTC disclosures.

Estimated Burden Hours

The annual burden is approximately 1,500 hours. the Rule's provisions require affected entities to test the power output of amplifiers in accordance with specified FTC protocol. Approximately 300 new amplifiers and receivers come on the market each year. Since high fidelity manufacturers routinely conduct performance tests as part of any new product development, the Rule imposes incremental costs only to the extent that the FTC protocol is more time-consuming than alternative testing procedures. Specifically, a warm up ("precondition") period that the Rule requires before measurements are taken may add approximately one hour to the time testing entails. Thus, we estimate that the Rule imposes approximately 300 hours (1 hour × 300 new products) of added testing burden annually.

The Rule requires disclosures if an advertisement makes a power output claim. Assuming that ten advertisements per magazine are placed each month in ten existing magazines carrying audio equipment advertisements, we estimate that approximately 1,200 magazine advertisements annually would be required to carry the FTC disclosures. The cost of these disclosures is limited to the time needed to draft and review the language pertaining to power output specifications.

Because this Rule became effective in 1974, and because members of the industry are familiar with its requirements, compliance is less burdensome today. Accordingly, we estimate the time involved for this task to be a maximum of 1 hour per advertisement, for a total burden of 1,200 hours. The total annual burden impose by the Rule is therefore approximately 1,500 burden hours. (300 testing hours + 1,200 disclosure hours). This is a reduction from 2,700 burden hours estimated in 1995.

Estimated Labor Costs

According to staff at the Bureau of Labor Statistics, the average hourly compensation for electronics engineers in the industry is $28.73, and the average hourly compensation for marketing, advertising and public relations managers is $27.88. Generally, electronics engineers perform the testing of amplifiers and receivers (300 hours × $28.73 = $8,619.00), and marketing, advertising or public relations managers prepare advertisements (including required disclosures) (1,200 hours × $27.88 = $33,456.00). Based on this information, we estimate the cost to the industry for the Rule's paperwork requirements to be $42,075.00 per year ($33,456.00 + $8,619.00).

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Estimated Capital or Other Non-Labor Costs

The Rule imposes no capital or other non labor costs because its requirements are incidental to testing and advertising done in the ordinary course of business.

4. Title: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("Franchise Rule"), 16 CFR Part 436—(OMB Control Number 3084–0107)—Extension

The Franchise Rule requires franchisors and franchise brokers to furnish to prospective investors a disclosure document that provides information relating to the franchisor, the franchisor's business, and the nature of the proposed franchise relationship, as well as additional information about any claims concerning actual or potential sales, income, or profits for a prospective franchisee ("earnings claims"). Franchisors must also preserve the information that forms a reasonable basis for such claims. The Rule is designed to help protect potential investors from fraudulent claims.

Estimatd Annual Burden Hours

The current public disclosure and recordkeeping burden for collections of information contained in the Rule is 36,200 hours. This figure may change depending upon Commission action on the Advance Notice of Proposed Rulemaking ("ANPR") in the **Federal Register**, announcing the Commission's intention to consider amending the Rule. *See* 62 Fed. Reg. 9115 (February 28, 1997).

A review of the trade publications and information from state regulatory authorities shows that approximately 5,000 American franchise systems, consisting of 2,500 business format franchises and 2,500 business opportunity sellers, currently exist.[5] We have calculated burden based on this estimate, although some of these franchisors, for a variety of reasons, are not covered by the Rule in certain situations (*e.g.*, when a franchisee buys bona fide inventory but pays no franchisor fees).

Estimated Annual Costs

Labor Costs

The Rule's required disclosure document provides franchisees with information on twenty broad-ranging subjects that affect the franchisors, the franchisors's business, and the nature of the proposed franchise relationship. This includes not only generally available information, such as the official name and address and principal place of business of the franchisor, but also less commonly available information such as, among other things, the previous 5 years business experience of each of the franchisors's current directors and executive officers and whether any of these individuals has been convicted of a felony or embezzlement, or has filed in bankruptcy or been adjudged bankrupt during the previous 7 years. All information in the disclosure statement must be updated and revised according to the express time requirements set forth in the Rule.

An attorney likely would prepare or update this disclosure document. Accordingly, we estimate the attorney-related labor costs of complying with the Rule's requirements as follows: 500 new franchisors each incur attorney's fees of approximately $250 per hour for 30 hours to develop the disclosure document, and 4,500 current franchisors each incur attorney's fees of approximately $250 per hour of 3 hours to update the disclosure document, for a total burden of 28,500 hours and a total cost of $7,125,000.

Printing the Disclosure Document

To comply specifically with the Rule, franchisors must incur costs to print and distribute the disclosure document. These costs vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. We estimate, however, that 2,500 business format and product franchisors print and mail 100 disclosure documents per year at a cost of $35.00 per document. Further, we estimate that another 2,500 business opportunity sellers print and mail 100 documents per year at a cost of $15.00 per document, for a total cost of $12,500.000.

Cover Sheet

The franchisor also must provide and disseminate an FTC cover sheet that identifies the franchisor, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in the Rule. Some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of "collection of information" under the PRA. 5 CFR 1320.3(c)(2). Nonetheless, franchisors must spend some time in providing the rest of the required information. Further, there are reproduction and mailing costs. Accordingly, we estimate that 5,000 franchisors complete and disseminate 100 cover sheets per year at a cost of approximately $.55 per cover sheet, or a total cost of approximately $277,000.

Recordkeeping Costs

The franchisor may require additional recordkeeping of information pertaining to the sale of franchise in non-registration states. At most, franchisors would spend an additional hour each year at a cost of $10 per hour to save material to show potential franchisees. This would result in a total of 5,000 hours per year for all affected entities at a total cost of $50,000.

Estimate of Capital and Other Non-Labor Costs

There are no significant current capital or other non-labor costs associated with this Rule.

5. Title: Labeling and Advertising of Home Insulation ("R-Value Rule"), 16 CFR Part 460—(OMB Control Number 3084–0109)—Extension

The R-Value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Estimated Annual Burden Hours

The Rule's requirements include product testing, recordkeeping, and third-party disclosure's on labels, fact sheets, advertisements and other promotional materials. These requirements apply to certain manufacturers and their testing laboratories; home insulation installers; new home sellers who make energy savings claims; and retailers who sell home insulation for do-it-yourself installation by consumers.

Based on information provided by members of the insulation industry, staff estimate that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,500 installers who sell home insulation; (3) 130,000 new home builders/sellers of site-built home and approximately 7,000 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Manufacturers and Testing Laboratories: Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. The test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. The total annual testing burden is therefore approximately 30 hours (15 manufacturers × 2 hours per test).

As for third-party disclosure requirements in advertising and other promotional materials, staff estimate that most manufacturers spend an average of approximately 20 hours per year to comply with this requirement. Only the five or six largest manufacturers require additional time (approximately 80 hours each). Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours (144 manufacturers × 20 hours + 6 manufacturers × 80 hours).

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep these records of testing in the ordinary course of business. Staff estimate that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

Installers: Installers are required to show the manufacturers' insulation fact sheet to retail consumers prior to purchase. Installers must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to be installed. Staff estimate that two minutes per sales transaction is sufficient for complying with these requirements. Approximately 835,000 retrofit insulations are installed by approximately 1,500 installers per year, and therefore, the annual burden is approximately 27,833 hours (835,000 sales transactions × 2 minutes). Staff also estimate that one hour per year per installer is sufficient for including required disclosures in advertisements and other promotional materials. The burden for this requirement is approximately 1,500 hours per year (1,500 installers × 1 hour).

Also, installers must keep records that indicate the substantiation relied upon for savings claims. The addition time for complying with this requirement is minimal, approximately 5 minutes per year per installer, for a total of approximately 125 hours (1,500 installers × 5 minutes).

New Home Sellers: New home sellers must make contract disclosures concerning the type, thickness and R-value of the insulation they install in each part of a new home. Staff estimate that no more than one minute per sales transaction is required to comply with this requirement, for a total annual burden of approximately 283,333 hours (1.7 million new home sales × 1 minute).

New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records anyway in the ordinary course of business, staff estimate that the one minute burden for disclosures would be more than adequate to cover this recordkeeping requirement, as well.

Retailers: The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers prior to purchase. This can be accomplished by, *e.g.*, placing copies in a display rack, or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets takes approximately one hour per year per retailer, for a burden estimate of approximately 25,000 annual hours (25,000 retailers × 1 hour).

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is extremely small because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer is sufficient for compliance with this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is *de minimis*. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule imposes a total of 366,331 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 125 recordkeeping and 29,333 disclosure hours for installers; 283,333 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. This figure has been rounded to 366,400 burden hours.

Estimated Annual Labor Costs:

The total annual labor costs for the Rule's information collection requirements is $7,290,030, derived as follows: $600 for testing, based on 30 hours for manufacturers (30 hours × $20 per hour for skilled technical personnel); $2,750 for complying with the recordkeeping requirements of the Rule, based on 275 hours (275 hours × $10 per hour for clerical personnel); $33,360 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $10 per hour for clerical personnel); and 47,253,320 for compliance by installers, new home (362,666 hours × $20 per hour for sales persons).

Estimate of Capital and Other Non-Labor Costs

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

6. Title: FTC Administrative Activities (OMB Control Number 3084–0047)—Extension

Currently, the FTC has OMB clearance for certain administrative and/or procedural activities relating to: (1) FTC procurement activities; (2) the document order form used by the FTC public reference branch; (3) applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); and (4) rules governing claims against the FTC under the Equal Access to Justice Act.

The FTC seeks to delete items (1), (2), and (4). With respect to item (1), OMB has advised the FTC that it must seek clearance only for any agency-unique information collections that have been published as a supplement to the Federal Acquisition Regulations. The FTC has no such supplement and accordingly, there is no requirement to obtain OMB approval. Deleting this item eliminates 1,000 of 2,300 hours estimated in the FTC's 1995 submission for OMB Control No. 3084–0047.

[5] These figures have been revised since the notice published January 8, 1999, requesting an OMB extension of this Rule. *See* 64 FR 1203. The new figures reflect calculations more recently prepared by staff.

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With respect to item (2), FTC Form 14 is excluded from the PRA's definition of "information" because the form asks only for the respondent's name, address, a description of the records and the number of copies requested. *See* 5 CFR 3(h)(1) (the definition of "information" excludes an "affidavit" or "certification" that merely asks the respondent for identifying information such as his or her name, address, the date, and the nature of the instrument), OMB Implementing Guidance to the Paperwork Reduction Act of 1995 (Preliminary Draft), February 3, 1997. Deleting this item eliminates another 1,000 of 2,300 hours.

With respect to item (4), the "law enforcement" exception of the PRA excludes this category, because it involves collecting information during the conduct of a Federal investigation, civil action, administrative action, investigation, or audit with respect to a specific party, or subsequent adjudicative or judicial proceedings designed to determine fines or other penalties *See* 5 CFR 1320.4(a)(1)–(3). Deleting this item eliminates another 200 hours of the 2,300 hours previously estimated for this submission.

With respect to item (3), the FTC is requesting an extension for those provisions covered by that category. Several of the Commission's rules contain provisions that allow certain modifications to, or exemptions from, a rule. For example, Part 901 of the Commission's Rules, 16 CFR Part 901, implementing the Fair Debt Collection Practices Act, 15 U.S.C. 1692, sets forth the procedures and standards for approving petitions received from a state that is requesting permission to apply state law in lieu of federal standards.

Also, the Commission recently amended Rule 4.11(e), 16 CFR 4.11(e), which establishes procedures for agency review of compulsory process issued to the Commission or its employees in matters to which the agency is not a party. The revised rule requires requesters who seek voluntary testimony by Commission employees to submit a statement in support of their requests. This amendment increases the burden imposed by "FTC Administrative Activities" by 24 hours and $6,000 per year. On June 11, 1999, the FTC filed an OMB Form 83–C, Paperwork Reduction Act Change Worksheet that reflected those increases.

The FTC also recently received approval from the Office of Government Ethics ("OGE") to use an alternative form (instead of OGE Form 450, OMB clearance No. 3209–0006) for Commission consultants to report financial and other conflicts of interest. This alternative form, which requires a simple certification instead of a detailed listing of the reporter's financial interests, is appropriate for FTC consultants, most of whom work only on specific projects for short periods of time, and many of whom serve without pay. While this form will save FTC consultants several hours per year in complying with financial disclosure and conflict of interest requirements, it also will increase the burden attributed to the FTC by approximately 2 hours per year because it replaces hours attributable to OGE. There is no significant cost associated with completing the form.

Estimated Annual Burden Hours

Most applications to the Commission generally fall within the "law enforcement exception" discussed above, and those that are not are rare and any burden associated with them is *de minimis*. For example, over the last decade, the Commission has received only one application for an exemption under the Fair Debt Collection Practices Act provisions. Staff has estimated that such a submission can be completed well within 50 hours. Applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rule of Practice) are also infrequent and difficult to quantify. An example is a request for a waiver of costs for obtaining Commission records. *See* 16 CFR 4.8(e). Nonetheless, in order to cover any potential" collections of information" for which we have not otherwise requested clearance, we are requesting a total of 100 burden hours as an estimate of the time needed to submit any relevant responses.

Estimated Annual Labor Costs

Based on 124 burden hours, and an hourly rate of $250 for attorney time, we estimate the annual cost burden to be no more than $31,000. There is no cost associated with the alternative financial reporting form.

Estimated Capital and Start-Up Costs/ Operation and Maintenance

Not applicable

John D. Graubert,

Acting General Counsel.

[FR Doc. 99–17313 Filed 7–7–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) research involving human embryonic stem cells and (2) the international project. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on July 13, 1999 from 11:30 am to 12 noon.

Dates/Times	Location
July 13, 1999, 8:30 am–5:00 pm.	Jerome C. Hunsaker Room, University Park Hotel, 20 Sidney Street, Cambridge, Massachusetts.
July 14, 1999, 8:30 am–12 Noon.	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: July 1, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–17243 Filed 7–7–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–15–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. *Young People in Alternative Education Settings: Preventing HIV and Other STDs*—New—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Division of Adolescent and School Health—The purpose of this request is to obtain OMB clearance to conduct a randomized trial of a curriculum to reduce behaviors related to HIV/STD transmission among 14 to 18 year old students in 30 court and community schools in Northern California. Participants will respond to surveys of attitudes, knowledge, and behavior related to HIV/STD transmission and prevention at baseline and at 6, 12, and 18 month post-tests. Reduction of behaviors among adolescents related to HIV and STD transmission, and reduction of the prevalence of STDs is the focus of at least seven objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions*. There have been few studies assessing the effectiveness of curricula to reduce HIV/STD related risk behaviors in this high-risk adolescent population. Data gathered from this study will provide information about how HIV/STD risk behavior may be effectively reduced among alternative school students. The total annual burden hours are 7,680.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Alternative school students	1,920	4	1.0

2. *Evaluation of Customer Satisfaction of the Agency for Toxic Substances and Disease Registry (ATSDR) Internet Home Page and Links*—New—ATSDR proposes to conduct consumer satisfaction research around its Internet site. Information on the site focuses on prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment. The site is designed to serve the general public, persons at risk for exposure to hazardous substances, and health professionals. This research will ensure that these audiences find the information easy to access, clear, informative, and useful. Specifically, the research will examine whether the information is presented in an appropriate technological format and whether it meets the needs, wants, and preferences of visitors or "customers" to the Internet site.

The initial 60 day **Federal Register** Notice was solely for the evaluation of the National Center for HIV, STD, and TB Prevention (NCHSTP) web-site, but after an internal meeting the instrument has been modified for use on the ATSDR web-site. The total annual burden hours are 2,000.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Visitors to ATSDR Internet Site	12,000	1	0.1667

3. *Use of Laboratory Information Systems (LIS) to Transmit Infectious Diseases Test Results (HL7 Messages) to Public Health Agencies*—New—Public Health Program Office (PHPPO), Division of Laboratory Systems. CDC proposes to gather data through the use of a mail/telephone survey of all United States vendors of LIS used for recording and processing microbiology data. The use of a mail/telephone-assisted survey instrument will be an efficient, cost-effective approach for performing the data collection. No computerized data collection systems have been developed for this survey because the number of respondents is small. Instead, trained telephone interviewers knowledgeable about LIS and about the specific messages that CDC is interested in transmitting will gather data. The interviewers will have the flexibility to answer technical questions, probe for further information and provide explanations of coding vocabularies, security needs and other issues that may not be readily understood by the LIS vendors.

The data will provide the government, LIS vendors, laboratory practitioners,

committees that make recommendations regarding messaging and other stakeholders with information about the projected costs to vendors and laboratories and about the time frames required for and the barriers to implementation.

CDC will use the survey to gauge the technological readiness and the cost factors affecting secure electronic transmission of infectious disease data to government agencies. These transmissions will act as part of an early warning system leading to more timely response to infectious disease outbreaks. This survey responds to President Clinton's request for the increased use of modern technology to identify and prevent outbreaks of food-borne illness. The total annual burden hours are 121.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Contact Information Form	56	1	0.1667
Mail Survey	56	2	0.50
Telephone Follow-up	56	2	0.50

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–17273 Filed 7–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Revised Vessel Sanitation Operations Manual; Public Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Discussion of the second draft of the revised Vessel Sanitation Operations Manual—Public meeting between CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9 a.m.–4:30 p.m., October 5, 1999; 9 a.m.–4:30 p.m., October 6, 1999; 9 a.m.–12 noon, October 7, 1999.

Place: Auditorium, Port Everglades Administration Building, 1850 Eller Drive, Fort Lauderdale, Florida 33316.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: CDC announced its intention to revise the *Vessel Sanitation Operations Manual* in the **Federal Register** of July 9, 1998 (Volume 63, Number 131). Input and comments from the public were requested of and received from the cruise ship industry, private sanitation consultants, and other interested parties, and were discussed in detail at a public meeting held in Fort Lauderdale on April 14–16, 1999. On the basis of comments received, VSP staff have written a second draft of the revised manual and will discuss the revisions at this public meeting.

Matters To Be Discussed: Agenda items will include a thorough discussion of each section of the second draft of the revised operations manual. A copy of the second draft will be available for review by August 6, 1999. To obtain a copy, contact the VSP in Atlanta at the address or phone number below, or go to the VSP Home Page on the Internet at *http://www.cdc.gov/nceh/programs/vsp.*

For a period of 15 days following the meeting, through October 22, 1999, the official record of the meeting will remain open so that additional materials or comments may be submitted to be made part of the record of the meeting. VSP staff will then finalize the revised operations manual and publish the final in the **Federal Register**.

Advanced registration for this important meeting is encouraged. If you plan to attend, please provide your name, title, company name, mailing address, telephone number, facsimile number, and E-mail address to Dorothy Johnson, Management Assistant, facsimile 770/488–4127 or E-mail: *dgj0@cdc.gov.*

Contact Person for More Information: David Forney, Acting Chief, VSP, telephone 770/488–7333 or E-mail: *dlf1@cdc.gov;* or Daniel Harper, Senior Environmental Health Officer, VSP, telephone 770/488–3524, E-mail: *dmh2@cdc.gov;* or write to us at Vessel Sanitation Program, CDC, 4770 Buford Highway, NE, M/S F–16, Atlanta, Georgia 30341–3724.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 30, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–17274 Filed 7–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1110]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "CGMP Regulations for Finished Pharmaceuticals" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 19, 1999 (64 FR 19180), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0139. The approval expires on June 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: June 30, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–17332 Filed 7–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0670]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by August 9, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Labeling Requirements for Color Additives (Other Than Hair Dyes)—21 CFR 70.25 and Petitions—21 CFR 71.1 (OMB Control Number 0910-0185—Extension)

Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or unless the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 (21 CFR 71.1) specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use.

FDA's scientific personnel review color additive petitions to ensure that the intended use of the color additive in or on food, drugs, cosmetics, and medical devices is suitable and safe. Color additive petitions were specifically provided for by Congress when it enacted the Color Additive Amendments of 1960 (Pub. L. 94–295). If FDA stopped accepting color additive petitions or stopped requiring them to contain the information specified in § 71.1, the number of new color additives approved would decrease.

FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Description of Respondents: Business or other for profit.

In the **Federal Register** of April 12, 1999 (64 FR 17672), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
70.25	5	1	5	1,866	9,330	$14,200
71.1	5	1	5		9,330	
Total						

[1] There are no capital costs associated with this collection of information.

This estimate is based on the average number of new color additive petitions received in 1997 and 1998. Although the burden varies with the type of petition submitted, a color additive petition involves analytical work and appropriate toxicology studies, as well as the work of drafting the petition itself. Because labeling requirements under § 70.25 for a particular color additive involve information required as part of the color additive petition safety review process, the estimate for the number of respondents is the same for § 70.25 as for § 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Color additives are subjected to payment of fees for the petitioning process. The listing fee for a color additive petition ranges from $1,600 to $3,000, depending on the intended use of the color and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of two Category A and three Category B color additive petitions are expected per year. The maximum color additive petition fee for a Category A petition is $2,600 and the maximum color additive petition fee for a Category B petition is $3,000. Because an average of five color additive petitions are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to $14,200 (2 x $2,600 + x $3,000 listing fees = $14,200).

Dated: June 30, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–17242 Filed 7–7–99; 8:45 am]

BILLING CODE 4160–01–F

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1938]

Review of Guidances for Industry on the Development of Generic Drug Products; Development and Use of FDA Guidance Documents; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), Office of Generic Drugs (OGD) is providing notice to drug manufacturers on its plans for reviewing policy and procedure guides (PPG's) and other existing OGD documents that provide guidance on the development of generic drug products. This effort is being undertaken consistent with the agency's good guidance practices (GGP's) policy. The goal of this long-term effort is to identify documents that need to be revised, reformatted to fit the GGP policy, or withdrawn because they are no longer current. OGD hopes this process will result in guidances for industry that better reflect the current thinking of the agency on generic drug development. OGD also is seeking input from the public on topics for future guidance development.

DATES: Written comments by September 7, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of agency guidance documents can be obtained on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rita R. Hassall, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5845.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice explaining its policy for guidance document development, issuance, and use. The notice included an agency document entitled "Good Guidance Practices" (GGP's), which sets forth agency policies and procedures for developing, issuing, and using guidance documents.

Since the early 1990's, OGD has developed and issued more than 40 PPG's to provide information to industry on the development of generic drug products and to set forth procedures for the review of generic drug applications. In addition, other guidance has been provided in the form of letters and other communications to industry. OGD is undertaking a long-term effort to review all of its guidances and identify those that need to be revised, those that need to be reformatted for consistency with GGP's, and those that need to be withdrawn because they are no longer current. As an initial step in this process, OGD is planning to withdraw a number of drug-specific bioequivalence guidances that are outdated and no longer reflect the current thinking of the agency. Guidances that are being withdrawn include the following:

Guidance	Date of Issuance
Alprazolam (tablets)	November 27, 1992
Bumetanide (tablets)	April 23, 1993
Captopril (tablets)	May 13, 1993
Carbidopa and Levodopa (tablets)	June 19, 1992
Cefaclor (capsules and suspension)	April 23, 1993
Diflunisal (tablets)	May 16, 1992
Diltiazem Hydrochloride (tablets)	May 16, 1992
Flurbiprofen (tablets)	June 8, 1995 (2d Revision)
Gemfibrozil (tablets and capsules)	June 15, 1992 (Revision)
Guanabenz Acetate (tablets)	April 23, 1993
Hydroxychloroquine Sulfate (tablets)	December 28, 1995
Indapamide (tablets)	April 23, 1993
Ketoprofen (capsules)	April 23, 1993
Leucovorin Calcium (tablets)	August 4, 1988 (Revision)
Medroxyprogesterone Acetate (tablets)	September 17, 1987 (Revision)
Metoprolol Tartrate (tablets)	June 12, 1992
Nadolol (tablets)	May 16, 1992
Naproxen (tablets)	June 8, 1995 (Revision)
Nortriptyline Hydrochloride (capsules)	June 12, 1992
Pentoxifylline (extended-release tablets)	December 22, 1995
Pindolol (tablets)	April 23, 1993
Piroxicam (capsules)	June 15, 1992
Ranitidine Hydrochloride (tablets)	April 23, 1993
Trazodone Hydrochloride (tablets)	April 30, 1988 (Revision)

It is possible that some of the remaining drug-specific guidances on bioavailability and bioequivalence also will be withdrawn after they are reassessed. However, several CDER guidances currently under development will serve as core guidances on bioavailability and bioequivalence once they have been finalized, and they will replace the product-specific guidances. On rare occasions, the agency may wish to provide bioavailability and bioequivalence guidance for specific drug products, and these will be developed and issued consistent with the agency's GGP policy.

The agency welcomes public comment on its efforts to review existing guidances related to the development of generic drugs and revise, reformat, or withdraw them as appropriate. The agency also is requesting public comment on topics for future guidance development regarding generic drugs.

This information is being issued consistent with FDA's GGP's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

Interested persons may submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 30, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–17331 Filed 7–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0209 and HCFA–R–0245]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set (OASIS) Data as Part of the Conditions of Participation for Home Health Agencies (HCFA–3006–IFC) and Supporting Regulations in 42 CFR 484.11 and 484.20; *Form No.:* HCFA–R–0209 (OMB# 0938–0761); *Use:* The information collection requirements contained in the HCFA–3006 regulation state that HHAs must report data from the OASIS data set as a condition of participation for HHAs. Specifically, the above named rule provides guidelines for HHAs for the electronic transmission of the OASIS data set as well as responsibilities of the State agency or OASIS contractor in collecting and transmitting this information to HCFA. These requirements are necessary to establish a prospective payment system for HHAs and to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs.; *Frequency:* As determined by HHA and monthly; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 10,492; *Total Annual Responses:* 10,492; *Total Annual Hours:* 1,274,866.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs: Use of Outcome and Assessment Information Set (OASIS) as Part of the Conditions of Participation for Home Health Agencies (HCFA–3007–F) and Supporting Regulations in 42 CFR 484.55; *Form No.:* HCFA–R–0245 (OMB# 0938–0760); *Use:* These information collection requirements revise the existing conditions of participation that home health agencies (HHAs) must meet to participate in the Medicare program. Specifically, this final rule requires that each patient receive from the HHA a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social and discharge planning needs. In addition, this final rule requires that as part of the comprehensive assessment, HHAs use a standard core assessment data set, the OASIS, when evaluating adult, non-maternity patients. These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through Federal programs and in the measurement of that care.; *Frequency:* Upon patient assessment; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 10,492; *Total Annual Responses:* 10,492; *Total Annual Hours:* 1,238,056.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 30, 1999.

John Parmigiani,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–17374 Filed 7–7–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis of Proarrhythmic Medicines and Primary Cardiac Arrest.

Date: August 9, 1999.

Time: 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies, SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Bypass Angioplasty Revascularization Investigation (BARI II).

Date: August 10, 1999.

Time: 8:00 AM to 9:00 AM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, (301) 435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Open Artery Trial (OAT).

Date: August 10, 1999.

Time: 9:00 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17387 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 28, 1999.

Time: 12:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2103), 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M Sayeed Quraishi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17380 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 29, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Peter R. Jackson, Chief, ACERRB, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17381 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 29, 1999.

Time: 3:00 PM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (ROOM 2103), 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M Sayeed Quraishi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17382 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, July 16, 1999, 8:00 AM to July 16, 1999, 5:30 PM, Holiday Inn Bethesda, Maryland Room, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on June 4, 1999, 64 FR 30045.

The meeting will be held on July 26, 1999. The meeting is closed to the public.

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17383 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 26, 1999.

Time: 10:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2103), 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M Sayeed Quraishi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17384 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Program Project Meeting.

Date: July 27, 1999.

Time: 12:00 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2103), 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M Sayeed Quraishi, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17385 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 15, 1999.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17386 Filed 7–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug Abuse Warning Network, (OMB number 0930–0078, extension)—The Drug Abuse Warning Network (DAWN) collects data on drug-related medical emergencies and deaths as reported from about 660 hospitals and medical examiners nationwide. Used by Federal, State, and local agencies, this on-going data system supports efforts to identify drug abuse trends, assess health hazards associated with substance abuse, and schedule substances under the Controlled Substances Act. The annual burden estimate is 15,284 hours as shown below:

	Number of respondents	Number of responses/ respondent	Hours per response	Gross burden hours	IR [1] reporting hours	Total adjusted burden (hrs)
HOSPITALS						
ED Forms	520	334	0.15	26,052	12,876	13,176
ED Logs	520	48	0.02	499	247	252
Hospital Total	.....	.....	.....	26,551	13,123	13,428
MEDICAL EXAMINERS						
ME Forms	140	107	0.25	3,745	1,953	1,792
ME Logs	140	48	0.02	134	70	64
ME Total	.....	.....	.....	3,879	2,023	1,856
DAWN Total	.....	.....	.....	30,430	15,146	15,284

[1] There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 1, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–17275 Filed 7–7–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council; Notice of Renewal

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Bay-Delta Advisory Council. The purpose of the Bay-Delta Advisory Council is to provide advice on the development of a long-term solution for problems affecting the public values in the California San Francisco Bay/Sacramento-San Joaquin Delta and its watershed estuary.

Further information regarding the advisory council may be obtained from the Bureau of Reclamation, Department of the Interior, 1849 C Street, NW, Washington, DC 20240. You may also call Mr. Rick Breitenbach, Bureau of Reclamation, at 916–657–2666.

The certification of establishement is published below:

Certification

I hereby certify that renewal of the Bay-Delta Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 26, 1937 (Ch. 832, 50 Stat. 850), as amended.

Dated: June 21, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–17413 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–013827

Applicant: International Golden Lion Tamarin Management Committee, National Zoo, Washington, DC

The applicant requests a permit to import 9 captive-bred golden lion tamarins (*Leontopithecus rosalia*) from the Brazilian Government (IBAMA) Rio Primate Center for the purpose of enhancement of the survival of the species through captive propagation.

PRT–014154

Applicant: Henry Doorly Zoo, Omaha, Nebraska

The applicant requests a permit to import skin biopsy and fecal samples collected from wild and captive-held lowland anoa (*Bubalus quarlesi*) and mountain anoa (*Bubalus depressicornis*) from Sulawesi, Indonesia, for scientific research.

PRT–014225

Applicant: Zoological Society of San Diego, San Diego, California

The applicant requests a permit to import a male oriental white stork (*Ciconia boyciana*) which was bred-in-captivity in Vogelpark Walsrode, Walsrode, Germany, for the purpose of enhancement of the survival of the species through captive propagation.

PRT–012875

Applicant: Forstner, Jenna McKnight, University of Miami, Florida

The applicant requests a permit to import blood and tissue samples from captive-held and wild American crocodile (*Crocodylus acutus*), Cuban crocodile (C. rhombifer), Orinoco crocodile (C. intermedius), and Morelet's crocodile (C. moreletti) from Mexico, Central America, South America, and the Caribbean region for the purpose of enhancement of the species through scientific research.

PRT–013811

Applicant: Center for Environmental Research and Conservation, Columbia University

The applicant requests a permit to import blood samples collected from wild and captive-held Asian elephants (*Elephas maximus*) from Sri Lanka for scientific research.

PRT–013680

Applicant: Warren Parker, Blue Springs, MO

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement to the survival of the species.

PRT–013842

Applicant: Gary Plumlee, White River Bison Farm, Anderson, IN

The applicant requests a permit to import five male and five female captive-born wood bison (*Bison bison athabascae*) from Canada for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

PRT–013808

Applicant: Tom Stehn, Whooping Crane Recovery Plan Coordinator, U.S. Fish and Wildlife Service, Region 2, Austwell, TX

The applicant requests a permit to import captive-bred/captive-hatched and wild live specimens, captive-bred/wild collected viable eggs, biological samples from captive-bred/wild specimens, and salvaged materials from captive-bred/wild specimens of Whooping cranes (*Grus americana*) from Canada, for completion of identified tasks and objectives mandated under the Whooping Crane Recovery Plan. Salvage materials may include, but are not limited to, whole or partial specimens, feathers, eggs and egg shell fragments. This notification covers activities conducted by the applicant over the next 5 years.

PRT–013805

Applicant: William Weidemoyer, Sellersville, PA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–013996

Applicant: William H. Bynum, Kingsville, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–013997

Applicant: Donald N. David, Soldotna, AK

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–013682

Applicant: New College of the University of South Florida, Sarasota, FL,

Permit Type: Take for scientific research

Name and Number of Animals: West Indian manatee (*Trichechus manatus*), up to 8

Summary of Activity to be Authorized: The applicant requests a permit to take up to 4 pair of salvaged manatee eyes and export them for analysis of spectral classes of receptors.

Source of Marine Mammals: Salvage specimens obtained opportunistically.

Period of Activity: Up to 5 years, if issued.

PRT–837923

Applicant: New College of the University of South Florida, Sarasota, FL

Permit Type: Take for scientific research.

Name and Number of Animals: West Indian manatee (*Trichechus manatus*), 2

Summary of Activity to be Authorized: The applicant requests an amendment to their permit to take 2 captive held manatees undergoing rehabilitation for the purpose of scientific research to study the manatee tactile ability as well as the visual acuity previously authorized.

Source of Marine Mammals: Two captive-held manatees housed at Mote Marine Laboratory, Sarasota, Florida.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–014173

Applicant: Edward Minto, Davison, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–014003

Applicant: Mike H. Boyd, Cartersville, Georgia

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–014002

Applicant: John F. Babler, Mahtomedi, Minnesota

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–014293

Applicant: Thomas L. Place, Janesville, Iowa

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The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–013922

Applicant: Gary R. Tuohy, Alpena, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 2, 1999.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–17396 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On March 25, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 57, Page 14460, that an application had been filed with the Fish and Wildlife Service by Bradley W. Nicholson for a permit (PRT–008875) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on May 13, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 25, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 57, Page 14460, that an application had been filed with the Fish and Wildlife Service by Robert Landis for a permit (PRT–008656) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on May 13, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by David Petrella for a permit (PRT–010260) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Aldrege Fabian,for a permit (PRT–010261) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Catherine Rondeau for a permit (PRT–010262) to import one polar bear (*Ursus maritimus*) trophy taken from the Western Hudson Bay population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Robert Rondeau, Jr. for a permit (PRT–010287) to import one polar bear (*Ursus maritimus*) trophy taken from the Western Hudson Bay population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 7, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 88, Page 24673, that an application had been filed with the Fish and Wildlife Service by Allen Ebnet for a permit (PRT–011207) to import one polar bear (*Ursus maritimus*) trophy taken from the McClintock Channel population, Canada for personal use.

Notice is hereby given that on June 22, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Dube Viateur for a permit (PRT–010660) to import one polar bear (*Ursus maritimus*) trophy taken from the Western Hudson Bay population, Canada for personal use.

Notice is hereby given that on June 16, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 13, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 92, Page 25899, that an application had been filed with the Fish and Wildlife Service by John Conti for a permit (PRT–011394) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on June 28, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: July 2, 1999.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–17397 Filed 7–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eleventh Regular Meeting; Proposed Resolutions and Agenda Items Being Considered; Species Being Considered for Amendments to the CITES Appendices; Public Meeting; Observer Information

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may submit proposed resolutions and agenda items for consideration at meetings of the Conference of the Parties to CITES. The United States may also propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The eleventh regular meeting of the Conference of the Parties to CITES (COP11) will be held at the United Nations Environment Programme (UNEP) Headquarters in Nairobi, Kenya, April 10–20, 2000.

With this notice we:

(1) List potential proposed resolutions and agenda items that the United States is considering submitting for consideration at COP11;

(2) List potential proposed amendments to the CITES Appendices (species proposals) that the United States is considering submitting for consideration at COP11;

(3) Invite your comments and information on these potential proposals;

(4) Announce a public meeting to discuss these potential proposals; and

(5) Provide information on how non-governmental organizations based in the United States can attend COP11 as observers.

DATES: The public meeting will be held on July 28, 1999, at 1:30 P.M. We will consider written information and comments you submit concerning potential species proposals, proposed resolutions, and agenda items that the United States is considering submitting for consideration at COP11, and other items relating to COP11, if we receive them by September 7, 1999.

ADDRESSES: The public meeting will be held in the Large Buffet Room of the Department of the Interior at 18th and C Streets, N.W., Washington, D.C. Directions to the building can be obtained by contacting the Office of Management Authority or the Office of Scientific Authority (see **FOR FURTHER INFORMATION CONTACT**, below). Please note that the room is accessible to the handicapped and all persons planning to attend the meeting will be required to present photo identification when entering the building. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Office of Management Authority or the Office of Scientific Authority as soon as possible.

Comments pertaining to proposed resolutions and agenda items should be sent to the Office of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203, or via E-mail at: r9oma_cites@fws.gov. Comments pertaining to species proposals should be sent to the Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203, or via E-mail at: r9osa@fws.gov. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Office of Management Authority or the Office of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Office of Management Authority, Branch of CITES Operations, phone 703/358–2095, fax 703/358–2298, E-mail: r9oma_cites@fws.gov; or Office of Scientific Authority, phone 703/358–1708, fax 703/358–2276, E-mail: r9osa@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in Appendices to CITES, copies of which are available from the Office of Management Authority or the Office of Scientific Authority at the above addresses, from our World Wide Web site http://www.fws.gov/r9dia/applinks.html, or from the official CITES Secretariat Web site at http://www.wcmc.org.uk/CITES/english. Currently, 145 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, and agenda items for consideration by the other Parties. Only Party countries may submit species proposals, resolutions, and agenda items for consideration at the meeting of the Conference of the Parties. Accredited non-governmental organizations may participate in the meeting as approved observers, and may speak during sessions, but may not vote.

This is our fourth in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of the United States' negotiating positions for the eleventh regular meeting of the Conference of the Parties to CITES (COP11). We published our first such **Federal Register** notice on January 30, 1998 (63 FR 4613), and with it we requested information and recommendations on potential species amendments for the United States to consider submitting for discussion at COP11. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Office of Scientific Authority at the above address. We published our second such **Federal Register** notice on September 4, 1998 (63 FR 47316), and with it we requested information and recommendations on potential resolutions and agenda items for the United States to consider submitting for discussion at COP11. You may obtain information on that **Federal Register**

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notice, and on proposed resolutions and agenda items, from the Office of Management Authority at the above address. We published our third such **Federal Register** notice on February 26, 1999 (64 FR 9523), and with it we announced the time and place of COP11, announced the times and places for the next meetings of the CITES Animals and Plants Committees, and announced a public meeting to discuss issues that will be raised at the Animals and Plants Committee meetings. You may locate our regulations governing this public process in 50 CFR §§ 23.31–23.39.

I. Recommendations for Resolutions and Agenda Items for the United States to Consider Submitting at COP11

In our **Federal Register** notice published on September 4, 1998 (63 FR 47316), we requested information and recommendations on potential resolutions and agenda items for the United States to consider submitting for discussion at COP11. We received recommendations for resolutions and agenda items from the following organizations or individuals: Animals of Montana, Inc.; Center for International Environmental Law; Earthtrust; Feld Entertainment, Inc.; Institute for Conservation Education and Development of Antioch University Southern California; International Wildlife Coalition; Kay Rosaire's Big Cat Encounter; Riverglen Tigers; Safari Club International; Species Survival Network; Steve Martin's Working Wildlife; and The Hawthorn Corporation.

We considered all of the recommendations of the above organizations and individuals when compiling a list of possible resolutions and agenda items that the United States might submit for consideration by the Parties at COP11. We also considered all of the recommendations of the above organizations and individuals when compiling a list of resolutions and agenda items for consideration at COP11 that the United States is either not considering submitting at this time, plans to address in ways other than through draft resolutions or agenda items, or is currently undecided about submitting. There are some issues for which we may consider submitting documents, depending on the outcome of discussions in the Animals, Plants, and Standing Committees.

We welcome your comments and information submissions regarding the resolutions and agenda items that the United States might submit, those that the United States is currently not planning to submit, or those that the United States is currently undecided about submitting.

A. What Resolutions and Agenda Items is the United States Considering Submitting for Consideration at COP11 or Considering Supporting at COP11?

1. Establishment of a Simplified System to Transport Crocodilian Swatch Samples Across International Borders

The CITES Parties have encouraged the ranching and farming of a number of species, particularly crocodilians. This has resulted in significant progress in protecting certain species and in species' recovery. The United States would like to explore ways to facilitate legitimate trade in specimens of ranched and captive-bred crocodilians. Sample pieces of crocodilian skins are used to provide a buyer or potential buyer a way to determine the quality of tanning and the appearance of the various dyes used to color the skins. Although the samples themselves are not for sale, they are used to generate sales. The international movement of these samples generates considerable paperwork for both the importing and exporting countries and may result in delays for the importer and/or exporter. We are considering submitting a proposed resolution that would establish a system to allow sample pieces of crocodilian skins that would not be sold to be transported to or through any CITES country. We believe such a system could facilitate legitimate trade in certain crocodilian species, while maintaining strict permitting requirements for commercial trade in products.

We are planning to ask another crocodilian range country to co-sponsor such a resolution with the United States and are considering presenting a draft for review at the next meeting of the Animals Committee in July 1999. The United States will make its decision on whether to submit this resolution for consideration at COP11 after the Animals Committee meeting and will base its decision on the results of the Animals Committee's discussions of the issue.

2. Trade in African Bushmeat

The International Wildlife Coalition and the Institute for Conservation Education and Development of Antioch University Southern California recommended that the United States submit an agenda item addressing African bushmeat trade. Both commenters pointed out that an increasing number of conservation organizations and wildlife researchers are concerned about the growing food trade for Central and West African wildlife species (both non-CITES and CITES listed). Both commenters expressed concern about the impact of bushmeat trade on African elephants and primates, especially the great apes. One estimate suggests that more than 2,000 gorillas and 4,000 chimpanzees are killed annually by bushmeat hunters.

We recognize that international commercial trade in bushmeat is a growing conservation concern. We believe that CITES is an appropriate arena for discussing the movement of bushmeat of CITES-listed species across country borders. The United States is considering submitting a discussion paper on the commercial African bushmeat trade and plans to seek one or more co-sponsors in submitting the paper. In addition, the United States plans to encourage the African range states involved in the bushmeat trade to convene a regional meeting to discuss the issue.

3. Recognition of the Important Contribution Made by Observers to the CITES Process

We received a comment from the International Wildlife Coalition requesting that we submit a resolution for consideration at COP11 recognizing the important contributions made by observers to the CITES process and affirming that observer participation in COPs is vital to the ability of the Conference of the Parties to discuss issues with the fullest possible available information. The International Wildlife Coalition expressed their concerns about the limited level of participation afforded observers in Committee I at the tenth meeting of the Conference of the Parties (COP10).

We agree that the participation of observers in the discussions of issues at COPs is essential. For many of the issues submitted for discussion at COPs, the greatest level of expertise is within the community of non-governmental organizations that attend as observers. Therefore, the United States is considering submitting a discussion paper on this issue for consideration at COP11, which it would present under the agenda item entitled "Admission of Observers," which is a standard agenda item raised at the beginning of each COP.

4. Synergy with FAO

The United States is very supportive of synergy and cooperation with international organizations, including the United Nations Food and Agriculture Organization (FAO). The United States proposes to submit a discussion paper to COP11 to promote synergy and cooperation between CITES Parties and the FAO in the implementation of FAO plans of action on "seabirds, sharks and over-capacity," and the review of CITES listing criteria. The United States proposes to submit this paper under the agenda item "Co-operation/synergy with Other Conservation Conventions and Agencies." We expect the Secretariat to include this agenda item on the provisional agenda for COP11 pursuant to Decision 10.63.

At its February 1999 meeting, the FAO Committee on Fisheries endorsed, for adoption by the FAO Conference in late 1999, plans of action to reduce seabird by-catch, conserve sharks, and manage fishing fleet overcapacity. The three action plans are global tools for implementing parts of the FAO Code of Conduct for Responsible Fisheries, and their approval has been a major U.S. objective since 1997. These voluntary plans of action will be implemented through national plans of action developed by FAO member states. The plans of action are available on the FAO Website at http://www.fao.org.

Many CITES Parties are also Members of FAO. In its discussion paper on this issue, the United States will call upon Parties to expeditiously implement the FAO plans of action and to examine areas of cooperation between CITES and the FAO in this endeavor.

The Sixth Session of the FAO Committee on Fisheries (COFI), Sub-Committee on Fish Trade, in June 1998, proposed that FAO initiate a scientific review of CITES listing criteria as they might apply to large-scale commercially harvested species, beginning with an ad hoc group to make suggestions on how such a process of scientific review might best be pursued. The ad hoc group met in November 1998, and produced a report for COFI. In that report, it recommended that FAO convene a scientific review process of the CITES listing criteria, leading to the development of recommendations to modify, if necessary, the existing CITES criteria. Those recommendations will be presented to CITES through the CITES Standing Committee.

In Resolution Conf. 9.24, the CITES Parties recommended: "* * * that the text and the annexes of this Resolution be fully reviewed before the twelfth meeting of the Conference of the Parties (COP12) with regard to the scientific validity of the criteria, definitions, notes and guidelines and their applicability to different groups of organisms." The CITES listing criteria in Conf. 9.24 were designed to cover all flora and fauna, but it was clear from the extensive discussions prior to and at the ninth meeting of the Conference of the Parties (COP9) that taxon-specific criteria could be beneficial. It was agreed that development of such taxon-specific criteria would best take place after the Parties had experience (two COPs) utilizing the new criteria in Conf. 9.24. At its 41st meeting in February 1999, the Standing Committee discussed this issue, and agreed that this should be a CITES-driven process, with leadership and direction from the Animals and Plants Committees. The United States concurs with that view. The Standing Committee agreed that the Chairs of the Animals and Plants Committees should be asked to prepare terms of reference for the review of the criteria (as spelled out in Conf. 9.24), and report these terms of reference to COP11. The Chairs of the Animals and Plants Committees will also be asked to oversee this review, to consider findings and develop any recommendations for consideration at the twelfth meeting of the Conference of the Parties (COP12). The Standing Committee encouraged the Committee Chairs to "consult with international technical bodies, such as FAO and COFI, but to ensure that the work plan for this effort must remain a CITES process." The United States will encourage cooperation with FAO on any review of the CITES listing criteria for marine fish through this proposed discussion paper.

5. Reaffirmation of the Synergy Between CITES and the IWC

We received a comment from the Species Survival Network requesting that we submit a resolution reaffirming the relationship between CITES and the International Whaling Commission (IWC). The United States, under the agenda item "Co-operation/synergy with Other Conservation Conventions and Agencies," which we expect the CITES Secretariat to include on the provisional agenda for COP11 pursuant to Decision 10.63, intends to inform the Conference of the Parties of an important resolution on this topic which was overwhelmingly adopted at the 51st Meeting of the IWC, in Grenada, May 23–27, 1999. The resolution, IWC/51/43, directs the IWC Secretariat to advise the CITES Conference of the Parties that the IWC has not yet completed a revised management regime which ensures that future commercial whaling catch limits are not exceeded and whale stocks can be adequately protected. The resolution further directs the IWC Secretariat to advise the CITES Conference of the Parties that zero catch limits are still in force for species of whales which are managed by the IWC.

The United States also notes that Resolution Conf. 2.9, "Trade in Certain Species and Stocks of Whales Protected by the International Whaling Commission from Commercial Whaling," was overwhelmingly reaffirmed by COP10 in 1997 by the defeat of a draft resolution proposed by Japan to repeal this resolution. At the 50th meeting of the IWC subsequent to COP10, the IWC passed a resolution that expressed its appreciation for the reaffirmation of this link between the IWC and CITES. IWC resolution IWC/51/43 also welcomes the CITES COP10 decision "to uphold CITES Resolution Conf. 2.9." For clarification, Conf. 2.9 calls on the CITES Parties to "agree not to issue any import or export permit, or certificate for introduction from the sea * * * for primarily commercial purposes for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling." The United States intends to submit this important IWC resolution to the CITES Secretariat for distribution to the Parties at COP11.

6. Introduction from the Sea

At the 14th Meeting of the CITES Animals Committee, held in Caracas, Venezuela, in June 1997, the government of Australia presented a document on Implementation of Articles IV(6) and IV(7) (Introduction from the Sea). At the suggestion of the government of Australia, an informal Working Group, consisting of the governments of Australia, Japan, and the United States, was formed to examine this complex matter in more detail, with the understanding that the Group would decide whether to report back to the Committee at its next meeting. The government of Australia is coordinating this discussion. The U.S. Government, led jointly by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, working with the Department of State, has participated in an exchange of letters with the government of Australia expressing U.S. views on this topic. The U.S. comments on this issue have focused on practical solutions to potential problems related to implementation of the provisions of the Convention for CITES-listed species taken in the marine environment, particularly outside the jurisdiction of any country, including but not limited to implementation of both Articles IV and XIV. Australia has indicated that, based on discussions of the informal Working Group, they intend to submit the topic for discussion at COP11. The United States intends to continue to participate in discussions of this issue

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and, if acceptable progress is made, expects to be in support of the results of the discussions. If expected progress is not made, however, the United States will consider whether it should develop its own proposed resolution on these issues for consideration during COP11.

7. Use of Annotations in the Appendices

We consider the issue of the use of annotations in the Appendices to be one of the most important for consideration at COP11. We received comments from the following organizations, recommending that we submit a resolution to clarify the criteria to be used when transferring populations or species from Appendix I to II with a product annotation: the Center for International Environmental Law; the International Wildlife Coalition; and the Species Survival Network. We also received comments from Safari Club International requesting that we work to preserve the flexibility of CITES through the use of annotations. All of these organizations provided useful information on the annotations issue, which was considered in developing our views on this issue.

Annotations are footnotes in the CITES Appendices that are being used by the CITES Parties for a number of purposes. In recent years, they are increasingly used when species or geographically distinct populations of species are transferred from Appendix I to II with an annotation; the annotation specifies that certain parts, products, or specimens are allowed to be traded under the provisions of Appendix II, whereas other parts and products are still treated as Appendix-I species. Such downlistings can serve a conservation purpose, but the United States and many other countries are quite concerned that there are no criteria or guidelines in place for the Parties on how to use, adopt, or amend these annotations. For example, there are annotations of this kind for the Appendix II listing of the African elephant in Zimbabwe, Botswana, and Namibia. A great deal of confusion arose at and after COP10 as to what products can or cannot be traded under that annotation. The United States has taken an active leadership role on this issue. At COP10, the Parties adopted Decision 10.70, which directed the Standing Committee to do the following: "Ways and means of clarifying legal and implementation issues related to the use of annotations in the Appendices shall be considered and a report shall be presented at the 11th meeting of the Conference of the Parties." At its 40th meeting in March 1998, the Standing Committee established a Working Group to explore this issue and develop a draft resolution for submission to COP11. The United States participated in that Working Group, along with Switzerland (Chair), Argentina, Canada, Germany, and Namibia. The Working Group corresponded via E-mail on the issue, and met at the 41st meeting of the Standing Committee in February 1999. A consensus draft resolution was presented to the Standing Committee by the Working Group. The Standing Committee endorsed the text, and agreed to submit it to the Conference of the Parties for their consideration at COP11. The full text is available upon request from the Office of Scientific Authority.

Key elements of the draft resolution include: (1) A differentiation between annotations that are for reference purposes only and those that are substantive, integral, and obligatory parts of a species' listing in the Appendices; (2) clarification that any proposal to introduce, amend, or delete substantive annotations must follow the provisions of the CITES listing criteria (Resolution 9.24), and can only be approved by a vote of the Conference of the Parties; (3) clarification that specimens containing parts or products of the species that are not specifically included in a substantive annotation for Appendix II should be considered to be retained in Appendix I, and should be subject to all of the provisions of CITES Article III; (4) requirement that Parties submitting proposals with substantive annotations should clearly specify what is meant by all aspects of the annotation, including what can and cannot be traded commercially; (5) requirement that proposals for such annotations should not become effective if the Party has entered a reservation for the species, unless the Party agrees to remove its reservation within 90 days of the close of that COP; and (6) direction to the Secretariat to investigate any information on increases in illegal trade or poaching of species subject to such annotations, and to report its findings to the Standing Committee.

The United States is pleased with the draft resolution, as an important consensus of the Standing Committee, and proposes to support it at COP11. We welcome your comments on the document.

8. Transborder Movements of Live Animals for Exhibition Purposes

At COP10, the Parties adopted Decision 10.142, directing the Secretariat to prepare recommendations on transborder movements of live animals for exhibition to simplify transborder movements of live animals traveling to other countries for exhibition purposes; register and identify live animals used in exhibitions; and present documents and animals to appropriate border control officers when traveling to other countries for exhibition purposes. At the 40th meeting of the Standing Committee in March 1998, the Committee agreed to establish an informal Working Group to focus on drafting recommendations. The members of the Working Group—the United States (Chair), Germany, Switzerland, and the Secretariat—have been working on draft language based on revising current Resolutions Conf. 8.16 (Travelling Live-Animal Exhibitions) and Conf. 10.20 (Frequent Transborder Movements of Personally Owned Live Animals).

We received comments from six organizations—Animals of Montana, Inc.; Feld Entertainment, Inc.; The Hawthorn Corporation; Kay Rosaire's Big Cat Encounter; Riverglen Tigers; and Steve Martin's Working Wildlife—that would like to see the development of a simplified, more workable system for the registration and movement of traveling live animal exhibitions that has adequate safeguards to prevent illegal trade in or laundering of wild animals. Comments included the following suggestions: adopt a specimen-based passport-type system; require marking by microchip or tattoo of animals in exchange for granting a lifetime CITES certificate; eliminate the publication in the **Federal Register** of a notice of receipt of applications for public comment for endangered species; use the U.S. Department of Agriculture's exhibitors license in lieu of CITES permits; establish a registration/certification system; and exempt captive-bred tigers and pre-Convention elephants from CITES regulation. Although we recognize the need for simplified procedures, we are only considering those comments that have a legal basis under the U.S. Endangered Species Act and meet the provisions of CITES. Thus, we have forwarded to the Working Group suggestions about a passport-type system and a review of marking requirements. Because the United States is participating in the Working Group, we anticipate that the United States will most likely be able to support what the Secretariat recommends to the Standing Committee. Thus, we are not planning to submit our own separate resolution to COP11.

B. What Resolutions and Agenda Items is the United States Currently Not Planning To Submit for Consideration at COP11 or Undecided About?

1. Preparation of Standards for Making Non-detriment Findings

We received comments from the Center for International Environmental Law and the International Wildlife Coalition recommending that we submit a resolution on standards for the issuance of non-detriment findings. The CITES Treaty requires scientific non-detriment findings for all exports and introductions from the sea for CITES-listed species, and for all imports of Appendix-I species. We are highly committed to the issuance of scientifically based non-detriment findings based on biologically sound information. The United States agrees that the conservation of species subject to international trade would benefit greatly from increased attention by the CITES Parties to the bases for issuance of non-detriment findings. Towards that end, the United States worked closely with the IUCN—the World Conservation Union, which convened an international Workshop to Develop Guidance on the Making of Non-Detriment Findings, in Hong Kong in October 1998. The United States provided funding for the Workshop through the U.S. Department of State's annual funding to IUCN. Our Office of Scientific Authority was an invited speaker at the Workshop, which was the first-ever opportunity to develop an international consensus on the CITES scientific decision-making process. The Workshop was very productive, and produced a useful report, which may lead to a document to be presented to COP11 for further discussion. The CITES Secretariat and Animals and Plants Committees will be involved in this process as well. However, the United States does not believe that it would be useful to submit a resolution at this time, and prefers instead to work through the aforementioned process.

2. Captive Breeding

At COP10 in June 1997, the Parties discussed the issue of registration of facilities breeding Appendix-I species in captivity for commercial purposes, and whether there was a need to amend or revise Resolution Conf. 8.15. This issue pertains to implementation of Article VII of the CITES Treaty. At COP10, the Parties adopted Decision 10.77, which charged the Animals Committee to "examine the effectiveness of and the need for the existing registration system for operations breeding specimens of Appendix-I species in captivity for commercial purposes." The same Decision also called upon the Animals Committee to consider the proposed definition of "bred in captivity for commercial purposes." The issue was discussed at length at the 14th meeting of the CITES Animals Committee held in Caracas, Venezuela, in June 1997. The Animals Committee meeting participants agreed by consensus to a number of elements of any revision of Conf. 8.15 pertaining to the registration of facilities. At that meeting, the Chair of the Committee appointed a Working Group to examine Resolution Conf. 8.15 and draft a revised resolution from recommendations agreed upon at the 14th Meeting. Germany was asked to chair this Working Group and the United States was asked to participate. The Working Group was asked to report back to the 15th meeting of the Animals Committee. The Chair of this Working Group has circulated drafts to Working Group members for comments. The U.S. Government, represented by the U.S. Fish and Wildlife Service's Office of Management Authority and Office of Scientific Authority, has participated actively in an exchange of letters with the Working Group Chair expressing U.S. views on this topic. The U.S. comments on this issue have focused on practical solutions to problems related to the registration of commercial breeding operations, including streamlining the process when feasible, allowing for and encouraging range state consultation, and defining what breeding for commercial purposes is, while at the same time supporting the consensus views of the Animals Committee meeting participants (as expressed in Venezuela in June 1997). The Chair of the Working Group has provided a draft resolution, based on comments received from the Working Group, to the CITES Secretariat. The Secretariat has requested additional comments that it will consider in preparing a document to be discussed at the 15th meeting of the CITES Animals Committee to be held in Madagascar in July 1999. The Animals Committee intends to submit a draft revision of Resolution Conf. 8.15 for discussion by the Parties at COP11. The United States intends to continue to participate in discussions of this issue and, if acceptable progress is made, expects to support of the results of the discussion.

3. Definition of the Term "Hunting Trophy"

The Center for International Environmental Law submitted comments that provided a suggested definition of "sport-hunted trophy" and recommended that the United States submit a resolution to amend Resolution Conf. 2.11 (Rev.) on Trade in Hunting Trophies of Species Listed in Appendix I. Several resolutions (Conf. 2.11 (Rev.), Conf. 10.14, and Conf. 10.15) and annotations to the Appendices (i.e., specified populations of southern white rhinoceros and African elephant) refer to hunting trophies without defining that term. This creates implementation problems and opens the possibility of trade in hunting trophies of Appendix-I and Appendix-II species for primarily commercial purposes. We agree that a definition would assist Parties in implementing the CITES Treaty. However, the United States is currently undecided on whether to develop such a resolution for COP11. We believe that this issue warrants further discussion and we welcome draft language or comments.

4. Possible Illegal Trade in Appendix-I Southeast Asian Freshwater Turtles for the East Asian Food Market

Reports from U.S. scientists working and traveling in Asia suggest that there is a very large international trade in live freshwater turtles for East Asian food markets. International reports also document Southeast Asian government interceptions of very large shipments of protected or regulated live freshwater turtles, without the appropriate documentation, being exported to supply this market. Since many of the turtles reported in these markets and in trade are believed to be CITES Appendix-I and Appendix-II species, we are seeking public comment on options within CITES to review this situation and consult with range and consuming countries on this issue.

5. Establishment of a Neutral Parliamentarian and Adoption of a Guide to the Rules of Procedure

We received comments from two organizations concerning procedures for conducting COPs. The Center for International Environmental Law submitted a draft Guide to the Rules of Procedure and draft text for a resolution that would establish a neutral parliamentarian to assist in interpreting the Rules of Procedure at COPs. Safari Club International wrote in support of continuing the option of voting by secret ballot at COPs.

The United States agrees that CITES would be best served if the Rules of Procedure were applied consistently at COPs. However, we believe that it is the responsibility of the CITES Secretariat to function at COPs as a neutral adviser to the Chairs of the Plenary, Committee I, and Committee II regarding the Rules of Procedure. The United States feels

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that establishing a parliamentarian is unnecessary. Establishing a neutral parliamentarian would require amending the Rules of Procedure, which cannot be done by resolution. The appropriate venue for amending the Rules of Procedure is in Plenary session when the Parties consider adoption of the Rules as one of the first orders of business at a COP.

CITES Notification to the Parties No. 1998/18 asked the Parties to submit to the Secretariat comments and suggestions on improving practical and procedural arrangements for COPs. In written comments submitted to the Secretariat in response to Notification No. 1998/18, the United States suggested actions that the Secretariat could take to dispel some of the confusion evident at COP10, including briefing or training the COP Chairs prior to commencement of a COP, and preparing a Guide to the Rules of Procedure with the assistance of the United Nations Office of Legal Counsel.

With regard to secret ballots, the United States feels that their excessive use at COP10 precluded meaningful debate on many issues and did not foster transparency in the decision-making process. The United States prefers that, with the exception of the vote for the host country of the next meeting, secret ballots be eliminated at CITES meetings or made more difficult to obtain.

The United States believes that the best strategy for addressing these and other procedural issues is for the Secretariat to review all the comments submitted in response to CITES Notification No. 1998/18, including those submitted by the United States, and to take these comments into consideration in its preparations for COP11. The Secretariat intends to present a document on this issue for discussion at the 42nd meeting of the Standing Committee in Lisbon, Portugal, in September 1999. This document will discuss the intention of the Secretariat to review and, where appropriate, revise practical and procedural arrangements for future COPs. The United States will review the Secretariat's recommendations, taking into account discussions of the document at the Standing Committee meeting, and will decide whether to support the Secretariat's recommendations or consider raising procedural issues on its own under the COP11 "Rules of Procedure" agenda item.

6. Reaffirmation of the Preamble to CITES

We received comments from the International Wildlife Coalition recommending that the United States submit a resolution to reaffirm the Preamble to the CITES text. They noted in their comments that the Study of the Effectiveness of the Convention, adopted at COP10, showed that a majority of the Parties believe CITES to be the best and most flexible instrument available for protecting species from over-exploitation in international trade. The International Wildlife Coalition also noted that reaffirming the CITES Preamble would assure the world that the Parties remain committed to the goals of CITES.

Recognizing that the CITES Effectiveness Study has already shown that the Parties believe CITES to be the best and most flexible instrument available for protecting species from over-exploitation through international trade, the United States does not believe it is necessary to submit a resolution to reaffirm the Preamble at this time. It would be inconsistent with international law to submit or adopt such a resolution.

7. Amend the CITES Preamble to Invite Participation of Religious Environmental Leaders and Organizations

The Institute for Conservation Education and Development of Antioch University Southern California submitted to us a draft agenda item calling for an amendment to the CITES Preamble. The proposing organization would like to see the CITES Preamble amended to invite the participation of religious environmental groups as well as encourage the development of religious and spiritual alternatives to exploitation of endangered wildlife. The 1997 Study of the Effectiveness of the Convention demonstrated that the majority of the CITES Parties believe that the text of the Convention should not be amended, and to do so would be logistically difficult and expensive. The United States concurs with this view.

However, the Convention currently provides for non-governmental observer participation at meetings of the Conference of the Parties, and all technically qualified non-governmental groups are invited to participate as approved observers. We encourage all interested environmental groups, including those with religious approaches to conservation, to pursue this avenue to participate in COPs.

8. Clarification of the Difference Between CITES Decisions and Resolutions

We received comments from the Center for International Environmental Law and the Species Survival Network recommending submission of a draft resolution clarifying the distinction between CITES resolutions and decisions. Some Parties and observers consider CITES resolutions to be statements of policy that should be implemented by Parties until repealed. Some Parties and observers consider CITES decisions to be limited to statements directed towards a committee or institution for the completion of a specific task. There is confusion as to whether resolutions are of greater importance than decisions and whether decisions are only effective for a specific time period, such as from one COP to the next.

The United States agrees that this is an issue that needs clarification, but does not believe that a new resolution is necessary at this time. We feel that this matter can be successfully resolved during open discussions in the Plenary sessions, when the Parties are voting to adopt resolutions and decisions. We also believe that the Secretariat may be developing a document clarifying the difference between resolutions and decisions. We welcome comments and information on this issue.

9. Prohibit the Down-listing of any Whale Stocks from Appendix I Until a Standardized, Externally Verified DNA Testing Protocol is Adopted

We received comments from Earthtrust recommending that the United States propose a resolution prohibiting the transfer of any whale stocks from Appendix I to Appendix II until a standardized, externally verified DNA testing protocol is adopted.

The United States has actively participated in efforts aimed at developing protocols for and coordination of activities concerning DNA testing, in both the IWC and CITES fora, and strongly supports such work. However, we believe that a requirement for such a testing protocol is inconsistent with the CITES listing criteria as they are currently written in that they contain no such requirement. The United States notes that the listing criteria will be reviewed and, perhaps, proposed for revision in preparation for COP12. The Animals Committee will devise a process and schedule for this review at its 15th Meeting in July 1999 in Madagascar. This issue could be discussed at that time.

There are a number of reasons that the United States does not support transfer of whale stocks to Appendix II, which go beyond the issue of DNA testing protocols. We continue to believe that it is inappropriate to consider these species for downlisting until the IWC completes the revision of its management regime to bring all whaling under effective IWC control. Therefore, although the United States is opposed to the transfer of whale stocks to Appendix II, it nonetheless does not intend to propose a resolution prohibiting the downlisting of whale stocks from Appendix I until a standardized, externally verified DNA testing protocol is adopted.

10. Periodic Review of Reservations, Particularly for Those Countries that are not Range States for the Species in Question

The Species Survival Network proposed that the United States submit a resolution calling on Parties to periodically review any species reservations that they have entered. The Species Survival Network submitted draft resolution text, which recommended that Parties which are not range states that have reservations should conduct these periodic reviews. They proposed that a resolution should instruct the Animals and Plants Committees to review the conservation merit or harm of existing reservations and make recommendations to the Parties that have entered them.

We support the idea that Parties should periodically review and refine their CITES implementation procedures, particularly with respect to unilateral actions permitted under the Convention, such as species reservations or Appendix-III listings. The United States concurs that resolutions adopted by the Conference of the Parties are powerful tools that should be used where they are likely to accomplish the most for species conservation and management. We believe that this suggestion springs from positive motivations to advance the conservation goals of CITES. However, if adopted, it would most likely discourage significant species conservation and management benefits on the part of those Parties that have acceded to CITES requirements for most listed species subject to specific species reservations.

We note that Parties have a right to enter reservations. Reservations to the listing of species in Appendices I, II, or III may be entered by any Party, in accordance with the provisions of Articles XV, XVI, and XXIII of the CITES Treaty. For Appendix-I and Appendix-II species, those reservations may only be entered when a country accedes to the Treaty, or within 90 days of the species' inclusion in that Appendix. Under the requirements of the CITES Treaty, until a country withdraws its reservation it is to be treated as non-Party to the Convention with respect to trade in the particular species. However, the United States agrees that commercial trade in an Appendix-I species under a reservation has the significant potential to undermine the effectiveness of the Convention. The United States has no reservations to CITES listings.

There have been recent cases where the review of reservations to Appendix-I listings have appropriately resulted in removal of those reservations by reserving Parties that are not range states for the species. For example, Japan had a reservation until 1992 on the listing of the hawksbill sea turtle (*Eretmochelys imbricata*). Trade that was legal under the Treaty continued in that highly endangered species, which the United States felt was undermining the effectiveness of the Convention and putting the species at further risk of extinction. After review and evaluation, the government of Japan withdrew that reservation (and informed the United States that it would phase out the domestic use of bekko, or hawksbill sea turtle shell). More recently, Switzerland evaluated its reservation to the Appendix-I listing of the Tibetan antelope (*Pantholops hodgsonii*), and based on that review, removed its reservation. Therefore, the United States believes that reviews of any reservations in force, particularly for Appendix-I species, would be very useful, especially when the reserving Parties conduct such reviews in consultation with range countries.

However, at this time the United States does not propose to submit a draft resolution recommending such review. Rather, we propose to discuss this matter at COP11 to determine if it would be advisable to ask the Animals and Plants Committees to coordinate such a review. We invite your comments on such a review and on this process.

11. The Transfer of a Species to Appendix I May Not Be Challenged for at Least Two Meetings of the Conference of the Parties

The International Wildlife Coalition proposed that the United States submit a resolution recommending to the Parties that any transfer of a species to Appendix I not be challenged for at least two COPs. The United States does not propose to submit such a resolution, for several reasons. First, such a recommendation would necessitate an amendment to Resolution Conf. 9.24 ("Criteria for Amendment of Appendices I and II"). The Parties have already recommended in Resolution Conf. 9.24 "that the text and the annexes of this Resolution be fully reviewed before the twelfth meeting of the Conference of the Parties with regard to the scientific validity of the criteria, definitions notes, and guidelines and their applicability to different groups of organisms." We therefore prefer that the listing criteria in Conf. 9.24, which have only been used for one COP (COP10), be used to their fullest at the upcoming COP (COP11) before making or recommending any further modifications to the criteria. Between COP11 and COP12, the Parties will put into place a process for further review. This recommendation of the International Wildlife Coalition can be evaluated at that time. Secondly, Conf. 9.24 also says "any species included in Appendix I for which sufficient data are available to demonstrate that it does not meet the criteria listed in Annex 1 should be transferred to Appendix II only in accordance with the relevant precautionary measures listed in Annex 4." We are hopeful that the precautionary measures in Annex 4 provide ample safeguards that species will not be transferred from Appendix I to II with undue haste. We agree that one interval between meetings of the Conference of the Parties may not be sufficient time to ensure the recovery of a species that was just included in Appendix I. However, the United States does not propose to submit a resolution on this issue for consideration at COP11. We do intend to actively participate in the review of the listing criteria in Conf. 9.24, which will take place between COP11 and COP12. The United States was an active participant in all scientific and technical discussions and Working Groups that led to the development of Conf. 9.24, and intends to fully participate in the proposed review of the scientific validity of the criteria, definitions, notes and guidelines and their applicability to different groups of organisms.

12. Definition and Interpretation of "Sustainable Use'

The International Wildlife Coalition proposed that the United States submit a resolution recommending that the Parties develop a definition and interpretation of the term "sustainable use." We agree that the term is used extensively in CITES-related documents, although it is not referred to in the CITES Treaty. We also agree that the term may be over-used, and a definition and clear understanding of the concept would be beneficial. The concept of sustainable use of wild flora and fauna is particularly relevant in a CITES context to the issuance of non-detriment findings, particularly for Appendix-II species subject to

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commercial trade. However, the United States does not propose to submit a resolution asking that CITES undertake such a definitional task, for the reasons discussed below.

From a U.S. perspective, we have already defined the term. We have defined sustainable use in regulations implementing the Wild Bird Conservation Act (WBCA). The WBCA complements CITES, and we view the definition of sustainable use in the WBCA implementing regulations as an appropriate basis for all CITES non-detriment findings. That definition states: "*Sustainable use* means the use of a species in a manner and at a level such that populations of the species are maintained at biologically viable levels for the long term and involves a determination of the productive capacity of the species and its ecosystem, in order to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself, and perform its role or function in its ecosystem." We believe that the above definition of sustainable use is appropriate for the determination of whether or not an export is non-detrimental.

We note that IUCN recently undertook a process to define sustainable utilization, but has not been able to reach consensus or complete the task. Therefore, we believe that it would be more fruitful for the CITES Parties to work to develop a consensus understanding of what is meant by non-detriment and how non-detriment findings should be issued, in the context of sustainable utilization.

To effectively define non-detriment, in the context of sustainable utilization of wildlife, we prefer to work within the context of the IUCN-sponsored process discussed above (under "*Preparation of Standards for Making Non-detriment Findings*"). We believe that the CITES Secretariat will be sponsoring a follow-up workshop in late 1999, where sustainable use and non-detriment will be discussed, with submission of a product to the Parties at COP11. We will recommend the inclusion of a definition or at least discussion of sustainable utilization in any final CITES product that arises from this process. In its comments to us, the International Wildlife Coalition submitted a document titled "Criteria for Assessing the Sustainability of Trade in Wild Fauna and Flora." These criteria provide useful information, and we will make sure that they are considered during any IUCN or CITES-sponsored process on this issue.

13. Criteria for Assessment of Export Quotas for Trophies of Appendix-I Species

The International Wildlife Coalition proposed that the United States submit a resolution outlining the information that should be submitted by any Party that submits a proposal for a trophy-hunting quota for an Appendix-I species, along with standards for the assessment of those proposed quotas by the Conference of the Parties. The United States agrees that this recommendation raises some important issues that should be discussed further by the CITES Parties, but does not propose to address it through a resolution at this time.

There is a significant difference between transfer of a species from Appendix I to II with a quota, that might include sport-hunted trophy specimens, and quotas for trophy specimens of species included in Appendix I. Parties may issue Appendix-I import and export permits for sport-hunted trophies, as long as all of the requirements of the Treaty are satisfied, including but not limited to those in Article III. Parties that wish to export sport-hunted trophies of native species are not obligated to have their quota approved by the Conference of the Parties. However, many countries have chosen to submit their trophy-hunting quotas to the Conference of the Parties for approval, to help expedite the findings required by the importing country (under Article III). For example, trophy-hunting quotas have been approved by the Conference of the Parties through a resolution process for the leopard (*Panthera pardus*) from 11 countries, and for the markhor (*Capra falconeri*) from Pakistan. Any quotas that are an integral part of a species listing, or are adopted by resolution of the Conference of the Parties, require the full evaluation of the Parties at a COP, and should of course be fully evaluated by Parties' scientific authorities.

The United States agrees with the commenter on this issue that clear guidelines to the Parties as to what should be submitted by the proponent of such a quota would be very helpful, and should mirror the types of information required for a listing proposal, pursuant to Resolution Conf. 9.24. The United States does not believe that a resolution should be submitted to COP11 with draft guidelines, but rather COP11 could direct a process for review and possible adoption at COP12. We believe that the COP should direct this issue to the Animals Committee for further evaluation, for possible submission of guidelines to the Conference of the Parties at COP12. We invite your views on this approach, and propose to discuss this issue with other attendees at the upcoming meeting of the Animals Committee.

II. Recommendations for Species Proposals for the United States To Consider Submitting at COP11

We published a notice in the **Federal Register** on January 30, 1998 (63 FR 4613), in which we requested information and recommendations on potential species amendments for the United States to consider submitting for discussion at COP11. In addition to possible species proposals that we have been developing on our own, we received recommendations from the public for possible proposals for 58 different taxa (at the species, genus, or family levels). We have undertaken extensive evaluations of the available trade and biological information on all of these taxa. Even if all of these species qualified for listing or transfer between the Appendices (uplisting, downlisting, or removal from the Appendices), we would not submit all of them for consideration at COP11, due to workload and time factors. Our first task was to determine if the requested action qualified under the CITES listing criteria (in Resolution Conf. 9.24). If a proposal qualifies under the listing criteria, we then must decide whether to consider its submission or not. We therefore must look at the conservation priorities associated with these different proposals, as well as the views and scientific assessment of the range countries, when the species is not native to the United States.

Below, we have provided the potential actions that the United States is considering taking at COP11 with regard to all of the species proposals recommended by the public. We have also provided the potential actions that the United States is considering taking at COP11 with regard to possible species proposals we have been developing on our own.

A. What species proposals is the United States considering submitting for consideration at COP11?

The United States is considering the submission of the following proposals. We welcome your comments and, in particular, any biological information on these species. For each species, more detailed information is on file in the Office of Scientific Authority than is presented in the summary below. For some of the species below, particularly those not native to the United States, additional consultation with range

countries and others is proceeding (see discussion), and a final decision is pending the outcome of those consultations. Several letters have already been sent to range countries asking for additional biological information on the species or taxon in question and several responses have already been received.

Plants

1. White wicky (*Kalmia cuneata*)

White wicky, an endemic plant of the North and South Carolina coastal plain, has been listed in CITES Appendix II since 1983. The Office of Scientific Authority (OSA) recommends that the species be deleted from the CITES Appendices. The recent OSA review of CITES-listed plant taxa native to the United States, as part of the ongoing Plants Committee taxa review process, determined that White wicky has not been in international trade in recent years, and that the main threats to the species are habitat loss due to land development, conversion to agriculture or production forestry, and fire suppression. For these reasons, the United States is considering a proposal to delete this species from Appendix II.

2. Holywood lignum-vitae (*Guaiacum sanctum*)

Holywood lignum-vitae, a valuable timber species widely distributed in the Florida Keys, West Indies, and Central America, has been listed in Appendix II since 1975. OSA recommends that the species be transferred to Appendix I. The recent OSA status review of CITES-listed plant taxa native to the United States determined that the species has been depleted through deforestation and felling for timber, such that it has now been extirpated or is extremely rare on most of the Caribbean islands. Remaining populations in Central America and Florida are confined to restricted areas and are still threatened by habitat loss and over-exploitation. The taxon is considered endangered by the IUCN. For these reasons, the United States is considering a proposal to transfer this species to CITES Appendix I.

Invertebrates

3. Eastern hemisphere tarantulas (*Poecilotheria* spp.)

The eleven known species of eastern hemisphere tarantulas occur only in the forests of southern India and Sri Lanka. None of the species is currently listed under CITES, and none has previously been proposed for listing. The entire genus *Poecilotheria* was recommended for listing in Appendix II by R.C. West of the Royal British Columbia Museum. With the listing of western hemisphere tarantulas (Brachypelma spp.) in CITES Appendix II in 1994, the commercial pet trade shifted to eastern hemisphere tarantulas. The natural reproductive potential of these species is relatively low and cannot keep up with current demand for the pet trade. In addition, captive propagation of these species is rarely successful and is unlikely to provide enough individuals to meet demand. Finally, the native forest habitat of these species is declining due to deforestation. For these reasons, the United States is considering either (1) submitting a proposal to list all eastern hemisphere tarantulas (i.e., the genus *Poecilotheria*) in CITES Appendix II, or (2) co-sponsoring or supporting a range country's proposal for listing all eastern hemisphere tarantulas in Appendix II. We have consulted with India and Sri Lanka with regard to this proposal and have already received useful comments from Sri Lanka.

Fish

4. Seahorses (*Hippocampus* spp.)

The Humane Society of the United States and the International Wildlife Coalition recommended that the United States propose seahorses for listing in Appendix II. There are approximately 35 species of *Hippocampus*. All species are marine; they live among sea grasses, mangroves, and coral reefs worldwide, between 45° north and south latitude, with most species in the western Atlantic or Indo-Pacific regions. Seahorses are characterized by sparse distributions, low mobility, small home ranges, low natural adult mortality, low fecundity, long parental care, and mate fidelity. They range in size from a 10–20 mm Australian seahorse to a 300 mm Pacific seahorse. Life history strategies of seahorses make populations susceptible to over-exploitation.

A rapidly growing trade in *Hippocampus* spp. for traditional Chinese medicine and its derivatives, aquarium pets, souvenirs, and curios is resulting in over-exploitation of wild populations. It is estimated that at least 20 million seahorses are captured annually from the wild. At least 20 nations worldwide are exporting seahorses; the largest known exporters are India, Indonesia, the Philippines, Thailand, and Vietnam, with annual exports for each country estimated at 3–15 tons of dried seahorses. The number of seahorses landed in the United States (Florida) has steadily increased since records began in 1992, with more than 112,000 seahorses taken in 1994.

The largest importers for dried seahorses are China, Hong Kong, and Taiwan, with an estimated annual consumption of 45 tons (16 million seahorses) in Asia. Seahorses are sold as whole, dried animals for preparation into tonics. There has been a recent increase in numbers of seahorses used in prepared medicines (pills) in Asia, possibly in response to decreases in size of individuals obtained in fisheries catch. Seahorses are also used in traditional medicines in Indonesia, the Philippines, and India, and at least eight seahorse medicines are now sold in North America. Dried seahorses are also utilized as curios with a high availability in beach resorts and shell shops around the world.

Live specimens for aquarium pets are exported primarily to North America, Europe, Japan, and Taiwan. Five species are preferred for aquaria, including four Indo-Pacific species in the *Hippocampus histrix* complex and *H. kuda* complex, and one North American species, *H. erectus*. Virtually all aquarium seahorses come from the wild. Seahorses are highly unsuitable aquarium fishes, and few survive in captivity.

The main threats to seahorse populations are widespread over-fishing and habitat loss. Seahorse populations in Indo-Pacific countries are estimated to have declined by 25–75% over the last five years. Size of individuals taken has also declined concomitant with an increased take of immature males in fisheries catch, which may have grave implications for reproductive potential. The United States believes that these species qualify for inclusion in Appendix II. Considering the substantial threats to these species and their importance in international wildlife trade, the United States is considering *Hippocampus* spp. for inclusion in Appendix II and seeks additional information about the biological or trade status of these species. We intend to consult with all CITES Parties, through the Secretariat, on the merits of such a proposal.

Reptiles and Amphibians

5. Timber rattlesnake (*Crotalus horridus*)

The timber rattlesnake occurs in 27 States in the northeastern, southeastern, and Midwestern United States. The species was proposed for listing in CITES Appendix II by the United States at COP10, but that proposal was withdrawn. A number of organizations, including the International Affairs Committee of the International Association of Fish and Wildlife

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Agencies (IAFWA), the Humane Society of the United States, and the International Wildlife Coalition, have recommended that the timber rattlesnake be listed in Appendix II at COP11. Research, long-term monitoring, and anecdotal observations indicate that timber rattlesnake populations are declining throughout the majority of the species' range. In most States only relict populations remain. Large local populations are considered to be rare. Timber rattlesnakes are threatened by ongoing habitat degradation and loss, highway mortality, rattlesnake roundups, collection for domestic and international trade, and intentional killing. The numerous threats to the timber rattlesnake are exacerbated by the species' low reproductive potential. Females in the northeastern United States often do not breed until eight or nine years of age, and may produce young only every two or three years. For these reasons, the United States is considering submitting a proposal to list the timber rattlesnake in CITES Appendix II.

6. Spotted turtle (*Clemmys guttata*)

The spotted turtle occurs in southern Ontario, Canada, and in northeastern, upper Midwestern, mid-Atlantic, and southeastern States in the United States. The species is not currently listed under CITES, and has not previously been proposed for CITES listing. OSA and the International Affairs Committee of IAFWA have recommended that the species be listed in CITES Appendix II. The primary threats to the spotted turtle are over-collection, habitat fragmentation, alteration and destruction, and road mortality. Habitat alterations include grazing impacts, draining and filling of wetlands, artificial control of water levels in wetlands, pollution, and development. The quantity and quality of spotted turtle habitat in southern Maine, southeastern New Hampshire, and many other parts of the species' range have been reduced by human population growth and associated development over the past two decades. The spotted turtle is listed as endangered, threatened, or a species of special concern at the State/provincial level throughout its range. Illegal commercial collecting and incidental collection by hobbyists are depleting populations in many areas. Substantial numbers of spotted turtles were exported from the United States in 1995 through 1997. For these reasons, the United States is considering submitting a proposal to list the spotted turtle in CITES Appendix II.

7. Sonoran green toad (*Bufo retiformis*)

The Sonoran green toad, limited to portions of Arizona and Sonora, Mexico, has been included in CITES Appendix II since 1975. The International Affairs Committee of the IAFWA has recommended that the Sonoran green toad be deleted from Appendix II; the Humane Society of the United States has recommended that the species be retained in Appendix II. Although this species has a limited geographic distribution, its population status within that distribution is considered to be stable. Much of the distribution falls within protected areas such as national monuments and military ranges. There is little or no documented international trade in this species, and no other significant threats to the species have been identified. For these reasons, the United States is considering a proposal to delete this species from Appendix II.

Birds

8. Gyrfalcon (*Falco rusticolus*)

The gyrfalcon is circumpolar in distribution. The North American population occurs in both the United States (primarily Alaska) and Canada (northern British Columbia, Labrador, Northwest Territories, Quebec, and Yukon Territory). The gyrfalcon was listed in Appendix I in 1975. The North American gyrfalcon population was transferred to Appendix II in 1981 (the third meeting of the Conference of the Parties), but was returned to Appendix I in 1985 (the fifth meeting of the Conference of the Parties) because of concern over illegal trade. At present the North American gyrfalcon population occurs over a large area of wilderness habitat, demonstrates density and productivity levels characteristic of the species, and has remained stable since surveys began over 20 years ago. Evidence indicates that the North American gyrfalcon population has not declined due to legal or illegal international trade since 1981. For these reasons, the United States is considering a proposal to transfer the North American gyrfalcon population from Appendix I to Appendix II. To allay concerns expressed by some European countries regarding potential illegal trade in the species, particularly of the European population, the United States is considering whether to include an annotation to the downlisting, with a zero quota on commercial trade for specimens removed from the wild.

Mammals

9. Steller's sea lion (*Eumetopias jubatus*)

The western stock of Steller's sea lions ranges from about Prince William Sound, Alaska, west through the Gulf of Alaska and the Aleutian Islands to Russia and Japan. The eastern stock extends from 144° W, through southeast Alaska and south to central California. The global population was estimated at over 300,000 Steller's sea lions in the late 1970s. Declines in abundance began in the eastern Aleutian Islands in the early 1970s, and by 1985 the declines had spread throughout the Aleutian Islands and eastward into the Gulf of Alaska, at least to the Kenai Peninsula. The Alaskan population, which numbered close to 157,000 non-pups in the 1970s, had declined to about 64,000 by 1989, a decline of almost 60%. The Alaskan population continues to decline. The species was listed as threatened under the U.S. Endangered Species Act in November 1990. Since then, two stocks, an eastern (stable population trends) and western (declining trends) have been identified. In 1997, the status of the western stock of Steller's sea lions was changed to endangered.

The magnitude of the decline in such a short time is startling. The rookery at Walrus Island in the Bering Sea once was the birthplace of over 2,800 pups annually; in 1991 only 50 pups were counted. Once Marmot Island near Kodiak Island was the largest Steller's sea lion rookery in the world. In 1979, 6,741 pups were born there, but only 804 pups were observed in 1994. Similar declines have occurred in both adult and pup counts in most of Alaska and Russia. From 1955 to 1968, the Steller's sea lion population in the Kuril Islands, Russia, was stable at about 15,000–20,000 individuals, but it declined steadily since that time to 5,000 in 1989.

It is presumed that international trade occurs in this species, particularly within the western North Pacific Ocean part of the species' range, based on the presence of Steller's sea lion meat available for purchase at shops at international airports in Japan. The actual level of take from the wild is unknown, but a harvest by the Japanese has been estimated based on interviews with local authorities. During 1991–1993, an average of 91 sea lions were killed per year; a high of 247 sea lions were killed per year during 1981–1985. Struck and lost rates are much higher (high in 1977–1980 of 559 sea lions struck and lost). This harvest comes from sea lions inhabiting the west coast of Asia with breeding rookeries found on islands and coastal areas of Russia, the Kuril Islands, the Okhotsk Sea, the Commander Islands, and the Kamchatka Peninsula. Sea lions marked in the Kuril Islands have been sighted in Japanese waters.

Steller's sea lions are considered by some in Japan to conflict with commercial fish harvests and are therefore subject to a directed take to reduce or eliminate damage to gear and depredation on fish stocks. This take is in the form of hunters commissioned by the government to shoot sea lions. These takes are within Japanese territorial waters. However, some of the meat is recovered and processed into a canned product that is then sold, primarily as a novelty to tourists. A significant portion of the sea lions that are killed incidental to fisheries in Japan may be from the Kuril Islands stock. The United States considers this species to meet the criteria for inclusion in Appendix I. The United States is considering submitting a proposal to add the species to Appendix I and seeks further information on its biological and trade status.

10. Bottlenose dolphin, Black Sea/Sea of Azov population (*Tursiops truncatus*)

The Humane Society of the United States recommended that the United States propose this population of the bottlenose dolphin for transfer from Appendix II to Appendix I. The subspecies *Tursiops truncatus ponticus* is endemic to the Black Sea and isolated from other populations of bottlenose dolphins in the Mediterranean and other waters. The species is distributed worldwide in temperate and tropical waters. It is believed that overall abundance of dolphins in the Black Sea has declined greatly due to severe over-exploitation up into the 1980s, for human consumption and for industrial products. A very large purse-seine fishery conducted by the former Soviet Union, Bulgaria, and Romania collapsed in the 1960s due to over-harvesting, and large takes by rifle continued by Turkey until a ban in 1983 and possibly thereafter. The proportions of the three endemic small cetaceans (bottlenose dolphin, harbor porpoise *Phocoena phocoena relicta*, and long-beaked common dolphin *Delphinus delphis ponticus*) in these catches and their relative degrees of depletion are not known with confidence. The size of the present population of bottlenose dolphins is unknown, and no estimates exist of sustainable levels of take. The habitat is thought to be highly degraded and declining in quality due to contamination by sewage and industrial effluents, algal blooms, decrease in prey species due to over-fishing, and by-catch in fisheries.

There has been a substantial international commercial trade in bottlenose dolphins from the Black Sea. Exporters in the Ukraine, Russia, and Georgia have been able to obtain CITES permits for export of bottlenose dolphins to several countries, including Cyprus, Malta, Turkey, Israel, Argentina, and Hungary, by stating that the purpose was to establish breeding colonies for conservation and research, but in all cases the actual purpose was commercial. The majority of the animals died during or shortly after transport; there were also some cases of illegal importation. Only one captive birth (in Israel) has occurred, and we are not aware of any scientific research papers that have resulted from the trade. The United States considers this population of bottlenose dolphin to meet the criteria for inclusion in Appendix I.

B. What species proposals is the United States considering submitting for consideration at COP11, pending additional information?

The United States is still undecided on whether to submit the following proposals. We welcome your comments, and especially any biological and trade information on these species. For each species, more detailed information is available in the Office of Scientific Authority than is presented in the summary below. For potential proposals, we delineate what additional information we are seeking or have sought to assist us in making our decision.

Fish

1. Great white shark (*Carcharodon carcharias*)

We received a recommendation from the Humane Society of Australia and the Humane Society of the United States to propose the great white shark (*Carcharodon carcharias*) for inclusion in Appendix I. The cosmopolitan great white shark is a coastal and offshore inhabitant of continental and insular shelves. It is distributed throughout temperate and subtropical oceans of the northern and southern hemispheres, and occasionally, seasonally strays into tropical waters and colder temperate waters.

In North American waters, the great white shark is occasionally found in the Western North Atlantic from Newfoundland to Florida, with the East Coast as a center of summer distribution around the New York Bight. It has been reported in the Bahamas, Cuba, northern Gulf of Mexico, Brazil, and Argentina. In the Eastern Pacific it occurs from the Gulf of Alaska to the Gulf of California and from Panama to Chile. It has a wide but sporadic distribution in the rest of the world's temperate oceans.

Great white sharks are exploited worldwide by incidental fisheries, as a by-catch of longline fishing and gillnet fishing. In the past, occasional captures have been routinely marketed for the curio trade, with jaws and individual teeth across the entire size and maturity range commanding high prices in international markets. There is a lesser market for flesh and fins. The flesh may be utilized for pet or human consumption. Shark fins can command a price as high as US$25.50/kg. Great white sharks have also been used for leather and a source for squalene oil from the liver for cosmetics. Single teeth in the United States can sell for as high as $30 to $80. Prepared jaws may command over $4,000 in collector's circles.

Information from worldwide commercial catches, recreational catches, and captures in beach-meshing operations suggests that numbers are declining. Sources of mortality of the great white shark result from commercial by-catch from large-scale longlining and gillnetting operations. Mortality also occurs from entanglement in fish traps, pound nets, and coastal weir nets, and in protective beach-meshing operations. Little data have been recorded on these captures. However, because of its rarity and the evident decline in catches, the United States considers this species to meet the biological criteria for inclusion in Appendix I.

Since 1993, the great white shark has been managed in the U.S. Atlantic and Gulf of Mexico as part of the Large Coastal Shark quota by the Fishery Management Plan for Sharks of the Atlantic Ocean. It received individual protection on April 2, 1997, when the National Marine Fisheries Service published a final rule that prohibited all directed fishing for the great white shark. Sharks are also protected in the States of California and Florida, and in the Maldives Islands and Namibia. The United States is considering the proposal of the great white shark for inclusion in Appendix I and seeks additional information about the species, particularly regarding its abundance and conservation status.

2. Whale shark (*Rhincodon typus*)

The whale shark is a pantropical species occurring in tropical and warm-temperate waters of the Atlantic, Pacific, and Indian Oceans, most often

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encountered in a band around the equator extending to roughly 30 °N and 35 °S. It is basically pelagic and can be encountered in very deep water far from land. However, shallow waters near the mouths of some rivers and estuaries could constitute feeding or breeding/birthing grounds; whale sharks gather there seasonally.

The whale shark is highly migratory. Movements of thousands of kilometers over periods of weeks or months have been recorded through satellite tracking in the eastern Pacific and Southeast Asia. One shark that had been satellite-tagged in the Mindanao Sea in the inner Philippines traveled over 3,000 km to the EEZ of Vietnam in two months. Another tagged on the coast of Sabah in Malaysia traveled offshore and then returned to coastal Malaysian waters over a 2,152-km route. Several sharks satellite-tagged in the Gulf of California, Mexico, moved over 12,000 km southeast into international waters and the waters offshore of South Pacific nations.

The species is rare, although little is known about its population size. Local seasonal populations have declined drastically in some areas, and fishing effort and price have greatly increased. In the Philippines, significant declines in catch-per-unit-of-effort in two traditional whale-shark fishing regions (Bohol and Misamis Occidental) have led to attempts to develop new fishing areas. Similar declines, possibly caused by over-exploitation, have been noted in Taiwan and the Maldives. It is not known to what degree fishing in one area affects populations in other areas, although the fact that at least some of the sharks migrate long distances within ocean basins suggests that the effects may not be purely local. The United States considers this species to meet the criteria for inclusion in Appendix II.

Sharks in general are more vulnerable to exploitation than are most other fishes, because of their longevity, delayed maturation, and relatively low fecundity. International trade in whale shark products takes place in Southeast Asia. The whale shark is fished for its fins and meat throughout Asia (India, Pakistan, China, Indonesia, the Philippines, Taiwan, Japan, the Maldives, and elsewhere), in some cases despite legal protection (e.g., in the Philippines). In very recent years, a market for fresh whale shark meat has developed rapidly in Taiwan, supplied by the Philippines. Ecotourism industries based on viewing whale sharks now exist in Thailand, Australia, South Africa, and the Maldives, as well as the Philippines. The United States is considering proposing the whale shark for inclusion in Appendix II and seeks additional information about this species.

Amphibians and Reptiles

3. Mantella frogs (*Mantella* spp.)

Mantella frogs occur only on the island of Madagascar. Four species, *Mantella bernhardi, M. cowani, M. haraldmeieri*, and *M. viridis*, were proposed for listing in Appendix II at COP10. That proposal was withdrawn when Madagascar agreed to list the four species in Appendix III. However, to date this listing has not taken place. Thus, the Humane Society of the United States, the International Wildlife Coalition, and Friends of Animals have recommended that these four species be listed in Appendix II at COP11. These Mantella frogs have limited distributions because of limited habitat availability, and available habitat is continuing to decline due to deforestation. These species are known to be in international trade, and population declines have been documented at several locations following heavy collection for international trade. For these reasons, the United States is considering either (1) submitting a proposal to list these four *Mantella* species in CITES Appendix II or (2) co-sponsoring an Appendix II listing proposal with Madagascar. We have contacted Madagascar with regard to this proposal.

4. Southeast Asian box turtle (*Cuora amboinensis*) / Chinese three-striped box turtle (*Cuora trifasciata*)

The Southeast Asian box turtle occurs throughout much of Southeast Asia, including Indonesia, Malaysia, Brunei, Burma/Myanmar, the Philippines, Thailand, Vietnam, and probably Cambodia, Lao People's Democratic Republic, and Singapore. It has also been reported from Bangladesh and India. The Chinese three-striped box turtle has a much more limited range, occurring from northern Vietnam through southern China (including Hainan Island). Neither species is currently listed under CITES. Both the Humane Society of the United States and the International Wildlife Coalition have recommended that the Southeast Asian box turtle be listed in Appendix II, and the International Wildlife Coalition has also recommended that the Chinese three-striped box turtle be listed in Appendix II. The Southeast Asian box turtle has been exploited heavily for food throughout much of its range. The Chinese three-striped box turtle is in heavy demand for medicinal use and as a food item. Both species have been documented in international trade, which primarily involves the movement of turtles from source countries to China. The Chinese three-striped box turtle is also considered valuable in the pet trade in Europe and the United States. For these reasons, the United States is considering either (1) submitting a proposal to list these two *Cuora* species in CITES Appendix II or (2) co-sponsoring an Appendix-II listing proposal for the genus *Cuora*. We have consulted with CITES range countries (Bangladesh, Brunei, Cambodia, China, India, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) and possible proponents with regard to these proposals. Comments have already been received from some range countries.

5. Parson's chameleon (*Chamaeleo parsonii parsonii*)

Parson's chameleon is endemic to the rainforests of eastern Madagascar. The species was listed in CITES Appendix II in 1977. The Chameleon Information Network has recommended that Parson's chameleon be transferred to Appendix I. The primary threats to this species are the continued loss of its rainforest habitat and exports for the live reptile trade. Parson's chameleons require dense forest cover, most of which has already been lost through deforestation. Parson's chameleons have been exported for the pet trade and as zoological specimens since 1988. Trade records from the World Conservation Monitoring Centre (WCMC) indicate that over 14,000 Parson's chameleons were exported from Madagascar from 1990 through 1997. Legal commercial exports were suspended in 1995, and relatively few captive offspring are produced. These two factors have served to drive up both the demand from hobbyists and the selling price of chameleons imported prior to the ban or born in captivity. In the event that trade resumes, Parson's chameleon would be placed under heavy pressure from collectors supplying exporters. For these reasons, the United States is considering a proposal to transfer Parson's chameleon from Appendix II to Appendix I. We have consulted with Madagascar with regard to this proposal.

C. What species proposals is the United States still undecided on, pending additional information and consultations?

The United States is still undecided on whether to submit the following proposals. We welcome your comments, especially any biological and trade information on these species. For each species, more detailed information is

available in the Office of Scientific Authority than is presented in the summary below. For each potential proposal, we delineate what additional information we are seeking or have sought to assist us in making our decision.

Plants

1. Bigleaf mahogany (Swietenia macrophylla)

The Rainforest Coalition, Friends of the Earth, and Defenders of Wildlife have requested that the United States propose bigleaf mahogany for inclusion in Appendix II. The United States is the largest importer of wood of this species, which occurs in range states from Mexico to Brazil and Bolivia. Brazil and Bolivia are the two largest exporters; the other 11 range states export far less. Bigleaf mahogany (from the Americas) was listed in Appendix III by Costa Rica in November 1995, including its sawlogs, sawn wood, and veneer sheets (i.e., other derivatives such as furniture are exempt from CITES requirements). Bolivia listed bigleaf mahogany in Appendix III in March 1998, and Brazil and Mexico took the same action in July 1998 and April 1999, respectively. Species listed in Appendix III can be traded commercially. Once a species is added to Appendix III, the countries that list the species are required to issue permits and ensure that specimens are legally acquired; non-listing range countries must issue certificates of origin; and importing countries are required to ensure that all shipments are accompanied by the appropriate CITES documents.

Proposals to include this species in Appendix II were submitted to the eighth meeting of the Conference of the Parties (COP8) by Costa Rica and the United States, to COP9 by the Netherlands, and to COP10 by Bolivia and the United States. At COP8, the proposal was withdrawn; at COP9 it gained 60 percent of the vote, short of the two-thirds majority needed for adoption. The COP10 proposal also received the majority of the votes, but did not obtain the required two-thirds majority. At COP10, Brazil offered to host a Mahogany Working Group meeting that would examine the conservation status of the species, including related forest policies and management, and international cooperation and trade, and make recommendations accordingly.

The Working Group met in Brasilia in June 1998. Attendees included seven range states, including the six largest (Brazil, Bolivia, Peru, Ecuador, Colombia, and Venezuela), the major importing countries, including the United States, the Food and Agriculture Organization of the United Nations (FAO), the International Tropical Timber Organization (ITTO), non-governmental organizations (NGOs), experts, and others. The group affirmed the utility of Appendix-III listings and the need for forest inventories. The group agreed to joint actions, which include evaluating the status of commercial timber species, technical and scientific cooperation for the species' sustained management and reproduction, and commercial and industrial cooperation, as well as supervision, control, and inspection of the products. The Amazon Cooperation Council affirmed the results of the Mahogany Working Group and passed a resolution calling for increased information sharing and coordination among Amazonian Cooperation Treaty (ACT) countries to preserve commercial-grade timber species. However, we are not aware of any progress on the implementation of important decisions and resolutions.

The United States is considering proposing *Swietenia macrophylla* for listing in Appendix II of CITES, and we are seeking additional information. At this time, the various interested and affected agencies of the U.S. Government are reviewing all pertinent information related to such a proposal. In particular, the U.S. Government seeks new information, especially regarding progress in addressing the sustainable use and trade in this species by the range countries, and any follow-on actions since the June 1998 Mahogany Working Group meeting. We are in the process of consulting directly with the range nations to obtain additional information, including in particular biological and trade information relevant to Resolution Conf. 9.24, and their views regarding a possible proposal to list *Swietenia macrophylla* in Appendix II; their views on possibly including certain populations of the species in Appendix II; for the countries that have listed bigleaf mahogany in Appendix III, their views on the implementation of that listing; and the views of other countries on the prospect of additional Appendix III listings.

Fish

2. Patagonian toothfish (*Dissostichus eleginoides*)

The Antarctic and Southern Ocean Coalition, Animal Protection Institute, Humane Society of the United States, and International Wildlife Coalition have recommended that the United States consider proposing Patagonian toothfish (*Dissostichus eleginoides*) for listing in CITES Appendix II. The geographic distribution of *D. eleginoides* occurs along slope waters in the Pacific off of Chile from 30°S to Cape Horn, in the southern Atlantic along the coast and slope waters of southern Patagonia and Argentina, to south of South Africa and south of New Zealand, including the sub-Antarctic waters of the Indian Ocean and Macquarie Island on the Indo-Pacific boundary of the Southern Ocean. A look-alike species, the Antarctic toothfish, *Dissostichus mawsoni*, reportedly has a similar and overlapping distribution to that of *D. eleginoides*.

The fishery for Patagonian toothfish is relatively new, and there are no long-term fishery data by which to establish trends. However, there have been rapid increases in catch over the last few years. In addition, there are several characteristics of the life history of *D. eleginoides* that make the species vulnerable to overexploitation, such as its low fecundity, slow growth, long life, and late maturation. Over-harvest due to illegal trade is of prime concern to the United States and other Parties of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The co-generic species, *D. mawsoni*, also falls under the authority of CCAMLR and has been subjected to intense fishing in CCAMLR and international waters. The Government of Australia is reviewing the status and trade of both species. Available evidence suggests that *D. eleginoides* may meet the criteria for inclusion in Appendix II, and *D. mawsoni* may meet the similarity of appearance criteria for inclusion in Appendix II.

The United States and other Parties have made proposals to CCAMLR for a toothfish catch certification program. Proposals were introduced at the October 1998 CCAMLR annual meeting, and addressed at an intersessional meeting of CCAMLR April 27–29, 1999. The results of the intersessional meeting discussions will be reviewed at the November 1999 CCAMLR annual meeting, the earliest that CCAMLR Parties could adopt a catch certification program. Any action taken by the CCMLAR Parties at their annual meeting in November 1999 will be considered in developing the final U.S. position on any listing proposal for the Patagonian toothfish.

Reptiles and Amphibians

3. Pancake tortoise (*Malacochersus tornieri*)

The pancake tortoise ranges from central Kenya southward through

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central Tanzania. Within that range, the species tends to be patchily distributed because of its rigid habitat requirements. The species is found only where suitable rock crevices and outcroppings are found in thorn-scrub and savannah vegetation. The pancake tortoise was listed in CITES Appendix II in 1975. The Humane Society of the United States has recommended that the species be transferred to Appendix I. Kenya banned trade in the species in 1981. Immediately following the ban in Kenya, there was an increase in exports from Tanzania. Field surveys conducted in the early 1990s indicated that pancake tortoise populations had become depleted in much of the species' range in Tanzania, especially in readily accessible areas. Additional collection pressure, combined with a low reproduction rate and specialized habitat requirements, could cause the species to become severely threatened throughout its range in Tanzania in the near future. For these reasons, the United States is considering a proposal to transfer the pancake tortoise from Appendix II to Appendix I. We are currently consulting with Kenya and Tanzania with regard to this proposal.

4. New Caledonian geckos (*Rhacodactylus* spp.)

The six species of *Rhacodactylus* geckos are endemic to New Caledonia and some nearby islands. None of the species is currently listed under CITES. The Humane Society of the United States has recommended that four species, *Rhacodactylus chahoua, R. ciliatus, R. leachianus,* and *R. sarasinorum,* be listed in Appendix II. These species are threatened by ongoing habitat destruction due to agricultural and related burning, deforestation, and mining; introduction of exotic species; and collection for the international commercial pet trade. Collection pressure appears to be most intense on some of the more remote uninhabited islands, where it is difficult to control collection. For these reasons, the United States is considering a proposal to list the above-mentioned four *Rhacodactylus* species in Appendix II. We have consulted with New Caledonia and France with regard to this proposal. We have already received preliminary comments from New Caledonia.

Birds

5. Lesser sulphur-crested cockatoo (*Cacatua sulphurea*)

The sulphur-crested cockatoo is endemic to islands in central Indonesia, and wild populations have declined due to trapping for the international bird trade. This species was proposed by Germany for transfer from Appendix II to I at COP10, but the proposal was withdrawn because the Indonesian government and BirdLife Indonesia reported that they had developed a recovery plan for the species, with a goal of establishing a community-based sustainable-use management plan for the species. Furthermore, the Indonesian government banned the export of the subspecies *Cacatua sulphurea citrinocristata* in 1992 and all other sub-species in 1995. It is believed that these export bans have been at least partially successful in reducing the level of trade in this species. Given that an Appendix-I listing could remove economic incentives for implementing the recovery plan for the species, it was recommended at COP10 that the species remain listed in Appendix II, but be reconsidered for transfer to Appendix I at COP11 if implementation of the recovery plan had not progressed. We are consulting with Indonesia on the implementation of its recovery plan for this species to determine if an Appendix-I listing is appropriate for this species at this time. We invite the submission of any information relevant to whether the recovery plan has progressed since COP10.

Mammals

6. Asian pangolins (*Manis* spp.)

There are three species of Asian pangolin. *Manis pentadactyla,* the Chinese pangolin, is found in Cambodia, India, Laos, Burma/Myanmar, Nepal, northern Thailand, Viet Nam, southern China, and Taiwan. *M. crassicaudata,* the Indian pangolin, occurs in Sri Lanka, peninsular India, Pakistan, Bangladesh, and China. *M. javanica,* the Malay pangolin, occurs throughout Burma/Myanmar, Brunei, Cambodia, Thailand, Laos, the Philippines, Vietnam, Malaysia, and much of Indonesia. All three species have been listed in CITES Appendix II since 1975. The International Wildlife Coalition has recommended that all three species be transferred from Appendix II to Appendix I. Pangolins are heavily exploited for food, for skins (used in the manufacture of leather goods such as boots), and medicinal uses (their scales are utilized in traditional Asian medicines). There is considerable international trade. Little information is available on the status of wild populations of these three species. The United States is considering submitting a proposal to transfer all three Asian pangolin species to Appendix I. We have consulted with CITES range countries (Bangladesh, Brunei, Burma/Myanmar, Cambodia, China, India, Indonesia, Malaysia, Nepal, Pakistan, the Philippines, Singapore, Sri Lanka, Thailand, and Vietnam) with regard to this proposal. We have already received responses from some of these countries.

7. Musk deer (*Moschus* spp.)

Musk deer are native to Asia, ranging from eastern Siberia south through Manchuria and central China to the Hindu Kush-Karakoram-Himalayan region of Afghanistan, Pakistan, and India. The number of *Moschus* species is not resolved, with authorities describing anywhere from four to seven species. This, in turn, affects subspecies classification. The subspecies *Moschus moschiferus moschiferus* was first listed in CITES Appendix I in 1975. In 1979, the listing was changed so that *Moschus moschiferus* (Himalayan population) was listed in Appendix I and all remaining populations of *Moschus* spp. were listed in Appendix II. In 1983, the listing was once again changed such that all musk deer populations of Afghanistan, Bhutan, India, Burma/Myanmar, Nepal, and Pakistan were listed in Appendix I and all other musk deer populations were listed in Appendix II. The International Wildlife Coalition has recommended that all musk deer taxa be listed in Appendix I. The limitations of clear taxonomic description, in combination with very little distribution information for some taxa, adds to the argument for listing all members of the genus in Appendix I. In addition, available information indicates that musk deer populations continue to decline throughout their ranges due to widespread poaching for international trade. Modification and loss of forest and scrub-forest habitat are additional threats in many portions of the range. For these reasons, the United States is considering submitting a proposal to transfer all *Moschus* populations currently in Appendix II to Appendix I. We have consulted with CITES range countries (Afghanistan, China, India, Republic of Korea, Mongolia, Burma/Myanmar, Nepal, Pakistan, Russia, and Vietnam) with regard to such a proposal. We have already received responses from some of these countries.

8. Urial sheep (*Ovis vignei*)

Urial sheep are native to central Asia, ranging from Iran and Turkmenistan in the west to northern India (Ladakh) in the east. Within this range, urial tend to have a patchy distribution associated with mountain ranges and rugged hill and canyon country. The number of urial subspecies is not resolved, with authorities describing from five to seven. The nominate subspecies, *Ovis vignei vignei* has been listed in CITES Appendix I since 1975; no other subspecies are currently listed. The Humane Society of the United States and the International Wildlife Coalition have recommended that all currently unlisted subspecies be listed in Appendix I. Urial populations appear to have declined across the species' entire range over the past 20–30 years as a result of poaching and habitat degradation due to domestic livestock grazing. Recent population figures are unavailable for Afghanistan and Iran. Urial are subject to sport hunting in several countries, but the sustainability of that hunting cannot readily be determined.

For these reasons, the United States is considering submitting, supporting, or co-sponsoring a proposal to list the entire species in Appendix I. We are currently consulting with range countries (Afghanistan, India, Kazakhstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan) with regard to this proposal.

D. What species proposals does the United States not plan to submit for consideration at COP11?

The United States does not plan to submit the following proposals, based on the information discussed below. We welcome your comments. For each species, more detailed information is available in the Office of Scientific Authority than is presented in the summary below. Some of the species may qualify for the proposed action, but due to resource availability, time constraints, or potential conservation benefit from the action, we do not propose to submit the proposal for COP11; that decision is independent of whether or not we still may support such a proposal if submitted by another Party.

Plants

1. Pau rosa (*Aniba duckei* and *Aniba rosaeodora*)

The Humane Society of the United States has requested that the United States propose pau rosa for inclusion in Appendix II. These species are harvested for the oil contained in their trunks and large branches, which is used as an ingredient in certain perfumes. The United States is the largest importer of pau rosa oil, followed by Switzerland, France, and other European countries. These species occur in the northern and western areas of greater Amazonia, including Brazil, Peru, Colombia, Ecuador, Suriname, French Guiana, Guyana, and Venezuela. The sole producer of pau rosa oil at present is Brazil.

Though areas within the range of these species lack mature trees (i.e., where they have been utilized by the oil industry), natural regeneration has been documented and substantial wild stands are likely to exist in inaccessible areas that may remain unexploited for logistical and economic reasons. International trade in pau rosa oil has declined by about 80 percent since the 1960s, largely due to the replacement of natural rosewood oil by synthetic substitutes.

The United States does not plan to propose the listing of *Aniba duckei* and *A. roseaodora* in Appendix II of CITES. However, we invite the submission of information regarding the status of these species in the wild and the impact of international trade on their status. This will assist us in monitoring the situation in the future. We are also seeking comments in relation to the CITES listing criteria in Resolution Conf. 9.24. In addition, the United States will discuss the status of these species, their international trade, and the potential impacts of CITES protection with the government of Brazil.

Invertebrates

2. Giant clams (*Tridacna gigas* and *T. derasa*)

The Commonwealth of Northern Mariana Islands' Division of Fish and Wildlife, Center for Tropical and Subtropical Aquaculture's Industry Advisory Council, and Micronesian Environmental Services made recommendations concerning giant clams (*Tridacna gigas* and *T. derasa*). These organizations requested that the United States propose the removal of these species from Appendix II or propose to exempt giant clam mariculture farms from CITES permitting requirements.

There are nine species of giant clams (7 *Tridacna* spp. and 2 *Hippopus* spp.) distributed throughout coral reef habitats in the western Pacific and Indian Oceans. The largest species of giant clam, *T. gigas,* is native to Australia, Indonesia, Fiji, the Federated States of Micronesia, Japan, Kiribati, New Caledonia, Guam, Malaysia, the Marshall Islands, Burma/Myanmar, the Northern Marianas, Palau, Papua New Guinea, the Philippines, the Solomon Islands, Taiwan, Thailand, Tuvalu, and Vanuatu. Today, abundant populations of *T. gigas* are known only in Australia and the Solomon Islands; this species is extinct in Fiji, Guam, New Caledonia, and the northern Marianas, and has been eliminated from most of the Federated States of Micronesia, Japan, the Philippines, Taiwan, Tuvalu, and Vanuatu. Cultivated stocks of *T. gigas* have been reintroduced to Fiji, the Federated States of Micronesia, and the Philippines, and introduced to the Cook Islands, Western Samoa, American Samoa, Tonga, and Tuvalu, although high mortality has been reported and self-sustaining populations have not been established in the wild.

T. derasa has a more restricted distribution than does *T. gigas,* and occurs in nine countries and territories, with confirmed centers of abundance in Palau, Papua New Guinea, Australia, the Solomon Islands, New Caledonia, Fiji, and Tonga. *T. derasa* is extinct in parts of Indonesia, the Philippines, Vanuatu, Guam, and the Northern Marianas. Although this species has been widely introduced, wild stocks have become established only in Yap.

A primary threat to *T. gigas* and *T. derasa* is over-exploitation from commercial utilization, poaching, and subsistence utilization, despite the protection afforded them in Appendix II of CITES. All species of giant clams are further threatened by habitat degradation, increased incidence of bleaching (loss of symbionts) and mortality associated with elevated sea water temperatures in 1997–1998, and low reproductive potential and recruitment success due to severe depletion of populations.

Wild stocks of these two species have declined dramatically over the past two decades, and they have been extirpated from many areas. The United States considers that wild populations of *T. gigas* and *T. derasa* still meet the listing criteria for inclusion in Appendix II. Furthermore, exemption of mariculture products of a listed species from regulation under CITES is not possible under the CITES Treaty. There are provisions in the Treaty for the issuance of CITES permits or certificates indicating that specimens were obtained from animals bred in captivity, if they meet CITES criteria for that designation. Therefore the United States does not intend to submit a proposal for a listing change for these species.

3. Hard Corals

The Center for Tropical and Subtropical Aquaculture's Industry Advisory Council recommended re-evaluation of the listing in Appendix II for these species, although no further information or explanation was given. Seventeen genera of hard corals were first listed in Appendix II in 1985. Because of law enforcement problems associated with the partial listing of a

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large group of taxa that are difficult to distinguish from one another, the entire orders of Scleractinia and Coenothecalia, and the family Tubiporidae (Order Stolonifera) were listed in Appendix II in 1989.

Over the last decade, coral reefs have experienced widespread declines in the abundance of coral reef species and live coral coverage at locations around the world. The 1998 *Reefs at Risk* study found that 58% of the world's reefs are potentially threatened by human activity, including coastal development, destructive and over-fishing practices, over-exploitation of marine resources, marine pollution, and runoff from deforestation and agriculture. Reefs have also been damaged by natural events such as coral disease outbreaks, crown-of-thorns sea star infestation, and several strong hurricanes and tropical cyclones, and these disturbances are being compounded by human impacts. In 1998, coral reefs around the world suffered the most extensive and severe coral bleaching episode in modern record, with subsequent mortality affecting 70–80% of all shallow-water corals on many Indo-Pacific reefs.

The collection of live coral and live rock (reported as Scleractinia) for the aquarium trade has increased each year since 1990, at a rate of approximately 25–30% per year. Commercial harvest of coral causes localized destruction of coral reef habitats and can result in extirpations of rare species. Nine of the ten dominant taxa for the aquarium trade consist of large-polyp corals that are slow-growing, long-lived, and often rare; these life-history characteristics render them vulnerable to over-exploitation. There has recently been increased demand for the faster-growing taxa (small-polyp corals), and coral husbandry programs are in the early stages of development to provide captive-reared specimens to hobbyists. However, the United States has concerns that major exporting countries involved in captive propagation of corals may be exporting first-generation corals as captive-reared or captive-bred animals. Although coral husbandry programs may eventually reduce the demand for wild-harvested specimens of some species, fast-growing corals that can be captive-reared are the taxa that suffered extensive mortality from the bleaching episode of 1998.

As part of the U.S. Government's implementation of President Clinton's Executive Order on Coral Reefs, the United States is evaluating recommendations concerning the trade in coral and coral products. The United States Coral Reef Task Force (USCRTF) has recognized that the international trade in coral and other coral reef species is driving destructive and potentially unsustainable fishing practices, particularly in the Indo-Pacific region. The International Working Group of the USCRTF (an interagency group) is concerned that the destruction of coral reef ecosystems will continue unless conservation efforts are improved at all points along the trade stream. In order to address the sustainability of the coral trade, we and the National Marine Fisheries Service have initiated a comprehensive examination of trade in live and dead coral and coral products. The United States considers these coral species to continue to meet the criteria for listing and retention in CITES Appendix II, and does not intend to propose a listing change for any species of hard coral.

Fish

4. Sawfishes (Pristiformes spp.)

We received a recommendation from Friends of Animals to include all species of the order Pristiformes (sawfishes) in Appendix II. The order consists of only one family, Pristidae, incorporating seven species (although the taxonomy of the group is debated). These species are: *Pristis pectinata* (smallmouth sawfish), inhabiting marine habitats in selected parts of the eastern Pacific Ocean, western and eastern Atlantic Ocean, Mediterranean Sea, Indo-Pacific, and Red Sea, and freshwater habitats in North, Central, and South America, Africa, and India; *P. clavata* (dwarf or Queensland sawfish), inhabiting nearshore and estuarine waters of northern Australia; *P. zijsron* (green sawfish), inhabiting marine habitats of the Indo-West Pacific from South Africa to the Persian Gulf, the Indian subcontinent, Indonesia, Australia, and Viet Nam, and throughout the Indo-Australian Archipelago, and also freshwater habitats in Thailand, Malaysia, Indonesia, and Australia; *P. pristis* (common sawfish), inhabiting marine habitats in the western Mediterranean and eastern Atlantic, possibly Africa; *P. microdon* (freshwater, Leichhardt's, great-tooth, or largetooth sawfish), inhabiting marine habitats in the Indo-West Pacific and freshwater habitats in Africa, Asia, Pacific Islands, and Australia; *P. perotteti* (largetooth sawfish), inhabiting warm-temperate to tropical-marine waters in the Atlantic and eastern Pacific, possibly in the eastern Mediterranean, and freshwater habitats in Central and South America and Africa; and *Anoxypristis cuspidata* (knifetooth, pointed, or narrow sawfish), inhabiting marine habitats in the Indo-West Pacific from the Red Sea and Persian Gulf to Australia and China, and brackish waters in Papua New Guinea, India, Myanmar, and Thailand. Of these species, *P. perotteti* and *P. pectinata* occur in U.S. waters.

Sawfishes have several life-history characteristics (e.g., slow growth, low fecundity, late sexual maturity, long life-span, long gestational period) that render them more vulnerable to reduced survivorship than many bony fishes. Other factors increasing the potential vulnerability of these species are restriction to a narrow depth range and disjunct distribution patterns. Threats to sawfishes include collection for the curio trade, habitat degradation, direct and incidental take in fisheries, destructive fishing practices (such as cyanide and dynamite fishing), and acquisition for live displays in public aquaria. Most species have exhibited either severe population declines or have an extremely localized distribution. Although data on international trade and other forms of exploitation of sawfishes are sketchy, localized effects can be seen in individual populations.

The United States proposed these species for inclusion in Appendix I at COP10, based on our view that they meet the criteria for inclusion in that Appendix. The proposal lost by a vote of 24–50. In their interventions, many Parties indicated that they believe that the main threats to the species are habitat degradation and incidental take, and not trade. Two species of sawfish in the United States are under consideration as candidate species for the U.S. Endangered Species Act. The United States will evaluate the possibility of addressing under domestic law the threats posed to sawfish. Therefore the United States does not intend to propose these species for listing at COP11.

5. Spiny dogfish shark (*Squalus acanthias*)

The Humane Society of the United States and International Wildlife Coalition have recommended that the United States consider proposing spiny dogfish shark (*Squalus acanthias*) for listing in CITES Appendix II at COP11. According to the most recent (1998) scientific assessment, spiny dogfish in the Northwest Atlantic is over-fished. Although total stock biomass is currently at a high level, present harvest levels and exploitation rates cannot be sustained. Spawning stock biomass declined by 50% during the 1990s. Current harvest rates exceed the replacement level for the stock and recruitment has declined. Much of the harvest from the species enters into international trade. If the recent level of unmanaged harvest and exploitation rate were to continue for an extended period of time, the species would meet the criteria for listing in Appendix I.

Under the Magnuson-Stevens Act, a Fishery Management Plan (FMP) has been developed for spiny dogfish. The FMP contains a rebuilding plan to alleviate the over-fished condition of this species and rebuild stocks within 10 years. The FMP has recently been adopted by the relevant Fishery Management Councils and has been sent to the National Marine Fisheries Service for review. If the FMP is adopted, landings will decrease significantly and international trade in this product will likely cease. The United States believes that rebuilding of this stock can be accomplished under the Magnuson-Stevens Act and, therefore, does not intend to propose this species for listing in CITES Appendix II.

6. Atlantic swordfish (*Xiphias gladius*)

The International Wildlife Coalition has recommended that the United States consider proposing Atlantic swordfish (*Xiphias gladius*) for inclusion in CITES Appendix II. Atlantic swordfish is being managed as two separate stocks (North Atlantic and South Atlantic) in the Atlantic Ocean. The North Atlantic swordfish stock has been in decline and is over-exploited. The most recent stock assessment (1997, with revisions in 1998) indicated that the current level of fishing mortality exceeds twice the fishing mortality needed to produce the maximum sustainable yield. The South Atlantic swordfish stock is being harvested at a level that exceeds twice the fishing mortality necessary to achieve maximum sustainable yield. The demand for *Xiphias gladius* is considerable and the United States is a major market for fresh and frozen swordfish. The United States considers that this species meets the criteria for inclusion in Appendix II. However, the United States believes that progress is being made to control the harvest of this species through management and trade actions.

Specifically, the International Convention for the Conservation of Atlantic Tunas' (ICCAT) scientific body, the Standing Committee on Research and Statistics (SCRS), indicated that North Atlantic swordfish is over-exploited and that South Atlantic swordfish is being over-harvested and is in decline. To address the decline in the resource, ICCAT has adopted reductions in quotas in addition to other conservation and management measures. In the fall of 1999, the SCRS will reassess the swordfish stock and ICCAT members will consider the adoption of appropriate new management measures for Atlantic swordfish that support rebuilding.

ICCAT has taken a number of concrete steps to address the problem of non-compliance among both member and non-member nations, some of which are discussed here. ICCAT members that were responsible for over-harvests of North Atlantic swordfish under the terms of a 1996 ICCAT compliance recommendation acknowledged these overages at the 1998 ICCAT meeting and pledged to reduce their quotas accordingly. Recognizing the problems associated with vessels fishing under flags of convenience, ICCAT adopted a measure to address unreported and unregulated catches of swordfish by large-scale longline vessels. This measure can lead to the revocation of the registration or fishing licenses of vessels that are acting improperly and, if necessary, the use of trade restrictive measures.

In addition, the National Marine Fisheries Service has developed a rebuilding plan for swordfish as part of the Highly Migratory Species (HMS) Fishery Management Plan (FMP), as required by the Magnuson-Stevens Act. A draft HMS FMP was published in October 1998 and was approved on April 26, 1999. The FMP includes a 10 year recovery period and recognizes the international nature of this fishery. The plan includes targets for recovery, limits, and explicit milestones for measurable improvement of the stock. The plan also includes limited entry for the commercial fishery and a time/area closure to reduce juvenile swordfish mortality.

Finally, in March 1999, the National Marine Fisheries Service published a final rule that bans the import of swordfish less than 33 pounds, extends dealer permitting and reporting requirements to swordfish imports, and implements a Certificate of Eligibility program to improve tracking of swordfish imports. Under this swordfish import monitoring program, all swordfish importers must submit data to the National Marine Fisheries Service regarding their swordfish importing activities. These regulations are designed to facilitate enforcement of the ICCAT minimum size limits and should also improve the collection of information relating to trade in Atlantic swordfish.

Given this progress, and the fact that the United States believes there is sufficient progress to manage this species under the auspices of ICCAT and the Magnuson-Stevens Act, the United States does not intend to submit a proposal to COP11 to list this species in CITES Appendix II.

Amphibians and Reptiles

7. California mountain kingsnake (*Lampropeltis zonata*)

The California mountain kingsnake has a restricted distribution on the west side of the Sierra Nevada mountain range in California and in the coast ranges from southwestern Oregon to northern Baja California, Mexico. This species is not currently listed under CITES. The Humane Society of the United States and the International Wildlife Coalition have recommended that the California mountain kingsnake be listed in Appendix II. Major threats to this species are habitat loss, particularly in southern California, and collection for commercial trade. To date, however, available information on the status of California mountain kingsnake populations and the impact of collection on populations is extremely limited, and appears to be inadequate to fulfill the CITES listing criteria. Therefore, the United States does not intend to submit a listing proposal for the California mountain kingsnake at COP11. We will continue to gather information on the conservation status and status in international trade of this species.

8. Eastern diamondback rattlesnake (*Crotalus adamanteus*)

The eastern diamondback rattlesnake ranges along the coastal plain from southeastern North Carolina to the Florida Keys to southern Mississippi and extreme southeastern Louisiana. The species is not currently listed under CITES. The Humane Society of the United States, the International Wildlife Coalition, and R. H. Mount, Professor Emeritus at Auburn University, have all recommended that the eastern diamondback rattlesnake be listed in CITES Appendix II. The major threats to this species include habitat loss and degradation (due primarily to conversion of suitable habitat to loblolly pine plantations, agricultural fields, and commercial and residential areas), collection for trade and rattlesnake roundups, and intentional killing. However, the magnitude and extent of the threat posed by international trade have not, as yet, been adequately determined. Therefore, the United States does not intend to submit an Appendix-II listing proposal for the eastern diamondback rattlesnake at COP11. We will continue to monitor the conservation status and status in international trade of this endemic U.S. species.

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9. Common snapping turtle (*Chelydra serpentina*)

The common snapping turtle occurs throughout the United States east of the Rockies, north into southern Canada, and south into Central America, Colombia, and Ecuador. The common snapping turtle is not currently listed under CITES. The Humane Society of the United States, International Wildlife Coalition, and New York Turtle and Tortoise Society recommended that the common snapping turtle be listed in Appendix II. Common snapping turtles are harvested in large numbers both for food and for the pet trade. Although certain local or regional populations may have been depleted by over-harvest, this species continues to be generally common and widely distributed. Much of the market is domestic, although international trade involving the United States may be increasing. The species does not appear to qualify for listing in Appendix II, given the general abundance of the species throughout most of its range. Therefore, the United States does not intend to submit a listing proposal for the common snapping turtle at COP11.

10. Alligator snapping turtle (*Macroclemys temminckii*)

The Friends of Animals, New York Turtle and Tortoise Society, Humane Society of the United States, and International Wildlife Coalition have recommended that the United States submit a proposal to list the alligator snapping turtle (*Macroclemys temminckii*) in CITES Appendix II. The United States submitted a proposal to COP10 to include the alligator snapping turtle in Appendix II. The proposal was withdrawn after some countries expressed the view that international trade is minimal and conservation problems for the species should be addressed through domestic measures. There was also opposition from the State of Louisiana to the proposal. Many countries at COP10 indicated that, for an endemic species such as the alligator snapper (which is confined to the United States in river systems that drain into the Gulf of Mexico), inclusion in Appendix III would be preferable.

Given that there is likely to be little support at COP11 for another Appendix-II proposal, and given the advantages of an Appendix-III listing, the United States now believes that an Appendix-III listing for the alligator snapping turtle may be the preferable approach. Listing U.S. native species in Appendix III would improve the regulation, protection, and control of the species in domestic and international trade. The United States does not intend to submit this proposal, but is actively considering whether to include the species in CITES Appendix III. A **Federal Register** notice to that effect may be published in the near future.

11. Map turtles (*Graptemys* spp.)

The Friends of Animals, New York Turtle and Tortoise Society, Humane Society of the United States, and International Wildlife Coalition have recommended that the United States submit a proposal to list all map turtles (*Graptemys* spp.) in CITES Appendix II. The United States submitted a proposal to COP10 to include nine of the twelve species of map turtles in Appendix II (and to leave as unlisted the three more common species). The proposal received a majority of votes, but did not receive the two-thirds majority required for adoption (37 votes for and 19 votes against).

The United States now believes that it may be preferable to include all 12 map turtle species in Appendix III, to adequately monitor trade and obtain the advantages of an Appendix-III listing. Listing U.S. native species in Appendix III would improve the regulation, protection, and control of the species in domestic and international trade. The United States does not intend to submit this proposal, but is actively considering whether to include the species in CITES Appendix III. A **Federal Register** notice to that effect may be published in the near future.

12. Southeast Asian softshell turtles (Trionychidae)

Softshell turtles are in the family Trionychidae. There is some scientific disagreement over the number of genera within this family. Some authorities recognize six genera. Other authorities recognize 14 genera, having subdivided the single genus *Trionyx* into eight genera (*Amyda, Apalone, Aspideretes, Dogania, Nilssonia, Palea, Pelodiscus,* and *Trionyx*), six of which are monotypic. For purposes of this notice, we have chosen to recognize fourteen genera.

Fourteen recognized species of Trionychidae occur in southern and southeastern Asia. Of these, three species (listed as *Trionyx*, but considered here to be *Aspideretes*) are listed in CITES Appendix I, and one *Lissemys* species is listed in Appendix II. The Humane Society of the United States and the International Wildlife Coalition have recommended that certain southeast Asian species of softshell turtle be listed in Appendix II. Non-CITES-listed Southeast Asian softshell turtles include *Lissemys scutata, Amyda cartilaginea, Aspideretes leithii, Chitra indica, Dogania subplana, Nilssonia formosa, Palea steindachneri, Pelochelys bibroni, Pelodiscus sinensis*, and *Rafetus swinhoei*. Although investigations have documented that several of these species are utilized for food and are traded internationally, available information on the biological status of the species and the levels and effects of international trade is inadequate to fulfill CITES listing criteria. Thus, the United States does not intend to submit a listing proposal for the Southeast Asian softshell turtles at COP11. We will continue to gather information on the conservation status and status in international trade of these species.

13. North American softshell turtles (*Apalone* spp.)

There are three species of North American softshell turtles. Some authorities place these species in the genus *Trionyx*, others place them in the genus *Apalone*. For purposes of this notice, we have chosen to use the genus *Apalone*. The three *Apalone* species, *Apalone spinifera, A. mutica,* and *A. ferox,* occur in the eastern, southeastern, and Midwestern United States. The Humane Society of the United States and the International Wildlife Coalition have recommended that all three *Apalone* species be listed in Appendix II. The New York Turtle and Tortoise Society has recommended that all North American *Trionyx* be listed in Appendix II. These turtles are threatened by habitat modification and loss, and by harvest for pets and human consumption. Records show that, since the early 1990s, U.S. exports of *Apalone* spp. have been steadily increasing. Few populations of *Apalone* have been well studied, so the effects of harvest on populations is poorly documented. For this reason, the United States does not intend to submit a listing proposal for the North American softshell turtles at COP11. We will continue to gather information on the conservation status and status in international trade of these species.

14. Malaysian giant turtle (*Orlitia borneensis*)

The Malaysian giant turtle occurs in Indonesia (Sumatra and Kalimantan), Malaysia (peninsular, Sarawak, and perhaps Sabah), and perhaps Brunei. The species is not currently listed under CITES, and has not previously been proposed for listing. The Humane Society of the United States and the International Wildlife Coalition have recommended that the Malaysian giant turtle be listed in CITES Appendix II. The limited available data on the status of wild populations appear to indicate that the Malaysian giant turtle is still relatively widespread and common in most of its range. Although anecdotal information indicates that Indonesian exports of this species for food have increased substantially in recent years, quantitative data are lacking. Because available information on the biological status of the species and the levels and effects of international trade is inadequate to fulfill CITES listing criteria, the United States does not intend to submit a listing proposal for the Malaysian giant turtle at COP11. We will continue to gather information on the conservation status and status in international trade of this species.

15. Burmese roofed turtle (*Kachugu trivittata*)

The Burmese roofed turtle is known only from the Salween and Irrawaddy River basins in Burma/Myanmar. The Humane Society of the United States and the International Wildlife Coalition have recommended that the Burmese roofed turtle be listed in CITES Appendix II. Virtually nothing is known of the status of the species in the wild, and very little information is available on current levels of exploitation of the species. Because available information on the biological status of the species and the levels and effects of international trade are inadequate to fulfill CITES listing criteria, the United States does not intend to submit a listing proposal for the Burmese roofed turtle at COP11. We will continue to gather information on the conservation status and status in international trade of this species.

16. Red-eared slider (*Trachemys scripta elegans*)

The red-eared slider occurs in the Mississippi River drainage from Illinois to the Gulf of Mexico and from eastern New Mexico to Tennessee and Alabama. The species is not currently listed under CITES. The International Wildlife Coalition and the New York Turtle and Tortoise Society have recommended that the red-eared slider be listed in Appendix II. The red-eared slider is probably the most commonly kept pet turtle in the United States. Red-eared sliders are also exported in large numbers as pets and food items. A number of turtle farms in the southern United States produce large quantities of sliders for the pet and food industries. These farms remove adult females from the wild each year to replace breeding stock. Additional adults are removed from the wild for international trade. Despite these harvests, we are not aware of any scientific reports indicating that wild populations are declining over large areas as a result of harvest, or that current levels of harvest are unsustainable. Thus, the United States does not intend to submit a listing proposal for the red-eared slider at COP11.

17. Beaded lizard and Gila monster (*Heloderma* spp.)

The beaded lizard occurs in Mexico and Guatemala, whereas the Gila monster occurs in the southwestern United States and northern Mexico (Sonora and Sinaloa). Both species have been listed in CITES Appendix II since 1975. The Humane Society of the United States and the International Wildlife Coalition have recommended that these species be transferred to Appendix I. Legal collection of both species is regulated in the United States and Mexico. The major threat to the species appears to be illegal commercial trade resulting from the high demand (and, therefore, high value) among collectors, although there are also localized habitat threats. There are few reliable data on the status of wild populations of either species, although both are considered relatively stable in most of their respective ranges. The Gila monster has been assigned a rank of G4 in The Nature Conservancy's Global Conservation Status ranking system. The G4 category is "Apparently Secure." The species is considered uncommon, but not rare, and is usually widespread. Therefore, an Appendix-I listing does not appear to be warranted for either species at the present time. The United States does not intend to submit an Appendix I listing proposal for *Heloderma* spp. at COP11.

18. Orange-throated whiptail lizard (*Cnemidophrus hyperythrus*)

The orange-throated whiptail lizard is limited to extreme southwestern California, Baja California, Mexico, and some islands off Baja California. This species was listed in Appendix II of CITES in 1975. The International Affairs Committee of the IAFWA has recommended that this species not be listed under CITES. The Humane Society of the United States and the International Wildlife Coalition have recommended that the species be retained in Appendix II. The primary threat to this species is loss of suitable, contiguous habitat in southern California, particularly in San Diego County, as a direct result of urban, commercial, and agricultural development. Habitat threats are exacerbated by ongoing commercial collection. However, the magnitude and extent of the threat posed by international trade has not, as yet, been adequately determined. As such, the United States believes that information is inadequate to warrant the submission of a proposal to delist the orange-throated whiptail lizard at COP11, and does not plan to propose any change to its CITES listing status.

19. Chuckwalla (*Sauromalus obesus*)

The chuckwalla is found in the deserts of the southwestern United States (southeastern California, southern Nevada, southern Utah, western Arizona) and northwestern Mexico. The chuckwalla is not currently listed under CITES, nor has it ever been proposed for listing. The Humane Society of the United States and the International Wildlife Coalition have recommended that the species be listed in Appendix II. The chuckwalla has a moderately large range, and the overall population is considered to be stable within that range. The species has been assigned a rank of G5 in The Nature Conservancy's Global Conservation Status ranking system. The G5 category is "Secure." The species is considered to be common, typically widespread, and abundant. Although localized habitat damage is occurring within its range, that damage is not considered extensive enough to pose a threat to the chuckwalla. The primary threat to this species appears to be increased commercial harvest in specific areas (e.g., Nevada). However, over much of its range harvest is either prohibited or restricted to small numbers of specimens, and overall the species does not appear to be threatened by legal commercial harvest. Thus, an Appendix-II listing for chuckwalla does not appear to be warranted at present, and the United States does not intend to submit this proposal at COP11.

20. Desert iguana (*Dipsosaurus dorsalis*)

The desert iguana is found in the creosote-bush deserts of the southwestern United States (southeastern California, southern Nevada, southern Utah, western Arizona) and northwestern Mexico. The desert iguana is not currently listed under CITES, nor has it ever been proposed for listing. The Humane Society of the United States has recommended that the species be listed in Appendix II. The desert iguana has a moderately large range, being found almost everywhere that creosote bush is found. The species is considered abundant throughout that range. The species has been assigned a rank of G5 in The Nature Conservancy's Global

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Conservation Status ranking system. As with the chuckwalla, the desert iguana is threatened by habitat loss and degradation in localized portions of its range, and by increased commercial harvest in specific areas (e.g., Nevada). Overall, however, the desert iguana does not appear to be threatened by legal commercial harvest. Thus, an Appendix-II listing for the desert iguana does not appear to be warranted at present, and the United States does not intend to submit this proposal at COP11.

21. Desert collared lizard (*Crotaphytus bicinctores*)

The desert collared lizard has a wide distribution extending from southeastern Oregon and southern Idaho south through northeastern California, the Great Basin of Nevada, and western and lowland central Utah to southeastern California and western Arizona. The desert collared lizard is not currently listed under CITES, nor has it ever been proposed for listing. The Humane Society of the United States has recommended that the species be listed in Appendix II. Habitat loss and degradation, and localized commercial collection threaten this species. However, overall, the desert collared lizard appears to be common, stable in distribution and population numbers, and not threatened by legal commercial harvest. The species has been assigned a rank of G5 in The Nature Conservancy's Global Conservation Status ranking system. Thus, an Appendix-II listing for the desert collared lizard does not appear to be warranted at present, and the United States does not intend to submit this proposal at COP11.

Birds

22. Black-billed parrot (*Amazona agilis*)

The black-billed parrot is endemic to humid forests in the mountainous regions of Jamaica. This species was proposed by Germany for transfer to Appendix I at COP10. That proposal was supported by the United States, but was withdrawn by Germany because it was claimed that an Appendix-I listing might actually stimulate illegal trade in the species by increasing its desirability as a rare species. We have no evidence that such a claim can be proven for any species. However, the species has been subject to little trade while listed in Appendix II. Data from WCMC for 1990–1997 indicate that only eight specimens were traded, and those were captive-bred. Therefore, although we believe that the species meets the biological criteria for listing in Appendix I, resource considerations and the lack of discernible trade in this species do not warrant a priority effort to propose a listing, and the United States does not plan to submit such a proposal at COP11.

23. Yellow-headed parrot (*Amazona oratrix*)

The yellow-headed parrot is found primarily in Mexico, although it also occurs in Belize, and it has been found recently in Guatemala. We considered a similar proposal to transfer this species from Appendix II to I at COP10, but consultation with Mexico, the primary range country for the species, revealed that they did not support such a proposal even though they supported a similar proposal for the red-crowned parrot (*Amazona viridigenalis*). From various discussions and meetings with CITES authorities in Mexico, we are aware of efforts in that country to better control domestic trade in indigenous birds, as well as the fact that Mexico prohibits the export of any native species unless their export is part of an approved community-based, sustainable-use management plan. In part because the yellow-headed parrot is currently a potential candidate species for a sustainable-use program, Mexico does not support the transfer of this species to Appendix I. We acknowledge that this species is a popular cage bird and has been subject to significant illegal trade between the United States and Mexico; however, U.S. and Mexican wildlife law enforcement personnel already devote significant effort to interdiction of illegal trade in this and other parrot species, and it is doubtful that these enforcement efforts would be affected by transfer of the species to Appendix I. Therefore, the United States does not plan to submit a proposal for this species, but will continue to consult with Mexico on its status.

24. Rimatara or Kuhl's lorikeet (*Vini kuhlii*)

Vini kuhlii is a small nectivorous parrot that occurs primarily on the island of Rimatara in French Polynesia and on remote islands of Kiribati, where it has been introduced. The total population is estimated to be about 3,500 birds and the species is classified as Endangered by IUCN. The primary threat to the species is predation by rats. There is little to no trade in the species. Although one live specimen was reported to exist in the United States when the species was considered for transfer to Appendix I at COP10, trade data from WCMC for 1990 to 1997 (the most recent year for which data are available) show that no specimens of this species were traded during this period. This species was proposed by Germany for transfer to Appendix I at COP10, but the proposal was rejected. Although we concur that the species qualifies for an Appendix-I listing on biological grounds, because of the lack of trade pressure as well as the prohibition on imports of wild-caught birds by importing countries, it is doubtful that such a proposal would be given priority consideration by the Parties at COP11. Therefore, the United States does not plan to submit a proposal for this species.

25. Tahitian lorikeet (*Vini peruviana*)

The Tahitian lorikeet is another small nectivorous parrot that has a fairly wide, irregular distribution in Southeast Polynesia. It occurs on various islands in French Polynesia and various other island groups, including the Cook Islands of New Zealand, where it was probably introduced. The species is classified by IUCN as Vulnerable, and wild populations are stable, increasing, or decreasing, depending on the subpopulation in question. The primary threat to the species is rat predation, and although the species is protected in parts of its range, some collection for keeping of pets may occur locally. Low levels of illegal trade are alleged to occur, but documentation of recent occurrences is lacking. During 1980–1992, only 14 birds were traded legally, and none since 1991. This species was proposed by Germany for transfer to Appendix I at COP10, but the proposal was rejected. The species qualifies for an Appendix-I listing on biological grounds, but because of the lack of trade pressure and protected status in parts of its range, as well as the prohibition on imports of wild-caught birds by importing countries, it is doubtful that such a proposal would be given priority consideration by the Parties at COP11. Therefore, the United States does not plan to submit a proposal for this species.

26. Ouvea horned parakeet (*Eunymphicus cornutus uvaeensis*)

The Ouvea horned parakeet is one of two subspecies of the horned parakeet (*Eunymphicus cornutus*) endemic to the French territory of New Caledonia in the South Pacific Ocean. This subspecies is found only on the Island of Ouvea and has a population estimated in 1993 at around 600 birds. This subspecies was proposed by Germany for transfer from Appendix II to I at COP10, but the proposal was withdrawn. The United States opposed Germany's COP10 proposal for this subspecies because the two subspecies of horned parakeets are extremely similar and occur in the same jurisdiction, and we believed that the proposed split-listing would be practically unenforceable and would be inconsistent with Annex 3 of CITES Resolution Conf. 9.24, which discourages the listing of a species in more than one Appendix because of enforcement difficulties that could result. Our position on the split-listing of this species has not changed. Therefore, the United States does not intend to propose the Ouvea horned parakeet for transfer to Appendix I at COP11.

27. Northern helmeted curassow (*Pauxi pauxi*)

The northern helmeted curassow is a gallinaceous bird that occupies very dense, wet, cool montane forest in northern Venezuela and adjacent areas of Colombia. The Netherlands proposed this species for inclusion in Appendix II at COP10, but withdrew the proposal. According to that proposal, the species was formerly common within its range in Venezuela, but its status in the Andes along the Colombia-Venezuela border and in adjacent areas of Colombia is unknown. The species is threatened by habitat loss and indiscriminate hunting (even in protected areas) in the range countries. The species has declined considerably from the 1950s to the present time. The total population is estimated at fewer than 2,500 mature individuals and severely fragmented, although good information is lacking on the population in Colombia. Trade data included in the proposal for COP10 showed that a total of 10 specimens were traded internationally from 1980 to 1992. The species was listed in Appendix III by Colombia in 1988, so trade data prior to listing may be incomplete. However, according to information reported by WCMC for the period 1990–1997, only 20 specimens were exported, 12 of which were captive-bred. Published conservation assessments do not mention international trade as a factor affecting the species. Considering that international trade does not appear to be a significant factor affecting the species, and such trade is monitored because of the Appendix-III listing, the United States does not believe that the species warrants inclusion in Appendix II at this time and does not intend to submit such a proposal at COP11.

28. Horned curassow (*Pauxi unicornis*)

The horned curassow is a poorly known gallinaceous bird that inhabits dense forest in areas of heavy rainfall and rugged terrain in Bolivia and Peru. The Netherlands proposed this species for inclusion in Appendix II at COP10, but withdrew the proposal; neither the species nor any population is listed in any other Appendix. According to the Netherlands' proposal, threats to the species include habitat loss to development and hunting for food as well as for making handicrafts from the head and "horn." The Amboró National Park, Bolivia, is an apparent stronghold for the species, and it is believed that improved enforcement of its protected status in the park has resulted in a population increase there, although threats to the park exist from timber extraction and other habitat losses, and funding shortages could reduce enforcement and result in a decline of the species. Published conservation assessments of this species do not mention international trade as a factor affecting the species. Considering that international trade does not appear to be a significant factor affecting the species, the United States does not believe that the species warrants inclusion in Appendix II at this time and does not intend to submit such a proposal at COP11.

29. Turacos (*Musophagidae spp.*)

Turaco species not currently included in any CITES Appendix include the Ruwenzori turaco (*Musophaga johnstoni* [=*Ruwenzornis johnstoni*]), Ross' turaco (*Musophaga rossae*), the grey go-away bird (*Corythaixoides concolor*), the bare-faced go-away bird (*Corythaixoides personatus*), the white-bellied go-away bird (*Corythaixoides leucogaster*), and eastern grey plaintain-eater (*Crinifer zonurus*). The great blue turaco (*Corythaeola cristata*), the western grey plaintain-eater (*Crinifer piscator*), and the violet turaco (*Musophaga violacea*) are listed in Appendix III by Ghana. All other musophagid species are included in Appendix II. None of the unlisted species are considered threatened, and are described as frequent to locally common, common, or even abundant in the wild. Some species, such as the grey go-away bird, are considered agricultural pests. All of them have extensive multi-national distributions except for the Ruwenzori turaco, which is restricted to the Ruwenzori Mountains of eastern Democratic Republic of the Congo, southwestern Uganda, Rwanda, and Burundi, although this species is also considered common within its range. The proponents for this listing proposal provided information on trade in some of these species from Tanzania, but acknowledged that Tanzania has imposed species-specific export quotas on all indigenous birds. A review of trade data on similar listed species suggests that the numbers of wild-caught birds in international trade peaked in the early 1990s, but has declined to relatively low levels since (1990–1997 trade data from WCMC for great blue turaco, violet turaco, and western grey plaintain-eater). None of these species are listed by IUCN. Therefore, the United States does not consider that listing is warranted at this time and does not intend to submit such a proposal at COP11.

Mammals

30. All bears (Ursidae spp.)

The Animal Welfare Institute has recommended that the CITES listing for Appendix-II bear species be annotated to allow trade only in sport-hunted trophies, meat, hides, paws, and live animals to appropriate and acceptable destinations. We do not believe that such an annotation is appropriate at this time, especially given our concern over the use of annotations in the Appendices and our desire to focus on adoption of the draft resolution related to the use of annotations (see previous discussion in this Notice). Therefore, the United States does not intend to submit this proposal at COP11.

31. Walrus (*Odobenus rosmarus*)

Walruses occur primarily in coastal waters of the Arctic Ocean and adjoining seas. The species is presently listed in Appendix III of CITES (included by Canada) and receives extensive protection in the United States under the Marine Mammal Protection Act (MMPA). Friends of Animals has recommended that we propose to include the walrus in CITES Appendix II. The MMPA allows non-wasteful take of walruses by Alaskan Natives for subsistence purposes and for the creation of authentic native articles of handicrafts and clothing, but limits legal international trade of walrus products for the most part to handicraft items. Population surveys are conducted jointly with Russia at 5-year intervals. There is no evidence of dramatic change in walrus populations in recent years due to international trade, and the legal take has remained stable. A small number of unfortunate poaching incidents have resulted in mortality that, while locally dramatic in some cases, does not represent a significant impact on the walrus population of Alaska. Although there is a possibility that some poached ivory finds its way into illegal international trade, there is no evidence to suggest that the volume warrants additional CITES controls. Thus, both on biological and trade

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grounds, the walrus in the United States does not meet the criteria for inclusion in CITES Appendix II. Therefore, the United States does not intend to submit a proposal for walrus at COP11.

32. African elephant (*Loxodonta africana*)

We received a recommendation from Friends of Animals and the International Wildlife Coalition to transfer the Appendix-II populations of the African elephant to Appendix I, in part due to alleged irregularities in the annotations. The African elephant populations of Botswana, Namibia, and Zimbabwe were transferred from CITES Appendix I to II at COP10, with annotations that allow for trade in certain parts and products only. All other populations of African elephants (and all Asian elephants) remain in Appendix I. The annotation authorizes the non-commercial exports of hunting trophies, and commercial exports of live animals to "approved destinations," and (from Zimbabwe only) hides, worked leather goods, and worked ivory; it also allows for resumption of a limited trade in stockpiled ivory if, and only if, certain conditions are met and approved by the CITES Standing Committee. The Standing Committee has since agreed that those conditions have been met, and the sales of ivory stockpiles from Botswana, Namibia, and Zimbabwe to Japan have taken place. The CITES Secretariat and CITES Parties (through the Standing Committee) must now monitor the implementation and enforcement ramifications of that sale, and any impact on elephant populations.

The United States was unable to support the proposed transfer of these three populations from Appendix I to II, and the limited sale of stockpiles, because of concerns that poaching and illegal ivory trade could increase in other range countries, and more specific concerns over the lack of agreed procedures among the Parties about the adoption and implementation of annotations. However, the United States respects the decision of the Parties and is working constructively with all interested Parties to see Decision 10.1 and Resolution Conf. 10.10 implemented properly. The United States considers that effective implementation of this decision is critical to the future of African and Asian elephant conservation and vital to the continued effective implementation of CITES.

The United States agrees with many of the concerns expressed by these commenters and others about the annotated African elephant downlisting. The United States believes that the generic problem of procedures for developing and implementing annotations to the Appendices is of the highest priority for the next meeting of the Conference of the Parties. We agree that the annotations and associated decisions for the African elephant are confusing and difficult to implement in some cases. The highest priority should be placed on refining the process of using annotations when transferring species or populations from Appendix I to II, including implementation and interpretation of such annotations and related decisions. The United States prefers to work through the resolution process at the COP, however, rather than submit a proposal to rescind the current African elephant annotation.

33. Pigtailed macaque (Macaca nemestrina)

The pigtailed macaque occurs in Southeast Asia (Burma/Myanmar, Cambodia, southern China, India, Indonesia, Laos, Malaysia, Thailand, and Vietnam). The species is currently listed in CITES Appendix II. The International Wildlife Coalition has recommended that the pigtailed macaque be transferred to Appendix I. This species is in international trade, apparently as a result of its use in biomedical research. However, available information on the biological status of the species and on the levels and effects of international trade is inadequate to fulfill the CITES listing criteria for transfer to Appendix I. Therefore, the United States does not intend to submit a listing proposal for the pigtailed macaque at COP11.

E. On which additional species proposals does the United States seek additional information and consultations?

The United States seeks additional information and consultations on the following proposals. We welcome your comments, especially any biological and trade information on these species. For each species, more detailed information is available in the Office of Scientific Authority than is presented in the summary below.

Fish

1. Southern bluefin tuna (Thunnus maccoyii)

A proposal to list this species in Appendix II is reportedly being considered by one or more Party countries. The United States is seeking additional information about the conservation status of this species and whether it qualifies for listing in the CITES Appendices, as a means of developing additional information on the species prior to COP11.

Southern bluefin tuna are large, highly migratory, pelagic fish that inhabit portions of the Pacific, Atlantic, and Indian Oceans in the Southern Hemisphere. Their only known spawning ground is located south of Java, Indonesia, and northwest of Australia. After metamorphosis, juveniles leave the spawning and nursery area and migrate along the west coast of Australia, inhabiting coastal waters of southwest, south, and southeast Australia. As fish reach maturity, they extend their ranges to the circumpolar regions.

Some researchers have estimated that the total Southern bluefin tuna population declined by 50% between 1960 and 1966, and then 30–57% between 1966 and 1991. By 1994, estimated adult population size had fallen 80–94% below 1966 levels. Some recent assessments indicate that numbers of adults may have increased between 1991 and 1994. Further analyses of all these estimates and assessments are warranted. The World Conservation Union (IUCN) classified the Southern bluefin tuna as "critically endangered" in its 1996 IUCN Red List of Threatened Animals. According to the IUCN criteria, a species is considered to be critically endangered when it is facing an extremely high risk of extinction in the wild in the immediate future.

Southern bluefin tuna are very valuable and are exploited for the Japanese high-grade sashimi market. Japanese auction prices were $29–$75 per pound in 1998, and markets have developed recently in Taiwan and the Republic of Korea. Principal harvesting nations are Australia, Japan, and New Zealand, with exploitation by Australia and New Zealand in their coastal waters and by Japan on the high seas. The fishery has been active since the 1950s, but the United States does not participate. Illegal fisheries have been documented in Australia's Exclusive Economic Zone (EEZ).

In 1979, Australia declared Southern bluefin tuna fully exploited in the global fishery. Subsequently, an informal trilateral agreement was instituted in 1982 between Australia, New Zealand, and Japan. Management measures from this agreement included voluntary restrictions on catch until management was formalized between the three nations under the Convention for the Conservation of Southern Bluefin Tuna (CCSBT) in May 1994. Commercial landings declined precipitously during the early 1980s, and have remained low because of global total allowable catch (TAC) levels set by CCSBT. Through 1998, CCSBT set annual quotas well below historic high harvest levels. However, quota effectiveness is undermined by rising catches of non-CCSBT fishing fleets. In addition, there has been no agreement among CCSBT members on quotas since 1998, and Japan has instituted experimental fisheries in areas not previously fished that have raised concerns from Australia and New Zealand. Japan claims that these fisheries show evidence of higher stock abundance.

Request for Information and Comments

We invite any information and comments concerning any of the possible COP11 species proposals, resolutions, and agenda items discussed above. You must submit your information and comments to us no later than September 7, 1999, to be ensured of consideration.

Announcement of Public Meeting

We announce that we will hold a public meeting to discuss with you species proposals, proposed resolutions, and agenda items that the United States is considering submitting for consideration at COP11. The public meeting will be held on July 28, 1999, from 1:30 P.M. to 4:30 P.M. in the Large Buffet Room of the Department of the Interior at 18th and C Streets, N.W., Washington, D.C. You can obtain directions to the building by contacting the Office of Management Authority or the Office of Scientific Authority (see **ADDRESSES**, above). The room is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Office of Management Authority or the Office of Scientific Authority as soon as possible.

Observers

Article XI, paragraph 7 of CITES states the following:

"Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote."

Persons wishing to be observers representing international non-governmental organizations (which must have offices in more than one country) at COP11 may request approval directly from the CITES Secretariat. Persons wishing to be observers representing U.S. national non-governmental organizations at COP11 must receive prior approval of our Office of Management Authority. Once we grant our approval, a U.S. national non-governmental organization is eligible to register with the Secretariat and must do so at least one month prior to the opening of COP11 to participate in COP11 as an observer. Individuals who are not affiliated with an organization may not register as observers. An international non-governmental organization with at least one office in the United States may register as a U.S. non-governmental organization if it prefers.

A request submitted to us for approval as an observer should include evidence of technical qualifications in protection, conservation, or management of wild fauna and/or flora, on the part of both the organization and the individual representative(s). The request should also include copies of the organization's charter and/or bylaws, and a list of representatives it intends to send to COP11. An organization that we have previously approved as an observer at a meeting of the Conference of the Parties within the past five years must submit a request but does not need to provide as much detailed information concerning its qualifications as an organization seeking approval for the first time. Organizations seeking approval for the first time should detail their experience in the protection, conservation, or management of wild fauna and/or flora, as well as their purposes for wishing to participate in COP11 as an observer. These requests should be sent to the Office of Management Authority (see **ADDRESSES**, above).

Once we approve an organization as an observer, we will send the organization instructions for registration with the CITES Secretariat in Switzerland, including a meeting registration form and relevant travel and hotel information. Any organization requesting approval for observer status at COP11 will be added to our CITES Mailing List if it is not already included, and will receive copies of all future **Federal Register** notices and other information pertaining to COP11. A list of organizations approved for observer status at COP11 will be available upon request from the Office of Management Authority just prior to the start of COP11. The deadline for registration of an organization as an observer at COP11 is one month prior to the opening of the COP.

Future Actions

We expect the CITES Secretariat to provide us with a provisional agenda for COP11 within the next several months. Once we receive the provisional agenda, we will publish it in a **Federal Register** notice. We will also provide it through our Website.

The United States must submit any species proposals, proposed resolutions, and agenda items for consideration at COP11, to the CITES Secretariat 150 days prior to the start of the meeting (i.e., by November 12, 1999). We will consider all available information and comments, including those presented at the public meeting (see **DATES** above) or received in writing during the comment period, in deciding which species proposals, proposed resolutions, and agenda items warrant submission by the United States for consideration of the Parties. Those we decide to submit for consideration at COP11 will be submitted to the CITES Secretariat by November 12, 1999.

We will publish a **Federal Register** notice approximately four months prior to COP11 announcing those species proposals, proposed resolutions, and agenda items submitted by the United States to the CITES Secretariat for consideration at COP11, and providing a basis for those decisions.

Through a series of additional notices in advance of COP11, we will inform you about preliminary and final (to the extent that we can anticipate the proceedings of the COP) U.S. negotiating positions on resolutions and amendments to the Appendices proposed by other Parties for consideration at COP11. We will also publish an announcement of a public meeting we expect to hold approximately two months prior to COP11, to receive public input on our positions regarding COP11 issues.

Author

The primary authors of this notice are Mark Albert, Office of Management Authority; and Dr. Susan Lieberman and Dr. Kurt Johnson, Office of Scientific Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects

Endangered and threatened species, Exports, Imports, Treaties.

Dated: July 2, 1999.
John G. Rogers,
Director.
[FR Doc. 99–17292 Filed 7–2–99; 11:41 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to maximize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Earthquake Report.

Current OMB approval number: 1028–0048.

Abstract: Respondents supply information on the effects of the shaking from an earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting on landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication "United States Earthquakes".

Bureau form number: 9–3013.

Frequency: After each earthquake.

Description of respondents: State and local employees; and, the general public.

Estimated completion time: 0.1 hours.

Annual responses: 3,500.

Annual burden hours: 350 hours.

Bureau clearance officer: John Cordyack 703–648–7313.

Dated: June 30, 1999.
John R. Filson,
Earthquake Hazards Program Coordinator.
[FR Doc. 99–17241 Filed 7–7–99; 8:45 am]
BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Adult Vocational Training and Employment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of emergency clearance and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) This notice announces that the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs approved an information collection request for emergency clearance under 5 CFR 1320.13. The information collection, Application for Training or Employment Assistance, is cleared under OMB Control Number 1076–0062 through November 30, 1999. We are seeking comments from interested parties to renew the clearance.

DATES: Written comments must be submitted on or before September 7, 1999.

ADDRESSES: Written comments should be sent to Deano Poleahla, Office of Economic Development, Bureau of Indian Affairs, 1849 C Street, NW, MS–4640–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the form, contact Deano Poleahla, (202) 208–2671 (this is not a toll-free number). You may also send requests by facsimile to (202) 208–3664.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pub. L. 84–959 and Pub. L. 88–230 authorize the Department of the Interior, Bureau of Indian Affairs (BIA), to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment. The information collection documents provide information necessary to administer the program for Employment Assistance or Vocational Training. The Department is authorized to undertake a program of vocational training that provides vocational counseling, guidance, and training in any recognized vocation, apprenticeship, trade, or on-the-job training. The program is available to Indians who are not less than 18 years old and not more than 35 years old who reside on or near Indian reservation. The Act authorizes the BIA to enter into contracts or agreements with Federal, State, local government agencies or associations with apprenticeship programs or on-the-job training that leads to skilled employment. The same application form is used for both 25 CFR parts 26 and 27.

II. Request for Comments

The Department of the Interior invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(2) The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

III. Data

(1) *Title of the Information Collection:* The Adult Vocational Training and Employment Assistance Program application form, OMB No. 1076–0062, Expiration date: 12/31/92.

(2) *Type of Review:* Reinstatement of an expired information collection form.

(3) *Summary of Collection of Information:* The collection of information provides pertinent data concerning the individual's training and employment background to determine eligibility for program services.

(4) *Affected Entities:* Individual tribal members residing on or near reservations seeking training and employment assistance services.

(5) *Frequency of Response:* Annually.

(6) *Estimated Number of Annual Responses:* 4,900.

(7) *Estimated Time per Application:* one-half hour.

(8) *Estimated Total Annual Burden Hours:* 2,450.

Dated: June 19, 1999.
Kevin Gover,
Assistant Secretary—Indian Affairs.
[FR Doc. 99–17399 Filed 7–7–99; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–99–1020–24–1 A]

Sierra Front/Northwest Great Basin Resource Advisory Council-Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. Topics for discussion will be Silver Saddle Ranch management plan, including a lunch and field visit at the ranch; mine closures, an update on Standards and Guides, a presentation on the completed Black Rock/Quinn River Population segments of the Lahontan Cutthroat Trout plan, the Black Rock Desert plan, and alternatives for the Fallon Navy environmental impact statement, and riparian assessment and restoration.

All meetings are open to the public. During the Thursday noon visit to the Silver Saddle Ranch, public visitors are invited to bring a picnic lunch, and to join the visit. The public may present written comments to the council. Each formal council meeting will have a time allocated for public comments. The public comment period for the council meeting is listed below. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6000.

DATE, TIME: The council will meet on Thursday, July 29, 1999 from 10:00 a.m. to 5:00 p.m. and Friday, July 30, 1999, from 8 a.m. to 3 p.m., at the Bureau of Land Management Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV, in the main conference room. If due to unforeseeable problems this site is not available, the alternate site of the meeting will be the Nevada State Office, 1340 Financial Blvd, Reno, NV. The dates and times will remain the same. Public comment will be received at the close of each discussion unit, with a general public comment period on Friday, July 30, 1999 at 1:30 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Information Specialist, Carson City Field Office, telephone (702) 885–6000.

Dated: June 24, 1999.
John Singlaub,
Field Office Manager.
[FR Doc. 99–17375 Filed 7–7–99; 8:45 am]
BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1220–00]

Off-Road Vehicle Designation Change; King Range National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designation change.

SUMMARY: Notice is hereby given related to the use of off-road vehicles in accordance with regulations contained in 43 CFR 8341.1(c) and 43 CFR 8342.3. Approximately 3.5 miles of the King Range National Conservation Area (KRNCA) beach area from Telegraph Creek Sec.4, T.5S., R.1E.) to Gitchell Creek (Sec.29, T.4S., R.1E.) are designated "CLOSED" to off-road vehicles. The purpose of this closure is to protect the unique resources and recreational opportunities of the KRNCA coastline and to provide a consistent management approach to the entire west slope of the KRNCA. The entire King Range beach and west slope from the Mattole Campground to Black Sands Beach are now managed for non-motorized, primitive recreation activities. Employees and agents of the BLM may be exempt from these restrictions for administrative or emergency situations as determined by the Field Manager.

EFFECTIVE DATE: July 3, 1999.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) and Plan Amendment was prepared on October 1, 1997 which focused, discussed and analyzed issues and concerns associated with off-road vehicle use within the beach corridor and the efforts of BLM to provide opportunities for both motorized and non-motorized user groups. A Decision Record on the EA and Plan Amendment was signed on September 30, 1998. The BLM received 15 protest letters which were subsequently dismissed by the Director of the BLM on June 17, 1999. The decision of the Director is the final decision of the Department of the Interior.

FOR FURTHER INFORMATON CONTACT: Lynda J. Roush, Arcata Field Manager, 1695 Heindon Road, Arcata, CA 95521, phone (707) 825–2300.

Daniel E. Averill,
Acting Arcata Field Manager.
[FR Doc. 99–17278 Filed 7–7–99; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Northstar Oil and Gas Development Project, Beaufort Sea

AGENCY: Minerals Management Service (MMS).

ACTION: Notice of Adoption of a Final Environmental Impact Statement (FEIS).

SUMMARY: The Northstar development project involves a joint Federal and State managed reservoir in the Beaufort Sea offshore the Alaskan arctic coast. The production facilities and pipeline would be located on State of Alaska submerged lands. Up to six development wells (and a Class II disposal well) could be drilled from a surface location on State submerged lands into the Federal Outer Continental Shelf (OCS). Drilling these wells requires approval of an OCS Development and Production Plan (DPP). The MMS determined in October 1996, that approval of a DPP for the Northstar development project would be a major Federal action warranting preparation of an EIS. The MMS entered into an agreement with the U. S. Corps of Engineers as a cooperating agency for the Northstar EIS. The FEIS, Beaufort Sea Oil and Gas Development/Northstar Project was published on February 5, 1999.

The MMS has determined that the Northstar FEIS is adequate to meet MMS's National Environmental Policy Act needs for the DPP. The FEIS provides a complete and thorough analysis of reasonable alternatives and impacts. The MMS hereby adopts the Northstar FEIS for use in its decision to

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approve, disapprove, or require modification of the proposed DPP. The regulations at 40 CFR 1506.3 contain provisions for a cooperating agency to adopt the environmental impact statement of a lead agency.

ADDRESSES: You may obtain single copies of the FEIS from the Regional Director, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Affairs Office. You may request copies by telephone at (907) 271–6070; 1–800–764–2627; or via e-mail at akwebmaster@mms.gov.

Note: This FEIS is identical to that listed in the Corps of Engineers FR Notice, Vol. 64, No. 24, February 5, 1999, page 5789.

Copies of the FEIS are also available for inspection in the following public libraries:

Tuzzy Consortium Library, Barrow, Alaska
North Slope Borough Office, Barrow, Alaska
Barrow City Office, Barrow, Alaska
Alaska Eskimo Whaling Commission Office, Barrow, Alaska
Nuiqsut City Office, Nuiqsut, Alaska
Kaktovik City Office, Kaktovik, Alaska
Noel Wien Public Library, 1215 Cowels Street, Fairbanks, Alaska
Valdez Consortium Library, 200 Fairbanks Street, Valdez, Alaska
Juneau Public Library, 292 Marine Way, Juneau, Alaska
U.S. Army Corps of Engineers Office, Elmendorf AFB, Alaska
Z.J. Loussac Library, 3600 Denali Street, Anchorage, Alaska
Alaska Resources Library and Information Services, 3150 C Street, Suite 100, Anchorage, Alaska
Minerals Management Service, Resource Center, Room 330, 949 East 36th Avenue, Anchorage, Alaska

Adoption of this FEIS constitutes the MMS Notice on the release and availability of an EIS for MMS's action to approve, disapprove, or require modification of a DPP for the Northstar development project. The MMS will take no action on the DPP for 30 days following the date of this notice. Under 30 CFR 250.204, MMS must approve, disapprove, or require modification of the DPP no later than 60 days after release of the FEIS.

ACTION: Availability of the Environmental Assessment (EA) and finding of no significant impact (FONSI) for the State-approved Oil Discharge Prevention and Contingency Plan.

SUMMARY: The Alaska OCS Region has also written an EA on the Oil Spill Response Plan for the Northstar Development Project on Beaufort Sea Leases OCS Y–0179 and –0181. We have reviewed the Northstar Development and Production Plan (DPP), the FEIS, and the Draft and State-approved versions of the Oil Discharge Prevention and Contingency Plans (Response Plans). Our summary finding is based on the analysis and conclusion of the corresponding EA No. AK 99–01. Based on this assessment, we have concluded that the State-approved Response Plan would mitigate the significant oil-spill impacts listed in the FEIS and would not introduce new significant impacts requiring preparation of an EIS. Therefore, approval of the State-approved Response Plan as part of the DPP would not siguificantly (40 CFR 1508.27) affect the quality of the human environment.

Individual copies of EA No. AK 99–01 and FONSI can be obtained by contacting the Alaska OCS Region at the same address as indicated earlier in this notice, under **ADDRESSES**, for obtaining copies of the FEIS. A copy of EA No. AK 99–01 is available for inspection at the Minerals Management Service, Resource Center. Room 330, 949 East 36th Avenue, Anchorage, Alaska.

FOR MORE INFORMATION CONTACT:
Mr. Paul Stang, Regional Supervisor, Leasing and Environment Division, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4363, (907) 271–6045.

Dated: July 1, 1999.
Carolita U. Kallaur,
Associate Director for Offshore Minerals Management.
[FR Doc. 99–17266 Filed 7–7–99; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Lincoln County, MT in the Possession of the Human Osteology Repository, Department of Anthropology, University of Wyoming, Laramie, WY

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Lincoln County, MT in the possession of the Human Osteology Repository, Department of Anthropology, University of Wyoming, Laramie, WY.

A detailed assessment of the human remains was made by the Human Osteology Repository professional staff in consultation with representatives of the Confederated Salish & Kootenai Tribes of the Flathead Reservation.

During the mid-1970s, human remains representing a minimum of six individuals were removed from private lands adjacent to the U.S.-Canadian border on the eastern banks of the Kootenai River, Lincoln County, MT by Mr. and Mrs. Ronald C. Morgan and Donald Morgan. During the mid-to-late 1970s, these human remains were donated by an unknown anthropology student to the Anthropology Department of the University of Wyoming. In 1994 and 1995, these six individuals were confirmed to be in the collections of the Human Osteology Repository. No known individuals were identified. The four associated funerary objects include a small historic glass button with four holes, an historic white glazed ceramic sherd, a soil sample, and a fragment of a white paste ceramic pipe stem.

Based on skeletal morphology and reported burial associations, these individuals have been identified as Native American. Based on the types of associated funerary objects, these burials are estimated to date to the mid to late-19th century. Cultural affiliation is assessed based on the location of the original interments within historically-defined Kootenai territory. The area of original interment is also located with in the judicially established Indian Lands Claims area of the Kootenai.

Based on the above mentioned information, officials of the Human Osteology Repository, Department of Anthropology, University of Wyoming have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the Human Osteology Repository, Department of Anthropology, University of Wyoming have also determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Human Osteology Repository, Department of Anthropology, University of Wyoming have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Confederated Salish & Kootenai Tribes of the Flathead Reservation.

This notice has been sent to officials of the Confederated Salish & Kootenai Tribes of the Flathead Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Rick L. Weathermon, NAGPRA Contact, University of Wyoming Department of Anthropology Human Osteology Repository, University of Wyoming, P.O. Box 3431, Laramie, WY 82071-3431; telephone: (307) 766–5136, before August 9, 1999. Repatriation of the human remains and associated funerary objects to the Confederated Salish & Kootenai Tribes of the Flathead Reservation may begin after that date if no additional claimants come forward.

Dated: June 29, 1999.
Francis P. McManamon,
Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.
[FR Doc. 99–17365 Filed 7–7–99: 8:45 am]
BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

[A7619 (2430)]

Availability of Draft Director's Order and Draft Reference Manual Concerning Risk Management/ Occupational Safety and Health Management Activities in the National Park Service

AGENCY: National Park Service, Department of Interior.
ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is converting and updating its current system of internal instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public review and comment. Draft Director's Order #50B contains Risk Management Program requirements, policies and responsibilities, and Draft Reference Manual #50B provides additional detailed guidance to NPS personnel engaged in Risk Management/ Occupational Safety and Health management activities.

DATES: Written comments will be accepted through August 1, 1999.

ADDRESSES: Draft Director's Order #50B/ Draft Reference Manual #50B are available on the Internet at http://www.nps.gov/refdesk/DOrders/index.htm. Requests for copies and written comments should be sent to Shirley Rowley, National Park Service, Risk Management Program Office, 14795 W. Alameda Parkway, Denver, Colorado 80228.

FOR FURTHER INFORMATION CONTACT:
Shirley Rowley at (303) 969–2197.

Dated: June 24, 1999.
Richard C. Powell,
Program Manager, WASO Risk Management Program.
[FR Doc. 99–17257 Filed 7–7–99; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–397–400 (Preliminary) and 731–TA–842–845 (Preliminary)]

Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela

AGENCY: United States International Trade Commission.
ACTION: Institution of countervailing duty and antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigations Nos. 701–TA–397–400 (Preliminary) and antidumping investigations Nos. 731–TA–842–845 (Preliminary) under sections 703(a) and 733(a), respectively, of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Iraq, Mexico, Saudi Arabia, and Venezuela of crude petroleum oils and oils obtained from bituminous minerals above or below 25 degrees A.P.I., as provided for in subheadings 2709.00.10 and 2709.00.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of Iraq, Mexico, Saudi Arabia, and Venezuela and to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in these investigations in 45 days, or in this case by August 13, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 20, 1999.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 29, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 29, 1999, by an incorporated consortium of independent domestic crude petroleum oil producers.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in these investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the

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investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 20, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than July 16, to arrange for their appearance. Parties in support of the imposition of countervailing duties and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 23, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 30, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17376 Filed 7–7–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–111 (Review)]

Roller Chain from Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on roller chain from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on July 6, 1998 (63 FR 36440), and determined on October 8, 1998, that it would conduct a full review (63 FR 56048, October 20, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 25, 1998 (63 F.R. 65221). Since all requests by interested parties to appear at the hearing were withdrawn before its scheduled date, no hearing was held in this review.

The Commission transmitted its determination in this review to the Secretary of Commerce on July 1, 1999. The views of the Commission are contained in USITC Publication 3203 (July 1999), entitled Roller Chain from Japan: Investigation No. AA1921–111 (Review).

By order of the Commission.

Issued: July 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17378 Filed 7–7–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–846 through 850 (Preliminary)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe and Tube from the Czech Republic, Japan, Mexico, Romania, and South Africa

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–846 through 850 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Czech Republic, Japan, Mexico, Romania and South Africa of certain seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipe and tube (including redraw hollows), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.30, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to §§ 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in these cases by August 16, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 23, 1999.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 30, 1999, by Koppel Steel Corp, Beaver Falls, PA; Sharon Tube Co., Sharon, PA; U.S. Steel Group, Fairfield, AL; USS/Kobe Steel Co., Lorain, OH; and Vision Metals' Gulf States Tube Div., Rosenberg, TX.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 21, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–205–3184) not later than July 16, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 26, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17379 Filed 7–7–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–851 (Preliminary)]

Synthetic Indigo From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–851 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of synthetic indigo, known commercially as Vat Blue 1, and preparations based thereon, provided for in subheadings 3204.15.10, 3204.15.40, and 3204.15.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 16, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 23, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on June 30, 1999, by Buffalo Color Corp., Parsippany, NJ, and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the investigation and public service list.—Persons (other than

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petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 22, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jozlyn Kalchthaler (202–205–3457) not later than July 20, 1999 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 27, 1999 a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17377 Filed 7–7–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Notice of Public Hearing

This document is a notice of public hearing to be held by the Department of Labor to gather information regarding products that might have been mined, produced, or manufactured by forced or indentured child labor, for the purpose of implementing Executive Order No. 13126 ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor"). This Executive Order was published in the **Federal Register** on June 16, 1999 (64 FR 32383–32385).

The hearing will be held on Tuesday, August 10, 1999, in Room N–3437 at the Department of Labor, 200 Constitution Avenue, NW, Washington, DC, beginning at 9:00 a.m. The hearing will be open to the public. This notice is a general solicitation of comments from the public.

The Department of Labor is now accepting requests from all interested parties to provide oral or written testimony at the hearing. Each presentation will be limited to ten minutes. The Department is not able to provide financial assistance to those preparing written submissions. The Department is not able to provide financial assistance to those wishing to travel to attend the hearing. Those unable to attend the hearing are invited to submit written testimony. Parties interested in testifying at the child labor hearing should call Cortney Oren of the International Child Labor Program, (202) 208–4843 ext. 112, to be put on the roster.

Pursuant to Section 2 of Executive Order No. 13126, and in consultation and cooperation with the Department of the Treasury and the Department of State, the Department of Labor is now taking steps to enable it to "publish in the **Federal Register** a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor." In compliance with the Executive Order, such a list will be published within 120 days of the date of publishing of the Executive Order or no later than October 10, 1999.

The Executive Order provides that "[t]he Department of Labor may conduct hearings to assist in the identification of" products to be included on the list required by the Executive Order. Information provided at the hearing will be considered by the Department of Labor in preparing the list.

Testimony at the hearing should be relevant to the topic of products "mined, produced or manufactured wholly or in part by forced or indentured child labor." With respect to industries where forced or indentured child labor may occur, but where programs have been implemented to eliminate child labor, the Department is also seeking testimony regarding the effectiveness of such programs.

Under section 6(c) of the Executive Order, "forced or indentured child labor" is defined as:

> all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

This definition is consistent with the Tariff Act of 1930, 19 U.S.C. 1307.

Among the products and countries that may be examined by the Department are those mentioned in the following Department of Labor reports on child labor: By the Sweat and Toil of Children (Volume I): The Use of Child Labor in U.S. Manufactured and Mined Imports, and By the Sweat and Toil of Children (Volume II): The Use of Child Labor in U.S. Agricultural Imports and Forced and Bonded Child Labor. These reports can be accessed on the Internet at *http://www.dol.gov/dol/ilab/public/media/reports/childnew.htm* or can be obtained from the International Child Labor Program. The Department of Labor will examine other recent developments, including additional products and countries where forced and indentured child labor has been identified as a problem.

DATES: The hearing is scheduled for Tuesday, August 10, 1999. The deadline for being placed on the roster for oral testimony is 5 p.m. on August 3, 1999. Presenters will be required to submit five (5) written copies of their oral testimony to the International Child Labor Program by 5 p.m., August 3, 1999. The record will be kept open for additional written testimony until 5 p.m., August 17, 1999.

ADDRESSES: Written testimony should be addressed to the International Child Labor Program, Bureau of International Labor Affairs, Room S–5303, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, fax: (202) 219–4923.

FOR FURTHER INFORMATION CONTACT: Cortney Oren, International Child Labor Program, Bureau of International Labor Affairs, Room S–5303, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 208–4843; fax (202) 219–4923. Persons with disabilities who need special accommodations should contact Cortney Oren by August 3, 1999.

All written or oral comments submitted pursuant to the public hearing will be made part of the record of review referred to above and will be available for public inspection.

Signed at Washington, DC, this 30th day of June, 1999.

Andrew J. Samet,

Deputy Under Secretary for International Labor Affairs.

[FR Doc. 99–17239 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 7th day of June, 1999.

Linda G. Poole,

Progrom Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/07/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,340	Beartrack Mine (Co.)	Salmon, ID	05/20/1999	Dore Metal.
36,341	Nortel (Wkrs)	Res. Triangle Pk, NC	05/04/1999	Wireless Products.
36,342	Kern Manufacturing (Co.)	Albion, IL	05/11/1999	Bras.
36,343	California Webbing (Wkrs)	Los Angeles, CA	05/04/1999	Safety belts.
36,344	Crysteco, Inc. (Co.)	Wilmington, OH	05/25/1999	Silicon wafers.
36,345	Thomas and Betts (Co.)	Vidalia, GA	05/22/1999	Safety Switches.
36,346	Green River Steel (USWA)	Owensboro, KY	05/03/1999	Steel.
36,347	Great River Insurance (Wkrs)	Meridian, MS	05/19/1999	Insurance Underwriters.
36,348	Burlington Industries (Wkrs)	Greensboro, NC	05/22/1999	Textured Polyester.
36,349	Alliance Leather (UNITE)	Johnstown, NY	05/21/1999	Leather.
36,350	Hewlett Packard (Co.)	Roseville, CA	05/21/1999	Personal Computers.
36,351	National Wood Products (Co.)	Glasgow, KY	05/17/1999	Wooden Brush Blocks.
36,352	Bain Industries (Co.)	Ft. Worth, TX	05/18/1999	Shaped Charge Cases.
36,353	Gdynia America Line (Co.)	Elizabeth, NJ	05/19/1999	Stream Ship Line.
36,354	Rama Group of Co. (Co.)	Cheektowaga, NY	05/20/1999	Printing, Publishing & Distribution.
36,355	Cresthill Industries (Co.)	Yonkers, NY	05/20/1999	Buttons.
36,356	Chippen Hook (Wkrs)	McAllen, TX	05/05/1999	Jewelry Boxes.
36,357	Golden Sunlight Mines (Co.)	Whitehall, MT	05/24/1999	Precious Metals.
36,358	New England Audio (NEAR) (Co.)	Lewiston, ME	05/26/1999	Indoor and Outdoor Speakers.
36,359	Motorola (Wkrs)	Austin, TX	05/24/1999	Semiconductor (chips).
36,360	Super Steel Schenectady (Wkrs)	Glenville, NY	05/10/1999	Locomotives.
36,361	Alta Gold Griffon Mine (Wkrs)	Ely, NV	05/06/1999	Gold.
36,362	AMP, Inc. (Wkrs)	Middletown, PA	05/22/1999	Electronic Connectors.
36,363	ABB Daimler Benz (Co.)	Elmira Heights, NY	05/24/1999	Mass Transit Rail Vehicles.
36,364	SWACO—Drilling Fluids (Comp)	Houston, TX	03/24/1999	Drilling Fluids.

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[FR Doc. 99–17289 Filed 7–7–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,399 TA–W–35,399A, TA–W–35,399B, TA–W–35,399C, TA–W–35,399D, TA–W–35,399E and TA–W–35,399F]

The Boeing Company, Seattle, WA, in the following locations: Puget Sound Region, WA, Wichita, KS, Philadelphia, PA, Tulsa, OK, Mcalester, OK, Oak Ridge, TN; Negative Determination Regarding Application for Reconsideration

By application dated May 12, 1999, the International Association of Machinists & Aerospace Workers (IAM&AW), District Lodge 751, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of the subject firm was signed on March 23, 1999, and published in the **Federal Register** on May 21, 1999 (64 FR 27810).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition was filed on behalf of workers of the subject firm in Seattle, Washington, Puget Sound Region, Washington, Wichita, Kansas, Philadelphia, Pennsylvania, Tulsa, Oklahoma, Mcalester, Oklahoma and Oak Ridge, Tennessee, engaged in employment related to the production of commercial aircraft at The Boeing Company. Investigation resulted in a negative determination based on the finding that the "contributed importantly" test of the group eligibility requirement of Section 222(3) the Trade Act of 1974, as amended, was not met for the workers engaged in the production of commercial aircraft. The investigation revealed that the predominate cause for layoffs at the subject firm was reduced anticipated orders, resulting from reduced demand for commercial aircraft, including significant lost export sales. Domestic customers of The Boeing Company did not increase their import purchases of commercial aircraft while decreasing orders from the subject firm to such a degree as to represent an important contributing factor. Overall, the subject firm experienced increasing sales in 1998 which was forecast to continue in 1999.

The District Lodge 751 assert that members and workers at The Boeing Company are impacted by completion from Airbus in addition to the subcontracting to foreign suppliers for components. The application contained information addressing the commercial aircraft industry and included charts comparing Boeing and Airbus orders and expected deliveries. The petitioner asserts that despite a record number of deliveries by Boeing in 1999, Airbus continues to gain market share. The petitioner adds that Boeing is beginning the downsizing process in anticipation of decline in market share. Loss of global market share as emphasized by the petitioners is not a basis for worker group certification under the Trade Act of 1974. The materials submitted by the IAM&AW did not contain information that was not previously considered in the petition investigation.

As to the impact of sourcing foreign parts, the Department found no evidence that foreign sourcing was a relevant factor in the separation of workers.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 21st day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–17286 Filed 7–7–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,135, 135F & 135G]

Computalog Wireline Services; Hays, Kansas and Operating at Various Locations in the Following States; Montana and Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 14, 1998, applicable to workers of Computalog Wireline Services located in Hays, Kansas. The notice was published in the **Federal Register** on December 23, 1998 (63 FR 71166).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that additional worker separations occurred at Computalog Wireline Services operating at various locations in Montana. The company also reports that worker separations will occur at its various locations in Arkansas. Workers at these locations provide services related to the exploration and production of crude oil and natural gas.

The intent of the Department's certification is to provide coverage to all workers of the subject firm adversely affected by increased imports. Accordingly, the Department is amending the certification to expand coverage to workers of Computalog Wireline Services in Montana and Arkansas.

The amended notice application to TA–W–35,135 is hereby issued as follows:

All workers of Computalog Wireline Services, Hays, Kansas (TA–W–35,135) and operating at various locations in Montana (TA–W–35,135F), and Arkansas (TA–W–35,135G) who became totally or partially separated from employment on or after October 9, 1997 through December 14, 2000, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17282 Filed 7–7–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,255]

KCS Resources, Inc. D/B/A/ KCS Mountain Resources, Inc. Worland, Wyoming; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on May 24, 1999, applicable to workers of KCS Resources, Inc., d/b/a KCS Mountain Resources, Inc., Worland, Wyoming. The notice will be published soon in the **Federal Register**.

The Department, on its own motion, reviewed the worker certification. Workers are engaged in employment related to the exploration and production of crude oil and natural gas. On April 6, 1999, the Department issued a certification of eligibility applicable to all workers of KCS Mountain Resources, Inc., Worland, Wyoming, TA–W–35,790. Workers separated from employment with the subject firm on or after February 12, 1998 through April 6, 2001 are eligible to apply for worker adjustment assistance program benefits.

Based on this new information, the Department is terminating the certification for petition number TA–W–36,255. Further coverage for workers under this certification would serve no purpose and the certification has been terminated.

Signed at Washington, DC, this 25th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17283 Filed 7–7–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,982]

Logistix, Medical Division, Fremont, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 5, 1999 in response to a worker petition which was filed on behalf of workers at Logistix, Fremont, California.

The petitioners were not employed at the subject firm location sited, therefore, the petition is not valid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of June 1999.

Linda Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17285 Filed 7–7–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,320 and TA–W–35,320A]

Lucky Star Industries, Baldwyn and Nettleton, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 23, 1999, applicable to all workers of Lucky Star Industries, Baldwyn, Mississippi. The notice was published in the **Federal Register** on May 21, 1999 (64 FR 27811).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations occurred at the Nettleton, Mississippi facility of Lucky Star Industries in April and May, 1999. The workers are engaged in employment related to the production of jeans. Accordingly, the Department is amending the certification to cover workers of Lucky Star Industries, Nettleton, Mississippi.

The intent of the Department's certification is to include all workers of Lucky Star Industries adversely affected by increased imports.

The amended notice applicable to TA–W–35,320 is hereby issued as follows:

All workers of Lucky Star Industries, Baldwyn, Mississippi (TA–W–35,320) and Nettleton, Mississippi (TA–W–35,320A) who became totally or partially separated from employment on or after November 24, 1997 through March 23, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–17281 Filed 7–7–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,086]

North Star Steel Texas, Inc. Including Workers of International Mill Service Beaumont, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 4, 1998, applicable to all workers of north Star Steel Texas, Inc., located in Beaumont, Texas. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 67140).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that employees of International Mill Service, Beaumont, Texas worked at North Star Steel Texas, Inc. to provide slag reclamation from the blast furnaces and other services for steel processing at the Beaumont, Texas facility. Worker separations occurred at International Mill Services as a result of workers separations at North Star Steel Texas, Inc.

Based on these findings, the Department is amending the certification to include workers of International Mill Service, Beaumont, Texas at North Star Steel Texas, Inc., Beaumont, Texas.

The intent of the Department's certification is to include all workers of North Star Steel Texas, Inc. adversely affected by imports.

The amended notice applicable to TA–W–35,086 is hereby issued as follows:

All workers of North Star Steel Texas, Inc., Beaumont, Texas and workers of International Mill Service, Beaumont, Texas engaged in employment related to providing slag reclamation from the blast furnaces and other services for steel processing at North Star Steel Texas, Inc., Beaumont, Texas who became totally or partially separated from employment on or after September 29, 1997 through November 4, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17284 Filed 7–7–99; 8:45 am]
BILLING CODE 4510–30–M

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,212]

Weatherford International, Inc. Longview, TX; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999; in response to a worker petition which was filed on behalf of workers at Weatherford International, Incorporated, Longview, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of June 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17288 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03180]

Federal-Mogul Friction Products Division, Manila, AR; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 18, 1999 in response to a petition filed on behalf of workers at Federal-Mogul, Friction Productions Division, located in Manila, Arkansas (NAFTA–3180).

The petitioning group of workers is subject to a certification signed on June 16, 1999 (NAFTA–3206) and that will remain in effect for two years from that date.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of June 1999.

Linda Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17287 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—03129]

Lee Textile, Incorporated, Ewing, VA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 28, 1999 in response to a petition filed on behalf of workers at Lee Textile, Incorporated, located in Ewing, Virginia (NAFTA–03129).

The petitioner has requested that the petition be withdrawn, Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 30th day of June 1999.

Linda Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17280 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–5]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (1218–0176)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. The Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for current paperwork requirements of 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses (less 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents and 1904.17, Annual OSHA Injury and Illness Survey of Ten or More Employers). The Agency is in the process of revising these recordkeeping requirements and expects to implement a revised injury and illness recordkeeping system next year. However, if the Agency is unable to attain this goal, it will need to continue the current injury and illness recordkeeping system. For this reason, OSHA will request OMB reauthorization of the existing part 1904 under the PRA, and is asking for public comment on burden estimates, practical utility, and other paperwork issues concerning OSHA's existing recordkeeping requirements.

DATES: Written comments must be submitted on or before September 7, 1999.

Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–99–5, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–2350. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Barbara Bielaski at (202) 693–2444. For electronic copies, contact OSHA's Web Page on the Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The OSHA Act and 29 CFR Part 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to provide workers a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country.

The data also provides information to employers and employees of the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, employers who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. This would generally raise the overall level of safety and health in the workplace.

OSHA currently has approval from the Office of Management and Budget (OMB) for information collection requirements contained in 29 CFR part 1904. That approval will expire on December 31, 1999, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's estimates, which are based upon the most current data available, and to comment on their accuracy or appropriateness in today's workplace situation.

29 CFR 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents (OMB control number 1218–0007) and 29 CFR 1904.17, Annual OSHA Injury and Illness Survey of Ten or More Employees (OMB control number 1218–0214) are each under separate Information Collection Request (ICR) packages.

II. Current Actions

This notice requests public comment on an extension of the current OMB approval of the paperwork requirements in 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses.

Type of Review: Extension of currently approved collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Recording and Reporting Occupational Injuries and Illnesses.

OMB Number: 1218–0176.

Agency Number: ICR–99–5.

Frequency: Recordkeeping.

Affected Public: Business or other for-profit; Farms; Not-for-profit institutions; State and Local Government.

Cite/Reference/Form/etc: 29 CFR part 1904; OSHA No. 200; OSHA No. 101.

Number of Respondents: 1,086,264.

Estimated Time Per Respondent: 1.6 hours.

Total Burden Hours: 1,739,157 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: June 29, 1999.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 99–17240 Filed 7–7–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL INSTITUTE FOR LITERACY

Application for Equipped for the Future (EFF) Center for Training, Technical Assistance, and Materials Development

AGENCY: The National Institute for Literacy.

ACTION: Notice.

SUMMARY: The National Institute for Literacy invites applications for a cooperative agreement grant to support integration of EFF standards into existing systems for the delivery of adult education and training. These systems include: adult literacy and basic education programs; Even Start, Head Start, and other family literacy programs; programs offered through LEAs; community-based organizations; community colleges; unions and employee associations; and public and private employers and associations of employers that are helping adults qualify for entry-level employment or meet skill standards developed through voluntary partnerships under the aegis of the Skills Standards Board.

Eligible Applicants: Individual public and private nonprofit organizations and agencies, or consortia of such organizations. While such consortia may include local and for-profit organizations, no grant will be made to either a local or for-profit organization.

Deadline for Transmittal of Applications: 4:30 PM, August 18, 1999.

Available Funds: This award is for a Center that will operate for two to four years, given adequate appropriations and satisfactory performance. Up to $500,000 is available for Year 1, with a comparable amount anticipated for Year 2.

Estimated Number of Awards: One.

Estimated Amount of Award: $500,000 for Year 1. Two years, with an option to renew for up to two additional project periods after completion of first year. Funds are provided under this solicitation for the first year only.

Note to Applicants: This notice is part of a complete application package that also includes: the NIFL Equipped for the Future Orientation Package, the statute authorizing the program, and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR). Taken together, these materials contain all the information, application forms, regulations, and instructions needed to apply for a grant under this competition. The Application and EFF Orientation Package are available on request from Sharyn Abbott, NIFL, EFF information, this grant announcement, and required forms can also be found on NIFL's web site (www.nifl.gov). Required forms are also available on-line at http://www.nifl.gov/activities/.

Grant Administration and Applicable Regulations: The administration of the grant is governed by the conditions of the award letter. The Education Department General Administrative Regulations, (EDGAR) 34 CFR Parts 74; 75.100–102, 104, 112, 117–118, 127–129, 190–192, 201, 217, 231–36, 250–51, 253, 261, 525, 531, 562, 591, 620–21, 700–707; 77; 79; 80; 81; 82; 85; and 86 (36/6/1997 and EDGAR Expanded

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Authorities, 1/27/98), set forth administrative and other requirements. This document is available through your public library, the National Institute for Literacy, and at the following web site (http://www.ed.gov/). It is recommended that appropriate administrative officials become familiar with the policies and procedures in the EDGAR which are applicable to this award. If a proposal is recommended for an award, the Grants Officer will request certain organizational, management, and financial information. Grant administration questions regarding General Requirements, Prior Approval Requirements, Transfer of Project Director, and Suspension or Termination of Award, should be referred to the Grants Officer.

FOR FURTHER INFORMATION CONTACT: Sondra Stein, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006 TEL: 202–233–2041; FAX 202–233–2050, EMAIL sstein@nifl.gov.

For Applications Only Contact: Sharyn Abbott, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006 TEL: 202–233–2026; FAX 202–233–2050, EMAIL sabbott@nifl.gov.

SUPPLEMENTARY INFORMATION: For purposes of this notice, the following definitions apply:

"Literacy" means an individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential (as stated in the Workforce Investment Act of 1998).

"Adult Literacy System" means all individuals, programs, and organizations that are involved, directly and indirectly, in the delivery of literacy and basic skill services to adults. This includes, but is not limited to, people and groups involved in literacy policymaking, research and development, technical assistance, and instructions service delivery.

"Adult Roles" means the following three major arenas of adult life, and the obligations that pertain to each:

- Parent/family member
- Citizen/community member
- Worker

"Constituencies" mean national, state, or local organizations in the public, nonprofit, and private sectors that have a stake in developing standards for particular adult roles because the quality of role performance has an impact on their organization's achievement of its mission and goals.

"Consensus-building" means the explicit, ongoing effort to develop a convincing public argument for the use of "Equipped for the Future" standards by key constituencies, to expand the number of individuals from key constituencies involved in standards development use, marketing, and dissemination, and to enlist key segments of the workforce development system in using the standards at the national, state, and local levels.

"Content Standards" mean specific descriptions of what adults need to know and be able to do to perform the key activities identified in the EFF standards framework. EFF has identified 16 content standards that are critical to adult success.

"Generative skills" mean skills and knowledge that are core to the performance of a wide range of tasks found in multiple roles and that are durable over time in the face of changes in technology, work processes, and occupational demand.

"National Policy Group" means the body of nationally-recognized leaders in literacy and workforce development that provides policy guidance and consensus-building support to the EFF initiative.

"Performance Indicators" mean descriptions of how achievement of the content standards will be demonstrated, and reflect the consensus of key stakeholders for the particular adult role being addressed.

"Purposes for Literacy" mean the following four general purposes, based on NIFL's survey of adult learners, that literacy serves in helping adults fulfill their roles:

- Providing access to information so adults can orient themselves in the world.
- Enabling adults to give voice to their ideas and have an impact on the world around them.
- Enabling adults to make decisions and act independently, without needing to rely on others.
- Building a bridge to the future by laying a foundation for continued learning, so adults can keep up with the world as it changes.

"EFF Standards Framework" means the conceptual system that includes the following: "role maps" that identify the broad areas of responsibility and key activities for each of the primary adult roles—parent/family member, citizen/community member, and worker; "common activities" that are derived from looking at what is common across all three roles; and content standards that define what adults need to know and be able to do to achieve the four purposes and carry out these activities. The EFF standards framework: (1) Is based on a coherent theory of adult learning; (2) communicates what customers, investors, and partners can expect from the adult literacy system; and (3) is explicitly linked to other standards development and implementation efforts.

"Validation" means the demonstration of the degree to which the standards are representative of the important aspects of role performance.

"Workforce Development System" means the sum of public and private programs that share a focus on building the skills and knowledge of youth and adults. These programs include: adult and family literacy programs, welfare-to-work programs, vocational education and training programs, school-to-work programs, industry-based skill standards programs, K–12 education programs, post secondary education programs, Workforce Investment Act programs, community college/post secondary education programs, union and employer-sponsored training programs, apprenticeship programs, one-stop career centers, dislocated worker programs, and related programs in the public, private, and nonprofit sectors.

Background

The National Institute for Literacy (NIFL), was created by the National Literacy Act of 1991 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. NIFL is authorized to carry out a wide range of activities that will improve and expand the system for delivery of adult literacy services nationwide.

Equipped for the Future (EFF) is the National Institute for Literacy's long-term, standards-based, collaborative initiative to reform the adult education system in the United States. EFF's goal is to help adult learning programs achieve results that really matter—to policymakers, educators, employers, and adult learners themselves.

EFF starts with a new definition of results that merges policymakers' goals of a responsible citizenry and a productive workforce with adult learner's vision of how education can help them succeed in their daily lives as workers, parents, citizens, and community members. To enable adults to get more of what they need to be successful, the EFF framework for adult learning shifts the focus in two ways. Instead of presenting education as remedial, making up for something adults didn't get in the past, EFF focuses adult learning on preparation for new, unanticipated responsibilities in the present. Instead of building a curriculum around *acquiring* the same body of knowledge and skills students are expected to learn in K–12 education, EFF focuses teaching and assessment on adults actually *using* a new set of basics in carrying out important life tasks. EFF addresses a major educational problem that has far-reaching implications for the social and economic well-being of the nation. Up to 90 million adults in the U.S.—nearly half the adult population—lack the skills necessary to respond and adapt to the changing demands of their lives at work, at home, and in their communities. Nearly 25 percent of adult with an average of 10 years of formal schooling have no more than *fourth* grade literacy skills. As a prominent literacy researcher put it, "* * * low-literate Americans may now be seen as a chronic feature of the American educational landscape." Their lack of skills contributes to every other serious social and economic problem the nation faces—children's failure in school, lower worker productivity, crime and welfare.

The current adult education system lacks the capacity to serve these adults. Beyond problems of funding and staffing, programs have trouble clarifying their goals for students, and assessing and demonstrating results. These were the findings of a 1995 General Accounting Office report, which linked these problems to the lack of a consistent vision of what is important to teach. Over 50 percent of students drop out before completing sufficient hours of instruction to develop skills that enhance performance of real life tasks. Meanwhile, welfare time limits, combined with a low unemployment rate, increase national pressure for programs to produce better results faster.

Adult educators in America clearly need a new way of doing business—a new sense of mission, a new approach to delivering services, and a new way of assessing program effectiveness. As a customer-driven, standards-based reform movement, EFF provides all three. Based on a customer-defined vision of what adults need to be effective, EFF enables teachers to link curriculum and instruction to real-world outcomes. As a result, students see the connection between their studies and their lives, and get immediate, practical results from their learning. As more and more programs use the EFF Standards to assess progress and report results, policymakers and funders will be able to base their decisions about education on well-documented resulted that matter. And taxpayers will have accountability for the billions of federal dollars being spent on literacy and lifelong learning programs.

History

In the first phase of this initiative, the NIFL developed a common framework of four fundamental purposes for literacy that emerge from the writings of 1,500 adults in literacy programs nationwide. As detailed in the NIFL report, Equipped for the Future: A Customer Driven Vision for Adult Literacy and Lifelong Learning, these four purposes are to—

- Gain access to information so adults can orient themselves in the world.
- Give voice to ideas, so that they will be heard and can have an impact on the world around them.
- Make decision and act independently.
- Build a bridge to the future, by learning how to learn in order to keep up with the world as it changes.

In October 1995, the NIFL awarded eight one-year planning grants as the second phase of this multiyear initiative to assure that adults are "equipped for the future." These planning grants resulted in a draft definition of a standards framework that identifies what adults need to know and be able to do to be effective in their roles as parent/family members, worker, and citizen. The grantees, working with NIFL and its National Policy Group, also developed a common definition of the system reform to be achieved the EFF initiative.

In October 1996, the NIFL awarded three-year grants to three consortia, resulting in further development and refinement of the EFF standards framework, including:

- Development and validation of "role maps" that identify the primary responsibilities and key activities all adults perform in their roles as workers; parents and family members, and citizens and community members, and performance indicators for each activity that enabled us to identify the knowledge and skills required to carry out those activities well.
- Development and validation of content standards that support effective performance across the Three primary adult roles.
- Pilot implementation of the standards in adult education delivery systems.
- Development of a coherent, theory-based framework for assessing competence and defining levels in using the skills defined by the standards in carrying out key roles.
- Building the support of key constituencies for the standards and their use.

This solicitation of grant applications addresses the fourth and final project phase: Implementation of EFF standards as a tool for system reform.

Description of Program

For the past four years, NIFL has been working with a range of partners in states across the country to develop a customer-driven, standards-based, collaborative approach to adult literacy system reform. The EFF content standards developed through this effort define the critical skills and knowledge that enable adults to effectively carry out their responsibilities as workers, parents and family members, and citizens and community members. The standards have been developed and refined with the assistance of a broad cross section of literacy and basic skills programs as well as the advice and guidance of key stakeholders in the nation's workforce development, family literacy, and civic participation movements.

Investment in EFF has been developed through strategic partnerships with states and other systems. These partners now see EFF as providing the framework and tools for system reform that will lead to improvements in practice and produce results that matter. Recognizing the promise of the EFF framework, many EFF partners have begun the process of "bringing EFF on line." They hope to integrate EFF into program improvement strategies now so that, once the levels for standards are defined, assessments are identified, and MIS systems put in place, teachers and programs will be ready to use these tools to measure progress and report results.

By Fall 1999, the NIFL will have completed the major development work on the standards and will publish a Users' Guide, designed to introduce key partners and stakeholders to the standards and how they can be used for teaching and learning, program improvement, accountability, and system reform.

The EFF Center for Training, Technical Assistance, and Materials Development established under this grant program will have primary responsibility for reaching out and establishing strong linkages with these key partners, including adult education, family literacy, welfare-to-work, skill standards voluntary partnerships, and other workforce development systems, and assuring that these partners have the support needed to integrate EFF as part of their effort to prepare their systems to deliver the desired results. The work of this Center will be

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complemented by an EFF Center for Research and Evaluation, based at the University of Tennessee's Center for Literacy Studies (CLS), and a Center for Assessment, currently operated through a contract with the Center for Workforce Development, Institute for Educational Leadership (IEL).

A detailed elaboration of goals and activities to be initiated and/or carried out by the grantee during the period October 1, 1999 to September 30, 2001 follows.

Goals

The primary goal of the Center is to assist NIFL in the effective integration of EFF into 4 key systems:

1. State adult basic education and literacy systems with responsibility for administering state and federal programs for adult education and family literacy and for preparing to meet new performance indicators under TANF and the Workforce Investment Act;

2. State and national literacy volunteer programs that coordinate the delivery of adult literacy and ESOL services through a network of volunteer literacy programs in communities across the country;

3. Federal, regional and state Even Start, Family Literacy, and Head Start programs that are putting in place new performance and quality indicators in response to new state legislation and changing federal legislation; and

4. National and state skill standards partnerships that are in the process of defining the knowledge and skills needed to qualify for entry-level positions in each of the 15 occupational/industrial sectors defined by the NSSB.

NIFL assumes that effective integration into a system starts with the needs of the customer as defined by the customer. It is based on close, ongoing collaboration with the customer, and includes but is not limited to the following:

1. Assistance to policymakers and administrators in developing a plan for how to integrate EFF into their ongoing efforts.

2. Assistance in introducing EFF to a leadership group in the system.

3. Assistance in developing and implementing a training and technical assistance plan for integrating EFF into the system [includes developing marketing materials, training a core of trainers, helping trainers plan and conduct training institutes, providing upgrades as new tools become available, and providing ongoing troubleshooting and technical assistance].

4. Provision of materials and tools that can be used (customized) to implement EFF.

5. Opportunities to share information and experiences with other states and systems integrating EFF.

6. Opportunities for policymakers and practitioners to learn more about EFF (on-line seminars, special institutes, conferences).

In order to achieve this goal, the Center will carry out the following activities:

1. Establish and manage a geographically distributed network of diverse, highly qualified trainers and practitioner-trainers who have expertise to the full range of programs and populations in the adult education system, and who can provide a range of training experiences (one-time workshops, ongoing staff development, mentoring, coaching) critical to integrating EFF into policy and into service delivery, training, and accountability systems. Right now there are approximately 10 part-time trainers and more than 100 practitioners with varying levels of experience in using EFF. The center should build on this base in developing a distributed training network that has the capacity to offer assistance to states nationwide.

2. Establish a system for building and maintaining such a network, including provisions for (a) building the capacity of practitioners to serve as trainers; (b) certifying trainers and training centers; and (c) providing credit for training.

3. Drawing on the experience of programs and systems already using EFF, develop a range of materials and resources that facilitate adoption and use of EFF. Such materials should include: (a) Materials that make explicit the links between EFF and approaches to instruction, assessment, credentialing, and accountability currently in use by key customers; (b) compilations of curriculum and assessment resources for use with EFF; (c) training guides; and (d) templates and other resources that enable programs to create useful, reliable tools for assessing performance of EFF standards.

4. Working with the four key system customers enumerated above, identify needs and develop, actively market, and deliver customized training and technical assistance packages that meet identified needs.

5. Working with practitioners currently using EFF, develop and deliver customized training and technical assistance packages that meet the need for ongoing capacity-building among direct-service programs and local initiatives that have been using EFF. Packages should be designed to address the needs of program administrators as well as teaching staff, and should include materials and training to assist programs in using EFF to identify learner goals; design instruction and assessment, and organize support services to facilitate achievement of these goals; and report and evaluate results.

6. Identifying and supporting high-quality EFF programs that can serve as demonstration sites.

7. Establishing and managing a system for collecting, reviewing, and evaluating materials that have been developed for use in EFF programs, and for packaging and broadly disseminating materials and tools judged to be high-quality. Such a system should: (a) Involve practitioners in design and decision-making; (b) have clear, user-friendly quality guidelines to enable practitioners to judge the quality of their own work; (c) be cost-effective; and (d) use multiple dissemination vehicles (hard copy, video, CD–ROM, on-line) in order to get materials out to as many people as possible, effectively and quickly.

8. Developing and maintaining a system for ongoing evaluation of the Center, including a database that tracks Center activities and their impact on the quality and outcomes of teaching and learning.

9. Working with NIFL to assure that all templates, modules, materials, and tools are designed to be delivered online through NIFL's web-based Literacy Information and Communications System (LINCS), as well as published in hard copy or CD–ROM formats.

10. Assuring that all training, technical assistance, and materials development maximizes the use of individuals, programs, and systems currently using EFF, in accordance with EFF's combined bottom-up/top-down approach to consensus-building and system reform.

11. Working in close collaboration with NIFL and its partners in EFF, the Center for Literacy Studies, the National Center for the Study of Adult Learning and Literacy (NCSALL), and the IEL, to integrate findings from research and practice into Center materials and dissemination work, and to assure a cohesive and integrated approach to system reform.

12. In consultation with NIFL, establishing a national advisory group that includes representatives of the key customers to be served by the Center, key technical expert(s), and key EFF partners. The Center advisory group should meet no less than two times per year and be comprised of individuals who legitimately represent key constituencies and customers whose buy-in is critical to widespread use of Center products.

13. Developing and maintaining partnerships with other training centers and institutions of higher education, publishers and test makers, and developers of distance learning to help them integrate EFF into their work.

14. Participating in quarterly EFF Management meetings in Washington, DC in November 1999, January 2000, March 2000, and July 2000, and on dates to be arranged the following year.

15. Participating in monthly management conference calls of two hours' duration.

16. Maintaining regular e-mail and other contact with other EFF Partners throughout the grant period, in order to maximize sharing of information and assure an integrated approach to system reform.

Project Narrative

The applicant's project narrative should address the above goals, purposes and activities. The narrative should not exceed twenty (20) single-spaced pages, or forty (40) double-spaced pages. It must be organized and contain the information as described in the following sections:

1. Approach

This section should describe the applicant's view of (a) what the goals of EFF are; (b) how the EFF initiative can best achieve these goals; (c) the various roles a center can play in achieving these goals; and (d) the extent to which the applicant's plan includes sound methods for achieving measurable goals.

2. Center Design

This section should describe the applicant's goals and objectives for the Center as an integral part of the EFF system reform initiative, and describe the applicant's vision of how the center can work most effectively to carry out the 16 key activities identified above within a two to three year time span.

This section should also demonstrate that the design is built on technical expertise relevant to the key tasks, as well as knowledge and experience in working with the four key customer systems. It should include detailed descriptions of how the applicant intends to approach key tasks, and what kinds of materials and other resources the applicant would produce for key customers.

3. Plan of Operation

This section includes the project work plan and timeline and project management plan. It describes clear, measurable goals and objectives for the project, and details the project tasks, timeline, staffing, and organization for their accomplishment.

The plan of operation should clearly describe the specific activities the applicant will undertake to implement the design described above, as well as proposed dates for their initiation and completion. The plan also should describe how the applicant will work with NIFL and the EFF Centers for Research and Evaluation and Assessment to assure an integrated approach to system reform, how the applicant will assure the investment of key constituencies in its work, and how constituents will be involved in key project development, implementation, marketing/dissemination, and validation tasks.

The plan of operation should detail the project's staffing and organization, clearly identifying the performance objectives of key staff, the scope and nature of their responsibilities, and the level of effort each staff person will devote to this project.

4. Organizational Capability

This section should demonstrate the ability and experience of the applicant to perform the tasks required in this project, including the applicant's skills, technical expertise, and experience in providing training and technical assistance and developing materials and resources appropriate to the needs of diverse constituencies at the national, state, and local levels. In the case of a consortium, this section should also describe how the various organizations that comprise the applicant's consortium will work together, their respective roles and responsibilities, and the plan for effective management across organizations.

5. Quality of Key Personnel

This section should include the qualifications of each staff person for the project position to which s/he has been assigned, identifying his/her employing organization, and providing an overview of his/her experience, knowledge, and capability to perform the work described as demonstrated by the conduct of similar work in related settings. A project organization chart should be provided.

6. Evaluation Plan

The applicant should describe the process for documenting and monitoring the project processes and results, including how the applicant will create a database of project activities for internal Center management purposes, for documenting and reporting to NIFL and other EFF Centers on project activities and achievements, and for use by the EFF Research and Evaluation Center for EFF research and evaluation activities.

7. Budget and Cost Effectiveness

The application must contain a detailed budget for support requested for years one and two of the project. The budget should include all applicants' costs and should identify contributed costs and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a consortium formed for purposes of the application should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost sharing is proposed for each budget item. Please note that overhead for this project is restricted as per EDGAR CPR 75–562.

Selection Criteria

In evaluating applications for a grant under this competition, the Director uses the following selection criteria (Total 105 points):

(1) Approach (15 points)

The Director reviews each application to determine the extent to which the applicant's description of approach demonstrates: (a) Understanding of the goals and purposes of EFF as a customer-driven, standards-based, collaborative system reform initiative; (b) knowledge of the work and products to date, including theoretical underpinnings of the approach to standards development; (c) philosophical and practical commitment to customer focus; (d) philosophical and practical commitment to collaborative development; (e) understanding of how a center can contribute to the system reform process; and (f) the relative importance of aspects of system reform in the adult literacy and lifelong learning system.

(2) Center Design (20 points)

The Director reviews each application to determine the extent to which the applicant's design for the Center: (a) Demonstrates commitment to building capacity of the system nationwide, rather than the capacity of the Center; (b) demonstrates an appropriate balance of services and products across constituencies; (c) demonstrates a commitment to working in close collaboration and consultation with

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appropriate partners; (d) demonstrates a commitment to draw on resources of NIFL and its partners in EFF, including local field development partners; and (e) demonstrates creativity and technical competence in dealing with key tasks and addressing needs of key customers.

(3) Plan of Operation (30 points)

The Director reviews each application to determine the quality of the plan of operation, including the extent to which the applicant: (a) States clear and measurable project goals and objectives that are clearly related to the intended purposes of the EFF, as outlined in this request for applications; (b) provides a fully detailed plan and timeline for achieving those goals, and assures that the plan addresses all the key project activities identified above, and is feasible, technically sound, and responsive to issues of balance; (c) proposes a plan for maintaining effective working relationships with NIFL and other EFF Centers and Partners, as required for effective development of the project; (d) proposes a management plan that is effective and ensures proper and efficient administration of the project; (e) demonstrates the quality of the applicant's plan to use its resources and personnel to achieve each project objective; and (f) demonstrates that staff assigned to key positions include appropriate qualifications, in terms of knowledge, experience and proven capability to perform the work described.

(4) Organizational Capability (15 points)

The Director reviews each application to determine the capability of the applicant (together with members of its consortium) to achieve the goals of the project, including the extent to which the applicant provides a full description of each of the organizations that make up the consortium, including how each organization contributes to the applicant's experience and capability to: (a) Lead a broad-based, collaborative process for adult learning systems reform and improvement that is standards-driven; (b) manage a system for training, technical assistance and materials development that builds and certifies distributed capacity; (c) develop theoretically sound, practical, high quality, customer-focused materials, training and resources; (d) disseminate effectively and efficiently through a variety of vehicles; and (e) leverage the commitment and involvement of key partners at the national, state, and local levels.

(5) Quality of Key Personnel (10 points)

The Director reviews each application to determine the quality of key personnel for all project activities, including: (a) The qualifications of the project director and other key personnel; (b) the experience and training of key personnel in working collaboratively with key system customers in fields related to project objectives, and (c) the applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability.

(6) Evaluation Plan (10 points)

The Director reviews each application to determine the quality of the applicant's plan for documenting and monitoring the project processes and results, including: (a) The quality of methods and mechanisms to be used to document, evaluate, and report progress in relation to the project's mission and goals, including the creation of a database that can be used by NIFL and its EFF partners for EFF research and evaluations activities; (b) the extent to which the applicant's statement of measurable outcomes addresses all project goals; and (c) the quality of methods that will be used to document and evaluate the impact of the project on programs, practitioners, and adult learners.

(7) Budget of Cost Effectiveness (5 points)

The Director reviews each application to determine the extent to which: (a) The budget is adequate to support grant activities; (b) the costs are reasonable in relation to the objectives of the project; (c) the budgets for any subcontracts are detailed and appropriate; and (d) the budget details an resources, cash, or in-kind, that the applicant will provide or seek in order to supplement grant funds.

Other Application Requirements

The application shall include the following:

Project Summary

The proposal must contain a brief summary of the proposed project suitable for publication. It should not be an abstract of the application, but rather a self-contained description of the project's goals, approach and the activities proposed. The summary must include the following information: (a) Name of applicant organization; and (b) description of the project.

Budget Proposal

ED Form 524, Sections A and C, must be completed and submitted with each application. Section C should include a detailed explanation and amplification of each budget category, and a complete justification of costs in each category. If Section B is completed, include the nature and source of non-Federal funds. Instructions for completion of the budget is on the back side of Form 524.

Personnel items should include the names (or position titles) of key staff, number of hours, and applicable hourly rates. Discussion of equipment, supplies, and travel should include both the cost and the purpose and justification. Budgets should include all applicant's costs and should identify contributed costs and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a consortium formed for purposes of the application should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost sharing is proposed for each budget item. Please note that overhead for this project is restricted as per EDGAR CFR 75–562.

Disclosure of Prior Institute Support

If any subcontractor, partner, consortium member, or organization has received NIFL funding in the past 2 years, the following information on the prior awards is required: (1) NIFL award number, amount and period of support; (2) a summary of the results of the completed work; and (3) a brief description of available materials and other related research products not described elsewhere. If the applicant has received a prior award, the reviewers will be asked to comment on the quality of the prior work described in this section of the application.

Current and Pending Support

All current project support from whatever source (such as federal, state, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other project personnel, even if they receive no salary support from the project(s). The number of person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

Any fee proposed to be paid to a collaborating or "partner" for-profit entity should be indicated. The Grants Officer will negotiate fees. Any copyright, patent, or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall application and addressed in the narrative.

Acknowledgment of Support and Disclaimer

An acknowledgment of NIFL support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL-supported projects:

This material is based upon work supported by the National Institute for Literacy under Grant No. (Grantee should enter NIFL grant number).

Except for articles of papers published in professional journals, the following disclaimer should be included:

Any opinion, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Institute for Literacy.

Reporting

In addition to working closely with the Institute, the applicant will be required to submit: (1) Quarterly reports from the database of Center activities; (2) an annual report; and (3) a continuation application for project years 2 and 3.

Instructions for Transmittal of Applications

To apply for a grant, deliver the original and five (5) copies of the application on or before deadline date of August 18, 1999, to: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006, Attention: CFDA#84–257M. An application will not be considered for funding unless the applicant can show proof that the application was: (1) Sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102(d) and (e). Applications delivered by hand must be received by 4:30 PM (Eastern Standard Time) on the deadline date. The applicant must indicate on the envelop and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Note: NIFL will mail a Grant Applicant Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call NIFL at (202) 632–1500.

Application Forms

Applicants are required to submit the following forms, assurances and certifications:

(a) Application for Federal Education Assistance (ED 424[Rev. 1–12–99])

(b) Budget Information Non-Construction Programs (ED 524)

(c) Assurances—Non-Construction Programs (Standard Form 424B)

(d) Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free-Workplace Requirements (ED 80–0013)

(e) Certification Regarding Debarment, Suspension, Ineligibility and Volunteer Exclusion—Lower Tier Covered Transactions (ED 80–0014)

(f) Disclosure of Lobbying Activities (Standard Form LLL [Rev. 7–97])

(g) Certification of Eligibility for Federal Assistance in Certain Programs (ED 80–0016)

An applicant may submit information on a photostat copy of the application and budget forms, assurances, and certifications. However, the application form, assurances, and certifications must each have an original signature. No award can be made unless a completed application has been received. Required forms are available from NIFL and on-line at http://www.nifl.gov/activities/.

Information about NIFL's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the NIFL homepage—LINCS—on the World Wide Web (at http://novel.nifl.gov/Grants.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid control number for this information collection is 3430–0005, Expiration date June 30, 2002. The time required to complete this information is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 99–17305 Filed 7–7–99; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF–3 issued to FirstEnergy Nuclear Operating Company (the licensee) for operation of Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio.

The proposed amendment would change the Technical Specifications to increase the spent fuel storage capacity by allowing the use of fuel storage racks in the cask pit, which is adjacent to the spent fuel pool.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No.

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1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the activities performed in and around the spent fuel pool and cask pit will not be significantly changed due to the use of spent fuel racks installed in the cask pit area.

In the analysis of the safety issues concerning the expanded spent fuel storage capacity, the following previously postulated accident scenarios have been considered:

—Misloaded or Mislocated Fuel Assembly
—Seismic Event
—Fuel Handling Accident

In addition, spent fuel cask crane travel and the effects of a loss of spent fuel pool cooling have been evaluated.

The proposed Technical Specification (TS) changes have no bearing on the probability of a seismic event or the probability of a loss of spent fuel pool cooling.

The probability of a fuel handling accident is primarily a function of fuel handling equipment reliability and fuel handling procedures. The probability of inadvertent misloading or mislocation of a fuel assembly is primarily a function of fuel handling procedures. Since the methods and procedures for handling fuel assemblies will not be significantly changed under the proposed TS changes, there will be no significant increase in the probability of these events.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because evaluations for each postulated accident have shown that the consequences remain bounded by the consequences from the previously evaluated accidents.

In the analysis of the safety issues concerning the expanded spent fuel storage capacity, the following previously postulated accident scenarios have been considered:

—Misloaded or Mislocated Fuel Assembly
—Seismic Event
—Fuel Handling Accident

In addition, spent fuel cask crane travel and the effects of a loss of spent fuel pool cooling have been evaluated.

The criticality analyses for the spent fuel storage racks located in the cask pit require burnup/enrichment limitations similar to those currently in place for the spent fuel pool. These burnup/enrichment limitations are imposed by the proposed changes to TS 3/4.9.13, Refueling Operations—Spent Fuel Pool Fuel Assembly Storage. The criticality evaluation for the cask pit racks shows that if an unirradiated fuel assembly of the highest permissible enrichment is placed in an unauthorized storage cell or mislocated outside a storage rack, K_{eff} will be maintained ≤0.95, taking credit for soluble boron in the cask pit water. Therefore, there will be no radiological consequences.

The evaluation of a loss of spent fuel pool cooling shows that sufficient time will be available, before the onset of pool boiling, to restore cooling or to provide a source of makeup water. Therefore, the racks will remain submerged and fuel stored therein will remain sufficiently cooled, and there will be no adverse consequences due to the proposed changes.

The results of the seismic evaluation demonstrate that the cask pit racks will remain intact and that the structural capability of the pool and liner will not be exceeded. The Auxiliary Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks and pool water inventory, therefore, the rack geometry and cooling to the fuel will be maintained. Thus, there will be no adverse consequences due to the proposed changes.

The results of the fuel handling mechanical accident evaluation and criticality evaluation show that the minimum subcriticality margin, K_{eff} less than or equal to 0.95, will be maintained and cooling will remain adequate. In addition, the analyses show that the cask pit liner will not be pierced, and although the underlying concrete could experience local crushing, the cask pit structure will not suffer catastrophic damage. The radiological dose resulting from the release caused by a fuel handling accident will not be increased from that previously considered.

The spent fuel cask crane travel interlocking design features were evaluated. Modification of the interlocking device to further restrict crane travel from over the cask pit maintains the same restriction of movement of loads over stored fuel that currently exists for the spent fuel pool.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the function and parameters of the components and the associated activities necessary to support safe storage of fuel assemblies in the cask pit are similar to those presently in place. The methods and procedures for handling fuel assemblies would not be significantly changed. Therefore, the list of postulated accidents remains unchanged.

Any event which would modify parameters important to safe fuel storage sufficiently to place them outside of the boundaries analyzed for normal conditions and/or outside of the boundaries previously considered for accidents would be considered a new or different accident. The fuel storage configuration and the existence of the coolant are the parameters that are important to safe fuel storage. The proposed changes do not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents, nor do they affect the important parameters required to ensure safe fuel storage. Therefore, the potential for a new or previously unanalyzed accident is not created.

3. Not involve a significant reduction in a margin of safety because for the proposed changes, appropriate evaluations have shown compliance with stipulated safety margins.

The objective of spent fuel storage is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as a seismic event or a fuel handling accident. The design of the spent fuel racks located in the cask pit meets all applicable requirements for safe fuel storage. The seismic and structural design of the racks preserves the proper margin of safety during normal and abnormal loads. The methodology used in the criticality analysis meets the applicable regulatory guidance. The thermal-hydraulic evaluation of the pool demonstrates that the cask pit will be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible malfunction scenarios and seismic events. Upon the unlikely event of a complete loss of spent fuel pool cooling, sufficient time will be available, before the onset of pool boiling, to restore cooling or to provide a source of makeup water. Therefore, the racks will remain submerged and fuel stored therein will remain sufficiently cooled. In addition, the results of the fuel handling accident evaluation show that the minimum subcriticality margin will be maintained, cooling will remain adequate, the cask pit structure will not suffer catastrophic damage, and the radiological dose resulting from the release caused by a fuel handling accident will not be increased from that previously considered.

Thus, it is concluded that the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 5, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

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for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated May 21, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 29th day of June 1999.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate 3, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17294 Filed 7–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the applications for licenses to export source material as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Description of items to be exported	Country of destination
U.S. Department of Energy, 06/04/99, 06/22/99, XSOU8767.	135 million kilograms of natural uranium for sale, storage, or blending with highly enriched uranium, consistent with the March 24, 1999 U.S.-Russia Agreements in this matter.	Russia.

Dated: This 1st day of July 1999 at Rockville, Maryland.

For The Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 99–17293 Filed 7–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 5, 12, 19, and 26, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 5

Wednesday, July 7

2:00 p.m.
Affirmation Session (Public Meeting)
a. International Uranium (USA) Corporation Envirocare's Appeals of LBP–99–5 and LBP–99–11 (Envirocare's Dismissal for Lack of Standing)

Week of July 12—Tentative

Tuesday, July 13

9:30 a.m.
Briefing on Treatment of Existing Programs for License Renewal (Public Meeting) (Contact: Sam Lee, 301–415–3109)

Thursday, July 15

10:00 a.m.
Briefing on Existing Event Response Procedures (including Federal Response Plan and Coordination of Federal Agencies in Response to Terrorist Activities) (Public Meeting) (Contact: Charlie Miller, 301–415–7482)

11:30 a.m.
Affirmation Session (Public Meeting) (If needed)

Week of July 19—Tentative

There are no meetings scheduled for the Week of July 19.

Week of July 26—Tentative

Thursday, July 29

2:00 p.m.
Briefing on Implementation of the License Termination Rule and Program on Complex Decommissioning Cases (Public Meeting)

Friday, July 30

9:30 a.m.
Briefing on Performance Assessment Progress in LLW, HLW, and SDMP (Public Meeting)

* The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on June 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Final Rule—Revisions to Requirements of 10 CFR Parts 50 and 72 Concerning Changes, Tests, and Experiments" (PUBLIC MEETING) be held on June 22, and on less than one week's notice to the public.

By a vote of 4–0 on June 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Proposed License to Export High Enriched Uranium (HEU) for Production of Medical Isotopes at the Canadian Maple Reactors (XSNM–03060)" (PUBLIC MEETING) be held on June 29, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–17467 Filed 7–7–99; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information that is not contained in a regulation (OMB control number 1212–0030; expires September 30, 1999). This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts. The survey is conducted by the American Council of Life Insurance for the PBGC. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 7, 1999.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 4281). Each month the PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the investment and annuity markets. To determine these interest rates, the PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly "Survey of Nonparticipating Single Premium Group Annuity Rates." The survey is distributed by the American Council of Life Insurance and provides the PBGC with "blind" data (*i.e.*, is conducted in such a way that the PBGC is unable to match responses with the companies that submitted them).

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurance. The survey is conducted quarterly and will be sent to approximately 12 insurance companies. Based on experience under the current approval, the PBGC estimates that 8 insurance companies will complete and return the survey. The PBGC further estimates that the average annual

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burden of this collection of information is 32 hours and $48.

The collection of information under the regulation has been approved by OMB under control number 1212–0030 through September 30, 1999. The PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC is soliciting public comments to—

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, D.C., this 1st day of July, 1999.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–17250 Filed 7–7–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41586; File No. SR–CHX–99–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

June 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on June 24, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. On June 25, 1999 the CHX submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby requests a seven month extension of the pilot program relating to the trading of Nasdaq/NM Securities on the Exchange that is currently due to expire on June 30, 1999. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules and the Exchange proposes that the amendments remain in effect on a pilot basis through January 31, 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[4] Among other things, these rules made the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System ("MAX system").[5]

On January 3, 1997, the Commission approved,[6] on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders in Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer ("NBBO").[7] When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months worth of trading data.[8] Due to programming issues, the pilot program was not implemented until April, 1997. Six months of trading data did not become available until November, 1997. As a result, the Exchange requested an additional three month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[9] The Exchange submitted the report to the Commission on January 30, 1998 ("January 1998 Report"). Subsequently, the Exchange requested another three month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis.

On March 31, 1998, the Commission approved the pilot for an additional three month period, until June 30, 1998.[10] On July 1, 1998 the Commission approved the pilot for an additional six month period, until December 31, 1998.[11] On December 31, 1998, the Commission approved the pilot for an additional six month period, until June 30, 1999.[12] The Exchange now requests another extension of the current pilot program, through January 31, 2000.

Under the pilot program, specialists must continue to accept agency[13] market orders or marketable limit orders, but only for orders of 100 to 1000 shares in Nasdaq/NM securities rather than the 2099 share limit previously in place.[14] Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they were quoting at the NBBO when the order was received.

The pilot program requires the specialist to set the MAX auto-execution threshold at 1000 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold set by the specialist will be automatically executed (in an amount up to the size of the specialist's quote). Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1000 shares, depending on the issue.[15]

When the specialist is not quoting a Nasdaq/NM security at the NBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, MAX market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO after a twenty second delay, provided that the auto-execution threshold is less than or equal to the NBBO.[16] If the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b). In particular, the proposal is consistent with the requirements of Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The proposal is also consistent with Section 11A(a)(1)(D) and 11A(a)(1)(C) of the Act.

The CHX's proposal to not require automatic execution for Nasdaq/NM securities when the specialist is not quoting at the NBBO, and to allow the specialist to execute the order as agent, is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide an execution reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–07 and should be submitted by July 29, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specially, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)[17] of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative practices,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1 the CHX requested that the Commission approve extension of the pilot program through January 31, 2000. *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to John C. Roeser, Attorney, Division of Market Regulation, Commission, dated June 25, 1999.

[4] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2). *See* Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[5] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. See CHX, Art. XX, Rule 37(b). A MAX order that fits under the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST Rule does not apply, but MAX system handling rules do apply.

[6] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997) ("January 1997 Order").

[7] The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1.

[8] In connection with approval of the CHX's current proposal, the Commission has requested supplemental trading data.

[9] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 62 FR 1517 (January 9, 1998).

[10] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[11] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[12] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[13] The term "agency order" means an order for the account of a customer, but shall not include professional orders as defined in CHX, Article XXX, Rule 2, interpretation and policy .04. The Rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[14] The auto-acceptance threshold in place for Dually Traded securities (those issues that are traded on the CHX and are listed on either the New York Stock Exchange or American Stock Exchange) was recently increased from 2099 to 5099 shares.

[15] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) in issues that became subject to mandatory compliance with SEC Rule 11Ac1–4 on or prior to February 24, 1997, and for 1000 shares in other issues.

[16] The twenty second delay is designed, in part, to provide an opportunity for the order to receive price improvement from the specialist's displayed quote.

[17] 15 U.S.C. 78(b)(5).

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to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 11A(a)(1)(C)[18] and 11A(a)(1)(D)[19] of the Act because the Exchange's proposal conforms CHX specialist obligations to those applicable to OTC market markers in Nasdaq/NM securities, while CHX provides a separate, competitive market for Nasdaq/NM securities.

The Commission notes, however, that while the Exchange has been working towards establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[20] In connection with this effort, the Commission requests an update on the information provided in the January 1998 Report, to supplement the available trading data and thus facilitate consideration of the underlying issues. The Commission's approval of the pilot extension is thus two fold: to allow the Exchange to operate without interruption, and to allow a period for compilation of the additional data.

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2)[21] of the Act that the proposed rule change (SR–CHX–99–07) be, and hereby is, approved through January 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17353 Filed 7–7–99; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78k–1(a)(1)(C).

[19] 15 U.S.C. 78k–1(a)(1)(D).

[20] *See* January 1997 Order, *supra* note 6.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41576; File No. SR–NYSE–99–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to an Examination Fee for the Front Line Specialist Clerk Qualification Examination ("Series 21")

June 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a $200 fee for each candidate in connection with the new Front Line Specialist Clerk Qualification Examination ("Series 21") to be given by the NYSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement a $200 per-exam administration fee for the new Front Line Specialist Clerk Qualification Examination ("Series 21"). The fee is consistent with other Exchange administered examination fees which range from $150 to $200. It will be used to offset the costs associated with the Examination's development, implementation, administration and maintenance.

Exchange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Under recently proposed amendments to Rule 35,[3] Front Line Specialist Clerks ("FLS Clerks") will have to be qualified by passing appropriate qualification examinations and by meeting appropriate training requirements.

The Exchange anticipates that administration of the Series 21 Examination will commence 90 days after its approval by the Commission.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(4) of the Act which permits the rules of the Exchange to provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder.[5] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41514 (June 10, 1999), 64 FR 32912 (June 18, 1999) (SR–NYSE–99–19); and No. 41515 (June 10, 1999), 64 FR 32911 (June 18, 1999) (SR–NYSE–99–20).

[4] 15 U.S.C. 78s(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(2).

investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. SR–NYSE–99–27 and should be submitted by July 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 17354 Filed 7–7–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(C).

[7] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Application for Widow's or Widower's Insurance Benefits-0960–0004. The Social Security Administration (SSA) uses the information collected on Form SSA–10-BK to determine whether the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for widow(er)'s benefits.

Number of Respondents: 288,850.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 72,213 hours.

2. Request for Waiver of Overpayment Recovery or Change in Repayment Notice-0960–0037. Form SSA–632 collects information on the circumstances surrounding overpayment of Social Security Benefits to recipients. SSA uses the information to determine whether recovery of an overpayment amount can be waived or must be repaid and, if repaid, how recovery will be made. The respondents are recipients of Social Security, Medicare, Black Lung or Supplemental Security Income overpayments.

Number of Respondents: 500,000.
Frequency of Response: 1.
Average Burden Per Response: 120 minutes.
Estimated Annual Burden: 1,000,000 hours.

3. Voluntary Customer Surveys in Accordance with E.O. 12862 within the Social Security Administration—0960–0526. These voluntary customer surveys will be used to ascertain customer satisfaction with the Social Security Administration in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are the direct or indirect beneficiaries of SSA services. The average burden per response for these activities is estimated to range from 5 minutes for a simple comment card to 2 hours for participation in a focus group.

FY 2000:
Number of Respondents: 1,328,264.
Frequency of Response: 1.
Estimated Annual Burden: 123,231 Hours.
FY 2001:
Number of Respondents: 1,325,760.
Frequency of Response: 1.
Estimated Annual Burden: 122,274 Hours.
FY 2002:
Number of Respondents: 1,327,400.
Frequency of Response: 1.
Estimated Annual Burden: 121,734 Hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Marriage Certification—0960–0009. Form SSA–3 is used by the Social Security Administration (SSA) to determine whether the claimant's spouse has the necessary relationship to the worker as required by section 216(h)(1) of the Social Security Act (the Act).

The respondents are applicants for Spouse's Benefits.

Number of Respondents: 180,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 15,000 hours.

2. Claimant's Work Background—0960–0300. The information collected on Form HA–4633 is used by SSA in cases in which claimants for disability benefits have requested a hearing, which is a statutory right granted to claimants under the Act, on the decision regarding their claim. A completed form provides an updated summary of a claimant's past relevant work and helps the Administrative Law Judge better decide whether or not the claimant is disabled. The respondents are claimants who request a hearing on entitlement to disability benefits, under titles II and/or XVI of the Act.

Number of Respondents: 120,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 30,000 hours.

3. Report on Individual with Childhood Impairment—0960–0084.

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Form SSA–1323 is used by SSA to determine the claimant's medical status prior to making disability determinations. The respondents are public and nonpublic schools and agencies who provide status reports on claimants applying for disability benefits.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 2,333 hours.

4. Medicare Buy-In Part B Screening Guide—0960–0601. Pub. L. 105–277 authorizes SSA to conduct a Medicare buy-in demonstration project to evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act. A lack of awareness about the Medicare buy-in programs appears to be one of the major obstacles to enrollments. Other obstacles to enrollment include the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local Medicaid offices.

SSA will screen respondents voluntarily for potential Medicare Part B buy-in eligibility using a screening guide developed for this purpose. The screening guide will collect information from SSA beneficiaries regarding income, resources, marital status, and living arrangements and also ask questions about their awareness of Medicare Part B buy-in programs. SSA will gather this information to identify and overcome obstacles to Medicare Part B buy-in enrollments and to determine potential eligibility for Medicare Part B benefits. The screening guide will be in use from March 1, 1999 through December 31, 1999.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 43,333 hours.

5. State Report of Incorrect Bendex Information—0960–0517. SSA uses the information collected on Form SSA–1086 to correct its master database and to facilitate the electronic exchange of data. The respondents are State agencies administering programs for Aid to Families with Dependent Children.

Number of Respondents: 123.

Frequency of Response: 2.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 41 hours.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: July 1, 1999.

Nicholas E. Tagliareni,

Director, Center for Publications Management, Social Security Administration.

[FR Doc. 99–17401 Filed 7–7–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 3087]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the three (3) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: June 30, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–U

United States Department of State

Washington, D.C. 20520

JUN 8 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of twenty-four SPH-122 Self-Propelled Howitzers to Egypt for the Egyptian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 64-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

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United States Department of State

Washington, D.C. 20520

JUN 24 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of the Target Acquisition Designation System and Pilot Night Vision System for use in the United Kingdom AH-64 Apache Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 68-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

JUN 24 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of commercial communication satellite components in the United Kingdom for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 69-99

The Honorable
H. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 99-17328 Filed 7-7-99; 8:45 am]
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DEPARTMENT OF STATE

[Public Notice 3086]

Revised Guidelines for the Implementation of Section 609 of Public Law 101–162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations

SUMMARY: Section 609 of Public Law 101–162 ("Section 609") provides that shrimp harvested with technology that may adversely affect certain species of sea turtles may not be imported into the United States. This import prohibition does not apply if the Department of State certifies to Congress that the harvesting nation has a regulatory program and an incidental take rate comparable to that of the United States, or, alternatively, that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. On March 25, 1999, in response to recommendations of the Dispute Settlement Body of the World Trade Organization, the Department of State published a notice in the **Federal Register** (Public Notice 3013, 64 FR 14481) proposing several revisions to the guidelines issued by the Department on August 28, 1998 for use in making such certifications. In that **Federal Register** Notice, the Department also requested public comment on certain aspects of those proposals, in accordance with provisions of the Uruguay Round Trade Agreements Act, 16 U.S.C. 3533. This notice reviews and responds to the comments received and provides the current version of the guidelines, which include a number of modifications made pursuant to those comments.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington D.C., telephone number (202) 647–2335.

I. SUPPLEMENTARY INFORMATION:

A. Section 609

Section 609 provides that shrimp or products from shrimp harvested with commercial fishing technology that may adversely affect certain species of sea turtles protected under U.S. law and regulations may not be imported into the United States. This import prohibition does not apply if the President certifies to Congress by May 1, 1991, and annually thereafter, that:

a. The government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and

b. The average rate of that incidental taking by vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or

c. The particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.

The President has delegated to the Secretary of State the authority to make certifications pursuant to Section 609 (Memorandum of December 19, 1990; 56 FR 357; January 4, 1991).

The relevant species of sea turtles are: Loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*).

B. Summary of Comments Received and Responses to Those Comments

The Department of State received 11 sets of comments on the **Federal Register** notice issued March 25, 1999. The Department received 5 sets of comments from governments (or government agencies): Agriculture, Fisheries and Forestry Australia; India; Malaysia; Thailand; and the U.S. Fish and Wildlife Service. The Department also received 6 sets of comments from non-governmental organizations and individuals: A coalition of environmental organizations, including the Caribbean Conservation Corporation, Center for Marine Conservation, Consumers Choice Council, Defenders of Wildlife, Earthjustice Legal Defense Fund, Humane Society of the United States, National Wildlife Federation, Natural Resources Defense Council, Sea Turtle Restoration Project, Sierra Club, World Wildlife Fund; Australian Prawn Promotion Association; Center for Marine Conservation; National Fisheries Institute; Sea Turtle Restoration Project; and J. Frazier, D. PhIL.

The **Federal Register** notice issued March 25, 1999 presented a review of the WTO decision and the steps being proposed and/or taken by the United States to implement that decision. However, the notice sought public comments on those aspects of the WTO decision that were intended to be addressed through the proposed changes to the guidelines, as set forth in Sections II and III of that notice.

Section II of the notice proposed an amendment to the list of exemptions for methods of harvesting shrimp that do not pose a threat to sea turtles and are thus outside the scope of any embargo under the Section 609. Section II also described in more specific terms the types of information that foreign governments may provide and the manner in which the Department will review such information in making determinations under Section 609.

Section III of the notice proposed certain changes to the criteria that the Department will use in making certification decisions, with the intent of introducing greater flexibility in considering the comparability of foreign programs and the U.S. program. Section III also laid out an elaborated "timetable and procedures" for certification decisions, including an expedited timetable to apply in 1999 only. The intent of these proposed changes is to increase the transparency and predictability of the certification process and to afford foreign governments seeking certification a greater degree of due process.

The governments and organizations that submitted comments did not limit those comments to Sections II and III of the **Federal Register** notice. Instead, many of those comments responded to other parts of the notice, particularly to the current policy of permitting importation of shrimp harvested by vessels equipped with turtle excluder devices ("TEDs") in uncertified nations, for which the Department proposed no change.

The following material summarizes, and responds to, all comments received.

(1) *General Comments:* A number of comments received were general in nature and did not relate to any particular proposal for revision of the guidelines. Several comments simply praised the effort of the Department of State to comply with the WTO ruling. Three comments, however, took the position that, in order to comply with the WTO decision, the United States must lift the import prohibition required by Section 609 immediately and that mere revisions in the implementation of Section 609 are insufficient.

Response. The WTO decision did not require a change to Section 609 itself or require that the import prohibitions set forth in Section 609 be otherwise lifted across-the-board. Rather, the WTO decision found that several aspects of the implementation of Section 609, in their cumulative effect, amounted to a violation of the obligations of the United States under the WTO Agreement. The modifications to the guidelines set forth in this notice, together with the other measures described in the **Federal Register** notice issued March 25, 1999, are intended to address the rulings and recommendations set forth in the WTO decision.

(2) *Comments on Section II:* With respect to the proposed amendment to the list of exemptions for harvesting methods that do not harm sea turtles, one comment simply supported the new wording. Another comment suggested that the conditions and criteria upon which determinations will be made under the proposed amendment should be clearly identified and that there should be a definite time-frame regarding publication and notification of the results of such determinations.

Response. The proposed amendment is designed to cover situations not presently known to the Department of State in which shrimp may be harvested in ways that do not adversely affect sea turtle species. As such, it is difficult to specify the conditions and criteria upon which such determinations will be made. Instead, in keeping with the spirit of the WTO decision, the intent is to provide for the flexibility necessary to assess each situation on its own merits, taking into account differences that may exist in the shrimp harvesting conditions in different nations. For similar reasons, it is hard to specify a single time-frame that would be appropriate for all such determinations. Nevertheless, the section of the proposed guidelines entitled "Review of Information" provides that the Department of State will make such determinations within 120 days from the date on which a foreign government submits the necessary information.

A final comment suggested that the term "incidental mortality" should be used instead of "incidental capture."

Response. The proposed guidelines actually use the term "incidental taking," which covers both incidental mortality and incidental capture. In the view of the Department of State, the term "incidental taking" is the most appropriate term since, in addition to being the term used in Section 609 itself, it is well-established in U.S. law and practice regarding the protection of endangered and threatened sea turtles.

Several comments supported the proposed changes regarding review of information, particularly the new language requiring "empirical data supported by objective scientific studies" and the proposed timeline for response. Once comment suggested the deletion of the phrase "available biological and commercial data," on grounds that such data are not relevant to the determination of whether the fishing environment of a harvesting nation is likely to pose a threat to sea turtles.

Response. The term "available biological and commercial data" refers to two separate sets of information. "Biological data" refers, e.g., to data and information on the resources in question, both the shrimp that is being targeted by the fisheries and the sea turtles that might be caught incidental to those fisheries. "Commercial data" refers, in this case, to information relating to the operation of the fleet in a particular fishery (areas of operation, fishing depth, length of trawls, etc.). Both sets of information are relevant to determining of whether the fishing environment in a particular country or fishery is likely to pose a threat to sea turtles. To be clearer on this point, the final version of the guidelines replaces the term "biological and commercial data" with "biological data regarding the resources in question and operational information relating to activities of the fishing fleet".

(3) *Comments on Section III:* With respect to the proposed changes intended to introduce greater flexibility in the making of certification decisions, several comments supported the changes on grounds that they would encourage nations to adopt innovative methods for protecting sea turtles. Another comment emphasized that, because properly installed TEDs release 97 percent of sea turtles captured in shrimp trawl nets, other approaches to protecting sea turtles in the course of shrimp trawl fishing cannot be considered comparable unless they are 97 percent effective.

Response: As recognized in the WTO decision, Section 609 requires, as a condition for certification, that a foreign program for protecting sea turtles in the course of shrimp trawl fishing be comparable to the U.S. program. If a foreign nation adopts a program that seeks to protect sea turtles by modifications to the gear used for shrimp trawling, it may be appropriate to compare, in a numerical sense, the success of such gear modifications in protecting sea turtles to the success achieved through the mandatory use of TEDs. If, by contrast, a foreign nation seeks to protect sea turtles from the effects of shrimp trawl harvesting through other means, e.g., through time and area closures or other non-gear related measures, it may not be appropriate to make the comparison to the U.S. program on a strictly numerical basis.

A further comment argued that the criteria on which certifications are made should be more clearly identified. Certain elements should be more clearly defined, including "comparably effective regulatory program", "sufficient duration" and "information from other sources".

Response: The term "comparably effective regulatory program" derives its meaning from Section 609 itself; i.e., "a regulatory program governing the incidental taking of sea turtles in the course of commercial shrimp trawl harvesting that is comparable to that of the United States." By contrast, the term "sufficient duration" is difficult to specify precisely, due to the fact that the duration of a scientific study necessary to make a reliable determination may vary considerably, depending on the nature of the inquiry. As provided in the section of the guidelines entitled "Review of Information," the United States will, upon request "review and provide comments on a planned or existing study with respect to sample size, scientific methodology and other factors that affect whether such a study provides a sufficient basis for making a reliable determination." It is the intention of the Department of State to work cooperatively with foreign nations seeking certification in considering the scientific bases on which such determinations are to be made.

Finally, the section of the guidelines entitled "Review of Information" also makes clear that the term "information from other sources" includes, but is not limited to "academic and scientific organizations, intergovernmental organizations and non-governmental organizations with recognized expertise in the subject matter."

The same comment added that the proposed revisions have not sufficiently taken into account the issue of predictability.

Response: The Department of State is not certain what is meant by this comment. To the extent that the comment suggests the need for a foreign government seeking certification to anticipate the result of a determination before it is made, the section of the guidelines entitled "Timetable and Procedures for Certification Decisions" provides, inter alia, for the considerable information exchange that is intended to allow the foreign government to predict the likely result. In particular, the guidelines stipulate that, "By March 15, the Department of State will notify in writing through diplomatic channels the government of each nation that, on the basis of available information * * * does not appear to qualify for certification. Such notification will explain the reasons for this preliminary assessment, suggest steps that the government of the harvesting nation can take in order to receive a certification and invite the government of the harvesting nation to provide, by April

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15, any further information. If the government of the harvesting nation so requests, the Department of State will schedule face-to-face meetings between relevant U.S. officials and officials of the harvesting nation to discuss the situation." Through these procedures, the Department of State intends that the certification determinations will be both more predictable and transparent.

With one exception, all other comments that addressed the proposals for new timetables and procedures supported the proposals, on grounds that they would ensure transparency and equitableness and will improve predictability, due process and procedural fairness. However, one comment stated that the proposed date of September 1, 1999, by which foreign governments seeking certifications under the revised guidelines must submit information, is not acceptable due to such factors as the availability of resources, capacity, skills, technologies, etc.

Response: The Department of State recognizes that a government seeking certification on the basis of the revised guidelines may not, by September 1, 1999, be able to gather sufficient information necessary to support such a request. To meet this concern, and in accordance with its existing practice, the Department will accept requests for certification at any time in the year and will undertake to process them as expeditiously as possible. However, the Department can only commit to making a certification determination by December 6, 1999 if it has received the necessary information by September 1, 1999. Language to this effect has been added to the guidelines.

(3) *Comments on Other Issues.* Despite the fact that the **Federal Register** notice issued March 25, 1999 only sought comments on the issued discussed above, by far the most comments pertained to the policy of the Department of State relating to the importation of shrimp harvested by vessels equipped with TEDs in uncertified nations. The current policy was set forth in the guidelines issued by the Department of State on August 28, 1998, Public Notice 2876, 63 F.R. 167 ("the current policy").

In general, some comments actively supported the current policy, while other comments strongly opposed it. Those comments in support of the current policy argued that imports of shrimp caught by vessels equipped with TEDs should not be excluded from the U.S. market, regardless of the certification status of the nation involved. Allowing such shrimp into the United States encourages foreign shrimpers to join sea turtle conservation efforts. Another comment in support of the current policy emphasized that, if shrimp is harvested by a vessel using a TED, it should be allowed to enter the U.S. market whether or not all vessels in the same nation are using TEDs.

Comments in opposition to the current policy argued that the policy was inconsistent with Section 609, insofar as Section 609 provides for certification of foreign nations, and does not allow for the authorization of individual shipments of shrimp entering the United States. Other comments also took the view that the current policy undermines the goal of sea turtle conservation by creating a disincentive for foreign nations that are maintaining, or may be considering, a nation-wide program to require TEDs use. Still other comments stated that the use of TEDs by only some vessels in a foreign nation does not protect sea turtles overall, in that sea turtles that escape from nets equipped with TEDs are subject to capture and drowning in nets of other vessels that are not using TEDs.

Response. The Department of State recognizes the strongly held views on all sides of this issue, and notes that the issue is also the subject of on-going litigation before the U.S. Court of International Trade. In light of these circumstances, the Department has determined that it will make no change to the current policy at this time.

Several comments supported U.S. efforts, described in the **Federal Register** notice issued March 25, 1999, to pursue negotiations toward a comprehensive sea turtle agreement for the Indian Ocean region. One comment, however, noted such an agreement "should not include a WTO escape clause, because this will negate the chance of any pro-environment aspect of the treaty to survive if ever challenged."

Response. The Department of State is not certain what is meant by the term "WTO escape clause." The Department would simply note that the agreement we envision would deal with the protection of sea turtles and would not deal with international trade issues except to reinforce existing restrictions on international trade in sea turtles and sea turtle parts.

Several comments addressed issues concerning the provision of assistance by the United States Government to other governments to promote TEDs use. One comment urged the United States Government to offer assistance to other governments in developing effective monitoring and enforcement programs. Another comment suggested that the United States Government should give TEDs away for free or on a subsidized basis, and that U.S. shrimp fishermen could take part in training shrimp fishermen in other nations.

Response. The United States Government, primarily through the NMFS, has offered assistance to other governments in the area of monitoring and enforcing fishing rules, and shrimp fishing rules in particular. We envision that, under the auspices of the Inter-American Sea Turtle Convention and a comparable agreement that would cover the Indian Ocean region, such assistance could also be made available from a variety of sources.

Experience has shown that foreign governments can easily acquire TEDs on the open market or by constructing TEDs themselves from materials that are readily available. The costs of purchasing or constructing a TED is modest when compared with other costs associated with the operation of a commercial shrimp trawl vessel, such as fuel, gear, etc. In our judgment, the resources of the United States Government are better devoted to training foreign government officials and shrimp fishermen in the proper design, construction, installation and use of TEDs.

The Department of State would support initiatives by U.S. fishermen familiar with TEDs to assist their foreign counterparts in acquiring and using this technology.

Several comments addressed other exemptions pertaining to shrimp harvested in ways not harmful to sea turtles. One comment noted that the ecological effects of shrimp farming or aquaculture ultimately harm sea turtles as they do other marine life. Another comment characterized as "meaningless and arbitrary" the 30-day minimum that shrimp must spend in an aquaculture pond before being harvested in order to qualify for the aquaculture exemption. A final comment suggested a more precise definition for the term "mechanical devices" with respect to the exemption relating to artisanal means of shrimp harvesting.

Response. While the Department of State is aware of significant ecological concerns with respect to the harvesting of shrimp by aquaculture, those concerns do not relate to sea turtles specifically. As such, the Department is of the view that Congress did not intend to include the harvesting of shrimp by aquaculture within the meaning of the term "commercial fishing technology that may adversely affect" sea turtle species. Regarding the 30-day minimum period, the Department instituted this requirement to ensure that shrimp categorized as qualifying for the

aquaculture exemption were not actually harvested in the wild and merely placed in an aquaculture facility for a brief moment before being processed for export. With respect to the term "mechanical devices," the Department has modified the language of the guidelines to add specificity.

Another comment suggested that the DSP–121 forms be made available for public inspection.

Response. The Department of State does not believe that this suggestion is feasible, or that its adoption is necessary to achieve an adequate system for monitoring imports of shrimp.

The guidelines contain numerous safeguards to ensure the proper completion of the DSP–121 and to protect against fraud.

A final comment suggested that, to achieve effective sea turtle conservation, the guidelines should cover all species of sea turtles, despite the fact that Section 609 applies only to "those species of sea turtles the conservation of which is the subject of regulations promulgated by the Secretary of Commerce on June 29, 1987."

Response. The purpose of the guidelines is to assist in the implementation of Section 609, which, as a technical matter, pertains only to those species of sea turtles covered by the June 29, 1987 regulations promulgated by the Secretary of Commerce. However, the Department of State notes that, as a practical matter, the requirements relating to shrimp imports set in place by Section 609 and the guidelines have the effect of extending protection to all endangered and threatened species of sea turtles. There are few, if any, places in the world where endangered or threatened sea turtle species falling outside the technical scope of Section occur and that sea turtle species covered by Section 609 do not.

Revised Guidelines

For the sake of clarity, the August 28, 1998 guidelines are restated below as modified to reflect the changes proposed in the **Federal Register** notice issued March 25, 1999, and the comments received on those proposed changes.

I. Introductory Material

A. The U.S. Program

Since certification decisions under Section 609(b)(2)(A) and (B) are based on comparability with the U.S. program governing the incidental taking of sea turtles in the course of shrimp harvesting, an explanation of the components of that program follows.

The U.S. program requires that commercial shrimp trawl vessels use TEDs approved in accordance with standards established by the U.S. National Marine Fisheries Service (NMFS), in areas and at times when there is a likelihood of intercepting sea turtles. The goal of this program is to protect sea turtle populations from further decline by reducing the incidental mortality of sea turtles in commercial shrimp trawl operations.

The commercial shrimp trawl fisheries in the United States in which there is a likelihood of intercepting sea turtles occur in the temperate waters of the Gulf of Mexico and the Atlantic Ocean from North Carolina to Texas. With very limited exceptions, all U.S. commercial shrimp trawl vessels operating in these waters must use approved TEDs at all times and in all areas. The only exceptions to this requirement are as follows:

a. Vessels equipped exclusively with wing nets, skimmer trawls, and pusher-head trawls when used in conjunction with certain restricted tow times are not required to use TEDs because their operations do not pose a threat to sea turtles. Vessels equipped with barred beam trawls and/or barred roller trawls are not required to use TEDs. Single try nets (with less than a twelve foot headrope and fifteen foot rope) are not required to use TEDs.

b. Vessels whose nets are retrieved exclusively by manual rather than mechanical means are not required to use TEDs because the lack of a mechanical retrieval system necessarily limits tow times to a short duration so as not to pose a threat of the incidental drowning of sea turtles. This exemption applies only to vessels that have no power or mechanical-advantage trawl retrieval system.

c. In exceptional circumstances, where NMFS determines that the use of TEDs would be impracticable because of special environmental conditions such as the presence of algae, seaweed, or debris, or that TEDs would be ineffective in protecting sea turtles in particular areas, vessels are permitted to restrict tow times instead of using TEDs. Such exceptions are generally limited to two periods of 30 days each. In practice, NMFS has permitted such exceptions only rarely.

With these limited exceptions, all other commercial shrimp trawl vessels operating in waters subject to U.S. jurisdiction in which there is a likelihood of intercepting sea turtles must use TEDs at all times. For more information on the U.S. program governing the incidental taking of sea turtles in the course of commercial shrimp trawl harvesting, see 50 CFR 227.17 and 50 CFR 227.72(e).

B. Shrimp Harvested in a Manner Not Harmful to Sea Turtles

The Department of State has determined that the import prohibitions imposed pursuant to Section 609 do not apply to shrimp or products of shrimp harvested under the following conditions, since such harvesting does not adversely affect sea turtle species:

a. Shrimp harvested in an aquaculture facility in which the shrimp spend at least 30 days in pond prior to being harvested.

b. Shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States.

c. Shrimp harvested exclusively by means that do not involve the retrieval of fishing nets by mechanical devices, such as winches, pulleys, power blocks or other devices providing mechanical advantage, or by vessels using gear that, in accordance with the U.S. program described above, would not require TEDs.

d. Shrimp harvested in any other manner or under any other circumstances that the Department of State may determine, following consultation with the NMFS, does not pose a threat of the incidental taking of sea turtles. The Department of State shall publish any such determinations in the **Federal Register** and shall notify affected foreign governments and other interested parties directly.

C. Shrimp Exporter's/Importer's Declaration

The requirement that all shipments of shrimp and products of shrimp imported into the United States must be accompanied by a declaration (DSP–121, revised) became effective as of May 1, 1996 and remains effective. The DSP–121 attests that the shrimp accompanying the declaration was harvested either under conditions that do not adversely affect sea turtles (as defined above) or in waters subject to the jurisdiction of a nation currently certified pursuant to Section 609. All declarations must be signed by the exporter. The declaration must accompany the shipment through all stages of the export process, including any transformation of the original product and any shipment through any intermediary nation. As before, the Department of State will make copies of the declaration readily available. Local reproduction of the declarations is fully acceptable.

The requirement that a government official of the harvesting nation not

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currently certified pursuant to Section 609 must also sign the DSP–121 asserting that the accompanying shrimp was harvested under conditions that do not adversely affect sea turtles species remains effective. In order to protect against fraud, the Department will continue to conduct periodic reviews of the systems that such foreign governments have put in place to verify the statements made on the DSP–121 form.

Date of Export. Import prohibitions shall not apply to shipments of shrimp and products of shrimp with a date of export falling at a time in which the harvesting nation is currently certified pursuant to Section 609.

Country of Origin. For purposes of implementing Section 609, the country of origin shall be deemed to be the nation in whose waters the shrimp is harvested, whether or not the harvesting vessel is flying the flag of another nation.

E. Review of Information

The government of any harvesting nation may request that the Department of State review any information regarding the particular shrimp fishing environment and conditions in that nation, or within a distinct geographic region of that nation, in making decisions pursuant to Section 609. Such information may be presented to demonstrate, inter alia:

(1) That some portion of the shrimp intended to be exported from that nation to the United States is harvested under one of the conditions identified above as not adversely affecting species of sea turtles;

(2) That the government of that nation has adopted a regulatory program governing the incidental taking of sea turtles in the course of commercial shrimp trawl fishing that is comparable to the U.S. program and, therefore, that the nation is eligible for certification under Section 609(b)(2)(A) and (B); or

(3) That the fishing environment in that nation does not pose a threat of the incidental taking of sea turtles and, therefore, that the nation is eligible for certification under Section 609(b)(2)(C).

Such information should be based on empirical data supported by objective scientific studies of sufficient duration and scope to provide the information necessary for a reliable determination. In addition, information submitted to support a request for any such determination should include available biological data regarding the resources in question and operational information relating to the activities of the fishing fleet that are relevant to determining whether or not the fishing environment of the harvesting nation is likely to pose a threat to sea turtles. Studies intended to show the rate of incidental taking of sea turtles in a given shrimp fishery should, at a minimum, contain data for an entire fishing season. Upon request, the United States will review and provide comments on a planned or existing study with respect to sample size, scientific methodology and other factors that affect whether such a study provides a sufficient basis for making a reliable determination.

The Department will fully review and take into consideration all such information and, in consultation with the NMFS, respond in writing to the government of the harvesting nation within 120 days from the date on which the information is received.

The Department, in consultation with the NMFS, will also take into consideration information on the same subjects that may be available from other sources, including but not limited to academic and scientific organizations, intergovernmental organizations and non-governmental organizations with recognized expertise in the subject matter.

II. Guidelines for Making Certification Decisions

A. Certification Pursuant to Section 609(b)(2)(C)

Section 609(b)(2)(C) authorizes the Department of State to certify a harvesting nation if the particular fishing environment of the harvesting nation does not pose a threat of incidental taking of sea turtles in the course of commercial shrimp trawl harvesting. Accordingly, the Department shall certify any harvesting nation meeting the following criteria without the need for action on the part of the government of the harvesting nation:

a. Any harvesting nation without any of the relevant species of sea turtles occurring in waters subject to its jurisdiction;

b. Any harvesting nation that harvests shrimp exclusively by means that do not pose a threat to sea turtles, e.g., any nation that harvests shrimp exclusively by artisanal means;

c. Any nation whose commercial shrimp trawling operations take place exclusively in waters subject to its jurisdiction in which sea turtles do not occur.

B. Certification Pursuant to Section 609(b)(2)(A) and (B)

Under Section 609(b)(2), the Department of State shall certify any other harvesting nation by May 1st of each year if "the government of (that) nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States" and if "the average rate of that incidental taking by vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting."

a. *Regulatory Program.* The Department of State shall assess regulatory programs, as described in any documentary evidence provided by the governments of harvesting nations, for comparability with the U.S. program.

Where standard otter trawl nets are used in shrimp fisheries in waters where sea turtles are present, sea turtles will inevitably be captured and drowned. The Department of State is presently aware of no measure or series of measures that can minimize the capture and drowning of sea turtles in such nets that is comparable in effectiveness to the required use of TEDs.

1. If the government of the harvesting nation seeks certification on the basis of having adopted a TEDs program, certification shall be made if a program includes the following:

(i) *Required Use of TEDs*—a requirement that all commercial shrimp trawl vessels operating in waters in which there is a likelihood of intercepting sea turtles use TEDs at all times. TEDs must be comparable in effectiveness to those used in the United States. Any exceptions to this requirement must be comparable to those of the U.S. program described above; and

(ii) *Enforcement*—a credible enforcement effort that includes monitoring for compliance and appropriate sanctions.

2. If the government of a harvesting nation demonstrates that it has implemented and is enforcing a comparably effective regulatory program to protect sea turtles in the course of shrimp trawl fishing without the use of TEDs, that nation will also be eligible for certification. As described above, such a demonstration would need to be based on empirical data supported by objective scientific studies of sufficient duration and scope to provide the information necessary for a reliable determination. In reviewing any such information, the Department of State will take fully into account any demonstrated differences between the shrimp fishing conditions in the United States and those in other nations, as well as information available from other sources.

b. *Incidental Take.* Average incidental take rates will be deemed comparable if the harvesting nation requires the use of TEDs in a manner comparable to that of the U.S. program or, as described above, otherwise demonstrates that it has implemented a comparably effective program to protect sea turtles in the course of shrimp trawl fishing without the use of TEDs.

c. *Additional Considerations.* 1. *Form*—A regulatory program may be in the form of regulations promulgated by the government of the harvesting nation and having the force of law. If the legal system and industry structure of the harvesting nation permit voluntary arrangements between government and the fishing industry, such an arrangement may be acceptable so long as there is a governmental mechanism to monitor compliance with the arrangement and to impose penalties for non-compliance, and reliable confirmation that the fishing industry is complying with the arrangement.

2. *Documentary Evidence*—Documentary evidence may be in the form of copies of the relevant laws, regulations or decrees. If the regulatory program is in the form of a government-industry arrangement, then a copy of the arrangement is required. Harvesting nations are encouraged to provide, to the extent practicable, information relating to the extent of shrimp harvested by means of aquaculture.

3. *Additional Sea Turtle Protection Measures*—The Department of State recognizes that sea turtles require protection throughout their life cycle, not only when they are threatened during the course of commercial shrimp trawl harvesting. In making certification determinations, the Department shall also take fully into account other measures the harvesting nation undertakes to protect sea turtles, including national programs to protect nesting beaches and other habitat, prohibitions on the directed take of sea turtles, national enforcement and compliance programs, and participation in any international agreement for the protection and conservation of sea turtles. In assessing any information provided by the governments of harvesting nations in this respect, the Department of State will rely on the technical expertise of NMFS and, where appropriate, the US Fish and Wildlife Service to evaluate threats to sea turtles and the effectiveness of sea turtle protection programs.

4. *Consultations*—The Department of State will engage in ongoing consultations with the governments of harvesting nations. The Department recognizes that, as sea turtle protection programs develop, additional information will be gained about the interaction between sea turtle populations and shrimp fisheries.

These Guidelines may be revised in the future to take into consideration that and other information, as well as to take into account changes in the U.S. program. These Guidelines may also be revised as a result of pending domestic litigation. In addition, the Department will continue to welcome public input on the best ways to implement both these Guidelines and Section 609 as a whole and may revise these guidelines in the future accordingly.

C. Timetable and Procedures for Certification Decisions

Each year the Department will consider for certification: (a) any nation that is currently certified, and (b) any other shrimp harvesting nation whose government requests such certification in a written communication to the Department of State through diplomatic channels prior to September 1 of the preceding year. Any such communication should include any information not previously provided that would support the request for certification, including the information specified above under Review of Information.

Between September 1 and March 1, U.S. officials will seek to visit those nations requesting certifications pursuant to Section 609(b)(2)(A) and (B). Each visit will conclude with a meeting between the U.S. officials and government officials of the harvesting nation to discuss the results of the visit and to review any identified deficiencies regarding the harvesting nation's program to protect sea turtles in the course of shrimp trawl fishing.

By March 15, the Department of State will notify in writing through diplomatic channels the government of each nation that, on the basis of available information, including information gathered during such visits, does not appear to qualify for certification. Such notification will explain the reasons for this preliminary assessment, suggest steps that the government of the harvesting nation can take in order to receive a certification and invite the government of the harvesting nation to provide, by April 15, any further information. If the government of the harvesting nation so requests, the Department of State will schedule face-to-face meetings between relevant U.S. officials and officials of the harvesting nation to discuss the situation.

Between March 15 and May 1, the Department of State will actively consider any additional information that the government of the harvesting nation believes should be considered by the Department in making its determination concerning certification.

By May 1 of each year the Department of State will make formal decisions on certification. The governments of all nations that have requested certification will be notified in writing of the decision promptly through diplomatic channels. In the case of those nations for which certification is denied, such notification will again state the reasons for such denial and the steps necessary to receive a certification in the future.

The government of any nation that is denied a certification by May 1 may, at any time thereafter, request reconsideration of that decision. When the United States receives information from that government demonstrating that the circumstances that led to the denial of the certification have been corrected, U.S. officials will visit the exporting nation as early as a visit can be arranged. If the visit demonstrates that the circumstances that led to the denial of the certification have indeed been corrected, the United States will certify that nation immediately thereafter.

D. Special Timetable for 1999

The United States and the four nations that brought the WTO complaint have agreed that the United States would implement the recommendations and rulings of the DSB within 13 months of the adoption of the WTO Appellate Body report by the DSB, i.e., by December 6, 1999.

Accordingly, the Department of State hereby establishes the following timetable to apply in 1999 only:

After the date of publication of the revised guidelines, the government of any harvesting nation that was denied certification by May 1, 1999, may request to be certified in accordance with these guidelines in a written communication to the Department of State through diplomatic channels prior to September 1, 1999.

Not later than October 15, 1999, U.S. officials will seek to visit to those nations requesting such certifications. Each visit will conclude with a meeting between the U.S. officials and government officials of the harvesting nation to discuss the results of the visit and to review any identified deficiencies regarding the harvesting nation's program to protect sea turtles in the course of shrimp trawl fishing.

By November 1, 1999, the Department of State will notify in writing through diplomatic channels the government of any nation that, on the basis of available

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information, including information gathered during such visits, does not appear to qualify for certification. Such notification will explain the reasons for this preliminary assessment, suggest steps that the government of the harvesting nation can take in order to receive a certification and invite the government of the harvesting nation to provide, by November 15, 1999, any further information.

Between November 15 and December 6, 1999, the Department of State will actively consider any additional information that the government of the harvesting nation believes should be considered by the Department in making its determination concerning certification.

By December 6, 1999, the Department of State will make formal decisions on certification. The governments of all nations that have requested certification under the special 1999 timetable will be notified in writing of the decision promptly through diplomatic channels. In the case of those nations for which certification is denied, such notification will again state the reasons for such denial and the steps necessary to receive a certification in the future.

The government of any nation that is denied a certification by December 6, 1999, may, at any time thereafter, request reconsideration of that decision. When the United States receives information from that government demonstrating that the circumstances that led to the denial of the certification have been corrected, U.S. officials will visit the exporting nation as early as a visit can be arranged. If the visit demonstrates that the circumstances that led to the denial of the certification have indeed been corrected, the United States will certify that nation immediately thereafter.

The Department of State recognizes that a government seeking certification on the basis of the revised guidelines may not, by September 1, 1999, be able to gather sufficient information necessary to support such a request. To meet this concern, and in accordance with its existing practice, the Department will accept requests for certification at any time in 1999 and will process them as expeditiously as possible. However, the Department can only commit to making a certification determination by December 6, 1999 if it has received the necessary information by September 1, 1999.

E. Related Determinations

As noted above, any harvesting nation that is not certified on May 1 of any year may be certified prior to the following May 1 at such time as the harvesting nation meets the criteria necessary for certification. Conversely, any harvesting nation that is certified on May 1 of any year may have its certification revoked prior to the following May 1 at such time as the harvesting nation no longer meets those criteria.

As a matter relating to the foreign affairs function, these guidelines are exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedures Act. This action is exempt from Executive Order 12866, and is not subject to the requirements of the Regulatory Flexibility Act.

Dated: June 29, 1999.

Stuart E. Eizenstat,

Under Secretary of State for Economic, Business and Agriculture Affairs.

[FR Doc. 99–17330 Filed 7–7–99; 8:45 am]

BILLING CODE 4710–09–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee, Generalized System of Preferences (GSP); Notice of the Results of the 1998 Annual Review and 1999 De Minimis Waiver and Redesignation Reviews; Designation of Gabon and Mongolia as Beneficiary Developing Countries and the Reinstatement of Mauritania

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of GSP changes.

SUMMARY: This notice announces the disposition of the petitions accepted for review in the 1998 Annual Review of the GSP program, the results of the 1999 De Minimis Waiver and Redesignation Reviews, exclusions for products that exceeded the GSP competitive need limitations (CNLs), and the designation of Gabon and Mongolia as beneficiary developing countries and the reinstatement of Mauritania.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

The GSP is provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465) (the 1974 Act). The President's decisions concerning the GSP changes addressed in this notice are contained in Proclamation No. 7206 of June 30, 1999. Unless otherwise specified, the changes in the GSP program addressed in this notice are intended to be effective with respect to goods entered on or after July 1, 1999, assuming an extension of the termination date in section 505 of the 1974 Act (19 U.S.C. 2465).

In the 1998 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee accepted for review one petition to withdraw GSP eligibility for a certain article and fifteen petitions for CNL waivers. The disposition of these petitions is indicated in Annex I of this notice.

In the 1999 De Minimis Waiver and Redesignation Reviews, the appraised import values during 1998 of each GSP-eligible article were reviewed to determine whether particular articles from particular GSP beneficiary developing countries exceeded the GSP CNLs. De Minimis waivers were granted to certain articles which exceeded the 50 percent import share CNL, but for which the aggregate value of the imports of that article was below the 1998 de minimis level of $14 million. Annex II to this notice contains a list of these articles.

Certain articles that had previously exceeded GSP CNLs but that had fallen below the CNLs in 1998 ($85 million and 50 percent of U.S. imports of the article) were redesignated for GSP eligibility. These articles are listed in Annex II to this notice.

Articles that exceeded GSP CNLs in 1998, and that are newly excluded from GSP eligibility, are listed in Annex IV to this notice.

The President has designated Gabon and Mongolia as beneficiary developing countries and reinstated Mauritania.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

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Annex I. Decisions on Product Petitions of the 1998 GSP Annual Review

Case		Product		Decision
		A. Petition to Remove Product from GSP		
98-1	2934.20.05	TPPS		Denied
		B. Petitions to Waive Competitive Need Limits for [Country]		
98-2	2841.70.10	Ammonium Moydates	[Chile]	Granted
98-3	2916.31.15	Benzoic Acid	[Estonia]	Granted
98-4	4412.13.50	Plywood	[Indonesia]	Denied
98-5	4412.22.30	Plywood	[Indonesia]	Denied
98-6	7113.11.50	Jewelry	[Thailand]	Denied
98-7	7113.19.29	Gold necklaces	[India]	Denied
98-8	7403.13.00	Unwrought copper	[Chile]	Granted
98-9	7403.19.00	Unwrought copper	[Chile]	Granted
98-10	7418.19.20	Brass articles	[India]	Granted
98-11	8483.10.30	Crankshafts	[Brazil]	Granted
98-12	8527.39.00	Radios	[Indonesia]	Granted
98-13	8528.12.16	TV/VCR Combo	[Thailand]	Denied
98-14	8531.20.00	Indicator panels	[Philippines]	Granted
98-15	8708.39.50	Brakes	[Brazil]	Granted
98-16	9001.30.00	Contact lenses	[Indonesia]	Denied

ANNEX II: GSP COUNTRIES GRANTED de MINIMIS WAIVERS AND 1998 TRADE

HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
0306.24.20	Venezuela	3,692,253	51.4%	Crabmeat, not frozen
0712.90.70	Egypt	330,193	83.6%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, s
0813.40.10	Thailand	1,164,169	91.3%	Papayas, dried
1102.30.00	Thailand	2,871,092	75.7%	Rice flour
1510.00.60	Morocco	1,366,831	53.4%	Edible oil including blends, and their fractions, nesi, not che
1601.00.40	Brazil	212,400	62.8%	Sausages and similar products of beef, beef offal or blood; foo
1604.15.00	Chile	7,449,389	62.6%	Prepared or preserved mackerel, whole or in pieces, but not min
1605.90.10	Thailand	3,713,864	66.9%	Boiled clams in immediate airtight containers, the contents of
1701.91.10	Philippines	63,765	58.0%	Cane/beet sugar & pure sucrose, refined, solid, w/added colorin
1702.90.35	Brazil	4,914,876	80.2%	Invert molasses
1703.10.30	Brazil	1,293,493	53.6%	Cane molasses imported for (a) the commercial extraction of sug
1703.90.30	Lebanon	17,509	56.8%	Molasses, other than cane, imported for (a) the commercial extr
1806.90.01	Croatia	94,416	58.3%	Cocoa preps, not in blocks/slabs/bars, subj. to gen. note 15 of
2008.99.35	Thailand	3,365,415	90.6%	Lychees and longans, otherwise prepared or preserved, nesi
2008.99.50	Thailand	1,942,988	50.0%	Papayas, other than pulp, otherwise prepared or preserved, nesi
2309.90.70	Hungary	174,420	89.8%	Other preps nes with a basis of vitamin B12, for supplementing
2619.00.30	Venezuela	1,096,625	65.2%	Ferrous scale
2819.10.00	Kazakhstan	6,181,518	78.2%	Chromium trioxide
2825.30.00	Republic of South Af	12,667,636	99.1%	Vanadium oxides and hydroxides
2825.70.00	Chile	8,725,498	92.8%	Molybdenum oxides and hydroxides
2841.70.10	Chile	5,657,545	64.2%	Ammonium molybdate
2841.90.10	Republic of South Af	1,022,074	72.3%	Vanadates
2902.90.40	Hungary	105,528	89.7%	Anthracene and 1,4-di-(2-methylstyryl)benzene
2903.51.00	Romania	2,878,046	52.1%	1,2,3,4,5,6-Hexachlorocyclohexane
2907.29.25	Republic of South Af	275,352	67.6%	tert-Butylhydroquinone
2909.50.40	Indonesia	3,827,445	58.4%	Odoriferous or flavoring compounds of ether-phenols, ether-alco
2914.22.10	Slovakia	625,490	76.3%	Cyclohexanone
2917.19.10	Hungary	1,612,642	72.1%	Ferrous fumarate
2918.21.50	Brazil	4,603,110	76.3%	Salicylic acid and its salts, not suitable for medicinal use
2922.12.00	Brazil	2,867,076	57.5%	Diethanolamine and its salts
2931.00.25	Brazil	3,703,959	92.5%	Pesticides of aromatic organo-inorganic (except organo-sulfur)
2933.40.08	Hungary	387,103	100.0%	4,7-Dichloroquinoline
3808.30.20	Brazil	457,176	50.2%	Herbicides, antisprouting products and plant-growth regulators,
4202.22.35	Philippines	447,457	94.4%	Handbags with or without shoulder strap or without handle, with
4412.13.25	Brazil	2,988,878	75.0%	Plywood sheet n/o 6 mm thick, tropical hard wood outer ply, face
4412.14.25	Brazil	6,571,666	94.9%	Plywood sheet n/o 6 mm thick, outer ply of nontropical hardwood,
4412.19.10	Chile	1,515,019	68.7%	Plywood of wood sheets, n/o 6 mm thick each, with outer plies o
4412.29.15	Russia	2,789,475	62.0%	Plywood nesoi, at least one hardwood outer ply nesoi, no partic
4412.92.40	Brazil	2,168	100.0%	Plywood nesoi, softwood outer plies, least 1 ply trop. hardwood, n
4412.99.15	Brazil	258,072	98.9%	Plywood nesoi, softwood outer plies, no tropical hardwood ply, no
4412.99.45	Brazil	236,475	58.1%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no
4810.11.20	Indonesia	3,962,689	63.0%	Basic paper sensitized for photography use with not over 10% fi
5607.30.20	Philippines	4,410,057	79.7%	Twine, cordage, rope and cables of abaca or other hard (leaf) f
7113.20.30	Mauritius	739,793	52.6%	Base metal clad w/precious metal clasps and parts thereof
7202.21.10	Macedonia (Skopje)	3,587,646	84.9%	Ferrosilicon containing by weight more than 55% but not more th
7202.80.00	Russia	2,004,248	51.5%	Ferrotungsten and ferrosilicon tungsten
7405.00.60	Russia	990,133	78.6%	Copper master alloys, not containing 5% or more but n/more than
7409.31.10	Poland	1,376,789	78.1%	Copper-tin base alloys (bronze), plates, sheets and strip, in c
7505.11.50	Zimbabwe (Rhodesia)	171,735	97.4%	Nickel (o/than alloy), profiles
7604.10.30	Slovenia	8,009,534	61.4%	Aluminum (o/than alloy), bar and rods, with a round cross secti
8112.19.00	Kazakhstan	771,529	86.8%	Beryllium, articles nesoi
8112.91.50	Chile	12,089,559	88.7%	Rhenium, unwrought; rhenium, powders
8410.13.00	Egypt	800,000	95.5%	Hydraulic turbines and water wheels of a power exceeding 10,000
8708.99.31	Bosnia-Hercegovina	30,760	63.4%	Pts. & access. of tractors (o/than road tractors or for agricu
8802.60.90	Republic of South Af	328,399	85.2%	Spacecraft, including satellites (o/than communication satellit
9013.10.30	Ukraine	3,097,320	67.2%	Telescopic sights for rifles designed for use with infrared lig
9401.90.15	Czech Republic	1,426,171	60.6%	Parts of seats nesoi, for bent-wood seats
9403.50.60	Indonesia	4,212	60.0%	Furniture (o/than seats) of wood (o/than bentwood), of a kind u
9506.19.40	Czech Republic	1,240,347	63.1%	Cross country snow-ski equipment nesoi, and parts & accessories

ANNEX III: GSP ITEMS REDESIGNATED AND 1998 TRADE

HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
3817.10.50	Indonesia	858,694	6.5%	Mixed alkylbenzenes, except linear
7403.13.00	Chile	235,480	1.9%	Refined copper, billets
7403.19.00	Chile	35,719,921	35.8%	Refined copper, unwrought articles nesoi
8531.20.00	Philippines	58,718,339	6.1%	Indicator panels incorporating liquid crystal devices (LCD's) or
8708.39.50	Brazil	81,418,402	4.5%	Pts. & access. of mtr. vehicles of 8701, nesoi, and 8702-8705, br

ANNEX IV: GSP COUNTRIES EXCEEDING COMPETITIVE NEED LIMITS
NEW EXCLUSIONS AND 1998 TRADE

HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
1702.90.40	Brazil	26,679,351	78.1%	Other cane/beet syrups nesi
1703.90.50	Poland	10,394,832	55.0%	Molasses nesi
7114.19.00	Peru	46,532,063	75.9%	Precious metal (o/than silver) articles, nesoi, whether or not pl
7115.90.30	Colombia	56,195,764	92.6%	Gold (including metal clad with gold) articles (o/than jewellry o
7403.12.00	Russia	17,327,397	96.5%	Refined copper, wire bars
8517.19.80	Indonesia	88,240,789	9.0%	Telephone sets, nesoi
8517.90.24	Costa Rica	109,039,506	31.7%	Parts of electrical telephonic switching or terminal apparatus

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Chandler Municipal Airport, Chandler, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the city of Chandler, Arizona, for Chandler Municipal Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150, are in compliance with applicable requirements.

EFFECTIVE DATES: The effective date of the FAA's acceptance of the Noise Exposure Maps for Chandler Municipal Airport, Chandler, Arizona is June 24, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Chandler Municipal Airport, Chandler, Arizona are in compliance with applicable requirements of Federal Aviation Regulations (FAR) Part 150, effective June 24, 1999.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and supporting documentation submitted by the city of Chandler. The specific maps under consideration are Exhibit 1, "1998 Noise Exposure Map" and Exhibit 2, "2003 Noise Exposure Map" in the submission. The FAA has determined that these maps for Chandler Municipal Airport are in compliance with applicable requirements. This determination is effective on June 24, 1999. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix (A) of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutory required consultation has been accomplished.

Copies of the Noise exposure Maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261

Mr. Greg Chenoweth, Manager, Chandler Municipal Airport, 2380 South Stinson Way, Chandler, Arizona 85249–1728

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on June 24, 1999.

Ellsworth Chan,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 99–17361 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Program Management Committee (PMC) meeting to be held July 29, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review/Approve Summary of previous PMC Meeting; (3) PMC Working Group Report: a. Weather Message Switching Center Replacement Working Group; (4) Publication Review and Approval: a. Final Draft, DO–181B, Minimum Operational Performance Standards for Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/Mode S) Airborne Equipment, RTCA Paper No. 098–99/PMC–048, prepared by SC–187; b. Final Draft, DO–218A, Minimum Operational Performance Standards for the Mode S Airborne Data Link Processor, RTCA Paper No. 099–99/PMC–049, prepared by SC–187; (5) Action Item Review: Cost-Benefit Considerations in RTCA Documents; (6) General Discussion: a. PMC Attendance Policy for members; b. Document Production and PMC Meeting Schedule; c. Recommendation to change Terms of Reference for SC–189, Air Traffic Services Safety & Interoperability Requirements and SC–194, Air Traffic Management Data Link Implementation; d. Recommendations for a Vice-Chairman for Special Committee 159, Global Positioning System; e. Recommendation for additional co-chair for Special Committee 192, National Airspace Review; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 2, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–17362 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 99–5923]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

Control of Alcohol Misuse in Transit Operations.

DATES: Comments must be submitted before September 7, 1999.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Control of Alcohol Misuse in Transit Operations—Ms. Judy Meade, Office of Program Management, (202) 366–2896.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Control of Alcohol Misuse in Transit Operations (*OMB Number: 2132–0557*).

Background: The Omnibus Transportation Employee Testing Act of 1991 (Pub.L. 102–143, October 28, 1991, now codified in relevant part at 49 U.S.C. Section 5331) requires any recipient of Federal financial assistance under 49 U.S.C. Sections 5309, 5307, or 5311 or under 23 U.S.C. Section 103(e)(4) to establish a program designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol by employees who perform safety-sensitive functions. FTA's regulation, 49 CFR Part 654, "Prevention of Alcohol Misuse in Transit Operations," effective March 17, 1994, requires recipients to submit to FTA annual reports containing data which summarize information concerning the recipients' alcohol testing program, such as the number and type of tests given, number of positive test results, and the kinds of safety-sensitive functions the employees perform. FTA uses these data to ensure compliance with the rule, to assess the misuse of alcohol in the transit industry, and to set the random testing rate. The data will also be used to assess the effectiveness of the rule in reducing the misuse of alcohol among safety-sensitive transit employees and making transit safer for the public.

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 20.1 hours for each of the 1,615 repondents.

Estimated Total Annual Burden: 32,480 hours.

Frequency: Annual.

Issued: July 1, 1999.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 99–17307 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5908]

Notice of Receipt of Petition for Decision That Nonconforming 1998–1999 BMW 5 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998–1999 BMW 5 Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998–1999 BMW 5 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States,

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certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1998–1999 BMW 5 Series passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1998–1999 BMW 5 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998–1999 BMW 5 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1998–1999 BMW 5 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998–1999 BMW 5 Series passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1998–1999 BMW 5 Series passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model tail-lamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. *208 Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's seating position or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints which adjust by means of an automatic retractor and release by means of a single push button in both front designated seating positions, with combination lap and shoulder restraints which release by means of a single push button in both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that non-U.S. certified 1998–1999 BMW 5 Series passenger cars will be inspected prior to importation to ensure that they are equipped to comply with the Theft Prevention Standard found in 49 CFR Part 541.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. NHTSA has previously decided that a number of individual models within the 1998–1999 BMW 5 Series are eligible for importation and has assigned separate eligibility numbers to each of these models. If the agency ultimately decides to grant this petition, these eligibility numbers will be replaced by a single eligibility number that applies to all 1998–1999 BMW 5 Series passenger cars.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17308 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5909]

Notice of Receipt of Petition for Decision that Nonconforming 1995–1999 Triumph Thunderbird Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1999 Triumph Thunderbird motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1999 Triumph Thunderbird motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports of Lansdale, Pennsylvania

("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1995–1999 Triumph Thunderbird motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1999 Triumph Thunderbird motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1999 Triumph Thunderbird motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1999 Triumph Thunderbird motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1999 Triumph Thunderbird motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model head lamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17309 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5910]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1999 BMW 7 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1999 BMW 7 Series passenger cars are eligible for importation.

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SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1999 BMW 7 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. Docket hours are from 9 am to 5 pm.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995–1999 BMW 7 Series passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1999 BMW 7 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1999 BMW 7 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1999 BMW 7 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1999 BMW 7 Series passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1995–1999 BMW 7 Series passenger cars comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model tail-lamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:*

(a) Installation of a U.S.-model seat belt in the driver's seating position or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints which adjust by means of an automatic retractor and release by means of a single push button in both front designated seating positions, with combination lap and shoulder restraints which release by means of a single push button in both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that non-U.S. certified 1995–1999 BMW 7 Series passenger cars will be inspected prior to importation to ensure that they are equipped to comply with the Theft Prevention Standard found in 49 CFR part 541.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. NHTSA has previously decided that a number of individual models within the 1995–1999 BMW 7 Series are eligible for importation and has assigned separate eligibility numbers to each of these models. If the agency ultimately decides to grant this petition, these eligibility numbers will be replaced by a single eligibility number that applies to all 1995–1999 BMW 7 Series passenger cars.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17310 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5911]

Notice of Receipt of Petition for Decision That Nonconforming 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1987–1999 Kawasaki ZX6, ZX7, ZX9, ZX10, and ZX11 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. *106 Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model head lamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

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Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–17311 Filed 7–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on Exemption Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on exemption applications in JANUARY–APRIL 1999. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail Freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on June 3, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
Modification Exemptions				
7708–M	DOT–E 7708	Pacific Scientific, (HTL/KIN-Tech Division) Durate, CA.	49 CFR 173.302(a), 173.3, 178.44.	To modify the exemption to allow for a design change and an increase in service pressure to 6300 psig of a non-specification high-pressure cylinder for shipment of a Division 2.2 material.
8009–M	DOT–E 8009	CP Industries, Inc., McKeesport, PA.	49 CFR 173.301(d) (2), 173.302 (a) (3), 178.37–5.	To modify the exemption to authorize increased ultrasonic scanning speeds on DOT–3AAX cylinders (trailer tubes) made of 4130X steel, for CNG service, at the time of manufacturing.
8602–M	DOT–E 8602	MVE, Inc., New Prague, MN.	49 CFR 173.320	To modify the exemption to provide for alternative testing criteria to be consistent with cryogenic MC–338 cargo tanks.
9162–M	DOT–E 9162	Sun Pipe Line Company, Tulsa, OK.	49 CFR 173.119, 173.304, 173.315.	To modify the exemption to increase the capacity of a trailer equipped with a mechanical displacement meter prover to 153.50 gallons for the transportation of Class 3 or Division 2.1 materials.
9275–M	DOT–E 9275	Estee Lauder Company, Melville, NY.	49 CFR Parts 100–199	To modify the exemption to include flammable deodorant sticks reclassed as a consumer commodity which contain 78–78% ethyl alcohol authorized to be transported as essentially unregulated.
9421–M	DOT–E 9421	Taylor-Wharton Co., Harrisburgh, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a) (1), 175.3, 178.37.	To modify the exemption to authorize the use of ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of non-DOT specification cylinders for use in transporting certain Division 2.1, 2.2 gases and Division 6.1 materials.
9706–M	DOT–E 9706	Taylor-Wharton Co., Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34 (a) (1), 175.3, 178.37.	To modify the exemption to authorize the use of ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of non-DOT specification cylinders for use in transporting certain Division 2.1, 2.2 gases and Division 6.1 materials.
9819–M	DOT–E 9819	Halliburton Energy Services, Inc., Duncan, OK.	49 CFR 173.119, 178.253, Part 173, Subpart F.	To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting Class 3 liquids and Class 8 liquids in non-DOT specification stainless steel portable tanks.
10047–M	DOT–E 10047	Taylor-Wharton Co., Harrisburg, PA.	49 CFR 173.301(h), 173.302(a), 173.304, 173.34 (a) (1), 175.3, 178.37.	To modify the exemption to provide for ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of non-DOT specification cylinder used for transporting certain hazardous materials.
10066–M	DOT–E 10066	Conax Florida Corporation, St. Petersburg, FL.	49 CFR 173.304, 178.36	To modify the exemption to authorize the inflator assembly (P/N 1812–161–01) to be shipped as a separate item; use of a different description/classification for the inflator assembly.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10407–M	DOT–E 10407	TN Technologies, Inc., Round Rock, TX.	49 CFR 173.302, 175.3	To modify the exemption to increase the water capacity of the non-DOT specification, stainless steel, radiation detection device, filled with a Division 2.2, nontoxic gas, from 30 cubic inches to 1000 cubic inches.
10458–M	DOT–E 10458	Marsulex, Inc., Sudbury, Ontario, CN.	49 CFR 174.67(j), Part 107, Appendix B, Subpart B.	To modify the exemption to provide for Sulfur dioxide, Division 2.2 as an additional class of material for transportation in DOT Specification 111A100W2 tank cars.
11054–M	DOT–E 11054	Welker Engineering Company, Sugar Land, TX.	49 CFR 178.36, Subpart C.	To modify the exemption to waive the requirement for inspection by an independent inspection agency by authorizing use of a competent manufacturer's inspector.
11270–M	DOT–E 11270	The Specialty Chemicals Div. of B.F. Goodrich Co., Cleveland, OH.	49 CFR 174.67 (i) & (j)	To modify the exemption to provide for unloading valves to remain open when rail cars are standing with unloading connections attached.
11380–M	DOT–E 11380	Baker Atlas (a division of Baker Hughes, Inc.), Houston, TX.	49 CFR 173.34(d), 178.37–13, 178.37–15, 178.37–5.	To modify the exemption to allow for several design changes of the non-DOT specification cylinder for the transportation of certain compressed hydrocarbon gases.
11447–M	DOT–E 11447	SAES Pure Gas, Inc., San Luis Obispo, CA.	49 CFR 173.187	To modify the exemption to include several design changes for the transportation of certain Division 4.1 & 4.2 materials in non-DOT specification packaging that exceed the maximum net quantity allowed per package.
11447–M	DOT–E 11447	SAES Pure Gas, Inc., San Luis Obispo, CA.	49 CFR 173.187	To modify the exemption to allow for a design change of the stainless steel pressure vessel; an increase of catalyst material not to exceed 8,000 pounds; increase of nickel content within the ctalyst not to exceed 5,200 pounds.
11686–M	DOT–E 11686	Bridgeview, Inc., Morgantown, PA.	49 CFR 171.8, 172.101(8.c), 173.197.	To modify the exemption to provide for several modifications to existing plastic bags.
11856–M	DOT–E 11856	Olin Corp/Motorola Corp	49 CFR 173.304(a)(2), 173.34(d), 175.3.	To modify the exemption to increase the satellite fuel tank capacity from 33 gallons to 35 gallons and to authorize rail freight as an additional mode of transportation for certain Division 2.3 and Class 8 materials.
11859–M	DOT–E 11859	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 178.65	To modify the exemption to authorize changes to the testing procedures and an additional configuration of the glass bottle system consisting of two cylindrical/spherical halves fabricated from stainless steel for use in transporting Division 1.4S material.
11916–M	DOT–E 11916	CP Industries, Inc., McKeesport, PA.	49 CFR 173.302(e) (2), (4) and (5), 173.34 (e) (1), (3) (4).	To modify the exemption to alter the Rejection Criteria for isolated pits and line corrosion for DOT–3AX and DOT–3AAX cylinders for the transportation in commerce of 2.1, 2.2 and 2.3 compressed gases.
12022–M	DOT–E 12022	Taylor-Wharton, Harrisburg, PA.	49 CFR 173.302(c) (2), (c)(3), (c)(4), (c)(5), 173.34(e) (1), (e)(1), (e)(3), (e)(4), (e)(8), 173.34(e) (14), (e)(15)(vi).	To modify the exemption to provide for alternative testing criteria of 3AA cylinders for use in transporting Division 2.1, 2.2 and 2.3 hazardous materials.
12162–M	DOT–E 12162	U.S. Department of Defense, Falls Church, VA.	49 CFR 178.35, 178.36(e)(j).	To reissue the exemption originally issued on an emergency basis to use non-DOT specification containers for certain compressed gases.
12178–M	DOT–E 12178	STC Technologies, Inc., Bethlehem, PA.	49 CFR 173.301(e)(f), 173.304 (a) (1) and (a)(3).	To reissue the exemption originally issued on an emergency basis to use a non-DOT specification container for liquefied gas, flammable, n.o.s.
12200–M	DOT–E 12200	Autoliv ASP, Inc., Ogden, UT.	49 CFR 173.28(b) (4)	To reissue the exemption originally issued as an emergency for the use of UN 1A2 steel drums that do not meet the minimum thickness requirements for drums with a maximum capacity of less than 20 liters for the transportation of certain Division 1.3C materials.
12211–M	DOT–E 12211	BJ Coiltech division of BJ Services Company USA, Lafayette, LA.	49 CFR 173.320(a)	To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of liquid nitrogen, cryogenic liquid by cargo vessel in non-DOT specification insulated portable tanks manufactured before 2/1/99, used in support of the offshore oil and gas exploration and production in the Gulf of Mexico.

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12212–M	DOT–E 12212	Daniel P. Dupuis, Windsor Locks, CT.	49 CFR 171.8	To reissue the exemption originally issued on an emergency basis to authorize the holder of this exemption to perform the function of a registered inspector for cargo tanks without meeting the requirements in 49 CFR 171.8.
12214–M	DOT–E 12214	Energetic Solutions Inc., Englewood, CO.	49 CFR 172.400, 172.407, 172.411.	To reissue the exemption originally issued on an emergency basis authorizing the use of UN 4G fiberboard boxes inadvertently marked with the wrong proper shipping name.
		New Exemptions		
11883–N	DOT–E 11883	Brownie Tank Mfg., Co., Minneapolis, MN.	49 CFR 172.200, 173.242(b), 173.243(b).	To authorize the transportation in commerce of meter provers in assorted sizes with residual amounts of Class 3 hazardous materials. (mode 1).
11947–N	DOT–E 11947	Patts Fabrication & Services, Odessa, TX.	49 CFR 178.253	To authorize the manufacture, mark and sale of non-specification 60 gallon portable metal tanks designed and constructed in accordance with DOT-Specification 57, with certain exceptions, for use in transporting Flammable liquids, n.o.s., Class 3. (mode 1).
12022–N	DOT–E 12022	Taylor-Wharton Co., Harrisburg, PA.	49 CFR 173.302 (c) (2), (c) (3), (c) (4), (c) (5), 173.34(e) (1), (e) (3), (e) (4), (e) (8), 173.34(e) (14), (e) (15) (vi).	To authorize the use of ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of 3AA cylinders for use in transporting hazardous materials classed as Division 2.1, 2.2 and 2.3 (modes 1, 2, 3, 4, 5).
12063–N	DOT–E 12063	The Hydrocarbon Flow Specialist, Inc. Morgan City, LA.	49 CFR 172.102, SP T–18.	To authorize the transportation in commerce of Hydrofluoric Acid solutions, Class 8, in IM 101 tanks equipped with valve to allow for bottom discharge. (modes 1, 3).
12073–N	DOT–E 12073	Patriotic Fireworks, North East, MD.	49 CFR 173.56(j)	To authorize to transpodtation in commerce fo certain approved Division 1.3G fireworks Devices in specially designed packagings to be offered for transportation as Division 1.4G firworks. (modes 1, 2).
12097–N	DOT–E 12097	Qual–X Inc. Powell, OH	49 CFR 173.140, 173.412	To authorize the one-time transportation in commerce of a specially designed device containing small quantities of gas, Division 2.2 contained in Type A package used as part of a leak detector console. (mode 1.)
12098–N	DOT–E 12098	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 178.65	To authorize the transportation in commerce of certain compressed gases, Division 2.2, in non-DOT specification pressure vessels. (modes 1, 2, 4).
12102–N	DOT–E 12102	AETS/CWM, Flanders, NJ	49 CFR 173.56(i)	To authorize the transportation of certain Division 1.1D, unstable waste laboratory mixtures that have been densitized to remove their explosive characteristics, as Division 4.1 flammable solids. (mode 1).
12104–N	DOT–E 12104	Hoechst Celanese, Spartanburg, SC.	49 CFR 174.67(i)	To authorize rail cars to remain connected throughout the unloading of Class 9 material without the physical presence of an unloader. (mode 2).
12105–N	DOT–E 12105	Becton Dickinson Microbiology Systems, Sparks, MD.	49 CFR 172.504, 174.81, 177.848.	To authorize the transportation in commerce of specially-designed combination packaging for use in transporting Division 4.3 and Class 8 material be exempt from segregation and placarding requirements. (modes 1, 2).
12116–N	DOT–E 12116	Proserv (North Sea) Ltd., Aberdeen, UK.	49 CFR 178.36	To authorize the transportation in commerce of certain flammable gases, Division 2.1, in non-DOT specification cylinder used for oil well sampling. (modes 1, 2, 3, 4).
12120–N	DOT–E 12120	The Sherwin-Williams Co., Cleveland, OH.	49 CFR 172, Subpart C, D, E, F.	To authorize the transportation in commerce of Class 3 and Division 4.1 hazardous materials in DOT-specification and non-DOT specification drums for intra-plant shipments as essentially unregulated. (mode 1).
12121–N	DOT–E 12121	Lufthansa Cargo, D–60546 Frankfurt/Main, GR.	49 CFR 175.75(a)(2)(i)	To authorize the transportation in commerce of hazardous materials classed in Division 2.2 in quantities that exceed the weight limitation permitted aboard passenger-carrying aircraft. (mode 5).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12129–N	DOT–E 12129	Kenyon International Emergency Services, Houston, TX.	49 CFR 175.75(a)(1)(2)	To authorize the transportation in commerce of small quantities of various hazardous materials that exceed the specified quantity limitation. (mode 5).
12131–N	DOT–E 12131	Gamma Laboratories, Ltd., Houston, TX.	49 CFR 173.302, 173.306(b)(4). 175.3.	To authorize the manufacture, mark and sale of non-DOT specification packagings, used as radiation detectors, for shipments of certain non-flammable compressed gases. (modes 1, 2, 3, 4, 5).
12132–N	DOT–E 12132	Carleton Technologies, Inc., Orchard, NY.	49 CFR 178.65	To authorize the transportation in commerce of a specifically designed device consisting of a hermetically sealed high pressure gas cylinder, containing argon gas, Division 1.4S. (modes 1, 2, 3, 4).
12134–N	DOT–E 12134	Institute of Shortening and Edible Oils (ISEO), Washington, DC.	49 CFR Parts 100–180	To authorize the transportation in commerce of sift-proof dump or hopper-type vehicles and sift-proof roll-on/roll-off bulk with tarpaulins, metal covers or equivalent covers for use in transporting Division 4.2 material. (mode 1).
12149–N	DOT–E 12149	CP Industries, Inc., McKeesport, PA.	49 CFR 178.45(h)	To provide for ultrasonically scanning of DOT 3T cylinders at time of manufacturing for use in transporting Division 2.1, 2.2 and 2.3 gases. (modes 1, 2, 3, 4).
12155–N	DOT–E 12155	S&C Electric Co., Chicago, IL.	49 CFR 172.301(c), 173.304.	To authorize the transportation in commerce of a specially designed non-DOT specification packaging containing compressed sulfur hexafluoride, Division 2.2. (modes 1, 2, 3, 4).
12157–N	DOT–E 12157	Raytheon Systems Co., Fort Wayne, IN.	49 CFR 173.306	To authorize the transportation in commerce of a specially designed packaging consisting of a gas cylinder containing limited quantities of hazardous materials to be transported as essentially unregulated by air. (mode 4).
12177–N	DOT–E 12177	Just In Time Certified Packaging Inc, St. Louis, MO.	49 CFR Part 172, Subpart E&F.	To authorize the manufacture, marking and sale of a specifically designed packaging for use in transporting various classes of hazardous materials without required labels and placards. (modes 1, 2, 3, 4).
12190–N	DOT–E 12190	Indiana Michigan Power Co., Buchanan, MI.	49 CFR 173.403	To authorize the transportation in commerce of steam generators which contain small quantities of Class 7 radioactive material. (modes 1, 2).
12195–N	DOT–E 12195	Custom Metalcraft, Inc., Springfield, MO.	49 CFR 172.203(a), 172.302(c), 173.240–243, 178.705(c)(iv)(A).	To authorize the manufacturer, mark and sale, of metal intermediate bulk containers meeting design type UN31A, except for minimum thickness requirements and marking requirements for use in the transportation of certain hazardous materials. (modes 1, 2, 3).
12196–N	DOT–E 12196	HR Textron Inc., Pacoima, CA.	49 CFR 173.302(a). 178.35, 178.37.	To authorize the manufacture, mark and sale of non-DOT specification stainless steel alloy cylinders to be used for the transportation in commerce of nitrogen or nitrogen or nitrogen mixtures classed as Division 2.2 materials. (modes 1, 2, 3, 5).
12199–N	DOT–E 12199	Flight International Newport News, VA.	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation in commerce of Division 1 explosives that are not permitted for shipment by air or are in quantities greater than those prescribed. (mode 4).
12202–N	DOT–E 12202	Vicksburg Chemical Co., Vicksburg, MS.	49 CFR 172.302(c), 173.24b(d)(2).	Request for an emergency exemption to transport two overloaded hopper cars containing a Division 5.1 material. (mode 2).
12222–N	DOT–E 12222	iSi GmbH, Vienna, AU	49 CFR 173.304(a)(2)	To authorize the transportation in commerce of DOT 39 Specification cylinders, containing a Division 2.2 gas, with a filling density which exceeds those presently authorized. (modes 1, 2, 3, 4).
		Emergency Exemptions		
EE 12178–N	DOT–E 12178	STC Technologies, Inc., Bethlehem, PA.	49 CFR 173.301 (e) (f), 173.304(a)(1) and (a)(3).	Request for an emergency exemption to use a non-DOT specification container for liquefied gas, flammable, n.o.s. (modes 1, 4).
EE 12200–N	DOT–E 12200	Autoliv, Ogden, UT	49 CFR 173.28(b)(4)	Request the use of UN 1A2 steel drums that do not meet the minimum thickness requirements for drums with a maximum capacity of less than 20 liters. (mode 1).
EE 12201–N	DOT–E 12201	Wills Trucking, Richfield, OH.	49 CFR 173.24b(d)(2)	To authorize the transport of two overloaded gondola railcars containing a Class 9 material. (mode 2).

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12211–N	DOT–E 12211	B.J. Coil Tech, Inc., Lafayette, LA.	49 CFR 173.320(a)	To authorize the use of non-DOT specification portable tanks containing liquid nitrogen, cryogenic liquid. (modes 1, 3).
EE 12212–N	DOT–E 12212	Daniel Dupuis, Rocky Hill, CT.	49 CFR 171.8	Request for an emergency exemption to perform the function of a registered inspector for cargo tanks without meeting the requirements in 171.8. (mode 1).
EE 12214–N	DOT–E 12214	Energetic Solutions, Englewood, Co.	49 CFR 172.400, 172.407, 172.411.	Request for an emergency exemption to authorize the use of boxes that were inadvertently marked with the wrong proper shipping names. (modes 1, 3).
EE 12218–N	DOT–E 12218	Air Liquide Electronics, Dallas, TX.	49 CFR 178.801(c)(1), 178.810, 178.811, 178.812, 178.815.	Request for an emergency exemption to authorize modifications to closures on IBCs. (modes 1, 2, 3, 4, 5).
EE 12219–N	DOT–E 12219	TRW Applied Technology, Redondo Beach, CA.	49 CFR 173.302, 173.305, 173.306, 173.307.	Application for an emergency exemption to transport compressed gas in a non-DOT specification container. (modes 1, 4, 5).
EE 12223–N	DOT–E 12223	Micro-Med Industries, Inc., Jacksonville, FL.	49 CFR 172.101(8)(h)(c), 173.197.	To authorize the transportation in commerce of roll-off containers, containing regulated medical waste. (mode 1).
EE 12224–N	DOT–E 12224	BioCor, Inc., Jacksonville, FL.	49 CFR 172.202(8)(b)(c), 173.197.	To authorize the emergency transportation in commerce of regulated medical waste in roll-off bins. (mode 1).
EE 12225–N	DOT–E 12225	Safety Disposal System, Inc., Norfolk, VA.	49 CFR 172.101(8)(b)(c), 173.197.	To authorize the emergency transportation in commerce of regulated in medical waste roll-off bins. (mode 1).
EE 12226–N	DOT–E 12226	American Environmental Group, Inc., Norfolk, VA.	49 CFR 172.101(8)(b)(c), 173.197.	To authorize the emergency transportation in commerce of regulated medical waste in roll-off bins. (mode 1).
EE 12227–N	DOT–E 12227	American Waste Industries, Inc., Norfolk, VA.	49 CFR 172.101(8)(b) & (c), 173.197.	To authorize the emergency transportation in commerce of regulated medicalwaste in roll-off bins. (mode 1).
EE 12229–N	DOT–E 12229	Gulf South Systems, Port Allen, LA.	49 CFR 173.24b (d)(2)	Request for an emergency exemption to authorize the transport of an overloaded tank car containing a Class 9 material. (mode 2).
EE 12231–N	DOT–E 12231	EQ—The Environmental Quality Co., Wayne, MI.	49 CFR 173.24b(d)(2), 173.26.	Request for an emergency exemption to transport hazardous waste, Class 9, in 8 overloaded gondola rail cars. (mode 2).
EE 12232–N	DOT–E 12232	Bell Helicopter, Hurst, TX	49 CFR 173.62	To authorize the emergency transportation in commerce of a Division 1.3C explosive device in non-DOT specification packaging. (mode 1).
EE 12233–N	DOT–E 12233	EM Industries, Hawthorne, NY.	49 CFR 173.227	Request for an emergency exemption to ship phosphorus oxychloride in packagings not authorized in the HMR. (mode 1).
EE 12235–N	DOT–E 12235	Thatcher Co., Salt Lake City, UT.	49 CFR 173.24(c)	Request for an emergency exemption to transport a leaking ton container that is fitted with a chlorine institute "B" kit. (mode 1.)
EE 12244–N	DOT–E 12244	Lone Star Industries, New Orleans, LA.	49 CFR 173.24b(a)(iii), 173.24b(d)(ii), 173.26, 173.31(a).	Request for an emergency exemption to authorize the transportation of a rail car that is overloaded with a 5.1 material. (mode 2).
EE 12255–N	DOT–E 12255	Raytheon Systems Co., Lewisville, TX.	49 CFR 173.306	Request for an emergency exemption to transport a cylinder containing helium in a alternative container. In addition, the applicant requests an exemption from the hazard communication requirements in 49 CFR Part 172. (modes 1, 4).
EE 12257–N	DOT–E 12257	D/K Environmental, Vernon, CA.	49 CFR 173.24b(a)(iii)	Request for an emergency exemption to transport hazardous material in a gondola rail car that exceeds the maximum gross weight by 7,500 lbs. (mode 2).
EE 12265–N	DOT–E 12265	Blu-Gas Co., Inc., Gastonia, NC.	49 CFR 173.302(c), 173.33(a)(3), 180.407(c).	To authorize the emergency transportation in commerce of Propane in certain MC–331 cargo tanks that were not retested and inspected by an authorized registered inspector. (mode 1).

DENIALS

2787–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the shipment of certain Division 2.2 materials in non-DOT specification pressure vessels equipped with regulating valve denied as incomplete March 12, 1999.

DENIALS—Continued

3121–X	Request by U.S. Department of Dentense Fall Church, VA to renew exemption to authorize the transportation of certain poisonous material classed as Division 2.3, in DOT Specification MC 338 cargo tanks denied as incomplete March 12, 1999.
3128–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the use of a non-DOT specification cylinder for transportation of Division 1.4 explosive and Division 2.2 gas denied as incomplete March 12, 1999.
4242–X	Request by U.S. Department of Defense falls Church, VA to renew exemption to authorize the use of a non-DOT specification aluminum pressure vessel for transportation of pyroforic mixture denied as incomplete March 12, 1999.
6232–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the shipment of Division 1.1 and 1.2 gases and a Division 4.1 solid in the same outside package denied as incomplete March 12, 1999.
6250–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the transport of partially dis-assembled aircraft with Division 1 materials components (ejection seat and canopy related devices) remaining installed denied as incomplete March 12, 1999.
6250–X	Request by the U.S. Department of Defense, Falls Church, VA. to renew exemption to authorize the transport of partially dis-assembled aircraft with Division 1 materials components (ejection seat and canopy related devices) remaining installed denied as incomplete March 12, 1999.
6557–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize deviation from the requirements of the inspector's report for DOT specification 3A, 3AA, and 4B cylinders of shipment of certain Division 2.2 materials denied as incomplete March 12, 1999.
6658–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize the use of a non-DOT specification open-head steel drum for transportation of a certain Division 1.1 and 1.2 material denied as incomplete February 23, 1999.
7255–X	Request by U.S. Department of Defense Falls Church, VA to renew exemption to authorize simultaneous loading of two holds within the same hatch when handling military explosives denies as incomplete March 12, 1999.
7887–M	Request by Kosdon Enterprises Ventura, CA to modify the exemption to provide for rocket motors and reloadable kits which are classified as Division 1.3G that exceed the 25 gram limitation to be excepted from labeling requirements denied March 15, 1999.
11938–N	Request by Steel Shipping Container Institute Washington, DC to authorize the transportation in commerce of non-bulk container with alternative markings for use in transporting various classes of hazardous materials denied January 26, 1999.
12052–N	Request by Engineered Carbons, Inc. Borger, TX to authorized rail cars to remain connected during the preheating process of various hazardous materials without the physical presence of an unloader denied January 6, 1999.
12215–N	Request by Bio-Tek Industries Atlanta, GA to authorize rail cars to remain connected during the preheating process of various hazardous materials without the physical presence of an unloader denied April 6, 1999.
12218–N	Request by Air Liquide Electronics Dallas, TX to authorize rail cars to remain connected during the preheating process of various hazardous materials without the physical presence of an unloader denied March 31, 1999.

[FR Doc. 99–17400 Filed 7–7–99; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33768]

Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—Consolidated Rail Corporation [1]

Consolidated Rail Corporation (Conrail) has agreed to grant limited, non-exclusive overhead trackage rights to Grand Trunk Western Railroad Incorporated (GTW), over segments of Conrail's lines as follows: (1) On Conrail's North Yard Branch between MP 6.7 (at Canadian National Railway Company's (CN) Milwaukee Junction, the proposed connection point between CN and Conrail) and MP 2.9 (the connection point between Conrail's North Yard Branch and Conrail's Detroit Line); and (2) on Conrail's Detroit Line between MP 2.9 and MP 18.9 (the proposed CN/Conrail connection near Gibraltar which is CN's Denby Station), for a total distance of approximately 20 miles.[2] The purpose of the trackage rights is to enable GTW to improve its service and expedite its trains through the congested Detroit, MI terminal area. The transaction was scheduled to be consummated on or after June 25, 1999, the effective date of the exemption (7 days after the exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk & Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease & Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33768, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert P. vom Eigen or Jamie P. Rennert, HOPKINS & SUTTER, 888 16th Street, NW, Washington, DC 20006.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

[1] By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of the assets of Conrail was effected by CSX and NS on June 1, 1999. See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999).

[2] A redacted version of the draft trackage rights agreement between Conrail and GTW was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order, which will be addressed in a separate decision.

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: July 1, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17388 Filed 7–7–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33771]

Delaware and Hudson Railway Company, Inc.—Trackage Rights Exemption—CSX Transportation, Inc. and New York Central Lines LLC

CSX Transportation, Inc. (CSXT) and New York Central Lines LLC (NYC) have agreed to grant overhead trackage rights to Delaware and Hudson Railway Company, Inc. (D&H), over lines generally between Schenectady, NY, and Fresh Pond Junction, NY. The lines are owned by NYC and leased to CSXT.[1] The scope of these rights and their terms were established by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision Nos. 89, 109, and 123 (STB served July 23, 1998, December 18, 1998, and May 20, 1999, respectively).[2]

The transaction was scheduled to be consummated on or after June 25, 1999, the effective date of the exemption.

The purpose of the trackage rights is to enhance rail competition for movements of traffic on the east side of the Hudson River.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33771, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric von Salzen, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW, Washington, DC 20004–1109.

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: June 30, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17215 Filed 7–7–99; 8:45 am]

BILLING CODE 4915–00–P

[1] CSXT, by letter filed June 21, 1999, and Samuel J. Nasca, for and on behalf of United Transportation Union-New York State Legislative Board, by comments filed June 24, 1999, express support for imposition of appropriate employee protective conditions. As indicated subsequently in this notice, the transaction is subject to employee protective conditions. The CSXT letter also makes reference to the requirement that D&H submit a final executed agreement within 10 days of the date the agreement is executed.

[2] The responsive application filed jointly by the State of New York, acting by and through its Department of Transportation, and the New York City Economic Development Corporation, acting on behalf of the City of New York, in connection with the railroad control application in STB Finance Docket No. 33388, was docketed as STB Finance Docket No. 33388 (Sub-No. 69).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 137X)]

Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Ada County, ID

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon an 18.2-mile line of railroad on the Boise Subdivision, "Boise Cutoff" from milepost 424.80 near Orchard to milepost 443.0 near Hillcrest, in Ada County, ID. The line traverses United States Postal Service Zip Code 83707.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on Augusut 7, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 19, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 28, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 13, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by July 8, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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Decided: July 1, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17389 Filed 7–7–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and time for the next meeting and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, July 23, 1999 at 9:30 a.m. in the Secretary's large conference room, Room 3327, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC. The duration of the meeting will be approximately three hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622–0220. Final meeting details, including the meeting time, location, and agenda, can be confirmed by contacting the above number one week prior to the meeting date.

Agenda

At the July 23, 1999 session, the regular quarterly meeting of the Advisory Committee, the Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

1. Reports on Subcommittee progress:
   (a) Study of Merchandise Processing Fee
   (b) Study of Resources for the Office of Rulings and Regulations
   (c) Study of Compliance Assessment Team (CAT) methodology
2. A review of HTS simplification and the benefits to Customs including automation, compliance and general administration
3. Brief report on status of Automated Commercial System (ACS) maintenance
4. Discussion of Export Compliance and Customs evolving role

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting should give advance notice by contacting Theresa Manning at (202) 622–0220, no later than July 15, 1990.

Dated: July 1, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 99–17249 Filed 7–7–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Fees for Customs Services at User Fee Airports

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of an increase in the fees charged user fee airports by Customs for providing Customs services at these designated facilities. These fees are based on actual costs incurred by Customs in purchasing equipment and providing training and one Customs inspector on a full-time basis, and, thus, merely represent reimbursement to Customs for services rendered. The fees to be increased are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with Customs to become a user fee airport, and the annual fee thereafter charged user fee airports.

EFFECTIVE DATE: The new fees will be effective on October 1, 1999, and will be reflected in quarterly, user fee airport billings issued on or after that date.

FOR FURTHER INFORMATION CONTACT: Cynthia Sargent, Office of Finance (202–927–9181).

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, 98 Stat. 2992) (codified at 19 U.S.C. 58b), as amended, authorizes the Secretary of the Treasury to make Customs services available and charge a fee for the use of such services at certain specified airports and at any other airport, seaport, or other facility designated by the Secretary pursuant to specified criteria. (The list of user fee airports is found at § 122.15 of the Customs Regulations (19 CFR 122.15.)) The fee that is charged is an amount equal to the expenses incurred by the Secretary in providing the Customs services at the designated facility, which includes purchasing equipment and providing training and inspectional services, i.e., the salary and expenses of individuals employed by the Secretary to provide the Customs services. The fees being raised are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with Customs to become a user fee airport (set at $105,000 in Fiscal Year 1997), and the annual fee, thereafter, charged user fee airports (set at $78,500 in Fiscal Year 1997).

These user fees for user fee airports are typically set forth in Memorandum of Agreements between a user fee facility and Customs. While the amount of these fees are agreed to be at flat rates, they are adjustable, as costs and circumstances change.

The last notice concerning fees charged user fee airports was published on October 28, 1997, in the **Federal Register** (62 FR 55846).

Adjustment of User Fee Airport Fees

As of April 30, 1999, Customs has determined that in order for the charged user fee to actually reimburse Customs for services provided, the initial fee is increased from $ 105,000 to $111,500, and that the recurring annual fee subsequently charged is increased from $ 78,500 to $80,000. The new fees will be effective October 1, 1999, and will be reflected in quarterly, user fee airport billings issued on or after that date.

Dated: July 2, 1999.

Wayne Hamilton,

Assistant Commissioner, Office of Finance.

[FR Doc. 99–17398 Filed 7–7–99; 8:45 am]

BILLING CODE 4820–02–P

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 210

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 210, Preparation Instructions for Media Labels.

DATES: Written comments should be received on or before September 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of Notice 210 should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Preparation Instructions for Media Labels.

OMB Number: 1545–0295.

Form Number: Notice 210.

Abstract: Section 6011(e)(2)(A) of the Internal Revenue Code requires certain filers of information returns to report on magnetic media. Notice 210 instructs the filers on how to prepare a pressure sensitive label that is affixed to the media informing the IRS as to what type of information is contained on the media being submitted. This label must be attached to each and every piece of media to identify items needed so that the media can be processed by the Internal Revenue Service.

Current Actions: There are no changes being made to Notice 210 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 12,765.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–17368 Filed 7–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Marketing Strategy Survey.

DATES: Written comments should be received on or before September 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Marketing Survey.

Abstract: The survey will focus on savings bond and Treasury Direct marketing issues.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 170.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 1, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–17279 Filed 7–7–99; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Educational Advising Program for International Students From Hong Kong/China; Notice: Request for Proposals

SUMMARY: The Advising and Student Services Branch/Advising, Teaching and Specialized Programs Division of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition to operate an educational advising center in Hong Kong/China. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to facilitate international educational exchange through overseas educational advising, orientation, and information services for international students and scholars seeking information on opportunities in U.S. higher education. On October 1, 1999, the U.S. Information Agency will become part of the United States Department of State without affecting the content of this announcement or the nature of the program described.

Program Information

Overview: An ideal program would provide a state-of-the-art advising center dedicated to providing information, orientation, and advice to international students in Hong Kong interested in studying in the U.S. We also expect the Hong Kong center to serve as an information resource to the other 48 U.S. affiliated advising centers in the People's Republic of China on advising and other educational issues. The centers are located at United States Information Service posts, universities, language institutes, libraries and at Chinese Service Centers for Scholarly Exchange. The proposal should address the applicant's ability to do the following:

—Produce and disseminate advising information packets and materials both on paper and electronically to advising centers in China.
—Recommend appropriate level of educational advising resource materials supplied by the Advising and Student Services Branch (E/ASA) to advising centers in China.
—Develop and maintain a database of centers in China.
—Provide feedback to E/ASA on site visits, consultations, training activities, and advising needs/concerns after each site visit and upon request from E/ASA.
—Encourage communication and networking among EICs within China.

The center should work with the Regional Educational Advising Coordinator (REAC) to provide in-country and regional workshops and seminars, site visits, needs assessments and consultations training for U.S. affiliated advising center personnel in China as requested. The REAC is responsible for conducting training workshops and needs assessment visits to U.S. affiliated advising centers in the region.

Guidelines: We anticipate that the grant will begin October 1, 1999 and end on September 30, 2000. However a final award cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures. The proposal should be presented in three parts.

I. Applicant's Background and Overview

The first part should contain an overview of the applicant's history and purpose. Evidence of previous experience with advising or educational exchange of international students and scholars should be included. The overview should indicate the total amount of funding requested with a justification as well as a budget presentation outlining the total project costs.

A listing of names, titles, addresses, and telephone numbers of the executive officer(s) and of the person(s) ultimately responsible for the project, must be included in the proposal. Resumes or vitae of key personnel must be provided. USIA also recommends the inclusion of brochures and general information concerning the applicant, e.g., organizational charts, job descriptions, the names of board members (or similar groups), the number of employees, etc.

II. Advising Center Operation and Services

The second part of the proposal should contain details on the advising center's proposed location and hours of operations, proposed staffing pattern (including the percentage of time each employee will devote to advising activities and a description of their functions and responsibilities), budget, and advising services to be provided. A resume or brief narrative explaining the qualifications of the person or persons who will have primary responsibility for conducting advising and/or providing oversight of the advising center staff should be included. The proposal should demonstrate the center's ability to provide the following educational advising services to international students and scholars:

1. Information and guidance on U.S. educational institutions, systems, tuition and related costs, fields of study, specialized training, etc.;
2. Information and research on short-term institutional training in technical and professional fields;
3. Information on English language training programs in the U.S.; and
4. Group and individual advising sessions, pre-departure orientation and reentry programs, as appropriate. The applicant should be willing to assist USIS Beijing and support educational outreach activities by developing a network of contacts with the local offices of the Ministry of Education, universities, U.S. government affiliated advising centers and other appropriate institutions.

III. Provision of Resource Materials, Equipment and Training

The third part of the proposal should address the extent to which the U.S. headquarters office will support its advising center abroad through the provision of educational advising resource materials and professional development activities and training.

Student access to a comprehensive university catalog collection, in print and/or computer software programs, and an extensive collection of current references on U.S. educational institutions and programs, through print or computer networks, is an integral component of an educational advising center and the applicant's ability to provide such should be made clear in this section.

Office equipment that facilitates the processing of inquiries, such as electronic mail, internet and facsimile machines would be regarded as an asset to the advising function and mention of such equipment should be made in the proposal. The Agency expects the advising center to be equipped with audio visual aids for students' use. Videos/CD–ROMS on U.S. study and life should complement the presentation and materials offered at group and individual advising sessions.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $85,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program

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component, phase, location, or activity to provide clarification. Allowable costs for the program include the following:

(1) Salary and benefits;
(2) Budget for travel and per diem;
(3) Office supplies and expenses;
(4) Rent and utilities;
(5) Outreach and publicity; and
(6) Indirect costs.

The center must agree to provide accurate, free and objective information about all accredited U.S. higher education institutions. The center may charge for services beyond the basic level (to be determined in consultation with the Advising and Student Services Branch) and for the sale/rental of educational advising materials. The proposal should provide details of cost-sharing and fundraising strategies to supplement cost of advising services. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number E/ASA–00–04.

FOR FURTHER INFORMATION CONTRACT: The Advising and Student Services Branch, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, phone: 202–619–5434, fax: 202–401–1433, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please Specify USIA Program Officer Dorothy Mora on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss thins competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Soliciation Package Via Fax On Demand: The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, DC time on August 6, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASA–00–04*, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom, and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, USIA shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East Asian and Pacific Affairs and the USIA posts overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Institution's record ability:* Proposals should demonstrate an institutional record of successful educational advising programs, including demonstrating responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. Proposals should demonstrate an ability to maintain effective relationships with USIS posts, advising centers, and the Agency's Advising and Student Services Branch. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Project evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute and award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: July 1, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–17366 Filed 7–7–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0209]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine if a student is eligible for work-study benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 7, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW. Washington, DC 20420. Please refer to "OMB Control No. 2900–0209" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Work-Study Allowance, VA Form 22–8691.

OMB Control Number: 2900–0209.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans, Selected Reservists, and other beneficiaries use this form to apply for work-study allowance under 38 U.S.C. chapters 30, 31, 32 and 35, Section 903 of Public Law 96–342, and 10 U.S.C. chapter 1606. The information is used to determine if a student is eligible for work-study benefits.

Affected Public: Individuals or households.

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Estimated Annual Burden: 4,667 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28,000.

Dated: May 28, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–17247 Filed 7–7–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0251]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the status of a loan account gone into default.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 7, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0251" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request to Lender for Status of Loan Account-LCS, VA Form 26–8778.

OMB Control Number: 2900–0251.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to collect information from the servicer and it serves as a code sheet to input data in the automated Liquidation and Claims System (LCS). The form is computer-generated and sent directly to the servicer of the loan. The servicer completes its portion and sends the form to the VA regional office having responsibility for the loan. Upon receipt of the form, VBA takes whatever action is necessary to properly service the loan.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

Dated: May 28, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–17248 Filed 7–7–99; 8:45 am]

BILLING CODE 8320–01–U

Corrections

Federal Register

Vol. 64, No. 130

Thursday, July 8, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Innovative Programs To Increase Booster Seat and Seat Belt Use Among Children

Correction

In notice document 99–16356, beginning on page 35245, in the issue of Wednesday, June 30, 1999, make the following correction:

On page 35245, in the first column, in the **DATES:** section, in the third line, "August" should read "July".

[FR Doc. C9–16356 Filed 7–7–99; 8:45 am]

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Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 250 and 251

Food Distribution Programs: Implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform); Proposed Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

RIN 0584–AC49

Food Distribution Programs: Implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend provisions of the Food Distribution Program regulations and the Emergency Food Assistance Program (TEFAP) regulations to implement the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly known as Welfare Reform, while generally streamlining and clarifying these regulations. In accordance with the Welfare Reform legislation, the proposals contained in this rule would address various changes required by the repeal of Section 110 of the Hunger Prevention Act of 1988, which authorized the former Soup Kitchens/Food Banks Program, the former beneficiaries of which are now served by an expanded TEFAP. It amends the definitions relating to organizational eligibility in TEFAP to reflect the program consolidation, and to achieve consistency with the Emergency Food Assistance Act of 1983 as amended by Welfare Reform. Changes to these and other definitions are also proposed in order to provide greater clarity to the regulations. As mandated by Welfare Reform, this rule also proposes changes in the required content and frequency of submission of the TEFAP State plan of operation, and encourages State agencies to create advisory boards comprised of public and private entities with an interest in the distribution of TEFAP commodities. In addition, this rule proposes to broaden the allowable uses of TEFAP administrative funds at the State and local levels, and provide greater flexibility for State agencies in meeting the TEFAP maintenance-of-effort requirement. Finally, in order to reduce the paperwork burden and afford State agencies greater flexibility, this rule proposes discretionary changes in TEFAP recordkeeping, monitoring, and reporting requirements.

DATES: To be assured of consideration, comments must be postmarked on or before September 7, 1999.

ADDRESSES: Comments should be sent to: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Avenue, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at 4501 Ford Avenue, Room 612, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Lillie Ragan at the above address or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The procedures in this rulemaking would primarily affect FNS regional offices, and the State distributing and recipient agencies that administer food distribution programs. Private enterprises that enter into agreements for the storage of donated food or meal service management would also be affected. While some of these entities constitute small entities, a substantial number will not be affected. Furthermore, any economic impact will not be significant.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995, Public Law 104–4 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550, 10.568 and 10.569 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FNS is submitting for public comment the changes in the information collection burden that would result from the adoption of the proposals in the rule.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. To be assured of consideration, comments must be postmarked on or before September 7, 1999. Comments may be sent to Lori Schack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. All comments will be summarized and included in the request for OMB approval of the proposed changes in the information collection burden. All comments will become a matter of public record. For further information, or for copies of the information collections discussed below, please contact Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Avenue, Alexandria, Virginia 22302, or telephone 703–305–2662.

Title: Food Distribution Regulations and Forms.

OMB Number: 0584–0293.

Expiration Date: 1/31/01.

Type of Request: Revision of a currently approved collection.

Abstract: State plans of operation, household participation reports, monitoring reviews, and review reports. The rule proposes to: (1) require State agencies to submit the TEFAP plan of operation to FNS only once every four years instead of the present annual requirement, with amendments made as necessary; (2) eliminate the requirement that State agencies report semiannually the number of households served through TEFAP; (3) reduce the number of TEFAP agencies required to be reviewed each year by State agencies from one-third or 50, whichever is fewer, to one-tenth or 20, whichever is fewer; and (4) require State agencies to submit review reports to TEFAP agencies they review only if a review discloses deficiencies.

Plans of Operation

Section 202A(a) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note (EFAA), as amended by Section 871(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (Welfare Reform), mandates that each State agency submit certain information to FNS in a TEFAP State plan of operation once every four years. Present regulations specify an annual submission of the State plan. Changes made by Welfare Reform in the required contents of the plan and implemented by this rule are discussed below. It is expected that changes in the amount of time required to prepare the plan will be negligible. Thus, for the purposes of the calculations below, response times are unaltered. The proposed decrease in burden hours reflects only the decreased frequency of response.

Respondents: State agencies administering TEFAP.

Estimated Number of Respondents: State agencies administering TEFAP number 56.

Estimated Number of Responses per Respondent: Frequency of response for the States to submit plans would be every four years, or at a frequency of 0.25 per year.

Household Participation Reports

Present regulations require State agencies to report household participation figures on the FNS–155, Inventory Management Report, semiannually. This rule proposes to eliminate this requirement, thus reducing the time required for completion of the FNS–155.

Respondents: State agencies administering TEFAP.

Estimated Number of Respondents: State agencies administering TEFAP number 56.

Estimated Number of Responses per Respondent: Frequency of response for State agencies to submit the FNS–155 remains 2 per year, but household participation reports would no longer be included, reducing this component of the FNS–155 burden to zero.

Review Reports Submitted to Emergency Feeding Organizations

This rule proposes no changes in the present regulatory requirement that State agencies annually review 25 percent of all emergency feeding organizations, and review all such organizations no less frequently than once every four years. Such organizations are, however, renamed "eligible recipient agencies which have signed an agreement with the State." This rule proposes to require State agencies to conduct an annual review of one-tenth or 20, whichever is fewer, of eligible recipient agencies which have signed an agreement with another eligible recipient agency, rather than the current one-third or 50, whichever is fewer, of "distribution sites." In addition, this rule proposes to require State agencies to submit review reports to those organizations reviewed only if the review discloses deficiencies, rather than the current requirement that a report be submitted for each review conducted. Current specific content requirements for the report would be eliminated. These changes are expected to reduce the number of reviews State agencies conduct each year, and the number of those reviews which will require reports.

Respondents: State agencies administering TEFAP.

Estimated Number of Respondents: State agencies administering TEFAP number 56.

Estimated Number of Responses per Respondent: Frequency of response for the States to submit reviews to emergency feeding organizations would be 1 per year.

	Respndnts.	Freq.	Hrs./Resp.	Total hrs.
TEFAP State Plan:				
Present	56	1	19	1064
Proposed	56	0.25	19	266
Submission of TEFAP Household Participation Data on Inventory Reports (FNS–155):				
Present	56	2	0.25	28
Proposed	56	2	0.00	0
TEFAP Review Reports Submitted to Eligible Recipient Agencies:				
Present	56	7	2	784
Proposed	56	1	2	112

Estimated Total Annual Burden on Respondents: The total annual burden under OMB Control Number 0584–0293 would be reduced from 1,190,971 hours to 1,189,473 hours: a difference of 1,498 hours.

Background

On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996, (hereinafter "Welfare Reform"). Welfare Reform amended legislation authorizing Department of Agriculture (hereinafter "USDA" or "Department") food distribution programs operated by FNS. It consolidated the Soup Kitchens/Food Banks Program (SK/FB) and TEFAP under the EFAA and repealed previous authorization for SK/FB under Section 110 of the Hunger Prevention Act of 1988, Pub. L. 100–435, (HPA), (7 U.S.C. 612c note). It also amended the definitions regarding organizational eligibility in TEFAP, as contained in Section 201A(3) of the EFAA, to ensure that organizations formerly served by SK/FB would be eligible to participate in TEFAP. Welfare Reform also made changes in the following areas: (1) allowable uses of TEFAP administrative funds; (2) content and frequency of submission of the TEFAP State plan of operation; (3) the annual date by which TEFAP commodities must be delivered to States; (4) the TEFAP maintenance-of-effort requirement; and (5) the distribution of commodities to aliens.

To assist State agencies in implementing the provisions contained in Welfare Reform, the Department issued a policy memorandum on January 14, 1997, which was sent to all FNS Regional Offices for dissemination to their respective State agencies. The guidance contained in the memorandum generated questions from several State agencies concerning the eligibility of certain types of organizations to receive TEFAP commodities. In response to these questions, the Department once again reviewed the legislative provisions and issued additional supplementary guidance through a policy memorandum dated July 23, 1997.

This proposed rule would incorporate Welfare Reform's legislative mandates into the appropriate regulations. Changes are also proposed as part of the Department's effort to clarify the regulations and reduce the burden associated with the administration of TEFAP. With the latter goal in mind, this rule proposes changes in TEFAP recordkeeping, monitoring, and reporting requirements. Welfare Reform also amended the National School Lunch Act to eliminate the requirement that State education agencies maintain advisory councils for the purpose of advising FNS on schools' needs relative to the selection and distribution of commodities, and to instead require that distributing agencies consult with representatives of schools on this subject. The substance of this provision is being addressed in a separate rulemaking, but this rulemaking removes references to the advisory councils in Food Distribution Program regulations. Provisions contained in Welfare Reform relative to the distribution of commodities to aliens which require a change in current regulations will be addressed under a separate rulemaking. The specific changes proposed in this rule are discussed in detail below.

Absorption of SK/FB into TEFAP

Repeal of Section 110 of the Hunger Prevention Act of 1988

The major change in Food Distribution Programs brought about by Welfare Reform was consolidation of TEFAP and SK/FB. This consolidation was accomplished by Section 873(1) of Welfare Reform, repealing Section 110 of the HPA, which authorized funds specifically for the purchase of commodities for SK/FB. Its authorizing legislation repealed, SK/FB ceased to exist. This rule proposes to amend current Food Distribution Program regulations (7 CFR part 250) by removing Section 250.52, which contained the requirements of Section 110 of the HPA, as well as all other references to Section 110, wherever they appear, in 7 CFR parts 250 and 251.

Definitions

This rule proposes to add definitions of several terms not currently found in Section 251.3 and to change the definitions of some currently existing terms. The accompanying chart graphically represents the existing and proposed definitions in a side-by-side format to assist readers in understanding the changes. A detailed explanation of the changes follows. It should be noted, however, that neither the chart nor the following detailed explanation contain the definitions of "formula," "state agency," and "value of commodities distributed." These definitions are set forth in the proposed regulatory text at the end of this rule. Although definitions of these terms are contained in the current Section 251.3 and are not proposed to be changed, it is easier, given the extensive surrounding additions and changes, to set forth the revised text of the section in its entirety.

BILLING CODE 3410–30–U–

DEFINITIONS CURRENTLY FOUND IN SECTION 251.3 WHICH ARE PROPOSED TO BE AMENDED	PROPOSED DEFINITIONS
(a) The terms used in this part that are defined in part 250 of this chapter shall have the meanings ascribed to them therein.	(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.
No current definition. (A substantially different definition of Charitable Institutions is found in Section 250.3)	(b) Charitable institution (which is defined differently in this part than in part 250 of this chapter) means an organization which—(1) is public, or (2) is private, possessing tax exempt status pursuant to §251.5(a)(3); and (3) is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and (4) provides food assistance to needy persons.
(b) Distribution site means the location(s) where the emergency feeding organization actually distributes commodities to needy persons under this part.	(c) Distribution site means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.
No current definition.	(d) Eligible recipient agency means an organization which— (1) is public, or (2) is private, possessing tax exempt status pursuant to §251.5(a)(3); and (3) is not a penal institution; and (4) provides food assistance— (i) exclusively to needy persons for household consumption, pursuant to a means test established in accordance with §251.5 (b), or (ii) predominantly to needy persons in the form of prepared meals pursuant to §251.5(a)(2); and (5) has entered into an agreement with the designated State agency pursuant to §251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to §251.2(c); and (6) falls into one of the following categories: (i) emergency feeding organizations (including food banks, food pantries and soup kitchens); (ii) charitable institutions (including hospitals and retirement homes); (iii) summer camps for children, or child nutrition programs providing food service; (iv) nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate nutrition sites and projects that provide home-delivered meals; and (v) disaster relief programs.

(c) Emergency feeding organization means any public or nonprofit private organization which has entered into an agreement with the designated State agency to provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, and which receives commodities under agreements pursuant to §251.2(c). Emergency feeding organizations include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies.	(e) Emergency feeding organization means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities, pursuant to §251.4(h).
No current definition. (A substantially similar definition of Food bank is found in Section 250.3)	(f) Food bank means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.
No current definition.	(g) Food pantry means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.
No current definition. (A substantially similar definition of Soup kitchen is found in Section 250.3)	(i) Soup kitchen means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

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Eligible recipient agency. Accompanying the repeal of Section 110 of the HPA, Section 871(a) of Welfare Reform slightly altered the definition of "eligible recipient agency" (ERA) contained in Section 201A of the EFAA. The alteration emphasizes that organizations formerly receiving commodities under SK/FB are eligible to receive TEFAP commodities. Soup kitchens and food banks had always been listed as eligible recipient agencies under Section 201A of the EFAA and in TEFAP regulations, but were not specifically defined, as they were in Section 110 of the HPA. Most States served soup kitchens exclusively under SK/FB. In addition to amending the definition of ERA itself, Welfare Reform incorporated into Section 201A specific definitions for "food banks" and "soup kitchens" similar to those found in the former Section 110 of the HPA. The term "food pantry" had never been listed or defined in the EFAA; Welfare Reform both added food pantries as a type of ERA and added to the EFAA the definition for this term formerly found in section 110 of the HPA. The net result of these changes is that more detailed and specific authority now exists in the EFAA for the distribution of TEFAP commodities to food banks, food pantries, and soup kitchens. Therefore, no organization formerly receiving commodities under SK/FB lost eligibility for food due to this program consolidation.

Section 871(a) of Welfare Reform amended Section 201A of the EFAA to explicitly prohibit the participation of penal institutions in TEFAP. It also removed school lunch programs and Commodity Supplemental Food Program (CSFP) sites from the list of eligible recipient agencies, while not categorically prohibiting their participation. All other types of organizations may participate as long as they meet the organizational eligibility criteria. While mention of school lunch programs as a specific category was removed, child nutrition programs as a category remains, and thus school lunch programs remain eligible. And while the removal of the reference to CSFP sites means that such sites may not receive TEFAP commodities for the sole purpose of serving CSFP participants, CSFP sites may receive TEFAP commodities if they meet the organizational eligibility criteria described below. The result of these changes is that penal institutions are the *only* type of organization which can be termed categorically ineligible for TEFAP. Since TEFAP commodities have never, in fact, been provided to penal institutions, school lunch programs or CSFP sites, this change has had no practical effect.

Although the changes wrought by Welfare Reform in the definition of ERA were minor, the January 14, 1997 guidance memorandum, discussed above, generated questions from several State agencies regarding the eligibility of certain types of organizations to receive TEFAP commodities. Based on an analysis of these questions, it appears that much of the need for clarification can be attributed to the fact that current TEFAP regulations (7 CFR part 251) do not contain a definition of ERA, instead employing the term "emergency feeding organization" (EFO). Thus, current regulations do not address the distribution of commodities to all of the various types of organizations specifically encompassed by the definition of ERA as set forth in the EFAA. These organizations include summer camps for children, child nutrition programs providing food service, nutrition projects operating under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*), and disaster relief programs. These organizations have always been eligible to receive commodities under the EFAA. However, 7 CFR part 251 does not currently address the distribution of TEFAP commodities to such organizations because they have traditionally received assistance through other commodity programs.

Another source of misunderstanding appears to be associated with the eligibility of certain adult correctional institutions. As discussed above, Welfare Reform explicitly prohibits penal institutions from receiving TEFAP commodities. Similarly, penal institutions are ineligible to receive commodities as charitable institutions under 7 CFR part 250. However, certain adult correctional institutions are eligible to receive commodities that are made available to States for distribution to charitable institutions under other donation authorities if they meet the requirements for rehabilitation programs set forth in Section 250.41(a)(2).

Therefore, to clarify the types of organizations eligible to receive TEFAP commodities, this rule proposes to amend Section 251.3 to add the following definition of ERA, which specifically includes all the various types of organizations eligible to receive TEFAP commodities that are included under the definition of ERA set forth in the EFAA: "eligible recipient agency means an organization which—(1) is public, or (2) is private, possessing tax exempt status pursuant to § 251.5(a)(3); and (3) is not a penal institution; and (4) provides food assistance—(i) exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5(b), or (ii) predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and (5) has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and (6) falls into one of the following categories: (i) emergency feeding organizations (including food banks, food pantries and soup kitchens); (ii) charitable institutions (including hospitals and retirement homes); (iii) summer camps for children, or child nutrition programs providing food service; (iv) nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate nutrition sites and projects that provide home-delivered meals; and (v) disaster relief programs."

The only material differences between this definition of ERA and that contained in the EFAA are intended to render the definition more useful to State and local agencies making day-to-day organizational eligibility determinations. Language regarding the execution of agreements between the State and eligible recipient agencies has been added. The term "needy persons" and related language have also been included, since the EFAA limits the distribution of commodities to organizations that provide food assistance to the needy. In addition, the proposed rule's ERA definition lists all of the types of EFOs for which Welfare Reform provides a specific, separate definition, i.e., food banks, food pantries, and soup kitchens. The proposed definition of ERA does not, however, limit EFOs to these organizational types, because, as discussed below, any type of ERA may qualify as an EFO, as long as it meets the criteria.

Emergency feeding organization. As discussed above, current regulations contain no definition of ERA. Instead, the regulations use the term "emergency feeding organization" and in Section 251.3 define it to mean "any public or nonprofit private organization which has entered into an agreement with the designated State agency to provide nutrition assistance to relieve situations of emergency and distress through the

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provision of food to needy persons, including low-income and unemployed persons, and which receives commodities under agreements pursuant to § 251.2(c). Emergency feeding organizations include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies."

The program consolidation and the need for greater clarity require that the regulatory definition of EFO be revised to further sharpen the legislative distinction between ERAs which are also EFOs on one hand, and on the other, ERAs which are not also EFOs. This distinction is crucial under the consolidated TEFAP, because it forms the basis of the priority system discussed below, which State agencies must employ in allocating TEFAP commodities. It also affects the requirement that State agencies pass down at least 40 percent of their administrative grants. This requirement, too, is discussed in detail below. Welfare Reform stresses this distinction in Section 201A(1) of the EFAA by removing the definition of EFO from within the definition of ERA, and providing a separate definition of EFO in Section 201A(4). The proposed regulatory definition of EFO removes the present language regarding agreements, which is neither included in the EFAA's definition of EFO nor necessary to distinguish EFOs from other ERAs. Instead agreements are addressed in the definition of ERA, as discussed above. The proposed definition of EFO also removes references to types of organizations which may or may not qualify as EFOs, likewise confining these to the definition of ERA, which is structured to more appropriately contain them. This change shifts the emphasis from types of organizations to criteria which ERAs must meet to be considered EFOs. Under this proposed rule at Section 251.3(e), an EFO would mean "an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h)." Examples of EFOs are food banks, food pantries, soup kitchens, and organizations such as Community Action Programs that distribute TEFAP commodities occasionally, e.g., monthly or quarterly.

Charitable institution. Section 201A of the EFAA authorizes the distribution of TEFAP commodities to charitable institutions. However, Section 251.3 does not currently contain a definition of this term. While Section 250.3 contains such a definition, it is needlessly complex given the limited application the term will have in TEFAP. Therefore, this rule proposes to include a definition of "charitable institution" in Section 251.3 which more accurately describes the types of organizations that would be considered eligible to participate in TEFAP and alerts the reader to the fact that the definition differs from that found in Section 250.3. The following definition of "charitable institution" would be included in this proposed rule: "charitable institution (which is defined differently in this part than in part 250 of this chapter) means an organization which—(1) is public, or (2) is private, possessing tax exempt status pursuant to § 251.5(a)(3); and (3) is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and (4) provides food assistance to needy persons."

Distribution site. Section 251.3(b) of the current regulations defines "distribution site" as "the location(s) where the emergency feeding organization actually distributes commodities to needy persons under this part." To reflect the consolidation of SK/FB into TEFAP, this rule proposes to revise the definition of "distribution site" to organizations which prepare meals using TEFAP commodities as well as the traditional distribution of commodities to households for home use. Also, the proposed definition employs the term ERA, rather than EFO, as discussed above, even though in practice, most distribution sites are, and will most likely continue to be, operated by organizations qualifying as EFOs. Under this proposed rule, "distribution site" means "a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part."

Food bank, Food pantry, Soup kitchen. Provisions regarding the distribution of Section 110 commodities as set forth in HPA, including the definitions of food banks and soup kitchens, are currently contained in 7 CFR part 250. Since Welfare Reform consolidated SK/FB into TEFAP, this rule proposes to include the definitions of these terms, as slightly revised by Welfare Reform, in Section 251.3 and to remove the corresponding definitions from Section 250.3. While the term "food pantry" was also defined in the HPA, the definition was never included in either 7 CFR part 250 or 7 CFR part 251. This rule also proposes to include in Section 251.3 the definition of "food pantry" as set forth in Welfare Reform. The changes made by Welfare Reform in the definitions of these terms are in all cases non-material. The proposed rule sets forth these definitions in Sections 251.3(f), 251.3(g), and 251.3(j) as follows: "Food bank" means "a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis." "Food pantry" means "a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress." "Soup kitchen" means "a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis."

Eligible Recipient Agency Eligibility Criteria

While Section 201A of the EFAA, in its definition of ERA, lists a broad array of organizations as eligible to participate in TEFAP, Section 202A(b)(4)(A) of the EFAA continues to require that TEFAP commodities be used to provide food assistance to those in need. Organizations applying to participate in TEFAP which distribute foods to households for home consumption meet this criterion by requiring that households applying for assistance pass a "means test," i.e., the household must meet the TEFAP income eligibility criteria established by the State agency. Eligibility cannot be established merely on the basis of a household residing within a specific area. Organizations which provide food assistance through the preparation of meals do not employ a means test because such testing would not be cost-effective, and because people who attend soup kitchens can reasonably be assumed to be needy. Accordingly, this proposed rule would require such organizations to demonstrate that they serve predominantly needy people. The State agency can determine if the organization meets this criterion by considering the socioeconomic data (e.g., poverty, unemployment, vagrancy and welfare

program usage rates) on the area in which the organization is located, or from which it draws its clientele. In the case of most traditional soup kitchens, this minimal standard will no doubt be easily and clearly satisfied. Application of this criterion will, however, render some organizations of a particular type eligible and others of the same type ineligible. For example, a hospital which is located in, or draws its patients from, an economically distressed area could be considered eligible to participate in TEFAP, whereas a hospital located in an area with more positive economic characteristics would not qualify. State agencies remain free to set a higher standard than "predominantly," should they wish to target resources to only their neediest citizens. This rule proposes to amend Section 251.5(a) to include these criteria.

Section 201A(3) of the EFAA continues to require that eligible recipient agencies be public or nonprofit organizations, thus continuing to exclude for-profit organizations. In order to clarify this legislative mandate, this rule also proposes to incorporate within part 251 requirements associated with tax-exempt status. Such requirements are currently contained in Section 250.52(b) which, as discussed above, is removed under this proposed rule as a result of Section 110 of the HPA being repealed by Welfare Reform. Under Section 250.52(b), all organizations receiving Section 110 commodities for distribution under the former SK/FB were required to have obtained tax-exempt status under the Internal Revenue Code (26 U.S.C. 501) (IRC) or to have made application for such status. However, under Section 501(c)(3) of the current IRC, organizations are automatically tax-exempt if they are "organized or operated exclusively for religious * * * purposes. * * *" Such organizations are not precluded from seeking Internal Revenue Service (IRS) recognition of their tax-exempt status, but they are not required to do so. Therefore, the Department does not intend to require organizations that are "organized or operated exclusively for religious * * * purposes. * * *" to obtain tax-exempt status in order to participate in TEFAP.

These tax exempt status requirements of current Section 250.52(b) also contain a "moving toward" exemption that allows an organization which has applied for, but has yet to obtain, IRS recognition of its tax-exempt status to receive Section 110 commodities for 12 months from the date of its approval for participation in TEFAP, and for an indefinite period thereafter, if the organization "documents to the distributing agency's satisfaction that it has made good faith efforts to obtain recognition of its tax-exempt status and that such recognition has not been provided due to no fault of the organization." The Department has learned through experience that this requirement is not strict enough to be consonant with program accountability, and recent legislation has set forth a higher standard. Section 107(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998, Pub. L. 105–336, amended Section 17(d)(1) of the National School Lunch Act (42 U.S.C. 1766(d)(1)) (NSLA) to limit the "moving toward" exemption for the Child and Adult Care Food Program to "not more than 180 days, except that a State agency may grant a single extension of not to exceed an additional 90 days if the institution demonstrates, to the satisfaction of the State agency, that the inability of the institution to obtain tax-exempt status within the 180-day period is due to circumstances beyond the control of the institution." This rule proposes to amend Section 251.5(a)(3) to add tax-exempt requirements consistent with the above discussion. Prior to shipping TEFAP commodities, the State agency or ERA would be required to ensure that a recipient agency (1) possesses documentation from the IRS recognizing tax-exempt status under the IRC, or (2) if not in possession of such documentation, is automatically tax-exempt as "organized or operated exclusively for religious purposes" under the IRC, or if required to file an application under the IRC to obtain tax-exempt status, has made application for recognition of such status and is moving toward compliance with the requirements for recognition of tax-exempt status, or (3) is currently operating another Federal program requiring such tax-exempt status. In instances in which an organization's application for tax-exempt status is denied or has not been obtained within 180 days of the effective date of the organization's approval for participation in TEFAP, the State agency or ERA must terminate the organization's participation until such time as recognition of tax-exempt status is actually obtained. However the State agency or ERA may grant a single extension of not to exceed 90 days if the organization can demonstrate, to the State agency's or ERA's satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control.

In sum, to be eligible to receive TEFAP commodities, organizations must be public or nonprofit organizations providing food assistance to needy persons. If they distribute commodities for household consumption, they must administer a means test to ensure that only needy persons receive TEFAP commodities. If they serve prepared meals, they must demonstrate that they serve predominantly needy persons. State agencies cannot require organizations to conduct a means test of individuals receiving prepared meals. Section 871(b) of Welfare Reform amended the EFAA to require that State agencies set forth the standards of eligibility for ERAs in the State plan. As discussed in detail below, this rule proposes to amend Section 251.6(b) to include this requirement.

This rule also proposes to revise Section 251.5 to address those instances in which the State agency chooses to delegate authority to one or more ERAs to determine which organizations they, in turn, will supply with TEFAP commodities. Section 251.5(a) currently requires State agencies to determine the eligibility of organizations and enter into agreements with such organizations prior to making TEFAP commodities available to them. However, in many instances, State agencies use ERAs to distribute commodities to other ERAs (e.g., a central food bank distributing commodities to one or more food pantries) and depend on those organizations to: (1) Determine the eligibility of organizations requesting TEFAP commodities from them; and (2) to make decisions regarding which organizations will receive TEFAP commodities and the amount of commodities to be provided when quantities are insufficient to support all requests. This rule proposes to revise Section 251.5 to clarify a State agency's authority to delegate such responsibilities to ERAs. If a State chooses to do this, it must require that such ERAs make decisions regarding an organization's eligibility to participate in TEFAP in accordance with the provisions contained in 7 CFR part 251 and the State Plan. However, responsibility for establishing eligibility criteria for recipient agencies may not be delegated to an ERA.

Priority System

While the explicit priority system outlined in Section 110 of the HPA no longer exists, Section 203B(b) of the EFAA requires that, in instances in which the State agency cannot meet all requests for TEFAP commodities, the State agency give priority in the

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distribution of such commodities to eligible recipient agencies "providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons." [emphasis supplied] As discussed in detail above, this is the definition of EFO as set forth in the EFAA. Thus, there is a two-tier priority system. The need to effectively describe the priority system is the primary reason for amending the regulatory definition of EFO to conform to the EFAA. The two-tier priority system provides that organizations which relieve situations of emergency and distress through the provision of food to needy persons, i.e., EFOs under the definition discussed above, are of higher priority and other organizations, which serve the needy, but do not relieve situations of emergency and distress and, thus, fall into the lower priority category. A State agency may, within the first priority, set subpriorities so that, for example, EFOs providing household distribution have access to resources before EFOs providing prepared meals, or vice versa. However, the needs of all EFOs must be satisfied before food is made available to a second-tier organization, i.e., an ERA which is not also an EFO. The supply of TEFAP commodities may not be sufficient for States to serve all ERAs. Therefore, some State agencies may be able to serve only EFOs. This rule proposes to revise Section 251.4(h) to reflect the legislatively mandated two-tier priority system.

This rule also proposes to revise Section 251.4(h) to address those instances in which the State agency chooses to delegate to ERAs, with which the State agency has an agreement, the responsibility for choosing ERAs to which they will provide TEFAP commodities. An example of this would be a central food bank distributing commodities to one or more food pantries. In such instances, the ERA is responsible for ensuring that commodities are distributed using the priority system described above. Though improbable, given the limited supplies of TEFAP commodities, there may be instances in which one ERA has sufficient inventories of commodities to serve some second-tier organizations while another ERA does not have sufficient inventories to serve all of its EFOs. The added expense and administrative complexity necessary to prevent this unlikely event would not be justified. Therefore, with regard to delegated authority, both the State agency and any ERA to which this authority has been delegated will be considered to be in compliance with the priority system requirement when the ERA distributes TEFAP commodities in a manner that ensures the needs of EFOs under its jurisdiction have been met prior to making commodities available to non-EFOs under its jurisdiction. The Department would expect State agencies and EFOs to be sufficiently knowledgeable about the organizations to which they distribute food to avoid substantial amounts of commodities being provided to non-EFOs before the needs of all EFOs have been satisfied.

To further assist States in making the best use of TEFAP commodities, Section 871(b) of Welfare Reform amended Section 202A of the EFAA to require the Secretary to encourage States to establish a State advisory board comprised of public and private entities with an interest in the distribution of TEFAP commodities. Such advisory boards can provide valuable guidance on how the State should allocate resources among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States use their program resources in the most efficient and effective manner possible. This rule proposes to revise Section 251.4(h) to include language encouraging States to establish an advisory board and allowing them to use TEFAP administrative funds for its support. Section 203B(b) of the EFAA, besides establishing the priority of EFOs, requires that "[e]ach State agency shall encourage distribution of TEFAP commodities in rural areas." [emphasis supplied] This encouragement is set forth in Section 251.4(k) of present regulations and would be retained by this proposed rule. State agencies are also reminded that, in accordance with Section 251.4(h) of the current regulations, which reflects the provisions contained in Section 203B(a) of the EFAA, State agencies have the option to give priority to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households. This option is, of course, subject to the two-tier priority system discussed above.

Recipient Eligibility Criteria

Section 251.5(b) of the current regulations requires that State agencies establish criteria for determining the eligibility of households to receive TEFAP commodities for household use. The criteria must include income-based standards and the methods by which households may demonstrate eligibility under such standards. Criteria may include a requirement that the household reside in the State, provided that length of residency is not used as an eligibility criterion. Section 871(a) of Welfare Reform amended Section 202A(b) of the EFAA to require that recipients reside in the "geographic location served by the distributing agency at the time of applying for assistance." Accordingly, this rule proposes to amend Section 251.5(b) to reflect the fact that State agencies must establish a residency requirement for households applying to receive commodities for home consumption. However, State agencies would continue to be prohibited from establishing a length-of-residency requirement. It should be noted that Section 251.4(j) of current regulations permits State agencies to enter into cooperative agreements with other State agencies to provide commodities jointly to, or to transfer commodities to, an organization serving needy persons in a contiguous area which crosses their respective States' borders. Organizations operating under such agreements may continue to serve persons crossing State lines for assistance. Section 203B(d) of the EFAA, which authorizes these cooperative agreements, was unchanged by Welfare Reform. This rule also proposes to amend Section 251.5(c) to clarify that State agencies may not delegate the responsibility for establishing eligibility criteria for program recipients to ERAs.

As was the case under the now defunct SK/FB, individuals seeking food assistance at prepared meal sites would not be subject to a means test under the proposed rule, since such a test would obviously be difficult to implement and regulate, and not at all cost-effective when compared to the value of the benefit provided. A person may attend a soup kitchen on a very irregular basis and receive meals of which TEFAP commodities are only a small part. Rather, as discussed above, organizations which provide prepared meals would be required to demonstrate that they serve predominantly needy persons.

State Agreements With Eligible Recipient Agencies

Section 251.2(c) of the current regulations requires State agencies to enter into an agreement with an EFO receiving TEFAP commodities or administrative funds. The agreement must provide that EFOs agree to operate the program in accordance with the requirements of 7 CFR part 251 and, as applicable, 7 CFR part 250. As discussed above, this rule proposes to amend the definition of the term EFO to conform to the definition contained in

Welfare Reform and require that State agencies enter into agreements with ERAs to which they distribute TEFAP commodities and/or administrative funds; therefore, Section 251.2(c) would be amended under this proposed rule to reflect this change.

The final rule, "Food Distribution Programs—Reduction of the Paperwork Burden," published in the **Federal Register** on October 16, 1997 (62 FR 53727), amended Sections 250.12(c) and 251.2(c) to make agreements between State agencies and ERAs permanent, with amendments to be made as necessary. Although none of those commenting on the rule at its proposed stage expressed concern, it has since come to the Department's attention that, while the authority for State agencies and ERAs to terminate agreements is clearly set forth in Section 250.12(c)(3), no corresponding provision is contained in Section 251.2(c). Therefore, Section 251.2(c) may have been interpreted by some to mean that State agencies could not terminate agreements with TEFAP ERAs. Since this was never the Department's intent, this rule proposes to revise Section 251.2(c) to clarify that agreements must provide State agencies and ERAs the authority to terminate the agreements upon 30 days' written notice.

In addition, this rule proposes to revise Section 251.2 to address those instances in which a State agency delegates responsibility to one or more ERAs to distribute TEFAP commodities and administrative funds to other ERAs (e.g., a central food bank distributing to one or more food pantries on the local level). In an effort to ensure that both the State agency and the ERA are fully cognizant of the responsibilities being delegated to the ERA, this rule proposes to require that the State agency specifically identify each function for which the ERA will be held responsible, and to require that the ERA perform such functions in accordance with the provisions contained in 7 CFR parts 250 and 251. Such functions must be identified in the agreement or through other written documents incorporated by reference in the agreement. In no case may a State agency delegate responsibility for establishing recipient or recipient agency eligibility criteria, or responsibility for ensuring, through State agency reviews, that the program is administered in accordance with Federal requirements. A State has the option to delegate both the authority to determine if organizations meet the State-established criteria for organizations to receive TEFAP commodities and administrative funds, and the authority to establish subpriorities consistent with the legislatively mandated priority system. If the State chooses not to exercise either one of these options, the State must identify the specific organizations which are eligible to receive TEFAP commodities and administrative funds in the agreement or other written documents incorporated by reference in the agreement.

As discussed in detail below, State agencies may choose to allocate administrative funds to ERAs for use in paying specific costs. Since the amount of administrative funds may not be sufficient to cover all costs allowable under TEFAP regulations, State agencies may also restrict ERAs' use of these funds to a narrower list of cost types than is allowed by the regulations. Their reasons for doing so might include the desire to concentrate these funds on the most important program functions, such as transport and warehousing of food, rather than on ancillary expenses, such as office supplies. This rule proposes to amend Section 251.2 to require that, when the State agency imposes on its ERAs a more restrictive use of TEFAP administrative funds than provided in Section 251.8, the restricted list of costs must be identified in the agreement, or provided to ERAs by other written documents incorporated by reference in the agreement.

Agreements Between Eligible Recipient Agencies

As discussed above, current regulations require agreements between States and ERAs to which they provide TEFAP commodities or administrative funds. There is, however, no requirement that ERAs enter into agreements with other ERAs to which they distribute TEFAP commodities or administrative funds on behalf of the State agency. It is extremely difficult to hold recipient agencies accountable for the distribution and use of TEFAP commodities and administrative funds without the existence of an agreement which sets forth the terms and conditions necessary to ensure that TEFAP commodities and administrative funds are distributed and used in accordance with Federal regulations. Therefore, this rule proposes to amend Section 251.2 to require that ERAs distributing TEFAP commodities or administrative funds to other ERAs on behalf of the State agency enter into an agreement with those organizations prior to making TEFAP commodities or administrative funds available. ERAs would have to receive formal written authorization from the State, either in the agreement itself or by other written documents incorporated into the agreement by reference, to enter into agreements with other ERAs for the further distribution of TEFAP commodities or administrative funds. While current regulations do not require that such agreements be entered into, the Department has been advised that this practice is characteristic of the program and will not, therefore, result in an increase in the paperwork burden on ERAs. The Department, in its original calculation of burden hours for part 251, assumed that agreements would be in place whenever TEFAP commodities or administrative funds were transferred between State agencies and EFOs and between EFOs, since ensuring compliance with regulatory requirements would be extremely difficult if not impossible without written agreements at all levels. Therefore, the discussion of changes in burden hours under *Paperwork Reduction Act* above does not address these agreements, as their effect on the calculations has already been taken into consideration.

Distribution Rates

Section 251.4(d)(3) of the current regulations requires that State agencies establish distribution rates for use by EFOs in distributing TEFAP commodities to needy households. This requirement was established when all, or almost all, commodities reached households through mass distributions, and when distributions of non-USDA commodities along with TEFAP commodities occurred infrequently. Increased reliance on food pantries, the growing practice of simultaneously distributing TEFAP and State or privately donated foods, and absorption of SK/FB into TEFAP have rendered mandatory distribution rates inappropriate. Such rates have also become increasingly less useful as the supply of TEFAP commodities to households has become more variable over time. Therefore, this rule proposes to revise Section 251.4(d)(3) to remove this requirement. However, State agencies may choose to develop distribution rates and require their use by all ERAs or specific types of ERAs, such as those that distribute TEFAP commodities only through mass distributions.

TEFAP State Distribution Plan

Section 251.6(b) of the current regulations requires State agencies to submit a TEFAP distribution plan to the appropriate FNS Regional Office on an annual basis. This plan is required to contain: (1) a description of the criteria to be used for determining that applicant households are in need of

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food assistance; (2) household rates of distribution for commodities; (3) a description of the program monitoring system, including any factors which may contribute to requests for approval of exceptions to conducting the minimum number of reviews; (4) a description of the State's formula for allocating administrative funds; and (5) a description of the State's contribution toward the matching requirement.

Section 871(b) of Welfare Reform amended Section 202A of the EFAA in a manner that: (1) for the first time codifies the requirement of a TEFAP State Plan; (2) specifies its contents differently than present regulations; and (3) requires submittal of the plan once every four years, instead of the present annual regulatory requirement. Welfare Reform provides that the plan may be amended at any time. Welfare Reform also specifies that plans must: (1) designate the State agency responsible for distributing commodities; (2) set forth a plan of operation and administration to expeditiously distribute TEFAP commodities; (3) set forth standards of eligibility for recipient agencies; and (4) set forth standards of eligibility for individual or household recipients of commodities, which must require that individuals or households be comprised of needy persons, and that they reside in the geographic area served by the distributing agency at the time of applying for assistance.

State agencies were notified of the changes in Welfare Reform regarding the State distribution plan in the January 14, 1997 memorandum, which also indicated that they would not be required to submit a complete plan until Fiscal Year 2001. However, in the interim, State agencies were required to submit, by March 14, 1997, amendments to the plan reflecting any changes in program operations or administration, including those mandated by Welfare Reform. In accordance with the provisions of Welfare Reform, this rule proposes to amend Section 251.6 to require the submission of a State distribution plan once every four years, establishing 2001 as the base year, with amendments to be added as changes occur in aspects of State program administration that are described in the plan, or at the request of FNS.

This rule also proposes to amend Section 251.6 to reflect the provisions contained in Welfare Reform regarding the specific contents of the plan. Following is a detailed description of the information State agencies are required to provide, pursuant to Section 871(b) of Welfare Reform.

Single State Agency—Welfare Reform requires that the plan identify the State agency responsible for administration of the program. Thus, this rule proposes to require States to include the current name and address of the agency authorized to administer TEFAP, and the name of the agency official entrusted with binding signature authority. Where TEFAP and SK/FB were administered by two different State agencies prior to enactment of Welfare Reform, the January 14, 1997 memorandum required States to inform FNS of the Governor's selection of a single State administering agency; otherwise the Department assumed that the State agency administering TEFAP at the time of enactment would administer the consolidated TEFAP. The State agency identified in the plan will be responsible for all aspects of program administration, including reporting and monitoring requirements, submission of the State distribution plan, and commodity ordering, storage, and distribution. The State agency may enter into an agreement with another State agency or private organization to perform some program functions, but FNS will deal only with the designated single State agency, which remains fully responsible for program administration.

Plan of Operation and Administration—Welfare Reform requires that the State agency "set forth a plan of operation and administration to expeditiously distribute" TEFAP commodities. Therefore, this rule proposes to reflect the requirement that State agencies include such an element as part of the State plan.

Standards of Eligibility for Recipient Agencies—Under Welfare Reform, State agencies are now required to set forth eligibility standards for recipient agencies in their distribution plan. Within the minimum standards established by 7 CFR part 251, State agencies are afforded broad discretionary authority in establishing their distribution networks. This rule proposes to require State agencies to describe eligibility criteria established by the State agency, including any sub-priorities set within the two-tier priority system, for the receipt of TEFAP commodities and/or administrative funds.

Standards of Eligibility for Individual or Household Recipients—Welfare Reform requires that State agencies set forth standards of eligibility in their State plan which ensure that commodities are provided only to those in need, and that needy persons reside in the geographic location served by the distributing agency at the time of application for assistance. Therefore, this rule proposes to retain the requirement currently found in Section 251.6(a)(1), which requires State agencies to describe the criteria which must be used in determining the eligibility of households to receive TEFAP commodities for household use.

This rule proposes to eliminate the present State plan requirements, with the exception of the neediness criteria of Section 251.6(a)(1), as mentioned above. Also, as discussed in detail above, this rule proposes to remove the requirement of Section 251.4(d)(3) that State agencies develop distribution rates; therefore such rates will not be included in State plans. The other program requirements previously mandated to be addressed in State plans would continue to exist, as they possess an independent regulatory basis, but State agencies would no longer be required to include proposals for meeting them in their State plans. State agencies would continue to be required to comply with the program monitoring provisions contained in Section 251.10(e). They would also be bound by the criteria for allowable uses of administrative funds contained in Section 251.8(d)(1), redesignated by this proposed rule as Section 251.8(e)(1), as discussed below, but would no longer be required to describe the monitoring system or the formula for allocating administrative funds in the State plan. A description of the State's contribution toward the matching requirement contained in Section 251.9(a) would no longer be required. Section 251.9(e), referring to the matching requirement as an element of the State plan, is therefore proposed to be removed. Of course States must still meet their matching requirement and report it as required in Section 251.9(f). Under current regulations, the match is to be reported on form SF–269, Financial Status Report, which has become obsolete. Therefore, this rule would remove references to it and instead refer to form FNS–667, Report of Administrative Costs throughout Section 251.9(f), which is redesignated as Section 251.9(e) under this proposed rule. Elimination of the above plan requirements would reduce the burden associated with the administration of TEFAP at the State level, while not affecting program accountability.

Formula Adjustments

Section 214(a) of the EFAA mandates the allocation of commodities purchased with funds appropriated for TEFAP to States through a formula based 60 percent on the number of persons in the State with incomes below the poverty line, relative to national figures, and 40 percent on the average monthly number of unemployed persons in the State, again relative to national figures. Section 204(a)(1) of the EFAA, in turn, mandates that TEFAP administrative funds be allocated among the States on the same basis.

Section 251.7 of the regulations implements this legislative mandate for the allocation of all commodities, including surplus USDA commodities, made available for distribution through TEFAP. In accordance with the regulatory provisions, the Department currently makes adjustments to the allocation formula for each State, based on updated unemployment statistics. For surplus commodities, adjustment is to be performed semi-annually, effective January 1 and July 1 of each fiscal year. For purchased commodities and administrative funds, adjustments are to be made annually, effective for the entire fiscal year. In the interest of streamlining program administration, and not subjecting States to disruptive mid-year formula adjustments, this rule proposes to revise Section 251.7 to make annual formula adjustments applicable to all commodities and administrative funds.

Disbursement of Administrative Funds

Disbursement of Funds to States by USDA—Section 251.8(c) provides for the disbursement of administrative funds to State agencies by means of U.S. Treasury checks or letters of credit in accordance with FNS Instruction 407–3 (Grant Award Process). This section currently requires that U.S. Treasury checks or letters of credit be issued pursuant to submission of the SF–270, Request for Advance or Reimbursement, and that State agencies receive funds through a letter of credit if payments are more than $120,000 for the year. Changes in financial management procedures and regulations, mainly attributable to implementation of automated electronic transactions, have rendered these provisions obsolete. It is now the practice of FNS to make funds available to States exclusively by means of letters of credit. Therefore, the above cited references to U.S. Treasury checks and the $120,000 threshold, would be removed by this proposed rule. FNS Instruction 407–3 is also obsolete, and in order to prevent part 251 from becoming outdated whenever financial management instructions change, this reference would be removed and replaced with a general reference to financial procedures established by FNS. Furthermore, as the SF–270 is no longer used, this rule would remove reference to it.

Disbursement of funds to ERAs by States—In the two-tiered priority system discussed in this preamble, not every ERA qualifies as an EFO. Under this system, State agencies and ERAs to which authority has been delegated would be required to ensure that the USDA commodity needs of all first-tier organizations, i.e., EFOs, are met before food is made available to a second-tier ERA. A similar situation exists with respect to documenting compliance with the requirement contained in Section 204(a)(2) of the EFAA that each State agency make available to EFOs not less than 40 percent of the State's share of TEFAP administrative funding. Although State agencies may disburse administrative funds to second-tier ERAs, such funds cannot be counted toward meeting the 40 percent pass-through requirement. This rule proposes to amend Section 251.9 to expressly prohibit State agencies from counting any funds provided by the State agency directly to ERAs that are not EFOs, or used by the State to pay costs on such ERAs' behalf, toward the 40 percent pass-through requirement. However, in instances in which State agencies have agreements with EFO intermediaries such as food banks, which, in turn, may share administrative funds with other EFOs as well as second-tier ERAs, requiring State agencies to account for the disposition of administrative funding to EFOs and second-tier ERAs by the organizations with which they have agreements would create undue expense and administrative complexity to protect against an unlikely event, i.e., that EFOs might receive less than 40 percent of the State's grant. Recent history has shown that administrative funding will probably not be sufficient to serve very many second-tier ERAs. In addition, most State agencies currently pass through to EFOs considerably more than 40 percent of their administrative funds, making it extremely unlikely that a State agency would fall below the minimum threshold. Therefore, this rule proposes to amend Section 251.8 to clarify that, if a State agency passes down to EFOs with which it has an agreement, or expends on behalf of such organizations, at least 40 percent of its administrative grant, the State agency will be deemed to have met its pass-through requirement. State agencies would not be required to account for how these organizations further distribute administrative funding in order to meet their pass-through requirement. For example, if a State passes administrative funds down to, or expends such funds on behalf of, a food bank with which it has an agreement, and which is an EFO, those funds can be counted toward the pass-through requirement. The State need not examine the food bank's records for the purpose of determining if the food bank passed any of the funds on to an organization which is not an EFO. All ERAs would, of course, be subject to audit and are accountable for their use of funds for necessary, reasonable, and allowable costs.

As discussed in detail below, the provisions of Welfare Reform permit State and local agencies to use TEFAP administrative funds for a much broader array of costs associated with the distribution of USDA and non-USDA commodities. This will, of course, intensify competing demands for funds, and require that additional priorities be set. The Department believes that TEFAP administrative funds should be available to leverage the supply of food to the needy, from whatever the source. However, the Department also expects that those funds should be available first to distribute the supply of TEFAP commodities. Only after this need has been fully met should TEFAP administrative funds be used to distribute non-USDA commodities. However, it would be impractical to apportion administrative funds within an organization on the basis of the proportion of USDA and non-USDA commodities it handles, in an attempt to ensure that administrative expenses associated with USDA commodities are covered before funds are used for the distribution of non-USDA commodities. Therefore, this rule proposes to amend Section 251.8(d) to provide only that State agencies and ERAs distributing administrative funds shall ensure that the administrative funding needs of ERAs which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to ERAs which distribute only non-USDA commodities.

Allowable Administrative Costs

Indirect Costs—Over the years, many questions have been raised about whether indirect costs may be charged against TEFAP administrative grants. The definition of "storage and distribution costs" in the initial TEFAP regulations issued on April 26, 1983 (48 FR 19004) limited allowable storage and distribution costs to "direct costs." Subsequent revisions of the TEFAP regulations retained this limitation, currently found in Section 251.8(d)(1)(i). However, section 204(a)(2) of the EFAA requires States to make available not less than 40 percent of their grants as necessary to meet the "direct expenses" of EFOs. This term is

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defined as including "transporting, storing, handling, repackaging, processing, and distributing commodities * * * costs associated with determinations of eligibility, verification, and documentation; costs of providing information to persons receiving commodities * * * concerning the appropriate storage and preparation of such commodities; and costs of recordkeeping, auditing, and other administrative procedures required for participation in the program under this Act."

Direct "expenses" does not have the same meaning as direct "costs." In fact, many of the items identified in EFAA Section 204(a)(2) as "direct expenses" could be charged as either direct or indirect costs depending on the EFO's accounting system (e.g., recordkeeping and auditing costs). To ensure consistency in the treatment of these expenses, this rule would amend Section 251.8 to define "direct expenses" to include both direct and indirect costs attributable to TEFAP.

Non-USDA Commodities—Prior to Welfare Reform, States and EFOs were permitted by Section 203D(b) of the EFAA to use TEFAP administrative funds to pay costs associated with the storing, handling, and distributing of non-USDA commodities. In addition, Section 204(a)(2) of the EFAA permitted EFOs to pay costs associated with the repackaging and processing of USDA commodities, as well as the costs of transporting, storing, handling and distributing such commodities. Welfare Reform amended Section 204(a)(1) of the EFAA to expand the allowable uses of TEFAP administrative funds to permit States to use such funds to pay costs associated with the processing of both TEFAP commodities and commodities secured from other sources. However, no corresponding change was made to Section 204(a)(2). Nevertheless, upon further review of the legislative changes made to the EFAA as a result of Welfare Reform, it has been noted that removing the distinction between TEFAP commodities and commodities secured from other sources in Section 204(a)(1) affected Section 204(a)(2) as well. As a result of this amendment, both States and ERAs may use TEFAP funds to pay costs associated with the processing, as well as the transporting, storing, handling, repackaging, and distributing of USDA and non-USDA commodities. This rule proposes to revise Section 251.8(e)(1)(i) to reflect the authority of the State agencies and ERAs to use TEFAP administrative funds to pay such costs.

Interstate Costs—TEFAP regulations have consistently limited "storage and distribution costs" to intrastate costs at both the State and local level. This limitation was based on the language contained in Section 204(a)(2) of the EFAA which limits allowable EFO costs of transporting, storing, handling, repackaging, processing and distributing both USDA and non-USDA commodities to those costs incurred "after [the commodities] are received by the organization." However, this restriction fails to recognize the increasing instances of interstate costs associated with the distribution of non-USDA commodities. The HPA first provided for the use of TEFAP administrative funds to pay costs associated with the distribution of non-USDA commodities by ERAs in 1988. Section 871(c) of Welfare Reform extended the authority to use TEFAP administrative funds for this purpose to States. These legislative changes have caused the Department to re-evaluate the prohibition on interstate costs. It has been determined that the phrase "incurred after they are received by the organization" does not necessarily mean that the ERA must have physical possession of the commodities. Once a particular commodity has been earmarked for a particular agency and has become its responsibility, the proposal would permit TEFAP funds to be used to pay any associated allowable cost. For example, if a farmer in another State makes potatoes available to an organization for gleaning, TEFAP funds could be used to pay the cost of transporting, processing and storing those potatoes. Therefore, this rule also proposes to amend Section 251.8(e)(1)(i) to allow interstate expenditures by both State and local agencies, with the restriction that for such expenditures to be allowable, the commodities in question must have been earmarked for the particular local agency and become its responsibility.

While the EFAA gives a more exhaustive list of the types of EFO costs that may be counted toward the 40 percent pass-through requirement, the Department considers these costs to be a subset of the full range of costs for which a State and other types of ERAs may use TEFAP funds. Included are typical "local" costs such as those associated with determinations of eligibility, verification, and documentation, costs of providing information to persons receiving commodities concerning the appropriate storage and preparation of such commodities, and costs of recordkeeping, auditing, and other administrative procedures required for participation in the program, as they are considered legitimate costs associated with program administration. Therefore, this rule proposes to revise Section 251.8(e)(1) to provide one list of the types of allowable costs for which TEFAP administrative funds can be used at either the State or local level.

This rule also proposes to amend Section 251.8(e)(2) to address those instances in which State agencies limit the use of TEFAP administrative funds to pay specific types of expenses. In most instances, there is not a sufficient amount of TEFAP administrative funds to pay all allowable local level costs. Therefore, some State agencies choose to limit the use of such funds to ensure that funds are utilized in a manner that results in TEFAP commodities being made available to the greatest number of needy possible. As discussed above, if the State agency chooses to limit the use of TEFAP administrative funds, the specific types of expenses for which funds can be used by ERAs must be identified in the agreement or other written documents incorporated by reference in the agreement.

The accompanying chart has been included in this preamble to assist readers in understanding the changes to the allowable administrative cost categories of Section 251.8 set forth in this proposed rule.

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ALLOWABLE ADMINISTRATIVE COSTS IN TEFAP (7 CFR 251.8)

Types of Costs	Current State and Local	Proposed State and Local
USDA Commodities Direct costs of:		
transporting, storing, handling, repackaging, processing and distributing commodities	YES after commodities are received by the organization (intrastate cost limitation)	YES (indirect cost and intrastate cost limitation removed; see Indirect Costs and Interstate Costs below)
determinations of eligibility, verification and documentation		
providing information on commodity storage and preparation		
publishing announcements of distributions		
recordkeeping, auditing, other administrative procedures		
Non-USDA Commodities Direct costs of:		
storing, handling and distributing commodities	YES, but intrastate cost limitation	YES intrastate cost limitation removed; indirect costs allowed; see below)
determinations of eligibility, verification and documentation		
providing information on commodity storage and preparation		
publishing announcements of distributions		
recordkeeping, auditing, other administrative procedures		
Processing	NO	YES
Indirect Costs related to above cost categories for both USDA and non-USDA commodities	NO	YES
Interstate Costs related to above cost categories for both USDA and non-USDA commodities	NO	YES, but commodity must be earmarked for local agency and become its responsibility

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Recordkeeping and Reporting Requirements

Section 251.10(a)(5) currently requires EFOs to retain all records for a period of 3 years from the close of the Federal Fiscal Year to which they pertain. This rule proposes to amend Section 251.10(a)(5), which is redesignated under this proposed rule as Section 251.10(a)(4), to require records to be kept by the ERA, or the State agency on behalf of the ERA, as long as such records are reasonably accessible at all times for purposes of management evaluation reviews, audits or investigations. This change would serve to clearly state the commonly accepted rule that once records become the subject of an audit or investigation, any time limits otherwise permitting their disposal are suspended until the audit or investigation is concluded. The second advantage would be greater flexibility in custodial arrangements for records, e.g., a mass distribution site may not have appropriate record storage space and may wish to ship its records to the State for safekeeping. This provision would be further amended to require records to be kept longer than 3 years if related to an audit or investigation in progress.

Section 251.10(a)(3) of the regulations currently requires each TEFAP distribution site to keep records showing the data and method used to determine the number of eligible households served at that site. Section 251.10(d)(2) of the regulations in turn currently requires States to report, on form FNS–155, the total number of households served in the State under TEFAP. Now that TEFAP and SK/FB have been consolidated, a significant proportion of TEFAP commodities are used for prepared meals. The Department does not intend to require that sites which serve prepared meals report the number of meals served, as in many instances, some meals would not contain TEFAP commodities, and in many other situations, such commodities might comprise a small part of meals. In addition, such a requirement would impose an unreasonable burden on sites which provide prepared meals. Therefore, information relative only to the number of households served through TEFAP is of little value to the Department since it bears no relationship to the total number of needy receiving assistance through TEFAP, and does not account for the disposition of all TEFAP commodities. The Final Rule, "Food Distribution Programs-Reduction of the Paperwork Burden," published at 62 FR 53727, amended Section 250.17(a) to allow the Department to establish the frequency of submission of form FNS–155 and, by implication, the information reported on the form, to conform to program needs. FNS Regional Offices were notified by means of TEFAP Policy Memorandum No. 12–TEFAP Household Participation Data, dated December 23, 1997, that the Department was exercising this authority to eliminate reporting of household data in TEFAP, and that current regulations would be amended to reflect this change. Therefore, this rule proposes to remove Section 251.10(a)(3), as it is oriented toward reporting the number of households served, and to revise Section 251.10(d)(2) to eliminate the requirement that State agencies report the total number of households served. Since it remains necessary, for purposes of accountability, to maintain information specific to each household certified for participation in the program, the requirements contained in Section 251.10(a)(4) are retained in this proposed rule, and redesignated as Section 251.10(a)(3).

Monitoring Requirements

Section 251.10(e)(2)(i) of current regulations requires State agencies to conduct on-site reviews of each participating organization with which the State has an agreement (i.e., EFO as defined by current regulations) at least once every four years, with at least 25 percent of the total number of such institutions reviewed each year. As discussed above, this rulemaking proposes to change the definition of EFO so that it corresponds to the legislative definition. Therefore, this rule proposes to replace the reference to EFO in Section 251.10(e)(2)(i) with "eligible recipient agency with which the State agency has executed an agreement." However, the applicability of the requirement remains unchanged in this proposed rule.

Section 251.10(e)(2)(ii) of current regulations requires that the State agency annually review one-third or 50, whichever is fewer, of all distribution sites within the State, to be conducted, to the maximum extent feasible, simultaneously with actual distribution and/or eligibility determinations. In selecting distribution sites for review, § 251.10(e)(3) of current regulations requires the State agency to rank all the sites according to the number of households participating during the previous Federal fiscal quarter and select for review the first 25 sites, or first one-sixth of all sites, whichever is fewer, which served the greatest number of households.

As indicated above, the 25 percent review requirement is proposed to apply to all ERAs which have an agreement with the State agency. The remaining review requirement, in Section 251.10(e)(2)(ii), is proposed to apply to all other ERAs, that is, to all ERAs which have an agreement with another ERA rather than the State agency. The Department proposes to reduce the frequency of this requirement. Thus, instead of annually reviewing the lesser of one-third or 50 of all distribution sites, the State agency would be required to review the lesser of one-tenth or 20 of all ERAs which have an agreement with another ERA. With the absorption of SK/FB into TEFAP, State agencies must actually expand their monitoring activities to include ERAs which serve prepared meals, so the total number of ERAs will increase. However, the value of available USDA commodities has decreased since the current regulatory requirement was established many years ago, generally reducing the need for oversight. As such, State agencies should have the flexibility to direct limited administrative resources where there is the most need for program oversight and corrective action. This change would decrease the burden associated with administration currently imposed on State agencies while maintaining program accountability.

As indicated above, Section 251.10(e)(3) of current regulations mandates a system for selecting and ranking distribution sites for review based on the number of households they serve. As previously noted, the number of households served is no longer meaningful data since SK/FB has been merged with TEFAP. In addition, it has been determined that States should be granted more flexibility in selecting ERAs for review. Therefore, this rule proposes to remove the current Section 251.10(e)(3) and to amend Section 251.10(e)(2)(ii) to require that State agencies develop a system for reviewing ERAs which have signed an agreement with another ERA for the receipt of TEFAP commodities and/or administrative funds that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner. Examples of criteria States might apply include actual or probable deficiencies in program administration, such as weakness in inventory management, that have been identified through audits, investigations of complaints; deficiencies in, or tardiness of, reports submitted by ERAs; or the dollar value of the TEFAP commodities received in the previous Federal fiscal quarter. Use of such criteria would yield systematic selection while at the same time providing State agencies the flexibility necessary to direct limited administrative resources where oversight and corrective action are most needed.

FNS Instruction 113–3, "Civil Rights Compliance and Enforcement—Food Distribution Programs," presently includes an on-site review requirement of recipient agencies every five years to ensure compliance with civil rights regulations. In accordance with the change in on-site review requirements for TEFAP proposed above, the Department plans to revise this provision of the instruction. The revised instruction would require that on-site reviews of ERAs to ensure compliance with civil rights provisions be conducted at the frequency established in Section 251.10(e)(2)(i) and (e)(2)(ii) of this proposed rule.

Section 251.10(e)(6) of current regulations requires that the State agency submit a report of review findings to each EFO, including a description of each deficiency found and factors contributing to each, requirements for corrective actions, and a timetable for completion of corrective action. The State agency must then monitor the implementation of corrective actions identified in the report. The Department has determined that this requirement is too prescriptive. State agencies should be given more flexibility to determine the manner in which they will work with ERAs to develop corrective action plans to remedy deficiencies. Therefore, this rule proposes to redesignate Section 251.10(e)(6) as Section 251.10(e)(5) and to amend it to require the State agency to submit a report of review findings to an ERA only if the review discloses deficiencies in program administration. In addition, the specific requirements for the report would be removed. State agencies would, however, continue to be responsible for ensuring that ERAs take corrective action to eliminate the deficiencies identified during the review.

Maintenance of Effort

Section 871(d)(5) of Welfare Reform amended Section 214(d) of the EFAA to allow States greater flexibility in complying with the maintenance-of-effort requirement by removing the mandate that a State agency maintain the amount of State funds made available to support other (non-TEFAP) nutrition programs in the State during each fiscal year. The prohibition against reducing State funding remains only for TEFAP itself, i.e., it applies only to State agencies that use their own funds to provide commodities or services to organizations receiving federal funds or services under TEFAP. This rule proposes to amend Section 251.10(h) accordingly.

In recent years, some States have been supporting TEFAP with significant amounts of their own funds, a development that should be encouraged. Therefore, the maintenance-of-effort requirement should not be construed to require that State spending on TEFAP within the State never fall below the highest level achieved in any year. Such an interpretation would no doubt cause States to become extremely wary of increasing their support for TEFAP, for fear that they would be forced, even if unable, to continue to provide the increased level of contributions in future years. Therefore, in an effort to encourage States to contribute additional resources to the extent feasible in any given year, this rule proposes to amend Section 251.10(h) to define the "base year" to be used in determining if States are complying with the maintenance-of-effort requirement as "the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later." The maintenance-of-effort requirement is independent of the State matching requirement for TEFAP administrative funds which States retain for State-level administrative costs, as set forth in Section 251.9.

National School Lunch Program—State Advisory Councils and Consultation Requirement

Section 707(b) of Welfare Reform amended Section 14(e) of the NSLA (42 U.S.C. 1762a(e)) to remove the requirement that State educational agencies-which typically are not involved with decisions relative to the commodity program-establish an advisory council for the purpose of advising the agency on schools' needs relative to the selection and distribution of commodities. Current regulations at 7 CFR 210.28 require State educational agencies to maintain these advisory councils. State agencies were informed via the January 14, 1997 policy memorandum that, effective immediately, State educational agencies need not maintain the formerly required advisory councils. The elimination of this requirement from the regulations is being addressed by FNS's Child Nutrition Division in a separate rulemaking covering the implementation of Welfare Reform relative to child nutrition programs. States should not interpret this change in the law as a requirement to disband their advisory councils. To the extent that they have proved useful, States may wish to retain them. It should be noted that, as mentioned previously, Section 871(b) of Welfare Reform amended Section 202A(c) of the EFAA to require the Secretary to encourage States to establish a State advisory board comprised of public and private entities with an interest in the distribution of TEFAP commodities. As noted above, this rule proposes to revise Section 251.4(h) to include language encouraging States to establish such an advisory board.

Section 707(b) of Welfare Reform also amended section 14(e) of the NSLA (42 U.S.C. 1762a(e)) to require that State agencies responsible for the distribution of commodities consult with representatives of schools in the State that participate in the National School Lunch Program when making decisions regarding the selection and distribution of commodities. Food Distribution Program regulations regarding commodity acceptability reports and information dissemination (Sections 250.13(k) and 250.24(b) respectively) should prove adequate to fulfill this consultation requirement, especially given Congress' decision to eliminate the requirement for advisory councils, and the general need to reduce the burden of program administration. Therefore this rule proposes no new regulations in furtherance of this legislative mandate. The above regulatory provisions do, however, include references (Sections 250.13(k)(2) and 250.24(b)(4)) to the no-longer-required advisory councils, which this rule proposes to eliminate.

Alien Provisions

The provisions of Welfare Reform affecting aliens do not require that States in any way restrict access of aliens to TEFAP. States can continue serving all categories of aliens they served prior to enactment of Welfare Reform. While Welfare Reform does not require discontinuation of benefits to aliens, Section 742 does give States the option to provide, or not provide, program benefits to any individual who is not a citizen or a qualified alien. However, prior to making any changes in program administration based on the alien provisions of Welfare Reform, States are advised to consult with their legal counsel.

States should also be aware that Section 403(a) of Welfare Reform imposes a five-year waiting period after

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a qualified alien enters the country before s/he is eligible for any "Federal means-tested public benefit." The Department has determined that FNS's food distribution programs, including TEFAP, are not subject to this provision. Therefore the five-year waiting period does not apply. The Department will publish a separate rulemaking to incorporate the provisions of Welfare Reform regarding eligibility of aliens for TEFAP and other food distribution programs.

Technical Amendments

This rule proposes to amend part 251 to remove the obsolete word "Temporary" from Section 251.1 and to correct outdated references.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250 and 251 are proposed to be amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a-1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

§ 250.3 [Amended]

2. In Section 250.3, the definitions of *Food bank* and *Soup kitchen* are removed.

§ 250.13 [Amended]

3. In § 250.13:

a. Paragraph (a)(1)(iv) is amended by removing the words "emergency feeding organizations" wherever they appear and adding the words "eligible recipient agencies" in their place.

b. The last sentence of paragraph (k)(2) is amended by removing the words ", including, for example, State Food Distribution Advisory Council Reports".

§ 250.24 [Amended]

4. In § 250.24, paragraph (b)(4) is removed, and paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(4) and (b)(5), respectively.

§ 250.41 [Amended]

5. In § 250.41, the first sentence of paragraph (a)(1) is amended by removing the words "With the exception of section 110 commodities, which are to be distributed in accordance with the provisions of § 250.52, the" and adding in their place "The".

§ 250.52 [Removed]

6. Section 250.52 is removed.

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516.

§ 251.1 [Amended]

2. In § 251.1, the word "Temporary" is removed.

3. In § 251.2:

a. Paragraph (a) is amended by adding the heading "Food and Nutrition Service.";

b. Paragraph (b) is amended by adding the heading "State Agencies.", by removing the words "emergency feeding organizations" and by adding the words "eligible recipient agencies" in their place;

c. Paragraph (c) is revised; and

d. Paragraph (d) is added.

The revision and addition read as follows:

§ 251.2 Administration.

* * * * *

(c) *Agreements.* (1) *Agreements between Department and States.* Each State agency that distributes donated foods to eligible recipient agencies or receives payments for storage and distribution costs in accordance with § 251.8 must perform those functions pursuant to an agreement entered into with the Department. This agreement will be considered permanent, with amendments initiated by State agencies, or submitted by them at the Department's request, all of which will be subject to approval by the Department.

(2) *Agreements between State agencies and eligible recipient agencies, and between eligible recipient agencies.* Prior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with any eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies. All agreements entered into must contain the information specified in paragraph (d) of this section, and be considered permanent, with amendments to be made as necessary, except that agreements must specify that they may be terminated by either party upon 30 days' written notice. State agencies must ensure that eligible recipient agencies provide, on a timely basis, by amendment to the agreement, or other written documents incorporated into the agreement by reference if permitted under paragraph (d) of this section, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

(d) *Contents of agreements between State agencies and eligible recipient agencies and between eligible recipient agencies.* (1) Agreements between State agencies and eligible recipient agencies and between eligible recipient agencies must provide:

(i) That eligible recipient agencies agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter; and

(ii) The name and address of the eligible recipient agency receiving commodities and/or administrative funds under the agreement; and

(iii) The name of the person responsible for administering the program in the receiving eligible recipient agency.

(2) The following information must also be identified, either in the agreement or other written documents incorporated by reference in the agreement:

(i) If the State agency delegates the responsibility for any aspect of the program to an eligible recipient agency, each function for which the eligible recipient agency will be held responsible; *except* that in no case may State agencies delegate responsibility for establishing eligibility criteria for organizations in accordance with

§ 251.5(a), establishing eligibility criteria for recipients in accordance with § 251.5(b), or conducting reviews of eligible recipient agencies in accordance with § 251.10(e);

(ii) If the receiving eligible recipient agency is to be allowed to further distribute TEFAP commodities and/or administrative funds to other eligible recipient agencies, the specific terms and conditions for doing so, including, if applicable, a list of specific organizations or types of organizations eligible to receive commodities or administrative funds;

(iii) If the use of administrative funds is restricted to certain types of expenses pursuant to § 251.8(e)(2), the specific types of administrative expenses eligible recipient agencies are permitted to incur;

(iv) Any other conditions set forth by the State agency.

4. Section 251.3 is revised to read as follows:

§ 251.3 Definitions.

(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.

(b) *Charitable institution* (which is defined differently in this part than in part 250 of this chapter) means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and

(4) Provides food assistance to needy persons.

(c) *Distribution site* means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.

(d) *Eligible recipient agency* means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution; and

(4) Provides food assistance—

(i) Exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5(b), or

(ii) Predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and

(5) Has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and

(6) Falls into one of the following categories:

(i) Emergency feeding organizations (including food banks, food pantries and soup kitchens);

(ii) Charitable institutions (including hospitals and retirement homes);

(iii) Summer camps for children, or child nutrition programs providing food service;

(iv) Nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate nutrition sites and projects that provide home-delivered meals; and

(v) Disaster relief programs.

(e) *Emergency feeding organization* means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h).

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

(g) *Food pantry* means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

(h) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

(i) *State agency* means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(j) *Soup kitchen* means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

(k) *Value of commodities distributed* means the Department's cost of acquiring commodities for distribution under this part.

5. In § 251.4:

a. The words "emergency feeding organization", "emergency feeding organizations" and "emergency feeding organization's" are removed wherever they appear in the section, and the words "eligible recipient agency", "eligible recipient agencies" and "eligible recipient agency's" respectively are added in their place;

b. Paragraph (c)(1) is amended by removing the reference to "§ 251.3(d)"and adding a reference to "§ 251.3(h)" in its place;

c. Paragraph (d)(3) is removed;

d. Paragraph (f)(5) is amended by removing the reference "§ 250.15" and adding in its place the reference "§ 250.30";

e. Paragraphs (g) and (h) are revised;

f. Paragraph (j) is amended by adding the words "that has signed an agreement with the respective State agencies" after the words "eligible recipient agency";

The revisions read as follows:

§ 251.4 Availability of commodities.

* * * * *

(g) *Availability and control of donated commodities.* Donated commodities will be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in paragraph (f) of this section, donated commodities not so distributed or used for any reason may not be sold, exchanged, or otherwise disposed of

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without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may be transferred by eligible recipient agencies receiving commodities under this part, or recipient agencies, as defined in § 250.3 of this chapter, to any other eligible recipient agency or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers will be effected only with prior authorization by the appropriate State agency and must be documented. Such documentation shall be maintained in accordance with § 251.10(a) of this part and § 250.16 of this chapter by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

(h) *Distribution to eligible recipient agencies-priority system and advisory boards.*—(1) State agencies must distribute commodities made available under this part to eligible recipient agencies in accordance with the following priorities:

(i) *First priority.* When a State agency cannot meet all eligible recipient agencies' requests for TEFAP commodities, the State agency must give priority in the distribution of such commodities to emergency feeding organizations as defined under § 251.3(e). A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(ii) *Second priority.* After a State agency has distributed TEFAP commodities sufficient to meet the needs of all emergency feeding organizations, the State agency must distribute any remaining program commodities to other eligible recipient agencies which serve needy people, but do not relieve situations of emergency and distress. A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(2) *Delegation.* When a State agency has delegated to an eligible recipient agency the authority to select other eligible recipient agencies, the eligible recipient agency exercising this authority must ensure that any TEFAP commodities are distributed in accordance with the priority system set forth in paragraphs (h)(1)(i) and (h)(1)(ii) of this section. State agencies and eligible recipient agencies will be deemed to be in compliance with the priority system when eligible recipient agencies distribute TEFAP commodities to meet the needs of all emergency feeding organizations under their jurisdiction prior to making commodities available to eligible recipient agencies which are not emergency feeding organizations.

(3) *Existing networks.* Subject to the constraints of paragraphs (h)(1)(i) and (h)(1)(ii) of this section, State agencies may give priority in the distribution of TEFAP commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(4) *State advisory boards.* Each State agency receiving TEFAP commodities is encouraged to establish a State advisory board representing all types of entities in the State, both public and private, interested in the distribution of such commodities. Such advisory boards can provide valuable advice on how resources should be allocated among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States to use their program resources in the most efficient and effective manner possible. A State agency may expend TEFAP administrative funds to support the activities of an advisory board in accordance with § 251.8 of this part.

* * * * *

6. Section 251.5 is revised to read as follows:

§ 251.5 Eligibility determinations.

(a) *Criteria for determining eligibility of organizations.* Prior to making commodities available, State agencies or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of TEFAP commodities, must ensure that an organization applying for participation in the program meets the definition of an "eligible recipient agency" under § 251.3(d). In addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing to households.* Organizations distributing commodities to households for home consumption must limit the distribution of commodities provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals.* Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency or eligible recipient agency to which they have applied for the receipt of commodities, that they serve predominantly needy persons. State agencies may establish a higher standard than "predominantly" and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

(3) *Tax-exempt status.* Private organizations must—

(i) Be currently operating another Federal program requiring tax-exempt status under the Internal Revenue Code (IRC), or

(ii) Possess documentation from the Internal Revenue Service (IRS) recognizing tax-exempt status under the IRC, or

(iii) If not in possession of such documentation, be automatically tax exempt as "organized or operated exclusively for religious purposes" under the IRC, or

(iv) If not in possession of such documentation, but required to file an application under the IRC to obtain tax-exempt status, have made application for recognition of such status and be moving toward compliance with the requirements for recognition of tax-exempt status. If the IRS denies a participating organization's application for recognition of tax-exempt status, the organization must immediately notify the State agency or the eligible recipient agency, whichever is appropriate, of such denial, and that agency will terminate the organization's agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the appropriate agency within 180 days of the effective date of the organization's approval for participation in TEFAP, the State agency or eligible recipient agency must terminate the organization's participation until such time as recognition of tax-exempt status is actually obtained, except that the State agency or eligible recipient agency may grant a single extension of not to exceed 90 days if the organization can demonstrate, to the State agency's or eligible recipient agency's satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control. It is the responsibility of the organization to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner.

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive commodities provided under this part for home consumption. The criteria must:

(1) Enable the State agency to ensure that only households which are in need of food assistance because of inadequate household income receive TEFAP commodities;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of commodities and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for determining the eligibility of such organizations to receive commodities and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive commodities and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that commodities and administrative funds are distributed in accordance with the provisions contained in this part.

7. Section 251.6 is revised to read as follows:

§ 251.6 Distribution plan.

(a) *Contents of the plan.* The State agency must submit for approval by the appropriate FNS Regional Office a plan which contains:

(1) A designation of the State agency responsible for distributing commodities and administrative funds provided under this part, the address of such agency, and the name of the agency official entrusted with binding signature authority;

(2) A plan of operation and administration to expeditiously distribute commodities received under this part;

(3) A description of the standards of eligibility for recipient agencies, including any subpriorities within the two-tier priority system; and

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive TEFAP commodities for home consumption.

(b) *Plan submission.* A complete plan will be required for Fiscal Year 2001, to be submitted no later than August 15, 2000. Thereafter, a complete plan must be submitted every 4 years, due no later than August 15 of the fiscal year prior to the end of the 4 year cycle.

(c) *Amendments.* State agencies must submit amendments to the distribution plan to the extent that such amendments are necessary to reflect any changes in program operations or administration as described in the plan, or at the request of FNS, to the appropriate FNS Regional Office.

8. Section 251.7 is revised to read as follows:

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make annual adjustments to the commodity allocation for each State, based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part.

(b) *Funds adjustments.* The Department will make annual adjustments of the funds allocation for each State based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year unless funds are recovered, withheld, or reallocated by FNS in accordance with § 251.8(f).

9. In § 251.8:

a. Paragraph (a) is amended by removing the reference "§ 251.3(d)" and adding in its place the reference "§ 251.3(h)";

b. Paragraph (b) is amended by removing the reference "part 3015" and adding in its place the reference "part 3016 or part 3019, as applicable.";

c. Paragraph (c)(1) is amended by removing the words "U.S. Treasury Department checks or";

d. Paragraph (c)(2) is amended by:

1. removing the words "FNS Instruction 407–3 (Grant Award Process)" and adding in their place the words "procedures established by FNS";

2. removing from the first sentence the words "either" and "or a U.S. Treasury check pursuant to submission of the SF–270, Request for Advance or Reimbursement";

3. removing the second sentence; and

4. removing reference to "§ 251.8(e)" and in its place adding reference to "§ 251.8(f)";

e. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and new paragraph (d) is added; and

f. Newly redesignated paragraph (e) is revised.

The addition and revision read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(d) *Priority for eligible recipient agencies distributing USDA commodities.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to organizations which distribute only non-USDA commodities.

(e) *Use of funds.* (1) *Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA commodities and commodities secured from other sources to the extent that the commodities are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities; except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

(ii) Costs associated with determinations of eligibility, verification, and documentation;

(iii) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(iv) Costs involved in publishing announcements of times and locations of distribution; and

(v) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(2) *State restriction of administrative costs.* A State agency may restrict the use of TEFAP administrative funds by eligible recipient agencies by disallowing one or more types of expenses expressly allowed in paragraph (e)(1) of this section. If a State agency so restricts the use of administrative funds, the specific types of expenses the State will allow eligible recipient agencies to incur must be identified in the State agency's agreements with its eligible recipient agencies, or set forth by other written notification, incorporated into such agreements by reference.

(3) *Agreements.* In order to be eligible for funds under paragraph (e)(1) of this section, eligible recipient agencies must have entered into an agreement with the State agency or another eligible recipient agency pursuant to § 251.2(c).

(4) *Pass-through requirement-local support to emergency feeding organizations.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State agency in accordance with paragraph (a) of this section must be:

(A) Provided by the State agency to emergency feeding organizations that have signed an agreement with the State agency as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (e)(1) of this section, except that such emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (e)(1) of this section.

(ii) Any funds allocated to or expended by the State agency to cover costs incurred by eligible recipient agencies which are not emergency feeding organizations shall not count toward meeting the pass-through requirement.

(iii) State agencies must not charge for commodities made available under this part to eligible recipient agencies.

* * * * *

10. In § 251.9:

a. The words "emergency feeding organization" and "emergency feeding organizations" are removed wherever they appear in the section, and added in their place are the words "eligible recipient agency" and "eligible recipient agencies" respectively;

b. Paragraph (a) is revised;

c. In paragraph (c) introductory text, the reference "3016.24(b)(1)" is removed, and in paragraph (c)(2)(i) the reference "3016.24(c) through 3016.24(f)" is removed, and the reference "part 3016 or 3019, as applicable" is added in both places.

d. Paragraph (e) is removed, and paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively;

e. Newly redesignated paragraph (e) is amended by removing the words "SF–269, Financial Status Report," and adding the words "FNS–667, Report of TEFAP Administrative Costs," in their place.

f. Newly redesignated paragraph (f) is amended by removing the reference "SF–269" wherever it appears and adding the reference "FNS–667" in its place.

The revision reads as follows:

§ 251.9 Matching of funds.

(a) *State matching requirement.* The State must provide a cash or in-kind contribution equal to the amount of TEFAP administrative funds received under § 251.8 and retained by the State agency for State-level costs or made available by the State agency directly to eligible recipient agencies that are not emergency feeding organizations as defined in § 251.3(e). The State agency will not be required to match any portion of the Federal grant passed through for administrative costs incurred by emergency feeding organizations or directly expended by the State agency for such costs in accordance with § 251.8(e)(4) of this part.

* * * * *

11. In § 251.10:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by adding the words "commodities distributed for home consumption and meals prepared from" after the word "law,";

c. Paragraph (c) is amended by adding the words "for home consumption or availability of meals prepared from commodities" after the word "foods".

d. Paragraphs (d) and (e) are revised;

e. Paragraph (f) is amended by:

1. removing the words "emergency feeding organizations and distribution sites", "emergency feeding organization or distribution site" and "emergency feeding organization's or distribution site's" wherever they appear, and adding in their place the words "eligible recipient agencies", "eligible recipient agency" and "eligible recipient agency's" respectively;

2. adding the words "or meal service" after the word "foods" in paragraph (f)(1) introductory text;

3. adding the words "for home consumption or prepared meals containing TEFAP commodities" after the word "commodities" in paragraph (f)(1)(ii);

4. adding the words "or meal service" at the end of paragraph (f)(1)(iii);

5. adding the words "or meal service" after the word "foods" in paragraph (f)(2); and

6. removing the words "the distribution of commodities by" in paragraph (f)(4);

f. Paragraph (g) is amended by removing the words "emergency feeding organizations" and adding in their place "eligible recipient agencies";

g. Paragraph (h) is revised.

The revisions read as follows:

§ 251.10 Miscellaneous provisions.

(a) *Records.* (1) *Commodities.* State agencies must maintain records to document the receipt, disposal, and inventory of commodities received under this part in accordance with requirements of § 250.16 of this chapter. State agencies must also ensure that eligible recipient agencies maintain such records.

(2) *Administrative funds.* In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Household information.* Each distribution site must collect and maintain on record for each household receiving TEFAP commodities for home consumption, the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities for home consumption.

(4) *Record retention.* All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

* * * * *

(d) *Reports.* (1) *Submission of Form FNS–667.* Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS–667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory.* Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter.

(e) *State monitoring system.* (1) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements.

(2) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(i) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided that each such agency must be reviewed no less frequently than once every four years; and

(ii) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive TEFAP commodities and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of commodities and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(3) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, and reporting and recordkeeping requirements.

(4) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (e)(2) of this section.

(5) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

* * * * *

(h) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide commodities or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

Dated: June 24, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–17160 Filed 7–7–99; 8:45 am]

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Part III

Environmental Protection Agency

Pesticides; Policy Issues Related to the Food Quality Protection Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00610; FRL–6088–7]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act (FQPA) are transparent and open to public participation, EPA is soliciting comments on four policy papers entitled "Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health," "Exposure Data Requirement for Assessing Risks of Pesticide Exposure to Children," "The Office of Pesticide Programs' Policy on Determination of the Appropriate FQPA Safety Factor(s) for Use in the Tolerance-Setting Process," and "Standard Operating Procedures (SOP) for Determining the Appropriate FQPA Safety Factor(s) for Use in Tolerance Assessment." This notice is the ninth in a series concerning science policy documents related to FQPA and developed through the Tolerance Reassessment Advisory Committee (TRAC).

DATES: Written comments for these policy papers, identified under one docket control number provided in Unit I. of this document, should be submitted by September 7, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of this document. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00610 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Penelope A. Fenner-Crisp, Environmental Protection Agency (7501C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 605–0654; fax: 703–305–4776; e-mail: fenner-crisp.penelope@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and the four science policy papers from the EPA Home Page under the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/. On the Office of Pesticide Program Home Page select "TRAC" and then look up the entry for this document. You can also go directly to the listings at the EPA Home Page at the Federal Register--Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/) to obtain this notice and the four science policy papers.

2. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section of this document. In addition, the official records for the science policy papers listed in the SUMMARY section of this document, including the public version, have been established under the docket control number OPP–00610 (including comments and data submitted electronically as described below). This record not only includes the documents that are physically located in the docket, but also includes all the documents that are referenced in those documents. Public versions of these records, including printed, paper versions of any electronic comments, which do not include any information claimed as Confidential Business Information (CBI), are available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00610 in the subject line on the first page of your response.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please call the Public Information and Records Integrity Branch; the telephone number is (703) 305–5805.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the draft science policy papers, new approaches the Agency has not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the "subject" heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00610 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background for the Tolerance Reassessment Advisory Committee (TRAC)

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10–year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with the FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27, 1998 through April 29, 1999.

The Agency has been working with TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision-making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues.

The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues. TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA has been issuing a series of draft documents concerning the nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of the four documents identified in the SUMMARY section of this document.

III. Background on FQPA Safety Factor Papers

A. 1993 National Research Council (NRC) Study

In response to a request from the U.S. Congress, the National Research Council (NRC) conducted a study on the scientific and policy issues concerning pesticides in the diets of infants and children. In its 1993 report, "Pesticides in the Diets of Infants and Children," the NRC concluded that although the uncertainty factors that are widely used to establish guidelines for human exposure on the basis of animal testing results generally provide adequate protection for infants and children, children may be uniquely susceptible to chemical exposures at particularly sensitive stages of development. The NRC further concluded, "in the absence of data to the contrary, there should be a presumption of greater toxicity to infants and children."

B. Applicable FQPA Requirements

The Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170) was signed into law on August 3, 1996. FQPA establishes a new safety standard and new procedures for EPA's pesticide tolerance-setting activities. Under new section 408(b)(2)(A)(i) of FFDCA, EPA can establish, revise or leave in effect a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if it is determined to be "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." Section 408(b)(2)(C) requires EPA to give special consideration to infants and children by ensuring "that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue."

FQPA instructs EPA, in making its "reasonable certainty of no harm" finding, that in "the case of threshold effects, . . . an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of data with respect to exposure and toxicity to infants and children." Section 408(b)(2)(c) further states that "the Administrator may use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children."

C. EPA 10X Task Force

In March 1998, the U.S. Environmental Protection Agency (EPA) established an agency-wide "10X Task Force" to address the use of the ten-fold (10X) margin of safety for infants and children (otherwise known as the "FQPA Safety Factor") provided for in the Food Quality Protection Act (FQPA) of 1996. Task Force members included high-level scientists primarily from the Office of Children's Health Protection, the Office of Prevention, Pesticides and Toxic Substances, and the Office of Research and Development. This group was charged with developing recommendations regarding the implementation of the FQPA Safety Factor.

In response to this charge, the 10X Task Force formed two working groups--the Toxicology Working Group and the Exposure Working Group. These groups have each drafted a report "Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health" and "Exposure Data Requirements for Assessing Risks of Pesticide Exposure to Children," respectively, which are summarized in Units IV.A. and IV.B. of this document. These reports contain recommendations concerning the implementation of the FQPA Safety Factor.

D. Pesticide Program Guidance

The Office of Pesticide Programs (OPP) is responsible for implementing the requirements of FQPA in making its pesticide regulatory decisions daily. Accordingly, OPP has developed updated, interim guidance as to how it will comply with FQPA concerning the FQPA Safety Factor for protecting infants and children. In drafting this guidance, OPP has taken into account the recommendations of the 10X Task Force as embodied in the above-mentioned documents. OPP's guidance consists of two documents: "The Office of Pesticide Programs' Guidance Document on the Determination of the Appropriate FQPA Safety Factor(s) for Use in the Setting of Tolerances" and "Standard Operating Procedures (SOP) for Determining the Appropriate FQPA Safety Factor(s) for Use in Tolerance Reassessment" which are summarized in Units IV.C. and IV.D. of this document. The former paper explains the general policies that OPP proposes to follow in making determinations concerning the use of the FQPA Safety Factor, while the latter paper specifies the detailed procedures that OPP will use in following these policies.

E. Scientific Peer Review

Since the FQPA was promulgated, OPP has submitted all interim policy and guidance documents on the FQPA safety factor for independent scientific peer review, with concurrent requests for public comment. Responses and comments received from the independent scientific panels, other offices within the Agency, government agencies, and from the public sector, in response to each of these document releases and/or presentations, have been carefully considered throughout the process of developing interim policy. The first interim policy paper explaining the OPP position on the use of the ten-fold margin of safety, was presented to the FIFRA Scientific Advisory Panel (SAP) in October 1996. In March 1998, a second OPP interim policy paper on the application of the ten-fold safety factor to risk assessments entitled "Presentation for FIFRA Scientific Advisory Panel by Office of Pesticide Programs Health Effects Division on FQPA Safety Factor for Infants and Children," was presented to the SAP. An update on the Agency's progress in addressing issues raised by the SAP was brought before a subsequent Panel in July 1998; however, the primary positions described in the March paper were not altered in that update.

F. Public Comments

Before and during the TRAC meetings, the Agency received comments on how to approach and improve its interim policies. Specifically, EPA received several petitions, including those from the National Food Processors Association, the Natural Resources Defense Council (NRDC) and others, a report from the Implementation Working Group (IWG), letters from the Environmental Working Group, and various correspondence from Congress and others. These documents will be considered as the Agency refines its science policies, and will also be made available through the public docket.

1. *NRDC petition.* On April 23, 1998, the NRDC and various individuals and other public interest organizations filed a petition requesting that EPA issue an interpretive rule/policy statement regarding EPA's implementation of the FQPA provision concerning the additional ten-fold safety factor to protect infants and children. The petition seeks three specific actions:

i. Issuance of a policy statement/interpretive rule providing that EPA maintain the ten-fold safety factor unless the Administrator has determined that there are reliable data on [evolving] prenatal and postnatal toxicity and exposure for fetuses, infants, and children. The petition sets forth a minimum set of data that petitioners believe constitutes "reliable data" and requests that the statement/rule direct EPA to apply the additional ten-fold factor if any of these data are absent.

ii. Convene a "blue ribbon panel" to assist EPA in determining when there are reliable data for prenatal and postnatal toxicity to fetuses, infants, and children. NRDC recommends that this panel be convened under the auspices of the Children's Health Protection Advisory Committee.

iii. Issuance of a policy statement/interpretive rule providing that, pending completion of the panel's report, EPA will apply the ten-fold safety factor.

2. *Grower group and trade association petition.* On May 26, 1998, EPA received a petition on rulemaking under the FQPA submitted on behalf of several grower groups and trade associations. The petition requested EPA to use notice and comment rulemaking to establish policies and procedures for implementing FQPA. The petitioners claimed that rules are needed to establish policies and procedures for determining when the FQPA ten-fold safety factor may be reduced or removed.

3. *IWG report.* The IWG, a coalition of farm, food, manufacturing, and pest management organizations, issued a "road map" report on June 18, 1998, which presents the IWG's views on how EPA can ensure what they regarded as a more balanced and workable implementation of FQPA. Their comments included the FQPA Safety Factor.

IV. Summary of FQPA Safety Factor Papers

A. Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health

The Toxicology Working Group of the 10X Task Force has developed a report addressing the role of toxicology data requirements in assessing risks to children's health from pesticide exposure. Specifically, the report provides guidance on the use of toxicity data in hazard characterization and dose-response analysis relevant to decisions about the FQPA 10X Safety Factor.

First, the report expands on the definition of prenatal and postnatal toxicity (developmental toxicity) from the EPA Guidelines for Developmental Toxicity Risk Assessment (1991), and recommends a core toxicology data set for conventional, food-use pesticides. In particular, the report suggests that adult and developmental neurotoxicity testing and adult immunotoxicity testing be included as a routine part of the core test data set for food-use pesticides because the current weight-of-the-evidence triggers may not identify all pesticides that have the potential to produce developmental neurotoxicity and immunotoxicity.

The report then describes criteria for assessing the overall "degree of concern" for children's health effects that encompasses a review of all available toxicity information. The recommended approach, which includes an evaluation of the degree of concern for children's health, represents an evolution and further harmonization of the approaches previously taken by EPA. The criteria for this approach fall into four basic categories, each of which the report discusses in detail:

1. Human data on prenatal and postnatal toxicity.

2. Prenatal and postnatal toxicity in animal studies.

3. The dose-response nature of the experimental animal data.

4. The relevance of the experimental animal data for humans.

When a dose-response analysis is done for health effects of pesticides in general, the report recommends how a dose-response analysis should be performed for children's health effects. That is, the data on developmental toxicity should be evaluated along with the data on adult toxicity, and the No Observed Adverse Effect Level (NOAEL) for the more sensitive or critical effect levels should be based on consideration of all health effects observed. In doing so, children's health will be protected along with that of other sensitive populations.

The report indicates that the default intraspecies ten-fold uncertainty factor, which is applied to account for variations in toxicity among humans, will be adequate in the majority of cases for protecting children's health regarding toxicity concerns, if a complete developmental toxicity data base is available. The report suggests that when data specific to children's health are missing or inadequate for a particular pesticide, application of the data base uncertainty factor in addition to the ten-fold intraspecies variability factor would account for the possibility that children may be significantly more sensitive than adults.

Although the report asserts that there is no formal process for considering the degree of concern in the RfD determination, the report recognizes that some aspects of degree of concern are taken into account at this point in the risk assessment process, for example, when developmental effects are selected as the most sensitive endpoints. Nevertheless, the report recommends that this issue be further considered in the calculation of the RfD.

In addition to the recommendations described above, the report makes several recommendations concerning the development of new data requirements:

1. 40 CFR part 158.340 should be updated to include the adult and developmental neurotoxicity guidelines and the adult immunotoxicity guidelines and to refer to the newly revised two-generation reproduction and prenatal developmental toxicity testing guidelines.

2. Guidelines for pharmacokinetic studies should be developed that include considerations of exposure during pregnancy and lactation, and of infants and children. These data can be developed as part of a tiered approach to overall pharmacokinetic evaluations and should be required for assessment of effects of pesticides on infants and children in 40 CFR part 158.

3. Specific testing guidelines for other types of functional or latent effects (e.g., developmental immunotoxicity, developmentally-induced cancer) do not currently exist. As well, guidelines for direct dosing of neonates and appropriate interpretation and application of such data are not available. Efforts should be made to develop these guidelines as well as criteria for when such studies should be conducted.

B. Exposure Data Requirements for Assessing Risks to Children's Health from Pesticide Exposure

The Exposure Working Group of the 10X Task Force has developed a report addressing the role of exposure data requirements in assessing risks to children's health from pesticide exposure. The report gives information and describes general principles for conducting exposure assessments. It also discusses issues that are specific to conducting exposure assessments for children.

The report contains criteria by which OPP evaluates data sets used in an exposure assessment. If direct measurements of exposure are used for the assessment, then the available exposure data must be of suficient quality and quantity to provide high confidence that the assessment will be protective of infants and children. If models are used to estimate exposure, then the exposure assumptions in the models must be judged to be conservative. The greater the uncertainty in the data associated with the assumptions, the more conservative (i.e., unlikely to underestimate exposure) the assumptions should be.

Finally, the report describes the assessment procedures for estimating single pathway pesticide exposures from food, drinking water, and non-occupational sources. It also characterizes the types of data that are used in the assessments. For each pathway, the procedures and data are evaluated to determine if there is a high level of confidence that the assessment is protective of infants and children. The report lists a number of recommendations on how to improve the assessment procedures, mentions the ongoing work within EPA to improve the procedures, and addresses the issues associated with aggregating exposures from different sources.

C. The Office of Pesticide Programs' Guidance Document on the Determination of the Appropriate FQPA Safety Factor(s) for Use in the Setting of Tolerances

The OPP guidance document describes the OPP policies for determining the appropriate FQPA Safety Factor(s) to apply when establishing, modifying, leaving in effect, or revoking a tolerance or exemption for a food use pesticide. It presents the legal framework for the FQPA Safety Factor and key interpretations of that framework. It states that, while the legislative language incorporates the term "safety factor" instead of the term "uncertainty

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factor," OPP believes that Congress clearly intended the FQPA Safety Factor to address uncertainty resulting from incompleteness of data and, therefore, deems the statutory term to incorporate the "uncertainty factor" concept. The document offers the opinion that the FQPA Safety Factor is to be applied in addition to the two routine or baseline factors which account for: (1) Differences in sensitivity and variability between humans (the "intraspecies" uncertainty factor) and (2) differences in sensitivity between experimental animals and humans, if animal data have been used as the basis for deriving the hazard values (the "interspecies" uncertainty factor). Therefore, the FQPA Safety Factor would include other uncertainty or modifying factors used in the calculation of hazard values, for example, the data base uncertainty factor that is applied when one or more critical core studies are missing.

The document describes the set of pesticides for which FQPA Safety Factor determinations would be made primarily as food-use chemicals of "conventional" chemistry for which hazard values such as the acute or chronic reference doses (RfD) can be derived. OPP would expect to make FQPA Safety Factor decisions when assessing risk to infants and children up through the time of sexual maturation, women of child-bearing age, and on occasion, sexually mature males. FQPA Safety Factor recommendations will be made as the risk characterization is being developed; the final decision will be made during the risk management process.

The guidance describes the criteria by which OPP determines the completeness of the toxicology data base for conducting a high quality hazard characterization. OPP makes this determination employing a weight-of-the-evidence approach. The core toxicology data base for a specific chemical generally consists of studies which meet three criteria:

1. All studies in the core data base must have "official" testing guidelines or standard, well-documented protocols available.

2. The studies will have been required under FIFRA/ FFDCA as first tier requirements or will have been triggered by results of Tier 1 or other existing studies (see the regulations in 40 CFR 158.340, subpart F). Alternatively, studies are required under a well-established policy and practice for registration and reregistration/renewal (e.g., data call-ins) and this requirement has resulted in the generation and submission of the data with which the Agency has acquired experience in evaluating.

3. There is consensus in the scientific community that there is a body of evidence supporting the conclusion that the results of such studies significantly improve the understanding of the potential hazard of the pesticide to humans, including infants and children.

The document notes that OPP will, in the next few months, propose to revise the toxicology data requirements in part 158, to include several new studies as Tier 1 requirements (e.g., the acute and subchronic neurotoxicity studies in adult mammals, the developmental neurotoxicity study, two immunotoxicity studies, and the 21–day dermal study) plus others as Tier 2 (i.e., conditionally required). In addition, there is a description of the criteria and other bases by which OPP has concluded that it is appropriate to begin the process to issue data call-ins for the acute and subchronic neurotoxicity studies in adult mammals and the developmental neurotoxicity study for a subset of conventional chemistry pesticides which are known neurotoxins.

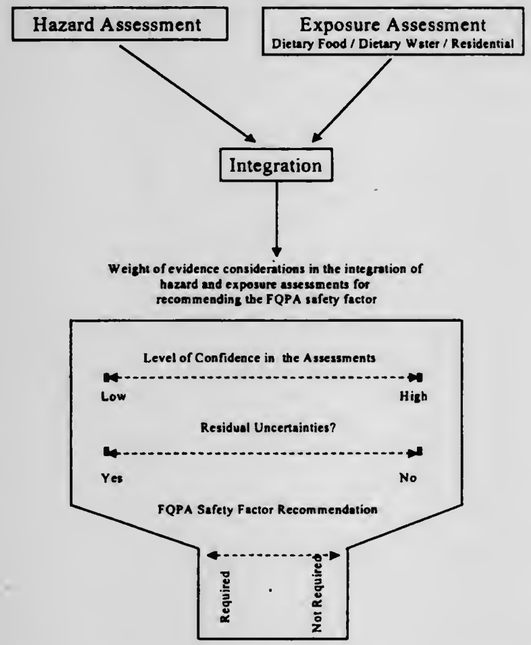
Separate from the question of what data will comprise a complete data base is the issue of what data base uncertainty factor should be applied when critical core studies are missing or inadequate. This document addresses this issue, including when the number of studies considered critical for a "high confidence" chronic RfD is expanded in the near term from five to six, and, then, after the studies are routinely required, received and understood, to eight. The data base uncertainty factor fulfills the same purpose as, and, in effect, becomes part of the FQPA Safety Factor. This guidance document incorporates the criteria and factors for assessing the degree of concern regarding the potential for prenatal and postnatal effects, as presented in the framework described in the report of the Toxicology Working Group of the Agency 10X Task Force entitled "Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health." (Toxicology Working Group, 1999).

The guidance document also considers the completeness of the toxicology data base and degree of concern in the selection and application of uncertainty factors when calculating the acute or chronic RfD and in the recommendations regarding the FQPA Safety Factor. The RfD derivation process takes into account deficiencies in the core toxicology data base and the potential for hazard to fetuses, infants and children (and, therefore, the degree of concern). The document articulates criteria for determining OPP's overall level of confidence in the hazard-related information and hazard assessment approaches employed. If, for some reason, an assessment does not meet this standard, then the assessment is said to contain "residual uncertainties or concerns." Any residual concerns remaining after the hazard assessment is examined are dealt with when making the final FQPA Safety Factor decision(s). During the period after a determination is made to require new toxicology studies, but before they become part of the core toxicology data base, their absence is evaluated as part of "residual uncertainties or concern" in the FQPA Safety Factor assessment process. This document states OPP's intention to solicit broad public input regarding the appropriate consideration of the absence of these particular newly-required studies in the FQPA Safety Factor assessment process.

Just as for hazard potential, determination of the completeness of the exposure data base--in the context of aggregate exposure and risk assessment--is a primary consideration relative to the FQPA Safety Factor. As described in the report of the Exposure Working Group of the Agency 10X Task Force entitled "Exposure Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health" (Exposure Working Group, 1999), OPP estimates exposure using chemical-specific and other reliable empirical data as well as models and conservative assumptions, which also are based upon reliable data. The Office is confident that, in the great majority of cases, it is not underestimating exposure to infants and children or to the general population. The guidance document acknowledges the desirability of obtaining more extensive and specific exposure data and notes that OPP continues to pursue the acquisition of such data from the private sector and its own and other agencies' research efforts. If any residual concerns remain after the exposure assessment is examined, these are dealt with when making the final FQPA Safety Factor decision(s). The guidance states that the absence of detailed and specific exposure data would require the application of an additional safety factor unless OPP can determine that the available data and its assessment methodologies give a high degree of confidence that exposure to infants and children is not underestimated. However, because OPP's approach to estimating exposure in the absence of extensive, specific data is typically very conservative, OPP can usually conclude, with a high degree of confidence, that its approach adequately protects infants and children, and the FQPA Safety Factor would not be needed to address uncertainties in the exposure data base.

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CONSIDERATIONS IN THE FQPA SAFETY FACTOR RECOMMENDATION PROCESS



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The guidance document notes that the decision, either that the default FQPA Safety Factor is to be applied or that there are reliable data which support the application of a different factor, uses a "weight-of-the-evidence" approach. This approach simply means that all of the data with regard to both hazard and exposure are considered simultaneously as the total body of evidence with regard to the pesticide(s) being evaluated. The integration approach to evaluating the available hazard- and exposure-related information involves characterization of the overall confidence that infants and children will be protected. As illustrated in the figure above, the weight-of-the-evidence considerations include the level of confidence in the hazard and exposure assessments, and whether or not there are any residual uncertainties identified in the risk characterization. If there is a high level of confidence that the combination of the hazard and exposure assessments is adequately protective of infants and children, then the default FQPA factor would not be applied at this stage in the process. For example, the optimal case would be one in which there is a high level of confidence that the hazard and exposure assessments are sufficiently conservative and there are no residual uncertainties in the assessment; then it would not be necessary to apply an additional safety factor to protect infants and children. At the other extreme is the case where OPP may find that reliable data do not support a particular finding other than to retain the 10X default factor, given the low level of confidence that the hazard and exposure assessments are sufficiently conservative and there are residual uncertainties that have not been dealt with in the assessment. Alternatively, in other cases where there is also a low level of confidence in the hazard and exposure assessments and residual concerns remain, an additional safety factor other than the 10X default (perhaps even greater) would be applied. The size of the final factor would depend on the overall weight-of-the-evidence and the level of confidence in the assessment.

The recommendation concerning the FQPA factor is made based upon consideration of the nature and level of confidence in the hazard and exposure assessments, the degree of concern for potential hazard to the fetus, infants and children, and any residual uncertainties that are not accounted for in the hazard and exposure assessments. The final decision on the FQPA Factor is informed by the science presented in the risk characterization and the recommendation.

D. "Standard Operating Procedures (SOP) for HED FQPA Safety Factor Committee"

The Standard Operating Procedures (SOP) is a working level document designed to obtain and organize information from disciplinary review

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scientists regarding the following: (1) The contribution of the hazard and dose response evaluations in determining whether an additional FQPA safety factor is required; (2) the contribution of the exposure assessment(s) in evaluating the safety factor; and (3) the characterization of both the toxicology and exposure data bases. The Committee considers this information in making the safety factor recommendation for each pesticide on a case-by-case basis using a weight-of-the-evidence approach. On December 9, 1998, the OPP FQPA Safety Factor Committee presented to the FIFRA Scientific Advisory Panel (SAP) its SOP for recommending the safety factor for risk assessments prepared in support of tolerance decisions. The Committee has revised its draft Standard Operating Procedures (SOP) in accordance with the draft OPP Policy Document and the recommendations of the SAP; the committee is issuing this revised document for comment today.

V. Questions/Issues for Comment

Because the four science policy documents covered by this notice have many common issues, the Agency encourages the public to submit comments by issue or topic rather than for each separate document. To facilitate this approach to commenting, EPA has placed all four documents under the same docket number (see Unit I.C. of this document). In this way, commenters may efficiently address a science policy or other issues that are addressed in the different documents.

Although EPA is making four documents concerning the FQPA 10X Safety Factor available for review and public comment, the Agency encourages the public to focus particularly on the OPP Guidance Document, "The Office of Pesticide Programs' Policy on Determination of the Appropriate FQPA Safety Factor(s) for Use in the Tolerance-Setting Process." While OPP used the two papers produced by the Toxicology and Exposure Working Groups of the Agency's 10X Task Force in developing its guidance, at this time, the 10X Task Force is not planning to revise and reissue these documents following public comment. In addition, the OPP Standard Operating Procedure is largely derived from the OPP Guidance Document, and any changes in it following public comment should reflect changes in the Guidance Document. Therefore, of the four documents being made available, OPP considers its Guidance Document the most important for the public to review and comment on.

Following are several issues and associated questions for which EPA has particular interest in receiving comments:

General FQPA Safety Factor Issues

1. The OPP Guidance indicates that OPP will generally apply the FQPA Safety Factor only to food-use pesticides of "conventional" chemistry. Please comment on this approach. The Guidance also indicates that different decisions about the need for, and size of, an additional FQPA Safety Factor may be appropriate for different durations of exposure and different exposed populations. Please comment on this approach. Finally, the Guidance indicates that it would be appropriate to make only one FQPA Safety Factor decision for a single population/exposure period, even though such exposure might occur by different routes and pathways. Please comment on this approach.

2. Is a weight-of-the-evidence approach to making FQPA Safety Factor decisions appropriate, taking into consideration the toxicology and exposure data bases for a pesticide and the potential risks for the developing fetus, infant and child as well as other populations? If not, why not? Given the scope of the evidence which OPP intends to consider, are there any other types of information that OPP should consider in making its FQPA Safety Factor determinations?

3. Do you agree with the view that the models and assumptions used by OPP in the risk assessment process, together with reliable data available on specific pesticides and other reliable, empirical data, typically do not understate risk? If not, under what circumstances do you believe OPP's current approaches to assessing risks from aggregate exposure to a single pesticide produce risk assessments that understate the risks to infants and children?

4. Do you agree with OPP's view that the FQPA Safety Factor should be applied in addition to the interspecies and intraspecies uncertainty factors, but that the FQPA Safety Factor should not be applied in a manner that results in "double-counting" of uncertainties that are otherwise addressed in the toxicity and exposure assessments through, for example, the data base uncertainty factor or conservative exposure models? If you disagree, why?

Toxicology Issues

1. Please comment on OPP's proposed criteria for defining the core toxicology data base.

2. After having considered the recommendations from the FIFRA Scientific Advisory Panel and the Toxicology Working Group, OPP is beginning the process of calling in data for three studies (the acute and subchronic neurotoxicity studies in adult mammals and the developmental neurotoxicity study) for a subset of conventional chemistry food-use pesticides known neurotoxicants. In addition, OPP will be proposing to require the same set of studies for all conventional chemistry food-use pesticides in the revision of the part 158 regulations. Please comment on this two-stage approach.

3. The OPP Policy Guidance indicates that one of the critical issues is whether or not to apply an FQPA Safety Factor pending receipt of newly-required studies. There are a variety of possible approaches. One possible approach would be to apply the FQPA Safety Factor's data base uncertainty component to gaps related to new core data requirements only where there are specific concerns regarding the pesticide pertaining to the data requirement. Alternatively, OPP could apply the default 10X factor (or some other additional factor) whenever a new data requirement is added and/or whenever a testing guideline is changed. Please explain how you think the FQPA Safety Factor provision should be implemented when OPP makes such changes. In commenting, please address whether OPP should apply the default FQPA 10X factor, some different yet additional factor, or no factor at all in the following circumstances:

i. A minor change to testing guidelines.

ii. A major change to testing guidelines.

iii. An addition of a new required test.

iv. An addition of a new required test to core requirements.

4. In the absence of the results from any of the studies to be required through data call-in notices (i.e., the acute and subchronic neurotoxicity studies in adult mammals and the developmental neurotoxicity study), what information from existing studies on a specific chemical would increase or decrease the concerns about the potential for prenatal and postnatal hazard, in general, and for neurotoxicity and developmental neurotoxicity, in particular? Which, if any, of the seven criteria discussed in section V.A.1.a., footnote 4 and associated text of the OPP Guidance document is appropriate for judging whether there is increased concern about the potential for a pesticide to cause developmental neurotoxicity? Are there any other criteria which would be useful for informing this judgment?

5. Please comment on whether you would expect that developmental neurotoxicity studies would, for a substantial number of chemicals, identify effects that are not detected in other studies and more fully characterize the potential risks of exposures during development. In addition, please comment on the sensitivity of these tests vis-a-vis other studies required and used for age-related comparisons for acute, intermediate, or chronic RfD derivation (e.g., prenatal developmental toxicity or multi-generation reproduction study, subchronic and chronic studies, etc.). Please explain the basis of your opinion.

6. OPP's Guidance states that currently five studies (a multi-generation reproduction study, prenatal developmental toxicity studies in two species, and chronic toxicity studies in a rodent and non-rodent species) comprise the toxicity data base necessary to produce a "high confidence RfD," and that some additional data base uncertainty factor will be imposed if the data base on a pesticide lacks one or more of these studies. OPP proposes to expand this core data base to include the subchronic neurotoxicity study. Eventually, OPP also includes the acute neurotoxicity study in adult mammals and the developmental neurotoxicity study, once these studies have met the criteria for inclusion in the core toxicity data base. Please comment on OPP's proposed approach to imposing a data base uncertainty factor of 3x if one key study is missing from the data base and a factor of 10x if more than one is missing.

7. OPP is proposing to adopt the framework and its criteria/factors for assessing the degree of concern about the potential for prenatal and postnatal effects as recommended by the Toxicology Working Group. Please comment on the appropriateness of the proposed criteria/factors for use in this assessment process, and OPP's proposed approach for accommodating its concerns in the Reference Dose derivation and FQPA Safety Factor decision processes, in the near term, and in the longer term.

8. When the hazard to infants and children is well-characterized, and the data show that infants and/or children are more susceptible than adults, under what circumstances, if any, should this information lead OPP to employ an additional Safety Factor?

Exposure Issues

1. Subject to the qualifications expressed in the OPP Policy document and the report from the Exposure Working Group, OPP believes that each of the tiers for estimating exposure to a pesticide through food, in almost all instances, will not underestimate exposure to infants and children. Please comment on this conclusion, as it applies to each of the tiers.

2. OPP is developing a tiered approach to assessing the likelihood and magnitude of contamination of drinking water and its sources by a pesticide. As an interim approach, when direct assessment is not possible, is it reasonable and protective to regard the estimates generated by OPP's current screening methodology as upper bound pesticide concentrations for surface and ground water and to assume that this concentration generally will not be exceeded in drinking water?

3. OPP is developing approaches to assess the likelihood and magnitude of exposure to pesticides in residential and other non-occupational use scenarios. When direct assessment is not possible, is it reasonable and protective to regard the estimates of exposure for the major residential and other non-occupational exposure use scenarios developed by OPP as upper bound estimates of the exposure received by infants and children from such use?

4. In OPP's view, its aggregate exposure assessments generally do not underestimate the exposure to infants and children because the aggregate exposure is calculated by adding the high-end estimates of exposure to pesticides in food, to the high-end estimates of exposure to pesticides both in water and as a consequence of pesticide use in residential and similar settings. Please comment on this view.

VI. Policies Not Rules

The draft policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The "revised" guidance will not be unalterable. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis, EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VII. Contents of Docket

Documents that are referenced in this notice will be inserted in the docket under the docket control number "OPP–00610." In addition, the documents referenced in the framework notice, which published in the **Federal Register** of October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 30, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–17315 Filed 7–7–99; 8:45 am]

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Part IV

Environmental Protection Agency

National Superfund Permanent Relocation Interim Policy; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6374–9]

National Superfund Permanent Relocation Interim Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability with request for comment on interim policy on the use of permanent relocation as part of superfund remedial actions.

SUMMARY: The Environmental Protection Agency (EPA) has developed and is requesting comment on an "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions." This policy provides direction to EPA staff on when to consider permanent relocation of residents and businesses living near or on National Priorities List (NPL) sites as part of a Superfund remedial action.

EFFECTIVE DATE: The effective date for this policy is June 30, 1999.

ADDRESSES: Members of the public may request copies of the "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions" by postal mail from Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, (Mail Code 5201G), 401 M Street, SW, Washington, DC 20460, 703–603–9232, or (800) 424–9346. Written comments on the interim policy may be submitted to the above address. EPA expects to hold a meeting in approximately six months in order to hear comments on the policy. EPA will announce at a later date the time and location of this meeting. Written comments will be accepted up until this meeting.

The "Interim Policy on the Use of Permanent Relocation as Part of Superfund Remedial Actions" and other documents related to development of the policy are also available on the Internet at http://www.epa.gov/oerrpage/superfund/tools/topics/relocation.

FOR FURTHER INFORMATION CONTACT: Jo Ann Griffith, phone (703) 603–8774, Region 2/6 Accelerated Response Center, Office of Emergency and Remedial Response (Mail Code 5202G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The U.S Environmental Protection Agency (EPA) responds to releases and threatened releases of hazardous substances under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), enacted by Congress in 1980. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 121 of CERCLA, the NCP (40 CFR 300.430) includes evaluation criteria for determining the selection of remedial actions to address releases of hazardous substances. Further the NCP (40 CFR part 300, App. D(g)) states that, "[t]emporary or permanent relocation of residents, businesses, and community facilities may be provided where it is determined necessary to protect human health and the environment."

Today's **Federal Register** document introduces a policy entitled "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions' which provides direction to EPA regional decision makers on when to consider permanent relocation as part of a Superfund remedial action. This policy outlines some of the circumstances under which permanent relocation (in conjunction with cleanup) may be considered to protect human health and the environment.

II. Background

In January 1995, the National Environmental Justice Advisory Council's (NEJAC) Waste and Facility Siting Subcommittee requested that EPA develop a policy to determine when citizens should be relocated away from residential areas near or affected by Superfund sites. NEJAC was responding to requests from communities who wanted to be relocated away from Superfund sites because of: Fear of the potential health effects; their concerns that they could no longer sell their homes; and the effects on their overall quality of life. Responding to these concerns, the Assistant Administrator of the Office of Solid Waste and Emergency Response issued a memorandum entitled "Relocation of Residents Affected by Superfund Sites" on May 11, 1995, to announce EPA's intent to develop a national relocation policy.

To understand fully the issues associated with relocation, EPA initiated several efforts. First, EPA selected the Escambia Wood Treating Company site in Pensacola, Florida, as a national relocation pilot. On February 12, 1997, a record of Decision (ROD) was issued for the permanent relocation of 358 households. The Agency made a decision to relocate the residences and clean up the properties to levels that are protective for industrial use. Although the pilot project has not yet been completed, several key themes are already emerging. These include the need for EPA to: keep communities informed throughout the process; promptly address community concerns; and factor community concerns into EPA decisions. Upon completion of the relocation pilot, EPA plans to conduct an evaluation to determine what lessons can be applied at future sites and in the final relocation policy.

Second, EPA reviewed a number of sites where cleanups in residential areas had been conducted. To date, the overwhelming majority of Superfund sites located in residential areas are being cleaned up without the need to permanently relocate residents and businesses. For example, at the Glen Ridge, Montclair/West Orange Radium sites in New Jersey, the Bunker Hill Mining site in Idaho, and the Tar Creek site in Oklahoma, EPA has successfully excavated contaminated soils from approximately 5,000 residential properties down to levels of contamination that no longer pose unacceptable risks. By addressing the risks at these three sites through cleanups, people were able to remain in their homes and entire communities were kept intact.

Finally, EPA sponsored a series of stakeholder forums to solicit views and experiences on the subject of relocation. Forums were held between May 1996 and October 1997 with representatives from state governments, local governments, federal agencies, Native

American communities, environmental justice groups (which included citizens from communities near Superfund sites), industries, and public health officials. Input from the relocation forums were considered in developing the "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions." There are three documents available that provide information on the relocation forums: "Proceedings: Superfund Relocation Roundtable Meeting" (December 1996, OSWER 9378.0–03, EPA 540–K–96–010, PB96–963254); "Meeting Summaries from the EPA/ICMA Relocation Stakeholder Forums" (May 1998, OSWER 9378.0–12, EPA/540–R–98–002, PB98–963203); and "Relocation Stakeholder Forums Responsiveness Summary" (June 1999, OSWER 9375.1–14, EPA 540–F–98–058, PB99–963206). These documents can be obtained through the CERCLA Docket which is listed in the **ADDRESSES** section of this notice.

Themes that emerged from these meetings included the need for EPA to: Work closely with members of the community to address their issues; involve the community in the decision making process; and communicate openly and honestly. Stakeholders also offered their opinions as to what types of situations warrant the use of permanent relocation at a site. Many believed that there should be clearly defined trigger conditions under which permanent relocation automatically should be offered, regardless of whether or not the residential areas could be cleaned up. One such suggested trigger condition was the presence of adverse health effects for those who live on or immediately adjacent to a Superfund site. There was a range of opinions on what type of health effects data should be considered, and how exactly they should factor into a relocation decision. Some suggested using the baseline risk assessment performed to assess the threats posed by the Superfund site, while others believed any unexplained or anecdotal reports of health effects in the area of the Superfund site should be sufficient to trigger a relocation offer. Still others asked EPA to consider cumulative and synergistic effects of multiple contaminants from other industrial sources.

In addition to health effects, stakeholders recommended that relocation be considered whenever the site has a negative influence on the resident's quality of life. Stakeholders provided anecdotal information about residents who curtailed all outside activities (e.g., allowing children to play outside, socializing outdoors, or opening windows) because of their fear of living near a Superfund site. Several also expressed concern that EPA might impose restrictions on normal residential activities (e.g., recommending that children not play in their yards) instead of cleaning up residential areas. Others questioned EPA's ability to implement a remedy safely, adding that relocation should be considered whenever cleanups result in dust emissions or heavy equipment in residential areas. Although stakeholders acknowledged that temporary relocations could address these safety concerns, some suggested that EPA offer permanent relocation when temporary relocation exceeds an acceptable duration.

Stakeholders also recommended that EPA make relocation experts available as early as possible whenever relocation is being contemplated as a potential remedial alternative so the community can be better informed of their options before a decision is made. There was also a general view that if relocation is necessary, EPA should seek ways to enhance stability and restore the remaining community's viability by working with other governmental and nonprofit agencies.

III. Summary of Interim Policy

Having proven our ability to successfully restore contaminated property at many Superfund sites, generally, EPA's preference is to address the risks posed by the contamination by using well-designed methods of cleanup which allow people to remain safely in their homes and businesses. This is consistent with the mandates of CERCLA and the implementing requirements of the NCP which emphasize selecting remedies that protect human health and the environment, maintain protection over time and minimize untreated waste.

Because of CERCLA's preference for cleanup, it will generally not be necessary to routinely consider permanent relocation as a potential remedy component. Whenever permanent relocation is under consideration, EPA must ensure that the vacated properties do not pose a current or future risk to human health and the environment for those that may come in contact with the site. As a result, some type of cleanup or other response action generally will be needed to address the vacated properties.

The following list, although not inclusive, provides examples of the types of situations where permanent relocation may be considered. Generally, the primary reasons for conducting a permanent relocation would be to address an immediate risk to human health (where an engineering solution is not readily available) or where the structures (e.g., homes or businesses) are an impediment to implementing a protective cleanup.

- Permanent relocation may be considered in situations where EPA has determined that structures must be destroyed because they physically block or otherwise interfere with a cleanup and methods for lifting or moving the structures safely, or conducting cleanup around the structures, are not implementable from an engineering perspective. The methods may be technically infeasible because they are too difficult to undertake or success may be too uncertain. Additionally, these methods may prove not to be cost-effective when compared with other alternatives that are protective of human health and the environment.
- Permanent relocation may be considered in situations where EPA has determined that structures cannot be decontaminated to levels that are protective of human health for their intended use, thus the decontamination alternative may not be implementable.
- Permanent relocation may be considered when EPA determines that potential treatment or other response options would require the imposition of unreasonable use restrictions to maintain protectiveness (e.g., typical activities, such as children playing in their yards, would have to be prohibited or severely limited). Such options may not be effective in the long-term, nor is it likely that those options would be acceptable to the community.
- Permanent relocation may be considered when an alternative under evaluation includes a temporary relocation expected to last longer than one year. A lengthy temporary relocation may not be acceptable to the community. Further, when viewed in light of the balancing of tradeoffs between alternatives, the temporary relocation remedy may not be practicable, nor meet the statutory requirement to be cost-effective. Additionally, a shortage of available long-term rentals within the immediate area, may make any potential temporary relocation extremely difficult to implement.

Whenever permanent relocation is to be considered, it is imperative that EPA work with the affected stakeholders (e.g., potentially affected residents and businesses, the state, the tribe, the local government, and other members of the community) to identify the major issues associated with the relocation, including acceptability of relocation to the community, so the issues can be

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factored into the remedy selection evaluation.

A permanent relocation funded through CERCLA should be implemented in accordance with the Uniform Relocation and Real Property Acquisition Policies Act (URA), 42 U.S.C. 4600–4655, and applicable regulations, 49 CFR part 24, *et seq.* The purpose of the URA is to ensure that persons displaced as a direct result of a project are treated fairly, consistently, and equitably. EPA uses the services of the U.S. Army Corps of Engineers and U.S. Bureau of Reclamation to assist in conducting relocations because of their expertise in applying the URA. All relocations funded by potentially responsible parties (PRPs), as part of the remedy selected by EPA, should follow procedures comparable to the URA.

As soon as EPA becomes involved at a site, discussions with the community should begin to inform residents and businesses of activities at the site and to allow the opportunity for citizens to become part of the process. These activities may include, but are not limited to: distributing fact sheets to inform the community of site activities; conducting availability sessions for residents to ask questions; posting news releases about site activities; and establishing hotlines to answer citizens' questions.

When a permanent relocation is considered, residents and businesses should understand the multitude of issues associated with the relocation process, including the financial benefits. Communities may want to use a relocation expert or advisor to provide independent assistance to the residents and businesses before EPA makes a decision to relocate. A relocation expert may be accessed through EPA's Technical Assistance Grant (TAG) program.

The TAG program awards grants of up to $50,000 to eligible communities so they can hire independent technical advisors to interpret information about the site. A relocation expert, funded under a TAG, would need to meet requirements regarding activities and qualifications that apply to TAGs (see 40 CFR part 35, subpart M). Generally, a qualified relocation expert should possess the following credentials: experience in working on family and/or business relocations including knowledge of the URA, and private relocation programs; experience working with real estate brokers and lenders; and demonstrated knowledge of appraisals, title searches, real estate title insurance, and relevant state and local real estate tax laws. In Indian country, the relocation expert should also understand relevant federal Indian law and tribal law. The relocation expert should be impartial and have the ability to explain the costs, benefits, pitfalls, and other lifestyle effects of relocation to residents. If a relocation decision is made, then EPA will provide relocation counseling services as required under the URA. On a voluntary basis, PRPs may fund a relocation expert for a community.

In addition to addressing the community's information needs, there are other procedural ways the community can be involved in the cleanup process. In response to the President's Executive Order on Environmental Justice 12898, Superfund established the Community Advisory Group (CAG) program. CAGs, comprising representatives with diverse community interests, provide a public forum for community members to present and discuss their needs and concerns about a site. At sites where relocation is being considered, EPA recommends that a CAG or similar-type group be formed to fully engage all the interested parties in a meaningful dialogue about the site cleanup and how relocation may or may not fit into a community's long-term vision and plans.

The prospect of permanent relocation as a remedial action alternative may raise a number of practical problems that should be carefully considered by citizens residing in an affected community. In some communities, a permanent relocation could alter the fabric of a locality by affecting the local tax base and the services that the communities support, including small businesses, schools, churches, and hospitals. Furthermore, permanent relocation can result in the break up of neighborhoods dissolving valuable social cohesion. Community involvement activities at a particular site should be tailored to meet the various needs and concerns of individual citizens within the affected community. EPA should also explore opportunities to partner with other federal agencies (e.g., Department of Housing and Urban Development, Agency for Toxic Substances and Disease Registry, or Department of Transportation), the state, local agencies, non-governmental organizations, and non-profit organizations (e.g., Red Cross) to help identify other potential assistance that may be available to the relocated residents or to those in the community that remain behind.

IV. Additional Considerations for Native Americans, Including Alaska Native Villages

For all decisions affecting federally recognized tribes, EPA is guided both by statute and policies. As provided in CERCLA section 126(b), if the Agency finds that "* * * the proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred on by the affected tribal government before relocation shall occur * * *." If there is nonconcurrence, EPA should work with the tribal government and community on a site-specific basis to address other cleanup options at these sites to protect tribal members' health and welfare. Additionally, CERCLA section 126(b) states that if the tribal government concurs in the relocation decision, then EPA, in cooperation with the Department of the Interior, "* * * shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe * * *."

As discussed previously, EPA conducted a stakeholder forum with Native American and Alaska Native participants. During that meeting, they generally expressed their views that permanent relocations should not be conducted on tribal lands. The participants asked that tribal lifestyles be considered when evaluating any potential relocation alternative. These considerations should include subsistence lifestyles (e.g., hunting/fishing territories, dietary needs, medicinal plants), treaty-protected resources, and religious beliefs tied closely with the land (e.g., sacred religious sites). Due to the close relationship between Native Americans and specific lands, relocation of tribal communities can have a profound impact on community well-being and integrity. Given these unique considerations, EPA expects that tribal government concurrence on the use of permanent relocation, as required by CERCLA section 126(b), may be quite limited.

V. Public Comments

EPA's goal is to receive feedback on the "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions' from the widest range of interested parties possible. The policy has already enjoyed the benefits of considerable input and broad public comments will improve it even further. EPA will review the public comments received on the policy and where appropriate, incorporate changes responsive to those comments. In addition, EPA is planning to hold a meeting with a variety of interested parties in approximately six months in order to hear comments on the policy. EPA will announce at a later date the time and location of this meeting. EPA will accept written comments up until the time of this meeting.

This policy is not intended to be, and should not be construed as a rule. Use of the policy is not legally binding on EPA staff or on other parties; rather it is intended to be a tool available for use as site-specific conditions warrant. EPA is seeking public comment at this time to ensure hearing the widest range of views and obtaining all information relevant to the development of the policy. EPA expects to respond to the comments received on the interim policy. EPA staff applying the guidance will have discretion to follow it or diverge from it as site-specific conditions may warrant, and each site-specific action will be explained in its own record. Please contact individuals and offices listed in the section of this notice entitled **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** to learn more about the "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions."

Dated: July 1, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–17344 Filed 7–7–99; 8:45 am]

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Reduced Vertical Separation Minimum; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–1999–5925; Notice No. 99–10]

RIN 2120–AG82

Reduced Vertical Separation Minimum

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) intends by this proposed rule to enable the implementation of Reduced Vertical Separation Minimum (RVSM) in Pacific oceanic airspace. RVSM is the reduction of the vertical separation of aircraft from 2,000 feet to 1,000 feet at flight levels (FLs) between FL 290 (29,000 feet) and FL 410 (41,000 feet). RVSM is applied only between aircraft that meet stringent altimeter and auto-pilot performance requirements. RVSM is currently applied only in North Atlantic (NAT) Minimum Navigation Performance Specification (MNPS) airspace. The introduction of RVSM in Pacific oceanic airspace would make more fuel and time efficient flight levels and tracks available to operators and would enhance airspace capacity. Since March 1997 in the North Atlantic, RVSM has been shown to maintain an acceptable level of safety. International RVSM planning groups have agreed to implement RVSM on or before February 24, 2000.

DATES: Comments must be submitted on or before September 7, 1999.

ADDRESSES: Comments on this NPRM should be delivered or mailed, in triplicate, to: U.S. Department of Transportation Dockets, Docket No. [FAA–1999–5925], 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments must indicate the Docket Number. Comments also may be submitted electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room Plaza 401 weekdays between 10:00 a.m. and 5:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Grimes, AFS–400, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, 600 Independence Avenue, SW., Washigton, DC 20591, telephone (202) 267–3734.

SUPPLEMENTARY INFORMATION:

Comments Invited

This action is a product of international agreements under which the international aviation community, including the United States, plans to implement RVSM in Pacific airspace. The International Civil Aviation Organization (ICAO) Asia/Pacific Air Navigation Planning and Implementation Regional Group (APANPIRG), the Informal Pacific Air Traffic Service Coordinating Group (IPACG), and the Informal South Pacific Air Traffic Service Coordinating Group have concluded that Pacific oceanic traffic will continue to increase significantly in the next few years. To accommodate this increase in air traffic, these groups have established a goal of implementing RVSM in Pacific Oceanic airspace on or before February 24, 2000. Affected FIRs include Anchorage Arctic, Anchorage Continental, Anchorage Oceanic, Auckland Oceanic, Brisbane, Edmonton, Honiara, Los Angeles, Melbourne, Nadi, Naha, Nauru, New Zealand, Oakland, Oakland Oceanic, Port Moresby, Seattle, Tahiti, Tokyo, and Vancouver.

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice are also invited. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Comments should identify the regulatory docket number and be submitted in triplicate to the above-specified address.

Because this proposed rule was developed as a result of an international agreement, comments deemed substantive will be presented for consideration and reviewed by the international community under the auspices of ICAO. If considered salient, the comments will be included for use by all participating member States.

All comments received will be available both before and after the closing date for comments in the Department of Transportation Docket for examination by interested persons.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–1999–5925." The FAA will date, time stamp, and return the postcard.

Availability of This Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this rule.

Persons interested in being placed on the mailing list for future rulemaking actions should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board Service (800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's Web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Background

Statement of the Problem

Air traffic on Pacific routes between the U.S. and Asia has increased steadily in the past few years and is projected to continue to increase. The North Pacific Track System (NOPAC) is the densest oceanic traffic area in the Pacific. Between 1994 and 198, the annual traffic count on the NOPAC increased from 42,305 to 60,772 flights which represents an increase of 44 percent. The FAA Aviation Forecast for Fiscal Years 1998–2010 estimates that transpacific passenger traffic will continue to increase at 6.6 percent per year through 2010. Studies conducted by independent aviation industry analysts forecast the Pacific area to be the fastest growing area for flights to/from the United States.

Unless action is taken, as traffic increases, the opportunity for aircraft to fly at fuel-efficient altitudes and tracks will be significantly diminished. In addition, air traffic service providers may not be able to accommodate greater numbers of aircraft in the airspace without invoking restrictions that can result in traffic delays and fuel penalties.

With air traffic levels increasing annually worldwide, FAA airspace planners and their international counterparts continually explore methods of enhancing the air traffic control (ATC) system's ability to accommodate traffic in a safe and efficient manner. NAT airspace was chosen to be the first airspace for RVSM introduction because it is the busiest oceanic airspace in the world and traffic is forecast to continue to increase. The NAT Traffic Forecasting Group Report shows that the number of annual flight operations increased 30 percent between 1991 and 1996 with a forecast 67 percent rise over the 1992 level of 228,200 by 2002.

Prior to the introduction of RVSM, 27 percent of flights in NAT airspace were issued clearances on tracks and at altitudes other than those requested by the operators in their filed flight plans. These flights were, therefore, generally conducted at less than optimum tracks and altitudes for the aircraft, resulting in time and fuel inefficiencies.

The North Atlantic Implementation Management Group has observed the following improvements in NAT operations due to the introduction of RVSM:

1. 50 percent of the fuel penalty attributed to NAT system operation was eliminated. (The total NAT system fuel penalty is estimated based on track design, meteorological forecast, cruise level and traffic congestion penalties).
2. 25 percent fewer fixed tracks were required to be published. (This allows more airspace for operators to fly preferred tracks).
3. There was a 5 percent increase in flights cleared to fly both at the altitude and on the track that the operator requested.

RVSM alleviates the limitation on air traffic management at high altitudes imposed by the conventional 2,000-foot vertical separation standard. Below FL 290, air traffic controllers can assign aircraft operating under Instrument Flight Rules (IFR) altitudes a minimum of 1,000 feet apart. Above FL 290, however, the Conventional Vertical Separation Minimum (CVSM) is 2,000 feet.

Note: Flight levels are stated in digits that represent hundreds of feet. The term flight level is used to described a surface of constant atmospheric pressure related to a reference datum of 29,92 inches of mercury. Rather than adjusting altimeters for changes in atmospheric pressure, pilots base altitude readings above the transition altitude [in the United States, 18,000 feet] on this standard reference. FL 290 represents the pressure surface equivalent of 29,000 feet based on the 29.29" Hg datum; FL 310 represents 31,000 feet, and so on.)

The 2,000-foot minimum vertical separation restricts the number of flight levels available. Flight levels 310, 330, 350, 370, and 390 are flight levels at which aircraft crossing oceanic airspace operate most economically. At peak hours these FLS can become congested. When all RVSM FLs are utilized, six additional flight levels are available: FLs 300, 320, 340, 360, 380, and 400. Increasing the number the FLs available in the Pacific region is projected to achieve operator benefits similar to those achieved in the NAT (i.e., mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks). In the Pacific, RVSM is initially planned to be implemented between FL 290 and FL 390 (inclusive). At this time, traffic density above FL 390 does not warrant implementing RVSM at FL 400 and FL 410.

Another factor that has led Pacific planners to believe that RVSM implementation should be pursued aggressively is that a large percentage of Pacific operators and aircraft have already received approval to conduct RVSM operations. This is due to the fact that Pacific operators conduct operations worldwide and therefore, have been required to obtain RVSM approval to operate in NAT RVSM airspace. Aircraft that have been approved for RVSM are approved for RVSM in any area of the world where it is applied. The Pacific RVSM Implementation Task Force (Task Force) has reviewed the RVSM approval status of Pacific operators and aircraft and found that approximately 36 percent of Pacific operations are already conducted by RVSM approved operators and projected that this figure will grow to 56 percent in the near term.

History

The ICAO APAN/PIRG develops and provides oversight for plans and policy related to air navigation in the Pacific and Asia. The APAN/PIRG established the Task Force to develop and implement RVSM policy and programs in the Pacific. The Task Force is using the policy and criteria developed in other ICAO forums to build the RVSM program for the Pacific. The following reviews the RVSM program development in U.S. and ICAO forums.

Rising traffic volume and fuel costs, which made flight at fuel-efficient altitudes a priority for operators, sparked an interest in the early 1970s in implementing RVSM above FL 290. In April 1973, the Air Transport Association of America (ATA) petitioned the FAA for a rule change to reduce the vertical separation minimum to 1,000 feet for aircraft operating above FL 290. The petition was denied in 1977 in part because (1) Aircraft altimeters has not been improved sufficiently, (2) improved maintenance and operational standards has not been developed, and (3) altitude correction was not available in all aircraft. In addition, the cost of modifying nonconforming aircraft was prohibitive. The FAA concluded that granting the ATA petition at that time would have adversely affected safety. Nevertheless, the FAA recognized the potential benefits of RVSM under certain circumstances and continued to review technological developments, committing extensive resources to studying aircraft altitude-keeping performance and necessary criteria for safely reducing vertical separation above FL 290. These benefits and data showing that implementing RVSM is technically feasible have been demonstrated in studies conducted cooperatively in international forums, as well as separately by the FAA.

Because of the high standard of performance and equipment required for RVSM, the FAA advocated initial introduction of RVSM in oceanic airspace where special navigation performance standards were already required. Special navigation areas require high levels of long-range navigation precision due to the separation standard applied. RVSM implementation in such airspace requires an increased level of precision demanded of operators, aircraft, and vertical navigation systems.

On March 27, 1997, RVSM was implemented in one such special navigation area of operation, the NAT MNPS, established in the ICAO NAT Region. In designated NAT MNPS airspace, tracks are spaced 60 nautical miles (NM) apart. Between Fs 310 and 390 (inclusive), aircraft are separated vertically by 1000 feet. All aircraft operating in this airspace must be appropriately equipped and capable of meeting required lateral navigation performance standards of part 91, section 91.705 and vertical navigation performance standards of part 91, section 91.706. Operators must follow procedures that ensure the standards are met, and flight crews are trained and qualified to meet the standards. Each operator, aircraft, and navigation system combination must receive and maintain authorization to operate in the NAT MNPS. The NATSPG Central Monitoring Agency monitors NAT MNPS. The NATSPG Central Monitoring Agency monitors NAT aircraft fleet performance to ensure that a safe operating environment is maintained.

FAA data indicate that the altitude-keeping performance of most aircraft flying in oceanic airspace can meet the

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standards for RVSM operations. The FAA and ICAO research to determine the feasibility of implementing RVSM included the following four efforts:

1. FAA Vertical Studies Program. This program began in mid-1981, with the objectives of collecting and analyzing data on aircraft performance in maintaining assigned altitude, developing program requirements to reduce vertical separation, and providing technical and operational representation on the various working groups studying the issue outside the FAA.

2. RTCA Special Committee (SC)–150. RTCA, Inc., (formerly Radio Technical Commission for Aeronautics) is an industry organization in Washington, DC, that addresses aviation technical requirements and concepts and produces recommended standards. When the FAA hosted a public meeting in early 1982 on vertical separation, it was recommended that RTCA be the forum for development of minimum system performance standards for RVSM. RTCA SC–150 was formed in March 1982 to develop minimum system performance requirements, identify required improvements to aircraft equipment and changes to operational procedures, and assess the impact of the requirements on the aviation community. SC–150 served as the focal point for the study and development of RVSM criteria and programs in the United States from 1982 to 1987, including analysis of the results of the FAA Vertical Studies Program.

3. ICAO Review of the General Concept of Separation Panel (RGCSP). In 1987, the FAA concentrated its resources for the development of RVSM programs in the ICAO RGCSP. The U.S. delegation to the ICAO RGCSP used the material developed by SC–150 as the foundation for U.S. positions and plans on RVSM criteria and programs. The Panel's major conclusions were:

- RVSM is technically feasible without imposing unreasonably demanding technical requirements on the equipment.
- RVSM provides significant benefits in terms of economy and en route airspace capacity.
- Implementation of RVSM on either a regional or global basis requires sound operational judgment supported by an assessment of system performance based on: aircraft altitude-keeping capability, operational considerations, systems performance monitoring, and risk assessment.

4. NATSPG and the NATSPG Vertical Separation Implementation Group (VISG).

The NATSPG Task Force was established in 1988 to identify the requirements to be met by the future NAT Region Air traffic services systems; to design the framework for the NAT airspace system concept; and to prepare a general plan for the phased introduction of the elements of the concept. The objective of this effort was to permit significant increases in airspace capacity and improvement in flight economy. At the meeting of the NATSPG in June 1991, all of the NAT air traffic service provider States, as well as the International Air Transport Association (IATA) and International Federation of Airline Pilots Association (IFALPA), endorsed the Future NAT Air Traffic Services System Concept Description developed by the NATSPG Task Force. With regard to the implementation of RVSM, the Concept Description concludes that priority must be given to implementation of this measure as it is believed to be achievable within the early part of the concept time frame. The NATSPG's initial goal was to implement RVSM between 1996 and 1997. To meet this goal, the NATSPG established the VSIG in June 1991 to take the necessary actions to implement RVSM in the NAT. These actions included:

- Programs and documents to approve aircraft and operators for conducting flight in the RVSM environment and to address all issues related to aircraft airworthiness, maintenance, and operations. The group has produced guidance material for aircraft and operator approval that ICAO has distributed to civil aviation authorities and NAT users. Also, ICAO has planned that the guidance material be incorporated in the approval process established by the States.
- Developing the system for monitoring aircraft altitude-keeping performance. This system is used to observe aircraft performance in the vertical plane to determine that the approval process is uniformly effective and that the RVSM airspace system is safe.
- Evaluating and developing ATC procedures for RVSM, conducting simulation studies to assess the effect or RVSM on ATC, and developing documents to address ATC issues.

The ICAO Limited NAT Regional Air Navigation Meeting held in Portugal in November 1992 endorsed the NATSPG RVSM implementation program. At the meeting, it was concluded that RVSM implementation should be pursued. The FAA concurred with the conclusions of the NATSPG on RVSM implementation.

Reference Material

The FAA and other entities studying the issues of RVSM requirements have produced a number of studies and reports. The FAA used the following documents in the development of this amendment:

- Summary Report of United States Studies on 1,000-Foot Vertical Separation Above Flight Level 290 (FAA, July 1988).
- Initial Report on Minimum System Performance Standards for 1,000-Foot Vertical Separation Above Flight Level 290 (RTCA SC–150, November 1984); the report provides information on the methodology for evaluating safety, factors influencing vertical separation, and strawman system performance standards.
- Minimum System Performance Standards for 1,000-Foot Vertical Separation Above Flight Level 290 (Draft 7, RTCA, August 1990); the FAA concurred with the material developed by RTCA SC–150.
- The Report of RGCSP/6 (ICAO, Montreal, 28 November–15 December 1988) published in two volumes. Volume 1 summarizes the major conclusions reached by the panel and the individual States. Volume 2 persents the complete RVSM study reports of the individual State:
- European Studies of Vertical Separation Above FL 290—Summary Report (prepared by the EUROCONTROL Vertical Studies Subgroup).
- Summary Report of United States Studies on 1,000-Foot Vertical Separation Above Flight Level 290 (prepared by the FAA Technical Center and ARINC Research Corporation).
- The Japanese Study on Vertical Separation.
- The Report of the Canadian Mode C Data Collection.
- The Results of Studies on the Reduction of Vertical Separation Intervals for USSR Aircraft at Altitudes Above 8,100 m (prepared by the USSR).
- Report of RGCSP/7 (Montreal, 30 October–20 November 1990) containing a draft Manual on Implementation of a 300 M (1,000 Ft) Vertical Separation Minimum (VSM) Between FL 290 and 410 Inclusive, approved by the ICAO Air Navigation Commission in February 1991 and published as ICAO Document 9574.
- Interim Guidance Material 91–RVSM, "Approval of Aircraft and Operators for Flight in Airspace Above FL 290 Where a 1,000 Foot Vertical Separation is Applied" (March 14, 1999). The interim guidance continues to provide recommended procedural steps for obtaining FAA approval.

- AC No. 91–70, "Oceanic Operations" (September 6, 1994).
- Flight Standards Handbook Bulletin for Air Transportation (HBAT) "Approval of Aircraft and Operators for Flight in Airspace Above Flight Level 290 Where a 1,000 Foot Vertical Separation Minimum is Applied" (HBAT 97–02).
- NATSPG Airspace Monitoring Sub-group Vertical Monitoring Report. (Issued quarterly)

Related Activity

Projected increases in pacific oceanic air traffic and the successful implementation of RVSM operations in the NAT support the addition of RVSM in the Pacific. Pacific operators and Air Traffic Service (ATS) providers have requested that RVSM be pursued aggressively.

The Pacific RVSM Implementation Task Force is the international body that is developing Pacific RVSM implementation plans. The Task Force is chaired by an FAA representative from the Air Traffic International Staff and supported by an ICAO representative from the Asia/Pacific Regional Office. The Task Force has three standing sub-groups: the Air Traffic Operations Group, the Aircraft Operations and Airworthiness Group and the Safety and Monitoring Group. The working groups are chaired by FAA air traffic and flight standards specialists. The Task Force includes representatives from Asia and Pacific civil aviation authorities, operators and the pilot and air traffic controller associations. The Task Force meets at approximately quarterly intervals to develop policy and procedure documents and to progress implementation tasks.

The Task Force chairperson and the three sub-group chairpersons will oversee the two phases of the Pacific implementation process:

System Verification Phase

During the verification phase, aircraft will continue to be separated vertically by 2,000 feet. Operators and aircraft that have not already been approved for RVSM will begin to receive RVSM approval in accordance with part 91, section 91.706 and Appendix G (or their equivalent for foreign operators). The overall objectives of the system verification phase are to:

1. Confirm that the target level of safety (TLS) will continue to be met.
2. Confirm that aircraft approved for RVSM operation demonstrate altitude-keeping performance that meets RVSM standards. This will be achieved by:
- Identifying and eliminating any causes of out-of-tolerance altitude-keeping performance, in general or for specific aircraft groups; and
- Monitoring a sample of RVMS-approved aircraft and operators that is representative of the total Pacific population.

3. Verify that operational procedures adopted for RVSM are effective and appropriate.

4. Confirm that the altitude-monitoring program is effective. The principal purpose of this phase has been to gain confidence that the operational trial phase can begin.

Initial Operational Capability/System Monitoring Phase

When the objectives of the system verification phase have been met, RVSM will be implemented at designated flight levels. The first year after implementation is considered the operational triais phase. The objectives of the operational trial phase are to:

1. Continue to collect altitude-keeping performance data.
2. Increase the level of confidence that safety goals are being met.
3. Demonstrate operationally that there are no difficulties with RVSM implementation.

Beginning February 24, 2000, only RVSM compliant aircraft will be cleared to operate in the major Pacific FIRs between FLs 290 and 390 (inclusive). Aircraft that are not RVSM compliant (e.g., State aircraft, ferry and maintenance flights) will only be cleared to operate between FLs 290 and 390 (inclusive), traffic permitting, after prior coordination with the appropriate oceanic center. 2,000-foot vertical separation will be applied to such aircraft.

Provided that all requirements continue to be met, at the end of one year, RVSM will be declared fully operational.

Altitude-Keeping Performance

For the past three years, the FAA, in conjunction with the NATSPG, has monitored aircraft altitude-keeping performance of RVSM approved aircraft. A major objective of monitoring is to establish that the altitude-keeping performance of the aircraft fleet operating in airspace where RVSM is applied continues to meet minimum requirements.

Altimeter system error (ASE) is the major component of aircraft altitude-keeping performance. In the past three years, 36,000 measurements of altimetry system error have been taken for over 3,000 different airframes. Those measurements have shown that the altitude-keeping performance of aircraft approved for RVSM operations is significantly better than the minimum requirement. The ASE requirement established for RVSM is that average ASE not exceed 80 feet and 99.9% of ASE observed not exceed 245 feet. The monitoring results have shown that actual average ASE is − 4 feet and 99.9% of ASE is within 156 feet.

The FAA has determined that the appropriate method of assessing collision risk is the Reich collision risk model (CRM). As noted in AC No. 91–70, Oceanic Operations, collision risk refers to the number of midair accidents likely to occur due to the loss of separation in a prescribed volume of airspace for a specific number of flight hours.

Collision Risk Methodology (CRM) was used to develop the requirements for safe implementation of a 1,000-foot vertical separation standard. The United States supported the methodology used to derive the accepted level of safety for RVSM implementation.

The TLS that is being used in the North Atlantic and the Pacific regions to assess safety is no more than five fatal accidents in 1 billion flying hours. The level of safety was developed using historical data on safety from global sources. One precedent used was a period of 100 to 150 years between midair collisions. When the TLS of 5 accidents in a billion flying hours is projected in terms of a calendar year interval between accidents in the Pacific, it yields a theoretical interval of approximately 322 years between midair collisions. The accepted level of safety is consistent with the acceptable level for aircraft hull loss and is based on the precedence of extremely improbable events as they relate to system safety, the basis for certain requirements in certification regulations such as 14 CFR 25.1309.

To ensure that the TLS is met, the FAA is monitoring the total vertical error (TVE) and the remaining CRM parameters that are critical for safety assessment (probability of lateral and longitudinal overlap). TVE is defined as the geometric difference between the aircraft and the flight level altitude. To monitor TVE, the FAA has deployed measurement systems that will produce estimates of aircraft and flight level geometric altitude. The overall goal of monitoring is to ensure that airworthiness, maintenance, and operational approval requirements result in required system performance (and level of safety) in the flight environment on a continuing basis. One such measurement/monitoring system is a Global Positioning System (GPS)-

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based monitoring system (GMS). The GMS has been used extensively in the NAT along with ground based Height Monitoring Units (HMUs). Due to the lack of land masses in the PAC, the GMS will be used for RVSM system verification and monitoring.

The on-going assessment of risk in the North Atlantic over the past two years has shown that the TLS of 5 accidents in 1 billion flight hours can be met. All sources of error related to aircraft performance and to human error have been assessed. One major incident that was observed in the on-going monitoring was judged to be a pilot error not related to the introduction of RVSM. In this incident, an aircraft did not fly the flight level to which it was cleared, but reported to ATC that it was flying the cleared level. This incident was advertised to the user community for emphasis in pilot training programs.

Current Requirements

Part 91 Section 91.706 (Operations within airspace designated as Reduced Vertical Separation Minimum Airspace.) and Appendix G to Part 91 (OPERATIONS IN REDUCED VERTICAL SEPARATION MINIMUM (RVSM) AIRSPACE) were published in April 1997. They are based on the ICAO Manual on RVSM. Technical and operational experts from the FAA, the European Joint Airworthiness Authorities (JAA), the aircraft manufacturers, and pilot associations developed the criteria in a joint FAA/JAA working group. Section 91.706 requires that aircraft and operators meet the requirements of Appendix G and receive authorization from the Administer prior to flying in airspace where RVSM is applied. Appendix G contains requirements in eight sections:

1. Definitions
2. Aircraft Approval
3. Operator Authorization
4. RVSM operations (flight planning into RVSM airspace)
5. Deviation Authority Approval
6. Reporting Altitude-keeping Errors
7. Removal or Amendment of Authority
8. Airspace Designation

Flight Standards Handbook Bulletin (HBAT) 97–02 entitled "Approval of Aircraft and Operators for Flight in Airspace Above Flight Level 290 Where 1,000 Foot Vertical Separation Minimum Is Applied", has been distributed through Flight Standards District Offices (FSDOs). This document provides guidance to FAA Flight Standards inspectors on the process and procedures to follow before approving an operator and its aircraft for RVSM operations. It details inspector responsibilities for assessment of airworthiness approval, maintenance program approval, and operations approval requirements in the rule. It discusses timing, process, and maintenance and operations material that the operator should submit for FAA review and evaluation normally at least 60 days before the planned operation in RVSM airspace. Operators under Title 14, Code of Federal Regulations (14 CFR) part 91 receive FAA approval in the form of a Letter of Authorization (LOA), and operators under 14 CFR parts 121, 125, and 135 receive Operations Specifications (OPS–SPEC) approval.

For operations over the high seas outside the United States, 14 CFR 91.703 requires that aircraft of U.S. registry comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation. Annex 2, amendment 32, effective February 19, 1996, reflects the change from 2,000 feet to 1,000 feet vertical separation for Instrument Flight Rules (IFR) traffic between FL 290 and FL 410, based on appropriate airspace designation, international agreements, and conformance with specified conditions.

General Discussion of the Proposal

The proposal allows operation of civil aircraft of U.S. registration in Pacific oceanic airspace where RVSM is applied. It is based on improvements in altitude-keeping technology. These improvements include:

- Introduction of the air data computer (ADC), which provides an automatic means of correcting the known static source error of aircraft to improve aircraft altitude measurement capability.
- Development of altimeters with enhanced transducers or double aneroid for computing altitude.

Under this proposal, airspace or routes in the Pacific where RVSM is applied would be considered special qualification airspace. Both the operator and the specific types of aircraft that the operator intends to use in RVSM airspace would have to be approved by the appropriate FAA office before the operator conducts flights in RVSM airspace.

Implementation of a 1,000-foot vertical separation standard above FL 290 offers substantial operational benefits to operators, including:

- Greater availability of the most fuel-efficient altitudes. In the RVSM environment, aircraft are able to fly closer to their optimum altitude at initial level off and through step climbing to the optimum altitude during the enroute phase.
- Greater availability of the most time and fuel-efficient tracks and routes (and an increased probability of obtaining these tracks and routes). Operators often are not cleared on the track or route that was filed due to demand for the optimum routes and resultant traffic congestion on those routes. RVSM allows ATC to accommodate a greater number of aircraft on a given track or route. More time and fuel-efficient tracks or routes would therefore be available to more aircraft.
- Increased controller flexibility. RVSM gives ATC greater flexibility to manage traffic by increasing the number of flight levels on each track or route.
- Reduction of pilot and controller work load. When controllers are required to re-route aircraft from their filed track and/or altitude they are required to re-coordinate and revise clearances. Pilots are required to re-program aircraft navigation systems (which has been a major cause of navigational errors). RSVM will reduce the number of re-routes required and therefore reduce both pilot and controller workload.
- Enhanced flexibility to allow aircraft to fly across route systems. Operators are often required to remain at lower, less fuel-efficient altitudes until the aircraft crosses a route system. RVSM makes more flight levels available at higher, more fuel-efficient altitudes to allow aircraft to cross route systems.
- Enhanced safety in the lateral dimension. Studies indicate that RVSM produces a wider distribution of aircraft among different tracks and altitudes, resulting in less exposure to aircraft at adjacent separation standards. RVSM reduces the number of occasions when two aircraft pass each other separated by a single separation standard (e.g., 60 nm laterally). The benefit to safety is that, should an aircraft enter, as a result of gross navigation error, onto an adjacent track, and another aircraft is on that track, there is an increased probability that the two aircraft would be flying at different flight levels.

This amendment to Sec. 91.706, Appendix G, Section 8 would add the Pacific oceanic FIRs to the list of FIR's where RVSM can be applied

Regulatory Evaluation Summary

Executive Order 12866 directs federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. Each federal agency shall assess both the costs and the benefits of proposed regulations while recognizing that some costs and benefits are difficult to quantify. A proposed rule is promulgated only upon a reasoned determination that the benefits of the proposed rule justify its costs.

The order also requires federal agencies to assess whether a proposed rule is considered a "significant regulatory action." The Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. The Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, the FAA has determined that this rule: (1) generates benefits that justify its costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) does not have a significant impact on a substantial number of small entities; and (4) does not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

This proposal amends FAR 91, Section 91.706, Section 8 (Airspace Designation) by adding the appropriate Pacific Oceanic Flight Information Regions (FIRs) where RVSM would be implemented. The benefits of this proposed rulemaking are (1) an increase in the number of available flight levels, (2) enhance airspace capacity, (3) permit operators to operate more fuel/time efficient tracks and altitudes, and (4) enhance air traffic controller flexibility by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The FAA estimates that this proposed rule would cost U.S. operators $21.7 million for the ten-year period 2000–2009 or $19.5 million, discounted. Estimated benefits, based on fuel savings for the commercial airplane fleet over the years 2000–2009, would be $120 million, or $83.8 million, discounted. Therefore, based on a quantitative and qualitative evaluation of this action, the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agency must perform a review to determine whether a proposed or final rule will have significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

A review of the Pacific traffic data shows that no small entities operate in Pacific oceanic airspace where this rule applies. The FAA has also examined the impact of this rulemaking on small operators of general aviation aircraft. The FAA database of U.S. registered aircraft operators shows that these airplanes are all operated by commuter or air taxi operators. Commuter or air taxi operators do not operate in Pacific oceanic airspace.

The FAA has determined that there are reasonable and adequate means to accommodate the transition to RVSM requirements, particularly for general aviation operators (many of whom are small). As of May 1999, 50% of the U.S. registered GA aircraft were approved for RVSM operations based on the NAT application of RVSM.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The provisions of this proposed rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the State, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act of 1995

The reporting and record keeping requirements associated with this rule remain the same as under the current rules and have previously been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0026. The FAA believers that this rule does not impose any additional record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995 Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annual for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernment mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to

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provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental and private sector mandate that exceeds $100 million a year, therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation Organization (ICAO), it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. The FAA has determined that this amendment does not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 91 of Title 14 of the Code of Federal Regulations (14 CFR part 91) as follows;

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Part 91, appendix G, is amended by revising Section 8 to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 8. Airspace Designation

(a) RVSM may be applied in the NAT in the following ICAO Flight Information Regions (FIRs): New York Oceanic, Gander Oceanic, Sondrestron FIR, Reykjavik Oceanic, Shanwick Oceanic, and Santa Maria Oceanic.

(b) RVSM may be applied in the Pacific in the following ICAO Flight Information Regions (FIRs): Anchorage Arctic, Anchorage Continental, Anchorage Oceanic, Auckland Oceanic, Brisbane, Edmonton, Honiara, Los Angeles, Melbourne, Nadi, Naha, Nauru, New Zealand, Oakland, Oakland Oceanic, Port Moresby, Seattle, Tahiti, Tokyo, and Vancouver.

(c) RVSM may be effective in the Minimum Navigation Performance Specification (MNPS) airspace within the NAT. The MNPS airspace within the NAT is defined by the volume of airspace FL 285 and FL 420 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundaries of control areas Reykjavik Oceanic, Gander Oceanic, and New York Oceanic, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

Issued in Washington, DC, on June 30, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–17360 Filed 7–7–99; 8:45 am]

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July 8, 1999

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 139

Year 2000 Airport Safety Inspections; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–1999–5924; SFAR No. 85–]

RIN 2120–AG83

Year 2000 Airport Safety Inspections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking proposes to require certain airport operators to conduct a one-time readiness check of certain airfield equipment and systems starting January 1, 2000, and report the results of these checks to the FAA. In addition, this proposal would temporarily revise the time period these airport operators have to repair or replace certain emergency equipment. This proposal is needed to ensure that airport operators identify and address any unforeseen problems with date-sensitive airfield equipment and systems. These proposed changes are intended to maintain the current level of airport safety on and after January 1, 2000.

DATES: Comments must be submitted on or before August 9, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5924, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert E. David, Airport Safety and Operations Division (AAS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8721.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–5924." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339), the *Government Printing Office's* electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800)322–2722 or (202)267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the *Government Printing Office's* WebPages at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202)267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

History

Since 1970, the FAA Administrator has had the statutory authority to issue airport operating certificates to airports serving certain air carriers and to establish safety standards for the operation of those airports. This authority is currently found in Title 49, United States Code (U.S.C.) § 44706, Airport operating certificates. The FAA has used this authority to issue requirements for the certification and operation of certain land airports. These requirements are contained in Title 14, Code of Federal Regulations part 139 (14 CFR part 139), Certification and Operations: Land Airports Serving Certain Air Carriers.

Under part 139, the FAA requires airports to comply with certain safety requirements prior to serving operations of large air carrier aircraft (aircraft with more than 30 passenger seats). When an airport satisfactorily complies with these requirements, the FAA issues to that facility an airport operating certificate that permits the airport to serve commercial operations using these aircraft. These safety requirements cover a broad range of airport operations, including the maintenance of runway pavement, markings, and lighting, notification to air carriers of unsafe or changed conditions, and preparedness for aircraft accidents and other emergencies. The FAA periodically inspects these airports to ensure continued compliance with part 139 safety requirements.

Many airport operators use computers or equipment with embedded microprocessors to meet certain part 139 requirements. For example, an operator of a certificated airport may have computer systems that control when airfield lighting is turned on, or that control access to the airfield through vehicle and passenger gates. Safety and maintenance vehicles, such fire fighting trucks, and emergency communications systems may likewise have computerized systems.

On January 1, 2000, many computers worldwide could malfunction or shut down because the year will change from 1999 to 2000. The problem, often referred to as the Year 2000 (Y2K) problem, is the result of how computers and other microprocessors have traditionally recorded and computed dates. Typically, these machines have used two digits to represent the year, such as "98" for 1998, to save electronic storage space and reduce operating costs. However, this format fails to distinguish the year 2000 (represented as "00") from the year 1900. Software and computer experts are concerned that this could cause computers and equipment with internal microprocessors to malfunction in unforeseen ways or to fail completely.

FAA Y2K Monitoring and Compliance

In preparing for the year 2000, the FAA is working with airport operators to ensure that all airfield equipment and systems used to support compliance with part 139 requirements are Y2K compliant, or that the airport operator has developed an alternative means of complying with the part 139 requirements.

In June 1998, the FAA sent a letter to the operators of the approximately 5,300 public-use airports in the U. S. to alert them that they may have systems on their airports that could be affected by date change to January 1, 2000. A follow-on letter was subsequently sent in October 1998 to the operators of airports certificated under part 139. This letter emphasized the need for these operators to take the necessary steps to ensure that Y2K issues would not affect any equipment and systems containing computers or microprocessors that are used to comply with part 139. It also stated that airport operators could develop an alternative means of meeting the regulation's requirements that did not rely on systems with computers or microprocessors, and provided some criteria for determining Y2K compliance.

At the same time, the FAA also formed an airport Y2K airport team to contact operators of certificated airports to monitor the Y2K status of each of these operator's systems that are used to support compliance with part 139 requirements. The results of these contacts have shown that airport operators are working to address Y2K issues at their airports. The Y2K airport team will continue to work with the operators of certificated airports throughout the remainder of 1999 to ensure that the agency is kept informed of the Y2K status at each part 139 airport.

Current Requirements

Self-Inspection of Airport Safety Systems

Part 139 currently requires operators of certificated airports to conduct daily inspections of their facilities to ensure compliance with the regulation. Such inspections include a visual check of movement areas (areas used by air carriers to land, takeoff, and taxi) and operational tests of equipment and systems used to comply with part 139 requirements. However, these required inspections are conducted at times determined by the airport operator. Typically, various elements of the self-inspection are conducted throughout the day. As such, the existing inspection requirement does not require inspection early on January 1, before most operations begin, and does not necessarily require the kind of tests that would determine if there is a Y2K-related problem that was not detected by pre-January Y2K validation testing. Certain equipment required by part 139, unlike other aviation systems, is intended for use only in an emergency. If special early testing is not required, a Y2K problem might only be detected when the equipment was needed for an actual emergency.

While part 139 also requires reporting of aircraft rescue and fire fighting (ARFF) equipment outages and conditions that affect air carrier operations, those reports would not be received until the equipment was tested or used, which could be after operations begin. The FAA believes that there is a substantial need for a system-wide reporting of Y2K testing results to quickly identify any effects of Y2K on the national airport system. This will permit the FAA to coordinate solutions at airports throughout the U.S. that use similar models of equipment, and to provide early assurances to the public that operations are normal, if in fact there are no Y2K problems.

ARFF Index

In addition, part 139 provisions regarding the repair or replacement of inoperative ARFF vehicles are not well adapted to the unique circumstances of the Y2K effect on equipment. The provisions of § 139.319(h)(3) allow an airport operator a 48-hour grace period to repair or replace inoperative ARFF vehicles, with no effect on the airport's ARFF index. The ARFF index for an airport, which is determined by the size of aircraft using the airport and number of daily departures, determines the number and size of ARFF trucks needed and, thereby, limits the size of aircraft that the airport can serve. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle or arrange for a replacement vehicle.

Under normal operations, this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence, and parts can be obtained quickly. However, since some ARFF vehicles may have embedded computer chips, a Y2K-related problem, while highly unlikely, is possible. Since similar models of ARFF vehicles are widely used, a failure of even one model of ARFF equipment could affect many airports. Therefore, a delay in repairing a Y2K problem at a number of airports could have a system-wide impact.

Alternatives Considered by the FAA

The FAA considered four alternatives to this rulemaking. These alternatives would affect all currently certificated airports, including those considered to be small business entities (owned and operated by a municipality with less than 49,999 population). In analyzing these alternatives, the FAA addressed the concerns of airports of varying sizes and operations, including those classified as small business entities.

First, the FAA considered not making changes to part 139 for the January 1, 2000, date rollover. Under this alternative, operators of certificated airports would continue to comply with current part 139 requirements. Scheduled operations could be conducted before emergency equipment was checked, and could continue for 48 hours, even if ARFF equipment experiences a Y2K problem. Airport operators would rely exclusively on pre-January tests to predict Y2K compliance, and might only become aware of an unexpected Y2K problem when a piece of equipment was needed for an actual emergency. Also, this approach would make it significantly more difficult for individual airport operators and the FAA to react to outages of airfield safety equipment if the problems were identified only in the course of actual operations over several days or weeks, rather than in a pre-test conducted at a specified time.

Second, the FAA arguably could determine Y2K compliance an "unusual condition" under § 139.327(a)(2) and require all certificate holders to conduct an inspection within a specified time period to identify and correct any deficiencies. While this approach is within the scope of part 139, there is no regulatory provision that would address the possibility, however remote, of widespread failure of ARFF vehicles.

Third, the FAA considered requiring the inspections only at airports holding an airport operating certificate and serving scheduled operations of air carrier aircraft with more than 30 passenger seats (as opposed to a holder of a limited airport operating certificate that serves unscheduled air carrier operations). However, many operators of limited certificated airports serve scheduled operations by aircraft with 10–30 passenger seats, and persons using those airports could benefit from the confirmation that ARFF and other airfield safety equipment at the airport are not affected by Y2K.

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Fourth, the FAA considered mandating both the self-inspection and reporting requirement, as well as the suspension of the 48-hour grace period for repair of ARFF vehicles. For the reasons discussed in the first three alternatives above, the FAA is proposing this alternative. Of the four alternatives considered to continue the current level of safety after January 1, 2000, the fourth alternative is the most comprehensive and the most costly. However, the costs are still minimal and only marginally greater than the other alternatives, and the benefits of the certainty of mandatory safety inspections fully justify this approach.

Discussion of the Proposal

This proposed rule would affect the approximately 566 civilian airports certificated under part 139, and would temporarily amend the regulation to require Y2K testing to determine the affects of the date rollover and to ensure adequate emergency support service as of January 1, 2000.

Section 139.327(a) requires operators of certificated airports to conduct regular facility inspections to ensure compliance with the regulation. However, as noted above, this does not require inspections on January 1, 2000, prior to air carrier operations, and would not necessarily require the kind of tests that would determine if there was a Y2K-related problem that was not detected by pre-January Y2K validation testing. To address these concerns and provide for thorough Y2K testing, the proposed Special Federal Aviation Regulation (SFAR) would require specific equipment and systems tests.

This proposal also would temporarily modify reporting requirements of § 139.327. Currently, this section requires airport operators to have a reporting system that ensures prompt correction of any unsafe conditions found during the self-inspections. These records are checked by the FAA during periodic inspections. This proposal would temporarily modify this requirement by requiring operators of certificated airports to report to the FAA the results of Y2K inspections and testing and the steps to be taken to resolve any discrepancies. The FAA has determined that this would efficiently provide the FAA with information that the 566 certificated airports remain compliant with part 139 requirements immediately after the unique circumstances of the Y2K date rollover. This information cannot be obtained by FAA inspection, because it would be impossible for the small number of FAA airport certification safety inspectors to visit more than a very few of the 566 certificated airports on January 1.

This special testing would apply only to systems identified by the FAA at each airport as critical to airfield safety and efficiency, and used by the airport to meet part 139 requirements. Generally these systems include ARFF equipment, airfield communications, emergency alarm systems, and airfield lighting. The specific systems on each airport that the FAA considers to be covered by this proposed requirement will be provided to the airport operator by the FAA Y2K representative for the FAA region in which the airport is located, after consultation with the airport operator, no later than October 1999.

The FAA proposes that as of January 1, 2000, each operator of a certificated airport be required to complete readiness tests at least one hour before the first air carrier operation is scheduled to occur. For example, if the first air carrier operation is scheduled for 10:00 a.m. on Monday, January 3, 2000, the airport operator would have to complete all required tests by 9:00 a.m. on that date. The FAA recognizes that this may not be possible at those few airports were the first air carrier operation would occur before 2 a.m. on January 1, 2000. To accommodate those early flights that would not allow testing to be completed one hour prior to the operation, e.g., an air carrier aircraft arrival at 12:30 a.m., the FAA proposes that the operators of these airports initiate required testing as soon as possible after 12:00 a.m. and be completed by 1:00 a.m. In any case, airport operators would be required to complete required tests before January 5, 2000, even if the airport operator does not serve air carrier operations (scheduled or unscheduled) before this date.

Finally, the provisions of § 139.319(h)(3) that allow an airport operator a 48-hour grace period to repair or replace inoperative ARFF vehicles, with no effect on the airport?s ARFF index, would be temporarily suspended. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle or arrange for a replacement vehicle. As noted above, under normal conditions this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence, and parts can be obtained quickly. However, some ARFF vehicles may rely on computers or microprocessors, and since similar models of ARFF vehicles are widely used, a failure of even one model of ARFF equipment could affect many airports.

A temporary suspension of the 48-hour grace period would effectively require that airports have a backup plan for ARFF coverage for the first few days of January 2000 if they want to ensure they will maintain their current ARFF index. This would serve both to handle actual Y2K problems and also to provide assurance to the public that ARFF coverage will continue on January 1, 2000, in the event of Y2K problems. If the ARFF equipment was needed to maintain the airport?s ARFF index, and the airport had not provided for backup coverage, a temporary reduction in the size of aircraft serving the airport would be required.

Paperwork Reduction Act

Information collection requirements in this proposal are small and have previously been approved for part 139 by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0063. This authorization was renewed in May 1999, and in anticipation of possible Y2K testing, the hour burden of this proposal's one-time, small information collection were included in the renewal. However, it should be noted that this proposal would not require new inspections or reports that are not already required by part 139, but would only require that those reports be done within a specified period.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

The Joint Aviation Authorities, an associated body of the European Civil Aviation Conference, develop Joint Aviation Requirements (JAR) in aircraft design, manufacture, maintenance, and operations for adoption by participating member civil aviation authority. The JAR does not address airport certification.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small business and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade.

However, if an agency determines that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect, and the basis for it, is included in the proposed regulation. The FAA has determined that this proposed rule meets this criteria. The expected impacts of this rule would be so minimal as to not warrant a full regulatory evaluation, and a full evaluation in the docket was not prepared.

This SFAR would establish a one-time self-test and reporting requirement that is essentially identical to the existing requirement, except for the timing, and would require that certain airports arrange for backup ARFF services or reduce their ARFF index if ARFF vehicles fail the test. Since self-inspection and reporting are already required under § 139.327(a), this regulation imposes little additional costs on airport operators. The FAA estimates that the tests required by this proposal may be completed in less than two hours, including reporting test results to the FAA. In addition, the expense of an ARFF backup requirement is both small and considered a low-probability event.

The proposed requirement that certificated airports provide immediate ARFF backup would require these airports to either maintain the current ARFF index or reduce their ARFF index. Operators of most certificated airports are required to maintain ARFF index to serve current scheduled air carrier operations. Many of these operators already provide for an ARFF backup plan, and if not, can relatively inexpensively and quickly make such arrangements. A satisfactory backup plan could be a prearranged plan with other local fire departments for auxiliary coverage.

An economic impact could occur in the following scenario. For those operators of certificated airports that are required to meet a specified ARFF index, this proposed rule does not allow the currently-permitted 48-hour grace period to repair or replace inoperative ARFF equipment. This rule may result in ARFF costs equal to the 48-hour expense of providing sufficient ARFF support, or reducing the level of support to current scheduled service to the airport.

The FAA believes the cost of maintaining an airport ARFF index for 48 hours is very low in terms of airport overall expenses. Secondly, for such an expense to occur, all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF index does not pass the Y2K readiness check.
2. No other ARFF equipment is readily available to maintain the ARFF index.
3. Air carrier aircraft serving the airport that day do not allow the airport operator to temporarily step down to a lower ARFF index.

The probability of an outcome, which depends upon a series of connected events in which each event must occur, is calculated by multiplying across all events the probability assigned to each event. In this case, the probability of the first event, a required ARFF vehicle does not pass the Y2K readiness check, is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent, the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus the FAA believes that while an ARFF expense can occur, the expected likelihood is thought to be very low.

The FAA has determined that it is unlikely that all three events will occur. However, in the event an airport does incur the cost of having backup ARFF vehicles available, only the first 48-hours of that cost is attributable to this proposed rule because the current rule imposes the same requirement after a 48-hour grace period. The cost for an airport that might need to provide a backup vehicle could be zero, if the vehicle were obtained from other fire units of the airport owner, or from other local governments through a mutual aid agreement. Accordingly, the expected cost is very small that an airport operator would be required under the proposed rule to incur costs for obtaining one or more backup ARFF vehicles. Finally, if the ARFF index was affected, an airport operator could choose to accept a lower ARFF index temporarily, with no effect on scheduled service, if aircraft currently used for scheduled service at the airport do not require the higher index. Thus the FAA expects this element of the proposed rule to be minimal.

The benefit of the proposed rule is that it will provide assurance that airport operator's preparations for Y2K have been effective and that compliance with part 139 requirements is not compromised due to the January 1, 2000 date rollover. In the unlikely event that this date rollover were to interrupt systems that are used to comply with part 139, the proposal would ensure an early knowledge of such interruption and facilitate immediate action to maintain safety, if necessary.

The FAA solicits comments from affected entities with respect to the cost and benefit assessment in the regulatory evaluation and requests that commenters provide supporting data or analyses.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, § 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As detailed above in the regulatory evaluation there are two costs that may be incurred. First, the proposed inspection costs are expected to be minimal as the expected inspection time is thought to be two hours or less. Second, the probability that the proposed requirement may impose an ARFF cost is expected to be very low. Of the 566 certificated airports, 177 meet the criteria for small entities. Fully 135 of those 177 airports are approved for air carrier operations using mutual aid, or have other arrangements that do not require the airport operator to have

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on the airfield ARFF equipment to meet a particular index requirement. These airports would not be financially affected by the suspension of the 48-hour ARFF grace period. The remaining 42 airports that are considered small entities do have an assigned ARFF index, and potentially could be affected by the proposed SFAR. The expected ARFF cost that this rule could impose on these 42 airports is expected to be minimal.

The proposed rule does not allow airports the currently-permitted 48-hour grace period to repair or replace inoperative ARFF equipment. Thus, the rule may impose an ARFF cost equal to a 48-hour expense of providing sufficient ARFF support, or reducing the level of support to current scheduled service to the airport.

The FAA believes the cost of maintaining an airport ARFF index for 48 hours is very low in terms of airport overall expenses. Secondly, for such an expense to occur all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF index does not pass the Y2K readiness check.

2. No other ARFF equipment is readily available to maintain the ARFF index.

3. Air carrier aircraft serving the airport that day do not allow the airport operator to temporarily step down to a lower ARFF index.

The probability of an outcome, which depends upon a series of connected events in which each event must occur, is calculated by multiplying across all events the probability assigned to each event. In this case, the probability of the first event, a required ARFF vehicle does not pass the Y2K readiness check, is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent, the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus the FAA believes, for reasons discussed above, that an ARFF expense can occur, but the expected likelihood is thought to be very low. In addition, the actual cost is expected to be low as mutual aid agreements with other fire departments and the potential of a lower ARFF index still permit the operation of scheduled flights.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination and requests that commenters provide supporting data or analyses.

International Trade Impact Analysis

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries, or the import of foreign goods and services into the United States.

Federalism Implications

The regulations herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments in the aggregate, or by the private sector.

Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 139 of Title 14, Code of Federal Regulations as follows:

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701–44706, 44709, and 44719.

2. Part 139 is amended by adding Special Federal Aviation Regulation No. to read as follows:

SFAR —YEAR 2000 AIRPORT SAFETY INSPECTIONS

1. *Test requirements.*

(a) Each certificate holder shall test each piece of equipment and system described in (b) and (c) of this paragraph to ensure that compliance with part 139 requirements has not been affected by the date change to January 1, 2000. Testing shall demonstrate that the equipment or system is sufficiently operational to continue to support the airport operator's compliance with the requirements of part 139.

(b) Equipment and systems to be tested include—

(1) Runway and taxiway lighting required under § 139.311;

(2) Emergency alarm/communication systems required under § 139.319(j)(6);

(3) ARFF vehicles and associated equipment required under §§ 139.213(b)(11), 139.317, and 139.319;

(4) Communication systems required under § 139.329; and (5) Any other system or unit of equipment that the Administrator determines—

(i) Relies on or contains a computer or microprocessor;

(ii) Is used in support of the holder's compliance with part 139 requirements; and

(iii) Is critical to the safety and efficiency of aircraft operations.

(c) Tests of ARFF vehicles shall include the discharge of fire extinguishing agents.

(d) After consultation with each certificate holder, the Administrator will make a final determination of equipment and systems to be tested and provide written notification of this determination by October 31, 1999.

2. *Reporting Requirements.* No later than one hour following the completion of testing required under paragraph 1 of this SFAR, each certificate holder shall report the results of each test to the Regional Airports Division Manager.

3. *Test Schedule.*

(a) Each certificate holder shall complete the tests prescribed in paragraph 1 of this SFAR, as follows:

(1) By 1:00 a.m. on January 1, 2000, if the first air carrier operation is scheduled to occur before 2:00 a.m. on this date.

(2) At least one hour before the first air carrier operation is scheduled to occur, if the operation is scheduled to occur after 2:00 a.m. on January 1, 2000.

(b) All required tests shall be completed before January 5, 2000, regardless of whether the airport has received air carrier operations from January 1 through January 4, 1999.

4. *Vehicle readiness.* Notwithstanding § 139.319(h)(3), until January 5, 2000, any required vehicle that becomes inoperative to the extent that it cannot perform as required by § 139.319(h)(1) shall be replaced immediately with equipment having at least equal capabilities. If the required Index level is not restored immediately after the testing required by this SFAR, the airport operator shall notify the Regional Airports Division Manager and limit air carrier operations on the airport to those compatible with the Index corresponding to the remaining operative rescue and fire fighting equipment.

5. *Self inspection requirements.* The requirements of this SFAR do not relieve the certificate holder from self-inspection obligations required under § 139.327. However, testing conducted in compliance with this SFAR may be used to fulfill applicable part 139 requirements.

6. *Effective times.* All of the times described in this SFAR are in local time at the airport.

7. *Expiration.* This Special Federal Aviation Regulation expires on January 5, 2000.

Issued in Washington, DC, on July 1, 1999.

David L. Bennett,

Director, Office of Airport Safety and Standards.

[FR Doc. 99–17359 Filed 7–7–99; 8:45 am]

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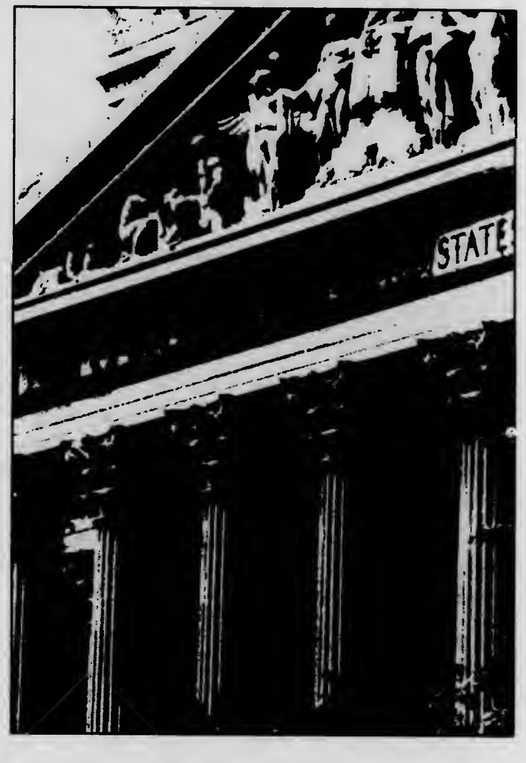
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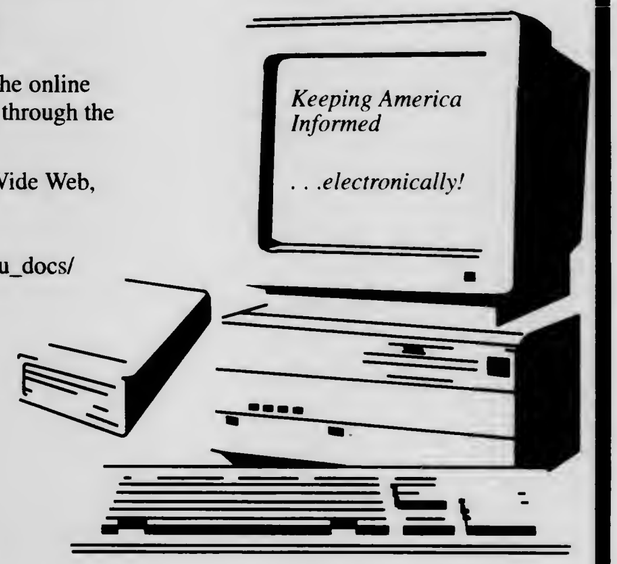
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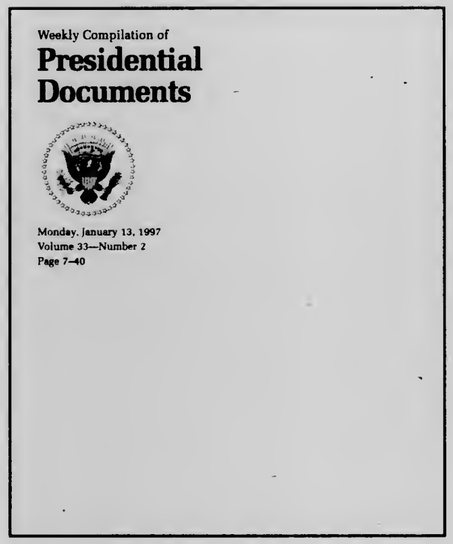
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Title 3—

The President

Presidential Determination No. 99–31 of June 30, 1999

Eligibility of the Organization for Security and Cooperation in Europe to be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, section 3(a)(1) of the Arms Export Control Act, and section 422 of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 (as implemented by Executive Order 13029 of December 3, 1996), I hereby find that the furnishing of defense articles and services to the Organization for Security and Cooperation in Europe will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register.**

William J. Clinton

[FR Doc. 99–17595
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Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 99–32 of July 1, 1999

Military Drawdown for Tunisia

Memorandum for the Secretary of State, [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including Title III (Foreign Military Financing) of the Foreign Operations, Exporting Financing, and Related Programs Appropriations Act, 1999, as enacted in Public Law 105–277 (Title III), I hereby direct the drawdown of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training of an aggregate value of $5 million for Tunisia, consistent with the authority provided under Title III, for the purposes of part II of the Foreign Assistance Act of 1961.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register.**

William J. Clinton

[FR Doc. 99–17596
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 153, 157, 284, 275, 290, and 385

[Docket No. RM98–9–000; Order No. 603]

Revision of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act

Issued April 9, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects regulatory text in the final rule published in the **Federal Register** on May 14, 1999, regarding governing the filing of applications for construction and operation of facilities or service under Section 7 of the Natural Gas Act.

DATES: Effective on July 9, 1999.

FOR FURTHER INFORMATION CONTACT:
Michael J. McGehee, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2257
Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 (202) 208–2246

Correction

In the final rule beginning at 64 FR 26572, on page 26606, in the issue of May 14, 1999, instruction 25 is corrected to read:

25. In § 157.202, paragraph (b)(2)(ii)(G) is removed; paragraph (b)(2)(ii)(F) is redesignated as paragraph (b)(2)(ii)(G) and a new paragraph (b)(2)(ii)(F) is added; paragraphs (b)(2)(i) and (ii)(A), (B), (C), (D), and (E) and paragraphs (b) (4), (5), (6), (7), (10), and (12) are revised and (b) (13) and (14) are removed to read as follows:

On page 26621, column 3, instruction number 58 and the CFR text following it are corrected to read as follows:

58. In § 385.2001, paragraph (a)(1)(ii) and (b)(3) are revised to read as follows:

§ 385.2001 Filings (Rule 2001)

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(3) The Secretary, or the office director to whom the filing has been referred, will send a letter of rejection with an indication of the deficiencies in the filing and the reason for the rejection.

* * * * *

David P. Boergers,

Secretary.

[FR Doc. 99–17254 Filed 7–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8476]

RIN 1545–AR05; 1545–AP09

Arbitrage Restrictions on Tax-Exempt Bonds; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 8476) which were published in the **Federal Register** on Friday, June 18, 1993 (58 FR 33510), relating to the arbitrage and related restrictions applicable to tax-exempt bonds issued by States and local governments.

DATES: This correction is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT:
David White, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 148 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8476) contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.148–11 is amended by adding paragraphs (b)(4), (h) and (i) to read as follows:

§ 1.148–11 Effective dates.

* * * * *

(b) * * *

(4) *No elective retroactive application for safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.* The provisions of §§ 1.148–5(d)(6)(iii) (relating to the safe harbor for establishing fair market value of guaranteed investment contracts and yield restricted defeasance escrow investments) and 1.148–5(e)(2)(iv) (relating to a special rule for yield restricted defeasance escrow investments) may not be applied to any bond sold before December 30, 1998.

* * * * *

(h) *Safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.* The provisions of § 1.148–5(d)(6)(iii) are applicable to bonds sold on or after March 1, 1999. Issuers may apply these provisions to bonds sold on or after December 30, 1998, and before March 1, 1999.

(i) *Special rule for investments purchased for a yield restricted defeasance escrow.* The provisions of § 1.148–5(e)(2)(iv) are applicable to bonds sold on or after March 1, 1999. Issuers may apply these provisions to

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bonds sold on or after December 30, 1998, and before March 1, 1999.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–17297 Filed 7–8–99;8:45am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 0 and 600

[A.G. Order No. 2232–99]

Office of Special Counsel

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends the Code of Federal Regulations to provide regulations concerning Attorney General appointment of Special Counsel to investigate and, when appropriate, to prosecute matters when the Attorney General concludes that extraordinary circumstances exist such that the public interest would be served by removing a large degree of responsibility for a matter from the Department of Justice. These regulations replace the procedures for appointment of independent counsel pursuant to the Independent Counsel Reauthorization Act of 1994.

EFFECTIVE DATES: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: John C. Keeney, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Washington, D.C. 20530, (202) 514–2621.

SUPPLEMENTARY INFORMATION:

Background

The Attorney General is promulgating these regulations to replace the procedures set out in the Independent Counsel Reauthorization Act of 1994. These regulations seek to strike a balance between independence and accountability in certain sensitive investigations, recognizing that there is no perfect solution to the problem. The balance struck is one of day-to-day independence, with a Special Counsel appointed to investigate and, if appropriate, prosecute matters when the Attorney General concludes that extraordinary circumstances exist such that the public interest would be served by removing a large degree of responsibility for the matter from the Department of Justice. The Special Counsel would be free to structure the investigation as he or she wishes and to exercise independent prosecutorial discretion to decide whether charges should be brought, within the context of the established procedures of the Department. Nevertheless, it is intended that ultimate responsibility for the matter and how it is handled will continue to rest with the Attorney General (or the Acting Attorney General if the Attorney General is personally recused in the matter); thus, the regulations explicitly acknowledge the possibility of review of specific decisions reached by the Special Counsel.

The regulations also remove § 0.14, setting forth procedures for Special Independent Counsels for members of Congress. The regulations in that section have been suspended since April 19, 1989. 54 FR 15752.

Section-by-Section Discussion

Section 600.1 Grounds for Appointing a Special Counsel

"The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, will appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter."

Section 600.2 Alternatives Available to the Attorney General

"When matters are brought to the attention of the Attorney General that might warrant consideration of appointment of a Special Counsel, the Attorney General may:

(a) Appoint a Special Counsel;

(b) Direct that an initial investigation, consisting of such factual inquiry or legal research as the Attorney General deems appropriate, be conducted in order to better inform the decision; or

(c) Conclude that under the circumstances of the matter, the public interest would not be served by removing the investigation from the normal processes of the Department, and that the appropriate component of the Department should handle the matter. If the Attorney General reaches this conclusion, he or she may direct that appropriate steps be taken to mitigate any conflicts of interest, such as recusal of particular officials."

Discussion

There are occasions when the facts create a conflict so substantial, or the exigencies of the situation are such that any initial investigation might taint the subsequent investigation, so that it is appropriate for the Attorney General to immediately appoint a Special Counsel. In other situations, some initial investigation, whether factual or legal, may be appropriate to better inform the Attorney General's decision. This provision is intended to make it clear that a variety of approaches, even in cases that might create an apparent conflict of interest, may be appropriate, depending on the facts of the matter.

Section 600.3 Qualifications of the Special Counsel

"(a) An individual named as Special Counsel shall be a lawyer with a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies. The Special Counsel shall be selected from outside the United States Government. Special Counsels shall agree that their responsibilities as Special Counsel shall take first precedence in their professional lives, and that it may be necessary to devote their full time to the investigation, depending on its complexity and the stage of the investigation.

"(b) The Attorney General shall consult with the Assistant Attorney General for Administration to ensure an appropriate method of appointment, and to ensure that a Special Counsel undergoes an appropriate background investigation and a detailed review of ethics and conflicts of interest issues. A Special Counsel shall be appointed as a 'confidential employee' as defined in 5 U.S.C. 7511(b)(2)(C)."

Section 600.4 Jurisdiction

"(a) *Original Jurisdiction.* The jurisdiction of a Special Counsel shall be established by the Attorney General. The Special Counsel will be provided with a specific factual statement of the matter to be investigated. The jurisdiction of a Special Counsel shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses; and to conduct appeals arising out of the matter being investigated and/or prosecuted.

"(b) *Additional Jurisdiction.* If in the course of his or her investigation the Special Counsel concludes that additional jurisdiction beyond that specified in his or her original jurisdiction is necessary in order to fully investigate and resolve the matters assigned, or to investigate new matters that come to light in the course of his or her investigation, he or she shall consult with the Attorney General, who will determine whether to include the additional matters within the Special Counsel's jurisdiction or assign them elsewhere."

Discussion

Under these regulations, it is intended that a Special Counsel's jurisdiction will be stated as an investigation of specific facts. The regulations also recognize, however, that accommodations can be made as necessary throughout the course of the investigation, with the Attorney General's approval. This provision establishes a protocol whereby Special Counsels are provided with an appropriate description of the boundaries of their investigation, with the full recognition that adjustments to that jurisdiction may be required.

Paragraph (b) establishes a single procedure through which a variety of different jurisdictional issues can be resolved. For example, a Special Counsel assigned responsibility for an alleged false statement about a government program may request additional jurisdiction to investigate allegations of misconduct with respect to the administration of that program; a Special Counsel may conclude that investigating otherwise unrelated allegations against a central witness in the matter is necessary to obtain cooperation; or a Special Counsel may come across evidence of additional, unrelated crimes by targets of his or her investigation. Rather than leaving the issue to argument and misunderstanding as to whether the new matters are included within a vague category of "related matters," the regulations clarify that the decision as to which component would handle such new matters would be made by the Attorney General. The Special Counsel would report such matters to the Attorney General, and the Attorney General would decide whether to grant the Special Counsel jurisdiction over the additional matters.

"(c) *Civil and Administrative Jurisdiction.* If in the course of his or her investigation the Special Counsel determines that administrative remedies, civil sanctions or other governmental action outside the criminal justice system might be appropriate, he or she shall consult with the Attorney General with respect to the appropriate component to take any necessary action. A Special Counsel shall not have civil or administrative authority unless specifically granted such jurisdiction by the Attorney General."

Discussion

Paragraph (c) is intended to clarify that the Special Counsel's jurisdiction will cover only the criminal aspects of the matters within his or her jurisdiction, unless other jurisdiction is specifically granted by the Attorney General.

Section 600.5 Staff

"A Special Counsel may request the assignment of appropriate Department employees to assist the Special Counsel. The Department shall gather and provide the Special Counsel with the names and resumes of appropriate personnel available for detail. The Special Counsel may also request the detail of specific employees, and the office for which the designated employee works shall make reasonable efforts to accommodate the request. The Special Counsel shall assign the duties and supervise the work of such employees while they are assigned to the Special Counsel. If necessary, the Special Counsel may request that additional personnel be hired or assigned from outside the Department. All personnel in the Department shall cooperate to the fullest extent possible with the Special Counsel."

Discussion

This provision, providing for the assignment of appropriate personnel to assist the Special Counsel, also includes assignment of needed investigative resources from the Federal Bureau of Investigation. It is anticipated that most personnel will be Department of Justice employees provided by detail to the Special Counsel, although the regulation provides for additional employment from outside the Department when necessary.

Section 600.6 Powers and Authority

"Subject to the limitations in the following paragraphs, the Special Counsel shall exercise, within the scope of his or her jurisdiction, the full power and independent authority to exercise all investigative and prosecutorial functions of any United States Attorney. Except as provided in this part, the Special Counsel shall determine whether and to what extent to inform or consult with the Attorney General or others within the Department about the conduct of his or her duties and responsibilities."

Section 600.7 Conduct and Accountability

"(a) A Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice. He or she shall consult with appropriate offices within the Department for guidance with respect to established practices, policies and procedures of the Department, including ethics and security regulations and procedures. Should the Special Counsel conclude that the extraordinary circumstances of any particular decision would render compliance with required review and approval procedures by the designated Departmental component inappropriate, he or she may consult directly with the Attorney General."

Discussion

Review and approval procedures are the way in which the Department typically addresses the most sensitive legal and policy issues facing its prosecutors. Such matters are usually not dealt with by mandatory substantive rules; rather, the Department recognizes that even the most controversial and risky investigative or prosecutorial steps might in extraordinary circumstances be justified. Therefore, such issues are generally handled by requiring a variety of levels of review and approval before the step can be taken. Were Special Counsels to be exempt from these procedural requirements, they would be left without relevant controls and without Departmental guidance in the most sensitive situations.

There are often sound institutional reasons for review and approval provisions that transcend the merits of any particular case. For example, the Department has concluded over time that the long-term interests in case law development, served by the requirement that the Solicitor General personally approve Departmental appeals, may outweigh the importance of any single prosecution. Finally, requiring compliance with review and approval procedures ensures that the Department's institutional judgment will be available to inform the Special Counsel's decisionmaking process in the particular case.

This provision therefore will allow a wide range of independent decisionmaking by the Special Counsel, while at the same time it will help to guard against a Special Counsel becoming too insulated and narrow in

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his or her view of the matter under investigation. Most review and approval procedures are conducted by and through long-term career Departmental officials with substantial and invaluable institutional memory and historical perspective.

At the same time, this provision permits the Special Counsel in extraordinary circumstances to proceed without complying with the Department's required review and approval procedures by consulting with the Attorney General. This provides a substantial degree of independent decisionmaking to the Special Counsel, while enhancing his or her accountability for the decision. Should the Special Counsel determine that the extraordinary circumstances of a particular decision make it inappropriate to comply with the established rules, regulations, procedures, practices and policies of the Department, the review and approval process may be bypassed through direct consultation with the Attorney General.

"(b) The Special Counsel shall not be subject to the day-to-day supervision of any official of the Department. However, the Attorney General may request that the Special Counsel provide an explanation for any investigative or prosecutorial step, and may after review conclude that the action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued. In conducting that review, the Attorney General will give great weight to the views of the Special Counsel. If the Attorney General concludes that a proposed action by a Special Counsel should not be pursued, the Attorney General shall notify Congress as specified in § 600.9(a)(3)."

Discussion

Paragraph (b) permits the Attorney General to determine, after a review in which substantial deference is given to the views of the Special Counsel, that an action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued.

"(c) The Special Counsel and staff shall be subject to disciplinary action for misconduct and breach of ethical duties under the same standards and to the same extent as are other employees of the Department of Justice. Inquiries into such matters shall be handled through the appropriate office of the Department upon the approval of the Attorney General.

(d) The Special Counsel may be disciplined or removed from office only by the personal action of the Attorney General. The Attorney General may remove a Special Counsel for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies. The Attorney General shall inform the Special Counsel in writing of the specific reason for his or her removal."

Discussion

Paragraphs (c) and (d) provide protection for a Special Counsel by providing that the Attorney General may remove the Special Counsel only for good cause, several examples of which are provided in the regulation. Violation of Departmental policies is specifically identified as a ground that may warrant removal. The willful violation of some policies might warrant removal or other disciplinary action, and a series of negligent or careless overlooking of important policies might similarly warrant removal or other disciplinary action. Such conduct also would be encompassed within the articulated standard of misconduct or dereliction of duty. There are, of course, other violations of Departmental policies and guidelines that would not ordinarily be grounds for removal or other disciplinary action.

Section 600.8 Notification and Reports by the Special Counsel

"(a) *Budget.* (1) A Special Counsel shall be provided all appropriate resources by the Department of Justice. Within the first 60 days of his or her appointment, the Special Counsel shall develop a proposed budget for the current fiscal year with the assistance of the Justice Management Division for the Attorney General's review and approval. Based on the proposal, the Attorney General shall establish a budget for the operations of the Special Counsel. The budget shall include a request for assignment of personnel, with a description of the qualifications needed.

(2) Thereafter, 90 days before the beginning of each fiscal year, the Special Counsel shall report to the Attorney General the status of the investigation, and provide a budget request for the following year. The Attorney General shall determine whether the investigation should continue and, if so, establish the budget for the next year."

Discussion

The annual report to the Attorney General and budget request for the coming year will help to ensure that a Special Counsel investigation does not continue indefinitely; it will be reviewed at least annually to determine whether the investigation should continue, or whether it has reached a point where it should be closed or where responsibility for the matter can be returned to the normal processes of the Department. This annual review will provide an opportunity for the Special Counsel to present his or her budget request for the upcoming year as well. It should be emphasized that this annual report is intended to be only a status report. The Special Counsel will not be subject to the day-to-day supervision of the Attorney General or any other Departmental official, and the annual report will not serve as a vehicle for ongoing supervision. Rather, the Attorney General will use the report to determine whether the investigation should continue, and what the budget for the coming year should be. For example, there may be no need for the Special Counsel to remain in office to handle final details, such as a routine appeal following a conviction.

"(b) *Notification of Significant Events.* The Special Counsel shall notify the Attorney General of events in the course of his or her investigation in conformity with the Departmental guidelines with respect to Urgent Reports."

Discussion

Paragraph (b) requires Special Counsels to notify the Attorney General in certain circumstances. Those circumstances are defined using the same standard as that governing United States Attorneys, who are required to notify the Attorney General or other Department officials before seeking an indictment in sensitive cases and at other significant investigative steps. A Special Counsel will be dealing with issues that are sensitive, with many possible repercussions, and experience has shown that such prosecutions are often as sensitive legally as they are politically. Given this sensitivity, notification of proposed indictments and other significant events in the course of the investigation, with the resulting opportunity for consultation, is a critical part of the mechanism through which the Attorney General can discharge his or her responsibilities with respect to the investigation.

"(c) *Closing Documentation.* At the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel."

Discussion

Much legitimate concern has been expressed about the Final Report requirement of the Independent Counsel Act, with respect to both the incentives it creates to over-investigate a matter and the fact that, since it often becomes a public document, it can do harm to legitimate privacy interests. On the other hand, it is appropriate for any federal official to provide a written record upon completion of an assignment, both for historical purposes and to enhance accountability—particularly a federal official who has functioned with substantial independence and little supervision. In major cases, federal prosecutors commonly document their decisions not to pursue a case, explaining the factual and legal reasons for the conclusions they have reached.

The principal source of the problems with the Final Report requirement as set forth in the Independent Counsel Act is the fact that the Report typically has been made public, unlike the closing documentation of any other criminal investigation. This single fact both provides an incentive to over-investigate, in order to avoid potential public criticism for not having turned over every stone, and creates potential harm to individual privacy interests.

Therefore, these regulations impose a limited reporting requirement on all Special Counsels, in the form of a summary final report to the Attorney General. This report will be handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed in the final set of reporting requirements, discussed below.

Section 600.9 Notification and Reports by the Attorney General

"(a) The Attorney General will notify the Chairman and Ranking Minority Member of the Judiciary Committees of each House of Congress, with an explanation for each action—

(1) Upon appointing a Special Counsel;

(2) Upon removing any Special Counsel; and

(3) Upon conclusion of the Special Counsel's investigation, including, to the extent consistent with applicable law, a description and explanation of instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.

(b) The notification requirement in paragraph (a)(1) of this section may be tolled by the Attorney General upon a finding that legitimate investigative or privacy concerns require confidentiality. At such time as confidentiality is no longer needed, the notification will be provided.

(c) The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions. All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law."

Discussion

To help ensure congressional and public confidence in the integrity of the process, the regulations impose on the Attorney General these reporting requirements to the Judiciary Committees of the Congress. These reports will occur on three occasions: on the appointment of a Special Counsel, on the Attorney General's decision to remove a Special Counsel, and on the completion of the Special Counsel's work. These reports will be brief notifications, with an outline of the actions and the reasons for them.

Section 600.10 No Creation of Rights

"The regulations in this part are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative."

Certifications and Determinations

Administrative Procedure Act

This rule relates to matters of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2). Moreover, to the extent that rulemaking procedures would otherwise be applicable, the Department finds that this rule would be exempted from the requirements of prior notice and comment as a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). Similarly, the effective date of the rule need not be delayed for 30 days after publication because the rule is not a "substantive rule." *See* 5 U.S.C. 553(d); 5 U.S.C. 552(a)(1)(D). In any event, because the provisions of the Independent Counsel Reauthorization Act of 1994 expire on June 30, 1999, the Attorney General has determined that it is imperative to have these rules governing the appointment and service of a Special Counsel in place as soon as possible. Accordingly, even if the rule were not exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date, there would be "good cause" for issuing this rule without prior notice and comment and without a 30-day delay in the effective date. *See* 5 U.S.C. 553(b)(B); 5 U.S.C. 553(d)(3).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. It is a rule relating to agency management or personnel and is therefore excluded from the scope of a covered "rule" for purposes of Chapter 8 of Title 5, U.S.C. *See* 5 U.S.C. 804(3)(B). Moreover, to the extent that this rule would be considered to be a rule of agency organization, procedure, or practice, it is excluded from the scope of a covered "rule" pursuant to 5 U.S.C. 804(3)(C). The provisions of Part 600 relate to the Attorney General's appointment of a Special Counsel as an employee of the Department of Justice, the procedures for defining the jurisdiction of the Special Counsel, and the requirements for consultation or approval within the Department. If the Attorney General determines, in some particular case, to appoint a Special Counsel, the Special Counsel would assume responsibility for an investigation or prosecution that would otherwise be under the responsibility of a litigating Division of the Department or a United States Attorney's Office, but the Special Counsel would nevertheless be serving under the Attorney General's authority as provided in this rule. For these reasons, the Department has determined that this rule does not substantially affect the rights or obligations of non-agency parties.

Accordingly, because this action is not a covered "rule," it is exempt from the requirement for the Department to submit a report to each House of Congress and to the Comptroller General before this rule can take effect, as provided in 5 U.S.C. 801(a)(1).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

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Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review. The Department of Justice has determined that this is not a "significant regulatory action" under section 3(f) of Executive Order 12866, and that it relates to a matter of agency organization, management, or personnel. See Executive Order 12866, 3(d)(3). Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

28 CFR Part 600

Authority delegations (Government agencies), Conflict of interests, Crime, Government employees, Investigations.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, chapters I and VI of title 28 of the Code of Federal Regulations, are amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.14 [Removed]

2. Section 0.14 is removed.

3. Part 600 is revised to read as follows:

PART 600—GENERAL POWERS OF SPECIAL COUNSEL

Sec.

600.1 Grounds for appointing a Special Counsel.
600.2 Alternatives available to the Attorney General.
600.3 Qualifications of the Special Counsel.
600.4 Jurisdiction.
600.5 Staff.
600.6 Powers and authority.
600.7 Conduct and accountability.
600.8 Notification and reports by the Special Counsel.
600.9 Notification and reports by the Attorney General.
600.10 No creation of rights.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 600.1 Grounds for appointing a Special Counsel.

The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, will appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.

§ 600.2 Alternatives available to the Attorney General.

When matters are brought to the attention of the Attorney General that might warrant consideration of appointment of a Special Counsel, the Attorney General may:

(a) Appoint a Special Counsel;

(b) Direct that an initial investigation, consisting of such factual inquiry or legal research as the Attorney General deems appropriate, be conducted in order to better inform the decision; or

(c) Conclude that under the circumstances of the matter, the public interest would not be served by removing the investigation from the normal processes of the Department, and that the appropriate component of the Department should handle the matter. If the Attorney General reaches this conclusion, he or she may direct that appropriate steps be taken to mitigate any conflicts of interest, such as recusal of particular officials.

§ 600.3 Qualifications of the Special Counsel.

(a) An individual named as Special Counsel shall be a lawyer with a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies. The Special Counsel shall be selected from outside the United States Government. Special Counsels shall agree that their responsibilities as Special Counsel shall take first precedence in their professional lives, and that it may be necessary to devote their full time to the investigation, depending on its complexity and the stage of the investigation.

(b) The Attorney General shall consult with the Assistant Attorney General for Administration to ensure an appropriate method of appointment, and to ensure that a Special Counsel undergoes an appropriate background investigation and a detailed review of ethics and conflicts of interest issues. A Special Counsel shall be appointed as a "confidential employee" as defined in 5 U.S.C. 7511(b)(2)(C).

§ 600.4 Jurisdiction.

(a) *Original jurisdiction.* The jurisdiction of a Special Counsel shall be established by the Attorney General. The Special Counsel will be provided with a specific factual statement of the matter to be investigated. The jurisdiction of a Special Counsel shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses; and to conduct appeals arising out of the matter being investigated and/or prosecuted.

(b) *Additional jurisdiction.* If in the course of his or her investigation the Special Counsel concludes that additional jurisdiction beyond that specified in his or her original jurisdiction is necessary in order to fully investigate and resolve the matters

assigned, or to investigate new matters that come to light in the course of his or her investigation, he or she shall consult with the Attorney General, who will determine whether to include the additional matters within the Special Counsel's jurisdiction or assign them elsewhere.

(c) *Civil and administrative jurisdiction.* If in the course of his or her investigation the Special Counsel determines that administrative remedies, civil sanctions or other governmental action outside the criminal justice system might be appropriate, he or she shall consult with the Attorney General with respect to the appropriate component to take any necessary action. A Special Counsel shall not have civil or administrative authority unless specifically granted such jurisdiction by the Attorney General.

§ 600.5 Staff.

A Special Counsel may request the assignment of appropriate Department employees to assist the Special Counsel. The Department shall gather and provide the Special Counsel with the names and resumes of appropriate personnel available for detail. The Special Counsel may also request the detail of specific employees, and the office for which the designated employee works shall make reasonable efforts to accommodate the request. The Special Counsel shall assign the duties and supervise the work of such employees while they are assigned to the Special Counsel. If necessary, the Special Counsel may request that additional personnel be hired or assigned from outside the Department. All personnel in the Department shall cooperate to the fullest extent possible with the Special Counsel.

§ 600.6 Powers and authority.

Subject to the limitations in the following paragraphs, the Special Counsel shall exercise, within the scope of his or her jurisdiction, the full power and independent authority to exercise all investigative and prosecutorial functions of any United States Attorney. Except as provided in this part, the Special Counsel shall determine whether and to what extent to inform or consult with the Attorney General or others within the Department about the conduct of his or her duties and responsibilities.

§ 600.7 Conduct and accountability.

(a) A Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice. He or she shall consult with appropriate offices within the Department for guidance with respect to established practices, policies and procedures of the Department, including ethics and security regulations and procedures. Should the Special Counsel conclude that the extraordinary circumstances of any particular decision would render compliance with required review and approval procedures by the designated Departmental component inappropriate, he or she may consult directly with the Attorney General.

(b) The Special Counsel shall not be subject to the day-to-day supervision of any official of the Department. However, the Attorney General may request that the Special Counsel provide an explanation for any investigative or prosecutorial step, and may after review conclude that the action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued. In conducting that review, the Attorney General will give great weight to the views of the Special Counsel. If the Attorney General concludes that a proposed action by a Special Counsel should not be pursued, the Attorney General shall notify Congress as specified in § 600.9(a)(3).

(c) The Special Counsel and staff shall be subject to disciplinary action for misconduct and breach of ethical duties under the same standards and to the same extent as are other employees of the Department of Justice. Inquiries into such matters shall be handled through the appropriate office of the Department upon the approval of the Attorney General.

(d) The Special Counsel may be disciplined or removed from office only by the personal action of the Attorney General. The Attorney General may remove a Special Counsel for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies. The Attorney General shall inform the Special Counsel in writing of the specific reason for his or her removal.

§ 600.8 Notification and reports by the Special Counsel.

(a) *Budget.* (1) A Special Counsel shall be provided all appropriate resources by the Department of Justice. Within the first 60 days of his or her appointment, the Special Counsel shall develop a proposed budget for the current fiscal year with the assistance of the Justice Management Division for the Attorney General's review and approval. Based on the proposal, the Attorney General shall establish a budget for the operations of the Special Counsel. The budget shall include a request for assignment of personnel, with a description of the qualifications needed.

(2) Thereafter, 90 days before the beginning of each fiscal year, the Special Counsel shall report to the Attorney General the status of the investigation, and provide a budget request for the following year. The Attorney General shall determine whether the investigation should continue and, if so, establish the budget for the next year.

(b) *Notification of significant events.* The Special Counsel shall notify the Attorney General of events in the course of his or her investigation in conformity with the Departmental guidelines with respect to Urgent Reports.

(c) *Closing documentation.* At the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.

§ 600.9 Notification and reports by the Attorney General.

(a) The Attorney General will notify the Chairman and Ranking Minority Member of the Judiciary Committees of each House of Congress, with an explanation for each action—

(1) Upon appointing a Special Counsel;

(2) Upon removing any Special Counsel; and

(3) Upon conclusion of the Special Counsels investigation, including, to the extent consistent with applicable law, a description and explanation of instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.

(b) The notification requirement in paragraph (a)(1) of this section may be tolled by the Attorney General upon a finding that legitimate investigative or privacy concerns require confidentiality. At such time as confidentiality is no longer needed, the notification will be provided.

(c) The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions. All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law.

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§ 600.10 No creation of rights.

The regulations in this part are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative.

Dated: June 30, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–17327 Filed 7–8–99; 8:45 am]

BILLING CODE 4410–AR–P

DEPARTMENT OF JUSTICE

48 CFR Part 2832

[Justice Acquisition Circular 99–1]

RIN 1105–AA68

Amendment to the Justice Acquisition Regulations (JAR) Regarding: Electronic Funds Transfer

AGENCY: Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending the Justice Acquisition Regulations (JAR) to provide flexibility to contractors in the timing of receipt of Electronic Funds Transfer (EFT) information from them. The Debt Collection Improvement Act of 1996, Public Law (P.L.) 104–134, mandates payment by EFT in most situations. In order to make the payment by EFT, the Department needs certain information from contractors. This rule gives the Department's contracting officers discretion in determining when contractors must submit the required information. Without the changes made by this rule, contractors would have to submit their EFT information no later than 15 days prior to their first request for payment.

DATES: Effective date: This rule is effective July 9, 1999.

FOR FURTHER INFORMATION CONTACT: Janis A. Spostao, Procurement Executive, Justice Management Division (202) 514–3103.

SUPPLEMENTARY INFORMATION:

Why Is the Department Changing the Justice Acquisition Regulations?

Public Law 104–134 amended 31 U.S.C. section 3332, to require that beginning January 2, 1999, all Federal payments (other than payments under the Internal Revenue Code of 1986) shall be made by EFT. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are responsibilities for issuing Federal Acquisition Circulars (FACs) and the Federal Acquisition Regulations (FAR) which are binding on other Federal Agencies. On March 4, 1999, these councils published Federal Acquisition Circular (FAC) 97–11, in the **Federal Register** (64 FR 10538–10544) as a final rule with an effective date of May 3, 1999. A portion of this final rule—Item IV—Electronic Funds Transfer—amended the FAR to address the use of EFT for Federal contract payments and to facilitate the implementation of P.L. 104–134.

Who Is Affected by the Changes Made by Item IV—Electronic Funds Transfer?

Before the latest FAR revision, contractors who sell to Federal agencies were required to furnish EFT information no later than 15 days prior to the submission of their first request for payment. Some contractors furnish their EFT information by registering in the Central Contractor Registration database. Agencies use that database to obtain EFT information. Other contractors are not registered in the Central Contractor Registration database, or agencies elect not to use the database. Under those circumstances, agencies collect EFT information directly from contractors.

What Changes Does This Rule Make?

When collecting EFT information directly from contractors, Item IV of FAC 97–11 allows the heads of Federal agencies to issue procedures that allow contracting officers discretion in determining when contractors' EFT information must be submitted in order to comply with P.L. 104–134 and to make timely payments. In the absence of this regulation, contractors of the Department would have to submit EFT information no later than 15 days prior to the submission of the first request for payment. This rule gives the Department's contracting officers discretion in determining when contractors must submit the required information. This flexibility will allow components of the Department to receive the EFT information with the first invoice, rather than 15 days before the first invoice. For those components that adopt such a procedure, contractors will only have to make one submission (the EFT information along with the invoice) rather than two submissions (the EFT information and—at least 15 days later—the invoice.) The flexibility proposed by this rule should be a benefit to contractors.

Regulatory Certifications

Administrative Procedure Act, 5 U.S.C. 553

This rule enhances the ability of Department contracting officers to allow contractors flexibility as to when to submit information required by current statute law and regulations. Further, this rule imposes no new restrictions. Accordingly, the Department of Justice finds good cause for exempting this rule from the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date.

Regulatory Flexibility Act

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published FAC 97–11 on March 4, 1999 at 64 FR 10538. In conjunction with the publication of that final rule, these councils performed a Final Regulatory Flexibility Analysis and submitted a copy to the Chief Counsel for Advocacy of the Small Business Administration.

The Assistant Attorney General for Administration in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because this regulation merely sets forth internal procedures of the Department relating to the timing of receipt of EFT information from contractors.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, § 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Janis A. Sposato, Procurement Executive, Justice Management Division (202) 514–3103.

Paperwork Reduction Act

This rule imposes no new information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). All information collection requirements have been submitted to OMB. In those cases where an OMB control number has been assigned, the control number is included in the regulation.

List of Subjects in 48 CFR Part 2832

Government procurement.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Accordingly, 48 CFR part 2832 is amended as follows:

1. The authority citation for 48 CFR part 2832 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2832—CONTRACT FINANCING

2. A new Subpart 2832.11 is added to read as follows:

Subpart 2832.11—Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

Subpart 2832.11—Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

When the clause at FAR 52.232–34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration, is required the contracting officer may insert in paragraph (b)(1) of the clause a particular time after award, such as a fixed number of days, or an event such as the submission of the first request for payment, to establish the point at which contractors' EFT information must be provided.

[FR Doc. 99–17373 Filed 7–8–99; 8:45 am]

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Proposed Rules

Federal Register
Vol. 64, No. 131
Friday, July 9, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–75–AD]

Airworthiness Directives; Eurocopter France Model SA–365C, C1, C2, N, and N1; AS–365N2; and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Eurocopter France Model SA–365C, C1, C2, N, and N1; AS–365N2; and SA–366G1 helicopters. This proposal would require inspecting the tightening torque of the main rotor hub blade attach beam spherical thrust bearing bolts (bolts). The proposal would then require either applying the specified torque or, if necessary, conducting a dye penetrant inspection for cracks in the metal components. If a crack is found, the proposal would require replacing the spherical thrust bearing (bearing) with an airworthy bearing. This proposal is prompted by reports of cracks in the metal components of the bearing attachment joint. The actions specified by the proposed AD are intended to prevent loosening of bearing bolts in flight, which may cause cracks in the metal components, failure of the bearing, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–75–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–75–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–75–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–365C, C1, C2, N, and N1; AS–365N2; and SA–366G1 helicopters. The DGAC advises of the formation of cracks in the metal components of the bearing joint due to increased stress resulting from possible loosening of the bearing bolts.

Eurocopter France has issued Service Bulletins 05.22, 05.24, and 05.00.39, all dated July 17, 1998 (SB's). The SB's specify inspecting the bearing bolts for the specified tightening torque and applying a greater torque or, if necessary, performing a dye penetrant inspection of the metal components of the bearing joint for cracks and replacing any bolt in which a crack is found. The DGAC classified these SB's as mandatory and issued AD's 98–383–044(A), 98–382–024(A), 98–384–047(A), all dated September 23, 1998, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–365C, C1, C2, N, and N1; AS–365N2; and SA–366G1 helicopters of the same type designs registered in the United States, the proposed AD would require inspecting to determine the torque applied to the bearing bolts and replacing the bearing if a crack is found.

The FAA estimates that 100 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour and approximately 3,000 inspections over the life of the fleet per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,030,000, assuming 10 ship sets of bearings would need to be replaced on the fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 98–SW–75–AD.

Applicability: Model SA–365C, C1, C2, N, and N1; AS–365N2; and SA–366G1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 550 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 550 hours TIS.

To prevent loosening of the main rotor hub blade attach beam spherical thrust bearing bolts (bolts), cracks in the metal components, failure of a spherical thrust bearing (bearing), and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the tightening torque of the bolts as indicated by "A" in Figure 1.

(1) If tightening torque is equal to or less than 12 m.daN (88.4 lb-ft), remove the bearing and conduct a dye penetrant inspection for cracks on the two contact surfaces identified as "H" in Figure 1.

(i) If a crack is detected, replace the bearing with an airworthy bearing.

(ii) If no crack is detected, reinstall the bearing.

Note 2: Eurocopter France Service Bulletins 05.22, 05.24, and 05.00.39, all dated July 17, 1998, pertain to the subject of this AD.

(2) If the tightening torque is greater than 12 m.daN (88.4 lb-ft), then tighten to 19–22 m.daN (140–162.2 lb-ft).

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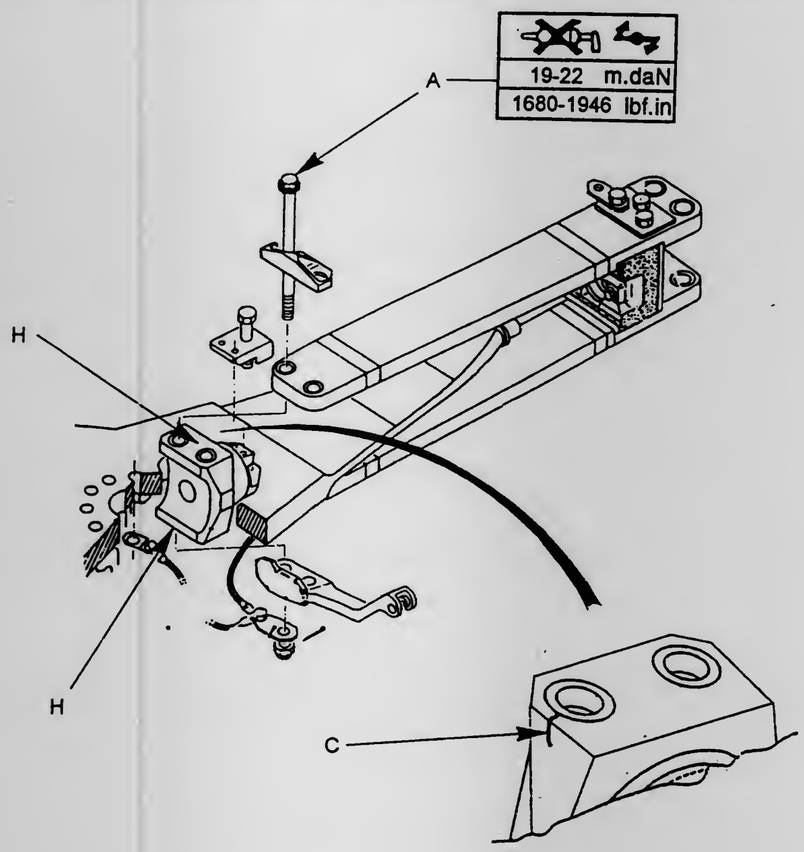


Figure 1

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(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD's 98–383–044(A) for the Model SA–365C, 98–382–024–(A) for the Model SA–366, and 98–384–047(A) for the Model AS–365N helicopters. These AD's are all dated September 23, 1998.

Issued in Fort Worth, Texas, on July 2, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–17487 Filed 7–8–99; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 99061159–9159–01]

RIN 0691–AA35

International Services Surveys: BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules to revise 15 CFR part 801.11 to present the reporting requirements for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

BEA proposes to raise the exemption level for the 1999 survey to $3 million in covered sales or purchases transactions, from $1 million on the previous (1994) survey. Raising the exemption level will reduce respondent burden, particularly for small companies. BEA also proposes to combine private placement services with underwriting services, combine foreign exchange brokerage services with other brokerage services, and create a separate category for electronic funds transfers. Finally, BEA has restated the definition of "financial services provider" using the nomenclature of the new North American Industry Classification System that has replaced the U.S. Standard Industrial Classification System.

The changes in the types of services to be reported separately reflect BEA's experience in collecting data on financial services transactions over the past 5 years. Data collected for both private placement and foreign brokerage services have been very small and do not justify the continuation of separate reporting. Electronic funds transfer services, in contrast, appear to account for a large fraction of both total receipts and total payments for "other financial services," in which electronic funds transfers were previously included.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before September 7, 1999.

ADDRESSES: Mail comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand deliver comments to room M–100, 1441 L Street, N.W., Washington, DC 2005. Comments will be available for public inspection in room 7005, 1441 L Street, N.W., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: These proposed rules amend 15 CFR part 801 to set forth revised reporting requirements for the BE–80, Benchmark Survey of Financial Services Transactions Between Financial Services Providers and Unaffiliated Foreign Persons. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), and under section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that "The President shall, to the extent he deems necessary and feasible * * * (1) conduct a regular data collection program to secure current information—related to international investment and trade in services * * *; and (5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection * * *" In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–80 survey is mandatory and is conducted once every 5 years by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108) hereinafter "the Act", and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). The proposed benchmark survey will be conducted for 1999. BEA will send the survey to potential respondents in January of the year 2000; responses will be due by March 31, 2000. The last benchmark survey was conducted for 1994. The benchmark survey will obtain universe data on trade in financial services, by type and by country, between U.S. financial services providers and unaffiliated foreign persons. Data from the BE–80 survey (and the follow-on annual survey, the BE–82) are needed to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The major purposes of the survey are to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

As proposed, BEA will conduct the BE–80 survey once every 5 years. The last survey was conducted for 1994. The survey is intended to cover the universe of financial services transactions

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between U.S. financial services providers and unaffiliated foreign persons. Reporting is required from U.S. financial services providers who have sales to or purchases from affiliated foreign persons in all covered financial services combined in excess of $3 million during the reporting year. Financial services providers meeting this criteria must supply data on the amount of their sales or purchases for each covered type of service, disaggregated by country. U.S. financial services providers that have covered transactions of less than $3 million during the reporting year are asked to provide voluntary estimates of their total sales or purchases of each type of financial service.

The information from the benchmark survey is updated in nonbenchmark years by an annual follow on survey, the BE–82. Currently, the annual survey covers only those U.S. financial services providers that have covered transaction in excess of $5 million during the reporting year.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act (PRA) and have been submitted to the Office of Management and Budget for review under the PRA.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The survey, as proposed, is expected to result in the filing of reports, containing mandatory or voluntary data, from about 500 respondents. The average burden for completing the BE–80—both the mandatory and voluntary sections—is estimated to be 7 hours. Thus, the total respondent burden of the survey is estimated at 3,500 hours (500 respondents times 7 hours average burden). The actual burden will vary from reporter to reporter, depending upon the number and variety of their financial services transactions and the ease of assembling the data. Thus, it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data, or that reports only in the voluntary section of the form, to 150 hours for a very large reporter that engages in a large number and variety of financial services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0062, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international financial services transactions tend to be quite large. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The BE–80 benchmark survey will be required only from U.S. persons with sales to, or purchases from, unaffiliated foreign persons in excess of $3,000,000 during the reporting year, in all covered financial services transactions combined; the exemption level for the previous benchmark survey, covering 1994, was $1,000,000. Thus, the exemption level will exclude most small businesses form mandatory coverage. Of those small businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 806

Balance of Payments, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.11 is revised to read as follows:

§ 801.11 Rules and regulations for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

A BE–80, Benchmark Survey of financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering 1999 and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.9 are applicable to this survey. Additional rules and regulations for the BE–80 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) Who must report—(1) Mandatory reporting. Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and who had transactions (either sales or purchases) directly with unaffiliated foreign persons in all financial services combined in excess of $3,000,000 during its fiscal year covered by the survey. The $3,000,000 threshold

should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the $3,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(2) Voluntary reporting. If during the fiscal year covered, sales of purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries, or parts, combined that are financial services providers or intermediaries, are $3,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. Because the $3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both.

(b) BE–80 definition of financial services provider. Except for Monetary Authorities (i.e., Central Banks), the definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 1997. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(c) Covered types of services. The BE–80 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage, including foreign exchange brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

(d) What to file. (1) The BE–80 survey consists of Forms BE–80(A) and BE–80(B). Before completing a form BE–80(B), a consolidated U.S. enterprise (including the top U.S. parent and all of its subsidiaries and parts combined) must complete Form BE–80(A) to determine its reporting status. If the enterprise is subject to the mandatory reporting requirement, or if it is exempt from the mandatory reporting requirement but chooses to report data voluntarily, it should either

(i) File a separate Form BE–80(B) for each separately organized financial services subsidiary or part of a consolidated U.S. enterprise; or

(ii) File a single BE–80(B) representing the sum of all covered transactions by all financial services subsidiaries or parts of the enterprise combined.

(2) Reporters who receive the BE–80 survey from BEA but are not subject to the mandatory reporting requirements and choose not to report data voluntarily must complete and return to BEA the Exemption Claim.

[FR Doc. 99–17391 Filed 7–8–99; 8:45 am]

BILLING CODE 3510–06–M

FEDERAL TRADE COMMISSION

16 CFR Part 23

Extension of Time; Guides for the Jewelry, Precious Metals and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Extension of time for filing public comments.

SUMMARY: The Federal Trade Commission (the "Commission") requested public comments on June 8, 1999, 64 FR 30448, on proposed revisions to the Guides for Jewelry, Precious Metals and Pewter Industries ("the Guides"), 16 CFR part 23. The Commission solicited comments until July 8, 1999. In response to a request from an industry group, the Commission grants an extension of the comment period.

DATES: Written comments will be accepted until August 31, 1999.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Comments should be identified as "Guides for the Jewelry, Precious Metals and Pewter Industries—16 CFR Part 23—Comment."

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–3740, <jewelry@ftc.gov>.

SUPPLEMENTARY INFORMATION: By letter dated June 23, 1999, the Appraisal Information Services' Gem and Jewelry Reference requested that the comment period be extended for forty-five days, until August 23, 1999.[1] The Commission has determined that an extension of the comment period as requested is appropriate. Therefore, to allow all interested persons the opportunity to supply the Commission with written data, views and arguments concerning the Commission's review of the Guides, the Commission grants an extension of the comment period to August 31, 1999.

List of Subjects in 16 CFR Part 23

Advertising, Labeling, Trade practices, Watches and jewelry.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–17432 Filed 7–8–99; 8:45 am]

BILLING CODE 6750–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1213, 1500, and 1513

Bunk Beds; Request for Additional Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

[1] A copy of the letter has been placed on the public record of this proceeding.

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SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") previously proposed a rule that would mandate bunk bed performance requirements to reduce the hazard of children being entrapped in the beds' structures or becoming wedged between a bed and a wall. 64 FR 10245 (March 3, 1999).

After the original proposal, discussions at meetings of a voluntary standards group (ASTM) indicated that requirements in addition to those proposed are needed to adequately address fatalities due to entrapment of children's necks in the end structures of bunk beds. Such requirements are proposed in this notice, and would be in addition to the requirements previously proposed. The Commission solicits written and oral comments from interested persons. Comments must be limited to issues raised by the additional requirements in this notice.

DATES: Written comments in response to this proposal must be received by the Commission by September 22, 1999. If requests for oral presentations of comments are received, the presentations will begin at 10 a.m., July 29, 1999, in Room 420 in the Commission's offices at 4330 East-West Highway, Bethesda, MD 20814.

Requests to present oral comments must be received by July 15, 1999. Persons requesting an oral presentation must file a written text of their presentations no later than July 22, 1999.

ADDRESSES: Written comments, and requests to make oral presentations of comments, should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Written comments should be captioned "NPR for Bunk Beds." Requests to make oral presentations and texts of presentations should be captioned "Oral Comment; NPR for Bunk Beds."

FOR FURTHER INFORMATION CONTACT: Concerning the substance of the proposed rule: John Preston, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207–0001; telephone (301) 504–0494, ext. 1315; email jpreston@cpsc.gov.

Concerning requests and procedures for oral presentations of comments: Rockelle Hammond, Docket Control and Communications Specialist, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1232. Information about this rulemaking proceeding may also be found on the Commission's web site: www.cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Without proper guardrails and safe dimensions for openings in the bed's structure, a bunk bed may allow a child to be entrapped, and thus strangle or suffocate. This can occur when the child becomes wedged between the wall and the bed, when the child slips his or her torso through an opening that is too small for its head to pass through, or when the child places its head in an opening, then moves to a narrower area of the opening where the head cannot pull out, and then falls or loses his/her footing.

There is a voluntary standard for bunk beds, ASTM F1427–96, that contains provisions to protect children from entrapment. The ASTM standard requires:

- That there be guardrails on both sides of the upper bunk, except for up to 15 inches at each end of the bed;
- That openings in the structure surrounding the upper bunk be small enough to prevent passage of a tapered block having a base measuring 3.5 inches by 6.2 inches (representing a child's torso) (See Fig. 1); and
- That openings in the end structures within 9 inches above the sleeping surface of the lower bunk mattress be either small enough to prevent passage of the 3.5 by 6.2 inch block or large enough to permit passage of a 9-inch diameter sphere (the space needed to withdraw a child's head).

Because of continued reports of deaths and other incidents associated with bunk beds, and because of indications there may not be adequate compliance with the voluntary ASTM standard, the CPSC published an advance notice of proposed rulemaking ("ANPR") to begin a rulemaking proceeding that could result in performance or other standards to address the risk of entrapment associated with bunk beds. 63 FR 3280 (January 22, 1998). After considering the comments received in response to the ANPR, the Commission voted 2–1 to publish a notice of proposed rulemaking ("NPR") to propose a new 16 CFR part 1213 under the Consumer Product Safety Act ("CPSA") and a new 16 CFR part 1513 under the Federal Hazardous Substances Act ("FHSA"). 64 FR 10245 (March 3, 1999).

The entrapment requirements in these proposed rules are identical to those in the ASTM standard, with the following exceptions.

1. Definition of a bunk bed: A bed in which the underside of any foundation is over 30 inches from the floor. In the ASTM standard, a bunk bed is defined as a bed in which the underside of the foundation is over 35 inches from the floor.

2. Guardrails: The Commission proposed that one guardrail shall be continuous between each of the bed's end structures. The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches between either end of the guardrail and the nearest bed end structure. The current ASTM standard permits both guardrails to end 15 inches from the nearest bed end structure.

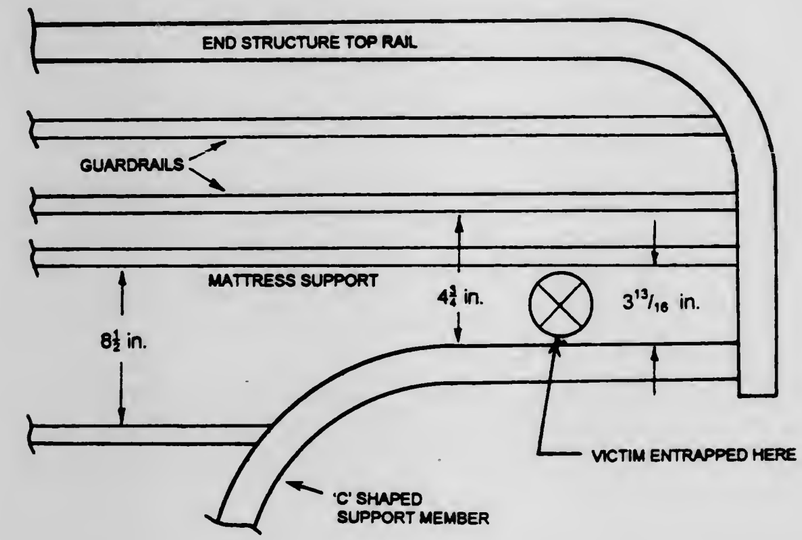
3. Lower bunk end structures: The Commission proposed that there shall be no openings in the end structures between the underside of the foundation of the upper bunk and the upper side of the foundation of the lower bunk that will permit the free passage of the wedge-block shown in Fig. 1 of the NPR (representing a child's torso) unless the openings are also large enough to permit the free passage of a 9-inch diameter sphere (to ensure the head can also pass through). In the ASTM standard, these passage requirements apply only to that portion of the end structure that is between the level of the lower bunk foundation support system and 9.0 inches (230 mm) above the sleeping surface of the maximum thickness mattress and foundation combined as recommended by the manufacturer.

In the fatal incidents of entrapment in the end structures of bunk beds where sufficient information was available, three occurred on beds that met the entrapment requirements in the ASTM standard. Of these, two involved entrapment in the upper bunk. In those two incidents, an 18-month-old infant and a child who was almost 5 years old slipped through the space between the end of the guardrail and the bed end structure and became wedged between the bed and a wall. These deaths are addressed in the original proposal by the requirement that one guardrail extend continuously between the bed's end structures. In the third incident, a 22-month-old child became entrapped by the head in an opening between the underside of the upper bunk foundation support and a curved structural member in the bunk-bed end structure. The Commission intended to address this death in the previous proposal by requiring that the torso probe in Fig. 1 be applied to all areas of the end

structure between the underside of the foundation of the upper bunk and the upper side of the foundation of the lower bunk. If the torso probe freely passes through an opening, the opening must also be large enough to permit the free passage of a 9-inch sphere, to allow head withdrawal.

After the original proposal, ASTM discussed whether to change the requirement in the ASTM standard addressing entrapment in lower bunk end structures to make it the same as that in the Commission's proposed rule. When ASTM members and CPSC staff discussed the details of the entrapment death of a 22-month-old child in a lower bunk end structure, mentioned above, it appeared that the opening in the structure of the metal bunk bed that was involved in the fatality could still present an entrapment hazard, even if it were modified to comply with the proposed requirement. The relevant portions of the bunk's end structure are shown in Figure A below.

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NOTE: Dimensions shown are the as-measured dimensions of the incident sample

Fig. A - End Structure of Bed Involved in Fatal Entrapment Incident Described in IDI #961126CWE5015

It is likely that this child placed his head through the wide portion of the opening then moved sideways until his neck was in the narrow portion of the opening. (A 22-month-old child's head is too large to go through the narrow portion of the opening.) After placing his neck into the narrow opening, his feet apparently slipped off the mattress of the lower bunk, suspending him by his head, and he strangled. Thus, the incident was a head-first neck entrapment, rather than a torso-first neck entrapment that would be addressed by the probe in Fig. 1 of the proposed standard.

For this bed to conform to the originally proposed requirement, the vertical dimension of the wider portion of the opening would have to be greater than 9 inches and the vertical dimension of the narrower portion would have to be less than 3½ inches (see Figure B). However, since a 22-month-old child's neck is significantly less than 3½ inches in diameter, the child could still become entrapped in the head-first manner described above.

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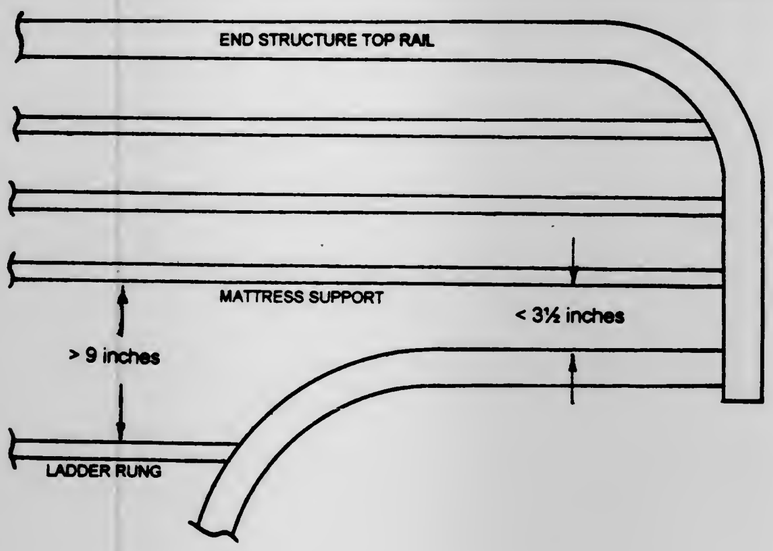


Fig. B - End Structure of Bed Modified to Comply With Entrapment Requirements in Rule Proposed in 3/3/99 Federal Register

There are two ways to modify the bed to prevent this type of entrapment. First, a vertical bar could be added to separate the wide and narrow portions of the opening (see Figure C). Second, the vertical dimension of the narrow portion of the opening could be reduced to less than 1⅞ inches, which is considered sufficient to prevent entry of the neck of a 5th percentile 2 year-old, accounting for tissue compression (see Figure D).

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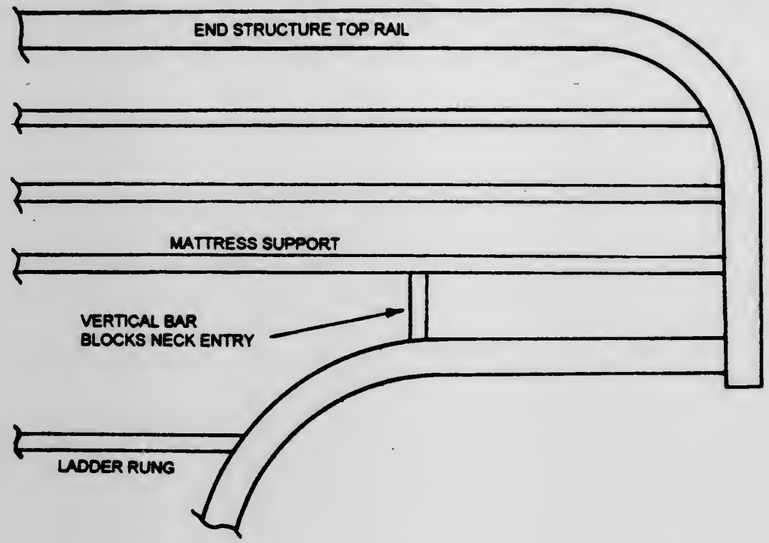


Fig. C – End Structure of Bed Modified to Add Vertical Bar Preventing Neck Entry into Narrow Portion of Opening

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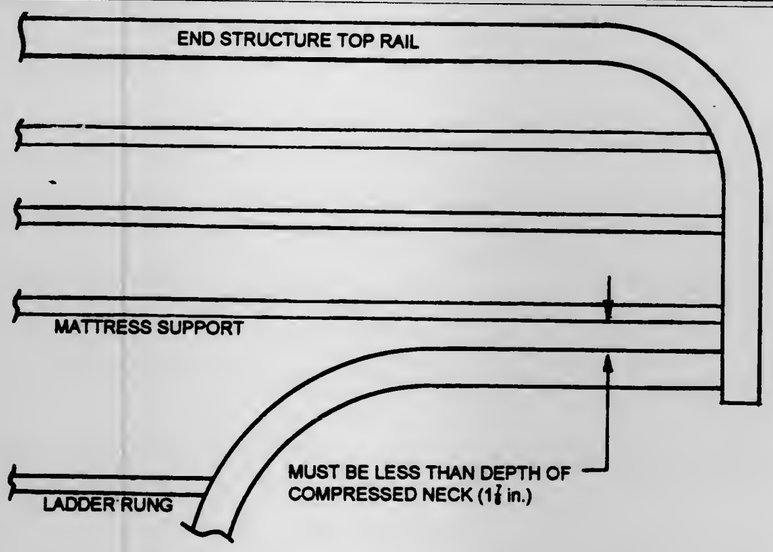


Fig. D – End Structure of Bed Modified to Reduce Vertical Dimension of Narrow Portion of Opening to Prevent Neck Entry

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B. The New Requirement

In order to protect against head-first entrapment in a bed's end structure, the Commission's staff developed a test procedure using the template shown in Fig. 2 to proposed Parts 1213 and 1513. This template and procedure are similar to those that were developed to address neck entrapment hazards in playground equipment structures and that are specified in ASTM F 1487–98, "Standard Specification for Playground Equipment for Public Use." Any portion of an opening in the bed's end structure below the foundation of the upper bunk that is required to be probed by the wedge-block probe shown in Figure 1 to proposed parts 1213 and 1513, and that will allow free passage of a 9-inch diameter sphere, must satisfy the new neck entrapment provisions proposed in this notice.

The template of Figure 2 embodies the following principles. First, a child will not be able to insert his or her neck sideways into an opening of less than 1.88 inches. (This dimension represents the neck breadth of 2.5 inches for a 5th percentile 2-year-old child, minus an allowance of 0.62 inches for tissue compression.)

Second, there is a minimal likelihood of entrapment when the boundaries of an opening converge on the neck at an included angle of greater than 75 degrees. See CPSC memorandum from Shelley Waters Deppa to John Preston, "Voluntary Standards for Gates and Enclosures," January 15, 1985. This angle was chosen to exclude the angles involved in neck entrapment accidents with baby gates and expandable enclosures.

In addition, in some boundary configurations, a child who slips while his/her head is in the opening will be removed from the opening by the force of gravity. In the proposed procedure, an opening that indicates a neck entrapment potential when tested with the template of Figure 2 is nevertheless allowed if its lower boundary slopes downward at 45 degrees or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

The template is used to protect against head-first entrapment as follows. First, all portions of the boundary of the opening are probed with the "A" section of the test template of Fig. 2. The template is inserted into the opening, with the plane of the template in the plane of the opening and with the "top" of the template perpendicular to the centerline of the portion of the boundary being probed. The template is then moved along the centerline of the portion of the boundary being probed until it is stopped by contact with the boundaries of the opening (see Fig. 3).

If there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template, the boundary is converging on a potential neck entrapment point at an angle of less than 75 degrees, and further investigation is required. (Contact with one or both upper corners of the template is not considered to be contact with a "side".)

To check further for the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with the template's plane perpendicular to both the plane of the opening and the centerline of the opening (see Fig. 4). If the neck portion can completely enter the opening (pass 0.75 inch or more beyond the points where contact with the sides of the "A" section of the template occurred), the opening may present a neck entrapment hazard. Such an opening is not allowed unless the lower boundary of the opening slopes downward at 45 degrees or more for the whole distance from the narrowest part of the opening the neck can reach to the larger (greater than 9-inch) part of the opening.

C. Preliminary Regulatory Analysis

The CPSA and FHSA require the Commission to publish a preliminary regulatory analysis of the proposed rule and its reasonable alternatives. This includes a discussion of the likely benefits and costs of the proposed rule and its reasonable alternatives. The Commission's preliminary regulatory analysis was published in the January 29, 1999, proposal. The additional requirement proposed in this notice does not significantly affect the results of that analysis. This new requirement would result in negligible additional costs to manufacturers, and its benefits would be small due to the small number of incidents.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 ("RFA") requires the Commission to address and give particular attention to the economic effects of the proposed rule on small entities. The original proposal's preliminary regulatory flexibility analysis concluded that the rule proposed at that time would not have a significant adverse effect on a substantial number of small entities. Because the additional requirement being proposed in this notice will not significantly increase the cost to manufacturers, the Commission certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

E. Preliminary Environmental Assessment

The proposed rule is not expected to have a significant effect on the materials used in the production and packaging of bunk beds, or in the number of units discarded after the rule becomes effective. Therefore, no significant environmental effects would result from the proposed mandatory rule for bunk beds.

F. Opportunities for Comment

Written comments limited to the issues raised by the additional requirement proposed in this notice may be submitted until September 22, 1999. There also will be an opportunity for interested parties to present oral comments on these issues on July 29, 1999. See the information under the headings **DATES** and **ADDRESSES** at the beginning of this notice. Any oral comments will be part of the rulemaking record.

Persons presenting oral comments should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners or the CPSC staff. The Commission reserves the right to further limit the time for any presentation and to impose restrictions to avoid excessive duplication of presentations.

List of Subjects in 16 CFR Parts 1213, 1500, and 1513

Consumer protection, Infants and children.

Effective date. The Commission originally proposed that the rule become effective 180 days after publication of the final rule. The Commission believes that the additional requirement proposed in this notice will cause only minor changes to presently produced bunk beds. Accordingly, manufacturers should still be able to make any modification to their bunk beds within the 180-day delayed effective date originally proposed.

In the **Federal Register** of March 3, 1999, the Commission proposed to amend Title 16, Chapter II, Subchapters B and C, of the Code of Federal Regulations by adding parts 1213 and 1513 and amending part 1500. For the reasons set out in the preamble, the Commission proposes the following additions to that proposal, as set forth below.

PART 1213—[AMENDED]

1. The authority citation for part 1213 continues to read as follows:

Authority: 15 U.S.C. 2056, 2058.

§ 1213.3 [Amended]

2. A new § 1213.3(b)(4) is added to read as follows:

* * * * *

(b) * * *

(4) All portions of the boundary of any opening required by §§ 1213.4(c)(1) and (2) to be probed by the wedge block of Fig. 1 this part, and that permits free passage of a 9-inch diameter sphere, must conform to the neck entrapment requirements of § 1213.4(c)(3).

§ 1213.4 [Amended]

3. A new § 1213.4(c)(3) is added to read as follows:

* * * * *

(c) * * *

(3) All portions of the boundary of any opening that is required to be probed by the wedge block of Fig. 1 of this part by paragraphs (c)(1) and (c)(2) of this section, and that permits free passage of a 9-inch diameter sphere, must satisfy the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this section addressing neck entrapment.

(i) Insert the "A" section of the test template shown in Fig. 2 of this part into the portion of the boundary of the opening to be tested, with the plane of the template in the plane of the opening and with the centerline of the top of the template (as shown in Fig. 2 of this part) aligned parallel to the centerline of the opening, until motion is stopped by contact between the test template and the boundaries of the opening (see Fig. 3 of this part). By visual inspection, determine if there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template. If simultaneous contact occurs, mark the contact points on the boundary of the opening and conduct the additional test described in paragraph (c)(3)(ii) of this section.

(ii) To check the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with its plane perpendicular to both the plane of the opening and the centerline of the opening (see Fig. 4 of this part). If the neck portion of the "B" section of the template completely enters the opening (passes 0.75 inch or more beyond the points previously contacted by the "A" section of the template), the opening is considered to present a neck entrapment hazard and fails the test, unless its lower boundary slopes downward at 45 degrees or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

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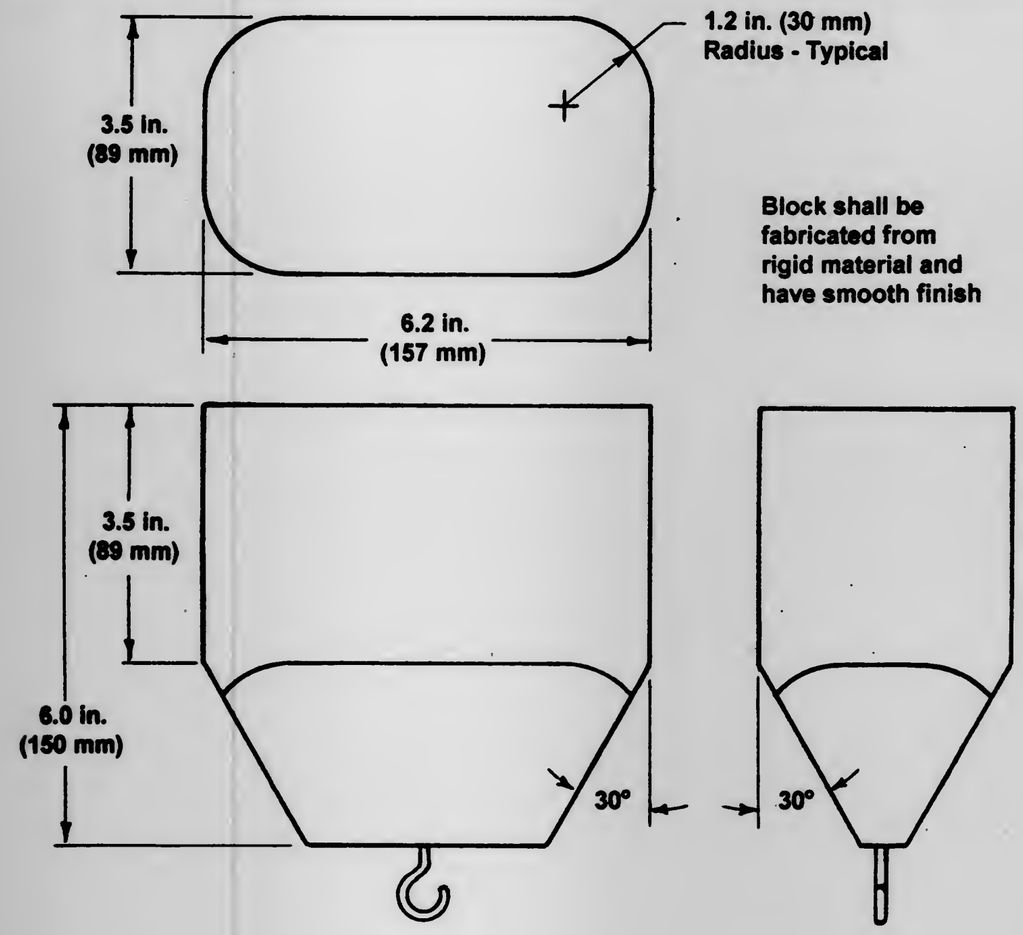
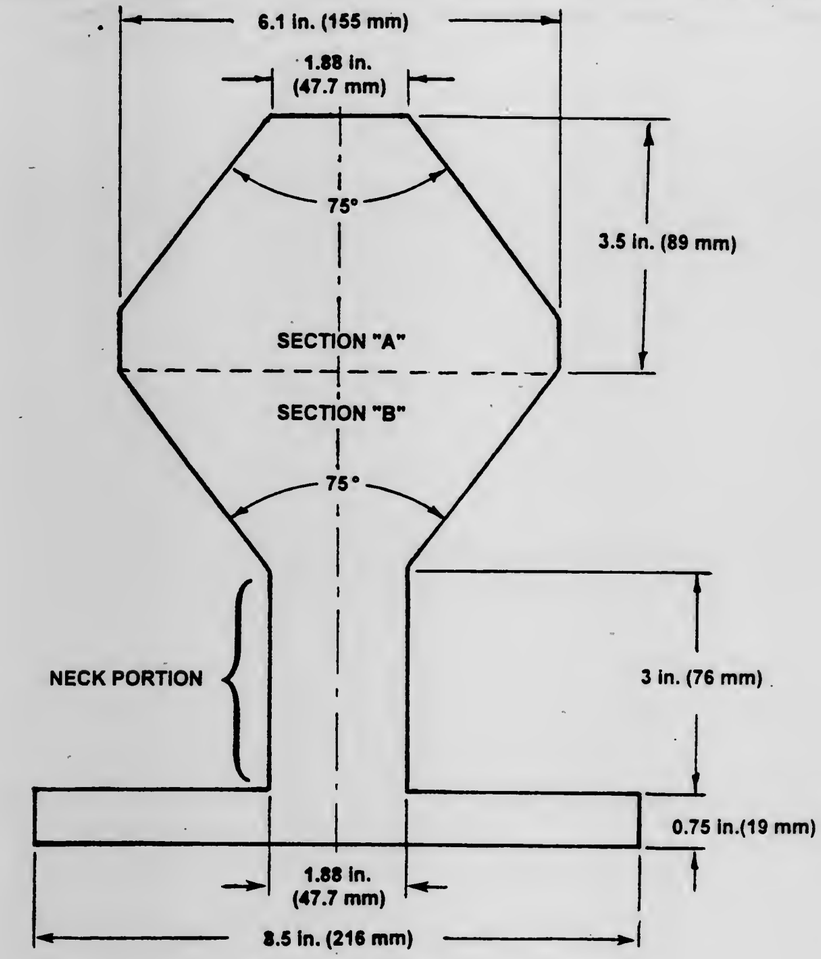


Figure 1 to Part 1213 - Wedge Block for Tests in § 1213.4(a), (b) and (c)



NOTE – Template to be constructed from any rigid material 0.75 in. (19 mm) thick

Fig. 2 – Test Template for Neck Entrapment

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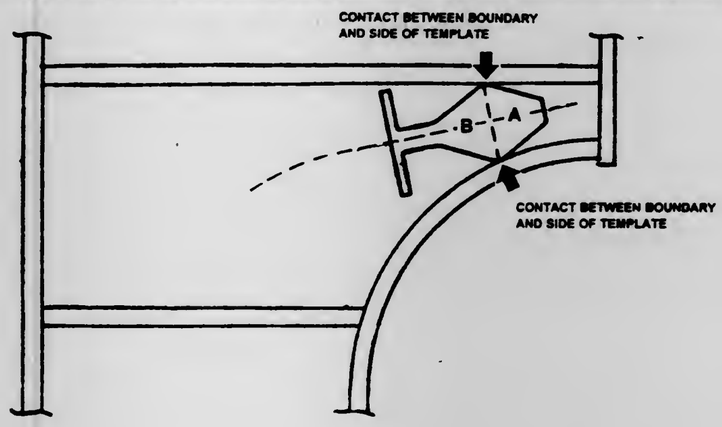


Fig. 3 - Motion of Test Template Arrested by Simultaneous Contact with Both Sides of "A" Section and Boundaries of Opening

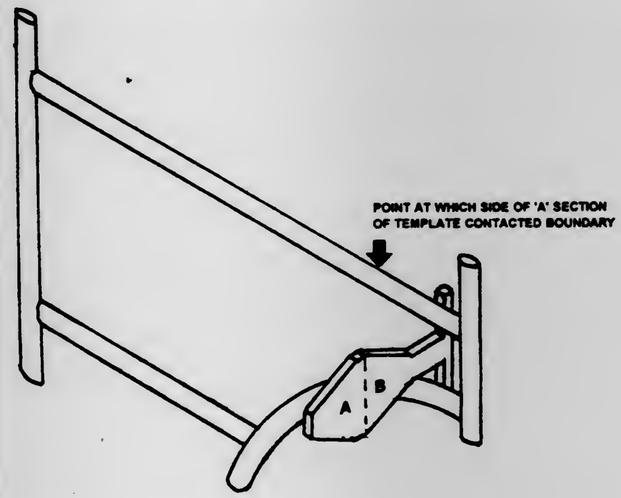


Fig. 4 – Neck Portion of "B" Section of Template Enters Completely into Opening

PART 1513—[AMENDED]

4. The authority citation for part 1513 continues to read as follows:

Authority: 15 U.S.C. 1261(f)(1)(D), 1261(5), 1262(e)(1), 1262(f)–(i).

§ 1513.3 [Amended]

5. A new § 1513.3(b)(4) is added to read as follows:

* * * * *

(b) * * *

(4) All portions of the boundary of any opening required by §§ 1513.4(c)(1) and (2) to be probed by the wedge block of Fig. 1 of this part, and that permits free passage of a 9-inch diameter sphere, must conform to the neck entrapment requirements of § 1513.4(c)(3).

§ 1513.4 [Amended]

6. A new § 1513.4(c)(3) is added to read as follows:

* * * * *

(c) * * *

(3) All portions of the boundary of any opening that is required to be probed by the wedge block of Fig. 1 of this part by paragraphs (c)(1) and (c)(2) of this section, and that permits free passage of a 9-inch diameter sphere, must satisfy the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this section addressing neck entrapment:

(i) Insert the "A" section of the test template shown in Fig. 2 of this part into the portion of the boundary to be tested, with the plane of the template in the plane of the opening and with the centerline of the top of the template (as shown in Fig. 2 of this part) aligned parallel to the centerline of the opening, until motion is stopped by contact between the test template and the boundaries of the opening (see Fig. 3 of this part). By visual inspection, determine if there is simultaneous contact between the boundary of the opening and both sides of the "A" section of the template. If simultaneous contact occurs, mark the contact points on the boundary of the opening and conduct the additional test described in paragraph (c)(3)(ii) of this section.

(ii) To check the potential for neck entrapment, place the neck portion of the "B" section of the template into the opening, with its plane perpendicular to both the plane of the opening and the centerline of the opening (see Fig. 4 of this part). If the neck portion of the "B" section of the template can completely enter the opening (passes 0.75 inch or more beyond the points previously contacted by the "A" section of the template), the opening is considered to present a neck entrapment hazard and fails the test, unless its lower boundary slopes downward at 45 degrees or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

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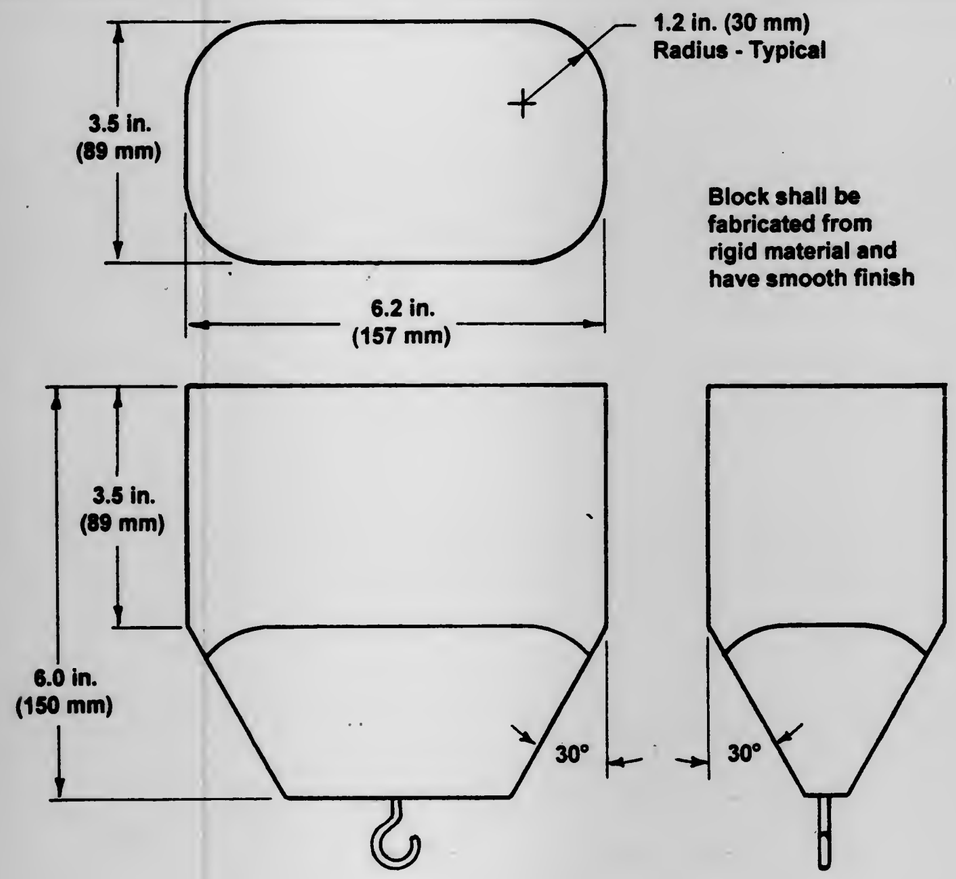
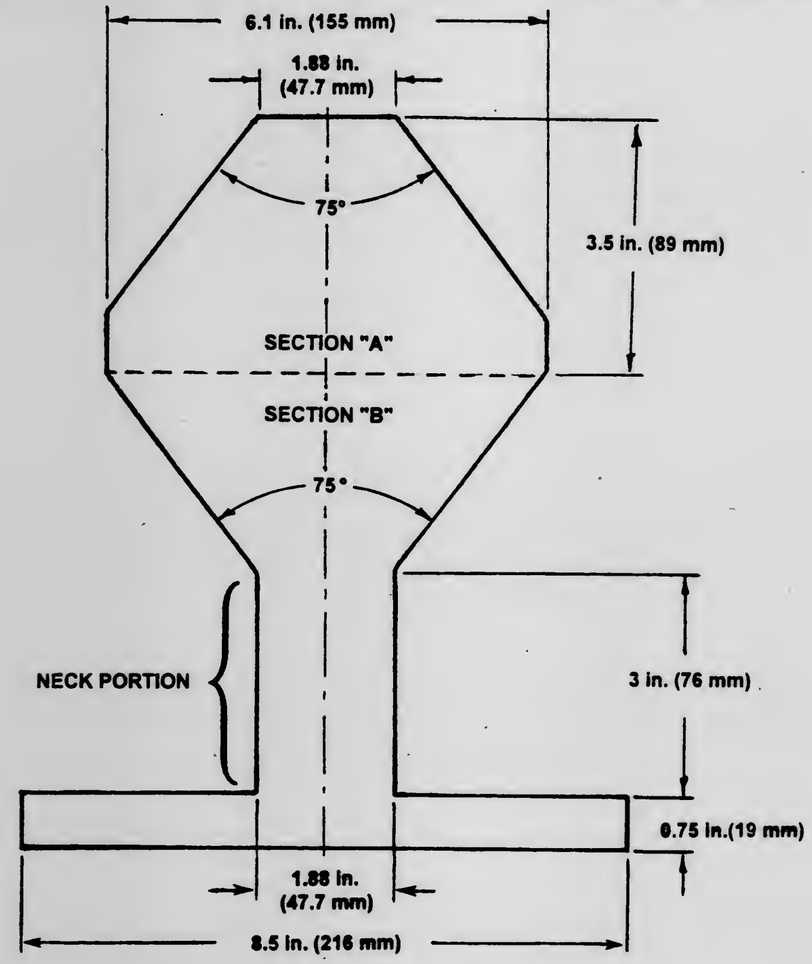


Figure 1 to Part 1213 - Wedge Block for Tests in § 1213.4(a), (b) and (c)



NOTE – Template to be constructed from any rigid material 0.75 in. (19 mm) thick

Fig. 2 – Test Template for Neck Entrapment

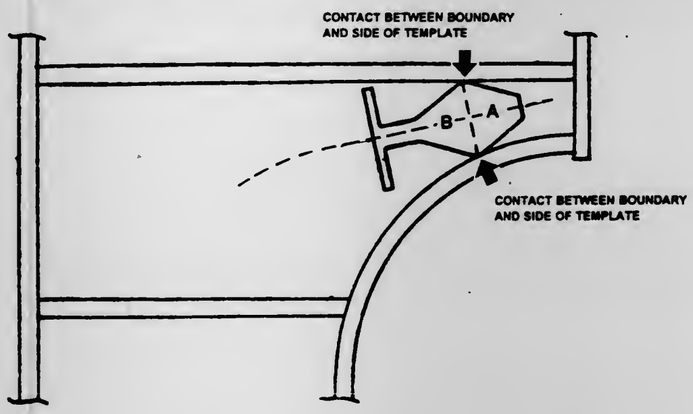


Fig. 3 - Motion of Test Template Arrested by Simultaneous Contact with Both Sides of "A" Section and Boundaries of Opening

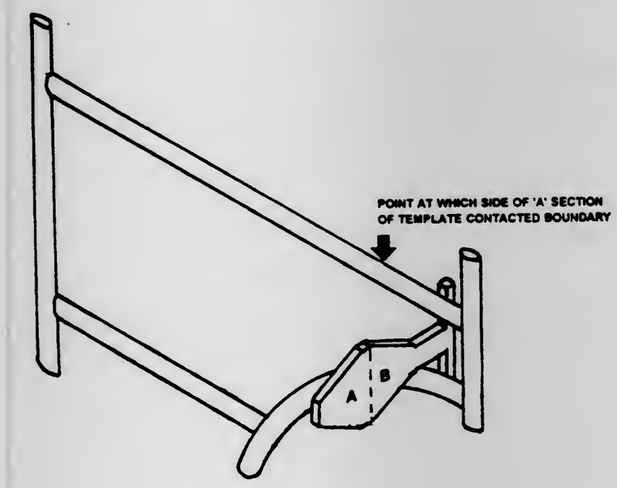


Fig. 4 – Neck Portion of "B" Section of Template Enters Completely into Opening

Dated: June 30, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–17087 Filed 7–8–99; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 5

[AG Order No. 2229–99]

RIN 1105–AA45

Foreign Agents Registration Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to amend its existing regulations implementing the Foreign Agents Registration Act of 1938, as amended (FARA or the Act). The proposed rule would establish new regulations needed as a result of the passage of the Lobbying Disclosure Act of 1995 (LDA) and the Lobbying Disclosure Technical Amendments Act of 1998 (LDTAA), both of which amended FARA. The proposed regulations clarify the scope of the amended Act and some exemptions to the Act, and make technical amendments to existing regulations.

DATES: Written comments must be submitted on or before September 7, 1999.

ADDRESSES: Please address all written comments concerning this proposed rule to Marshall R. Williams, Chief, Registration Unit, Internal Security Section, Criminal Division, United States Department of Justice, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Marshall R. Williams, Chief, Registration Unit or Heather H. Hunt, Attorney, Registration Unit on (202) 514–1216 or by facsimile on (202) 514–2836. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the Foreign Agents Registration Act of 1938 (FARA or the Act), 22 U.S.C. 611–621, agents of foreign principals are required to register with the Department of Justice in order to make periodic public disclosure of their relationship with the foreign principal, activities on behalf of the foreign principal, and receipts and disbursements in support of these activities. In the Lobbying Disclosure Act of 1995, Public Law 104–65 (LDA), and the Lobbying Disclosure Technical Amendments Act of 1998, Public Law 105–166 (LDTAA), Congress amended FARA in several respects. First, Congress generally narrowed the scope of FARA to agents of foreign governments and foreign political parties. Under new section 3(h) of FARA, 22 U.S.C. 613(h), agents of foreign principals other than foreign governments or foreign political parties need not register under FARA if such agents engage in lobbying activities and register under the LDA. Second, Congress repealed section 1(q), 22 U.S.C. 611(a), which had provided a safe harbor specifying circumstances in which agents of multinational corporations would be exempt from registration under section 3(d)(2) of the Act, 22 U.S.C. 613(d)(2). When Congress authorized registration under the LDA rather than FARA for lobbying activities on behalf of foreign principals other than foreign governments and foreign political parties, section 1(q) became largely unnecessary.

In addition, in the LDA Congress clarified the applicability of an exemption in section 3(g), 22 U.S.C. 613(g), for legal representation of a foreign principal in certain proceedings. Finally, Congress substituted the term "informational materials" for the term "political propaganda" throughout FARA, except in section 4(e), 22 U.S.C. 614(e), which concerns the dissemination of materials on behalf of the foreign principal, and in section 11, 22 U.S.C. 621, which concerns the filing of a semi-annual report with Congress.

These amendments require changes in regulations implementing, among others, sections 3(d)(2), 3(g), 3(h) and 4 of FARA. First, this proposed rule clarifies the reach of section 3(d)(2) in light of the repeal of section 1(q) of FARA. Section 3(d)(2) exempts from registration under FARA activities of a political nature "not serving predominantly a foreign interest." Under the rule, activities of an agent on behalf of a foreign commercial interest, even if the activities are political in nature and are directed or controlled by a foreign government or foreign political party, do not require registration under FARA because such activities do not "serve predominantly a foreign interest" for purposes of 3(d)(2). However, the new regulation clarifies that even after the deletion of section 1(q), any person, including a foreign or domestic corporation, who engages in political activities, not of a commercial nature, on behalf of a foreign government or foreign political party is required to register under FARA, as these activities will "serve predominantly a foreign interest" and thus not be exempt under section 3(d)(2).

Second, the rule clarifies the circumstances in which agents of foreign principals, other than foreign governments or foreign political parties, can claim the new exemption provided in section 3(h), and clarifies the reach of the revised "attorneys' exemption" in section 3(g). In addition, the proposed rule strikes the term "political propaganda" wherever it appears in the regulations and substitutes the LDA term, "informational materials." Finally, the rule makes certain technical amendments to the existing regulations to delete reference to other repealed sections of the Act and to enable the Registration Unit to more effectively administer the statute by allowing for electronic filing in the future.

Certifications and Determinations

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The rule primarily affects those persons required to register pursuant to FARA, currently approximately 525 primary registrants and 2,464 individual short form registrants.

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that it does not constitute "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly it has not been reviewed by the Office of Management and Budget.

In addition, the Department of Justice certifies that this rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. The rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Furthermore, this rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Finally, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on

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distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

Accordingly, the Department of Justice proposes to amend part 5 of title 28 of the Code of Federal Regulations, chapter I, as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

1. The authority citation for part 5 continues to read as follows:

Authority: 28 U.S.C. 509, 510; section 1, 56 Stat. 248, 357 (22 U.S.C. 620); title I, Pub. L. 102–395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

§ 5.5 [Amended]

2. a. Amend § 5.5 in paragraph (d)(10) by adding the words "informational materials," following "reports,".

b. Amend § 5.5 in paragraph (d)(11) by adding the words "informational materials," following "reports,".

§ 5.100 [Amended]

3. a. Amend § 5.100 in paragraph (c) by removing "1 (q),".

b. Amend § 5.100 in paragraph (d) by removing "1 (q),".

§ 5.200 [Amended]

4. Amend § 5.200 in paragraph (b) by removing the words "Form OBD–63" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.201 [Amended]

5. a. Amend § 5.201 in paragraph (a)(1) by removing the words "Form OBD–67" and adding, in their place, the words "a form provided by the Registration Unit".

b. Amend § 5.201 in paragraph (a)(2) by removing the words "Form OBD–65" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.202 [Amended]

6. a. Amend § 5.202 in paragraph (b) by adding the work "registrable" before the word "activity".

b. Amend § 5.202 in paragraph (e) by removing the words "Form OBD–66" and adding, in their place, the words "a form provided by the Registration unit".

§ 5.203 [Amended]

7. Amend $5.203 in paragraph (a) by removing the words "Form OBD–64" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.204 [Amended]

8. Amend § 5.204 in paragraph (a) by removing the words "Form OBD–68" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.205 [Amended]

9. Amend § 5.205 in paragraph (a) by removing the words "OBD–64" and adding, in their place, the words "the supplemental statement form.

§ 5.206 [Amended]

10. Amend § 5.206 in paragraph (b) by adding the words "or if it is filed in an electronic format acceptable to the registration Unit" following the words "ink".

11. Revise paragraph (c) of § 5.304 to read as follows:

§ 5.304 Exemptions under sections 3(d) and (e) of the Act.

* * * * *

(c) For the purpose of section 3(d)(2) of the Act, the term "other activities not serving predominantly a foreign interest" includes political activities on behalf of foreign commercial interests, even if such activities are directed or controlled by a foreign government or foreign political party. The term does not include other political activities that are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in substantial part by a government of a foreign country or a foreign political party.

* * * * *

12. Revise paragraph (a) of § 5.306 to read as follows:

§ 5.306 Exemption under section 3(g) of the Act.

* * * * *

(a) Attempts to influence of persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record, shall include only such attempts to influence or persuade with reference to formulating, adopting, or changing the domestic or foreign policies of the United States of with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party; and

* * * * *

§ 5.306 [Amended]

13. Amend § 5,306 in the last sentence of paragraph (b) by removing the word "like" and adding, in its place, the word "fall".

14. Add § 5.307 to read as follows:

§ 5.307 Exemption under section 3(h) of the Act.

For the purpose of section 3(h) of the Act, the burden of establishing that registration under the Lobbying Disclosure Act of 1995 (LDA), 2 U.S.C. 1601 *et seq.*, has been made shall fall upon the person claiming the exemption. The Department of Justice will accept as prima facie evidence of registration a duly executed registration statement filed pursuant to the LDA. In no case where a foreign government or foreign political party is the ultimate foreign principal will the exemption under section 3(h) be recognized.

§ 5.400 [Amended]

15. a. Amend the heading of § 5.400 by removing the words "political propaganda" and adding, in their place, the words "informational materials".

b. Amend § 5.400 in paragraph (a) by removing the words "two copies of each item of political propaganda" and adding, in their place, the words "informational materials", and by adding, before the period, the words "no later than 48 hours after the beginning of the transmittal of the informational materials".

c. Amend § 5.400 in paragraph (b) by removing the words "two copies of an item of political propaganda" and adding, in their place, the words "informational materials" and by removing the word "material" and adding, in its place, "materials".

d. Amend § 5.400 in the first sentence of paragraph (c) by removing the words "two copies of a motion picture containing political propaganda" and adding, in their place, the words "a copy of a motion picture".

§ 5.401 [Removed]

16. Remove § 5.401.

§ 5.402 [Amended]

17. a. Revise the heading of § 5.402 as set forth below.

b. Amend § 5.402 in paragraph (a) by removing the words "political propaganda" and adding, in their place, the words "informational materials", by removing the words "it has" and adding, in their place, the words "they have", and by removing the word "its" and adding in its place, the word "their".

c. Amend § 5.402 in paragraph (b) by removing the words "An item of political propaganda which is" and adding, in their place, the words "Informational materials", and removing the words "which is" and adding, in their place, the words "which are", and by removing the words "such item" and adding, in their place, the words "such materials".

d. Amend § 5.402 in paragraph (c) by removing the words "An item of political propaganda which is" and adding, in their place, the words "Informational materials", and by removing the phrase "which is not" and adding, in its place, the phrase "which are not".

e. Amend § 5.402 in paragraph (d) by removing the words "Political propaganda as defined in section 1(j) of the Act which is" and adding, in their place, the words "Informational materials that are", and by removing the words "is caused" and adding, in its place, the words "are caused".

f. Amend § 5.402 in paragraph (e) by removing the words "political propaganda as defined in section 1(j) of the Act" and adding, in their place, the words "informational materials".

g. Amend § 5.402 in paragraph (f) by removing the words "political propaganda" and adding, in their place, the words informational materials".

h. Add new paragraph (g) to § 5.402 to read as follows:

§ 5.402 Labeling informational materials

* * * * *

(g) For the purpose of section 4(b) of the Act, a statement will be deemed conspicuous if it prefaces or accompanies the informational materials.

§ 5.500 [Amended]

18. Amend § 5.500 in paragraph (a)(4) by removing the words "political propaganda has" and adding, in their place, the words "informational materials have".

§ 5.600 [Amended]

19. Amend § 5.600 by adding the words "informational materials," following the words "Registration statements," and by removing the words "from 10 a.m. to 4 p.m." and adding, in their place, the words "during the posted hours of operation.".

§ 5.601 [Amended]

20. a. Amend § 5.601 in paragraph (a) by adding the words "informational materials," following the word "thereto,".

b. Amend § 5.601 in paragraph (b) by adding the words "informational materials," following the word "thereto,".

Dated: June 26, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–16941 Filed 7–8–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR–029–FOR]

Arkansas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Arkansas abandoned mine land reclamation plan (Arkansas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Arkansas plan relating to definitions, purposes of the reclamation program, identification of eligible lands and water, ranking and selection procedures, coordination of reclamation work, acquisition management and disposition of land and water, reclamation on private land, rights of entry, public participation, organizational structure, personnel and staffing policies, purchasing and procurement systems, management accounting, and abandoned mine land (AML) problem description. Arkansas intends to revise its amendment in response to our letter dated September 26, 1994, that we sent to the State under 30 CFR 884.15(d). The amendment also includes changes made at Arkansas' own initiative.

This document gives the times and locations that the Arkansas plan and the amendment to that plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., August 9, 1999. If requested, we will hold a public hearing on the amendment on August 3, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on July 26, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Arkansas plan, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430

Arkansas Department of Environmental Quality, Russellville Field Office, 1220 West 2nd Street, Russellville, Arkansas 72801, Telephone: (501) 968–7339

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: *mwolfrom@tokgw.osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Plan

On May 2, 1983, the Secretary of the Interior approved the Arkansas plan. You can find background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 2, 1983, **Federal Register** (48 FR 19710). You can find later actions on the Arkansas plan at 30 CFR 904.25 and 904.26.

II. Description of the Proposed Amendment

By letter dated June 16, 1999 (Administrative Record No. AR–565), Arkansas sent us an amendment to its plan under SMCRA. Arkansas sent the amendment in response to a letter dated September 26, 1994, that we sent to the State under 30 CFR 884.15(d). The amendment also includes changes made at Arkansas' own initiative. Below is a summary of the changes proposed by Arkansas. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES.**

A. Arkansas proposes to add to the reclamation plan a table of contents with numbered headings and lettered sub-headings.

B. Arkansas proposes to add Part III—"Definitions," to the reclamation plan.

C. Part IV—"Policies and Procedures for the State Abandoned Mine Land 'Reclamation Program."

1. Arkansas proposes to rename section 884.13(c)(1), "Introduction," and to remove the old SMCRA priority 4 (Research and Demonstration) project selection criteria. Arkansas also proposes to move descriptions of abandoned mine problem types from this section to section 884.13(e)(3). Arkansas also proposes to move the

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section entitled, "Corrective Measures to be used in reclamation of Abandoned Mine Lands," to section 884.13(e)(3) and to substantially shorten it.

2. Arkansas proposes to add a section, "Identification of Eligible Lands and Water." The changes pertain to reclamation of interim program and bond insolvency sites.

3. Arkansas proposes to add a new subsection to section 884.13(c)(2), "Ranking and Selection Procedures." Also, Arkansas proposes to remove the project ranking matrix form contained in the original reclamation plan and to replace it with a reference to the evaluation criteria contained in the regulations at ASCMRC 874.14.

4. Arkansas proposes to make editorial modifications to section 884.13(c)(3), "Coordination of Reclamation Work," primarily to update the names and relationships of agencies and their roles in abandoned mine land reclamation projects. Arkansas also proposes to revise and enhance the description of AML project coordination efforts related to resource issues.

5. Arkansas proposes to revise section 884.13(c)(4) to reduce redundancy with the state regulations. In addition, Arkansas proposes to remove most of the description of land and water acquisition, directing the reader, instead, to follow procedures established in ASCMRC 879.11.

6. Arkansas proposes to revise section 884.13(c)(5), "Reclamation on Private Land," to reduce redundancy with the state regulations. The proposed revision provides a brief overview of policies for placement, waiver, and satisfaction of liens, and refers the reader to ASCMRC 882.13 and 882.14.

7. Arkansas proposes to revise section 884.13(c)(6), "Rights of Entry," to reduce redundancy with the state regulations. The proposed revision provides a brief overview of policies for entry on private land and refers the reader to ASCMRC 882.13 and 882.14.

8. Arkansas proposes to revise section 884.13(c)(7), "Public Participation Policies," to reduce redundancy with the state regulations and to eliminate obsolete information. The proposed revision provides a brief overview of current public participation practices.

D. Part V—"Administrative and Management Structure."

1. Arkansas proposes to revise section 884.13(d)(1), "Organizational Structure," to update the organizational charts.

2. Arkansas proposes to revise section 884.13(d)(2), "Personnel and Staffing Policies," to update the list of State and Federal laws, regulations, and policies related to personnel practices.

3. Arkansas proposes to revise section 884.13(d)(3), "Purchasing and Procurement Systems," to comply with 30 CFR 874.16 and 875.20 regarding "Contractor Responsibility" and to identify 43 CFR Part 12 as the guidance by which Federal grant funds will be administered in the state program.

4. Arkansas proposes to revise section 884.13(d), "Management Accounting," to identify 43 CFR Part 12 as the guidance for administering Federal grant funds in the state program and to make minor editorial corrections.

E. Part VI—"General Description of AML Problems"

Arkansas proposes to add section 884.13(e) to replace information previously contained in the "Introduction" section of the reclamation plan. Section 884.13(e) contains an overview of reclamation problem types and guides the reader to the OSM Abandoned Mine Land Inventory Directive and to OSM's December 30, 1996 (61 FR 68777), AML Program Guidelines for additional information.

III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Arkansas plan.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on July 26, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have spoken.

Public Meeting

If only one person requests an opportunity to speak at a hearing, we may hold a public meeting, rather than a public hearing. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

This rule does not require an environmental impact statement since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–17428 Filed 7–8–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 775

RIN 0703–AA51

Policies and Responsibilities For Implementation of the National Environmental Policy Act Within the Department of the Navy

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule and withdrawal of proposed rule.

SUMMARY: The Department of the Navy (DON) is revising portions of its regulations which establish the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). This revision clarifies when certain DON actions must be studied to determine their effect on the human environment and what types of activities are excluded from the NEPA documentation requirements. DON is also withdrawing an earlier proposed rule published in the **Federal Register** on February 25, 1999.

DATES: Comments must be received by September 7, 1999.

ADDRESSES: Interested parties should submit written comments to: Mr. Lew Shotten, Office of the Assistant Secretary of the Navy (Installations and Environment), 2000 Navy Pentagon, Washington, DC 20350.

FOR FURTHER INFORMATION CONTACT: Mr. Lew Shotten, Office of the Assistant Secretary of the Navy (Installations and Environment), 703–588–6671.

SUPPLEMENTARY INFORMATION: The Department of the Navy published a document in the **Federal Register** of February 25, 1999, (64 FR 9286) proposing to revise 32 CFR part 775 in its entirety. Due to errors in that submission it is withdrawn and these proposed amendments to 32 CFR part 775 are submitted.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) establishes national policy and goals for protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports significantly affecting the quality of the human environment.

Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR parts 1500–1508) on November 29, 1978, which are binding on all federal agencies as of July 30, 1979. These regulations require each federal agency, as necessary, to adopt implementing procedures to supplement the CEQ regulations. Section 1507.3(b) of the CEQ regulations identifies those sections of the regulations that must be addressed in agency procedures.

The proposed rule revises the Department's implementing regulations that were originally published on August 20, 1990.

Significant changes that these amendments bring about include: revision of and additions to the DON list of approved categories of actions excluded (CATEXed) from further documentation under NEPA; revised criteria for disallowing the application of listed CATEXs; and, assignment of responsibilities to the Assistant Secretary of the Navy (Research, Development and Acquisition), the General Counsel of the Navy, and the Judge Advocate General of the Navy.

The Department of the Navy has determined that this regulation is not a significant rule as defined by Executive Order 12866 and is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)).

List of Subjects in 32 CFR Part 775

Environmental impact statements.

Accordingly, part 775 of chapter VI of title 32 of the Code of Federal Regulations is proposed to be amended as follows:

PART 775—POLICIES AND RESPONSIBILITIES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT WITHIN THE DEPARTMENT OF THE NAVY

1. The authority for part 775 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 4321–4361; 40 CFR parts 1500–1508.

2. Section 775.1 is revised to read as follows:

§ 775.1 Purpose and Scope.

(a) To implement the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, 40 CFR 1500–1508, that direct environmental planning procedures, and to assign responsibilities within the Department of the Navy (DON) for preparation, review, and approval of environmental documents prepared under NEPA.

(b) The policies and responsibilities set out in this part apply to the DON, including the Office of the Secretary of the Navy, and Navy and Marine Corps commands, operating forces, shore establishments, and reserve components. This part is limited to the actions of these elements with environmental effects in the United States, its territories, and possessions.

3. Section 775.2 is revised to read as follows:

§ 775.2 Definitions.

(a) *Action.* A new or continuing activity, program, project, or exercise

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which is under the control and direction of the DON and that may change the physical environment or impact natural resources. An action is considered a proposed action and the requirements of this instruction become applicable when the action proponent has identified a program, project, exercise, or other activity and is actively preparing to make a decision among one or more alternative means of executing the program, project, exercise or other activity.

(b) *Action proponent.* The commander, commanding officer, or civilian director of a unit, activity, or organization who initiates a proposal for action, as defined in 40 CFR 1508.23, and who has command and control authority over the action once it is authorized. For some actions, the action proponent will also serve as the decisionmaking authority for that action. In specific circumstances, the action proponent and decisionmaker may be identified in Navy Regulations, other SECNAV Instructions, operational instructions and orders, acquisition instructions, and other sources which set out authority and responsibility within the DON.

(c) *Environmental Impact Statement (EIS).* An environmental document prepared according to the requirements of Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) for a major action which will have a significant effect on the quality of the human environment.

(d) *Environmental Assessment (EA).* A concise document prepared according to the requirements of 40 CFR parts 1500–1508 which briefly provides sufficient evidence and analysis for determining whether to prepare an EIS. An EA aids compliance with NEPA when no EIS is necessary and facilitates preparation of an EIS when one is necessary.

(e) *Categorical Exclusion (CATEX).* A published category of actions which, under normal conditions, are excluded from further documentation requirements under NEPA.

(f) *Record of Decision (ROD).* An environmental document signed by an appropriate official of the DON. A ROD sets out a concise summary of the final decision and selected measures for mitigation (if any) of adverse environmental impacts of the alternative chosen from those considered in an EIS.

(g) *Finding of No Significant Impact (FONSI).* A document which sets out the reasons why an action not otherwise categorically excluded will not have a significant impact on the human environment, and for which an EIS will not therefore be prepared. A FONSI may be one result of review of an EA.

4. Section 775.3 is revised to read as follows:

§ 775.3 Policy.

(a) It is the DON policy regarding NEPA, consistent with its mission and the environmental laws and regulations of the United States, to:

(1) Initiate the NEPA processes as soon as possible in the course of identifying a proposed action.

(2) Develop and carefully consider a reasonable range of alternatives for achieving the purpose(s) of proposed actions.

(3) Assign responsibility for preparation of action specific environmental analysis under NEPA to the action proponent. The action proponent should understand the plans, analyses, and environmental documents related to that action.

(b) NEPA is intended to ensure that environmental issues are fully considered and incorporated into the federal decision making process. Consequently, actions for which the DON has no decision making authority, such as those carried out under a non discretionary mandate from Congress (e.g., congressional direction to transfer federal property to a particular entity for a particular purpose) or as an operation of law (e.g., reversionary interests in land recorded at the time the property was obtained), are not major federal actions in the context of NEPA and require no analysis or documentation under NEPA or CEQ regulations.

5. Section 775.4 is revised to read as follows:

§ 775.4 Responsibilities.

(a) The Assistant Secretary of the Navy (Installations and Environment) (ASN (I&E)) shall:

(1) Act as principal liaison with the Office of the Secretary of Defense, the Council on Environmental Quality, the Environmental Protection Agency, other federal agencies, Congress, state governments, and the public with respect to significant environmental planning matters.

(2) Direct the preparation of appropriate environmental documents and, with respect to those matters governed by SECNAV Instruction 5000.2 series, advise the Assistant Secretary of the Navy (Research Development and Acquisition (ASN(RD&A)) concerning environmental issues and concerning the appropriate level of environmental planning document needed in any particular circumstance.

(3) Except for proposed acquisition-related actions addressed in paragraph (b)(2) of this section, review, sign, and approve for publication, as appropriate, documents prepared under NEPA.

(4) Establish and publish a list of categorical exclusions for the DON.

(b) The Assistant Secretary of the Navy (Research, Development and Acquisition (ASN(RD&A)) shall, in accordance with SECNAV Instruction 5000.2 series:

(1) Ensure that DON acquisition programs and procurements comply with NEPA.

(2) Review, sign, and approve for publication, as appropriate, environmental documents prepared under NEPA for proposed acquisition-related actions.

(c) The General Counsel of the Navy and the Judge Advocate General of the Navy shall:

(1) Ensure that legal advice for compliance with environmental planning requirements is available to all decision-makers.

(2) Advise the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps as to the legal requirements that must be met, and the conduct and disposition of all legal matters arising in the context of environmental planning.

(d) The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) shall:

(1) Implement effective environmental planning throughout their respective Services.

(2) Prepare and issue instructions or orders to implement environmental planning policies of the DON. Forward proposed CNO/CMC environmental planning instructions or orders to ASN (I&E) and, when appropriate, ASN(RD&A), for review and comment prior to issuance.

(3) Ensure that subordinate commands establish procedures for implementing mitigation measures described in environmental planning documents.

(4) Provide coordination as required for the preparation of environmental documents for actions initiated by non-DON/DOD entities, state or local agencies and/or private individuals for which Service involvement may be reasonably foreseen.

(5) Bring environmental planning matters that involve controversial issues or which may affect environmental planning policies or their implementation to the attention of ASN(I&E), and where appropriate ASN(RD&A), for coordination and determination.

6. Section 775.6 is amended by revising paragraphs (a), (b), (e) and (f) to read as follows:

§ 775.6 Planning considerations.

(a) An EIS must be prepared for proposed major federal actions that clearly will have significant impacts on the human environment. The agency decision in the case of an EIS is reflected in a ROD.

(b) Where a proposed major federal action has the potential for significantly affecting the human environment, but it is not clear whether the impacts of that particular action will in fact be significant, or where the nature of an action precludes use of a categorical exclusion, an EA may be used to assist the agency in determining whether to prepare an EIS. If the agency determination in the case of an EA is that there is no significant impact on the environment, the findings will be reflected in a FONSI. If the EA determines that the proposed action is likely to significantly affect the environment (even after mitigation), than an EIS will be prepared.

* * * * *

(e) Where a federal agency has determined through experience, studies, or prior NEPA analysis that impacts normally resulting from a particular category of actions are not significant, a categorical exclusion (CATEX) may be used to exclude the proposed action from further analysis. Even though a proposed action generally is covered by a listed categorical exclusion, a categorical exclusion will not be used if the proposed action:

(1) Would adversely affect public health or safety;

(2) Involves effects on the human environment that are highly uncertain, involve unique or unknown risks, or which are scientifically controversial;

(3) Establishes precedents or makes decisions in principle for future actions which have the potential for significant impacts;

(4) Threatens a violation of federal, state, or local environmental laws applicable to the Department of the Navy; or

(5) Involves an action that, as determined in coordination with the appropriate resource agency, may:

(i) Have an adverse effect on federally-listed endangered/threatened species or marine mammals;

(ii) Have an adverse effect on coral reefs or on federally designated wilderness areas, wildlife refuges, marine sanctuaries, or park lands;

(iii) Adversely affect the size, function or biological value of wetlands and is not covered by a nation-wide or regional permit;

(iv) Have an adverse effect on archaeological resources or resources (including but not limited to ships, aircraft, vessels and equipment) listed or determined eligible for listing on the National Register of Historic Places;

(v) Result in an uncontrolled or unpermitted release of hazardous substances or require a conformity determination under standards of the Clean Air Act General Conformity Rule.

(f) *Categorical exclusions.* The following are actions which, under normal conditions, are categorically excluded from further documentation requirements under NEPA. These exclusions are separated into two groupings. Group I consists of actions which clearly do not have the potential for causing significant impacts on the human environment and consequently do not meet the basic definition of major federal action in the context of NEPA. Group II consists of actions which have the potential for causing significant impacts on the human environment but which, through experience, studies, or prior NEPA analysis, have been shown not to have significant environmental impacts. A decision to forego preparation of an EA or EIS on the basis of one or more categorical exclusions in Group II shall be documented by identifying the applicable CATEX and describing the proposed action to the extent required to support selection and use of a CATEX. Application of a categorical exclusion does not affect the applicability of other laws/regulations (e.g., Endangered Species Act, Clean Water Act, and National Historic Preservation Act) to the proposed action.

(1) Group I Categorical Exclusions:

(i) Routine fiscal, administrative, and recreation/welfare activities, including administration of contracts;

(ii) Routine law and order activities performed by military personnel, military police, or other security personnel, including physical plant protection and security;

(iii) Routine use and operation of existing facilities, laboratories, and equipment;

(iv) Administrative studies, surveys, and data collection;

(v) Issuance or modification of administrative procedures, regulations, directives, manuals, or policy;

(vi) Military ceremonies;

(vii) Routine procurement of goods and services;

(viii) Routine repair and maintenance of buildings, facilities, vessels, aircraft and equipment associated with existing operations and activities (e.g., localized pest management activities, minor erosion control measures, painting, refitting);

(ix) Training of an administrative or classroom nature;

(x) Routine personnel actions;

(xi) Routine movement of mobile assets (such as ships and aircraft) for homeport reassignments, for repair/overhaul, or to train/perform as operational groups where no new support facilities are required;

(xii) Routine procurement, management, storage, handling, installation, and disposal of commercial items, where the items are used and handled in accordance with applicable regulations (e.g., consumables, electronic components, computer equipment, pumps).

(2) Group II Categorical Exclusions:

(i) Actions to conform or provide conforming use specifically required by new or existing applicable legislation or regulations, (e.g., hush houses for aircraft engines, scrubbers for air emissions, improvements to stormwater and sanitary and industrial wastewater collection and treatment systems, and installation of fire fighting equipment);

(ii) The modification of existing systems or equipment when the environmental effects will remain substantially the same, and the use is consistent with applicable regulations;

(iii) Movement, handling and distribution of materials, including hazardous materials/wastes that when moved, handled, or distributed are in accordance with applicable regulations;

(iv) New activities conducted at established laboratories and plants, (including contractor-operated laboratories and plants) where all airborne emissions, waterborne effluent, external ionizing and non-ionizing radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state, and local laws and regulations;

(v) Studies, data, and information gathering that involve no permanent physical change to the environment, (e.g., topographic surveys, wetlands mapping, surveys for evaluating environmental damage, and engineering efforts to support environmental analyses);

(vi) Temporary placement and use of simulated target fields (e.g., inert mines, simulated mines, or passive hydrophones) in fresh, estuarine, and marine waters for the purpose of military training exercises or research, development, test and evaluation;

(vii) Installation and operation of passive scientific measurement devices (e.g., antenna, tide gauges, weighted hydrophones, salinity measurement devices, and water quality measurement devices) where use will not result in

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changes in operations tempo and is consistent with applicable regulations;

(viii) Short term increases in air operations up to 50 percent of the typical operation rate, or increases of 50 operations per day, whichever is less;

(ix) Decommissioning, disposal, or transfer of Navy vessels, aircraft, vehicles, and equipment when conducted in accordance with applicable regulations, including those regulations applying to removal of hazardous materials;

(x) Non-routine repair, renovation, and donation or other transfer of structures, vessels, aircraft, vehicles, landscapes or other contributing elements of facilities listed or eligible for listing on the National Register of Historic Places which will result in no adverse effect;

(xi) Hosting or participating in public events (e.g., air shows, open houses, Earth Day events, and athletic events) where no permanent changes to existing infrastructure (e.g., road systems, parking and sanitation systems) are required to accommodate all aspects of the event;

(xii) Military training conducted on or over nonmilitary land or water areas, where such training is consistent with the type and tempo of existing non-military airspace, land, and water use (e.g., night compass training, forced marches along trails, roads and highways, use of permanently established ranges, use of public waterways, or use of civilian airfields);

(xiii) Transfer of real property from DON to another military department or to another federal agency;

(xiv) Receipt of property from another federal agency when there is no substantial change in land use;

(xv) Minor land acquisitions or disposals where anticipated or proposed land use is consistent with existing land use and zoning, both in type and intensity;

(xvi) Disposal of excess easement interests to the underlying fee owner;

(xvii) Renewals and minor amendments of existing real estate grants for use of government-owned real property where no significant change in land use is anticipated;

(xviii) Land withdrawal continuances or extensions which merely establish time periods and where there is no significant change in land use;

(xix) Renewals and/or initial real estate ingrants and outgrants involving existing facilities and land wherein use does not change significantly (e.g., leasing of federally-owned or privately-owned housing or office space, and agricultural outleases);

(xx) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses;

(xxi) New construction that is consistent with existing land use and, when completed, the use or operation of which complies with existing regulatory requirements (e.g., a building within a cantonment area with associated discharges/runoff within existing handling capacities);

(xxii) Demolition, disposal, or improvements involving buildings or structures not on or eligible for listing on the National Register of Historic Places and when in accordance with applicable regulations including those regulations applying to removal of asbestos, PCBs, and other hazardous materials;

(xxiii) Acquisition, installation, and operation of utility (e.g., water, sewer, electrical) and communication systems, (e.g., data processing cable and similar electronic equipment) which use existing rights of way, easements, distribution systems, and/or facilities;

(xxiv) Decisions to close facilities, decommission equipment, and/or temporarily discontinue use of facilities or equipment, where the facility or equipment is not used to prevent/control environmental impacts);

(xxv) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

(xxvi) Relocation of personnel into existing federally owned or commercially-leased space that does not involve a substantial change affecting the supporting infrastructure (e.g., no increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase);

(xxvii) Pre-lease exploration activities for oil, gas or geothermal reserves, (e.g., geophysical surveys);

(xxviii) Natural resources management actions where underlying natural resources management decisions have been analyzed in an EA or EIS;

(xxix) Installation of devices to protect human or animal life, (e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas);

(xxx) Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat when no substantial site preparation is involved;

(xxxi) Temporary closure of public access to DON property in order to protect human or animal life;

(xxxii) Actions similar in type, intensity and setting (including physical location and, where pertinent, time of year) to other actions for which it has been determined, in a DON EA or EIS, that there were no significant environmental impacts;

(xxxiii) Actions which require the concurrence or approval of another federal agency where the action is a categorical exclusion of the other federal agency.

7. Section 775.12 is revised to read as follows:

§ 775.12 Delegation of Authority.

(a) The ASN(I&E) may delegate his/her responsibilities under this instruction for review, approval and/or signature of EISs and RODs to appropriate Executive Schedule/Senior Executive Service civilians or flag/general officers. ASN (I&E), CNO and CMC may delegate all other responsibilities assigned in this instruction as deemed appropriate.

(b) The ASN(RD&A) delegation of authority for approval and signature of documents under NEPA is contained in SECNAV Instruction 5000.2 series which sets out policies and procedures for acquisition programs.

(c) Previously authorized delegations of authority are continued until revised or withdrawn.

Dated: June 29, 1999.

Ralph W. Corey,

Commander, U.S. Navy, Judge Advocate General's Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 99–17475 Filed 7–8–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–6373–7]

RIN 2040–AD33

EPA Review and Approval of State and Tribal Water Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to change the regulation that specifies when new and revised State and Tribal water quality standards become effective for Clean Water Act purposes. Under the proposal, new and revised standards adopted after the effective date of the final rule will not be used for Clean Water Act purposes until approved by EPA, unless such new and revised standards are more stringent than the standards previously in effect. The proposal also provides that standards already in effect at the effective date of the new rule may be used for Clean Water Act purposes, whether or not approved by EPA, unless EPA subsequently disapproves them and replaces them with Federal water quality standards.

DATES: EPA must receive comments on this proposed rule on or before August 23, 1999.

ADDRESSES: Send written comments to W–99–05, WQS-Approvals Comment Clerk, Water Docket, MC 4101, U.S. EPA, 401 M Street, SW, Washington, DC 20460. Written comments should include an original and three copies. Electronic comments are encouraged and should be submitted to OW-Docket@epa.gov. Electronic comments must be submitted as an ASCII file or a WordPerfect file, and must be identified by the docket number, W–99–05. The record for this rulemaking is available for inspection from 9:00 to 4:00 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, East Tower Basement, Room EB57, U.S. EPA, 401 M Street, SW, Washington, DC. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

The draft Clean Water Act Water Quality Standards dockets discussed in section III.E. of the **SUPPLEMENTARY INFORMATION** below are available for viewing in the Regional Offices. Regional contacts, addresses, and phone numbers are included in the supplementary section of this preamble.

FOR FURTHER INFORMATION CONTACT: William Morrow, Office of Science and Technology, Standards and Applied Sciences Division, (202) 260–3657.

SUPPLEMENTARY INFORMATION:

I. Potentially Regulated Entities
II. Background
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IX. Paperwork Reduction Act
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XI. National Technology Transfer and Advancement Act

I. Potentially Regulated Entities

Citizens concerned with water quality may be interested in this rulemaking. Entities discharging pollutants to waters of the United States could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Potentially regulated entities include:

Category	Examples of potentially affected entities
States, Tribes, and Territories	States, Territories, and Tribes authorized to administer water quality standards.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to regulated by this action once finalized. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the proceeding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Statutory

1. The Role of Water Quality Standards Under the CWA

When the Clean Water Act (CWA or Act) was enacted in 1972, its focus was on the establishment of a system for controlling pollution at the source through imposition of categorical technology-based permit effluent limitations on point sources. However, Congress recognized that such controls would not always be sufficient to meet the goals of the Act, and therefore complemented that technology-based program with the water quality standards program under section 303 of the Act. Under the CWA, water quality standards consist of designated uses for waterbodies, water quality criteria to protect those uses, an antidegradation policy to maintain water quality, and any policies affecting the application and implementation of such standards. Such standards serve both as a description of the desired water quality for particular waterbodies and as a means of ensuring that such quality is attained and maintained.

The CWA prescribes various uses for water quality standards. For example, they are used as benchmarks for evaluating proposals such as basin grants under section 102(c), plans for the Chesapeake Bay under section 117(b)(2), water quality management planning under section 205(j), and contained disposal facilities for dredged spoil under 33 U.S.C. 1293(a). Water quality standards are also the basis for identifying impaired waters under sections 303(d)(1)(A) and 304(1) and developing total maximum daily loads (TMDLs) and waste load allocations under section 303(d)(1)(C). Water quality standards are the foundation for water quality-based effluent limitations for NPDES permits under section 301(b)(1)C), serve to limit variances under section 301(h) and (m), and are a floor when permit limitations are relaxed under section 402(o)(3). Under section 401, they also serve as a basis for granting or denying State or Tribal certifications for federal licenses or permits for activities that may result in a discharge.

2. Adoption, Revision, and Review and Approval of State and Tribal Water Quality Standards

CWA section 303 describes the requirements for adoption, revision, review and approval of water quality standards. Sections 303(a) and (b) provided a transition from the predecessor statute and were designed to ensure that States have water quality

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standards for both interstate and intrastate waters of the United States. Section 303(c) establishes procedures for the periodic review of, and as needed, revisions to States and Tribes' initial standards. Section 303(c) requires States (and hence Tribes which have authorized to be treated in the same manner as States) from time to time but at least once every three years to hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting new or revised standards. The results of such reviews are to be made available to EPA.

Under section 303(c)(2)(A), whenever a State or authorized Tribe adopts a new or revised standard, the State or Tribe must submit it to EPA. Section 303(c)(3) requires EPA to review such submissions. If the Administrator, within 60 days of such submission, determines that a standard meets the requirements of the Act, "such standard shall thereafter be the water quality standard for the applicable waters of that State." Today's proposed rule addresses the meaning and implementation of the phrase: "such standard shall thereafter be the water quality standard for the applicable waters of that State."

If the Administrator determines that a new or revised standard is not consistent with the requirements of the Act, she shall notify the State or authorized Tribe no later than 90 days after the date of the submission and shall specify the changes needed to meet such requirements. If the State or authorized Tribe does not adopt the necessary changes within 90 days of notification, the Administrator is to promptly propose a federal replacement water quality standard pursuant to section 303(c)(4)(A). In addition, section 303(c)(4)(B) authorizes the Administrator to propose a water quality standard whenever she determines one is necessary, for example, if a State or authorized Tribe fails to update an existing standard or adopt a standard where necessary. Whether proceeding under section 303(c)(4)(A) or (B), the Administrator is to promulgate a final water quality standard not later than 90 days after proposal, unless the State or authorized Tribe has in the meantime taken action that addresses EPA's concern.

3. CWA Section 510

As discussed above, the CWA sets out a detailed process to ensure that there will be a complete set of applicable water quality standards available for CWA purposes which meet the minimum requirements of the Act. However, section 510 of the Act also makes it clear that this process was not intended to preempt the right of States to adopt and enforce more stringent standards if they so choose. Thus, if a new or revised standard is more stringent than the otherwise applicable water quality standard, the proposed rule would continue to allow the promulgating State or Tribe to enforce within its boundaries such standards without prior EPA review and approval. Accordingly, the practical consequences of the proposed rule requiring EPA approval before a state water quality standard is considered the "applicable water quality standard" are largely confined to new or revised standards which are less stringent than the preceding standards. The interplay between CWA sections 510 and 303 is discussed in more detail in section III.D. below.

B. Regulations

EPA first promulgated a water quality standard regulation in 1975. That regulation specified the minimum requirements for State review and revision of water quality standards, but did not identify the procedures for submitting standards to EPA for review or address whether such standards were effective under the CWA prior to EPA's approval (promulgated Nov. 28, 1975, as 40 CFR 130.17(c), recodified as 40 CFR 35.1550).

In 1983, EPA substantially revised and expanded the water quality standards regulation. This regulation, codified at 40 CFR part 131, specified in more detail the requirements for water quality standards. These revisions included the specific elements that must be in a State's water quality standards, procedures for triennial reviews, and procedures for submitting new or revised standards to EPA. The regulation also for the first time addressed the question of when State standards were effective for purposes of the CWA. Specifically, it provided that "A State water quality standard remains in effect, even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standard." See 40 CFR 131.21(c). As explained in the preamble to the 1983 rule, this provision was based on the view that State water quality standards should be effective under the CWA as soon as they were adopted and effective under State law. In 1991, EPA amended the water quality standards regulation to add procedures by which an Indian Tribe may qualify for the water quality standards and CWA section 401 certification programs.

C. The Alaska Litigation

In 1996, a coalition of environmental groups sued EPA, alleging that EPA was violating the CWA by applying new and revised standards adopted by Alaska before EPA had approved the standards (*Alaska Clean Water Alliance* v. *Clark*, No. C96–1762R (W.D.Wash.)). On July 8, 1997, the United States District Court for the District of Washington (the Court) issued an opinion in this case holding that, notwithstanding § 131.21(c) of EPA's regulation, the plain meaning of CWA section 303(c)(3) was that new or revised State water quality standards did not become effective for CWA purposes until approved by EPA. The parties to the lawsuit have entered into a settlement agreement under with EPA agreed to propose revisions to 40 CFR 131.21(c) consistent with the Court's opinion no later than July 1, 1999, EPA also agreed to take final action within nine months of this proposal. If EPA promulgates a final regulation that substantially conforms to the proposal, plaintiffs have agreed to dismiss their litigation. If the final rule does not substantially conform to the proposal, the plaintiffs retain the right to reactivate the litigation and seek a remedy from the court. Today's proposed rule is issued in accordance with this settlement agreement. EPA seeks comment on both the basic approach and the specific provisions in today's proposal.

III. What Is EPA Proposing and How Will it Work?

A. Summary

This proposed rule makes three principal points. First, today's proposed regulation at § 131.21(c) addresses the issue of when a new or revised State or Tribal water quality standard becomes the "applicable water quality standard for purposes of the CWA" in accordance with section 303(c)(3) of the CWA. The proposed rule does not affect the process by which State or Tribal water quality standards are adopted under State or Tribal law, but simply specifies when State or Tribal standards will be recognized as the "applicable water quality standard" under the CWA. In accordance with the language of CWA section 303(c)(3) as interpreted by the District Court in the Alaska case, proposed § 131.21(c) provides that new and revised water quality standards adopted after the effective date of the final rule will not become the "applicable water quality standards for CWA purposes" until approved by EPA. See proposed § 131.21(c). As discussed above, such "CWA purposes" include, but or not limited to, section 303(d)

listings of impaired waters, development of TMDLs, and establishment of water quality-based effluent limitation in NPDES permits.

As discussed in more detail below, today's proposed regulation would affect standards adopted after the effective date of EPA's final rule. (In the context of this proposal, the word "adopted" refers to completion of the process under which standards are developed and made effective under State and Tribal law.) EPA is proposing the State and Tribal standards adopted prior to that date, which are considered applicable standards under the current federal water quality standards regulation, will remain the applicable standards. This will include those standards that EPA has approved and continue in effect under State and Tribal law as well as those standards in effect under State and Tribal law that EPA has not yet approved or that EPA has disapproved. This "grandfathering" of State and Tribal standards adopted and in effect before EPA's new rule becomes affective merely allows such standards to continue in effect; it does not alter EPA's responsibility to complete its review of any standards it has not yet approved or disapproved or to promulgate replacement standards for any disapproved standards.

Second, today's proposed regulation at § 131.21(c) and (3) state that, after the effect date of the final rule, any changes (i.e, repeals, amendments or additions) to the applicable Sate and Tribal standards must be approved by EPA to be effective for CWA purposes. (This requirement will apply to future changes to "grandfathered" standards which automatically become applicable standards under the current rule as well as to changes to future standards which, under the new rule, become applicable standards when approved by EPA.)

Third, the proposed rule makes it clear that, in accordance with CWA section 510, it does not preempt the right of State or Tribes to adopt and enforce within their boundaries water quality standards which are "not less stringent" than the applicable water quality standards. What this means, in practical terms, is that if a State or authorized Tribe adopts a standard which is at least stringent as the applicable standard (either a grandfathered standard or a standard adopted and approved after the effective date of the rule), the State or Tribe may immediately use such a standard for CWA purposes, pursuant to § 510, without waiting for EPA to complete its section 303(c)(3) review. The State may also use standards adopted pursuant to § 510 as a basis for conditions in section 401 certifications for federal permits such as EPA-issued NPDES permits.

While EPA review of standards adopted pursuant to § 510 is underway, the State or Tribe can repeal or modify them and such changes would go into effect immediately. However, when EPA completes its review and approves such standards, they become the new applicable CWA water quality standards, and subsequent revisions to them will not be applicable for CWA purposes until approved by EPA (subject again to the State's and Tribe's preserved right under section 510 to adopt and enforce an even more stringent standard).

B. Rationale for Changing § 131.21(c)

As mentioned in the background section above, EPA's current regulations at 40 CFR part 131 provide that new and revised State and Tribal standards are effective for CWA purposes as soon as they are effective under State or Tribal law and that they remain in effect, even if subsequently disapproved by EPA, until superseded by a federal promulgation or changed or withdrawn by the State or Tribe. EPA believed such an approach was necessary to avoid an absence of standards prior to EPA approval. See response to comments for 1983 regulation, 48 FR 51400, 51412 (Nov. 8, 1983): "This interpretation is necessary because otherwise there would be no standard at all until federal action was completed." Over time, however, it became apparent that this approach did not always serve the purposes of the Act, particularly if a revised standard did not meet the requirements of the Act. The Alaska litigation in which EPA's reliance on existing § 131.21(c) was challenged (see II.C. above) caused EPA to re-examine its position.

EPA believes that the approach set forth in today's proposal not only is consistent with the language of section 303(c)(3) but also addresses the practical concern driving the approach in the 1983 regulation. As the Court held, the import of the phrase in section 303(c)(3) "shall thereafter be the water quality standards" (emphasis added) is that, until the new or revised standards are approved, they are not considered the applicable standards as a matter of federal law. In addition, EPA has re-examined its earlier concern that the 1983 approach was necessary to avoid a gap in standards until federal review was complete, because states would repeal their old standard when adopting new or revised one. The fact of the matter is that the repeal of the earlier water quality standard would itself be considered a revision to standards. If, as the words of section 303(c)(3) indicate, revisions need to be approved to be effective for CWA purposes, the repeal of the old standard could not be effective until approved by EPA, and hence there would in fact be no gap in standards.

Another concern underlying the 1983 regulation was that requiring EPA approval might delay the use of improved water quality standards. However, as a practical matter, only the implementation of less stringent standards would be delayed under today's proposal, since section 510 provides that nothing in the CWA affects the right of States or Tribes to enforce standards within their boundaries that are equally or more stringent than the federally approved water quality standards. Of course, the mere fact that a standard is less stringent than the previous standard does not mean that it is not justified (e.g., new scientific information may show that a less stringent criterion is in fact protective of the designated uses or the previous criterion may have been based on incomplete or inaccurate information). Having EPA review a new or revised standard before it replaces a more stringent standard simply allows EPA to confirm that the new standard is justified and that it meets the requirements of the CWA.

EPA recognizes that the approach of the proposed rule may change in some respects the relationship between EPA and the States and authorized Tribes. For example, States and authorized Tribes will not be able to base CWA permits on new or revised standards which are less stringent than the predecessor applicable standards unless EPA approves the less stringent standard. On the other hand, there may be less need for federal promulgations to correct deficiencies in State and Tribal standards under the new approach.

C. Options EPA Considered

1. Prospective Effect of the Rule

Because the Court concluded that the CWA on its face required that new and revised State or Tribal water quality standards be approved by EPA before being used for CWA purposes, EPA considered whether the new rule should govern all standards adopted since 1972, or whether it should apply only to standards adopted after this rulemaking takes effect. For the reasons below, EPA proposes that only new and revised State or Tribal water quality standards adopted after the effective date of this rule must be approved to be the applicable water quality standards for purposes of the CWA. Previously

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adopted standards that are in effect under State and Tribal law on the effective date of this rule will remain applicable standards. If the State or authorized Tribe repeals or revises such standards after the effective date of the rule, any such revisions or repeal would be subject to the new rule, that is, they would need EPA approval to be effective for CWA purposes.

If EPA were to apply the new interpretation to standards adopted before EPA's final rule, EPA would need to do so consistently. EPA's experience indicates in some cases this would be exceedingly difficult, if not impossible, to do. There are a number of reasons for this. Under the current rule, the approval status of a standard did not affect whether it was the applicable standard for CWA purposes; standards changes have not always been promptly submitted to EPA; and some EPA reviews of standards have not resulted in timely and clear-cut approvals or disapprovals. Confirming in every case that standards currently in effect under State law have been approved by EPA, or, it not, tracking down in each case the last approved predecessor standard, could by a very burdensome task with minimal environmental benefits. For example, if a State or authorized Tribe had reorganized and recodified its water quality standards after approval, it might be difficult today to reconcile the current citations with the citations of the provisions in question when approved. In addition, in the case of standards approved in the 1970's and still in effect, the record of approval could in some instances be difficult to locate, especially in EPA Regional offices where there have been organizational changes and physical relocations of office records over the years. Furthermore, if the last standard which could be clearly demonstrated as approved had later been superseded by other standards a long time ago, it might no longer mesh with the structure of other, approved parts of the State or Tribe's current standards or reflect current science or improved stream conditions. To resurrect such a standard as the applicable standard CWA purposes could in many cases be very artificial, and have uncertain environmental benefits. Finally, the time and effort involved in confirming the status of standards adopted since 1972 would also significantly detract from EPA's ability to make future approval/disapproval decisions in a timely manner. For these reasons, EPA believes that there would be extreme practical problems to applying today's proposed approach to all standards adopted since 1972.

Additionally, changing the status of standards currently on the books could result in confusion, for example, in situations where States or authorized Tribes had in the past relied on the current federal water quality standards regulation to take actions using State or Tribal standards that were not yet approved by EPA. Questions would arise about the need to revisit such State or Tribal actions. While the use of a grandfathering provision excepting such actions from the rule might partially address this problem, EPA believes that it would be difficult to craft, and would not fully eliminate confusion. EPA solicits comment on the approach outlined in today's proposed rule.

2. Disapproved Water Quality Standards

As described above, the proposed rule provides that standards adopted by a State or authorized Tribe before the effective date of the rule (and still in effect under State or Tribal law) will remain the applicable water quality standards for CWA purposes regardless of whether they have been approved, disapproved, or simply not yet acted on by EPA. One option EPA considered was to propose that where such a standard was disapproved by EPA, it would cease to be the applicable standard for CWA purposes as of the effective date of the rule or disapproval date, whichever was later. An advantage of such an option would be to limit circumstances under which inadequate standards could be used. A disadvantage is that there would be no standard to replace the disapproved standard until EPA promulgated a superseding federal standard or the State or authorized Tribe revised the disapproved standard and obtain EPA's approval. This gap could theoretically be filled if the proposed rule also provided that the last previously approved standard could be "resurrected" until a new standard was approved or promulgated. However, for the reasons given above, tracking down the predecessor standard in each case would be problematic in these instances as well.

EPA seeks comments on whether the final rule should provide that standards disapproved by EPA prior to the effective date of the final rule should cease to be applicable water quality standards under the CWA. EPA also seeks comments on whether, if it adopts such a provision, the provision should specify that previously approved standards be resurrected and serve as the applicable CWA standard until a replacement for the disapproved standard is adopted by the State or authorized Tribe and approved by EPA, or until EPA promulgates a federal standard.

D. Integration With CWA Section 510

Section 510 of the Act provides that nothing in the Act restricts the right of any State or authorized Tribe (or political subdivision thereof, or interstate agency) to adopt or enforce any standard, as long as it is not less stringent than a standard in effect under the Act. The proposed rule acknowledges this reserved State and Tribal authority by stating explicitly that a State or authorized Tribe may adopt and enforce a water quality standard which is not less stringent than the "applicable water quality standard" under the rule. (As explained above, the "applicable standard" would be either the standard in effect as of the effective date of the rule, or a superseding approved standard, or a federally promulgated standard.)

Section 510 is self-implementing. This means that a standard adopted under authority preserved by section 510 may be used immediately to control pollution originating in the State or Tribe adopting the standard, without first obtaining EPA approval or EPA concurrence that the standard is "not less stringent." (Of course, it would be prudent for a State or authorized Tribe to consult with EPA if there is any question about the comparative stringency of a new or revised standard.) Before it is approved by EPA and becomes the "applicable standard", such a standard can be changed by the State or authorized Tribe. However, until federally approved, the standard does not have any extra territorial effect. Once such a standard is federally approved, it becomes the new "applicable standard" and may serve as the basis for NPDES permit limitations on out-of-state (as well as in-state) sources which could affect the waters covered by the standard. (See CWA sections 402(a)(2), 402(b)(5) and (d)(2); *Arkansas* v. *Oklahoma,* 503 U.S. 91 (1992).)

While the use of standards adopted pursuant to § 510 that have not yet been federally approved and thereby transformed into "applicable standards for purpose of the Act" is generally within the State or Tribe's discretion, there is an exception. CWA section 301(b)(1)(C), in conjunction with section 402(a), requires that NPDES permits contain limits as needed to meet water quality standards established under authority preserved by section 510, as well as applicable standards established under section 303. Therefore, permitting authorities must include effluent limitations in NPDES permits as stringent as necessary to meet all water quality standards of the State or authorized Tribe within which the permittee is discharging, including standards adopted pursuant to 510 that have not yet been approved by EPA.

E. Tracking CWA Standards

1. EPA's CWA WOS Docket

In today's proposed rule, EPA, is proposing to rely on the adoption date (for existing standards) and the approval status (for future adoptions) to determine whether or not a State or Tribal standard is an "applicable standard" under the CWA. To facilitate identifying whether a given State or Tribal standard is an applicable CWA standard, EPA believes it is important to develop a comprehensive tracking system. Under the current regulation, EPA primarily relies on the standards compilations prepared by States and authorized Tribes to determine the applicable CWA standard. For example, where EPA is the NPDES permitting authority, EPA looks to the State's or authorized Tribe's standards, plus any superseding federal standard that may have been promulgated by EPA, as the basis for developing water quality-based conditions in a permit. Under today's proposed rule, before using a State or tribal standard, EPA would also need to know whether the standard had been in effect under State and Tribal law on the effective date of the final rule, and, if it had not been, whether EPA had approved the State or Tribal standard (see table at § 131.2 (c) in today's proposed regulation). To simplify the process for determining what the CWA standard is at any given time, EPA is proposing to establish a CWA Water Quality Standards (WQS) docket which would contain the applicable CWA standards for every State, authorized Tribe, and Territory. This CWA WQS docket will contain (1) State and Tribal standards adopted prior to, and still in effect under State or Tribal law on, the effective date of the final rule, (2) State or Tribal standards adopted after the effective date of the final rule and approved by EPA, (3) any applicable federal standards promulgated under subpart D to 40 CFR part 131. This CWA WQS docket will be updated regularly by EPA to reflect future EPA approvals and promulgations. This CWA WQS docket will be available to the public to facilitate the public's ability to determine what the applicable CWA standard is for a particular waterbody.

In conjunction with today's proposed rule, EPA has established a draft CWA WQS docket for each State, authorized Tribe, and Territory. The draft CWA WQS docket for each State, authorized Tribe, and Territory is located in the corresponding EPA Regional Office. EPA believes the draft CWA WQS docket contains all the current CWA standards in effect as of July 9, 1999. EPA assembled the draft CWA WQS docket with assistance from State, authorized Tribes, and Territories. While we collectively believe it contains all of the elements of each State's or Tribe's program that is subject to review and approval under section 303(c) of the CWA, we will be checking its accuracy before finalizing the rule. Although the docket is not itself a rule but rather an administrative aid, comments from the public pointing out any omissions or erroneous inclusions are welcome. EPA will continue to work with States, authorized Tribes, and Territories to ensure that the CWA WQS docket is current and complete by the time this rule goes into effect.

EPA believes that, in order for the CWA WQS docket to be useful, it should be in a form that is readily accessible to anyone interested in water quality standards. Establishing hardcopy CWA WQS subdockets in each EPA Regional office EPA's first step in assuring such accessibility. EPA is evaluating long term plans for maintaining the CWA WQS docket, including the possibility of having the CWA WQS docket accessible over the Internet. For example, EPA could establish and maintain a web site where the applicable CWA standard for any State, authorized Tribe, or Territory could be accessed quickly. If this approach is taken, having States and authorized Tribes submit their standards revisions electronically would allow EPA to enter the revisions into an electronic database in a more timely manner. EPA solicits comments on the most effective ways (short term and long term) to make the CWA WQS docket accessible to the public.

Under the existing regulations at 40 CFR 131.21(d), EPA annually publishes in the **Federal Register** a notice of State and Tribal standards that have been approved by EPA since the most previous notice. EPA publishes this notice of approvals to keep the public informed of changes in State and Tribal water quality standards program, and to inform the public that EPA has determined such changes are consistent with the CWA. In today's proposed rule, EPA is proposing to delete this annual reporting requirement in light of our plan to establish a CWA WQS docket. See § 131.21(g) in today's proposed rule. EPA does not see the need to maintain this annual notice of approvals, since the CWA WQS docket will allow anyone to review the applicable CWA standard at anytime. EPA believes the establishment of a CWA WQS docket is an improvement over the existing annual reporting requirement because the full text of the standards themselves will be included, not just a listing of the relevant sections, and because it will be updated whenever there is a change to the applicable standards. EPA solicits comment on replacing the exiting annual reporting requirement of State and Tribal approvals with the establishment of a CWA WQS docket.

As stated above, these draft standards contained in the CWA WQS docket can be viewed in the Regional Offices. Regional contacts, addresses, and phone numbers are listed in the table below.

State	EPA regional office	EPA contact
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	EPA Region 1, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023.	Bill Beckwith, 617–918–1544.
New Jersey, New York, Puerto Rico, Virgin Islands ...	EPA Region 2, 290 Broadway, New York, NY 10007	Wayne Jackson, 212–637–3807.
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.	EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029.	Ify Davis, 215–814–5453.
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	EPA Region 4, Water Division—15th Floor, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303.	Fritz Wagener, 404–562–9267.
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	EPA Region 5, Water Division, 77 West Jackson Boulevard, Chicago, IL 60604–3507.	David Pfeifer, 312–353–9024.
Arkansas, Louisiana, New Mexico, Oklahoma, Texas	EPA Region 6, Water Division, 1445 Ross Avenue, First Interstate Bank Tower, Dallas, TX 75202.	Russell Nelson, 214–665–6646.
Iowa, Kansas, Missouri, Nebraska	EPA Region 7, 726 Minnesota Avenue, Kansas City KS 66101.	Larry Shepard, 913–551–7441.

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State	EPA regional office	EPA contact
Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	EPA Region 8, 999 18th Street, Suite 500, Denver CO 80202–2466.	Bill Wuerthele, 303–312–6943.
Arizona, California, Hawaii, Nevada, American Samoa, Guam.	EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, CA 94105.	Phil Woods, 415–744–1997.
Alaska, Idaho, Oregon, Washington	EPA Region 10, Water Division, 1200 Sixth Avenue, Seattle, WA 98101.	Lisa Macchio, 206–553–1834.

2. Approving Standards Promptly

Section 303(c)(3) of the CWA provides EPA with 60 days to approve, and 90 days to disapprove, water quality standards submitted by States and Tribes. For a variety of reasons, EPA has not always been able to meet these deadlines. Under the current federal water quality standards regulation, delay on the part of EPA in approving State and Tribal revisions to standards has no immediate practical effect, except for the State of Alaska where EPA is already implementing today's proposed changes as a result of the Court's opinion. While the structure of EPA's proposed rule ensures that States and authorized Tribes will not be penalized by past delays, EPA still views the elimination of this backlog as a high priority. EPA headquarters staff are working with EPA Regional Offices, and with States and Tribes, to streamline our approval process and eliminate the backlog.

EPA is taking several steps to improve the timeliness of its approval/disapproval decisions. For example, EPA is improving coordination among the many EPA offices involved in water quality standards approvals. Although, EPA Regional offices have been delegated the authority to make approval/disapproval decisions, the approval/disapproval process involves substantial coordination among several EPA offices. EPA is taking steps to ensure that these offices are providing timely feedback in a coordinated fashion. In addition, EPA is making every effort to communicate to States and Tribes early in the standards revisions process EPA's position with respect to the approvability of specific potential revisions a State or Tribe may be considering. As part of this effort, EPA recently published an updated list of recommended ambient water quality criteria for the protection of human health and aquatic life (see 63 FR 68353) to ensure that States and Tribes have EPA's most current recommendations. In discussions with several States during the development of today's proposal, the States emphasized that in addition to EPA's most current guidance and recommendations, it is necessary to know early in the State regulatory development process whether or not a revision they are considering is inconsistent with the CWA, preferably before the State proposes it for public comment. EPA will continue to discuss with States and Tribes ways to coordinate efforts to improve the standards development process, including ways for EPA to provide input that is both valuable and timely, and for States and Tribes to seek such input.

Under the Endangered Species Act (ESA), EPA's approval of State and Tribal water quality standards revisions is considered a federal action subject to consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) if the standards may affect a federally listed species. Such consultations can in certain cases be time-consuming and delay approval decisions. In recent years, EPA and Services have increased their efforts to achieve greater integration of ESA and CWA Programs. In an effort to coordinate its consultation efforts more efficiently, EPA, the FWS, and NMFS are working at the national level to develop a Memorandum of Agreement (MOA). A draft of the MOA was published in the **Federal Register** for public comment in January 15, 1999 (see 64 FR 2741). The draft MOA contains procedures for enhancing coordination regarding the protection of endangered and threatened species under section 7 of the Endangered Species Act and the Clean Water Act's Water Quality Standards and National Pollution Discharge Elimination System programs. Among a number of objectives, the draft MOA seeks to make ESA consultations more timely and efficient. Approving/disapproving State and Tribal WQS submissions in the CWA time frames is a priority for EPA. EPA, at both Headquarters and its Regional Offices, is working with a number of States and FWS and NMFS to improve the approval/disapproval process and eliminate frequently encountered delays. Based on the feedback from these discussions, EPA will develop more detailed guidance to achieve the goals discussed above.

IV. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), federal agencies generally are required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities as part of a proposed rulemaking. However, under section 605(b) of the RFA, if the Administrator for the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, the agency is not required to prepare an IRFA. The Administrator certifies, pursuant to section 605(b) of the RFA, that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an initial regulatory flexibility analysis.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rule's requirements. See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Todays' proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule," United Distribution* at 1170, *quoting Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) Today's proposed rule, once finalized, will only have a direct effect on States and authorized Tribes, which by definition are not small entities under the RFA. The Agency is thus certifying that today's proposed rule will not have a significant economic impact on substantial number of small entities, within the meaning of the RFA.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or the private sector, $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why they alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule does not affect the process by which State or Tribal water quality standards are adopted under State or Tribal law, but simply specifies when a State or Tribal adoption will be recognized as the applicable water quality standard for general CWA purposes. The rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA's proposed rule will only address a single administrative aspect of the water quality standards approval process (i.e. the timing of the "effectiveness" of State or Tribal standards under the CWA.) There will be no revisions to existing submission requirements and no revisions to EPA's standard for review. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

VI. Regulatory Planning and Review, Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal government communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Enhancing the Intergovernmental Partnership, Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or trial governments. The proposed rule does not impose any enforceable duties on these entities. Today's proposed rule, once finalized, will only address a single administrative aspect of the water quality standards approval process (i.e., the timing of the "effectiveness" of State or Tribal standards under the CWA). There will be no revisions to existing submission requirements and no revisions to EPA's standards for review. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

VIII. Consultation and Coordination With Indian Tribal Governments, Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. Today's proposed rule, once finalized, will only address a single administrative aspect of the WQS

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approval process (i.e., the timing of the "effectiveness" of Tribal WQS under the CWA). There will be no revisions to existing submission requirements and no revisions to EPA's standards for review. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Paperwork Reduction Act

This action requires no new information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Therefore, no Information Collection Request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act.

X. Protection of Children From Environmental Health Risks and Safety Risks, Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it is not economically significant as defined under E.O. 12866 and, further, it does not establish an environmental standard intended to mitigate health or safety risks.

XI. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d)((15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in it regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking, and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Water pollution control, Water quality standards.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 131 is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart C—[Amended]

2. Section 131.21 is amended by revising paragraphs (c) and (d) and by adding paragraphs (e), (f), and (g) to read as follows:

§ 131.21 EPA review and approval of water quality standards.

* * * * *

(c) *How do I determine which water quality standards are applicable for purposes of the Act?*

You may determine which water quality standards are applicable water quality standards for purposes of the Act for the following table:

If	Then	Unless	In which case
(1) A State or authorized Tribe has adopted a water quality standard that is effective under State or Tribal law *before* [effective date of the final rule].	* * * The State or Tribe's water quality standard is the applicable water quality standard for purposes of the Act.	* * * EPA has promulgated a more stringent water quality standard for the State or Tribe, that is in effect.	* * * The EPA-promulgated water quality standard is the applicable water quality standard for purposes of the Act.
(2) A State or authorized Tribe adopts a water quality standard that goes into effect under State or Tribal law on or *after* [effective date of the final rule].	* * * Once EPA approves that water quality standard, it becomes the applicable water quality standard for purposes of the Act.	* * * EPA has promulgated a more stringent water quality standard for the State or Tribe, that is in effect.	* * * The EPA promulgated water quality standard is the applicable water quality standard for purposes of the Act.

(d) *When do I use the applicable water quality standards identified in paragraph (c) of this section?*

Applicable water quality standards for purposes of the Clean Water Act (CWA) are the minimum standards which must be used when the CWA and regulations implementing the CWA refer to water quality standards, for example, in identifying impaired waters and calculating TMDLs under section 303(d), developing NPDES permit limitations under section 301(b)(1)(C), evaluating proposed discharges or dredged or fill material under section 404, and in issuing certifications under section 401 of the Act.

(e) *For how long does the applicable water quality standard for purposes of the Act remain the applicable water quality standards for purposes of the Act?*

A State or Tribe's applicable water quality standards for purposes of the Act remains in effect until EPA approves a change, deletion, or addition to that water quality standard, or until EPA promulgates a more stringent water quality standard.

(f) *Can standards other than those identified in paragraph (c) of this section be used for purposes of the Act?*

State or Tribal water quality standards which are not less stringent than the applicable water quality standards may be adopted and enforced within the boundaries of the adopting State or authorized Tribe.

(g) *How can I find out what the applicable standards are for purposes of the Act?*

EPA will maintain a docket system, available to the public, identifying the applicable water quality standards for purposes of the Act.

[FR Doc. 99–17343 Filed 7–8–99; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office Of The Secretary

45 CFR Part 5b

Privacy Act; Implementation

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services proposes to exempt a new system of records, 09–25–0213, "Administration: Investigative Records, HHS/NIH/OM/OA/OMA," from certain requirements of the Privacy Act to protect records compiled in the course of an inquiry and/or investigation and to protect the identity of confidential sources who furnish information to the Government under an express promise that the identity of such source would be held in confidence.

DATES: Comments on the proposed amendment must be received on or before August 9, 1999.

ADDRESS: Written comments should be sent to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, Rockville, MD 20852.

Comments will be available for public inspection at this address on Monday through Friday of each week from 9 am to 3 pm.

FOR FURTHER INFORMATION CONTACT: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, Rockville, MD 20852, 301–496–2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Office of Management Assessment (OMA) assumes the lead responsibility on cases received through the DHHS Office of Inspector General (OIG) hotline that are referred to NIH for action. OMA serves as NIH's central liaison on matters involving the Office of Audit Services, OIG; General Accounting Office; Federal Bureau of Investigation; congressional staff members; etc., related to management controls and audits. OMA also has overall responsibility for all matters related to management controls to prevent fraud, waste, abuse, and conflict of interest or the appearance of these, including the development and implementation of policy and the Annual Management Control Plan and the development of a planned management oversight activity that focuses on early identification and prevention of such occurrences.

To perform these responsibilities, OMA compiles and maintains administrative and investigative records related to alleged or suspected violations of statutes, regulations, and policies governing the conduct of Federal employees, recipients of Federal funding, and others who transact, or seek to transact business with the NIH.

These records contain information related to complaints of incidents, inquiries and investigative findings, administrative and other matters involving complainants, suspects and witnesses, and court dispositions.

The administrative and investigation records are located in the OMA and constitute a "system of records" as defined by the Privacy Act. Concurrent with this notice of proposed rulemaking, the National Institutes of Health is publishing a notice for this new system in the **Federal Register**.

Under the Privacy Act, individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Act permits certain types of systems to be exempt from some of the Privacy Act requirements. Subsection (k)(2) allows agency heads to exempt a system of records containing investigatory material compiled for enforcement purposes. This exemption is qualified in that if the material results in denial of any right, privilege, or benefit to an individual to which that individual would be entitled by Federal law, the individual must be granted access to the material, unless the access would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. In addition, paragraph (k)(5) permits an agency to exempt material from the individual access, notification, and correction and amendment provisions of the Act where investigatory material is compiled for the purpose of determining suitability, eligibility, or qualification for federal employment or financial assistance if release of the material would cause the identity of a confidential source to be revealed.

Because the administrative and investigative records are compiled by a distinct component of the agency whose principal function is investigations which compile material for law enforcement purposes, the specific exemption (k)(2) requirements are met and the exemption is justified. Investigations compiled for the purpose of determining suitability, eligibility, or qualification for federal employment or financial assistance may be undertaken when the investigations result from a direct allegation or through suspected violations of statutes, regulations and policies uncovered during an administrative management control review or audit. Determinations that applicants are not suitable, eligible or qualified would justify the need to invoke the paragraph (k)(5) exemption.

The system contains sensitive investigative records. The release of these records to the subject of the investigation could have a chilling effect on the willingness of informants to provide information freely, not only because of fear of retribution, but because they might hesitate to provide any information other than that of which they are entirely certain. Disclosure could impede ongoing investigations and violate the privacy rights of individuals other than the subject of the investigation, thereby diminishing the ability of the OMA to conduct a thorough and accurate investigation. Disclosure of information from these records might also reveal to the subjects of the investigation that their actions are being scrutinized, allowing them the opportunity to prevent detection of illegal activities. Finally, disclosure of information from the records might reveal investigative techniques and thereby jeopardize the integrity of the investigation.

Sources may be reluctant to provide sensitive information unless they can be assured that their identities will not be revealed. These exemptions are proposed to ensure that: (1) Efforts to obtain accurate and objective information will not be hindered; (2) investigative records will not be disclosed inappropriately; and (3) identities of confidential sources and OMA investigators will be protected. Accordingly, the Department proposes to exempt this system under paragraphs (k)(2) and (k)(5) of the Privacy Act from the notification, access, correction, and amendment provisions of the Privacy Act (paragraphs (c)(3), (d)(1)–(4), (e)(1), (e)(4)–(G) and (H) and (f)).

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment,

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public health or safety, or State, local, or tribal governments or communities:

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

Because the amendment affects only NIH OMA investigatory records, a small subset of Agency records, we do not believe this proposed rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. The proposed rule is not expected to have any significant impact on OMA operations and does not impose any new information collection requirements under the Paperwork Reduction Act. In addition, this proposed rule is not inconsistent with the actions of any other agency.

For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act, is not required.

List of Subjects in 45 CFR Part 5b

Privacy.

Dated: October 13, 1998.

Harold Varmus,

Director, National Institutes of Health.

Approved: March 11, 1999.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, 45 CFR part 5b is proposed to be amended as set forth below:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b would continue to read:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11(b)(2)(vii) would be amended by designating the paragraph after the colon as paragraph (b)(2)(vii(A)and republishing it and by adding paragraph (b)(2)(vii)(B) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(vii) Pursuant to subsections (k)(2) and (k)(5) of the Act:

(A) Public Health Service Records Related to Investigations of Scientific Misconduct, HHS/OASH/ORI.

(B) Administration: Investigative Records, HHS/NIH/OM/OA/OMA.

* * * * *

[FR Doc. 99–17411 Filed 7–8–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622 and 640

[Docket No. 990621165–9165–01; I.D. 022599A]

RIN: 0648–AL43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat (EFH) for Species in the South Atlantic; Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmosphere Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to increase the size of the Oculina Bank Habitat Area of Particular Concern (HAPC) and to incorporate two adjacent areas within the Oculina Bank HAPC. NMFS also proposes regulatory changes to reflect the South Atlantic Fishery Management Council's proposed framework procedure for all its fishery management plans (FMPs) that would allow for timely modification of definitions of EFH and establishment or modification of EFH-HAPCs and Coral HAPCs. The intended effect is to protect, conserve, and enhance EFH.

DATES: Written comments on this proposed rule must be received on or before August 23, 1999.

ADDRESSES: Copies of the Habitat Plan for the South Atlantic Region (Habitat Plan) and the EFH Amendment, which includes Amendment 4 to the Coral FMP, a final supplemental environmental impact statement (FSEIS), a regulatory impact review (RIR), and a social impact assessment/fishery impact assessment may be obtained from the South Atlantic Fishery Management Council (Council), One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520. Copies of the initial regulatory flexibility analysis (IRFA) prepared by NMFS may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments on the proposed rule or the IRFA may be submitted to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for shrimp, red drum, snapper-grouper, coastal migratory pelagics, golden crab, spiny lobster, and coral, coral reefs, and live/hard bottom habitat of the South Atlantic are managed under the Council's FMPs, as approved and implemented by NMFS. These FMPs were prepared solely by the Council, except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the Council and the Gulf of Mexico Fishery Management Council. These FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622, except for the FMP for spiny lobster that is implemented by regulations at 50 CFR part 640.

The Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act, requires the Council to describe and identify EFH in all its FMPs, including identification of adverse impacts from both fishing and non-fishing activities on EFH and identification of actions required to conserve and enhance EFH. This requirement is intended to provide a basis for the Council and NMFS to protect, conserve, and enhance EFH under management measures that are proposed, approved, and implemented through amendments to FMPs or other means provided by the Magnuson-Stevens Act, if appropriate, and for the Council and NMFS to fulfill their consulting and commenting responsibilities regarding Federal and state actions that may adversely affect EFH.

50 CFR 600.10 defines EFH as follows:

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: Waters include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; substrate includes sediment, hard bottom, structures underlying the waters, and associated biological communities; necessary means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

The Council may identify EFH that is judged to be particularly important to the long-term productivity of populations of one or more managed species, or to be particularly vulnerable to degradation, as an HAPC. Such designation helps provide additional focus for conservation efforts. EFH-HAPCs may be identified based on the following criteria: (1) The importance of the ecological function provided by the habitat; (2) the extent to which the habitat is sensitive to human-induced environmental degradation; (3) whether, and to what extent, development activities are, or will be, stressing the habitat type; and (4) the rarity of the habitat type (50 CFR § 600.815(a)(9)).

The Council prepared and submitted a Habitat Plan, which serves as a source document for habitat data, and a Comprehensive Amendment addressing EFH in FMPs of the South Atlantic Region (EFH Amendment). The EFH Amendment proposes EFH definitions and EFH-HAPCs for the management unit species in all of the Council's FMPs.

The EFH Amendment also would establish a framework procedure, applicable to all of the Council FMPs, to allow for timely modification of EFH definitions and establishment or modification of existing EFH-HAPCs or Coral HAPCs. This framework procedure would allow the Council to recommend to NMFS additions or modifications regarding EFH definitions and EFH-HAPCs and Coral-HAPCs without requiring an amendment to the appropriate FMP(s). This procedure would provide for a streamlined Council process for obtaining public comment on the Council's proposals and their expected biological, social, and economic impacts. After receiving the Council's recommendations for additions or modifications regarding EFH definitions, EFH-HAPCs, and Coral-HAPCs, the NMFS Regional Administrator would decide whether to approve or disapprove the Council's recommendations as well as whether to implement any approved measures directly by a final rule or through a proposed and final rule. Finally, the framework procedure would allow these adjustments any time during the year. Although the FMP's framework procedures refer to rulemaking, NMFS does not intend to modify EFH definitions, EFH-HAPCs, or Coral-HAPCs in codified text. However, NMFS would publish notice of the proposed changes in the **Federal Register** and solicit public comment in accordance with the FMP framework procedure. Details of the proposed framework procedure are contained in section 4.2.8 of the EFH Amendment. This rule proposes changes to 50 CFR § 622.48 and 50 CFR § 640.25 to reflect the Council's proposed framework procedure.

The EFH Amendment contains Amendment 4 to the Coral FMP that would expand the boundaries of the current Oculina Bank HAPC to encompass: (1) An area bounded on the north by 28°30' N. lat., on the south by 27°30' N. lat., on the east by the 100–fathom (183–m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°00' W. long.; and (2) two adjacent areas, the first bounded on the north by 28°30' N. lat., on the south by 28°29' N. lat., on the east by 80°00' W. long., and on the west by 80°03' W. long., and the second bounded on the north by 28°17' N. lat., on the south by 28°16' N. lat., on the east by 80°00' W. long., and on the west by 80°03' W. long.

The current boundaries of the Oculina Bank HAPC were established by the final rule to implement the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic (49 FR 29607, July 23, 1984). In the Oculina Bank HAPC, fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited, and a fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain.

Subsequently, fishing for South Atlantic snapper-grouper in the Oculina Bank HAPC was prohibited (59 FR 27242, May 26, 1994). The purpose of this prohibition was to evaluate the benefits of marine reserves. In effect, an experimental closed area was established for South Atlantic snapper-grouper with the same boundaries as the original Oculina Bank HAPC.

Amendment 4 to the Coral FMP would expand only the Oculina Bank HAPC—the experimental closed area would not be expanded and its restrictions on snapper-grouper fishing would not be changed or expanded. The proposed expanded Oculina Bank HAPC also includes the current area closed to rock shrimp trawling.

Expansion of the Oculina Bank HAPC is necessary to protect the *Oculina* coral concentrations contained in the area of expansion. *Oculina* coral, a slow growing, delicate stony coral, is easily damaged by anchoring and use of bottom tending gear (e.g., trawls, traps). *Oculina* coral provides important habitat for snapper-grouper species and for rock shrimp and calico scallop spawning stock.

Availability of the Habitat Plan and EFH Amendment

Specifications of EFH and HAPCs and additional background and rationale for the expansion of the Oculina Bank HAPC are contained in the Habitat Plan and the EFH Amendment, which includes Amendment 4 to the Coral FMP. Availability of the Habitat Plan and EFH Amendment was announced in the **Federal Register** (63 FR 10612, March 5, 1998). The preamble to the final rule will summarize and address all comments on the EFH Amendment, including Amendment 4, the Habitat Plan, and this proposed rule that are received during their respective comment periods.

Classification

The Administrator, Southeast region, NMFS, determined that the EFH Amendment is necessary for the conservation and management of the Council's FMPs and it is consistent with the Magnuson-Stevens Act and other applicable law on June 3, 1999.

The Council prepared a final SEIS (FSEIS) for the EFH Amendment, including Amendment 4 to the Coral FMP. The Environmental Protection Agency (EPA) published a notice of the availability of the draft SEIS on July 17, 1998 (63 FR 19120). EPA published a notice of availability of the FSEIS on April 19, 1999, (64 FR 17362). The environmental impacts described in the FSEIS are summarized as follows. Expanding the Oculina Bank HAPC to include the *Oculina* coral and the hard bottom/soft coral habitat within the area north of the current Oculina Bank HAPC boundary and in two adjacent areas would provide additional protection for essential fish habitat. The expansion would reduce the gear-related impact of the rock shrimp and calico scallop fisheries on live/hard bottom and coral habitat by eliminating the use of trawl gear in the expanded area. It would also eliminate damage from other fishing gear that contacts the bottom.

Trawl damage occurs from direct contact with live/hard bottom, including *Oculina* coral. *Oculina* is only known to be distributed in bank formation south of 29° N. lat. Therefore, prohibiting the use of trawl gear in the expanded area will help prevent the loss

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of this essential snapper grouper habitat and will enhance its biological integrity.

There is concern that repetitive trawling of the limited fishable bottom over the years has and may continue to impact the benthic habitat and the fishery resources it sustains. Therefore, an additional benefit of protecting these habitats would be protection of a portion of the rock shrimp and calico scallop spawning stock. This would help the fishery recover in years when recruitment is low due to poor environmental conditions.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The EFH Amendment does not contain measures that would result in immediate economic effects, except for Actions 3A and 3B. These actions would enlarge the existing Oculina Bank HAPC, create two "satellite HAPC" areas, and prohibit fishing with a bottom longline, bottom trawl, dredge, pot, or trap in these areas. The Council determined that the prohibition on trawling for calico scallops would not have a significant impact on a substantial number of small entities. NMFS reviewed the Council's determination and made an independent determination that certain criteria for significance, in particular the NMFS criterion of a 5 percent negative impact on revenues, may be met. Accordingly, NMFS determined there would be a significant impact on a substantial number of small entities and prepared an IRFA. However, NMFS notes that the information on economic impacts associated with the proposed rule is incomplete and is specifically requesting public comment on the extent and nature of economic impacts that may be associated with a prohibition on calico scallop trawling in expanded Oculina HAPC. The IRFA prepared by NMFS was based on information in the EFH Amendment and on other available information. A summary of the IRFA follows.

The proposed action responds to the Magnuson-Stevens Act requirements to identify essential fish habitats and to minimize any fishing related damage to these habitats. The overall objective of the proposed rule is to identify and maintain essential fish habitats. The Magnuson-Stevens Act provides the legal basis for the rule. Most of the provisions of the proposed rule would result in regulations that would not have cost or revenue effects on small entities. However, a proposal to enlarge an existing protected area, called the Oculina Bank HAPC, would also prohibit trawling for calico scallops in the expanded HAPC. This portion of the proposed rule would apply to about 25 small fishing businesses that have historically participated in the fishery. Most of the vessels used by these small businesses were not built specifically for harvesting calico scallops but are shrimp trawling vessels using modified gear. In 1997, the industry had landings that generated gross revenues of $1.3 million dollars, and this indicates that gross revenue per vessel averaged about $52,000. Complete information regarding variability of revenues among vessels does not exist, but it is known with reasonable certainty that the actual landings of calico scallops and the associated revenues would show a considerable amount of variation among the 25 vessels in the industry, and differential impacts are expected. There are no additional reporting, recordkeeping, or other compliance costs associated with the proposed action, and no existing duplicative, overlapping, or conflicting Federal rules have been identified. Two alternatives were considered and rejected. One of the alternatives considered was no action. While this option obviously would have no impact on small business entities, it was rejected since it would provide no additional protection for essential fish habitats. The other alternative would expand the Oculina Bank HAPC by a greater area than required by the proposed alternative. This option would provide additional protection to essential fish habitats but would result in the closure of a major portion of the known historic fishing grounds for calico scallops and would result in major negative impacts on the calico scallop industry. The resulting negative economic impacts were deemed to be greater than the benefits that would accrue from the additional protection for essential fish habitats, and the alternative was rejected on that basis.

Copies of the IRFA are available (see **ADDRESSES**).

List of Subjects

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 1, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 622 and 640 are proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.35, paragraph (g) is removed and paragraph (c) is revised to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(c) *Oculina Bank*—(1) *HAPC.* The Oculina Bank HAPC encompasses an area bounded on the north by 28°30' N. lat., on the south by 27°30' N. lat., on the east by the 100–fathom (183–m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°00' W. long.; and two adjacent areas: the first bounded on the north by 28°30' N. lat., on the south by 28°29' N. lat., on the east by 80°00' W. long., and on the west by 80°03' W. long.; and the second bounded on the north by 28°17' N. lat., on the south by 28°16' N. lat., on the east by 80°00 W. long., and on the west by 80°03' W. long.

In the Oculina Bank HAPC, no person may:

(i) Use a bottom longline, bottom trawl, dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for rock shrimp or possess rock shrimp in or from the area on board a fishing vessel.

(2) *Experimental closed area.* Within the Oculina Bank HAPC, the experimental closed area is bounded on the north by 27°53' N. lat., on the south by 27°30' N. lat., on the east by 79°56' W. long., and on the west by 80°00' W. long. No person may fish for South Atlantic snapper-grouper in the experimental closed area, and no person may retain South Atlantic snapper-grouper in or from the area. In the experimental closed area, any South Atlantic snapper-grouper taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

* * * * *

3. In § 622.48, the introductory text and paragraphs (c), (f), (g), and (h) are revised; and paragraphs (j) and (k) are added to read as follows:

§ 622.48 Adjustment of management measures.

In accordance with the framework procedures of the applicable FMPs, the RD may establish or modify the following items:

* * * * *

(c) *Coastal migratory pelagic fish.* For cobia or for a migratory group of king or Spanish mackerel: MSY, overfishing level, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), minimum size limit, vessel trip limits, closed seasons or areas, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, permit requirements, definitions of essential fish habitat, and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

* * * * *

(f) *South Atlantic snapper-grouper and wreckfish.* For species or species groups: Target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

(g) *South Atlantic golden crab.* MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the RD to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat, and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

(h) *South Atlantic shrimp.* Certified BRDs and BRD specifications, definitions of essential fish habitat, and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

* * * * *

(j) *Atlantic coast red drum.* Definitions of essential fish habitat and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

(k) *South Atlantic coral, coral reefs, and live/hard bottom habitats.* Definitions of essential fish habitat and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

3. The authority citation for part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. A new § 640.25 is added to subpart B to read as follows:

§ 640.25 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RD may establish or modify the following items: definitions of essential fish habitat, Essential Fish Habitat-Habitat Areas of Particular Concern, Coral-Habitat Areas of Particular Concern, limits on the number of traps fished by each vessel, construction characteristics of traps, specification of gear and vessel identification requirements, specification of allowable or prohibited gear in a directed fishery, specification of bycatch levels in non-directed fisheries, changes to soak or removal periods and requirements for traps, recreational bag and possession limits, changes in fishing seasons, limitations on use, possession, and handling of undersized lobsters, and changes in minimum size.

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–041–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the importation of animals and poultry, animal and poultry products, and animal germplasm.

DATES: Comments on this notice must be received by September 7, 1999, to be assured of consideration.

ADDRESSES: We invite you to comment regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information. Please send your comment and three copies to: Docket No. 99–041–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–041–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the importation of animals and poultry, animal products and poultry products, and animal germplasm, contact Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export (NCIE), VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8364; or e-mail: gary.s.colgrove@usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Importation of Animals and Poultry, Animal and Poultry Products, and Certain Animal Embryos.

OMB Number: 0579–0040.

Expiration Date of Approval: September 30, 1999.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture is responsible for preventing the introduction of exotic animal diseases into the United States and for rapidly identifying, containing, and eradicating these diseases when outbreaks occur. To fulfill this mission, we must collect pertinent information from those individuals who import animals or poultry, animal or poultry products, or animal germplasm into the United States.

This information includes important data such as the origins of the animals or animal products to be imported, the health status of the animals or the processing methods used to produce the animal products to be imported, and whether the animals or animal products were temporarily offloaded in another country during their transit to the United States. This information helps us to ensure that these imports pose no more than a negligible risk of introducing exotic animal diseases into the United States.

Acquiring this information entails the use of a variety of information collection procedures, devices, and forms including, but not limited to: Health certificates, import permits, ear tags, leg bands, specimen submission forms, inspection reports, cooperative and trust fund agreements, and certification statements.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25304 hours per response.

Respondents: Entities that import animals or poultry, animal or poultry products, or animal germplasm into the United States.

Estimated annual number of respondents: 107,849.

Estimated annual number of responses per respondent: 23.5245.

Estimated annual number of responses: 2,537,098.

Estimated total annual burden on respondents: 64,200 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of July 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17446 Filed 7–8–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 1999–June 30, 2000

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to: The national average payment rates for meals and supplements served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and supplements served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein, Section Chief, Child and Adult Care and Summer Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria Virginia, 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR Part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (NSLA) (42 U.S.C. §§ 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for institutions participating in CACFP. These rates shall be in effect during the period July 1, 1999 through June 30, 2000.

As provided for under the NSLA and the CNA, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on July 2, 1998 at 63 FR 36205 (for the period July 1, 1998–June 30, 1999). A subsequent notice was published on July 13, 1998 at 63 FR 37628 to correct printing errors in the original notice.

Section 103(b) of the William F. Goodling Child Nutrition Reauthorization Act of 1998, Pub. L. 105–336, enacted October 31, 1998, amended section 11(a)(3)(B) of the NSLA (42 U.S.C. § 1759a(a)(3)(B)) and changed the method of computing the annual adjustments to the reimbursement rates for free and reduced-price meals and supplements served in centers participating in CACFP. Effective July 1, 1999, the amendment requires that operating reimbursement rates for meals and supplements served in centers be rounded down to the nearest lower whole cent. This complements the amendment made by section 704(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, enacted August 22, 1996, which changed the method of computing the paid meal reimbursements in centers, and the reimbursements for all meals served in CACFP family day care homes. With the amendment described within section 103(b), all reimbursement rates for meals served in CACFP will be adjusted and then rounded down to the nearest lower whole cent.

Section 708(e)(1) of Pub. L. 104–193 also amended section 17(f)(3)(A) of the NSLA to establish two "tiers" of day care homes and reimbursement rates. Tier I homes are homes located in low-income areas or homes in which the provider's household income is at or below 185 percent of the Federal income poverty guidelines. Tier II homes are those homes which do not meet the location or provider income criteria for a tier I home. However, tier II homes may receive the tier I rates for meals served to identified income-eligible children (i.e. children from households with incomes at or below 185 percent of the Federal income poverty guidelines).

Pub. L. 104–193 further specified in section 17(f)(3)(A)(ii)(III) and (IV) the reimbursement factors for meals served in tier I day care homes as the factors in effect on July 1, 1996, with adjustments made to the factors on July 1, 1997, and each July 1 thereafter. Pub. L. 104–193 further provided in section 17(f)(3)(A)(ii)(IV) and 17(f)(3)(A)(iii)(I)(bb) (42 U.S.C. 1766(f)(3)(A)(ii)(IV) and 1766(f)(3)(A)(iii)(I)(bb)) of the NSLA that the factors paid to tier I and tier II homes be rounded down to the nearest whole cent, instead of rounding the factors up or down to the nearest quarter-cent increment as previously required. Subsequent adjustments must be based on the unrounded rate from the preceding school year. In addition, annual adjustments, which were previously based on changes in the CPI for food away from home, must now be made based on the CPI for food at home.

Please note that reimbursement rates for tier II family day care homes are set forth in section 17(f)(3)(A)(iii)(I)(aa) of the NSLA (42 U.S.C. 1766(f)(3)(A)(iii)(I)(aa)), as amended by section 708(e)(1) of Pub. L. 104–193. After these reimbursement rates were adjusted and rounded down to the nearest whole cent as required under the law, an additional six cents was added to the breakfast rate as required by section 4(b)(3) of the CNA of 1966, as amended (42 U.S.C. 1773(b)(3)). The CNA requires that all reimbursement rates for breakfasts served under the School Breakfast Program and the CACFP be adjusted upward by six cents. As background, this addition was first made in 1986, under Pub. L. 99–500, the School Lunch and Child Nutrition Amendments of 1986, which added three cents to adjusted breakfast rates to assist States in improving the nutritional quality of the breakfasts. This adjustment was raised from three cents to six cents in 1989 under Pub. L. 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, for the same reason.

The payment rates for the period July 1, 1999–June 30, 2000 are:

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MEALS SERVED IN CENTERS—ALL STATES EXCEPT ALASKA AND HAWAII

[Per meal rates in whole or fractions of U.S. dollars]

Type of meal served	Paid	Reduced price	Free
Breakfast	0.21	0.79	1.09
Lunch and Supper [1]	0.19	1.58	1.98
Supplement	0.05	0.27	0.54

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the **Federal Register**.

MEALS SERVED IN DAY CARE HOMES—ALL STATES EXCEPT ALASKA AND HAWAII

[Per meal rates in whole or fractions of U.S. dollars]

Type of meal served	Tier I	Tier II
Breakfast	0.92	0.34
Lunch and Supper	1.69	1.02
Supplement	0.50	0.13

ADMINISTRATIVE REIMBURSEMENT RATES—ALL STATES EXCEPT ALASKA AND HAWAII

[For sponsoring organizations of day care homes]

Number of homes	Rate per home
Initial 50	78
Next 150	59
Next 800	46
Each Additional	41

Pursuant to section 12(f) of the NSLA (42 U.S.C 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

MEALS SERVED IN CENTERS—ALASKA

[Per meal rates in whole or fractions of U.S. dollars]

Type of meal served	Paid	Reduced price	Free
Breakfast	0.30	1.44	1.74
Lunch and Supper [1]	0.30	2.81	3.21
Supplement	0.08	0.44	0.88

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the **Federal Register**.

MEALS SERVED IN DAY CARE HOMES—ALASKA

[Per meal rates in whole or fractions of U.S. dollars]

Type of meal served	Tier I	Tier II
Breakfast	1.45	0.52
Lunch and Supper	2.73	1.65
Supplement	0.81	0.22

ADMINISTRATIVE REIMBURSEMENT RATES—ALASKA

[For sponsoring organizations of day care homes per home/per month rates in U.S. dollars]

Number of homes	Rate per home
Initial 50	126
Next 150	96
Next 800	75
Each Additional	66

The new payment rates for Hawaii are as follows:

MEALS SERVED IN CENTERS—HAWAII

[Per meal rates in whole or fractions of U.S. dollars]

Type of meal served	Paid	Reduced price	Free
Breakfast	0.23	0.97	1.27
Lunch and supper [1]	0.22	1.92	2.32
Supplement	0.05	0.31	0.63

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the **Federal Register**.

MEALS SERVED IN DAY CARE HOMES—HAWAII

[Per meal rates in whole or fractions of U.S. dollars]

Type of meal served	Tier I	Tier II
Breakfast	1.06	0.39
Lunch and Supper	1.97	1.19
Supplement	0.58	0.16

ADMINISTRATIVE REIMBURSEMENT RATES—HAWAII

[For sponsoring organizations of day care homes per home/per month rates in U.S. dollars]

Number of homes	Rate per home
Initial 50	91
Next 150	69
Next 800	54
Each Additional	48

The changes in the national average payment rates for centers reflect a 2.49 percent increase during the 12-month period, May 1998 to May 1999, (from 160.6 in May 1998 to 164.6 in May 1999) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 1.99 percent increase during the 12-month period, May 1998 to May 1999, (from 160.7 in May 1998 to 163.9 in May 1999) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.09 percent increase during the 12-month period, May 1998 to May 1999, (from 162.8 in May 1998 to 166.2 in May 1999) in the series for all items of the CPI for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order.12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Secs. 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: July 2, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–17407 Filed 7–8–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: The "national average payments," the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 1999 through June 30, 2000.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Jane Whitney, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1007, Alexandria, VA 22302 or phone (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products (Code 0231), published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1999 to June 30, 2000, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 12.75 cents. This reflects a decrease of 1.41 percent in the Producer Price Index for Fluid Milk Products (Code 0231) from May 1998 to May 1999 (from a level of 141.7 in May 1998 to 139.7 in May 1999).

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to sections 11 and 17A of the National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966, (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 1999 through June 30, 2000 reflect a 2.49 percent increase in the Price Index during the 12-month period May 1998 to May 1999 (from a level of 160.6 in May 1998 to 164.6 in May 1999).

Section 103(b) of the William F. Goodling Child Nutrition Reauthorization Act of 1998, Pub. L. 105–336, enacted October 31, 1998 amended section 11(a)(3)(B) of the National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)) and changed the method of computing the annual adjustments to the national average payment rates for meals and afterschool snacks served to *needy* children. Effective July 1, 1999, the annual adjustments to the payment rates for free and reduced price meals under section 11(a)(2) of the National School Lunch Act (42 U.S.C. 1759a(a)(2)), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and section 17A(c) of the National School Lunch Act (42 U.S.C. 1766a(c)), authorized under section 11(a)(3)(B) of the National School Lunch Act are rounded down to the nearest whole cent. This complements section 704(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, enacted August 22, 1996, which amended section 11(a)(3)(B) of the National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)) to change the method for computing the annual adjustments to the national average payment rates for meals and afterschool snacks served to *nonneedy* children. Effective July 1, 1997, the annual adjustments to the payment rates for *paid* meals under Section 4 of the National School Lunch Act (42 U.S.C. 1753), and Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773)

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and *paid* afterschool snacks under section 17A(c) of the National School Lunch Act (42 U.S.C. 1766a(c)), authorized under section 11(a)(3)(B) of the National School Lunch Act, were rounded down to the nearest whole cent. Thus, these two statutory amendments implement a provision wherein annual adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Lunch Payment Levels—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The National School Lunch Act provides two different Section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these Section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act (42 U.S.C. 1757, 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Afterschool Snack Payments in Afterschool Care Programs—Section 17A of the National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific Section 4, Section 11 and Section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates and breakfast rates are in effect from July 1, 1999 through June 30, 2000. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 1997–98, the payments for meals served are: *Contiguous States*—paid rate—19 cents, free and reduced price rate—19 cents, maximum rate—27 cents; *Alaska*—paid rate—30 cents, free and reduced price rate—30 cents, maximum rate—42 cents; *Hawaii*—paid rate—22 cents, free and reduced price rate—22 cents, maximum rate—31 cents.

In school food authorities which served *60 percent or more* free and reduced price lunches in School Year 1997–98, payments are: *Contiguous States*—paid rate—21 cents, free and reduced price rate—21 cents, maximum rate—27 cents; *Alaska*—paid rate—32 cents, free and reduced price rate—32 cents, maximum rate—42 cents; *Hawaii*—paid rate—24 cents, free and reduced price rate—24 cents, maximum rate—31 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch—179 cents, reduced price lunch—139 cents; *Alaska*—free lunch—291 cents, reduced price lunch—251 cents; *Hawaii*—free lunch—210 cents, reduced price lunch—170 cents.

Afterschool Snacks in Afterschool Care Programs—The payments are: *Contiguous States*—free snack—54 cents, reduced price snack—27 cents, paid snack—5 cents; *Alaska*—free snack—88 cents, reduced price snack—44 cents, paid snack—8 cents; *Hawaii*—free snack—63 cents, reduced price snack—31 cents, paid snack—5 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast—109 cents, reduced price breakfast—79 cents, paid breakfast—21 cents; *Alaska*—free breakfast—174 cents, reduced price breakfast—144 cents, paid breakfast—30 cents; *Hawaii*—free breakfast—127 cents, reduced price breakfast—97 cents, paid breakfast—23 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast—130 cents, reduced price breakfast—100 cents, paid breakfast—21 cents; *Alaska*—free breakfast—208 cents, reduced price breakfast—178 cents, paid breakfast—30 cents; *Hawaii*—free breakfast—151 cents, reduced price breakfast—121 cents, paid breakfast—23 cents.

Payment Chart

The following chart illustrates: The lunch National Average Payment Factors with Sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

BILLING CODE 3410-30-U

SCHOOL PROGRAMS
MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES
Expressed in Dollars or Fractions Thereof
Effective from July 1, 1999 - June 30, 2000

NATIONAL SCHOOL LUNCH PROGRAM *		LESS THAN 60%	60% OR MORE	MAXIMUM RATE
CONTIGUOUS STATES	PAID	$ .19	$ .21	$ .27
	REDUCED PRICE	1.58	1.60	1.75
	FREE	1.98	2.00	2.15
ALASKA	PAID	$ .30	$ .32	$ .42
	REDUCED PRICE	2.81	2.83	3.07
	FREE	3.21	3.23	3.47
HAWAII	PAID	$ .22	$ .24	$ .31
	REDUCED PRICE	1.92	1.94	2.11
	FREE	2.32	2.34	2.51

SCHOOL BREAKFAST PROGRAM		NON-SEVERE NEED	SEVERE NEED
CONTIGUOUS STATES	PAID	$ .21	$ .21
	REDUCED PRICE	.79	1.00
	FREE	1.09	1.30
ALASKA	PAID	$ .30	$ .30
	REDUCED PRICE	1.44	1.78
	FREE	1.74	2.08
HAWAII	PAID	$ .23	$ .23
	REDUCED PRICE	.97	1.21
	FREE	1.27	1.51

SPECIAL MILK PROGRAM	ALL MILK	PAID MILK	FREE MILK
PRICING PROGRAMS WITHOUT FREE OPTION	$ .1275	N/A	N/A
PRICING PROGRAMS WITH FREE OPTION	N/A	$ .1275	Average cost per ½ pint of milk.
NONPRICING PROGRAMS	$ .1275	N/A	N/A

AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS		
CONTIGUOUS STATES	PAID	$ .05
	REDUCED PRICE	.27
	FREE	.54
ALASKA	PAID	$ .08
	REDUCED PRICE	.44
	FREE	.88
HAWAII	PAID	$ .05
	REDUCED PRICE	.31
	FREE	.63

* Payments listed for Free & Reduced Price Lunches include both sections 4 and 11 funds.

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This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 2, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–17406 Filed 7–8–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Long Clear Project, Boise National Forest, Boise County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Boise National Forest will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of a proposed timber sale, and road and dispersed-campsite treatments (including road closures), in the Lower Clear Creek subwatershed of the Clear Creek drainage. During the winter months of 1996–97, heavy snows and saturated soils caused blow down of trees within the Clear Creek drainage of the Lowman Ranger district. The blown down trees were subsequently attacked by Douglas-fir beetles in the spring and summer of 1997. Pure, dense stands of Douglas-fir stressed by drought and previous insect or disease attack are particularly susceptible to Douglas-fir beetle infestations that can kill large forested areas. Because there are dense, stressed Douglas-fir stands within the project area, many of these areas are at risk of insect and disease infestation. Some areas also remain less resistant and resilient to unnaturally severe wildfire. These areas need to be thinned, and in some cases, seral species need to be restored, to improve their resistance and resilience to uncharacteristic events. Some trees are infested with bark beetles or infected with mistletoe and other disease, and are expected to die. Prompt salvage of these trees is needed if their economic value is to be captured. In addition, many roads within the project area are contributing sediment, and need to be reconstructed, rehabilitated and/or closed to enhance water quality, protect native fish habitat and help restore healthy aquatic conditions in the Clear Creek watershed. The ford on the Long Clear road (Forest road 545), and dispersed campsites, need to be treated to reduce impacts to water quality and fish habitat.

During the winter and spring of 1998, the Lowman District prepared an environmental assessment (EA) for this proposed timber sale and a Decision Notice and Finding of No Significant Impact was signed in May 1998. Subsequently, American Wildlands and the Idaho Sporting Congress filed suit in Federal District Court. The District Court's decision found the EA did not contain or refer to the "hard data" supporting the project's purpose and need, and directed the Forest Service to prepare adequate National Environmental Policy Act (NEPA) documentation for the proposed project. The Forest Service has determined an EIS is the appropriate form of documentation for the proposed Long Clear Timber Sale.

The Lowman Ranger District of the Boise National Forest proposes to treat about 5,700 acres through commercial thinning, precommercial thinning, salvage harvest, and reforestation, to reduce stand density and improve resistance and resilience to uncharacteristic events, and to capture the economic value of dead and dying trees. No timber harvest would occur in Riparian Habitat Conservation Areas or in the Deadwood or Red Mountain Inventoried Roadless Areas. Twelve pheromone bait stations have been established to attract Douglas-fir bark beetles into easily accessible concentrations of trees. These bait stations resulted in Douglas-fir bark beetle infestations in approximately 400 trees. These 400 trees would be harvested as a portion of this proposal. Activity (harvest-related) fuels would be burned on about 4,600 acres to reduce fuel buildup and the potential for unnaturally intense wildfires. Prescribed fire would be undertaken on about 500 acres, to burn natural fuels in areas where natural fire has not occurred as often as could be historically expected. Ten dispersed-recreation sites along Clear Creek would be treated to reduce impacts on water quality and fish habitat resulting from recreational use. A total of 6.9 miles of currently open but impassable road would be closed year long to full-sized motorized vehicles and converted to a seasonal motorized trail. A total of 3.6 miles of currently open roads would be closed and revegetated, and 2.1 miles of currently closed roads would be revegetated. The Long Creek road (Forest road 545) bridge across Clear Creek would be reconstructed, eliminating use of the current ford. Additionally, approximately 20 miles of existing road (mostly along the Long Creek road) would be reconstructed to facilitate harvest activities and reduce sediment delivery, in accordance with INFISH guidelines.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received by July 23, 1999 to ensure timely consideration. No scoping meetings are planned at this time.

ADDRESSES: Send written comments to Jackie Andrew, Project Coordinator, Lowman Ranger District, 7359 Highway 21, Lowman, ID 83637.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Jackie Andrew at 208–259–3361.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

Information received will be used in preparation of the draft EIS and final EIS. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**. The Responsible Official is David D. Rittenhouse, Forest Supervisor, Boise National Forest. The decision to be made is whether to thin and harvest National Forest System timber, treat roads and dispersed campsites, and reduce natural and activity fuels through prescribed fire. The draft EIS is expected to be available for public review in September 1999, with a final EIS estimated to be completed in November 1999. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986), and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapter of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentially should be aware that, under the FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester the comments may be resubmitted with or without name and address within 10 days.

Dated: June 29, 1999.

David Rittenhouse,

Forest Supervisor.

[FR Doc. 99–17127 Filed 7–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Meadow Smith Project Environmental Impact Statement; Flathead National Forest, Swan Lake Ranger District, Lake and Missoula Counties, State of Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest timber, commercial and pre-commercial tree thinning, burn brush fields or forest understory trees, reclaim and construct roads, change road access, improve fish passages, wet land restoration, and reduce sediment sources within the Meadow Smith Project area. The project area is located in the upper Swan Valley and is approximately 35 miles air miles southeast of Bigfork, Montana in the vicinity of the community of Condon.

The Forest Service is seeking further information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. These comments will be used to prepare the draft EIS.

DATES: The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in August, 1999. No date has yet been determined for filing the final EIS.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

ADDRESSES: You may request to be placed on the project mailing list or direct questions, comments, and suggestions about the proposed action and EIS to Keith Soderstrom, EIS Team Leader, or Chuck Harris, District Ranger, Swan Lake Ranger District, 200 Ranger Station Road, Bigfork, MT 59911. Phone: (406) 837–7500.

The proposal's actions listed above are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The Forest Service believes the current forest conditions resulting from large wildfires that occurred near the turn of the century and subsequent management decisions are causing adverse effects. Specifically, the encroachment of shade tolerant tree species on dry sites historically dominated by open-grown, large-tree communities has caused an overall reduction of individual tree health; increased risk of property damage on both national forest and adjacent private land from large and intense wildfires; and, a decrease in the presence of open-grown, large tree ponderosa pine and western larch forests. The Forest Service also believes implementing a no action alternative will further increase these effects in the future. The proposed actions may have short term significant effects on wildlife, but long term benefits to the function of the ecosystem are more desirable.

The EIS will tier to the Flathead National Forest Land and Resource Management Plan (LRMP) and EIS of January, 1986, and its subsequent amendments, which provide overall guidance of all land management activities on the Flathead National Forest.

Decision To Be Made

Should the Forest Service implement the proposed action or any action to meet the purpose and need or to defer any action at this time within the Meadow Smith Project area? The deciding official for this project is Chuck Harris, Swan Lake District Ranger, Flathead National Forest.

Preliminary Issues and Alternatives

Public and internal scoping which has already occurred for this project includes two public meetings, four public field trips; three mailings to Federal, State, and local agencies and other individuals or organizations; personal conversations with interdisciplinary team members and members of the public, and news media releases. An Environmental Assessment has been completed for this proposal and made available for public comment;

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based on comments received, the Forest Service has decided to prepare an Environmental Impact Statement. Through public and internal scoping, the following significant issues emerged:

SUPPLEMENTARY INFORMATION:

Nature and Scope of the Proposed Action

Ponderosa pine and western larch forests in the Swan Valley were once a mosaic of open, park like stands that supported large trees. Fire suppression and timber harvesting in this century have changed these forests. Many of the remaining stands of ponderosa pine and western larch have become densely overgrown with mid-story and understory Douglas-fir, subalpine fir, spruce, and grand fir trees. These shade tolerant species are growing into the crowns of the older ponderosa pine and western larch. This creates "fuel ladders" that put ponderosa pine and western larch at increased risk should a fire occur. Historically, the low intensity ground fires will have thinned out these shades tolerant species. Trees in these dense stands are also susceptible to insects and pathogens. Dead or diseased trees increase the risk of fire. The closed forest canopy is also shading and reducing the vigor of shrub, grass, and forb populations associated with open forest conditions.

This proposal addresses the need to restore old growth forest characteristics within the Upper Swan Valley. The proposed management actions are intended to increase the presence of open-grown, large-tree ponderosa pine and western larch forests; lower the risks of loss of mature large trees from insects, disease, and lethal fire; and return fire, in the form of prescribed fire, as a process of forest succession.

The proposed action outlines 2,090 acres of vegetation treatments which include prescribed burning, pre-commercial thinning, and varying intensities of timber harvest with associated fuels treatments and preparation for reforestation. The proposed action includes 2.9 miles of road reclamation, 3.3 miles of temporary road construction and subsequent restoration, improved fish passages at 3 sites, culvert replacement at one site, wetland restoration (filling a man-made ditch) at one site, and approximately 5.5 miles of fuel breaks on upland sites adjacent to private lands. In addition, road access changes are proposed for 3.0 miles, and establishing approximately 5.5 miles of fuel breaks on upland sites adjacent to private lands.

1. Effects of vegetation treatments on big game winter range habitat.

2. Effects of vegetation treatments on existing and future old growth forest communities. The interdisciplinary team has developed alternatives to the proposed action that respond to these significant issues.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Following this comment period, the comments received will be analyzed, considered, and responded to by the Forest Service in the final environmental impact statement (FEIS). Chuck Harris, District Ranger, Swan Lake Ranger District, 200 Ranger Station Road, Bigfork, MT 59911 is the responsible official for the preparation of the EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and rational for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: July 2, 1999.

Chuck Harris,

District Ranger, Swan Lake Ranger District, Flathead National Forest.

[FR Doc. 99–17476 Filed 7–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Threemile Timber Harvest, Tongass National Forest; Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revision of the Notice of Intent to Prepare an Environmental Impact Statement for the Threemile Timber Harvest as published in **Federal Register** page 13766–13767, on March 22, 1999. This revision includes changes in the proposed action, the size of the project area, as well as changes in the project schedule.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Tongass National Forest timber sale program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The revised proposed action is to harvest timber in the Threemile Project area on Kuiu Island with associated road construction as well as a new log transfer facility at Threemile Arm.

A range of alternatives responsive to significant issues will be developed including a no-action alternative. The proposed timber harvest is located in the Tongass National Forest, Petersburg Ranger District, on Kuiu Island. Alaska, within the Threemile Arm area. The *Tongass Land and Resource Management Plan* (1999) provides the overall guidance (land use designations, goals, objectives, management prescriptions, standards and guidelines) to achieve the desired future condition for the area in which this project is proposed. The Forest Plan allocates portions of the project area into three management prescriptions: Timber Production, Modified Landscape, and Old-growth Habitat Land Use Designations.

DATES: For the Forest Service to best use the scoping input, comments should be received by August 1, 1999; however, scoping comments will be accepted at any time. Comments received in response to the original Notice of Intent are also accepted.

ADDRESSES: Please send written comments to Petersburg Ranger District; Tongass National Forest, Attn: Threemile Timber Harvest EIS; PO Box 1328, Petersburg, AK., 99833.

INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Everett Kissinger, Interdisciplinary Team Leader, PO Box 1328, Petersburg, AK, 99833, phone (907) 772–3841.

SUPPLEMENTARY INFORMATION: Public participation will be part of the planning process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from federal, tribal, state, and local agencies, and from individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written scoping comments will be solicited through a scoping package sent to a project mailing list. For the Forest Service to best use the scoping input, comments should be received by August 1, 1999; however, scoping comments will be accepted at any time. Tentative issues identified for analysis in the EIS include subsistence, wildlife habitat, road development and access management, and timber sale economics and timber supply. Based on the results of scoping and the resource capabilities within the project area, alternatives including a no-action alternative will be developed for a Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Projection Agency (EPA) in January 2000. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), may be conducted during the comment period on the Draft EIS if the analysis indicates a significant effect to subsistence uses. The Final EIS is anticipated by July, 2000.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes a notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific areas with the project area are specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and address of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requests should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Those required for implementation include the following:

1. U.S. Army Corps of Engineers
—Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
—Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1989;
2. Environmental Protection Agency
—National Pollutant Discharge Elimination System (402) Permit;
—Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
—Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
—Solid Waste Disposal Permit;
—Certification of Compliance with Alaska Water Quality Standards (401 Certification)
5. State of Alaska, Division of Governmental Coordination
—Coastal Zone Consistency Determination concurrence

RESPONSIBLE OFFICIAL: Carol J. Jorgensen, Assistant Forest Supervisor, Stikine Area, Tongass National Forest, PO Box 309, Petersburg, AK 99833, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: June 21, 1999.

Carol J. Jorgensen,

Assistant Forest Supervisor.

[FR Doc. 99–17477 Filed 7–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting; Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

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SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Tuesday, July 20, 1999, at the Port of Skamania County meeting room, located at 70 SE Cascade, Stevenson, Washington. The meeting will begin at 10 a.m. and continue until 5 p.m. The purpose of the meeting is to present: (1) The National Forest roads policy and how that affects the roads policy on the Gifford Pinchot National Forest; (2) the timber and recreation aspects of monitoring the Northwest Forest Plan; (3) restoration monitoring; (4) an update on the timber sale plan; (5) an update on survey and manage; and (6) a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (6) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: July 2, 1999.

Peggy Kain,

Acting Deputy Forest Supervisor.

[FR Doc. 99–17485 Filed 7–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Stewardship Contracting Pilot Projects

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service is implementing pilot projects to study whether alternate means of contracting on National Forest System lands can better accomplish program objectives. Section 347 of the FY 1999 Omnibus Appropriations Act authorizes the Forest Service to enter into twenty-eight "stewardship end result contracting demonstration projects" to pilot test an array of new authorities for giving national forest managers greater administrative flexibility to improve forest conditions and address the needs of local communities.

ADDRESSES: Questions about this notice may be sent to Cliff Hickman, via mail at USDA Forest Service, Forest Management, Mail Stop 1105, P.O. Box 96090, Washington, DC 20090–6090 or electronically to chickman/wo/@fs.fed.us. Electronic copies of Section 347 of the FY 1999 Omnibus Appropriations Act may be obtained via Internet at www.fs.fed.us/land/fm/stewardship/framework.html.

FOR FURTHER INFORMATION CONTACT: Cliff Hickman, Forest Management Staff, (202) 205–1162, or chickman/wo@fs.fed.us.

SUPPLEMENTARY INFORMATION: Many forests within the National Forest System are currently experiencing conditions that jeopardize long-term ecosystem health and sustainability (such as, high fuel loadings, impaired watersheds, and habitat loss). The Forest Service seeks to respond to these problems in an efficient and cost-effective manner to maximize treated acreage without undue administrative delay. In addition to natural resource benefits, local economies may benefit as a result of the Forest Service using private contractors to implement needed ecosystem restoration, maintenance, or protection activities.

The Forest Service's current contracting authorities are limited in their ability to address the agency's changing forest management challenges because those laws were originally designed to sell and remove forest products of commercial value. To address many of today's most pressing forest health concerns (such as excessive fuel loadings), the agency needs to remove material of relatively little to no economic value. Except within very narrowly defined limits, the agency's current timber sale authorities preclude the federal government from requiring purchasers to perform land management services not directly associated with removing purchased timber. This often results in making multiple entries on the same site using multiple service contracts to implement desired treatments. The need for multiple entries and contracts increases the potential for environmental degradation and adds to the administrative costs.

Stewardship contracts are generally multiserve and multiyear procurements, are end result oriented, and generally authorize the exchange of goods for services. Given these attributes, stewardship contracts may greatly enhance the agency's ability to implement needed ecosystem restoration, maintenance, or protection activities.

Background

In Fiscal Years 1992 and 1993, the Forest Service was given limited authority to experiment with stewardship contracting. Language in the appropriations act for these 2 years provided that tests cold be conducted on five administrative units (the Idaho Panhandle National Forest in Region 1, the Coconino and Kaibab National Forests in Region 3, the Dixie National Forest in Region 4, and the Lake Tahoe Basin Management Unit in Region 5) and also authorized the exchange of goods for services. Test units conducted such work as: site preparation, replanting, silviculture activities, recreation activities, wildlife habitat improvement, and other multiple-use enhancements. These projects were funded, in part, by the products sold from the test sites.

In its final report to Congress on the results of these tests, the agency concluded that: (1) in instances where the primary reason for manipulating vegetation was to create specific resource conditions, rather than to produce fiber, stewardship contracting could be an extremely useful management tool, and (2) certain issues needed to be resolved before stewardship contracting could be applied more broadly or on a permanent basis. Key concerns identified during the study included: the handling of payments to states, the competitive disadvantage small businesses may have due to inadequate resources (such as, skills, finances, equipment), and the difficulties inherent in trying to fund multiyear contracts out of a single year's appropriated funds.

In October of 1996, in recognition of the growing need to find better ways to manage vegetation, especially material that is of little or no commercial value, the Forest Service held a national scoping workshop on the subject of "Improving Administrative Flexibility and Efficiency in the National Forest Timber Sale Program." At this meeting, a broad array of stakeholders discussed stewardship contracting and other potentially innovative ways of managing national forest vegetation within an ecosystem context. An outcome of the workshop was a new initiative with the following objectives:

- To find new ways to accomplish needed vegetation treatments more effectively and efficiently.
- To investigate how the Forest Service's existing authorities can be used more creatively to accomplish needed vegetation treatments.

- To demonstrate the role of vegetation management in resource stewardship.
- To demonstrate the role that ecosystem restoration, maintenance, and protection activities play in helping to sustain rural communities.
- To demonstrate the advantages of improved communication and joint problem solving among stakeholders concerned with restoring the diversity and productivity of forested watersheds.

This initiative is proceeding along two complementary paths: (1) determining how the agency can take maximum advantage of its existing authorities, and (2) evaluating what new authorities are needed to accomplish resource objectives. The first pathway has resulted in the publication of a booklet describing the agency's current authorities and their usefulness in implementing innovative land stewardship projects. This booklet is available from the Pinchot Institute for Conservation, Washington, DC.

In an effort to explore the second pathway, all National Forest System field units were invited in the summer of 1997 to nominate pilot projects that could test new and innovative ways of achieving diverse vegetation management goals. Field managers were encouraged to suggest useful projects that would entail applying processes and procedures beyond the scope of the agency's current authorities. A total of 52 nominations were received, including proposals from each region.

In November of 1997, an interdisciplinary team of resource specialists from both the Washington Office and the field reviewed the nominations and recommended that 22 projects be implemented as pilots. Criteria considered during the selection process included the following: the ability of the project to increase the existing knowledge of how to achieve national forest vegetative management goals more effectively and efficiently, the potential of the project to yield results applicable in a wide range of geographic and ecosystem settings, the number of committed cooperators and the level of public support for implementation of the project, and the degree to which the project would address one or more of the agency's natural resource priorities (improving water quality, riparian restoration, forest and rangeland ecosystem health, and promoting responsible recreation use).

Stewardship Pilots

Section 347 of the FY 1999 Omnibus Appropriations Act (Act) authorizes the Forest Service to implement up to 28 stewardship end result contracts, nine of which by law must be in Region 1. This Act also enumerates the new processes and procedures that the agency may test, to include: (1) awarding of contracts on the basis of "best value;" (2) issuing service contracts up to 10 years duration; (3) exchanging goods for services; (4) retaining receipts; (5) offering sales valued at over $10,000 without advertisement; (6) designating timber to be cut by prescription or description; and (7) collecting brush disposal and cooperative deposits when the agency conducts contract logging with subsequent sale of the cut products.

The land management goals that may be pursued through a Section 347 contract are set forth in subsection (b) of the legislation. They include, but are not limited to, the following: (1) Road and trail maintenance or obliteration to restore or maintain water quality; (2) soil productivity, habitat for wildlife and fisheries, or other resource values; (3) prescribed fires to improve the composition, structure, condition, or health of stands or to improve wildlife habitat; (4) noncommercial cutting or removal of trees or other activities to promote healthy forest stands, reduce fire hazards, or achieve other noncommercial objectives; (5) watershed restoration and maintenance; (6) restoration and maintenance of wildlife and fish habitat; and (7) control of noxious and exotic weeds or reestablishment of native plant species.

With regard to the noncommercial cutting or removal of trees, the Forest Service has interpreted "noncommercial" to mean a project where the primary purpose is to achieve some nontimber objective, established in the forest plan, that requires manipulating the existing vegetation, such as, improving forest health, reducing the risk of catastrophic wildfire, or creating desired wildlife habitat conditions. Sawtimber-sized trees could be removed during such projects and sold, but the sale of such timber would be secondary to achieving the forest plan objective.

Because of the limited scope of the pilot testing, the need to provide a better basis for evaluating the exchange of goods-for-services concept, and because the focus of the authorized projects is the noncommercial cutting of trees, subsection (d)(3) of the Act states that any receipts from the pilot projects are not to be considered in determining required payments to states and counties.

Twenty-seven Stewardship Pilot Projects have been selected: North Fork Big Game Habitat Restoration Project (Clearwater NF), Three Mile Restoration Project (Custer NF), Paint Emery Stewardship Demonstration Project (Flathead NF), Priest Pend Oreille Land Stewardship Project (Idaho Panhandle NF), Yaak Community Stewardship Proposal (Kootenai NF), Dry Wolf Project (Lewis & Clark NF), Clearwater Project (Lolo NF), Knox-Brooks Results Based Stewardship Proposal (Lolo NF), South Fork Clearwater River Stewardship Proposal (Nez Perce NF), Winiger Ridge Restoration Project (Arapaho-Roosevelt NF), Mt. Evans Collaborative Stewardship Project (Arapaho-Roosevelt NF), Upper Blue Stewardship Project (White River NF), SW Ecosystem Stewardship Project (San Juan NF), Beaver Meadows Restoration Project (San Juan NF), Grand Canyon Stewardship Project (Coconino NF), Cottonwood/Sundown Watershed Project (Apache-Sitgreaves NF), North Kennedy Forest Health Project (Boise NF), Monroe Mountain Ecosystem Restoration Project (Fishlake NF), Grassy Flats Project (Shasta-Trinity NF), Pilot Creek Project (Six Rivers NF), Baker City Watershed Project (Wallowa-Whitman NF), Antelope Pilot Project (Winema NF), Upper Glade LMSC Project (Rogue River NF), Littlehorn Wild Sheep Habitat Restoration (Colville NF), Wayah Contract Logging Service Project (National Forests in North Carolina), Nolichucky-Unaka Stewardship (Cherokee NF), and Contract Logging/Stewardship Services (George Washington-Jefferson NF).

The agency is working on a multiparty monitoring and evaluation process as required by subsection (g) of the Act. Notice of the process will be published in the **Federal Register** as a separate notice for public comment.

Dated: July 1, 1999.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 99–17439 Filed 7–8–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

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COMMENTS MUST BE RECEIVED ON OR BEFORE: August 9, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were.

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Stapler

7520–01–315–9854
NPA: Occupations, Inc., Middletown, New York

Services

Facilities Management

Federal Center, Defense Logistics Information Services (DLIS), 74 North Washington Street, Battle Creek, Michigan
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Janitorial/Custodial

U.S. Department of Agriculture, Animal Plant Health Inspection Services (APHIS), Plant Protection and Quarantine (PPQ), 214 North Andes Avenue, Orlando, Florida
NPA: Lakeview Center, Inc., Pensacola, Florida

Janitorial/Custodial

Fort Hamilton Proper, Fort Hamiliton Manor and Fort Hamiliton Tenants (less buildings 114 & 116), Fort Hamilton, New York
NPA: Fedcap Rehabilitation Services, Inc., New York, New York

Janitorial/Custodial

U.S. Army Reserve Center, Building 213, Fort Hamilton, New York
NPA: Fedcap Rehabilitation Services, Inc., New York, New York

Linen Rental

New Orleans Naval Air Station, New Orleans Naval Support Activity, New Orleans, Louisiana
NPA: St. Tammany Association for Retarded Citizens, Inc., Slidell, Louisiana

Operation of Individual Equipment Element Store, Pope Air Force Base, North Carolina
NPA: Lions Club Industries, Inc., Durham, North Carolina

Beverly L. Milkman,
Executive Director.
[FR Doc. 99–17479 Filed 7–8–99; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: August 9, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 22, May 7 and 21, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 13767, 24570 and 27752) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Eyewear Prescription Service

Phoenix Indian Medical Center, Department of Health and Human Services, Phoenix, Arizona

Operation of Postal Service Center

Davis-Monthan Air Force Base, Arizona

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Basin, Wash

6530–01–075–2723
6530–01–166–9035

Cleaning and Degreasing Compounds

6850–01–383–3038
6850–01–383–3042
6850–01–383–3045
6850–01–383–3046
6850–01–383–3047
6850–01–383–3052
6850–01–383–3053
6850–01–383–3054
6850–01–383–3056
6850–01–383–3058
6850–01–383–3059
6850–01–383–3060
6850–01–430–7134
6850–01–430–7135
6850–01–430–7137
6850–01–430–7138
6850–01–430–7139
6850–01–430–7140

Bedspread

7210–00–728–0175
7210–00–728–0187

Beverly L. Milkman,
Executive Director.
[FR Doc. 99–17480 Filed 7–8–99; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Requests For Appointment Of Technical Advisory Committee.

Form number(s): Not applicable.

Agency Approval Number: 0694–0100.

Type of Request: Renewal of an existing collection.

Burden: 5 hours.

Number of respondents: 1.

Average hours per response: 5.

Needs and uses: The Technical Advisory Committees (TACs) were established to advise and assist the U.S. Government on export control matters. In managing the operations of the TACs, the Department of Commerce is responsible for implementing the policies and procedures prescribed in the Federal Advisory Committee Act. The Bureau of Export Administration provides technical and administrative support for these committees. The TACs advise the government on proposed revisions to export control lists, licensing procedures, assessments of the foreign availability of controlled products, and export control regulations. Any producer of items subject to export controls can make application to the Department requesting that a committee be established. The information provided is used to determine if the creation of a committee is appropriate.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required for benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme.doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 2, 1999.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 99–17482 Filed 7–8–99; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Miscellaneous Activities.

Form number(s): Not applicable.

Agency Approval Number: 0694–0102.

Type of Request: Renewal of an existing collection.

Burden: 10 hours.

Number of respondents: 2.

Average hours per response: 5.

Needs and uses: On September 30, 1993, the Secretary of Commerce submitted to the Congress a report of the Trade Promotion Coordinating Committee, entitled **Toward a National Export Strategy.** The report included the goal to "Undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more user-friendly." To carry out this recommendation, BXA has rewritten the entire EAR. During the course of this process, many activities imposed on the public were changed to reduce the burden, however the methods varied. Some were merely eliminated; others had old activities replaced with newer, simpler activities, and still others had new activities added to permit participation in programs where prohibitions once existed. Therefore, to the extent activities have been added or changed but not deleted, this collection represents the authority to collect, on rare occasions, certain information from the public. This assembly of information collection activities is comprised of two activities. The two of these—"**Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export**" and "**Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings**" are statutory in nature and—though they never have been applied—must remain a part of BXA's information collection budget authorization.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required for benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

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Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–17483 Filed 7–8–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Supplemental Declaration for Reissue Patent Application (Proposed Addition to 0651–0033, Post Allowance.

Form Number: PTO/SB/51S.

Agency Approval Number: 0651–0033.

Type of Request: Revision of a currently approved collection (proposed addition of a new form to collection).

Burden: 10.5 hours annually.

Number of Respondents: 350 responses annually.

Average Hours Per Response: Based on estimates and knowledge of the form, the PTO estimates the burden hours required by the public to gather, prepare, and submit Form PTO/SB/51S, Supplemental Declaration for a Reissue Patent Application under 37 CFR 1.175, to be approximately 1.8 minutes.

Needs and Uses: The Supplemental Declaration for Reissue Patent Application, Form PTO/SB/51S, is used by the patentee to correct errors in the patent that occurred "without any deceptive intention" on the part of the patentee. It is also used by the patentee to obtain a reissue patent. The PTO uses this declaration to correct errors in the original patent that occurred "without deceptive intent." It is also used by the PTO to reissue the patent.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, federal government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Peter Weiss, (202) 395–3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Peter Weiss, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: July 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–17484 Filed 7–8–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Technology Administration

Proposed Information Collection; Licensing of Government-Owned Inventions

AGENCY: Technology Administration, Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995, PL 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be received on or before September 7, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Department Forms Clearance Officer, Room 5327, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: John Raubitschek, Department Patent Counsel, by telephone at (202) 482–8010.

SUPPLEMENTARY INFORMATION:

I. Background

In 1980, the Bayh-Dole Act (PL 96–517) authorized all government agencies to license their inventions. Each applicant for a license must submit a marketing or development plan (35 U.S.C. 209(a)). In 1981, GSA issued a regulation to implement Bayh-Dole and obtained OMB approval for the collection of information under this regulation.

The licensing regulation was reissued in 1985 by DOC after assuming the responsibility from GSA in 1984 (35 U.S.C. 208). The details of an application for a license appear in 37 CFR 404.8 and include a marketing or development plan. Although it takes time to develop an effective plan, we expect that most will have a plan in mind before applying for a license. Periodic utilization reports are authorized by 37 CFR 404.5(b)(6).

About 325 licenses in total are issued every year by Government agencies. There are about 1,500 active patent licenses and each license requires an annual utilization report.

II. Data

OMB Number: None (previously cleared under GSA Control No. 8090–0108).

Form Number: None.

Type of review: Regular submission of a collection in use without formal OMB approval.

Affected Public: Any person or company seeking a patent license from the Government and any active licensee.

Estimated Number of Respondents: 400/yr applicants and 1,500/yr active licensees.

Estimated Times Per Response: 2 hrs per applicant and 15 minutes per licensee.

Estimated Total Annual Burden Hours: 800 + 400 = 1,200 hrs.

Estimated Total Annual Cost to Public: $0 (no capital costs).

III. Request for Comments

Comments are invited on: (a) Whether the collected information is necessary to implement 35 U.S.C. 209; (b) the accuracy of the Department's estimate of the burden (including hours and cost) of the collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on respondents.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: July 2, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–17481 Filed 7–8–99; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990513129–9129–01]

RIN 0648–ZA65

NOAA Climate and Global Change Program, Program Announcement

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Climate and Global Change Program represents a National Oceanic and Atmospheric Administration (NOAA) contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and longstanding capabilities in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Unless otherwise noted, strict deadlines for submission to the FY 2000 process are: Letters of intent must be received at the Office of Global Programs (OGP) no later than July 31, 1999. Full proposals must be received at OGP no later than October 15, 1999. Applicants who have not received a response to their letter of intent within four weeks should contact the Program Manager. The time from target date to grant award varies by program area. We anticipate that review of full proposals will occur during late September 1999 through March 2000, and funding should begin during the spring of 2000 for most approved projects. May 1, 2000, should be used as the proposed start date on proposals, unless otherwise directed by the appropriate Program Officer. Applicants should be notified of their status within six months. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Letters of Intent and Proposals should be submitted to: Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Avenue, Suite 1225; Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address, or at (301) 427–2089 ext. 107, fax: (301) 427–2222, Internet: duPree@ogp.noaa.gov.

SUPPLEMENTARY INFORMATION:

1. Funding Availability

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Because of ongoing debates on the Federal budget, it is uncertain how much money will be available through this announcement. Actual funding levels will depend upon the final FY 2000 budget appropriations. This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, primarily over a one, two or three year period. The NOAA Climate and Global Change Program has been approved for multi-year funding up to a three year duration. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA is not available under this announcement. Matching share is not required by this program.

2. Program Authority

49 U.S.C. 44720(b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15U.S.C. 2931 *et seq.*; (CFDA No. 11.431)—CLIMATE AND ATMOSPHERIC RESEARCH

3. Program Objectives

The long term objective of the Climate and Global Change Program is to provide reliable predictions of climate variability and change with associated regional implications on time scales ranging from seasons to a century or more. NOAA believes that climate variability across these time scales can be modeled with an acceptable probability of success and are the most relevant for fundamental social concerns. Predicting the behavior of the coupled ocean-atmospheric-land surface system will be NOAA's primary contribution to a successful national effort to deal with observed or anticipated changes in the global environment. NOAA has a range of unique facilities and capabilities that can be applied to Climate and Global Change investigations. Proposals that seek to exploit these resources in collaborative efforts between NOAA and extramural investigators are encouraged.

4. Program Priorities

In FY 2000, NOAA will give priority attention to individual proposals in the Main Program Elements listed below. The names, affiliations and phone numbers of relevant Climate and Global Change Program Officers are provided. Funding for some programs may be limited to ongoing projects or may be used to fund projects proposed in FY 1999 that were unable to be funded due to budgetary circumstances. Prospective applicants should communicate with Program Officers for information on priorities within program elements and prospects for funding.

(A) Aerosols

The Aerosols program element focuses on research to improve the predictive understanding of the role of anthropogenic aerosols in climate focusing. For further information, please contact Joel Levy, NOAA/Office of Global Programs, 301–427–2089 ext. 111, Internet: *levy@ogp.noaa.gov.*

(B) Atmospheric Chemistry

The Atmospheric Chemistry Project focuses on global monitoring, process-oriented laboratory and field studies, and theoretical modeling to improve the predictive understanding of the atmospheric trace gases that influence the earth's chemical and radiative balance. For an information sheet containing further details, contact: Joel

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M. Levy, NOAA/Office of Global Programs, 301–427–2089 ext.111, Internet: levy@ogp.noaa.gov; or Fred C. Fehsenfeld, NOAA/Aeronomy Laboratory, Boulder, CO, 303–497–5819, Internet: *fcf@al.noaa.gov.*

(C) Climate and Societal Interactions (CSI)

Research on Vulnerability, Opportunities, and Response Options. Variability, change, and surprise results from a wide variety of climatological, social, economic and ecological circumstances and interactions. The purpose of this program is to increase understanding of the impacts of climate variability and change as conditioned by ongoing processes of decision-making and socio-economic transformation. The suite of efforts is intended to further research-based integration between studies of the whole of the climate system, including human components, such as health, and evolving informational and educational needs of decision-makers in climate sensitive sectors. The goal is to provide the basis for more effective application of climate information, including climate forecasts, for purposes of adaptation. The intent of this program is to encourage overlapping research approaches to integrate knowledge for problem solving. Prospective applicants are strongly encouraged to communicate with Program Officers listed within this program.

(D) Human Dimensions of Global Change Research (HDGCR)

The Human Dimensions of Global Change Research program is aimed at understanding how social and economic systems are currently influenced by fluctuations in climate, and how human behavior can be (or why it may not be) affected based on information about variability in the climate system. In addition, a separate program announcement for HDGCR may be issued later this year because an interagency joint announcement on human vulnerability and opportunities associated with climate and environmental surprise is under consideration. For more information and a detailed information sheet, contact: Caitlin Simpson, NOAA/Office of Global Programs, 301–427–2089 ext. 152, Internet: simpson@ogp.noaa.gov.

A joint interagency announcement is also anticipated on Climate and Health. (For more information on this future announcement contact Juli Trtanj, NOAA/Office of Global Programs, 301–427–2089 ext. 134, Internet: trtanj@ogp.noaa.gov.)

(E) Regional Assessments

NOAA's present program of Regional Assessments possesses three distinct qualities: (1) Interdisciplinarity, integration and synthesis; (2) Bridging the gap between climatic, environmental and societal interactions on different temporal and spatial scales; and (3) Decision support and services. It requires innovative partnerships among a spectrum of interests (Federal, State, local and private) to enable regional organizational capacity to develop accurate (i.e., identifying risks, uncertainties, and/or indeterminacies), balanced syntheses and services on an ongoing basis. As such, the program relies heavily on consolidating the results and data from ongoing NOAA–OGP disciplinary program elements, already funded in a region, into an integrated framework. For more information and a detailed information sheet, contact: Roger Pulwarty, NOAA/Office of Global Programs, 301–427–2089 ext. 103, Internet: pulwarty@ogp.noaa.gov.

(F) Climate Change Date and Detection

The scientific goals of this element include efforts to: (1) Provide data and information management support activities needed to assure the availability of critical data sets from a variety of national and international programs of primary interest to NOAA's Climate and Global Change Program, e.g., the CLIVAR (Climate Variability and Predictability) Program, GEWEX (Global Energy & Water Cycle Experiment), GCOS (Global Climate Observing System), National and International Assessments, etc.; (2) provide data and information management support related to cross cutting science efforts necessary to assess seasonal, interannual, decadal, and longer climate variations and changes; (3) document the quantitative character of observed climate variations and changes; and (4) attribute changes in the observed climate record to specific climate forcings.

(G) NOAA/NASA Jointly Sponsored Project

A number of new starts are anticipated within the NOAA/National Aeronautics and Space Administration (NASA) co-sponsored project that supports research in the areas of data fusion and enhancement of climate data sets through the use of space and/or ground based observations. Preference will be given to those proposals that use more than one observing system to develop a blended data set.

(H) NOAA/DOE Jointly Sponsored Project

A very limited number of new starts are anticipated within the NOAA/Department of Energy (DOE) co-sponsored project that specifically addresses all aspects of Climate Change Detection and Attribution.

Additional details on the jointly sponsored projects are provided on the supplementary fact sheet included in the Program Announcement mailing (additional copies of the supplementary fact sheet can be obtained from Irma duPree at the Office of Global Programs). For further information contact: Bill Murray, NOAA/Global Programs, 301–427–2089 ext. 133, Internet: murray@ogp.noaa.gov; Chris Miller, NOAA/Global Programs, 301–427–2089 ext. 143, Internet: miller@ogp.noaa.gov; Martha Maiden, NASA/Headquarters 202/358–1078, Internet: maiden@hq.nasa.gov; or Rick Petty, DOE/Environmental Sciences Division, Germantown, MD; 301–903–5548, Internet: Rick.Petty@oer.doe.gov.

(I) Climate Dynamics and Experimental Prediction

This program will not accept applications to initiate centers at new institutions, but will accept renewal applications for ongoing efforts or as part of ongoing negotiations. Qualified applications for this program may be submitted throughout the year. For further information, contact Mark Eakin, NOAA/Global Programs, 301–427–2089 ext. 109, Internet: eakin@ogp.noaa.gov.

(J) Climate Variability and Predictability (CLIVAR)

CLIVAR focuses on the role of the coupled ocean and atmosphere within the overall climate system, with emphasis on variability, especially within the oceans, on seasonal to centennial time scales. CLIVAR intends to explore predictability and how to improve predictions of climate variability and climate change using existing, re-analyzed, and new global observations, enhanced coupled ocean-atmosphere-land-ice models and paleoclimate records. A separate program announcement for CLIVAR will be issued later this year inviting proposals for CLIVAR Atlantic, CLIVAR Pacific (formerly GOALS), and CLIVAR PACS. Investigators interested in these program areas are encouraged to respond to this later announcement. For further information on the Atlantic, please contact James Todd, NOAA /Global Programs, 301/427–2089 ext. 139, Internet: todd@ogp.noaa.gov. For the Pacific and PACS efforts, please contact, Michael Patterson, NOAA/Global Programs, 301–427–2089 ext. 102, Internet: patterson@ogp.noaa.gov.

(K) Economics and Human Dimensions of Climate Fluctuations

Please see Climate and Societal Interactions (CSI) above.

(L) GEWEX Continental-Scale International Project (GCIP)

GCIP supports research directed at closing regional water and energy budgets, developing coupled hydrologic-atmospheric models and interpreting hydroclimatic predictions for water resource managers within the Mississippi River Basin. For this call priority will be given to research in the Missouri River Basin. Details of the priority research needs are outlined in the CCIP Major Activities Plan for the Large Scale Area—Northwest. A later joint GCIP/PACS call dealing with monsoonal circulations and summer precipitation is under consideration and will be outlined in a subsequent information sheet. For more information, contact Rick Lawford, NOAA/Office of Global Programs, 301–427–2089 ext. 146, Internet: lawford@ogp.noaa.gov.

(M) Global Carbon Cycle (GCC)

GCC focuses on global observations, process-oriented field studies and modeling to improve our ability to predict the fate of anthropogenic carbon dioxide (CO2), and future CO2 concentrations. A separate program announcement for GCC may be issued later this year because an interagency joint announcement in this area is under consideration. For an information sheet containing further details and the current priorities, please contact Lisa Dilling, NOAA/Office of Global Programs, 301–427–2089 ext. 106, Internet: dilling@ogp.noaa.gov or see the web at: http://www.ogp.noaa.gov/MPE/GCC/GCCinfo.html.

(N) Global Ocean—Atmosphere—Land System (GOALS):

Please see Climate Variability and Predictability (CLIVAR) above.

(O) Pan-American Climate Studies (PACS)

Please see Climate Variability and Predictability (CLIVAR) above.

(P) Ocean-Atmosphere Carbon Exchange Study (OACES)

Please see Global Carbon Cycle (GCC) above.

(Q) Paleoclimatology

The NOAA Paleoclimatology Program will entertain proposals that support the joint IGBP PAGES/WCRP CLIVAR Research Initiative. This initiative is jointly supported by NOAA and the National Science Foundation (NSF) through the Earth System History (ESH) Program at NSF. All proposals must be submitted to the NSF/ESH Program by January 15 each year. For more information, please contact Heather Benway, NOAA/Global Programs, 301–427–2089 ext. 113, Internet: benway@ogp.noaa.gov; Jonathan Overpeck NOAA/National Geophysical Data Center, Boulder, CO; 303–497–6172, Internet: jto@mail.ngdc.noaa.gov; or Connie Sancetta, National Science Foundation (NSF) OCE Program, Arlington, VA; 703–306–1586, Internet: sancett@nsf.gov. or visit http://www.nsf.gov/pubs/1997/nsf9716/nsf97161.htm.

5. Eligibility

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Universities, non-profit organizations, for-profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement.

Funding for non-U.S. institutions is not available under this announcement.

6. Letters of Intent

Letters of Intent should provide a concise description of the proposed work and its relevance to the program element to which it is directed. (A) Investigators must identify the program element that is being pursued in the Letter of Intent. Failure to identify program element will result in return of application. Secondary program elements should also be identified, if appropriate. (B) Investigators must identify a project title in the Letter of Intent (LOI). (C) Letters should be no more than two pages in length and include the name and institution of principal investigator(s), a statement of the problem, brief summary of work to be completed, methodology to be used, and approximate cost of the project. (D) It is in the best interest of applicants and their institutions to submit letters of intent; however, it is not a requirement. (E) Facsimile and electronic mail are acceptable for letters of intent only. (F) Full proposals will be encouraged only for LOIs deemed relevant by Program Management.

7. Evaluation Criteria

Consideration for financial assistance will be given to those proposals that address one of the Program Elements listed and meet the following evaluation criteria:

(A) *Scientific Merit:* Intrinsic scientific value of the subject and the study proposed, including methodology and readiness.

(B) *Relevance:* Importance and relevance to the goals of the selected Program Element(s). (See Program Objectives above)

8. Selection Procedures

All proposals, including those submitted by NOAA employees, will be evaluated in accordance with the above evaluation criteria by (A) independent peer mail review, and/or (B) independent peer panel review, and a rating will be calculated based on these evaluations; both NOAA and non-NOAA experts in the field may be used in this process. The program officer will not be a voting member of an independent peer panel. The recommendations and evaluations of the panel members will be considered by the Program Officer in final selections. Proposals are usually awarded in the numerical order they are ranked based on the independent peer mail review or the independent peer panel review. However, the Program Manager will ascertain which proposals do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, and fall within remaining funds available. As a result of this review, the Program Manager may decide to select an award out of order. The Program Manager will also determine the total duration of funding and the amount of funding for each selected proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

9. Proposal Submission

The following forms are required in each application, with original signatures on each federal form. Failure to comply will result in proposal application being returned.

(A) *Full Proposals:* (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are required to submit 3 copies of the proposal, however, the normal review process requires 20 copies. For an optimal review, investigators are encouraged to submit sufficient proposal copies, especially color or unusually sized (not 8.5″x11″), or otherwise unusual materials submitted as part of the proposal. Only three

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original copies of the Federally-required forms are needed. (3) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three year duration. Appended information may not be used to circumvent the page length limit. Federally-mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(B) *Required Elements:* All proposals must include the following elements: (1) Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which program element is being addressed. If more than one investigator is listed on the title page, please identify the lead investigator. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period. (2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period. (3) Results from prior research: The results of each prior research project (during the last 3 years) relevant to the proposed effort should be summarized in brief paragraphs. This section should not exceed two pages. (4) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. The Statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. Investigators wishing to submit group proposals that exceed the 15 page limit should discuss this possibility with the appropriate Program Officer prior to submission. Proposals from 3 or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions. (5) Budget Justification: A brief description of the expenses listed on the budget and how they address the proposed work. Item justifications must include salaries, equipment, publications, supplies, tuition, travel, etc. (6) Budget: The proposal must include total and annual itemized budgets corresponding with the descriptions provided in the statement of work. Non-Federal Applicants must submit a Standard Form 424 (4–92) "Application for Federal Assistance," including a detailed budget using the Standard Form 424a (4–92), "Budget Information—Non-Construction Programs." Travel must be itemized to include destination, airfare, per diem, lodging and ground travel. The form is included in the standard NOAA application kit. (7) Vitae: Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers. (8) Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months per year, dollar value and duration. Requested values should be listed for pending support.

(C) *Other requirements:* Applicants may obtain a standard NOAA application kit from the Program Office.

10. Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Applicants are also hereby notified of the following:

(A) *Nonprocurement Debarment and Suspension:* Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

(B) *Drug Free Workplace:* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(C) *Anti-Lobbying:* Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected program, whichever is greater; and

(D) *Anti-Lobbying Disclosures:* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required Under 15 CFR part 28, appendix B.

11. Lower Tier Certifications

(A) Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(B) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(C) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(D) This program is subject to the requirements of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, and 63 CFR 47155, September 4, 1998, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations, to State and Local Governments", as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(E) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(F) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(G) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (i) The delinquent account is paid in full, (ii) A negotiated repayment schedule is established and at least one payment is received, or (iii) Other arrangements satisfactory to the Department of Commerce are made.

(H) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program be American-made to the maximum extent feasible.

(I) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(J) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(K) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denial benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8:00 a.m.–4:30 p.m.

(L) Notwithstanding any other provisions of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB control number.

12. Classification

The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046. This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: July 2, 1999.

Louisa Koch,

Deputy Assistant Administrator.

[FR Doc. 99–17490 Filed 7–8–99; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990624172–9172–01]

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS publishes notice of proposed certifications for the consolidation, automation, and closure of several Weather Service Offices (WSO) and Fire Weather Offices (FWO). Notice is given of a proposed certification for the automation and closure of the Los Angeles, Aviation WSO which will be automated at Federal Aviation Administration (FAA) Weather Observation Service Level A and have its services consolidated into the Los Angeles Forecast Office. Notice is also given of proposed certifications for the consolidation, automation, and closure of the Redding WSO and FWO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the Sacramento and Eureka, California; Reno, Nevada; and Medford, Oregon Forecast Offices. Finally, notice is given of a proposed certification for the closure of the Riverside, California FWO with services being provided by the San Diego and Los Angeles, California; Las Vegas, Nevada; and Phoenix, Arizona Forecast Offices.

DATES: Comments are requested to be mailed by September 7, 1999.

ADDRESSES: Requests for copies of proposed certification packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, Maryland 20910–3283, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300 extension 141.

SUPPLEMENTARY INFORMATION: Pursuant to section 706 of Pub. L. 102–567, the Secretary of Commerce must certify that consolidation, automation, and/or closure of a NWS field office will not result in a degradation of service to the affected area of responsibility and must propose such certifications in the FR for 60-days public comment. Notice is given of a proposed certification for the automation and closure of the Los Angeles, Aviation WSO which will be automated at Federal Aviation Administration (FAA) Weather Observation Service Level A and have its services consolidated into the Los Angeles Forecast Office. Notice is also given of proposed certifications for the consolidation, automation, and closure of the Redding WSO and FWO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the Sacramento and Eureka, California; Reno, Nevada; and Medford, Oregon Forecast Offices. Finally, notice is given of a proposed certification for the closure of the Riverside, California FWO with services being provided by the San Diego and Los Angeles, California; Las Vegas, Nevada; and Phoenix, Arizona Forecast Offices. Documentation supporting these proposed certifications includes the following:

For all certifications:

(1) A draft memorandum by the meteorologist in charge recommending the certification, the final of which will be concurred with by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of services provided within the service area to services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operations which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the Doppler weather surveillance radar network (WSR–88D); and

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(6) A letter appointing a liaison officer for the action.

For consolidation certifications: evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service would result from such action, including the WSR–88D Radar Commissioning Report, User Confirmation of Services Report, and the Decommissioning Readiness Report.

For automation certification:

(1) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action, including the Automated Surface Observing System (ASOS) commissioning report;

(2) A series of three letters between NWS and FAA confirming weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning;

(3) Surface Aviation Observation Transition Checklist documenting transfer of augmentation and back-up responsibility from NWS to FAA;

(4) Successful resolution of ASOS user confirmation of services complaints; and

(5) An in-place supplementary data program at the responsible forecast office.

For closure certifications:

(1) Where appropriate, warning and forecast verification statistics for pre-modernized and modernized services utilized in determining services have not been degraded; and

(2) An Air Safety Appraisal for offices which are located on an airport.

For the proposed certifications covered by this notice, there is no report of the Committee. The Committee has the option to submit a report in accordance with sections 706(b)(6) and 707(c) of Pub. L. 102–567. In December 1995, the Committee decided to forego the optional consultation on proposed certifications. Instead, the Committee decided to review certifications only after the public comment period closes so that its consultation includes the benefit of all public comments received. This notice does not publish the complete certification packages because they are too voluminous. Copies of the complete certification packages and supporting documentation can be obtained from the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish final certifications in the FR and transmit the certifications to the appropriate congressional committees prior to consolidating, automating, and closing the office.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–17408 Filed 7–8–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904

Binational Panel Reviews; Decision of Binational Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of Binational Panel.

SUMMARY: On June 18, 1999 the Binational Panel issued its decision in the matter of Gray Portland Cement and Clinker from Mexico, Secretariat File No. USA–97–1904–01.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information:

On May 6, 1997, Cemex, S.A. de C.V. ("CEMEX") and Cementos de Chihuahua, S.A. de C.V. ("CDC") filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of Antidumping Duty Administrative Review made by the International Trade Administration respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** on April 9, 1997 (62 FR 27238–39). The request was assigned File No. USA–97–1904–01.

Panel Decision

The Panel affirmed in part and remanded in part with one dissenting opinion. The Panel determined that by stipulation between CEMEX and the Department announced at the hearing on December 15, 1998, the Panel remanded the final results of the Fifth Review to the Department for the purpose of correcting the ministerial errors identified by CEMEX in its May 9, 1997 letter to the Department. On remand, the Department shall correct the errors identified by CEMEX in its May 9, 1997 letter to the Department identified as Number 1, A and B, and Number 2. CEMEX has agreed to abandon its claim for ministerial error identified in its May 9, 1997 letter to the Department as Number 3. Pursuant to the stipulation, once the ministerial errors are corrected, the Department shall publish in the **Federal Register** notice of the corrections and then instruct the U.S. Customs Service to give effect to the ???

The Panel ordered the Department to issue a determination on remand consistent with the instructions and findings set forth in the Panel's decision. The determination on remand shall be issued within ninety (90) days of the date of the Order (not later than September 16, 1999).

Dated: June 25, 1999.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 99–17474 Filed 7–8–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Panel on Military Operations on Vieques

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Panel will conduct a public meeting to receive and discuss information associated with military operations at Vieques, Puerto Rico and in the adjoining ocean range complex. The panel will receive information from the Office of the Governor of Puerto Rico regarding the recently released report by the Governor's Vieques Commission and from Department of the Navy representatives on the Vieques Study directed by the Secretary of the Navy. Because of the short timeframe of the panel's review, and the accelerated pace of the meeting schedule, this announcement must be made less than 15 days before the meeting will take place.

DATES: July 9, 1999, 9 a.m. to 12:00 p.m..

ADDRESSES: 1401 Wilson Boulevard, Room 400, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Hector Nevarez, the Designated Federal Officer, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209, phone (703) 696–9456, fax (703) 696–9482, or via Email at *Hector.Nevarez@osd.pentagon.mil.* Written comments must be sent to Dr. Nevarez and received no later than Friday, July 9, 1999. Copies of the draft meeting agenda can be obtained by contacting Debra Crnkovic at (703) 695–5493.

SUPPLEMENTARY INFORMATION: Seating in the panel meeting room is limited, and spaces will be reserved only for panel members and invited representatives. The remaining seating is available on a first-come, first-served basis. No teleconference lines will be available. Written comments for the record may be mailed to the Panel and will be distributed to the Panel members after the adjournment of the July 9, 1999 meeting.

Dated: July 2, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17504 Filed 7–6–99; 4:17 pm]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: July 12–22, 1999.

Time of Meeting: 0800–1700 (daily).

Place: Irvine, CA—Arnold & Mabel Beckman Center.

Agenda: The Army Science Board's (ASB) 1999 Summer Studies on "Full-Spectrum Protection for 2025-Era Ground Platforms" and "Enabling Rapid and Decisive Strategic Maneuver for the Army After 2010" will meet for the purpose of discussions, report writing and finalizing briefings for their respective sponsors. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 604–7479.

Wayne Joyner,

Program Support Manager, Army Science Board.

[FR Doc. 99–17473 Filed 7–8–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 2, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Phase 1 of the National Evaluation of Talent Search and Educational Opportunity Centers.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 445

Burden Hours: 301

Abstract: The purpose of this evaluation is to provide updated information on the operation and implementation of Talent Search and Educational Opportunity Centers and to examine the feasibility of conducting a study of Talent Search Outcomes and impact on students. The Talent Search Program has the purpose of increasing the number of youth from disadvantaged backgrounds who graduate from high school and enroll in postsecondary institutions. Educational Opportunity Centers (EOCs) have goals and services similar to Talent Search but with a focus on serving an adult population that has left school prior to completion. Clearance is requested for two data collection efforts: (1) A census-survey of all Talent Search Coordinators/Directors, and (2) a census-survey of all EOC Coordinators/Directors.

Written comments and requests for copies of this information collection should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address

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vivian__reese@ed.gov or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or electronically mail her at internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: Extension.
Title: Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note.
Frequency: On occasion.
Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Burden:
Responses: 1,400,000
Burden Hours: 1,400,000

Abstract: This revised promissory note is the means by which a Federal Stafford Program Loan borrower promises to repay his or her loan.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian__Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically mail him at joe^schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of the Under Secretary

Type of Review: New.
Title: Compact for Reading Evaluation.
Frequency: Semi-annually.
Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 26,624
Burden Hours: 30,123

Abstract: The Compact for Reading is a written agreement between families, teachers, students, and principals describing how each partner will work to improve the reading skills of students in kindergarten through third grade. At each grade level, a set of 100 home learning activities is offered to improve reading skills. These activities focus on family members as home learning partners. Research shows that even though the requirement for Title I compacts is several years old, many Title I schools still do not have compacts in place, or do not use them to full advantage. The Compact for Reading evaluation will attempt to show whether implementing this type of compact will enhance student learning and therefore should be considered for adoption by other Title I schools.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *Vivian__Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or electronically mail her at Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17414 Filed 7–8–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Board on Tribal Colleges and Universities; Meeting

AGENCY: President's Advisory Board on Tribal Colleges and Universities.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the first meeting of the President's Advisory Board on Tribal Colleges and Universities and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: July 20, 1999, from 9 a.m. to 5:30 p.m.

LOCATION: The Clark Room, Holiday Inn Capitol, 550 C Street, SW., Washington, D.C. 20024.

FOR FURTHER INFORMATION, CONTACT: Carrie Billy, Executive Director, President's Advisory Board on Tribal Colleges and Universities, U.S. Department of Education, 4050 MES, 330 C Street, SW, Washington, D.C. 20202–7594, Telephone: 202–260.5714.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13021 (October 19, 1996) to provide advice regarding the progress made by federal agencies toward fulfilling the purposes and objective of the order. The Board shall also provide recommendations to the President and the Secretary of Education at least annually on ways Tribal Colleges can:

(1) Use long-term development, endowment building, and master planning to strengthen institutional viability;

(2) Use the federal and private sector to improve financial management and security, obtain private sector funding support, and expand and complement federal education initiatives;

(3) Develop institutional capacity through the use of new and emerging technologies offered by the federal and private sectors;

(4) Enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) Help achieve National Education Goals and meet other high standards of education accomplishment.

The meeting agenda will include: orientation of the new Presidentially appointed members; discussion, including recommendations, on assisting the Tribal Colleges in addressing existing needs; and discussion of the federal government's progress in implementing Executive Order 13021.

The general public is encouraged to attend. However, space is limited and is available on a first come, first served basis.

A summary of the activities of the meeting and other related materials, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at White House Initiative on Tribal Colleges & Universities, United States Department of Education, 4050 MES, 330 C Street, SW, Washington, D.C. from 9:00 a.m. to 5:30 p.m.

Dated: July 2, 1999.

Robert D. Muller,

Acting Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc 99–17423 Filed 7–8–99; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Wednesday, July 28, 1999, 6:00 p.m.–9:00 p.m.

ADDRESSES: Holiday Inn, 1005 Paseo de Pueblo Sur, Taos, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 528 35th Street, Los Alamos, NM 87544. Phone: 505–665–5048; FAX 505–665–4872.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public Comment
2. Committee Reports
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on July 6, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–17498 Filed 7–8–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of the meetings be announced in the Federal Register.

DATES: Monday, July 26, 1999: 10:00 a.m.–9:00 p.m., Tuesday, July 27, 1999: 8:30 a.m.–4:00 p.m.

ADDRESS: All meetings will be held at: Adam's Mark Hotel, 1200 Hampton Street, Columbia, SC 29201.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, July 26, 1999

10:00 a.m.–12:00 p.m. Administrative Subcommittee
3:30 p.m.–4:30 p.m. Executive Committee
5:00 p.m.–6:00 p.m. Outreach Subcommittee
6:30 p.m.–7:00 p.m. Public Comment Session
7:00 p.m.–9:00 p.m. Issue-Based Subcommittee Meetings
9:00 p.m. Adjourn

Tuesday, July 27, 1999

8:30 a.m.
Approval of Minutes, Agency Updates (approximately 15 minutes)
Public Comment Session (5-minute rule) (approximately 10 minutes)
Facilitator Update (approximately 15 minutes)
Outreach Subcommittee Report (SRS CAB Video) (approximately 1 hour)
Fish Fact Sheet Discussion (approximately 20 minutes)
Nuclear Materials Management Subcommittee Report (approximately 2 hours)
—Yucca Mountain Presentations
12:00 p.m. Lunch Break
ER&WM Subcommittee Report continued (approximately 1¾ hours)
Risk Management and Future Use Subcommittee (approximately 30 minutes)
Administrative Subcommittee Report (approximately 20 minutes)
Public Comments (approximately 10 minutes)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting, Monday, July 26, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling (803)–725–5374.

Issued at Washington, DC on July 6, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–17499 Filed 7–8–99; 8:45 am]
BILLING CODE 6450–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–74–000]

Southwestern Public Service Company v. El Paso Electric Company; Notice of Filing

July 6, 1999.

Take notice that Southwestern Public Service Company (SPS) submitted for filing on July 2, 1999, a complaint against El Paso Electric Company (EPE) seeking an order from the Commission by July 15, 1999 requiring EPE to provide firm transmission service to SPS. The complaint also requested fast track processing.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to complaints should also be filed on or before July 12, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17562 Filed 7–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2665–000]

Wisconsin Electric Power Company; Notice of Filing

June 30, 1999.

Take notice that on June 25, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a response to the June 3, 1999, deficiency letter in the above captioned docket. The response constitutes an amendment to the filing submitted by Wisconsin Electric on April 28, 1999.

Copies of the filing have been served on customers under the market-based rate tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426, in accordance with Rules 211 and 214 of the Commision's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 15, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17442 Filed 7–8–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1984–001, et al.]

ALLIANT ENERGY CORPORATE SERVICES, INC., ET AL.; ELECTRIC RATE AND CORPORATE REGULATION FILINGS

July 2, 1999.

Take notice that the following filings have been made with the Commission:

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–1984–001]

Take notice that on June 29, 1999, Alliant Energy Corporate Services, Inc. submitted an amendment on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC) and Wisconsin Power and Light Company (WPL), in response to the Commission's order dated May 12, 1999, in North American Electric Reliability Council, Docket No. EL98–52–000 (NERC Order). Alliant Energy has revised the terminology "firm load curtailment" to "firm transmission curtailment". Alliant Energy also has clarified that the implementation of MAIN Voluntary Interim Regional Redispatch Plan involves the use of the NERC Market Redispatch Pilot Project Summer 1999.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, the Public Service Commission of Wisconsin, and all parties listed on the service list as compiled by the Secretary in this proceeding.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. California Power Exchange Corporation

[Docket Nos. EC96–19–050 and ER96–1663–052]

Take notice that on June 29, 1999, the California Power Exchange Corporation (PX) filed proposed tariff sheets in compliance with the Commission's June 1, 1999 order in the above proceeding.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. PP&L Resources, Inc., PP&L, Inc., Sunbury Holdings, LLC, and Sunbury Generation, LLC

[Docket Nos. EC99–91–000 and ER99–3446–000]

Take notice that on June 30, 1999, PP&L Resources, Inc., PP&L, Inc., Sunbury Holdings, LLC and Sunbury Generation, LLC (collectively the Applicants) filed with the Commission a Joint Application for Authorization to Sell Jurisdictional Facilities and for Approval of Interconnection Agreement.

The Applicants have served a copy of the foregoing on the Pennsylvania Public Utility Commission.

Comment date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3380–000]

Take notice that on June 28, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and DukeSolutions, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3381–000]

Take notice that on June 28, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations, a Service Agreement between CHG&E and Cargill-Alliant, LLC. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff), filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested a waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3382–000]

Take notice that on June 28, 1999, tendered Central Hudson Gas & Electric Corporation (CHG&E), for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations, a Service Agreement between CHG&E and Avista Energy Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff), filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3383–000]

Take notice that on June 28, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations, a Service Agreement between CHG&E and KeySpan-Ravenswood, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No.1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER99–3384–000]

Take notice that on June 28, 1999, Montaup Electric Company (Montaup), tendered for filing an executed service agreement under Montaup's market-based power sales tariff, FERC Electric Tariff, Original Volume No. 8, between Montaup and Constellation Power Source, Inc.

Montaup requests a waiver of the sixty-day notice requirement so that the service agreement may become effective as of June 1, 1999.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. The Detroit Edison Company

[Docket No. ER99–3386–000]

Take notice that on June 28, 1999, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), and Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff).

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Avista Corp.

[Docket No. ER99–3391–000]

Take notice that on June 28, 1999, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Los Angeles Department of Water and Power.

AVA requests the Service Agreement be given the respective effective date of June 4, 1999.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER99–3392–000]

Take notice that on June 28, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 3 executed service agreements with PP&L, Inc., Baltimore Gas and Electric Company and Public Service Electric and Gas Company for point-to-point transmission service under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER99–3393–000]

Take notice that on June 28, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed Service Agreement for Network Integration Transmission Service between PJM and PECO Energy Company to enable PECO Energy Company to sell electricity to the New Jersey Boroughs of Butler, Lavallette, Madison, Pemberton and Seaside Heights.

PJM requests a waiver of the Commission's notice requirements and an effective dated of June 1, 1999.

A copy of the filing was served upon PECO Energy Company, Jersey Central Power & Light Company, and the Pennsylvania Public Utility Commission.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER99–3394–000]

Take notice that on June 28, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission

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Service Agreement between Niagara Mohawk and NRG Power Marketing, Inc., (NRG). This Transmission Service Agreement specifies that NRG has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and NRG to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for NRG as the parties may mutually agree.

Niagara Mohawk requests an effective date of June 17, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and NRG.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER99–3395–000]

Take notice that on June 28, 1999, Niagara Mohawk (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and NRG Power Marketing, Inc. (NRG). This Transmission Service Agreement specifies that NRG has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and NRG to enter into separately scheduled transactions under which Niagara Mohawk will provide firm transmission service for NRG as the parties may mutually agree.

Niagara Mohawk requests an effective date of June 17, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and NRG.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Energy NY–GEN, L.L.C.

[Docket No. ER99–3407–000]

Take notice that on June 29, 1999, Southern Energy NY–GEN, L.L.C. (July 2, 1999 Southern NY–GEN), tendered for filing the following agreements as a long-term service agreement under its Market Rate Tariff accepted by the Commission in the Docket No. ER99–2045–000:

1. Western Load Pocket Call Option Agreement Between Orange and Rockland Utilities, Inc., and Southern Energy NY–GEN, L.L.C., dated November 24, 1998, as amended, June 14, 1999.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Avista Corp.

[Docket No. ER99–3408–000]

Take notice that on June 29, 1999, Avista Corp., tendered for filing, pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, an executed service agreement with Cogentrix Energy Power Marketing, Inc., for Dynamic Capacity and Energy Service at cost-based rates under Avista Corp.'s FERC Electric Tariff, Original Volume No. 10.

Avista Corp. requests that the Commission waive its prior notice requirement, pursuant to Section 35.11 of the Commission's regulations, 18 CFR 35.11, and accept the service agreement for filing effective June 1, 1999.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER99–3409–000]

Take notice that on June 29, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm-To-Point Service Agreement), and a Service Agreement for Non-Firm Point-To-Point Service (Non-Firm Point-To-Point Service Agreement) with Seattle City Light (SCL), as Transmission Customer.

A copy of the filing was served upon SCL.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. The Montana Power Company

[Docket No. ER99–3474–000]

Take notice that on June 28, 1999, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Firm and executed Non-Firm Point-To-Point Transmission Service Agreements with Arizona Public Service under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Arizona Public Service.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. El Paso Electric Company

[Docket No. OA96–200–007]

Take notice that on June 25, 1999, El Paso Electric Company (EPE or Company) tendered for filing with the Federal Energy Regulatory Commission, modifications to its open access transmission tariff pursuant to FERC Opinion No. 437 issued May 26, 1999.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17441 Filed 7–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–173–000, et al.]

CH Resources, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 29, 1999.

Take notice that the following filings have been made with the Commission:

1. CH Resources, Inc.

[Docket No. EG99–173–000]

Take notice that on June 24, 1999, CH Resources, Inc. (Resources) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Public Service Electric and Gas Company, PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC

[Docket Nos. EC99–79–000 and ER99–3151–000]

Take notice that on June 24, 1999, Public Service Electric and Gas Company (PSE&G), PSEG Fossil LLC, PSEC Nuclear LLC, and PSEC Energy Resources & Trade LLC filed a supplement to their application. The supplement consisted of a copy of the application PSE&G had previously filed with the Nuclear Regulatory Commission in connection with the transfer of its interest in certain nuclear generating facilities.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Victory Garden Power Partners I LLC

[Docket No. EG99–174–000]

Take notice that on June 24, 1999, Victory Garden Power Partners I LLC, 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Victory Garden Power Partners I LLC is constructing a wind turbine generation facility with nine wind turbines, each with a nameplate capacity of 750 kW, resulting in an aggregate peak generating capacity of approximately 6.75 MW.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Vitol Gas & Electric LLC and Energy Resource Management Corporation

[Docket No. ER94–155–025 and Docket No. ER96–358–012

Take notice that on June 18, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Gulfstream Energy, LLC

[Docket No. ER94–1597–016]

Take notice that on June 22, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. Commonwealth Energy Corporation

[Docket No. ER97–4253–005]

Take notice that on June 21, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. California Independent System Operator Corporation

[Docket No. ER99–2730–001]

Take notice that on June 24, 1999, the California Independent System Operator Corporation (ISO), tendered for filing as part of its Electric Service Tariff, Volume No. I, the revised tariff sheet identified below:

First Revised Sheet No. 375

The ISO states that the revision to this sheet deletes a confusing sentence and was submitted to comply with the Commission's June 17, 1999 Order, 87 FERC ¶61,304 (1999), in the above-referenced docket.

The ISO requests an effective date of July 1, 1999.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Green Mountain Power Corporation

[Docket No. ER99–3340–000]

Take notice that on June 24, 1999, Green Mountain Power Corporation (GMP), tendered for filing a service agreement for Vermont Electric Cooperative, Inc., to take service under its Network Integration Transmission Service tariff.

Copies of this filing have been served on each of the affected parties, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER99–3341–000]

Take notice that on June 24, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short term firm Transmission Service Agreement between itself and Illinova Energy Partners Inc., (Illinova). The Transmission Service Agreements allow Illinova to receive firm transmission service under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on Illinova, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3342–000]

Take notice that on June 24, 1999, Alliant Energy Corporate Services, Inc., tendered for filing two executed service agreements for transmission service. One agreement is for short-term firm point-to-point transmission service, the other agreement is for non-firm point-to-point transmission service. The agreements are signed by Basin Electric Power Cooperative and Alliant Energy Corporate Services, Inc.

Alliant Energy Corporate Services, Inc., requests an effective date of June 15, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER99–3343–000]

Take notice that on June 24, 1999, Arizona Public Service Company (APS), tendered for filing a Service Agreements under APS' FERC Electric Tariff, Original Volume No. 4, for service to the Utah Municipal Power Agency (Utah).

A copy of this filing has been served on the Arizona Corporation Commission and Utah.

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Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. EMC Gas Transmission Company

[Docket No. ER99–3344–000]

Take notice that on June 24, 1999, pursuant to Section 35.15 of the Commission's Regulations, EMC Gas Transmission Company submitted for filing a notice of termination of its Rate Schedule FERC No. 1.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Energy Dynamics, Inc.

[Docket No. ER99–3345–000]

Take notice that on June 24, 1999, pursuant to Section 35.15 of the Regulations, Energy Dynamics, Inc., tendered for filing a notice of termination of its Rate Schedule FERC No. 1.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER99–3346–000]

Take notice that on June 24, 1999, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/close-out agreement between PNM and Mieco Inc. (Mieco).

PNM requested waiver of the Commission's notice requirement so that service under the PNM/Mieco netting agreement may be effective as of June 7, 1999.

Copies of the filing were served on Mieco and the New Mexico Public Regulation Commission.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of New Mexico

[Docket No. ER99–3347–000]

Take notice that June 24, 1999, Public Service Company of New Mexico (PNM), tendered for filing on a netting agreement between PNM and Williams Energy Marketing & Trading Company (Williams).

PNM requested waiver of the Commission's notice requirement so that service under the PNM/Williams netting agreement may be effective as of May 1, 1999.

Copies of the filing were served on Williams and the New Mexico Public Regulation Commission.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER99–3348–000]

Take notice that on June 24, 1999, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/close-out agreement between PNM and Cinergy Services, Inc. (Cinergy).

PNM requested waiver of the Commission's notice requirement so that service under the PNM/Cinergy netting agreement may be effective as of June 1, 1999.

Copies of the filing were served on Cinergy and the New Mexico Public Regulation Commission.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. MidAmerican Energy Company

[Docket No. ER99–3349–000]

Take notice that on June 24, 1999 MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Southwestern Public Service Company (Southwestern), dated June 8, 1999, and a Non-Firm Transmission Service Agreement with Southwestern, dated June 8, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 8, 1999, for the Agreements with Southwestern, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Southwestern, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Energy, Inc.

[Docket No. ER99–3350–000]

Take notice that on June 24, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Arizona Public Service Co., (APS).

A copy of the filing was served upon APS.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Puget Sound Energy, Inc.

[Docket No. ER99–3351–000]

Take notice that on June 24, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Bonneville Power Administration (BPA).

A copy of the filing was served upon BPA.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Puget Sound Energy, Inc.

[Docket No. ER99–3352–000]

Take notice that on June 24, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Benton Public Utility District No. 1 of Benton County (Benton PUD).

A copy of the filing was served upon Benton PUD.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Puget Sound Energy, Inc.

[Docket No. ER99–3353–000]

Take notice that on June 24, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Avista Energy, Inc., (Avista).

A copy of the filing was served upon Avista.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER99–3354–000]

Take notice that on June 24, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Aquila Power Corporation (Aquila).

A copy of the filing was served upon Aquila.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. The Dayton Power and Light Company

[Docket No. ER99–3355–000]

Take notice that on June 24, 1999, The Dayton Power and Light Company (Dayton), tendered for filing an unexecuted service agreement establishing Indianapolis Power & Light as a customer under Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Indianapolis Power and Light and the Public Utilities Commission of Ohio.

Comment date: July 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17420 Filed 7–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–784–016, et al.]

J. Anthony & Associates Ltd, et al.; Electric Rate and Corporate Regulation Filings

July 1, 1999.

Take notice that the following filings have been made with the Commission:

1. J. Anthony & Associates Ltd.

[Docket No. ER95–784–016]

Take notice that on June 28, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. Avista Corporation

[Docket No. ER99–55–002]

Take notice that on June 28, 1999, Avista Corporation (Avista Corp.), made its filing in compliance with the Commission's Order of May 27, 1999, in the above-referenced docket.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Southwest Power Pool, Inc.

[Docket No. ER99–2257–001]

Take notice that on June 28, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing certain changes to the Agreement for Capacity and Energy Services in Southwest Power Pool (Agreement) in compliance with the Federal Energy Regulatory Commission's May 27, 1999, order in the proceeding captioned above.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Electric Transmission

[Docket No. ER99–2331–001]

Take notice that on June 28, 1999, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing a compliance filing pursuant to the Commission's May 28, 1999 Order in the above-referenced docket involving generation imbalance charges.

Duke states that a copy has been served on the Service List in this proceeding.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. International Energy Consultants, Inc.

[Docket No. ER99–3130–000]

Take notice that on June 28, 1999, International Energy Consultants, Inc. (International), tendered for filing in the above-referenced docket an amendment to its petition, filed with the Commission on June 2, 1999, for Commission approval to engage in wholesale electric power and energy transactions as a power marketer. International states that the amendment has been submitted in response to a request from FERC staff for additional information concerning ownership, affiliation and business activities of International.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Colockum Transmission Company, Inc.

[Docket No. ER99–3257–000]

Take notice that on June 28, 1999, pursuant to Section 385.216, 18 CFR 385.216 of the Commission's Regulations, Colockum Transmission Company, Inc. (Colockum) tendered for filing with the Federal Energy Regulatory Commission a Notice of Withdrawal of its Notice of Termination of the 1988 Exchange Agreement between Colockum and PacifiCorp, effective date July 1, 1988, designated as Colockum Rate Schedule FERC No. 2, which Colockum filed on June 15, 1999.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3378–000]

Take notice that on June 28, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Strategic Energy Ltd. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3379–000]

Take notice that on June 28, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and VTEC Energy, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's

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Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER99–3385–000]

Take notice that on June 28, 1999, Southern California Edison Company (SCE), tendered for filing the executed Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and the Additional Facilities Agreement between SCE and Green Power Partners I LLC.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3387–000]

Take notice that on June 28, 1999, Alliant Energy Corporate Services, Inc., tendered for filing two executed service agreements for transmission service. One agreement is for short-term firm point-to-point transmission service, the other agreement is for non-firm point-to-point transmission service. The agreements are signed by Missouri River Energy Services and Alliant Energy Corporate Services, Inc.

Alliant Energy Corporate Services, Inc., requests an effective date of June 24, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER99–3388–000]

Take notice that on June 28, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated June 18, 1999, with WISVEST–CONNECTICUT, LLC (Wisvest) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Wisvest as an eligible customer under the Tariff.

PP&L requests an effective date of June 28, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Wisvest and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PP&L, Inc.

[Docket No. ER99–3389–000]

Take Notice that on June 28, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated May 25, 1999 with UGI Utilities, Inc. (UGI) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds UGI as an eligible customer under the Tariff.

PP&L requests an effective date of June 28, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to UGI and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER99–3390–000]

Take notice that on June 28, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. § 792 *et seq.*, a Transaction Agreement dated May 12, 1999 with Borough of Butler, New Jersey (Butler) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Butler and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Western Systems Coordinating Council

[Docket No. ER99–3396–000]

Take notice that on June 28, 1999, the Western Systems Coordinating Council (WSCC), tendered for filing with the Commission executed agreements with participants in the WSCC's Reliability Management System.

The WSCC requests that the Commission act on the filing by August 2, 1999.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER99–3397–000]

Take notice that on June 28, 1999, Niagara Mohawk Power Corporation tendered for filing Amendment No. 1, to the Interconnection Agreement, Rate Schedule FERC No. 259, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824 d, and Part 35 of the Commission's Regulations, 18 CFR Part 35.

A copy of this filing has been served on the New York State Public Service Commission, as well as the official service list in the above-captioned docket.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17440 Filed 7–8–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–175–000, et al.]

Rocky Mountain Cogeneration LLC, et al.; Electric Rate and Corporate Regulation Filings

June 30, 1999.

1. Rocky Mountain Cogeneration LLC

[Docket No. EG99–175–000]

Take notice that on June 25, 1999, Rocky Mountain Cogeneration LLC, c/o Mr. Michael J. Ruffatto, President, North American Power Group, Ltd., 8480 East Orchard Road, Suite 4000, Greenwood Village, Colorado 80111, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Rocky Mountain Cogeneration LLC is a Colorado limited liability company. Rocky Mountain Cogeneration LLC will own and operate an approximately 180 MW facility located in Adams County, Colorado ("Facility"). Electricity generated by the Facility will be sold at wholesale to one or more power marketers, public utilities or other wholesalers.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Wellhead Generating Company, LLC

[Docket No. EG99–176–000]

Take notice that on June 25, 1999, Wellhead Generating Company LLC (Wellhead), a Delaware limited liability company with its principal place of business at 7500 Old Georgetown Road, 13th Floor, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Wellhead will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, eligible facilities as defined in Section 32(a) of PUHCA and selling electric energy exclusively at wholesale. The eligible facilities may be located throughout the United States. At present, Wellhead owns certain 130 kW natural gas-fired generators to be located throughout the state of Texas and such interconnection transmission facilities as necessary to effect sales of electric energy at wholesale.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Ultrapower 3, A Joint Venture

[Docket No. EG99–177–000]

Take notice that on June 25, 1999, Ultrapower 3, A Joint Venture (Ultrapower 3), c/o Mr. Michael J. Ruffatto, President, North American Power Group, Ltd., 8480 East Orchard Road, Suite 4000, Greenwood Village, Colorado 80111, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Ultrapower 3 is a California general partnership. Ultrapower 3 will own and operate an approximately 25 MW facility located in Blue Lake, California (Facility). Electricity generated by the Facility will be sold at wholesale to one or more power marketers or the California PX.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Southern Energy Bowline, L.L.C.

[Docket No. EG99–178–000]

Take notice that on June 28, 1999, Southern Energy Bowline, L.L.C. (Southern Bowline), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern Bowline is a Delaware limited liability company that intends to acquire a direct 100 percent ownership interest in the Bowline Point Generating Station located in the Village of West Haverstraw, New York (the Facility). The Facility has an aggregate generating capacity of approximately 1200 MW. Southern Bowline is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Southern Energy NY–GEN, L.L.C.

[Docket No. EG99–179–000]

Take notice that on June 28, 1999, Southern Energy NY–GEN, L.L.C. (Southern NY–GEN), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern NY–GEN is a Delaware limited liability company that intends to acquire ownership interests in certain gas turbine and hydroelectric assets located in New York (the Facilities). The Facilities have an aggregate generating capacity of approximately 124 MW. Southern NY–GEN is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Southern Energy Lovett, L.L.C.

[Docket No. EG99–180–000]

Take notice that on June 28, 1999, Southern Energy Lovett, L.L.C. (Southern Lovett), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern Lovett is a Delaware limited liability company that intends to acquire a direct 100 percent ownership interest in the Lovett Station located in Tomkins Cove, New York (the Facility). The Facility has an aggregate generating capacity of approximately 453 MW. Southern Lovett is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Griffiss Local Development Corporation

[Docket No. EL99–73–000]

Take notice that on June 24, 1999, Griffiss Local Development Corporation tendered for filing with the Federal

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Energy Regulatory Commission, a Petition for Expedited Declaratory Order.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. DTE-CoEnergy L.L.C.

[Docket No. ER97–3835–007]

Take notice that on June 25, 1999, DTE-CoEnergy L.L.C., tendered for filing notification of change in status indicating that the Company will be dissolved effective June 30, 1999.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER99–2779–000]

Take notice that on June 25, 1999, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) tendered an amendment to its May 3, 1999, filing in this proceeding in response to a Letter Order issued in this proceeding on May 26, 1999.

The CSW Operating Companies state that a copy of the filing has been served on all parties to Docket No. ER99–2779–000.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Power Management Co., L.L.C.

[Docket No. ER99–3275–000]

Take notice that on June 25, 1999, Power Management Co., L.L.C., tendered for filing an amendment to its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority filed with the Commission on June 16, 1999, in the above-referenced docket.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER99–3356–000]

Take notice that on June 25, 1999, Wisconsin Public Service Corporation tendered for filing an executed service agreement with TransAlta Energy Marketing (U.S.) Inc., under its Market-Based Rate Tariff.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER99–3357–000]

Take notice that on June 25, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing Service Agreements between NYSEG and Select Energy, Inc., KeySpan Energy Trading Services LLC and Merrill Lynch (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of June 28, 1999, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER99–3358–000]

Take notice that on June 25, 1999, Southern California Edison Company (SCE), tendered for filing an executed Service Agreement for Wholesale Distribution Service with PacifiCorp under SCE's Wholesale Distribution Access Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER99–3359–000]

Take notice that on June 25, 1999, PECO Energy Company, tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated May 12, 1999 with Borough of Lavallette, New Jersey (Lavallette) under PECO's FERC Electric Tariff Original Volume No.1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Lavellette and to the Pennsylvania Public Utility Commission.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER99–3360–000]

Take notice that on June 25, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated May 11, 1999 with Borough of Butler, New Jersey (BUTLER) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds BUTLER as a customer under the Tariff.

PECO requests an effective date of May 11, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to BUTLER and to the Pennsylvania Public Utility Commission.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Central Maine Power Company

[Docket No. ER99–3361–000]

Take notice that on June 25, 1999, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service entered into with Greenville Steam Company. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER99–3362–000]

Take notice that on June 25, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Letter dated June 24, 1999 with Horizon Energy Company d/b/a Exelon Energy (EXELON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of July 1, 1999, for the Transaction Letter.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER99–3363–000]

Take notice that on June 22, 1999, Cinergy Services, Inc. (Cinergy) and New York State Electric & Gas Corporation (NYSEG), are requesting via a Notice of Assignment that NYSEG will replace NGE Generation Inc., of

Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 165, dated January 2, 1998.

Cinergy and NYSEG are requesting an effective date of May 14, 1999.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER99–3364–000]

Take notice that on June 25, 1999, Cinergy Services, Inc., collectively as agent on behalf of its utility company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Cost-Based Power Sales Standard Tariff-CB (the tariff) entered into between Cinergy and Cleco Corporation (CLECO).

Cinergy and CLECO are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER99–3365–000]

Take notice that Cinergy Services, Inc. (Cinergy), and New York State Electric & Gas Corporation (NYSEG), on June 22, 1999, are requesting via a Notice of Assignment that NYSEG will replace NGE Generation Inc. of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7–MB, Service Agreement No. 165, dated January 2, 1998.

Cinergy and NYSEG are requesting an effective date of May 14, 1999.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER99–3366–000]

Take notice that on June 25, 1999, Cinergy Services, Inc. (Cinergy) and New York State Electric & Gas Corporation (NYSEG), tendered for filing a request via a Notice of Assignment that NYSEG replace NGE Generation Inc., for Cinergy's Market-Based Power Sales Tariff Original Volume No. 7–MB, Service Agreement No. 165, dated January 2, 1998.

Cinergy and NYSEG are requesting an effective date of May 14, 1999.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Idaho Power Company

[Docket No. ER99–3367–000]

Take notice that on June 25, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Wholesale Power Purchase and Sale Agreement between Idaho Power Company and Portland General Electric Company.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. DTE Energy Marketing, Inc.

[Docket No. ER99–3368–000]

Take notice that on June 25, 1999, DTE Energy Marketing, Inc., tendered for filing an initial rate schedule to sell power and certain ancillary services at market-based rates and for certain waivers of the Commission's filing and reporting requirements.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Penobscot Hydro, LLC

[Docket No. ER99–3369–000]

Take notice that on June 25, 1999, Penobscot Hydro, LLC (Penobscot), tendered for filing an umbrella Service Agreement for transactions between Penobscot and PP&L EnergyPlus Company, which was entered into pursuant to Penobscot's market-based rate tariff.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Kansas City Power & Light Company

[Docket No. ER99–3370–000]

Take notice that on June 25, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 25, 1999, between KCPL and El Paso Power Services. This Agreement provides for the rates and charges for Non-Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

KCPL proposes an effective date of June 14, 1999 and requests waiver of the Commission's notice requirement.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER99–3371–000]

Take notice that on June 25, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated May 12, 1999, with Borough of Pemberton, New Jersey (Pemberton), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Pemberton and to the Pennsylvania Public Utility Commission.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER99–3372–000]

Take notice that on June 25, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated May 12, 1999 with Borough of Madison, New Jersey (Madison) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Madison and to the Pennsylvania Public Utility Commission.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. PECO Energy Company

[Docket No. ER99–3373–000]

Take notice that on June 25, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated May 12, 1999 with Borough of Seaside Heights, New Jersey (Seaside Heights) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Seaside Heights and to the Pennsylvania Public Utility Commission.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Arizona Public Service Company

[Docket No. ER99–3374–000]

Take notice that on June 25, 1999, Arizona Public Service Company, tendered for filing a service agreement under APS' FERC Electric Tariff, Original Volume No. 4 for service to the United States Department of Interior, Bureau of Indian Affairs, San Carlos Irrigation Project (SCIP).

A copy of this filing has been served on the Arizona Corporation Commission and SCIP.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Arthur Kill Power LLC

[Docket No. ER99–3375–000]

Take notice that on June 25, 1999, Arthur Kill Power LLC, tendered for filing under its market-based rate tariff two long-term service agreements with Consolidated Edison Company of New York, Inc., and one long-term service agreement with NRG Power Marketing, Inc.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. ER99–3376–000]

Take notice that on June 25, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and Tenaska Power Services Co. (Tenaska), replacing the unexecuted service agreement filed on April 16, 1999 under Docket No. ER99–2511–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Astoria Gas Turbine Power LLC

[Docket No. ER99–3377–000]

Take notice that on June 25, 1999, Astoria Gas Turbine Power LLC, tendered for filing under its market-based rate tariff two long-term service agreements with Consolidated Edison Company of New York, Inc., and one long-term service agreement with NRG Power Marketing, Inc.

Comment date: July 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Michael L. Jines, James E. Hammelman, Rufus S. Scott and Lloyd A. Whittington

[Docket Nos. ID–3384–000, ID–3385–000, ID–3386–000 and ID–3387–000]

Take notice that on June 25, 1999, the following officers of El Dorado Energy, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) abbreviated applications pursuant to Section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (1994), and the Commission's Order in El Dorado Energy, LLC, 85 F.E.R.C. (CCH) ¶61,006 (1998), to hold jurisdictional interlocks:

Michael L. Jines
James E. Hammelman
Rufus S. Scott
Lloyd A. Whittington

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Air Products and Chemicals, Inc.

[Docket No. QF99–84–000]

Take notice that on June 22, 1999, Air Products and Chemicals, Inc., tendered for filing supplemental information to its application filed on May 28, 1999 in the above-referenced docket. No determination has been made that this filing constitutes a complete filing.

The supplement provides additional information pertaining to the technical aspects and the ownership of the cogeneration facility.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17421 Filed 7–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Proposed Rate Adjustment

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Secretary of Department of Energy, confirmed and approved, on an interim basis, Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A. The rates were approved on an interim basis through June 30, 2004, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rate on an interim basis is effective through June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia 30635–2496, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued December 14, 1994, in Docket No.EF94–3021–000, confirmed and approved Wholesale Power Rate Schedules CBR–1–C, CSI–1–C, CK–1–C, CC–1–D, CM–1–C, CEK–1–C, and CTV–1–C. By order issued August 11, 1997, in Docket No. EF97–3021–000, the Federal Energy Regulatory Commission confirmed and approved rate schedule SJ–1. Rate schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A replace these schedules.

Dated: June 29, 1999.

Bill Richardson,

Secretary.

Southeastern Power Administration—Cumberland; Order Confirming and Approving Power Rates on an Interim Basis

[Rate Order No. SEPA–38]

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. On November 4, 1993, the Secretary of Energy issued Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 at 58 FR 59716, which delegated (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Southeastern (Southeastern); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). By subsequent

Order effective April 15, 1999, the Secretary rescinded all delegations of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 0204–108, as amended. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903. Procedures for approving power marketing administration rates by FERC are found at 18 CFR part 300. This rate is issued by the Secretary by pursuant to said notice.

Background

Power from the Cumberland System of Projects is presently sold under Wholesale Power Rate Schedules CBR–1–C, CSI–1–C, CEK–1–C, CM–1–C, CC–1–D, CK–1–C, CTV–1–C, and SJ–1. These rate schedules were approved by the FERC on December 14, 1994 and August 11, 1997, for a period ending June 30, 1999 (69 FERC 61333 and 80 FERC 62123).

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in January 1999, for the Cumberland System shows that with an annual revenue increase of $2,272,000 over the revenues in the current repayment study using current rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Public Notice and Comment

Opportunity for Public Review and Comment on Wholesale Power Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A, was announced by notice published in the **Federal Register** February 9, 1999. A Public Information and Comment Forum was held March 16, 1999, in Nashville, Tennessee, and written comments were invited through May 10, 1999. The notice proposed rates with a revenue increase of $2,272,000 in Fiscal Year 1999 and all future years. Transcript of the Public Information and Comment Forum is included as Exhibit A–4. A review of comments is included as Exhibit A–5. The following is a summary of the comments.

Staff Evaluation of Public Comments

Comments and questions from four sources were received at the Public Comment Forum held in Nashville, Tennessee on March 16, 1999. These are included in the Forum Transcripts which are included as Exhibit A–4. Written comments and questions from four sources were received by mail and facsimile during the comment period and are attached. The comments were received pursuant to **Federal Register** Notice 64 Fed. Reg. 6341 dated February 9, 1999.

Comments have been condensed into six major categories. An outline of the six major categories and subcategories of each is as follows:

1. Justification of the TVA transmission rate
2. Rate design
   - A. Inclusion of the TVA transmission credit with the other costs of providing service
   - B. Comparative value of service provided
   - C. Cost recovery from energy and capacity
   - D. Disproportionate impact on the Kentucky Utilities Municipals
   - E. Phase-in of the rate adjustment
3. SEPA Power Marketing Policy
   - A. Allocation of Energy
   - B. Ability to negotiate power contracts
4. SEPA's contract with TVA and TVPPA
   - A. Use of TVA transmission facilities
   - B. Amount of Capacity Wheeled
5. Cost of Service Issues
   - A. Budgeted replacements
   - B. CSRS
6. Rate Implementation

1. Justification of the TVA Transmission Rate

Comment 1: Historically, Southeastern Power Administration's (SEPA or Southeastern) rate treatment of the SEPA transmission credit to TVA resulted in TVA realizing significantly less than the total cost to TVA of transmitting SEPA power across the TVA transmission system. This is a problem that needs to be corrected.

Comment 2: TVA's proposed transmission charges to SEPA are plainly excessive. When the current TVA transmission charges were established about five year ago, the rate under TVA's transmission tariff (or equivalent) was about $2.00 per kW/Month. In the intervening years, TVA's tariff rate has decreased to about $1.57 per kW/Month, yet TVA seeks an increase in its charges to SEPA of approximately $2.5 million, for a total of about $9.5 million. On its face, TVA's proposed increase is unjustified.

Comment 3: The purportedly cost-based TVA transmission charges contain many elements that are excessive or questionable. For example:

a. TVA has not properly determined the facilities to be include in transmission rate base for ratemaking purposes. For example, TVA has improperly included generator step-up facilities and has not justified its inclusion of such facilities as radial lines and customer-specific facilities.

b. TVA exclusion of certain loads from its rate divisors and its use of revenue credits for certain services, rather than allocating costs to those services, tend to inflate TVA's transmission rates.

c. TVA's inclusion of a 10% margin is unjustified.

d. TVA's inclusion of a 5% "factor" for payments in lieu of taxes has not been justified.

e. TVA's charges should be adjusted to reflect the limited service that TVA provides in the transmission of SEPA allocations, which include limitations on the amounts and scheduling of energy associated with the capacity being purchased. Alternatively, if SEPA and its customers are to be required to pay for transmission capacity year-round, they should be entitled to make full use of the transmission services for which they are paying.

f. The annual, levelized carrying charge rate implicit in TVA's revenue requirement as a percentage of gross plant investment appears excessive in relation to those of other utilities in the region, even before taking into account the fact that TVA does not pay income taxes.

g. With declining TVA transmission costs during recent years, its proposed rates based upon a single year's costs should be scrutinized for the applicability in SEPA rates that are to be in effect for five years.

h. Administrative and general expenses do not appear to have been properly functionalized prior to their allocation.

i. TVA's derivation of charges for scheduling service are not supported and appear excessive in relation to corresponding charges of other utilities.

j. TVA proposes to establish the new transmission rates applicable to SEPA based upon fiscal year 1997, which ended September 30, 1997, or nearly two years prior to the effective date of TVA's proposed rate increase.

k. It is SeFPC's understanding that TVA is proposing to apply its transmission tariff formula rate to SEPA's service and thus change SEPA's rate annually. TVA's formula rate procedures under its tariff call for annual rate changes effective January 1 of each year based upon data for the second preceding fiscal year. For example, rate changes under the tariff effective January 1, 1999 are based upon fiscal year 1997 data. The lag is only fifteen (15) months. Since adjustments to the rate applicable to SEPA would change each July 1, this makes the lag twenty-one (21) months without justification. If TVA is to use a formula rate which adjusts annually on July 1, it is reasonable, under facts specific to SEPA, to use a test year ending no earlier than the preceding fiscal year (e.g., fiscal 1998 for rates effective July 1, 1999).

l. SeFPC questions the inclusion of facilities with voltage less than 166 kV in the determination of TVA's proposed transmission rate.

Response: Section 9.1 of the TVA–SEPA–TVPPA Contract, executed

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October 1, 1997, allows TVA to adjust rates for delivering power to the points of delivery to the "Other Customers" defined as customers outside the TVA area. Section 9.1 does not provide any means for SEPA to determine an appropriate transmission rate. TVA and the "Other Customers" are disagreeing over the appropriateness of the rate increase. SEPA's only recourse, when TVA and the Outside Customers disagree, is to try to determine an equitable split of the costs; therefore, SEPA has determined to allocate a comparable increase to all customers. SEPA will support discussions between TVA and the customers outside the TVA system in an effort to reach a negotiated settlement on an appropriate amount for the TVA transmission charge.

2. Rate Design

A. Inclusion of the TVA Transmission Credit With the Other Costs of Providing Service

Comment 1: TVA is paying approximately 60 percent of the increased charges for TVA transmission service to transport SEPA power to other SEPA customers. The proposed methodology fails to compensate TVA adequately for the use of its transmission facilities to deliver SEPA power to customers outside the TVA area and shifts costs from certain of SEPA's customer to TVA distributors and directly served customers.

Comment 2: It is entirely inappropriate for TVA to bear the costs for transmitting the SEPA power to others in what amounts to an arbitrary assignment of costs to TVA and its customers.

Comment 3: The manner in which SEPA charges TVA for power the Cumberland Projects results in discriminatory charges for use of TVA's system.

Comment 4: SEPA's proposed rate would mean that those who receive SEPA power over TVA's transmission system receive the benefit of firm transmission service on the TVA system but do not pay their fair share of TVA's cost-based transmission service, while TVA power customers and other transmission customers pay a higher rate for the same type of transmission service. This is an unfair shifting of costs.

Comment 5: The SEPA rate should pass through the TVA published cost-based transmission charges to those SEPA preference customers receiving power wheeled across the TVA system, as SEPA does with other transmission providers' charges.

Comment 6: By combining together TVA's transmission charges with the cost of SEPA's power, SEPA arbitrarily disregards Federal Energy Regulatory Commission (FERC) policy and utility industry practice of separating (unbundling new arrangements for) transmission charges from power and energy charges. SEPA is similarly arbitrary in singling out TVA transmission charges for this "rolled in" rate: those SEPA customers served through the transmission system of Carolina Power & Light Company (CP&L) have their transmission charge unbundled from the SEPA power cost as a separate pass-through, as do other SEPA customers taking power from projects other than the Cumberland Basin Projects.

Comment 7: The CP&L transmission cost component is clearly broken out as a separate charge in the very same rate proposal in which TVA's transmission cost component is deceptively buried. SEPA does not provide a reasoned basis for this arbitrarily disparate ratemaking treatment of transmission charges attributable to TVA.

Comment 8: The proposed SEPA methodology would have the effect of allowing the customers outside the TVA area to obtain a type of premium on-peak firm transmission service at charges that do not fully recover the costs of providing such service and that are less than charges that would be charged others requesting other types of premium service (point-to-point firm transmission service).

Comment 9: While TVA recognizes that ratemaking is a highly complex process, one basic premise is that customers should not be forced to pay for services or benefits provided for other customers. If the costs of providing services to one group are different from the costs of serving another, the two groups are, in one important respect, different, and it is appropriate for that difference to be addressed in the ratemaking process. TVA recommends remedying this defect in SEPA's proposed rates by treating TVA's transmission costs solely as a pass-through, like those of CP&L, rather than adjusting the energy charge, which effectively results in TVA paying some 53 percent of the increased costs of providing transmission service to SEPA customers outside the TVA area.

Comment 10: SEPA arbitrarily disregards FERC and industry practice of transmission unbundling.

Comment 11: To the extent that TVA does not recover from SEPA the costs for SEPA's use of TVA's transmission facilities to wheel power to SEPA's preference customers outside the TVA region, the those costs are unfairly and unlawfully shifted to TVPPA member systems. TVPPA opposes such cost-shifting to its members.

Response: SEPA will support continued discussions between TVA and the customers outside the TVA system in an effort to reach a negotiated settlement on an appropriate amount of the TVA transmission charge. TVA's proposed transmission charge appears to be substantially higher than the transmission charges SEPA pays to investor owned utilities in the southeastern region. TVA's transmission rates are not subject to the same review as investor owned utilities. Considering these factors, SEPA does not at this time consider it appropriate to treat the TVA transmission charges as a pass-through rate, which is how SEPA treats most of the transmission charges of other utilities. Rather, SEPA has determined to allocate a comparable increase to all customers.

B. Comparative Value of Service Provided

Comment 1: SEPA's allocation of energy has resulted in TVA receiving greater value from the Cumberland River System Projects than the customers outside the TVA area. This has not been taken into consideration in the development of the rate.

Comment 2: Please provide an explanation of why the energy allocation values were not considered in the development of the rate.

Response: Energy allocations are a part of the Southeastern Power Marketing Policy for the Cumberland System of Projects published in the **Federal Register** August 5, 1993, 58 FR 41762, and are not subject to review in these proceedings. A determination of the value of these allocations in the development of the rates would require an assessment of market rates for power in the relevant markets. SEPA is required to market power at cost-based rates, rather than at market-based rates. SEPA does not believe it can appropriately assess the relative value of the energy allocations.

C. Cost Recovery From Energy and Capacity

Comment: SEPA distorts transaction economics and arbitrarily disregards ratemaking practice by assigning significant fixed costs to energy charges.

Response: Traditional utility rate design practice assigns fixed costs to capacity charges and variable costs to energy charges. In a hydroelectric system, where there is no fuel cost and almost all of the costs are fixed, the capacity charge would be designed to recover nearly 100 percent of the cost. Having only a capacity charge is not a common method of setting rates, and does not provide an incentive for the customers to manage energy wisely. SEPA looked for a more equitable way to allocate costs. For the period from 1984 to 1994, SEPA compared its rates to the wholesale rates charged by utilities in the Southeastern portion of the United States. Based on these results, a rate design that recovered 40 percent of the costs from capacity and 60 percent from energy. In 1994 TVA objected to this rate design. After negotiations between SEPA, TVA, and the customers outside the TVA system, a rate design that included 1500 hours of energy with each kilowatt of capacity and an additional energy charge for energy above 1500 hours use was implemented as a negotiated settlement. SEPA is proposing to continue this rate design to allow for equal sharing of the cost increase.

D. Disproportionate Impact on the Kentucky Utilities Municipals

Comment: SEPA's rate design imposes a disproportionate increase on the KU Area Preference Customers. Given that the KU Area Preference Customers were denied access to the benefits of SEPA power for years (because of the actions of Kentucky Utilities Company, not of SEPA), it seems unfair for these utilities to bear the greatest percentage rate increase, after receiving the power for only two and one-half years. To the extent that any rate increase is found to be justified, an equal percentage increase to all customers would be more equitable and more consistent with the principles of cost-based ratemaking.

Response: The Kentucky Utilities Municipals are unique among the customers outside the TVA area. They are the only group that receives more than 1500 hours use per kilowatt per year. The Kentucky Utilities Municipals receive 1800 hours use, which means that they incur an additional energy charge for 300 hours use per kilowatt per year. Because of this additional energy, the rate increase for the Kentucky Utilities Municipals is slightly higher (7% versus 6%) than for the other customers of the Cumberland System.

E. Phase-in of the Rate Adjustment

Comment: SEPA should allow its customers the option of phasing in the proposed rate increase over the five-year period.

Response: The total rate adjustment is an increase of about seven percent to the most adversely affected customer group, which is the municipal customer in the Kentucky Utilities area. Because of the continued disagreement over the TVA transmission costs, it is very likely the rate will be modified prior to expiration of the 5 year rate. SEPA does not believe it is appropriate to use a phase-in of a rate adjustment for an increase of this relatively small magnitude.

3. SEPA Power Marketing Policy

A. Allocation of Energy

Comment: TVA was already overcompensated for transmission services under the existing arrangement, which includes not only charges to SEPA for services, but also make available "excess" energy to TVA in substantial amounts. TVA's transmission charges are unjustified, even without consideration of these additional benefits to TVA not reflected in the charges SEPA pays to TVA.

Response: The comment links the allocation of energy from the Cumberland System with TVA's compensation for providing transmission. The allocation of energy, which is a part of Southeastern Power Marketing Policy for the Cumberland System of Projects published in the **Federal Register** August 5, 1993, 58 FR 41762, is not subject to review in these proceedings. These proceedings pertain only to the rates for Cumberland System Power.

B. Ability to Negotiate Power Contracts

Comment: SEPA should allow SEPA's customers an option to purchase transmission service directly from TVA, with a corresponding reduction in the price of SEPA power to eliminate the currently bundled component for TVA transmission charges that is included in SEPA's proposed rates.

Response: SEPA negotiates transmission service contracts in behalf of SEPA's customers when it is determined to be in the best interest of the customers for SEPA to do so. If the customers wish to negotiate for transmission service in their own behalf, SEPA will support their efforts. Such arrangements may require modification or replacement of existing contracts between SEPA, the preference customers involved, TVA and TVPPA, and other area utilities.

4. SEPA's Contract With TVA and TVPPA

A. Use of TVA Transmission Facilities

Comment 1: Customer's outside the TVA area are being asked to pay what is described as TVA's full transmission costs. Yet the customers outside the TVA area have firm use of that transmission capacity for only 1500 hours per year.

Comment 2: SeFPC believes the 1500 hours limitation on the annual use of TVA's transmission system is unreasonable and does not represent the true value of the availability.

Comment 3: SeFPC customers should be allowed to utilize this excess capacity reservation to engage in non-firm transactions to other customers and fully utilize TVA's transmission system.

Response: These comments relate to the use of headroom, or the difference in the capacity that SEPA has reserved on the TVA system and the capacity that SEPA is actually using in any given hour. The current contract between SEPA, TVA, and TVPPA does not allow the use of headroom. SEPA is willing to negotiate modifications to the existing agreement that will allow the use of headroom.

B. Amount of Capacity Wheeled

Comment 1: SEPA has previously indicated that, notwithstanding TVA's clear contractual commitment to transmit up to 475 MW for the SEPA customers outside TVA, TVA somehow actually transmits less than that amount because two of SEPA's Cumberland projects are directly connected to two systems receiving Cumberland output (Big Rivers Electric Corporation and East Kentucky Power Cooperative). Contrary to SEPA's contentions, TVA's commitment to transmit 475 MW of power to the periphery is not lessened because of the location of specific Cumberland projects on the TVA system since the fully integrated TVA transmission system (not isolated pieces of the system) is utilized in providing the service.

Comment 2: TVA allocates 475,000 kW of transmission capacity to SEPA each month of the contract year. SeFPC believes that there are months or periods during the month that the full 475,000 kW of transmission capacity is not required by TVA.

Response: The current contract between SEPA, TVA, and TVPPA provides for the delivery of 475 MW of capacity at the TVA border. This includes the delivery of 190 MW to Big Rivers Electric Corporation, which has an interconnection with the Barkley Project, and 100 MW to East Kentucky Power Cooperative, which has an interconnection with the Wolf Creek Project. TVA has the right to schedule the output of eight of the ten Cumberland Projects, including these two projects. The output of the Barkley Project is 158 MW, and the output of the Wolf Creek Project is 274 MW. Big Rivers could receive 158 MW of their delivered capacity from the Barkley Project without utilization of the TVA

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transmission system, and East Kentucky could receive all 100 MW of their delivered capacity from the Wolf Creek Project without utilization of the TVA transmission system. Under the existing contract between SEPA, TVA, and TVPPA it is unclear how much capacity is being transmitted across the TVA system. Reducing the amount of capacity transmitted would likely require modification of the existing agreement. This is a contractual matter, and is not appropriately addressed in these proceedings, which pertain to rates for the Cumberland System capacity and energy.

5. Cost of Service Issues

A. Budgeted Replacements

Comment: SEPA has paid into the treasury over $62 million cumulatively which has been applied to reduce the long-term debt owed by SEPA. SeFPC requests that SEPA review its construction expenditures budget to collect only those revenues required to meet its actual construction requirements.

Response: The DOE Order RA6120.2 requires SEPA to include the cost of replacements in the repayment studies used to support rate filings. SEPA has used the best estimates that were available over the years to determine the levels of future replacement costs. Over the years, SEPA's estimates have been in excess of the actual replacement costs, and by end of fiscal year 1998, the difference between estimated and actual replacement cost has grown to $62 million for the Cumberland System of projects. SEPA agrees with this comment and has joined with the Corps and the customers' organized committees to examine the future rehabilitation of the projects. SEPA is using the best estimates of the Corps in this repayment study. The Corps is estimating that a large amount of replacements will occur in the near future.

B. CSRS

The preference customers have objected to the inclusion of Civil Service Retirement System Costs and Health Benefit Costs (CSRS) that are funded by the Office of Personnel Management (OPM) in a prior SEPA rate filing. The Georgia-Alabama-South Carolina Rates were filed with the Commission on September 22, 1998, and approved by the Commission on February 26, 1999. See Southeastern Power Administration 86 FERC ¶61,195 (1999). The customers have requested a rehearing and the request is currently pending before the Commission. Many of these issues were responded to in the prior rate filing. We will respond to each comment individually.

Comment 1: The members of the SeFPC do not believe that the collection of CSRS costs remains within the cost recovery guidelines which the PMAs must follow.

Response: On July 1, 1998, DOE General Counsel Mary Anne Sullivan responded to the issue of SEPA's discretion to collect the full CSRS costs in rates by a memorandum opinion of same date entitled, "PMA Authority To Collect In Rates, and Reimburse To Treasury, Government's Full Costs of Post Retirement Benefits' (Opinion). The Opinion is cited hereafter as (Mem. Opinion, July 1, 1998). A copy of the Memorandum Opinion is included as Attachment 1 to this notice, as well as part of the Administrator's record of decision as Exhibit A–5 filed with the Federal Energy Regulatory Commission (FERC) pursuant to 18 CFR 300.10 *et seq.* in support of this rate action. The Opinion concludes at page 4:

* * * that it is reasonable to interpret the term "cost" in the organic statutes to include the total costs to the Government of post retirement benefits for PMA-related employees.

The July 1, 1998 Opinion also concludes, at page 7:

DOE policy, FASB principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all employer costs accruing in that period is a reasonable interpretation of the statutory obligation to recover costs.

Comment 2: The failure to follow Financial Accounting Standards Board represents an unexplained departure from the existing regulations which pertain to the recovery of costs by the PMAs.

Response: As explained more fully at page 4 of the July 1, 1998 DOE General Counsel's Opinion, there was no "articulated legal judgment" to bar to the inclusion of the cost of unfunded post-retirement benefits in rates. As explained in said Opinion, and in SEPA's responses to comments 4 and 16, SEPA is implementing the said Opinion to recover in our rates such costs.

The July 1, 1998 Opinion concluded on page 10, that "* * * monies received from power rates to recover costs of unfunded liabilities from power marketed by SEPA * * *, would be deposited into the general fund of the Treasury as miscellaneous receipts," and that such "* * * (p)ayments would therefore offset the appropriation for unfunded liability made to the OPM Funds."

In accordance with such Opinion, SEPA is including a component in our rates which will operate as an offset against the annual appropriations by Congress to the Office of Personnel Management to fund post-retirement benefits promised to Federal retirees under existing law.

In the view of SEPA, such actions as we are undertaking for the second time since the July 1, 1998 Opinion was issued, were in accordance with the Congressional mandate, applicable law, and the requirements of DOE Order RA 6120.2 that SEPA establish its rates in accordance with generally accepted accounting principles as adopted by the Financial Accounting Standards Board (FASB).

Comment 3: Information SEPA has relied upon in calculating the rate increase [regarding CSRS] fails to comport with the regulations that SEPA and other PMAs must follow.

Response: SEPA used the best estimates for future years of the CSRS costs by estimating that future years would be the same as the actual 1998 CSRS cost of $818,991. The actual costs for 1998 were determined by using the ratio of OPM's share of the costs applied to the actual annual salaries for each Corps employee allocated to power. The same method was used to compute SEPA's CSRS cost. It should be noted that this comment was directed toward estimated costs used in the proposed rate filing presented to the customers at the rate forum. The estimate at that time was $789,000.

Comment 4: The inclusion of CSRS costs in the proposed rate increase also raises questions whether SEPA may recover CSRS costs for Corps employees. By operation of law, each federal agency makes deductions, contribution and deposits for retirement benefits for the agency's federal employees. The SEFPC submits that the discretion afforded by the Flood Control Act of 1944 to collect (full) CSRS costs must yield to the more explicit statutes, *i.e.* 5 U.S.C. 8334, placing an obligation upon the employing agency to deduct a percentage of the employee's pay and to contribute an equal amount from the appropriation or fund used to pay the employee to fund retirement costs.

Response: The Department of Energy has made a determination that it is appropriate for the PMAs to include the CSRS costs and pension health benefits costs that are funded by the OPM in the rates charged to customers. Therefore, SEPA has included the costs in the repayment study and thereby included them in the rates that SEPA proposes to charge to the customers. The DOE General Counsel's July 1, 1998 Opinion

reviewed SEPA's statutory framework to determine whether SEPA, under current law, (1) may collect in rates the costs of post-retirement benefits, and (2) pay these rates revenues into a non-revolving Treasury account "* * * as an effective offset to appropriations [1] into the OPM funds from which these benefits are financed."

The July 1, 1998 DOE General Counsel's Opinion synopsized them as follows:

A. The Civil Service Retirement Act provides retirement and disability benefits for federal employees. The employing agency deducts a percentage of an employee's basic pay, combines it with an equal amount contributed by the appropriate governmental agency, and deposits it in the Treasury to the credit of the Civil Service Retirement and Disability Fund (Retirement Fund), citing *Clark* v. *United States*, 691 F.2d 837, 841 (7th Cir. 2d 1982), 5 U.S.C. § 8334. Mem. Opinion (July 1, 1998), at 2;

B. The Federal Employees' Health Benefits Fund (Health Fund) consists of funds withheld from employees plus specified contributions by the employing agencies, citing 5 U.S.C. 8906, 8909. *Id.* at 2; and

C. The Employees' Life Insurance Fund (Insurance Fund) consists of funds withheld from employees plus specified contributions by the employing agencies. 5 U.S.C. 8707, 8708, 8714. *Id.* at 2.

Congress provides in annual appropriations acts, as part of the appropriations to the OPM "such sums as may be necessary" for payments, to retirees to the extent these funds are underfunded. See, e.g., Omnibus Consolidated and Emergency Supplemental Appropriations Act, FY 1999, 112 Stat. 2681–509, Pub. L. No. 105–277, Act of October 21, 1998; and Treasury and General Government Appropriations Act, 1998; 111 Stat. 1303, Pub. L. No. 105–61, Act of October 10, 1997.

The DOE General Counsel took cognizance of the fact that at present the four PMAs are recovering in rates the cost of their own direct contributions to the three OPM funds with respect to their own employees.

The DOE General Counsel cited the statute, 5 U.S.C. 8334 (a)(1), establishing the Civil Service Retirement and Disability Fund, stating that it provides that "* * * government contributions for an employee shall be 'contributed from the appropriation or fund used to pay the employee' * * *" Mem. Opinion, (July 1, 1998) at 3, and that the statutes, 5 U.S.C. 8708(a) and 8906(f)(1), creating the Insurance and Health Funds "contain similar language," Mem. Opinion (July 1, 1998), at 3. Also, with "* * * respect to Bureau of Reclamation (Bureau) and Corps of Engineers (Corps) employees that are involved in power operations and maintenance, the Bureau and Corps make the agency contributions to the OPM Funds directly." Mem. Opinion (July 1, 1998), at 3. The General Counsel also noted that the four PMAs were recovering in rates the cost of their own "* * * direct contributions to the three OPM funds with respect to their own employees." See *id.* at 6. The General Counsel likewise noted that the PMAs were "* * * recovering in rates the power-related operation and maintenance expenses of the Corps and the Bureau," including "* * * contributions by those two agencies to the OPM funds to the extent that their employees conduct these functions." See *Id.* at 6. There was a problem by reason of the fact that (1) PMA rates "* * * generally have not reflected the cost to the Government of the unfunded liability related to the Retirement Fund or post-retirement health and life insurance benefits," and (2) that these under-collected amounts are eleven percent in the case of Civil Service Retirement System employees. Mem. Opinion (July 1, 1998), at 1, 2 and 6.

The General Counsel reviewed the 1969 Congressional enactment, i.e., 5 U.S.C. 8348(f), which "* * * addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury." Mem. Opinion (July 1, 1998), at 2. The opinion noted that, "* * * prior to 1969 * * *, the Retirement Fund had an unfunded deficit created "by the Government's failure to contribute sufficient funds, the gradual increase in liability caused by past increased retirement benefits and salary increases.'" Mem. Opinion (July 1, 1998), at 2. The General Counsel concluded, after an extensive review of all relevant factors, that the PMAs, including SEPA, have sufficient statutory authority to include unfunded costs in their rates and can deposit such funds into an appropriate Treasury account so as to effectively "offset" the said "such sums as necessary" appropriations made to the OPM funds from which these post-retirement costs are paid to retirees. Mem. Opinion (July 1, 1998), at 2, 7, 10, and 11.

The General Counsel noted that SEPA is required to set rates for electric power that cover costs, and the relevant statutes leave "considerable discretion" to the PMAs in applying this standard. The General Counsel cited Section 5 of the Flood Control Act of 1944, which applies to projects built by the Army Corps of Engineers, and power marketed by SEPA, provides that the rates "shall be set 'having regard to the recovery * * * of the cost of producing and transmitting such electric energy.'" " 16 U.S.C. 825s. Mem. Opinion (July 1, 1998), at 3. The General Counsel emphasized that, under Section 12 of DOE Order No. RA6120.2, "rates for a power system are adequate if, and only if, a power repayment study indicates that expected revenues are at least sufficient to recover, *inter alia*, '(all) costs of operating and maintaining the power system during the year in which such costs are incurred,'" and that the said order further "requires the PMAs to use accounting practices consistent with the principles prescribed by the Financial Accounting Standards Board." Mem. Opinion (July 1, 1998), at 5, citing Section 6 of RA6120.2. The General Counsel also observed that, "* * * the requirement to set rates consistent with the DOE order has been judicially recognized," citing *Overton Power Dist. No. 5* v. *Watkins*, 829 F. Supp. 1523, 1530 n. 5 (D. Nev. 1993)." Mem. Opinion (July 1, 1998), at 5.

The FASB, whose principles are referenced in DOE Order RA6120.2, in December 1985, established standards for financial reporting and accounting of employee pension benefits. The standard is Statement of Accounting Standards No. 87 (FAS 87). Under FAS 87, "* * * 'a company must recognize future pension benefits earned by current employees as current pension costs rather than when the pension benefits are actually paid.'" Southwestern Bell Telephone Company, Missouri Public Service Commission, (Case No. TC–93–224), 2 Mo. P.S.C. 3d 479; 1993 Mo. P.S.C. Lexis 62 (Dec. 17, 1993). See also, SEPA Georgia-Alabama-South Carolina System Rate Order No. SEPA–37, 63 Fed. Reg. 53,409, 53,413 (October 5, 1998). The "* * * 'FASB 87 recognizes that unfunded pensions promised to current and retired employees are actual liabilities' * * * 'so that there must be recognition as a cost in any period of the actuarial present value of benefits attributed by the pension benefit formula to employee service during the period,'" Southwestern Bell Telephone Co., at 5, f.n. 5. See also, SEPA Rate Order 37, 63 Fed. Reg. 53,413.

FAS No. 106, * * * "changes generally accepted accounting principle * * * for post retirement, medical and life insurance benefits from accounting on a pay-as-you-go basis to an accrual basis." *Pennsylvania Public Utility*

[1] The Government's full costs of the post retirement benefits not recovered by employer-employee contributions to the OPM Funds are funded by permanent and mandatory "such sums as may be necessary" annual appropriations to these funds. There are three such funds.

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Commission v. *Metropolitan Edison Company*. (Case No. R–00922314) 78 Penn, PUC 124; 141 P.U.R. 4th 336 (January 21, 1993). See also, SEPA Rate Order 37, 63 Fed. Reg. 53,413, supra. The General Counsel, citing Section 106 of FASB Statement No. 106, stated that "FASB has recognized post-retirement benefits to be broader than simply pensions, issuing in December 1990 standards regarding post-retirement benefits other than pensions." Mem. Opinion (July 1, 1998), at 5, f.n. 5. The General Counsel, who noted that under FAS 106, "* * * post retirement benefits include post-retirement health care and life insurance provided outside a pension plan to retirees," also stated that under FAS 106, "* * * '(a) post retirement benefit is part of the compensation paid to an employee for services rendered.' Thus, under FAS 106, "* * * 'the cost of providing the benefits should be recognized over those employee service periods.' This was "* * * '(b)ecause the obligation to provide benefits arises as employees render services * * *'" Mem. Opinion (July 1, 1998), at 5, f.n.5.

The DOE General Counsel emphasized that "* * * FERC has recognized that the obligation for such retiree benefits is legitimately treated as a cost," and that "FERC recognizes, as a component of cost-based rates, allowances for prudently-incurred costs of post-retirement benefits other than pensions (PBOPs) that are consistent with the accounting principles set forth in FASB Statement No. 106 (1991)." Mem. Opinion (July 1, 1998), at 5, citing 61 FERC ¶61,330, at 62,200 (1992). Further, FERC "interpreted the FASB statement to find 'that PBOP plans are deferred compensation arrangements whereby an employer promises to exchange future benefits for employees' current service and that their cost should be recognized over that employee's service periods for financial accounting and reporting purposes,'" Mem. Opinion (July 1, 1998), at 6, citing 61 FERC at 62,199.

The DOE General Counsel found it very significant that FERC had concluded that, "PBOP are a form of deferred compensation to employees for the services that they provide during their working years * * * Therefore, * * * the costs of providing these benefits are properly included in the cost of service during the period that the benefits are earned." Mem. Opinion (July 1, 1998), at 6, citing 61 FERC, at 62,201. Also, "FERC's uniform system of accounts recognizes accruals to provide for pensions as an element of operation and maintenance expenses where the utility has, by contract, committed to a pension plan." Mem. Opinion (July 1, 1998), at 6, citing 18 CFR 101.926.

The General Counsel stated that, under case law precedent courts, "* * * in reviewing actions of the PMA's, 'give' substantial deference to PMA interpretations of their organic statute," Mem. Opinion (July 1, 1998), citing *Department of Water & Power of the City of Los Angeles* v. *Bonneville Power Administration*, 759 F.2d. 684, 690–91 [9th Cir. 1985] and that, "* * * the courts need not find that an agency's interpretation of its organic statutes '* * * is the only reasonable one, or even that it is the result [the court] would have reached had the question arisen in the first instance in judicial proceedings.' "*Id.*, citing *Alcoa* v. *Central Lincoln Peoples*" Util. Dist., 467 U. S. 380, 389 (1994). *Id.* at 4. The court "* * * need only conclude that the interpretation is a reasonable one," *Id.* at 4, citing *Chevron* v. *Natural Resources Defense Council*, 467 U.S. at 845. The relevant statute, i.e., Section 5 of the Flood Control Act of 1944 and DOE Order RA 6120.2, provides that the PMAs must set rates that fully recover costs. Because the statutes provide little direction as to how the agencies are to interpret the term "costs," this confers discretion upon DOE and SEPA. There is no indication that Congress intended to preclude the collection of full costs. Congress appropriates such sums as may be necessary to OPM to provide promised post retirement benefits.[2] Congress provides additional sums to OPM to supply benefits to retirees whose costs are only partially recovered by the Government agency and its employees' contributions to the OPM funds.

Chevron, Inc. v. *National Resources Defense Council, Inc.*, supra, is the landmark case in determining judicial deference to administrative interpretation of statutes. See Thomas W. Merrill, Judicial Deference to Executive Precedent, 101 Yale L.J. 969, 975 (1992). In Chevron, the Supreme Court adopted a two-step analysis for determining whether to defer to agency interpretation of statutes. See Chevron, 467 U.S. at 842–43. First, the court determines whether Congress has "directly spoken" on the issue. If the court concludes that the intent of Congress is clear, it must enforce the ascertained intent. See *id.* at 842–43. If the court determines that Congress has not directly spoken on the issue, or has been silent or ambiguous, the court merely asks whether the agency's interpretation is reasonable.

[2] See discussion at f.n. 1.

The General Counsel reasoned that, "* * * post retirement benefits 'are part of the compensation paid to an employee for services rendered,'" Mem. Opinion (July 1, 1998), at 5, f.n.5. The FASB "'believes that the cost of providing the benefits should be recognized over those employee service periods.'" *Id.* citing FASB 106.03 and 106.18). The obligation "* * * 'to provide benefits arises as employees render services * * *'" *Id.* at 5, f.n. 5. Further, the DOE General Counsel was of the view that, "On a practical, common sense level, there seems little room to dispute that the full amount of the retiree benefits is a 'cost' of hiring the employees to operate and maintain the PMA power systems" and that, "* * * recovering those costs in rates is entirely consistent with the congressional objective that the PMAs operate on a fiscally self-supporting basis." Mem. Opinion (July 1, 1998), at 5, citing *Department of Water & Power* v. *BPA*, 759 F.2d at 695 (9th Cir. 1985). It is entirely reasonable that agencies like SEPA be required to recover in their rates a component for costs attributable to retirement benefits of Federal employees producing power in the period covered by the rates, where such charges offset the appropriation of funds necessary to provide promised benefits to all retirees, including such future SEPA and Corps of Engineers retirees who are engaged in producing power sold by SEPA in the period covered by such rates.

The DOE General Counsel, concluding by way of summary, stated that the above-described DOE ratemaking policy, FASB 87 and FASB 106 Accounting Principles, and FERC ratemaking policy, "indicate that the inclusion in rates 'in a given period of all employer costs, 'including unfunded post-retirement costs' accruing in that period is a reasonable interpretation of the statutory obligation to recover costs." Mem. Opinion (July 1, 1998), at 6–7. Since DOE's General Counsel has upheld the reasonableness of the recovery of all such SEPA employer costs by the said July 1, 1998 Memorandum Opinion, SEPA must reject this objection.

Comment 5: Deposits into the Treasury of SEPA's charge for post-retirement benefits in rates violates the principle of cost-based rate making that there be a matching of costs collected with costs actually incurred. At page 19 of their May 10, 1999 comments, the Southeastern Federal Power Customers object to the collection of a separate post retirement component for post retirement benefits in rates. They stated:

Cost-based ratemaking requires a matching of costs collected with costs actually incurred. With respect to the PMA's, the collection of CSRS in rates, deposited in the Treasury, provides no assurance that amounts paid by ratepayers will match the benefits actually paid.

Response: The commenters fail to understand the matching principle in the context of FAS 106 as interpreted by FERC and the courts. The matching principle within ratemaking, as defined by Kohler's A Dictionary for Accountants, is "* * * identifying related revenue and expense with the same accounting period." Accrual basis of accounting, as defined by the same dictionary, is, "The method of accounting whereby revenues and expenses are identified with specific periods of time, such as a month or year * * *" In the case of CSRS costs and post-retirement health benefits costs, the expenditures for these costs will be in the future after employees retire. However, accrual accounting would require that the current expenses should be recorded for these future costs.

Historically, for many organizations not including the Federal Government or SEPA, post-retirement benefit expenses have been recognized on a cash basis for both ratemaking and accounting purposes. Under the cash basis approach, the cost of post-retirement benefits "provided to retirees (and their dependents and beneficiaries) is included in a utility's rates when the benefits are actually received by the retirees after retirement, i.e., when cash expenditures are made from general corporate assets in satisfaction of the company's obligation to provide such benefits." New England Power Company, 61 FERC ¶61,331, at 62,207. Under the cash method, these expenses are not recognized for ratemaking purposes (or for accounting purposes) during the current period if no cash outlay has been made. *Id.* at 62,207.

In December 1990, the FASB issued Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other than Pensions (FAS 106), which requires all companies subject to FASB accounting standards with over 500 plan participants to adopt accrual accounting for PBOP expenses no later than fiscal years beginning after December 15, 1992. FAS 106 applies to both regulated and unregulated companies. New England Power Company, 61 FERC at 62,207.

Under FAS 106, companies will be required, for financial reporting purposes, to recognize PBOP expenses as a current expense during the years an employee provides service to the employer (and, accordingly, earns such benefits) rather than when they are actually paid. FERC stated that "FAS 106 requires that each accounting period be charged with the present value of the cost * * *" [of post retirement benefits] "* * * earned by the employees during that period." New England Power Company, 61 FERC ¶61,331, at 62,207.

FAS 106 instructed companies to adopt the accrual accounting method for determining post-retirement benefit. This method prescribes that companies must "account now for the post-retirement benefits they expect to pay in the future to their current employees." Town of Norwood, 53 F.3d at 377, 378 (D.C. Cir. 1995).

The protestants are wrong when they assert that cost-based ratemaking requires a matching costs actually incurred. Such assertion is not necessarily so, in a case where the utility is attempting to apply FAS 106. In New England Power Company, the Commission recognized that the matching principle was not violated, even though rate payers in future rates would become liable for both costs of prior service, referred to as the transition obligation, and costs of current service, even though the costs of prior services far exceeded the cost of current service by nearly three and one-half times. See, 60 FERC ¶63,006, at 65,084 (A.L.J. initial decision) and 61 FERC ¶61,331 at 62,213–15.

The development of SEPA's rate does not involve the complicated step of calculating costs of prior service involved in their calculation of the transition obligation.[3] No such complication is presented by SEPA's rates. SEPA, under Administration policy, looks only to recovery of future costs for current service in rates to be approved as provided for in the subject Cumberland rates. As FERC stated:

When the accrual method is employed, the company first estimates the future liability of the PBOPs for the current employees, and then, collects the costs for that liability from current ratepayers." Note effects of Financial Accounting Standard 106 on Electric Ratemaking, 64, George Washington Law Review 1180, 1183 (1966) citing Town of Norwood, 53 F.3d 378–79.

SEPA need only take the first step in the accrual accounting system. This requires that the future costs for current service be calculated. The policy of matching has as its purpose to have "ratepayers * * * pay for the production of the services they receive." Id., citing Town of Norwood, 53 F.3d 381 (D.C. Cir. 1995).

In SEPA's case, this means calculation of those future costs which are not recovered from the SEPA's and the employees' contributions to the Civil Service Retirement Fund, the Life Insurance Fund, and the Federal Employees Health Benefits Fund, described above. SEPA, in accordance with Administration policy, only recovers in this rate the costs of current service of those of its employees and the Corps of Engineers employees, who render services to the Cumberland rate payers over the period of the effectiveness of the Cumberland rate which are not recovered pursuant to the aforementioned laws. The OPM provides the instructions for the recording of accrual basis of costs for pension expense and for post-retirement health benefits. The cost factor applicable for CSRS employees for 1998 was 24.2% of the salary. The amount withheld from employees was 7.0% for part of the year and 7.25% for part of the year, and the amount paid by SEPA was 8.51% of the salary for the entire year. Therefore, the amount paid by the OPM was 9.69% for part of the year and 9.44% for the rest of the year. This 9.69% and 9.44% was multiplied times the salaries of the SEPA employees during the appropriate period for the employees during 1998. The post-retirement health benefits costs was computed by taking actual enrollment in FEHB on 10–1–97, 3–31–98, & 9–30–98. The number of enrollees on 10–1–97 and on 9–30–97 was multiplied times one (1), and the number of enrollees on 3–31–98 was multiplied times two (2). The total was divided by four (4), thereby creating an average enrollment for the year. The product is multiplied times the cost factor provided by the OPM of $2,493. Life benefits funded by OPM are computed by multiplying the salaries of the enrollees by two percent (2%). We have

[3] In the case of a private utility (but not of SEPA) an "integral component of conversion to the accrual method is the calculation of (and recovery schedule for) the PBOP obligation associated with the past service of employees and retirees (known as the transition obligation). The transition obligation represents a company's accumulated liability for PBOP expenses for both present employees and current retirees during the period up to the date of conversion from a cash to an accrual method which had been deferred for future periods."

Under FAS 106, companies have the option either to expense the transition obligation immediately or to recognize the expense over time (i.e., to amortize the transition obligation over a specified period of time). If recognized over time, a company has the further option to amortize the transition obligation on a straight-line basis over the average remaining service period of active plan participants over 20 years if greater. New England Power Company, 61 FERC ¶61,331 at 62,208.

The Federal Government has always been on an accrual basis and therefore no transition obligation is necessary.

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confirmed that the Corps is using a similar method for fiscal year 1998 to determine their actual costs.

All SEPA must do is to take the first step, which is the establishment of reasonable estimate of the costs of post-retirement benefits currently earned by those utility employees serving SEPA's customers during the period of effectiveness of SEPA's proposed Cumberland rates, to the extent such costs are not covered in the future by said laws. SEPA has done this.

Comment 6: SEPA's CSRS proposal contains none of the customer protections that FERC has required.

Response: SEPA believes that the protection that FERC requires is that the cost be a true actual cost. The actual costs for Fiscal Year 1998 were $818,991, and SEPA has projected this amount for all future years. However, the actual cost that is recorded by SEPA and the Corps in future years will be the costs the customers actually repay according to the repayment recovery criteria set forth in DOE Order RA 6120.2.

Comment 7: Moneys collected go to the Treasury and are available for general purpose along with all other taxpayer receipts. They are not separately accounted for or held like Treasury payments or the illusory Social Security "trust funds." They would be bookkeeping entries at best, nothing more. SEPA's proposal contains none of the protections that arise from "irrevocable external trust funds[s]" such as FERC has required to be established in the case of post-retirement benefits collected by regulated utilities from rate payers.

Response: SEPA can, under existing law, make no disposition of its post-retirement benefit collection, other than payment into miscellaneous receipts account. The DOE General Counsel recognizes that Section 5 of the Flood Control Act requires all SEPA revenues, "received in rates to recover costs of unfunded liabilities would be deposited directly into the Treasury as miscellaneous receipts fund of the Treasury, and could not be expended without further appropriation." Mem. Opinion (July 1, 1998), at 7, citing 31 U.S.C. 3302(b). SEPA must comply with this requirement, as it is not subject to the Federal Power Act, pursuant to which FERC adopted such an irrevocable trust requirement for utilities subject to FERC jurisdiction. SEPA is exempt from FERC's Federal Power Act jurisdiction.

Payments of SEPA revenues into the Treasury, including the component thereof for unfunded retirement benefits, constitutes, in the view of DOE General Counsel, an "offset" to the appropriations to the OPM funds to meet the large unfunded liability of the Government for retirement benefits. Id. at 10 and 11. Congress meets this obligation by annual "such sums as may be necessary" appropriations to the Office of Personnel Management's Funds to assure retirement benefits are paid.

The Opinion addresses the authority of the Power Marketing Administrations (PMA) to collect in rates an amount that would offset the Government's full cost of post-retirement employee benefits. It stated, quoting the Testimony of William E. Flynn, Associate Director for Retirement and Insurance of the Office of Personnel Management Before the Senate Committee on Governmental Affairs, Subcommittee on Post Office and Civil Service (May 15, 1995), that:

> The elements of the historically under collected amounts are approximately 11 percent of salary for CSRS employees (cost of approximately 25 percent of salary less the 7 percent employee contribution and the 7 percent agency contribution), plus the FY 1998 accrual for the Government's share of post retirement health and life insurance benefits for current employees.

The DOE General Counsel, citing 5 U.S.C. 8348 (f), Pub. L. 91–93, Act of October 20, 1969, 83 Stat. 136, noted that, "In 1969, Congress," had "authorize(d) appropriations to the Retirement Fund to finance the unfunded liability" for retiree benefits "* * *by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury." Mem. Opinion (July 1, 1998), at 2.

Since FY 1998, Congress has, by a separate line item in Appropriations Acts to the Office of Personnel Management, pursuant to the authority of said 1969 Act, appropriated "such sums as may be necessary" to finance the unfunded Civil Service Retirement Fund obligation. See the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999, Pub. L. 105–277, Act of October 21, 1998; 112 Stat 2681, 2681–509. This Act states:

> Payment to Civil Service Retirement and Disability Fund
>
> For financing the unfunded liability of new and increased annuity benefits becoming effective on or after October 20, 1969, as authorized by 5 U.S.C. 8348, and annuities under special Acts to be credited to the Civil Service Retirement and Disability Fund, such sums as may be necessary: Provided, The annuities authorized by the Act of May 29, 1944, as amended, and the Act of August 19, 1950, as amended (33 U.S.C. 771–775), may hereafter be paid out of the Civil Service Retirement and Disability Fund." *Id.*

See, also the Treasury and General Government Appropriations Act, for FY 1998 (PL 105–61; Act of October 10, 1997; 111 Stat. 1303) which states:

> Payment to Civil Service Retirement and Disability Fund
>
> For financing the unfunded liability of new and increased annuity benefits becoming effective on or after October 20, 1969, as authorized by 5 U.S.C. 8348, and annuities under special Acts to be credited to the Civil Service Retirement and Disability Fund, such sums as may be necessary: Provided, The annuities authorized by the Act of May 29, 1944, as amended, and the Act of August 19, 1950, as amended (33 U.S.C. 771–775), may hereafter be paid out of the Civil Service Retirement and Disability Fund.

The underlying Office of Personnel Management Budget Justification for FY 1998, in support of the FY 1998 Appropriation to the Civil Service Retirement Fund to meet the annual unfunded liability, stated that this was a mandatory appropriation. OPM estimated that $8.3 billion would be needed for this purpose in FY 1998. See, Hearings Before a Subcommittee of House Committee on Appropriations on Treasury, Postal Service and General Government Appropriations for FY 1998, 105th Congress, 1st Session, 732 (1997).

The statement of Honorable Janice R Lachance, Director, OPM, before the Subcommittee on Treasury, Postal Service, and General Government Committee on Appropriations, U. S. House of Representatives on OPM's Fiscal Year 1999 Appropriations Request stated:

> "* * * as mandated by the financing system established in 1969 by Public Law 91–93, we are requesting a 'such sums as may be necessary' appropriation for the civil service retirement and disability fund. This payment, which we estimate to be $8.7 billion, represents the 30-year amortization of liabilities resulting from changes since 1969 (principally pay increases) which affected benefits." See Hearings Before a Subcommittee of the House Committee on Appropriations on Treasury, Postal Service, and General Government Appropriations for fiscal year 1999, 105th Congress, 2d Session 636 (1998).

The General Counsel noted the other two funds that provide benefits to retirees. These are funds for health and insurance benefits, which are likewise underfunded. Congress, likewise, makes provisions for them. The said FY 1999 Appropriations Act, appropriating funds to OPM, makes appropriations for the unfunded health and life insurance benefits. This Act provides:

> Government Payment for Annuitants, Employees Health Benefits
>
> For payment of Government contributions with respect to retired employees, as authorized by chapter 89 of title 5, United States Code, and the Retired Federal Employees Health Benefits Act (74 Stat. 849), as amended, such sums as may be necessary.

See Public Law 105–277; Act of October 21, 1998, 112 Stat 2681–509.

> Government Payment for Annuitants, Employee Life Insurance
>
> For payment of Government contributions with respect to employees retiring after December 31, 1989, as required by chapter 87 of title 5, United States Code, such sums as may be necessary.

Id. at 112 Stat at 2681–509.

The FY 1999 Budget Statement of OPM Director Lachance stated:

> "As always, the OPM budget request includes mandatory appropriations to pay the government's contributions to the federal employee life insurance and health benefits programs on behalf of annuitants since those enrollees have no employing agencies to contribute the government's share for them. We are requesting a 'such sums as may be necessary' appropriation for each of these accounts because of their mandatory nature. We estimate that $35.2 million will be required for the 323,000 non-postal annuitants retiring after 1989 and electing post retirement life insurance, while an estimated $4.6 billion will be needed to finance the government's contribution toward health benefits coverage for the 1.9 million participating annuitants." See FY 1999 House Treasury , Postal Service, and General Government Appropriations Hearings, supra, at 635–636.

So long as Congress continues to provide all retirees these health and life insurance benefits, SEPA's retirees and Corps retirees engaged in the production of power, will not suffer.

As indicated, payments of SEPA revenues into the Treasury, including the component thereof for unfunded retirement benefits, constitutes in the view of DOE's General Counsel an offset against the large unfunded liability of the government for retirement benefits. The General Counsel stated:

> All PMA rate revenues are required to be deposited in a statutorily specified fund or account of the Treasury. Pursuant to Flood Control Act requirements, monies received from power rates to recover costs of unfunded liabilities from power marketed by SEPA * * * would be deposited into the general fund of the Treasury as miscellaneous receipts. Payments into the general fund from these sources would therefore offset the appropriation for unfunded liability made to the OPM funds.

See Mem. Opinion (July 1, 1998), at 10.

The comments are a basic attack against the Administration decision to charge ratepayers for unfunded post-retirement benefit liabilities. So long as Congress honors the federal government's commitments to all its retirees, SEPA's retirees and Corps retirees engaged in the production of power will receive the benefits as promised. The only difference is that SEPA's customers will bear the total estimated future government cost thereof attributable to current SEPA and Corps employees providing electric service to SEPA customers who retire in the future.

The DOE General Counsel Opinion states in detail how Administrator policy respecting post-retirement benefits in PMA rates may be legally implemented. SEPA must prepare its rates accordingly. It must reject the Southeastern Power Customers' challenge to SEPA's treatment of post-retirement benefits, as they embody Administration policy as set forth in the DOE General Counsel's Opinion.

Comment 8: SEPA's imposition of the post-benefit retirement charge fails to meet the requirement of the FERC rule that funds so collected be placed in an irrevocable trust.

Response: SEPA is not bound by such FERC rule, which is applicable to utilities subject to the Federal Power Act. See New England Power Company, 61 FERC ¶ 61,331, at 62,213 (1992). FERC stated:

> We will require, however, that NEP use external funding in irrevocable trusts for all amounts collected for PBOP obligations as a condition of rate recovery under the accrual method. External funding in irrevocable trust will remove any incentive for NEP to overestimate its costs because NEP will not have use of the funds for any other corporate purpose. Moreover, external funding will ensure that the revenues collected will be available for their intended purpose—to provide post retirement benefits to employees. Additionally, to the extent that overfunding ever occurs, NEP is also directed to reserve any over-collection expressly for the benefit of customers, through reduced expense projections in subsequent filings. *Id.* at 62,213 (footnotes omitted).

The jurisdiction conferred by the Federal Power Act (FPA) (18 U.S.C. 824 *et seq.*) upon FERC to regulate electric and natural gas public utilities does not apply to the PMAs. Jurisdiction to review PMA rates is conferred and limited by a delegation from the Secretary of Energy to FERC. See Department of Energy Delegation Order No. 0204–108, as amended. 58 FR 59716 (November 10, 1993). Hence, the foregoing rule has no application to SEPA. All SEPA can do under applicable law, is to place the post-retirement benefits it receives into miscellaneous receipts account of the treasury. This becomes an offset against annual "such sums as may be necessary" appropriations to OPM to finance unfunded but promised benefits. Mem. Opinion (July 1, 1998), at 10–11.

SEPA is required by Flood Control Act of 1944, as well as the Miscellaneous Receipts Act (31 U.S.C. 33020), to deposit all monies received to the Treasury of United States as miscellaneous receipts. It is, therefore, not possible for SEPA to establish an "irrevocable external trust fund" for these monies, as FERC has in some instances required of regulated electric and gas public utilities.

Comment 9: The data relied upon by SEPA illustrates how the proposed rate increase fails to comply with RA6120.2.

Response: RA 6120.2 says SEPA must recover costs. The Legal Opinion defines CSRS costs as reasonable costs. See response to 1 above.

Comment 10: Because SEPA has failed to incorporate any provisions that would adjust or modify CSRS rates on an annual basis which would ensure a more accurate representation of CSRS costs to SEPA, the customers have no assurances that the costs of operating and maintaining the system are incurred during the year in which the rates are effective.

Response: The customer will pay the actual CSRS costs. See response to 6 above.

Comment 11: Because a significant component of the CSRS costs includes cost recovery for Corps employees, the SeFPC requested background information from the Corps pertaining to the Corps's calculations of CSRS costs.

Response: The Corps has provided SEPA actual costs for FY 1998, which were used to estimate costs in future years.

Comment 12: SeFPC notes that there appear to be inconsistencies in the determination of Full-Time Equivalents ("FTEs"). SeFPC wishes to raise this specific issue to express its overall concern with its inability to determine (based upon the data provided to date) whether the CSRS costs are reasonable and whether the assumptions are justified. Absent such determination, and for other reasons explained by SeFPC, SEPA should not be allowed to flow-through the CSRS cost to its customers.

Response: The Corps and SEPA have determined actual costs of CSRS of $818,991 for fiscal year 1998.

Comment 13: SeFPC submits that recovery of CSRS costs for Corps employees is without legal basis and constitutes an illegal augmentation of both the Corps' and OPM's appropriations. SeFPC asks SEPA to explain how the discretion afforded by the Flood Control Act of 1944 allows

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DOE to augment the appropriations of the Corps and OPM without violating statutory restrictions against augmenting appropriations. Government is in essence "double-dipping" into taxpayer's pockets to pay the costs of the retirement program.

Response: The legal basis for the recovery of costs of Corps and SEPA employees is set forth in SEPA's response to Comment 4.

There is no double dipping by the Government of the taxpayer. The simple fact of the matter is that employer-employee contribution to the three OPM funds fails to recover benefits of all Federal retirees, including SEPA employees and Corps employees whose efforts are attributable to production of Cumberland power. Congress must supply from general revenues of the Government the unfunded portion of such costs. SEPA's inclusion of component in its rates for unfunded liabilities, by reason of the fact that SEPA's revenues are deposited into miscellaneous receipts in the Treasury, offsets the amount that must be appropriated.

Congress places no dollar limits on appropriations from the general fund to assure full funding of these employee retirement benefits. SEPA's inclusion in rates of a component to recover unfunded retirement properly assigns to the SEPA customers the full costs of the post-retirement benefits of Federal employees producing the power which such customers consume. This reduces the burden on Federal taxpayers, and is justified by reason of the fact that SEPA customers enjoy the benefits of SEPA power.

There is no augmentation of appropriations. Congress appropriates "such sums as may be necessary" to fully fund retirement benefits.

The Flood Control Act requires that SEPA's power revenues be deposited in the miscellaneous receipts of the Treasury. The Miscellaneous Receipts Act is a general statute of like effect. The purpose of the Miscellaneous Receipts Act is to ensure that the Congress retains control of the public purse, and to effectuate Congress' constitutional authority to appropriate monies. See in Matter of Nuclear Regulatory Commission's Authority to Mitigate Civil Penalties, B–238419, 70 Comp. Gen. 17; 1990 U.S. Comp. Gen. Lexis 1060 (October 9, 1990).

The reason for the prohibition against augmentation of appropriation is to protect Congress' power of the purse and its prerogative to determine the level at which an agency of Federal programs may operate. See Nolan: Public Interest, Private Income: Conflicts and Control Unit on the Outside Income of Government Officials, 87 Nw. U.L. Rev. 57,122 (1992). The prohibition against augmentation of appropriation would not apply. Congress places no dollar limit on what OPM spends. OPM is free to draw from the Treasury such sums as may be necessary to pay the retirement benefits Congress has promised Federal retirees. Use of SEPA's component for unfunded retirement benefits in rates, as a source to pay these benefits, does not violate the power of Congress to determine how much shall be spent. Congress has agreed to allow OPM to spend what is needed to pay promised retirement benefits.

Comment 14: Until SEPA clears up the glaring discrepancies with existing legal authority to recover CSRS costs for SEPA and the Corps and sets forth a clear understanding of how the estimated figures for the Corps employees was determined and relates to the actual costs of the Corps in the future, SeFPC submits that the proposed rate increase should not include CSRS costs at this time.

Response: The Department of Energy has determined that it is appropriate for the PMA's to include CSRS costs in rates charged to customers. Therefore, SEPA has included the costs in the repayment study and thereby included them in rates that SEPA proposes to charge to the customers.

Comment 15: SeFPC submits that the statutory duty for the Corps to collect and pay retirement benefits obviates the need for SEPA to recover CSRS costs for the Corps. In different terms, if the federal government already imposes an obligation of the Corps to deduct funds for benefits, in addition to paying the remaining balance from appropriations, SEPA has imposed a burden on the customers of the Cumberland System of Projects.

Response: SEPA interprets Section 5 of the Flood Control Act of 1944, RA6120.2 and FAS 87 and 106 to mean that the full cost of post-retirement benefits of Corps of Engineers and SEPA employees, engaged in the production of power which SEPA markets, must be covered in SEPA's rates. As demonstrated in Responses to Comment 5, the statutorily-mandated deductions for retirement benefits and employee contributions for these purposes do not fully recover the costs or retirement benefits. To meet the gap, SEPA is of the view that it must add a component to recoup in rates being established by this rate order to fund the cost of future unfunded retirement benefits attributable to its current employees and current Corps employees who are engaged in the production of power during the effective period of such rate. See Response to Comment 5.

Comment 16: Due process of law, as interpreted by United States Circuit Court of Appeals decisions, i. e., *Sacred Heart Medical Center* vs. *Sullivan*, 958 F.2d 537 (3rd Cir. 1992) (holding that an agency must offer a "reasoned justification" for the change in its interpretation of statute or modification of its policy); and *Mobil Oil Corporation* vs. *EPA*, 871 F. 2d 129 (D. C. Cir. 1989) (requiring an agency to acknowledge and explain the departure from its prior views) obligates SEPA to "* * * explain how the proposal to collect pension and health benefit costs comports with existing FASB guidance which requires the creation of separate accounts."

Response: We interpret this due process of law assertion to at least require an explanation by SEPA why SEPA did not establish an irrevocable trust from the portion of SEPA's Cumberland rate attributable to unfunded retirement benefits earned by current SEPA and Corps employees who market and produce the power SEPA sells.

The use of revenues from SEPA rates is governed by the Flood Control Act of 1944 which provides that "* * * [a]ll moneys received from * * * (electric) sales shall be deposited in the Treasury of the United States as miscellaneous receipts." 16 U. S. C. 825s. Because SEPA is required by Flood Control Act of 1944 as well as the Miscellaneous Receipts Act (31 U. S. C. 3302) to deposit all monies received to the Treasury of United States as miscellaneous receipts, it is not possible for SEPA to establish an "irrevocable external trust fund" for these monies as FERC has in some instances required of regulated electric and gas public utilities.

Such "sums as may be necessary", in the view of the Administration and DOE General Counsel Sullivan, offset the general fund of the Treasury made to the OPM Funds for unfunded retirement liabilities. Given the permanent and mandatory nature of the "such sums as may be necessary" appropriations to the three OPM funds identified in SEPA's Response to Comments 1, 4, 5, and 7. The use of such funds to "offset" appropriations of unfunded liabilities achieves the same purpose that an irrevocable trust would, were it legally possible for SEPA to create such a trust. Mem. Opinion (July 1, 1998), at 10-11. To the extent that an explanation is required of SEPA why it decided to include unfunded benefit costs in rates, SEPA states by way of historical explanation. SEPA did not, prior to 1998, include in its rate the unfunded portion of employee benefit costs. It did so in the Georgia-Alabama-South Carolina (GA–AL–SC) rates in 1998. At that time SEPA first proposed recovery of CSRS costs. The rate increase for the Georgia-Alabama-South Carolina system was considered by FERC in Docket No. EF98–3011-000. FERC approved the inclusion of unfunded retirement benefits in SEPA rates in United States Department of Energy—Southeastern Power Administration, 86 FERC ¶ 61,195 (1999). On April 23, 1999, the Commission issued an order in this docket granting rehearing for the limited purpose of further consideration of SeFPC's request.

SEPA continues to include the unfunded portion of its employee benefit costs in the case of the subject Cumberland rate order for many of the same reasons. See In the Matter of Southeastern Power Administration-Georgia-Alabama-South Carolina System Power Rates, Rate Order No. SEPA–37, signed by Deputy Secretary Elizabeth A. Moler, on September 18, 1998, 63 Fed. Reg. 53409 (October 5, 1998). It also does so in light of Administration policy, as set forth in and confirmed by General Counsel Mary Anne Sullivan's July 1, 1998 Memorandum Opinion, referenced above in SEPA's responses to Comments 4.

The Financial Accounting Standards Board (FASB) in December 1985 Statement of Accounting Standards N. 87 (FAS 87) states that, under FAS 87, "* * * 'a company must recognize future pension benefits earned by current employees as current pension costs rather than when the pension benefits are actually paid.'" See Southeastern Power Administration-Georgia-Alabama-South Carolina System Power Rates, Rate Order No. SEPA–37 at 53,413. In 1991, the Financial Accounting Standards Board issued FAS No. 106, ("FAS 106"). This "* * * 'changes generally accepted accounting principles * * * for post retirement, medical and life insurance benefits from accounting on a pay-as-you-go basis to an accrual basis.'" *Id.* at 53,413.

The DOE General Counsel has concluded that under FASB 106.18, "* * * 'a post retirement benefit is part of the compensation paid to an employee for services rendered * * *'" and that, under FASB 106.03, "* * * 'the cost of providing the benefits should be recognized over those employee service periods.'" Mem. Opinion (July 1, 1998), at 5, f.n.5. In the view of SEPA and the DOE General Counsel, under Section 5 of the Flood Control Act of 1944, DOE Order RA6120.2 and the said FASB accounting principles, SEPA has an obligation to provide post-retirement benefits in its rates as its employees and those of the Corp render services by producing power that SEPA sells.

The Cumberland rates, as were the Georgia-Alabama-South Carolina rates, were prepared by SEPA in light of DOE's guidance, both as to interpretation of statues and DOE orders, as well as in accordance with Administration policy.

6. Rate Implementation

Comment: KU Area Preference Customers request that SEPA include an express commitment, as part of its implementation of the rates, that SEPA will refund and flow through to its customers any and all reductions that are achieved in TVA's charges to SEPA.

Response: SEPA cannot make a commitment regarding any future rate filings; however, SEPA will be more than willing to listen to any suggestions as to how any reductions in TVA charges to SEPA should be handled.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning on July 1, 1999, and ending no later than June 30, 2004.

Order

In view of the foregoing and pursuant to the authority vested in me as the Secretary of Energy, I hereby confirm and approve on an interim basis, effective July 1, 1999, attached Wholesale Power Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A. The Rate Schedules shall remain in effect on an interim basis through June 30, 2004, unless such period is extended or until the FERC confirms and approves them or substitutes Rate Schedules on a final basis.

Dated: June 29. 1999.

Bill Richardson,

Secretary.

Wholesale Power Rate Schedule CBR–1–D

Availability

This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky, (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.900 per kilowatt/month of total contract demand

Energy Charge: None

Energy To Be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following

calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2,400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{880{,}000 \text{ kilowatts}}$$

July 1, 1999

Wholesale Power Rate Schedule CSI–1–D

Availability

This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.900 per kilowatt/ month of total contract demand
Energy Charge: None

Energy To Be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{880{,}000 \text{ kilowatts}}$$

July 1, 1999

Wholesale Power Rate Schedule CEK–1–D

Availability

This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and power available from the Laurel Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery

The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule from the Cumberland Projects shall be:

Demand charge: $2.900 per kilowatt/ month of total contract demand
Energy Charge: None

Energy To Be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2,400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{880{,}000 \text{ kilowatts}}$$

July 1, 1999

Wholesale Power Rate Schedule CM–1–D

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association and Municipal Energy Agency of Mississippi (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery

The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.900 per kilowatt/ month of total contract demand
Energy Charge: None

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per

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kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{880{,}000 \text{ kilowatts}}$$

July 1, 1999

Wholesale Power Rate Schedule CC–1–E

Availability

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery

The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $3.301 per kilowatt/ month of total contract demand
Energy Charge: None
Transmission Charge: $1,2828 per kilowatt of total contract demand

The transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government-Carolina Power & Light Company contract.

Energy To Be Furnished by the Government

The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less six percent (6%) losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

Billing Month

The billing month for power sold under this schedule shall end at 2,400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

July 1, 1999

Wholesale Power Rate Schedule CK–1–D

Availability

This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company, (hereinafter called the Customers.)

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery

The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.900 per kilowatt/ month of total contract demand
Energy Charge: None
Additional Energy Charge: 8.631 mills per kilowatt-hour

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers. In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

For billing purposes, each kilowatt of capacity will include 1500 kilowatt-hours energy per year. Customers will pay for additional energy at the additional energy rate.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

July 1, 1999

Wholesale Power Rate Schedule CTV–1–D

Availability

This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Monthly Rates

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.434 per kilowatt/ month of total demand as determined by the agreement between the Department of Energy and TVA.
Energy Charge: None
Additional Energy Charge: 8.631 mills per kilowatt-hour

Energy To Be Made Available

The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 749,400 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project) provided, that if additional energy is required to make a marketing arrangement viable for other customers which do not own generating facilities and which are within service areas of Kentucky Utilities Company and Carolina Power & Light Company, Western Division, such additional energy required shall be made available from the Cumberland Projects and shall not exceed 300 kilowatt-hours per kilowatt per year. The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 220 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year, (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two (2) percent, and (4) station service energy furnished by TVA.

Each kw of capacity received by TVA includes 1500 kwh of energy. Energy received in excess of 1500 kwh will be subject to an additional energy charge identified in the monthly rates section of this rate schedule.

Billing Month

The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year

For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Service Interruption

When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system which are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

The agreement capacity related to the 76,000 kilowatts of capacity allocated to the Other Customers in the Carolina Power & Light Company and Kentucky Utilities service areas shall, irrespective of sale to Other Customers, remain in effect in the formula throughout the term of this rate schedule.

Power Factor

TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of

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less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

July 1, 1999

Wholesale Power Rate Schedule SJ–1–A

Availability

This rate schedule shall be available to Monongahela Power Company for energy from the Stonewall Jackson Project (hereinafter called the Project).

Applicability

This rate schedule shall be applicable to energy made available by the Government from the Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

Monthly Rate

The monthly rate for energy made available or delivered under this rate schedule shall be the lower of:

(a) The energy equivalent rate of Cumberland Rate Schedule CC–1–E, which is 34.2 mills per kwh, or;

(b) The sum, as reasonably determined by Monongahela Power Company (Buyer), of (1) and (2) below calculated for each period as to which the determination is being made, (normally monthly) based on costs and net generation of Buyer and other regulated subsidiaries of Allegheny Power System, Inc. to produce energy from: Ft. Martin Units Nos. 1 and 2, Hatfield Ferry Units Nos. 1, 2, and 3, Harrison Units Nos. 1, 2, 3, and Pleasants Units Nos. 1 and 2.

(1) The accrued expense in FERC Account 501 (fuel expense) or such appropriate similar account as the FERC may from time to time establish for fuel expense for steam power generation, divided by the actual net generation in kilowatt-hours, exclusive of plan use, plus

(2) One-half of the accrued expenses in FERC Accounts 510–514 (maintenance expense), inclusive, of such other appropriate similar accounts as FERC may from time to time establish for maintenance expense for steam power generation, divided by the actual net generation in kilowatt-hours, exclusive of plant use.

Energy Made Available

Project energy generated by the District at the Project except energy use in the production of such energy or utilized by the District for its operations at the location of the project.

Billing Month

Buyer shall read the metering devices within three business days of the end of each calendar month will render payment within 15 days of such reading.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Monongahela Power Company on its side of the delivery point.

July 1, 1999

[FR Doc. 99–17500 Filed 7–8–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 14, 1999 through June 18, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–E65051–AL Rating LO, Longleaf Restoration Project, Implement a Systematic Five-Year Program for Restoration of the Native Longleaf Pine, Conecuh National Forest, Conecuh Ranger District, Covington and Escambia Counties, AL.

Summary: EPA expressed lack of environmental objections. ERP No. D–AFS–J65299–MT Rating EC2, Pinkham Timber Sales and Associated Activities, Implementation, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns regarding some high projected peak flow increases in area streams and adverse wildlife impacts from exceedances of forest standards for open road density and from regeneration timber harvests that would leave many large forest openings. The EPA believed additional information is needed to fully assess and mitigate all potential impacts of management actions.

ERP No. D–BLM–G65051–NM Rating LO, New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management, Implementation, NM.

Summary: EPA had no objection to the selection of the RAC or County alternative described in the DEIS. ERP No. DS–BLM–K67040–CA Rating EO2, Imperial Project, Open-Pit Precious Metal Mining Operation Utilizing Heap Leach Processes, Updated Information concerning "Endangered, Rare or Threatened" Biological Resources, Plan of Operations and Reclamation Plan Approvals, R–O–W Grants, Conditional Use/US COE Permits, EL Centro Resource Area, CA Desert Dist., Imperial Co., CA.

Summary: EPA expressed continuing environmental objections with the proposed project and its potential impacts, particularly regarding aquatic resources protected under Section 404 of the Federal Clean Water Act. EPA asked that BLM's Final EIS clarify the relationship between the endangered species issues addressed in the Supplemental DEIS and EPA's 1998 comments on the DEIS concerning Clean Water Act Section 404 issues.

Final EISs

ERP No. F–AFS–B65005–NH, Appalachian Mountain Club (AMC) Huts and Pinkham Notch Visitor Center (PNVC) Continued Operations, Special Use Permit and Possible COE Permit Issuance, White Mountain National Forest, Grafton and Coos Counties, NH.

Summary: Final EIS was responsive to EPA's comments and plan described avoids impacts to the water supply, ground water minimizes impacts to wetlands.

ERP No. F–AFS–E65049–FL, Florida National Forests, Revised Land and Resource Management Plan, Implementation, Apalachicola, Choctowhatchee, Ocala and Osceola National Forests, Several Counties, FL.

Summary: EPA expressed environmental concerns and supported an alternative which involves less harvested acreage and road construction and more emphasis on wilderness and recreation values.

ERP No. F–AFS–J65287–UT, South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT.

Summary: EPA believed the preferred alternative, modified Alternative A, can be implemented with the proposed project specific mitigation measures without significant impact to the environment.

Dated: July 6, 1999.

Joseph Montgomery,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–17501 Filed 7–8–99; 8:45 am]

BILLING CODE 8560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements.

Filed June 28, 1999 Through July 2, 1999.

Pursuant to 40 CFR 1506.9.

EIS No. 990220, Draft Supplement, AFS, CA, Sirretta Peak Motorcycle Trail, Additional Information on Alternative Route for the Trail, Construction, Approval and Implementation, Sirretta Peak/Machine Creek Area, Kern Plateau, Sequoia National Forest, Cannell Meadow Ranger District, Tulare County, CA, Due: August 16, 1999, Contact: Barbara Johnston (559) 784–1500. The above AFS EIS should have appeared in the 07/02/99 **Federal Register.** The 45-day Comment Period is Calculated from 07/02/99.

EIS No. 990221, Draft EIS, AFS, ID, Sloan-Kennally Timber Sale, Proposal to Harvest and Regenerate Timber Strands, Implementation, Payette National Forest, McCall Ranger District, Valley County, ID, Due: September 13, 1999, Contact: Don Anderson (208) 634–0700.

EIS No. 990222, Final Supplement, IBR, UT, Boneville Unit, Central Utah Project, Approval and Funding, Utah and Wasatch Counties, UT, Due: August 9, 1999, Contact: Reed Murray (801) 379–1237.

EIS No. 990223, Final EIS, FHW, AZ, Red Mountain Freeway (Loop 202) Construction and Operation, between AR 87 (County Club Drive) and US–60 (Superstition Freeway), Funding, NPDES Permit and COE Section 404 Permit, City of Mesa, Maricopa County, AZ, Due: August 9, 1999, Contact: Ken Davis (602) 379–3646.

EIS No. 990224, Draft EIS, AFS, AK, Kuakan Timber Sale, Timber Harvesting in the Kuakan Project Area, Implementation, Deer Island within the Wrangell Ranger District, Stikine Area of the Tongass National Forest, AK, Due: August 30, 1999, Contact: Randy Hojem (907) 874–2323.

EIS No. 990225, Draft EIS, USN, CA, Marine Corp Air Station (MCAS) Tustin Disposal and Reuse Plan, Implementation Cities of Tustin and Irvine, Orange County, CA, Due: August 23, 1999, Contact: Richard Anderson (703) 695–8240.

EIS No. 990226, Draft EIS, COE, FL, Southwest Florida Improvement to the Regulatory Process for Rapid Growth and Development, Alternatives Development Group (ADG), Lee and Collier Counties, FL, Due: August 23, 1999, Contact: Kenneth R. Dugger (904) 232–1686.

EIS No. 990227, Final EIS, USN, CA, HI, WA, Developing Home Port Facilities For Three NIMITZ-Class Aircraft Carriers in Support of the U.S. Pacific Fleet, Construction and Operation, Coronado, CA; Bremerton and Everett, WA, Pearl Harbor, HI, Due: August 9, 1999, Contact: Bob Hexom (888) 428–6440.

Amended Notices

EIS No. 990196, Draft EIS, NPS, VA, Booker T. Washington National Monument (BOWA), General Management Plan, Implementation, Franklin County, VA, Due: August 9, 1999, Contact: Fred Herling (215) 597–1782. Published FR 07–09–99 Correction to Telephone Number.

Dated: July 6, 1999.

Joseph Montgomery,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–17502 Filed 7–8–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, June 24, 1999, 10:00 a.m., Meeting Open to the Public.

The following item was added to the agenda: Advisory Opinion 1999–12: Campaign for Working Families (CWF), by Bobby R. Burchfield, counsel.

DATE AND TIME: Tuesday, July 13, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 15, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–14: Council for a Livable World by counsel, Elizabeth Kingsley.

Advisory Opinion 1999–15: American Resort Development Association by counsel, Mark Braden.

Matching Fund Error Rates—Alexander for President, Buchanan for President, Clinton/Gore '96 Primary Committee, Inc.

Clinton/Gore '96 Primary Committee, Inc.—Proposed Notice of Repayment Determination.

Alexander for President—Proposed Notice of Repayment Determination.

Buchanan for President—Proposed Notice of Repayment Determination.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–17530 Filed 7–7–99; 10:12 am]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

TIME AND DATE: 10:00 a.m., Wednesday, July 14, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

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STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17561 Filed 7–7–99; 11:33 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (45 CFR Part 92)—0990–0169—Extension No Change—Pre-award, post-award, and subsequent reporting and recordkeeping requirements are necessary to award, monitor, close out and manage grant programs, ensure minimum fiscal control and accountability for Federal funds and deter fraud, waste and abuse. Respondents: State and Local Governments; Number of Respondents: 4000; Average Burden per Respondent: 70 hours; Total Burden: 280,000 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503. Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: July 1, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–17409 Filed 7–8–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pilot Training and Research Program; Demonstration Project; Studies in Clinical Pharmacology and New Drug Review Technologies; Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER) is announcing the anticipated availability of funds for training and research cooperative agreements for fiscal year (FY) 2000. This pilot program is a demonstration project to evaluate the extent to which such a program can contribute to an identifiable increase in the number of trained biomedical, scientific personnel in clinical pharmacology. Research will be conducted to study clinical pharmacology and biopharmaceutics issues related to new drug development and review. If funds are appropriated in FY 2000 for the program, FDA anticipates that approximately $3.0 million will be available. FDA anticipates making 4 to 10 cooperative agreement awards to domestic medical schools at $300,000 to $750,000 per award per year (direct and indirect costs). Support for these agreements may be for up to 3 years. The number of agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the projects.

DATES: Submit applications by August 9, 1999. If the closing date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday.

ADDRESSES: Application forms are available from, and completed applications should only be submitted to: Rosemary Springer, Senior Grants Management Specialist (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182. Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852. Application forms can also be found at "http://www.nih.gov/grants/phs398/forms-toc.html".

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Rosemary Springer (address above).

Regarding the programmatic aspects of this notice: Shiew-Mei Huang, Office of Clinical Pharmacology and Biopharmaceutics, Center for Drug Evaluation and Research (HFD–850), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5690.

SUPPLEMENTARY INFORMATION: FDA, CDER is announcing the anticipated availability of funds for FY 2000 for awarding cooperative agreements to support post-doctoral training of clinical pharmacologists. The training to be supported will be research studies related to new drug development and review. FDA will support the studies covered by this notice under Pub. L. 102–222. The law authorizes a pilot program for training additional clinical pharmacologists. If funding is available, FDA will award Demonstration Cooperative Agreements to evaluate the extent to which such a program can contribute to increasing the number of trained biomedical, scientific personnel in clinical pharmacology. FDA's extramural program is described in the Catalog of Federal Domestic Assistance, No. 93.948.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people. PHS urges applicants to submit work plans that address

specific objectives of "Healthy People 2000." Potential applicants may obtain a copy of Healthy People 2000 (Full Report, stock No. 017–00100474–0) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–512–1800.

PHS Policy is that applicants for PHS clinical research grants are required to include minorities and women in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder or condition under study; special emphasis must be placed on the need for inclusion of minorities and women in studies of diseases, disorders, and conditions which disproportionately affect them. This policy is intended to apply to males and females of all ages. If women or minorities are excluded or inadequately represented in clinical research, particularly in proposed population-based studies, a clear and compelling rationale must be provided.

Some activities carried out by a recipient under this announcement may be governed by Department of Health and Human Services' regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Protection from Research Risks (OPRR), prospective recipients must have on file with OPRR an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the Institutional Review Board (IRB) designated for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OPRR, a formal request for the required Assurance will be issued by OPRR at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OPRR, may spend funds on human subject activities or accrue subjects. No performance site, even with an OPRR-approved and applicable Assurance, may proceed without approval by OPRR of an applicable Assurance for the recipients. Applicants may wish to contact OPRR by facsimile 301–402–0527 to obtain preliminary guidance on human subjects' issues. When contacting OPRR, applicants should provide their institutional affiliation, geographic location, and all available Requests for Application (RFA) citation information.

Applicants are advised that the section on human subjects on pages 7 and 8 in the application kit entitled "Section C. Specific Instructions—Forms, Item 4, Human Subjects," should be carefully reviewed for the certification of Institutional Review Board (IRB) approval requirements. Documentation of IRB approval for every participating center is required to be on file with the Grants Management Officer, FDA. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review.

Consent and/or assent forms, and any additional information to be given to a subject, should accompany the grant application. Information that is given to the subject or the subject's representative must be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability. If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

The elements of informed consent are stated in the regulations at 45 CFR 46.116 and 21 CFR 50.25 as follows:

1. Basic elements of informed consent.

In seeking informed consent, the following information shall be provided to each subject.

(a) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained. Additional protections for children involved as subjects in research are found in 45 CFR part 46, subpart D.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.

(h) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional elements of informed consent.

When appropriate, one or more of the following elements of information shall also be provided to each subject.

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study.

Additional protections for children involved as subjects in research are found in 45 CFR part 46, subpart D.

The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

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I. Background

There is currently a nationwide shortage of trained clinical pharmacologists at a time when advances in molecular medicine have provided an unparalleled opportunity to better understand pharmacotherapeutics. This shortage limits the number of clinical pharmacologists trained in the range of new technologies that are driving the future directions of drug development and regulatory science. Clinical pharmacologists have tremendous potential to translate molecular insights and technology in a way that would promote the public health, improve the quality and speed of the regulatory review, and accelerate the development of new drugs in this country. Pub. L. 102–222 authorizes a pilot project for a modern training program to increase clinical pharmacology and mechanistic knowledge in this country, and to help alleviate this shortage of trained biomedical personnel. With this authority and appropriated funding, FDA will establish a Demonstration Project to evaluate whether training and research cooperative agreements can contribute to an increase in the number of trained clinical pharmacologists. The public health role of the FDA's CDER in this program relates directly to the safe and effective use of prescription drugs. Several areas of clinical pharmacology and biopharmaceutics research are related to the public health by providing a bridge between bedside observations of clinical outcome, and molecular insights and mechanistic knowledge. FDA seeks to have research conducted in the clinical pharmacology training program that will develop:

1. Understanding of the multiple enzyme isoforms responsible for drug-drug interactions and the variations in risk associated with different metabolic pathways;

2. The application of pharmacogenomics to characterize the mechanisms of disease to target drug therapies to the causative events and pathways of disease progression;

3. The development of molecularly based biological markers and surrogate endpoints for clinical outcomes that can be linked to systemic drug exposure to provide ways to assess early treatment interventions and long term management of chronic diseases;

4. The application of sophisticated mechanistic-based exposure-response models to design human clinical trials and simulate clinical outcomes as a function of drug input and patient variables;

5. The development of an electronic bioinformatic database to manage key metabolic and drug-drug interaction data that can provide the core knowledge for an expert system intended to predict clinical risks from in vitro and in vivo data; and

6. The biopharmaceutics and clinical pharmacology characterization of complex drug substances including botanicals, herbs, and endogenous proteins to offer the possibility that these agents can be used more effectively and safely in the early treatment and long-term management of diseases.

II. Research Goals and Objectives

The specific objective of this training and research program will be to provide financial assistance to investigators who conduct research as part of their clinical pharmacology training program. It is of particular importance to the public health that this program advance scientific knowledge of mechanisms of in vitro/in vivo metabolism/drug interactions; characterization of individual exposure-response to drugs; and the effect of age, gender, and race on drug disposition and exposure-response relationships. Projects that fulfill any one or a combination of the following specific objectives will be considered for funding:

1. Mechanistic understanding of drug-drug, drug-food (e.g., grapefruit juice), and drug-non-prescription product interactions in the general population;

2. Research to understand the mechanistic basis for individual variability in pharmacokinetics and pharmacodynamics as a function of intrinsic (gender, age) and extrinsic (co-administered drugs) factors: application of pharmacogenomics, pharmacogenetics biological markers, and surrogate endpoints to link exposure to clinical outcome;

3. Research to develop and evaluate biomarkers, and evaluate noninvasive imaging as a way to assess safety and efficacy;

4. Computer modeling and clinical trial simulations: evaluation of clinical study designs to confirm drug safety and efficacy; evaluation of these techniques in the assessment of gender-, age-, race-, and liver/kidney function-specific differences in drug response and drug interactions;

5. Development of electronic databases to capture key metabolism/drug interaction data and provide a linkage to an expert system to assist new drug application reviews of pre-clinical and clinical drug interaction data; and

6. Research to define the clinical pharmacology characteristics (such as dose-exposure-response) of complex drug substances (such as conjugated estrogens, botanical, and proteins), to assure proper use of these substances; research to define the biopharmaceutic characteristics of the active ingredients for these substances and development of ways to establish the equivalency of these dosage forms to establish standards for new and generic product approvals.

III. Reporting Requirements

A Program Progress Report and an annual Financial Status Report (FSR) (SF–269) are required under 45 CFR 74.51 and 74.52. An original FSR and two copies shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR (SF–269) on time will be grounds for suspension or termination of the grant. Progress reports will be required semiannually. The first report will be due 6 months after award and the second report that will also serve as the annual report will be due 90 days after the budget expiration date. CDER program staff will advise the recipient of the suggested format for the Program Progress Report at the appropriate time. A final FSR (SF–269) and Program Progress Report must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least semiannually by the Project Officer. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be duly recorded in the official file and may be available to the recipient upon request.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of demonstration cooperative agreements. These demonstration cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, as modified by this RFA, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program.

B. Eligibility

These demonstration cooperative agreements are available to any domestic public or private medical school. For-profit entities must commit to excluding fees or profit in their request for support to receive awards. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive awards.

C. Length of Support

The length of support will be for up to three years. Funding beyond the first year will be noncompetitive and will depend upon: (1) Satisfactory performance during the preceding year; and (2) the availability of Federal fiscal year appropriations.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have substantive involvement in the programmatic activities of all the projects funded under this RFA. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint Project Officers who will actively monitor the FDA supported program under each award and collaborate with award recipients;

2. FDA will review experimental protocols describing study objectives, study design, and data analysis methods prepared by Award recipients;

3. FDA Project Officers and scientists will collaborate with the recipient and have final approval on the experimental protocol;

4. FDA will collaborate on the interpretation of findings and may incorporate information from studies in agency policy decisions benefiting the public health;

5. FDA Project Officers will be eligible to participate as coauthors on publications based on the research conducted.

VI. Review Procedure and Criteria

A. Review Method

Grants management and program staff will first review all applications submitted in response to this RFA for responsiveness to the RFA. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers, and the final funding decisions will be made by the Commissioner of FDA or designee.

B. Program Review Criteria

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria or administrative procedure prior to the submission of their application. All questions of a technical or scientific nature must be directed to the CDER contact and all questions of an administrative or financial nature must be directed to the Grants Management Office. (See the "**FOR FURTHER INFORMATION CONTACT**" section at the beginning of this document.) Responsiveness will be based on the following criteria:

1. Post-doctoral training and research studies should be proposed on one or more of the six clinical pharmacology and biopharmaceutics objectives listed in this notice under section II: Research Goals and Objectives;

2. Whether the proposed study is within the budget and costs have been adequately justified and fully documented;

3. Soundness of the rationale for the proposed study and appropriateness of the study design to address the objectives of the RFA;

4. Availability and adequacy of laboratory and associated clinical pharmacology and biopharmaceutics resources;

5. Availability and adequacy of support services, e.g., biostatistics, computers, etc.; and

6. Research experience, training, and competence of the Principal Investigator and support staff.

VII. Submission Requirements

Applications must contain one or more of the research objectives in section II of this notice but may also contain other objectives not specifically identified. However, each objective must be described and budgeted independently. An overall budget incorporating all objectives must be submitted as reflected on pages DD and EE of the Grant Application Form PHS 398 (rev. 5/95).

Budget items normally allowed under Federal research programs will be considered allowable under this program. In addition, stipend support may be requested. Stipend levels may not exceed those which are allowed under NIH regulations. Applicants may refer to the NIH web site "http://www.nih.gov/grants/guide/notice.files/not98–161.html" for current stipend levels. PHS funds can be used for stipends paid only to a U.S. citizen, a noncitizen national, or a person who has been lawfully admitted to the U.S. for permanent residence at the time of the application. Payback requirements are not applicable under this program. PHS Expanded Authorities do not apply. Indirect costs requested may not exceed 8 percent and will exclude equipment in the base.

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 5/95) with copies of the appendices for each of the copies, must be delivered to Rosemary Springer (address above). Submit applications by August 9, 1999. If the closing date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday. No supplemental or addendum material will be accepted after the receipt date.

The outside of the mailing package and item 2 of the application face page should be labeled, "Response to RFA FDA CDER–CP–2000."

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health (NIH). Any application that is sent to the NIH and therefore not received in time for orderly processing, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet (address "http://www.nih.gov/grants/phs398/phs398.html"; the forms can be found at "http://www.nih.gov/grants/phs398/forms—toc.html"). However, as noted above, applications are not to be

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mailed to the NIH. (Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by the NIH on its applications). Applications must be submitted via mail delivery as stated above. FDA is unable to receive applications electronically. The Institutional National Research Service Award requirements do not apply.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/95). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the CSR, NIH.

The face page of the application should reflect the request for applications number RFA–FDA–CDER–CP–2000.

C. Confidentiality of Information

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Legend: Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

IX. Paperwork Reduction Act of 1995

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Office of Management and Budget (OMB) has assigned OMB control number 0925–0001 to the collection of information regarding grant applications in Form PHS 398. This approval expires February 28, 2001.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: July 2, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–17505 Filed 7–6–99; 4:04 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–0276]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Feedback Postcard; *HCFA Form Number:* HCFA–R–0276 (OMB approval #: 0938–0766); *Use:* The purpose of this collection is post-distribution testing. This feedback postcard will be printed with Medicare & You 2000. This is the primary vehicle for presenting Medicare information to beneficiaries. Each household with up to 4 Medicare beneficiaries will receive one book. Households with over 4 beneficiaries will have one book sent to each beneficiary. (It is assumed these may be nursing homes/care facilities.) The beneficiaries have the option of completing the postcard, which will provide HCFA with valuable information that will assist in improving future versions of the publication.; *Frequency:* On occasion, Semi-annually, and Annually; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Gov; *Number of Respondents:* 16,834,000 (estimate); *Total Annual Responses:* 510,000 (3% estimate); *Total Annual Burden Hours:* 25,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Louis Blank Room N2–14–26 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 1, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–17471 Filed 7–8–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1856/1893, HCFA–1880/1882, and HCFA–R–0290]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Certification in the Medicare/Medicaid Program to Provide Outpatient Physical Therapy and/or Speech-Language Pathology and the Outpatient Physical Therapy and/or Speech-Language Pathology Survey Report Form and Supporting Regulations in 42 CFR 485.701–485.729; *Form No.:* HCFA–1856/1893 (OMB #0938–00065); *Use:* The form HCFA–1856 is utilized as an application to be completed by suppliers of OPT/SP services requesting participation in the Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions of coverage are met as an OPT/SP supplier. It is used by the HCFA Regional Offices (ROs) to enter the new supplier into the Online Survey, Certification and Reporting System (OSCAR). The survey report form HCFA–1893 is an instrument used by the State survey agency to record data collected during an on-site survey of a supplier of OPT/SP services to determine compliance with the applicable conditions of participation and to report this information to the Federal Government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the OSCAR system at the HCFA ROs. The form includes basic information on compliance (i.e., met, not met, explanatory statements) and does not require any descriptive information regarding the survey activity itself; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 1,700; *Total Annual Responses:* 255; *Total Annual Hours:* 446.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Certification as Supplier of Portable X-ray Services under the Medicare/Medicaid Program for Portable X-ray Survey Report and Supporting Regulations in 42 CFR 486.100–486.110; *Form No.:* HCFA–1880/1882 (OMB #0938–0027); *Use:* The Medicare program requires portable X-ray suppliers to be surveyed for health and safety standards. The HCFA–1880 is used by the surveyor to determine if a portable X-ray applicant meets the eligibility requirements. It also promotes data reduction or introduction, and retrieval from the Online Survey Certification and Reporting (OSCAR) System by the HCFA Regional Offices. The HCFA–1882 is the survey form that records survey results. The form is primarily a coding work sheet designed to facilitate data reduction and retrieval into the OSCAR system at the HCFA Regional Offices; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 655; *Total Annual Responses:* 98; *Total Annual Hours:* 172.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Procedures for Making National Coverage Decisions; *Form No.:* HCFA–R–0290 (OMB #0938–NEW); *Use:* These information collection requirements provide the process HCFA will use to make a national coverage decision for a specific item or service under sections 1862 and 1871 of the Social Security Act. This will streamline our decision making process and will increase the opportunities for public participation in making national coverage decisions; *Frequency:* As needed; *Affected Public:* Business or other for profit and Not for profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 8,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 1, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–17470 Filed 7–8–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; New System of Records

AGENCY: National Institutes of Health, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the National Institutes of Health (NIH) is proposing to establish a new system of records, 09–25–0213, "Administration: Investigative Records, HHS/NIH/OM/OA/OMA."

DATES: NIH invites interested parties to submit comments with regard to the proposed internal and routine uses on or before August 9, 1999. NIH sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on July 9, 1999. This system of records will be effective 40 days from the date of publication unless NIH receives comments on the routine uses which would result in a contrary determination.

ADDRESSES: Please submit comments to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852, 301–496–2832. (This is not a toll free number.) Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852, 301–496–2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09–25–0213, "Administration: Investigative Records, HHS/NIH/OM/OA/OMA." The purposes of the Investigative Records system of records are to document reviews and investigations undertaken by the Office of Management Assessment (OMA), NIH, to provide management or the Office of Inspector General, Office of the Secretary, HHS, with information needed to take action to resolve complaints of misconduct or alleged violations of statutes, regulations, policies, or the terms and conditions of funding.

This system will comprise records that contain a unique classification number; names of the victim, accused, complainant, and witnesses; date of birth; Social Security number; nature of the incident; and time of occurrence.

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This system will include records relating to correspondence concerning an individual's employment status or conduct while employed by or working at NIH. This system will also contain reports of investigations to resolve allegations of misconduct or violations of statutes, regulations or policies, with related exhibits of statements, affidavits or records obtained during the investigation; reports of action taken by management; decisions on any misconduct substantiated by the investigation; and reports of legal action resulting from violations of statutes referred for prosecution.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH and contractor staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are OMA employees and contractors responsible for implementing employee conduct investigations. Records may be stored on electronic media such as computer tapes and diskettes, and as hard-copy records. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf:45–13, the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Data on computer files is accessed by keyword known only to authorized users who are OMA employees or contractor staff who have a need for the data in the performance of their duties as determined by the system manager. Access to the restricted office area containing the rooms where records are stored is controlled through the use of door locks. Only authorized users have the keys to these locks. During regular business hours, rooms in this restricted area are unlocked but entry is controlled by on-site personnel. Rooms where records are stored are locked when not in use. Individually identifiable records are kept in locked file cabinets or in locked rooms under the direct control of the system manager or his/her delegated representatives. Computer records are accessible only through a series of code or keyword commands available from and under direct control of the system manager or his/her delegated representatives.

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use allows disclosure to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained, if the disclosure does not compromise the investigative activities of the OMA. The second routine use allows the Department of Health and Human Services (HHS) to disclose information from this system of records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records. The third routine use allows disclosure to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United states Government, is a party to the proceeding or has an interest in such proceeding, and by careful review, the agency determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records. The fourth routine use allows disclosure when a record, on its face or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity. The fifth routine use allows disclosure to a Federal, State, local, foreign, or tribal or other public authority of any portion of this system of records that contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The sixth routine use allows disclosure to Federal, State, local or foreign agencies maintaining, civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit. The seventh routine use allows disclosure where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, and the Department is authorized to make such records available. The eighth routine use allows disclosure to agency contractors, experts, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. The ninth routine use allows disclosure in the course of employee discipline or competence determination proceedings. The tenth routine use allows disclosure of pertinent records (excluding, for example, records that OMA determines would invade the privacy of the complainant or witnesses, impede the investigation or reveal investigative techniques) to representatives of an awardee of an NIH grant, contract, or cooperative agreement that is the subject of an investigation by OMA, NIH.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: October 13, 1998.

Anthony L. Itteilag,

Deputy Director for Management, National Institutes of Health.

09–25–0213

SYSTEM NAME:

Administration: Investigative Records, HHS/NIH/OM/OA/OMA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management Assessment (OMA), 6011 Executive Building, Rockville, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are alleged or suspected to have violated NIH or Departmental policies, regulations or Federal statutes and are: Personnel employed by the Federal Government who are under a career, career conditional, or other type of appointment; personnel working under Intergovernmental Personnel Act assignments; Guest Researchers; Volunteers; Individuals on Temporary Appointments (including student appointments); Fogarty International Center Scholars; Staff Fellows; Intramural Research Training Award Fellows; IC Fellowship Award Recipients; Visiting Associates, Scientists, and Fellows; Commissioned Corps; individuals who receive funding through or have responsibility for NIH sponsored grants, contracts, or cooperative agreements and other individuals who transact or seek to transact business with NIH or use the facilities of those agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes records relating to allegations of misconduct against the categories of individuals covered by the system of records. Examples of these records include: Correspondence from employees, members of Congress and members of the public alleging misconduct by an employee of NIH or a person who transacts business with NIH. It also contains working papers prepared during the investigations, reports of investigations to resolve allegations of misconduct or violations of statutes, regulations, or policies, with related exhibits of statements, affidavits or records obtained during the investigation; reports of action taken by management; decisions on any misconduct substantiated by the investigation; and reports of legal action resulting from violations of statutes referred for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 302; 42 U.S.C. 203, 282; 44 U.S.C. 3101; E.O. 10450.

PURPOSE(S):

To document reviews and investigations undertaken by the OMA, NIH to provide management or the Office of Inspector General, Office of the Secretary, HHS with information needed to take action to resolve complaints of misconduct or alleged violations of statutes, regulations, policies, or the terms and conditions of funding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained, if the disclosure does not compromise the investigative activities of the OMA.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. Disclosure may be made to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to the proceeding or has an interest in such proceeding, and by careful review, the agency determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

5. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of any portion of this system of records that contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

6. Disclosure may be made to Federal, State, local or foreign agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

7. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department is authorized to make such records available.

8. Disclosure may be made to agency contractors, experts, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act

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of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

9. Disclosure may be made in the course of employee discipline or competence determination proceedings.

10. Disclosure may be made to representatives of an awardee of an NIH grant, contract, or cooperative agreement that is the subject of an investigation by the OMA, NIH, to the extent necessary for OMA to carry out its investigative functions, while providing appropriate confidentiality for the accused, complainant and witness.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper forms in file folders, file cards, magnetic tapes, magnetic disks, optical disks and/or other types of data storage devices.

RETRIEVABILITY:

Records are retrieved by a unique classification number; name of the victim, accused, or complainant, date of birth, Social Security number; and by the nature of the incident and/or time of occurrence.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by keyword known only to authorized users who are OMA employees or contractor staff who have a need for the data in the performance of their duties as determined by the system manager.

2. *Physical Safeguards:* Access to the restricted office area containing the rooms where records are stored is controlled through the use of door locks. Only authorized users have the keys to these locks. During regular business hours, rooms in this restricted area are unlocked but entry is controlled by on-site personnel. Rooms where records are stored are locked when not in use. Individually identifiable records are kept in locked file cabinets or in locked rooms under the direct control of the system manager or his/her delegated representatives.

3. *Procedural and Technical Safeguards:* Computer records are accessible only through a series of code or keyword commands available from and under direct control of the system manager or his/her delegated representatives. These records are secured by a multiple-level security system which is capable of controlling access to the individual data field level. Persons having access to the computer database can be restricted to a confined application which permits only a narrow "view" of the data. All authorized users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised area/office. These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, supplementary Chapter PHS hf: 45–13, the Department's Automated Information Systems Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361): Item 1700–A–4, which allows records to be kept permanently when involving extensive litigation; five years for minor infractions or improprieties when final recommendation is that no action be taken, or 20 years for all other. Refer to the NIH Manual Chapter for specific retention and disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management Assessment, National Institutes of Health, 6011 Executive Blvd., Room 601, Rockville, Maryland 20892.

NOTIFICATION PROCEDURES:

This system is exempt from the notification requirements. However, consideration will be given to requests addressed to the system manager listed above. The requestor must verify his or her identity by providing either a notarization of the request or a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (a) full name, (b) address, and, (c) year of records in question.

RECORDS ACCESS PROCEDURE:

This system is exempt from the access requirements. However, consideration will be given to requests addressed to the system manager listed above. The requestor must verify his or her identity by providing either a notarization of the request or a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (a) Full name, (b) address, and, (c) year of records in question. Requestors should also reasonably specify the record contents being sought. Although the system is exempt, individuals may, upon request, receive records from this system and an accounting of disclosure of their records, if the system manager determines that disclosure would not compromise the investigative activities of the OMA, NIH.

CONTESTING RECORD PROCEDURE:

Exempt. However, consideration will be given requests addressed to the system manager. Requests for corrections should reasonably identify the record and specify the information being contested, and state the corrective action sought with supporting information. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Departmental and other Federal, State, and local government records; subjects of investigations, complaints, witnesses; documents and other material furnished by non-government sources; and personal observations by the investigator.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been exempted pursuant to 5 U.S.C. 552a (k)(2) of the Privacy Act from the access, notification, correction, and amendment provisions of the Privacy Act [5 U.S.C. 552a (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G) and (H) and (f)], because it consists of investigatory material compiled for law enforcement purposes. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, thereby allowing them time to take measures to prevent detection of illegal action or to escape prosecution. Disclosure of investigative techniques/procedures and the existence and identity of confidential sources of information could jeopardize investigative activities. However, any individual who has been denied any right, privilege, or benefit for which he/she would otherwise be entitled or be eligible, as a result of the maintenance of such material, will be given access to the material, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of such source would be held in confidence.

The system is also exempted under 5 U.S.C. 552a (k)(5) of the Privacy Act which allows the agency to exempt from individual access, investigatory materials compiled for the purpose of determining suitability, eligibility, or qualification for federal employment or financial assistance if release of the material would disclose the identity of a confidential source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

Note: This document was received by the Office of the Federal Register on July 2, 1999.

[FR Doc. 99–17412 Filed 7–8–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–31]

Submission for OMB Review

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice: Section 8 tenant-based vouchers merger rule.

SUMMARY: The rental voucher program provides a rent subsidy so eligible families can afford rent or decent, safe, and sanitary housing in the private market. Housing Agencies will submit an application for funding and other appropriate forms to administer the Voucher Program. Housing Agencies will report to HUD automated Section 8 Management Information System.

DATES: *Comments Due Date:* August 9, 1999.

ADDRESSES: Interest persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number (2577–0169) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Officer of Management Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if approval; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 2, 1999.

David S. Cristy,

Director, Information Technology Capital Planning Staff.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Section 8 Tenant-Based Vouchers Merger Rule (Part 982).

Office: Public and Indian Housing.

OMB Approval Number: 2577–0169.

Description of the Need for the Information and its Proposed Use: The rental voucher program provides a rent subsidy so eligible families can afford rent for decent, safe, and sanitary housing in the private market. Housing Agencies will submit an application for funding and other appropriate forms to administer the Voucher Program. Housing Agencies will report to HUD automated Section 8 Management Information Systems.

Form Number: HUD–52515, 52517, 52580, 52580A, 52595, 52646, 52665, 52667, 52672, 52673, 52681, 52683, 52663.

Respondents: Individuals or Households and State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	307,500		13		.165		650,975

Total Estimated Burden Hours: 650,975

Status: Revision.

Contact: Cecilia Livingston, HUD, (202) 708–0477, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–17419 Filed 7–8–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD

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publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 1, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–17258 Filed 7–8–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Santa Cruz Long-Toed Salamander for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a Draft Revised Recovery Plan for the Santa Cruz Long-Toed Salamander (*Ambystoma macrodactylum croceum*). The salamander occurs near the Pacific Coast in Monterey and Santa Cruz Counties, California.

DATES: Comments on the draft revised recovery plan must be received on or before September 7, 1999 to receive consideration by the Service.

ADDRESSES: Copies of the draft revised recovery plan are available for inspection by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766). Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to Ms. Diane K. Noda, Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Dr. Grace S. McLaughlin, Herpetologist, at the above Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This salamander is listed as endangered. Currently it is known from no more than seven breeding sites comprising three metapopulations in the coastal areas of two Counties (Santa Cruz and Monterey) along the central coast of California. The Santa Cruz long-toed salamander inhabits temporary ponds for breeding and adjacent upland scrub and wooded areas during the nonbreeding season. These kinds of ponds and adjacent scrub and woodlands are restricted naturally to relatively few areas along the central coast of California. Direct habitat loss due to agriculture, urbanization, and road building is the main cause for decline. Other threats include pollution, siltation, and declining water quality in breeding ponds due to nearby development and agricultural activities; loss of non-breeding habitat and food resources due to the spread of exotic plants; predation by introduced fishes, bullfrogs, and tiger salamanders; and parasites.

The objective of this plan is to provide a framework for the recovery of the Santa Cruz long-toed salamander so that protection by the Act is no longer necessary. The recovery strategy for the Santa Cruz long-toed salamander is focused on providing sufficient breeding and upland habitat to maintain self-sustaining populations of salamanders in each of the metapopulations, and minimizing or eliminating impacts and threats to salamander populations. This plan describes a five-part recovery strategy with specific tasks necessary to maintain healthy aquatic, riparian, and adjacent upland ecosystems that provide habitat for Santa Cruz long-toed salamanders. The tasks, when implemented, will stabilize and maintain populations throughout the range of the Santa Cruz long-toed salamander in California by protecting sufficient breeding and nonbreeding habitat, monitor the status of existing populations to ensure recovery actions are successful, identify and secure additional suitable Santa Cruz long-toed salamander habitat and populations, conduct research to determine the population dynamics and ecology of the species to guide management efforts and determine the best methods for reducing threats, and continue and expand an outreach program.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 1, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 99–17276 Filed 7–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Revised Recovery Plan for Hawaiian Waterbirds, Second Revision

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Revised Recovery Plan for Hawaiian Waterbirds, Second Revision. The four waterbirds covered by this plan, the Hawaiian duck or koloa maoli (*Anas wyvilliana*), Hawaiian coot or "alae ke'oke'o (*Fulica alai*), Hawaiian moorhen or "alae "ula (*Gallinula chloropus sandvicensis*), and the Hawaiian stilt or ae'o (*Himantopus mexicanus knudseni*), are all listed as endangered species by the Federal government and the State of Hawaii. All four species require wetlands for their survival. These species are currently found on one or more of the eight main Hawaiian Islands (Niihau, Kauai, Oahu, Maui, Molokai, Lanai, Kahoolawe, and Hawaii). None of these species are thought to number more than 2,500 individuals, with the exception of the Hawaiian coot which is estimated to range between 2,000 and 4,000 birds statewide.

DATES: Comments on the draft revised recovery plan received by September 7, 1999 will be considered by the Service.

ADDRESSES: Copies of the draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following locations: US Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to the Pacific Islands Manager, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor, Pacific Islands Office (See **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The four waterbirds covered by this draft revised recovery plan, the Hawaiian duck or koloa maoli (*Anas wyvilliana*), Hawaiian coot or "alae ke'oke'o (*Fulica alai*), Hawaiian moorhen or "alae "ula (*Gallinula chloropus sandvicensis*), and the Hawaiian stilt or ae'o (*Himantopus mexicanus knudseni*), are all listed as endangered species by the Federal government and the State of Hawaii. Hawaiian ducks are found on the islands of Kauai-Niihau, Oahu, Maui, and Hawaii; Hawaiian coots and Hawaiian stilts are found on all the main Hawaiian Islands except Kahoolawe; and the Hawaiian moorhen is found only on the islands of Kauai and Oahu. All four species require wetlands for their survival. The population of wild Hawaiian ducks in the State of Hawaii is estimated to be 2,500 birds. The statewide coot population is estimated to range between 2,000 and 4,000 birds. Hawaiian moorhens are by far the most difficult of the waterbirds to census, thus accurate population estimates do not exist. However, the Hawaii State Division of Forestry and Wildlife waterbird counts give a rough idea of population trends and indicate that moorhen numbers range between 200 and 400 birds. The Hawaiian stilt population is estimated to range between 1,200 and 1,600 birds.

The four waterbirds addressed in this plan are found in a variety of wetland habitats including freshwater marshes, coastal ponds, taro patches, irrigation ditches, and in the case of the Hawaiian duck, montane streams and swamplands. The primary cause of the decline of these four species of endangered waterbirds has been the loss of wetland habitat. Hunting is another factor that contributed to the historic decline of waterbird populations but does not pose a threat presently. Factors that continue to be detrimental include predation by introduced mammals, including mongooses, feral cats, dogs, and rats; invasion of wetlands by alien plants and fish; hybridization; disease; altered hydrology; and possibly environmental contaminants.

The objective of the draft revised recovery plan is to provide a framework for the recovery of these four taxa so that their protection by the Endangered Species Act is no longer necessary. Actions called for in the revised plan include protection of habitat; management of wetland areas to maximize productivity and survival; conducting research to better define limiting factors, assist in determination of recovery objectives and improve management techniques; monitoring of populations; removal of the threat of mallard-Hawaiian duck hybridization; supplementation of populations of Hawaiian duck and Hawaiian moorhen; and conducting public education and information programs.

For downlisting, wetlands identified in the plan should be protected and managed following management practices identified in the revised recovery plan, monitoring should indicate that populations are stable or increasing above a minimum (2,000 for the Hawaiian duck, 1,800 for the Hawaiian coot, 1,500 for the Hawaiian stilt and the Hawaiian moorhen) for at least 5 consecutive years, and multiple viable breeding populations should exist on several islands identified in the revised recovery plan.

For delisting, in addition to areas already protected and managed, primary habitats identified in the plan should be protected and managed following management practices identified in the revised recovery plan, monitoring should indicate that populations are stable or increasing for at least 10 consecutive years, and multiple viable breeding populations should exist on several islands identified in the plan for each species.

Public Comments Solicited

The Service solicits written comments on the draft revised recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 2, 1999.

William B. Zimmerman,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–17425 Filed 7–8–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Act: Request for Small Grants Proposals for Year 2000

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that we, the U.S. Fish and Wildlife Service (Service) and the North American Wetlands Conservation Council (Council), are currently entertaining proposals that request match funding for wetland conservation projects under the Small Grants program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as amended. We will give funding priority to projects from new grant applicants with new partners, where the project ensures long-term conservation benefits. However, previous Act grantees are eligible to receive funding, and can compete successfully on the basis of strong project resource values.

DATES: Proposals must bear postmarks no later than Friday, December 3, 1999.

ADDRESSES: Address proposals to: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Small Grants Coordinator, or Ms. Heather Poindexter, Office Secretary, North American Waterfowl and Wetlands Office, 703/358–1784; facsimile 703/358–2282.

SUPPLEMENTARY INFORMATION:

The purpose of the 1989 North American Wetlands Conservation Act (NAWCA) is, through partnerships, to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitats. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated uplands habitat.

Initiated in 1996, the underlying objective of the Small Grants program is to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to compete in the regular grants program. We also hope that successful participants in the Small Grants program will be encouraged to participate in the NAWCA-based Standard Grants program. Over the first four years of the program, about 326 proposals requesting a total of approximately $10.1 million competed for funding. Ultimately, 55 projects were funded over this period. For 2000, with the approval of the Migratory Bird Conservation Commission, we have again made the Small Grants program operational at a base level of $500,000. Up to $1 million in quality Small Grants projects may be funded.

To be considered for funding in the 2000 cycle, proposals must have a grant request no greater than $50,000. All wetland conservation proposals are accepted that meet the requirements of the Act. However, considering appropriate proposal resource values, funding priority is given to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits. As suggested by the former, this does not preclude former NAWCA grant recipients from receiving Small Grants funding; ultimately, project resource value is the critical factor in deciding which projects receive funding. Too, projects are likely to receive a greater level of attention if they are part of a broader related or unrelated effort to bring or restore wetland or wetland-associated upland conservation values to a particular area or region.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget must constitute 10 percent or less of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetland-associated uplands.

Please keep in mind that NAWCA and matching funds may only be applied to wetlands acquisition, creation, enhancement, and/or restoration; they may not be applied to signage, displays, trails or other educational features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, useful project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals are not considered for funding.

Even though requiring less total information than those submitted for the regular grants program, Small Grant proposals must have clear explanations and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council-established guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, "Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds." Applicants must submit a completed Standard Form 424, Application For Federal Assistance. Small Grants instructional booklets contain forms and instructions for the Standard Form 424; booklets are available at the address provided or by E-mail, as explained later in this notice.

Small Grants proposals may be submitted prior to the due date but must bear postmarks no later than Friday, December 3, 1999. Address submitted proposals as follows: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, VA 22203, Attn: Small Grants Coordinator.

It is essential that applicants submit complete grant request packages to the North American Waterfowl and Wetlands Office (NAWWO), including *all* of the documentation of partners (partner letters) with funding pledge amounts. Information on funding in partner letters, i.e., amounts and description regarding use, must correspond with budget amounts in the budget table and any figures provided in the narrative.

With the volume of proposals received, we are not usually able to contact proposal sources to verify and/or request supplemental data and/or materials. Thus, those proposals lacking required information or containing conflicting information are subject to being declared ineligible and not further considered for funding.

For more information, and/or to request the Small Grants instructional booklet, call the NAWWO office secretary at (703) 358–1784, facsimile (703) 358–2282, or send E-mail to R9ARW_NAWWO@FWS.GOV. Small Grant application instructions are also available by E-mail as a WordPerfect© file, upon request.

In conclusion, we require that upon arrival in the NAWWO, proposal packages must be complete with regard to the information requested, in the format requested, and on time.

The Service has submitted information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Pub. L. 104–13. On May 26, 1999, OMB gave its approval for this information collection and confirmed the approval number as 1018–0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the North American Wetlands Conservation Council and the Migratory Bird Conservation Commission; is necessary to determine the eligibility and relative value of wetland projects; results in an approximate paperwork burden of 80 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: July 1, 1999.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–17468 Filed 7–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Act: Request for Evaluation Grant Proposals for Year 2000

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; correction.

SUMMARY: The purpose of this notice is to correct an Office of Management and Budget (OMB) information collections clearance number cited erroneously in a previous **Federal Register** announcement requesting proposals for evaluation grants, as provided for by the North American Wetlands Conservation Act.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Small Grants Coordinator, North American Waterfowl and Wetlands Office, 703/358–1784; facsimile 703/358–2282.

SUPPLEMENTARY INFORMATION: On Wednesday, May 26, 1999, the Service published a **Federal Register** notice of request for proposals for the evaluation grants program (64 FR 28504) to be conducted under the authority of section 19 of the North American Wetlands Conservation Act of 1989, as amended. The evaluation grants program seeks to evaluate the wetland conservation effectiveness of the ongoing Small and Standard Grants programs. The referenced notice signaled the initiation of the new program but cited incorrectly that the OMB clearance number is 1018–0100. The OMB information collections clearance number 1018–0100 is in fact that for the Small and Standard Grants programs, approved on May 26, 1999. The emergency clearance number provided by OMB, on 06/04/99, for information collections under the evaluation grants program, and the one that should have been cited in the request for proposals, is 1018–0104. This emergency approval expires on November 30, 1999. Also, the May 26 notice should have advised that the anticipated paperwork burden for applicants is 8 hours for a preproposal and 40 hours for a proposal.

Dated: June 28, 1999.

Daniel Ashe,

Assistant Director—Refuges and Wildlife, Fish and Wildlife Service.

[FR Doc. 99–17469 Filed 7–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–065–1220–00]

Notice of Restriction Orders for BLM Lands within the Lower Salmon River Recreation Area from Vinegar Creek to Hammer Creek, Orders No. ID–060–16 and ID–060–17

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Idaho.

SUMMARY: By order, the following restrictions apply to all public land administered by the Bureau of Land Management within the Lower Salmon River Recreation Area from Vinegar Creek (river mile 112) to Hammer Creek (river mile 53), Idaho County, Idaho.

The following acts are prohibited yearlong:

1. Building, maintaining, or using a fire or campfire.

The following persons are exempt from this order:

A. A person with a burning permit for fires other than campfires, cooking fires, or warming fires;

B. A person using any of the following types of equipment:

1. *FIREPAN, INCLUDING PORTABLE BARBECUE WITH GRILL:* A device made of fire-resistant material or metal, with raised edges of a height sufficient to contain all ash and residue from a wood or charcoal fire. All ash and wood or charcoal residue must be packed out, including partially consumed briquets.

2. *GAS STOVES:* Pressurized liquid or gas stoves including space heating devices.

3. *PERMANENTLY INSTALLED FIRE RINGS AND GRILLS IN DEVELOPED RECREATION SITES:* For the purposes of this closure, developed recreation sites are Spring Bar, Allison Creek, Shorts Bar, Riggins City Park, Lucile, Slate Creek, Skookumchuck, and Hammer Creek.

4. *ENCLOSED WOOD STOVE:* A fully enclosed stove for burning wood or charcoal. The stove must be enclosed on six sides with ¼ inch or smaller screening covering the chimney opening. Ash and wood residue must be packed out.

C. A person on public land more than 200 feet from the edge of the Salmon River.

2. Operating non-valid watercraft on the Salmon River between Vinegar Creek (river mile 112) and Hammer Creek (river mile 53). The area between the Lucile Bridge (river mile 76.5) and the Deer Creek Bridge (river mile 53.7) is exempt from this restriction between the dates of April 1 and September 15 each year.

Non-valid watercraft on the Lower Salmon River are those types of equipment that were not traditionally and commonly being used for recreational purposes on this section of the river prior to 1999 when the Recreation Area Management Plan Revision for the Lower Salmon River Recreation Area was approved.

Non-valid Types of Watercraft Include: Personal water vehicles such as jet skis, air boats, motorized surf boards, wind surf boards, sailboats, hover craft, winged watercraft, any powerboats equipped with an over the transom exhaust system, amphibious craft, mini submarines, powerboats under 12 feet in length and designed to carry a maximum of two passengers, watercraft that must be straddled when ridden by the operator and/or passengers, devices towed behind a powerboat for recreational purposes (such as water skis, kneeboards, and various types of tubes), and devices attached to a fixed point on the bank for purposes of surfing or water skating.

Authorized Float Boats Include: Sweep boats, pontoons, catarafts, inflatable rafts, rigid hull and inflatable kayaks, canoes, dories, drift boats, and inner tubes. They may be propelled by paddles, oars, motors, or other devices,

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but are not capable of upstream travel through rapids.

Authorized Powerboats Include: Motorized, rigid hull watercraft with water cooled exhaust that are driven by propeller(s) or jet pump(s), are capable of upstream and downstream travel, and usually require trailering to enter and exit the water.

Authorized watercraft on the Lower Salmon River are those types of float boats and powerboats traditionally and commonly being used for recreational purposes on this section of the Lower Salmon River prior to 1999 when the Recreation Area Management Plan Revision for the Lower Salmon River Recreation Area was approved.

The following persons are exempt from this order:

A. Any Federal, State, or local officer or member of an organized rescue or firefighting force in the performance of an official duty.

B. Any person holding a Special Recreation Permit authorizing use of non-valid watercraft during specific times listed on the permit.

The authority for establishing these restrictions is Title 43, Code of Federal Regulations, Sections 8364.1 and 8365.1–6.

Violation of these orders is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: Greg Yuncevich, Area Manager, Bureau of Land Management, Cottonwood Field Office, Rt. 3, Box 181, Cottonwood, ID 83522.

Dated: July 1, 1999.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 99–17486 Filed 7–8–99; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable Amendment Subcommittee will meet on July 22, 1999, to discuss requested amendments for projects funded under the Restoration Coordination Program. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 p.m. on Thursday, July 22, 1999.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: July 2, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–17426 Filed 7–8–99; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Privacy Act of 1974; Revisions to Systems of Records

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of thirteen deleted Privacy Act systems of records, eleven revised systems, and nine new systems.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Overseas Private Investment Corporation (OPIC) has conducted a comprehensive review of the Corporation's Privacy Act systems of records and is publishing the resulting revisions and its twenty systems of records in their entirety. OPIC is deleting from its inventory of systems of records thirteen record systems that are either covered by government-wide or other departmental records systems, or that are obsolete because the information contained in the systems is no longer collected, maintained or retrieved by personal identifier. OPIC also is providing notice of revisions to eleven existing systems of records and establishing nine new systems of records.

OPIC is re-numbering its entire inventory of systems of records as follows:

OPIC–1 was previously Applicants (General). It now becomes Leave Sharing Records.

OPIC–2 was previously Applicants (General Counsel). It now becomes Permanent Duty Relocation Files.

OPIC–3 was previously Attendance and Leave Records. It now becomes Employee Security Badges.

OPIC–4 was previously Awards. It now becomes Employee Exit Forms.

OPIC–5 is renamed Biographies of Employees from the former Biographies of Key Employees and Board Members.

OPIC–6 was previously Compensation. It now becomes Controlled Correspondence.

OPIC–7 is renamed Employee Relations Files from the former Conduct and Discipline.

OPIC–8 was previously Conflicts of Interest. It now becomes Telephone Call Records.

OPIC–9 is renamed Employee Health Insurance—Temporary Continuation of Coverage from the former Employee Health and Life Insurance.

OPIC–10 was previously Employment (Excepted Positions). It now becomes Transportation Subsidy Files.

OPIC–11 was previously Evaluations. It now becomes Freedom of Information (FOIA) Requests and Appeals.

OPIC–12 remains Photographs.

OPIC–13 was previously Placement of Handicapped Individuals. It now becomes Contractor Files.

OPIC–14 was previously Position Classification. It now becomes Retirement.

OPIC–15 was previously Recruitment. It now becomes Personnel Security Investigations.

OPIC–16 was previously Retirement. It now becomes Security Violations.

OPIC–17 was previously Security and Investigations. It now becomes Travel Documents.

OPIC–18 was previously Security Violations. It now becomes Directors (Current and Former).

OPIC–19 was previously Travel Advances. It now becomes Employees' Payroll Records.

OPIC–20 was previously Travel Obligations. It now becomes Employee Biography, Skills and Interest Inventory.

OPIC–21 was previously Directors (Current). It is now deleted and the system is revised and re-numbered as new OPIC–18, Directors (Current and Former).

OPIC–22 was previously Directors (Former). It is now deleted and the system is revised and re-numbered as new OPIC–18, Directors (Current and Former).

OPIC–23 was previously Employees' Payroll Records. It is now deleted and the system is revised and re-numbered as new OPIC–19, Employees' Payroll Records.

OPIC–24 was previously Employee Biography, Skills and Interest Inventory. It is now deleted and the system is revised and re-numbered as new OPIC–20, Employee Biography, Skills and Interest Inventory.

DATES: The revised and proposed new systems will be effective without further notice on August 18, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Written comments on the new systems of records may be addressed and mailed or hand-delivered to Jean Strasser, Management Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527. Faxes may be sent to Jean Strasser at (202) 842–8413. Submit electronic comments to jstra@opic.gov.

FOR FURTHER INFORMATION CONTACT: Jean Strasser, Management Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527, telephone (202)336–8670.

SUPPLEMENTARY INFORMATION: After reviewing the Corporation's Privacy Act systems of records, thirteen record systems were identified for deletion. Of the thirteen record systems identified for deletion, ten record systems are covered by other governmental or departmental record systems, and three are obsolete because the information contained in the systems is no longer collected, maintained or retrieved by personal identifier. As noted in the summary section, OPIC is re-numbering its entire inventory of systems of records. The records being deleted are listed as follows by their old system numbers:

I. Deletions: Obsolete and Duplicative Systems of Records.

OPIC–1

Applicants (General). Covered by Office of Personnel Management OPM/GOVT–5.

OPIC–2

Applicants (General Counsel). Covered by Office of Personnel Management OPM/GOVT–5.

OPIC–3

Attendance and Leave Records. Substantially overlaps with the revised Overseas Private Investment Corporation OPIC–19, Employees' Payroll Records, and has been combined with this system of records.

OPIC–4

Awards. Covered by Office of Personnel Management OPM/GOVT–2.

OPIC–6

Compensation. Records relating to denials of within grade increases and pay adjustments for administratively determined employees are covered by Office of Personnel Management OPM/GOVT–1. Appeals of denials of within grade increases are covered by the revised Overseas Private Investment Corporation OPIC–7, Employee Relations Files.

OPIC–8

Conflicts of Interest. Covered by Office of Government Ethics OGE/GOVT–1 and OGE/GOVT–2.

OPIC–10

Employment (Excepted Positions). No longer maintained.

OPIC–11

Evaluations. Covered by Office of Personnel Management OPM/GOVT–2.

OPIC–13

Placement of Handicapped individuals. Covered by Office of Personnel Management OPM/GOVT–7.

OPIC–14

Position Classification. No longer maintained.

OPIC–15

Recruitment. No longer maintained.

OPIC–19

Travel Advances. Substantially overlaps with the revised Overseas Private Investment Corporation OPIC–17, Travel Documents, and has been combined with this system of records.

OPIC–22

Directors (Former). Substantially overlaps with the revised Overseas Private Investment Corporation OPIC–18, Directors (Current and Former), and has been combined with this system of records.

II. Revised Systems of Records

OPIC is republishing eleven of its Privacy Act systems of records with certain changes, additions, and deletions. Where appropriate, system record names have been updated to reflect the current name of the system, as well as changes and updates to content, routine uses and safeguards. Addresses have been changed throughout to reflect the Corporation's current location and organizational structure. Minor stylistic changes have been made to provide a more consistent format throughout. OPIC's entire inventory of systems of records has been re-numbered, as outlined in the

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summary section. The revised systems below are published with their new system numbers.

OPIC–5

SYSTEM MAME:

Biographies of Employees.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

General biographies and press releases based on biographies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

These records are used to supply OPIC employees, the communications media, clients, and other OPIC stakeholders with pertinent background information on employees of the Corporation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) for press releases to local, national and international communications media in connection with publicizing the role of the Corporation in furthering the development assistance objectives of the U.S.; (ii) as communication material at OPIC-hosted and external conferences and speaking engagements where employees participate as representatives of the Corporation; (iii) to provide background on new employees, along with their photographs, to current employees of the Corporation via the Corporate Intranet site; (iv) to provide biographies of executives to the public via the Corporation's Internet web site at www.opic.gov; and (v) to assist corporate managers and executives as information for resource planning and utilization decisions and the exercise of supervisory responsibilities.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders in each OPIC department and on departmental computer network drives. Biographies of executives and key employees may also be kept on the Corporation's Inter/Intranet web server and may be accessible to OPIC employees (Intranet) and the public (Internet).

RETRIEVABILITY:

Hard copy files are indexed alphabetically by surname. Electronic records are retrievable by file name, which includes employee name or initials, and through electronic word searches.

SAFEGUARDS:

Original hard copy files are stored in file cabinets in staff offices and in a central location in OPIC's Investment Development Department. Individual staff members have authentication passwords to access the computer network drive for their respective department and to access OPIC's Intranet; staff are electronically restricted from accessing the files of another department unless otherwise authorized. OPIC's web server is protected by standard firewall and Internet security measures.

RETENTION AND DISPOSAL:

Records are updated as needed and retained as long as the individual is employed by the Corporation. Hard copy biographies are disposed of by shredding, and electronic copies are disposed of by deleting files.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Administration, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained, staff of the hiring department based on interviews with the subject employees, or information contained in the official personnel folder.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–7

SYSTEM NAME:

Employee Relations Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Corporation (excluding personal services contractors) who: (a) Are the subject of a disciplinary or adverse action or a within-grade increase denial or reconsideration; or (b) initiate a grievance, internal agency appeal, or administrative appeal.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to formal and informal actions based on conduct or performance; grievances filed under the negotiated or administrative grievance procedures; position classification appeals; and miscellaneous related inquires and complaints. The records may include information such as case number; employment history; copies of notices of proposed actions and decisions; materials relied on by the Corporation to support the proposed action; statements of witnesses; employee responses or appeals; transcripts; and third-party agency decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 33, 71, 73, 75, and 77; 5 CFR 315, 531, 532, 715, 731, 735, 752, and 771.

PURPOSE(S):

These records are used to document management actions and decisions concerning adverse personnel actions and employee grievances, appeals and complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to provide information to officials of labor organizations recognized under 5 U.S.C. 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; (ii) where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, to refer records to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation or order; (iii) to provide information to those sources from which additional information is requested in order to process personnel actions, to the extent necessary to identify the individual, inform the source or the purpose(s) of the request, and to identify the type of information requested; (iv) to provide information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, or the conducting of a security or suitability investigation of an individual, to the extent that the information is relevant and necessary to the requesting agency's decision on the hiring or retention of an employee, or the issuance of a security clearance; (v) to provide information to an administrative body or court in any administrative or legal proceeding to which the Corporation is a party; (vi) to provide information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205, or as may be authorized by law; (vii) to provide information to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with applicable laws and regulations, or other functions vested in the Commission by applicable law; (viii) to provide information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel; and (ix) to provide information to other Federal agencies needed for the performance of their official duties related to reconciling or reconstructing data files, in relating to personnel actions. In each of these cases, OPIC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy in file folders.

RETRIEVABILITY:

Records are indexed chronologically with the surname indicated on the file tab.

SAFEGUARDS:

Hard copy files are stored in a locked office, access to which is restricted to Human Resources Management staff.

RETENTION AND DISPOSAL:

Records created in conjunction with an adverse or disciplinary action are retained for four years after the case is closed. Labor management issues such as labor arbitration or negotiated grievances are retained for five years after the case is closed. Other records are retained for one to three years based on Federal records disposition schedules. Hard copy records are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Subject employee, supervisors, Human Resources Management staff, EEO Director, Union Officials, EEO Contract Investigators, Merit Systems Protection Board, Equal Employment Opportunity Commission, and the Federal Labor Relations Authority.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–9

SYSTEM NAME:

Employee Health Insurance—Temporary Continuation of Coverage.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recently separated employees and current/former employees' former spouses and/or eligible children (excluding personal services contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include (i) copies of correspondence notifying applicants of their eligibility for temporary continuation of coverage; (ii) copies of election forms for temporary continuation of coverage; and (iii) tracking sheets containing applicant's name, date of separation, eligibility status, dependents' status, dates of correspondence, and dates forwarded to providers for processing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

These records are used to record and track eligibility of temporary continuation of coverage and possible subsequent enrollment in government-wide or OPIC health insurance plans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to inform former employees and current/former employees' former spouses and/or eligible children of temporary continuation of health insurance coverage; and (ii) to provide proof that these individuals received notification of temporary continuation of coverage opportunities.

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DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders in file cabinets.

RETRIEVABILITY:

Filed by category of insurance with information indexed therein alphabetically by surname.

SAFEGUARDS:

Files are stored in a locked metal file cabinet. The doors to OPIC's office in which these cabinets are located are locked outside of business hours or anytime the office is not staffed.

RETENTION AND DISPOSAL:

The records are retained for three years following the employee's separation or date of enrollment. They are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Applicants for temporary continuation of health insurance coverage and OPIC Human Resources Management staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–12

SYSTEM NAME:

Photographs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains (i) portrait shots (head and shoulders) and (ii) candid shots of individuals taken while performing official functions or while involved in OPIC-sponsored activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

Photographs are used as internal and external communication devices to publicize the Corporation's mission and activities and to recognize the individuals who carry out those activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Portrait shots are used (i) in releases to local, national and international communications media (a) upon the individual's appointment to the Corporation, and (b) when the individual makes an official appearance; (ii) as communication material at OPIC-hosted and external conferences and speaking engagements where employees participate as representatives of the Corporation; (iii) as a data source for introducing new employees to the Corporation via the Corporate Intranet; and (iv) to provide biographies of executives to the public via the Corporation's Internet web site at www.opic.gov. The photograph may be combined with or used as a supplement to biographies (see OPIC–5). Candid shots are used in (i) releases to the above-mentioned media in connection with publicizing the Corporation's mission and activities; and (ii) in the Corporation's publications.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Photographs are imaged electronically and stored on the Corporation's computer network and/or Inter/Intranet web server, and stored in hard copy files in each OPIC department.

RETRIEVABILITY:

Electronic images are retrievable by file name, which includes employee name or initials, through electronic word searches, or by cross-indexing in a database by surname. Hard copy files are indexed alphabetically by surname. Records are accessible by current OPIC personnel only.

SAFEGUARDS:

Hard copy files are stored in file cabinets in staff offices which are locked during non-business hours. Individual staff members have authentication passwords to access the computer network drive for their respective department and to access OPIC's Intranet; staff are electronically restricted from accessing the files of another department. OPIC's web server is protected by standard firewall and Internet security measures. Only employees authorized to update the Inter/Intranet server have the electronic access to make changes.

RETENTION AND DISPOSAL:

Records are updated as needed and retained as long as the individual is employed by the Corporation. Hard copy photographs are disposed of by shredding, or by returning to the individual. Electronic copies are disposed of by deleting files from the OPIC network.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Administration, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Photographs are taken by employees or agents of the Corporation. Except for photographs of executive staff, the decision concerning inclusion of photographs into the Corporation's

system of records is voluntary and at the discretion of the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–14

SYSTEM NAME:

Retirement.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have retired from the Corporation (excluding personal services contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of SF–2809, SF–2817, retirement application package, retirement estimates, election forms to carry OPIC benefits into retirement, and copies of correspondence from U.S. Office of Personnel Management (OPM) or carriers for OPIC health or life insurance or benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8301 *et seq.*, Retirement; 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101, Records Management by Agency Heads; and 5 CFR Part 831, Retirement.

PURPOSE(S):

These records are used in the general administration of the Corporation's insurance programs upon election by a retiring OPIC employee, and to facilitate retirement processing by OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to forward copies of records to the retiree, beneficiaries, OPM, and the life insurance company for those retirees who carry OPIC's term life insurance into retirement; and (ii) to forward copies to the OPIC health insurance provider for those retirees who carry OPIC's health insurance policy into retirement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Retirement records are stored in file folders in file cabinets.

RETRIEVABILITY:

Files are indexed alphabetically by surname.

SAFEGUARDS:

Files are stored in a locked metal file cabinet. The doors to OPIC's office in which these cabinets are located are locked outside of business hours or anytime the office is not staffed.

RETENTION AND DISPOSAL:

Records are retained indefinitely or for one year following the death of a retiree or claim made by beneficiaries. Records are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Retirees on whom the records are maintained, OPIC, OPM, or carriers of OPIC insurance benefits.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–15

SYSTEM NAME:

Personnel Security Investigations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Corporation, including personnel services contractors and other contractors, who are being or have been investigated and cleared for access to data classified for national security reasons, for access to automated information systems, and/or for access to OPIC premises outside of business hours.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains an index which is an automated system for identifying the individuals above listing the status and types of investigations, the dates of clearance and level of clearances, and contacts related to the request for the investigations, results of the investigation, and clearance approvals for access to classified national security information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, Examination, Selection and Placement; 5 CFR Part 732; and E.O. 10450, Clearance for Federal Employment, as amended.

PURPOSE(S):

These records are used to determine the suitability, eligibility and/or qualifications of employees for initial and/or continued employment in the Corporation, and for employment in sensitive positions involving access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) by OPIC human resource and security managers to check the status of security clearances, dates of completion of security background investigations, and as a record of clearance levels received; and (ii) by other Federal agencies who have a job offer pending for individuals covered by the system or who may need to clear an OPIC employee for access to classified information controlled by that agency.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated data is stored on the Corporation's computer network.

RETRIEVABILITY:

All data is retrieved only by authorized OPIC staff by searching under the employee's name.

SAFEGUARDS:

Information contained in the system is safeguarded and protected through assignment to authorized users of passwords to access the automated data.

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RETENTION AND DISPOSAL:

Files are retained for one year following clearance, and are deleted electronically after that time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained and Federal agencies conducting background investigations under agreements with OPIC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–16

SYSTEM NAME:

Security Violations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Corporation who have been investigated for alleged security violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters of notice of alleged security violations containing the facts and circumstances surrounding the alleged violations, listing the personnel involved, and describing the findings and recommendations for or against remedial, administrative or disciplinary actions. Documents reflecting results of investigations involving sensitive or classified information that allegedly has been compromised through loss, unauthorized disclosure, improper handling or transmission, or failure to safeguard. Information developed by the security officer investigating the alleged violation may include interviews with the individual(s) involved in the alleged violation; witnesses to or having knowledge of the alleged violation; co-workers and supervisor; sworn statements; depositions; photographs or sketches of the area or equipment involved in the alleged violation; and office security procedures or instructions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

These records are used to ensure proper handling of national security information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) by OPIC management as information to track security violations, and (ii) as documentation for agency administrative, disciplinary, criminal, or other actions against employees.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders in a file cabinet.

RETRIEVABILITY:

Files are indexed alphabetically by surname.

SAFEGUARDS:

Files are stored in a file cabinet in a locked office. Only OPIC security staff have access to the office.

RETENTION AND DISPOSAL:

Records are retained for one year and disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Contract and Administrative Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

OPIC security staff and individuals interviewed by OPIC security staff, including the individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–17

SYSTEM NAME:

Travel Documents.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Corporation, Board members, and certain invitees to OPIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel records pertaining to reimbursements or payments, consisting of: Copies of travel orders; travel vouchers; receipts; transportation requests; hotel reservations/statements and all supporting papers relating to official travel of OPIC employees or others authorized to travel by law; and statements from travel carriers or providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 *et seq.*, Travel, Transportation and Subsistence; 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101, Records Management by Agency Heads; The Budget and Accounting Act of 1921; The Accounting and Auditing Act of 1950; and Federal Travel Regulations, 41 CFR part 301–304.

PURPOSE(S):

These records are used for internal management and control, and also to authorize travel and reimbursement of expenses incurred. Used to maintain a record of official agency travel and associated expenses, and for payment purposes to vendors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) by OPIC personnel to monitor progress, verify order, assure delivery and travel reimbursement payments to employees; and (ii) by outside auditors to audit overseas travel vouchers.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy in file folders.

RETRIEVABILITY:

Files are indexed alphabetically by surname.

SAFEGUARDS:

Files are stored in file cabinets in OPIC's accounting office. This office is accessible to authorized personnel only.

RETENTION AND DISPOSAL:

Records are retained for six years and three months after the close of the fiscal year to which they pertain. Disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained and staff members who assist in preparation of official travel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–18

SYSTEM NAME:

Directors (Current and Former).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private and public sector members of OPIC's Board of Directors, both current and former. Categories of records in the system: Contains (i) biographies of Board members; (ii) photographs of Board members; (iii) notices of commission dates or other types of appointment notices; (iv) copies of **Federal Register** notices relating to members; and (v) resignation notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

These records are used to track appointments to the Corporation's Board of Directors, and to maintain biographical information on Board Members to share among the groups identified under routine uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used to distribute to the general public, communications media, the Board of Directors, and employees of the Corporation general biographical information on Board Members.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders. Biographies of Board Members may be kept on the Corporation's Internet web server and made available to the public at www.opic.gov.

RETRIEVABILITY:

Hard copy files are indexed alphabetically by surname. Electronic files are maintained on the Corporations computer network.

SAFEGUARDS:

Access to records is limited to OPIC employees who have an official need for the records. Internal procedures governing the use, transfer, and photocopying of the records have been established. Records in the system are maintained in a file cabinet located in the Corporate Secretary's Office. The office is locked each evening. Electronic records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Corporate Secretary, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–19

SYSTEM NAME:

Employees' Payroll Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

a. Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW Washington, DC 20527; b. U.S. Bureau of Reclamation Administration Service Center Payroll Operations Division, Mail Stop D–2600 7301 West Mansfield Avenue Lakewood, CO 80235–2230; and c. For Retired Personnel Files: National Archives and Records Administration, National Personnel Records Center (Civilian Personnel Records Center), 111 Winnebago Street, St. Louis, MO 63118.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Corporation's system consists of four files. Official personnel files held by the Corporation are governed by the U.S. Office of Personnel Management (OPM) regulations found in parts 293 and 297 of Title 5 of the Code of Federal Regulations (CFR) and are covered by OPM's government-wide system of records, OPM/GOVT–1. The four categories of Corporation files are described below: a. Official personnel file—This file consists of the employees' Standard Form 50's and copies of benefits election forms. This is a hard copy file. b. Service history file—These records contain name, Social Security number, birth date, effective date, nature of action, pay plan, grade and salary related to personnel actions for OPIC service prior to July 7, 1996. These are electronic records. c. Payroll file—This system consists of documents related to employees' pay and related payroll deductions that are not properly filed in the official personnel file. These files may contain copies of income tax forms, savings bond elections, net deposits and allotments, union dues elections, Corporation benefits elections, danger pay requests, and legal process related to garnishments. This is a hard copy file. d. Time and attendance reports—This system consists of credit hour records, biweekly summaries of hours worked and leave taken, flextime records, leave applications, authorized premium pay, corrections of the foregoing, and annual audit summaries of leave usage. This information is maintained in an automated system, in supporting paper documentation, and on microfiche.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12107, Civil Service Commission and Labor-Management Relations in the Federal Service; 5 CFR 293, Personnel Records; and 5 CFR part 297, Privacy Procedures for Personnel Records.

PURPOSE(S):

These records are used to establish and maintain employee qualifications, benefits and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used (i) to document proper payment and benefits related to employment; and (ii) to transmit information directly to the Denver Administrative Services Center, U.S. Bureau of Reclamation, U.S. Department of Interior, which in turn transmits them to the following: (a) To the Treasury Department for payroll purposes; (b) to the Treasury Department for issuance of savings bonds; (c) to the U.S. Office of Personnel Management for retirement, health and life insurance purposes, and to carry out the Corporation's government-wide personnel management functions; (d) to the National Finance Center, U.S. Department of Agriculture for the Thrift Savings Plan and Temporary Continuation of Coverage; (e) to the Social Security Administration for compliance with the Federal Insurance Compensation Act; (f) to the Internal Revenue Service for taxable earnings and withholding purposes; (g) to the Combined Federal Campaign for charitable contribution purposes; (h) to the American Federal of Government Employees for union dues; (i) to state and local government tax entities for income tax purposes; (j) to the Attorney General of the United States or an authorized representative in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice, or carried out as a legal representative of the Executive Branch agencies; (k) to the Internal Revenue Service for audit and inspection and investigation purposes; (l) for employment verifications as authorized in writing by current or former employees; (m) to judgment holders for the purposes of garnishment; (n) to arbitrators pursuant to a negotiated labor agreement or to Equal Employment Opportunity investigators authorized to hear or investigate employee grievances or complaints of discrimination; and (o) to Congressional offices in response to inquiries from Congressional offices made at the request of individuals to whom the record pertains. These records may also be provided to an administrative body or court in any administrative or legal proceeding to which the Corporation is a party.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

No disclosure to consumer reporting agencies is made from these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Official personnel files, payroll files, and time and attendance reports are kept in file folders. Service history files prior to July 7, 1996, are maintained in an automated system.

RETRIEVABILITY:

Official personnel files and payroll files are filed alphabetically by surname. Time and attendance reports are filed by date, type of report, and then by surname. Service history files are retrieved from the automated system by surname or Social Security number.

SAFEGUARDS:

All manual records are stored in a key-locked metal file cabinet. The doors to OPIC's offices in which these cabinets are located are locked outside of business hours or anytime the office is not staffed. Access to the service history files requires a user identification number and password.

RETENTION AND DISPOSAL:

(i) The official personnel file is retained until the end of the first thirty days following the date of the individual's separation from the Corporation if the individual is not thereafter employed by a Federal agency, or temporarily retained with authorization by the Office of Personnel Management in the event of a claim or administrative action. After the thirty days, records are sent to the National Archives and Records Administration, National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri. However, if following the separation from the Corporation, the individual is employed by a Federal agency, records are maintained until that Federal agency requests said records from the Corporation; (ii) Service history records are kept for three years following an employee's separation; (iii) Payroll records of the Corporation are maintained for four calendar years following the year in which the employee separates; and (iv) Time and attendance reports are maintained for six years after the year of the employee's separation. System manager(s) and address: Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Ave., NW., Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained and OPIC employees acting in their official capacities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–20

SYSTEM NAME:

Employee Biography, Skills and Interest Inventory.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may contain information about the individual's name, current position, primary duties, previous positions, post-secondary education, professional certification, specialized training, country and regional knowledge, industry knowledge, computer skills, special skills (e.g., CPR, financial modeling), interest in other departments, job functional interests, foreign language proficiency, and other similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

These records are used to identify employees' skills and interest related to agency activities and special projects, and to establish biographies that reflect employees' relevant experience and training, to encourage awareness throughout OPIC of employees' skills and interests and thereby increase opportunities for broader assignments and support career development.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to provide background information about OPIC staff to other OPIC staff members; (ii) to identify staff members with desired skills or expertise (e.g., language proficiency); (iii) to determine individual staff member's interest in the programs and activities of other OPIC departments; and (iv) to determine the feasibility of special temporary assignments.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Information is input electronically by each OPIC staff member onto an electronic form. Information is stored in an electronic database and biographies and skill set information can be accessed by OPIC staff members by searching available form fields (e.g., name, industry knowledge, computer skills) through OPIC's Intranet. Staff interest information and individual profiles are accessed by Human Resources Management staff who may, in turn, share this information with OPIC managers for work-related needs. Information is retained on-line throughout a staff member's tenure at OPIC. Information will be deleted from the OPIC network when a staff member departs the Corporation.

STORAGE:

Records are stored on OPIC's network in an electronic database. Data forms from which the data is collected are maintained by OPIC's IRM department. No hard copies of completed forms will be maintained except by individual OPIC staff, at each staff member's discretion.

RETRIEVABILITY:

Access to records stored in the database is limited to current OPIC staff as described above.

SAFEGUARDS:

Access to record files is limited as described above. Access is further limited by OPIC's network security precautions, e.g., log-on passwords. The information submitted is volunteered with the understanding that it will be potentially accessible by all OPIC staff.

RETENTION AND DISPOSAL:

When an individual leaves OPIC employment, his or her record will be deleted from the OPIC network.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Information is volunteered by staff on a form entitled, "Employee Biography, Skills and Interest Profile."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

III. New Systems of Records

Based on a review of OPIC's Privacy Act Systems of records, OPIC is establishing nine new systems of records. OPIC's systems of records have been re-numbered, as outlined in the summary statement above.

OPIC–1

SYSTEM NAME:

Leave Sharing Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees who have volunteered to participate in the Corporation's leave sharing program as either a donor or recipient of annual leave.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave sharing records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, brief description of the medical emergency which qualifies the individual for inclusion in the leave transfer program, the status of the hardship, and a statement that selected data elements may be used in soliciting donations. The file may also contain medical or physician certifications and OPIC approvals or denials. Donor records include the individual's name, organization, office, telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours being transferred (or donated leave), and, in the case of the transfer program, the designated leave recipient.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101, Records Management by Agency Heads; 5 U.S.C. 6331 *et seq.*, Voluntary Transfers of Leave; and 5 CFR part 630, Absence and Leave.

PURPOSE(S):

These records are used in managing the Corporation's Voluntary Leave Sharing Program. The recipient's name, and a brief description of the hardship, if authorized by the recipient, are published internally for solicitation purposes. Used to ensure the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used (i) by other Federal agencies where the leave donor or leave recipient is employed by a different Federal agency; (ii) by the personnel and finance offices of another Federal agency involved to effectuate the leave transfer; and (iii) by OPIC timekeepers in order to debit and credit the leave accounts of donors and recipients.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders in locked file cabinets.

RETRIEVABILITY:

Files are indexed alphabetically by surname.

SAFEGUARDS:

Files are stored in a locked file cabinet. Only OPIC HRM staff have access to the office.

RETENTION AND DISPOSAL:

Records are retained for one year after the close of the leave sharing emergency and close of the case. Disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–2

SYSTEM NAME:

Permanent Duty Relocation Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to official relocation travel authorizations and reimbursements or payments, consisting of: Government bills of lading, records of invoice or payments, employee service agreements, insurance election forms, and correspondence related to relocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 57, Travel, Transportation, and Subsistence.

PURPOSE(S):

These records are used to provide supporting documentation related to the authorization of government payment or reimbursement related to official relocation travel, and to document service agreements and employee and PSC insurance elections.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) as supporting documents for authorization for payment; (ii) as a record of invoice and payment; (iii) as a record of service agreement; and (iv) as a record of any employee elections (insurance).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored in file folders in file cabinets.

RETRIEVABILITY:

Files are indexed alphabetically by surname.

SAFEGUARDS:

Files are stored in a locked metal file cabinet. The doors to OPIC's office in which these cabinets are located are locked outside of business hours or anytime the office is not staffed.

RETENTION AND DISPOSAL:

Records are retained for the period of the service agreement (generally 12 months) but not to exceed three years. Records are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained and OPIC staff who manage the relocation process.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–3

SYSTEM NAME:

Employee Security Badges.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Corporation and contractors whose official duties require frequent and continuing access to the Corporation's offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Badges contain a photograph of the individual with his or her surname, first name and middle initial, and a badge number. They also contain: Date of birth, color of hair, weight, date issued, height, and color of eyes. The badge is signed on the reverse side by the individual and countersigned by a representative of the Corporation. Duplicate photographs are retained and are used for renewal of badges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, Security Requirements for Government Employment, as amended; E.O. 10865, as amended, Safeguarding Classified Information Within Industry; and E.O. 12829, National Industrial Security Program.

PURPOSE(S):

These records are used to issue identification badges to employees of the Corporation to maintain proper building access and security controls.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used by (i) OPIC management to allow access to Corporation premises; and (ii) by other agencies of the U.S. government to allow access to their premises.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Box containing duplicate photograph is filed in a locked office. Employees maintain possession of badges during their tenure with the Corporation.

RETRIEVABILITY:

Photograph is retrieved by likeness of individual.

SAFEGUARDS:

Records are maintained in an area which is accessible only to authorized security personnel.

RETENTION AND DISPOSAL:

Badges and duplicate photographs are destroyed upon termination of the individual's employment with or need for access to the Corporation's headquarters.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Contract and Administrative Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

OPIC–4

SYSTEM NAME:

Employee Exit Forms.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former employees of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms containing name, signature and date of signature of employees departing OPIC stating that they have been debriefed on the Corporation's records, policies and procedures, have been advised of and fully understand provisions on post employment conflicts of interest, and certifying that all required clearances for release of the employee's final pay check have been obtained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

These records are used to maintain a record of all debriefings and completed exit procedures for former employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to verify that all departing employees have completed the checkout process; (ii) to ensure the security of OPIC-related information; (iii) to ensure that employees are briefed concerning post-employment restrictions; and (iv) if necessary, to disclose records to the Department of Justice for compliance or enforcement purposes.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy in file folders in a secure file room in a secure office suite accessible only by Central Files staff.

RETRIEVABILITY:

Records are indexed alphabetically by surname.

SAFEGUARDS:

Only authorized Central Files staff have access to the file room containing the records.

RETENTION AND DISPOSAL:

Records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Administration, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for

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review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–6

SYSTEM NAME:

Controlled Correspondence.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the general public, members of Congress, and others who correspond on a variety of official business matters with the Corporation, the President or the Executive Vice President of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification of writer, subject, date and disposition of correspondence, and copy of incoming and outgoing/reply correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

These records are used to track official agency correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used primarily to ascertain the status of correspondence to OPIC's President, Executive Vice President, or other OPIC officials to whom inquiries are directed. Disclosures outside the Corporation may be made: (i) To a Federal agency so that the agency may respond to an inquiry from the named individual; (ii) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body; (iii) to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting a violation, when information indicates a violation or potential violation of a statute, regulation, rule, order or license; and (iv) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in an automated database and in hard copy files.

RETRIEVABILITY:

Indexed by number, name of correspondent, organization/committee, subject(s), date, date received, and disposition.

SAFEGUARDS:

Records are maintained on a secure electronic database with access limited by password. Hard copy files are stored in file cabinets accessible only by authorized OPIC staff.

RETENTION AND DISPOSAL:

Records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant to the Executive Vice President, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–8

SYSTEM NAME:

Telephone Call Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Corporation and individuals assigned an OPIC telephone number or an OPIC calling card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of OPIC telephones to place long-distance calls; records relating to long-distance telephone calls charged to OPIC; and records indicating assignment of telephone numbers and authorized calling card numbers to individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101, Records Management by Agency Heads; and 41 CFR part 101–35, Telecommunications Management Policy.

PURPOSE(S):

These documents are used to support the certification that telephone calls listed on call detail records were required for official business and to verify accuracy of telephone company charges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to cross reference data on charges sent by the telephone company; (ii) to disclose to members of Congress or their staff in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained; (iii) to disclose to a court, a magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored on computer disks.

RETRIEVABILITY:

The records are indexed by employee phone number and/or calling card number assigned to employee, and may be cross-indexed with employee name.

SAFEGUARDS:

The disks are stored in an office that is locked during non-business hours and available only to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained for two years and disposed of by deleting electronic files.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Administration, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Telecommunications staff in charge of assigning phone numbers to employees; employees who create records by placing phone calls; telecommunications companies who forward bills to the Corporation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

OPIC–10

SYSTEM NAME:

Transportation Subsidy Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees applying for transit subsidies for use of public transportation to and from the workplace.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, mode of transportation, commuting costs, and signature of applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905, Programs to Encourage Commuting by Means Other Than Single-Occupancy Motor Vehicles.

PURPOSE(S):

These records are used to maintain a record of active participants in the OPIC transportation subsidy program and to verify pickup of payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to provide a record of participants eligible to receive subsidies under OPIC Directive 94–31; (ii) to provide monthly lists of applicants eligible to receive subsidies and forward the list for disbursement through the Department of Treasury; (iii) to verify employee participation and retrieval of METROchecks; and (iv) to respond to information requests from the General Accounting Office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy records are stored in file folders.

RETRIEVABILITY:

Records are indexed by month and then by individual's surname.

SAFEGUARDS:

Files are stored in a locked metal file cabinet.

RETENTION AND DISPOSAL:

Records are retained for six years and three months and are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

OPIC–11

SYSTEM NAME:

Freedom of Information Act (FOIA) Requests and Appeals.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting information under FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, correspondence, relevant data provided or referenced and responses to FOIA requests and appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Administrative Procedure—Public Information.

PURPOSE(S):

These records are used to respond to FOIA requests and appeals pursuant to 5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to process individuals' FOIA requests; (ii) to provide a record of communications between the requester and the Corporation; (iii) to ensure that all relevant, necessary and accurate data are available to support any process for appeal; and (iv) to prepare annual reports to the Attorney General of the United States as required by FOIA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored in file folders in file cabinets.

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RETRIEVABILITY:

Files are indexed alphabetically by surname.

SAFEGUARDS:

Files are stored in staff offices, access to which is limited to authorized OPIC employees.

RETENTION AND DISPOSAL:

Records are retained: (i) For two years from the date of OPIC's final response in cases where no appeal is filed; (ii) for six years from the date of OPIC's response to an appeal in cases where an appeal is filed; or (iii) for six years from the date of the court's final order in cases involving litigation. Records are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA Director, Department of Legal Affairs, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals requesting information under FOIA and assigned OPIC attorneys generating responses or other pertinent OPIC employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OPIC–13

SYSTEM NAME:

Contractor Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently and formerly contracted by the Corporation to serve as personal services contractors (PSCs) or as consultants to the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained contain a copy of the contract/amendments and the history of the contractual relationship, including, as applicable, time and attendance records, salary calculations or earnings records, invoices/procurement documents, direct deposit forms, and tax forms. Procurement requests and payment information are maintained by the Treasurer. Records maintained by Human Resources Management include, as applicable, security forms and the level of security clearance, public vouchers for health expense reimbursement, emergency numbers, employment offer letters, injury or illness claims, resumes and related application materials, copies of contracts and related modifications and extensions, conditions of services agreed to by PSCs, Declarations for Federal Employment, rate determinations, and training requests and agreements. Each department maintains its own records, including contracts, time and attendance records, and records, as applicable, of the qualifications, performance, and evaluation of the contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2199(d), General Provisions and Powers—Powers of the Corporation.

PURPOSE(S):

These records are used to determine eligibility for contractual employment, to provide background information for the purpose of counseling PSCs regarding their status and contract/employment conditions, to make pay determinations, and to administer or modify contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to provide information to support requests or clearances for pay adjustments; (ii) to document certain aspects of employment conditions; (iii) to initiate and clear recommendations concerning contracts; (iv) to determine and allocate OPIC departmental budgets; (v) to provide information to the Department of Labor, Office of Workers' Compensation to process work-related illness and injury claims; (vi) to report earnings information to the Internal Revenue Service and the Social Security Administration; (vii) to refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto; (viii) to request information from a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary to obtain information relevant to an OPIC decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records; (ix) to provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee or the letting of a contract; (x) to verify name, position title, grade, salary and duty station to prospective employers. These records may also be provided to an administrative body or court in any administrative or legal proceeding to which the Corporation is a party.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy in file folders and electronically on automated data storage devices.

RETRIEVABILITY:

Records are retrievable by contractor name.

SAFEGUARDS:

Hard copy files are stored in OPIC staff offices in locked file cabinets accessible by authorized OPIC staff only. Electronic records are password protected and accessible by authorized OPIC staff only.

RETENTION AND DISPOSAL:

Financial records are retained for six years and three months after the close of the fiscal year to which they pertain. Personnel records are retained for up to twelve months after the resignation of the PSC or the termination of the contract. Records are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Contract and Administrative Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain; educational institutions, former employers, and other reference sources; OPIC supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 30, 1999.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 99–17447 Filed 7–8–99; 8:45 am]

BILLING CODE 3210–01–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–114 (Review)]

Stainless Steel Plate From Sweden

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on stainless steel plate from Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on August 3, 1998 (63 FR 41288) and determined on November 5, 1998 that it would conduct a full review (63 FR 63748, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 24, 1998 (63 FR 71300). The hearing was held in Washington, DC, on May 11, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on July 6, 1999. The views of the Commission are contained in USITC Publication 3204 (July 1999), entitled Stainless Steel Plate from Sweden: Investigation No. AA1921–114 (Review).

By order of the Commission.

Issued: July 6, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17478 Filed 7–8–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Bragg dissenting.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Sunshine Meeting Notice

AGENCY: United States International Trade Commission.

ACTION: Notice.

TIME AND DATE: July 13, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None
2. Minutes
3. Ratification List
4. Inv. No. AA1921–129 (Review) (Polychloroprene Rubber from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 26, 1999.)
5. Inv. No. 731–TA–5396A (Final) (Uranium from Kazakhstan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 23, 1999.)
6. Outstanding action jackets:
   (1) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).
   (2) Document NO. GC–99–057: Regarding Inv. No. 337–TA–412 (Certain Video Graphics Display Controllers and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 6, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–17599 Filed 7–7–99; 1:03 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for voluntary departure under the family unity program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 19, 1999 at 64 FR 8404, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 9, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and effected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

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for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Application for Voluntary Departure Under the Family Unity Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–817. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Family Unity Program provides for the voluntary departure of the spouse and unmarried children who are not eligible for the same status as the legalized alien they are related to.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 23,944 responses at 2 hours and 35 minutes (2.583) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 61,847 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 525 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 2, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–17415 Filed 7–8–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Correction to Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces a correction to the notice of a solicitation for a cooperative agreement in Fiscal Year 1999 for "Development of a Training Video on Staff Sexual Misconduct" which was printed in the June 25, 1999 edition (Volume 64, Number 122) of the **Federal Register**. On page 34269 in the third column, in paragraph four of the notice, the second sentence should be corrected to read as follows:

A total of $80,000 is reserved for the project which will support one cooperative agreement for an 8 month period.

ADDRESSES AND FURTHER INFORMATION: Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. E-mail *jevens@bop.gov*. All technical and/or programmatic questions concerning this announcement should be directed to Andie Moss at the above address or by calling (800) 995–6423, or (202) 307–3106, extension 140, or by E-mail via *amoss@bop.gov*. Application forms may also be obtained through the NIC website: *http:www.nicic.org*.

NIC Application Number: 99P12. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

The Catalog of Federal Domestic Assistance number is: 16.501.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–17410 Filed 7–8–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 14th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

Appendix

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,365 ..	Ashland Speciality Chem. (Comp) ...	Plaquemine, LA	05/26/1999	Chemicals.
36,366 ..	Southern Lady Sportswear (Wrks) ...	Killen, AL	05/24/1999	T-Shirts.
36,367 ..	Hoov-R-Line (Comp)	Providence, KY	06/01/1999	Plastic Plumbing Components.
36,368 ..	General Cigar Co. (Comp)	Dothan, AL	05/12/1999	Cigars.
36,369 ..	Wyman Gordon Albany (Wrks)	Albany, OR	05/25/1999	Oil.
36,370 ..	L.V. Myles, Inc (Wrks)	New York, NY	06/01/1999	Headquarters Office—Sleepwear.
36,371 ..	Gesco International (Comp)	San Antonio, TX	05/03/1999	Venous Catheters and Other Medical Devices.
36,372 ..	Shadowline, Inc (Comp)	Mars Hill, NC	05/28/1999	Ladies' Intimate Apparel.
36,373 ..	Morganton Mfg Co (Wrks)	Knoxville, TN	05/26/1999	Military Flight Jackets.
36,374 ..	Rockwell Automation (Wrks)	Shelby, NC	05/21/1999	Electric Motors.
36,375 ..	Allied Signal, Inc. (USWA)	Ironton, OH	04/22/1999	Tar Products.
36,376 ..	Trim Master, Inc. (Comp)	R. Cucamongo, CA	05/28/1999	Automotive Wood Trim.
36,377 ..	Modern Machine Works, Inc (PACE)	Cudahy, WI	05/24/1999	Connecting Rods.
36,378 ..	Eckel Manufacturing, Inc (Wrks)	Odessa, TX	05/14/1999	Oilfield Power Tong.
36,379 ..	Ayers Manufacturing Co. (Comp)	Coward, SC	05/25/1999	Knit Shirts.
36,380 ..	Smurfit Stone (PACE)	LaPorte, IN	05/18/1999	Corrugated Sheets and Containers.
36,381 ..	Technaflow (IASMW)	Vancouver, WA	05/27/1999	Valve and Controls.
36,382 ..	Philips Components (Comp)	Saugerties, NY	05/19/1999	Yoke Rings.
36,383 ..	N.G.K. Locke Insulators (UE)	Baltimore, MD	05/14/1999	Gas Bushing Insulators.
36,384 ..	John Hester Textiles (Wrks)	Orwigsburg, PA	05/24/1999	Cotton Fleece Sweatshirts.
36,385 ..	Chicago Miniture Lamps (Wrks)	Wynnewood, OK	05/25/1999	Light Bulbs.
36,386 ..	A.A. Fogley Co., Inc (Wrks)	Paris, AR	05/22/1999	Men's Dress and Casual Slacks.
36,387 ..	Sylvia Hat, Inc. (UNITE)	St. Louis, MO	05/27/1999	Ladies' Hats.
36,388 ..	Heel Rite (UNITE)	Wright City, MO	05/27/1999	Shoe Heels and Soles.
36,389 ..	Safecar, Inc. (Wrks)	San Angelo, TX	05/0-7/1999	Armored Vehicles.
36,390 ..	Motorola (Comp)	Phoenix, AZ	05/31/1999	Semiconductors.
36,391 ..	D.Q.C. (Wrks)	Tucson, AZ	06/02/1999	Cultured Marble.
36,392 ..	Devro-Teepak, Inc. (Wrks)	Danville, IL	05/19/1999	Casings for Meat.
36,393 ..	Fruit of The Loom (Wrks)	Campbellsville, KY	06/03/1999	Underwear and Fleecewear Distribution.
36,394 ..	Lambda Electronics, Inc. (Comp)	McAllen, TX	06/04/1999	Power Supplies and Metal Stampings,.
36,395 ..	Circle DE Lumber (Wrks)	Klamath Falls, OR	06/01/1999	Wood Chips, Wood Poles and Posts.
36,396 ..	Horn Textile, Inc. (Comp)	Titusville, PA	06/02/1999	Woven Narrow Fabrics.
36,397 ..	Techneglas, Inc. (GMP)	Pittston, PA	05/18/1999	Glass for TV Screens.
36,398 ..	Majestic Lace Corp. (UNITE)	Union City, NJ	05/27/1999	Bridal Dresses.
36,399 ..	Anderson Brothers (Wrks)	Wausau, WI	05/21/1999	Rough Blocks, Slabs and Finished Granite.
36,400 ..	Elementis Pitments, Inc. (Wrks)	East St. Louis, IL	05/21/1999	Synthetic Iron Oxide Pigments.
36,401 ..	Coeur Rochester, Inc. (Comp)	Lovelock, NV	06/02/1999	Mine Gold.
36,402 ..	BWD Automotive, Alabama (Comp)	Selma, AL	05/07/1999	Automobile Locking Devices.
36,403 ..	Evans Machine Works, Inc. (Wrks)	Hobbs, NM	06/01/1999	Repair Oilfield Equipment.
36,404 ..	CXY Energy, Inc. (Wrks)	Dallas, TX	06/01/1999	Oil and Gas.
36,405 ..	First Reserve Oil and Gas (Comp) ..	Houston, TX	06/03/1999	Oil and Gas.
36,406 ..	Baker Hughes Centrilift (Comp)	Claremore, OK	05/21/1999	Submersible Pumps.
36,408 ..	Geo-Log, Inc (Comp)	Granbury, TX	05/18/1999	Oilfield Measuring Equipment.
36,409 ..	Barrett Resources Corp. (Wrks)	Tulsa, OK	05/25/1999	Oil and Gas.
36,410 ..	Grey Wolf, Inc. (Wrks)	Houston, TX	05/22/1999	Oil and Gas Drilling.
36,411 ..	Apache Corp (Wrks)	Houston, TX	05/17/1999	Drilling and Prod. of Oil and Gas.

[FR Doc. 99–17438 Filed 7–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,938 and TA–W–35,938A]

Day-Timers, Inc., East Texas, PA and Abe Facility, Allentown, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (18 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 28, 1999, applicable to all workers of Day-Timers, Inc., located in East Texas, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separation occurred at the ABE facility, Allentown, Pennsylvania location of Day-Timers, Inc. The workers are engaged in the production of paper-based business planners and calendars as well as provide administrative, sales and support function services.

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The intent of the Department's certification is to include all workers of Day-Timers, Inc., who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Day-Timers, Inc., ABE facility, Allentown, Pennsylvania.

The amended notice applicable to TA–W–35,938 is hereby issued as follows:

All workers of Day-Timers, Inc., East Texas, Pennsylvania (TA–W–35,938). and the ABE facility, Allentown, Pennsylvania (TA–W–35,938A) who became totally or partially separated from employment on or after March 17, 1998 through May 28, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17434 Filed 7–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,067]

Original Bradford Soap Works Incorporated, West Warwick, Rhode Island; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 19, 1999, in response to a worker petition filed on behalf of workers at Original Bradford Soap Works, Incorporated, West Warwick, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17436 Filed 7–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,752]

Rhodia Rare Earths, Inc., Freeport, TX: Including Leased Workers of Kelly Services, Lake Jackson, TX, Gulf States, Freeport, TX, CDI Engineering, Freeport, TX; Amended Certification of Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 30, 1999, applicable to all workers of Rhodia Rare Earths, Inc. located in Freeport, Texas. The notice was published in the **Federal Register** on May 21, 1999 (64 FR 27812).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that workers of Rhodia Rare Earths, Inc. were leased from Kelly Services, Lake Jackson, Texas, Gulf States and CDI Engineering, Freeport, Texas to produce rare earth chemical compounds (cerium carbonate, cerium oxide, cerium hydroxide and neodymium) at the Freeport, Texas facility. Worker separations occurred that these companies as a result of worker separations at Rhodia Rare Earths, Inc., Freeport, Texas.

Based on these findings, the Department is amending the certification to include leased workers from Kelly Services, Lake Jackson, Texas, Gulf States and CDI Engineering, Freeport, Texas.

The intent of the Department's certification is to include all workers of Rhodia Rare Earths, Inc. adversely affected by imports.

The amended notice applicable to TA–W–35,752 is hereby issued as follows:

All workers of Rhodia Rare Earths, Inc. Freeport, Texas and leased workers of Kelly Services, Lake Jackson, Texas, Gulf States and CDI Engineering, Freeport, Texas engaged in employment related to the production of rare earth chemical compounds (cerium carbonate, cerium oxide, cerium hydroxide and neodymium) at Rhodia Rare Earths, Inc., Freeport, Texas who became totally or partially separated from employment on or after February 1, 1998 through April 30, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17433 Filed 7–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,711, et. al.]

Sperry-Sun Drilling Service, Div. of Dresser Industries, Inc., Baroid Drilling Fluids, Headquartered in Houston, Texas

Operating out of other locations in the following states:

TA–W–35–711A	ALASKA
TA–W–35–711B	CALIFORNIA
TA–W–35–711C	LOUISIANA
TA–W–35–711D	MICHIGAN
TA–W–35–711E	OKLAHOMA
TA–W–35–711F	TEXAS
TA–W–35–711G	WYOMING

[TA–W–35,711AA]

Baroid Drilling Fluids, Div. of Dresser, Industries, Inc., Headquartered, in Houston, Texas

Operating out of other locations in the following states:

TA–W–35–711AB	ALASKA
TA–W–35–711AC	ARKANSAS
TA–W–35–711AD	ARIZONA
TA–W–35–711AE	CALIFORNIA
TA–W–35–711AF	COLORADO
TA–W–35–711AG	GEORGIA
TA–W–35–711AH	IOWA
TA–W–35–711AI	KANSAS
TA–W–35–711AJ	LOUISIANA
TA–W–35–711AK	MISSOURI
TA–W–35–711AL	NEW MEXICO
TA–W–35–711AM	NEVADA
TA–W–35–711AN	OHIO
TA–W–35–711AO	OKLAHOMA
TA–W–35–711AP	PENNSYLVANIA
TA–W–35–711AQ	TEXAS
TA–W–35–711AR	WYOMING
TA–W–35–711AS	MISSISSIPPI
TA–W–35–711AT	ALABAMA

[TA–W–35,711BA]

Security DBS, Div. of Dresser Industries, Inc., Headquarters in Dallas, Texas

Operating out of other locations in the following states:

TA–W–35–711BB	COLORADO
TA–W–35–711BC	LOUISIANA
TA–W–35–711BD	OKLAHOMA

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a

Certification of Eligibility to Apply for Worker Adjustment Assistance on March 22, 1999, applicable to all workers of Baroid Drilling Fluids headquartered in Houston, Texas. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25372)

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in various activities related to the drilling for crude oil and natural gas. Findings show the Department incorrectly set the worker certification impact date at February 17, 1998. The impact date should be February 10, 1998, one year prior to the date of the petition.

Accordingly, the Department is amending the certification to properly reflect this matter.

In accordance with the provisions of the Act, I make the following certification:

All workers of Sperry-Sun Drilling Services, a Div. of Dresser Industries, Inc., Houston, Texas (TA–W–35,711) and operating out of other locations in the following states Alaska (TA–W–35,711A), California (TA–W–35,711B), Louisiana (TA–W–35,711C), Michigan (TA–W–35,711D), Oklahoma (TA–W–35,711E), Texas (TA–W–35,711F) and Wyoming (TA–W–35,711G); Bariod Drilling Fluids, a Div. of Dresser Industries, Inc., Houston, Texas (TA–W–35,711AA) and operating out of other locations in the following states Alaska (TA–W–35,711AB), Arkansas (TA–W–35,711AC), Arizona (TA–W–35,711AD), California (TA–W–35,711AE), Colorado (TA–W–35,711AF), Georgia (TA–W–35,711AG), Iowa (TA–W–35,711AH), Kansas (TA–W–35,711AI), Louisiana (TA–W–35,711AJ), Missouri (TA–W–35,711AK), New Mexico (TA–W–35,711AL), Nevada (TA–W–35,711AM), Ohio (TA–W–35,711AN), Oklahoma (TA–W–35,711AO), Pennsylvania (TA–W–35,711AP), Texas (TA–W–35,711AQ), and Arkansas (TA–W–35,711AR) and Security DBS, a Div. of Dresser Industries, Inc., Dallas, Texas (TA–W–35,711BA) and operating out of other locations in the following states: Colorado (TA–W–35,711BB), Louisiana (TA–W–35,711BC), Oklahoma (TA–W–35,711BD) and Texas (TA–W–35,711BE) who became totally or partially separated from employment on or after February 10, 1998, through March 22, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17435 Filed 7–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03016; NAFTA–03016A]

Day-Times, Inc., East Texas, PA; ABC Facility, Allentown, Pennsylvania; Amended Certification of Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (18 U.S.C. 2273), the Department Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 28, 1999, applicable to all workers of Day-Timers, Inc., located in East Texas, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the ABE facility, Allentown, Pennsylvania location of Day-Timers, Inc. The workers are engaged in the production of paper-based business planners and calendars as well as provide administrative, sales and support function services.

The intent of the Department's certification is to include all workers of Day-Timers, Inc. who were adversely affect by increased imports from Mexico and Canada.

Accordingly, the Department is amending the certification to cover the workers of Day-Timers, Inc., ABE facility, Allentown, Pennsylvania.

The amended notice applicable to NAFTA–03016 is hereby issued as follows:

All workers of Day-Timers, Inc., East Texas, Pennsylvania (NAFTA–03016), and the ABE facility, Allentown, Pennsylvania (NAFTA–03016A) who became totally or partially separated from employment on or after March 17, 1998 through May 28, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–17437 Filed 7–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a smaller character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

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CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encourage to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume II

Virginia
VA990105 (Jul. 09, 1999)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Govenrment Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Act" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ990002 (Mar. 12, 1999)
NJ990003 (Mar. 12, 1999)

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California
CA990029 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 2nd day of July 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–17299 Filed 7–8–99; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Meeting Notice

TIME AND DATE: 9:30 a.m., Tuesday, July 13, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

7177—Railroad Summary Report: Collision of Norfolk Southern Corporation (Norfolk Southern) Train 255L5 with Consolidated Rail Corporation (Conrail) Train TV 220 in Butler, Indiana, on March 25, 1998.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, July 9, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: July 7, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–17598 Filed 7–7–99; 1:06 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Washington Public Power Supply System

[Docket No. 50–397]

Nuclear Project No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–21, issued to the Washington Public Power Supply System (the licensee), for operation of the Washington Nuclear Project No. 2 (WNP–2), located in Benton County, Washington.

Environmental Assessment

Identification of the Proposed Action

The proposed one-time exemption to 10 CFR 55.59(a)(2), would allow the licensee to extend the completion date for the administration of the annual licensed operator examinations for the WNP–2 requalification program from October 23, 1999, to February 12, 2000.

The proposed action is in accordance with the licensee's application for exemption dated May 7, 1999.

The Need for the Proposed Action

The schedular exemption is requested on a one-time only basis due to WNP–2 transitioning from a 12-month to a 24-month fuel cycle. As part of this transition, the Spring 1999 refueling outage has been moved to the Fall 1999 time frame. The current scheduled annual operating test conflicts with the Fall refueling outage. This one-time exemption will allow additional licensed operator support during the current refueling outage, which will provide a safety enhancement during plant shutdown operations, enhance post-maintenance testing and eliminate the need to conduct annual operating tests on overtime which will reduce operator fatigue. The affected licensed operators will continue to demonstrate and possess the required levels of knowledge, skills, and abilities needed to safely operate the plant throughout the extension period via continuation of the current satisfactory licensed operator requalification program. In meeting the requirement for the administration of the annual operating tests as currently scheduled, the refueling outage could be prolonged without a net benefit to safety, and would otherwise have a detrimental effect on the public interest.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes, since the operators will continue to participate in a requalification program, they will maintain their knowledge, skills, and abilities needed to safely operate the plant through the extension period.

The proposed exemption will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

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Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Washington Public Power System Nuclear Project No. 2 dated December 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on June 4, 1999, the staff consulted with the Washington State official, Mr. Crowley of the Department of Health, State of Washington Energy Facility Site Evaluation Council, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 7, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 30th day of June 1999.

For The Nuclear Regulatory Commission.

Jack Cushing,

Project Manager, Section 2, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17430 Filed 7–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Change of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses, Availability of Draft NUREG

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability and request for comments.

SUMMARY: NRC is announcing the availability of and requesting comment on draft NUREG–1556, Volume 15, "Consolidated Guidance about Materials Licenses: Guidance about Change of Control and about Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," dated May 1999.

NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the 15th guidance document developed to support an improved materials licensing process.

This guidance is intended for use by applicants, licensees, and NRC staff, and will also be available to Agreement States. This document combines and updates the guidance found in NRC Information Notice 89–25, Rev. 1: "Unauthorized Transfer of Ownership or Control of Licensed Activities"; NRC Information Notice 97–30: "Control of Licensed Material During Reorganizations, Employee-Management Disagreements, and Financial Crises"; and Policy and Guidance Directive 8–11, "NMSS Procedures for Reviewing Declarations of Bankruptcy." Upon publication in final form, the guidance in this report will supersede Policy and Guidance Directive 8–11. This draft report takes a more risk-informed, performance-based approach to evaluating changes of control or bankruptcy of byproduct, source, and special nuclear material licensees, reducing the information (amount and level of detail) needed to properly inform NRC of a change of control or bankruptcy. Note that this document is strictly for public comment and is not for use in preparing or reviewing notifications of changes of control or bankruptcy until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends October 7, 1999. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 15, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 15, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. 20555–0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this licensing guidance NUREG specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–7874; electronic mail address: *slm2@nrc.gov.*

Electronic Access

Draft NUREG–1556, Vol. 15 is available electronically by visiting NRC's Home Page *(http://www.nrc.gov/nrc/nucmat.html).*

Dated at Rockville, Maryland, this 29th day of June, 1999.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 99–17431 Filed 7–8–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Dallas Gold and Silver Exchange, Inc., Common Stock, $.01 Par Value Per Share) File No. 1–11048

July 2, 1999.

Dallas Gold and Silver Exchange, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the Emerging Company Marketplace of the American Stock Exchange LLC ("Amex" or "Exchange").

The Security has been listed for trading on the Amex and on June 29, 1999, pursuant to a Registration Statement on Form 8–A, became designated for quotation and was admitted into trading on the Nasdaq Small-Cap Market ("Nasdaq").

The Security of the Company was one of the initial securities approved for listing on the Amex's Engineering Company Marketplace approximately six years ago, but is now one of only nine such securities which continue to trade in this marketplace. The Company contends that the reduced stature of the Amex's Emerging Company Marketplace, in conjunction with the special symbol extensions assigned to securities listed thereon, has resulted in both very limited publication in the media of trading information regarding the Security and reduced access to timely trading data from the tape concerning transactions in the Security. Moreover, in seeking quotation of the Security on the Nasdaq, the Company believes that the variety of market makers available on the Nasdaq will provide greater depth, continuity and liquidity for the Company's shareholders.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Board of Directors of the Company authorizing the withdrawal of the Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Amex has informed the Company of its determination not to interpose any objection to the Company's application to withdraw its Security from listing and registration on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security on the Emerging Company Marketplace of the Amex and shall have no effect upon the continued designation of the Security for quotation on the Nasdaq and registration pursuant to section 12(g) of the Act. By reason of section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under section 13 of the Act with the Commission.

Any interested person may, on or before July 23, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–17462 Filed 7–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23889; File No. 812–11662]

The Equitable Life Assurance Society of the United States, et al.

July 2, 1999.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or the "Act") to amend a prior order of the Commission under section 6(c) of the 1940 Act which granted exemptions from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of credits applied to contributions made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the 1940 Act to amend a prior order under section 6(c) of the Act ("Prior Order") that, to the extent necessary, permits, under specified circumstances, the recapture of credits equal to 3% of contributions made under deferred variable annuity contracts and certificates (the "Contracts") that Equitable issues through the Separate Accounts, as well as other contracts that Equitable may issue in the future through Future Accounts that are substantially similar in all material respects to the Contracts (the "Future Contracts"). The Prior Order extends the relief to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Equitable, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through the Separate Accounts or any Future Account ("Equitable Broker-Dealer(s)"). The application seeks to amend the Prior Order to permit the recapture of credits of up to 5% of contributions made under the Contracts or Future Contracts.

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA," and together with SA 45 and SA 49, the "Separate Accounts"), and other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by Equitable ("Future Account"), EQ Financial Consultants, Inc. ("EQFC"), and Equitable Distributors, Inc. ("EDI") (collectively, "Applicants").

FILING DATE: The application was filed on June 15, 1999, and amended on July 2, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 27, 1999, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

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notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW Washington, DC 20549–0609. Applicants, c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Mary Joan Hoene, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Equitable Life is a stock life insurance company organized under the laws of the State of New York. SA 45 and SA 49 were established in August 1994 and June 1996. Equitable Life serves as depositor of SA 45 and SA 49. Equitable Life may in the future establish one or more Future Accounts for which it will serve as depositor.

2. EOC is a stock life insurance company organized under the laws of the State of Colorado. SA VA was established in December 1996, pursuant to authority granted under a resolution of EOC's Board of Directors. EOC serves as depositor of SA VA. EOC may in the future establish one or more Future Accounts for which it will serve as depositor.

3. SA 45 and SA 49 are each a segregated asset account of Equitable Life, and SA VA is a segregated asset account of EOC. Each of the Separate Accounts is registered with the Commission as a unit investment trust series investment company under the Act. SA 45 filed a Form N–8A Notification of Registration under the 1940 Act on September 6, 1994, and SA 49 filed a Form N–8A under the Act on June 7, 1996. SA VA filed a Form N–8A on February 16, 1999. Each of the Separate Accounts will fund the variable benefits available under the Contracts funded through it. Units of interest in the Separate Accounts under the Contracts they fund will be registered under the Securities Act of 1933 (the "1933 Act"). In that regard, SA 45 and SA 49 filed Form N–4 Registration Statements on September 30, 1998, under the 1933 Act relating to the Contracts. SA VA filed a Form N–4 Registration Statement on February 16, 1999, under the 1933 Act relating to the Contracts. Equitable may in the future issue Future Contracts through the Separate Accounts or through Future Accounts. That portion of the respective assets of the Separate Accounts that is equal to the reserves and other Contract liabilities with respect to SA 45, SA 49 or SA VA is not chargeable with liabilities arising out of any other business of Equitable Life or EOC, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts are, in accordance with the respective Separate Accounts' Contracts, credited to or charged against the Separate Accounts, without regard to other income, gains or losses of Equitable Life or EOC, as the case may be.

4. EQFC is an indirect, wholly-owned subsidiary of Equitable Life and will be the principle underwriter of SA 45 and SA VA and distributor of the Contracts funded through SA 45 (the "SA 45 Contracts") and through SA VA (the "SA VA Contracts"). EQFC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The SA 45 Contracts and the SA VA Contracts will be offered through registered representatives of EQFC and its affiliates who are registered broker-dealers under the 1934 Act and NASD members. EQFC, or any successor entity, may act as principal underwriter for any Future Account and distributor for any Future Contracts issued by Equitable in the future. A successor entity also may act as principal underwriter for SA 45 and/or SA VA.

5. EDI is an indirect, wholly-owned subsidiary of Equitable Life and will be the principal underwriter of SA 49 and SA VA and distributor of the Contracts funded through SA 49 (the "SA 49 Contracts") and the SA VA Contracts. EDI is registered with the Commission as a broker-dealer under the 1934 Act and is a member of the NASD. The SA 49 and SA VA Contacts will be offered through registered representatives of EDI and its affiliates, as well as through unaffiliated broker-dealers who have entered into agreements with EDI. All of such affiliates and unaffiliated broker-dealers will be registered broker-dealers under the 1934 Act and NASD members. EDI, or any successor entity, may act as principal underwriter for any Future Account and distributor for any future Contracts issued by Equitable in the future. A successor entity also may act as principal underwriter for SA 49 or SA VA.

6. On May 3, 1999, the Commission issued the Prior Order exempting certain transaction of Applicants from the provisions of Section 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act, and Rule 22c–1 thereunder.[1] The Prior Order permits the recapture, under specified circumstances, of 3% credits applied to contributions made under the Contracts.

7. Equitable now desires the flexibility to increase the amount that it may subsequently recapture to up to 5% of contributions under the Contracts or Future Contracts.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors of the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission amend the Prior Order to permit Applicants to rely on the exemption provided thereby from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, to recapture, under the same circumstances described in the Prior Application, credits to contributions of up to 5% for all Contracts and Future Contracts.

2. Applicants submit that the relief requested hereby is identical to the relief granted in the Prior Order, except that it covers a higher credit.

3. Applicants incorporate by reference the legal analysis set out in the Prior Application.

4. Applicants assert that recapture of credits of up to 5% will not raise concerns under sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder for the same reasons as those given in the Prior Application. Applicants submit that the credits of up to 5% will be recapturable under the same circumstances and on the same basis as the 3% credits described in the Prior Application, the only difference being the higher percentage amount. Accordingly, Applicants believe that the requested relief from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, is consistent with the exemptive relief provided under the Prior Order.

5. In addition, Applicants state that the Commission has previously granted similar exemptive relief to permit the issuance of variable annuity contracts providing for recapturable bonus credits in amounts up to 5%.

[1] *The Equitable Life Assurance Society of the United States, et al.*, Investment Company Act Release No. 23822 (File No. 812–11388). Pursuant to Rule 0–4 under the 1940 Act, Applicants incorporated by reference in the application the statement of facts set out in the amended and restated application ("Prior Application") for the Prior Order, to the extent necessary to support the application.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely that the exemptions requested are necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17460 Filed 7–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27045]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 2, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration (s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 27, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be field with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 27, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8691)

The Southern Company ("Southern"), 270 Peachtree Street, N.W, Atlanta, Georgia 30303, a registered holding company, has filed an amendment to its declaration under sections 6(a), 7, and 12(b) of the Act and rules 45 and 54 under the Act.

On May 23, 1997 (HCAR No. 26720), the Commission issued a notice whereby Southern filed a declaration seeking authority for it to guarantee securities to be issued to third parties by Southern Company Services, Inc. ("Services"), a wholly owned service company subsidiary of Southern.

Southern now proposes, from time to time through June 30, 2004, to guarantee the debt or other obligations of Services up to an aggregate principal amount of $200 million.

Services intends, from time to time through June 30, 2004, to make borrowings from Southern or third parties under rule 52 up to an aggregate principal amount of $200 million. Services proposes to issues notes to Southern as evidence of any borrowings made from Southern. Terms and conditions of any borrowings from Southern to Services will mirror Southern's effective cost of capital.

Services proposes to issue and sell notes ("Notes") to third party lenders with terms of up to 50 years, contain sinking funds and bear interest at a rate not to exceed 3½ percentage points per annum over the rate for U.S. Treasury securities with a corresponding maturity. Services may hire an agent to place the Notes for a commission based upon the principal amount borrowed.

Services may also make borrowings from certain banks under one or more revolving credit commitment agreements. Short-term borrowings would have a maximum maturity of one year, and term loans would have maturities up to ten years. Borrowings would be evidenced by a "grid" promissory note to be dated the date of the initial borrowing and the date of each subsequent borrowing when a "grid" short-term or term-loan note is not outstanding. These borrowings would bear interest at rates to be negotiated with the leader. Services expects to pay fees in connection with the credit arrangements. The interest rates and fees will be negotiated based upon prevailing market conditions.

Services also may make borrowings from other institutions. The institutional borrowings will be evidenced by notes to be dated as of the date of the borrowings and to mature in not more than ten years after the date of borrowing, or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature in not more than ten years after the date of borrowing. Generally, borrowings will be prepayable in whole, or in part, without penalty or premium, and will be at rates to be negotiated with the lending institutions based upon prevailing market conditions. Services also may negotiate separate rates for, or agree not to prepay, particular borrowings if it is considered more favorable.

In the event that Services makes borrowing from Southern, Services proposes to issue notes to Southern as evidence of the indebtedness. Terms and conditions of any borrowings from Southern to Services will mirror Southern's effective cost of capital.

The net proceeds from all borrowings will be used to fund the general requirements of Southern's Services' business, including the possible refunding of outstanding indebtedness. The proceeds will be used in the routine course of business for funding required capital expenditures, including computer equipment, software, office equipment and office facilities, other requirements as approved by the Commission and maintaining an adequate working capital level.

GPU, Inc. (70–7607)

GPU, Inc. ("GPU"), 300 Madison Avenue, Morristown, New Jersey 07962, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 under the Act to a declaration previously filed under the Act.

By order dated March 30, 1989 (HCAR No. 24851) ("Order"), the Commission authorized GPU to issue up to 20,000 shares of GPU common stock through December 31, 1998 ("Authorization Period") under a restricted stock plan for outside directors ("Plan").[1] GPU now requests that the Commission extend the Authorization Period through December 31, 2008. In all other respects, the terms and conditions of the Plan would remain unchanged.

[1] The number of shares authorized under the Plan later rose to 40,000 due to a two-for-one stock split.

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Under the Plan, all members of GPU's board of directors ("Board") who are outside directors ("Outside Directors") are eligible to receive—in addition to their annual retainer, committee fees, and benefits under any other applicable benefits plan—shares of GPU common stock as compensation for their services as Board members. Until termination of service, an Outside Director generally may not dispose of any shares of GPU common stock awarded under the Plan, but has all other rights of a shareholder with respect to such shares, including voting rights and the right to receive all cash dividends paid with respect to awarded shares. A committee administers the Plan and determines any award under the plan.

The Plan states that its purpose is to enable GPU to attract and retain persons of outstanding competence to serve on its Board by paying them a portion of their compensation in GPU common stock.

Southern Ohio Coal Company, et al. (70–9515)

Southern Ohio Coal Company ("SOCCo"), a West Virginia corporation and a wholly owned nonutility subsidiary of Ohio Power Company ("Ohio Power"), and electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, each located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a declaration under section 12(c) of the Act and rules 46 and 54 under the Act.

By Commission order dated September 13, 1996 (HCAR No. 26573), SOCCo was authorized to pay up to $68 million out of capital surplus to Ohio Power through December 31, 1998, as one or more dividends on its common stock. Dividends in that amount have been paid to Ohio Power, according to SOCCo, and the authority under that order has expired. In June of 1997, SOCCo received approximately $50 million from an institutional investor from the sale-leaseback of its Meigs Division coal preparation plant, intermine coal conveyor and overland coal conveyor. The remaining sale-leaseback proceeds and the cash generated from SOCCo's Meigs Division are in excess of $15.8 million and exceed the amount of its working capital requirements, which are estimated by SOCCo to be $9,928,000.

SOCCo now requests authorization to pay Ohio Power one or more dividends on its common stock, out of capital surplus, totalling up to $15.807 million. SOCCo proposes that its Board of Directors declare dividends periodically when the cash is available, but in no event later than December 31, 2001.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17461 Filed 7–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41593; File No. SR–AMEX–99–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Trust Issued Receipts

July 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rules 1200, 1201 and 1202 relating to the listing and trading of Trust Issued Receipts. The text of the proposed rule change follows. [Bracketing] indicates text to be deleted and *italics* indicate text to be added.

Rules of General Applicability

TRUST ISSUED RECEIPTS

Rule 1200

(a) Applicability. The Rules in this Chapter (Trading of Trust Issued Receipts) are applicable only to Trust Issued Receipts. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

(b) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

Trust Issued Receipts. The term "Trust Issued Receipt" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be canceled by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

Commentary

.01 The Exchange requires that members and member organizations provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts

.02 Transactions in Trust Issued Receipts may be effected until 4:00 pm each business day.

Designation

Rule 1201

The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts, and may be revised from time to time.

Initial and Continued Listing

Rule 1202

Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria .

(a) Initial Listing—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Listing—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; or

(ii) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee—The requirements of paragraph (a) of Section #811 of the Exchange Company Guide apply.

(e) Voting—Voting rights shall be as set forth in the Trust prospectus.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to add Rules 1200, 1201 and 1202 to accommodate the trading of trust issued receipts that are intended to provide investors with a flexible, cost-effective way of purchasing, holding and transferring the securities of one or more specified companies. Since trust issued receipts have many of the same features and characteristics of Portfolio Depositary Receipts ("PDRs") that have been listed on the Exchange since 1993, the Exchange is proposing that trust issued receipts have similar listing standards and rules as are currently in place for PDRs. In addition, the Exchange proposes to trade standardized options on the trust receipts using the listing standards for exchange-traded fund shares.

Trust Issued Receipts

Trust issued receipts are negotiable receipts which are issued by a Trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts are designed to allow investors to hold certain securities investments in a single, exchange-listed and traded instrument representing their beneficial ownership in the deposited securities. Holders of trust issued receipts maintain beneficial ownership of each of the deposited securities evidenced by trust issued receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

The proposed initial trust issued receipts will be formed under a depositary trust agreement between a qualified trustee, as trustee, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as the initial depositor. A trust will issue trust issued receipts under a depositary agreement. After the initial offering, a trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust.

A round-lot of 100 trust issued receipts represents a holder's individual and undivided ownership interest in a whole number of securities of one or more specified companies in a specified industry. Trust issued receipts may be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Orders for less than a round-lot will be rejected, while orders for greater than a round-lot, but not a round-lot, but not a round-lot multiple will be executed to the extent of the largest round lot multiple, rejecting the remaining odd-lot (*e.g.*, orders for 50 trust issued receipts will be rejected, and for orders of 1050 trust issued receipts, 1000 will be executed and 50 will be rejected). The initial offering price for a trust issued receipt will be established on the data the receipts are priced for sale to the public.

Except when a reconstruction event occurs, as described below, the securities represented in a trust issued receipt will not change. Under no circumstances will a new security be added to the list of securities after a particular receipt program is established. An investor in trust issued receipts will be permitted to withdraw its deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts and to deposit such securities to receive trust issued receipts.

The amounts of deposited securities for each round-lot of 100 trust issued receipts will be determined on the pricing date and will be disclosed in the prospectus to investors.

Maintenance of Trust Issued Receipts

The amounts of deposited securities specified in the prospectus will not change, except for changes due to certain corporate events such as stock splits or reverse stock splits on the deposited securities. The relative weighings among the deposited securities will change based on the current market price of the deposited securities. Once established, the component securities held by the trust and represented by trust issued receipts will not change unless an event described below occurs.

The trust agreement provides for the automatic distribution of specified deposited securities to the beneficial owner of such receipts in three circumstances referred to in the prospectus as "reconstitution events." A reconstitution event occurs if:

(1) A company with deposited securities evidenced by a trust issued receipt no longer has a class of common stock registered under Section 12 of the Securities Exchange Act of 1934. In such instance, its securities will no longer be a deposited security and the trustee will distribute the securities of that company to the owners of the trust receipts;

(2) The Commission finds that a company with deposited securities evidenced by the trust issued receipts is a company that should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding. In this situation, the trustee will distribute the securities of that company to the owners of the trust issued receipts; and

(3) The deposited securities of a company evidenced by a trust issued receipt are no longer outstanding because the securities were acquired by another company. Under this scenario, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of trust issued receipts, unless the consideration is additional deposited securities (*i.e.*, the acquiring company's securities are already included in the trust issued receipt as

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deposited securities), in which case such additional securities will be deposited into the trust.

If the trustee removes a deposited security from the trust due to the occurrence of one of the reconstitution events described above, the trustee will deliver the deposited security to the investor within three calendar days from the occurrence of the reconstitution event. Investors in the trust issued receipts will receive dividends and other distributions paid in respect of the deposited securities.

The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, receipts only in a round-lot of 100 trust issued receipts and round-lot multiples. While investors will only be able to acquire, hold, transfer and surrender the receipts in round-lots of 100 trust issued receipts, the bid and asked prices will be quoted on a per receipt basis.[3] The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain trust issued receipts by delivering to the trust the requisite securities evidencing a trust issued receipt, the trustee will charge an issuance fee of up to $10.00 per 100 trust issued receipts. If an investor wants to cancel trust issued receipts and withdraw the deposited securities, the trustee will charge a cancellation fee of up to $10.00 per 100 trust issued receipts.

Criteria for Initial and Continued Listing

Because of the continuous issuance and cancellation of trust issued receipts, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific trust. In connection with initial listing, the Exchange proposes that, for each trust, the Exchange will establish a minimum number of receipts required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each trust. It is anticipated that a minimum of 150,000 receipts will be required to be outstanding when trading begins.

Because of the continuous issuance and cancellation of trust issued receipts, and because the number of holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on trust issued receipt holders to consider suspending trading in or delisting a series of receipts with the consequent termination of the trust, unless the number of holders remains severely depressed over an extended time period. Therefore, after twelve months from the formation of a trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of a trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) if the trust has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the trust issued receipts for 30 or more consecutive trading days; or

(b) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Exchange Rules Applicable to the Trading of Trust Issued Receipts

Trust issued receipts will be deemed equity securities subject to all Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, market volatility related trading halt provisions pursuant to Amex Rule 117, and responsibilities of the specialist. Exchange equity margin rules and the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in trust issued receipts. However, trading rules pertaining to the availability of odd-lot trading in Amex equities will not apply to the trading of trust issued receipts, since they can only be traded in round-lots.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–99–20 and should be submitted by July 30, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17464 Filed 7–9–99; 8:45 am]

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[3] The per share amount will be disseminated by the Amex every 15 seconds over the Consolidated Tape Association's Network B.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41590; File No. SR–EMCC–99–6]

Self-Regulatory Organizations; The Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a New Fee Related to Bond Trade Data Submitted to EMCC

July 1, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 28, 1999, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a new fee related to bond trade data submitted directly to EMCC by a member.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change EMCC will charge a fee of $1.75 per side for bond trade data submitted directly to EMCC by members.[3] This fee will be used to meet the minimum monthly fee imposed by GE for the Match-EM service until the Emerging Markets Traders Association's contract with GE terminates on October 31, 1999. This new fee is effective on June 1, 1999, and will expire on October 31, 1999.

The proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to EMCC, since it provides for the equitable allocation of dues, fees and other charges among EMCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(f)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by EMCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–6 and should be submitted by July 30, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17463 Filed 7–8–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] The Commission recently approved an EMCC proposed rule whereby EMCC may accept trade data directly from either members or service bureaus. Securities Exchange Act Release No. 41247 (April 2, 1999) 64 FR 17705.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41589; File No. SR–GSCC–98–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Expanding the Automated Customer Account Transfer Service To Include Government Securities

July 1, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 11, 1998, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on February 3, 1999, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, GSCC will establish an interface with the National Securities Clearing

[1] 15 U.S.C. 78s(b)(1).

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Corporation ("NSCC") to make government securities eligible for fully automated processing through the Automated Customer Account Transfer Service ("ACATS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statement.[2]

(A) Self-Regulatory Organization's Statement of the Purposed of, and Statutory Basis for, the Proposed Rule Change

On November 10, 1998, the Commission approved a proposed rule change by NSCC to expand the types of eligible ACATS participants and kinds of assets (*i.e.*, government and mortgage-backed securities) that can be transferred through ACATS.[3] However, the ACATS service does not currently provide operationally for the transfer of any government securities included in a customer's account.

In order to broaden the types of assets which can be transferred through ACATS, NSCC has requested that GSCC establish with it an interface that will enable account transfers involving netting-eligible government securities to be processed using GSCC's existing netting and settlement processes.

Key operational aspects of the proposed interface are:

(1) The ACATS participant that will be transferring the securities and the ACATS participant that will be receiving the securities each must either be a GSCC netting member or clear through a GSCC netting member.

(2) The instructions for the securities transfers will be provided by the ACATS participants to NSCC and then from NSCC to GSCC.[4] GSCC will receive these instructions after the close of business on the business day prior to the account transfer date on a locked-in basis from NSCC.[5]

(3) Two trades would be submitted for each account transfer in each eligible government security: a trade that moves securities from the GSCC member delivering the securities ("delivering member") to an omnibus NSCC/ACATS account established on GSCC's system, and a trade that moves securities from the omnibus NSCC/ACATS account to the GSCC member receiving the securities ("receiving member"). These trades will be included in the net settlement position established by GSCC for each of the two members in the particular security.

(4) Account transfers essentially are free transactions; however, because GSCC's IONS[6] system was not designed to process free trades, all ACATS deliver and receive transactions will be processed at settlement at a nominal value of one penny.

(5) The delivering member will be debited in the form of a mark-to-market payment ("ACATS mark payment") the full current market value of the securities being transferred separate from the account transfer. The receiving member will be credited that amount. The delivering member will effectively receive its money back once the securities are delivered to GSCC and GSCC pays for them through its normal settlement mechanism.

With regard to this last operational aspect, if GSCC pays a receiving member an ACATS credit mark payment before realizing that the delivering member is insolvent and will not pay the ACATS debit mark payment to GSCC, the receiving member would be obligated under GSCC's rules to return the ACATS credit mark payment to GSCC. In the alternative, GSCC would have the authority under its rules to recompense itself by retaining an equivalent amount of the receiving member's clearing fund margin. GSCC will not guarantee settlement of the ACATS transaction until the delivering member has satisfied its ACATS debit mark in connection with the transaction.

If the receiving member becomes insolvent after receiving an ACATS credit mark payment and before taking in the securities and paying for them in completion of the ACATS transfer, GSCC makes clear under its rules that it has no responsibility to return the ACATS mark payment to the delivering member. If the delivering member delivers the securities to GSCC, GSCC will pay the delivering member for them and then sell the securities in the secondary market to recoup its money. GSCC would not take a position as to whether there had been a bona fide movement of customer securities.

GSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to GSCC because the proposed rule change will increase efficiency in processing government securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[7] Section 17A(b)(3)(A)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with GSCC's obligations under section 17A(b)(3)(F) of the Act. ACATS will provide a more efficient method for the transfer of government securities included in a customer's account.

GSCC has requested that the Commission approve the proposed rule change subsequent to the thirtieth day after publication of the notice of the filing because it is currently operational capable of taking trade information from NSCC. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow GSCC's interface with ACATS to immediately become operative with NSCC's expanded ACATS system. The Commission points out that this proposed rule change was discussed in NSCC's rule filing regarding the new ACATS system to which no written comments were received.[8]

IV. Solicitation of Comments

Intersted persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–98–05 and should be submitted by July 30, 1999 in the **Federal Register.**

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–98–05) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17416 Filed 7–8–99; 8:45 am]

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[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Securities Exchange Act Release No. 40657 (November 10, 1998), 63 FR 63952 [File No. SR–NSCC–98–06]. ACATS complements New York Stock Exchange ("NYSE") and National Association of Securities Dealers ("NASD") rules which require NYSE and NASD members to use automated, clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

[4] The receiving ACATS participant would submit a transfer request in automated fashion to NSCC for processing. NSCC would assign a control number and send ACATS control reports to both the delivering and receiving ACATS participants, as it does today. The delivering ACATS participant would submit customer account asset details to NSCC, and these would be reported to the receiving ACATS participant for validation. NSCC then would submit trade input to GSCC using GSCC's existing input format prior to its 10:00 p.m. submission deadline.

[5] ACATS transactions will be incorporated into all existing GSCC output, including print image reports and machine readable output. GSCC members will have the ability to monitor account transfer transaction details and net transfer positions moving through the NSCC/ACATS account.

[6] IONS refers to GSCC's Industry Owned Netting System.

[7] 15 U.S.C. 78q–1(b)(3)(F)(1988).

[8] Securities Exchange Act Release Nos. 40487 (September 28, 1998), 63 FR 53479 and 40657 (November 10, 1998), 63 FR 63952.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41592; File No. SR–MBSCC–99–03]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Eligibility of Applicants

July 1, 1999.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 19, 1999, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds Addendum B to MBSCC's rules regarding the eligibility of applicants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments is received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article III, Rule 1, Section 1 of MBSCC's rules sets forth the categories of applicants that are eligible to become participants of MBSCC. The specific categories of entities that may become participants include mortgage bankers, broker-dealers registered with the Commission, commercial banks, thrift institutions, insurance companies, clearing agencies registered with the Commission, and investment companies registered with the Commission. The rule also contains a provision for "firms in such other categories as the [MBSCC] from time to time may determine."

The addendum clarifies the provision of MBSCC's eligibility rule regarding "firms in such other categories as the [MBSCC] from time to time may determine." The categories of firms that are participants pursuant to this provision currently include government sponsored enterprises, international organizations, and private investment companies. The addendum also states that pension funds have expressed an interest in becoming participants of MBSCC and in the future may constitute an additional category within this provision. The addendum specifically provides that these firms are subject to MBSCC's rules and procedures, including standards for qualifications to the same extent as other firms.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it constitutes an interpretation of an existing rule regarding the admission of participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[4] and pursuant to Rule 19b–4(e)(1)[5] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(e)(1).

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meaning, administration, or enforcement of an existing MBSCC rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–99–03 and should be submitted by July 30, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17417 Filed 7–8–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41582; File No. SR–PCX–99–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Reorganization of PCX Rule 6.87

June 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On June 21, 1999, the PCX filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing the notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to redesignate the subsections of PCX Rule 6.87 to conform to proposed changes to this rule previously approved by the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to redesignate and clarify the provisions of PCX Rule 6.87, relating to the Exchange's Automatic Execution System ("Auto-Ex") for options, to reflect changes to the rule recently approved by the Commission.

First, the Exchange proposes to redesignate subsection (d) pertaining to "Suspension of Auto-Ex," approved by the Commission in February, 1998, as subsection (h).[4] Second, the Exchange proposes to redesignate subsection (d) pertaining to "Auto-Ex NBBO," approved by the Commission in September, 1998 and amended in a filing approved in January, 1999, as subsection (i).[5] Third, the Exchange proposes to redesignate subsection (e) pertaining to "Crossed or Locked Markets," approved by the Commission in January, 1999, as subsection (j).[6] Fourth, the Exchange proposes to redesignate subsections (d) pertaining to "Market Maker Requirements and Eligibility," (e), and (f) pertaining to "Price Adjustments," approved by the Commission in October, 1998, as subsections (e), (f) and (g).[7] In addition, the Exchange proposes to redesignate Commentary .01 of the rule as subsection (c) and to change the reference to "this commentary" in proposed subsection (c) to "this subsection." The Exchange also proposes to redesignate current subsection (c) as subsection (d). The Exchange proposes these changes to recognize recent revisions to PCX Rule 6.87.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5)[9] in particular, because it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and a national market system and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical modifications to its filing and further clarified the proposal. *See* letter to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, from Robert P. Pacileo, Staff Attorney, PCX, dated June 18, 1999.

[4] *See* Securities Exchange Act Release No. 39635 (February 10, 1998), 63 FR 8246 (February 18, 1998) (SR–PCX–97–21).

[5] *See* Securities Exchange Act Release No. 40980 (January 26,1999), 64 FR 5335 (February 3, 1999) (SR–PCX–98–55) and Securities Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (SR–PCX–98–27).

[6] *See* Securities Exchange Act Release No. 40980 (January 26, 1999), 64 FR 5335 (February 3, 1999) (SR–PCX–98–55).

[7] *See* Securities Exchange Act Release No. 40598 (October 23, 1998), 63 FR 58439 (October 30, 1998) (SR–PCX–97–48).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(a)(iii)[10] of the Act and subparagraph (f) of Rule 19b–4 thereunder[11] because it is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–23 and should be submitted by July 30, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17466 Filed 7–8–99; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f).

[11] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41588; File No. SR–Phlx–98–56]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to the Enhanced Parity Split Pilot Program for Equity and Index Option Specialists, and the Adoption of an Enhanced Parity Split for Specialists That Develop and Trade New Products

July 1, 1999.

I. Introduction

On December 28, 1998, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to extend and receive permanent approval of the Exchange's enhanced parity split pilot program for Exchange specialists in equity and index options ("Pilot Program").[3] In addition, the Exchange proposed to amend Exchange Rule 1014(g), "Equity Option and Index Option Priority and Parity," and its corollary Option Floor Procedure Advice B–6 to provide an enhanced parity split for Exchange specialists that develop and trade new products.

In the release published for comment in the **Federal Register** on January 12, 1999, the Commission gave accelerated approval to the Exchange's request that the Pilot Program be extended for a six-month period ending June 30, 1999, or until the Commission approves the Exchange's request for permanent approval of the Pilot Program, whichever occurred first.[4] The Commission did not receive any comment letters with respect to the proposal. This order permanently approves the Pilot Program and the Exchange's proposal to establish an enhanced parity split for Exchange specialists that develop and trade new products.

II. Description of the Proposal

A. Permanent Approval of the Pilot Program

The Exchange seeks permanent approval of the Pilot Program for Exchange specialists in equity and index options. The Commission first approved the Pilot Program on August 26, 1994,[5] to provide Exchange specialists in equity options with an enhanced participation in "parity trades," or trades where orders compete at the same price.[6] While a parity trade is generally divided evenly among the crowd participants on parity, the enhanced participation gives the specialist a greater share of the trade than he would normally receive.

On November 30, 1994, the Commission approved the Exchange's proposal to expand the Pilot Program to include index option specialists.[7] The Pilot Program was later revised on March 1, 1995, with respect to situations where less than three controlled accounts are on parity with the specialist.[8] The Pilot Program was subsequently renewed without change on three occasions[9] and later was extended and expanded so that the enhanced parity split applies to: (i) All index options; (ii) all new option classes allocated to a specialist during the year; and (iii) 50% of a specialist's equity option issues, which issues are designed by the specialist and approved by the Exchange's Allocation, Evaluation, and Securities Committee.[10] In addition, the Pilot Program was revised to permit specialists to revise the list of eligible

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1014(g)(ii), "Two for-one Enhanced Specialist Participation."

[4] Securities Exchange Act Release No. 40876 (Dec. 31, 1998), 64 FR 1849 (Jan. 12, 1999).

[5] *See* Securities Exchange Act Release No. 34606 (Aug. 26, 1994), 59 FR 45741 (Sep. 2, 1994). The Pilot Program was initially approved for a one year period ending August 26, 1995.

[6] According to Exchange Rules 119 and 120, when bids and offers are made simultaneously, or when it is impossible to determine clearly the order of time in which they were made, all such bids and offers shall be on parity. For example, suppose that a floor broker holding a sell order for 10 Jan XYZ call options announces his order to the crowd. In response, three crowd participants might simultaneously bid to buy the 10 Jan XYZ call options at the same price. Because these three simultaneous bids are competing at the same price, the bids are on parity.

[7] Securities Exchange Act Release No. 35028 (Nov. 30, 1994), 59 FR 63151 (Dec. 7, 1994).

[8] Securities Exchange Act Release No. 35429 (Mar. 1, 1995), 60 FR 12802 (Mar. 8, 1995).

[9] Securities Exchange Act Release Nos. 36122 (Aug. 18, 1995), 60 FR 44530 (Aug. 28, 1995); 37524 (Aug. 5, 1996), 61 FR 42080 (Aug. 13, 1996); and 38924 (Aug. 11, 1997), 62 FR 44160 (Aug. 19, 1997).

[10] Securities Exchange Act Release No. 39401 (Dec. 4, 1997), 62 FR 65300 (Dec. 11, 1997). The Exchange maintains a separate, permanent enhanced parity split program for new specialist units that trade newly listed options. *See* Exchange Rule 1014(g)(iii), "New Unit/New Option Enhanced Specialist Participation," and Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994).

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options (*i.e.*, the designated equity options for which the specialist is entitled to receive the enhanced parity split) on a quarterly basis, rather than annually.

The Exchange now seeks permanent approval of the Pilot Program. The Pilot Program works as follows: when an equity or index option specialist is on parity with one controlled account [11] and an order for more than five contracts comes into the crowd, the specialist will receive 60% of the contracts and the controlled account will receive 40%. When the specialist is on parity with two controlled accounts and the order is for more than five contracts, the specialist will receive 40% of the contracts and each controlled account will receive 30%. When the specialist is on parity with three or more controlled accounts and the order is for more than five contracts, the specialist will be counted as two crowd participants when allocating the contracts. In any of these situations, if a customer order is on parity, the customer will not be disadvantaged by receiving a lesser allotment than any other crowd participant, including the specialist. Thus, a customer on parity is assured a minimum participation that is equal to the participation of the specialist.[12]

The application of this enhanced parity split is mandatory. Therefore, with respect to any equity or index option transaction that implicates the enhanced parity split, the specialist is required to accept the preferential allocation and may not decline the enhancement. If an equity or index option trade is on parity, but not subject to the enhanced parity split (*i.e.*, the trade is for five or less contracts), the Exchange specialist is required to allocate the contracts according to the Exchange's priority and parity rules.[13]

At the request of the Commission, the Exchange prepared a report ("Report") discussing whether the: (i) Pilot Program has generated any evidence of any adverse effect on competition or investors, in particular, or the market for equity or index options, in general; (ii) Exchange has received any complaints, either written or otherwise, concerning the operation of the Pilot Program; and (iii) Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquires concerning the operation of the Pilot Program, as well as the outcome of any such matter.

The Exchange incorporated the findings of its Report into the proposed rule change filing. According to the Exchange, its regulatory personnel have not observed during the past year evidence of any adverse effects on competition, investors, or the market for equity or index options. As to the second issue, the Exchange has not received any complaints, either orally or in writing, from investors or Exchange members regarding the Pilot Program. Finally, regarding disciplinary actions, investigations, examinations or inquires, the Exchange reports that it did not commence any investigations relating to the Pilot Program this past year.

B. Adoption of Enhanced Parity Split for Specialists That Develop and Trade New Products

The Exchange separately proposes to adopt an enhanced parity split for Exchange specialists that develop and trade new products ("New Products Split"). The Exchange stated that the New Products Split is intended to encourage specialist units to develop and trade new products, and to provide liquidity in such products, thereby attracting order flow to the Exchange. The exchange believes that the proposal balances the competing interests of specialists and Registered Option Traders ("ROTs"), while encouraging specialists to take an active role in supporting and marketing a new product, both important activities in a competitive environment.

Under the proposed New Products Split, when the specialist is on parity with three or more controlled accounts in the crowd, the specialist will receive 40% of the contracts and the controlled accounts will receive the remaining 60%. When the specialist is on parity with less than three controlled accounts in the crowd, the specialist will receive 60% of the contracts and the controlled accounts will receive 40%. In either of these situations, if a customer order is on parity, the customer may not receive a lesser allotment than any other crowd participant, including the specialist.

The Exchange indicated that the New Products Split would be limited to new products developed *and* traded by the same specialist unit. Therefore, if one specialist unit develops a new product but another specialist unit is allocated specialist privileges in that same new product,[14] the specialist unit trading the new product would not be entitled to the New Products Split. The Exchange's Options Committee will be responsible for determining whether a specialist "developed" a new product.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.[16] The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by helping the Exchange to attract and retain specialist units, and offer new products to the investing public.

Generally, a parity trade is divided evenly among the crowd participants on parity. However, the Pilot Program and the New Products Split would provide Exchange specialists with an enhanced participation in parity trades. The enhancement would give the specialist a greater share of the trade than he would normally receive.

The Pilot Program gives an equity or index option specialist 60% of the contracts when he is on parity with one controlled accounts and the order is for more than five contracts. When the specialist is on parity with two controlled accounts and the order is for more than five contracts, the specialist will receive 40% of the contracts. When the specialist is on parity with three or more controlled accounts and the order is for more than five contracts, the specialist will be counted as two crowd participants when allocating the contracts.

The New Products Split would give an eligible specialist (*i.e.*, a specialist who developed a new product and to whom the new product is allocated) 40% of the contracts in the new product when the specialist is on parity with three or more controlled accounts in the crowd. When the specialist is on parity with less than three controlled accounts in the crowd, the specialist will receive 60% of the contracts. Under the Pilot Program and the New Products Split, if a customer order also is on parity, the customer may not receive a lesser allotment than any other crowd participant, including the specialist.

The Commission recognizes that the purpose of the enhanced parity split is to encourage specialists to make deep and liquid markets in order to attract order flow to the Exchange. The Commission has previously noted that specialists have responsibilities that other crowd participants do not share, such as the staff costs associated with continually updating and disseminating quotes.[17] As a result, the Commission believes it is reasonable for the Exchange to grant certain advantages to specialists, such as the enhanced parity split, to attract and retain well capitalized specialists at the Exchange. As long as these advantages do not unreasonably restrain competition and do not harm investors, the Commission believes that the granting of such benefits to specialists, in general, is within the business judgment of the Exchange.

The Commission believes that the proposal will encourage specialists to make deep and liquid markets to attract order flow to the Exchange. The Commission also believes that the Pilot Program and New Products Split provide reasonable benefits to specialists, given the heightened responsibilities and costs of specialist. Because it appears that these that these benefits do not unreasonably restrain competition and do not harm investors, the Commission believes that the approval of the Pilot Program and New Products Split is consistent with the Act.

The Pilot Program and the New Products Split specify that the application of the enhanced parity split cannot cause a customer order on parity to received a smaller participation than any other crowd participant, including the specialist. The Commission believes this provision adequately protects customers orders from any negative impact that might flow from application of the enhanced parity split. As a result, customer orders on parity are ensured a participation that, at a minimum, is equal to that given any other crowd participant on parity.

The Commission notes that the Pilot Program has been operative, albeit in differing forms, since 1994. During that period, the Commission has required the Exchange to submit Reports discussing: (i) The Pilot Program's impact on competition and investors; (ii) complaints regarding the Pilot Program; and (iii) inquiries, investigations, or disciplinary actions taken regarding the Pilot Program. The Reports have indicated that the Pilot Program operates well and does not adversely impact competition or investors.[18] Furthermore, the Exchange has not received complaints regarding the Pilot Program and has brought only one disciplinary action concerning the Pilot Program.[19] The Commission believes that the absence of significant problems over the past five years demonstrates that the Pilot Program is a reasonable benefit for the Exchange to offer to its equity and index option specialists.

Based on the Exchange's five year experience with the Pilot Program, and the similarity between the Pilot Program and the New Products Split, the Commission believes that the New Products Split is a reasonable measure to attract new products to the Exchange. Like the Pilot Program, the New Products Split should be an incentive for Exchange specialists to generate more business by developing and training new products. The Commission supports the Exchange's attempts to attract new business. The Commission also believes that because the enhanced parity split will be available only to a specialist unit that develops and trades a new product, the benefit is reasonably limited in scope to those specialist units that put forth significant effort. Therefore, the Commission believes it is appropriate to approve the New Products Split.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–98–56) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17418 Filed 7–8–99; 8:45 am]

BILLING CODE 8010–01–M

[11] A controlled account is defined as "any account controlled by or under common control with a member broker-dealer." Customer accounts, which include discretionary accounts, as defined as all accounts other than controlled accounts. *See* Exchange Rule 1014(g)(i).

[12] For example, if a customer is on parity with a specialist and two controlled accounts for a 10 contract order, the specialist—and therefore the customer also—would be entitled to receive 4 contracts (40%).

[13] *See* Exchange Rule 119, "Precedence of Highest Bid," and Exchange Rule 120, "Precedence of Offers at Same Price."

[14] Allocation determinations are governed by Exchange Rules 500–526.

[15] 15 U.S.C. 78f(b)(5).

[16] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See, e.g.* Securities Exchange Act Release No. 35177 (Dec. 29, 1994), 60 FR 2419 (Jan. 9, 1995).

[18] The Exchange found that the enhanced parity split, as first proposed in 1994, was overly burdensome when only one or two controlled accounts were on parity with the specialist. Therefore, the Exchange amended the Pilot Program in 1995 to make the enhanced parity split more equitable in those situations. *See* Securities Exchange Act Release No. 35429 (Mar. 1, 1995), 60 FR 12802 (Mar. 8, 1995). The Exchange also formed a subcommittee to analyze the Pilot Program and its effect on competition, investors, and the market in general. The subcommittee members concluded that there is no evidence of any adverse effects on competition, investors, or the market for equity or index options.

[19] In 1995, the Exchange brought one disciplinary case against an equity option specialist for making an inequitable split among himself and the ROTs in the crowd. The specialist was censured and suspended for one week as part of a settlement. *See* Exchange Enforcement Matter No. 95–12.

[20] U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41591; File No. SR–Phlx–99–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Amend By-Law Article IX—Trustees of Stock Exchange Fund, at Section 9–5—Agent of Trustees, and Section 9–6—Reports

July 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 1999, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend By-Law Article IX-Trustees of Stock Exchange Fund, at Section 9–5—Agent of Trustees, and Section 9–6—Reports. The text of the proposed rule change is set forth below. Additions are italicized, and deletions are bracketed.

* * *

By-Law Article IX

Trustees of Stock Exchange Fund

* * *

Agent of Trustees

Section 9–5. The Trustees shall, with approval of the Board of Governors, appoint *an* [Trust Company to act as their] Agent, to hold the securities of the Exchange for safekeeping, to collect the interest, dividends and income therefrom for the Treasurer of the Exchange. Said Agent shall also, from time to time, make deliveries of securities held for the Trustees of the Stock Exchange Fund as the Trustees of the Stock Exchange Fund shall direct.

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Section 9–6. The Trustees of the Stock Exchange Fund shall submit to the [Board of Governors] *Finance Committee* at least quarterly a statement of the investments of the Exchange held by them in their capacity of Trustees of the Stock Exchange Fund. *The Finance Committee shall forward that report to the Board with its recommendation.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PHLX has proposed an amendment to By-Law Article IX, Sections 9–5 and 9–6, to permit the Board of Governors to appoint an Agent to hold the securities of the Exchange for safekeeping, and to collect the interest, dividends, and income therefrom for the Treasurer of the Exchange, as the Exchange no longer utilizes its subsidiary the Philadelphia Depository Trust Co. for such services. Additionally, the Board proposes to have the Finance Committee receive and review the quarterly report of investments of the Exchange and forward that report to the Board of Governors with its recommendation. The Board believes that oversight by the Finance Committee of the Trustees of the Stock Exchange Fund is appropriate as the Finance Committee, pursuant to By-Law Article X, Section 10–15, has charge of the funds of the Exchange and serves in an advisory capacity to the Board in the investment and sale of securities held by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6[3] of the Act in general, and with Section 6 (b)(5)[4] in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by providing further oversight of the financial arrangements of the Stock Exchange Fund.

B. Self-Regulatory Organization's Statement on Burden Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were received in response to Circular 98–17.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the PHLX. All submissions should refer to File No. SR–Phlx–99–17 and should be submitted by July 30, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17465 Filed 7–8–99; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0277]

BOCF, L.L.C.; Notice of Issuance of a Small Business Investment Company License

On March 8, 1999, an application was filed by BOCF, L.L.C. at 501 Knights Run Avenue, #4104, Tampa, Florida 33602 with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 04/04–0277 on May 28, 1999, to BOCF, L.L.C. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No.59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17455 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/75–0240]

Chicago Venture Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On July 6, 1998, an application was filed by Chicago Venture Partners, L.P. at 360 East Randolph Street, Suite 2402, Chicago, Illinois 60601 with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA

isssued License No. 05/75–0240 on May 24, 1999, to Chicago Venture Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17452 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0589]

Emigrant Capital Corp.; Notice of Issuance of a Small Business Investment Company License

On March 11, 1999, an application was filed by Emigrant Capital Corporation at 6 East 43rd Street, 8th Floor, New York, New York 10017 with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 02/02–0589 on May 28, 1999, to Emigrant Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17450 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 07/77–0103]

KCEP Ventures II, L.P.; Notice of Issuance of a Small Business Investment Company License

On October 16, 1998, an application was filed by KCEP Ventures II, L.P. at 233 West 47th Street, Kansas City, MO 64112 with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 07/77–0103 on May 28, 1999, to KCEP Ventures II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17456 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/75–0239]

River Cities Capital Fund II, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 26, 1998, an application was filed by River Cities Capital Fund II, L.P. at 221 East Fourth Street, Suite 2250, Cincinnati, Ohio 45202 with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 05/75–0239 on April 15, 1999, to River Cities Capital Fund, II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17458 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 08/78–0156]

Roser Partnership III, SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On September 30, 1998, an application was filed by The Roser Partnership III, SBIC, L.P. at 1105 Spruce Street, Boulder, Colorado 80302 with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 08/78–0156 on May 24, 1999, to The Roser Partnership III, SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17451 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0418]

Selby Venture Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On May 5, 1998, an application was filed by Selby Venture Partners, L.P. at 2460 Sand Hill Road, Suite 200, Menlo Park, California 94025 with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 09/79–0418 on May 24, 1999, to Selby Venture Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17454 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0587]

Signal Capital Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On December 8, 1998, an application was filed by Signal Capital Partners, L.P.

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at 10 East 53rd St, 32nd Floor, New York, New York 10022, with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0587 on April 22, 1999, to Signal Capital Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17449 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0215]

Spring Capital Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On October 22, 1998, an application was filed by Spring Capital Partners, L.P. at Two Hopkins Plaza, Baltimore, Maryland 21201, with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0215 on April 22, 1999, to Spring Capital Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17453 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0588]

T.S. Capital Corp.; Notice of Issuance of a Small Business Investment Company License

On June 18, 1998, an application was filed by T.S. Capital Corporation at 32 Second Street, Troy, New York 12180 with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR, 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0588 on May 24, 1999, to T.S. Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17448 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/74–0276]

TD Javelin Capital Fund, II, L.P.; Notice of Issuance of a Small Business Investment Company License

On September 14, 1998, an application was filed by TD Javelin Capital Fund, II, L.P. at 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35233, with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/74–0276 on March 1, 1999, to TD Javelin Capital Fund, II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17457 Filed 7–8–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3058]

Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection: Notifications of Appointment, Change or Termination of Diplomatic, Consular or Foreign Government Employees, Currently Forms DSP–110, DSP–111, DSP–112, DSP–113, DSP–114, DSP–115.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Continuation of Existing Collection.

Originating Office: S/CPR.

Title of Information Collection: Notification of Appointment of Foreign Diplomatic and Career Consular Officer.

Frequency: On occasion.

Form Number: DSP–110.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 2,000.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 850.

Title of Information Collection: Notification of Appointment of Foreign Government Employee.

Frequency: On occasion.

Form Number: DSP–111.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 2,125.

Title of Information Collection: Notification of Appointment of Honorary Consular Officer.

Frequency: On occasion.

Form Number: DSP–112.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 200.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 80.

Title of Information Collection: Notification of Change, Identification Card Request.

Frequency: On occasion.

Form Number: DSP–113.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 9 minutes.

Total Estimated Burden: 600.

Title of Information Collection: Notification of Dependents of Diplomatic, Consular and Foreign Government Employees.

Frequency: On occasion.

Form Number: DSP–114.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 7,000.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 840.

Title of Information Collection: Notification of Termination of Diplomatic, Consular or Foreign Government Employment.

Frequency: On occasion.

Form Number: DSP–115.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 6,000.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 720.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Lawrence Dunham, Assistant Chief of Protocol, U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: June 29, 1999.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 99–17329 Filed 7–8–99; 8:45 am]

BILLING CODE 4710–20–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability on routes in Grand Canyon National Park; comment request.

SUMMARY: This notice announces the availability of and requests comments on proposed commercial routes for the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). The proposed commercial routes are not being published in the **Federal Register** because they are depicted on large and very detailed charts that would be difficult to read if published in the **Federal Register**. The proposed modifications of certain commercial routes may require airspace changes in the GNCP SFRA that are contained in a notice of proposed rulemaking being published concurrently in this **Federal Register**. The proposed airspace modification and the planned modification to the route structure support the National Park Service mandate to provide for the substantial restoration of the natural quiet and experience of the park.

DATES: Comments on the routes must be received on or before September 7,1999.

ADDRESSES: Comments on the proposed routes, in triplicate, may be delivered or mailed to: Federal Aviation Administration, ATTN: Alberta Brown, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8321. Comments may be examined at the above address between 9 a.m. and 4 p.m. weekdays, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: The proposed commercial routes are not being published in the **Federal Register** because they are on very large and detailed charts that would not publish well in the **Federal Register**. A copy of the charts depicting the routes may be obtained by contacting Denise Cashmere at (202) 267–3717, by faxing a request to (202) 267–5229, or by sending a request in writing to the Federal Aviation Administration, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591.

Comments Invited

Interested persons are invited to comment on the proposed routes by submitting such written data, views, or arguments as they may desire. Commenters must identify that they are commenting on the proposed commercial routes for the GCNP SFRA. All comments received on or before the end of the comment period will be considered by the FAA before finalizing the commercial routes. Late filed comments will be considered to the extent practicable.

Discussion

The FAA, in consultation with the National Park Service (NPS), proposes to restore and modify certain commercial routes in the GCNP SFRA. The proposed modified routes were developed based on airspace configurations, safety considerations, the goal of substantial restoration of natural quiet in the GCNP, economic considerations, consultation with Native American tribes, and comments received in response to previous route proposals. The FAA, in consultation with the NPS, also proposes to modify the existing airspace in the SFRA to accommodate these proposed route changes in a companion notice of proposed rulemaking published elsewhere in this **Federal Register**.

In developing the proposed modified routes for GCNP, the FAA has been consulting with Native American tribes, on a government-to-government basis, as required by the Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments to assess potential effects on tribal trust resources and to assure that tribal government rights and concerns are considered in the decisionmaking process. The FAA has also been consulting with these tribes pursuant to the American Indian Religious Freedom Act and the Religious Freedom Restoration Act concerning potential effects of the proposed routes on sacred sites. In addition, under Section 106 of the National Historic Preservation Act the FAA, has been consulting with these

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tribes, the Arizona State Historic Preservation Office, the Advisory Council on Historic Preservation, and other interested parties concerning potential effects on historic sites, including traditional cultural properties and Native American sacred sites.

This action provides interested persons an opportunity to comment on the proposed commercial routes. Before the commercial routes for GCNP are finalized, FAA and NPS will fulfill their consultation responsibilities. In this consultation process, the FAA in coordination with NPS, will continue to consider feasible actions to mitigate any identified significant impacts to Native American cultural, religious, or historic sites.

General Description of the Modified Routes

The FAA proposes to rename the Blue Direct route as Blue Direct North and restore and modify the Blue Direct South, the Blue 2, and the Green 4 routes, as appropriate. Commenters should also note that the chart depicts proposed modifications to the Desert View, Bright Angel, and Sanup Flight-free Zones and the Zuni Point corridor.

These proposed routes have been developed after consideration of various alternative routes by the FAA and NPS. The FAA and NPS believes that the proposed routes best address preservation issues and Native American concerns. The proposal also continues to provide routes for commercial tour operators that mitigate noise impacts and provide the public with the requisite level of safety. The FAA believes that the routes depicted on the chart made available by this notice, would provide an opportunity for commercial air tours as well as assist the NPS in achieving its statutory mandate to provide for the substantial restoration of natural quiet in GCNP.

Environmental Review

The FAA is preparing a draft environmental assessment (EA) for this proposed action to ensure conformance with the National Environmental Policy Act of 1969. Copies of the draft EA will be circulated to interested parties and placed in the docket, where it will be available for review.

Issued in Washington, DC on July 1, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–17321 Filed 7–6–99; 12:06 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Supplemental Environmental Assessment for the Proposed Actions Relating to the Grand Canyon National Park and Public Comment

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of availability and request for comments.

SUMMARY: The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS) and the Hualapai Indian Tribe (the Tribe), announces the availability of the Draft Supplemental Environmental Assessment (DSEA) for proposed Special Flight Rules vicinity of Grand Canyon National Park (GCNP) and request for comments.

The DSEA was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts", and other applicable environmental laws, and regulations. The DSEA assesses the effects of proposed Federal actions under consideration by the FAA and the Department of the Interior (DOI). These actions are to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91 to provide for the substantial restoration of natural quiet in the GCNP. The proposed actions include the following: (1) New air tour routes, and modifications to existing air tour routes for commercial aircraft operating in the Special Flight Rules Area (SFRA) in the vicinity of GCNP, identified as Special Federal Aviation Regulation Number 50–2 (SFAR 50–2); (2) new air space, and modifications to existing airspace in the SFRA; and (3) a limitation on the number of commercial air tours in the SFRA.

DATES: The opportunity to provide written comments on the DSEA will extend from July 7, through September 7, 1999. Late filed comments will be considered to the extent practicable.

ADDRESSES: Written comments on the Draft Supplemental EA may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Attention: William J. Marx, Air Traffic Airspace Management, Environmental Programs Division, ATA–300, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be submitted via the internet. The internet address for written comments is *Bill.Marx@FAA.GOV*. Comments may be examined at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Questions concerning this Draft Supplemental EA or the process being applied by the FAA should be directed to William J. Marx, via telephone at (202) 267–3075, or in writing to the address above.

SUPPLEMENTARY INFORMATION: The FAA and DOI are considering the proposed actions to assist the NPS in achieving its congressional mandate to provide for the substantial restoration of natural quiet at GCNP. Based upon further discussions with interested parties and consultation with Native American tribal representatives pursuant to Section 106 of the National Historic Preservation Act, the FAA is proposing additional revisions to the route structure in the SFRA. These proposed revisions will minimize impact on traditional cultural properties that we identified during consultation with Native American tribal representatives. The Notice of Route Availability (and accompanying chart), that details the proposed changes to the routes in the SFRA is being released concurrently with this DSEA, and contains a summary of the background information.

Other Federal actions considered in the DSEA include:

(1) Expansion of the Desert View Flight Free Zone (FFZ); (2) expansion of the boundary of the SFRA to contain the expansion of the Desert View FFZ; (3) reduction of the Sanup FFZ; and (4) a limitation on the number of commercial air tours in the SFRA. These proposals are contained in the Notice of Proposed Rulemaking (NPRM) for the Modification to the Airspace in the SFRA, and the NPRM for the Proposed Limitations to Commercial Air Tours in the GCNP. These documents are also being released concurrently with this DSEA and contain a summary of the background information.

The Supplemental EA

The scoping process for this Supplemental EA consisted of a public comment period for those interested agencies and parties to submit written comments representing the concerns and issues they believed should be addressed. The FAA received a total of 20 written comments. The Draft Supplemental EA contains a summary of those comments in Appendix G.

Information, data, opinions, and comments obtained throughout the course of the scoping process were used in preparing the draft supplemental EA. The purpose of this Notice is to inform the public and local, State, and Federal government agencies of the availability of the draft supplemental EA. It also provides interested parties with an opportunity to present to the FAA their opinions, comments, information, or other relevant observations relating to the alternatives and potential environmental impacts of these proposals.

To maximize the opportunities for public participation in this environmental process, the FAA has mailed copies of the draft supplemental EA (DSEA), the two NPRMs, and the Notice of Route Availability and graphic to those individuals and agencies listed in Appendix I of the DSEA. The graphic containing the proposed route changes and airspace modifications is not being published in today's **Federal Register** due to the detail on the charts. Again these proposed actions represent concepts presently under consideration by the FAA and DOI.

Issued in Washington, DC on July 2, 1999.

William J. Marx,

Manager, Environmental Programs Division, Office of Air Traffic Airspace Management.

[FR Doc. 99–17342 Filed 7–6–99; 12:06 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–99–5929]

A Study of the Section 5307 Urbanized Area Formula Program and the Transit Needs of Small Urbanized Areas

AGENCY: Federal Transit Administration, DOT.

ACTION: Request for comments; notice of meeting.

SUMMARY: Section 3033 of the Transportation Equity Act for the 21st Century requires the Federal Transit Administration to study whether the formula 49 U.S.C. 5336 for apportioning funds to urbanized areas accurately reflects the transit needs of certain small urbanized areas that have unusually intensive transit service for their size. This document announces the commencement of this study, and solicits comments and suggestions on its design and aims. The results of this study will be sent to Congress along with FTA's suggestions on whether the formula should be changed to reflect the transit need of small urbanized areas.

DATES: Written comments on this notice should be submitted by September 7, 1999. Two outreach sessions to discuss the study design will also be held on July 7, 1999, and July 14, 1999. See addresses for meeting locations.

ADDRESSES:

(1) July 7, 1999, 10:00 AM to 12:00 noon (local time), at the Radisson Hotel, 500 Leisure Lane, Sacramento, CA. This meeting will be held in conjunction with the APTA/AASHTO/CTAA State Affairs Conference.

(2) July 14, 1999, 10:00 AM to 12:00 noon (local time), at the U.S. Department of Transportation, 400 7th Street SW, Washington, DC, in Room 6332–36.

Written comments and suggestions regarding the proposed study must refer to the docket number appearing above and must be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street SW, Washington, DC 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a stamped, self-addressed postcard. Written material submitted at the workshops will also be placed in the docket.

FOR FURTHER INFORMATION CONTACT: Darren Timothy, Office of Policy Development, FTA, (202) 366–0177. Email: darren.timothy@fta.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Access
II. Background
III. Research Questions

I. Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/fedreg or the Government Printing Office's database at http://www.access.gpo.gov/nara.

II. Background

The Urbanized Area Formula Grants Program, section 5307 of Title 49 of the United States Code allocates funds to urbanized areas for capital, operating, and planning costs associated with mass transit; however, the actual apportionment formula is found in 49 U.S.C. 5336. The formula allocates section 5307 funds through a series of hierarchical tiers. The first division establishes two separate tiers of urbanized areas: (1) 9.32% is allocated to small urbanized areas (population 50,000 to 199,999); (2) 90.68% is allocated to large urbanized areas (population 200,000 and above).

For small urbanized areas, the formula apportionments are based solely on two factors: (1) Population; and (2) Population times population density.

For larger urbanized areas, however, the formula again breaks down into two tiers:

(1) The Fixed Guideway Tier (33.29%). The formula for this tier includes three factors: (A) Fixed guideway route miles; (B) Fixed guideway revenue-vehicle; and (C) Fixed guideway passenger-miles weighted by passenger-miles per dollar of operating cost (the fixed guideway incentive tier)

(2) The Bus Tier (66.71%). 90.8% of this tier is allocated based on three factors: (A) Population; (B) Population times population density: and (C) Bus revenue-vehicle miles.

This portion of the bus tier is further divided between urbanized areas with more than and less than 1 million in population. The remaining 9.2% of the bus tier is allocated based on bus passenger-miles weighted by bus passenger-miles per dollar of operating cost (the bus incentive tier).

There are two other important distinctions between small and large cities in the formula program. The first lies in the method of funds allocation to the urbanized areas. Large urbanized areas receive their formula apportionments directly from the federal government, through a designated recipient agency within the urbanized area. Small urbanized areas that are not in a transportation management area do not receive federal formula funds directly, however. Instead, the governor of their respective state acts as the designated recipient, and receives an apportionment based on formula allocations for all the small urbanized areas within the state. The second distinction between large and small urbanized areas is that formula funds for small urbanized areas may be used for operating costs, while this option is no longer available to larger urbanized areas.

While most small urbanized areas have transit system characteristics which are substantially different from those of large urbanized areas, this does not hold universally. Certain small, transit-intensive cities provide a level of service that is substantially greater than their size and density characteristics might indicate. Given the tier structure of the section 5307 formula, however, this service level is not reflected in the

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governors' apportionments for small cities.

In light of this fact, section 3033 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) calls for the Secretary of Transportation to "conduct a study to determine whether the formula for apportioning funds to urbanized areas * * * accurately reflects the transit needs of the urbanized areas and, if not, whether any changes should be made either to the formula or through some other mechanism to reflect the fact that some urbanized areas with a population between 50,000 and 200,000 have transit systems that carry more passengers per mile or per hour than the average of those transit systems in urbanized areas with a population over 200,000." This report is to be submitted to the House Transportation and Infrastructure Committee and the Senate Banking, Housing, and Urban Affairs Committee by December 31, 1999, and is to contain both the results of this study and any suggested changes to the formula program.

III. Research Questions

The FTA is interested in receiving any comments or suggestions for conducting the study that interested parties might have. In particular, we would like to solicit comment on the following questions:

A. Formula Apportionment Factors

The section 5336 formulas use population and population weighted by population density as factors for both large and small urbanized areas. As described above, the formulas also use transit service factors (route-miles and revenue-vehicle miles) and operating factors (the incentive tier) for urbanized areas over 200,000 in population. Our questions on this topic include—

(1) Are population and population density adequate factors for use in apportioning funds to small urbanized areas? Are there specific reasons why other factors shouldn't be applied to these small cities?

(2) Should service factors also be applied to small urbanized arees in apportioning formula funds? In particular, should bus revenue-vehicle miles be applied to small urbanized areas as well? Should bus passenger miles and operating costs used in the incentive tier be applied to small urbanized areas?

It should be noted that small transit systems face different reporting requirements under the National Transit Database program than do their counterparts in larger systems and cities. For example, transit systems with fewer than 10 buses are not required to report annual bus revenue-vehicle miles. Passenger-mile data is also collected and reported less frequently for small cities: urbanized areas under 200,000 in population are only required to sample passenger-miles every 5 years, as opposed to every 3 years for areas between 200,000 and 500,000 in population and annually for most cities over 500,000.

B. Other Transit Funding Sources

Section 3033 of TEA–21 directs us to look at both formula changes and "other mechanisms" to reflect the needs of small, transit-intensive cities. For example, other sources of intergovernmental aid are aid available to local transit operators in small urbanized areas in addition to the section 5307 program. Our questions are—

(1) Would examining these other aid sources available to small urbanized areas be a useful and informative exercise?

(2) What other mechanisms besides changing the formula might be practical and useful in order to assist small transit-intensive cities?

Issued on: July 2, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–17422 Filed 7–8–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33751]

Grand Trunk Western Railroad Incorporated and The Baltimore and Ohio Chicago Terminal Railroad Company—Joint Relocation Project Exemption—in Harvey, IL

Grand Trunk Western Railroad Incorporated (GTW), a subsidiary of Canadian National Railway Company, and The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT), a subsidiary of CSX Transportation, Inc., have jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to enter into a project to relocate lines of railroad in Harvey, IL.[1] The joint relocation project will facilitate more efficient operations and allow for the removal of unnecessary and duplicative trackage. The transaction was expected to be consummated on or after June 18, 1999, the effective date of the exemption.

GTW connects with the Illinois Central Railroad Company's (IC) main line adjacent to Markham Yard at Harvey. GTW and IC plan to improve their connection by constructing an additional connection within the existing right-of-way. B&OCT has a line parallel to GTW's line adjacent to the yard, crossing it just west of IC's line and running underneath IC's line. In order to construct the additional connection between GTW and IC, a segment of B&OCT's line will need to be removed. The carriers will construct the necessary connections between their lines to permit B&OCT trains to move from B&OCT's line onto GTW's line.

Under the joint project, GTW and B&OCT agree to the following: (1) GTW will grant B&OCT the right to operate, in non-exclusive overhead freight service, its trains and equipment with its own crews over the segment of GTW's railroad lines from GTW milepost 23.7 to milepost 22.5, South Bend Division; (2) GTW will grant B&OCT the right to use the new wye connection between GTW and IC for the purpose of B&OCT's access to IC; (3) B&OCT will abandon its line between mileposts 4.0 and milepost 2.6, Chicago Heights Subdivision, and grant to GTW a perpetual easement to the underlying right-of-way between B&OCT mileposts 3.6 and 3.1 for GTW's construction of a new connection to Markham Yard; (4) GTW will install turnouts and connecting tracks east of the current GTW/B&OCT rail crossing from GTW's south main line west of Vincennes Road, near GTW milepost 23.7, South Bend Division, to the GTW/B&OCT property line, as well as west of the current GTW/B&OCT rail crossing from GTW's north main line west of 150th Street in Harvey, near GTW milepost 22.5, South Bend Division, to the GTW/B&OCT property line; (5) B&OCT will realign its trackage east of the current GTW/B&OCT rail crossing west of Vincennes Road, at or near B&OCT milepost 4.0, Chicago Heights Subdivision, to the GTW/B&OCT property line, and west of the current GTW/B&OCT rail crossing west of 150th Street, at or near B&OCT milepost 2.6, Chicago Heights Subdivision, to the GTW/B&OCT property line.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* v. *ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33751, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert P. vom Eigen, 888 16th Street, NW, Washington, DC 20006; and Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: June 30, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17182 Filed 7–8–99; 8:45 am]

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[1] A redacted version of a Trackage Rights Agreement and a Supplement to Interlocking Agreement between GTW and B&OCT were filed with the notice of exemption. The full version of the agreements was concurrently filed under seal along with a motion for a protective order. The motion was granted and a protective order was served in this proceeding on June 21, 1999.

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on August 3, 1999, of the following debt management advisory committee:

The Bond Market Association
Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:00 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. § 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. § 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. § 552b(c)(9)(A).

The Office of the Under Secretary for Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. § 552b.

Dated: July 2, 1999.

Gary Gensler,

Under Secretary, (Domestic Finance).

[FR Doc. 99–17443 Filed 7–8–99; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Ancient Near Eastern Art"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Ancient Near Eastern Art," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, NY, beginning in the fall of 1999, for approximately three years, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6084, or USIA, 301 4th Street, SW, Room 700, Washington, D.C. 20547–0001.

Dated: July 6, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–17531 Filed 7–8–99; 8:45 am]

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Corrections

Federal Register
Vol. 64, No. 131
Friday, July 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–6337–1]

RIN 2060–AH97

Test Methods: Three New Methods for Velocity and Volumetric Flow Rate Determination in Stacks or Ducts

Correction

In rule document 99–11796 beginning on page 26484 in the issue of Friday, May 14, 1999, make the following corrections:

Appendix A to Part 60—[Corrected]

Method 2F—Determination of Stack Gas Velocity And Volumetric Flow Rate With Three-Dimensional Probes [Corrected]

1. On page 26491, in the first column, in paragraph 3.20, in the 13th line, "±°" should read "±3°".

2. On page 26492, in the second column, in paragraph 6.4.1, in the 20th line "(P_1–P_2" should read "(P_1–P_2)".

3. On page 26495, in the third column, in paragraph 9.1.1, in the fifth line, "πP" should read "ΔP".

4. On page 26497, in the first column, in paragraph 10.3.4, in the eighth line "0" should read "θ".

5. On page 26498, in the first column, in paragraph 10.6.2, in the second line, "(F–1) versus pitch angle)" should read "(F_1 versus pitch angle)".

6. On page 26499, in the second column, in paragraph 12.0, in the fifth line, "($v_{s(i)}$)" should read "($v_{s(i)}$)".

7. On the same page, in the same column, in the same paragraph, in the tenth line, "(v_s (avg))" should read "($v_{s(avg)}$)".

8. On the same page, in the same column, under paragraph 12.1 Nomenclature, in the sixth line, "Kp" should read "K_p".

9. On page 26501, in the third column, in paragraph 18.1, in the sixth line, "(RADO)" should read "R_{ADO}".

10. On page 26503, in the first column, in paragraph 18.4.2.6, in the second line, "T_{null}" should read "θ_{null}".

11. On the same page, in the second column, in paragraph 18.4.2.7, in the fourth line, "T_{null}" should read "θ_{null}".

12. On th same page, in the same column, in the same paragraph, in the same line, "(90° – T_{null})" should read "(90° – θ_{null})".

Method 2G—Determination of Stack Gas Velocity and Volumetric Flow Rate With Two-Dimensional Probes [Corrected]

13. On page 26524, in the third column, in paragraph 3.21, in the 13th line, "±3 of 0" should read "±3° of 0°".

14. On page 26530, in the first column, in paragraph 10.1.2.1, in the ninth line from the bottom, "±3@ of 0@" should read "±3° of 0°".

15. On the same page, in the second column, in paragraph 10.1.3.2, in the third line, "3" should read "±3".

16. On the same page, in the third column, in paragraph 10.3.3.2, in the fifth line, "#2" should read "±2".

17. On page 26531, in the first column, in the first line, "#2" should read "±2".

18. On the same page, in the same column, in paragraph 10.3.4, in the eighth line, "angle "" should read "angle θ".

19. On the same page, in the same column, in the same paragraph, the last sentence is corrected to read as follows: "The difference of the sum of the two readings from 180° (i.e., 180°-R_1-R_2) shall be within ±2° of the known angle, θ."

20. On the same page, in the third column, in paragraph 10.5.8, in the first line, "RSLO" should read "R_{SLO}".

21. On page 26532, in the second column, in paragraph 10.6.6, in the second line, "(ΔPstd)" should read (ΔP_{std})".

22. On the same page, in the third column, in paragraph 10.6.12.1, in the first line, "C_p" should read "C_p".

23. On page 26533, in the first column, in paragraph 12.0, in the fifth line, "($_{s(ii)}$)" should read "($v_{s(i)}$)".

24. On th same page, in the same column, in the same paragraph, in the last line, "$a_{(avg)}$" should read "($v_{s(avg)}$)".

25. On the same page, in the same column, under paragraph 12.1 Nomenclature, in the second line, "m_2 (ft_2)" should read "m^2 (ft^2)".

26. On the same page, in the second column, in the 28th line, "$ts_{(i)}$ = Stack or duct temperature, °C (°F), at traverse point i" should read "$t_{s(i)}$ = Stack or duct temperature, °C (°F), at traverse point i."

27. On page 26536, in the third column, in paragraph 18.4.2.1.2, in the third line "°" should read " 0°".

Method 2H—Determination of Stack Gas Velocity Taking Into Account Velocity Decay Near the Stack Wall [Corrected]

28. On page 26554, in the first column, in paragraph 3.1, in the first line, "Complete wall effects traverse" should read "*Complete wall effects traverse*".

29. On page 26557, in the second column, in the fourth line, "$U_{dl} \rightarrow {}_{last}$" should read "$Q_{dl} \rightarrow {}_{dlast}$".

30. On the same page, in the same column, in the 34th line, "$\hat{v}_{e_j}$" should read "$\hat{v}e_j$"

31. On the same page, in the same column, in the 52nd line, "*WAF*" should read, "$\bar{W}\bar{A}\bar{F}$".

32. On the same page, in the third column, in the first line "$\hat{v}_{avg(k)}$" should read "$v_{avg(k)}$".

33. On the same page, in the same column, in paragraph 12.4, in the second line, "$\bar{v}_j$" Should read "$\hat{v}e_j$".

34. On the same page, in the same column, in the third and second line from the bottom, "*enter the corresponding calculated value of*" should read "enter the corresponding calculated value of".

35. On page 26558, in the first column, equation 2H–10 is corrected to read as follows:

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36. On the same page, in the second column, in the first line, "$Q_{dl} \rightarrow {}_{dlast}$" should read "$Q_{dl} \rightarrow {}_{d_{rem}}$".

37. On the same page, in the first column, in paragraph 12.4.6, in the first line following equation 2H–13, "μ_{drem}" is corrected to read "v_{drem}".

38. On the same page, in the same column in the same paragraph, in the fourth line following equation 2H–13, "d_{drem}" should read "d_{rem}".

39. On the same page, in the same column, in the eighth line from the bottom, "μe" should read "$\hat{v}e_j$"

40. On the same page, in the same column, in paragraph 12.5, in the second line, "velocity," should be corrected to read, "velocity, $\hat{v}_{avg}$".

41. On the same page, in the same column, in the same paragraph, in the third line, "μ_{avg}" should read "ve_j"

42. On the same page, in the same column, in the same paragraph, in the fifth line "μe" should read "$\hat{v}e_j$".

43. On the same page, in the third column, in paragraph 12.7.1, in the last line, "μ_{avg}" should read "v_{avg}".

44. On the same page, in the same column, in the seventh line from the bottom, "*WAF*" should read, "$\bar{W}\bar{A}\bar{F}$".

45. On the same page, in the third column, in the second line from the bottom, "$\mu_{avg(k)}$" should read "$v_{avg(k)}$".

46. On page 26559, in the first column, in paragraph 12.8, in the fifth line, "μ_s" should read "v_s"

47. On the same page, in the same column, in the same paragraph, in the sixth line, "$\mu_{a(avg)}$" should read "$v_{a(avg)}$".

48. On the same page, in the same column, in the same paragraph, in the same line, "a" should be removed.

49. On the same page, in the same column, in the same paragraph, in the eighth line, "$\mu_{a(avg)}$" should read "$v_{a(avg)}$".

50. On the same page, in the same column, in paragraph 12.8.1, in the third line, "$\mu_{final,}$" should read "$\hat{v}_{final,}$".

51. On the same page, in the same column, in paragraph 12.8.2, in the third line "$\mu_{final(k),}$" should read "$\hat{v}_{final(k),}$"

[FR Doc. C9–11796 Filed 7–8–99; 8:45 am]

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Part II

General Services Administration

48 CFR Chapter 5
General Services Administration
Acquisition Regulation; Interim Rule

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GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

RIN 3090–AE90

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration (GSA) is revising the General Services Administration Acquisition Regulation (GSAR) in its entirety. GSA has rewritten the GSAR into plain English, included only regulatory material, and removed internal agency guidance. GSA has also updated the GSAR to reflect recent changes to the Federal Acquisition Regulation (FAR). GSA intends the reissued GSAR to be simpler to understand and less burdensome for contractors and offerors, GSA contracting personnel, and contracting personnel in other agencies delegated contracting authority subject to following GSAR procedures.

DATES: *Effective Date:* September 1, 1999. Comments should be submitted in writing to the address shown below on or before September 7, 1999.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4012, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION:

A. Background

On January 28, 1992, the President directed agencies to evaluate their regulatory programs and eliminate certain rules that restrict the economy. On September 11, 1993, the President directed agencies to eliminate at least half of their internal management regulations. While these directives did not apply to GSA acquisition regulations, GSA initiated a review and rewrite of the GSAR following the same principles. The GSAR, as reissued—

—Uses plain English to improve clarity and understanding.
—Reduces the amount of regulatory material.
—Eliminates internal operating procedures that do not have a significant effect beyond GSA, or a significant cost or administrative impact on contractors or offerors.
—Eliminates guidance which merely implements or supplements the Federal Acquisition Regulation (FAR) without a significant cost or administrative impact on contractors or offerors, or an effect beyond GSA's internal operating procedures.
—In subparts 503, 515, 552, and 570, incorporates changes from the interim rule published in the **Federal Register** at 63 FR 18843, April 16, 1998 (ADP 2800.12A, CHGE 79). GSA received no comments on this interim rule. The interim rule updated regulation procedures for acquisitions of leasehold interests in real property for consistency with FAR Part 15 where applicable. The interim rule is incorporated with editorial changes for plain language, more clear organization, and consistency in cross references.
—In subparts 504.5 and 505.1, provides guidance on use of GSA's Electronic Posting System for issuing synopses and solicitations.
—In subparts 511, 516, 542, and 552 incorporates changes from the interim rule published in the **Federal Register** at 64 FR 4788, February 1, 1999 (ADP 2800.12A, CHGE 81). The interim rule clarified requirements for making deliveries under contracts that provide for delivery to both civilian and military locations, clarified the contracting activities authorized to place orders under Federal Supply Service (FSS) contracts, allowed Procuring Contracting Officers (PCOs) in FSS to authorize Administrative Contracting Officers (ACOs) to issue cure or show causes notices, revised the time for submission of close-out reports under FSS multiple award contracts (MAS), and simplified the process for deleting items from FSS MAS contracts. Only the Department of Veterans Affairs (VA) submitted comments. VA requested that the authority to delete items without prior approval be optional for VA because of potential conflicts with its Prime Vendor system. VA also requested that publication requirements for supplemental price lists be clarified to reflect workdays and be based on calendar months. GSA adopts these comments. VA also requested that section 552.216–73 identify a GSA contact for information on authorized schedule users. This comment is not adopted. Questions regarding authorized users should be referred to the contracting officer.
—In subparts 515.3, 537.2, and 552.237–73, provides guidance on use of outside evaluators. GSA published a proposed rule on disclosure and use of proprietary information in the **Federal Register** at 58 FR 42715, August 11, 1993. GSA received 18 comments from 5 respondents and considered all comments in preparing this interim rule. Two principal areas of concern from industry concerned adding a requirement for nongovernment evaluators to execute nondisclosure agreements directly with the owners of proposal information and clarification of available remedies for violations. GSA will not require nondisclosure agreements between outside evaluators and the owner of proposal information. Such a requirement would be impractical to administer and does not add to the protection afforded the owner of the information. The owner of proposal information has remedies under the Trade Secrets Act. The Government has contractual and legal remedies, including those defined at FAR 3.104, FAR 52.203–8 and 52.203–10, GSAR 552.237–73, and the termination provisions of the contract.
—In sections 532.71 and 552.232–1, allows automatic payment for recurring services (i.e., fixed roll payment).
—In sections 536.271 and 552.236–83, establishes procedures for using project labor agreements for large and significant Federal construction projects.
—Incorporates updates to remain consistent with the FAR through Federal Acquisition Circular (FAC) 97–10, including:
—Revises section 503.1 to eliminate references to certifications and parallel the organization of FAR section 3.1.
—In section 511.404(a)(1), updates the FAR reference from FAR 52.211–1 to FAR 52.211–8.
—Reorganizes Part 513 to correspond to FAR Part 13.
—Eliminates certifications that are not based on statute, including section 514.303 (eliminating the requirement that the receipt for withdrawal of a bid certify the representative's authority), section 528.301 (deleting the reference to certification of insurance and deferring to applicable FAR clauses), and sections 537.110 and 552.237–72 (changing the certification regarding quasi-military armed forces to a prohibition).
—Reorganizes and updates Part 515 to correspond to FAR part 15.
—Makes conforming changes to rules on cost and pricing data and information other than cost or pricing data in Part 515.

—Updates subpart 519.8 and section 552.219–74, to conform to changes in FAC 97–05 and 97–06, and to add direct section 8(a) award authority based on a Memorandum of Understanding with the Small Business Administration.
—Updates subparts headings in Part 528 to correspond to subpart headings in the FAR.
—Implements agency protest procedures in sections 533.103 and 552.233–70.
—Reorganizes Part 542 to correspond to FAR Part 42.
—Updates prescription citations in Part 552 to conform to the revised Parts 501–550 and 570.
—Deletes the following sections from Part 552, which are either obsolete or duplicate FAR provisions or clauses:

552.203–4 Contingent Fee Representation and Agreement
552.214–16 Minimum Bid Acceptance Period
552.214–74 Solicitation Copies
552.225–70 Buy American Act—Hand or Measuring Tools or Stainless Steel

Flatware

552.225–72 Eligible Products from Nondesignated Countries—Waiver
552.225–75 Buy American Act Notice—Construction Materials
552.228–70 Bid Guarantee and Bonds
552.228–71 Bid Guarantee
552.228–72 Performance Bond
552.228–73 Performance and Payment Bonds
552.233–70 Disputes (Utility Contract)
552.236–83 Furnishing Information and Records
552.270–40 Asbestos and Hazardous Waste Management.

—Renumbers section 552.211–1 to 552.211–8 for consistent cross-numbering to the corresponding clause of FAR 52.211–8.
—Incorporates a clause at sections 552.212–71 and 552.238–78, Cancellation, required by the Federal Supply Service for multiple award schedule contracts.
—At section 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, separates provisions from clauses and updates references to revised provisions and clauses.
—At section 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items, separates provisions from clauses; adds 552.225–8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate and 552.225–9, Buy American Act—Trade Agreements—Balance of Payments Program; and updates references to revised provisions and clauses.
—At section 552.216–70, Economic Adjustment—FSS Multiple Award Schedule Contracts, corrected the title of the clause for internal consistency.
—At section 552.225–8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, conforms the name to the related FAR provisions.
—At section 552.225–9, Buy American Act—Trade Agreements—Balance of Payments Program, conforms the name to the related FAR clause.
—At section 552.225–70, Buy American Act-Hand of Measuring Tools or Stainless Steel Flatware, updates GSAR references.
—At section 552.228–70, Workers' Compensation Laws, changes "workermen's" to "workers'' ' to conform to FAR references.
—At section 552.232–23, Assignment of Claims, deletes references to "delivery" orders so that the clause covers both delivery and task orders.
—At section 552.232–70, Invoice Requirements, deletes references to "purchase" and "delivery" orders so that the clause covers purchase, delivery, and task orders.
—At section 552.232–76, Electronic Funds Transfer Payment, updates the clause to conform the information required under leases for real property to FAR requirements for other contracts.
—At section 552.232–77, Payment by Credit Card, updates procedures for consistency with the new Government credit card contract and removes "delivery" so that the clause covers both delivery and task orders.
—At section 552.236.77, Specifications and Drawings, corrects the reference to the FAR clause at 52.236–21, Specifications and Drawings for Construction.
—At section 552.236–78, Shop Drawings, Coordination Drawings, and Schedules, corrects the reference to the FAR clause at 52.236–21, Specifications and Drawings for Construction.
—At section 552.238–74, Contractor's Report of Sales, updates references to the clause at 552.238–76, Industrial Funding Fee and adds task orders in paragraph (a).
—At section 552.238–76, Industrial Funding Fee, updates references to the clause at 552.238–75, Contractor's Report to Sales.
—At section 552.243–71, Equitable Adjustments, revises a reference from "workmen's" to workers'' ' to conform to references in the FAR.
—At section 552.243–72, Modifications (Multiple Award Schedule), updates references to GSAR clauses.
—At section 552.246–70, Source Inspection by Quality Approved Manufacturer, corrects the numbering of subparagraphs in paragraph (b).
—At section 552.247–71, Diversion of Shipment Under F.O.B. Destination Contracts. The clause authorizes GSA to unilaterally direct shipment of an order to an alternate location. Prior to changes resulting from the Federal Acquisition Streamlining Act, FAR 52.243–1, Changes—Fixed Price, and 52.247–54, Diversion of Shipment Under F.O.B. Destination Contracts, provided the Government the right to unilaterally change the place of delivery and defined the basis for making related price adjustments GSA's Federal Supply Service (FSS) used these clauses to implement efficient inventory management in the Stock, SOP, and Single Award Schedule programs. The authority to divert shipment to certain volume orders allows FSS to maintain optimum inventory levels and minimize space, storage, handling, and related expenses. It also allows FSS to respond quickly to customer agency needs. FAR 52.212–4(c) allows changes "only by written agreement of the parties." This requires FSS to process a bilateral modification for each order when directing shipment to an alternate location would be in the Government's best interest. This creates unacceptable delays in processing orders and responding to customer agencies' needs. It also cause FSS to maintain excessive stock levels and storage facilities in order to respond to unusual orders. This unnecessarily increases FSS costs, and in turn, costs to customer agencies. The ability to unilaterally direct shipments improves responsiveness and reduces costs in the Government's best interest.
—At section 552.225–5, Authorized Deviations in Provisions, conforms the provision to changes in FAR 52.252–5.
—At section 552.252–6, Authorized Deviations in Clauses, conforms the clause to changes in FAR 52.252–6.
—Revises the following clauses applicable to leases of real property to provide a common standard to measuring usable square feet based on the Building Owners and Managers Association definition:

552.270–2 Historic Preference.
552.270–4 Definitions
552.270–14 Changes
552.270–16 Adjustment for Vacant Premises

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552.270–18 Default in Delivery—Time Extensions
552.270–20 Payment
552.270–29 Acceptance of Space

—Redesignates provisions and clauses so that they appear in the sequence referred to in parts 501–551 and 570.

Old section	New section
552.203–73	552.203–70
552.203–70	552.203–71
552.209–73	552.209–70
552.209–74	552.209–71
552.209–75	552.209–72
552.209–76	552.209–73
552.214–73	552.214–70
552.214–75	552.214–71
552.214–76	552.214–72
552.216–71	552.216–70
552.216–72	552.216–71
552.216–73	552.216–72
552.216–74	552.216–73
552.219–71	552.219–70
552.219–72	552.219–71
552.219–73	552.219–72
552.219–74	552.219–73
552.223–71	552.223–72
552.223–72	552.223–71
552.225–71	552.225–70
552.228–75	552.228–70
552.229–72	552.229–71
552.232–70	552.232–74
552.232–71	552.232–75
552.232–72	552.232–70
552.232–73	552.232–76
552.232–77	552.232–73
552.232–78	552.232–71
552.232–79	552.232–72
552.232–80	552.232–77
552.238–72	552.238–74
552.238–74	552.238–71
552.238–75	552.238–72
552.238–76	552.238–75
552.238–77	552.238–76
552.246–71	552.246–72
552.246–72	552.246–71
552.270–4	552.270–2
552.270–6	552.270–3
552.270–10	552.270–4
552.270–11	552.270–5
552.270–12	552.270–6
552.270–13	552.270–7
552.270–15	552.270–8
552.270–16	552.270–9
552.270–17	552.270–10
552.270–18	552.270–11
552.270–19	552.270–12
552.270–20	552.270–13
552.270–21	552.270–14
552.270–22	552.270–15
552.270–25	552.270–16
552.270–27	552.270–17
552.270–28	552.270–18
552.270–30	552.270–19
552.270–31	552.270–20
552.270–32	552.270–21
552.270–33	552.270–22
552.270–34	552.270–23
552.270–35	552.270–24
552.270–36	552.270–25
552.270–37	552.270–26
552.270–38	552.270–27
552.270–39	552.270–28
552.270–41	552.270–29

B. Executive Order 12866

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12866. This is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The guidance on disclosure and use of proprietary information implements agency procedures for releasing proposals outside the Government for evaluation and provide a contract clause to ensure that evaluation contractors protect proposal information appropriately. The agency protest procedures offer vendors an alternate forum which is quicker and less expensive than protests to the General Accounting Office or the Courts. The other revisions do not add any new requirements; but reduce the number of agency regulations, restate existing requirements in plain English, and provide consistency with the FAR. These revisions streamline GSA acquisition rules, provide greater flexibility, and promote understanding.

D. Paperwork Flexibility Act

The reissued GSAR contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) which were approved previously by OMB and assigned the control numbers shown in section 501.106.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule under 5 U.S.C. 804. This rule was submitted to Congress and GAO under 5 U.S.C. 804.

F. Determination to Issue an Interim Rule

Urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. Many of the updates to consistency with the FAR are necessary to comply with statute or Executive Orders. For example, this rule implements Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), eliminating certifications not required by statute or approved by the Office of Federal Procurement Policy, and Executive Order 12979, Agency Procurement Protests, providing inexpensive, informal, simple, and quick resolution of protests. Other changes necessary for consistency with the FAR implement streamlined and innovative acquisitions procedures that benefit contractors, offerors, and GSA contracting personnel, such as GSA implementation of new FAR Part 15 source selection procedures. Further, the rule provides significant benefits to the Federal government, offerors, and contractors by:

—Reducing the number of agency regulations, which reduces administrative burden and promotes flexibility in the acquisition process.

—Restates requirements in plain English, which promotes understanding.

—Provides consistency with the FAR, which eliminates conflicts and reduces confusion.

However, pursuant to Pub. L. 98–577 and FAR 1.501, GSA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Chapter 5

Government procurement.

Dated: June 16, 1999.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

Accordingly, the General Services Administration revises 48 CFR Chapter 5, to read as follows:

CHAPTER 5—GENERAL SERVICES ADMINISTRATION

SUBCHAPTER A—GENERAL

Part
501 General Services Administration Acquisition Regulations System
502 Definitions of Words and Terms
503 Improper Business Practices and Personal Conflicts of Interest
504 Administrative Matters

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

505 Publicizing Contract Actions
509 Contractor Qualifications
511 Describing Agency Needs
512 Acquisition of Commercial Items

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

513 Simplified Acquisition Procedures
514 Sealed Bidding
515 Contracting by Negotiation
516 Types of Contracts
517 Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

519 Small Business Programs
522 Application of Labor Laws to Government Acquisitions
523 Environment, Conservation, Occupational Safety and Drug-Free Workplace
525 Foreign Acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

527 Patents, Data, and Copyrights
528 Bonds and Insurance
529 Taxes
532 Contract Planning
533 Protests, Disputes, and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

536 Construction and Architect-Engineer Contracts
537 Service Contracting
538 Federal Supply Schedule Contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

542 Contract Administration and Audi Services
543 Contract Modifications
546 Quality Assurance
547 Transportation
549 Termination of Contracts

SUBCHAPTER H—CLAUSES AND FORMS

552 Solicitation Provisions and Contract Clauses
553 Forms

SUBCHAPTER I—SPECIAL CONTRACTING PROGRAMS

570 Acquiring Leasehold Interests in Real Property

SUBCHAPTER A—GENERAL

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

Subpart 501.1—Purpose, Authority, Issuance

Sec.
501.101 Purpose
501.103 Authority
501.104 Applicability
501.105 Issuance
501.105–1 Publication and code arrangement
501.105–2 Arrangement of regulations
501.105–3 Copies
501.106 OMB Approval under the Paperwork Reduction Act

Subpart 501.4—Deviations From the FAR and GSAR

501.402 Policy
501.403 Individual deviations
501.404 Class deviations

Authority: 40 U.S.C. 486(c).

Subpart 501.1—Purpose, Authority, Issuance

501.101 Purpose.

(a) The General Services Acquisition Regulation (GSAR) contains agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors.

(b) GSAR address rules directly to you, the contracting officer, unless otherwise indicated.

501.103 Authority.

GSA's Senior Procurement Executive issues the GSAR under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

501.104 Applicability.

(a) *General.* The GSAR applies to contracts for suppliers or services, including construction.

(b) *Acquisition of leasehold interests in real property.* Part 570 establishes rules for the acquisition of leasehold interests in real property. Other provisions of 48 CFR chapter 5 (GSAR) do not apply to leases of real property unless specifically cross-reference in part 570.

(c) *Relationship to state.* Some GSAR rules implement and interpret laws and other authorities affecting procurement. A GSAR rule specifically directed by statute has the force and effect of law.

(d) *GSAR/FAR Relationship.* The GSAR may deviate from the Federal Acquisition Regulation (FAR) if authorized. If the GSAR does not implement the FAR, the FAR alone governs.

501.105 Issuance.

501.105–1 Publication and code arrangement.

The GSAR is published in the following sources:

(a) Daily issue of the **Federal Register.**

(b) Annual Code of Federal Regulations (CFR), as Chapter 5 of Title 48.

(c) GSA Acquisition Manual distributed within GSA.

(d) GSA Home Page at http://www/gas.gov. Click on either "Government Agencies" or on "Business and Industry," the click on "Acquisition."

501.105–2 Arrangement of regulations.

(a) The GSAR numbers and captions policies and procedures to correspond to how they appear in the FAR, e.g., 1.104 in the FAR is 501.104 in the GSAR.

(b) GSAR rules not implementing the FAR have numbers beginning with 70, e.g., part 570, subsection 515.209–70.

(c) The GSAR may have gaps in its numbering scheme because a FAR rule may not require GSAR implementation.

501.105–3 Copies.

The GSAR in CFR form may be purchased from: Superintendent of Documents, Government Printing Office, Washington, DC 20402.

501.106 OMB approval under the Paperwork Reduction Act.

GSAR Reference	OMB Control No.
509.105–1(a)	3090–0007
511.170–3(a)	3090–0203
511.170–3(c)	3090–0203
511.204(d)	3090–0246
511.404(a)(1)	3090–0204
511.404(a)(2)	3090–0204
511.404(a)(5)	3090–0204
514.201–7(a)	3090–0200
516.203–4(a)(1)	3090–0243
516.506	3090–0248
519.708(b)	3090–0252
522.406–6	1215–0149
523.370	3090–0205
532.111(c)	3090–0080
532.905–70	9000–0102
532.905–71	3090–0080
537.110(a)	3090–0197
537.110(b)	3090–0006
538.273(a)(1)	3090–0250
538.273(a)(3)	3090–0262
538.273(b)(1)	3090–0121
542.1107	3090–0027
546.307–70	3090–0027
546.302–71	3090–0027
549.502(b)	3090–0027
552.211–8	3090–0204
552.211–70	3090–0203
552.211–77	3090–0246
552.211–78	3090–0204
552.211–82	3090–0204
552.214–71	3090–0200
552.216–70	3090–0243
552.216–72	3090–0248
552.216–73	3090–0248
552.219–72	3090–0252
552.223–72	3090–0205
552.232–72	3090–0080
552.237–70	3090–0197
552.237–71	3090–0006
552.238–70	3090–0250
552.238–72	3090–0262
552.238–74	3090–0121
552.242–70	3090–0027
552.246–70	3090–0027
552.246–71	3090–0027
552.249–71	3090–0227
GSA–72–A	3090–0121
GSA–527	3090–0007
GSA–618–D	1215–0149
GSA–1142	3090–0080
GSA–1364	3090–0086
GSA–1678	3090–0027
GSA–2419	9000–0102
570.702(c)	3090–0086

Subpart 501.4—Deviations From the FAR and GSAR

501.402 Policy.

Uniformity is a goal of GSA's Acquisition Regulation System. Despite this desire for uniformity, a contracting activity may take any of the following actions:

(a) Develop and test new procedures and techniques.

(b) Adopt alternate procedures in the public interest for unique programmatic or managerial requirements

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(c) Deviate from a regulatory provision implementing a statutory requirement provided the deviation does not violate the underlying statute. Deviations must not be used to defeat the FAR and GSAR approval requirements.

501.403 Individual deviations.

(a) The Contracting Director approves individual deviations from the FAR and GSAR.

(b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the Contracting Director in the agency receiving the delegation may approve individual deviations from the GSAR unless the agency head receiving the delegation designates another official.

(c) Send a copy of each deviation to GSA's Senior Procurement Executive (MV).

501.404 Class deviations.

(a) HCAs approve class deviations from the FAR and GSAR.

(b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the HCA in the agency receiving the delegation may approve class deviations from the GSAR unless the agency head receiving the delegation designates another official.

(c) Send a copy of each deviation to GSA's Senior Procurement Executive (MV).

(d) A request for class deviations must be supported by statements that fully describe the need for and the nature of the deviation.

(e) Class deviations from the GSAR:

(1) Expire in 12 months if not extended.

(2) May be rescinded earlier by GSA's Senior Procurement Executive or by officials designated under paragraph (a) of this section without prejudice to any action taken previously.

PART 502—DEFINITIONS OF WORDS AND TERMS

Authority: 40 U.S.C. 486(c).

Subpart 502.1—Definitions

502.101 Definitions.

Agency competition advocate means the GSA Competition Advocate in the Office of Acquisition Policy.

Assigned counsel means the attorney employed by the Office of General Counsel (including offices of Regional Counsel) assigned to provide legal review or assistance.

Contracting activity competition advocate means the individual designated in writing by the head of the contracting activity (HCA). This authority may not be redelegated. The HCA must ensure that the designated competition advocate is not assigned any duty or responsibility that is inconsistent with the advocacy function. The identity of the designated official shall be communicated to procuring staff and the Senior Procurement Executive.

Contracting director means:

(a) Except in FSS, a director of a Central Office or Regional office Division responsible for performing contracting or contract administration functions.

(b) In FSS, a director of a Commodity Center or FSS Bureau.

Contracting officer's representative (COR), contracting officer's technical representative (COTR), or contract administrator means a Government employee designated in writing by the contracting officer to perform specific limited activities for the contracting officer, such as contract administration.

Debarring official or *suspending official* means the Senior Procurement Executive or a designee.

Head of the contracting activity means the Deputy Associate Administrator for Acquisition Policy (MV); Commissioners of the Federal Technology Service (FTS); Federal Supply Service (FSS), or Public Buildings Service (PBS); or Regional Administrators. The Deputy Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FTS, FSS, and PBS.

Senior procurement executive means the Deputy Associate Administrator for Acquisition Policy.

Senior program official means a person reporting to, and designated by, the HCA to have overall program responsibility for determining how the agency will meet its need. The official should have a position of authority over the participating offices. Examples include Assistant Regional Administrators or Deputy Commissioners.

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 503.1—Safeguards

Sec.
503.104 Procurement integrity
503.104–3 Definitions
503.104–9 Contract clauses

Subpart 503.2—Contractor Gratuities to Government Personnel

503.204 Treatment of violations

Subpart 503.4—Contingent Fees

503.404 Contract clause

Subpart 503.5—Other Improper Business Practices

503.570 Advertising
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503.570–2 Contract clause

Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definition
503.705 Procedures

Authority: 40 U.S.C. 486(c).

Subpart 503.1—Safeguards

503.104 Procurement integrity.

503.104–3 Definitions.

Federal agency procurement as used in FAR 3.104 and in this section, also means acquisitions of leasehold interests in real property.

503.104–9 Contract clauses.

Acquisitions of Leasehold Interests in Real Property

Insert a clause substantially the same as the clause at 552.203–70, Price Adjustment for Illegal or Improper Activity, in solicitations and contracts for and modifications to leasehold interests in real property exceeding $100,000.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.204 Treatment of violations.

(a) The Senior Procurement Executive, or designee, makes determinations under FAR 3.204.

The Senior Procurement Executive, or designee, takes all the following actions:

(1) Coordinates with legal counsel.

(2) Initiates proceedings under FAR 3.204(a) by notifying the contractor that GSA is considering action against the contractor for a violation of the Gratuities clause. Notice is sent by a certified letter to the last known address of the party, its counsel, or agent for service of process. In the case of a business, notice is sent to any partner, principal officer, director, owner or co-owner, or joint venture.

(3) Presumes receipt if no return receipt is received within 10 calendar days after mailing the notice.

(b) The contractor has 30 calendar days to exercise its rights under FAR 3.204(b), unless the Senior Procurement Executive, or designee, grants an extension.

(c) If there is a dispute of fact material to making a determination, the Senior Procurement Executive, or designee, may refer the matter to an agency fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. Referrals for fact-finding are not made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official takes all the following actions:

(1) Gives the contractor an opportunity to dispute material facts relating to the determinations under FAR 3.204(a)(1) and (2).

(2) Conducts proceedings under rules consistent with FAR 3.204(b).

(3) Schedules a hearing within 20 calendar days of receipt of the referral. The contractor or GSA may request an extension for good cause.

(4) Delivers to the Senior Procurement Executive, or designee, written findings of fact (together with a transcription of the proceedings, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(d) The Senior Procurement Executive, or designee, may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(e) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Senior Procurement Executive, or designee, conducts the hearing required by FAR 3.204(b).

(f) If the Gratuities clause was violated, the contractor may present evidence of mitigating factors to the Senior Procurement Executive, or designee, either orally or in writing, in accordance with a schedule the Senior Procurement Executive, or designee, establishes. The Senior Procurement Executive, or designee, exercises the Government's rights under FAR 3.204(c) only after considering mitigating factors.

Subpart 503.4—Contingent Fees

503.404 Contract clause.

Insert 552.203–5, Covenant Against Contingent Fees, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed $100,000.

Subpart 503.5—Other Improper Business Practices

503.570 Advertising.

503.570–1 Policy.

GSA policy precludes contractors from referring to GSA contracts in commercial advertising in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

503.570–2 Contract clause.

Insert the clause at 552.203–71, Restriction on Advertising, in solicitations and contracts, including acquisitions of leasehold interests in real property, if the contract amount is expected to exceed the simplified acquisition threshold.

Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definition.

Notice means a letter sent by certified mail with a return receipt requested to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt is presumed.

Voiding and rescinding official means the Senior Procurement Executive or designee.

503.705 Procedures.

(a) *Contracting officer's actions:*

(1) If a contract is tainted by misconduct, consult with assigned counsel to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation.

(2) If the contractor has a final conviction for a violation under 18 U.S.C. 201–224, you may refer the matter to the voiding and rescinding official under FAR 3.705.

(i) In the referral, identify the final conviction and include the information required by FAR 3.705(d)(2) through (5).

(ii) Coordinate the referral with the Office of Inspector General to determine whether to recommend debarment.

(3) You may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract until completion of legal proceedings against the contractor.

(b) *Voiding and rescinding official's actions:*

(1) The voiding and rescinding official reviews the referral and coordinates with assigned counsel and the contracting activity.

(2) If the official decides to declare void and rescind a contract and to recover the amounts expended and the property transferred, the official takes both the following actions:

(i) Issues the notice required by FAR 3.705.

(ii) Conducts the hearing contemplated by FAR 3.705(c)(3).

(3) In case of a dispute of material fact about the agency decision, the official refers the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. The voiding and rescinding official makes this referral if the dispute of fact relates to any of the following:

(i) Contracts affected by the final conviction.

(ii) Amounts expended and property transferred by the Government under the affected contracts.

(iii) Identity and value of any tangible benefits received by the Government under the affected contracts.

(4) The voiding and rescinding official issues GSA's final decision under FAR 3.705(e) after receiving the fact-finding official's report, if a referral was made. The voiding and rescinding official may reject the fact-finding official's findings only if they are clearly erroneous or arbitrary and capricious.

(5) The official coordinates the final decision was the contracting activity and provides the activity a copy of the decision.

(c) *Fact-finding official's actions:* The fact-finding official takes all the following actions:

(1) Gives the contractor an opportunity to dispute material facts.

(2) Conducts the proceedings under rules consistent with FAR 3.705(c)(3).

(3) Schedules a hearing within 20 calendar days after receiving the referral. The official may grant extensions for good cause at the request of the contractor or GSA.

(4) Delivers written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

PART 504—ADMINISTRATIVE MATTERS

Subpart 504.4—Safeguarding Classified Information Within Industry

Sec.
504.402 General
504.475 Return of classified information

Subpart 504.5—Electronic Commerce in Contracting

504.500 Scope of subpart
504.502 Policy
504.570 Procedures for using the EPS

Authority: 40 U.S.C. 486(c).

Subpart 504.4—Safeguarding Classified Information Within Industry

504.402 General.

(a) This subpart:

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(1) Prescribes procedures for safeguarding classified information required to be disclosed to contractors in connection with the solicitation of offers, and the award, performance, and termination of contracts.

(2) Implements the requirements of the Department of Defense's Industrial Security Regulation (ISR) and Industrial Security Manual for Safeguarding Classified Information (ISM). By agreement, the Department of Defense (DOD) will act for, and on behalf of, GSA in rendering security services required for safeguarding classified information released by GSA to U.S. industry.

(b) As used in this subpart, the term:

(1) "Contractor(s)" means prospective contractors, subcontractors, vendors, and suppliers.

(2) "U.S. industry" means those industries (including educational and research institutions) located within the United States, its possessions, and the Commonwealth of Puerto Rico.

504.475 Return of classified information.

(a) You must recover classified information unless it has been destroyed as provided in paragraph 19 of the ISM. The Government agency that provided classified information to a GSA contractor is responsible for the return of the information.

(b) You must ensure that classified information furnished to prospective offerors, offerors, or contractors is returned immediately after any of the following:

(1) After bid opening or closing date for receipt of proposals by non-responding offerors.

(2) After contract award by unsuccessful offerors.

(3) Upon termination or completion of the contract.

(4) Upon notification that authorization to release classified information has been withdrawn.

(5) After notification that a facility:

(i) Does not have adequate means to safeguard classified information.

(ii) Has had its security clearance revoked or inactivated.

(6) Whenever otherwise instructed by the authority responsible for the security classification.

Subpart 504.5—Electronic Commerce in Contracting

504.500 Scope of subpart.

This subpart provides policy and procedure for use of GSA's Electronic Posting System (EPS).

504.502 Policy.

(a) The EPS is GSA's primary vehicle for disseminating synopses and written solicitations. GSA intends that the EPS will substitute for, not supplement, paper copies of solicitations. (Note that FAR 2.101 defines "in writing" or "written" to include "electronically transmitted and stored information.")

(b) This policy does not apply to orders placed against existing contracts, including Federal Supply Service schedule contracts.

(c) Nothing in this policy limits your authority to obtain oral quotations or proposals as authorized by regulation (e.g., FAR 13.106–1 or FAR 15.203(f)).

504.570 Procedures for using the EPS.

(a) You must use the EPS to issue any synopsis required by FAR part 5 or GSAR part 505.

(b) You must issue each written solicitation on the EPS, except as provided in paragraphs (c)(2) and (d) of this section.

(c) Although GSA intends that the EPS will substitute for paper copies of solicitations, web-based transactions are not practical in some industries or in some geographic areas at this time.

(1) If you expect that electronic access to a solicitation will result in adequate competition, distribute the solicitation only through the EPS. Include the following notice in the related synopsis:

> GSA is issuing this solicitation only electronically. Interested parties may access the solicitation at *http://www.eps.gov*. This site provides instructions for downloading the solicitation file.

(2) If you believe that distribution of paper copies is necessary to ensure adequate competition, document the file to justify distribution of paper copies. Include the notice in paragraph (c)(1) of this section in the related synopsis, leaving out the first sentence.

(d) In some cases, release of construction drawings must be controlled to ensure adequate security. In other cases, an exhibit or attachment incorporated in a solicitation may not be available electronically. In either of these cases, you must explain in both the synopsis and the solicitation how interested parties may obtain a copy. In addition to the notice required by paragraph (c), include a notice substantially the same as follows in both the synopsis and solicitation. Tailor the notice as necessary for the particular acquisition.

> This solicitation incorporates documents which are not available electronically. See [Identify the solicitation section that lists the subject documents]. Interested parties may request copies of these documents by writing the Contracting Officer at the address in [Identify address block in the solicitation].

(e) The Electronic Posting System Manual provides detailed instructions for using the EPS. The Manual is available at *http://www.eps.gov/buyer.html*.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 505—PUBLICIZING CONTRACT ACTIONS

Subpart 501.1—Dissemination of Information

Sec.
505.101 Methods of disseminating information

Subpart 505.2—Synopses of Proposed Contract Actions

505.202 Exceptions
505.203 Publicizing and response time
501.270 Synopsis of amendments to solicitations

Subpart 505.5—Paid Advertisements

505.502 Authority

Authority: 40 U.S.C. 486(c).

Subpart 505.1—Dissemination of Information

505.101 Methods of disseminating information.

(a) In Regions with a Business Service Center (BSC), you may post the notice required by FAR 5.101(a)(2) at the BSC.

(b) Use GSA's Electronic Posting System (EPS) to issue each synopsis required by FAR part 5 or GSAR part 505. When synopsizing a solicitation, include the appropriate notice(s) required by 504.570(c) and (d).

(c) For acquisitions involving real property:

If the acquisition is not exempt under FAR 5.202 or GSAR 505.202, and—	Then you must publicize the proposed acquisition—
(1) The acquisition is for real property appraisal services estimated to cost $25,000 or more	(1) Either: (i) In local newspapers. (ii) In the Commerce Business Daily through the EPS.

If the acquisition is not exempt under FAR 5.202 or GSAR 505.202, and—	Then you must publicize the proposed acquisition—
(2) The acquisition is for leasehold interests in real property estimated to exceed 10,000 square feet (except lease construction on a preselected site).	(2) Either: (i) In local newspapers. (ii) In the Commerce Business Daily through the EPS.
(3) The acquisition is for a leasehold interest in a building to be constructed on a preselected site.	(3) In the Commerce Business Daily through the EPS.

(d) You may publicize proposed leases of 10,000 square feet or less in local newspapers if it will serve to promote competition.

Subpart 505.2—Synopses of Proposed Contract Actions

505.202 Exceptions.

The Administrator has determined under section 18(c)(3) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 416(c)(3)) and Section 8(g)(3) of the Small Business Act, as amended (15 U.S.C. 644(g)(3)) that:

(a) Synopsizing in the CBD is not always appropriate for acquisitions of leasehold interests in real property (except lease construction on a designated site) or real property appraisal services. You may publicize such contract actions following the procedures in 505.101 and 505.203.

(b) It is not appropriate or reasonable to publish an advance notice of any of the following:

(1) Acquisitions of works of art, including the design, execution and installation of the artwork, under the Art-in-Architecture Program.

(2) Supplemental agreements to leases of real property involving any of the following:

(i) Expansion requests within the scope of a lease (see 570.403).

(ii) Lease extensions under the conditions defined in 570.405.

(iii) Building alterations within the scope of a lease (see 570.5).

505.203 Publicizing and response time.

(a) If you publicize in local newspapers under 505.101(c), ensure that the notice appears in local newspapers at least 3 calendar days before issuance of the solicitation. Except as provided in paragraph (B) of this section, allow at least these minimum response times:

(1) For leasehold interests in real property, 20 calendar days between solicitation issuance and the date established for receipt of initial offers.

(2) For real property appraisal services valued at less than either the Trade Agreements Act (TAA) threshold or the North American Free Trade Agreement (NAFTA) threshold, 10 calendar days between solicitation issuance and the date established for receipt of initial offers. The lower of the two thresholds governs.

(3) For real property appraisal services valued at or over the TAA threshold or the NAFTA threshold, 40 calendar days from when the notice appears to receipt of initial offers. If the acquisition falls in a general category identified in an annual forecast, the period may be reduced to as few as 10 days. The lower of the two thresholds governs.

(b) The following exceptions to the publicizing and response times in paragraph (a) of this section apply only to proposed acquisitions of leasehold interests in real property:

(1) For a proposed acquisition conducted using simplified lease acquisition procedures (see 570.2), consider the individual acquisition and establish a reasonable response time.

(2) In cases of urgency, provide as much time as possible and document the file.

505.270 Synopsis of amendments to solicitations.

Synopsize in the CBD any solicitation amendment when the amendment either:

(a) Increases the anticipated value of the proposed acquisition above the dollar threshold requiring synopsis.

(b) Alters the scope of the proposed acquisition so that increased interest of contractors can be reasonably anticipated.

Subpart 505.5—Paid Advertisements

505.502 Authority.

(a) *Newspapers.* The HCA, or designee, must approve publication of paid newspaper advertisements. Approval is not required if FAR 5.101 or 505.101 requires publication. Document the contract file with the regulatory citation or written approval to support the use of paid newspaper advertisements.

(b) *Other media.* Advance approval is not required to advertise in other media.

PART 509—Contractor Qualifications

Subpart 509.1—Responsible Prospective Contractors

Sec.
509.105 Procedures
509.105–1 Obtaining information
509.105–2 Determinations and documentation
509.106 Preaward surveys
509.106–2 Requests for preaward surveys

Subpart 509.2—Qualifications Requirements

509.206 Acquisitions subject to qualification requirements
509.206–2 Contract clause

Subpart 509.3—First Article Testing and Approval

509.306 Solicitation requirements
509.308 Contract clauses
509.308–1 Testing performed by the contractor
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Subpart 509.4—Debarment, Suspension, and Ineligibility

509.401 Applicability
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509.405 Effect of listing
509.405–1 Continuation of current contracts
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509.406 Debarment
509.406–1 General
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509.407 Suspension
509.407–1 General
509.407–3 Procedures

Authority: 40 U.S.C. 486(c).

Subpart 509.1—Responsible Prospective Contractors

509.105 Procedures.

509.105–1 Obtaining information.

(a) *From a prospective contractor.* In making a determination of responsibility, you may use the GSA Form 527, Contractor's Qualification and Financial Information, to obtain information regarding financial capability from a prospective contractor.

(b) *From Government personnel.* Solicit and consider information from all appropriate activities, including legal counsel, quality control, contract management, credit and finance, and the auditor before determining that an offeror is responsible. "Auditor" is either:

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(1) The Assistant Inspector General for Auditing (Central Office only).
(2) The Regional Inspector General for Auditing.
(3) Chief, Credit and Finance Section, the Heartland Region (for an evaluation of a prospective contractor's financial competence and credit).

509.105–2 Determinations and documentation.

(a) Provide written notification to a prospective contractor you determine not responsible. Include the basis for the determination. Notification provides the prospective contractor with the opportunity to correct any problem for future solicitation.
(b) Due to the potential for de facto debarment, avoid making repeated determinations of nonresponsiblity based on the same past performance information.
(c) To provide for timely consideration of the need to institute action to debar a contractor, submit a copy of each nonresponsibility determination, other than those based on capacity or financial capability, to the debarring official.

509.106 Preaward surveys.

509.106–2 Requests for preaward surveys.

Federal Supply Service (FSS). Contracting activities in FSS may use GSA Form 353, Performance Evaluation & Facilities Report, in lieu of SF 1403 through 1406. Complete Section I in accordance with instructions in 553.370–353–I.

Subpart 509.2—Qualifications Requirements

509.206 Acquisitions subject to qualification requirements.

509.206–2 Contract clause.

Insert 552.209–70, Product Removal from Qualified Products List, in solicitations and contracts containing FAR 52.209–1, Qualification Requirements.

Subpart 509.3—First Article Testing and Approval

509.306 Solicitation requirements.

(a) The clauses at FAR 52.209–3 and 52.209–4 do not cover all the solicitation requirements described in FAR 9.306. If a solicitation contains a testing and approval requirement, you must address the requirements in FAR 9.306 (d), (f), (g), (h), (i), and (j). For FSS, the clauses prescribed in 509.308 address the requirement in FAR 9.306(h).
(b) In FSS solicitations that contain FAR 52.209–3, First Article Approval—Contractor Testing, or FAR 52.209–4, First Article Approval—Government Testing, insert 552.209–71, Waiver of First Article Testing and Approval Requirement.

509.308 Contract clauses.

509.308–1 Testing performed by the contractor.

In FSS solicitations and contracts that will require the contractor to perform testing, insert 552.209–72, Supplemental Requirements for First Article Approval—Contractor Testing, and FAR 52.209–3, Alternate I.

509.308–2 Testing performed by the Government.

In FSS solicitations and contracts that will have the Government responsible for first article testing, insert 552.209.73, Supplemental Requirements for First Article Approval—Government Testing, and FAR 52.209–4, Alternate I.

Subpart 509.4—Debarment, Suspension, and Ineligibility

509.401 Applicability.

This subpart applies to all the following:
(a) Acquisitions of personal property, nonpersonal services (including construction), space in buildings, transportation services (Federal Property Management Regulations (FPMR) Subpart 101–40.4).
(b) The purchase, sale, and disposal of real property.
(c) Contracts for disposal of personal property (FPMR Subpart 101–45.6).
(d) Covered transactions as defined at General Services Property Management Regulations (GSPMR) 105–68.110(a).

509.403 Definitions.

Fact-finding official, means the Chairman of the Debarment and Suspension Board within the GSA Board of Contract Appeals or a designee.
Notice means a letter sent by certified mail, return receipt requested, to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will then be presumed.

509.405 Effect of listing.

509.405–1 Continuation of current contracts.

(a) Consider terminating a current contract under any of the following circumstances:
(1) Any of the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of the contract.
(2) The contractor presents a significant risk to the Government in completing the contract.
(3) The conduct that provides the cause of the suspension, proposed debarment, or debarment involved a GSA contract.
(b) Determine which of the following is in the Government's best interest:
(1) Terminate the contract for either convenience or cause.
(2) Cancel under appropriate contract clauses (e.g., 552.238–73, Cancellation).
(3) Use other available alternatives under:
(i) FAR 3.2 and 503.2.
(ii) FAR 3.7 and 503.7.
(c) Before making a decision, consult with legal counsel and consider these factors:
(1) Seriousness of the cause for debarment or suspension.
(2) Extent of contract performance.
(3) Potential costs of termination and reprocurement.
(4) Need for or urgency of the requirement, contract coverage, and the impact of delay for reprocurement.
(5) Availability of other safeguards to protect the Government's interest until completion of the contract.
(6) Availability of alternate competitive sources to meet the requirement (e.g., other multiple award contracts, readily available commercial items, etc.).
(d) The debarring official is the designee under FAR 9.405–1(c).

509.405–2 Restrictions on subcontracting.

The debarring official is the designee under FAR 9.405–2(a).

509.406 Debarment.

509.406–1 General.

The debarring official is the designee under FAR 9.406–1(c).

509.406–3 Procedures.

(a) *Investigation and referral.*
(1) Refer to the debarring official matters involving serious contract improprieties or performance deficiencies. Performance deficiencies that continue over a period of time or apply to more than one contract may warrant debarment consideration.
(2) Refer possible criminal or fraudulent activities to the Office of the Inspector General (OIG). See 5 CFR 6701.107, Reporting Waste, Fraud, Abuse, and Corruption. If, after investigation, the OIG believes a cause for debarment exists, it will refer the matter to the debarring official for consideration of debarment action.

(b) *Reports.* Include in referrals to the debarring official a report that contains at least the following:
(1) The recommendation and supporting rationale.
(2) A list of parties to be considered for possible debarment, including the contractor, principals, and affiliates. Include last known home and business addresses, zip codes, and DUNS Number.
(3) A statement of facts.
(4) Copies of documentary evidence and a list of witnesses. Include addresses and telephone numbers. Determine their availability to appear at a fact-finding proceeding and identify the subject matter of their testimony.
(5) GSA's acquisition history with the contractor. Include recent experience, copies of the pertinent contracts, and an explanation of impact debarment would have on GSA programs. OIG referrals do not require this explanation; the debarring official will obtain the information directly from the contracting activity(s).
(6) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals.
(7) A statement regarding the impact of the debarment action on GSA programs. This statement is not required for referrals by the Inspector General; the debarring official will obtain a statement directly from the contracting activity(s).
(c) *Review.* The debarring official will review the report, and after coordinating with assigned legal counsel, either:
(1) Initiate debarment action.
(2) Decline debarment action.
(3) Request additional information.
(4) Refer the matter to the OIG for further investigation and development of a case file.
(d) *Decisionmaking process.*
(1) The debarring official will provide:
(i) Notice of declinations, proposed debarments, and decisions to the referring activity.
(ii) Notice of proposed debarment to each party being considered for debarment.
(iii) Decision notices to each party after considering information in the administrative record and information and argument submitted by the affected party or parties.
(2) A party proposed for debarment:
(i) Has 30 calendar days after receipt of the notice to respond to the debarring official or the debarment becomes final.
(ii) May request and receive a copy of the administrative record that was the basis for the proposed debarment. If information is withheld, the party will be notified and provided the reason.
(iii) May request the opportunity to present information and argument in person to the debarring official. The debarring official will schedule an oral presentation within 20 calendar days of receipt of the request, unless a longer period of time is requested by the party. An oral presentation is informal and a transcript usually is not made. The party may supplement the oral presentation with written information and arguments.
(iv) May identify to the debarring official material facts in dispute and the bases. For an action other than one based on a conviction of civil judgment, a party may request review and a written finding by a fact-finding official.
(3) The debarring official will determine whether there is a genuine dispute of material fact. If so, the debarring official refers the matter to a fact-finding official, who will take the following action as appropriate:
(i) Schedule a hearing within 20 calendar days after receipt of a request to resolve disputed facts.
(ii) Grant extensions for good cause.
(iii) Provide notice of scheduled hearing.
(iv) Conduct hearings under rules consistent with FAR 9.406–3(b)(2).
(v)Resolve facts in dispute and provide the debarring official with written findings of fact based on a preponderance of the evidence. The fact-finding official provides the written findings of fact (together with a transcription of the proceeding, unless waived) within 20 calendar days after the hearing record closes.

509.407 Suspension.

§ 509.407–1 General.

The suspending official is the designee under FAR 9.407–1(d).

§ 509.407–3 Procedures.

(a) *General.* The procedures in 509.406–3 apply to suspension actions except as noted in paragraph (b) of this section.
(b) *Fact-finding.*
(1) Fact-finding will not be conducted in an action:
(i) Based on an indictment.
(ii) When the suspending official finds no genuine dispute of material facts.
(2) If the action is not based on an indictment, the suspending official must coordinate with the Department of Justice or state prosecutorial authority through OIG. Based on the advice received, the suspending official will determine if fact-finding would impair substantial interests of the Federal or state Government. In an action not based on an indictment, a suspended party may:
(i) Identify to the suspending official material facts in dispute and the bases.
(ii) Request review and a written finding by a fact-finding official to resolve genuine disputes of material fact. For procedures involving a genuine dispute of material fact, see 509.406–3(d)(3).

PART 511—DESCRIBING AGENCY NEEDS

Subpart 511.1—Selecting and Developing Requirements Documents

Sec.
511.170 Use of brand name or equal product descriptions
511.170–3 Solicitation provisions

Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses

Subpart 511.4—Delivery or Performance Schedules

511.404 Contract clauses

Authority: 40 U.S.C. 486(c).

Subpart 511.1—Selecting and Developing Requirements Documents

511.170 Use of brand name or equal product descriptions.

511.170–3 Solicitation provisions.

(a) Include the following immediately after each brand name or equal item description, with instructions for the offeror to complete the information:

Offering on:
Manufacturer's Name _____
Brand _____
Model or Part No. _____

(b) If the solicitation does not require samples for "or equal" offers, include the following notice in the list of brand name or equal items or component parts:

Notice

If you offer other than brand name items identified in this solicitation, you must provide adequate information for GSA to determine the quality of the product(s) offered.

(c) Include a provision substantially the same as the one at 552.211–70, Brand Name or Equal, when you use a brand name or equal purchase description.
(d) If you use brand name or equal descriptions for component parts of an end item and the provision at 552.211–70 is impractical for some or all of the components, you may either:
(1) Not use the provision.
(2) Limit its application to specified components.

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Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

(a) *Construction services.* Insert the clause at 552.211–71, Standard References, in solicitations and contracts for construction services when you expect the contract amount to exceed the simplified acquisition threshold, and the solicitation meets either of the following conditions:

(1) The solicitation cites documents or publications not furnished with the solicitation.

(2) The solicitation incorporates documents or publications by reference.

(b) *Federal specifications.* Insert the clause at 552.211–72, Reference to Specifications in Drawings, in solicitations and contracts citing Federal specifications which contain drawings.

(c) *Supply contracts that exceed the simplified acquisition threshold.*

(1) Include the clause at 552.211–73, Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(2) Include the clause at 552.211–74, Charges for Marking, in solicitations and contracts that include the clause at 552.211–73 or a similar clause.

(3) Include the clause at 552.211–75, Preservation, Packaging and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. You may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate.

(4) Insert a clause substantially the same as the clause at 552.211–76, Charges for Packaging and Packing, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

(d) *Supply contracts.* Include the clause at 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold.

Subpart 511.4—Delivery or Performance Schedules

511.404 Contract clauses.

(a) *Supply contracts.*

(1) *Single award schedules.* Insert 552.211–8, Time of Delivery, in solicitations and contracts instead of the clause at FAR 52.211–8. If you need to show different delivery times for different items or groups of items, use Alternate I.

(2) *Multiple award schedules.* Insert 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule), in solicitations issued and contracts awarded under the multiple award schedule program.

(3) *Shelf-life items.* Use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production (see 101–27.206–2 of the Federal Property Management Regulation):

(i) Insert 552.211–79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, substitute Alternate I when required by the director of the commodity center concerned.

(ii) Insert 552.211–80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(4) *Stock replenishment contracts.* Insert 552.211–81, Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing and Shipment/Delivery clause at 552.211–83 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, use Alternate I.

(5) *Notice of shipment.* Include 552.211–82, Notice of Shipment, in solicitation and contracts for supplies when you need to have a notice of shipment from the contractor.

(6) *Indeterminate testing time.* Insert 552.211–83, Availability for Inspection, Testing and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. If the contract is for stock items, use Alternate I.

(b) *Construction contracts.* Insert the clause at 552.211–84, Non-Compliance with Contract Requirements, in solicitations and contracts for construction when you expect the contract amount to exceed the simplified acquisition threshold.

PART 512—ACQUISITION OF COMMERCIAL ITEMS

Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items

Authority: 40 U.S.C. 486(c).

Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) *Solicitation provisions and clauses.* Insert these provisions or clauses in solicitations or solicitations and contracts, respectively, in accordance with the instructions provided:

(1) 552.212–70, Preparation of Offer (Multiple Award Schedule), in solicitations and contracts issued under the multiple award schedule program.

(2) 552.213–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, when listed clauses apply. The clause provides for incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

(3) 552.212–72, Contract Terms and Conditions Required to Implement Statutes of Executive Orders Applicable to GSA Acquisitions of Commercial Items, when listed clauses apply.

(i) The clause provides for the incorporation by reference of terms and conditions required to implement provisions of law or executive orders that apply to commercial item acquisitions.

(ii) As a result of the General Services Administration Board of Contract Appeals (GSBCA) decision in the protest of *International Business Machines Corporation* GSBCA 90–2 BCA P22,924, May 18, 1990, GSA solicitations and contracts will deviate from FAR 52.225–8, Buy American Act-Trade Agreements-Balance of Payments Program Certificate. Incorporate 552.225–8, Buy American Act-Trade Agreements-Balance of Payments Program Certificate, and 552.225–9, Buy American Act-Trade Agreements-Balance of Payments Program, in solicitations and contracts subject to the Trade Agreement Act. Use them instead of FAR 52.225–8 and 52.225–9 (referenced in FAR 52.212–3 and 52.212–5 respectively).

(4) 552.213–73, Evaluation-Commercial Items (Multiple Award Schedule), in multiple award schedule solicitations. Use this provision instead of FAR 52.212–2.

(b) *Use of required provisions and clauses.* Use only those provisions and clauses prescribed in this part. Unless the use of a provision or clause prescribed elsewhere in the GSAR is consistent with customary commercial practice for the item being acquired, disregard contrary instructions. Provisions and clauses prescribed in this part will be revised to reflect the applicability of new statutes and executive orders.

(c) *Discretionary use of GSAR provisions and clauses.* Consistent with the limitations contained in FAR 12.302(c), include in solicitations and contracts by addendum other GSAR provisions and clauses.

(d) *Use of additional provisions and clauses.* The Senior Procurement Executive must approve the use of a provision or clause that is either not:

(1) Prescribed in the FAR or GSAR for use in contracts for commercial items.

(2) Consistent with customary commercial practice.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 513—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 513.3—Simplified Acquisition Methods

Sec.

513.302 Purchase orders.

513.302–70 Purchase orders and related forms.

513.303 Blanket purchase agreements (BPAs).

513.303–3 Preparation of BPAs.

513.307 Forms.

Authority: 40 U.S.C. 486(c).

Subpart 513.3—Simplified Acquisition Methods

513.302 Purchase orders.

513.302–70 Purchase order and related forms.

(a) See GSA Order, Interim Guidance on Use of the Governmentwide Commercial Purchase Card Service (OAD 4200.8), for forms required for purchase card actions.

(b) Use GSA Form 3000 or 300–1 (pin-feed format), Order for Supplies and Services, instead of OF 347, Order for Supplies or Services, when making purchases payable through the National Electronic Accounting and Reporting (NEAR) System.

(1) This form may also be used to make other purchases when a specific form is not prescribed. It may be used as a delivery or task order instead of SF 1449, Solicitation/Contract/Order for Commercial Items.

(2) Prepare and process GSA Form 300 following the instructions at 553.370–300–I. Use GSA Form 300A or 300–A(1) (pin-feed format), order for Supplies or Services (continuation), if additional space is needed.

(c) Use GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, instead of the OF 347 when making purchases in connection with the maintenance, servicing or repair of GSA fleet management vehicles.

(d) Use GSA Form 3186, Order for Supplies or Services or GSA Form 3186–B, Order for Supplies or Services (EDI), instead of OF 347, Order for Supplies or Services, when making simplified acquisitions or placing orders against established contracts through the FSS–19 system.

(1) Use GSA Form 3186 for mail orders placed against established contracts.

(2) Document the file for a delivery, task, or purchase order transmitted to contractors electronically using Electronic Data Interchange (EDI) procedures by generating a GSA Form 3186–B.

(e) Use GSA Form 8002B, Motor Vehicle Delivery Order, to order fleet management vehicles. Do not use this form as a purchase order for simplified acquisitions. Use GSA Form 8002A to notify the consignee of the status of motor vehicle requisitions.

513.303 Blanket purchase agreements (BPAs).

513.303–3 Preparation of BPAs.

(a) *Description of agreement.* Describe limitations, if any, on the geographic area to be served.

(b) *Delivery tickets.* Instruct the contractor to include the name of the individual placing the order on the delivery ticket. The individual receiving the item or service must sign and date the delivery or service ticket. Both the supplier and the receiving office must retain a copy of the delivery ticket.

513.307 Forms.

You may use the GSA Form 3521, Blanket Purchase Agreement, to prepare a blanket purchase agreement.

PART 514—SEALED BIDDING

Subpart 514.2—Solicitation of Bids

Sec.

514.201 Preparation of invitations for bids.

514.201–1 Uniform contract format.

514.201–2 Part I—The Schedule.

514.201–6 Solicitation provisions.

514.201–7 Contract clauses.

514.202 General rules for solicitation of bids.

514.202–4 Bid samples.

514.203 Methods of soliciting bids.

514.203–1 Transmittal to prospective bidders.

514.270 Aggregate awards.

514.270–1 Definition.

514.270–2 Guidelines for use.

514.270–3 Evaluation factors for award.

514.270–4 Grouping line items for aggregate award.

514.270–5 Evaluation methodologies for aggregate awards.

514.270–6 Guidelines for using the weight factors method.

514.270–7 Guidelines for using the price list method.

Subpart 514.4—Opening of Bids and Award of Contract

514.407 Mistakes in bids.

514.407–3 Other mistakes disclosed before award.

514.407–4 Mistakes after award.

Authority: 40 U.S.C. 486(c).

Subpart 514.2—Solicitation of Bids

514.201 Preparation of invitations for bids.

514.201–1 Uniform contract format.

Include the following notice in each solicitation:

The information collection requirements contained in this solicitation/contract, are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0162.

514.201–2 Part I—The Schedule.

(a) When you use Standard Form 33, Solicitation, Offer and Award, include the following cautionary notice:

Notice to Bidders—Use Item 13 of the Standard Form 33, Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this solicitation sets forth payment terms. Do not insert any statement in Item 13 which requires payment sooner than the time stipulated in the Prompt Payment clause. *Example:* If you insert "NET 20" in Item 13, GSA will reject your offer as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.

(b) When you use any other authorized form (e.g., Standard Form 1447, Solicitation/Contract), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

§ 514.201–6 Solicitation provisions.

When you will consider all or none bids, insert the provision at 552.214–70, "All or None" Offers, in the solicitation. For requirements or indefinite quantity

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contracts, use Alternate I. Do not include this provision in solicitations when you require the bidder to submit bids on all items and will make only one award.

514.201–7 Contract clauses.

(a) *Stock replenishment contracts.* For some stock replenishment contracts, individual contractors may be unable to furnish the Government's monthly requirements. You may determine that progressive awards will be more expedient. In such cases, insert a clause substantially the same as the clause 552.214–71, Progressive Awards and Monthly Quantity Allocations, in the solicitation and contract.

(b) *Examinations of Records.*

(1) Insert 552.214–70, Examination of Records by GSA, in solicitations and contracts for supplies or services that exceed $100,000, and acquisitions of leasehold interests in real property that exceed the simplified lease acquisition threshold, that meet at least one of the following conditions:

(i) Involve the use or disposition of Government-furnished property.

(ii) Provide for advance payments, progress payments based on cost, or guaranteed loan.

(iii) Contain a price warranty or price reduction clause.

(iv) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.

(v) Are requirements, indefinite-quantity, or letter contracts as defined in FAR part 16.

(vi) Contain the provision at FAR 52.223–4, Recovered Materials Certification.

(2) You may modify the clause to define the specific area of audit (e.g., the use or disposition of Government-furnished property). Legal Counsel and the Assistant Inspector General—Auditing or Regional Inspector General—Auditing, as appropriate, must concur in any modifications to the clause.

514.202 General rules for solicitation of bids.

514.202–4 Bid samples.

(a) *Solicitation requirements.*

(1) When you require bid samples, require bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(2) The FAR limits use of bid samples to cases where you cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics. You may determine that you need to examine objective characteristics of bid samples to determine the responsiveness of a bid. Base your determination on past experience or other valid considerations. In the solicitation, separately list "Subjective Characteristics" and "Objective Characteristics."

(3) A sample provision appears at 552.214–72, Bid Sample Requirements. You may use this provision as shown or modify it to fit the circumstances of a procurement.

(b) *Handling and disposition of samples.*

(1) Retain samples from accepted bids for the period of contract performance. If you have no outstanding claims regarding the contract, dispose of the samples at the end of the contract term following the bidder's instructions.

(2) If you anticipate a claim regarding the contract, retain the bid samples until the claim is resolved.

(3) Retain samples from unsuccessful bids until you make award. After award, dispose of these samples following the bidder's instructions.

(c) *Using bid samples.* Include the information required by FAR 14.202–4(e) in the solicitation. Provide the number, size, and full description of samples with instructions on how to submit bids. List the characteristics that you will examine. The list needs to include any aspect of the bid sample the acquisition team will examine to determine the product(s) acceptability.

514.203 Methods of soliciting bids.

514.203–1 Transmittal to prospective bidders.

Prospective bidders, as used in FAR 14.203–1, include both the following:

(a) The incumbent contractor, except when its written response to the notice of contract action under FAR subpart 5.2 states a negative interest.

(b) Bidders that responded to recent solicitations for the same or similar items.

514.270 Aggregate awards.

514.270–1 Definition.

Aggregate award means an arrangement whereby two or more separately-priced line items are combined for award to that bidder whose bid will result in the lowest overall cost to the Government for the line items as a group. The individual price for each item does not have to be the lowest bid received. (See also the definition of a "line item" in FAR 3.302.)

514.270–2 Guidelines for use.

(a) GSA usually solicits prices and reserves the right to make award for individual line items. In some cases it serves GSA's best interest to combine two or more line items for an aggregate award. Such cases include when:

(1) Users desire uniformity of design, style, and finish (e.g., suites of household furniture).

(2) The articles will be assembled and used as a unit, and different manufacturers' components may not be interchangeable.

(3) Users have high demand for certain articles, but demand for related articles is insufficient to attract competitive bids (e.g., various sized of socket wrenches). Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

(4) One location (delivery point) has a large requirement, and another location has a requirement too small to individually attract competitive bids.

(5) Awarding and administering numerous small contracts for similar articles or services is impractical.

(b) Before deciding to combine items for aggregate award, consider the following factors:

(1) The capability of bidders to furnish the types and quantities of supplies or services in the aggregate.

(2) How grouping delivery points will affect bidders.

(3) Which combinations will accurately project the lowest overall cost to the Government.

(c) Do not use an aggregate award if it will significantly restrict the number of eligible bidders.

514.270–3 Evaluation factors for award.

Clearly state in the solicitation the basis for evaluating bids for aggregate award. Require bidders to submit a price on each item within the group or a percentage to be added or subtracted from a list price. Advise bidders that failure to submit prices as required within a group makes a bid ineligible for award for that group.

514.270–4 Grouping line items for aggregate award.

(a) *Type of contract.* While this section addresses supply contracts (articles and delivery points), the same principles apply to service contracts (types of services and service areas).

(b) *Effect on compeition.* Provide for full and open competition when you group items for award. Grouping items for award may preclude a significant of firms from bidding. This occurs if firms are unable to provide all the types or quanities of supplies or services, or

make deliveries to the various delivery points included in the prospective aggregate group.

(c) *Grouping different articles.* Include only related articles in an aggregate group. Related articles are those normally manufactured or produced by a majority of prospective bidders. Grouping unrelated articles often restricts competition unnecessarily.

(d) *Grouping geographic locations or delivery points.* Consider the following guidelines before deciding to group different geographic locations or delivery points:

(1) A delivery point may have sufficient requirements so that individual shipments involve economic production runs and carload or truckload quanities. In this case, list it as a separate line item.

(2) The types of bidders (i.e., small or large firms, manufacturers or distributors, etc.) who respond to previous solicitations can provide important information. For example, if previous bidders are distributors with franchises in certain territories, grouping different territories could tend to restrict competition.

(3) Transportation costs can affect competition and pricing. They may constitute a significant portion of the total delivered cost. Obtain the advice and assistance of transportation specialists before grouping geographic locations or delivery points. Depending upon the supplies being acquired:

(i) Grouping widespread geographic locations or delivery points may reduce competition or result in higher prices. It can cause you to lose "area pricing" advantages provided by a supplier with a single production point.

(ii) Conversely, for many small commercial items (hand tools, locks, etc.), manufacturers may quote the same price for delivery anywhere in the U.S..

(iii) Tariff boundaries can also affect how manufacturers price deliveries to different areas.

514.270–5 Evaluation methodologies for aggregate awards.

(a) *Definite quantity contracts without options.* For definite quantity contracts without options, the evaluated bid price is the total bid price, as adjusted for any price-related factors identified in the solicitation. This reflects the actual cost to the Government and will identify the most advantageous bid.

(b) *Indefinite quantity contracts, requirements contracts, and options.* Indefinite quantity and requirements contracts use estimated quantities. Options involve the probability of whether and when the options will be exercised. These situations may result in unbalanced bids (see FAR 15.404–1(g)), leading to inaccurate evaluation of the projected cost and award to other than the most advantageous bid. To avoid unbalanced bids, GSA has two preferred methods for evaluating bids for aggregate awards: weight factors and price list.

(1) *Weight factors method.* Assign a weight to each item in a group. The weight is based on the portion of quantities that item represents. To evaluate bids, multiply each unit price by its weight factor, then total the results.

(2) *Price list method.* Establish prices for bidders to use as a base for preparing their bids. Prepare a list that identifies a base price for each item in a group. Bidders bid a percentage factor to add to or subtract from the base price.

514.270–6 Guidelines for using the weight factors method.

(a) Use the weight factors method when you have reliable estimates for the quantities needed in an acquisition. Reliable estimates of quantities form the foundation for:

(1) Accurate evaluation of the projected cost of each bid.

(2) An appropriate determination of which bid is most advantageous to the Government for the aggregate group.

(b) Assign a weight factor to each item in a group. Develop the weight factor by calculating the portion of the total quantity in a defined group that each item represents.

(c) To evaluate bid prices, first multiply the price bid for each item (unit price X quantity) by its weight factor. Then, add the subtotals together to project the cost for the aggregate group.

(d) You may reduce estimated quantities to smaller numbers by a common denominator. This may help facilitate the computations involved in evaluating bids.

(e) Consider all price-related factors you identified in the solicitation. Award to the responsive and responsible bidder with the lowest evaluated overall cost to the Government for the aggregate group. This represents the most advantageous bid.

514.270–7 Guidelines for using the price list method.

(a) *General.* The price list method helps avoid unbalanced bidding when you need to make aggregate awards, but lack accurate estimates of anticipated quantities. This method establishes base prices for bidders to use in preparing their bids.

(b) *Solicitation requirements.* When you use the price list methods, in the solicitation:

(1) Include the price list.

(2) Include an estimate of requirements.

(3) Require the bidder to express its price as "net" or as a percentage added to or subtracted from the list prices for each group. Require the bidder to quote only one percentage factor for each group. This means that the bidder provides one percentage factor that applies to every item in a group; not a separate percentage for each item. "Net" indicates the bidder chooses to submit the list prices as its bid.

(4) Identify the percentage factor in paragraph (b)(3) of this section as a price related evaluation factor.

(c) *Developing list prices.* You may develop price lists using one or more of the following sources:

(1) Industry published prices.

(2) Industry surveys.

(3) Government cost estimates based on knowledge of the supplies or services and previous contract prices.

(d) *First time use for an item or service.* The first time you use list prices for an item or service, give prospective bidders an opportunity to review the proposed list. Also provide information on how GSA will use the list prices. You may provide this information in a draft solicitation.

(e) *Balanced prices.* Ensure that the list prices for the grouped items bear a reasonable and balanced relationship to one another. You may use prices from previous awards made using the weight factors method to develop price lists. Review those prices first to ensure they did not result from unbalanced bidding.

(f) *Evaluation and award.* Consider all price-related factors identified in the solicitation. Award to the responsive and responsible bidder whose percentage factor produces the most favorable price to the Government. This represents the most advantageous bid.

(g) *Example.* The following illustrates a bidding schedule arrangement for a group of items for aggregate award under the price list method:

DRILLS, TWIST, HIGH SPEED, UNDER FEDERAL SPECIFICATION (NO. AND DATE), AND AMENDMENT (NO. AND DATE), AMENDMENT (NO. AND DATE) WIRE GAUGE SIZES, STRAIGHT SHANK, SHORT LENGTH, TYPE C

Item No.	National Stock No.	Drill size	Est. quantity	Unit	List price
Group 1 (Items 1 through 5)					
1	5133–00–189–9246	1	2,800	Pkg	$11.18
2	5133–00–189–9247	2	2,400	Pkg	11.16
3	5133–00–189–9248	3	2,800	Pkg	10.44
4	5133–00–189–9249	4	1,600	Pkg	10.80
5	5133–00–189–9250	5	2,000	Pkg	10.80

The bid on each item above is the list price shown minus/plus ____ percent. (Bidder, insert "net" or a single percentage amount in the blank space and cross out minus or plus, as appropriate.)

(h) *Special considerations for contracts for store stock items.* Show estimated quantities only if estimates of demand for each item within a group can be derived from Government records or verified contractor sales reports. Use only current estimates. If you cannot estimate the Government's needs, the solicitation may include past orders. (See CG Decision, B–209037, 82–2 CPD para 323 (1982).)

(i) *Special considerations for repair and alteration contracts.* In the solicitation:

(1) List the estimated quantities for work to be performed during both normal working hours and outside of normal working hours.

(2) State the percent of work anticipated to be performed during normal working hours.

(3) List the unit prices for work to be performed during both normal working hours and outside of normal working hours.

(4) Define "normal" in terms of hours and days of the week.

(5) Advise bidders of the previous year's total expenditures or portions of that total attributable to the listed items.

(6) If you provide quantity estimates, state that the estimates are for information only and do not constitute guarantees or commitments to order items under the contract.

(7) Solicit two percentage factors for the line item unit prices listed: one for the unit prices for work performed during normal working hours and the second for the unit prices for work performed outside of normal working hours.

(8) You may require multiple percentages when the solicitation further groups unit prices by trade or business category.

(9) For the evaluated bid price, add together the following percentages:

(i) The percentage of work performed during normal work hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work, plus

(ii) The percentage of work performed during other than normal working hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work.

(10) Consider other price-related factors identified in the solicitation. Make award to the responsible and responsive bidder submitting the lowest overall evaluated bid price for the aggregate group. This represents the most advantageous bid.

Subpart 514.4—Opening of Bids and Award of Contract

514.407 Mistakes in bids.

514.407–3 Other mistakes disclosed before award.

(a) *Delegation of authority by head of the agency.* Under FAR 14.407–3(e), contracting directors (see 502.101) are authorized, without power of redelegation, to make:

(1) The determinations regarding corrections and withdrawals under FAR 14.407–3(a), (b), and (c).

(2) The corollary determinations not to permit withdrawal or correction under FAR 14.407–3(d).

(b) *Legal review and approval.* Assigned counsel must approve determinations by the contracting director and contracting officer regarding mistakes in bid.

514.407–4 Mistakes after award.

The contracting director and assigned counsel review and approve your determinations under FAR 14.407–4(b) and (c).

PART 515—CONTRACTING BY NEGOTIATION

Sub part 515.2—Solicitation and Receipt of Proposals and Information

Sec.
515.204 Contract format
515.204–1 Uniform contract format
515.205 Issuing solicitations
515.209 Solicitation provisions and contract clauses
515.209–70 Examination of records by GSA clause

Subpart 515.3—Source Selection

515.305 Proposal evaluation
515.305–70 Use of outside evaluators

Subpart 515.4—Contract Pricing

515.408 Solicitation provisions and contract clauses

Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.506 Postaward debriefing of offerors

Subpart 515.70—Use and Bid Samples

515.7002 Procedures

Authority: 40 U.S.C. 486(c).

Subpart 515.2—Solicitation and Receipt of Proposals and Information

515.204 Contract format.

515.204–1 Uniform contract format.

(a) The uniform contract format is not required for leases of real property.

(b) Each solicitation and contract must include the two notices in paragraphs (b)(1) and (b)(2) of this section, except that acquisitions of interests in real property, must include only the notice in (b)(1):

(1) "The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163."

(2) "GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day."

515.205 Issuing solicitations.

Potential sources, as used in FAR 15.205, include both of the following:

(a) The incumbent contractor, except when its written response to the notice of contract action under FAR subpart 5.2 states a negative interest.

(b) Offerors that responded to recent solicitations for the same or similar items.

515.209 Solicitation provisions and contract clauses.

515.209–70 Examination of records by GSA clause.

Clause for Other Than Multiple Award Schedules

(a) For other than multiple award schedule (MAS) contracts, insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts over $100,000, including acquisitions of leasehold interests in real property, that meet any of the following conditions:

(1) Involve the use or disposition of Government-furnished property.

(2) Provide for advance payments, progress payments based on cost, or guaranteed loan.

(3) Contain a price warranty or price reduction clause.

(4) Involve income to the Government where income is based on operations under the control of the contractor.

(5) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.

(6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR part 6.

(7) Are subject to adjustment based on a negotiated cost escalation base.

(8) Contain the provision of FAR 52.223–4, Recovered Material Certification.

(b) You may modify the clause at 552.215–70 to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with the price reduction clause). Counsel and the Assistant Inspector General—Auditing or Regional Inspector General— Auditing, as appropriate, must concur in any modifications to the clause.

Clause for Multiple Award Schedules

(c) Insert the clause at 552.215–71, Examination of Records by GSA (Multiple Award Schedule), in solicitations and contracts for MAS contracts.

(d) With the Senior Procurement's Executive approval, you may modify the clause at 552.215–71 to provide for post-award access to and the right to examine records to verify that the pre-award/modification pricing, sales or other data related to the supplies or services offered under the contract which formed the basis for the award/modification was accurate, current, and complete. The following procedures apply:

(1) Such a modification of the clause must provide for the right of access to expire 2 years after award or modification.

(2) Before modifying the clause, you must make a determination that absent such access there is a likelihood of significant harm to the Government and submit it to the Senior Procurement Executive for approval.

(3) The determinations under paragraph (d)(2) of this section must be made on a schedule-by-schedule basis.

Subpart 515.3—Source Selection

515.305 Proposal evaluation.

(a) *Restrictions placed on a proposal by the submitter.* If you receive a proposal with more restrictive conditions than those in the provision at FAR 52.215–1(e), ask whether the submitter is willing to accept the conditions of the paragraph at FAR 52.215–1(e). If the submitter refuses, consult with legal counsel on whether to accept the proposal as marked or return it.

(b) *Actions before releasing proposal.* Before releasing any proposal to an evaluator you must take all the following actions:

(1) Obtain the signed original "Conflict of Interest Acknowledgment and Nondisclosure Agreement" from each Government and nongovernment individual serving as an evaluator. Use the Acknowledgment/Agreement in Figure 515.3–1.

(i) For employees of other Executive agencies, replace the reference in paragraph (c) of the Acknowledgement/Agreement to GSA's supplemental standards with a reference to the applicable agency.

(ii) for nongovernment evaluators, substitute paragraph (c) of the Acknowledgement/Agreement with the following language and delete paragraph (h):

"(c) I have read and understand the requirements of subsection 27(a) and 27(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 423).

(2) Attach to each proposal a cover page bearing the following notice:

Government Notice for Handling Proposals

To anyone receiving this proposal or proposal abstract:

(1) This proposal must be used and disclosed for evaluation purposes only.

(2) You must apply a copy of this Government notice to any reproduction or abstract of this proposal.

(3) You must comply strictly with any authorized restrictive notices which the submitter places on this proposal.

(4) You must *not* disclose this proposal outside the Government for evaluation purposes except to the extent authorized by, and in accordance with, the procedures in 48 CFR 515.305–71.

515.305–70 Use of outside evaluators.

(a) *Conditions.* To use outside evaluators, you must meet the restrictions in FAR 37.203 and 537.2.

(b) *Limitations on disclosing proposal information.* You may disclose proposal information outside the Government before the Government's decision as to contract award only to the extent authorized in this section. Disclosure and handling must comply with FAR 3.1 and 503.1.

(c) *Solicitation notice.* Include in the solicitation a notice substantially as follows:

Notice About Releasing Proposals

(1) The Government intends to disclose proposals received in response to this solicitation to nongovernment evaluators.

(2) Each evaluator will sign and provide to GSA a "Conflict of Interest Acknowledgment and Nondisclosure Agreement."

Figure 515.3–1—Conflict of Interest Acknowledgment and Nondisclosure Agreement

Conflict of Interest Acknowledgment and Nondisclosure Agreement

For proposals submitted in response to GAS solicitation no. _____, I agree to the following:

(a) To the best of my knowledge and belief, no conflict of interest exists that may either:

(1) Diminish my capacity to impartially review the proposals submitted.

(2) Or result in a biased opinion or unfair advantage.

(b) In making the above statement, I have considered all the following factors that might place me in a position of conflict, real or apparent, with the evaluation proceedings:

(1) All my stocks, bonds, other outstanding financial interests or commitments.

(2) All my employment arrangements (past, present, and under consideration).

(3) As far as I know, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household.

(c) I have read and understand the requirements of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635) and Supplemental Standards of Ethical Conduct for Employees of the General Service Administration (5 CFR Part 6701).

(d) I have a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the Contracting Officer. I will perform no more duties related to evaluating proposals until I receive instructions on the matter.

(e) I will use proposal information for evaluation purposes only. I understand that any authorized restriction on disclosure placed on the proposal by the prospective contractor, prospective subcontractor, or the Government applies to any reproduction or abstracted information of the proposal.

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(f) I will use my best efforts to safeguard proposal information physically. I will not disclose the contents of, nor release any information about, the proposals to anyone other than:

(1) The Source Selection Evaluation Board or other panel assembled to evaluate proposals submitted in response to the solicitation identified above.

(2) Other individuals designed by the contracting Officer.

(g) After completing evaluation, I will return to the Government all copies of the proposals and any abstracts.

(h) GSA Appropriations Act restriction: These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosure of Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Codes, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.

(Enter name of evaluator and organization)

Date

Subpart 515.4—Contract Pricing

515.408 Solicitation provisions and contract clauses.

MAS Requests for Information Other Than Cost or Pricing Data

(a) You should use Alternative IV of the FAR provision at 52.215–20, Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, for MAS contracts to provide the format for submission of information other than cost or pricing data for MAS contracts. To provide uniformity in request under the MAS program, you should insert the following in paragraph (b) of the provision:

(1) An offer prepared and submitted in accordance with the clause at 552.212–70, Preparation of Offer (Multuiple Award Schedule).

(2) Commercial sales practices. The Offeror shall submit information in the format provided in this solicitation in accordance with the instructions at Figure 515.4 of the GSA Acquisition Regulation (48 CFR 515–2), or submit information in the Offeror's own format.

(3) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(4) By submission of an offer in response to this solicitation, the Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before initial award, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Offeror's cost or profit information of other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(b) Insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation and resulting contract (see FAR 12.303).

Commercial Sales Practices Format

Name of Offeror _____ SIN(s) _____

Note: Please refer to Clause 552.212–70, Preparation of Offer (Multiple Award Schedule), for additional information concerning your offer. Provide the following information for each SIN (or group of SINs or SubSIN for which information is the same).

(1) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12-month period or the offerors last fiscal year: $_____. State beginning and ending of the 12 month period. Beginning _____ ending _____. In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

(2) Show your total projected annual sales to the Government under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12 months of sales under that contract.

SIN _____ $_____
SIN _____ $_____
SIN _____ $_____

(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES____ NO____ (See definition of "concession" and "discount" in 552.212–70.)

(4)(a) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at Figure 515.4, which is provided in this solicitation for your convenience. The information should be provided in the chart below or in an equivalent format developed by the offeror. Rows should be added to accommodate as many customers as required.

Column 1 Customer	Column 2 Discount	Column 3 Quantity/Volume	Column 4 FOB Term	Column 5 Concessions

(b) Do any deviations from your written policies or standard commercial sales practices disclosed in the above chart ever result in better discounts (lower prices) or concessions than indicated? YES __ NO __. If YES, explain deviations in accordance with the instructions at Figure 515.4, which is provided in this solicitation for your convenience.

(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers' information required by paragraphs (1) through (4) above for each item/SIN offered, if the manufacturer's sales under any resulting contract are expected to exceed $500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

(a) Manufacturer's Name.
(b) Manufacturer's Part Number.
(c) Dealer's/Reseller's Part Number.
(d) Product Description.
(e) Manufacturer's List Price.
(f) Dealer's/Reseller's percentage discount from list price or net prices.

(End of Format)

(c) Include the instructions for completing the commercial sales practices format in Figure 515.4 in solicitations issued under the MAS program.

Figure 515.4—Instructions for Commercial Sales Practices Format

If you responded "yes" to question (3), on the Commercial Sales Practices Format in paragraph (b) of this section, complete the chart in question (4)(a) for the customer(s) who receive your best discount. If you responded "no", complete the chart in question (4)(a) showing your written policies or standard sales practices for all customers or customer categories to whom you sell at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. If your offer is lower than your price to other customers or customers categories, you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reductions clause at 552.238–75. The Government expects you to provide information required by the format in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 14 calender days prior to its submission. You must also disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

Column 1—Identify the Applicable Customer or Category of Customer

A "customer" is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local Governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the Offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

Column 2—Identify the Discount

The term "discount" is as defined in solicitation clause 552.212–70, Preparation of Offer (Multiple Award Schedule). Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

Column 3—Identify the Quantity or Volume of Sales

Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn a discount indicate the time period.

Column 4—Indicate the FOB Delivery Term for Each Identified Customer

See FAR 47.3 for an explanation of FOB delivery terms.

Column 5—Indicate Concessions Regardless of Quantity Granted to the Identified Customer or Category of Customer

Concessions are defined in solicitation clause 552.12–70, Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

If you respond "yes" to question 4(b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer, or the sales of prototype goods for testing purposes.

If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practices Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

(End of Figure)

(d) Insert the clause at 452.215–72, Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts under the MAS program.

(e) You should use Alternate IV of FAR 52.215–21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, to provide for submission of information other than cost or pricing data for MAS contracts. To provide for uniformity in requests under the MAS program, you should insert the following in paragraph (b) of the clause:

(1) Information required by the clause at 552.243–72, Modifications (Multiple Award Schedule).

(2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(3) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, record, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the

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reasonableness of price(s). Access does not extent to Contractor's cost or profit information or other data related solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.506 Postaward debriefing of offerors.

For purposes of determining the date of receipt of a request for a post award debriefing, GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Request received after 4:30 p.m. will be considered received the following business day.

Subpart 515.70—Use of Samples

515.7002 Procedures.

(a) *Unsolicited samples.* The reference to FAR 14.404–2(d) in FAR 14.202–4(g) does not apply.

"However, qualifications in the proposal that are at variance with the Government's requirements, constitute deficiencies. Resolve these as provided in FAR 15.306."

(b) *Solicitation requirements.*

(1) Use the clause at FR 52.214–20. The second sentence in paragraph (c) of the clause does not apply. Substitute a sentence substantially as follows:

Failure of the bid samples to conform to all the required characteristics listed in the solicitation constitutes a deficiency in the proposal (see FAR 15.306).

(2) In addition to listing subjective characteristics that you cannot adequately describe in the specification, you may list and evaluate objective characteristics. To include objective characteristics, you must determine that examination of such characteristics is essential to the acquisition of any acceptable product. Base your determination on past experience or other valid considerations.

(c) FAR 52.215–1(c)(3) applies to samples received after the time set for receipt of offers.

PART 516—TYPES OF CONTRACTS

Subpart 516.2—Fixed Price Contracts

Sec.

516.203–4 Contract clauses

Subpart 516.5—Indefinite-Delivery Contracts

516.506 Solicitation provisions and contract clauses

Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts

516.603–3 Limitations

Authority: 40 U.S.C. 486(c).

Subpart 516.2—Fixed Price Contracts

516.203–4 Contract clauses.

(a) *Multiple award schedules.* Do not use FAR 52.216–2, 52.216–3, or 52.216–4 in negotiated acquisitions based on discounts from established commercial catalogs or pricelists. Instead, use:

(1) 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, in a 1-year solicitation or contract.

(2) 552.216–70 (Alternate I) in multiyear solicitations and contracts.

(b) *Stock or Special Order Program Contracts.* In multiyear solicitations and contracts, after making the determination required by FAR 16.203–2, use 552.216–71, Economic Price Adjustment-Stock and Special Order Program Contract, or a clause prepared as authorized in paragraph (a)(2)(ii) of this subsection.

(1) If the contract includes one or more options to extend the term of the contract, use the clause with its Alternate I or a clause substantially the same as 552.216–71 with its Alternate I suitably modified.

(2) In a contract requiring a minimum adjustment before the price adjustment mechanism is effectuated, use the basic clause with Alternate II or with Alternate I and Alternative II.

(3) If the Producer Price Index is not an appropriate indicator for price adjustment, modify the clause to use an alternate indicator for adjusting prices. Similarly, if other aspects of 552.216–71 are not appropriate, use an alternate clause following established procedures.

(c) *Adjustments based on cost indexes of labor or material.*

(1) If you decide to provide for adjustments based on cost indexes of labor or material, prepare a clause that defines each of the following elements:

(i) The type of labor and/or material subject to adjustment.

(ii) The labor rates, including any fringe benefits and/or unit prices of materials that may be increased or decreased.

(iii) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured.

(iv) The period during which the price(s) will be subject to adjustment.

(2) The contracting director must approve use of this clause.

Subpart 516.5—Indefinite-Delivery Contracts

516.506 Solicitation provisions and contract clauses.

(a) In solicitations and contracts for stock or special order program items, when the contract authorizes FSS and other activities to issue delivery or task orders, insert the clause at 552.216–72, Placement of Orders. If only FSS will issue delivery or task orders, insert the clause with its Alternate I.

(b) In solicitations and contracts for single or multiple award schedule program items, insert the clause at 552.216–72, Placement of Orders, with its Alternate II.

(c) If the clause at 552.216–72 is prescribed, insert the provision at 552.216–73, Ordering Information, in solicitations for stock items and in other FSS solicitations. Use 552.216–73 Alternate I when 552.216–72 Alternate I is prescribed. Use 552.216–73 Alternate II when 552.72 Alternate II is prescribed.

Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.

516.603–3 Limitations.

Architect-Engineer (A–E) Services

(a) *Requirement for a price proposal.* Before you award a letter contract, the proposed A–E must provide a price proposal for the non-design effort.

(b) *Contents of each letter contract.* You must include the following information in the letter contract:

(1) The scope. If you include the design effort, only authorize the A–E to perform those services that are independent of the design effort (for example, feasibility studies, existing facility surveys or site investigation, etc.). Do not authorize the A–E to begin the design effort before the letter contract is definitized.

(2) A definitization schedule. Include dates for each of the following:

(i) Submission of the design fee proposal.

(ii) Start of negotiations.

(iii) Definitization. This date must be no later than 90 days after the date of the letter contract.

(3) A limitation on the Government's liability for the non-design effort to be performed under the contract. Insert this amount in FAR 52.216–24, Limitation of Government Liability.

(c) *Unilateral price decision.* If you must issue a unilateral price decision, the maximum contract amount must not exceed a reasonable price for the excludable items plus the 6 percent statutory fee limitation for the project.

PART 517—SPECIAL CONTRACTING METHODS

Subpart 517.1—Multiyear Contracting

Sec.

517.109 Contract clauses

Subpart 517.2—Options

17.202 Use of options

17.203 Solicitations

17.207 Exercise of options

17.208 Solicitation provisions and contract clauses

Authority: 40 U.S.C. 486(c).

Subpart 517.1—Multiyear Contracting

517.109 Contract clauses.

Use of FAR 52.217–2, Cancellation Under Multi-year Contracts, is optional in multiyear contracts authorized by 40 U.S.C. 490(a)(14) for maintenance and repair of fixed equipment in federally-owned buildings and services and 40 U.S.C. 481(a)(3) for public utility services.

Subpart 517.2—Options

517.200 Scope of subpart.

(a) This subpart applies to all GSA contracts for supplies and services, including:

(1) Services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

(2) Architect-engineer services.

(b) If a requirement in this subpart is inconsistent with FAR 17.2, this subpart takes precedence.

517.202 Use of options.

(a) *Supplies or services.*

(1) You should use options when they meet one or more of the following objectives:

(i) Reduce procurement lead time and associated costs.

(ii) Ensure continuity of contract support.

(iii) Improve overall contractor performance.

(iv) Facilitate longer term contractual relationships with those contractors that continually meet or exceed quality performance expectations.

(2) An option is normally in the Government's interest in the following circumstances:

(i) You anticipate a need for additional supplies or services during the contract term.

(ii) Multiyear contracting authority is not available or its use is inappropriate and you anticipate a need for additional supplies or services beyond the initial contract term.

(iii) There is a need for continuity of supply or service support.

(iv) Funds are not available for the entirety of the Government's needs, but are likely to become available during the contract term.

(v) The initial contract will be used to evaluate the performance of an emerging small business.

(3) Do not use an option if the market price is likely to change substantially and an economic price adjustment clause inadequately protects the Government's interest.

b *Construction.* For limitations on the use of options, see 536.213 and 536.270.

517.203

Solicitations.

A solicitation that includes an option to extend should inform offerors that the contract could result in a long term contractual relationship subject to both of the following conditions:

(a) Continuing need by GSA.

(b) Level of contract performance that at least meets GSA's quality performance expectations.

517.207 Exercise of options.

Before exercising an option, you must:

(a) Synopsize it unless you meet of the following conditions:

(1) The option was evaluated as part of the original competition.

(2) The contract action meets an exception in FAR 5.202.

(b) Conclude that the contractor's performance under the contract met or exceeded the Government's expectation for quality performance, unless another circumstance justifies an extended contractual relationship.

(c) Determine that the option price is fair and reasonable.

517.208

Solicitation provisions and contract clauses.

(a) For solicitations under FSS's Stock or Special Order Program, insert a provision substantially the same as the provision at 552.217–70, Evaluation of Options, if both of the following conditions apply:

(1) The solicitation contains an option to extend the term of the contract.

(2) The contract will be fixed price and contain an economic price adjustment clause.

(b) Insert the provision at 552.217–71, Notice Regarding Option(s), or a similar provision, in solicitations that include an option for increased quantities of supplies or services or an option to extend.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 519—SMALL BUSINESS PROGRAMS

Subpart 519.5—Set-Asides for Small Business

Sec.

519.508 Soliciation provisions and contract clauses

Subpart 519.7—The Small Business Subcontracting Program

519.708 Soliciation provisions

519.708–70 Contract clauses

Subpart 519.8—Contracting with the Small Business Administration (The 8(a) Program)

519.870 Direct 8(a) contracting

519.870–8 Contract clauses

Subpart 519.12—Small Disadvantaged Business Participation Program

519.1202 Evaluation factor or subfactor

519.1202–2 Applicability

Authority: 40 U.S.C. 486(c).

Subpart 519.5—Set-Asides for Small Business

519.508 Solicitation provisions for contract clauses.

Insert 552.219–70, Allocation of Orders—Partially Set-Asides Items, in solicitations and requirements type supply contracts that are partially set aside for small business.

Subpart 519.7—The Small Business Subcontracting Program

519.708 Contract clauses.

519.708–70 Solicitation provisions.

Insert the following provisions as directed:

(a) 552.219–71, Notice to Offerors of Subcontracting Plan Requirements, on the cover page of solicitations containing the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(b) 552.219–72, Preparation, Submission, and Negotiations of Subcontracting Plans, in solicitations requiring submission of the subcontracting plan with initial offers.

(c) 552.219–73, Goals for Subcontracting Plan as follows:

(1) Use the basic provision in sealed bid solicitations containing FAR 52.219–9 if you are able to establish realistic target goals.

(2) Use Alternate I in:

(i) sealed bid solicitations if you cannot establish target goals.

(ii) Negotiated solicitations that include FAR 52.219–9, but do not include 552.219–72.

Subpart 519.8—Contracting With the Small Business Administration (The 8(a) Program)

519.870 Direct 8(a) contracting.

519.870–8 Contract clauses.

(a) Insert the following clauses in solicitations, contracts, and orders issued under the MOU:

(1) Insert the clause at 552.219–74, Section 8(a) Direct Award.

(2) Insert the clause at FAR 52.219–14, Limitation on Subcontracting.

(3) Insert the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, Substitute the following paragraph for paragraph (c) of the clause. Add the word "Deviation" at the end of the clause title.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(b) Do not use the clauses at FAR 52.219–11, Special 8(a) Contract Conditions, FAR 52.219–12, Special 8(a) Subcontract Conditions, or FAR 52.219–17, Section 8(a) Award.

Subpart 519.12—Small Disadvantaged Business Participation Program

519.1202 Evaluation factor or subfactor.

519.1202–2 Applicability.

In addition to the exception in FAR 19.1202–2, do not evaluate the extent of participation of SDB concerns in performance of multiple award schedule contracts when all fair and reasonable offers from responsible sources are accepted.

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

522.001 Defintion

Subpart 522.1—Basic Labor Policies

Sec.
522.101 Labor relations
522.101–1 General
522.10-3–5 Contract clauses

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.406 Administration and enforcement
522.406–6 Payrolls and statements

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities
522.804 Affirmative action programs
522.804–1 Nonconstruction
522.805 Procedures
522.807 Exemptions

Authority: 40 U.S.C. 486(c).

522.001 Definition.

Agency labor advisory, as used in this part, means the Director of the GSA Acquisition Policy Division, Office of Acquisition Policy.

Subpart 522.1—Basic Labor Policies

522.101 Labor relations.

522.101–1 General.

(a) GSA personnel performing official duties must maintain GSA's impartiality in disputes between labor and contractor management by refraining from involvement in or expressing a position on:

(1) Labor negotiations between contractors and unions.

(2) The merits of any dispute between labor and a contractor's management.

(b) The Office of General Counsel (OGC) and the agency labor advisor:

(1) Serve as focal points on contractor labor relations.

(2) Initiate contact on contractor labor relations matters with national offices of labor organizations, Government departments, agencies or other governmental organizations.

(3) Serve as a clearinghouse for information on labor laws applicable to Government acquisitions.

(4) Respond to questions involving FAR Part 22, this part, or other contractor labor relations matters concerning GSA acquisition programs. OGC determines the agency's legal position.

522.103–5 Contract clauses.

Insert FAR 52.222–1, Notice to the Government of Labor Disputes, in solicitations and contracts for items on the DoD Master Urgency List.

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.406 Administration and enforcement.

522.406–6 Payrolls and statements.

Statement From Prime Contractors or Subcontractors That Personally Perform Work

(a) Weekly payrolls and statements of compliance with respect to payment of wages are not required from a prime contractor or a subcontractor that personally performs work.

(b) Instead, a prime contractor or a subcontractor that personally performs work must submit weekly certified statements clearly showing the following information:

(1) The individual's contractual relationship.

(2) The scope and date(s) the individual performed the work.

(3) The individual received no wages for the labor performed.

(4) No mechanics or laborers were employed in the prosecution of the work.

(c) Use GSA Form 618–D, Statement to be Submitted When Work is Performed Personally, to furnish this information.

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities.

Submit questions on the applicability of E.O. 11246 and implementing regulations to assigned legal counsel.

522.804 Affirmative action programs.

522.804–1 Nonconstruction.

(a) The requirements of FAR 22.804 also apply to each contractor and subcontractor with 50 or more employees who either:

(1) Serves as a depository of Government funds.

(2) Is a financial institution serving as an issuing and paying agent for U.S. savings bonds and savings notes.

(b) Contractors, subcontractors, and financial institutions must develop a written affirmative action compliance program for each of its establishments even if the amount held is less than $50,000.

522.805 Procedures.

(a) To determine whether the contract meets the threshold in FAR 22.805(a), include the value of the basic contract plus priced options. A contract modification exercising a priced option is not a contract award under FAR 22.805(a)(1)(ii) and does not a require a preaward clearance.

(b) Submit preaward review requests directly.

Furnishing Information to Contractors

(c) In addition to the poster required by FAR 22.805(b), provide each nonexempt contractor a copy of SF 100.

522.807 Exemptions.

The agency labor advisor submits a request for exemption.

PART 523—ENVIORNMENT, CONSERVATION, OCCUPATIONAL SAFETY AND DRUG-FREE WORKPLACE

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

Sec.
523.303 Contract clause
523.370 Solicitation provision

Authority: 40 U.S.C. 486(c).

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

523.303 Contract clause.

(a) Insert 552.223–70, Hazardous Substances, in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

(b) Insert 552.223–71, Nonconforming Hazardous Materials, in solicitations and contracts for supplies that contain hazardous materials.

523.370 Solicitation provision.

Insert 552.223–72, Hazardous Material Information, in any solicitation that provides for delivery of hazardous materials on an f.o.b. origin basis.

PART 525—FOREIGN ACQUISITION

Subpart 525.1—Buy American Act-Supplies

Sec.
525.105 Evaluating offers
525.105–70 Procurement of hand or measuring tools or stainless steel flatware for DOD
525.109 Solicitation provisions and contract clause

Subpart 525.3—Balance of Payments Program

525.302 Policy
525.302–70 Procurements for agencies under the Foreign Assistance Act

Subpart 525.4—Trade Agreements

525.402 Policy
525.408 Solicitation provision and contract clauses

Authority: 40 U.S.C. 486(c).

Subpart 525.1—Buy American Act-Supplies

525.105 Evaluating offers.

525.105–70 Procurement of hand or measuring tools or stainless steel flatware for DOD.

(a) "Stainless steel flatware" means special order and stock items of stainless steel flatware purchased for DOD, including, but not limited to, the following National Stock Numbers (NSN):

7340–00–060–6057
7340–00–205–3340
7340–00–205–3341
7340–00–241–8169
7340–00–241–8170
7340–00–241–8171
7340–00–559–8357
7340–00–688–1055
7340–00–721–6316
7340–00–721–6971

(b) Purchases of hand or measuring tools or stainless steel flatware exceeding the simplified acquisition threshold by DOD must be domestic end products. In the case of stainless steel flatware, the Secretary of the Department concerned can make an exception. The individual must determine that a satisfactory quality and sufficient quantity produced in the United States or its possessions are not available when needed at domestic market prices.

(c) If GSA solicitations of hand or measuring tools or stainless steel flatware include DOD requirements, GSA will apply the DOD restrictions. The bases for applying the DOD restriction to GSA acquisitions are:

(1) DOD's restrictions apply to requisitions of such items from the GSA stock program.

(2) The impracticality of establishing a dual supply system to satisfy the requirements of civilian and military agencies.

(3) GSA may reject any offer when it is considered necessary for reasons of national interest.

525.109 Solicitation provisions and contract clause.

If you include DOD requirements for hand or measuring tools or stainless steel flatware in the solicitation for an acquisition to exceed the simplified acquisition threshold, insert 552.225–70, Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware, in the solicitation and resulting contract(s).

Subpart 525.3—Balance of Payments Program

525.302 Policy.

525.302–70 Procurements for agencies under the Foreign Assistance Act.

GSA procurements made directly for other agencies of items to be used outside the United States are made the Balance of Payments Program. The only exception is if GSA contracts as the agent for an agency governed by the Foreign Assistance Act (22 U.S.C. 2151 *et seq.*). If this exception applies, the contract will be governed by the policies and procedures of the agency instead of FAR 25.3 and 525.3. For example, GSA sometimes acts as agent for the Agency for International Development and the Bureau of International Narcotics Matters.

Subpart 525.4—Trade Agreements

525.402 Policy.

As a result of the General Services Administration Board of Contract Appeals (GSBCA) decision in the protest of *International Business Machines Corporation*, 90–2BCA P22,924, May 18. 1990, GSA solicitations and contracts will deviate from FAR 52.225–8, Buy American Act-Trade Agreements-Balance of Payments Program Certificate, and FAR 52.225–9, Buy American Act-Trade Agreements-Balance of payments Program.

525.408 Solicitation provision and contract clauses.

Insert 552.225–8. Buy American Act-Trade Agreements-Balance of Payments Program Certificate, and 552.225–9, Buy American Act-Trade Agreements-Balance of Payments Program, in solicitations and contracts subject to the Trade Agreements Act. Use them instead of FAR 52.225–8 and 52.225–9.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 527—PATENTS, DATA, AND COPYRIGHTS

Subpart 527.4—Rights in Data and Copyrights

Sec.
527.409 Solicitation provisions and contract clauses

Authority: 40 U.S.C. 486(c).

Subpart 527.4—Rights in Data and Copyrights

527.409 Solicitation provisions and contract clauses.

Architect-Engineer Services and Construction Contracts Involving Architect-Engineer Services

Insert the following in solicitations and contracts for architect-engineer services and construction contracts involving architect-engineer services:

(a) Insert 552.227–70, Government Rights (Unlimited), instead of FAR 52.227–17, Rights in Data-Special Works, in contracts, except if 552.227–71 is prescribed.

(b) If the Government requires sole property rights and exclusive control over the design and data, insert 552.227–71, Drawings and Other Data to Become Property of Government, instead of FAR 52.227–17.

PART 528—BONDS AND INSURANCE

Subpart 528.2—Sureties and Other Security for Bonds

Sec.
528.202 Acceptability of corporate sureties

Subpart 528.3—Insurance

528.310 Contract clause for work on a Government installation

Authority: 40 U.S.C. 486(c).

Subpart 528.2—Sureties and Other Security for Bonds

528.202 Acceptability of corporate sureties.

Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. You may waive failure of the surety to affix the corporate seal as a minor informality. (See B–184120, July 2, 1975, 75–2 CPD 9.)

Subpart 528.3—Insurance

528.310 Contract clause for work on a Government installation.

(a) Insert the clause at 552.228–70, Workers' Compensation Laws, in each solicitation and contract that meets all the following conditions:

(1) The contract amount is expected to exceed the simplified acquisition threshold.

(2) The contract will require work to be performed on Government property.

(b) In the case of an owner-controlled insurance program, or wrap-up insurance, the clause will be a part of the policy holder's requirements.

PART 529—TAXES

Subpart 529.4—Contract Clauses

Sec.
529.401 Domestic contracts
529.401–70 Purchases at or under the simplified acquisition threshold
529.401–71 Contracts for supplies and services usable by the DC Government

Authority: 40 U.S.C. 486(c).

Subpart 529.4—Contract Clauses

529.401 Domestic contracts.

529.401–70 Purchases at or under the simplified acquisition threshold.

Insert 552.229–70, Federal, State, and Local Taxes, in purchases and contracts estimated to exceed the micropurchase threshold, but not the simplified acquisition threshold.

529.401–71 Contracts for supplies and services usable by the DC Government.

Insert 552.229–71, Federal Tax-DC Government, in solicitations and contracts that permit the District of Columbia Government to place orders.

PART 532—CONTRACT FINANCING

Subpart 532.1—Non-Commercial Item Purchase Financing

Sec.
532.111 Contract clauses for non-commercial purchases

Subpart 532.2—Commercial Item Purchase Financing

532.206 Solicitation provisions and contract clauses

Subpart 532.7—Contract Funding

532.705 Contract clauses
532.705–1 Clauses for contracting in advance of funds

Subpart 532.8—Assignment of Claims

532.806 Contract clauses

Subpart 532.9—Prompt Payment

532.902 Definitions
532–905 Invoice payments
532.905–70 Certification of payment to subcontractors and suppliers under fixed-price construction contracts
532.905–71 Final payment—construction and building service contracts
532.908 Contract clauses

Subpart 532.70—Authorizing Payment By Governmentwide Commercial Purchase Card

532.7001 Definition
532.7002 Solicitation requirements
532.7003 Contract clause

Subpart 532.71—Payments for Recurring Services

532.7101 Definitions
532.7102 Applicability
532.7104 Contract clauses

Authority: 40 U.S.C. 486(c).

Subpart 532.1—Non-Commercial Item Purchase Financing

532.111 Contract clauses for non-commercial purchases.

(a) *Invoice requirements.* Insert 552.232–70, Invoice Requirements, or something substantially the same, in all solicitations and contracts for supplies, services, construction, architect-engineer services, or the acquisition of leasehold interests in real property that require the submission of invoices for payment. Delete subparagraph (b) of the clause if an Accounting Control Transaction (ACT) number is not required for payment.

(b) *Adjusting payments.* Insert 552.232–71, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the simplified acquisition threshold.

(c) *Final payment.* Insert 552.232–72, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the simplified acquisition threshold.

Subpart 532.2—Commercial Item Purchase Financing

532.206 Solicitation provisions and contract clauses.

Discounts for prompt payment. Include 552.232–8, Discounts for Prompt Payments, in multiple award schedule solicitations and contracts insted of the clause at FAR 52.232–8.

Subpart 532.7—CONTRACT FUNDING

532.705 Contract clauses.

532.705–1 Clauses for contracting in advance of funds.

Insert 552.232–73, Availability of Funds, in solicitations and contracts for services which are "severable" when both of the following conditions apply:

(a) The contract, or a portion of the contract, will be chargeable to funds of the new fiscal year.

(b) The circumstances described in the prescriptions for FAR 52.232–18 or 52.232–19 do not apply.

Subpart 532.8—Assignment of Claims

532.806 Contract clauses.

Insert the clause at 552.232–23, Assignment of Claims, in solicitations and requirements or indefinite quantity contracts under which more than one agency may place orders.

Subpart 532.9—Prompt Payment

532.902 Definitions.

Full cycle electronic commerce means the use of electronic data interchange (EDI), Internet-based invoice processing, and electronic funds transfer (EFT):

(a) By the Government, to place purchase, delivery, or task orders, receive invoices, and pay invoices.

(b) By the Contractor, to accept and fill orders, submit invoices, and receive payment.

532.905 Invoice payments.

(a) *General and architect-engineer contracts.* Before exercising the authority to modify the date for constructive acceptance or constructive approval of progress payments in the clauses listed in this section, you must prepare a written justification explaining why a longer period is necessary. An official one level above you must approve your justification. Determine the time needed on a case-by-case basis.

(1) In subdivision (a)(6)(i) of the clause at FAR 52.232–25, Prompt Payment, do not specify a constructive acceptance period that exceeds 30 days.

(2) In subdivision (a)(4)(i)(A) of the clause at FAR 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, do not specify a constructive acceptance period that exceeds 30 days.

(3) In subdivision (a)(4)(i)(B) of the clause at FAR 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, do not specify a period for constructive approval of progress payments that exceeds 7 days.

(b) *Construction contracts.*

(1) Determine on a case-by-case basis the time specified for payment of progress payments in subdivision (a)(1)(i)(A) of the clause at FAR 52.232–27, Prompt Payment for Construction Contracts. Justify in writing periods longer than 14 days. An official one level above you must approve your justification. Under no circumstances may more than 30 days be specified.

(2) Determine the time to be specified in subdivision (a)(4)(i) of FAR clause 52.232–27, for constructive acceptance or approval, on a case-by-case basis. This time may not exceed 7 days unless you justify a longer period in writing, and obtain the approval of an official one level above you. Under no circumstances may more than 30 days be specified.

(c) *Federal Supply Service.*

(1) To increase efficiency and reduce costs to the Government, Federal Supply Service contracts under the Stock, Special Order, and Schedules Programs may authorize payment within 10 days of receipt of a proper invoice. The contract must meet all the following conditions:

(i) The contractor agrees to full cycle electronic commerce.

(ii) The contract includes FAR 52.232–33, Mandatory Information for Electronic Funds Transfer Payment.

(2) The 10 day payment terms apply to each order that meets all the following conditions:

(i) FSS places the order using EDI in accordance with the Trading Partner Agreement.

(ii) The contractor submits EDI invoices in accordance with the Trading Partner Agreement or invoices through the GSA Finance Center Internet-based invoice process.

(iii) A GSA Finance Center pays the invoices using EFT.

(3) The 10 day payment terms do not apply to any order:

(i) Placed by a GSA contracting activity other than FSS.

(ii) Placed by or paid by another agency.

532.905–70 Certification of payment to subcontractors and suppliers under fixed-price construction contracts.

The contractor may use GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, for the certification required by FAR 52.232–5.

532.905–71 Final payment—construction and building service contracts.

The following procedures apply to construction and building service contracts.

(a) Do not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims. If, after repeated attempts, you are unable to obtain a release of claims from the contractor, you may process the final payment with the approval of assigned legal counsel.

(b) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amounts withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

532.908 Contract clauses.

(a) *Federal Supply Service.* For FSS Stock, Special Order, and Schedules solicitations and contracts that provide payment in 10 days under 532.905(c):

(1) If the contract will include FAR 52.212–4 insert the clause at 552.232–74, Invoice Payments. GSA received a class deviation to allow use of 552.232–74 for commercial items.

(2) If the contract will not include FAR 52.212–4, insert 552.232–25, Prompt Payment, instead of FAR 552.232–25.

(b) *Leasehold Interests in Real Property.*

(1) Insert 552.232–75, Prompt Payment, in solicitations and contracts for acquiring leasehold interests in real property.

(i) You may modify the date for constructive acceptance in subparagraph (b)(2) of the clause to specify a period longer than 7 calendar days (but not to exceed 30 days) if necessary because of the nature of the services to be received, inspected or accepted by the Government. Prepare a written justification for specifying the longer period and obtain your contracting director's approval.

(ii) Use Alternate I if the lease contract does not contain provisions for ordering alterations or overtime utility services.

(2) Insert 552.232–76, Electronic Funds Transfer Payment, in solicitations and contracts for acquisition of leasehold interests in real property.

Subpart 532.70—Authorizing Payment by Governmentwide Commercial Purchase Card

532.7001 Definition.

Governmentwide commercial purchase card has the same meaning as in FAR 13.101.

532.7002 Solicitation requirements.

(a) In solicitations for supplies and services except telecommunications services (i.e., major systems such as the Federal Telecommunications System or DSN) and multiple award schedule solicitations, request offerors to indicate if they will accept payment by Government commercial credit card. Identify the credit card brand(s) under the GSA SmartPay program that may be used to make payments under the contract, on the cover page or in Section L of the solicitation.

(b) For multiple award schedule contracts, identify the credit card brand(s) under the GSA SmartPay program that may be used to make payments under the contract in the contract award letter.

(c) For orders placed by GSA, you may authorize payment by Government commercial credit card only for orders that do not exceed $100,000 (see GSA Order, Interim Guidance on Use of the Governmentwide Commercial Purchase Card Service (OAD 4200.8).

(d) Consider requesting offerors to designate different levels for which they may accept payment by Government commercial credit card, for example:

If awarded a contract under this solicitation, the offeror agrees to accept payment by commercial credit card for orders of:

____ $2,500 or less
____ $25,000 or less
____ $50,000 or less
____ $100,000 or less

532.7003 Contract clause.

Insert the clause at 552.232–77, Payment By Credit Card, in solicitations and resultant contracts for supplies and services except telecommunications services (i.e., major systems such as the Federal Telecommunications System or DSN) to provide for payment by Governmentwide commercial purchase card as an alternative method of payment for orders.

(a) Use the basic clause when only GSA will place orders under the contract.

(b) Use Alternate I for solicitations and contracts under which other agencies may place orders directly.

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Subpart 532.71—Payments for Recurring Services

532.7101 Definitions.

Fixed roll payment means automatic payment of fixed amounts at regular intervals without submission of an invoice or receiving report.

532.7102 Applicability.

You may use fixed roll payments in any contract that meets all four of the following conditions:

(a) The contract provides for recurring services at a constant level for a period of at least two months.

(b) The contract does not contain any discount items.

(c) Payment is due 30 days following completion of the service month.

(d) For a commercial item acquisition, fixed roll payments are consistent with customary commercial practice.

532.7104 Contract clauses.

(a) *Noncommercial item acquisitions.* For solicitations and contracts to be paid by fixed roll payment, include the clause at 552.232–1, Payments. Do not include the clauses at FAR 52.232–1, Payments, or 552,232–70, Invoice Requirements.

(b) *Commercial item acquisitions.* For solicitations and contracts to be paid by fixed roll payment, tailor the clause at FAR 52.212–4 by an addendum as noted in paragraphs (b) (1) and (2) of this section. This tailoring is authorized by a deviation approved on January 5, 1999.

(1) Delete paragraph FAR 52.212–4(g), Invoice.

(2) Add the following to paragraph FAR 52.212–4(i), Payment:

The Government shall pay the Contractor, without submission of invoices or vouchers, 30 days after the service period, the prices stipulated in this contract for services rendered and accepted, less any deductions provided in this contract.

PART 533—PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1—Protests

Sec.

533.103 Protests to the agency

533.103–72 Solicitation provisions

Subpart 533.2—Disputes and Appeals

533.211 Contracting officer's decision

Authority: 40 U.S.C. 486(c).

Subpart 533.1—Protests

§ 533.103 Protests to the agency.

§ 533.103–72 Solicitation provisions.

Include the provision at 552.233–70, Protests Filed Directly With the General Services Administration, in each solicitation for either:

(a) Supplies, services, construction, or architect-engineer services expected to exceed the simplified acquisition threshold.

(b) Acquisition of leasehold interests in real property expected to exceed the simplified lease acquisition threshold.

Subpart 533.2—Disputes and Appeals

§ 533.211 Contracting officer's decision.

In addition to the information in FAR 33.211(a)(4)(v), advise the contractor in your written decision that a notice of appeal must:

(a) Describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute considered important.

(b) Be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 536—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

Subpart 536.1—General

Sec.

536.101 Applicability

Subpart 536.2—Special Aspects of Contracting for Construction

536.213 Special procedures for sealed bidding in construction contracting

536.213–3 Invitations for bids

536.213–370 Bids that include alternates

536.213–371 Bids that include options

536.213–372 Bids that include both alternates and options

536.270 Exercise of options

536.271 Project labor agreements

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses

536.570–1 Definitions

536.570–2 Authorities and limitations

536.570–3 Specialist

536.570–4 Basis of award—construction contract

536.570–5 Working hours

536.570–6 Use of premises

536.570–7 Measurements

536.570–8 Specifications and drawings

536.570–9 Shop drawings, coordination drawings, and schedules

536.570–10 Samples

536.570–11 Heat

536.570–12 Use of equipment by the Government

536.570–13 Subcontracts

536.570–14 Requirement for a project labor agreement

Authority: 40 U.S.C. 486(c).

Subpart 536.1—General

536.101 Applicability.

If a requirement in this part is inconsistent with a requirement in another GSAR part, this part takes precedence.

Subpart 536.2—Special Aspects of Contracting for Construction

536.213 Special procedures for sealed bidding in construction contracting.

536.213–3 Invitations for bids.

536.213–370 Bids that include alternates.

(a) The base bid must include all features essential to a sound and adequate building design. If it appears that funds available for a project may be insufficient to include all desired features in the base bid, you may issue a solicitation for a base bid and include one or more alternates in the order of priority. Use alternates only if they are clearly justified and involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only "add" alternates.

(b) Before opening bids that include alternates, determine, and record in the contract file, the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening. The amount is the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to award to the low bidder if the following condition is met: the award amount of the base bid plus the combination of alternate items does not exceed the amount offered for the base bid and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the alternates to be used.

536.213–371 Bids that include options.

(a) Subject to the limitations in paragraph (c) of this section, you may include options in contracts if it is in the Government's interest.

(b) the appropriate use of options may include, but is not limited to, any of the following:

(1) If additional work is anticipated but funds are not expected to be available at the time of award, and it would not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) If fixed building equipment, e.g. elevators or escalators, will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) You must not use options under any of the following conditions:

(1) the prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded.

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions must state the period within which the options may be exercised.

(e) Solicitations must state whether the basis of award is inclusive or exclusive of the options. Before issuing a solicitation that includes evaluated options, you must determine that there is reasonable certainty that funds will be made available to permit exercise of the option.

536.213–372 Bids that include both alternates and options.

(a) Solicitations may include both alternates and options if the conditions in 536.213–370, Bids that include alternates, and 536.213–371, Bids that include options, are satisfied. In these solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and the alternates, in the order of priority listed in the solicitation, that provide the most work features within the funds available at bid opening, plus all options designated to be evaluated.

(b) The basis of award may require the evaluation of options associated with alternates if the related alternate is selected.

(c) Before opening bids that include both alternates and options, determine, and record in the contract file, the amount of funds available for the project (i.e., for the base bid and alternate work). The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options plus the alternate items does not exceed the amount offered for the base bid, the evaluated options, and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation.

536.270 Exercise of options.

(a) If exercising an option, notify the contractor, in writing, within the time period specified in the contract.

(b) Exercise options only after determining that all the following conditions exist:

(1) Funds are available.

(2) The requirement covered by the option fulfills an existing Government need.

(3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.

(c) Before exercising an option, you must determine that the action complies with the option's terms and this section's requirements. Include your written determination in the contract file.

(d) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and 517.207).

536.271 Project labor agreements.

(a) *Authority.* This subpart implements the Presidential memorandum of June 5, 1997, on using project labor agreements (PLAs) on Federal construction projects. The Presidential memorandum authorizes executive departments and agencies to require PLAs on large and significant construction projects for facilities to be owned by a Federal department or agency.

(b) *Applicability.* These policies and procedures apply to all GSA activities authorized to award contracts for construction of facilities to be owned by a Federal department or agency. You may use a PLA in leasehold arrangement, Federally funded projects, and other appropriate circumstances.

(c) *Definitions.*

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. The terms buildings, structures, or other real property are defined further in Federal Acquisition Regulation (FAR) 36.102.

Labor organization means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, and any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization (42 U.S.C. 2000e(d)).

Large and significant project means a Federal construction project with a total cost to the Federal Government of more than $5 million.

Project Labor Agreement (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

(d) *Policy.*

(1) You may, on a project-by-project basis, use a PLA on a large and significant project when both of the following conditions apply:

(i) A PLA will advance the Government's procurement interests.

(ii) No laws that apply to the specific construction project preclude the use of the PLA.

(2) Do not require any contractor to enter into a PLA with any particular labor organization.

(3) The use of a PLA is not intended to create any right or benefit, substantive or procedural enforceable by a nonfederal party against the United States, its departments, and agencies, its officers or employees, or any other person.

(e) *Procedures.*

(1) As part of procurement planning for construction projects with a total estimated cost to the Federal Government of more than $5 million, you may consider requiring a PLA.

(2) To require a PLA, you must determine whether use of a PLA will advance the Government's procurement interests in all the following areas:

(i) Cost, efficiency, and quality.

(ii) Promoting labor-management stability.

(iii) Promoting compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards, and other matters.

(3) In making the determination required by paragraph (b) of this section, consult with the agency project or program manager and obtain guidance from the Agency Labor Advisor and assigned legal counsel. You should consider the following factors:

(i) Whether past experience with construction projects in the location where the project will be performed indicates that a PLA will be effective.

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(ii) Whether delays in performance of the construction contract would have significant adverse impact on the mission of the agency or operation of the installation or facility.

(iii) Whether any law applies to the specific construction project that would impede use of a PLA.

(iv) Whether the labor organizations in the area can provide a reliable source of skilled, experienced building trades workers in all crafts needed on the job site for the project's duration (taking into consideration other major construction work in the area).

(v) Whether the Government can benefit from uniform work rules and working conditions and established procedures for resolving labor disputes, no strike/no lock-out protections.

(vi) Whether the Government can benefit from increased stability and labor peace that derives from greater labor-management cooperation.

(vii) Whether the requirements for a PLA will unreasonably restrict competition.

(viii) Other relevant information.

(4) Document the rationale supporting your decision to require a PLA in the contract file.

(5) Provide the following information to the Agency Labor Advisor (GSA Acquisition Policy Division (MVP)):

(i) A brief description of the project.

(ii) The estimated cost.

(iii) A copy of the document supporting your decision to require a PLA.

(iv) A copy of the solicitation.

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.

536.570–1 Definitions.

Insert 552.236–70, Definitions, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–2 Authorities and limitations.

Insert 552.236–71, Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570–3 Specialist

Insert 552.236–72, Specialist, in solicitations and contracts for construction if the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

536.570–4 Basis of award—construction contract.

(a) Insert a provision substantially the same as 552.236–73, Basis of Award—Construction Contract, in solicitations for fixed-price construction contracts except if any of the following conditions apply:

(1) The solicitation requires the submission of a lump-sum bid only.

(2) The solicitation is for an indefinite quantity contract.

(3) The contract amount is not expected to exceed the simplified acquisition threshold.

(b) *Instructions for use.*

If the solicitation requests the submission of a . . .	Then use the . . .
(1) Base bid and unit prices	Basic provision.
(2) Base bid and options	Provision with its Alternate I.
(3) Base bid and alternates	Provision with its Alternate II.
(4) Base bid, alternates, and options	Provision with its Alternate III.

536.570–5 Working hours.

Insert 552.236–74, Working Hours, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570–6 Use of premises.

Insert 552.236–75, Use of Premises, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–7 Measurements.

Insert 552.236–76, Measurements, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–8 Specifications and drawings.

Insert the clause at 552.236–77, Specifications and Drawings, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570–9 Shop drawings, coordination drawings, and schedules.

Insert the clause at 552.236–78, Shop Drawings, Coordination Drawings, and Schedules, in solicitations and contracts if construction is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570–10 Samples.

Insert the clause at 552.236–79, Samples, in solicitations and contracts for construction if the technical sections of the contract require the submission and approval of samples.

536.570–11 Heat.

Insert the clause at 552.236–80, Heat, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–12 Use of equipment by the Government.

Insert the clause at 552.236–81, Use of Equipment by the Government, in contracts requiring heating and air-conditioning of existing buildings if it may be necessary for the Government to operate all or part of the equipment before final acceptance of the contract.

536.570–13 Subcontracts.

Insert 552.236–82, Subcontracts, in solicitations and contracts for construction if the contract amount is expected to exceed the simplified acquisition threshold.

536.570–14 Requirement for a project labor agreement.

Insert a clause substantially the same as 552.236–83, Requirement for a Project Labor Agreement, in solicitations and contracts that will require a project labor agreement.

Part 537—Service Contracting

Subpart 537.1—Service Contracts—General

Sec.

537.101 Definitions
537.110 Solicitation provisions and contract clauses

Subpart 537.2—Advisory and Assistance Services

537.270 Contract clause

Authority: 40 U.S.C. 486(c).

Subpart 537.1—Service Contracts—General

537.101 Definitions.

"Contracts for building services" means contracts for services relating to the operation and maintenance of a building (for example, janitorial; window washing; snow removal; trash removal; lawn and grounds care; inspection, maintenance and repair of fixed equipment (e.g., elevators, air-conditioning, hearing systems)) and protection or guard service.

537.110 Solicitation provisions and contract clauses.

Contracts for Building Services

The following provision and clauses apply to contracts for building services:

(a) Insert 552.237–70, Qualifications of Offerors, in solicitations if the contract amount is expected to exceed the simplified acquisition threshold.

(b) Insert 552.237–71, Qualifications of Employees, in solicitations and contracts if the contract amount is expected to exceed the simplified acquisition threshold. If needed, use supplemental provisions or clause to describe specific requirements for employees performing work on the contract.

(c) Insert 552.237–72, Prohibition Regarding "Quasi-Military Armed Forces," in solicitations and contracts for guard service.

Subpart 537.2—Advisory and Assistance Services

537.270 Contract clause.

Insert the clause at 552.237–73, Restriction on Disclosure of Information, in solicitations and contracts for proposal evaluation and analysis services.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

Subpart 538.2—Establishing and Administering Federal Supply Schedules

Sec.

538.270 Evaluation of multiple award schedule (MAS) offers
538.271 MAS contract awards
538.272 MAS price reductions
538.273 Contract clauses

Authority: 40 U.S.C. 486(c).

Subpart 538.2—Establishing and Administering Federal Supply Schedules

538.270 Evaluation of multiple award schedule (MAS) offers.

(a) The Government will seek to obtain the offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

(b) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(c) When establishing negotiation objectives and determining price reasonableness, compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers. When determining the Government's price negotiation objectives, consider the following factors:

(1) Aggregate volume of anticipated purchases.

(2) The purchase of a minimum quantity or a pattern of historic purchases.

(3) Prices taking into consideration any combination of discounts and concessions offered to commercial customers.

(4) Length of the contract period.

(5) Warranties, training, and/or maintenance included in the purchase price or provided at additional cost to the product prices.

(6) Ordering and delivery practices.

(7) Any other relevant information, including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the most favored commercial customer(s). For example, an offeror may incur more expense selling to the Government than to the customer who receives the offeror's best price, or the customer (e.g., dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the offeror that the Government does not perform. In such cases, some reduction in the discount given to the Government may be appropriate. If the best price is not offered to the Government, you should ask the offeror to identify and explain the reason for any differences. Do not require offerors to provide detailed cost breakdowns.

(d) You may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases if you make a determination that both of the following conditions exist:

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated.

(2) Award is otherwise in the best interest of the Government.

538.271 MAS contract awards.

(a) MAS awards will be for commercial items as defined in FAR 2.101. Negotiate contracts as a discount from established catalog prices.

(b) Before awarding any MAS contract, determine that the offered prices are fair and reasonable (see FAR subpart 15.4 and 538.270). Document the negotiation and your determination using FAR 15.406–3 as guidance.

(c) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) on which the award is predicated.

538.272 MAS price reductions.

(a) Section 552.238–75, Price Reductions, requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the Government and the offeror's customer or category of customers on which the contract award was predicated (see 538.271(c)). If a change occurs in the contractor's commercial pricing or discount arrangement applicable to the identified commercial customer (or category of customers) that results in a less advantageous relationship between the Government and this customer or category of customers, the change constitutes a "price reduction."

(b) Make sure that the contractor understands the requirements of section 552.238–75 and agrees to report to you all price reductions as provided for in the clause.

538.273 Contract clauses.

(a) *Multiple award schedules.* Insert in solicitations and contracts:

(1) 552.238–70, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped, if you include electronic office equipment items.

(2) 552.238–71, Submission and Distribution of Authorized FSS Schedule Pricelists. If GSA is not prepared to accept electronic submissions for a particular schedule delete:

(i) Subparagraphs (c)(1)(ii) and (c)(3).

(ii) The subparagraph identifier "(i)" in (c)(1) and the word "and" at the end of subparagraph (i).

(3) 552.238–72, Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes.

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(4) 552.238–73, Cancellation.

(b) *Multiple and single award schedules.* Insert in solicitations and contracts:

(1) 552.238–74, Contractor's Report of Sales.

(2) 552.238–75, Price Reductions.

(3) 552.238–76, Industrial Funding Fee.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 542.11—Production Surveillance and Reporting

Sec.
542.1107 Contract clause.

Subpart 542.15—Contractor Performance Information

542.1503 Procedures.
542.1503–71 Information to collect.

Authority: 40 U.S.C. 486(c).

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clause.

FSS Stock or Special Order Program

Insert 552.242–70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for stock or special order program items. You also may use the clause in indefinite delivery definite quantity contracts for stock or special order program items when close monitoring is necessary because numerous shipments are involved.

Subpart 542.15—Contractor Performance Information

542.1503 Procedures.

542.1503–71 Information to collect.

The system for collecting contractor performance data should include, as appropriate:

(a) Timeliness of delivery or performance, for example:

(1) Adherence to contract delivery schedules.

(2) Resolution of delays

(3) Number of "show cause" letters and "cure notices" issued.

(4) Number of delinquent deliveries.

(5) Number of contract extensions resulting from contractor-caused delays.

(6) Timely submission or performance or required tests.

(b) Conformance of product or service to contract requirements, for example:

(1) Quality of workmanship.

(2) Reliability.

(3) Adequacy of correction of defects.

(4) Number of safety defects.

(5) Number of product rejections.

(6) Results of laboratory tests.

(7) Number and extent of warranty problems.

(c) Customer comments, for example:

(1) Number and quality of positive comments.

(2) Number and nature of complaints.

(3) Adequacy of resolving customer complaints.

(d) Terminations for default.

(e) On-the-job safety performance record, including the number of lost or restricted workdays due to occupational injuries in comparison to the national average.

(f) Adequacy of contractor's quality assurance system.

(g) Compliance with other key contract provisions, for example:

(1) Subcontracting program.

(2) Labor standards.

(3) Safety standards.

(4) Reporting requirements.

(h) Exhibiting customer-oriented behavior.

(i) Other performance elements identified by the Service.

PART 543—CONTRACT MODIFICATIONS

Subpart 543.2—Change Orders

Sec.
543.205 Contract clauses

Authority: 40 U.S.C. 486(c).

Subpart 543.2—Change Orders

543.205 Contract clauses.

(a) *Construction.*

(1) Insert 552.243–70, Pricing of Adjustments, in solicitations and contracts if the contract:

(i) Amount is expected to exceed the simplified acquisition threshold.

(ii) Will be other than a cost type.

(2) Insert 552.243–71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243–4.

(b) *Multiple award schedules (MAS).* Insert 552.243–72, Modifications (Multiple Award Schedule), in MAS solicitations and contracts issued by GSA. For solicitations and contracts issued under Federal Supply Classification (FSC) 65 you may use the clause with its Alternate I for products ordered from authorized Prime Vendors.

PART 546—QUALITY ASSURANCE

Subpart 546.3—Contract Clauses

Sec.
546.302 Fixed-price supply contracts
546.302–70 Source inspection by Quality Approved Manufacturer
546.302–71 Source inspection
546.312 Construction contracts

Subpart 546.4—Government Contract Quality Assurance

546.470–2 Certification testing

Subpart 546.7—Warranties

546.708 Warranties of Data
546.710 Contract clauses

Authority: 40 U.S.C. 486(c).

Subpart 546.3—Contract Clauses

546.302 Fixed-price supply contracts.

546.302–70 Source Inspection by Quality Approved Manufacturer.

For contracts and solicitations issued by FSS:

(a) Insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection, except:

(1) Multiple award schedule contracts.

(2) Motor vehicle contracts.

(3) Contracts awarded by the FSS Services Acquisition Center, unless you decide, together with the Central Office Quality Assurance Division (FQA), that inspection by Government personnel is necessary.

(b) You may authorize inspection and testing at manufacturing plants or other facilities located outside the United States, Puerto Rico, or the Virgin Islands, under paragraph (a)(1) of the clause at 552.246–70 under any of the circumstances listed in this paragraph. Coordinate the authorization with FQA and document it in the file.

(1) Inspection services are available from another Federal agency with primary inspection responsibility in the geographic area.

(2) An inspection interchange agreement exists with another agency for inspection at a contractor's plant.

(3) The procurement is for the Agency for International Development and specifies the area of source.

(4) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

546.302–71 Source inspection.

For solicitations and contracts issued by FSS, if Government personnel at the source will perform inspection, insert 552.246–71, Source Inspection by Government.

546.312 Construction contracts.

Insert the clause at 552.246–72, Final Inspection and Tests, in solicitations and contracts for construction that include FAR 52.246–12, Inspection of Construction.

Subpart 546.4—Government Contract Quality Assurance

546.470–2 Certification testing.

Certification testing determines whether an item conforms with a specification for the purpose of executing a certificate of compliance required by the specification. The contractor has responsibility for certification testing.

Subpart 546.7—Warranties

546.708 Warranties of data.

(a) Use warranties of data only when you meet both of the following conditions:

(1) You decide the use of a warranty is in the Government's interest.

(2) The contracting director concurs in your decision.

(b) The technical or specification manager has responsibility for developing any warranties of data.

546.710 Contract clauses.

(a) Insert the clause at 552.246–17, Warranty of Supplies of a Noncomplex Nature, instead of FAR 52.246–17 in solicitations and contracts. Use the following alternates as applicable:

(1) *Commercial item acquisitions other than multiple award schedules.* Use the clause at 552.246–17 with its Alternate I.

(2) *Other than commercial items in Class 8010.* Use the clause at 552.246–17 with its Alternate II.

(3) *Other than commercial items in Class 8030 or 8040.* Use the clause at 552.246–17 with its Alternate III. In addition, specify in the solicitation whether the items are "noncritical end use items" or "critical end use items".

(b) *Multiple award schedules, except international schedules.* Insert the clause at 552.246–73, Warranty—Multiple Award Schedule, in solicitations and contracts.

(c) *International multiple award schedules.* Insert the clause at 552.246–74, Warranty—International Multiple Award Schedule, in solicitations and contracts.

(d) *Construction contracts expected to exceed the simplified acquisition threshold.* Insert the clause at 552.246–75, Guarantees, in solicitations and contracts.

(e) *Pesticides.* Insert the clause at 552.246–76, Warranty of Pesticides, in solicitations and contracts involving the procurement of pesticides.

PART 547—TRANSPORTATION

Subpart 547.3—Transportation in Supply Contracts

Sec.
547.300 Scope of subpart
547.303 Standard delivery terms and contract clauses
547.303–1 F.o.b origin
547.304 Determination of delivery terms
547.304–5 Exceptions
547.305 Solicitation provisions, contract clauses, and transportation factors

Authority: 40 U.S.C. 486(c).

Subpart 547.3—Transportation in Supply Contracts

547.300 Scope of subpart.

This subpart applies to FSS acquisitions.

547.303 Standard delivery terms and contract clauses.

547.303–1 F.o.b origin.

Contractor Responsibilities

The contractor must both:

(a) Request a carrier routing from the applicable transportation zone office on all shipments weighing 10,000 pounds or more.

(b) Mail the original of the commercial bill of lading (CBL), to the office that authorized the CBL (applies to shipment on a CBL). Ensure that the signature of the carrier's agent and the annotation required by FAR 52.247–1 appear on the original and all copies of the CBL.

547.304 Determination of delivery terms.

547.304–5 Exceptions.

(a) *Solicitations that provide for delivery to Alaska, Hawaii, or Puerto Rico.* Include notice that the offeror may specify delivery f.o.b. origin; f.o.b. vessel, part of shipment; f.o.b. destination; or any combination of these. If appropriate, provide for other delivery terms.

(b) *Federal Supply Schedules.* If f.o.b. destination is offered for delivery within CONUS, attempt to obtain the same delivery term for shipment to Alaska, Hawaii, or Puerto Rico.

547.305 Solicitation provisions, contract clauses, and transportation factors.

(a) Insert 552.247–70, Placarding Railcar Shipments, in solicitations and contracts if it is essential that the railcar doors be especially positioned next to the unloading dock, platform, or warehouse door.

(b) Insert 552.247–71, Diversion of Shipment Under f.o.b. Destination Contracts, in Stock, Special Order Program (SOP), and Single Award Schedule solicitations and contracts which provide for f.o.b. destination shipment.

PART 549—TERMINATION OF CONTRACTS

Subpart 549.5—Contract Termination Clauses

Sec.
549.502 Termination for convenience of the Government

Authority: 40 U.S.C. 486(c).

Subpart 549.5—Contract Termination Clauses

549.502 Termination for convenience of the Government.

Acquisitions Funded Through the Information Technology (IT) Fund

(a) You may use the clause at 552.249–70, Termination for Convenience of the Government (Fixed-Price) (Short Form), when appropriate, in solicitations and contracts for the acquisition and maintenance of telephone systems funded through the Information Technology (IT) Fund. Use this clause with FAR 52.249–1 or FAR 52.249–3 and 52.249–4.

(b) If you use the clause at 552.249–70, you must also insert 552.249–71, Submission of Termination Liability Schedule, in the solicitation and contract.

SUBCHAPTER H CLAUSES AND FORMS

PART 552 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.000 Scope of part

Subpart 552.1—Instructions for Using Provisions and Clauses

552.101–70 Using Part 552
552.102 Incorporating provisions and clauses
552.103 Identification of provisions and clauses
552.104 Procedures for modifying and completing provisions and clauses
552.105 Procedures for using alternates
552.107–70 Provisions and clauses prescribed in subpart 552.1

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart
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552.203–70 Price Adjustment for Illegal or Improper Activity
552.203–71 Restriction on Advertising
552.209–70 Product Removal from Qualified Products List
552.209–71 Waiver of First Article Testing and Approval Requirement
552.209–72 Supplemental Requirements for First Article Approval—Contractor Testing
552.209–73 Supplemental Requirements for First Article Approval—Government Testing

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552.211–8 Time of Delivery
552.211–70 Brand Name or Equal
552.211–71 Standard References
552.211–72 Reference to Specifications in Drawings
552.211–73 Marking
552.211–74 Charges for Marking
552.211–75 Preservation, Packaging and Packing
552.211–76 Charges for Packaging and Packing
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552.211–78 Commercial Delivery Schedule (Multiple Award Schedule)
552.211–79 Acceptable Age of Supplies
552.211–80 Age on Delivery
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552.211–83 Availability for Inspection, Testing, and Shipment/Delivery
552.211–84 Non-Compliance with Contract Requirements
552.212–70 Preparation of Offer (Multiple Award Schedule)
552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items
552.212–72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items
552.212–73 Evaluation—Commerical Items (Multiple Award Schedule)
552.214–70 "All or None" Offers
552.214–71 Progressive Awards and Monthly Quantity Allocations
552.214–72 Bid Sample Requirements
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552.215–71 Examination of Records by GSA (Multiple Award Schedule)
552.215–72 Price Adjustment—Failure to Provide Accurate Information
552.216–70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts
552.216–71 Economic Price Adjustment—Stock and Special Order Program Contracts
552.216–72 Placement of Orders
552.216–73 Ordering Information
552.217–70 Evaluation of Options
552.217–71 Notice Regarding Option(s)
552.219–70 Allocation of Orders—Partially Set-aside Items
552.219–71 Notice to Offerors of Subcontracting Plan Requirements
552.219–72 Preparation, Submission, and Negotiation of Subcontracting Plans
552.219–73 Goals for Subcontracting Plan
552.219–74 Section 8(a) Direct Award
552.223–70 Hazardous Substances
552.223–71 Nonconforming Hazardous Materials
552.223–72 Hazardous Material Information
552.225–8 Buy American Act—Trade Agreements—Balance of Payments Program Certificate
552.225–9 Buy American Act—Trade Agreements—Balance of Payments Program
552.225–70 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware
552.227–70 Government Rights (Unlimited)
552.227–71 Drawings and Other Data to Become Property of Government
552.228–70 Workers' Compensation Laws
552.229–70 Federal, State, and Local Taxes
552.229–71 Federal Excise Tax—DC Government
552.232–1 Payments
552.232–8 Discounts for Prompt Payment
552.232–23 Assignment of Claims
552.232–25 Prompty Payment
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552.232–71 Adjusting Payments
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552.236–71 Authorities and Limitations
552.236–72 Specialist
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552.236–81 Use of Equipment by the Government
552.236–82 Subcontracts
552.236–83 Requirement for a Project Labor Agreement
552.237–70 Qualifications of Offerors
552.237–71 Qualifications of Employees
552.237–72 Prohibition Regarding "Quasi-Military Armed forces."
552.237–73 Restriction on Disclosure of Information
552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped
552.238–71 Submission and Distribution of Authorized FSS Schedule Pricelists
552.238–72 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes
552.238–73 Cancellation
552.238–74 Contractor's Report of Sales
552.238–75 Price Reductions
552.238–76 Industrial Funding Fee
552.242–70 Status Report of Orders and Shipments
552.243–70 Price of Adjustments
552.243–71 Equitable Adjustments
552.243–72 Modifications (Multiple Award Schedule)
552.246–17 Warranty of Supplies of a Noncomplex Nature
552.246–70 Source Inspection by Quality Approved Manufacturer
552.246–71 Source Inspection by Government
552.246–72 Final Inspection and Tests
552.246–73 Warranty—Multiple Award Schedule
552.246–74 Warranty—International Multiple Award Schedule
552.246–75 Guarantees
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552.270–2 Historic Preference
552.270–3 Parties to Execute Lease
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552.270–7 Fire and Casualty Damage
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552.270–9 Inspection—Right of Entry
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552.270–12 Alterations
552.270–13 Proposals for Adjustment
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552.270–17 Delivery and Condition
552.270–18 Default in Delivery—Time Extensions
552.270–19 Progressive Occupancy
552.270–20 Payment
552.270–21 Effect of Acceptance and Occupancy
552.270–22 Default by Lessor During the Term
552.270–23 Subordination, Nondisturbance and Attornment
552.270–24 Statement of Lease
552.270–25 Substitution of Tenant Agency
552.270–26 No Waiver
552.270–27 Integrated Agreement
552.270–28 Mutuality of Obligation
552.270–29 Acceptance of Space

552.000 Scope of part.

This part provides the text of provisions and clauses which are unique to GSA or supplement the FAR.

Subpart 552.1—Instructions for Using Provisions and Clauses

552.101–70 Using Part 552.

(a) *Definition.* "Clause," as used in this subpart, means provision or clause as defined in FAR 52.101(a).

(b) *Numbering.*

(1) Clauses which are "substantially" the same as FAR clauses and clauses to be used instead of FAR clauses are identified as follows:

(i) The clause has the same title as a clause in the FAR.

(ii) The number 5 precedes the clause.

(iii) The clause appears under the same subsection number and caption as in the FAR.

(2) Supplemental clauses are numbered in the same manner as the FAR, except:

(i) The chapter number precedes the clause.

(ii) The subsection numbers begin with 70.

(iii) The clauses are sequentially numbered, e.g., 552.232–70, 552.232–71, etc.

552.102 Incorporating provisions and clauses.

You may incorporate clauses prescribed in the GSAR for solicitations and contracts by reference.

552.103 Identification of provisions and clauses.

Deviations. If the GSAR prescribes a class deviation from a FAR clause, identify the clause by the GSAR citation (e.g., 552.232–8 PROMPT PAYMENT DISCOUNT (NOV 1987) (DEVIATION FAR 552.232–8)).

552.104 Procedures for modifying and completing provisions and clauses.

(a) The procedures in FAR 52.104 apply when you modify or complete a GSAR provision or clause. Provisions and clauses shall not be modified unless the GSAR authorizes their modification.

(b) You do not need to identify modifications of clauses which result from negotiations unless you issue an amendment to the solicitation.

(c) In general, you should modify FAR or GSAR clauses only for individual cases. If a contracting activity develops a modification for repeated use, furnish a copy to the Office of GSA Acquisition Policy (MV) for potential inclusion in the GSAR.

552.105 Procedures for using alternates.

The procedures in FAR 52.105 apply to GSAR part 552.

552.107–70 Provisions and clauses prescribed in subpart 552.1.

(a) Insert the provision at 552.252–5, Authorized Deviations in Provisions, in solicitation that include any FAR or GSAR clause with an authorized deviation. You must use this provision in lieu of the FAR provision at 552.252–5.

(b) Insert the clause at 552.252–6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or GSAR clause with an authorized deviation. You must use this clause in lieu of the FAR clause at 52.252–6.

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart.

This subpart sets forth the text of all GSAR provisions and clauses. It also cross-references the location in the GSAR that prescribes the use of each provision and clause.

552.203–5 Covenant Against Contingent Fees.

As prescribed in 502.404, insert the following clause:

Convenant Against Contingent Fees (Feb 1990)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warrant, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

552.203–70 Price Adjustment for Illegal or Improper Activity.

As prescribed in 503.104–9, insert the following clause:

Price Adjustment for Illegal or Improper Activity (Sep 1999)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

(End of clause)

552.203–71 Restriction on Advertising.

As prescribed in 503.570–2, insert the following clause:

Restriction on Advertising (Sep 1999)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

552.209–70 Produce Removal from Qualified Products List.

As prescribed in 509.206–2, insert the following clause:

Product Removal From Qualified Products List (Sep 1999)

If, during the performance of this contract, the product being furnished is for any reason (except those outlined in paragraph 3.1.1 of the applicable Federal or Interim Federal Specification for security cabinets, security vault doors and changeable combination padlocks) removed from the Qualified Products List, the Government may terminate this contract for default.

(End of clause)

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552.209–71 Waiver of First Article Testing and Approval Requirement.

As prescribed in 509.306, insert the following provision:

Waiver of First Article Testing and Approval Requirement (Sep 1999)

(a) Offerors must submit an offer including testing and approval, however, an offeror may submit an alternate offer excluding testing and approval, provided the offeror satisfies the requirements for the waiving of first article testing.

(b) Before a waiver of the first article testing requirement of this solicitation will be considered, the offeror is requested to identify the procurement under which the product offered was previously approved and accepted:

_____

(Offeror to insert both contract number and applicable national stock number.)

(End of provision)

552.209–72 Supplemental Requirements for First Article Approval—Contractor Testing.

As prescribed in 509.308–1, insert the following clause:

Supplemental Requirements for First Article Approval—Contractor Testing (Sep 1999)

(a) The term "Contracting Officer" as used in FAR 52.209–3, First Article Approval—Contractor Testing, means the Administrative Contracting Officer (ACO).

(b) The Contractor shall have either (1) the necessary inspection and test equipment at the Contractor's plant to perform first article testing, or (2) if the inspection and test equipment is not available, a letter of commitment from a laboratory acceptable to the Government to perform the inspection and testing.

(c) When the Government elects to witness the first article testing, the Contractor shall conduct the testing between the hours of 7:00 AM and 5:00 PM, Monday thru Friday, unless a different time is agreed to by the ACO.

(d) The first article test report shall contain:

(1) The complete test data, the test method(s) used and date of test;

(2) Signature and printed name of the individual who performed the inspection;

(3) Applicable specification/CID and/or drawing numbers;

(4) Name and type of test equipment used; and

(5) All numerical values as a result of testing with each noted as to whether it passes or fails the contract test requirements.

(e) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under control of the Quality Assurance Specialist (QAS), to protest against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(f) If the Contractor delivers the approved first article as part of the contract quantity, it shall be in the last scheduled delivery under the contract.

(End of clause)

552.209–73 Supplemental Requirements for First Article Approval—Government Testing.

As prescribed in 509.308–2, insert the following clause:

Supplemental Requirements for First Article Approval—Government Testing (Sep 1999)

(a) The term "Contracting Officer" as used in FAR 52.209–4, First Article Approval—Government Testing, means the Administrative Contracting Officer (ACO).

(b) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under the control of the Quality Assurance Specialist (QAS) to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(c) If the Contractor deliver the approved first article as part of the contract quantity, it shall be in the last scheduled delivery under the contract.

(End of clause)

552.211–8 Time of Delivery.

As prescribed in 511.404(a)(1) insert the following clause:

Time of Delivery (Sep 1999)

(a) The time of delivery for each item means the time required after receipt of an order (1) to make delivery to a destination in the case of delivered prices, or (2) to place shipment in transit in the case of f.o.b. origin prices.

(b) Delivery is required to be made at the point(s) specified within _____ days after receipt of order.

(End of clause)

Alternate I (SEP 1999). It it is necessary to show different delivery times for different items or groups of items, the Contracting Officer may substitute the following paragraph (b) for paragraph (b) of the basis clause.

(b) Delivery is required to be made at the point(s) specified within the number of calender days after receipt of order as indicated below:

Items or groups of items (Special Item Numbers or Nomenclature)	Required delivery time (DAYS ARO)

552.211–70 Brand Name or Equal.

As prescribed in 511.170–3(c), insert the following provision:

Brand Name or Equal (Feb 1996)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) Identification of items in this solicitation by a "brand name or equal" description is intended to indicate the quality and characteristics of products that will be satisfactory and is not intended to be restrictive. Offers of "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless clearly indicated in the offer than an "equal" product is offered, the offer shall be considered as offering a referenced brand name product.

(c)(1) An offeror proposing to furnish an "equal" product shall insert the name of the product in the space provided in the solicitation or otherwise clearly the product. The Government's determination as to the acceptability of the "equal" product shall be based on information furnished or otherwise identified in the offer as well as other information reasonably available to the purchasing activity. CAUTION TO OFFERORS. The purchasing activity is not responsible for locating or securing any information not identified in the offer and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the offeror must furnish with its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the special salient characteristics, and (ii) establish exactly what the offeror proposes to furnish. The information furnished may include specific references to information previously furnished or otherwise reasonably available to the purchasing activity.

(2) An offeror proposing to modify a product to make it conform to the requirements of the solicitation shall (i) include in its offer a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) In sealed bidding, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

552.211–71 Standard References.

As prescribed in 511.204(a), insert the following clause:

Standard References (Sep 1999)

(a) All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards and specifications) cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this contract, in accordance with the following:

(1) Wherever reference is made to Standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the Contractor shall comply with the requirements set out in the issue or edition identified in this contract.

(2) Wherever reference is made to any such document other than those specified in subparagraph (1) above, the Contractor shall comply with the requirements set out in the edition specified in this contract, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the solicitation on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the specifications of this contract.

(b) Upon request the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in this contract and which governs quality and workmanship.

(End of clause)

552.211–72 Reference to Specifications in Drawings.

As prescribed in 511.204(b), insert the following clause:

References to Specifications in Drawings (Feb 1996)

If military or other drawings are made a part of this contract, any reference in the drawings to Federal specifications or standards will be considered to be a reference to the date of such Federal specification or standard identified in the contract. If the date of the Federal specification or standard is not identified in the contract, the edition, including revisions thereto, in effect on the date the solicitation is issued will apply.

(End of clause)

552.211–73 Marking.

As prescribed in 511.204(c)(1), insert the following clause:

Marking (Feb 1996)

(a) *General requirements.* Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards:

(1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities.* Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material.* When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required marking, by contract or otherwise, and charge the Contractor therefor at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

552.211–74 Charges for Marking.

As prescribed in 511.204(c)(2), insert a clause substantially as follows:

Charges for Marking (Feb 1996)

The rate provided for in paragraph (b) of 552.211–73, Marking, is $_____* per man-hour or fraction thereof.

(End of clause)

** The rate to be inserted in the above clause shall be determined and published by the Commissioner, Federal Supply Service, or a designee.*

552.211–75 Preservation, Packaging and Packing.

As prescribed in 511.204(c)(3), insert the following clause:

Preservation, Packaging, and Packing (Feb 1996)

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of clause)

552.211–76 Charges for Packaging and Packing.

As prescribed in 511.204(c)(4), insert a clause substantially as follows:

Charges for Packaging and Packing (Feb. 1996)

If supplies shipped to a GSA wholesale distribution center are not packaged and packed in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking, by contract or otherwise, and charge the Contractor therefore at the rate of $____* ____ per man-hour or fraction thereof. The Contractor will also be charged for material costs, if incurred. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

** The rate to be inserted in the above clause shall be determined by the Commissioner, Federal Supply Service, or a designee.*

552.211–77 Packing List.

As prescribed in 511.204(d), insert the following clause:

Packing List (Feb. 1996)

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate:

(1) Name and address of the consignor;

(2) Name and complete address of the consignee;

(3) Government order or requisition number;

(4) Government bill of lading number covering the shipment (if any); and

(5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:

(1) Cardholder name and telephone number and

(2) The term "Credit Card."

(End of clause)

552.211–78 Commercial Delivery Schedule (Multiple Award Schedule).

As prescribed in 511.404(a)(2), insert the following clause:

Commercial Delivery Schedule (Multiple Award Schedule) (Feb. 1996)

(a) *Time of Delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices, or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the "Time of Delivery (days ARO)" column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal commercial practice. The Government requires the Contractor's normal commercial delivery time, as long as it is less than the "STATED" delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government's stated delivery time as stated below:

Items or group of items (Special Item Number or Nomenclature)	Government's stated delivery time (days ARO)	Contractor's normal commercial delivery time
	.....	.....
	.....	.....
	.....	.....

(b) *Expedited Delivery Times.* For those items that can be delivered quicker than the delivery times in paragraph (a), above, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Item or group of items (Special Item Number or Nomenclature)	Expedited delivery time (HOURS/DAYS ARO)
	.....
	.....
	.....

(c) *Overnight and 2-Day Delivery Times.* Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.

(End of clause)

552.211–79 Acceptable Age of Supplies.

As prescribed in 511.404(a)(3)(i), insert the following clause:

Acceptable Age of Supplies (Feb. 1996)

The supplies furnished under this contract shall not be more than ____ months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies shall be considered to be furnished (1) when they are offered to the Government for inspection and testing, or (2) on the date of shipment if shipment is authorized to be made without prior inspection by the Government. If the age of the supplies furnished under this contract is greater than the specified period, the Government may exercise its right to reject the supplies.

(End of clause)

Alternate I (FEB 1996). For items having a limited shelf-life, the sentence below should be substituted for the first sentence of the basic clause when authorized:

The supplies furnished under this contract shall not be more than ____ days old, beginning with the date of manufacture (month, day, year) marked on the container.

552.211–80 Age on Delivery.

As prescribed in 511.404(a)(3)(ii) insert the following clause:

Age on Delivery (Feb. 1996)

Included in the description of each shelf-life item is a statement regarding the "age on delivery." The age of the item(s) shall not exceed the number of months shown in the item description, counted from the first day of the month after the month of manufacture to the date of delivery to the specified delivery point(s). If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its right to reject the supplies.

(End of clause)

552.211–81 Time of Shipment.

As prescribed in 511.404(a)(4), insert the following clause:

Time of Shipment (Feb. 1996)

Shipment is required within _____ calendar days after receipt of order.

(End of clause)

Alternate I (FEB 1996). If the contract will require shipment more than 45 calendar days after receipt of the order, the following paragraph should be added to the basic clause.

Each delivery order will specify that shipment is required no later than the number of days shown above. If such order also states that "Early Shipment is Precluded," the Contractor agrees to make shipment no sooner than _____ calendar days after receipt of order. Earlier shipments may result in nonacceptance of the supplies at the delivery point at the time of arrival. *(The second number to be inserted should be 15 calendar days less than the first number.)*

552.211–82 Notice of Shipment.

As prescribed in 511.404(a)(5), insert the following clause:

Notice of Shipment (Feb 1996)

If specified in an order placed under this contract, the Contractor shall, at the time each shipment is made on such order, furnish a notice of shipment to either the consignee or the ordering office or both, as specified. This requirement may be satisfied by completion and return of appropriate forms furnished by the ordering office or by the furnishing of copies of bills of lading, freight bills, or similar documents in accordance with normal commercial practice if such document clearly identifies the order number, items and quantities shipped, date of shipment, point of origin, method of shipment and routing, and the name of initial carrier.

(End of clause)

552.211–83 Availability for Inspection, Testing, and Shipment/Delivery.

As prescribed in 511.404(a)(6), insert the following clause:

Availability for Inspection, Testing, and Shipment/Delivery (Feb 1996)

(a) The Government requires that the supplies be made available for inspection and testing within _____*_____ calendar days after receipt of [*Insert "Notice of Award" or "order"*], and be [*Insert "shipped" or "delivered"*] within _____*_____ calendar days after receipt of (1) notice of approval and release by the Government inspector or (2) authorization to ship without Government inspection.

(b) Failure to make supplies available for inspection and testing or to [*Insert "ship" or "deliver"*] as required by this clause may result in termination of this contract for default.

(End of clause)

Alternate I (Feb. 1996). If the contract is for stock items, the Contracting Officer shall insert "shipped" or "ship" in the basic clause, add the following paragraph (b) and redesignate paragraph (b) of the basic clause as paragraph (c).

(b) If notice of approval and release by the Government inspector or authorization to ship without Government inspection is received before _____*_____ calendar days after receipt of the [*Insert "Notice of Award" or "order"*], receipt of such notice shall be deemed to be received on the _____*_____ calendar day after receipt of [*Insert "Notice of Award" or "order"*]. Shipments shall not be made before the _____*_____ calendar day after receipt of the [*Insert "Notice of Award" or "order"*] unless authorized in writing by the Contracting Officer.

*Entries are normally the same number of days specified for availability.

552.211–84 Non-Compliance With Contract Requirements.

As prescribed in 511.404(b), insert the following clause:

Non-Compliance With Contract Requirements (Feb 1996)

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of clause)

552.212–70 Preparation of Offer (Multiple Award Schedule).

As prescribed in 512.301(a)(1), insert the following clause:

Preparation of Offer (Multiple Award Schedule) (Aug 1997)

(a) Definitions. *Concession,* as used in this solicitation, means a benefit, enhancement or privilege (other than a discount), which either reduces the overall cost of a customer's acquisition or encourages a customer to consummate a purchase. Concessions include, but are not limited to freight allowance, extended warranty, extended price guarantees, free installation and bonus goods.

Discount, as used in this solicitation, means a reduction to catalog prices (published or unpublished). Discounts include, but are not limited to, rebates, quantity discounts, purchase option credits, and any other terms or conditions other than concessions) which reduce the amount of money a customer ultimately pays for goods or services ordered or received. Any net price lower than the list price is considered a "discount" by the percentage difference from the list price to the net price.

(b) For each Special Item Number (SIN) included in an offer, the Offeror shall provide the information outlined in paragraph (c). Offerors may provide a single response covering more than one SIN, if the information disclosed is the same for all products under each SIN. If discounts and concessions vary by model or product line, offerors shall ensure that information is clearly annotated as to item or items referenced.

(c) Provide information described below for each SIN:

(1) Two copies of the offeror's current published (dated or otherwise identified) commercial descriptive catalogs and/or price list(s) from which discounts are offered. If special catalogs or price lists are printed for the purpose of this offer, such descriptive catalogs or price lists shall include a statement indicating the special catalog or price list represent a verbatim extract from the Offeror's commercial catalog and/or price list and identify the descriptive catalog and/or price list from which the information has been extracted.

(2) Next to each offered item in the commercial catalog and/or price list, the Offeror shall write the special item number (SIN) under which the item is being offered. Unless a special catalog or price list is submitted, all other items shall be marked "excluded," lined out, and initiated by the offeror.

(3) The discount(s) offered under this solicitation. The description of discounts offered shall include all discounts, such as prompt payment discounts, quantity/dollar volume discounts (indicate whether models/products can be combined within the SIN or whether SINs can be combined to earn discounts), blanket purchase agreement discounts, or purchase option credits. If the terms of sale appearing in the commercial catalogs or price list on which an offer is based are in conflict with the terms of this solicitation, the latter shall govern.

(4) A description of concessions offered under this solicitation which are not granted to other customers. Such concessions may include, but are not limited to, an extended warranty, a return/exchange goods policy, or enhanced or additional services.

(5) If the Offeror is a dealer/reseller or the Offeror will use dealers to perform any aspect of contract awarded under this solicitation, describe the functions, if any, that the dealer/reseller will perform.

(End of clause)

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

As prescribed in 512.301(a)(2), insert the following clause:

Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (Sep 1999)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[*The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The contracting officer may add the date of the provision or clause if desired for clarity.*]

(a) *Provisions.*

___ 552.237–70 Qualifications of Offerors

(b) *Clauses.*

___ 552.203–71 Restriction on Advertising
___ 552.211–73 Marking
___ 552.2215–70 Examination of Records by GSA
___ 552.215–71 Examination of Records by GSA (Multiple Award Schedule)
___ 552.215–72 Price Adjustment—Failure to Provide Accurate Information
___ 552.219–70 Allocation of Orders—Partially Set-Aside Items
___ 552.228–70 Workers' Compensation Laws
___ 552.229–70 Federal, State, and Local Taxes
___ 552.232–8 Discounts for Prompt Payment
___ 552.232–23 Assignment of Claims
___ 552.232–71 Adjusting Payments
___ 552.232–72 Final Payment
___ 552.232–73 Availability of Funds
___ 552.237–71 Qualifications of Employees
___ 552.238–71 Submission and Distribution of Authorized FSS Schedule Price List
___ 552.238–74 Contractor's Report of Sales
___ 552.238–75 Price Reductions
___ 552.242–70 Status Report of Orders and Shipments
___ 552.243–72 Modifications (Multiple Award Schedule)
___ 552.246–73 Warranty—Multiple Award Schedule
___ 552.246–76 Warranty of Pesticides

(End of clause)

552.212–72 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.

As prescribed in 512.301(a)(3), insert the following clause:

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Sep 1999)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[*The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The contracting officer may add the date of the provision or clause if desired for clarity.*]

(a) *Provisions.*

___ 552.223–72 Hazardous Material Information
___ 552.225–8 Buy American Act—Trade Agreements—Balance of Payments Program Certificate

(b) *Clauses.*

___ 552.223–70 Hazardous Substances
___ 552.223–71 Nonconforming Hazardous Material
___ 552.225–9 Buy American Act—Trade Agreements—Balance of Payments Program
___ 552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped
___ 552.238–72 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes
___ 552.238–76 Industrial Funding Fee

(End of clause)

552.212–73 Evaluation—Commercial Items (Multiple Award Schedule).

As prescribed in 512.301(a)(4), insert the following provision:

Evaluation—Commercial Items (Multiple Award Schedule) (Aug 1997)

(a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the definition of a "commercial item" in FAR 52.202–1. Awards may be made to those responsible offerors that offer reasonable pricing, conforming to the solicitation, and will be most advantageous to the

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Government, taking into consideration the multiplicity and complexity of items of various manufacturers and the differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, and other pertinent factors. By providing a selection of comparable supplies or services, ordering activities are afforded the opportunity to fulfill their requirements with the item(s) that constitute the best value and that meet their needs at the lowest overall cost.

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

Alternate I (AUG 1997). When anticipating competition of identical items, add the following paragraph after paragraph (b) of the basic provision.

(c) The Government reserves the right to award only one contract for all or a part of a manufacturer's product line. When two or more offerors (e.g., dealers/resellers) offer the identical product, award may be made competitively to only one offeror on the basis of the lowest price. (Discounts for early payment will not be considered as an evaluation factor in determining the low offeror). During initial open season for an option period, any offers that are equal to or lower than the current contract price received for identical items will be considered. Current contractors will also be allowed to submit offers for identical items during this initial open season. The current contractor which has the identical item on contract will be included in the evaluation process. The Government will evaluate all offers and may award only one contract for each specified product or aggregate group.

552.214–70 "All or None" Offers.

As prescribed in 514.201–6, insert the following provision:

"All or None" Offers (Sep 1999)

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and make awards on all "all or none" basis as provided below.

(b) An offer submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the "all or none" offer will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" offer. Award will be made to result in the lowest total cost to the Government.

(End of provision)

Alternate I (SEP 1999). For a requirements or indefinite quantity contract, the following paragraph (b) shall be substituted in the basic provision:

(b) An offer submitted on an "all or none" or similar basis will not be considered unless the offer is low on each item to which the "all or none" offer is made applicable. The term "each item" as used in this provision refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate.

552.214–71 Progressive Awards and Monthly Quantity Allocations.

As prescribed in 514.201–7(a), insert the following clause:

Progressive Awards and Monthly Quantity Allocations (Sep 1999)

(a) *Monthly quantity allocation.*

(1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this solicitation. Offerors shall indicate, in the spaces provided, the monthly quantity which they are willing to furnish of any item or group of items involving the use of the same production facilities. In making monthly allocations, offerors are urged to group as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each offeror.

(2) Offerors need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If an offeror does not insert monthly allocation quantities, it will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

National stock number	Estimated annual requirements	Estimated monthly requirements

BIDDERS MONTHLY QUANTITY ALLOCATIONS

Items or groups of items	Monthly allocation quantity

(b) *Progressive awards.* If the low responsive offeror's monthly quantity allocation is less than the Government's estimated requirements, the Government may make progressive awards beginning with the low responsive offeror and including each next low responsive offeror to the extent necessary to meet the estimated requirements.

(c) *Ordering procedures.* If progressive awards are made, orders will be placed first with the Contractor offering the lowest price on each item normally up to that Contractor's maximum quantity allocation and then, in the same manner, successively to other Contractors. When cumulative orders during any month, placed with a lower priced Contractor, equal or exceed 95 percent of its monthly quantity allocation, to avoid the placement of unduly small orders or the splitting of a subsequent order, the Government reserves the right to award the full quantity of the subsequent order to the next lower priced Contractor. In no case will orders be placed with any Contractor in excess of its monthly quantity allocation.

(End of clause)

552.214–72 Bid Sample Requirements.

As prescribed in 514.202–4(a)(3), insert the following provision:

Bid Sample Requirements (Sep 1999)

This provision supplements FAR 52.214–20, which is incorporated by reference. Samples shall be from the production of the manufacturer whose products will be supplied under resultant contracts.

(a) Two bid samples are required for each of the following items in this solicitation:

(b) Two representative samples shall be submitted for each of the following items upon which a bid is submitted:

Items	Acceptable representative samples

Note:

(1) Bidders ☐ are or ☐ are not authorized to re-apply samples being retained by GSA in connection with previous solicitations and/or resultant contracts. When the block "are" is marked by the government, FAR 52.214–20, Alternate II, shall apply.

(2) Bidders who propose to furnish an item or group of items from more than one manufacturer or production point must submit two samples from the production of each manufacturer or production point.

(c) Samples will be evaluated to determine compliance with all characteristics listed below:

Subjective characteristics	Objective characteristics

(d) Forward samples addressed to the Sample Room indicated below. Except for samples delivered by U.S. Mail, deliveries will be accepted between the hours of _____ Mondays through Fridays, official holidays excluded.

Caution: Use proper address for method of shipment selected.

Mail and Parcel Post
(Insert Address of Bid Sample Room)
Freight or Express
(Insert address of Bid Sample Room)

(End of provision)

552.215–70 Examination of Records by GSA.

As prescribed in 514.201–7(b) and 515.209–70(a) insert the following clause:

Examination of Records by GSA (Feb 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding $100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

552.215–71 Examination of Records by GSA (Multiple Award Schedule).

As prescribed in 515.209–70(c), insert the following clause:

Examination of Records by GSA (Multiple Award Schedule) (Aug 1997)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall have access to and the right to examine any books, documents, papers and records of the contractor involving transactions related to this contract for overbillings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee clause of this contract. This authority shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of applying this clause.

(End of clause)

552.215–72 Price Adjustment—Failure to Provide Accurate Information.

As prescribed in 515.408(d), insert the following clause:

Price Adjustment—Failure To Provide Accurate Information (Aug 1997)

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

(1) Provide information required by this solicitation/contract or otherwise requested by the Government; or

(2) Submit information that was current, accurate, and complete; or

(3) Disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States—

(1) The amount of the overpayment; and

(2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C. 6621(a)(2).

(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

552.216–70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

As prescribed in 516.203–4(a), insert the following clause:

Economic Price Adjustment—FSS Multiple Award Schedule Contracts (Sep 1999)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) Contractors may request price increases under the following conditions:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) Only three increases will be considered during the contract period.

(3) Increases are requested after the first 30 days of the contract period and prior to the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) The aggregate of the increases in any contract unit price under this clause shall not exceed _____* percent of the original contract unit price. The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase.

**Insert the percent appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6-month period indicates that a different percentage is more appropriate. Any ceiling other than 10 percent must be approved by the contracting director.*

(d) The following material shall be submitted with the request for a price increase:

(1) A copy of the commercial catalog/pricelist showing the price increase and the effective date for commercial customers.

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(2) Commercial Sales Practice format regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/price-list, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Documentation supporting the reasonableness of the price increase.

(e) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;

(2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or,

(3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(f) The contract modification reflecting the price adjustment shall be signed by the Government and made effective upon receipt of notification from the Contractor that the new catalog/pricelist has been mailed to the addresses previously furnished by the Contracting Officer, provided that in no event shall such price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

(End of clause)

** Insert the percent appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6-month period indicates that a different percentage is more appropriate. Any ceiling other than 10 percent must be approved by the contracting director.*

Alternate I (SEP 1999). The following is substituted for paragraphs (b) and (c) of the clause:

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b)).

(3) Increases are requested before the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed *_____ percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

** Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the Contracting Director.*

552.216–71 Economic Price Adjustment—Stock and Special Order Program Contracts.

As prescribed in 516.203–4(b), insert the following clause:

Economic Price Adjustment-Stock and Special Order Program Contracts (Sep 1999)

(a) "Producer Price Index" (PPI), as used in this clause, means the originally released index, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor (Labor) for product code _____ found under Table _____.

(b) During the term of the contract, the award price may be adjusted once upward or downward a maximum of *_____ percent. Any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released 12 months later (the updated index). The formula for determining the Adjusted Contract Price (ACP) applicable to shipments for the balance of the contract period is-

$$ACP = \frac{\text{Updated Index}}{\text{Base Index}} \times \text{Award Price}$$

(c) If the PPI is not available for the month of the base index or the updated index, the month with the most recently published PPI prior to the month determining the base index or updated index shall be used.

(d) If a product code is discontinued, the Government and the Contractor will mutually agree to substitute a similar product code. If Labor designates an index with a new title and/or code number as continuous with the product code specified above, the new index shall be used.

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formula in (b) above is received by the Contracting Officer within 30 calendar days of the release of the updated index, the Contractor shall have waived its right to an upward price adjustment for the balance of the contract. Alternatively, the Contracting Officer will unilaterally adjust the award price downward when appropriate using the updated index defined in (b) above.

(f) Price adjustments shall be effective upon execution of a contract modification by the Government or on the 31st day following the release of the updated index, whichever is later, shall indicate the updated index and percent of change as well as the ACP, and shall not apply to delivery orders issued before the effective date.

(End of clause)

Alternate I (SEP 1999). As prescribed in 516.203–4(b) (1) and (2), substitute the following paragraphs (b), (e) and (f) for paragraphs (b), (e) and (f) of the basic clause:

(b) In any option period, the contract price may be adjusted upward or downward a maximum of *_____ percent.

(1) For the first option period, any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released in the third month before completion of the initial contract period stated in the solicitation (the updated index). This initial contract period may be less than 12 months. The formula for determining the Adjusted Contract Price (ACP) applicable to shipments during the first option period is—

$$ACP = \frac{\text{Updated Index}}{\text{Base Index}} \times \text{Award Price}$$

(2) For any subsequent option period, the price adjustment shall be the percentage change between the previously updated index (the new base index) and the PPI released 12 months later (the most recent updated index). This percentage shall be applied to the Current Contract Price (CCP). The formula for determining the ACP applicable to shipments for the subsequent option period(s) is—

$$ACP = \frac{\text{Most Recent Updated Index}}{\text{New Base Index}} \times CCP$$

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formulas in (b) (1) or (2) above is received by the Contracting Officer within 30 calendar days of the date of the Government's preliminary written notice of its intent to exercise the option, the Contractors shall have waived its right to an upward price adjustment for that option period. Alternatively, the Contracting Officer in its written notice shall exercise the option at the CCP or at a reduced price when appropriate using the formulas in (b) (1) or (2) above.

(f) Price adjustments shall be effected by execution of a contract modification by the Government indicating the most recent updated index and percent of change and shall apply to delivery orders placed on or after the first day of the option period.

Alternate II (SEP 1999). As prescribed in 516.203–4(b)(2), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage in the PPI is at least **____ percent.

**The appropriate percentage should be determined based upon the historical trend in the PPI for the product code. A ceiling of more than 10 percent must be approved by the Contracting Director.*

***The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.*

552.216–72 Placement of Orders.

As prescribed in 516.506, inset the following clause:

Placement of Orders (Sep 1999)

(a) Delivery orders (orders) will be placed by:

[*Contracting Officer insert names of Federal agencies*]

(b) Orders may be placed through Electronic Data Interchange (EDI) or mailed in paper form. EDI orders shall be placed using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, GSA's Federal Supply Service (FSS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FSS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other agencies may place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each Federal agency placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Federal agencies may obtain a sample format to customize as needed from the office specified in (g) below.

(e) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.

(f) Nothing in the TPA will invalidate any part of this contract between the Contractor and the General Services Administration. All terms and conditions of this contract that otherwise would be applicable to a mailed order shall apply to the electronic order.

(g) The basic content and format of the TPA will be provided by:

General Services Administration, Acquisition Operations and Electronic Commerce Center (FCS), Washington, DC 20406

Telephone: [Contracting officer insert appropriate telephone numbers]

FAX:

(End of clause)

Alternate I (SEP 1999). As prescribed in 516.506, substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) All delivery orders (orders) under this contract will be placed by the General Services Administration's Federal Supply Service (FSS). The Contractor is not authorized to accept orders from any other agency. Violation of this restriction may result in termination of the contract pursuant to the default clause of this contract.

(b) All orders shall be placed by Electronic Data Interchange (EDI) using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, transmission will be computer-to-computer EDI. If computer-to-computer EDI is not possible, FSS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into a Trading Partner Agreement (TPA) with FSS in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation.

Alternate II (SEP 1999). As prescribed in 516.506(c), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The organizations listed below may place orders under this contract. Questions regarding organizations authorized to use this schedule should be directed to the Contracting Officer.

(1) Executive agencies.

(2) Other Federal agencies.

(3) Mixed-ownership Government corporations.

(4) The District of Columbia.

(5) Government contractors authorized in writing by a Federal agency pursuant to 48 CFR 51.1.

(6) Other activities and organizations authorized by statute or regulation to use GSA as a source of supply.

552.216–73 Ordering Information.

As prescribed in 516.506(c), insert the following provision:

Ordering Information (Sep 1999)

(a) In accordance with the Placement of Orders clause of this solicitation, the offeror elects to receive orders placed by GSA's Federal Supply Service (FSS) by either ☐ facsimile transmission or ☐ computer-to-computer Electronic Data Interchange (EDI).

(b) An offeror electing to receive computer-to-computer EDI is requested to indicate below the name, address, and telephone number of the representative to be contacted regarding establishment of an EDI interface.

_____

_____

_____

(c) An offeror electing to receive orders by facsimile transmission is requested to indicate below the telephone number(s) for facsimile transmission equipment where orders should be forwarded.

_____

_____

_____

(d) For mailed orders, the offeror is requested to include the postal mailing address(es) where paper form orders should be mailed.

_____

_____

_____

(End of provision)

Alternate I (SEP 1999). As prescribed in 516.506(b), delete paragraph (d) of the basic provision.

Alternate II (SEP 1999). As prescribed in 516.506(b), add paragraph (e) to the basic provision.

(e) Offerors marketing through dealers are requested to indicate below whether those dealers will be participating in the proposed contract.

Yes ( ) No ( )

If "yes" is checked, ordering information to be inserted above shall reflect that in addition to offeror's name, address, and facsimile transmission telephone number, orders can be addressed to the offeror's name, c/o nearest local dealer. In this event, two copies of a list of participating dealers shall accompany this offer, and shall also be included in Contractor's Federal Supply Schedule pricelist.

552.217–70 Evaluation of Options.

As prescribed in 517.208(a), insert the following provision:

Evaluation of Options (Aug 1990)

(a) The Government will evaluate offers for award purposes by determining the lowest base period price. When option year pricing is based on a formula (e.g., changes in the Producer Price Index or other common standard); option year pricing is automatically' considered when evaluating the base year price, as any change in price will be uniformly related to changes in market conditions. All options are therefore considered to be evaluated. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government will reject the offer if exceptions are taken to the price provisions of the Economic Price Adjustment clause, unless the exception results in a lower maximum option year price. Such offers will be evaluated without regard to the lower option year(s) maximum. However, if the offeror offering a lower maximum is awarded a contract, the award will reflect the lower maximum.

552.217–71 Notice Regarding Option(s).

As prescribed in 517.208(b), insert the following provision:

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Notice Regarding Option(s) (Nov 1992)

The General Services Administration (GSA) has included an option to [*Insert "purchase additional quantities of supplies or services" or "extend the term of this contract" or "purchase additional quantities of supplies or services and to extend the term of this contract"*] in order to demonstrate the value it places on quality performance by providing a mechanism for continuing a contractual relationship with a successful Offeror that performs at a level which meets or exceeds GSA's quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor's past performance under this contract in accordance with 48 CFR 517.207.

(End of provision)

552.219–70 Allocation of Orders—Partially Set-aside Items.

As prescribed in 519.508, insert the following clause:

Allocation of Orders—Partially Set-Aside Items (Sep 1999)

Where the set-aside portion of an item or group of items is awarded to a Contractor other than the one receiving the award on the corresponding non-set-aside portion, the Government will divide the requirements to be ordered between the two Contractors with the objective of achieving, as nearly as possible, a 50/50 division of the total value of orders placed after the award of the set-aside portion. In no case will this division vary by more than a 60/40 division (with either the non-set-aside or set-aside Contractor receiving the larger portion) from the time of the award of the set-aside portion.

(End of clause)

552.219–71 Notice to Offerors of Subcontracting Plan Requirements.

As prescribed in 519.708, insert the following provision:

Notice to Offerors of Subcontracting Plan Requirements (Sep 1999)

The General Services Administration (GSA) is committed to assuring that maximum practicable opportunity is provided to small, HUBZone small, small disadvantaged, and women-owned small business concerns to participate in the performance of this contract consistent with its efficient performance. GSA expects any subcontracting plan submitted pursuant to FAR 52.219–9, Small Business Subcontracting Plan, to reflect this commitment. Consequently, an offeror, other than a small business concern, before being awarded a contract exceeding $500,000 ($1,000,000 for construction), must demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors in the performance of this contract.

(End of provision)

552.219–72 Preparation, Submission, and negotiation of Subcontracting Plans.

As prescribed in 519.708(b), insert the following provision:

Preparation, Submission, and Negotiation of Subcontracting Plans (Sep 1999)

(a) An offeror, other than a small business concern, submitting an offer that exceeds $500,000 ($1,000,000 for construction) shall submit a subcontracting plan with its initial offer. The subcontracting plan will be negotiated concurrently with price and any required technical and management proposals, unless the offeror submits a previously-approved commercial products plan.

(b) Maximum practicable utilization of small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits. The General Services Administration (GSA) expects that an offeror's subcontracting plan will reflect a commitment to assuring that small, HUBZone small, small disadvantaged, and women-owned small business concerns are provided the maximum practicable opportunity, consistent with efficient contract performance, to participate as subcontractors in the performance of the resulting contract. An offeror submitting a commercial products plan can reflect this commitment through subcontracting opportunities it provides that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(c) GSA believes that this potential contract provides significant opportunities for the use of small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors. Consequently, in addressing the eleven elements described at FAR 52.219–9(d) of the clause in this contract entitled Small Business Subcontracting Plan, the offeror shall:

(1) Demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, and women-owned small business concerns in performing the contract.

(2) Include a description of the offeror's subcontracting strategies used in any previous contracts, significant achievements, and how this plan will build upon those earlier achievements.

(3) Demonstrate through its plan that it understands the small business subcontracting program's objectives and GSA's expectations, and it is committed to taking those actions necessary to meet these goals or objectives.

(d) In determining the acceptability of any subcontracting plan, the Contracting Officer will take each of the following actions:

(1) Review the plan to verify that the offeror demonstrates an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the program and has included all the information, goals, and assurances required by FAR 52.219–9.

(2) Consider previous goals and achievements of contractors in the small industry.

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, and women-owned small business concerns.

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, and women-owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(e) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

(End of provision)

552.219–73 Goals for Subcontracting Plan.

As prescribed in 519.708(c), insert the following provision:

Goals for Subcontracting Plan (Sep 1999)

(a) Maximum practicable utilization of small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits.

(1) The General Service Administration's (GSA's) commitment to ensuring that maximum practicable opportunity is provided to small, HUBZone small, small disdvantaged, and women-owned small business concerns to participate as subcontractors in the performance of this contract, consistent with its efficient performance, must be reflected in the offeror's subcontracting plan submitted pursuant to the clause of this contract at FAR 52.219–9, Small Business Subcontracting Plan.

(2) In addressing the eleven elements described at FAR 52.219–9(d), the offeror shall demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, and women-owned small business concerns in performing this contract. An offeror submitting a commercial products plan can demonstrate its commitment in providing maximum practicable opportunities through subcontracting opportunities it provides to small, HUBZone small, small disadvantaged, and women-owned small business concerns that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(3) The subcontracting plan shall include a description of the offeror's subcontracting strategies used in previous contracts and significant achievements, with an explanation of how this plan will build upon those earlier achievements. Additionally, the offeror shall demonstrate through its plan

that it understands the small business subcontracting program's objectives, GSA's expectations, and is committed to taking those actions necessary to meet these goals or objectives.

(b) GSA believes that this contract provides significant opportunities for the use of small, HUBZone small, small disadvantaged, and women-owned small business concerns as subcontractors. Accordingly, it is anticipated that an acceptable subcontracting plan will contain at least the following goals:

Small Business	_____ percent.
HUBZone Small Business	_____ percent.
Small Disadvantaged Business.	_____ percent.
Women-Owned Small Business.	_____ percent.

Note: Target goals are expressed as a percentage of planned subcontracting dollars.

(c) In determining the acceptability of any subcontracting plan, the Contracting Officer will—

(1) Review the plan to verify that the offeror has demonstrated an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the programs and has included all the information, goals, and assurances required by FAR 52.219–9;

(2) Consider previous goals and achievements of contractors in the same industry;

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, and women-owned small business concerns; and

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, and women-owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(d) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

(End of provision)

Alternate I (SEP 1999). As prescribed in 519.708(c)(2), delete paragraph (b) of the basic provision and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

552.219–74 Section 8(a) Direct Award.

As prescribed in 519.870–8, insert the following clause:

Section 8(a) Direct Award (Sep 1999)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the General Services Administration. SBA retains the responsibility for 8(a) certifications, 8(a) eligibility determinations, and related issues, and will provide counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

[*Complete at time of award*]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any advance payments or novation agreements. The contracting activity may assign contract administration functions to a contract administration office.

(c) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) To the requirements of 52.219–14, Limitations on Subcontracting.

(End of clause)

552.223–70 Hazardouls Substances.

As prescribed in 523.303(a), insert the following clause:

Hazardous Substances (May 1989)

(a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal Hazardous Materials Act, as amended (15 U.S.C. 1261–1276), implementing regulations thereof (16 CFR Chapter II), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) The packaged items to be delivered under this contract are subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR and the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49 CFR 173.

(End of clause)

552.223–71 Nonconforming Hazardous Materials.

As prescribed in 523.303(b), insert the following clause:

Nonconforming Hazardous Materials (Sep 1999)

(a) Nonconforming supplies that contain hazardous material or that may expose persons who handle or transport the supplies to hazardous material and which require replacement under the inspection and/or warranty clauses of this contract shall be reshipped to the Contractor at the Contractor's expense. The Contractor agrees to accept return of these nonconforming supplies and to pay all costs occasioned by their return.

(b) "Hazardous materials," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(c) If the Contractor fails to provide acceptable disposition instructions for the nonconforming supplies within 10 days from the date of the Government's request (or such longer period as may be agreed to between the Contracting Officer and the Contractor), or fails to accept return of the reshipped nonconforming supplies, such failure:

(1) may be interpreted as a willful failure to perform,

(2) may result in termination of the contract for default and

(3) shall be considered by the Contracting Officer in determining the responsibility of the Contractor for any future award (see FAR 9.104–3(b) and 9.406–2).

(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

(End of clause)

552.223–72 Hazardous Material Information.

As prescribed in 523.370, insert the following provision:

Hazardous Material Information (Sep 1999)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT shipping name	DOT hazard class	DOT label required
			Yes [ ] No [ ] Yes [ ] No [ ] Yes [ ] No [ ]

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(End of provision)

552.225–8 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

As prescribed in 525.408, insert the following provision:

Buy American Act—Trade Agreements—Balance of Payments Program Certificate (Sep 1999) (Deviation FAR 52.225–8)

(a) The Offeror, by signing this offer, certifies that each end product to be delivered under this contract is a U.S. made end product, a designated country end product, a Caribbean Basin country end product, a Canadian end product or a Mexican end product as defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program" at 48 CFR 552.225–9.

(b) Offers will be evaluated in accordance with Subpart 25.4 of the Federal Acquisition Regulation except that offers of U.S. made end products, designated country end products, Caribbean Basin end products, Canadian end products, or Mexican end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of provision)

552.225–9 Buy American Act—Trade Agreements—Balance of Payments Program.

As prescribed in 525.408, insert the following clause.

Buy American Act—Trade Agreements—Balance of Payments Program (SEP 1999) (Deviation FAR 52.225–9)

(a) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501–2582) by providing a preference for U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products or Mexican end products over other products.

"Caribbean Basin country end products," as used in this clause, means an article that: (1) is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term excludes products that are excluded from duty free treatment from Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preference under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers, (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps) of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

"Designated country end product," as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"Canadian end product," as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of Canada, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"Mexican end product," as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of Mexico, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

"U.S. made end product," as used in this clause, means an article which (1) is wholly the growth, product, or manufacture of the United States, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

"Nondesignated country end products," as used in this clause, means any end product which is not a U.S. made end product, designated country end product, Caribbean Basin Country end product, Canadian end product or Mexican end product.

"United States," as used in this clause, means the United States, its possessions, Puerto Rico, and any other place which is subject to its jurisdiction, but does not include leased bases or trust territories.

(b) The Contractor agrees to deliver under this contract only U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products or Mexican end products or, if a national interest waiver is granted under section 302 of the Trade Agreements Act of 1979, nondesignated country end products. Only if such waiver is granted may a nondesignated country end product be delivered under the contract(s).

(c) Offers will be evaluated in accordance with the policies and procedures of Part 25 of the FAR except that offers of U.S. made end products, designated country end products, Caribbean Basin end products, Canadian end products or Mexican end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of clause)

552.225–70 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware.

As prescribed in 525.109, insert the following clause:

Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware (Sep 1999)

(a) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools or stainless steel flatware that are domestic end products. Pursuant to the requirements of the current Department of Defense Appropriations Act, GSA has determined, in accordance with Section 6–104.4 of the Armed Services Procurement Regulation (6/15/70)(32 CFR 6–104.4), that it is in the national interest to reject foreign products.

As used in this clause, a "domestic end product" is—

(1) Any hand or measuring tool, except for an electric or air-motor driven hand tool, or stainless steel flatware, wholly produced or manufactured, including all components, in the United States or its possessions; or

(2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

(b) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this clause. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

(End of clause)

552.227–70 Government Rights (Unlimited).

As prescribed in 527.409, insert the following clause:

Government Rights (Unlimited) (May 1989)

The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

552.227–71 Drawings and Other Data to Become Property of Government.

As prescribed in 527.409(b), substitute the following clause:

Drawings and Other Data to Become Property of Government (May 1989)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of works beyond such period.

(End of clause)

552.228–70 Workers' Compensation Laws.

As prescribed in 528.310(a), insert the following clause:

Workers' Compensation Laws (Sep. 1999)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workers' compensation laws to all lands and premises owned or held by the United States.

(End of clause)

552.229–70 Federal, State, and Local Taxes.

As prescribed in 529.401–70, insert the following clause:

Federal, State, and Local Taxes (Apr 1984)

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

(End of clause)

552.229–71 Federal Excise Tax—DC Government.

As prescribed in 529.401–71, insert the following clause:

Federal Excise Tax—DC Government (Sep 1999)

If the District of Columbia cites an Internal Revenue Tax Exempt Certificate Number on orders placed under this contract, the Contractor shall bill shipments to the District of Columbia at prices exclusive of Federal excise tax and show the amount of such tax on the invoice.

(End of clause)

552.232–1 Payments.

As prescribed in 532.7104, insert the following clause:

Payments (Apr 1984) (Deviation FAR 52.232–1)

(a) The Government shall pay the Contractor, without submission of invoices or vouchers, 30 days after the service period, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

(b) Unless otherwise specified in this contract, the Government will make payment on partial deliveries accepted by the Government if either:

(1) The amount due on the deliveries warrants it.

(2) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

(c) When processing payment, GSA's Finance Office will automatically generate the 12 digit invoice number using the ACT number assigned to the contract, followed by an abbreviated month and year of service (e.g., 84261554JUN7, for June 1997). The ACT number appears on the contract award document.

(End of clause)

552.232–8 Discounts for Prompt Payment.

As prescribed in 532.206, insert the following clause:

Discounts for Prompt Payment (Apr 1989) (Deviation FAR 52.232–8)

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the **Federal Register**. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101–26.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.

(e) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.

(f) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(g) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of clause)

552.232–23 Assignment of Claims.

As prescribed in 532.806, insert the following clause:

Assignment of Claims (Sep 1999)

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause (FAR 52.232–23) is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any order amounting to $1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the

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finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.
(End of clause)

552.232–25 Prompt Payment.

As prescribed in 532.908(a)(2), insert the following clause:

Prompt Payment (Jul 1998) (Deviation FAR 52.232–25)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments.

(1) The due date for making invoice payments by the designated payment office is:

(i) For orders placed electronically by the General Services Administration (GSA) Federal Supply Service (FSS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(A) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(ii) For all other orders, the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date ofthe Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor.

(iii) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(2) The General Services Administration will issue payment on the due date in (a)(1)(i) above if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(i) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(ii) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810) or submit invoices through the GSA Finance Center Internet-based invoice process. Internet-based invoices must be submitted using procedures provided by GSA.

(iii) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(iv) The EDI transaction sets in (i) through (iii) above must adhere to implementation conventions provided by GSA.

(3) If any of the conditions in(a)(2) above do not occur, the 10 day payment due dates in (a)(1) become 30 day payment due dates.

(4) Certain food products and other payments.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182 (3)), and as further defined in Pub. L. 98–181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, an any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For daily products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressing, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(5) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. Notwithstanding paragraph (g) of the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items, if the Contractor submits hard-copy invoices, submit only an original invoice. No copies of the invoice are required. A proper invoice must include the items listed in subdivisions (a)(5)(i) through (a)(5)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services preformed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, an extended prices of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills or lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(6) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(6)(i) through (a)(6)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(7) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(5) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does, not however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(8) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(7) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(9) Additional interest penalty.

(i) If this contract was awarded on or October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(9)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty of $1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(9)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(1) The additional penalty shall not exceed $5,000;

(2) The additional penalty shall never be less than $25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than $1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments.

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213–1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.
(End of clause)

552.232–70 Invoice Requirements.

As prescribed in 532.111(a), insert the following clause:

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Invoice Requirements (Sep 1999)

(a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this contract or order.

(b) Invoices must include the Accounting Control Transaction (ACT) number provided below or on the order.

ACT Number (Contracting Officer insert number)

(c) In addition to the requirements for a proper invoice specified in the Prompt Payment clause on this contract or order, the following information or documentation must be submitted with each invoice:

(Contracting Officer list additional requirements.)

(End of clause)

552.232–71 Adjusting Payments.

As prescribed in 532.111(b), insert the following clause:

Adjusting Payments (Sep 1999)

(a) Under the Inspection of Services clause of this contract, payments may be adjusted if any services do not conform with contract requirements. The Contracting Office or a designated representative will inform the Contractor, in writing, of the type and dollar amount of proposed deductions by the 10th workday of the month following the performance period for which the deductions are to be made.

(b) The Contractor may, within 10 working days of receipt of the notification of the proposed deductions, present to the Contracting Officer specific reasons why any or all of the proposed deductions are not justified. Reasons must be solidly based and must provide specific facts that justify reconsideration and/or adjustment of the amount to be deducted. Failure to respond within the 10-day period will be interpreted to mean that the Contractor accepts the deductions proposed.

(c) All or a portion of the final payment may be delayed or withheld until the Contracting Officer makes a final decision on the proposed deduction. If the Contracting Officer determines that any or all of the proposed deductions are warranted, the Contracting Officer shall so notify the Contractor, and adjust payments under the contract accordingly.

(End of clause)

552.232–72 Final Payment.

As prescribed in 532.111(c), insert the following clause:

Final Payment (Sep 1999)

Before final payment is made, the Contractor shall furnish the Contracting Officer with a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under Assignment of Claims Act of 1940, as amended (31 U.S. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

(End of clause)

552.232–73 Availability of Funds.

As prescribed in 532.705–1, insert the following clause:

Availability of Funds (Sep 1999)

The authorization of performance of work under this contract during the initial contract period and any option or extension period(s) is contingent upon the appropriation of funds to procure this service. If the contract is awarded, extended, or option(s) exercised, the Government's obligation beyond the end of the fiscal year (September 30), in which the award or extension is made or option(s) exercised, is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Government for payment of any money beyond the end of the each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for this procurement and written notice of such availability is given to the Contractor.

(End of clause)

552.232–74 Invoice Payments.

As prescribed in 532.908 (a)(1), insert the following clause:

Invoice Payments (Sep 1999)

(a) The due date for making invoice payments by the designated payment office is:

(1) For orders placed electronically by the General Services Administration (GSA) Federal Supply Service (FSS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(2) For all other orders, the later of the following two events:

(i) The 30th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and on disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor.

(3) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(b) The General Services Administration will issue payment on the due date in (a)(1) above if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(1) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(2) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810) of submit invoices through the GSA Finance Center Internet-based invoice process. Internet-based invoices must be submitted using procedures provided by GSA.

(3) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(4) The EDI transaction sets in (b)(1) through (b)(3) above must adhere to implementation conventions provided by GSA.

(c) If any of the conditions in (b) above do not occur, the 10-day payment due dates in (a)(1) become 30-day payment due dates.

(d) Notwithstanding paragraph (g) of the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items, if the Contractor submits hard-copy invoices, submit only an original invoice. No copies of the invoice are required.

(e) All other provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment, apply.

(End of clause)

552.232–75

As prescribed in 532.908 (b)(1), insert the following clause:

Prompt Payment (Sep 1999)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date.*

(1) *Rental Payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However,

if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Names and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptabillty of the work performed or services delivered within 7 days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7 day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest rates penalties of less than $1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(End of clause)

Alternate I (SEP 1999). If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated (b).

552.232–76 Electronic Funds Transfer Payment.

As prescribed in 532.908(b)(2), insert the following clause:

Electronic Funds Transfer Payment (Sep 1999)

(a) The Government will make payments under this lease by electronic funds transfer (EFT). The Lessor must, no later than 30 days before the first payment:

(1) Designate a financial institution for receipt of EFT payments.

(2) Submit this designation to the Contracting Officer or other Government official, as directed.

(b) The Lessor must provide the following information:

(1) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Lessor is a new enrollee to the EFT system, the Lessor must complete and submit a "Payment Information Form," SF 3881, before payment can be processed.

(c) If the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment, the appropriate Government official must receive notice of such change and the required information specified above no later than 30 days before the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the:

(1) Signature, title, and telephone number of the Lessor or the Lessor's authorized representative.

(2) Lessor's name.

(3) Lease number.

(e) Lessor's failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

552.232–77 Payment By Credit Card.

As prescribed in 532.7003, insert the following clause:

Payment By Credit Card (Sep. 1999)

(a) Definitions. "Government commercial credit card" means the uniquely numbered credit card issued by a contractor under GSA's Governmentwide Contract for Fleet, Travel, and Purchase Card Services to named individual Government employees to pay for official Government purchases.

"Oral order" means an order placed orally either in person or by telephone.

(b) At the option of the Government and if agreeable to the Contractor, payments of ___ * ___ or less for oral or written orders may be made using the Government commercial credit card.

(c) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item in accordance with other contract requirements, the Contractor shall immediately credit a cardholder's account for items returned as defective or faulty.

(d) Payments made using the Government Commercial Credit Card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.

(End of clause)

* *Enter amount not to exceed $100,000.*

Alternate I (SEP 1999). For solicitations and contracts under which other agencies may place orders directly, replace paragraph (b) of the basic clause with the following:

(b) At the option of the Government and if agreeable to the Contractor, payments for oral or written orders may be made using the Government commercial purchase card. The dollar value of a purchase card ection must not exceed the ordering agency's established limit.

552.233–70 Protests Filed Directly with the General Services Administration.

As prescribed in 533.103–72, insert the following provisions:

Protests Filed Directly With the General Services Administration (Sep. 1999)

(a) The following definitions apply in this provision:

"Agency Protest Official for GSA" means the official in the Office of Acquisition Policy designated to review ad decide procurement protests filed with GSA.

"Deciding official" means the person chosen by the protester to decide the agency protest. The deciding official may be either the Contracting Officer or the Agency Protest Official.

(b) The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests. GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Protests delivered after 4:30 p.m. will be considered received and filed the following business day.

(c) A protest filed directly with the General Services Administration (GSA) must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

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(3) State whether the protester chooses to have the Contracting Officer or the Agency Protest Official for GSA decide the protest. If the protest is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protester prefers to make an oral presentation, a written presentation, or an oral presentation confirmed in writing, of arguments in support of the protest to the deciding official.

(5) Include the information required by FAR 33.103(d)(2):

(i) Name, address, fax number, and telephone number of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest (see paragraph (b) of this provision).

(d) An interested party filing a protest with GSA has the choice of requesting either that the Contracting Officer or the Agency Protest Official for GSA decide the protest.

(e) The decision by the Agency Protest Official for GSA is an alternative to a decision by the Contracting Officer. The Agency Protest Official for GSA will not consider appeals from the Contracting Officer's decision on an agency protest.

(f) The deciding Official must conduct a scheduling conference with the protester within three (3) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(g) Oral conferences may take place either by telephone or in person. Other parties (e.g., representatives of the program office) may attend at the discretion of the deciding official.

(h) The following procedures apply to information submitted in support of or in response to an agency protest:

(1) The protester and the agency have only one opportunity to support or explain the substance of the protest (either orally, in writing, or orally confirmed in writing).

(2) GSA procedures do not provide for any discovery.

(3) The deciding official has discretion to request additional information from either the agency or the protester. However, the deciding official will normally decide protests on the basis of information provided by the protester and the agency.

(4) The parties are encouraged, but not required, to exchange information submitted to the Agency Protest Official for GSA.

(5) Any written response by the agency to the protest must be filed with the deciding official within five (5) days after the filing of the protest.

(6) Any additional information that either party wants to submit in writing after one-time oral arguments in support of the agency protest, must be received by the deciding official within two (2) days after the date of the oral arguments.

(i) The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(j) An interested party may represent itself or be represented by legal counsel. GSA will not reimburse the party for any legal fees related to the agency protest.

(k) GSA will stay award or suspend contract performance in accordance with FAR 33.103(f). The stay or suspension, unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(l) The deciding official will make a best effort to issue a decision on the protest within twenty-eight (28) days after the filing date. The decision may be oral or written. If the decision is communicated orally to the protester, the deciding official will confirm in writing within three (3) days after the decision.

(m) GSA may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a protest forum outside of GSA.

(End of provision)

552.236–70 Definitions.

As prescribed in 536.570–1, insert the following clause:

Definitions (Apr 1984)

The terms "Administration" and "Service" as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(End of clause)

552.236–71 Authorities and Limitations.

As prescribed in 536.570–2, insert the following clause:

Authorities and Limitations (Apr 1984)

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

(End of clause)

552.236–72 Specialist.

As prescribed in 536.570–3, insert the following clause:

Specialist (Apr 1984)

The term "Specialist," as used in the contract specification, shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

(End of clause)

552.236–73 Basis of Award—Construction Contract.

As prescribed in 536.570–4, insert the following provision or the appropriate Alternate:

Basis of Award—Construction Contract (Apr 1985)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Sealed Bidding."

(b) A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of provision)

Alternate I (APR 1985). if the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Sealed Bidding."

Alternate II (APR 1985). If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled "Contract Award—Sealed Bidding."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceed the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates.

Alternate III (APR 1985). If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) below. The evaluation of options will not obligate the Government to exercise the options. See the provision entitled "Contract Award—Sealed Bidding."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, or Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection under paragraph (c). If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

552.236–74 Working Hours.

As prescribed in 536.570–5, insert the following clause:

Working Hours (Apr 1984)

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

(End of clause)

552.236–75 Use of Premises.

As prescribed in 536.570–6, insert the following clause:

Use of Premises (Apr 1984)

(a) If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

(b) Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this contract except with official permission.

(End of clause)

552.236–76 Measurements.

As prescribed in 536.570–7, insert the following clause:

Measurements (Apr 1984)

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

(End of clause)

552.236–77 Specifications and Drawings

As prescribed in 536.570–8, insert the following clause:

Specifications and Drawings (Sep 1999)

The requirements of the clause entitled "Specifications and Drawings for Construction" at FAR 52.236–21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing. On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(b) Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(c) Standard Details or Specification Drawings are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

(d) In case of difference between Standard Details or Specification Drawings and the specifications, the specifications will govern. In case of difference between the Standard Details or Specification Drawings and their drawings prepared specifically for this contract, the later shall govern.

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(End of clause)

552.236–78 Shop Drawings, Coordination Drawings, and Schedules.

As prescribed in 536.570–9, insert the following clause:

Shop Drawings, Coordination Drawings, and Schedules (Sep 1999)

The requirements, of the clause entitled "Specifications and Drawings for Construction" at FAR 52.236–21, are supplemented as follows:

(a) The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

(b) Show drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturers' scale drawings, wriring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(c) Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor who shall then furnish the number of additional prints, not to exceed 10, required by the specifications. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

(d) Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer's approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.

(e) Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches, located adjacent to the title block. The title block shall display the following:
Number and title of drawing
Date of drawing or revision
Name of project building or facility
Name of Contractor and (if appropriate) name of subcontractor submitting drawing
Clear identify of contents and location on the work
Project title and contract number

(f) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, shop drawings, coordination drawings and schedules shall be submitted to the Contracting Officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.

(g) Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the contract requirements, or as approving departures from full-size details furnished by the Contracting Officer.

(End of clause)

552.236–79 Samples.

As prescribed in 536.570–10, insert the following clause:

Samples (Apr 1984)

(a) After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

(b) Each sample shall have a label indicating:

(1) Name of project building or facility, project title and contract number.

(2) Name of Contractor and, if appropriate, name of subcontractor.

(3) Identification of material or equipment with specification requirement.

(4) Place of origin.

(5) Name of producer and brand (if any).

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

(c) The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraph (b) of this clause. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative on the project. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

(d) Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

(e) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

(g) Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Government at the expense of the Contractor.

(End of clause)

552.236–80 Heat.

As prescribed in 536.570–11, insert the following clause:

Heat (Apr 1984)

Unless otherwise specified or unless already provided by the Government the Contractor shall;

(a) Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;

(b) Protect, cover and/or heat as may be necessary, to provide and maintain a temperature of not less than 50 degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and

(c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing or interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

(End of clause)

552.236–81 Use of Equipment by the Government.

As prescribed in 536.570–12, insert the following clause:

Use of Equipment by the Government (Apr 1984)

(a) The Government may take over and operate, with Government employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.

(b) The Contracting Officer will advise the Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation will begin.

(c) Government operation of equipment will not relieve the Contractor of the one-year guarantee on materials and workmanship elsewhere provided for in this contract.

(d) The guarantee period, elsewhere provided for in this contact, for each piece of equipment shall be in accordance with the "Guarantees" clause of this contract.

(End of clause)

552.236–82 Subcontracts.

As prescribed in 536.570–13, insert the following clause:

Subcontracts (Apr 1984)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors and suppliers.

(c) The Government will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.

(End of clause)

552.236–83 Requirement for a Project Labor Agreement.

As prescribed in 536.570–14, insert a clause substantially the same as the following:

Requirement for a Project Labor Agreement (Sep 1999)

(a) Definition. "Project Labor Agreement" (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

(b) The Contractor shall, after contract award, enter into a PLA for performance of [*Insert project or contract name*]. The PLA binds the Contractor and subcontractors of whatever tier engaged in onsite construction work. The PLA shall include all the following terms:

(1) Guarantees against strikes, lockouts, and similar work disruptions.

(2) Effective, prompt and mutually binding procedures for resolving labor disputes arising during the project.

(3) Other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.

(4) The PLA shall fully conform to all applicable statutes, regulations, and Executive Orders.

(c) Any PLA reached under this clause shall not change the terms of this contract or provide for any pricing adjustment by the Government.

(d) The Government shall not participate in the negotiations of any PLA.

(e) Nothing in this clause precludes contractors or subcontractors from competing for contracts or subcontracts on this project without discrimination based on union or non-union status.

(End of clause)

552.237–70 Qualifications of Offerors.

As prescribed in 537.110(a), insert the following provision:

Qualifications of Offerors (May 1989)

(a) Offers will be considered only from responsible organizations or individuals now or recently engaged in the performance of building service contracts comparable to those described in this solicitation. In order to determine an Offeror's qualifications, the Offeror may be requested to furnish a narrative statement listing comparable contracts which it has performed; a general history of its operating organization; and its complete experience. An Offeror may also be required to furnish a statement of its financial resources; show that it has the ability to maintain a staff of regular employees adequate to ensure continuous performance of the work; and, demonstrate that its equipment and/or plant capacity for the work contemplated is sufficient, adequate, and suitable.

(b) Competency in performing comparable building service contracts, demonstration of acceptable financial resources, personnel staffing, plant, equipment, and supply sources will be considered in determining whether an Offeror is responsible.

(c) Prospective Offerors are advised that in evaluating these areas involving any small business concern(s), any negative determinations are subject to the Certificate of Competency procedures set forth in the Federal Acquisition Regulation.

(End of provision)

552.237–71 Qualifications of Employees.

As prescribed in 537.110(b), insert the following clause:

Qualifications of Employees (May 1989)

(a) The contracting officer or a designated representative may require the Contractor to remove any employee(s) from GSA controlled buildings or other real property should it be determined that the individual(s) is either unsuitable for security reasons or otherwise unfit to work on GSA controlled property.

(b) The Contractor shall fill out and cause all of its employees performing work on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor and its employees shall be fingerprinted.

(c) Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I–151, or, who presents other evidence from the Immigration and Naturalization Service that employment will not affect his immigration status.

(End of clause)

552.237–72 Prohibition Regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(c), insert the following clause:

Prohibition Regarding "Quasi-Military Armed Forces" (Sep 1999)

The Contractor must not, during the term of this contract, offer for hire "Quasi-Military Armed Forces" within the meaning of the court decision in United States ex. rel. Weinberger v. Equifax, 557 F.2d 456 (5th Cir. 1977).

(End of clause)

552.237–73 Restriction on Disclosure of Information.

As prescribed in 537.270, insert the following clause:

Restriction on Disclosure of Information (Sep 1999)

(a) The Contractor shall, in the performance of this contract, keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor shall not publish or otherwise divulge such information in whole or in part, in any manner or form, nor authorize or permit others to do so. The Contractor shall take such reasonable measures as are necessary to restrict access to such information, while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor shall immediately notify, in writing, the Contracting Officer in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor shall not disclose any information concerning the work under this contract to any person or individual unless the Contractor obtains prior written approval from the Contracting Officer.

(c) The Contractor shall insert the substance of this clause in any consultant agreement or subcontract under this contract.

(d) Any unauthorized disclosure of information may result in termination of this contract for cause.

(End of clause)

552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

As prescribed in 538.273(a)(1), insert the following clause:

Identification of Electronic Office Equipment Providing Accessibility for the Handicapped (Sept 1991)

(a) *Definitions.* "Electronic office equipment accessiblity" means the application/configuration of electronic office equipment (includes hardware, software and firmware) in a manner that accommodates the functional limitations of individuals with disabilities (i.e., handicapped individuals) so as to promote productivity and provide access to work related and/or public information resources.

"Handicapped individuals" mean qualified individuals with impairments as cited in 29 CFR 1613.702(f) who can benefit from electronic office equipment accessibility.

"Special peripheral" means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to a handicapped individual.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for handicapped individuals. Identification should include the type of disability accommodated and how the users with that disability would be helped.

(End of clause)

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552.238–71 Submission and Distribution of Authorized FSS Schedule Pricelists.

As prescribed in 538.273(a)(2), insert the following clause:

Submission and Distribution of Authorized FSS Schedule Pricelists (Sep 1999)

(a) Definition. For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: "the list of addressees provided to the Contractor by the Contracting Officer" or "the Contractor's listing of its Federal Government customers"].

(b) The Contracting Officer will return one copy of the Authorize FSS Schedule Pricelist to the Contractor with the notification of contract award.

(c)(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized FSS Schedule Pricelist; and

(ii) The Authorized FSS Schedule Pricelist on a common-use electronic medium.

The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either:

(i) One paper copy of the Authorized FSS Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressee that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the on-line Multiple Award Schedule electronic data base.

(d) The Contractor shall make all of the distributions required in paragraph (c) at least 15 calendar days before the beginning of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(e) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of clause)

552.238–72 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes.

As prescribed in 538.273(a)(3), insert the following clause:

Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes (Sep. 1999)

(a) *Definitions.* "Energy-efficient office equipment," as used in this clause, means office equipment that, in representative use, provides equivalent or better performance and value to users, but uses significantly less energy than most functionally equivalent models.

"Recovered materials," as used in this clause, means waste material and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused, within an original manufacturing process (42 U.S.C. 6903(19)). For paper, it also includes postconsumer materials, and manufacturing and certain other wastes. (42 U.S.C. 6962(h)).

"Remanufactured products," as used in this clause, means equipment or parts that have been factory remanufactured or rebuilt to meet new equipment or part performance specifications and have had no use subsequent to their remanufacture.

(b) The offeror shall identify in its offer and include in any commercial catalogs and pricelists and any resultant Government catalogs or pricelists submitted to the Contracting Officer, energy-efficient office equipment and supplies that contain recovered material, remanufactured products, or other environmental attributes. Examples of energy-efficient office equipment are microcomputers and associated equipment that meet the requirements of the Environmental Protection Agency's (EPA's) Energy Star Computers Program. Supplies that contain recovered materials and other environmental attributes include, but are not limited to, products identified in EPA procurement guidelines (40 CFR Subchapter I) and products that are either degradable, ozone safe, recyclable, contain low volatile organic content compounds, contribute to source reduction, or otherwise are designed or manufactured to achieve environmental improvement. For example, an offeror can identify products that are safe or safer alternatives for more toxic or hazardous products and products that can be substituted for ones manufactured with toxic or hazardous materials. Such supplies shall satisfy the guidance contained in 16 CFR Part 260, Guides for the Use of Environmental Marketing Claims.

(c) An offeror, in identifying an item with an environmental attribute, shall possess evidence or rely upon a reasonable basis to substantiate the claim (see 16 CFR 260.5). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency sponsored program, e.g., EPA's Energy Star Computer program;

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

552.238–73 Cancellation.

As prescribed in 538.273(a)(4), insert the following clause:

Cancellation (Sep 1999)

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

(End of clause)

552.238–74 Contractor's Report of Sales.

As prescribed in 538.273(b)(1), insert the following clause:

Contractor's Report of Sales (Sep 1999)

(a) The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of all sales under this contract by calendar quarter (i.e., January–March, April–June, July–September, and October–December). The dollar value of a sale is the price paid by the schedule user for products and services on a schedule contract task or delivery order, as recorded by the Contractor. The reported contract sales value must include the industrial funding fee (see Clause 552.238–76).

(b) The Contractor must report the quarterly dollar value of sales on electronic GSA Form 72A, Contractor's Report of Sales, to the FSS Vendor Support Center (VSC) Website at Internet, http://VSC.gsa.gov. The Contractor must report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or subitem. If no sales occur, the Contractor must show zero on the report for each separate NSN, SIN, or subitem.

(c) The Contractor must register with the VSC before using the automated reporting system. To register, the Contractor (or its authorized representative) must call the VSC at (703) 305–6235 and provide the necessary information regarding the company, contact name(s), and telephone number(s). The VSC will then issue a 72A specific password and provide other information needed to access the reporting system. Instructions for electronic reporting are available at the VSC Website or by calling the above phone number.

(d) The Contractor must convert the total value of sales made in foreign currency to U.S. dollars using the "Treasury Reporting Rates of Exchange," issued by the U.S. Department of Treasury, Financial Management Service. The Contractor must use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from: Department of the Treasury, Financial Management Service, International Funds Branch, 3700 East-West Highway, PGCII, Room 5A19, Hyattsville, MD 20782, Telephone: (202) 874–7994, Internet: http://www.fms.treas.gov/intn.html.

(e) The report is due 30 days following the completion of the reporting period. The Contractor must also provide a close-out report within 120 days after the expiration of the contract. The contract expires upon physical completion of the last, outstanding task or delivery order of the contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then show zero sales in the close-out report.

(End of clause)

552.238–75 Price Reductions.

As prescribed in 538.273(b)(2), insert the following clause:

Price Reductions (Sep 1999)

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained through out the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c)(1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the Government with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies; or

(3) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contractor will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

552.238–76 Industrial Funding Fee.

As prescribed in 538.273(b)(3), insert the following clause:

Industrial Funding Fee (Sep 1999)

(a) The Contractor must pay the Federal Supply Service, GSA, an industrial funding fee (IFF). The Contractor must remit the IFF in U.S. dollars within 30 days after the end of each quarterly reporting period as established in clause 552.238–74, Contractor's Report of Sales. The IFF equals _____ * _____ of total quarterly sales reported. The IFF reimburses the GSA Federal Supply Service for the costs of operating the Federal Supply Schedules Program and recoups its operating costs from ordering activities. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities.

(b) The Contractor must remit any monies due as a result of the close-out report required by Clause 552.238–74 at the time the close-out report is submitted to GSA.

(c) The Contractor must pay the IFF amount due by check, or electronic funds transfer through the Automated Clearing House (ACH), to the "General Services Administration." If the payment involves multiple special item numbers or contracts, the Contractor may consolidate the IFFs into one payment. To ensure that the payment is credited properly, the Contractor must identify the check or electronic transmission as an "Industrial Funding Fee" and include the following information: contract number(s); report amount(s); and report period(s). If the Contractor makes payment by check, provide this information on either the check, check stub, or other remittance material.

(1) If paying the IFF by check, the Contractor must forward the check to the following address: General Services Administration, Accounts Receivable Branch, P.O. Box 70500, Chicago, IL 60673–0500.

(2) If paying by electronic funds transfer through the ACH, the Contractor must call GSA, Financial Information Control Branch, Receivables, Collections and Sales Section (6BCDR) at [Contracting Officer to insert phone number] to make arrangements.

(d) If the full amount of the IFF is not paid within 30 calendar days after the end of the applicable reporting period, it constitutes a contract debt to the United States Government under the terms of FAR 32.6. The Government may exercise all rights under the Debt Collection Act of 1982, including withholding or setting off payments and interest on the debt (see FAR 52.232–17, Interest).

(e) If the Contractor fails to submit sales reports, falsifies sales report, or fails to pay the IFF In a timely manner, the Government may terminate or cancel this contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to pay the IFF timely constitutes sufficient cause for terminating the Contractor for cause under the termination provisions of this contract.

(End of clause)

**The Commissioner, Federal Supply Service or a designee determines and provides to contracting officers the percentage amount of the fee to insert in the above clause.*

552.242–70 Status Report of Orders and Shipments.

As prescribed in 542.1107, insert the following clause:

Status Report of Orders and Shipments (Apr 1992)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form. The information required by the GSA Form 1678 may also be submitted in an automated printout form if authorized by the ACO. Alternatively, the required information may be reported by electronic data interchange using ANSI standards. For further information, contact GSA, Contract Administration Division [Insert appropriate telephone number of FQC] Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of clause)

552.243–70 Pricing of Adjustments.

As prescribed in 543.205(a)(1), insert the following clause:

Pricing of Adjustments (Apr. 1989)

When costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract.

(End of clause)

552.243–71 Equitable Adjustments.

As prescribed in 543.205(a)(2), insert the following clause:

Equitable Adjustments (Apr 1984)

(a) The provisions of the "Changes" clause prescribed by FAR 52.243–4 are supplemented as follows:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the "Equitable Adjustments" clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to

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clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:

Direct Costs

Material quantities by trades and unit costs
(Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site)
Labor breakdown by trades and unit costs
(Identified with specific item of material to be placed or operation to be performed)
Construction equipment exclusively necessary for the change
Costs of preparation and/or revision to shop drawings resulting from the change
Workers' Compensation and Public Liability Insurance
Employment taxes under FICA and FUTA
Bond Costs—when size of change warrants revision

Overhead, Profit and Commission

(2) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following unless the Contractor demonstrates entitlement to a higher percentage:

	Overhead	Profit (percent)	Commission (percent)
To Contractor on work performed by other than his own forces			10
To first tier subcontractor on work performed by his subcontractors			10
To Contractor and/or the subcontractors for that portion of the work performed with their respective forces.	To be Negotiated	10	

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The Contractor shall not be allowed a commission on the commission received by a first tier subcontractor.

Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(3) The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

(4) In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(5) After receipt of a proposal the Contracting Officer shall act thereon, within 30 days; provided however, that when the necessity to proceed with a change does not allow time properly to check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed.

(6) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

(b) The provisions of the "Differing Site Conditions" clause prescribed by FAR 52.236–2 are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of this "Equitable Adjustments" clause.

(End of clause)

552.243–72 Modifications (Multiple Award Schedule).

As prescribed in 543.205(b), insert the following clause:

Modifications (Multiple Award Schedule (Sep 1999)

(a) *General.* The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications.*

(1) *Additional items/additional SINs.* When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new item(s) or new SIN(s). Specifically, submit the information requested in *paragraphs 3 through 5* of the Commercial Sales Practice Format. This information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) as described in 552.212–70, Preparation of Offer (Multiple Award Schedule) is required.

(iv) Delivery time(s) for the new item(s) or the items under the new SIN(s) must be submitted in accordance with 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by 52.215–6, Place of Performance.

(vi) Hazardous material information (if applicable) must be submitted as required by 52.223–3 (ALT I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by 52.212–3(f), Offerors Representations and Certifications—Commercial Items, that may be necessary to assure compliance with 552.225–9, Buy American Act—Trade Agreement—Balance of Payments Program.

(2) *Deletions.* The Contractor shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) *Price Reduction.* The Contractor shall indicate whether the price reduction falls under item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238–75. If the price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective Dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238–75.

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the contracting officer as set forth in the Price Reductions clause at 552.238–75.

(e) *Amendments to Paper Supply Schedule Price Lists.*

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February—April, and every 3 month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the contracting officer, and one copy to the FSS Schedule Information Center.

(End of clause)

Alternate I (Sep 1999). As prescribed in 543.205(b), substitute the following paragraph (d) for paragraph (d) of the basic clause:

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions and corrections without prior approval. However, the Contractor shall notify the contracting officer as set forth in the Price Reductions clause at 552.238–75.

552.246–17 Warranty of Supplies of a Noncomplex Nature

As prescribed in 546.710(a), insert the following clause:

Warranty of Supplies of a Noncomplex Nature (Dec 1990) (Deviation FAR 52.246–17)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*_____

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such applies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.*

(1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause with _____*_____. This notice shall contain information concerning the deficiencies found, the location of the nonconforming supplies, and the quantity involved.

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided*, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement. All costs incurred by the Government in returning the nonconforming supplies, including costs to the freight carrier resulting from the Contractor's refusal to accept their return, shall be for the Contractor's account.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price for all nonconforming supplies, including batch or lot materials which either have been consumed or other disposition has been made. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may return the supplies for screening and correction or replacement under subparagraph (c)(3)(ii)(D) above; store the nonconforming supplies for the Contractor's account; sell the nonconforming supplies to the highest bidder on the open market and apply the proceeds against the accumulated storage and other costs, including the cost of the sale; or otherwise dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the

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nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) whom to notify if the supplies are found to be defective.

(End of clause)

** State the specific period of time after delivery or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable event or periods of time.*

*** Insert specific period of time; e.g., "45 days from the last delivery under this contract," or "45 days after discovery of the defect." The number of days specified shall be no less than 30.*

Alternate I (DEC 1990). As prescribed in 546.710(a)(1), substitute the following for paragraph (b)(1) of the basic clause and delete paragraph (b)(4) of the basic clause.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*_____ all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

Alternate II (DEC 1990). As prescribed in 546.710(a)(2), substitute the following paragraph for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*_____ all supplies furnished—

(i) Conform to the specifications except that in the case of solvent systems, the viscosity may exceed the specified maximum by 10 Kreb Units, unless otherwise specified elsewhere in this contract; and

(ii) Are suitable for their intended purpose as stated in this contact.

Alternate III (DEC 1990). As prescribed in 546.710(a)(3), substitute the following for paragraph (b)(1) of the basic clause, redesignate paragraph (c) of the basic clause as paragraph (d), and add the following as paragraph (c) in the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*_____, beginning with the first day of the first full month following the month of manufacture marked on the container, all supplies furnished retain their original characteristics to the extent that the supplies remain suitable for the intended use as stated in this contract (i) under actual application conditions or (ii) when tested in accordance with requirements stated elsewhere in this contract.

(c) *Government surveillance and testing.*

(1) During this period, surveillance will be maintained on supplies warehoused in Government facilities; and the supplies will be tested periodically to determine their suitability for intended use. Sampling for surveillance testing will be in accordance with Military Standard No. 105, and such testing will be made after NORMAL MIXING, STIRRING, OR SHAKING, in accordance with directions either furnished with the supplies or as shown in the applicable specifications.

(2) Surveillance testing will be based on storage stability requirements set forth in the contract specification, or purchase description on the basis of salient characteristics (e.g., viscosity or sag flow, curing time, strip adhesion or tensile shear, etc.) established by GSA as appropriate to determine suitability for intended use. In the case of brand name items not covered by detailed purchase descriptions, surveillance testing may be based on salient characteristics included in the manufacturer's data sheets. If storage stability requirements showing allowable variations are not included in applicable specifications or elsewhere in the contract, material will be considered suitable for intended use if the salient characteristics vary not more than 20 percent from the originally specified values (i.e., those applicable to acceptance testing of the supplies) for noncritical end-use items, and not more then 10 percent for critical end-use items.

552.246–7–0 Source Inspection by Quality Approved Manufacturer.

As prescribed in 546.302–70, insert the following clause:

Source Inspection by Quality Approved Manufacturer (Sep 1999)

(a) *Inspection system and inspection facilities.*

(1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246–2) of this contract shall be maintained throughout the contract period and shall comply with all requirements of editions in effect on the date of the solicitation of either Federal Standard 368 or the International Organization for Standardization (ISO) Standard 9001 (ANSI/ASQC Q 91) (Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation and Servicing), or ISO Standard 9002 (ANSI/ASQC Q 92) (Quality Systems—Model for Quality Assurance in Production and Installation). The ISO 9000 family of standards is a set of worldwide standards used to document, implement and demonstrate quality assurance systems. When using the ISO option the Contractor's quality system must be registered by a third party registrar accredited by either the Registrar Accreditation Board (RAB) or an organization recognized as equivalent. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA quality assurance office of any changes made in the inspection system during the contract period. As used herein, the term "inspection system" means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, ISO 9001 or ISO 9002 records shall include the date when inspection and testing were performed. These records shall be available for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) Within 10 calendar days after receipt of the written notice of award, the Contractor shall provide the Administrative Contracting Officer with the name of the individual and an alternate that will be responsible for inspecting each shipment under this contract.

(b) *Inspection and receiving reports.*

(1) For each shipment released, one of the officials named by the Contractor under paragraph (a)(4) above shall sign a Quality Approved Manufacturer Certificate certifying that supplies have been inspected and found to comply with contract requirements. The certification shall read as follows:

"I certify that all items in this shipment have been listed herein, and have been inspected and found to comply with all requirements of the contract."

Signature of Certifying Official

(2) For shipments made to military facilities, the Contractor shall prepare and distribute the DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent of the form not later than the close of business the workday following shipment. The certification above shall be placed in block 16 on this form. The Contractor will be provided a supply of the DD Form 250 with complete instructions for preparation and distribution.

(3) For shipments made to civilian facilities *only*, the Contractor shall prepare and distribute not later than the close of business the workday following shipment a certification of inspection and conformance for the identified items, in accordance with instructions furnished at the time of award. The Contractor may furnish the requisite information on the DD Form 250 or computer formatted equivalent, company letterhead, or invoice document.

(c) *Inspection by Government personnel.*

(1) Although the Government will normally rely upon the Contractor's certification as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by the Government is completed and shipment is authorized by the Government.

(2) Government inspection responsibility will be assigned the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for verification inspection and testing. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damages in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(d) Quality deficiencies.

(1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of _____*_____ months after acceptance shall, at the Government's option, be replaced, repaired or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its expense, supplies rejected or required to be replaced, repaired or corrected. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies and reducing the contract price by an amount equitable under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) If supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements, or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the GSA quality assurance office, within 5 workdays, of corrective action taken or to be taken to permit on site verification by a Government representative. Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination. Delays due to the insurance of a QDN do not constitute excusable delay under the Default clause. Failure to complete corrective action in a timely manner may result in termination of this contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, supplies which do not meet the requirements of the specification are being shipped, or there is failure to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____*_____ per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____*_____ per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____*_____ per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(F) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under paragraph (d) above, pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246–2, supplies may be—

(1) Stored for the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return also shall be for the Contractor's account); or

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(g) *Subcontracting requirements.* The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

(End of clause)

**Normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, you should use the shelf-life period, or in the instance where you reasonably expect a longer period to be available, you should use the longer period.*

***The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.*

552.246–71 Source Inspection by Government.

As prescribed in 546.302–71, insert the following clause:

Souce Inspection by Government (SEP 1999)

(a) *Inspection by Government personnel.*

(1) Supplies to be furnished under this contract will be inspected at source by the Government before shipment from the manufacturing plant or other facility designated by the Contractor, unless the Contractor is otherwise notified in writing by the Contracting Officer or a designated representative. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment. Samples sent to a Government resting facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

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(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's subcontractor's plant or other designated point for inspection is located. The Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed and shipment is authorized by Government.

(b) *Inspection and receiving reports.* For each shipment, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their reparation and distribution.

(c) *Inspection facilities.*

(1) The inspection system required to be maintained by the Contractor in accordance with FAR 52.246–2, Inspection of Supplies—Fixed Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. The facilities shall be utilized to perform all inspections and tests of materials and components before incorporation into end articles, and for the inspection of such end articles before shipment. The Government reserves the right to evaluate the acceptability and effectiveness of the Contractor's inspection system before award and periodically during the contract period.

(2) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(3) The Contractor shall deliver the items specified in this contract from a plant or warehouse located within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by this contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(d) *Availability of records.*

(1) In addition to any other requirement of this contract, the Contractor shall maintain records showing the following information for each order received under the contract: (i) order number; (ii) date order received by the Contractor; (iii) quantity ordered; (iv) date scheduled into production; (v) batch or lot number, if applicable; (vi) date inspected and/or tested; (vii) date available for shipment; (viii) date shipped or date service completed; and (ix) National Stock Number (NSN), or if none is provided in the contract, the applicable item number or other contractual identification.

(2) These records should be maintained at the point of source inspection and shall be available to the Contracting Officer, or an authorized representative, for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost for inspecting/testing or reinspection/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____*_____ per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____*_____ per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____*_____ per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52.246–2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246–2, supplies may be—

(1) Stored for the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return also shall be for the Contractor's account); or

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(End of clause)

* *The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.*

552.246–72 Final Inspection and Tests.

As prescribed in 546.312, insert the following clause:

Final Inspection and Tests (Sep 1999)

The Contractor shall give written notice to the Contracting Officer at least 10 calendar days before the date the work will be completed and ready for final inspection and tests. Final inspection and tests will begin within 10 calendar days after the date specified in the Contractor's notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(End of clause)

552.246–73 Warranty—Multiple Award Schedule.

As prescribed in 546.710(b), insert the following clause:

Warranty—Multiple Award Schedule (Feb 1996)

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the Contractor's commercial price list will apply to this contract.

(End of clause)

552.246–74 Warranty—International Multiple Award Schedule.

As prescribed in 546.710(c), insert the following clause:

Warranty—International Multiple Award Schedule (May 1989)

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial price list applies to this contract, except: (a) the Contractor shall provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the Government accepts the product; (b) parts and labor required under the warranty provisions shall be supplied free of charge; (c) transportation costs of returning the products to and from the repair facility, or the costs involved with Contractor personnel traveling to the Government facility for the purpose of repairing the product onsite shall be borne by the Contractor during the 90-day warranty period.

(End of clause)

552.246–75 Guarantees.

As prescribed in 546.710(d), insert the following clause:

Guarantees (May 1989)

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for 1 year after the date of final acceptance or the date the equipment or work was placed in use by the Government, whichever occurs first.

(b)(1) If, within any guarantee period, the Contracting Officer finds that guaranteed work requires repair or change because of defective or inferior materials, equipment, or workmanship or is not in accordance with contract requirements, the Contracting Officer shall notify the Contractor in writing. The Contractor shall promptly, and without additional expense to the Government, correct:

(i) All guaranteed work;

(ii) All damage to equipment, the site, the building or its contents resulting from the unsatisfactory guaranteed work; and

(iii) Any work, materials, and equipment that are disturbed in fulfilling the guarantee, including any disturbed work, materials, and equipment that may have been guaranteed under another contract.

(2) If the Contractor fails to proceed promptly in accordance with the guarantee, the Government may have such work performed at the expense of the Contractor.

(c) Any special guarantees that may be required under the contract will be subject to paragraphs (a) and (b), insofar as they do not conflict with special guarantees.

(d) The Contractor shall furnish to the Government: (1) Each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of business; (2) All information required to make such guarantee or warranty legally binding and effective; and (3) The information and the guarantee or warranty in sufficient time to permit the Government to meet any time limit specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract.

(End of clause)

552.246–76 Warranty of pesticides.

As prescribed in 546.710(e), insert the following clause:

Warranty of Pesticides (May 1989)

(a) Notwithstanding acceptance of pesticides by the Government, the Contractor warrants that for 1 year after the date of shipment, all pesticides furnished under this contract shall meet the requirements of Pub. L. 92–516, as amended, and shall be registered with the Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after date of shipment, the Contractor shall immediately notify the Contracting Officer. The notification will include: (1) contract number; (2) identification of the pesticide; (3) reason for the EPA action against the pesticide; and (4) list of Government agencies and addresses to which it was delivered.

(End of clause)

552.247–70 Placarding Railcar Shipments.

As prescribed in 547.305(a), insert the following clause:

Placarding Railcar Shipments (May 1989)

When a railcar is loaded in such a manner that it can be or should be unloaded from only one side, the Contractor shall place on the appropriate railcar door a placard reading "UNLOAD FROM THIS SIDE" and on the opposite door a placard reading "UNLOAD FROM OTHER SIDE."

(End of clause)

552.247–71 Diversion of Shipment Under f.o.b. Destination Contracts.

As prescribed in 547.305(b), insert the following clause:

Diversion of Shipment Under F.O.B. Destination Contracts (Sep 1999)

(a) Notwithstanding paragraph (c) of the clause in this contract titled 52.212–4, Contract Terms and Conditions—Commercial Items, the Government has the unilateral right to make changes at any time within the general scope of this contract in either the:

(1) Method of shipment or packing.

(2) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of this contract, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of a delivery order.

(c) The Government shall make no adjustment when supplies are identically priced for delivery regionally or nationally and the place of delivery is changed within the area to which the identical price applies. In all other cases, adjustments for changes in transportation costs under this clause shall be determined as follows:

(1) If the contractor ships by contract or common carrier, price adjustments shall be determined by comparing the cost of shipments to the new destination(s), as evidenced by copy of paid freight bills supplied by the Contractor with the invoice, to one of the following:

(i) The cost of shipments to the standard contract destination, as evidenced by copy of appropriate paid freight bills supplied by the Contractor.

(ii) If no shipments have been made to the standard contract destination, the cost as evidenced by the applicable rates of a common or contract carrier. If carrier rates are not publicly filed with a regulatory body (e.g., interstate shipments moving by rail piggyback service), the Contractor shall provide a copy of the contract, letter agreement, or other written communication from the carrier(s) quoting the rates/charges that would have applied for shipments to the standard contract destination.

(2) If (i) shipments to the new destination are made by the Contractor's owned or leased trucks or (ii) shipments to the original destination were or would have been made by the Contractor's owned or leased trucks, the Government shall determine the adjustment by substituting a rate equal to 70 percent of the lowest applicable rate published in common carrier tariffs as of the date of shipment for the Contractor's actual rate or contemplated transportation costs.

(d) If the copies of paid freight bills for a diverted shipment do not show, or make readily available, each of the following items,the Contractor shall supply a written statement showing the item(s):

(1) Full name of each carrier in the routing.

(2) Number of containers.

(3) Gross shipping weight.

(4) Actual date of shipping.

(5) Freight description for the supplies as indicated in the "National Motor Freight Classification" or the "Uniform Freight Classification" (Rail).

(End of clause)

552.249–70 Termination for Convenience of the Government (Fixed Price) (Short Form).

As prescribed in 549.502(a) insert the following clause:

Termination for Convenience of the Government (Fixed-Price) (Short Form) (May 1988) (Deviation FAR 52.249–1 and 52.249–2)

(a) If the Government terminates this contract for convenience, the rights of the Government and the Contractor shall be determined under paragraph (b) unless there is a termination liability schedule, in which case the rights of the parties shall be determined under paragraph (c).

(b) The clause at [Contracting Officer inserts 52.249–1 or 52.249–2, as applicable] of the FAR shall apply to the supply portion of the contract and the clauses at 52.249–4 of the FAR shall apply to the service portion of the contract.

(c) If the Contractor specifies a schedule of termination liability charges that would be incurred by the Government if the Government terminates this lease contract without taking title to the equipment, the payment of such charges shall be the only responsibility of the Government to compensate the Contractor for such termination; except that, there shall be no termination liability for equipment installed after termination of this contract.

(End of clause)

552.249–71 Submission of Termination Liability Schedule.

As prescribed in 549.502(b), insert the following clause:

Submission of Termination Liability Schedule (May 1989)

(a) An offeror may submit, as part of its proposal, a termination liability schedule to be applied if any resultant contract is terminated by the Government for reasons other than default. The offeror shall provide and explain the amount and method of computation of the termination liability charge(s).

(b) If submitted, the termination liability schedule will be incorporated into Part I, Section B of the contract document. If a termination liability schedule is not submitted and the Government terminates any resultant contract for its convenience, the rights of the parties shall be determined under paragraph (b) of the GSAR Termination for Convenience of the Government clause at 552.249–70.

(c) Any termination liability charges existing at the end of the evaluated contract period will be considered in the evaluation of offers.

(End of clause)

552.252–5 Authorized Deviations in Provisions.

As prescribed in 552.107–70(a), insert the following provision:

Authorized Deviations in Provisions (Deviation FAR 52.252–5) (Sep 1999)

(a) *Deviations to FAR provisions.*

(1) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) provision by the addition of "(DEVIATION)" after the date of the provision, if the provision is not published in the General Services

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Administration Acquisition Regulation (48 CFR Chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) provision that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR provision no.))" after the date of the provision.

(b) *Deviations to GSAR provisions.* This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation provision by the addition of "(DEVIATION)" after the date of the provision.

(c) *"Substantially the same as" provisions.* Changes in wording of provisions prescribed for use on a "substantially the same as" basis are not considered deviations.

(End of provision)

552.252–6 Authorized Deviations in Clauses.

As prescribed in 552.107–70(b), insert the following clause:

Authorized Deviations in Clauses (Deviation FAR 52.252–6) (Sep 1999)

(a) *Deviations to FAR clauses.*

(1) This solicitation or contract indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) clause by the addition of "(DEVIATION)" after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) clause that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR clause no.))" after the date of the clause.

(b) *Deviations to GSAR clauses:* This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation clause by the addition of "(DEVIATION)" after the date of the clause.

(c) *"Substantially the same as" clauses.* Changes in wording of clauses prescribed for use on a "substantially the same as" basis are not considered deviations.

(End of clause)

552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

As prescribed in 570.602, insert the following provision:

Instructions to Offerors—Acquisition of Leasehold Interests in Real Property (Mar 1998)

(a) Definitions. As used in this provision—

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In Writing" or "Written" means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of as allowed by a Contracting Officer as the result or of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages. Offers must be:

(i) Submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and

(ii) Signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(2) Late proposals and revisions.

(i) The Government will not consider any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers unless it is received before the Government makes award and it meets at least one of the following conditions:

(A) It was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th).

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation.

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

(D) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry of the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals.

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement.

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in subparagraphs (c)(2)(i)(A) through (c)(2)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service, "Postmark" has the same meaning as defined in paragraph (c)(2)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(2)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) An offeror may withdraw its proposal by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, an offeror may withdraw its proposal via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(3) Any information given to a prospective offeror concerning this solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

(4) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(5) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(6) The Government will construe an offer to be in full and complete with this solicitation unless the offer describes any deviation in the offer.

(7) Offerors may submit proposals that depart from stated requirements. Such a proposal shall clearly identify why the acceptance of the proposal would be advantageous to the Government. The proposal must clearly identify and explicitly define any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

(d) Restriction on disclosure and use of data. An offeror that includes in its proposal data that it does not want disclosed to the public for any purpose, or use by the Government except for evaluation purposes, must meet both of the following conditions:

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a lease is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets].

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(e) Lease award.

(1) The Government intends to award a lease resulting from this solicitation to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a lease after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

(5) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(6) The Government may determine that a proposal is unacceptable if the price proposed are materially unbalanced between line terms or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understand as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(7) The unconditional written acceptance of an offer establishes a valid contract.

(8) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall making of all offerors, when any making was developed by the agency during source selection; and

(iii) A summary of the rationale for award.

(End of provision)

Alternate I (MAR 1998). As prescribed in 570.602, substitute the following paragraph for paragraph (c)(2)(i) of the basic provision:

(i) Any offer received at the office designated in the solicitation after the exact time specified for receipt of final proposal revisions will not be considered unless it is received before award is made and it meets one of the following conditions—

Alternate II (MAR 1998). As prescribed in 570.602, substitute the following paragraph for paragraph (e)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a lease without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

552.270–2 Historic Preference.

As prescribed in 570.602, insert the following provision:

Historic Preference (Sep 1999)

(a) The Government will give preference to offers of space in buildings on, or formally listed as eligible for inclusion in, the National Register of Historic Places and to historically significant buildings in historic districts listed in the National Register. This preference extends to historic buildings and will result in award if both of the following are met:

(1) The offer for space meets the terms and conditions of this solicitation as well as any other offer received. The Contracting Officer has discretion to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of the building such as high ceilings, wooden floors, etc.

(2) The rental is no more than 10 percent higher on a total annual usable square foot cost to the Government than the lowest otherwise acceptable offer.

(b) If the Government receives more than one offer of an historic building and they meet the above criteria, the Government will award to the lowest priced historic property offered.

(End of provision)

552.270–3 Parties to Execute Lease.

As prescribed in 570.602, insert the following provision:

Parties to Execute Lease (Sep 1999)

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, shall accompany the lease.

(b) If the Lessor is a partnership, the lease shall be signed with the partnership name, followed by the name of the legally authorized partner signing the same, and, if requested by the Government, a copy of either the partnership agreement or current Certificate of Limited Partnership shall accompany the lease.

(c) If the Lessor is a corporation, the lease shall be signed with the corporate name,

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followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority to so act shall be furnished.
(End of provision)

552.270–4 Definitions.

As prescribed in 570.603, insert the following clause:

Definitions (Sep 1999)

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:
(a) "Commencement Date" means the first day of the term.
(b) "Contract" and "Contractor" means "Lease" and "Lessor," respectively.
(c) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
(d) "Delivery Date" means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.
(e) "Delivery Time" means the number of days provided by this lease for delivery of the premises to the Government, as such number may be modified in accordance with the provision so this lease."
(f) "Excusable Delays" means delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation:
(1) acts of God or of the public enemy,
(2) acts of the United States of America in either its sovereign or contractual capacity,
(3) acts of another contractor in the performance of a contract with the Government,
(4) fires,
(5) floods,
(6) epidemics,
(7) quarantine restrictions,
(8) strikes,
(9) freight embargoes,
(10) unusually severe weather, or
(11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.
(g) "Lessor" means the sub-lessor if this lease is a sublease.
(h) "Lessor shall provide" means the Lessor shall furnish and install at Lessor's expense.
(i) "Notice" means written notice sent by certified or registered mail, Express Mail or Comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.
(j) "Premises" means the space described in this lease.
(k) "Substantially complete" and "substantial completion" means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use of enjoyment.
(l) "Usable square feet" means the ANSI/BOMA Z65.1–1996 definition for BOMA usable office area, which means "The area where a tenant normally houses personnel and/or furniture, for which a measurement is to be computed."
(m) "Work" means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.
(End of clause)

5512.270–5 Subletting and Assignment.

As prescribed in 570.603, insert the following clause:

Subletting and Assignment (Sep 1999)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any that have accrued to the date of said assignment. Any assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.
(End of clause)

552.270–6 Maintenance of Building and Premises—Right of Entry.

As prescribed in 570.603, insert the following clause:

Maintenance of Building and Premises—Right of Entry (Sep 1999)

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises, including the building and all equipment, fixtures, and appurtenances furnished by the lessor under this lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.
(End of clause)

552.270–7 Fire and Casualty Damage.

As prescribed in 570.603, insert the following clause:

Fire and Casualty Damage (Sep 1999)

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.
(End of clause)

552.270–8 Compliance with Applicable Law.

As prescribed in 570.603, insert the following clause:

Compliance With Applicable Law (Sep 1999)

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.
(End of clause)

552.270–9 Inspection—Right of Entry.

As prescribed in 570.603, insert the following clause:

Inspection—Right of Entry (Sep 1999)

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to:
(1) Inspecting, sampling and analyzing suspected asbestos-containing materials and air monitoring for asbestos fibers;
(2) Inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;
(3) Inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and
(4) Inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State and local law.
(b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other lessees. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.
(End of clause)

552.270–10 Failure in Performance.

As prescribed in 570.603, insert the following clause:

Failure in Performance (Sep 1999)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payment under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.
(End of clause)

552.270–11 Successors Bound.

As prescribed in 570.603, insert the following clause:

Successors Bound (Sep 1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.
(End of clause)

552.270–12 Alterations.

As prescribed in 570.603, insert the following clause:

Alterations (Sep 1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.
(End of clause)

552.270–13 Proposals for Adjustment.

As prescribed in 570.603, insert the following clause:

Proposals for Adjustment (Sep 1999)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.
(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds $100,000. The proposal, including all subcontractor work, will contain at least the following details—
(1) Material quantities and unit costs;
(2) Labor costs (identified with specific item or material to be placed or operation to be performed);
(3) Equipment costs;
(4) Worker's compensation and public liability insurance;
(5) Overhead;
(6) Profit; and
(7) Employment taxes under FICA and FUTA.
(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $500.000 in cost—
(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403–4); and
(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $500.000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406–2).
(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.
(End of clause)

552.270–14 Changes.

As prescribed in 570.603, insert the following clause:

Changes (Sep 1999)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:
(1) Specifications (including drawings and designs).
(2) Work or services.
(3) Facilities or space layout.
(4) Amount of space, provided the Lessor consents to the change.
(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:
(1) A modification of the delivery date.
(2) An equitable adjustment in the rental rate.
(3) A lump sum equitable adjustment.
(4) An equitable adjustment of the annual operating costs per usable square foot specified in this lease.
(c) The Lessor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and must submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause excuses the lessor from proceeding with the change as directed.
(d) Absent such written change order, the Government is not liable to Lessor under this clause.
(End of clause)

552.270–15 Liquidated Damages.

As prescribed in 570.603, insert the following clause:

Liquidated Damages (Sep 1999)

"In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum $_____ for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all the space ready for occupancy by the Government. this remedy is not exclusive and is in addition to any other remedies which may be available under this lease or at law.
(End of clause)

552.270–16 Adjustment for Vacant Premises.

As prescribed in 570.603, insert the following clause:

Adjustment for Vacant Premises (Sep 1999)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part before the lease term expires, the rental rate will be reduced.
(b) The rental rate will be reduced by that portion of the costs per usable square foot of operating expenses not required to maintain the space. The reduction takes effect 30 calendar days after the Government gives notice to the Lessor, and continues in effect until the Government occupies the premises or the lease expires or is terminated.
(End of clause)

552.270–17 Delivery and Condition.

As prescribed in 570.603, insert the following clause:

Delivery and Condition (Sep 1999)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.

(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.

(End of clause)

552.270–18 Default in Delivery—Time Extensions.

As prescribed in 570.603, insert the following clause:

Default In Delivery—Time Extensions (Sep 1999)

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date, time is of the essence. If the Lessor fails to work diligently to ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease. Such termination is effective when received by Lessor. The Lessor and the Lessor's sureties, if any, are jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government is entitled to the following damages:

(1) The Government's aggregate rent, estimated real estate tax, and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term. If the Government procures replacement premises for a term (including all option terms) in excess of this lease term, the Lessor is not liable for excess Government rent or adjustments during such excess lease term.

(2) All administrative and other costs the Government incurs in procuring a replacement lease or leases.

(3) Other, additional relief provided for in this lease, at law, or in equity.

(b) Damages to which the Government is entitled under this clause are due and payable thirty (30) days following the date Lessor receives notice from the Contracting Officer specifying such damages.

(c) Delivery by Lessor of less than the minimum usable square footage required by this lease shall in no event be construed as substantial completion, except as the Contracting Officer permits.

(d) The Government shall not terminate this lease under this clause nor charge the Lessor with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays, and (2) the Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If the facts warrant, the Contracting Officer shall extend the delivery date, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

(End of clause)

552.270–19 Progressive Occupancy.

As prescribed in 570.603, insert the following clause:

Progressive Occupancy (Sep 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a complete determined from all rent commencement dates.

(End of clause)

552.270–20 Payment.

As prescribed in 570.603, insert the following clause:

Payment (Sep 1999)

(a) When space is offered and accepted, usable square footage delivered will be confirmed by either:

(1) The Government's measurement of plans submitted by the successful offeror as approved by the Government, and an inspection of the space to verify that the delivered space conforms with such plans.

(2) A mutual on-site measurement of the space if the Contracting Officer determines it necessary.

(b) The Government will not pay for space in excess of the amount of usable square footage stated in the lease.

(c) If the amount of usable square footage delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of usable space delivered and the annual rental will be adjusted as follows:

Usable square feet (USF) not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is:

USF X(1+CAF) X Rate per RSF=Reduction in Annual Rent.

(End of clause)

552.270–21 Effect of Acceptance and Occupancy.

As prescribed in 570.603, insert the following clause:

Effect of Acceptance and Occupancy (Sep 1999)

Neither the Government's acceptance of the premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

(End of clause)

552.270–22 Default by Lessor During the Term.

As prescribed in 570.603, insert the following clause:

Default By Lessor During the Term (Sep 1999)

(a) Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Contracting Officer or an authorized representative.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

(End of clause)

552.270–23 Subordination, Nondisturbance and Attornment.

As prescribed in 570.603, insert the following clause:

Subordination, Nondisturbance and Attornment (Sep 1999)

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

(End of clause)

552.270–24 Statement of Lease.

As prescribed in 570.603, insert the following clause:

Statement of Lease (Sep 1999)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; and (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

(End of clause)

552.270–25 Substitution of Tenant Agency.

As prescribed in 570.603, insert the following clause:

Substitution of Tenant Agency (Sep 1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

(End of clause)

552.270–26 No Waiver.

As prescribed in 570.603, insert the following clause:

No Waiver (Sep 1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

(End of clause)

552.270–27 Integrated Agreement.

As prescribed in 570.603, insert the following clause:

Integrated Agreement (Sep 1999)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

(End of clause)

552.270–28 Mutuality of Obligation.

As prescribed in 570.603, insert the following clause:

Mutuality of Obligation (Sep 1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

(End of clause)

552.270–29 Acceptance of Space.

As prescribed in 570.603, insert the following clause:

Acceptance of Space (Sep 1999)

(a) When the Lessor has completed all alterations, improvements, and repairs necessary to meet the requirements of the lease, the Lessor shall notify the Contracting Officer. The Contracting Officer or designated representative shall promptly inspect the space.

(b) The Government will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required usable square footage as indicated in Paragraph 1.1, Amount and Type of Space, of this solicitation.

(End of clause)

PART 553 FORMS

Subpart 553.2 Illustrations of Forms

553.300 Scope of subpart.

Standard and GSA forms prescribed or referenced in the text of this chapter are illustrated in and made a part of the General Services Administration Acquisition Manual. The forms are not illustrated in Title 48, Chapter 5, of the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (MVP), 1800 F Street, NW, Washington, DC 20405.

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SUBCHAPTER I—SPECIAL CONTRACTING PROGRAMS

PART 570 ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

Subpart 570.1 General

570.101 Applicability.

(a) This part applies to acquisitions of leasehold interests in real property except:

(1) Leasehold interests acquired by the power of eminent domain or by donation.

(2) Acquisition of leasehold interests in bare or unimproved land.

(b) In addition, the GSAR rules in the following table apply. Other provisions of 48 CFR Chapter 5 (GSAR) do not apply to leases of real property unless specifically cross-referenced in this part 570.

GSAR RULES APPLICABLE TO ACQUISITIONS OF LEASEHOLD INTERESTS IN REAL PROPERTY

501	514.201–7(b)	517.207	533
502	514.407	519.7	536.271
503	515.204–1	519.12	537.2
504.5	515.209–70	522.8	552
505	515.305	532.1	553
509.4	517.202	532.908	

570.102 Definitions.

Acquisition means the acquiring by lease of an interest in improved real property for use by the Federal Government, whether the space already exists or must be constructed.

Contract means lease.

Contractor means lessor.

Landlord or *lessor* means any individual, firm, partnership, trust, association, State or local government, or other legal entity that leases real property to the Government.

Lease or *leasehold interest in real property* means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include operational services provided by the landlord.

Lessee or *tenant* means the United States of America.

Operational services means services that support use of a leased property, such as heating, ventilation, air condition, utilities, and custodial services.

Rent and related services means that consideration paid for the use of leased property plus the costs of operational services whether furnished by the lessor, the Government, or both.

Simplified lease acquisition procedures mean the procedures for awarding leases at or below the simplified lease acquisition threshold.

Simplified lease acquisition threshold Means $100,000 average annual rent for the term of the lease, including option periods and excluding the cost of operational services.

Small business means a concern including affiliates, which is organized for profit, is independently-owned and operated, is not dominant in the field of leasing commercial real estate, and has annual average gross receipts of $15 million or less for the preceding three fiscal years.

Solicitation for Offers (SFO) means invitation for bids in sealed bidding or request for proposals in negotiations.

Space in buildings means the premises leased, or to be leased, including improvements. Its quantity is normally expressed in square feet. It does not include space acquired by the power of eminent domain, donation, or condemnation, nor acquisitions of bare or unimproved land.

Substantially as follows or *substantially the same as*, when used in prescribing a provision or clause, means that you may prepare and use a variation of that provision or clause to accommodate requirements peculiar to an individual acquisition. The variation must include the salient features of the FAR or GSAR provision or clause. It must also be consistent with the intent, principle, and substance of the FAR or GSAR provision or clause and related coverage on the subject matter.

570.103 Authority to lease.

(a) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)), as amended, and Section 1 of the Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 Note) authorize the Administrator of General Services to acquire leasehold interests in real property for use by Federal agencies. The authority is limited to leases for buildings and improvement that bind the Government for periods not exceeding 20 years.

(b) You have exclusive authority to enter into and administer leases on the Government's behalf to the extent provided in your certificate of appointment as a contracting officer.

570.104 Competition.

Unless you use the simplified procedures in subpart 570.2, the competition requirements of FAR part 6 apply to acquisition of leasehold interests in real property.

570.105 Methods of contracting.

570.105–1 Contracting by negotiation.

Contracting by negotiation is usually appropriate for acquiring space in a building through a lease contract. You will usually need to conduct discussions with offerors about their proposals and consider factors other than price in making the award.

570.105–2 Two-phase design-build selection procedures.

Unless you use another acquisition procedure authorized by law, you must use the two-phase design-build selection procedures in section 303M of the Federal Property and Administrative Services Act of 1949, as amended, for lease construction projects. This includes lease construction projects with options to purchase the real property leased. Use the procedures in section 303M when you meet the conditions in paragraphs (a) and (b) of this section:

(a) You anticipate the lease will involve the design and construction of a public building, facility, or work for lease to the Government.

(b) You determine the procedures are appropriate for entering into a lease construction contract based on the following:

(1) You expect to receive three or more offers.

(2) Offerors will need to perform design work before developing a price.

(3) Offerors will incur a substantial amount of expense in preparing offers.

(4) You consider criteria such as the following:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection procedures.

(v) The capability of the agency to manage the two-phase selection process.

(vi) Other criteria established by the HCA.

570.105–3 Sealed bidding.

For sealed bidding, use the procedures in FAR part 14. In most cases you should not use sealed bidding to acquire space in buildings unless you meet all the following conditions:

(a) You have a preselected site.

(b) A building will be constructed on the site using Government furnished plans and specifications.

(c) The Government will lease the building.

570.106 Publicizing/Advertising.

(a) Subparts 505.101, 505.202, and 505.203 define requirements for publicizing lease actions.

(b) Instead of issuing separate advertisements for multiple, known leasing actions, you may include the actions in one consolidated advertisement.

570.107 Oral presentations.

You may use oral presentations for acquisitions of leasehold interests in real property. Follow the procedures in FAR 15.102.

570.108 Responsibility determination.

(a) Determine that the prospective awardee is responsible with respect to the lease under consideration. The standards in FAR 9.104 apply. As part of the determination that a prospective contractor is otherwise qualified and eligible for award, review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(b) Your signature on the contract is deemed an affirmative determination.

(c) If you find an offeror nonresponsible, sign and place in the contract file a determination of nonresponsibility. State the basis for the determination.

(d) If you find a small business concern nonresponsible, the procedures at FAR 19.6 apply. Place all documents and reports supporting a determination of responsibility or nonresponsibility in the lease file.

570.109 Certifications.

Before awarding a lease, review applicable certifications for compliance with statute and regulations.

570.110 Cost or pricing data and information other than cost or pricing data.

(a) The policies and procedures of FAR 15.403 apply to lease contract actions.

(b) FAR 15.403–1 defines exceptions to and waivers for submitting cost or pricing data. Most leasing actions will have adequate price competition. For price analysis, you may use a market survey or an appraisal conducted using accepted real property appraisal procedures to establish a market price for comparison.

(c) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived under FAR 15.403–1(c)(4).

(d) If cost or pricing data are required, follow the procedures in FAR 15.403–4 and 15.406–2.

570.111 Inspection and acceptance.

Before you accept space, obtain an inspection to ensure that the space complies with the Government's requirements and specifications. Document the inspection and acceptance in the contract file.

570.112 Awards to Federal employees.

If you receive an offer from an officer or employee of the Government, follow the procedures in FAR 3.6.

570.113 Disclosure of mistakes after award.

If you discover a mistake in a lessor's offer after award, follow the procedures in FAR 14.407–4 and subpart 514.407–4.

570.114 Protests.

FAR 33.1 and 533.1 apply to protests of lease acquisitions.

Subpart 570.2—Simplified Lease Acquisition Procedures

570.201 Purpose.

This subpart prescribes simplified procedures for small leases. These procedures reduce administrative costs, while improving efficiency and economy, when acquiring small leasehold interests in real property.

570.202 Policy.

Use simplified lease acquisition procedures to the maximum extent practicable for actions at or below the simplified lease acquisition threshold.

570.203 Procedures.

570.203–1 Market survey.

Conduct a market survey to identify potential sources. Use information available in GSA or from other sources to identify locations that will meet the Government's requirements.

570.203–2 Competition.

(a) Solicit at least three sources to promote competition to the maximum extent practicable. If you have repeated requirements for space in the same market, and if practicable, invite two sources not included in the most recent solicitation to submit offers.

(b) If you solicit only one source, document the file to explain the lack of competition.

570.203–3 Soliciting offers.

(a) Solicit offers by providing each prospective offeror a proposed short form lease or SFO. The short form lease or SFO must provide all the following information:

(1) A description of the Government's requirements.

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(2) All award factors, including price or cost, and any significant subfactors you will consider in awarding the lease.
(3) A statement of the relative importance of the evaluation factors and subfactors.
(4) A statement of whether all evaluation factors other than cost or price, when combined, are either:
(i) Significantly more important than cost or price.
(ii) Approximately equal in importance to cost or price.
(iii) Significantly less important than cost or price.
(5) Either in full text or by reference, applicable FAR provisions and contract clauses required by 570.6.
(b) As necessary, review with prospective offerors the Government's requirements, pricing matters, evaluation procedures and submissions of offers.

570.203–4 Negotiations, evaluation, and award.

(a) If you need to conduct negotiations, use the procedures in 570.307.
(b) Evaluate offers in accordance with the solicitation. Evaluate prices and document the lease file to demonstrate whether the proposed contract prices are fair and reasonable.
(c) If the total price, including options, exceeds $500,000, consider whether you need cost and pricing data to determine that the price is fair and reasonable. In most cases the exceptions at FAR 15.403–1 will apply.
(d) If the total contract value of the lease, including options, will exceed $500,000, the proposed awardee must provide an acceptable small business subcontracting plan. This requirement does not apply if the proposed awardee is a small business concern.
(e) Make award to the responsible offeror whose proposal is most advantageous to the Government considering price and other factors included in the solicitation.

Subpart 570.3—Contracting Procedures for Leasehold Interests in Real Property

570.301 Market survey.

Conduct a market survey to identify potential sources. Use information available in GSA or from other sources to identify locations capable of meeting the Government's requirements.

570.302 Description of requirements.

(a) The description of requirements depends on the nature of the space the agency needs and the market available to satisfy that need.
(b) The description of requirements must include all the following:
(1) A statement of the purpose of the lease.
(2) Functional, performance, or physical requirements.
(3) Any special requirements.
(4) The delivery schedule.
(c) The description must promote full and open competition. Include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs or as authorized by law.

570.303 Solicitation for offers.

570.303–1 Preparing the SFO.

The SFO forms the basis for the lease negotiation process and becomes part of the lease. Document each SFO in writing or electronically. Include the information necessary to enable prospective offerors to prepare proposals. Each SFO, at a minimum, must provide all the following:
(a) Describe the Government's requirements.
(b) State the method the Government will use to measure space.
(c) Explain how to structure offers.
(d) Specify a date, time, and place for submission of offers.
(e) Explain how the Government will evaluate offers.
(f) Describe the source selection procedures the Government will use.
(g) Include a statement outlining the information the Government may disclose in debriefings.
(h) Include appropriate forms prescribed in 570.7.

570.302–3 Issuing the SFO.

Release the SFO to all prospective offerors at the same time.

570.303–3 Late offers, modifications of offers, and withdrawals of offers.

Follow the procedures in FAR 15.208.

570.303–4 Changes to SFOs.

(a) If the Government's requirements change, either before or after receipt of proposals, issue an amendment. Document the amendment using the same method as for the SFO, written or electronic.
(b) If time is critical, you may provide information on SFO amendments orally.
(1) Make a record of the information provided.
(2) Provide, or attempt to provide, the notice to all offerors or prospective offerors on the same day.
(3) Promptly confirm the information provided orally in a written amendment.
(c) Distribute an amendment as follows:
(1) If before the proposal due date, send the amendment to all prospective offerors who were sent a copy of the SFO.
(2) If after proposal receipt, send the amendment to each offeror who submitted a proposal.
(d) If an amendment is so substantial that it requires a complete revision of the SFO, cancel the SFO and issue a new one.

570.304 General source selection procedures.

(a) These procedures apply to acquisitions of leasehold interests except if you use either:
(1) Simplified lease acquisition procedures authorized by 570.2.
(2) Two-phase design-build selection procedures authorized by 570.105–2.
(b) The contracting officer is designated as the source selection official unless the HCA appoints another individual for a particular leasing action or group of leasing actions.
(c) You must include price or cost to the Government and past performance as evaluation factors in every case.
(d) The SFO must comply with FAR 15.304 and either:
(1) FAR 15.101–1 if you will use the tradeoff process.
(2) FAR 15.101–2 if you will use the lowest price technically acceptable source selection process.

570.305 Two-phase design-build selection procedures.

(a) These procedures apply to acquisitions of leasehold interests if you use the two-phase design-build selection procedures authorized by 570.105–2.
(b) The SFO must include all the following information:
(1) The scope of work.
(2) The evaluation factors and subfactors to be used in evaluating phase-one proposals and their relative importance.
(3) The maximum number of offerors to be selected to submit competitive proposals in phase-two.
(4) The evaluation factors, including cost or price, and subfactors to be used in evaluating phase-two proposals and selecting the successful offeror, and their relative importance.
(c) The following procedures apply to phase-one evaluation factors:
(1) Phase one factors include:
(i) Specialized experience and technical competence.
(ii) Capability to perform.
(iii) Past performance of the offeror's team (including architect-engineer and construction members of the team).
(iv) Other appropriate factors, such as site or location.

(2) Do not require offerors to submit detailed design information or cost or price information in phase one. Do not use cost related or price related evaluation factors.
(d) Set the maximum number of offerors to be selected for phase-two to not exceed five (5) unless you determine that a number greater than five is both:
(1) In the government's interest.
(2) Consistent with the purpose and objectives of the two-phase selection process.
(e) In phase-two, require detailed technical and price proposals. Evaluate the proposals using the procedures in 570.306.

570.306 Evaluating offers.

(a) You must evaluate offers solely in accordance with the factors and subfactors stated in the SFO.
(b) Evaluate prices and document the lease file to demonstrate that the proposed contract price is fair and reasonable.
(c) Evaluate past performance in accordance with FAR 15.305(a)(2).
(d) Document the evaluation of award factors other than price listed in the solicitation. The file must include the basis for evaluation, an analysis of each offer, and a summary of findings.

570.307 Negotiations.

(a) Follow the procedures in FAR 15.306 and 15.307 for exchanges (including clarifications, communications, negotiations, discussions, and revisions).
(b) Place a written record of all exchanges in the lease file.
(c) Provide prompt written notice to any offeror excluded from the competitive range or otherwise eliminated from the competition in accordance with FAR 15.503(a).

570.308 Award.

(a) Make award to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the SFO.
(b) Make award in writing and in the timeframe specified in the SFO.
(1) If you cannot make an award in that time, request in writing from each offeror an extension of the acceptance period through a specific date.
(2) If time is critical, you may request the extensions orally. You must make a record of the requested and confirm it promptly in writing.
(c) Notify unsuccessful offerors in writing or electronically in accordance with FAR 15.501 and 15.503(b).
(d) The source selection authority may reject all proposals received in response to an SFO, if doing so is in the best interest of the Government.

570.309 Debriefings.

The procedures of FAR 15.505 and 15.506 apply to leasing actions.

Subpart 570.4—Special Aspects of Contracting for Continued Space Requirements

570.401 Renewal options.

(a) *Exercise of options.* Before exercising an option to renew, follow the procedures in 517.202 and 517.207. The contract must first provide the right to renew the lease.
(b) *Market survey.* Before exercising an option to renew a lease, review current market information to ensure the rental rate in the option is fair and reasonable.

570.402 Succeeding leases.

570.402–1 General.

(a) If a succeeding lease for the continued occupancy of space in a building does not exceed the simplified lease acquisition threshold, you may use the simplified procedures in 570.2. Explain the absence of competition in the contract file.
(b) If a succeeding lease will exceed the simplified lease acquisition threshold, you may enter into the lease under either of the following conditions:
(1) You do not identify any potential acceptable locations.
(2) You identify potential acceptable locations, but a cost-benefit analysis indicates that award to an offeror other than the present lessor will result in substantial relocation costs or duplication of costs to the Government, and the Government cannot expect to recover such costs through competition.

570.402–2 Publicizing/Advertising.

Publish a notice if required by 505.101(c). The notice should:
(a) Indicate the Government's lease is expiring.
(b) Describe the requirement in terms of type and quantity of space.
(c) Indicate the Government is interested in considering alternative space if economically advantageous.
(d) Advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate.
(e) Provide a contact person for those interested in providing space to the Government.

570.402–3 Market survey.

Conduct a market survey following 570.301.

570.402–4 No potential acceptable locations.

If you do not identify any potential acceptable locations through the advertisement or the market survey, you may prepare a justification to negotiate directly with the present lessor. Fully document the efforts to locate alternative sources. Prepare the justification and obtain approval following FAR 6.3 and 506.3.

570.402–5 Potential acceptable locations.

If you identify potential acceptable locations through the advertisement or market survey, conduct a cost-benefit analysis following the procedures in 570.402–6. Based on the results of the cost-benefit analysis, take appropriate action as follows:
(a) If the cost-benefit analysis indicates that the Government will recover relocation costs and duplication of costs through competition, develop an SFO and negotiate with all interested parties following 570.3.
(b) If the cost-benefit analysis indicates that the Government cannot expect to recover relocation costs and duplication of costs through competition, prepare a justification for approval in accordance with FAR 6.3 and 506.3. Explain both:
(1) How you performed the cost-benefit analysis.
(2) That the cost-benefit analysis indicates that award to any other offeror will likely result in substantial costs to the Government that the Government cannot expect to recover through competition.

570.402–6 Cost-benefit analysis.

(a) The cost-benefit analysis must consider all the following:
(1) The prices of other potentially available properties.
(2) Relocation costs, including estimated costs for moving, telecommunications, and alterations, amortized over the firm term of the lease.
(3) Duplication of costs to the Government.
(4) Other appropriate considerations.
(b) Establish the prices for other potentially available properties by requesting each prospective offeror to provide an informational quotation for standard space for comparison purposes.
(1) Adjust the prices quoted for standard space for any special requirements.
(2) You do not need a formal SFO to obtain the informational quotation. However, you must provide a general description of the Government's needs.

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(3) If you obtain oral quotations, document the following information, as a minimum:

(i) Name and address of the firm solicited.

(ii) Name of the firm's representative providing the quote.

(iii) Price(s) quoted.

(iv) Description of the space and services for which the quote is provided.

(v) Name of the Government employee soliciting the quotation.

(vi) Date of the conversation.

(4) Compare the informational quotations to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease.

570.403 Expansion requests.

(a) If the expansion space is in the general scope of the lease, you may acquire the space through a modification without further justification under FAR 6.3.

(b) If the expansion space needed is outside the general scope of the lease, determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement by competitive means.

(1) Conduct a market survey to determine the availability of suitable alternative locations.

(2) If you identify alternate locations that can satisfy the total requirement, perform a cost-benefit analysis to determine whether it is in the Government's best interest to relocate. Consider, as appropriate.

(i) The cost of the alternate space compared to the cost of expanding at the existing location.

(ii) The cost of moving.

(iii) The cost of duplicating existing improvements.

(iv) The cost of the unexpired portion of the firm lease term. If a termination is possible, use the actual cost of such an action.

(v) the cost of disruption to the agency's operation.

(c) If you determine not to use competitive procedures and the expansion space is outside the general scope of the lease:

(1) If the estimated value of the acquisition does not exceed the simplified lease acquisition threshold, document the file as required by 570.203–2(b).

(2) If the estimated value of the acquisition exceeds the simplified lease acquisition threshold, prepare a justification for approval under FAR 6.3 and 506.3.

570.404 Superseding leases.

(a) Consider executing a superseding lease to replace an existing lease when the Government need numerous or detailed modifications to the space that would cause complications or substantially change the present lease.

(b) If the value of the superseding lease exceeds the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply. If the cost does not exceed the simplified lease acquisition threshold, you may use the simplified procedures in 570.2 and explain the absence of competition in the file.

570.405 Lease extensions.

(a) This section applies to extension of the term of a lease to provide for continued occupancy on a short-term basis.

(b) If the value of a lease extension will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply. For extensions that will not exceed the simplified lease acquisition threshold, you may use the simplified procedures in 570.2 and explain the absence of competition in the file.

(c) FAR 6.302–1 permits contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may apply to lease extensions in situations such as the following:

(1) The agency occupying the leased space is scheduled to move into other Federally controlled space, but encounters unexpected delays in preparing the new space for occupancy.

(2) The Government encounters unexpected delays outside of its control in acquiring replacement space.

(3) The Government is consolidating various agencies occupying the leased space and you need to extend the terms of some leases to establish a common expiration date.

Subpart 570.5—Special Aspects of Contracting for Lease Alterations

570.501 General.

(a) Acquire alterations through a modification to an existing lease if you meet all the following conditions:

(1) The alterations fall in the general scope of the lease. Consider whether the work can be regarded as fairly and reasonably an inseparable part of the lease requirement originally contracted for.

(2) The lessor is willing to perform the proposed alterations at a fair and reasonable price.

(3) It is in the Government's interest to acquire the alterations from the lessor.

(b) If proposed alterations are outside the general scope of the existing lease, decide whether to acquire the alterations through either:

(1) A supplemental lease agreement, justified and approved under 570.502–1.

(2) Government performance or a separate contract. The lease must first provide the Government the right to perform alterations to the leased space.

570.502 Alterations by the lessor.

These procedures apply to alterations you acquire directly from a lessor by modification or supplement lease agreement.

570.502–1 Justification and approval requirements.

If the proposed alterations are outside the general scope of the lease and you plan to acquire them from the lessor without competition, the following justification and approval requirements apply:

(a) If the alteration project will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply.

(b) If the alteration project will exceed $2,500, but not the simplified lease acquisition threshold, you may use simplified acquisition procedures and explain the absence of competition in the file.

(c) If the alternation project will not exceed $2,500, no justification and approval is required.

570.502–2 Procedures.

(a) *Scope of work.* Prepare a scope of work for each alteration project.

(b) *Independent Government estimate.* Obtain an independent Government estimate for each alteration project, including changes to existing alteration agreements with the lessor.

(c) *Request for proposal.*

(1) Provide the scope of work to the lessor, including any plans and specifications, and request a proposal. Indicate in the request for proposal if the Government will make progress payments and provide for retainage, when appropriate.

(2) Request sufficient cost or price information to permit a price analysis.

(d) *Audits.* If you require cost or pricing data and the alteration project will exceed $500,000, request an audit.

(3) *Proposal evaluation.*

(1) Determine if the proposal meets the Government's requirements.

(2) Analyze price or cost. At a minimum, compare the proposed cost to the independent estimate and, if applicable, any audit received.

(3) Analyze profit following FAR 15.404–4.

(4) Document your analysis under this paragraph and the resulting negotiation objectives.

(f) *Price negotiations.*

(1) Exercise sound judgment. You may make reasonable compromises as necessary.

(2) The negotiated price should provide the lessor with the greatest incentive for efficient and economical performance.

(3) Document negotiations in the contract file.

(g) *Award.* Use GSA Form 276, Supplemental Lease Agreement. If the modification does not exceed the simplified acquisition threshold, you may use GSA Form 300, Order for Supplies or Services. Reference the lease on the form.

(h) *Inspection and payment.* Do not make final payment for alterations until the work is:

(1) Inspected by a qualified Government employee or independent Government contractor.

(2) Confirmed as completed in a satisfactory manner.

570.503 Alterations by the Government or through a separate contract.

(a) If the Government chooses to exercise its right to make the alterations rather than contracting directly with the lessor, the Government may either:

(1) Have Federal employees perform the work.

(2) Contract out the work using standard contracting procedures that apply to a construction contract performed on Federal property.

(b) If the Government decides to contract for the work, invite the lessor, as well as all other prospective contractors, to submit an offer for the project.

Subpart 570.6—Solicitation Provisions and Contract Clauses

570.601 FAR provisions and clauses.

Include provisions or clauses substantially the same as the following FAR provisions and clauses.

If . . .	Then include . . .
(a) the estimated value of the acquisition exceeds $2,500.	52.204–3 Taxpayer Identification. 52.219–1 Small Business Program Representations. 52.222–36 Affirmative Action for Workers with Disabilities. 52.232–23 Assignment of Claims. 52.233–1 Disputes.
(b) the estimated value of the acquisition exceeds $10,000.	52.222–21 Prohibition of Segregated Facilities. 52.222–22 Previous Contracts and Compliance Reports. 52.222–25 Affirmative Action Compliance. 52.222–26 Equal Opportunity. 52.222–35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era. 52.222–37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.
(c) the estimated value of the acquisition exceeds $25,000.	52.209–6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(d) the estimated value of the acquisition exceeds $100,000.	52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(e) the estimated value of the acquisition exceeds the simplified lease acquisition threshold.	52.203–2 Certificate of Independent Price Determination. 52.203–7 Anti-Kickback Procedures. 52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. 52.215–2 Audit and Records—Negotiation. 52.219–8 Utilization of Small Business Concerns. 52.223–6 Drug-Free Workplace. 52.233–2 Service of Protest.
(f) the estimated value of the acquisition exceeds $500,000.	52.219–9 Small Business Subcontracting Plan. 52.219–16 Liquidated Damages—Subcontracting Plan.
(g) the estimated value of the acquisition exceeds $500,000 and the acquisition includes an evaluation factor that considers the extent of participation of small disadvantaged business concerns in accordance with FAR 19.12.	52.219–24 Small Disadvantaged Business Participation Program—Targets. 52.219–25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
(h) the estimated value of the acquisition exceeds $10 million.	52.222–24 Preaward On-Site Equal Opportunity Compliance Review.
(i) you require cost or pricing data for work or services exceeding $500,000.	52.215–10 Price Reduction for Defective Cost or Pricing Data. 52.215–12 Subcontractor Cost or Pricing Data.
(j) you authorize submission of facsimile proposals.	52.215–5 Facsimile Proposals.
(k) a negotiated acquisition provides monetary incentives based on actual achievement of small disadvantaged business subcontracting targets under FAR 19.1203 and 519.1203.	52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

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570.602 GSAR solicitation provisions.

Each SFO must include provisions substantially the same as the following, unless you determine that the provision is not appropriate:

552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property. Use Alternate I if you decide that it is advantageous to the Government to allow offers to be submitted up to the exact time specified for award. Use Alternate II if the Government intends to award without discussions. These two alternates are not exclusive.
552.270–2 Historic Preference.
552.270–3 Parties to Execute Lease.

570.603 GSAR contract clauses.

Insert clauses substantially the same as the following in solicitations and contracts for leasehold interests in real property that exceed the simplified lease acquisition threshold, unless you determine that a clause is not appropriate. You do not require a deviation under 570.604 to determine that a clause in this section is not appropriate. Use the clauses at your discretion in actions at or below the simplified lease acquisition threshold.

552.270–4 Definitions. You must use this clause if you use 570.270–28.
552.270–5 Subletting and Assignment.
552.270–6 Maintenance of Building and Premises—Right of Entry.
552.270–7 Fire and Casualty Damage.
552.270–8 Compliance with Applicable Law.
552.270–9 Inspection—right of Entry.
552.270–10 Failure in Performance.
552.270–11 Successors Bound.
552.270–12 Alterations.
552.270–13 Proposals for Adjustment.
552.270–14 Changes.
552.270–15 Liquidated Damages. Insert this clause in solicitations and contracts if you have a critical requirement to meet the delivery date and you cannot establish an actual cost for the loss to the Government resulting from late delivery.
552.270–16 Adjustment for Vacant Premises.
552.270–17 Delivery and Condition.
552.270–18 Default in Delivery—Time Extensions.
552.270–19 Progressive Occupancy.
552.270–20 Payment.
552.270–21 Effect of Acceptance and Occupancy.
552.270–22 Default by Lessor During the Term.
552.270–23 Subordination, Nondisturbance and Attornment
552.270–24 Statement of Lease.
552.270–25 Substitution of Tenant Agency.
552.270–26 No Waiver.
552.270–27 Integrated Agreement.
552.270–28 Mutuality of Obligation.
552.270–29 Acceptance of Space.

570.604 Deviations to provisions and clauses.

(a) You need a deviation approved under 501.4 to omit any required provision or clause.

(b) You also need an approved deviation to modify the language of a provision or clause mandated by statute (e.g., GSAR 552.203–5, Covenant Against Contingent Fees, FAR 52.215–2, Audit and Records—Negotiation). The authorizing statue must allow for a waiver.

(c) Certain clauses required by non-GSA regulations require approval of the issuing agency before you can delete or modify them. For example, 52.222–26, Equal Opportunity; 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; and 52.222–36, Affirmative Action for Workers with Disabilities, require the approval of the Department of Labor's Office of Federal Contract Compliance Programs before they can be deleted from or modified in the SFO or lease.

Subpart 570.7 Forms

570.701 Standard forms.

Use Standard Form 2, U.S. Government Lease for Real Property, to award leases unless you use GSA Form 3626 (see 570.702). Delete the reference to the Standard Form 2–A in paragraph 7.

570.702 GSA forms.

(a) You may use GSA Form 3626, U.S. Government Lease for Real Property (Short Form), to award leases if you use the simplified leasing procedures in 570.2 or if you determine it advantageous to use.

(b) You may use GSA Form 276, Supplemental Lease Agreement, for actions requiring the agreement of both parties. This includes actions such as amending an existing lease to acquire additional space, obtaining partial release of space, revising the terms of a lease, settling restoration claims, and acquiring alterations.

(c) You may use GSA Form 1364, Proposal To Lease Space, to obtain offers from prospective offerors.

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federal register

Friday
July 9, 1999

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Comprehensive Program Plan for Fiscal Year 1999; Notice

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1204]

RIN 1121–ZB71

Comprehensive Program Plan for Fiscal Year 1999

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final program plan for fiscal year 1999.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing its Final Program Plan for fiscal year (FY) 1999.

FOR FURTHER INFORMATION CONTACT: Eileen M. Garry, Director, Information Dissemination Unit, at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), the Administrator of OJJDP published for public comment a Proposed Comprehensive Plan describing the program activities that OJJDP proposed to carry out during Fiscal Year (FY) 1999. The Proposed Comprehensive Plan included activities authorized in Parts C and D of Title II of the JJDP Act, codified at 42 U.S.C. 5651–5665a, 5667, 5667a. The public was invited to comment on the Proposed Plan by March 18, 1999. The Administrator analyzed the public comments received, and the comments and OJJDP's responses are provided below. The Administrator took these comments into consideration in developing this Final Comprehensive Plan describing the particular program activities that OJJDP intends to fund during FY 1999, using in whole or in part funds appropriated under Parts C and D of Title II of the JJDP Act.

Notice of the official solicitation of grant or cooperative agreement applications for competitive programs to be funded under the Final Comprehensive Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Overview

After a steady climb in the rates of juvenile violent crime arrests, resulting in an increase of 60 percent between 1988 and 1994, the Nation experienced a substantial, 23 percent decline in the 3 years between 1994 and 1997. More notable were the trends in the juvenile arrest rate for murder, which, after doubling between 1987 and 1993, dropped by more than 40 percent between 1993 and 1997. In addition, in the discussion of trends, it is important to note that in any given year less than ½ of 1 percent of this country's juveniles ages 10 to 17 are arrested for violent crime. Even though rates have been dropping, however, they are still more than 20 percent higher than the average rate of the years between 1980 and 1988.

The serious concerns engendered by the increase in violent juvenile crime in the 1980's led many States to enact legislation to address the changing nature of juvenile delinquency and to use a more accountability-based approach in dealing with serious violent juvenile offenders. At the same time, a national dialog began over how best to reform the juvenile justice system to make it more effective in preventing and intervening with juvenile delinquency and victimization and in protecting the public. In order to see this become a reality, the positive achievements of recent years should lead not to complacency, but to a renewed commitment to continue to pursue the research-based, comprehensive approach to problems of delinquency, violence, and victimization that OJJDP inaugurated with the publication in December 1993 of its *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.*

It is encouraging that in recent years communities have begun to take on this work and make the commitment needed to make a comprehensive strategy a reality. More and more communities are coming to the understanding that a long-term, consistent commitment will be required to reduce juvenile delinquency, violence, and victimization and to ensure public safety.

This Final Comprehensive Plan describes OJJDP's plans for funding activities authorized under Part C (National Programs) and Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention) of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act. The activities authorized under Parts C and D make up part of OJJDP's overall responsibilities under the JJDP Act. These responsibilities are outlined briefly below.

In 1974, the JJDP Act established OJJDP as the Federal agency responsible for providing national leadership, coordination, and resources to develop and implement effective methods to prevent and reduce juvenile delinquency and improve the quality of juvenile justice in the United States. OJJDP administers State Formula Grants under Part B of Title II, State Challenge Grants under Part E of Title II, and Community Prevention Grants under Title V of the JJDP Act to assist States and territories to fund a range of delinquency prevention, control, and juvenile justice system improvement activities. OJJDP provides support activities for these and other programs under statutory set-asides that are used to provide related research, evaluation, statistics, demonstration, and training and technical assistance services. OJJDP also funds Special Emphasis programs, authorized under Part C; school and community-based gang prevention, intervention, and suppression programs under Part D; and mentoring programs under Part G of Title II of the JJDP Act; funds numerous research, evaluation, statistics, demonstration, training and technical assistance, and information dissemination activities through its National Institute for Juvenile Justice and Delinquency Prevention; administers the Drug Prevention Program, the Underage Drinking Program, the Safe Schools Initiative, a Native American discretionary grants program, the Safe Start: Children Exposed to Violence Initiative, and the Juvenile Accountability Incentive Block Grants program. OJJDP also coordinates Federal activities related to juvenile justice and delinquency prevention.

OJJDP serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention, coordinates the Concentration of Federal Efforts Program, and administers both the Title IV Missing and Exploited Children's Program and programs under the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. 13001 *et seq.*

OJJDP focuses its assistance on the development and implementation of programs with the greatest potential for reducing juvenile delinquency and improving the juvenile justice system by establishing partnerships with State and local governments, American Indian and Alaska Native jurisdictions, and public and private agencies and organizations. OJJDP performs its role of national leadership in juvenile justice and delinquency prevention through a cycle of activities. These include collecting data and statistics to determine the extent and nature of issues affecting juveniles; funding research that can lead to demonstrations funded by discretionary grants; evaluating demonstration projects; sharing lessons learned from the field with practitioners through a range of information dissemination vehicles; providing seed money to States through formula and block grants to implement projects or reform efforts; and providing training and technical assistance to assist States and local governments to implement programs effectively and to maintain the integrity of model programs as they are being replicated.

It is important to note that OJJDP emphasizes coordination with other Office of Justice Program (OJP) components and other Federal agencies whenever possible to concentrate Federal resources to achieve maximum results from its programs and initiatives. This coordination, which is evidenced in many of the program descriptions that follow, includes joint funding, interagency agreements, and partnerships to develop, implement, and evaluate projects. More important, it is critical that the reader become familiar with the program activities of the other OJP Bureaus and Offices as reflected in the Office of Justice Programs Fiscal Year 1999 Program Plan. The work undertaken in OJP in many instances cuts across components and areas of practice; therefore, the work undertaken by OJJDP should be viewed as part of a larger OJP composite.

Considering all the factors discussed above, OJJDP has prepared this Final Comprehensive Plan for FY 1999 for activities authorized under Part C (National Programs) and Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention) of Title II of the JJDP Act, as described in the following pages.

Fiscal Year 1999 Program Planning Activities

The OJJDP program planning process for FY 1999 was coordinated with the Assistant Attorney General, Office of Justice Programs (OJP), and all OJP components. The program planning process involved the following steps:

- Internal review of existing programs by OJJDP staff.
- Internal review of proposed programs by OJP bureaus and Department of Justice components.
- Review of information and data from OJJDP grantees and contractors.
- Review of information contained in State comprehensive plans.
- Review of comments from youth service providers, juvenile justice practitioners, and researchers who provided input in proposed new program areas.
- Consideration of suggestions made by juvenile justice policymakers concerning State and local needs.
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed on the following pages continuation projects currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in FY 1999, either within an existing project period or through an extension for an additional project period. A grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives. The amount of award is based on prior projections, demonstrated need, and fund availability.

The only projects described in this Final Program Plan are those that will receive Part C or Part D FY 1999 continuation funding under project period or discretionary continuation assistance awards and new programs that OJJDP intends to fund in FY 1999. Readers should note that they will not find descriptions of other OJJDP programs, including mentoring programs under Part G of Title II of the JJDP Act, the Drug Prevention Program, the Underage Drinking Program, the Safe Schools Initiative, the Native American discretionary grants program, the Safe Start: Children Exposed to Violence Initiative, and the Juvenile Accountability Incentive Block Grants program. When appropriate, separate solicitations are issued for applications for funding for programs that are not authorized under Parts C and D.

Consideration for continuation funding for an additional project period for previously funded discretionary grant programs was based upon several factors, including the following:

- The extent to which the project responds to the applicable requirements of the JJDP Act.
- Responsiveness to OJJDP and Department of Justice FY 1999 program priorities.
- Compliance with performance requirements of prior grant years.
- Compliance with fiscal and regulatory requirements.
- Compliance with any special conditions of the award.
- Availability of funds (based on appropriations and program priority determinations).

In accordance with section 262 (d)(1)(B) of the JJDP Act, as amended, 42 U.S.C. 5665a, the competitive process for the award of Part C funds is not required if the Administrator makes a written determination waiving the competitive process:

1. With respect to programs to be carried out in areas in which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act codified at 42 U.S.C. 5121 *et seq.* that a major disaster or emergency exists, or
2. With respect to a particular program described in Part C that is uniquely qualified.

Program Goals

The three goals listed below constitute the major elements of a sound policy that ensures public safety and security while establishing effective juvenile justice and delinquency prevention programs. Underlying each of the goals is the overarching premise that their achievement is vital to protecting the long-term safety of the public from juvenile delinquency and violence.

- *Delinquency Prevention and Early Intervention.* OJJDP promotes delinquency prevention and early intervention efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers. While removing serious and violent juvenile offenders from the street serves to protect the public, long-term solutions lie primarily in taking aggressive steps to stop delinquency before it starts or becomes a pattern of behavior.
- *Improvement of the Juvenile Justice System.* OJJDP seeks to improve the juvenile justice system and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.
- *Corrections, Detention, and Community-Based Alternatives.* OJJDP supports efforts to preserve the public safety through the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders.

In pursuing these broad goals, OJJDP divides its programs into four categories: public safety and law enforcement; strengthening the juvenile

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justice system; delinquency prevention and intervention; and child abuse and neglect and dependency courts. A fifth category, overarching programs, contains programs that have significant elements common to more than one of the other four categories. Following the summary of public comments and the introductory section below, the continuation programs that OJJDP will fund in FY 1999 are listed and summarized within these five categories. New programs are described in the introductory section.

Summary of Public Comments on the Proposed Comprehensive Plan for Fiscal Year 1999

OJJDP published its Proposed Comprehensive Plan for FY 1999 in the **Federal Register** (Vol. 64, No. 20) on February 1, 1999, for a 45-day public comment period. OJJDP received 17 letters commenting on the Proposed Plan. (Each letter had one signature.) All comments have been considered in the development of OJJDP's Final Comprehensive Plan for Fiscal Year 1999.

Comment: Eight letters suggested that OJJDP should include career academies in its program plan. Originally established in inner-city Philadelphia in the late 1960's, high school career academies are designed to restructure high schools to support students academically while providing them with marketable skills, work-based learning experiences, and clearer pathways to postsecondary education and productive employment. Support for including career academies in the program plan came from the president of the National Career Academy Coalition, two high school principals, the executive director of the American Society for Public Administration (ASPA) and a person associated with the ASPA Philadelphia Regional Chapter, two career academy coordinators, and the professional standards officer for the Law Enforcement Training Board of the Indiana Law Enforcement Academy.

Response: OJJDP is a strong supporter of the career academy concept and is working with LAWNET, the National Career Academy Coalition's collaborative initiative to link law-related career academies with police departments and communities across the country. The U.S. Department of the Treasury and the U.S. Department of Justice have provided funding and personnel support to two academies (Academy for Law, Justice, and Security and the Public Service Academy) in Anacostia Senior High School in Washington, D.C. OJJDP has also long supported the Communities in Schools program, which has facilitated a number of career academies. [Note: At the time this response was sent to the commenters, OJJDP was considering working with LAWNET; however, this effort was not chosen to be part of the final program plan.]

Comment: One writer, a State juvenile justice specialist, made four comments and one request. The comments concerned: (1) Mental health issues and education for system professionals in recognizing signs of mental illness, (2) technical assistance to Title V and the need to increase the capacity of States to conduct the training without entailing a high cost for training materials, (3) the need for an annual report of products developed by the various projects, and (4) the survey of juvenile probation and inclusion of social service and community placements. The fifth item was a request for additional information about funds earmarked for the National Association of State Fire Marshals.

Response: OJJDP's responses are presented in order below.

1. Concerning mental health issues, the joint funding efforts OJJDP is engaged in with the Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMSHA), encompasses work with the education system. The U.S. Department of Education's Office of Special Education Programs (OSEP) is also a partner in this effort. The program that CMHS funds is designed to support the development of a system of care for children and youth across the developmental spectrum. Forty-five sites are currently funded to create this system of care. OJJDP's funds support training and technical assistance to assist with the greater inclusion of the juvenile justice system in the sites' efforts to develop a comprehensive system of care, and the OSEP funds support the same for the education system.

OJJDP funds that were transferred for the system of care on Native American reservations under a program called Circles of Care are being used to fund an additional site. These Native American recipients will be planning for the development and implementation of a system of care for youth on the reservation, including the school system.

OJJDP has also transferred funds to the National Institute of Mental Health to support studies of attention deficit hyperactivity disorder and a study of mental health issues among a school population. Both of these studies will be of assistance to schools and communities in future efforts to address the mental health needs of children and youth.

2. The answer to the comment about the technical assistance to Title V is that the contractor will work with OJJDP's Formula Grants Program technical assistance contractor to develop a community planning curriculum for delinquency prevention planning and implementation activities and use it to train groups of trainers in different States. OJJDP intends to expand the pool of in-State trainers and to encourage wide use of training materials, thereby making Title V training and technical assistance accessible to a large number of communities.

3. The suggestion for a single annual report of the products developed by the various projects certainly has some merit, but at this time, OJJDP does not have any plans for such a publication. Although OJJDP does not issue the type of report the writer described, the Office does publish a wealth of information about the latest promising and effective programs, an annual report that gives an overview of OJJDP's major accomplishments, and various program-specific reports such as the annual report to Congress on Title V and last year's report to Congress on OJJDP's Juvenile Mentoring Program. The commenter is on OJJDP's mailing list to receive all these publications.

4. In regard to the Survey of Juvenile Probation, the writer asked if this effort to determine the number of juveniles under some form of community supervision includes social service placements and community placements of youth in the custody of the State correctional system. The answer is yes. OJJDP will endeavor to enumerate those juveniles who are under supervision as part of an official juvenile court sanction. Therefore, all those not currently in a residential placement will be enumerated. However, at this stage in the development of the project, OJJDP reserves the right not to cover particular parts of the system for practical or theoretical reasons. To make the survey consistent across jurisdictions, if OJJDP chooses to exclude or include particular populations in one jurisdiction, those populations will be excluded or included in all jurisdictions.

5. In response to the request for more information about the earmarked funds for the National Association of State Fire Marshals (NASFM), the following information was provided. NASFM was awarded $382,640 to implement the Juvenile Fire-Setter Intervention Project. NASFM will develop a national juvenile fire-setting intervention mobilization plan that will facilitate and promote the establishment of juvenile fire-setter intervention programs, based on existing valid models at the State and local levels.

NASFM also plans to provide the first comprehensive study that will look at the problem of juvenile fire-setting through an examination of the best of what has been done to date and the best of what might be done in the future. This study will serve as the basis of a strategic plan to better coordinate existing public and private resources needed to reduce the severity and incidence of fires started by children. Through this study, NASFM plans to develop a consensus statement on the nature, dynamics, and scope of children's involvement with fire; present an analytical summary of public and private sector initiatives addressing juvenile fire-setting; recommend how best to use existing public and private resources to reduce the severity and incidence of fires started by children; and establish a clearinghouse to create linkages among fire services, educational, product safety, and child welfare professionals addressing juvenile fire-setting issues.

Experts nationwide will analyze the issues and techniques that have been key to effective intervention programs and recommend national standardized approaches that have acceptance from both professional and peer groups.

Comment: One writer, director of a university training resource center, affirmed the "importance of addressing the educational issues related to youth in the juvenile justice system" and indicated support for the OJJDP proposal to "establish with the Department of Education a Center for Students with Learning Disabilities in the Juvenile Justice System."

Response: OJJDP appreciates the words of support for a cooperative effort between OJJDP and the U.S. Department of Education to establish a Center for Students with Learning Disabilities in the Juvenile Justice System. The commenter was sent an information copy of the announcement of a new U.S. Department of Education grant for establishing this center. The application deadline was April 23, 1999.

OJJDP agrees that it is important to address educational issues related to youth in the juvenile justice system. Most of OJJDP's funding is not provided under Parts C and D but is distributed to the States and territories through Formula Grants, Challenge, and Title V (Community Prevention) programs and education-related concerns can be addressed through these programs. Two of the Challenge Grant activities, for example, refer to "appropriate education services, including special education, for youth in the juvenile justice system" and comprehensive education services as part of aftercare programs.

Comment: A second writer, executive director of the National Juvenile Detention Association, also applauded the proposed collaboration with the Department of Education in developing the Center for Students with Learning Disabilities in the Juvenile Justice System. This commenter also expressed appreciation for OJJDP's "continued support in funding projects to improve systemic and programmatic issues within the juvenile justice system and more specifically the juvenile detention and corrections field."

Response: OJJDP appreciates the words of approval for its funding of projects to improve systemic and programmatic juvenile justice issues, specifically in the field of detention and corrections. In response to the comments in support of the Center for Students with Learning Disabilities in the Juvenile Justice System, OJJDP sent the writer an information copy of the announcement of a new U.S. Department of Education grant for establishing this center. The application deadline was April 23, 1999.

Comment: One commenter, the associate legislative director of the National Association of Counties, expressed concern that the plan "fails to address the county role in the partnership" between State legislators and State and local leaders. The writer offered to work with OJJDP in building a county policymaker component in the plan.

Response: OJJDP recognizes the important role counties play in the overall effort to effectively deal with juvenile justice issues. During the past year, OJJDP officials have met with the writer and other representatives of the National Association of Counties and the National Organization of Black County Officials to discuss development of a long-term approach to improving the juvenile justice system at all levels'national, State, county, and community. OJJDP plans to continue to work with and encourage representatives of the various levels of government to identify and agree on ways to collaborate to prevent and reduce juvenile crime and victimization throughout the country.

Comment: Another writer, president of a State council on crime and delinquency, also suggested that the program of Technical Assistance for State Legislatures should be more focused on county officials. The writer also commented on two other areas: field-initiated research and the Balanced and Restorative Justice (BARJ) Project. The response concerning the need for more focus on counties was essentially the same as the response provided to the preceding comment. The other two comments are noted and addressed below.

1. Field-Initiated Research. The writer asked that funding for field-initiated research be included in the Final Program Plan. OJJDP has added a field-initiated program of general research to the plan.

2. BARJ. The writer praised this project and recommended increased funding to expand its training and technical component to jurisdictions throughout the United States. Although OJJDP's grant support for the Project is modest, the Office shares the commenter's enthusiasm for the BARJ Project. OJJDP views the BARJ Project as an evolving, not a static, venture to improve juvenile justice systems and expects to see further growth and development of the BARJ Project and further positive outcomes for juvenile justice from it.

Comment: One writer, a juvenile prosecutor in a county attorney's office, objected to money or attention going to anything titled "balanced and restorative justice," which he referred to as an oxymoron. He wrote that a balanced approach is "balanced between fixing the kid, protecting the community, and restoring the victim" and that restorative justice "focuses primarily on restoring the victim." The writer praised OJJDP's December 1998 teleconference on Juveniles and the Criminal Justice System.

Response: OJJDP grant support for the BARJ Project is quite modest. The BARJ Project was deliberately organized to merge the concepts and practices of the "balanced approach" and "restorative justice." OJJDP determined that the goals of community safety, victim reparation, and offender rehabilitation are best achieved if the offender is directed to engage in restorative activities. These activities are structured to foster the offender's sense of accountability and hands-on competency to pursue constructive rather than destructive life styles. One of the main authors of the balanced approach concept (Dennis Maloney) is a senior associate of the BARJ Project and assists the Project in joining not only the theoretical and programmatic elements of the balanced approach and restorative justice, but of "community justice" as well. OJJDP views the BARJ Project as an evolving, not a static, venture to improve juvenile justice systems. Its roots are in effective juvenile restitution

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programs, which by definition are "restorative." Besides evidence from other sources, the effectiveness of these programs was determined by a study in the writer's own State of Utah (please see OJJDP Update on Research: Restitution and Juvenile Recidivism by Jeffrey A. Butts and Howard N. Snyder, September 1992). OJJDP incorporated lessons learned from the best restitution programs into the BARJ Project and expects to see further growth and development of the BARJ Project and further positive outcomes for juvenile justice from it.

Comment: The director-designate of a State department of juvenile justice wrote to support OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and the plan's emphasis on delinquency prevention. Of the areas that OJJDP is considering for new programs, the writer specifically expressed support for five: community justice and balanced and restorative justice, risk and needs assessment instruments, education programs for students in the juvenile justice system, and programs for abused and neglected children within the juvenile justice system.

Response: OJJDP appreciates the writer's support for the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and for the emphasis on delinquency prevention. It is also helpful to know which of the proposed broad priority areas the writer believes should be given major consideration.

Comment: The president of a private program to combat juvenile delinquency commended the programs OJJDP proposed to fund this fiscal year. In addition, the writer stated that there is need for reform in how adults view and deal with young people.

Response: OJJDP appreciates the writer's support for the Proposed Program Plan. In regard to the issue of "how adults view and deal with young people," OJJDP notes that the programs it supports all involve an element of respect for the young people they serve. As the Proposed Comprehensive Plan points out, the foundation of OJJDP's work is its Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The Comprehensive Strategy provides a strategic planning framework for States and communities to increase their ability to effectively combat juvenile delinquency and victimization and provide for public safety. Based on three decades of research on what causes juvenile delinquency and what works to address it, the Comprehensive Strategy emphasizes six key principles. The first two principles touch on the writer's concern about respect for youth:

1. Strengthening families as their children's first and primary teachers and role models.

2. Supporting core social institutions such as schools, religious institutions, and community organizations in their efforts to develop youth who will lead productive and law-abiding lives.

An example of a specific OJJDP program that helps to build mutual respect between youth and adults is the Juvenile Mentoring Program (JUMP), which provides one-on-one mentoring for youth at-risk of delinquency, gang involvement, educational failure, or dropping out of school. The adults who volunteer as mentors give their time and talents to try to make a difference in the lives of these young people. Initial evaluation findings from 93 JUMP sites across the county show that youth in the program reported that mentoring helped them stay away from alcohol and drugs, keep away from gangs, and avoid using guns.and knives.

Comment: A writer with a background in paralegal and security work stressed the importance of early prevention, parent involvement, mentoring, and other programs that reduce the risk of involvement in delinquency and described positive results that her community has achieved through collaboration among business, schools, mentoring groups, and government.

Response: OJJDP's proposals for FY 1999 reflect a similar commitment to prevention activities.

Introduction to Fiscal Year 1999 Program Plan

Since 1993, when it published the *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*, OJJDP has been advocating that States, local governments, and communities adopt this research-based comprehensive strategy approach to address the problems of juvenile crime and victimization. OJJDP has synthesized decades of research and practice from practitioners and established a framework for implementing an effective juvenile justice system. Through support of research, demonstration programs, and training and technical assistance, OJJDP encourages States, local governments, and communities to use the Comprehensive Strategy to develop coordinated, communitywide approaches to preventing and intervening with juvenile delinquency and victimization. OJJDP focuses its support on programs and initiatives that further one or more of the basic principles of the Comprehensive Strategy:

- Strengthen families in their role of guiding, disciplining, and instilling sound values in their children.
- Support core social institutions and their role in supporting families and helping children develop to their maximum potential.
- Promote prevention strategies and activities that reduce the impact of negative (risk) factors and enhance the influence of positive (protective) factors in the lives of youth at greatest risk of delinquency.
- Intervene immediately and appropriately at the first signs of trouble in a child's life and establish a system of graduated sanctions and a continuum of services to respond appropriately to the needs of each juvenile offender.
- Protect the public from the most serious, violent, and chronic juvenile offenders by providing for their incapacitation while at the same time addressing their treatment needs.

For the fourth consecutive year, OJJDP has developed a Program Plan rooted in its Comprehensive Strategy. The Plan also supports the Coordinating Council's National Juvenile Justice Action Plan released in 1996. This Action Plan, which grew out of the Comprehensive Strategy, provides eight objectives to reduce juvenile violence and describes ways to meet these objectives. OJJDP will continue to support development and refinement of the Comprehensive Strategy and training and technical assistance to help jurisdictions begin to implement it by developing a continuum of care to deal with both juvenile offenders and juveniles at risk of becoming offenders. Development, dissemination, and support of the Comprehensive Strategy and the Action Plan are prime examples of how OJJDP's national leadership is instrumental in moving the field from innovation to infrastructure.

OJJDP-funded programs that emphasize early prevention and family involve a variety of approaches, including strengthening the dependency court, parent training, nurse-based home visitation for at-risk first-time mothers, problem solving, parent support groups led by parents themselves, multisystemic therapy, and training and technical assistance for replicating exemplary programs. Other prevention programs reach out to youth in the schools and the community. They include youth development, conflict resolution, mentoring, career preparation, truancy reduction, drug prevention, violence prevention, and antigang outreach programs.

Efforts involving intervention, accountability, and sanctions include dissemination of the principles of balanced and restorative justice, emphasis on reducing overcrowding and disproportionate minority confinement in secure facilities, gender-specific services targeted to female juvenile offenders, intensive aftercare services, services for chemically involved young people, and a communitywide approach to preventing and suppressing gangs. Funds are also provided for collaborations between police and health services agencies and for appropriate training for legislators, prosecutors, and line staff in secure facilities.

Research and evaluation can assure policymakers, practitioners, and the public that juvenile justice is moving in the right direction and that programs being supported do indeed work. OJJDP will continue supporting a range of research studies, including its landmark study of the causes and correlates of delinquency; studies of very young offenders and of the origins of and pathways to youth violence; a cost-benefit analysis of juvenile justice programs; analyses of a range of juvenile justice data; development of a juvenile sex offender typology; studies of risk reduction for delinquency, substance abuse, and school failure in school children and of delinquency and attention deficit/hyperactivity disorder; and censuses and surveys related to confinement and probation. Continued support will be provided for evaluations of the SafeFutures initiative, Safe Kids/Safe Streets, Partnerships To Reduce Juvenile Gun Violence, Intensive Community-Based Aftercare, teen court training and technical assistance, and several gang-related programs.

New Programs

OJJDP will also support new programs in several areas related to emerging issues facing the juvenile justice system. These programs are described below. The availability of funding for new competitive programs will be announced in the next few months in the **Federal Register** and posted on OJJDP's Web site at www.ojjdp.ncjrs.org under Grants and Funding.

Three new programs fall in the area of information dissemination. The first, the *Children's Court Communications Project*, will help to publicize the centennial of the juvenile court. Jointly designed by the Justice Policy Institute, a project of the Center on Juvenile and Criminal Justice, and the Children and Family Justice Center at Northwestern University School of Law, this project is designed to humanize juvenile court "graduates," highlight their successes, and publicize lessons learned and best practices of the juvenile justice system. OJJDP funds will enable the project to disseminate stories about successful former juvenile court clients through a combined effort involving television, radio, and print public service announcements; a summary publication; and electronic and print media interviews, stories, and talk shows. In funding this effort, OJJDP is engaging in a public-private partnership with the MacArthur Foundation and the Annie E. Casey Foundation. The project will expand public knowledge and dialog about the juvenile court during its centennial and open the door for professionals, advocates, and community-based entities to learn about best practices and successes in the system.

Education on Gun Violence and Safety is the second new program focusing on disseminating information and educating the public. OJJDP will partner with the Bureau of Justice Assistance to support Education on Gun Violence and Safety. This project seeks to educate gunowners and parents about how to safely use and store guns and how to protect children from gun violence. Through a coordinated communications, education, grassroots, and media campaign, the project will reach gunowners and other caring adults with important information on preventing youth's illegal access to and unlawful use of guns. In FY 1999, critical communications research with gunowners will determine their perceptions, attitudes, habits, and inclinations and thereby inform the communications strategy.

OJJDP will participate in a joint Department of Justice/Federal Trade Commission *Study of the Marketing of Media Violence*, which will examine whether the motion picture, television, music, and video game industries market adult-rated material to young people. This study will analyze the degree to which violent entertainment is targeted at the very people who should not be exposed to it. The year-long study will also examine whether entertainment industries require, monitor, or encourage enforcement of the rating systems in stores and movie theaters.

As described in the Proposed Program Plan, OJJDP is planning a joint initiative with the Office of Special Education and Rehabilitative Services, U.S. Department of Education, to establish a *Center for Students With Disabilities in the Juvenile Justice System*. The Secretary of Education and the Attorney General expect this project to have a significant impact on services for students with disabilities in the juvenile justice system. Improvements in these services will be based on a combination of research, training, and technical assistance. To meet the challenges of serving this population of students, positive changes must occur in the following areas: prevention, educational programming, and reintegration/transition. The Center for Students With Disabilities in the Juvenile Justice System will provide guidance and assistance to States, schools, justice programs, families, and communities to design, implement, and evaluate comprehensive educational programs based on research-validated practices for students with disabilities within the juvenile justice system.

A new school-related prevention program is the *School and Classroom Management Demonstration Project*. OJJDP will support this North Carolina pilot initiative designed to improve classroom management and to assist in the creation of safe learning environments. Funds will be awarded to the Center for the Study of School Violence to manage the initial pilot in partnership with the University of North Carolina and the North Carolina State Board of Education. The State of North Carolina has made a commitment to support full implementation of the program. The purpose of the pilot program is to increase the ability of teachers and administrators to model and use sound conflict resolution practices by integrating skills training into preservice curriculums at North Carolina schools of education and by working with the North Carolina State Board of Education to change curriculum requirements to include conflict resolution skills training in the context of effective classroom management.

OJJDP plans to partner with the U.S. Department of Education's Safe and Drug-Free Schools Program to fund *Training and Technical Assistance for Sharing Information*, a program on information sharing across disciplines. Protecting children, preventing delinquency, maintaining safe schools and communities, and ensuring accountability for juvenile offenders all require effective information sharing across the agencies responsible for these outcomes. Educators who see warning signs of delinquency can, by sharing information with justice and other youth-serving agencies, develop effective intervention strategies. At the other end of the spectrum, when the juvenile justice system is about to send an adjudicated offender back into the regular school system, justice officials

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need to notify the school so it can provide needed support services to help the student succeed. These are just two examples of circumstances in which it is both appropriate and necessary to share information to ensure public safety.

This new training and technical assistance program would provide guidance to school, court, police, probation and parole, child protective services, and health and social service agencies on opportunities, barriers, and legislation regarding sharing information on juveniles. The training would expand on guidance provided in *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (OJJDP Program Report, 1997) to assist professionals interested in developing a range of interagency information sharing agreements. Training sessions would provide instruction on the legal, ethical, and institutional barriers to information sharing between/among parties with "legitimate interests." Technical assistance would facilitate planning and implementing a practical system of information exchange that meets legal, ethical, and institutional requirements locally through collaborative decisionmaking and negotiation among agencies. The program would also support the development of interagency agreements and protocols for sharing information and data that reflect mutually agreeable policies and procedures.

Two programs, in addition to the Circles of Care Program described in the Proposed Program Plan, address mental health issues as they relate to juvenile justice. These programs will further the overall goal of OJJDP's mental health strategy: to increase understanding of the mental health needs of at-risk youth and juvenile offenders, improve the quality of services and treatment they receive, and prevent their future involvement in the juvenile justice system. (Readers should note that, besides the programs funded under Parts C and D of Title II of the JJDP Act, funding for mental health programs related to juvenile justice is also available under the Juvenile Accountability Incentive Block Grants (JAIBG) Program administered by OJJDP. Information about JAIBG funding opportunities is available from the Juvenile Justice Clearinghouse at 800-638–8736 and from OJJDP's Web site at www.ojjdp.ncjrs.org.)

In FY 1999, support for an update of the 1992 report *Responding to the Mental Health Needs of Youth in the Juvenile Justice System* will provide important information as to current trends and prevalence of mental health disorders and approaches and programs for dealing with this population. Systems interactions and legal issues affecting mentally disordered youth in the juvenile justice system are likely to be other topics covered by *Responding to the Mental Health Needs of Youth in the Juvenile Justice System—Part II.* Of particular importance is the need to address the issue of youth of color and their under representation in services. The GAINS Center on Co-occurring Disorders will provide oversight and technical review of individual chapters by knowledgeable researchers and practitioners.

Another mental health project is *Technical Assistance Support for the Comprehensive Children and Families Mental Health Projects.* For the past several years, OJJDP has been participating in the Federal Partnership for Children's Mental Health, which was organized by the Center for Mental Health Services (CMHS) of the Substance Abuse and Mental Health Services Administration. In addition to OJJDP, this task group includes agencies within the U.S. Departments of Education and Health and Human Services. An outgrowth of this task group has been the development of interagency agreements between OJJDP and CMHS for OJJDP to support training and technical assistance for the 45 Comprehensive Children and Families Mental Health sites. The funds transferred to CMHS have supported training and technical assistance for the past 2 years to the sites on strategies for greater inclusion of juvenile-justice-involved youth in the continuum of care being developed under these grants. OJJDP will continue this support in FY 1999 as CMHS rebids its training and technical assistance contract. CMHS's 45 sites, with their developing comprehensive mental health services for children and families, present an excellent opportunity to improve mental health services for all children, including juvenile offenders.

In a project called *Helping Communities To Promote Youth Development,* OJJDP will provide support to the Institute of Medicine/National Research Council, National Academy of Sciences, to establish a committee that will review and synthesize existing evidence regarding the effectiveness of community-level interventions and service programs designed to promote positive youth development. The committee will also assess the strengths and limitations of measurement and methodologies that have been used to evaluate these interventions and address the policy and programmatic implications of this research. The committee will be composed of an interdisciplinary group of individuals with expertise in a range of fields (child and adolescent development, sociology, psychology, statistics and evaluation, youth service, and other relevant areas). The committee will meet periodically and will convene two workshops and commission background papers to inform the field. In addition to a final report that will synthesize the work of the committee, brief summary fact sheets will be widely disseminated to policymakers, local decisionmakers, program administrators, service providers, researchers, community organizers, and other key stakeholders.

Three new efforts will be undertaken in the research area. The first, *Field-Initiated Program of General Research,* is part of OJJDP's larger Field-Initiated Research and Evaluation Program, which will combine general research with three additional topical areas (at-risk girls, Native Americans, and juvenile justice system interventions). Although most of the research funded by OJJDP derives from congressional mandates or addresses statutory priority areas that are narrowly defined, many innovative and important research ideas deserving support arise outside the Federal Government. The Field-Initiated Program of General Research allows OJJDP to provide flexible funding for creative and rigorous research that supports its mission. The ideal field-initiated project not only will increase the knowledge base regarding juvenile delinquency, but will have practical implications for juvenile justice policies and practices. In past years, OJJDP has supported field-initiated research on such topics as gangs in correctional institutions, mental health issues in the juvenile justice system, and juvenile sex offending. Investigators applying for FY 1999 funding may wish to consider (but are not limited to) projects in the following areas: serious and violent juvenile offenders, risk versus protective factors for juvenile offending, development of risk and needs assessment tools for courts and correctional facilities, impact of juvenile transfers to adult court, causes of early-onset offending, causes of desistance from offending, characteristics and needs of very young offenders, and development of innovative intervention programs for specific subgroups of juvenile offenders.

In another research program, *Pornography on the Internet,* OJJDP will provide funds to the National Academy of Sciences for a 2-year study that will address the capabilities of today's technologies for controlling electronic transmission of pornographic images, identify what is needed to develop more effective and practical control technology for such material, analyze the inherent limitations of such technology, and identify operational policies or management techniques needed to ensure the effectiveness of technologies for controlling transmission of pornographic images. The results of this study will be used in the context of possible options for action by legislators, law enforcement, regulators, industry groups, online service providers, educators, and parents.

In collaboration with the National Institute of Justice's Crime Mapping Research Center, OJJDP will support the research and development of mapping software that will allow State and local communities to use geographic data to facilitate and strengthen planning and implementation of programmatic activities, assessment of conditions and trends, and development of comprehensive plans. *The Crime and Data Mapping Project* will create a software package that will map geospatial data and be useful for immediate strategic planning needs within a local community. It will also provide a geographic information system (GIS) program platform for bringing together multiple data elements and sources for more thorough strategic planning. The software developed will provide not only the ability to map GIS-coded data that includes crime data, but also a tool for analyzing the multiple data variables. This funding will provide initial support to a technologically appropriate organization for the development of software.

With the endorsement of the Drug-Free Communities Advisory Commission, OJJDP has decided to provide additional resources to support the strengthening of the training and technical assistance component of the *Drug-Free Communities Support Program.* This support will directly supplement the Office of National Drug Control Policy's training and technical assistance budget, which currently funds the Centers for the Application of Prevention Technologies through an interagency agreement with the Center for Substance Abuse Prevention. This funding will provide additional support and customized assistance to the Drug-Free Communities Support Program grantees.

Finally, in FY 1999, OJJDP is considering enhancing its assistance to the field in the area of community-based gang intervention, consistent with the OJJDP Comprehensive Gang Model, and in the area of school-centered antigang efforts. Work currently being conducted under OJJDP's Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression and OJJDP's Rural Gang Initiative has resulted in lessons learned that will be helpful to various types of jurisdictions around the country as they develop comprehensive gang programs. No applications are currently being solicited. Separate solicitations for these programs (both community-based gang intervention and school-centered antigang efforts) may be issued at a later date.

Together, the programs in this Comprehensive Plan constitute a practical, multifaceted, and comprehensive approach to effectively preventing juvenile delinquency and victimization.

Fiscal Year 1999 Programs

The following are brief summaries of each of the new and continuation programs projected to receive Part C and Part D funding in FY 1999. As indicated above, the program categories are public safety and law enforcement; strengthening the juvenile justice system; delinquency prevention and intervention; and child abuse and neglect and dependency courts. However, because many programs have significant elements of more than one of these program categories or generally support all of OJJDP's programs, they are listed in an initial program category, called overarching programs. With regard to implementation sites and other descriptive data and information, program priorities within each category will be determined based on grantee performance, application quality, fund availability, and other factors. Programs are listed alphabetically within each category.

A number of OJJDP programs have been identified for funding consideration by Congress with regard to the grantee(s), the amount of funds, or both. These programs, which are listed below, are not included in the program descriptions that follow.

National Council of Juvenile and Family Court Judges
Teens, Crime, and the Community
Parents Anonymous, Inc.
Juvenile Offender Transition Program
Suffolk University Center for Juvenile Justice
Center for Crimes and Violence Against Children
Metro Denver Gang Coalition
L.A. Best Youth
Intensive Services for Juveniles and Families
Delancy Street
Juvenile Justice Program in Alaska
National Association of State Fire Marshals
Syracuse-Onondaga County Drug and Alcohol Abuse Commission
Law-Related Education
Hamilton Fish National Institute on School and Community Violence

In addition, OJJDP has been directed to examine each of the following, provide assistance if warranted, and report to the Committees on Appropriations of both the House and the Senate on its intention for each proposal:

Low Country Children's Center
Center for Prevention of Juvenile Crime and Delinquency at Prairie View University
Project O.A.S.I.S.
Consortium on Children, Families, and Law
Women of Vision Program for Youthful Female Offenders
Violence Institute of New Jersey
L.A. Bridges Youth Programs
Compton Youth Intervention Center for AfterSchool Programs
Kids With a Promise Program
Operation Quality Time
Achievable Dream Program
Secure School Pilot Program
Youth Advocates Program
Camden Urban Science Enrichment Program
Juvenile Crime Reduction Strategies Pilot Program
School Security Technology Center
New Mexico Cooperative Service Extension 4–H Youth Development Program
Adolescent Residential Treatment Program
Coalition for Drug-Free Lanai
Youth Courts in Alaska
Sioux Falls, South Dakota School District for Youth Programs
South Dakota Unified Judicial System
Nebraska Commission for Law Enforcement for Youth Programs
Chicago Public Schools Substance Abuse Program
Minnehaha, South Dakota, County Sheriff's Office for Youth Programs
Essex Teen Center and other Vermont Coalition for Teen Center's Members
Comprehensive Juvenile Justice Crime Prevention Initiative in Gainesville
Multistate Youth Violence Prevention Network
State of Hawaii to combat teen prostitution
Safe Places for Kids

The FY 1999 Omnibus Appropriations Conference agreement also urges OJJDP to work with the Head Start Bureau and other Federal agencies to coordinate an effort to increase public/private partnerships, such as Free to Grow, aimed at strengthening families and communities in their efforts to reduce the negative effect of substance abuse and use on the development of young children.

Fiscal Year 1999 Program Listing

Overarching

Coalition for Juvenile Justice
Cost-Benefit Analysis of Juvenile Justice Programs
Evaluation of SafeFutures

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Insular Area Support
Intergenerational Transmission of Antisocial Behavior Project
Juvenile Justice Clearinghouse
Juvenile Justice Statistics and Systems Development
OJJDP Management Evaluation Contract
OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center
Program of Research on the Causes and Correlates of Delinquency
SafeFutures: Partnerships To Reduce Youth Violence and Delinquency
Study Group on Very Young Offenders
Technical Assistance for State Legislatures
Telecommunications Assistance
Training and Technical Assistance Coordination for the SafeFutures and Safe Kids/Safe Streets Initiatives

Public Safety and Law Enforcement

The Chicago Project for Violence Prevention
Child Development-Community-Oriented Policing (CD–CP)
Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program
Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)
National Youth Gang Center
Partnerships To Reduce Juvenile Gun Violence
Survey of School-Based Gang Prevention and Intervention Programs
Training and Technical Assistance for the Rural Gang Initiative

Delinquency Prevention and Intervention

Advertising Campaign—Investing in Youth for a Safer Future
Assessing Alcohol, Drug, and Mental Health Disorders
The CETARY Project
Communities in Schools—Federal Interagency Partnership
Community Anti-Drug Abuse Technical Assistance Voucher Project
The Congress of National Black Churches: National Anti-Drug Abuse/Violence Campaign (NADVC)
A Demonstration Afterschool Program
Diffusion of State Risk-and Protective-Factor Focused Prevention
Hate Crime
Home Visitation
Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder
National Center for Conflict Resolution Education
No Hope in Dope Project
Partnerships for Preventing Violence
Proactive Youth Program
Risk Reduction Via Promotion of Youth Development
The SAGE Project and PRIDE Center Afterschool Program
Strengthening Services for Chemically Involved Children, Youth, and Families
Technical Assistance to Title V
Training and Technical Assistance for Family Strengthening Programs

Strengthening the Juvenile Justice System

Balanced and Restorative Justice Project (BARJ)
Blueprints for Violence Prevention: Training and Technical Assistance
Building Blocks for Youth
Census of Juveniles in Residential Placement
Circles of Care Program
Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Evaluation of the Intensive Community-Based Aftercare Program
Evaluation of Teen Courts
Gender-Specific Programming for Female Juvenile Offenders
Intensive Community-Based Aftercare Demonstration and Technical Assistance Program
Intensive Treatment Family Programs (ITF)
The Juvenile Justice Prosecution Unit
Juvenile Residential Facility Census
Juvenile Sex Offender Typology
Juvenile Transfers to Criminal Court Studies
Linking Balanced and Restorative Justice and Adolescents (LIBRA)
National Academy of Sciences Study of Juvenile Justice
National Juvenile Justice Program Directory
The National Longitudinal Survey of Youth 97
Performance-Based Standards for Juvenile Correction and Detention Facilities
Quantum Opportunities Program (QOP) Evaluation
Survey of Juvenile Probation
Technical Assistance to Juvenile Corrections and Detention (The James E. Gould Memorial Program)
Technical Assistance to Native Americans
TeenSupreme Career Preparation Initiative
Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (The Deborah Ann Wysinger Memorial Program)
Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

Child Abuse and Neglect and Dependency Courts

National Evaluation of the Safe Kids/Safe Streets Program
Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency

Overarching

Coalition for Juvenile Justice

This project supports the Coalition in its efforts to meet the statutory mandates through the development of a technical assistance capability that provides training, technical assistance, and information to the State Juvenile Justice Advisory Groups. This will be accomplished through a series of regional training and information workshops and a national conference designed to address the needs of the membership of the Coalition.

This project will be implemented by the current grantee, the Coalition for Juvenile Justice. No additional applications will be solicited in FY 1999.

Cost-Benefit Analysis of Juvenile Justice Programs

The University of Texas and the Dallas County Juvenile Department are working together to perform a substantive cost-benefit analysis of juvenile adjudications in the county to explore the extent to which the method can provide better answers to increasingly urgent questions by decisionmakers. The work, funded under an FY 1997 competitive grant, is examining several important methodological and practical issues, including methods of determining alternative measures for and the extent of beneficial program effects and estimating and allocating unit costs-benefit relationships of different programs. Through the process of addressing these and related matters under the guidance of an advisory board composed of individuals directly engaged in the juvenile justice field at the local and State level, the project will also show how the method can be made immediately useful to decisionmakers.

This program will be implemented by the current grantee, the University of Texas—Dallas. No additional applications will be solicited in FY 1999.

Evaluation of SafeFutures

A national evaluation competitively awarded with FY 1995 funds is being conducted by the Urban Institute to determine the success of the SafeFutures initiative in creating a comprehensive continuum of care for youth in six participating sites (Boston, Massachusetts; Contra Costa County and Imperial County, California; Fort Belknap, Montana; Seattle, Washington; and St. Louis, Missouri). The evaluation addresses the program implementation process and measures performance outcomes and lessons learned about the challenges and accomplishments across the six sites. A cross-site report will document the process of program implementation and community outcomes for use by other funding agencies or communities that want to develop and implement a comprehensive community-based strategy to address serious, violent, and chronic delinquency.

The evaluation will be implemented by the current grantee, the Urban Institute. No additional applications will be solicited in FY 1999.

Insular Area Support

The purpose of this statutorily required program is to provide support to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by Section 261(e) of the JJDP Act of 1974, as amended, 42 U.S.C. 5665(e).

Intergenerational Transmission of Antisocial Behavior Project

The purpose of this project is to expand on the Rochester Youth Development Study by examining the development of antisocial behavior and delinquency in the children of the original Rochester, New York, subjects of OJJDP's Program of Research on the Causes and Correlates of Delinquency. By age 21, 40 percent of the original Rochester subjects were parents. This provides a unique opportunity to examine and track the development of delinquent behavior across three generations in a particularly high-risk sample. Results of the study should provide useful findings with policy implications for prevention programs. The program is being funded under an FY 1998 interagency agreement between OJJDP and the National Institute of Mental Health.

The project will be implemented by the current grantee, SUNY Research Foundation. No additional applications will be solicited in FY 1999.

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) collects, synthesizes, and disseminates information on all aspects of juvenile justice. OJJDP established the Clearinghouse in 1979 to serve the juvenile justice community, legislators, the media, and the public. JJC offers toll-free telephone access to information; prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and database; and administers several electronic information resources. NCJRS is administered by the National Institute of Justice (NIJ) under a competitively awarded contract to Aspen Systems Corporation.

This program will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 1999.

Juvenile Justice Statistics and Systems Development

The Juvenile Justice Statistics and Systems Development (SSD) program was competitively awarded in FY 1990 to the National Center for Juvenile Justice (NCJJ) to improve national, State, and local statistics on juveniles as victims and offenders. The project has focused on three major tasks: (1) Assessing how current information needs are being met with existing data collection efforts and recommending options for improving national level statistics; (2) analyzing data and disseminating information gathered from existing Federal statistical series and national studies; and (3) providing training and technical assistance tools for local agencies in developing or enhancing management information systems.

This project will be implemented by the current grantee, NCJJ. No additional applications will be solicited in FY 1999.

OJJDP Management Evaluation Contract

This contract was competitively awarded in FY 1995 for a period of 3 years to provide OJJDP with an expert resource to perform independent program evaluations and assist in implementing evaluation activities. Evaluations may be conducted on OJJDP-funded programs and on other programs designed to prevent and treat juvenile delinquency. The time and cost of each evaluation depends on program complexity, availability of data, and purpose of the evaluation. Because the purpose of many evaluations is to inform management decisions, the completion of an evaluation and submission of a report may be required in a specific and, often, short time period.

This contract will be implemented by the current contractor, Caliber Associates. However, a new competitive contract solicitation will also be issued and a new contract awarded in FY 1999.

OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center

This contract has been competitively awarded since the mid-1980's when OJJDP identified the need for technical assistance support in carrying out its mission. The Juvenile Justice Resource Center (JJRC) provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. With assistance from expert consultants, JJRC coordinates the peer review process for OJJDP grant applications and grantee reports, conducts research and prepares reports on current juvenile justice issues, plans meetings and conferences, and provides administrative support to various Federal councils and boards.

This contract will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 1999.

Program of Research on the Causes and Correlates of Delinquency

Since 1986, this longitudinal study has addressed a variety of issues related to juvenile violence and delinquency and has produced a massive amount of information on the causes and correlates of delinquent behavior. Three project sites participate: Institute of Behavioral Science, University of Colorado at Boulder; Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. The sites pursue both collaborative research efforts and site-specific research. Results from the study have been used extensively in the field of juvenile justice and contributed significantly to the development of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and other program initiatives.

This program will be implemented by the current grantees. No additional applications will be solicited in FY 1999.

SafeFutures: Partnerships To Reduce Youth Violence and Delinquency

Since FY 1995, this 5-year project has awarded grants of up to $1.4 million annually to each of six communities (Boston, Massachusetts; Contra Costa County and Imperial County, California; Fort Belknap, Montana; Seattle, Washington; and St. Louis, Missouri) to assist in implementing comprehensive community programs designed to reduce youth violence, delinquency, and victimization through the creation of a continuum of care in communities. This continuum enables communities to respond to the needs of youth at critical stages of their development through a range of prevention, intervention, treatment, and sanctions programs.

SafeFutures activities will be carried out by the current grantees. No additional applications will be solicited in FY 1999.

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Study Group on Very Young Offenders

Modeled after the OJJDP Study Group on Serious and Violent Juvenile Offenders, this program is exploring what is known about the prevalence and frequency of very young (under the age of 13) offending. In FY 1998, OJJDP supplemented a grant to the University of Pittsburgh, the grantee for the Study Group on Serious and Violent Juvenile Offenders. The Study Group on Very Young Offenders is examining whether such offending predicts future delinquent or criminal careers, how these youth are handled by various systems including juvenile justice, mental health, and social services; and what methods are best for preventing very young offending and persistence of offending. This project will disseminate the results of its research to the public, policymakers, and practitioners. The Study Group is also assisting OJJDP in formulating a 5-year research agenda for OJJDP and the juvenile justice field.

This program will be implemented by the current grantee, the Western Psychiatric Institute and Clinic at the University of Pittsburgh. No additional applications will be solicited in FY 1999.

Technical Assistance for State Legislatures

Since FY 1995, OJJDP has awarded annual grants to the National Conference of State Legislatures (NCSL) to provide relevant, timely information on comprehensive approaches in juvenile justice to aid State legislators in improving State juvenile justice systems. Nearly every State has enacted, or is considering, statutory changes affecting the juvenile justice system. This project has helped policymakers understand the ramifications and nuances of juvenile justice reform. The grant has improved capacity for the delivery of information services to legislatures. The project also supports increased communication between State legislators and State and local leaders who influence decisionmaking regarding juvenile justice issues.

The project will be implemented by the current grantee, NCSL. No additional applications will be solicited in FY 1999.

Telecommunications Assistance

OJJDP uses information technology and distance training to facilitate access to information and training for juvenile justice professionals. This cost-effective medium enhances OJJDP's ability to share with the field salient elements of the most effective or promising approaches to various juvenile justice issues. In FY 1995, OJJDP awarded a competitive grant to Eastern Kentucky University (EKU) to produce live satellite teleconferences. In FY 1998, OJJDP continued the cooperative agreement with EKU to provide program support and technical assistance for a variety of information technologies. The grantee also explored linkages with key constituent groups to advance mutual information goals and objectives. During the past year, EKU has experimented with cybercasting "live" satellite videoconferences on the Internet.

This project will be implemented by the current grantee, EKU. No additional applications will be solicited in FY 1999.

Training and Technical Assistance Coordination for the SafeFutures and Safe Kids/Safe Streets Initiatives

OJJDP will provide funding for long-term training and technical assistance to the SafeFutures and Safe Kids/Safe Streets initiatives. This coordination effort builds local capacity for implementing and sustaining effective continuum of care and systems change approaches in six SafeFutures and five Safe Kids/Safe Streets sites. Project activities include assessment, identification, and coordination of the implementation of training and technical assistance needs at each of the sites and administration of cross-site training.

This program will be implemented by the current grantee, Patricia Donahue. No additional applications will be solicited in FY 1999.

Public Safety and Law Enforcement

The Chicago Project for Violence Prevention

The Chicago Project for Violence Prevention is a citywide, long-term effort to reduce violence. Objectives include reductions in homicide, physical injury, disability and emotional harm from assault, domestic abuse, sexual abuse and rape, and child abuse and neglect. A partnership among the Chicago Department of Public Health, the Illinois Council for the Prevention of Violence, the University of Illinois, and Chicago communities, the project began in 1995 with joint funding from OJJDP and the Centers for Disease Control and Prevention, the National Center for Injury Prevention and Control, the Bureau of Justice Assistance, and the U.S. Department of Housing and Urban Development. The project provides technical assistance to a variety of community-based and citywide organizations involved in violence prevention planning.

The Chicago Project for Violence Prevention will be implemented by the current grantee, the University of Illinois, School of Public Health. No additional applications will be solicited in FY 1999.

Child Development-Community-Oriented Policing (CD–CP)

The Child Development-Community-Oriented Policing (CD–CP) program is an innovative partnership between the New Haven Department of Police Services and the Child Study Center at the Yale University School of Medicine that addresses the psychological burdens on children, families, and the broader community of children witnessing increasing levels of community violence. In FY 1993, OJJDP provided support to document Yale—New Haven's child-centered, community-oriented policing model. The model consists of interrelated training of police officers, consultation, and teaming mental health clinicians with law enforcement in intervening onsite with children and families who witness violence. OJJDP, with first-year support from the Bureau of Justice Assistance, funded a 3-year replication of the model in Buffalo, New York; Charlotte, North Carolina; Nashville, Tennessee; and Portland, Oregon. Other OJP components joined OJJDP in funding an expansion of CD–CP in FY 1998. This expansion moved the project into school-based activities and the area of addressing exposure to violence in domestic violence settings and will continue to do so in FY 1999.

This project will be continued by the current grantee, the Yale University School of Medicine, in collaboration with the New Haven Department of Police Services. No additional applications will be solicited in FY 1999.

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

This program supports implementation of a comprehensive gang program model in five jurisdictions (Bloomington, Illinois; Mesa, Arizona; Riverside, California; San Antonio, Texas; and Tucson, Arizona). OJJDP will continue funding for the program, which was competitively awarded with FY 1994 funds. The demonstration sites are implementing a model developed by the University of Chicago with OJJDP funding support. Implementation requires the mobilization of the community to address gang-related violence by making available and coordinating social interventions, providing social/academic/vocational

and other opportunities, and supporting gang suppression through law enforcement, probation, and other community control mechanisms. Each site has established a multidisciplinary team to coordinate the services that project youth receive. Included in the service mix is accountability or social control. Demonstration sites also receive training and technical assistance.

This project will be implemented by the current demonstration sites. No additional applications will be solicited in FY 1999.

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

OJJDP will continue funding this evaluation. Under a 4-year competitive cooperative agreement awarded in FY 1995, the evaluation grantee assisted the five program sites (Bloomington, Illinois; Mesa, Arizona; Riverside, California; San Antonio, Texas; and Tucson, Arizona) in establishing realistic and measurable objectives, documenting program implementation, and measuring the impact of this comprehensive approach. It has also provided interim feedback to the program implementors and trained the local site interviewers. The grantee will continue to gather and analyze data required to evaluate the program; monitor and oversee the quality control of data; provide assistance for completion of interviews; and provide ongoing feedback to project sites.

This project will be implemented by the current grantee, the University of Chicago, School of Social Service Administration. No additional applications will be solicited in FY 1999.

Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program

This 3-year project began with a competitive award in FY 1997 to document and evaluate the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing gun violence involving juveniles. The Partnerships to Reduce Juvenile Gun Violence Program is being implemented in four sites: Baton Rouge and Shreveport, Louisiana; Oakland, California: and Syracuse, New York. In addition to working with these sites, the grantee will also identify additional promising or effective programs underway in communities across the country and evaluate a select number of these programs. An expanded base of youth gun violence programs offers greater opportunity to identify sites that are employing similar strategies with different populations.

This evaluation will be implemented by the current grantee, COSMOS Corporation. No additional applications will be solicited in FY 1999.

Gang Prevention Through Targeted Outreach (Boys and Girls Clubs)

The purpose of this program is to enable local Boys & Girls Clubs to prevent youth from entering gangs, intervene with gang members in the early stages of gang involvement, and divert youth from gang activities into more constructive programs. This program reflects the ongoing pattern of cooperation between OJJDP and the Boys & Girls Clubs to reduce problems of juvenile delinquency and violence. The Boys & Girls Clubs of America provides training and technical assistance to local gang prevention and intervention sites, including some at SafeFutures and OJJDP Comprehensive Gang sites. The project includes funds for local clubs to implement the Targeted Outreach program. A national evaluation of this program is being implemented by Public/Private Ventures.

This program will be implemented by the current grantee, the Boys & Girls Clubs of America. No additional applications will be solicited in FY 1999.

National Youth Gang Center

The proliferation of gang problems over the past two decades led OJJDP to develop a comprehensive, coordinated response to America's gang problem. This response involved five program components, one of which was implementation and operation of the National Youth Gang Center (NYGC), competitively funded with FY 1994 funds, to expand and maintain the body of critical knowledge about youth gangs and effective responses to them. NYGC provides support services to the National Youth Gang Consortium, composed of Federal agencies with responsibilities in this area. NYGC is also providing technical assistance for the Rural Gang Initiative planning and assessment phase. OJJDP will extend the NYGC project an additional year and provide FY 1999 funds to NYGC to conduct more indepth analyses of the National Youth Gang Survey results that track changes in gang membership and gang-related crime, produce timely information on the nature and scope of the youth gang problem, and continue its efforts to foster integration of gang-related items into other relevant surveys and national data collection efforts.

This program will be implemented by the current grantee, the Institute for Intergovernmental Research. No additional applications will be solicited in FY 1999.

Partnerships To Reduce Juvenile Gun Violence

OJJDP will award continuation grants to each of three competitively selected communities that initially received funds in FY 1997 to increase the effectiveness of existing youth gun violence reduction strategies by enhancing and coordinating prevention, intervention, and suppression strategies and strengthening linkages between community residents, law enforcement, and the juvenile justice system. Baton Rouge, Louisiana; Oakland, California; and Syracuse, New York, were selected to receive 3-year awards. The goals of this initiative are to reduce juveniles' illegal access to guns and address the reasons they carry and use guns in violent exchanges. A national evaluation currently underway will document the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing juvenile gun violence.

The Partnerships To Reduce Juvenile Gun Violence program will be carried out by the three current grantees. No additional applications will be solicited in FY 1999.

Survey of School-Based Gang Prevention and Intervention Programs

Under a competitively awarded FY 1997 grant, this project is classifying and describing approaches used by schools to prevent or reduce gang involvement among students in a large sample of urban, suburban, and rural schools. In addition, a search and review of activities undertaken by States to identify and evaluate school-based gang prevention and intervention programs will be completed. Based on a review of programs identified in a national survey currently under way, a small number of promising programs will be examined more closely and described. Technical reports will describe the full range of gang prevention and intervention currently being implemented in the United States, and they will compare program types and quality of implementation across different school levels and locations. A report will highlight promising programs and practices and include guidelines on program development.

This project will be implemented by the current grantee, Gottfredson Associates, Inc. No additional

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applications will be solicited in FY 1999.

Training and Technical Assistance for the Rural Gang Initiative

In FY 1998, OJJDP provided supplemental funding support to the National Youth Gang Center to provide training and technical assistance to demonstration sites under OJJDP's Rural Gang Initiative. In FY 1999, training and technical assistance will continue to be provided to those sites chosen to implement the OJJDP Comprehensive Gang model. Training and technical assistance will focus on adapting the OJJDP model to rural jurisdictions and on implementing the model in a theoretically sound manner. Assistance will be delivered through onsite visits, conferences, meetings, and other means such as telephone and electronic media.

This initiative will be implemented by the current grantee, the National Youth Gang Center. No additional applications will be solicited in FY 1999.

Delinquency Prevention and Intervention

Advertising Campaign—Investing in Youth for a Safer Future

OJJDP will continue its support, which began in FY 1997, of the National Crime Prevention Council's (NCPC's) ad campaign, "Investing in Youth for A Safer Future," through the transfer of funds to the Bureau of Justice Assistance (BJA) under an Intra-agency Agreement. OJJDP and BJA are working with the NCPC Media Unit to produce, disseminate, and support effective public service advertising and related media to inform the public of effective solutions to juvenile crime and to motivate young people and adults to get involved and support these solutions. The featured solutions include effective prevention programs and intervention strategies.

The program will be administered by BJA through its existing grant to NCPC. No additional applications will be solicited in FY 1999.

Assessing Alcohol, Drug, and Mental Health Disorders

This project supplements an ongoing National Institute of Mental Health study assessing alcohol, drug, and mental health disorders among juveniles in detention in Cook County, Illinois. The project has three primary goals: (1) To determine how alcohol, drug, and mental disorders develop over time among juvenile detainees; (2) to investigate whether juvenile detainees receive needed psychiatric services after their cases reach disposition (and they are back in the community or serving sentences); and (3) to study the development of dangerous and risky behaviors. The study will investigate how violence, drug use, and HIV/AIDS risk behaviors develop over time, what the antecedents of these behaviors are, and how these behaviors are interrelated. This project is unique because the sample is so large: it includes 1,833 youth from Chicago who were arrested and interviewed between 1996 and 1998. The sample is stratified by gender, race (African American, non-Hispanic white, Hispanic), age (10–13, 14–17), and severity of charge. The investigators will reinterview subjects whether they are back in the community or incarcerated. Because the sample is so large, there will be sufficient statistical power to study rarer disorders (especially comorbidity), patterns of drug use, and risky, life-threatening behaviors. OJJDP funding for this project began in FY 1998.

The project will be implemented by the current grantee, Northwestern University. No additional applications will be solicited in FY 1999.

The CETARY Project

The goals of this project are to provide 20 second-time juvenile offenders, up to age 18, an opportunity to enroll in an intense and structured culinary arts training program; develop and maintain linkage and employment opportunities for the youth; and place a minimum of 18 youth in an accredited continuing education program and/or in the workplace with full-time employment. Funded in FY 1998, the project also provides a counseling specialist who helps the youth establish job readiness and who coordinates placement between career development and employment. General educational development (GED) classes are also offered. Continuous progress evaluations and needs assessments are implemented and enforced for each youth.

This project will be implemented by the current grantee, Johnson & Wales University. No additional applications will be solicited in FY 1999.

Communities In Schools—Federal Interagency Partnership

This program will continue an ongoing national school dropout prevention model developed and implemented by Communities In Schools, Inc. (CIS). CIS, Inc., provides training and technical assistance in adapting and implementing the CIS model in States and local communities. The model brings social, employment, mental health, drug prevention, entrepreneurship, and other resources to high-risk youth and their families in the school setting. Where they exist, CIS State organizations assume primary responsibility for local program replication during the Federal Interagency Partnership. The Partnership is based on enhancing (1) CIS, Inc., training and technical assistance capabilities; (2) its capability to introduce selected initiatives to youth at the local level; (3) its information dissemination capability; and (4) its capability to network with Federal agencies on behalf of State and local CIS programs.

The program will be implemented by the current grantee, Communities In Schools, Inc. No additional applications will be solicited in FY 1999.

Community Anti-Drug Abuse Technical Assistance Voucher Project

Through the Community Anti-Drug Abuse Technical Assistance Voucher Project, the National Center for Neighborhood Enterprise (NCNE) has been awarding vouchers for several years to grassroots organizations to purchase technical assistance and training to effectively address the problem of juvenile drug abuse. NCNE has established a clearinghouse featuring more than 1,200 promising and proven anti-drug programs. The impact of technical assistance vouchers includes enhanced organizational visibility, larger grant awards for indigenous groups, and expanded and increased services resulting from technical assistance in program development and staff training. In addition to awarding vouchers for technical assistance, NCNE provides technical assistance to applicants regarding the development of their mission, goals, and objectives.

The Community Anti-Drug Abuse Technical Assistance Voucher Project will be implemented by the current grantee, the National Center for Neighborhood Enterprise. No additional applications will be solicited in FY 1999.

The Congress of National Black Churches: National Anti-Drug Abuse/ Violence Campaign (NADVC)

The Congress of National Black Churches (CNBC) addresses the problems of juvenile drug abuse, violence, and hate crime through its national public awareness and mobilization strategy. The strategy coordinates the black religious leadership, in cooperation with the U.S. Department of Justice and other Federal agencies and organizations, to mobilize

community residents to combat juvenile drug abuse and drug-related violence. The CNBC National Anti-Drug Abuse/ Violence Campaign (NADVC) is a partner in the Education Development Center's (EDC) Juvenile Hate Crime Initiative. NADVC's training and technical assistance have helped sites leverage funds from public and private sources. The NADVC model for the development of prevention programs is easily tailored to the local community's assessment of its drug, delinquency, violence, and hate crime problems.

The program will be implemented by the current grantee, the Congress of National Black Churches. No additional applications will be solicited in FY 1999.

A Demonstration Afterschool Program

This project, known as Estrella, is using FY 1998 funds to design and evaluate a pilot afterschool program to reduce juvenile delinquency and increase educational retention at Gadsden Independent School District in Dona Ana County, New Mexico. Through a curriculum of hands-on science and reading projects and supervised recreation, Estrella is providing a constructive alternative to afternoons of unsupervised free time. New Mexico Mathematics, Engineering, Science Achievement (NM MESA) will provide the academic component of the program. Middle school students will mentor elementary students in a highly interactive learning environment developed through the use of the nationally recognized MESA curriculums. The New Mexico Police Athletic League (PAL) will provide a sports component to round out the program. The University of New Mexico's Institute for Social Research will evaluate the program using both qualitative and quantitative methods.

This project will be implemented by the current grantee, the University of New Mexico—Regents. No additional applications will be solicited in FY 1999.

Diffusion of State Risk- and Protective-Factor Focused Prevention

Since FY 1997, OJJDP has provided funds to the National Institute on Drug Abuse, through an interagency agreement, to support this 5-year study of the public health approach to prevention, focusing on risk and protective factors for substance abuse at the State and community levels. The study will identify factors that influence the adoption of the public health approach and assess the association between this approach and the levels of risk and protective factors and substance abuse among adolescents. The study will also examine State substance abuse data gathered from 1988 through 2001 and use interviews to describe the process of implementing the epidemiological risk-and protective-factor approach in Colorado, Kansas, Illinois, Maine, Oregon, Utah, and Washington.

This project will be implemented by the current grantee, the Social Development Research Group at the University of Washington School of Social Work. No additional applications will be solicited in FY 1999.

Hate Crime

Under an OJJDP grant competitively awarded in FY 1993, the Education Development Center (EDC) developed *Healing the Hate*, a multipurpose curriculum for hate crime prevention in middle schools and other classroom settings. OJJDP expanded this grant to allow EDC to provide training and technical assistance to youth, educators, juvenile justice and law enforcement professionals, and representatives of local public/private community agencies and organizations and the faith community. In FY 1999, EDC will expand its training and technical assistance to new sites and further disseminate the products through the education and juvenile justice networks. In addition, EDC will provide onsite, short-term technical assistance to practitioners interested in hate crime issues. EDC will also assist State juvenile justice agencies to formulate hate crime prevention components for their juvenile delinquency prevention plans.

The project will be implemented by the current grantee, Education Development Center. No additional applications will be solicited in FY 1999.

Home Visitation

This program integrates prenatal and early childhood nurse home visitation into five sites of Operation Weed and Seed (Clearwater, Florida; Fresno, Los Angeles, and Oakland, CA; and Oklahoma City, OK) and one SafeFutures site (St. Louis, MO). Operation Weed and Seed is a national initiative to make communities safe through law enforcement activities and to rebuild the community through social services and economic redevelopment in crime-ridden communities across the country. SafeFutures is an initiative to assist in implementing comprehensive community programs designed to reduce youth violence, delinquency, and victimization through the creation of a continuum of care in communities. The nurse home visitation program addresses three major goals: (1) Preparation of clear, comprehensive home visitation materials to facilitate dissemination and accurate replication of the program; (2) dissemination of the program to the six sites and provision of technical support and training to local staff; and (3) an evaluation of the program with a significant research focus on the dissemination process.

The project will be implemented by the current grantee, the University of Colorado Health Services Center. No additional applications will be solicited in FY 1999.

Multisite, Multimodal Treatment Study of Children With Attention Deficit/ Hyperactivity Disorder

OJJDP will transfer funds under an interagency agreement with the National Institute of Mental Health (NIMH) to support this research, funded principally by NIMH. In 1992, NIMH began a study of the long-term efficacy of stimulant medication and intensive behavioral and educational treatment for children with attention deficit/ hyperactivity disorder (ADHD). Although ADHD is classified as a childhood disorder, up to 70 percent of afflicted children continue to experience symptoms in adolescence and adulthood. The study will continue through 2000 and will follow the original families and a comparison group. OJJDP's participation, which began in FY 1998, will allow for investigation into the subjects' delinquent behavior and contact with the legal system, including arrests and court referrals.

OJJDP will support this study through an interagency agreement with NIMH. No additional applications will be solicited in FY 1999.

National Center for Conflict Resolution Education

Funded under a competitively awarded cooperative agreement in FY 1995, the National Center for Conflict Resolution Education works to integrate conflict resolution education (CRE) programming into all levels of education in schools, juvenile facilities, and youth-serving organizations. In FY 1998, OJJDP entered into a partnership with the U.S. Department of Education to expand and enhance this project. The grantee provides training and technical assistance through onsite training and consultation for teams from schools, communities, and juvenile facilities; by providing resource materials including the guide to implementing conflict resolution programs; and by partnering with State-level agencies to establish

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State training institutes and otherwise build local capacity to implement successful CRE programs for youth. The Center also facilitates peer-to-peer mentoring.

Additionally, the National Center for Conflict Resolution Education has developed the interactive portion of a CD–ROM that is part of an MTV campaign against violence. Through its Juvenile Justice Clearinghouse, OJJDP is making available to MTV viewers 1 million free copies of the CD–ROM/Action Guide package. The CD–ROM presents real-life situations that confront young people and gives them the skills needed to resolve conflicts peacefully. Besides OJJDP, the Bureau of Justice Assistance and the Safe and Drug-Free Schools Program of the U.S. Department of Education are providing funding for this MTV project.

The project will be implemented by the current grantee, Illinois Institute for Dispute Resolution. No additional applications will be solicited in FY 1999.

No Hope in Dope Project

The goal of the No Hope in Dope (NHID) program, funded under an FY 1998 OJJDP grant, is to prevent, reduce, or delay the onset of substance abuse in elementary, intermediate, and high school students in Hawaii's Windward Oaho area. This goal will be accomplished by using a community-based approach that makes antidrug norms clear, salient, and useful as guides for behavior. The program uses opinion-leading student athletes, the No Hope in Dope seminar, and the Officer Honolulu Safety Program. NHID is a program of Project Hope in coordination with the Kahuku and Castle School complexes of the Windward Oahu School District and the Honolulu Police Department. The program will be evaluated with a pre/post intervention design that will allow conclusions about the effectiveness of this community-and school-level intervention.

This project will be implemented by the current grantee, Operation Hope. No additional applications will be solicited in FY 1999.

Partnerships for Preventing Violence

This program will continue for a second year in a multiple funding agreement among OJJDP, the U.S. Department of Education, and the U.S. Department of Health and Human Services to provide support for distance training using satellite videoconferencing as the medium. The project, funded under a 3-year grant, consists of a series of six live, interactive satellite training broadcasts that focus on violence prevention programs and strategies that have proven promising or effective. The training is targeted to school and community violence prevention personnel, health care providers, law enforcement officials, and other service providers representing a variety of community-based and youth-serving organizations. To date, two events have been held; the third telecast is scheduled for April 16, 1999.

The project will be implemented by the current grantee, Harvard University School of Public Health. No additional applications will be solicited in FY 1999.

Proactive Youth Program

The New Mexico Police Activities League (PAL) is implementing a statewide prevention project consisting of recreational, educational, and cultural activities for families and youth between the ages of 5 and 18, but focused on at-risk youth and their families. The Albuquerque PAL will provide the initial model for the organization and implementation of the New Mexico PAL project. Local PAL programs will be initiated in at least 12 other New Mexico communities. Schedules for core programs will be coordinated, and a system of regional and statewide activities will be established. The overall goal of the project, which received an FY 1998 OJJDP grant, is to reduce negative behavior and promote healthy behavioral patterns among New Mexico's youth by providing activities that unite youth with law enforcement officers, educators, and other positive adult role models.

This project will be implemented by the current grantee, the University of New Mexico—Regents. No additional applications will be solicited in FY 1999.

Risk Reduction Via Promotion of Youth Development

This program, also known as Early Alliance, is a large-scale prevention study involving hundreds of African-American and Caucasian children in several elementary schools in lower socioeconomic neighborhoods of Columbia, SC. This project is designed to promote coping-competence and reduce risk for conduct problems, aggression, substance use, delinquency and violence, and school failure beginning in early elementary school. Children are being followed longitudinally throughout the 5 years of the project. The program is funded through an interagency agreement with the National Institute of Mental Health (NIMH). NIMH's grantee is the University of South Carolina. Funding has also been provided by the Centers for Disease Control and Prevention and the National Institute on Drug Abuse.

Funded initially in FY 1997 through a fund transfer to NIMH under an interagency agreement, support will be continued for an additional 3 years. No additional applications will be solicited in FY 1999.

The SAGE Project and PRIDE Center Afterschool Program

The SAGE project is continuing development of a project to prevent and reduce juvenile delinquency and school violence. The long-term goal of the PRIDE Center is to provide a comprehensive, year-round juvenile delinquency prevention and intervention program that supports the youth objectives of the SAGE Secondary School and the youth and community objectives of the SAGE project as a whole. Under an FY 1998 grant, the project is providing the collaborating organizations with the means to (1) Expand and enhance adult-mentored and supervised, structured educational opportunities to court-involved and high-risk youth; (2) involve additional city agencies and community-based organizations through the PRIDE Center; and (3) continue to evaluate and disseminate findings on the project's success for replication in other urban areas.

This project will be implemented by the current grantee, Springfield College. No additional applications will be solicited in FY 1999.

Strengthening Services for Chemically Involved Children, Youth, and Families

The U.S. Departments of Justice and Health and Human Services (HHS) provide services to children affected by parental substance use or abuse. OJJDP administers this training and technical assistance program, which began in FY 1998, with funds transferred to OJJDP by HHS's Substance Abuse and Mental Health Services Administration, through a cooperative agreement to the Child Welfare League of America (CWLA), a nonprofit organization. CWLA is assisting child welfare personnel to provide appropriate intervention services for children impacted by the abuse of alcohol and other drugs (AOD) and for their caregivers. CWLA is producing a s comprehensive assessment tool and decisionmaking guidelines for child welfare workers and supervisors. CWLA training and technical assistance will help to develop innovative and effective approaches to meeting the needs of children in the child welfare system whose parents are AOD abusers.

This jointly funded project will be implemented by CWLA. No additional applications will be solicited in FY 1999.

Technical Assistance to Title V

The purpose of this continuation contract is to provide OJJDP with training support for the Title V program. This training, which the grantee has developed and refined over several years, will continue to introduce key community leaders to data-based risk- and resiliency-focused delinquency prevention strategies and provide localities with the knowledge and skills to assess risk factors and resources in their communities. This contract will also increase the capacity of States to conduct data-based risk and resiliency focused training without Federal support.

This project will be implemented by the current grantee, Developmental Research and Programs, Inc. No additional applications will be solicited in FY 1999.

Training and Technical Assistance for Family Strengthening Programs

OJJDP will continue funding a cooperative agreement competitively awarded in FY 1995 to the University of Utah's Department of Health Education (DHE) to provide training and technical assistance to communities interested in establishing or enhancing a continuum of family strengthening efforts. After a literature review, the grantee convened regional training conferences to showcase selected exemplary and promising family strengthening programs; developed a process for sites to receive followup training on specific program models; conducted program-specific workshops; produced and then updated user and training-of-trainers guides; and distributed videos of several family strengthening workshops. The grantee's technical assistance delivery system and the overall impact of the project are being assessed. In FY 1999, this program will expand its surveys and research on effective practices and assist in replication of identified programs.

This program will be implemented by the current grantee, the University of Utah's DHE. No additional applications will be solicited in FY 1999.

Strengthening the Juvenile Justice System

Balanced and Restorative Justice Project (BARJ)

OJJDP has supported development and improvement of juvenile restitution programs since 1977. The purpose of the BARJ project is to enhance the development of restitution programs as part of systemwide juvenile justice improvement using balanced approach concepts and restorative justice principles. The BARJ program model was first described in a 1994 OJJDP Program Summary, *Balanced and Restorative Justice*, which became a reference source for BARJ training. The BARJ project has provided intensive training, technical assistance, and guideline materials to three selected sites (Allegheny County, Pennsylvania; Dakota County, Minnesota; and West Palm Beach County, Florida), which have been implementing major systemic change in accordance with the BARJ model. The BARJ Project also offers technical assistance and training to other jurisdictions nationwide.

This project will be implemented by the current grantee, Florida Atlantic University. No additional applications will be solicited in FY 1999.

Blueprints for Violence Prevention: Training and Technical Assistance

OJJDP will continue to fund an FY 1998 cooperative agreement with the Center for the Study and Prevention of Violence (CSPV) at the University of Colorado. Under this grant, CSPV provides intensive training and technical assistance to community organizations and units of local government to replicate 10 "Blueprint" model programs. These are programs that CSPV identified as meeting a rigorous scientific standard of proven program effectiveness and replicability for reducing adolescent violence, crime, and substance abuse. CSPV will help communities determine the feasibility of program development and also monitor and assist in the replication of these Blueprint programs for 2 years.

This project will be implemented by the current grantee, CSPV. No additional applications will be solicited in FY 1999.

Building Blocks for Youth

The goals of this initiative are to protect minority youth in the justice system and promote rational and effective juvenile justice policies. These goals are accomplished by the following components: (1) Conducting research on issues such as the impact on minority youth of new State laws and the implications of privatization of juvenile facilities by profit-making corporations; (2) undertaking an analysis of decisionmaking in the justice system and development of model decisionmaking criteria that reduce or eliminate disproportionate impact of the system on minority youth; (3) building a constituency for change at the national, State, and local levels; and (4) developing communication strategies for dissemination of information. A fifth component, direct advocacy for minority youth is funded by other sources, not by OJJDP. Funding by OJJDP began in FY 1998.

This initiative will be implemented by the current grantee, the Youth Law Center. No additional applications will be solicited in FY 1999.

Census of Juveniles in Residential Placement

In FY 1998, the Census of Juveniles in Residential Placement (CJRP) replaced the biennial Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities, known as the Children in Custody census. CJRP collects detailed information on the population of juveniles who are in juvenile residential placement facilities as a result of contact with the juvenile justice system. New methods developed for CJRP are expected to produce more accurate, timely, and useful data on the juvenile population, with less reporting burden for facility respondents.

This program will be implemented through an existing interagency agreement with the Bureau of the Census. No additional applications will be solicited in FY 1999.

Circles of Care Program

In FY 1998, OJJDP and the Center for Mental Health Services (CMHS) entered into an interagency agreement to have OJJDP provide support to the Circles of Care Program, which CMHS had developed. OJJDP transferred funds to CMHS to support the funding of an additional site. The Circles of Care Program is designed to facilitate the planning and implementation of a continuum of care for Native American youth at risk of mental health, substance abuse, and delinquency problems. CMHS funded nine sites in FY 1998 and will continue these sites in FY 1999, based on availability of funds and project performance. OJJDP will transfer additional funds in FY 1999 to continue support for this program.

The currently funded projects will continue in FY 1999. No new applications will be solicited in FY 1999.

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

OJJDP has been providing support for development of its Comprehensive Strategy for several years. This project will complete ongoing strategic

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planning efforts in six States and expand to two additional States, Oregon and Wisconsin. In each State, up to six jurisdictions have been identified to receive Comprehensive Strategy planning training and technical assistance. OJJDP internal technical assistance capacity will be developed during this time to further assist States through training and technical assistance, including States planning on developing a Comprehensive Strategy planning framework. Implementation support will be developed and provided to the six States and one pilot site scheduled to complete Comprehensive Strategy plans in 1999. Further development and updates of the *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* will also occur in FY 1999.

This project will be implemented by the current grantees, the National Council on Crime and Delinquency and Developmental Research and Programs, Inc. No additional applications will be solicited in FY 1999.

Evaluation of the Intensive Community-Based Aftercare Program

In FY 1995, OJJDP competitively awarded a grant to the National Council on Crime and Delinquency (NCCD) to perform a process evaluation and design an outcome evaluation of the Intensive Community-Based Aftercare Demonstration and Technical Assistance program. In FY 1998, the project was supplemented and extended for an additional 2 years to continue the outcome evaluation. The outcome evaluation seeks to determine the extent of the differences between the Intensive Community-Based Aftercare Program (IAP) participants and the "regular" parolees, the supervision and services provided to both groups, and the cost-effectiveness of IAP. Data collection is being accomplished using several methods including searches of State police records to measure recidivism and analyzing State agency and juvenile court data to estimate costs.

This project will be implemented by the current grantee, NCCD. No additional applications will be solicited in FY 1999.

Evaluation of Teen Courts

This project, which OJJDP began in FY 1997, is measuring the effect of handling young, relatively nonserious law violators in teen courts rather than in traditional juvenile or family courts. Researchers are collecting data on several dimensions of program outcomes, including postprogram recidivism, changes in teens' perceptions of justice, and their ability to make more mature judgements. Analyses of these dimensions will be used to compare youth handled in at least three separate teen court programs with those processed by the traditional juvenile justice system. In addition, the study will conduct a process evaluation of the teen court programs, exploring legal, administrative, and case processing factors that affect the ability of the programs to achieve their goals.

This evaluation will be implemented by the current grantee, the Urban Institute. No additional applications will be solicited in FY 1999.

Gender-Specific Programming for Female Juvenile Offenders

Using a FY 1995 competitive OJJDP grant, Cook County has built a network of support for juvenile female offenders. The county has developed gender-specific needs, strengths, and risk assessments for juvenile female offenders; provided training in implementing gender-appropriate programming; and designed a pilot program with a community-based continuum of care and a unique case management system. In FY 1998, OJJDP provided continuation funding to the Cook County gender-specific program and began providing funding to the State of Connecticut to develop specialized programs for girls from prevention to detention. Connecticut's objectives and activities also include planning, implementing, and demonstrating a program that will develop a hierarchy of sanctions with specific emphasis on females up to age 18 and incorporating systemic changes. The primary emphasis of the Connecticut program is on the needs of pregnant girls and those who are mothers. Technical assistance is being provided to both Cook County and the State of Connecticut by Greene, Peters, and Associates, OJJDP's gender-specific training and technical assistance grantee.

The project will be implemented, in partnership with the Bureau of Justice Assistance, by the current grantee, the Cook County Bureau of Public Safety and Judicial Coordination, and by the State of Connecticut's Office of Alternative Sanctions. No additional applications will be solicited in FY 1999.

Intensive Community-Based Aftercare Demonstration and Technical Assistance Program

This initiative supports implementation, training and technical assistance, and an independent evaluation of an intensive community-based aftercare model in three competitively selected demonstration sites. The overall goal of the intensive aftercare model is to identify and assist high-risk juvenile offenders to make a gradual transition from secure confinement back into the community. The Intensive Aftercare Program (IAP) model has three distinct, yet overlapping segments: (1) Prerelease and preparatory planning activities during incarceration; (2) structured transitioning involving the participation of institutional and aftercare staffs both prior to and following community reentry; and (3) long-term reintegrative activities to ensure adequate service delivery and the required level of social control. The grantee provides continuing training and technical assistance to administrators, managers, and line staff at the intensive community-based aftercare sites. The grant was competitively awarded in FY 1995.

The IAP project will be implemented by the current grantee, the Johns Hopkins University. No additional applications will be solicited in FY 1999.

Intensive Treatment Family Programs (ITF)

The purpose of KidsPeace is to provide individualized foster care (IFC) to seriously disturbed children and adolescents in a therapeutic family setting. KidsPeace will expand its program to additional sites, with the assistance of OJJDP's funding, first provided in FY 1997. KidsPeace has established four sites (Union, New Jersey; Orchard Park and Albany, New York; and Muncie, Indiana). A fifth site is currently under development.

This project will be implemented by the current grantee, KidsPeace National Centers for Kids in Crisis of North America. No additional applications will be solicited in FY 1999.

The Juvenile Justice Prosecution Unit

Under an FY 1996 OJJDP grant, the American Prosecutors Research Institute, the research and technical assistance affiliate of the National District Attorneys Association, established the Juvenile Justice Prosecution Unit (JJPU) to promote prosecutor training. JJPU holds workshops on juvenile-related policy, leadership, and management for chief prosecutors and juvenile unit chiefs and also provides prosecutors with background information on juvenile justice issues, programs, training, and technical assistance. The project solicits planning and other advisory input from prosecutors familiar with juvenile justice system and prosecutor needs. It draws on the expertise of working groups of elected or appointed prosecutors and juvenile unit chiefs to support project staff in providing technical assistance, juvenile justice-related research, program information, and training to practitioners nationwide.

This project will be implemented by the current grantee, the American Prosecutors Research Institute. No additional applications will be solicited in FY 1999.

Juvenile Residential Facility Census

As part of a long-term relationship with the Bureau of the Census, OJJDP will continue to fund the development and testing of a new census of juvenile residential facilities. This census will focus on those facilities that are authorized to hold juveniles based on contact with the juvenile justice system. From interviews with facility administrators and staff at 20 locations, project staff have produced a detailed report discussing how best to capture information on education, mental health and substance abuse treatment, health services, conditions of custody, staffing, and facility capacity. Project staff have also drafted and tested a questionnaire based on the interview results. The questionnaire will be finalized in 1999. The first full implementation will take place in October 2000.

This project will be conducted through an interagency agreement with the Bureau of the Census, Governments Division and Statistical Research Division. No new applications will be solicited in FY 1999.

Juvenile Sex Offender Typology

In FY 1998, OJJDP competitively funded two feasibility studies in an effort to develop a juvenile sex offender typology. One study is being conducted by the University of Illinois-Springfield, the other by Health Related Research. Efforts to effectively address issues related to juvenile sex offenders' dangerousness, the most appropriate level of placement restrictiveness, the potential for rehabilitation, assessment requirements, and intervention needs have been hampered by the lack of an empirically based system for classifying this heterogeneous population into meaningful subgroups. These initial studies will determine specific methodologies best suited to generate an empirically validated typology of the juvenile sex offender. Based on the results of these initial studies, OJJDP will determine the feasibility of developing a juvenile sex offender typology or the desirability of continuing in the specific directions suggested by Phase I of this work.

An expansion of this work will be implemented by one or both of the current grantees, University of Illinois-Springfield and Health Related Research. No additional applications will be solicited in FY 1999.

Juvenile Transfers to Criminal Court Studies

This study explores the impact of the 1994 changes in Florida law by contrasting transfer policies and practices and sentences received for 1993 with those for 1995. Postsentencing recidivism of the 400 transferred youth in 1993 will be examined. Detailed data on the role of the offender in the commission of the offense; the involvement of gangs, guns, and drugs; and prior offense histories will be used in analyzing sentencing outcomes and postrelease offending. Predictions will be made on rearrest and time to failure in multivariate models with variables reflecting characteristics of offenses, offenders, and offense histories. Cross-group recidivism analyses are planned to compare the recidivism of youth transferred to adult court with that of those retained in the juvenile justice system.

The project will be implemented by the current grantee, the Florida Juvenile Justice Accountability Board. No additional applications will be solicited in FY 1999.

Linking Balanced and Restorative Justice and Adolescents (LIBRA)

The goal of this program is to continue development of a comprehensive, integrated, balanced and restorative system of justice for youthful offenders that holds them accountable to victims, protects the community, builds offender skills and competencies, and offers opportunities for positive connections to community members. OJJDP funding for the program began in FY 1998. To hold youth accountable, the project will establish a network of accountability boards. The project will also pilot Community Justice Centers, which will demonstrate that the community is the core of the justice process and recognizes youth as a vital part of the community.

This program will be implemented by the current grantee, the Vermont Department of Social and Rehabilitation Services. No additional applications will be solicited in FY 1999.

National Academy of Sciences Study of Juvenile Justice

In FY 1997, OJJDP initiated support for a 2-year study by the National Academy of Sciences to draw upon expertise from relevant disciplines in the scientific and practitioner communities to develop a synthesis of the relevant scientific research and expert opinion regarding the prevention, treatment, and control of juvenile crime. Following an examination of empirical and clinical research relevant to the origin of and pathways to youth violence and justice system treatment of juveniles, the review will be supplemented by two workshops and site visits to selected programs. These activities will help to identify (1) the elements of settings, with a particular emphasis on family and school, that inhibit or contribute to the ways in which serious delinquency develops; (2) juvenile and criminal justice system concerns regarding the shifts in youth crime prevention and control policies; and (3) juvenile violence and policing practices in public and federally assisted housing. The study will identify key elements of current efforts and policies that appear to either contribute to or inhibit the development of effective interventions and control mechanisms for youth violence and delinquency. The project is also being supported by the U.S. Department of Education.

This program will be implemented by the current grantee, the National Academy of Sciences. No additional applications will be solicited in FY 1999.

National Juvenile Justice Program Directory

In FY 1995, OJJDP initiated development of this program directory. To conduct its statistical functions, OJJDP must maintain a current and accurate list of all entities surveyed either in the various censuses or in surveys. This list currently entails a complete list of juvenile residential facilities and a list of juvenile probation offices. As OJJDP expands its statistical work, it will need to expand this listing as well. The list needs to contain contact information for the various facilities or agencies and appropriate information for sampling.

This project will be conducted through an interagency agreement with the Bureau of the Census, Governments Division. No additional applications will be solicited in FY 1999.

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The National Longitudinal Survey of Youth 97

OJJDP will continue supporting the second round of data collection under the National Longitudinal Survey of Youth 97 (NLSY97) through an interagency agreement with the Bureau of Labor Statistics (BLS). OJJDP funding began in FY 1997. NLSY97 is studying school-to-work transition in a nationally representative sample of 8,700 youth ages 12 to 16 years old. BLS is also collecting data on the involvement of these youth in antisocial and other behavior that may affect their transition to productive work careers. This survey provides information about risk and protective factors related to the initiation, persistence, and desistance of delinquent and criminal behavior and provides an opportunity to determine the generalizability of findings from OJJDP's Program of Research on the Causes and Correlates of Delinquency and other longitudinal studies across a nationally representative population of youth.

The program will be implemented by the BLS under an interagency agreement. No additional applications will be solicited in FY 1999.

Performance-Based Standards for Juvenile Correction and Detention Facilities

This program, which began with a competitive OJJDP cooperative agreement awarded in FY 1995, is in its third phase. Goals for this phase are to (1) introduce concepts, tools, and principles of performance-based standards and accountability in 25 to 30 facilities nationwide; (2) complete the collection of baseline measures of performance on 22 standards covering six critical areas of facility operations in all participating facilities using uniform data collection instruments and protocols; (3) assist the management team in developing appropriate strategies to respond to problem areas based on the performance data; (4) facilitate access to OJJDP/OJP resources for training and technical assistance and related support services needed to carry out the facility improvement plan; (5) monitor results of interventions through reassessment and analysis of progress; and (6) refine the measurement processes and build database performance benchmarks.

This program will be implemented by the current grantee, Council of Juvenile Correctional Administrators. No additional applications will be solicited in FY 1999.

Quantum Opportunities Program (QOP) Evaluation

OJJDP will continue funding an impact evaluation of the Quantum Opportunities Program (QOP) through an interagency fund transfer to the U.S. Department of Labor (DOL). OJJDP began funding this evaluation in FY 1997. QOP, designed by the Ford Foundation and Opportunities Industrialization Centers of America, is a career enrichment program using a model providing basic education, personal and cultural development, community service, and mentoring. The evaluation will determine whether QOP reduces the likelihood that inner-city youth at educational risk will enter the criminal or juvenile justice system. Outcomes to be examined include academic achievement in high school; misbehavior in school; self-esteem and sense of control over one's life; educational and career goals; and personal decisions such as teenage parenthood, substance abuse, and criminal activity. Data on criminal activity are being collected from individual student interviews.

This program will be implemented through an interagency agreement with the U.S. Department of Labor. No additional applications will be solicited in FY 1999.

Survey of Juvenile Probation

OJJDP will continue to support development of a survey of juvenile probation offices in an effort to determine the number of juveniles under some form of community supervision. The exact nature and extent of this survey depends greatly on the results of various development efforts OJJDP is pursuing currently. This project will fund the Bureau of the Census to establish standard procedures for the implementation of this survey. Funding for this project began in FY 1996.

This project will be conducted through an interagency agreement with the Bureau of the Census, Governments Division. No new applications will be solicited in FY 1999.

Technical Assistance to Juvenile Corrections and Detention (The James E. Gould Memorial Program)

The primary purpose of this program is to provide specialized technical assistance to juvenile corrections, detention, and community residential service providers. The grantee also plans and convenes an annual Juvenile Corrections and Detention Forum, which provides an opportunity for juvenile corrections and detention leaders to meet and discuss issues, problems, and solutions to emerging corrections and detention problems. The grantee also provides workshops and conferences on current and emerging national issues in the field of juvenile corrections and detention, conducts surveys, and offers technical assistance through document dissemination. OJJDP will continue this program, which began in FY 1995 under competitive grant for a 3-year period.

The project will be implemented by the current grantee, the American Correctional Association. No additional applications will be solicited in FY 1999.

Technical Assistance to Native Americans

The goal of this program is to build the capacity of the Gila River Indian community, the Pueblo of Jemez, the Navajo Nation, the Red Band of Chippewa Indians, other Native American and Alaskan Native communities, and urban jurisdictions where tribal people reside to address Indian youth crime, delinquency, violence and victimization. Project funds support the development of comprehensive, systemwide responses to these problems in tribal communities. In FY 1999, OJJDP will continue to provide technical assistance to Native Americans to enable tribes to further develop alternatives to detention, specifically targeting juveniles who are first or nonviolent offenders; design guidebooks for the tribal peacemaking process to be used in addressing juvenile delinquency issues that are reported to Family District Court systems; design and implement juvenile justice needs assessments to assist tribes in responding to juvenile detention and alternatives to detention needs; develop protocols to implement State Children's Code provisions that affect Native American Children; and establish sustainable, comprehensive community-based planning processes that focus on the needs of tribal youth. In FY 1997, American Indian Development Associates (AIDA) was selected to implement OJJDP's national technical assistance program for tribes and urban tribal programs across the country for a 3-year period.

This program will be implemented by the current grantee, the American Indian Development Associates. No additional applications will be solicited in FY 1999.

TeenSupreme Career Preparation Initiative

In FY 1998, OJJDP, in partnership with the U.S. Department of Labor's (DOL's) Employment and Training Administration, provided funding support to the Boys & Girls Clubs of America for demonstration and evaluation of the TeenSupreme Career Preparation Initiative. This initiative provides employment training and other related services to at-risk youth through local Boys & Girls Clubs with TeenSupreme Centers. In FY 1998, DOL funds supported program staffing in the existing 41 TeenSupreme Centers, provided intensive training and technical assistance to each site, and provided administrative and staffing support to this program from the national office. OJJDP funds supported the evaluation component of the program, which is to be implemented by an independent evaluator.

This jointly funded Department of Labor and OJJDP initiative will be implemented by the Boys & Girls Clubs of America. No additional applications will be solicited in FY 1999.

Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (The Deborah Ann Wysinger Memorial Program)

In FY 1997, recognizing the continued need to improve the ability of States and local jurisdictions to address disproportionate confinement of minority juveniles, OJJDP awarded a competitive grant to Cygnus Corporation to implement a 3-year national training, technical assistance, and information dissemination initiative. Since the 1988 reauthorization of the JJDP Act, State Formula Grants program plans have addressed disproportionate minority confinement (DMC). OJJDP's DMC funding efforts have included a competitive award to demonstrate model approaches in five State pilot sites (Arizona, Florida, Iowa, North Carolina, and Oregon) and an award to a national contractor to provide technical assistance to the pilot sites and other States. In addition, OJJDP made funds available to nonpilot States that had completed data gathering and assessment to use for innovative DMC projects.

This project will be implemented by the current grantee, Cygnus Corporation, Inc. No additional applications will be solicited in FY 1999.

Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

Through systemic change within local juvenile detention systems or statewide juvenile corrections systems, this project seeks to reduce overcrowding in facilities where juveniles are held. Competitively awarded in FY 1994 to the National Juvenile Detention Association (NJDA), in partnership with the San Francisco Youth Law Center, the project provides training and technical assistance materials for use by State and local jurisdictional teams. NJDA selected three jurisdictions (Camden, New Jersey; Oklahoma City, Oklahoma; and the Rhode Island Juvenile Corrections System) for onsite development, implementation, and testing of procedures to reduce crowding. Of the original sites selected, Oklahoma City has completed its work. The grantee is exploring additional sites for comprehensive training and technical assistance in FY 1999.

This project will be implemented by the current grantee, the National Juvenile Detention Association. No additional applications will be solicited in FY 1999.

Child Abuse and Neglect and Dependency Courts

National Evaluation of the Safe Kids/Safe Streets Program

OJJDP will continue funding the grant competitively awarded in FY 1997 to Westat, Inc., Rockville, MD, for a national evaluation to document and explicate the process of community mobilization, planning, and collaboration that has taken place before and during the Safe Kids/Safe Streets awards; to inform program staff of performance levels on an ongoing basis; and to determine the effectiveness of the implemented programs in achieving the goals of the Safe Kids/Safe Streets program. The initial 18-month grant began a process evaluation and determined the feasibility of an impact evaluation.

This evaluation will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 1999.

Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency

This 5½ year demonstration program is designed to foster coordinated community responses to child abuse and neglect. Several components of the Office of Justice Programs joined in FY 1996 to develop this coordinated program response to break the cycle of early childhood victimization and later criminality and to reduce child abuse and neglect and resulting child fatalities. OJJDP awarded competitive cooperative agreements in FY 1997 to five sites (National Children's Advocacy Center, Huntsville, Alabama; the Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan; Heart of America United Way, Kansas City, Missouri; Toledo Hospital Children's Medical Center, Toledo, Ohio; and the Community Network for Children, Youth and Family Services, Chittenden County, Vermont). Funds were provided by OJJDP, the Executive Office for Weed and Seed, and the Violence Against Women Grants Office.

In FY 1999, continuation awards will be made to each of the current demonstration sites. No additional applications will be solicited in FY 1999.

Dated: June 29, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Part IV

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Federal Aviation Administration

14 CFR Part 93

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–99–5926; Notice No. 99–11]

RIN 2120–AG74

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the special operating rules and airspace for all persons operating aircraft in the airspace designated as the Grand Canyon Special Flight Rules Area (SFRA). Specifically, this action proposes to modify the eastern portion of the SFRA and the Desert View Flight-free Zone (FFZ) to address concerns raised by Native Americans; modify the Bright Angel FFZ to provide a provisional corridor to be available at a future date for noise efficient/quiet technology aircraft; modify the Sanup FFZ to provide for a planned revision to a commercial route over the northwestern section of the Grand Canyon National Park (GCNP); and provide for an additional commercial route over the northern section of the Sanup plateau for those aircraft transiting between Las Vegas, Nevada and Tusayan, Arizona. The FAA is taking this action as part of a continuing effort to assist the National Park Service in fulfilling its statutory mandate of providing for the substantial restoration of the natural quiet and experience in GCNP.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Comments on this NPRM should be mailed in triplicate to: U.S. Department of Transportation Dockets, Docket No. [FAA99–5926] 400 Seventh Street, SW., Washington DC, 20590. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9–NPRM–CMTS@faa.gov. Comments must be marked Docket No. FAA–99–5926]. Comments may be filed and examined in Room Plaza 401 on weekdays, except Federal holidays, between 10:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783. For the draft Environmental Assessment contact Tina Hunter, Environmental Affairs Division, ATA–300, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: (202) 267–7685.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice are also invited. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify the regulatory docket number and be submitted in triplicate to the address listed above. All communications and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received. Late filed comments will be considered to the extent possible without incurring expense or delay.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should marked "Comments to Docket No. [ ]." When the comment is received, the postcard will be date stamped and mailed to the commenter.

Availability of This NPRM

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Federal Register's electronic bulletin board service (telephone: (202) 512–1661). Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register**'12s web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may also obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Public Meetings

The FAA intends to hold two public meetings to provide interested persons an additional opportunity to comment on this proposal. The details pertaining to the public meetings will be announced in the notice section of the **Federal Register.** For more information, contact Linda Williams at (202) 267–9685 or by email at linda.1.williams@faa.gov

Background

On December 31, 1996, the FAA published a final rule amending part 93 of the Federal Aviation Regulations by adding a new subpart to codify the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of GCNP; modifying the dimension of the GCNP SFRA; establishing new and modifying existing flight corridors and FFZs; establishing reporting requirements for commercial sightseeing companies operating in the SFRA; restricting flights in the Zuni Point and Dragon Corridors during certain time periods (curfews); and limiting the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA (aircraft cap) (61 FR 69302). The provisions contained in the final rule were to become effective on May 1, 1997.

Published concurrently with the final rule on December 31, 1996, was a notice of proposed rulemaking (NPRM) on noise limitations for aircraft operations in the vicinity of GCNP (noise efficient/quiet technology NPRM) and a notice of availability of proposed routes. All three of the above referenced actions comprise an overall strategy to further reduce the impact of aircraft noise on the park environment and to assist the National Park Service (NPS) in achieving its statutory mandate, imposed by Public Law 100–91, to provide for the substantial restoration of natural quiet and experience in GCNP.

On February 21, 1997, the FAA delayed the effective date for the expansion of the FFZs, the air tour routes, and other related airspace provisions of the rule until January 31, 1998 (62 FR 8861; February 26, 1997). However, this action did not affect or delay implementation of the curfew, aircraft cap, or the reporting requirements of the final rule, which became effective on May 1, 1997.

On December 17, 1997, the FAA took action to further delay the implementation of the above mentioned sections of the final rule and to further extend certain portions of SFAR 50–2 until January 31, 1999 (62 FR 66248). On December 7, 1998, the FAA again took action to further delay implementation of the above mentioned sections and to extend certain portions of SFAR 50–2 until January 31, 2000 (63 FR 67544).

Recent Actions

On May 15, 1997, the FAA published a Notice of Availability of Proposed Routes and a companion NPRM (Notice No. 97–6) that proposed two noise efficient/quiet technology incentive corridors over the GCNP (62 FR 26901). The first corridor, through the Bright Angel FFZ, was planned for use by noise efficient/quiet technology aircraft use only. The second corridor, through National Canyon, was planned for use by noise efficient/quiet technology aircraft westbound after December 31, 2001. The FAA, in consultation with the NPS, determined not to proceed with a corridor through National Canyon. The FAA received suggestions for alterations and refinements from officials of the GCNP and NPS that could potentially produce noise reductions. Based on comments from environmentalists, Native Americans, and air tour operators, the FAA was led to conclude that the National Canyon air tour route was not a viable option. This proposal was subsequently withdrawn in July 1998, along with the quiet technology NPRM's proposal for a route through the central portion of GCNP. Due to resource constraints, the FAA has not been able to prepare a disposition of the comments received in response to Notice 97–6. The FAA plans to summarize those comments and publish a disposition of comments document in the **Federal Register.**

The Proposal

Special Flight Rules Area and Desert View FFZ

In this action, the FAA is proposing to modify the Grand Canyon SFRA by moving the eastern boundary five (5) nautical miles to the east. The FAA is also proposing to modify the Desert View FFZ by moving the eastern boundary five (5) nautical miles to the east.

The current design of the eastern portion of the SFRA and the Desert View FFZ allows entry and exit as well as travel over several Traditional Cultural Properties (TCP) on the eastern side of the Grand Canyon National Park, of importance to the Zuni, Hopi, and Navajo Tribes. These sites were identified through consultation with affected tribes in accordance with Section 106 of the National Historic Preservation Act (NHPA). The specific locations of the TCP are not identified pursuant to section 304 of the NHPA which provides for confidentiality of cultural and religious sites. The proposed expansion of the Desert View FFZ and associated proposed changes to the SFRA would provide mitigation of impacts on the TCP in accordance with Section 106 requirements.

Bright Angel Flight-Free Zone

The FAA is proposing to reinstate the provisional incentive corridor, one nautical mile in width, through the Bright Angel FFZ to be used at some future date only by aircraft meeting a noise efficiency/quiet technology standard. The FAA acknowledges that currently no standard for noise efficient/quiet technology aircraft exists. Both the FAA and NPS are anticipating, however, that such a standard will be developed in the future. Readers must understand that until such a standard is developed and adopted, that the Bright Angel incentive corridor will not be available for commercial operations. The FAA and NPS find that it is of value, however, for commenters to have the opportunity to comment on the merit of this specific proposal.

This proposed incentive corridor would pass through the Bright Angel FFZ along the northern boundary of the current Bright Angel FFZ as defined in SFAR 50–2. Even without a standard, it is intuitively clear that the proposed Bright Angel Corridor would have a three-fold benefit. First, fewer aircraft would be flying over the northern rim of the canyon along the Saddle Mountain Wilderness Area, where the NPS and U.S. Forest Service have indicated that noise-sensitive activity regularly occurs. Second, noise from the air tour aircraft would be dispersed between the northern boundary of the Bright Angel FFZ and the proposed incentive corridor, thereby reducing the level of concentrated aircraft noise along any one route. Third, opening this corridor to aircraft that could meet the noise efficiency/quiet technology standard, yet to be developed, would provide a valuable and tangible incentive for the air tour operators to convert to quieter aircraft. The GCNP could thereby experience the benefit of a reduction in the level of aircraft noise over time.

Sanup Flight-Free Zone

The FAA is proposing to modify the Sanup FFZ to continue to provide for a commercial route over the northwestern section of the GCNP and to provide for an additional commercial route between the vicinity of Las Vegas, Nevada and Tusayan, Arizona. As discussed in the preamble to the December 1996 final rule (61 FR 69302), the Blue 1 and Blue 1A routes were eliminated due to environmental and Native American concerns. Concurrently, the noise limitations NPRM included a corridor to permit routes through National Canyon to continue with noise efficient/quiet technology aircraft. Since the FAA did not finalize the NPRM and delayed the effective date for the December 1996 final rule and extended certain portions of SFAR 50–2 until January 31, 2000, they are still in use. With the elimination of the Blue 1 and Blue 1A, the FAA anticipates that aircraft operating on these routes would move to the Blue Direct, which may be renamed Blue Direct North (BDN), thus increasing operations on the route. The Blue Direct South (BDS) route was eliminated from the December 1996 and April 1997 route maps. Therefore, to accommodate safely the expected increase in operations moving from the Blue 1 and Blue 1A, the FAA plans to restore and modify the BDS route. The FAA recognizes that increased aircraft operations on BDS would be over the northern portion of the newly created Sanup FFZ (December 1996 final rule), at altitudes less than 3,000 feet above the elevation of some areas of the Sanup plateau. At this altitude, these aircraft operations may have a noise impact. It is with this in mind that the FAA believes that the northern portion of the Sanup FFZ, that would lie beneath BDS, should be eliminated from the FFZ to accommodate safely an additional route between Tusayan, Arizona and Las Vegas, Nevada. Therefore, the FAA is proposing to modify the Sanup FFZ by moving the northern portion of the FFZ south approximately one mile south of the BDS route.

Additionally, to provide for a proposed revision of the current Blue 2 commercial route over the northwestern portion of the GCNP, the FAA is proposing to modify the Sanup FFZ by moving the northwestern portion of the

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FFZ east approximately one mile east of the Blue 2 route.

Information on the proposed commercial routes for the Grand Canyon SFRA can be obtained through instructions in a Notice of Availability that will be published concurrently with this proposed rulemaking effort. In addition, the alternatives considered are more fully discussed in the Environmental Assessment for these rulemaking/nonrulemaking efforts.

Economic Summary

Any changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. A regulatory evaluation of the proposal is in the docket.

Because of the continued high public interest surrounding GCNP regulations and the potential implications within a small locality, the FAA has determined that this notice of proposed rulemaking is considered a significant regulatory action under 3(f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget. This notice is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The FAA, however, has determined that this NPRM would not have a significant economic impact on a substantial number of small entities (commercial air tour operators conducting flights within Grand Canyon National Park), and does not warrant further regulatory flexibility action. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This NPRM would not have a significant impact on international trade.

Introduction

The FAA proposes to modify the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA) and three Flight-free Zones (FFZs). The eastern boundaries of the SFRA and the Desert View FFZ would each be moved five (5) nautical miles to the east, respectively. The FAA also proposes to modify the Bright Angel FFZ to provide an incentive corridor, one nautical mile in width, for use at some time in the future by only the most noise efficient/quiet technology aircraft. Finally, the FAA proposes to modify the Sanup FFZ to continue to provide for a commercial air tour route over the northwestern section of the GCNP.

Costs

Costs associated with the reconfiguration of the Desert View and Bright Angel FFZs, as described in 14 CFR § 93.305, were accounted for in the December 31, 1996 final rule (61 FR 69302), hereafter referred to as the Final Rule. This analysis, therefore, is concerned only with the costs associated with the currently proposed modifications to the reconfigurations.

14 CFR § 93.317 requires each operator (effective May 1, 1997) to report to the FAA the following commercial air tour activity for each flight conducted in the Grand Canyon SFRA: (1) routes flown; (2) departure airport, date and time; and (3) aircraft registration number. Based on the operator reports, the FAA has developed a database for the time period May 1997 through April 1998, the first full year of operator reporting. The information developed in the database forms the basis, or baseline, for the following economic analysis.

Special Flight Rules Area and Desert View Flight-Free Zone

The Black 2E and Green 3E routes are the only air tour routes that would be affected by the eastward shifts of the SFRA and the Desert View FFZ. During the baseline period, three operators conducted 577 air tours that would likely use the Black 2E route. The combined estimated gross operating revenue of these three operators for tours which would use the Black 2E route was about $825,000; net operating revenue adjusted for variable operating costs was $496,000.

The FAA believes that a shift in the Black 2E route eastward resulting from the eastward shift in the SFRA and Desert View FFZ by 5 nautical miles would serve only to realign the access/approach to the Black 2 tour route. It would not alter the tour offerings of the individual operator, and any changes in the operator's variable operating costs resulting from adding 5 nautical miles to the overall air tour (about 2–3 minutes) are small. Similarly, the FAA believes there will be little impact on the three operators entering the SFRA on the Black 2E route to conduct air tours of the Canyon. Therefore, the FAA concludes that this part of the proposed rulemaking is non-significant and requests comments.

Bright Angel Flight-Free Zone

In the Final Rule, the FAA determined that the increase in average annual variable operating costs associated with the expansion of the Bright Angel FFZ was just over $1 million. FAA argued that these costs could be passed onto the consumer as higher ticket prices so long as all operators were similarly confronted by higher variable operating costs. The FAA concluded, therefore, that no net operating losses would be borne by GCNP air tour operators. The full societal cost of the increase in variable operating costs would be reflected in higher commercial air tour prices and would be borne by the consumer.

This NPRM proposes to re-open a provisional flight corridor (incentive corridor) along the routes that are currently depicted on the Grand Canyon VFR Aeronautical Chart as the Green 1A and Black 1A, or Alpha routes. This corridor would be available at some future date only to noise efficient/quiet technology aircraft. Currently, the FAA and the NPS have not defined a standard for what is a noise efficient/quiet technology aircraft. Consequently, the route will not be available for immediate use. However, for the purpose of this cost analysis, the FAA has assumed that one or more operator(s) may use aircraft that meet the above standard, and that this (these) operator(s) could use the corridor and thereby benefit from no increase in variable operating costs.

The FAA believes that the operator(s) assumed to be permitted to conduct air tours on the incentive route would continue to conduct air tours along the Black 1A route or Green 1A route as per usual business practice, and thus would avoid the higher variable operating costs facing competitors. The FAA assumes cost relief would accrue to the operator(s) conducting air tours in noise efficient/quiet technology aircraft. By holding constant the price of the "Black 1, 1A" air tour or "Green 1, 1A" air tour, this (these) operator(s) could become the price setter(s), and some of their competitors conducting commercial air tours along other, longer tour routes may be required to absorb the increased variable operating costs to remain price competitive. The FAA estimates, however, that only one (or two) of these operators would have to maintain the current price in the face of rising variable operating costs. The amount of cost transfer from consumers of air tours to this operator over the 1999–2008 time period would depend on which operator (or operators) ultimately introduce quiet aircraft. A discussion of this expectation is presented in a section summarizing the "Initial Regulatory Flexibility Analysis" below.

Sanup Flight-Free Zone

The Sanup FFZ would be altered to accommodate other proposed FAA action contained in the concurrent Notice of Route Availability, thereby providing current commercial air tour traffic using the Blue 1, Blue Direct and Blue Direct South routes a commercial air tour route. The FAA has identified no costs associated with the alteration of the Sanup FFZ.

Cost Summary

The FAA estimates that any costs associated with the eastward expansion of the SFAR and Desert View FFZ 5 nautical miles would be non-significant. Also, the FAA determines that the proposed modification to the Sanup FFZ would result in no additional costs. However, the FAA estimates the cost impact of the proposed Bright Angel FFZ incentive corridor could result in some reduction in average annual variable operating costs and accompanying price increases previously estimated in the Final Rule. In addition, some of the remaining cost burden previously estimated in the Final Rule would shift from air tour consumers to one or two air tour operators.

Benefits

The benefits associated with this NPRM include the following:

(1) The potential reduction in the impact of air tours over Traditional Cultural Properties as a result of the proposed modification of the eastern portion of the SFRA and the Desert View FFZ; (2) a reduction in the number of aircraft flying over the northern rim of the canyon along Saddle Mountain as a consequence of the proposed incentive corridor, which could result in some dispersal of noise from air tour aircraft over an area the NPS has pointed out as noise sensitive; and (3) the provision of an incentive for the air tour operators to convert to quieter aircraft. The particular groups that would benefit most from this rulemaking action are Native Americans and some of the operators and consumers of GCNP commercial air tours.

The establishment of the proposed corridor for noise efficient/quiet technology aircraft through the Bright Angel FFZ along the "Alpha" routes would mitigate some of the potential adverse effects created by the consolidation of aircraft overflight noise at the northern edge of the expanded FFZ as described in the Final Rule. Furthermore, to the extent the consumer perceives the current shorter, more established commercial air tour through the proposed incentive corridor as having a greater value, then demand for these tours conducted in the more noise efficient/quiet technology aircraft would increase. Concurrently, demand for the longer commercial air tours that are conducted in less noise efficient/quiet technology aircraft could decrease. In combination, the two potential outcomes of this proposed rulemaking could create a significant incentive for operators of non-qualifying aircraft to convert to quieter aircraft.

the expansion of the eastern boundary of the SFRA and the Desert View FFZ redress certain concerns of the Native Americans in that area while at the same time imposing no perceived additional costs on operators.

Benefit/Cost Comparison

The FAA has determined that the three proposed modifications could result in net cost savings for some commercial air tour operators while one or two operators could be forced to absorb cost increases associated with the Final Rule. However, there will be no significant net increase in societal costs, only redistribution between producers and consumers of Grand Canyon air tours. This rulemaking would result in a potential reduction of noise over Native American Traditional Cultural Properties and a potential reduction of noise over the sensitive northern rim of the Canyon along Saddle Mountain, and would provide an incentive for air tour operators to convert to quieter aircraft.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and information requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Ten operators (7 fixed-wing; 3 helicopter) conducted air tours during the base period of May 1997–April 1998 along routes that would be affected by the proposed incentive corridor modification to the Bright Angel FFZ. In the regulatory evaluation, the FAA assumed that one or more operators of aircraft that qualified for operating on the incentive route might avoid the estimated increase in variable operating costs determined in the Final Rule, and therefore, would not have to raise ticket prices to offset higher costs.

The FAA believes that if the above qualifying operators use fixed-wing aircraft and operate out of Tusayan, then the helicopter operators at Tusayan could continue to pass the increase in variable operating costs resulting from the expansion of the Bright Angel FFZ accounted for in the Final Rule onto the consumer as higher prices, and would not be impacted by the proposed rulemaking. The three helicopter operators have been able to maintain their air tour fares twice that of the fixed-wing operators in a declining market for East-end air tours. This suggests that helicopters and fixed-wing operators are not close competitors in the East-end GCNP market.

Of the fixed-wing operators conducting air tours in non-qualifying aircraft in competition with the above qualifying fixed-wing operators, two ceased operating as Grand Canyon air tour operators during the baseline period May 1997–April 1998. Therefore, this rulemaking would no longer be applicable to them. A third operator conducted 10 "Black 1, 1A" air tours during the baseline period, but this accounted for only one one-thousandth of this operator's total Grand Canyon air tour business. The FAA believes that this operator would not be affected by this rulemaking. Another operator, originating out of Phoenix, AZ, is the only remaining operator providing a Grant Canyon air tour service from the Phoenix market. Furthermore, this operator includes the "Black 1, 1A" tour

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only as a part of a more comprehensive air tour, the price for which is 3 to 4 times the "Black 1, 1A" air tour as offered by the other operators. Therefore, this operator, because of a captured market and exclusive tour offering, would likely be able to pass on the increase in variable operating costs to customers without consequence, and thus, would not be impacted by this NPRM, either.

One fixed-wing aircraft operator also conducts helicopter tours in the East-end of the Canyon in addition to the fixed-wing "Black 1, 1A" tour during the baseline period. The price of this operator's helicopter tours, however, are at the low end ($150) of the price range, and the portion of his total air tour business represented by his fixed-wing "Black 1, 1A" tour is only about 17 percent. If this operator were to redistribute the per passenger increase in variable operating costs for this fixed-wing customers to his helicopter customers (cross-subsidy), it would add about $1.35 to the ticket price of the helicopter air tour, and this operator would still be a below market price for a helicopter air tour on the East-end.

The remaining fixed-wing operator(s) conducting "Black 1, 1A" air tours in non-qualifying aircraft on the East-end of the Canyon, could be significantly affected by the introduction of quiet aircraft by a competitor, in that the increased operating costs imposed by the Final rule may no longer be passed onto the customers because of the operator(s) who may be able to operate in the incentive corridor established by this proposal. This cost could be as much as $7 per passenger. The FAA does not consider one or two small operators to be a substantial number of small operators significantly impacted by this proposed rule.

The FAA believes that if the qualifying operator(s) use helicopters and operate out of Tusayan, then the fixed-wing operators could continue to pass the increase in variable operating costs resulting from the expansion of the Bright Angel FFZ in the Final Rule onto the consumer as higher prices, and the (these) remaining helicopter operator(s) would not be impacted by the proposed rulemaking (in the East-end market, helicopter operators and fixed-wing operators are not close competitors). The remaining non-qualifying helicopter operator(s) at Tusayan could be significantly affected by competition from the qualifying helicopter operator(s) in that the increased operating costs imposed by the 1996 final rule may no longer be passed onto the customers. The FAA does not consider one or two small operators to be a substantial number of small operators significantly impacted by this proposed rule.

Last, the FAA believes that if a qualifying operator operates from an airport other than Tusayan, the remaining East-end operators could continue to pass the increase in variable operating costs resulting from the expansion of the Bright Angel FFZ accounted for in the Final Rule onto the consumer. The remaining operators are located at different airports and would not be in direct competition with the qualifying operator.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The FAA has determined that the proposed rulemaking would have no affect on non-U.S. operators of foreign aircraft operating outside the United States nor would it have an affect on U.S. trade to trade relations. However, because the proposed rulemaking has been determined to be cost beneficial to commercial air operators and a large proportion of GCNP commercial air tour passengers are foreign, it could have a positive affect on foreign tourism in the U.S. The FAA cannot put a dollar value on the potential gain in commercial air tour revenue associated with possible increases in foreign tour dollars.

Environmental Review

The FAA is preparing a draft supplemental environmental assessment (EA) for this proposed action to ensure conformance with the National Environmental Policy Act of 1969 and other applicable environmental laws. The draft supplemental EA indicates that this NPRM, the companion air tour limitation NPRM, and revised air tour routes on the western and of the Sanup would result in 41.3% of the GCNP achieving natural quiet 75% of the time by 2008.

Copies of the draft supplemental EA will be circulated to interested parties and placed in the docket, where it will be available for review.

The proposed rule is premised on the National Park Service's noise evaluation methodolology for GCNP, which was published in the **Federal Register** on January 26, 1999 (64 FR 3969). The NPS is reviewing comments submitted in response to that notice. If, on completion of that review, the NPS determines not to adopt the methodology described in the notice (such as the two-zone system and accompanying noise thresholds), the FAA will reevaluate the proposal and draft Supplemental Environmental Assessment in light of whatever final action is taken by the NPS.

Federalism Implications

This proposed rule would not have substantial effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13), there are no requirement for information collection associated with the proposed regulation.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Naviagtion (air), Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 93 of Title 14, Chapter 1, Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Section 93.301 is revised as follows:

Subpart U—Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ

§ 93.301 Applicability.

This subpart prescribes special operating rules for all persons operating aircraft in the following airspace, designated as the Grand Canyon National Park Special Flight Rules Area: That airspace extending from the surface up to but not including 18,000 feet MSL within an area bounded by a line beginning at Lat. 35°55′ 12″ N., Long. 112°04′ 05″ W.; east to Lat. 35°55′38″ N., Long. 111°36′03″ W.; north to Lat. 36°15′30″ N., Long. 111°36′06″ W.; to Lat. 36°24′49″ N., Long. 111°47′45″ W.; to Lat. 36°52′23″ N., Long. 111°33′10″ W.; west-northwest to Lat. 36°53′37″ N., Long. 111°38′29″ W.; southwest to Lat. 36°35′02″ N., Long. 111°53′28″ W.; to Lat. 36°21′30″ N., Long. 112°00′03″ W.; west-northwest to Lat. 36°30′30″ N., Long. 112°35′59″ W.; southwest to Lat. 36°24′46″ N., Long. 112°51′10″ W.; thence west along the boundary of Grand Canyon National Park (GCNP) to Lat. 36°14′08″ N., Long. 113°10′07″ W.; west-southwest to Lat. 36°09′50″ N., Long 114°01′53″ W.; southeast to Lat. 36°06′24″ N., Long. 113°58′46″ W.; thence south along the boundary of GCNP to Lat. 36°00′23″ N., Long. 113°54′11″ W.; northeast to Lat. 36°02′14″ N., Long 113°50′16″ W.; to Lat. 36°02′16″ N., Long. 113°48′08″ W.; thence southeast along the boundary of GCNP to Lat. 35°58′09″ N., Long. 113°45′04″ W.; southwest to Lat. 35°54′48″ N., Long. 113°50′24″ W.; southeast to Lat. 35°41′01″ N., Long. 113°35′27″ W.; thence clockwise via the 4.2-nautical mile radius of the Peach Springs VORTAC to Lat. 35°28′53″ N., Long. 113°27′49″ W.; northeast to Lat. 35°42′58″ N., Long. 113°10′57″ W.; north to Lat. 35°57′51″ N., Long. 113°11′06″ W.; east to Lat. 35°57′44″ N.; Long. 112°14′04″ W.; thence clockwise via the 4.3-nautical mile radius of the Grand Canyon National Park Airport reference point (Lat. 35°57′08″ N., Long. 112°08′49″ W.) to the point of origin.

3. Section 93.305 is amended by revising paragrpah (a), by adding a new sentence to the end of paragraph (b), and by revising paragraph (d) to read as follows: (**Note:** All instructions in this amendment refer to § 93.305 as it currently exists. But if adopted, these changes would be made in addition to the changes in Notice No. 99–12 published elsewhere in this issue):

§ 93.305 Flight-free zones and flight corridors.

* * * * *

(a) *Desert View Flight-free Zone.* That airspace extending from the surface up to but not including 14,500 feet MSL within an area bounded by a line beginning at Lat. 35°59′58″ N., Long. 111°52′47″ W.; thence east to Lat. 36°00′00″ N., Long. 111°51′04″ W.; thence north to 36°00′24″ N.; Long. 111°51′04″ W.; thence east to 36°00′24″ N., Long. 111°45′44″ W.; continue east to 36°00′24″ N., Long. 111°39′34″ W.; thence north to 36°12′35″ N., Long. 111°39′33″ W.; thence west to 36°12′35″ N., Long. 111°45′44″ W.; thence west and north along the GCNP boundary to Lat. 36°14′05″ N., Long. 111°48′34″ W.; thence southwest to Lat. 36°12′06″ N., Long. 111°51′14″ W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 nautical mile of the western boundary of the zone. The corridor to the west between the Desert View and Bright Angel Flight-free Zones, is designated the "Zuni Point Corridor." * * *

(b) * * * The Bright Angel Flight-free Zone does not include the following airspace designated as the Bright Angel Corridor: That airspace one-half nautical mile on either side of a line extending from Lat. 36°14′21.24″ N., Long. 112°08′57.54″ W. and Lat. 36°14′15.32″ N., Long. 111°55′07.32″ W.

* * * * *

(d) *Sanup Flight-free Zone.* That airspace extending from the surface up to but not including 8,000 feet MSL within an area bounded by a line beginning at Lat. 35°59′32″ N., Long. 113°20′28″ W.; west to Lat. 36°00′55″ N., Long. 113°42′09″ W.; southeast to Lat. 35°59′57″ N., Long. 113°41′09″ W., to Lat. 35°59′09″ N., Long. 113°40′53″ W.; to Lat. 35°58′45″ N., Long. 113°40′15″ W.; to Lat. 35°57′52″ N., Long. 113°39′34″ W.; to Lat. 35°56′44″ N., Long. 113°39′07″ W.; to Lat. 35°56′04″ N., Long. 113°39′20″ W.; to Lat. 35°55′02″ N., Long. 113°40′43″ W.; to Lat. 35°54′47″ N., Long.113°40′51″ W., southeast to Lat. 35°50′16″ N., Long. 113°37′13″ W.; thence along the park boundary to the point of origin.

Issued in Washington, DC, on July 1, 1999.

Reginald C. Matthews,

Acting Program Director, Air Traffic Airspace Management Program.

[FR Doc. 99–17320 Filed 7–6–99; 12:06 pm]

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–99–5927; Notice No. 99–12]

RIN 2120–AG73

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area

AGENCY: Federal Aviation Administration (FAA, DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to limit the number of commercial air tours that may be conducted in the Grand Canyon National Park Special Flight Rules Area (SFRA) and to revise the reporting requirements for commercial air tours in the SFRA. These proposed changes would allow the FAA and the National Park Service (NPS) to limit and further assess the impact of aircraft noise on the Grand Canyon National Park (GCNP). In addition, this action proposes non-substantive changes to 14 CFR part 93, subpart U to improve the organization and clarity of the rule. This document is one part of an overall strategy to control aircraft noise on the park environment and to assist the NPS in achieving the statutory mandate imposed by Public Law 100–91 to provide substantial restoration of natural quiet in the GCNP.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Comments on this NPRM should be mailed or delivered, in triplicate, to: U.S. Department of Transportation Dockets, Docket No., [ ], 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: *9–NPRM–CMTS@faa.gov*. Comments may be filed and examined in Room Plaza 401 between 10:00 a.m. and 5:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, AFS–200, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8321.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice are also invited. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Comments should identify the regulatory docket number and be submitted in triplicate to the above-specified address. A report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. ." The FAA will date, time stamp, and return the postcard.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future FAA NPRMs should request a copy of advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: (202) 512–1661). Internet users may access the FAA's Internet site at http://www.faa.gov or the **Federal Register**'s Internet site at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Public Meetings

The FAA intends to hold two public meetings to provide interested members of the public an additional opportunity to comment on this proposal. The details pertaining to the public meetings will be announced in the notice section of the **Federal Register**. For more information, contact Mark Lawyer at (202) 493–4531 by telephone or *mark.lawyer@faa.gov* by email.

I. History

A. FAA's Actions

Beginning in the summer of 1986, the FAA initiated regulatory action to address increasing air traffic over Grand Canyon National Park (GCNP). On March 26, 1987, the FAA issued Special Federal Aviation Regulation (SFAR) No. 50 establishing a special flight rules area and other flight regulations in the vicinity of the GCNP (52 FR 9768). The purpose of the SFAR was to reduce the risk of midair collision and decrease the risk of terrain contact accidents below the rim level. These requirements were modified and extended by SFAR 50–1 (52 FR 22734; June 15, 1987).

In 1987 Congress enacted Public Law (Pub. L.) 100–91, commonly known as the National Parks Overflights Act. Public Law 100–91 stated, in part, that "noise associated with aircraft overflights at Grand Canyon National Park [was] causing a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users."

Section 3 of Public Law 100–91 required the Department of Interior (DOI) to submit to the FAA recommendations to protect resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The law mandated that the recommendations provide for, in part, "substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflights,"

In December 1987, the DOI transmitted its "Grand Canyon Aircraft Management Recommendation" to the FAA, which included both rulemaking and non-rulemaking actions. Public Law 100–91 required the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon, implementing the recommendations of DOI without change unless the FAA determined that executing the recommendation would adversely affect aviation safety.

On May 27, 1988, the FAA issued SFAR No. 50–2, revising the procedures for aircraft operation in the airspace above the Grand Canyon (53 FR 20264; June 2, 1988). SFAR No. 50–2 did the following: (1) Extended the Special Flight Rules Area (SFRA) from the surface to 14,499 feet above mean sea level (MSL) in the area of the Grand Canyon; (2) prohibited flight below a certain altitude in each of the five sectors of this area, with certain exceptions: (3) established four flight-free zones from the surface to 14,499 feet MSL; (4) provided for special routes for air tours; and (5) contained certain communications requirements for flights in the area.

A second major provision of section 3 of Public Law 100–91 required the DOI to submit a report to Congress discussing "whether the plan has succeeded in substantially restoring the natural quiet in the park; and * * * such other matters, including possible revisions in the plan, as may be of interest." On September 12, 1994, the DOI submitted its final report and recommendations to Congress. This report, entitled, "Report on Effects of Aircraft Overflights on the National Park System" (Report to Congress), was published in July, 1995. The Report to Congress recommended numerous revisions to SFAR No. 50–2 in order to substantially restore natural quiet in the GCNP.

Recommendation No. 10, which is of particular interest to this rulemaking, states: "Improve SFAR 50–2 to Effect and Maintain the Substantial Restoration of Natural Quiet at Grand Canyon National Park." This recommendation incorporated the following general concepts: simplification of the commercial sightseeing route structure; expansion of the flight-free zones; accommodation of the forecasted growth in the air tour industry; proposing phase-in of noise efficient/quiet technology aircraft; temporal restrictions ("flight-free" time periods); use of the full range of methods and tools for problem solving; and institution of changes in approaches to park management, including the establishment of an acoustic monitoring program by the NPS in coordination with the FAA.

On June 15, 1995, the FAA published a final rule that extended the provisions of SFAR No. 50–2 to June 15, 1997 (60 FR 31608), pending implementation of the final rule adopting DOI's recommendations.

On December 31, 1996, the FAA issued the final rule (61 FR 69302) implementing many of the recommendations set forth in the DOI report including: flight-free zones and corridors; minimum flight altitudes; general operating procedures; curfews in the Dragon and Zuni Point corridors; reporting requirements; and a cap on the number of "commercial sightseeing" aircraft that could operate in the SFRA. The FAA subsequently issued a written interpretation stating that the aircraft cap applied to the number of aircraft operating in the SFRA at a given time.

This final rule was issued concurrently with a Notice of Proposed Rulemaking regarding Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park; a Notice of Availability of Proposed Commercial Air Tour Routes for Grand Canyon National Park and Request for Comments; and the Environmental Assessment. The final rule was originally scheduled to become effective May 1, 1997. On February 26, 1997, the FAA published a delay of the effective date to January 31, 1998 (62 FR 8861), for the establishment of an acoustic monitoring program by the NPS in coordination with the FAA.

On June 15, 1995, the FAA published a final rule that extended the provisions of SFAR No. 50–2 to June 15, 1997 (60 FR 31608), pending implementation of the final rule adopting DOI's recommendations.

On December 31, 1996, the FAA issued the final rule (61 FR 69302) implementing many of the recommendations set forth in the DOI report including: flight-free zones and corridors; minimum flight altitudes; general operating procedures; curfews in the Dragon and Zuni Point corridors; reporting requirements; and a cap on the number of "commercial sightseeing" aircraft that could operate in the SFRA. The FAA subsequently issued a written interpretation stating that the aircraft cap applied to the number of aircraft operating in the SFRA at a given time.

This final rule was issued concurrently with a Notice of Proposed Rulemaking regarding Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park; a Notice of Availability of Proposed Commercial Air Tour Routes for Grand Canyon National Park and Request for Comments; and the Environmental Assessment. The final rule was originally scheduled to become effective May 1, 1997. On February 26, 1997, the FAA published a delay of the effective date to January 31, 1998 (62 FR 8861), for those portions of the December 31, 1996, final rule which define the Grand Canyon SFRA (14 CFR § 93.301), define the flight-free zones and flight corridors (14 CFR § 93.305), and establish minimum flight altitudes in the vicinity of the GCNP (14 CFR § 93.307). The February 26, 1997, final rule also reinstated the corresponding sections of SFAR 50–2 until January 31, 1998 (flight-free zones, the Special Flight Rules Area, and minimum flight altitudes). On December 17, 1997, the effective date for these sections was delayed to January 31, 1999 (62 FR 66248). On December 7, 1998, the effective date for 14 CFR §§ 93.301, 93.305, and 93.307, was delayed until January 31, 2000 (63 FR 67543).

The FAA's final rule published in 1996 was challenged before the U.S. Court of Appeals for the District of Columbia Circuit by the following petitioners: Grand Canyon Air Tour Coalition; the Clark County Department of Aviation and the Las Vegas Convention and Visitors Authority; the Hualapai Indian Tribe; and seven environmental groups led by the Grand Canyon Trust. See Grand Canyon Air Tour Coalition v. FAA, 154 F.3d 455 (D.C. Cir., 1998). In general, the petitioners charged that the FAA misapplied Public Law 100–91 in implementing the final rule and committed several procedural errors during the rulemaking process. The Court ruled in favor of the FAA and upheld the final rule.

B. Interagency Working Group

On December 22, 1993, the then Secretary of Transportation, Federico Peña, and Secretary of the Interior, Bruce Babbitt, formed an interagency working group (IWG) to explore ways to limit or reduce the impacts from overflights on national parks, including the GCNP. Secretary Babbitt and Secretary Peña concurred that increased flight operations at GCNP and other national parks have significantly diminished the national park experience for some park visitors, and that measures can and should be taken to preserve a quality park experience for visitors, while providing access to the airspace over the national parks. The FAA has been working closely with the NPS to identify and address the impacts of commercial air tours on the GCNP.

C. President's memorandum

The President, on April 22, 1996, issued a Memorandum for the Heads of Executive Departments and Agencies to address the impact of transportation in national parks. Specifically, the President directed the Secretary of Transportation to issue proposed regulations for the GCNP that would place appropriate limits on sightseeing aircraft to reduce the noise immediately, and to make further substantial progress towards restoration of natural quite, as defined by the Secretary of the Interior, while maintaining aviation safety in accordance with Public Law 100–91.

This memorandum also indicated that, with regard to overflights of the

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GCNP, "should any final rulemaking determine that issuance of a further management plan is necessary to substantially restore natural quite in the Grand Canyon National Park, [the Secretary of Transportation, in consultation with heads of relevant departments and agencies] will complete within 5 years a plan that addresses how the Federal Aviation Administration and the National Park Service" will achieve the statutory goal not more than 12 years from the date of the directive (i.e., 2008).

II. Purpose of This NPRM

The government has analyzed the noise situation at the GCNP over the last two years and has decided that a greater effort must be made to reach the statutory goals of Public Law 100–91, especially in light of the President's Memorandum. Noise generated by aircraft conducting commercial air tours presents a specific type of problem because these aircraft generally are operated repeatedly at low altitudes over the same routes. Thus, the FAA issued its 1996 final rule and instituted the aircraft cap as a means to limit aircraft noise generated by air tours.

In the 1996 final rule, however, the FAA underestimated the number of aircraft operated in the SFRA by commercial air tour operators. This problem was identified in the Notice of Clarification issued October 31, 1997 (62 FR 58,898). In fact, the FAA concluded in this Notice that "there is enough excess capacity in terms of aircraft numbers for air tours to increase by 3.3 percent annually for the next twelve years if the demand exists (62 FR 58902)." The FAA went on to state that "in the aggregate, and for most individual operators, the number of air tours provided can continue to increase while the number of aircraft remains the same." In light of this conclusion, the IWG recommended that the FAA and NPS develop a rule that will temporarily limit commercial air tours in the GCNP SFRA at the level reported by the air tour operators for the period May 1997–April 1998.

The agencies' goal through this rulemaking is to prevent an increase in aircraft noise by limiting the number of commercial air tours. Concurrently with this NPRM, the FAA also is issuing a Notice of Availability to Routes which indicates certain modifications to aircraft routes through the SFRA and an NPRM modifying airspace in the SFRA. Additionally, the FAA is issuing a draft supplemental Environmental Assessment which assesses the environmental impact of the route modifications, the proposed commercial air tours limitation and the airspace modifications. The FAA also continues to work on the rulemaking initiated on December 31, 1996 proposing quiet technology aircraft. All of these steps are aimed at controlling or reducing the impact of aircraft noise in the GCNP.

In addition to preventing the noise situation from worsening, controlling the overall number of commercial air tours in the GCNP SFRA will facilitate the analysis of noise conditions in the GCNP and aid in the design of the noise management plan. Once the commercial air tour limitation and the new routes are implemented, the FAA and NPS will be better able to consider future noise mitigation strategies.

The proposed rule is premised on the National Park Service's noise evaluation methodology for Grand Canyon National Park, which was published in the **Federal Register** on January 26, 1999 (64 FR 3969). The NPS is reviewing comments submitted in response to that notice. If, on completion of that review, the NPS determines not to adopt the methodology described in the notice (such as the two-zone system and accompanying noise thresholds), the FAA will reevaluate the proposal and Draft Supplemental Environmental Assessment in light of whatever final action is taken by the NPS.

The Proposal

A. Overview

This NPRM would temporarily limit commercial air tours in the GCNP Special Flight Rules Area (SFRA) at the level reported to the FAA by the operators for the year May 1, 1997–April 30, 1998 (the base year), pending implementation of the Comprehensive Noise Management Plan (see discussion in III.B. below). During the implementation of this commercial air tour limitation, the FAA and the NPS would collect further information regarding commercial SFRA operations and aircraft noise in the GCNP. The NPS and the FAA would use the information collected during this time to determine whether the "substantial restoration of natural quiet" has been achieved at the GCNP. In the event that the agencies determine that the statutory goal is not met through the various noise mitigation techniques adopted, the FAA and NPS would need to take further steps to achieve the substantial restoration of natural quiet. This could mean that the commercial air tour limitation would become permanent and/or that commercial air tours would be further limited. This commercial air tour limitation would replace the current aircraft cap set forth in § 93.316(b).

In addition to the limitation on commercial air tours, this rulemaking would add a requirement for certificate holders to file a visual flight rules (VFR) flight plan to provide the FAA with a mechanism for monitoring and enforcing the limitation. This rule also would modify the current reporting requirements to require certificate holders authorized to conduct commercial air tours in the GCNP SFRA to report air tour and other flights that enter the SFRA. This data would be used to assess the noise situation in the GCNP and further develop the Comprehensive Noise Management Plan.

The NPRM also would make a number of non-substantive changes to Part 93, subpart U. These changes consist of the following: renumbering paragraphs; moving subparagraphs into new sections; and amending section headings. These changes are intended to make the rule easier to read and understand and to reflect the changes proposed herein.

B. Comprehensive Noise Management Plan

The Comprehensive Noise Management Plan (CNMP) is the overall process that the government would use to control and monitor noise conditions in the GCNP to achieve the statutory goal of substantial restoration of natural quiet. This plan is part of NPS' overall effort to reduce noise levels from all sources within the park, as called for in the NPS' 1995 General Management Plan.

As part of the CNMP, the FAA and NPS are working together to develop a noise management program that addresses noise from commercial air tour overflights. To ensure development of a flexible and adaptive approach to noise mitigation and management, this plan will, at a minimum do the following: (1) Address development of a reliable aircraft operations and noise database; (2) validate and document the most effective uses for FAA and NPS noise models in GCNP; (3) explore how the conversion to noise efficient/quiet technology aircraft can most effectively contribute to the substantial restoration of natural quiet while allowing for growth in the industry; and (4) determine how to provide operators with incentives to purchase noise efficient/quiet technology aircraft. In developing this plan, the FAA and NPS are committed to an open process that will provide for full public involvement and consultation with the public and affected Native American tribes.

As discussed above, the effective date for a portion of the 1996 final rule was delayed. Additionally, the NPRM for Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park has not been finalized. A noise management plan also has not been fully implemented yet. Work to date has primarily focused on developing a database of commercial air tours and developing a plan to improve noise modeling at the GCNP.

C. Definitions

Three new definitions would be added to current § 93.303 and would be applicable to part 93, subpart U. Definitions would be added for the terms "allocation", "commercial air tour" and "commercial SFRA operation." Additionally, the paragraph designations would be removed to simplify administration of this section.

1. Allocation

The term "allocation" would be defined as the authorization to conduct a commercial air tour in the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). Each certificate holder reporting base year (May 1, 1997—April 30, 1998) air tours to the FAA would receive one allocation for each commercial air tour reported.

2. Commercial Air Tour

The term "commercial air tour" would be defined as any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing. If the operator of a flight asserts that the flight is not a commercial air tour, the Administrator during an administrative review may consider a number of factors in determining whether the flight is actually a commercial air tour. Factors that the Administrator may consider include, but are not limited to—(1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire; (2) whether a narrative was provided that referred to areas or points of interest on the surface; (3) the area of operation; (4) the frequency of flights; (5) the route of flight; (6) the inclusion of sightseeing flights as part of any travel arrangement package; or (7) whether the flight or flights in question would or would not have been canceled based on poor visibility of the surface. The Administrator may give more weight to some factors than others in making this determination. This definitional change would be consistent with other rulemakings that the FAA is working on.

The current rules at 14 CFR. part 93, subpart U use the term "commercial sightseeing flight" at §§ 93.305 (Flight-free zones and flight-free corridors); 93.307 (Minimum flight altitudes); 93.315 (Commercial sightseeing flight operations); 93.316 (Commercial sightseeing limitations); and 93.317 (Commercial sightseeing flight reporting requirements). This NPRM would replace the term "commercial sightseeing flight" with the term "commercial air tour" throughout part 93, subpart U.

The proposed definition would clarify which flights are considered commercial air tours. The current rules do not define the term "commercial sightseeing flight". Instead, the FAA has assumed that flights operated on the Blue, Black and Green routes that are reported to the FAA under § 93.317 are commercial air tour flights with the following exceptions: (1) flights using the Blue Direct and Blue Direct South routes generally are presumed to be flights to reposition aircraft or transportation flights to move passengers from point A to point B; and (2) flights using the Green 3 route are operated under an FAA Form 7711–1, Certificate of Waiver or Authorization (Form 7711) issued by the Las Vegas Flight Standards District Office in support of Supai Village and the Havasupai Tribe. The FAA also believes that most flights operated on the Brown routes are operated under a Form 7711, typically in support of the Canyon's river rafting operations. On occasion, a commercial air tour may transition to a Brown route as part of a more extensive tour. There are only two east/west routes proposed that would be used for all types of commercial SFRA operations. Hence, because it will be more difficult to identify air tours based on the route flown, the FAA intends to define the term "commercial air tour".

3. Commercial SFRA Operations

Public Law 100–91 recognizes that noise associated with "aircraft overflights" at the GCNP is causing "a significant adverse effect on the natural quiet and experience of the park." In order to improve noise management in the GCNP, the agencies believe it is necessary to impose some requirements on all flights conducted in the SFRA by air tour operators, regardless of whether an air tour is actually conducted on that flight. Therefore, the FAA proposes to adopt a new term to apply to all commercial operations conducted by certificate holders authorized to conduct commercial air tours and occurring within the GCNP SFRA.

The term "Commercial Special Flight Rules Area Operation" (Commercial SFRA Operation) would be defined as any portion of a flight within the GCNP SFRA that is conducted by a certificate holder that has operations specifications authorizing air tours within the GCNP SFRA. This term is broader than the term "commercial air tour" as it includes air tours as well as transportation, repositioning, maintenance, and training/proving flights. The types of flights covered by this term would be defined in the "Las Vegas Flights Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual" (see discussion at III.F re: definitions). The term "commercial SFRA operations" does not include supply and administrative flights conducted under contract with the Native Americans, or other flights conducted under a Form 7711. The FAA proposes to create this new term so that it can better account for the types of operations occurring within the park other than commercial air tours.

Examples 1 and 2 (below) illustrate the types of commercial SFRA operations and how air tours are defined.

Example 1. A commercial air tour operator conducts a commercial air tour through the GCNP SFRA from point A to point B, drops off passengers for a ground tour at point B and returns to point A without passengers. A subsequent aircraft completes a second tour from point A to point B and unloads its passengers at point B. The aircraft then picks up the passengers from the first tour, and returns them through the GCNP SFRA from point B to point A, completing the round trip air tour for these passengers. The initial trip by the first aircraft from point A to point B is a commercial air tour. The return trip of the first aircraft, without passengers, from point B to point A is a repositioning trip. The first trip of the second aircraft is a commercial air tour. The return trip of the second aircraft is a transportation trip because it moves passengers from point B to point A. The two commercial air tours each use one allocation. The other flights do not use allocations.

Example 2. A commercial air tour operator conducts a flight within the GCNP SFRA solely for the purpose of performing a flight check on a new pilot. During the flight, the aircraft develops mechanical problems and makes a precautionary landing. A second aircraft is dispatched with a pilot and mechanic to perform any necessary repairs. The first flight is a training flight. The second flight is a

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maintenance flight. The return flights for both aircraft are repositioning flights. No allocations are used.

D. Requirements Specific to Commercial SFRA Operations

Section 93.315 would be reorganized and revised to remove the capacity limitation on aircraft and to delete the reference to the outdated SFAR 38–2. The current language only applies to aircraft having a passenger-seat configuration of 30 or fewer seats. The FAA believes that removal of the capacity restriction is necessary because it is aware that some air tour operators are beginning to use larger capacity aircraft. The FAA wants to ensure that each air tour operator, regardless of the capacity of aircraft, is held to the same operational and safety standards. This section would continue to require commercial air tour operators to be certificated under 14 CFR part 119 to operate in accordance with either 14 CFR part 121 or part 135 and to hold appropriate GCNP SFRA operations specifications.

Section 93.317 of the NPRM would maintain the current curfew hours in the Dragon and Zuni Point corridors (current § 93.316(a)). This curfew would now apply to commercial SFRA operations. Currently, the curfew applies to "commercial sightseeing operations," which is an undefined term. The FAA believes that amending this curfew to include commercial SFRA operations would improve management of aircraft noise in the Dragon and Zuni Point corridors. With the removal of this language from § 93.316 to proposed § 93.317, § 93.316 would be removed and reserved.

Section 93.325 would require certificate holders conducting commercial air tours in the GCNP SFRA to report their commercial SFRA operations to the FAA on a quarterly basis. As discussed below, this reporting requirement is similar to that in current section 93.317 and would enable the government to assess more accurately the noise level and airspace use in the GCNP and further the development of the Comprehensive Noise Management Plan.

E. Operations Limitation

This NPRM would limit all commercial air tours in the GCNP SFRA on a twelve month basis to the number of air tours reported in accordance with current § 93.317 for the year May 1, 1997—April 30, 1998. This time period is being used as the basis for determining the allocations because it is the first twelve months for which the FAA has air tour data that has been fully compiled and analyzed. Proposed § 93.319 would establish this commercial air tour limitation. The number of commercial air tours that a certificate holder could conduct would be shown on the certificate holder's operations specifications as allocations.

The FAA is proposing that these allocations would remain unchanged by the FAA for a twenty-four month period from the effective date of this rule. After that time, all certificate holders' allocations may be revised based on the following: (1) Data submitted under proposed § 93.325; (2) updated noise analysis; and/or (3) the status of the Comprehensive Noise Management Plan. Any change in the overall allocations to all certificate holders would be subject to notice and comment rulemaking.

The FAA and NPS realize that commercial air tour operators need consistency to justify equipment investment and make other business plans. In devising the proposed two-year term for the allocations, the FAA considered two other alternatives including revising the allocations annually or on an ad hoc time basis thereafter. The FAA rejected both of these alternatives because it was concerned that neither alternative would achieve the proper balance between providing the certificate holders with the latitude necessary to conduct business, and controlling noise in the GCNP. The FAA solicits comments on this matter.

1. Initial Allocation

Under this NPRM, each commercial air tour would be represented by an allocation. Thus, each certificate holder that reported commercial air tours to the FAA in accordance with current § 93.317 for the base year would receive one allocation for each air tour. The total number of commercial air tours that were reported by all of the operators to the FAA for that base year was 88,000. This number does not include flights in support of air tour operations such as transportation flights, training flights, maintenance flights, and repositioning flights or flights conducted under a Form 7711.

To prevent a worsening of noise conditions in the park during the peak season, the FAA, in consultation with the NPS, proposes to establish a peak season cap that prevents the movement of allocations from off-peak season into the peak season. Peak season allocations, however, would be permitted to be used during the off-peak season as noise during the off-peak season generally is substantially less than during the peak season. The FAA proposes that the peak season be defined as the period from May 1–September 30; the off-peak season would be the period October 1–April 30. This peak/off-peak season definition is consistent with the summer and winter season for curfew purposes. Peak/off-peak allocations would be determined from the information reported to the FAA for the base year. There were 52,500 commercial air tours reported for May through September in the base year.

This restriction helps to eliminate the potential that noise would become worse during the peak season months because operators could maximize their allocation use during the time. Additionally, the restriction reduces the potential of an airspace congestion problem caused by an operator using all of its allocations during the peak season and shutting down its business during the off-peak season. This was deemed advisable after the FAA utilized its Airport and Airspace Simulation Computer Model (SIMMOD), which demonstrated significant use of the routes during the peak season.

In developing the peak/off-peak season distributions, the FAA and NPS considered three alternatives: (1) the proposed 5 month peak season (May–September); (2) a three month (July–September) peak season; and (3) a uniform year with no peak/off-peak delineation. The base year data indicates that the July–September time period is the most active period. A shorter peak, however, may limit the ability of the operators to maximize the use of their allocations since they would not be able to use peak season air tour allocations during the off-peak season. Consequently, the FAA requests comment specifically on the definition of peak/off-peak season.

Under the proposed rule, allocations also would be separated into those that may be used in the Dragon and Zuni Point corridors and those that may be used in the rest of the SFRA. Dragon and Zuni Point allocations again would be determined based on the number of air tours an operator conducted and reported in these corridors for the base year. Only operators who reported air tours in these corridors for the base year would receive allocations for these corridors. There were approximately 43,000 commercial air tours reported for the Dragon and Zuni Point corridors for the base year; approximately 29,500 of those tours were reported for the peak season.

The NPS and the FAA believe it is necessary to restrict allocations for the Dragon and Zuni Point corridors because the airspace is already

congested. The agencies believe that this restriction would help maintain the number of air tours in these corridors at a level that does not pose a congestion problem and that minimizes the likelihood that aircraft noise in this region of the park will increase.

The FAA believes the initial allocation phase would proceed in a manner similar to the example below:

Assuming the FAA adopts the 5-month proposed peak season. Throughout the base year, Operator A reported that half of its air tours each month were conducted in the Dragon and Zuni Point corridors. Operator B did not report any Dragon and Zuni Point air tours for the base year. The following information was reported to the FAA under current § 93.317 for theMay 1, 1997–April 30, 1998 time period:

EXAMPLE OF INITIAL ALLOCATIONS

	Operator A	Operator B
Reported operations		
Peak:		
May	75	50
June	150	100
Jul	300	250
Aug	300	200
Sep	200	100
Subtotal	1025	700
Off-Peak:		
Oct	75	25
Nov	25	.....
Dec	50	25
Jan	25	.....
Feb	.....	.....
Mar	.....	.....
Apr	50	25
Subtotal	225	75
Total	1250	775
Dragon/Zuni Point	625	None
Allocations		
Overall:		
Total	1250	775
Peak Season	1025	700
Dragon/Zuni Point:		
Total	625	None
Peak	513	None

2. Certificate Holders Receiving Allocations

The FAA is not reporting each certificate holder's individual allocation in this NPRM. Instead, this NPRM will identify those certificate holders who reported air tours to the FAA for the base year period and are scheduled to receive initial allocations to continue to conduct commercial air tours. These certificate holders are, in alphabetical order, as follows:

Air Bridge, Inc.; Air Grand Canyon, Inc.; Air Nevada Airlines, Inc.; Air Star Helicopters (includes Air Star Airlines); Aladdin Air Services, Inc.; AVI, Inc.; Aviation Ventures, Inc. (dba Vision Air); Bruce Adams (dba Southwest Safaris); Eagle Canyon Airlines; Grand Canyon Airlines; Heli USA Airways, Inc. (dba HeliUSA); Kenai Helicopters, Inc.; King Airlines, Inc.; Lake Meade Air, Inc; Las Vegas Airlines, Inc.; Las Vegas Helicopters, Inc.; Maverick Helicopters, Inc.; Papillon Airways, Inc. (includes Papillon Grand Canyon Helicopters); Scenic Airlines, Inc. (includes Las Vegas, Page and all other operations); Sundance Helicopters, Inc.; Temple Air Service, Inc.; Vista Airlines, Inc.; and Westwind Aviation, Inc.

Only certificate holders identified above are scheduled to receive an initial allocation under this rule.

Based on its additional research, the FAA believes that one certificate holder who reported air tours to the FAA during the base year period is no longer in business. Its allocation would be distributed among the remaining certificate holders, proportionate to the size of each certificate holder's allocation, unless the certificate holder listed below as not receiving allocations notifies the Manager, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Ave., S.W. Washington, D.C. 20591. This written notification must be received on or before the NPRM comment deadline and indicate that the certificate holder intends to conduct commercial air tours in the GCNP SFRA and is authorized to do so. Thus, the following certificate holder will NOT receive an allocation UNLESS it notifies the FAA before the close of the comment period:

** Flagstaff Safe Flyers, Inc.

Certificate holders identified as receiving allocations to conduct air tours in the SFRA will receive a written notification by certified mail, return receipt requested, informing them of the following: (1) Total number of air tours allocated in the SFRA; (2) Number of air tours allocated in the Dragon and Zuni Point corridors; and (3) Peak season allocation for both the total SFRA and Dragon and Zuni Point corridors. This notification will be sent out concurrently with publication of this NPRM.

The FAA also will attempt to notify the certificate holder identified above as not receiving allocations via certified

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mail; return receipt requested, directed to the last known business address.

3. Requesting Modification of Initial Allocation

The FAA recognizes that the air tour business in the GCNP is constantly changing. In fact, the FAA is aware that since the time period reflected in the base year data, some businesses have been bought and sold. Additionally, the FAA is aware that some operators have expanded their business into Las Vegas or modified the focus of their business to include some flights in the Dragon and Zuni Point corridors. Thus, due to mergers/acquisitions, bankruptcies, or other reasons that affect operations, certificate holders may believe that data they submitted for the base year does not reflect their current business. The FAA is striving to be fair in assessing the allocations. Therefore, it is permitting any certificate holder who believes that the base year data does not reflect its current operations as of the date of this notice to submit a written request to the Manager, Air Transportation Division requesting reassessment and indicating why the base year data is not an accurate representation. Such a request must be supported by written documentable evidence (i.e., contracts, leases, or other legal documentation). The FAA anticipates that any modifications will only result in redistribution of allocations among certificate holders affected by the merger or acquisition, etc., or within a certificate holder's allocation distribution (e.g., transfer of business operations prior to this NPRM into the Dragon or Zuni Point sector).

Certificate holders requesting modification of the initial allocation must submit the information described above in writing to Manager, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Ave., SW Washington DC 20591. All requests for modification must be received on or before the comment deadline. Requests for modifications received after the comment deadline will not be considered. The Manager will review the information to determine whether the party has provided substantive, documentable evidence that the information relied on for the initial allocation is not an appropriate standard of measure. Any transfer of allocations due to prior mergers, acquisitions, etc. must be agreed to by all involved parties. The FAA will not consider increasing an initial allocation because of changes in consumer demand or the fact that the base year was not a busy year, operationally.

One example of how the above process would work is set forth below:

There are four certificate holders reporting commercial air tours in the GCNP SFRA, Operators A, B, C and D. In December, 1998 (post base-year) Operator A purchased all of Operators C's operations. Operator B reported no air tours in the Dragon and Zuni Point corridors for the base year but transferred 50% of its operations to the Dragon and Zuni Point corridors in November, 1998. Operator D has turned in its operations specifications.

Because all of these changes occurred post base year, they would not be reflected by the data used by the FAA to allocate air tours. Hence the certificate holders should do the following:

Operator A should submit a request to the Manager, Air Transportation Division to have its allocation re-assessed. It should provide copies of all documents relating to the purchase of Operator C's business operations and indicate how it believes the numbers should be reallocated. Operator A should also submit a statement from Operator C supporting the transfer. Operator B should submit a request to the Manager, Air Transportation Division requesting that its allocation be redistributed so that it receives an allocation for the Dragon and Zuni Point corridors. Operator B should submit any written evidence documenting its shifting of operations from one area of the GCNP to the Dragon and Zuni Point corridors. Operator C is no longer in business. Operator D's allocation would be retained by the FAA and be redistributed among all remaining operators.

F. Flight Plans

Proposed § 93.323 would require each certificate holder conducting a commercial SFRA operation to file an FAA visual flight rules (VFR) flight plan with an FAA Flight Service Station for each flight. Each flight segment (one take-off and one landing) would require a flight plan. Each certificate holder filing a VFR flight plan would be responsible for indicating in the "remarks" section of the flight plan the purpose of the flight. There would be at least five possible purposes: commercial air tour; transportation; repositioning; maintenance; and training/proving. The term "commercial air tour" would be as already defined in the proposed rule. The other five terms would be defined in the "Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual" as follows:

1. Transportation—A flight transporting passengers for compensation or hire from point A to point B on a flight other than air tour.

2. Repositioning—A non-revenue flight for the purpose of repositioning the aircraft (e.g., a return flight without passengers after an air tour and that is conducted to reposition the aircraft for the next air tour).

3. Maintenance flight—A flight conducted under a special flight permit, or a support flight to transport necessary repair equipment or personnel to an aircraft that has a mechanical problem.

4. Training/proving—A flight taken for one of the following purposes: (1) Pilot training in the SFRA; (2) checking the pilot's qualifications to fly in the SFRA in accordance with FAA regulations; or (3) an aircraft proving flight conducted in accordance with section 121.163 or 135.145.

The information obtained from the flight plan would be used to ensure compliance with the commercial air tours limitation. Certificate holders may wish to develop "canned" flight plans that may be opened and closed quickly. Copies would not have to be maintained.

The FAA considered requiring certificate holders conducting commercial air tours to complete a form prior to each commercial air tour conducted in the GCNP SFRA. Under this proposal, a certificate holder identified as receiving an allocation would receive one form for each air tour reported for the base year. The forms would be serialized and carbonized. Prior to each commercial air tour, the certificate holder would complete the form with the required information, retain a copy of its files and keep a copy with the pilot. The information that would have been required would have been almost identical to the information required for the quarterly reporting at proposed § 93.325.

The FAA rejected the form alternative because it would impose burdensome reporting and recordkeeping requirements on the certificate holders. The FAA believes that the VFR flight plan requirement is less burdensome. At this time, the FAA believes that flight plan filing is a feasible approach.

G. Reporting

The reporting requirement currently contained in § 93.317 would be moved to proposed § 93.325 and expanded to cover certificate holders conducting transportation flights, repositioning flights, maintenance flights or training/proving flights in the GCNP SFRA. The information reported would be similar to that currently required by § 93.317.

Commercial SFRA operations can originate in one time zone and cross time zones so the FAA wants to ensure that the times reported are consistent. At this time, the FAA is proposing that time be shown in Universal Coordinated Time (UTC). The FAA seeks comment on whether UTC would be the appropriate time measurement or whether an alternative time zone (i.e., Mountain Standard Time) should be used.

The reporting required by proposed § 93.325 would be submitted to the Las Vegas Flight Standards District Office on a quarterly basis. Currently, certificate holders are required to report three times a year. A number of certificate holders, however, have commented to the FAA that quarterly filing would be preferred because the timing would be consistent with other government reporting requirements (IRS, Social Security, etc.). The information submitted on these quarterly reports would be used by the FAA and NPS to assess the noise situation in the GCNP and in development of the Comprehensive Noise Management Plan. Certificate holders would continue to submit the reports in written form. Electronic transmission (diskettes, email, etc.) is preferable and encouraged.

Certificate holders conducting flights in the SFRA under Form 7711 would not be required to report under § 93.325; however, the FAA is considering establishing such reporting as a condition of the waiver. This reporting would provide the agencies with a clearer picture of the types and numbers of flights operating in the SFRA. The FAA seeks comment on this matter.

H. Transfer and Termination of Allocations

Allocations to conduct commercial air tours in the GCNP SFRA would be an operating privilege granted to certificate holders who conducted and reported commercial air tours during the base year. As proposed, the allocations would be subject to reassessment after two years. Allocations to conduct commercial air tours in the GCNP SFRA would not be a property interest.

The FAA recognizes that air tour operators often utilize a variety of contracting/subcontracting methods to handle passenger loads during busy periods. Thus, the FAA proposes to allow an allocation to be transferred among certificate holders, subject to three restrictions. First, all certificate holders would be required to report any transfers to the Las Vegas Flight Standards District Office in writing. Permanent transfers (mergers/acquisitions, etc.) would require FAA approval through the modification of the operations specifications. Temporary transfers (seasonal leases, etc.) would be effective without FAA approval. The FAA would not modify the operations specifications for temporary arrangements. Second, all certificate holders would be subject to all other applicable requirements in the Federal Aviation Regulations. Third, allocation authorizing commercial air tours outside the Dragon and Zuni Point corridors would not be permitted to be transferred into the Dragon and Zuni Point corridors, however, could be used outside the Dragon and Zuni Point corridors. This restriction is necessary to ensure that flight within these corridors do not increase, thus, posing a potential safety and noise problem. A certificate holder may increase its peak season allocation outside the Dragon and Zuni Point corridors by transferring Dragon and Zuni Point allocations in the rest of the SFRA.

Examples of the interrelationship between the Dragon and Zuni Point restriction and the peak season restriction is as follows:

Example 1: Operator A has a total of 1250 GCNP SFRA allocations to operate in the SFRA, with 625 designated for the Dragon and Zuni Point corridors. The total peak season GCNP SFRA allocations for Operator A is 1025. The Dragon and Zuni Point peak season allocations are 513 (of the 1025 GCNP SFRA peak). The Operator may reallocate its Dragon and Zuni Point peak allocations in the peak season for the rest of the GCNP SFRA. It may also reallocate its Dragon and Zuni Point allocations to the off-peak season for use in the rest of the GCNP SFRA.

Example 2: Operator A has the same allocations as described in Example 1 above. Operator A, however, decides to lease for 1 year 100 peak season allocations for the Dragon and Zuni Point corridors to Operator B. Operator B has 50 peak season allocations designated on its operations specifications for these corridors. This is permitted since Operator A and Operator B both have current Dragon and Zuni Point allocations. Thus, Operator A's peak season allocations for these corridors decrease to 413 (513 – 100) for the length of the lease. Operator B's Dragon and Zuni Point Corridor peak season allocations increase to 150 (50+100) for the length of the lease.

Example 3: Operator A has the same allocations as described in Example 1 above. In year 1 Operator A experiences high consumer demand between January and April (off season) for the east/west routes (outside the Dragon and Zuni Point corridors). Therefore, Operator A decides to use 100 peak season allocations for the Dragon and Zuni Point corridors in the off-peak season to operate on the east/west routes outside these corridors. This reduces the amount of Dragon and Zuni Point allocations it can use during the peak season to 413 in year 1. In year 2, Operator A experiences a very slow off-peak season between the months of January and April and does not use all of its off-peak allocations. In the peak season, however, demand in the Dragon and Zuni Point corridors is high. Thus, Operator A can use all 513 of its peak season Dragon and Zuni Point allocations during this time.

Certificate holders who voluntarily cease conducting commercial air tours in the GCNP SFRA for any consecutive 180-day period would lose their allocations. This use or lose provision recognizes that the FAA is the sole controller of these allocations. If not used, the holder would lose its operating privilege and the FAA would then assert its control and decide whether to redistribute the allocations. The FAA considered proposing a time period shorter than 180 days, however, given the seasonal nature of the air tour business the FAA believes that a shorter time could be prejudicial against the certificate holders. The FAA believes that 180 days is a reasonable accommodation to the certificate holders and allows them the flexibility to manage their business. The FAA seeks comment on this matter.

The FAA also would retain the right to redistribute, reduce or revoke allocations based on the need to carry out its statutory mandate to regulate for efficiency of airspace or aviation safety. Additionally, the FAA could redistribute, reduce or revoke allocations if the certificate holder voluntarily surrendered the allocation or in the event of an involuntary cessation of business. (i.e., FAA shuts down an operator following an FAA enforcement action). This last factor likely would occur when the FAA enforced its regulations against a certificate holder to improve airspace efficiency or aviation safety.

I. Specific Matters for Comment

While the FAA seeks comment on all parts of the NPRM, there are a number of matters that it specifically would like commenters to address:

(1) Whether the FAA should use a 5 month peak season (May–Sept), a three month peak season (July–September), or no peak season for purposes of assigning allocations.

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(2) Whether the time reported on the quarterly report should be expressed in Universal Coordinated Time (UCT), Mountain Standard Time, or another time measurement.

(3) Whether reporting should be imposed as a condition of a Form 7711 and, if so, whether the requirements of proposed § 93.325 would be appropriate for such operations.

(4) Whether 180 days is a proper measurement of time for the use or lose provision proposed in § 93.321.

(5) Whether the initial allocation reflects business operations as of the date of this notice.

(6) Whether the allocations should remain unchanged for any specific period of time.

Following a review of the comments and further consideration, the final rule may incorporate changes based on the above questions.

IV. Environmental Review

The FAA has prepared a draft environmental assessment (EA) for this proposed action to ensure conformance with the National Environmental Policy Act of 1969. Copies of the draft EA will be circulated to interested parties and a copy has been placed in the docket, where it will be available for review.

V. Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

Because of the continued high public interest surrounding GCNP regulations and the potential implications within a small locality, the FAA has determined that this Notice of Proposed Rulemaking (NPRM) would be "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. The FAA also has determined that this NPRM would have a significant economic impact on a substantial number of small entities (commercial air tour operators conducting flights within Grand Canyon National Park), and warrants an initial regulatory flexibility analysis (IRFA).

In conducting these analyses, the FAA has also determined that this proposed rule: (1) would not constitute a barrier to international trade; and (2) would not contain any Federal intergovernmental or private sector mandate.

A. Benefits

The primary intended benefit of this proposed rule is its contribution toward achieving the public mandate imposed by Public Law 100–91 to substantially restore natural quiet in the GCNP. This is one of three actions currently being taken by the FAA to move toward that goal. One of the other two actions is issuance of a notice of proposed rulemaking to make certain modifications of the airspace designations in GCNP. The other action is notification of modifications to air tour routes in the park. In addition to a discussion of restoration of natural quiet, a quantified analysis is given in this benefits section of the increased value that less aircraft noise may provide to ground visitor in the park. The FAA has estimated potential benefits two ways in this analysis. First, restoration of natural quiet is discussed. Second, a quantified estimate is made of the increased value of trips to the park by ground visitors if this proposal were implemented.

The FAA's benefits analysis is limited to commercial air tour aircraft noise, because only commercial air tours would be affected by this proposed rule. It is recognized that other aircraft operate in the vicinity of the Grand Canyon, either above the SFRA or along designated corridors (general aviation (GA)) through the SFRA. This noise has not been measured on included in the noise models used to obtain the estimates contained in this analysis because the FAA believes the amount of noise produced by these aircraft is very small compared to that of commercial all tour aircraft. GA traffic accounts for about 3 percent of all aircraft traffic in the GCNP according to the Las Vegas FSDO. The FAA does not believe that this amount of noise would affect the accuracy of its estimates. The FAA welcomes comments on this matter.

1. Restoration of Natural Quiet

The policy decision of GCNP is that a substantial restoration requires that 50% or more of the park achieve "natural quiet" (i.e., no aircraft audible) for 75–100 percent of the day. That level of "quiet" (50 percent) does not exist today in the park, in spite of past actions to limit noise. Based on noise modeling, the FAA estimates that today only about 32 percent of the park area has had natural quiet restored. Furthermore, if no additional action is taken estimated future air tour growth will reduce even that number to about 25 percent in nine to ten years. On the other hand, noise modeling indicates that this proposal, together with the other two FAA actions, would increase the restoration of natural quiet to slightly more than 41 percent and maintain that level in the future. The FAA will monitor future operations in the park to determine the actual level of natural quiet that is restored. It necessary, further actions will be taken to ultimately achieve the goal of substantial restoration of natural quiet.

2. Increased Value of Ground Visit Analysis

The benefits of noise reduction attributable to this rulemaking can be broadly categorized as use and non-use benefits. Use benefits are the benefits perceived by individuals from the direct use of a resource such as hiking, rafting, or sightseeing. Non-see benefits are the benefits perceived by individuals from merely knowing that a resource exists, or is perserved, in a given state. The act benefits of this rulemaking have been estimated and are presented below. The non-use benefits attributable to this rulemaking have not been estimated.

The available visitation data for GCNP permits the categorization of visitors into backcountry users, river users, and other visitors. The activities included in the "other visitors" category primarily involves sightseeing, as well as other activities such as hiking or camping not related to background or river use. The number of visitor-days (defined as one visitor to a location for all or any part of one day) in 1997 for these visitor groups is presented below.

NUMBER OF VISITOR-DAYS—GRAND CANYON NATIONAL PARK, 1997

Visitor group	Visitor-days
Backcountry	99,137
River	182,481
Other	5,788,187
Total	6,069,805

Source: National Park Service.

While the FAA, based on its projections on air traffic growth at the airports around GCNP, assumes that the number of air tours would increase at an annual rate of 3.3 percent, the FAA nevertheless, assumes that the number of visitor-days at GCNP would remain constant at 1997 levels throughout the evaluation period of this rulemaking. This assumption is considered to

reasonable because of the actions the NPS is taking to control visitor growth.

Permits for backcountry and river use are limited to a maximum number that can be issued each year. Also, the NPS plans to prevent cars from entering GCNP. Rim visitors will be required to park outside GCNP and take a shuttle into the Park. This will greatly reduce or possibly eliminate any future growth in the number of rim visitors. Last, an assumption of constant visitation is a conservative approach that would not bias the indicated net benefits of the rulemaking upward and would also probably results in benefits being somewhat underestimated.

The GCNP visitor survey indicates that these different visitor groups are variously affected by aircraft noise (HBRS, Inc. and Harris, Miller, Miller, & Hanson, Inc. 1993). This survey asked respondents to classify the interference of aircraft noise with their appreciation of the natural quiet of GCNP as either "not at all," "slightly," "moderately," very much," or "extremely." The percent of visitors indicating these impacts is presented below by visitor group.

VISITORS AFFECTED BY AIRCRAFT NOISE—GRAND CANYON NATIONAL PARK

Impact	Percent of visitors by category		
	Backcountry (percent) [a]	River (percent) [b]	Other (percent)
Not At All	41.0	45.5	76.0
Slightly	15.0	16.5	11.0
Moderately	13.5	10.0	4.0
Very Much	14.5	12.5	4.0
Extremely	16.0	15.5	5.0

[a] Average for summer and fall users.
[b] Average for motor and oar users.
Source: HBRS, Inc. and Harris, Miller, Miller, & Hanson, Inc. 1993.

The economic studies selected for use in the benefits transfer, and their indicated visitor-day values, are listed below. These values are also known as "consumer surplus." Consumer surplus is the maximum amount an individual would be willing to pay to use a resource, minus the actual costs of use. It is a measure of the net economic benefit gained by individuals from participating in recreational activity.

ESTIMATED VISITOR-DAY VALUES (CONSUMER SURPLUS)—GRAND CANYON NATIONAL PARK

Visitor group	Study	Activity	Visitor-day value (1998 $)
Backcountry	Bergstrom and Cordell 1991	Backpacking (national survey)	$37.13
River	Bureau of Reclamation 1995	River use in Grand Canyon NP	92.44
Other	Haspel and Johnson 1982	Visit to Bryce Canyon NP	48.72

All values indexed to 1998 using the Consumer Price Index for all urban consumers.

The visitor-day value for backcountry use, $37.13, was derived from a national study of outdoor recreation (Bergstrom and Cordell 1991). That study estimated an average of $25.88 per visitor-day in consumer surplus for backpacking (1987). That value indexed to 1998 is $37.13 per visitor-day.

The visitor-day value for river use, $92.44, was derived from the economic analysis contained in the Final Environmental Impact Statement for Glen Canyon Dam operations (Bureau of Reclamation 1995). Originally, the value per visitor-day for river use was $77.24 in 1991. That value indexed to 1998 is $92.44 per visitor-day.

The visitor-day value for all other visitor uses in GCNP, $48.72, was derived from an economic analysis of recreation at Bryce Canyon National Park. The visitor uses addressed by that analysis were considered to closely match those included in the "other visitors" category for GCNP, primarily sightseeing. That analysis estimated two consumer surplus values, $71.00 and $62.00 per vehicle in 1980, using alternative techniques. The average of those two values, $66.50 per vehicle, was used in the present analysis. An average of 2.7 visitors per vehicle per vehicle for Bryce Canyon National Park was then used to convert that average to a visitor-day value, $24.63 ($66.50 per vehicle divided by 2.7 visitors per vehicle). That value indexed to 1998 is $48.72 per visitor-day.

The FAA assumed that these visitor-day values represent the net economic benefits obtained from recreational uses in GCNP absent any impacts from commercial air tour aircraft noise. Therefore, these values potentially under-state recreational benefits to the extent that the were estimated in conditions where aircraft noise was present.

There is no known economic study that estimates the reduction in the value of recreational uses due to commercial air tour aircraft noise for areas similar to GCNP. The reductions shown in the chart below were assumed in the present analysis.

ASSUMED REDUCTIONS IN VISITOR-DAY VALUES—GRAND CANYON NATIONAL PARK

Impact	Reduction (percent)
Slightly	20
Moderately	40
Very Much	60
Extremely	80

These data and assumptions imply the following total loss in value from aircraft noise in 1998. The total loss in value of $34.5 million was calculated as the product of the number of visitor-days, the proportion of visitors affected by aircraft noise, the visitor-day value, and the assumed proportional reduction in the visitor-day value, for respective impact levels and visitor categories.

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ESTIMATED TOTAL LOST VALUE (CONSUMER SURPLUS) FROM AIRCRAFT NOISE—GRAND CANYON NATIONAL PARK, 1997
[In $ thousands]

Impact	Visitor category			
	Backcountry	River	Other	Total
Slightly	$110	$557	$6,204	$6,871
Moderate	199	675	4,512	5,386
Very Much	320	1,265	6,768	8,353
Extremely	471	2,092	11,280	13,843
Total	1,100	4,589	28,764	34,453

The benefit of this rulemaking is the reduction of the total lost value associated with the resulting lower future levels of noise from commercial air tour aircraft. Through aircraft noise modeling, FAA has predicted the number of square miles within GCNP that would be affected by various levels of aircraft noise, both with and without the commercial air tour limitation and change in routes. These noise levels were quantified by a nonlinear measure. The average linearized noise measure, weighted by the number of affected square miles, is presented below.

PREDICTED FUTURE NOISE REDUCTIONS IN GRAND CANYON NATIONAL PARK DUE TO THE COMMERCIAL AIR TOUR LIMITATION AND NEW ROUTES

Year	Weighted average linearized noise measure		Noise reduction due to the limitation and change (percent)
	Limitation and route change	No action	
1998	1,219.23	1,496.04	18.50
2000	1,219.23	1,577.47	22.71
2003	1,219.23	1,713.06	28.83
2008	1,219.23	1,943.88	37.28

These percentage reductions in commercial air tour aircraft noise were applied to the total lost consumer surplus value from aircraft noise in 1998 ($34.45 million) to estimate the current use benefits for future years. Linear interpolation was used to estimate levels of noise reduction for years of the evaluation period not shown in the table above. This calculation assumes that benefits increase linearly with noise reduction (i.e., a constant marginal benefit from noise reduction). A three percent discount rate was then applied to calculate the present value of use benefits (discounted to the year 1999) over the ten-year evaluation period. A three percent discount rate is supported by the economics literature for natural resource valuation (e.g., Freeman 1993). Federal rulemakings also support a three percent discount rate for lost natural resource use valuation (61 FR 453; 61 FR 20584). The resulting use benefit estimates are presented below.

ESTIMATED USE BENEFITS AT 3%—COMMERCIAL AIR TOUR LIMITATION GRAND CANYON NATIONAL PARK
[In $ millions]

Year	Estimated benefits	Present value
2000	$7.82	$7.60
2001	8.53	8.04
2002	9.23	8.45
2003	9.93	8.82
2004	10.51	9.09
2005	11.10	9.29
2006	11.68	9.50
2007	12.26	9.68
2008	12.83	9.84
2009	13.43	9.90
Total	107.32	90.29

It is important to recognize significant uncertainties in this estimation. One area of uncertainty relates to the percentage reductions in visitor-day values that can be attributed to commercial air tour aircraft noise. It was assumed above that there is a 20 percent reduction for visitors affected "slightly," a 40 percent reduction for visitors affected "moderately," a 60 percent reduction for visitors affected "very much," and an 80 percent reduction for visitors affected "extremely." In recognition of the uncertainty surrounding this assumption, one-half of these percentage reductions were used to calculate an alternative benefit estimate. Additionally, in recognition of the discount rate recommended in OMB Circular A–94, alternative benefit estimates were calculated using a seven percent discount rate. These alternative benefit estimates are presented below.

ALTERNATIVE ESTIMATES OF USE BENEFITS
[In $ millions]

Visitor-Day Value Reduction Assumption				Discount rate	
Slightly	Moderately	Very much	Extremely	3%	7%
Total Present Value Over the 10-Year Evaluation Period					
20%	40%	60%	80%	$90.29	$72.98
10%	20%	30%	40%	45.14	36.49
Total Present Value Over the Five-Year Evaluation Period					
20%	40%	60%	80%	42.00	37.37
10%	20%	30%	40%	21.00	18.67
Total Present Value Over the Two-Year Evaluation Period					
20%	40%	60%	80%	15.63	14.76
10%	20%	30%	40%	7.82	7.38

The use benefits discussed above assume that the commercial air tour limitation and the change in routes would occur at about the same time. The rule being analyzed, however, only limits commercial air tours. Hence, benefit estimates were calculated using the same methodology described above, but only applying the predicted noise reduction due to the commercial air tour limitation. These alternative benefit estimates are presented below.

ALTERNATIVE ESTIMATES OF USE BENEFITS
[In $ millions]

Visitor-Day Value Reduction Assumption				Discount rate	
Slightly	Moderately	Very much	Extremely	3%	7%
Total Present Value Over the 10-Year Evaluation Period Commercial Air Tour Limitation Only					
20%	40%	60%	80%	$44.05	$34.61
10%	20%	30%	40%	22.03	17.31
Total Present Value Over the Five-Year Evaluation Period Commercial Air Tour Limitation Only					
20%	40%	60%	80%	15.68	13.78
10%	20%	30%	40%	7.84	6.89
Total Present Value Over the Two-Year Evaluation Period Commercial Air Tour Limitation Only					
20%	40%	60%	80%	4.22	3.97
10%	20%	30%	40%	2.11	1.98

In addition to these use benefits, this rulemaking may generate significant non-use benefits. The FAA does not have adequate data to estimate the non-use benefits of aircraft noise reduction at GCNP. However, there are other studies that suggest potentially significant non-use benefits that might be attributed to this rulemaking. One such study was done for the Bureau of Reclamation regarding the operation of the Glen Canyon Dam (Hagler Bailly Consulting 1995). A national survey was conducted for this study, indicating significant non-use benefits for changes in Glen Canyon Dam operations. While the magnitude of non-use benefits estimated in that study are not directly applicable to this rulemaking, potentially significant non-use benefits associated with aircraft noise reduction are suggested.

B. Costs of Compliance and Initial Regulatory Flexibility Determination and Analysis

The proposed rule would impact all business entities conducting commercial air tours over the GCNP. Data collected for the base year period (May 1997 to April 1998) shows that there were 25 such entities (24 operators, one of whom operated as a fixed wing operator as well as a helicopter operator) at that time. This time period will be considered the baseline for the analysis. All of the entities are "small" as defined by the Small Business Administration (SBA). Since every air tour operator doing business in the GCNP would be significantly impacted and they all satisfy the definition of a "small business", the FAA concludes that there would be a significant economic impact on a substantial number of small entities. Consequently, the FAA has conducted this analysis of compliance costs to include an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act.

The total cost of this rulemaking would largely depend on how commercial air tour operators respond to the changes. After reviewing a number of operating alternatives the FAA has concluded that the cost of the proposed regulation (e.g., five-month peak season) would be a reduction in net operating revenue of $177.6 million or $114.6 million discounted over the next ten years. There may be some additional cost associated with implementing the proposed alternative (i.e., activating, filing, and closing a flight plan). This is not expected to be

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a significant cost but the FAA is unable to measure fully the cost impact at this time and requests public comment. For other provisions of the proposed rule ((1) requesting modification and initial allocations and (2) transfer and termination of allocations), the ten-year cost to air tour operators would be $30,000 or $23,000, discounted. Finally, the FAA costs over the next ten years (including initial allocations) would be $1,445,900 or $1,016,900 discounted. In sum, the total cost of this proposed rulemaking over the next ten years would be $179.1 million or $115.6 million, discounted.

1. Revenue Impact of Compliance Model

The main economic impact resulting from limiting commercial air tours in the GCNP SFRA is the reduction in projected net operating revenue. This number can be calculated by subtracting the net operating revenue associated with the projected future number of operations under the operations limitation from the net operating revenue associated with the projected future number of operations without the operations limitation.

The number of commercial air tours conducted during the May 1997–April 1998 base year period was used for determining the base number of air tours in this analysis. This information, by operator and by route, was provided to the FAA in accordance with current section 93.317 of Title 14, Code of Federal Regulations (14 CFR). Under the proposed rule, each air tour operator that conducted and reported an air tour during that period under existing section 93.317 would receive one allocation for each air tour reported.

A certificate holder's total allocations would be divided up into peak and off-peak season. The FAA proposes that the peak season be defined as the period from May 1–September 30; and the off-peak season would be the period October 1–April 30. This peak/off-peak definition coincides with the summer and winter season for curfew purposes. Peak/off-peak allocations would be based on the information reported to the FAA for the same time period during the base year.

Under the proposed rule, allocations also would be separated into those that may be used in the Dragon and Zuni Point corridors and those that may be used in the rest of the SFRA. Dragon and Zuni Point corridors allocations again would be based on the number of air tours an operator conducted and reported in those corridors during the base year period. Operators reporting no commercial air tours in these corridors during the base year period would receive no allocations for the Dragon and Zuni Point corridors.

The baseline number of passengers was estimated for each operator in this analysis in a four-step process using data provided from interviews and surveys of the affected air tour operators. First, the FAA determined how many aircraft and which aircraft, by route, were used in the base year time period. Second, the FAA identified the maximum number of passengers that each aircraft could legally carry. Next, the FAA determined the load factor for type of aircraft on each route by operator (in some cases, air tour operators were able to provide the FAA this estimate by time of year). After calculating the number of passengers for each route and for each type of aircraft, the FAA was able to sum this information and determine the baseline number of passengers. The FAA estimates the baseline number of passengers to be about 616,000.

The baseline gross operating revenue was calculated for each operator for each route in this analysis using data provided from published advertisements from air tour operators on the price of each type of air tour. The base period gross operating revenue by route was calculated by multiplying the estimated number of passengers that flew on a specific route for a specific operator by the published retail fare. No discounts are assumed.

Variable operating costs for GCNP air tour operators are defined as the costs for crews, fuel and oil, and maintenance per flight hour. The data by type of aircraft can be found on Table 4–20 of *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs* published by the Federal Aviation Administration, FAA–APO–98–8, June 1998. Estimates of the time taken to fly a particular route were obtained from air tour pilots and individuals in the Las Vegas Flight Standards District Office (FSDO). To calculate the variable operating cost for a particular route and type of aircraft, the FAA multiplied the hourly variable operating costs by the time to fly the particular route. In a few instances, the travel time was unavailable—the FAA estimated the time using information from other air tours and the time it took to complete those tours.

Baseline net operating revenue for each aircraft by route is the difference between the gross operating revenue for each route by aircraft and the variable operating costs for each route by aircraft. An air tour operator's total net operating revenue is the sum of the net operating revenues from all of the routes used by that air tour operator.

The FAA forecast rate of compound annual growth in the GCNP is estimated at 3.3 percent per year. This growth rate was derived from a composite of tower operations of four Las Vegas vicinity airports and those of Tusayan as reported in the 1994 Tower Activity Forecast (TAF). It represents different rates of growth at the West and East ends of the GCNP. The FAA estimated the future number of monthly operations without the proposed rule using projections as described above for each route by aircraft type and by operator.

The model does not take into consideration that air tour operators could switch from smaller-sized aircraft to larger-sized aircraft. Consequently, in this analysis, the number of available seats is fixed throughout the entire time period. Holding the number of seats constant and assuming that more individuals would want to take air tours in the future implies that air tour operators should be able to raise air tour prices. The model does not consider a new equilibrium price given that supply becomes fixed while demand increases. Consequently, this model assumes a worst case analysis.

2. Cost of Various Alternatives to Operators

a. Peak Season Limitations

The costs of the three operating scenarios considered in this rulemaking are discussed below. Each of the operating scenarios considers an alternative delineation of the annual commercial air tours against which the proposed operations limitation would be applied. The three alternatives are as follows: (1) The proposed 5-month peak season (May 1–September 30) with a 7-month off-peak season (October 1–April 30); (2) a uniform year; e.g., no peak/off-peak seasonal delineation; and (3) a 3-month peak season (July 1–September 30) with a 9-month off-peak season (October 1–June 30).

(1) The Proposed Five-Month Peak Season (May 1 to September 30)

The proposed rule would limit all commercial air tours in the GCNP SFRA on a 12-month basis to the number of air tours reported in accordance with current section 93.317 of 14 CFR for the twelve-month period from May 1, 1997 to April 30, 1998. Proposed section 93.319 of 14 CFR would establish this commercial tour limitation. The number of commercial air tours that a certificate holder could conduct would be shown on the certificate holder's operations specifications as an allocation.

A certificate holder's total allocations would be divided up into peak season and off-peak season. Under the proposed rule, the peak season would be defined as the period from May 1 to September 30; the off-peak season would be the period October 1 to April 30. This peak/off-peak definition would coincide with the summer and winter season curfew purposes. Peak/off-peak allocations would be based on the information reported to the FAA for the time period during the base year period. Off-peak allocations could not be used during peak season; however, peak season allocations could be used during off-peak. Under the proposed rule, allocations also would be separated into those that may be used in the Dragon and Zuni Point corridors and those that may be used in the rest of the SFRA but not in the Dragon and Zuni Point corridors. Dragon and Zuni Point allocations again would be determined based on the number of commercial air tours an air tour operator reported in this region for the base year period. Operators reporting no commercial air tours in these corridors for the base year would receive no allocations for these corridors.

The FAA is proposing that these allocations would be valid for a two-year period. After that time, the certificate holder's allocations may be revised or removed based on the data submitted under proposed section 93.325; an updated noise analysis; and/or the status of the Comprehensive Noise Management Plan. In this analysis, the FAA assumed that this operation process would continue for ten years.

(2) A Uniform Year With No Peak/Off Peak Delineation

The first operating alfernative to the proposed rule would limit all commercial air tours in the GCNP SFRA on a 12-month basis to the number of air tours reported in accordance with current section 93.317 for the year May 1, 1997 to April 30, 1998. As discussed under the proposed rule, the number of commercial air tours that a certificate holder could conduct would be shown on the certificate holder's operations specifications as an allocation. Air tour operators, under this alternative could compress all of their air tour allocations into the most active period should they desire. It is also assumed, as discussed under the proposed rule, that allocations would be separated into those that may be used in the Dragon and Zuni Point corridors and those that may be used in the rest of the SFRA.

It is assumed that these allocations would also be valid for a two-year period. After that time, the certificate holder's allocations may be revised based on the data submitted under proposed § 93.325; an updated noise analysis; and/or the status of the Comprehensive Noise Management Plan.

The FAA is not currently able to estimate how this alternative would impact net revenue differently than the proposed rule's impact on net revenue. Nevertheless, the FAA is aware that this alternative would allow an operator to shift air tour operations from the off-peak, winter season to the peak, summer season. The incentive to do this would be particularly strong if prices are higher during the peak, summer season or if aircraft have more passengers per flight, than during off-peak, winter season.

If prices are higher or aircraft are flown with more passengers per flight during the peak, summer season, an operator could reduce the proposed regulation's impact on its net revenues by shifting operations from the off-peak, winter season to the peak, summer season. Unfortunately, if the air tour operators were allowed to shift operations from the winter to the summer, then aircraft noise would also be shifted from the winter (when aircraft noise is less of a problem) to the summer (when aircraft noise is more a problem).

(3) A Three-Month Peak Season (July 1 to September 30)

Another operating alternative to the proposed rule would also limit all commercial air tours in the GCNP SFRA on a 12-month basis. Commercial air tours conducted by certificate holders in the SFRA would not exceed the amount of air tours reported in accordance with current section 93.317 for the year May 1, 1997 to April 30, 1998. As discussed under the previous alternative, the number of air tours that a certificate holder could conduct would be shown on the certificate holder's operations specifications as an allocation.

Under this alternative, as with the other alternatives, a certificate holder's total allocations would also be divided up into peak season and off-peak season.

Allocations also would be separated into those that may be used in the Dragon and Zuni Point corridors and those that may be used in the rest of the SFRA. Dragon and Zuni Point allocations again would be determined based on the number of air tours an operator reported in this region for the base year. Only operators who reported air tours in these corridors for the base year would receive allocations for these corridors.

It is assumed that these allocations would also be valid for a two-year period. After that time, the certificate holder's allocations may be revised based on the data submitted under proposed § 93.325; an updated noise analysis; and/or the status of the Comprehensive Noise Management Plan.

The FAA is not currently able to estimate how this three-month peak season alternative would impact net revenue in a different way than the proposed rule's impact on net revenue. Nevertheless, the FAA is aware that this alternative would allow an operator to shift commercial air tours from the off-peak winter season to May and June. The incentive to do this would be strong if prices are higher during May and June or if aircraft have more passengers per commercial air tour during May and June than during the off-peak, winter season. If prices are higher during May or June or if aircraft can be flown with more passengers per flight during these two months, then an operator could reduce the proposed regulation's impact on net revenue by shifting air tour allocations from the off-peak winter season to May and June. If commercial air tour operators were allowed to shift air tours from the winter to May and June, then aircraft noise would also be shifted from the winter (when there is less aircraft noise) to these two months.

b. Cost of Various Reporting Requirements Alternatives to Operators

The FAA considered two reporting requirement alternatives in the proposed rule. They are quarterly reporting and trimester reporting. The existing rule requires certificate holders to report three times annually. Since the existing rule already requires certificate holders to establish a system to implement the reporting requirement, there are assumed to be no start-up costs.

(1) Reporting on a Trimester Basis

It is assumed that the information for these reports is currently being updated throughout the entire timeframe. The total amount of time needed to update this information is a function of the number of aircraft maintained by each operator. The FAA assumes that it takes each operator about five minutes per aircraft per day regardless of the season to record the updated information into a master spreadsheet. The total cost of the existing rule in 1997 dollars for this task is $753.000 or $529,000 discounted over ten years at 7 percent. This is a

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current requirement of the regulations (adopted in 1996) and these costs were previously accounted for in the regulatory evaluation prepared for the 1996 final rule.

The written information would have been provided to the Las Vegas FSDO three times per year. The FAA assumes that each operator would have to collate and verify the information that they had been collecting throughout the year. The time it takes to complete these two tasks would be two hours per operator regardless of the number of aircraft and assumes that the operators would have been recording the information throughout the year. The total cost to the industry of the existing rule is estimated at $34,000 for ten years or $24,000 discounted.

In sum, the FAA estimates that the cost associated with regular updating and trimester reporting for the existing rule is $787,000 or $552,000 discounted over ten years. The FAA is, however, proposing to replace the trimester reporting requirement with a quarterly reporting requirement.

(2) Reporting on a Quarterly Basis

As stated previously under the section on trimester reporting, it is assumed that updating is taking place throughout the entire timeframe. The total amount of time needed to update this information would be a function of the number of aircraft maintained by each operator. The FAA assumes that it would take each operator about five minutes per aircraft per day regardless of the season to record the updated information onto a master spreadsheet. The total cost in 1997 dollars absent the existing rule for this task would be $753,000 or $529,000 discounted over ten years at 7 percent.

Under this reporting requirement scenario, which is the proposed rule, the written information would have to be provided to the Las Vegas FSDO four times per year. The FAA assumes that each operator would have to collate and verify the information that they have been collecting throughout the year. The time it takes to complete these two tasks would be two hours per operator regardless of the number of aircraft and assumes that the operators would have been recording the information throughout the year. Given the wage rate of a Director of Operations at $22.50 per hour, the FAA estimates that this provision would cost each operator $180 per year ($22.50/hour × 2 hours × 4 times/year=$180 per operator; 200 hours/year to the industry, assuming the operator of the mixed fleet reports fixed-wing and helicopter tour business separately) absent the existing rule. The total cost to the industry is estimated at $45,000 for ten years or $31,600 discounted.

In sum, the FAA estimates that the cost associated with regular updating and quarterly reporting absent the existing rule would be $798,000 or $560,000, discounted over ten years.

The incremental cost of reporting three times annually versus four times annually is the difference in costs shown previously. The total incremental cost to industry of the proposed rule is estimated at $11,000 for ten years or $8,000 discounted. For the first year, the incremental costs are approximately $1,000. The two-year costs are estimated at $2,000. The five-year costs are estimated at $5,000 or $4,000 discounted.

Some commercial air tour operators stated that trimester reporting would be more burdensome than quarterly reporting because trimester reporting does not correspond with other business reporting requirements. However, because an additional fourth report would be required, quarterly reporting would be more costly.

c. Cost of Implementing the Rule

The FAA considered two means of monitoring the allocation usage—a form method and a flight plan method. The flight plan method is proposed in this rule. The following is a discussion of these two methods.

(1) Form Method

The form method would require certificate holders conducting commercial air tours in the Special Flight Rules Area (SFRA) to complete an SFRA Operation Form provided by the FAA prior to the beginning of each commercial SFRA operation. A commercial SFRA operation would consist of a point-to-point flight of the aircraft.

The FAA estimates that it would take about one minute for the certificate holder to complete each form because much of the information would have been pre-printed. Based on the previously noted operators' reports for the base year period, the FAA estimates that no more than approximately 88,000 commercial air tours would have to be reported annually. The FAA estimates that the total annual cost in 1997 dollars would be between $29,000 and $30,000 [$20.00/hour × 88,000 forms × 1 minute per form]/60 = $29,300/year; 1,467 hours per year to the industry) or about $27,400 discounted in the first year. The total cost would be $293,000 over ten years or $206,000, discounted. The two-year costs are estimated at $58,600 or $53,000 discounted. The five-year costs are estimated at $146,500 or $120,300 discounted.

(2) Flight Plan Method

Section 93.323 of the proposed rule would require each certificate holder of a commercial SFRA operation to file a visual flight rules (VFR) flight plan with an FAA flight Service Station for each flight. A flight consists of one take-off and one landing. The "remarks" section of the flight plan would be completed to indicate the purpose of the flight out of five designated purposes. These purposes would be: (1) commercial air tour; (2) transportation; (3) repositioning; (4) maintenance; and (5) training/proving. The information obtained from the flight plan would be used to ensure compliance with the commercial air tour limitation. Copies would not have to be maintained or carried on board by the certificate holder.

The extent to which an operator would be impacted by these costs would depend upon the volume of commercial air tour business in the GCNP and the number of aircraft and pilots providing air tour service. Additionally, the cost impact would be influenced by whether the operator conducts air tours daily on a regular frequency.

Relying on information from the Las Vegas flight Standards District Office (FSDO), the FAA has identified the following four principal areas where start up costs for the larger, more regularly scheduled operators would be incurred: (a) Creation of "canned" VFR flight plans (templates) to be filed with the Reno or Prescott Flight Service Station; (b) rewriting of existing General Operations Manuals to incorporate the new procedures; (c) set-up of a pilot training program; and (d) training of pilots. The FAA assumes each operator's Director of Operations (DO) would be responsible for the first three tasks and possibly the fourth, the instructing of the pilots in the new procedures.

The FAA estimates that the amount of time required of the DO to create and file a template with the Flight Service Stations (task 'a') is about 2 days. Task 'b' would require 2 days for part 121 operators and part 135 operators; and task 'c', the development of pilot instruction in VFR flight plan procedures would require 2 days. Finally, the FAA believes that the VFR flight plan procedures could be presented to the pilots currently conducting air tours in the Canyon through an operational bulletin. Presentation of the procedures to new hires would be part of an operator's on-going costs; the FAA assumes each operator would incorporate this into the periodic review, modification, and update of plans as noted in the next section.

The FAA estimates that the total start-up costs to the Grand Canyon air tour operators for the VFR flight filing requirements would be about $22,320 or $20,850 discounted.

The VFR flight filing procedures requires the following sequence of activities: (1) Filing a flight plan; (2) activating the flight plan; and (3) closing the flight plan. The opening and closing of a flight plan would be the responsibility of the pilot-in-command and would be a part of normally assigned duties. This usually takes about one to five minutes.

The FAA is unable to accurately assess the variable or on-going costs of the VFR flight filing plan procedures at this time. Specifically, the FAA cannot precisely account for the costs incurred by opening and closing a flight plan, nor can the FAA accurately account for the costs each operator would typically incur in filing a flight plan. The FAA, therefore, requests public comment.

The FAA believes there would also be additional on-going requirements and costs imposed on the Las Vegas FSDO with proposed § 93.323. Coordinating and cross referencing the daily air tour activity recorded by the Flight Service Station with the operator reporting requirements, and monitoring the activity for potential enforcement action would add requirements to the Las Vegas FSDO's current mission that would task current staffing levels. Some of these activities (not enforcement) could be a part of the workload of a senior analyst/statistician assigned to manage the reporting requirements.

d. Cost of Other Provisions to Operators

Operators would incur costs associated with (1) requesting modification to initial allocations and (2) transfer of allocations. The FAA estimates that the cost of these provisions could be up to $20,000 or $14,000 discounted over ten years. The following is a discussion of the costs associated with these two provisions.

(1) Requesting Modification to Initial Allocations

The FAA recognizes that the air tour business in the GCNP is constantly changing. Due to mergers/acquisitions, bankruptcies, etc., certificate holders may believe that the data submitted for May 1997 to April 1998 does not reflect their current business operations. Therefore, the FAA would permit any certificate holder who believes that the base year data does not reflect its current business operation to submit a written request to the Manager, Air Transportation Division that its allocation be reassessed. The request should explain why the base year reported data does not properly reflect its current operations. The operator must provide supporting documentation.

The FAA estimates that as many as five operators may request modifications to their initial allocations. The FAA estimates that each operator would incur one-time costs of between $500 and $1,000 to complete and provide the required information to the FAA. Therefore the one-time cost to the industry would be between $2,500 and $5,000 or between $2,300 and $4,700, discounted. The FAA requests information from affected air tour operators on the validity of this estimate.

(2) Transfer of Allocations

Allocations to conduct air tours in the GCNP SFRA would be considered an operating privilege initially granted to certificate holders, who conducted commercial air tours during the base year and reported them to the FAA. As proposed, the allocation would be subject to reassessment no earlier than two years after the effective date of the rule. The FAA recognizes that air tour operators often utilize a variety of contracting/subcontracting methods to handle passenger loads during busy periods. Thus, the FAA proposes to allow allocations to be transferred among certificate holders, subject to several restrictions.

Under the proposed rule a certificate holder would be required to report any transfer of allocations to the Las Vegas FSDO in writing.

The FAA distinguishes between temporary and permanent transfers of allocations. In the former case, the FAA recognizes the current business practice of air tour operators to occasionally sell, exchange or otherwise transfer air tour bookings (usually to an overflow operator) to accommodate unexpected surges in demand.

Temporary transfers would not require FAA approval, nor would the FAA modify the involved operators' operations specifications. The FAA assumes any operator costs associated with temporary transfers to be part of the on-going business cost of conducting air tours of the Grand Canyon. The FAA also assumes any costs associated with notifying the Las Vegas FSDO of such temporary transfers would be de minimus. Similarly, FAA costs associated with the processing of these written notices concerning temporary transfers would be de minimus.

Permanent transfers of allocations resulting from mergers/acquisitions, bankruptcies, etc. would require FAA approval through the modification of the operations specifications in addition to the required reporting to the Las Vegas FSDO in writing. The FAA cannot predict how many such permanent transfers might occur or estimate associated costs. The FAA, however, is aware of two acquisitions that occurred during the base period and offers the following example of what costs might result if no more than two operators were to submit requests for permanent transfers of allocations to the FAA annually. The FAA requests operator comment regarding the likely costs of a permanent transfer.

If each operator would incur costs of between $500 and $1,000 (which includes two days effort per operator) to complete and provide the required information to the FAA, then the annual cost to the industry would be between $1,000 and $2,000 annually (about 32 hours annually) or between $900 and $1,900 discounted. The cost over 10 years would be between $10,000 and $20,000 or between $7,000 and $14,000, discounted. The two-year costs are estimated at between $2,000 and $4,000 or between $1,800 and $3,600 discounted. The five-year costs are estimated at between $5,000 and $10,000 or between $4,100 and $8,200, discounted.

3. Cost of Proposed Rule to the FAA

The FAA, as a result of this proposed rule, would incur costs in four ways. The FAA would incur costs associated with the initial allocation, recording and tracking, filing of flight plans, and transfer of allocations. Over the next ten years, FAA costs are expected to be $1,445,900 or $1,016,900, discounted. The following is a discussion of these cost components.

a. Initial allocation, and recording and tracking

The FAA would need to develop an allocation process and prepare the necessary information to send to each air tour operator. This one time administrative work would require analyst, clerk, legal and management resources. The FAA estimates that this would result in an agency cost of $3,700 in the first year only. The discounted cost is $3,500.

In addition, the FAA would incur recurring annual costs from the recording and tracking of the information provided by the operators. Again, this would require analyst, clerk,

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management and legal resources. For the purpose of this cost assessment, the FAA assumes that one additional agency employee would be required at the GS–14 grade level. Based on FAA resources required to record and track data provided by operators since 1997, the agency estimates that the total cost for the FAA of these elements would be about $138,000 annually or $1,379,000 over ten years ($968,587, discounted).

b. Transfer of Allocations

The FAA estimates that on average it would spend about 80 hours managing each transfer of allocations or 160 hours annually assuming two permanent transfers. Based upon the salary of a GS–13 employee of $39.50/hour, the FAA estimates that cost would be about $6,300 annually, $63,200 over ten years or $44,400, discounted.

In sum, the FAA would incur costs associated with the initial allocation, tracking and monitoring, filing a flight plan, and transfer and termination of allocations. Over the next ten years, FAA costs are expected to be $1,445,900 or $1,016,900, discounted.

C. Summary of Benefits and Costs

Public Law 100–91 was adopted to substantially restore natural quiet and experience in Grand Canyon National Park. The primary intended benefit of this proposed rule is its contribution toward restoring natural quiet and experience in Grand Canyon National Park. The estimated 10-year use benefits (benefits derived from hiking, rafting, or sightseeing) as a result of this proposed rule and the other two accompanying proposed rules would be about $73 million, discounted at seven percent over ten years (about $35 million if this proposed rule is adopted alone). The FAA does not have adequate data to estimate the non-use benefits of aircraft noise reduction at GCNP, but believes this rulmaking may generate significant non-use benefits. Studies cited in the Regulatory Evaluation suggest potentially significant non-use benefits associated with aircraft noise reduction in GCNP as a result of this rulemaking.

The estimated 10-year cost of this proposed regulation would be $179.1 million or $115.6 million discounted. The majority of the costs of this proposed regulation, would be $177.6 million, ($114.6 million, discounted) in projected lost revenue (net of variable operating costs). The estimated 10-year cost of the other provisions to air tour operators which includes (1) reporting four times annually, (2) filing of flight plans, (3) transfer of allocations and (4) requesting modifications and initial allocations is $30,000, or $23,000 discounted. FAA costs include those associated with initial allocations, annual recording and tracking, and transfer of allocations. These FAA costs are estimated at $1,445,900 or $1,016,900, discounted.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended March 1996, requires regulatory agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities," FAA's interim regulatory flexibility policy and guidelines establish threshold costs and small entity size standards for complying with RFA requirements. This guidance defines small entities in terms of size thresholds, significant economic impact in terms of annualized cost thresholds, and substantial number as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

The Small Business Administration defines small entities to be those airlines with 1,500 or fewer employees for the air transportation industry. For this proposed rule, the small entity group is considered to be operators conducting commercial air tours in the GCNP and having 1,500 or fewer employees. The FAA has identified a total or 25 such entities (24 operators, one of whom operated as a fixed-wing operator as well as a helicopter operator) that meet this definition.

The FAA has estimated the annualized cost impact on each of these 25 small entities potentially impacted by the proposed rule. The proposed rule is expected to impose an estimated total cost of $177.6 million or $114.6 million, discounted over the next 10 years. The annualized cost over ten years is estimated at about $25.5 million for all of the affected entities. The FAA has determined that the proposal would have a significant impact on a substantial number of small entities, and has performed on initial regulatory flexibility analysis. All 25 small entities would incur an economically significant impact.

Under Section 603(b) of the RFA (as amended), each initial regulatory flexibility analysis is required to address these points: (1) reasons why the FAA is considering the proposed rule, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule would apply, (4) the reporting, and other compliance requirements of the proposed rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the proposed rule.

1. Reasons Why the FAA Is Considering the Proposed Rule

Public Law 100–91 recognizes that noise associated with "aircraft overflights" at the GCNP is causing "a significant adverse effect on the natural quiet and experience of the park." This legislation directed the FAA and NPS to work together to achieve substantial restoration of natural quiet in the GCNP. In order to stabilize noise levels in the SFRA while further noise analysis is conducted, the FAA and NPS believe it is necessary to impose a commercial air tour limitation.

2. The Objectives and Legal Basis for the Proposed Rule

The objective of the proposed rule is to limit commercial air tours in the GCNP SFRA. Commercial air tours conducted by certificate holders in the SFRA are not to exceed the amount of air tours reported in accordance with current section 93.317 for the period from May 1, 1997 through April 30, 1998.

The legal basis for the proposed rule is found in Public Law 100–91, commonly known as the National parks Overflights Act. Public Law 100–91 stated in part, that "noise associated with aircraft overflights at GCNP [was] causing a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park has raised serious concerns regarding public safety, including concerns regarding the safety of park users." Further congressional direction is discussed in the history section of the full regulatory evaluation.

3. The Kind and Number of Small Entities to Which the Proposed Rule Would Apply

The proposed rule applies to 24 potentially affected part 135 and 121 commercial air tour operators, each having 1500 or fewer employees. The FAA estimates that all 24 of these operators (25 entities) would be impacted by the proposal.

4. The Projected Reporting and Other Compliance Requirements of the Proposed Rule

Each of the 24 operators affected by this proposal would need to comply with certain reporting and recordkeeping requirements. Certificate holders conducting commercial air tours in the GCNP SFRA would complete a flight plan for each flight. The FAA estimates this compliance effort would occur at the beginning of a flight and would impose an additional one to five minutes on the part of the certificate holder per operation for each of the 25 small entities during each year of compliance, for a total of 10,956 hours annually. This estimate is limited to compliance associated with commercial air tours.

Certificate holders conducting commercial air tours would need to report quarterly to the FAA certain information on the total operations conducted in the GCNP SFRA to the FAA. The FAA estimates that this compliance effort would take place four times per year (one additional time compared to the existing rule) and would impose an additional 50 hours of labor on the industry annually. This provision would cause an operator, regardless of the number of aircraft, to expend an additional two hours of labor annually (including record maintenance).

The initial assigned allocation could involve operator requests for modifications in some instances that the FAA estimates would impose about 80 hours total the first year on five operators. The FAA estimates that the paperwork burden to each of these operators would be about 16 hours (see earlier discussion).

Finally, the FAA expects that two operators would enter the industry and would leave the industry through mergers, acquisitions or bankruptcies. The FAA estimates that two operators would spend about 32 hours annually.

Excluding the provisions that impose a one-time burden (initial allocations would affect five operators the first year annually; 80 hours total), each certificate holder would have imposed an additional annual reporting burden on average of 581 hours of labor. This estimate, however, is highly dependent upon how many aircraft and how many operations the certificate holder flies per year. For a period of 10 years, a total of approximately 143,750 hours would be spent.

5. All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The FAA is unaware of any federal rules that either duplicate, overlap, or conflict with the proposed rule. The FAA welcomes comment on this.

6. Affordability Analysis

For the purpose of this Initial Regulatory Flexibility Analysis, an affordability analysis is an assessment of the ability of small entities to meet costs imposed by the proposed rule. There are two types of costs imposed by the rule—(1) out-of-pocket costs (actual expenditures) associated with certain documentation and (2) loss of potential future operating revenue above current levels associated with a freeze in the level of operations. This latter burden may be significant to financial viability for companies that depend on growth in operating revenue to provide cash needed to meet long-term obligations such as equipment purchase loans.

An operator's short-run financial strength is substantially influenced, among other things, by its working capital position and its ability to pay short-term liabilities. Unfortunately, data is not available on the amount of working capital that these operators have to finance changes in short term costs.

There is an alternative perspective to the assessment of affordability based on working capital of the proposed rule. The alternative perspective pertains to the size of the annualized costs of the proposed rule relative to annual revenues. The lower the relative importance of those costs, the greater the likelihood of implementing either offsetting cost saving efficiencies or raising fares to cover increased costs without substantially decreasing passengers.

This analysis assesses affordability by examining the annualized cost of compliance relative to an estimate of total Grand Crayon commercial air tour operating revenues for each of the 25 small entities. (Note: There are 24 operators covered by this rule, but one operator conducts helicopter operations under one business entity and airplane operations under another separate business entity.) The annualized change in net operating revenues corresponds to foregoing the anticipated three percent per year growth of undiscounted net operating revenues. This number is relatively constant across all air tour operators because the majority of the negative impact (lost revenues) imposed by this rulemaking is directly related to the number of air tours that are being conducted. For these operators, there may be some prospect of absorbing the cost of the proposed rule through fare increases (especially since the cost model does not account for increasing demand with a fixed supply).

It appears that given the current state of the industry, changes in net operating revenues may be offset by increased prices. The limit on air tours would restrict the future supply of Grand Canyon air tours while demand for air tours is expected to increase. No clear conclusion can be drawn with regard to the abilities for small entities to afford the reductions in net operating revenues that would be imposed by this NPRM because the FAA is not able at this time to estimate the amount of revenue increase obtained through price increases. The FAA requests small entities to provide better information supporting this assertion or any alternative.

7. Disproportionality Analysis

The FAA does not believe that reporting requirements imposed by the proposed rule would disadvantage any of the 25 small entities relative to large operators because there are no affected large operators.

The smallest operators are expected to incur some higher costs relative to their size than larger operators do. This is because while all operators have periodic reporting requirements, the smallest operators would not be able to spread their reporting costs across as many operations as the larger operators. Consequently, the periodic reporting requirements would be proportionately greater for the smallest operators compared to the other small operators. However, these reporting costs are a relatively small portion of the economic impact of this rulemaking. As a result this cost disadvantage to the small operators is not expected to be significant.

8. Competitiveness Analysis

All air tour operators currently operating in the GCNP are small entities. All these operators would be proportionately impacted by the commercial air tour limitation provision of this rulemaking (the limitation has the greatest impact of all provisions of this rulemaking). The small operators would not be put at a disadvantage relative to the larger operators as a result of this provision. There are some paperwork costs that impact each operator equall, regardless of size. In this case the larger operators could have an advantage over the smaller operators since the larger operators could spread these costs among more passengers. However, these particular paperwork costs are small and any relative advantage that the larger operators could have as a result of the paperwork cost would be insignificant.

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This proposed rulemaking has one feature that impacts competitiveness. The operation limitation would protect established operators from competition from wholly new entrants. Under this proposed rule, a new entrant could conduct commercial air tours in the GCNP SFRA only if it were able to purchase allocations from another operator and satisfy all other requirements of the Federal Aviation Regulations. Thus, the potential maximum number of air tours conducted in the GCNP SFRA would not change.

The FAA solicits comments on this matter. Specifically, commenters are asked to provide information on the impact this proposed rule would have on the continued ability of small airlines to compete in the existing market. The FAA requests that supporting data on markets and cost be provided with the comments.

D. Summary of Costs of Compliance

The estimated 10-year cost of the proposed regulation, which divides the year into a five-month peak season and a seven-month off-peak season would be $177.6 million, ($114.6 million, discounted) in lost revenue (net of variable operating costs). The estimated 10-year cost of the non-operators alternatives which includes (1) Reporting four times annually, (2) filing of flight plans, (3) transfer of allocations and (4) requesting modifications to initial allocations is $30,000, or $23,000 discounted. In sum, the estimated 10-year cost to air tour operators as a result of this proposed rule would be $178.4 million or $115.2 million, discounted.

FAA costs include those associated with initial allocations, annual recording and tracking, transfer and terminations of allocations, and filing of flight plans. These FAA costs are estimated at $1,445,900 or $1,016,900, discounted. In sum, the FAA estimates that the 10-year cost of this proposed rule would be $179.1 million or $115.6 million discounted.

E. International Trade Impact Assessment

The FAA has determined that the rulemaking would not affect non-U.S. operators of foreign aircraft operating outside the United States nor affect U.S. trade. It could, however, have an impact on commercial air tours at the GCNP, much of which includes foreign tourists.

The United States Air Tour Association estimates that 60 percent of all commercial air passengers in the United States are foreign nationals. The Las Vegas FSDO and some operators, however, believe this estimate to be considerably higher at the Grand Canyon, perhaps as high as 90 percent. To the extent the proposed operational limitation rulemaking dampens foreign visitor demand for commercial air tours of the Grand Canyon, the commercial air tour industry could potentially experience an additional loss of revenue beyond what is expected as a result of the operations limitation.

The FAA is unable to determine the loss of commercial air tour revenue that might result from lowered foreign demand for commercial air tours at GCNP for reasons unrelated to this proposed rulemaking.

F. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extend permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1532(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

VI. Federalism Implications

This proposed rule would not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with executive Order 12612, it is determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

VII. Paperwork Reduction Act

This proposal contains the following new information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)).

Proposed § 93.321 would require each operator that receives an allocation from another operator to report the transfer in writing to the Las Vegas Flight Standards District Office before the transferee may use the allocation. Temporary transfers would require FAA notification but no FAA approval. Permanent transfers (mergers, acquisitions, etc.) would require FAA notification and FAA approval. The FAA estimates that the cost of the paperwork burden associated with initial allocations would be $450 (a one-time cost during the first year only). The FAA estimates that there would be approximately two permanent transfers per year at a total cost per year of $720.

Proposed § 93.323 would require each of the affected commercial air tour operators to file a visual flight rules (VFR) flight plan for each flight and list the purpose of the flight in the "remarks" section. There would be no requirement for the operator to keep a copy of the flight plan nor for the pilot to carry a copy of the flight plan during flight. The flight plan could be "canned" so that it would be on file and could be activated easily. Computations assume that all air tour operators would use "canned" flight plans. Opening and closing flight plans would be part of the normal duties of a pilot, a dispatcher, or other person designated by the certificate holder. The FAA estimates that filing of flight plans with an FAA Flight Service Station and activation of these flight plans for each flight would require 368 hours per year at a cost of $8,280.

Proposed § 93.325 would require each operator to report to the FAA on a quarterly basis. This would increase the existing reporting requirement by one report per year. It would also add the make and model of aircraft and further divides flights into segments based on departure airports. The previous requirement (93.317) was only for sightseeing flights. The proposed rule would require all flights in the Special Flight Rules Area, which includes transportation flights, repositioning flights, maintenance ferries, and training/proving flights. The quarterly aspect of reporting is at the operators' request. Existing § 93.317 requires reporting three times per year. The operators expressed a preference for quarterly reporting as this more closely matches how they do business and report to other government entities. The FAA estimates that this additional burden will require 46 hours per year at a cost of $1,035 for all operators.

The total estimated annual cost of the paperwork burden for the proposed rule is $10,485.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other techological collection techniques or other forms of information technology (for example, permitting electronic submission of responses). Individuals and organizations may submit comments on the information collection requirement by September 7, 1999, to the address listed in the **ADDRESSES** section of this document.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The public will be notified of the OMB control number when it is assigned.

List of Subjects

14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and Recordkeeping requirements.

The Proposed Amendment

For the reasons set forth above, the Federal Aviation Administration proposes to amend part 93, chapter 1 of title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Section 93.303 is revised to read as follows:

§ 93.303 Definitions.

For the purposes of this subpart:

Allocation means authorization to conduct a commercial air tour in the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA).

Commercial air tour means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing. If the operator of a flight asserts that the flight is not a commercial air tour, factors that can be considered by the Administrator in making a determination of whether the flight is a commercial air tour include, but are not limited to—

(1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(2) Whether a narrative was provided that referred to areas or points of interest on the surface;

(3) The area of operation;

(4) The frequency of flights;

(5) The route of flight;

(6) The inclusion of sightseeing flights as part of any travel arrangement package; or

(7) Whether the flight in question would or would not have been canceled based on poor visibility of the surface.

Commercial SFRA Operation means any portion of any flight within the GCNP SFRA that is conducted by a certificate holder that has operations specifications authorizing air tours within the GCNP SFRA. This term does not include operations conducted under an FAA Form 7711–1, Certificate of Waiver or Authorization. The types of flights covered by this definition are set forth in the "Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual" available from the Las Vegas Flight Standards District Office.

Flight Standards District Office means the FAA Flight Standards District Office with jurisdiction for the geographical area containing the Grand Canyon.

Park means Grand Canyon National Park.

Special Flight Rules Area means the Grand Canyon National Park Special Flight Rules Area.

3. Section 93.305 is amended by revising the last sentence in paragraph (a) and in paragraph (b) to read as follows (Note: The instructions in this amendment refer to § 93.305 as it currently exists. But if adopted, these changes would be made in addition to the changes in Notice No. 99–11 published elsewhere in this issue):

§ 93.305 Flight-free zones and flight corridors.

* * * * *

(a) * * *

(a) * * * This corridor is 2 nautical miles wide for commercial air tour flights and 4 nautical miles wide for transient and general aviation operations.

(b) * * * This corridor is 2 nautical miles wide for commercial air tour flights and 4 nautical miles wide for transient and general aviation operations.

* * * * *

4. Section 93.307 is amended by revising the headings of paragraphs (a)(1) and (b)(1) to read as follows:

§ 93.307 Minimum flight altitudes.

* * * * *

(a) * * *

(1) *Commercial air tours*—

* * * * *

(b) * * *

(1) *Commercial air tours*—

* * * * *

5. Section 93.315 is revised to read as follows:

93.315 Requirements for Commercial Special Flight Rules Area operations.

Each person conducting commercial Special Flight Rules Area operations must be certificated in accordance with Part 119 for Part 135 or 121 operations and hold appropriate Grand Canyon National Park Special Flight Rules Area operations specifications.

§ 93.316 [Removed and reserved]

6. Section 93.316 is removed and reserved.

7. Section 93.317 is revised to read as follows:

§ 93.317 Commercial Special Flight Rules Area operation curfew.

Unless otherwise authorized by the Flight Standards District Office, no person may conduct a commercial Special Flight Rules Area operation in the Dragon and Zuni Point corridors during the following flight-free periods:

(a) Summer season (May 1–September 30)—6 p.m. to 8 a.m. daily; and

(b) Winter season (October 1–April 30)—5 p.m. to 9 a.m. daily.

8. Section 93.319 is added to read as follows:

§ 93.319 Commercial air tour limitations.

(a) No certificate holder certificated in accordance with part 119 for part 121 or 135 operations may conduct more commercial air tours in any calendar

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year than the number of allocations specified on the certificate holder's operations specifications.

(b) The Administrator determines the number of initial allocations for each certificate holder based on the total number of commercial air tours conducted by the certificate holder and reported to the FAA during the period beginning on May 1, 1997 and ending on April 30, 1998.

(c) Certificate holders who conducted commercial air tours during the base year and reported them to the FAA receive an initial allocation.

(d) Allocations are apportioned between peak season and off-season. Peak season allocations may be used in the off-season, but off-season allocations may not be used in the peak season. For the purposes of this section seasons are defined as follows:

(1) Peak-Season: May 1–September 30
(2) Off-Season: October 1–April 30

(e) A certificate holder must use one allocation for each flight that is a commercial air tour.

(f) Each certificate holder's operation specifications will identify the following information, as applicable:

(1) Total SFRA allocations;

(2) Dragon corridor and Zuni Point corridor allocations;

(3) Peak season allocations for the SFRA; and

(4) Peak season allocations for the Dragon and Zuni Point corridors.

9. Section 93.321 is added to read as follows:

§ 93.321 Transfer and termination of allocations.

(a) Allocations are not a property interest; they are an operating privilege subject to absolute FAA control.

(b) Allocations are subject to the following conditions:

(1) The Administrator will re-authorize and re-distribute allocations no earlier than two years from the effective date of this rule.

(2) Allocations that are held by the FAA at the time of reallocation may be distributed among remaining certificate holders, proportionate to the size of each certificate holder's allocation.

(3) The aggregate SFRA allocations will not exceed the number of operations reported to the FAA for the base year beginning on May 1, 1997 and ending on April 30, 1998.

(4) Allocations may be transferred among Part 135 or Part 121 certificate holders, subject to the following:

(i) Such transactions are subject to all other applicable requirements of this chapter.

(ii) Allocations authorizing commercial air tours outside the Dragon and Zuni Point corridors may not be transferred into the Dragon and Zuni Point corridors. Allocations authorizing commercial air tours within the Dragon and Zuni Point corridors may be transferred outside of the Dragon and Zuni Point corridors.

(iii) A certificate holder must notify in writing the Las Vegas Flight Standards District Office within 10 calendar days of a transfer of allocations. This notification must identify the parties involved, the type of transfer (permanent or temporary) and the number of allocations transferred. Permanent transfers are not effective until the Flight Standards District Office reissues the operations specifications reflecting the transfer. Temporary transfers are effective upon notification of the Flight Standards District Office.

(5) An allocation will revert to the FAA upon voluntary cessation of commercial air tours within the SFRA for any consecutive 180-day period.

(6) The FAA retains the right to re-distribute, reduce, or revoke allocations based on:

(i) efficiency of airspace;

(ii) voluntary surrender of allocations;

(iii) involuntary cessation of operations; and

(iv) aviation safety.

10. Section 93.323 is added to read as follows:

§ 93.323 Flight plans.

Each certificate holder conducting a commercial SFRA operation must file a visual flight rules (VFR) flight plan in accordance with § 91.153. The flight plan must be on file with a FAA Flight Service Station prior to each flight. Each VFR flight plan must identify the purpose of the flight in the "remarks" section according to one of the types set forth in the "Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual" available from the Las Vegas Flight Standards District Office.

11. Section 93.325 is added to read as follows:

§ 93.325 Quarterly reporting.

(a) Each certificate holder must submit in writing, within 30 days of the end of each calendar quarter, the total number of commercial SFRA operations conducted for that quarter. Quarterly reports must be filed with the Las Vegas Flight Standards District Office.

(b) Each quarterly report must contain the following information:

(1) Make and model of aircraft;

(2) Identification number (registration number) for each aircraft;

(3) Departure airport for each segment flown;

(4) Departure date and actual Universal Coordinated Time, as applicable for each segment flown;

(5) Type of operation; and

(6) Route(s) flown.

Issued in Washington, DC, on July 1, 1999.

L. Nicholas Lacey,

Director, Office of Flight Standards.

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Friday
July 9, 1999

Part VI

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans With Disabilities Act Accessibility Guidelines; Recreation Facilities; Proposed Rulemaking

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ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 98–5]

RIN 3014–AA16

Americans With Disabilities Act Accessibility Guidelines; Recreation Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) proposes to amend the Americans with Disabilities Act Accessibility Guidelines (ADAAG) by adding a new special application section for newly constructed and altered recreation facilities that are not adequately addressed by the existing guidelines. The new section covers amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf, exercise equipment and machines, bowling lanes, shooting ranges, swimming pools, wading pools, and spas. The proposed rule also amends several existing ADAAG provisions to specifically address certain recreation facility features and adds provisions for saunas and steam rooms, and benches. Finally, the proposed rule adds a provision for boat and ferry docks. The amendments will ensure that newly constructed and altered recreation facilities are readily accessible to and usable by individuals with disabilities.

DATES: Comments should be received by November 8, 1999. The Access Board will hold a public hearing on the proposed rule on August 26, 1999 from 9:00 a.m. to 3:00 p.m.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447. E-mail comments should be sent to recreate@access-board.gov. Comments sent by e-mail will be considered only if they include the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days.

The public hearing will be held at the Hyatt Regency, 300 Reunion Boulevard in Dallas, Texas. Interested members of the public may contact the Board at (202) 272–5434 extension 18 or (202) 272–5449 (TTY) to preregister to give testimony or may register on the day of the hearing.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). These are not toll-free numbers. E-mail address: greenwell@access77.board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication S–37 (Recreation Facilities Notice of Proposed Rulemaking). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–37. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (http://www.access-board.gov/rules/recnprm.htm).

Background

The Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*) is a comprehensive civil rights law that prohibits discrimination on the basis of disability and requires, among other things, that newly constructed and altered State and local government buildings and facilities, places of public accommodation, and commercial facilities be readily accessible to and usable by individuals with disabilities. The Architectural and Transportation Barriers Compliance Board (Access Board) [1] is responsible for developing accessibility guidelines for newly constructed and altered buildings and facilities subject to the ADA. The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) (36 CFR part 1191) in 1991.[2] The ADA requires the Department of Justice and the Department of Transportation to publish regulations that include design standards for newly constructed and altered buildings and facilities that are consistent with ADAAG.[3]

ADAAG contains scoping provisions and technical specifications for designing parking areas, entrances, toilet rooms and other elements and spaces that typically comprise a building and its site so that individuals with disabilities will have ready access to and use of the facility. ADAAG also contains special application sections for certain types of facilities, including restaurants, medical care facilities, business and mercantile establishments, libraries, transient lodging, and transportation facilities. ADAAG was amended in 1998 to add special application sections for certain State and local government facilities, including judicial, legislative and regulatory facilities, and detention and correction facilities.

Various types of recreation facilities are covered by the ADA. The Access Board is now proposing to amend several existing sections of ADAAG and to add a new special application section to address the unique features of recreation facilities that are not adequately addressed by the current guidelines. The ADA covers a wide variety of recreation facilities such as boating and fishing facilities, golf courses, parks, places of amusement, play areas, sports facilities, and trails. In July 1993, the Access Board convened a Recreation Access Advisory Committee as the first step in developing these guidelines. The committee was comprised of owners and operators of recreation facilities; persons who design recreation facilities or manufacture related equipment; local, State and Federal officials responsible for parks and other outdoor developed areas; and individuals with disabilities and organizations representing their interests. The committee was requested to accomplish the following objectives:

- Develop a list of the various types of recreation facilities;
- Identify the features of each facility type that are not adequately addressed by ADAAG;
- Consider any unique design issues or constraints affecting access to each facility type;
- Review any existing voluntary guidelines for providing access to the various facility types; and
- Make recommendations for accessibility guidelines for each facility type.

The committee organized itself into six subcommittees based on facility types to accomplish these objectives: places of amusement; boating and fishing facilities; golf; play areas; sports facilities; and outdoor developed areas. The committee met five times between July 1993 and May 1994. Committee members spent most of their time working in subcommittees which reported to the full committee. The subcommittees also worked between committee meetings. Committee meetings were well attended by persons interested in the committee's work and public comment was received at each meeting. The subcommittees also encouraged interested persons to participate in their work, including providing information and reviewing draft reports. More than 250 people actively participated in the committee and subcommittee's work and collectively gave between 50,000 and 60,000 hours of their time. In July 1994, the committee formally presented its report and recommendations to the Access Board. The committee's recommendations represented the consensus of the members of each subcommittee, and not necessarily the full committee. Because of this, this notice refers to recommendations made by the subcommittee which examined particular facilities.

After receiving the committee's report, the Access Board published an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comment on the recommendations. 59 FR 48542 (September 21, 1994). More than 600 comments were received on the recommendations contained in the report. Overall, the comments were supportive of the committee's recommendations. However, public comment revealed a lack of a consensus on some major issues regarding the committee's recommendations for play areas and outdoor developed areas (i.e., trails, camping and picnic facilities, and beaches). There was also a need to gain additional input from some groups that had not been involved in the committee's work. For these reasons, the Board elected to use a regulatory negotiation process to develop proposed rules for play areas and outdoor developed areas. In February 1996, the Board established a regulatory negotiation committee on play areas. That committee met seven times, and the Board published a notice of proposed rulemaking on April 30, 1998 (63 FR 24080). In June 1997, the Board established a regulatory negotiation committee on outdoor developed areas. That committee will present a report to the Board in September 1999.

Using the Recreation Access Advisory Committee's recommendations, the Board has developed proposed accessibility guidelines addressing amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf, sports facilities, swimming pools, wading pools, and spas. There were some areas where the Board needed additional information. For example, the Board sponsored a research project on swimming pool access to gather information. In other areas, the Board believed that existing ADAAG adequately addressed an element and as a result has not repeated or included the provisions in this proposed rule. Finally, there are areas that the Board has not addressed in this proposed rule. For example, accessibility guidelines for ski areas have not been proposed. The Board will continue to monitor and gather information in this and other areas for potential future rulemaking.

The Board also is responsible for establishing accessibility guidelines for federally financed facilities covered by the Architectural Barriers Act (42 U.S.C. 4151 *et seq.*), including facilities constructed or altered by Federal agencies. Since Federal agencies own or operate many of the same type of recreational facilities addressed by this proposed rule, the Board plans to take action at a future date to make the provisions applicable to federally financed facilities pursuant to the Architectural Barriers Act. Federal agencies and other interested persons are encouraged to comment on this proposed rule and how the provisions will affect recreational facilities owned or operated by the Federal government.

Section-by-Section Analysis

This section of the preamble contains a concise summary of the proposed rule. The proposed rule amends several existing sections of ADAAG and adds a new special application section. For purposes of the section by section analysis, the proposed amendments to the existing sections of ADAAG and the new special application section are summarized by type of facility.

Amusement Rides

3.5 Definitions

This section defines terms used in the proposed rule. Terms and definitions established within the industry have been used to the greatest extent possible.

The term "amusement device" means a device that moves persons through a fixed course within a defined area for amusement or entertainment purposes. Additionally, the definition specifies that the rider does not control or operate an amusement device.

The term "amusement ride" is defined as a system containing one or more amusement devices that provide the same general amusement experience.

Question 1: The proposed rule does not address amusement attractions without seats such as walk-through fun houses, mazes, or barrels. Additionally, the proposed rule does not address amusement rides where the patron has control over the ride, such as go-carts and bumper boats. The Board is considering developing guidelines for these types of amusement rides and attractions. Specific information regarding the unique characteristics of these rides and how persons with disabilities have accessed these rides is requested.

4.1.3(19)(a) Exception

ADAAG 4.1.3(19)(a) requires a specific number of wheelchair spaces in an assembly area, based on the number of seats. An exception is proposed to allow the installation of transfer seats instead of wheelchair spaces, where the motion of fixed seats is an integral part of an amusement experience. This exception applies only to fixed seats in amusement facilities. Some seats in amusement attractions, such as flight simulators, may provide motion as an integral part of the amusement experience. Where seats move independent of the user, transfer seats may enhance the user's amusement experience.

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

[2] Existing buildings and facilities, while subject to certain ADA requirements, are not addressed by ADAAG except where altered. Section 4.1.6 of the 1991 ADAAG contains the provisions relating to alterations. Generally, each altered element and space is required to comply with new construction technical specifications unless technically infeasible. If alterations are made to an area containing a primary function area, an accessible path of travel is required to the altered area to the extent that the cost is not disproportionate to the cost of the overall alteration as determined under regulations issued by the Department of Justice. For the Department of Justice's regulations on alterations to a primary function area, see 28 CFR 36.403.

[3] The ADA Standards for Accessible Design published by the Department of Justice (28 CFR part 36, Appendix A) are based on the 1991 ADAAG. Newly constructed and altered recreation facilities covered by the ADA must comply with the ADA Standards for Accessible Design to the extent that the standards apply to the facility (e.g., parking areas, accessible routes, entrances, toilet rooms, restaurants, mercantile establishments).

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15.1 Amusement Rides

The proposed guidelines apply to permanent amusement rides and devices with fixed seats that are set up for a long duration and are not regularly assembled and disassembled (e.g., rides in amusement parks and theme parks). They do not apply to amusement rides and devices set up for a short period and assembled and disassembled regularly (e.g., rides that are part of traveling carnivals, State and county fairs, festivals, and other special events). However, itinerant amusement rides and devices are covered by the ADA when they are provided by a public entity or a public accommodation. The obligations of covered entities operating itinerant amusement rides and devices are established by the Department of Justice ADA regulations.

15.1.1 Number Required

This section applies to amusement rides with amusement devices containing fixed seats. One wheelchair space complying with 15.1.3 is required per 100 fixed seats, or fraction thereof, on each amusement ride. In addition, one transfer seat complying with 15.1.4 must be provided per 100 fixed seats, or fraction thereof, on each amusement ride. Unlike other assembly seats, amusement ride devices cycle frequently (between ninety seconds and fifteen minutes). Each device accommodates a high volume of people due to its short cycles. Requiring wheelchair spaces and transfer seats will provide more choice and options for integrated seating.

The places of amusement subcommittee recommended that at least one wheelchair space and at least one transfer seat be provided on an amusement ride. They recommended that where a ride is comprised of three cars, for example, one wheelchair space and one transfer seat should be provided on one of the three cars. The Board has based the requirement for wheelchair spaces and transfer seats on the number of fixed seats provided on each ride. Given the diversity of amusement rides, this approach is intended to simplify the requirement.

15.1.1 Exception

This exception permits the use of an additional transfer seat instead of the required wheelchair space, where it is not operationally or structurally feasible to provide wheelchair spaces. For purposes of this section, feasibility is not to be determined by the cost of providing a wheelchair space. Amusement rides must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. A determination that it is operationally or structurally infeasible should be based on an engineering analysis that demonstrates that placing a wheelchair on a ride would have a significant adverse effect on the structural integrity of either the mobility device or the amusement device. For example, some wheelchairs may not be designed to withstand the forces that are a part of a ride. The places of amusement subcommittee suggested that accommodating a person in a wheelchair on an amusement device may not be feasible on a looping roller coaster, for example, because the use of a wheelchair may raise a person's center of gravity and impact the dynamic forces of a ride. A wheelchair may also create instability on a raft ride. Designers should think about how to provide a wheelchair space on a ride from the conceptual phase onward. If a designer determines at some point that it is not operationally or structurally feasible to do so, the guidelines do not require any specific documentation. However, the designer should be prepared to explain the basis for the determination if any questions arise about the use of the exception.

15.1.1.1 Dispersion

This section requires that accessible amusement devices be dispersed throughout an amusement ride. Where different types of amusement devices are provided, accessible devices are required to be dispersed among the different types.

15.1.2 Accessible Loading and Unloading Areas

This provision requires an accessible route to connect the portion of the loading and unloading area serving each accessible amusement device. The loading and unloading area serving each accessible amusement device must provide a level maneuvering space complying with ADAAG 4.2.3. This section permits loading and unloading in the same area. This reduces the need to move a wheelchair or other mobility device from the load area to the unload area.

15.1.2.1 Wheelchair Storage Space

This provision requires a wheelchair storage space complying with ADAAG 4.2.4 to be provided in the unloading area for each required transfer seat. For example, if a ride provides 200 fixed seats, two transfer seats would be required. Thus, two wheelchair storage spaces would also be required. Wheelchair storage spaces are necessary so that individuals who transfer from their wheelchair to a ride device will have a place to leave their wheelchair. The wheelchair storage spaces cannot overlap any required means of egress or required accessible routes.

15.1.2.2 Signage

This provision requires amusement rides to provide signs at the entrance of queues and waiting lines to identify whether the accessible amusement devices provide wheelchair spaces, transfer seats, or both. Where an accessible unload area is coincident with the accessible load area, the ride must provide signs at the entrance to the queue or waiting line showing the location of the accessible load and unload area. Signage will provide important information to people with disabilities regarding the type of access provided (i.e., roll-on or transfer) and the location of the accessible loading area. Since not every person can transfer from a wheelchair or mobility device, signs will reduce unnecessary backtracking.

15.1.2.3 Loading and Unloading

This provision requires the height of loading and unloading areas to be coordinated with the floor height of an amusement device. When an amusement device is at rest, the vertical difference between the floor height of the loading and unloading area and the floor height of the amusement ride device must be within plus or minus 5/8 inches under normal passenger load conditions. The horizontal gap between the amusement ride device and the edge of the loading and unloading area must be no greater than 3 inches. These changes in level are consistent with the rail-to-platform height required in ADAAG 10.3.1(9) (Fixed Transportation Stations).

15.1.2.3 Exception

This exception permits the use of ramps, bridge plates, or similar manually deployed devices complying with the applicable requirements of 36 CFR 1192.83, where it is not operationally or structurally feasible to meet the horizontal or vertical difference requirements between amusement ride devices and loading and unloading areas. The technical requirements for ramps and bridge plates are based on the provisions for light rail vehicles. For purposes of this section, feasibility is not to be determined by the cost of providing access where there are horizontal or vertical differences. An engineering analysis, however, may demonstrate that eliminating the horizontal or vertical difference between the ride

device and the loading and unloading areas would have a significant adverse effect. Gaps between the amusement ride device and the load and unload areas are necessary to protect patrons from potential pinching. Amusement ride devices with more complicated suspensions may also be unable to meet the access requirements and allow for the safe movement of the amusement ride device. If a designer determines that it is not operationally or structurally feasible to meet the horizontal or vertical difference requirements between the amusement ride device and the loading and unloading area, the guidelines do not require any specific documentation. However, the designer should be prepared to explain the basis for the determination if any questions arise about the use of the exception.

15.1.3 Wheelchair Space

This section contains technical provisions for wheelchair spaces on accessible amusement devices.

15.1.3.1 Floor or Ground Surface

This section requires floor or ground surfaces to be level. Additionally, wheelchair spaces must comply with ADAAG 4.5.1, 4.5.3 and 4.5.4. These sections address surface characteristics, carpet, and gratings. This section is consistent with other ADAAG provisions for wheelchair spaces in assembly areas.

15.1.3.2 Width

This section requires a wheelchair space to be 36 inches minimum in width. A 36 inch width is required, as opposed to 30 inches, because of the confined spaces often found on amusement devices. This is consistent with the maneuvering clearances required by ADAAG 4.2.4 for alcoves.

15.1.3.3 Depth

This section requires that where a wheelchair space can be entered from the front or rear, the wheelchair space must be 48 inches minimum in depth. Where a wheelchair space can be entered only from the side, the wheelchair space must be 60 inches minimum in depth.

15.1.3.4 Approach

This section requires that at least one side of the wheelchair space adjoin an accessible route.

15.1.3.5 Fixed Companion Seats

This section requires that where amusement devices provide seating for more than one rider, a fixed companion seat must be provided for each required wheelchair space. Where amusement devices provide shoulder to shoulder seating, companion seats must be shoulder to shoulder with the adjacent wheelchair space. For example, where an amusement device provides single seating in the front and rear of a device, the companion seating is not required to be positioned shoulder to shoulder with the wheelchair space. Where a ride provides seating for more than one rider sitting shoulder to shoulder, the wheelchair space and required companion seating must also be aligned shoulder to shoulder.

15.1.4 Transfer Seat

This section contains technical provisions for transfer seats on accessible amusement devices. Some of the provisions may be consistent with current design practices. The places of amusement subcommittee recommended technical provisions for a diagonal approach, side approach, and other special transfer provisions. The Board has proposed provisions for side transfers only, because in many cases one transfer seat will be provided and a side transfer will be accessible to the greatest range of individuals with disabilities.

15.1.4.1 Clear Floor Space

This section requires a clear space complying with ADAAG 4.2.4.1 to be provided with the longer dimension parallel to the unobstructed side of the transfer seat and to be located within 3 inches maximum of the transfer seat. A clear space allows space for a stationary wheelchair adjacent to the transfer seat. The clear floor space must extend 12 inches beyond the back of the seat so that the rear wheels of a wheelchair do not obstruct a person's transfer.

15.1.4.2 Maneuvering Space

This section permits the maneuvering space required by 15.1.2 to overlap the clear floor space serving transfer seats. This is consistent with existing ADAAG requirements.

15.1.4.3 Transfer Seat Dimensions and Position

This section requires the height of transfer seats to be 17 inches minimum to 19 inches maximum above the load and unload platform. The end of the transfer seat adjacent to the clear floor space complying with 15.1.4.1 must be unobstructed when in the load or unload position to permit transfer. The places of amusement subcommittee recommended a height of 15 to 19 inches to address the needs of children. The proposed guidelines are largely based on adult dimensions. As a result, the 17 to 19 inch range, which is consistent with other elements designed for transfer (ADAAG 4.16 and ADAAG 4.21), has been proposed. ADAAG 2.2 permits equivalent facilitation. This means that departures from these proposed provisions will be permitted, provided that alternative designs and technologies used provide substantially equivalent or greater access to and usability of the amusement ride. If, for example, an amusement ride is to be used primarily by children, a lower transfer seat height may be appropriate.

15.1.4.4 Transfer Entry

This section requires that, when in the load and unload position, an amusement device provide a 36 inch wide minimum entry. The entry must provide an opening and be positioned parallel to the longer dimension of the clear floor space.

Question 2: The places of amusement subcommittee indicated that on certain amusement devices, transfer access may not be possible. Examples included amusement devices in flumes and pools where the pool sides must be higher than the amusement devices. Also, in some water rides, water levels must be kept lower than the loading areas. Are there other amusement devices with seats where it is not operationally or structurally feasible to design the amusement device to provide transfer seats? The Board is interested in specific information on why such amusement devices cannot be designed to provide transfer seats. The Board requests comments on how ADAAG should address amusement devices where transfer access cannot be provided. The Board also requests comments on the impact of providing a wheelchair space and a transfer seat on permanent amusement rides with a small number of fixed seats.

Question 3: The Board has examined issues related to providing an accessible route connecting accessible elements on sites used for fairs, carnivals, and other itinerant places of amusement. In many circumstances, a site such as a field or parking lot may be used for a short period of time. Where the site is altered to provide a route to serve the temporary elements, ADAAG accessible route provisions apply. This requires, among other things, for the surface to be stable, firm, and slip-resistant and to have a conforming slope. The places of amusement subcommittee recommended that fairs, carnivals, and other itinerant places of amusement provide a modified accessible route to connect temporary elements. The Board requests comments on how to address the issue of accessible routes in itinerant

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places of amusement. When a site is altered to provide a route to serve temporary elements, should the route be required to meet the technical provisions of ADAAG 4.3? If not, how should such routes be treated? What factors should be considered in determining when it is appropriate to depart from the technical provisions for an accessible route?

Question 4: The proposed rule does not contain any requirement for access to water slides. The Board requests comment on this issue.

Boating Facilities

3.5 Definitions

This section defines terms used in the proposed rule.

The term "boat launch ramp" is defined as a sloped surface designed for the launching and retrieval of trailered boats to and from the water.

The term "boat slip" is defined as the area where a boat is tied to a dock or pier for the purpose of embarking or disembarking.

The term "design high point" means a selected elevation, based on hydrologic data and other appropriate records, that is used as a safe and practical upper limit for the design and construction of a gangway to a floating facility. The term is necessary for establishing a vertical measurement to the water level. Designers have some discretion in determining the high point based on this information. The Board has combined the design high point with other factors to determine gangway slopes.

The term "gangway" is defined as a variable-sloped structure linking a fixed structure or land with a floating structure.

10.5 Boat and Ferry Docks

This section requires that boat and ferry docks comply with 15.2. The Board added a special application section for transportation facilities (section 10) to ADAAG in 1991. However, provisions to address access to floating boat and ferry docks were not yet developed and section 10.5 was reserved. This section applies the provisions contained in 15.2 to boat and ferry docks covered by 10.5.

15.2 Boating Facilities

This section applies to each boating facility provided within a site and requires compliance with the applicable provisions of 15.2. A boating facility can contain one or more piers and the same facility can also include one or more boat launch ramps. In some cases, such as a State park with a large lake, a site may contain more than one boating facility. In other cases, several boating facilities may be located in the same waterfront area, each operated by different operators. The provisions of 15.2 apply to each boating facility.

15.2.1 Gangways

This section requires that gangways which are part of an accessible route comply with ADAAG 4.3. Gangways are permitted to have transition plates at the top and bottom.

At boating facilities, gangways function as bridges that link land or fixed structures with floating piers. As water levels rise and fall, the gangway slopes also rise and fall. Sometimes the changes may be very gradual over a period of weeks or months, and in other cases dramatic changes occur over a few hours. Often, the land sides of gangways are hinged to fixed structures with the pier sides left free to move across the pier surfaces as the slope of the gangway changes. Rollers are sometimes attached to the pier end to allow the gangway to adjust freely as the slope changes. These rollers can produce changes in level between the walking surface at the end of the gangway and the walking surface of the floating pier. Other friction reducing aids and the framing that forms the structural supports of the gangway can produce changes in level. Sometimes, neither end of the gangway is hinged and a change in level occurs at both ends.

Where the slope of an accessible route exceeds 1:20, ADAAG 4.3.7 requires the sloping surface to comply with ADAAG 4.8 (Ramps). ADAAG 4.8 requires level landings at the top and bottom of each ramp segment. Because of the changing water levels and the varying slopes of gangways, the boating and fishing subcommittee recognized the difficulty in providing level landings. Proposed 15.2.1 permits the use of transition plates at the top and bottom of a gangway. Transition plates are often constructed of metal and are used to connect the ends of a gangway to a boarding dock. The boating and fishing facilities subcommittee recommended that transition plates be allowed at the ends of gangways and that these transition plates have slopes less than or equal to 1:12 (8.33 percent).

15.2.1 Exceptions 1 and 2

Exception 1 proposes that the maximum rise requirements of ADAAG 4.8.2 not apply to gangways. In addition, exception 2 proposes that gangways be permitted to exceed the 1:12 maximum slope specified by ADAAG 4.8.2, when the vertical distance between the design high point and the level of the water exceeds the vertical distance specified in the left hand column of Table 15.2.1 and the square footage of fixed and floating piers at the facility is less than the square footage specified in the right hand column of Table 15.2.1.

One of the most difficult issues relating to accessibility in boating facilities is the issue of gangway slopes. Bodies of water fluctuate due to rainfall, snow melting, droughts, reservoir draw downs, surge effects, tidal forces, flood control, and other factors. Fluctuations can range from less than 12 inches to changes of more than 40 feet, and sometimes, several hundred feet with reservoir impoundments. Changes can occur rapidly over a few hours or gradually over an operating season. Overall, boating and fishing facilities subcommittee members agreed that under some circumstances, the slope of a gangway could exceed the maximum 1:12 slope allowed for ramps by ADAAG 4.8.2. The boating and fishing facilities subcommittee recommended three options for gangway slopes.

Option 1 recommended that where water level changes do not exceed 5 feet during the operating season, gangways should comply with ADAAG 4.3. The boating and fishing facilities subcommittee noted that additional information was needed to recommend design standards where water level changes exceed 5 feet.

Option 2, primarily based on recommendations made by the States Organization for Boating Access, recommended that gangways be allowed to be 60 feet long before a level landing is required. It also recommended that gangways located in areas with annual water fluctuations of zero to 5 feet should have slopes that do not exceed 1:12, the maximum permitted by ADAAG 4.8.2. In areas with annual water fluctuations of 5 feet or more during 92 percent of the operating season, the slope of the gangway should not exceed 1:12.

Option 3 recommended that an accessible route be provided to at least one of each type of boating activity in recreational boating facilities. A gangway connecting an accessible dock or pier should comply with ADAAG 4.3 during all operating hours of a facility. Boating and fishing facilities subcommittee members also noted that additional information was needed to determine when exceptions to ADAAG 4.3 should apply.

A substantial majority of commenters to the ANPRM supported option 2. Most supporters of option 2 agreed with allowing the gangway to be 60 feet long. However, a substantial number of commenters did not support the 92 percent requirement and recommended that the percentage should be closer to 50 percent.

The Board determined that further information and cost data was necessary to develop a slope requirement for gangways. In 1996, the Board completed a study to develop design solutions and general cost estimates for providing access to floating boating facilities. The study found that there was a relationship between the cost of compliance with ADAAG 4.3 and water level change. Costs of providing gangway ramping systems conforming to ADAAG 4.3 ranged from $10,000 for a 30 inch water level change to $450,000 for a 30 foot water level change. Cost estimates included fabrication, delivery, and placement of a gangway in the water, but excluded configuration and mooring system costs. The study also indicated that price bids in a competitive marine environment can easily vary up to 50 percent above or below engineers' estimates.

As the range of water level changes increases, so does the complexity of the structures designed to provide access. In one example provided in the Board's study, a design was provided to access a 12.5 foot change in water level while still complying with existing ADAAG requirements. The design included three ramps on land, four on a floating structure, and two 64 foot gangways. Because ADAAG 4.8.2 limits the rise of a ramp run to 30 inches, the design increased the gangway length so that the slopes never exceeded 1:20. The estimated cost for this gangway ramping system was more than $200,000.

The study also evaluated the use of elevators and platform lifts and reported that in the 30 inch to 30 foot range, gangway ramp systems could be half as expensive as lift or elevator-based systems. It was also noted that there are maintenance difficulties in operating mechanical devices such as platform lifts and elevators in saltwater environments.

The Board recognizes that the interface between land and water environments is often very dynamic and constraints exist which cannot be easily resolved. Waterside restrictions include limits on how far piers may project from shore lines into navigable channels. For small facilities, such as a bait shop with a floating pier capable of mooring a few row boats, the cost of providing a gangway conforming to ADAAG 4.3 could become economically infeasible as the change in water level increases. However, for large facilities, such as a 1000-slip marina, conformance to ADAAG 4.3 would be feasible even as the change in water level increases.

In an attempt to balance the economic impact of this proposed rule with the access concerns of persons with disabilities, the Board identified two issues with the greatest impact on floating facilities: gangway lengths and gangway slopes. As the range of water level changes increase, gangways generally increase in length. Where gangway lengths are restricted, supporting land and pier ramps must be provided, which increase the size and complexity of such gangway ramping systems. The study showed that by allowing a gangway length to increase beyond 30 feet, and even beyond 60 feet, the complexity and size of the gangway ramping system was often reduced. Therefore, this section proposes that the rise restrictions under ADAAG 4.8.2 not apply to gangways.

With respect to gangway slopes, the Board sought to balance access and the economic impact on small and large facilities. Exception 2 references table 15.2.1 which establishes conditions where gangways are permitted to exceed a 1:12 slope. The table is based on the vertical distance the water level descends below an established design high point and the square footage of all the fixed and floating piers at a boating facility. Since this exception only applies to gangways, accessible routes to fixed piers must conform to all requirements of ADAAG 4.3, including slope. Fixed piers are not subject to water level changes and gangways are not needed. Also, because this exception is applicable only to gangways, fixed ramping systems required on land or on floating piers must conform to all requirements of ADAAG 4.3, including slope.

The table permits, during the time the water level is beyond a certain distance from a design high point, a gangway to exceed the slope maximums of ADAAG 4.3. Although the exception allows slopes greater than allowed by ADAAG 4.3, the exception has not modified any other requirement of ADAAG 4.3, such as handrails. The exception applies to tidal and non-tidal settings and to all gangways within a boating facility that are part of an accessible route.

Based on this exception, some boating facilities will not have access conforming to ADAAG 4.3 all the time. Some facilities may have access conforming to ADAAG 4.3 only during times when the water level is at higher levels and as water levels decline, the gangway slopes will become steeper. Because gangway slopes rise and fall, it is possible that for some facilities, gangways will also have zero slopes for certain water levels. Where table 15.2.1 establishes no maximum slope, a sloped surface is still required. Stairs are not permitted as a part of an accessible route.

Question 5: Some floating piers, although small, are designed primarily for use by larger passenger vessels, such as tour boats. The Board is considering adding a provision that would also control the slope of a gangway in some facilities based on the size of the vessels they are designed to accommodate. The Board is interested in the extent to which floating piers are provided for use by passenger vessels carrying more than 150 passengers or more than 49 overnight guests. Specific size and cost information for the construction of this type of facility is also requested.

15.2.1 Exception 3

This section exempts handrail extension requirements on gangways or landings where they connect to transition plates and permits transition plates to be free of handrail extensions.

ADAAG 4.8.5 requires that if a ramp has a rise greater than 6 inches or a horizontal projection greater than 72 inches, handrails are required on both sides. ADAAG 4.8.5(2) further provides that if handrails are not continuous, they shall extend at least 12 inches beyond the top and bottom of the ramp segment and be parallel with the floor or ground surface.

Because gangway slopes change, ensuring that handrail extensions remain parallel with adjacent walking surface would be difficult. In addition, if transition plates are required to have handrail extensions, these extensions would also have problems remaining parallel with adjacent walking surfaces and would overlap with the gangway extensions. For these reasons, handrail extensions are not required on gangways or landings where they connect to transition plates and are not required on transition plates.

15.2.2 Slips: Minimum Number

This section requires that where boat slips are provided, at least 3 percent, but not less than one, shall comply with 15.2.3. Accessible boat slips must be dispersed throughout the various types provided. This dispersion provision does not require an increase in the minimum number of boat slips required to be accessible.

The boating and fishing facilities subcommittee recommended that when boat slips are provided, the number of accessible boat slips be determined using the scoping provisions of ADAAG 4.1.2(5)(a) for vehicle parking spaces. Using ADAAG 4.1.2(5)(a), a 100-slip

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boating facility would need 4 accessible boat slips. Most commenters responding to this recommendation in the ANPRM supported using the vehicle parking scoping. A few commenters questioned whether the need for accessible boat slips was the same as accessible vehicle parking spaces.

Designing accessible boat slips will have limited impact on newly constructed boating facilities. Wider piers and pier clearances are often incorporated into newer facilities. The 3 percent requirement was selected to parallel the accessible vehicle parking requirements. A percent was used, as opposed to a table, to simplify application. Therefore, a 50-slip boating facility would need two accessible boat slips and a 100-slip facility would need three accessible boat slips. However, where the number of boat slips cannot be identified, each 40 feet of mooring space provided along the perimeter of a pier shall be counted as one boat slip.

To ensure that persons with disabilities have access to different types of boat slips, 15.2.2 also requires that the accessible boat slips be dispersed throughout the various types provided. Types include the size of the boat slip, single berths, double berths, depth of the water, transient, longer-term lease, covered slips, and slips equipped with features such as telephone, water, electricity and cable connections. To satisfy this dispersal requirement, the provision does not require an increase in the minimum number of boat slips required to be accessible.

15.2.2.1 Slips Serving Boat Launch Ramps

This section requires that, in addition to the requirements of 15.2.2, where boat launch ramps are provided with boarding piers, at least one accessible boat slip complying with 15.2.3 be provided adjacent to a boat launch ramp.

This provision has been proposed to ensure that where boarding piers are provided at boating facilities with launch ramps, at least one launch ramp will have an accessible boat slip. This accessible boat slip is in addition to the accessible boat slips required by 15.2.2.

Where an accessible boat slip is required on a boarding dock, an accessible route complying with ADAAG 4.3 must serve the slip. Where the boarding dock is a floating dock, a gangway complying with 15.2.1 is permitted. Section 15.2.1, exception 2, includes the square footage of the dock in the total square footage of fixed and floating piers at the boating facility.

Boat launch ramps typically have slopes steeper than 1:12 (8.33 percent). Steeper slopes allow boats to float free of their trailers while the depth of the water does not submerge the tow vehicle's exhaust system. In saltwater areas, steeper slopes also reduce saltwater exposure to the underside of tow vehicles. In general, the Board is not proposing any provisions that will change the slope of a boat launch ramp. However, where an accessible route connecting an accessible boarding dock is coincident with the boat launch ramp, that portion of the launch ramp must meet the requirements of ADAAG 4.3, including slope.

15.2.2.2 Location

This section requires that among each type provided, accessible boat slips be those nearest to amenities provided in a boating facility. Since travel distance is often an important consideration for persons with disabilities, the Board proposes this section to address the location of accessible boat slips. First, under 15.2.2, the various types of boat slips are determined and the required accessible boat slips are assigned to the selected types. Then, under this section, within the group of boat slips of the same type, the accessible slips must be the ones nearest to the amenities provided in a boating facility. The following example illustrates this provision.

A boating facility has two piers, each containing 60 boat slips. With a total of 120 boat slips, four accessible boat slips would be required. One pier has transient slips and the other has long-term lease slips. Both piers are served by the same parking lot and a public restroom. At the end of the transient slip pier, a ship's store and fueling station are provided. To comply with 15.2.2.2, the two accessible slips on the long-term lease pier must be located closest to the amenities provided, the parking lot and restroom. On the transient pier, one slip next to the parking lot must be accessible and one slip nearest to the ship's store and fueling station must be accessible.

15.2.3 Accessible Boat Slips

This section contains provisions for accessible boat slips.

15.2.3.1 Pier Clearances

This section requires that accessible boat slips be served by clear pier space 60 inches wide minimum and at least as long as the accessible boat slip. At least one 60 inch minimum continuous clear opening must be provided within every 120 inch maximum of linear pier edge serving an accessible boat slip.

Using the vehicle parking spaces in ADAAG 4.6 as a guide, the Board is proposing that an accessible boat slip be provided a 60 inch wide minimum pier space, similar to an access aisle, and at least as long as the boat slip. Boat slips may contain features such as pillions, bollards and cleats, and utility connections such as electrical, water, and sewage that can block or interfere with transfer to and from a boat. This section also requires that every 120 inches maximum of linear pier edge contain at least one opening 60 inches minimum along the edge of a pier at accessible boat slips to allow for access to and from a boat. Flexibility has been provided to designers and operators to decide the placement of these openings, understanding that the purpose is to allow space for transfer to and from a boat. For example, a 40 foot long accessible boat slip would have at least four clear openings provided along the pier edge. The different openings will accommodate different size vessels and mooring orientations (e.g., stern first, bow first).

Fishing Piers and Platforms

15.3 Fishing Piers and Platforms

This section requires that each fishing pier and platform comply with 15.3.

15.3.1 Accessible Route

This section applies the requirements for gangways in 15.2.1 when an accessible route connects a floating fishing pier or a floating fishing platform. The Board recognizes that floating fishing piers and floating fishing platforms are subject to many of the same constraints as floating boating piers. As a result, the gangway provisions of 15.2.1 would apply. The total square footage of floating and fixed pier space at a fishing facility must be used to determine the requirements for a gangway accessing a fishing pier or platform. If a boating facility has a floating boarding dock at a boat launch ramp and another floating structure which serves as a fishing platform, both the square footage of the boarding dock and the fishing platform would be used under 15.2.1, Exception 2, to determine the slope criteria for the gangway accessing the fishing platform. Likewise, the same square footage would be used to determine the slope criteria for the gangway accessing the boarding dock.

15.3.2 Railings

This section requires that where railings, guardrails, or handrails are provided, they must comply with 15.3.2.

15.3.2.1 Edge Protection

Where railings, guardrails, or handrails are provided, this section requires edge protection to be provided and extend 2 inches minimum above the ground or deck surface. The requirement for edge protection is triggered only where railings, guardrails, or handrails are provided on a fishing pier or platform. Edge protection will prevent wheelchairs and other mobility aids from slipping off the fishing pier or platform.

15.3.2.2 Height

Where railings, guardrails, and handrails have been installed on fishing piers and platforms, the height of the railings interfere with fishing and block vision for persons who use wheelchairs and other mobility devices. This section requires at least 25 percent of the railings to be a maximum of 32 inches high above the surface of the fishing pier or platform to address this problem. The section is based on the recommendations from the boating and fishing subcommittee. Anglers who stand can fish from any part of the pier or platform and change location depending on the fishing conditions. The boating and fishing subcommittee wanted to ensure that persons with disabilities have a similar range of choices to fish from a variety of locations.

This section does not address the material or spacing between the horizontal or vertical supports and between the top of the railing and the surface of the fishing pier or platform. Building codes and standards, and common construction practices address the design of these spaces, which can be solid or include vertical or horizontal barriers.

During the advisory committee meetings and in the comments on the ANPRM, questions were raised regarding whether guardrail standards issued by the Occupational Safety and Health Administration (OSHA) apply to recreational fishing piers and platforms. The OSHA standards apply "with respect to employments performed in a workplace." 29 CFR 1910.5(a). The OSHA guardrail standards provide in relevant part that "[e]very open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing." 29 CFR 1910.23(c). OSHA prescribes a 42 inch height for a standard railing. 29 CFR 1910.23(e). The Board has conferred with OSHA's Directorate of Compliance Programs, and that office has confirmed that OSHA does not routinely enforce its guardrail standards at recreational fishing piers and platforms.

Question 6: Many building codes and standards generally require a guardrail not less than 42 inches in height where there is an unenclosed floor opening more than 30 inches above the grade or floor below. These codes and standards do not require guardrails at certain locations such as the loading side of a loading dock or raised platforms used for entertainment, and permit lowered railings at other locations such as in front of the first row of fixed seats on a balcony. The Board seeks information about whether these codes and standards have been applied to recreational fishing piers and platforms. Where lower guardrails have been used, the Board is interested in knowing the height of those lower guardrails and what steps were taken to ensure that their use was permitted under the applicable codes and standards. In light of concerns that have been raised about safety issues related to lower guardrails, the Board also is interested in any experiences designers or operators have had where guardrails have been lowered to accommodate individuals using wheelchairs and other mobility devices.

15.3.2.3 Dispersion

This section requires that lowered railings (32 inch maximum) required by 15.3.2.2 be dispersed throughout a fishing facility. This provides anglers with disabilities with a choice of locations for fishing on a fishing pier or platform.

15.3.3 Clear Pier or Platform Space

This section requires that at least one clear space complying with ADAAG 4.2.4 be provided where the railing height required by 15.3.2.2 is located. Where no railings are provided, at least one clear space complying with ADAAG 4.2.4 shall be provided on the fishing pier or fishing platform. The Board has not set a minimum size for a fishing pier or platform, but has proposed minimum clear space requirements so that the accessible route can be adjacent to the 32 inch maximum high rails.

15.3.4 Maneuvering Space

This section requires that at least one maneuvering space complying with ADAAG 4.2.3 be provided on a fishing pier or platform to allow persons who use wheelchairs to turn and exit the space safely.

Golf

The golf subcommittee developed recommended accessibility guidelines for newly constructed 18 and 9 hole golf courses and for miniature golf courses. In examining 18 and 9 hole golf courses, the golf subcommittee considered all elements of the course and made recommendations that would increase accessibility for persons with disabilities without significantly changing the game of golf. Issues involving the application of ADAAG accessible route provisions were important in the golf subcommittee's discussions.

3.5 Definitions

This section defines terms used in the proposed rule. Terms and definitions established within the industry have been used to the greatest extent possible.

The term "golf car passage" is defined as a continuous passage on which a motorized golf car, also known as golf carts, can operate. Designers and operators sometimes use the term "golf car path" to identify what the Board is defining as a "golf car passage". Because the term "golf car path" may connote a prepared surface, the term was not used. While a golf car passage must be usable by golf cars, it does not necessarily need to be a prepared surface.

The Board recognizes that not all golf courses provide golf cars or golf car passages. However, by requiring a course to be designed and constructed to allow for golf car travel between accessible elements and spaces on a course, individuals who bring their own golf car or use those provided at a course, will have the opportunity to play the game of golf. On most courses where golf cars are not provided, paths for maintenance vehicles often exist which could support golf car passages and generally connect many of the elements and spaces required to be accessible.

A "teeing ground" is defined as the starting place for a hole to be played. This definition is consistent with the United States Golf Association definition, which describes a teeing ground as a rectangular area two club-lengths in depth, with the front and sides defined by the outside limits of two tee-markers.

15.4.1 Accessible Route

This section requires that, where the accessible route is located within the boundary of a golf course, it must be 48 inches wide minimum and connect to the bag drop areas, accessible teeing grounds, and putting greens. Additionally, where handrails are required, the accessible route is required to be 60 inches wide minimum.

The golf subcommittee considered the ADAAG requirements for an accessible route to be impractical on a golf course

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for several reasons. First, the route of play for a golfer is dependent on where the ball lands and is therefore unpredictable. Secondly, there is an assumption that on most courses, most golfers use a golf car to move throughout the course. Finally, the golf subcommittee raised concerns that requiring an accessible route throughout a course would substantially alter the slopes within a course and eliminate some of the challenge of the game.

As a result, the golf subcommittee recommended that an accessible route only be required to connect course elements from a golf car path or a golf car parking area. This was intended to allow a golfer with a disability to ride in a golf car to reach a point where an accessible route would provide access to various course elements. Public comment received from golf course architects, operators, and the Association of Disabled Golfers to the ANPRM generally supported this approach.

The Board agrees that making the game of golf accessible to the majority of persons with disabilities can be achieved primarily through the use of golf cars. These proposed guidelines incorporate the concept of providing access through a golf car passage and allow for access to various elements. These proposed guidelines also ensure that all of the amenities (such as snack bars, toilet rooms, and weather shelters) on a course are accessible and are connected by a golf car passage.

Question 7: These proposed guidelines are based on the golf subcommittee's recommendations for 18 and 9 hole courses. Should smaller courses (i.e., 3 or 6 holes) have the option of using a golf car passage in lieu of a modified accessible route?

15.4.1 Exception 1

This exception permits the use of a golf car passage in lieu of all or part of an accessible route within the boundary of a golf course. This exception does not apply to practice putting greens and driving ranges since they are not located within a course.

Question 8: The proposed requirements for a golf car passage seek to provide access for players on a golf course. The Board requests comments on how access should be provided for spectators during a golf tournament.

15.4.1 Exception 2

This exception provides that accessible routes within the boundary of a golf course are not required to comply with handrail requirements in ADAAG 4.8.5. It is hazardous for handrails to be located through a green, or on teeing grounds, because of the danger of golf balls ricochetting off rails. Since most elements are required to be accessible from golf car paths, handrails would be of little utility along those routes.

15.4.2 Teeing Grounds

This section requires that where one teeing ground is provided for a hole, it must comply with 15.4.7. If two or more teeing grounds are provided for a hole, at least two teeing grounds must be accessible. The golf subcommittee recommended that as many teeing grounds as possible be made accessible on each hole, but that at least one accessible teeing ground per hole be required. The golf subcommittee based its recommendation on the premise that an accessible route with a running slope not exceeding 1:20 may be required to connect the golf car path and the teeing ground, and that it may not be possible to provide such a route to each teeing ground due to sloped terrain. The exception to 15.4.1, which permits the use of a golf car passage in lieu of an accessible route with the boundary of a golf course, is very flexible and would allow a golfer with a disability to access the teeing ground by using a golf car, instead of providing an accessible route to the area. The Board recognizes that some teeing grounds may be located on steep slopes and that it may not be possible to provide a golf car passage to each teeing ground. Comments to the ANPRM recommended that more than one accessible teeing ground be required for each hole. Commenters were concerned that if only one accessible teeing ground per hole were required, it would be the forward tee. Commenters considered that this would be discriminatory toward golfers with disabilities. When golf courses provide several teeing grounds for each hole, the placement of these areas is usually based on skill level (e.g., one set of teeing grounds would be the "pro tee" and the other set would be the "amateur tee"). Golfers with disabilities want the same range of choice to play from different teeing grounds appropriate to their skill levels. The proposed rule would ensure a range of choice for golfers with disabilities.

Question 9: The Board requests comments on the number of accessible teeing grounds that should be required for each hole. If more than one accessible teeing ground is required per hole, should one of the accessible tees be the forward tee?

15.4.3 Driving Ranges and Practice Tees

This section requires that where driving ranges or practice tees are provided, at least 5 percent, but not less than one, of the practice tees must comply with 15.4.7. This provision applies to practice facilities adjacent to a golf course, in addition to stand-alone facilities.

15.4.4 Weather Shelters

This section requires weather shelters to be designed and constructed to allow a golf car to enter and exit in a forward direction and have a clear floor or ground space 60 inches minimum by 96 inches minimum. This space will allow a golf car to be driven directly into a weather shelter.

15.4.5 Golf Car Passage

This section requires openings at least 60 inches wide at intervals of 75 yards where curbs or other manmade barriers are provided along a golf car passage to prohibit a golf car from entering a fairway. These openings will provide access to fairways at reasonable intervals where golf cars are used to play the game.

15.4.5.1 Width

This section requires a golf car passage to be 48 inches wide minimum. This dimension is based on the standard width of gasoline or electric powered golf cars.

Question 10: Although the Board has proposed to allow a golf car passage within a golf course, limited technical requirements have been proposed for golf car passages. Should the Board establish additional technical requirements (e.g., maximum slope or changes in level)? Do criteria exist which govern the design and construction of golf car paths? Do requirements applicable to golf car paths exist in State or local codes? Do slope and width criteria allow use of the golf car passage by golf cars?

15.4.6 Putting Greens

This section requires putting greens to be designed and constructed to allow a golf car to enter, maneuver within, and exit the putting green. Unlike teeing grounds, each hole of a golf course is provided with only one putting green where the hole is located. This provision supports the use of a golf car on the putting green and requires space to allow a golf car to approach, enter, and exit. This requirement should not impact the design or space required for putting greens.

15.4.7 Teeing Grounds

This section requires teeing grounds to be level with a clear space of 10 feet by 10 feet and be designed and constructed so that a golf car can enter in a forward direction and maneuver.

This dimension is wide enough to accommodate a player playing off of the side of a golf car or from a wheelchair. The teeing ground is required to be level since slopes and cross slopes are difficult for wheelchair users to manage even on relatively flat routes of travel.

Question 11: Proposed technical provisions for teeing grounds require cross slopes no greater than 1:48 in all directions. The Board understands that maintaining this slope may be difficult on turf surfaces due to settling. Drainage problems have also been reported in areas where 1:48 slopes are provided. The Board requests information from operators on the maintenance of teeing areas where 1:48 slopes are provided.

The proposed rule does not contain any requirements for access to bunkers or other hazards. The golf subcommittee recommended that practice bunkers be made accessible, but not bunkers and hazards on the course. There was minimal support in the comments to the ANPRM to make bunkers and hazards accessible.

Miniature Golf

The golf subcommittee recommended accessibility guidelines for miniature golf facilities. While the majority of commenters responding to the ANPRM supported the recommendations, several operators and miniature golf trade groups were opposed to the recommendations. Concerns were expressed that the recommended accessibility guidelines would require additional space and cost, and would be too onerous for operators. There were also concerns about the loss of curbing in areas where a ball may ricochet.

To obtain additional information on providing access to miniature golf courses, the Board participated in information meetings with designers, operators, persons with disabilities, and representatives from miniature golf trade associations. The purpose of these meetings was to gather additional information about the varied range of facility types, accessibility barriers, obstacles for designers in providing accessibility, options for making individual holes accessible, providing an accessible route throughout a course, and trends in miniature golf course design. The Board has taken this additional information into account in proposing accessibility guidelines for miniature golf courses.

15.5 Miniature Golf Courses

This section requires each hole on a miniature golf course to be accessible. The technical requirements for an accessible hole on a miniature golf course are addressed in 15.5.2 and 15.5.3.

15.5 Exception

This exception permits no more than 50 percent of elevated miniature golf holes to be inaccessible. Since elevated holes are often designed to provide more of a challenge, this provision is proposed to ensure that a person with a disability has adequate opportunities to play some of the more challenging holes. The golf subcommittee recommended that all holes be made accessible. Operators and miniature golf trade groups felt that a requirement for every hole to be accessible would result in flat courses, taking some of the fun and challenge from the game. Commenters to the ANPRM also expressed concern that the golf subcommittee recommendations would have a negative impact on business or eliminate smaller courses by requiring accessible routes to all portions of a course. This proposed exception provides a compromise between the golf subcommittee's recommendation and the concerns of the industry and operators.

Question 12: Miniature golf course operators have claimed that additional costs may be associated with providing an accessible route to all elevated holes of a miniature golf course. These additional costs, however, have not been associated with courses that are considered level. The Board is seeking specific guidance on how to differentiate between level and elevated holes.

15.5.1 Accessible Route

This section requires that at least one accessible route connect start of play areas on each accessible hole. The accessible route connecting each start of play area required to be accessible may be located on the hole or adjacent to the hole. The accessible route must comply with ADAAG 4.3 and 4.8, where the slope of the route exceeds 1:20.

15.5.1 Exception 1

This exception permits readily removable curbs where the accessible route intersects the playing surface of a hole. The golf subcommittee recommended that the entry and exit points of a miniature golf hole be free of railings, obstacles, and elevation changes. During the comment period for the ANPRM, miniature golf course operators and the industry expressed concerns that this recommendation would significantly alter the play of the game. It was noted that curbs surround the majority of holes on a miniature golf course to prevent a ball from exiting a hole. This proposed exception balances the need for a person with a disability to access the hole and the concern to keep the ball on the hole.

To maximize the benefit of this feature, it will be important for players using the miniature golf course to know the location of the readily removable curbs. Several options are recommended for operators and designers including signage placed directly on the curb to show that it is removable or including information about the location of these curbs on the scorecard provided for players at the start of the game.

15.5.1 Exception 2

This exception permits a maximum slope of 1:4 for a maximum rise of 4 inches where the accessible route is located on the playing surface of a hole. This exception is only applicable where the accessible route connecting start of play areas is located on the hole. Permitting a greater slope for a limited distance will allow more flexibility in the design of the hole, while still providing access on the hole for the play of the game.

15.5.1 Exception 3

This exception eliminates the requirement for handrails on a ramp located on a miniature golf hole. Handrails are a potential hazard on a hole, because of the danger of golf balls ricochetting off the rails.

15.5.2 Start of Play Areas

This section requires a start of play area to be a 60 inch minimum by 60 inch minimum level area. This level start of play area is necessary so that a person using a wheelchair or other mobility device has sufficient space to maneuver into position to play the game.

15.5.3 Golf Club Reach Range

This section requires that all level areas within an accessible hole be located within 27 inches maximum of an accessible route with a slope not to exceed 1:20. This will allow space for wheelchair users to hit the ball from on the hole or from an accessible route adjacent to the hole. The space requirements incorporate the reach of a golf club. This provision allows persons with disabilities to be within the reach of their ball at all times, while not increasing the size of individual holes.

Play Areas

15.6 Play Areas [Reserved]

This Board issued proposed accessibility guidelines for play areas in April 1998. This section is reserved for the final guidelines for play areas,

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which will be incorporated into this section in the future. Figures 64 to 74 are reserved for the play areas guidelines.

Sport Facilities

The sports subcommittee provided the Board with recommended accessibility guidelines for sports facilities. The sports subcommittee addressed a variety of sports facilities such as fitness centers, aerobic and martial arts studios, roller and ice skating rinks, leisure pools, lap pools and other swimming pools, bowling centers, horse racing facilities, and facilities for court sports (e.g., handball, basketball, tennis, racquetball, volleyball), field sports (e.g., baseball, lacrosse, soccer, track, softball, football, rugby) and gymnastics. This proposed rule is based on the sports subcommittee's recommendations and the comments received to the ANPRM.

3.5 Definitions

This section defines terms used in the proposed rule.

The term "area of sport activity" distinguishes that portion of a room or space where the play or practice of a sport occurs from adjacent areas. Examples of areas of sport activity include basketball courts, baseball fields, running tracks, bowling lanes, and the area surrounding a piece of fixed gymnastic equipment. While the size of an area of sport activity may vary from sport to sport, each includes only the space needed to play. The following examples are provided for additional clarification.

Example 1. Boundary lines define the field where a football game is played. A safety border is also provided around the field. The game may temporarily be played in the space between the boundary lines and the safety border when players are pushed out of bounds or momentum carries them forward while receiving a pass. Because the game of football anticipates that the space between the boundary line and the safety border is used to play the game, this space and the football field are included in the area of sport activity.

Example 2. Uneven bars and other pieces of gymnastic equipment generally include space around the equipment for gymnasts to safely use the apparatus, including mounting and dismounting. In this example, the area of sport activity includes the space within which the apparatus is located.

The sports subcommittee recommended the term "field of play" as a definition for the area where a sport is practiced or played. This term is not used in this guideline. However, the intent of the "field of play" concept is preserved. The term "area of sport activity" is used to indicate that the area required to be accessible is broader than a field of play and encompasses activities other than field sports.

4.1.1(5)(b)(iv)

This section provides a new general exception for access to raised structures used solely for refereeing a sport. This provision exempts raised structures such as elevated judging stations for horse racing facilities and refereeing stands used for volleyball games and tennis matches. These raised structures are similar to those currently exempted under ADAAG 4.1.1(5)(b), such as observation galleries, prison guard towers, fire towers, and fixed lifeguard stands. This exception should not be construed to obviate the obligations of State and local government entities to provide program access under title II of the ADA or for employers to provide reasonable accommodation under title I of the ADA.

4.1.2(2)(a)

This section requires that an accessible route complying with ADAAG 4.3 must connect both player ends of a court. Where there are multiple courts, such as in tennis complexes, net posts for adjacent courts may be too close to provide the minimum width required for an accessible route. This provision, however, requires only one accessible route between player ends of a court. Therefore, not every opening between adjacent net posts must comply with ADAAG 4.3. One opening could serve two adjacent courts. If a route is not accessible, it will restrict the movement of persons with disabilities between player ends of a court. Movement between ends is necessary for switching sides during the play of a game. To reduce redundancy, similar changes to ADAAG 4.1.3 (Accessible Buildings: New Construction) have not been included in this proposed rule.

4.1.2(2)(a) Exception

This exception provides that vertical access to raised boxing rings is not required. ADAAG 4.3 requires at least one accessible route to connect accessible buildings, facilities, elements, and spaces that are on the same site. Rope barriers surrounding the raised area are an integral part of boxing rings. The ropes prevent the installation of an accessible route without compromising the integrity of the barrier. Modifications to this design feature would fundamentally change the nature of the sport. Therefore, the Board is proposing an exception for vertical access for these unique spaces. To reduce redundancy, similar changes to ADAAG 4.1.3 (Accessible Buildings: New Construction) have not been included in this proposed rule.

4.1.2(3)

This exception provides that ADAAG 4.4, which sets requirements for protruding objects, does not apply to areas of sport activity. The sports subcommittee recommended that only exercise machines and gymnastic equipment be exempt from the requirements of ADAAG 4.4. However, in addition to exercise machines and gymnastic equipment, many other sports are played or practiced in facilities that contain protruding objects which are necessary for the play or practice of a sport. Examples include protrusions on obstacle courses and climbing walls. The exception for protruding objects is proposed because requiring most areas of sport activity to comply with ADAAG 4.4 would change the sport itself. To reduce redundancy, similar changes to ADAAG 4.1.3 (Accessible Buildings: New Construction) have not been included in this proposed rule.

4.1.2(4) Exception 1

Exception 1 provides that areas of sport activity are not required to comply with ADAAG 4.5, which sets requirements for accessible ground and floor surfaces. In proposing this exception, the Board has attempted to address accessibility to sports by balancing the conditions desired for sports facilities with the needs of persons with disabilities. Rules that govern a sport, or even common practices, often dictate the surface conditions of an area of sport activity. In examining the application of ADAAG to areas of sport activity, the sports subcommittee noted that ADAAG 4.1.2(4) and 4.1.3(3) require the entire surface of an accessible room or space to conform to ADAAG 4.5. Based on this, most sporting areas would be required to provide surfaces that are stable, firm, and slip-resistant and, where changes in level occur, ramps or other accessible means of vertical access. For example, beach volleyball, played on sand, and hockey, played on ice, would require stable, firm and slip-resistant surfaces. Requiring these surfaces to be accessible would fundamentally change these sports. Additionally, obstacle courses that have tires, beams, logs and other raised features would require accessible changes in level. The changes in level

are integral to the desired experience on an obstacle course.

Under the proposed guidelines, areas of sport activity are considered an accessible space and are required to be connected by an accessible route to other accessible spaces and elements on a site. While the Board considers it necessary to permit exceptions for accessible surfaces, including level changes, in areas of sport activity, the accessible route connecting these spaces is critical and is not exempted. The required accessible route can be located where it does not enter an area of sport activity. To reduce redundancy, similar changes to ADAAG 4.1.3 (Accessible Buildings: New Construction) have not been included in this proposed rule.

4.1.2(4) Exception 2

Exception 2 provides that in hoofed animal containment areas, the requirements of ADAAG 4.5 for stable, firm, and slip resistant surfaces do not apply. The provision is an exception to the surface requirement for accessible routes. In some facilities, including permanent fairgrounds, animal containment areas are open to the public for animal viewing, petting, and display. Absorbent material such as wood shavings, sawdust, and straw is provided for sanitary reasons. In most applications, a surface composed of such materials would not comply with the surface requirements of ADAAG 4.5

Additionally, surfaces that are not firm or stable are sometimes necessary to ensure the safety and health of the animals. A hard pavement, for example, can damage the tissue of a hoof. This exception is consistent with the sports subcommittee's recommendations that included input from designers and operators responsible for hoofed animal containment areas.

While the sports subcommittee recommended additional exceptions for the requirements for accessible routes and protruding objects in hoofed animal containment areas, the Board does not consider these necessary. Exception 2 only addresses those issues that conflict with sanitation and animal welfare. Since accessible routes can be located to avoid other features in livestock facilities where conflicts with the accessible route provisions may exist, the Board has not proposed any other exemptions. To reduce redundancy, similar changes to ADAAG 4.1.3 (Accessible Buildings: New Construction) have not been included in this proposed rule.

4.1.3(12)(c)

This section requires that 5 percent, but not less than one, of each type of locker be accessible. Lockers are required to comply with the requirements for storage in ADAAG. The sports subcommittee recommended that 5 percent of lockers in a locker room be accessible. The Board supports this recommendation and has also included a specific provision that one of each type of locker be accessible. Different types of lockers may include full-size and half-size lockers, as well as those specifically designed for temporary storage of various sports equipment.

4.1.3(13) Exception

This provision exempts exercise machines from the requirements of ADAAG 4.27 that controls and operating mechanisms must have clear floor space, be located within accessible reach ranges, and be operable with one hand and not require tight grasping, pinching, or twisting of the wrist. Where applicable, ADAAG 4.27 also requires that the force required to activate controls be no greater than 5 lbf.

Many of the requirements of ADAAG 4.27, as outlined above, may conflict with the operating characteristics of some exercise machines and equipment. Requiring compliance would significantly alter their design and function. While this section proposes an exception to the requirements of ADAAG 4.27, a new section 15.7.1 is proposed which includes a requirement for clear floor space for accessible exercise machines and equipment.

4.1.3(19)(c)

This section requires that wheelchair spaces be provided in team or player seating areas serving accessible areas of sport activity. ADAAG 4.1.3(19)(a) requires wheelchair spaces to be provided in spectator areas with fixed seating. This section requires wheelchair spaces to be provided in team or player seating areas in addition to the wheelchair spaces required for spectators. Where fixed seating is provided in team or player seating areas, no more than one to two wheelchair spaces are required based on the total number of seats provided.

Wheelchair spaces in the team seating area must be connected by an accessible route and be provided with companion seating. The requirement to provide an accessible route to the team seating area does not necessarily require the accessible route to be located on the area of sport activity. The requirement for companion seating in this application is intended to include other team members and personnel. The section does not propose changes to the technical requirements for accessible seating in ADAAG 4.33.2, 4.33.3, 4.33.4, and 4.33.5.

Professional and college baseball facilities often have recessed team seating areas, usually referred to as dugouts. A dugout has a rear wall, side walls and a roof. This configuration provides secure team seating, visibility for managers and a protected vomitory for players to safely enter and exit the area of sport activity. The recessed seating also allows for unobstructed spectator viewing over the team seating area.

The sports subcommittee recommended that the use of platform lifts be permitted in new construction to provide access from a recessed dugout to the playing field. The sports subcommittee cited the exception under ADAAG 4.1.3 (5) Exception 4(a) which permits the use of platform lifts when providing access to a "performing area." The sports subcommittee was concerned that if spectator seating is raised, lines of sight could be adversely affected. For this reason, the sports subcommittee recommended that such sight line constraints may justify the use of a platform lift.

The proposed rule requires an accessible route to the team and player seating areas and to the area of sport activity. In a baseball facility, for example, an accessible route is required to connect a recessed dugout with the playing field. The Board does not agree with the sports subcommittee's recommendation that platform lifts be allowed to provide access to areas of sport activities and has not proposed an exception for a platform lift in new construction from a dugout. Providing ramp access facilitates more independent access for coaching and other management staff and others using playing fields for special events. Since it is technically feasible in new construction to design for ramp access, the Board does not believe that there is sufficient rationale for persons with disabilities to rely on a platform lift to gain access to a field.

Question 13: Several new minor league baseball stadiums have provided ramp access from the dugout to the field by extending the ramp parallel to the fence line along the spectator seats. The Board is interested in receiving information about this and other designs for providing ramp access from the dugout to the field. The Board also is interested in knowing whether these ramp designs have presented any safety concerns for players or have interfered with the play of the sport (e.g., catching foul balls).

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4.1.3(21)

This section amends ADAAG 4.1.3(21) by requiring that where a public or common use dressing, fitting, or locker room is provided, the room must comply with ADAAG 4.35. An exception is included permitting five percent of dressing, fitting, or locker rooms to be accessible when they are provided in a cluster. Additionally, at least one of each type of room in each cluster is required to be accessible.

This section clarifies that locker rooms are required to be accessible, regardless of whether they contain dressing rooms. Additionally, dressing rooms not located within larger rooms or clusters are required to be accessible. A reference to locker rooms has been added and scoping included for non-cluster situations. For consistency with other ADAAG scoping sections, the Board has also changed the reference from rooms used "by general public, patients, customers, or employees" to "public or common use" rooms.

4.1.3(22)(a)

This section requires that where saunas or steam rooms are provided, each room must comply with ADAAG 4.36, which provides new technical provisions for accessible saunas and steam rooms.

4.1.3(22)(a) Exception

This section provides an exception where saunas or steam rooms are provided in a cluster. Five percent, but not less than one, of sauna and steam rooms for each type of use in each cluster of rooms must comply with ADAAG 4.36.

The sports subcommittee recommended that each sauna and steam room be accessible in new construction. However, the Board is aware that some facilities have clusters of small sauna rooms which are designed for one or two persons. Compliance with the proposed technical requirements in 4.36 without an exception could have the effect of eliminating such smaller units. Since saunas are similar in size to dressing rooms, the Board has proposed to address clustered sauna and steam rooms in the same manner as clustered dressing rooms in ADAAG 4.1.3(21).

4.35 Dressing, Fitting, and Locker Rooms

4.35.1 General

This section requires that locker rooms comply with ADAAG 4.35.

4.35.4 Bench

This section requires that accessible dressing rooms, fitting rooms, and locker rooms have a bench complying with ADAAG 4.37, which provides new technical provisions for accessible benches.

4.36 Saunas and Steam Rooms

4.36.1 General

This section requires that saunas and steam rooms required to be accessible comply with the technical provisions of ADAAG 4.36.

4.36.2 Turning Space

This section requires turning space complying with ADAAG 4.2.3 to be provided within a sauna or steam room. Turning space is required within a sauna or steam room so that the door to the room can be opened independently by all users. The sports subcommittee did not recommend that a turning space be required within a sauna or steam room. In part, the sports subcommittee's rationale was based on an additional recommendation for a signaling device that would permit individuals to indicate a need to exit the room. Many commenters to the ANPRM did not support the recommendation for a signaling device citing safety concerns when individuals may be trapped in a sauna or steam room. Commenters also indicated that the requirement for a signaling device may be too onerous for operators. The Board agrees and has not proposed a requirement for a signaling device. To be effective, such a device would require monitoring and a method for assuring it is functional at all times.

4.36.2 Exception

This exception allows the turning space in saunas or steam rooms to be temporarily obstructed by readily removable seats. This allows operators an option for smaller units designed for one or two persons.

Knowing the location of the readily removable seats will be important for both operators and users of the saunas and steam rooms. Several options are recommended for operators and designers including signage indicating the location of the removable seat or by incorporating information about the location of the seat into other general user information.

Question 14: The proposed accessibility guidelines for saunas do not require grab bars or other types of handholds. The Board is interested in whether some type of grab bar or handhold should be required to assist users when transferring from a wheelchair onto a bench in a sauna or steam room. Specific information on the location and types of handholds and grab bars recommended for this use is also requested.

4.36.3 Bench

This section requires that, where provided, benches in saunas and steam rooms must comply with ADAAG 4.37, which provides new technical provisions for accessible benches.

4.36.3 Exception

This exception allows the clear floor space required by ADAAG 4.37.1 at an accessible bench in saunas or steam rooms to be temporarily obstructed by readily removable seats. As previously discussed, being aware of the location of the removable seat either by signage or other user information is important for both operators and users.

4.36.4 Door Swing

This section provides that doors must not swing into the required clear floor space at an accessible bench in a sauna or steam room.

4.37 Benches

4.37.1 Clear Floor or Ground Space

This section requires that clear floor or ground space be provided and be positioned for a parallel approach to an end of the bench seat.

4.37.2 Size

This section provides technical criteria for accessible benches, including seat dimensions and back support. The seat on an accessible bench is required to be 20 to 24 inches deep and 42 inches long minimum. The bench is required to be fixed and provide back support which is 42 inches minimum in length and extend from a point two inches maximum above the bench to a point 18 inches minimum above the bench. These dimensions provide back support to approximately chest level on most adults. Back support may be achieved through locating benches adjacent to walls or by other designs that will meet the minimum dimensions specified.

4.37.3 Height

This section requires a bench seat to be 17 inches minimum to 19 inches maximum above the floor or ground. This height requirement is consistent with the bench height established in ADAAG 4.35.4 for benches located in dressing and fitting rooms.

4.37.4 Structural Strength

This section requires that allowable stresses not be exceeded for materials used when a vertical or horizontal force of 250 lbs. is applied at any point on the seat, fastener, mounting device, or supporting structure.

4.37.5 Wet Locations

This section requires accessible benches, when installed in wet locations, to be slip-resistant and not accumulate water. This section is consistent with the requirements in ADAAG 4.35.4 for benches installed in conjunction with showers, swimming pools, and other wet locations.

15.7 Sports Facilities

15.7.1 Exercise Equipment and Machines

This section requires that at least one of each type of exercise equipment and machine be provided with clear floor space complying with ADAAG 4.2.4 and be served by an accessible route. The required clear floor space must be positioned for transfer or positioned so that the equipment can be operated by an individual seated in a wheelchair. The position of the clear floor space may vary greatly depending on the use of the equipment or machine. For example, to make a stationary bicycle accessible, clear floor space adjacent to the seat would be appropriate to allow for transfer. Clear floor space for a bench press machine designed for use by an individual seated in a wheelchair, however, will most likely be centered on the operating mechanisms.

Fitness facilities often provide a range of choices of equipment. For example, there are many different types of strength training machines and equipment. Each is designed to address a particular muscle group such as quadriceps, biceps, and abdominal muscles. Similarly, there are many types of cardiovascular exercise machines, such as stationary bicycles, rowing machines, stair climbers, and treadmills. At least one of each type of exercise equipment and machines must be served by an accessible route

This proposal is consistent with the recommendation of the sports subcommittee. The sports subcommittee recommended that accessible routes be provided to and around exercise equipment and machines. The sports subcommittee also noted that many pieces of exercise equipment and machines are not fixed, and therefore, are not within the scope of ADAAG. ADAAG applies to fixed equipment. Access to non-fixed equipment, however, is covered by the ADA when provided by a public entity or a public accommodation. The obligations of covered entities providing this equipment are established by the Department of Justice ADA regulations.

15.7.2 Bowling Lanes

This section requires at least five percent, but not less than one, of each type of bowling lane provided to be accessible. This requirement is consistent with other ADAAG provisions where multiple features are provided for the same use. Ten pin and duckpin bowling are among the different types of bowling lanes that may be provided in a bowling facility. Where team and player areas are provided in conjunction with accessible bowling lanes, ADAAG 4.1.3(19)(c) would apply and require accessible wheelchair spaces. Designers and operators have flexibility in the location of the required accessible lanes and seating areas. If fixed spectator seating is provided, ADAAG 4.1.3(19)(a) specifies the number of wheelchair spaces that must be provided as a part of a bowling facility spectator area.

15.7.3 Shooting Facilities

This section requires at least at least five percent of the total, but not less than one, of each type of fixed firing position provided to be accessible. Examples of different types of firing positions include, but are not limited to, positions having different admission prices, positions with or without weather covering or lighting, and different shooting events the fixed firing position is intended to support. Events include argon, muzzle loading rifle, small bore rifle, high power rifle, bulls eye pistol, action pistol, silhouette, trap, skeet, and archery (bow and crossbow).

15.7.3.1 Fixed Firing Position

This section requires that an accessible fixed firing position contain a turning circle at least 60 inches in diameter that has a slope not steeper than 1:48 in all directions. A turning circle is needed at accessible firing positions to ensure sufficient maneuvering space for aiming.

Swimming Pools, Wading Pools, and Spas

The sports, places of amusement, and outdoor developed areas suboommittees each provided recommendations in this area. The recommendations from these subcommittees were fairly consistent; however, there were some differences. For example, the sports subcommittee recommended that the methods of providing access into the water be limited to ramps, lifts, or combination stairs-transfer tiers. The places of amusement subcommittee provided the identified methods as examples, but did not limit accessible alternatives to those identified. The places of amusement subcommittee recommended that handrails be required on only one side of ramps, while the sports subcommittee recommended 22 inches clearance between handrails. The outdoor developed areas subcommittee recommended that the need for handrails at ramps, for example, be determined by the facility designer.

Comments to the ANPRM generally agreed with the recommendations of the three subcommittees in terms of requiring one means of access into the water. Many commenters recommended that more specific technical specifications would be necessary to ensure compliance and reduce confusion.

In October 1995, the Board sponsored a research project on swimming pool access. The project was conducted by the National Center on Accessibility at Indiana University. The project included an extensive literature review, telephone surveys of persons with disabilities, telephone surveys of pool operators and on-site testing of various means of accessing the water. Based on this research, the Board received additional information on the specific designs and requirements for providing safe and independent access into the water. The results of the project also supported many of the initial recommendations of the subcommittees. Based on this research and the information provided by the subcommittees, the Board is proposing accessibility guidelines for accessible entry and exit to and from the water.

In addition to the input received from the Board sponsored research project, significant input has also been provided by the ANSI/NSPI–1 Public Pool Standard Committee. This standard is currently under revision. With a parallel development process occurring for these standards, diverse input was received from pool designers and operators on accessibility guidelines for people with disabilities. The Board has made extensive efforts to maintain consistency between the ANSI/NSPI–1 standard and ADAAG. The Board will continue its efforts to seek input and achieve harmonization with the ANSI/NSPI–1 standard.

15.8.1 Swimming Pools

This section requires that at least two means of entry and exit be provided for each public and common use swimming pool. A sloped entry or lift must be the primary means of access. The secondary means of access is not permitted to duplicate the primary means and also allows transfer walls, transfer systems.

stairs, or moveable floors as a means of access. An exception permits swimming pools with less than 300 linear feet of swimming pool wall to have only one means of access, but that means of access must be either a lift or sloped entry.

This section is generally consistent with the recommendations of the subcommittees and is supported by the Board sponsored research project. Sixty percent of the people with disabilities interviewed during the research project had used a pool during the previous year, and most, once a month. Of those individuals, 99 percent indicated that one or more means of access should be required at each pool. The need for more than one means of pool access was also supported by pool operators who participated in the study. At least one means of access was already being provided at 73 percent of the pools surveyed.

No one means of access will fully meet the needs of all persons with disabilities. However, certain means of pool access provide independent operation to a broader range of people. These means include swimming pool lifts and sloped entries. Other means of access such as a transfer wall, transfer system, stairs, and moveable floors provide access for some people with disabilities. For example, stairs with handrails provide support for individuals who walk short distances and transfer systems serve individuals who prefer to transfer into the water without the use of a mechanical lift. When these means are combined with a pool lift or sloped entry, they serve a larger segment of the population of individuals with disabilities. For these reasons, larger pools, those with more than 300 linear feet of pool wall, are required to have at least two means of entry and exit to a pool. In larger swimming pools, multiple access points provide for greater safety and convenience to users, allowing some choice in methods of entering or exiting the pool.

15.8.2 Wading Pools

This section requires at least one accessible means of entry to be provided in wading pools. Acceptable means of entry are sloped entry, transfer wall, or transfer system. Unlike swimming pools, the size and depth of wading pools limits the options for access into the water. For example, the ANSI/NSPI–1 Committee is expected to require wading pool depths to be limited to 18 inches maximum. Where wading pools are less than 18 inches deep, a pool lift cannot be used.

Question 15: It has been suggested to the Board that it is inappropriate to require a means of access into a wading pool because the height of transfer walls and other transfer systems are considered to be hazardous to children. Based on these concerns, should the Board consider exempting these areas?

15.8.3 Spas

This section requires at least one accessible means of entry into spas. The means of entry must be a lift, transfer wall, or transfer system. Like a wading pool, size and depth limitations prohibit the use of certain means of entry into a spa. While a swimming pool lift is an option for a spa, a sloped entry may significantly impact size and designs for water containment.

An exception has also been added to address facilities where spas are provided in a cluster. The exception allows for five percent, but not less than one, in each cluster to be accessible. This application is consistent with the other requirements in ADAAG where multiple elements of the same type are clustered.

15.8.4 Swimming Pool Lifts

This section provides technical provisions for swimming pool lifts. The provisions provide specifications for the necessary clear deck space and seat orientation to ensure usability for persons with disabilities.

15.8.4.1 Seat Location

This section requires the centerline of the seat, when in the raised position, to be located over the deck and 20 inches minimum from the edge of the pool. The position of the lift seat is important for ease of operation and for safety. The location in relationship to the edge of the pool is especially important to facilitate safe transfers. The 20 inch minimum distance from the edge of the pool, allows space to transfer over the deck. Unsafe conditions created by locating the seat either over the water or too close to the deck edge were observed during the Board sponsored research project and were identified by research subjects as problems affecting access.

15.8.4.2 Clear Deck Space

This section requires a clear deck space on the side of the seat opposite the water. The space is measured from the seat. Clear space is required to be 30 inches wide minimum and 48 inches long minimum from a line located 12 inches behind the intersection of the seat and its back. The clear space is specified in relationship to the seat to allow unobstructed space for either side or diagonal transfer. The space must be clear and free of deck braces that can interfere with transfer. Figure 71 shows the clear floor space, its position, and dimensions.

15.8.4.3 Seat Height

This section requires the height of a lift seat to be 16 inches minimum to 18 inches maximum above the deck floor. This height is to be measured from the deck to the top of the seat surface when the seat is in the raised (load) position. In addition to the clear deck space, lift seat height is also critical for transfer from a wheelchair or other mobility device. Several ADAAG provisions such as water closet seat height and bench height establish a transfer height of 17 to 19 inches for adults. Information obtained from the Board sponsored research project supported the heights established for other elements designed for transfer. A slight departure from this provision has been proposed to address the needs of children transferring to a lift seat. ADAAG 4.16.7 (Water Closets for Children) permits 11 inches minimum to 17 inches maximum to the top of a toilet seat height. An adjustable seat may accommodate the need for varying transfer heights for users of all ages.

15.8.4.4 Seat Width

This section requires a lift seat to be 16 inches wide minimum. This dimension is consistent with seat widths established for other seating elements and will accommodate a range of users. Each of the seats tested during the Board sponsored research project either met or exceeded this minimum requirement.

Question 16: Different types of seats are available on swimming pool lifts. The types include flexible sling seats, plastic or fiberglass seats, and larger stretcher designs that accommodate the entire body. Persons with disabilities involved in the Board sponsored research project expressed interest in all types of seats. The Board has not proposed any special technical provisions for the material of the seat. Should a certain type of seat be required on swimming pool lifts?

15.8.4.5 Footrests and Armrests

This section requires footrests to be provided and to move in conjunction with the seat. Many adult legs will extend beyond 16 to 18 inches below the lift seat. Without a footrest, users' feet will drag across the deck, potentially causing injury.

This section also requires that, if provided, the armrest opposite the water be removable or fold clear of the seat when the seat is in the raised (load)

position. This clearance is necessary to allow for transfer from a wheelchair or other mobility device. Armrests are not required on the lift seats because there is insufficient information to determine their usefulness and optimal design criteria. However, when provided, armrests may not obstruct transfer.

Question 17: Should armrests be required on swimming pool lifts? If so, please provide specific information regarding the appropriate size and location.

15.8.4.6 Operation

This section requires that a pool lift be capable of unassisted operation from both the deck and water levels. ADAAG requires that platform lifts provide unassisted operation. The need for independence is not diminished by the fact that the user operates a swimming pool lift. A large percentage of the respondents in the Board sponsored research project noted the importance of using a lift without assistance. Pool facility staff also indicated the importance of a device or design that could be used without pool staff assistance. Lifts that are operated manually do not offer independent use because they require an attendant to operate a crank which is unreachable by the lift user. In most cases, power-operated lifts can offer independent use.

This section also requires that controls and operating mechanisms be unobstructed when a lift is in use. This is also important for independent operation. Controls and operating mechanisms may not require continuous manual pressure for operation and must comply with ADAAG 4.27.4 which requires that operating controls not require tight grasping, pinching, or twisting of the wrist. Additionally, the controls may not require more than 5 lbf to operate. This is consistent with requirements for other accessible elements with operating mechanisms.

15.8.4.7 Submerged Depth

This section requires that a pool lift be designed so that the seat will submerge to a water depth of 18 inches minimum. This depth is necessary to ensure buoyancy for the person on the lift seat once in the water. Data relating to buoyancy levels was provided through the Board sponsored research project. A diverse group of persons with disabilities were tested to establish minimum levels of buoyancy with a sloped entry and a lift.

15.8.4.8 Lifting Capacity

This section requires that single person pool lifts provide a minimum weight capacity of 300 lbs. Lifts also must be capable of sustaining a static load of at least three times the rated load. ANSI A17.1 for platform lifts (Rule Number 2002.7A) requires a minimum weight capacity of 250 lbs. for single seat lifts. Data from the Board sponsored research project indicated that the 250 lbs. may be insufficient. Swimming pool lifts used at two of the facilities for on-site testing were replaced because of weight damage. Breakdowns and injuries due to insufficient weight capacity of pool lifts were cited in the telephone interviews of pool facility staff and people with disabilities. Based on this information, the weight capacity is proposed at 300 lbs. for single person lifts, with the capability of sustaining a static load of at least three times the rated load. This requirement was also supported by several pool lift manufacturers who provided advice during the Board sponsored research project.

15.8.5 Sloped Entries

This section provides technical provisions for sloped entries. These proposed technical provisions provide requirements for more gradual sloped entries, commonly referred to as beach entry, zero grade entry, or in-the-water ramps. Due to the similarities of this type of entry with ramps used in other buildings and facilities, provisions in ADAAG have been referenced accordingly.

The use of an aquatic chair or other type of water resistant chair is important for use of a pool ramp and other sloped entries to gain access into the water. Use of personal wheelchairs or power chairs in the water can create safety and health hazards. Provisions regarding aquatic chairs cannot be included in ADAAG. The provision of such chairs, however, may be subject to the Department of Justice ADA regulations.

15.8.5.1 Sloped Entries

This section requires sloped entries designed to provide access into the water to comply with most of the provisions of ADAAG 4.3 (Accessible Route). Where a sloped entry has been designed to provide access into the water, it must provide an accessible route. This requires that when the slope of the entry exceeds 1:20, the provisions of ADAAG 4.8 (Ramps) are applied.

15.8.5.2 Submerged Depth

This section modifies the requirements of ADAAG 4.3 and requires sloped entries designed to provide access into the water to extend to a depth of 24 inches minimum to 30 inches maximum below the stationary water level. This requirement is consistent with the submerged depth requirement for swimming pool lift seats in the water. As indicated in 15.8.4.7, the Board sponsored research project provided data related to buoyancy levels necessary for a variety of subjects with disabilities. Mean buoyancy and mean seated height were calculated to determine the buoyancy point and water depth at which subjects became buoyant or floated off their wheelchairs. While there was limited testing with children, anthropometric data indicated that a water depth exceeding 30 inches would be over the mouth and nose of an average 9 year old child.

This section also requires that at least one landing be located 24 inches minimum to 30 inches maximum below the stationary water level. The requirement for landings applies to sloped entries when the slope exceeds 1:20 and the entry must comply with the provisions for ramps. Beach access or zero grade entries do not have slopes in excess of 1:20 and are not required to have landings. When beach access or zero grade entry is provided, the entry must extend to a depth of 24 inches minimum to 30 inches maximum below the stationary water level.

Since wading pools are less than 24 to 30 inches deep, an exception provides that sloped entries are only required to extend to the deepest part of the wading pool.

15.8.5.3 Handrails

This section requires handrails on all sloped entries. The clear width between handrails must be between 33 inches minimum and 38 inches maximum. Information from on-site testing and interviews in the Board sponsored research project indicated a need for handrails on both sides of a sloped entry, regardless of whether mobility aids were used. Pool operators also indicated that two handrails were most often found on pool ramps. Further, while a gradual sloped entry (beach or zero grade entry) increased usability for many individuals, handrails were especially important given the travel distance to sufficiently deep water. Handrails on both sides of ramps are necessary for individuals with limited use of one arm. In light of concerns regarding underwater obstructions, an exception is provided for handrail extensions required at the bottom landing of a pool ramp.

15.8.6 Transfer Walls

This section provides technical provisions for transfer walls. Transfer walls provide a surface at the edge of a

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pool for transfer into the water. Transfer walls may be elevated walls at the pool edge or lowered sections of the deck. A transfer wall is a secondary means of access into the water and must be combined with a lift or sloped entry. A transfer wall is proposed to be a secondary, not a primary means of access, because this method of entry requires significant upper body strength.

15.8.6.1 Clear Deck Space

This section requires clear deck space of 60 inches minimum by 60 inches minimum to be provided at the base of a transfer wall. Clear space is needed to allow individuals to transfer and maneuver from their wheelchair or mobility device. Where one grab bar is provided on a transfer wall, the clear deck space must be centered on the grab bar. This allows sufficient space for a transfer on either side of the grab bar. Where two grab bars are provided, the clear deck space must be centered on the clearance between the grab bars. This requirement provides sufficient space between grab bars for transfer. Section 15.8.6.5 provides additional requirements for grab bars, including spacing.

15.8.6.2 Height

This section requires the height of transfer walls to be 16 inches minimum to 18 inches maximum measured from the deck below. The height requirement is consistent with proposed requirements for pool lift seat heights at 15.8.4.3 and similarly addresses the needs of some children.

15.8.6.3 Wall Depth

This section requires the depth of a transfer wall to be 12 inches minimum to 18 inches maximum. As a minimum, the 12 inch depth of the transfer wall provides adequate space for a person to comfortably sit on the surface of the wall. The wall depth is limited to 16 inches maximum so that users are not required to traverse the wall to transfer to the water.

15.8.6.4 Surface

This section requires the surface of a transfer wall to be free of sharp edges. This is necessary to reduce the potential for injury when individuals move across the surface of the wall. Sharp edges may result in abrasions and other injuries.

15.8.6.5 Grab Bars

This section requires at least one grab to be provided on a transfer wall. Similar to other elements which require transfer, a grab bar is necessary to assist users to transfer to and from the transfer wall. Grab bars also facilitate transfer to and from the water. Grab bars are required to be perpendicular to the pool wall and extend the full depth of the wall. The top of the gripping surface must be 4 inches maximum above the wall. Where two grab bars are provided, clearance between grab bars must be 22 inches minimum. Where one grab bar is provided, clearance must be 22 inches minimum on both sides of the grab bar. Grab bars must comply with ADAAG 4.26.

15.8.7 Transfer Systems

This section provides technical provisions for transfer systems used as a means of access into the water. A transfer system consists of a transfer surface, combined with a series of transfer steps that descend into the water. Users must transfer from their wheelchair or mobility device to a surface and continue transferring from step to step.

Transfer systems have been used in play areas for the past several years to provide access to elevated structures. While it has been an important method for some children to gain access to an elevated play structure, it is limited to use by persons who are able to transfer, with or without assistance. Transfer systems are not considered a primary means of access because they require sufficient upper body strength to transfer independently, or assistance must be provided. A transfer system may only be used as a secondary means of access in a larger pool with 300 linear feet or more of pool wall and must be combined with either a lift or a sloped entry.

15.8.7.1 Transfer Platform

This section requires a transfer platform to be 19 inches deep minimum by 22 inches wide minimum. Transfer platforms must be provided at the head of each transfer system. The transfer platform is the first point of transfer from a wheelchair or mobility device before entering the water. The minimum width and depth is necessary to comfortably sit on the platform.

15.8.7.2 Clear Deck Space

This section requires a clear deck space of 60 inches wide minimum by 60 inches long minimum with a slope not steeper than 1:48 at the base of the transfer platform. A level unobstructed space at the base of the transfer platform, centered along the 22 inch side, is necessary to facilitate a transfer from a wheelchair or mobility device. The clear space requirement is consistent with spaces also needed at the base of a transfer wall.

15.8.7.3 Height

This section requires the height of transfer platforms to be 16 inches minimum to 18 inches maximum measured from the deck. This height requirement is consistent with other elements used to provide access into the water.

15.8.7.4 Transfer Step Risers

This section requires transfer step risers to be 7 inches maximum in height. It also requires that transfer step risers extend to a water depth of 18 inches minimum. Based on the Board sponsored research project, a 7 inch maximum step riser was considered to be a comfortable transfer height when moving from step to step. The 18 inch minimum depth requirement is consistent with the buoyancy data obtained from on-site testing completed during the Board sponsored research project.

15.8.7.5 Surface

This section requires the surface of a transfer system to be free of sharp edges. Similar to other transfer surfaces, this is necessary to reduce the potential for injury. Sharp edges may result in abrasions and other injuries.

15.8.7.6 Size

This section requires each transfer step to have a tread depth of 12 inches minimum and 17 inches maximum. A 22 inch minimum tread width is also required. A minimum tread depth and width is necessary to ensure adequate space for movement on transfer steps.

15.8.7.7 Grab Bars

This section requires one grab bar on each step to be located so that the grab bar does not obstruct transfer at either a transfer platform or a transfer step. The top of the gripping surface must be 4 inches maximum above each step. Grab bars must comply with ADAAG 4.26.

15.8.8 Pool Stairs

This section provides technical provisions for pool stairs used as a means of entry and exit to the water. Stairs may only be used as a secondary means of access in a larger pool with 300 linear feet or more of pool wall and must be combined with either a lift or a sloped entry.

15.8.8.1 Pool Stairs

This section requires pool stairs to comply with ADAAG 4.9 (Stairs), except as modified. ADAAG 4.9 has been referenced since stairs in pools are used in a similar manner as stairs elsewhere. Unlike transfer steps which are designed for individuals to use in a seated position, pool stairs are used by individuals who walk.

15.8.8.2 Handrails

This section requires the width between handrails to be 20 inches minimum to 22 inches maximum. To reduce the potential for underwater protrusions, handrail extensions required by ADAAG 4.9.4 are not required at the bottom landing serving a pool stair. The handrail width provides users who are ambulatory the opportunity for support. During the Board's work with the ANSI/NSPI–1 Public Pool Standard Committee, pool designers supported this requirement based on their experience and preferences from users. The width requirement is similar to the grab bar configuration required in ADAAG Figure 30(b) (Alternate Stalls).

15.8.9 Moveable Floors

This section requires that the pool coping comply with ADAAG 4.5.2 where a moveable floor connects with a pool deck. Moveable floors in pools are designed in several ways. In some cases, the entire pool floor or only a section of the floor is raised or lowered to the desired depth. Hydraulic pistons are used to slowly move the floor. When the floor is raised to deck level, people can either walk or roll their wheelchair or mobility device onto the pool floor and then be lowered to the desired water depth.

The ANSI/NSPI/WWA–9 Committee is developing new standards for public pools and water sources for aquatic recreation facilities. This includes wave pools, activity pools, leisure rivers, and other facilities often found in water parks. This standard will not address conventional swimming pools, pools for competitive aquatic sports, and wading pools which are covered by ANSI/NSPI–1. ADAAG will apply to all swimming pools and aquatic recreation facilities. The proposed guidelines provide designers with a choice of options of how to provide access. For example, while moveable floors may not be appropriate for a wave pool, sloped entries have been used as a means of access into water. Designers and operators can select the means of access appropriate to the design and function of the pool.

Question 18: Are there specific features within aquatic recreation facilities where it is technically infeasible in new construction to comply with the proposed requirements in 15.8? If so, the Board is interested in specific examples of why this is not feasible, along with alternatives to providing access for persons with disabilities.

Other Issues

The sports subcommittee recommended that separate accessible unisex toilet and changing facilities be provided in sports facilities. This was based on the concern that some individuals with disabilities use the assistance of persons of the opposite sex and require a toilet or bathing facility that accommodates both persons. The Board is aware of this concern and has worked with model building code organizations to develop scoping provisions for accessible unisex toilet facilities. These provisions will likely be incorporated into State and local building codes. It is anticipated that this would be required in assembly and mercantile occupancies where an aggregate of six or more fixtures (e.g., toilets for either men or women) are provided. Assembly occupancies include, but are not limited to, theaters, museums, nightclubs, stadiums, amusement parks, restaurants, health clubs, and transportation facilities.

Question 19: Multi-head showers, often referred to as "gang" showers, can be designed to meet the requirements in ADAAG 4.21, which requires grab bars on three sides. Is this location of the grab bars useful in multi-head showers? If not, what design would be most useful?

Question 20: The Board has not proposed exceptions for existing conditions where recreation facilities are altered. Some exceptions will be necessary to address elements and features where unique conditions prevent accessibility according to new construction requirements. Commenters are encouraged to recommend exceptions where necessary. Please provide an explanation of the problem and the solution, including costs and benefits associated with recommended exceptions.

Question 21: Some wheelchairs designed for wheelchair sports have a longer or wider wheelbase than those designed for everyday use. The Board is interested in obtaining more information about the dimensions of sports wheelchairs and any issues related to their use in sports facilities complying with ADAAG. Do existing ADAAG requirements for door widths, maneuvering clearances, or clear floor space allow for use of such wheelchairs? If not, please provide specific information regarding problems experienced and how these problems have been addressed.

Question 22: The Department of Justice's ADA regulations require that public entities and places of public accommodation ensure effective communications so that persons with visual and hearing impairments can obtain information about programs, services, activities, and facilities. The Board has examined sports facilities to determine if ADAAG adequately addresses access to communications in various types of sports facilities. There are areas in sports facilities where information is communicated to players, coaches, and spectators via fixed communications systems. Examples include screens displaying scoring information and public address announcements. The Board seeks further information on specific concerns not currently addressed by ADAAG regarding communication accessibility in recreation facilities. The Board wishes to explore accessible communication technologies that are fixed building elements. Please also provide information about accessibility issues related to fixed, inaccessible communication systems.

Question 23: On April 30, 1998, the Access Board published proposed accessibility guidelines for play areas (63 FR 24080). During the comment period, several commenters requested clarification on the application of the proposed accessibility guidelines to water play components. Some play components have mechanisms that squirt water. In some facilities, including neighborhood parks and other recreation facilities, these water play components are not located in a swimming or wading pool and, therefore, would be considered ground-level play components. Sections 16.1.1(1) and 16.1.5 of the proposed accessibility guidelines for play areas would require one of each type of ground-level play component to be accessible and be connected by an accessible route. In other facilities, water play components are located in swimming and wading pools. For example, wading pools designed for small children often include water play components. Section 15.8.1 of this proposed rule would require an accessible means of entry into each public use and common use swimming pool. Should the Board develop additional provisions to more specifically address access to these water play components? If so, please provide specific examples of the type of guidance required.

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Regulatory Process Matters

Executive Order 12866: Regulatory Assessment

This proposed rule is a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget. The Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget considers the proposed rule to be a major rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*). The Board has assessed the potential costs and benefits of the rule. For each type of facility covered by the rule, the Board has analyzed data on the number of existing facilities, number of new facilities projected to be built each year, current design and construction practices, construction costs, and any additional costs expected to result from the rule. For some facility types, sufficient data was not available to conduct a complete analysis. The data is summarized below. The Board invites comment on the data and seeks additional data as indicated below.

Amusement Rides

There are approximately 200 amusement and theme parks in the United States. These facilities operate a variety of amusement rides, whose costs typically range from $90,000 to $600,000. Theme park rides and roller coasters are usually unique and cost millions of dollars. There is limited data available on capital investment for new amusement rides. In a trade association survey, 10 amusement facilities projected capital investments totaling $267 million in 1997, and approximately the same number of facilities projected $140 million in 1998. These figures include the construction of concession stands and other facilities, in addition to amusement rides. Based on this limited data and assuming an average cost of $345,000 for an amusement ride, it is estimated that there are 590 new rides annually. This represents 3 new rides for existing amusement facilities each year.

The Board seeks additional data from owners and operators of amusement rides on the number of new amusement and theme parks expected to be constructed in the next five years, the number and types of rides expected to be provided at these new facilities, the number and types of rides expected to be added each year to existing facilities, and the costs of the rides. The Board also seeks information on current design and construction practices for providing access to new rides.

Industry sources estimate that the cost for providing a wheelchair space on an amusement device ranges from $4,500 to $150,000 and the cost for providing a transfer seat ranges from $15,000 to $100,000. Industry sources further estimate that the cost for providing a wheelchair storage space for each transfer seat ranges from $0 to $5,000 for ground-level load and unload areas, and from $20,000 to $60,000 for elevated load and unload areas. Some of these estimates appear to be based on retrofitting existing rides to provide access. Designing new rides to provide access from the conceptual phase onward usually results in much less cost. For example, incorporating a 30 inch by 48 inch minimum clear floor space for storing a wheelchair in the design of an elevated load and unload area should cost a lot less than $20,000 to $60,000. The Board seeks additional data on the costs for providing wheelchair spaces and transfer seats on amusement devices where these designs are incorporated in the conceptual phase of the ride.

Boating Facilities, and Boat and Ferry Docks

There are approximately 10,375 marinas and 1.1 million boat slips in the United States. New boating facilities incorporate wider piers and pier clearances in their designs and the proposed provision for accessible boat slips is not expected to result in any increase in costs. The proposed provision for gangways connecting floating platforms will have a cost impact. The cost will depend on the size of the facility and water level change. Small facilities and facilities with high water level changes are permitted to exceed a 1:12 maximum slope under the conditions specified in Table 15.2.1. Cost estimates were prepared by engineers for constructing gangways for various water level changes with and without maintaining a 1:12 maximum slope to determine the incremental costs resulting from the proposed rule. Actual construction costs in a competitive bid environment may vary up to 50 percent above or below these engineering estimates. Cost estimates were prepared for four regions of the country and national averages used. The incremental costs were compared to the total construction costs for boating facilities, which are assumed to be $40 per square foot. Land acquisition is not included in the construction costs.

For a boating facility with 10 slips and 2,450 square feet of fixed and floating piers, the gangway would have to maintain a 1:12 maximum slope for water level changes up to 2.5 feet. The total construction cost for the facility is estimated at $99,600. The incremental cost for maintaining a 1:12 maximum slope when the water level change is 2.5 feet is $1,825, or 1.8 percent of the total construction costs.

For a boating facility with 100 slips and 20,550 square feet of fixed and floating piers, the gangway would have to maintain a 1:12 maximum slope for water level changes up to 12.5 feet. The total construction cost for the facility is estimated at $822,000. The incremental cost for maintaining a 1:12 maximum slope varies directly with the water level change. For a 2.5 feet water level change, the incremental cost is $1,825 or 0.2 percent of the total construction cost; for a 5 feet water level change, the incremental cost is $12,769 or 1.5 percent of the total construction cost; for a 7.5 feet water level change, the incremental cost is $42,881 or 5.2 percent of the total construction cost; for a 10 feet water level, the incremental cost is $62,956 or 7.6 percent of the total construction cost; and for a 12.5 feet water level change, the incremental cost is $110,406 or 13.4 percent of the total construction cost.

The Board seeks data from owners and operators of boating facilities on the number of new boating facilities with floating platforms expected to be constructed in the next five years, the size of the facilities (total square feet of fixed and floating piers), water level changes at the facilities, and costs of the facilities.

Boat and ferry docks that consist of floating platforms also would have to comply with the gangway provision. The Board seeks the same data for boat and ferry docks as requested above for boating facilities.

Fishing Piers and Platforms

There is limited data available on the number of fishing piers and platforms in the United States. The National Marine Fisheries Service lists 3,000 saltwater fishing sites on the East Coast and Gulf of Mexico, excluding Florida and Texas. These sites include piers, beaches, jetties, marinas, and bridges. The Army Corps of Engineers has constructed 413 fishing piers and docks which are usually operated by public and private entities.

New fishing facilities have wider piers and platforms and the proposed provisions for clear space and maneuvering space are not expected to result in any increase in costs. The proposed rule does not require new fishing facilities to provide railings. However, if railings are provided, the proposed rule sets a maximum height for a portion of the railings and also

requires edge protection to extend at least 2 inches above the ground or deck surface. The cost of this requirement is negligible when compared to the total cost of the facility.

New fishing facilities that consist of floating platforms will have to comply with the same maximum slope requirements for gangways as do boating facilities with floating platforms. The Board seeks data from owners and operators of fishing facilities on the number of new fishing facilities with floating platforms expected to be constructed in the next five years, the size of the facilities (total square feet of fixed and floating piers), water level changes at the facilities, and costs of the facilities.

Golf

There are approximately 11,300 public and municipal golf courses in the United States. Based on the number of new golf courses opened between 1992 and 1997, the rate of new construction is projected at 3.8 percent, or about 430 new golf courses annually. Most recently constructed golf courses meet the proposed provisions for a golf car passage, teeing grounds, putting greens, and driving ranges and practice tees. Industry sources have indicated that the proposed rule is expected to have minimal to negligible cost impact on the construction of new golf courses.

Miniature Golf

There are 3,000 to 4,000 miniature golf courses in the United States. Miniature golf course lots vary considerably in size. There is a trend to design courses with elevated holes. One designer typically uses 29,000 square feet for an 18 hole course, with an average hole size of 360 square feet. Land costs range from $3 to $15 per square foot. Holes and paths typically consist of concrete or brick, and cost from $1 to $3 per square foot. The Board seeks additional data on the number of new miniature golf courses expected to be constructed in the next five years, the size of the facilities, and total project costs, including land, materials, and labor.

The cost impact of the proposed rule will vary based on the elevation change and hole design of the miniature golf course. The proposed rule would require at least 50 percent of elevated holes to be accessible. The proposed rule also allows holes to be designed so that wheelchair users can hit the ball from an accessible route adjacent to the hole instead of providing an accessible route through the hole. One designer estimates that it will cost 5 percent to 45 percent more to connect holes with an accessible route. Designers will plan miniature golf courses differently based on accessibility requirements. The Board seeks information on designs that will comply with the proposed rule, meet the objectives of miniature golf course operators, and make optimum use of space. Commenters should identify differences in space usage from current design practices and the method for estimating additional costs attributed to the proposed rule.

Sports Facilities

The proposed rule adds several exceptions to existing ADAAG provisions for certain sports facilities. There is no cost associated with these exceptions. The proposed rule also includes provisions for exercise equipment and machines, bowling lanes, shooting ranges, sauna and steam rooms, and locker rooms. There are approximately 13,800 health and fitness clubs; 6,700 bowling centers; and 6,400 shooting ranges in the United States. In addition, hotels and motels, schools, colleges and universities, and public parks and recreation programs often have exercise equipment and machines, sauna and steam rooms, and locker rooms as part of their facilities. Industry sources have indicated that the proposed rule is expected to have negligible impact on the construction of these new sports facilities.

Swimming Pools, Wading Pools, and Spas

There is no data available on the number of commercial swimming pools in the United States. One manufacturer estimates that about 2,500 new commercial swimming pools are constructed each year. Most commercial swimming pools have less than 300 linear feet of pool wall. Schools, colleges and universities, and public parks and recreation programs usually construct pools having more than 300 linear feet of pool wall. Assuming a unit cost of $142 per square foot, a 5,000 square foot pool would cost $.7 million and a 10,000 square foot pool would cost $1.4 million. The Board seeks additional data on the number of commercial swimming pools constructed each year, the size of the pools, and their costs. The Board also seeks information on the extent to which an accessible means of entry is currently provided to newly constructed pools.

The costs for the various accessible means of entry to a swimming pool range from $2,860 to $7,500 for swimming pool lifts; $8,282 to $11,000 for sloped entries; $3,600 to $4,000 for transfer walls; $864 to $3,000 for transfer systems; $2,413 to $3,000 for pool stairs; and $200,000 to $500,000 for movable floors.

The proposed rule would require swimming pools which have less than 300 linear feet of pool wall to provide at least one accessible means of entry to the pool. If a swimming pool lift costing $5,200 is used, the additional cost would be 0.7 percent of the total construction cost for a 5,000 square foot pool. Assuming that 80 percent of new pools have less than 300 linear feet of pool wall, it would cost $10.4 million annually to provide swimming pool lifts for these 2,000 new pools.

The proposed rule would require swimming pools which have 300 linear feet or more of pool wall to provide at least two accessible means of entry to the pool. If a swimming pool lift costing $5,200 and a transfer system costing $2,400 are used, the additional cost would be 0.5 percent of the total construction cost for a 10,000 square foot pool. Assuming the other 20 percent of new swimming pools have 300 linear feet or more of pool wall, it would cost another $3.8 million annually to provide swimming pool lifts and transfer systems for those 500 new pools.

The proposed rule also would require an accessible means of entry to wading pools and commercial spas. The Board seeks data on the number of new wading pools and commercial spas constructed each year and their costs. The Board also seeks information on the means currently used to provide access to wading pools and commercial spas, and the costs for providing access.

Benefits

The proposed rule is issued pursuant to the Americans with Disabilities Act (ADA) to eliminate discrimination against individuals with disabilities. In enacting the ADA, Congress expressly found that architectural, transportation and communication barriers result in discrimination against individuals with disabilities. The proposed rule will ensure that new recreation facilities are readily accessible to and usable by individuals with disabilities. As new recreation facilities are designed and constructed to be accessible, individuals with disabilities will enjoy the benefits of these facilities. Operators of recreation facilities will experience increased usage and patronage by individuals with disabilities. The proposed rule also establishes the basis for uniform standards for accessibility to recreation facilities. Designers and manufacturers will have a clear and consistent set of standards with which to work. Establishing uniform standards

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for accessibility has resulted in innovation and new designs that are cost effective and beneficial to everyone.

Regulatory Flexibility Act: Initial Regulatory Flexibility Analysis

The Board has prepared this initial regulatory flexibility analysis for purposes of the Regulatory Flexibility Act to describe the impact of the proposed rule on small entities.

Reason for, Objectives of, and Legal Basis for Proposed Rule

This proposed rule is issued under the authority of the Americans with Disabilities Act (ADA), which requires the Board to issue guidelines to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities. Recreation facilities are specifically covered by the ADA. In enacting the ADA, Congress expressly found that individuals with disabilities continually encounter various forms of discrimination, including the discriminatory effects of architectural, transportation, and communication barriers. Among the purposes of the ADA is to provide clear and consistent standards addressing discrimination against individuals with disabilities.

The Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. ADAAG contains scoping provisions and technical specifications for designing parking areas, entrances, toilet rooms, and other elements and spaces that typically comprise a building and its site so that individuals with disabilities will have ready access to and use of the facility. Amusement rides, boating and fishing facilities, golf courses, miniature golf, sports facilities, swimming pools, wading pools, and spas have some unique features which are not adequately addressed by ADAAG. Additional guidelines are needed for providing access to these features. The proposed rule would add provisions to ADAAG to address these features.

Description and Estimate of Number of Small Entities to Which the Proposed Rule Will Apply

The proposed rule will apply to small entities in the services industries. The Small Business Administration defines small entities for the services industries as those having $5 million or less in annual receipts. The number of small entities to which the proposed rule will apply are included in the following categories of the Standard Industrial Classification (SIC) system:

(1) Amusement parks (SIC 7996). Census data indicate that 711 out of 753 firms have less than $5 million in annual receipts.

(2) Marinas (SIC 4493). Census data indicate that 3,600 out of 3,675 firms have less than $5 million in annual receipts.

(3) Golf Courses (SIC 7992). Census data indicate that 3,525 out of 3,560 firms have less than $5 million in annual receipts.

(4) Physical fitness facilities (SIC 7991). Census data indicate that 8,116 out of 8,169 firms have less than $5 million in annual receipts.

(5) Membership sports and recreation clubs (SIC 7997). Census data indicate that 6,828 out of 6,929 firms have less than $5 million in annual receipts.

(6) All other amusement and recreation services (SIC 7999). Census data indicate that 21,078 out of 21,312 firms have less than $5 million in annual receipts. This category is over broad and includes entities such as bingo parlors, karate instruction, ping pong parlors, bicycle rental, scuba and skin diving instruction, and yoga instruction, which are not affected by the proposed rule.

The following entities would also be affected by the proposed rule to the extent that they provide exercise equipment, swimming pools, and other recreational facilities covered by the rule.

(7) Sporting and recreational camps (SIC 7032). Census data indicate that all 2,812 firms are small entities.

(8) Elementary and secondary schools (SIC 8211). Census data indicate that 13,335 out of 14,882 private firms are small entities.

(9) Colleges, universities, and professional schools (SIC 8221). Census data indicate that 947 out of 2,063 private firms are small entities.

(10) Junior colleges and technical institutes (SIC 8222). Census data indicate that 353 out of 543 private firms are small entities.

(11) Hotels and motels (SIC 7011). Census data indicate that 34,417 out of 36,695 firms are small entities.

In addition, the proposed rule would apply to public parks and recreation programs, public elementary and secondary schools, and public colleges and universities that provide exercise equipment, swimming pools, or other recreation facilities covered by the rule. For purposes of the Regulatory Flexibility Act, a governmental jurisdiction is considered a small entity if it has a population of less than 50,000. The National Recreation and Park Association estimates that there are 4,800 public park and recreation departments in the United States. The U.S. Department of Education reports that there are 85,393 public elementary and secondary schools, and 1,625 public colleges and universities. The Board seeks information on the number of these public programs which are part of governmental jurisdictions having a population less than 50,000.

Description of Reporting, Record Keeping, and Other Compliance Requirements

The proposed rule establishes accessibility guidelines for the design and construction of new recreation facilities. The guidelines also apply to alterations to recreation facilities. The guidelines apply to altered parts of a facility subject to alteration provisions in ADAAG 4.1.6, including the exception for when compliance is technically infeasible. There are no reporting or record keeping requirements.

The provisions of the proposed rule are discussed in detail in the Section-by-Section Analysis of the preamble. The provisions are summarized briefly below. Amusement rides would be required to provide one wheelchair space and one transfer seat for each 100 fixed seats. An exception is provided for amusement rides where it is not operationally or structurally feasible to provide wheelchair spaces, in which case two transfer seats would be required for each 100 fixed seats. The proposed rule includes technical specifications for wheelchair spaces, transfer seats, accessible loading and unloading areas, wheelchair storage space, and signage.

Boating facilities with floating platforms would be permitted to exceed a 1:12 maximum slope under certain conditions specified in Table 15.2.1 relating to size of the facility and change in water level. At least 3 percent of boat slips would have to be accessible. The proposed rule includes technical specifications for accessible boat slips. Floating fishing piers and platforms would have to comply with the same provisions for gangways as do boating facilities. Where railings are provided at fishing facilities, at least 25 percent of the railings would have to be 32 inches maximum above the ground or deck surface, and edge protection would have to be provided. The proposed rule includes technical specifications for clear space and maneuvering space on fishing piers or platforms.

Golf courses would be permitted to provide a golf car passage on which a motorized golf car can operate in lieu of an accessible route. The proposed rule includes scoping provisions and technical specifications for teeing grounds, putting greens, driving ranges and practice tees, and weather shelters. The proposed rule also addresses miniature golf courses. Where elevated holes are provided on a miniature golf course, at least 50 percent of those holes would have to be connected by an accessible route. All other holes would have to be on an accessible route. The proposed rule also allows holes to be designed so that wheelchair users can hit the ball from an accessible route adjacent to the hole instead of providing an accessible route through the hole.

At least one of each type of exercise equipment would have to be served by an accessible route and have a clear floor space positioned for transfer or for use by an individual seated in a wheelchair. At least 5 percent of bowling lanes and fixed firing positions at shooting ranges would have to be accessible.

Swimming pools having less than 300 linear feet of pool wall would have to provide at least one accessible means of entry to the pool, and swimming pools having 300 linear feet or more of pool wall would have to provide at least two means of accessible entry to the pool. Wading pools and spas also would have to provide at least one accessible means of entry. The proposed rule includes technical specifications for the following accessible means of entry to pools: swimming pool lifts, slopped entries, transfer walls, transfer systems, pool stairs, and moveable floors.

Other Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

Under the ADA, the Department of Justice is responsible for issuing regulations to implement the law. The Department of Justice's ADA regulations are required to include standards for the accessible design of facilities, which must be consistent with ADAAG. Thus, the Department of Justice is expected to amend its ADA regulations at a future date based on the Board's amendments to ADAAG. The Department of Justice's ADA regulations, not ADAAG, are enforceable under the ADA.

Description of Steps Taken To Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The proposed rule is issued to implement the ADA, which requires newly constructed and altered facilities to be accessible to individuals with disabilities. By nature of the ADA, ADAAG has universal applicability to all newly constructed and altered facilities covered by the law. In developing the proposed rule, the Board sought the advice and recommendations of an advisory committee representing the various interests affected by the rule, published an advance notice of proposed rulemaking seeking comment on the advisory committee's recommendations, and considered current design and construction practices for the types of facilities addressed by the rule and the potential cost impact of the rule.

The proposed rule is expected to have minimal or negligible impact on the design and construction of new golf courses, bowling centers, shooting ranges, and facilities providing exercise equipment and machines, sauna and steam rooms, and locker rooms. For swimming pools, the number of accessible means of entry to the pool is based on the size of the pools. Swimming pools having less than 300 linear feet of pool wall would have to provide at least one means of accessible entry to the pool. The additional cost for providing an accessible means of entry is expected to be less than 1 percent of the total construction for a swimming pool.

For boating and fishing facilities, the proposed rule is not expected to have any impact on the design and construction of boat slips and pier clearances. The exception permitting gangways to floating piers and platforms to exceed the 1:12 maximum slope is based on the size of the facility and water level change as set out in Table 15.2.1. The table was developed to minimize the cost impact on smaller facilities and facilities having greater water level changes. The cost data is summarized above under Executive Order 12866: Regulatory Assessment.

For miniature golf courses, to minimize the cost impact, the proposed rule would require at least 50 percent of elevated holes and each level hole to be accessible. The Board requests specific guidance in the preamble on how to differentiate between level and elevated holes.

As explained under Executive Order 12866: Regulatory Assessment, there is limited data available on amusement rides. The Board is requesting additional data from owners and operators of amusement rides during the comment period on the proposed rule and will fully analyze any additional data provided before issuing a final rule. The Board seeks information on the economic impact of the proposed rule on small entities who plan to design or construct new amusement rides and any regulatory alternatives that would minimize the impact and still achieve the statutory objective of providing access to such facilities for people with disabilities.

The Board invites comment on this initial regulatory flexibility analysis.

Executive Order 12612: Federalism

The proposed rule is issued under the authority of the Americans with Disabilities Act. Ensuring the civil rights of individuals with disabilities has been recognized as a responsibility of the Federal government. The proposed rule does not otherwise affect the relationship between the Federal government and the States or the distribution of power and responsibilities among the various levels of government to warrant an assessment of federalism implications under Executive Order 12612.

Executive Order 12875: Intergovernmental Partnership

The Board has involved organizations representing the various interests affected by the proposed rule in the development of the rule. The Recreation Access Advisory Committee included representatives of State and local governments. Notices of advisory committee meetings were disseminated widely and interested persons were encouraged to attend the meetings. The report of the advisory committee's recommendations has been distributed to entities that will be affected by the rule and is one of the Board's most frequently requested publications. The Board published an advance notice of proposed rulemaking requesting comments on the advisory committee's report and received comments from all sectors, including State and local governments. In addition to requesting comments on the proposed rule, the Board will hold a public hearing on the rule to give all interested persons an additional opportunity to share their views regarding the rule with the Board.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce any statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since the proposed rule is issued under the authority of the Americans with Disabilities Act, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

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List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

June I. Kailes,

Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons stated in the preamble, the Architectural and Transportation Barriers Compliance Board proposes to amend Part 1191 of title 36 of the Code of Federal Regulations as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

Appendix A to Part 1191—[Amended]

2. Appendix A to part 1191 is amended as follows:

a. In section 3.5, add definitions for "Amusement Device," "Amusement Ride," "Area of Sport Activity," "Boat Launch Ramp," "Boat Slip," "Design High Point." "Gangway," "Golf Car Path," and "Teeing Ground" in alphabetical order.

b. In section 4.1.1, remove the word "or" at the end of the paragraph 5(b)(ii); add the word "or" at the end of paragraph 5(b)(iii); and add a new paragraph 5(b)(iv).

c. In section 4.1.2, redesignate paragraph 2 as paragraph 2(a); add a new paragraph 2(b); add an exception after paragraph 2(b); add an exception after paragraph (3); and add two exceptions after paragraph (4).

d. In section 4.1.3, add a new paragraph (12)(c); add an exception after paragraph (13); add an exception after paragraph (19)(a), add a new paragraph (19)(c); revise paragraph (21); add an exception after paragraph (21); add a new paragraph (22); and add an exception after paragraph (22).

e. Revise the heading of section 4.35, and revise sections 4.35.1 and 4.35.4.

f. Add new section 4.36.

g. Add new section 4.37.

h. Add new section 10.5.

i. Add new section 15.

The additions and revisions read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

* * * * *

3.5 Definitions

* * * * *

Amusement Device. A device which moves persons through a fixed course within a defined area for the purpose of amusement or entertainment and which is not controlled or operated by the rider.

Amusement Ride. A system containing one or more amusement devices that are intended to provide the same general amusement experience.

* * * * *

Area of Sport Activity. That portion of a room or space where the play or practice of a sport occurs.

* * * * *

Boat Launch Ramp. A sloped surface designed for the launching and retrieval of trailered boats to and from the water.

Boat Slip. The area where a boat is tied to a dock or pier for the purpose of embarking or disembarking.

* * * * *

Design High Point. A selected elevation, based on hydrologic data and other appropriate records, which is used as a safe and practical upper limit for the design and construction of a gangway to a floating facility.

* * * * *

Gangway. A variable-sloped structure linking a fixed structure or land with a floating structure.

Golf Car Passage. A continuous passage on which a motorized golf car can operate.

* * * * *

Teeing Ground. In golf, the starting place for the hole to be played.

* * * * *

4.1.1* Application

* * * * *

(b) Accessibility is not required to or in:

* * *

(iv) structures used solely for refereeing a sport.

* * * * *

4.1.2 Accessible Sites and Exterior Facilities: New Construction

* * * * *

(2) * * *

(b) Court Sports. An accessible route complying with 4.3 shall connect both sides of the court in court sports.

Exception: Vertical access is not required to a raised boxing ring.

(3) * * *

Exception: The requirements of 4.4 do not apply to areas of sport activity.

(4) * * *

Exception 1: The requirements of 4.5 do not apply to an area of sport activity.

Exception 2: The requirements for stable, firm, and slip-resistant surfaces do not apply to surfaces in hoofed animal containment areas.

* * * * *

4.1.3 Accessible Buildings: New Construction

* * * * *

(12) * * *

(c) Where lockers are provided in accessible spaces, at least 5 percent, but not less than one, of each type shall comply with 4.25.

(13) * * *

Exception: The requirements of 4.27 do not apply to exercise machines.

* * * * *

(19) * * *

(a) * * *

Exception: In amusement facilities where the motion of fixed seats is an integral part of the amusement experience, transfer seats complying with 15.1.4 shall be permitted.

* * * * *

(c) In addition to the requirements of 4.1.3(19)(a), where a fixed team or player seating area is provided and serves an accessible area of sport activity, the seating area shall contain wheelchair spaces in a number required by 4.1.3(19)(a), but not less than one space. Such wheelchair spaces shall conform to 4.33.2, 4.33.3, 4.33.4, and 4.33.5

* * * * *

(21) Where a public or common use dressing, fitting, or locker room is provided, the room shall comply with 4.35.

Exception: Where public or common use dressing, fitting, or locker rooms are provided in a cluster, at least 5 percent, but not less than one, of the rooms for each type of use in each cluster shall comply with 4.35.

(22) Where saunas or steam rooms are provided, the rooms shall comply with 4.36.

Exception: Where saunas or steam rooms are provided in a cluster, 5 percent, but not less than one, of the rooms for each type of use in each cluster, shall comply with 4.37.

* * * * *

4.35 Dressing, Fitting, and Locker Rooms

4.35.1 General. Dressing, fitting, and locker rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.

* * * * *

4.35.4 Bench. Accessible dressing rooms, fitting rooms, and locker rooms shall have a bench complying with 4.37.

* * * * *

4.36 Saunas and Steam Rooms

4.36.1 General. Saunas and steam rooms required to be accessible by 4.1 shall comply with 4.36.

4.36.2 Turning Space. A turning space complying with 4.2.3 shall be provided within the room.

Exception: Turning space shall be permitted to be temporarily obstructed by readily removable seats.

4.36.3 Bench. Where provided, at least one bench shall comply with 4.37.

Exception: Clear floor space required by 4.37.1 shall be permitted to be temporarily obstructed by readily removable seats.

4.36.4 Door Swing. Doors shall not swing into any part of the clear floor space required at an accessible bench.

4.37 Benches

4.37.1 Clear Floor or Ground Space. Clear floor or ground space complying with 4.2.4 shall be provided and shall be positioned for parallel approach to an end of the bench seat.

4.37.2 Size. Benches shall have seats that are 20 in (510 mm) minimum to 24 in (610 mm) maximum in depth and 42 in (1065 mm) minimum in length. The bench shall be fixed and shall have back support which is 42 in (1065 mm) minimum in length and extend from a point 2 in (50 mm) maximum above the bench to a point 18 in (455 mm) minimum above the bench.

4.37.3 Height. The bench seat shall be 17 in (430 mm) minimum to 19 in (485 mm) maximum above the floor or ground.

4.37.4 Structural Strength. Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 lbs (1112 N) is applied at any point on the seat, fastener, mounting device, or supporting structure.

4.37.5 Wet Locations. Where installed in wet locations, the surface of the bench shall be slip-resistant and shall not accumulate water.

* * * * *

10.5 Boat and Ferry Docks. Boat and ferry docks shall comply with 15.2.

* * * * *

15 Recreation Facilities

Recreation facilities covered by this section shall comply with the applicable requirements of section 4 and the special application sections, except as modified or otherwise provided in this section.

Amusement Rides

15.1 General. Amusement rides with amusement devices containing fixed seats shall comply with 15.1.

15.1.1 Number Required. One wheelchair space complying with 15.1.3 shall be provided per 100 fixed seats or fraction thereof on each amusement ride. In addition, one transfer seat complying with 15.1.4 shall be provided per 100 fixed seats or fraction thereof on each amusement ride.

Exception: Where it is not operationally or structurally feasible to provide wheelchair spaces, two transfer seats complying with 15.1.4 shall be provided per 100 fixed seats or fraction thereof on each amusement ride.

15.1.1.1 Dispersion. Accessible amusement devices shall be dispersed throughout the amusement ride. Where different types of amusement devices are provided on an amusement ride, the accessible amusement devices shall be dispersed among the different types. This provision does not require an increase in the minimum number of amusement devices required to be accessible.

15.1.2 Accessible Loading and Unloading Areas. An accessible route shall connect the portion of the loading and unloading area serving each accessible amusement device. The loading and unloading area serving each accessible amusement device shall provide a maneuvering space complying with 4.2.3. The maneuvering space shall have a slope not steeper than 1:48.

15.1.2.1 Wheelchair Storage Space. A wheelchair storage space complying with 4.2.4 shall be provided in the unloading area for each required transfer seat. Wheelchair storage spaces shall not overlap any required means of egress or accessible route.

15.1.2.2 Signage. Signage shall be provided at the entrance of the queue or waiting line for each amusement ride to identify whether the accessible amusement devices provide wheelchair spaces, transfer seats, or both. Where an accessible unload area also serves as the accessible load area, signage shall be provided at the entrance to the queue or waiting line indicating the location of the accessible load and unload area.

15.1.2.3 Loading and Unloading. When an accessible amusement device is positioned for loading or unloading, the height of the loading or unloading area shall be coordinated with the floor height of the amusement device so that, when the device is at rest, the vertical difference shall be within plus or minus 5/8 in (16 mm) under normal passenger load conditions and the horizontal gap shall be no greater than 3 in (75 mm).

Exception: Where it is not operationally or structurally feasible to meet the horizontal or vertical difference requirements, ramps, bridge plates, or similar manually deployed devices complying with the applicable requirements of 36 CFR 1192.83 shall be provided.

15.1.3 Wheelchair Space. Accessible amusement devices designed to provide wheelchair spaces shall comply with 15.1.3.

15.1.3.1 Floor or Ground Surface. The floor or ground surface of wheelchair spaces shall have a slope not steeper than 1:48 and shall comply with 4.5.1, 4.5.3, and 4.5.4. Changes in level are not permitted.

15.1.3.2 Width. A wheelchair space shall be 36 in (915 mm) minimum in width.

15.1.3.3 Depth. Where a wheelchair space can be entered from the front or rear, the wheelchair space shall be 48 in (1220 mm) minimum in depth. Where a wheelchair space can be entered only from the side, the wheelchair space shall be 60 in (1525 mm) minimum in depth.

15.1.3.4 Approach. One side of the wheelchair space shall adjoin an accessible route.

15.1.3.5 Fixed Companion Seats. Where amusement devices provide seating for more than one rider, a fixed companion seat shall be provided for each required wheelchair space. Where amusement devices provide shoulder-to-shoulder seating, companion seats shall be shoulder-to-shoulder with the adjacent wheelchair space.

15.1.4 Transfer Seat. Accessible amusement devices designed to provide transfer seats shall comply with 15.1.4 when positioned for loading and unloading.

15.1.4.1 Clear Floor Space. Clear floor space complying with 4.2.4.1 shall be provided with the longer dimension parallel to the unobstructed side of the transfer seat and shall be located within 3 in (75 mm) maximum from the transfer seat. Clear floor space shall extend 12 in (305 mm) beyond the back of the seat (see Fig. 58).

15.1.4.2 Maneuvering Space. The maneuvering space required by 15.1.2 is permitted to overlap the clear floor space serving transfer seats.

15.1.4.3 Transfer Seat Dimensions and Position. The height of the transfer seat shall be 17 in (430 mm) minimum to 19 in (485 mm) maximum above the load and unload platform. The end of the transfer seat adjacent to the clear floor space complying with 15.1.4.1 shall be unobstructed when in the load and unload position (see Fig. 59).

15.1.4.4 Transfer Entry. When in the load and unload position the amusement device shall provide a 36 in (915 mm) wide minimum entry. The entry shall provide a opening and shall be positioned parallel and adjacent to the longer dimension of the clear floor space (see Fig. 60).

Boating Facilities

15.2 Boating Facilities. Boating facilities shall comply with 15.2.

15.2.1 Gangways. Gangways which are part of an accessible route shall comply with 4.3. Gangways shall be permitted to have transition plates at the top and bottom.

Exception 1. The maximum rise specified by 4.8.2 shall not apply to gangways.

Exception 2. Gangways shall be permitted to exceed the maximum slope specified by 4.8.2 when the distance in feet between the design high point and the level of the water, and the square footage of fixed and floating piers at the facility are in accordance with Table 15.2.1.

Exception 3. Handrail extensions shall not be required on gangways or landings where they connect to transition plates and shall not be required on transition plates.

TABLE 15.2.1.—CONDITIONS WHEN GANGWAY MAY EXCEED 1:12 MAXIMUM SLOPE

Distance in feet between design high point and water level is over	And square footage of fixed and floating piers at the facility is less than
2.5	3,000
5.0	10,000
10.0	20,000
12.5	30,000
30.0	95,000

15.2.2 Slips: Minimum Number. Where boat slips are provided, at least 3 percent, but not less than one, shall comply with 15.2.3. Accessible boat slips shall be dispersed throughout the various types provided. This provision does not require an increase in the minimum number of boat slips required to be accessible. Where the number of slips cannot be identified, each 40 feet (12.2 m) of mooring space provided along the perimeter of a pier, shall be counted as one boat slip for the purpose of this section.

15.2.2.1 Slips Serving Boat Launch Ramps. In addition to the requirements of 15.2.2, where boat launch ramps are provided with boarding piers, at least one accessible slip complying with 15.2.3 shall be provided adjacent to a boat launch ramp.

15.2.2.2 Location. Among each type provided, accessible slips shall be those nearest to amenities provided in the boating facility.

15.2.3 Accessible Boat Slips. Accessible boat slips shall comply with 15.2.3.

15.2.3.1 Pier Clearances. Accessible boat slips shall be served by clear pier space 60 in (1525 mm) wide minimum and at least as long as the accessible slip (see Fig. 61). Every

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120 in (3050 mm) maximum of linear pier edge serving the accessible boat slip shall contain at least one continuous clear opening 60 in (1525 mm) minimum (see Fig. 62).

Fishing Piers and Platforms

15.3 Fishing Piers and Platforms. Each fishing pier and platform shall comply with 15.3.

15.3.1 Accessible Route. When an accessible route connects a floating fishing pier or a floating fishing platform, the requirements of 15.2.1 shall apply.

15.3.2 Railings. Where railings, guardrails, or handrails are provided, they shall comply with 15.3.2.

15.3.2.1 Edge Protection. Edge protection shall be provided and shall extend 2 in (50 mm) minimum above the ground or deck surface.

15.3.2.2 Height. At least 25 percent of the railings shall be 32 in (815 mm) maximum above the ground or deck surface.

15.3.2.3 Dispersion. Railings required to comply with 15.3.2.2 shall be dispersed throughout a fishing facility.

15.3.3 Clear Pier or Platform Space. At least one clear space complying 4.2.4.1 shall be provided where the railing height required by 15.3.2.2 is located. Where no railings are provided, at least one clear space complying with 4.2.4.1 shall be provided on the fishing pier or fishing platform.

15.3.4 Maneuvering Space. At least one maneuvering space complying with 4.2.3 shall be provided on the fishing pier or fishing platform.

Golf

15.4 General. Golf courses, driving ranges, and practice putting greens shall comply with 15.4.

15.4.1 Accessible Route. The accessible route required by 4.1.2(2) shall be 48 in (1220 mm) minimum wide where located within the boundary of a golf course and shall connect to the bag drop areas, accessible teeing grounds, and putting greens. Where handrails are required, the accessible route shall be 60 in (1525 mm) minimum wide.

Exception 1: A golf car passage complying with 15.4.5 shall be permitted in lieu of all or part of an accessible route within the boundary of the golf course.

Exception 2: The requirements of 4.8.5 do not apply to an accessible route located within the boundary of a golf course.

15.4.2 Teeing Grounds. Where one teeing ground is provided for a hole, the teeing ground shall comply with 15.4.7. Where two or more teeing grounds are provided for a hole, at least two teeing grounds serving the hole shall comply with 15.4.7.

15.4.3 Driving Ranges and Practice Tees. Where driving ranges or practice tees are provided, at least 5 percent of the practice tees, but not less than one, shall comply with 15.4.7.

15.4.4 Weather Shelters. Where weather shelters are provided on a golf course, each weather shelter shall have a clear floor or ground space 60 in (1525 mm) minimum by 96 in (2440 mm) minimum and shall be designed and constructed so that a golf car can enter and exit in a forward direction.

15.4.5 Golf Car Passage. Where curbs or other manmade barriers are provided along a golf car passage to prohibit a golf car from entering a fairway, openings at least 60 in (1525 mm) wide shall be provided at intervals of 75 yds (69 m).

15.4.5.1 Width. The golf car passage shall be 48 in (1220 mm) minimum wide.

15.4.6 Putting Greens. Putting greens shall be designed and constructed so that a golf car can enter, maneuver within, and exit the putting green.

15.4.7 Teeing Grounds. Accessible teeing grounds shall have a minimum clear area of 10 ft by 10 ft (3050 mm by 3050 mm) with a surface slope which does not exceed 1:48 in all directions, and shall be designed and constructed so that a golf car can enter in a forward direction and maneuver in the teeing ground.

Miniature Golf

15.5 Miniature Golf Courses. Each hole on a miniature golf course shall comply with 15.5.

Exception: Where elevated holes are provided, at least 50 percent of elevated holes shall comply with 15.5.

15.5.1 Accessible Route. An accessible route shall connect start of play areas on each accessible hole.

Exception 1: Readily removable curbs are permitted where the accessible route intersects the playing surface of a hole.

Exception 2: Where the accessible route is located on the playing surface of a hole, a maximum slope of 1:4 is permitted for a 4 in (100 mm) maximum rise.

Exception 3: The requirements of 4.8.5 do not apply to an accessible route located on a hole.

15.5.2 Start of Play Areas. An accessible start of play area shall have a slope not steeper than 1:48 and shall be 60 in (1525 mm) minimum by 60 in (1525 mm) minimum.

15.5.3 Golf Club Reach Range. All level areas within accessible holes where golf balls rest shall be within 27 in (560 mm) maximum of an accessible route with a maximum slope of 1:20 (see Fig. 63).

Play Areas

15.6 Play Areas [Reserved]

Sports Facilities

15.7.1 Exercise Equipment and Machines. At least one of each type of exercise equipment and machines shall be provided with clear floor space complying with 4.2.4 and shall be served by an accessible route. Clear floor space shall be positioned for transfer or for use by an individual seated in a wheelchair.

15.7.2 Bowling Lanes. Where bowling lanes are provided, at least 5 percent, but not less than one lane of each type, shall be accessible.

15.7.3 Shooting Facilities. Where fixed firing positions are provided at a site, at least 5 percent, but not less than one, of each type of fixed firing position, shall comply with 15.7.3.1. Factors to be considered in determining the types of fixed firing positions include the price of admission, if covering and lighting is provided, and the shooting events the fixed firing position intends to support.

15.7.3.1 Fixed Firing Position. An accessible fixed firing position shall contain a turning circle complying with 4.2.3 and shall have a slope not steeper than 1:48 in all directions.

Swimming Pools, Wading Pools, and Spas

15.8.1 Swimming Pools. At least two accessible means of entry shall be provided for each public and common use swimming pool. The primary means of entry shall comply with 15.8.4 (Swimming Pool Lifts) or 15.8.5 (Sloped Entries). The secondary means of entry shall not duplicate the primary means and shall comply with one of the following: 15.8.4 (Swimming Pool Lifts), 15.8.5 (Sloped Entries), 15.8.6 (Transfer Walls), 15.8.7 (Transfer Systems), 15.8.8 (Pool Stairs), or 15.8.9 (Moveable Floors).

Exception: Where a swimming pool has less than 300 linear feet of swimming pool wall, at least one accessible means of entry shall be provided and shall comply with 15.8.4 (Swimming Pool Lifts) or 15.8.5 (Sloped Entries).

15.8.2 Wading Pools. At least one accessible means of entry complying with 15.8.5 (Sloped Entries), 15.8.6 (Transfer Walls), or 15.8.7 (Transfer Systems), shall be provided for each wading pool.

15.8.3 Spas. At least one accessible means of entry complying with 15.8.4 (Swimming Pool Lifts), 15.8.6 (Transfer Walls), or 15.8.7 (Transfer Systems) shall be provided for each spa.

Exception: Where spas are provided in a cluster, 5 percent, but not less than one in each cluster, shall be accessible.

15.8.4 Swimming Pool Lifts. Swimming pool lifts shall comply with 15.8.4.

15.8.4.1 Seat Location. In the raised position, the centerline of the seat shall be located over the deck and 20 in (510 mm) minimum from the edge of the pool.

15.8.4.2 Clear Deck Space. On the side of the seat opposite the water, a clear deck space shall be provided parallel with the seat. The space shall have a width of 30 in (760 mm) minimum and shall extend forward 48 in (1220 mm) minimum from a line located 12 in (305 mm) behind the intersection of the seat and its back (see Fig. 75).

15.8.4.3 Seat Height. The height of the lift seat shall be 16 in (405 mm) minimum to 18 in (455 mm) maximum measured from the deck to the top of the seat surface when in the raised (load) position (see Fig. 76(a)).

15.8.4.4 Seat Width. The seat shall be 16 in (405 mm) minimum wide.

15.8.4.5 Footrests and Armrests. Footrests shall be provided and shall move with the seat. If provided, armrests positioned opposite the water shall be removable or shall fold clear of the seat when the seat is in the raised (load) position.

15.8.4.6 Operation. The lift shall be capable of unassisted operation from both the deck and water levels. Controls and operating mechanisms shall be unobstructed when the lift is in use. Controls and operating mechanisms shall comply with 4.27.4 and shall not require continuous manual pressure for operation.

15.8.4.7 Submerged Depth. The lift shall be designed so that the seat will submerge to a water depth of 18 in (455 mm) minimum (see Fig. 76(b)).

15.8.4.8 Lifting Capacity. Single person pool lifts shall have a minimum weight capacity of 300 lbs (136 kg). Lifts shall be capable of sustaining a static load of at least three times the rated load.

15.8.5 Sloped Entries. Sloped entries shall comply with 15.8.5.

15.8.5.1 Sloped Entries. Sloped entries designed to provide access into the water shall comply with 4.3, except as modified below.

15.8.5.2 Submerged Depth. Where sloped entries are designed to provide access into the water, they shall extend to a depth of 24 in (610 mm) minimum to 30 in (760 mm) maximum below the stationary water level. Where landings are required by 4.8, at least one landing shall be located 24 in (610 mm) minimum to 30 in (760 mm) maximum below the stationary water level (see Fig. 77).

Exception: In wading pools, the sloped entry and landings, if provided, shall extend to the deepest part of the wading pool.

15.8.5.3 Handrails. Handrails shall be provided on both sides of the sloped entry. The clear width between handrails shall be 33 in (840 mm) minimum and 38 in (965 mm) maximum. Handrail extensions required by 4.8.5 shall not be required at the bottom landing serving a pool ramp (see Fig. 78).

15.8.6 Transfer Walls. Transfer walls shall comply with 15.8.6.

15.8.6.1 Clear Deck Space. A clear deck space of 60 in (1525 mm) minimum by 60 in (1525 mm) minimum with a slope not steeper than 1:48 shall be provided at the base of the transfer wall. Where one grab bar is provided, the clear deck space shall be centered on the grab bar. Where two grab bars are provided, the clear deck space shall be centered on the clearance between the grab bar (see Fig. 79).

15.8.6.2 Height. The height of the transfer wall shall be 16 in (405 mm) minimum to 18 in (455 mm) maximum measured from the deck (see Fig. 80).

15.8.6.3 Wall Depth. The depth of the transfer wall shall be 12 in (305 mm) minimum to 16 in (405 mm) maximum.

15.8.6.4 Surface. The surface of the transfer wall shall not have sharp edges.

15.8.6.5 Grab Bars. At least one grab bar shall be provided on the transfer wall. Grab bars shall be perpendicular to the pool wall and shall extend the full depth of the wall. The top of the gripping surface shall be 4 in (100 mm) maximum above walls. Where two grab bars are provided, clearance between grab bars shall be 22 in (560 mm) minimum. Where one grab bar is provided, clearance shall be 22 in (560 mm) minimum on both sides of the grab bar. Grab bars shall comply with 4.26.

15.8.7 Transfer Systems. Transfer systems shall comply with 15.8.7.

15.8.7.1 Transfer Platform. A transfer platform 19 in (485 mm) minimum deep by 22 in (560 mm) minimum wide shall be provided at the head of each transfer system.

15.8.7.2 Clear Deck Space. A clear deck space of 60 in (1525 mm) minimum by 60 in (1525 mm) minimum with a slope not steeper than 1:48 shall be provided at the base of the transfer platform surface and shall be centered along a 22 in (560 mm) minimum unobstructed side of the transfer platform (see Fig. 81).

15.8.7.3 Height. The height of the transfer platform shall comply with 15.8.6.2.

15.8.7.4 Transfer Step Risers. Transfer step riser height shall be 7 in (180 mm) maximum. Transfer step risers shall extend to a water depth of 18 in (455 mm) minimum (see Fig. 82).

15.8.7.5 Surface. The surface of the transfer system shall not have sharp edges.

15.8.7.6 Size. Each transfer step shall have a tread depth of 12 in (305 mm) minimum and 17 in (430 mm) maximum and shall have a tread width of 22 in (560 mm) minimum.

15.8.7.7 Grab Bars. One grab bar shall be provided on each step. The grab bar at the transfer platform shall not obstruct transfer. The top of the gripping surface shall be 4 in (100 mm) maximum above each step. Grab bars shall comply with 4.26.

15.8.8 Pool Stairs. Pool stairs shall comply with 15.8.8.

15.8.8.1 Pool Stairs. Pool stairs shall comply with 4.9, except as modified below.

15.8.8.2 Handrails. The width between handrails shall be 20 in (510 mm) minimum and 22 in (560 mm) maximum. Handrail extensions required by 4.9.4 shall not be required at the bottom landing serving a pool stair.

15.8.9 Moveable Floors. The pool coping shall comply with 4.5.2 where the moveable floor connects with the pool deck.

* * * * *

3. The following figures indicated in the left hand column will be added following the sections in Appendix A indicated in the right hand column:

Figure	Section
58	15.1.4.1.
59	15.1.4.3.
60	15.1.4.4.
61	15.2.3.1.
62	15.2.3.1.
63	15.5.3.
64	[Reserved].
65	[Reserved].
66	[Reserved].
67	[Reserved].
68	[Reserved].
69	[Reserved].
70	[Reserved].
71	[Reserved].
72	[Reserved].
73	[Reserved].
74	[Reserved].
75	15.8.4.2.
76	15.8.4.3.
77	15.8.5.2.
78	15.8.5.3.
79	15.8.6.1.
80	15.8.6.2.
81	15.8.7.2.
82	15.8.7.4.

Figures 58 to 63 and 75 to 82 read as follows:

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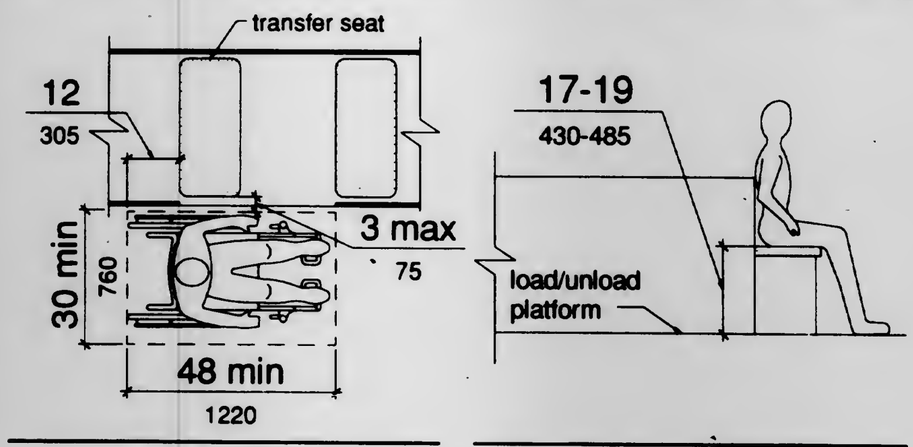


Fig. 58

Clear Floor Space at Transfer Seats

Fig. 59

Transfer Seat Height

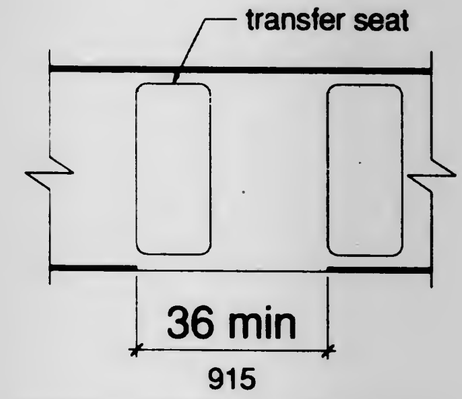


Fig. 60

Transfer Seat Entry

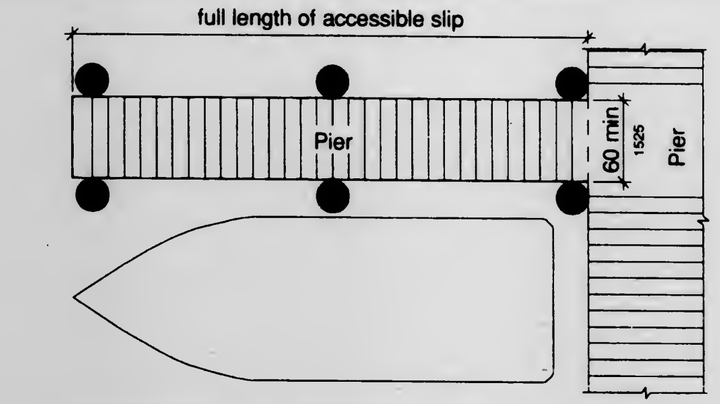


Fig. 61

Clear Space at Pier

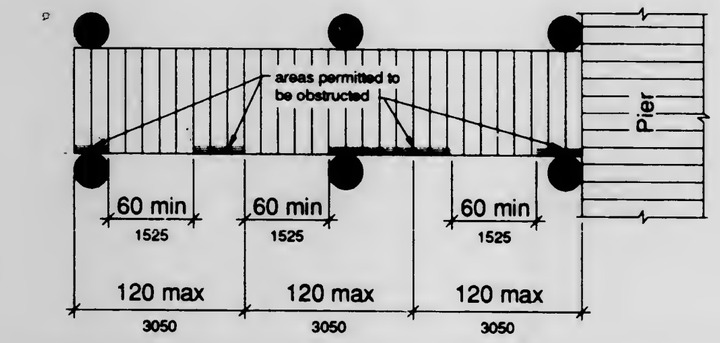


Fig. 62

Pier Clear Opening

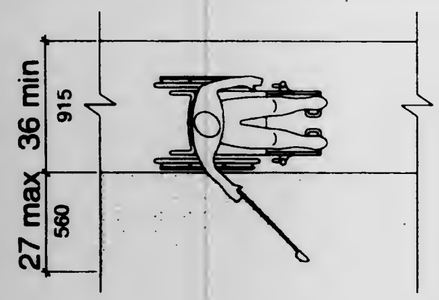


Fig. 63

Golf Club Reach Range

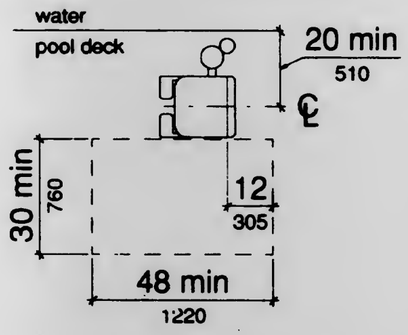


Fig. 75

Clear Deck Space at Pool Lift

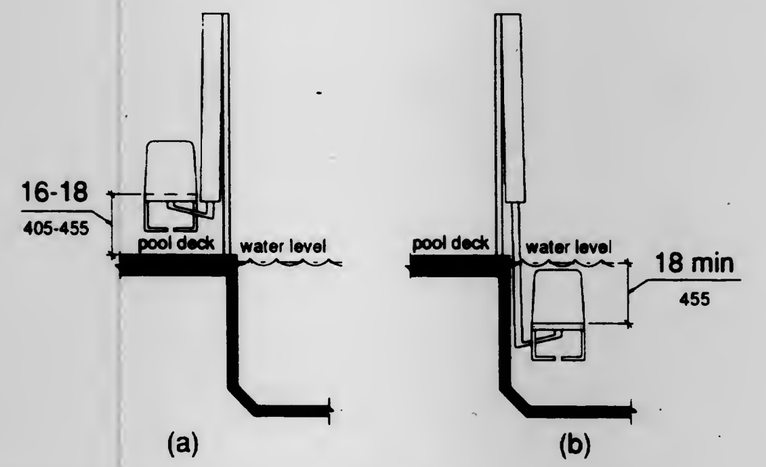


Fig. 76

Height and Submerged Depth of Pool Lifts

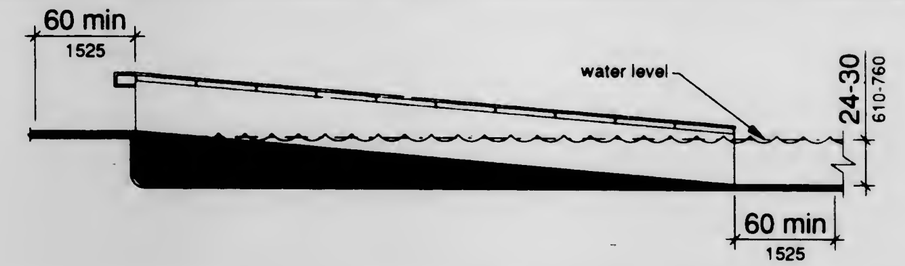


Fig. 77

Sloped Entries

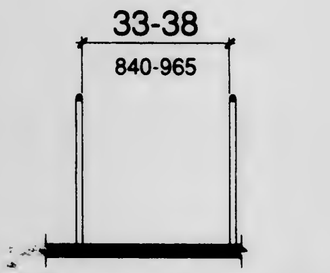


Fig. 78

Sloped Entry Handrails

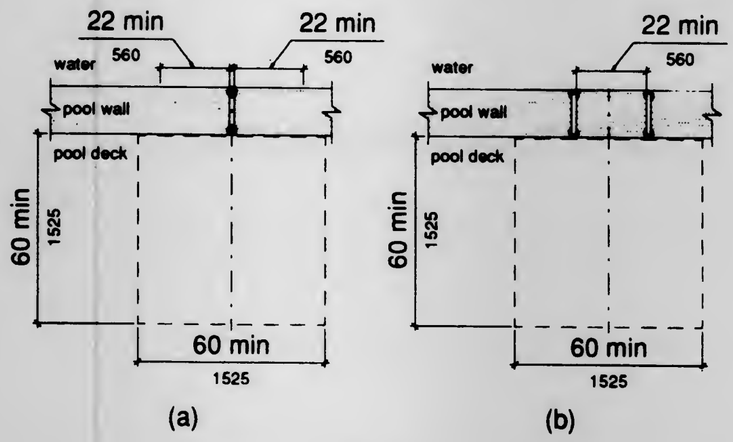


Fig. 79

Clear Deck Space at Transfer Walls

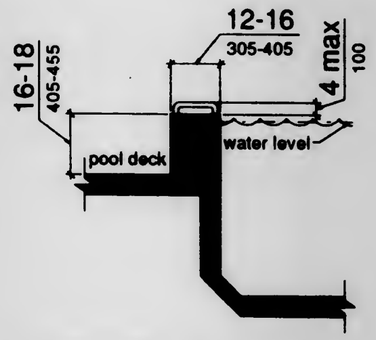


Fig. 80

Transfer Walls

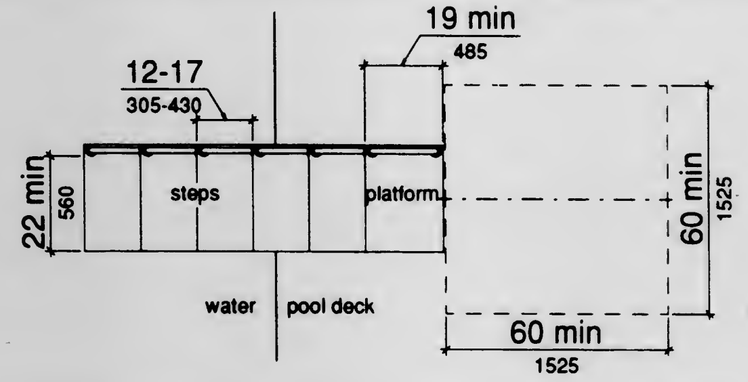


Fig. 81

Clear Deck Space at Transfer Systems

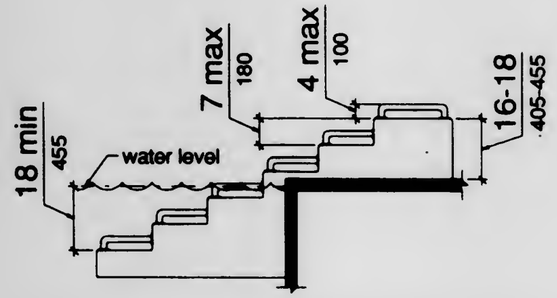


Fig. 82

Transfer Systems

[FR Doc. 99–17156 Filed 7–8–99; 8:45 am]
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Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 9 and 31
Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 31

[FAR Case 99–010]

RIN 9000–AI40

Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify coverage and give examples of suitable contractor responsibility considerations, as well as to make unallowable the costs of attempting to influence employee decisions regarding unionization, and make unallowable those legal expenses related to defense of judicial or administrative proceedings brought by the Federal Government when a contractor is found to have violated a law or regulation, or the proceeding is settled by consent or compromise, except to the extent specifically provided as part of the settlement agreement.

DATES: Comments should be submitted on or before November 8, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035 ATTN: Laurie Duarte Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.99–010@gsa.gov.

Please submit comments only and cite FAR case 99–010 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 99–010.

SUPPLEMENTARY INFORMATION:

A. Background

1. FAR Responsibility Criteria

This proposed rule revises FAR 9.104–1(d) and (e) to clarify coverage concerning contractor responsibility considerations, by adding examples of what falls within the existing definition of "an unsatisfactory record of integrity and business ethics." The proposed amendment will provide contracting officers with guidance concerning general standards of contractor compliance with applicable laws when making pre-award responsibility determinations.

A prospective contractor's record of compliance with laws and regulations promulgated by the Federal Government is a relevant and important part of the overall responsibility determination. This proposed FAR amendment clarifies the existing rule by providing several examples of what constitutes an unsatisfactory record of compliance with laws and regulations. These examples are premised on the existing principle that the Federal Government should not enter into contracts with contractors who do not comply with the law. For example, the proposed rule clarifies that a prospective contractor's failure to comply with applicable tax laws may be considered by the contracting officer in making a responsibility determination. Similarly, the proposed rule attempts to clarify the fact that an established record of employment discrimination would be a relevant part of the contracting officer's responsibility determination because such a record or pattern is a strong indication of a contractor's overall willingness or capability to comply with applicable laws.

Normally, the contracting officer should base adverse responsibility determinations involving violations of law or regulation upon a final adjudication by a competent authority concerning the underlying charge. However, in some circumstances, it may be appropriate for the contracting officer to base an adverse responsibility determination upon persuasive evidence of substantial noncompliance with a law or regulation (*i.e.*, not isolated or trivial, but repeated and substantial violations establishing a pattern or practice by a prospective contractor. The facts and circumstances in each such case will require close scrutiny and examination.).

An efficient, economical and well-functioning procurement system requires the award of contracts to organizations that meet high standards of integrity and business ethics and have the necessary workplace practices to assure a skilled, stable and productive workforce. This proposal seeks to further the Government's use of best practices by ensuring the Government does business only with high-performing and successful companies that work to maintain a good record of compliance with applicable laws.

2. Cost Principle Changes

This proposed rule revises the cost principle at FAR 31.205–21 to make unallowable those costs relating to attempts to influence employee decisions regarding unionization. This cost principle change is in furtherance of the Government's long-standing policy to remain neutral with respect to employer-employee labor disputes (see FAR Part 22). Some contractors are claiming, as an allowable cost, those activities designed to influence employees with regard to unionization decisions. Inasmuch as a number of cost-based Federal programs have long made these types of costs unallowable as a matter of public policy (*e.g.*, see 29 U.S.C. 1553(c)(1), 42 U.S.C. 1395x(v)(1)(N), 42 U.S.C. 9839(e), and 42 U.S.C. 12634(b)(1)), equity dictates that this same principle be extended to Government contracts as well.

The proposed rule also revises FAR 31.205–47 to make clear that costs relating to legal and other proceedings are unallowable where the outcome is a finding that a contractor has violated a law or regulation, or where the proceeding was settled by consent or compromise (except that such costs may be made allowable to the extent specifically provided as a part of a settlement agreement). At present, the relevant cost principle generally makes unallowable legal and other proceeding costs where, for example, in a criminal proceeding, there is a conviction; or where, for example, in a civil proceeding, there is a monetary penalty imposed. There are a number of civil proceedings brought by the Federal Government each year that do not result in imposition of a monetary penalty (*e.g.*, NLRB or EEOC proceedings), but which do involve a finding or adjudication that a contractor has violated a law or regulation, and where appropriate remedies are then ordered.

Under the proposed rule, the allowability of legal and other proceedings costs would depend on whether or not a contractor is found to have violated a law or regulation rather than on the nature of the remedy imposed. Taxpayers should not have to pay the legal defense costs associated with adverse decisions against contractors, especially where the proceeding is brought by an agency of the Federal Government.

3. Additional Considerations

In order to give greater effect to the FAR responsibility clarifications being proposed, please provide comments and suggestions concerning whether the provision appearing at FAR 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, should be amended to provide for enhanced responsibility disclosure relative to this proposal.

This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities do not involve use of formal responsibility surveys. In addition, most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis and do not require the submission of cost or pricing data or information other than cost or pricing data, and thus do not require application of the FAR cost principles. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 99–010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed FAR changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 31

Government procurement.

Dated: July 1, 1999.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 9 and 31 be amended as set forth below:

1. The authority citation for 48 CFR parts 9 and 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Amend section 9.104–1 to revise paragraphs (d) and (e) to read as follows:

9.104–1 General standards.

* * * * *

(d) Have a satisfactory record of integrity and business ethics (examples of an unsatisfactory record may include persuasive evidence of the prospective contractor's lack of compliance with tax laws, or substantial noncompliance with labor laws, employment laws, environmental laws, antitrust laws or consumer protection laws);

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors) (see 9.104–3(a)) and the necessary workplace practices addressing matters such as training, worker retention, and legal compliance to assure a skilled, stable and productive workforce;

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Revise section 31.205–21 to read as follows:

31.205–21 Labor relations costs.

(a) Costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) Costs incurred for activities related to influencing employees' decision regarding unionization are unallowable.

4. In section 31.205–47, redesignate paragraphs (b)(3) through (b)(5) as paragraphs (b)(4) through (b)(6) and add new paragraph (b)(3); and revise redesignated paragraphs (b)(5) and (b)(6) to read as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(b) * * *

(3) In a judicial or administrative proceeding brought by the Government, a finding that the contractor violated a law or regulation;

* * * * *

(5) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in paragraphs (b)(1) through (4) of this subsection (but see paragraphs (c) and (d) of this subsection); or

(6) Not covered by paragraphs (b)(1) through (5) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (5) of this subsection.

* * * * *

[FR Doc. 99–17298 Filed 7–8–99; 8:45 am]

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Part VIII

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Year 1999 for New Awards and Inviting Applications and Pre-Application Meeting for New Awards Under the Assistive Technology Act Technical Assistance Program; Notices

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1999 for new awards Under the Assistive Technology Act Technical Assistance Program.

SUMMARY: The Secretary announces final funding priorities for four assistive technology (AT) technical assistance (TA) activities under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year 1999. The Secretary takes this action to improve the activities of AT projects that serve individuals with disabilities.

DATES: These priorities are effective August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Waiver of Rulemaking

Pursuant to section 437(d)(1) of the General Education Provisions Act, the Secretary has determined that this priority is exempt from the Administrative Procedure Act (5 U.S.C. 553). Section 437(d)(1) exempts from rulemaking the first grant competition under a new or substantially revised program authority. This is NIDRR's first grant competition under the Assistive Technology Act (AT Act) of 1998, which replaces the Technology-Related Assistance for Individuals with Disabilities Act of 1998, as amended, (Tech Act), and was signed into law on November 13, 1998.

SUPPLEMENTARY INFORMATION: This notice contains four final priorities under the AT Act Program. The priorities are: (1) Technical Assistance to Assistive Technology Act State Grant Program Grantees; (2) Technical Assistance to Assistive Technology Act Protection and Advocacy (P&A) Program Grantees; (3) Assistive Technology Act Data Collection Project; and (4) National Assistive Technology Internet Site.

These final priorities support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The authority for the Secretary to fund TA projects is contained in section 104 of the Assistive Technology Act of 1998.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Assistive Technology Act

Background

The AT Act of 1998 reaffirms the Federal role of promoting access to AT devices and services for individuals with disabilities. In 1988 Congress passed the Tech Act to assist States to identify and respond to the AT needs of individuals with disabilities. Reauthorized in 1994, the Tech Act was premised on the assumption that individuals with disabilities needed access to AT devices and services, and that Federal funds could function as a catalyst and as leverage to create permanent systemic change within State infrastructures that did, could, or should make AT devices and services more readily available to individuals with disabilities.

In addition to continuing the Assistive Technology State grant program and TA conducted under the Tech Act, the 1994 Tech Act amendments required each State grant to fund Protection and Advocacy (P&A) systems to assist individuals with disabilities access AT devices and services. The amendments also included standards of accountability to ensure that States would meet the Tech Act goals within the ten-year funding period and mandated the provision of information and TA to the AT State grant program grantees, individuals with disabilities, and other persons.

Although the AT State grant program under the Tech Act may have met many of the technology challenges related to individuals with disabilities, there is still a lack of: resources to pay for the AT devices and services; trained personnel to assist individuals with disabilities to use such devices and services; knowledge among targeted individuals about the availability and potential benefits of technology for individuals with disabilities; outreach to underrepresented and rural populations; systems that ensure timely acquisition and delivery of AT devices and services; coordination among State human services programs, and between such programs and private entities, particularly with respect to the transition between such programs and entities; and capacity in such programs to provide the necessary technology-related assistance.

There are changes in the delivery of AT devices and services that include the increased prevalence of managed care entities as payers for these devices and services; an increased focus on universal design; the increased importance of AT in employment, as more individuals with disabilities move from public assistance to work through training and on-the-job accommodations; the role and impact that new technologies have on how individuals with disabilities will learn about, access, and participate in programs or services that will affect their lives; and the increased role that telecommunications play in education, employment, health care, and social activities.

The AT Act was passed in recognition of the technology challenges that remain for individuals with disabilities. AT State grant programs have met some of these challenges, but there is a need for continuing Federal support to assist States to address these challenges in the most appropriate way, given its resources, expertise, experience, and approaches to assisting individuals with disabilities to access AT.

Description of Assistive Technology Act Technical Assistance Program

The purpose of the AT Act Technical Assistance Program is to address issues raised by States, individuals, P&A providers, and other relevant organizations; the purpose of the AT Act Data Collection Project is to collect data that will provide information about AT devices and services that can be used to identify effective practices and formulate policies; and the purpose of the National Assistive Technology Internet Site is to provide information that will facilitate increased access to AT devices, AT services and other disability-related resources.

Priorities

Under 34 CFR 75.105(c)(3), and Section 104 of the Assistive Technology Act of 1998, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet these priorities.

Priority 1: Technical Assistance to Assistive Technology Act State Grant Program Grantees

The Secretary will establish a TA project that will provide assistance to the AT Act State Grant Program grantees to reduce barriers and increase access to AT devices and services for consumers with disabilities of all ages. The TA project will also provide TA to AT Act State Grant Program grantees in areas related to universal design, State procurement actions, and funding of AT. Consistent with statutory requirements, the project must:

(a) Respond to grantees' requests for and disseminate information about current Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures that increase access to AT devices and services;

(b) Identify and disseminate information to grantees about exemplary Federal-State coordination of programs related to improving funding for and access to AT devices and services;

(c) Identify and disseminate information to grantees about effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of AT devices and services; and

(d) Provide TA to grantees to help them develop corrective action plans if the Secretary determines that the grantee has failed to comply with the requirements of the AT Act.

In addition to the statutory requirements, the TA project must:

(e) Provide TA to grantees to assist with their implementation of the mandates of the AT Act;

(f) Develop and disseminate strategies that can be used to assist grantees to promote: (1) Universal design principles in the State's infrastructure in the built environment and the telecommunications and transportation environments; (2) compliance with section 508 of the Rehabilitation Act, as amended; (3) improvement of State policies for the financing of AT through public or private health insurance providers; and (4) modification of State revenue policy to increase the resource base for funding AT;

(g) Assist grantees to identify weaknesses within their individual State programs and provide programmatic solutions to the problems;

(h) Develop and maintain an accessible website that can be used by grantees to obtain, share, and disseminate information;

(i) Coordinate and share resources with the TA project to AT Act P&A Program grantees, the AT Act Data Collection project, and the National Assistive Technology Internet Site project about activities of mutual interest; and

(j) Develop and implement a self-assessment instrument to determine the effectiveness of this TA project.

Priority 2: Technical Assistance to Assistive Technology Act Protection and Advocacy Program Grantees

The Secretary will establish a TA project that will provide assistance to AT Act P&A Program grantees to assist individuals with disabilities of all ages in acquiring, utilizing, or maintaining AT devices or services. The TA project will also provide TA to the AT Act P&A Program grantees in areas related to participation by individuals with disabilities in informal advocacy and formal representation activities. Consistent with statutory requirements, the TA project must:

(a) Respond to grantees' requests for and disseminate information about current policies, practices, procedures, regulations, administrative hearing decisions or legal actions that can enhance access to and funding for AT devices and services; and

(b) Provide TA to grantees to help them develop corrective action plans if the Secretary determines that the grantee has failed to comply with the requirements of the AT Act.

In addition to the statutory requirements, the TA project must:

(c) Provide TA to grantees to identify weaknesses within their P&A programs and provide programmatic solutions to the problems;

(d) Develop and disseminate strategies to grantees to assist them to: (1) coordinate activities with P&A services funded through sources other than Section 102 of the AT Act; (2) participate in formal representation to assist individuals with disabilities in securing systems change and in increasing access to assistive technology devices and services; (3) participate in formal and informal advocacy to assist individuals with disabilities in securing AT devices and services; and (4) develop long-term abilities of individuals with disabilities and their family members, guardians, advocates and authorized representatives to advocate for the provision of AT devices and services to which the individuals with disabilities are entitled under laws other than the AT Act;

(e) Develop and maintain an accessible website that can be used by grantees to obtain, share and disseminate information;

(f) Coordinate and share resources with the TA project to AT Act State Grant Program grantees, the AT Act Data Collection Project and the National Assistive Technology Internet Site Project about activities of mutual interest; and

(g) Develop and implement a self-assessment instrument to determine the effectiveness of this TA project.

Priority 3: Assistive Technology Act Data Collection Project

The Secretary will establish a Data Collection Project for the purpose of collecting data from the AT Act State Grant Program grantees and the AT Act P&A Program grantees that can provide policy-relevant information to Federal, State and local decision makers about the availability, use and reliability of AT devices and services and exemplary practices to improving access to AT services and devices. The data collection project must:

(a) Develop and implement a process for producing performance standards for the assessment of AT State Program grantees;

(b) Design a web-based data collection and analysis system, including a data collection instrument, to collect data required to assess performance;

(c) Train entities funded under the AT Act in the use of the data collection system;

(d) Generate evaluative reports from the data and prepare an annual report on performance;

(e) Identify and evaluate model approaches to increased access to AT;

(f) Conduct one or more evaluation studies on specific aspects of the use of AT by persons with disabilities;

(g) Coordinate and share resources with the TA projects to the AT Act State Grant Program grantees, the AT Act P&A Program grantees and the National Assistive Technology Internet Site about activities of mutual interest; and

(h) Develop and implement a self assessment instrument that will be used to determine the effectiveness of the data collection project.

Priority 4: National Assistive Technology Internet Site

The Secretary will establish a National Assistive Technology Internet Site for the purpose of providing to individuals with disabilities and the general public TA and information that will increase access to AT devices, AT services, and other disability-related resources. Consistent with statutory requirements, the Internet site must:

(a) Develop, implement and maintain an accessible public Internet site that incorporates an innovative automated

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intelligent agent to assist users in problem definition and selection of appropriate AT devices and services resources;

(b) Provide Internet access to a comprehensive, accessible library (i.e. database) of information on AT and rehabilitation equipment, such as ABLEDATA, available for all environments including home, workplace, and transportation;

(c) Identify and maintain electronic links to appropriate and accessible public and private resources and information related to all types of disabilities, including low-level reading skills, all funded AT Act Programs, the National Center for the Dissemination of Disability Research, and the National Rehabilitation Information Center; and

(d) Identify and maintain electronic links to programs of excellence in areas such as information and referral, outreach, coordination, capacity building, public awareness, training, data collection, consumer control, funding and demonstrations sites.

In addition to the statutory requirements, the Internet site must:

(e) Provide TA to AT Act State Grant Program grantees and other entities funded under the AT Act, as appropriate, on accessible website development;

(f) Coordinate and share resources with the TA projects to the AT Act State Grant Program grantees and AT Act P&A Program grantees, the AT Act Data Collection Project, and NIDRR-funded Dissemination and Utilization projects about activities of mutual interest; and

(g) Develop and implement a self-assessment instrument that will be used to determine the effectiveness of the Internet site.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.224B, Assistive Technology Act Technical Assistance Program)

Program Authority: 29 U.S.C. 3001.

Dated: June 30, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–17135 Filed 7–8–99; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.224B]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Inviting Applications and Pre-Application Meeting for New Awards Under the Assistive Technology Act Technical Assistance Program for Fiscal Year 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86.

Program Title: Assistive Technology Act (AT Act) Technical Assistance Program.

CFDA Number: 84.224B.

Purpose of Program: The purpose of the AT Act Technical Assistance Program is to address issues raised by States, individuals, Protection and Advocacy providers, and other relevant organizations; collect data that will provide information about assistive technology devices and services that can be used for determining policy; provide information on increased access to assistive technology devices, assistive technology services and other disability-related resources.

Eligible Applicants: Parties eligible to apply for technical assistance grants shall have documented experience with and expertise in assistive technology service delivery or systems, interagency coordination, and capacity building and advocacy activities.

Parties eligible to apply for a grant under priorities 1, 2, and 3 are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Parties eligible to apply for a grant under priority 4, the National Assistive Technology Internet Site, are institutions of higher education that emphasize research and engineering, have a multidisciplinary research center, and have demonstrated expertise in working with assistive technology and intelligent agent interactive information dissemination systems; managing libraries of assistive technology and disability-related resources; delivering education, information, and referral services to individuals with disabilities, including technology-based curriculum development services for adults with low-level reading skills; developing cooperative partnerships with the private sector, particularly with private sector computer software, hardware, and Internet services entities; and developing and designing advanced Internet sites.

APPLICATION NOTICE FOR FISCAL YEAR 1999 AT ACT TECHNICAL ASSISTANCE PROGRAM, CFDA NO. 84.224B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per fiscal year)*	Project period (months)
84.224B–1, Technical Assistance to AT Act State Grant Program Grantees.	9/7/99	1	FY 1999, $638,000; FY 2000, $600,000; FY 2001, $600,000.	36

APPLICATION NOTICE FOR FISCAL YEAR 1999 AT ACT TECHNICAL ASSISTANCE PROGRAM, CFDA NO. 84.224B—Continued

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per fiscal year)*	Project period (months)
84.224B–2, Technical Assistance to AT Act Protection and Advocacy Program Grantees.	9/7/99	1	FY 1999, $200,000; FY 2000, $175,000; FY 2001, $175,000.	36
84.224B–3, AT Act Data Collection Project ...	9/7/99	1	FY 1999, $338,000; FY 2000, $305,000; FY 2001, $305,000; FY 2002, $305,000.	48
84.224B–4, National Assistive Technology Internet Site.	9/7/99	1	FY 1999, $352,000; FY 2000, $300,000; FY 2001, $300,000.	36

* **Note:** The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Pre-application Meeting: This notice invites interested parties to participate in a pre-application meeting to discuss the funding priorities and receive technical assistance through individual consultation and information about the funding priorities. The pre-application meeting for the Technical Assistance to AT Act State Grant Program grantees and the Technical Assistance to AT Act Protection and Advocacy Program grantees will be held on July 21, 1999 at the Department of Education, Office of Special Education and Rehabilitative Services, Room 1002, Switzer Building, 330 C Street, S.W., Washington, D.C. between 9 a.m. and 11 p.m. NIDRR staff will also be available from 12 p.m. to 3 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priorities. The pre-application meeting for the AT Act Data Collection Project and the National Assistive Technology Internet Site will be held on July 22, 1999 at the Department of Education, Office of Special Education and Rehabilitative Services, Room 1002, Switzer Building, 330 C Street, S.W., Washington, D.C. between 9 a.m. and 11 a.m. NIDRR staff will also be available from 12 p.m. to 3 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priorities. For further information contact Judith Fein, U.S. Department of Education, room 3430, Switzer Building, 330 C Street, S.W., Washington, D.C. 20202, or call (202) 205–8116. Individuals who use a telecommunications device (TDD) may call the TDD number at (202) 205–5516. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person.

Assistance to Individuals with Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for priorities under the Assistive Technology Act of 1998. (See 34 CFR 75.210)

(a) *Significance* (8 points total).

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(b) *Quality of the project design* (35 points total).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (12 points).

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (10 points).

(iii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition (8 points).

(iv) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (5 points).

(c) *Quality of project services* (16 points total).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible proposed project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (5 points).

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources (6 points).

(d) *Quality of project personnel* (12 points total).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of proposed project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (3 points).

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator (5 points).

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(ii) The qualifications, including relevant training and experience, of key project personnel (4 points).

(e) *Adequacy of resources* (6 points total).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization (3 points).

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (3 points).

(f) *Quality of the management plan* (11 points total).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks (6 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (5 points).

(g) *Quality of the project evaluation* (12 points total).

(1) The Secretary considers the quality of the evaluation to be conducted by the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (6 points).

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (6 points).

Instructions for Application Narrative: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(a) A one-page abstract;

(b) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 75 pages double-spaced (no more than 3 lines per vertical inch) 8.5 x 11" pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(c) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters, and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue S.W., room 3317 Switzer Building, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: donna_nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, D.C. area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.224B, Assistive Technology Act Technical Assistance Program)

Program Authority: 29 U.S.C. 3001.

Dated: July 1, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

An applicant is limited to the organization's approved indirect rate. If the organization does not have an approved indirect rate, the application should include an estimated actual rate.

6. Can Profit Making Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:_____

Address:_____

_____

City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 ➡ Title:_____

4. Project Director:_____

Address:_____

City _____ State _____ ZIP Code + 4 _____

Tel. #: ( )_____-_____ Fax #: ( )_____-_____

E-Mail Address:_____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*:_____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—Pre-Application	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #: b. Assurance of Compliance #: *OR*
c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( )_____-_____ Fax #: ( )_____-_____

d. E-Mail Address:

e. Signature of Authorized Representative Date: ___/___/_____

REV. 1/1999 ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

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PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided If Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, (all research activities are exempt), provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under II.B. "Exemptions," below. The Narrative must be succinct. Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations (some or all of the research activities are nonexempt), address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

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ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683. and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control No. 1880–0538 Expiration Date: 10/31/99
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

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Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, D.C. 20503.

Assistive Technology Act Technical Assistance Program (CFDA No. 84.224B).

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such

conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used in 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.);
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____
(Signature) (Date)

_____
(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

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OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application ____ b. initial award c. post-award	**3. Report Type:** a. initial filing ____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**		**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District, if known:**
6. Federal Department/Agency:		**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*		**9. Award Amount,** *if known:* $
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*		**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____
Federal Use Only		**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99–17136 Filed 7–8–99; 8:45 am]
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federal register

Friday
July 9, 1999

Part IX

The President

Proclamation 7208—To Facilitate Positive Adjustment to Competition From Imports of Lamb Meat

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Presidential Documents

Title 3—

The President

Proclamation 7208 of July 7, 1999

To Facilitate Positive Adjustment to Competition From Imports of Lamb Meat

By the President of the United States of America

A Proclamation

1. On April 5, 1999, the United States International Trade Commission (USITC) transmitted to the President a unanimous affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2252), with respect to imports of fresh, chilled, or frozen lamb meat, provided for in heading 0204 of the Harmonized Tariff Schedule of the United States (HTS). Under section 202 of the Trade Act, the USITC determined that such lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry producing a like or directly competitive article. Further, the USITC, pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act") (19 U.S.C. 3371(a)), made negative findings with respect to imports of lamb meat from Canada and Mexico. The USITC also transmitted to the President its recommendation made pursuant to section 202(e) of the Trade Act with respect to the action that would address the threat of serious injury to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

2. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and after taking into account the considerations specified in section 203(a)(2) of the Trade Act, I have determined to implement action of a type described in section 203(a)(3). However, pursuant to section 312(a) of the NAFTA Implementation Act (19 U.S.C. 3372(a)), I have determined that imports from Canada and Mexico, considered individually, do not account for a substantial share of total imports and do not contribute importantly to the threat of serious injury found by the USITC. Accordingly, pursuant to section 312(b) of the NAFTA Implementation Act (19 U.S.C. 3372(b)), I have excluded lamb meat the product of Canada or Mexico from the action I am taking under section 203 of the Trade Act.

3. Such action shall take the form of a tariff-rate quota on imports of fresh, chilled, or frozen lamb meat, provided for in HTS subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20, imposed for a period of 3 years plus 1 day, with annual increases in the within-quota quantities in the second and third years, as provided for in the annex to this proclamation.

4. Except for products of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act (ATPA), and other developing countries that have accounted for a minor share of lamb meat imports, which shall all be excluded from this restriction, such tariff-rate quota shall apply to imports of lamb meat from all other countries and the in-quota quantity in each year shall be allocated among such countries. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have further determined that these actions will facilitate efforts by the domestic industry to make a positive adjustment

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to import competition and provide greater economic and social benefits than costs.

5. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 203 and 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to establish a tariff-rate quota on imports of fresh, chilled, or frozen lamb meat classified in HTS subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20, subchapter III of chapter 99 of the HTS is modified as provided in the annex to this proclamation.

(2) Such imported lamb meat that is the product of Canada, Mexico, Israel, and of beneficiary countries under the CBERA and the ATPA, and of developing countries listed in general note 4(a) to the HTS, shall be excluded from the tariff-rate quota established by this proclamation, and such imports shall not be counted toward the tariff-rate quota limits that trigger the over-quota rates of duty.

(3) In the event that a quota quantity established by this proclamation and allocated to a country or to "other countries" is significantly underutilized, the United States Trade Representative is authorized to reallocate all or part of the unfilled portion of such quota quantity to any other country or countries and, upon publication of notice in the **Federal Register**, to modify the HTS provisions created by the annex to this proclamation to reflect any such reallocation.

(4) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) The modifications to the HTS made by this proclamation, including the annex hereto, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. e.d.t. on July 22, 1999, and shall continue in effect as provided in the annex to this proclamation, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

Billing code 3195–01–P

ANNEX
Modifications to the Harmonized Tariff Schedule of the United States

(a) Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 22, 1999, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting in numerical sequence the following new U.S. note, subheadings and superior text thereto, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

"8. For purposes of the subheadings enumerated below, the in-quota quantities for fresh, chilled or frozen lamb meat shall be allocated as follows:

Subheadings	Country or Countries	Allocation
9903.02.01	Australia	17,139,582
	New Zealand	14,481,603
	Other countries	229,966
9903.02.03	Australia	17,600,931
	New Zealand	14,871,407
	Other countries	236,155
9903.02.05	Australia	18,062,279
	New Zealand	15,261,210
	Other countries	242,346

	Carcasses and half-carcasses of lamb (provided for in subheading 0204.10.00 or 0204.30.00), other lamb cuts with bone in (provided for in subheading 0204.22.20 or 0204.42.20), and boneless lamb meat (provided for in subheading 0204.23.20 or 0204.43.20), all the foregoing fresh, chilled or frozen, except products of Canada, of Mexico, of Israel, of developing countries enumerated in general note 4(a) to this schedule, of beneficiary countries under the Caribbean Basin Economic Recovery Act (as enumerated in general note 7(a) to this schedule) or of beneficiary countries under the Andean Trade Preference Act (as enumerated in general note 11(a) to this schedule):		
	If entered during the period from July 22, 1999, through July 21, 2000 inclusive:		
9903.02.01	**In quantities not in excess of 31,851,151 kg**	**9%**	**15.4¢/kg**
9903.02.02	**Other**	**40%**	**15.4¢/kg + 40%**

	[Carcasses...:]		
	If entered during the period from July 22, 2000, through July 21, 2001, inclusive:		
9903.02.03	In quantities not in excess of 32,708,493 kg	6%	15.4¢/kg
9903.02.04	Other	32%	15.4¢/kg + 32%
	If entered during the period from July 22, 2001, through July 22, 2002, inclusive:		
9903.02.05	In quantities not in excess of 33,565,835 kg	3%	15.4¢/kg
9903.02.06	Other	24%	15.4¢/kg + 24%"

[FR Doc. 99–17749
[Filed 7–8–99; 11:48 am]
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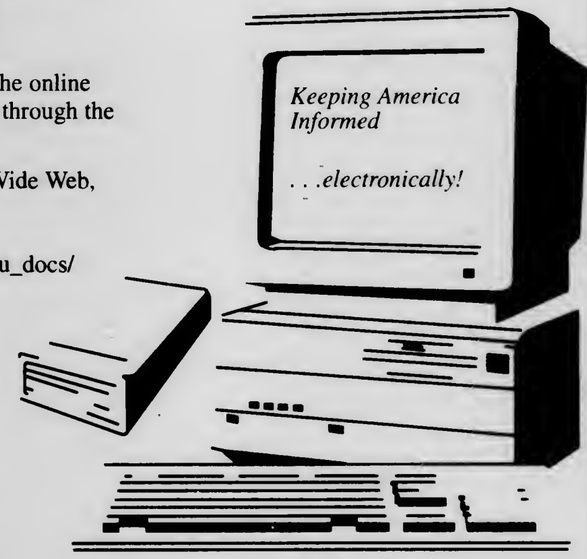
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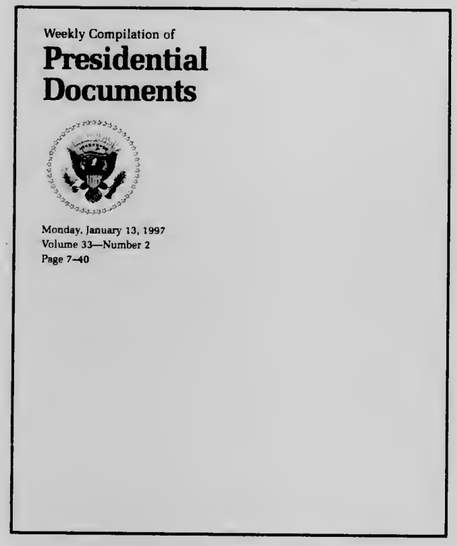
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Title 3—

The President

Memorandum of July 7, 1999

Action Under Section 203 of the Trade Act of 1974 Concerning Lamb Meat

Memorandum for the Secretary of the Treasury, the Secretary of Agriculture, the United States Trade Representative, the Director of the Office of Management and Budget, [and] the Director of the National Economic Council

On April 5, 1999, the United States International Trade Commission (USITC) submitted a report to me that contained: (1) a determination pursuant to section 202 of the Trade Act of 1974, as amended (the "Trade Act"), that imports of lamb meat are being imported into the United States in such increased quantities as to be a substantial cause of threat of serious injury to the domestic lamb meat industry; and (2) negative findings made pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act") with respect to imports of lamb meat from Canada and Mexico.

After considering all relevant aspects of the investigation, including the factors set forth in section 203(a)(2) of the Trade Act, I have implemented actions of a type described in section 203(a)(3). I have determined that the most appropriate action is a tariff-rate quota on imports of lamb meat with an increase in currently scheduled rates of duties for imports within and above the tariff-rate quota level. I have proclaimed such action for a period of 3 years and 1 day in order to facilitate efforts by the domestic industry to make a positive adjustment to import competition.

Specifically, I have established a tariff-rate quota for lamb meat in an amount equal to 31,851,151 kg. in the first year (July 22, 1999, through July 21, 2000), an amount that is equal to imports of lamb meat during calendar year 1998. The tariff-rate quota amount will increase by 857,342 kg. annually in the second and third years of relief. I have also established individual country allocations for product imported from Australia, New Zealand, and an "other country" category within the tariff-rate quota, which reflect the actual shares of each country in calendar year 1998. I have established increased rates of duty for imports within the tariff-rate quota amount: namely 9 percent *ad valorem* for imports in the first year of relief; 6 percent *ad valorem* for imports in the second year; and 3 percent *ad valorem* for imports in the third year. I have established increased rates of duty for imports above the tariff-rate quota levels: namely, 40 percent *ad valorem* in the first year of relief, 32 percent *ad valorem* in the second year, and 24 percent *ad valorem* in the third year.

I have also determined that implementation of adjustment assistance measures based on authorized programs of the Department of Agriculture will facilitate efforts by the domestic lamb meat industry to make a positive adjustment to import competition. In this regard, I instruct the United States Trade Representative (the USTR), the Secretary of Agriculture (the Secretary), the Director of the Office of Management and Budget, and the Director of the National Economic Council, in consultation with the U.S. industry, to transmit to me a set of substantial adjustment assistance measures that would improve the competitiveness of the U.S. industry and facilitate efforts by the industry to adjust to import competition.

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I further determine, pursuant to section 312(a) of the NAFTA Implementation Act, that imports of lamb meat produced in Canada and Mexico do not account for a substantial share of total imports of lamb meat and are not contributing importantly to the threat of serious injury. Therefore, pursuant to section 312(b) of the NAFTA Implementation Act, the safeguard measure will not apply to imports of lamb meat, whether fresh/chilled or frozen, that are the product of Canada or Mexico. Similarly, the safeguard measure will not apply to imports of lamb meat that are the product of Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act, or other developing countries that have accounted for a minor share of lamb meat imports.

I have determined that the actions described above will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. These actions will provide the domestic industry with necessary temporary relief from increasing import competition as well as assistance from existing U.S. Government programs, while also assuring our trading partners continued access to the United States market. The over-quota tariff rates I have established will provide substantial certainty to the domestic lamb industry regarding import levels.

Pursuant to section 204 of the Trade Act, the USITC will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms to make a positive adjustment to import competition. The USITC will provide to me and to the Congress a report on the results of its monitoring no later than the date that is the mid-point of the period during which the action I have taken under section 203 of the Trade Act is in effect. In this regard, I instruct the USTR, in consultation with the Secretary, and the Director of the Office of Management and Budget to transmit to the USITC no later than 30 days from today a list of benchmarks that the USTR recommends that the USITC use in connection with its monitoring and in preparing its report. These benchmarks are to be focused on industry efforts to adjust to import competition and on price trends for domestic and imported lamb meat.

The United States Trade Representative is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE
Washington, July 7, 1999.

[FR Doc. 99–17789
Filed 7–9–99; 8:45 am]
Billing code 3190–01–M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 52

[Docket No. 98–123–4]

RIN 0579–AB10

Pseudorabies in Swine; Extension of Indemnity Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of indemnity program.

SUMMARY: In an interim rule published in the **Federal Register** on January 15, 1999, and effective as of January 12, 1999, we established animal health regulations to provide for the payment of indemnity by the United States Department of Agriculture for the voluntary depopulation of herds of swine known to be infected with pseudorabies. In that interim rule, we announced that the indemnity program would end no later than 6 months after publication of the interim rule. We are giving notice that we are extending the indemnity program to continue until further notice.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service's regulations in 9 CFR part 52 govern the payment of indemnity to owners of herds of swine that are slaughtered because they are infected with pseudorabies.

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine. The disease, also known as Aujesky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus and is known to cause reproductive problems, including abortion and stillborn death in neonatal pigs, and, occasionally, death in breeding and finishing hogs.

A Federal eradication program for pseudorabies was implemented in the United States in 1989. The program is cooperative in nature and involves Federal, State, and industry participation. Industry/State/Federal pseudorabies eradication efforts have been markedly successful. In 1992, for instance, approximately 8,000 herds of swine nationwide were known to be infected with the disease. At the end of 1998, approximately 1,000 herds were known to be infected. This represented slightly less than 1 percent of the herds of swine in the United States. The goal of the cooperative pseudorabies eradication program is the elimination of pseudorabies in the United States in the year 2000.

However, in the past year, market conditions in the swine industry jeopardized the progress of the pseudorabies eradication program. Depressed market conditions caused some producers to eliminate the costs they had been incurring to participate in the eradication program. Continued cessation of eradication efforts, particularly the elimination of herd vaccination, would likely have resulted in an increase in the number of herds infected with pseudorabies. This growth in pseudorabies-infected herds would likely have extended the amount of time necessary to eradicate pseudorabies, and would ultimately have cost both the industry and the Federal and State governments additional time and monies in eradication efforts.

In response to this threat to the progress of the pseudorabies eradication program, we published an interim rule in the **Federal Register** (64 FR 2545–2550, Docket No. 98–123–2) on January 15, 1999 to establish an accelerated pseudorabies eradication program. In order to carry out the accelerated pseudorabies eradication program, the Secretary of Agriculture authorized the transfer of $80 million in funds from the Commodity Credit Corporation.

Under the accelerated program, we began payment of fair market value to owners who depopulated infected herds. In addition to indemnity for the value of the animals, we have been providing funding for trucking costs to disposal, for euthanasia and disposal costs, and for cleaning and disinfection of conveyances used for transporting the swine to disposal.

In our January 15, 1999, interim rule, we stated that the indemnity program would extend 6 months from the date of publication of the interim rule (until July 15, 1999), or until funds allocated for the program were depleted, whichever came first. Based on the time we estimated to be necessary to depopulate all known infected herds should all owners take part, we projected that 6 months would be long enough to complete the program, but short enough to encourage rapid depopulation of infected herds.

To date, the accelerated pseudorabies eradication program has significantly reduced the number of known infected herds in the United States. (As of late-June of this year, 424 infected herds had been depopulated.) All States have eliminated or virtually eliminated their pseudorabies-infected herds, except for Indiana, Iowa, and Minnesota, which are still in the midst of substantial eradication programs. Because some States are still conducting their eradication programs, we consider it important to the pseudorabies eradication effort in the United States to continue our accelerated pseudorabies eradication program beyond July 15, 1999. Therefore, we will continue the accelerated eradication program until further notice.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 6th day of July 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17612 Filed 7–9–99; 8:45 am]
BILLING CODE 3410–34–P

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DEPARTMENT OF ENERGY

10 CFR Part 708

RIN 1901–AA78

Criteria and Procedures for DOE Contractor Employee Protection Program

AGENCY: Office of Hearings and Appeals, Department of Energy

ACTION: Interim final rule; amendment.

SUMMARY: The Department of Energy (DOE) amends its DOE contractor employee protection program regulations to include three provisions inadvertently omitted in an interim final rule published on March 15, 1999.

DATES: This interim final rule is effective August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, or Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585–0107; telephone: 202–426–1449; e-mail: *roger.klurfeld@hq.doe.gov, thomas.mann@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 15, 1999, DOE published an interim final rule in the **Federal Register** (64 FR 12862) that comprehensively revised the regulations for the DOE contractor employee protection program, which are codified at 10 CFR Part 708. DOE became aware during the comment period on the interim final rule that three provisions in the original Part 708 had been inadvertently omitted from the interim final rule. These provisions (10 CFR 708.13, 708.14, and 708.15) were not within the scope of the Notice of Proposed Rulemaking published on January 5, 1998. See 63 FR 374, 375 (statement that those provisions would not be affected by the rulemaking). This interim final rule amendment restores these provisions. It also renumbers them and makes non-substantive language changes to conform the provisions to the "plain language" format used in the interim final rule published on March 15, 1999. In addition, § 708.42 (formerly § 708.15) permits the Secretary of Energy or Secretary's designee, to extend any deadlines established by Part 708, and permits the Director of the Office of Hearings and Appeals (OHA Director) to approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process).

II. Public Comment

DOE ordinarily invites public participation in rulemaking through submission of written comments and attendance at a public hearing. However, DOE has concluded that an opportunity for public comment on this interim final rule is unnecessary and would not be in the public interest. DOE received no public comment on the statement in the January 5, 1998, NOPR announcing that no changes were proposed for the three provisions that are the subject of this rulemaking. Except for one change, this rule corrects the inadvertent omission of the provisions in the program regulations published on March 15, 1999. The new feature added by this rule is the grant of authority to the OHA Director to extend any deadlines applicable to the investigation, hearing and OHA appeal process. This change is procedural and, thus, exempt from notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)). In any event, the change expands the procedural opportunities available to affected parties. Because the rule does not adversely affect the rights of members of the public, no purpose would be served by a public comment opportunity.

III. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect , if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As discussed in the Public Comment section of this notice, neither the Administrative Procedure Act (5 U.S.C. 553) nor any other law requires DOE to propose this rule for public comment. Accordingly, DOE did not prepare a regulatory flexibility analysis for this rule.

D. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 12612

Executive Order 12612, "Federalism" (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the federal government and the states, or in the distribution of power and responsibilities among the various levels of government. If there are substantial effects, the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing the policy action. DOE has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined there are no federalism implications that would warrant the preparation of a federalism assessment. Today's interim final rule deals with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors. This rule will not have a substantial direct effect on states, the relationship between the states and federal government, or the distribution of power and responsibilities among various levels of government.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This interim final rule does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 708

Administrative practice and procedure, Energy, Fraud, Government contracts, Occupational Safety and Health, Whistleblowing.

Issued in Washington, on July 6, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, Chapter III of title 10 of the Code of Federal Regulations is amended as set forth below:

PART 708—[AMENDED]

1. The authority citation for Part 708 continues to read as follows:

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i) and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

2. Part 708 is amended by adding § 708.40 to subpart C to read as follows:

§ 708.40 Are contractors required to inform their employees about this program?

Yes. Contractors who are covered by this part must inform their employees about these regulations by posting notices in conspicuous places at the work site. These notices must include the name and address of the DOE office where you can file a complaint under this part.

3. Part 708 is amended by adding § 708.41 to subpart C to read as follows:

§ 708.41 Will DOE ever refer a complaint filed under this part to another agency for investigation and a decision?

Notwithstanding the provisions of this part, the Secretary of Energy retains the right to request that a complaint filed under this part be accepted by another Federal agency for investigation and factual determinations.

4. Part 708 is amended by adding § 708.42 to subpart C to read as follows:

§ 708.42 May the deadlines established by this part be extended by any DOE official?

Yes. The Secretary of Energy (or the Secretary's designee) may approve the extension of any deadline established by this part, and the OHA Director may approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process).

[FR Doc. 99–17658 Filed 7–9–99; 8:45 am]

BILLING CODE 6415–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1999–10]

Treatment of Limited Liability Companies Under the Federal Election Campaign Act

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has adopted new regulations that address the treatment of limited liability companies ("LLC") for purposes of the Federal Election Campaign Act ("FECA" or the "Act"). The new rules provide that LLCs will be treated as either partnerships or corporations for FECA purposes, consistent with the tax treatment they select under the Internal Revenue Code.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, or Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is publishing today new regulations at 11 CFR 110.1(g) governing the treatment of Limited Liability Companies under the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* LLCs are non-corporate business entities, created under State law, that have characteristics of both partnerships and corporations. These entities did not exist when the FECA was originally enacted in 1971, and were in their infancy when the pertinent provisions of the FECA were last amended in 1979.

On December 18, 1998, the Commission published a Notice of Proposed rulemaking ("NPRM") in which it sought comments on this issue. 63 FR 70065 (Dec. 18, 1998). Written comments were received from the American Medical Association, the Internal Revenue Service, and Nicholas G. Karambelas.

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the FECA controls the legislative review process. *See* 5 U.S.C. 801(a)(4), Small Business Enforcement Fairness Act, Pubic Law 104–121, section 251, 110 Stat. 857, 869 (1996). Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by

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the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on Friday, June 25, 1999.

Explanation and Justification

The Federal Election Campaign Act, as amended, contains various restrictions and prohibitions on the right of "persons" to contribute to Federal campaigns. The Act defines "person" to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. 431(11).

The Act prohibits corporations and labor organizations from making any contribution or expenditure in connection with a Federal election, 2 U.S.C. 441b(a), although these entities may establish separate segregated funds ("SSF") and solicit contributions from their restricted class to the SSF. 2 U.S.C. 441b(b)(2)(C). The Act also prohibits contributions by Federal contractors, 2 U.S.C. 441c, and foreign nationals, 2 U.S.C. 441e. Contributions by persons whose contributions are not prohibited by the Act are subject to the limits set out in 2 U.S.C. 441a(a), generally $1,000 per candidate per election to Federal office; $20,000 aggregate in any calendar year to national party committees; and $5,000 aggregate in any calendar year to other political committees. 2 U.S.C. 441a(a)(1). Individual contributions may not aggregate more than $25,000 in any calendar year. 2 U.S.C. 441a(a)(3).

Contributions by partnerships are permitted, subject to the 2 U.S.C. 441a(a) limits. In addition, partnership contributions are attributed proportionately against each contributing partner's limit for the same candidate and election. 11 CFR 110.1(e).

In recent years the Commission received several advisory opinion requests ("AOR") seeking guidance on the treatment of LLCs for purposes of the Act, and has issued advisory opinions ("AO") in response to these AORs. *See* AOs 1998–15, 1998–11, 1997–17, 1997–4, 1996–13, and 1995–11. The AOs generally considered how the LLCs were treated under State law to determine their treatment for purposes of the Act. As the number of AORs on this topic increased, the Commission decided that it would be advisable to draft a generally-applicable rule to deal with these entities.

The NPRM sought comments on two alternative approaches. Under Alternative A, LLCs would be treated as partnerships for FECA purposes. Contributions by an LLC would be attributed to the LLC and to each member of the LLC in direct proportion to member's share of the LLCs profits, as reported to the recipient by the LLC, or by agreement of the members, as long as certain conditions were met.

Under Alternative B, the Commission would defer to the IRS "check the box" rules in classifying LLCs as either partnerships or corporations for FECA purposes. The IRS rules allow certain business entities to opt for corporate tax treatment under federal law without regard to their State law status. *See,* 26 CFR 301.7701–3. Generally, an eligible entity is one that is not required to be treated as a corporation for federal tax purposes. Under 26 U.S.C. 7704, read in conjunction with 26 CFR 301.7701–3, the IRS considers LLCs eligible entities so long as the LLC is not publicly traded. If an eligible LLC makes no election under these rules, the IRS' "default rule" treats the LLC as a partnership. 26 CFR 301.7701–3(b). Alternatively, if an LLC selects corporate tax status by "checking the box," it is taxed as a corporation for federal tax purposes. 26 CFR 301.7701–3(b)(3).

Like the IRS rules, the Commission would treat all LLCs as partnerships unless an LLC opts for federal corporate tax treatment pursuant to the "check the box" provisions. Both LLCs which "check the corporate box" and those that are publicly traded would be treated as corporations for FECA purposes.

For the reasons set forth below, the Commission is adopting Alternative B and will follow the IRS' "check the box" approach for purposes of these rules. The new rules therefore supersede AOs 1998–15, 1998–11, 1997–17, 1997–4, 1996–13, and 1995–11, in which the Commission determined that LLCs should be treated as "persons" for FECA purposes.

The Commission notes that these rules should be viewed as a narrow exception to its general practice of looking to State law to determine corporate status. The Commission will continue to treat all entities that qualify as corporations under State law as corporations for FECA purposes.

Section 110.1(g) Contributions by Limited Liability Companies

Section 110.1(g)(1) Definition

LLCs are a relatively recent creation of state law. Wyoming enacted the first LLC statute in 1977, but the majority of these laws have been enacted since 1990. Callison and Sullivan, *Limited Liability Companies,* section 1.5 (1994). LLCs are a cross between the traditional corporation and a partnership, sharing both corporate and partnership attributes. Like partnerships, LLC members are generally taxed as partners at the state level, but enjoy the liability protection of corporate shareholders. To varying extents, LLCs possess other corporate attributes, including free transferability of interest, centralized management, and the ability to accumulate capital. This section defines a limited liability company as a business entity recognized as a limited liability company under the laws of the State in which it is established.

Section 110.1(g)(2) Treatment of Certain LLCs as Partnerships

This section follows the IRS "check the box" rules at 26 CFR 301.7701–3, stating that a contribution by an LLC that elects to be treated as a partnership by the IRS, or does not elect treatment as either a partnership or a corporation, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e). Since most LLCs choose this tax classification, or acquire it through default, they will be covered by this paragraph.

One commenter urged the Commission to adopt Alternative A, which would treat all LLCs as partnerships. However, the structure of LLCs that elect corporate tax treatment is such that they would find it impracticable, if not impossible, to comply with such a requirement. As the Tax Court has explained, partnerships, and by analogy partnership-like LLCs, "must maintain a capital account for each member that directly reflects the actual amounts paid in respect to that particular membership interest. There is no such requirement for corporations. A corporation is a separate legal entity, whereas a partnership is an aggregate of its partners. A corporation does not have individual drawing accounts for each of its shareholders." *Board of Trade of Chicago* v. *Comm. of Internal Revenue,* 106 T.C. 369, 391 n.21 (1996). Therefore, corporate-like LLCs would be hard-pressed to comply with this requirement.

Another commenter requested that the Commission continue the approach set forth in past advisory opinions, i.e., treat LLCs as persons subject to the 2 U.S.C. 441a(a) contribution limits. The Commission is concerned that this approach could lead to possible proliferation problems, since a person who was a member of numerous LLCs could contribute up to the statutory limits through each of them. Also, if any of the LLC's members were prohibited from contributing, e.g., were foreign nationals or government contractors, the LLC itself would be precluded from making contributions, under this approach.

Section 110.1(g)(3) Treatment of Certain LLCs as Corporations

This section states that an LLC that elects to be treated as a corporation by the IRS pursuant to 26 CFR 301.7701–3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114. Part 114 contains the Commission's rules governing corporate and labor organization activity under the FECA.

The Commission notes that, in order to determine the type of entities subject to corporate treatment under the FECA, it must first identify those business entities that should be defined as corporations. This term is not explicitly defined anywhere in the Act or the regulations. The only reference in the legislative history directs the Commission to look to State law to determine the status of professional corporations, but is silent as to all other types of corporations. *See* H.R. Rept. 1438 (Conf.), 93d Cong., 2d Sess. 68–69 (1974).

Since Congress did not "directly address the precise question at issue"—whether the definition of *corporation* includes LLCs—the Commission is free to refer to the IRS rules, as long as its interpretation is not "manifestly contrary to the statute." *Chevron U.S.A., Inc.* v. *National Resources Defense Council, Inc.,* 837 U.S. 837, 842–44 (1984). The Chevron analysis is the standard used by Federal courts to determine whether or not an agency has construed the statute permissibly. *See also, Clifton* v. *FEC,* 114 F.3d 1309, 1318 (1st Cir. 1997); *Bush-Quayle '92 Primary Committee, Inc.* v. *FEC,* 104 F.3d 448, 452 (D.C.Cir. 1997)

When an LLC elects corporate status for IRS purposes, it is essentially telling the IRS that its organizational structure and functions are more akin to a corporation than a partnership. This allows the LLC to accumulate capital at the corporate level, and to take advantage of favorable tax treatment of corporate losses and dividends received. Rather than attempting to determine whether an LLC more closely resembles a corporation versus a partnership, or simply classifying an LLC as a partnership without any reference to its actual structure or form, the Commission believes it can most effectively carry out FECA's intent by classifying LLCs according to their federal tax status, which most accurately describes whether an LLC's structure and function are more akin to a "corporation" or a "partnership."

The U.S. Supreme Court has interpreted congressional intent behind the FECA's prohibition of corporate contributions as a legitimate "need to restrict the influence of political war chests funneled through the corporate form" and to "regulate the substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization." *FEC* v. *National Conservative Political Action Committee,* 470 U.S. 480, 501 (1985), quoting *National Right to Work Committee* v. *FEC,* 197, 210 (1982). Following the IRS' "check the box" approach carries out this policy.

An LLC electing federal corporate status "checks the box" because it seeks to enjoy the benefits of corporate status. Such corporate advantages include, *inter alia,* flexible merger rules, the avoidance of personal income tax for LLC members, preferential tax treatment on dividends received and deductions for corporate losses, subject to certain rules. LLCs might also elect corporate status in preparation for an upcoming corporate merger.

Election of IRS corporate status confers specific benefits on those LLCs, just as State-chartered corporations enjoy similar advantages. Thus the Commission is fulfilling the purpose behind FECA's corporate prohibitions by regulating these entities as corporations.

As explained above, the Commission's adoption of the IRS treatment is consistent with the underlying policy regarding the ability of corporate-like LLCs to amass capital through the special advantages conferred upon them by the Federal Government. Moreover, the courts have consistently held that, where a corporation does not exist under State law, Federal agencies may appropriately refer to the policies behind Federal statutes in identifying the "corporate-like" activities of non-corporate forms: In *Morrissey* v. *Commissioner,* 296 U.S. 344 (1935), the Supreme Court held that a trust could be classified as an association, conferring what was, at that time, the equivalent of corporate tax status, for Federal income tax purposes. Instead of looking to State status or "labels," the Court explained that, "[w]hile the use of corporate forms may furnish persuasive evidence of the existence of an association, the absence * * * of the usual terminology of corporations cannot be regarded as decisive. Thus an association may not have 'directors' or 'officers' but the 'trustees' may function 'in much the same manner as the directors in a corporation' for the purpose of carrying on the enterprise." *Id.* at 358 (internal citations omitted). Similarly, in *U.S.* v. *McDonald & Eide, Inc.,* 865 F.2d 73, 76 (3d Cir. 1989), the Third Circuit Court of Appeals held that, because there is no Federal common law of corporations, "state law is used where persuasive, but ignored when not in accord with the policies" of the underlying federal statute, in this case the Internal Revenue Code.

The IRS' "check the box" rules, read in conjunction with 26 U.S.C. 7704, which requires publicly-traded partnerships to be taxed as corporations for tax purposes, require publicly-traded LLCs to be taxed as corporations. Paragraph 110.1(g)(3), therefore, further provides that publicly-traded LLCs shall be treated as corporations for FECA purposes.

Section 110.1(g)(4) Contributions by Single Member LLCs

The IRS in its comment pointed out that single member LLCs are not eligible for treatment as partnerships—that is, they cannot "check the box" to elect partnership treatment. Consistent with this approach, section 110.1(g)(4) states that a contribution by a single-member LLC that does not elect corporate tax treatment shall be attributed only to that member. Because of the unity of the member and the LLC in this situation, it is appropriate for attribution of the contribution to pass through the LLC and attach to the single member under these circumstances.

Section 110.1(g)(5) Information Provided to Recipient Committees

One commenter pointed out that, if this approach were adopted, a recipient committee might inadvertently accept an illegal contribution, because the committee would have no way of knowing whether the LLC had opted for corporate tax treatment and was therefore prohibited from contributing to Federal campaigns. The Commission further notes that the recipient committee would have no way of knowing how to attribute a contribution made by an eligible multi-member or single member LLC, unless that information was provided. Section 110.1(g)(5) accordingly states that an LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that the LLC is eligible to make the contribution.

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Subchapter S Corporations

Subchapter S corporations are corporations that, if they meet certain size and other requirements, can choose to be taxed as unincorporated businesses for Federal income tax purposes under Subchapter S of the Internal Revenue Code, 26 U.S.C. 1361–1379. Because there is some general similarity between the Federal income taxation of LLCs and Subchapter S corporations, the NPRM also sought comments as to whether Subchapter S corporations should be allowed to make otherwise lawful contributions in Federal elections. Under that approach, contributions by a Subchapter S corporation would be attributed only to the individual stockholders of the corporation as their personal (noncorporate) contributions and would be subject to their limits under the Act.

Because Subchapter S corporations are considered corporations under the laws of all fifty States, the final rules do not address this issue.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that limited liability companies are already covered by the Act, and the proposed revisions would clarify the extent to which they could contribute to Federal campaigns. In some instances this amount would be greater than is presently the case, while in others it would be smaller. In neither case would the amount involved qualify as "significant" for purposes of the Regulatory Flexibility Act.

List of Subjects in 11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

2. Section 110.1 is amended by adding new paragraph (g) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)

* * * * *

(g) *Contributions by limited liability companies ("LLC").*

(1) *Definition.* A limited liability company is a business entity that is recognized as a limited liability company under the laws of the State in which it is established.

(2) A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701–3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).

(3) An LLC that elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701–3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114.

(4) A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701–3 shall be attributed only to that single member.

(5) An LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.

* * * * *

Dated: June 25, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–16605 Filed 7–9–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Selamectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for veterinary prescription use of selamectin solution as a topical parasiticide for dogs and cats.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed NADA 141–152 that provides for topical veterinary prescription use of Revolution™ (selamectin) solution. Selamectin kills adult fleas and prevents flea eggs from hatching for 1 month, and it is indicated for the prevention and control of flea infestations (*Ctenocephalides felis*), prevention of heartworm disease caused by *Dirofilaria immitis*, and treatment and control of ear mite (*Otodectes cynotis*) infestations in dogs and cats; in dogs for treatment and control of sarcoptic mange (*Sarcoptes scabiei*); and in cats for treatment of intestinal hookworm (*Ancylostoma tubaeforme*) and roundworm (*Toxocara cati*) infections. The NADA is approved as of May 26, 1999, and the regulations are amended by adding 21 CFR 524.2098 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning May 26, 1999, because no active ingredient (including any ester or salt of the drug) has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.2098 is added to read as follows:

§ 524.2098 Selamectin.

(a) *Specifications.* Each milliliter contains 60 or 120 milligrams of selamectin.

(b) *Sponsor.* See 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Amount.* 2.7 milligrams of selamectin, topically, per pound (6 milligrams per kilogram) of body weight once a month.

(2) *Indications for use.* Kills adult fleas and prevents flea eggs from hatching for 1 month, and it is indicated for the prevention and control of flea infestations (*Ctenocephalides felis*), prevention of heartworm disease caused by *Dirofilaria immitis*, and treatment and control of ear mite (*Otodectes cynotis*) infestations in dogs and cats. Treatment and control of sarcoptic mange (*Sarcoptes scabiei*) in dogs. Treatment of intestinal hookworm (*Ancylostoma tubaeforme*) and roundworm (*Toxocara cati*) infections in cats. For dogs and cats 6 weeks of age and older.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 29, 1999.

George A. Mitchell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 99–17507 Filed 7–9–99; 8:45 am]

BILLING CODE 4160–01–F

POSTAL RATE COMMISSION

39 CFR Part 3002

Mission Statement for Office of Consumer Advocate

[Order No. 1255; Docket No. RM99–3]

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission has replaced a set of policy guidelines for its Office of Consumer Advocate (OCA) with a mission statement. The superseding statement retains current duties, adds responsibilities, and identifies opportunities for public input. This action clarifies and updates the OCA's role.

DATES: Effective July 12, 1999.

ADDRESSES: Send correspondence about this rule to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street, NW., Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Washington, DC, 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: Before recommending decisions on rate and classification matters, the Postal Rate Commission is required by the Postal Reorganization Act to provide an opportunity for a hearing on the record to "the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public." 39 U.S.C. 3624(a). In Order No. 433, issued June 1, 1982, the Commission issued policy guidelines for the officer of the Commission (OOC) (and for the permanent staff assigned to the OOC) with respect to representing the interests of the general public. Subsequently, the Commission designated a staff unit as the Office of the Consumer Advocate (OCA). The director of the OCA is generally appointed as the officer of the Commission responsible for representing the interests of the general public. *See* 39 CFR 3002.7 (describing the OCA) and Appendix A to 39 CFR Part 3002 (the policy statement).

Development of Superseding Mission Statement

The Commission has developed a mission statement of the OCA (presented as Appendix A to this order) to update and reemphasize the importance of the role of OCA in proceedings before the Commission. The mission statement encompasses the duties outlined in the 1982 guidelines, but broadens the scope of the activities the OCA is expected to undertake in representing the general public interest. The purpose of the mission statement also is to apprise the general public and participants in proceedings before the Commission of the current role of the OCA in the work of the agency and the opportunities available for public input in Commission proceedings.

The mission statement is not intended to limit the means by which the OCA represents the interests of the general public. The Commission will not consider either the scope of the activities of the OCA or whether positions taken by OCA adhere to the mission statement as an issue in any proceeding.

The OCA will participate in formal dockets before the Commission, including rulemaking dockets initiated by the Commission, and make evidentiary and legal presentations to the Commission on issues arising in such dockets. OCA shall participate in informal and formal discovery to obtain information needed to support its presentations or otherwise to inform the Commission on pending issues. For its presentations, OCA may utilize its staff resources and, where appropriate, retain expert witnesses, consultants, or counsel to assist it in preparing and presenting material to the Commission. OCA will present views to the Commission on behalf of members of the general public, including individuals and small businesses as both senders and recipients of mail, who are not otherwise adequately represented by private parties in proceedings before the Commission. The OCA shall also participate in dockets to assure that a full record is developed for Commission consideration.

In the event the Commission indicates through a notice of inquiry or other suitable procedure that it wishes to explore certain issues, including the reconsideration of previous decisions to evaluate their continued viability, the OCA shall contribute to this process on the same basis as all other parties. The OCA shall also carry out such other functions as may be assigned to it by the Commission.

The Commission values appropriate contact between the OCA and members of the general public and organizations representing consumers or advocating on behalf of consumers. Such contacts can provide useful information as to general public postal needs and preferences; widely held concerns about postal rates and services; and complaints about, or perceptions of, deficiencies in the Postal Service. Such contacts also can be the source of specific suggestions for changes in the Domestic Mail Classification Schedule (DMCS) and the DMCS Fee Schedule, and for other public suggestions for changes in which the Commission may be interested. Such suggestions may include matters that are not the subject of specific Commission proceedings.

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The OCA is expected to maintain regular contact with consumer advocacy or public interest groups that may wish to participate, either on a full or limited basis, in proceedings before the Commission. The OCA may consult with such groups and shall facilitate, through informational or logistical means, the ability of such groups to present their positions to the Commission. The OCA also shall serve as a resource to assist individuals and otherwise unrepresented entities to understand how they may best present their views to the Commission.

Other Responsibilities

In addition to the duty to participate in Commission proceedings, the OCA staff is expected to stay abreast of the body of published information germane to postal rate and classification matters, as well as regulatory and non-regulatory developments in related fields such public utilities, telecommunications, and transportation. The OCA staff is expected to increase its understanding of mailer needs and postal operations by appropriate field study, including the use of surveys where appropriate. Public contacts and informational undertakings of this nature are appropriately related to the OCA's function.

Impact on Existing Policy Statement

The mission statement that has been developed supersedes the "Policy Guidelines for Representation of the Interests of the General Public in Commission Proceedings," which currently appears as Appendix A to 39 CFR Part 3002. Adoption of the mission statement also requires a minor conforming editorial change in 39 CFR 3002.7(c).

Effective Date

The Commission has determined that the mission statement shall take effect upon publication of this notice and order.

List of Subjects in 39 CFR Part 3002

Administrative practice and procedure, Organization and functions, Postal Service.

For the reasons stated in the preamble, the Postal Rate Commission amends part 3002 of title 39 of the Code of Federal Regulations as follows:

PART 3002—ORGANIZATION

1. The authority citation for part 3002 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662.

2. In § 3002.7(c) remove the phrase "policy statement" and add in its place the phrase "mission statement."

3. Revise Appendix A to part 3002 as follows:

Appendix A to Part 3002—Postal Rate Commission, Mission Statement of the Office of the Consumer Advocate

The mission of the Office of the Consumer Advocate is to be a vigorous, responsive, and effective advocate for reasonable and equitable treatment of the general public in proceedings before the Postal Rate Commission.

In furtherance of this mission, the Office of the Consumer Advocate will:

1. Give a strong and consistent voice to the views of consumers, especially those that are not otherwise represented in Commission proceedings;
2. Argue for equity on behalf of individuals and small businesses, both as senders and as recipients of mail and mail services;
3. Utilize all means and procedures available under the Commission's rules and applicable law to present evidence and arguments on behalf of consumers in Commission proceedings;
4. Assist in the development of a complete record on issues pending before the Commission;
5. Engage in dialogue with parties or participants in proceedings before the Commission to advance the interests of consumers;
6. Encourage the equitable settlement of issues among the parties and participants in proceedings whenever possible;
7. Promote fair competition between the United States Postal Service and its competitors for the ultimate benefit of consumers;
8. Seek out responsible advocates of consumer interests and encourage their participation in Commission cases;
9. Maintain the highest standards of competence and quality in all evidence and pleadings submitted to the Commission; and
10. Maintain separation and independence from the Commission and its advisory staff in the course of proceedings before the Commission.

Dated: July 7, 1999.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 99–17638 Filed 7–9–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 125–1a; FRL–6375–4]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving a June 1, 1999 request from Ohio for a State Implementation Plan (SIP) revision of the Dayton/Springfield, Ohio ozone maintenance plan. The maintenance plan revision establishes a new transportation conformity mobile source emissions budget for the year 2005. We are also approving the revision of the maintenance plan which reestimates point source growth and allots a larger volatile organic compounds (VOCs) budget to the area's 2005 mobile source sector for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations. We are also correcting a typographical error in the original maintenance plan approval.

DATES: This rule is effective on August 26, 1999, unless USEPA receives adverse written comments by August 11, 1999. If adverse comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is USEPA taking today?
Who is affected by this action?
How did the State support its request?
What is transportation conformity?
What is an emissions budget?
What is a safety margin?
How does this action change the Dayton/Springfield, Ohio maintenance plan?
Why is the request approvable?

What Action Is USEPA Taking Today?

In this action, we are approving a revision to the maintenance plan for the Dayton/Springfield, Ohio, ozone maintenance area. The Dayton/Springfield, Ohio ozone maintenance area includes the Counties of Montgomery, Clark, Greene and Miami Counties. The revision will change the mobile source emission budget that is used for transportation conformity purposes. The revision will also change the projected growth in industrial sources (point sources) from the projections in the currently approved maintenance plan. The revision will keep the projected total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to maintain air quality while providing for transportation growth and growth in point and area sources.

We are also correcting a typographical error in the original maintenance plan approval. The original **Federal Register** approval on May 5, 1995, (60 FR 22289) contained a typographical error in Table 1 showing the VOC emissions from the source categories in the Dayton/Springfield area. The 2005 VOC emissions for point and area sources are incorrect in Table 1. The correct number for point source VOC emissions in 2005 should be 98.0 and the correct number for area sources in 2005 should be 63.8 tons of VOC. These corrected numbers match the original submittal from the Ohio Environmental Protection Agency (OEPA) and are documented in the docket materials. This correction does not change the substance of the maintenance plan approval.

Who Is Affected by This Action?

Primarily, the transportation sector represented by the Ohio Department of Transportation and the Miami Valley Regional Planning Commission (the metropolitan planning organization) will benefit from this revision. Although, the long range transportation plan for the Dayton/Springfield area projects higher emissions than currently allowed in the maintenance plan, the conformity rule provides that the maintenance plan can be revised. The Dayton/Springfield maintenance plan does not currently have a "safety margin" which can be allocated to the transportation sector. In a **Federal Register** notice (62 FR 44903) published on August 25, 1997, all of the VOC safety margin was allocated to the mobile source budget. Therefore, there is no safety margin to allocate.

Instead, the OEPA and the Regional Air Pollution Control Agency have reestimated the projected growth from industrial sources. Current projections of industrial growth are less than the projections estimated in the approved maintenance plan. The maintenance plan and the projections in the maintenance plan were approved on May 5, 1995, in the **Federal Register** (60 FR 22289). These projections allowed for substantial growth in industrial sources. The growth in industrial sources was offset by reductions from the mobile source sector through implementation of the inspection and maintenance program and cleaner automobiles. If source growth or population growth were to increase as initially projected, the OEPA would need to offset the emissions by implementing a reduction strategy to keep the maintenance plan emissions at the air quality attainment level.

How Did the State Support This Request?

The State provided updated emissions projections and budget numbers to support their request. On June 1, 1999, Ohio formally submitted to USEPA a SIP revision request for the Dayton/Springfield ozone maintenance area. A public hearing on this proposal was held on June 3, 1999. No one from the public commented on the proposed revisions.

In the submittal, Ohio requested to allocate 5.5 tons per day to establish a new 2005 mobile source emissions budgets for VOC for the Dayton, Ohio, ozone maintenance area. The State recalculated the stationary source growth between the years 1990 and 2005 (the last year of the maintenance plan). Stationary sources in 1990 were estimated to contribute 37.4 tons per day of VOC. In 2005 stationary sources were allowed to grow up to 98.0 (this is the corrected number) tons per day of VOC. This is a significant increase in industrial emissions over a 15 year time frame. Growth of stationary source emissions was not as large as earlier anticipated. Based on the revised projections, stationary source growth will be reduced to 92.5 tons per day which is still a significant potential increase. The State requested that 5.5 tons per day of VOC be allocated to the mobile source sector for the conformity budget. The mobile source budgets are used for transportation conformity purposes.

What Is Transportation Conformity?

Transportation conformity means that the level of emissions from the transportation sector (cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the air quality standards. The Clean Air Act, in section 176(c), requires conformity of transportation plans, programs and projects to an implementation plan's purpose of attaining and maintaining the National Ambient Air Quality Standards. On November 24, 1993, USEPA published a final rule establishing criteria and procedures for determining if transportation plans, programs and projects funded or approved under Title 23 U.S.C. or the Federal Transit Act conform to the SIP.

The transportation conformity rules require an ozone maintenance area, such as Dayton/Springfield, to compare the actual projected emissions from cars, trucks and buses on the highway network, to the mobile source emissions budget established by the maintenance plan. The Dayton/Springfield area has an approved maintenance plan. Our approval of the maintenance plan on May 5, 1995, established the mobile source emissions budgets for transportation conformity purposes. The transportation conformity budget was changed on August 25, 1997, when USEPA approved a revision to the maintenance plan which allocated the 2.4 tons per day VOC safety margin to the mobile source budget. At that time, the mobile source budget changed from 31.7 tons per day of VOC to 34.1 tons per day of VOC.

What Is an Emissions Budget?

An emissions budget is the projected level of controlled emissions from the transportation sector (mobile sources) that is estimated in the SIP. The SIP controls emissions through regulations, for example, on fuels and exhaust levels for cars. The emissions budget concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the mobile source emissions budget in the SIP and how to revise the emissions budget. The transportation conformity rule allows the mobile source emissions budget to be changed as long as the total level of emissions from all sources remains below the attainment level.

What Is a Safety Margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. For example: the Dayton/Springfield area attained the

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one hour ozone standard during the 1989–1991 time period. The State uses 1990 as the attainment level of emissions for the area. The emissions from point, area and mobile sources in 1990 equaled 131.1 tons per day of VOC. The Ohio Environmental Protection Agency projected emissions out to the year 2005 and projected a total of 131.1 tons per day of VOC. The safety margin is calculated to be the difference between these amounts or, in this case, 0 tons per day of VOC. Table 1 gives detailed information on the estimated emissions from each source category and the safety margin calculation.

The 2005 emission projections reflect the point, area and mobile source changes and reductions and are illustrated in Table 1. Please note that these numbers reflect the corrected typographical error to the point and area source 2005 numbers.

TABLE 1.—NO_X AND VOC EMISSIONS BUDGET; AND SAFETY MARGIN DETERMINATIONS, STARK COUNTY

[Tons/day]

Source category	1990	2005
VOC Emissions:		
Point	37.4	98.0
Mobile (on-road)	103.6	34.1
Biogenic	105.2	105.2
Area	54.9	63.8
Totals	301.1	301.1

Safety Margin = 1990 total emissions – 2005 total emissions = 0 tons/day VOC

The emissions are projected to maintain the area's air quality consistent with the air quality health standard. The safety margin credit can be allocated to the transportation sector. The total emission level, must stay below the attainment level or safety level and to be acceptable. The safety margin is the extra safety [points] that can be allocated as long as the total level is maintained.

How Does This Action Change the Dayton/Springfield Maintenance Plan?

It raises the budget for mobile sources and lowers the amount of expected growth in industrial source (point source) emissions. The maintenance plan is designed to provide for future growth while still maintaining the ozone air quality standard. Growth in industries, population, and traffic is offset with reductions from cleaner cars and other emission reduction programs. Through the maintenance plan the State and local agencies can manage and maintain air quality while providing for growth.

In the submittal, Ohio requested to change the projected growth of stationary source emissions and to use the difference to add 5.5 tons per day of VOC to the mobile source emissions budget. The SIP revision requests the allocation of 5.5 tons/day VOC, into the area's mobile source emissions budget. The 2005 mobile source emissions budget showing the maintenance plan changes to stationary and area sources are in Table 2. The mobile source emissions budget in Table 2 will be used for transportation conformity purposes.

Table 2 below illustrates that the requested changes can be made to the 2005 mobile source budget and that total emissions will still remain at the 1990 attainment level of total emissions for the Dayton/Springfield maintenance area. Since the area would still be at or below the 1990 attainment level for the total emissions, this allocation is allowed by the conformity rule.

TABLE 2.—MAINTENANCE PLAN CHANGES TO THE 2005 EMISSIONS BUDGET, DAYTON/SPRINGFIELD

[Tons/day]

Source category	1990	2005
VOC Emissions:		
Point	37.4	92.5
Mobile (on-road)	103.6	39.6
Biogenic	105.2	105.2
Area	54.9	63.8
Totals	301.1	301.1

Remaining Safety Margin = 1990 total emissions – 2005 total emissions = 0 tons/day VOC

Why is the Request Approvable?

After review of the SIP revision request, USEPA finds that the requested change in the maintenance plan for the Dayton/Springfield area is approvable. The revised growth estimates for stationary sources are reasonable because the past data between 1990 and 1998 indicate a slower growth rate than in the original maintenance plan. The 5.5 tons per day allocated to mobile sources still allows sufficient growth margin for the stationary sources and maintains the total emissions for the area at the attainment year inventory level as required by the transportation conformity regulations.

USEPA Action

USEPA is approving the requested change to the growth estimates in the maintenance plan and the change to the mobile source budget for the Dayton/Springfield ozone maintenance area.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by August 11, 1999. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 26, 1999.

Administrative Requirements

Administrative Requirements are organized as follows:

A. Executive Order 12866
B. Executive Order 12875
C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller
H. Paperwork Reduction Act
I. Executive Order 12898: Environmental Justice
J. National Technology Transfer and Advancement Act
K. Petitions for Judicial Review

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, USEPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, USEPA must provide to the Office of Management and Budget a description of the extent of USEPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires USEPA to develop an effective process permitting elected officials and other representatives of

state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that USEPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. USEPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to E.O. 13045 because it approves a state rule implementing a previously promulgated health or safety-based Federal standard, and preserves the existing level of pollution control for the affected areas.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, USEPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, USEPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of USEPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires USEPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State, or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Paperwork Reduction Act

This action does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. Executive Order 12898: Environmental Justice

Under E.O. 12898 each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's action (revising the emissions budgets in Ohio's maintenance plan for Stark County) does not adversely affect minorities and low-income populations because the new, more stringent 8-hour ozone standard is in effect and provides increased protection to the public, especially children and other at-risk populations.

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J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, USEPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

USEPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Nitrogen oxides, Transportation conformity.

Dated: June 29, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

2. Section 52.1885 is amended by adding paragraph (a)(12) to read as follows:

§ 52.1885 Control Strategy: Ozone

(a) * * *

(12) Approval—On June 1, 1999, Ohio submitted a revision to the ozone maintenance plan for the Dayton/Springfield area. The revision consists of revising the point source growth estimates and allocating 5.5 tons per day of VOCs to the transportation conformity mobile source emissions budget. The mobile source VOC budget for transportation conformity purposes for the Dayton/Springfield area is now: 39.6 tons per day of volatile organic compound emissions for the year 2005. The approval also corrects a typographical error in the maintenance plan point and area source numbers for 2005.

[FR Doc. 99–17491 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192–0160 FRL–6376–4]

Withdrawal of Direct Final Rule for Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule for the approval of revisions to the California State Implementation Plan. EPA published the direct final rule on May 13, 1999 (64 FR 25822), approving revisions to rules from the following air pollution control districts: Mojave Desert Air Quality Management District (SCAQMD) and Tehama County Air Pollution Control District (TCAPCD). As stated in that **Federal Register** document, if adverse or critical comments were received by June 14, 1999, the rule would not take effect and notice of withdrawal would be published in the **Federal Register**. EPA subsequently received adverse comments on that direct final rule. EPA will address the comments received in a subsequent final action in the near future. EPA will not institute a second comment period on this action.

DATES: The direct final rule published at (64 FR 25822) is withdrawn as of July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the May 13, 1999 **Federal Register**, and in the proposed rule located in the proposed rule section of the May 13, 1999 (64 FR 25854) **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Particulate Matter.

Dated: June 29, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by removing paragraphs (b)(3)(ii) and (c)(6)(xv)(B).

[FR Doc. 99–17634 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN–217–1–9920a; FRL–6373–9]

Implementation Plan and Redesignation Request for the Williamson County, Tennessee Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is simultaneously approving the lead state implementation plan (SIP) and redesignation request for the Williamson County, Tennessee, lead nonattainment area. Both plans, dated May 12, 1999, were submitted by the State of Tennessee for the purpose of demonstrating that the Williamson County area has attained the lead national ambient air quality standard (NAAQS).

DATES: This direct final rule is effective September 10, 1999 without further notice, unless EPA receives adverse comment by August 11, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by the Tennessee Department of Environment and Conservation (TDEC) may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104

Tennessee Air Pollution Control Board, 9th Floor, L&C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9038.

SUPPLEMENTARY INFORMATION:

I. Background—Lead SIP

Section 107(d)(5) of the Clean Air Act as amended in 1990 (CAA) provides for areas to be designated as attainment, nonattainment, or unclassifiable with respect to the lead NAAQS. Governors are required to submit recommended designations for areas within their states. When an area is designated nonattainment, the state must prepare and submit a SIP pursuant to sections 110(a)(2) and 172(c) of the CAA demonstrating how the area will be brought into attainment.

On January 6, 1992, EPA designated the portion of Williamson County around the General Smelting and Refining, (GSR) Inc. (now Metalico-College Grove, Inc.) lead smelter as a nonattainment area for lead. This nonattainment designation was based on lead NAAQS violations recorded by monitors located near the GSR facility during the fourth quarter of 1990 and the second quarter of 1991.

On July 2, 1993, the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) submitted a SIP for attaining the lead NAAQS in the Williamson County lead nonattainment area. EPA found the SIP to be inadequate because it did not meet all of the requirements of section 172(c) of the CAA and requested that TDEC make the necessary corrections and submit supplemental information to address the deficiencies.

On June 23, 1995, EPA promulgated the national emission standards for hazardous air pollutants (NESHAP) for secondary lead smelters. Because the existing GSR facility could not meet the new NESHAP requirements without extensive modifications, the company elected to build an entirely new lead smelter designed to meet the new NESHAP regulations. Subsequently, on January 16, 1997, TDEC issued a construction permit to GSR, Inc.

In late 1997, the facility was sold and renamed Metalico-College Grove, (MCG) Inc. The new owner proposed changes to the facility's design and submitted a new permit application to TDEC on July 13, 1998, reflecting those changes. At that point, TDEC had begun developing a new lead SIP and redesignation request based on the GSR, Inc. facility. TDEC elected to submit a lead SIP and redesignation request dated September 11, 1998, based on the GSR facility, while acknowledging that a new lead SIP would be necessary to accommodate the new MCG, Inc. smelter, as reflected by the July 13, 1998, permit application.

On December 22, 1998, the old facility was completely shutdown, and the new smelter began operation. As a result, TDEC developed a new lead SIP and redesignation request dated May 12, 1999, based on the new MCG, Inc. lead smelter. Further, TDEC withdrew both the 1993 and 1998 lead SIPs and replaced them with the new lead SIP submittal and redesignation request.

II. Analysis of the State Submittal

The 1999 SIP revision was reviewed using the criteria established by the CAA in section 110(a)(2). Section 172(c) of the CAA specifies the provisions applicable to areas designated as nonattainment for any of the NAAQS. EPA has also issued a General Preamble describing how EPA will review SIPs and SIP revisions submitted under Title I of the CAA, including those state submittals containing lead nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's approval and the supporting rationale (57 FR 13549, April 16, 1992).

A. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Williamson County area was effective on January 6, 1992; therefore, the latest attainment date permissible by statute would be January 6, 1997. The Williamson County area has air quality data showing attainment of the lead NAAQS for the years 1996 through 1998 and to date for 1999.

To demonstrate that the area will continue to be in attainment with the lead NAAQS, emission limits were set through the application of reasonable achievable control technologies (RACT) and workplace standards at the MCG facility. The emission limits were evaluated using air dispersion modeling. This modeling predicts the impact of emissions on the environment surrounding the facility and whether or not the area will attain the lead NAAQS. The modeling demonstration submitted by TDEC for the MCG facility shows a predicted maximum quarterly ambient air lead concentration of 0.218 micrograms per cubic meter ($\mu g/m^3$) which is well below the NAAQS for lead of 1.5 $\mu g/m^3$.

B. Emissions Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because it is necessary to support an area's attainment demonstration, the emission inventory must be included with the SIP submission.

TDEC submitted an emissions inventory for the base year 1998. The inventory identifies the secondary lead smelter owned and operated by MCG as the sole major source of lead emissions in the Williamson County area when violations were recorded. The EPA is approving the emissions inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of the CAA.

C. Reasonably Available Control Measures (RACM) (Including Reasonably Available Control Technology (RACT))

States with lead nonattainment areas must submit provisions to assure that RACM (including RACT) are

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implemented (see section 172(c)(1)). All smelting processes at the MCG facility are enclosed in a single concrete and steel building, and the building is kept under negative pressure. Baghouses at the facility control emissions from the blast and reverberatory furnaces and associated process equipment. Other than the flues for the indirect fired refining kettles, which contain natural gas combustion products and no lead emissions, the exhausts of the two baghouses and the wet scrubber are the only emission points for the smelter. All of the control measures employed at the MCG facility were evaluated for reasonableness and technological and economical feasibility. EPA has determined that requirements for RACM (including RACT) have been met.

D. Other Measures Including Emission Limitations, and Timetables

Pursuant to 172(c)(6) of the CAA, all nonattainment SIPs must contain enforceable emission limitations, other control measures, and schedules and timetables for compliance.

The emission limits for the MCG facility were submitted as a part of the lead SIP and used in the modeling study. The facility-wide emissions of lead for MCG are limited to 0.863 pounds per hour (lbs/hr). Any relaxation of the emission limits which results in a computer modeling prediction of a maximum quarterly lead concentration off the MCG plant property exceeding 0.218 $\mu g/m^3$ will require a revision of this lead SIP.

The CAA also requires that nonattainment SIPs include other measures and schedules and timetables for compliance that may be needed to ensure the attainment of the relevant NAAQS by the applicable attainment date. Because the Williamson County area has been attaining the lead NAAQS since 1996, it is not necessary to require other control measures or a schedule and timetable for compliance with the NAAQS.

E. Computer Modeling

Section 110(a)(2)(K) of the CAA requires the use of air quality modeling to predict the effect on ambient air quality from any emissions of an air pollutant for which a NAAQS has been established. Therefore, TDEC was required to submit a modeling demonstration with the lead SIP. TDEC used the current long-term ISCLT3 and CTSCREEN models. The 1998 modeling results reveal that the maximum quarterly lead concentration was 0.218 $\mu g/m^3$ which is well below the 1.5 $\mu g/m^3$ lead NAAQS. Furthermore, it is predicted that the maximum quarterly lead concentration in the year 2011 shall be either at or below the 1998 value.

F. Reasonable Further Progress (RFP)

The SIP must provide for RFP, defined in section 171(1) of the CAA as such reductions in emissions of the relevant air pollutant as are required by section 172(c)(2), or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The EPA reviewed the attainment demonstration for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure continued attainment of the lead NAAQS. The EPA found that at the emission rate established through RACT limits and control measures utilized at the old GSR facility has provided continuous attainment of the lead NAAQS since 1996. The emission rate, RACT limits and controls implemented at the new MCG facility are more stringent than those at the old GSR facility and constitute adequate reasonable further progress for the Williamson County area. Furthermore, the air quality monitoring data indicate no exceedances of the lead NAAQS since 1996 and the modeling study predicts no future exceedances. Therefore, no additional incremental reductions in emissions are needed.

G. New Source Review (NSR)

Section 172(c)(5) of the CAA requires that the submittal include a permit program for the construction and operation of new and modified major stationary sources. The federally approved Rule 1200–3–9 of the Tennessee Air Pollution Control Regulations identifies the current specific permitting requirements for nonattainment areas in the State of Tennessee. Rule 1200–3–9—Prevention of Significant Deterioration of Air Quality will replace this rule once the Williamson County lead nonattainment area is redesignated to attainment. An analysis of the redesignation request is discussed later in this document. This rule meets the requirements of the CAA.

H. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

If a violation of the Lead NAAQS occurs in the Williamson County area, TDEC will proceed within 60 days to take appropriate enforcement action for that violation, and, if necessary incorporate a schedule of corrective action into any order issued as a result of that enforcement action. EPA has determined this requirement in the Tennessee SIP to meet the contingency measure provisions of the CAA.

The EPA is approving the lead SIP for Williamson County, Tennessee because it meets the requirements set forth in section 110(a)(2) and 172(c) of the CAA.

III. Background and Analysis of the Redesignation Request

In 1995, TDEC submitted a proposal package requesting that the Williamson County area to be redesignated attainment for the lead NAAQS. Subsequent violations of the lead NAAQS recorded the entire calendar year of 1995 prevented TDEC from submitting a final redesignation request. After the area had sufficient air quality monitoring data, on September 11, 1998, TDEC submitted a lead SIP and redesignation request that has been withdrawn and replaced with a new request dated May 13, 1999.

Pursuant to section 107(d)(3)(E) of the CAA, five requirements must be met before a nonattainment area can be redesignated to attainment. The following describes how each of the five requirements has been achieved.

A. Attainment of the Lead NAAQS

The EPA requires eight consecutive quarters or two calendar years of air quality monitoring data showing attainment to justify a redesignation to attainment for the lead NAAQS. To demonstrate that the Williamson County area is in attainment with the NAAQS for lead, TDEC included air quality data for the years 1996–1998 in the submittal. The data has been quality assured, and can be found in EPA's Aerometric Information Retrieval System. This monitoring data which covers over 12 consecutive quarters without an exceedance, is adequate to demonstrate attainment of the lead NAAQS. TDEC will continue to monitor the air quality of the Williamson County area to verify continued maintenance of the lead NAAQS.

A modeling demonstration is also required to redesignate a lead nonattainment area to attainment. The EPA believes that the modeling analysis included in the 1999 lead SIP also being approved in this document satisfies this requirement. As stated previously in this notice, the results of the modeling analysis indicate that the lead NAAQS will continue to be maintained.

B. Section 110(k) SIP Approval

The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area. Approval actions on SIP elements and the redesignation request may occur simultaneously as in the case of this lead SIP and redesignation request. The SIP elements for the lead SIP were discussed previously in the "Analysis of the State Submittal" section of this document. The EPA has determined that the approval of the lead SIP for the Williamson County area meets the requirements of section 110(k).

C. Permanent and Enforceable Improvement in Air Quality

A state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. The MCG facility provides more stringent emission limits and lower emission rates compared to those at the old GSR facility which provide enforceable and permanent emission reductions needed to attain and maintain the lead NAAQS. This is evidenced by the area having more than 12 consecutive quarters of clean air quality data. Furthermore, the modeling study shows that the area will remain in attainment through the year 2011. Subsequently, EPA has determined that there is a permanent and enforceable improvement in the air quality in Williamson County.

D. Compliance With Section 110(a)(2) and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110(a)(2) and part D of the CAA. The EPA has determined that the lead SIP for the Williamson County lead nonattainment area meets the requirements of section 110(a)(2) and part D of the CAA and is approving the submittal in this document. A detailed explanation of the requirements can be found in the "Analysis of the State Submittal" section of this document.

E. Maintenance Plan

Section 175(A) of the CAA requires states that submit a redesignation request to include a maintenance plan to ensure that the attainment of NAAQS for the relevant pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. To provide for the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures necessary to assure that a state will promptly correct any violation of the standard that occurs after redesignation. The contingency provisions must include a requirement that a state will implement all measures for controlling the air pollutant concerned that were contained in the SIP prior to redesignation.

TDEC demonstrated that the lead SIP also being approved in this action is adequate to maintain compliance with the lead NAAQS for at least ten years. The EPA agrees that the lead SIP satisfies the requirements of section 175(A) of the CAA to show maintenance of the lead NAAQS. The control measures and lead emission limits included in the SIP have been implemented at the MCG facility to ensure the continued attainment of the lead NAAQS. The modeling demonstration supporting the lead SIP shows maintenance of the lead standard through 2011, meeting the requirement to show maintenance for ten years. The lead SIP also includes contingency measures that will take effect if a violation of the lead NAAQS occurs. Since these measures were not implemented to attain the lead NAAQS, they can be used as contingency measure for maintenance.

IV. Final Action

EPA is approving the lead SIP and redesignation of the Williamson County lead nonattainment area to attainment because the submittal meets the requirements of the CAA as discussed in this document. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 10, 1999 without further notice unless the Agency receives adverse comments by August 11, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 10, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

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and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relation, Lead, Reporting and record keeping requirements.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 17, 1999.

Winston A. Smith,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2220(d) is amended by adding at the end of the table a new entry for the Metalico College Grove, Inc. facility to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(d) EPA-approved State Source specific requirements.

EPA-APPROVED TENNESSEE SOURCE—SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
. . .	.	.	. . .	. . .
Metalico College Grove, Inc	N/A	05/12/99	July 12, 1999.	

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. In § 81.343, the attainment status table for lead is amended by revising the Designated Area, Designation Date and type entry for Williamson County (part) to read as follows:

§ 81.343 Tennesse.

TENNESSEE—LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
. . .	.	.	.	.
Williamson County (part): Area encompassed by a circle centered on Universal Transverse Mercator coordinate 530.38 E, 3961.60 N (Zone 16) with a radius of 1.5 kilometers.	September 10, 1999.	Attainment.		
. . .	.	.	.	.

[FR Doc. 99–17338 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2522, 2525, 2526, 2527, 2528, and 2529

RIN 3045–AA09

AmeriCorps Education Awards

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation adopts interim rules published on June 15, 1994, regarding AmeriCorps education awards as final rules. The Corporation is also issuing final rules amending several provisions relating to the AmeriCorps education award, including those governing a participant's eligibility and the ways in which a participant may use the award. These changes will promote efficiency and consistency in providing education awards to AmeriCorps participants.

DATES: The final rules are effective August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799.

SUPPLEMENTARY INFORMATION:

Background

Through this document, the Corporation adopts as final, with changes, rules regarding AmeriCorps education awards. On March 23, 1994 (59 FR 13772), the Corporation published final rules covering its grant programs, including general provisions regarding the provision of a partial education award for participants who are released because of compelling personal circumstances before completing their terms of service. On June 15, 1994 (59 FR 30709), the Corporation published interim final rules for the National Service Trust governing the AmeriCorps education award and related interest benefits. The Corporation did not receive any comments from the public concerning the interim rules. The Corporation published a proposed rule on April 9, 1999 (64 FR 17302), designed to clarify the rules applicable to the determination of compelling personal circumstances as well as several National Service Trust rules concerning the education award.

Discussion of the Final Rule

The proposed rule gave the public sixty days to submit comments. The Corporation received comments from two persons.

Welfare to Work Transition as Compelling Personal Circumstances

One commenter expressed concern that allowing programs to approve a pro-rated education award for welfare recipients who enroll as AmeriCorps members and thereafter leave their term of service as part of a transition from welfare (e.g., to accept permanent employment) would undermine both an ethic of work and an ethic of service and might cause morale problems among other members who are not welfare recipients. The Corporation has concluded that, on balance, the overriding public policy objective of fostering self-sufficiency among welfare recipients outweighs these concerns.

Transfers by Members From One Program To Another

One commenter urged the Corporation to include in its rules guidance on transfers by members between programs. The commenter believes that this is necessary to ensure consistent policies and procedures in this area. The Corporation believes that these policies and procedures do not rise to the level of a regulation and may be addressed through avenues other than a rule.

Release for Cause

One commenter stated that the Corporation had proposed a definition of "for cause" that is too broad. The commenter also objected to the removal

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of a requirement that programs explicitly state in advance the circumstances under which members may be released for cause. The Corporation believes that definition of "for cause" is consistent with the statutory framework. Section 139(c) of the National and Community Service Act (42 U.S.C. 12593(c)) recognizes only two types of releases from completing a term of service: (1) For compelling personal circumstances; and (2) for cause. The rules spell out in detail the types of situations that constitute compelling personal circumstances and provide that a release for cause "encompasses any circumstances other than compelling personal circumstances that warrant an individual's release from completing a term of service." This does not provide programs unlimited discretion to release a member for cause for *any* reason other than compelling personal circumstances or convert members into an "at will" status. The rule requires that the reason be sufficient to "warrant an individual's release from completing a term of service." If a member objects to such a determination, the member may pursue a grievance through the process available under the Act to all members.

Benefits for Reinstated Members

One commenter objected to the elimination of a requirement that all members who are reinstated as part of a grievance be credited with missed service hours and be paid the full amount of living allowance withheld during the grievance process. Because there may be instances in which it may not be equitable or appropriate to require a program to provide a reinstated member with credit for missed service hours and the amount of withheld living allowance, the Corporation believes that the statutory grievance process is a better mechanism to resolve these issues on an case-by-case basis.

Explanation of Change Regarding Fair and Equitable Refund Policy Requirement

In several sections regarding the requirement that educational institution receiving disbursements from the National Service Trust first provide verification that they have in effect a fair and equitable refund policy consistent with section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b), the Corporation has added a reference to the relevant U.S. Department of Education regulations. This reference is informational and is intended to improve clarity.

Implementation

These rules will apply to any member who enrolls in a position approved by the Corporation beginning the 1999–2000 program year.

Regulatory Matters

Executive Order 12866

Because this regulatory action makes only minor amendments to existing rules and will involve only small adjustments in operating national service programs, the Corporation has determined that it is not a "significant" rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

In addition, the Corporation has concluded that the benefits of this regulatory action (greater consistency, predictability, and equity) outweigh the relatively small costs of implementing the changes.

Regulatory Flexibility Act

Because this regulatory action makes only minor amendments to existing rules and will involve only small adjustments in operating national service programs, the Corporation certifies that it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the regulatory flexibility analyses that are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the rules do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). If the Corporation proposes to modify any of the forms used in connection with determining eligibility of individuals for payments from the National Service Trust, the Corporation will comply with clearance procedures as provided under the Paperwork Reduction Act.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

This regulatory action does not establish requirements that will adversely affect the Year 2000 readiness of national service programs.

List of Subjects

45 CFR Part 2522

AmeriCorps, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2526

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2527

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2529

Grant programs—social programs, Student aid, Volunteers.

Accordingly, the Corporation for National and Community Service adopts as final its interim rule adding 45 CFR parts 2525, 2526, 2527, 2528, and 2529, published in the **Federal Register** at 59 FR 30709, June 15, 1994, and amends 45 CFR chapter XXV as follows:

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2522.200 is revised to read as follows:

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

(a) *Eligibility.* An AmeriCorps participant must—

(1)(i) Be at least 17 years of age at the commencement of service; or

(ii) Be an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or (g);

(2)(i) Have a high school diploma or its equivalent; or

(ii) Not have dropped out of elementary or secondary school to enroll as an AmeriCorps participant and must agree to obtain a high school diploma or its equivalent prior to using the education award; or

(iii) Obtain a waiver from the Corporation of the requirements in paragraphs (a)(2)(i) and (a)(2)(ii) of this section based on an independent evaluation secured by the program demonstrating that the individual is not capable of obtaining a high school diploma or its equivalent; or

(iv) Be enrolled in an institution of higher education on an ability to benefit basis and be considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091);

(3) Be a citizen, national, or lawful permanent resident alien of the United States.

(b) *Primary documentation of status as a U.S. citizen or national.* The following are acceptable forms of certifying status as a U.S. citizen or national:

(1) A birth certificate showing that the individual was born in one of the 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands;

(2) A United States passport;

(3) A report of birth abroad of a U.S. Citizen (FS–240) issued by the State Department;

(4) A certificate of birth-foreign service (FS 545) issued by the State Department;

(5) A certification of report of birth (DS–1350) issued by the State Department;

(6) A certificate of naturalization (Form N–550 or N–570) issued by the Immigration and Naturalization Service; or

(7) A certificate of citizenship (Form N–560 or N–561) issued by the Immigration and Naturalization Service.

(c) *Primary documentation of status as a lawful permanent resident alien of the United States.* The following are acceptable forms of certifying status as a lawful permanent resident alien of the United States:

(1) Permanent Resident Card, INS Form I–551;

(2) Alien Registration Receipt Card, INS Form I–551;

(3) A passport indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence; or

(4) A Departure Record (INS Form I–94) indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence.

(d) *Secondary documentation.* If primary documentation is not available, the program must obtain written approval from the Corporation that other documentation is sufficient to demonstrate the individual's status as a U.S. citizen, U.S. national, or lawful permanent resident alien.

3. Section 2522.230 is revised to read as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances as demonstrated by the participant, or for cause.

(a) *Release for compelling personal circumstances.* (1) An AmeriCorps program may release a participant upon a determination by the program, consistent with the criteria listed in paragraphs (a)(5) through (a)(6) of this section, that the participant is unable to complete the term of service because of compelling personal circumstances.

(2) A participant who is released for compelling personal circumstances and who completes at least 15 percent of the required term of service is eligible for a pro-rated education award.

(3) The participant has the primary responsibility for demonstrating that compelling personal circumstances prevent the participant from completing the term of service.

(4) The program must document the basis for any determination that compelling personal circumstances prevent a participant from completing a term of service.

(5) Compelling personal circumstances include:

(i) Those that are beyond the participant's control, such as, but not limited to:

(A) A participant's disability or serious illness;

(B) Disability, serious illness, or death of a participant's family member if this makes completing a term unreasonably difficult or impossible; or

(C) Conditions attributable to the program or otherwise unforeseeable and beyond the participant's control, such as a natural disaster, a strike, relocation of a spouse, or the nonrenewal or premature closing of a project or program, that make completing a term unreasonably difficult or impossible;

(ii) Those that the Corporation, has for public policy reasons, determined as such, including:

(A) Military service obligations;

(B) Acceptance by a participant of an opportunity to make the transition from welfare to work; or

(C) Acceptance of an employment opportunity by a participant serving in a program that includes in its approved objectives the promotion of employment among its participants.

(6) Compelling personal circumstances do not include leaving a program:

(i) To enroll in school;

(ii) To obtain employment, other than in moving from welfare to work or in leaving a program that includes in its approved objectives the promotion of employment among its participants; or

(iii) Because of dissatisfaction with the program.

(7) As an alternative to releasing a participant, an AmeriCorps*State/National program may, after determining that compelling personal circumstances exist, suspend the participant's term of service for up to two years (or longer if approved by the Corporation based on extenuating circumstances) to allow the participant to complete service with the same or similar AmeriCorps program at a later time.

(b) *Release for cause.* (1) A release for cause encompasses any circumstances other than compelling personal circumstances that warrant an individual's release from completing a term of service.

(2) AmeriCorps programs must release for cause any participant who is convicted of a felony or the sale or distribution of a controlled substance during a term of service.

(3) A participant who is released for cause may not receive any portion of the AmeriCorps education award or any other payment from the National Service Trust.

(4) An individual who is released for cause must disclose that fact in any subsequent applications to participate in an AmeriCorps program. Failure to

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do so disqualifies the individual for an education award, regardless of whether the individual completes a term of service.

(5) An AmeriCorps*State/National participant released for cause may contest the program's decision by filing a grievance. Pending the resolution of a grievance procedure filed by an individual to contest a determination by a program to release the individual for cause, the individual's service is considered to be suspended. For this type of grievance, a program may not—while the grievance is pending or as part of its resolution—provide a participant with federally-funded benefits (including payments from the National Service Trust) beyond those attributable to service actually performed, without the program receiving written approval from the Corporation.

(c) *Suspended service.* (1) A program must suspend the service of an individual who faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance.

(2) A program must suspend the service of an individual who is convicted of possession of a controlled substance.

(3) An individual may not receive a living allowance or other benefits, and may not accrue service hours, during a period of suspension under this provision.

(d) *Reinstatement.* (1) A program may reinstate an individual whose service was suspended under paragraph (c)(1) of this section if the individual is found not guilty or if the charge is dismissed.

(2) A program may reinstate an individual whose service was suspended under paragraph (c)(2) of this section only if the individual demonstrates the following:

(i) For an individual who has been convicted of a first offense of the possession of a controlled substance, the individual must have enrolled in a drug rehabilitation program;

(ii) For an individual who has been convicted for more than one offense of the possession of a controlled substance, the individual must have successfully completed a drug rehabilitation program.

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2525.10 is revised to read as follows:

§ 2525.10 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which the Corporation makes payments of education awards, pays interest that accrues on qualified student loans for AmeriCorps participants during terms of service in approved national service positions, and makes other payments authorized by Congress.

3. Section 2525.20 is amended by revising the definitions for "Approved school-to-work program," "Education award," and "Qualified student loan" and by adding a definition for "Current educational expenses" in alphabetical order to read as follows:

§ 2525.20 Definitions.

* * * * *

Approved school-to-work program. The term *approved school-to-work program* means a program that is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 *et seq.*).

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance for a period of enrollment that begins after an individual receives an education award.

Education award. The term *education award* means the financial assistance available under parts 2526 and 2528 of this chapter for which an individual in an approved AmeriCorps position may be eligible.

* * * * *

Qualified student loan. The term *qualified student loan* means any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078–2), any loan made pursuant to title VII or VIII of the Public Service Health Act (42 U.S.C. 292a *et seq.*), or any other loan designated as such by Congress. This includes, but is not necessarily limited to, the following:

(1) *Federal Family Education Loans.* (i) Subsidized and Unsubsidized Stafford Loans.

(ii) Supplemental Loans to Students (SLS).

(iii) Federal Consolidation Loans.

(iv) Guaranteed Student Loans (predecessor to Stafford Loans).

(v) Federally Insured Student Loans (FISL).

(2) *William D. Ford Federal Direct Loans.* (i) Direct Subsidized and Unsubsidized Stafford Loans.

(ii) Direct Subsidized and Unsubsidized Ford Loans.

(iii) Direct Consolidation Loans.

(3) *Federal Perkins Loans.* (i) National Direct Student Loans.

(ii) National Defense Student Loans.

(4) *Public Health Service Act Loans.* (i) Health Education Assistance Loans (HEAL).

(ii) Health Professions Student Loans (HPSL).

(iii) Loans for Disadvantaged Students (LDS).

(iv) Nursing Student Loans (NSL).

(v) Primary Care Loans (PCL).

* * * * *

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

1. The heading for part 2526 is revised to read as set forth above.

1a. The authority citation for part 2526 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2526.10 is revised to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

(a) *General.* An individual is eligible to receive an education award from the National Service Trust if the individual—

(1) Is a citizen, national, or lawful permanent resident alien of the United States;

(2) Is either at least 17 years of age at the commencement of service or is an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or (g) of this chapter;

(3) Successfully completes a term of service in an approved national service position.

(b) *High school diploma or equivalent.* To use an education award, an individual must—

(1) Have received a high school diploma or its equivalent; or

(2) Be enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) and meet the requirements of subsection of section 484; or

(3) Have received a waiver described in § 2522.200(b) of this chapter.

(c) *Prohibition on duplicate benefits.* An individual who receives a post-service benefit in lieu of an education award may not receive an education award for the same term of service.

(d) *Penalties for false information.* Any individual who makes a materially false statement or representation in connection with the approval or disbursement of an education award or other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

3. Section 2526.20 is revised to read as follows:

§ 2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?

(a) *Compelling personal circumstances.* A participant who is released prior to completing an originally-approved term of service for compelling personal circumstances and who completes at least 15 percent of the originally-approved term of service is eligible for a pro-rated education award.

(b) *Release for cause.* A participant who is released prior to completing an originally-approved term of service for cause is not eligible for any portion of an education award.

§ 2526.30 [Removed]

§ 2526.60 [Redesignated as § 2526.30]

4. Section 2526.30 is removed and § 2526.60 is redesignated as § 2526.30.

§ 2526.40 [Removed]

§ 2526.70 [Redesignated as § 2526.40]

5. Section 2526.40 is removed and § 2526.70 is redesignated as § 2526.40.

§ 2526.40 [Amended]

6. Newly redesignated § 2526.40 is amended in paragraph (b)(2) by removing the words "under § 2526.40".

§ 2526.50 [Removed]

§ 2526.80 [Redesignated as § 2526.50]

7. Section 2526.50 is removed and § 2526.80 is redesignated as § 2526.50 and revised to read as follows:

§ 2526.50 Is there a limit on the number of education awards an individual may receive?

(a) *First and second terms of service.* An individual may receive an education award for only the first and second terms of service for which an education award is available, regardless of the length of the term.

(b) *Release for cause.* Except as provided in paragraph (c) of this section, a term of service from which an individual is released for cause counts as one of the two terms of service for which an individual may receive an education award.

(c) *Early release.* If a participant is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the two terms of service for which an individual may receive an education award.

§ 2526.90 [Redesignated as § 2526.60]

8. Section 2526.90 is redesignated as § 2526.60 and revised to read as follows:

§ 2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?

No. An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans.

§ 2526.100 [Removed]

9. Section 2526.100 is removed.

PART 2527—DETERMINING THE AMOUNT OF AN EDUCATION AWARD

1. The heading for part 2527 is revised to read as set forth above.

1a. The authority citation for part 2527 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2527.10 is revised to read as follows:

§ 2527.10 What is the amount of an AmeriCorps education award?

(a) *Full-time term of service.* The education award for a full-time term of service of at least 1,700 hours is $4,725.

(b) *Part-time term of service.* The education award for a part-time term of service of at least 900 hours is $2,362.50.

(c) *Reduced part-time term of service.* The education award for a reduced part-time term of service of fewer than 900 hours is—

(1) An amount equal to the product of—

(i) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(ii) 2,362.50; or

(2) An amount as determined otherwise by the Corporation.

(d) *Release for compelling personal circumstances.* The education award for an individual who is released from completing an originally-approved term of service for compelling personal circumstances is equal to the product of—

(1) The number of hours completed divided by the number of hours in the originally-approved term of service; and

(2) The amount of the education award for the originally-approved term of service.

1. Revise part 2528 to read as follows:

PART 2528—USING AN EDUCATION AWARD

Sec.

2528.10 For what purposes may an education award be used?
2528.20 What steps are necessary to use an education award to repay a qualified student loan?
2528.30 What steps are necessary to use an education award to pay all or part of the current cost of attendance at an institution of higher education?
2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?
2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?
2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?
2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

Authority: 42 U.S.C. 12601–12604.

§ 2528.10 For what purposes may an education award be used?

(a) *Authorized uses.* An education award may be used—

(1) To repay qualified student loans in accordance with § 2528.20;

(2) To pay all or part of the current cost of attendance at an institution of higher education in accordance with § 2528.30 through § 2528.50;

(3) To pay expenses incurred in participating in an approved school-to-work program in accordance with § 2528.60 through § 2528.70.

(b) *Multiple uses.* An education award is divisible and may be applied to any combination of loans, costs, or expenses described in paragraph (a) of this section.

§ 2528.20 What steps are necessary to use an education award to repay a qualified student loan?

(a) *Required information.* Before disbursing an amount from an education award to repay a qualified student loan, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Identifying and other information from the holder of the loan as requested by the Corporation and necessary to ensure compliance with this part.

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(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the holder of the loan and notify the individual of the payment.

(c) *Aggregate payments.* The Corporation may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current cost of attendance at an institution of higher education?

(a) *Required information.* Before disbursing an amount from an education award to pay all or part of the current cost of attendance at an institution of higher education, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the institution of higher education as requested by the Corporation, including verification that—

(i) It has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) Its eligibility to participate in any of the programs under title IV of the Higher Education Act of 1965 has not been limited, suspended, or terminated;

(iii) It has in effect a fair and equitable refund policy, consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b) and 34 CFR 668.22, and must ensure an appropriate refund to the Corporation if an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided;

(iv) Individuals using education awards to pay for the current cost of attendance at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance;

(vi) The amount requested does not exceed the difference between:

(A) The individual's cost of attendance; and

(B) The sum of the individual's estimated student financial assistance for that period under part A of title IV of the Higher Education Act and the individual's veterans' education benefits as defined in section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution and notify the individual of the payment.

(c) *Installment payments.* The Corporation will disburse the education award to the institution of higher education in at least two separate installments, none of which exceeds 50 percent of the total amount. The interval between installments may not be less than one-half of the period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or other division of a period of enrollment.

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

Yes. The Corporation's disbursement from an individual's education award for any period of enrollment may not exceed the difference between—

(a) The individual's cost of attendance for that period of enrollment, determined by the institution of higher education in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1987ll); and

(b) The sum of—

(1) The individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act; and

(2) The individual's veterans' education benefits as defined under section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) An institution of higher education that receives a disbursement of education award funds from the Corporation must have in effect, and must comply with, a fair and equitable refund policy that includes procedures for providing a refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment.

(2) For purposes of this part, an institution of higher education's refund policy is deemed "fair and equitable" if it is consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b) and 34 CFR 668.22.

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

§ 2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?

(a) *Required information.* Before disbursing an amount from an education award to pay expenses incurred in participating in an approved school-to-work program, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the school-to-work program as requested by the Corporation, including verification that—

(i) It is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101);

(ii) The amount requested will be used to pay all or part of the individual's cost of participating in the school-to-work program;

(iii) It will ensure an appropriate refund, consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b) and 34 CFR 668.22, to the Corporation if an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the program and notify the individual of the payment.

§ 2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) An approved school-to-work program that receives a disbursement of education award funds from the Corporation must provide a fair and equitable refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment.

(2) For purposes of this part, a refund is deemed "fair and equitable" if it is an amount consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b) and 34 CFR 668.22.

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

1. Revise part 2529 to read as follows:

PART 2529—PAYMENT OF ACCRUED INTEREST

Sec.

2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position?

2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which the individual has obtained forbearance?

Authority: 42 U.S.C. 12601–12604.

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position?

(a) *Eligibility.* The Corporation will pay interest that accrues on an individual's qualified student loan, subject to the limitation on amount in paragraph (b) of this section, if—

(1) The individual successfully completes a term of service in an approved AmeriCorps position; and

(2) The holder of the loan approves the individual's request for forbearance during the term of service.

(b) *Amount.* The percentage of accrued interest that the Corporation will pay is the lesser of—

(1) The product of—

(i) The number of hours of service completed divided by the number of days for which forbearance was granted; and

(ii) 365 divided by 17; and (2) 100.

(c) *Supplemental to education award.* A payment of accrued interest under this part is supplemental to an education award received by an individual under parts 2526 through 2528 of this chapter.

(d) *Limitation.* The Corporation is not responsible for the repayment of any accrued interest in excess of the amount determined in accordance with paragraph (b) of this section.

(e) *Suspended service.* The Corporation will not pay any interest expenses that accrue on an individual's qualified student loan during a period of suspended service.

§ 2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

(a) An individual seeking forbearance must submit a request to the holder of the loan.

(b) If, before approving a request for forbearance, the holder of the loan requires verification that the individual is serving in an approved AmeriCorps position, the Corporation will provide verification upon a request from the individual or the holder of the loan.

§ 2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which an individual has obtained forbearance?

(a) The Corporation will make payments from the National Service Trust for interest that has accrued on a qualified student loan during a term of service which the individual has successfully completed and for which an individual has obtained forbearance, after the following:

(1) The program verifies that the individual has successfully completed the term of service and the dates upon which the term of service began and ended;

(2) The holder of the loan verifies the amount of interest that has accrued during the term of service.

(b) When the Corporation receives all necessary information from the program and the holder of the loan, the Corporation will pay the holder of the loan and notify the individual of the payment.

Dated: June 28, 1999.

Wendy Zenker,

Chief Operating Officer.

[FR Doc. 99–17059 Filed 7–9–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket No. 98–42, FCC 99–135]

Regulations for RF Lighting Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules for radio frequency (RF) lighting devices. This action seeks to eliminate unnecessary regulations and to support the introduction of new and beneficial products while ensuring that radio communications services are protected from interference. Accordingly, we are relaxing the line-conducted emission limits below 30 MHz for new consumer RF lighting devices.

DATES: Effective October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Anthony Serafini, Office of Engineering and Technology, (202) 418–2456.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 98–76, FCC 99–58, adopted June 9, 1999, and released June 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (TW–A257), 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, 445 12th Street, S.W., Room CY–B400, Washington, D.C. 20554.

Summary of the Report and Order

1. The *Report and Order* amends Part 18 of the Commission's rules for radio frequency (RF) lighting devices. Recent developments and advances in RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current Commission rules, however, do not easily accommodate these technological advancements and thus hinder the further development and implementation of these new products. This action eliminates unnecessary regulations and supports the introduction of new and beneficial products while ensuring that radio communications services are protected from interference. Accordingly, we are relaxing the line-conducted emission limits below 30 MHz for new consumer RF lighting devices.

2. On April 1, 1998, the Commission adopted a *Notice of Proposed Rulemaking (Notice)* 63 FR 20363, April 24, 1998, that proposed rules to accommodate a new generation of RF lighting devices. These new devices offer potential benefits for both consumer and non-consumer users. General Electric (GE) developed a new Electrodeless Fluorescent Lamp (EFL) for typical low power consumer applications such as in-home lighting. The GE lamp is designed to operate in the 2.2–2.8 MHz band. GE claims that its new lamp is more efficient and longer-lasting than incandescent consumer bulbs, and is an improvement over existing low frequency RF lights known as Compact Fluorescent Lamps (CFL). Unlike current RF lighting lamps,

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EFLs are nearly identical in size and shape to incandescent bulbs. GE reports that a new 23-watt EFL will provide light similar to a 75-watt standard incandescent bulb and is expected to last two or three times longer than present lamps that use electrodes. GE estimates that, if 10% of consumer lamps were replaced with EFL technology, energy consumption in the United States would be reduced by nearly 1 billion kilowatt hours, saving consumers approximately $1.4 billion each year. The lamp cannot meet the current FCC line-conducted emission limits for consumer RF lighting devices without the addition of filters which would significantly increase costs and would impede market acceptance. In 1995 the Commission granted GE a waiver to begin marketing the lamp under relaxed line-conducted emissions limits in the 2.2–2.8 MHz band. In the *Notice*, the Commission proposed to codify the relaxed line-conducted emission limits.

3. The Commission proposed to relax the consumer line-conducted emission limits in Section 18.307(c) by 22 dB in the 2.2–2.8 MHz band, to the existing non-consumer limit of 3000 microvolts. This proposal was consistent with the waiver granted to GE. The 2.2–2.8 MHz band is allocated to several Government and Non-Government communications services, including aviation, international fixed public, maritime, private land mobile, Government fixed and mobile, and standard frequency and time transmissions. Operations on these frequencies include, among others, Civil Air Patrol, ship to shore communications, broadcast auxiliary, local government and police operations. GE had performed analyses showing that there would be little risk of interference to these services if the line-conducted emissions limits were relaxed. GE marketed several hundred thousand EFLs under the waiver, with no reported incidents of interference to communications services.

4. We believe that it is appropriate to relax the line conducted limits to facilitate the use of this new technology. GE has demonstrated through experience gained under its waiver that the proposed relaxation of the line conducted limits does not pose any significant risk of causing interference to radio communications services. We find no evidence in the record to support argument that the proposed relaxation of the line-conducted limit could increase spurious emissions due to interactions with other products. Further, we find no basis for the argument that the proposed relaxation could lead to increased harmonic emissions in other frequency bands because the Commission proposed no changes to the existing line-conducted and radiated emissions limits that apply to harmonic and spurious emissions outside the proposed frequency band.

5. We also believe that the frequency range for the rule relaxation should be changed to be consistent with international standards. We believe that harmonization with the frequency band used internationally will promote trade and reduce product costs. Accordingly, we are relaxing the consumer line-conducted emission limit in Section 18.307(c) by 22 dB to 3000 microvolts in the 2.51–3.0 MHz band, as proposed.

6. *Labelling.* The terms of the GE waiver required that an advisory label be placed on the product packaging warning of possible interference to maritime operations. In the *Notice*, we asked for comment on whether to continue to require this advisory label and whether a similar label should be required for all RF lighting devices. Commenters recommend requiring a label for RF lighting devices to warn users about potential interference to communication services.

7. We believe that an advisory label is appropriate to further ensure that RF lighting devices are not used in close proximity to critical navigation and communications equipment. Accordingly, we are requiring manufacturers of RF lighting devices to provide an advisory statement, either on the product packaging or with other user documentation, similar to the following: "This product may cause interference to radio communications and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz." Variations of this language are permitted provided all the points of the statement are addressed.

8. *Transient Emissions.* In the *Notice*, we invited comment as to whether any requirements may be necessary to address transient emissions that can occur when RF lighting devices are turned on and off. We find that requirements for transient emissions are unnecessary. The limited potential for added interference does not warrant additional regulations. Accordingly, we choose not to adopt any requirements for transient emissions.

9. *It is ordered* that Part 18 of the Commission's Rules and Regulations *is amended* as specified and will be effective October 13, 1999 in order to allow sufficient time for the Paperwork Reduction Act requirements due to the new labelling regulations. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA),[1] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rule Making ("Notice"). Written public comments were requested on the IRFA. The Final Regulatory Flexbility Analysis (FRFA) in this Report and Order conforms to the RFA.

Need for and Objective of the Rules

11. This rule making proceeding was initiated to obtain comment regarding proposals to change the regulations for RF lighting. Recent developments and advances in RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current Commission rules, however, do not easily accommodate these technological advancements and thus hinder the further development and implementation of these promising new products. This action seeks to relax the Part 18 regulations to accommodate new and beneficial products while ensuring that other important communications services continue to be protected from interference. This action will potentially benefit all entities using RF lighting technologies, including small entities.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

12. No commenting parties raised issues specifically in response to the IRFA.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

13. The RFA generally defines a "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."[2] In addition, the term "small business" is the same meaning as the term "small business concern" under the Small Business Act ("SBA"), 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[3] Under the SBA, a "small business concern" is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any individual criteria established by the Small Business Administration (SBA).[4]

14. The Commission has not developed a definition of small entities applicable to RF Lighting Devices. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts.[5] According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

15. Under Part 18 of the FCC rules, consumer ISM equipment must be approved under the FCC certification process and non-consumer equipment is subject to verification. No changes are being made to the testing and approval process requirements for RF lighting product.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The new rules adopted in this *Report and Order* are intended to support the further development and implementation of new RF lighting products. These actions will benefit all RF lighting manufacturers, including small entities.

17. U.S. manufacturers have developed new RF lighting technologies that offer potential economic and environmental benefits to consumers and industry. General Electric (GE) has developed an Electrodeless Fluorescent Lamp (EFL) that operates between 2.2–2.8 MHz. This is a more efficient, longer lasting consumer lamp that is an alternative to normal incandescent light bulbs. EFL lamps represent a new generation of technology beyond the existing low frequency RF lights known as Compact Fluorescent Lamps (CFL), which are limited in their applications due to their non-traditional design using curved tubing. EFL lamps are nearly identical in size and shape to incandescent bulbs and therefore, are expected to have greater consumer applications and acceptance over CFL lamps.

18. The existing RF lighting rules were adopted many years ago for products operating at relatively low frequencies and do not easily accommodate new state-of-the-art RF lighting technologies. We are modifying our rules to accommodate these new technologies to the extent possible while still ensuring that communications services are protected from harmful interference.

Report to Congress

19. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**, see 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 18

Business and industry, Household appliances, Radio, Report and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, Part 18 of the Code of Federal Regulations, is amended as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for Part 18 continues to read as follows:

Authority: 47 U.S.C. Sec. 4, 301, 302, 303, 304 and 307.

2. Section 18.213, paragraph (d) is added to read as follows:

§ 18.213 Information to the user.

* * * * *

(d) Manufacturers of RF lighting devices must provide an advisory statement, either on the product packaging or with other user documentation, similar to the following: This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz. Variations of this language are permitted provided all the points of the statement are addressed and may be presented in any legible font or text style.

3. Section 18.307(c) is revised to read as follows:

§ 18.307 Conduction Limits.

* * * * *

(c) RF lighting devices:

Frequency (MHz)	Maximum RF line voltage measured with a 50 uH/50 ohm LISN (uV)
Non-consumer equipment:	
0.45 to 1.6	1,000
1.6 to 30	3,000
Consumer equipment:	
0.45 to 2.51	250
2.51 to 3.0	3,000
3.0 to 30	250

* * * * *

[FR Doc. 99–17516 Filed 7–9–99; 8:45 am]

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[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 601(6).

[3] 5 U.S.C. 601(3) (incorporeting by reference the definition of "small business concern" in 5 U.S.C. 632).

[4] 15 U.S.C. 632.

[5] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF36

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). A total of approximately 296,240 hectares (731,712 acres) of riverine riparian and upland habitat are designated. Critical habitat is located in Pima, Cochise, Pinal, and Maricopa counties, Arizona. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. As required by section 4 of the Act, the Service considered economic and other relevant impacts

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prior to making a final decision on the size and configuration of critical habitat.

EFFECTIVE DATE: August 11, 1999.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640–2720 ext. 240; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (referred to as "pygmy-owl" in this final rule) is in the Order Strigiformes and the Family Strigidae. It is a small bird, approximately 17 centimeters (cm) (6¾ inches (in)) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. Some individuals are grayish brown, rather than reddish brown. The crown is lightly streaked, and paired black-and-white spots on the nape suggest eyes. This species lacks ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish brown with darker brown bars. The pygmy-owl is diurnal (active during daylight), and its call, heard primarily near dawn and dusk, is a monotonous series of short notes.

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of *Glaucidium brasilianum cactorum* is listed as an endangered species.

The pygmy-owl in Arizona occurs in a variety of scrub and woodland communities, including riverbottom woodlands, woody thickets ("bosques"), Sonoran desertscrub, and semidesert grasslands. Unifying habitat characteristics among these communities are fairly dense woody thickets or woodlands, with trees and/or cacti large enough to provide nesting cavities. The pygmy-owl occurs at low elevations, generally below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914, Karalus and Eckert 1974, Monson and Phillips 1981, Johnsgard 1988, Enriquez-Rocha *et al.* 1993).

The pygmy-owl's primary habitats historically were in riparian cottonwood (*Populus fremontii*) forests, but the subspecies currently occurs primarily in Sonoran desertscrub associations and mesquite bosques consisting of palo verde (*Cercidium* spp.), bursage (*Ambrosia* spp.), ironwood (*Olneya tesota*), mesquite (*Prosopis velutina*, and *P. glandulosa*), acacia (*Acacia* spp.), and giant cacti such as saguaro (*Carnegiea giganteus*) and organ pipe (*Stenocereus thurberi*) (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988). Primary prey include various reptiles, insects, birds, and small mammals (Proudfoot 1996).

Pygmy-owls are considered non-migratory throughout their range by most authors, and have been reported during the winter months in several locations, including Organ Pipe Cactus National Monument (R. Johnson, unpubl. data 1976, 1980, Tibbitts, pers. comm. 1997). Major Bendire collected pygmy-owls along Rillito Creek near Camp Lowell at present-day Tucson on January 24, 1872. The University of Arizona Bird Collection contains a female pygmy-owl collected on January 8, 1953 (University of Arizona 1995). Similarly, records exist from Sabino Canyon documenting pygmy-owls on December 3, 1941, and December 25, 1950 (U.S. Forest Service, unpubl. data). These winter records demonstrate that pygmy-owls are found within Arizona throughout the year, and do not appear to migrate southward to warmer climates during the winter months.

Previous Federal Action

We included *Glaucidium brasilianum cactorum* in our Animal Notice of Review as a category 2 candidate species throughout its range on January 6, 1989 (54 FR 554). Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. After soliciting and reviewing additional information, we elevated *G. b. cactorum* to category 1 status throughout its range in our November 21, 1991, Notice of Review (56 FR 58804). Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On May 26, 1992, a coalition of conservation organizations (Galvin *et al.* 1992) petitioned us to list the pygmy-owl as an endangered species under the Act. The petitioners also requested designation of critical habitat. In accordance with section 4(b)(3)(A) of the Act, on March 9, 1993, we published a finding that the petition presented substantial scientific or commercial information indicating that listing of the pygmy-owl may be warranted and commenced a status review of the subspecies (58 FR 13045). As a result of information collected and evaluated during the status review, including information collected during a public comment period, we published a proposed rule to list the pygmy-owl as endangered in Arizona and threatened in Texas on December 12, 1994 (59 FR 63975). We proposed designation of critical habitat in Arizona. After a review of all comments received in response to the proposed rule, we published a final rule on March 10, 1997 (62 FR 10730), listing the pygmy-owl as endangered in Arizona. We determined that listing in Texas was not warranted. We also determined that critical habitat designation for the Arizona population was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Secretary of the Department of the Interior (Secretary) for failure to designate critical habitat for the cactus ferruginous pygmy-owl and the plant, *Lilaeopsis schaffneriana var. recurva*, (Huachuca water umbel) (*Southwest Center for Biological Diversity* v. *Babbitt*, CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order stating: "There being no evidence that designation of critical habitat for the pygmy-owl and water umbel is not prudent, the Secretary shall, without further delay, decide whether or not to designate critical habitat for the pygmy-owl and water umbel based on the best scientific and commercial information available."

On November 25, 1998, in response to a motion by the Plaintiffs requesting clarification of the October 7, 1998, order, Judge Marquez further ordered "that within 30 days of the date of this Order, the Secretary shall issue the proposed rules for designating critical habitat for the pygmy-owl and water umbel * * * and that within 6 months of issuing the proposed rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel."

On December 30, 1998, we proposed 295,775 ha (730,565 ac) as critical habitat in Arizona for the pygmy-owl (63 FR 71820). On April 15, 1999, we released the draft economic analysis on proposed critical habitat and reopened the public comment period for 30 days (64 FR 18596).

The processing of the December 30, 1998, proposed rule and this final rule does not conform with our Listing Priority Guidance for Fiscal Year 1998 and 1999 published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. Our Southwest Region is currently working on Tier 2 actions; however, we are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

Habitat Characteristics

According to early surveys referenced in the literature, the pygmy-owl, prior to the mid-1900s, was "not uncommon," "of common occurrence," and a "fairly numerous" resident of lowland central and southern Arizona in cottonwood forests, mesquite-cottonwood woodlands, and mesquite bosques along the Gila, Salt, Verde, San Pedro, and Santa Cruz rivers and various tributaries (Breninger 1898 in Bent 1938, Gilman 1909, Swarth 1914). Bendire (1888) noted that he had taken "several" along Rillito Creek near Fort Lowell, in the vicinity of present-day Tucson, Arizona. Records indicate that pygmy-owls were initially more common in xeroriparian habitats (very dense thickets bordering dry desert washes) than in more open, desert uplands (Monson and Phillips 1981, Johnson and Haight 1985, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988, Davis and Russell 1990). The pygmy-owl was also noted to occur at isolated desert oases supporting small pockets of riparian and xeroriparian vegetation (Howell 1916, Phillips *et al.* 1964).

The historical use of Sonoran desertscrub habitats by pygmy-owls is not as clear. A disproportionately low number of historical records from desertscrub habitats may be due to the focus of early collection efforts along rivers where humans tended to concentrate, while the upland areas received less survey. Historical records of pygmy-owls do exist for Sonoran desertscrub in areas such as the Santa Catalina foothills and in "groves of giant cactus" near New River, north of present-day Phoenix. Kimball (1921) reported one pygmy-owl in a mesquite tree in the foothills of the Santa Catalina Mountains. Fisher (1893) took 2 pygmy-owl specimens near New River, and observed "several others" in mesquite and large cacti.

The northernmost historical record for the pygmy-owl is from New River, Arizona, approximately 56 kilometers (35 miles) north of Phoenix, where Fisher (1893) reported the pygmy-owl to be "quite common" in thickets of intermixed mesquite and saguaro cactus. Four eggs were collected in Phoenix, Maricopa County by G.F. Breninger on May 18, 1898, and R.D. Lusk collected five eggs at Cave Creek on April 12, 1895. Pygmy-owls were also detected in central Arizona at the Blue Point Cottonwoods area, at the confluence of the Salt and Verde rivers, in 1897, 1949, 1951, 1964, and 1971 (AGFD unpubl. data, Phillips *et al.* 1964, Millsap and Johnson 1988). Additionally, pygmy-owls were detected at Dudleyville on the San Pedro River as recently as 1985 and 1986 (AGFD unpubl. data, Hunter 1988).

The easternmost record for the pygmy-owl is from 1985 at the confluence of Bonita Creek and the Gila River (Hunter 1988). Other records from this eastern portion of the pygmy-owl's range include a 1876 record from Camp Goodwin (current day Geronimo) on the Gila River (Aiken 1937), and a 1978 record from Gillard Hot Springs, also on the Gila River (Hunter 1988). Pygmy-owls have been found as far west as the Cabeza Prieta Tanks in 1955 (Monson 1998).

Over the past several decades, pygmy-owls have been primarily found in Sonoran desertscrub communities in southern and southwestern Arizona consisting of palo verde, ironwood, mesquite, acacia, bursage, and columnar cacti (Phillips *et al.* 1964, Davis and Russell 1984 and 1990, Monson and Phillips 1981, Johnson and Haight 1985, Johnsgard 1988). Recently pygmy-owls have also been found in wooded drainages within semidesert grasslands in southern Arizona (unpubl. data). These sites are closely associated with xeroriparian habitats.

Historically, pygmy-owls were associated with riparian woodlands in central and southern Arizona. Plants present in these riparian communities include cottonwood, willow (*Salix* spp.), ash (*Fraxinus velutina*), and hackberry (*Celtis* spp.). These trees are suitable for cavity nesting, while the density of mid- and lower-story vegetation likely provides necessary protection from predators and an abundance of prey. Mesquite bosque communities are dominated by mesquite trees, and are described as mesquite forests due to the density and large size of the trees. This habitat type provides for all of the necessary habitat components of the pygmy-owl.

The Arizona upland subdivision of the Sonoran Desert provides an overstory of mature saguaros which are suitable for cavity nesting, as well as large mesquites and other trees which may be used for nesting, as well as perch and cover sites. Saguaro cavities are also used for roosting, perching, and caching food (Scott Richardson, Arizona Game and Fish Department, pers. comm. 1998). The mid- and lower-stories are comprised of a variety of mesquite, palo verde, ironwood, acacia, graythorn (*Ziayphus obtusifola*), bursage, cholla (*Opuntia* spp.), prickly pear (*Opuntia* spp.), and annual and perennial grass species. As in riparian habitat, the larger trees provide perches for foraging and protection from predators. Adequate vegetation in mid- and lower-stories appears to be important, and likely provides protection from predators and a higher density of prey items including lizards, small birds and mammals, and insects.

In central and southern Arizona, the pygmy-owl's primary habitats are riparian deciduous forests and woodlands, mesquite bosques, Sonoran desertscrub, and semidesert and Sonoran savanna grasslands with drainages lined with mesquite; although most recent observations have occurred primarily in Sonoran desertscrub associations of palo verde, bursage, ironwood, mesquite, acacia, and giant cacti such as saguaro and organ pipe (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988, Aaron Flesch pers. comm. 1999). Farther south in northwestern Mexico, pygmy-owls occur in Sonoran desertscrub, Sinaloan thornscrub, and Sinaloan deciduous forest as well as riverbottom woodlands,

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cactus forests, and thornforest (Enriquez-Rocha *et al.* 1993).

Pygmy-owls at Organ Pipe Cactus National Monument have been detected primarily in relatively dense, lush Arizona uplands desertscrub associations on bajadas. Visually dominant plants at the pygmy-owl sites include saguaros, organ pipe cactus, ironwood, triangle-leaf bursage, foothill paloverde (*C. Microphyllum*), mesquite, whitethorn and catclaw acacia (*Acacia constricta* and *A. greggii*), numerous cholla, prickly pear cacti, ocotillo (*Fouquieria splendens*), various *Lycium* spp., and creosotebush (*Larrea tridentata*) (Smith 1996). In addition to the dense bajada desertscrub habitat described above, pygmy-owls have been documented in several large xeroriparian habitats in lower bajada or valley floor areas that have dense saguaro stands; however, some sites have much less dense adjacent upland areas dominated chiefly by creosotebush. Xeroriparian habitat at these sites consist of mesquites, foothill and blue paloverde (*Cercidium microphyllum* and *C. flordum*), desert willow (*chilopsis lineraris*), catclaw acacia, ironwood, and soapberry (*Sapindus saponaria*) (Smith 1996).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. "Jeopardize the continued existence" (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical (50 CFR § 402.02).

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain the habitat components necessary for the primary biological needs of a species but are likely to develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, air, light, minerals or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and

Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the pygmy-owl are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, sheltering, and dispersal, or the capacity to develop those habitat components. The primary constituent elements are found in areas that support or have the potential to support Sonoran riparian deciduous woodlands, Sonoran riparian scrubland, xeroriparian forests, tree-lined drainages in semidesert and Sonoran savanna grasslands, and the Arizona upland subdivision of Sonoran desertscrub (Brown 1994). Within these biotic communities, specific plant associations that are essential to the primary biological needs of the pygmy-owl include, but are not limited to, the following—cottonwood, willow, ash, mesquite, palo verde, ironwood, hackberry, saguaro cactus, and/or organ pipe cactus. Specifically, larger diameter trees and cacti provide not only nesting substrate, but also roosting, perching, foraging, and dispersal habitat, while smaller trees and shrubs provide for the same functions except nesting.

In river floodplains, the presence of surface or subsurface water is important in maintaining pygmy-owl habitat. Riverine riparian woodlands and thickets are dependent on availability of groundwater at or near the surface

(Brown 1994). Surface or subsurface moisture may also be important in maintaining various prey species.

Methods

In developing this final rule, we formed an interconnected system of suitable and potential habitat areas extending from the Mexican border through the northernmost recent pygmy-owl occurrence east of Phoenix. Areas designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical areas occupied by the species, are essential to the conservation of the species, and are in need of special management considerations or protection.

In an effort to map areas essential to the conservation of the species, we used data on known pygmy-owl locations to initially identify important areas. We then connected these areas based on the topographic and vegetative features believed most likely to support resident pygmy-owls and/or facilitate movement of birds between known habitat areas. Facilitating movement of birds between habitat areas is important for dispersal and gene flow (Beier and Noss 1998). In selecting areas, we avoided private lands to the extent possible if State and Federal lands were present that could meet the conservation needs of the species. However, we are designating critical habitat in some largely privately owned areas, such as the area northwest of Tucson which supports the greatest known concentration of pygmy-owls in Arizona.

In selecting areas of critical habitat, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to pygmy-owl conservation. Given the short period of time in which we were required to complete this final rule, we were unable to map critical habitat in sufficient detail to exclude all such areas. However, within the delineated critical habitat boundaries, only lands containing, or are likely to develop, those habitat components that are essential for the primary biological needs of the pygmy-owl are considered critical habitat. Existing features and structures within this area, such as buildings, roads, aqueducts, railroads, and other features, do not contain, and are not likely to develop, those habitat components and are not considered critical habitat.

In selecting areas as critical habitat, we attempted to exclude areas believed to be adequately protected, or where current management is compatible with pygmy-owls and is likely to remain so into the future. We excluded National Park lands (Organ Pipe Cactus National Monument and Saguaro National Park) and National Wildlife Refuges (Cabeza Prieta and Buenos Aires National Wildlife refuges). We also excluded non-Federal lands covered by a legally operative incidental take permit for pygmy-owls issued under section 10(a)(1)(B) of the Act. However, we did not exclude areas currently managed in a manner compatible with pygmy-owls where such management may not be assured in the future (e.g., county and State parks).

In addition, lands of the Tohono O'odham Indian Nation are not included in this final rule. We are aware that pygmy-owls and pygmy-owl habitat likely exist on the Nation, and we believe these lands are important to the species' continued existence in Arizona. However, the short amount of time given by the court to designate critical habitat precluded us from adequately coordinating with the Nation to obtain pygmy-owl location and habitat information. In addition, we were unable to assess whether current or future Tribal management is likely to maintain pygmy-owls into the future, although the probable existence of both pygmy-owls and pygmy-owl habitat led us to believe that current management may be compatible with the species. As explained in the "Summary of Changes from the Proposed Rule" section of this final rule, Tribal grazing allotments have also been excluded.

We did not designate all pygmy-owl historical or potential habitat as critical habitat. We only designated those areas that we believe are essential for the conservation of the pygmy-owl and in need of special management or protection.

In summary, the critical habitat areas described below, and protected areas either known or suspected to contain some of the primary constituent elements but not designated as critical habitat (e.g., National Park land, National Wildlife Refuge lands, etc.), constitute our best assessment of areas needed for the species' conservation. Also, we have appointed a Cactus Ferruginous Pygmy-owl Recovery Team that will develop a recovery plan for the species. The experts on this team will conduct a far more thorough analysis than we were able to conduct in the short amount of time allowed by the Court Order. Upon the team's completion of a recovery plan, we will evaluate the plan's recommendations and reexamine areas designated as critical habitat.

Critical Habitat Designation

In determining areas that are essential for the survival and recovery of the species, we used the best scientific information obtainable in the time allowed by the court. This information included habitat suitability and site-specific species information. To date, limited survey effort or research has been done to identify and define specific habitat needs of pygmy-owls in Arizona or to completely quantify their distribution. Only preliminary habitat assessment work has begun over small portions of the State, primarily on Bureau of Land Management (BLM) lands.

We emphasized areas containing most of the verified pygmy-owl occurrences, especially recently identified locations. In order to maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between areas supporting pygmy-owls. These corridors or connecting areas, which have not been well surveyed connect recent sites and areas where suitable habitat remain. These corridors or connecting areas, while supporting some habitat suitable for nesting, were primarily included to facilitate dispersal and may contain more foraging, perching, and roosting habitat than actual breeding habitat. While habitat of similar quality occurs outside of these corridors, we anticipate that the use and importance of these corridors will increase over time if and when habitat outside of the corridors becomes unsuitable in the future.

Table 1 shows the approximate acreage of critical habitat designation by county and land ownership. Critical habitat for the pygmy-owl includes river floodplains, Sonoran desertscrub, and semidesert grassland communities in Pima, Pinal, Maricopa, and Cochise counties, Arizona. To provide additional information, we have grouped areas designated into critical habitat units (see maps). A brief description of each unit and our reasons for designating those areas as critical habitat are presented below.

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TABLE 1.—APPROXIMATE CRITICAL HABITAT ACREAGE BY COUNTY AND LAND OWNERSHIP

[Note: acreage estimates are derived from Arizona Land Resource Information System data based on the cited legal descriptions]

Ownership	County				Total
	Pima	Cochise	Pinal	Maricopa	
FS	.....	.....	5,065	33,323	38,388
BLM	21,913	.....	69,579	.....	91,492
STATE	158,974	2,371	273,541	.....	434,886
PRIVATE	61,830	2,461	71,634	68	135,993
OTHER	18,166	.....	12,787	.....	30,953
TOTAL	260,883	4,832	432,606	33,391	731,712

Unit 1

This unit lies between Buenos Aires National Wildlife Refuge and the Tohono O'odham Indian Nation, consisting of primarily State Trust lands, with some dispersed private ownership. This area contains semidesert and Sonoran savanna grasslands with a series of xeroriparian washes extending from the Baboquivari Mountains to Altar and Brawley washes. Uplands primarily consist of grasslands with dispersed mesquite trees, and a very few isolated saguaros in some areas, mostly occurring at the extreme north end of the unit. Dominant tree species in riparian areas include mesquite, ash, and hackberry.

This unit is located in the Altar Valley, which recently has had several pygmy-owls documented. Not until 1998 had systematic surveys in this unit and adjacent areas been initiated; as a result, at least nine new pygmy-owl sites have been found (Harris Environmental Group, Inc. 1998; AGFD unpubl. data; Aaron Flesch, pygmy-owl surveyor, pers. comm. 1999). These new sites are located in riparian and xeroriparian habitats and wooded drainages within semidesert grassland and Sonoran savanna grassland communities. Since the turn of the century, many areas that were historical semidesert and Sonoran savanna grasslands in the Altar Valley have developed into habitats similar to Sonoran desertscrub (Brown 1994). It is unclear at this time what role this transition has played in the distribution of pygmy-owls in the region.

Habitat in Unit 1 is suitable for nesting and dispersal habitat for pygmy-owls; however, nesting opportunities are generally greater in the washes because of a higher incidence of large diameter trees that may provide cavities for nesting. This unit is important for conservation of the species because it contains several pygmy-owl sites and it is close to other recent or currently active sites on the nearby refuge. It also provides opportunities for demographic and genetic interchange between pygmy-owls in Mexico and the United States as well as expansion of populations for recovery. Critical habitat in this area, together with protected lands on the refuges, National Monument, and habitat on the Nation, constitutes a large block of pygmy-owl habitat.

Unit 2

This unit connects habitat on the Tohono O'odham Indian Nation to habitat in Saguaro National Park West and Tucson Mountain County Park. Ownership in this area is primarily BLM, State Trust, Bureau of Reclamation, Pima County, and some private lands. The area consists of Sonoran desertscrub, mesquite bosques interspersed by washes, and some retired agricultural lands. This east-west habitat corridor, together with the "Garcia Strip" of the Nation, includes suitable habitat for occupancy, movement, and genetic interchange of pygmy-owls between the Nation and the western Tucson region.

Unit 3

This narrow unit connects suitable habitat in Unit 2 and Saguaro National Park west to Unit 4, which has the highest known concentration of pygmy-owls in Arizona. The land ownership in this area is mostly private. The area consists of Sonoran desertscrub, mesquite bosques interspersed by washes, and some retired agricultural lands. This area includes a recent pygmy-owl site west of Interstate 10 and provides a connection to habitat in the northwest Tucson region. Because of existing and past land management practices and development, this area contains the narrowest habitat linkage among other areas of critical habitat.

Few options currently exist for movement of pygmy-owls in this portion of their known range based on our limited knowledge of their movement among areas at this time (Scott Richardson, pers. comm. 1998). The pygmy-owl's flight pattern typically consists of a series of short, direct flights, perching in trees or shrubs usually less than 100 m (328 ft) apart (Glenn Proudfoot, pers. comm, 1999 and Scott Richardson, pers. comm. 1999).

Unit 4

This unit is located in the northwest portion of Tucson north of Interstate 10 and contains the highest known concentration of pygmy-owls in Arizona. This unit contains mostly private and County lands. The area includes known locations of pygmy-owls and adjacent habitats and is bounded by La Cholla Boulevard to the east, Cortaro Road to the south, Interstate 10 to the west, and the Tortolita Mountains to the north. In the immediate Tucson area, and to the south of Unit 4, very little suitable habitat remains due to residential, commercial, and agricultural development. Historically, these upland and riparian areas may have supported pygmy-owls. The area of critical habitat contains stands of ironwood, acacia, and saguaro, mesquite bosques, and several washes, and includes the most contiguous and highest quality pygmy-owl habitat based on current information (Scott Richardson, pers. comm. 1998; Wilcox *et al.* 1999).

Units 5a and 5b

Unit 5 includes 2 habitat corridors that connect habitat in Unit 4 to riparian habitats to the north on the Gila River (5a) and to the east on San Pedro River (5b). Land ownership is mostly BLM, State Trust, and private. This area also includes recent pygmy-owl occurrences in southern Pinal County, although only a limited number of surveys have been conducted to determine if pygmy-owls are present in much of this area. Relatively intact riparian woodland habitats still remain along much of these portions of the Gila and San Pedro rivers. These units contain historical pygmy-owl locations and/or areas thought to contain suitable upland habitat (Dave Krueper, BLM, pers. comm. 1998).

Limited habitat assessment has been completed within these corridors and few historical or current pygmy-owl occurrences have been documented. However, the BLM has conducted some habitat assessments on their lands in Unit 5a and rated the habitat suitability for pygmy-owls as moderate to high (Dave Krueper, pers. comm. 1998). We included these two corridors primarily because they constitute areas for dispersal, and also for nesting where nesting habitat is present. Upon field review of habitats present in both of these units, we believe they could facilitate movement through these areas, which would act as dispersal corridors. In addition to dispersal habitat, nesting habitat is also present in uplands with saguaros and in washes where large diameter trees are present. The majority of the nesting habitat in this region is in Unit 5a, although some large diameter trees are also located in some of the washes in Unit 5b, and may contain some potential nesting cavities. Where possible, we avoided the higher elevation areas, which likely provide lower quality habitat.

We are only beginning to understand the importance of upland habitat to the pygmy-owl. Although historical observations of pygmy-owls were almost exclusively in riparian woodlands (Breninger 1898 in Bent 1938), almost all of the recent records of pygmy-owls have been in Sonoran desertscrub, and mesquite bosque upland areas, semidesert grasslands, and washes. Based on the current information, we believe these two corridors (5a and 5b) provide a high potential for supporting resident and/or dispersing pygmy-owls through this area. Without these habitat linkages, demographic and genetic connectivity and exchange may not be maintained between known populations in the greater Tucson region and riparian habitats in the Gila and San Pedro rivers.

Unit 6

This unit includes the riparian woodlands of the middle and lower San Pedro River and a portion of the Gila River. There were four pygmy-owls documented in the mid-1980s from lower San Pedro River woodlands. Similar riparian woodlands and associated upland habitats with saguaro cactus are present along the San Pedro upstream (south) to approximately the town of Cascabel.

The San Pedro River riparian corridor connects to the Gila River to the north. This section of the Gila River also contains riparian woodland habitats, which we believe are suitable for pygmy-owls (Dr. Roy Johnson, National Park Service (Retired) pers. comm. 1998). We are designating these areas as critical habitat because of the importance, based on the early records of naturalists during the late 1800s and early 1900s, of riparian woodland habitats, the presence of suitable habitat, and the linkage these areas provide to other historical locations and suitable habitat to the north.

Unit 7

This unit links riparian habitat on the Gila River to other upland habitats and ultimately to the remaining woodland habitat along the Salt River where pygmy-owls were collected in the 1940s and 1950s and where this species was recorded in the early 1970s. Land ownership in this area is primarily BLM, State Trust, Forest Service, and some dispersed private. Although recent surveys have not located pygmy-owls in riparian areas in this unit, riparian woodland habitats remain along portions of the Salt River in this area (Roy Johnson pers. comm. 1998), and we cannot rule out pygmy-owl use of the area because pygmy-owls may use areas only periodically and may not be detected. In delineating critical habitat in this unit, we considered elevation, topographic features, and existing developed areas and determined that a habitat linkage that includes Sonoran upland desertscrub will provide connectivity and suitable habitats between riparian woodland habitats along the Gila and Salt rivers.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR § 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR § 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Conferencing on proposed critical habitat for the pygmy-owl was not requested by any Federal agency.

Activities on Federal lands that may affect the pygmy-owl or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit from the Environmental Protection Agency, will be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the pygmy-owl is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Such activities may include, but are not limited to:

(1) Removing, thinning, or destroying vegetation, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, overgrazing, construction, road building, mining, herbicide application, etc.);

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that riparian vegetation is significantly affected; and

(3) Recreational activities that appreciably degrade vegetation.

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If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920, facsimile 505–248–6922).

Designation of critical habitat could affect Federal agency activities including, but not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(3) Regulation of water flows, damming, diversion, and channelization by Federal agencies; and

(4) Regulation of grazing, mining, or recreation by the BLM or Forest Service.

Summary of Comments and Recommendations

In the December 30, 1998, proposed rule, all interested parties were requested to submit comments or information that might bear on the designation of critical habitat for the pygmy-owl (63 FR 71820). The first comment period closed March 1, 1999. The comment period was reopened from April 15 to May 15, 1999, to once again solicit comments on the proposed rule and to accept comments on the draft economic analysis (72 FR 18596). Comments received from March 2 to April 14, 1999, were entered into the administrative record during the second comment period.

All appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and invited to comment. In addition, newspaper notices inviting public comment were published in the following newspapers in Arizona: Arizona Republic, Tucson Citizen, Arizona Daily Star, Sierra Vista Herald, Green Valley News and Sun, The Bulletin, The Tombstone Tumbleweed, and Nogales International. The inclusive dates of these publications were January 4 to 12, 1999, for the initial comment period; January 26 to February 4, 1999, to advertise the public hearings; and April 21 to 29, 1999, for the second comment period.

We held three public hearings on the proposed rule, including at Coolidge (February 10, 1999), Sierra Vista (February 11, 1999), and Tucson, Arizona (February 12, 1999). The hearings were also held to solicit comments on the proposed rule to designate critical habitat for the Huachuca water umbel, *Lilaeopsis Schaffneriana* var. *recurva* (63 FR 71838). A notice of hearings and locations was published in the **Federal Register** on January 26, 1999 (64 FR 3923). A total of 89 people attended the public hearings, including 10 in Coolidge, 28 in Sierra Vista, and 51 in Tucson. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We requested four Arizona ornithologists, who are familiar with this species and were not on the appointed Cactus Ferruginous Pygmy-owl Recovery Team, to peer review the proposed critical habitat designation. However, only one of the peer reviewers submitted comments. He concluded that "sound scientific information about habitat requirements and movements is the most essential matter related to the conservation of the CFPO (pygmy-owl)." Further, he summarized, "I oppose this designation because it is not based on adequate scientific data, and also because it detracts from the path of gathering good data by wasting public resources on needless, time-consuming actions related to bureaucratic process, not species conservation."

We received a total of 21 oral and 268 written comments during the 2 comment periods. Of those oral comments, 4 supported critical habitat designation, 16 were opposed to designation, and 1 provided additional information but did not support or oppose the proposal. Of the written comments, 59 supported designation, 182 were opposed to it, and 21 provided additional information only, or were nonsubstantive or not relevant to the proposed designation. In total, oral and written comments were received from 10 Federal agencies, 7 State agencies, 9 local governments, and 242 private organizations, companies, or individuals.

All comments received were reviewed for substantive issues and new data regarding critical habitat and the pygmy-owl. Comments of a similar nature are grouped into 9 issues relating specifically to critical habitat. These are addressed in the following summary.

Issue 1: Biological Justification and Primary Constituent Elements 1a) Comment: How could the Service determine areas essential for conservation of the species since little is known about their habitat needs? Designation of critical habitat should be delayed until it is determinable and better information becomes available on the species. Stale, inaccurate data were used in the proposal.

Service Response: Under sections 4(a)(3)(A) and 4(b)(6)(C) of the Act, critical habitat must, to the maximum extent prudent and determinable, be designated at the time of listing. If there is insufficient information to perform the required impact analysis of designation, or the biological needs of the species are not sufficiently known to permit identification of an area as critical habitat, it may be delayed up to 1 year. On December 12, 1994, we published a proposed rule to list the pygmy-owl as endangered with critical habitat (59 FR 63975). On March 19, 1997, we published a final rule listing this species as endangered. In that final rule, we determined that designaton of critical habitat was not prudent, because of the potential harm to the species from publishing precise location maps as required for critical habitat designation (62 FR 10730). Given the amount of time since the pygmy-owl was listed as endangered (over 20 months), a "not determinable finding" is no longer possible. Because of the October 7, 1998, court order, we must now designate critical habitat using the best information currently available.

Although much additional biological information for this species is needed, some of its biological needs are known. In making this designation, we reviewed all pygmy-owl records within the historical range of this subspecies in Arizona. To the extent possible, given the short time available, we utilized the most current scientific literature; vegetation descriptions; information from outside sources such as species experts, agencies, and others; and field reconnaissance of specific areas in developing this final rule.

1(b) Comment: The Service, in partnership with counties and municipalities, needs to develop science-based surveys and studies to determine recovery efforts needed.

Service Response: We agree that additional surveys and ecological studies are needed. We are currently working with Pima County in their efforts to conduct comprehensive studies within the County, that will serve as the foundation for their Habitat Conservation Plan, which is currently under development. We encourage others to complete surveys and life history studies on their lands to assist them in managing for pygmy-owls. We welcome new partnerships with any entity in order to conserve pygmy-owls.

1(c) Comments: There is no biological justification or analysis to designate unoccupied areas or use a "connect the dots approach" in determining areas as critical habitat. Some areas in Units 1, 2, 5b, 6, and 7 are not connected by habitat and should not be included.

Service Response: Much of the area designated as critical habitat has never been surveyed for pygmy-owls. Therefore, it is unknown if owls are currently present. We designated critical habitat in areas that include sites we believed were essential for the conservation of the species and those needing special management considerations. Pygmy-owls may be present in those areas. We also believe areas between recent sightings play an important role and are essential to conservation of the species for the following reasons—(1) it is unknown if owls are in fact using these areas due to the lack of past survey effort; (2) areas of suitable or potentially suitable habitat located between areas of known owl occurrence are very important to allow pygmy-owls to colonize new areas; (3) they provide areas where pygmy-owls can disperse or facilitate movement between occupied areas for genetic interchange; and (4) they require special management considerations.

There are some areas within the critical habitat boundaries that, by definition of the primary constituent elements, are not critical habitat. We have provided additional habitat element descriptions where possible for each mapping unit to assist landowners and managers in identifying areas containing these elements or where these elements have the potential to develop on their lands. Refer to the description of each unit within this final rule.

Much of southern Arizona contains areas that provide potentially suitable habitat that may support pygmy-owls. However, as directed in section 3(5)(A)(i and ii) of the Act, we have only designated those areas that we believe are essential to conservation of the species. Pygmy-owls may be present in some of those areas, but many areas have not yet been surveyed.

(1d) Comment: How could the Service determine critical habitat when it doesn't know what viable populations are necessary to recover the species?

Service Response: A population viability analysis for this species has not been undertaken, however, we are required to designate critical habitat to the maximum extent prudent and determinable using existing information. Although population viability information will be useful in developing a recovery strategy for the species, it is not required to make this determination of critical habitat. A population viability analysis is unavailable for many species due to the lack of demographic information, habitat requirements, and other information required for an analysis. Studies to determine viable population levels for the pygmy-owl could not be conducted within the time frame given by the court and are not required by the Act for designation of critical habitat.

1(e) Comment: Critical habitat should not be designated until a recovery plan is completed.

Service Response: Although having a recovery plan in place is extremely helpful in identifying areas as critical habitat, the Act does not require a plan be prepared prior to such designation. Section 4(c) specifically requires that critical habitat be designated at the time a species is listed, or within 1 year if not determinable at listing. Once a recovery plan is finalized, we may revise the critical habitat described in this final rule if appropriate, to reflect the goals and recovery strategy of the recovery plan.

1(f) Comments: Only riparian areas should be designated since Sonoran desertscrub is only marginal habitat for pygmy-owls in Arizona. The Service should stress riparian restoration in recovery efforts for the pygmy-owl.

Service Response: At the time the pygmy-owl was listed, it was almost exclusively known from historical records to occur in riparian woodlands and mesquite bosques. Since these early records, all active sites have been located in Sonoran desertscrub, xeroriparian, or desert grassland habitats. Based on our current knowledge, both riparian and other habitat types appear to be important.

1(g) Comments: The habitat assessment key should have been used to identify areas of critical habitat. Some areas that rated low using this key were designated critical habitat, such as in Units 1 and 5b. Why were these two units included since they are of low quality? Why was Unit 1 designated when there have never been owls present?

Service Response: The BLM developed a habitat assessment key for its use to prioritize areas to survey that may be suitable for pygmy-owls. Not enough information is currently known regarding range-wide habitat requirements to develop a key with specific criteria that would apply to all habitats. Habitats where pygmy-owls have been found in the greater Tucson area are vastly different from other areas of the State, such as Organ Pipe Cactus National Monument and the Altar Valley. The BLM methodology uses specific habitat evaluation criteria to assess distinct habitats found on their lands within specific regions of the State. The BLM believes, and we concur, that it would be inappropriate to use this methodology to identify areas of critical habitat and to evaluate other habitats throughout the State since many of these criteria do not apply to other regions. We are not aware of any completed habitat assessments using the BLM methodology within Units 1 or 5b.

When we originally proposed critical habitat in December, 1998, there was only one documented record of a pygmy-owl in Unit 1. Although very few surveys had been completed in this area previously, potential habitat was present and we believed this area was important to the species. Since then, intensive surveys have been initiated in this unit and the nearby refuge. As a result, nine pygmy-owl sites have been found (Harris Environmental Group 1998; Aaron Flesch, pers. comm. 1999; AGFD unpubl. data 1999). Therefore, we consider this unit essential for recovery of the species. Likewise, other areas we have designated have little survey data to date. Areas where pygmy-owls are not currently known to exist because of lack of or limited survey efforts may also have pygmy-owls. We encourage landowners and managers with suitable habitat described in this rule to conduct surveys for pygmy-owl. We agree that Unit 5b likely contains limited nesting habitat; however, the mesquite-lined washes in this unit provide, at a minimum, dispersal habitat for owls moving between Units 4 and 6.

1(h) Comment: Critical habitat boundaries do not appear to reflect habitat; rather they follow squared-off, arbitrary lines.

Service Response: We are required to describe critical habitat (50 CFR § 424.12(c)) with specific limits using reference points and lines as found on standard topographic maps of the area. Due to the time constraints imposed by the court, the absence of detailed vegetation maps, we followed roads, railroads, and section or township lines wherever possible to delineate the critical habitat boundaries. Some pygmy-owl unsuitable habitat areas may be included in these mapped areas. Under 50 CFR § 424.12(d), when several habitat areas are located in proximity to one another, an inclusive area may be designated as critical habitat.

(1i) Comments: Why are some areas that do not appear to have suitable pygmy-owl habitat or to contain any of the primary constituent elements included as critical habitat? Only those areas with these constituent elements

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should be designated (15 USC § 1532 (5)(A) and 50 CFR § 424.12).

Service Response: As previously stated in this document, due to time constraints, we were not able to eliminate areas within the critical habitat boundaries that do not contain, or do not have the reasonable likelihood of ever containing, the primary constituent elements necessary for the pygmy-owl. However, any areas that do not, and cannot, support these elements are, by definition, not considered to be critical habitat, even though they are within the identified boundaries.

(1j) Comments: Areas with reduced value as pygmy-owl habitat should not be included. Commenters cited the following factors as to why their lands had little value as pygmy-owl habitat—lack of some primary constituent elements, "low-quality" habitat, nearby major roads, schools, or high-density housing, and lack of saguaros or ironwoods. Some areas may not be suitable because they are adjacent to planned developments such as future road-widening projects or housing developments.

Service Response: We have documented the presence of pygmy-owls near developed lands, roads, and areas that possess some, but not all, of the primary constituent elements. Therefore, we are including areas near developed lands that contain at least some primary constituent elements as critical habitat because owls use these areas. We believe these areas also play an important role for pygmy-owls for some of their life history requirements such as foraging or dispersal. We can not exclude areas as critical habitat because of projected projects or proposed activities, unless the economic impact outweighs the benefit to the species (section 4(b)(2) of the Act). Although ironwoods are commonly found at sites in the northwest Tucson area (Wilcox *et al.* 1999), numerous other historical and recent sites lack ironwoods. Therefore, we do not believe ironwoods are specifically a necessary component for pygmy-owls. Further research is needed to fully understand this species' habitat needs and life history requirements.

(1k) Comment: You should not only designate currently occupied sites, but also sites with suitable or potential habitat that was previously occupied, and also dispersal habitat.

Service Response: The Act (section 3(5)(C)) states that not all areas capable of being occupied by the species should be designated as critical habitat unless we determine that such designation is essential to the species' conservation. In determining what areas are critical habitat, we considered areas and constituent elements that are essential to the conservation of the species and that may require special protection or management considerations (50 CFR § 424.12(b)). Thus, not all areas occupied or potentially occupied by a species are eligible for designation. Our rationale for not designating all occupied pygmy-owl sites as critical habitat are discussed in the section entitled "Critical Habitat Designation." Due to time constraints and because of a lack of survey data to indicate documented pygmy-owl presence, we cannot assert that pygmy-owls are not present in a particular area designated as critical habitat. This critical habitat designation contains areas that may be important for pygmy-owl dispersals.

(1l) Comments: There was no scientific basis for the constituent elements described in the proposed rule. The definition of constituent elements should be expanded to include dispersal habitat such as creosote bush and grasslands. The constituent elements described are vague (violating 50 CFR § 424.12(c)) and are overly inclusive, and should include the required greater detail defining structure, species richness, and juxtaposition of riparian and xeroriparian areas with adjacent upland habitat types. Identified corridors are not based on known movement of owls, and appear to be sheer guesswork.

Service Response: The primary constituent elements described in this final rule are elements for which we have evidence of use by pygmy-owls in Arizona. Smaller diameter trees and shrubs, though not suitable nesting structure, appear suitable for dispersal movements and/or support prey species for pygmy-owls (Proudfoot, pers. comm. 1999). Pure stands of extensive grassland do not support primary constituent elements; however, grasslands with scattered mesquites or other trees or shrubs provide dispersal and foraging habitat and drainages within grasslands containing trees with cavities may also provide suitable nesting habitat. Information regarding movement of pygmy-owls gathered in Arizona and Texas was used to determine suitability of dispersal corridors.

To date, pygmy-owl habitat studies have been limited to descriptive studies in the greater Tucson area. Habitat in this study area is vastly different from sites elsewhere in the State with historical and recent pygmy-owl sightings. In addition to this Tucson habitat study (Wilcox *et al.* 1999), we are aware of two additional habitat studies that are scheduled to begin in the summer of 1999, which will analyze habitats where other pygmy-owls are found in the State. These additional studies will examine habitats used by pygmy-owls in areas containing very different habitats compared to previous studies. Random sites will also be studied in the state to determine use versus availability. These studies will provide valuable information about the habitat needs of pygmy-owls and will be useful to us and others in meeting the conservation needs of the species.

As noted earlier, pygmy-owls use a variety of habitats. We have described in the greatest detail possible in this final rule the constituent elements important to pygmy-owls known at this time. If new information later becomes available as a result of the above mentioned or other studies regarding the habitat needs of this species, we will then evaluate whether a revision of designated critical habitat is warranted. In addition, as new habitat information becomes available that can further refine habitat definitions and descriptions, it will be used in future section 7 consultations and recovery planning for the pygmy-owl.

Issue 2: Take of Private Property/ Additional Burdens on Private Landowners

(2a) Comment: The designation of critical habitat would constitute "taking" of private property rights; thus a takings implications assessment, as required by Executive Order 12630, must be conducted.

Service Response: The designation of critical habitat has no effect on non-Federal actions taken on private land, even if the private land is within the mapped boundary of designated critical habitat. Critical habitat has possible effects on activities by private landowners only if the activity involves Federal funding, a Federal permit, or other Federal action. If such a Federal nexus exists, we will work with the landowner and the appropriate Federal agency to ensure that the landowner's project can be completed without jeopardizing the species or adversely modifying critical habitat.

Executive Order 12630 requires that Federal actions that may affect the value or use of private property be accompanied by a takings implication assessment. As discussed in our response to Issue 9, (McKenney *et al.* 1999), the economic analysis found that designation of critical habitat would have no economic effect above that already imposed by listing. The primary effect of critical habitat designation on private property is to identify areas important for the conservation of the species. In addition, if a Federal action occurs on those private lands, such as issuance of a Clean Water Act section 404 permit, the Federal action agency would be required to consult with us pursuant to section 7 of the Act if that action may affect the pygmy-owl or its critical habitat. In Arizona, all private landowners that have applied for a section 10 take permit to allow them incidental take of a federally listed species have been issued permits, and all projects that have completed the section 7 consultation process have gone forward.

(2b) Comments: The designation of critical habitat would place an additional burden on landowners above and beyond what the listing of the species would require. The number of section 7 consultations will increase; large areas where no pygmy-owls are known to occur will now be subject to section 7 consultation. Many Federal agencies have been making a "no effect" call within unoccupied suitable habitat. Now, with critical habitat there will be "may effect" determinations, and section 7 consultation will be required if any of the constituent elements are present.

Service Response: If a Federal agency funds, authorizes, or carries out an action that may affect either the pygmy-owl or its critical habitat, the Act requires that the agency consult with us under section 7 of the Act. For a project to affect critical habitat, it must affect the habitat features important to the pygmy-owl, which are the primary constituent elements described in this final rule. Our view is and has been that any Federal action within the geographic area occupied by the species that affects these habitat features should be considered a situation that "may affect" the pygmy-owl and should undergo section 7 consultation. This is true whether or not critical habitat is designated, even when the particular project site within the larger geographical area occupied by the species is not known to be currently occupied by an individual pygmy-owl. All areas designated as critical habitat are within the geographical area occupied by the species, so Federal actions affecting essential habitat features of the species should undergo consultation. Thus, the need to conduct section 7 consultation should not be affected by critical habitat designation. As in the past, the action agency will continue to make the determination as to whether their project may affect a species even when the particular site is not known to be currently occupied by an individual pygmy-owl.

Issue 3: National Environmental Policy Act.

Comment: The designation of critical habitat constitutes a major Federal action significantly affecting the quality of the human environment. An environmental impact statement (EIS) should be prepared.

Service Response: We have determined that Environmental Assessments (EAs) and EISs, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October, 1983 (48 FR 49244).

Issue 4: Lands with Habitat Conservation Permits to be Excluded from Critical Habitat.

Comments: It is illegal and unscientific to withdraw critical habitat designation from land covered by an approved or future Habitat Conservation Plan (HCP) incidental take permit. Critical habitat protects land essential for conservation, which is a higher standard than a HCP permit which only assures that jeopardy would not occur. The HCP take permit has no public process analysis or scientific accountability. HCPs should maintain constituent elements. Regional HCPs are preferred to individual permits. Individual HCPs should not be approved until a regional HCP is completed in Pima County.

Service Response: Before we issue a section 10 permit, we must determine that the HCP provides for the conservation of the species. As a part of the permit evaluation process, we must determine whether our action of issuing the section 10 permit is likely to jeopardize the continued existence of the species or result in adverse modification of critical habitat. Thus, when a HCP is approved through a section 10 permit, we will have already determined that critical habitat would not be adversely modified. HCP permits for lands over 5 acres in size are required to go through the NEPA process that involves public participation and comment. Monitoring and adaptive management are important components of the HCP process to ensure that needed actions are taken and that actions can be modified, as needed, as new information is collected.

We agree that maintaining the primary constituent elements is an important consideration in developing HCPs. In addition, we strongly support regional multiple-species HCPs such as the one currently under development by Pima County, and we encourage this broad-based approach to others within the region. Experience gained from development of similar plans indicates that because of their complexity, these plans typically take a year or more to complete. We encourage landowners and members of the public in the region to participate in this planning effort; however, we realize that it would be unrealistic for some to wait until the county's plan is finalized. We cannot preclude any applicant from pursuing an individual HCP pending the development of a regional plan.

Issue 5: Section 7 Consultation and Section 9.

(5a) Comments: How will the Service conduct section 7 consultations on land immediately adjacent to critical habitat; would additional buffers be required?

Service Response: We address all direct, indirect, inter-related, and interdependent effects of projects under section 7 consultation, which could include effects to areas outside of the immediate project area (downstream effects, for example). However, if a project is adjacent to, but not within, critical habitat and has no direct or indirect effect on critical habitat, that would be acknowledged in the section 7 Biological Opinion, and only effects to the species would be addressed.

(5b) Comment: Section 9 does not fully protect habitat absent a critical habitat designation because critical habitat can include unoccupied habitat. There is a clear distinction between the "jeopardy" and "adverse modification of critical habitat" prohibitions. In its final rule listing the pygmy-owl as endangered, the Service states that clearing of unoccupied habitat is not a section 9 "take." The courts have consistently held that for a party to assert that removal or disturbance of vegetation from an area will result in take of an endangered species, such a party must demonstrate that the species is present in the area or otherwise using it for essential behavioral functions. Where there is no owl, there is no take.

Service Response: We agree that section 9 does not protect unoccupied habitat, i.e., areas from which the pygmy-owl has been extirpated. However, as discussed in our response to comment 2(b) above, section 7 requires consultation on Federal actions that may affect a listed species or its critical habitat. An action agency may determine that a project may affect a species even when the particular site is not known to be currently occupied by an individual pygmy-owl. It is our view that actions affecting suitable pygmy-owl habitat within the known range of the pygmy-owl, whether or not that area has been designated as critical habitat and whether or not it is known to

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currently support an individual, should undergo review under section 7.

Issue 6: Designation by Specific Land Ownership.

(6a) Comments: Designation of critical habitat is not necessary on non-Federal lands because vast tracts of Federal and Tribal lands are already protected. For instance, over 87% of Pima County is owned by the government; the Service should move the owls to those lands.

Service Response: The Act defines critical habitat as those areas essential to the conservation of the species and that are in need of special management considerations or protection. We agree that Federal lands provide a significant amount of the habitat currently occupied by the pygmy-owl, and that those lands are essential to the species' conservation. However, much of the currently occupied habitat is on non-Federal land, especially in Pima County. As stated in the proposed rule, we tried to avoid designation on non-Federal lands except when those lands are, because of their location or the habitat they support, necessary to ensure pygmy-owl conservation. We do not believe that Federal and Tribal lands alone, are adequate to ensure the species' conservation.

(6b) Comments: Exemption of Federal lands such as National Parks and National Wildlife Refuges is illegal, violating 50 CFR § 424.12, and draft guidance exhibit 2, pp 5, 11–12, which states that lands must be evaluated regardless of ownership. None of those lands have an owl plan, and there is no basis to claim that future management will be consistent with critical habitat protections. The Service does not have the statutory authority to exclude areas because it feels their current management is compatible with pygmy-owls, and the benefits from exclusion must be greater than that of inclusion.

Service Response: In determining what areas are critical habitat, we consider physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection (50 CFR § 424.14(b)). Organ Pipe Cactus National Monument, Saguaro National Park, and Buenos Aries and Cabeza National Wildlife refuges provide important habitat for the pygmy-owl. These areas were excluded from designation not simply because of ownership, but because we believe these areas are managed in such a way that provides for natural values, including protection of threatened and endangered species. We believe that these specific areas are managed and likely will continue to be managed in a manner compatible with pygmy-owl needs, and are therefore not in need of special management considerations or protection.

(6c) Comments: Exemption of Tribal lands is illegal, and there is no evidence that current densities on Tribal lands are as high as historical levels, nor that the population is increasing. The Service states that, because the owl occurs on the reservation, Tribal management is compatible with pygmy-owls. Failure to designate critical habitat on Tribal lands violates the Equal Protection Clause of the United States Constitution and the Administrative Procedures Act.

Service Response: Given the lack of species' location and habitat information on Tribal lands available at the time of drafting the proposed rule, we were unable to thoroughly assess either the status of the species on those lands, or the management practices currently employed by the tribes. The court's order required publication of a proposed rule within only 30 days and a final rule in 6 months. Given the extensive preparation and review requirements of publishing a proposed rule, our staff had but a few days to develop the critical habitat maps and determine what areas are both essential to the species' conservation and in need of special management considerations or protection. Further, Secretarial Order 3206 requires significant coordination with Tribal governments, as well as several specific determinations, prior to proposing Tribal land as critical habitat. The 30 days allowed by the court precluded the analyses and coordination that would have been necessary before proposing critical habitat on Tribal lands. We therefore based our proposal on the best scientific and commercial information available, as required by the Act.

(6d) Comments: To designate State trust lands because they are owned by the State is arbitrary, capricious, discriminatory, and unlawful; they should be treated as private lands. The Service considers State lands as public lands and therefore assumes that the limitations of use resulting from designation of critical habitat will not adversely affect the landowner. The Service did not justify the assumption that State lands require special management considerations.

Service Response: We first identified areas essential to the conservation of the species. We looked first to Federal, then State lands to develop a configuration that would include most occupied pygmy-owl sites, connected across the species' range. Our reasoning was that the Act clearly puts the largest share of the burden on Federal agencies and Federal lands in conserving listed species. The Act also considers the states to be important partners in species' conservation efforts. Where possible, we therefore proposed Federal and State lands as the primary areas to concentrate pygmy-owl recovery, with private lands included where necessary. As stated in the economic analysis and this final rule, we do not believe the designation of critical habitat will have adverse economic effects on any landowner, including the State of Arizona, above and beyond the effects of listing of the species (McKenney *et al.* 1999).

Future management practices of State trust lands are uncertain in areas we have determined essential to the recovery of this species and may in some instances not be compatible with conservation efforts; therefore, we believe that designation of these lands is warranted. We believe that designation of these and other lands as critical habitat does not result in additional economic or other effects to the landowner above that which would occur from listing the species.

Issue 7: Legal and Procedural Comments.

(7a) Comments: The Service did not consult, nor allow for an appropriate level of involvement with, the State of Arizona, counties, and cities in areas proposed as critical habitat.

Service Response: In regard to the role of local governments in decisions to determine critical habitat, the Act requires we "give actual notice of the proposed regulation (including the complete text of the regulation) to * * * each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each jurisdiction" (section 4(b)(5)(A)(ii) of the Act). Due to the limited time allowed by the court and plaintiffs, we were not able to individually contact all of the entities that could be affected by this proposal; however, we notified each affected county, several cities, and many special interest groups of the proposed rule and draft economic analysis. All entities, including the State and local municipalities, were given ample opportunity, during two separate public comment periods and three public hearings, to submit their concerns and have them addressed in the final rule. Numerous local, city, county, State, and Federal agencies provided comments during two public comment periods and three public hearings; we reviewed and considered these comments in developing this final rule.

(7b) Comments: The court order was not to designate critical habitat, but

rather to reconsider whether it was prudent to do so. The court referred to only 12 of the 28 items of evidence the Service provided in its original "not prudent" determination. Designation of critical habitat provides no additional benefits to the species and can lead to increased threats from bird watchers or retaliation against the species as happened with the Mexican wolf. The Service lacks sufficient original information and its original not prudent finding was correct until future research is done.

Service Response: The Act requires the Secretary, "to the extent prudent and determinable," to designate critical habitat concurrently with listing a species as threatened or endangered. Regulations under 50 CFR § 424.12(a)(1) state that critical habitat is not prudent when one or both of the following situations exist—(i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat, or (ii) designation of critical habitat would not be beneficial to the species.

We determined in our final rule listing the species as endangered (62 FR 10730) that critical habitat designation would increase the threat of harassment of owls by bird watchers and increase the potential for vandalism. The court found this determination to be arbitrary and capricious, and remanded the "not prudent" finding to us.

As stated in our economic analysis (McKenney *et al.* 1999), we believe that designation of critical habitat for the pygmy-owl provides no significant additional impacts or benefits to the species beyond that which would occur, or is provided, through listing the species as endangered. While we believe this argument fits the second argument for a "not prudent" finding, the court order cited a previous finding in the 9th Circuit (*Natural Resources Defense Council* v. *Department of Interior;* 113 F3d 1121, 1126) that it was Congress' intent that the imprudence exception be a rare exception. This and other statements in the court order led us to believe that another "not prudent" finding based on the available information would be inconsistent with the court order.

(7c) Comment: The biological benefits of critical habitat are outweighed by the benefits of exclusion.

Service Response: Section 4(b)(2) of the Act and 50 CFR § 424.19 requires us to consider excluding areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species concerned. As discussed in this final rule, we have determined that no adverse economic or other effects will result from this critical habitat designation (McKenney *et al.* 1999). Therefore, no areas were found where the benefits of exclusion outweighed the benefits of including the areas as critical habitat.

(7d) Comments: The Service must consider the entire range, including Mexico, in determining areas of critical habitat. The Service has never found that the Arizona population is a distinct population segment from the Mexican population.

Service Response: Regulations at 50 CFR § 424.12(h) state that critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction. We agree that the status of the species in Mexico will be an important consideration in recovery of the species in Arizona. However, maintenance of a healthy population in the U.S. also depends on areas within the pygmy-owls' historical U.S. range, and we have determined that those areas are essential to the species' conservation.

(7e) Comment: The Service failed to comply with a number of required determinations, including Executive Orders 12291, 12630, 12866, and 50 CFR §§ 424.12(c)(d), and § 424.19 as well as the Regulatory Flexibility Act and the Unfunded Mandates Reform Act.

Service Response: These Executive Orders and other Acts are discussed in the "Required Determinations" section of this final rule. Issues pertaining to 50 CFR § 424.14(c)(d) and 424.19 are addressed elsewhere in this final rule.

(7f) Comment: Critical habitat will have potential impacts on water resource use by Arizona and local agencies. How has the Service coordinated with these groups to resolve water resources issues?

Service Response: This final rule does not authorize our jurisdiction over water rights, and we do not anticipate impact to local economies or citizens as a result of this designation as we state elsewhere in this rule. Critical habitat designation does not, in itself, restrict groundwater pumping or water diversions; nor does it in anyway restrict or usurp water rights or violate State or Federal water laws. Local agencies, governments, and individuals have had the opportunity to provide comments during two comment periods, and three public hearings. We will work with these groups during the section 7 consultation process as necessary to ensure their activities comply with the Act and other Federal and State laws.

(7g) Comment: Designation of critical habitat on Arizona State trust lands violates the Arizona-New Mexico Enabling Act of 1910.

Service Response: Under the provisions of the Arizona and New Mexico Enabling Act, in 1910, Congress granted title to certain Federal lands within the borders of Arizona to the State of Arizona for the purpose of creating a trust to provide financial support to the Arizona common schools, universities, and other public institutions operated by the State. However, the State trust created under the Enabling Act is not immune from the operation of otherwise applicable Federal law, including the Endangered Species Act. Further, we do not anticipate that critical habitat designation will affect the State's ability to utilize their trust lands in a manner that will provide financial support to State institutions. Even if there are situations where a State activity requires Federal authorization or funding, we do not anticipate any restrictions beyond those that may result from listing the pygmy-owl as endangered.

(7h) Comments: Critical habitat should not have been proposed before an economic and other impacts analysis was completed, and the opportunity to comment on the economic analysis and the proposed rule was limited. Several requests were received to extend the public comment period.

Service Response: We are not required to conduct an economic analysis at the time critical habitat is initially proposed. We published in the **Federal Register** (63 FR 71820) the availability of the proposed rule and invited public comment which we used to develop a draft economic analysis (McKenney *et al.* 1999). We invited public comments for 30 days on this draft analysis, which we believe was sufficient given the short-time frame ordered by the court. Because of the court-ordered time frame, we were not able to extend the public comment period.

(7i) Comment: Maps and descriptions provided are vague and violate the Act and 50 CFR § 424.12(c).

Service Response: This final rule contains the required legal descriptions of areas designated as critical habitat. The accompanying maps are for illustration purposes. If additional clarification is necessary, contact the Arizona Ecological Service Field Office (see **ADDRESSES** section). We identified specific areas referenced by specific legal description, roads, railroads, and other landmarks, which are found on standard topographic maps.

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(7j) Comment: Once land is designated as critical habitat it will likely result in a panoply of Federal, State, and local land use laws, and restrictions or extra procedures.

Service Response: We are unaware of any information that indicates any new State or local laws, restrictions, or procedures will result from critical habitat designation. Should any State or local regulation be promulgated as a result of this rule, this would be outside of the authority of the Service under the Act. The comment is correct in that projects funded, authorized, or carried out by Federal agencies, and that may affect critical habitat, must undergo consultation under section 7 of the Act on the effects of the action on critical habitat. However, as stated elsewhere in this final rule, we do not expect the result of those consultations to result in any restrictions that would not be required as a result of listing the pygmy-owl as an endangered species.

(7k) Comment: Additional areas not identified in the proposed rule should be designated critical habitat.

Service Response: Section 4(b)(4) of the Act requires that designation of critical habitat undergo the regulation promulgation procedures identified under 5 U.S.C. 553. That is, areas designated as critical habitat must first be proposed as such. Thus, we cannot make significant additions in the final rule to the areas included in the proposed rule. Designation of such areas would require new proposed and final rules. The Act explicitly states that not all suitable or occupied habitat be designated as critical habitat, rather only those essential for the conservation of the species (50 CFR § 424.12 (e)).

The pygmy-owl recovery team is currently developing a recovery plan for this species. During the development of a recovery strategy, the team will not only closely examine areas designated as critical habitat but also all lands within the listed population, to determine their importance and role in the recovery of the species. This process will allow substantially more in-depth analysis than we were afforded by the court and plaintiffs to designate critical habitat. If the recovery team, as a result of new information or analysis, further refines those areas designated in this final rule or identifies additional areas which they determine are essential to the conservation of the species, we will evaluate whether a revision of critical habitat is warranted at that time.

Issue 8: Specific Projects and Activities.

(8a) Comments: Critical habitat would affect specific projects such as erosion control measures on Brawley Wash and fire management in the Altar and Falcon Valley regions. Grazing would be affected by designation on private lands.

Service Response: Critical habitat designations only apply to Federal lands, or federally funded or authorized projects on private lands. If there is no Federal nexus or involvement, then additional considerations are not necessary (see Issue 2 above). Where a Federal nexus exists, designation of critical habitat does not preclude projects or activities such as riparian restoration, erosion control, fire management, or grazing if they do not cause an adverse modification of critical habitat. We will work with landowners within designated critical habitat and Federal agencies that are required to consult with us under section 7 of the Act to ensure that land management will not adversely modify critical habitat. We also encourage landowners to restore riparian habitats including erosion control measures, and we can provide financial and technical assistance through our Partners for Fish and Wildlife Program.

(8b) Comment: Designation of areas with existing pipelines and aqueducts would be affected and should be excluded. Routine maintenance of trails should be excluded.

Service Response: Periodic maintenance of existing pipelines, roads, trails, or aqueducts would not typically constitute adverse modification of critical habitat. These areas generally lack the primary constituent elements described in this rule, and it is our intention to exclude such areas by definition. If maintenance would require removal of constituent elements, and Federal involvement is part of that activity, then section 7 consultation may be necessary.

(8c) Comment: Designation of critical habitat may compromise wildfire prevention and suppression activities in those areas.

Service response: We agree that wildfire prevention and suppression activity is very important to protect human life and property, and also from a resource protection standpoint. Fire protection of areas designated as critical habitat will be essential to ensure the conservation of the species. We will work with all landowners and managers responsible for these activities to ensure adequate fire prevention and suppression measures are in place and to protect resource values. Only fire prevention and suppression activity undertaken or funded by a Federal agency would require consultation under section 7 of the Act. Non-Federal activities will not be affected by critical habitat designation.

Issue 9: Economic Impacts.

(9a) Comment: The assumption applied in the economic analysis that the designation of critical habitat will cause no impacts above and beyond those caused by listing of the species is faulty, legally indefensible, and contrary to the ESA. "Adverse modification" and "jeopardy" are different, will result in different impacts, and should be analyzed as such in the economic analysis.

Service Response: The designation of critical habitat for the pygmy-owl has been evaluated in the economic context known as "with" and "without" the rule. It was found that the survival of the pygmy-owl makes it necessary that any adverse modification of its habitat would jeopardize the species. Under this condition, any and all economic consequences would be due to the jeopardy call under section 7 of the Act, and an adverse modification without a jeopardy call would not occur. Further, it is our position that both within and outside of critical habitat, Federal agencies should consult under the jeopardy standard if a proposed action is (1) within the geographic areas occupied by the species, whether or not owls have been detected on the specific project site; (2) the project site contains habitat features that can be used by the species; and (3) the proposed action is likely to adversely affect that habitat. The economic consequences identified during the comment period are all due to the listing of the pygmy-owl and not the designation of critical habitat. The economic analysis of designating critical habitat determined that the same regulatory process is in place "with" as well as "without" the rule, and consequently found no economic effects.

(9b) Comment: The proposed designation of critical habitat will impose economic hardship on private landowners and businesses. There is an expressed concern that the proposed critical habitat designation would have serious financial implications for commercial and residential development businesses. It is suggested that designation would result in reduced property values, lost tax revenues, lost jobs, and foregone economic activity.

Service Response: As stated in the economic analysis, the proposed rule to designate critical habitat for the pygmy-owl is not adding any new requirements to the current regulatory process. Since the adverse modification standard for critical habitat and the jeopardy standard are almost identical, the listing of the pygmy-owl itself initiated the requirement for consultation. This

critical habitat designation adds no additional requirements not already in place due to the species' listing.

(9c) Comment: There is an expressed concern that the delay in acquiring Federal permits or the inability to acquire permits for further development, as a result of section 7 consultation, would be an economic hardship to both developers and homeowner associations.

Service Response: The requirement for Federal agency consultation under section 7 of the Act for actions they carry out, fund, or authorize on Federal or non-Federal lands resulted from listing of the species, and no new requirements are imposed by critical habitat designation.

(9d) Comment: There is an expressed concern that the value and security of bonds issued to construct public infrastructure might be threatened by critical habitat designation.

Service Response: Bonds issued by non-Federal entities that are not insured by the Federal Government do not constitute a Federal nexus. However, an incidental take permit issued under section 10 of the Act would still be required if a taking of the pygmy-owl is possible. The designation of critical habitat does not add any additional requirements to the section 10 incidental take permit process.

(9e) Comment: There is an expressed concern that all property owners who will be adversely affected by the designation of critical habitat should be provided just compensation.

Service Response: This designation of critical habitat will not add any additional restrictions and will not affect property owners beyond those restrictions resulting from the listing of the pygmy-owl as endangered.

(9f) Comment: Critical habitat may disrupt current and future Federal, State, and County land management activities and cause economic losses.

Service Response: Federal agencies are required to consult with us when a species is listed under the Act. State and County entities are not required to consult with us unless a Federal nexus exists. The designation of critical habitat does not add any new requirements or restrictions.

(9g) Comment: The designation will have harmful impacts on the quality of life, education, and economic stability of small towns. There is an expressed concern that the proposed critical habitat designation will change water diversions, groundwater pumping, road maintenance and land development.

Service Response: As stated in the economic analysis, the proposed rule to designate critical habitat for the pygmy-owl is not adding any new requirements to the regulatory process. Since the adverse modification standard of critical habitat and the jeopardy standard are nearly identical, the listing of the pygmy-owl itself placed the requirement for consultation. This final rule to designate critical habitat adds no additional requirements that were not already in place due to the species' listing.

(9h) Comment: There is an expressed concern that the designation would limit the construction of much needed schools, colleges, and community and recreation centers, thereby threatening the ability of small towns affected by the designation to expand and diversify their economy and to improve education.

Service Response: As previously stated, this final rule designating critical habitat will not impose additional restrictions on private, cities, counties, State or Federal lands. Restrictions already in place due to the listing of the pygmy-owl require consultation with us when there is a Federal nexus. Any limitations or restrictions on construction were imposed due to the species' listing. Additional restrictions are not expected.

(9i) Comment: There is an expressed concern that the economic stability of the towns of Kearny, Hayden, and Winkelman, as well as Pinal and Gila counties, depends on the continued operation of their mining complex, and further regulatory costs would threaten the corporation.

Service Response: Critical habitat designation will not add new restrictions beyond those imposed by the listing of the pygmy-owl.

(9j) Comment: The Service's designation of critical habitat has not adequately considered potential economic implications. There is opposition to the fact that the Service did not prepare an initial regulatory flexibility analysis to address potential impact to small businesses, as required under the Regulatory Flexibility Act.

Service Response: The proposed rule was published under very tight time constraints by the court order on December 24, 1998. At that time we prepared a record of compliance (ROC) that the proposed critical habitat designation would not have a significant economic impact on small entities. A detailed analysis was initiated by a private firm under contract and subsequently, we distributed a draft of the economic analysis for a 30-day public comment period ending in May, 1999. The findings of the economic analysis indicate that the designation of critical habitat adds no new restrictions on economic activity that were not due to the listing of the pygmy-owl. Therefore, there are no economic effects on small entities attributable to this final rule, and a regulatory impact analysis is not required.

(9k) There is a concern that the different jurisdictions impacted by critical habitat designation should be addressed separately; impacts should be addressed as individual cases, not collectively.

Service Response: If the economic analysis would have detected economic effects attributable to the critical habitat designation, then those effects would have been enumerated for each of the areas of critical habitat and would have been estimated for each type of land and management involved. This information would have been used by the Secretary of the Department of the Interior to determine if the benefits of exclusion of the land outweighed the benefits of including the land as critical habitat. There are no economic effects attributable to critical habitat designation so the issue of separating economic effects is a moot point.

Summary of Changes From the Proposed Rule

Below is a summary of the changes made to the legal descriptions for the cactus ferruginous pygmy-owl critical habitat designation. The maps included in the proposed rule accurately depicted the critical habitat proposed by the rule. Based on the comments we received, we discovered that several areas within the proposed critical habitat were not accurately described by the legal descriptions in the proposed rule, although the areas were accurately depicted on the maps. As discussed below, we are clarifying the legal descriptions in this final designation to conform to the area depicted by the maps, which remain unchanged.

Changes in the legal descriptions below are of three types: (1) The result of typographical errors discovered after publication of the proposed rule; (2) corrections in sectional descriptions resulting from the use of more up-to-date Public Land Survey System data obtained from the Arizona Land Resource Information System (ALRIS) to more closely reflect mapped information of the proposed rule; and (3) clarification of the description for Tucson Mountain County Park, the boundary of which was obtained from Pima County Public Works and is more up-to-date than that depicted on the BLM map cited in the proposed rule and which was available from ALRIS.

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As a result of using ALRIS data for ownership, the acres summary in Table 1 also changed. The total acres increased by about 1% with the greatest change in Pinal County where BLM's total was reduced and the "Other" category picked up that reduction. This is largely due to acreage originally identified as BLM that was actually Bureau of Reclamation when the newer data sets were analyzed. The remaining acreage differences are attributed to the differing methods of determining acres. For the proposed rule, sections and ownership were roughly counted and totaled manually by visual inspection of the cited maps. Subsequently, digital information was obtained from ALRIS and Pima County, which was used to create the updated version of Table 1 (as well as the legal descriptions).

Finally, as mentioned previously, lands in Tribal grazing allotments are excluded from critical habitat. We determined that pygmy-owl conservation could be adequately ensured without designation of the approximately 240 acres.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude areas from critical habitat if such exclusion would result in the extinction of the species concerned.

Economic effects caused by listing the pygmy-owl as endangered and by other statutes are the baseline upon which critical habitat is imposed. The economic analysis must then examine the incremental economic and conservation effects of the critical habitat addition. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of pygmy-owl critical habitat designation was prepared (McKenney *et al.* 1999) and made available for public review (April 15–May 15, 1999; 64 FR 18597). The final analysis, which reviewed and incorporated public comments, concluded that no economic impacts are expected from critical habitat designation above and beyond that already imposed by listing the pygmy-owl. The only possible economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. These activities would be subject to section 7 consultation if they may affect critical habitat. However, activities that may affect critical habitat may also affect the species, and would thus be subject to consultation regardless. Also, changes or mitigating measures that might increase the cost of the project would only be imposed as a result of critical habitat if the project adversely modifies or destroys that critical habitat. We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Thus, no regulatory burden or additional costs would accrue because of critical habitat above and beyond that resulting from listing.

A copy of the economic analysis and description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, we submitted this action for review by the Office of Management and Budget. Because the economic analysis identified no economic benefits from excluding any of the proposed critical habitat areas, we made a determination to designate all proposed critical habitat units. No inconsistencies with other agencies' actions and/or effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, were identified in the economic analysis. This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed in that document and in this final rule, designation of critical habitat will not restrict any actions beyond those already resulting from listing the pygmy-owl. We recognize that some towns, counties, and private entities are considered small entities in accordance with the Regulatory Flexibility Act, however, they also are not affected by the designation of critical habitat because no additional restrictions will result from this action.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis we determined that designation of critical habitat will not cause—(a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In the economic analysis we determined that no effects would occur to small governments as a result of critical habitat designation.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This designation will not "take" private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists.

Federalism

This rule will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. As previously stated, critical habitat is only applicable to Federal lands and to non-Federal lands when a Federal nexus exists, and in the economic analysis we determined that no economic impacts would result from critical habitat designation.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that EAs and EISs, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that "Critical habitat shall not be designated in such areas an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, we shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands." Pygmy-owl critical habitat does not contain any Tribal lands nor lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary author of this notice is Mike Wrigley (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons given in the preamble, we amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Pygmy-owl, cactus ferruginous" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific Name						
BIRDS							
Pygmy-owl, cactus ferruginous.	*Glaucidium brasilianum cactorum.*	U.S.A. (AZ, TX), Mexico.	AZ	E	600	§ 17.95 (b)	NA

3. Amend section 17.95(b) by adding critical habitat for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) Birds.

* * * * *

Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)

1. Critical habitat units are depicted for Pima, Cochise, Pinal, and Maricopa counties, Arizona, on the maps below. The maps are for reference only; the areas in critical habitat are legally described below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, sheltering, and dispersal or the capacity to develop those habitat components. The primary constituent elements are found in areas that support, or have the potential to support, riparian forests, riverbottom woodlands, xeroriparian forests, and semidesert grassland, and the Arizona upland subdivision of Sonoran desertscrub. Within these vegetation communities, specific plant associations that are essential for the primary biological needs of the cactus ferruginous pygmy-owl include, but are not limited to, the following vegetation: cottonwood, willow, ash, mesquite, palo verde, ironwood, hackberry, saguaro cactus, and/or organ pipe cactus.

3. Critical habitat does not include non-Federal lands covered by a legally operative incidental take permit for the cactus ferruginous pygmy-owl issued under section 10(a) of the Act, nor Indian Tribal grazing allotments.

Unit 1. Pima County, Arizona. From BLM map Sells, Ariz. 1979, Atascosa Mts., Ariz. 1979.

Gila and Salt Principal Meridian, Arizona: T. 17 S., R. 8 E., secs. 1 to 3, E½ sec. 4, E½ sec. 9, secs. 10 to 16, 21 to 36; T. 17 S., R. 9 E., that portion of sec. 1 lying west of St. Hwy 286, secs. 2 to 10, those portions of secs. 11, 12, and 14 lying west of St. Hwy 286, secs. 15 to 22, those portions of secs. 23 and 26 lying west of St. Hwy 286, secs. 27 to 34, that portion of sec. 35 lying west of St. Hwy 286; T. 18 S., R 7 E., sec. 1, those portions of secs. 2 and 11 lying east of Papago Indian Reservation Bdy, sec. 12, those portions of secs. 13, 14, 24, 25, and 36 lying east of Papago Indian Reservation Bdy; T. 18 S., R. 8 E., secs. 1 to 36; T. 18 S., R. 9 E., that portion of sec. 2 lying west of Hwy 286, secs. 3 to 10, those portions of secs. 11 and 14 lying west of St. Hwy 286, secs. 15 to 22, those portions of secs. 23, 26, 27 and 28 lying

west and north of St. Hwy 286, secs. 29 to 31, those portions of secs. 32 and 33 lying west and north of St. Hwy 286; T. 19 S., R. 7 E., those portions of secs. 1, 12, 13, 14, and 23 lying east of Papago Indian Reservation Bdy, secs. 24 and 25, those portions of secs. 26 and 34 lying east of Papago Indian Reservation Bdy, secs. 35, 36; T. 19 S., R. 8 E., secs. 1 to 12, N½ sec. 13, secs. 14 to 21, W½ sec. 22, S½ sec. 26, S½ & NW¼ sec. 27, secs. 28 to 35; T. 19 S., R. 9 E., sec. 6; T. 20 S., R. 7 E., secs. 1, 2, those portions of secs. 3, 9, and 10 lying east of Papago Indian Reservation Bdy, secs. 11 to 15, those portions of secs. 16, 17, and 21 lying east of Papago Indian Reservation Bdy, secs. 22 to 27, those portions of secs. 28, 29, 32, and 33 lying east of Papago Indian Reservation Bdy, secs. 34 to 36; T. 20 S., R. 8 E., secs. 2 to 11, 14 to 23, 27 to 33; T. 21 S., R. 7 E., secs. 1 to 4, those portions of secs. 5 and 8 lying east of Papago Indian Reservation Bdy, secs. 9 to 16, those portions of secs. 17 and 20 lying east of Papago Indian Reservation Bdy, secs. 21 to 27, those portions of secs 28 and 29 lying east of Papago Indian Reservation Bdy, that portion of sec. 33 lying north of Papago Indian Reservation Bdy, secs. 34 to 36; T. 21 S., R. 8 E., secs. 4 to 9; T. 22 S., R. 7 E., secs. 1 to 3, 10 to 15, 22 to 25; T. 22 S., R. 8 E., S½ SW, SW¼ SE¼ sec. 18, W½ & W½ E½ sec. 19, that portion of sec. 20 outside Buenos Aires NWR Bdy, secs. 29, 30.

Unit 2. Pima County, Arizona. From BLM map Silver Bell Mts., Ariz. 1977.

Gila and Salt Principal Meridian, Arizona: T. 13 S., R. 9 E., secs. 31 to 36; T. 13 S., R. 10 E., secs. 31 to 36; T. 13 S., R. 12 E., those portions of secs. 31 to 34 lying within Tucson Mountain County Park; T. 14 S., R. 9 E., secs. 1 to 12; T. 14 S., R. 10 E., secs. 1 to 12; T. 14 S., R. 11 E., that portion of secs. 1 and 2 lying within the Tucson Mountain County Park, secs. 5 to 8, 10, 11, those portions of secs. 12 and 13 lying within Tucson Mountain County Park, secs. 14 and 15; T. 14 S., R. 12 E., those portions of secs. 1 to 25, lying within Tucson Mountain County Park; T. 14 S. R. 13 E., those portions of secs. 7, 18, 19, 28, 29, and 30 lying within Tucson Mountain County Park. (Note: Areas described for Tucson Mountain County Park do not match the Silver Bell Mts., Ariz. BLM map cited above. This description is based on more recent information obtained from Pima County Public Works.)

Unit 3. Pima County, Arizona. From BLM map Silver Bell Mts., Ariz. 1977.

Gila and Salt Principal Meridian, Arizona: T. 12 S., R. 12 E., those portions of secs. 8 and 9 lying south and west of Interstate 10, secs. 17, 20, and 29.

Unit 4. Pima and Pinal Counties, Arizona. From BLM maps Casa Grande, Ariz. 1979, Silver Bell Mts., Ariz. 1977.

Gila and Salt Principal Meridian, Arizona: T. 10 S., R. 11 E., secs. 1 to 36; T. 10 S., R. 12 E., secs. 4 to 9, 16 to 21, 28 to 33; T. 11 S., R. 11 E., secs. 1 to 5, 9 to 15, secs. 23, 24; T. 11 S., R. 12 E., secs. 3 to 10, 14 to 30, N½ sec. 31, secs. 32 to 36; T. 11 S., R. 13 E., secs. 19, 28 to 33; T. 12 S., R. 12 E., secs. 1 to 4, those portions of secs. 8 and 9 lying north and east of Interstate 10, secs. 10 to 14, 23, 24, that portion of sec. 25 lying north of W. Cortaro Farms Road, that portion of sec. 26 lying north of W. Cortaro Farms Road and north and east of Interstate 10; T. 12 S., R. 13 E., secs. 4 to 9, 16 to 21, those portions of secs. 29 and 30 lying north of W. Cortaro Farms Road.

Unit 5a. Pinal County, Arizona. From BLM maps Mesa, Ariz. 1979, Casa Grande, Ariz. 1979.

Gila and Salt Principal Meridian, Arizona: T. 5 S., R. 11 E., secs. 1 to 36; T. 6 S., R. 11 E., secs. 1 to 36; T. 7 S., R. 11 E., secs. 1 to 36; T. 8 S., R. 11 E., secs. 1 to 36; T. 9 S., R. 11 E., secs. 1 to 36.

Unit 5b. Pinal County, Arizona. From BLM maps Casa Grande, Ariz. 1979, Mammoth, Ariz. 1986.

Gila and Salt Principal Meridian, Arizona: T. 8 S., R. 15 E., secs. 1 to 36; T. 9 S., R. 12 E., secs. 1 to 36; T. 9 S., R. 13 E., secs. 1 to 36; T. 9 S., R. 14 E., secs. 1 to 31; T. 9 S., R. 15 E., secs. 1 to 12, 14 to 21, 28 to 30.

Unit 6. Cochise, Pima, and Pinal Counties, Arizona. From BLM maps Mesa, Ariz. 1979, Globe, Ariz. 1986, Mammoth, Ariz. 1986, and Tucson, Ariz. 1979.

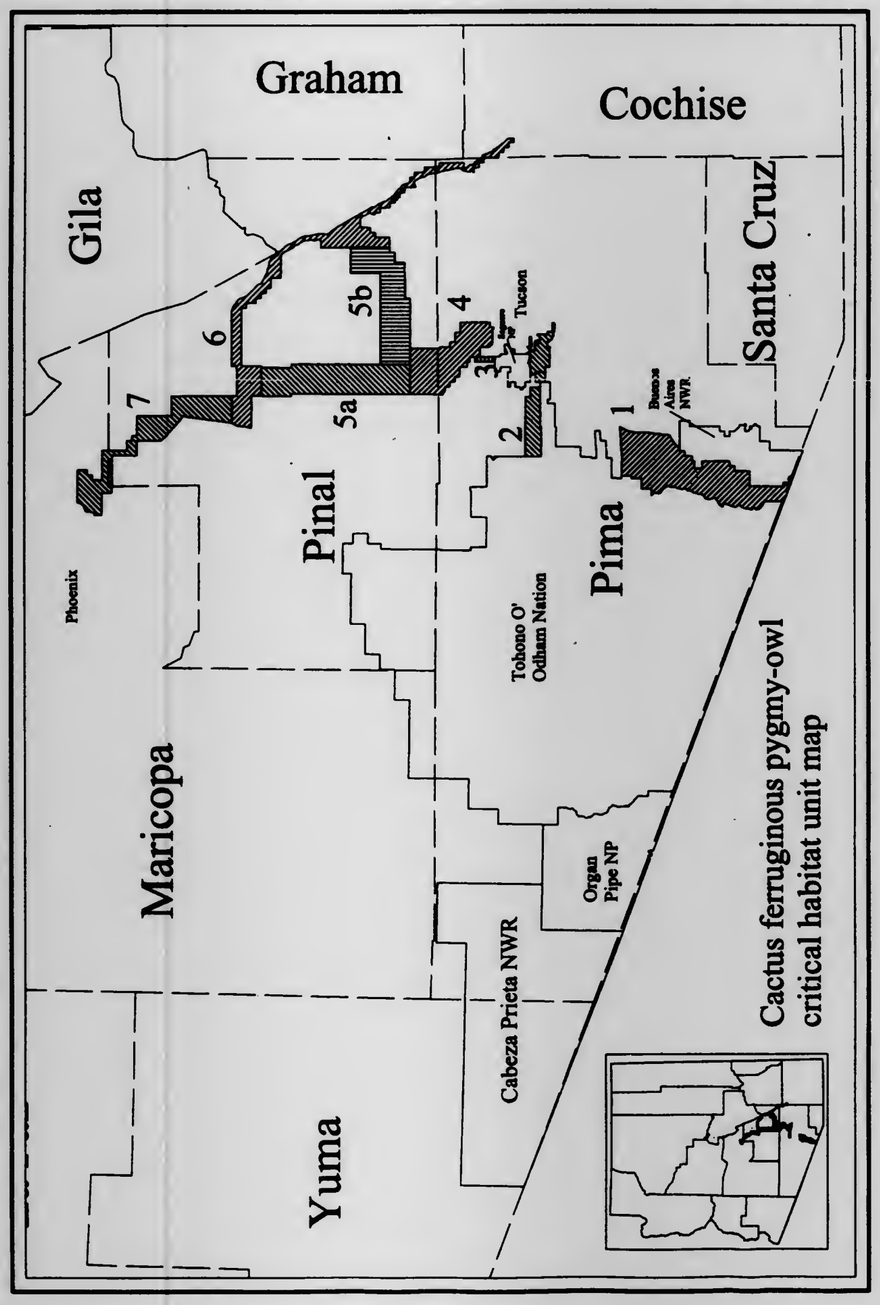
Gila and Salt Principal Meridian, Arizona: T. 4 S., R. 9 E., those portions of secs. 1, 12, 13, and 24 lying east of U.S. Hwy 89; T. 4 S., R. 10 E., secs. 1 to 5, that portion of sec. 6 lying east of U.S. Hwy 89, secs. 7 to 24; T. 4 S., R. 11 E., secs. 7 to 36; T. 4 S., R. 12 E., secs. 1 to 12; T. 4 S., R. 13 E., that portion of sec. 1 lying south and west of St. Hwy 177, secs. 2 to 12; T. 4 S., R. 14 E., those portions of secs. 5, 6, 7, 8, 16, and 17 lying south and west of St. Hwy 177, secs. 18, 20, those portions of secs. 21, 22, 26, and 27, lying south and west of St. Hwy 177, secs. 28, 29, 33, and 34, that portion of sec. 35 lying south and west of St. Hwy 177; T. 5 S., R. 14 E., those portions of secs. 1 and 2 lying south and west of St. Hwy 177, secs. 3, 11, 12; T. 5 S., R. 15 E., those portions of secs. 6, 7, 8, 9, and 10 lying south and west of St. Hwy 177, that portion of sec. 14 lying south and west of the Pinal and Gila Counties boundary (all within Pinal County), that portion of sec. 15 lying south of St. Hwy 177 and west of the Pinal and Gila Counties boundary (all within Pinal County), secs 16 to 22, that portion of sec. 23 lying south and west of the Pinal and Gila Counties boundary (all within Pinal County), that portion sec. 24 lying west of St. Hwy 77 and south of Pinal and Gila Counties boundary (all within Pinal County), that portion of sec. 25 lying south and west of St. Hwy 77 and north and east of San Manuel Railroad, those portions of secs. 26 and 36 lying north and east of San Manuel Railroad; T. 5 S., R. 16 E., those portions of secs. 30 and 31 lying south and west of St. Hwy 77; T. 6 S., R. 15 E., that portion of sec. 1 lying north and east of San Manuel Railroad; T. 6 S., R. 16 E., that portion of sec. 5 lying south and west of St. Hwy 77, that portion of sec. 6 lying south and west of St. Hwy 77 and north and east of San Manuel Railroad, that portion of sec. 7 lying north and east of San Manuel Railroad, that portion sec. 8 lying south and west of St. Hwy 77 and north and east of San Manuel Railroad, those portions of secs. 9 and 16 lying south and west of St. Hwy 77, those portions of secs. 17 and 20 lying east of San Manuel Railroad, those portions of secs. 21 and 28 lying west of St. Hwy 77, those portions of secs. 29 and 32 lying east of San Manuel Railroad, that portion of sec. 33 lying west of St. Hwy 77; T. 7 S., R. 16 E., that portion of sec. 4 lying west of St. Hwy 77, secs. 5 to 8, those portions of secs. 9, 10, and 15 lying south and west of St. Hwy 77, secs. 16 to 21, those portions of secs. 22, 23, 25, and 26 lying south and west of St. Hwy 77, secs. 27 to 35, that portion of sec. 36 lying south and west of St. Hwy 77; T. 8 S., R. 16 E., that portion of sec. 1 lying south and west of St. Hwy 77, secs. 2 to 12, that portion of sec. 13 lying east of Camino Rio Road, secs. 15 to 22, 28 to 32; T. 8 S., R. 17 E., that portion of sec. 6 south and west of St. Hwy 77, that portion of section 7 west of St. Hwy 77 and west of River Road, that portion of sec. 17 lying south and west of River Road, that portion of sec. 18 south and west of River Road and north and east of a line defined by Camino Rio Road where it runs southeasterly from the west boundary of sec. 18 to its intersection with St. Hwy 77 then southeasterly along St. Hwy 77 to its intersection with Old State Hwy 77 then along Old State Hwy 77 to its intersection with the south boundary of sec. 18, that portion of sec. 19 lying east of Old State Highway 77, those portions of secs. 20, 28, and 29 lying south and west of River Road, that portion of sec. 30 lying east of Old State Hwy 77 and St. Hwy 77, sec. 32, that portion of sec. 33 lying west of River Road; T. 9 S., R. 16 E., secs. 5 to 8; T. 9 S., R. 17 E., those portions of secs. 3 and 4 lying west of River Road, sec. 9, those portions of secs. 10, 14, and 15 lying west of River Road, NE¼ sec. 22, those portions of secs. 23, 24, and 25 west of River Road; T. 9 S., R. 18 E., those portions of secs. 30, 31 and 32 west of River Road; T. 10 S., R. 18 E., those portions of secs. 5, 6, 7, and 8 lying north and east of Redington Road, sec. 9, those portions of secs. 16, 17, and 21 lying north and east of Redington Road, secs. 22 and 27, those portions of secs. 28 and 33 lying east of Redington Road, sec. 34; T. 11 S., R. 18 E., sec. 2, those portions of secs. 3 and 10 lying east of Redington Road, secs. 11 and 14, those portions of secs. 15 and 22 lying east of Redington Road, secs. 23 and 26, that portion of sec. 27 lying east of Redington Road, that portion of sec. 34 lying east of Redington Road and west of Cascabel Road, that portion of sec. 35 lying west of Cascabel Road; T. 12 S., R. 18 E., that portion of sec. 2 west of Cascabel Road, that portion of sec. 3 lying east of Redington Road, those portions of secs. 11, 12, and 13 lying west of Cascabel Road; T. 12 S., R. 19 E., those portions of secs. 18, 19, 29, and 30 lying west of Cascabel Road, sec. 31, that portion of sec. 32 and 33 lying west of Cascabel Road; T. 13 S., R. 19 E., that portion of sec. 4 lying west of Cascabel Road, sec. 5, those portions of secs. 9, 10, and 15 lying west of Cascabel Road.

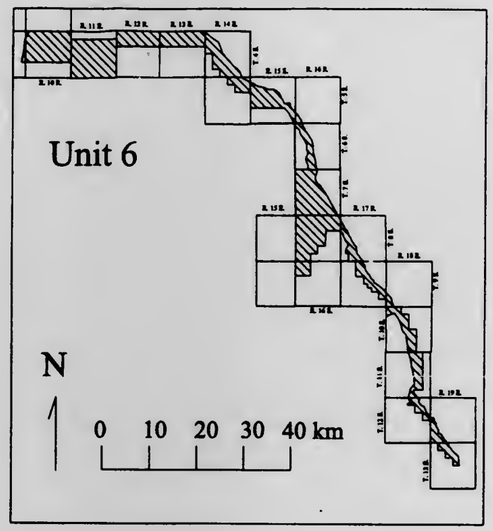
Unit 7. Maricopa and Pinal Counties, Arizona. From BLM maps Theodore Roosevelt Lake, Ariz. 1981 and Mesa, Ariz. 1979.

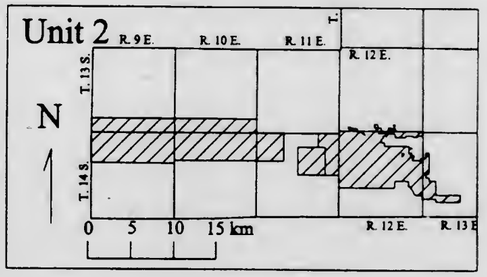
Gila and Salt Principal Meridian, Arizona: T. 3 N., R. 7 E., that portion of sec. 33 lying easterly of Salt River Indian Reservation Bdy, secs. 34 to 36; T. 3 N., R. 8 E., secs. 31 to 33; T. 2 N., R. 7 E., secs. 1 to 3, those portions of secs. 4, 5, 6 and 7 lying south and east of

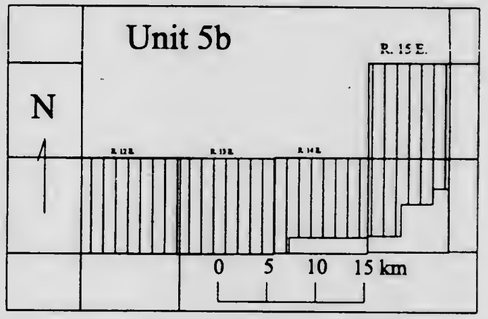
Salt River Indian Reservation Bdy, secs. 8 to 17, that portion of sec. 18 lying south and east Salt River Indian Reservation Bdy, secs. 19 to 25, E ½ sec. 26, E ½ sec. 35, sec. 36; T. 2 N., R. 8 E., secs. 4 to 8, 18, 19, 25 to 36; T. 2 N., R. 9 E., secs. 30, 31; T. 1 N., R. 9 E., secs. 6, 7, 18 to 21, 27 to 30, 34 to 36; T. 1 N., R. 10 E., secs. 31, 32; T. 1 S., R. 9 E., secs. 1 to 3, 10 to 15, 22 to 26, those portions of secs. 27, 35 and 36 lying north and east of U.S. Hwy 60/89; T. 1 S., R. 10 E., secs. 5 to 8, 17 to 20, 29 to 32; T. 2 S., R. 9 E., that portion of sec 1 lying north and east of U.S. Hwy 60/89; T. 2 S., R. 10 E., secs. 1 to 5, those portions of secs. 6, 7 and 8 lying north and east of U.S. Hwy 60/89, secs. 9 to 16, that portion of sec. 17 lying north and east of U.S. Hwy 60/89 and south and east of U.S. Hwy 89, that portion of sec. 20 lying east of U.S. Hwy 89, secs. 21 to 28, those portions of secs. 29 and 32 lying east of U.S. Hwy 89, secs. 33 to 36; T. 3 S., R. 10 E., secs. 1 to 4, those portions of secs. 5 and 8 lying east of U.S. Hwy 89, secs. 9 to 16, those portions of secs. 17, 18, and 19 lying east of U.S. Hwy 89, secs. 20 to 29, those portions of secs. 30 and 31 lying east of U.S. Hwy 89, secs. 32 to 36.

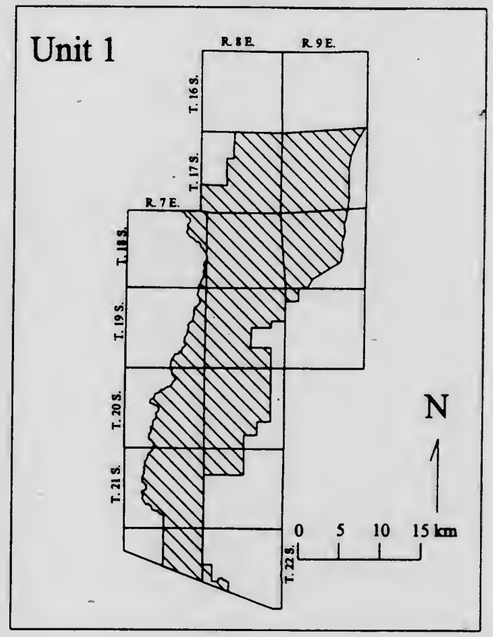
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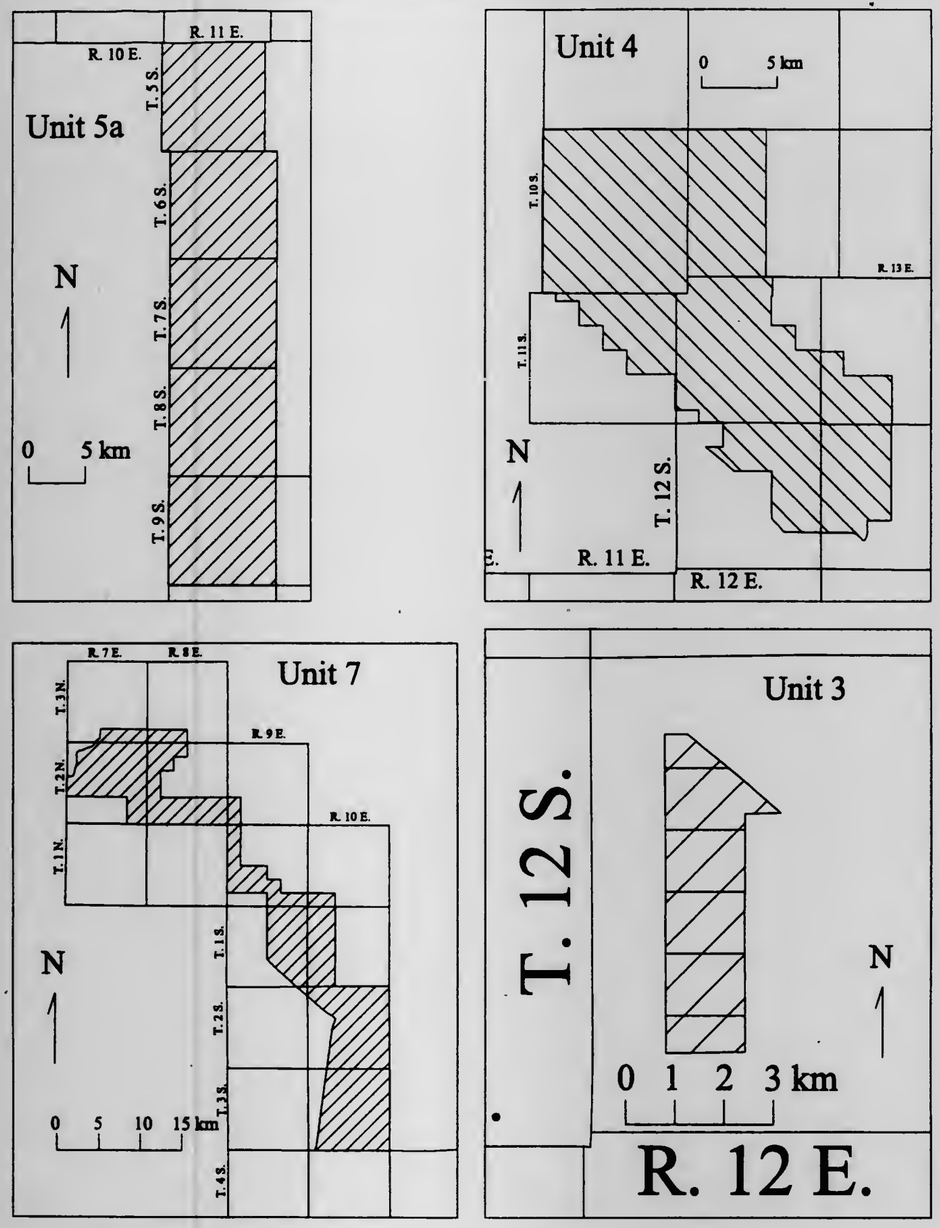

Graham
Cochise
Gila
Santa Cruz
Pinal
Pima
Maricopa
Yuma
Phoenix
Tucson
Tohono O'Odham Nation
Buenos Aires NWR
Organ Pipe NP
Cabeza Prieta NWR
1
2
3
4
5a
5b
6
7
Cactus ferruginous pygmy-owl critical habitat unit map


Unit 6
N
0 10 20 30 40 km


Unit 2
R. 9 E.
R. 10 E.
R. 11 E.
R. 12 E.
T. 13 S.
T. 14 S.
N
0 5 10 15 km
R. 12 E.
R. 13 E


Unit 5b
R. 15 E.
N
0 5 10 15 km


Unit 1
R. 8 E.
R. 9 E.
T. 16 S.
T. 17 S.
R. 7 E.
T. 18 S.
T. 19 S.
T. 20 S.
T. 21 S.
T. 22 S.
N
0 5 10 15 km



Dated: June 30, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–17404 Filed 7–6–99; 1:25 pm]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF37

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Huachuca Water Umbel, a Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water umbel). Designated habitat includes a total of 83.2 kilometers (km) (51.7 miles (mi)) of streams or rivers in Cochise and Santa Cruz counties, Arizona. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

EFFECTIVE DATE: August 11, 1999.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640–2720 ext. 240; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

Lilaeopsis schaffneriana var. *recurva* (referred to as *Lilaeopsis* in this proposed rule), the Huachuca water umbel, is a plant found in cienegas (desert marshes), rivers, streams, and springs in southern Arizona and northern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as *Lilaeopsis* (Hendrickson and Minckley 1984, Lowe 1985, Ohmart and Anderson 1982, Minckley and Brown 1982).

Cienegas, perennial streams, and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total land area of Arizona, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimated that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered in historical times. *Lilaeopsis* occupies small portions of these rare habitats.

Lilaeopsis is an herbaceous, semiaquatic to occasionally fully aquatic, perennial plant with slender, erect leaves that grow from creeping rhizomes (root-like stems). The leaves are cylindrical, hollow with no pith, and have septa (thin partitions) at regular intervals. The yellow-green or bright green leaves are generally 1–3 millimeters (mm) (0.04–0.12 inches (in)) in diameter and often 3–5 centimeters (cm) (1–2 in) tall, but can reach up to 20 cm (8 in) tall under favorable conditions. Three to 10 very small flowers are borne on an umbel that is always shorter than the leaves. The fruits are globose, 1.5–2 mm (0.06–0.08 in) in diameter, and usually slightly longer than wide (Affolter 1985). The species reproduces sexually through flowering and asexually from rhizomes; the latter probably being the primary reproductive mode. An additional dispersal opportunity occurs as a result of the dislodging of clumps of plants which then may reroot at different sites along streams.

Lilaeopsis schaffneriana spp. *recurva* was first described by A.W. Hill based on the type specimen collected near Tucson in 1881 (Hill 1926). Hill applied the name *Lilaeopsis recurva* to the specimen, and the name prevailed until Affolter (1985) revised the genus. Affolter applied the name *L. schaffneriana* ssp. *recurva* to plants found west of the continental divide.

Previous Federal Action

We included *Lilaeopsis schaffneriana* ssp. *recurva*, then under the name *L. recurva*, as a category 2 candidate in our November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39526), plant notices of review. Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. In our February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), notices, we included *Lilaeopsis* as a category 1 candidate. Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On June 3, 1993, we received a petition, dated May 31, 1993, from a coalition of conservation organizations (Suckling *et al.* 1993) to list *Lilaeopsis* and two other species as endangered species pursuant to the Act. On December 14, 1993, we published a notice of 90-day finding that the petition presented substantial information indicating that listing of *Lilaeopsis* may be warranted, and requested public comments and biological data on the status of the species (58 FR 65325).

On April 3, 1995, we published a proposal (60 FR 16836) to list *Lilaeopsis* and two other species as endangered, and again requested public comments and biological data on their status. After consideration of comments and information received during the comment period, we listed *Lilaeopsis* as endangered on January 6, 1997.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time we determine a species to be endangered or threatened. At the time of listing, we determined that any potential benefits of critical habitat beyond that of listing, when weighed against the negative impacts of disclosing site-specific localities, did not yield an overall benefit to the species, and, therefore, that designation of critical habitat was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Department of Interior for failure to designate critical habitat for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) and *Lilaeopsis (Southwest*

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Center for Biological Diversity v. *Babbitt*, CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order stating that "There being no evidence that designation of critical habitat for the pygmy-owl and water umbel is not prudent, the Secretary shall, without further delay, decide whether or not to designate critical habitat for the pygmy-owl and water umbel based on the best scientific and commercial information available."

On November 25, 1998, in response to the Plaintiff's motion to clarify his initial order, Judge Marquez further ordered "that within 30 days of the date of this Order, the Secretary shall issue the proposed rules for designating critical habitat for the pygmy-owl and water umbel * * * and that within six months of issuing the proposed rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel." A rule proposing 83.9 kilometers (km) (52.1 miles (mi)) of streams and rivers in Cochise and Santa Cruz counties, Arizona, as critical habitat for Lilaeopsis was published December 30, 1998.

The processing of the December 30, 1998, proposed rule and this final rule does not conform with our Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. Our Southwest Region is currently working on Tier 2 actions; however, we are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

Habitat Characteristics

The physical and biological habitat features essential to the conservation of *Lilaeopsis* include a riparian plant community that is fairly stable over time and not dominated by nonnative plant species, a stream channel that is relatively stable but subject to periodic flooding, refugial sites (sites safe from catastrophic flooding), and a substrate (soil) that is permanently wet or nearly so, for growth and reproduction of the plant.

Lilaeopsis has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not experience scouring floods, *Lilaeopsis* occurs in microsites (small isolated sites) where competition among different plant species is low. At these sites, *Lilaeopsis* occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of *Lilaeopsis* occurs, is an example of a site that meets these conditions. The types of microsites required by *Lilaeopsis* were generally lost from the main stems of the San Pedro and Santa Cruz Rivers when channel entrenchment occurred in the late 1800s. Habitat on the upper San Pedro River is recovering, and *Lilaeopsis* has recently recolonized small reaches of the main channel.

Lilaeopsis can occur in backwaters and side channels of streams and rivers, and in nearby springs. After a flood, *Lilaeopsis* can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was recorded at Sonoita Creek in August 1988, when a scouring flood removed about 95 percent of the *Lilaeopsis* population (Gori *et al.* 1990). One year later, *Lilaeopsis* had recolonized the stream and was again co-dominant with *Rorippa nasturtium-aquaticum* (watercress) (Warren *et al.* 1991).

In rivers and streams, the expansion and contraction of *Lilaeopsis* populations appears to depend on the presence of "refugia" where the species can escape the effects of scouring floods, a watershed that has an unaltered flow regime, and a healthy riparian community that stabilizes the channel. Two patches of *Lilaeopsis* on the San Pedro River were lost during a winter flood in 1994, and the species had still not recolonized that area as of May 1995, demonstrating the dynamic and often precarious nature of occurrences within a riparian system (Al Anderson, Grey Hawk Ranch, *in litt.* 1995).

The density of *Lilaeopsis* plants and size of populations fluctuate in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory of trees and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 500 square-meter (sq-m) (5,385 square-foot (sq-ft)) patch of habitat (Gori *et al.* 1990). Some populations are as small as 1–2 sq-m (11–22 sq-ft). The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains one of the larger Huachuca water umbel populations, where in 1995 it occupied about 64 percent of a 1,420-m (4,660-ft) reach (Falk 1998).

While the extent of occupied habitat can be estimated, the number of individuals in each population is difficult to determine because of the intermeshing nature of the creeping rhizomes and the predominantly asexual mode of reproduction. A "population" of *Lilaeopsis* may be composed of one or many genetically distinct individuals.

Introduction of *Lilaeopsis* into ponds on the San Bernardino and Leslie Canyon National Wildlife Refuges, Arizona, appears to be successful (Warren 1991; Kevin Cobble, San Bernardino National Wildlife Refuge, pers. comm. 1999). In 1991, *Lilaeopsis* was transplanted from Black Draw into new ponds and other wetlands at San Bernardino Refuge. Transplants placed in areas with low plant density expanded rapidly (Warren 1991). In 1992, *Lilaeopsis* naturally colonized a pond created in 1991. However, as plant competition increased around the perimeter of the pond, the *Lilaeopsis* population decreased. This response seems to confirm observations (Kevin Cobble, Service, pers. comm. 1994; and Peter Warren, Arizona Nature Conservancy, pers. comm. 1993) that other species such as *Typha* sp. will out-compete *Lilaeopsis*. A recent introduction to Leslie Canyon Refuge is successful and the plant appears to be expanding its distribution there (K. Cobble, pers. comm. 1999).

Lilaeopsis has been documented from 26 sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (K. Cobble, pers. comm. 1999; Haas and Frye 1997; Saucedo 1990; Warren *et al.* 1989; Warren *et al.* 1991; Warren and Reichenbacher 1991). The plant has been extirpated from six of the sites. The 20 extant sites occur in 4 major watersheds—San Pedro River, Santa Cruz River, Rio Yaqui, and Rio Sonora. All sites are between 1,148–2,133 m (3,500–6,500 ft) elevation.

Nine *Lilaeopsis* populations occur in the San Pedro River watershed in Arizona and Sonora, on sites owned or managed by private landowners, Fort Huachuca Military Reservation, the Coronado National Forest, and the Bureau of Land Management's (BLM)

Tucson Field Office. Two extirpated populations in the upper San Pedro watershed occurred at Zinn Pond in St. David and the San Pedro River near St. David. Cienega-like habitats were probably common along the San Pedro River prior to 1900 (Hendrickson and Minckley 1984, Jackson *et al.* 1987), but these habitats are now largely gone. Surveys conducted for wildlife habitat assessment have found several discontinuous clumps of *Lilaeopsis* within the upper San Pedro River where habitat was present in 1996 prior to recent flooding (Mark Fredlake, BLM, pers. comm. 1996).

The four *Lilaeopsis* populations in the Santa Cruz watershed probably represent very small remnants of larger populations that may have occurred in the extensive riparian and aquatic habitat formerly existing along the river. Before 1890, the spatially intermittent, perennial flows on the middle Santa Cruz River most likely provided a considerable amount of habitat for *Lilaeopsis* and other aquatic plants. The middle section of the Santa Cruz River mainstem is about a 130-km (80-mi) reach that flowed perennially from the United States/Mexico border northward to Tubac area and intermittently from Tubac north to the Tucson area (Davis 1986).

Davis (1982) quotes from the July 1855, descriptive journal entry of Julius Froebel while camped on the Santa Cruz River near Tucson: "* * * rapid brook, clear as crystal, and full of aquatic plants, fish, and tortoises of various kinds, flowed through a small meadow covered with shrubs. * * *" This habitat and species assemblage no longer occurs in the Tucson area. In the upper watershed of the middle Santa Cruz River, the species is now represented only by a single population in two short reaches of Sonoita Creek. A population at Monkey Spring in the upper watershed of the middle Santa Cruz River has been extirpated, although suitable habitat exists (Warren *et al.* 1991).

Lilaeopsis remains in small areas (generally less than 1 sq-m (10.8 sq-ft)) in Black Draw, Cochise County, Arizona. Transplants from Black Draw have been successfully established in nearby wetlands and ponds, including Leslie Canyon. A population at House Pond on private land near Black Draw was thought to be extirpated, but was recently rediscovered there (K. Cobble, pers. comm. 1999).

Two *Lilaeopsis* populations occur in the Rio Yaqui watershed. The species was recently discovered at Presa Cuquiarichi, in the Sierra de los Ajos, several miles east of Cananea, Sonora (Tom Deecken, Coronado National Forest, pers. comm. 1994). A population in the Rio San Bernardino in Sonora was recently extirpated (Gori *et al.* 1990), but another population was found in 1997 on Cajon Bonito near its confluence with Black Draw in Sonora (K. Cobble, pers. comm. 1999). One *Lilaeopsis* population occurs in the Rio Sonora watershed at Ojo de Agua, a cienega in Sonora at the headwaters of the river (Saucedo 1990).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide additional protection to areas where significant threats to the species have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. "Jeopardize the continued existence" (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical (50 CFR § 402.02).

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

Critical habitat identifies specific areas, that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain habitat components necessary for the primary biological needs of a species but that could develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

Section 3(5)(C) of the Act states that, "except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." All areas containing the primary constituent elements are not necessarily essential to the conservation of the species. Areas that contain one or more of the primary constituent elements, but that are not included within critical habitat

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boundaries, may still be important to a species' conservation and may be considered under other parts of the Act or other conservation laws and regulations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR § 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, air, light, minerals or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and

Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for *Lilaeopsis* include, but are not limited to, the habitat components that provide:

(1) Sufficient perennial base flows to provide a permanently or nearly permanently wetted substrate for growth and reproduction of *Lilaeopsis;*

(2) A stream channel that is relatively stable, but subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for *Lilaeopsis* expansion;

(3) A riparian plant community that is relatively stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for *Lilaeopsis* growth and reproduction; and

(4) In streams and rivers, refugial sites in each watershed and in each reach, including but not limited to springs or backwaters of mainstem rivers, that allow each population to survive catastrophic floods and recolonize larger areas.

We selected critical habitat areas to provide for the conservation of *Lilaeopsis* throughout the remaining portion of its geographic range in the United States. At least one segment of critical habitat is designated in each watershed containing the species, with the exception of the Rio Yaqui watershed where the plants are found on the San Bernardino National Wildlife Refuge. That population is secure under current management and, therefore, does not require special management considerations or protection.

Critical Habitat Designation

The critical habitat areas described below, combined with other habitat either known or suspected to contain some of the primary constituent elements but not in need of special management, constitute our best assessment at this time of the areas needed for the species' conservation. However, the Arizona Plant Recovery Team will be providing guidance on recovery planning for this species and may provide additional guidance regarding the significance of areas designated as critical habitat or the need to designate other areas. Upon the team's completion of recovery planning guidance, we will evaluate the recommendations and reexamine if and where critical habitat is appropriate.

Critical habitat designated for *Lilaeopsis* includes areas that currently sustain the species and areas that do not currently sustain the species but offer recovery habitat. The species is already extirpated from a significant portion of its historical range. Seven disjunct areas are designated as critical habitat; all proposed areas are in Santa Cruz and Cochise counties, Arizona, and include stream courses and adjacent areas out to the beginning of upland vegetation.

The following general areas are designated as critical habitat (see legal descriptions for exact critical habitat boundaries): approximately 2.0 km (1.25 mi) of Sonoita Creek southwest of Sonoita; approximately 4.4 km (2.7 mi) of the Santa Cruz River on both sides of Forest Road 61, plus approximately 3 km (1.9 mi) of an unnamed tributary to the east of the river; approximately 5.4 km (3.4 mi) of Scotia Canyon upstream from near Forest Road 48; approximately 1.1 km (0.7 mi) of Sunnyside Canyon near Forest Road 117 in the Huachuca Mountains; approximately 6.1 km (3.8 mi) of Garden Canyon near its confluence with Sawmill Canyon; approximately 1.6 km (1.0 mi) of Lone Mountain Canyon and approximately 1.6 km (1.0 mi) of Rattlesnake Canyon and 1.0 km (0.6 mi) of an unnamed canyon, both of which are tributaries to Lone Mountain Canyon; approximately 1.6 km (1.0 mi) of Bear Canyon; an approximate 0.9-km (0.6-mi) reach of an unnamed tributary to Bear Canyon; and approximately 54.2 km (33.7 mi) of the San Pedro River from the perennial flows reach north of Fairbank (Arizona Department of Water Resources 1991) to 200 meters (.13 mi) south of Hereford, San Pedro Riparian National Conservation Area.

Although the majority of lands designated as critical habitat is under Federal administration and management, some riparian systems on private land are being designated. The Sonoita Creek segment and the San Rafael Valley segment within the Santa Cruz River drainage are privately owned. The upper portion of Scotia Canyon is privately owned, but is expected to soon be acquired through land exchange by the Coronado National Forest. Other sites in the Huachuca Mountains (lower Scotia Canyon, Sunnyside, Bear, and Lone Mountain canyons, and tributaries of the latter two canyons) are managed by the Coronado National Forest. The San Pedro Riparian National Conservation Area is managed by the BLM. The Garden Canyon segment is managed by the Fort Huachuca Military Reservation.

Several areas where *Lilaeopsis* occurs are not designated as critical habitat. We recognize the importance of all lands occupied or potentially occupied by *Lilaeopsis,* but, as discussed below, not all such areas were designated because some did not meet the designation criteria (i.e., were too small to support a stable *Lilaeopsis* population over time, and/or were already protected). Also, areas outside the United States are not considered for critical habitat designation (50 CFR 424.12(h)). Several sites were considered small and not capable of supporting large stable populations, including Turkey Creek in the Canelo Hills, Sawmill Spring, Sycamore Spring, Mud Spring, and Freeman Springs.

We believe these small, isolated sites are important, but may not be essential to the conservation of the species, and in the case of Sawmill Spring and Freeman Spring, may not require special management considerations or protection above that currently provided. Freeman Spring is fenced to prevent livestock grazing. Sawmill Spring is an isolated site near the western boundary of Fort Huachuca at which the only significant threats are a trail to the site and wildfire. Recreational use along the trail does not appear to be adversely affecting the species, and Fort Huachuca has committed to various measures to lessen the threat of wildfire.

Also not designated are portions of Bear Canyon above and below the critical habitat reach and several isolated populations in the Bear and Lone Mountain canyons complex. We believe the best habitat in this area is included in the designated reaches of the two canyons and their tributaries. Other reaches are intermittent with limited habitat for *Lilaeopsis*, or are small, relatively isolated sites. Also, designation of the critical habitat reach provides some protection to at least the downstream reach of Bear Canyon due to conservation of watershed values.

The 0.7-km (0.4-mi) reach of Joaquin Canyon, proposed as Unit 7, is also not designated. This reach is currently administered by the Coronado National Forest, but is expected to be exchanged into private ownership in the near future. During the open comment period, we met with both the Coronado National Forest and prospective new landowners. Through these discussions we learned that the future owners plan to continue current grazing practices, but no other uses of the property are anticipated. Further, the effects of grazing are moderated at this site because the stream channel is largely bedrock and not easily subject to structural damage. Thus, we do not consider this area to be in need of special management consideration or protection. In summary, because of the small size of the Joaquin Canyon habitat and the low degree of threats to the area, we did not designate this area as critical habitat, because it is neither essential to the conservation of the species nor in need of special management or protection. The area proposed as Unit 8 now becomes Unit 7.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Conferencing on *Lilaeopsis* critical habitat was requested twice, including once by the Department of the Army, Fort Huachuca, in regard to military activities, and once by the Coronado National Forest on their forest-wide grazing program. These conferences are not yet complete. With designation of critical habitat, these conferences are now section 7 consultations.

Activities on Federal lands that may affect *Lilaeopsis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, will also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Lilaeopsis* is appreciably diminished. We note that such activities will also likely jeopardize the continued existence of the species. Such activities may include but are not limited to:

(1) Activities such as damming, water diversion, channelization, excess groundwater pumping, or other actions that appreciably decrease base flow and appreciably reduce the wetted surface area of rivers, streams, cienegas, or springs;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural flooding regimes needed to maintain natural, dynamic riparian communities. Such activities adverse to *Lilaeopsis* critical habitat could include, but are not limited to: vegetation manipulation such as chaining or harvesting timber; maintaining an unnatural fire regime either through fire suppression, or too-frequent or poorly-timed prescribed fires; mining; military maneuvers, including bombing and tank operations; residential and commercial development; road construction; and overgrazing that reduces fire frequency or otherwise degrades watersheds;

(3) Activities that appreciably degrade or destroy native riparian communities, including but not limited to livestock overgrazing, clearing, cutting of live trees, introducing or encouraging the spread of nonnative species, and heavy recreational use; and

(4) Activities that appreciably alter stream channel morphology such as sand and gravel mining, road construction, channelization, impoundment, overgrazing, watershed disturbances, off-road vehicle use, heavy or poorly-planned recreational use, and other uses.

Designation of critical habitat could affect the following agencies and/or actions including, but not limited to, managing recreation, road construction, livestock grazing, granting rights-of-way, timber harvesting, and other actions funded, authorized, or carried out by the Forest Service or BLM. Permitting of some military activities on Fort Huachuca may be affected by designation. Development on private or State lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, would also be subject to the section 7 consultation process. These activities are already subject to section 7 consultation because of the listing of *Lilaeopsis.*

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone (505) 248–6920, facsimile (505) 248–6922).

Summary of Comments and Recommendations

In the December 30, 1998, proposed rule to designate critical habitat, we requested all interested parties to submit comments or information that might bear on the listing or designation of critical habitat for *Lilaeopsis.* The first comment period closed March 1, 1999. We reopened the comment period from April 15 to May 15, 1999, to once again solicit comments on the proposed

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rule and to accept comments on the draft economic analysis. Comments received from March 2 to April 14, 1999, were entered into the administrative record during the second comment period. All appropriate State agencies, Federal agencies, County governments, scientific organizations, and other interested parties were contacted and invited to comment. We published newspaper notices inviting public comment in the following newspapers in Arizona: Arizona Republic, Tucson Citizen, Arizona Daily Star, Sierra Vista Herald, Green Valley News and Sun, The Bulletin, The Tombstone Tumbleweed, and Nogales International. The inclusive dates of publication were January 4 to 12, 1999, for the initial comment period; January 26 to February 4, 1999, to advertise the public hearings; and April 21 to 29, 1999, for the second comment period.

We held three public hearings on the proposed rule, at Coolidge (February 10, 1999), Sierra Vista (February 11, 1999), and Tucson, Arizona (February 12, 1999). The hearings were also held to solicit comments on the proposed rule to designate critical habitat for the cactus ferruginous pygmy-owl, *Glaucidium brasilianum cactorum* (63 FR 71820). A notice of hearings and locations was published in the **Federal Register** on January 26, 1999 (64 FR 3923). A total of 89 people attended the public hearings, including 10 in Coolidge, 28 in Sierra Vista, and 51 in Tucson. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We contacted three experts on the species that agreed to peer review the proposed critical habitat designation. One of those peer reviewers submitted comments. He concluded that "the habitat sites designated, to the best of my knowledge, seem reasonable enough to guarantee its (*Lilaeopsis*') survival—even though I would prefer additional ones."

A total of 8 oral and 41 written comments were received during the two comment periods. Of the 8 oral comments, 3 supported critical habitat designation, 4 were opposed to designation, and 1 provided additional information but did not support or oppose the proposal. Of the written comments, 22 supported designation, 9 were opposed to it, and 10 provided additional information only, or were nonsubstantive or not relevant to the proposed designation. In total, oral and written comments were received from 5 Federal agencies, 2 State agencies, 4 local governments, and 38 private organizations, companies, or individuals.

We reviewed all comments received for substantive issues and new data regarding critical habitat and *Lilaeopsis*. Comments of a similar nature are grouped into a number of general issues. Fifteen general issues were identified relating specifically to critical habitat. These are addressed in the following summary.

Issue 1: The Service did not allow for an appropriate level of local government involvement in the designation of critical habitat. Several commenters said that cities and counties should have greater say in critical habitat designations, while one commenter would have us not consider comments from local governments.

Service Response. The Act requires that we "give actual notice of the proposed regulation (including the complete text of the regulation) to* * *each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each jurisdiction" (section 4(b)(5)(A)(ii)). The comments of local governments are then entered into the administrative record for the proposed regulation and are considered when developing proposed or final rules. However, we do not weight comments from a local government any more or less than other comments. Instead, we are required to base our decision on the "best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat" (section 4(b)(2) of the Act). The proposed rule was sent to Cochise, Santa Cruz, and Pima county offices, the Southeastern Arizona Council of Governments, and the cities/towns of Patagonia, Benson, and Sierra Vista. Of these local governments, comments were received from the City of Benson. Those comments were considered in development of this final rule.

Issue 2: Lilaeopsis receives an adequate level of protection on the San Pedro River and at Fort Huachuca, and therefore critical habitat should not be designated in these areas.

Service Response: The San Pedro River critical habitat unit is administered by the BLM, while designated critical habitat on Fort Huachuca (Garden Canyon) is administered by the Department of Defense. Because of the protection afforded *Lilaeopsis* through section 7 consultations on these Federal lands resulted from listing of the species, there is little additional benefit of critical habitat designation in occupied habitats because *Lilaeopsis* occurs patchily in both Garden Canyon and the San Pedro River, and a project that affects one portion of a stream course will affect downstream and perhaps upstream reaches as well.

Given the above, we fundamentally agree that critical habitat designation provides no additional protection beyond that provided through listing the species under the Act. However, given the outcome of litigation surrounding this and other critical habitat designations, we felt that the prudent course would be to designate critical habitat in areas where Federal actions are likely to affect that habitat.

Issue 3: Most of the areas proposed for critical habitat do not have constituent elements and thus should not be designated. Occupied habitat is adequate to ensure conservation of the species, thus unoccupied sites should not be designated. In particular, one commenter said that the San Pedro River channel is too unstable to support *Lilaeopsis*, no refugia exist where the species can escape the effects of flooding, and it is dominated by nonnative species, such as *Typha* spp. (cattail). This commenter also said that the San Pedro River should not be designated critical habitat because flows could be depleted or halted due to diversions or pumping in the upper watershed in Mexico.

Service Response: Although *Lilaeopsis* occurs within all of the critical habitat units, the extent of occupied habitat and areas where all of the constituent elements are found are somewhat dynamic and change within these systems depending on floods, drought, changes in channel morphology, and other factors. Some portions of stream segments designated as critical habitat have very little potential to support *Lilaeopsis*, such as the majority of the upper portion of Lone Mountain Canyon, but may support the species and constituent elements in wet years.

Nevertheless, these segments are hydrologically connected to, and part of, the drainages that support the most important populations of *Lilaeopsis*. In the case of upper Lone Mountain Canyon, populations of *Lilaeopsis* occur both upstream and downstream of this reach; thus not only is this segment likely ephemeral habitat which affects downstream populations hydrologically, it is also a link that can allow for flow of individuals and genetic material among populations. Such flow is essential for genetic diversity and for recolonization if populations are extirpated (Shafer 1990).

In regard to the San Pedro River, the reach designated as critical habitat supports six populations or clusters of

populations that are distributed from the southern to northern boundaries of the reach. This reach is broadly defined by the Arizona Department of Water Resources (1991) as perennial throughout, although in most years flow is greatly reduced and many places are dry immediately before the summer rains begin in July.

The commenter's suggestion that the San Pedro River channel is too unstable; no refugia exist for persistence during floods; and nonnatives such as *Typha* are common is belied by the fact that six populations exist within the critical habitat reach, despite changes in channel morphology and periodic flooding. Also, *Typha* is a native emergent plant, although other non-natives, particularly *Rorippa nasturtium-aquaticum*, are common in the San Pedro River. Habitat suitability varies within the San Pedro critical habitat unit, but we have no reason to believe that any significant portion of it is unsuitable. With the removal of grazing and off-road vehicles since 1989, the channel has apparently become more stable, emergent and riparian vegetation has increased in the river channel, and *Lilaeopsis* was rediscovered on the river. The recent introduction of beavers to the system should further hasten the recovery of cienega conditions and *Lilaeopsis* habitat. Groundwater pumping or diversions, or other changes in the watershed of the San Pedro River in Mexico or Arizona may affect the ability of the river to support *Lilaeopsis* and to provide constituent elements.

Issue 4: The economic effects of designating critical habitat greatly outweigh any benefits of designating critical habitat. The designation will have harmful impacts on the quality of life, education, and economic stability. In particular, designation of critical habitat on the San Pedro River would change groundwater pumping, which could result in closure of Fort Huachuca and subsequent devastating effects to the economy of Sierra Vista.

Service Response: Areas proposed as critical habitat may be excluded from designation if "the benefits of such exclusion outweigh the benefits of specifying the areas as part of the critical habitat," unless it is determined that "failure to designate such area as critical habitat will result in extinction of the species" (section 4(b)(2) of the Act). As discussed in our response to issue 2, additional conservation benefits of designation for most species, are few if any.

The economic analysis (McKenney *et al.* 1999), based on our view that no restrictions beyond those resulting from listing the species will result from critical habitat designation, found that the critical habitat designation would have no economic effect on activities. Based on our experience with consultation on *Lilaeopsis* as well as completed and ongoing conferences on the species' proposed critical habitat, we do not foresee any action that would result in a finding of destruction or adverse modification of proposed critical habitat that would not also result in a finding of jeopardy to the species. As a result, no effects to the economy of Sierra Vista or other cities or towns are anticipated from designation of critical habitat, and therefore the benefits of excluding these areas do not outweigh the benefits of including them as critical habitat.

Issue 5: Designation of critical habitat has significant takings implications; thus a takings implications assessment, as required by Executive Order 12630, must be conducted. Also, a Regulatory Flexibility Analysis should have been done.

Service Response: Please see the discussions under the "Required Determinations" section of this final rule that discusses takings implications assessments.

Issue 6: San Bernardino National Wildlife Refuge should be designated critical habitat instead of the San Pedro River.

Service Response: In determining what areas are critical habitat, we consider physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection (50 CFR 424.14(b)). San Bernardino and Leslie Canyon National Wildlife Refuges, as well as the upper San Pedro River, provide important habitat for *Lilaeopsis*. However, as National Wildlife Refuges with mandates to conserve and protect rare species, special management and protection are already in place. Thus, no additional layer of protection is needed. However, as discussed herein and in the final listing rule (62 FR 665), *Lilaeopsis* and its habitat are threatened by groundwater overdraft on the upper San Pedro, which may require special management considerations or protection. As a result, critical habitat was designated on the upper San Pedro River but not at San Bernardino or Leslie Canyon National Wildlife Refuges.

Issue 7: Critical habitat designation will direct collectors of rare plants and recreationists to these important habitats, resulting in increased collection of *Lilaeopsis* and habitat disturbance.

Service Response: Designation of critical habitat is not prudent when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species (50 CFR 424.19). As discussed in the proposed rule, we are concerned that publishing maps of *Lilaeopsis* critical habitat could facilitate collection or other adverse effects. However, *Lilaeopsis* is a small, grass-like plant with inconspicuous flowers that is unlikely to be highly prized by plant collectors. Collection has not been identified as a threat.

Publishing the localities could facilitate visits by botanists or recreationists to these sites, which could result in trampling of plants or banklines. However, we expect that these visits will be few in number and very little disturbance will result from such visits.

Issue 8: All *Lilaeopsis* localities should have been designated as critical habitat, or the Service should provide a rationale for not designating sites. One commenter suggested that more critical habitat should be designated in Bear Canyon of Unit 6.

Service Response: In determining what areas are critical habitat, we consider areas and constituent elements that are essential to the conservation of the species and that may require special protection or management considerations (50 CFR 424.19(b)). Thus, not all areas occupied or potentially occupied by a species are appropriate for designation. Our rationale for not designating all *Lilaeopsis* localities as critical habitat is discussed in the section of this rule entitled "Critical Habitat Designation."

Issue 9: Designation of critical habitat should be delayed until better information becomes available on the species.

Service Response: Critical habitat designation can be found to be not determinable if information is insufficient to perform the required analyses of the impacts of the designation, or the biological needs of the species are not known well enough to permit identification of an area as critical habitat. Although additional work on this species is needed, the biological needs of the species is far from unknown and an analysis of economic impacts was completed (McKenney *et al.* 1999). Surveys and ecological studies of *Lilaeopsis* (Affolter 1985, Falk 1998, Falk and Warren 1994, Gori *et al.* 1990, Haas and Frye 1997, Saucedo 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991) provide sufficient

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information upon which to base a critical habitat determination. Critical habitat may be revised if new information becomes available suggesting such revision is needed (50 CFR 424.12(g)).

On November 25, 1998, Judge Marquez ordered "that within 30 days of the date of this Order, the Secretary shall issue the proposed rules for designating critical habitat for the pygmy-owl and water umbel * * * and that within six months of issuing the proposed rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel."

Issue 10: The maps are inadequate for landowners to determine what areas were proposed as critical habitat. The meaning of "adjacent areas out to the beginning of the upland vegetation" is unclear.

Service Response: The maps are intended to be a general guide to where critical habitat is located. To determine exactly where critical habitat begins and ends along the designated canyons and stream reaches, readers should refer to the legal descriptions in the section entitled "Critical Habitat—Plants." In regard to the precise location of critical habitat within canyons or stream reaches, we decided that an ecological description would be more appropriate than a strictly legal description. The floodplain vegetation community defines the area in which constituent elements will be found more precisely than legal descriptions. *Lilaeopsis* habitat and constituent elements are expected to change within those floodplains over time as the watercourse changes direction, creates new channels, etc. Movement within the floodplain is more likely to occur in a broad floodplain such as the San Pedro River, as compared to a narrow canyon, such as Rattlesnake Canyon in Unit 6. Although the habitat and constituent elements may move within a floodplain, they will always be within that floodplain and its associated zone of riparian and wetland vegetation, thus we defined the boundaries of critical habitat by vegetation communities. The boundary between riparian/wetland communities and adjacent uplands are typically quite clear in the arid woodlands and semi-desert grasslands in which *Lilaeopsis* habitat occurs and should be easy to identify on the ground.

Issue 11: Further survey work is needed in Unit 6 to determine where critical habitat should be designated.

Service Response: We reevaluated survey data and reports, particularly Gori *et al.* (1990), Haas and Frye (1997), and Warren *et al.* (1991); and in March, 1999, we made two field trips to the area to investigate the distribution of *Lilaeopsis* and assess habitat suitability. These field trips focused on Lone Mountain Canyon and its tributaries. Our review of existing literature and investigations in Lone Mountain Canyon confirmed that the stream reaches proposed as critical habitat met the regulatory criteria for critical habitat. *Lilaeopsis* was found by us and previous investigators in Lone Mountain Canyon and its two tributaries, but there are long stretches of these canyons that are typically dry, and the species was not located. The species may occur in these reaches during wet periods, but as discussed in our response to Issue 3, not only are these reaches likely ephemeral habitat during wet cycles, but they also affect downstream populations hydrologically, and are links that can allow for flow of individuals and genetic material among populations.

Issue 12: There is no need to designate critical habitat on the fringe of *Lilaeopsis'* range, where few areas contain constituent elements.

Service Response: The commenter states that the range of *Lilaeopsis* extends to central and northern Mexico and northwestern South America. This is the range of the entire species, but the listed entity, *Lilaeopsis schaffneriana* ssp. *recurva*, is only known from 26 sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico. These are not "fringe" localities; they represent the only places where this taxon is found.

Issue 13: The Service failed to notify or request comments from the State of Arizona, Mexico, and South American countries where *Lilaeopsis* occurs, as required by the Act.

Service Response: As discussed in our response to Issue 12, *Lilaeopsis schaffneriana* ssp. *recurva* does not occur in South America, therefore we did not solicit comments from South American countries. Pursuant to 50 CFR 424.16 (c)(1)(iv), we are required to give notice to foreign countries in which the species occurs only if the proposed regulation is to list, delist, or reclassify the species. Because this is not an action to list, delist, or reclassify a species, this action does not apply to Mexico, and we are not required to inform that government of this designation. Within Arizona State government, the proposed rule was sent to 28 contacts within numerous agencies, including the Governor's Office and the Arizona Department of Agriculture, which has jurisdiction over plant protection within State government. Of these 28, the Arizona Department of Environmental Quality and Arizona Game and Fish Department responded in writing to us indicating they had no comments on the proposed designation.

Issue 14: The Service should focus on establishing *Lilaeopsis* in small sites where it can persist, such as creating a small diversion along the San Pedro River that could serve as a refugium for the species, rather than designating large areas that impinge on property and water rights and increase unnecessary regulation.

Service Response: Creation of habitat is an action that could be employed to help recover and ultimately eliminate the need for *Lilaeopsis'* endangered status and the critical habitat designation. However, such decisions will be addressed in the species' recovery plan, which has yet to be developed.

Because critical habitat designation would not affect any uses of private property, unless those uses were federally authorized, funded, or carried out, no infringement of property rights would result from critical habitat designation. The designation is also not expected to increase regulatory burden above and beyond that already imposed by listing, because projects that would adversely modify or destroy critical habitat would also result in jeopardy to the species.

Issue 15: The following finding from the proposed rule is inconsistent with the Act and its implementing regulations: "Areas that do not currently contain all of the primary constituent elements but that could develop them in the future may be essential to the conservation of the species and may be designated as critical habitat."

Service Response: The implementing regulations require that analyses to determine critical habitat shall focus on the principal biological and physical constituent elements within defined areas that are essential to the conservation of the species (50 CFR 424.12(b)(5)). The species occurs in all of the critical habitat units, but in certain reaches within each unit it may at times be absent and some constituent elements may be missing. Nevertheless, these areas are important as habitat during wet cycles and/or are important corridors for movement of plants and genetic material among populations. Since stream courses are dynamic, as is the distribution of the plant, protection of sites that do not currently support the water umbel but could do so in the future are essential to the species' conservation.

Issue 16: The assumption used in the analysis is incorrect, as designation of critical habitat will have economic impacts on the City of Sierra Vista and Fort Huachuca.

Service Response: The designation of critical habitat for the Huachuca water umbel has been evaluated in the economic context known as "with" and "without" the rule. It was found that the status of the Huachuca water umbel is such that any adverse modification of its habitat would be likely to jeopardize the species. Further, it is our position that both within and outside of critical habitat, Federal agencies should consult under the jeopardy standard if a proposed action is (1) within the geographic areas occupied by the species, whether or not the Huachuca water umbel has been detected on the specific project site; (2) the project site contains habitat features that can be used by the species; and (3) the proposed action is likely to adversely affect that habitat. Under this condition, any and all real economic consequences would be due to the jeopardy call under section 7 of the Act and an adverse modification without a jeopardy call would not occur. Therefore, the economic consequences identified during the comment period are all due to the listing of the water umbel and not additional consequences accrued from the designation of critical habitat. The economic analysis of designating critical habitat determined that the same regulatory process is in place "with" as well as "without" the rule, and consequently found no economic effects attributable to the designation of critical habitat.

Issue 17: The designation will have harmful impacts on the quality of life, education, and economic stability of small towns. There is an expressed concern that the proposed critical habitat designation will change groundwater pumping from the San Pedro River and this will negatively affect the city of Sierra Vista and Fort Huachuca which provides jobs to local residents.

Service Response: As stated in the economic analysis, the proposed rule to designate critical habitat for the Huachuca water umbel is not adding any new requirements to the regulatory process. Since the adverse modification standard for critical habitat and the jeopardy standard are almost identical, the listing of the Huachuca water umbel itself invoked the requirement for consultation. The rule to designate critical habitat adds no other requirements not already in place when the species was listed.

Issue 18: The Service's designation of critical habitat has not adequately considered potential economic implications. There is opposition to the fact that the Service did not prepare an initial regulatory flexibility analysis to address potential impact to small businesses, as required under the Regulatory Flexibility Act.

Service Response: The proposed rule was published under very tight time constraints placed by Court Order on December 24, 1998. At that time we prepared a Record of Compliance certification that the proposed critical habitat designation would not have a significant economic impact on small entities. A detailed analysis was initiated by a private firm under Government contract and subsequently, we distributed a draft of the economic report for a 30-day public comment period ending in May, 1999. The findings of the economic reports indicate that the designation of critical habitat adds no new restrictions on economic activity that were not in place with the listing of *Lilaeopsis*. Therefore, there is no economic effect on small entities attributable to this rulemaking, and a regulatory impact analysis is not required.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude such areas from critical habitat if such exclusion would result in the extinction of the species concerned.

Economic effects caused by listing *Lilaeopsis* as endangered and by other statutes are the baseline upon which critical habitat is imposed. The economic analysis must then examine the incremental economic and conservation effects of the critical habitat addition. Economic effects are measured as changes in national income, regional jobs, and household income.

An analysis of the economic effects of *Lilaeopsis* critical habitat designation was prepared (McKenney *et al.* 1999) and made available for public review. The final analysis, which reviewed and incorporated public comments, concluded that no economic impacts are expected from critical habitat designation above and beyond that already imposed by listing *Lilaeopsis*. The only possible economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. These activities would be subject to section 7 consultation if they may affect critical habitat. However, activities that may affect critical habitat may also affect the species, and would thus be subject to consultation regardless of critical habitat designation. Also, changes or mitigating measures that might increase the cost of the project would only be imposed as a result of critical habitat if the project adversely modifies or destroys that critical habitat. We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species; thus no regulatory burden or additional costs would accrue because of critical habitat above and beyond those resulting from listing. Furthermore, we believe any reasonable and prudent alternative that would remove jeopardy to the species would also remove adverse modification of critical habitat.

A copy of the economic analysis and description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review. In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. Because the economic analysis identified no economic benefits from excluding any of the proposed critical habitat areas, we made a determination to designate all proposed critical habitat units, with the exception of Unit 7, Joaquin Canyon, which is excluded because its designation is not essential to the conservation of the species and is not in need of special management or protection. No inconsistencies with other agencies' actions and or effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, were identified in the economic analysis. This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed in that document and in this final rule, designating critical habitat will not place restrictions on any actions beyond those already resulting from listing *Lilaeopsis* as endangered. We recognize that some towns, counties, and private entities are considered small entities in accordance

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with the Regulatory Flexibility Act, however, they also are not affected by the designation of critical habitat because no additional restrictions will result from this action.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that designation of critical habitat will not cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In the economic analysis, we determined that no effects would occur to small governments as a result of critical habitat designation.

Takings. In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This rule will not "take" private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species. Although the majority of lands designated as critical habitat is under Federal administration and management, some riparian systems on private land are being designated.

Federalism

This rule will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. As previously stated, critical habitat is only applicable to Federal lands and to non-Federal lands when a Federal nexus exists, and in the economic analysis we determined that no economic impacts would result from of critical habitat designation.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act (NEPA)

We have determined that regulations adopted pursuant to section 4 of the Act need not undergo preparation of Environmental Assessments or Environmental Impact Statements as defined under the authority of the NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206—American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, states that "Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands." *Lilaeopsis* critical habitat does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary author of this notice is Jim Rorabaugh (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons given in the preamble, we amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entry for "*Lilaeopsis schaffneriana* var. *recurva*" under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	•
Lilaeopsis schaffneriana var. *recurva.*	Huachuca water umbel.	U.S.A. (AZ), Mexico	Apiaceae	E	600	§ 17.96(a)	NA
•	•	•	•	•	•	•	•

3. In section 17.96 add critical habitat for *Lilaeopsis schaffneriana* var. *recurva*, Huachuca water umbel, as the first entry under "(a) Flowering plants" to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

Family Apiaceae: *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water umbel). Critical habitat includes the stream courses identified in the legal descriptions below, and includes adjacent areas out to the beginning of upland vegetation. Within these areas, the primary constituent elements include, but are not limited to, the habitat components which provide—(1) Sufficient perennial base flows to provide a permanently or nearly permanently wetted substrate for growth and reproduction of *Lilaeopsis;* (2) A stream channel that is relatively stable, but subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for *Lilaeopsis* expansion; (3) A riparian plant community that is relatively stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for *Lilaeopsis* growth and reproduction; and (4) In streams and rivers, refugial sites in each watershed and in each reach, including but not limited to springs or backwaters of mainstem rivers, that allow each population to survive catastrophic floods and recolonize larger areas.

Unit 1. Santa Cruz County, Arizona. From USGS 7.5′ quadrangle map Sonoita, Arizona.

Gila and Salt Principal Meridian, Arizona: T. 20 S., R. 16 E., beginning at a point on Sonoita Creek in sec. 34 at approx. 31°39′19″ N latitude and 110°41′52″ W longitude proceeding downstream (westerly) to a point in sec. 33 at approx. 31°39′07″ N latitude and 110°42′46″ W longitude covering approx. 2 km (1.25 mi.).

Unit 2. Santa Cruz County, Arizona. From USGS 7.5′ quadrangle map Lochiel, Arizona.

That portion of the Santa Cruz River beginning in the San Rafael De La Zanja Grant approx. at 31°22′30″ N latitude and 110°35′45″ W longitude downstream (southerly) to Gila and Salt Principal Meridian, Arizona, T. 24 S., R. 17 E., through secs. 11 and 14, to the south boundary of sec. 14 covering approx. 4.4 km (2.7 mi.). Also, a tributary that begins in T. 24 S., R. 17 E., sec. 13 at approx. 31°21′10″ N latitude and 110°34′16″ W longitude downstream (southwesterly) to its confluence with the Santa Cruz River covering approx. 3 km (1.9 mi.).

Unit 3. Cochise County, Arizona. From USGS 7.5′ quadrangle map Huachuca Peak, Arizona.

Gila and Salt Principal Meridian, Arizona: That portion of Scotia Canyon beginning in T. 23 S., R. 19 E., sec. 3 at approx. 31°27′19″ N latitude and 110°23′44″ W longitude downstream (southwesterly) through secs. 10, 9, 16 and to approx. 31°25′22″ N latitude and 110°25′22″ W longitude in sec. 21 covering approx. 5.4 km (3.4 mi.).

Unit 4. Cochise County, Arizona. From USGS 7.5′ quadrangle map Huachuca Peak, Arizona.

Gila and Salt Principal Meridian, Arizona: That portion of Sunnyside Canyon beginning in T. 23 S., R. 19 E., on the east boundary of sec. 10 downstream (southwesterly) to the south boundary of sec. 10 covering approx. 1.1 km (0.7 mi.).

Unit 5. Cochise County, Arizona. From USGS 7.5′ quadrangle map Miller Peak, Arizona.

That portion of Garden Canyon in the Fort Huachuca Military Reservation beginning at approx. 31°27′13″ N latitude and 110°22′33″ W longitude downstream (northwesterly) to approx. 31°28′45″ N latitude and 110°20′11″ W longitude covering approx. 6.1 km (3.8 mi.).

Unit 6. Cochise County, Arizona. From USGS 7.5′ quadrangle map Miller Peak, Arizona.

Gila and Salt Principal Meridian, Arizona: That portion of Bear Canyon beginning at a point in T. 24 S., R. 19 E., sec. 1 at approx. 31°22′30″ N latitude and 110°21′47″ W longitude upstream through T. 23 S., R. 19 E., sec. 36 to a point in sec. 31 at approx. 31°23′18″ N latitude and 110°21′22″ W longitude covering approx. 1.7 km (1.0 mi.). Also, continuing up an unnamed tributary beginning at a point in T. 23 S., R. 19 E., sec. 31 at approx. 31°23′18″ N latitude and 110°21′22″ W longitude upstream (northerly) to a point in T. 23 S., R. 19 E., sec. 30 at approx. 31°23′44″ N latitude and 110°21′14″ W longitude covering approx. 0.9 km (0.5 mi.). Also, that portion of Lone Mountain Canyon beginning at its confluence with Bear Creek at a point in T. 23 S., R. 19 E., sec. 36 at approx. 31°22′54″ N latitude and 110°21′43″ W longitude to a point in sec. 36 at approx. 31°23′26″ N latitude and 110°21′58″ W longitude, thence up an unnamed tributary northwesterly into sec. 25 thence northerly to a point at approx. 31°24′13″ N latitude and 110°21′54″ W longitude covering approx. 2.7 km (1.7 mi.). Also that portion of Rattlesnake Canyon beginning at its confluence with Lone Mountain Canyon in T. 23 S., R. 19 E., sec. 36 upstream northeasterly into sec. 25 to a point at approx. 31°22′08″ N latitude and 110°21′31″ W longitude covering approx. 1.5 km (1.0 mi.).

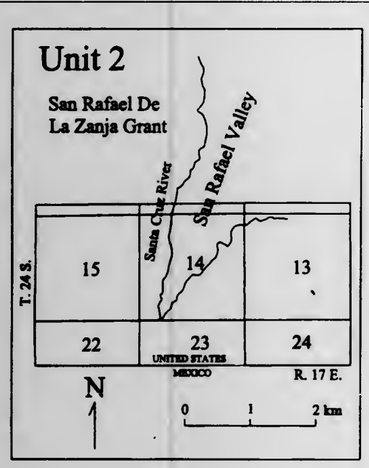
Unit 7, Cochise County, Arizona. From USGS 7.5′ quadrangle maps: Hereford, Ariz.; Tombstone SE, Ariz.; Nicksville, Ariz.; Lewis Springs, Ariz.; Fairbank, Ariz.; Land, Ariz.

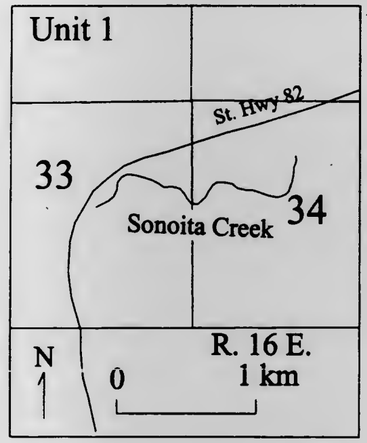
Gila and Salt Principal Meridian, Arizona: That portion of the San Pedro River beginning in the San Rafael Del Valle Grant at a point approx. 200 meters upstream (south) of the Hereford Road bridge at approx. 31°26′16″ N latitude and 110°06′24″ W longitude continuing downstream (northerly) through the San Rafael Del Valle Grant; T. 21 S., R. 22 E.; T. 21 S., R 21 S.; through the San Juan De Las Boquilla y Nogales Grant to a point at approx. 31°48′28″ N latitude and 110°12′32″ W longitude covering approx. 54.2 km (33.7 mi.).

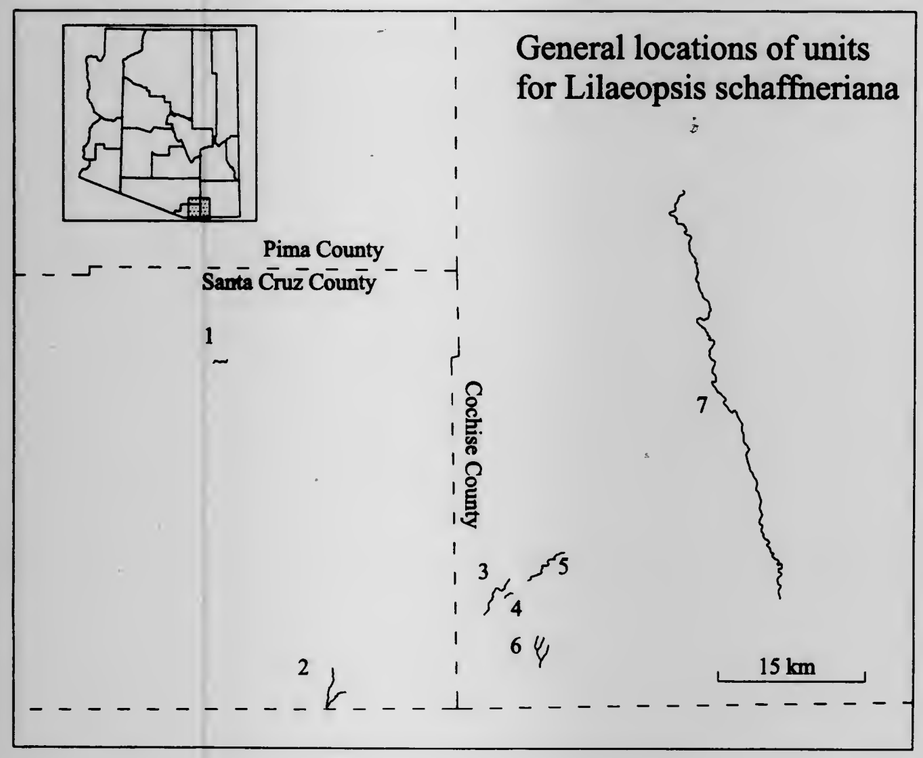
Note: Maps for Units 1–7 follow:

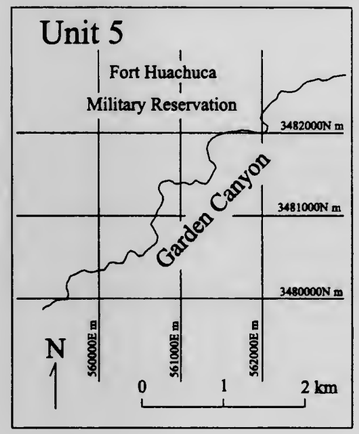
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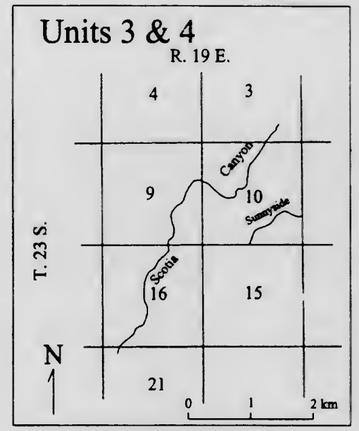
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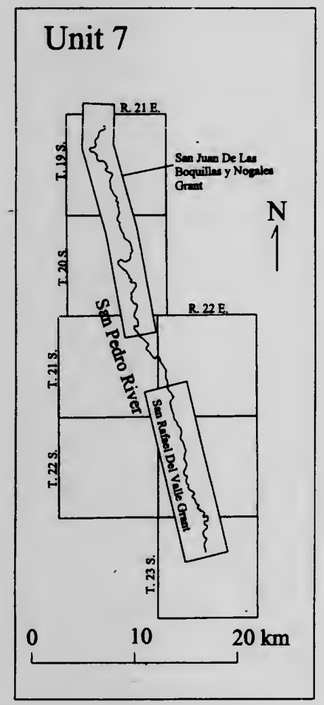


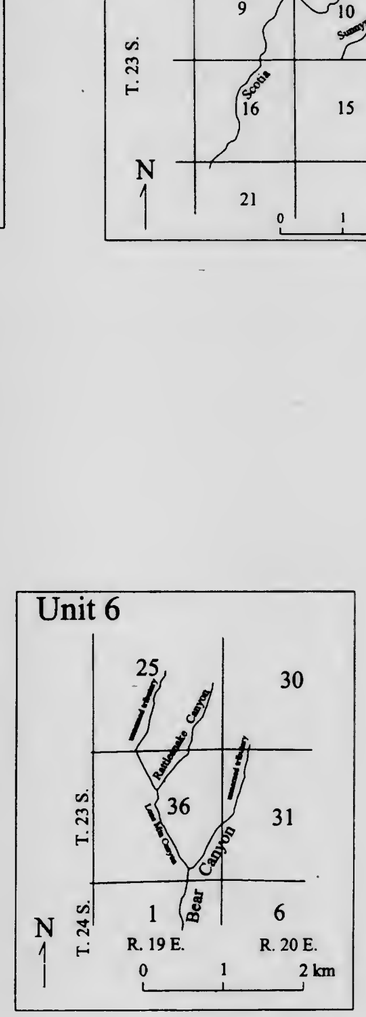












Dated: June 30, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–17403 Filed 7–6–99; 1:25 pm]

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Proposed Rules

Federal Register
Vol. 64, No. 132
Monday, July 12, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Chapter II, Subchapter C, and Parts 271, 273 and 276

RIN 0584–AC41

Food Stamp Program: Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This rule proposes to amend the Food Stamp Program Regulations to implement the non-discretionary provisions of this law which affect the Food Stamp Program. These provisions concern changes in the minimum and maximum allotments, the standard and shelter deductions, household composition, the fair market value of vehicles, the definition of homeless, and expedited service. This rule also incorporates, where possible, the principles of the President's Regulatory Reform Initiative and removes overly prescriptive, outdated, and redundant provisions and increases State agency flexibility.

DATES: Comments on this proposed rulemaking must be received on or before September 10, 1999 to be assured of consideration.

ADDRESSES: Comments should be submitted to Margaret Werts Batko, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Ms. Batko at (703) 305–2486 or e-mailed to Margaret_Batko@FCS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Ms. Batko at the above address or by telephone at (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Economically Significant under E.O. 12866, and Major under P.L. 104–121, and has therefore been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition, and Nutrition Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. Participants will be affected to the extent that their benefits will not increase at the rate they would have under the old law.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8 and Part 279.

Regulatory Impact Analysis

Need for Action

This action is needed to implement 8 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193. This rule proposes to remove the exception in current law that allows persons age 21 and under who are themselves parents or married, and who live with a parent, to participate in the Food Stamp Program as a separate household; change the way the maximum allotments are calculated by using 100% of the Thrifty Food Plan instead of 103%; alter the definition of homeless by setting a time limit (where there was none before) on people whose primary nighttime residence is a temporary accommodation in the home of another; freeze the standard deduction in food stamps for fiscal year 1997 and beyond at $134; retain a cap on the excess shelter expense deduction; freeze the fair market value of vehicle exemption at $4,650; freeze the minimum allotment at $10 a month; increase the number of days in which States have to provide expedited service from 5 to 7 calendar days; eliminate households consisting entirely of homeless people from those categories of households entitled to receive expedited service; and remove the State agency option to exclude from unearned income up to $50 monthly of title IV–D child support payments.

Effects on Administering Agencies

State food stamp offices are affected to the extent that they must implement the provisions described in this action. However, State agencies are not expected to change their personnel due to these changes, so State agencies are expected to incur minimal costs.

Costs

The changes in the food stamp requirements made by the provisions addressed in this rule would reduce Food Stamp Program costs for FY 1998 by approximately $1,930 million.

Definitions—7 CFR 271.2

Definition of Homeless: Current regulations at 7 CFR 271.2 define a homeless individual as an individual lacking a fixed or regular nighttime residence or whose primary nighttime residence is a shelter, a residence intended for those to be institutionalized, a temporary accommodation in the residence of another, or a public or private place not designed to be a regular sleeping accommodation for humans. The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032) (the Act), did not place a time limit on what constitutes a temporary accommodation in the residence of another.

Section 805 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amends section 3(s)(2)(C) of the Act by setting a time limit for people whose primary nighttime residence is a temporary accommodation in the home of another. These people will only be considered homeless if the temporary accommodation is for not more than 90 days. This rule proposes to amend 7 CFR 271.2 accordingly.

Definition of Minimum Benefit: Prior to the PRWORA, section 8(a) of the Act provided that the minimum benefit for one- and two-person households shall be $10 per month, and shall be adjusted to the nearest $5 each October 1 based upon the percentage change in the Thrifty Food Plan for the twelve-month period ending the preceding June.

The current regulations at 7 CFR 271.2 define minimum benefit as the minimum monthly amount of food stamps that one- and two-person households received. Section 271.2 also provides that the amount of the minimum benefit will be reviewed annually and adjusted to the nearest $5 each October 1 based on the percentage change in the Thrifty Food Plan for the twelve-month period ending the preceding June.

Section 826 of the PRWORA amends section 8(a) of the Act by removing the annual adjustment provision, thus freezing the minimum benefit at $10. This rule proposes to amend 7 CFR 271.2 accordingly.

Household Concept—7 CFR 273.1

7 CFR 273.1(a)(2)—Special Definition—Treatment of Children Living at Home: Section 3(i)(2) of the Act provides specific definitions for what constitutes a household when a child is living with his or her parents. The Mickey Leland Childhood Hunger Relief Act, Title XIII, Chapter 3 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (Leland Act), amended section 3(i) of the Act with the intention of simplifying the household definition provisions and supporting families that live together and share housing expenses but who do not necessarily purchase and prepare meals together. With certain enumerated exceptions, the simplified household definition allowed persons who live together and who purchase food and prepare meals separately to participate in the Program as separate food stamp households. Specifically, it provided that a child under 22 years of age who is living with his or her natural or adoptive parent or stepparent, is presumed to purchase and prepare meals together with the parent even if he does not, unless the child is also living with his or her own child(ren) or spouse. The "Certification Provisions of the Mickey Leland Childhood Hunger Relief Act" rule published October 17, 1996 (61 FR 54279), amended 7 CFR 273.1 accordingly. Currently, 7 CFR 273.1(a)(2)(B) provides that a child under 22 years of age who is living with his or her natural or adoptive parents or stepparents, is considered to be purchasing and preparing meals with his or her parents, *unless* the child is also living with his or her own child(ren) or spouse.

Section 803 of the PRWORA amended section 3(i) of the Act by eliminating this exception to the household definition. This rule proposes to make a corresponding change to the regulations at 7 CFR 273.1 to provide that a child under 22 years of age who is living with his or her natural or adoptive parents or stepparents is considered to be purchasing and preparing meals with his or her parents and, therefore, is part of the parents' household.

Definition of Parental Control: To provide the same treatment for a child living with a non-parent adult that is provided for a child living with a natural or adoptive parent or stepparent, the Department is proposing to change the definition of parental control. This rule proposes to amend 7 CFR 273.1 by removing the exception that a child who is living with his or her own child(ren) or spouse is not considered to be under parental control.

Reorganization of 7 CFR 273.1—Household Concept: In the spirit of the President's Regulatory Reform Initiative, we are proposing to reorganize section 273.1, with the exception of 7 CFR 273.1(d) and (f), which remain unchanged. We are not proposing significant changes to section 273.1 as nearly every provision is set forth in the Act and can be changed only through legislative action. However, we are condensing several sections into a single section: removing unnecessary verbiage and provisions covered elsewhere in the regulations; and providing State agency flexibility where possible. This proposed rule sets out the entire revised text for the convenience of the reader. The specific changes are detailed in the following paragraphs of this section of preamble.

Eligibility for the Food Stamp Program is based on a "household" concept. Current regulations at 7 CFR 273.1(a)(1) define what constitutes a "household" for Food Stamp Program purposes. Generally, a household means an individual living alone or group of individuals living together and purchasing food and preparing meals in common. There are exceptions to this general household concept policy for certain types of living arrangements which are set forth in 7 CFR 273.1(a)(2), (b), (c), and (e).

This rule proposes to combine the current provisions at 7 CFR 273.1(a)(2), (b), (c)(1), (c)(3), and (e) governing the inclusion or exclusion from a household of certain individuals living with others in a single section designated as paragraph (b). These individuals include spouses, children, elderly and disabled persons, roomers, live-in attendants, boarders, residents of institutions, and other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. There has been confusion in the past as to when such individuals are included or excluded as household members. We believe including the provisions in separate paragraphs under a single regulatory section rather than addressing each inclusion/exclusion provision in a separate regulatory section will help to clarify the household concept.

Furthermore, this rule would remove the definition of "spouse" at 7 CFR 271.2. Most States have laws governing who is considered a spouse. Allowing State agencies to use a State definition of spouse provides flexibility while

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ensuring a uniform policy throughout the State.

To ensure uniformity among all States, we are proposing to retain in new paragraph (b)(3) the language currently appearing in 7 CFR 273.1(c)(1) which defines a boarder. Boarders are individuals or groups of individuals residing with others and paying reasonable compensation to the others for meals or meals and lodging. Persons paying less than reasonable compensation for meals are not boarders and, thus, are required to be members of the household providing the services. We are also proposing to retain the language appearing in current rules at 7 CFR 273.1(c)(3)(i) and (ii) that provides that an individual qualifies as a boarder paying reasonable compensation for board when the board payment is for more than two meals a day for which the individual pays an amount equal to or in excess of the maximum food stamp allotment for the appropriate size of the boarder household, or is for less than two meals a day and the individual pays an amount equal to or in excess of two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

We contemplated removing these computation provisions from the rules and allowing State agencies the flexibility to establish a means for computing reasonable compensation. This computation method has been in existence since 1982. Upon researching our files, we found no evidence that these provisions have been a problem for the State agencies or clients. This is not an area of the Program where State agencies have specifically asked for flexibility. We believe the provision as written is simple to administer, equitable to clients, and adaptable to each State's automated certification system. However, we specifically solicit comments from interested parties on this matter.

With the proposed combining of 7 CFR 273.1(a)(2), (b), (c)(1), (c)(3), and (e) in new paragraph (b), 7 CFR 273.1(c) of current regulations would be eliminated. We are adding a new paragraph (c). There has been some confusion by State agencies as to when the policy on "purchasing food and preparing meals" overrides policy prohibiting the separation of spouses and children, or prohibiting the participation of boarders. In the new paragraph (c) we would specifically allow State agencies to apply discretion when the rule does not lend itself to a simple and direct answer to certain living situations. We cannot cover all living situations by regulation. We intend that State agencies use prudent judgment in determining when to allow individuals to be certified as separate households from others with whom they reside and to protect Program integrity by not allowing great numbers of households to fragment into smaller households. The language also clarifies that any State policy adopted under this provision must be applied consistently throughout the State.

This rule proposes to remove the language currently appearing at 7 CFR 273.1(c)(2) and (c)(4). The provision at 7 CFR 273.1(c)(2) reminds the State agency that the household with whom the boarder resides can participate in the Program if otherwise eligible. The provision at 7 CFR 273.1(c)(4) reminds the State agency that an individual furnished both meals and lodging and paying less than reasonable compensation for these services is not a boarder, but is a member of the household providing the services pursuant to 7 CFR 273.1(a). We consider these two provisions to be redundant.

We are not proposing any changes in 7 CFR 273.1(d) Head of Household, and (f) Authorized Representative because we believe the current regulations are appropriate. Requirements in current regulations at 7 CFR 273.1(g) for determining the eligibility and benefits of households containing members on strike are redesignated as paragraph (e), with minor editorial changes for clarity.

Application Processing—7 CFR 273.2

Expedited Service: Current regulations at 7 CFR 273.2(i) provide for expedited service to migrant or seasonal farm workers who are destitute and households with less than $150 in combined monthly gross income. Both of these types of households must also have liquid resources of $100 or less to qualify for expedited service. Households in which all members are homeless individuals and eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and utilities are also eligible to receive expedited service. Prior to the PRWORA, section 11(e)(9) of the Act required that benefits be provided not later than five calendar days following a household's date of application for all eligible households.

Section 838 of the PRWORA amends section 11(e)(9) of the Act by increasing the amount of days in which States have to provide expedited service from five to seven calendar days, and eliminating households consisting entirely of homeless people from those categories of households entitled to receive expedited service.

Accordingly, this rule proposes to amend 7 CFR 273.2(i)(3)(i) by striking "fifth" calendar day and inserting "seventh". This rule also would amend 7 CFR 273.2(i)(3)(ii) by striking "5 calendar days" and inserting "7 calendar days." In addition, the rule would remove 7 CFR 273.2(i)(1)(iii) which provides that households in which all members are homeless individuals are entitled to expedited service and redesignates 2(i)(1)(iv) as 2(i)(1)(iii). Homeless individuals may continue to qualify for expedited service under the financial criteria.

Resource Eligibility Standards—7 CFR 273.8

Fair Market Value: The Leland Act amended section 5(g) of the Act to provide that on October 1, 1996, and each October 1 thereafter, the fair market value resource exclusion limit for licensed vehicles shall be adjusted, using a base of $5,000, to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest $50. The "Certification Provisions of the Mickey Leland Hunger Relief Act" rule, published October 17, 1996 (61 FR 54279), amended 7 CFR 273.8(h)(3) accordingly.

Section 810 of the PRWORA amended section 5(g) of the Act to provide that any licensed vehicle that is used for household transportation or to obtain or continue employment to the extent that the fair market value of the vehicle exceeds $4,600 through September 30, 1996, and $4,650 beginning October 1, 1996 shall be included in financial resources. Section 810 also freezes the fair market value exclusion limit used in determining the countable value of the included vehicle at $4,650. Accordingly, this rule proposes to amend 7 CFR 273.8 to include the new resource exclusion level which is effective October 1, 1996.

We are proposing to modify the definition in 7 CFR 273.8(c)(i)(C) of a vehicle that can be excluded from a household's assets because it is used for income-producing purposes to include vehicles needed for performing a job, although they may also be used for commuting and for normal household errands. Examples would be a car used for a job as a delivery person, a motor vehicle used by a courier, a car used by a household member to call on customers, even though the vehicle is not used for long-distance travel, or any vehicle used to perform a job that was advertised as requiring a personally-owned motor vehicle. This will ensure that State agencies will not have to verify the relative amount of mileage traveled for income-producing purposes. Accordingly, this rule proposes to amend 7 CFR 273.8 to remove the requirement that a vehicle used for income-producing purposes be used primarily for those purposes in order to be excluded from a household's assets. FNS is seeking comments on the effect this proposal will have on State agencies and on food stamp applicants and recipients.

Reorganization of 7 CFR 273.8: We are taking this opportunity to propose a reorganization of 7 CFR 273.8 and the removal of redundant or unnecessary verbiage.

Section 5(g)(2) of the Act requires that the Secretary prescribe inclusions and exclusions from financial resources following the regulations in force as of June 1, 1982. The law provided an exception for the provisions governing vehicles and inaccessible resources. All other resource inclusion and exclusion provisions described in the regulations as of June 1, 1982 became law by reference and can only be changed through legislative action. Nonetheless, there are some provisions we are able to change and some areas where we can remove redundant or unnecessary verbiage. Those provisions relate to the fair market value test for vehicles, inaccessible resources, and the transfer of resources. This rule would revise 7 CFR 273.8(e), (g), (h), (i) and remove (j).

Currently, paragraph (e)(3) provides that licensed vehicles shall be excluded from resources pursuant to the current provisions under paragraph (h). A list of vehicles excluded from resources without regard to the fair market value or equity value of the vehicle appears in paragraphs (h)(1) and (h)(2). Paragraphs (h)(3) through (h)(6) state that vehicles not excluded under paragraphs (h)(1) or (h)(2) must be evaluated for their fair market value and/or equity value to determine what portion of the value of the vehicle would be counted as a resource, unless the vehicle is exempt from such tests. Regulations governing the determination of the fair market value of a vehicle are set forth in paragraph (g). We believe that this organization is confusing and difficult to follow.

This rule proposes to remove all the provisions from paragraph (h) and transfers them to either (e) or (g). The list of vehicles excluded from resource consideration currently contained in paragraphs (h)(1)(i)–(v) and (h)(2) are incorporated into 7 CFR 273.8(e)(3). The remaining provisions of paragraph (h)(3), (h)(4) and (h)(5) concerning the treatment of non-excluded vehicles are rewritten and combined with the provisions in paragraph (g) to improve readability. As a result of transferring the text of paragraph (h), that section would no longer exist and paragraph (i) would be re-designated as paragraph (h). A conforming amendment would also be made to paragraphs (e)(16) and (e)(18) to reference the relocation of the vehicle exclusion provisions. Furthermore, the current 7 CFR 273.8(j), which provides that the resources of certain non-household members shall be treated in accordance with 7 CFR 273.11, would be removed. We believe this reference is unnecessary.

In keeping with the principles of the President's Regulatory Reform Initiative of increasing State flexibility, this interim rule removes the proscriptive regulations in paragraph (g) for determining the fair market value of a vehicle and allows State agencies to establish their own methodologies. However, to ensure client protection, we are proposing to retain the prohibition against increasing the basic value of a vehicle because of low mileage, optional equipment, or special apparatus for the handicapped as State variations may affect eligibility and costs.

This proposed rule would also revise paragraph (e)(11) which excludes from countable resources any resource that is specifically excluded by any other Federal statute and lists such excluded resources. This rule proposes to remove the specific list of resources excluded by other Federal laws. We periodically provide State agencies with a list of such excluded resources through agency memoranda because the list changes frequently and quickly becomes outdated. Doing this by regulations results in incomplete regulations, thereby causing confusion. We believe it is sufficient to have the regulation simply provide an exclusion for any resource specifically excluded by another Federal statute and continue to notify State agencies through agency memoranda when such laws are enacted.

Income and Deductions—7 CFR 273.9

Standard Deduction: Current regulations at 7 CFR 273.9(d)(7) provide that effective October 1, 1987, and each October 1 thereafter, the standard deduction shall be adjusted to reflect change in the CPI-U for items other than food for the twelve months ending the preceding June 30. Section 809 of the PRWORA amends section 5(e) of the Act to provide that the Secretary shall allow a standard deduction for each household in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands of the United States of $134, $229, $189, $269, and $118, respectively. The annual adjustment is eliminated. This rule would amend the regulations at 7 CFR 273.9(d)(7) accordingly.

Excess Shelter Expense Deduction: The current regulations at 7 CFR 273.9(d)(5) provide that households are entitled to a deduction from income for excess shelter expenses that exceed 50 percent of the household's net income remaining after all other deductions. For households with an elderly or disabled member (as defined in 7 CFR 271.2), the amount of the deduction is not limited. For other households, the deduction is limited. This limit, usually referred to as the "shelter cap," has been changed several times due to legislation. The current regulations at 7 CFR 273.9(d)(8) were last updated in 1987 and provide that effective October 1, 1988, and each October 1 thereafter, the maximum limit for the excess shelter expense deduction shall be adjusted to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI–U for the 12 months ending the preceding June 30.

The Leland Act amended section 5(e) of the Act to gradually increase and then remove the limit on the amount of excess shelter expenses these households could deduct from their income to determine eligibility and benefits. The Leland Act provided that effective October 1, 1995 through December 31, 1996, the excess shelter expense deduction in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, shall not exceed $247, $429, $353, $300, and $182, respectively, and that the cap be removed January 1, 1997.

The "Excess Shelter Expense Limit and Standard Utility Allowances" rule, published on November 22, 1994 (59 FR 60098), proposed to make the corresponding change in the regulations at 7 CFR 273.9(d)(8). This rule has been overtaken by more recent statutory changes and will not be published in final form.

Section 809 of the PRWORA once again amended section 5(e) of the Act in regard to the excess shelter limit. Section 809 provides that a household shall be entitled to an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 percent of monthly household income after all other applicable deductions have been allowed. In the case of a household that does not contain an elderly or disabled individual, in the 48 contiguous States

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and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the excess shelter expense deduction shall not exceed:

(i) for the period beginning on the date of enactment of the law and ending on December 31, 1996, $247, $429, $353, $300, and $182 per month, respectively;

(ii) for the period beginning on January 1, 1997, and ending on September 30, 1998, $250, $434, $357, $304, and $184 per month, respectively;

(iii) for fiscal years 1999 and 2000, $275, $478, $393, $334, and $203 per month, respectively; and

(iv) for fiscal year 2001 and each subsequent fiscal year, $300, $521, $429, $364, and $221 per month, respectively.

This proposed rule would make a corresponding change to the regulations at 7 CFR 273.9(d)(8).

Determining Household Eligibility and Benefit Levels—7 CFR 273.10

Maximum Allotments: As required by section 3(o) of the Act prior to the PRWORA, the current regulations at 7 CFR 273.10(e)(4)(ii)(F) provide that effective October 1, 1990 and each October 1 thereafter, maximum food stamp allotments shall be based on 103 percent of the cost of the Thrifty Food Plan (TFP) for the four-person reference family for the preceding June, rounded to the nearest lower dollar increment.

Section 804 of the PRWORA amends section 3(o) of the Act by providing that on October 1, 1996, and each October 1 thereafter, the Department shall adjust the cost of the maximum allotment to reflect the cost of the Thrifty Food Plan in the preceding June, and round the result to the nearest lower dollar increment for each household size, except that on October 1, 1996, the Secretary may not reduce the cost of the maximum allotment in effect on September 30, 1996.

Accordingly, this proposed rule would amend 7 CFR 273.10(e)(4)(ii) to provide that effective October 1, 1996, the maximum food stamp allotments shall be based on 100% of the cost of the TFP, as defined in section 271.2, for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

In addition, the Department is proposing to remove 7 CFR 273.10(e)(4)(ii)(A) through (F) as these paragraphs, which provide for the adjustment of the TFP for the years 1983 through 1995, are outdated.

Conforming Amendments

Aid to Families with Dependent Children: The current food stamp regulations contain the terms, "Aid to Families with Dependent Children," "AFDC," and "Aid to Families with Dependent Children (AFDC)." The PRWORA block granted this program to the States and renamed it the Temporary Assistance for Needy Families (TANF) program. Therefore, these terms are obsolete. Section 109 of the PRWORA made conforming amendments to the Food Stamp Act by replacing those terms with a reference to assistance under a State program funded under part A of title IV of the Social Security Act.

Accordingly, this rule proposes to amend Subchapter C by replacing the words "Aid to Families with Dependent Children" with "Temporary Assistance for Needy Families", by replacing "AFDC" with "TANF", and by replacing "Aid to Families with Dependent Children (AFDC)" with the phrase "Temporary Assistance for Needy Families (TANF)".

Child support payments: As required by section 5 of the Act prior to the PRWORA, the current regulations at 7 CFR 273.9(c)(12) provide that the State agency has the option to exclude from unearned income, up to $50 monthly of title IV-D child support payments in cases where such payments are received by the households from the title IV-D support agency responsible for collecting such child support payments on behalf of AFDC recipients. The exclusion must be uniformly applied to all affected households. Section 109 of the PRWORA amends section 5 of the Act by removing this exclusion. This rule proposes to remove 7 CFR 273.9(c)(12) and renumber (c)(13) through (c)(17) accordingly.

As required by section 5 of the Act prior to the PRWORA, current regulations at 7 CFR 276.2(e)(1) provide that the State agency shall be liable to FCS for the increased dollar value of coupon allotments resulting from providing households with an income exclusion for child support payments as described in section 273.9(c)(12). Section 109 of the PRWORA amends section 5 of the Act by removing the payback. Accordingly, this rule would remove 7 CFR 276.2(e) in its entirety.

Implementation

State welfare agencies have been instructed through agency directive to implement the provisions of the PRWORA without waiting for formal regulations. Sections 803 (Treatment of Children Living at Home), 805 (Definition of Homeless), and 838 (Expedited Service) were required to be implemented as of August 22, 1996. Sections 804 (Adjustment of the Thrifty Food Plan) and 810 (Vehicle Allowance) were required to be implemented as of October 1, 1996. Section 809 (Excess Shelter Cap) required no change until January 1, 1997. Sections 809 (Standard Deduction), 826 (Minimum Allotment), and 109 (Conforming Amendments) required no immediate action by the State agencies. The Department is proposing that the changes in this rule be effective and must be implemented the first day of the month 60 days from date of publication of the final rule. State agencies shall implement the provisions no later than the required implementation date. State agencies would be required to adjust the cases of ongoing households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. If implementation of the above Act or this rule is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Any variances resulting from implementation of the provisions of the final rule would be excluded from error analysis for 120 days from the first day of the month 60 days from date of publication of the final rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR chapter II, subchapter C, and parts 271, 273, 276 are proposed to be amended as follows:

SUBCHAPTER C—FOOD STAMP AND FOOD DISTRIBUTION PROGRAM—[AMENDED]

1. In Subchapter C:

a. The words "Aid to Families with Dependent Children" are removed wherever they appear and the words "Temporary Assistance for Needy Families" are added in their place.

b. The references to "AFDC" are removed wherever they appear and "TANF" is added in their place.

c. The references to "Aid to Families with Dependent Children (AFDC)" are removed wherever they appear, and the words "Temporary Assistance for Needy Families (TANF)" are added in their place.

2. The authority citation for parts 271, 273, and 276 is revised to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

3. In § 271.2:

a. Paragraph (3) of the definition of "Homeless individual" is amended by adding the words "for not more than 90 days" after the word "accommodation".

b. The definition of "Minimum benefit" is amended by removing all text after the word "benefit" in the second sentence and adding in its place "shall be $10."

c. The definition of "Spouse" is removed.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1, paragraphs (a), (b), (c) and (e) are revised to read as follows:

§ 273.1 Household concept.

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

(1) An individual living alone;

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or

(3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(b) *Special household requirements.* (1) *Required household combinations.* The following individuals who live with others shall be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

(i) Spouses;

(ii) A child under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and

(iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child shall be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household.

(2) *Elderly and disabled persons.* Notwithstanding the provisions of paragraph (a) of this section, an otherwise eligible member of a household who is 60 years of age or older and is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or a non disease-related, severe, permanent disability may be considered, together with his or her spouse (if living there), a separate household from the others with whom the individual lives. Separate household status under this provision shall not be granted when the income of the others with whom the elderly disabled individual resides (excluding the income of the elderly and disabled individual and his or her spouse) exceeds 165 percent of the poverty line.

(3) *Boarders.* (i) Residents of a commercial boarding house, regardless of the number of residents, are not eligible to participate in the Program. A commercial boarding house is an establishment licensed as an enterprise that offers meals and lodging for compensation. In project areas without licensing requirements, a commercial boarding house is a commercial establishment which offers meals and lodging for compensation with the intent of making a profit.

(ii) All other individuals or groups of individuals paying a reasonable amount for meals or meals and lodging shall be considered boarders and are not eligible to participate in the Program *independently* of the household providing the board. Such individuals or groups of individuals may participate, along with a spouse or children living with them, as members of the household providing the boarder services, only at the request of the household providing the boarder service. An individual paying less than a reasonable amount for board shall not be considered a boarder but shall be considered, along with a spouse or children living with them, as a member of the household providing the board.

(A) For individuals whose board arrangement is for more than two meals per day, "reasonable compensation" shall be an amount that equals or exceeds the maximum food stamp allotment for the appropriate size of the boarder household.

(B) For individuals whose board arrangement is for two meals or less per day, "reasonable compensation" shall be an amount that equals or exceeds two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

(iii) Boarders shall not be considered to be residents of an institution for the purposes of paragraph (b)(7)(vii) of this section.

(4) *Foster care individuals.* Individuals placed in the home of relatives or other individuals or families by a Federal, State, or local governmental foster care program shall be considered to be boarders and cannot participate in the Program *independently* of the household providing the foster care services. Such foster care individuals may participate, along with a spouse or children living with them, as members of the household providing the foster care services, only at the request of the household providing the foster care.

(5) *Roomers.* Individuals to whom a household furnishes lodging for compensation, but not meals, may participate as separate households. Persons described in paragraph (b)(1) of this section shall not be considered roomers.

(6) *Live-in attendants.* Live-in attendants may participate as a separate household. Persons described in paragraph (b)(1) of this section shall not be considered live-in attendants.

(7) *Ineligible household members.* The following persons are not eligible to participate as separate households or as a member of any household:

(i) Ineligible aliens and students as specified in § 273.4 and § 273.5, respectively;

(ii) SSI recipients in "cash-out" States as specified in § 273.20;

(iii) Individuals disqualified for noncompliance with the work requirements of § 273.7;

(iv) Individuals against whom a sanction was imposed for failure to comply with a workfare requirement as specified in § 273.22;

(v) Individuals disqualified for failure to provide an SSN as specified in § 273.6;

(vi) Individuals disqualified for an intentional Program violation as specified in § 273.16; and

(vii) Residents of an institution, with some exceptions. Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Exceptions to this requirement include only the individuals listed in paragraphs (b)(7) (vii)(A) through (b)(7)(vii)(E) of this section. The individuals listed in paragraphs (b)(7)(vii)(A) through (b)(7)(vii)(E) can

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participate in the Program and shall be treated as separate households from the others with whom they reside pursuant to the mandatory household combination requirements of paragraph (b)(1) of this section, unless otherwise stated:

(A) Individuals who are residents of federally subsidized housing for the elderly;

(B) Individuals who are narcotic addicts or alcoholics who reside at a facility or treatment center for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, and their children but not the spouse of such persons who live with them at the treatment center or facility;

(C) Individuals who are disabled or blind who are residents of group living arrangements;

(D) Individual women or women with their children who are temporarily residing in a shelter for battered women and children; and

(E) Individuals who are residents of public or private nonprofit shelters for homeless persons.

(c) *Unregulated situations.* For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied consistently throughout the State.

* * * * *

(e) *Strikers.* Households with a striking member are not eligible to participate in the Program, unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. A striker shall be anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee affected by a lockout, however, shall not be deemed to be a striker. Further, an individual who goes on strike who is exempt from work registration, in accordance with § 273.7(b), the day prior to the strike, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker.

(1) Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur.

(2) Eligibility at the time of application shall be determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of non-striking members during the month of application. If the household is eligible, the higher income figure shall also be used in determining the household's benefits.

* * * * *

§ 273.2 [Amended]

5. In § 273.2:

a. Paragraph (i)(1)(iii) is removed.

b. Paragraph (i)(1) (iv) is redesignated as paragraph (i)(1)(iii).

c. Paragraph (i)(3)(i) is amended by removing the word "fifth" wherever it appears and adding the word "seventh" in its place.

d. Paragraph (i)(3)(ii) is amended by removing the words "5 calendar days" and adding the words "7 calendar days" in its place.

6. In § 273.8:

a. Paragraph (c)(2) is amended by removing the regulatory reference to "paragraph (h)" and adding in its place a regulatory reference to "paragraph (g)".

b. Paragraph (e)(3) is revised.

c. Paragraph (e)(11) is amended by removing the second sentence of the introductory text and by removing paragraphs (e)(11)(i) through (e)(11)(ix).

d. Paragraph (e)(16) is amended by removing the regulatory reference to "paragraphs (h)(1)(i), (h)(1)(ii) or (h)(1)(v)" and adding in its place the regulatory reference to "paragraphs (e)(3)(i)(A), (e)(3)(i)(B) or (e)(3)(i)(E)", respectively.

e. Paragraph (e)(18) is amended by removing the regulatory reference to "paragraph (h)" and adding in its place a regulatory reference to "paragraph (g)".

f. Paragraph (g) is revised.

g. Paragraphs (h) and (j) are removed and paragraph (i) is redesignated as paragraph (h).

The revisions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(3)(i) Licensed vehicles that meet the following conditions:

(A) Used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on customers, or required by the terms of employment. Licensed vehicles that have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment farming;

(B) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(C) Necessary for long-distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or a migrant farm worker following the work stream;

(D) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section;

(E) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the special needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member; or

(F) Necessary to carry fuel for heating or water for home use when such transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households shall receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households shall not be required to furnish documentation, as mandated by § 273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with § 273.2(f)(4).

(ii) On those Indian reservations that do not require vehicles driven by tribal members to be licensed, such vehicles shall be treated as licensed vehicles for the purpose of this exclusion.

(iii) The exclusion in paragraphs (e)(3)(i)(A) through (e)(3)(i)(F) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

* * * * *

(g) *Determining the value of non-excluded vehicles.* (1) The State agency shall individually evaluate the fair market value of each licensed vehicle that is not excluded under paragraph (e)(3) of this section. That portion of the fair market value that exceeds $4,650 beginning October 1, 1996, shall be counted in full toward the household's resource level, regardless of any encumbrances on the vehicle. Such licensed vehicles as well as all unlicensed vehicles shall *also* be evaluated for their equity value (fair market value less encumbrances), unless specifically exempt from the equity value test. If the vehicle has a countable fair market value of more than $4,650 after October 1, 1996, and also has a countable equity value, only the greater of the two amounts shall be counted as a resource. Only the following vehicles are exempt from the equity value test:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per household; and

(iii) Any other vehicle used to transport household members to and from employment (including times during temporary periods of unemployment), or to and from training or education that is preparatory to employment, or to seek employment in compliance with the employment and training criteria specified in § 273.7.

(2) State agencies shall be responsible for establishing methodologies for determining the fair market value of vehicles. In establishing such methodologies, the State agency shall not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment or special apparatus for the handicapped. Households which claim that the State agency's determination of the value of its vehicle(s) does not apply shall be given the opportunity to acquire verification of the true value of the vehicle from a reliable source.

* * * * *

7. In § 273.9:

a. Paragraph (c)(12) is removed and paragraphs (c)(13), (c)(14), (c)(15), (c)(16) and (c)(17) are redesignated as paragraphs (c)(12), (c)(13), (c)(14), (c)(15) and (c)(16) respectively.

b. Paragraphs (d)(7) and (d)(8) are revised to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(7) *Adjustment of standard deduction.* Effective October 1, 1996, for each household in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the standard deduction shall be $134, $229, $189, $269, and $118, respectively.

(8) *Adjustment of shelter deduction.* In the case of a household that does not contain an elderly or disabled individual, in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the excess shelter expense deduction shall not exceed

(i) For the period beginning August 22, 1996, and ending on December 31, 1996, $247, $429, $353, $300, and $182 per month, respectively;

(ii) For the period beginning on January 1, 1997, and ending on September 30, 1998, $250, $434, $357, $304, and $184 per month, respectively;

(iii) For the period beginning on October 1, 1998 and ending on September 30, 2000, $275, $478, $393, $334, and $203 per month, respectively; and

(iv) For the period beginning on October 1, 2000 and thereafter, $300, $521, $429, $364, and $221 per month, respectively.

* * * * *

8. In § 273.10 paragraph (e)(4)(ii) is revised to read as follows.

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) Calculating net income and benefit levels. * * *

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

* * *

(ii) Adjustment. Effective October 1, 1996, the maximum food stamp allotments shall be based on 100% of the cost of the TFP as defined in section 271.2 for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

* * * * *

§ 276.2 [Amended]

9. In § 276.2, paragraph (e) is removed.

Dated: June 29, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 99–17445 Filed 7–9–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 241

[INS No. 1848–97]

RIN 1115–AE83

Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (INS) regulations relating to apprehension and removal of aliens under section 241 of the Immigration and Nationality Act (Act). This proposed rule establishes an administrative process whereby criminal aliens in state custody convicted of nonviolent offenses may be removed prior to completion of their sentence of imprisonment. This proposed rule will implement the authority contemplated by Congress to enhance the ability of the United States to remove criminal aliens.

DATES: Written comments must be submitted on or before September 10, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling please reference INS No. 1848–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Senior Special Agent, Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone (202) 514–2998. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1996, President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104–132, 110 Stat. 1214. The AEDPA contained numerous provisions dealing with criminal aliens, designed to "enhance the ability of the United States to deport criminal aliens." See Conference Report on S. 735 (H.R. Rept. No. 104–518, dated April 15,

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1996), at page 119 (concernign AEDPA Sec. 441).

Section 438(a) of AEDPA added subsection 242(h)(2) to the Act, authorizing, but not compelling, the Attorney General to remove certain aliens convicted of nonviolent offenses prior to the completion of their sentence of imprisonment.

On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104–208, 110 Stat. 3009, became law. The provisions formerly contained in section 242(h)(2) of the Act, as amended by AEDPA, and subsequently further amended by IIRIRA, are now found in section 241(a)(4)(B) of the Act. Both AEDPA and IIRIRA contain separate provisions, now incorporated in the Act, which distinguish between Federal and state prisoners. However, there are some differences between AEDPA and IIRIRA pertaining to categories of Federal and state inmates barred from early release. Section 305(a) of IIRIRA both expands and contracts the classes of offenders eligible for consideration for early removal under the Act as amended by AEDPA. Under IIRIRA, aliens in the custody of the state convicted of offenses defined in section 101(a)(43)(C) or (E) of the Act are ineligible for early release. Under IIRIRA, alien smuggline is no longer a bar to eligibility for state inmates.

The statutory provisions distinguish between Federal and state inmates. Because of the clear distinctions between provisions and procedures for Federal and state inmates, the two require distinct regulatory separation. The Department of Justice is giving consideration to various means for implementing the statute on the Federal level. This proposed rule addresses state inmates only.

According to section 241(a)(4)(B)(ii), an alien may be removed from state custody if the chief state official exercising authority with respect to the incarceration of the alien makes a determination that the offense is a nonviolent offense, and that removal is in the best interest of the state. The chief state official must then submit a written request for the alien's removal to the Attorney General.

Section 438(b) of the AEDPA amended section 276 of the Act, (8 U.S.C. 1326) to require incarceration for the remainder of their sentence, without parole, of aliens who were released for early removal pursuant to the provisions of section 438(a) of the AEDPA, and who reenter the United States without the express permission of the Attorney General.

Further, section 241(a)(4)(D) of the Act, as amended by IIRIRA, provides that no cause or claim may be asserted under section 241 against any official of the United States or of any state to compel the release, removal, or the consideration for release or removal of any alien.

Procedurally, this proposed regulation provides that in order to participate a state or its political subdivision must have enabling legislation authorizing early release of prisoners. Participation in the program will be contingent on a formal agreement between the state and the Service in the form of a uniform memorandum of understanding. The memorandum of understanding may be modified in writing by mutual consent of the signatories and/or may be canceled by either party upon 30 days' written notice. Only criminal aliens approved by both the state and the Service as suitable candidates will be released to the Service for removal. In accordance with the Victim and Witness Protection Act of 1982 (VWPA) and the Attorney General's Guidelines for Victim and Witness Assistance, the state will make reasonable efforts to notify victims of record regarding the early release of criminal aliens for removal. The state will assist the Service by providing, to the extent allowed under state law, access to and use of information contained in the alien's correctional files to assist in the removal of such criminal aliens. The date of the criminal alien's release will be coordinated between the Service and the governmental entity representing the state or its political subdivision. The criminal alien will remain in the custody of the state until: a final order of removal is issued, there are no impediments to obtaining travel documents for the alien, and arrangements have been made to remove the alien. In order to transfer custody of the criminal alien from the state to the Service, the Service will notify the state when a final order has been issued and removal arrangements have been made. At that time the transfer will take place. If after the transfer of custody, the alien cannot be removed promptly, the Service will return the alien to the custody of the state. The state will enter relevant information relating to such criminal aliens released and removed into its criminal history records system, which must provide for rapid identification of such aliens should they reenter or attempt to reenter the United States or otherwise be encountered by law enforcement personnel. The Service will also develop and maintain a permanent alien file detailing the identity of each such criminal alien. The Service will ensure that fingerprint dispositions are expeditiously forwarded to the Federal Bureau of Investigation (FBI) for inclusion in the subject's criminal history record and that the alien's name is forwarded to the National Crime Information Center (NCIC). The state may submit names for consideration for removal prior to completion of criminal sentences of aliens who have committed nonviolent offenses as defined under state law, except for offenses specifically excluded by Federal statute. The state will advise such aliens that the release is conditional and the alien must agree in writing that he/she has been informed that the criminal sentence(s) has been suspended, not rescinded, and that such suspended sentence(s) will remain in abeyance for the state to reimpose should the alien must have admitted and conceded the charges and factual allegations which form the basis of the removal action, and must have waived all rights to appeal any order of removal and waived the right to apply for relief from removal. The criminal alien must remain outside the United States and agree to refrain from making any attempt to reenter the United States for the time period statutorily specified in 8 U.S.C. 1182 (10 years, 20 years, or at any time in the case of an alien convicted of an aggravated felony), unless the Attorney General has expressly consented to such alien's reentry. Any unlawful return to the United States shall constitute a violation of the conditions of the alien's release and shall result in such alien's return to the custody of the state for the completion of the alien's sentence and the alien shall be subject to Federal prosecution. The state or the Service will notify the other of any encounter with such alien. If, during the period of any remaining sentence, the criminal alien applies to the Attorney General for readmission after removal under this program, and the Service is inclined to grant the request, the Service will notify the state of that request and provide an opportunity for the state to note any objection.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors:

This proposed rule will not have a significant economic impact on small entities since it pertains to removal of criminal aliens incarcerated in state institutions (or a political subdivision thereof). The removal of these individuals from the United States will not adversely or materially affect a sector of the economy, cause major increases in costs or prices for consumers or have other adverse effects on the economy in terms of productivity, competition, jobs, or the environment, public health or safety or adversely affect small government jurisdictions.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. The alien's release under the provisions of this section is conditional. Any violation of the terms of release will result in a violation of that conditional release, resulting in a return to state or local custody. State (or political subdivision thereof) participation in this process is at the discretion of the state or political subdivision thereof. This rule does not impose an enforceable duty on state, local, or tribal governments. Not only is the program voluntary, but the state or political subdivision derives considerable benefit from participation in the program. The state or subdivision is enabled to remove nonviolent offenders from their penal facilities prior to expiration of sentence. This saves the state or subdivision considerable resources. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

Section 241.17 of this proposed rule allows states or a political subdivision thereof to enter into an agreement with the Service for participation in an early release program for removal of nonviolent alien offenders in state custody prior to the completion of the alien's sentence to imprisonment. Some of the provisions in the agreement contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Therefore, the agency solicits public comments on the information collection requirement for 30 days in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Since participation on the part of state is voluntary and the number of states or subdivisions electing to participate is unknown as is an estimate of the number of eligible nonviolent alien offenders states would recommend as candidates for early removal, the Service does not have sufficient data to estimate of the number of hours that would constitute the total annual reporting burden.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the information collection requirement. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of this information collection requirement, including suggestions for reducing the burden should direct them to: Office of Information and Regulatory Affairs (OMB), 725 17th Street, NW, Washington, DC 20503, Attn: DOJ/INS Desk Officer, Room 10235. The comments or suggestions should be submitted within 30 days of publication of this rulemaking.

Executive Order 12866

This proposed rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. An assessment of the need for the regulatory action, an explanation of how the action will meet that need, an assessment of the potential costs and benefits of the regulatory action and of any reasonable feasible alternatives, and any bearing which the regulatory action has on state, local, and tribal governments in the exercise of their governmental functions has been submitted to the Office of Management and Budget under section 6(a)(3)(B)–(D).

Executive Order 12612

The regulation proposed herein will not have substantial direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. As previously stated under the Unfunded Mandates Reform Act of 1995, this proposed rule will save considerable resources of participating states and subdivisions. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 241

Administration practice and procedure, Aliens, Immigration.

Accordingly, part 241 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

1. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

2. Section 241.17 is added to read as follows:

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§ 241.17 Removal of nonviolent offenders in state custody prior to the completion of the alien's sentence of imprisonment pursuant to section 241(a)(4)(B) of the Act.

(a) *Authorization.* (1) A state or its political subdivision must have enabling legislation in order to enter into an agreement with the Service for participation in an early release program. Participation in the program will be contingent on a formal agreement bearing the signatures of the Governor of the state or designee and the Commissioner or designee. In the case of a political subdivision, participation will be contingent on the signature of the leading official of the political subdivision and the Commissioner or designee following formal agreement between the state and the Service. An early release program for inmates of a state or political subdivision will be implemented through a Memorandum of Understanding (MOU) developed by the Service. From the date of final publication in the **Federal Register**, requests for consideration under this provision of the Act should be referred to the chief state official exercising authority with respect to the confinement of the alien. Any inquiries pending with the Attorney General or the Service at that time will be referred to the appropriate state authority.

(2) The uniform MOU will constitute the agreement between the Service and a state or political subdivision thereof for the removal of nonviolent alien offenders prior to the completion of the alien's sentence to imprisonment. The MOU will govern the procedures and responsibilities of the parties. Specific operational procedures for implementing the MOU should be negotiated between the appropriate state officials and Service District Offices. The MOU imposes no limitations on the discretion of the Attorney General to exercise authority or to decline to do so with regard to section 241(a)(4)(B) of the Act. The MOU does not confer any rights on any third party.

(b) *Agreement provisions.* The MOU shall include the following provisions:

(1) Only criminal aliens approved by both agencies as suitable candidates will be released to the Service for removal. The Service District Office will review the state's written submission. A query of the National Crime Information Center (NCIC) will be performed to determine if there are outstanding wants or warrants in other jurisdictions. Notification will be provided to the Department of Justice Office of International Affairs of those aliens being considered for early release to provide that office with the opportunity to note any objection. The Service will indicate by return document which aliens the Service finds appropriate for the program. The decision of the Service District Office as the Attorney General's delegate is not reviewable.

(2) In accordance with the Victims and Witness Protection Act of 1982 (VWPA) and the Attorney General's Guidelines for Victim and Witness Assistance, the state will make reasonable efforts to notify victims of record at the time of request for consideration under this section regarding the early release of the alien for removal and the nature and intent of the removal of nonviolent alien offenders prior to the completion of their sentence to imprisonment.

(3) The state will certify that there are no detainers or other litigation involving the alien as a defendant or witness in any criminal proceeding outstanding at the time of the request for consideration for early release.

(4) The governmental entity representing the state or its political subdivision will assist the Service and its agents by providing, to the extent allowed under state law, access to and use of documents, materials and information contained in the aliens' correctional files for the purpose of assisting the Service in its efforts to remove such criminal aliens from the United States.

(5) The date that criminal aliens are to be released to the Service for removal will be coordinated between the Service and the governmental entity representing the state or its political subdivision. Any criminal alien determined eligible for removal pursuant to section 241(a)(4)(B) of the Act will remain in the custody of the governmental entity representing the state or its political subdivision unit:

(i) A final order of removal is issued against such alien by an Immigration Judge or through any other procedure authorized by law,

(ii) There are no impediments to obtaining travel documents, and

(iii) Arrangements have been made to remove the alien.

(6) In order to transfer custody of the criminal alien from the state to the Service, the Service will notify the governmental entity representing the state or its political subdivision when the final order of removal is issued and the consular official has assured the Service that a travel document will be immediately issued upon presentation of the criminal alien. The Service will then maintain custody of such alien in a secure environment until such time as the Service effectuates the alien's removal from the United States. If, after the Service has accepted custody of a criminal alien released by the governmental entity representing the state or its political subdivision for removal, the alien cannot be promptly removed from the United States, the Service will return that alien to the custody of the state. The state must accept such alien into its custody unless prevented from doing so by order of a court of competent jurisdiction or other lawful authority.

(7) The state will enter relevant information relating to criminal aliens released and removed subject to the provisions of section 241(a)(4)(B) of the Act into its criminal history records system. Such system must provide for the rapid identification of any alien who is released and removed subject to the provisions of section 241(a)(4)(B) of the Act should such alien reenter or attempt to reenter the United States and/or otherwise be encountered by law enforcement personnel. The Service will develop and maintain a permanent alien file detailing the identity of each criminal alien subject to treatment under section 241(a)(4)(B) of the Act, including his or her fingerprints and photograph, and executed warrant of removal, for the purpose of allowing rapid identification of any alien released for purposes of removal under section 241(a)(4)(B) of the Act, should such alien reenter or attempt to reenter the United States.

(8) The Service will also ensure that fingerprint dispositions are expeditiously forwarded to the Federal Bureau of Investigation for inclusion in the subject's criminal history record and that the alien's name is forwarded to the National Crime Information Center (NCIC).

(9) The state may submit names for consideration for removal prior to completion of criminal sentences of aliens who have committed nonviolent offenses as defined under state law, except for the following offenses specifically excluded by section 241(a)(4)(B) of the Act: illicit trafficking in firearms or destructive devices (as defined in 18 U.S.C. 921), or in explosive materials (as defined in 18 U.S.C. 841(c)); an offense described in 18 U.S.C. 842(h) or (i) or 18 U.S.C. 844(d), (e), (f), (g), (h), or (i) (relating to explosive materials offenses); 18 U.S.C. 922(g)(1), (2), (3), (4), (5), (j), (n), (o), (p), or 18 U.S.C. 924(b) or (h) (relating to firearms offenses); or an offense described in section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses).

(10) Any alien being considered for early release pursuant to section 241(a)(4)(B) of the Act shall be advised by the governmental entity representing the state or its political subdivision that the release is conditional and the alien must agree in writing that the following special conditions have been met:

(i) The criminal alien has been informed that any state action to release the alien from incarceration pursuant to section 241(a)(4)(B) of the Act will only suspend, not rescind, the alien's remaining criminal sentence(s) and any related period(s) of incarceration, and that such suspended sentence(s) will be tolled and remain in abeyance to be reinstated should the alien breach any of the express conditions of the executive release order.

(ii) The criminal alien has a final order of removal as required under section 241(a)(4)(B) of the Act. Further, the alien must have admitted and conceded the charges and factual allegations which form the basis of the removal action, and must have waived all rights to appeal any order of removal issued pursuant to authorized procedures. The alien must have waived any right to pursue an appeal of the order of removal, or to seek any relief therefrom, and must further waive any possible challenge to removal under domestic or international law, including but not limited to asylum, withholding of removal, and protection from "refoulement" under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees or under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(iii) The criminal alien has withdrawn any pending appeal of the underlying criminal conviction and sentence, and waived his or her right to pursue such appeal if the time for filing has not yet expired.

(iv) The criminal alien must cooperate fully with the Service in connection with execution of any final order of removal, particularly with respect to producing travel documents or other evidence of nationality.

(v) The criminal alien must remain outside the United States and agree to refrain from making any attempt to reenter the United States for the period specified by section 212 (a)(9)(A)(ii) of the Act (8 U.S.C. 1182(a)(9)(A)(ii)), as amended, in that an alien who has been ordered removed or departed while an order of removal was outstanding is ineligible to seek admission within 10 years of the date of such alien's departure or removal, or within 20 years of such date in the case of a second or subsequent removal, or at any time in the case of an alien convicted of an aggravated felony, unless the Attorney General has expressly consented to such alien's reentry. Any unlawful return to the United States shall constitute a violation of the alien's conditions of release and shall result in such alien's return to the custody of the state (or political subdivision thereof) for the completion of the alien's sentence and the alien will be subject to Federal prosecution.

(ii) A criminal alien granted early release for removal, who is removed but subsequently illegally returns to the United States may be subject to Federal prosecution. Either party to this agreement shall notify the other of any encounter with such alien. The Attorney General will determine whether the alien should be prosecuted for an unlawful reentry pursuant to section 276 of the Act. After the Attorney General determines whether to prosecute the alien for reentry after removal and any Federal action or period of Federal incarceration has concluded, the state will assume custody of such alien and bear all costs associated with the transportation and escort back to the state or locality. The state (or political subdivision thereof) will hold the alien in state custody to serve the balance of the sentence of imprisonment in an appropriate state facility at state expense.

(12) If, during the period of any remaining sentence, the criminal alien applies to the Attorney General for readmission after removal under this program, and the Service is inclined to grant the request, the Service will notify the state of that request and provide an opportunity for the state to note any objection by the victim or other state authority.

(13) The MOU may be modified in writing at any time by mutual consent of the signatories and/or may be canceled by either party upon 30 days written notice. Pursuant to section 241(a)(4)(D) of the Act, as amended by IIRIRA, no cause or claim may be asserted under section 241 against any official of the United States or of any state to compel the release, removal, or consideration for release or removal of any alien and all MOU's will so state.

Dated: July 2, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–17563 Filed 7–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. J–2 Series Airplanes That are Equipped With Wing Lift Struts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain The New Piper Aircraft, Inc. (Piper) J–2 series airplanes equipped with wing lift struts. The proposed AD would require repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks. The proposed AD would also require incorporating a "NO STEP" placard on the lift strut. The proposed AD is the result of the Federal Aviation Administration (FAA) inadvertently omitting the J–2 series airplanes from the applicability of AD 99–01–05. The actions specified by the proposed AD are intended to prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane.

DATES: Comments must be received on or before September 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the F. Atlee Dodge supplemental type certificate (STC) may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen

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Aircraft, Inc., 9225 County Road 140, Salida, Colorado 81201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 99–01–05, Amendment 39–10972 (63 FR 72132, December 31, 1998), currently requires the following on certain Piper airplanes that are equipped with wing lift struts:

—Repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks;

—Incorporating a "NO STEP" placard on the lift strut; and

—Providing the option of installing certain wing lift strut and wing lift strut fork assemblies, as terminating action for repetitive inspection and replacement requirements.

AD 99–01–05 superseded AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993). The following describes the differences between AD 93–10–06 and AD 99–01–05:

—AD 99–01–05 clarifies certain requirements of AD 93–10–06;

—The requirement of AD 93–10–06 of repetitively inspecting the lift strut forks on the Piper PA–25 series airplanes was deemed unnecessary by AD 99–01–05;

—AD 99–01–05 incorporates airplane models inadvertently omitted from AD 93–10–06;

—AD 99–01–05 requires fabricating and installing a placard on the lift strut; and

—The J–2 series airplanes were included in the Applicability of AD 93–10–06, but omitted from the Applicability of AD 99–01–05.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that:

—The J–2 series airplanes were inadvertently omitted from AD 99–01–05;

—The actions of AD 99–01–05 should apply to the J–2 series airplanes; and

—AD action should be taken to prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper J–2 series airplanes of the same type design that are equipped with wing lift struts, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks: replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks. The proposed AD would also require installing a placard on the lift strut, and would provide the option of installing certain wing lift strut and wing lift strut fork assemblies, as terminating action for repetitive inspection and replacement requirements.

Cost Impact

The FAA estimates that 91 airplanes in the U.S. registry would be affected by the proposed AD.

It would take approximately 8 workhours per airplane to accomplish the proposed initial inspection, and the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed initial inspection on U.S. operators is estimated to be $43,680, or $480 per airplane. These figures are based only on the cost of the proposed initial inspection and do not take into account the costs of any repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator would incur over the life of the airplane.

It would take approximately 4 workhours per airplane to accomplish the proposed initial wing lift strut fork replacements, and the average labor rate is approximately $60 an hour. Fork assemblies cost approximately $110 each and four are required for each airplane. Based on these figures, the total cost impact of the proposed initial wing lift strut fork replacements on U.S. operators is estimated to be $61,880, or $680 per airplane.

Airplane operators who do not incorporate the improved design wing lift strut assemblies would have to repetitively replace the wing lift strut forks. The FAA has no way of determining how many airplanes do not have the improved design wing lift strut assemblies installed and would need repetitive strut fork replacements.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

The New Piper Aircraft, Inc.: Docket No. 99–CE–13–AD.

Applicability: J–2 series airplanes, serial numbers 500 through 1975, certificated in any category; that are equipped with wing lift struts.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 4: (A), (B), (C), etc.

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) Within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection accomplished per AD 93–10–06, whichever occurs later, remove the wing lift struts in accordance with Piper Service Bulletin (SB) No. 528D, and accomplish one of the following (the actions in either paragraph (a)(1), (a)(2), (a)(3), or (a)(4), including subparagraphs, of this AD):

(1) Inspect the wing lift struts for perceptible dents (as defined in the service bulletin referenced below) and corrosion in accordance with the "INSTRUCTIONS" section in Part I of Piper SB No. 528D, dated October 19, 1990.

(i) If no perceptible dents are found in the wing lift strut and no corrosion is externally visible, prior to further flight, apply corrosion inhibitor to each strut in accordance with the SB referenced above. Reinspect the lift struts at intervals not to exceed 24 calendar months.

(ii) If a perceptible dent is found in the wing lift strut or external corrosion is found, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3) or (a)(4) of this AD.

(2) Inspect the wing lift struts for corrosion in accordance with the Appendix to this AD. The inspection procedures in this Appendix must be accomplished by a Level 2 inspector certified using the guidelines established by the American Society for Non-destructive Testing, or MIL–STD–410.

(i) If no corrosion is found that is externally visible and all requirements in the Appendix to this AD are met, prior to further flight, apply corrosion inhibitor to each strut in accordance with the SB referenced above. Reinspect the lift struts at intervals not to exceed 24 calendar months.

(ii) If external corrosion is found or if any of the requirements in the Appendix of this AD are not met, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3) or (a)(4) of this AD.

(3) Install original equipment manufacturer (OEM) part number wing struts (or FAA-approved equivalent part numbers) that have been inspected in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD, and are found to be airworthy according to the inspection requirements included in these paragraphs. Thereafter, inspect these wing lift struts at intervals not to exceed 24 calendar months in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD.

(4) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D (or FAA-approved equivalent part numbers), on each wing as specified in the INSTRUCTIONS section in Part II of the above-referenced SB. These sealed wing lift strut assemblies also include the wing lift strut forks. Installation of these assemblies constitutes terminating action for the inspection and replacement requirements of both paragraphs (a) and (b) of this AD.

(b) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within 500 hours TIS after the last inspection, whichever is later, remove the wing lift strut forks and accomplish one of the following (the actions in either paragraph (b)(1), (b)(2) or (b)(3); including subparagraphs, of this AD):

(1) Inspect the wing lift strut forks for cracks using FAA-approved magnetic particle procedures.

(i) If no cracks are found, reinspect at intervals not to exceed 500 hours TIS provided that the replacement requirements of paragraphs (b)(1)(ii)(B) and (b)(1)(ii)(C) of this AD have been met.

(ii) Replace the wing lift strut forks at whichever of the following is applicable:

(A) *If cracks are found on any wing lift strut fork:* Prior to further flight;

(B) *If the airplane is equipped with floats or has been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 1,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS after the effective date of this AD, whichever occurs later; or

(C) *If the airplane has not been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 2,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.

(iii) Replacement parts shall be of the same part numbers of the existing part (or FAA-approved equivalent part numbers) and shall be manufactured with rolled threads. Lift strut forks manufactured with machined (cut) threads shall not be utilized.

(iv) The 500-hour TIS interval repetitive inspections are still required when the above replacements are accomplished.

(2) Install new OEM part number wing lift strut forks (or FAA-approved equivalent part numbers). Reinspect and replace these wing lift strut forks at the intervals specified in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv), including all subparagraphs, of this AD.

(3) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D (or FAA-approved equivalent part numbers), on each wing as specified in the INSTRUCTIONS section in Part II of the above-referenced SB.

(i) This installation may have "already been accomplished" through the actions specified in paragraph (a)(4) of this AD.

(ii) No repetitive inspections are required after installing these sealed wing lift strut assemblies.

(c) If holes are drilled in wing lift strut assemblies installed in accordance with (a)(4) or (b)(3) of this AD to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in paragraphs (a)(1) or (a)(2), including all subparagraphs, of this AD.

(d) Within 1 calendar month after the effective date of this AD and thereafter prior

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to further flight after the installation of any lift strut assembly, accomplish one of the following:

(1) Install "NO STEP" decal, Piper part number (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft; or

(2) Paint the statement "NO STEP" approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft. Use a minimum of 1-inch letters utilizing a color that contrasts with the color of the airplane.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) The service bulletins referenced in this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen Aircraft, 9225 County Road 140, Salida, Colorado 81201. Copies of the instructions to the F. Atlee Dodge STC may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. These documents may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Appendix to Docket No. 99–CE–13–AD; Procedures and Requirements for Ultrasonic Inspection of Piper Wing Lift Struts

Equipment Requirements

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001-inch and an A-trace waveform display will be needed to accomplish this inspection.

2. An ultrasonic probe with the following specifications will be needed to accomplish this inspection: 10 MHz (or higher), 0.283-inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020-inch. An accuracy of **+/−0.002-inch throughout a 0.020-inch to 0.050-inch thickness range while calibrating shall be the criteria for acceptance.**

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to accomplish this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020-inch, one shall be greater than or equal to 0.050-inch, and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

• **Note:** Couplant is defined as "a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface."

• **Note:** If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

Instrument Setup

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231-inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the **Equipment Requirements.** Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to "ring" the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. "Ring" the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and "ring" the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/−0.002-inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

Inspection Procedure

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the **Equipment Requirements** section.

2. Using a flexible ruler, draw a ¼-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper Service Bulletin No. 528D or 910A, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every ¼-inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first ¼-inch mark on the ruler and "ring" the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at ¼-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

• **Note:** A reading shall not exceed .041-inch. If a reading exceeds .041-inch, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

7. In areas where obstructions are present, take a data point as close to the correct area as possible.

• **Note:** The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024-inch or less shall require replacement of the strut prior to further flight

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020-inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule "Fabric Tester" as specified in Piper Service Bulletin No. 528D or 910A.

10. Record the lift strut inspection in the aircraft log book.

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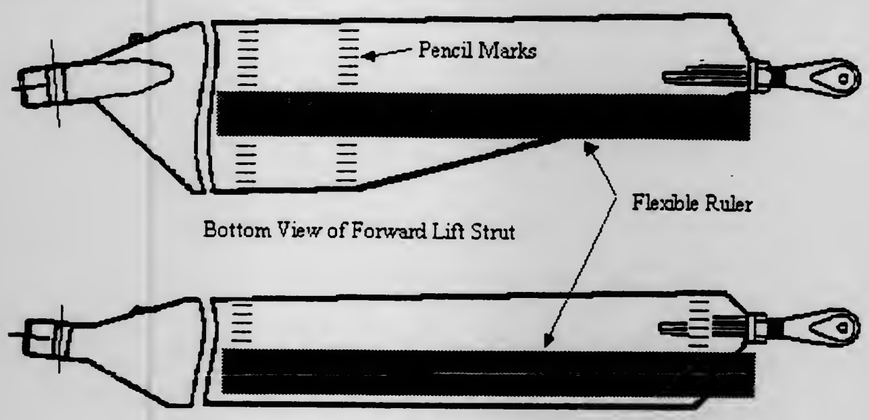


Figure 1

Issued in Kansas City, Missouri, on July 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17553 Filed 7–9–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–113–AD]

RIN 2120–AA64

Airworthiness Directives; Overland Aviation Services Fire Extinguishing System Bottle Cartridges

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Overland Aviation Services fire extinguishing system bottle cartridges that were distributed during a certain time period. The proposed AD would require removing from service any of these fire extinguishing system bottle cartridges. The proposed AD is the result of several incidents where the fire extinguishing system bottle cartridges activated with excessive energetic force. In one instance, the discharge valve outlet screen fractured and the screen material went through the distribution manifold. The actions specified by the proposed AD are intended to prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force, which could result in the fire extinguishing system operating improperly.

DATES: Comments must be received on or before September 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–113–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Overland Aviation Services, 10271 Bach Boulevard, St. Louis, Missouri; telephone: (314) 428–2062; facsimile: (314) 428–3403. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Janusz, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4148; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–113–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–113–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of several incidents where fire extinguishing system bottle cartridges that were manufactured by Overland Aviation Services activated with excessive energetic force. In one instance, the discharge valve outlet screen fractured and the screen material went through the distribution manifold.

The fire extinguishing system bottle cartridges are considered critical parts. The fire extinguishing system is only required to function after a failure or series of failures have occurred and developed into the potential for a fire. In the above-referenced incidents, the fire extinguishing system could not be relied on because of the potential for damage to the fire extinguishing system components that could result from a cartridge activating with excessive energetic force. Overland Aviation Services distributed fire extinguishing system bottle cartridges that could incorporate this problem from April 1, 1996, through September 15, 1997.

Relevant Service Information

Overland Aviation Services issued Service Bulletin 22–09–97, not dated, which contains information pertaining to the above-referenced condition.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force, which could result in the fire extinguishing system operating improperly.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in Overland Aviation Services fire extinguishing system bottle cartridges that were distributed from April 1, 1996, through September 15, 1997, the FAA is proposing AD action. The proposed AD would require removing from service any of these fire extinguishing system bottle cartridges.

Compliance Time of the Proposed AD

The unsafe condition described in this proposed AD is not a direct result of aircraft operation. The fire extinguishing system bottle cartridges could activate with excessive energetic force the first time they are used during flight. This could occur on an aircraft with 50 hours time-in-service (TIS) or an aircraft with 10,000 hours TIS. Therefore, to assure that the unsafe condition is corrected in a timely manner, the proposed AD is utilizing a compliance time of 120 days after the effective date of the AD.

Cost Impact

The FAA estimates that 5,128 fire extinguishing system bottle cartridges would be affected by the proposed AD, that it would take approximately 8 workhours per cartridge to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Warranty credit from Overland Aviation Services will cover the cost of replacement cartridges. Based on these

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figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,461,440, or $480 per fire extinguishing system bottle cartridge.

Overland Aviation Services reports that 2,100 parts have been removed from service. This reduces the cost impact of the proposed AD from $2,504,640, to $1,453,440.

The number of cartridges utilized varies from airplane to airplane. The FAA has no way of determining which airplanes have the affected fire extinguishing system bottle cartridges incorporated. Therefore, the FAA has presented the cost impact of the proposed AD based upon the number of fire extinguishing system bottle cartridges manufactured instead of the number of airplanes affected.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Overland Aviation Services: Docket No. 98–CE–113–AD.

Applicability: The fire extinguishing system bottle cartridges presented below that were distributed from April 1, 1996, through September 15, 1997, and are installed on, but not limited to the following aircraft:

Overland Aviation Services (OAS) cartridge part Nos.	Walter Aerospace (WKA) fire extinguishing system (Firex) bottle assembly basic part No.	Make/model of applicable aircraft	Cartridge lot No.
OA47200	472073, 472420, 472467, 897885, 897878, 899170.	Aerospatiale ATR72 Series ATR42–200, –300, – 320.	SBI 1–1 SBI 1–2
		Embraer EMB–120 Series.	
OA841155	898768, 890532, 890598, 890599, 891070, 891147, 891814, 893675, 892308.	Boeing 707–100, –100B Series, –300 Series, 720B.	SBI 1–3 OAS 1–2
		McDonnell Douglas DC–8, –8F Series.	
		Lockheed 382, 382E, 382F, 382G.	
		Sabreliner NA–265 Series.	
		Bell 204B.	
OA873364	893523, 893524, 893456, 893726, 472049, 472162, 895353, 894703, 472389, 472390, 893572, 897770, 898066, 898006.	Gulfstream G–1159, G–1159B, G–1159A	SBI 1–3
		Cessna 425, 441, 550, S550, 551, 552.	
		Fokker F.28 Series.	
		SAAB 340 Series.	
		Bell 412.	
OA873571	893244, 899827, 899927, 892807, 892857	Boeing 707–100, –100B Series, –300 Series, 720B.	SBI 2–2
		McDonnell Douglas DC–8, –8F Series, DC–9 Series.	
		Lockheed 382, 382E, 382F, 382G.	
OA876296	895240, 895678, 895683, 895564, 898150, 472603, 472602, 473598, 896054, 895877.	McDonnell Douglas DC–9–81, DC–9–82, DC–9–83, DC–10 Series.	SBI 1–1 OAS 1–1
		Airbus A300 Series.	
OA876299	895656, 895752, 895848, 897785, 897797, 897798, 472268, 896166, 896165.	Lockheed L–1011 Series	SBI 1–1
OA897776	897869, 899486, 897899, 897885, 899170, 472258, 472428, 899074, 897775, 899066.	Canadair CL–600–1A11, CL–600–2A12, CL–600–2B16.	SBI 1–4 SBI 1–15
		Embraer EMB–120, EMB–120RT	SBI 1–16
		Sikorsky S–76A	OAS 1–1
		SAAB 340 Series	

Note 1: Overland Aviation Services distributed the affected fire extinguishing system bottle cartridges from April 1, 1996, through September 15, 1997. Those cartridges incorporated on the aircraft prior to April 1, 1996, would not be affected by this AD. This AD allows the aircraft owner or pilot to check the maintenance records to determine whether the fire extinguishing system bottle cartridges were installed since April 1, 1996. See paragraph (d) of this AD for authorization.

Note 2: Procurement records may show if the owner/operator has ever bought affected parts, for spares or time replacements, for airplane installation, or to support a repair shop. These could be cross-referenced to the lots that are suspect. Additionally, a review of procurement records with respect to the part number, lot number, and distribution date of the suspect lots would also reduce the owners'/operators' workload of having to examine all applicable Air Transport Association (ATA) codes in the databases. A search of the maintenance/inspection records and logbooks of a specific airplane make and model and serial number could be beneficial.

Note 3: The fire extinguishing system parts are installed up to a hex wrenching flat on the cartridge body. These wrenching flats have the part number, lot number, and date of manufacture stamped on them, as well as safety wire holes. When installed, the safety wire will probably cover up at least one bit of the above information. Inspecting the wrenching flats could help determine whether the fire extinguishing system bottle cartridges contain an affected part number or lot number.

Note 4: This AD applies to each aircraft that incorporates one of the fire extinguishing system bottle cartridges identified in the preceding applicability provision, regardless of whether the aircraft has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

Note 5: "Unless already accomplished" credit may be extended to the records check allowed by this AD provided that the records are checked to cover any time period that has elapsed since the previous check.

To prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force, which could result in the fire extinguishing system operating improperly, accomplish the following:

(a) Within the next 120 calendar days after the effective date of this AD, remove from service any fire extinguishing system bottle cartridge referenced in the Applicability section of this AD, and replace it with an FAA-approved fire extinguishing system bottle cartridge that is not of the affected part numbers.

(b) As of the effective date of this AD, no person shall install, on any aircraft, any affected Overland Aviation Services fire extinguishing system bottle cartridge that was distributed from April 1, 1996, through September 15, 1997.

(c) The FAA requests that any fire extinguishing system bottle cartridge removed from service that has not been fired or cartridges that are held in inventory be sent to the manufacturer for analysis. Contact Jeff Janusz, Aerospace Engineer, at the FAA,Wichita Aircraft Certification Office (ACO), for shipping instructions; telephone: (316) 946–4148; e:mail: *jeff.janusz@faa.gov.*

(d) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether any of the affected fire extinguishing system bottle cartridges were installed since April 1, 1996. If an affected fire extinguishing system bottle cartridge was installed prior to April 1, 1996, the AD does not apply and the owner/operator must make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Overland Aviation Services, 10271 Bach Boulevard, St. Louis, Missouri; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17552 Filed 7–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 776

RIN 0703–AA54

Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy proposes to revise regulations concerning the professional conduct of attorneys practicing law under the cognizance and supervision of the Judge Advocate General of the Navy. This revision will ensure the professional supervision of judge advocates, military trial and appellate military judges, and other lawyers who practice in Department of the Navy proceedings and other legal programs.

DATES: Submit comments on or before September 10, 1999.

ADDRESSES: Send comments to Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

FOR FURTHER INFORMATION CONTACT: Major Ed McDonnell, U.S. Marine Corps, 703–604–8228.

SUPPLEMENTARY INFORMATION: The Judge Advocate General of the Navy (JAG) is responsible for the professional supervision and discipline of military trial and appellate military judges, judge advocates, and other lawyers who practice in Department of the Navy proceedings governed by the Uniform Code of Military Justice and the Manual for Courts-Martial. See, 10 U.S.C. 806, 806a, 826, 827, and Rule for Courts-Martial 109. The JAG has further responsibilities to supervise the provision of legal advice and related services in the Department of the Navy's Legal Assistance Program and such other legal programs as assigned by the Secretary of the Navy. See, 10 U.S.C. 1044; Article 0331, U.S. Navy Regulations (1990); Secretary of the Navy Instruction 5430.27A. To discharge these responsibilities, the JAG has prescribed Rules of Professional Conduct (JAG Rules) for attorneys providing legal services or otherwise practicing in proceedings under JAG cognizance and supervision. These Rules, and the procedures by which JAG investigates and resolves allegations of professional misconduct, are found at 32 CFR part 776.

The Department of the Navy is proposing a complete revision of 32 CFR part 776. While there are numerous administrative changes in the revised text, the most significant substantive proposals are as follows:

1. The terms "covered attorney," "covered United States Government (USG) attorney," and "covered non-USG attorney" are introduced and incorporated throughout part 776. Currently, subpart B to 32 CFR part 776 uses the generic term "judge advocate" in fashioning rules of professional conduct, with the proviso that this term applies to all other attorneys who practice under the supervision of the JAG (to include civilian attorneys defending individual clients in courts-

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martial or administrative separation proceedings). See current § 776.13(a)(2). The proposal would utilize the new terms to define better to whom, when, and how the JAG Rules apply. See proposed § 776.2.

2. Addition of a specific rule prohibiting sexual relations between covered attorneys and their clients or other principals to the particular matter which is the subject of the representation. This proposed rule is modeled, in significant part, on Rule 1.18 of the Revised Rules of Professional Conduct of the North Carolina State Bar. See proposed § 776.36.

3. Addition of a specific rule that requires all covered USG attorneys to remain in good standing with state licensing authorities. The rule would further ensure that covered non-USG attorneys representing individual clients in court-martial or administrative separation proceedings are members in good standing with, and authorized to practice law by, the bar of a Federal court or of the bar of the highest court of a State, or a lawyer otherwise authorized by a recognized licensing authority to practice law. See proposed § 776.71.

4. Addition of a procedure wherein the JAG may impose an interim suspension of a covered attorney where there is probable cause to believe that the attorney has committed misconduct and poses a substantial threat of irreparable harm to clients or the orderly administration of military justice. See proposed § 776.82.

5. Removal of subpart D, Outside Part-Time Practice of Naval Service Attorneys. This subpart is limited in application to covered USG attorneys, and as an internal administrative rule which does not affect the public, need not be published in the CFR. Covered USG attorneys who wish to engage in the part-time practice of law, outside of their official Department of the Navy responsibilities, must still obtain JAG approval, notice of which is contained in proposed § 776.11. Additional information for covered USG attorneys is available in JAG Instruction 5803.1 (series).

The JAG Rules contained in subpart B are based upon the American Bar Association's (ABA's) Model Rules of Professional Conduct. Like the ABA's Model Rules, each JAG Rule has accompanying commentary which explains and illustrates the meaning and purpose of the Rule. This commentary for the JAG Rules is not reprinted in subpart B. A complete version of the JAG Rules, with accompanying commentary, may be found in JAG Instruction 5803.1 (series), copies of which may be obtained from the address indicated.

Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

Revision of this part does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

Regulatory Flexibility Act

Revision of this part will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

Revision of this part does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

List of Subjects in 32 CFR Part 776

Conflict of interests, Lawyers, Legal services, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Navy proposes to revise 32 CFR part 776 to read as follows:

PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL

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Authority: 10 U.S.C. 806, 806a, 826, 827; Manual for Courts-Martial, United States, 1998; U.S. Navy Regulations, 1990; Secretary of the Navy Instruction 5430.27(series), Responsibility of the Judge Advocate General for Supervision of Certain Legal Services.

Subpart A—General

§ 776.1 Purpose.

In furtherance of the authority citations (which, if not found in local libraries, are available from the Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374–5066), which require the Judge Advocate General of the Navy (JAG) to supervise the performance of legal services under JAG cognizance throughout the Department of the Navy (DON), this part is promulgated:

(a) To establish Rules of Professional Conduct (subpart B of this part) for attorneys subject to this part;

(b) To establish procedures (subpart C of this part) for receiving, processing, and taking action on complaints of professional misconduct made against attorneys practicing under the supervision of JAG, whether arising from professional legal activities in DON proceedings and matters, or arising from other, non-U.S. Government related professional legal activities or personal misconduct which suggests the attorney is ethically, professionally, or morally unqualified to perform legal services within the DON; and

(c) To ensure quality legal services at all proceedings under the cognizance and supervision of the JAG.

§ 776.2 Applicability.

(a) This part defines the professional ethical obligations of, and applies to, all "covered attorneys."

(b) *Covered attorneys* include:

(1) The following U.S. Government (USG) attorneys, referred to, collectively, as "covered USG attorneys" throughout this part:

(i) All active-duty Navy judge advocates (designator 2500 or 2505) or Marine Corps judge advocates (MOS 4402 or 9914).

(ii) All active-duty judge advocates of other U.S. armed forces who practice law or provide legal services under the cognizance and supervision of the JAG.

(iii) All civil service and contracted civilian attorneys who practice law or perform legal services under the cognizance and supervision of the JAG.

(iv) All Reserve or Retired judge advocates of the Navy or Marine Corps (and any other U.S. armed force), who, while performing official DON duties, practice law or provide legal services under the cognizance and supervision of the JAG.

(v) All other attorneys appointed by JAG (or the Director, Judge Advocate (JA) Division, Headquarters Marine Corps (HQMC), in Marine Corps matters) to serve in billets or to provide legal services normally provided by Navy or Marine Corps judge advocates. This policy applies to officer and enlisted reservists, to active-duty personnel, and to any other personnel who are licensed to practice law by any Federal or state authorities, but who are not members of the Judge Advocate General's Corps or who do not hold the 4402 or 9914 designation in the Marine Corps.

(2) The following non-U.S. Government attorneys, referred to, collectively, as "covered non-USG attorneys" throughout this part: All civilian attorneys representing individuals in any matter for which JAG is charged with supervising the provision of legal services. These matters include, but are not limited to, courts-martial, administrative separation boards or hearings, and disability evaluation proceedings.

(3) The term *covered attorney* does not include those civil service or civilian attorneys who practice law or perform legal services under the cognizance and supervision of the General Counsel of the Navy.

(c) Professional or personal misconduct unrelated to a covered attorney's DON activities, while normally outside the ambit of these rules, may be reviewed under procedures established in subpart C of this part and may provide the basis for decisions by the JAG regarding the covered attorney's continued qualification to provide legal services in DON matters.

(d)(1) Although the rules in subpart B of this part do not apply to non-attorneys, they do define the type of ethical conduct that the public and the military community have a right to expect from DON legal personnel. Accordingly, subpart B of this part shall serve as a model of ethical conduct for the following personnel when involved with the delivery of legal services under the supervision of the JAG:

(i) Navy legalmen and Marine Corps legal administrative officers, legal service specialists, and legal services reporters (stenotype);

(ii) Limited duty officers (LAW);

(iii) Legal interns; and

(iv) Civilian support personnel including paralegals, legal secretaries, legal technicians, secretaries, court reporters, and others holding similar positions.

(2) Covered USG attorneys who supervise non-attorney DON employees are responsible for their ethical conduct to the extent provided for in § 776.55.

§ 776.3 Policy.

(a) Covered attorneys shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in subpart B of this part must come before private gain or personal interest.

(b) Whether conduct or failure to act constitutes a violation of the professional duties imposed by this part is a matter within the sole discretion of JAG or officials authorized to act for JAG. Rules contained in subpart B of this part are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Department of Defense Joint Ethics Regulation, the Code of Conduct, the Uniform Code of Military Justice (UCMJ), and the general precepts of ethical conduct to which all DON servicemembers and employees are expected to adhere. Similarly, action taken per this part is not supplanted or barred by, and does not, even if the underlying misconduct is the same, supplant or bar the following action from being taken by authorized officials:

(1) Punitive or disciplinary action under the UCMJ; or

(2) Administrative action under the Manual for Courts-Martial, U.S. Navy Regulations, or under other applicable authority.

(c) Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation (subpart C of this part) stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this part.

§ 776.4 Attorney-client relationships.

(a) The executive agency to which assigned (DON in most cases) is the client served by each covered USG attorney unless detailed to represent another client by competent authority. Specific guidelines are contained in § 776.32.

(b) Covered USG attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority. Wrongfully establishing an attorney-client relationship may subject the attorney to discipline administered per this part. See § 776.21.

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(c) Employment of a non-USG attorney by an individual client does not alter the professional responsibilities of a covered USG attorney detailed or otherwise assigned by competent authority to represent that client.

§ 776.5 Judicial conduct.

To the extent that it does not conflict with statutes, regulations, or this part, the American Bar Association's Code of Judicial Conduct applies to all military and appellate judges and to all other covered USG attorneys performing judicial functions under JAG supervision within the DON.

§ 776.6 Conflict.

To the extent that a conflict exists between this part and the rules of other jurisdictions that regulate the professional conduct of attorneys, this part will govern the conduct of covered attorneys engaged in legal functions under JAG cognizance and supervision. Specific and significant instances of conflict between the rules contained in subpart B of this part and the rules of other jurisdictions shall be reported promptly to the Rules Counsel (see § 776.9), via the supervisory attorney. See § 776.53.

§ 776.7 Reporting requirements.

Covered USG attorneys shall report promptly to the Rules Counsel any disciplinary or administrative action, including initiation of investigation, by any licensing authority or Federal, State, or local bar, possessing the power to revoke, suspend, or in any way limit the authority to practice law in that jurisdiction, upon himself, herself, or another covered attorney. Failure to report such discipline or administrative action may subject the covered USG attorney to discipline administered per this part. See § 776.71.

§ 776.8 Professional Responsibility Committee.

(a) *Composition.* This standing committee will consist of the Assistant Judge Advocate General (AJAG) for Military Justice; the Vice Commander, Naval Legal Service Command (NLSC); the Chief Judge, Navy-Marine Corps Trial Judiciary; and in cases involving Marine Corps judge advocates, the Deputy Director, JA Division, HQMC; and such other personnel as JAG from time-to-time may appoint. A majority of the members constitutes a quorum. The Chairman of the Committee shall be the AJAG for Military Justice. The Chairman may excuse members disqualified for cause, illness, or exigencies of military service, and may request JAG to appoint additional or alternate members on a temporary or permanent basis.

(b) *Purpose.* (1) When requested by JAG or by the Rules Counsel, the Committee will provide formal advisory opinions to JAG regarding application of rules contained in subpart B of this part to individual or hypothetical cases.

(2) On its own motion, the Committee may also issue formal advisory opinions on ethical issues of importance to the DON legal community.

(3) Upon written request, the Committee will also provide formal advisory opinions to covered attorneys about the propriety of proposed courses of action. If such requests are predicated upon full disclosure of all relevant facts, and if the Committee advises that the proposed course of conduct is not violative of subpart B, then no adverse action under this part may be taken against a covered attorney who acts consistent with the Committee's advice.

(4) The Chairman will forward copies of all opinions issued by the Committee to the Rules Counsel.

(c) *Limitation.* The Committee will not normally provide ethics advice or opinions concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct, etc.) that are then the subject of litigation.

§ 776.9 Rules Counsel.

Appointed by JAG to act as special assistants for the administration of this part, the Rules Counsel derive authority from JAG and, as detailed in this part, have "by direction" authority. The Rules Counsel shall cause opinions issued by the Professional Responsibility Committee of general interest to the DON legal community to be published in summarized, non-personal form in suitable publications. Unless another officer is appointed by JAG to act in individual cases, the following officers shall act as Rules Counsel:

(a) Director, JA Division, HQMC, for cases involving Marine Corps judge advocates, or civil service and contracted civilian attorneys who perform legal services under his cognizance; and

(b) AJAG for Civil Law, in all other cases.

§ 776.10 Informal ethics advice.

(a) *Advisors.* Covered attorneys may seek informal ethics advice either from the officers named below or from supervisory attorneys in the field. Within the Office of the JAG and HQMC, the following officials are designated to respond, either orally or in writing, to informal inquiries concerning this part in the areas of practice indicated:

(1) Head, Military Affairs/Personnel Law Branch, Administrative Law Division: administrative boards and related matters;

(2) Deputy Director, Criminal Law Division: military justice matters;

(3) Director, Legal Assistance Division: legal assistance matters;

(4) Deputy Director, JA Division, HQMC: cases involving Marine Corps judge advocates, or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC; and

(5) Head, Standards of Conduct/Government Ethics Branch, Administrative Law Division: All other matters.

(b) *Limitation.* Informal ethics advice will not normally be provided by JAG/HQMC advisors concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct) that are then the subject of litigation.

(c) *Written advice.* A request for informal advice does not relieve the requester of the obligation to comply with subpart B of this part. Although covered attorneys are encouraged to seek advice when in doubt as to their responsibilities, they remain personally accountable for their professional conduct. If, however, an attorney receives written advice on an ethical matter after full disclosure of all relevant facts and reasonably relies on such advice, no adverse action under this part will be taken against the attorney. Written advice may be sought from either a supervisory attorney or the appropriate advisor in paragraph (a) of this section. JAG is not bound by unwritten advice or by advice provided by personnel who are not supervisory attorneys or advisors. See § 776.54.

§ 776.11 Outside part-time practice of law.

A covered USG attorney's primary professional responsibility is to the executive agency to which assigned, and he or she is expected to devote the required amount of effort and time to satisfactorily accomplish assigned duties. The outside practice of law, therefore, must be carefully monitored. Covered USG attorneys who wish to engage in the part-time, outside practice of law must first obtain permission from JAG. Failure to obtain permission before engaging in the outside practice of law may subject the covered USG attorney to administrative or disciplinary action, including professional sanctions administered per subpart C of this part. Covered USG attorneys may obtain

further details in JAGINST 5803.1 (series). This requirement does not apply to non-USG attorneys, or to Reserve or Retired judge advocates unless serving on active-duty for more than 30 consecutive days.

§ 776.12 Maintenance of files.

Ethics complaint records shall be maintained by the Administrative Law Division, Office of the Judge Advocate General, and, in the case of Marine records, by the Judge Advocate Research and Civil Law Branch, JA Division, HQMC.

(a) Requests for access to such records should be referred to Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General (Code 13), Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374–5066, or to Head, Judge Advocate Research and Civil Law Branch, JA Division, Headquarters Marine Corps, Washington, DC 20380–0001, as appropriate.

(b) Local command files regarding professional responsibility complaints will not be maintained. Commanding officers and other supervisory attorneys may, however, maintain personal files but must not share their contents with others.

§§ 776.13–§ 776.17 [Reserved]

Subpart B—Rules of Professional Conduct

§ 776.18 Preamble.

(a) A covered USG attorney is a representative of clients, an officer of the legal system, an officer of the Federal Government, and a public citizen who has a special responsibility for the quality of justice and legal services provided to the DON and to individual clients. The Rules of Professional Conduct contained in this subpart govern the ethical conduct of covered attorneys practicing under the Uniform Code of Military Justice, the Manual for Courts-Martial, 10 U.S.C. 1044 (Legal Assistance), other laws of the United States, and regulations of the DON.

(b) This subpart not only addresses the professional conduct of judge advocates, but also applies to all other covered attorneys who practice under the cognizance and supervision of the JAG. See § 776.2.

(c) All covered attorneys are subject to professional disciplinary action imposed by the JAG for violation of the Rules contained in this subpart. Action by the JAG does not prevent other Federal, state, or local bar associations or other licensing authorities from taking professional disciplinary or other administrative action for the same or similar acts.

§ 776.19 Principles.

The Rules of this subpart are based on the following principles. Interpretation of this subpart should flow from common meaning. To the extent that any ambiguity or conflict exists, this subpart should be interpreted consistent with these general principles.

(a) Covered attorneys shall:

(1) Obey the law and military regulations, and counsel clients to do so.

(2) Follow all applicable ethics rules.

(3) Protect the legal rights and interests of clients, organizational and individual.

(4) Be honest and truthful in all dealings.

(5) Not derive personal gain, except as authorized, for the performance of legal services.

(6) Maintain the integrity of the legal profession.

(b) Ethical rules should be consistent with law. If law and ethics conflict, the law prevails unless an ethical rule is constitutionally based.

(c) The military criminal justice system is a truth-finding process consistent with constitutional law.

§ 776.20 Competence.

(a) *Competence.* A covered attorney shall provide competent, diligent, and prompt representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and expeditious preparation reasonably necessary for representation. Initial determinations as to competence of a covered USG attorney for a particular assignment shall be made by a supervising attorney before case or issue assignments; however, assigned attorneys may consult with supervisors concerning competence in a particular case.

(b) [Reserved]

§ 776.21 Establishment and scope of representation.

(a) *Establishment and scope of representation.* (1) Formation of attorney-client relationships by covered USG attorneys with, and representation of, clients is permissible only when the attorney is authorized to do so by competent authority. Military Rule of Evidence 502, the Manual of the Judge Advocate General (JAG Instruction 5800.7 (series)), and the Naval Legal Service Office and Trial Service Office Manual, define when an attorney-client relationship is formed between a covered USG attorney and a client servicemember, dependent, or employee.

(2) Generally, the subject matter scope of a covered attorney's representation will be consistent with the terms of the assignment to perform specific representational or advisory duties. A covered attorney shall inform clients at the earliest opportunity of any limitations on representation and professional responsibilities of the attorney towards the client.

(3) A covered attorney shall follow the client's well-informed and lawful decisions concerning case objectives, choice of counsel, forum, pleas, whether to testify, and settlements.

(4) A covered attorney's representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(5) A covered attorney shall not counsel or assist a client to engage in conduct that the attorney knows is criminal or fraudulent, but a covered attorney may discuss the legal and moral consequences of any proposed course of conduct with a client, and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

(b) [Reserved]

§ 776.22 Diligence.

(a) *Diligence.* A covered attorney shall act with reasonable diligence and promptness in representing a client, and shall consult with a client as soon as practicable and as often as necessary upon being assigned to the case or issue.

(b) [Reserved]

§ 776.23 Communication.

(a) *Communication.* (1) A covered attorney shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(2) A covered attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(b) [Reserved]

§ 776.24 Fees.

(a) *Fees.* (1) A covered USG attorney shall not accept any salary, fee, compensation, or other payments or benefits, directly or indirectly, other than Government compensation, for services provided in the course of the covered USG attorney's official duties or employment.

(2) A covered USG attorney shall not accept any salary or other payments as compensation for legal services

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rendered, by that covered USG attorney in a private capacity, to a client who is eligible for assistance under the DON Legal Assistance Program, unless so authorized by the JAG. This rule does not apply to Reserve or Retired judge advocates not then serving on extended active-duty.

(3) A Reserve or Retired judge advocate, whether or not serving on extended active-duty, who has initially represented or interviewed a client or prospective client concerning a matter as part of the attorney's official Navy or Marine Corps duties, shall not accept any salary or other payments as compensation for services rendered to that client in a private capacity concerning the same general matter for which the client was seen in an official capacity, unless so authorized by the JAG.

(4) A covered USG attorney shall not accept any payments or benefits, actual or constructive, directly or indirectly, for making a referral of a client in the course of the covered USG attorney's official duties or employment.

(5) Covered non-USG attorneys may charge fees. Fees shall be reasonable. Factors considered in determining the reasonableness of a fee include the following:

(i) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(ii) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney;

(iii) the fee customarily charged in the locality for similar legal services;

(iv) The amount involved and the results obtained;

(v) The time limitations imposed by the client or by the circumstances;

(vi) The nature and length of the professional relationship with the client;

(vii) The experience, reputation, and ability of the attorney or attorneys performing the services; and

(viii) Whether the fee is fixed or contingent.

(6) When the covered non-USG attorney has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(7) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (a)(8) of this section or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the covered non-USG attorney in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the covered non-USG attorney shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(8) A covered non-USG attorney shall not enter into an arrangement for, charge, or collect a contingent fee for representing an accused in a criminal case.

(9) A division of fees between covered non-USG attorneys who are not in the same firm may be made only if:

(i) The division is in proportion to the services performed by each attorney or, by written agreement with the client, each attorney assumes joint responsibility for the representation;

(ii) The client is advised of and does not object to the participation of all the attorneys involved; and

(iii) The total fee is reasonable.

(b) *Applicability.* Paragraphs (a)(5) Through (9) of this section apply only to private civilian attorneys practicing in proceedings conducted under the cognizance and supervision of the JAG. The primary purposes of paragraphs (a)(5) Through (9) of this section are not to permit the JAG to regulate fee arrangements between civilian attorneys and their clients but to provide guidance to covered USG attorneys practicing with non-USG attorneys and to supervisory attorneys who may be asked to inquire into alleged fee irregularities. Absent paragraphs (a)(5) Through (9) of this section, such supervisory attorneys have no readily available standard against which to compare allegedly questionable conduct of a civilian attorney.

§ 776.25 Confidentiality of information.

(a) *Confidentiality of Information.* (1) A covered attorney shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (a)(2) and (a)(3) of this section.

(2) A covered attorney shall reveal such information to the extent the covered attorney reasonably believes necessary to prevent the client from committing a criminal act that the covered attorney believes is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system.

(3) A covered attorney may reveal such information to the extent the covered attorney reasonably believes necessary to establish a claim or defense on behalf of the covered attorney in a controversy between the covered attorney and the client, to establish a defense to a criminal charge or civil claim against the attorney based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the attorney's representation of the client.

(b) *Definition. Conduct likely to result in the significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system* include, but are not limited to: Divulging the classified location of a special operations unit such that the lives of members of the unit are placed in immediate danger; sabotaging a vessel or aircraft to the extent that the vessel or aircraft could not conduct an assigned mission, or that the vessel or aircraft and crew could be lost; and compromising the security of a weapons site such that the weapons are likely to be stolen or detonated. Paragraph (a)(2) of this section is not intended to and does not mandate the disclosure of conduct which may have a slight impact on the readiness or capability of a unit, vessel, aircraft, or weapon system. Examples of such conduct are: Absence without authority from a peacetime training exercise; intentional damage to an individually assigned weapon; and intentional minor damage to military property.

§ 776.26 Conflict of interest: General rule.

(a) *Conflict of interest: General rule.* (1) A covered attorney shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(i) The covered attorney reasonably believes the representation will not adversely affect the relationship with the other client; and

(ii) Each client consents after consultation.

(2) A covered attorney shall not represent a client if the representation of that client may be materially limited by the covered attorney's responsibilities to another client or to a third person, or by the covered attorney's own interests, unless:

(i) The covered attorney reasonably believes the representation will not be adversely affected; and,

(ii) The client consents after consultation.

(3) When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(b) *Reserve judge advocates.* These conflict of interest rules only apply when Reservists are actually drilling or on active-duty for training, or, as is the case with Retirees, on extended active-duty or when performing other duties subject to JAG supervision. Therefore, unless otherwise prohibited by criminal conflict of interest statutes, Reserve or Retired attorneys providing legal services in their civilian capacity may represent clients, or work in firms whose attorneys represent clients, with interests adverse to the United States. Reserve judge advocates who, in their civilian capacities, represent persons whose interests are adverse to the DON will provide written notification to their supervisory attorney and commanding officer, detailing their involvement in the matter. Reserve judge advocates shall refrain from undertaking any official action or representation of the DON with respect to any particular matter in which they are providing representation or services to other clients.

§ 776.27 Conflict of interests: Prohibited transactions.

(a) *Conflict of interests: Prohibited transactions.* (1) Covered USG attorneys shall strictly adhere to current Department of Defense Ethics Regulations and shall not:

(i) Knowingly enter into any business transactions on behalf of, or adverse to, a client's interest which directly or indirectly relate to or result from the attorney-client relationship, or otherwise profit, directly or indirectly, through knowledge acquired during the course of the covered USG attorney's official duties;

(ii) Accept compensation or gifts in any form from a client or other person or entity, other than the U.S. Government, for the performance of official duties;

(iii) Provide any financial assistance to a client or otherwise serve in a financial or proprietorial fiduciary or bailment relationship, unless otherwise specifically authorized by competent authority; or

(iv) Make any referrals of legal or other business to any non-USG attorney or enterprise with whom the covered USG attorney has any present or expected direct or indirect personal interest; any referrals must be made strictly without regard to personal interests of the covered attorney, and special care shall be taken not to give preferential treatment to Reserve attorneys or other covered USG attorneys in their private capacities.

(2) No covered attorney shall:

(i) Use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by § 776.25 or § 776.42;

(ii) Prepare an instrument giving the covered attorney or a person related to the covered attorney as parent, child, sibling, or spouse any gift from a client, including a testamentary gift, except where the client is related to the donee;

(iii) In the case of covered non-USG attorneys, accept compensation for representing a client from one other than the client unless the client consents after consultation, there is no interference with the covered attorney's independence of professional judgment or with the attorney-client relationship, and information relating to representation of a client is protected as required by § 776.25;

(iv) Negotiate any settlement on behalf of multiple clients in a single matter unless each client provides fully informed consent;

(v) Prior to the conclusion of representation of the client, make or negotiate an agreement giving a covered attorney literary or media rights for a portrayal or account based in substantial part on information relating to representation of a client;

(vi) Represent a client in a matter directly adverse to a person whom the covered attorney knows is represented by another attorney who is related as parent, child, sibling, or spouse to the covered attorney, except upon consent by the client after consultation regarding the relationship; or

(vii) Acquire a proprietary interest in the cause of action or subject matter of litigation the covered attorney is conducting for a client.

(b) [Reserved]

§ 776.28 Conflict of interest: Former client.

(a) *Conflict of interest: Former client.* A covered attorney who has represented a client in a matter shall not thereafter:

(1) Represent another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation;

(2) Use information relating to the representation to the disadvantage of the former client or to the covered attorney's own advantage, except as § 776.25 or § 776.42 would permit or require with respect to a client or when the information has become generally known; or

(3) Reveal information relating to the representation except as § 776.25 or § 776.42 would permit or require with respect to a client.

(b) [Reserved]

§ 776.29 Imputed disqualification: General rule.

(a) *Imputed disqualification: General rule.* Covered USG attorneys working in the same military law office are not automatically disqualified from representing a client because any of them practicing alone would be prohibited from doing so by § 776.26, § 776.27, § 776.28, or § 776.38. Covered non-USG attorneys must consult their federal, state, and local bar rules governing the representation of multiple or adverse clients within the same office before such representation is initiated, as such representation may expose them to disciplinary action under the rules established by their licensing authority.

(b) *Representing opposing side.* (1) The circumstances of military (or Government) service may require representation of opposing sides by covered USG attorneys working in the same law office. Such representation is permissible so long as conflicts of interests are avoided and independent judgment, zealous representation, and protection of confidences are not compromised. Thus, the principle of imputed disqualification is not automatically controlling for covered USG attorneys. The knowledge, actions, and conflicts of interests of one covered USG attorney are not imputed to another simply because they operate from the same office. For example, the fact that a number of defense attorneys operate from one office and normally share clerical assistance would not prohibit them from representing co-accused at trial by court-martial. Imputed disqualification rules for non-USG attorneys are established by their individual licensing authorities and may well proscribe all attorneys from one law office from representing a co-accused, or a party with an adverse interest to an existing client, if any attorney in the same office were so prohibited.

(2) Whether a covered USG attorney is disqualified requires a functional analysis of the facts in a specific situation. The analysis should include consideration of whether the following

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will be compromised: Preserving attorney-client confidentiality; maintaining independence of judgment; and avoiding positions adverse to a client. See, e.g., *U.S.* v. *Stubbs*, 23 M.J. 188 (C.M.A. 1987).

(3) Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in a particular circumstance, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which covered USG attorneys work together. A covered USG attorney may have general access to files of all clients of a military law office (e.g., legal assistance attorney) and may regularly participate in discussions of their affairs; it may be inferred that such a covered USG attorney in fact is privy to all information about all the office's clients. In contrast, another covered USG attorney (e.g., military defense counsel) may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a covered USG attorney in fact is privy to information about the clients actually served but not to information of other clients. Additionally, a covered USG attorney changing duty stations or changing assignments within a military office has a continuing duty to preserve confidentiality of information about a client formerly represented. See § 776.25 and § 776.28.7.

(4) Maintaining independent judgment allows a covered USG attorney to consider, recommend, and carry out any appropriate course of action for a client without regard to the covered USG attorney's personal interests or the interests of another. When such independence is lacking or unlikely, representation cannot be zealous.

(5) Another aspect of loyalty to a client is the general obligation of any attorney to decline subsequent representations involving positions adverse to a former client in substantially related matters. This obligation normally requires abstention from adverse representation by the individual covered attorney involved, but, in the military legal office, abstention is not required by other covered USG attorneys through imputed disqualification.

§ 776.30 Successive government and private employment.

(a) *Successive government and private employment.* (1) Except as the law or regulations may otherwise expressly permit, a former covered USG attorney shall not represent a private client in connection with a matter in which the covered USG attorney participated personally and substantially as a public officer or employee, unless the appropriate Government agency consents after consultation. If a former covered USG attorney in a firm, partnership, or association knows that another attorney within the firm, partnership, or association is undertaking or continuing representation in such a matter:

(i) The disqualified former covered USG attorney must ensure that he or she is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom; and,

(ii) Must provide written notice promptly to the appropriate Government agency to enable it to ascertain compliance with the provisions of applicable law and regulations.

(2) Except as the law or regulations may otherwise expressly permit, a former covered USG attorney, who has information known to be confidential Government information about a person which was acquired while a covered USG attorney, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. The former covered USG attorney may continue association with a firm, partnership, or association representing any such client only if the disqualified covered USG attorney is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom.

(3) Except as the law or regulations may otherwise expressly permit, a covered USG attorney shall not:

(i) Participate in a matter in which the covered USG attorney participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the covered USG attorney's stead in the matter; or,

(ii) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the covered USG attorney is participating personally and substantially.

(4) As used in this section, the term *matter* includes:

(i) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties, and

(ii) Any other matter covered by the conflict of interest rules of the Department of Defense, DON, or other appropriate Government agency.

(5) As used in this section, the term *confidential Governmental information* means information which has been obtained under Governmental authority and which, at the time this Rule is applied, the Government is prohibited by law or regulations from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

(b) [Reserved]

§ 776.31 Former judge or arbitrator.

(a) *Former judge or arbitrator.* (1) Except as stated in paragraph (a)(3) of this section, a covered USG attorney shall not represent anyone in connection with a matter in which the covered USG attorney participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, unless all parties to the proceeding consent after disclosure.

(2) A covered USG attorney shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the covered USG attorney is participating personally and substantially as a judge or other adjudicative officer. A covered USG attorney serving as law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the covered USG attorney has notified the judge, other adjudicative officer, or arbitrator, and been disqualified from further involvement in the matter.

(3) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

(b) [Reserved]

§ 776.32 Department of the Navy as client.

(a) *Department of Navy as client.* (1) Except when representing an individual client pursuant to paragraph (a)(6) of this section, a covered USG attorney represents the DON (or the Executive agency to which assigned) acting through its authorized officials. These officials include the heads of organizational elements within the naval service, such as the commanders of fleets, divisions, ships and other heads of activities. When a covered USG attorney is assigned to such an organizational element and designated to provide legal services to the head of the organization, an attorney-client relationship exists between the covered attorney and the DON as represented by the head of the organization as to matters within the scope of the official business of the organization. The head of the organization may not invoke the attorney-client privilege or the rule of confidentiality for the head of the organization's own benefit but may invoke either for the benefit of the DON. In invoking either the attorney-client privilege or attorney-client confidentiality on behalf of the DON, the head of the organization is subject to being overruled by higher authority.

(2) If a covered USG attorney knows that an officer, employee, or other member associated with the organizational client is engaged in action, intends to act or refuses to act in a matter related to the representation that is either adverse to the legal interests or obligations of the DON or a violation of law which reasonably might be imputed to the Department, the covered USG attorney shall proceed as is reasonably necessary in the best interest of the naval service. In determining how to proceed, the covered USG attorney shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the covered USG attorney's representation, the responsibility in the naval service and the apparent motivation of the person involved, the policies of the naval service concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize prejudice to the interests of the naval service and the risk of revealing information relating to the representation to persons outside the service. Such measures shall include among others:

(i) Asking for reconsideration of the matter by the acting official;

(ii) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the naval service;

(iii) Referring the matter to, or seeking guidance from, higher authority in the chain of command including, if warranted by the seriousness of the matter, referral to the supervisory attorney assigned to the staff of the acting official's next superior in the chain of command; or

(iv) Advising the acting official that his or her personal legal interests are at risk and that he or she should consult counsel as there may exist a conflict of interests for the covered USG attorney, and the covered USG attorney's responsibility is to the organization.

(3) If, despite the covered USG attorney's efforts per paragraph (a)(2) of this section, the highest authority that can act concerning the matter insists upon action or refuses to act, in clear violation of law, the covered USG attorney shall terminate representation with respect to the matter in question. In no event shall the attorney participate or assist in the illegal activity. In this case, a covered USG attorney shall report such termination of representation to the attorney's supervisory attorney or attorney representing the next superior in the chain of command.

(4) In dealing with the officers, employees, or members of the naval service a covered USG attorney shall explain the identity of the client when it is apparent that the naval service's interests are adverse to those of the officer, employee, or member.

(5) A covered USG attorney representing the naval service may also represent any of its officers, employees, or members, subject to the provisions of § 776.26 and other applicable authority. If the DON's consent to dual representation is required by § 776.26, the consent shall be given by an appropriate official of the DON other than the individual who is to be represented.

(6) A covered USG attorney who has been duly assigned to represent an individual who is subject to disciplinary action or administrative proceedings, or to provide legal assistance to an individual, has, for those purposes, an attorney-client relationship with that individual.

(b) [Reserved]

§ 776.33 Client under a disability.

(a) *Client under a disability.* (1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the covered attorney shall, as far as reasonably possible, maintain a normal attorney-client relationship with the client.

(2) A covered attorney may seek the appointment of a guardian or take other protective action with respect to a client only when the covered attorney reasonably believes that the client cannot adequately act in the client's own interest.

(b) [Reserved]

§ 776.34 Safekeeping property.

(a) *Safekeeping property.* Covered USG attorneys shall not normally hold or safeguard property of a client or third persons in connection with representational duties. See § 776.27.

(b) [Reserved]

§ 776.35 Declining or terminating representation.

(a) *Declining or terminating representation.* (1) Except as stated in paragraph (a)(3) of this section, a covered attorney shall not represent a client or, when representation has commenced, shall seek to withdraw from the representation of a client if:

(i) The representation will result in violation of the Rules contained in this subpart or other law or regulation;

(ii) The covered attorney's physical or mental condition materially impairs his or her ability to represent the client; or

(iii) The covered attorney is dismissed by the client.

(2) Except as stated in paragraph (a)(3) of this section, a covered attorney may seek to withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(i) The client persists in a course of action involving the covered attorney's services that the covered attorney reasonably believes is criminal or fraudulent;

(ii) The client has used the covered attorney's services to perpetrate a crime or fraud;

(iii) The client insists upon pursuing an objective that the covered attorney considers repugnant or imprudent;

(iv) In the case of covered non-USG attorneys, the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or

(v) Other good cause for withdrawal exists.

(3) When ordered to do so by a tribunal or other competent authority, a covered attorney shall continue representation notwithstanding good cause for terminating the representation.

(4) Upon termination of representation, a covered attorney shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for assignment or employment of other counsel, and surrendering papers and property to which the client is entitled and, where a non-USG attorney provided representation, refunding any advance payment of fee that has not been earned. The covered attorney may retain papers relating to the client to the extent permitted by law.

(b) [Reserved]

§ 776.36 Prohibited sexual relations.

(a) *Prohibited sexual relations.* (1) A covered attorney shall not have sexual

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relations with a current client. A covered attorney shall not require, demand, or solicit sexual relations with a client incident to any professional representation.

(2) A covered attorney shall not engage in sexual relations with another attorney currently representing a party whose interests are adverse to those of a client currently represented by the covered attorney.

(3) A covered attorney shall not engage in sexual relations with a judge who is presiding or who is likely to preside over any proceeding in which the covered attorney will appear in a representative capacity.

(4) A covered attorney shall not engage in sexual relations with other persons involved in the particular case, judicial or administrative proceeding, or other matter for which representation has been established, including but not limited to witnesses, victims, co-accuseds, and court-martial or board members.

(5) For purposes of this Rule, *sexual relations* means:

(i) Sexual intercourse; or

(ii) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the covered attorney for the purpose of arousing or gratifying the sexual desire of either party.

(b) [Reserved]

§ 776.37 Advisor.

(a) *Advisor.* In representing a client, a covered attorney shall exercise independent professional judgment and render candid advice. In rendering advice, a covered attorney should refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

(b) [Reserved]

§ 776.38 Mediation.

(a) *Mediation.* (1) A covered attorney may act as a mediator between individuals if:

(i) The covered attorney consults with each individual concerning the implications of the mediation, including the advantages and risks involved, and the effect on the attorney-client confidentiality, and obtains each individual's consent to the mediation;

(ii) The covered attorney reasonably believes that the matter can be resolved on terms compatible with each individual's best interests, that each individual will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the individuals if the contemplated resolution is unsuccessful; and,

(iii) The covered attorney reasonably believes that the mediation can be undertaken impartially and without improper effect on other responsibilities the covered attorney has to any of the individuals.

(2) While acting as a mediator, the covered attorney shall consult with each individual concerning the decisions to be made and the considerations relevant in making them, so that each individual can make adequately informed decisions.

(3) A covered attorney shall withdraw as a mediator if any of the individuals so requests, or if any of the conditions stated in paragraph (a)(1) of this section is no longer satisfied. Upon withdrawal, the covered attorney shall not represent any of the individuals in the matter that was the subject of the mediation unless each individual consents.

(b) [Reserved]

§ 776.39 Evaluation for use by third persons.

(a) *Evaluation for use by third persons.* (1) A covered attorney may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(i) The covered attorney reasonably believes that making the evaluation is compatible with other aspects of the covered attorney's relationship with the client, and,

(ii) The client consents after consultation.

(2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by § 776.25.

(b) [Reserved]

§ 776.40 Meritorious claims and contentions.

(a) *Meritorious claims and contentions.* A covered attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A covered attorney representing an accused in a criminal proceeding or the respondent in an administrative proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action, may nevertheless defend the client at the proceeding as to require that every element of the case is established.

(b) [Reserved]

§ 776.41 Expediting litigation.

(a) *Expediting litigation.* A covered attorney shall make reasonable efforts to expedite litigation or other proceedings consistent with the interests of the client and the attorney's responsibilities to tribunals.

(b) [Reserved]

§ 776.42 Candor and obligations toward the tribunal.

(a) *Candor and obligations toward the tribunal.* (1) A covered attorney shall not knowingly:

(i) Make a false statement of material fact or law to a tribunal;

(ii) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(iii) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the covered attorney to be directly adverse to the position of the client and not disclosed by opposing counsel;

(iv) Offer evidence that the covered attorney knows to be false. If a covered attorney has offered material evidence and comes to know of its falsity, the covered attorney shall take reasonable remedial measures; or

(v) Disobey an order imposed by a tribunal unless done openly before the tribunal in a good faith assertion that no valid order should exist.

(2) The duties stated in paragraph (a) of this section continue to the conclusion of the proceedings, and apply even if compliance requires disclosure of information otherwise protected by § 776.25.

(3) A covered attorney may refuse to offer evidence that the covered attorney reasonably believes is false.

(4) In an ex parte proceeding, a covered attorney shall inform the tribunal of all material facts known to the covered attorney which are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

(b) [Reserved]

§ 776.43 Fairness to opposing party and counsel.

(a) *Fairness to opposing party and counsel.* A covered attorney shall not:

(1) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A covered attorney shall not counsel or assist another person to do any such act;

(2) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(4) In trial, allude to any matter that the covered attorney does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(5) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(i) The person is a relative, an employee, or other agent of a client; and

(ii) The covered attorney reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(b) [Reserved]

§ 776.44 Impartiality and decorum of the tribunal.

(a) *Impartiality and decorum of the tribunal.* A covered attorney shall not:

(1) Seek to influence a judge, court member, member of a tribunal, prospective court member or member of a tribunal, or other official by means prohibited by law or regulation;

(2) Communicate ex parte with such a person except as permitted by law or regulation; or

(3) Engage in conduct intended to disrupt a tribunal.

(b) [Reserved]

§ 776.45 Extra-tribunal statements.

(a) *Extra-tribunal statements.* (1) A covered attorney shall not make an extrajudicial statement about any person or case pending investigation or adverse administrative or disciplinary proceedings that a reasonable person would expect to be disseminated by means of public communication if the covered attorney knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof.

(2) A statement referred to in paragraph (a)(1) of this section ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action, and the statement relates to:

(i) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, victim, or witness, or the identity of a victim or witness, or the expected testimony of a party, suspect, victim, or witness;

(ii) The possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by an accused or suspect or that person's refusal or failure to make a statement;

(iii) The performance or results of any forensic examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(iv) Any opinion as to the guilt or innocence of an accused or suspect in a criminal case or other proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action;

(v) Information the covered attorney knows or reasonably should know is likely to be inadmissible as evidence before a tribunal and would, if disclosed, create a substantial risk of materially prejudicing an impartial proceeding;

(vi) The fact that an accused has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty; or

(vii) The credibility, reputation, motives, or character of civilian or military officials of the Department of Defense.

(3) Notwithstanding paragraphs (a)(1) and (a)(2)(i) through (vii) of this section, a covered attorney involved in the investigation or litigation of a matter may state without elaboration:

(i) The general nature of the claim, offense, or defense;

(ii) The information contained in a public record;

(iii) That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law or regulation, the identity of the persons involved;

(iv) The scheduling or result of any step in litigation;

(v) A request for assistance in obtaining evidence and information necessary thereto;

(vi) A warning of danger concerning the behavior of the person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(vii) In a criminal case, in addition to paragraphs (a)(3)(i) through (vi) of this section:

(A) The identity, duty station, occupation, and family status of the accused;

(B) If the accused has not been apprehended, information necessary to aid in apprehension of that person;

(C) The fact, time, and place of apprehension; and

(D) The identity of investigating and apprehending officers or agencies and the length of the investigation.

(4) Notwithstanding paragraphs (a)(1) and (a)(2)(i) through (vii) of this section, a covered attorney may make a statement that a reasonable covered attorney would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the covered attorney or the attorney's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(5) The protection and release of information in matters pertaining to the DON is governed by such statutes as the Freedom of Information Act and the Privacy Act, in addition to those governing protection of national defense information. In addition, other laws and regulations may further restrict the information that can be released or the source from which it is to be released (e.g., the Manual of the Judge Advocate General).

(b) [Reserved]

§ 776.46 Attorney as witness.

(a) *Attorney as witness.* (1) A covered attorney shall not act as advocate at a trial in which the covered attorney is likely to be a necessary witness except when:

(i) The testimony relates to an uncontested issue;

(ii) The testimony relates to the nature and quality of legal services rendered in the case; or

(iii) Disqualification of the covered attorney would work substantial hardship on the client.

(2) A covered attorney may act as advocate in a trial in which another attorney in the covered attorney's office is likely to be called as a witness, unless precluded from doing so by § 776.26 or § 776.28.

(b) [Reserved]

§ 776.47 Special responsibilities of a trial counsel.

(a) *Special responsibilities of a trial counsel.* A trial counsel shall:

(1) Recommend to the convening authority that any charge or

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specification not warranted by the evidence be withdrawn;

(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(3) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights;

(4) Make timely disclosure to the defense of all evidence or information known to the trial counsel that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the trial counsel, except when the trial counsel is relieved of this responsibility by a protective order or regulation;

(5) Exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the trial counsel from making an extrajudicial statement that the trial counsel would be prohibited from making under § 776.45; and

(6) Except for statements that are necessary to inform the public of the nature and extent of the trial counsel's actions and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused.

(b) *Role of the trial counsel.* (1) The trial counsel represents the United States in the prosecution of special and general courts-martial. See Article 38(a), UCMJ, and R.C.M. 103(16), 405(d)(3)(A), and 502(d)(5). Accordingly, a trial counsel has the responsibility of administering justice and is not simply an advocate. This responsibility carries with it specific obligations to see that the accused is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Paragraph (a)(1) of this section recognizes that the trial counsel does not have all the authority vested in modern civilian prosecutors. The authority to convene courts-martial, and to refer and withdraw specific charges, is vested in convening authorities. Trial counsel may have the duty, in certain circumstances, to bring to the court's attention any charge that lacks sufficient evidence to support a conviction. See *United States* v. *Howe*, 37 M.J. 1062 (NMCMR 1993). Such action should be undertaken only after consultation with a supervisory attorney and the convening authority. See also § 776.42, governing ex parte proceedings. Applicable law may require other measures by the trial counsel. Knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of § 776.69.

(2) The "ABA Standards for Criminal Justice: The Prosecution Function," (3rd ed. 1993), has been used by appellate courts in analyzing issues concerning trial counsel conduct. To the extent consistent with this part, the ABA standards may be used to guide trial counsel in the prosecution of criminal cases. See *United States* v. *Howe*, 37 M.J. 1062 (NMCRS 1993); *United States* v. *Dancy*, 38 M.J. 1 (CMA 1993); *United States* v. *Hamilton*, 41 M.J. 22 (CMA 1994); *United States* v. *Meek*, 44 M.J. 1 (CMA 1996).

§ 776.48 Advocate in nonadjudicative proceedings.

(a) *Advocate in nonadjudicative proceedings.* A covered attorney representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of § 776.42, § 776.43, and § 776.44.

(b) [Reserved]

§ 776.49 Truthfulness in statements to others.

(a) *Truthfulness in statements to others.* In the course of representing a client a covered attorney shall not knowingly;

(1) Make a false statement of material fact or law to a third person; or

(2) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by § 776.25.

(b) [Reserved]

§ 776.50 Communication with person representated by counsel.

(a) *Communication with person represented by counsel.* In representing a client, a covered attorney shall not communicate about the subject of the representation with a party the covered attorney knows to be represented by another attorney in the matter, unless the covered attorney has the consent of the other attorney or is authorized by law to do so.

(b) [Reserved]

§ 776.51 Dealing with an unrepresented person.

(a) *Dealing with an unrepresented person.* When dealing on behalf of a client with a person who is not represented by counsel, a covered attorney shall not state or imply that the covered attorney is disinterested. When the covered attorney knows or reasonably should know that the unrepresented person misunderstands the covered attorney's role in the matter, the covered attorney shall make reasonable efforts to correct the misunderstanding.

(b) [Reserved]

§ 776.52 Respect for rights of third persons.

(a) *Respect for rights of third persons.* In representing a client, a covered attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) [Reserved]

§ 776.53 Responsibilities of the Judge Advocate General and supervisory attorneys.

(a) *Responsibilities of the Judge Advocate General and supervisory attorneys.* (1) The JAG and supervisory attorneys shall make reasonable efforts to ensure that all covered attorneys conform to this part.

(2) A covered attorney having direct supervisory authority over another covered attorney shall make reasonable efforts to ensure that the other attorney conforms to this part.

(3) A supervisory attorney shall be responsible for another subordinate covered attorney's violation of this part if:

(i) The supervisory attorney orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(ii) The supervisory attorney has direct supervisory authority over the other attorney and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(4) A supervisory attorney is responsible for ensuring that the subordinate covered attorney is properly trained and is competent to perform the duties to which the subordinate covered attorney is assigned.

(b) [Reserved]

§ 776.54 Responsibilities of a subordinate attorney.

(a) *Responsibilities of a subordinate attorney.* (1) A covered attorney is bound by this part notwithstanding that the covered attorney acted at the direction of another person.

(2) In recognition of the judge advocate's unique dual role as a commissioned officer and attorney, subordinate judge advocates shall obey lawful directives and regulations of supervisory attorneys when not inconsistent with this part or the duty of a judge advocate to exercise independent professional judgment as to the best interest of an individual client.

(3) A subordinate covered attorney does not violate this part if that covered attorney acts in accordance with a supervisory attorney's written and reasonable resolution of an arguable question of professional duty. See § 776.10.

(b) [Reserved]

§ 776.55 Responsibilities regarding non-attorney assistants.

(a) *Responsibilities regarding non-attorney assistants.* With respect to a non-attorney acting under the authority, supervision, or direction of a covered attorney:

(1) The senior supervisory attorney in an office shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney;

(2) A covered attorney having direct supervisory authority over the non-attorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney; and

(3) A covered attorney shall be responsible for conduct of such a person that would be a violation of this part if engaged in by a covered attorney if:

(i) The covered attorney orders or, with the knowledge of the specific conduct, explicitly or impliedly ratifies the conduct involved; or

(ii) The covered attorney has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(b) [Reserved]

§ 776.56 Professional independence of a covered USG attorney.

(a) *Professional independence of a covered USG attorney.* (1) Notwithstanding a judge advocate's status as a commissioned officer subject, generally, to the authority of superiors, a judge advocate detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(2) Notwithstanding a civilian USG attorney's status as a Federal employee subject, generally, to the authority of superiors, a civilian USG attorney detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(3) The exercise of professional judgment in accordance with paragraphs (a)(1) and (a)(2) of this section shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action.

(b) *Loyalty to individual client.* (1) This section recognizes that a judge advocate is a military officer required by law to obey the lawful orders of superior officers. It also recognizes the similar status of a civilian USG attorney. Nevertheless, the practice of law requires the exercise of judgment solely for the benefit of the client and free of compromising influences and loyalties. Thus, when a covered USG attorney is assigned to represent an individual client, neither the attorney's personal interests, the interests of other clients, nor the interests of third persons should affect loyalty to the individual client.

(2) Not all direction given to a subordinate covered attorney is an attempt to influence improperly the covered attorney's professional judgment. Each situation must be evaluated by the facts and circumstances, giving due consideration to the subordinate's training, experience, and skill. A covered attorney subjected to outside pressures should make full disclosure of them to the client. If the covered attorney or the client believes the effectiveness of the representation has been or will be impaired thereby, the covered attorney should take proper steps to withdraw from representation of the client.

(3) Additionally, a judge advocate has a responsibility to report any instances of unlawful command influence. See R.C.M. 104, MCM, 1998.

§ 776.57 Unauthorized practice of law.

(a) *Unauthorized practice of law.* A covered USG attorney shall not:

(1) Except as authorized by an appropriate military department, practice law in a jurisdiction where doing so is prohibited by the regulations of the legal profession in that jurisdiction; or

(2) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) *Practice of law under JAG authorizaton.* Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. A covered USG attorney's performance of legal duties pursuant to a military department's authorization, however, is considered a Federal function and not subject to regulation by the states. Thus, a covered USG attorney may perform legal assistance duties even though the covered attorney is not licensed to practice in the jurisdiction within which the covered attorney's duty station is located. Paragraph (a)(2) of this section does not prohibit a covered USG attorney from using the services of non-attorneys and delegating functions to them, so long as the covered attorney supervises the delegated work and retains responsibility for it. See § 776.55. Likewise, it does not prohibit covered USG attorneys from providing professional advice and instruction to non-attorneys whose employment requires knowledge of law; for example, claims adjusters, social workers, accountants and persons employed in Government agencies. In addition, a covered USG attorney may counsel individuals who wish to proceed pro se or non-attorneys authorized by law or regulation to appear and represent themselves or others before military proceedings.

§§ 776.58–776.65 [Reserved]

§ 776.66 Bar admission and disciplinary matters.

(a) *Bar admission and disciplinary matters.* A covered attorney, in connection with any application for bar admission, appointment as a judge advocate, employment as a civilian USG attorney, certification by the JAG or his designee, or in connection with any disciplinary matter, shall not:

(1) Knowingly make a false statement of fact; or

(2) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this section does not require disclosure of information otherwise protected by § 776.25.

(b) *Providing information.* The duty imposed by this section extends to covered attorneys and other attorneys seeking admission to a bar, application for appointment as a covered USG attorney (military or civilian) or certification by the JAG or his designee. Hence, if a person makes a false statement in connection with an application for admission or certification (e.g., misstatement by a civilian attorney before a military judge regarding qualifications under Rule for Courts-Martial 502), it may be the basis

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for subsequent disciplinary action if the person is admitted or certified, and in any event may be relevant in a subsequent admission application. The duty imposed by this section applies to a covered attorney's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a covered attorney to make a knowing misrepresentation or omission in connection with a disciplinary investigation of the covered attorney's own conduct. This section also requires affirmative clarification of any misunderstanding on the part of the admissions, certification, or disciplinary authority of which the person involved becomes aware.

§ 776.67 Judicial and legal officers.

(a) *Judicial and legal officers.* A covered attorney shall not make a statement that the covered attorney knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, investigating officer, hearing officer, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) [Reserved]

§ 776.68 Reporting professional misconduct.

(a) *Reporting professional misconduct.* (1) A covered attorney having knowledge that another covered attorney has committed a violation of this part that raises a substantial question as to that covered attorney's honesty, trustworthiness, or fitness as a covered attorney in other respects, shall report such violation in accordance with the procedures set forth in subpart C of this part.

(2) A covered attorney having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall report such violation in accordance with the procedures set forth in subpart C of this part.

(3) This Rule does not require disclosure of information otherwise protected by § 776.25.

(b) [Reserved]

§ 776.69 Misconduct.

(a) *Misconduct.* It is professional misconduct for a covered attorney to:

(1) Violate or attempt to violate this subpart, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the covered attorney's honesty, trustworthiness, or fitness as an attorney in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(b) *Responsibilities.* (1) Judge advocates hold a commission as an officer in the Navy or Marine Corps and assume legal responsibilities going beyond those of other citizens. A judge advocate's abuse of such commission can suggest an inability to fulfill the professional role of judge advocate and attorney. This concept has similar application to civilian USG attorneys.

(2) Covered non-USG attorneys, Reservists, and Retirees (acting in their civilian capacity), like their active-duty counterparts, are expected to demonstrate model behavior and exemplary integrity at all times. JAG may consider any and all derogatory or beneficial information about a covered attorney, for purposes of determining the attorney's qualification, professional competence, or fitness to practice law in DON matters, or to administer discipline under this part. Such consideration shall be made, except in emergency situations necessitating immediate action, according to the procedures established in subpart C of this part.

§ 776.70 Jurisdiction.

(a) *Jurisdiction.* All covered attorneys, as defined in § 776.2, shall be governed by this part.

(b) *Applicability.* (1) Many covered USG attorneys practice outside the territorial limits of the jurisdiction in which they are licensed. While covered attorneys remain subject to the governing authority of the jurisdiction in which they are licensed to practice, they are also subject to these Rules.

(2) When covered USG attorneys are engaged in the conduct of Navy or Marine Corps legal functions, whether serving the Navy or Marine Corps as a client or serving an individual client as authorized by the Navy or Marine Corps, the rules contained in this subpart supersede any conflicting rules applicable in jurisdictions in which the covered attorney may be licensed. However, covered attorneys practicing in State or Federal civilian court proceedings will abide by the rules adopted by that State or Federal civilian court during the proceedings. As for covered non-USG attorneys practicing under the supervision of the JAG, violation of the rules contained in this subpart may result in suspension from practice in DON proceedings.

(3) Covered non-USG attorneys, Reservists, or Retirees (acting in their civilian capacity) who seek to provide legal services in any DON matter under JAG cognizance and supervision, may be precluded from such practice of law if, in the opinion of the JAG (as exercised through this instruction) the attorney's conduct in any venue renders that attorney unable or unqualified to practice in DON programs or proceedings.

§ 776.71 Requirement to remain in good standing with licensing authorities.

(a) *Requirement to remain in good standing with state licensing authority.* (1) Each officer of the Navy appointed as a member of the Judge Advocate General's Corps, each officer of the Marine Corps designated a judge advocate, and each civil service and contracted civilian attorney who practices law under the cognizance and supervision of the JAG shall maintain a status considered "in good standing" at all times with the licensing authority admitting the individual to the practice of law before the highest court of at least one State, Territory, Commonwealth, or the District of Columbia.

(2) The JAG, the Director, JA Division, HQMC, or any other supervisory attorney may require any covered USG attorney over whom they exercise authority to establish that the attorney continues to be in good standing with his or her licensing authority. Representatives of the JAG or of the Director, JA Division, HQMC, may also inquire directly of any such covered USG attorney's licensing authority to establish whether he or she continues to be in good standing and has no disciplinary action pending.

(3) Each covered USG attorney shall immediately report to the JAG if any jurisdiction in which the covered USG attorney is or has been a member in good standing commences disciplinary investigation or action against him or her or if the covered USG attorney is disciplined, suspended, or disbarred from the practice of law in any jurisdiction.

(4) Each covered non-USG attorney representing an accused in any court-martial or administrative separation proceeding shall be a member in good standing with, and authorized to practice law by, the bar of a Federal court or of the bar of the highest court of a State, or a lawyer otherwise authorized by a recognized licensing authority to practice law and found by the military judge to be qualified to represent the accused.

(b) *Definition.* (1) The licensing authority granting the certification or privilege to practice law within the jurisdiction generally defines the phrase "in good standing." At a minimum it means that the individual is subject to the jurisdiction's disciplinary review process; has not been suspended or disbarred from the practice of law within the jurisdiction; is up-to-date in the payment of all required fees; has met applicable continuing legal education requirements which the jurisdiction has imposed (or the cognizant authority has waived those requirements in the case of the individual); and has met such other requirements as the cognizant authority has set to remain eligible to practice law. So long as these conditions are met, a covered USG attorney may be considered "inactive" as to the practice of law within a particular jurisdiction and still be considered "in good standing" for purposes of this section.

(2) Rule for Courts-Martial 502(d)(3)(A) requires that any civilian defense counsel representing an accused in a court-martial be a member of the bar of a Federal court or of the bar of the highest court of a State. This civilian defense counsel qualification only has meaning if the attorney is a member "in good standing," see *U.S.* v. *Waggoner*, 22 M.J. 692 (AFCMR 1986), and is then authorized to practice law within that jurisdiction. It is appropriate for the military judge, in each and every case, to ensure that a civilian defense counsel is qualified to represent the accused.

(3) Failure of a judge advocate to comply with the requirements of this Rule may result in professional disciplinary action as provided for in this instruction, loss of certification under Articles 26 and/or 27(b), UCMJ, adverse entries in military service records, and administrative separation under Secretary of the Navy Instruction 1920.6(series) based on the officer's failure to maintain professional qualifications. In the case of civil service and contracted civilian attorneys practicing under the JAG's cognizance and supervision, failure to maintain good standing or otherwise to comply with the requirements of this Rule may result in adverse administrative action under applicable personnel regulations, including termination of employment.

(4) A covered USG attorney need only remain in good standing in one jurisdiction. If admitted to the practice of law in more than one jurisdiction, however, and any jurisdiction commences disciplinary action against or disciplines, suspends or disbars the covered USG attorney from the practice of law, the covered USG attorney must so advise the JAG.

(5) Certification by the United States Court of Appeals for the Armed Forces that a covered attorney is in good standing with that court will not satisfy the requirement of this section, since such status is normally dependent on Article 27 UCMJ certification alone.

§§ 776.72–776.75 [Reserved]

Subpart C—Complaint Processing Procedures

§ 776.76 Policy.

(a) It is JAG's policy to investigate and resolve, expeditiously and fairly, all allegations of professional impropriety lodged against covered attorneys practicing under JAG cognizance and supervision.

(b) Rules Counsel approval will be obtained before conducting any preliminary inquiry or formal investigation into an alleged violation of subpart B of this part or the Code of Judicial Conduct. The Rules Counsel will notify the JAG prior to the commencement of any preliminary inquiry or investigation. The preliminary inquiry and any subsequent investigation will be conducted according to the procedures set forth in this subpart.

§ 776.77 Related investigations and Actions.

Acts or omissions by covered attorneys may constitute professional misconduct, criminal misconduct, poor performance of duty, or a combination of all three. Care must be taken to characterize appropriately the nature of a covered attorney's conduct to determine who may and properly should take official action.

(a) Questions of legal ethics and professional misconduct by covered attorneys are within the exclusive province of JAG. Ethical or professional misconduct will not be attributed to any covered attorney in any official record without a final JAG determination, made in accordance with this part, that such misconduct has occurred.

(b) Criminal misconduct is properly addressed by the covered USG attorney's commander through the disciplinary process provided under the UCMJ and implementing regulations, or through referral to appropriate civil authority.

(c) Poor performance of duty is properly addressed by the covered USG attorney's reporting senior through a variety of administrative actions, including documentation in fitness reports or employee appraisals.

(d) Prior JAG approval is not required to investigate allegations of criminal conduct or poor performance of duty involving covered attorneys. When, however, investigations into criminal conduct or poor performance reveal conduct that constitutes a violation of this part, or of the Code of Judicial Conduct in the case of judges, such conduct shall be reported to the Rules Counsel immediately.

(e) Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this subpart.

§ 776.78 Informal complaints.

Informal, anonymous, or "bot line" type complaints alleging professional misconduct must be referred to appropriate authority (such as the JAG IG or the concerned supervisory attorney) for inquiry. Such complaints are not, by themselves, cognizable under this subpart but may, if reasonably confirmed, be the basis of a formal complaint described in § 776.79.

§ 776.79 The complaint.

(a) The complaint shall:

(1) Be in writing and be signed by the complainant;

(2) State that the complainant has personal knowledge, or has otherwise received reliable information indicating, that:

(i) The covered attorney concerned is, or has been, engaged in misconduct that demonstrates a lack of integrity, that constitutes a violation of subpart B of this part or a failure to meet the ethical standards of the profession; or

(ii) The covered attorney concerned is ethically, professionally, or morally unqualified to perform his or her duties; and

(3) Contain a complete, factual statement of the acts or omissions constituting the substance of the complaint, as well as a description of any attempted resolution with the covered attorney concerned. Supporting statements, if any, should be attached to the complaint.

(b) A complaint may be initiated by any person, including the Administrative Law Division of the Office of JAG (JAG (13)), or the Judge Advocate Research and Civil Law Branch, JA Division, HQMC (JAR).

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§ 776.80 Initial screening and Rules Counsel.

(a) Complaints shall be forwarded to JAG(13) or, in cases involving Marine Corps judge advocates or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC, to JAR.

(b) JAG(13) and JAR shall log all complaints received and will ensure that a copy is provided to the covered attorney who is the subject of the complaint.

(c) The covered attorney concerned may elect to provide an initial statement regarding the complaint for the Rules Counsel's consideration. The covered attorney will promptly inform JAG(13) or JAR if he or she intends to submit any such statement. At this screening stage, forwarding of the complaint to the Rules Counsel will not be unduly delayed to await the covered attorney's submission.

(d) The Rules Counsel shall initially review the complaint, and any statement submitted by the covered attorney complained of, to determine whether it complies with the requirements set forth in § 776.79.

(1) Complaints that do not comply with the requirements may be returned to the complainant for correction or completion, and resubmission to JAG(13) or JAR. If the complaint is not corrected or completed, and resubmitted within 30 days of the date of its return, the Rules Counsel may close the file without further action. JAG (13) and JAR will maintain copies of all correspondence relating to the return and resubmission of a complaint, and shall notify the covered attorney concerned if and when the Rules Counsel takes action to close the file.

(2) Complaints that comply with the requirements shall be further reviewed by the Rules Counsel to determine whether the complaint:

(i) Establishes probable cause to believe that a violation of this part or of the Judicial Code has occurred; or

(ii) Alleges ineffective assistance of counsel, or other violations of subpart B of this part, as a matter of defense in a court-martial, administrative separation, or nonjudicial punishment proceeding. If so, the Rules Counsel shall forward a copy of the complaint to the proper appellate authority for appropriate action and comment.

(e) The Rules Counsel shall close the file without further action if the complaint does not establish probable cause to believe that a violation has occurred. The Rules Counsel shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file.

(f) The Rules Counsel may close the file if there is a determination that the complaint establishes probable cause but the violation is of a minor or technical nature appropriately addressed through corrective counseling. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure the covered attorney concerned receives appropriate counseling and shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting of such action.

§ 776.81 Charges.

(a) If the Rules Counsel determines that there is probable cause to believe that a violation of this part or of the Code of Judicial Conduct has occurred, the Rules Counsel shall draft charges alleging violations of this part or of the Code of Judicial Conduct and forward the charges, together with the original complaint and any allied papers, as follows:

(1) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, to the officer exercising general court-martial jurisdiction (OEGCMJ) over the charged covered attorney, and request, on behalf of JAG, that the OEGCMJ appoint a covered attorney (normally the concerned attorney's supervisor) to conduct a preliminary inquiry into the matter;

(2) In all other cases, to the supervisory attorney in the charged attorney's chain of command (or such other officer as JAG may designate), and direct, on behalf of JAG, the supervisory attorney to conduct a preliminary inquiry into the matter.

(b) The Rules Counsel shall provide a copy of the charges, complaint, and any allied papers to the covered attorney against whom the complaint is made and notify him or her that a preliminary inquiry will be conducted. Service of complaints, charges, and other materials shall be made by personal service, or by registered or certified mail sent to the covered attorney's last known address reflected in official Navy or Marine Corps records or in the records of the state bar(s) which licensed the attorney to practice law.

(c) The Rules Counsel shall also provide a copy of the charges to the commanding officer, or equivalent, of the covered USG attorney concerned if the complaint involves a covered USG attorney on active duty or in civilian Federal service.

(d) The Rules Counsel shall also forward a copy of the charges as follows:

(1) In cases involving Navy or Marine Corps judge advocates serving in Naval Legal Service Command (NLSC) units, to Vice Commander, NLSC;

(2) In cases involving Navy attorneys serving in Marine Corps units, or involving Marine Corps attorneys serving in Navy units, to the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving members of the Navy-Marine Corps Trial Judiciary, to the Trial Judiciary Chief Judge; and

(4) To the appropriate military service attorney discipline section if the complaint involves covered attorneys certified by the Judge Advocates General/Chief Counsel of the other uniformed services.

§ 776.82 Interim suspension.

(a) Where the Rules Counsel determines there is probable cause to believe that a covered attorney has committed misconduct or other violations of this part, and poses a substantial threat of irreparable harm to his or her clients or the orderly administration of military justice, the Rules Counsel shall so advise the JAG. Examples of when a covered attorney may pose a "substantial threat of irreparable harm" include:

(1) When charged with the commission of a crime which involves moral turpitude or reflects adversely upon the covered attorney's fitness to practice law, and where substantial evidence exists to support the charge;

(2) When engaged in the unauthorized practice of law (e.g., failure to maintain good standing in accordance with § 776.71); or

(3) Where unable to represent client interests competently.

(b) Upon receipt of information from the Rules Counsel, JAG may order the covered attorney to show cause why he or she should not face interim suspension, pending completion of a professional responsibility investigation. The covered attorney shall have 10 calendar days in which to respond.

(c) If an order to show cause has been issued under paragraph (b) of this section, and the period for response has passed without a response, or after consideration of any response and finding sufficient evidence demonstrating probable cause to believe that the covered attorney is guilty of misconduct and poses a substantial threat of irreparable harm to his or her client or the orderly administration of military justice, JAG may direct an interim suspension of the covered attorney's certification under Articles 26(b) or 27(b), UCMJ, or R.C.M. 502(d)(3), or the authority to provide legal assistance, pending the results of the investigation and final action under this instruction.

(d) Within 10 days of JAG's decision to impose an interim suspension, the covered attorney may request an opportunity to be heard before an impartial officer designated by JAG. Where so requested, that opportunity will be scheduled within 10 calendar days of the request. The designated officer shall receive any information that the covered attorney chooses to submit on the limited issue of whether to continue the interim suspension. The designated officer shall submit a recommendation to JAG within 5 calendar days of conclusion.

(e) A covered attorney may, based upon a claim of changed circumstances or newly discovered evidence, petition for dissolution or amendment of JAG's imposition of interim suspension.

(f) Any professional responsibility investigation involving a covered attorney who has been suspended pursuant to this section shall proceed and be concluded without appreciable delay. However, JAG may determine it necessary to await completion of a related criminal investigation or proceeding, or completion of a professional responsibility action initiated by other licensing authorities. In such cases, JAG shall cause the Rules Counsel to so notify the covered attorney under interim suspension. Where necessary, continuation of the interim suspension shall be reviewed by JAG every 6 months.

§ 776.83 Preliminary inquiry.

(a) The purpose of the preliminary inquiry is to determine whether, in the opinion of the officer appointed to conduct the preliminary inquiry (PIO), the questioned conduct occurred and, if so, whether it constitutes a violation of this part or the Code of Judicial Conduct. The PIO is to recommend appropriate action in cases of substantiated violations.

(b) Upon receipt of the complaint and charges, the PIO shall promptly investigate the charges, generally following the format and procedures set forth in the Manual of the Judge Advocate General for the conduct of command investigations. Reports of relevant investigations by other authorities including, but not limited to, State bar associations may be used. The PIO should also:

(1) Identify and obtain sworn affidavits or statements from all relevant and material witnesses to the extent practicable;

(2) Identify, gather, and preserve all other relevant and material evidence; and

(3) Provide the covered attorney concerned an opportunity to review all evidence, affidavits, and statements collected and a reasonable period of time (normally not exceeding 7 days) to submit a written statement or any other written material that the covered attorney wishes considered.

(c) The PIO may appoint and use such assistants as may be necessary to conduct the preliminary inquiry.

(d) The PIO shall personally review the results of the preliminary inquiry to determine whether, by a preponderance of the evidence, a violation of this part or of the Judicial Code has occurred.

(1) If the PIO determines that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the PIO determines by a preponderance of the evidence that a violation did occur, and that corrective action greater than counseling may be warranted, he or she shall then recommend what further action is deemed appropriate.

(e) The PIO shall forward (via the OEGCMJ in appropriate Marine cases) the results of the preliminary inquiry to the Rules Counsel, providing copies to the covered attorney concerned and all parties to whom the charges were previously sent.

(f) The Rules Counsel shall review all preliminary inquiries. If the report is determined by the Rules Counsel to be incomplete, the Rules Counsel shall return it to the PIO, or to another inquiry officer, for further or supplemental inquiry. If the report is complete, then:

(1) If the Rules Counsel determines, either consistent with the PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part or Code of Judicial Conduct has not occurred and that further action is not warranted, the Rules Counsel shall close the file and notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file.

(2) If the Rules Counsel determines, either consistent with a PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part has occurred but that the violation is of a minor or technical nature, then the Rules Counsel may determine that corrective counseling is appropriate and close the file. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint that the file has been closed. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting such action.

(3) If the Rules Counsel determines, either consistent with a PIO recommendation or through the Rules Counsel's own review of the report, that further professional discipline or corrective action may be warranted, the Rules Counsel shall:

(i) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, request, on behalf of JAG, that the subject attorney's OEGCMJ appoint a disinterested covered attorney (normally senior to the covered attorney complained of and not previously involved in the case) to conduct an ethics investigation into the matter;

(ii) In all other cases, appoint, on behalf of JAG, a disinterested covered attorney (normally senior to the covered attorney complained of and not previously involved in the case) to conduct an ethics investigation; and

(iii) Notify those supervisory attorneys listed in paragraphs (c) and (d) of § 776.81.

§ 776.84 Ethics investigation.

(a) Whenever an ethics investigation is initiated, the covered attorney concerned will be so notified, in writing, by the Rules Counsel.

(b) The covered attorney concerned will be provided written notice of the following rights in connection with the ethics investigation:

(1) To request a hearing before the investigating officer (IO);

(2) To inspect all evidence gathered;

(3) To present written or oral statements or materials for consideration;

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(4) To call witnesses at his or her own expense (local military witnesses should be made available at no cost);

(5) To be assisted by counsel (see paragraph (c) of this section);

(6) To challenge the IO for cause (such challenges must be made in writing and sent to the Rules Counsel via the challenged officer); and

(7) to waive any or all of these rights.

(c) The covered attorney may be represented by counsel at the hearing. Such counsel may be:

(1) A civilian attorney retained at no expense to the Government; or,

(2) In the case of a covered USG attorney, another USG attorney:

(i) Detailed by the cognizant Naval Legal Service Office (NLSO), Law Center, or Legal Service Support Section (LSSS); or

(ii) Requested by the covered attorney concerned, if such counsel is attached to the cognizant NLSO, Law Center, LSSS, or to a Navy or Marine Corps activity located within 100 miles of the hearing site at the time of the scheduled hearing, and if such counsel is reasonably available, as determined by the requested counsel's reporting senior in his or her sole discretion. There is no right to detailed counsel if requested counsel is made available.

(d) If a hearing is requested, the IO will conduct the hearing after reasonable notice to the covered attorney concerned. The hearing will not be unreasonably delayed. The hearing is not adversarial in nature and there is no right to subpoena witnesses. Rules of evidence do not apply. The covered attorney concerned or his or her counsel may question witnesses that appear. The proceedings shall be recorded but no transcript of the hearing need be made. Evidence gathered during, or subsequent to, the preliminary inquiry and such additional evidence as may be offered by the covered attorney shall be considered.

(e) The IO may appoint and use such assistants as may be necessary to conduct the ethics investigation.

(f) The IO shall prepare a report which summarizes the evidence, to include information presented at any hearing.

(1) If the IO believes that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the IO believes that a violation did occur, and that corrective action greater than counseling is warranted, he or she shall then recommend what further action is deemed appropriate.

(g) The IO shall forward the ethics investigation, including the IO's recommendations, to the Rules Counsel, as follows:

(1) In cases involving Navy or Marine Corps attorneys serving with NLSC units, via Vice Commander, NLSC;

(2) In cases involving Navy attorneys serving with Marine Corps units, via the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving Navy or Marine Corps attorneys serving in subordinate Navy fleet or staff billets, via the fleet or staff judge advocate attached to the appropriate second-echelon commander;

(4) In cases involving members of the Navy-Marine Corps Trial Judiciary, via the Trial Judiciary Chief Judge;

(5) In cases involving Marine Corps attorneys serving in defense billets, via the Chief Defense Counsel of the Marine Corps;

(6) In cases involving Marine Corps attorneys not serving in defense counsel billets or in Navy units, via the OEGCMJ over the concerned attorney; and

(7) In cases involving covered attorneys certified by the Judge Advocates General/Chief Counsel of the other U.S. Armed Forces, via the appropriate military service attorney discipline section of that U.S. Armed Force.

(h) The Rules Counsel shall review all ethics investigations. If the report is determined by the Rules Counsel to be incomplete, the Rules Counsel shall return it to the IO, or to another inquiry officer, for further or supplemental inquiry. If the report is complete, then:

(1) If the Rules Counsel determines, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that a violation of this part or Code of Judicial Conduct has not occurred and that further action is not warranted, the Rules Counsel shall close the file and notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file.

(2) If the Rules Counsel determines, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that a violation of this part or Code of Judicial Conduct has occurred but that the violation is of a minor or technical nature, then the Rules Counsel may determine that corrective counseling is appropriate and close the file. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint that the file has been closed. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting such action.

(3) If the Rules Counsel believes, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that professional disciplinary action greater than corrective counseling is warranted, the Rules Counsel shall forward the investigation, with recommendations as to appropriate disposition, to JAG.

§ 776.85 Effect of separate proceeding.

(a) For purposes of this section, the term *separate proceeding* includes, but is not limited to, court-martial, non-judicial punishment, administrative board, or similar civilian or military proceeding.

(b) In cases in which a covered attorney is determined, at a separate proceeding determined by the Rules Counsel to afford procedural protection equal to that provided by a preliminary inquiry under this instruction, to have committed misconduct which forms the basis for ethics charges under this instruction, the Rules Counsel may dispense with the preliminary inquiry and proceed directly with an ethics investigation.

(c) In those cases in which a covered attorney is determined to have committed misconduct at a separate proceeding which the Rules Counsel determines has afforded procedural protection equal to that provided by an ethics investigation under this instruction, the previous determination regarding the underlying misconduct is *res judicata* with respect to that issue during an ethics investigation. A subsequent ethics investigation based on such misconduct shall afford the covered attorney a hearing into whether the underlying misconduct constitutes a violation of this part, whether the violation affects his or her fitness to practice law, and what sanctions, if any, are appropriate.

(d) The Rules Counsel may dispense with the preliminary inquiry and ethics investigation, and if warranted, recommend to JAG that the covered attorney concerned be disciplined,

consistent with this subpart, after providing the covered attorney concerned written notice and an opportunity to be heard in writing, in those cases in which a covered attorney has been:

(1) Decertified or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Judge Advocate General of another Military Department;

(2) Disbarred or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Court of Appeals for the Armed Forces or by any Federal, State, or local bar; or

(3) Convicted of a felony (or any offense punishable by one year or more of imprisonment) in a civilian or military court which, in the opinion of the Rules Counsel, renders the attorney unqualified or incapable of properly or ethically representing the DON or a client when the Rules Counsel has determined that the attorney was afforded procedural protection equal to that provided by an ethics investigation under this instruction.

§ 776.86 Action by JAG.

(a) JAG is not bound by the recommendation rendered by the Rules Counsel, IO, PIO, or any other interested party, but will base any action on the record as a whole. Nothing in this instruction limits JAG authority to suspend from the practice of law in DON matters any covered attorney alleged or found to have committed professional misconduct or violated this part, either in DON or civilian proceedings.

(b) JAG may, but is not required to, refer any case to the Professional Responsibility Committee for an advisory opinion on interpretation of subpart B of this part or its application to the facts of a particular case.

(c) Upon receipt of the ethics investigation, and any requested advisory opinion, JAG will take such action as JAG considers appropriate in JAG's sole discretion. JAG may, for example:

(1) Direct further inquiry into specified areas.

(2) Where determining the allegations to be unfounded, or that no further action is warranted, direct the Rules Counsel to make appropriate file entries and to notify the complainant, covered attorney concerned, and all interested parties of such determination.

(3) Where determining the allegations to be supported by clear and convincing evidence, take appropriate corrective action including, but not limited to:

(i) Limiting the covered attorney to practice under direct supervision of a supervisory attorney;

(ii) Limiting the covered attorney to practice in certain areas or forbidding him or her from practice in certain areas;

(iii) Suspending or revoking, for a specified or indefinite period, the covered attorney's authority to provide legal assistance;

(iv) Where finding that the misconduct so adversely affects the covered attorney's continuing ability to practice law in the naval service or that the misconduct so prejudices the reputation of the DON legal community, the administration of military justice, the practice of law under the cognizance of JAG, or the armed services as a whole, that certification under Article 27(b), UCMJ (10 U.S.C. 827(b)), or R.C.M. 502(b)(3), should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently;

(v) In the case of a judge, where finding that the misconduct so prejudices the reputation of military trial and appellate judges that certification under Article 26(b), UCMJ (10 U.S.C. 826(b)), should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently; and

(vi) Directing the Rules Counsel to contact appropriate authorities such as the Chief of Naval Personnel or the Commandant of the Marine Corps so that pertinent entries in appropriate DON records may be made; notifying the complainant, covered attorney concerned, and any officials previously provided copies of the complaint; and notifying appropriate tribunals and authorities of any action taken to suspend, decertify, or limit the practice of a covered attorney as counsel before courts-martial or the U.S. Navy-Marine Corps Court of Appeals, administrative boards, as a legal assistance attorney, or in any other legal proceeding or matter conducted under JAG cognizance and supervision.

§ 776.87 Finality.

Any action taken by JAG is final, subject to any remedies afforded by Navy Regulations or any other regulation to the covered attorney concerned.

§ 776.88 Report to licensing authorities.

Upon determination by JAG that a violation of the Rules or the Code of Judicial Conduct has occurred, JAG may cause the Rules Counsel to report that fact to the Federal, state, or local bar or other licensing authority of the covered attorney concerned. If so reported, notice to the covered attorney shall be provided by the Rules Counsel. The JAG's decision in no way diminishes a covered attorney's responsibility to report adverse professional disciplinary action as required by the attorney's Federal, state, and local bar or other licensing authority.

Subpart D—[Reserved]

Dated: July 1, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–17137 Filed 7–9–99; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 125–1b; FRL–6375–5]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a June 1, 1999, request from Ohio for a State Implementation Plan (SIP) revision of the Dayton/Springfield, Ohio ozone maintenance plan The maintenance plan revision re- stimates the point source growth estimates and allocates 5.5 tons per day of VOC emissions to establish a new transportation conformity mobile source emissions budget for the year 2005. We are approving the allocation of the 5.5 tons per day volatile organic compounds (VOCs) growth estimate to the area's 2005 mobile source emissions budgets for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations. We are also correcting a typographical error in the original maintenance plan approval for the point and area source VOC numbers for 2005. In the Final Rules section of this **Federal Register**, USEPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we

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receive no adverse comments in response to that direct final rule we plan to take no further activity in relation to this proposed rule. If USEPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this document.

DATES: We must receive comments by August 11, 1999.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized as follows:

What action Is USEPA taking today?

Where can I find more information about this proposal and the corresponding direct final rule?

What Action Is USEPA Taking Today?

In this action, we are proposing to approve a revision to the ozone maintenance plan for Dayton/Springfield, Ohio. The revision will change the mobile source emission budget that is used for transportation conformity purposes. The revision will keep the total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to maintain air quality while providing for transportation growth. We are also correcting a typographical error in the original maintenance plan approval. The original **Federal Register** approval on May 5, 1995, (60 FR 22289) contained a typographical error in Table 1 showing the VOC emissions from the source categories in the Dayton/Springfield area. The 2005 VOC emissions for point and area sources are incorrect in Table 1. The correct number for point source emissions in 2005 should be 98.0 and the correct number for area sources in 2005 should be 63.8 tons of VOC. These corrected numbers match the original submittal from the Ohio Environmental Protection Agency (OEPA) and are documented in the docket materials. This correction does not change the substance of the maintenance plan approval.

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 29, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–17492 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN–217–1–9920b; FRL–6373–8]

Implementation Plan and Redesignation Request for the Williamson County, Tennessee Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to simultaneously approve the lead state implementation plan (SIP) and redesignation request for the Williamson County, Tennessee lead nonattainment area. Both plans, dated May 12, 1999, were submitted by the State of Tennessee for the purpose of demonstrating that the Williamson County area has attained the lead National Ambient Air Quality Standard (NAAQS). In the final rules section of this **Federal Register**, the EPA is approving the Tennessee's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 11, 1999.

ADDRESSES: Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, Atlanta, Tennessee 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 17, 1999.

Winston A. Smith,

Acting Regional Administrator, Region 4.

[FR Doc. 99–17339 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF56

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on the Proposed Rule To List the Alabama Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service, give notice that we are reopening the comment period on the proposed rule to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered. We invite all interested parties to submit comments on this proposal.

DATES: We will accept comments until September 10, 1999. We will consider any comments received by the closing date in the final decision on this proposal.

ADDRESSES: You may submit written comments and materials concerning the proposal to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield (see **ADDRESSES** section), 601/965–4900, extension 25; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

The Alabama sturgeon is a small freshwater sturgeon that was historically found only in the Mobile River Basin of Alabama and Mississippi. The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system in Alabama (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers) and Mississippi (Tombigbee River). Since 1985, all confirmed captures of this fish have been from a short, free-flowing reach of the Alabama River below Miller's Ferry and Claiborne locks and dams in Clarke, Monroe, and Wilcox counties, Alabama. The historic decline of the Alabama sturgeon is attributed to over-fishing, loss and fragmentation of habitat as a result of navigation-related development, and water quality degradation. Current threats primarily result from its small population numbers and its inability to offset mortality rates with reproduction and recruitment.

On March 26, 1999, we published a rule proposing endangered status for the Alabama sturgeon in the **Federal Register** (64 FR 14676). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that we hold a public hearing if it is requested within 45 days of the publication of the proposed rule. Sheldon Morgan, Chairman, Alabama-Tombigbee Rivers Coalition, requested a public hearing within the allotted time period. On May 25, 1999, we published a notice in the **Federal Register** announcing a public hearing and extending the comment period until July 5, 1999 (64 FR 28142). We held a public hearing on June 24, 1999, at the Montgomery Civic Center in Montgomery, Alabama.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. In making a final decision, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final determination that differs from this proposal.

The previous comment period on this proposal closed on July 5, 1999. To allow all interested parties the maximum time to submit their comments for the record, we are reopening the comment period until September 10, 1999.

Author

The primary author of this notice is Paul Hartfield (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 6, 1999.

H. Dale Hall,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 99–17557 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 64, No. 132
Monday, July 12, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a survey of cattle, hog, chicken, and turkey slaughter and processing plants. The survey would contain questions on the costs of implementing and maintaining a Hazard Analysis Critical Control Point (HACCP) system and the usage of pathogen-reducing technologies and methods. These data will be used to examine the costs of HACCP regulation, to link the use of pathogen-reducing technologies and methods to plant pathogen data provided by the Food Safety Inspection Service (FSIS), to assess the extent of the adoption of pathogen-reducing technologies and methods, to develop indexes of pathogen-reducing technologies and methods that could be used to learn how technology and methods adoption progresses over time and how changes in technology levels affects plant-level pathogens, and to examine characteristics of plants that adopt particular classes of pathogen-reducing technologies and methods.

DATES: Comments on this notice must be received by September 10, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Michael Ollinger, Economist, Diet, Safety, Health Economics Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room N–3064, Washington, DC 20036–5831, 202–694–5454.

SUPPLEMENTARY INFORMATION:

Title: Pathogen Reduction and Innovation Under HACCP Regulation in Cattle, Hog, Chicken, and Turkey Slaughter and Processing Plants.

Type of Request: Approval to collect data on the cost to industry of HACCP regulation and the use of pathogen-reducing technologies and methods.

Abstract: ERS is responsible for economic research on the economics of pathogen control regulation and HACCP regulation in the meat and poultry industries. Recent estimates suggest that microbial pathogens cause 6.5–33 million cases of human illness and up to 9,000 deaths each year. These findings have made food safety a major White House policy priority and have led FSIS to implement HACCP regulation. FSIS estimates that this regulation will reduce foodborne illness by 90% and cost industry $1 billion over 20 years. However, some economists, policy-makers, and firms assert that producer costs will be much higher and disproportionately affect small firms. Moreover, they argue that the lost revenues and profits due to product recalls, reputation losses, and reduced product shelf-life give industry strong incentives to reduce pathogens and that industry's approach to pathogen-reduction is less costly than government regulation.

Answers to questions of regulatory costs and incentives to use pathogen-reducing technologies and methods requires data. However, these data do not exist and there is no plan to obtain them. The objective of this proposal is to generate survey data that will illustrate both the costs of HACCP regulation and industry usage of pathogen-reducing technologies and methods. The data and subsequent analyses will be useful for policy-makers in making regulatory decisions and provide general information to the public about industry efforts to reduce pathogens.

The data would be used by economists to assess the costs of HACCP regulation, to link the use of pathogen-reducing technologies and methods to plant pathogen data provided by the Food Safety Inspection Service (FSIS), to assess the extent of the adoption of pathogen-reducing technologies and methods, to develop indexes of pathogen-reducing technologies and methods that could be used to learn how technology and methods adoption progresses over time and how changes in technology levels affects plant-level pathogens, and to examine characteristics of plants that adopt particular classes of pathogen-reducing technologies and methods.

Estimates of Burden: Public reporting burden for this data collection is estimated to average 30 minutes.

Respondents: Federally registered cattle, hog, chicken, and turkey slaughter and processing manufacturing plants.

Estimated Number of Respondents: 2,000.

Estimated Total Burden on Respondents: 1,000 hours.

Copies of Information: Copies of the information to be collected can be obtained from Michael Ollinger, Economist, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room N–3064, Washington, DC 20036–5831, (202) 694–5454.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Michael Ollinger, Economist, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room N–3064, Washington, DC 20036–5831, (202) 694–5454. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 14, 1999.

Betsy Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 99–17532 Filed 7–9–99; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Agency: International Trade Administration.

Title: Participation Agreement and Trade Mission Application.

Agency Form Number: ITA–4008P–1.

OMB Number: 0625–0147.

Type of Request: Revision-Emergency Submission.

Burden: 2,688 hours.

Number of Respondents: 7,500.

Avg. Hours Per Response: 20 minutes—65 minutes.

Needs and Uses: The Participation Agreement and Trade Mission Application forms are the vehicles by which individual firms agree to participate in the Department of Commerce's (DOC) trade promotion program, identify the products or services they intend to sell or promote, and record their required participation fees. DOC is revising the current Form ITA–4008P–1, "Trade Mission Application," to clarify and refine the information sought, which relates to industry sector and principal line of business, size of company, content of products, and export experience. Two questions are being added to assist in verifying the legitimacy of a company and performing background security checks on applicants seeking to participate in trade missions led by the Secretary of Commerce.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington DC 20503 within 30 days of the publication of this notice in the **Federal Register.**

Dated: July 6, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–17570 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Applicant Background Questionnaire.

Form Number(s): BC–1431.

Agency Approval Number: 0607–0494.

Type of Request: Revision of a currently approved collection.

Burden: 133,333 hours.

Number of Respondents: 3,200,000.

Avg Hours Per Response: 2.5 minutes.

Needs and Uses: The Applicant Background Questionnaire is completed on a voluntary basis by applicants for temporary (Schedule A) positions with the Census Bureau at the time of application and testing. Temporary positions normally last 8–12 weeks, and applicants must meet the minimum qualifications of a written test. The BC–1431 is used to collect minority and handicapped information in order for the Census Bureau to evaluate its Schedule A recruitment program and to strengthen affirmative action recruitment. This information is useful in determining whether we have a representative sample of the community from which we are hiring and allows us to adjust recruiting efforts quickly and to employ local applicants for indigenous hiring. Background information provided by applicants will not be used in applicant screening or selection and will not be available to the selecting official. An applicant's decision to complete or not complete this form will not affect his or her opportunity to be selected for a position with the Census Bureau.

The expected number of applicants for temporary Census Bureau jobs is increasing significantly because of our efforts to hire over 800,000 enumerators for Census 2000. In this request, we seek an addition to annual reporting burden to cover this increase.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: Pub. L. 92–261; Equal Employment Opportunity Act of 1972, Section 717.— Pub. L. 94–311; Joint Resolution relating to the publication of economic and social statistics for Americans of Spanish origin or descent.—43 FR 38297, Section 4; Information on Impact.—" 5 U.S.C. 7201; Anti-discrimination Policy; Minority Recruitment Program.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–17571 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Notice of Meeting With Interested Public on the Sale of Medicines, Medical Products, Food and Agricultural Items to Cuba

The Bureau of Export Administration (BXA) will hold a meeting on July 15, 1999 for those companies and organizations that have an interest in exporting medicines and medical products, food and agricultural items for sale to Cuba. U.S. Government officials will provide information at this meeting on how to apply for export of such items to Cuba.

The meeting will be held July 15, 1999 at 10:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 6800, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC.

If you plan to attend, please fax your name and company or organizational affiliation to (202) 482–6088 or (202)

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482–4094, Attn: July 15 Cuba Briefing. For further information, please contact John Bolsteins at BXA on (202) 482–3283 or (202) 482–4252.

Background

In March of 1998 and January of 1999, the President announced certain new initiatives intended to aid the Cuban people in their transition to democracy and a market economy.

Under the first initiative, the Department of Commerce and other agencies streamlined the review of license applications for the sale to Cuba of medicines, medical supplies and equipment. Prior to 1998, very few applications to export medicines and medical supplies and equipment for sale to Cuba were submitted to the Commerce Department. Now, since the March 1998 announcement, the volume of applications and licensed medical exports to Cuba has increased notably. These medical exports are monitored to ensure that they are for the use by the Cuban people.

Under the second initiative, the Department of Commerce revised its Cuba regulations to provide for case-by-case review of applications to sell food and certain agricultural items to independent entities and non-governmental organizations in Cuba. This program is intended to aid the small but vital private sector in Cuba. In a corresponding action, the Treasury Department revised its Cuba regulations to provide for specific licensing of travel to Cuba to explore sales opportunities in these commodity areas.

Dated: July 7, 1999.

James Lewis,

Director, Office of Strategic Trade.

[FR Doc. 99–17741 Filed 7–8–99; 11:52 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 27 & 28, 1999, 9 a.m., in Room 3884 of the Herbert C. Hoover Building, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 27

Closed Session

1. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

July 28

Public Session 9 a.m.–12 p.m.

2. Election of officers.
3. Comments or presentations by the public.
4. Consultation on renewal of Committee charter.
5. Update on proposed Export Administration Act bill.
6. Discussion paper, Alternatives to High-Performance Computing.
7. Work Plan for Fiscal Year 2000.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. and Pennsylvania Ave, NW, Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 · U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: July 6, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–17506 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–99]

Foreign-Trade Zone 59—Lincoln, NE; Application for Expansion of Manufacturing Authority—Subzone 59A, Kawasaki Motors Manufacturing Corp., U.S.A., Plant, Lincoln, NE (Motorcycles, Personal Watercraft, All-Terrain Vehicles, Utility Work Trucks, Industrial Robots)

A application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lincoln Foreign Trade Zone, Inc., grantee of 59, requesting an expansion of the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures and requesting authority to expand the boundary of FTZ Subzone 59A at the Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), plant in Lincoln, Nebraska. It was formally filed on June 25, 1999.

Subzone 59A was approved by the Board in 1980 with authority granted for the manufacture of motorcycles, jet skis, and four wheel all-terrain vehicles (Board Order 163, 45 FR 58637, 9–4–80). The subzone was subsequently expanded in 1994 (Board Order 712, 59 FR 66891, 12–28–94) and currently consists of a single, 305-acre site with a total of 1.13 million square feet of manufacturing and warehouse space. The Board later approved the manufacture of off-road, utility work trucks and industrial robots with 6 or more axes of motion under FTZ procedures for the U.S. market and export (Board Orders 744 and 745, 60 FR 30517, 6–9–95) .

The applicant is now requesting authority to expand the subzone boundary to include an adjacent 27-acre parcel and to expand the scope of FTZ manufacturing authority to include increased capacity for the production of motorcycles, personal watercraft , all-terrain vehicles, utility work trucks, and industrial robots. Under the current expansion plan, the KMM plant's capacity will be approximately doubled (to 225,000 units per year) with the addition of 1.07 million square feet of production area. The activity will involve fabrication, welding, molding, and assembly using domestic and foreign-origin components. The application indicates that the expanded operations will reduce the current level of foreign-sourced components used in the manufacturing process. Foreign-sourced components and materials (about 40 percent of the finished vehicles' material value) include: plastic parts, rubber belts, fasteners, air and liquid pumps/compressors, data processing equipment (numerical controllers) and parts, optical readers, valves and switches, electric motors and transformers, parts of industrial robots, transmissions/gear boxes, clutches, diodes, transistors, semiconductors, liquid crystal devices, measuring instruments, spark-ignition/diesel engines, transmissions, calipers/brake parts, wheels, tires, parts of rubber, articles of agglomerated cork, paperboard/cardboard boxes, glazers putty, caulking, glue/adhesive, plastic tubes/pipes/fittings, reflective sheet, polyurethane and PVC sheet/film/laminates, plastic knobs/handles/gaskets/washers/seals/fasteners, V-belts, decals, printed materials, cargo nets, non-electrical graphite/carbon items, safety glass, mirrors, profiles/tubes/sections/couplings/wire of alloy, cast or stainless steel, chain, fasteners, steel/copper springs, brake cables, aluminum tubes/pipes/fittings/fasteners, articles of lead, base metal articles, heat exchangers, filters, bearings and related assemblies, gears, transmission shafts, torque converters, pulleys, ball/roller screws, sprockets, flywheels, propellers, electric motors, commutators, capacitors, fuses, switches, resistors, stators, rotors, inductors, transformers, electromagnetic couplings, batteries, ignition components, starters, alternators, voltage regulators, lighting equipment, horns, audio components, radios, cassette players, navigational equipment, alarm systems, electronic components, fiber optic and coaxial cables, wire, parts of motor vehicles (Heading 8708), hulls, flat panel displays, measuring and process control instruments, thermostats, gauges, and clocks (duty rate range: free – 15%, 16¢+2.5%).

FTZ procedures exempt KMM from Customs duty payments on the foreign components used in export production (15% of shipments). On its domestic sales, the company can choose the duty rate that applies to the finished motorcycles, personal watercraft, all-terrain vehicles, utility work trucks, and industrial robots (free – 2.8%) for the foreign components noted above. The request indicates that the savings from FTZ procedures will continue to help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 27, 1999).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 28, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–17639 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–99]

Foreign-Trade Zones 19—Omaha, NE; Application for Foreign-Trade Subzone Status, Zeneca Inc. (Agricutural Chemical Products) Omaha, NE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dock Board of the City of Omaha, grantee of FTZ 19, requesting special-purpose subzone status for the manufacturing facilities (agricultural chemical products) of Zeneca Inc. (Zeneca), located in Omaha, Nebraska. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 25, 1999.

The Zeneca facility (42 acres, 252,000 sq. ft. + 223,000 proposed) is located at 4111 Gibson road in Omaha, Nebraska. The facilities (63 full-time and 30 seasonal employees) produce agricultural chemical products, which Zeneca intends to formulate, test, package, and warehouse under FTZ procedures. The principal product to be formulated initially under subzone procedures is the herbicide which is marketed under the trade name Achieve®. Other products sourced from this site are the Force® 3G insecticide, the Ordram® 15GM, FulTime®, Surpass EC®, Eradicane®, Eptam®, and Ro-Neet® herbicides, the Turbocharge® crop adjuvant, and the Bonzi® plant growth regulator. Zeneca indicates that other products may be sourced from this facility in the future, and that initial U.S. value added will be 15 percent of finished products' value.

Zeneca has indicated that the following inputs will be the principal products to be imported initially under FTZ procedures: tralkoxydim; azoxystrobin; n-phosphonomethylglycyne trimethyl sulfonium salt; brodifcaoum; paclobutrazol; daconil; bromoxynil; cyhalothrin CS; and pirimiphosmethyl. Current duty rates for these inputs range from 3.7 to 10.7 percent.

Zone procedures would exempt Zeneca from Customs duty payments on foreign components used in export production. On its domestic sales, Zeneca would be able to choose the lower duty rate that applies to the finished products (6.5 percent) for the foreign inputs noted above. Zeneca would be able to avoid duty on foreign inputs which become scrap/waste, estimated at 0.5 percent of imported inputs. The application indicates that FTZ procedures would also allow Zeneca to eliminate its current use of a foreign "toll" manufacturer to process the Achieve® herbicide, thus realizing savings through the internalization of this function. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 27, 1999.

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A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

U.S. Department of Commerce Export Assistance Center, 11135 "O" Street, Omaha, Nebraska 68137

Dated: June 30, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–17640 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–99]

Foreign-Trade Zone 38—Charleston, SC; Application for Foreign-Trade Subzone Status, Fuji Photo Film, Inc. (Imaging and Information Products) Greenwood, SC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status for the manufacturing and distribution facilities (imaging and information products) of Fuji Photo Film, Inc. (Fuji), located in Greenwood, South Carolina. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 28, 1999.

Fuji's Greenwood, South Carolina complex (488 acres, 2.0 million sq. ft.) is comprised of seven facilities: *Facility 1* (350,000 sq. ft.)—Distribution Center, located at 921 Highway 246 South; *Facility 2* (120,000 sq. ft.)—Graphic Arts Film Finishing Facility, located at 201 Pucketts Ferry Road; *Facility 3* (210,000 sq. ft.)—Pre-sensitized Offset Printing Plate Manufacturing Facility, located at 211 Pucketts Ferry Road; *Facility 4* (300,000 sq. ft.)—Videotape and Computer Back-up Tape Manufacturing Facility, located at 311 Pucketts Ferry Road; *Facility 5* (200,000 sq. ft.)—One-time-use Camera Manufacturing Facility, located at 401 Pucketts Ferry Road; *Facility 6* (500,000 sq. ft.)—Color Photographic Paper and Color Negative Film Manufacturing Facility, located at 401 Pucketts Ferry Road; and *Facility 7* (250,000 sq. ft.)—35mm Film Finishing Factory, located at 123 Spray Shed Road.

The facilities (1,250 employees) are used for the manufacture and distribution of imaging and information products (graphic arts film; pre-sensitized offset printing plates; blank videotapes and computer back-up tape; one-time-use cameras; and color negative photographic paper and film). Some of the components used in the manufacturing process are purchased from abroad (ranging from 8 to 75 percent of finished product value, depending on the product), with average U.S. value added for the Greenwood facilities estimated at 60 to 70 percent of the finished products' value. The foreign components which Fuji proposes to import under subzone procedures include chemicals (e.g., titanium oxide; methanol; alkylphenonl; glycol ether; di-n-butyl phthalate; tricarboxylated benzene; hydroxyalkyl benzoate; phenylphosphonic acid; axon dye; basic blue dye; oil/water emulsion) and other components (e.g., bulk photographic film; packaging materials; one-time-use camera components) used in the production of Fuji's imaging and information products (current duty rates on these items range from duty-free to 13.2 percent).

Zone procedures would exempt Fuji from Customs duty payments on foreign components used in export production. On its domestic sales, Fuji would be able to choose the lower duty rate that applies to the finished products (duty-free to 6.5 percent) for the foreign inputs noted above. Fuji would be able to avoid duty on foreign inputs which become scrap/waste (savings on scrap/waste are estimated to comprise less than 15 percent of overall anticipated subzone savings). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 27, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, Park Central Office Park, Building 1, Suite 109, 555 N. Pleasantburg Drive, Greenville, SC 29607

Dated: June 30, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–17641 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of barium chloride from the People's Republic of China.

SUMMARY: On November 30, 1998, the Department of Commerce ("the Department") published a notice of initiation of administrative review of the antidumping duty order on barium chloride from the People's Republic of China (PRC) covering the period October 1, 1997 through September 30, 1998.

For all companies named in this review, we are basing our preliminary results on "facts available" (FA). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on entries during the period.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Nova J. Daly or Thomas Futtner, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0989, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1998).

Period of Review

The period of review (POR) is October 1, 1997 through September 30, 1998.

Scope of the Review

The imports covered by this review are shipments of barium chloride, a chemical compound having the formulas $BaCl_2$ or $BaCl_2–2H_2O$, currently classifiable under item number 2827.38.00 of the Harmonized Tariff Schedule (HTS). Although the HTS item numbers are provided for convenience and for Customs purposes, the written description remains dispositive.

Background

On October 17, 1984, the Department of Commerce (the Department) published in the **Federal Register** (49 FR 40635) the antidumping duty order on barium chloride from the PRC. On October 9, 1998, the Department published in the **Federal Register** (63 FR 54440) a notice of opportunity to request an administrative review of the antidumping duty order. In response to our notice of opportunity to request administrative review for this POR, the petitioner, Chemical Products Corporation ("CPC"), requested, by letter dated October 22, 1998, that the Department conduct an administrative review of the following Chinese manufacturers/exporters of the subject merchandise: Hebei Xinji Chemical Plant (Hebei); Hengnan Chemical Factory (Hengnan); Kunghan Chemical Factory (Kunghan); Linshu Chemical Factory (Linshu); Qingdao Red Star Chemical Group Co. (Red Star); Sichuan Emeishan Salt Chemical Industry Group Company, Ltd. (Sichuan); Sinochem (U.S.A.)(Sinochem); Tangshan Chemical Factory (Tangshan); Tianjin Chemical Industry Corporation (Tianjin); Tianjin Bohai Chemical United Import/Export Company (Tianjin Bohai); and Zhangjiaba Salt Chemical Plant (Zhangjiaba). (*See* Letter from CPC to the Department, October 22, 1998). One of these companies, Sinochem, was previously determined by the Department to be entitled to a separate rate.

On November 30, 1998, the Department published a notice of initiation of an administrative review on the producers/exporters named by the petitioner in its review request (63 FR 65748).

The Department sent questionnaires to all of the companies for which we had addresses on January 28, 1999. Also on January 28, 1999, we sent a letter to Mr. Zhang Yuqing of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), enclosing copies of the questionnaire.

Separate Rates

Although Sinochem had been granted separate rate status in a prior administrative review, in this review, like the other named companies, Sinochem failed to respond or show that it remained entitled to a separate rate. Consequently, we have considered Sinochem to be part of the PRC-wide entity for purposes of this administrative review. In addition, the other companies named in the request for review also did not request a separate rate. Exporters which have not established they are entitled to a separate rate are presumed to be under common government control and, therefore, should receive a single PRC-wide rate. Because none of the companies for which an administrative review has been requested for this POR has demonstrated that it is entitled to a separate rate, all are deemed to be included in the PRC-wide entity, and will receive a common margin in this review.

Facts Available

Section 776(a)(1) of the Act mandates that the Department use FA if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use FA where an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified. In this case, none of the named respondents responded to the Department's questionnaire. Where the Department must base the entire dumping margin for a respondent in an administrative review on FA because that respondent failed to cooperate by not acting to the best of its ability, section 776(b)(2) authorizes the Department to use an inference adverse to the interests of that respondent in choosing FA. Section 776(b)(2) also authorizes the Department to use as adverse FA information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record.

In this administrative review, none of the companies responded to our questionnaire. Therefore, we lack information with which to calculate a margin and, consequently, have determined we must base the margin for the PRC-wide entity on FA.

As noted above, none of the companies named in the notice of initiation in this review responded. Therefore, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Consequently, we have preliminarily decided to use adverse FA with respect to the PRC-wide entity in accordance with section 776(b) of the Act.

For the preliminary results of this review, we determine that it is appropriate to use, as adverse FA for the PRC-wide rate, the highest rate from this or previous segments of the proceeding. In this case, we have used Sinochem's rate of 60.84 percent from *Barium Chloride From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 57 FR 29467 (July 2, 1992) (1990–91 Final Results).

Information from prior segments of a proceeding constitutes secondary information. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action, H.R. Doc. 103–316, Vol. 1 (1994)(SAA), provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is an administrative determination. Thus, in an administrative review, if the Department chooses as adverse FA a calculated

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dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567, 49568 (September 26, 1995) (the Department disregarded the highest margin as best information available because that margin was based on an extraordinarily high business expense resulting from uncharacteristic investment activities, which resulted in the high margin).

In the absence of information on the administrative record that application of this 60.84 percent rate would be inappropriate, that the margin is not relevant, or that leads us to re-examine this rate as adverse FA in the instant review, we find the margin reliable and relevant. Therefore, we have satisfied the corroboration requirements under section 776(c) of the Act and have applied, as FA, the 60.84 percent margin from the *1990–91 Final Results*.

Accordingly, we are applying a single dumping rate—the highest rate established in any segment of this proceeding—to all exporters in the PRC. The weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
PRC-wide rate	60.84

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. *See* section 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 44 days after the publication date of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. *See* sections 351.309 and 351.310 of the Department's regulations. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of these preliminary results.

Duty Assessment Rates

Upon completion of the final results in this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We intend to issue assessment instructions to Customs based on the dumping rate stated above. The Department will issue appraisement instructions directly to Customs.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of barium chloride from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters will be the rate established in the final results of this review; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to their PRC suppliers. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), section 777(i) of the Act (19 U.S.C. section 1677f(i)), and 19 CFR 351.221.

Dated: July 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17645 Filed 7–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–802]

Furfuryl Alcohol From the Republic of South Africa; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation of antidumping duty order.

SUMMARY: On March 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on furfuryl alcohol from the Republic of South Africa and intent to revoke in part. This review covers one manufacturer/exporter and the period June 1, 1997–May 31, 1998. We have analyzed comments submitted regarding the preliminary results.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230; telephone: (202) 482–0650 or 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On March 8, 1999, we published the preliminary results of this review and intent to revoke in part. *See Furfuryl Alcohol from the Republic of South Africa; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part*, 64 FR 10983. We gave interested parties an opportunity to comment on our preliminary results. On April 7, 1999, respondent Illovo Sugar Limited (ISL) and its related U.S. selling agent, Harborchem, filed a case brief and requested a hearing. We received no comments from any other party. On April 21, 1999, representatives for ISL met with Department officials in lieu of a hearing to discuss the preliminary results. *See* Memorandum from Case Analyst to the File, April 22, 1999.

Scope of Review

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Revocation of the Order

In the preliminary results, we indicated our intent to revoke the antidumping duty order in part, with respect to merchandise produced and exported by ISL, noting that record evidence indicated that a South African company unrelated to ISL has exported the subject merchandise to the United States under the order. On April 7, 1999, ISL filed a case brief in which the company argued that the Department should revoke the order in full because there has been no dumping of furfuryl alcohol by any South African producer or exporter for three consecutive reviews, and because the petitioner no longer has an interest in the order.

Based on a review of the relevant record evidence, including the facts pertaining to the shipments exported by the unrelated exporter, we have determined to revoke the order in full for the following reasons: (1) ISL has sold the subject merchandise at not less than normal value (NV) for three consecutive review periods, including this review; (2) there is no evidence to indicate that ISL or other persons are likely to sell the subject merchandise at less than NV in the future; and (3) the exports in question, which occurred over two years ago, represent isolated shipments of insignificant quantities of subject merchandise. We also note that there were no comments filed by any other party on this issue, with respect to either our preliminary results or ISL's case brief.[1] Accordingly, we determine that a full revocation of the order is warranted under 19 CFR 351.222(b)(1) and section 751(d)(1) of the Act.

Final Results of Review

As a result of this review, we determine that the following margin exists for the period June 1, 1997–May 31, 1998:

Manufacturer/exporter	Margin (percent)
Illovo Sugar Ltd	0.00

We determine that ISL has met the requirements for revocation set forth in section 351.222(b) of our regulations.

This revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1998. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct Customs to refund with interest any cash deposits on entries made after May 31, 1998.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17647 Filed 7–9–99; 8:45 am]

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[1] Although aware of our preliminary decision to revoke in part and of the possibility of a revocation of the order in full, the petitioner did not participate in this review. *See* Memorandum to the File from Richard Moreland dated May 21, 1999.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film From Korea: Preliminary Results of Antidumping Duty Administrative Review, and Partial Recission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review, and partial recission of review.

SUMMARY: In response to a request from one respondent and two U.S. producers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1997 through May 31, 1998.

We preliminarily determine that there is a dumping margin for SKC Limited (SKC) during the period June 1, 1997 through May 31, 1998. We therefore preliminarily are denying SKC's request for revocation.

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the United States Price (USP) and normal value (NV). STC Corporation (STC) made no sales or shipments during the POR. Accordingly, we are rescinding the review with respect to STC.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes).

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, AD/CVD Enforcement Group III , Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475/0649.

Applicable statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are

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references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on PET film from the Republic of Korea on June 5, 1991 (56 FR 25660). On June 25, 1998, two domestic producers, E.I. DuPont Nemours & Co., Inc. and Hoescht Celanese Corporation, requested reviews of SKC and STC. On June 30, 1998, SKC requested an administrative review of its sales and revocation of the order for SKC only. We published a notice of initiation of the review on July 28, 1998 (63 FR 40258).

In response to our request for information, STC reported that it had no sales or shipments during the period of review (POR). On March 24, 1998, the Department sent a no-shipment inquiry regarding STC to the U.S. Customs Service. Customs did not report any shipments by STC during the POR. Therefore, consistent with 19 CFR 351.213(d), we are rescinding the review with respect to STC.

On December 7, 1998, the Department published a notice extending the time limits for publication of its preliminary results by 120 days (63 FR 67456).

Verification

As provided for in section 782(i)(2) of the Act, we verified the information submitted by SKC. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification reports placed in the case file.

Intent Not To Revoke

In its submission of June 30, 1998, SKC requested, pursuant to 19 CFR 351.222(b)(2), revocation of the order with respect to its sales of PET film from Korea. SKC certified that: (1) It sold the subject merchandise at not less than NV for a period of at least three consecutive years, (2) that in the future it will not sell the subject merchandise at less than NV, and (3) that it agreed to its immediate reinstatement in the order if the Department determines that, subsequent to revocation, it sold the subject merchandise at less than NV.

In this case SKC does not meet the first criterion required for revocation. In this segment of the proceeding the Department preliminarily has found that SKC sold subject merchandise at less than NV. Since SKC has not met the first criterion for revocation, i.e., zero or de minimis margins for three consecutive reviews, the Department need not reach a conclusion with respect to the second and third criteria. Therefore, on this basis, we have preliminarily determined not to revoke the order on PET film from Korea with respect to SKC.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers the period June 1, 1997 through May 31, 1998. The Department is conducting this review in accordance with section 751 of the Act, as amended.

Currency Conversion

Consistent with the position taken in Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Final Determination of Sales at Less Than Fair Value (June 8, 1998, (64 FR 30664, 30670)), the Department determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, for the final results the Department will use daily rates exclusively for currency conversion purposes for HM sales matched to U.S. sales occurring between November 1 and December 31, 1997, and the standard exchange rate model with a modified benchmark for sales occurring between January 1, 1999 and February 28, 1999.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to the NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

United States Price (USP)

In calculating USP, the Department treated SKC's sales as export price (EP) sales, as defined in section 772(a) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation, and use of the constructed export price (CEP) methodology was not otherwise indicated. The Department treated SKC's sales as CEP sales, as defined in section 772(b) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers after importation.

EP was based on the delivered or c.i.f. U.S. port, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, U.S. duties, and discounts, in accordance with section 772(c) of the Act. We made an addition to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

CEP was based on the delivered, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, and U.S. duties, in accordance with section 772(c) of the Act. Pursuant to section 772(c)(1)(B) of the Act, we made an addition to CEP for duty drawback. We also made an addition to CEP for interest revenue. In accordance with section 772(d)(1) of the Act, we made deductions for selling expenses associated with economic activities in the United States, including warranties, credit expenses, bank charges, and indirect selling expenses.

With respect to subject merchandise to which value was added in the United States by SKC prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP.

Based upon our findings at verification, we revised SKC's reported amounts for brokerage, interest revenue, Korean inland freight, and further processing costs. (See *Sales Verification of SKC Co., Inc; PET Film from South Korea*, July 6, 1999.)

Normal Value

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of HM sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. SKC's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on the price at which the foreign like product was sold for consumption in the home market in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade.

Based on the fact that the Department had disregarded SKC's sales of the foreign like product in the June 1996–May 1997 administrative review because they failed the cost test, the Department had reasonable grounds to believe or suspect that SKC made sales below COP during this POR. Accordingly, we initiated a sales-below-cost of production investigation for SKC in accordance with section 773(b) of the Act. (The June 1996–May 1997 administrative review was the most recently completed review at the time that we issued our antidumping questionnaire.)

We performed a model-specific COP test in which we examined whether each HM sale was priced below the merchandise's COP. We calculated the COP of the merchandise using SKC's cost of materials and fabrication for the foreign like product, plus amounts for home market general and administrative (G&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We allocated yield losses equally between A-grade and B-grade film because these grades have identical production costs. This is consistent with the methodology employed in past reviews of this case. *See e.g.*, Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 37334, 37335 (July 10, 1998).

Based upon our findings at verification, we revised SKC's reported amounts for G&A and financing expenses. (See *Cost Verification of SKC Co., Inc; PET Film from South Korea*, July 6, 1999.)

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of SKC's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of SKC's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made: (1) In substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act.

In determining NV, we considered comparison market sales of identical or similar merchandise, or constructed value (CV).

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, G& A expenses, and profit. We allocated yield losses equally between A-grade and B-grade film. In accordance with section 773(e)(2)(A) of the Act, we based G&A expenses and profit on the amounts incurred and realized by SKC in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for credit expenses. When NV was based upon home market sales, we made an adjustment for inland freight. For SKC's local export sales, we also made an addition to home market price for duty drawback. For comparisons to EP, we made an addition to NV for U.S.credit expenses, and bank charges as circumstance-of-sale adjustments pursuant to section 773(a)(6)(C) of the Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See e.g.*, Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked SKC to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. SKC identified two channels of distribution in the home market: (1) Wholesalers/distributors and (2) end-users. For both channels SKC performs similar selling functions such as market research and after-sales warranty services. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, and in this case, we have determined that the selling functions are similar, we determined

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that there exists one LOT for SKC's home market sales.

For the U.S. market SKC reported two LOTs: (1) EP sales made directly to its U.S. customers, and (2) CEP sales made through SKC America, Inc., SKC's wholly-owned U.S. subsidiary. The Department examined the selling functions performed by SKC for both EP and CEP sales. These selling functions included customer sales contacts (i.e., visiting current or potential customers, receiving orders, promotion of new products, collection of unpaid invoices), technical services, inventory maintenance, and/or business system development. We found that SKC provided a greater degree of these services on EP sales than it did on CEP sales, and that the selling functions were sufficiently different to warrant two separate LOTs in the United States.

When we compared EP sales to home market sales, we determined that both sales were made at the same LOT. For both EP and home market transactions, SKC sold directly to the customer and provided similar levels of customer sales contacts, technical services, inventory maintenance and business system development. Therefore, no LOT adjustment was warranted.

For CEP sales, SKC performed fewer customer sales contacts, technical services, inventory maintenance, and computer legal, audit and business system development. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales.

Because we compared these CEP sales to HM sales at a different LOT, we examined whether a LOT adjustment may be appropriate. In this case SKC sold at one LOT in the home market; therefore, there is no demonstrated pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of SKC's sales of other similar products, and there are no other respondent's or other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment but the LOT in Korea for SKC is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SKC. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Preliminary Results of Review

We preliminarily determine that a margin of 1.21 percent exists for SKC for the period June 1, 1997 through May 31, 1998. We will disclose calculations performed in connection with this preliminary results of review within 5 days of the day of publication of this notice. Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–009 of the main Department of Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the entered value of those same sales. This Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the "all others" rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17642 Filed 7–9–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review of pressure sensitive plastic tape from Italy.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty finding on pressure sensitive plastic tape (PSPT) from Italy in response to a request from a manufacturer of the subject merchandise, Autoadesivi Magri s.r.l. The period of review (POR) is October 1, 1997 through September 30, 1998. This review covers products manufactured and exported by Autoadesivi Magri s.r.l. We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and normal value.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Nova J. Daly or Thomas Futtner, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0989, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Scope of the Review

Imports covered by the review are shipments of PSPT measuring 1⅜ inches in width and not exceeding 4 millimeters (mils) in thickness. During the POR, the above described PSPT was classified under Harmonized Tariff Schedule (HTS) subheadings 3919.90.20 and 3919.90.50. The HTS subheadings are provided for convenience and for U.S. Customs Service (Customs) purposes. The written description remains dispositive as to the scope of the product coverage.

Background

On October 21, 1977, the Department of Commerce (the Department) published in the **Federal Register** (42 FR 56110) the antidumping duty finding on PSPT from Italy. On October 9, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping finding for the period, October 1, 1997 through September 30, 1998 (63 FR 54440). On October 28, 1998, in accordance with 19 CFR 351.213(b), Autoadesivi Magri s.r.l. (Magri), a manufacturer of the subject merchandise, requested that the Department conduct an administrative review of its exports of subject merchandise to the United States. We did not receive a request to conduct an administrative review from any other party. On November 30, 1998, the Department published a "Notice of Initiation of Administrative Review" (63 FR 65748) covering the POR for the above manufacturer.

On November 10, 1998, we issued an antidumping questionnaire to Magri, setting an original deadline of January 11, 1999, for its response. On November 30, 1998, Magri requested an extension of the deadline for submitting its response to January 25, 1999. We granted this request for an extension on December 11, 1998, and specified that if Magri had any questions, it should contact the Department. We did not receive a response to the Department's questionnaire from Magri. In a February 17, 1999 letter to Magri we again afforded it the opportunity to respond to the Department's questionnaire. In the letter, we stated that if Magri had so far not responded because it had no shipments of subject merchandise during the POR, it could so respond by March 15, 1999. We also specified that, otherwise, the Department would take Magri's non-response to mean that it had decided not to cooperate with the review. We clearly stated that, as a consequence, we would apply facts available (FA), as stated in our November 10, 1998, questionnaire.

Because we did not receive a questionnaire response or any other correspondence from Magri, we have determined that we must resort to FA for Magri pursuant to section 776(a) of the Act (*see* "Use of Facts Otherwise Available" section, below).

Use of Facts Otherwise Available

Magri did not respond to our original questionnaire or to a follow-up letter that was issued to it. (*See* "Background" section of this notice). Section 776(a)(2) of the Act provides that, if an interested party: (1) Withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and 782(e) of the Act, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because Magri did not respond to the questionnaire or the follow-up letter, we preliminarily determine that, in accordance with section 776(a)(2)(A) of the Act, the use of FA is appropriate for Magri. In addition, there is no information on the record within the meaning of section 782(e) of the Act with regard to sales by Magri and, therefore, no information to consider as an alternative to FA in determining the margin for this company.

Because Magri completely failed to respond, despite the Department's best efforts to accommodate the company, we must conclude that Magri failed to cooperate to the best of its ability to comply with the Department's request for information.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. The section provides that an adverse inference may include reliance on information derived from: (1) The petition, (2) the final determination in the investigation segment of the proceeding, (3) a previous review under section 751 of the Act or a determination under section 753 of the Act, or (4) any other information placed on the record. In addition, the Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. 103–316, Vol. 1 (1994), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. In employing adverse inferences, the SAA instructs the Department to consider "the extent to which a party may benefit from its own lack of cooperation." *Id.*; *see also Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review*, 62 FR 69472, 69477 (November 10, 1997).

Because Magri did not cooperate by complying with our request for information, and in order to ensure that it does not benefit from its lack of

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cooperation, we are employing an adverse inference in selecting from among the facts otherwise available. The Department's practice when selecting an adverse FA rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse so "as to effectuate the purpose of the FA rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

In order to ensure that the rate is sufficiently adverse so as to induce Magri's future cooperation, we have assigned the company as adverse FA the highest rate from any prior segment of the proceeding, 12.66 percent. This rate was calculated in *Pressure Sensitive Plastic Tape From Italy; Final Results of Administrative Duty Review of Antidumping Finding*, 48 FR 35686 (August 5, 1983) (*Final Results 1977–80*), covering the period February 18, 1977 through September 30, 1980.

Information from prior segments of the proceeding, such as involved here, constitutes "secondary information" under section 776(c) of the Act. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for FA by reviewing independent sources reasonably at its disposal. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

As to the relevance of the margin used for adverse FA, the Department stated in *TRBs* that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin." *Id.*

As stated above, the highest rate determined in any prior segment of the proceeding is 12.66 percent, a calculated rate from *Final Results 1977–80*.

In the absence of information on the administrative record that application of the 12.66 percent rate to Magri would be inappropriate as an adverse FA rate in the instant review, we have applied, as FA, the 12.66 percent margin from a prior administrative review of this finding, and have satisfied the corroboration requirements under section 776(c) of the Act.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the POR:

Manufacturer/exporter	Weighted-average margin percentage
Autoadesivi Magri s.r.l.	12.66

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSPT from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in the original less-than-fair-value (LTFV) investigation or in a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous reviews or in the original LTFV investigation; the cash deposit rate will be 12.66 percent, the "new shipper" rate established in the final results of the first antidumping finding administrative review conducted by the Department (*see Final Results 1977–80*, 48 FR at 35688).[1] These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to

[1] This rate will constitute the "all others" rate the for this review. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to edopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors as a result of litigetion) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews, (*see, e.g., Final Results of Antidumping Duty Administrative Review of Certain Internal-Combustion Industrial Forklift Trucks From Japan*, 59 FR 1374, 1384, (January 10,1994)).

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17644 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–401]

Certain Carbon Steel Products From Sweden: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the countervailing duty order on certain carbon steel products from Sweden. The period covered by this administrative review is January 1, 1997 through December 31, 1997. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Gayle Longest, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1985, the Department published in the **Federal Register** (50 FR 48517) the countervailing duty order on certain carbon steel products from Sweden. On October 9, 1998, the Department published a notice of "Opportunity to Request Administrative Review" (63 FR 54440) of this countervailing duty order. We received timely requests for review, and we initiated a review covering the period January 1, 1997 through December 31, 1997, on November 30, 1998 (63 FR 65749).

In accordance with 19 CFR 351.213(b) this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The producer/exporter of the subject merchandise for which the review was requested is: SSAB Svenskt Stal AB (SSAB). This review covers seven programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1998), unless otherwise indicated.

Scope of the Review

Imports covered by this review are shipments of certain carbon steel products from Sweden. These products include cold-rolled carbon steel, flat-rolled products, whether or not corrugated, or crimped; whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or pleated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7209.11.0000, 7209.12.0000, 7209.13.0000, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7211.30.5000, 7211.41.7000 and 7211.49.5000. The written description remains dispositive.

Subsidies Valuation Information

Privatization and Sale of Assets to Other Companies

SSAB is the only Swedish company that produces and exports the subject merchandise. SSAB has sold several productive units and the company was partially privatized in 1987 and in 1989. In 1994, SSAB was completely privatized.

In *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden*, 58 FR 37385 (July 9, 1993) (*1993 Certain Steel Products*), the Department found that SSAB had received countervailable subsidies prior to the sale of the productive units and the two partial privatizations. Further, the Department found that a private party purchasing all or part of a government-owned company can repay prior subsidies on behalf of the company as part or all of the sales price (*see General Issues Appendix*, (GIA) 58 FR 37217, 37262 (July 9, 1993)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.

To calculate a rate for the subsidies that were allocated to the spin-off, *i.e.*, a productive unit that was sold, we first determined the amount of the subsidies attributable to each productive unit by dividing the asset value of that productive unit by the total asset value of SSAB in the year of the spin-off. We then applied this ratio to the net present value (NPV), in the year of the spin-off, of the future benefit streams from all of SSAB's prior subsidies allocable to the POR. The future benefit streams at the time of the sale of each productive unit reflect the Department's allocation over time of prior subsidies to SSAB in accordance with the declining balance methodology (*see Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 64568 (December 8, 1997) and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 63 FR 18367 (April 15, 1998)), and reflect also the effect of prior spin-offs of SSAB productive units.

We next estimated the portion of the purchase price which represents repayment of prior subsidies by determining the portion of SSAB's net worth that was accounted for by subsidies. To do that, we divided the face value of the allocable subsidies

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received by SSAB in each year from fiscal year 1979 through fiscal year 1993 by SSAB's net worth in the same year. We calculated a simple average of these ratios, which was then multiplied by the purchase price of the productive unit. Thus, we determined the amount of the purchase price which represents repayment of prior subsidies. This amount was subtracted from the subsidies attributed to the productive unit at the time of sale to arrive at the amount of subsidies allocated to the productive unit being spun-off.

To calculate the subsidies remaining with SSAB after privatization, we performed the following calculations. We first calculated the NPV of the future benefit stream of the subsidies at the time of the sale of the shares. Next, we estimated the portion of the purchase price which represents repayment of prior subsidies in accordance with the methodology described in the "Privatization" section of the *General Issues Appendix* (58 FR 37217, 37259). This amount was then subtracted from the amount of the NPV eligible for repayment, and the result was divided by the NPV to calculate the ratio representing the amount of subsidies remaining with SSAB.

To calculate the benefit provided to SSAB in the POR, where appropriate, we multiplied the benefit calculated for 1997, adjusted for sales of productive units, by the ratio representing the amount of subsidies remaining with SSAB after privatization. We then divided the results by the company's total sales in 1997.

Allocation Methodology

In the current review, there are no new subsidies. All of the non-recurring grants under review were provided prior to the POR; allocation periods for these grants were established during prior segments of this proceeding. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to each grant. *See Certain Carbon Steel Products from Sweden; Final Results of Administrative Review*, 66 FR 16549–16550 (April 7, 1997) (*1994 Final Results*).

Analysis of Programs

I. Programs Conferring Subsidies

A. Structural Loans

Under three separate pieces of legislation, SSAB received structural loans for investment in plant and equipment. The loans were disbursed in installments between 1978 and 1983. Three loans were outstanding during the period of review (POR).

According to the terms of the loans, all three structural loans were interest-free for three years from the date of disbursement. After that time, two loans incurred interest at a fixed rate of five percent per annum while the other loan incurred interest at a variable rate subject to change every five years. *See* SAAB's February 16, 1999 Questionnaire Response at page 11–13 (Public Version on file in Room B–099 of the main Commerce Building). The variable interest rate on this loan is set at the rate of the long-term government bonds plus a 0.25 percent margin. After a five-year grace period, the principal is repaid in 20 equal installments at the end of each calendar year.

In the final determination of the original investigation of the subject merchandise, *Final Affirmative Countervailing Duty Determination; Certain Carbon Steel Products from Sweden*, 50 FR 33377 (August 19, 1985) and *1993 Certain Steel Products*, we determined that these loans were received at an interest rate lower than what the recipient would have paid on a comparable commercial loan. We therefore, determined that the loans are countervailable. There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination.

To calculate the benefit from the fixed-rate structural loans, we employed the long-term loan methodology described in the 1994 administrative review of this order. *See 1994 Final Results.* To calculate the benefits of the variable-rate loan, we used the variable-rate long-term loan methodology described in the *1994 Final Results.* As the benchmark, we used SSAB's company-specific long-term interest rates, previously established in *1993 Certain Steel Products.*

We reduced the benefit attributable to the POR from the fixed-rate structural loans according to the methodology outlined in the "Privatization" section above. We then aggregated the benefits for the three loans (fixed interest rate and variable interest rate) and divided the results by SSAB's total sales for 1997. On this basis, we preliminarily determine the net subsidy from the three structural loans to be 0.12 percent *ad valorem.*

B. Forgiven Reconstruction Loans

The Government of Sweden (GOS) provided reconstruction loans to SSAB between 1979 and 1985 to cover operating losses, investment in certain plant and equipment, and for employment promotion purposes. The loans were interest free for three years, after which a fixed interest rate was charged. According to the terms of the loans, up to half of the outstanding amount of the loan could be written off after the second calendar year following the disbursement. The remainder of the loan could be written off entirely at the end of the ninth calendar year after disbursement. Pursuant to the terms of the reconstruction loans, evidence indicated that the GOS wrote off large portions of principal and accrued interest on these loans between 1980 and 1990.

In the *1985 Final Determination* and in *1993 Certain Steel Products*, we determined that forgiveness of these loans is countervailable. There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination.

To calculate the benefit, we treated the written-off portions of the reconstruction loans as countervailable grants received in the years the loans were forgiven and calculated the benefit for the POR from this program using the methodology described in the "Allocation Methodology" section above. We reduced the benefits from these grants attributable to the POR according to the methodology outlined in the "Privatization" section above. We then divided the results by SSAB's total sales for 1997. On this basis, we preliminarily determine the net subsidy from the three allocable forgiven reconstruction loans to be 0.59 percent *ad valorem.*

II. Other Programs Examined

A. Research and Development Loans and Grants

The Swedish National Board for Industrial and Technical Development (NUTEK) provides research and development loans and grants to Swedish industries for R&D purposes. One type of R&D loan (industrial development loans) is mostly aimed at "new" industries such as the biotechnical, electronic, and medical industries. Another type of R&D loan (energy efficiency loans) is directed towards big energy consumers.

The loans accrue interest equal to the official "discount" rate plus a premium of 3.75 percent. SSAB had several R&D loans outstanding during the POR on which it did not make either principal or interest payments. To calculate the benefit on these long-term variable rate loans, we used the variable-rate long-term loan methodology described in the *1994 Final Results.* We measured the interest savings on each outstanding loan during the POR using the Department's long-term benchmark.

Because SSAB did not have any long-term loans in 1997, we used as the discount rate the long-term industrial bond rate in Sweden, a benchmark previously established in *1993 Certain Steel Products.* Then we divided the aggregate benefit of these loans by SSAB's total sales for 1997. On this basis, we preliminarily determine that, because the assistance provided under this program would result in a rate of less than 0.005 percent *ad valorem*, and would have no impact on the countervailing duty rate calculated for this POR, it is not necessary to determine whether these loans under NUTEK are specific. *See, e.g. Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990, 54995–54996 (October 22, 1997).

In addition, SSAB reported to have received a NUTEK R&D grant for the application and further development of Information Technology concerning improved energy utilization and control of industrial processes. Disbursements of these grants, which were received prior to the POR, did not exceed the 0.5 percent of SSAB's total sales in the year they were received. Therefore, in accordance with our practice, the entire amount was expensed in the year of receipt. See *Cut-to-Length Steel Plate from Belgium; Preliminary Results of Countervailing Duty Review*, 63 FR 48188, 48190 (September 9, 1998). On that basis, we preliminarily determine that it is not necessary to determine whether grants under NUTEK are specific.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for SSAB to be 0.72 percent *ad valorem.*

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 61 FR 5378 (February 12, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to Subpart B of 19 CFR 351.224(b), the Department will disclose to the parties of this proceeding within five days after the date of any public announcement or if none within five days after the publication of this notice, the calculations performed in this review. Interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with Subpart B of 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 351.213.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17646 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Amended Final Results of Expedited Sunset Review: Iron Metal Castings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of expedited sunset review: iron metal castings from India.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: July 12, 1999.

Scope

The merchandise subject to this countervailing duty order are shipments of manhole covers and frames, clean-out covers and frames, and catch basin grates and frames from India. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. These articles must be of cast iron, not alloyed, and not malleable. This merchandise is currently classifiable under item numbers 7325.10.0010 and 7325.10.0050 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

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Summary

On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on iron metal castings from India (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On June 1, 1999, the Department issued its final results of the sunset review of the countervailing duty order on iron metal castings from India (64 FR 30316), in which we determined that there was a likelihood of continuation or recurrence of a countervailable subsidy if the order were to be revoked. In this determination, the Department also determined the net subsidy rate likely to prevail if the order were to be revoked.

On June 23, 1999, the Department received allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from the Municipal Castings Fair Trade Council and its individual members (collectively, "domestic industry") that the Department made a ministerial error in its final results. The domestic industry alleged that the Department failed to include the subsidy rate for the International Price Reimbursement Scheme ("IPRS") program in its final results of the sunset review for this case. The domestic industry, citing the *Sunset Policy Bulletin*, stated that the Department normally "will not make adjustments to the net countervailable subsidy rate for programs that still exist, but were modified subsequent to the order, * * * to eliminate exports to the United States (or subject merchandise) from eligibility." The domestic industry argued that Indian foundries that exported heavy castings (subject merchandise) to the United States were simply told not to make claims for IPRS benefits on those castings. Further, the domestic industry argued that there has never been any termination of the IPRS program overall, and the program continues today.

The Department received, on June 30, 1999, a submission on behalf of the Engineering Export Promotion Council of India ("EEPC") in rebuttal to the ministerial error alleged by the domestic industry. The EEPC argued that the domestic industry was incorrect in stating that the IPRS program continues to exist. The EEPC asserted that the Department has information on the record of the 1994 administrative review segment of this proceeding stating that the Indian Ministry of Commerce withdrew the IPRS, effective April 1, 1994. Further, the EEPC states that this withdrawal applied to all exporters and all products.

On July 2, 1999, the Department received a response from the domestic industry arguing that the EEPC has waived its right to participate in this sunset review before the Department, pursuant to 19 CFR 351.218, and the Department should, therefore, reject the EEPC's June 30, 1999, submission. Furthermore, the domestic industry states that it knows of no finding that the IPRS has been terminated, with respect to all exporters and all products.

After analyzing the domestic industry's June 23, 1999 submission, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in the final determination concerning the IPRS program. The Department notes that the definition of a ministerial error provides not only for the correction of errors in arithmetic but also for "any other similar type of unintentional error which the Secretary considers ministerial" (*see* 19 CFR 351.224(f)). In the Department's final results of the sunset review for this case, we excluded the IPRS program from our net subsidy calculation based on the fact that the Department "had verified this termination [of the IPRS program] by examining a circular from the Indian Ministry of Commerce which stated that claims were not to be made on exports of castings to the United States and, as such, the Department determined that this constituted termination of the program" (*see Final Results of Expedited Sunset Review: Iron Metal Castings from India*, 64 FR 30316 (June 7, 1999)). The Department's reliance on this statement for its final determination in the sunset review was in error. As noted above, the Department's *Sunset Policy Bulletin* state that where a program continues to exist, but was modified to eliminate exports to the United States (or subject merchandise) from eligibility, the Department will normally not make adjustments to the net countervailable subsidy rate. The Department's decision to consider the IPRS program terminated based upon the fact that the program had been modified to exclude exports of heavy castings to the United States was, therefore, in error because reliance on modification as a basis for finding a program completely terminated is inconsistent with our *Sunset Policy Bulletin*.

However, based on the domestic industry's ministerial allegation and the EEPC's reply, the Department has reexamined all relevant information pertaining to the termination of the IPRS program. The Department located a submission from the Indian Ministry of Commerce, dated April 4, 1994, which demonstrates that the Government of India has fully and completely eliminated the IPRS program (*see* November 19, 1996 Verification Report for Certain Iron Metal Castings from India, Exhibit EEPC 4, placed on the record of this sunset review on July 2, 1999).[1] Specifically, the Indian Ministry of Commerce states that "it has been decided to withdraw the International Price Reimbursement Scheme (IPRS) with effect from 01.4.1994, i.e. benefits under the scheme would be available for eligible engineering goods exports shipped up to [sic] 31.3.1994 only." (*Id.*) Consistent with our *Sunset Policy Bulletin* (*see* section III.B.3.a), this evidence of the complete and total withdrawal of the IPRS program is the appropriate basis for the Department's finding that the IPRS program is terminated. The Department's correction of its ministerial error, *i.e.*, the appropriate basis for its termination finding, does not change the net subsidy rate reported in the original final determination of this sunset review.[2]

With respect to the domestic industry's argument that, pursuant to 19 CFR 351.218, the Department should reject the June 30, 1999, submission of the EEPC, the Department disagrees. Section 351.218(d)(2)(i) of the Department's regulations provides that if a respondent interested party waives participation in the sunset review before the Department (as the EEPC did), the Department will not accept or consider any unsolicited submissions from that party *during the course of the review*. The EEPC's submission, however, was not made during the course of the sunset review. Rather, the EEPC filed a reply to ministerial error comments made by the domestic industry *after* the Department had issued its final determination in the sunset review.

Section 351.224 of the Act outlines the procedures for the correction of ministerial errors. Specifically, section 351.224(c)(3) of the Act, states that "replies to comments filed under (c)(1) of this section must be filed within five days after the date on which comments were filed with the Secretary." This regulation does not limit who may file replies to ministerial error allegations.[3] Because the submission from the EEPC is timely filed, pursuant to section 351.224(c)(3) of the Act, we have accepted it. Finally, contrary to arguments raised by the domestic industry, acceptance of the EEPC's submission does not result in an inference adverse to the domestic industry; rather the EEPC's submission relates important factual information that is already on the record of this proceeding, *i.e.*, in the 1994 administrative review segment. For these reasons, therefore, the Department finds no reason to reject the EEPC's June 30, 1999, submission.

[1] In addition, the Department has placed on the record of this sunset review all relevant information concerning the termination of the IPRS program. This information can be found in the public sunset file of this review in Central Records Unit, Room B–099 of the main Commerce building.

[2] Furthermore, the Department can confirm that no residual benefits exist from this program to Indian producers/exporters of the subject merchandise to the United States (*see* the 1996 and the 1997 Verification Report of Iron Metal Castings from India, placed on the record of this sunset review on July 2, 1999).

[3] While there are no limitations on who may file *replies* to ministerial error allegations, the regulations do provide that only a "party to the proceeding" may file ministerial error allegations. *See* 19 CFR 351.224(c)(1) and 19 CFR 351.102 (defining "party to the proceeding")

Amended Final Results of Review

For the reasons stated above, the Department continues to find that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed in the Department's final determination of the sunset review of this case (*see Final Results of Expedited Sunset Review: Iron Metal Castings from India*, 64 FR 30316 (June 7, 1999)).

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17643 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No: 981029270–9156–02]

RIN 0693–ZA26

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Institute of Standards and Technology (NIST) announces the establishment of an accreditation program for laboratories that perform Information Technology (IT) Security Testing in accordance with the National Information Assurance Partnership (NIAP) Common Criteria Evaluation and Validation Scheme based on: (1) ISO/IEC FDIS 15408, and (2) Common Evaluation Methodology for Information Technology Security (CEM), an International draft.

DATES: The evaluation of an initial group of applicant laboratories for accreditation to the ISO/IEC FDIS 15408 and CEM standards will commerce on or about June 30, 1999. Laboratories wishing to be accredited in the first group must submit an application form and pay all required fees. Laboratories whose applications are received will be considered on a when-received basis. The fees are partially refundable if the laboratory's application is withdrawn before its evaluation begins.

ADDRESSES: Laboratories may obtain applications for accreditation for Common Criteria Testing (CCT) by calling 301–975–4016 or by writing to: Information Technology Security Testing (ITST) Program Manager, NIST/NVLAP, 100 Bureau Drive, Stop 2140, Gaithersburg, Maryland 20899–2140.

FOR FURTHER INFORMATION CONTACT: James L. Cigler, Chief, National Voluntary Laboratory Accreditation Program (NVLAP), NIST, 100 Bureau Drive, Stop 2140, Gaithersburg, Maryland 20899–2140. Telephone: 301–975–4016.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with the NVLAP Procedures and General Requirements (15 CFR Part 285). A request for establishment of the NVLAP Information Technology Security Testing Program and the inclusion of Common Criteria Testing in that program was published in the **Federal Register** on Wednesday, February 17, 1999, 64 FR 7859–7861. At the end of the comment period, May 3, 1999, only one comment was received that did not pertain to the establishment of the program.

Common Criteria Testing

NVLAP will accredit laboratories which demonstrate their competence to perform Common Criteria Testing (CCT) in accordance with protocols specified in ISO/IEC FDIS 15408 and the draft CEM standard.

Cryptographic Modules Testing

NVLAP currently offers accreditation for laboratories conducting testing to Federal Information Processing Standard (FIPS) 140–1 for Cryptographic Modules. This offering will be continued as part of the development of the new Information Technology Security Testing (ITST) program.

Technical Requirements for the Accreditation Process

Specific requirements and criteria address quality systems, staff, facilities and equipment, calibrations, test methods and procedures, manuals, records, and test reports. Laboratory competence will be determined through: (1) On-site assessments of the laboratory by peer assessors, (2) evaluation of background of personnel performing Common Criteria Testing, (3) review of quality and technical documentation, and (4) proficiency testing. Laboratories must meet all NVLAP criteria and requirements in order to become accredited.

Laboratories which apply for accreditation and pay all necessary fees will be required to meet proficiency testing requirements and on-site assessment requirements before initial accreditation can be granted, and will be required to meet ongoing proficiency testing requirements and periodic reassessments to retain accreditation.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The NVLAP application is approved by the Office of Management and Budget under OMB Control No. 0693–0003.

Dated: July 6, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–17661 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061199A]

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Power Plant Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act

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(MMPA), as amended, and implementing regulations, notification is hereby given that a 1-year letter of authorization to take harbor, gray, harp and hooded seals incidental to intake cooling water operations at Seabrook Station nuclear power plant, Seabrook, NH, was issued to the North Atlantic Energy Service Corporation on July 2, 1999.

ADDRESSES: The application and letter are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Scott Sandorf, Northeast Region (978) 281–9388.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of several species of seals incidental to intake cooling water operations at Seabrook Station nuclear power plant, Seabrook, NH, were published on May 25, 1999 (64 FR 28114), and remain in effect until June 30, 2004.

Issuance of this letter of authorization is based on a finding that the total takings will have a negligible impact on the marine mammal species of the Western North Atlantic.

Dated: July 2, 1999.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–17624 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59942, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 12, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	574,995 dozen.
336/636	563,635 dozen.
341	2,293,257 dozen.
347/348	3,135,706 dozen.
363	29,279,569 numbers.
369–S [2]	1,962,630 kilograms.
641	1,032,554 dozen.
647/648	1,730,761 dozen.
847	470,638 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17565 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 70107, published on December 18, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementotion of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 13, 1999, you are directed to increase the current limit for Categories 347/348 to 2,145,005 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing. The guaranteed access level for Categories 347/348 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17567 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Egypt

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339 is being increased for recrediting of unused special carryforward from 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 54114, published on October 8, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 1, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Arab Republic of Egypt and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 12, 1999, you are directed to increase the limit for Categories 338/339 to 2,763,159 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17568 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 14, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

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see 63 FR 59946, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 14, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
226/313	129,440,629 square meters.
334/634	259,256 dozen.
336/636	526,715 dozen.
338	5,254,913 dozen.
339	1,492,003 dozen.
340/640	702,288 dozen of which not more than 263,357 dozen shall be in Categories 340–D/640–D [2].
347/348	873,067 dozen.
351/651	351,143 dozen.
359–C/659–C [3]	1,580,146 kilograms.
363	46,143,936 numbers.
369–F/369–P [4]	2,570,724 kilograms.
369–S [5]	761,728 kilograms.
613/614	25,386,716 square meters.
615	26,766,044 square meters.
625/626/627/628/629	83,859,305 square meters of which not more than 41,929,654 square meters shall be in Category 625; not more than 41,929,654 square meters shall be in Category 626; not more than 41,929,654 square meters shall be in Category 627; not more than 8,675,101 square meters shall be in Category 628; and not more than 41,929,654 square meters shall be in Category 629.
638/639	487,367 dozen.
666–S [6]	4,224,988 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17566 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the Uni ted States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 20, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	996,653 dozen.
331/631	7,012,533 dozen pairs.
333/334	311,393 dozen of which not more than 48,265 dozen shall be in Category 333.
335	180,117 dozen.
336	829,345 dozen.
340/640	1,316,182 dozen.
341/641	944,363 dozen.
342/642	732,236 dozen.
345	226,339 dozen.
350	181,587 dozen.
351/651	798,648 dozen.

Category	Adjusted twelve-month limit [1]
352/652	2,950,437 dozen.
359–C/659–C [2]	1,388,265 kilograms.
361	2,272,912 numbers.
431	192,094 dozen pairs.
433	3,854 dozen.
443	46,184 numbers.
445/446	33,210 dozen.
447	9,234 dozen.
633	60,063 dozen.
634	558,012 dozen.
635	439,520 dozen.
636	1,950,096 dozen.
643	866,217 numbers.
645/646	817,769 dozen.
649	7,619,553 dozen.
650	129,968 dozen.
659–H [3]	1,817,879 kilograms.
847	432,395 dozen.
Group II	
200–227, 300–326, 332, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–607, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	198,623,048 square meter equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (Category 359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementotion of Textile Agreements.

[FR Doc. 99–17569 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Employer Support of National Guard and Reserve Training and Service—National Guard and Reserve Survey; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 2,400.

Responses Per Respondent: 1.

Annual Responses: 2,400.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 1,200.

Needs and Uses: The information collection requirement is necessary to learn about employer tolerance for leaves of absence caused by the departure of National Guard and Reserve members from their workplaces to attend military training or to provide military service. In order to sustain and not to diminish employer support, it is important to learn about employer tolerance of absences due to Guard/Reserve obligations, and how such absences can be least disruptive to the employer when Guard and Reserve members are called to training or service. Respondents are employers, manager, and supervisors with hiring/firing authority within a diverse set of employers, both public and private. Results gathered from this survey will provide military leadership with new and important information to help them plan and manage more effectively, with a better understanding of the limits to removing Guard/Reserve members from their workplaces for military training and service.

Affected Public: Business or Other For-Profit, Not-For-Profit Institutions; Federal Government; State, Local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 1, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17511 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0083]

Submission for OMB Review; Comment Request Entitled Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

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and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Qualification Requirements. A request for public comments was published at 64 FR 24598, May 7, 1999. No comments were received.

DATES: Comments may be submitted on or before August 11, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *7,882;* responses per respondent, *100;* total annual responses, *788,200;* preparation hours per response, *.25;* and total response burden hours, *197,050.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: July 7, 1999.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 99–17564 Filed 7–9–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1999 Summer Study on 21st Century Defense Technology Strategies

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1999 Summer Study Task Force on 21st Century Defense Technology Strategies will meet in closed session on August 2–13, 1999 at the Beckman Center, Irvine, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review and consider the broad spectrum of topics, which were addressed in the 1990 DSB Summer Study on "Research and Development Strategy for the 1990s." Of particular concern will be the proliferation of nuclear, chemical, and biological weapons technology and the many means to deliver such weapons.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: July 6, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17513 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Filed Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive /Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Deputy Assistant Director for Staffing, Classification and Executive Resources, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 588–0410.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executive are appointed to the office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 1999.

Office of the Secretary of Defense

Chairman

Robert R. Soule

Members

Joseph Angello
Diana Blundell
Thomas Bozek
James Brooks
Jennifer Buck
Bill Campbell
Mark Cancian
Victor Ciardello
Charlie Cook
Eric Coulter
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Robert Foster
William Frederick
Warren Hall
Douglas Hansen
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Paul Koffsky
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Ronald Mutzelburg
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Michael Parmentier
Karla Perri
James Reardon
Ron Richards
Richard Ritter
Alina Romanowski
Frank Rush
Patricia Sanders
George Schneiter
Jack Schrader
Wayne Sellman
David Shilling
Robert Snyder
Robert Soule
Nancy Spruill
Richard Sylvester
Robert Taylor
Nelson Toye
Thomas Troyano
Albert Volkman
Austin Yamada
Karen Yannello
Michael Yoemans

Dated: July 2, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17512 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Exclusive or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland, DOD.

ACTION: Notice.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to Paratek Microwave, Inc., a corporation having its principle place of business at 6935 Oakland Mills Road, Suite N, Columbia, Maryland 21045–4719, an exclusive or partially exclusive licenses under U.S. Patents 5,334,958, issued 2 August 1994, entitled, "Microwave Ferroelectric Phase Shifters and Methods for Fabricating the same," 5,680,141; issued 21 October 1997, entitled, "Temperature Calibration System For A Ferroelectric Phase Shifting Array Antenna," 5,427,988; issued 17 June 1995, entitled "Ceramic Ferroelectric Composite Material—BSTO–MGO;" Patent Application ARL Docket No.: ARL 97–01, entitled "Ferroelectric Thin Film composites Made by Metallo-Oranic Decomposition." Patent Application ARL Docket No.: ARL 97–12, entitled, "Ceramic Ferrite Ferroelectric Composite Material," Patent Application ARL Docket No.: ARL 98–47, entitled, "Ceramic Ferroelectric Composite Material with Enhanced Electric properties, BSTO/MG Based Compound—Rare Earth Oxide.

Anyone wishing to object to the granting of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Technology Transfer, ATTN: AMSRL–CS–TT, Aberdeen Proving Ground, Maryland 21005–5055, telephone number: (410) 278–5028, Fax (410) 278–5820.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–17620 Filed 7–9–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 11, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TALC-PAD-RP, Stop C, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

DEPARTMENT OF DEFENSE

Department of the Army

Notification of Hours of Operating for Armed Forces Discharge Review/ Correction Board Reading Room

AGENCY: Army Review Board Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with DoD Directive 1332.28D3f, the Secretary of the Army hereby gives notice of the hours of operation regarding the Reading Room. Effective 1 August 1999, the hours of operation for the Reading Room will be from 7:30 a.m. to 4:00 p.m. Monday thru Friday, with the exception of being closed on federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Troxell, Army Review Board Agency 1941 Jefferson Davis Highway, Crystal Mall #4, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: Discharge Review Board (DRB) documents are made available for public inspection and copying, and are located in the Reading Room. The documents are indexed in a usable and concise format so as to enable the public, the applicant and/or those who represent applicants, to locate a decision document that is similar in circumstances or reasons for which the DRB or the Secretary concerned granted or denied relief.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–17619 Filed 7–9–99; 8:45 am]

BILLING CODE 3710–08–M

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Dated: July 6, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0037–103a SAFM

SYSTEM NAME:

Contractor Indebtedness Files *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0037–103b SAFM

SYSTEM NAME:

Subsidary Ledger Files (Accounts Receivable) *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0037–104–1a SAFM

SYSTEM NAME:

Joint Uniform Military Pay System-Army-Retired Pay *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7347b, Defense Military Retiree and Annuity Pay System.

A0037–104–1b SAFM

SYSTEM NAME:

Debt Management System *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0037–104–3 DASG

SYSTEM NAME:

Health Professions Scholarship Program *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7340, Defense Joint Military Pay System-Active Component.

A0037–104–3b SAFM

SYSTEM NAME:

Joint Uniform Military Pay System-Active Army (JUMPS-JSS) *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7340, Defense Joint Military Pay System-Active Component.

A0037–104–3c SAFM

SYSTEM NAME:

Joint Uniform Military Pay System-Reserve Components-Army *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7346, Defense Joint Military Pay System-Reserve Component.

A0037–105b SAFM

SYSTEM NAME:

Military and Civilian Waiver Files *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under two Defense Finance and Accounting Service Privacy Act notices T7332, Defense Debt Management System and T5015a, Military Pay Correction Case Files.

A0037–105c SAFM

SYSTEM NAME:

Bankruptcy Processing Files *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332c, Bankruptcy Processing Files.

A0037–107a SAFM

SYSTEM NAME:

Absentee Apprehension/Reward/ Expenses Payment System *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0037–108 CE

SYSTEM NAME:

Corps of Engineers Debt Collection System *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0055–71 SAFM

SYSTEM NAME:

Household Goods Shipment Excess Cost Collection Files *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

[FR Doc. 99–17515 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on August 11, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: July 6, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS)*(October 15, 1998, 63 FR 55373).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entire entry and replace with 'Primary Location: Naval Postgraduate School Computer center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up Location: Defense Manpower Data Center, DoD Center, 400 Gigling Road, Seaside, CA 93955-6771.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the second, third, and fourth paragraphs and replace with 'Active duty military (includes Coast Guard) personnel accused of criminal offenses under the Uniform Code of Military Justice and investigated by a military law enforcement organization.

Active duty military (includes Coast Guard) personnel accused of fraternization, sexual harassment, a sex-related offense, a hate or bias crime, or a criminal offense against a victim who is a minor and investigated by a commander, military officer, or civilian in a supervisory position.

Active duty military (includes Coast Guard) personnel accused of a criminal incident, which is not investigated by a military law enforcement organization,but which results in referral to trial by court-martial, imposition of nonjudicial punishment, or an administrative discharge.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law.

Active duty military (includes Coast Guard) personnel who attempt or commit suicide.

Individuals who are victims of those offenses which are either reportable to the Department of Justice or are reportable for having committed criminal incidents in violation of law or regulation.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.'

* * * * *

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS).

SYSTEM LOCATION:

Primary Location: Naval Postgraduate School Computer center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up Location: Defense Manpower Data Center, DoD Center, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military (includes Coast Guard) or civilian personnel who have been apprehended or detained for criminal offenses which must be reported to the Department of Justice pursuant to the Uniform Crime Reporting Handbook as required by the Uniform Federal Crime Reporting Act.

Active duty military (includes Coast Guard) personnel accused of criminal offenses under the Uniform Code of Military Justice and investigated by a military law enforcement organization.

Active duty military (includes Coast Guard) personnel accused of fraternization, sexual harassment, a sex-related offense, a hate or bias crime, or a criminal offense against a victim who is a minor and investigated by a commander, military officer, or civilian in a supervisory position.

Active duty military (includes Coast Guard) personnel accused of a criminal incident, which is not investigated by a military law enforcement organization,but which results in referral to trial by court-martial, imposition of nonjudicial punishment, or an administrative discharge.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law.

Active duty military (includes Coast Guard) personnel who attempt or commit suicide.

Individuals who are victims of those offenses which are either reportable to the Department of Justice or are reportable for having committed criminal incidents in violation of law or regulation.

Active duty military (includes Coast Guard) personnel who must be reported to the Department of Justice under the Brady Handgun Violence Prevention Act because such personnel have been referred to trial by a general courts-martial for an offense punishable by imprisonment for a term exceeding one year; have left the State with the intent of avoiding either pending charges or giving testimony in criminal proceedings; are either current users of a controlled substance which has not been prescribed by a licensed physician (Note: includes both current and former members who recently have been convicted by a courts-martial, given nonjudicial punishment, or administratively separated based on drug use or failing a drug rehabilitation program) or using a controlled substance and losing the power of self-control with respect to that substance; are adjudicated by lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs or are formally committed by lawful authority to a mental hospital or like facility (Note: includes those members found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice); have been discharged from the Armed Services pursuant to either a dishonorable discharge or a dismissal adjudged by a general courts-martial; or have been convicted in any court of a misdemeanor crime of domestic violence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled by law enforcement authorities (e.g., Defense Protective Service, military and civilian police, military criminal investigation services or commands); DoD organizations and military commands; Legal and judicial authority (e.g., Staff Judge Advocates, courts-martial); and Correctional institutions and facilities (e.g., the United States Disciplinary Barracks) consisting of personal data on individuals, to include but not limited to, name; social security number; date of birth; place of birth; race; ethnicity; sex; identifying marks (tattoos, scars, etc.); height; weight; nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; actions taken by military commanders (e.g., administrative and/or non-judicial measures, to include sanctions imposed); court-martial results and punishments imposed; confinement

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information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

Records also consist of personal information on individuals who were victims. Such information does not include the name of the victim or other personal identifiers (e.g., Social Security Number, date of birth, etc.), but does include the individual's residential zip code; age; sex; race; ethnicity; and type of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 et seq., Victims Rights and Restitution Act; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN).

PURPOSE(S):

To provide a single central facility within the Department of Defense (DoD) which can serve as a repository of criminal and specified other non-criminal incidents which will be used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act; and to enhance DoD's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) only as follows:

To the Department of Justice:

(1) To compile crime statistics so that such information can be both disseminated to the general public and used to develop statistical data for use by law enforcement agencies.

(2) To compile information on those individuals for whom receipt or possession of a firearm would violate the law so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufactures or dealers) to determine whether individuals are disqualified from receiving or possessing a firearm.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices *do not* apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, incident number, or any other data element contained in system.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services (includes the U.S. Coast Guard) and Defense agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–17514 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Wappapello Lake Operation and Maintenance, Wayne and Butler Counties, MO

AGENCY: U.S. Army Corps of Engineers, St. Louis District, DOD.

ACTION: Notice of intent.

SUMMARY: St. Louis District, U.S. Army Corps of Engineers is proposing an Environmental Impact Statement (EIS) for the Continuing Operation and Maintenance of Wappapello Lake on the St. Francis River, Wayne and Butler counties, Missouri. Even though this project was completed before the National Environmental Policy Act of 1969, it is the intent of the Corps to prepare an EIS on current operations, which have an impact on notable environmental resources.

ADDRESSES: U.S. Army Corps of Engineers, St. Louis District, Planning, Programs, and Project Management Division, Environmental and Economic Analysis Branch, 1222 Spruce St., St. Louis MO 63103–2833.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Neher, (314) 331–8880, Lynn.N.Neher@mvs02.usace.army.mil or Mr. Daniel Ragland, (314) 331–8461, Daniel.V.Ragland @mvs02.usace.army.mil.

SUPPLEMENTARY INFORMATION: Wappapello Lake and Dam were part of the St. Francis Basin Project that was authorized by the Flood Control Act of 1936 (Overton Act). Construction of the dam was completed in 1941 with an authorized purpose of flood control. Development and use of flood control reservoirs for recreational and related purposes were authorized by Section 4 of the Flood Control Act approved 22 December 1944, as amended by Section 209 of the Flood Control Act of 1954 approved 3 December 1954. A final EIS was completed for the entire St. Francis Basin Project in July 1973. Wappapello Lake and Dam were included in this EIS as part of the St. Francis Basin Project's purpose of flood control, but general O&M details for Wappapello Lake and Dam was not addressed. Wappapello Lake and Dam have a range of operational practices within the authorized purpose of the project. Since its inception, the development and management of Wappapello Lake and Dam have included flood control, recreational facility development and access, forestry, fish and wildlife management and protection of natural and cultural resources.

Alternatives

The Corps of Engineers will evaluate reasonable alternatives for the O&M of Wappapello Lake and Dam. The no action alternative will be to not change the current O&M practices. The action alternatives will address proposed changes to the current O&M practices concerning the management of the project's natural resources and recreational opportunities.

Scoping and Public Involvement

Public involvement will be sought during scoping and conduct of the study in accordance with NEPA procedures. A public scoping process will help to clarify issues of major concern, identify any information sources that might be available to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. The Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all Federal, state and local agencies, Native American tribes, and other interested private organizations or individuals, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, probable significant environmental impacts and permits or other approvals that may be required.

The following key areas have been identified to be analyzed in-depth in the draft EIS:

1. Geology and Engineering Design
2. Water Management
3. Water Quality
4. Fisheries
5. Wildlife
6. Wetlands
7. Forest Management
8. Cultural Resources
9. Socioeconomic Resources
10. Recreation
11. Hydroelectric
12. Utility right-of-ways

Other Environmental Review and Coordination Requirements

All review and coordination requirements will be fulfilled via this NEPA process. On-going operations of the lake and dam are continually coordinated with agencies and interested publics.

Scoping Meeting

A scoping meeting for this EIS will be held in conjunction with a public workshop that will be held in July or August 1999 for the Lake's Master Plan Update. The exact date has not been set and can be requested by calling the Lake's office at (573) 222–8562.

Availability of Draft EIS

The draft EIS is scheduled for release in the spring of 2000.

Thomas J. Hodgini,

COL, EN, Commanding.

[FR Doc. 99–17621 Filed 7–9–99; 8:45 am]

BILLING CODE 3710–55–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–357–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 29, 1999, ANR Pipeline Co. (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets listed at Appendix A to the filing, to be effective August 1, 1999.

ANR states that this filing is made in compliance with Order No. 587–K which completed the Commission's adoption of Version 1.3 of the Gas Industry Standards Boards' Business Practice Standards. In addition, ANR is making housekeeping-type corrections to changes that were made previously to comply with Order Nos. 587 and 587–B.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17578 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–271–002]

East Tennessee Natural Gas Co.; Notice of Compliance Filing

July 6, 1999.

Take notice that on June 28, 1999, East Tennessee Natural Gas Co. (East Tennessee), filed a report pursuant to Section 23 of the General Terms and Conditions of its FERC Gas Tariff and in compliance with the June 30, 1994 Letter Order in Docket No. RP94–271. The referenced tariff provision and the Letter Order require East Tennessee to file to recover trailing costs in East Tennessee's Account No. 191 resulting from the resolution of Tennessee Gas Pipeline Company's ("Tennessee") proceedings in Docket Nos. RP94–201–000 and RP93–47–000 within 60 days of Tennessee filing its final PGA report. Tennessee filed its report on April 29, 1999.

East Tennessee states that since East Tennessee's last report, East Tennessee received a refund from Tennessee in April 1995, which East Tennessee flowed through to its customers, and that Tennessee has billed East Tennessee $25,508.00, which East Tennessee does not propose to pass on to its customers.

East Tennessee also submits pro forma tariff sheets to reflect the

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elimination of the PGA provisions of its FERC Gas Tariff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17576 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–363–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 30, 1999, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective August 1, 1999.

First Revised Sheet No. 251
First Revised Sheet No. 287
First Revised Sheet No. 288
First Revised Sheet No. 289
First Revised Sheet No. 308

Equitrans states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Order No. 587–K issued on April 2, 1999 in Docket No. RM96–1–011 adopting new and revised standards promulgated by ther Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to follow certain new and revised business practice procedures. The Commission directed pipelines to make a filing adopting Version 1.3 of the GISB standards which revises the standards in the area of confirmation practices, data sets and establishes standardization of the information provided on Internet Web Sites by August 1, 1999. Equitrans is filing to incorporate by reference the new and revised standards, except for standards 2.3.16 and 4.3.23 which are incorporated verbatim in Sections 12.4 and 26.3, respectively, of the General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission'a Rules and Regualtions. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the approprite action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are avaiable for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17584 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–205–004]

Granite State Gas Transmission, Inc.; Notice of Report

July 6, 1999.

Take notice that on May 28, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing a report, pursuant to Article 34.6 of its General Terms and Conditions, detailing billed lease costs and surcharge revenue collected in conjunctionn with the Portland Pipe Line Company third lease extension. Article 34.6 requires that Granite State reports to the Commission 30 days after the lease termination showing all lease related costs billed to Granite State and all revenue collected under the special surcharge, together with carrying charges.

Granite State states that it accumulated revenues of $10,135,086.09 during the one year period of the surcharge and incurred lease costs of $8,012,680.92.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 13, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17577 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–360–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 30, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 11 and Sixth Revised Sheet No. 50C, proposed to be effective August 1, 1999.

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Order No. 587–K issued on April 2, 1999, in Docket No. RM96–1–011. 87 FERC § 61,021 (1999). In Order No. 587–K, the Commission adopted Version 1.3 of the standards promulgated by the Gas Industry Standards Board, and established an implementation date of August 1, 1999 for these standards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17581 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–57–000]

Kentucky West Virginia Gas Co., L.L.C.; Notice of Refund Report

July 6, 1999.

Take notice that on June 30, 1999, Kentucky West Virginia Gas Co., L.L.C. (Kentucky West) filed a Report summarizing the refunds of GRI overcollections which were credited to the June billing invoice of its sole eligible customer.

Kentucky West states that on May 29, 1998, it received a refund from GRI of $67,004 for overcollections of Kentucky West 1998 GRI funding level. Kentucky West states that it credited this amount to the account of its sole eligible firm customer.

Kentucky West states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17575 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–361–000]

Kentucky West Virginia Gas Co, L.L.C., Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 30, 1999, Kentucky West Virginia Gas Co., L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 121, and Second Revised Sheet No. 174, to become effective August 1, 1999.

Kentucky West states that the purpose of this filing is to comply with the Commission's Order No. 587–K issued on April 2, 1999 in Docket No. RM96–1–011 adopting new and revised standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to follow certain new and revised business practice procedures. The Commission directed pipelines to make a filing adopting Version 1.3 of the GISB standards which revises the standards in the area of confirmation practices, data sets and establishes standardization of the information provided on Internet Web Sites by August 1, 1999. Kentucky West is filing to incorporate by reference the new and revised standards, except for standard 2.3.16 which is incorporated verbatim in Section 13.4(b)(i) and of the General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17582 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–6–16–000]

National Fuel Gas Supply Corp.; Notice of Tariff Filing

July 6, 1999.

Take notice that on June 30, 1999, National Fuel Gas Supply Corp. (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become, effective July 1, 1999:

Seventeenth Revised Sheet No. 9

National assets that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, et al. Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 9.15 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17585 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–362–000]

Nora Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 30, 1999, Nora Transmission Co., (Nora) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 121, and Fourth Revised Sheet No. 173, to become effective August 1, 1999.

Nora states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Order No. 587–K issued on April 2, 1999, in Docket No. RM96–1–011 adopting new and revised standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to follow certain new and revised business practice procedures. The Commission directed pipelines to make a filing adopting Version 1.3 of the GISB standards which revises the standards in the area of confirmation practices, data sets and establishes standardization of the information provided on Internet Web Sites by August 1, 1999. Nora is filing to incorporate by reference the new and revised standards, except for standard 2.3.16 which is incorporated verbatim in Section 13.4(b)(1) and of the General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17583 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–159–002]

Phelps Dodge Corporation v. El Paso Natural Gas Company, Notice Extending Period To Convene Meeting and Setting Date for Convening Session

July 6, 1999.

By Order issued June 16, 1999, *Phelps Dodge Corporation* v. *El Paso Natural Gas Company*, 87 FERC ¶ 61,297, the Commission directed its Dispute Resolution Service to convene a meeting of the parties to arrange a process that may foster negotiation and agreement on the disputes presented in the above captioned proceeding. The meeting was to be held within 30 days of issuance of the June 16th Order. The Director of the Dispute Resolution Proceeding contacted representatives of Phelps Dodge Corporation and El Paso Natural Gas Company and has determined that due to conflicts with filings in other proceedings, the 30-day period to convene should be extended. Accordingly, the period to convene the parties is extended until July 23, 1999.

The Commission's Dispute Resolution Service will conduct a convening session on July 21, 1999, commencing at 10:00 a.m., in Room 3M–3, at the Commission's offices in Washington, DC. The convening session will cover what processes can be taken to reach a consensual agreement, including whether to use an alternative dispute resolution process and/or an appropriate third party neutral.

All parties are invited to attend. If a party has any questions, please call Richard Miles, the Director of the Office of the Dispute Resolution Service. His telephone number is 202–208–0702 and his E-mail address is richard.miles@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17573 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–56–000]

Transcontinental Gas Pipe Line Corp.; Notice of Refund Report

July 6, 1999.

Take notice on June 29, 1999, Transcontinental Gas Pipe Line Corp. (Transco) refunded amounts to eligible shippers via Mail or wire transfer based on non-discounted GRI demand amounts paid during the year ended December 31, 1998. The amounts refunded by Transco resulted from refunds made to Transco by the Gas Research Institute (GRI).

Transco states that copies of this filing are being served to each affected customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before July 13, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed/us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17574 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–358–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 29, 1999, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1999.

First Revised Sheet Nos. 213 and 230A
Second Revised Sheet No. 230B
Third Revised Sheet No. 297

Williams states that on April 2, 1999, the Commission issued Order No. 587–K (Order). The Order incorporated by reference, in Section 284.106(b)(1)(i), Version 1.3 of the standards promulgated July 31, 1998, by the Gas Industry Standards Board (GISB). The Commission also established August 1, 1999, as the implementation date of Version 1.3 of the standards adopted in Order No. 587–K. Williams states that the purpose of this filing is to revise the tariff in compliance with the Order.

Williams states that copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17579 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–359–000]

Young Gas Storage Co., Ltd.; Notice of Tariff Filing

July 6, 1999.

Take notice that on June 29, 1999, Young Gas Storage Co., Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective August 1, 1999.

Young states that the purpose of this compliance filing is to conform Young's tariff to requirements of Order No. 587–K. Order No. 587–K requires interstate pipelines transporting pursuant to Section 284.223 of the Commission's Regulations to conform their tariffs to the most recent version of the Gas Industry Standards Board standards, Version 1.3 promulgated July 31, 1998.

Young further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17580 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF99–3021–000, et al.]

Southeastern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

July 6, 1999.

Take notice that the following filings have been made with the Commission:

1. Southeastern Power Administration

[Docket No. EF99–3021–000]

Take notice that on July 1, 1999 , the Secretary of the Department of Energy confirmed and approved Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A for power from Southeastern Power Administration's (Southeastern) Cumberland System of Projects. The approval extends through June 30, 2004.

The Deputy Secretary states that the Commission, by order issued December 14, 1994, in Docket No. EF94–3021–000, and August 11, 1997, in Docket No. EF97–3021, confirmed and approved Rate Schedules CBR–1–C, CSI–1–C, CK–1–C, CC–1–D, CM–1–C, CEK–1–C, CTV–1–C, and SJ–1.

Southeastern proposes in the instant filing to replace these rate schedules.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company, et al.

[Docket No. EC99–70–000]

Take notice that on July 1, 1999, New England Power Company (NEP) and its affiliates holding jurisdictional assets (Massachusetts Electric Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., and AllEnergy Marketing Company, L.L.C.) (collectively, the NEES Companies), Montaup Electric Company and its affiliates holding jurisdictional assets (Blackstone Valley Electric Company, Eastern Edison Company (Eastern Edison), Newport Electric Corporation) (collectively, the "EUA Companies"), and Research Drive LLC submitted a Supplement to their Application in the above referenced docket. The proceeding in the above-referenced docket seeks the Commission's approval and related authorizations to effectuate the merger involving New England Electric System (NEES), the parent company of the NEES Companies, and Eastern Utilities Associates (EUA), the parent company of the EUA Companies (Merger).

The Supplement explains that currently 100% of the common stock of Montaup is held by Eastern Edison, which in turn is wholly owned by EUA. Independent of and prior to the closing of the Merger, Eastern Edison will transfer all of the common stock of Montaup to EUA so that EUA will become the direct parent of Montaup. The Supplement states that this independent internal corporate restructuring of Montaup's parent companies has no impact on the Merger, but is being filed to make certain that the discussion of Montaup's corporate structure in the original Application remains accurate.

In addition, the Supplement states that to the extent the Commission determines that this internal corporate restructuring of Montaup's parent companies qualifies as a disposition of control of a jurisdictional entity that requires Commission approval under Section 203 of the FPA, the Applicants request such approval.

Finally, the Applicants included for filing copies of the following material that the Applicants request be made part of Exhibit G to the Application: Application of Montaup Electric Company and New England Power Company for Transfer of Licenses and

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Ownership Interests before the Nuclear Regulatory Commission (consisting of three volumes).

The Applicants have served copies of the filing on the state commissions of Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont, all parties on the service list of EC99–70, and all parties on the service list on Docket No. ER99–2832.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company, et al.

[Docket No. EC99–90–000]

Take notice that on June 29, 1999, Illinois Power Company, Illinova Power Marketing, Inc., and Illinova Corporation filed a joint application requesting that the Commission: (1) Provide all approvals necessary for the disposition of certain jurisdictional facilities under Section 203 of the Federal Power Act; or (2) disclaim jurisdiction over the proposed transaction.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. El Paso Power Services Company

[Docket No. ER95–428–020]

Take notice that on June 30, 1999, El Paso Power Services Company (EPPS), tendered for filing a notice of changes in status and a request to file a revised market analysis on a triennial basis.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. TransAlta Energy Marketing Corp.; TransAlta Energy Marketing (U.S.) Inc.; TransAlta Energy Marketing (California) Inc.

[Docket Nos. ER96–1316–013; ER98–3184–004; and ER99–2343–001]

Take notice that on June 30, 1999, TransAlta Energy Marketing Corp. (TEMC), tendered for filing a three year update to its market power study in compliance with the Commission's Order in Docket No. ER96–1615–1316, granting TEMC market rate authority. TEMC requests that the filed three year update also be deemed to satisfy the three year update obligations of its two marketing affiliates.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. The Empire District Electric Company

[Docket No. ER99–1757–001]

Take notice that on June 30, 1999, The Empire District Electric Company (Empire District), tendered for filing a notification of change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority. Empire District informed the Commission of a planned merger between Empire District and UtiliCorp United, Inc.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3398–000]

Take notice that June 28, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Strategic Energy, Ltd. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Edison Company

[Docket No. ER99–3399–000]

Take notice that on June 29, 1999, Ohio Edison Company tendered for filing revisions to Appendices A and B of Service Agreements with American Municipal Power-Ohio, Inc., under FERC Electric Tariff, Second Revised Volume No.2. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER99–3400–000]

Take notice that on June 29, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with L.A. Department of Water and Power.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective June 28, 1999.

A copy of this filing was caused to be served upon L.A. Department of Water and Power, as noted in the filing letter.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER99–3401–000]

Take notice that on June 29, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date June 23, 1999.

Copies of the filing have been served on Wisconsin Public Power, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3402–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Columbia Energy Power Marketing Corp., (Columbia).

Con Edison states that a copy of this filing has been served by mail upon Columbia.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3403–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3404–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3405–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3406–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Energy Lovett, L.L.C.

[Docket No. ER99–3410–000]

Take notice that on June 29, 1999, Southern Energy Lovett, L.L.C. (Southern Lovett), tendered for filing the following agreements as a long-term service agreements under its Market Rate Tariff accepted by the Commission in the Docket No. ER99–2043–000:

1. Eastern Load Pocket Call Option Agreement Between Orange and Rockland Utilities, Inc. and Southern Energy NY-GEN, L.L.C., dated November 24, 1998, as amended, June 14, 1999.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Energy Cooperative of Western New York, Inc.

[Docket No. ER99–3411–000]

Take notice that on June 29, 1999, Energy Cooperative of Western New York, Inc. (ECWNY), petitioned the Commission for acceptance of ECWNY Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

ECWNY intends to engage in wholesale electric power and energy purchased and sales as a marketer. ECWNY is not in the business of generating or transmitting electric power.

The Energy Cooperative of Western New York, Inc., is a not-for-profit corporation created by a group of businesses (both industrial and commercial). The Co-op's sole mission is to buy energy for its members at a low cost. It has met all the requirements of the PSC, Public Service Commission, of New York to offer this service to its members.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Vermont Public Service Corporation

[Docket No. ER99–3412–000]

Take notice that on June 28, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with El Paso Power Services Company under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on July 1, 1999.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER99–3413–000]

Take notice that on June 29, 1999, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to Schedule 1 of the Participating Generator Agreement between the ISO and California Department of Water Resources (CDWR). The ISO states that the amendment revises Schedule 1 to incorporate information about the technical characteristics of CDWR's generator units.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Energy, Inc.

[Docket No. ER99–3414–000]

Take notice that on June 29, 1999, Consolidated Edison Energy, Inc. (CEEI), tendered for filing an amendment to Consolidated Edison Energy FERC Electric Rate Schedule No. 1, Market Based Rate Tariff to include the sale of ancillary services at market-based rates.

CEEI states that a copy of this filing has been served by mail upon The New York State Public Service Commission and those customers taking service under Consolidated Edison Energy FERC Electric Rate Schedule No. 1, Market Based Rate Tariff.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER99–3415–000]

Take notice that on June 29, 1999, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to Schedule 1 of the Participating Generator Agreement between the ISO and Texaco Exploration and Production Inc. (Texaco). The ISO states that the amendment revises Schedule 1 to incorporate information about the technical characteristics of and limitations on Texaco's facilities.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

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protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17572 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 7, 1999.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 14, 1999, 10:00 a.m.

PLACE: Room 2C 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda:

* Note—items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro—723rd Meeting—July 14, 1999, Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–2113, 114, WISCONSIN VALLEY IMPROVEMENT COMPANY
CAH–2.
DOCKET# P–2404, 021, THUNDER BAY POWER COMPANY
OTHER#S P–2419, 010, THUNDER BAY POWER COMPANY
CAH–3.
DOCKET# P–2584, 025, ROCHESTER GAS & ELECTRIC CORPORATION
CAH–4.
DOCKET# P–2496, 042, EUGENE WATER AND ELECTRIC BOARD
CAH–5.
DOCKET# P–6879, 021, SOUTHEASTERN HYDRO-POWER, INC.
CAH–6.
DOCKET# P–7115, 017, SOUTHEASTERN HYDRO-POWER, INC. AND HOMESTEAD ENERGY RESOURCES, LLC
CAH–7.
DOCKET# P–5, 041, MONTANA POWER COMPANY, CONFEDERATED SALISH AND KOOTENAI TRIBES

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–1119, 000, FIRSTENERGY TRADING & POWER MARKETING, INC.
OTHER#S ER99–3063, 000, FIRSTENERGY TRADING SERVICES, INC.
CAE–2.
DOCKET# ER99–2968, 000, NRG NORTHEAST POWER MARKETING, LLC
OTHER#S ER99–2879, 000, FRONT RANGE ENERGY ASSOCIATES, LLC
ER99–2984, 000, GREEN COUNTRY ENERGY, LLC
ER99–2992, 000, TENASKA GATEWAY PARTNERS, LTD.
ER99–3005, 000, COAST ENERGY GROUP
ER99–3050, 000, LITTLE BAY POWER CORPORATION
ER99–3077, 000, COLORADO POWER PARTNERS
ER99–3086, 000, AMERICAN ATLAS #1, LTD., LLLP
ER99–3098, 000, EGC 1999 HOLDING COMPANY, LP
CAE–3.
DOCKET# ER99–2967, 000, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–4.
DOCKET# ER99–2028, 002, PJM INTERCONNECTION, L.L.C.
CAE–5.
DOCKET# ER99–3025, 000, PUBLIC SERVICE COMPANY OF COLORADO
CAE–6.
DOCKET# ER99–2997, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
CAE–7.
DOCKET# ER99–2792, 000, ARCHER DANIELS MIDLAND
CAE–8.
DOCKET# ER99–3063, 000, FIRSTENERGY TRADING SERVICES, INC.
CAE–9.
DOCKET# ER99–2931, 000, NEW ENGLAND POWER POOL
CAE–10.
DOCKET# ER99–3043, 000, ENTERGY OPERATING COMPANIES
CAE–11.
OMITTED
CAE–12.
DOCKET# OA96–78, 000, DETROIT EDISON COMPANY
CAE–13.
DOCKET# ER98–1057, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER98–1057, 001, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1057, 002, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1058, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1058, 001, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2199, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–4106, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–4107, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER99–189, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER99–294, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–14.
DOCKET# ER96–58, 004, ALLEGHENY POWER SERVICE CORPORATION
OTHER#S ER99–237 003, ALLEGHENY POWER SERVICE CORPORATION
CAE–15.
DOCKET# ER95–1042, 000, SYSTEM ENERGY RESOURCES, INC.
CAE–16.
DOCKET# ER99–2892, 000, NEW ENGLAND POWER POOL
OTHER#S ER99–1142, 005, NEW ENGLAND POWER POOL
CAE–17.
DOCKET# EL99–10, 003, CITY OF LAS CRUCES, NEW MEXICO V. EL PASO ELECTRIC COMPANY
CAE–18.
DOCKET# EC99–1, 001, SIERRA PACIFIC POWER COMPANY AND NEVADA POWER COMPANY
OTHER#S ER99–34, 001, SIERRA PACIFIC POWER COMPANY AND NEVADA POWER COMPANY
CAE–19.
DOCKET# RM87–3, 035, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (KOCH ENERGY TRADING, INC., ET AL.)
OTHER#S RM87–3, 036, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (KOCH ENERGY TRADING, INC., ET AL.)
RM87–3, 037, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (KOCH ENERGY TRADING, INC., ET AL.)
CAE–20.
DOCKET# EL99–15, 001, SITHE NEW ENGLAND HOLDINGS, LLC AND SITHE NEW BOSTON, LLC V. NEW ENGLAND POWER POOL AND ISO NEW ENGLAND, INC.
OTHER#S ER99–913, 001, SITHE NEW ENGLAND HOLDINGS, LLC AND SITHE NEW BOSTON, LLC V. NEW ENGLAND POWER POOL AND ISO NEW ENGLAND, INC.
CAE–21.
DOCKET# EL98–74, 000, SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION V. ENTERGY SERVICES, INC.
OTHER#S ER98–2910, 000, ENTERGY SERVICES, INC.
CAE–22.
DOCKET# ER99–1969, 001, ENTERGY OPERATING COMPANIES
OTHER#S ER99–1986, 001, VIRGINIA ELECTRIC AND POWER COMPANY
ER99–1987, 001, DAYTON POWER AND LIGHT COMPANY
ER99–1998, 001, WESTERN RESOURCES, INC.
ER99–2000, 001, SOUTHERN COMPANIES SERVICES, INC.
ER99–2003, 001, FLORIDA POWER CORPORATION, FLORIDA POWER & LIGHT COMPANY AND TAMPA ELECTRIC COMPANY
ER99–2010, 001, PJM INTERCONNECTION, L.L.C.
ER99–2011, 001, DUKE ENERGY CORPORATION
ER99–2016, 001, SOUTH CAROLINA ELECTRIC & GAS COMPANY
ER99–2035, 001, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY
ER99–2038, 001, SOUTHWEST POWER POOL, INC.
ER99–2040, 001, THE UNITED ILLUMINATING COMPANY
ER99–2075, 001, NORTHERN INDIANA PUBLIC SERVICE COMPANY

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP99–282, 001, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–2.
DOCKET# RP99–335, 000, TRANSWESTERN PIPELINE COMPANY
CAG–3.
DOCKET# RP99–342, 000, EL PASO NATURAL GAS COMPANY
CAG–4.
DOCKET# RP98–361, 002, EQUITRANS, L.P.
CAG–5.
DOCKET# RP99–251, 001, SOUTH GEORGIA NATURAL GAS COMPANY
OTHER#S RP99–253, 001, SOUTHERN NATURAL GAS COMPANY
CAG–6.
DOCKET# RP99–297, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–7.
DOCKET# RP99–334, 000, SOUTHERN NATURAL GAS COMPANY
CAG–8.
DOCKET# RP98–203, 004, NORTHERN NATURAL GAS COMPANY
OTHER#S RP99–31, 001, NORTHERN NATURAL GAS COMPANY
CAG–9.
DOCKET# RP99–111, 001, KOCH GATEWAY PIPELINE COMPANY
CAG–10.
DOCKET# RP93–5, 031, NORTHWEST PIPELINE CORPORATION
OTHER#S RP93–96, 006, NORTHWEST PIPELINE CORPORATION
CAG–11.
DOCKET# RS92–11, 024, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–12.
DOCKET# MG99–15, 000, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–13.
DOCKET# MG99–19, 000, PINE NEEDLE LNG COMPANY, L.L.C.
CAG–14.
DOCKET# MG99–21, 000, MISSISSIPPI CANYON GAS PIPELINE, L.L.C.
CAG–15.
DOCKET# MG99–22, 000, NAUTILUS PIPELINE COMPANY, L.L.C.
CAG–16.
DOCKET# CP99–61, 001, TRISTATE PIPELINE, L.L.C.
OTHER#S CP99–62, 001, TRISTATE PIPELINE, L.L.C.
CP99–63, 001, TRISTATE PIPELINE, L.L.C.
CP99–64, 001, TRISTATE PIPELINE, L.L.C.
CAG–17.
DOCKET# CP99–178, 000, MIDAMERICAN ENERGY COMPANY
CAG–18.
DOCKET# CP99–218, 000, ANR PIPELINE COMPANY
CAG–19.
DOCKET# PR99–4, 002, CONSUMERS ENERGY COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I. PIPELINE RATE MATTERS

PR–1.
RESERVED

II. PIPELINE CERTIFICATE MATTERS

PC–1.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 99–17751 Filed 7–8–99; 11:51 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Proposed Robert D. Willis Power Rate Change

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment period.

SUMMARY: The Administrator, Southwestern, has prepared current and revised 1999 Power Repayment Studies for the Robert D. Willis (Willis) project which show the need for an increase in annual revenues required to meet cost recovery criteria. The increase in the revenues required is the result of an increase in the amount of large maintenance items within the Operations and Maintenance costs estimated by Corps of Engineers. The Administrator has also developed a proposed rate schedule for the isolated Willis project to recover the required revenues. The proposed rate for the Willis project would increase annual revenues approximately 11.5 percent from $302,928 to $337,932 beginning October 1, 1999.

DATES: Southwestern is conducting this 30 day public notice and comment period as prescribed by 10 CFR 903.14(d). The consultation and comment period will begin on the date of publication of this **Federal Register** and will end August 11, 1999. The Public Information Forum will be held (if requested) on July 20, 1999, 1:00 p.m., Central Daylight Time in Southwestern's offices, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

ADDRESSES: Ten copies of any written comments should be submitted to: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, (918) 595–6696, reeves@swpa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, through the Department of Energy Organization Act, P.L. 95–91, dated August 4, 1977, and Southwestern Power Administration's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located in eastern Texas, is not interconnected with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The

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Willis project, located on the Neches River downstream from the Sam Rayburn Dam, consists of two 4,000 kilowatt hydroelectric generating units. It, like the Sam Rayburn Dam project, is marketed as an isolated project under a contract through which the customer, Sam Rayburn Municipal Power Agency (SRMPA), receives the entire output of the project. The SRMPA contract is for a period of 50 years as a result of SRMPA's funding the construction of the hydroelectric facilities at the project. A separate power repayment study is prepared for each project which has a special rate based on its isolated project determination.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a current power repayment study for the Robert D. Willis project using the existing annual rate of $302,928. This Power Repayment Study, like the previous year's, includes estimates for both Southwestern's and the Corps' portions of the unfunded Civil Service Retirement Service and post retirement life/health costs. The study indicated that maintaining the current rate will create a revenue deficit for the project. This is primarily a result of the Corps of Engineers' increase of Large Maintenance items included in the estimated Operations and Maintenance cost for the Willis Project. The Revised Power Repayment Study for the isolated Willis project shows that an increase of $35,004 (a 11.5 percent increase) annually will satisfy repayment criteria. This increase would change annual revenues produced by the Willis Project from $302,928 to $337,932 and satisfy the present financial criteria for repayment of the project.

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Willis project. If you desire a copy of the Repayment Study Data Package for the Willis project, submit your request to the information contact listed above.

A Public Information Forum is scheduled to be held July 20, 1999. The Public Information Forum is to explain to customers and interested parties the proposed rates and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the Forum may be submitted from interested persons and will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except the questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by 4:00 p.m., Central Daylight Time, Thursday, July 15, 1999, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held. A transcript of the Forum will be made. Copies of the transcripts may be obtained, for a fee, directly from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, also for a fee. Written comments on the proposed rates for the project are due on or before August 11, 1999. Written comments should be submitted to the Assistant Administrator as indicated above.

Following review of the oral and written comments, the Administrator will submit the rate proposals and the Power Repayment Studies for the Willis project, in support of the proposed rates, to the Secretary of Energy for confirmation and approval on an interim basis and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 28th day of June, 1999.

Michael A. Deihl,

Administrator.

[FR Doc. 99–17656 Filed 7–9–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6375–7]

Agency Information Collection Activities; National Emission Standards for Benzene Emissions From Coke By-Product Recovery Plants (Subpart L), EPA ICR No. 1080–10, OMB Control No. 2060–0185

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before September 10, 1999.

ADDRESSES: U.S. Environmental Protection Agency, Mail code 2223A, OECA/OC/METD, 401 M. St., S.W., Washington, D.C. 20460. A hard copy of the ICR may be obtained without charge by calling Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1080.10. This information may also be acquired electronically through the Internet Web site at www.epa.gov/fedrgstr.

FOR FURTHER INFORMATION CONTACT: For specific information on the ICR contact Maria Malave at (202) 564–7027 or via E-mail to (MALAVE.MARIA@EPAMAIL.EPA.GOV.), EPA ICR No. 1080–10, OMB No. 2060–0185.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information requirement; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

ICR

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Title: The National Emission Standards for Benzene Emissions from Coke By-Product Recovery Plants (Subpart L), EPA ICR No 1080–10, OMB Control No. 2060–0185; expiration date is July 31, 1999.

Affected Entities: These standards apply to sources at furnace and foundry coke by-product recovery plants that store benzene having a specific gravity within the range of specific gravities specified in ASTM D 836–84 for Industrial Grade Benzene, and ASTM D 835–85 for Refined Benzene-535 and ASTM D 4734–87 for Refined Benzene-545, which are codified as separate subparts under 40 CFR part 61.

Abstract: The National Emissions Standards for Benzene Emissions form Coke By-product Recovery Plants were proposed by EPA on June 6, 1984. Subsequently, the coke by-product recovery plants rule was promulgated September 14, 1989 and amended September 19, 1991. This rule relies on the capture of benzene emissions by installing closed systems, barrier fluid degassing systems, closed-vent systems to a control device, closed purge systems to a control device, seal systems, and by monitoring equipment to repair leaks as soon as practical. It requires that owners or operators of furnace and foundry coke by-product recovery plants to comply with the following monitoring, recordkeeping and reporting requirements:

Monitoring requirements include:

(1) Semiannual inspections and annual maintenance inspections.

(2) Checks for equipment leaks according to test methods and procedures specified in section 61.245.

(3) Monitor organic compound concentration levels that are reasonable indicators of benzene concentration; and

(4) Control equipment operation and maintenance.

Recordkeeping requirements include:

(1) A startup, shutdown, and malfunction plan.

(2) A coke oven emission control work practice plan.

(3) Maintain records of design control device and plan operation and corrective action; compliance test, reference values for monitored parameters, monitoring results and exceedances (alternative control options).

(4) Maintain records according to section 60.246 for equipment leaks.

(5) Records of monitoring and recordings should be maintained for two years.

(6) Records of equipment and process design are kept permanently.

Reporting requirements include:

(1) Submit one-time notifications of:

—Initial compliance certification and election to meet a specific emission limitation:

—Construct a new, brownfield, or padup rebuild by-product coke oven, battery using a new recovery technology;

—Restart a cold-idle battery shutdown prior to November 15, 1990;

—Obtain an exemption from control requirements for bypass/bleeder stacks by committing to permanent closure of a battery or using an equivalent alternative control system for the stacks; and

—Obtain an alternative standard for coke oven doors on a battery equipped with a shed.

(2) Semiannual compliance certifications.

(3) Report for the venting of coke oven gas other than through a flare system.

(4) Semiannual reports of exceedances of an applicable visible emission limitation for a regulated emission point.

(5) Quarterly reports of excess emissions (for alternative control options)

(6) Performance tests.

(7) Reporting requirements of an owner or operator of any piece of equipment subject to subpart V.

Records and reports are necessary to enable the Administrator to identify new, modified, or reconstructed sources to ensure that the emission limitations, work practice requirements, and other provisions of the national emission standards are being implemented and achieved.

Based on recorded and reported information, EPA and states can identify compliance problems and what records or processes should be inspected at the plant. The records the plants maintain help indicate whether plants are in compliance with the standard, reveal misunderstanding about how the standard is to be implemented, and indicate to EPA whether plant personnel are operating and maintaining their process equipment properly. Specifically, the information and data will be used by EPA and states to monitor fugitive benzene emissions, and to ensure effective operation of a vapor-collection system and control device, thus ensuring continuous compliance.

Reporting and recordkeeping requirements on the part of the respondent are mandatory, under sections 112 and 114 of the Clean Air Act as amended. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Industry Burden Statement

In the previously approved ICR, the total annual hours were estimated to be 7,083 and the recordkeeping and reporting burden was estimated to average 196.8 hours per respondent per year. The total annual cost was estimated to average $339,984 based on 36 respondents. Costs were based on an hourly rate of $22.86 plus 110% overhead costs which equals $48.00. There were no capital and start-up cost, or operation and maintenance cost documented since no new sources were estimated to become subject to these standards.

The following activities were considered in calculating the respondent burden: annual maintenance inspection; Method 21 performance evaluations; notifications and written reports required; and information gathering and recording. This analysis presents a highest cost scenario by assuming that all plants are complying with the leak detection and repair program for fugitive emissions, which require more stringent recordkeeping and reporting than the alternative options. This burden estimate considered the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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Dated: June 30, 1999.

Mamie R. Miller,

Acting Director, Manufacturing, Energy and Transportation Division, Office of Compliance.

[FR Doc. 99–17631 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6375–9]

Underground Injection Control Program, Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; ASARCO, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on injection well no migration petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to ASARCO, Inc., (ASARCO) for three Class I injection wells located at Amarillo, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by ASARCO, of the specific restricted hazardous wastes identified in the exemption, into three Class I hazardous waste injection wells (WDW–129, WDW–273 and WDW–324) at the Amarillo, Texas facility, until July 1, 2009, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued April 26, 1999. The public comment period closed on June 10, 1999. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 2, 1999.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

Shirley Bruce,

Acting Director, Water Quality Protection Division.

[FR Doc. 99–17632 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00613; FRL–6091–7]

Pesticide Program Dialogue Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act [Public Law 92–463], EPA's Office of Pesticide Programs (OPP) is giving notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC).

DATES: The meeting will be held on Wednesday, July 21, 1999 from 9:00 a.m. to 5:30 p.m. and Thursday, July 22, 1999 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the: Ramada Plaza Old Town, 901 N. Fairfax Street, Alexandria, VA; telephone number (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Terria Northern, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, (Rm. 1119), Arlington, VA 22202. Office telephone number; (703) 305–7090; Internet address: Fehrenbach.Margie@epamail.epa.gov or Northern.Terria@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The PPDC is composed of a balanced group of participants from the following sectors: pesticide industry and user groups; federal agencies and state governments; consumer and environmental/public interest groups, including representatives from the general public; academia; and the public health community. The Committee was formed to foster communication and understanding among the parties represented on the Committee and with OPP, and to provide advice and guidance to the Agency regarding pesticide regulatory, policy, and implementation issues.

PPDC meetings are open to the public. Outside statements by observers are welcome. Oral statements will be limited to three to five minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement can do so before or after a Committee meeting. These statements will become part of the permanent file and will be provided to the Committee members for their information. Materials will be available for public review at the following address: U.S. Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

An agenda and background information are being developed and will be posted on the Agency's website, July 16, 1999 at: WWW.EPA.GOV/PESTICIDES. To date, topics planned for discussion at the July 21–22, 1999 meeting will include: Registration priority setting and status of resources; pesticide tolerance issues; the Pesticide Environmental Stewardship Program; worker risk assessments; and updates on several other topics, including FQPA science policies, section 18 Regulations, the Tolerance Fee Rule, and PPDC work group activities.

List of Subjects

Environmental protection.

Dated: July 6, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–17765 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6376–1]

A & D Barrel & Drum Superfund Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United State Environmental Protection Agency (EPA) proposes to enter into a cost recovery settlement pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h). The administrative settlement will resolve the settling party's liability for past response cost incurred by EPA at the A & D Barrel & Drum Superfund Site located in Atlanta, Fulton County, Georgia.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement is available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: June 25, 1999.

Franklin E. Hill

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 19–17630 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Wednesday, July 14, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, July 14, 1999, which is scheduled to commence at 9:30 a.m. in Room C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	COMMON CARRIER	TITLE: 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171). SUMMARY: The Commission will consider a Report and Order that would simplify reporting requirements for contributors to the numbering administration, local number portability, Telecommunications Relay Services, and universal service support mechanisms.
2	COMMON CARRIER XL	TITLE: Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that commences Phase I of a comprehensive review of its accounting and reporting requirements.
3	WIRELESS TELECOMMUNICATIONS.	TITLE: Amendment of the Commission's Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands (ET Docket No. 95–183, RM–8553); and Implementations of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz 38.6–40.0 GHz Bands (PP Docket No. 93–253). SUMMARY: The Commission will consider a Memorandum Opinion and Order addressing petitions for reconsideration regarding licensing and service rules in the 39 GHz service.
4	OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking to allocate spectrum on a primary basis for medical telemetry equipment, and to establish rules for a new wireless medical telemetry service.
5	OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Closed Captioning Requirements for Digital Television Receivers. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking proposing standards for the reception and display of closed captioning information on digital television (DTV) receivers.
6	OFFICE OF ENGINEERING AND TECHNOLOGY AND COMMON CARRIER.	TITLE: Implementation of Sections 225 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; and Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities (WT Docket No. 96–198). SUMMARY: The Commission will consider a Report and Order concerning access to telecommunications services, telecommunications equipment, and customer premises equipment by persons with disabilities.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection on a delayed basis. The meeting will be aired at approximately 1 pm on July 14, 1999. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100 voice/relay. The meeting will be captioned and will be carried live on the Internet through RealAudio from the FCC website at: http://www.fcc.gov/realaudio. The meeting will be captioned on the Internet at: http://www.lexicast.com. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 voice/relay or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100 voice/relay; fax (703) 834–0111.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 99–17819 Filed 7–8–99; 3:33 pm]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Election Administration Advisory Panel: Renewal of Charter

AGENCY: Federal Election Commission.

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ACTION: Notice of Election Administration Advisory Panel Advisory Panel Charter Renewal.

SUMMARY: The Office of Election Administration announces the renewal of the charter for the Election Administration Advisory Panel. The purpose of the Panel is to provide advice and consultation to the Election Administration with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Karen Koyne, Office of Election Administration, 999 E Street, NW, Washington, DC 20463, Telephone: (202) 694–1095; Toll Free (800) 424–9530.

Dated: July 6, 1999.

William Kimberling,

Deputy Director, Office of Election Administration.

[FR Doc. 99–17529 Filed 7–9–99; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1276–DR]

Colorado; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado, (FEMA–1276–DR), dated May 17, 1999, and related determinations.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident type for this disaster has been expanded to include landslides and mudslides.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–17608 Filed 7–9–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1279–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1279–DR), dated June 8, 1999, and related determinations.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 8, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms, flooding, snow and ice, ground saturation, landslides, mudslides, and tornadoes beginning on March 1, 1999 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lesli A Rucker of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

The counties of Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Emmons, Foster, Grand Forks, Griggs, Kidder, LaMoure, Logan, McHenry, McIntosh, McLean, Mountrail, Nelson, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Steele, Stutsman, Towner, Traill, Walsh, Ward, and Wells, and the Indian Reservations of the Spirit Lake Tribe, Three Affiliated Tribes, and Turtle Mountain Band of Chippewa for Individual Assistance and Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–17609 Filed 7–9–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1280–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1280–DR), dated June 9, 1999, and related determinations.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 9, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, tornadoes, and flooding, on June 4, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act, as authorized by Executive Order 12148, as amended.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter J. Bakersky of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

The Pine Ridge Indian Reservation and Shannon County for Individual Assistance and Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–17610 Filed 7–9–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Lehigh Acres First National Bancshares, Inc., Lehigh Acres, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Lehigh Acres First National Bank, Lehigh Acres, Florida, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire 100 percent of the voting shares of Farmers State Bancshares of Andrew County, Inc., Savannah, Missouri, and thereby indirectly acquire Farmers State Bank of Northern Missouri, Savannah, Missouri.

2. Summersville Bancorporation, Inc., Summersville, Missouri; to become a bank holding company by acquiring at least 87.77 percent of the voting shares of First National Bank, Summersville, Missouri.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Greater Bay Bancorp, Palo Alto, California; to acquire 100 percent of the voting shares of Bay Commercial Services, San Leandro, California, and thereby indirectly acquire Bay Bank of Commerce, San Leandro, California.

Board of Governors of the Federal Reserve System, July 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17525 Filed 7–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager

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of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Southwest Partners, Des Moines, Iowa; to engage *de novo* through their subsidiary, Gold Coast Mortgage, San Diego, California, in a joint venture with Werner & Simmons Real Estate, Inc., San Diego, California, and RAS Financial Services, Inc. Pases Verdes, California, in making, acquiring, brokering and servicing loans or other extensions of credit, including residential mortgage loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17526 Filed 7–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 18, 1999.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 18, 1999.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests continued vigorous expansion in economic activity. Nonfarm payroll employment moderated on balance over March and April, and the civilian unemployment rate in April matched its first-quarter average. Total industrial production increased substantially in March and April. Total retail sales edged up in April after recording large gains earlier in the year. Housing starts fell in April. Available indicators suggest that growth of business capital spending has remained relatively rapid. The nominal deficit on U.S. trade in goods and services widened substantially in January and February from its fourth-quarter average. Consumer prices rose substantially in April, boosted by a sharp increase in energy prices; labor costs have remained quiescent thus far this year despite very tight labor markets.

Interest rates on Treasury securities have arisen appreciably since the meeting on March 30, 1999, with the largest increases concentrated in intermediate- and long-term maturities; rates on private obligations show mixed changes over the period. Most key measures of share prices in equity markets have registered sizable gains over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar has depreciated somewhat over the period in relation to the currencies of a broad group of important U.S. trading partners.

M2 and M3 recorded sizable increases in April, apparently owing to a tax-related buildup in liquid accounts. For the year through April, M2 is estimated to have increased at a rate somewhat above the Committee's annual range and M3 at a rate slightly above its range. Total domestic nonfinancial debt has continued to expand at a pace somewhat above the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The range for growth of total domestic nonfinancial debt was set at 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

To promote the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 4-3/4 percent. In view of the evidence currently available, the Committee believes that prospective developments are more likely to warrant an increase than a decrease in the federal funds rate operating objective during the intermeeting period.

By order of the Federal Open Market Committee, July 6, 1999.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 99–17607 Filed 7–9–99; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 18, 1999, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 noon, Friday, July 16, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17820 Filed 7–8–99; 3:41 pm]

BILLING CODE 6210–01–M

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request: Proposed Moderately Revised SF 278 Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit a proposed moderately revised version of the Standard Form (SF) 278 which it sponsors under its existing executive branch public financial disclosure regulations for review and three-year approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The future revised edition of the form will replace the editions currently in use.

DATES: Comments on this proposed extension should be received by September 27, 1999.

ADDRESSES: Comments should be sent to William E. Gressman, Senior Associate General Counsel, or Michael J. Lewandowski, Records Management Officer, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov (for E-mail messages, the subject line should include the following reference—"SF 278 paperwork comment").

FOR FURTHER INFORMATION CONTACT: Mr. Gressman or Mr. Lewandowski at the Office of Government Ethics; telephone: 202–208–8000, extensions 1110 or 1185; TDD: 202–208–8025; FAX: 202–208–8037. A mark-up copy of the SF 278 form as proposed for revision may be obtained, without charge, by contacting either Mr. Gressman or Mr. Lewandowski.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period (with any modifications that may appear warranted), a proposed moderately revised version of the SF 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209–0001) for a three-year approval (extension) by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Most of the proposed changes result from OGE's own experience and review for updating, though some come from agency suggestions received from time to time. Moreover, upon consideration, OGE has decided to retain the same basic form design and to keep the Public Financial Disclosure Report as a standard form. As part of that consideration, OGE has reviewed the form and determined that it clearly and plainly, to the extent feasible, explains the reporting requirements of the rather complex financial disclosure provisions of the Ethics in Government Act (the Ethics Act), 5 U.S.C. appendix, and OGE's implementing executive branchwide regulations at 5 CFR part 2634. The current paperwork approval for the SF 278 is scheduled to expire at the end of September 1999. Since modifications to the standard form are being proposed, OGE will also seek General Services Administration (GSA) clearance for the modified form once OMB paperwork approval for it is received. The original printed forms of the new edition will be stocked through GSA (see below) and will have a yellow or green background shading to help distinguish them from the current edition forms they will replace.

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), is the sponsoring agency for the Standard Form 278, the most recent edition of which is that of June 1994. The prior January 1991 edition has also remained usable until supplies are exhausted. The forthcoming new 1999 edition of the SF 278 report form will replace those prior editions. In accordance with section 102 of the Ethics in Government Act, 5 U.S.C. appendix, section 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The financial information collected under the statute and regulations relates to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions.

The SF 278 is completed by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation. This group of nominee reports forms, together with those of terminees from such positions who may file after leaving the Government, forms the basis for OGE's paperwork estimates in this notice. In light of OGE's experience over the past three years (1996–1998), the estimate of the total number, on average, of such nominees' SF 278 forms expected to be filed annually at OGE by members of the public (as opposed to current Federal employees), is being somewhat reduced to 260. This estimated number is based primarily on the forms processed at OGE by private citizen Presidential nominees to positions subject to Senate confirmation (and their private representatives—lawyers, accountants, brokers and bankers) and those who file termination reports from such positions after their Government service ends, as well as Presidential and Vice Presidential candidates who are private citizens. The OGE estimate covers the next three years, 1999–2001, including a significant increase in reports anticipated with the fall 2000 Presidential election and following transition. The prior paperwork burden estimate was 280 forms per year. The estimated average amount of time to complete the report form, including review of the instructions and gathering of needed information, remains the same at three hours. Thus, the overall estimated annual public burden for the SF 278 for the private citizen/representative nominee and terminee report forms processed at the Office of Government Ethics is being reduced to 780 (from 840) hours. Moreover, OGE estimates, based on the agency ethics program questionnaire responses for 1996–1998, that some 21,500 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. Most of those executive branch filers are current Federal employees at the time they file, but certain candidates for President and Vice President, nominees, new entrants and terminees complete the form either before or after their Government service. The percentage of private citizen filers branchwide is estimated at no more than 5% to 10%, or some 1,050 to 2,100 per year at most.

Among the new modifications proposed to the SF 278 is the incorporation into the form of certain changes in the reporting law as regards higher-category (over $1,000,000) assets, income and liabilities. To date, OGE has asked executive branch departments and agencies in a series of DAEOgrams over the years to so notify filers. Moreover, OGE has now determined, for the first time, that transactions are included in the higher-category reporting requirement; that new inclusion will only affect future reports once the proposed modified form receives its final paperwork approval and is made available by OGE and GSA. As noted in the mark-up copy of the SF 278 as proposed for revision available from OGE (see the **FOR FURTHER INFORMATION CONTACT** section above), these higher categories for items of filers (including items jointly held with a spouse or dependent children) will be specified in new notes proposed on page 11 of the form instructions as well as on Schedules A, B and C of the report. The new higher categories, and the letter codes representing them that would be indicated, are for assets, transactions and liabilities: $1,000,001 to $5,000,000—A; $5,000,001 to $25,000,000—B; $25,000,001 to $50,000,000—C; and over $50,000,000—D. For income, the new higher

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categories and letter codes are: $1,000,001 to $5,000,000—a; and over $5,000,000—b. For any such items solely held by a spouse or dependent children, only the traditional "over $1,000,000" column would need to be checked. In addition, OGE proposes to include on page 5 of the form instructions a notice of a similar modification as to reportable trust interests for those filers who have qualified blind trusts. In such instances, OGE advises concerned filers and their agencies of the application of this provision, which does not apply to trusts executed prior to July 24, 1995, that preclude the beneficiary from receiving information on the total cash value of any such trust interest. See sections 20 and 22 of the Lobbying Disclosure Act of 1995, Pub. L. 104–65, which amended section 102(a)(1)(B), (d)(1) and (e)(1) and added new section 102(a)(8) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(1)(B), (a)(8), (d)(1) and (e)(1).

Moreover, OGE is proposing to include an adjustment of the gifts/travel reimbursements reporting thresholds for the SF 278 that needs to be made since GSA recently raised "minimal value" to $260 or less for the three-year period 1999–2001 (from the prior level of $245 or less) under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. See 64 FR 13700–13701 (March 22, 1999), revising the GSA foreign gifts regulation at 41 CFR 101–49.001–5. Because the foreign gifts "minimal value" is now over $250, the Ethics Act financial disclosure gifts/reimbursements reporting thresholds, at 5 U.S.C. appendix, section 102(a)(2)(A) and (B), which are pegged to any such increase are being adjusted to "more than $260" for the aggregation level of reporting and "$104 or less" for gifts and reimbursements which do not have to be counted in the aggregate threshold. In a forthcoming rulemaking, OGE will revise those reporting thresholds as found at 5 CFR 2634.304(a), (b) and (d). Since OGE expects that GSA will adjust "minimal value" every three years, the ethics reporting thresholds for gifts and reimbursements will now likely have to be adjusted every three years as well (as coordinated with paperwork renewals, as nearly as possible).

Moreover, as noted on the mark-up copy of the form as proposed to be revised, OGE proposes in the future to adjust the referenced civil monetary penalty, on page 11 of the instructions, for prohibited uses of an SF 278 report to which access has been gained. The penalty under section 104(a) of the Ethics Act, 5 U.S.C. appendix, section 104(a), will be raised from $10,000 to $11,000 once OGE and the Department of Justice issue their respective inflation adjustment rulemakings under the 1996 Debt Collection Improvement Act revisions to the 1990 Federal Civil Penalties Inflation Adjustment Act, at 28 U.S.C. 2461 note. The OGE rulemaking will, in pertinent part, revise 5 CFR 2634.703 of the executive branchwide financial disclosure regulation. The Office of Government Ethics will request permission from OMB to revise the SF 278 reference once the inflation adjustment takes effect without further paperwork clearance, even if that adjustment occurs after the paperwork reclearance of the moderately revised form (with notice and distribution to the agencies and OMB at that time). In addition, any periodic future adjustments to that civil monetary penalty pursuant to further rulemakings by OGE and the Justice Department (every three years or so) under the inflation adjustment law will also be reflected in future editions of the SF 278.

Also on page 11 of the instructions, OGE would parenthetically reference the extra time grantable pursuant to a filing extension—up to 45 days by the filer's agency and up to an additional 45 days by OGE. See 5 U.S.C. appendix, section 101(g)(1) of the Ethics Act and 5 C.F.R. 2634.201(f) of OGE's regulations thereunder. In addition, OGE is adding a new check-off box in the reviewing officials comments box on the bottom of the front page of the SF 278 report form itself to show whether any filing extension has been granted and, if so, the number of days.

Another important change OGE is proposing is the addition of a new continuation page for part I of Schedule B on transactions. In OGE's experience, many filers need more than the five spaces currently provided in that part to indicate their reportable purchases, sales and transactions. The new continuation page would add sixteen more spaces for such entries, and duplicates of that page would allow for any further entries needed.

Various other, minor changes are being proposed. The Office of Government Ethics would include in the Schedule A (assets and income), Block C column for indicating the type of "other" income a new cross-reference to the additional column calling for the actual amount of any such income. In Block A of Schedule A, OGE would add reference to the requirement for reporting the source, but not the amount, of any earned income of a spouse over $1,000 (over $200 for honoraria). Further, OGE proposes to add a clarification that no earned income of dependent children need be reported. Also in Block A, OGE would include a new reminder that any reportable income received from assets prior to sale or exchange should be shown. The Office of Government Ethics proposes to provide a corresponding cross-reference reminder in Part I of Schedule B (transactions), together with a note that any remaining asset value also needs to be shown on Schedule A (none or less than $1.001 if a total sale or exchange). New Sentences in Part II of Schedule C (agreements or arrangements) and Part I of Schedule D (outside positions) would remind incumbent filers that the reporting period for those items is the preceding calendar year *and* the filing year up to the date of filing. In addition, OGE proposes to add a further reminder to Part II of Schedule C to the effect that any reportable financial arrangement also needs to be shown on Schedule A. Moreover, a new indication would be added on page 5 of the instructions of the general requirement to show on the form any reportable interests in a trust as to which the filer serves as trustee.

Another revision that OGE proposes would add express mention, in the public burden information notice on page 11 of the instructions, of a statement pursuant to the 1995 amendments to the paperwork law to the effect that "an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number," together with a parenthetical mention that such number is displayed in the upper right-hand corner of the front page of the form. In that notice, OGE also proposes to drop the reference to OMB as a further point of contact for information collection comments on the SF 278. Pursuant to current procedures, OGE will be indicated from now on as the sole contact point for such comments on the form, on which OGE will coordinate with OMB if necessary. Furthermore, OGE proposes to slightly modify the wording regarding the sixth numbered routine use under the Privacy Act statement (also on page 11 of the instructions). The modified wording will reflect the application to *pending* judicial or administrative proceedings of the underlying routine use h. in the OGE/GOVT–1 executive branchwide system of records. See 55 FR 6327–6331 (February 22, 1990).

Finally, various minor proposed style, format and updating changes to certain parts of the instructions and the report form are proposed, including indication of the new 1999 edition date.

Once finally cleared by OMB and GSA and printed by the Government Printing Office, the paper original of the new 1999 edition of the SF 278 report form will be stocked and available for purchase by departments and agencies nationwide from the GSA Federal Supply Service Customer Service Centers.

In addition, OGE already has placed on its Internet Web site (Uniform Resource Locator (URL) address: *http://www.usoge.gov)* a viewable and downloadable Portable Document Format (PDF) version of the current 6/94 edition of the SF 278 and is also working on a fillable version of the 6/94 edition. A fillable version of the SF 278 is available from GSA's Web site electronic library of standard and optional forms (URL address: *http://www.gsa.gov/forms/)*. Moreover, OGE will develop both PDF and fillable versions of the new 1999 edition of the SF 278 once it is finally cleared and issued later this year. Those electronic versions of the SF 278 form have been and will continue to be made available free-of-charge to executive branch departments and agencies and their employees. In addition, the forthcoming 1999 edition of the form will be included in future editions of The Ethics CD–ROM. Departments and agencies can also electronically duplicate the SF 278 without standard form exception clearance, provided that the duplication precisely parallels the original paper form to the extent technically feasible, producing a "mirror image" print-out thereof.

Furthermore, OGE is considering the paperwork and technical issues relating to development of so-called "smart" electronic forms, including the SF 278, which employ a question and answer format to elicit information on reportable interests and funnel the responses onto the various schedules of the report forms. Various agencies including OGE are interested in this area, and OGE is reviewing the executive branchwide aspects of these initiatives.

For now, OGE notes that even with all of these electronic initiatives, the SF 278 reports, once completed by individual filers, will still need to be printed out and signed manually. Electronic filing is not authorized at the present time for SF 278 reports. However, OGE is monitoring developments under the Government Paperwork Elimination Act and the draft OMB guidelines, under which appropriate electronic availability and filing of various Government forms will generally be phased in by 2003.

Public comment is invited on each aspect of the proposed moderately revised SF 278 Public Financial Disclosure Report as set forth in this notice, including specifically views on the need for and practical utility of this collection of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Any comments received in response to this notice will be summarized for, and may be included with, OGE's request for extension of OMB paperwork approval for this information collection. Comments will also become a matter of public record.

Approved: July 6, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 99–17528 Filed 7–9–99; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement 13655.892]

Fiscal Year 1999 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging (AoA), HHS.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act (Act), title VI, Grants for Native Americans, part B—Native Hawaiian Program.

SUMMARY: The AoA will accept applications for funding in fiscal year 1999 under the Act, title VI, Grants for Native Americans, part B—Native Hawaiian Program. The deadline date for the submission of applications is September 10, 1999. Public and/or nonprofit private organizations having the capacity to provide services for Native Hawaiians are eligible for assistance under title VI, part B, if the organization will serve at least 50 Native Hawaiian individuals who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive services and nutrition services. For the purposes of title VI, part B, the term "Native Hawaiian" means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, M. Yvonne Jackson, Director, Office for American Indian, Alaskan Native and Native Hawaiian Programs, 330 Independence Avenue, S.W., Room 4743, Washington, DC 20201, telephone: (202) 619–2713.

Dated: July 7, 1999.

Diane Justice,

Deputy Assistant Secretary for Aging.

[FR Doc. 99–17653 Filed 7–9–99; 8:45 am]

BILLING CODE 4130–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–99–2]

Fiscal Year 1999 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to establish, or expand and improve, Statewide Senior Legal Hotlines whose purpose is to advance the quality and accessibility of the legal assistance provided to older people.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for four (4) to five (5) projects that establish, or expand and improve, Statewide Senior Legal Hotlines aimed at advancing the quality and accessibility of the legal assistance provided to older people.

The deadline date for the submission of applications is August 26, 1999. Eligibility for grant awards is limited to public and/or nonprofit agencies, organizations, and institutions experienced in providing legal assistance to older persons.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, S.W., Room 4264, Washington, DC 20201, or by calling 202/619–2987.

Dated: July 7, 1999.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 99–17654 Filed 7–9–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00011]

Emerging Infections Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to support the national network of Emerging Infections Programs (EIP). This program will assist in local, State, and national efforts to conduct surveillance and applied epidemiologic and laboratory research in emerging infectious diseases and to pilot and evaluate prevention measures. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases.

The purpose of the program is to assist State health departments to support established EIPs (California, Connecticut, Georgia, Maryland, Minnesota, New York, Oregon, and Tennessee) or to develop new EIPs as part of the national network. EIPs will be population-based centers designed to assess the public health impact of emerging infections and to evaluate methods for their prevention and control. The EIP network has developed these guiding principles:

1. The EIP network aims to be a national resource for surveillance, prevention, and control of emerging infectious diseases. EIP activities are intended to go beyond the routine functions of health departments in ways that allow important public health questions to be answered.
2. EIP activities address important issues in infectious diseases and are selected with regard to what is appropriate, in particular, for the EIP network.
3. The EIP network maintains sufficient flexibility for emergency response and to address new problems as they arise.
4. Training is a key function of the EIPs.
5. The EIP network develops and evaluates public health practices and transfers what is learned to the public health community.
6. The EIP network gives high priority to activities that lead directly to prevention of disease.

Activities of the EIPs fall into the general categories of: (1) Active surveillance; (2) applied epidemiologic and applied laboratory research; and (3) implementation and evaluation of pilot prevention/intervention projects.

The EIPs will maintain sufficient flexibility to accommodate changes in projects as required by the emergence of public health infectious disease problems. EIPs will be strategically located to serve a variety of geographical areas and diverse groups of people. They may enlist the participation of local health departments, academic institutions, and other public and private organizations with an interest in addressing public health issues relating to emerging infectious diseases, and will seek support from sources, in addition to CDC, to operate the EIP. EIPs will work as part of a collaborative network.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In addition, official public health agencies of city governments with jurisdictional populations greater than 2,500,000 (based on 1990 census data) or county governments with jurisdictional populations greater than 8,000,000 (based on 1990 census data) are eligible to apply. Specifically, the three eligible local jurisdictions are New York City; Los Angeles County, California; and Chicago.

C. Availability of Funds

Approximately $9,000,000 is available in FY 2000 to fund up to eight awards. Although only eight awards are expected at this time, CDC may make additional awards to approved applications received and evaluated under this announcement. It is expected that the awards will range from approximately $500,000 (for a new award) to approximately $1,200,000 (for a competing continuation) depending on the activities funded per site. This amount is for both direct and indirect costs. It is expected that the awards will begin on or about December 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and the availability of funds.

Note: Per instructions in Evaluation Criteria section below, the application should include proposals for the core activities and at least one optional project. CDC will fund core and optional projects based on the application and availability of resources.

Funding Preferences

To achieve appropriate geographic representation in the EIP network, funding preference may be given to approved applications that would enhance the geographic diversity of the network.

Funding preference may be given to competing continuation applications over applications for programs not already receiving support under the EIP cooperative agreement.

D. Program Requirements

Recipient Activities

1. Establish and operate an EIP to further local, State, and national efforts to address emerging infectious diseases:
   a. Establish the EIP in a defined population, which could include either an entire State or a geographically defined area (or areas) within a State. To accomplish the objectives of certain EIP activities, a minimum population base of approximately 1,500,000 may be necessary.
   b. Organize the EIP so that it will have the capacity to conduct multiple concurrent projects.
   c. Organize the EIP so that it will maintain the ability to accommodate changes in specific activities and priorities as the public health system's need for information changes or new health problems emerge.
   d. Operate the EIP so that it can function effectively as part of a national network of EIPs. Collaborate with CDC and other EIP sites, through the EIP steering group and other EIP working groups, to establish priorities, to coordinate and monitor projects, and to assure that important emerging infections issues are well addressed.
2. Work to obtain technical and financial assistance to complement the basic assistance obtained from CDC.
3. Develop the EIP as a partnership between the health department and other public and private organizations that have an interest in addressing public health issues relating to emerging infectious diseases (e.g., local public health agencies, schools of public health, university medical schools, health care providers, infection control practitioners, clinical laboratories, community-based organizations, other Federal and State government agencies, research organizations, medical institutions, foundations, etc.).
4. Conduct emerging infections activities in collaboration with appropriate partner organizations. Collaborate with other EIPs, as appropriate, to develop and conduct EIP activities.
   a. Categories of EIP activities. Activities of the EIPs fall into three categories:
   (1) Active population-based surveillance projects. These may include collection and submission of disease-causing infectious agents to State, CDC, or other laboratories. For example, the surveillance case definition for the condition might involve detection of a positive culture or a drug resistant isolate in a microbiology laboratory, a serologic test result, a histopathologic finding, or a clinical syndrome, depending upon the disease or condition under surveillance; the specific approach to surveillance could also vary depending on the disease or condition under surveillance. Surveillance should be comprehensive (e.g., may include audits to assure complete reporting) with active case-finding.
   (2) Applied epidemiologic and applied laboratory projects. Examples of potential projects include: evaluation of illnesses often not specifically diagnosed for which information about trends and etiology are important (e.g., diarrhea, encephalitis); evaluation of clinical outcomes or risk factors for drug resistant infections; and evaluation of the efficacy of upcoming pneumococcal and meningococcal conjugate vaccines.
   (3) Implementation and evaluation of pilot prevention/intervention projects for emerging infectious diseases. Examples might include assessment of efforts to promote safe food preparation in the home, evaluation of impact of hand-washing promotion on infectious diseases in child-care facilities, or evaluation of antibiotic prescribing practices in out-patient settings.
   b. Specific EIP activities.
   In the application, propose the core activities and at least one optional activity. (Note: Approximately 80–90% of resources will go for core and multisite activities.) See Appendix for details about activities. Applicants are encouraged to consult with CDC programs in planning their proposed activities. Core Activities (propose all):
   (1) Active Bacterial Core surveillance (ABCs) and related activities.
   (2) Active population-based laboratory surveillance for foodborne diseases and related activities (FoodNet).
   (3) Unexplained Deaths and Critical Illnesses Project, OR Active surveillance for syndromes of possibly infectious etiology (e.g., encephalitis, fulminant hepatitis).

Optional (applicant may propose activities from the list below or other projects of local interest or concern that are in keeping with the guiding principles of the EIP network):

(1) Sentinel Surveillance for chronic liver disease.

(2) Sentinel Counties Study for Acute Viral Hepatitis.

(3) Population-based laboratory surveillance for invasive disease caused by community acquired methicillin-resistant Staphylococcus aureus.

(4) Surveillance of antimicrobial-resistant isolates from clinical microbiology laboratories by aggregating cumulative susceptibility data, i.e., antibiograms and correlation with antimicrobial usage practices.

(5) Facilitating electronic reporting from clinical laboratories to public health (Electronic Laboratory-based Reporting, ELR).

(6) Enhanced case ascertainment for culture negative meningococcal disease.

(7) Active laboratory-based surveillance for Bordetella pertussis.

5. As a part of certain EIP projects, provide specimens such as disease-causing isolates or serum specimens to appropriate organizations (which may include, but is not limited to, CDC) for laboratory evaluation (e.g., molecular epidemiologic studies, evaluation of diagnostic tools).

6. Manage, analyze, and interpret data from EIP projects, and publish and disseminate important public health information stemming from EIP projects in collaboration with CDC and the EIP network.

7. Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program.

8. Incorporate training activities as an important component of the EIP. Training activities may take one or more of these forms:

(1) Providing training opportunities for persons in professional training, such as infectious disease fellows, laboratory fellows, public health students.

(2) Providing training for partner organizations within the EIP area, such as infection control practitioners or local health department personnel.

(3) Acting as a resource for states that are not participating in the EIP network, for example by providing information, training, or recommendations about emerging public health issues and evolving public health practices.

9. If a proposed project involves research on human participants, ensure appropriate IRB review.

CDC Activities

1. Provide general coordination for the EIP network.
2. Provide consultation, scientific and technical assistance in the operation of the EIP and in designing and conducting individual EIP projects.
3. Participate in analysis and interpretation of data from EIP projects. Participate in the dissemination of findings and information stemming from EIP projects.
4. Assist in monitoring and evaluating scientific and operational accomplishments of the EIP and progress in achieving the purpose and overall goals of this program.
5. If needed, perform laboratory evaluation of specimens or isolates (e.g., molecular epidemiologic studies, evaluation of diagnostic tools) obtained in EIP projects and integrate results with other data from EIP projects.
6. If during the project period research involving human subjects should be conducted and CDC scientists will be co-investigators in that research, assist in the development of a research protocol for IRB review by all institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on, at least, an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements and Evaluation Criteria sections to develop the application. Applications will be evaluated on the criteria listed, so it is important to follow them in preparing your program plan.

Applications should address the following topics in the order presented:

1. Understanding the objectives of the EIP
2. Description of the population base for the EIP
3. Description of existing capacity to assess, control, and prevent emerging infectious diseases
4. Operational plan
5. Evaluation plan
6. Budget

Applicants should propose the core activities and at least one optional activity. Optional activities may be chosen from the list provided or initiated by the applicant based on local interest, concern, or expertise that are in keeping with the guiding principles of the EIP. Each activity proposal, including both core and optional activities, should be clearly identified in a distinct portion of the Operational Plan and should not exceed 3 pages. Although the activities described below

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address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity, or supplies and equipment are shared.

Page Limitations

The application narrative (excluding budget, budget narrative, appendices, and required forms) must not exceed 25 single-spaced pages, printed on one side, with one inch margins, and a font size no smaller than 10. The following information should be presented in appendices: Letters of support, documentation of bona fide agent status, curricula vitaes, and budget. In addition, documentation of relevant accomplishments, such as abstracts, manuscripts, or bibliographies may be included in appendices. Materials or information that should be included in the narrative will not be reviewed if placed in the appendices.

Budget Instructions

For each line-item (as identified on the Form 424a of the application), show both Federal and non-Federal (e.g., State funding) shares of total cost for the EIP. For each staff member listed under the Personnel line item, indicate their specific responsibilities relative to each of the proposed projects. All other line-items should also be clearly justified. In addition to the budget justification, provide an estimate of the budget for each separate activity or project (e.g., FoodNet, ABCs, etc.).

Bona Fide Agent Status

If applicant is an agent of a State public health agency and not a State public health agency itself, documentation that applicant is acting as a bona fide agent of a State public health agency should be provided in an appendix. Applicants acting as bona fide agents of a State public health agency are strongly encouraged to consult with CDC's Grants Management Specialist (identified in Section J below) prior to submitting the application for guidance regarding what constitutes acceptable documentation.

F. Submission and Deadline

Notice of Intent To Apply

In order to assist CDC in planning and executing the evaluation of applications submitted under this announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so at least thirty (30) days prior to the application due date. Notification should include: (1) Name and address of institution, and (2) name, address, and telephone number of contact person. Notification should be provided by facsimile, postal mail, or E-mail, to: Catherine Spruill, National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–12, Atlanta, GA 30333, E-mail address cas5@cdc.gov. Facsimile (404) 639–4197.

Application Submission and Deadline

Submit the original and two copies of PHS.5161–1 (OMB Number 0937–0189). Forms are provided in the application kit. On or before September 1, 1999, submit the application to: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00011, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Your application should address each section in the order presented below:

1. Understanding the objectives of the EIP (5 points)

a. Demonstration of a clear understanding of the background and objectives of this cooperative agreement program.

b. Demonstration of a clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the EIP.

c. Demonstration of a clear understanding of the roles and responsibilities of participation in the EIP network.

2. Description of the population base of the EIP area (10 points).

a. Clear definition of the geographic area and population base in which the EIP will operate. Detailed description of the demographics of the proposed population base.

b. Clear description of various special populations within the defined population base as they relate to the proposed activities of the EIP, such as the rural or inner-city poor, underserved women and children, the homeless, immigrants and refugees, and persons infected with HIV.

c. Extent to which the population base is demographically diverse.

3. Description of existing capacity to assess, control and prevent emerging infectious diseases (40 points).

a. Description of applicant's past experience and documentation of accomplishments in conducting active surveillance, applied epidemiologic research, applied laboratory research, and prevention research, in general, and on emerging infectious diseases, including antimicrobial drug resistant, foodborne and waterborne, currently or potentially vaccine preventable, and opportunistic diseases. (A list of relevant papers and abstracts should be included in an appendix.) Demonstration of applicant's ability to develop and maintain strong cooperative relationships with both public and private, local and regional, medical, public health, laboratory, academic, and community organizations. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

c. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., included in the operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate collaborators' willingness to participate in the EIP and define their roles. Do not include letters of support from CDC personnel.

d. Demonstration of applicant's ability to participate in a multistate collaborative network.

4. Operational plan (40 points).

a. The extent to which the applicant's plan for establishing and operating the population-based EIP clearly describes the proposed organizational and operating structure/procedures and clearly identifies the roles and responsibilities of all participating agencies, organizations, institutions, and individuals.

b. The extent to which the applicant describes plans for collaboration with CDC and other EIP sites in the establishment and operation of the EIP and individual EIP projects, including project design/development (e.g., protocols), management and analysis of data, and synthesis and dissemination of findings.

c. Description and quality of applicant's partnerships with necessary and appropriate organizations for establishing and operating the proposed EIP and for conducting individual EIP projects.

d. Description and quality of plans to provide training opportunities in one or more of these areas: (1) Providing training opportunities for persons in professional training, such as infectious disease fellows, laboratory fellows, public health students; (2) Providing training for partner organizations within the EIP area, such as infection control practitioners or local health department personnel; (3) Acting as a resource for states that are not participating in the EIP network, for example by providing information, training, or recommendations about emerging public health issues and evolving public health practices.

e. Description of a plan to solicit and secure financial and technical assistance from other public and private organizations (e.g., schools of public health, university medical schools, public health laboratories, community-based organizations, other Federal and State government agencies, research organizations, foundations, etc.) to supplement the core funding from CDC.

f. Quality of the proposed projects (as requested in the Application Content section above) regarding consistency with EIP guiding principles, public health needs, intent of this program, feasibility, methodology/approach, and collaboration/ participation of partner organizations.

g. Identification of applicant's key professional personnel to be assigned to the EIP and EIP projects as well as key professional personnel from other participating or collaborating institutions, agencies, and organizations outside of the applicant's agency that will be assigned to EIP activities (provide curriculum vitae for each in an appendix). Clear identification of participants' respective roles in the management and operation of the EIP. Descriptions of participants' experience in conducting work similar to that proposed in this announcement.

h. Description of all support staff and services to be assigned to the EIP.

i. The extent to which the applicant clearly describes how the EIP or its design for the EIP is flexible and able to swiftly address new public health challenges in infectious diseases.

j. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in any proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Evaluation (5 points).

a. Quality of plan for monitoring and evaluating scientific and operational accomplishments of the EIP and of individual EIP projects.

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

6. Budget (not scored).

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program. Extent to which applicant shows both Federal and non-Federal (e.g., State funding) shares of total cost for the EIP.

If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

8. Human Subjects (not scored).

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The first semiannual report is required with each year's continuation application and should cover program activities from beginning of the current budget period to date of report/application preparation. The second semiannual report is due 90 days after the end of each budget period and should cover activities for the entire budget period recently completed.

2. Financial Status Report (FSR), no more than 90 days after the end of the budget period; and

3. Final FSR and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00011, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a), 317(k)(1) and 317(k)(2) of the Public Health Service Act [42 U.S.C. sections 241(a), 247b(k)(1) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00011, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2751. E-mail address: ayw3@cdc.gov.

For program technical assistance, contact: Catherine Spruill, National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–12, Atlanta, GA 30333,

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Telephone (404) 639–2603. E-mail address: cas5@cdc.gov.

See also the CDC homepage on the Internet for a copy of this announcement, application and forms: http://www.cdc.gov.

Potential applicants may obtain a copy of "Preventing Emerging Infectious Diseases: A Strategy for the 21st Century" through the Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Office of Planning and Health Communication—EP, Mailstop C–14, 1600 Clifton Road, NE., Atlanta, GA 30333 or on the CDC webpage.

Dated: July 6, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–17556 Filed 7–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[99–01]

New Child Welfare Demonstration Project Proposals Submitted by States for Waivers Pursuant to Section 1130 of the Social Security Act (the Act); Titles IV–E and IV–B of the Act; Public Law 103–432

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for child welfare waiver demonstration projects submitted to the Department of Health and Human Services pursuant to the guidance contained in Information Memorandum ACYF–CB–IM–99–03 dated January 21, 1999, public notice of which was given in the **Federal Register** of February 8, 1999, Vol. 64, No. 25, page 6099.

Comments: We will accept written comments on these proposals, but will not provide written responses to comments. We will neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project or requests for copies of a proposal, contact the State contact person listed for that project.

Comments on a proposal should be addressed to:

Laura Oliven, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Mary E. Switzer Building, Room 2058, Washington, D.C. 20447. FAX: (202) 260–9345.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1130 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve child welfare waiver demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. The most recent expression of these policies and procedures may be found in the January 21 Information Memorandum cited above, a copy of which may be found at the ACF website at http://www.acf.dhhs.gov/programs/cb/cww.htm or may be obtained from the National Clearinghouse on Child Abuse and Neglect Information, (800) 394–3366, internet address <nccanch@calib.com>. We are committed to a thorough and expeditious review of state proposals to conduct child welfare demonstrations.

II. Listing of New Proposals

As part of our procedures, we are publishing a notice in the **Federal Register** of all new proposals. This notice contains summaries of five new proposals received as of July 6, 1999. Each of the proposals contains an assurance that the proposed demonstration effort will be cost neutral to the federal government over the life of the proposed effort; and each proposal contains an evaluation component designed to assess the effectiveness of the project.

State: Colorado

Description: Colorado proposes to test the impact of contracting with a single provider (or consortium of providers) under a case rate financing model to achieve improved outcomes for children in the target population. Under the case rate, the providers will have a defined amount of resources to achieve case outcomes. Each of the six counties participating in the project will individually negotiate their case rate. One of the most critical aspects of the case rate structure is that providers will be expected to meet child specific outcomes and system performance targets. In addition to the case rate financing structure, the provider will be able to use flexible title IV-E funds to provide an expansive array of preventive and treatment intervention services. To be eligible for the demonstration, the provider must have access to such services as mental health, substance abuse, transportation, education, post placement services and many more. Because few providers have the full array of services "under one roof" they will need to collaborate to ensure a comprehensive network. The State seeks waivers of child welfare eligibility requirements and restrictions on allowable expenditures for their proposed five year demonstration.

The target population for the project would be children who are at high risk of, or already experiencing "placement drift" and are at significant risk of aging out of the system without a permanent relationship with a family. The State hypothesizes that by converting the financing from fee-for-service to risk-based, performance based contracting, the State will produce improved safety, permanency and well-being outcomes for this population and overall efficiencies in the system. The State will analyze the impact of the project using a random assignment evaluation design.

Contact Person: Marva Livingston Hammons, Director, Colorado Department of Human Services, 1575 Sherman Street, 8th Floor, Denver, Colorado 80203–1714, Phone: (303) 866–5700; Fax: (303) 866–4214.

State: Florida

Description: Florida proposes to test the effectiveness of capitating payments and providing flexible use of title IV–E dollars to support and incentivize locally controlled systems of care in select districts to better meet the needs of abused and neglected children and their families. This demonstration will assist the State in meeting its 1998 legislative requirement to develop a plan for privatizing the entire child welfare system, with the exception of child protective service intake and investigations, by the year 2003. Florida plans to conduct this demonstration in at least 8 of its 15 districts. The target population will be all title IV–E and non-title IV–E eligible children and families in each of the demonstration sites who are reported for abuse or neglect with some finding of maltreatment and require services beyond those provided by the department during the investigation phase. Each demonstration site will contract with community-based, nonprofit agencies for the management and delivery of services, using a lead agency community network model. These lead agencies will assume the financial risk for providing all services for all children referred and receive financial bonuses and penalties linked to performance. In addition, these flexible child welfare services will be coordinated with Medicaid funded behavioral health services.

The State hypothesizes that providing expanded services through community-based systems of care will improve access to services, provide protection from harm for the children served, reduce the length of stay in out-of-home care, reduce re-entry into the foster care system, improve satisfaction ratings of services, and reduce variability in performance across sites.

The State is requesting a waiver of eligibility requirements and services that can be provided using federal title IV–E funds. The evaluation of this five year demonstration will be based on county comparisons.

Contact Person: Margaret Taylor, Florida Department of Children and Families, 1317 Winewood Boulevard, Tallahassee, Florida 32399–0700, Phone: (850) 922–0149, Email: Margaret__Taylor@dcf.state.fl.us

State: Illinois

Description: The State of Illinois proposes to provide enhanced alcohol and other drug abuse (AODA) and individualized services to families affected by alcohol and other drugs. The purpose of the demonstration is to improve permanency outcomes for children of parents with AODA problems and to reduce the negative impact of parental AODA on children by assisting the family in treatment and recovery. Specifically the project is expected to result in higher rates of reunification, a reduced number of days in foster care and fewer re-allegations of abuse or neglect.

This project will involve two cohorts. Families in the first cohort will be assigned Recovery Coaches who will conduct outreach and support services. Following an additional planning year, families assigned to the second cohort will receive services tailored to their individual needs, in addition to the outreach and support provided by the Recovery Coaches. These services may include medically-managed detoxification and withdrawal, drug-free housing for families, graduated sanctions, reunification/concurrent planning specialists, public health nurses and parental involvement services. Existing aftercare services are available for control group families; Recovery Coaches will access and coordinate aftercare services for experimental group families.

The State hypothesizes that children in the experimental groups will spend fewer average days in foster care, will be safely reunited with their parents at higher rates, and revictimized at lower rates than children in the control group. The state also postulates that parents in the demonstration groups will successfully complete AODA treatment at a higher proportion than do parents in the control group.

Target populations in Cook County are: (1) custodial parents with a child who enters placement after September 30, 1999; and (2) parents who deliver substance exposed infants. The demonstration will operate for five years. The State will randomly assign families to experimental and control groups following AODA assessment.

The State is requesting a waiver to allow title IV–E funds to be used for services not normally eligible including the maintenance and provision of services to the parent of the ward as well as to operate this demonstration project in selected parts of the state.

Contact Person: Jess McDonald, Director, Illinois Department of Children and Family Services, 100 West Randolph, 6th Floor, Chicago, IL 60601, Phone: (312) 814–4650, Fax: (312) 814–3255.

State: Maryland

Description: The State of Maryland proposes two distinct components for a five year Child Welfare demonstration: intensive substance abuse treatment and supportive services for substance-abusing women; and a child welfare managed care project for children placed in out-of-home care through the Baltimore City Department of Social Services.

The first project would provide gender specific substance abuse treatment in combination with intensive supports and case management from a Family Support Services Team (FSST) to substance abusing mothers whose children are in foster care, or at risk for being placed in foster care. The FSST will consist of Chemical Addiction Counselors (CAC), mentors, parent aides, agency staff and treatment providers. The program is designed to provide a comprehensive and seamless support system to incentivize women to enter into, and complete successful drug and alcohol treatment. The purpose of the project is to prevent unnecessary out-of-home placements and reduce the length of stay of children already placed in foster care. The project would be conducted in Baltimore City and Prince George's County, two jurisdictions in Maryland that experience a high number of foster care placements due to parental substance abuse.

The second project would implement a child welfare managed care pilot initiative for 1,000 of the children in paid out-of-home placement and committed to the Baltimore City Department of Social Services (BCDSS) by the Baltimore City Juvenile Court. This initiative focuses on accountability and quality outcomes with reimbursement linked to performance. The project proposes to reshape the contractual relationship between the public agency and the private agencies from one of "payment of care" to a "reward for results" system. Providers will be asked to propose outcome improvements that exceed the State outcome goals and current benchmarks. Providers that do not meet the benchmark outcomes will risk financial loss. Those who improve on outcomes will be given the flexibility to redirect cost savings to innovative and enhanced services for project participants. The State expects to produce an increase in permanency with a reduction in the number of foster care days; a decrease in the restrictiveness of placements provided; and a reduction in re-entry into foster care.

Contact Person: Linda D. Ellard, Executive Director, Social Services Administration, 311 West Saratoga Street, Baltimore, MD 21201, Phone: (410) 767–7216, Fax: (410) 333–0127.

State: West Virginia

Description: West Virginia proposes a substance abuse initiative that would allow a child to remain in his/her home or be placed in a temporary setting while the child's mother receives 30–60 day in-patient and/or residential treatment for alcohol or drug abuse. Where possible, the child would be placed in close proximity to the treatment center to enable visitation between the mother and child. The State hypothesizes that by placing the child in a temporary care setting, and avoiding the "formal" foster care system, mothers receiving treatment will be more likely to enter into, and complete, successful treatment. The State expects to reduce the number of children entering into the State's formal foster care system due to parental substance abuse; increase the number of family reunifications after treatment; and increase the number of mothers completing short-term treatment. The State intends to partner with the West Virginia Department of Health and Human Resources, responsible for the care of the state's foster children, with the Division of Alcoholism and Drug Abuse, to assist mothers in overcoming barriers to substance abuse treatment. Following treatment, multidisciplinary teams including Substance Abuse Outreach Specialists and social workers

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will continue to provide services to the families to ensure the children's safety and work towards successful reunification.

The State plans to operate this demonstration project in rural counties including Boone, Cabell, Clay, Jackson, Roane, Kanawha, Lincoln, Mason, Mingo, Putnam, and Wayne. The target population includes all youth ages 0–18 who would likely enter formal foster care if their parents do not receive substance abuse treatment, according to formal risk assessments.

The State is requesting a waiver of the placement standards and eligibility requirements. West Virginia plans to assess the impact of the five year demonstration using a random assignment evaluation design.

Contact Person: Ann Burds, Director, Bureau for Children & Families/Office of Social Services, Department of Health and Human Resources, State Capital Complex, Building 6, room 850, Charleston, West Virginia 25305, Phone: (304) 558–7980, Fax: (304) 558–8800.

Dated: July 7, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–17655 Filed 7–9–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0530]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the publication of modifications to the list of standards that will be recognized for use in the premarket review process. This will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: This recognition of standards is effective on July 12, 1999; however, written comments concerning this document may be submitted at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of "Modifications to the List of Recognized Standards" to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Written comments concerning this document must be submitted to the listed contact person. Comments should be identified with the docket number found in brackets in the heading of this document. This document may also be accessed via the Internet at FDA's web site "http://www.fda.gov/cdrh/fedregin.html". See the **SUPPLEMENTARY INFORMATION** section for electronic access to "Guidance on the Recognition and Use of Consensus Standards," the current list of "FDA Recognized Consensus Standards Appendix A," and other standards related information.

FOR FURTHER INFORMATION CONTACT: To comment on this document and/or to recommend additional standards for recognition: James J. McCue, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext. 101.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d) to allow the agency to recognize consensus standards established by international and national standards development organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance document entitled "Recognition and Use of Consensus Standards," which describes how FDA will implement that part of FDAMA. The February 1998 notice also provided the initial list of recognized standards.

In a notice published in the **Federal Register** of October 16, 1998 (63 FR 55617), FDA made modifications to the initial list of recognized standards. This October 1998 notice described the changes made in the initial list and also provided a listing of the "Modifications to the List of Recognized Standards."

II. Discussion of Modifications to the List of Recognized Standards

Modifications to the list of consensus standards to be recognized for use in premarket review and to meet other requirements are presented in a listing at the end of this notice.

Modifications identified in the listing include: (1) The initial addition of certain recognized standards not previously identified by FDA; (2) the addition of certain recognized standards in conjunction with the withdrawal of other previously recognized standards and their replacement by later, amended, or different standards; and (3) the addition of certain recognized standards with revisions to the supplementary information sheets for the standards, involving changes in significant applications of the standards, e.g., changes in the extent of recognition.

The listing of modifications presented at the end of this document does not include minor revisions which the agency is making in certain previously recognized standards. These revisions are made for editorial, corrective, or technical purposes, such as adding a previously omitted date, or changing the contact person(s) in the supplementary information sheet for a recognized standard. Particular minor revisions in the specific recognition of standards are described in the following paragraphs.

As noted previously, FDA is making modifications to the list of recognized standards that represent the initial addition of certain standards not previously recognized by the agency. These additions are identified in the listing presented at the end of this document and are not otherwise described.

Modifications that FDA is making, which represent the addition of certain recognized standards in conjunction with the withdrawal of other standards, or with changes in significant applications of the standards, are also identified in the listing at the end of this document. However, the agency is further describing the actions it is taking in making these additions, and in sections II.A through H of this document it is identifying the minor revisions it is making in certain recognized standards.

A. Generally Applicable Standards

1. ANSI/AAMI/ISO 10993–1 and ISO 10993–1 are withdrawn, under previous items 1 and 3,[1] respectively, from the list of recognized consensus standards. The latest version of the standard ISO 10993–1 (1997) is added, under current item 13, to the list of recognized standards.

2. EN 1441 (1997) is withdrawn, under previous item 9, from the list of recognized consensus standards. EN 1441 (1997) is added back, under current item 21, to the list of recognized standards, with changes to the extent of recognition and relevant guidances made in the supplementary information sheet(s) for the recognized standard.

[1] Item numbers identify entries in the "FDA Recognized Consensus Standards Appendix A." Within each grouping, entries begin with item 1. Item numbers are not repeated if an entry is withdrawn, replaced, or added.

B. Anesthesia

1. IEC 60601–2–13 (1998–05) is withdrawn, under previous item 10, from the list of recognized consensus standards. This 1998 version of the standard is not yet finalized. The latest version of the standard IEC 60601–2–13 (1989) is added, under current item 30, to the list of recognized standards.

C. Biocompatibility

1. ANSI/AAMI/ISO 10993–12 (1996) is withdrawn, under previous item 22, from the list of recognized consensus standards. ANSI/AAMI/ISO 10993–12 (1996) is added back, under current item 28, with changes to the extent of recognition made in the supplementary information sheet(s) for the recognized standard.

2. ANSI/AAMI/ISO 10993–5 (1993) is withdrawn, under previous item 17, from the list of recognized consensus standards. ANSI/AAMI/ISO 10993–5 (1998) is added, under current item 29, to the list of recognized standards.

3. ASTM F720–81 (r1996) is withdrawn, under previous item 8, from the list of recognized consensus standards. ASTM F720–81 (r1996) is added, under current item 30, to the list of recognized standards, with changes to the extent of recognition made in the supplementary information sheet(s) for the recognized standard.

4. USP 23, "Biological Reactivity Tests, In Vivo, Classification of Plastics, Sample Preparation (88)," is withdrawn, under previous item 26, from the list of recognized consensus standards. USP 23, "Biological Reactivity Tests, In Vivo, Classification of Plastics, Sample Preparation (1988)," is added back, under current item 31, to the list of recognized standards, with changes to the extent of recognition made in the supplementary information sheet(s) for the recognized standard.

5. ASTM F750 is withdrawn, under previous item 10, from the list of recognized consensus standards. The latest version of the standard ASTM F750–96 is added, under current item 32, to the list of recognized standards.

6. ASTM E1372–90 is withdrawn, under previous item 4, from the list of recognized consensus standards. ASTM E1372–95 is added, under current item 33, to the list of recognized standards.

7. ASTM F749–87 (r1996) is withdrawn, under previous item 9, from the list of recognized consensus standards. The latest version of the standard ASTM F749–98 is added, under current item 34, to the list of recognized standards.

8. ASTM F763–87 is withdrawn, under previous item 11, from the list of recognized consensus standards. ASTM F763–87 (1993) is added, under current item 35, to the list of recognized standards.

9. ASTM F1408–92 is withdrawn, under previous item 15, from the list of recognized consensus standards. ASTM F1408–97 is added, under current item 36, to the list of recognized standards.

D. Cardiovascular/Neurology

1. ASTM F75–92 is withdrawn, under previous item 6, from the list of recognized consensus standards. ASTM F75–98 is added, under current item 21, to the list of recognized standards.

2. ASTM F90–96 is withdrawn, under previous item 7, from the list of recognized consensus standards. ASTM F90–97 is added, under current item 22, to the list of recognized standards.

3. ASTM F136–96 is withdrawn, under previous item 8, from the list of recognized consensus standards. ASTM F136–98 is added, under current item 23, to the list of recognized standards.

4. ASTM F560–92 is withdrawn, under previous item 10, from the list of recognized consensus standards. ASTM F560–98 is added, under current item 24, to the list of recognized standards.

E. General Plastic Surgery/General Hospital

1. IEC 60601–2–19 (1990–12) is withdrawn, under previous item 7, from the list of recognized consensus standards. IEC 60601–2–19 (1996) is added, under current item 29, to the list of recognized standards.

2. IEC 60601–2–20 (1990–12) is withdrawn, under previous item 8, from the list of recognized consensus standards. IEC 60601–2–20 (1996) is added, under current item 32, to the list of recognized standards.

3. USP 21, "Absorbable Surgical Sutures," is withdrawn, under previous item 22, from the list of recognized consensus standards. The latest version of USP 23, "Absorbable Surgical Sutures," is added, under current item 40, to the list of recognized standards.

4. USP 21, "Nonabsorbable Surgical Sutures," is withdrawn, under previous item 23, from the list of recognized consensus standards. The latest version of USP 23, "Nonabsorbable Surgical Sutures," is added, under current item 41, to the list of recognized standards.

5. USP 21, "Sutures—Diameter <861>," is withdrawn, under previous item 24, from the list of recommended consensus standards. USP 23, "Sutures— Diameter <861>," is added, under current item 42, to the list of recognized standards.

6. USP 21, "Sutures Needle Attachment <871>," is withdrawn, under previous item 25, from the list of recognized consensus standards. USP 23, "Sutures Needle Attachment <871>," is added, under current item 43, to the list of recognized standards.

7. USP 21, "Tensile Strength <881>," is withdrawn, under previous item 26, from the list of recognized consensus standards. USP 23, "Tensile Strength <881>," is added, under current item 44, to the list of recognized standards.

F. Ob-Gyn/Gastroenterology

1. ASTM D3492–96 was inadvertently listed twice and is withdrawn, under previous items 2 and 15, from the list of recognized consensus standards. The latest version of the standard ASTM 3492–97 is added, under current item 17, to the list of recognized standards, with changes to the extent of recognition made in the supplementary sheet(s) for the recognized standard.

2. For ISO Standards for "Rubber Condoms," Parts 1 through 9, specifically: ISO 4074–1:1996(E), ISO 4074–2:1994(E), ISO 4074–3:1994(E), ISO 4074–5:1996(E), ISO 4074–6:1996(E), ISO 4074–7:1996(E), and ISO 4074–9:1996(E), which were identified under previous items 8 through 14, respectively, on the list of recognized consensus standards, the FDA technical contact person has been changed on the supplementary information sheets for the recognized standards. These standards remain identified under current items 8 through 14 on the list of recognized standards.

G. Ophthalmic

1. For ISO 10942 listed, under previous item 13, on the list of recognized consensus standards, the previously omitted publication date of 1988 has been added. ISO 10942:1998 remains identified, under current item 13, on the list of recognized standards.[2]

H. Sterility

1. ANSI/AAMI/ISO 10993–7:1995 is withdrawn, under previous item 23, from the list of recognized consensus

[2] These minor revisions are not identified in the listing of "Modifications to the List of Recognized Standards," but are to be included in the current list in the "FDA Recognized Consensus Standards Appendix A."

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standards. ANSI/AAMI/ISO 10993–7:1995 is added, under current item 37, to the list of recognized standards, with changes to the extent of recognition made in the supplementary information sheet(s) for the recognized standard.

III. List of Recognized Standards

The complete list of consensus standards to be recognized for use in premarket review and to meet other requirements is contained in the document, "FDA Recognized Consensus Standards Appendix A." The modifications and minor revisions to the list of recognized standards set forth in this document are to be incorporated in that document, which is maintained on the FDA World Wide Web (WWW) site, "http://www.fda.gov/cdrh/modact/recstand.html". Also posted on the WWW site are supplementary information sheets for each recognized standard. These information sheets list the address(es) where the standard can be obtained, information on any limitations on the application of the standard in medical device review or in satisfying other regulatory requirements, and a list of devices for which declarations of conformity with the recognized standard will be routinely accepted by agency reviewers. In addition to these documents, the WWW site contains answers to frequently asked questions regarding the use of recognized standards.

Additional modifications and minor revisions, as needed, to the list of recognized consensus standards will be announced in the **Federal Register** once a year, or more often if necessary.

IV. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (address above). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive the guidance entitled "Guidance on the Recognition and Use of Consensus Standards," via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 321, followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. Persons interested in obtaining a copy of the guidance may also do so by using the WWW. CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the "Guidance on the Recognition and Use of Consensus Standards," as well as the current list in the "FDA Recognized Consensus Standards Appendix A," "Supplementary Information" sheets for each recognized standard, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". The "Guidance on the Recognition and Use of Consensus Standards" is available at "http://www.fda.gov/cdrh/ modact/k982.html". The "FDA Recognized Consensus Standards Appendix A" may be accessed at "http://fda.gov/cdrh/modact/recstand.html" and provides hyperlinks to the "Supplementary Information" sheets for listed recognized standards.

VI. Comments

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be considered in determining whether to amend the current listing of "Modifications to the List of Recognized Standards."

The listing of "Modifications to the List of Recognized Standards" is set forth below:

Item Number	Title of Standard	Reference Number and Date
	Generally Acceptable Standards	
10	Medical Devices—Risk Management—Part 1: Application of Risk Analysis	AAMI/ISO 14971–1 (1998)
11	Sampling Procedures and Tables for Inspection by Attributes	ISO 2859 (1995)
12	Quality Assurance Requirements for Measuring Equipment Part 1: Metrological Confirmation System for Measuring Equipment	ISO 10012 (1993)
13	Biological Evaluation of Medical Devices Part 1: Evaluation and Testing	ISO 10993–1 (1997)
14	Inspection by Attributes	ANSI/ASQC Z1.4 (1993)
15	Inspection by Variables	ANSI/ASQC Z1.9 (1993)
16	Test Methods for Peel or Stripping Strength of Adhesive Bonds	ASTM D–903 (1993)
17	Standard Practice for Performance Testing of Shipping Containers and Systems	ASTM D–4169 (1993)
18	Standard Practice for Conditioning Containers, Packages, or Packaging Components for Testing	ASTM D–4332 (1991)
19	Standard Practice for Use of Statistics in the Evaluation of Spectrometric Data	ASTM E–876 (1995)
20	Standard Test Method for Failure Resistance of Unrestrained and Nonrigid Packages for Medical Applications	ASTM F–1140 (1988)
21	Medical Devices—Risk Management	EN 1441 (1997)

Item Number	Title of Standard	Reference Number and Date
	Anesthesia	
23	Conical Fittings of 15 millimeters (mm) and 22 mm Sizes	ASTM F 1054 (1987)
24	Standard Specification for Capnometers	ASTM F 1456 (1992)
25	Specification for Oxygen Analyzers	ASTM F 1462 (1993)
26	Standard Color Marking of Compressed Gas Containers Intended for Medical Use	CGA C–9 (1988)
27	Standard for Compressed Gas Cylinder Valve Outlets and Inlet Connection	CGA V–1 (1994)
28	Diameter-Index Safety System	CGA V–5 (1989)
29	Standard Method of Determining Cylinder Valve Outlet Connections for Medical Gases	CGA V–7 (1997)
30	Medical Electrical Equipment Part 2: Particular Requirements for the Safety of Anesthetic Machines	IEC 60601–2–13 (1989)
31	Anesthetic and Respiratory Equipment—Conical Connectors	ISO 5356–1 (1996)
32	Oxygen Monitors for Monitoring Patient Breathing Mixtures—Safety Requirements	ISO 7767 (1997)
33	Capnometers for Use With Humans—Requirements	ISO 9918 (1993)
	Biocompatibility	
28	Biological Evaluation of Medical Devices—Part 12: Sample Preparation and Reference Materials	ANSI/AAMI/ISO 10993–12 (1996)
29	Biological Evaluation of Medical Devices—Part 5: Tests for Cytotoxicity: In Vitro Methods	ISO 10993–5 (1998)
30	Standard Practice for Testing Guinea Pigs for Contact Allergens: Guinea Pig Maximization Test	ASTM F720–81 (r1996)
31	Biological Reactivity Tests, In Vivo, Classification of Plastics-Sample Preparation	USP 23 (1988)
32	Standard Practice for Evaluating Material Extracts by Systemic Injection in the Mouse	ASTM F750 (1996)
33	Standard Test Method for Conducting a 90-Day Oral Toxicity Study in Rats	ASTM E1372–95
34	Standard Practice for Evaluating Material Extracts by Intracutaneous Injection in the Rabbit	ASTM F749–98
35	Standard Practice for Short Term Screening for Implant Material	ASTM F763–87 (1993)
36	Standard Practice for Subcutaneous Screening Test for Implant Materials	ASTM F1408–97
	Cardiovascular/Neurology	
21	Specification for Cobalt-28 Chromium-6 Molyb- denum Casting Alloy and Cast Products for Surgical Implants (UNS R30075)	ASTM F75–98
22	Specification for Wrought Cobalt–20 Chromium-15 Tungsten-10 Nickel Alloy for Surgical Implant Applications (UNS R30605)	ASTM F90–97
23	Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial) Alloy (UNS R56401) for Surgical Implant Applications	ASTM F136–98
24	Specification for Unalloyed Tantalum for Surgical Implant Applications	ASTM F560–98
	Dental/ENT	
40	Specification for Audiometers	ANSI S3.6 (1996)
41	Specification of Hearing Aid Characteristics	ANSI S3.22 (1996)
42	Dental Impression Compound	ANSI/ADA Specification No. 3 (1994)
43	Dental Casting Alloys	ANSI/ADA Specification No. 5 (1988)
44	Agar Impression Material	ANSI/ADA Specification No. 11 (1968)
45	Denture Cold-Curing Repair Resin	ANSI/ADA Specification No. 13 (1981)
46	Dental Base Metal Casting Alloys	ANSI/ADA Specification No. 14 (1982)
47	Synthetic Resin Teeth	ANSI/ADA Specification No. 15a (1992)
48	Dental Impression Paste Zinc Oxide-Eugenol Type	ANSI/ADA Specification No. 16 (1989)
49	Denture Base Temporary Reclining Resin	ANSI/ADA Specification No. 17 (1983)
50	Alginate Impression Materials	ANSI/ADA Specification No. 18 (1992)
51	Dental Duplicating Material	ANSI/ADA Specification No. 20 (1968)
52	Resin-Based Filling Materials	ANSI/ADA Specification No. 27 (1993)
53	Dental Zinc Oxide-Eugenol and Zinc Oxide Non-Eugenol Cements	ANSI/ADA Specification No. 30 (1990)
54	Metal-Ceramic Systems	ANSI/ADA Specification No. 38 (1991)
55	Ultraviolet Activator and Disclosing Lights	ANSI/ADA Specification No. 48 (1983)

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Item Number	Title of Standard	Reference Number and Date
56	Endodontic Sealing Materials	ANSI/ADA Specification No. 57 (1993)
57	Dental Ceramic	ANSI/ADA Specification No. 69 (1991)
58	Endodontic Obturating Points	ANSI/ADA Specification No. 78 (1994)
59	Color Stability Test Procedure	ANSI/ADA Specification No. 80 (1997)
60	Dental Water-Based Cements	ANSI/ADA Specification No.96 (1994)
61	Dental Casting Gold Alloys	ISO 1562 (1993)
62	Dental Alginate Impression Material	ISO 1563 (1990)
63	Dental Aqueous Impression Materials Based on Agar	ISO 1564 (1995)
64	Dental Zinc Oxide/Eugenol Cements and Zinc Oxide Non-Eugenol Cements	ISO 3107 (1988)
65	Dentistry—Synthetic Polymer Teeth	ISO 3336 (1993)
66	Dentistry—Resin-Based Filling Materials	ISO 4049 (1988)
67	Dental Base Metal Casting Alloys—Part 1: Cobalt-Based Alloys	ISO 6871–1 (1994)
68	Dental Base Metal Casting Alloys—Part 2: Nickel-Based Alloys	ISO 6871–2 (1994)
69	Dental Ceramic	ISO 6872 (1995) Amendment 1 (1997)
70	Dental Resin-Based Pit and Fissure Sealants	ISO 6874 (1988)
71	Dental Root Canal Sealing Materials	ISO 6876 (1986)
72	Dental Root-Canal Obturating Points	ISO 6877 (1995)
73	Dentistry—Preclinical Evaluation of Biocompatibility of Medical Devices Used in Dentistry—Test Methods for Dental Materials	ISO 7405 (1997)
74	Dental Units	ISO 7494 (1996)
75	Part 1: High-Speed Air Turbine Handpieces	ISO 7785–1 (1997)
76	Part 2: Straight and Geared Angle Handpieces	ISO 7785–2 (1995)
77	Dental Casting Alloys With Noble Metal Content of 25% Up to but Not Including 75%	ISO 8891(1993)
78	Dental Handpieces—Hose Connectors	ISO 9168 (1991)
79	Dental Ceramic Fused to Metal Restorative Material	ISO 9693 (1991)
80	Dental Water-Based Cements	ISO 9917 (1991)
81	Dentistry—Resilient Lining Materials for Removable Dentures—Part 1: Short Term Materials	ISO 10139–1 (1991)
82	Dentistry—Polymer-Based Crown and Bridge Materials	ISO 10477 (1998)
83	Dental Handpieces: Dental Low Voltage Electrical Motors	ISO 11498 (1997)
84	Dental Handpieces—Dental Air-Motors	ISO 13294 (1997)
	General Plastic Surgery/General Hospital	
29	Medical Electrical Equipment—Part 2: Particular Requirements for Safety of Baby Incubators	IEC 60601–2–19 (1996)
30	Standard Specification for Rubber Surgical Gloves	ASTM D3577 (1998)
31	Standard Specification for Rubber Examination Gloves	ASTM D3578 (1995)
32	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Transport Incubators	IEC 60601–2–20 (1996)
33	Standard Specification for Rubber Finger Cots	ASTM D3772 (1997)
34	Standard Test Method for Detection of Holes in Medical Gloves	ASTM D5151 (1992)
35	Standard Specification for Poly (vinyl chloride) Gloves for Medical Application	ASTM D5250 (1992)
36	Standard Test Method for Resistance of Medical Face Masks to Penetration by Synthetic Blood (Horizontal Projection of Fixed Volume at a Known Velocity)	ASTM F862 (1998)
37	Standard Specification for Conical Fittings of 15-mm and 22-mm Sizes	ASTM F1054 (1987)
38	Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Blood-Borne Pathogens Using Phi-X174 Bacterio-phage Penetration as Test System	ASTM F1671 (1997b)
39	Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	ASTM F1670 (1997)
40	Absorbable Surgical Sutures	USP 23
41	Nonabsorbable Surgical Sutures	USP 23
42	Sutures—Diameters <861>	USP 23
43	Sutures Needle Attachment <871>	USP 23
44	Tensile Strength <881>	USP 23
45	Standard Test Method for Residual Powder on Medical Gloves	ASTM D6124–97
	In Vitro Devices	
49	Performance Goals for the Internal Quality Control of Multichannel Hematology Analyzers; Approved Standard	NCCLS H26–A (1996)
50	Glossary and Guidelines for Immunodiagnostic Procedures, Reagents, and Reference Materials—Second Edition; Approved Guideline	NCCLS D11–A2

Item Number	Title of Standard	Reference Number and Date
51	Using Proficiency Testing (PT) to Improve the Clinical Laboratory; Approved Guideline	NCCLS GP27–A
52	Terminology and Definition for Use in NCCLS Documents; Approved Standard	NRSCL 8–A
53	Continuous Quality Improvement: Essential Management Approaches; Approved Guideline	NCCLS GP22–A
	OB–GYN/Gastroenterology	
16	Enteral Feeding Set Connectors and Adapters	ANSI/AAMI ID54 (1996)
17	Standard Specifications for Rubber Contraceptives (Male Condoms)	ASTM D3492–97
18	Electrosurgical Device	ANSI/AAMI HF–18 (1993)
	Ophthalmic	
14	Ophthalmics—Contact Lenses—Standard Terminology, Tolerances, Measurements, and Physicochemical Properties	ANSI Z80.20–1998
	Radiology	
44	Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment	AIUM (1998)
45	Standard for Real-Time Display of Thermal andMechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment. Revision 1.	AIUM RTD (1998)
46	Acoustic Output Labeling Standard for Diagnostic Ultrasound Equipment: A Standard for How Manufacturers Should Specify Acoustic Output Data	AIUM AOL (1998)
47	Medical Electrical Equipment: Radionuclide Calibrators *B* Particular Methods for Describing Performance	IEC 61303 (1994–10)
48	Calibration and Usage of "Dose Calibrator" Ionization Chambers for the Assay of Radionuclides	ANSI N42.13 (1986)
49	Calibration and Usage of Ionization Chamber Systems for Assay of Radionuclides	IEC 61145 (1992–05)
	Software	
2	Standard for Developing Software Life Cycle Processes	IEEE 1074 (1997)
3	Industry Implementation of International Standard ISO/IEC 12207: 1995 (ISO/IEC 12207) Standard for Information Technology—Software Life Cycle Processes	IEEE/EIA 12207.0 (1996)
	Sterility	
37	Biological Evaluation of Medical Devices—Part 7: Ethylene Oxide Sterilization Residuals	ANSI/AAMI/ISO 10993–7 (1995)

Dated: June 30, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy.

[FR Doc. 99–17429 Filed 7–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–289]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

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minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because of the unanticipated urgency to meet the enrollment cycle of the program, thereby reducing the burden on the demonstration sites. HCFA is supporting the demonstration within the current fiscal year, and as an agency priority. In addition, public harm may occur as the result of not evaluating and possibly providing alternative health care measures outlined in this demonstration.

HCFA is requesting OMB review and approval of this collection within three days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within three days. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection;

Title of Information Collection: Medicare Lifestyle Modification Program Demonstration;

Form No.: HCFA–R–289;

Use: The Health Care Financing Administration (HCFA) through its Office of Clinical Standards and Quality (OCSQ) is planning to conduct a new demonstration to test the feasibility and cost effectiveness of cardiovascular lifestyle modification. This demonstration will focus on Medicare provider sponsored, lifestyle modification programs designed to reverse, reduce, or ameliorate the indications of cardiovascular disease (CAD) of Medicare beneficiaries at risk for invasive treatment procedures. This demonstration will test the feasibility and cost effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries. In addition, the demonstration will test the use of contractual agreements for administration, claims processing and payment, and routine monitoring of quality of care.

Frequency: On occasion, Monthly, and Quarterly;

Affected Public: Individuals or Households, and Not-for-profit institutions;

Number of Respondents: 12;

Total Annual Responses: 4,500;

Total Annual Hours: 750.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within three days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167. Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: July 1, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–17559 Filed 7–9–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: July 22, 1999.

Time: 8:30 am to 5 pm

Agenda: To review and evaluate cooperative agreement applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eugene G. Hayunga, Ph.D., Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–594–2014, hayungae@od.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–17592 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Clinical Data Management and Support Center."

Date: July 13, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "INVEST."

Date: August 4, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 2, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17509 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Exploratory Research Grants (R21).

Date: July 13–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

Contact Person: J. Patrick Mastin, PhD., Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17586 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: July 27, 1999.

Time: 2:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Craig A. Jordan, PHD, Acting Director, NIH/NIDCD/DEA, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8693.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–17587 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: July 8–9, 1999.

Time: 2:00 pm and 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, Broad Street and Locust Streets, Philadelphia, PA 19107.

Contact Person: Michael A. Sesma, PHD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS19H, 45 Center Drive, Bethesda, MD 20892, (301) 594–2048.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

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Dated: July 6, 1999.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy, NIH.
[FR Doc. 99–17588 Filed 7–9–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: July 9, 1999.
Time: 8:00 am to 6:00 pm.
Agenda: To review and evaluate contract proposals.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Tommy L. Broadwater, PHD, Chief, Grants Review Branch, NIAMS, NIH, 45 Center Drive, Rm. 5AS25U, Bethesda, MD 20892, 301–594–4952.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: July 13, 1999.
Time: 8:00 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place : Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: John R. Lymangrover, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 6, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–17591 Filed 7–9–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, P01 Oldest-old Mortality-Demographic Models and Analysis.
Date: July 28, 1999.
Time: 11:00 am to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Suite 502C, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mary Ann Guadagno, Ph.D, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 6, 1999.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 99–17593 Filed 7–9–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel SEP for Dr. Chute and Dr. Lyon.
Date: July 29, 1999.
Time: 11:00 am to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sharee Pepper PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 6, 1999.
LaVerne Y. Stringfield,
Office of Federal Advisory Committee Policy, NIH.
[FR Doc. 99–17589 Filed 7–9–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Workshop on Development of New Therapies for Rare Blood Diseases

Notice is hereby given of a workshop on the "Development of New Therapies for Rare Blood Diseases" sponsored by the National Heart, Lung, and Blood Institute and the Office of Rare Diseases, N.I.H., to be held from 9 a.m. to 4 p.m. on Wednesday, July 14, 1999, in the Lister Hill Auditorium on the N.I.H. campus in Bethesda, MD.

Historically, it has been difficult to develop new therapies for rare diseases, in part because of limited financial incentives and few patients available to do rigorous clinical trials. This problem has been particularly frustrating in the area of blood diseases, where the pathophysiologic defects may be well understood. For example, the first human molecular defect was demonstrated in sickle cell disease in 1956, but it still presents a formidable clinical challenge. Since it has been difficult to stimulate commercial development of basic research into clinical application, the purpose and goals of the workshop are to:

1. Identify the barriers to the translation of basic scientific discoveries to clinical treatment of rare blood diseases.

2. Identify mechanisms to overcome these barriers.

The outcome of this meeting will improve or create approaches to expedite the development of new therapies for rare blood diseases. All individuals interested in facilitating this process are invited to attend. Further information can be found on the NHLBI website, *http://www.nhlbi.nih.gov*. For pre-registration, please contact Henry Chang, M.D., Acting Director, Blood Resources Program, Division of Blood Diseases and Resources, NHLBI, NIH, MSC 7950, 6701 Rockledge Dr., Room 10170, Bethesda, MD 20892–7950, Phone: 301–435–0067, FAX: 301–480–1060, E-mail *changh@nih.gov*.

Dated: July 2, 1999.
Barbara Alving,
Director, Division of Blood Diseases and Resources.
[FR Doc. 99–17508 Filed 7–9–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 14, 1999.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 15–17, 1999.
Time: 8:00 am to 5:00 pm..
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW, Washington, DC 20007.
Contact Person: David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 20, 1999.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 6, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc 99–17590 Filed 7–9–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 1999.
Time: 2:00 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 14, 1999.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 15–16, 1999.
Time: 8:30 am to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Hilton Hotel, Darnestown Conference Room, 620 Perry Parkway, Gaithersburg, MD 20877.
Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 15, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Herman Teitelbaum, PhD, Scientific Review Administrator, Center for

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Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Biological Sciences Subcommittee 1.

Date: July 15–16, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, N.W., Washington, DC 20037.

Contact Person: H. Mac Stiles, DDS, Phd, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301–435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Joe Marwah, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 9:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15, 1999.

Time: 10:00 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William C. Branche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15, 1999.

Time: 1:30 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 40461, MSC 7890, Bethesda, MD 20892, (301) 435–1159.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 2:00 to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 1999.

Time: 9:00 am to 1:00 am.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 1999.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 1999.

Time: 1:00 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, ev___sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Judith U. Cope, MD, MPH, Special Expert, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Woodfin Suite Hotel, 1380 Piccard Drive, Rockville, MD 20850.

Contact Person: Ron Manning, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gertrude K. McFarland, RN, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784, mcfarlag@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.

Time: 8:30 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel p41.

Date: July 19, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (telephone Conference call.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892. (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel MDCN–5.

Date: July 19, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nadarajen A. Vydelingum, PhD, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167 srinvar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 1999.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 1999.

Time: 2:00 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RPHB–3(2).

Date: July 21–22, 1999.

Time: .8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Michael Micklin, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, 301–435–0682.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21–22, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Washington, DC 20007.

Contact Person: Martin Slater, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21–22, 1999.

Time: 9:00 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact Person: A. Hameed Khan, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21, 1999.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17594 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

SAMHSA Special Emphasis Panels; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in August 1999.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual

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grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(6) and 5 U.S.C. App.2. § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 2–5, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 2–4, 1999, 8:30 a.m.–5:00 p.m.; August 5, 1999, 8:30 a.m.–adjournment.
Panel: Community Initiated Interventions SP 99–001 (3 Committees).
Contact: Stan Kusnetz, Room 17–89, Parklawn Building, Telephone: 301–443–3042 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 3, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 3, 1999, 8:30 a.m.–adjournment.
Panel: Iowa Prevention Initiative Supplement SP 99–006.
Contact: Amie Rogal, Room 17–89, Parklawn Building, Telephone: 301–443–8216 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 9–13, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 9–12, 1999, 8:30 a.m.–5:00 p.m.; August 13, 1999, 8:30 a.m.–adjournment.
Panel: Family Strengthening SP 99–002 (6 Committees).
Contact: Peggy Thompson, Room 17–89, Parklawn Building, Telephone: 301–443–9912 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 16–19, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 16–18, 1999, 8:30 a.m.–5:00 p.m; August 19, 1999, 8:30 a.m.–adjournment.
Panel: Targeted Capacity HIV/AIDS TI 99–004 (3–5 Committees).
Contact: Michael Koscinski, Room 17–89, Parklawn Building, Telephone: 301–443–6094 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 16–19, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 16–18, 1999, 8:30 a.m.–5:00 p.m.; August 19, 1999, 8:30 a.m.–adjournment.
Panel: State Treatment Needs Assessment TI 99–008.
Contact: Boris Aponte, Room 17–89, Parklawn Building, Telephone: 301–443–2290 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 23–26, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 23–25, 1999, 8:30 a.m.–5:00 p.m.; August 26, 1999, 8:30 a.m.–adjournment.
Panel: Targeted Substance Abuse/HIV Prevention SP 99–003 (4–5 Committees).
Contact: Raquel Crider, Ph.D., Room 17–89, Parklawn Building, Telephone: 301–443–5063 and FAX: 301–443–3437.

Dated: July 1, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–17605 Filed 7–9–99; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

SAMHSA Special Emphasis Panels; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in July.

A summary of the meeting may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, Section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.
Meeting Date: July 26–30, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: July 26–29, 1999, 8:30 a.m.–5 p.m.; July 30, 1999, 8:30 a.m.–Adjournment.
Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Dated: June 30, 1999.

Coral Sweeney,

Lead GTA, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–17606 Filed 7–9–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Alaska Notice for Publication; F–19155–4; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Gwitchyaazhee Corporation for 22,000.58 acres. The lands involved are in the vicinity of Fort Yukon, Alaska.

Fairbanks Meridian, Alaska

T. 18 N., R. 9 E.
T. 19 N., R. 10 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News Miner.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 11, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stephanie Clusiau,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 99–17558 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–99–1410–00; AA–53202]

Realty Action; FLPMA Lease of Public Lands in Southeast Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease of public land.

SUMMARY: The following public lands in the area near the confluence of the Tahini River and the Chilkat River in Southeast Alaska have been examined and found suitable for non-competitive lease to the State of Alaska, Department of Fish and Game, Sport Fish Division, under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920. The State of Alaska, Department of Fish and Game, proposes to lease the Tahini River Research Site for ten years, or until two days prior to conveyance of the lands to the State of Alaska, whichever occurs first. The lease is intended to authorize operation and maintenance of the existing facilities on site.

Copper River Meridian, Alaska

T. 26 S., R. 55 E.,
Sec. 12, NE¼NW¼.

Containing approximately .2 acre on the bank of the Tahini River.

SUPPLEMENTARY INFORMATION: These lands have been selected by the State of Alaska for future conveyance under the Alaska Statehood Act.

DATES: For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of timely objections, this proposal shall become the final decision of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Lorri Denton, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599; (907) 267–1244 or (800) 478–1263.

Dated: June 29, 1999.

Nick Douglas,

Field Manager.

[FR Doc. 99–17636 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–99–1410–00; AA–77687]

Notice of Realty Action; Recreation and Public Purpose (R&PP) Act Classification; Juneau, AK

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The following public lands in Juneau, Alaska have been examined and found suitable for classification for lease to the City and Borough of Juneau (C&BJ) under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 *et seq.*). C&BJ proposes to use the lands for a Water Treatment Plant.

Copper River Meridian, Alaska

T. 41 S., R. 67 E.,
Sec. 9, All.
U.S. Survey No. 3824.

Containing 0.20 acre more or less.

The lands are not needed for Federal purposes. Lease is consistent with current BLM land use planning and will be in the public interest. The lease, when issued, will be subject to the following terms, conditions and reservations:

1. *Nondiscrimination.* Nondiscrimination as to access to or use of the land and facilities based on race, color, sex, creed, national origin, or handicap (43 CFR 17, Subparts A and B) must be guaranteed.

2. *Development and Management Plans.* Leases must be conditioned on adherence to these plans. The approved plan of management and development upon which the lease was considered and issued is required. No modifications will be made without prior consent of the authorized officer.

3. *Lease Period.* The terms of the lease shall be 25 years, renewable and/or transferable.

4. *Hazardous Materials.* Requirements for proper handling of hazardous materials, such as chlorine gas, are referenced in the R&PP lease.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Water Treatment Plant. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development. The BLM is required to follow proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Water Treatment Plant.

DATES: Interested parties may submit comments on or before August 26, 1999.

ADDRESSES: Comments must be submitted to the Anchorage Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Bonds, BLM, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599, 907–267–1239, or 1–800–478–1263.

Dated: July 6, 1999.

Nicholas E. Douglas,

Anchorage Field Manager.

[FR Doc. 99–17637 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–01; N–32958]

Notice of Realty Action; Termination of Recreation and Public Purposes Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purposes (R&PP) Classification N–32958 in its entirety. The land will be opened to the public land laws, including location and entry under the mining laws, subject to valid existing rights.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445, or 775–623–1500.

SUPPLEMENTARY INFORMATION: R&PP Classification N–32958, is hereby terminated in its entirety on the following described public land:

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Mount Diablo Meridian, Nevada

T. 32 N., R. 23 E.,
Sec. 16: NW¼NW¼NW¼NE¼.

Totalling 2.5 acres more or less in Humboldt County.

On April 15, 1981 the Bureau of Land Management received an application for lease from the Gerlach High School, of Gerlach Nevada, to place a "G" constructed of gravel, on the subject lands as symbol of their school spirit. On October 22, 1981, the lands were classified as suitable, pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), segregating the subject land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. On 10/23/86, the Gerlach High School filed a request for relinquishment of Lease N–32958. On November 25, 1986, BLM accepted that relinquishment, but failed to terminate the R&PP classification opening the lands to entry.

At 9 a.m. on August 2, 1999, the land encumbered by R&PP Classification N–32958 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on August 2, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 2, 1999.

Michael R. Holbert,

Associate Field Manager, Winnemucca.

[FR Doc. 99–17521 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Modifications to the Bid Adequacy Procedures

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notification of procedural change.

SUMMARY: The Minerals Management Service (MMS) has changed a criterion in its existing bid adequacy procedures for ensuring receipt of fair market value on Outer Continental Shelf (OCS) oil and gas leases. The change ensures consistency in the evaluation of tracts.

DATES: This modification is effective July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economics Division, at (703) 787–1536. The revised bid adequacy procedures are described below.

What Definitions Apply to These Procedures?

The MROV is a dollar measure of a tract's expected net present value, if that tract is leased in the current sale. The calculation of the MROV allows for exploration and economic risk, and includes tax consequences, e.g., depletion of the cash bonus.

The delayed MROV (DMROV) is a measure used to determine the size of the high bid needed in the current sale to equalize it with the discounted sum of the bonus and royalties expected in the next sale, less the foregone royalties from the current sale. The bonus for the next sale is computed as the MROV associated with the delay in leasing under the projected economic, engineering, and geological leasing receipts conditions, including drainage. If the high bid exceeds the DMROV, then the leasing receipts from the current sale are expected to be greater than those from the next sale, even in cases in which the MROV exceeds the high bid.

The Adjusted Delayed Value (ADV) is the minimum of the MROV and the DMROV.

The RAM is the revised arithmetic average measure of the MROV and all qualified bids on a tract that are equal to at least 25 percent of the high bid.

Anomalous bids are all but the highest bid submitted for a tract by the same company (bidding alone or jointly with another company), parent, or subsidiary. These bids are excluded when applying the number of bids rule or any other bid adequacy measure.

Legal bids are those bids which comply with the MMS regulations (30 CFR 256) and the Notice of Sale, e.g., equal or exceed the specified minimum bid. Any illegal bid will be returned to the bidder.

Qualified bids are those bids that are legal and not anomalous.

MONTCAR is a probabilistic, cash flow computer simulation model used to conduct a resource-economic evaluation that results in an estimate of the expected net present value of a tract (or prospect).

Nonviable tracts or prospects are those geographic or geologic configurations of hydrocarbons that are estimated to be uneconomic to produce with the costs and anticipated future prices used in the analysis.

Within the context of our bid adequacy procedures, the term "unusual bidding patterns" typically refers to a situation in which two or more companies bid against each other more often than would normally be expected. Companies could agree to bid against each other on certain sets of tracts in a sale so that the number of bids rule would apply for bid acceptance. Other forms of unusual bidding patterns exist as well, and generally involve anti-competitive practices, e.g., if it appears that companies are attempting to avoid bidding against each other in a sale on a set of prospective tracts.

A confirmed tract is a previously leased tract having a well(s) which encountered hydrocarbons and may have produced. It contains some oil and/or gas resources whose volume may or may not be known.

A development tract is a tract which has nearby productive (past or currently capable) wells with indicated hydrocarbons and which is not interpreted to have a productive reservoir extending under the tract. There should be evidence supporting the interpretation that at least part of the tract is on the same general structure as the proven productive well.

A drainage tract is a tract which has a nearby well which is capable of producing oil or gas, and the tract could incur drainage if and when such a well is placed on production. The reservoir, from which the nearby well is capable of producing, is interpreted to extend under the drainage tract to some extent.

A wildcat tract is a tract which has neither nearby productive (past or currently capable) wells, nor is interpreted to have a productive reservoir extending under the tract. It has high risk in addition to sparse well control.

Water depth categories for bid adequacy purposes in the Gulf of Mexico are designated as (1) less than 800 meters and (2) 800 meters or more. If different water depth categories are used for a Gulf of Mexico sale, they will be specified in the sale's final notice. For areas other than the Gulf of Mexico, all tracts will be considered to be in the same water depth category, unless an alternative is specified in the final notice of sale.

What Problem Is Addressed by the Change?

In any OCS lease sale, a limited number of tracts may be reclassified from drainage or development (DD) in Phase 1 of the bid evaluation process to confirmed or wildcat (CW) in Phase 2. (The MMS reclassifies a tract if additional Phase 2 analysis supports a classification different than the one assigned the tract in Phase 1 of the evaluation.) However, under the old bid adequacy procedures, a tract classified as CW in Phase 1 was evaluated under different criteria than a tract that was reclassified as CW in Phase 2. This change ensures the consistent treatment of similarly classified tracts whether they are evaluated in Phase 1 or Phase 2.

What Change Is Being Made?

In Phase 1 of the bid adequacy procedures, the MMS classifies tracts as either CW or DD based on information available at the time of sale. Under the old (February 10, 1999) guidelines, tracts within designated water depth categories that were reclassified from DD to CW in Phase 2 only had to have a third largest bid within 50 percent of the high bid to be accepted. Now, DD tracts reclassified as CW tracts must satisfy the same criteria for acceptance that would have had to been met if they were classified as CW in Phase 1.

To ensure consistency in evaluations, the following change is being made. In Phase 1, for CW tracts receiving three-or-more qualified bids, acceptance under the number of bids rule will apply only if the third largest bid is within 50 percent of the high bid, and if the high bid is in the top 75 percent of high bids on a per acre basis for all three-or-more-bid tracts within designated water depth categories. In Phase 2 of the bid evaluation process, DD tracts that have been reclassified as CW will be subject to the same screening criteria that the CW tracts with three-or-more bids had to meet in Phase 1.

How Are Bids Evaluated?

During the bid review process, we conduct evaluations in a two-phased procedure for bid adequacy determination. We also review bids to ensure that they are for at least the minimum amount specified in the notice of sale and that unusual bidding patterns are not present.

What Happens in Phase 1 of the Bid Adequacy Procedures?

In Phase 1, we partition the tracts receiving bids into three general categories:

1. Those tracts with three-or-more bids, on which competitive market forces can be used to assure fair market value;

2. Those tracts which we identify as being nonviable based on adequate data and maps; and

3. Those tracts which we identify as being viable and on which we have the most detailed and reliable data, including tracts classified as DD.

What Phase 1 Rules Are Applied to All Tracts Receiving Bids?

Six Phase 1 rules are applied to all tracts receiving bids:

1. We accept the highest qualified bid on viable CW tracts receiving three-or-more qualified bids if the third largest bid on the tract is at least 50 percent of the highest qualified bid and if the high bid per acre ranks in the top 75 percent of high bids for all three-or-more-bid tracts within a specified water depth category.

2. We accept the highest qualified bid on CW tracts that we determine to be nonviable.

3. We pass to Phase 2 all tracts that require additional information to make a determination on viability or tract type.

4. We pass to Phase 2 all viable CW tracts receiving one or two qualified bids.

5. We pass to Phase 2 all viable CW tracts receiving three-or-more qualified bids if either the third largest such bid is less than 50 percent of the highest qualified bid or if the high bid per acre ranks in the lowest 25 percent of high bids for all three-or-more-bid tracts in the specified water depth category.

6. We pass to Phase 2 all DD tracts.

How is the Percentile Ranking of a Tract's High Bid Calculated?

The percentile ranking of a tract's high bid is calculated by multiplying 100 times the ratio of the numerical ordering of the three-or-more-bid tract's high bid to the total number of all three-or-more-bid tracts in the designated water depth. For example, suppose there are 21 total tracts identified in Phase 1 as receiving three-or-more-bids in the designated water depth category of at least 800 meters. All tracts in this set having a high bid among the top 15 high bids would satisfy the 75 percent requirement; the 15th ranked high bid would represent the 71st percentile, i.e., (100*(15/21)=71).

Can any Other Procedures be Used in Phase 1 to Ensure the Receipt of Fair Market Value?

In ensuring the integrity of the bidding process, the Regional Director may identify an unusual bidding pattern at any time during the bid review process, but before a tract's high bid is accepted. If the finding is documented, the Regional Director has discretionary authority, after consultation with the Solicitor, to pass those identified tracts to Phase 2 for further analysis. The Regional Director may eliminate all but the largest of the unusual bids from consideration when applying any bid adequacy rule, may choose not to apply a bid adequacy rule, or may reject the tract's highest qualified bid.

How Long Does it Take To Complete the Phase 1 Procedures?

These procedures are generally completed within 3 weeks of the bid opening. All the leases that will be awarded as a result of the Phase 1 analysis are announced at the end of this period.

How Long do the Phase 2 Procedures Take?

The Phase 2 bid adequacy determinations are normally completed sequentially over a period ranging between 21 and 90 days after the sale. Leases are awarded as the analysis of bids is completed over this time period. The total evaluation period can be extended, if needed, at the Regional Director's discretion (61 FR 34730, July 3, 1996).

What are the Initial Steps of the Bid Adequacy Process that are Followed in Phase 2?

Activities to assess bids are undertaken by analyzing, partitioning, and evaluating tracts in two steps:

1. Further mapping and/or analysis is performed to review, modify, and finalize viability determinations and tract classifications.

2. Tracts we identify as being viable must undergo an evaluation to determine if fair market value has been received.

What Decision Rules are Applied in Phase 2 of the Bid Evaluation Process?

After completing the initial two steps, a series of rules and procedures are followed.

1. We accept the highest qualified bid on newly classified CW tracts having three-or-more qualified bids if its third

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largest bid is at least 50 percent of the highest qualified bid and if its high bid per acre ranks in the top 75 percent of high bids for all three-or-more-bid tracts that reside within its specified water depth category.

2. We accept the highest qualified bid on all tracts determined to be nonviable.

3. We determine whether any categorical fair market evaluation technique(s) will be used.

If so we:

A. Evaluate, define, and identify the appropriate threshold measure(s) for bid acceptance.

B. Accept all tracts whose individual measures of bid adequacy satisfy the threshold categorical requirements.

4. We conduct a full-scale evaluation, which could include the use of MONTCAR, on all remaining tracts passed to Phase 2 and still awaiting an acceptance or rejection decision.

What Subset of Tracts Comprise the "Remaining Tracts" That Still Need a Phase 2 Acceptance or Rejection Decision?

The remaining tracts include tracts not accepted by a categorical rule that we classify as:

1. DD tracts, or

2. CW tracts that are viable and received:

A. One or two qualified bids, or

B. Three-or-more qualified bids, if either its third largest bid is less than 50 percent of the highest qualified bid or the high bid is in the bottom 25 percent of all three-or-more-bid CW tracts within a designated water depth category.

What Procedures are Followed for Evaluating the Adequacy of Bids on These Tracts?

For these tracts we:

1. Accept the highest qualified bid, if it equals or exceeds the tract's ADV.

2. Reject the highest qualified bid on DD tracts receiving three-or-more qualified bids, if the high bid is less than one-sixth of the tract's MROV.

3. Reject the highest qualified bid on DD tracts receiving one or two qualified bids and on CW tracts receiving only one qualified bid, if the high bid is less than the tract's ADV.

What Happens Next to the Tracts Still Awaiting an Acceptance or Rejection Decision?

At this stage of the process, the tracts still awaiting a decision consist of those having a highest qualified bid that is less than the ADV that are either:

1. DD tracts receiving three-or-more qualified bids with the highest bid exceeding one-sixth of the tract's MROV or

2. Viable CW tracts that receive two-or-more qualified bids.

From these tracts, we select the following:

A. DD tracts having three-or-more qualified bids with the third largest bid being at least 25 percent of the highest qualified bid, and

B. CW tracts having two-or-more qualified bids with the second largest bid being at least 25 percent of the highest qualified bid.

We then compare the highest qualified bid on each of these selected tracts to the tract's RAM. For all these tracts, we:

1. Accept the highest qualified bid, if the high bid equals or exceeds the tract's RAM, or

2. Reject the highest qualified bid, if the high bid is less than the tract's RAM.

Finally, we identify those tracts that are still awaiting a decision, but did not meet the requirements for comparison to the RAM and we reject the high bid on these tracts.

At this point, the acceptance or rejection decisions are made on all the high bids in the sale. The successful bidders are notified and their leases are awarded after the full payment of the high bid is received. The unsuccessful bidders are notified as well and their bid deposits are returned. Unsuccessful bidders may appeal a bid rejection decision as described in 30 CFR 256.47(e)(3).

Dated: July 1, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–17662 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Yukon-Charley Rivers National Preserve.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies is proposing in 1999 to conduct surveys of persons using selected Alaskan Military Operations Areas where Air Force training occurs. In one of these surveys, person owning property along the Salcha River will be asked about their expectations concerning Air Force training and the impacts of reported overflights on their activities and experiences.

	Estimated numbers of	
	Responses	Burden hours
Salcha River Land-owner Mail Survey	150	75

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

DATES: Public comments will be accepted on or before September 10, 1999.

Send Comments To: Darryll R. Johnson, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100; or Mark E. Vande Kamp, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100.

FOR FURTHER INFORMATION CONTACT: Darryll R. Johnson. Voice: 206–685–7404, Email:<darryllj@u.washington.edu>; Mark E. Vande Kamp. Voice: 206–543–0378, Email: <mevk@u.washington.edu>.

SUPPLEMENTARY INFORMATION:

Titles: Salcha River Land-owner Mail Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service (in conjunction with a natural resource protection council

including members from the Air Force and a number of state and federal land management agencies) needs information to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

Automated date collection: At the present time, there is no automated way to gather this information because it includes asking land-owners for expectations and evaluations they associate with their experiences with military aircraft on the Salcha River.

Description of respondents: Persons owning land on the Salcha River.

Estimated average number of respondents: 150.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 30 minutes.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: 75 hours.

Leonard Stowe,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 99–17650 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Yukon-Charley Rivers National Preserve.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies is proposing in 1999 to conduct surveys of persons using selected Alaskan Military Operations Areas where Air Force training occurs. In one of these surveys, visitors entering Harding Lake and Chena River State Recreation Areas (SRAs) will be asked about their expectations concerning Air Force training, and will be sent a mail questionnaire asking about the impacts of reported overflights on their activities and experiences.

Estimated numbers of	Responses	Burden hours
Alaskan Military Operations Areas On-Site Entrance Survey	1410	235
Alaskan Military Operations Areas Mail Survey	950	396
Total	2360	631

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on these six proposed information collection requests (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility: (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to incorporate survey information into the process of setting policy to mitigate the impact of Air Force activity in the Alaskan MOAs on recreational users of those areas.

One request for further information was received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for these six surveys. Further information was provided as requested. No other comments were received.

DATES: Public comments will be accepted on or before August 11, 1999.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: Darryll R. Johnson, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100; or Mark E. Vande Kamp, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100.

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments on or before August 11, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGES SUBMITTED FOR OMB REVIEW, CONTACT: Darryll R. Johnson. Voice: 206–685–7404, Email: <darryllj@u.washington.edu>; or Mark E. Vande Kamp. Voice: 206–543–0378, Email: <mevk@u.washington.edu>.

SUPPLEMENTARY INFORMATION:

Titles: Alaskan Military Operations Areas On-Site Entrance Survey; Alaskan Military Operations Areas Mail Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service (in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies) needs information to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

Automated data collection: At the present time, there is no automated way to gather this information because it includes asking visitors about the expectations and evaluations they associate with their experiences in Harding Lake and Chena River State Recreation Areas.

Description of respondents: A sample of individuals who use Harding Lake and Chena River State Recreation Areas for recreation purposes.

Estimated average number of respondents: 1410 Total respondents.

Estimated average number of responses: 2360 total responses. Approximately 950 respondents will respond twice, once to an entrance survey, and once to a mail follow-up survey, thus accounting for the difference between total respondents and total responses.

Estimated average burden hours per response: 10 minutes (Alaskan Military Operations Areas On-Site Entrance

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Survey): 25 minutes (Alaskan Military Operations Areas Mail Survey).

Frequency of response: 2 times per respondent (for persons completing both the Alaskan Military Operations Areas On-Site Entrance Survey and the Alaskan Military Operations Areas Mail Survey).

Estimated annual reporting burden: 235 hours (Alaskan Military Operations Areas On-Site Entrance Survey); 396 hours (Alaskan Military Operations Areas Mail Survey); 631 Total hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 99–17651 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Environmental Assessment of Proposed Land Transfer, Arlington House—The Robert E. Lee Memorial, George Washington Memorial Parkway to Department of the Army, Arlington National Cemetery

ACTION: National Park Service, Interior.

ACTION: Notice of availability of an environmental assessment (EA) for land transfer from National Park Service to Department of Army, Arlington National Cemetery.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service policy, the National Park Service has completed an EA which evaluated the potential impacts of the proposed land transfer of an area known as Section 29. The EA examines the environmental and visual impacts of the land transfer on the natural and historic resources and scenic quality of Arlington House—The Robert E. Lee Memorial. The National Park Service is soliciting comments on this EA. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act.

DATES: There will be a 45-day public review period for comment on this document. Comments on the EA should be received no later than August 24, 1999.

ADDRESSES: Comments on the EA should be submitted to Ms. Audrey Calhoun, Superintendent, National Park Service, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. A limited number of copies of the EA are available on request. A public reading copy of the EA will be available at the Arlington County Main Library, the Headquarters of the George Washington Memorial Parkway and at the Arlington House—The Robert E. Lee Memorial.

And at the National Park Service web page at: http://www.nps.gov/gwmp/section29index.htm.

FOR FURTHER INFORMATION CONTACT: Ms. Audrey Calhoun, Superintendent, George Washington Memorial Parkway, McLean, VA 22101, Telephone: (703) 289–2500.

SUPPLEMENTARY INFORMATION: Section 29 is a 24.44 wooded ravine that is the remaining portion of the historic Custis-Lee estate's forested grounds at Arlington House—The Robert E. Lee Memorial (Arlington House). The forested area and the adjacent mansion are administered by the George Washington Memorial Parkway, a unit of the National Park Service (NPS), and are located in Arlington National Cemetery (ANC). The area was part of the historic forest of the Custis-Lee estate and was transferred from ANC to the NPS in 1975 to maintain the historic setting of Arlington House in perpetuity.

The Department of the Army recognized that ANC is nearing capacity and on February 22, 1995 signed an interagency agreement with the Department of the Interior to transfer a portion of Section 29 to the cemetery. The agreement divided Section 29 approximately in half, into the "Preservation Zone" and the "Interment Zone".

The Preservation Zone consists of approximately 12.5 acres to the west of Arlington House; that the agreement described as having steep slopes, a high potential for archeological resources pertaining to Arlington House, and forest cover which dates to the Lee occupancy and contributes significantly to the historic setting of Arlington House. The Interment Zone is a 12-acre area west of the Preservation Zone; which the agreement described as having no known cultural resources, slopes that are not steep, and forest cover that is not historically significant.

Implementation of the agreement required carrying out a study to consider archeological resources, cultural landscape values, and National Register eligibility; an environmental analysis of the transfer under the National Environmental Policy Act; and satisfaction of the requirements of Section 106 of the National Historic Preservation Act.

The cultural resources study was contracted and the resulting cultural investigation report identified the Arlington House Ravine Site, an archeological site of high integrity containing historic elements related to the period of the Custis-Lee occupancy and also prehistoric quarrying and tool making components. It encompasses a large portion of the project area and is an element that enhances the National Register of Historic Places listing of the site. The archeological site is the only recorded Late Archaic period quartzite quarry on National Park Service land in northern Virginia.

The cultural landscape analysis determined that much of the existing forest canopy dates to the Custis-Lee occupation and retains the historic landscape character. A forestry study demonstrated that the hardwood forest in the Preservation Zone contained trees 220–230 years old. Other portions of the project area forest have grown to maturity and presently recreate the landscape characteristics that defined the appearance and significance of the forest historically as a portion of the Arlington estate. This forest is the same type that once covered the estate, and regenerated from trees that were present historically. A representative tree in the southern Interment Zone was determined to be 258 years old. The forest constitutes the oldest and largest tract of climax eastern hardwood forest in Arlington County, Virginia.

Analysis of the resources of Section 29 identified other conditions that affect the potential for transfer of land. The Interment Zone was determined to contain significant archeological and cultural landscape resources, in addition to those of the Preservation Zone. Upon consideration of these resources, four alternatives were developed.

Alternative 1 retains the highest significance resources to NPS (The Preferred Alternative): NPS would transfer approximately 9.6 acres, comprising most of the Interment Zone, except for the southeastern sloped area containing archeological locus 1 and a stream; and also transferring to ANC the northern tip of the Preservation Zone, containing two disturbed areas. Alternative 2—retains most resources to NPS: NPS would transfer 4.3 acres of the Interment Zone between the ANC old warehouse (maintenance) area and Fort Myer. Alternative 3—retains the Preservation Zone to NPS and Interment Zone transfers to ANC: NPS would transfer the 12-acre Interment Zone to ANC and retain the 12.5-acre Preservation Zone. Alternative 4—All of Section 29 is retained by NPS (the No Action Alternative): No property would be transferred from NPS to ANC.

Public Law 104–201 directed the Secretary of the Interior to transfer to the Secretary of the Army jurisdiction over the Interment Zone, which is the plan in Alternative 3. Adoption of any of the other alternatives would require legislative action to amend the existing law.

A public meeting on the EA will be held July 21, 1999 at the Women In Military Service For America Memorial's Education Center from 7:00 p.m. until 9:00 p.m. The Memorial is located on Memorial Drive at the Gates to Arlington National Cemetery. Parking will be at the Arlington Cemetery's Visitor Parking Lot. There is a $1.25 fee per hour to park in the lot.

Dated: July 2, 1999.

Audrey F. Calhoun,

Superintendent.

[FR Doc. 99–17523 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Parkwide Trails Plan Environmental Impact Statement and General Management Plan Amendment (GMPA/EIS)

AGENCY: National Park Service. DOI.

ACTION: Notice of availability.

SUMMARY: Delaware Water Gap National Recreation Area announces the availability of the draft Trails Plan/General Management Plan Amendment/Environmental Impact Statement. The draft plan has been developed to meet the needs of its many visitors. This plan serves as an amendment to the park's 1987 General Management Plan. The document will be available for a 45-day public review beginning on July 2, 1999.

Public meetings will be held in early August. Notices of these meetings will be distributed to prior respondents/participants and through the local media. For further information about this document, contact: Superintendent, Delaware Water Gap National Recreation Area, 1 River Road, Bushkill, PA 18324, 570–588–2418.

Copies available at: Website: www.nps.gov/dewa

Park Headquarters, River Road, Bushkill, PA 18324

Warren County Library, Belvidere NJ, 07823

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenburg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802

Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, D.C. 20515

Honorable Don Sherwood, U.S. House of Representatives, Washington, DC, 20515–3810

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005

Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120

Honorable Christine Whitman, State House, Trenton, NJ 08625

Kemp Library, East Stroudsburg University, E Stroudsburg, PA 18301

State Library of PA, P.O. Box 1601, Harrisburg, PA 17105

Easton Area Public Library, 6th and Church Street, Easton, PA 18042

Sussex County Library, 125 Morris Turnpike, Newton, NJ 07860

New Jersey State Library, 185 West State Street CN 520, Trenton, NJ 08625

Eastern Monroe Public Library, 1002 North Ninth Street, Stroudsburg PA 18360

Pike County Library, 201 Broad Street, Milford PA 18337

Dated: June 15, 1999.

J. Robert Kirby,

Acting Superintendent.

[FR Doc. 99–16581 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area; Notice; Correction

SUMMARY: The Delaware Water Gap National Recreation Area submitted a Notice of Availability for its Trail Plan/General Management Plan Amendment/Environmental Impact Statement. The document contained an incorrect date for the start of the public comment period.

FOR FURTHER INFORMATION CONTACT: Chris Nelson, 570–588–2418.

Correction

In a **Federal Register** publication request letter published June 23, 1999 (64 FR 33501), Summary section, correct date to read:

The document will be available for a 45-day public review beginning on July 9, 1999.

Dated: June 29, 1999.

J. Robert Kirby,

Acting Superintendent.

[FR Doc. 99–17652 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Pea Ridge National Military Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare a General Management Plan and Environmental Impact Statement for Pea Ridge National Military Park, Arkansas.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an associated Environmental Impact Statement (EIS) for Pea Ridge National Military Park, Arkansas, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters or other mailings.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters should be directed to: Mr. Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, Arkansas 72751; E-mail: steve_adams@nps.gov. Requests to be added to the project mailing list can be made to Jennie Wagner at the above address or telephone 501–451–8122, extension 103.

FOR FURTHER INFORMATION CONTACT: Superintendent, Pea Ridge National Military Park, at the address above or at telephone 501–451–8122, extension 104.

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SUPPLEMENTARY INFORMATION: Pea Ridge National Military Park is a 4,300 acre Civil War Battlefield that preserves the site of March 1862 battle that saved Missouri for the Union. The Battle of Pea Ridge, March 7th and 8th, 1862 was the successful culmination of a Union campaign to foil the Confederacy's goal of securing Missouri and capturing the Federal arsenal at St. Louis. The victory at Pea Ridge allowed the Union to continue control of Missouri and the Missouri and Mississippi Rivers, thus assisting the strategic and logistical base for General Grant's Mississippi campaign.

In accordance with NPS Park Planning policy, the GMP will ensure the Memorial has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for Historic Site will be conducted in accordance with requirements of the NEPA (42 U.S.C. § 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The National Park Service estimates the draft GMP and draft EIS will be available to the public by the autumn of 2000.

Dated: June 30, 1999.

William W. Schenk,

Regional Director.

[FR Doc. 99–17522 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places;Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 3, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 27, 1999.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Clarke County

Bush House (Clarke County MPS), 168 N. Church St., Grove Hill, 99000885

Cleveland, Stephen Beech, House (Clarke County MPS), Cty Rd. 35, 2.4 mi. S of US 84, Suggsville vicinity, 99000886

Coate, John A., House (Clarke County MPS), DuBose St., bet. Church and Crawford Sts., Grove Hill, 99000887

Cobb House (Clarke County MPS), US 84, 1.4 mi. W of US 43, Grove Hill vicinity, 99000888

Gainestown Methodist Church and Cemetery (Clarke County MPS), Cty. Rd. 29, 0.3 mi. S of Cty. Rd. 33, Gainestown vicinity, 99000889

Pugh, Jesse Pickens, Farmstead (Clarke County MPS), US 84, 3.5 mi. W of Grove Hill, Grove Hill vicinity, 99000890

Dallas County

Street Manual Training School, 263 Cty. Rd. 38, Ruchmond-Minter vicinity, 99000891

Elmore County

East Wetumpka Commercial Historic District (Boundary Increase), 206 S. East Main St., Wetumpka, 99000884

ARKANSAS

Washington County

Fayetteville National Cemetery (Civil War Era National Cemeteries MPS), 700 Government Ave., Fayetteville, 99000892

CALIFORNIA

Alameda County

American Bag Co.—Union Hide Co., 299 Third St., Oakland, 99000896

Los Angeles County

Scripps Hall, 209 E. Mariposa St., Altadena, 99000893

Riverside County

Childs, William, House, 1151 Monte Vista Dr., Riverside, 99000895

San Francisco County

Second and Howard Streets District, 121–198 2nd, 579–612 Howard, 116 Natoma, 111–163 New Montgomery, San Francisco, 99000894

COLORADO

Crowley County

Crowley School, 301 Main St., Crowley, 99000897

FLORIDA

Palm Beach County

Central Park Historic District, Roughly along FL 805 and S. Olive Ave. from Monroe Dr. to Southern Blvd., West Palm Beach, 99000898

GEORGIA

Marion County

Drane—Stevens House, Church St. bet. Fourth and Fifth Ave., Buena Vista, 99000899

KENTUCKY

Fayette County

Bowman Mill Road Rural Historic District, Bowman Mill Rd., Parkers Mill Rd., and Cave Hill Ln.,

Taylor County

Battle of Tebbs Bend, Off KY 55, Tebbs Bend Rd., Campbellsville vicinity, 99000900

MISSOURI

Knox County

Edina Double Square Historic District, Roughly along portions of Main and E. Lafayette Sts., Edina, 99000902

McDonald County

Pineville Site, Address Restricted, Pineville vicinity, 99000903

NEW JERSEY

Atlantic County

Babcock, Capt. Francis, House, 324 S. Shore Rd., Absecon City, 99000907

Cape May County

Hildreth, George, House, 731 Seashore Rd., Lower Township, 99000905

Monmouth County

North Long Branch School—Primary No. 3, 469 Church St., Long Branch, 99000906

Morris County

Lake Hopatcong Yacht Club, N. Bertrand Rd. and Willow St., Mount Arlington Borough, 99000904

NEW YORK

Clinton County

Miller Homestead, 664 Hallock Hill Rd., AuSable, 99000910

Delaware County

Second Old School Baptist Church of Roxbury, Cty. Rd. 41, Roxbury, 99000908

Ulster County

Brunel, Emile, Studio and Sculpture Garden, NY 28, Boiceville, 99000909

NORTH CAROLINA

Bladen County

Gilmore—Patterson Farm, 20337 NC 87 W, St. Paul's vicinity, 99000912

Buncombe County

Spinning Wheel, 1096 Hendersonville Rd., Asheville, 99000913

Currituck County

Currituck Beach Lighthouse Complex (Boundary Increase), NC 12, N of NC 1185, Corolla, 99000911

OHIO

Warren County

Springboro Historic District, Roughly bounded by Main, East, and Mill Sts., and Central Ave., Springboro, 99000914

WASHINGTON

Douglas County

Nifty Theater (Movie Theaters in Washington State MPS) 201 Locust, Waterville, 99000916

King County

Entwistles, David and Martha, House, 32021 E. Entwistle St., Carnation, 99000918, Independent Order of Odd Fellows (IOOF) Hall No. 148, 3940 Tolt Ave., Carnation, 99000917

Pierce County

Annobee Apartments, 319–323 North I St., Tacoma, 99000919

Spokane County

Koerner House, 1824 S. Mount St., Spokane, 99000915

WISCONSIN

Green Lake County

Thrasher's Opera House, 506 Mill St., Green Lake, 99000921

Sauk County

Sauk City Fire Station, 717 John Adams St., Sauk City, 99000920

[FR Doc. 99–17660 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the American Museum of Natural History of New York, NY

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the American Museum of Natural History which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural item is a wooden canoe prow piece carved in the shape of a beaver. It is painted red with black and blue-green detailing and it has abalone teeth and eyes. Representatives of Kootznoowoo, Incorporated, identified this prow piece as belonging to the one canoe that survived the U.S. Navy's shelling of Angoon in 1882.

In 1911, the American Museum of Natural History purchased this prow piece from George Thornton Emmons. The Museum accessioned the item into its collection the same year (AMNH Accession Number 1911-7).

The cultural affiliation of this item is Hutsnuwu ("Hootz-ah-tar") Tlingit as indicated through Museum records and consultation with representatives of Kootznoowoo, Incorporated. Kootznoowoo, Incorporated, had requested the object on behalf of the Deisheetaan Clan. Consultation evidence presented by representatives of Kootznoowoo, Incorporated, indicates that this item has ongoing historical, traditional, and cultural importance central to the tribe itself, and no individual had the right to alienate it at the time of acquisition.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and Kootznoowoo, Incorporated.

This notice has been sent to officials of Kootznoowoo, Incorporated, and the Angoon Community Association. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Martha Graham, Registrar for Cultural Resources, Department of Anthropology, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before August 11, 1999. Repatriation of this object to Kootznoowoo, Incorporated, may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the contents of or determinations within this notice.

Dated: July 2, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–17659 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Telecommunications Facilities; Construction and Operation; Redwood National Park, Del Norte County, California

AGENCY: Redwood National Park, NPS, DOI.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that Redwood National Park has prepared an environmental assessment on an application made by Cal North Cellular to upgrade its existing wireless telecommunication facility at the Requa maintenance area.

EFFECTIVE DATE: Comments on the environmental assessment will be accepted on or before August 6, 1999.

ADDRESSES: Interested parties should contact National Park Service, Superintendent's Office, Redwood National Park, 1111 Second Street, Crescent City, CA 95531. To obtain a copy of the environmental assessment, contact Kelly Cahill at (707) 464–6101 extension 5002.

SUPPLEMENTARY NOTICE: The initial application made by Cal North Cellular requests that a cellular site be upgraded in the national park's maintenance area at Requa. The Superintendent will consider and evaluate all comments received on the environmental assessment before authorizing Cal North Cellular to proceed with the permitting process.

Dated: June 29, 1999.

Andrew T. Ringgold,

Superintendent, Redwood National Park.

[FR Doc. 99–17524 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below

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on or before August 11, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Virginia Huth, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 30, 1999 (64 FR 23361). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Returned Request Form, Reply to Request Involving Relief Agencies, Walk-In Request for OPM Records or Information.

OMB number: 3095-New.

Agency form number: NA Forms 13022, 13064, 13063.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 4,500.

Estimated time per response: 5 minutes.

Frequency of response: On occasion, when individuals desire to acquire information from civilian personnel or medical records.

Estimated total annual burden hours: 375 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. The authority for this information collection is contained in 36 CFR 1228.162. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF's or EMF's, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

Dated: July 6, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–17603 Filed 7–9–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 26, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Intelligence Agency (N1–373–99–2, 1 item, 1 temporary item). Records relating to the planning and development of an automated resource management information system that was never operational. Included are such records as feasibility studies, plans, manuals, and budget documents.

2. Department of Defense, Office of the Inspector General (N1–509–99–3, 3 items, 3 temporary items). Surveys, working papers, recommendations, charts, and related records pertaining to staffing. Included are electronic copies of documents created using electronic mail and word processing.

3. Department of Energy, Agency-wide (N1–434–98–8, 3 items, 2 temporary items). Electronic copies of records created using electronic mail, word processing, and other office automation applications that pertain to budget policy, budget estimates, budget justifications, and related matters. Also included are recordkeeping copies of budget office records that pertain to non-substantive programs. Recordkeeping copies of files that relate to substantive programs are proposed for permanent retention.

4. Department of Energy, Strategic Petroleum Reserve (N1–434–98–3, 36 items, 21 temporary items). Records relating to administrative and operational activities of the Strategic Petroleum Reserve (SPR). Included are such records as general subject files, organization improvement files, external relations records, files on environmental matters, safety and health records, legislative files, and maintenance management files. Files proposed for permanent retention include program planning files, construction and engineering records, external agreements, oil acquisition/drawdown records, economic analysis files, organization and management files, SPR publications, maps, photographs, and drawings.

5. Central Intelligence Agency, Agency-wide (N1–263–99–2, 2 items, 2 temporary items). Electronic system and related paper input documents containing financial information on individual personnel collected pursuant to the Counterintelligence and Security Enhancements Act of 1994 and Executive Order 12968 (Access to Classified Information).

6. Central Intelligence Agency, Agency-wide (N1–263–99–3, 2 items, 1 temporary item). Office automation copies of schedules of daily activities. Recordkeeping copies of schedules of daily activities for all Presidential appointees and deputy directors are proposed for permanent retention.

7. Environmental Protection Agency, Agency-wide (N1–412–98–2, 2 items, 2 temporary items). Records relating to EPA participation in safety tests and disaster preparedness exercises. Included are correspondence files, state and local emergency response plans, inspection reports, and electronic copies of documents created using electronic mail and word processing.

8. Federal Energy Regulatory Commission, Financial Policy Division (N1–138–99–1, 8 items, 8 temporary items). Records relating to delegations of administrative authorities, including an electronic database which identifies individuals to whom administrative authorities have been delegated. Electronic copies of documents created using electronic mail and word processing are also included.

9. Federal Retirement Thrift Investment Board, Agency-wide (N1–474–98–1, 6 items, 6 temporary items). Federal Retirement Thrift Investment Board and Thrift Savings Plan web sites and related records. Included web site archives, change control records including e-mail and word processing applications, migration records, feedback and statistical reports, and electronic code.

10. Federal Trade Commission, Agency-wide (N1–122–96–2, 4 items, 3 temporary items). Congressional correspondence records consisting of routine inquiries from Members of Congress, responses, tracking sheets, data about correspondence maintained on-line, and printed out reports derived from on-line data. Substantive correspondence with Congressional Committees and Subcommittees, signed by the Chairman of the Commission or by the Commission's Secretary on behalf of the Commission, is proposed for permanent retention.

11. Nuclear Regulatory Commission, Office of Congressional Affairs (N1–431–99–2, 35 items, 31 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) pertaining to Congressional affairs, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Records, which were previously approved for disposal in paper form, include files relating to committees and conferences for which the Commission was not a sponsor, Congressional correspondence, Congressional hearing testimony and transcripts, copies of proposed legislation, and biographical information on Members of Congress. The electronic recordkeeping copies of files relating to committees and conferences sponsored by the Commission and general program correspondence files at the Office Director level are proposed for permanent retention.

12. Nuclear Regulatory Commission, Office of Small Business and Civil Rights (N1–431–99–5, 4 items, 2 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) pertaining to small business and civil rights, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of program correspondence files at the Office Director level are proposed for permanent retention.

13. Social Security Administration, Agency-wide (N1–47–99–1, 4 items, 4 temporary items). Title II Retirement and Survivors Insurance International Claims Folders consisting of paper case files and electronic copies of records created using word processing, electronic mail, and other office automation applications. These files are used to adjudicate claims and include such records as award or disallowance determination forms, correspondence, claims payment history, and, for disability-based benefits, medical

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reports and disability hearing transcripts.

Dated: July 6, 1999.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–17600 Filed 7–9–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice; Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Preservation for a two-year period. In accordance with the Office of Management and Budget (OMB) Circular A–135, OMB has approved the inclusion of the Advisory Committee on Preservation in NARA's ceiling of discretionary advisory committees. The Committee Management Secretariat, General Services Administration, has also concurred with the renewal of the Advisory Committee on Preservation in correspondence dated June 14, 1999.

The Archivist of the United States has determined that the renewal of the Advisory Committee on Preservation is in the public interest due to the expertise and valuable advice the committee members provide on technical preservation issues affecting Federal records of all types of media. NARA uses the Committee's recommendations in NARA's implementation of strategies for preserving the permanently valuable records of the Federal Government.

Dated: July 6, 1999.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 99–17602 Filed 7–9–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in Federal Register notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before August 26, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for addi-tional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, LifeCycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedule Pending

Farm Credit Administration, Agency-wide (N9–103–99–1, 28 items, 28 temporary items). Electronic copies of records created using electronic mail and word processing accumulated by the Office of the Board, the Office of Examination, the Office of General Counsel, and the Office of Resources Management as well as electronic copies relating to routine program administration accumulated by all agency components. Included are electronic copies associated with such records as rulemaking files, funding approvals, examination reference files, litigation and enforcement cases, published periodicals and studies, training materials, and criminal referrals. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Chapters 1, 2, 4, 5, 6, 8, and 9 of the FCA Comprehensive Records Schedule and Disposition Information manual and Disposition Jobs N1–103–87–3, N1–103–92–2, N1–103–94–8, and N1–103–96–1. The January 1995 version of the manual is available on the NARA web site (http://ardor.nara.gov/agricult/fca/index.html).

Dated: July 6, 1999.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–17601 Filed 7–9–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 137th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 22, 1999 from 2:30 to 5:30 p.m. in Room 527 and on July 23, 1999 from 9 a.m. to 3:30 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The Council will meet in closed session on July 22, from 2:30 to 5:30 p.m. for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of May 12, 1999, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code. The remainder of the meeting, from 9 a.m. to 3:30 p.m. on July 23, will be open to the public. Topics for discussion tentatively include: A report and discussion of issues emerging from the Planning & Stabilization Colloquia; a Research presentation on the Role of Research in Agency Planning and Demographics; a report on Millennium projects; Application Review; Challenge America 2000 and ArtsREACH 2000 Guidelines; a Design Initiative—New Public Works; the new Endowment logo for television use; Congressional and Budget updates; and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TTY–TDD 202/692–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5570.

Dated: July 6, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 99–17510 Filed 7–9–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 26, "Fitness for Duty Program".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* All licensees authorized to construct or operate a nuclear power reactor and all licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material.

6. *An estimate of the number of responses:*

a. 144 semi-annual reports (an average of 40 hours per response).

b. 72 telephonic event reports (an average of 15 minutes per response).

c. 44,000 written statements from applicants for unescorted access authorization to protected areas (an average of 30 seconds per response).

7. *The estimated number of annual respondents:* 72.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 61,574.6 (6097 hours of reporting burden and 55,477.6 hours of recordkeeping burden).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 26, "Fitness for Duty Program," requires licensees of nuclear power plants and licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning significant events and program performance. Compliance with these program requirements is mandatory for licensees subject to 10 CFR Part 26.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 11, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0146), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 7th day of July 1999.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–17616 Filed 7–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50 issued to GPU Nuclear, Inc., (the licensee) for operation of the Three Mile Island Nuclear Station, Unit 1, (TMI–1) located in Dauphin County, Pennsylvania.

The proposed amendment would grant authority for the licensee to possess radioactive materials without unit distinction so that after the sale and transfer of the TMI–1 license to AmerGen, radioactive materials may continue to be moved between the TMI–1 and TMI–2 units as they currently are. After the license transfer, GPU Nuclear will need to access the waste handling and processing facilities at TMI–1 (currently common facilities) for its normal post defueling monitored storage (PDMS) activities. Similarly, AmerGen as the TMI–1 licensee and PDMS contractor, will need to move radioactive apparatus and materials between units. The amendment would not authorize receipt or possession of radioactive material or waste from other sites.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or the consequences of an accident previously evaluated. The proposed changes do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR [Updated Final Safety Analysis Report] transient analyses. No Technical Specification Limiting Condition for Operation, Action statement or Surveillance Requirement is affected by any of the proposed changes. Examples of TMI–2 radioactive materials which are moved or staged in TMI–1, such as liquid or solid radwaste or contaminated protective clothing, provide negligible source terms for any potential release. Further, the proposed changes do not alter the design, function, or operation of any plant component. Therefore, the proposed amendment does not affect the probability or consequences of any accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes do not affect assumptions contained in plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license, or Technical Specifications that preserve safety analyses assumptions. The proposed changes do not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed changes do not alter the design, function, or operation of any plant components. Therefore, the proposed amendment does not affect the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Technical Specification Limiting Condition for Operation, Action statement, or Surveillance Requirement is affected. Therefore, the proposed amendment does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 11, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publication Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no

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significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 29, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publication Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 6th day of July 1999.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17614 Filed 7–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments would change the Technical Specifications (T/S) to allow reactor coolant system temperature changes in certain Mode 5 and 6 action statements if the shutdown margin is sufficient to accommodate the expected temperature change. In addition, footnotes regarding additions of water from the refueling water storage tank to the reactor coolant system are clarified and relocated to action statements. Additional actions are added in Table 3.3–1, "Reactor Trip System Instrumentation," when the required source range neutron flux channel is inoperable. Corresponding changes are proposed for the bases for T/S 3/4.1.1, "Boration Control," and T/S 3/4.1.2, "Boration Systems." Administrative changes are proposed to improve clarity. Finally, additions are made to shutdown margin T/S surveillance requirements to address use of a boron penalty (requirement for additional boron) during residual heat removal system operation in Modes 4 and 5.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

No. I&M [IM] [Indiana Michigan Power Company] proposes to permit operators to make RCS [reactor coolant system] temperature changes under conditions not previously allowed. RCS temperature changes may add positive reactivity to the reactor core that could reduce the SDM [shutdown margin] necessary to maintain subcritical conditions. Acceptable consequences for an inadvertent criticality rely on prevention. Maintaining an adequate SDM is an essential means to prevent an inadvertent criticality.

When equipment that is relied upon to prevent, detect, correct, or mitigate an unintentional approach to a critical condition is unavailable or degraded, activities that may reduce the SDM must be precluded or adequately controlled. This amendment request is based on maintaining adequate control of positive reactivity additions as a result of RCS temperature changes in Modes 5 and 6. The control is provided by requirements to confirm that the SDM required by the T/S is available to accommodate the expected RCS temperature change. This preserves the validity of accident analyses that assume the T/S SDM requirements are met when the accident is initiated.

The following accidents of potential applicability in Modes 5 and 6 are described in Section 14.2, "Standby Safeguards Analysis" of the Updated Final Safety Analysis Report (UFSAR).

1. Fuel handling accident
2. Waste liquid release
3. Waste gas release
4. Steam generator tube rupture
5. Steam pipe rupture
6. Rupture of control rod mechanism housing—rod cluster control assembly (RCCA) ejection
7. Environmental consequences following secondary system accidents
8. Rupture of a feedline (Unit 2 only)

The UFSAR also describes these events:

9. Uncontrolled RCCA withdrawal from a subcritical condition (Section 14.1.1)
10. Uncontrolled boron dilution (Section 14.1.5)

Accidents 4 through 8, above, are not credible in Modes 5 and 6 due to negligible stored energy (temperature and pressure) in the primary and secondary systems below the Mode 5 RCS temperature limit of 200°F. Therefore, they are not analyzed in Mode 5 and 6 and are not considered further.

Remaining accidents 1, 2, 3, 9, and 10 are discussed below:

1. Fuel Handling Accident

The only time a fuel handling accident could occur is during the handling of a fuel assembly. The required action to suspend core alterations is not changed. Changing RCS temperature in Modes 5 and 6 would not initiate this accident. SDM is not a factor or initial condition assumed in the analysis of a fuel handling accident. Therefore, since the requirements that would preclude this accident are not affected, the probability of the accident is not changed. Similarly, a potential reduction in SDM does not increase the consequences of this accident.

2. Waste Liquid Release

The inadvertent release of radioactive liquid wastes to the environment was evaluated for the waste evaporator condensate and monitor tanks, condensate storage tank, primary water storage tank, RWST [refueling water storage tank], auxiliary building storage tanks, and chemical and volume control system (CVCS) holdup tanks. It was concluded in the Updated Final Safety Analysis Report Chapter 14 evaluation that loss of liquid from these tanks to the environment is not a credible accident. This conclusion is not impacted by the thermal effects or reactivity changes due to RCS temperature while in Modes 5 and 6.

3. Waste Gas Release

Radioactive gases would be introduced into the RCS by the escape of fission products if defects existed in the fuel cladding. The processing of the reactor coolant by auxiliary systems results in the accumulation of radioactive gases in various tanks. The two main sources of any significant gaseous radioactivity that could occur would be the volume control tank and the gas decay tanks. It is assumed that a tank ruptures by an unspecified mechanism after the reactor has been operating for one core cycle with 1% defects in the fuel cladding. The integrity of these tanks is not affected by changes in RCS temperature and SDM is not a factor in the consequences of these events. Therefore, it is concluded that the probability of occurrence of a tank rupture and the consequences of a tank rupture are not significantly increased by this change.

9. Uncontrolled RCCA Withdrawal From a Subcritical Condition

The proposed changes specifically permit positive reactivity additions due to temperature changes. However, all other positive reactivity changes are suspended when the action applies. Therefore, intentional rod withdrawal would not be permitted.

Additionally, this event could occur only when the reactor trip breakers are closed and the control rod drive mechanisms are energized. With the exception of testing or special maintenance, the rod drive motor generator set remains tagged out (de-energized with administrative cards to alert operators) in Modes 4 and 5. This alone would preclude rod movement. If the physical conditions for rod withdrawal were intentionally met, T/S require that two source range neutron flux instruments, two reactor trip instrumentation channels, and associated reactor trip breakers must be operable to automatically terminate the event. RCS temperature changes in Mode 5 and 6 are sufficiently below the normal operating and designed temperature of the drive mechanisms. The thermal effects of the proposed RCS temperature changes are not a significant contributor to the possibility of a drive mechanism failure. Acceptable consequences for the rod withdrawal event rely on termination by an automatic reactor trip prior to criticality, and no assumptions are made in the analysis about the SDM existing at the start of rod withdrawal. Therefore, it is concluded that this proposed license amendment would have no impact on the probability or consequences of an uncontrolled rod withdrawal event.

10. Uncontrolled Boron Dilution

Uncontrolled boron dilution is analyzed for refueling, startup, and power operation described in UFSAR section 14.1.5 for Unit 1 and Unit 2. The source of water for this event is primary grade water from the reactor makeup portion of the CVCS. The CVCS is designed to limit, even under various postulated failure modes, the potential rate of dilution to a value that provides the operator sufficient time to correct the situation in a safe and orderly manner. Acceptable consequences for this event rely on preventing an uncontrolled dilution.

The proposed change to allow RCS temperature changes below 200°F do not involve changes to the operating methods for the CVCS or modifications to the CVCS. Additionally, the CVCS pumps and valves required to add water to the RCS are not affected by the RCS temperature changes themselves. Any such effects in the range of 68°F to 200°F that would be permitted would be small compared to changes between 200°F to normal RCS operating temperature. Therefore, the thermal effects are significantly less than those that occur during normal operation. It is concluded that the probability and consequences of an uncontrolled boron dilution event are not significantly increased by the proposed license amendment.

The initiators and precursors for the accidents described above are not changed. Therefore, the probability of their occurrence is not changed and the consequences are bounded by the current analyses. Therefore, there is no increase in the types or amounts of effluents released offsite.

The proposed additions to action 5 of T/S Table 3.3–1 are conservative. They provide additional assurance that instrumentation would be available to alert operators to a dilution event. The requirement to isolate sources of dilution water removes potential initiators for an inadvertent dilution. The RWST would be considered a dilution source if the RWST boron concentration is less than the RCS boron concentration and less than the minimum boron concentration in T/S limiting condition for operation 3.1.2.7.b.2. Isolating the RWST in this case is appropriate because it eliminates a potential accident initiator. The borated water concentration and volume in Mode 5 are established to provide the required SDM after xenon decay and cooldown from 200°F to 140°F. The accidents described above do not require a minimum volume for reasons other than boration control.

The addition to T/S SRs 4.1.1.1.e and 4.1.1.2.b, which requires application of a boron penalty, is an additional restriction that is imposed administratively already. The remaining changes are administrative. They correct typographical errors or change format, and are not intended to change the meaning. They do not affect accident initiators or precursors.

In summary, based on the above, the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes permit RCS temperature changes under conditions that were previously prohibited. However, no new methods of changing RCS temperature are involved, and the T/S limits on the permissible rates of RCS temperature changes are not altered. Therefore, the integrity of the reactor vessel when subject to RCS temperature changes is not affected.

The accident of concern for the proposed amendment is an unintentional reduction in SDM leading to an inadvertent criticality. This is not a new or different kind of accident, although the causal mechanism adding the positive reactivity is an RCS temperature change instead of a dilution event.

As discussed in question 1, the requirement to maintain SDM during RCS temperature changes provides assurance that the probability of the SDM reduction is not increased. However, as an additional conservative measure, a maximum RCS heatup and cooldown rate of 50°F in any one-hour period is imposed when the action applies. This increases the time necessary for a RCS temperature change to reduce the SDM by an unacceptable amount. Thus, if a heatup or cooldown was initiated at 50°F/hr, and inadvertently continued beyond the intended temperature, sufficient time would be available for the operators to detect the SDM reduction with the source range nuclear instruments and secure the temperature change. The rate of 50°F in any one-hour period was estimated to provide at least as much time as was considered adequate for detecting and correcting a dilution event. The acceptable time for a dilution event is described in UFSAR Section 14.1.5. Conservative assumptions of the maximum positive or negative moderator temperature coefficient were used for the estimate.

It should be noted that compliance with the current T/S action statements prohibit deliberate heatup and cooldown. However, it does not prevent use of the equipment involved in removing decay heat to maintain plant temperature (for example residual heat removal system pumps, valves, and heat exchangers). Therefore, the probability of a malfunction of this equipment during deliberate heatup and cooldown is not significantly greater than it is when the equipment is operated, as necessary, to maintain steady-state temperatures for decay heat removal.

The addition to T/S SRs 4.1.1.1.e and 4.1.1.2.b, which requires application of a boron penalty, is an additional restriction that is imposed administratively already. The proposed additions to the T/S action statements for the source range neutron flux instrumentation provide additional controls to prevent an unmonitored positive reactivity

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addition. The remaining changes are administrative. They correct typographical errors or change format, and are not intended to change the meaning.

Isolating the RWST when it is a potential dilution source and when there are no source range neutron flux instrument channels operable in Mode 5 is not an accident initiator. Borated makeup to the RCS can be accomplished with the boric acid storage tank.

Based on the above, it is concluded that the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The margin of safety pertinent to the proposed changes is the T/S-required SDM. The additions to T/S SRs 4.1.1.1.e and 4.1.1.2.b require application of a boron penalty. Because this penalty is controlled administratively already and there are no other changes to the SDM requirements, the margin of safety is maintained. Additionally, the proposed change to isolate the RWST when it is a potential dilution source does not impact the ability of the boric acid storage tank to supply the boron required for SDM during cooldown from 200°F to 140°F including xenon decay.

The minimum time available to the operators to detect and terminate an unintentional addition of positive reactivity could also be considered a margin of safety. The proposed changes limit temperature changes to 50°F in a one-hour period so as not to reduce this time. Compliance with the proposed changes would continue to provide assurance that there is no significant reduction in these margins of safety.

The remaining changes are administrative. They correct typographical errors or change format, and are not intended to change the meaning.

Based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 11, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 21, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 6th day of July 1999.

For the Nuclear Regulatory Commission.

John F. Stang, Sr.,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17615 Filed 7–9–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form N–17D–1, SEC File No. 270–231, OMB Control No. 3235–0229

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*), the Securities and Exchange Commission (Commission) is publishing for public comment the following summary of previously approved information collection requirements. The Commission plans to submit these existing collections of information to the Office of Management and Budget (OMB) for extension and approval.

Section 17(d) [15 U.S.C. 80a–17(d)] of the Investment Company Act of 1940 (the Act) authorizes the Commission to adopt rules that protect investment companies and their security holders from overreaching by affiliated persons where the investment company and the affiliated person participate jointly or jointly and severally in a transaction. Rule 17d–1 under the Act [17 CFR 270.17d–1] prohibits any such participation, unless an application regarding the transaction has been filed with and approved by the Commission. The rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (investments) made by a affiliated bank and a small business investment company (SBIC), provided that reports about the investments are made on such forms as the Commission may prescribe. For this purpose, Rule 17d–2 [17 CFR 270.17d–2] prescribes Form N–17D–1.

Form N–17D–1 is used by SBICs and their affiliated banks to report any investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have a high potential for overreaching at the expense of shareholders.

Form N–17D–1 requires SBICs to report identifying information about the small business concern and the affiliated bank. On the form, SBICs must state, among other things, the outstanding investments in the small business concern, the use of the proceeds of the investment made during the reporting period, any changes in the nature and amount of the bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of such person) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration received or to be received by the affiliate.

The Commission estimates that up to 5 SBICs may use the form annually. The estimated burden of filling out the form is approximately 5 hours per response and would likely be completed by an accountant or other professional. At $114 per hour of time, completion of the form will cost approximately $570 per filer. The total annual burden would be 25 hours with a total annual cost of $2,850.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are requested on: (a) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

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Dated: July 2, 1999.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 99–17622 Filed 7–9–99; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 10a–1, SEC File No. 270–413, OMB Control No. 3235–0475

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10a–1 (17 CFR 240.10a–1) under the Securities Exchange Act of 1934 (Exchange Act) is designed to limit short selling of a security in a declining market by requiring, in effect, that each successive lower price be established by a long seller. The price at which short sales may be effected is established by reference to the last sale price reported in the consolidated system or on a particular marketplace. Rule 10a–1 requires each broker or dealer that effects any sell order for a security registered on, or admitted to unlisted trading privileges on, a national securities exchange to market the relevant order ticket either "long" or "short."

There are approximately 1,500 brokers and dealers registered with the national securities exchanges. The Commission has considered each of these respondents for the purposes of calculating the reporting burden under Rule 10a–1. Each of these approximately 1,500 registered broker-dealers effects sell orders for securities registered on or admitted to unlisted trading privileges on, a national securities exchange. In addition, each respondent makes an estimated 60,933 annual responses, for an aggregate total of 91,400,000 responses per year. Each response takes approximately .000139 hours (.5 seconds) to complete. Thus, the total compliance burden per year is 12,705 burden hours.

Written comments are invited on: (a) whether the existing collection of information is necessary for the proper performance of the functions of the agency, including whether the information continues to have practical utility; (b) the accuracy of the agency's estimate of the burden of the existing collection of information; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: June 30, 1999.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 99–17623 Filed 7–9–99; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 3088]

Shipping Coordinating Committee, Working Group for the Facilitation of International Maritime Traffic; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 AM on Wednesday, August 18, 1999, in room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 27th session of the Facilitation Committee of the International Maritime Organization (IMO), which is scheduled for 6–10 September, 1999, at the IMO Headquarters in London. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:
—Convention on Facilitation of International Maritime Traffic
—Consideration and Adoption of Proposed Amendments to the Annex to the Convention
—EDI Messages for the Clearance of Ships
—Application of the Committee's Guidelines
—General Review of the Convention
—Formalities Connected with the Arrival, Stay and Departure of Ships
—Formalities Related to Cargo—Facilitation Aspects of the Multimodal Transport of Dangerous Goods
—Formalities Connected with the Arrival, Stay and Departure of Persons—Stowaways
—Facilitation Aspects of Other IMO Forms and Certificates-Harmonized Reporting Format
—Ship-Port Interface
—Technical Co-Operation Sub-Programme for Facilitation

Members of the public may attend this meeting up to the seating capacity of the room.

Interested persons may seek information by writing: Chief, Office of Standards Evaluation and Development, U.S. Coast Guard Headquarters, Commandant (G–MSR), Room 1400, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling Mr. David A. Du Pont at: (202) 267–0971.

Dated: July 6, 1999.
Stephen M. Miller,
Executive Secretary, Shipping Coordinating Committee.
[FR Doc. 99–17618 Filed 7–9–99; 8:45 am]
BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 2, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5897
Date Filed: June 28, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–SEA 0077 dated May 28, 1999—Issuance
Mail Vote 007—Special Passenger Amending Resolution 010n from Europe to South East Asia
PTC23 EUR–SEA 0078 dated 22 June 1999—Adoption
Intended effective date: 1 September 1999

Docket Number: OST–99–5901
Date Filed: June 29, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0067 dated 29 June 1999
Mail Vote 015—Resolution 010s TC23 Middle East-TC3
Special Passenger Amending Resolution from Korea to Middle East
Intended effective date: 15 July 1999

Docket Number: OST–99–5902
Date Filed: June 29, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC12 USA–EUR 0078 dated 29 June 1999
Mail Vote 016—Resolutions 002, 015n TC12 North Atlantic
USA-Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland
Intended effective date: 1 August 1999

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 99–17611 Filed 7–9–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff (ANE–110), 12 New England Executive Park, Burlington, MA 01803; phone (781) 238–7111; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Task 17: Bird Ingestion

Review the comments received in response to NPRM 98–19 and recommend disposition of those comments. ARAC recommendations that do not support the proposals may include supporting data as appropriate.

The FAA expects ARAC to forward its recommendation to the FAA by November 30, 1999. The FAA will consider this recommendation in the development of the final rule.

Contrary to the usual practice, the FAA has not asked ARAC as part of this task to develop a final draft of the next action (i.e., supplemental notice, final rule, or withdrawal); rather, ARAC should provide a document setting forth the rationale for the recommended disposition of each of the comments.

Working Group Activity

The Engine Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Engine Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 28, 1999.
Brenda D. Courtney,
Acting Executive Director, Aviation Rulemaking Advisory Committee.
[FR Doc. 99–17648 Filed 7–9–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–19]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 2, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of

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Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 2, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29396
Petitioner: Department of the Air Force
Section of the FAR Affected: 14 CFR 91.209
Description of Relief Sought/ Disposition: To permit the USAF to conduct certain night flight military training operations without lighted external aircraft position and anticollision lights.

Docket No.: 29548
Petitioner: Continental Express
Section of the FAR Affected: 14 CFR 121.344(b)(3)
Description of Relief Sought: To permit Continental Express to operate its Avions de Transport Regional ATR 42 and ATR 72 aircraft, Beechcraft 1900D aircraft, and Embraer EMB–120 and EMB 145 aircraft without installing, in each aircraft, the required, approved digital flight data recorder (DFDR) until the next heavy maintenance check after the aircraft manufacturers have made the DFDR modification kits available, but not later than August 20, 2001.

Docket No.: 29556
Petitioner: Business Express Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.344(b)(3)
Description of Relief Sought: To permit Business Express Airlines to operate its fleet of Saab 340A and 340B aircraft without installing, in each aircraft, the required, approved digital flight data recorder (DFDR) until the next heavy maintenance check after the aircraft manufacturers have made the DFDR modification kits available, but not later than August 20, 2001.

Docket No.: 29574
Petitioner: Central Air Flight Training, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353
Description of Relief Sought: To permit Central Air Flight Training, Inc. to conduct sightseeing flights without establishing drug testing and alcohol misuse prevention programs

Docket No.: 29575
Petitioner: Air Wisconsin Airlines Corporation
Section of the FAR Affected: 14 CFR 121.344(b)(3)
Description of Relief Sought/ Disposition: To permit Air Wisconsin Airlines to operate certain British Aerospace 146 aircraft without installing, in each aircraft, the required, approved digital flight data recovered (DFDR) until the next heavy maintenance check after the aircraft manufacturers have made the DFDR modification kits available, but not later than August 20, 2001.

Docket No.: 29620
Petitioner: The Boeing Company
Section of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought/ Disposition: In lieu of a static proof pressure test on the 737–900, Boeing proposes to demonstrate compliance with § 25.1435(b)(1) by similarity to the 737–700 hydraulic system (compliance for which was established during certification of that aircraft) and by engineering design review of the added straight-line hydraulic tube installations on the 737–900.

Dispositions of Petitions

Docket No.: 22451
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.613, 121.619(a), and 121.625
Description of Relief Sought/ Disposition: To permit ATA-members airlines and other similarly situated part 121 operators to continue to dispatch airplanes under instrument flight rules when conditional language in a one-time increment of the weather forecast states that the weather at the destination airport, alternate airport, or both airports could be below authorized weather minimums when other time increments of the weather forecast state that weather conditions will be at or above the authorized weather minimums.
Grant, 06/18/99, Exemption No. 3585L

Docket No.: 23477
Petitioner: Experimental Aircraft Association
Section of the FAR Affected: 14 CFR 103.1(a), and (e)(1) through (e)(4)
Description of Relief Sought/ Disposition: To permit individuals authorized by EAA to give instruction in powered ultralights that a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.
Partial grant, 6/18/99, Exemption No. 3748I

Docket No.: 24427
Petitioner: United States Ultralight Association, Inc.
Section of the FAR Affected: 14 CFR 103.1(a), and (e)(1) through (e)(4)
Description of Relief Sought/ Disposition: To allow individuals authorized by USUA to give instructions in powered ultralights that have maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have power-off staff speed that does not exceed 35 knots calibrated airspeed.
Grant, 6/18/99, Exemption No. 4274H

[FR Doc 99–17649 Filed 7–9–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33773]

Consolidated Rail Corporation—Trackage Rights Exemption—Grand Trunk Western Railroad Incorporated

Grand Trunk Western Railroad Incorporated (GTW), a subsidiary of Canadian National Railway Company (CN), has agreed to grant limited, non-exclusive overhead trackage rights to Consolidated Rail Corporation (Conrail) [1] over a 4.4-mile segment of GTW's Shoreline Subdivision between the proposed CN/Conrail connection at Milwaukee Junction, near milepost 54.6 and the existing connection with Norfolk Southern Railway Company (NSR) at West Detroit, MI, near milepost 50.2, on CN's Shoreline Subdivision. [2]

The transaction was expected to be consummated on or after July 1, 1999, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to allow Conrail to improve service to customers by reducing congestion and delay in the West Detroit, Delray and Ecorse Junction, MI areas.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33773, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John J. Paylor, 2001 Market Street, 16A, Philadelphia, PA 19101–1416.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 2, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17635 Filed 7–9–99; 8:45 am]
BILLING CODE 4915–00–P

[1] By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively es CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of assets of Conrail was effected by CSX and NS on June 1, 1999. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/ Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999). Conrail continues to operate rail properties in Michigan, New Jersey, and Pennsylvania.

[2] A redacted version of the Trackage Rights Agreement between GTW and Conrail was filed with the notice of exemption. The full version of the agreement was concurrently filed under seal along with a motion for a protective order. The motion will be addressed in a separate decision.

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 6, 1999.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 99–17604 Filed 7–9–99; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Pharaohs of the Sun: Akhenaten, Nefertiti, Tutankhamen"

AGENCY: United States Information Agency.
ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Pharaohs of the sun: Akhenaten, Nefertiti, Tutankhamen," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, MA, from on or about November 14, 1999 to on or about February 6, 2000; the Los Angeles County Museum of Art, Los Angeles, CA, from on or about March 12, 2000 to on or about May 20, 2000; and the Art Institute of Chicago, Chicago, IL, from on or about July 1, 2000 to on or about September 24, 2000, is in the Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul Manning, Assistant General Counsel, Office of the General Counsel, 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: July 6, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–17560 Filed 7–9–99; 8:45 am]
BILLING CODE 8230–01–M

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Corrections

Federal Register
Vol. 64, No. 132
Monday, July 12, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVRIONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL-6320-8]

RIN 2060-AG46

Acid Rain Program; Continuous Emission Monitoring Rule Revisions

Correction

In rule document 99–8939 beginning on page 28564 in the issue of Wednesday, May 26, 1999, make the following correction(s):

§ 75.19 [Corrected]

1. On page 28592, in the third column, in §75.19(c)(4)(ii)(A), under "Where:", "$EFNNO_X$" should read "$EFNO_X$"

§ 75.57 [Corrected]

2. On page 28610, in the second column, § 75.57(c)(4)(iv), in table 4A., in entry 4., "NSO_2" should read "SO_2".

Appendix A to Part 75 [Corrected]

3. On page 28637, in the second column, in appendix A, in section 3.1(b), in the 11th and 12th lines, "|R–A–" and in the 19th line, "–R–A|" should read "|R–A|".

4. On page 28643, in the first column, in appendix A, in section 7.6.5(b), in the 14th and 15th lines, "±" should read "≤".

5. On page 28645, in the first column, in appendix A, in section 1.2.4, in the 5th line, "SO_X or NO_2" should read "SO_2 or NO_X".

Appendix B to Part 75 [Corrected]

6. On page 28652, in the table, Figure 2 to Appendix B of part 75, in the second column, in the fifth line, "1.5% H_2O_2" should read "1.5% H_2O2".

7. On the same page, in the same table, in the footnote 3, "NO_2" should read "NO_X".

Appendix D to Part 75 [Corrected]

8. On page 28654, in the second column, in appendix D, in section 2.1.5.2, paragraph designation "(4)" should read "(b)".

9. On page 28661, in the second column, in appendix D, in section 2.3.2.1.2(d), in the fourth line, paragraph designation "(5)" should read "(e)".

Appendix E to Part 75 [Corrected]

10. On page 28667, in the third column, in appendix E, in section 4.3, for "(Eq. F-13)", under "Where:", in the first line, "mass emission," should read "mass emissions, tons.".

Appendix B to Part 75 [Corrected]

11. On page 28651, the table "Figure 1 to Appendix B to Part 75–Quality Assurance Text Requirements" is corrected and set out in its entirety below:

FIGURE 1 TO APPENDIX B OF PART 75—Quality Assurance Test Requirements.

Test	QA test frequency requirements		
	Daily*	Quarterly*	Semiannual*
Calibration Error (2 pt.)	✔		
Interference (flow)	✔		
Flow-to-Load Ratio		✔	
Leak Check (DP flow monitors)		✔	
Linearity (3 pt.)		✔	
RATA (SO_2, NO_X, CO_2, H_2O)[1]			✔
RATA (flow)[1,2]			✔

*For monitors on bypass stack/duct, "daily" means bypass operating days, only. "Quarterly" means once every QA operating quarter. "Semiannual" means once every two QA operating quarters.

[1] Conduct RATA annually (i.e., once every four QA operating quarters), if monitor meets accuracy requirements to qualify for less frequent testing.

[2] For flow monitors installed on peaking units and bypass stacks, conduct all RATAs at a single, normal load. For other flow monitors, conduct annual RATAs at the two load levels used most frequently since the last annual RATA. Alternating single-load and 2-load RATAs may be done if a monitor is on a semiannual frequency. A single-load RATA may be done in lieu of a 2-load RATA if, since the last annual flow RATA, the unit has operated at one load level for ≥85.0 percent of the time. A 3-load RATA is required at least once in every period of five consecutive calendar years and whenever a flow monitor is re-linearized.

[FR Doc. C9–8939 Filed 7–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR

Correction

In notice document 99–16849, beginning on page 36035 in the issue of Friday, July 2, 1999, make the following correction:

On page 36038, in the second column, in the first full paragraph, in the sixth and seventh lines from the end, "[thirty days after publication in the **Federal Register**]" should read "August 2, 1999".

[FR Doc. C9–16849 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01-99-009]

RIN 2115-AE46

Special Local Regulations: Fireworks Displays Within the First Coast Guard District

Correction

In rule document 99–16360 beginning on page 34543 in the issue of Monday, June 28, 1999, make the following corrections

§ 100.114 [Corrected]

1. On page 34545, in § 100.1149(a), in the " Fireworks Display Table", in the third column, in the 15th line, "Harboreast" should read "Harborfest".

2. On page 34546, in § 100.114(a), in the "Fireworks Display Table", in the first column, in the fourth line, add a colon after "Massachusetts".

3. On page 34546,in the same section, in the same table, in the second column, in the 10th line, "July 3th" should read "July 3rd".

4. On page 34546,in the same section, in the same table, in the same column, in the 11th line, "July 3th" should read "July 3rd".

5. On page 34549, in the "Fireworks Display Table", in the same section. under "August", in the third column, in the 23rd line from the bottom, "(LLNR) 37955)" should read "(LLNR 37955)".

[FR Doc. C9–16360 Filed 7–9–99; 8:45 am]

BILLING CODE 1505–01–D

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Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249
Broker-Dealer Registration and Reporting; Final Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240 and 249

[Release No. 34–41594; File No. S7–16–99]

RIN 3235–AH73

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending Form BD, the uniform broker-dealer registration form, and related rules under the Securities Exchange Act of 1934. The amendments modify the version of Form BD that was adopted in 1996 but never implemented. The primary purpose of the amendments is to support electronic filing in the new, Internet-based Central Registration Depository system. This computer system, which is operated by the National Association of Securities Dealers, Inc., maintains registration information regarding broker-dealers and their registered personnel. The changes adopted today direct how broker-dealers will make the transition to the new system, as well as how they will comply with their filing obligations on an ongoing basis.

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel or Barbara A. Stettner, Special Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("Commission") is adopting amendments to Form BD, the uniform application for broker-dealer registration, and related rules under the Securities Exchange Act of 1934 ("Exchange Act").[1] The amendments modify the version of Form BD that was adopted in 1996 but never implemented ("1996 Form BD").[2] As we described more fully in our release proposing amendments to Form BD and related rules ("Proposing Release"),[3] these amendments are mainly technical and formatting changes needed to accommodate "Web CRD," the new, Internet-based Central Registration Depository ("CRD") system.[4] Web CRD will replace the current CRD system ("Legacy CRD"), which was created in 1981 as a cooperative effort with the North American Securities Administrators Association ("NASAA"), in order to facilitate the "one-stop" filing process for broker-dealers and their associated persons.[5] Web CRD should help regulators to more efficiently gather the information needed to make informed registration and licensing decisions. It should also help regulators to process registration-related filings more efficiently and effectively and significantly enhance their ability to use the system for regulatory purposes. In addition, Web CRD should make it easier for registrants to comply with their filing obligations. Moreover, by utilizing the Internet, Web CRD is expected to streamline the procedures to process and respond to requests from the public for information about particular broker-dealers and their associated persons.

The 1996 Form BD amendments were based upon expected changes to the CRD that were being developed at that time. Because Web CRD differs significantly from the approach anticipated then, 1996 Form BD cannot be implemented without the changes we adopt today. Specifically, the amendments to Form BD are intended to elicit the same level of disclosure required by 1996 Form BD, but in a different format. Other changes to the form are intended to clarify the form's requirements, to update references, or to streamline the registration process. The amendments to Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1 are necessary to implement Web CRD, both initially and on an ongoing basis. Web CRD is scheduled to be operational beginning August 16, 1999.

In the Proposing Release, we requested comment on the specific changes proposed for Form BD and whether those changes would provide more meaningful information to regulators without increasing the regulatory burden on broker-dealers. The Commission also requested comment on the rule changes needed to implement the new form. The Commission received three comment letters.[6] The commenters essentially supported the proposed amendments, as well as the shift to electronic filing that will be possible with Web CRD. However, the commenters also all raised issues concerning Web CRD's phase-in period, and particularly the Form BD re-filing requirement.[7] In response to these concerns, the staff of the Division of Market Regulation is expanding its no-action position discussed in the Proposing Release.[8] In addition, we are modifying the Temporary Filing Instructions proposed under Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1.[9] With the exception of a few additional formatting changes and corrections, the amendments to the form itself are being adopted as proposed.

II. Amendments to Form BD

The amendments to 1996 Form BD adopted today will modify the form's general filing instructions and terms, its Disclosure Reporting Pages ("DRPs") and Schedule E.[10] The amendments correct oversights, replace outdated information, and clarify instructions. They also replace Legacy CRD references with Web CRD references, establish certain information fields as

[1] 17 CFR 240.15b1–1; 17 CFR 249.501; 15 U.S.C. §§ 78a *et seq.*

[2] Securities Exchange Act Release No. 37431 (July 12, 1996); 61 FR 139 (July 18, 1996). 1996 Form BD was not implemented until today because of the shift from "Redesigned CRD," a network-based system upon which 1996 Form BD was based, to Web CRD. *See* Proposing Release, part II. Background (discussing the rationale behind the shift from Redesigned CRD to Web CRD).

[3] Securities Exchange Act Release No. 41351 (April 29, 1999); 64 FR 25153 (May 10, 1999).

[4] The CRD is operated and maintained by the National Association of Securities Dealers, Inc. ("NASD") and is used by the Commission, self-regulatory organizations ("SROs"), and state securities regulators in connection with registering and licensing broker-dealers and their registered personnel. For purposes of this release, the term "NASD" will be used to encompass both the NASD and NASD Regulation, Inc. ("NASDR") unless specified otherwise. The NASDR is the regulatory subsidiary of the NASD and is responsible for the operation of the CRD system.

[5] Applicants seeking broker-dealer registration with the Commission, the NASD, the Chicago Board Options Exchange ("CBOE"), and the various states currently file a single Form BD with the NASD. The NASD manually enters the information into the CRD system, which then makes the information available (electronically) to the Commission and the appropriate states for review. Applicants may also seek registration with SROs other than the NASD and the CBOE through Form BD, but they may also be required to submit a copy of the paper Form BD to those SROs that do not participate in the CRD system. The NASD anticipates more SROs to become full participants in Web CRD after the system is operational.

[6] *See* Letters from Marie Montagnino, President, Association of Registration Management ("ARM") (June 8, 1999); Michael B. Radest, Director, Credit Suisse First Boston ("CSFB") (June 9, 1999); and Derek W. Linden, Senior Vice President, NASD (June 15, 1999). These letters are available for inspection and copying in File No. S7–16–99, located in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549.

[7] *See infra* text accompanying notes 39–44.

[8] *See* discussion *infra* part III.A.2.b.(i).

[9] *See* discussion *infra* part III.A.2.b.(ii).

[10] As explained below, the version of Form BD currently in use does not incorporate the DRPs or Schedule E that were adopted in 1996. To distinguish these documents from the ones currently in use, we will refer to the versions adopted in 1996 but never implemented as the "1996 DRPs" and "1996 Schedule E," respectively.

"read-only,"[11] and make conforming changes based on the reorganization of the NASD manual in 1996[12] throughout Form BD. In addition, one change is intended to help eliminate incorrect succession filings by requiring broker-dealers to discuss these filings with CRD personnel prior to submission.[13]

While the changes we are adopting today amend 1996 Form BD, we stress that registrants have never actually used that form. Rather, during the past year, registrants have used "Interim Form BD," which the Commission adopted on March 16, 1998[14] after the NASD decided to abandon its original plan to modernize CRD and proceed instead with Web CRD.[15] Interim Form BD requires registrants to file the same disclosure information called for by the 1996 Form BD amendments in a format that is compatible with the Legacy CRD system.[16] Interim Form BD incorporated all of the substantive changes of the 1996 Form BD amendments relating to disclosure of disciplinary history, but did not incorporate the formatting changes, the 1996 DRPs, or the 1996 Schedules (including Schedule E).[17] Interim Form BD will remain in effect until the amendments adopted today are implemented on July 30, 1999.[18]

The amendments to the 1996 DRPs, which must be completed when an applicant answers "Yes" to one of the disclosure questions in Item 11 of Form BD, correspond to formatting changes to the DRPs that were recently approved in connection with amendments to Forms U–4 and U–5.[19] While more amendments are being made to the DRPs than to the main part of Form BD, the amendments primarily involve restructuring and reformatting which will permit electronic filing in Web CRD.[20] The only substantive change intended in the DRPs is in Question 13 of the Civil Judicial DRP. This question now requires an applicant to indicate whether any portion of a penalty assessed against it was waived.[21]

1996 Schedule E, which must be completed by an applicant to register or report a branch office, is also being amended. The amendments reflect the current numbering scheme for NASD Rules.[22]

A detailed textual description of the amendments to Form BD, its instructions and terms, the DRPs, and Schedule E (collectively, "Appendix A") will be available on the Commission's Web site at http:\\www.sec.gov[23] or may be obtained from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001; (202) 942–0073.[24] Form BD as amended today is attached as Appendix B to this document.

III. Amendments to Related Rules

The Commission is also amending Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act. Rules 15b3–1 and 15Ca2–1 both contain "Temporary Filing Instructions" for Form BD that are now outdated. These amendments delete the outdated instructions in those rules and add new "Temporary Re-Filing Instructions" for Form BD to all three rules.

A. Electronic Filing and Re-Filing Requirements

Web CRD is intended to expedite the electronic filing of registration and licensing information for broker-dealers and their associated persons. While initial applications for broker-dealer registration on Form BD will continue to be filed on paper, the amendments require all subsequent changes and updates to the Form to be made electronically through Web CRD.[25] The amendments also require registered broker-dealers to electronically re-file certain information in Web CRD that is already filed in Legacy CRD.[26] The key dates and events associated with the transition from Legacy CRD to Web CRD, including the Web CRD filing and re-filing requirements for broker-dealer applicants and registered broker-dealers, are described below.

1. Key Dates

July 30, 1999 Through August 15, 1999

As the NASD moves from Legacy CRD to Web CRD, there will be a 17-day period beginning July 30, 1999 and ending August 15, 1999 ("System Transition Period"), during which neither system will process Form BD filings and amendments, or Form BDW filings.[27] At the time we published the Proposing Release, we expected the System Transition Period to extend from July 31, 1999 through August 15, 1999. The NASD has advised us, however, that the System Transition Period needs to be extended slightly to ensure that it has sufficient time to complete inputting data from paper forms and converting that data to the new system.

Initial filings of Form BD received during the System Transition Period will be accepted by the CRD and entered into Web CRD by the NASD beginning on August 16, 1999. Amendments to Form BD received by the CRD during this period will be returned with instructions to re-submit the amendments electronically on or after August 16, 1999. Forms BDW seeking withdrawal from registration with all

[11] Read-only fields may not be altered by registrants.

[12] *See* NASD Notice to Members 96–26.

[13] *See* Appendix A, part D, Item 5.

[14] Securities Exchange Act Release No. 39677 (February 18, 1998), 63 FR 9413 (February 25, 1998).

[15] *See* Proposing Release, part II. Background (discussing the different stages of Web CRD development).

[16] One of the principal goals of Redesigned CRD, and the 1996 amendments to Form BD, was to make certain information regarding broker-dealers and their associated persons, that is required to be reported on the applicable registration forms, more readily available to the public. Accordingly, pending the implementation of Web CRD, Interim Form BD incorporated the enhanced disclosure elicited by 1996 Form BD Question 11 into the existing Form BD Question 7. Specifically, Interim Form BD Question 7, requested information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications, other relevant history, and the applicant's financial soundness. In order to make the disclosures more organized and complete, Question 7 was divided into broad categories: criminal, civil, regulatory, and financial.

[17] The new disclosure question (Question 11) and the "Explanation of Terms" were the only items incorporated by Interim Form BD from 1996 Form BD because they could be made compatible with Legacy CRD. The 1996 DRPs and 1996 Schedule E, which did not become part of Interim Form BD, elicit more specific information than was required from the 1993 version of Form BD used in the Legacy CRD system.

[18] *See* discussion *infra* note 30 (regarding the change in the effective date of Form BD).

[19] Securities Exchange Act Release No. 41560 (June 25, 1999); File No. SR–NASD–98–96.

[20] The DRPs adopted today eliminate the practical problems posed by the NASD's first attempt to redesign CRD by using improved formatting. *See* Proposing Release, part III. "Proposed Amendments to Form BD" (discussing DRP formatting differences between the Redesigned and Web CRD systems).

[21] *See* Appendix A, part 3.c (part II. 16, 17, 18, 19, 20 and 21).

[22] The NASD Manual was reformatted in 1996. *See* NASD Notice to Members 96–25. *See also* Appendix A, part E.4.

[23] *See* Current SEC Rulemaking; Final Rules; Release No. 34–41594, File No. S7–16–99 on the SEC Web site at <http://www.sec.gov>.

[24] Appendix A will not be published in the **Federal Register**. Appendix B (Form BD) is the only appendix to this release that will be published in the **Federal Register**. Both Appendix A and Appendix B are attached as appendices to this release electronically on the Commission's Web site at <http://www.sec.gov> and in paper format from the Commission's Publications Office at (202) 942–4040.

[25] The NASD expects, however, that all filings for both broker-dealers and their associated persons will eventually be submitted exclusively through electronic means.

[26] *See infra* notes 29, 37–38 and accompanying text. *See also* part IX *infra* (Temporary Filing Instructions for Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1).

[27] Registrants that participate in the Firm Access Query System ("FAQS"), however, may electronically file Schedule E amendments through July 30, 1999. *See infra* note 30 and accompanying text.

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jurisdictions and SROs that are received during this period will be held by the CRD until August 16, 1999, then entered into Web CRD by the NASD.[28] Forms BDW seeking withdrawal from registration with only some jurisdictions or SROs that are received by the CRD during this period will be returned with instructions to re-submit the filing electronically on or after August 16, 1999. During the System Transition Period, the NASD will also transfer certain information from Legacy CRD to Web CRD.[29]

July 30, 1999

The amendments to Form BD adopted today will become effective on July 30, 1999. Any filings submitted on Interim Form BD after July 30, 1999 will be returned by CRD.[30]

August 16, 1999

It is anticipated that Web CRD will be operational on August 16, 1999, at which time registered broker-dealers may begin entering information not already transferred from Legacy CRD into their respective Forms BD.[31] The requirements for broker-dealer applicants filing initial Forms BD, for registered broker-dealers filing amendments to Form BD, or for currently registered broker-dealers re-filing certain information in Web CRD on or after August 16, 1999, are described below. The issues raised by the comment letters are also discussed below in Part B.2.b, "Re-filing and Amendments to Form BD by Registered Broker-Dealers."

2. Filings on or After August 16, 1999

a. Initial Filings of Form BD by Broker-Dealer Applicants

Broker-dealer applicants must continue to obtain the paper version of Form BD from the Commission[32] or from the NASD.[33] They must also continue to mail the completed initial Form BD to the NASD, which will manually enter the information into the Web CRD system. This manual process will allow the NASD to establish a base record of information on broker-dealer applicants as well as begin the process of establishing a unique Web CRD user account for each broker-dealer. This account will allow broker-dealers to access their own records and file subsequent amendments to their Forms BD.

Before a broker-dealer may access Web CRD, however, it will first need to designate an "account administrator." This person, who may be someone within the firm or a third-party,[34] will serve as the point-of-contact between the broker-dealer and Web CRD. The NASD will establish a user account[35] for the broker-dealer's account administrator and send a letter of confirmation to the broker-dealer containing the account administrator's user name and initial password. Among other things, the account administrator is responsible for identifying any additional persons who need access to Web CRD[36] to submit filings on the firm's behalf. Designated persons will then be given passwords and the authorization to use Web CRD as determined by the account administrator.

The NASD will manually input the information from the broker-dealer's initial Form BD into Web CRD. It will then disseminate the information to the Commission, SROs, and state securities regulators with which the broker-dealer is requesting registration. Thus, except for the establishment of an account and account administrator, the processing of the initial Form BD will not significantly differ from the filing procedures currently in place under Legacy CRD.

b. Re-Filing and Amendments to Form BD by Registered Broker-Dealers

As discussed above, the amendments adopted today also require registered broker-dealers to establish Web CRD accounts to accommodate both the transfer of existing Form BD information from Legacy CRD to Web CRD and the electronic filing of Form BD amendments in Web CRD. Beginning August 16, 1999, all Form BD amendments and re-filings must be submitted electronically through the NASD's Web site at https://crd.nasdr.com/crdmain.

As discussed in the Proposing Release, due to technical issues identified by the NASD, certain broker-dealer information currently contained in Legacy CRD will not be transferred by the NASD to Web CRD.[37] Therefore,

[28] The NASD will also accept a paper-filed Form BDW seeking withdrawal from registration in all jurisdictions and SROs on or after August 16, 1999 if it is the first filing made by a broker-dealer after implementation of the Web CRD system.

[29] Since March 1998, the NASD has been converting the following broker-dealer information from Legacy CRD to Web CRD: Base information (*i.e.*, the broker-dealer's general CRD record information including the broker-dealer's CRD number, name, Commission number, IRS number, NASD district assignment, CRD contact, and related telephone number), Registration Status, Current Address (main and mailing), Types of Business (*e.g.*, municipal securities dealer, corporate debt securities broker), and Form U–6 Disclosure (*e.g.*, Commission and NASD actions). This initial conversion was done to accommodate the NASD's Public Disclosure Program on the Internet. During the System Transition Period, the NASD will transfer any remaining data described above. In addition, it will convert the following information: Name Change History (*i.e.*, old name, new name, effective date of change), Mass Transfer History (*e.g.*, firm name and CRD number, pre-and post-merger, acquisition), and Branch Information (Schedule E). Firms will have to re-file the information that will not be transferred by the NASD from Legacy CRD. *See infra* part IX (Temporary Filing Instructions).

[30] The effective date of Form BD has changed from the proposed date of August 1, 1999 to July 30, 1999 because the NASD will not accept any filings on Interim Form BD after July 29, 1999 (*See* discussion *supra* part III.A.1. "Key Dates—July 30, 1999 through August 15, 1999"). This change provides the NASD with two additional days needed to manually enter information from filings submitted on Interim Form BD. One exception applies to FAQS users, who will be allowed to continue filing Schedule E amendments electronically through July 30, 1999. Because FAQS filings are electronic, the NASD does not need as much time to process these amendments.

[31] Firms can take certain steps now to avoid timing problems in connection with their re-filing obligations later. For example, broker-dealers may opt to begin entering their re-filing information into their own word processing programs. This will enable them to save, and then subsequently "cut and paste," their data into Web CRD beginning August 16, 1999. Web CRD is equipped to accept textual inserts from all versions of word processing programs such as Microsoft Word and WordPerfect. In addition, the NASD will be providing a template in a standard graphics format (*i.e.*, .pdf format) at <http://www.nasdr.com/3400_web.htm>. This will allow broker-dealers to enter re-filing data into sections that correspond with sections on Form BD. Firms may also "cut and paste" the data saved on their respective templates into Web CRD on August 16, 1999. The template is compatible with Microsoft Word version 6.0, and higher, and WordPerfect version 6.1 (Windows), and higher. Therefore, broker-dealers are now able to begin the collection and recording of re-filing information rather than waiting to begin this process on August 16, 1999.

[32] Applicants may request the Form BD Registration Package from the Commission's Publications Office at (202) 942–4040 or from any of the Commission's Regional or District Offices listed at <http://www.sec.gov/asec/secaddr.htm>. In addition, Form BD will be available from the Commission's Web site at <http://www.sec.gov> (under "Current SEC Rulemaking; Final Rules; Release No. 34–41594, File No. S7–16–99").

[33] Form BD will also be available from the NASD's Publications Office at (301)590–6201 or can be downloaded from NASD's Web site at <http://www.nasdr.com>.

[34] Broker-dealers have the option to designate a third party (*e.g.*, a service bureau or clearing firm) as its account administrator. However, if a broker-dealer opts for a third-party account administrator, it must acknowledge that the broker-dealer is responsible for filings made by those designated persons on behalf of the firm.

[35] Information packages on how to establish a Web CRD user account are available from the NASD at (301) 212–8181.

[36] The account administrator is responsible for determining who has access to Web CRD and may limit such access in any manner. For example, a person responsible for Form U–4 filings might not have access to Form BD on Web CRD. In addition, the account administrator may choose to allow read-only access to many individuals within the firm.

[37] Large portions of Form BD data are currently stored as text fields in Legacy CRD. It is not technologically possible for the NASD to convert this data to the counterpart text fields of Web CRD. (*See also* note 29 *supra*)

beginning on August 16, 1999, broker-dealers will be required to re-file the following Form BD information: Item 11 Disclosure (Schedule DRP), Direct/Indirect Owners (Schedules A and B), Control/Financial Information (*i.e.*, direct owners, executive officers, and indirect owners), Industry Arrangements (*e.g.*, custodial arrangements, holding company status), and Affiliated Firms. The amendments require a registered broker-dealer to re-file this information when it files its first amendment in Web CRD but, in any event, no later than December 15, 1999.[38]

In their letters commenting on the Proposing Release, ARM and CSFB both expressed concerns about this re-filing obligation. In particular, ARM and CSFB asserted that broker-dealers will require more time than was contemplated in the Proposing Release to comply with their respective re-filing obligations.[39] In response, the NASD provided additional perspective on the practical application of the suggestions provided by ARM and CSFB.[40]

In the Proposing Release, we acknowledged that broker-dealers may have difficulty complying with the requirement in Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1[41] to promptly file amendments because (1) they will not be able to file amendments to their Forms BD during the System Transition Period, and (2) they must re-file certain information from their Forms BD in Web CRD at the same time they are required to file their first amendment in Web CRD. Therefore, the staff of the Division of Market Regulation proposed to consider broker-dealers as having met this requirement if they filed an amendment that should have been filed during the System Transition Period no later than September 14, 1999 (*i.e.*, 30 days from August 16, 1999).[42] In addition, the staff proposed that during the period from August 16 to December 15, 1999, it would not recommend enforcement action for filings of any amendment to Form BD that would also trigger the re-filing obligation, if the amendment was filed within 30 days from when the disclosable event occurred. ARM and CSFB both stated that the 30-day no action position would not be sufficient for firms to meet their Form BD re-filing obligations.

These commenters contended that several factors may contribute to a broker-dealer requiring more time to complete its re-filing. For example, ARM maintained that the revised DRPs and Schedule E elicit a higher degree of specificity than the current versions used with Interim Form BD.[43] In ARM's view, this will create additional burdens on firms to research, collect, and report information not currently required by Interim Form BD.[44]

ARM also noted that the shutdown of the CRD system during the System Transition Period may cause some firms to experience a significant backlog of Form U–4, U–5, and BD filings. This backlog, coupled with the likely occurrence of a disclosable event (*i.e.*, an event that would require an amendment to Form BD, thus triggering the re-filing obligation) within the first week of Web CRD's implementation, may inhibit a firm's ability to amend and complete its re-filing of Form BD within the proposed 30-day time period. Both commenters indicated that this situation was most likely to arise in connection with a Schedule E event (*i.e.*, the obligation of the firm to disclose the opening or closing of a branch office), within the initial weeks of Web CRD's implementation. ARM also added that many larger firms' Forms BD may be affected when one or more of their respective broker-dealer control affiliates' Forms BD are amended. In addition, ARM commented that the training of selected staff on Web CRD Internet navigation and usage will be another time constraint for broker-dealers.

In light of their concerns, ARM suggested that all firms should be allowed to wait until December 15, 1999 before completing the re-filing of their respective Forms BD. ARM also suggested, however, that firms should be permitted to input Form BD amendments into Web CRD prior to this time. As ARM noted, this would require disengaging the "completeness checks"[45] that are built into the Web CRD system to prohibit the submission of an incomplete re-filing of Form BD. For similar reasons, CSFB requested a safe harbor for the good-faith failure of firms to file amendments to Form BD on a timely basis.

We have considered the issues raised by each of the commenters. While we are sympathetic to the concerns expressed by ARM and CSFB, we are also mindful of the need to ensure that Web CRD is fully implemented no later than mid-December 1999.[46] We have determined to adopt the amendments to Rules 15b3–1, 15Ba2–2, and 15Ca2–1 as proposed, with the following modifications:

(i) The Staff's No-Action Position Under Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1

The staff is extending its proposed 30-day no-action position to 60 days for disclosable events that occur during the System Transition Period as well as during the period August 16, 1999 through August 31, 1999. This position takes into account the commenters' concerns over the possibility of a backlog of filings during the System Transition Period. It also takes into account their concerns that a disclosable event may occur shortly after Web CRD becomes operational, thus prompting the re-filing requirement at a time when firms may have a backlog of filings. This no-action position should provide firms with greater flexibility to meet their re-filing obligations without unnecessarily delaying the time when the information in Web CRD is complete and up-to-date.

In reaching this position, the staff considered CSFB's suggestion for a subjective safe harbor for a firm that shows a good-faith delay in re-filing its Form BD information. The staff does not, however, believe that such a subjective standard would provide adequate guidance for registrants. Instead, the objective standards adopted

[38] The December 15, 1999 date was chosen to ensure that re-filings will take place prior to the annual shutdown of CRD for renewals and to have the re-filing complete before the Year 2000.

[39] *See* ARM and CSFB letters *supra* note 6.

[40] *See* NASD letter *supra* note 6.

[41] Exchange Act Rule 15Ca2–2 directs government securities brokers and dealers to file Form BD, in accordance with its instructions, to the CRD. The rule does not, however, contain language directing them to "promptly" amend Form BD when the information therein becomes inaccurate. Unlike broker-dealers that are registered under Exchange Act Sections 15(b) or 15B, government securities broker-dealers must comply with Treasury Rule 400.5 which directs them to file an amendment to Form BD within 30 days from the time the information becomes inaccurate. The staff's no-action position will apply to all registered broker-dealers, including government securities broker-dealers.

[42] The Commission has not defined what constitutes "prompt" filing for purposes of Rule 15b3–1 because whether a filing is deemed "promptly filed" needs to be determined on a facts-and-circumstances basis. Moreover, the concept of "promptness" changes with the evolution of technology. In the Proposing Release, the Commission stated that in no event would filing an amendment after 30 days be considered "prompt" at a time other than during the System Transition Period. *See* Proposing Release, note 35 and accompanying text.

[43] *See supra* notes 16–17 and accompanying text.

[44] CSFB also stated that the accurate disclosure of this information may require firms, especially larger firms, to conduct extensive research.

[45] Completeness checks ensure that a firm fully completes Form BD before it submits the form to Web CRD. If certain informational fields are left blank, the completeness check will immediately prompt the firm to complete the field. The firm will be unable to re-file its new Form BD in Web CRD until these informational fields are completed.

[46] *See* discussion *infra* part III.A.2.b.(i) (regarding Y2K and Form BD renewal requirements for firms).

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today provide definitive dates by which registrants must complete their filings.

The staff also considered ARM's request to allow all firms to have until December 15, 1999 to complete their re-filing requirement, regardless of disclosable events. This suggestion, however, does not appear to be practical. As the NASD noted in its comment letter, if a large percentage of the broker-dealer community delayed re-filing until December, it could pose significant operational challenges to the NASD's CRD/Public Disclosure Department (which is responsible for reviewing and processing all form filings). That department is also responsible for comparing the information from the Form BD re-filing to the information currently in Legacy CRD. This comparison can only occur after a broker-dealer re-files its Form BD. The NASD also noted that a large percentage of firms submitting their Form BD re-filing in mid-December could impair the flexibility of both the firms and the NASD to complete final Y2K preparations. In addition, the NASD pointed out that firms that delay re-filing until mid-December also will have to be prepared to complete the annual renewal process for broker-dealers and registered representatives at the same time.[47] Finally, the NASD commented that ARM's suggestion of disengaging the completeness checks (and thereby avoiding the re-filing requirement upon the occurrence of a disclosable event) is not a viable option.[48] The staff has, therefore, modified the re-filing requirements to address the difficulties to be faced by both the firms and the NASD.

July 30, 1999–August 15, 1999

As adopted, under Rules 15b3–1, 15Ba2–2, and 15Ca2–1,[49] the staff of the Division of Market Regulation will not recommend enforcement action if a firm files an amendment to Form BD that should have been filed during the System Transition Period no later than October 15, 1999 (*i.e.*, 60 days from August 16, 1999). Therefore, a firm will have a minimum of over 90 days in which to gather its re-filing data, type it into a word processing program, and "cut and paste" the data into Web CRD (*i.e.*, approximately 20 days before Form BD is effective on July 30, 1999, plus 17 days during the System Transition Period, plus the 60-day no-action position, assuming a disclosable event occurs as early as July 26, 1999).

August 16, 1999–August 30, 1999

The staff of the Division of Market Regulation will not recommend enforcement action for filings of any amendment to Form BD that would also trigger the re-filing obligation, if the amendment is filed within 60 days of a disclosable event that occurs during the period from August 16, 1999 through August 30, 1999.

August 31, 1999–December 15, 1999

With respect to disclosable events that on or after August 31, 1999, the staff of the Division of Market Regulation will not recommend enforcement action for filings of any amendment to Form BD that would also trigger the re-filing obligation, if the amendment is filed within 30 days from when the disclosable event occurred. In any event, however, all re-filings must be completed on or before December 15, 1999.

(ii) Schedule E Disclosable Events

We are also modifying the proposed Temporary Filing Instructions under Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1 by allowing firms to submit all Schedule E amendments to the CRD on paper during the period from August 16, 1999 through December 15, 1999.[50] The NASD has agreed to accept paper filings of Schedule E disclosable events and manually enter them into Web CRD, thereby overriding the completeness checks for this category of filings. Once a firm completes its re-filing, however, all subsequent Schedule E amendments must be submitted electronically in Web CRD.[51] This will allow firms to continue filing Schedule E amendments to Form BD on a timely basis without triggering the re-filing requirement. This position takes into account the commenters' concerns that the re-filing obligation may be triggered soon after Web CRD's implementation when the firms may be busy dealing with the backlog of filings generated during the System Transition Period.

While the Commission understands the concerns expressed by the commenters, we believe that the accommodations outlined above will allow firms to comply with their re-filing obligations without incurring an undue burden.[52]

B. Effective Date

Form BD, as amended today, as well as the amendments to Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act, will become effective on July 30, 1999. Section 553(d) of the Administrative Procedure Act generally provides that, unless an exception applies, a substantive rule may not be made effective less than 30 days after notice of the rule has been published in the **Federal Register**.[53] One exception to the 30 day requirement is when an agency finds good cause for providing a shorter notice period. We believe that good cause exists in this situation.[54]

As discussed in Part I of this release, Web CRD, even more than Legacy CRD, is expected to be a significant regulatory tool that will benefit regulators, broker-dealers, and the public. In order to ensure that the transition from Legacy CRD to Web CRD is orderly and complete, the NASD needs an adequate System Transition Period. The NASD has made a significant effort in preparing itself, its members broker-dealers, and non-member broker-dealers for the shift from Legacy CRD to Web CRD beginning August 16, 1999. If the NASD were to delay implementation of Web CRD so as to allow new Form BD and the related rules to become effective 30 days after publication in the **Federal Register**, a significant amount of confusion could result among industry participants, with little or no benefit to anyone from the delay. Indeed, substantial costs could be incurred by

[47] Each year, firms are required to complete the process of filing renewal and termination requests for their respective registered representatives no later than December 15.

[48] According to the NASD, disengaging the completeness checks would involve a major code change to the Web CRD application. Such a change would require replacing code that has already been tested and approved. This, in turn, could lead to further system problems which would ultimately delay the deployment of Web CRD. Moreover, the NASD contends that disabling the completeness checks would require additional manual NASD staff review to ensure that all required information was submitted on a particular filing, thereby eliminating one of the significant advantages of Web CRD.

[49] *See supra* note 41 regarding the application of the staff's no-action position to government securities broker-dealers.

[50] The NASD, however, will not accept paper filings of Schedule E during the System Transition Period or at any time following December 15, 1999.

[51] The NASD will return all paper submissions of Schedule E amendments from any firm that has completed its re-filing.

[52] Currently, there are tools available to firms to assist them in complying in a timely manner with their re-filing requirements. For example, firms have the option to begin training their staff now, rather than waiting until August 16, 1999. For example, broker-dealer staff members responsible for Web CRD input have been able to review the proposed Form BD since May 10, 1999. They may now also access a Web CRD Tutorial at <http://www.nasd.com/crd_cbt/crd_1.htm>. In addition, during the month of July 1999, on Tuesdays, Wednesdays, and Thursdays, the NASD will provide access to the Web CRD system which will allow firm staff to "practice" using the Web CRD system with mock data. This will enable staff to become more familiar with Web CRD prior to its implementation. Firms will not, however, be able to begin inputting its actual re-filing information until August 16, 1999.

[53] 5 U.S.C. § 553(d).

[54] 5 U.S.C. § 553(d)(3).

broker-dealers and the NASD, all of which have been preparing for the System Transition Period and for Web CRD's implementation on August 16, 1999.

Because the System Transition Period will commence at the end of July 1999, Web CRD should be operational on August 16, 1999. As a practical matter, although Form BD and the related rules will be effective beginning July 30, 1999, Web CRD will not be implemented until August 16, 1999. Thus, firms will effectively have notice of the new forms and rules for over 30 days before compliance with them is required. Most initial filers on new Form BD will have been in contact with the staff at the NASD prior to their actual filing and will, as a consequence of that contact, have actual notice of the substance of the new Form BD.

Additionally, not delaying the System Transition Period should help ensure that firms have adequate time to complete their re-filing obligations before Year 2000. In addition, not delaying the System Transition Period will allow the NASD sufficient time before Year 2000 to capture the data submitted on paper forms during the System Transition Period.

The Commission hereby finds that there is good cause for making the amendments to Form BD and Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1 effective on July 30, 1999, even if this date is less than 30 days after notice of the amendments has been published in the **Federal Register**.

IV. Cost Benefit Analysis

We expect that the benefits of Web CRD to the industry will outweigh the costs associated with the one-time re-filing requirement[55] for registered broker-dealers. In the Proposing Release, we stated our preliminary view that when Web CRD is fully implemented, it would minimize future regulatory burdens on broker-dealers for filing Form BD and related amendments. No commenters addressed this aspect of the Proposing Release except to state that the benefits of Web CRD are welcomed by the industry. Furthermore, industry representatives told us that they expect their costs involving postage, duplication, and staff time to be reduced by using the Internet to file Form BD amendments. We estimate that broker-dealers filed approximately 15,350 Form BD amendments in Legacy CRD for fiscal year 1998. Industry representatives estimate that each amendment in Legacy CRD typically requires $.60 for duplication costs (*i.e.*, $.05 per page at approximately 12 pages), $180 for postage (*i.e.*, $12 × approximately 15 next-day mailings to the CRD, SROs, and relevant states), and $140 of staff time required to fill out the amendment to Form BD and submit it to the appropriate regulators (*i.e.*, 4 hours of staff time per amendment x an average compensation rate of $35 per hour). Thus, the total annual cost burden to the industry to amend Form BD in Legacy CRD is approximately $4,921,210 (*i.e.*, [$.60 + $180 + $140] × a yearly average of 15,350 amendments).

In contrast, industry representatives estimate that the average time necessary to complete an amendment on Web CRD will be approximately 20 minutes (*i.e.*, 5 minutes for simple amendments and up to 30 minutes for more complicated amendments). Therefore, we estimate that the annual cost burden to the industry to amend Form BD under Web CRD will be approximately $177,293 (*i.e.*, .33 hours × a yearly average of 15,350 amendments × an average compensation rate of $35 per hour).[56] This will result in a total annual cost savings of over $4.5 million for all broker-dealers amending Form BD.

Because the form will still be filed initially on paper, the amendments will not alter the current burden on initial filers of Form BD. In addition, the amendments requiring broker-dealers to designate an account administrator and establish an account with an Internet Service Provider ("ISP")[57] are not expected to significantly alter the current burden on broker-dealers. As described above, the account administrator will be the point-of-contact between the broker-dealer and the CRD. According to industry representatives, the account administrator will most likely be the person who already performs filing and reporting functions for the firm (either internally or as a third-party filer). It is anticipated, therefore, that this person will continue to be the point-of-contact with the CRD and continue to perform similar reporting and administrative tasks for the firm.

With respect to ISP accounts, we are of the view that the requirement that broker-dealers have Internet access (either internally or through a third-party filer) will not significantly alter the current burden on broker-dealers. Most broker-dealers already have Internet access and, for those that do not, the cost of obtaining an ISP account averages approximately $20 per month. In addition, many broker-dealers use the Internet for other business purposes such as sending and receiving e-mail, maintaining a Web site, or delivering documents. For these broker-dealers, the additional burden to file amendments to Form BD through the Internet will be only a fraction of their total costs associated with their use of the Internet.

We also believe that Web CRD will benefit regulators and the public by streamlining the capture of relevant information pertaining to broker-dealers and their associated persons. Precise information regarding a broker-dealer's activities and disciplinary history is needed for investigations and examinations by regulators. It also is a valuable informational resource for investors in deciding whether to entrust their financial assets to a particular broker-dealer.[58] While it is impossible to quantify these benefits, we expect that they will exceed the recordkeeping and reporting burden imposed on broker-dealers.

V. Consideration of Competition, Efficiency, and Capital Formation/ Impact on Competition

In addition, Section 3 of the Exchange Act as amended by the National Securities Markets Improvement Act of 1996, provides that whenever the Commission is engaged in rulemaking and is required to consider whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[59] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to refrain from adopting a rule that will impose a burden on competition not necessarily or appropriate in furthering the purpose of the Exchange Act.

As noted above, the form revisions and related rule amendments adopted

[55] *See* discussion *infra* in part VII (Paperwork Reduction Analysis) regarding the burden hours for the one-time re-filing of certain information on Form BD.

[56] Broker-dealers that employ third-party filers account for approximately 3,009 of the Form BD amendments (*i.e.*, an approximate cost burden of $34,754). *See* discussion *infra* notes 66–67 and accompanying text (regarding the hour and cost burdens on these broker-dealers).

[57] A broker-dealer will also need access to an Internet browser (*e.g.*, Netscape, Internet Explorer) in order to submit filings over the Internet. Internet browsers typically are provided by the ISP or can be downloaded free of charge from the Internet.

[58] The NASD receives approximately 525,000 inquiries each year from the public requesting information about broker-dealers or their associated persons.

[59] 15 U.S.C. 78w(a)(2).

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today should reduce the regulatory burden on broker-dealers by facilitating electronic filing over the Internet, which will be a more efficient and cost-effective means for broker-dealers to meet their regulatory and reporting obligations. No commenters suggested otherwise. The amendments to Form BD and the related rules under the Exchange Act therefore will not result in any new burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. No commenters suggested otherwise.

VI. Regulatory Flexibility Analysis

We have prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[60] regarding the amendments to Form BD. We did not receive any comments on our Initial Regulatory Flexibility Analysis ("IRFA").[61] As noted above and in the FRFA, the revisions to Form BD and related rules are intended to respond to the shift from the network-based architecture and proprietary software approach anticipated in the 1996 CRD system to the Internet-based Web CRD. The revisions to Form BD not only should provide benefits to securities regulators in the retrieval of information, but should also ease the burden of registration by future registrants, including small businesses. The FRFA also indicates that, except for the one-time re-filing requirement on registered broker-dealers, the revisions to Form BD will reduce aggregate cost and time burdens on broker-dealers, including small entity broker-dealers, who are required to file, or make amendments to, Form BD. The FRFA further indicates that because the amendments generally are intended to lessen the burden of registration, small broker-dealers will be affected in the same manner as other registrants. Thus, exempting small broker-dealers from Form BD disclosures would be unwarranted.

A copy of the FRFA may be obtained from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001; (202) 942–0073.

VII. Paperwork Reduction Act Analysis

Certain provisions of the amendment to Form BD contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 *et seq.*). The Commission submitted the proposal to the Office of Management and Budget ("OMB") for review in accordance with PRA requirements in effect at this time. The title for this collection of information: "Application for Registration as a Broker or Dealer." OMB has approved the amendments to Form BD and has assigned Form BD OMB control Number 3235–0012 with an expiration date of March 31, 2001. The information required by Form BD is mandatory and the responses are not kept confidential. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

The amendments to Form BD are expected to provide securities regulators with better information about a registrant's disciplinary history by grouping disciplinary information into related categories and by customizing the corresponding DRPs used to disclose details of the registrant's disciplinary history. The amendments also are intended to elicit more precise information about the business activities of broker-dealer applicants.[62]

As discussed above, the amendments to Form BD respond to certain recommended changes to the CRD system that have led to its redesign as an Internet-based system. Web CRD is expected to be more useful to securities regulators. It will also allow broker-dealers to file amendments to Form BD and other uniform registration forms electronically. Because Web CRD is intended to operate in an electronic environment, paper amendments to Form BD will no longer be submitted by broker-dealers. Rather, broker-dealers will be able to access and update their respective Forms BD through the NASD's Web site. This should result in cost-savings related to copying, postage, and staff time. Under Web CRD, broker-dealers will not have to obtain dedicated computer systems or proprietary software as would have been required under Redesigned CRD. Rather, a firm only needs access to the Internet and an Internet browser through an account with an ISP to submit filings electronically.

Broker-dealers already are required pursuant to Rule 15b1–1[63] under the Exchange Act to file for registration on Form BD and, pursuant to Rule 15b3–1(b),[64] to promptly file an amendment to Form BD if any information contained therein becomes inaccurate.[65] These amendments are intended to adapt Form BD to Web CRD's Internet-based environment. Therefore, except for the one-time re-filing requirement, the amendments to Form BD and the related rules will not impose any significant additional recordkeeping, reporting or other compliance requirement on broker-dealers. Initial filings of Form BD will continue to be made on paper and the electronic filing of Form BD amendments is expected to reduce time and cost burdens on broker-dealers.

With respect to the one-time re-filing requirement, we estimate (based on discussions with industry representatives) that the average time necessary to complete a re-filing will be as follows: (1) Approximately 30 large firms (total capital of more than $500 billion) will require approximately 40 hours each to re-file, (2) approximately 170 medium firms (total capital between $499 billion and $20 million) will require approximately 24 hours each to re-file, and (3) approximately 6,640 small firms[66] (total capital below $20 million) will require approximately 2 hours each to re-file. Thus, the total burden hours for the re-filing of certain disclosure information into Web CRD is estimated as 18,560 hours [30 large firms × 40 (1,200) + 170 medium firms × 24 (4,080) + 6,640 small firms × 2 (13,280) = 18,560].

Broker-dealer applicants are also subject to Form BD's initial reporting obligation. Form BD is only submitted once and is updated by amendment (see discussion on Form BD amendments below). For fiscal year 1998, the Commission received approximately 790 Form BDs for an initial or successor application for registration as a broker-dealer, non-bank municipal securities dealer, or non-bank government securities broker-dealer (pursuant to Rules 15b1–1, 15b1–3, 15b1–4, 15Ba2–2(a), 15Ba2–4, 15Ba2–5, 15Ca2–1, 15Ca2–3, and 15Ca2–4). Although the time necessary to complete Form BD will vary depending on the nature and complexity of the applicant's securities business, we estimate that the average time necessary to complete the initial form is approximately 2.75 hours. Thus, the Commission estimates that total annual burden hours required for the initial filing of a Form BD is 2,173 hours (2.75 × 790). It is important to note that the amendments adopted today do not alter the current burden on initial filers of Form BD because a Form BD filed for the first time is still required to be filed on paper.

Under Web CRD, all amendments to Form BD will be filed electronically. For fiscal year 1998, the Commission received approximately 15,350 amendments. Of these 15,350 amendments, approximately 3,009 were from broker-dealers that employ third-party filers.[67] Because these broker-dealers will incur cost burdens rather than hour burdens, they will be removed from the total annual hour burden calculation (see discussion regarding cost burdens on broker-dealers that employ third-party filers below). Therefore, for purposes of the annual hour burden calculation, the total annual number of amendments to Form BD will be 12,341 (*i.e.*, 15,350 total amendments—3,009 amendments filed by third-party filers). The staff estimates that the average time necessary to complete an amendment on Web CRD will be approximately 20 minutes (*i.e.*, 5 minutes for simple amendments and up to 30 minutes for more complicated amendments). Thus, the total annual burden hours for the filing of Form BD amendments is 4,073 hours (.33 hours x approximately 12,341 [15,350—3009] amendments per year).

We estimate that the total annual filing burden for Form BD and Form BD amendments is 6,246 hours (2,173 for initial filings of Form BD + 4,073 for amendments to Form BD). This is a reduction of approximately 1,030 total burden hours from the annual regulatory burden anticipated in Redesigned CRD. However, the total one-time re-filing burden will be approximately 18,560 hours. Accordingly, for the year when Web CRD is first implemented, the total hour burden will be approximately 24,806 hours.

We also anticipate that the burden hours discussed above will apply similarly to broker-dealers who rely on third-party filers. Instead of incurring the cost of staff time, however, these broker-dealers will be billed by third-party filers at an average compensation rate of $35 per hour. Therefore, a small broker-dealer will pay a third-party filer $70 (2 hours for re-filing x $35 per hour) to comply with its one-time re-filing obligation. This will amount to a total, one-time cost burden of $58,100 ($70 x 1,660 small broker-dealers that employ third-party filers).

Broker-dealers that employ third-party filers to file amendments to Form BD will also incur a cost burden. As discussed above in Part VII (Cost Benefit Analysis), the Commission estimates that approximately 15,350 amendments to Form BD are filed each year by broker-dealers. Of these 15,350 amendments, approximately 3,009 are from broker-dealers that employ third-party filers. The average time necessary to complete an amendment on Web CRD is estimated to be approximately 20 minutes. Therefore, the total annual cost burden to broker-dealers that employ third-party filers to file amendments to Form BD will be approximately $34,754 (*i.e.*, .33 hours x 3,009 amendments x an average compensation rate of $35 per hour). The staff estimates that the total annual cost burden to these broker-dealers for re-filing and amending Form BD is approximately $92,854 (*i.e.*, $58,100 + $34,754).

With respect to ISP accounts, we are of the view that most broker-dealers already have Internet access (either internally or through a third-party filer), which they currently use to send and receive e-mail, to maintain a Web site, or to deliver documents.[68] Therefore, the use of their existing Internet accounts for filing in Web CRD will be incremental and will not significantly alter their current burden. As discussed above in Part VII (Cost Benefit Analysis), for those broker-dealers that do not currently have access to the Internet, the cost burden of obtaining an ISP account is approximately $20 per month. The Commission estimates that approximately 5% of all broker-dealers (approximately 425 broker-dealers) do not currently have access to the Internet either directly or through the use of a third-party filer. Therefore, the total annual cost burden for obtaining and maintaining an Internet account will be approximately $102,000 [$20 × 12 months x (.05 × 8500)].

Accordingly, for the year when Web CRD is first implemented, the total cost burden will be $194,854 (*i.e.*, $102,000 for ISP accounts + $92,854 for broker-dealers employing third-party filers to amend and re-file Form BD).

It is important to note that regardless of whether a broker-dealer employs a person internally or hires a third-party to file information in CRD, ultimately the same costs will apply.

VIII. Statutory Basis

The foregoing amendments are adopted pursuant to the Exchange Act and particularly to Sections 15(a), 15(b), 15B, 15C, and 23(a) therein.[69]

IX. Lists of Subjects in 17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities

Statutory Basis and Text of Final Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.15b3–1 by removing paragraph (b), redesignating

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[60] 5 U.S.C. 603.

[61] A summary of the IRFA was included in the Proposing Release at part X.

[62] The Commission uses the information disclosed by applicants in Form BD to: (i) determine whether broker-dealer applicants meet the standards for registration set forth in the provisions of the Exchange Act; (ii) develop and maintain a central information resource where members of the public may obtain relevant, current information about broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers, and where the Commission and other securities regulators may obtain information for investigatory purposes; and (iii) develop statistical information concerning broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers.

[63] 17 CFR 240.15b1–1.

[64] 17 CFR 240.15b3–1(b).

[65] As noted above, Exchange Act Rule 15Ba2–2 also requires municipal securities dealers to promptly file an amendment to Form BD if any information contained therein becomes inaccurate. Treasury Rule 400.5 requires government securities brokers and dealers to file such an amendment within 30 days from the time information in their Forms BD become inaccurate. *See also* note 41 *supra*.

[66] The Commission estimates that approximately 20% of the small broker-dealer population (*i.e.*, 1,660 [.20 x 8,300 small broker-dealers]) employ third parties to file information related to their respective Forms BD with the CRD. These broker-dealers will not incur an hour burden and, therefore, for purposes of the Paperwork Reduction Act, are removed from the hour-burden calculation for small broker-dealers (*i.e.*, 8,300 total small broker-dealers—1,660 small broker-dealers that employ third-party filers = 6,640 small broker-dealers that will incur hour burdens). As discussed below, however, the 1,660 broker-dealers will incur a cost burden with respect to re-filing and Form BD amendments.

[67] Out of the approximate 15,350 amendments filed each year, approximately 15,043 are filed by small broker-dealers (*i.e.*, 8,300 small broker-dealers = 98% of the broker-dealer community; 15,350 × .98 = 15,043). As discussed above, approximately 1,660 (20%) of small broker-dealers employ third-party filers and, therefore, will be responsible for approximately 3,009 of the total annual amendments to Form BD (*i.e.*, 15,043 amendments by small broker-dealer community × .20 = 3,009 amendments).

[68] In addition, NASD members are already required to have an electronic mail account and to be able to access NASD Regulation's Web site for the purpose of updating their Firm Contact Questionnaire. *See* NASD By-Laws Article IV, Section 3.

[69] 15 U.S.C. §§ 78o(a), 78o(b), 78o–4(a)(2), 78o–5(a)(2), and 78w(a).

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paragraph (c) as paragraph (b), and adding a new paragraph (c) to read as follows:

§ 240.15b3–1 Amendments to application.

* * * * *

(c) *Temporary re-filing instructions.* (1) Except as provided in paragraph (c)(3) of this section, every registered broker-dealer shall re-file with the Central Registration Depository, at the time the broker-dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD (17 CFR 249.501):

(i) Question 8 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered "Yes," the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered "Yes," the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered "Yes," the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered broker-dealer, at the time it re-files the information required by paragraph (c)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

(3) Every registered broker-dealer that has not completed the re-filing requirements provided in paragraphs (c)(1) and (c)(2) of this section, during the period from August 16, 1999 to December 15, 1999, shall submit in paper format to the Central Registration Depository all Schedule E amendments to Form BD. A Schedule E filed pursuant to this paragraph (c) shall not be deemed an "amendment" for purposes of paragraphs (a) and (b) of this section.

3. By amending § 240.15Ba2–2 by adding paragraph (e) to read as follows:

§ 240.15Ba2–2. Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

* * * * *

(e) *Temporary re-filing instructions.* (1) Except as provided in paragraph (e)(3) of this section, every dealer that is registered in accordance with this section shall re-file with the Central Registration Depository, at the time the dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered "Yes," the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered "Yes," the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered "Yes," the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every dealer that is registered in accordance with this section, at the time it re-files the information required by paragraph (e)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

(3) Every dealer that is registered in accordance with this section but that has not completed the re-filing requirements provided in paragraphs (c)(1) and (c)(2) of this section, during the period from August 16, 1999 to December 15, 1999, shall submit in paper format to the Central Registration Depository all Schedule E amendments to Form BD. A Schedule E filed pursuant to this paragraph (e)(3) shall not be deemed an "amendment" for purposes of paragraphs (e)(1) and (e)(2) of this section.

4. By amending § 240.15Ca2–1 by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and adding a new paragraph (c) to read as follows:

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

* * * * *

(c) *Temporary re-filing instructions.* (1) Except as provided in paragraph (c)(3) of this section, every registered government securities broker or government securities dealer shall re-file with the Central Registration Depository, at the time the broker or dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered "Yes," the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered "Yes," the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered "Yes," the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered government securities broker or dealer, at the time it re-files the information required by paragraph (c)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

(3) Every registered government securities broker or government securities dealer that has not completed the re-filing requirements provided in paragraphs (c)(1) and (c)(2) of this section, during the period from August 16, 1999 to December 15, 1999, shall submit in paper format to the Central Registration Depository all Schedule E amendments to Form BD. A Schedule E filed pursuant to this paragraph (c)(3) shall not be deemed an "amendment" for purposes of paragraphs (c)(1) and (c)(2) of this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

Appendix B—Form BD [Amended]

11. By revising Form BD (referenced in § 249.501) to read as set forth in appendix B.

By the Commission.

Dated: July 2, 1999.

Margaret H. McFarland,

Deputy Secretary.

Note: The following Appendices will not appear in the Code of Federal Regulations:

Appendix A

Appendix A will also not appear in the **Federal Register** but is available in the Commission's Public Reference Room and on the Commission's Web site at www.sec.gov.

Appendix B—Form BD

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Form BD

OMB APPROVAL	
OMB Number:	3235-0012
Expires:	March 31, 2001
Estimated average burden hours per:	
Response	2.75
Amendment	0.33

Uniform Application for Broker-Dealer Registration

SEC 1490 (7/1999)

FORM BD INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form BD is the Uniform Application for Broker-Dealer Registration. Broker-Dealers must file this form to register with the Securities and Exchange Commission, the *self-regulatory organizations*, and *jurisdictions* through the Central Registration Depository ("CRD") system, operated by the NASD.
2. **UPDATING** – By law, the *applicant* must promptly update Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason.
3. **CONTACT EMPLOYEE** – The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
4. **GOVERNMENT SECURITIES ACTIVITIES**
   - A. Broker-dealers registered or *applicants* applying for registration under Section 15(b) of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 2B.
   - B. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, answer "yes" to Item 2C if conducting only a government securities business.
   - C. Broker-dealers registered under Section 15(b) of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 2D.

NOTE: Broker-dealers registered under Section 15C may register under Section 15(b) by filing an amendment to Form BD and answering "yes" to Items 2A and 2D. By doing so, broker-dealer expressly consents to withdrawal of broker-dealer's registration under 15C of the Exchange Act.

5. **FEDERAL INFORMATION LAW AND REQUIREMENTS** – An agency may not conduct or sponsor, and a *person* is not required to respond to, a collection of information unless it displays a currently valid control number. Section 15, 15c, 17(a) and 23(a) of the Exchange Act authorize the Commission to collect the information on this Form from registrants. See 15 U.S.C. §§78o, 78o-5, 78-q and 78w. Filing of this Form is mandatory; however the social security number information, which aids in identifying the *applicant*, is voluntary. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirement to engage in the securities business. The Form also is used by *applicants* to register as broker-dealers with certain *self-regulatory organizations* and all of the states. The Commission and the National Association of Securities Dealers, Inc. maintain the files of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on application facing page of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

B. PAPER FILING INSTRUCTIONS (FIRST TIME *APPLICANTS* FILING WITH CRD AND WITH SOME *JURISDICTIONS*)

1. **FORMAT**
   - A. A full paper Form BD is required when the *applicant* is filing with the CRD for the first time. In addition, some *jurisdictions* may require a separate paper filing of Form BD. The *applicant* should contact the appropriate *jurisdiction(s)* for specific filing requirements.
   - B. Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing.
   - C. Type all information.
   - D. Give the name of the broker-dealer and date on each page.
   - E. Use only the current version of Form BD and its Schedules or a reproduction of them.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP(BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). Attach a copy of the fully completed DRP(BD) or DRP(U-4) previously submitted. If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP(BD).
3. **SCHEDULES A, B AND C** – File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B. Individuals not required to file a Form U-4 (individual registration) with the CRD system who are listed on Schedules A, B, or C must attach page 2 of Form U-4. The *applicant* broker-dealer must be listed in Form U-4 Item 20 or 21. Signatures are not required.
4. **SCHEDULE D** – Schedule D provides additional space for explaining answers to Item 1C(2), and "yes" answers to Items 5, 7, 8, 9, 10, 12, and 13 of Form BD.

C. ELECTRONIC FILING INSTRUCTIONS (*APPLICANTS* / REGISTERED BROKER-DEALERS FILING AMENDMENTS WITH CRD)

1. **FORMAT**
   - A. Items 1-13 must be answered and all fields requiring a response must be completed before the filing will be accepted.
   - B. *Applicant* must complete the execution screen certifying that Form BD and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   - C. To amend information, *applicant* must update the appropriate Form BD screens.
   - D. A paper copy, with original manual signatures, of the initial Form BD filing and amendments to Disclosure Reporting Pages (DRPs BD) must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete the *control affiliate* name and CRD number of the *applicant's* appropriate DRP(BD). Details for the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the questions and complete all fields requiring a response on the *applicant's* appropriate DRP(BD) screen.

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3. **DIRECT AND INDIRECT OWNERS** – Amend the Direct Owners and Executive Officers screen and the Indirect Owners screen when changes in ownership occur. *Control affiliates* that are individuals who are not required to file a Form U-4 (individual registration) with the CRD must complete page 2 of Form U-4 (i.e., submit/file the information elicited by the Personal Data, Residential History, and Employment and Personal History sections of that Form). The *applicant* broker-dealer must be listed in Form U-4 Item 20 or 21.

The CRD mailing address for questions and correspondence is:

NASAA/NASD CENTRAL REGISTRATION DEPOSITORY
P.O. BOX 9495
GAITHERSBURG, MD 20898-9495

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

1. **GENERAL**

APPLICANT – The broker-dealer applying on or amending this form.

CONTROL – The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)

JURISDICTION – A state, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or regulatory body thereof.

PERSON – An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION – Any national securities or commodities exchange or registered securities association, or registered clearing agency.

2. **FOR THE PURPOSE OF ITEM 5 AND SCHEDULE D**

SUCCESSOR – An unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a registered predecessor broker-dealer, who ceases its broker-dealer activities. [See Securities Exchange Act Release No. 31661 (December 28, 1992), 58 FR 7 (January 4, 1993)]

3. **FOR THE PURPOSE OF ITEM 11 AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)**

CONTROL AFFILIATE – A *person* named in Items 1A, 9 or in Schedules A, B or C as a *control* person or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the *applicant*, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

INVESTMENT OR INVESTMENT-RELATED – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

INVOLVED – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

FOREIGN FINANCIAL REGULATORY AUTHORITY – Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *investment* or *investment-related* activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

PROCEEDING – Includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or a *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal charge); or a *misdemeanor* criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

CHARGED – Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

ORDER – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an *order*.

FELONY – For *jurisdictions* that do not differentiate between a *felony* and a *misdemeanor*, a *felony* is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

MISDEMEANOR – For *jurisdictions* that do not differentiate between a *felony* and a *misdemeanor*, a *misdemeanor* is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

FOUND – Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

MINOR RULE VIOLATION – A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the U.S. Securities and Exchange Commission. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes).

ENJOINED – Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

FORM BD PAGE 1 (Execution Page) (REV. 7/1999)	UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION Date: _____ SEC File No.: 8- _____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the *jurisdictions* and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of *applicant*:

A. Full name of *applicant* (if sole proprietor, state last, first and middle name):

B. IRS Empl. Ident. No.:

C. (1) Name under which broker-dealer business primarily is conducted, if different from Item 1A.

(2) List on Schedule D, Page 1, Section I any other name by which the firm conducts business and where it is used.

D. If this filing makes a name change on behalf of the *applicant*, enter the new name and specify whether the name change is of the ☐ *applicant* name (1A) or ☐ business name (1C):

Please check above.

E. Firm main address: (Do not use a P.O. Box)

(Number and Street) (City) (State/Country) (Zip+4/Postal Code)

Branch offices or other business locations must be reported on Schedule E.

F. Mailing address, if different:

G. Business Telephone Number:

(Area Code) (Telephone Number)

H. Contact Employee:

(Name and Title) (Area Code) (Telephone Number)

EXECUTION:

For the purposes of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and *applicant* hereby certify that the *applicant* is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the *applicant* in said State(s), upon whom may be served any notice, process, or pleading in any action or *proceeding* against the *applicant* arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the *applicant* hereby consents that any such action or *proceeding* against the *applicant* may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if *applicant* were a resident in said State(s) and had lawfully been served with process in said State(s).

The *applicant* consents that service of any civil action brought by or notice of any *proceeding* before the Securities and Exchange Commission or any *self-regulatory organization* in connection with the *applicant's* broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the *applicant's* contact employee at the main address, or mailing address if different, given in Items 1E and 1F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said *applicant*. The undersigned and *applicant* represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and *applicant* further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

Date (MM/DD/YYYY) Name of Applicant

By: _____ _____
Signature Print Name and Title

Subscribed and sworn before me this _____ day of _____, _____ by _____
Year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
To amend, circle items being amended. Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM BD PAGE 2 (REV. 7/1999)

Applicant Name: _____ Date: _____ Firm CRD No.: _____

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2. Indicate by checking the appropriate box(es) each governmental authority, organization, or *jurisdiction* in which the *applicant* is registered or registering as a broker-dealer.

SECURITIES AND EXCHANGE COMMISSION

If *applicant* is registered or registering with the SEC, check here and answer Items 2A through 2D below. ☐

	YES	NO
A. Is *applicant* registered or registering as a broker-dealer under Section 15(b) or Section 15B of the Securities Exchange Act of 1934?	☐	☐
B. Is *applicant* registered or registering as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer?	☐	☐
C. Is *applicant* registered or registering solely as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934?	☐	☐
Do not answer "yes" to Item 2C if applicant answered "yes" to Item 2A or Item 2B.		
D. Is *applicant* ceasing its activities as a government securities broker or dealer?	☐	☐

If applicant answers "yes" to Items 2A and 2D, applicant expressly consents to the withdrawal of its registration as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934. See "Instructions."

SRO

☐ AMEX ☐ BSE ☐ CBOE ☐ CHX ☐ CSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PCX ☐ OTHER *(specify)* _____

JURISDICTION

☐ Alabama	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ Alaska	☐ Idaho	☐ Minnesota	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Mississippi	☐ Ohio	☐ Vermont
☐ Arkansas	☐ Indiana	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ California	☐ Iowa	☐ Montana	☐ Oregon	☐ Washington
☐ Colorado	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ West Virginia
☐ Connecticut	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ Wisconsin
☐ Delaware	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wyoming
☐ District of Columbia	☐ Maine	☐ New Jersey	☐ South Carolina	
☐ Florida	☐ Maryland	☐ New Mexico	☐ South Dakota	
☐ Georgia	☐ Massachusetts	☐ New York	☐ Tennessee	

3. A. Indicate legal status of *applicant*:

☐ Corporation ☐ Sole Proprietorship ☐ Other *(specify)* _____
☐ Partnership ☐ Limited Liability Company

B. Month *applicant's* fiscal year ends: _____

C. If other than a sole proprietor, indicate date and place *applicant* obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed):

State/Country of formation: _____ Date of formation: _____ (MM/DD/YYYY)

Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these schedules must be provided on Schedule C.

4. If *applicant* is a sole proprietor, state full residence address and Social Security Number.

Social Security Number: _ _ _ - _ _ - _ _ _ _

_____
(Number and Street) (City) (State/Country) (Zip+4/Postal Code)

	YES	NO
5. Is *applicant* at the time of this filing *succeeding* to the business of a currently registered broker-dealer? *Do not report previous successions already reported on Form BD.* *If "Yes," contact CRD prior to submitting form; complete appropriate items on Schedule D, Page 1, Section III.*	☐	☐
6. Does *applicant* hold or maintain any funds or securities or provide clearing services for any other broker or dealer?	☐	☐
7. Does *applicant* refer or introduce customers to any other broker or dealer? *If "Yes," complete appropriate items on Schedule D, Page 1, Section IV.*	☐	☐

FORM BD PAGE 3 (REV. 7/1999)

Applicant Name: _____ Date: _____ Firm CRD No.: _____

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	YES	NO
8. Does *applicant* have any arrangement with any other *person*, firm, or organization under which:		
A. any books or records of *applicant* are kept or maintained by such other *person*, firm or organization?	☐	☐
B. accounts, funds, or securities of the *applicant* are held or maintained by such other *person*, firm, or organization?	☐	☐
C. accounts, funds, or securities of customers of the *applicant* are held or maintained by such other *person*, firm or organization?	☐	☐
For purposes of 8B and 8C, do not include a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).		
If "Yes" to any part of Item 8, complete appropriate items on Schedule D, Page 1, Section IV.		
9. Does any *person* not named in Item 1 or Schedules A, B, or C, directly or indirectly:		
A. *control* the management or policies of the *applicant* through agreement or otherwise?	☐	☐
B. wholly or partially finance the business of *applicant*?	☐	☐
Do not answer "yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; 2) credit extended in the ordinary course of business by suppliers, banks, and others; or 3) a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1).		
If "Yes" to any part of Item 9, complete appropriate items on Schedule D, Page 1, Section IV.		
10. A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?	☐	☐
If "Yes" to Item 10A, complete appropriate items on Schedule D, Page 2, Section V.		
B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?	☐	☐
If "Yes" to Item 10B, complete appropriate items on Schedule D, Page 3, Section VI.		
11. Use the appropriate DRP for providing details to "yes" answers to the questions in Item 11. Refer to the Explanation of Terms section of Form BD Instructions for explanations of italicized terms.		
CRIMINAL DISCLOSURE		
A. In the past ten years has the *applicant* or a *control affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony?*	☐	☐
(2) been *charged* with any *felony?*	☐	☐
B. In the past ten years has the *applicant* or a *control affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving:* investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
(2) been *charged* with a *misdemeanor* specified in 11B(1)?	☐	☐
REGULATORY ACTION DISCLOSURE		
C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?	☐	☐
(3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?	☐	☐

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Applicant Name: _____ Date: _____ Firm CRD No.: _____

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REGULATORY ACTION DISCLOSURE

	YES	NO
D. Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority:*		
(1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	☐	☐
(2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	☐	☐
(3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) in the past ten years, entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?	☐	☐
(5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order*, prevented it from associating with an *investment-related* business or restricted its activities?	☐	☐
E. Has any *self-regulatory organization* or commodities exchange ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?	☐	☐
(3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	☐	☐
F. Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	☐	☐
G. Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 11C, D, or E?	☐	☐

CIVIL JUDICIAL DISCLOSURE

H. (1) Has any domestic or foreign court:		
(a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?	☐	☐
(b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?	☐	☐
(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or *control affiliate* by a state or *foreign financial regulatory authority*?	☐	☐
(2) Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H(1)?	☐	☐

FINANCIAL DISCLOSURE

I. In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:		
(1) has been the subject of a bankruptcy petition?	☐	☐
(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	☐	☐
J. Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?	☐	☐
K. Does the *applicant* have any unsatisfied judgments or liens against it?	☐	☐

FORM BD PAGE 5 (REV. 7/1999)

Applicant Name: _____ Date: _____ Firm CRD No.: _____

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12. Check types of business engaged in (or to be engaged in, if not yet active) by *applicant*. Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.

A. Exchange member engaged in exchange commission business other than floor activities	☐ EMC
B. Exchange member engaged in floor activities	☐ EMF
C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D. Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E. Broker or dealer selling corporate debt securities	☐ BDD
F. Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
G. Mutual fund underwriter or sponsor	☐ MFU
H. Mutual fund retailer	☐ MFR
I. 1. U.S. government securities dealer	☐ GSD
2. U.S. government securities broker	☐ GSB
J. Municipal securities dealer	☐ MSD
K. Municipal securities broker	☐ MSB
L. Broker or dealer selling variable life insurance or annuities	☐ VLA
M. Solicitor of time deposits in a financial institution	☐ SSL
N. Real estate syndicator	☐ RES
O. Broker or dealer selling oil and gas interests	☐ OGI
P. Put and call broker or dealer or option writer	☐ PCB
Q. Broker or dealer selling securities of only one issuer or associate issuers (other than mutual funds)	☐ BIA
R. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
S. Investment advisory services	☐ IAD
T. 1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ TAS
U. Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V. Trading securities for own account	☐ TRA
W. Private placements of securities	☐ PLA
X. Broker or dealer selling interests in mortgages or other receivables	☐ MRI
Y. Broker or dealer involved in a networking, kiosk or similar arrangement with a:	
1. bank, savings bank or association, or credit union	☐ BNA
2. insurance company or agency	☐ INA
Z. Other *(give details on Schedule D, Page 1, Section II)*	☐ OTH

	YES	NO
13. A. Does *applicant* effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account?	☐	☐
B. Does *applicant* engage in any other non-securities business?	☐	☐
If "yes," describe each other business briefly on Schedule D, Page 1, Section II.		

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Schedule A of FORM BD

DIRECT OWNERS AND EXECUTIVE OFFICERS

(Answer for Form BD Item 3)
(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule A only in new applications to provide information on the **direct** owners and executive officers of the *applicant*. Use Schedule B in new applications to provide information on **indirect** owners. File all amendments on Schedule C. **Complete each column.**

2. List below the names of:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or functions;
   (b) in the case of an *applicant* that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the *applicant*, unless the *applicant* is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);
   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the *applicant*. For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (c) in the case of an *applicant* that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and
   (d) in the case of a trust that directly owns 5% or more of a class of a voting security of the *applicant*, or that has the right to receive upon dissolution, or has contributed, 5% or more of the *applicant's* capital, the trust and each trustee.
   (e) in the case of an *applicant* that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Are there any indirect owners of the *applicant* required to be reported on Schedule B? ☐ Yes ☐ No

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

6. Ownership codes are: NA – less than 5% A – 5% but less than 10% B – 10% but less than 25% C – 25% but less than 50% D – 50% but less than 75% E – 75% or more

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM	Date Title or Status Acquired YYYY	Ownership Code	*Control Person*	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule B of FORM BD

INDIRECT OWNERS

(Answer for Form BD Item 3)
(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule B only in new applications to provide information on the **indirect** owners of the *applicant*. Use Schedule A in new applications to provide information on **direct** owners. File all amendments on Schedule C. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:
   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;
   For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and
   (c) in the case of an owner that is a trust, the trust and each trustee.
   (d) in the case of an owner that is a Limited Liability Company ("LCC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Status" column by entering status as partner, trustee, shareholder, etc., and if shareholder, class of securities owned (if more than one is issued).

6. Ownership codes are: C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM	Date Status Acquired YYYY	Ownership Code	*Control Person*	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

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Schedule C of FORM BD

AMENDMENTS TO SCHEDULES A & B

(Amendments to answers for Form BD Item 3)

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schedules for specific instructions for completing this Schedule C. **Complete each column.** File with a completed Execution Page (Page 1).

2. In the Type of Amendment ("Type of Amd.") column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are: NA – less than 5% A – 5% but less than 10% B – 10% but less than 25% C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

4. **List below all changes to Schedule A: (DIRECT OWNERS AND EXECUTIVE OFFICERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Title or Status	Date Title or Status Acquired MM	Date Title or Status Acquired YYYY	Ownership Code	Control Person	Control Person PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

5. **List below all changes to Schedule B: (INDIRECT OWNERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Entity in Which Interest is Owned	Status	Date Status Acquired MM	Date Status Acquired YYYY	Ownership Code	Control Person	Control Person PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule D of FORM BD

Page 1

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

OFFICIAL USE ONLY

Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information.

This is an ☐ INITIAL ☐ AMENDED detail filing for the Form BD items checked below:

SECTION I *Other Business Names*

(Check if applicable) ☐ Item 1C(2)

List each of the "other" names and the *jurisdiction(s)* in which they are used.

1. Name	Jurisdiction	2. Name	Jurisdiction
3. Name	Jurisdiction	4. Name	Jurisdiction

SECTION II *Other Business*

(Check one) ☐ Item 12Z ☐ Item 13B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section.

Briefly describe any other business (ITEM 12Z), or any other non-securities business (ITEM 13B). Use reverse side of this sheet for additional comments if necessary.

SECTION III *Successions*

(Check if applicable) ☐ Item 5

Date of *Succession* MM / DD / YYYY	Name of Predecessor	
Firm CRD Number	IRS Employer Identification Number (if any)	SEC File Number (if any)

Briefly describe details of the *succession* including any assets or liabilities not assumed by the *successor*. Use reverse side of this sheet for additional comments if necessary.

SECTION IV *Introducing and Clearing Arrangements / Control Persons / Financings*

(Check one) ☐ Item 7 ☐ Item 8A ☐ Item 8B ☐ Item 8C ☐ Item 9A ☐ Item 9B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement or agreement, enter the effective date of the change.

Firm or Organization Name	CRD Number (if any)	
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY
Individual Name (if applicable) *(Last, First, Middle)*	CRD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Briefly describe the nature of reference or arrangement (ITEM 7 or ITEM 8); the nature of the *control* or agreement (ITEM 9A); or the method and amount of financing (ITEM 9B). Use reverse side of this sheet for additional comments if necessary.

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Schedule D of FORM BD

Page 2

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

OFFICIAL USE ONLY

Use this Schedule D Page 2 to report details for Item 10A. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 2 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10A

☐ 10A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?

SECTION V ***Complete this section for control issues relating to ITEM 10A only.***

The details supplied relate to:

1 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 3 organizations to report, complete additional Schedule D Page 2s.

Schedule D of FORM BD

Page 3

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

OFFICIAL USE ONLY

Use this Schedule D Page 3 to report details for Item 10B. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 3 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10B

☐ 10B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?

SECTION VI ***Complete this section for control issues relating to ITEM 10B only.***

Provide the details for each organization or institution that *controls* the *applicant*, including each organization or institution in the *applicant's* chain of ownership. The details supplied relate to:

1 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

4 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 4 organizations/institutions to report, complete additional Schedule D Page 3s.

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Schedule E of FORM BD

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

INSTRUCTIONS

General: Use this schedule to register or report branch offices or other business locations of the *applicant*. Repeat Items 1-12 for each branch office or other business location. Each item must be completed unless otherwise noted. Use additional copies of this schedule as necessary. If this branch office or other business location is using a name in connection with securities activities other than the *applicant's* name, such name must be reported under Item 1C(2) on Page 1 of this form.

Specific:

Item 1. Specify only one box. Check "Add" when a branch office or other business location is opened and the *applicant* is filing the initial notice, "Delete" when a branch office or other business location is closed, and "Amendment" to indicate any other change to previously filed information.

Item 2. CRD will assign this branch number when the *applicant* adds a branch office or other business location as discussed in Item 1 above. If known, complete this item for all deletions and amendments.

Item 3. The Billing Code is an alpha/numeric value consisting of up to eight characters. It is the responsibility of the firm to establish and maintain its own unique billing codes. This is not a required field.

Item 4. Complete this item for all entries. A physical location must be included; post office box designations alone are not sufficient.

Item 5. Complete this item only when the *applicant* changes the address of an existing branch office or other business location.

Item 6. If the branch office or other business location occupies or shares space on premises within a bank, savings bank or association, credit union, or other financial institution, enter the name of the institution in the space provided.

Item 7. Complete this item for all entries. Enter the name of the supervisor or registered representative in charge who is physically at this location.

Item 8. Provide the CRD number for the branch office supervisor named in Item 7.

Item 9. Complete this item for all entries. Provide the date that the branch office or other business location was opened (ADD), closed (DELETE), or the effective date of the change (AMENDMENT).

Item 10. Check "Yes" or "No" to denote whether the location will be an Office of Supervisory Jurisdiction (OSJ) as defined in NASD Rule 3010.

Item 11. Check "Yes" or "No" to denote whether the location is a business location that will operate pursuant to a written agreement or contract (other than an insurance agency agreement) with the main office and any one or more of the following will apply: the location (A) assumes liability for its own expenses or has its expenses paid by a party other than the *applicant*; (B) has primary responsibility for decisions relating to the employment and remuneration of its registered representatives; (C) deems 5% or more of its total registered representatives to be "independent contractors" for tax purposes; or (D) engages in separate market making and/or underwriting activities.

Item 12. Check the appropriate box(es) if the branch or other business location is registering with the NASD or registering or reporting with a *jurisdiction*.

1. *Check only one box:* ☐ Add ☐ Delete ☐ Amendment
2. CRD Branch Number _____
3. Billing Code _____
4. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code
   If applicant is changing the address, enter the new address in Item 5.
5. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code
6. _____ Institution Name (if applicable)
7. _____ Supervisor Name
8. _____ CRD Number of Supervisor
9. _____ Effective Date (MM/DD/YYYY)
10. OSJ ☐ Yes ☐ No
11. ☐ Yes ☐ No
    If Yes, indicate each Item 11 subset that applies: ☐ A ☐ B ☐ C ☐ D
12. ☐ NASD ☐ *Jurisdiction*

1. *Check only one box:* ☐ Add ☐ Delete ☐ Amendment
2. CRD Branch Number _____
3. Billing Code _____
4. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code
   If applicant is changing the address, enter the new address in Item 5.
5. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code
6. _____ Institution Name (if applicable)
7. _____ Supervisor Name
8. _____ CRD Number of Supervisor
9. _____ Effective Date (MM/DD/YYYY)
10. OSJ ☐ Yes ☐ No
11. ☐ Yes ☐ No
    If Yes, indicate each Item 11 subset that applies: ☐ A ☐ B ☐ C ☐ D
12. ☐ NASD ☐ *Jurisdiction*

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Items 11A and 11B*** of Form BD;

Check ☑ item(s) being responded to:

11A In the past ten years has the *applicant* or a *control affiliate*:
- ☐ (1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
- ☐ (2) been *charged* with any *felony*?

11B In the past ten years has the *applicant* or a *control affiliate*:
- ☐ (1) been convicted or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
- ☐ (2) been *charged* with a *misdemeanor* specified in 11B(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be provided to the CRD if not previously submitted. Documents will not be accepted as disclosure in lieu of answering the questions on this DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

BD DRP - *CONTROL AFFILIATE*

CRD NUMBER _____ This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle) _____

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

(continued)

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CRIMINAL DISCLOSURE REPORTING PAGE (BD)

(continuation)

PART II

1. If charge(s) were brought against an organization over which the *applicant* or *control affiliate* exercise(d) *control*: Enter organization name, whether or not the organization was an *investment-related* business and the *applicant's* or *control affiliate's* position, title or relationship.

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case number).

3. **Event Disclosure Detail** (Use this for both organizational and individual charges.)

   A. Date First Charged (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: 1. number of counts, 2. *felony* or *misdemeanor*, 3. plea for each charge, and 4. product type if charge is *investment-related*):

   C. Did any of the Charge(s) within the Event involve a *Felony*? ☐ Yes ☐ No

   D. Current status of the Event? ☐ Pending ☐ On Appeal ☐ Final

   E. Event Status Date (complete unless status is Pending) (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation:

4. **Disposition Disclosure Detail**: Include for each charge, A. Disposition Type [e.g., convicted, acquitted, dismissed, pretrial, etc.], B. Date, C. Sentence/Penalty, D. Duration [if sentence-suspension, probation, etc.], E. Start Date of Penalty, F. Penalty/Fine Amount and G. Date Paid.

5. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (The information must fit within the space provided.)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Items 11C, 11D, 11E, 11F or 11G*** of Form BD;
Check ☑ item(s) being responded to:

11C Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:
- ☐ (1) *found the applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) *found the applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?
- ☐ (3) *found the applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) entered an order against the *applicant* or a *control affiliate* in connection with *investment-related* activity?
- ☐ (5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or ordered the *applicant* or a *control affiliate* to cease and desist from any activity?

11D Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority*:
- ☐ (1) ever found the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?
- ☐ (2) ever found the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?
- ☐ (3) ever found the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) in the past ten years, entered an order against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?
- ☐ (5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by order, prevented it from associating with an *investment-related* business or restricted its activities?

11E Has any *self-regulatory organization* or commodities exchange ever:
- ☐ (1) found the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) found the *applicant* or a *control affiliate* to have been involved in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S Securities and Exchange Commission)?
- ☐ (3) found the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

11F ☐ Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

11G ☐ Is the *applicant* or a *control affiliate* now the subject of any regulatory proceeding that could result in a "yes" answer to any part of 11C, D, or E?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11C, 11D, 11E, 11F or 11G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

BD DRP - *CONTROL AFFILIATE*

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the anewer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

(continued)

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REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

PART II

1. Regulatory Action initiated by:
☐ SEC ☐ Other Federal ☐ State ☐ *SRO* ☐ Foreign
(Full name of regulator, *foreign financial regulatory authority*, federal, state or *SRO*)

2. Principal Sanction: (check appropriate item)
☐ Civil and Administrative Penalty(ies)/Fine(s) ☐ Disgorgement ☐ Restitution
☐ Bar ☐ Expulsion ☐ Revocation
☐ Cease and Desist ☐ Injunction ☐ Suspension
☐ Censure ☐ Prohibition ☐ Undertaking
☐ Denial ☐ Reprimand ☐ Other
Other Sanctions:

3. Date Initiated (MM/DD/YYYY): ☐ Exact ☐ Explanation
If not exact, provide explanation:

4. Docket/Case Number:

5. *Control Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type: (check appropriate item)
☐ Annuity(ies) - Fixed ☐ Derivative(s) ☐ Investment Contract(s)
☐ Annuity(ies) - Variable ☐ Direct Investment(s) - DPP & LP Interest(s) ☐ Money Market Fund(s)
☐ CD(s) ☐ Equity - OTC ☐ Mutual Fund(s)
☐ Commodity Option(s) ☐ Equity Listed (Common & Preferred Stock) ☐ No Product
☐ Debt - Asset Backed ☐ Futures - Commodity ☐ Options
☐ Debt - Corporate ☐ Futures - Financial ☐ Penny Stock(s)
☐ Debt - Government ☐ Index Option(s) ☐ Unit Investment Trust(s)
☐ Debt - Municipal ☐ Insurance ☐ Other
Other Product Types:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.):

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final
9. If on appeal, regulatory action appealed to: (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

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(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved: (check appropriate item)
☐ Acceptance, Waiver & Consent (AWC) ☐ Decision & Order of Offer of Settlement ☐ Settled
☐ Consent ☐ Dismissed ☐ Stipulation and Consent
☐ Decision ☐ Order ☐ Vacated

11. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation
If not exact, provide explanation:

12.
A. Were any of the following Sanctions Ordered? (Check all appropriate items):
☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions Ordered:

C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against *applicant* or *control affiliate*, date paid and if any portion of penalty was waived:

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

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CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11H*** of Form BD;

Check ☑ item(s) being responded to:

11H(1) Has any domestic or foreign court:

- ☐ (a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?
- ☐ (b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?
- ☐ (c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or a *control affiliate* by a state or *foreign financial regulatory authority*?

11H(2) ☐ Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

BD DRP - *CONTROL AFFILIATE*

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority*, *SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

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(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

2. Principal Relief Sought: (check appropriate item)

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint) ☐ Restraining Order
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution ☐ Other _____

Other Relief Sought:

3. Filing Date of Court Action (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

4. Principal Product Type: (check appropriate item)

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):

6. *Control Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):

7. Describe the allegations related to this civil action. (The information must fit within the space provided.):

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court): Date Appeal Filed (MM/DD/YYYY):

10. If pending, date notice/process was served (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

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(continued)

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CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved: (check appropriate item)

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other_____

12. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

13. **Resolution Detail:**

A. Were any of the following Sanctions Ordered or Relief Granted? (Check appropriate items):

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions:

C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against *applicant* or *control affiliate*, date paid and if any portion of penalty was waived:

14. Provide a brief summary of circumstances related to action(s), allegation(s), disposition(s) and/or finding(s) disclosed above. (The information must fit within the space provided.):

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BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11I*** of Form BD;

Check ☑ item(s) being responded to:

11I In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:

☐ (1) has been the subject of a bankruptcy petition?
☐ (2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

☐ The *Applicant*
☐ *Applicant* and one or more *control affiliate(s)*
☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

BD DRP - *CONTROL AFFILIATE*

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Action Type: (check appropriate item)

☐ Bankruptcy ☐ Declaration ☐ Receivership
☐ Compromise ☐ Liquidated ☐ Other _____

2. Action Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

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(continued)

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BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (BD)
(continuation)

3. If the financial action relates to an organization over which the *applicant* or *control affiliate* exercise(d) *control*, enter organization name and the *applicant's* or *control affiliate's* position, title or relationship:

Was the Organization *investment-related?* ☐ Yes ☐ No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

5. Is action currently pending? ☐ Yes ☐ No

6. If not pending, provide Disposition Type: (check appropriate item)

☐ Direct Payment Procedure ☐ Dismissed ☐ Satisfied/Released
☐ Discharged ☐ Dissolved ☐ SIPA Trustee Appointed ☐ Other

7. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

8. Provide a brief summary of events leading to the action and if not discharged, explain. (The information must fit within the space provided.):

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid or agreed to be paid by you; or the name of the trustee:

Currently Open? ☐ Yes ☐ No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

10. Provide details to any status/disposition. Include details as to creditors, terms, conditions, amounts due and settlement schedule (if applicable). (The information must fit within the space provided.)

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BOND DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11J*** of Form BD;

Check ☑ item(s) being responded to:

11J ☐ Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

1. Firm Name: (Policy Holder)

2. Bonding Company Name:

3. Disposition Type: (check appropriate item)

☐ Denied ☐ Payout ☐ Revoked

4. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

5. If disposition resulted in Payout, list Payout Amount and Date Paid:

6. Summarize the details of circumstances leading to the necessity of the bonding company action: (The information must fit within the space provided.)

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JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11K*** of Form BD;

Check ☑ item(s) being responded to:

11K ☐ Does the *applicant* have any unsatisfied judgments or liens against it?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

1. Judgment/Lien Amount:

2. Judgment/Lien Holder:

3. Judgment/Lien Type: (check appropriate item)
☐ Civil ☐ Default ☐ Tax

4. Date Filed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

5. Is Judgment/Lien outstanding? ☐ Yes ☐ No

If No, provide status date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

If No, how was matter resolved? (check appropriate item)
☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

6. Court (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country) and Docket/Case Number:

7. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable). (The information must fit within the space provided.):

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[FR Doc. 99–17459 Filed 7–6–99; 3:47 pm]
BILLING CODE 8010–01–C

federal register

Monday
July 12, 1999

Part III

Environmental Protection Agency

40 CFR Part 9 et al.
Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management Systems; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 262, 264, 265, and 270

[FRL–6374–8]

Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rule provides regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended. It allows participating New York State Utilities to consolidate hazardous waste, which they generate at remote locations, at designated Utility-owned central collection facilities (UCCFs) for up to 90 days subject to specified requirements. EPA is promulgating this rule to implement an XL project for Utilities in New York State. The terms of the XL project are defined in the Final Project Agreement (FPA) which is scheduled to be signed by the parties on July 12, 1999. The FPA explains the project in detail, while the promulgation of this federal rule will enable New York State Department of Environmental Conservation (NYSDEC) to implement portions of the project requiring regulatory changes . The requirements of this rule will not take effect in New York State until it adopts the requirements as state law. For the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding state law change that will actually govern this XL project.

In order to qualify for the flexibility that the rule provides New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation and approval of UCCFs. Subsequent to these public participation procedures, Utilities must receive approval to participate in the flexibility provided by this rule. EPA expects this XL project to result in superior environmental performance in New York State, while providing cost savings to participating Utilities.

DATES: This final rule is effective on January 10, 2000.

ADDRESSES: A docket containing public comments and supporting materials is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 am to 4:00 pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–98–NYSP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866 during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Philip Flax in advance, by telephoning (212) 637–4143. Information is also available on the world wide web at http://www.epa.gov/ProjectXL.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Flax, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4143.

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is organized as follows:

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2. NYSDEC XL Project Description
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6. Project Duration and Completion
C. Rule Description
III. Response to Public Comments
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2. USWAG Comment
3. Niagara Mohawk Comment
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I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
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I. Authority

These regulations are being published under the authority of sections 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, and 6974.

II. Background

A. Overview of Project XL

The FPA sets forth the intentions of EPA and the NYSDEC with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. The regulation would facilitate implementation of the project. Project XL—"eXcellence and Leadership" was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting the risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document. For further discussion as to how the NYSDEC XL project addresses the XL criteria, readers should refer to the Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, it expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, e.g., section 8001 of RCRA.

B. Overview of the NYSDEC XL Project

1. Introduction

Today's rule will facilitate implementation of the FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, New York State Department of Environmental Conservation (NYSDEC), New York State Utilities, and other stakeholders. EPA and NYSDEC are scheduled to sign the final FPA on July 12, 1999. The FPA is available for review in the docket for today's action and on the world wide web at http://www.epa.gov/ProjectXL. The FPA addresses the eight Project XL criteria, and the expectation of EPA that this XL project will meet those criteria. Those criteria are: (1) Environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden). The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

EPA is promulgating today's rule to implement the provisions of this Project XL initiative that require regulatory changes. However, as discussed in Section IV.F. below, New York State has received authority to administer hazardous waste standards for generators that are equivalent to, or more stringent than, the federal program. Therefore, the requirements outlined in today's rule will not take effect in New York State until the State adopts equivalent requirements as State law, and EPA will not be the primary regulatory agency responsible for implementing the requirements of this rule. Although today's rule references "EPA," "NYSDEC" will be substituted for "EPA" when the State adopts these requirements as State law. For this reason, this preamble discussion will use the term "regulatory agency" when referring to the "EPA" responsibilities identified in today's rule. In addition, for the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding state law change that will actually govern this XL project.

2. NYSDEC XL Project Description

Utilities maintain rights-of-way, such as oil and gas pipelines, telephone lines, and electric power distribution systems, in some cases extending hundreds of miles. Frequently, hazardous waste is generated at remote locations that are not continuously staffed. The collection of the hazardous waste is sometimes planned in advance, but often is not, particularly in cases where there has been a sudden, unexpected interruption of service. Waste may also be generated as part of routine service. This waste generally consists of sediments accumulating at Utility access points.

In the case of electric power and telephone systems, the locations involved are usually transformer vaults, service boxes, and manholes, which are most often located in the middle of public roads. In order to access conduits and service the system, sediment and/or infiltration water must be removed. These materials commonly fail the Toxicity Characteristic (TC) for lead and therefore may be hazardous waste. For electric power systems, polychlorinated biphenyl (PCB) contamination is also possible. Waste containing PCBs is regulated under the Toxic Substances Control Act (TSCA). In the case of oil and gas pipelines, the waste may consist of pipeline condensate which collects in "drip" pipes downstream of pressure regulating stations. This waste commonly exhibits the characteristic of ignitability, commonly fails the TC for benzene and may contain PCBs.

Generally, hazardous waste may qualify for conditional exemption under RCRA because it is generated in quantities less than 100 kilograms per calendar month. However, when hazardous waste generated exceeds 100 kilograms per calendar month, it is subject to applicable regulations at 40 CFR part 262. In addition, when one kilogram or more of an acutely

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hazardous waste is generated per calendar month at a remote location, it is also subject to applicable regulations at 40 CFR part 262.

Utilities are currently allowed to accumulate hazardous waste without a permit at the remote location where it is generated for up to 90 days (or, under certain circumstances, 180 days) without RCRA permits prior to transporting it to a permitted treatment, storage and disposal facility (TSDF) or other designated facility. However, since remote Utility locations are often unstaffed, it is very difficult to store hazardous waste and secure against releases resulting from accidents or vandalism. Arranging to bring hazardous waste directly to a TSDF may take several days, particularly if the event was unplanned. To enhance protection of public health, safety, and the environment, it would be preferable if hazardous waste generated at remote locations were transported to a secured location as soon as it is collected from the remote location.

RCRA regulations generally do not allow the shipment to, or consolidation of, hazardous waste at off-site facilities other than a permitted or interim status TSDF or other designated facility. Furthermore, for each remote location that generates more than 1,000 kilograms during any single month, the utility must prepare and submit a Biennial Report. The RCRA-authorized state processes each report and enters the data into state databases, and EPA enters it into the Biennial Report System (BRS) database. As a result, both state and federal databases include hundreds of "sites" which are actually only drip pipes and/or manholes.

Additionally, utilities must arrange frequent shipments of small loads of hazardous waste which must be sent directly to a permitted TSDF, which is often located hundreds of miles from the remote location. The current handling of hazardous waste at remote locations may result in unsafe storage and hazardous conditions, additional paperwork and expenditure of time and labor, and inefficiencies in transportation, increasing direct costs.

Utilities would prefer to transport hazardous waste immediately from remote locations to a UCCF so that hazardous waste does not remain susceptible to releases from the remote locations through accidents or vandalism. At the secured UCCFs , the Utilities could then safely combine compatible types of hazardous waste collected from different remote locations to achieve important efficiencies in transportation and waste management. By consolidating hazardous waste in this manner, vehicles transporting waste from a UCCF to a commercial TSDF could then carry relatively full loads. On the other hand, if hazardous waste must be transported to a TSDF directly from remote locations, more vehicle trips, often hundreds of miles away, would be required, each carrying smaller loads.

This rule is designed to address the problems of unsafe storage, transportation inefficiencies, and unnecessary paperwork in the following ways:

a. Hazardous waste generated at a Utility's remote locations can be consolidated without a RCRA permit for up to 90 days at a UCCF, so long as the Utility complies with requirements set forth in today's rule. Each UCCF can only consolidate waste generated at its remote locations and at the UCCF itself. Hazardous waste generated at a remote location would be transported from each remote location immediately following collection of all hazardous waste at the remote location or when the staff collecting the hazardous waste leave the remote location, whichever comes first. If wastes arriving at the UCCF on different dates are consolidated in the same unit, the 90-day period will run from the earlier of the two dates that the wastes arrived.

b. Hazardous waste generated at remote locations that is transported to a UCCF can be accounted for in a combined Biennial Report, submitted by the Utility, instead of the Utility having to submit a Biennial Report for each remote location. A separate Biennial Report must be prepared for hazardous waste sent from a remote location directly to a permitted TSDF that would ordinarily require a Biennial Report.

Thus, under the rule a UCCF would be able to consolidate hazardous waste received from remote locations at the UCCF for up to 90 days, thereby providing the Utilities with more flexibility to combine compatible hazardous wastes generated at different remote locations, prior to having to ship such waste to a treatment, storage, or disposal facility.

In order to participate in the flexibility provided by the rule, New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation(s) and approval of UCCF(s). In addition, the regulatory agency must respond to the comments received regarding the designation(s) and approval of UCCF(s). Subsequent to these public participation procedures, Utilities must receive approval to participate in the flexibility provided by this rule. The regulatory agency may determine that a Utility or UCCF should not be approved to participate based on relevant information learned before, during or after the public notice procedures, including a Utility's compliance history.

The rule will enhance the protection of public health and the environment by facilitating and requiring the more immediate removal of hazardous waste that is difficult to properly secure at remote locations to staffed and secure UCCFs. Hazardous traffic conditions that endanger public safety may also diminish. Once hazardous waste is transported to a UCCF it will be subject to a number of requirements, including that it must be held in units that are managed in accordance with specified requirements in 40 CFR part 265. In order to operate a UCCF under the terms of today's rule, utilities will also have to comply with personnel training, contingency planning, and other emergency preparedness and prevention requirements, and they will be subject to both general and unit-specific closure requirements. In addition, if the regulatory agency determines that the requirements identified in this rule may not fully protect human health and the environment, it may impose additional conditions on the operation of a particular UCCF.

Utilities should realize considerable savings in direct costs through efficiencies in transportation by consolidating hazardous waste. Reducing the number of trips made to often-remote TSDFs by waste-transporting vehicles also reduces mobile source emissions. Elimination of the need to complete biennial reports should bring about a very significant reduction in paperwork and savings in time and labor, both for Utilities and environmental regulatory agencies, who can then redirect such resources to other environmental needs.

In addition, the rule requires Utilities to reinvest at least one-third of the direct savings realized from participation in the XL project into one or more environmental projects, such as pollution prevention, that are over and above existing legal requirements and that were not planned prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to the rule.

The rule applies only to hazardous waste at a Utility's remote locations or at a UCCF. This rule does not allow a UCCF to receive waste from locations other than remote locations that are within the same right-of-way network as the UCCF. In addition, except as explicitly provided for in the rule, the rule does not affect any other requirements pertaining to the storage, transport, and disposal of waste generated at a Utility's remote locations. For example, a Utility is still required to determine whether waste generated at a remote location is subject to the land disposal restrictions set forth in 40 CFR part 268 and the Toxic Substances Control Act and its implementing regulations set forth in 40 CFR part 761 at the point of generation, prior to any commingling of waste. In addition, nothing in the rule prohibits a Utility from treating hazardous waste in a tank or container pursuant to the provisions set forth in § 262.90 provided the Utility complies with the requirements for tanks set forth in subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200, and/or the requirements for containers set forth in subpart I of 40 CFR part 265.

Similarly, it is not the intent of the rule to subject Conditionally Exempt Small Quantity Generator waste (i.e., hazardous waste that does not exceed 100 kilograms per calender month) generated at individual remote locations to increased regulation. Thus, a Utility may continue to follow the requirements for Conditionally Exempt Small Quantity Generators (CESQGs) at 40 CFR 261.5 for CESGQ waste generated at individual remote locations that is not sent to a UCCF. If, however, a Utility chooses to send CESQG waste generated at individual remote locations to its UCCF, that waste will be subject to the requirements of this rule once it is received at the UCCF. The Utility must comply with 40 CFR 262.34(a)–(c) (requirements for large quantity generators) for all hazardous waste consolidated at the UCCF regardless of the total amount of waste generated or consolidated per month at the UCCF.

3. Environmental Benefits

This XL project facilitates the immediate transport of hazardous waste, generated by Utilities at "remote" locations that are not permanently staffed, to a secured location that is subject to the enhanced requirements established by today's rule. At the present time, particularly when the collection of hazardous waste is unplanned, it may take several days to make arrangements for removal of the material directly to a TSDF. In the meantime, if the material remains at the remote location, it may endanger public health and the environment because it may be difficult for the Utility to provide secure storage for the material, safe from releases through accidents or vandalism. Moreover, if the material is left at a street location where it continues to disrupt normal traffic patterns (vehicular and/or pedestrian), public safety is threatened, even if there are no releases. Particularly in urban settings (e.g., New York City), the disruption of traffic patterns can lead to a substantial risk of vehicular collisions or vehicle/pedestrian accidents. Leaving the material at a street location may result in forced merging of high-volume traffic lanes. This project should help to enhance public safety and prevent endangerment to human health and the environment.

There should also be direct environmental results to be realized from the consolidation of compatible waste at UCCFs. By minimizing the number of vehicle trips that must be made to the often-distant TSDF, emissions from mobile sources are reduced, as well as vehicular fuel consumption and the possibility of an accident involving a vehicle transporting this waste.

Indirect environmental benefits should result from the reduced need for human resources, time and paperwork. More Utility and regulatory agency resources would be made available to address higher priority environmental issues.

In addition, participating Utilities are required to reinvest one-third of the direct cost savings accrued due to participation in this project into one or more environmentally beneficial projects that are above and beyond what is legally required by law and that were not planned prior to receipt of approval of each UCCF. Participating Utilities must identify, in annual Progress Reports, the monetary value of the direct cost savings which they have experienced as a result of the project and the environmental activities in which one-third of these direct cost savings have been reinvested.

4. Economic Benefits

Utilities should realize direct cost savings. Through the need for reduced resources, time and paperwork, they also anticipate indirect savings. NYSDEC and EPA will realize indirect savings through reduced resource demands, time saved (including computer time), and reduced paperwork.

Utilities should realize a variety of direct cost savings. First, Utilities will not incur expenses for having to store hazardous waste at remote locations, even temporarily. Second, Utilities will realize direct cost savings through efficiencies in transportation. By being able to combine waste at the UCCF that is compatible, fewer vehicle trips to ultimate destination facilities will be required. These savings may include: database management for each remote location as an individual generator, State annual Hazardous Waste Report preparation costs, Biennial Report preparation costs, and cost savings realized from consolidation of waste for economical shipment (including no longer sending waste directly to a TSDF from a remote location.). The proposed rule explicitly identified as reportable cost savings, cost savings achieved as a result of not being required to obtain a TSDF permit or comply with substantive TSDF requirements. It is EPA's understanding, however, that in the absence of today's rule, utilities would probably continue to comply with the existing requirements for hazardous waste generators rather than obtain a permit for a UCCF. Thus, EPA does not generally expect these savings identified in the proposed rule to result from this project. Accordingly, EPA has modified the proposed rule by deleting the explicit references to these types of savings. Instead § 262.90(h) includes a more general request for cost savings achieved by a particular utility, thus ensuring that all cost savings based on any regulatory requirements which a particular utility is actually relieved from due to compliance with today's rule will be accounted for in its estimate of cost savings. EPA believes that this is a more appropriate approach given that the specific cost savings for each utility are difficult to precisely anticipate and are based in large part on the operating decisions a particular utility may make when faced with the options that still exist in the absence of this XL project.

Utilities will realize indirect savings in resources, time, and reduced paperwork by not having to submit separate Biennial Reports for each remote location that generates in excess of 1,000 kilograms of hazardous waste per calender month. Instead, the hazardous waste generated at remote locations will be included in the Biennial Reports of the UCCFs to which they are brought. All such hazardous waste will still be fully accounted for without increasing the number of Biennial Reports that the Utility must prepare and submit. EPA and NYSDEC will also realize indirect savings in human resources, time (including computer time), and reduced paperwork. Biennial Reports for remote locations will no longer need to be processed and entered in state and federal databases. As long as the quantities and types of hazardous waste from these locations are accounted for, the minimal benefits of these excess reports do not justify the extra work involved in preparing and processing the reports.

5. Stakeholder Involvement

NYSDEC and EPA have been involved in the development of this project, and

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both support it. Bell Atlantic acted as lead for the telephone industry. Consolidated Edison acted as lead for the electric power industry, with assistance from the New York State Power Pool. Brooklyn Union Gas acted as lead for the oil and gas pipeline industry (intrastate and interstate). Consolidated Edison and the New York State Power Pool solicited comments from other electric power companies in New York State which were then funneled through Consolidated Edison. Brooklyn Union Gas provided the same service to other intrastate and interstate oil and gas pipelines.

The development of the FPA was accomplished through implementation of a Public Participation and Outreach Plan, which is included in the docket for this rulemaking. This Plan provided opportunity for participation by potential industrial participants, environmental organizations, the general public and other interested parties. The rule and FPA also provide for public participation in the designation and approval of UCCFs.

Finally, the NYSDEC intends to propose and (subject to public comment) promulgate an equivalent state regulation.

6. Project Duration and Completion

As with all XL projects testing alternative environmental protection strategies, the term of the NYSDEC XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be 60 months from the effective date of this rule. However, a participating UCCF or Utility may be terminated or suspended at any time for failure to comply with any of the requirements of the rule.

C. Rule Description

The rule adds a new section to the Standards Applicable to Generators of Hazardous Waste, 40 CFR 262.90. Paragraph (a) of the rule defines terms used in the new rule. The definition of remote location in paragraph (a)(3) is of particular interest because of its importance in the implementation of the regulation. Paragraph (b) includes the requirements that a Utility and UCCF will comply with in order to consolidate hazardous waste for up to 90 days at the UCCF. For example, under § 262.90(b)(1), the utility is required to use a Uniform Hazardous Waste Manifest (Form 8700–22) for all shipments of hazardous waste greater than 100 kilograms being sent from a remote location to a UCCF. The manifest used to transport hazardous waste from the remote location to the UCCF will be prepared as follows:

(1) The EPA ID # of the UCCF would be entered on the Manifest Form in Item 1.

(2) The name and location of the remote location would be entered in the Generator's Name and Mailing Address block (Item 3).

(3) The transporter's name and EPA ID number would be entered in the Transporter 1 Company Name box (Items 5 and 6).

(4) The UCCF name would be entered in the Designated Facility Name and Site Address (Item 9) as the facility which will be handling the waste described on the manifest.

(5) The DOT description and other information about the waste would be entered in Items 11 through 14.

(6) The Generator's Certification (Item 16) would be signed.

(7) The Transporters Acknowledgment of Receipt (Item 18) would be signed.

(8) The person accepting the waste on behalf of the UCCF would sign the Certification of receipt of hazardous materials covered by this manifest (Item 20).

(9) A copy of the manifest, signed by all required signatories, must be retained at the UCCF for a minimum of three years. A copy of the manifest must also be provided to the transporter, if other than the utility.

The utility would also complete a new manifest in accordance with 40 CFR 262.20, for all hazardous waste transported to a TSDF from the UCCF.

EPA has modified the rule to consistently refer to a Utility's waste handling activities as "consolidation." The proposed rule and its accompanying preamble interchangeably used the terms "accumulate" and "consolidate" to refer to Utility waste handling activities. EPA has modified the rule to uniformly refer to "consolidation" because that term more accurately reflects the range of activities that a Utility will carry out under this project. The activities that a Utility will carry out include, collecting hazardous waste from multiple remote locations, transporting the collected hazardous waste to a designated UCCF, keeping that hazardous waste at the UCCF for up to 90 days, and combining, where feasible and appropriate, physically and chemically similar hazardous waste.

Paragraph (c) of the rule requires public notification of a Utility's and UCCF's participation. These requirements ensure that there is adequate public notice and comment on participation. Paragraph (d) includes items that need to be included in a notification of participation that would be sent to the regulatory agency. Paragraph (e) describes the procedures for designating UCCFs, including how information from the public comments will be incorporated in the approval process. Paragraph (f) includes requirements for the addition or deletion of UCCFs from participation. Paragraph (g) includes the requirement that a participating Utility submit an Annual Progress Report, including information on the number of remote locations, the total tonnage of each type of waste handled, and savings reaped from participation. Paragraph (h) requires a Utility to assess any direct savings that result from its participation in the project, and sets forth examples of the direct savings that a Utility may experience as a result of participation. Paragraph (i) discusses grounds for termination of a Utility or UCCF's participation. Paragraph (j) sets forth the expiration date of the rule. Amendments to parts 264, 265, and 270 clarify that a UCCF operating in accordance with the requirements of 40 CFR 262.90 is exempt from TSDF and permitting requirements.

EPA has made several changes to the proposed rule in response to comments. These are: (1) A clarification regarding when hazardous waste must be transported from a remote location to a UCCF; (2) a clarification regarding whether the UCCF may also consolidate hazardous waste generated at the UCCF under the terms of this rule; (3) additional requirements applicable to containers of hazardous waste; (4) additional public notice and public participation requirements; and (5) an additional reporting requirement for participating utilities. Each of these changes is discussed in detail in section III below.

III. Response to Public Comments

A. Public Comments Received

On December 7, 1998, EPA requested comments on the proposed rule and draft Final Project Agreement for the NYSDEC XL project. See 63 FR 67561. As a result of this **Federal Register** document, EPA received four comments: one from Consolidated Edison Company of New York, Inc., (ConEd), one from the Utility Solid Waste Activities Group (USWAG), one from Niagara Mohawk, and one from the Atlantic States Legal Foundation (ASLF) (joined by New York Rivers Unlimited, Great Lakes United, and the New York Public Interest Research Group).

1. ConEd Comment

ConEd supports the NYSDEC XL project because it believes that the project will achieve better environmental results at less cost. It believes that these cost savings will result from unnecessary paperwork reductions, the consolidation of waste, and cost reductions from allowing UCCFs to operate under certain conditions without obtaining TSD permits and maintaining TSD facilities. In its comment, ConEd also extols the environmental benefits of the project which it identifies as the reinvestment of cost savings in environmentally beneficial projects, the expedited removal of waste, and the reduction in vehicle trips through the consolidation of waste. ConEd suggests that EPA clarify whether UCCFs may handle hazardous waste generated at the UCCF as well as hazardous waste generated at remote locations. ConEd points out that, although the proposed rule suggested that a UCCF could handle both remote location hazardous waste and UCCF generated hazardous waste, a statement in the preamble to the proposed rule suggested that each UCCF could only handle waste generated at its remote locations. EPA agrees that this issue should be clarified. EPA's intent with the proposed rule was that each UCCF would handle both the hazardous waste generated at its remote locations as well as hazardous waste generated at the UCCF. EPA's statement in the preamble to the proposed rule was not meant to suggest that UCCFs would not be able to handle UCCF-generated hazardous waste, but rather to clarify that a UCCF would not be allowed to receive hazardous waste from any off-site location other than a remote location. EPA has modified § 262.90(b) to clarify that UCCFs may consolidate, under the terms of this rule, hazardous waste generated at remote locations and hazardous waste generated at the UCCF itself. The Utility must comply with the requirements of 40 CFR 262.34(a)–(c) (requirements for large quantity generators), regardless of the total quantity of waste generated or consolidated each calender month (see, § 262.90(b)(4)(i)).

2. USWAG Comment

USWAG is an informal consortium of the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, and about 80 electric utilities located throughout the country. In its comment, USWAG states that (1) "the current hazardous waste reporting and waste consolidation rules are inefficient and increase costs when applied to electric utility individual 'remote locations;'" (2) "the NYSDEC Project XL will provide regulatory flexibility and costs savings to electric utilities by reducing the paperwork burdens and waste consolidation restrictions under the current hazardous waste rules;" and (3) "the NYSDEC Project XL will not only maintain the same levels of environmental protection and public safety under existing rules, but will facilitate their improvement." USWAG, like ConEd, requests that EPA clarify that hazardous waste generated at a UCCF can also be consolidated at the UCCF in accordance with the terms of this XL rule. As discussed above, EPA agrees and has clarified § 262.90(b) of the rule accordingly. USWAG also requests that EPA clarify the meaning of the term, "generation event." USWAG suggests that a "generation event" ends when the utility has completed the removal of the hazardous waste from inside the manhole, oil or gas pipeline, or other remote location. EPA agrees that the term "generation event" should be clarified. One of the purposes of this XL project is to improve the existing situation in which hazardous waste generated at an unstaffed or unsecure remote location can remain at that site, unsupervised, for extended periods of time. Thus, EPA's intent with this rule is that waste that is collected from a manhole or other remote location will not remain at a remote location where it might be unsupervised prior to being transferred to a UCCF. In light of this comment, EPA believes that use of the term "generation event" is insufficient to indicate when hazardous waste must be transferred from a remote location to the UCCF. EPA has modified the rule to clarify that hazardous waste must be transferred from the remote location to a UCCF immediately following collection of all hazardous waste at the remote location or when the staff collecting the hazardous waste leave the remote location, whichever comes first. This approach will ensure that hazardous waste that is collected at a remote location is never left unsupervised and that it does not unnecessarily remain on-site for extended periods of time. For example, if it takes Utility workers several days to collect all the hazardous waste at a remote location, but the workers leave the remote location at the end of each day, the hazardous waste collected during the course of the day will have to be transported to the UCCF when the workers leave the remote location. Alternatively, hazardous waste must be transported to the UCCF once all the hazardous waste at the remote location has been collected, even if utility staff remain at the remote location.

In addition, USWAG requests that EPA "consider eliminating the requirement that remote locations comply with the identification number and manifesting requirements in order to further reduce unnecessary, time-consuming and costly paperwork burdens." EPA did not intend that each remote location would be required to have an individual identification number under this project. Rather, under this project, the identification number of the UCCF will also be used by its remote locations (see, section II.C. above). With respect to the manifesting requirements, EPA does not consider the manifest requirements of 40 CFR part 262, subpart B (incorporated by reference in today's rule) to be unnecessary. Hazardous waste generated at remote locations and transported to a UCCF will be traveling on public roads, and thus EPA believes that the tracking and emergency response functions served by these requirements are still necessary. Moreover, this project is focused on experimenting with flexibility regarding hazardous waste consolidation, not flexibility with regard to manifest preparation.

3. Niagara Mohawk Comment

In its comment, Niagara Mohawk supports the initiative proposed by this rule and asserts that it will provide substantial regulatory relief to the utility industry while reducing environmental impact. However, Niagara Mohawk believes that the rule contains two requirements that are disincentives to participation. First, it believes that the public notice requirements are excessive. Specifically, Niagara Mohawk asserts that placing a public notice in a newspaper of local circulation should be sufficient and that two additional outreach methods are unnecessary. EPA disagrees. Stakeholder involvement is one of the criteria for XL projects. The provision of two methods of public notice in addition to a public notice in the newspaper will help to ensure that all interested members of the community will be aware of, and able to participate in the process of designating UCCFs. Second, Niagara Mohawk requests a utility exemption from the need to obtain a permit under 6 NYCRR part 364. Niagara Mohawk is referring to a New York State requirement that a transporter of hazardous waste obtain a permit. This requirement is a state-only requirement and can be addressed by NYSDEC. It is not appropriate for EPA to address this issue in this federal rulemaking.

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4. ASLF Comment

ASLF agrees that the portion of the project pertaining to RCRA identification numbers and biennial reports will achieve RCRA objectives in a superior manner while achieving cost savings. ASLF does, however, raise a number of concerns regarding the consolidation of remote location hazardous waste at a UCCF.

a. RCRA Permits

ASLF asserts that RCRA section 3005(a) requires that a UCCF obtain a permit before it can accept waste from a Utility remote location. EPA disagrees. RCRA section 3005(a) requires treatment, storage, and disposal facilities (TSDFs) to obtain permits. RCRA section 3002 establishes separate requirements for generators. Thus, the statute clearly recognizes that generators and TSDFs are separate classes of regulated entities subject to different regulatory regimes, although it does not clearly specify where the line between these classes of regulated entities is drawn. Specifically, it does not identify at what point a generator's waste handling activities become "treatment" or "storage" under the statute such that the generator becomes a TSDF. EPA believes it is clear that some amount of waste handling by a generator must fall outside the scope of the RCRA TSDF requirements; otherwise, virtually every generator in the country would also be a TSDF and the distinction between the two classes of regulated entities would be meaningless. EPA does not believe that Congress intended that every entity in the country that generates hazardous waste become a TSDF subject to the requirement to obtain a RCRA permit.

In the case of hazardous waste generated at Utility remote locations and consolidated at a central collection facility, EPA believes it is inappropriate to require a UCCF to obtain a permit because it is not acting as a TSDF. Rather, the consolidation of remote location hazardous waste at the UCCF is an activity that is incidental to the Utility's operations. As discussed previously, the purpose of consolidating hazardous waste at the UCCF prior to transportation to a TSDF is to ensure that remote location hazardous waste is not left in an unsecured, unstaffed location and to achieve transportation efficiencies. These are issues that the Utilities face as generators of hazardous waste. For this reason, EPA believes that RCRA does not prohibit the participating Utilities from consolidating remote location hazardous waste for up to 90 days at a UCCF without a TSDF permit. In addition, EPA believes that the procedural and substantive requirements that participating Utilities will have to comply with in order to consolidate remote location waste at a UCCF ensure the protection of human health and the environment. These requirements include that hazardous waste can only be held at a UCCF for a limited duration (up to 90 days) and such waste must be held in units that are managed in accordance with specified technical requirements in 40 CFR part 265, as well as with additional requirements for closure and secondary containment of containers. Utilities will also have to comply with personnel training, contingency planning, and other emergency preparedness and prevention requirements, and they will be subject to both general and unit-specific closure requirements. In addition, the regulatory agency may impose additional conditions on the operation of a particular UCCF if it determines that the requirements identified in this rule may not fully protect human health and the environment. Finally, the designation of a particular UCCF is subject to public notice and comment (including the opportunity for a public meeting if the regulatory agency determines such a meeting is warranted) and must be approved by the regulatory agency. If the regulatory agency believes that the designation of a UCCF will not ensure protection of human health and the environment, the UCCF will be rejected as provided for in § 262.90(e)(4).

This limited exemption is, in fact, necessary in order to provide utilities with the incentive to more immediately remove hazardous waste generated at unstaffed remote locations. If permitting were required, utilities who permitted their facilities would incur high transaction costs as a result of lengthy permitting procedures and high state permitting fees. Utilities have not found permitting of these facilities to be cost-effective, and utilities are thus unlikely to permit them. As a result, waste is generally sent to non-utility-owned permitted facilities. Because utilities await authorization from these TSD facilities prior to transport, the waste remains at the remote location for several days. EPA is entering into this project to experiment with ways to avoid this situation and allow waste to be removed from remote locations faster. In fact, this project idea was initiated when three utilities independently expressed concern to New York State that the storage of hazardous waste "on-site" at remote locations was a problem in terms of potential liability, traffic disruption, accidental releases and attendant environmental damage, and vandalism.

ASLF also asserts that the Agency has reopened the issue of its authority to exempt 90-day generator on-site accumulation units from the RCRA permit requirement. EPA disagrees. EPA has never indicated in any way that it intended to reconsider the existing regulatory provisions for the on-site accumulation of hazardous waste. EPA did not propose to amend or otherwise modify the existing provisions for on-site accumulation of hazardous waste, nor did the Agency solicit comment on these provisions. Today's rule is limited to the off-site consolidation of hazardous waste for a limited class of hazardous waste generators. It does not in any way affect the existing requirements for on-site accumulation of hazardous waste.

1. Utility-owned Rights-of-Way and Remote Locations

ASLF states that the rule excludes from "permitting a storage or treatment facility simply because it is located along a utility right-of-way, and would thereby regulate the entire right-of-way as if it were one onsite individual generation location," and concludes that the rule extends the current provisions for on-site accumulation beyond their limits. EPA disagrees. Today's rule is not intended to treat a utility right-of-way as one site (see, e.g., § 262.90(b)(1) which requires participating utilities to manifest hazardous waste shipments from a remote location to an off-site UCCF). EPA did not include the notion of the Utility right-of-way in today's rule for any reason other than to limit the waste a UCCF may receive. By linking the definition of "remote location" to a Utility's right-of-way network, the rule ensures that a UCCF may only receive waste generated by that Utility at predictable and expected locations. Finally, today's rule is not intended to be an "extension" of the existing provisions for on-site accumulation, rather it is a distinct set of requirements under which participating Utilities can consolidate remote location waste at off-site UCCFs.

ASLF further states that some "rights-of-way may include hundreds of miles of rural areas where the utility may actually own (or operate) little or none of the land" and that concepts of contiguous ownership inherent in EPA's definition of "facility" are disregarded. As discussed above, today's rule is not intended to treat a Utility right of way as one site or one facility.

2. Small Quantity Generator Exclusion

ASLF notes that this rule does not modify the small quantity generator exclusion threshold for individual remote locations, and asserts that this is inconsistent with otherwise regulating "the entire right-of-way as one collective onsite generator location." As discussed above, this rule does not regulate a right-of-way as one site. In addition, it is not the intent of the rule to subject Conditionally Exempt Small Quantity Generator waste (i.e., hazardous waste that does not exceed 100 kilograms per calender month) generated at individual remote locations to increased regulation. Thus, a Utility may continue to follow the requirements for Conditionally Exempt Small Quantity Generators (CESQGs) at 40 CFR 261.5 for CESGQ waste generated at individual remote locations that is not sent to a UCCF. If, however, a Utility chooses to send CESQG waste generated at individual remote locations to its UCCF, that waste will be subject to the requirements of § 262.90 (see 40 CFR 262.90(b)).

3. Quantity Limits

ASLF expresses concern that the rule does not include quantity limits restricting the consolidation of large quantities of waste at each UCCF, particularly because UCCFs may be located at or near population centers. EPA agrees that there may be circumstances where it will be necessary to limit the amount of hazardous waste that may be consolidated at a particular UCCF; however, EPA does not believe it is necessary to impose a universal limit on all UCCFs regardless of their particular circumstances. Instead, the rule provides that such restrictions may be imposed on a UCCF on a case-by-case basis at the time the UCCF is approved (see, 40 CFR 262.90(e)(3)). In addition, EPA has modified the rule to require the inclusion in the utilities' Annual Report of the total tonnage of each type of hazardous waste handled at each UCCF. This information will enable EPA to conduct reviews to determine whether the approach is working. If this experiment is later extended to the rest of the nation, the collection of this data will assist EPA in determining whether quantity limits should be imposed.

4. Substantive TSDF Requirements

ASLF voices concern that some of the substantive requirements applicable to permitted TSDFs would not apply to UCCFs. Specifically, ASLF highlights that a UCCF would not be subject to the following standards: (1) Secondary containment for container storage areas; (2) clean closure of container storage areas; and (3) facility wide corrective action. At the time of proposal, EPA did not consider additional requirements for containers because, given the types of hazardous waste generated at utility remote locations, it is unlikely that the utilities will be consolidating hazardous waste in containers. Upon consideration of ASLF's comment, however, EPA agrees that additional requirements for containers may be appropriate to include as part of this XL project in the event that containers are used to consolidate hazardous waste. As a result, EPA has included in today's rule a requirement for secondary containment of containers that is based on New York State requirements currently applicable to all generators (i.e., requirements that are not currently federal requirements). This requirement is that participating Utilities operating a UCCF that holds liquid hazardous waste in containers must provide secondary containment for those containers under two sets of circumstances: (1) If the UCCF is consolidating 8,800 gallons or more of liquid hazardous waste at any time; and (2) if the UCCF is consolidating 185 gallons or more of liquid hazardous waste at any time and is located in an area designated by New York State that overlays a sole-source aquifer (this would include, for example, areas in Brooklyn, Queens, and Long Island). In addition, EPA has incorporated the closure requirements of 40 CFR 264.178 for containers into today's rule. EPA does not, however, believe that it is appropriate to require corrective action because the purpose of today's rule is to provide flexibility so that utilities will have an incentive to quickly remove hazardous waste generated at remote locations to a secure location. Because facility-wide corrective action can be extremely expensive, imposing such a requirement would likely create a disincentive to the very behavior the Agency seeks to promote. Overall, EPA believes today's rule will result in hazardous waste management practices that provide a benefit of superior protection of human health and the environment as compared with current practices. In addition, if a UCCF is not operated in compliance with the terms of today's rule, it may be deemed a treatment, storage or disposal facility subject to enforcement or corrective action under RCRA section 3008 or section 3004. Furthermore, UCCFs participating in this project remain subject to enforcement or cleanup authorities under RCRA and other environmental statutes (e.g., RCRA section 7003, CERCLA section 106).

5. Public Participation

ASLF is also concerned that certain procedural rights associated with permitted facilities may not apply under this rule. In particular, ASLF expresses concern regarding (1) reduced public notice requirements at the time a facility is first proposed for designation; (2) lack of an opportunity to administratively appeal the approval of a facility; (3) lack of opportunity to review and comment on closure plans; and (4) no formal opportunity to seek modifications of an approval once it is issued. With respect to public notice requirements, EPA believes the types of public outreach required at the time that the UCCF is proposed are sufficient to ensure that all interested parties will be notified about a proposed UCCF. However, to further ensure that notice of a proposed UCCF designation is provided to all interested parties, EPA has modified the rule to ensure that the parties who commented on the proposed rule for this XL project are notified by a Utility when that Utility seeks approval for a particular UCCF. Today's rule also includes other requirements to ensure public involvement in the decision process for UCCFs. Utilities are required to respond to all of the comments that are submitted at the time that the UCCF is proposed. EPA has also modified the rule to clarify that the regulatory agency responsible for deciding whether to approve a particular UCCF will also respond to all of the comments submitted at the time that the UCCF is proposed, and consider these comments in determining whether or not to approve the UCCF, impose restrictions on the approval, or hold a site-specific meeting. EPA has also modified the rule to require that notification of the decision on whether or not to approve the UCCF be sent to each party that commented on the proposed designation.

ASLF expresses concerns about the lack of an opportunity to administratively appeal the approval of a facility. ASLF is correct that this rule provides no opportunity for administrative appeals following the regulatory agency's decision regarding designation of a UCCF; however, as part of this XL initiative there will be an annual opportunity for public input on the continued operation of a UCCF. As it does for all XL projects, EPA will be conducting annual evaluations of this project's progress. At the time of the evaluation, EPA will solicit public comment on how the project is progressing, and will contact all persons

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who have expressed an interest in the project as a whole or in particular UCCFs. Where information provided by the public indicates a Utility or UCCF is not operating in compliance with today's rule, EPA may consider taking appropriate enforcement action or terminating or suspending a Utility or UCCF from the project. In addition, EPA will consider comments on a UCCF that are submitted at any time during the project.

ASLF comments that it is unclear whether there will be an opportunity for judicial review of the regulatory agency's approval of a particular UCCF. As discussed in section II.B., NYSDEC will be the primary regulatory authority responsible for impiementing the requirements of this rule and will therefore be the regulatory agency determining whether or not a UCCF may be approved to participate. Thus, the right to judicial review of the approval of a particular UCCF would be governed by the State Administrative Procedures Act.

ASLF expresses concern that there is no formal opportunity to seek modifications of a UCCF approval once it is issued. ASLF is correct that this rule will provide no formal opportunity for the public to request a modification of a UCCF approval. EPA notes, however, that there is also no formal opportunity for the public to request modification of a RCRA permit once it is issued. As discussed above, as part of this XL initiative, there will be an annual opportunity for public input regarding continued operation of a UCCF. Each year, EPA, using the annual reports that utilities are required to file with the regulatory agency as a starting point, will evaluate the progress of the project. EPA conducts this annual evaluation for all XL projects. At the time of the evaluation, EPA will solicit public comment on how the project is progressing. At this point in time, EPA will contact all persons who have expressed an interest in the project as a whole or in particular UCCFs. In addition, EPA will consider comments on a UCCF that are submitted at any time during the project. Where information provided by the public indicates a Utility or UCCF is not operating in compliance with today's rule, EPA or NYSDEC may consider taking appropriate enforcement action or terminating or suspending a Utility or UCCF from the project.

ASLF is also concerned about the lack of opportunity to review and comment on closure plans for UCCFs. In response, EPA wishes to clarify that there is no opportunity for public review on closure plans because utilities are not required to develop closure plans to participate in this XL project. Under today's rule, utilities are required to comply with general and unit-specific closure requirements, but they are not required to develop closure plans.

Finally, EPA notes that the appropriate baseline against which the environmental benefits of this project should be measured is the status quo, under which waste is accumulated at remote locations without any of these public participation opportunities. EPA does not believe that a comparison to the safeguards provided at permitted facilities is meaningful, since (with limited exceptions) the utilities have not chosen to obtain permits and are not required to do so.

b. Need for Flexibility Provided by Rule

1. Transfer Facilities and Other Existing Provisions

ASLF suggests that existing regulatory provisions, such as requirements for transfer facilities (where hazardous waste may be held for up to 10 days as part of the normal course of transportation) could be sufficient to deal with the problem identified in this rulemaking. ASLF also states that emergency identification numbers are available, and some utilities are licensed to transport the waste. EPA does not believe these options are generally sufficient to deal with the identified problems. First, none of these options help a utility to remove hazardous waste from a remote location more quickly if the only place that it can ultimately be transported to is a TSDF. Under current regulations, prior to transport to a TSDF or a transfer facility, a utility must complete a manifest, which includes identifying the name of the TSDF (regardless of whether the waste will be held at a transfer facility during the course of transportation to that TSDF). The requirements for holding hazardous waste at a transfer facility include that the hazardous waste be manifested. Since the waste cannot be taken to a TSDF or even manifested unless the TSDF grants its permission, utilities do not, in practice, transport the waste until authorization from the TSDF is received. Waiting for authorization from the TSDF can cause a delay of two to three days before the hazardous waste can be removed from the remote location. By allowing the utility to transport waste directly to the UCCF, this rule facilitates more immediate transport of the hazardous waste. Also, while waste may be held at a transfer facility for up to 10 days, the utilities have not found this time period to be long enough to provide a meaningful opportunity to consolidate the hazardous waste generated at remote locations so that the hazardous waste can be transported to a TSDF in a cost-effective manner. The reason that 10 days is insufficient is that utilities cannot predict how much waste will be removed from each remote location or how the hazardous waste generated at each remote location will combine to make an efficient load.

2. Utilities Could Obtain Permits

ASLF states that there is no evidence in the rulemaking record that utilities are unable to obtain a RCRA permit where necessary or advantageous to do so. ASLF states that utilities can obtain permits under current regulations so the flexibility provided by this rule is unnecessary. EPA disagrees with the assertion that the flexibility provided by this rule is unnecessary. While utilities may obtain permits for UCCFs under current regulations, in practice they generally do not because of the high cost of obtaining a permit and paying annual state permit fees.[1] This project is an experiment to determine if an alternate regulatory approach can create incentives for utilities to expedite the removal of hazardous waste from remote locations and to achieve transportation efficiencies. As discussed in section II.A., the overall purpose of Project XL is to experiment with untried, potentially promising regulatory approaches. EPA believes that this approach will accomplish faster removal of hazardous waste and result in superior environmental performance. The proposed rule was developed based on EPA's understanding from communications with NYSDEC and various New York State utilities. Confirmatory information supporting this final rule that addresses this point has been included in the rulemaking record.

3. Delays in Securing Hazardous Waste Transporters

ASLF expresses concern that, to the extent that securing the services of a hazardous waste transporter is the cause of the delay in removing hazardous waste from a remote location, this project will not solve that problem. EPA has not found that the delay in removing hazardous waste from the remote locations is generally a result of

[1] There are currently five TSDFs operating under a RCRA permit and owned by a utility in all of New York State. However, not all utilities currently own or operate a permitted TSDF and of those that do, the TSDF may not be accessible to all of their remote locations. Whether a utility already owns or operates a TSDF will be an issue considered by the regulatory agency when it decides whether to approve a designation of a particular UCCF.

having to secure a licensed transporter, but rather of having to obtain authorization from the TSDF before that TSDF can be entered on the manifest (see (4)(b)(2) above). To the extent that securing a commercial transporter is a problem, this rule will address it because allowing the Utilities to transport waste to a UCCF will mean that Utilities could remove the waste immediately with their own licensed transporters.

4. Existence of Delays in Hazardous Waste Removal

ASLF comments that the rulemaking record does not contain any evidence that the delay in transporting hazardous waste from remote locations actually occurs and that there is no analysis of why a delay should ever occur. For an explanation of why this delay occurs, see section III. A.4.b.1. Regarding the rulemaking record, the proposed rule was developed based on EPA's understanding from communications with NYSDEC and various New York State utilities. Confirmatory information supporting this final rule that addresses these points has been included in the rulemaking record.

5. Streamlined Permits

ASLF questions why EPA did not consider an option of a streamlined permit for UCCFs because streamlined permitting in general is being considered by EPA's Office of Solid Waste. Under Project XL potential participants are invited to develop *their* proposals for common sense, cost-effective strategies that will replace or modify specific regulatory requirements and result in superior environmental benefits. Project XL is intended to allow EPA to experiment with these proposals to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. In this case, several Utilities and NYSDEC proposed this approach to EPA. This approach provides a commonsense way to ensure the fast removal of hazardous waste from remote locations. Because of the hazards involved in leaving the waste at the remote locations, EPA has determined that this project is beneficial to human health and the environment and is worth evaluating as an alternative to the existing system.

c. Environmental Benefits

ASLF also expresses concern over the environmental benefits of the project. ASLF states that the immediate removal of hazardous waste from remote locations is not derived from the exemption from permitting requirements for UCCFs. EPA disagrees. As discussed above, nothing currently prevents utilities from leaving hazardous waste at unstaffed, unsecured remote locations. In fact, there is generally, a two to three day delay in the transport of the hazardous waste from the remote locations (after all the hazardous waste is collected) because utilities wait for TSDF authorization prior to listing the TSDF on the manifest and transporting the waste. While utilities may obtain permits for UCCFs under current regulations, in practice they generally do not. This project is an experiment to determine if an alternate regulatory approach can create incentives for utilities to expedite the removal of hazardous waste from remote locations and to achieve transportation efficiencies. ASLF questions the amount of environmental benefits resulting from the consolidation of waste resulting in fewer vehicle trips. While EPA does not consider this environmental benefit in of itself to constitute superior environmental performance, EPA believes that a reduction in vehicle trips does create some environmental benefit. EPA considers all of the environmental benefits as a whole when deciding whether a project achieves superior environmental performance. ASLF also expresses concern that the utilities may choose the environmental projects. EPA views this as one of the areas of experimentation under this project. Because utilities know their facilities and operations better than EPA, they should know where they can achieve the greatest environmental benefit. Thus, EPA is experimenting with giving the utilities discretion to choose the best environmental projects for their particular facilities. These environmental projects, as well as the amount of money spent, must be described in the utilities' annual reports. As discussed above, as in all XL projects, EPA will solicit public comment on the project when it evaluates the annual reports. EPA will consider these comments in determining whether the approval of individual UCCFs and the project as a whole provide sufficient environmental benefits. In addition, if the regulatory agency finds that the environmental projects are a sham, the regulatory agency has the authority to terminate a UCCF's approval or a utility's participation in this project.

ASLF also expresses concern that the determination of whether an environmental project is otherwise required by law is subject to interpretation. EPA believes that the regulatory agencies have the knowledge and expertise to determine whether a particular environmental project is otherwise required by law. If a Utility chooses a project that it is otherwise required to do, the regulatory agency has the authority to terminate a UCCF's approval or a utility's participation in this project.

ASLF is concerned that there is no opportunity for public input into the areas of reinvestment chosen by the utilities. EPA disagrees. The public may provide suggestions to the utilities about the environmental projects chosen by the utilities at any time. In addition, when EPA conducts its annual evaluation of this project, it will solicit public input on the benefit of the environmental projects chosen by the utilities. All information received from the public will be included in EPA's annual evaluation of the project. EPA will also provide this information to NYSDEC and the relevant utilities.

IV. Additional Information

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an Agency to conduct a Regulatory Flexibility analysis of any rule subject to notice and comment

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rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA believes that in determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the required analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed [or final] rule on small entities." 5 U.S.C. 603 and 604. Thus, EPA may certify as not having a significant economic impact on a substantial number of small entities rules that relieve regulatory burden, or otherwise have a positive economic effect on the small entities subject to the rule. EPA has concluded that today's rule will relieve regulatory burden for all types of entities, including any affected small entities. Further, today's rule does not impose any requirements on any utility unless the utility opts to participate and receives approval to participate. Therefore, EPA certifies today's rule is unlikely to have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 10, 2000.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2010–0026.

EPA is collecting information regarding the locations and amount of waste involved as well as the money saved and what the savings was invested in. EPA plans to use this information to determine whether the XL project is successful. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a Utility decides to participate, EPA requires the filing of a report containing pertinent information. These reports will be publicly available. The estimated cost burden of filing the annual report is $10,000 and the estimated length of time to prepare the report is 40 hours. The estimated number of respondents is 15. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the 40 CFR part 9 table of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule. The table lists the CFR citations for EPA's reporting and recordkeeping requirements, and the current OMB control numbers. This listing of OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's implementing regulations at 5 CFR part 1320.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number or regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to New York State Utilities. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA/HSWA

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous waste within the state. (See 40 CFR part 271 for the standards and requirements for authorization.) States with final

authorization administer their own hazardous waste programs in lieu of the federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA.

After authorization, rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. New federal requirements imposed by those rules do not take effect in an authorized state until the state adopts the requirements as state law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time they take effect in nonauthorized states. EPA is directed to carry out those requirements and prohibitions in authorized states until the state is granted authorization to do so.

2. Effect on New York State Authorization

Today's rule is promulgated pursuant to RCRA provisions that predate HSWA. New York State has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the federal program. New York State has received authority to administer hazardous waste standards for generators. As a result, today's rule will not be effective in New York State until the State adopts equivalent requirements as State law. It is EPA's understanding that subsequent to the promulgation of this rule, New York State intends to propose a rule containing equivalent provisions. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

G. Applicability of Executive Order 13045

The Executive Order, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous waste, Recordkeeping requirements.

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Dated: July 1, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 9, 262, 264, 265, and 270 of title 40 of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding a new entry in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
. . . . .	.
Standards Applicable to Generators of Hazardous Waste	
. . . . .	.
262.90(c), (d), (f), (g)	2010–0026
. . . . .	.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Subpart I consisting of § 262.90 is added to read as follows:

Subpart I—New York State Public Utilities

§ 262.90 Project XL for Public Utilities in New York State.

(a) The following definitions apply to this section:

(1) A *Utility* is any company that operates wholesale and/or retail oil and gas pipelines, or any company that provides electric power or telephone service and is regulated by New York State's Public Service Commission or the New York Power Authority.

(2) A *right-of-way* is a fixed, integrated network of aboveground or underground conveyances, including land structures, fixed equipment, and other appurtenances, controlled or owned by a Utility, and used for the purpose of conveying its products or services to customers.

(3) A *remote location* is a location in New York State within a Utility's right-of-way network that is not permanently staffed.

(4) A *Utility's central collection facility (UCCF)* is a Utility-owned facility within the Utility's right-of-way network to which hazardous waste, generated by the Utility at remote locations within the same right-of-way network, is brought.

(b) A UCCF designated pursuant to paragraph (e) of this section may consolidate hazardous waste (with the exception of mixed waste) generated by that Utility at its remote locations (and at that UCCF) for up to 90 days without a permit or without having interim status, provided that:

(1) The Utility complies with all applicable requirements for generators in 40 CFR part 262 (except § 262.34 (d) through (f)) for hazardous waste generated at its remote locations and at the UCCF, including the manifest and pretransport requirements for all shipments greater than 100 kilograms sent from a remote location to a UCCF.

(2) The Utility transports the hazardous waste from the remote location to a UCCF immediately after collection of all hazardous waste at the remote location is complete or when the staff collecting the hazardous waste leave the remote location, whichever comes first.

(3) The Utility complies with all applicable requirements for transporters in 40 CFR part 263 for each shipment of hazardous waste greater than 100 kilograms which is sent from remote location to the UCCF, and all applicable Department of Transportation requirements.

(4) (i) The Utility complies with 40 CFR 262.34 (a) through (c), regardless of the total quantity of hazardous waste generated or consolidated at the UCCF per calendar month;

(ii) The Utility complies with 40 CFR 264.178; and

(iii) Secondary containment is provided for all liquid hazardous waste consolidated in containers if:

(A) The UCCF is consolidating 8,800 gallons or more of liquid hazardous waste, or

(B) The UCCF is consolidating 185 gallons or more of liquid hazardous waste and is located in an area designated by New York State that overlays a sole-source aquifer.

(5) The Utility submits a biennial report in accordance with 40 CFR 262.41 including all hazardous waste shipped from remote locations to the UCCF. This UCCF biennial report may be submitted in lieu of submitting a biennial report for each remote location. However, for hazardous waste generated at a particular remote location that exceeds 1000 kg per calendar month and that is not sent to the UCCF, the Utility must submit a separate biennial report.

(6) Waste generated at a remote location that is not sent to a UCCF is managed according to the requirements of parts 260 through 270 of this chapter.

(7) The Utility maintains records at the UCCF in accordance with all the recordkeeping requirements set forth in subpart D of 40 CFR part 262, including 40 CFR 262.40, and maintains records on any PCB test results for hazardous wastes brought to the facility from remote locations.

(8) The UCCF obtains an EPA identification number.

(9) The UCCF receives hazardous waste only from its remote location.

(10) The Utility reinvests at least one-third of the direct savings described in paragraph (h) of this section in one or more environmentally beneficial projects, such as remediation or pollution prevention, that are over and above existing legal requirements and that have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(c) Utilities seeking to have UCCFs designated under paragraph (e) of this section must comply with the following requirements:

(1) Any New York State Utility seeking approval to consolidate hazardous waste under this section must notify local governments and communities of the Utility's intent to designate specific UCCFs.

(2) In carrying out paragraph (c)(1) of this section, the Utility must solicit public comment. In soliciting public comment, the Utility must use the notice method set forth in paragraph (c)(2)(i) of this section, as well as at least two of the methods set forth in paragraphs (c)(2)(ii) through (vii) of this section. Each Utility must also notify by mail all parties who commented on the proposed rule for this XL project.

(i) A public notice in a newspaper of general circulation within the area in which each proposed UCCF is located;

(ii) A radio announcement in each affected community during peak listening hours;

(iii) Mailings to all citizens within a five-mile radius of proposed UCCF;

(iv) Well-publicized community meetings;

(v) Presentations to the local community board;

(vi) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section in the local library nearest the proposed UCCF, and inclusion of the name and address of the library in the newspaper notice; and

(vii) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section on the Utility's web site, and inclusion of the web site's address in the newpaper notice.

(3) All outreach efforts made under paragraph (c)(2) of this section shall be prepared in English (and any other language spoken by a large number of persons in the community of concern) and at a minimum shall include the following information:

(i) A brief description of the XL project, the intended new use of the facility, and a request for comments on the proposed UCCF.

(ii) The name, if any, and address of the proposed UCCF and its current status under the RCRA Subtitle C program.

(iii) The intended duration of use of the UCCF under the requirements of this section.

(iv) Names, addresses, and telephone numbers of contact persons, representing the Utility, to whom questions or comments may be directed.

(v) Notification of when the comment period of no less than 30 days will close.

(4) Prior to the solicitation of public comment pursuant to paragraph (c)(2) of this section, the Utility must submit copies of each notice, announcement or mailing directly to local governments and to EPA.

(5) At the close of the comment period, the Utility shall prepare a Responsiveness Package containing a summary of public outreach efforts, all comments and questions received as a result of its outreach efforts, and the Utility's written responses to all comments and questions. The Utility shall provide copies of its Responsiveness Package to any citizens that participated in the public notice process, local governments and EPA.

(d) Upon completion of the public notice procedures described in paragraph (c) of this section, the Utility must provide written notice to EPA of its intent to participate. The Notice of Intent must contain the following information:

(1) The name of the Utility, corporate address, and corporate mailing address, if different.

(2) The name, mailing address, and telephone number of a corporate-level contact person to whom communications and inquiries may be directed.This contact person may be changed by written notification to EPA.

(3) A list of the names, addresses, and EPA identification numbers, if applicable, of all Utility-owned facilities in New York State that are proposed UCCFs and the names and telephone numbers of a designated contact person at each facility.

(4) A summary of public outreach efforts undertaken pursuant to paragraph (c) of this section.

(5) A commitment that one-third of the direct cost savings outlined in paragraph (h) of this section due to project participation will be reinvested in one or more environmentally beneficial projects which are over and above existing legal requirements and which have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(6) An acknowledgment that the signatory is personally familiar with the terms and conditions of this section and has the authority to obligate and does obligate the Utility to comply with all such terms and conditions. The Utility shall comply with the signatory requirements set forth in 40 CFR 270.11(a)(1).

(e) The procedures for designating UCCFs are as follows:

(1) Subject to paragraphs (e)(2) through (5) of this section, the Utility and specified UCCF shall receive approval to comply with the requirements set forth in paragraph (b) of this section upon the receipt of written acknowledgment from EPA that the Notice of Intent described in paragraph (d) of this section has been received and found to be complete and in compliance with all the requirements set forth in paragraph (d) of this section. This acknowledgment will state whether the UCCF has been designated under this section and any additional limitations which have been placed on the UCCF.

(2) Based on information provided and comments received during the public notice and comment period, EPA shall prepare a response to the comments received. The response to comments shall be attached to the acknowledgment described in paragraph (e)(1). Both the acknowledgment and the response to comments shall be sent to all persons who commented on the designation of the UCCF(s) that are the subject of the acknowledgment.

(3) Based on information provided and comments received during or after the public notice and comment period, designated UCCFs may be rejected for the proposed use, or, if EPA determines that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors, the acknowledgment may impose conditions in addition to those in paragraph (b) of this section.

(4) If EPA determines that a site-specific informational public meeting is warranted prior to determining the acceptability of a designated UCCF, the acknowledgment will so state.

(5) Subsequent to any public meeting, EPA may reject or prohibit UCCFs from participating in this project based on information provided or comments received during or after the public notice process or based on a determination that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors.

(f) At any time, a Utility may add or remove UCCF designations by complying with the following requirements:

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(1) A Utility may notify EPA of its intent to designate additional UCCFs. Such a notification shall be submitted to, and processed by, EPA, in the manner indicated in paragraphs (d) and (e) of this section.

(2) To have one or more additional UCCFs designated, the Utility must comply with paragraph (c) of this section.

(3) A Utility can discontinue use of a facility as a UCCF by notifying EPA in writing.

(g) Each Utility that receives approval to consolidate hazardous waste pursuant to this section shall submit an Annual Progress Report with the following information for the preceding year:

(1) The number of remote locations statewide for which hazardous waste was handled in accordance with paragraph (b) of this section.

(2) The total tonnage of each type of hazardous waste handled by each UCCF.

(3) The number of remote locations statewide from which 1,000 kilograms or more of hazardous waste were collected per calendar month.

(4) The number of remote locations statewide from which between 100 and 1,000 kilograms of hazardous waste were collected per calendar month.

(5) An estimate of the monetary value, on a Utility-wide basis, of the direct savings realized by participation in this project. Direct savings at a minimum include those outlined in paragraph (h) of this section.

(6) Descriptions of the environmental compliance, remediation, or pollution prevention projects or activities into which the savings, described in paragraph (h) of this section, have been reinvested, with an estimate of the savings reinvested in each. Any such projects must consist of activities that are over and above existing legal requirements and that have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(7) The addresses and EPA identification numbers for all facilities that served as UCCFs for hazardous waste from remote locations.

(h) Utilities that receive approval to consolidate hazardous waste pursuant to this section must assess the direct savings realized as a result. Cost estimates shall include direct savings based on relief from any regulatory requirements, which the facility expects to be relieved from due to compliance with the provisions of this section including, but not limited to, the following:

(1) Database management for each remote location as an individual generator;

(2) Biennial Report preparation costs; and/or

(3) Cost savings realized from consolidation of waste for economical shipment (including no longer shipping waste directly to a TSD from remote locations).

(i) If any UCCF or Utility that receives approval under this section fails to comply with any of the requirements of this section, EPA may terminate or suspend the UCCF's or Utility's participation. EPA will provide a UCCF or Utility with 15 days written notice of its intent to terminate or suspend participation. During this period, the UCCF will have the opportunity to come back into compliance or provide a written explanation as to why it was not in compliance with the terms of this section and how it will come back into compliance. If EPA then issues a written notice terminating or suspending participation, the Utility must take immediate action to come into compliance with all otherwise applicable federal requirements. EPA may also take enforcement action against a Utility for non-compliance with the provisions of this section.

(j) This section will expire on January 10, 2005.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding paragraph (g)(12) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(12) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937.

2. Section 265.1 is amended by adding paragraph (c)(15) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(15) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding paragraph (c)(2)(ix) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(ix) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

[FR Doc. 99–17347 Filed 7–9–99; 8:45 am]

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federal register

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July 12, 1999

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 47 and 52
Federal Acquisition Regulation; Ocean Transportation by U.S.-Flag Vessels; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAR Case 98–604]

RIN 9000–AI39

Federal Acquisition Regulation; Ocean Transportation by U.S.-Flag Vessels

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to clarify application of the preference for U.S.-flag vessels.

DATES: Comments should be submitted on or before September 10, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–604@gsa.gov.

Please cite FAR case 98–604 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 98–604.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the FAR as follows:

- Apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures (47.504 and 52.213–4).
- Add to the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statues or Executive Orders-Commercial Items, Alternate I to 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels.
- Incorporate in the clause at 52.247–64 the exception at 47.504(e) for subcontracts for commercial items or commercial components.

Subpart 47.5, Ocean Transportation by U.S.-Flag Vessels, of the Federal Acquisition Regulations, does not apply to the Department of Defense. Policy and procedures applicable to DoD appear in DFARS subpart 247.5.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most ocean transportation companies are large business concerns. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–604), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collection requirements of the clause at FAR 52.247–64 have been approved under OMB Control Number 9000–0054.

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: July 6, 1999.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR parts 47 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

2. Amend section 47.504 to remove paragraph (d) and redesignate paragraph (e) as (d); and at the beginning of the newly redesignated paragraph (d) revise the first sentence to read as follows:

47.504 Exceptions.

* * * * *

(d) Subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(13)). * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.212–5 to revise the date of the clause; redesignate paragraph (b)(26) as (b)(26)(i); and add paragraph (b)(26)(ii) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statues or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statues or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *

_____ (26)(ii) Alternate I of 52.247–64.

* * * * *

4. Amend section 52.213–4 to revise the date of the clause; and add paragraph (b)(1)(xi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Date)

* * * * *

(b) * * *

(1) * * *

(xi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (DATE)(46 U.S.C. 1241). (Applies to supplies transported by ocean vessels.)

* * * * *

5. Amend section 52.247–64 to revise the date of the clause; revise paragraph (d); remove paragraph (e)(1); and redesignate paragraphs (e)(2) through (e)(4) as (e)(1) to (e)(3), respectively. The revised text reads as follows:

52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Date)

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this clause, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(2) Unless this is a contract for ocean transportation services, the Contractor is not required to insert the substance of this clause in subcontracts under this contract for the

acquisition of commercial items or commercial components.

* * * * *

[FR Doc. 99–17520 Filed 7–9–99; 8:45 am]

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Part V

Equal Employment Opportunity Commission

29 CFR Part 1614
Federal Sector Equal Employment Opportunity; Final Rule

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AA66

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This rule revises the Equal Employment Opportunity Commission's federal sector complaint processing regulations to implement the recommendations made by its Federal Sector Workgroup. The rule revises procedures throughout the complaint process, addressing the continuing perception of unfairness and inefficiency in the process. The Commission is requiring that agencies make available alternative dispute resolution programs, and is revising the counseling process, the bases for dismissal of complaints and the procedures for requesting a hearing. EEOC is providing administrative judges with authority to dismiss complaints and issue decisions on complaints. Agencies will have the opportunity to issue a final order stating whether they will implement the administrative judge's decision. The Commission is also revising the class complaint procedures, the appeals procedures, and the attorney's fees provisions.

DATES: *Effective Date:* This final rule will become effective on November 9, 1999.

Applicability Dates: The requirement in §§ 1614.102(b)(2) and 1614.105(b)(2) will apply on January 1, 2000 for agencies that do not currently have ADR programs. All actions taken by agencies and by the Commission after November 9, 1999 shall be in accordance with this final rule.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney, Office of Legal Counsel, 202–663–4669 (voice), 202–663–7026 (TDD). This final rule is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for the final rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION:

Introduction

The Equal Employment Opportunity Commission, as part of an ongoing effort to evaluate and improve the effectiveness of its operations, established the Federal Sector Workgroup, which was composed of representatives from offices throughout the Commission. The Workgroup focused on the effectiveness of the EEOC in enforcing the statutes that prohibit workplace discrimination in the federal government: section 717 of Title VII of the Civil Rights Act of 1964, which prohibits discrimination against applicants and employees based on race, color, religion, sex and national origin; section 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination on the basis of disability; section 15 of the Age Discrimination in Employment Act, which prohibits employment discrimination based on age; and the Equal Pay Act, which prohibits sex-based wage discrimination.

The Workgroup reviewed and evaluated EEOC's administrative processes governing its enforcement responsibilities in the federal sector and, after consulting with affected agencies and groups of stakeholders, developed recommendations to improve its effectiveness. In addition, the review sought to implement the goals of Vice President Gore's National Performance Review (NPR), including eliminating unnecessary layers of review, delegating decision-making authority to front-line employees, developing partnership between management and labor, seeking stakeholder input when making decisions, and measuring performance by results.

The Commission drafted a Notice of Proposed Rulemaking (NPRM) that was circulated to all agencies for comment pursuant to Executive Order 12067 and subsequently published in the **Federal Register** on February 20, 1998. The Notice proposed changes to the Commission's federal sector complaint processing regulations at 29 CFR Part 1614 to implement the regulatory recommendations of the Federal Sector Workgroup. 63 FR 8594 (1998). It sought public comment on those proposals.

The Commission received over sixty comments on the NPRM. Federal agencies and departments submitted 19 comments. Ten comments were submitted by civil rights groups and attorneys groups and law firms, four were submitted by federal employee unions and union representatives, one by an association of federal EEO executives, and one was submitted by a Member of Congress. EEOC also received 27 comments from individuals, including federal employees, attorneys and other interested persons. The Commission has carefully considered all of the comments and, as stated in the February Notice, also considered the comments of agencies made during the interagency comment period. The Commission has made a number of changes to the proposals contained in the NPRM in response to the comments. In making these changes, the Commission intends to continue its efforts to reform the federal sector discrimination procedures. While the Commission believes that these changes will make the procedures fairer, the Commission will continue to seek improvements in the procedures. The comments on the NPRM and all of the changes to the proposals are discussed more fully below.

Alternative Dispute Resolution

In the NPRM, the Commission proposed to require all agencies to establish or make available an alternative dispute resolution (ADR) program for the EEO pre-complaint process. In addition, EEOC proposed to require that counselors advise aggrieved persons at the initial counseling session that they may choose between participation in the ADR program offered by the agency and the traditional counseling activities provided for in the current regulation.

The commenters generally supported both proposals, agreeing that providing an ADR mechanism in the pre-complaint stage of the EEO process will resolve more claims earlier in the process. Many of the agency commenters emphasized their need for flexibility in developing their ADR programs. Small agencies, in particular, requested that they have the authority to determine on a case-by-case basis whether to offer ADR to an aggrieved person for his or her claim. Other agencies urged the Commission to ensure that the election provision take into account that ADR should be voluntary for both parties, the aggrieved person and the agency. Commenters also requested that EEOC clarify how the pre-complaint process will operate when ADR is involved and address the responsibilities of the Counselors throughout that process.

The Commission has revised the ADR and counseling provisions in response to the comments. Agencies will be required to establish or make available an ADR program. The ADR program must be available during both the pre-complaint process and the formal complaint process. The Commission encourages agencies to use ADR as a valuable tool in resolving EEO disputes at all stages of the EEO process.

Agencies are free to develop ADR programs that best suit their particular needs. While many agencies have adopted the mediation model, other resolution techniques are acceptable, provided that they conform to the core principles set forth in EEOC's policy statement on ADR, contained in Management Directive 110. The Commission believes that agencies should have flexibility in defining their ADR programs. EEOC expects that, overall, agencies will develop an array of ADR programs, designed to suit their particular circumstances. Agencies with limited funds and resources could use the services, in whole or in part, of another agency, a volunteer organization or other resources to make available an ADR program.

In keeping with the Commission's emphasis on voluntariness as a component of ADR, agencies may decide on a case-by-case basis whether it is appropriate to offer ADR to individual aggrieved persons. EEOC does not anticipate that ADR will be used in connection with every claim brought to a Counselor. For example, some agencies may wish to limit pre-complaint ADR geographically (if extensive travel would be required), or by issue (excluding, for example, all claims alleging discriminatory termination). Some agencies may wish to exclude class allegations from their ADR programs. Agencies may not, however, exclude entire bases of discrimination from ADR programs. For example, it would be inappropriate for an agency to exclude from its ADR program all claims alleging race discrimination.

In response to a comment, the Commission has revised the regulatory provision governing the initial counseling session. The Commission has removed from section 1614.105(b)(1) the requirement that Counselors advise individuals both orally and in writing of their rights and responsibilities, revising the section to require only that Counselors provide that information in writing. Counselors are encouraged to discuss the rights and responsibilities involved in the EEO process orally with individuals, but are only required to provide that information to the individuals in writing.

When an agency offers ADR to an individual during the pre-complaint process, the individual may choose to participate in the ADR program at any point in the pre-complaint process. In all cases, the Counselor will conduct an initial counseling session, as currently provided, identifying claims and fully informing individuals about their rights. When ADR is selected, resolution attempts through traditional counseling will be eliminated and the limited inquiry of the traditional counseling will change. Counselors must also inform individuals that if the ADR process does not result in a resolution of the dispute, they will receive a final interview and have the right to file a formal complaint. Management Directive 110 will contain additional guidance on these pre-complaint procedures.

The Commission's intention in requiring an ADR program is that agencies establish informal processes to resolve claims. Thus any activity conducted in connection with an agency ADR program during the EEO process would not be a formal discussion within the meaning of the Civil Service Reform Act. Generally, the agency should have an official at any ADR session with full authority to resolve the dispute. To the extent consultations with other agency officials would be necessary during any session, the agency is accountable for making sure those consultations can be accommodated.

If the ADR attempt succeeds in resolving the claim, the agency must notify the Counselor that the claim was resolved. If the ADR attempt is unsuccessful, the agency must return the claim to the Counselor to write the counseling report. That report will describe the initial counseling session, frame the issues, and report only that ADR was unsuccessful.

Dismissals

In the NPRM, the Commission proposed three changes to the dismissal provision contained in section 1614.107. First, the Commission proposed to remove the provision contained in section 1614.107(h) permitting agencies to dismiss complaints for failure to accept a certified offer of full relief. As explained in the preamble to the NPRM, the full relief dismissal policy was premised on the view that adjudication of a claim is unnecessary if the agency is willing to make the complainant whole. The regulatory process, however, has been criticized because complainants are placed in the position of risking dismissal of their complaints if they do not believe the offer of their opposing party is an offer of full relief. If a complainant makes the wrong assessment of the offer and EEOC decides on appeal that the agency did offer full relief, the complainant is precluded from proceeding with the complaint or from accepting the offer. In addition, difficulties assessing what constitutes full relief increased when, as a result of the Civil Rights Act of 1991, damages became available to federal employees. The Commission found that offers of full relief must address compensatory damages, where appropriate. *Jackson* v. *USPS*, Appeal No. 01923399 (1992); Request No. 05930306 (1993). Unless the agency offers the full amount of damages permitted under the statutory caps in the law, it is virtually impossible for the complainant to assess whether the agency has offered full relief.

The non-agency commenters uniformly supported the proposal to eliminate the full relief dismissal provision. Agency comments were mixed with nearly as many agencies supporting the change as opposing it. For the foregoing reasons, the Commission has decided to remove the failure to accept a certified offer of full relief dismissal basis from the regulations. At the same time, the Commission is retaining the provision from the NPRM that permits agencies to make an offer of resolution in a case. This offer of resolution is similar, but not identical, to the procedure under Rule 68 of the Federal Rules of Civil Procedure for an offer of judgment, and is discussed in greater detail below.

In the NPRM, EEOC proposed to add two dismissal provisions to section 1614.107. One of the new provisions will require dismissal of complaints that allege dissatisfaction with the processing of a previously filed complaint (spin-off complaints). As was explained in the NPRM, EEOC's regulations at 29 CFR Part 1613, which were superseded by 29 CFR Part 1614 in 1992, expressly permitted complainants to file separate complaints alleging dissatisfaction with agencies' processing of their original complaints. 29 CFR 1613.262 (1991). The procedure resulted in the filing of multiple spin-off complaints. The Commission recognized the need to limit these complaints, and did not include the Part 1613 provision in Part 1614. Guidance was provided in Management Directive 110. Spin-off complaints continued to be filed, however, despite there being no provision in either the regulations or the management directive permitting the filing of a separate complaint on this issue.

The comments on the proposal to add a dismissal provision for spin-off complaints fell into three categories. Agencies favored the addition. Some individual federal employees and attorneys opposed the dismissal provision and others encouraged EEOC to provide detailed guidance in Management Directive 110 on how to handle spin-off allegations outside of the EEO process.

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The Commission continues to believe that any alleged unfairness or discrimination in the processing of a complaint can—and must—be raised during the processing of the underlying complaint and there is ample authority to deal with such allegations in that process. The spin-off allegations are so closely related to the underlying complaint that a separate complaint would result in redundancy, duplication of time and waste of resources. Such allegations need to be addressed within the over-all context of the initial complaint while that complaint is still pending. The Commission has decided to add the provision requiring dismissal of spin-off complaints to ensure that a balance is maintained between fair and nondiscriminatory agency processing of complaints and the need to eliminate the multiple filing of burdensome complaints about the manner in which an original complaint was processed.

In conjunction with this regulatory change, the Commission will issue detailed companion guidance in Management Directive 110 addressing the procedures to be followed to resolve allegations of dissatisfaction with the complaints process quickly and effectively. Individuals who are dissatisfied with the processing of a complaint will be advised to bring this dissatisfaction to the attention of the official responsible for the complaint, whether it be an investigator, the agency EEO manager, an EEOC administrative judge, or the Commission's Office of Federal Operations on appeal. The allegation of dissatisfaction, and any appropriate evidence, will then be considered during the processing of the existing complaint by the individuals responsible for that step of the process, who will be required to take appropriate action. If any official throughout the process becomes aware of a systemic problem of discriminatory complaint processing, that official may refer the matter to the Complaints Adjudication Division of the Office of Federal Operations at EEOC.

Proper handling of spin-off allegations is important because such allegations involve the overall quality of the complaints process and implicate the resources devoted to those allegations. The procedures in the Management Directive will ensure that any evidence of discriminatory or improper handling will be considered as part of the claim before the agency or Commission without unnecessarily adding complaints to the system. When an individual presents a counselor, an agency official, or the Commission with a spin-off allegation, the complainant shall be advised where and how to have the allegation of dissatisfaction made part of the existing complaint record. The Commission believes that agency and Commission resources should not be used to process the allegation as a separate complaint because many of these allegations involve evidentiary matters or disagreements with agency decisions made in the processing of the underlying complaint. Counselors, investigators and agency officials are required to note these allegations of dissatisfaction in the complaint record so that reviewing entities can ensure that the allegation was properly addressed. As a result, individuals who file separate complaints will have such complaints dismissed by the agency or by the Commission. The Commission has decided to delegate appellate decision-making authority for appeals from dismissals of spin-off complaints to the Office of Federal Operations to ensure expeditious handling of any such appeals.

The second new dismissal provision proposed by the Commission in the NPRM provides for dismissal of complaints through strict application of the criteria set forth in Commission decisions where there is a clear pattern of abuse of the EEO process. The proposed section would codify the Commission's decisions in *Buren* v. *USPS*, Request No. 05850299 (1985), and subsequent cases, in which the Commission has defined "abuse of process" as a clear pattern of misuse of the EEO process for ends other than those that it was designed to accomplish. The Commission has stated that it has the inherent power to control and prevent abuse of its processes, orders, or procedures.

Comments from agencies generally supported the proposal to add abuse of process as a basis for dismissal, while non-agency commenters opposed it or, while supporting its purpose, expressed concern that agencies would invoke this authority too frequently based arbitrarily on the number of complaints filed by an individual. Several commenters, including agencies and individuals, suggested the criteria for dismissal be clearly set forth in the regulation. A few agencies thought the criteria should be expanded beyond those set forth in the Commission's decisions and that the Commission should provide for sanctions for complainants who abuse the process. Some non-agency commenters maintained that only administrative judges should have the authority to dismiss complaints for abuse of process because agencies will abuse their discretion under this provision.

The Commission has decided to include this dismissal provision in its regulation with additional language defining abuse of process as "a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination" and setting forth the factors found in Commission decisions. The Commission reiterates that dismissing complaints for abuse of process should be done only on rare occasions because of the strong policy in favor of preserving complainants' EEO rights whenever possible. *Kleinman* v. *Postmaster General*, Request No. 05940579 (1994). Evaluating complaints for dismissal for abuse of process requires careful deliberation and application of strict criteria. Agencies must analyze whether a complainant's behavior evidences an ulterior purpose to abuse the EEO process. Improper purposes would include circumventing other administrative processes such as the labor-management dispute process; retaliating against the agency's in-house administrative machinery; or overburdening the EEO complaint system, which is designed to protect individuals from discriminatory practices. *Hooks* v. *USPS*, Appeal No. 01953852 (1995). Evidence of numerous complaint filings, in and of itself, is an insufficient basis for making a finding of abuse of process. *Id.* However, as stated in the regulation, evidence of multiple complaint filings combined with the subject matter of the complaints (such as frivolous, similar or identical allegations; lack of specificity in the allegations; and allegations involving matters previously resolved) may be considered in determining whether a complainant has engaged in a pattern of abuse of the EEO process. *See Goatcher* v. *USPS*, Request No. 05950557 (1996).

The Commission will require strict adherence to these criteria. With respect to the argument that only administrative judges should have the authority to dismiss complaints for abuse of process, the Commission sees no reason to treat this basis for dismissal differently than the others listed in section 1614.107 by disallowing it to agencies. The Commission believes that review by the Commission on appeal will fully safeguard complainants against arbitrary or unjust dismissals.

The Commission believes that the new dismissal provisions for spin-off complaints and abuse of process will improve the efficiency and effectiveness of the EEO process. In addition, dealing summarily with abuse of process complaints will make the process fairer both for agencies that must process complaints and for complainants who raise bona fide allegations by focusing resources on bona fide allegations.

Partial Dismissals

In the NPRM, the Commission proposed changes to the regulations to eliminate interlocutory appeals of partial dismissals of complaints. Currently, where an agency dismisses part of a complaint, but not the entire complaint, the complainant has the right to immediately appeal the partial dismissal to EEOC. The Commission provided for interlocutory appeals of partial dismissals in Part 1614, hoping to streamline the process and avoid holding two or more hearings on the same complaint. Multiple hearings could have occurred absent an interlocutory appeal when EEOC reversed an agency's partial dismissal after a hearing was held on the rest of the complaint. The Commission believes that this result can be accomplished without the unintended delays or fragmentation of complaints that may have resulted from implementation of the current provision. The Commission proposed to amend section 1614.401 to remove the right to immediately appeal the dismissal of a portion of a complaint. In addition, the Commission proposed to add a paragraph to the dismissals section, section 1614.107, explaining how to process complaints where a portion of the complaint, but not the entire complaint, meets one or more of the standards for dismissal contained in that section.

Comments on eliminating interlocutory appeals for partial dismissals were mixed. Many commenters, agencies and others, supported the proposal believing that it will simplify the process. The commenters who opposed the change expressed concerns that there will be no investigatory record of the portion of a complaint dismissed by an agency but reinstated by the administrative judge or the Office of Federal Operations. Some agencies questioned how the administrative judge will be able to evaluate a partial dismissal if there is no record on that part of the complaint.

The Commission believes that eliminating interlocutory appeals of partial dismissals will result in a more efficient complaint process and will help avoid fragmentation of complaints. The Commission has decided, therefore, to finalize the proposals without change. The concerns raised by some of the commenters are addressed by the procedure contained in new section 1614.107(b). If an agency determines that a portion of a complaint, but not all of the complaint, meets one or more of the standards for dismissal contained in section 1614.107(a), the agency must document the file with its reasons for believing that the portion of the complaint meets the standards for dismissal. Accordingly, the agency must fully explain its reasons for dismissing that portion of the complaint, and, if appropriate, include any evidence or documents necessary to support that conclusion. The agency's rationale and any record supporting that rationale must be sufficiently developed for an administrative judge or the Office of Federal Operations to evaluate the appropriateness of the partial dismissal without further investigation or inquiry. The agency will then investigate the remainder of the complaint.

If the complainant requests a hearing, the administrative judge will, as soon as practicable, evaluate the reasons given by the agency for believing a portion of the complaint meets the standards for dismissal. If the administrative judge believes that the agency's reasons are not well taken, the entire complaint or all of the portions not meeting the standards for dismissal will continue in the hearing process. Where a portion of a complaint is reinstated in the hearing process and the investigatory record from the agency is incomplete as to the portion the agency dismissed, the administrative judge will oversee supplementation of the record by discovery or any other appropriate method. Administrative judges will no longer remand complaints or portions of complaints for supplemental investigations by the agency, but will ensure that the record is sufficiently developed during the hearing process.

The administrative judge's decision on the partial dismissal will become part of the decision on the complaint. Where a complainant requests a final decision from the agency without a hearing, the agency will issue a decision addressing all claims in the complaint, including its rationale for dismissing claims, if any, and its findings on the merits of the remainder of the complaint. The complainant may appeal the agency's final action, including any partial dismissals, to the EEOC. If the Office of Federal Operations finds that a dismissal was improper, it will give the complainant the choice between a hearing and an agency final decision on the claim.

Offer of Resolution

The Commission proposed to add this provision, limiting attorney fees and costs when a complainant rejects an offer and subsequently obtains less relief, in place of the dismissal for failure to accept full relief. The purpose of the offer of resolution is to provide incentive to settle complaints and to conserve resources where settlement should reasonably occur. Some commenters preferred the full relief dismissal to the proposed offer of resolution. Two stated that the relief offered should be compared to the relief obtained, rather than to the decision obtained, in order to determine which is more favorable. A few commenters asked for clarification of what the offer must contain, for example, suggesting that it must contain attorney's fees. Several commenters raised concerns that a complainant might not have enough information to judge whether the offer is reasonable or may not fully appreciate the significance of the offer if the offer is made early in the process. Others questioned how non-monetary remedies would be evaluated for determining whether the relief awarded was more favorable than that offered. Some commenters objected that the "interest of justice" exception was too vague; some asked that it be defined in the regulation while others suggested that it be deleted for that reason. Finally, several commenters believed the proposed provision was a good alternative to the dismissal for failure to accept full relief.

After considering these comments, the Commission has decided that the offer of resolution is an appropriate alternative to and preferable to the dismissal for failure to accept full relief, but has made several changes to the provision to address the commenters' concerns. Simply to clarify, we have revised the provision so that the relief offered is compared with the final relief obtained rather than with the decision when determining which is more favorable. That formulation is more practicable and expresses the Commission's original intent. We have also added a sentence stating that the agency's offer, to be effective, must include attorney's fees and costs that have been incurred and must specify any non-monetary relief. With regard to monetary relief, an agency may make a lump sum offer or it may itemize the amounts and types of monetary relief being offered.

We have revised the offer of resolution provision to include a two-tiered approach. An offer of resolution can be made to a complainant who is represented by an attorney at any time from the filing of a formal complaint until 30 days before a hearing. If, however, the complainant is not represented by an attorney, an offer cannot be made before the parties have received notice that an administrative

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judge has been assigned. We will include model language in the Management Directive that agencies are required to include in each offer of resolution.

We note that, when comparing the relief offered in an offer of resolution with that actually obtained, we intended that non-monetary as well as monetary relief would be considered. Although a comparison of non-monetary relief may be inexact and difficult in some cases, non-monetary relief can be significant and cannot be overlooked.

The Commission believes that equitable considerations may make it unjust to apply the offer of resolution provision in particular cases and, thus, the interest of justice exception is necessary to prevent the denial of fees in those circumstances. We do not envision many circumstances in which the interest of justice provision will apply. One example, however, of appropriate use of the exception would be where the complainant received an offer of resolution, but was informed by a responsible agency official that the agency would not comply in good faith with the offer (e.g., would unreasonably delay implementation of the relief offered). The complainant did not accept the offer for that reason, and then obtained less relief than was contained in the offer of resolution. We believe that it would be unjust to deny attorney's fees and costs in this case.

Fragmentation

In the NPRM, the Commission requested public comment on the issue of fragmentation of complaints in the federal sector EEO process. Specifically, the Commission asked whether regulatory changes are necessary to correct the fragmentation problem. EEOC believes that agencies are not properly distinguishing between factual allegations in support of a legal claim and the legal claim itself, resulting in the fragmentation of some claims that involve a number of different allegations. Certain kinds of claims are especially susceptible to fragmentation, for example, harassment claims and continuing violation claims. Fragmentation of claims is undesirable both because it unnecessarily multiplies complaints and can improperly render non-meritorious otherwise valid and cognizable claims.

The Commission received some comments on the fragmentation issue. Commenters recommended the elimination of remands by administrative judges, the elimination of partial dismissals (see discussion above), and the revision of the consolidation procedures in the regulation. Commenters also suggested that EEO Counselors need more training to recognize the difference between claims and allegations.

The Commission has revised the regulation in several places to address the fragmentation problem. Section 1614.108(b) has been amended to replace the phrase "matter alleged to be discriminatory" with the word "claim." The Commission believes that agencies may be interpreting "matter" to mean something less than a claim. Where a complainant raises a claim of retaliation or a claim involving terms and conditions of employment, subsequent events or instances involving the same claim should not be filed as separate complaints, but should be treated as part of the first claim. For the same reasons, the Commission has revised section 1614.603 to remove the word "allegations" and replace it with "claims."

The Commission is removing from the hearings section the provision permitting administrative judges to remand issues to agencies for counseling or other processing. The Commission intends that administrative judges will have full responsibility for complaints after they enter the hearing stage and should no longer remand them to the agencies. This change and others involving hearings are discussed more fully below.

Finally, the Commission is adding a provision permitting amendment of complaints, and is revising the consolidation section of the regulation. Section 1614.106 now permits complainants to amend complaints to add issues or claims that are like or related to the original complaint any time prior to the conclusion of the investigation. After requesting a hearing, complainants may seek leave from the administrative judge to amend a complaint to add issues or claims that are like or related to the original complaint by filing a motion to amend. The Commission has amended section 1614.606, which governs joint processing and consolidation of complaints, to require that agencies consolidate two or more complaints filed by the same complainant. The current consolidation provision is permissive only. Moreover, the current provision, the Commission believes, may serve to discourage consolidation of complaints because it provides that the date of the first filed complaint controls the applicable complaint processing time frames. Under this provision, if a complainant filed a second complaint 175 days after the first complaint, the current regulation would provide the agency with only 5 days to investigate the second complaint if it were consolidated with the first complaint. As part of the revision to the consolidation section, the Commission provides in the final rule that when a complaint has been consolidated with an earlier filed complaint the agency must complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that a complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. If a complainant requests a hearing on consolidated complaints prior to the agency's completion of the investigation, the administrative judge will decide how best to insure an appropriate record, whether by staying the hearing process for some period of time during which the agency can finish its investigation or by supplementation of the record through discovery or other methods ordered by the administrative judge. When an administrative judge becomes aware that one or more complaints in the agency process should be consolidated with a complaint in the hearing process, the administrative judge may consolidate all claims at the hearing stage or hold the complaint in the hearing process until the others are ready for hearing.

Management Directive 110 will contain additional guidance on amendment of complaints, consolidation of complaints, and fragmentation, including what constitutes a cognizable claim under the employment discrimination statutes.

Hearings

The Commission proposed several changes to the hearings provisions in the Notice of Proposed Rulemaking, the most significant being the proposal to make administrative judge's decisions final in complaints referred to them for hearing. The Commission received dozens of comments on this proposal, with the majority of agency commenters opposing it and the non-agency commenters overwhelmingly favoring it. A number of agencies challenged EEOC's statutory authority to make administrative judges' decisions final, arguing that section 717(c) of Title VII requires that agencies take final action on EEO complaints before a complainant may appeal to EEOC. In addition, an agency argued that agency final action is required to trigger federal court suit rights. Section 717(c) permits an individual to file a lawsuit in federal court in four instances, including within 90 days of receipt of notice of final

action. One agency suggested that EEOC could make administrative judges' decisions final by moving the hearing process to the appellate stage. Agencies also expressed concern about EEOC's resources, believing that there will be an increase in requests for hearings if administrative judges' decisions are made final. Agencies also questioned the quality and consistency of administrative judges' decisions in opposing the change. Several agencies complained that they would be unable to defend themselves if administrative judges' decisions were made final.

Several agencies, however, supported the proposal. One noted that EEOC's statistics demonstrate a problem with the EEO process government-wide that undermines the confidence of complainants in the system and creates a perception of unfairness. The civil rights groups, unions and attorneys' groups that commented on the proposal strongly supported it and some noted that it is the most important change proposed by EEOC in the NPRM.

The Commission has carefully considered all of the comments on this issue. The Commission strongly believes that allowing agencies to reject or modify an administrative judge's findings of fact and conclusions of law and to substitute their own decision leads to an unavoidable conflict of interest and creates a perception of unfairness in the federal EEO system. While the Commission believes that its interpretation of the statute regarding the Commission's authority is correct, the Commission has decided to revise the proposal in order to make needed improvements in the procedures while recognizing the concerns expressed by the agencies. At the same time the Commission will preserve the functional goal of the earlier proposal: agencies will no longer be able to simply substitute their view of a case for that of an independent decision-maker.

In response to comments from agencies that the Office of Federal Operations was upholding agency decisions that reversed administrative judge's decisions finding discrimination, we made two independent inquiries of EEOC's information systems. The Commission had not previously studied that information or reported it, although it had collected it. The first inquiry showed that in 1994 and 1996, there were 80 administrative judges' decisions favorable to complainants that were reversed by the agency, appealed to the Office of Federal Operations, and for which the Office of Federal Operations issued a decision on the merits. Of those 80 decisions, EEOC upheld the administrative judge in 53 instances and upheld the agency in 27 instances. In the second inquiry, we found that in fiscal year 1998, there were 157 decisions by the Office of Federal Operations reviewing administrative judges' decisions adverse to agencies. Of those decisions, 135 (86%) affirmed the administrative judge in whole, 8 (5%) reversed in whole or in part, and 14 (9%) modified the administrative judge's decision. These inquiries demonstrated that the arguments made by the agencies were not supported by the facts. EEOC upholds administrative judges' decisions in a significant majority of all cases.

The final rule provides that administrative judges will issue decisions on all complaints referred to them for hearings. Agencies will have the opportunity to take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. The final order will notify the complainant whether or not the agency will fully implement the decision of the administrative judge and will contain notice of the complainant's suit and appeal rights. If the agency's final order does not fully implement the decision of the administrative judge, the agency must simultaneously file an appeal of the decision with EEOC. In this way, agencies will take final action on complaints referred to administrative judges by issuing a final order, but they will not introduce new evidence or write a new decision in the case. Agencies will have an additional 20 days to file a brief in support of their appeal.

To parallel the provision on interim relief in section 1614.502(b), we are adding a provision requiring an agency to provide interim relief in limited circumstances when the agency appeals. When the agency issues a final order notifying the complainant that it will not fully implement the administrative judge's decision, the case involves removal, separation or suspension continuing beyond the date of the order, and the administrative judge's decision provided for retroactive restoration, the agency must comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position stated by the administrative judge pending the outcome of the appeal. In response to agency comments, we have revised the regulation to more closely track the MSPB's interim relief provision, including a provision permitting agencies to decline to return the complainant to his or her place of employment if it determines that the return or presence of the complainant will be unduly disruptive to the work environment. Prospective pay and benefits must be provided, however. In addition, we have noted in the regulation that an employee may decline an offer of interim relief, and a grant of interim relief does not insulate a complainant from subsequent disciplinary or adverse action for another reason. Interim relief does not apply in cases where the complainant alleges that she or he was not retained beyond the period of a temporary appointment which expired prior to the appeal or that the temporary position was not converted to a permanent position. For example, where the Census hires temporary employees and the temporary appointment would have expired prior to the appeal, or the employee was not converted to a career position, the interim relief provision would not apply.

In another proposed change to the hearings process in the NPRM, we proposed that at the end of the investigation or after 180 days, complainants who want to request a hearing will send their requests directly to the EEOC office instead of to the agency EEO office in order to eliminate delays. Almost all of the commenters agreed with this proposal. A few commenters asked that complainants be required to notify the agency at the same time that they make the request to EEOC. That requirement was already contained in the proposal so no change is being made. We have made some minor changes to the provision. We added a requirement that all requests for hearings must be in writing. The proposal stated that EEOC would request the complaint file after it received a request for hearing. The final rule has been revised to state that the agency must forward the file within 15 days of the date of receipt of the request for hearing. Since the agency will be receiving notice directly from the complainant when a hearing is requested, eliminating the request from EEOC and the time incident to preparation of that letter will result in a more efficient process. If any agency receives a request for a hearing that has not also been submitted to EEOC, the agency should forward the request along with the file to EEOC and should advise the complainant of its actions and of the requirement that requests be submitted directly to EEOC.

In response to comments, the Commission has decided to revise section 1614.109(a) to better explain the administrative judge's responsibilities in the hearing process and to remove the current provision permitting

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administrative judges to remand for counseling issues that are like or related to those issues raised in the complaint. Section 1614.109(a) now provides that upon appointment, the administrative judge will assume full responsibility for adjudication of the complaint, including overseeing the development of the record. The Commission intends that the administrative judge will take complete control of the case once a hearing is requested. The new sentence clarifies that the agency's authority to dismiss a complaint ceases once a hearing is requested. Administrative judges will preside over any necessary supplementation of the record in the hearing process without resort to remands of complaints to agencies for additional investigations. Remands of complaints to agencies for supplemental investigations have proliferated, resulting in fragmentation or unwarranted delays. The changes to the regulation will eliminate these remands and improve the timeliness and efficiency of the complaint process.

In the NPRM, the Commission proposed to add a new section 1614.109(b) providing that administrative judges have the authority to dismiss complaints during the hearing process for all of the reasons contained in section 1614.107. Nearly all commenters, agencies and others, supported this proposal. In response to comments, the Commission has revised the regulation to provide that administrative judges may dismiss complaints on their own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint.

The Commission has made several minor revisions to the hearings section of the regulations. In response to a comment, we have added a new section (f)(1) providing that the administrative judge must serve all orders to produce evidence on both parties. We have revised section 1614.109(i) to provide that the time frame for issuing a decision will run from the administrative judge's receipt of the complaint file from the agency, rather than, as currently provided, from receipt by EEOC of a request for a hearing. In addition, the Commission has revised the section to provide that administrative judges send the hearing record, rather than the entire record, to the parties with the final decision. Finally, the Commission has removed the requirement that administrative judges send final decisions and the record to the parties by certified mail. This will save the Commission scarce resources.

Procedures for Handling Clearly Meritless Cases

The growing inventory of cases pending at agencies, in the hearings units and on appeal to the Commission causes delays across the board. The problem is exacerbated by the allocation of scarce resources to meritless cases. Many commenters representing all points of view identified this situation as an urgent priority, and the Federal Sector Workgroup devoted considerable attention to the problem. The Workgroup noted the widespread concern among stakeholders that the system is overburdened by meritless complaints and misused as a forum for workplace disputes that do not involve EEO matters. Its Report concluded that "Government resources should be targeted to addressing colorable claims of discrimination. Excessive resources devoted to non-meritorious claims of discrimination undermines the credibility of the process and impairs the rights of those with meritorious claims." The Commission agrees.

Among the measures proposed by the Commission in its NPRM to address this problem were two provisions to give administrative judges additional procedures for quickly resolving complaints that are inappropriately in the EEO process or that lack merit. First, the Commission proposed to give administrative judges the authority to dismiss complaints during the hearing process for all of the reasons contained in the dismissal section, 29 CFR 1614.107, including for failure to state a claim. As discussed above, the Commission has included this proposed section 1614.109(b), which most commenters supported, in its final rule.

The second proposal was a provision for decisions without a hearing in cases that lack merit, which would have supplemented administrative judges' existing authority to issue summary judgment decisions currently contained in 29 CFR 1614.109(e). The Commission proposed to add a provision, section 1614.109(g)(4), permitting administrative judges to issue a decision without a hearing where they determine, even though material facts remain in dispute, that there is sufficient information in the record to decide the case, that the material facts in dispute can be decided on the basis of the written record, that there are no credibility issues that would require live testimony in order to evaluate a witness' demeanor and that the case lacks merit.

Almost all non-agency commenters as well as about half of the agency commenters opposed granting administrative judges this new authority, arguing that there must be a hearing if material facts are in dispute. Individual commenters and those representing civil rights groups and unions also doubted that the administrative judge would have sufficient information in the record to decide the case under this procedure because the agency compiles the record and the complainant is likely not to have had an opportunity to develop evidence. Some suggested that complainants have won cases that may have seemed non-meritorious when filed, based on discovery and live testimony at the hearing. Several agency commenters believed the procedure would also adversely affect agencies by leading to erroneous decisions based on incomplete evidence. Agencies also thought it was unclear and difficult to distinguish from traditional summary judgment. A number of agency commenters supported the proposal as an appropriate way to streamline the process and deal with the increasing workload. When the investigatory record is complete, they argued, a hearing may waste resources and cause agency employees to be absent from work when their testimony is not really necessary.

The Commission has decided that it is not necessary to add this provision at this time. We believe that the problem of meritless complaints can be addressed through appropriate application of the failure to state a claim dismissal basis and the traditional summary judgment provision. Dismissal for failure to state a claim is appropriate when a complaint alleges conduct that does not rise to the level of a violation of the anti-discrimination statutes. Summary judgment under section 1614.109(e) is appropriate for complaints that state a claim but that involve no genuine dispute over material facts. Continued processing of cases that should have been dismissed for failure to state a claim or decided on summary judgment contributes to the growing inventory and the perception that the system gives too much consideration to trivial matters. Such cases should be resolved more quickly at earlier stages in the process using existing legal standards. The Commission summarizes these standards below and intends to provide more detailed guidance in Management Directive 110.

Dismissal for Failure to State a Claim: Existing section 1614.107(a) requires that agencies dismiss a complaint that fails to state a claim under section 1614.103. Under the new section 1614.109(b), administrative judges may dismiss complaints for the same reasons

as contained in section 1614.107. In determining whether a complaint states a claim, the proper inquiry is whether the conduct as alleged would constitute an unlawful employment practice under the EEO statutes. *Cobb* v. *Department of the Treasury*, Request No. 05970007 (March 13, 1997). *See Burlington Industries, Inc.* v. *Ellerth*, 118 S. Ct. 2257, 2268–9 (1998)(referencing cases in which courts of appeals considered whether various employment actions were sufficient to state a claim under the civil rights laws).

When a complainant does not challenge agency action or inaction with respect to an employment decision or a specific term, condition or privilege of employment, but alleges a hostile and discriminatory working environment, the severity of the alleged conduct must be evaluated to determine whether the complaint is actionable under the statutes. As the Supreme Court has stated, "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview." *Harris* v. *Forklift Systems, Inc.*, 510 U.S. 17, 21–22 (1993); *see Meritor Savings Bank, FSB* v. *Vinson*, 477 U.S. 57, 67 (1986).

In *Faragher* v. *City of Boca Raton*, 118 S. Ct. 2275 (1998), the Court reemphasized that conduct must rise above a certain minimum level to be actionable: "'[S]imple teasing,' * * * offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" 118 S. Ct. at 2283 (citations omitted). To determine whether an environment is sufficiently hostile or abusive, courts must look at all of the circumstances, including the frequency and severity of the conduct. *Id.* These standards should "ensure that Title VII does not become a 'general civility code.' * * * Properly applied, they will filter out complaints attacking 'the ordinary tribulations of the workplace'" * * *." *Id.* at 2283–84 (citations omitted).

The Commission also has repeatedly stated that isolated comments, petty slights, and trivial annoyances are not actionable. See EEOC Compliance Manual Section 8, "Retaliation," No. 915.003 (May 20, 1998) at 8–13; EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N–915.050 (March 19, 1990) at 14; EEOC Enforcement Guidance on *Harris* v. *Forklift Systems, Inc.*, No. 915.002 (March 8, 1994) at 6 n.4; *see also, e.g., Cobb* v. *Department of the Treasury, supra.; Moore* v. *United States Postal Service*, Appeal No. 01950134 (April 17, 1997); *Backo* v. *United States Postal Service*, Request No. 05960227 (June 10, 1996); *Phillips* v. *Department of Veterans Affairs*, Request No. 05960030 (July 12, 1996); *Miller* v. *United States Postal Service*, Request No. 05941016 (June 2, 1995); *Banks* v. *Department of Health and Human Services*, Request No. 05940481 (February 16, 1995) . However, a persistent pattern of harassing conduct or a particularly severe individual incident, when viewed in light of the work environment as a whole, may constitute a hostile environment. *See, e.g., Brooks* v. *Department of the Navy*, EEOC Request No. 05950484 (June 25, 1996).

The Commission cautions that before dismissing a complaint the administrative judge must ensure that the claim has not been fragmented inappropriately into more than one complaint. As discussed above under the heading "Fragmentation," a series of subsequent events or instances involving the same claim should not be treated as separate complaints, but should be added to and treated as part of the first claim.

Summary Judgment: The problem identified by the Workgroup can also be addressed through more effective use of the existing summary judgment authority. Summary judgment is proper when "material facts are not in genuine dispute." 29 CFR 1614.109(e). Only a dispute over facts that are truly material to the outcome of the case should preclude summary judgment. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (only disputes over facts that might affect the outcome of the suit under the governing law, and not irrelevant or unnecessary factual disputes, will preclude the entry of summary judgment). For example, when a complainant is unable to set forth facts necessary to establish one essential element of a prima facie case, a dispute over facts necessary to prove another element of the case would not be material to the outcome. *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322–23 (1986).

Moreover, a mere recitation that there is a factual dispute is insufficient. The party opposing summary judgment must identify the disputed facts in the record with specificity and demonstrate that there is a dispute by producing affidavits or records that tend to disprove the facts asserted by the moving party. In addition, the non-moving party must explain how the facts in dispute are material under the legal principles applicable to the case. 29 CFR 1614.109(e)(2); *Anderson*, 477 U.S. at 257; *Celotex*, 477 U.S. at 322–24; *Patton* v. *Postmaster General*, Request No. 05930055 (1993) (summary judgment proper where appellant made only a general pleading that his job performance was good but set forth no specific facts regarding his performance and identified no specific inadequacies in the investigation).

Class Complaints

The Federal Sector Workgroup identified a series of concerns with the class complaint process. It found that despite studies indicating that class-based discrimination may continue to exist in the federal government, recent data reflect that very few class complaints are filed or certified at the administrative level. While an effective administrative process for class complaints offers several important advantages over litigation in federal court, including informality, lower cost, and speed of resolution, the Workgroup found that the current process does not adequately address class-based discrimination in the federal government. As a result, complainants often have elected to pursue their complaints in federal court.

Class actions play a particularly vital role in the enforcement of the equal employment laws. They are an essential mechanism for attacking broad patterns of workplace discrimination and providing relief to victims of discriminatory policies or systemic practices. The courts have long recognized that class actions "are powerful stimuli to enforce Title VII," providing for the "removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." *Wetzel* v. *Liberty Mutual Ins. Co.*, 508 F.2d 239, 254 (3d Cir.), *cert. denied*, 421 U.S. 1011 (1975). The class action device exists, in large part, to vindicate the interests of civil rights plaintiffs. See 5 James W. Moore, Moore's Federal Practice § 23.43[1][a], at 23–191 (3d ed. 1997).

These same policies apply with equal force in the federal sector. Accordingly, the Commission is making several changes in its regulation to strengthen the class complaint process. The purpose of these changes is to ensure that complaints raising class issues are not unjustifiably denied class certification in the administrative process and that class cases are resolved under appropriate legal standards consistent with the principles applied by federal courts.

In the NPRM, the Commission proposed four regulatory changes to the class complaint procedures found at 29

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CFR 1614.204. The Commission proposed to revise section 1614.204(b) to provide that a complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications raised in an individual complaint. If a complainant moves for class certification after completing counseling, the complainant will not be required to return to the counseling stage. Individual commenters and those representing civil rights groups uniformly endorsed the proposed change. Some agency commenters supported the change but asked that the regulation define "reasonable point in the process"; some suggested that this point be during the investigation or within a short time after distribution of the agency investigative file, rather than during discovery. Other agencies opposed the change, arguing that it would entail additional investigative costs, cause delays and invite abuse by complainants seeking to bypass the counseling process by making frivolous class allegations. They maintained that a complainant should have to elect between a class or an individual claim at the pre-complaint stage. If a complainant can move for class certification on the eve of hearing, they argued, the agency would be required to put the individual complaint on hold and start its investigation all over again as a class case. Others objected only to eliminating counseling, as that is how the complainant is informed of his or her rights and responsibilities as class agent.

The Commission believes that this revision is an important step toward removing unnecessary barriers to class certification of complaints that are properly of a class nature. The Commission has consistently recognized that its decisions on class certification must be guided by the complainant's lack of access to pre-certification discovery on class issues; this is different from the situation of a federal court Rule 23 plaintiff who does have access to pre-certification discovery on class issues. Similarly, an individual complainant often will not have reason to know at the counseling stage, and sometimes even after the agency's investigation, that the challenged action actually reflects an agency policy or practice generally applicable to a class of similarly situated individuals.

Because of the importance of discovery, the Commission has decided not to place the restrictions suggested by some of the commenters on the time at which a complainant may seek class certification. The Commission intends that "reasonable point in the process" be interpreted to allow a complainant to seek class certification when he or she knows or suspects that the complaint has class implications, i.e., it potentially involves questions of law or fact common to a class and is typical of the claims of a class. Normally, this point will be no later than the end of discovery at the hearing stage. The complainant must seek class certification within a reasonable time after the class nature of the case becomes apparent. The administrative judge will deny class certification if the complainant has unduly delayed in moving for certification. In response to the comments, the Commission has added language to this effect in the regulation. The Commission disagrees with those commenters who advocated returning the complaint for additional counseling. It will be the responsibility of the agency or administrative judge, as appropriate, to ensure that the class agent is advised of his or her obligations at the time the complainant moves for certification. The Commission believes it is impracticable and unproductive to require the complainant to return to counseling at this stage.

A request for class certification made after the filing of an individual complaint but before the issuance of the notice required by section 1614.108(f) will be forwarded to an EEOC administrative judge for a decision on whether to accept or dismiss a class complaint. The administrative judge's decision will be appealable to the Office of Federal Operations. The filing of an appeal will not stay further proceedings, although either party may request that the administrative judge stay the administrative process pending a decision on appeal.

The Commission proposed in the Notice of Proposed Rulemaking to amend section 1614.204(d) to provide that administrative judges would issue final decisions on whether a class complaint will be accepted (or certified) or dismissed. Currently, administrative judges make recommendations to agencies on acceptance or dismissal. For the same reasons noted in the discussion of administrative judges' decisions above, the Commission has decided to provide that administrative judges will issue decisions to accept or dismiss class complaints, and agencies will take final action by issuing a final order, and, simultaneously appealing the decision to EEOC if the final order does not fully implement the decision of the administrative judge. Some agency commenters said they supported making certification decisions final only if the agency is given the right to an interlocutory appeal. That was the Commission's intent. The Commission has revised current section 1614.401(b) (redesignated section 1614.401(c)), which sets forth appeal rights in all the situations that might arise in class cases, to include agency interlocutory appeals from administrative judges' certification decisions.

In the proposed rule, the Commission proposed to amend section 1614.204(g)(2) to require that administrative judges must approve class settlement agreements pursuant to the "fair and reasonable" standard, even when no class member has asserted an objection to the settlement. Some agency commenters supported this proposal while most others disagreed, arguing that it would add an unnecessary layer of review when the parties are satisfied with the settlement and that adequate safeguards exist in section 1614.204(g)(4), which gives dissatisfied class members the right to petition to vacate a settlement, and 1614.204(a)(2), which requires the class agent to fairly and adequately represent the class.

Because it believes that the administrative judge's approval of settlements in all cases is the best way to protect the interests of the class, the Commission has decided to add this proposal to its regulation. As one agency commenter noted, class agents sometimes seek to settle their individual claims without full regard for the interests of the class. The change makes the regulations consistent with the practice in federal courts where the court must approve any settlement of a class case under a fair and reasonable standard. Thus, the same standard applies whether or not any petitions to vacate the resolution have been filed. In response to the suggestion of one agency, the Commission has elaborated upon the standard by revising the regulation to follow the language used by the Court of Appeals for the District of Columbia Circuit in *Thomas* v. *Albright*, 139 F.3d 227, 233 (1998), which held that to approve a settlement under Rule 23, a district court must find that it is "fair, adequate, and reasonable to the class as a whole." The court is to evaluate the terms of the settlement in relation to the strength of the plaintiffs' case, and should not reject a settlement merely because individual class members contend that they would have received more had they prevailed after a trial. 139 F.3d at 231, 232. See also Manual for Complex Litigation (Third) (1995) §§ 30.41–.42.

The Commission also has made additional revisions to the procedures for notice and approval of settlements contained in section 1614.204(g)(4) to

reflect the changes in the administrative judge's authority. Currently, any member of the class who is dissatisfied may petition the agency EEO Director to vacate the resolution because it benefits only the class agent or is otherwise not fair and reasonable. The administrative judge issues a recommended decision, and the agency makes the final decision whether to vacate the resolution. 29 CFR 1614.204(g)(4). In the new section 1614.204(g)(4), a class member may petition the administrative judge to vacate the resolution. The administrative judge reviews the notice of resolution and considers any petitions filed. The administrative judge must issue a decision vacating or approving the settlement on the basis of whether it is fair, adequate and reasonable to the class as a whole. A decision to vacate a settlement, as well as a decision to approve settlement over the objections of petitioning class members, is appealable to the Office of Federal Operations.

Finally, the Commission proposed to amend section 1614.204(l)(3) in the proposed rule to clarify the burdens of proof applicable to individual class members who believe they are entitled to relief. The change makes explicit that the burdens enunciated in *Teamsters* v. *United States*, 431 U.S. 324 (1977), and subsequent lower court decisions apply. In Teamsters, the Court stated that where a finding of discrimination has been made, there is a presumption of discrimination as to every individual who can show he or she is a member of the class and was affected by the discrimination during the relevant period of time. 431 U.S. at 361–62. Lower courts have held that this presumption may be rebutted only by clear and convincing evidence that the class member is not entitled to relief. See *McKenzie* v. *Sawyer*, 684 F.2d 62, 77–78 (D.C. Cir. 1982); *Trout* v. *Lehman*, 702 F.2d 1094, 1107 (D.C. Cir. 1983), vacated on other grounds, 465 U.S. 1056 (1984); *United States* v. *City of Chicago*, 853 F.2d 572, 575 (7th Cir. 1988); *Cox* v. *American Cast Iron Pipe Co.*, 784 F.2d 1546, 1559 (11th Cir.), *cert. denied*, 479 U.S. 883 (1986); *Baxter* v. *Savannah Sugar Refining Corp.*, 495 F.2d 437, 444–45 (5th Cir.), *cert. denied*, 419 U.S. 1033 (1974); *Reynolds* v. *Alabama Department of Transportation*, 996 F. Supp. 1156, 1195 (N.D. Ala. 1998). Other courts, however, have held that the standard is preponderance of the evidence. *See Wooldridge* v. *Marlene Indus. Corp.*, 875 F.2d 540, 549 (6th Cir. 1989); *Craik* v. *Minnesota State Univ. Bd.*, 731 F.2d 465, 470 n.8 (8th Cir. 1984); *Sledge* v. *J.P. Stevens & Co., Inc.*, 585 F.2d 625, 637 (4th Cir. 1978); *Richerson* v. *Jones*, 551 F.2d 918, 923–25 (3d Cir. 1977).

Comments on this provision were divided, with non-agency commenters uniformly endorsing it and most agency commenters objecting that "clear and convincing" was too high a standard, inappropriate for a class case, and a misreading of Teamsters. The objecting commenters wanted the standard to be preponderance of the evidence.

The Commission has decided to retain the "clear and convincing" standard and emphasizes that this regulatory revision merely codifies the longstanding rule in the federal sector, *see McKenzie* v. *Sawyer, supra*. In 1992, when the Commission first issued its Part 1614 regulation, we considered the burden of proof issue with respect to relief when discrimination has been found. The Commission determined at that time that no change was required to its requirement, included in the predecessor Part 1613 regulation and in the new section 1614.501, that relief should be provided to an individual when discrimination is found unless clear and convincing evidence indicates that the personnel action at issue would have been taken even absent discrimination. See 57 Fed. Reg. 12634, 12641 (April 10, 1992); 29 CFR 1614.501. The Commission concluded that the Supreme Court's decision in *Price Waterhouse* v. *Hopkins*, 490 U.S. 228 (1989), which held that an employer could avoid liability in a mixed motive case under a preponderance of the evidence standard, did not require a change in the regulation. As we then noted, the Hopkins decision cited and distinguished the Commission's Part 1613 regulation on the basis that it relates to proof at the relief stage rather than the liability stage. 490 U.S. at 253-54. The Commission further noted that the relief provision in the regulation "will be applied most often to determining whether class members are entitled to individual relief after a class finding of discrimination, but it is also applicable to individual cases where there has been a finding of discrimination." 57 FR at 12641.

The Commission is now making this presumption explicit in its revised class regulation. The Commission believes that requiring proof at the "clear and convincing" level when the agency has been found to have engaged in classwide discrimination furthers the remedial and deterrent purposes of the statutes. "By making it more difficult for employers to defeat successful plaintiffs" claims to retroactive relief, the higher standard of proof may well discourage unlawful conduct by employers. . . . In addition, the higher standard of proof is justified by the consideration that the employer is a wrongdoer whose unlawful conduct has made it difficult for the plaintiff to show what would have occurred in the absence of that conduct." *Toney* v. *Block*, 705 F.2d 1364,1373 (D.C. Cir. 1983) (Tamm, J., concurring); see also Teamsters, 341 U.S. at 359 n.45, 372.

Thus, agencies are required to show by clear and convincing evidence that any class member is not entitled to relief, as is provided currently in sections 1614.501(b) and (c). To be presumptively entitled to relief, the class member first must have filed a written claim pursuant to section 1614.204(l)(3) making a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that the discriminatory action took place within the period of time for which class-wide discrimination was found. To reflect the administrative judge's new role and to provide a procedure for resolving issues related to individual relief, the Commission additionally has revised section 1614.204(l)(3) to state that the administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member.

In response to a comment, we have clarified that the agency or the Commission may find classwide discrimination, and provide a remedy, for any policy or practice in existence within 45 days of the class agent's initial contact with the counselor. We also note, as we stated when Part 1614 was promulgated in 1992, that the 45-day time limit in section 204(l)(3) defining the period for which class-wide discrimination can be found is not intended to limit the two-year time period for which back pay can be recovered by a class member. See 57 FR 12634, 12644 (April 10, 1992); 29 CFR 1614.204(l)(3). Under the continuing violation theory, moreover, incidents occurring earlier than 45 days before contact with the counselor must also be remedied provided that the initial contact with the counselor was timely and the earlier incidents were part of the same continuing policy or practice found to have been discriminatory. That is, where contact with the counselor is timely as to one of the events comprising the continuing violation, then the counseling contact is timely as to the entire violation.

Appeals

In the proposed rule, the Commission proposed two different appeal briefing schedules, depending on the matter

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being appealed: 30 days to file both a notice of appeal and any statement or brief in support of the appeal from a dismissal (a "procedural" appeal); and 30 days to file a notice of appeal and an additional 30 days thereafter to file a brief or statement in support of an appeal from a final decision (a "merits" appeal). Those who commented on this section were nearly unanimous that this distinction was confusing and that there should be a single briefing schedule. The Commission has revised the regulation to provide that a complainant must file an appeal within 30 days of receipt of the agency dismissal or final action, and any supporting statement or brief shall be filed within 30 days of the filing of the notice of appeal. In cases where there has been a decision by an administrative judge, agencies must take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. If the final order does not fully implement the administrative judge's decision, agencies must simultaneously file an appeal with the EEOC. They have an additional 20 days to file a brief in support of that appeal. The final regulation also provides that briefs or statements in support of an appeal and papers filed in opposition to an appeal can be filed by facsimile, provided that they are no more than 10 pages in length. Briefs and statements longer than 10 pages must be mailed or delivered in person.

In response to the Commission's statement in the NPRM that the Commission will strictly apply appellate time frames, a number of commenters suggested that provision be made for extending the appellate time limits for good cause shown. Part 1614 already provides that regulatory time limits "are subject to waiver, estoppel and equitable tolling." 29 CFR § 1614.604(c).

Most commenters agreed with the Commission's proposal that the Office of Federal Operations be empowered to impose sanctions or otherwise take appropriate action regarding any party who fails, without good cause shown, to comply with appellate procedures or to respond fully and timely to a Commission request for information. Some commenters were concerned that this provision could unfairly impact unrepresented complainants. To the extent an unrepresented complainant fails to comply due to mistake, lack of knowledge, or misunderstanding, the Commission will take such factors into consideration when determining whether good cause has been shown.

Most commenters also agreed with the proposed appellate standards of review —factual findings rendered by administrative judges after a hearing will be subject to a substantial evidence standard of review; all other decisions will be subject to a de novo review. No new evidence will be considered on appeal unless the evidence was not reasonably available during the hearing process. As we noted in the preamble to the proposed rule, the substantial evidence standard does not preclude meaningful review of factual findings. Moreover, applying the de novo standard of review to the factual findings in administrative judges' final decisions after hearings would be an inefficient use of EEOC's limited resources.

Finally, the Commission proposed to revise the reconsideration process to approximate the process used by the MSPB, reallocate some resources to the improvement of the appellate process and discourage automatic requests for reconsideration whenever a party loses on appeal. Parties may still request reconsideration but it will only be granted, in the discretion of the Commission, if the requester has demonstrated that the appellate decision involved a clearly erroneous interpretation of material fact or law, or the appellate decision will have a substantial impact on the policies, practices or operations of the agency. The comments received were mixed. The unfavorable comments were mostly from agencies although many other agencies favored the change. The objectors raised the same objections discussed in the preamble to the proposed rule. After considering all comments, we have decided to adopt the proposed rule without change. The proposal makes the reconsideration procedure available for those cases where the requestor demonstrates that there are errors of fact or law that would affect the outcomes of the cases and for those cases that will have a substantial impact. By preserving the Commission's discretion, it also will allow the Commission to reallocate its resources to the improvement of the appellate process.

Attorney's Fees

In its NPRM, the Commission proposed two changes to the attorney's fees regulatory scheme: administrative judges would be authorized to determine the amount of the fee award, not just entitlement to the award; and attorney's fees and costs would be available to prevailing complainants for services rendered prior to the filing of the formal complaint (*e.g.*, during the counseling and ADR phases). Most commenters were in favor of the former change. Comments were split on the latter change; agencies were opposed and plaintiffs' attorneys and employees were in favor of the proposal.

The commenters opposed to an administrative judge determining the amount of attorney's fees and costs to be awarded generally were concerned that an administrative judge would not be able to assess adequately the reasonableness of the time spent by an attorney working on the complaint prior to the hearing. The Commission believes that an administrative judge is in a comparable position to a federal district court judge in making a determination of attorney's fees. To address this concern, though, the Commission has clarified section 1614.501(e)(2) to provide that, when a decision-making authority, that is, an agency, an administrative judge, or the Commission, determines that a complainant is entitled to an award of attorney's fees and costs, the complainant's attorney shall submit a statement of fees and costs to the decision-making authority. The agency may respond to and comment on the statement of fees and costs. The decision-making authority will then determine the amount of fees and costs to be awarded. The Commission believes this procedure will best facilitate the determination of the amount of attorney's fees and costs to be awarded, once an entitlement to a fee award has been determined. The Commission has also updated the discussion in the regulation on calculating fees. Management Directive 110 will contain additional guidance on attorney's fees.

The Commission received many comments on the second change to the attorney's fees provisions, allowing fees for services rendered prior to the formal complaint filing. Agencies expressed significant concern about the proposal, arguing that the change would render the preliminary complaint processing phase more formal and adversarial. The decision was made to provide that agencies are not required to pay for attorney's fees for services rendered during the pre-complaint process unless an administrative judge issues a decision finding discrimination, the agency issues a final order disagreeing with the finding, and EEOC upholds the administrative judge's finding on appeal. In addition, the agency and the complainant can agree that the agency will pay attorney's fees for pre-complaint process representation. These changes were made to preserve the incentive to resolve matters during the pre-complaint process and, at the same time, to create the incentive for agencies to accept administrative judges' decisions, unless they are clearly erroneous.

Matters of General Applicability

The Commission proposed to amend section 1614.103(b) of the regulations to include the Public Health Service Commissioned Corps and the National Oceanic and Atmospheric Administration Commissioned Corps in the coverage of part 1614. As we noted in the preamble to the NPRM, we intended these changes to clarify coverage of these employees and be consistent with the determination of the Solicitor General, in connection with litigation, that Commissioned Corps members are covered by federal sector anti-discrimination statutes. Congress amended the Public Health Service Act, however, in Public Law 103–183, and, as a result, we have decided not to finalize the amendment to section 1614.103(b) adding the Public Health Service Commissioned Corps. We are making final the inclusion of the National Oceanic and Atmospheric Administration Commissioned Corps. In the final rule, the Commission is also amending section 1614.103(b) to make the regulation consistent with the changes made to section 717(a) by the Congressional Accountability Act of 1995, Pub. L. 104–1, § 201(c), 109 Stat. 8, and the Workforce Investment Act of 1998, Pub. L. 105–220, § 341(a), 112 Stat. 936, 1092. These Acts amended the scope of coverage of section 717, eliminating the legislative branch and adding several agencies. We are amending section 1614.103(b) to remove the legislative branch from coverage and to add the Government Printing Office and the Smithsonian Institution to Part 1614 coverage.

Some commenters suggested that the Commission adopt its private sector charge prioritization procedures in whole or in part in the federal sector. We are making one change to the regulation related to those comments. The current regulation requires a full and fair investigation of every complaint that is not dismissed. Some have interpreted it to require the same amount of investigative effort in each case. That interpretation is not reasonable or desirable and is inconsistent with EEOC's private sector charge prioritization procedures. The Commission believes that the proper scope of an investigation should be dictated by the facts at issue and that a cookie-cutter, one-size-fits-all approach wastes resources and needlessly delays resolution of that complaint and all other complaints. The investigation and the amount of effort expended should be appropriate to determine the issues raised by the complaint. To remedy the misconception that more is required, we have revised sections 1614.106(e)(2) and 1614.108(b) to remove the word "complete" and replace with "appropriate." An appropriate investigation is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.

Based on comments the Commission received pertaining to the administrative EEO process in general, the Commission has decided to fine-tune certain sections. In section 1614.604, which pertains to methods of filing and the computation of time limits, the Commission is replacing the phrase "delivered in person" with the word "received." This change is intended to ensure that a document will be deemed timely if it is received on or before the applicable due date regardless of the manner in which it is transmitted or delivered.

Section 1614.605(d), pertaining to service of papers and computation of time when a complainant has a representative, has been modified. Under the current language, if a complainant is represented by an attorney, correspondence is to be served only on the attorney. The section has been revised to require all papers to be served on both the attorney and the complainant. Dual notification currently is required under section 1614.605(d) if the representative is a non-attorney. For reasons of consistency, the same service rules will apply regardless of the status of the representative. Timeframes for receipt of materials shall be computed, however, from the time of receipt by the attorney where the representative is an attorney.

Regulatory Procedures

Executive Order 12866

In promulgating this final rule, the Commission has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has been designated as a significant regulation and reviewed by OMB consistent with the Executive Order.

Regulatory Flexibility Act

In addition, the Commission certifies under 5 U.S.C. § 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to employees and agencies and departments of the federal government. For this reason, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination.

For the Commission.

Ida L. Castro,

Chairwoman.

Accordingly, for the reasons set forth in the preamble, chapter XIV of title 29 of the Code of Federal Regulations is amended as follows:

PART 1614—[AMENDED]

1. The authority citation for 29 CFR part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

2. Section 1614.102 is amended by redesignating paragraphs (b)(2) through (b)(6) as paragraphs (b)(3) through (b)(7), by adding paragraph (b)(2) and by revising paragraph (c)(5) to read as follows:

§ 1614.102 Agency program.

* * * * *

(b) * * *

(2) Establish or make available an alternative dispute resolution program. Such program must be available for both the pre-complaint process and the formal complaint process.

* * * * *

(c) * * *

(5) Assuring that individual complaints are fairly and thoroughly investigated and that final action is taken in a timely manner in accordance with this part.

* * * * *

3. Section 1614.103 is amended by removing the word "and" at the end of paragraph (b)(3), revising paragraph (b)(4), and adding paragraphs (b)(5) through (b)(7) to read as follows:

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§ 1614.103 Complaints of discrimination covered by this part.

* * * * *

(b) * * *

(4) All units of the judicial branch of the Federal government having positions in the competitive service, except for complaints under the Rehabilitation Act;

(5) The National Oceanic and Atmospheric Administration Commissioned Corps;

(6) The Government Printing Office; and

(7) The Smithsonian Institution.

* * * * *

4. Section 1614.105 is amended by redesignating paragraph (b) as paragraph (b)(1), revising the first sentence of redesignated paragraph (b)(1), adding paragraph (b)(2), revising the first sentence of paragraph (d) and revising paragraph (f) to read as follows:

§ 1614.105 Pre-complaint processing.

* * * * *

(b)(1) At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing or an immediate final decision after an investigation by the agency in accordance with § 1614.108(f), election rights pursuant to §§ 1614.301 and 1614.302, the right to file a notice of intent to sue pursuant to § 1614.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the claims raised in precomplaint counseling (or issues or claims like or related to issues or claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the agency. * * *

(2) Counselors shall advise aggrieved persons that, where the agency agrees to offer ADR in the particular case, they may choose between participation in the alternative dispute resolution program and the counseling activities provided for in paragraph (c) of this section.

* * * * *

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the agency's EEO office to request counseling.* * *

* * * * *

(f) Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be 90 days. If the claim has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall be issued.

* * * * *

5. Section 1614.106 is amended by redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising redesignated paragraph (e) to read as follows:

§ 1614.106 Individual complaints.

* * * * *

(d) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

(e) The agency shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed. The agency shall advise the complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. Such acknowledgment shall also advise the complainant that:

(1) The complainant has the right to appeal the final action on or dismissal of a complaint; and

(2) The agency is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the agency shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

6. Section 1614.107 is amended by redesignating paragraphs (a) through (h) as paragraphs (a)(1) through (a)(8), redesignating the introductory text as paragraph (a) introductory text and revising it, removing the word "or" at the end of redesignated paragraph (a)(7), revising redesignated paragraph (a)(8) and adding new paragraphs (a)(9) and (b) to read as follows:

§ 1614.107 Dismissals of complaints.

(a) Prior to a request for a hearing in a case, the agency shall dismiss an entire complaint:

* * * * *

(8) That alleges dissatisfaction with the processing of a previously filed complaint; or

(9) Where the agency, strictly applying the criteria set forth in Commission decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:

(i) Evidence of multiple complaint filings; and

(ii) Allegations that are similar or identical, lack specificity or involve matters previously resolved; or

(iii) Evidence of circumventing other administrative processes, retaliating against the agency's in-house administrative processes or overburdening the EEO complaint system.

(b) Where the agency believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section, the agency shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

7. Section 1614.108 is amended by removing the first sentence of paragraph (b) and adding two sentences in its place, revising paragraph (f) and adding a new paragraph (g) to read as follows:

§ 1614.108 Investigation of complaints.

* * * * *

(b) In accordance with instructions contained in Commission Management Directives, the agency shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. * * *

* * * * *

(f) Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the agency shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision pursuant to § 1614.110 from the agency with which the complaint was filed.

(g) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the agency's acknowledgment letter. The complainant shall send a copy of the request for a hearing to the agency EEO office. Within 15 days of receipt of the request for a hearing, the agency shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

8. Section 1614.109 is amended by revising paragraph (a), redesignating paragraphs (b) through (g) as paragraphs (d) through (i), adding new paragraphs (b) and (c), removing the introductory text of redesignated paragraph (f) and adding a heading, adding a sentence at the end of redesignated paragraph (f)(1), revising the introductory text of redesignated paragraph (f)(3), in the heading of redesignated paragraph (g) removing the words "Findings and conclusions" and adding, in their place the word "Decisions", in redesignated paragraphs (g)(2) and (g)(3) removing the phrases "findings and conclusions" and adding, in their place, the words "a decision", and revising redesignated paragraph (i) to read as follows:

§ 1614.109 Hearings.

(a) When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with this section. Upon appointment, the administrative judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances.

(b) *Dismissals.* Administrative judges may dismiss complaints pursuant to § 1614.107, on their own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint.

(c) *Offer of resolution.* (1) Any time after the filing of the written complaint but not later than the date an administrative judge is appointed to conduct a hearing, the agency may make an offer of resolution to a complainant who is represented by an attorney.

(2) Any time after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to the hearing, the agency may make an offer of resolution to the complainant, whether represented by an attorney or not.

(3) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The agency's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief. With regard to monetary relief, an agency may make a lump sum offer covering all forms of monetary liability, or it may itemize the amounts and types of monetary relief being offered. The complainant shall have 30 days from receipt of the offer of resolution to accept it. If the complainant fails to accept an offer of resolution and the relief awarded in the administrative judge's decision, the agency's final decision, or the Commission decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the agency of attorney's fees or costs incurred after the expiration of the 30-day acceptance period. An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a complainant fails to accept an offer of resolution, an agency may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

* * * * *

(f) *Procedures.*

(1) * * * The administrative judge shall serve all orders to produce evidence on both parties.

* * * * *

(3) When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances:

* * * * *

(i) *Decisions by administrative judges.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a decision, an administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the administrative judge of the complaint file from the agency. The administrative judge shall send copies of the hearing record, including the transcript, and the decision to the parties. If an agency does not issue a final order within 40 days of receipt of the administrative judge's decision in accordance with 1614.110, then the decision of the administrative judge shall become the final action of the agency.

9. Section 1614.110 is revised to read as follows:

§ 1614.110 Final action by agencies.

(a) *Final action by an agency following a decision by an administrative judge.* When an administrative judge has issued a decision under § 1614.109(b), (g) or (i), the agency shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. The final order shall notify the complainant whether or not the agency will fully implement the decision of the administrative judge and shall contain notice of the complainant's right to appeal to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the agency shall simultaneously file an appeal in accordance with § 1614.403 and append a copy of the appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(b) *Final action by an agency in all other circumstances.* When an agency dismisses an entire complaint under § 1614.107, receives a request for an immediate final decision or does not receive a reply to the notice issued under § 1614.108(f), the agency shall take final action by issuing a final decision. The final decision shall consist of findings by the agency on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found,

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appropriate remedies and relief in accordance with subpart E of this part. The agency shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision from the agency, or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of EEOC Form 573 shall be attached to the final action.

§ 1614.201 [Amended]

10. Section 1614.201 is amended by removing the words "Federal Sector Programs, 1801 L St., NW., Washington, DC 20507" in the second sentence of paragraph (a) and adding the words "at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile" in their place, removing the words "issued a final decision" in paragraph (c)(1) and adding the words "taken final action" in their place and removing the words "the issuance of a final decision" in paragraph (c)(2) and adding the words "final action" in their place.

11. Section 1614.204 is amended by revising paragraph (b), removing the words "recommend that the agency" from paragraphs (d)(2), (d)(3), (d)(4), and (d)(5), removing the word "recommend" and adding the word "decide" in its place in paragraph (d)(6), revising paragraphs (d)(7), (e)(1), (g)(2), (g)(4), and (l)(3), and removing the word "agency" and adding the word "agent" in its place in paragraph (j)(7), to read as follows:

§ 1614.204 Class complaints.

* * * * *

(b) *Pre-complaint processing.* An employee or applicant who wishes to file a class complaint must seek counseling and be counseled in accordance with § 1614.105. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a complainant moves for class certification after completing the counseling process contained in § 1614.105, no additional counseling is required. The administrative judge shall deny class certification when the complainant has unduly delayed in moving for certification.

* * * * *

(d) * * *

(7) The administrative judge shall transmit his or her decision to accept or dismiss a complaint to the agency and the agent. The agency shall take final action by issuing a final order within 40 days of receipt of the hearing record and administrative judge's decision. The final order shall notify the agent whether or not the agency will implement the decision of the administrative judge. If the final order does not implement the decision of the administrative judge, the agency shall simultaneously appeal the administrative judge's decision in accordance with § 1614.403 and append a copy of the appeal to the final order. A dismissal of a class complaint shall inform the agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart A or that the complaint is also dismissed as an individual complaint in accordance with § 1614.107. In addition, it shall inform the agent of the right to appeal the dismissal of the class complaint to the Equal Employment Opportunity Commission or to file a civil action and shall include EEOC Form 573, Notice of Appeal/Petition.

(e) * * * (1) Within 15 days of receiving notice that the administrative judge has accepted a class complaint or a reasonable time frame specified by the administrative judge, the agency shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

* * * * *

(g) * * *

(2) The complaint may be resolved by agreement of the agency and the agent at any time pursuant to the notice and approval procedure contained in paragraph (g)(4) of this section.

* * * * *

(4) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and to the administrative judge. It shall state the relief, if any, to be granted by the agency and the name and address of the EEOC administrative judge assigned to the case. It shall state that within 30 days of the date of the notice of resolution, any member of the class may petition the administrative judge to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. The administrative judge shall review the notice of resolution and consider any petitions to vacate filed. If the administrative judge finds that the proposed resolution is not fair, adequate and reasonable to the class as a whole, the administrative judge shall issue a decision vacating the agreement and may replace the original class agent with a petitioner or some other class member who is eligible to be the class agent during further processing of the class complaint. The decision shall inform the former class agent or the petitioner of the right to appeal the decision to the Equal Employment Opportunity Commission and include EEOC Form 573, Notice of Appeal/Petition. If the administrative judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class.

* * * * *

(l) * * *

(3) When discrimination is found in the final decision and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the head of the agency or its EEO Director within 30 days of receipt of notification by the agency of its final decision. Administrative judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which the agency found class-wide discrimination in its final decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The agency must show by clear and convincing evidence that any class member is not entitled to relief. The administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member. The agency or the Commission may find class-wide discrimination and order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the Counselor. Relief otherwise consistent with this Part may be ordered for the time the policy or practice was in effect. The agency shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file an appeal or a civil action in accordance with

subpart D of this part and the applicable time limits.

§ 1614.302 [Amended]

12. Section 1614.302 is amended by removing the words "5 CFR 1201.154(a)" in paragraph (d)(1)(i) and adding the words "5 CFR 1201.154(b)(2)" in their place.

13. Section 1614.401 is amended by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), revising paragraph (a), adding a new paragraph (b), and revising redesignated paragraph (c) to read as follows:

§ 1614.401 Appeals to the Commission.

(a) A complainant may appeal an agency's final action or dismissal of a complaint.

(b) An agency may appeal as provided in § 1614.110(a).

(c) A class agent or an agency may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or an agency may appeal a final decision on a petition pursuant to § 1614.204(g)(4).

* * * * *

14. Section 1614.402 is amended by revising paragraph (a) to read as follows:

§ 1614.402 Time for appeals to the Commission.

(a) Appeals described in § 1614.401(a) and (c) must be filed within 30 days of receipt of the dismissal, final action or decision. Appeals described in § 1614.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a complainant has notified the EEO Director of alleged noncompliance with a settlement agreement in accordance with § 1614.504, the complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of an agency's determination.

* * * * *

15. Section 1614.403 is revised to read as follows:

§ 1614.403 How to appeal.

(a) The complainant, agency, agent, grievant or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

(c) If an appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Any statement or brief on behalf of the agency in support of its appeal must be submitted to the Office of Federal Operations within 20 days of filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(e) The agency must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the agency.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

16. Section 1614.404 is amended by adding a new paragraph (c) to read as follows:

§ 1614.404 Appellate procedure.

* * * * *

(c) When either party to an appeal fails without good cause shown to comply with the requirements of this section or to respond fully and in timely fashion to requests for information, the Office of Federal Operations shall, in appropriate circumstances:

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(3) Issue a decision fully or partially in favor of the opposing party; or

(4) Take such other actions as appropriate.

17. Section 1614.405 is amended by revising the third sentence of paragraph (a), by removing the words "certified mail, return receipt requested" from the last sentence of paragraph (a) and adding the words "first class mail" in their place and revising paragraph (b) to read as follows:

§ 1614.405 Decisions on appeals.

(a) * * * The decision on an appeal from an agency's final action shall be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 1614.109(i) shall be based on a substantial evidence standard of review. * * *

(b) A decision issued under paragraph (a) of this section is final within the meaning of § 1614.407 unless the Commission reconsiders the case. A party may request reconsideration within 30 days of receipt of a decision of the Commission, which the Commission in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the agency.

§ 1614.407 [Removed]

§§ 1614.408 through 1614.410 [Redesignated as §§ 1614.407 through 1614.409]

18. Section 1614.407 is removed and §§ 1614.408 through 1614.410 are redesignated as §§ 1614.407 through 1614.409.

19. Redesignated § 1614.407 is amended by removing the words "final decision" from paragraph (a) and adding the words "final action" in their place and by removing the words "a final decision has not been issued" from paragraph (b) and adding the words "final action has not been taken" in their place.

20. Section 1614.501 is amended by revising the last sentence of the introductory text of paragraph (e)(1), and revising paragraphs (e)(1)(iv) and (e)(2)(i), the first sentence of paragraph (e)(2)(ii)(A) and paragraph (e)(2)(ii)(B) to read as follows:

§ 1614.501 Remedies and relief.

* * * * *

(e) *Attorney's fees or costs*—(1) * * * In a decision or final action, the agency, administrative judge, or Commission may award the applicant or employee

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reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.

* * * * *

(iv) Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the agency, administrative judge or Commission, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Agencies are not required to pay attorney's fees for services performed during the pre-complaint process, except that fees are allowable when the Commission affirms on appeal an administrative judge's decision finding discrimination after an agency takes final action by not implementing an administrative judge's decision. Written submissions to the agency that are signed by the representative shall be deemed to constitute notice of representation.

(2) * * * (i) When the agency, administrative judge or the Commission determines an entitlement to attorney's fees or costs, the complainant's attorney shall submit a verified statement of attorney's fees (including expert witness fees) and other costs, as appropriate, to the agency or administrative judge within 30 days of receipt of the decision and shall submit a copy of the statement to the agency. A statement of attorney's fees and costs shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. The agency may respond to a statement of attorney's fees and costs within 30 days of its receipt. The verified statement, accompanying affidavit and any agency response shall be made a part of the complaint file.

(ii)(A) The agency or administrative judge shall issue a decision determining the amount of attorney's fees or costs due within 60 days of receipt of the statement and affidavit. * * *

(B) The amount of attorney's fees shall be calculated using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. There is a strong presumption that this amount represents the reasonable fee. In limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency.

* * * * *

21. Section 1614.502 is amended by revising the first sentence of paragraph (a), revising the introductory text of paragraph (b), revising paragraph (b)(2) and adding a new paragraph (b)(3) to read as follows:

§ 1614.502 Compliance with final Commission decisions.

(a) Relief ordered in a final Commission decision is mandatory and binding on the agency except as provided in this section. * * *

(b) Notwithstanding paragraph (a) of this section, when the agency requests reconsideration and the case involves removal, separation, or suspension continuing beyond the date of the request for reconsideration, and when the decision orders retroactive restoration, the agency shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified by the Commission, pending the outcome of the agency request for reconsideration.

* * * * *

(2) When the agency requests reconsideration, it may delay the payment of any amounts ordered to be paid to the complainant until after the request for reconsideration is resolved. If the agency delays payment of any amount pending the outcome of the request to reconsider and the resolution of the request requires the agency to make the payment, then the agency shall pay interest from the date of the original appellate decision until payment is made.

(3) The agency shall notify the Commission and the employee in writing at the same time it requests reconsideration that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the agency to provide notification will result in the dismissal of the agency's request.

* * * * *

§ 1614.504 [Amended]

22. Section 1614.504 is amended by removing the words "final decisions" from the section heading and adding the words "final action" in their place, removing the words "A final decision" from the second sentence of paragraph (a) and adding the words "Final action" in their place, and removing the word "final" from the third sentence of paragraph (a) and the second sentence of paragraph (b).

23. Section 1614.505 is added to subpart E to read as follows:

§ 1614.505 Interim relief.

(a)(1) When the agency appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the administrative judge's decision orders retroactive restoration, the agency shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the agency appeal. The employee may decline the offer of interim relief.

(2) Service under the temporary or conditional restoration provisions of paragraph (a)(1) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the Commission upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure if the Commission reverses the decision on appeal.

(3) When the agency appeals, it may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the complainant until after the appeal is resolved. If the agency delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the agency to make the payment, then the agency shall pay interest from the date of the original decision until payment is made.

(4) The agency shall notify the Commission and the employee in writing at the same time it appeals that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the agency to provide notification will result in the dismissal of the agency's appeal.

(5) The agency may, by notice to the complainant, decline to return the complainant to his or her place of employment if it determines that the return or presence of the complainant will be unduly disruptive to the work environment. However, prospective pay and benefits must be provided. The determination not to return the complainant to his or her place of employment is not reviewable. A grant of interim relief does not insulate a complainant from subsequent disciplinary or adverse action.

(b) If the agency files an appeal and has not provided required interim relief, the complainant may request dismissal

of the agency's appeal. Any such request must be filed with the Office of Federal Operations within 25 days of the date of service of the agency's appeal. A copy of the request must be served on the agency at the same time it is filed with EEOC. The agency may respond with evidence and argument to the complainant's request to dismiss within 15 days of the date of service of the request.

§ 1614.603 [Amended]

24. Section 1614.603 is amended by removing the word "allegations" from the last sentence and adding the word "claims" in its place.

§ 1614.604 [Amended]

25. Section 1614.604 is amended by removing the words "delivered in person" and adding the word "received" in their place in paragraph (b).

26. Section 1614.605 is amended by revising the second sentence of paragraph (d) to read as follows:

§ 1614.605 Representation and official time.

* * * * *

(d) * * * When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. * * *

* * * * *

27. Section 1614.606 is revised to read as follows:

§ 1614.606 Joint processing and consolidation of complaints.

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the agency or the Commission for joint processing after appropriate notification to the parties. Two or more complaints of discrimination filed by the same complainant shall be consolidated by the agency for joint processing after appropriate notification to the complainant. When a complaint has been consolidated with one or more earlier filed complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. Administrative judges or the Commission may, in their discretion, consolidate two or more complaints of discrimination filed by the same complainant.

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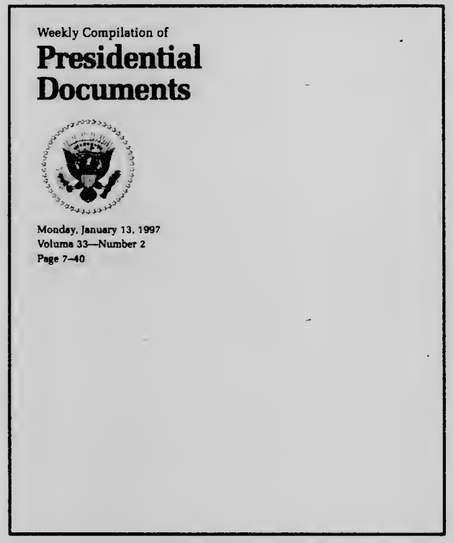
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Rules and Regulations

Federal Register
Vol. 64, No. 133
Tuesday, July 13, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 301

[Docket No. 96–069–3]

High-Temperature Forced-Air Treatments for Citrus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, to allow navel oranges from Mexico and areas of the United States that are infested with plant pests in the genus *Anastrepha*, which includes *A. ludens*, the Mexican fruit fly, to be treated with a high-temperature forced-air process currently approved for tangerines, oranges other than navel oranges, and grapefruit from these areas. This action provides an additional option for treating navel oranges from these areas.

DATES: This rule will be effective on September 13, 1999 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before August 12, 1999. The incorporation by reference of the material listed in the rule is approved by the Director of the Federal Register as of September 13, 1999.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to: Docket No. 96–069–3, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 96–069–3.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Grosser, Senior Import Specialist, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236; (301) 734–6799; or e-mail ronald.c.campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

To prevent the spread of plant pests into or within the United States, the U.S. Department of Agriculture (USDA) restricts the importation and interstate movement of many articles, including fruits. As a condition of movement, some fruits are required to be treated for plant pests in accordance with title 7 of the Code of Federal Regulations (CFR). The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual) of the USDA's Animal and Plant Health Inspection Service (APHIS) contains approved treatment schedules and is incorporated by reference into the CFR at 7 CFR 300.1.

Pursuant to 7 CFR 319.56–2x, USDA allows tangerines, oranges, and grapefruit from Mexico to be imported into the United States if treated in accordance with the PPQ Treatment Manual. In addition, USDA regulates the interstate movement of certain articles from areas of the United States where outbreaks of the Mexican fruit fly have occurred (currently, parts of Texas and California). The pertinent regulations are at 7 CFR 301.64 through 301.64–10; acceptable treatments for the regulated articles are listed in 301.64–10.

On December 30, 1997, we published in the **Federal Register** (62 FR 67761 67763, Docket No. 96–069–1) a proposed rule to, among other things, amend the PPQ Treatment Manual to include high-temperature forced-air treatments for tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States affected with pests in the genus *Anastrepha*, which includes *A. ludens*, the Mexican fruit fly. We also proposed to amend 7 CFR 300.1 to show that the PPQ Treatment Manual had been so changed and to amend 301.64–10(e) of the Mexican fruit fly regulations to indicate that grapefruit, oranges (except navel oranges), and tangerines from areas of the United States infested with the Mexican fruit fly may be treated with high-temperature forced air in accordance with the PPQ Treatment Manual. The high-temperature forced-air treatments we proposed were developed by the USDA's Agricultural Research Service (ARS) in conjunction with APHIS PPQ Methods Development.

We solicited comments for 60 days ending March 2, 1998. We received 28 comments by that date. They were from Mexican citrus producers, USDA employees, a State government, and a citrus industry association. The commenters generally supported the adoption of the proposed high-temperature forced-air treatments. However, some of the commenters suggested changes or clarifications to the proposed treatments. A comment provided by the ARS researchers who did the research upon which the proposed high-temperature forced-air treatments were based suggested the inclusion of a high-temperature forced-air treatment for navel oranges. The ARS commenters stated that research proving the quarantine security of the treatment for navel oranges was performed shortly after the completion of the research on the treatments for oranges other than navel oranges, tangerines, and grapefruit.

After carefully considering the comments, we published a final rule in the **Federal Register** on December 10, 1998 (63 FR 68161–68165, Docket No. 96–069–2), that, among other things, amended the PPQ Treatment Manual to include a single high-temperature forced-air treatment (described below) for tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States affected with pests in the genus *Anastrepha*. We

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also amended 7 CFR 300.1 to show that the PPQ Treatment Manual had been so changed and 301.64–10(e) of the Mexican fruit fly regulations to indicate that high-temperature forced air in accordance with the PPQ Treatment Manual can be used to treat grapefruit, oranges (except navel oranges), and tangerines for movement from areas of the United States infested with the Mexican fruit fly.

In the preamble to the final rule, we stated that we had reviewed the completed data provided by ARS concerning the inclusion of a high-temperature forced-air treatment for navel oranges and had determined that the treatment would be effective for navel oranges as well. We also indicated that we would soon publish in the **Federal Register** a direct final rule to allow the use of the treatment on navel oranges. We did not include the treatment for navel oranges in the final rule because the proposed rule had not addressed navel oranges.

Therefore, we are now amending the PPQ Treatment Manual to add navel oranges to the list of fruits that may be treated with high-temperature forced air for pests in the genus *Anastrepha*. We are also amending 7 CFR 300.1 to show that the PPQ Treatment Manual has been so revised. We are also amending 301.64–10(e) to remove the exception for navel oranges so that all types of oranges from areas of the United States quarantined under the Mexican fruit fly regulations may be treated with high-temperature forced air as specified in the PPQ Treatment Manual. The high-temperature forced-air treatment that will be authorized is described below.

Treatment Procedure

The treatment must be administered in sealed, insulated chambers; the air may be heated in the chambers, or hot air may be introduced into the chambers. The number of temperature probes must be approved in advance during the chamber certification procedure.

Place the temperature probes into the centers of the largest fruit in the load. Place the fruit inside the chamber, seal it, and begin the treatment.

The target temperature is 44 °C (111.2 °F). Throughout the treatment, record the fruit center temperatures at least once every 2 minutes. If it takes less than 90 minutes for the fruit to reach the target temperature, the fruit must remain at the target temperature for any additional time needed to reach 90 minutes, plus another 100 minutes. If the fruit takes 90 minutes or more to reach the target temperature, the fruit must remain at the target temperature for an additional 100 minutes only.

Hydrocooling after treatment is optional.

The treatment is for fruit of the following sizes:

Fruit variety	Standard pack count [1]	Container size (bu)	Maximum weight (g)	Maximum diameter (in)
Tangerines	120	4/5	245 (8.6 oz)	Not specified.
Navel oranges	100	1 3/5	450 (15.9 oz)	3 13/16.
Oranges (other than navel)	100	1 3/5	468 (16.4 oz)	3 13/16.
Grapefruit	70	1 3/5	536 (18.8 oz)	4 5/16.

[1] Standard pack count is an index based on the approximate number of fruit of uniform diameter that fit into a bushel container of the size indicated.

Examples of Treatment Administration

1. If the center temperature of fruit located in the coolest location inside a forced-air chamber required 112 minutes to reach 44 °C, then the total treatment time for the fruit load would be 212 minutes (112 minutes approach time to target temperature + 100 minutes treatment time at target temperature).

2. If the center temperature of fruit located in the coolest location inside a forced-air chamber required 80 minutes to reach 44 °C, then the total treatment time for the fruit load would be 190 minutes (80 minutes approach time to target temperature + 10 additional minutes so that approach time is the required 90 minutes in duration + 100 minutes treatment time at target temperature).

Note: Tolerance data may be obtained from the USDA–ARS Subtropical Research Center, Crop Quality & Fruit Insects, 2301 S. International Blvd., Weslaco, TX 78596, or the USDA–APHIS–PPQ Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule, which allows the use of a process involving high-temperature forced air for treating navel oranges from areas of Mexico and the United States infested with plant pests of the genus *Anastrepha* (which includes *A. ludens*, the Mexican fruit fly), could affect producers and treatment administrators in areas in Texas and California regulated for the Mexican fruit fly and U.S. importers of citrus from Mexico.

The effect of this rule in California should be almost nonexistent as avocados are the major crop in the area in California where an outbreak of the Mexican fruit fly has occurred.

Regulated areas in Texas comprise a major citrus-growing region of the United States. Four of the five regulated production areas in Texas were infested with Mexican fruit flies in fiscal year (FY) 1996 and FY 1997. In treating fruit for export and for shipment to other U.S. citrus-growing areas, producers generally use methyl bromide fumigation, although other options are available. More than 90 percent of the fruit treated are grapefruit; the rest are oranges. In FY 1996, 5.4 million pounds of citrus from regulated areas of Texas were fumigated, and this amount increased to 19.2 million pounds in FY 1997. Ninety percent of the treated fruit is shipped to California, and 10 percent, to Mexico.

Eight fumigation companies treat citrus shipped from the regulated areas of Texas. The fumigation facilities are located in the packing sheds of major packing houses. Some are private companies; others operate as cooperatives. All of the fumigation companies can be considered small entities by Small Business Administration standards (annual revenue less than $5 million, averaged over 3 years).

The use of high-temperature forced air as an alternative treatment for navel oranges could lead to a slight reduction in revenue for the fumigation companies, if the new treatment is found by the growers to be financially preferable. At growers' meetings in the area, the possibility of building and operating one or two high-temperature forced-air treatment facilities as cooperative ventures has been discussed. However, the consensus has been that more information is needed before the sizable expenditures such facilities would require are made. Producers remain concerned about the speed with which the fruit could be treated and the risk of fruit being damaged by the high temperatures. Producers are unlikely to replace fumigation with the proposed high-temperature forced-air process until these issues are resolved to their satisfaction.

Mexico is a major supplier of oranges to the United States, providing one-third or more of all oranges imported. Mexico exported 7,633 metric tons of oranges (worth about $3.7 million) to the United States in 1996; 10,461 metric tons of oranges ($4.9 million) in 1997; and 9,103 metric tons of oranges ($4.2 million) in 1998. Navel oranges represent approximately 25 percent of the oranges imported from Mexico.

Importations of citrus that originate in certain areas of the State of Sonora, Mexico, considered to be free of the Mexican fruit fly require certification only. Oranges are the only fruit exported to the United States from these areas.

Citrus imports from the rest of Mexico must be treated for *Anastrepha* species. Methyl bromide fumigation has been and continues to be an acceptable treatment, and, as of December 10, 1998, high-temperature forced-air has been acceptable for use on tangerines, oranges other than navel oranges, and grapefruit. A facility capable of treating citrus with high-temperature forced air has been built in Mexico; however, it is not yet in operation. The Mexico Citrus Exporters Association estimates that use of the new facility could lead to annual exports to the United States of an additional 453 metric tons (1 million pounds) of navel oranges. To put this estimate in perspective, this amount is 4.9 percent of the total Mexican orange imports into the United States in 1998.

Citrus producers in the regulated areas in Texas are expected to monitor the experiences of Mexican producers with the new treatment and reassess its future adoption. Effects of this rule on fumigation companies in the regulated areas of Texas (and on any fumigation companies that may serve producers in the regulated areas in California) are expected to be negligible to nonexistent. The proposed treatment will provide another alternative for producers and fumigation companies.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR parts 300 and 301 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a) introductory text is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through June 1999 has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–10 [Amended]

4. In 301.64–10, paragraph (e), the words "(except navel oranges)" are removed.

Done in Washington, DC, this 6th day of July 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17613 Filed 7–12–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 331 and 381

[Docket No. 99–036F]

Designation of the State of Alaska Under the Federal Meat Inspection Act and the Poultry Products Inspection Act

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that representatives of the State of Alaska have advised the Department of Agriculture that, because of a lack of funding, the State of Alaska will stop administering its State meat and poultry inspection programs after July 30, 1999. FSIS is mandated by law to assume responsibility for administering the meat and poultry inspection programs with respect to operations and transactions within Alaska. Therefore, in accordance with the law, the Secretary of Agriculture is designating the State of Alaska to receive Federal inspection with respect to operations and transactions within the State, and FSIS is amending the Federal meat and poultry inspection regulations by adding Alaska to the list of "designated" States.

EFFECTIVE DATE: This final rule will be effective on July 31, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. William Leese, Director, Federal-State Relations Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700 at (202) 418–8897.

SUPPLEMENTARY INFORMATION:

Background

Under section 301 of the Federal Meat Inspection Act (FMIA) and section 5 of the Poultry Products Inspection Act (PPIA), a State may administer State meat and poultry inspection programs provided that it has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1–4, 6–10, and 12–22 of the PPIA (collectively referred to below as "the titles"). These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, they must be "designated" by the Secretary to receive Federal inspection.

In accordance with the FMIA and PPIA, the Secretary had determined that the State of Alaska had developed and was enforcing State meat and poultry inspection requirements for establishments at least equal to Federal meat and poultry inspection requirements under the titles. However, on June 14, 1999, representatives of the State of Alaska notified FSIS that, because of a lack of funding, Alaska will no longer continue to administer its State meat and poultry inspection programs after July 30, 1999. The representatives have requested that the Department assume responsibility for the meat and poultry inspection programs.

In view of the termination date, FSIS has determined that the State of Alaska would not effectively enforce requirements at least equal to those imposed under the titles. Therefore, the Secretary of Agriculture must designate the State of Alaska under section 301(c)(3) of the FMIA and section 5(c)(3) of the PPIA. On and after July 31, 1999, the provisions of the titles will apply to operations and transactions within the State of Alaska, unless exempt under sections 23 or 301(c)(2) of the FMIA or sections 5(c)(2) or 15 of the PPIA.

Owners or operators of Alaska's meat and poultry establishments wishing to continue operations after July 30, 1999, must contact the FSIS District Office in Salem, Oregon, in order to receive Federal inspection. This office will provide information concerning requirements and exemptions under the FMIA and the PPIA, applications for inspection, and requests for surveys of establishments. Address correspondence to USDA/FSIS District Office, 530 Center Street, NE, Mezzanine Level, Salem, Oregon 97301.

The Administrator, FSIS, has determined that there is good cause for issuing this final rule without prior notice and opportunity for public comment. Because the State of Alaska has advised FSIS that its State-operated meat and poultry inspection programs will be discontinued, the Agency is mandated by law to assume the responsibilities for administering the meat and poultry inspection programs. It is necessary, therefore, to designate the State of Alaska immediately, in accordance with section 301(c)(3) of the FMIA and section 5(c)(3) of the PPIA, in order to carry out the Secretary's responsibilities under the FMIA and PPIA.

In addition, it does not appear that additional relevant information would be made available to the Secretary by public participation in this rulemaking proceeding. Accordingly, under the administrative procedures in 5 U.S.C. 553, FSIS finds good cause to conclude that notice and other public procedures are impracticable and contrary to the public interest.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Alaska, of administering the meat and poultry inspection programs with respect to operations and transactions within the State of Alaska. This action will affect approximately 13 State meat and poultry establishments that require inspection in Alaska, most, if not all, of which may be presumed to be very small businesses. However, this is not a substantial number of establishments given the approximately 5,790 very small meat and very small poultry establishments nationwide, which are either federally or State inspected. In addition, the application of certain Federal facility and other requirements will be flexible, and each facility will be reviewed with regard to the circumstances peculiar to that establishment. Further, it is not anticipated that significant costs will be incurred by these Alaska establishments as a result of this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or the PPIA.

Paperwork Requirements

This rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or recordkeeping requirements.

List of Subjects

9 CFR Part 331

Meat inspection.

9 CFR Part 381

Poultry and poultry products.

Accordingly, 9 CFR parts 331 and 381 are amended as follows:

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

1. The authority citation for part 331 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 331.2 [Amended]

2. The table in § 331.2 is amended in the "State" column by adding "Alaska" as the first entry immediately above "Arkansas" and in the "Effective date of application of Federal provisions" column, by adding "July 31, 1999" on the line with "Alaska."

§ 331. [Amended]

3. The table in § 331.6 is amended by adding "Alaska" as the first entry immediately above "Arkansas" under the "Sections of act and regulations" columns titled "Act, section 202; §§ 320.1, 320.2, 320.3, and 320.4," "Act, 203; § 320.5," and "Act, 204; §§ 325.20 and 325.21" and in the "Effective date of designation" column by adding "July 31, 1999" on the line with "Alaska."

PART 381—POULTRY PRODUCTS INSPECTION

4. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.221 [Amended]

5. The table in § 381.221 is amended in the "States" column by adding "Alaska" as the first entry immediately above "Arkansas" and in the "Effective date of application of Federal provisions" column, by adding "July 31, 1999," on the line with "Alaska."

§ 381.224 [Amended]

6. The table in § 381.224 is amended by adding "Alaska" as the first entry immediately above "Arkansas" under the "Paragraphs of act and regulations" columns titled "Act, 11(b); §§ 381.175–381.178," "Act, 11(c); § 381.179," and "Act, 11(d); 381.194" and in the "Effective date" column by adding "July 31, 1999" on the line with "Alaska."

Done at Washington, DC, on: July 7, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–17737 Filed 7–12–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–23; Amendment 39–11219; AD 99–14–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that currently requires initial and repetitive inspections of the sixth stage low pressure turbine (LPT) inner airseal, and modification of the sixth stage LPT inner airseal to reduce the potential for two failure modes. This amendment requires additional repetitive borescope inspections for sixth stage LPT inner airseals found with cracks less than one inch in length. This amendment is prompted by the publication of a revision to a PW service bulletin that introduces the new borescope inspections. The actions specified by this AD are intended to prevent an uncontained failure of the sixth stage LPT inner airseal, which can result in damage to the aircraft.

DATES: Effective September 13, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–10–09, Amendment 39–8916 (59 FR 36047, July 15, 1994), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, was published in the **Federal Register** on September 9, 1998 (63 FR 48138). That action proposed to add, at intervals not to exceed 50 cycles in service (CIS) since last inspection, additional repetitive borescope inspections for sixth stage LPT inner airseals found with cracks less than one inch in length, in accordance with PW Service Bulletin (SB) No. 5978, Revision 4, dated May 6, 1998.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters state they are not affected by the proposed rule.

One commenter states that it is not affected by the proposed changes to the current AD.

The FAA has switched the placement of paragraphs (b) and (c) of the proposed rule in order to emphasize that rework of the 6th stage LPT inner airseal rear retaining wing must be performed prior to further flight, but that even after rework, the required ECI or borescope inspections must be performed until installation of an improved 6th stage inner airseal. Therefore, proposed paragraph (b) appears as paragraph (c) in the final rule, and proposed paragraph (c) as paragraph (b). After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with this change. The FAA has determined that this change neither increases the economic burden on any operator nor increases the scope of the AD

There are approximately 566 engines of the affected design in the worldwide fleet. The FAA estimates that 157 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2.1 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,782.

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The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8916 (59 FR 36047, July 15, 1994) and by adding a new airworthiness directive,

Amendment 39–11219, to read as follows:

99–14–08 Pratt & Whitney: Amendment 39–11219. Docket No. 92–ANE–23. Supersedes AD 94–10–09, Amendment 39–8916.

Applicability: Pratt & Whitney (PW) Model JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines, installed on but not limited to Boeing 747 series, McDonnell Douglas DC–10 series, and Airbus A300 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the sixth stage low pressure turbine (LPT) inner airseal, accomplish the following:

(a) Prior to further flight, rework the sixth stage LPT inner airseal knife edge diameters in accordance with the Accomplishment Instructions of PW Service Bulletin (SB) 5847, Revision 2, dated October 31, 1990.

(b) Prior to further flight, rework the sixth stage LPT inner airseal rear retaining wing in accordance with the Accomplishment Instructions of PW SB 5745, Revision 2, dated October 24, 1990.

Note 2: Rework of the sixth stage LPT inner airseal rear retaining wing in accordance with paragraph (b) of this AD does not exempt sixth stage LPT inner airseals from initial and repetitive inspections in accordance with paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(c) Eddy current inspect (ECI) or borescope inspect sixth stage LPT inner airseal rear retaining wings for cracks, as follows:

(1) For sixth stage LPT inner airseals identified by part number (P/N) in PW SB No. 5978, Revision 4, dated May 6, 1998, or Revision 3, dated May 20, 1992, with greater than 500 cycles since new (CSN) on the effective date of this AD, accomplish an initial ECI or borescope inspection prior to accumulating more than 250 cycles in service (CIS) after the effective date of this AD, or 500 CIS since the last in-shop fluorescent penetrant inspection (FPI), whichever occurs later, in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 4, dated May 6, 1998, or Revision 3, dated May 20, 1992.

(2) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 4, dated May 6, 1998, or Revision 3, dated May 20, 1992, with less than or equal to 500 CSN on the effective date of this AD, accomplish an initial ECI or borescope inspection prior to accumulating 750 CSN, or 500 CIS since the last in-shop FPI, whichever occurs later, in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 4, dated May 6, 1998, or Revision 3, dated May 20, 1992.

(3) For sixth stage LPT inner airseals that meet the continue in service criteria described in PW SB No. 5978, Revision 4, dated May 6, 1998, thereafter, ECI or borescope inspect the sixth stage LPT inner airseal retaining wing for cracks at intervals specified in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 4, dated May 6, 1998.

(4) Remove cracked sixth stage LPT inner airseals that do not meet the continue in service criteria described in PW SB No. 5978, Revision 4, dated May 6, 1998, and replace with a new, or serviceable sixth stage LPT inner airseal that has been reworked in accordance with paragraph (c) of this AD.

(5) Thereafter, inspect initially, reinspect, and remove from service, if necessary, the replacement sixth stage LPT inner airseals in accordance with paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(d) Installation of a new, improved 6th stage LPT inner airseal, in accordance with PW SB No. 6054, Revision 1, dated April 24, 1992, constitutes terminating action to the inspections and rework required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following PW SBs:

Document No.	Pages	Revision	Date
5847	1–4	2	October 31, 1990.
	5	Original	April 11, 1989.
	6	2	October 31, 1990.
	7	Original	April 11, 1989.
	8	2	October 31, 1990.
	9	Original	April 11, 1989.
	10	2	October 31, 1990.

Document No.	Pages	Revision	Date
Total pages: 10.			
5978	1	4	May 6, 1998.
	2	Original	December 19, 1990.
	3,4	4	May 6, 1998.
	5	1	October 10, 1991.
	6	4	May 6, 1998.
	7–11	1	October 10, 1991.
	12	4	May 6, 1998.
	13–18	1	October 10, 1991.
	19	4	May 6, 1998.
	20–33	1	October 10, 1991.
	34	2	April 28, 1992.
Total pages: 34.			
5978	1	3	May 20, 1992.
	2	Original	December 19, 1990
	3,4	2	April 28, 1992.
	5	1	October 10, 1991.
	6	4	February 1998.
	7–11	1	October 10, 1991.
	12	3	May 20, 1992.
	13–18	1	October 10, 1991.
	19	3	May 20, 1992.
	20–33	1	October 10, 1991.
	34	2	April 28, 1992.
Total pages: 34.			
5745	1–9	2	October 24, 1990.
Total pages: 9.			
6054	1–4	1	April 24, 1992.
	5–7	Original	November 6, 1991.
	8	1	April 24, 1992.
	9–16	Original	November 6, 1991.
Total pages: 16.			

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 13, 1999.

Issued in Burlington, Massachusetts, on July 2, 1999.

Jay J. Pardee,

Monager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–17427 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–112–AD; Amendment 39–11223; AD 99–15–04]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. (Piper) Models PA–46–310P and PA–46–350P airplanes. This AD requires calibrating the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring for all of the applicable airplanes, and repairing or replacing any turbine inlet temperature system that fails the calibration test. This AD also requires repetitively replacing the turbine inlet temperature probe on the Model PA–46–350P airplanes, and inserting a copy of this AD into the Pilot's Operating Handbook of certain airplanes. This AD is the result of field reports that indicate service accuracy problems with the existing turbine inlet temperature system. The actions specified by this AD are intended to prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane.

DATES: Effective August 31, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Young, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6079; facsimile: (770) 703–6097; e-mail address: "Donald.Young@faa.gov".

SUPPLEMENTARY INFORMATION:

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Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Piper Models PA–46–310P and PA–46–350P airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 23, 1999 (64 FR 13934). The NPRM proposed to require calibrating the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring for all of the applicable airplanes, and repairing or replacing any turbine inlet temperature system that fails the calibration test. The NPRM also proposed to require repetitively replacing the turbine inlet temperature probe on the Model PA–46–350P airplanes, and inserting a copy of this AD into the Pilot's Operating Handbook of certain airplanes.

The NPRM was the result of field reports that indicate service accuracy problems with the existing turbine inlet temperature system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

Comment Disposition

The commenter provides reference to other POH revisions than those referenced in the AD. The commenter recommends that the FAA incorporate these into the final rule.

The FAA concurs and has revised the final rule accordingly.

No comments were received regarding the FAA's estimate of the cost impact upon the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 580 airplanes in the U.S. registry will be affected by the calibration, that it will take approximately 4 workhours per airplane to accomplish the calibration, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the calibration on U.S. operators is estimated to be $139,200, or $240 per airplane.

The FAA estimates that it will take approximately 1 workhour per airplane to accomplish the initial turbine inlet temperature probe replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $518. Based on these figures, the total cost impact of the replacement on U.S. operators is estimated to be $335,240, or $578 per airplane. These figures only take into account the initial replacement and do not take into account the cost of subsequent repetitive replacements. The FAA has no way of determining the number of replacements each owner/operator will incur over the life of the affected airplanes.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–15–04 The New Piper Aircraft, Inc.: Amendment 39–11223; Docket No. 98–CE–112–AD.

Applicability: Models PA–46–310P and PA–46–350P airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane, accomplish the following:

(a) For all affected airplanes (Models PA–46–310P and PA–46–350P), within the next 100 hours time-in-service (TIS) after the effective date of this AD, accomplish the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection, and Turbine Inlet Temperature System Calibration, as follows:

(1) *For Model PA–46–310P airplanes:* Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection in accordance with the PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (section A.(1)(d), pages 1 and 2); and accomplish the Turbine Inlet Temperature System Calibration in accordance with the PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (pages 3 and 4); and

(2) *For Model PA–46–350P airplanes:* Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection in accordance with the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.C, page 1); and accomplish the Turbine Inlet Temperature System Calibration in accordance with the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.I., pages 4 through 7).

Note 2: Operators of the Model PA–46–350P airplanes with over 150 hours TIS on the currently installed turbine inlet temperature probe will have to replace the probe as required in paragraph (c) of this AD. In this case, the operator may want to accomplish the replacement prior to the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection, and Turbine Inlet Temperature System Calibration.

(b) For all affected airplanes (Models PA–46–310P and PA–46–350P), if the results of paragraph (a) of this AD cannot be met (the turbine inlet temperature system indicator cannot be calibrated or the turbine inlet temperature probe fails the inspection), prior to further flight, repair or replace the failed parts with serviceable parts of the following part numbers:

(1) Lewis Turbine Inlet Temperature Analog Indicator, part number 471–008.

(2) Lewis Turbine Inlet Temperature Digital Indicator, part number 548–811.

(3) Turbine Inlet Temperature Probe, part number 471–009 for the Model PA–46–310P airplanes and part number 481–392 for the PA–46–350P airplanes.

(4) Only the Lewis Turbine Inlet Temperature Analog Indicator (referenced in paragraph (b)(1) of this AD) has a zero adjustment screw. The Lewis Turbine Inlet Temperature Digital Indicator (referenced in paragraph (b)(2) of this AD) must be returned to the factory for adjustment or replacement.

(c) For the Model PA–46–350P airplanes, upon accumulating 250 hours TIS on the currently installed turbine inlet temperature probe or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 250 hours TIS: replace the part number 481–392 turbine inlet temperature probe with a new one of the same part number.

(d) For the operators of the airplanes presented in paragraphs (d)(1) and (d)(2) of this AD, within the next 100 hours TIS after the effective date of this AD, incorporate the emergency operation procedures specified in paragraph (e) of this AD for when a turbine inlet temperature system failure occurs while in-flight by inserting a copy of this AD into the applicable Pilots' Operating Handbook/Airplane Flight Manual (AFM/POH):

(1) For all operators of the Model PA–46–310P airplanes that do not have the applicable POH revision incorporated as follows:

POH	Revision/date	Affected serial numbers
VB–1200	16/March 19, 1999	46–8408001 through 46–8608067 and 4608001 through 4608007.
VB–1300	13/February 25, 1999	4608008 through 4608140.

(2) For those operators of the Model PA–46–350P airplanes that do not have the applicable POH revision incorporated as follows:

POH	Revision/date	Affected serial numbers
VB–1332	16/November 14, 1997	4622001 through 4622200.
VB–1609	1/November 21, 1997	463001 through 4636020.
VB–1602	1/November 28, 1997	4636021 through 4636131.
VB–1446	New/December 3, 1997	4636132 through 4636195.
VB–1710	New/February 23, 1999	All serial numbers beginning with 4636196.

(e) The following are emergency operation procedures for when a turbine inlet temperature system failure occurs while in-flight:

(1) *For Model PA–46–310P airplanes:*

(i) If the turbine inlet temperature indication fails during takeoff, climb, descent, or landing, maintain FULL RICH mixture to assure adequate fuel flow for engine cooling.

(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain cruise power setting and lean to 6 gallons per hour (GPH) fuel flow above that specified in the Power Setting Table in Section 5 of the AFM/POH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(2) *For Model PA–46–350P airplanes:*

(i) If the turbine inlet temperature indication fails during takeoff, climb, descent or landing, set power per the POH Section 5 Power Setting Table and then lean to the approximate POH Power Setting Table fuel flow plus 4 GPH.

(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain the power setting and increase indicated fuel flow by 1 GPH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(f) Inserting a copy of this AD into the applicable POH/AFM as required by paragraph (d) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with paragraph (d) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(i) Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106

(j) This amendment becomes effective on August 31, 1999.

Issued in Kansas City, Missouri, on July 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17678 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–8]

Establishment of Class E Airspace; Avon Park, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Avon Park, FL. A Global Positioning System (GPS) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) has been developed for Avon Park Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Avon Park Municipal Airport. The operating status

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of the airport will change from Visual Flight Rules (VFR) operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION: .

History

On May 28, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Avon Park, FL, (64 FR 28944). This action provides adequate Class E airspace for IFR operations at Avon park Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal was received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Avon Park, FL. A GPS RWY 9 SIAP has been developed for Avon Park Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Avon Park Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO FL E5 Avon Park, FL [New]

Avon Park Municipal Airport
(Lat. 27°35'28"N, long. 81°31'40"W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.6-mile radius of Avon Park Municipal Airport, excluding that airspace within the Sebring, Fl Class E airspace area.

* * * * *

Issued in College Park, Georgia, on June 29, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–17760 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Food and Drug Administration

21 CFR Parts 520 and 558

Animal Drugs, Feeds, and Related Products; Chlortetracycline Powder, Etc.; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to correct errors concerning the sponsor of oral chlortetracycline powder, oral tetracycline powder, and interim use of certain medicated feeds. The amendments are required because the regulations did not reflect a change of sponsor from Fermenta Animal Health to Boehringer Ingelheim Vetmedica.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 30, 1997 (62 FR 35075 through 35077), FDA published a document reflecting the change of sponsor of several new animal drug applications from Fermenta Animal Health Co. to Boehringer Ingelheim Vetmedica, Inc. (at that time known as Boehringer Ingelheim Animal Health, Inc.). In 21 CFR 520.445b(d)(4)(iii)(C) and 520.2345d(a)(1) the regulations failed to reflect the change from "054273" to "000010". Also, in 21 CFR 558.15(g)(1) and (g)(2), the regulation failed to reflect the change from "Fermenta Animal Health" to "Boehringer Ingelheim Vetmedica." At this time, the regulations in 21 CFR parts 520 and 558 are amended to reflect the change of sponsor.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the Congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 558 are amended as follows:

PART 520— ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.445b [Amended]

2. Section 520.445b *Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate)* is amended in paragraph (d)(4)(iii)(C) by removing "012286, 053389, and 054273" and adding in its place "000010, 012286, and 053389".

§ 520.2345d [Amended]

3. Section 520.2345d *Tetracycline hydrochloride soluble powder* is amended in paragraph (a)(1) by removing "054273," and adding "000010," before "046573".

PART 558— NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

4. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.15 [Amended]

5. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in paragraphs (g)(1) and (g)(2) by removing "Fermenta Animal Health Co." and adding in its place "Boehringer Ingelheim Vetmedica, Inc."

Dated: June 28, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–17761 Filed 7–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–183F]

21 CFR Part 1308

Schedules of Controlled Substances: Placement of Ketamine into Schedule III

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance ketamine, including its salts, isomers, and salts of isomers, into schedule III of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). As a result of this rule, the regulatory controls and criminal sanctions of schedule III will be applicable to the manufacture, distribution, dispensing, importation and exportation of ketamine and products containing ketamine.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537; Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

Ketamine hydrochloride is marketed in the United States as a general anesthetic for use in human medicine under the trade name Ketalar®. It is also marketed as a veterinary product under various names including Ketajet®, Ketaset®, and Vetalar®. Since 1992, more than 775 reports of ketamine diversion or abuse have been received by the DEA. More than 568 law enforcement reports described encounters of individuals who sold the drug, who had it in their possession and/or were under its influence. Veterinary clinic burglaries which were directed at ketamine were described also. The balance of the reports were of ketamine abuse related hospital emergency department visits.

The wide geographic distribution and prevalence of diversion and/or abuse of ketamine, the spreading notoriety of ketamine as a party drug, Special 'K' or 'K', and the involvement of teenagers and young adults caused the DEA to submit to the Department of Health and Human Services (DHHS) information related to each of the eight factors which are determinative of control under the CSA. The DHHS responded by letter, recommending that ketamine be added to schedule III.

The pharmacological and behavioral effects of ketamine are similar, but somewhat less intense and shorter in duration, to those of the schedule II substance, phencyclidine (PCP). Low dose intoxication with ketamine results in impaired attention, learning, and memory functions. Higher doses may result in ataxia, dizziness, elevated blood pressure, mental confusion, hyperexcitability, catalepsy (the inability to move), amnesia, convulsions, a delusional dream-like state, hallucinations, and psychosis. Long-term use of ketamine is associated with hallucinatory flashbacks, an inability to concentrate, psychological dependence, and tolerance. Reports of ketamine abuse leading to physical or psychological dependence consistent with schedule III criteria have been published.

Diversion of ketamine pharmaceutical products from practitioners has been the most frequently documented source of the drug, with the primary sources being veterinary clinics. The liquid pharmaceutical product is injected or, more commonly, evaporated and the resultant power inhaled (snorted). Clandestine manufacture of ketamine has not been encountered. In contrast to that of PCP, the synthesis of ketamine is difficult.

Notice of Proposed Rule Making

Relying on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health in accordance with section 201(b) of the CSA [21 U.S.C. 811(b)], and the independent review of the DEA, the Deputy Administrator of the DEA, pursuant to Sections 201(a) and 201(b) of the CSA [21 U.S.C. 811(a) and 811(b)] proposed the placement of ketamine, including its salts, isomers, and salts of isomers, into schedule III of the CSA in an April 9, 1999, **Federal Register** notice (64 FR 17299). The notice provided an opportunity for all interested persons to submit their comments or objections in writing on the proposed scheduling of ketamine on or before June 8, 1999.

Comments

The DEA received five comments regarding the proposal. Comments in support of the proposal were received from the American Animal Hospital Association (AAHA), the American Veterinary Medical Association (AVMA), the American Association of Equine Practitioners (AAEP) and a practicing veterinarian. The AAHA, which represents 16,000 veterinary care providers, commented that the movement of ketamine into Schedule III was in the best interest of the veterinary industry and the general public. The AVMA, on behalf of 62,000 members, stated that the security and record keeping required of Schedule III controlled substances will prevent diversion and unauthorized use of ketamine while providing a reasonable mechanism for the continued, responsible use of ketamine for legitimate purposes by members of the veterinary profession. The AAEP which reaches 3.2 million horse owners through its more than 6,200 members world wide strongly supports the placement of ketamine into Schedule III.

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The group commented that anesthesia in the horse poses unique dangers to both handlers and the horse; that ketamine has proven to be the safest induction agent known and remains an important medication to the equine practitioner; that the equine veterinary community is keenly aware of the public health concerns associated with this drug; and that many veterinary practices have already taken precautionary steps to prevent its misuse by keeping the drug restricted and secured. A veterinarian whose hospital in Pennsylvania was broken into by individuals seeking ketamine strongly supports the placement of ketamine into Schedule III and notes that publicity of the mandatory security measures will discourage potential burglars.

The Phoenix Scientific, Inc., a supplier of generic veterinary ketamine hydrochloride injection products, opposed the proposal. In summary, the company posited that: 1. The Fort Dodge Animal Health advocacy of the placement of ketamine into Schedule III might be an attempt to limit the production and distribution of the generic equivalent by reputable firms; 2. the problem of diversion of ketamine is not a factor which needs to be addressed further at the manufacturers' level; 3. compliance with the DEA requirements will cause substantial price increases and not stop diversion; and 4. the manufacturer(s) will be burdened with assisting law enforcement and forensic labs throughout the country because a field test for the identification of ketamine does not exist. Further, the company asked that "a reasonable amount of time" be allowed for coming into compliance with the regulatory requirements if the proposed action were finalized.

In response, the Deputy Administrator finds that the comments do not relate to the factors determinative of control of a substance [21 U.S.C. 811(c)] or the criteria for placement of a substance in a particular schedule [21 U.S.C. 812(b)]. Therefore, he need not address the objections. In relation to the commenter's request for the allowance of sufficient time for coming into compliance with the Schedule III regulatory requirements, the Deputy Administrator notes that, as described below, the DEA will entertain any justified request for an extension of time in the event that the regulations impose special hardships.

Findings

The Deputy Administrator of the DEA, taking into consideration the comments which were received in response to the publication of the proposed rule, and based on the investigations and review conducted by his staff and relying on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health, received in accordance with Section 201(b) of the Act [21 U.S.C. 811(b)], finds, pursuant to Sections 201(a) and 201(b) of the Act [21 U.S.C. 811(a) and 811(b)], that:

(1) Ketamine has a potential for abuse less than the drugs or other substances in Schedules I and II;

(2) Ketamine has currently accepted medical use in treatment in the United States; and

(3) Abuse of ketamine may lead to moderate or low physical dependence or high psychological dependence.

Scheduling Action

Based on these findings, the Deputy Administrator of the DEA concludes that ketamine, including its salts and isomers, and salts of isomers, warrants control in Schedule III in the CSA. The Schedule III controls of ketamine will become effective on August 12, 1999. In the event that the regulations impose special hardships on any registrant, the DEA will entertain any justified request for an extension of time to comply with the Schedule III regulations regarding ketamine. The applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports ketamine or who engages in research or conducts instructional activities or chemical analysis with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations on and after August 12, 1999. Any person who is currently lawfully engaged in any of the above activities must submit an application for registration by August 12, 1999. Any such person may then continue their lawful activities until the DEA has approved or denied that application.

2. *Disposal of stocks.* Any person who elects not to obtain a Schedule III registration or is not entitled to such registration must surrender all quantities of currently held ketamine in accordance with procedures outlined in 21 CFR 1307.21 on or before August 12, 1999, or may transfer all quantities of currently held ketamine to a person registered under the CSA and authorized to possess Schedule III control substances on or before August 12, 1999. Ketamine to be surrendered to DEA must be listed on a DEA Form 41, "Inventory of Controlled Substances Surrendered for Destruction." DEA Form 41 and instructions can be obtained from the nearest DEA office.

3. *Security.* Ketamine must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

4. *Labeling and packaging.* All commercial containers of ketamine, which are packaged on or after January 13, 2000, must have the appropriate Schedule III labeling as required by §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations. Commercial containers of ketamine packaged before January 13, 2000 and not meeting the requirements specified in §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations may be distributed until May 15, 2000. On and after May 15, 2000 all commercial containers of ketamine must bear the CIII labels as specified in §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Registrants possessing ketamine are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations.

6. *Records.* All registrants must keep records pursuant to §§ 1304.03, 1304.04 and 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

7. *Prescriptions.* All prescriptions for ketamine are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulations. All prescriptions for products containing ketamine issued on or before September 13, 1999, if authorized for refilling, shall as of that date be limited to five refills and shall not be refilled after January 13, 2000.

8. *Importation and Exportation.* All importation and exportation of ketamine shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

9. *Criminal Liability.* Any activity with ketamine not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful on or after August 12, 1999.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, Section 3(d)(1). The Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this rule and by approving it, certifies that it will not have a significant economic impact on a substantial number of small business entities. Ketamine products are prescription drugs used as anesthetics in hospitals and clinics. Handlers of ketamine are likely to handle other controlled substances which are already subject to the regulatory requirements of the CSA.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule, as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the United States, on the relationship between the national government and the United States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.13 is amended by redesignating the existing paragraphs (c)(5) through (c)(11) as (c)(6) through (c)(12) and by adding a new paragraph (c)(5) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(c) * * *

(5) Ketamine, its salts, isomers, and salts of isomers [Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone].	7285

* * * * *

Dated: July 7, 1999.

Donnie R. Marshall,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 99–17803 Filed 7–12–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, and 40

[TD 8928]

RIN 1545–AW41

Electronic Funds Transfers of Federal Deposits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deposit of Federal taxes by electronic funds transfer (EFT). The final regulations affect certain taxpayers required to make deposits of Federal taxes. For calendar years beginning after 1999, the final regulations provide rules under which certain taxpayers must make deposits by EFT.

DATES: *Effective Date:* These regulations are effective July 13, 1999.

Applicability Date: For dates of applicability, see § 31.6302–1(h)(2).

FOR FURTHER INFORMATION CONTACT: Vincent Surabian, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1), the Estate Tax Regulations (26 CFR part 20), the Gift Tax Regulations (26 CFR part 25), the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31), and the Excise Tax Procedural Regulations (26 CFR part 40). On March 23, 1999, a notice of proposed rulemaking was published in the **Federal Register** (64 FR 13940). A public hearing originally scheduled in the notice of proposed rulemaking for May 11, 1999, was canceled as there were no requests to speak. Three written comments were received. After consideration of all comments, the proposed regulations are adopted by this Treasury decision.

Explanation of Provisions

Section 6302(h) requires that, beginning in fiscal year 1999, 94 percent of employment taxes and 94 percent of other depository taxes be collected by EFT. The IRS and Treasury Department previously concluded that the deposit threshold had to be set at $50,000 to satisfy this statutory requirement. More recent experience suggests, however, that the statutory requirement can be satisfied even if the threshold is set at a substantially higher level. Moreover, an increase in the threshold would allow small businesses to make the transition to the EFT system at their own pace as they adopt electronic funds transfer in their other business operations. Accordingly, the final regulations increase the deposit threshold to $200,000 in aggregate Federal tax deposits during a calendar year.

The new $200,000 aggregate deposits threshold will be applied initially to 1998 deposits, and taxpayers that exceed the threshold in 1998 will be required to deposit by EFT beginning in 2000. Taxpayers that first exceed the threshold in 1999 or a subsequent year will similarly be required to deposit by EFT beginning in the second succeeding calendar year. A taxpayer that exceeds the threshold will not be permitted to resume making paper coupon deposits if its deposits fall below $200,000 in a subsequent year. Although a similar rule applies under the current regulations, taxpayers that are currently required to deposit by EFT will be given a fresh start and will not be required to use EFT unless they exceed the $200,000 threshold in 1998 or a subsequent calendar year.

The final regulations also expand the types of nondepository tax payments for which voluntary payment by EFT is allowed to include nondepository payments of Federal income, estate and gift, employment, and various specified excise taxes.

Public Comments

Two commentators on the proposed regulations opposed the increase in the threshold to $200,000. They were concerned that financial institutions

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and the Federal government would have to continue to process large volumes of checks and paper coupons.

In addition, they stated that the increase in threshold does not seem justified since the requirement to deposit by EFT does not require an investment by the taxpayer in new technology and greater use of EFT payment methods will contribute to the maintenance of a secure and efficient payment system. The two commentators conclude that the Federal government should continue to use penalty waivers until taxpayers become adept at using the system of depositing by EFT efficiently and accurately. The two commentators did, however, agree with the use of an aggregate deposits test to determine whether a taxpayer is required to deposit by EFT.

As stated in the notice of proposed rulemaking, the IRS and Treasury Department are confident that most taxpayers currently required to deposit by EFT have come to appreciate the simplicity and convenience of the EFT system and will continue to deposit by EFT on a voluntary basis. Despite the increase in the threshold, the continued participation of these taxpayers, coupled with continuing efforts to encourage voluntary enrollment, should ensure the Congressionally-mandated 94 percent of collections by EFT. A lower threshold would, as the commentators suggest, result in even greater use of the EFT system. The IRS and Treasury Department have concluded, however, that the $200,000 threshold appropriately balances concerns relating to small businesses against the benefit of reduced paper transactions.

A third comment suggested removal of the rule in 31 CFR part 203 prohibiting banks from charging fees for processing paper coupon deposits. The regulations in 31 CFR part 203 are issued by the Financial Management Service (FMS) of the Treasury Department, rather than by the Internal Revenue Service. FMS has received similar comments and announced, in the preamble of the 1998 regulations revising 31 CFR part 203 (63 FR 5643), that it intends to issue a notice of proposed rulemaking on removing this prohibition.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Vincent Surabian, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, and 40 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.6302–4 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6302–4 also issued under 26 U.S.C. 6302(a), (c), and (h). * * *

Par. 2. Section 1.6302–4 is revised to read as follows:

§ 1.6302–4 Use of financial institutions in connection with income taxes; voluntary payments by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle A of the Internal Revenue Code, including any payment of estimated tax. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 20.6302–1 also issued under 26 U.S.C. 6302(a) and (h). * * *

Par. 4. Section 20.6302–1 is added to read as follows:

§ 20.6302–1 Voluntary payments of estate taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 20 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 25.6302–1 also issued under 26 U.S.C. 6302(a) and (h). * * *

Par. 6. Section 25.6302–1 is added to read as follows:

§ 25.6302–1 Voluntary payments of gift taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 25 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 7. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 8. Section 31.6302–1 is amended as follows:

1. The heading for paragraph (h)(2) is revised.
2. A heading is added for paragraph (h)(2)(i).
3. New paragraph (h)(2)(i)(C) is added.
4. Paragraph (h)(2)(ii) is revised
5. Paragraph (h)(2)(iii) is added.
6. Paragraph (m) is redesignated as paragraph (n).
7. Paragraph (k) is redesignated as new paragraph (m).
8. Paragraph (j) is redesignated as new paragraph (k).
9. New paragraph (j) is added.

The additions and revisions read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(h) * * *

(2) *Applicability of requirement*—(i) *Deposits for return periods beginning before January 1, 2000.* (A) * * *

(C) This paragraph (h)(2)(i) applies only to deposits required to be made for return periods beginning before January 1, 2000. Thus, a taxpayer, including a taxpayer that is required under this paragraph (h)(2)(i) to make deposits by electronic funds transfer beginning in 1999 or an earlier year, is not required to use electronic funds transfer to make deposits for return periods beginning after December 31, 1999, unless deposits by electronic funds transfer are required under paragraph (h)(2)(ii) of this section.

(ii) *Deposits for return periods beginning after December 31, 1999.* Unless exempted under paragraph (h)(5) of this section, a taxpayer that deposits more than $200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. Thus, a taxpayer that exceeds the $200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in or after calendar year 2000 by electronic funds transfer.

(iii) *Voluntary deposits.* A taxpayer that is not required by this section to use electronic funds transfer to make a deposit of taxes described in paragraph (h)(3) of this section may voluntarily make the deposit by electronic funds transfer, but remains subject to the rules of paragraph (i) of this section, pertaining to deposits by Federal tax deposit (FTD) coupon, in making deposits other than by electronic funds transfer.

* * * * *

(j) *Voluntary payments by electronic funds transfer.* Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle C of the Internal Revenue Code. Such payment must be made in accordance with procedures prescribed by the Commissioner.

* * * * *

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Par. 9. The authority citation for part 40 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6302(a)–1 also issued under 26 U.S.C. 6302 (a) and (h).

Par. 10. Section 40.6302(a)–1 is added to read as follows:

§ 40.6302(a)–1 Voluntary payments of excise taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 40 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Approved: July 2, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–17517 Filed 7–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8827]

RIN 1545–AW49

Removal of Regulations Providing Guidance Under Subpart F Relating to Partnerships and Branches

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary and final regulations.

SUMMARY: This document removes regulations relating to the treatment under subpart F of certain payments involving branches of a controlled foreign corporation (CFC) that are treated as separate entities for foreign tax purposes or partnerships in which CFCs are partners, as published in the **Federal Register** on March 26, 1998. Removal of the temporary regulations will allow Congress and the Treasury the opportunity to consider in greater depth the issues pertaining to hybrid transactions.

EFFECTIVE DATES: These regulations are removed effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Valerie Mark, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1998 (63 FR 14669, March 26, 1998), the IRS issued proposed regulations (REG–104537–97) relating to the treatment under subpart F of certain partnership and hybrid branch transactions. The provisions of the proposed regulations concerning hybrid branch transactions were also issued as temporary regulations (TD 8767) (63 FR 14613, March 26, 1998). Congress and taxpayers raised concerns about the proposed and temporary regulations relating to hybrid branch transactions. Accordingly, as announced in Notice 98–35 (1998–27 I.R.B. 35), the IRS has decided to withdraw the proposed regulations (see document withdrawing proposed regulations and setting out new proposed regulations, published elsewhere in this issue of the **Federal Register**) and remove the temporary regulations. Removal of the temporary regulations will allow Congress and the Treasury the opportunity to consider in greater depth the issues pertaining to hybrid transactions.

Drafting Information: The principal author of these regulations is Valerie Mark, of the Office of the Associate Chief Counsel (International). Other personnel from the IRS and Treasury Department also participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.904–5 [Amended]

Par. 2. In § 1.904–5, paragraph (o) is amended by removing the last sentence.

§ 1.904–5T [Removed]

Par. 3. § 1.904–5T is removed.

§ 1.954–1 [Amended]

Par. 4. Section 1.954–1 is amended by removing paragraph (c)(1)(iv).

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§ 1.954–1T [Removed]

Par. 5. Section 1.954–1T is removed.

§ 1.954–2T [Removed]

Par. 7. Section 1.954–2T is removed.

§ 1.954–9T [Removed]

Par. 9. Section 1.954–9T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 10. The authority citation for 26 CFR part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.7701–3 [Amended]

Par. 11. In § 301.7701–3, the last sentence in paragraph (f)(1) is removed.

§ 301.7701–3T [Removed]

Par. 12. Section 301.7701–3T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 29, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–17369 Filed 7–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[TD 8742]

RIN 1545–AU42 and 1545–AV20

Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 8742), which were published in the **Federal Register** on Wednesday, December 31, 1997 (62 FR 68167), providing the procedures for requesting an extension of time to make certain elections under the Internal Revenue Code.

DATES: This correction is effective December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Cheryl Lynn Oseekey (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Sections 301.9100–2 and 301.9100–3 of the Procedure and Administration Regulations are the subject of these corrections. These regulations require information to be collected from taxpayers seeking to obtain from the Commissioner extensions of time to make certain elections.

Need for Correction

As published, final regulations (TD 8742) contains errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 602

Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 602 is corrected by making the following correcting amendment:

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 1. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. In § 602.101, paragraph (b) is amended by removing the entry for § 301.9100–1 from the table and adding entries for §§ 301.9100–2 and 301.9100–3 to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
301.9100–2	1545–1488
301.9100–3	1545–1488
. . . . .	

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–17518 Filed 7–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–099–007]

RIN 2115–AE47

Drawbridge Operations Regulations; Columbia River, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily revising the operating regulations for the dual Interstate 5 drawbridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The temporary rule will enable the bridge owner to paint the lift towers of the northbound bridge by permitting the vertical lift span to be maintained in the closed (down) position from July 26 to September 26 in 1999 and from July 15 to September 15, 2000, provided that the water level at the bridge remains at or below 6 feet (Columbia River Datum or CRD) at all times during these periods.

DATES: This rule is effective from July 26, 1999, through September 15, 2000.

ADDRESSES: Unless otherwise noted, documents referred to in this preamble are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, WA 98174–1067 or deliver them to room 3510 between 7:45 a.m. and 4:25 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7272.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a notice of proposed rulemaking in the **Federal Register** (64 FR 17134) on April 8, 1999. The Coast Guard received no letters on the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The purpose of the temporary change to the operation regulations for the dual Interstate 5 drawbridges (33 CFR 117.869) is to permit the bridge owner to paint the lift span of the northbound bridge. According to the Oregon Department of Transportation, the entire structure is badly in need of painting to prevent further loss of steel through corrosion. The adjacent southbound bridge on I–5 is a newer structure and is not included in this painting project. Its draw span, however, operates in unison with the southbound draw span and therefore will be affected by this rule.

Current containment requirements to prevent pollution from the lead paint removal make it necessary to install an envelope around the towers which support the movable span and to isolate

the wire ropes within the towers from contamination. This containment system makes it impossible to operate the lift span while it is in place. Derigging such a containment system can not be achieved in a timely fashion for opening the drawbridge for the passage of vessels.

The closure periods are during that part of the year that coincides with lower water levels on the Columbia River. Most vessels are able to pass through one of the two higher fixed spans of the structure south of the drawspan when the river is low. This obviates the need for the dual draw-bridges to open for these vessels. The containment system will not intrude into the two fixed spans while it is in use in the drawspan.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the notice of proposed rulemaking. The start date for the closure period is being changed for 1999 from the proposed date of July 15 to July 26 because the Corps of Engineers, Portland District, has predicted that the river level will not be below 6 feet until the last week of July at the earliest. This is largely due to the late melting of the unusually substantial snow pack in the Cascade Mountains. The rule also changes the ending date for the 1999 temporary closure to September 26 instead of the proposed September 15 date. The Coast Guard will consider granting an extension of the closed period if the river level is predicted to remain at or below 6 feet at the bridges. Any extensions to the closures in this rule will be published separately in the **Federal Register**.

The closed period proposed for the year 2000 remains July 15 to September 15.

This final rule does not provide 30 days notice because a comment period was provided in the notice of proposed rulemaking. Pursuant to U.S.C. 553, notice of proposed rulemaking has been published for this regulation. However, good cause exists for making the final rule effective in less than 30 days from date of publication in the **Federal Register**. Publishing a final rule with 30 days notice before it becomes effective would be contrary to public interest since immediate action is necessary. Due to the complex planning and coordination of this bridge maintenance with water levels, the Coast Guard was not provided with notice of the final details of water level predictions for 1999 until less than 30 days prior to the date the maintenance is scheduled to begin. If normal notice and comment procedures were followed, this rule would not become effective until after the date that the maintenance is scheduled to begin. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Regulatory Evaluation

This final rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard Expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The final rule would permit vital maintenance to be performed without unreasonable inconvenience to river traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); § 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. From July 26, 1999, to September 15, 2000, a new paragraph (a)(3) is added to § 117.869 to read as follows:

§ 117.869 Columbia River.

(a) * * *

(3) The draws of the dual Interstate 5 Bridges, mile 106.5, between Portland, OR and Vancouver, WA, need not open for the passage of vessels from July 26 to September 26, 1999, and from July 15 to September 15, 2000, provided that the river level remains at or below 6 feet Columbia River Datum. If the river level rises to more than 6 feet, the bridges shall operate as provided in paragraphs (a)(1) and (2) of this section.

* * * * *

Dated: 23 June 1999.

Paul M. Blayney,

Rear Admiral, Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 99–17674 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–115]

RIN 2115–AA97

Safety Zone: T E L Enterprises Fireworks Display, Great South Bay off Davis Park, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the T E L

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Enterprises Fireworks Display to be held in Great South Bay off Davis Park, N.Y. on August 7, 1999. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective from August 7, 1999, at 7:45 p.m. until 8:45 p.m. on August 8, 1999. For rain dates for this event, refer to the regulatory text set out in this rule.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, new Haven, CT 06512. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after Federal Register publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

T E L Enterprises is sponsoring a 15 minute fireworks display in Great South Bay off Davis Park, N.Y. The fireworks display will occur on August 7, 1999, from 8:15 p.m. until 8:30 p.m. The safety zone covers all waters of Great South Bay within a 600 foot radius of the fireworks launching barge which will be located in approximate position 40°41′17″N, 073°00′20″W (NAD 1983). This zone is required to protect the maritime community from the dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Great South Bay off Davis Park and entry into this zone will be restricted for only 60 minutes on August 7, 1999. Although this regulation prevents traffic from transiting this section of Great South Bay, the effect of this regulation will not be significant for several reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule by selected. No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–115 to read as follows:

§ 165.T01–115. T E L Enterprises Fireworks Display, Great South Bay off Davis Park, N.Y.

(a) *Location.* The safety zone includes all waters of Great South Bay within a 600 foot radius of the launch barge located in approximate position 40°41′17″N, 073°00′20″W (NAD 1983).

(b) *Effective date.* This section is effective on August 7, 1999 from 7:45 p.m. until 8:45 p.m. August 8, 1999, at the same times as the scheduled rain date for this event.

(c) *Regulations.* (1) The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

P.K. Mitchell,

Captain, Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–17809 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV016–6010a; FRL–6372–3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Approval of Revisions to Coal Preparation Plants and Coal Handling Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the West Virginia State Implementation Plan (SIP). The revisions concern regulations for coal handling and preparation facilities. New permitting, monitoring, reporting, and testing requirements are included for these facilities and new emission limits are included for facilities that are located in the Follansbee particulate matter nonattainment area. EPA is approving these revisions to West Virginia's regulation 45CSR5 "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations" in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on September 13, 1999 without further notice, unless EPA receives adverse written comment by August 12, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for pubiic inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, or by e-mail at knapp.ruth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1991, EPA received an attainment plan from West Virginia for the Follansbee PM–10 nonattainment area.[1] The plan consisted of several portions including bilateral consent orders between the State of West Virginia and six companies in the Follansbee area, emergency revisions to West Virginia Regulation 5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants", and air quality modeling. EPA advised the State that the revisions to Regulation 5 were not approvable as a SIP revision because West Virginia's emergency rules, are by State law, temporary. On August 10, 1993, West Virginia submitted formal State Implementation Plan (SIP) revisions to EPA of the permanently adopted revisions to Regulation 5. The SIP revision provides new emission limits and operating practices for coal preparation and handling facilities in the Follansbee, West Virginia PM–10 nonattainment area and new permitting, monitoring, reporting and testing requirements for coal handling facilities statewide.

Summary of the SIP Revision

The revisions to Regulation 5 are scattered throughout the rule. The major changes to the rule are provisions for the following:

(1) Special limits on emissions from coal handling operations and coal preparation plants in the Follansbee PM–10 nonattainment area, including an emission limit of 0.001 pounds of particulate matter per ton of coal crushed or screened; a limit of 5% opacity from any crushing, screening, or conveying operation; and a plan to control fugitive dust from haul roads, pile areas, berms, and plant access roads;

(2) A requirement for the continuous measurement of exit gas temperature or scrubber pressure drop and water pressure at thermal drier units statewide; and

(3) Revisions to reporting and testing requirements, and provisions related to granting variances.

These regulations went into effect in the State of West Virginia in 1993. EPA is publishing this revision to West Virginia's Regulation 5 without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 13, 1999 without further notice unless EPA receives adverse comment by August 12, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action.

[1] The Follansbee particulate matter nonattainment area is that part of Brooke County, West Virginia west of State Route 2, north of an eastward extension of the southern boundary of Steubenville Township, Ohio, and south of the Market Street Bridge. There is only one coal preparation facility in the Follansbee area, and it has been inactive for several years.

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Any parties interested in commenting must do so at this time.

II. Final Action

EPA is approving the revisions to West Virginia Regulation 5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Facilities". These revisions strengthen the State Implementation Plan by providing additional controls for particulate matter.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the revisions to West Virginia regulation 45 CSR 5 must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 29, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraphs (c)(42) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(42) Revisions to the West Virginia Regulations for coal preparation and handling facilities 45CSR5 submitted on August 10, 1993 by the West Virginia Department of Commerce, Labor and Environmental Resources:

(i) Incorporation by reference.

(A) Letter of August 10, 1993 from the West Virginia Department of Commerce, Labor, and Environmental Resources transmitting revisions to West Virginia's regulation 45CSR5 "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".

(B) Revisions to West Virginia regulation 45CSR5 regarding coal preparation and handling plants specifically: Revisions to 45CSR5 which require specific emission limits on particulate matter emissions at coal preparation and handling facilities in the Follansbee PM10 nonattainment area, monitoring of thermal driers and control equipment statewide, revised permitting, testing and reporting requirements.

(ii) Additional Material—Remainder of the August 10, 1993 submittal on 45CSR5.

[FR Doc. 99–17626 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6376–5]

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final rule amends the national emission standard for hazardous air pollutants (NESHAP) for halogenated solvent cleaning by: permanently exempting nonmajor (or "area") batch cold solvent cleaning machines that use halogenated solvent from the Federal operating permit program; and deferring Federal operating permit requirements until December 9, 1999 for all other nonmajor halogenated solvent cleaning machines. With this amendment, these sources will be treated by our Federal Operating Permits Program in the same way EPA allows them to be treated by State operating permit programs adopted under title V of the Clean Air Act (CAA). State programs are already allowed to exempt/defer such sources from their requirements for title V operating permits. Without today's amendment, sources located in areas that do not have State title V permit programs (such as Indian country) could be subject to more burdensome requirements than may apply to sources located elsewhere. Today's action will reduce an undue regulatory burden on industry as well as on EPA's Regional Offices.

DATES: This rule takes effect on September 13, 1999, without further notice unless EPA receives adverse comment by August 12, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments.* If you have adverse comments on this action, you may submit them in writing (in duplicate, if possible) to Docket No. A–92–39 at the following address: Air and Radiation Docket and Information Center (MC–6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. EPA requests that you send a separate copy of the comments to the contact person listed below at the same time that you submit comments to the docket.

Docket. Today's direct final rulemaking and other related materials are available for review in the docket. Copies may be obtained by request from the Air Docket by calling (202) 260–7548. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC, 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information about the final rule, contact Candace Carraway (telephone 919–541–3189), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Drop 12, Research Triangle Park, North Carolina, 27711.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used we mean EPA.

Entities Affected by This Action

Entities affected by this action are stationary air sources that are nonmajor halogenated solvent cleaning machines (typically known as "degreasers") that are (1) subject to subpart T of 40 CFR part 63, and (2) subject to the Federal Operating Permits Program rule at 40 CFR part 71. Examples of affected categories and entities are in the following table:

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Category	NAICS code	Examples of affected entities
Halogenated Solvent Cleaners	447	Gasoline Stations.
	332	Fabricated Metal Product Manufacturing.
	333	Machinery Manufacturing.
	334	Computer and Electronic Product Manufacturing.
	335	Electrical Equipment, Appliance, and Component Manufacturing.
	336	Transportation Equipment Manufacturing.

This table is not exhaustive. Numerous industries use halogenated solvent cleaners. Other types of entities not listed in the table could also be affected by this action.

Rationale for Direct Final Rulemaking

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate proposal to exempt and defer nonmajor halogenated solvent cleaners if adverse comments are filed. This rule will be effective on September 13, 1999, without further notice unless we receive adverse comment by August 12, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a later final rule based on the proposed rule. We will not start a second comment period on this action. If you want to comment, you must do so at this time.

Outline

The contents of today's preamble are listed in the following outline:

I. Background of the Final Rule
A. Statutory and Regulatory Framework
B. Rationale for Exemption/Deferral
II. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Regulatory Flexibility
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act
F. Submission to Congress and the General Accounting Office
G. Executive Order 13045
H. Executive Order 12875
I. Executive Order 13084
J. National Technology Transfer Advancement Act

I. Background of the Final Rule

Under section 112 of the CAA, stationary air pollution sources that do not have the potential to emit 10 or more tons per year of a single hazardous air pollutant (HAP) and 25 or more tons per year of total HAP are nonmajor or area sources. Our regulations provide that sources with the potential to emit greater than these levels are major sources and must obtain a title V operating permit from a State, local, or Tribal permitting authority, or from us if the permitting authority does not administer a permit program that we have approved.

Many halogenated solvent cleaners are nonmajor sources. When we adopted regulations for halogenated solvent cleaners, we allowed State and local agencies to exempt or defer nonmajor sources from their permit programs. Today's rulemaking provides a level playing field by allowing nonmajor halogenated solvent cleaners out of our Federal Operating Permit Program on a permanent or temporary (deferred) basis.

However, a title V permit is required if the nonmajor or area halogenated solvent cleaner is:

- Subject to title V for a reason other than being subject to the area source requirements in the NESHAP for halogenated solvent cleaning, or
- Located at a facility that is required to obtain a title V permit (e.g., the facility is a major source).

The statutory and regulatory framework discussed below provides background information on the permitting requirements of title V of the CAA, the criteria that we use to decide whether to allow the exemption of sources from permitting requirements, and the action we have already taken to allow State, local, and Tribal agencies to exempt or defer nonmajor halogenated solvent cleaners.

A. Statutory and Regulatory Framework

1. Permitting Requirements under the CAA

Title V of the CAA as amended in 1990 (42 U.S.C. 7661 et seq.) requires us to develop regulations that set minimum standards for approvable State programs for operating permits. We issued those regulations (codified in part 70 of chapter I, title 40, of the CFR) on July 21, 1992 (57 FR 32250).

We issued rules establishing the Federal Operating Permit Program on July 1, 1996 (61 FR 34202), codified at 40 CFR part 71. The part 71 regulations authorize us to issue permits when a State, local, or Tribal agency has not developed an approvable program, has not adequately administered or enforced its approved operating permits program, or has not issued permits that comply with the applicable requirements of the CAA.

Section 502(a) of the CAA initially requires that major and nonmajor sources subject to standards or regulations under section 111 or 112 of the Act obtain operating permits. However, section 502(a) also provides that in some cases, we may exempt certain nonmajor source categories from the requirement to obtain operating permits. This means that nonmajor sources that are subject to the NESHAP for halogenated solvent cleaning must obtain title V permits unless the requirement is deferred or the sources are exempted from the requirement to obtain a permit.

2. Criteria for Exemptions from Permitting Requirements

We may exempt certain source categories from the requirement to obtain operating permits if we determine through rulemaking that compliance with such requirements is "impracticable, infeasible, or unnecessarily burdensome on such categories." We may not exempt major sources. When we issue standards or other requirements under section 112 of the CAA, we determine whether to exempt any or all nonmajor sources subject to the standard or requirement from the requirement to obtain a title V permit (40 CFR 70.3(b)(2); 40 CFR 71.3(b)(2)). If a NESHAP does not exempt or defer nonmajor sources from title V permitting, then nonmajor sources that are subject to the NESHAP must obtain title V permits (40 CFR 63.1(c)(2)(iii)).

3. Exemption and Deferral under the NESHAP for Halogenated Solvent Cleaning

The NESHAP for halogenated solvent cleaning were proposed in the **Federal Register** on November 29, 1993 (58 FR 62566) and were promulgated on December 2, 1994 (59 FR 61801). These standards were codified at 40 CFR part 63, subpart T.

In the 1994 final rule for halogenated solvent cleaning, we determined that

compliance with part 70 permitting requirements administered by State and local permitting authorities would be impracticable, infeasible, or unnecessarily burdensome on such sources. So, the final rule provided that owners or operators of any batch cold solvent cleaning machine that was not itself a major source of pollutants and that was not located at a major source could be exempt from permitting requirements under State title V operating permit programs (known as "part 70 programs")(40 CFR 63.468(j)). In addition, the final rule provided that States could defer permitting requirements for 5 years under their part 70 programs for all other types of solvent cleaning machines subject to subpart T, if the machines are not major or located at major sources. On June 5, 1995 (60 FR 29484), we promulgated corrections to the NESHAP which clarified the length of the deferral for nonmajor halogenated solvent cleaners, i.e., such sources may be deferred from part 70 permitting requirements until December 9, 1999.

B. Rationale for Exemption/Deferral

Today's action is necessary because the final NESHAP for halogenated solvent cleaning did not address whether to exempt or defer the permitting requirements that apply to sources that are subject to the part 71 program. We had not yet established the part 71 program when the final NESHAP was issued. It has recently come to our attention that numerous nonmajor halogenated solvent cleaners are located in Indian country. We believe it would not be appropriate to leave these sources subject to our operating permits program by default without considering whether the burden of obtaining permits would be any different for them than it would be for sources that are currently deferred or exempted under State and local operating permits programs. Without today's rulemaking, nonmajor halogenated solvent cleaners that are located in areas subject to the part 71 program (such as Indian country) would have to obtain a permit, while similar sources located in other areas might not. Today's action will eliminate this disparate treatment. However, note that today's action does not relieve sources of the requirement to meet all applicable requirements established by the NESHAP. Also, today's action does not affect the authority of State, local, or Tribal permitting authorities to require that these sources obtain title V permits.

The great majority of nonmajor sources nationwide are owned or operated by small businesses, and we believe this is also true for nonmajor halogenated solvent cleaners in Indian country. If required to obtain permits, many such businesses would require greater assistance from the permitting staff at our Regional Offices because of their relative lack of technical and legal expertise, resources, and experience in dealing with environmental regulation. If our Regional Offices are overburdened from a backlog of permits to be processed, nonmajor sources will be unable to obtain technical and procedural assistance necessary to help them file timely and complete applications. This scenario would constitute an impracticable, infeasible, and unnecessary burden on these nonmajor sources, especially considering that by definition they emit less than majors.

Currently, we administer the part 71 program for sources in U.S. Territories and on the Outer Continental Shelf as well as in Indian country. The vast majority of sources subject to the part 71 program are located in Indian country. We estimate that as many as 200 nonmajor halogenated solvent cleaners are in Indian country, and that most are owned or operated by small entities, primarily small gasoline service stations and repair shops.

We believe that requiring nonmajor halogenated solvent cleaners in Indian country to obtain title V permits when similar sources located elsewhere are generally not required to do so would have a disparate impact on the economies of Tribal communities. One of the benefits of the title V program is that it has improved enforcement of, as well as compliance with, applicable requirements that are included in the permit. However, we have previously concluded that for nonmajor halogenated solvent cleaners, States may determine that the burden associated with permitting outweighs the enhancement to the enforceability of the NESHAP which would result from including the standards in a part 70 permit. Similarly, we believe that the burden of permitting nonmajor halogenated solvent cleaners under the part 71 program outweighs the enforcement benefits. Also, we believe it is reasonable for purposes of national consistency for part 71 to provide such nonmajor sources the same relief from permitting requirements as is available under most State part 70 programs. So today's rule will exempt nonmajor batch cold solvent cleaners from part 71 and defer part 71 permitting requirements for other nonmajor halogenated solvent cleaners.

Besides burdening sources, requiring our Regional Offices to issue permits to these nonmajor sources would be burdensome on us and would divert our resources from permitting larger emitting sources. Unlike States, we have just 2 years in which to take action on all part 71 permit applications from Indian country sources. Permitting large numbers of nonmajor sources would stress our permitting system at its most vulnerable time and possibly keep us from issuing permits to both major and nonmajor sources on time. It could also divert resources from our efforts to develop substantive pollution control programs in Indian country and to assist Tribes in developing their own programs. Since pollution control programs in Indian country are far less developed than in neighboring States, we believe these efforts are more important than requiring nonmajor halogenated solvent cleaners to get part 71 permits.

The deferral from part 71 permitting requirements which is established in today's rulemaking extends to December 9, 1999 which is 5 years after the effective date of the first part 70 program that we approved. The existing deferral authorized for State, local, and Tribal part 70 programs also expires on December 9, 1999. If the deferral is not extended further, then halogenated solvent cleaners that are currently deferred would be required to submit title V permit applications to the applicable permitting authority (State, local, Tribal, or EPA) by December 9, 2000. Before that date, we plan to complete a rulemaking that addresses whether to extend the deferral under both part 70 and part 71 programs. The exemption for nonmajor batch cold solvent cleaners under part 70 and part 71 will not expire on December 9, 1999. No additional rulemaking is needed to extend it.

II. Administrative Requirements

A. Docket

The docket for this regulatory action is A–92–39. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking.

B. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

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1. Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the rights and obligation of recipients thereof;

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of E.O. 12866, it has been determined that this rule is not a "significant" regulatory action because it does not raise any of the issues associated with "significant" regulatory actions. The rule will have a negligible effect on the economy and will not create any inconsistencies with other actions by other agencies, alter any budgetary impacts, or raise any novel legal or policy issues. For these reasons, this action was not submitted to OMB for review.

C. Regulatory Flexibility

We have determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. We have also determined that this final rule will not have a significant economic impact on a substantial number of small entities. There are no compliance costs associated with this action. As explained earlier in this notice, this action relieves sources of regulatory requirements under the title V program.

D. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by OMB. Today's changes to the NESHAP would not increase the information collection burden estimates made previously. In fact, they are expected to reduce the required paperwork by providing the opportunity for delays for some sources and exemptions for others from requirements to obtain a title V permit.

E. Unfunded Mandates Reform Act

Today's action imposes no costs on State, local, and Tribal governments. The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector, in any 1 year. Therefore, the Agency concludes that it is not required by section 202 of the Unfunded Mandates Reform Act of 1995 to provide a written statement to accompany this regulatory action.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Executive Order 13045

The E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1977), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

We interpret E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because: (1) it is not an economically significant rule as defined by E.O. 12866, and (2) it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 12875: Enhancing Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

The EPA has concluded that this rule will not create a mandate upon any State, local, or Tribal governments.

I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. It does not result in any expenditure of Tribal government revenue or have any impact on Tribal governments. The rule applies to all nonmajor sources for which EPA is the permitting authority, regardless of whether they are located in Indian country. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials, the National Fire Protection Association, and the Society of Automotive Engineers. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, consideration of voluntary consensus standards is not relevant to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Operating permits.

Dated: July 6, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as set forth below.

Part 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—[Amended]

2. Section 63.468 is amended by revising paragraph (j) to read as follows:

§ 63.468 Reporting requirements.

* * * * *

(j) The Administrator has determined, pursuant to the criteria under section 502(a) of the Act, that an owner or operator of any batch cold solvent cleaning machine that is not itself a major source and that is not located at a major source, as defined under 40 CFR 70.2 or 71.2, whichever is applicable, is exempt from title V permitting requirements for that source. An owner or operator of any other solvent cleaning machine subject to the provisions of this subpart is subject to title V permitting requirements. These sources, if not major or located at major sources as defined under 40 CFR 70.2 or 71.2, whichever is applicable, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the effective date of the first part 70 program approved by EPA (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet the compliance schedule as stated in § 63.460.

* * * * *

[FR Doc. 99–17628 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6375–1]

RIN 2060–AG76

Regulation of Fuels and Fuel Additives: Corrections to Standards and Requirements for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: Through the 1990 amendments to the Clean Air Act (CAA), Congress required EPA to publish rules requiring that gasoline sold in certain areas be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds. EPA published rules for the certification and enforcement of reformulated gasoline (RFG) and provisions for non-reformulated or conventional gasoline on February 16, 1994.

In a final rule published on December 31, 1997, EPA took final action on several revisions to the RFG/conventional gasoline regulations. However, the December 31, 1997 final rule included two clerical errors. One of these errors involved an incorrect designation in the amendatory language published in the **Federal Register**, which resulted in the inadvertent deletion of certain regulatory text when the regulation was published in the Code of Federal Regulations (CFR) on July 1, 1998. The other was a typographical error in a revised chart for Phase II Complex Model Averaged Standards for RFG. The correct text for both appears in earlier editions of the CFR. This action corrects these errors in the current CFR. This action does not make any substantive changes to the RFG/conventional gasoline regulations.

DATES: This action will be effective on July 27, 1999.

ADDRESSES: Materials relevant to the final rule establishing standards for reformulated gasoline and anti-dumping standards for conventional gasoline are contained in Public Dockets A–92–01, A–92–12, and A–97–03 and are incorporated by reference. These materials are available for review at EPA's Air Docket Section, Waterside Mall (Room M–1500), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Fuels and Energy Division, U.S. EPA, 401 M Street, S.W. (6406J), Washington, D.C. 20460. Telephone: (202) 564–8989.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Regulated categories and entities affected by this action include:

Category	NAICS [1]	SIC Codes [2]	Examples of regulated entities
Industry	324110	2911	Refiners, importers, and distributors of motor vehicle fuel; motor vehicle fuel retail outlets and wholesale purchaser-consumer facilities.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) System Code.

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This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of part 80, subparts D, E and F, of title 40 of the Code of Federal Regulations. If you have questions regarding applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT SECTION**

Today's correcting amendments are available electronically on the day of publication from the Office of Federal Register Internet Web site listed below. Today's correcting amendments are also available from the EPA Office of Mobile Sources Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for Internet connectivity.

EPA Web Site:

http://www.epa.gov/docs/fedrgstr/EPA-air/
(either select desired date or use Search feature)

Office of Mobile Sources (OMS) Web Site:

http://www.epa.gov/omswww/
(look in "What's New" or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

I. Correction of Typographical Error in § 80.41(f)

On December 31, 1997, EPA published a final rule which made several revisions to the RFG/conventional gasoline regulations, including the deletion of the NOx per-gallon minimum standards for complex model averaged RFG. However, the December 31, 1997 **Federal Register** rule, which re-published the charts at §§ 80.41(d) and (f) (Phase I and Phase II Complex Model Averaged Standards) to delete the NOx per-gallon minimum standards, included a typographical error in the entry for the benzene per-gallon standard in the chart at § 80.41(f). The entry for the benzene per-gallon standard at § 80.41(f) in the December 31, 1997 notice reads "Per-Gallon Minimum" whereas the proper designation is "Per-Gallon Maximum." As a result, this improper designation was published in the July 1, 1998 CFR. The proper designation appeared in the final RFG rule published in the **Federal Register** on February 16, 1994, and in all editions of the CFR published between the publication of the final rule in 1994 and the July 1, 1998 edition. Today's action will correct the CFR to again properly designate the per-gallon standard for benzene at § 80.41(f) as "Per-Gallon Maximum."

II. Correction of Inadvertent Deletion of Regulatory Text at § 80.101(f)(4)

The December 31, 1997 **Federal Register** rule, which finalized several revisions to the RFG rule, included a revision to the introductory text of paragraph of § 80.101(f)(4). However, the amendatory language in the **Federal Register** rule failed to designate that the revision to paragraph (f)(4) affected only the introductory text and that the remainder of paragraph (f)(4) was to remain unchanged. As a result, paragraphs (f)(4)(i) and (f)(4)(ii) were inadvertently deleted in the July 1, 1998 CFR. Today's action corrects this error.

In a rule published on June 9, 1999, (64 FR 30904), a new paragraph (f)(4)(iii) was added to § 80.101. The June 9, 1999 rule reserved paragraphs (f)(4)(i) and (f)(4)(ii), the original text of which is being reinstated by this action. The June 9, 1999 rule also inadvertently deleted the introductory text of § 80.101(f)(4), which is being reinstated by today's action. Because the June 9, 1999 rule is effective on July 26, 1999, the effective date of today's action is July 27, 1999, so that this action will supersede the June 9, 1999 rule regarding the § 80.101(f)(4) introductory text and the text of paragraphs (f)(4)(i) and (f)(4)(ii).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 F.R. 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because it does not include any information collection requirements. This rule is not subject to the requirements of the National Technology Transfer and Advancement Act (NTTAA) because it does not include provisions for technical standards.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on July 27, 1999.

List of Subjects in 40 CFR Part 80

Environmental Protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: July 1, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.41 is amended by amending the paragraph (f) table "Phase II Complex Model Averaged Standards" by revising the entry for "Benzene (percent, by volume)" to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(f) * * *

PHASE II COMPLEX MODEL AVERAGED STANDARDS

* * * * *	
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

* * * * *

3. Effective July 27, 1999, § 80.101 is amended by adding paragraph (f)(4) introductory text, (f)(4)(i) and (f)(4)(ii) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(f) * * *

(4) Any compliance baseline under paragraph (f)(1) of this section shall be adjusted for each averaging period as follows:

(i) If the total volume of the conventional gasoline, RBOB, reformulated gasoline, and California gasoline as defined in § 80.81(a)(2), produced or imported by any refiner or importer during the averaging period is equal to or less than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), the compliance baseline for each parameter or emissions performance shall be that refiner's or importer's individual 1990 baseline; or

(ii) If the total volume of the conventional gasoline, RBOB, reformulated gasoline, and California gasoline as defined in § 80.81(a)(2), produced or imported by any refiner or importer during the averaging period is greater than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), the compliance baseline for each parameter or emissions performance shall be calculated according to the following formula:

$$CB_i = \left(B_i * \left(\frac{V_{1990}}{V_a}\right)\right) + \left(DB_i * \left(1 - \frac{V_{1990}}{V_a}\right)\right)$$

Where:

CB_i = The compliance baseline value for parameter or emissions performance i.

B_i = The refiner's or importer's individual baseline value for parameter or emission performance i calculated according to the methodology in § 80.91.

DB_i = The anti-dumping statutory baseline value for parameter or emissions performance i, as specified at § 80.91(c)(5)(iii) or (c)(5)(iv), respectively.

V_{1990} = The 1990 baseline volume as determined under § 80.91(f)(1).

V_a = The total volume of reformulated gasoline, conventional gasoline, RBOB, and California gasoline as defined in § 80.81(a)(2) produced or imported by a refiner or importer during the averaging period.

* * * * *

[FR Doc. 99–17496 Filed 7–12–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

Global Positioning System (GPS) Technology; Extension of Application Date

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of extension of deadline for submission of applications to participate in the GPS technology pilot demonstration project.

SUMMARY: The FHWA is extending the deadline for motor carriers to submit applications to participate in the agency's Global Positioning System (GPS) technology pilot demonstration project. This project allows qualified motor carriers that use GPS technology and related safety management computer systems to enter into an agreement with the FHWA to use such systems to record and monitor drivers' hours-of-service, in lieu of requiring them to prepare handwritten records of duty status. This project is intended to demonstrate that the motor carrier industry can use this technology to improve compliance with the hours-of-service requirements in a manner which promotes safety and operational efficiency while reducing paperwork.

DATES: Applications must be received on or before December 31, 1999.

ADDRESSES: Written applications should be mailed to the Office of Motor Carrier Research and Standards (HCS–10), Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Research and Standards (HMCS–10), (202) 366–4009, or Mr. Charles Medalen, Office of Chief Counsel (HCC–20), (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Application requests and specific questions regarding this pilot demonstration project may also be directed to the contact person(s) named in this notice or the Division Offices of the FHWA in your State.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

On September 30, 1988, the FHWA published a final rule (53 FR 38666) to allow motor carriers to use certain automatic on-board devices to record their drivers' duty status in lieu of the handwritten records required by 49 CFR 395.8. This provision is now codified at 49 CFR 395.15. Many motor carriers employing this technology found that their compliance with the hours-of-

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service regulations improved. New technologies are emerging, however, and the narrowly crafted on-board recorder provision is becoming obsolete.

Before considering changes to the rule, the FHWA determined that it would be prudent to demonstrate the effectiveness of more recent technology for ensuring compliance with the hours-of-service regulations. On April 6, 1998, the FHWA announced a pilot project that would allow motor carriers to use GPS tracking systems and related computer programs to monitor compliance with the hours-of-service regulations. Drivers would be exempted from the requirement to maintain paper logs (63 FR 16697). Werner Enterprises, Inc., was the first carrier to enter into an agreement with the FHWA to use a GPS system for this purpose. The FHWA believes GPS technology and many of the complementary safety management computer systems currently available to the motor carrier industry provide at least the same degree of monitoring accuracy as 49 CFR 395.15. The FHWA also believes the project will demonstrate that reduced paperwork and recordkeeping requirements are consistent with highway safety, while providing economic advantages to the motor carrier industry.

Reason for Extending the Application Deadline

The FHWA has received letters or telephone calls from 17 entities that have expressed their desire to participate in the pilot program. Development of the related safety management computer systems has been slow. Those motor carriers that wish to participate in the pilot demonstration project have been unable to purchase or develop the requisite computer systems and software that complement the GPS technology before the extended application deadline of June 30, 1999. Two entities have informed us that they now have the requisite software. Others will be coming on-line shortly. Therefore, to ensure the best possible results for this pilot project, the agency is extending the application period to December 31, 1999. Motor carriers that wish to participate in the pilot demonstration project must have GPS technology and complementary safety management computer systems which meet all of the conditions specified in the April 6, 1998, notice.

Authority: 5 U.S.C. 553(b); 23 U.S.C. 315; 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

Issued on: July 7, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–17804 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[I.D. 062499B]

Regulations Governing the Taking of Marine Mammals by Alaskan Natives; Marking and Reporting of Beluga Whales Harvested in Cook Inlet

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; notice of public hearing.

SUMMARY: On May 24, 1999, NMFS published an interim final rule amending 50 CFR 216.23 to require that Alaskan Natives harvesting beluga whales in Cook Inlet collect the lower left jaw from harvested whales and complete a report (64 FR 27925). At that time, NMFS requested public comments on the rule and announced that a public hearing would be held as part of the process. NMFS announces the location, date, and time of the hearing.

DATES: The hearing will be held on Thursday, July 29, 1999, beginning at 3:00 p.m.

ADDRESSES: The hearing will be held in room 135 of the Anchorage Federal Office Building, 222 W. 7th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Brad Smith, (907) 271–5006.

Special Accommodations

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brad Smith (see **FOR FURTHER INFORMATION CONTACT**) by July 26, 1999.

Dated: July 7, 1999.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–17794 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990330083–9166–02; I.D. 031999B]

RIN 0648–AK32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Certification of Bycatch Reduction Devices

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), NMFS establishes procedures for the testing and certification of bycatch reduction devices (BRDs) for use in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico. Consistent with these procedures, NMFS certifies the Jones-Davis and Gulf fisheye BRDs for use in the Gulf of Mexico. NMFS also establishes the specifications for the Jones-Davis, Gulf fisheye, and fisheye BRDs. The intended effect is to foster the development and provide for the certification of additional BRDs.

DATES: Effective July 13, 1999, except for the collection-of-information requirements in: § 622.41(h)(3)(i) and (h)(3)(ii), Appendix—Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual, and Appendix I—Qualifications of Observer. This rule is being issued prior to the Office of Management and Budget's (OMB) approval of the information collection requirements in: § 622.41(h)(4)(i) and (h)(4)(ii), Appendix—Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual, and Appendix I—Qualifications of Observer. When OMB approval is received, the effective dates of these paragraphs and appendices will be published in the **Federal Register**.

ADDRESSES: Copies of the regulatory impact review (RIR) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of the *Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual* should be sent to the Southeast Regional Office, NMFS.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, NMFS, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure for adjusting management measures, NMFS published and requested comments on a proposed rule (64 FR 23039, April 29, 1999) to establish procedures for the testing and certification of BRDs for use in shrimp trawls in the EEZ in the Gulf of Mexico. The preamble to the proposed rule described the testing and certification procedures and the background and rationale for them. That information is not repeated here.

In this rule, in addition to establishing the BRD testing and certification procedures, NMFS is also certifying the Jones-Davis and Gulf fisheye BRDs, providing the specifications for construction and installation of these BRDs (specifications), and amending the fisheye BRD specifications. NMFS previously certified the Jones-Davis and Gulf fisheye BRDs by interim rule (63 FR 27499, May 19, 1998; 63 FR 64430, November 20, 1998). The interim rule published May 19, 1998, and amended by the interim rule published November 20, 1998, also established the specifications for the newly certified BRDs. The fisheye BRD, as distinguished from the Gulf fisheye BRD, was certified in a final rule published April 16, 1997 (62 FR 18536). The specifications included in this final rule are identical to the specifications in the April 16, 1997, final rule (62 FR 18536), as amended by the interim rule of November 20, 1998 (63 FR 64430).

To be certified for use in the Gulf of Mexico, a BRD must reduce the bycatch mortality of juvenile red snapper by a minimum of 44 percent from the average level of mortality for these age groups during the years 1984–1989 (bycatch reduction criteria). The NMFS' Galveston Laboratory assembled a database of field evaluations for the Gulf fisheye and Jones-Davis BRDs under a research plan developed by the Gulf and South Atlantic Fisheries Development Foundation and an initial BRD-testing protocol developed by NMFS prior to the development of the protocol established by this rule. The NMFS Pascagoula Laboratory reviewed this database to determine whether the BRDs met the red snapper bycatch reduction criterion established in Amendment 9 to the FMP. NMFS' Pascagoula Laboratory determined that the data were collected according to the established protocol at the time. That protocol required that an adequate sample consisting of data from no less than 30 successful tows be collected aboard commercial shrimp trawlers in the act of fishing shoreward of the 100-fm (183-m) depth contour west of 85°30′ W. long., that trawl nets be equipped with certified hard turtle-excluder-devices (TEDs), that only outboard nets be used as control and experimental nets, and that the control and experimental nets be alternated from one side of the vessel to the other during the period of the test. NMFS' analyses of the data collected on the Gulf fisheye and the Jones-Davis BRD indicated that the BRDs met the bycatch reduction criterion. These analyses formed the basis for interim certification of these BRDs pending the implementation of the protocol in this final rule. The conditions under which the data were collected and analyzed for the interim certification also meet the criteria outlined in the protocol implemented by this rule. Therefore, NMFS certifies in this rule the Jones-Davis and Gulf fisheye BRDs for use in the Gulf of Mexico shrimp fishery.

Comments and Responses

Comments were received from three entities on the proposed rule; an industry organization, a consulting firm, and a Sea Grant office. Relevant comments and responses are included here.

Pre-certification Phase Testing

Comment 1: One commenter stated that the objective of the pre-certification phase test should be to allow the applicant to examine the overall functionality of the proposed BRD design without a focus on red snapper exclusion or shrimp retention.

Response: The pre-certification procedures are specifically designed to allow the applicant to modify the design and configuration of a prototype BRD during pre-certification phase testing and to evaluate the overall effectiveness and operational functionality of the prototype BRD. However, in addition to evaluating the operational functionality of the prototype BRD, the applicant will need to know if the prototype BRD has the potential to meet the red snapper bycatch reduction criterion. This information will allow the applicant to decide whether or not to apply for certification testing authorization.

Certification Phase Testing

Comment 2: One commenter suggested that a particular BRD candidate's performance, as evaluated during a certification test, might not be applicable when the BRD is used in different styles of nets, or with different TEDs, or under different fishing conditions. The commenter suggested that, prior to certification, extensive commercial field evaluations of the BRD candidate be conducted under a variety of fishing conditions aboard different vessels and/or with different fishing gear designs to obtain statistically sound estimates of the BRD's true ability to meet the bycatch reduction criterion.

Response: NMFS disagrees. The protocol describes a statistically valid procedure to determine whether a BRD candidate meets the bycatch reduction criterion, and, thus, can be certified for general use in the shrimp fishery. If a certified BRD is subsequently found not to meet the certification criterion, the protocol provides a mechanism for the Regional Administrator to decertify that particular BRD through the FMP framework procedure.

Comment 3: Two commenters suggested that, even after the tuning tests are completed, the catch efficiency of the two nets used in the certification phase testing may begin to deviate over the 30-tow test period and that any such biases should be incorporated into the final statistical analyses.

Response: The protocol requires that the BRD candidate be moved from the net on one side of the vessel to the net on the other side of the vessel at specific time intervals. This procedure is intended to negate any undetected net/side bias by introducing that bias into both the experimental net and control net data.

Comment 4: Two commenters had several technical concerns about the procedures to be used when testing a soft TED for certification as a BRD, and recommended that both nets should be equipped with soft TEDs during both the tuning and certification phases of the certification test. The commenters were also concerned about an undue burden being placed on the trawler and its crew because installation of a soft TED must be done by a skilled installer, which will require the vessel to return to port between the tuning and certification phases. One of the

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commenters further suggested that this problem could be avoided by testing the soft TED against a control net containing a disabled soft TED; this would ensure that the efficiency was similar between the two nets because they were both equipped with the same TED.

Response: NMFS disagrees that the trawler or its crew, which is voluntarily participating in the test, will be unduly burdened from having to return to port to replace the TED in the experimental net. NMFS disagrees that the test should be conducted using a soft TED in the experimental net and a disabled soft TED in the control net. BRD performance is to be measured against the performance of a standard net, and a standard net is a net equipped with a functioning certified TED. Using hard TEDs in both the control and experimental nets during the tuning tows will ensure that the two nets are fishing with equivalent efficiency, and, once the soft TED is installed in the experimental net, any changes in catch rates can be attributed to the influence of the soft TED.

Comment 5: Two commenters requested clarification of the statement "A gear change (i.e., changing nets, doors, or rigging) during a test constitutes the beginning of a new test.", noting that, under this definition, the repair of damaged gear that did not change the original gear configuration of the trawl could still be interpreted as meeting the criterion for beginning a new test.

Response: NMFS intends the word "gear change" in this section of the protocol to represent wholesale replacement of gear components, such as doors, nets, or alterations in the configuration, including such actions as shortening tickler chains, adjusting the leg lines, or removing or adding headrope floats or footrope weights. These kinds of changes would alter the fishing efficiency of that particular trawl array, and, thus the test would need to be re-started. NMFS does not intend the definition of "gear change" to include the repair of damaged components of the trawl array to the original configuration, such as sewing up tears in the net or repairing a damaged tickler chain.

Comment 6: Two commenters questioned the requirement to restrict tow times during a test to a specific timeframe with an allowance of only 10 percent. They noted that consistent tow times do not necessarily represent normal fishing activities and that tow times might need to be adjusted, based on fishing conditions, during a test. One commenter noted that a 10-percent allowance for a tow-time range of 2 to 8 hours could range from 12 to 48 minutes, thus introducing unnecessary bias into the calculations of catch-per-unit-effort and catch composition. This commenter indicated that this allowance was unnecessary and that tow times should be standardized.

Response: NMFS recognizes that fishers do not necessarily tow their nets for a standard length of time, and that tow times may vary for reasons including changing environmental conditions or catch rates. BRD certification tests are to be conducted under normal operational conditions, but they must also be conducted in a scientifically rigorous manner suitable for standard statistical analyses. Any foreseeable deviations from the prescribed protocol must be described and justified in the application and must be approved by the Regional Administrator prior to beginning the certification test. Additionally, deviations from the prescribed protocol required by unforeseen events during a certification test must be made in a scientifically sound manner and must be described and explained in the final report submitted to the Regional Administrator. The Regional Administrator will evaluate the appropriateness of the deviation prior to making a final determination concerning the BRD candidate's ability to meet the certification criterion. NMFS disagrees with the comment that the tow times must be standardized without an allowance or that the allowance would introduce an unacceptable bias into the catch per unit of effort data. Catch per unit effort will not change if the catchability co-efficient of the net does not change during the tow, which is a basic assumption of this sampling protocol. The ranges in tow time variations given as examples by the commenter are not applicable to any given test. The applicant will be establishing a specific tow time prior to beginning the tests, and, thus the allowance will remain constant as long as the applicant adheres to that designated tow time. Thus, no changes to the protocol are necessary.

Statistical Analysis

Comment 7: Two commenters questioned the continued use of the Goodyear (1995) VPA-based stock assessment model for calculating fishing mortality reduction attributable to the BRD candidate. One commenter further noted that the more recent observer-based data sets indicated that the size distributions of red snapper in the shrimp trawl bycatch were different than the size distribution of the red snapper shrimp trawl bycatch data set used by Goodyear.

Response: NMFS recently provided a report to the Gulf of Mexico Fishery Management Council summarizing a data collection effort by NMFS during the summer of 1998 concerning BRD efficiency. In that report, NMFS compared results from the original (1995) Goodyear procedure with results from an update of the underlying data set. Analyses by NMFS indicated that updates to the underlying information used by the Goodyear procedure agreed with the original analysis. NMFS will continue to evaluate the procedure for routine evaluations of BRD effectiveness as additional information becomes available and will implement any appropriate changes to this protocol through the FMP framework procedure.

Comment 8: One commenter questioned the use of a two-sided confidence interval in the statistical analysis.

Response: The BRD candidate will be evaluated for its ability to meet the bycatch reduction criterion through the use of a modified one-sided t-test. The null hypothesis, $R \leq R_o$, will be rejected if $t > t_{alpha-1}$. This test will determine whether the BRD meets the certification criterion and is eligible for certification by the Regional Administrator. Confidence intervals, while illustrating the range of expected results of the BRD candidate, are not used as part of the certification determination.

Observer Requirements

Comment 9: Two commenters expressed concerns about the requirement that the observer not have a previous or current financial relationship with the applicant, noting that this requirement would restrict certain agencies and organizations that have trained observers on staff from effectively participating as applicants in BRD certification testing.

Response: NMFS disagrees. An applicant must select an observer from a list of qualified observers maintained by the Regional Administrator. A qualified observer who is associated with a specific organization or agency and who is on the list of observers maintained by the Regional Administrator could still participate in the test, as long as the organization or agency is not the applicant.

Comment 10: Two commenters stated that the requirement for an observer to have a Bachelor's Degree in fishery biology or in a closely related field might exclude some very capable observers without degrees.

Response: NMFS does not intend to exclude any qualified candidates from being included on the list of qualified observers. The qualification criteria include having a Bachelor's Degree, having 6 months experience as an observer, or successfully completing a training course conducted or approved by the Director of the NMFS Southeast Fisheries Science Center. An observer candidate need meet only one of these three criteria. No changes are necessary.

Changes From the Proposed Rule

In § 622.7, paragraph (aa) has been revised to eliminate an incorrect cross reference and to clarify the intent of the prohibition.

In § 622.41, paragraph (h)(2) was revised to reflect certification of the Jones-Davis and Gulf fisheye BRDs in this rule. Also in § 622.41, references to paragraph (h)(4) were revised to read (h)(3) to conform to reorganization of codified text due to expiration of interim rule text. Other than the paragraph designations, there were no changes to codified text.

In Appendix D to part 622, paragraph C.2. was revised and paragraphs D and E were added to incorporate specifications for the Jones-Davis and Gulf fisheye BRDs certified in this rule and to incorporate a minor revision of the specifications for the fisheye BRD. These specifications, including the minor revision, are identical to those implemented previously by an interim rule that expired May 15, 1999.

In Appendix H to the *Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual*, the explanations of type I and type II errors were corrected.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification and the basis for it has not changed. As a result, a regulatory flexibility analysis was not prepared. Copies of the RIR are available (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA—namely, the BRD certification process, consisting of applications for pre-certification or certification of a new BRD, pre-certification adjusting, the testing itself, the submission of the test results, application for observer position, and references for observers. These requirements have been submitted to OMB for approval. The public reporting burden for this collection of information which includes the application, pre-certification phase, testing, and submission of results, is estimated to average 211 hours. The public reporting burden for applying for an observer position will average 1 hour per response and the burden for obtaining references will average 1 hour per response. The collection consists of an Application Form, Vessel Information Form, Gear Specification Form, TED/BRD Specification Form, Station Sheet Form, Species Characterization Form, Length Frequency Form, and Condition and Fate Form. The average response time for each of these forms is 20 minutes, except for the Species Characterization Form which has a 5-hour response time and the Application Form which has a 2.3-hour response time. In addition, 4 hours will be needed to prepare the final report. Send comments regarding these burden estimates or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

These collection-of-information requirements are contained in § 622.41(h)(3)(i) and (h)(3)(ii), Appendix—Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual, and Appendix I—Qualifications of Observer. This rule is being issued prior to approval by OMB of these information collection requirements. When OMB approval is received, a notice will be published in the **Federal Register** making the information requirements in those sections and appendices effective.

This rule establishes the procedures for testing and certification of BRDs, thus providing the mechanism for increasing the number and types of certified BRDs available for use by the Gulf of Mexico shrimp trawl fishery. Certification of additional BRDs will provide the industry greater flexibility in choosing a BRD that is optimal for particular fishing operations and conditions. The BRD specifications incorporated in this rule are essential for the proper construction and installation of the newly certified BRDs and are identical to the specifications previously implemented by NMFS via interim rule that recently expired. For these reasons, under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, for good cause, finds that it would be unnecessary and contrary to the public interest to delay for 30 days the effective date of this rule.

Immediate implementation of these testing and certification procedures also allows for immediate certification of the Jones Davis and Gulf fisheye BRDs that NMFS has determined are in compliance with the procedures based on prior testing. Because these certifications relieve a restriction on the affected public, under 5 U.S.C. 553(d)(1), they are not subject to a 30-day delay in effective date.

As noted above, the collection-of-information components of this rule will not take effect until approval by OMB and publication of a separate notice in the **Federal Register** making these components effective.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 1, 1999.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.7, paragraph (bb) is reserved and paragraph (aa) is added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(aa) Falsify information submitted regarding an application for testing a BRD, testing of a BRD, or the results of such testing, as specified in § 622.41(h)(3).

(bb) [Reserved]

3. In § 622.41, the first sentence of paragraph (h)(1)(i) and paragraph (h)(2) are revised and paragraph (h)(3) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(h) * * *

(1) * * *

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(i) Except as exempted in paragraphs (h)(1)(ii) through (iv) and paragraph (h)(3)(iii) of this section, on a shrimp trawler in the Gulf EEZ shoreward of the 100-fathom (183-m) depth contour west of 85°30' W. long., each net that is rigged for fishing must have a certified BRD installed. * * *

* * * * *

(2) *Certified BRDs.* The following BRDs are certified for use by shrimp trawlers in the Gulf EEZ. Specifications of these certified BRDs are contained in Appendix D to this part.

(i) Fisheye.

(ii) Gulf fisheye.

(iii) Jones-Davis.

(3) *Procedures for certification of additional BRDs.* The process for the certification of additional BRDs consists of two phases—an optional pre-certification phase and a required certification phase.

(i) *Pre-certification.* The pre-certification phase allows a person to test and evaluate a new BRD design for up to 60 days without being subject to the observer requirements and rigorous testing requirements specified for certification testing in the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual.*

(A) A person who wants to conduct pre-certification phase testing must submit an application, as specified in the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual*, to the RD. The *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual*, which is available from the RD, upon request, contains the application forms.

(B) After reviewing the application, the RA will determine whether to issue a letter of authorization (LOA) to conduct pre-certification trials upon the vessel specified in the application. The RA will issue a pre-certification phase LOA if the BRD design is substantially unlike any BRD design previously determined not to meet the BRD certification criterion or, if the design is substantially similar to a BRD design previously determined not to meet the BRD certification criteria, and the application demonstrates that the design could meet the certification criterion through design revision or upon retesting (e.g., the application shows that statistical results could be improved upon retesting by such things as using a larger sample size than that previously used). If the RD authorizes pre-certification, the RD's letter of authorization must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification.* A person who proposes a BRD for certification for use in the Gulf EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual.* The RA will issue a LOA to conduct certification trials upon the vessel specified in the application if the RA finds that: The test plan meets the requirements of the protocol; the observer identified in the application is qualified and has no current or prior financial relationship with the entity seeking BRD certification; the application presents a BRD candidate substantially unlike BRDs previously determined not to meet the current bycatch reduction criterion, or the applicant has shown good cause for reconsideration (such as the likelihood of improved statistical results yielded from a larger sample size than that previously used); and for BRDs not previously tested for certification, the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If authorization to conduct certification trials is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. If a BRD meets the certification criterion, as determined under the testing protocol, NMFS will publish a notice in the **Federal Register** adding the BRD to the list of certified BRDs in paragraph (h)(2) of this section providing the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(iii) A shrimp trawler that is authorized to participate in the pre-certification phase or to test a BRD in the EEZ for possible certification has such written authorization on board and is conducting such test in accordance with the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual* is granted a limited exemption from the BRD requirement specified in paragraph (h)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

4. In Appendix D to part 622, paragraph C.2. is revised and paragraphs D and E are added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

* * * * *

C. * * *

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed at the top center of the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend drawstring (tie-off rings) or 70 percent of the distance between the codend drawstring and the forward edge of the codend, excluding any extension, whichever is the shorter distance. In the Gulf EEZ only, when the fisheye BRD is installed in this position, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system.

D. *Gulf fisheye.*

1. *Description.* The Gulf fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel that is inserted into the top center of the codend, or is offset not more than 15 meshes perpendicular to the top center of the codend, to form an escape opening.

2. *Minimum Construction and Installation Requirements.* The Gulf fisheye is a cone-shaped rigid frame constructed of aluminum or steel rods. The rods must be at least ¼-inch (6.35-mm) diameter. Any dimension of the escape opening must be at least 5.0 inches (12.7 cm), and the total escape opening area must be at least 36.0 in^2 (232.3 cm^2). The Gulf fisheye must be installed in the codend of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 12.5 ft (3.81 m) and no less than 8.5 ft (2.59 m) from the codend tie-off rings. When installed in this position, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system. The Gulf fisheye may not be offset more than 15 meshes perpendicular to the top center of the codend.

E. *Jones-Davis.*

1. *Description.* The Jones-Davis BRD is similar to the expanded mesh and the extended funnel BRDs except that the fish escape openings are windows cut around the funnel rather than large-mesh sections. In addition, a webbing cone fish deflector is installed behind the funnel.

2. *Minimum Construction and Installation Requirements.* The Jones-Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single piece of 1⅝-inch (3.5-cm) stretch mesh number 30 nylon 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42-mesh side together.

(b) *28-inch (71.1-cm) cable hoop.* A single hoop must be constructed of ½-inch (1.3-cm) steel cable 88 inches (223.5 cm) in length. The cable must be joined at its ends by a 3-inch (7.6-cm) piece of ½-inch (1.3-cm) aluminum pipe and pressed with a ⅜-inch (0.95-cm) die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches (68.6 and 73.7 cm). The hoop must be attached to the extension webbing 17½ meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(c) *24-inch (61.0-cm) hoop.* A single hoop must be constructed of either number 60 twine 80 inches (203.2 cm) in length or ⅜-inch (0.95-cm) steel cable 75½ inches (191.8 cm) in length. If twine is used, the twine must be laced in and out of the extension webbing 39 meshes behind the leading edge, and the ends must be tied together. If cable is used, the cable must be joined at its ends by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe and pressed together with a ¼-inch (0.64-cm) die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches (58.4 and 63.4 cm). The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel.* The funnel must be constructed from four sections of 1½-inch (3.8-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29½ meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29½ meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23-mesh edge to form the funnel.

(e) *Attachment of the funnel in the webbing extension.* The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position.

(f) *Cutting the escape openings.* The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(g) *Alternative Method for Constructing the Funnel and Escape Openings.* The following method for constructing the funnel and escape openings may be used instead of the method described in paragraphs F.2.d., F.2.e., and F.2.f. of this section. With this alternative method, the funnel and escape openings are formed by cutting a flap in each side of the extension webbing; pushing the flaps inward; and attaching the top and bottom edges along the bars of the extension webbing to form the v-shape of the funnel. Minimum requirements applicable to this method include: (1) The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop); (2) clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position; (3) the leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid; and, (4) the area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). To construct the funnel and escape openings using this method, begin 3½ meshes from the leading edge of the extension, at the top center seam, count over 18 meshes on each side, and cut 13 meshes toward the back of the extension. Turn parallel to the leading edge, and cut 26 meshes toward the bottom center of the extension. Next, turn parallel to the top center seam, and cut 13 meshes forward toward the leading edge, creating a flap of webbing 13 meshes by 26 meshes by 13 meshes. Lengthen the flap to 18 meshes by adding a 4½-mesh by 26-mesh rectangular section of webbing to the 26-mesh edge. Attach the 18-mesh edges to the top and bottom of the extension by sewing 2 bars of the extension to 1 mesh on the flap in toward the top center and bottom center of the extension, forming the exit opening and the funnel. Connect the two flaps together in the center with a 7-inch piece of number 42 twine to allow adequate clearance for fish escapement between the flaps and the side openings. On each side, sew a 6-mesh by 10½-mesh section of webbing to 6 meshes of the center of the 26-mesh cut on the extension and 6 meshes centered between the 13-mesh cuts 3½ meshes from the leading edge. This forms two 10-mesh by 13-mesh openings on each side.

(h) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.13-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10–14 inches (25.4–35.6 cm) of the posterior edge of the funnel.

(i) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16-inch (0.79-cm) or ⅜-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(j) *Installation of the cone in the extension.* The cone must be installed in the extension 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine 4 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine must be attached to the 28-inch (71.1-cm) cable

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hoop at the center of each of its sides; the points of attachment for the two pieces of twine must be measured 20 inches (50.8 cm) from the midpoint attachment. Two 8-inch (20.3-cm) pieces of number 60 twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24-inch (61-cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11-inch (27.9-cm) cone hoop.

Note: The *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual* and appendices H and I to the Manual are published as appendices to this document. These appendices will not appear in the Code of Federal Regulations.

Appendix—Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual

Definitions

Bycatch reduction criterion is that the BRD reduces the mortality of juvenile (age 0 and age 1) red snapper by a minimum of 44 percent from the average level of bycatch mortality (F=2.06) on these age classes during the years 1984–1989.

Bycatch reduction device (BRD) is any gear or trawl modification designed to allow finfish to escape from a shrimp trawl.

BRD candidate is a bycatch reduction device to be tested for certification for use in the commercial shrimp fishery of the Gulf of Mexico.

Catch per unit of effort (CPUE) means the number or pounds of fish (e.g., red snapper) or shrimp taken during a pre-defined measure of fishing activity (e.g., per hour).

Certification phase is a required testing phase whereby an individual so authorized by the RA may conduct a discrete testing program, with a sample size adequate for statistical analysis (no less than 30 tows), to determine whether a BRD candidate meets the bycatch reduction criterion.

Certified BRD is a BRD that has been tested according to this protocol and has been determined by the RA as having met the bycatch reduction criterion.

Control trawl means a trawl used during the certification testing that is not equipped with a BRD. The catch of this trawl is compared to the catch of the experimental trawl.

Experimental trawl means the trawl used during the certification tests that is equipped with the BRD candidate.

Evaluation and oversight personnel includes scientists, observers, and other technical personnel who, by reason of their occupational or other experience, scientific expertise or training, are approved by the RA as qualified to evaluate and oversee the application and testing process. Scientists and other technical personnel will (1) review a BRD certification test application for its merit, and (2) critically review the scientific validity of the certification test results.

Observer means a person on the list maintained by the RA of individuals qualified to supervise and monitor a BRD certification test. Applicants may obtain the list of individuals qualified to be an observer from the RA. The observer chosen by the applicant may not have any current or prior financial relationship with the entity seeking BRD certification. For information on observer qualification criteria and the observer application process, see Appendix I.

Pre-certification phase is an optional testing phase whereby an individual, so authorized by the RA, can experiment with the design, construction, and configuration of a BRD and gather data.

Regional Administrator (RA) means the Southeast Regional Administrator, National Marine Fisheries Service, 9721 Executive Center Drive North, St. Petersburg, Florida 33702, phone 727–570–5301.

Required measurements refers to the quantification of the dimensions and configuration of the trawl, the BRD candidate, the doors, the location of the BRD in relation to other parts of the trawl gear, and other quantifiable criteria used to assess the performance of the BRD candidate.

Sample size means the number of successful tows (a minimum of 30 tows per test are required).

Shrimp loss means the percent difference in average CPUE (e.g. kg/hr) between the amount of shrimp caught in the control trawl and the amount of shrimp caught in the experimental trawl.

Successful tow means that the control and experimental trawl were fished in accordance with the requirements set forth in the protocol and the terms and conditions of the letter of authorization, that the control or experimental net caught at least five red snapper during the tow, and that no indication exists that problematic events, such as those listed in Appendix D–5, occurred during the tow which would impact or influence the fishing efficiency (catch) of one or both nets.

Tow time means the total time (hours and minutes) an individual trawl was fished while being towed (i.e., the time between "dog-off" and start of haul back).

Trawl means a net and associated gear and rigging, as illustrated in Appendix B–5 of this manual, used to catch shrimp. The terms trawl and net are used interchangeably throughout the manual.

Tuning o net means adjusting the trawl and its components to minimize the differences in shrimp catch between the two nets that will be used as the control and experimental trawls during the certification tests.

I. Introduction

Purpose of the Protocol

This protocol sets forth a standardized scientific procedure for the testing of a BRD candidate and for the evaluation of its ability to meet the bycatch reduction criterion. For a BRD candidate to be certified by the RA, the BRD candidate must meet the bycatch reduction criterion.

There are two phases to this procedure: An optional, but recommended, pre-certification phase and a required certification phase. An applicant is encouraged to take advantage of the pre-certification phase which allows experimentation with different BRD designs and configurations prior to certification phase testing (see below for details). The certification phase requires the applicant to conduct a discrete testing program, with a sample size of no less than 30 tows to determine whether the BRD candidate meets the bycatch reduction criterion. There is no cost to the applicant for the RA's administrative expenses such as preparing applications, issuing letters of authorization (LOAs), or evaluating test results or certifying BRDs. However, all other costs associated with either phase (e.g., field testing) are at the applicant's expense.

II. Pre-Certification Phase (Optional)

The pre-certification phase provides a mechanism whereby an individual can experiment with the design, construction, and configuration of a prototype BRD for up to 60 days to improve the design's effectiveness at reducing the bycatch of red snapper and to determine whether it is likely to meet the bycatch reduction criterion. To conduct pre-certification phase evaluations of a prototype BRD, the applicant must apply for, receive, and have on board the vessel during testing, an LOA from the RA.

A. Application

In order to obtain an LOA to conduct pre-certification phase evaluations of a prototype BRD, an individual must submit a complete application to the RA. A complete application consists of a completed application form, Application to Test A Bycatch Reduction Device in the Exclusive Economic Zone (the form is appended as Appendix J–1), and the following: (1) a brief statement of the purpose and goal of the activity for which the LOA is requested; (2) a statement of the scope, duration, dates, and location of the testing; (3) an 8.5-inch x 11-inch (21.6-cm x 27.9-cm) diagram drawn to scale of the BRD design; (4) an 8.5-inch x 11-inch (21.6-cm x 27.9-cm) diagram drawn to scale of the BRD and approved TED in the shrimp trawl; (5) a description of how the BRD is supposed to work; and (6) a copy of the testing vessel's documentation or its state registration.

An applicant requesting a pre-certification LOA of an unapproved hard or soft TED as a BRD must first apply for and obtain from the RA an experimental TED authorization pursuant to 50 CFR 227.72(e)(5)(ii). The pre-certification phase LOA application must also append a copy of that authorization.

B. Issuance

The RA will review the application for completeness. If the application is incomplete, the RA will inform the applicant of the incompleteness and give the applicant an opportunity to cure. If incompleteness is not cured within 30 days, the application will be returned to the applicant. Upon receipt of a complete application, the RA will issue a LOA to conduct pre-certification phase testing upon the vessel specified in the application if the BRD design is substantially unlike BRD designs previously determined not to meet the current performance criterion, or if the design is substantially similar to BRD designs previously determined not to meet the current performance criteria and the application demonstrates that the design could meet the bycatch reduction criterion through design revision or upon retesting (e.g., the application shows that statistical results could be improved upon retesting by such things as a larger sample size than that previously used). If a pre-certification phase LOA is denied, the RA will return the application to the applicant along with a letter of explanation including relevant recommendations as to curing the deficiencies which caused the denial. In arriving at a decision, the RA may consult with evaluation and oversight personnel. Issuance of a LOA allows the applicant to remove or disable the existing BRD in one net (to create a control net), and to place the prototype BRD in another net in lieu of a certified BRD (to create an experimental net). All other trawls under tow during the test must be equipped with a certified BRD. All trawls under tow during the pre-certification phase tests must be equipped with an approved TED unless operating under an authorization issued pursuant to 50 CFR 227.72(e)(5)(ii). The LOA, and experimental TED authorization if applicable, must be on board the vessel while the pre-certification phase tests are being conducted. The term of the LOA will be 60 days.

C. Applicability

The pre-certification phase allows an individual to compare the catches of a control net to the catches of the experimental net (net equipped with the prototype BRD) to estimate the potential efficiency of the prototype BRD. If that individual subsequently applies for a certification phase LOA to test this design he/she must include the results of the pre-certification phase evaluation with the certification application. The RA will use this information to determine if there is a reasonable scientific basis to conduct certification phase testing. Therefore, for each paired tow, the applicant should keep a written record of the weight of the shrimp catch, the weight of the finfish catch, and the total catch (in numbers) of red snapper of each net. The form contained in Appendix D should be used to record this information.

III. Certification Phase (Required)

In order to have a BRD certified, it must, under certification phase testing, be consistent with the requirements of the testing protocol and LOA and be determined by the RA to meet the bycatch reduction criterion.

A. Application

To conduct certification phase testing, an individual must obtain a certification phase LOA. To obtain a certification phase LOA, an individual must submit a complete application to the RA. The complete test application consists of an Application to Test A Bycatch Reduction Device in the Exclusive Economic Zone (Appendix J–1), a copy of the vessel's current Coast Guard certificate of documentation or, if not documented, its state registration certificate; the name of a qualified observer who will be on board the vessel during all certification test operations (see Appendix I); and a test plan showing: (1) an 8.5-inch × 11-inch (21.6-cm × 27.9-cm) diagram drawn to scale of the BRD candidate; (2) an 8.5-inch × 11-inch (21.6-cm × 27.9-cm) diagram drawn to scale of the BRD candidate and approved TED in the shrimp trawl; (3) a description of how the BRD candidate is supposed to work; (4) the results of previous pre-certification phase tests; (5) the location, time, and area where the certification phase tests would take place; and (6) the identity of the observer from the list of qualified individuals maintained by the RA and certification that the observer has no current or prior financial relationship with the applicant or entity seeking BRD certification.

An applicant requesting a certification phase LOA to test an unapproved hard or soft TED as a BRD must first apply for and obtain from the RA an experimental TED authorization pursuant to requirements of 50 CFR part 227.72(e)(5)(ii). The application for the certification phase LOA also must append a copy of that authorization.

A.1 Special Circumstances Not Covered By Protocol

Because actual testing conditions may vary, it may be necessary to deviate from the prescribed protocol to determine if a BRD candidate meets the bycatch reduction criterion. Any foreseeable deviations from the protocol must be described and justified in the application, and if scientifically acceptable will be approved by the RA in the LOA. The RA may consult with evaluation personnel to determine whether the deviations are scientifically acceptable. Without the RA's approval in the LOA, results from any tests deviating from the protocol may be rejected as scientifically unacceptable, and could result in a denial of certification.

B. Observer Requirement

A qualified observer must be on board the vessel during all certification testing operations (See Appendix I). A list of qualified observers is available from the RA. Observers may include employees or individuals acting on behalf of NMFS, state fishery management agencies, universities, or private industry who meet the minimum requirements outlined in Appendix I, but the individual chosen may not have a current or prior financial relationship with the entity seeking BRD certification. It is the responsibility of the applicant to ensure that a qualified observer is on board the vessel during the certification tests. Compensation to the observer, if necessary, must be paid by the applicant. Any change in information or testing circumstances, such as replacement of the observer, must be reported to the R.A. within 30 days. Under 50 CFR 600.746, the owner and operator of any fishing vessel required to carry an observer as part of a mandatory observer program under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) is required to comply with guidelines, regulations, and conditions to ensure their vessel is adequate and safe to carry an observer, and to allow normal observer functions to collect scientific information as described in this protocol. A vessel owner is deemed to meet this requirement if the vessel displays one of the following: (i) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I, and 46 CFR, chapter I; (ii) a certificate of compliance issued pursuant to 46 CFR 28.710; or (iii) a valid certificate of inspection pursuant to 46 U.S.C. 3311.

C. Issuance

The RA will review the application for completeness. If the application is not complete, the RA will notify the applicant of the incompleteness and give the applicant an opportunity to cure. If the incompleteness is not cured within 30 days, the RA will return the application to the applicant. Upon receipt of a complete application, the RA will issue a LOA to conduct certification phase testing of the BRD candidate specified in the application if: (1) the test plan meets the requirements of the protocol; (2) the qualified observer named in the application has no current or prior financial relationship with the entity seeking BRD certification; (3) the BRD candidate design is substantially unlike BRD designs previously determined not to meet the current bycatch reduction criterion, or if the BRD candidate design is substantially similar to a BRD design previously determined not to meet the current bycatch reduction criterion, the application demonstrates that the design could meet the bycatch reduction criterion upon retesting (e.g., the application shows that statistical results could be improved upon retesting by such things as a larger sample size than that previously used); and (4) the results of any pre-certification phase testing conducted indicate a reasonable scientific basis for further testing. The submission of pre-certification phase data to provide a scientific basis for the conduct of certification testing is not an absolute requirement for the issuance of a certification phase LOA. For example, a reque to conduct certification phase testir of a minor modification of a certified BRD design would not need to include pre-certification phase data. Similarly, a request for certification phase testing of a previously failed design that under a different test plan (e.g., larger sample sizes) could yield improved statistical results would likewise not need pre-certification phase data. However, pre-certification phase data would normally be needed to establish a reasonable scientific basis for conducting certification phase testing (e.g., that the BRD could meet the certification criterion upon certification testing). In making these determinations, the RA may consult with evaluation and oversight personnel. If a LOA to conduct certification phase testing is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. Issuance of a LOA allows the applicant to remove or disable the existing certified BRD in one net (to create a control net) and to place the BRD candidate in another net in lieu of a certified BRD (to create an experimental net). All other trawls under tow during the tests must be equipped with a BRD. All trawls under tow during the certification tests must be equipped with an approved TED unless operating under an

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authorization issued pursuant to 50 CFR 227.72(e)(5)(ii). The LOA will specify the date when the applicant may begin to test the BRD candidate, the observer who will conduct the onboard data collection, and the vessel to be used during the test. The LOA and experimental TED authorization, if applicable, must be onboard the vessel while the certification phase tests are being conducted.

D. Testing Protocol

Certification testing must be conducted in areas and at times when commercial quantities of penaeid shrimp and juvenile (age 0 and age 1) red snapper are available to the gear. The best time for testing a BRD candidate is July and August (July 1—August 31) due to the availability of red snapper on the penaeid shrimp commercial grounds located shoreward of the 100-fm (183-m) depth contour west of 85°30' W. longitude, the approximate longitude of Cape San Blas, FL. Data should be recorded on the forms found in Appendices B through G, using the instructions provided for each form.

D.1. Tuning the Control and Experimental Trawls Prior to BRD Certification Trials

The primary assumption in assessing the bycatch reduction efficiency of the BRD candidate during paired-net tests is that the inclusion of the BRD candidate in the experimental net is the only factor causing a difference in catch from that of the control net. Therefore, it is imperative that the fishing efficiency of the two nets be as similar as possible prior to starting the certification tests. Catch data from no more than 20 tuning tows should be collected on nets that will be used as control and experimental trawls to determine if there is a between-net or between-side (port vs. starboard) difference in fishing efficiency (bias). Any net/side bias will be reflected as differing catch rates of shrimp and red snapper between two nets that were towed simultaneously. During the tuning tows, these nets should be equipped with identical approved hard TEDs, without the BRD candidate being installed. Using this information, the applicant should identify and minimize the causes for any net/side bias, to the extent practicable, by making appropriate trawl gear adjustments. Form D–1 from Appendix D should be used to record the net/side bias data collected from these tows. These data will enable the RA to determine if any net/side bias existed in either trawl in assessing the BRD candidate's performance.

If the applicant is testing a soft TED as a BRD, it will be imperative that little or no position or side bias with the trawl nets be demonstrated before the certification trials are initiated. Once any net/side bias is corrected using identical approved hard TEDs in both nets, any alterations in catch rate following the substitution of the soft TED into the experimental net can then be attributed to that TED's influence.

D.2. Retention of Data Collected During Tuning Trials

All data collected during tuning trials and used for minimizing the net/side bias must be documented and submitted to the RA along with the testing data for evaluation. Additional information on tuning shrimp trawls is available from the Harvesting Technology Branch, Mississippi Laboratories, Pascagoula Facility, 3209 Frederic Street, Pascagoula, Mississippi 39568–1207; phone (601) 762–4591.

D.3. Certification Tests

The certification tests must follow the testing protocol where paired identical trawls are towed by a trawler in areas west of Cape San Blas, Florida, where shrimp and juvenile red snapper occur. For tests of BRD candidates that do not encompass testing a hard or soft TED as the BRD candidate, identical approved hard TEDs are required in each trawl and one of the trawls must be equipped with a functioning BRD candidate. To test a hard or soft TED as a BRD candidate, the control net must be equipped with an approved hard TED, and the experimental net must be equipped with the TED that is acting as the BRD candidate.

A minimum sample size of 30 successful tows per test is required. Additional tows may be necessary for sufficient statistical evidence, especially if red snapper catch is highly variable. A gear change (i.e., changing nets, doors, or rigging) during a test constitutes the beginning of a new test. All certification tows must be no less than 2 hours and no more than 8 hours in duration. The applicant may select any tow time within this range. Once a tow time is selected, no tow time during a series of tests may vary by more than 10 percent.

To avoid potential biases associated with trynet catches, the outside trawls on quad-rigged vessels must be used as the control and experimental trawls, and for double-rigged vessels, the use of a trynet is prohibited.

The functioning BRD candidate must be switched every 4–6 tows (approximately every 2 days) between the two trawl nets. This process must be repeated, ensuring that an equal number of successful tows are made with the BRD candidate employed in both the port and starboard nets, until a minimum of 30 successful tows have been completed. For BRDs incorporated in the codend of the net, this process can be facilitated by the use of zippers, or other quick-connection devices, to more easily move the codends between nets; however, simply switching the entire net will not satisfy this requirement because doing so would not resolve net bias. Such quick-connection devices must be attached behind the TED. The TED must not be moved unless the BRD is actually incorporated into the TED portion of the net. Where a hard TED is being tested as a BRD candidate, that portion of the net including the TEDs must be moved, and again, quick-connection devices located in front of the TEDs may be used.

A different procedure must be followed to conduct tests of an approved or experimental soft TED as a BRD candidate. To conduct these tests, the applicant must first demonstrate that little or no side/net bias exists between the two nets to be used in the test (see D.1.). Removing the soft TED from one trawl net and installing it in the other net is not required. For these tests, the control (with a hard TED) and experimental (with the soft TED) nets must be disconnected from the doors and their positions switched from one side of the vessel to the other. The first switch must be made after successfully completing approximately 25 percent of the total number of intended tows. This process must be repeated, at 25 percent intervals, until at least 30 successful tows are completed (i.e., every 7–8 successful tows).

Following each paired tow, the catches from the control and experimental nets must be examined separately. This requires that the catch from each net be kept separate from each other, as well as from the catch taken in other nets fished during that tow. First, the observer must weigh the total catch of each test net (control and experimental nets). If the catch in a net does not fill one standard 1-bushel [ca. 10 gallon] (30 liters) polyethylene shrimp basket (ca. 70 pounds) (31.8 kg), but the tow is otherwise considered successful, data must be collected on the entire catch of that net, and recorded as a "select" sample (see Appendix E). If the catch in a net exceeds 70 pounds (31.8 kg), a well-mixed sample consisting of one standard 1-bushel [ca. 10 gallon] (30 liters) polyethylene shrimp basket must be taken from the total catch of that net.

Data must be collected on Form E–1 for the following species or general groups found in each of the samples: (1) penaeid shrimp—brown, white and pink shrimp from each sample must be separated by species, counted and weighed; in addition, the weight for those penaeid shrimp species caught in each test net, but that were not included in the sample, must be recorded so that a total shrimp catch for each net (by weight) is documented; (2) crustacea—mantis shrimp, sugar shrimp, seabobs, crabs, lobsters and other similar species—must be weighed as an aggregate; (3) other invertebrates—squid, jellyfish, starfish, sea pansies, shells, and other similar species—must be weighed as an aggregate; (4) each finfish species or species group listed in Appendix E must be weighed and counted; (5) other finfish—including all other fish not listed on the above-referenced form must be weighed as an aggregate; and (6) debris (mud, rocks, and related matter) must be weighed as an aggregate.

"Select" finfish species (page E–3) (i.e., particular species to be quantified from the total catch and not just the sample) are red snapper, Spanish mackerel, and king mackerel. All individuals of the "Select" species from each test net (control and experimental net) must be collected, counted, weighed, and recorded. Lengths for as many as 30 individuals of each select species must be recorded on Form F–1. These data are necessary to robustly determine age-class composition, and specific mortality reductions attributable to each of the age classes.

Applicants must also collect qualitative information, using Form G–1, on the condition (alive or dead) and fate (floated off, swam down, eaten) of the discards whenever possible, and note the presence of any predator species such as sharks, porpoises, and jacks that are observed. The condition and fate of the bycatch is important for determining the fishing mortality and waste associated with this discard.

E. Reports

A report on the BRD candidate test results must be submitted for certification. The report must contain a comprehensive description of the tests, copies of all completed data forms used during the certification trials, and photographs, drawings, and similar material describing the BRD. The captain or owner must sign and submit the cover form (Appendix A). The report must include a description and explanation of any unforeseen deviations from the protocol which occurred during the test. Applicants must provide information on the cost of materials, labor, and installation of the BRD candidate. In addition, any unique or special circumstances of the tests, including special operational characteristics or fishing techniques which enhance the BRD's performance, should be described and documented as appropriate.

F. Certification

The RA will determine whether the required reports and supporting materials are sufficient to evaluate the BRD candidate's efficiency. The RA also will determine whether the applicant adhered to the prescribed testing protocol, and whether the BRD candidate meets the bycatch reduction criterion for juvenile red snapper. In making a decision, the RA may consult with evaluation and oversight personnel.

The RA will determine the effectiveness of the BRD candidate. The statistical protocol in Appendix H provides the methodology that the RA will use to estimate the reduction in bycatch mortality on age-1 juvenile red snapper if the test is conducted during the primary period (July or August). Tests conducted during other parts of the year will, most likely, catch both age 0 and age 1 red snapper. To evaluate the overall reduction in mortality rate of these juvenile age classes attributable to the BRD candidate will require alternative extensive analysis, involving use of the Goodyear (1995) stock assessment model to assign mortality reductions by specific size classes within the age 0 and age 1 red snapper catch.

Following a favorable determination of these criteria, the RA will certify the BRD (with any appropriate conditions as indicated by test results) and publish the certification in the **Federal Register.**

IV. BRDs Not Certified and Resubmission Procedures

The RA will advise the applicant, in writing, if a BRD is not certified. This notification will explain why the BRD was not certified and what the applicant may do to either modify the BRD or the testing procedures to improve the chances of having the BRD certified in the future. If certification was denied because of insufficient information, the RA will explain what information is lacking. The applicant must provide the additional information within 60 days from receipt of such notification; thereafter, the applicant must re-apply. If the RA subsequently certifies the BRD, the RA will announce the certification in the **Federal Register.**

V. Decertification of BRDs

The RA will decertify a BRD whenever it is determined that it no longer satisfies the bycatch reduction criterion for juvenile red snapper. Before determining whether to decertify a BRD, the Council and public will be advised and provided an opportunity to comment on the advisability of any proposed decertification. The RA will consider any comments from the Council and public, and if the RA elects to proceed with decertification of the BRD, the RA will publish proposed and final rules in the **Federal Register** with a comment period of not less than 15 days on the proposed rule.

VI. Interactions With Sea Turtles

The following section is provided for informational purposes. Sea turtles are listed under the Endangered Species Act as either endangered or threatened. The following procedures apply to incidental take of sea turtles under 50 CFR 227.72(e)(1):

"(i) Any specimen so taken must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by:

(1) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot; or (2) Placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period from 1 to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to 24, if possible) must be returned to the water in the same manner.

(ii) Any specimen so taken must not be consumed, sold, landed, off-loaded, transshipped, or kept below deck."

References

Gulf of Mexico Fishery Management Council. 1997. Amendment 9 to the Fishery Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, Including a Final Supplemental Environmental Impact Statement and Regulatory Impact Review and Social Impact Assessment. Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619, 153 p.

Goodyear, C. P.; 1995. Red snappers in U.S. waters of the Gulf of Mexico. National Marine Fisheries Service, Southeast Fisheries Science Center, Miami Laboratory, Miami, FL. Laboratory Report, Contribution 1 MIA 95/96–05, 171 p.

Hoese, H. Dickson and Richard H. Moore; 1977. Fishes of the Gulf of Mexico, Texas, Louisiana, and Adjacent Waters. Texas A&M University Press, College Station, TX, 327 p.

SAFMC; 1997. Final Bycatch Reduction Device Testing Protocol Manual. South Atlantic Fishery Management Council, 1 Southpark Cir., Ste 306, Charleston, S.C. 29407, 34 p.

Ward, John M., Teofilo Ozuna and Wade Griffen; 1995 Cost and Revenues in the Gulf of Mexico Shrimp Fishery . NOAA Tech. Mem. NMFS–SEFSC–371, 76 p.

Appendix H Statistical Procedures for Analyzing BRD Evaluation Data

NMFS will calculate the reduction in bycatch mortality (F) based on data gathered during the testing. Both age 0 and age 1 red snapper, ranging in length from 10 mm to 200 mm, occur frequently in shrimp trawls. During the July/August (July 1–August 31) period, the most recently spawned year class of fish have not fully recruited to the shrimp grounds; thus the catch is represented by a relatively narrow length range of individuals, all of which are considered to be age 1. The numerical reduction in catch-per-unit-effort (CPUE) of this specific age class is expected to be a good predictor of fishing mortality (F) reduction, although the size composition data will be checked for any particular test. The analysis of the data collected under this testing protocol will be based on a modified paired t-test. Because of the varying age and size composition of the red snapper catch taken at other times of the year, more detailed analyses through use of a stock assessment model (Goodyear 1995) incorporating the size-specific reduction performance of the device and the seasonal progression of F must be conducted to determine if the BRD candidate will meet the bycatch reduction criterion. Based on the time of the year that the test is conducted, NMFS will utilize the appropriate technique to assess the performance of the BRD candidate as a service for the BRD sponsor.

All experimental tows must be conducted in conformance with the requirements of the BRD testing protocol. Data collected from no more than 20 tuning tows of the control and experimental trawls (without the BRD candidate installed) must be included to determine if any net bias exists prior to beginning certification phase testing. To further reduce problems caused by no or low catches, a tow must contain a minimum catch of 5 red snapper in at least one trawl for inclusion in the analysis. Once conducted, the tow and the corresponding collected data become the permanent part of the record and cannot be discarded. Only the successful tows will count toward the minimum required; however, information from other tows, if appropriate, will be used in the analysis.

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Statistical Approach for Calculation of Bycatch Mortality (F) Reduction for Devices Tested in July/August

The statistical approach assumes that the BRD to be tested does not achieve the minimum required reduction rate, (R_o). The hypotheses to be tested are as follows:

H_o: BRD does not achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} \leq R_o, \text{ i.e. } (1 - R_o)\,\mu_c - \mu_b \leq 0.$$

H_a: BRD does achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} > R_o, \text{ i.e. } (1 - R_o)\,\mu_c - \mu_b > 0.$$

R denotes the actual reduction rate (unknown), R_o denotes the minimum required reduction rate, μ_c denotes the actual mean CPUE with the control, and μ_b denotes the actual mean CPUE with the BRD.

With any hypothesis testing, there are two risks involved known as type I error (rejection of true H_o) and type II error (acceptance of false H_o). The probabilities of committing these errors are denoted by alpha and beta, respectively. The probabilities are inversely related to each other. As alpha increases, beta decreases and vice versa. An alpha of 10 percent will be used. The two hypotheses are tested using a 'modified' paired t-test.

The CPUE values for the control and BRD trawls for each successful tow is computed first and is used in the following computations:

$$t = \frac{(1 - R_o)\,\bar{x} - \bar{y}}{s_{d0}/\sqrt{n}},$$

Where:

$\bar{x}$ is the observed mean CPUE for the control,

$\bar{y}$ is the observed mean CPUE for the BRD,

s_{d0} is the standard deviation of $d_i = \{(1 - R_o)X_i - Y_i\}$ values,

n is the number of successful tows used in the analysis, and

i = 1,2,...,n.

The H_o will be rejected if $t > t_{alpha,\ n-1}$ where $t_{alpha,\ n-1}$ denotes the (1 − alpha)100th percentile score in the t distribution with (n − 1) degrees of freedom.

A (1 − alpha)100% two-sided confidence interval on R consists of all values of R_o for which H_o: $R = R_o$ (versus H_a: $R \neq R_o$) cannot be rejected at the level of significance of alpha. One-sided confidence intervals on R could also be computed appropriately.

Appendix I Qualifications of Observer

An observer:

1. Must have a Bachelor's degree in fisheries biology or closely related field from an accredited college, have at least 6 months experience working with a university, college, state fisheries agency, NMFS, or private research organization such as the Gulf and South Atlantic Fisheries Development Foundation as an observer on a trawler (including research trawlers) in the southeast region, or have successfully completed a training course conducted or approved by the Director of the NMFS Southeast Fisheries Science Center.

2. Must not have a current or prior financial relationship with the entity seeking BRD certification.

In addition, any individual:

1. Applying to serve as an observer must provide the names, addresses, and telephone numbers of at least three references who can attest to the applicant's background, experiences, and professional ability. These references will be contacted; unsatisfactory references may be a basis for disapproval of an applicant as an observer.

2. Wishing to serve as an observer should submit a resume and supporting documents to the Director, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149. The Center will use this information to determine which names will to be included on a list of qualified observers. If an applicant is not approved as an observer, the RA will notify the applicant of the disapproval and will provide an explanation for the denial.

[FR Doc. 99–17488 Filed 7–12–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 981216308–9180–03; I.D. 052699A]

RIN 0648–AJ67

Atlantic Highly Migratory Species (HMS) Fisheries; Regulatory Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS is amending the final consolidated regulations governing the Atlantic HMS fisheries to clarify the applicability of recreational retention limits to persons aboard charter/headboat vessels; to set Atlantic bluefin tuna (BFT) quotas for the period beginning January 1, 1999, and ending May 31, 1999; to clarify the requirements for embarking observers aboard shark gillnet vessels; to reestablish certain enforcement provisions inadvertently edited from the consolidated HMS regulations; to clarify transfer provisions for limited access permits; to correct the baseline reference point for limited access fishery vessel upgrades; to clarify references to the management unit and jurisdictional areas for species under regulation by the International Commission for the Conservation of Atlantic Tunas (ICCAT); to correct the effective dates of the restriction on length of pelagic longlines; to correct cross references; and to remove the interim provisions that were not intended to remain in effect beyond June 30, 1999.

DATES: Effective July 1, 1999, except that § 635.69(h) will be effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Chris Rogers at 301–713–2347, FAX: 301–713–1917.

SUPPLEMENTARY INFORMATION: On May 28, 1999, NMFS published a final rule (64 FR 29090) that implemented the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan (HMS FMP), and an Amendment to the Atlantic Billfish FMP and that consolidated regulations for Atlantic HMS into one CFR part. The final consolidated rule inadvertently omitted certain provisions of the final HMS FMP and/or previously issued regulations and contained regulatory text that, in some instances, was not consistent with the final HMS FMP. In addition, because the final rule was not to be effective until July 1, 1999, certain interim provisions that pertained to fishing activities occurring in June were made effective on May 24, 1999. However, the amendatory instructions did not indicate that the effectiveness of the interim provisions would lapse as of the effective date of the remainder of the final rule because these provisions duplicate regulatory text that appears elsewhere in 50 CFR part 635. Finally, a supplement to the proposed rule to implement the HMS FMP (64 FR 9298, February 25, 1999) proposed, among other things, BFT quotas for the proposed new fishing year to begin on June 1, 1999, and, as a consequence, BFT quotas for the transition period of January 1, 1999, through May 31, 1999. The final consolidated HMS regulations implemented the new fishing year, and final quota specifications were issued in a separate document (64 FR 29806, June 3, 1999). The quotas for the transition period were inadvertently omitted from the final specifications notice. All these items are rectified by this technical amendment.

Shark Gillnet Observers

Under the terms of the biological opinion issued as a result of an Endangered Species Act, section 7, consultation on the HMS FMP, NMFS required that all shark gillnet vessels carry an observer on all trips in the southeast during the season when right whales are present.

It was intended that the mandatory observer requirement apply only to vessels in the directed shark fishery and not to vessels taking sharks under an incidental catch limited access permit or under the recreational retention limit. The regulatory text was drafted such that the observer requirement was broader than that intended. This technical amendment revises the regulatory text to clarify that observers are required to be embarked on all trips of gillet vessels issued directed shark limited access permits.

Jurisdictional Issues

Regulations managing the Atlantic shark fishery are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and as such are generally applicable with respect to the U.S. exclusive economic zone (EEZ). As some Atlantic sharks in the management unit are harvested from waters under state jurisdiction and by vessels that fish exclusively in state waters, certain of the Federal regulations may not apply to all vessels or to all cases of transfer of sharks to a dealer. Specifically, federally permitted dealers may purchase regulated sharks from non-federally permitted vessels that fish for sharks exclusively in waters under state jurisdiction but may not purchase sharks from federally permitted vessels after a closure of any specific management group even if those sharks were taken shoreward of the EEZ.

Regulations governing the management of Atlantic billfish are issued under the authority of the Magnuson-Stevens Act and, if implementing a recommendation of ICCAT, also under the authority of the Atlantic Tunas Convention Act (ATCA). As such, billfish regulations, generally applicable in the U.S. exclusive economic zone (EEZ), may apply throughout all waters of the convention area or for a particular stock management unit, as defined by ICCAT. As regulated billfish may be harvested from waters under state, U.S. EEZ, or high seas jurisdictions, or by persons or vessels subject to U.S. jurisdiction within the EEZ of another nation bordering the convention area, certain Federal regulations may apply in all areas, depending on the ICCAT recommendation and the species.

In consolidating the HMS regulations under 50 CFR part 635, certain specific references to these jurisdictional issues for sharks and billfish were inadvertently omitted or stated incorrectly. This technical amendment clarifies these jurisdictional issues and the applicability of Federal regulations for the different species within the U.S. EEZ and the U.S. territorial sea, or on the high seas, or within the EEZ of another nation.

Facilitation of Enforcement

In consolidating the HMS regulations into one CFR part, certain provisions were inadvertently omitted or drafting errors occurred which limit NMFS' ability to enforce the regulations. Specifically, omitted language in the prohibitions on attempting to purchase, sell, trade, or barter HMS contrary to the regulations elsewhere in 50 CFR part 635 is necessary to facilitate enforcement. Also, reports of BFT landed under the Angling category quota must be made through NMFS' automated catch reporting system. A drafting error in the final rule omitted the 24–hour time limit for such catch reporting. To facilitate enforcement, this technical amendment reestablishes the 24–hour requirement. Additionally, a provision for access to position data was inadvertently omitted from the regulations on vessel monitoring systems. For enforcement purposes, NMFS must have unrestricted access to vessel position information. Because VMS units transmit from the vessel to NMFS through a communications service provider that is a third party, access to the data could be at issue. This technical amendment adds the omitted regulatory text and corrects the drafting errors.

Transferability of Tuna Permits

The final consolidated HMS regulations limit transferability of tuna permits to those limited access permits issued to purse seine vessels. As stated in the HMS FMP, however, the limited access program for the Atlantic swordfish and shark fisheries required that limited access also be implemented in the tuna longline fishery so that regulatory discards of swordfish and sharks would not increase in an expanding tuna longline fishery. Further, because the final regulations introduced a limited access system for Atlantic Tunas Longline category permits, and the transfer provisions of the swordfish/shark LAPs require that an Atlantic tunas permit also be obtained, it is necessary to allow the limited access Longline category permits to be transferred from current owners rather than issued on an open-

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access basis by NMFS. This Technical amendment corrects the drafting error to make limited access Atlantic Tunas Longline category permits transferable.

Vessel Upgrade Baseline

As limited access permits for shark, swordfish, and tuna longline vessels were issued based on historical records, certain qualifying vessels were no longer owned by current fishery participants but had been replaced with the intent to retain the qualifying catch history. The HMS FMP established the baseline for limited access vessel upgrades as of the date of publication of the final rule (May 28, 1999). Accordingly, this technical amendment clarifies the regulatory text to establish the baseline for upgrade of vessel parameters (length, tonnage, horsepower) to coincide with the vessel owned as of May 28, 1999, in such cases that the limited access qualifying vessel had already been replaced.

Retention Limits for Charter/Headboats

NMFS recognizes that certain vessels operating as charter vessels and headboats by taking anglers fishing for HMS on a fee basis may, on occasion, sell fish taken by those anglers. Additionally, some of these vessels may, when not operating as a charter/headboat, directly engage in commercial fishing operations. As the retention limits applicable to the recreational fisheries for HMS do not generally apply to persons aboard permitted commercial fishing vessels, it is necessary to clarify the circumstances under which persons aboard a charter/headboat vessel are subject to the recreational retention limits.

For BFT, the consolidated regulations at 50 CFR part 635 allow persons aboard a vessel issued an Atlantic tunas permit in the Charter/Headboat category to land BFT either against the Angling category quota or against the General category quota subject to the applicable size limits, daily catch limits, restricted fishing days and closures. The designation of category is determined by the size of the first BFT retained. Such designation is practical for BFT because the quota categories are related to size limits.

A similar designation is not possible for yellowfin tuna (YFT) because all fish above the 27–inch minimum size limit may be landed in either the commercial or recreational fisheries. While the HMS FMP and compliance guide clearly indicated NMFS' intent that the daily catch limit of three YFT per person per day would apply to persons aboard vessels permitted in the Atlantic Tunas Charter/Headboat category, the consolidated regulations at 50 CFR part 635 are not clear. Although the regulations at § 635.22(a) indicate that the YFT retention limit applies to all persons aboard vessels in the recreational fishery, that same section states that the limit does not apply aboard vessels issued a commercial permit. Under § 635.4, the Atlantic Tunas Charter/Headboat category permit is classified as a commercial permit, and fish landed by persons aboard such vessels may be sold to permitted dealers.

The technical amendment revises the regulatory text to clarify that the YFT retention limit applies to persons aboard charter/headboat vessels. While such YFT may be sold to permitted dealers, the number of fish landed cannot exceed three times the number of persons aboard, including captain and crew.

Transition Period BFT Quota

In specifying the 1999 BFT allocations, NMFS considered carryover adjustments from the 1998 fishing year, new provisions for the discard allowance and limitations on school BFT catch, and additional adjustments to accommodate the establishment of the new fishing year proposed to begin on June 1, 1999. NMFS proposed to allocate BFT quota for the transition period (January 1, 1999, through May 31, 1999) based on underharvest in 1998. At the end of 1998, the following subquotas had not been harvested: 1 metric ton (mt) in the General category, 2 mt in the Purse Seine category, 67 mt in the Angling category, and 26 mt in the Incidental (Longline) category. Additionally, 15 mt remained in the Reserve category.

NMFS proposed to use the 1998 underharvest from the Angling and Incidental categories for the transition period, a time period in which only the Angling and Longline fishing categories would be active. Based on public comment, NMFS had determined that no changes to the proposed transition period BFT quota specifications were necessary. However, the final BFT quota specifications published on June 3, 1999 (64 FR 29806) inadvertently omitted the transition period to the new fishing year beginning June 1, 1999. NMFS, therefore, issues final BFT quota specifications for the transition period of January 1, 1999, through May 31, 1999 in this technical amendment to the final rule.

Consistent with the proposed transition period BFT quota specifications, NMFS subdivides the Angling category transition period quota of 79 mt as follows: Large school/small medium bluefin—75 mt, with 16 mt to the northern area and 59 mt to the southern area; and large medium/giant bluefin—4 mt, allocated entirely to the southern area given the distribution of large BFT during the period. NMFS also subdivides the Longline category transition period quota of 26 mt as follows: 1 mt to longline vessels operating north of 34° N. lat. and 25 mt to longline vessels operating south of 34° N. lat. During the transition period, no BFT quota is allocated to other fishing categories.

Longline Operations

In the final consolidated HMS regulations, the period during which pelagic longlines deployed in the Mid-Atlantic Bight are limited to 24 nautical miles was misspecified. The corrected regulatory text limits the length of longlines for the period beginning August 1, 1999, and ending November 30, 2000. Additionally, the prohibition at § 635.71 (a)(18) regarding movement of longline gear after an entanglement with a protected species is corrected to cross reference paragraph § 635.21(c)(3).

Classification

The Assistant Administrator for Fisheries, under 5 U.S.C. 553(b)(B), finds that providing prior notice and opportunity for public comment on this rule is unnecessary and contrary to the public interest. The rule merely corrects an earlier rule by clarifying regulatory text inconsistent with the final HMS FMP, correcting drafting errors, and reestablishing regulatory provisions that were intended to remain in effect but were inadvertently omitted during the consolidation. These corrections and clarifications are necessary to avoid adverse impacts on fishery participants that would result from inconsistent interpretations of the regulations relative to the HMS FMP and/or the inability of NMFS to enforce regulations due to lack of clarity. For similar reasons, the Assistant Administrator for Fisheries, under 5 U.S.C. 553(d)(3), finds that delaying the effective date of this rule for 30 days is unnecessary and contrary to the public interest.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 USC 601 et seq., are inapplicable. This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 6, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635, is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.4, paragraphs (d)(4), (f)(4), (l) and (m) are revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(d) * * *

(4) A person can obtain an Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit for swordfish. NMFS will issue Atlantic Tunas Longline category permits to qualifying vessels in calendar year 1999. Thereafter, such permits may be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

* * * * *

(f) * * *

(4) Unless the owner has been issued a swordfish handgear permit, a limited access permit for swordfish is valid only when the vessel has on board a valid limited access permit for shark and a valid Atlantic Tunas Longline category permit issued for such vessel.

* * * * *

(l) *Transfer*—(1) *General.* A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish or tuna longline fishery, in accordance with paragraph (l)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit and by a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Shark, swordfish, and tuna longline LAPs.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish ILAP or LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear ILAPs and LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a shark, swordfish, or tuna longline limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective

specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial limited access permit or, if applicable, of that vessel's replacement owned as of May 28, 1999.

(B) The vessel's horsepower may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(C) The vessel's length overall, gross registered tonnage, and net tonnage may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark directed or tuna longline limited access permits have been issued.

(iv) In order to transfer a swordfish, shark or tuna longline limited access permit to a replacement vessel, the owner of the vessel issued the limited access permit must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit to another vessel, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid limited access permit to NMFS with a complete application for a limited access permit, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and tuna longline limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for limited access permit transfers involving vessels.

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the limited access permit(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a limited access permit(s) who sells the permitted vessel but retains the limited access permit(s) must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the limited access permit(s) to a replacement vessel, he/she must apply

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according to the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas commercial category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without

either a directed or incidental catch shark LAP or an Atlantic tunas commercial category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m) *Renewal*—(1) *General.* Persons must apply annually for a vessel or dealer permit for Atlantic tunas, sharks, and swordfish, and HMS Charter/Headboats. Persons must apply annually for an Atlantic tunas or HMS Charter/headboat vessel permit. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in § 635.4 (l)(2), all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section.

(2) *Shark, swordfish, and tuna longline LAPs.* As of June 1, 2000, the owner of a vessel of the United States that fishes for, possesses, lands or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in § 635.4, paragraphs (e) and (f). However, any ILAP that expires on June 30, 2000, is valid through that date. Only valid limited access permit holders in the preceding year are eligible for renewal of a limited access permit(s). Limited access permits that have been transferred according to the procedures of paragraph (l) of this section are not eligible for renewal by the transferor.

3. In 635.5, the first sentence of paragraph (c) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) *Anglers.* The owner of a vessel permitted in the Atlantic tunas Angling or Atlantic tunas or HMS Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1-888-USA-TUNA within 24 hours of the landing. * * *

* * * * *

4. In § 635.7, the last sentence of paragraph (d) is revised to read as follows:

§ 635.7 At-sea observer coverage.

* * * * *

(d) * * * Notwithstanding the above procedures for assignment or waiver, at no time shall a person aboard a vessel issued a directed shark ILAP or LAP under § 635.4 fish for Atlantic sharks with a gillnet or possess sharks on board a vessel issued a directed shark ILAP or LAP with a gillnet on board unless a NMFS-approved observer is aboard the vessel.

* * * * *

5. In § 635.20, the first sentence of paragraph (e)(1) and paragraph (e)(2) are revised to read as follows:

§ 635.20 Size limits.

* * * * *

(e) *Sharks.* (1) No person shall take, retain, or possess in the Atlantic EEZ any species classified as a ridgeback LCS shark, taken from its management unit that is less than 54 inches (137 cm), fork length, or, if the head and fins have been removed, 30 inches (76 cm) as a straight line from the first dorsal fin ray to the precaudal pit * * *

(2) All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins attached and be at least 54 inches (137 cm), FL, except that the minimum size limit does not apply for Atlantic sharpnose sharks.

* * * * *

6. In § 635.21, paragraph (c)(1), the first two sentences of (d)(1), and paragraphs (d)(2)(ii) and (d)(3)(i) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(1) From August 1, 1999, through November 30, 2000, no person may deploy a pelagic longline that is more than 24 nautical miles (44.5 km) in length in the Mid-Atlantic Bight.

* * * * *

(d) *Authorized gear*—(1) *Atlantic tunas.* A person that retains or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board the vessel any gear other than that authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. When fishing for Atlantic tunas other than BFT, fishing gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit as well as ILAPs or LAPs for both swordfish and sharks. * * *

* * * * *

(2) * * *

(ii) Persons may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ only if it is harvested by rod and reel. Regardless of how taken, persons may not possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ on board a vessel using or having on board a pelagic longline.

(3) *Sharks.* (i) No person may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than handgear, longline or gillnet.

* * * * *

7. In § 635.22, paragraphs (a) and (b) are revised to read as follows:

§ 635.22 Recreational retention limits.

(a) *General.* Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, and to a yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a vessel permit under § 635.4 for Atlantic sharks. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a vessel permit under § 635.4 for Atlantic tunas in any category other than Angling or Charter/Headboat.

(b) *Billfish.* No longbill spearfish from the management unit may be possessed shoreward of the outer boundary of the EEZ.

* * * * *

§ 635.25 [Removed on Reserved]

8. Section 635.25 is removed and reserved.

9. In § 635.28, paragraph (b)(3) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) * * *

(3) When the fishery for a shark species group is closed, a fishing vessel issued a shark ILAP or LAP pursuant to § 635.4 may not possess or sell a shark of that species group, and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued a shark ILAP or LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

* * * * *

10. In § 635.69, paragraph (h) is added to read as follows:

§ 635.69 Vessel monitoring systems.

* * * * *

(h) *Access.* As a condition to obtaining a limited access permit for Atlantic swordfish, sharks or tunas, all vessel owners or operators using pelagic longline gear subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

11. In § 635.71, paragraphs (a)(3), (a)(4) and (a)(18) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS without the appropriate valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell or transfer or attempt to sell or transfer an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

* * * * *

(18) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21(c)(3).

* * * * *

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Proposed Rules

Federal Register
Vol. 64, No. 133
Tuesday, July 13, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–801]

RIN 1904–AB03

Energy Conservation Program for Consumer Products: Amendment to the Definition of "Electric Refrigerator"

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking and opportunity for public comment.

SUMMARY: The Department of Energy (DOE or Department) is proposing to amend the definition of Electric refrigerator in its energy conservation program regulations to include a maximum temperature of the fresh food storage compartment, and to exclude certain appliances whose physical configuration makes them unsuitable for general storage of perishable foods.

DATES: DOE will consider all written comments received by August 12, 1999.

ADDRESSES: Mail comments concerning this proposed rule to Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9611 or electronically at michael.raymond@ee.doe.gov.; Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9526.

SUPPLEMENTARY INFORMATION:

I. Background and Introduction

The Department has received requests from several manufacturers of wine coolers, including Danby Products, Ltd. and the Witt Company, requesting exemptions from the refrigerator energy efficiency standards for their wine coolers. These products are configured with special storage racks for wine bottles and do not attain as low a storage temperature as a standard refrigerator. These characteristics make them unsuitable for general long-term storage of perishable foods. Wine coolers also have glass front doors which makes them less energy efficient than standard refrigerators. The Department proposes to amend the definition of "electric refrigerator" at 10 CFR 430.2 to exclude such appliances from coverage. Sales of these products are small and excluding them from coverage would not have any significant impacts.

DOE proposes to exclude wine coolers by including an upper temperature limit in the definition of electric refrigerator. The refrigerator definition contains the phrase "designed for the refrigerated storage of food at temperatures above 32 °F." Clearly, any temperature above 32 °F would not be suitable for the refrigerated storage of food. What is lacking in the definition is a temperature range suitable for food storage for a reasonable length of time. The "American National Standard—Household Refrigerators/Household Freezers," ANSI/AHAM HRF–1–1988, Section 7.6.5.1, "Recommended Level of Performance" states: "It is recommended that in the fresh food compartment of household refrigerators, an average temperature within the range of 34 °F and 41 °F be attainable between the coldest and warmest settings of the controls * * *." Also, from the same paragraph, "Refrigerator-freezer design and development engineers believe 41 °F to be a very practical but not absolute upper limit."

Accordingly, the Department proposes to change the definition of a refrigerator to include the 41 °F upper limit, and to exclude refrigerators containing special storage racks only. By the proposed definition, appliances which, at the coldest setting of the controls, could not attain a fresh food compartment temperature below 41 °F, and contain only special-purpose storage racks, would not be considered a refrigerator, and therefore, not a covered product.

II. Opportunity for Public Comment

A. Participation in Rulemaking

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or comments with respect to the subject set forth in this notice. Whenever applicable, full supporting rationale, data, and detailed analyses should also be submitted.

B. Written Comment Procedures

Written comments (10 copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Refrigerator Definition" and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit a written comment cannot provide 10 copies, alternative arrangements may be made in advance by calling Michael Raymond at (202) 586–9611.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Ave., SW, Washington, DC 20585–0121, telephone (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The DOE will make its own determination of any such claim.

C. Public Hearing

In DOE's view, today's proposed rulemaking does not involve any significant issues of law or fact that would warrant holding a public hearing. Moreover, the companies requesting these changes have not requested such a hearing, and the opportunity to file written comments should suffice for other members of the public who want

DOE to consider their views. For these reasons, DOE has not provided for a public hearing in this notice. Nevertheless, if members of the public request the opportunity to make oral comments and can identify issues that would justify scheduling a public hearing, DOE will reconsider its position on holding such a hearing.

III. Regulatory and Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

The Department has reviewed this rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, the Department's regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). The Department classified this proposed rule as having no environmental effect.

B. Review Under Executive Order 12866, "Regulatory Planning and Review."

The Department has reviewed this regulatory action under Executive Order 12866, "Regulatory Planning and Review," October 4, 1993. The Department concluded that this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs. Therefore, the Department will take no further action in today's proposed rule with respect to Executive Order 12866.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, requires the preparation of an initial regulatory flexibility analysis for every rule which, by law, the agency must propose for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Today's proposed rule simply redefines the term "electric refrigerator" to exclude wine coolers. This change to the definition was requested by small manufacturers of wine coolers for their benefit. No negative impact on any small manufacturer is foreseen.

D. Review Under Executive Order 12612, "Federalism"

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987), requires that agencies review regulations, rules, legislation, and any other policy actions for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The proposed rule published today is a change to the definition of the term "electric refrigerator" and would not regulate the States. Accordingly, the Department has determined that preparation of a Federalism assessment is unnecessary.

E. Review Under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"

The Department has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's notice of proposed rulemaking would have no paperwork impacts.

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented. The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

I. Review Under the Public Law: 105–277 (FY 1999 Appropriations Act)

A provision under the Public Law: 105–277 (FY 1999 Appropriations Act, Page 547 of the Conference Report, H. R.

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4328) requires that agencies assess the impact of proposed actions on family well-being before implementing policies and regulation. Agencies must assess such an action with respect to whether—(1) it strengthens or erodes the stability or safety of the family and, particularly, the marital commitment, (2) it strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children, (3) it helps the family perform its functions, or substitutes governmental activity for the function, (4) it increases or decreases disposable family income or poverty of families and children, (5) its benefits justify the financial impact on the family, (6) it can be carried out by State or local government or by the family, (7) it establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. Additionally, agency heads must submit a written certification to the Director of the Office of Management and Budget and to Congress that the policy or regulation has been so assessed and they must provide an adequate rationale for the implementation of each policy or regulation that may negatively affect family well-being.

The Department has determined that the action proposed today, which amends the definition of the term "electric refrigerator," does not have any significant potential negative impact on the family well-being. Therefore, the requirements of the above provisions under Public Law 105–277 do not apply to this action.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on June 7, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by revising the definition of "Electric refrigerator" to read as follows:

§ 430.2 Definitions.

* * * * *

Electric refrigerator means a cabinet designed for the refrigerated storage of food at temperatures above 32 °F and below 41 °F, storage racks configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F.

* * * * *

[FR Doc. 99–17657 Filed 7–12–99; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1031]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: In December 1998, the Board issued an advance notice of proposed rulemaking requesting comment on the potential benefits and drawbacks of a modification to its Regulation CC that would shorten the maximum hold for many nonlocal checks. This modification would shorten the availability schedule for nonlocal checks from five to four business days, except that a depositary bank could retain a five-day availability schedule for subcategories of nonlocal checks for which it certifies that it does not receive a sufficient proportion of returned checks within four business days. This proposal was one of several possible alternatives for defining subcategories of nonlocal checks that would be subject to a shortened availability schedule. The Board has concluded that return times for nonlocal checks do not support a reduced availability schedule for nonlocal checks in the aggregate at this time. The Board has also determined that the costs and potential risks would outweigh the likely benefits of establishing subcategories of nonlocal checks for availability purposes at this time. Therefore, the Board has decided not to propose any specific regulatory changes at this time to reduce the nonlocal check availability schedule.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager, Check Payments Section (202/452–2660) or Michele Braun, Project Leader (202/452–2819), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Managing Senior Counsel (202–452–3198), Legal Division. For the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

As a result of concerns about some banks' practice of delaying funds availability by placing holds on the proceeds of checks deposited into customers' transaction accounts, Congress passed the Expedited Funds Availability Act (EFAA) in 1987.[1] The EFAA specifies maximum time limits on the holds that banks may place on funds deposited into transaction accounts.

The EFAA funds availability schedules attempt to balance banks' concerns about managing their risk with consumers' concerns about the availability of their funds. Congress recognized that banks would be exposed to risks if they were required to make funds from a check available before they had a reasonable opportunity to learn that the check was returned unpaid. To balance depositors' interest in receiving prompt access to their funds with banks' ability to manage their risks, the EFAA directed the Board to consider improvements to the check processing system that would speed the collection and return of checks.[2] In addition, the EFAA required the Board to reduce the statutory funds availability schedules to as short a time as possible and equal to the period achievable under the improved check clearing system for a depositary bank to reasonably expect to learn of the nonpayment of most items for each category of checks.[3]

The Board's Regulation CC (12 CFR part 229), which implements the EFAA, includes maximum availability schedules for funds deposited into transaction accounts as well as provisions designed to accelerate the check return system. The regulation's availability schedules incorporate several provisions in the EFAA where Congress deemed that, in certain cases, a longer time was necessary to provide a reasonable amount of time for a

[1] 12 U.S.C. 4001–4010. As used in this notice and in Regulation CC, the term *bank* includes commercial banks, savings institutions, and credit unions. *Depositary bank* refers to the bank of first deposit (see 12 CFR 229.2(e) and (o)).

[2] 12 U.S.C. 4008(b) and (c).

[3] 12 U.S.C. 4002(d)(1).

depositary bank to learn of a returned check before having to make the funds from that check available for withdrawal. For example, the schedules provide for a one-day schedule extension for checks deposited in Alaska, Hawaii, Puerto Rico, and the Virgin Islands that are payable by a bank located in another state or territory.[4] Similarly, the EFAA provides a one-day extension for making certain funds available for withdrawal by cash or similar means.[5]

The availability schedules in the EFAA and Regulation CC apply to three broad categories of checks. Certain "low-risk" checks drawn or guaranteed by credit-worthy institutions, such as cashier's checks, teller's checks, certified checks, and government checks, generally must be made available for withdrawal on the next business day following the banking day of deposit. Local checks (checks payable by banks located in the same check processing region as the depositary bank) generally must be made available for withdrawal within two business days. Nonlocal checks (checks payable by banks located in different check processing regions than the depositary bank) generally must be made available for withdrawal within five business days.[6]

Pursuant to the EFAA's direction to reduce the statutory schedules when banks can reasonably learn of the return of most items in a category of checks within a faster time, the Board adopted Appendix B of Regulation CC. Appendix B requires depositary banks within certain check processing regions to make certain nonlocal checks available within a faster time period than that required by the EFAA. Current appendix B requires depositary banks in the Utica, Nashville, and Kansas City check processing regions to make selected nonlocal checks available for withdrawal within three, rather than five, business days.[7] The Board formulated these reduced schedules in 1988 through a relatively informal process in which each Federal Reserve Bank check processing office estimated which nonlocal checks that were deposited in banks in its region could be collected and returned faster than the prescribed EFAA maximum hold period. These estimates were based on the Reserve Bank's knowledge of geographic proximity between certain banks or robust transportation networks and projected improvements in return times that would result from requirements intended to speed the return of unpaid checks.

[4] 12 U.S.C. 4002(d)(2); 12 CFR 229.12(e).

[5] Under the "cash-withdrawal rule," the depositary bank may extend the holds on local and nonlocal checks for purposes of making funds available for withdrawal by cash or similar means. The depositary bank may extend the hold until 5:00 p.m. on the normal availability day for the first $400 of the deposit and until the following business day for the remainder of the deposit. *See*, 12 U.S.C. 4002(b)(3); 12 CFR 229.12(d).

[6] Under Regulation CC's temporary availability schedule, which was in effect from September 1, 1988, through August 31, 1990, funds deposited by most local checks had to be made available for withdrawal within three business days, and nonlocal checks had to be made available for withdrawal within seven business days. Other than the change from the temporary to the current permanent schedule, the EFAA's local and nonlocal check availability schedules have not been modified since the EFAA was enacted. During this period, the Federal Reserve has consolidated several of its check processing regions, listed in Regulation CC's appendix A, which has resulted in some checks being reclassified from nonlocal to local. Thus, the availability that must be accorded to some deposits has improved.

1998 Proposal

After a decade of experience with the post-Regulation CC check collection and return system, the Board undertook a study of whether a more rigorous approach to reducing nonlocal check schedules would be appropriate and what the relative costs and benefits of such an approach would be. For guidance on the conditions under which it would be appropriate to reduce the availability schedules, the Board looked to the 1987 Conference Report on the EFAA.[8]

The Conference Report tied availability schedules to banks' ability to reasonably expect to learn of the nonpayment of a significant number of checks. The Report suggested that if improvements in the check clearing system make it possible for two-thirds of the items in a category of checks to meet this test in a shorter period of time, then the Board must shorten the schedules accordingly.[9] The Report also recognized that geographic proximity or transportation arrangements between check processing regions would permit the Federal Reserve to provide shorter times than the general schedule for nonlocal checks would require. The Report noted that shorter times would be possible for checks transported between such nearby territories as New York City and Jericho, Long Island, and for checks transported between banks in cities with Federal Reserve check processing offices, such as banks in Boston and San Francisco.[10]

[7] A more extensive set of reduced schedules for nonlocal checks was in effect during the temporary schedule period from September 1, 1988, to August 31, 1990.

[8] H.R. Conf. Rep. No. 100–261 (1987).

[9] *Id.* at 179.

[10] *Id.*

In considering whether nonlocal checks as a single broad category, the Board also began investigating whether it would be appropriate to define subcategories for various types of nonlocal checks and specify maximum availability schedules for these subcategories. One means of establishing subcategories of nonlocal checks would be for the Board to make subcategory determinations by regulation. These determinations would require a trade-off between precision in subcategory definition and the practical limitations of the data collection needed to support the categorization. Identifying a large number of subcategories of nonlocal checks should increase the likelihood that the checks are accurately categorized based on when they are returned. The greater accuracy afforded by a large number of subcategories would lower the risk that funds from a particular check would have to be made available by the depositary bank before it would normally be returned. Similarly, a higher degree of accuracy would increase the probability that customers would receive faster availability for those checks for which the depositary bank learns of the return before making funds available for withdrawal. Thus, a large number of subcategories of nonlocal checks should provide a better balance, as sought by Congress, between banks' needs to manage their fraud-loss risk and their customers' interests in having as early access to their funds as possible.

The Board explored alternative approaches for defining subcategories of nonlocal checks that should receive earlier availability. These approaches ranged from categorizing the almost 2,000 possible pairs of check processing regions to a more aggregated approach that would group nonlocal checks into only three categories nationwide based on the availability zone (city, RCPC, or country) of the paying bank.[11] Each

[11] In general, nonlocal checks payable by banks located closest to Federal Reserve check processing

Continued

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approach recognized the roles of geographic proximity and transportation arrangements in the check clearing and return cycle. It was not clear, however, what would be the most reasonable and cost-effective way to identify those subcategories of nonlocal checks that should receive earlier availability. Collecting data to support a valid analysis of return cycles for nonlocal checks becomes increasingly expensive and, in some cases, impractical as the number of subcategories increases.

The Board requested comment on an alternative approach for establishing nonlocal check subcategories. Specifically, the Board considered a self-certification system under which the general nonlocal check availability schedule would be reduced to four business days, and depositary banks could conduct their own surveys, if they believed it would be cost-effective to do so, to determine the subcategories of nonlocal checks that would be subject to five-day availability schedules. This approach would match the bank's actual return experience with availability schedules more precisely than any approach that relies on data that the Reserve Banks could collect. Permitting a bank to certify that it qualifies to use five-day availability schedules for some subcategories of nonlocal checks could give it the flexibility to weigh (1) the costs of collecting data with which to certify that it should be permitted to hold certain subcategories of nonlocal checks for five days, (2) the fraud risk associated with its hold policy, and (3) the customer benefits of that policy.

The Board noted, however, the difficulty of obtaining a sufficient sample to validate several of the available options for defining such subcategories of nonlocal checks. If a bank determined that the administrative cost associated with demonstrating that certain subcategories of nonlocal checks should be subject to five-day availability and the resulting increased complexity of its availability schedules outweighs the incremental fraud protection, then it could adopt a four-day or shorter schedule for all of its nonlocal check deposits.

The Board requested comment on this self-certification approach in an advance notice of proposed rulemaking, issued in December 1998.[12] The notice noted that the Board was also considering other methods for defining categories of nonlocal checks that might reasonably meet the congressional mandate.

offices are returned fastest. Nonlocal checks payable by banks located further away require somewhat more time. The locations are organized roughly in concentric circles. City checks are payable by banks located relatively close to a Federal Reserve office, RCPC checks are payable by banks located somewhat further from a Federal Reserve office, and country checks are payable by banks even more geographically remote. Only eight of forty-four check processing regions have country availability zones.

Summary of Comments

General Comments

The Board received one hundred twenty-five comment letters in response to the December 1998 advance notice of proposed rulemaking. The following table shows the number of comments by the category of commenter:

Category of commenter	Number of responses
Banks and bank holding companies	99
Clearinghouses and associations representing banks	21
Check processors	1
Federal Reserve Banks	4
Total	125

One hundred sixteen commenters opposed shortening nonlocal hold periods. One commenter stated that it would support any reduction in the hold period as a move to improve the image of banks in general. The eight other commenters did not address the length of the nonlocal availability schedule, but did comment on specific questions posed by the Board about implementing the proposed self-certification process.

Eighty-two commenters cited increased risk of fraud loss as their reason for opposing any proposal to shorten nonlocal hold periods. Many commenters also stated that banks frequently maintain availability policies that make funds available sooner than required by Regulation CC.[13] These commenters stated that although their banks generally make funds available earlier than required, on a case-by-case basis they withhold funds for the maximum permissible period. Several of these commenters further stated that the checks for which they use case-by-case holds are the ones with greatest risk for loss, so that shortening the hold period by even one day could increase the risk of loss dramatically. Other banks stated that they use the maximum permissible hold period and that shortening the permitted hold period would expose them to a potentially significant increase in check fraud losses.

Eighteen commenters also stated that shortening nonlocal holds by one day would provide little benefit to consumers, either because banks already make most funds available more quickly than required or because banks that use four-or five-day holds may release funds early if the customer so requests and the banks can verify payment by contacting the paying bank. Thus, these commenters argued, shortening the nonlocal hold period by one day would not benefit many depositors.

Reasonable Time To Learn of Nonpayment

As noted above, the Board included in its notice data regarding return times for nonlocal checks from four surveys. In 1996, the Board's comprehensive survey of check-fraud losses at banks asked respondents to indicate the proportion of returned checks that they typically received on each business day following the initial deposit of a check (1996 bank survey). In conjunction with that check-fraud study, Federal Reserve staff also collected detailed data from a sample of checks processed during one week through the Federal Reserve Banks (1996 Reserve Bank survey).[14] In 1997, Federal Reserve staff repeated the Reserve Bank survey for six weeks and thereby increased the number of nonlocal returned checks sampled compared with the prior survey (1997 Reserve Bank survey).[15] The results of the 1997 survey were generally consistent with those of the 1996 survey. For historical comparison, the Board also reviewed a survey of checks returned through the Reserve Banks conducted shortly after the implementation of Regulation CC (1990 Reserve Bank survey).[16] The table below summarizes the average nonlocal return

[12] 63 FR 69027, December 15, 1998.

[13] These statements are consistent with findings reported in studies conducted by the Board and the American Bankers Association. In these studies, 70 and 86 percent of responding banks, respectively, reported that they do not hold nonlocal checks for the full period permitted under Regulation CC. Board of Governors of the Federal Reserve System, *Report to the Congress on Funds Availability Schedules and Check Fraud at Depository Institutions* (Board of Governors, 1996), p. 36, and American Bankers Association, *ABA 1998 Check Fraud Survey Report*, (1998), p. 19.

[14] Board of Governors of the Federal Reserve System, *Report to the Congress on Funds Availability Schedules and Check Fraud at Depository Institutions* (Board of Governors, 1996).

[15] The 1997 survey was designed to provide a sufficient number of checks to estimate the proportion of nonlocal checks returned within four and five days nationwide. The sample was not intended to provide statistically valid results between each possible pairing of check processing regions throughout the country. (63 FR 69027, December 15, 1998).

[16] Board of Governors of the Federal Reserve System, *The 1990 Report to Congress Under the Expedited Funds Availability Act* (Board of Governors, 1990).

cycles observed in the 1990, 1996, and 1997 surveys.

CUMULATIVE PERCENTAGE OF NONLOCAL CHECKS RETURNED WITHIN NUMBER OF BUSINESS DAYS

	1997 Reserve Bank survey[1]	1996 Reserve Bank survey[1]	1996 bank survey	1990 Reserve Bank survey	Percent improvement 1990–97
3 business days	27.8	33.3	32.0	21.0	32.4
4 business days	59.9	64.1	64.9	47.0	27.5
5 business days	82.8	83.3	84.3	73.0	13.4
Number of nonlocal checks sampled	31,646	5,707	[2]773	NA	NA

[1] Excludes outlier observations defined as nonlocal checks that exceed 15 business days. For example, the 1997 survey data exclude 1.6 percent of nonlocal checks sampled.
[2] Reflects the number of commercial banks, savings institutions, and credit unions sampled.
Source: Board of Governors of the Federal Reserve System. See text notes 17, 18, and 19 for sources of data.

Twenty-nine commenters stated that, in the aggregate, the return periods reported in the Board's notice indicated that banks did not yet receive two-thirds of their returns within four business days. Fifteen commenters stated that the average return cycle was shorter in 1996 than in 1997 and requested that the Board defer shortening the maximum hold periods until the data showed that return times for nonlocal checks, in the aggregate, clearly exceeded at least the two-thirds threshold.

The way in which the Board presented the data in the 1998 notice suggested that a nonlocal check that was returned to the depositary bank on the fifth business day after the day of deposit afforded the depositary bank a reasonable time in which to learn that the check was returned before making funds available for withdrawal on that day. Similarly, the notice could be read as assuming that if a nonlocal check is returned on the fourth business day after deposit, it may be appropriate to reduce the availability schedule applicable to that check to four business days.

Several commenters, including the American Bankers Association, argued that all banks need the ability to hold funds for one day beyond the day on which they receive returned checks. These commenters noted that Regulation CC requires that funds be made available at the start of the business day on which the depositor must have access to funds pursuant to the schedules, but unpaid checks typically are not delivered until mid-day. As a result, the depositor might be permitted to withdraw cash several hours before the bank knows that the check was being returned.[17] Therefore, they argued, banks should be able to hold checks for one day beyond the day they can "reasonably expect to learn of the nonpayment of most items." Under this theory, nonlocal schedules should not be reduced to four business days unless two-thirds of nonlocal checks can be returned to the depositary bank by the third business day after the banking day of deposit. The American Bankers Association further argued that the extra day permitted for cash withdrawals does not ameliorate this problem because the attendant requirement that cash and check withdrawals be tracked separately is not operationally feasible for most banks.

In addition, seven commenters argued that the two-thirds threshold suggested by the legislative history was inadequate and that receiving as many as one-third of returned checks back after the maximum permissible hold period would expose banks to more risk than they considered acceptable. One commenter cited the statutory language that requires shorter schedules where the depositary bank can reasonably expect to learn of the nonpayment of "most" items and argued that, as interpreted by several courts in other contexts, "most" means an amount more significant that two-thirds, and the Conference Report language should not be considered controlling.

Twenty-four commenters provided data on their return experiences. Some commenters provided explicit surveys of their return items, while others asserted that some items took six or more days to be returned and, therefore, they opposed reducing the permissible hold period. These banks also noted the difficulty they had collecting representative data and explained that this was an expensive, labor-intensive, manual process.

Several smaller institutions pointed out that they use one or more intermediaries to process and collect checks, which tends to add at least one day to the collection process, and that they would be particularly disadvantaged by shortened hold periods for nonlocal checks. The National Association of Federal Credit Unions stated that shorter nonlocal hold periods would have a disproportionately negative effect on credit unions because credit unions are less likely than commercial banks to receive returned checks within four business days.

Subcategories of Nonlocal Checks

In general, the commenters stated that there were difficulties associated with an availability policy that includes subcategories of checks. Seven commenters stated that creating subcategories of checks within the categories of next-day, local, and nonlocal checks would greatly increase the complexity of the regulation, the cost of implementation, and the difficulty of adequately disclosing banks' availability policies to consumers. These commenters also stated that they could not reliably collect data on check return patterns beyond the existing categories of checks.

Some of these commenters further stated that the EFAA established the check categories and does not require the Board to further subdivide those categories. The American Bankers Association stated that the most obvious meaning of "category of checks" in the EFAA is provided by the statute (that is, next-day, local, and nonlocal checks), on which the statutory funds availability schedules are based.

Many commenters stated that it would be important to disclose availability policies to depositors thoroughly. The American Bankers Association stated, however, that creating a more complex, changeable system would confuse consumers when one of the main purposes of the statute was to inform consumers. Most commenters expressed similar views,

[17] 12 CFR 229.19(b). Specifically, funds must be made available for withdrawal by the later of 9:00 a.m. (local time of the depositary bank) or the time the depositary bank's teller facilities (including ATMs) are available for customer-account withdrawals.

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stating that existing availability schedules were complicated to explain to depositors and that policies that differentiate among categories of nonlocal checks would be more confusing.

Forty-two respondents stated that administering holds for subcategories, implementing the proposed self-certification process, making any change to availability schedules, and training clerical staff on current hold and disclosure policies would be excessively costly. Fifty-two commenters stated that Regulation CC was already very complex and that training staff to properly administer the regulation presented a continuing problem. These commenters argued against any changes that might increase the cost or complexity of implementing or explaining the Regulation's provisions.

Thirty-four commenters commented on the proposed self-certification procedure. Generally, commenters indicated that banks would be unlikely to use the self-certification option because of its complexity and implementation cost, and that they would simply use shorter hold periods or shorter case-by-case holds despite the potentially increased risk.

Conclusions

Reasonable Time to Learn of Nonpayment.

Although the EFAA requires the Board to reduce availability schedules based on improvements in the check collection process, the EFAA states that such reductions should be made when depositary banks can reasonably expect to learn of the nonpayment of most items subject to the reduced schedules. Other provisions of the EFAA, such as the extended schedules allowed for cash withdrawal purposes and for certain checks deposited outside the continental U.S., indicate that Congress meant to protect depositary banks from undue risk that might accompany the EFAA's maximum availability schedules.[18] Thus, the EFAA attempts to balance the interests of depositors in receiving prompt availability of funds against the risks to depositary banks of making funds available before learning that checks have not been paid.

Although the discussion of the survey data in the Board's December 1998 notice was based on the premise that a depositary bank should be able to make funds available from a check on the day it would normally receive the return of that check, the Board has reconsidered that reasoning. The Board believes that the depositary bank can reasonably expect to learn of the nonpayment of most items only if it learns of the returned checks in time to take action before funds are required to be available for withdrawal. Generally, banks receive returned checks around midday. Banks require time to process the unpaid checks and post entries to depositors' accounts. Under the EFAA, $400 in cash must be made available not later than 5:00 p.m. on the day that funds are to be made available for other purposes. While banks are permitted to delay by one more day the withdrawal of additional amounts by cash or similar means, it is costly and perhaps operationally not feasible for banks to treat cash and check withdrawals differently. Accordingly, banks appear to make funds available for withdrawal by cash at the opening of business on the same day on which they make funds available for other purposes. If the schedule is shortened so that the depositary bank is required to make funds available at the opening of business on the day that it receives the returned check, it may need to make funds available several hours prior to receipt of the check and before it is able to post the returned check to the depositor's account. Accordingly, the Board has reconsidered the time frame within which the "two-thirds" test is relevant. The Board believes that, before availability schedules are reduced for a category (or subcategory) of checks, a depositary bank should be able to learn of the return of most checks in that category in time to prevent depositors from withdrawing funds from the checks. The data from the surveys shows that, on an aggregate basis for nonlocal checks, the proportion of nonlocal checks returned to banks within three business days was well below the two-thirds envisioned by Congress. In addition, although the proportion of nonlocal checks returned within four business days after deposit was close to two-thirds, it remained slightly below that threshold. The Board has concluded, therefore, that it would not be appropriate to reduce the general availability schedule for nonlocal checks five to four days at this time. This determination does not foreclose the possibility that improvements in the check return system or in posting systems might lead to a shortening of the general availability schedule in the future.

Subcategories of Nonlocal Checks

After reviewing the comments on the difficulties of implementing differing availability schedules for subcategories of nonlocal checks, the Board has determined that the costs and difficulties of establishing such subcategories, in addition to those already specified in appendix B of Regulation CC, would outweigh the likely benefits. As stated by the commenters, creation of subcategories of nonlocal checks would increase depositary bank costs significantly, particularly in the area of employee training and operations changes. These costs would increase regardless of whether the subcategories were established by regulation or by a self-certification process, although depositary banks would bear additional costs under the latter process.[19] In addition, the commenters expressed concern that increasing the complexity of the availability schedules would also increase confusion for depositors and bank employees. The Board also notes that most banks do not appear to impose the maximum permissible hold periods, thus reducing the apparent potential benefits to depositors of reducing the nonlocal hold period.

Furthermore, it would be difficult to determine specific categories of nonlocal checks that should be subject to a shortened availability schedule. While Reserve Bank estimates based on geographic proximity or robust transportation networks formed the basis for including specific categories of checks in appendix B, the basis for determining additional categories of nonlocal checks subject to shortened availability schedules in a comprehensive way would be more complex. Optimally, statistical sampling of data from returned checks would provide a valid estimate of the number of returned checks with reasonable confidence intervals around the estimates. Collecting such an optimum sample of returned nonlocal checks, however, is not simple. First, because most checks are local, the sample size would have to be very large to obtain a sufficient number of nonlocal checks. Second, as the number of subcategories of nonlocal checks increases, the number of checks that need to be sampled increases as well. It may be virtually impossible to collect a sufficient number of checks between certain regions of the country owing to the limited number of checks returned between them. Further, collecting the data is a costly and time-consuming process. The information on returned checks needed for a survey must be collected manually from the back of checks and is often overprinted, lightly printed, and otherwise difficult to read. Data collection is further complicated by processing schedules. Returned checks become available to be sampled during peak processing periods in the middle of the night when bank staff have very limited time to collect the required data without slowing the return of those checks to the depositary bank.

Accordingly, the Board has decided not to establish different maximum availability schedules for additional subcategories of nonlocal checks. Although the Board has decided not to propose any specific regulatory changes at this time to reduce the nonlocal check availability schedule, the Board will continue to monitor the time periods needed to return unpaid nonlocal checks and may consider further action if return times improve significantly.

By order of the Board of Governors of the Federal Reserve System, July 7, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–17679 Filed 7–12–99; 8:45 am]

BILLING CODE 6210–01–P

[18] The Act also permits depositary banks to extend holds under certain exception situations, such as when a deposit is over $5,000 or when a bank has reasonable cause to doubt the collectibility of a check. These exception holds are not based on the amount of time it takes to collect and return the particular check, indicating that Congress may have presumed that, in the normal course of events, a significant number of checks would not be returned in time to provide the depositary bank with protection within the regular availability schedules, making these exception holds necessary.

[19] Moreover, as some commenters stated, it is not clear that the EFAA requires reduced schedules for subcategories of checks. Although the EFAA does not define "categories of checks," some commenters argued that the Board should rely on the categories of checks delineated in the EFAA and that the EFAA does not direct the Board to define additional check categories. The 1987 Conference Report, however, provided an example using subcategories of nonlocal checks.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–10]

Proposed Establishment of Class D Airspace; Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi Airport Authority is installing a control tower at the Tupelo Municipal—C.D. Lemons Airport. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport. This would establish Class D airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the Tupelo Municipal—C.D. Lemons Airport. Control tower hours of operation are scheduled for 0600–2200, daily.

DATES: Comments must be received on or before August 12, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–10, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi Airport Authority is installing a control tower at the Tupelo Municipal—C.D. Lemons Airport. Class D surface area airspace is required when the control tower is open to accommodate current SIAP and for IFR operations at the airport. Class D airspace designations for airspace areas extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Tupelo, MS [New]

Tupelo Municipal—C.D. Lemons Airport, MS
(Lat. 34°16'00"N, long. 88°46'11"W)

That airspace extending upward from the surface to an including 2,800 feet MSL within a 4.1-mile radius of Tupelo Municipal—C.D. Lemons Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 28, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–17759 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–AA–11]

Proposed Amendment to Class E Airspace; Moundsville, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Class E airspace area at Moundsville, WV. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Marshall County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before August 12, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 99–AEA–11, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AEA–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Moundsville, WV. A GPS RWY–24 SIAP has been developed for Marshall County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in that Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E4 Moundsville, WV [Revised]

Marshall County Airport, Moundsville, WV
GRP
(Lat. 39°52'52"N, long. 80°44'08"W.)

That airspace extending upward from 700 feet above the surface within a 6.2 mile radius of Marshall County Airport, and within 2 miles each side of the 051° bearing from the Marshall County Airport, extending from the 6.2 mile radius of the airport to 12 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on June 28, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–17755 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–41]

Proposed Modification of Class E Airspace; Cable Union, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Cable Union, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 34 has been developed for Cable Union Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to decrease the radius of the existing controlled airspace and redefine a portion of the existing controlled airspace using an additional navigation facility for this airport.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–41, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–41." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availabiliy of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Cable Union, WI, to accommodate aircraft executing the proposed GPS Rwy 34 SIAP at Cable Union Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

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Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amemdment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Cable Union, WI [Revised]

Cable Union Airport, WI
(Lat. 46°11′39″N., long. 91°14′47″W.)
Hayward VOR/DME
(Lat. 46°01′08″N., long. 91°26′47″W.)
Seeley NDB
(Lat. 46°06′37″N., long. 91°23′02″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Cable Union Airport, and within 3.0 miles each side of the Hayward VOR/DME 038° radial extending from the 6.4-mile radius to 10.0 miles southwest of the airport, and within 1.8 miles each side of the Seeley NDB 228° bearing extending from the 6.4-mile radius to 7.6 miles southwest of the airport, excluding that airspace within the Hayward, WI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 28, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–17756 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–40]

Proposed Modification of Class E Airspace; Hayward, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Hayward, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 02, and a GPS SIAP to Rwy 20, have been developed for Sawyer County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–40, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–40." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a cop of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Hayward, WI, to accommodate aircraft executing the proposed GPS Rwy 02 SIAP and GPS Rwy 20 SIAP at Sawyer County Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September, 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Hayward, WI [Revised]

Hayward, Sawyer County Airport, WI
(Lat. 46° 01′ 33″ N., long. 91° 26′ 39″ W.)
Hayward VOR/DME
(Lat. 46° 01′ 08″ N., long. 91° 26′ 47″ W.)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of the Sawyer County Airport, and within 3.7 miles each side of the Hayward VOR/DME 205° radial extending from the 6.5-mile radius to 9.4 miles southwest of the VOR/DME, and within 2.5 miles each side of the Hayward VOR/DME 022° radial extending from the 6.5-mile radius to 7.9 miles northeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on June 28, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–17757 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–11]

Proposed Amendment of Class E Airspace; Fort Rucker, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Fort Rucker, AL. A Global Positioning System (GPS) Runway (RWY) 22 Standard Instrument Approach Procedure (SIAP) has been developed for Florala Municipal Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Florala Municipal Airport.

DATES: Comments must be received on or before August 12, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–11, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Fort Rucker, AL. A GPS RWY 22 SIAP has been developed for Florala Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Florala Municipal Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface

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are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Fort Rucker, AL [Revised]

Fort Rucker, Cairns AAF, AL
(Lat. 31°16'37"N, long. 85°42'36"W)
Andalusia—Opp Airport, Andalusia, AL
(Lat. 31°18'32"N, long. 86°23'38"W)
Florala Municipal Airport, AL
(Lat. 31°02'38"N, long. 86°18'37"W)

That airspace extending upward from 700 feet or more above the surface within the area bounded by a line beginning at lat. 31°38'01"N, long. 86°23'30"W, to lat. 31°45'01"N, long. 85°38'00"W; to lat. 31°17'01"N, long. 85°26'00"W; to lat. 31°04'01"N, long. 85°52'00"W; to lat. 31°03'02"N, long. 86°11'04"W, to and clockwise along the arc of a 6.5-mile radius circle of Florala Municipal Airport to lat. 31°02'14"N, long. 86°26'10"W; to the point of beginning and within a 7-mile radius of Andalusia—Opp Airport.

* * * * *

Issued in College Park, Georgia, on June 29, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–17758 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Subchapter O, Parts 330 and 385

[Docket No. RM99–5–000]

Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf; Notice of Proposed Rulemaking

June 30, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to exercise its authority under the Outer Continental Shelf Lands Act (OCSLA) to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS). To achieve this, the Commission is considering requiring OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. Making this information available will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. This will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The Commission believes this proposed regulatory regime is a key step to developing a uniformly-applied, light-handed regulatory standard equally applicable to all OCS gas service providers.

DATES: Comments on the Notice of Proposed Rulemaking are due August 27, 1999. Comments should be filed with the Office of the Secretary and should refer to Docket No. RM99–5–000.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marc Poole, Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426, (202) 208–0482.

Gordon Wagner, Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 219–0122.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 or 8.0. User assistance is available at 202–208–2474 or by e-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by e-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

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I. Introduction

The Commission is proposing to exercise its authority under the Outer Continental Shelf Lands Act (OCSLA)[1] to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS).[2] To achieve this, the Commission is considering requiring OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. Making this information available will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. This will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The Commission believes this proposed regulatory regime is a key step to developing a uniformly-applied, light-handed regulatory standard equally applicable to all OCS gas service providers.

[1] 43 U.S.C. 1301–1356 (1988).

[2] The OCS is defined as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters . . . and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1331(a). *See also* 43 U.S.C. 1301(a)(1), defining "lands beneath navigable waters" as "all lands within the boundaries of each of the respective States." Thus, the federal OCS does not include offshore areas that are within state boundaries.

II. Background

A. The Increasing Importance of OCS Gas Supplies

The OCS is the nation's most promising source of stable energy supplies, both currently and for the foreseeable future. Already, the OCS, mainly the Gulf of Mexico, is one of the nation's most important natural gas supply areas. The Gulf area currently accounts for approximately 26.2-percent of U.S. annual natural gas marketed production[3] and is becoming increasingly important to the energy security of the United States. Gas production from the Gulf of Mexico in 1997 was 5.24 trillion cubic feet (Tcf).[4] The relative importance of the Gulf's gas production to the U.S. grew very rapidly from only 1–2 percent of production in the mid-1950s. Estimates of the Gulf resources are large and the current production levels of 5 Tcf can be maintained or increased for years. As of 1997, proven natural gas reserves in the Gulf of Mexico totaled 27.9 Tcf[5] with estimated resources up to 155 Tcf. The Department of Energy forecasts that offshore production will rise to 6.81 Tcf in 2010 and 7.83 Tcf in 2020. The rapid development of new offshore production and transmission technologies over the past several years has spawned a dynamic expansion of exploration, development, production, construction, and transmission activities throughout the Gulf area. In 1997, 84 percent of new field discoveries were in the federal OCS Gulf of Mexico, along with 56 percent of new reservoir discoveries in old fields.[6]

Clearly, the increasing OCS gas resource development is driving pipeline development. Since 1990, the gas industry has installed approximately 4,000 miles of new pipe in the Gulf. Stated otherwise, over 30 percent of the active offshore pipelines have been constructed over the past nine years. Already, 1,512 miles of new pipe have been planned and recent estimates predict that another 7,400 miles of pipe will be needed in the region over the next 15 years.

B. Federal Regulatory Responsibilities

Under the federal scheme, the responsibility for the various aspects of OCS pipeline regulation resides in several agencies. The Minerals Management Service (MMS) of the U.S. Department of the Interior has the responsibility to award permits to pipelines that transport gas and other products across the OCS. The approval process covers design, fabrication, and installation plans, as well as the granting of rights-of-way for the pipeline and accessory structures. Although section 5(e) of the OCSLA grants "right-of-way" responsibility to the MMS, it also requires consultation with the Secretary of Transportation to assure environmental protection and safety. Section 5(e) of the OCSLA further states that pipelines with approved permits must be operated in accordance with competitive principles.

Section 5(e) of the OCSLA also requires that gas (and oil) be transported without discrimination, pursuant to standards established by the Commission. Specifically, section 5(e) requires pipelines to "transport or purchase without discrimination" OCS gas "in such proportionate amounts" as the Commission (in consultation with the Secretary of Energy) determines to be reasonable. Section 5(f)(1) of the OCSLA states that a pipeline transporting gas on or across the OCS shall adhere to certain competitive principles, which include the requirement that "[t]he pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers." Sections 5(e) and (f) are to be read together, with the more recently adopted section 5(f) as a "reaffirmation and strengthening of subsection 5(e)."[7]

To assure offshore pipelines adhere to competitive principles, section 5(f)(3) of the OCSLA requires the Commission (and the Secretary of Energy) to consult with the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way or grant of authority on the OCS.[8]

C. The Commission's OCS Regulatory Activity

The Commission currently exercises authority over offshore gas service providers under the NGA, the OCSLA, and the Natural Gas Policy Act (NGPA).[9] This Notice of Proposed Rulemaking

[3] Annual Energy Review 1997, Energy Information Administration.

[4] Annual Energy Review 1997, Energy Information Administration, at 12.

[5] U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves 1997 Annual, Energy Information Administration, at 28.

[6] *Id.*, at 30.

[7] See the Joint Explanatory Statement of the Committee of Conference, discussing 1978 amendments to the OCSLA. H.R. Conf. Rep. 1474, 95th Cong., 2d Sess. 37, *reprinted in* 1978 U.S. Code Cong. & Admin. News 1674, 1687.

[8] Section 5(f)(3) adds that in preparing requested views, the Attorney General shall consult with the Federal Trade Commission.

[9] Offshore, the NGPA is of relatively little significance, since the only facilities to which it alone applies are intrastate facilities in state waters. Intrastate facilities that extend seaward beyond the reach of state waters are subject to the OCSLA; interstate facilities located in state waters are subject to the NGA.

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(NOPR) requests comments on whether these multiple, overlapping regulatory regimes complement one another or may be a cause of inefficient competitive inequities. The Commission expects that a single set of limited reporting requirements, uniformly applied to all OCS gas service providers covered under this proposal, will eliminate any distortions in the offshore marketplace due to competitors' compliance with different regulatory regimes. We also expect the simplicity and certainty afforded by a single set of reporting requirements to encourage continued investment in the development of OCS resources.

When the NGA was passed in 1938, offshore production was negligible, and as a result, that statute and the regulatory regime developed to enforce it made no effort to distinguish between the different characteristics of gas operations onshore and offshore.[10] As gas companies began to extend their onshore lines into shallow waters, the Commission was able to effectively apply its NGA regulatory scheme to these facilities near shore. However, as production areas were developed farther from shore, and as pipelines were constructed to access these increasingly remote locations, the validity of the Commission's means for identifying the primary function of offshore facilities was called into question.[11]

To determine whether a specific facility was engaged in interstate transmission, and thus subject to the NGA, or was performing primarily production or gathering, and thus exempt from the NGA pursuant to section 1(b), the Commission applied a test based on several physical characteristics.[12] Because this test grew out of the physical characteristics of gas operations onshore, the Commission modified its application to suit the different nature of gas operations offshore.[13]

The OCSLA was passed in 1953 to promote and provide federal oversight of the exploration, development, and production of OCS minerals. Section 5(f) of the statute specifies that competitive principles are to govern OCS pipeline operations. The Commission determined that adherence to NGA open access provisions would satisfy OCSLA nondiscrimination requirements.[14]

The increasing importance and level of OCS activity in recent years has generated a concomitant increase in the importance of the Commission's responsibility under the OCSLA to ensure a competitive market for gas pipeline services on the OCS. Over the past several years, the Commission has been concerned with and attentive to its regulatory authority over activities on the OCS.

In separate Notices of Inquiry in 1995[15] and 1998,[16] the Commission sought comments on the most suitable means to regulate OCS activities. Both Notices of Inquiry asked whether the Commission might act under the OCSLA to regulate offshore pipeline facilities—either in conjunction with or absent the exercise of any concurrent NGA jurisdiction—without impeding or distorting offshore development or production. In developing the regulations proposed in this docket, we have taken into account those portions of the comments that address our OCSLA authority.[17]

In 1988, the Commission acted under the OCSLA to require adherence to the section 5 principles of open and nondiscriminatory transportation by issuing an NGA section 7 blanket transportation certificate to every offshore NGA-jurisdictional pipeline.[18] Pursuant to Subpart G of the Commission's regulations, blanket certificate holders transport gas on an open access basis subject to a rate schedule on file with the Commission. The Commission stated its belief "that the condition of nondiscriminatory access (open access) placed on the [blanket] transportation program established in Order Nos. 436 and 500 will satisfy in substantial measure, the nondiscriminatory access requirements in section 5 of the OCSLA."[19] At that time, although affirming "that all pipelines on the OCS have a duty to provide open and nondiscriminatory access to transportation services,"[20] the Commission did not require NGA-exempt OCS pipelines to act to meet this mandate, stating:

> If problems do arise with respect to either the movement of OCS gas (1) through state waters, or (2) through gathering or producer-owned facilities on the OCS, the Commission possesses ample ancillary authority under the OCSLA to ensure that the statutory requirements of the OCSLA are not thwarted.[21]

Until recently, we have not encountered circumstances prompting us to act under the OCSLA to remedy anticompetitive behavior. However, lately we have been presented with allegations of offshore discrimination for which the NGA regulatory regime appears either inapplicable[22] or inadequate.[23] Such allegations, and a review of offshore regulation in general, persuades us that the best way to ensure adherence to the nondiscriminatory provisions of the OCSLA is to adopt an even-handed approach whereby OCS gas service providers covered under the proposed rule will be held to a single, uniform reporting standard.

Making information available pursuant to the regulations proposed herein will allow the Commission and interested persons to monitor the activities of OCS gas service providers and identify potential violations of the OCSLA and, we anticipate, of the NGA as well. Whereas all OCS gas service providers are subject to the OCSLA, only a subset thereof are also subject to the NGA.[24] The competitive inequities that this can cause could be mitigated if OCS operators would be subject to identical, light-handed regulations under the proposed inform-and-enforce regime. We expect disclosure to serve as a means to enable market discipline to displace part of the Commission's role in overseeing OCS operations.

D. The Proposed Regulations

The Commission has completed a review of its policy governing offshore natural gas facilities and services, informed by the comments submitted in response to the 1998 Notice of Inquiry. We conclude that the key issue for shippers using OCS facilities is the assurance of open access and nondiscriminatory conditions of service, including nondiscriminatory rates. Accordingly, to ensure that these competitive characteristics will exist on all facilities used to move gas on or across the federal OCS, the Commission believes it is necessary to institute a single set of regulatory requirements under the OCSLA that are equally applicable to NGA-jurisdictional and NGA-exempt offshore gas service providers. Thus, all OCS gas service providers will be subject to the same OCSLA regulatory regime and, unless exempt under proposed section 330.3(a), make available the information specified in proposed sections 330.2(a) and (b).

The Commission anticipates that the proposed reporting requirements will result in lighter-handed oversight than under the NGA while offering even-handed treatment for all market participants. The approach the Commission proposes balances the OCS gas service providers' interest in light-handed regulation with OCS shippers' interest in ensuring they are not subject to discriminatory practices. This should encourage competitive options for offshore producers and onshore purchasers of natural gas.

III. Discussion

A. Purpose

Sections 5(e) and (f) of the OCSLA state that offshore gas pipelines must transport or purchase OCS gas without discrimination and provide open and nondiscriminatory access to both owner and nonowner shippers. The Commission is proposing to require OCS gas service providers to make certain information available to assist the Commission and interested persons in monitoring compliance with these OCSLA mandates.

Currently, offshore pipeline companies subject to the Commission's NGA jurisdiction must, among other requirements, make information available to assist the Commission and interested persons in assessing whether the pipeline companies are providing open and nondiscriminatory access.[25] However, there are no similar reporting requirements applicable to offshore pipelines that are not regulated under the NGA. The proposed OCSLA reporting requirements will apply to both NGA-jurisdictional and NGA-exempt OCS pipelines. Because the proposed OCSLA reporting requirements are less rigorous than those in place under the NGA, to the extent an OCS gas service provider is subject to the NGA, it should be able to fulfill the proposed OCSLA reporting requirements, in large part or in full, by referencing information already on file with the Commission pursuant to present NGA regulations.

The proposed regulations are intended to enable a shipper—or the Commission or any other interested person—to compare the terms and rates under which offshore gas service providers offer service to shippers. If a shipper believes it has been subject to discrimination or has been unjustifiably denied access by a gas service provider, it may seek redress through a number of means, including use of the Commission's Enforcement Hotline,[26] alternative dispute resolution (ADR) processes,[27] or by filing a complaint.[28]

The Commission is requesting comments on the proposed regulations, including the practicality of the proposed reporting requirements as a means to prevent, monitor, and remedy anticompetitive practices by OCS gas service providers. In addition, the Commission requests comments on the extent to which NGA and NGPA obligations may be met by relying on OCS competitors' adherence to the proposed OCSLA reporting requirements.

B. Scope of Proposed Regulations

1. Reporting Requirements

The reporting requirements are contained in proposed sections 330.2(a) and (b). Proposed section 330.2(a) states that an OCS gas service provider must identify itself, the facilities it operates, and its affiliates. Proposed section 330.2(b) states that a gas service provider must submit copies of all current customer contracts or, alternatively, the OCS gas service provider must instead submit a statement of its conditions of service with a detailed description of rates charged and if rates are not uniform, the gas service provider must list each of its

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[10] Less than one half of one percent of the offshore facilities today were in place prior to 1960.

[11] *EP Operating Co.* v. *FERC*, 876 F. 2d 48 (5th Cir. 1989).

[12] The "primary function" test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983), which took into consideration the following factors as relevant: (1) The length and diameter of the pipeline, (2) the extension of the facility beyond the central point in the field, (3) the pipelines' geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The primary function test has been found by the Commission to be applicable to both onshore and offshore facilities, as modified as applied to offshore facilities in Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990). The criteria set out in Farmland were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the Natural Gas Policy Act of 1978.

[13] Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990). The Commission's application of its primary function test to gas operations offshore was challenged in *Sea Robin Pipeline Company* v. *FERC (Sea Robin)*, 127 F.3d 365 (5th Cir. 1997), *reh'g denied*, (February 2, 1998); the court vacated and remanded a Commission decision involving the exercise of its NGA jurisdiction over an OCS pipeline system. In an order on remand in Docket No. CP95–168–002, the Commission clarifies the application of its modified primary function test for offshore facilities. This NOPR is not intended to address issues specific to Sea Robin.

[14] *See* Interpretation of, and Regulations Under, Section 5 of the OCSLA Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the OCS, Order No. 509, 53 Fed. Reg. 50,925 (December 19, 1988), FERC Stats. & Regs. ¶ 30,842 (1988), *order on reh'g*, Order No. 509–A, 54 FR 8,301 (February 28, 1989), FERC Stats. & Regs. ¶ 30,848 (1989).

[15] The 1995 Notice of Inquiry led to a 1996 Policy Statement that established a presumption that facilities located in deep water of 200 meters or more were engaged in production or gathering. Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC 61,222 (1996), *reh'g dismissed*, 75 FERC ¶ 61,291 (1996).

[16] Alternative Methods for Regulating Natural Gas Pipeline Facilities and Services on the Outer Continental Shelf, 83 FERC ¶ 61,235 (1998).

[17] The Notices of Inquiry also sought responses regarding the scope of the Commission's NGA authority offshore, and the 1998 Notice of Inquiry was informed by the 1997 decision in Sea Robin.

[18] *See* Interpretation of, and Regulations Under, Section 5 of the OCSLA Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the OCS, Order No. 509, 53 FR 50,925 (December 19, 1988), FERC Stats. & Regs. ¶ 30,842 (1988), *order on reh'g*, Order No. 509–A, 54 FR 8,301 (February 28, 1989), FERC Stats. & Regs. ¶ 30,848 (1989).

[19] Order No. 491 at 61,031; *see also* Order No. 509 at 31,274.

[20] Order No. 509 at 31,289.

[21] *Id.* at 31,280. On rehearing, in response to concerns that this placed offshore gathering facilities not regulated under the NGA beyond the reach of the OCSLA provisions, the Commission stated that if it "receives complaints regarding gathering facilities it will, on a case-specific basis, use its ancillary authority, its authority under sections 4 and 5 of the NGA, and its authority under section 5 of the OCSLA, as appropriate under the circumstances presented." Order No. 509–A, at 31,333.

[22] For example, in *Murphy Exploration & Production Company*, 81 FERC ¶ 61,148 (1997), the Commission was faced with a case of alleged rate discrimination on an offshore gathering line. In response, the Commission stated that because NGA jurisdiction does not extend to facilities used for gathering and production, it would act to remedy discrimination on the NGA-exempt line, if necessary, under its authority under the OCSLA. Commission action on this order is pending. A similar approach was employed in Bonito Pipe Line Company, 61 FERC ¶ 61,050 (1992), wherein the Commission found OCS oil facilities were exempt from the Commission's authority under the Interstate Commerce Act but were subject to the OCSLA. After determining that a refusal to provide new service contravened the OCSLA section 5 open access requirement, the Commission acted pursuant to the OCSLA to order an existing OCS oil line to provide the requested service. This decision was affirmed in *Shell Oil Company* v. *FERC*, 47 F.3d 1186, 1200 (D.C. Cir. 1995), in which the court "accept[ed] the Commission's determination that it had authority to order an interconnection with an existing pipeline with excess capacity where the interconnection is necessary to the Commission's enforcement of the open access requirements of the OCSLA."

[23] For example, Sea Robin's February 26, 1999 proposal in Docket No. RP99–238–000 to revise its tariff in order to charge certain discounted rates was protested, not as being inconsistent with the NGA, but on the grounds that such discounting could lead to different rates for similarly situated shippers in contravention of the OCSLA nondiscrimination provisions. *See* Burlington Resources Oil & Gas' March 10, 1999 Protest.

[24] As indicated in note 9, we expect there are very few facilities subject exclusively to the OCSLA and the NGPA.

[25] In addition to information made available in support of an NGA certificate application, NGA-regulated pipelines are required to file periodic publicly available reports, for example, the Major Natural Gas Pipeline Annual Report, Form No. 2, 18 CFR 260.1; Non-Major Pipeline Annual Report, Form No. 2a, 18 CFR 260.2; Quarterly Statement on Monthly Data, Form No. 11, 18 CFR 260.3; Index of Customers Report, 18 CFR 284.106(c) and 18 CFR 284.223(b); or the Discount Rate Report, 18 CFR 284.7(c)(6).

[26] 18 CFR Part 1b.

[27] 18 CFR 385.604–06.

[28] 18 CFR 385.206. The Commission's procedures for responding to allegations of improper action or inaction were revised and expanded in the recently issued Complaint Procedures, Final Rule, 64 FR 17,087 (April 8, 1999), FERC Stat. & Regs. ¶ 31,071 (1999), 86 FERC ¶ 61,324 (1999), *reh'g pending*.

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customers, the services provided, and the rates applicable thereto.

One area of the Commission's concern is the potential for discrimination between the affiliates and non-affiliates of a gas service provider. Identifying service provider and shipper affiliations [29] should permit interested persons to judge whether a gas service provider is treating an affiliate more favorably than a non-affiliate and to weigh whether such treatment amounts to discrimination or a denial of access.

The reporting requirements of proposed sections 330.2(a) and (b) are met by filing the specified information with the Commission. However, such information is of use only as long as it remains accurate, since interested persons cannot meaningfully compare and consider conditions of service unless they reflect current conditions. Thus, proposed section 330.3(d) states that an OCS gas service provider that files information pursuant to proposed sections 330.2(a) and (b) must refile in the event that there are changes to the information initially filed. To ensure information on file remains up to date, proposed section 330.3(d) directs an OCS gas service provider to submit a description of changes in its affiliates, customers, rates, or terms and conditions of service within 15 days of the date the change occurs. An OCS gas service provider that has fulfilled the proposed reporting requirements need not subsequently submit any further information for as long as its status remains unchanged.

As to the initial filing, we direct all affected OCS gas service providers to submit the information described in proposed sections 330.2(a) and (b) within 60 days of the issuance date of the final rule in this proceeding.

The proposed regulations would amend Rule 2011 of the Commission's Rules of Practice and Procedure to allow all filings made pursuant to the proposed sections 330.2(a) and (b) to be via electronic media.

2. Circumstances Under Which the Proposed Regulations Will Not Apply

As discussed below, the proposed regulations will exempt certain types of facilities, based on their location, and certain gas service providers, based on the nature of the service performed. The Commission is considering whether it would be more appropriate to omit this latter exemption and apply the proposed reporting requirements to OCS gas service providers universally, without regard to the type of service offered or shippers served. Our aim is to strike a balance between, on the one hand, instituting a reporting regime broad enough to ensure that shippers are able to identify potential discrimination and, on the other hand, narrowing the applicability of this reporting regime to exclude circumstances where the prospects of finding discrimination are remote. However, given the limited use to date of the OCSLA to define, prevent, and remedy discrimination, and given that where there is no information available on conditions of service there is no way to discover potential discrimination, we are concerned that instituting exemptions for certain gas service providers might compromise the efficient development and transportation of offshore gas supplies. Therefore, the Commission is requesting comments on whether it would be prudent to issue a final rule without the exclusions contained in sections (b) and (c) below.

a. *Feeder Lines.* Section 5(f)(2) of the OCSLA states that the Commission may exempt "any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed" from the requirements of open and nondiscriminatory access. The Commission is exercising its authority to do so, as provided in proposed section 330.3(a)(2).

b. *Pipelines Dedicated to Service for a Single Shipper.* Where an OCS gas service provider carries gas exclusively for a single shipper, either itself or another party, there is no possibility for multiple shippers to be subject to different, potentially discriminatory conditions of service. In such circumstances, we see no reason to require the gas service provider to make information concerning its terms and rates available for public inspection; indeed, where the gas service provider is carrying gas only for itself, there may be no rates or terms and conditions of service as such. Thus, proposed section 330.3(a)(1) states that the reporting requirements regarding affiliates and terms and conditions of service would not apply in such circumstances. Such circumstances would be present where a single OCS gas producer owns and operates a pipeline to carry its own gas from a producing field to shore or to an interconnection with another offshore pipeline. As long as the OCS producer serves only itself or a single other party, we see no cause to be concerned about anticompetitive practices.

If a gas service provider offers new service to a second shipper, this gives rise to the prospect of similarly situated shippers on the same pipeline being subject to different and potentially discriminatory conditions of service. Pursuant to proposed section 330.3(c), the reporting requirements would then apply.

A request for new service from a second shipper may also give rise to the possibility for similarly situated shippers to be served under different and potentially discriminatory terms or rates. If the gas service provider accepts the request to serve a second shipper, then as noted above, this offer to serve triggers the obligation to comply with the reporting requirements under proposed section 330.3(c).

If the gas service provider denies service on the grounds that it is physically unable to transport the requested volumes, and the party denied service complains, the Commission will first address and assess the rationale for denying service, without triggering the reporting requirements. If the Commission deems the denial justifiable—*e.g.*, if the receipt of additional volumes could cause gas from producing wells to be shut in contrary to the OCSLA section 5(e) admonishment concerning conservation or the prevention of waste, or if the content of the proposed gas stream would be incompatible with the characteristics of gas volumes currently flowing—then, as described in proposed section 330.3(a)(1), the reporting requirements would not apply, and the gas service provider may continue to serve its single customer. However, if the gas service provider's claim that it is physically unable to serve another customer is found to be unwarranted and rejected by the Commission, or if the gas service provider denies access on some other basis, then the prospective shipper may pursue its claim respecting the denial of service, and the gas service provider's response must include the information specified in the proposed reporting requirements.

c. *Other Self-Owned Pipelines.* In general, we do not believe allegations of anticompetitive conduct will arise unless a gas service provider is carrying gas for more than one shipper, hence the preceding reporting exemption for single-shipper pipelines. We also believe there are certain circumstances where a pipeline carrying gas for multiple parties has no incentive to discriminate. Where a pipeline is used exclusively to transport gas to shore or to an interconnection with another gas service provider's facilities, and the same parties jointly own all interests in the pipeline and the gas carried by that pipeline, we see no need to require disclosure of the conditions of service on that pipeline. The Commission views this as the equivalent of the above example of an OCS producer that owns and operates a pipeline to carry its own gas production. Presumably, each of the several parties holding ownership interests in the gas produced, and the pipeline over which that gas is carried, is fully informed regarding the conditions of service on its own pipeline. Therefore, in such situations, the proposed reporting requirements will not apply.

This exemption will cease if one of the existing shippers alleges denial of access or discrimination. Further, this exemption will end if the OCS gas service provider operating the pipeline offers service to any person that does not hold an ownership interest in both the pipeline and the gas produced from the field served by the pipeline. Finally, this exemption will end if the gas service provider rejects a service request submitted by a person that has no ownership interest, unless the Commission determines the requested service was denied due to a physical inability to accept the proposed additional volumes. If the Commission finds that physical access is possible or if the reason for refusing service is based on other grounds, then the OCS gas service provider would have to comply with the proposed reporting requirements.

3. Enforcement of the Proposed Regulations

The proposed reporting requirements will provide the Commission and interested persons with information on OCS gas service providers' affiliates and conditions of service as a means to examine and identify discriminatory practices. Although we expect to monitor compliance with the proposed reporting requirements, we do not expect to scrutinize each submission with the aim of identifying and challenging every aspect of a gas service provider's operations that could conceivably lead to an OCSLA-barred act. Instead, we anticipate the proposed regulations will result in a shipper-initiated, complaint-driven enforcement process.

This approach differs from NGA regulation, under which natural gas companies must obtain Commission authorization prior to initiating, altering, or abandoning facilities or services. In contrast, under the proposed OCSLA regulation, gas service providers will not be required to obtain Commission approval prior to acting. In this sense, regulation under the OCSLA will be lighter-handed: compliance will consist of describing affiliations and operations. While the proposed OCSLA regulations will impose a new reporting requirement on certain OCS gas service providers that do not currently file any information with the Commission, the proposed regulations impose no new constraints on these gas service providers' actions. Information made available pursuant to the proposed reporting requirements should aid our efforts to enforce the current OCSLA nondiscrimination provisions.

Actions that shippers or others believe constitute discrimination under the OCSLA should be described in a complaint to the Commission.[30] Where a denial of access is alleged, the gas service provider will respond with an explanation of whether and why service was denied. The Commission will review the response and may instruct the gas service provider to submit the information specified in proposed sections 330.2(a) and (b) if it has not previously done so. Where the gas service provider's response contains information previously unavailable to the complaining shipper, the shipper may cite this as cause to request that it be allowed to supplement its initial filing.

IV. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[31] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[32] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[33]

This proposed rule is procedural in nature. It directs certain offshore gas service providers to make certain information publicly available. Thus, no environmental assessment or environmental impact statement is necessary for the requirements proposed in the rule.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) [34] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.[35]

The Commission does not believe that this rule would have a significant economic impact on small entities. Most entities that will be required under the proposed rule to file for the first time do not fall within the RFA's definition of small entity.[36] Further, many of the entities that will be required to meet the new reporting requirements are currently regulated under the NGA and as such have already submitted information to the Commission that largely fulfills the proposed new requirements. To the extent information submitted pursuant to NGA regulations duplicates that required under the proposed OCSLA regulations, NGA-regulated gas companies may satisfy the proposed OCSLA reporting requirements by referencing that already-filed information. Hence, this new rule should have little impact on these companies. Further, NGA-regulated gas companies with offshore facilities are generally too large to fall within the RFA definition of a small entity. Similarly, we anticipate that the non-NGA gas service providers that file for the first time will, for the most part, fall outside of the RFA definition of a small entity. With respect to small entities, the effort involved to comply with the proposed reporting requirements should be minimal. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Information Collection Requirements

The following collection of information contained in this proposed rule (proposed new Subchapter O) is being submitted to the Office of Management and Budget (OMB) for

[29] For purposes of applying the proposed regulations, the Commission herein adopts the definitions of "affiliate" and "control" as defined in sections 161.2(a) and (b) respectively of the Commission's regulations.

[30] The recent Complaint Procedures Final Rule provides for different processing paths that the Commission may use to resolve issues raised in complaints. "These complaint resolution paths are (1) alternative dispute resolution, (2) decision on the pleadings by the Commission, and (3) hearing before an ALJ." Order No. 602, 64 FR 17,087 (April 8, 1999), FERC Stat. & Regs. ¶ 31,071 at 30,764 (1999), 86 FERC ¶ 61,324 (1999), *reh'g pending.*

[31] Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), codified at 18 CFR Part 380.

[32] 18 CFR 380.4(a)(2)(ii).

[33] 18 CFR 380.4.

[34] 5 U.S.C. 601–612 (1988).

[35] 5 USC 605(b) (1988).

[36] 5 U.S.C. 601(3) (1988), citing to section 3 of the Small Business Act, 15 USC 632 (1988). Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operations.

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review under Section 3507(d) of the Paperwork Reduction Act of 1995.[37] The Commission proposes to identify the information required as FERC-545 for OCSLA-jurisdictional gas service providers. Currently, NGA-jurisdictional companies file with the Commission most or all the information that will be required by this NOPR under Subchapters E, G, and I. Thus, the reporting burden imposed on NGA-jurisdictional companies will be minimal or merely ministerial, as they can comply with the proposed rules in large part or in full by submitting a statement describing the extent to which the information required by this OCSLA NOPR is already on file pursuant to existing NGA regulations.

The proposed regulations impose new reporting requirements on OCS gas service providers that offer service to multiple non-owner shippers, requiring them to make an initial submission of specific information—information which should be readily available in the ordinary course of business—and then make timely filings if there are any changes in the initially submitted information. To the extent the status of a gas service provider's affiliations, customers, and conditions of service remain the same, there is no need to file again. To the extent that a gas service provider is currently subject to the NGA's reporting requirements, the proposed OCSLA reporting requirements should call for little or no additional information. The proposed regulations would not apply to service provided by means of facilities located upstream of a point where gas is first collected, separated, dehydrated, or otherwise processed.

Considering the complex nature of the offshore operating environment, we cannot state with assurance the exact number of entities that will be subject to the proposed regulations. Consequently, we request parties submitting comments to clarify whether and to what extent the proposed requirements might apply to offshore operations. In addition, we seek comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

Public Reporting Burden: Estimated Annual Burden.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–545	70	2	8	1,120

Total Annual Hours for Collection

(Reporting + Record Keeping, (if appropriate)) = *1,120*

For NGA-jurisdictional gas companies, the current annual reporting burden for FERC–545 is 58,201 hours. Over the next year, the total annual burden under the proposed OCSLA reporting requirements is estimated to be 1,120 hours. Based on the Commission's experience with processing filings by NGA-regulated pipelines for the fiscal year 1996–1997, it is estimated that about 140 filings per year will be made with an average burden of 8 hours per response. The burden under the proposed OCSLA regulations would minimally increase current burden levels for pipelines already subject to the NGA.

During the first year after the proposed rules become effective, most of the burden will consist of an initial, one-time compliance filing. In subsequent years, most of the burden will consist of minor filings updating the initial filing.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

Annualized Capital/Startup Costs	0.
Annualized Costs (Operations and Maintenance)	$56,000 ($50 per hour).
Total Annualized Costs	$56,000.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[38] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collection to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal).

Action: Proposed Data Collection.

OMB Control No.: 1902–0154. The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for-profit, including small businesses.

Frequency of Responses: Initial, one-time filing; updated if status changes.

Necessity of the Information: The proposed rule implements the Commission's authority under the OCSLA to assure open and nondiscriminatory access for gas moving on or across the OCS by collecting certain information concerning OCS gas service providers' affiliations and conditions of service. Without this information, neither the Commission nor a prospective or existing shipper will be able to determine whether the existing or proposed conditions of service discriminate or deny access. Implementation of these data requirements will help the Commission carry out its responsibilities under the OCSLA and coincide with the current competitive regulatory environment which the Commission fostered under Order No. 636.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the proposed reporting requirements. The Commission's staff will use the data in the OCS gas service providers' filings to determine whether their operations are consistent with the nondiscriminatory, open access provisions of the OCSLA. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

[37] 44 U.S.C. 3507(d) (1988).

[38] 5 CFR 1320.11.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, e-mail: michael.p.miller@ferc.fed.us].

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

VII. Comment Procedure

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be recieved by the Commission before 5 p.m., August 27, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM99–5–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–5–000; the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects

18 CFR Part 330

Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Commissioners Bailey and Hébert dissented with separate statements attached.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter 1, Title 18, of the Code of Federal Regulations, as set forth below.

1. A new Subchapter O, including part 330 is added to read as follows:

SUBCHAPTER O—REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT (OCSLA)

PART 330—CONDITIONS OF SERVICE REPORTING REQUIREMENTS

Sec.

330.1 Definitions.
330.2 Reporting requirements.
330.3 Applicability of reporting requirements.

Authority: 43 U.S.C. 1334.

§ 330.1 Definitions.

(a) Outer Continental Shelf (OCS) has the same meaning as found in section 2(a) of the OCSLA (43 U.S.C. 1331(a)); and

(b) Gas Service Provider means any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS.

(c) Affiliate has the same meaning as found in 18 CFR 161.2(a).

(d) Control has the same meaning as found in 18 CFR 161.2(b).

§ 330.2 Reporting requirements.

(a) Gas Service Providers must file with the Commission a declaration of affiliation consisting of:

(1) The date of the filing;

(2) The name and address of the Gas Service Provider;

(3) The name and address of a contact person;

(4) The title, name, and address of the Gas Service Provider's officers if a corporation or general partners if a partnership;

(5) A description and map of the facilities operated by the Gas Service Provider, denoting the facilities' location, length, and size; and

(6) For all entities affiliated with the Gas Service Provider: the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the Gas Service Provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the Gas Service Provider (where the Gas Service Provider holds control jointly with other interest holders, so state and name the other interest holders).

(b) Gas Service Providers must file with the Commission its conditions of service consisting of:

(1) Copies of all current Gas Service Provider and customer contracts for gas shipments or, alternatively;

(2) A statement of the Gas Service Provider's rules, regulations, and conditions of service that includes:

(i) The rate between each pair of receipt and delivery points available under the Gas Service Provider's contracts, if point-to-point rates are charged;

(ii) The rate per unit per mile, if mileage-based rates are charged;

(iii) Any other rate employed by the Gas Service Provider, with a detailed description of how such rate is derived, identifying customers and the rate charged to each customer;

(iv) Any adjustments made by the Gas Service Provider to the rates charged based on gas volumes shipped, the terms and conditions of service, or other criteria, identifying customers and the rate adjustment applicable to each customer.

§ 330.3 Applicability of Reporting Requirements.

(a) The § 330.2 (a) and (b) reporting requirements do not apply with respect to:

(1) A Gas Service Provider that serves exclusively a single entity (either itself or one other party), until such time as

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the Gas Service Provider offers to serve a second shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial;

(2) A Gas Service Provider that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from the field connected to the pipeline, until such time as the Gas Service Provider offers to serve a non-owner shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial; and

(3) Services rendered over facilities that feed into a facility where natural gas is first collected, separated, dehydrated, or otherwise processed.

(b) A Gas Service Provider that makes no filing pursuant to § 330.3(a)(1) must comply with the specified reporting requirements within 15 days of offering to serve a new shipper or when required by the Commission.

(c) A Gas Service Provider subject to these reporting requirements that alters its affiliates, customers, rates, or terms and conditions of service must file with the Commission a description of the change within 15 days of the effective date of such alteration.

PART 385—RULES OF PRACTICE AND PROCEDURE

2. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

3. In § 385.2011, new paragraph (b)(6) is added to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(b) * * *

(6) Material submitted electronically pursuant to § 330.2 of this chapter.

Note: The following appendix to the preamble will not appear in the Code of Federal Regulations.

Appendix to the Preamble

Bailey, Commissioner, *dissenting.*

I respectfully dissent from the issuance of this rulemaking proposal. As noted in my dissent in the *Sea Robin* remand proceeding (also decided today), my views reflect the evolution of my thinking about OCS issues over the last several years.

The jurisdictional status of existing OCS pipelines reflects conflicting applications of the primary function test. This situation was aggravated by the implementation of the 1996 OCS Policy Statement, when it became apparent that lines declared to be gathering only a few years earlier would be found jurisdictional if decided under the new policy.

Attempts to define gathering versus transmission on the OCS continue to be driven by concerns for the need to retain FERC/NGA rate jurisdiction as a backstop in case a complaint arises. But, as I have stated on other occasions, I do not think we have that right if the function of a line can be viewed as gathering under a common sense analysis. Without a statutory definition of gathering, I find the analysis set forth in *EP Operating Company* v. *FERC*, 876 F. 2d 46 (Fifth Cir. 1989) to be controlling. In the end, I remain convinced that the movement of gas across the OCS is most often a collection process.

I appreciate that these proposed OCSLA regulations are a first step in preparing for what is an expected increase in the number of lines found to be gathering under the reformulated primary function test outlined in today's *Sea Robin* remand order. And I respect the effort to create what is meant to be a light-handed regulatory approach. I believe, however, that the proposal is not necessary, and I am concerned that it raises new OCS issues without resolving the already difficult ones presented to us.

I would prefer to accept that, under the *EP Operating* analysis, much of the activity on the OCS is gathering. I would likewise prefer to continue the current practice of relying on the antidiscrimination provisions of the OCSLA if, and when, complaints are filed by shippers on OCS gathering lines. I do not find any compelling evidence that we need to expand our OCSLA regulatory regime by promulgating these rules. The Commission has acknowledged quite clearly its jurisdiction pursuant to this statute and specifically emphasized in the 1996 Policy Statement that it would respond promptly to complaints filed thereunder. We receive very few such complaints.

In sum, I see no reason to endorse a proposal that will create, at least initially, a dual scheme of regulation for certain pipelines on the OCS. And I am uncomfortable embarking on a course that may invite new legal challenges to our regulation of the offshore, without resolving the confusion underlying our attempts to apply the existing primary function test.

Vicky A. Bailey,

Commissioner.

Hebert, Commissioner, *dissenting.*

In this proposed rulemaking the Commission is developing a series of regulations to enhance its ability to ensure that the competitive principles governing pipeline operation on the Outer Continental Shelf (OCS) are met. As I understand it, the Commission in response to the precepts of Section 5(e) of the Outer Continental Shelf Lands Act (OCSLA)[1] which requires that pipelines must provide open and nondiscriminatory access to both owner and nonowner shippers, has proposed these regulations to ensure that the Commission has the authority to address any allegations of discriminatory treatment on the OCS or concerns about open access.

While I fully support the competitive principles on the OCS, and I recognize the importance of these principles, I am not comfortable with how the majority has chosen in this document to address OCSLA regulation. Specifically, the NOPR intends to require OCS gas transportation service providers to file with the Commission information regarding the conditions under which they render service on the OCS and indicating their affiliates. While the provision of this information will obviously not be burdensome to service providers currently subject to NGA jurisdiction, the NOPR's requirement also goes to a population that is currently not subject to NGA jurisdiction.

The indications from this NOPR are that once filed, the information used to support Commission OCSLA jurisdiction will be used only as part of a light-handed, complaint driven regulatory process. Under normal circumstances I would find a proposal to replace NGA jurisdiction with light-handed complaint driven regulation as appropriate, but in this situation, the pairing of lighter regulation for NGA companies with regulation for currently non-jurisdictional companies is unacceptable. Yes, the regulatory scheme would be light-handed but when compared to no regulation, it can only be seen as heavy-handed. (REGULATORY GAP).

My uncomfortableness with extending Commission jurisdiction in this proposal is not a failure to uphold the competitive principles of the OCS. Instead, I believe that the OCSLA provides the Commission with the necessary authority to act to address issues of discrimination and open access through its own provisions, even though that authority has heretofore lain dormant. As opposed to subjecting the Commission's jurisdiction under the OCSLA to the vagaries of future and inevitable court challenges which a NOPR of this design would involve, the Commission should act with confidence on any complaints that are brought before it under the OCSLA. The Commission has recently refined and expedited its complaint process which is a workable vehicle for bringing these issues to the Commission in a timely manner. Additionally, as has been noted by Commissioner Bailey on this matter, if the OCSLA did ultimately fail to remedy a showing of discriminatory rates, a legislative solution could be pursued. I also take guidance from the Circuit Court's statement that the "need for regulation cannot alone create authority to regulate."[2]

While I can understand the interest some may have in ensuring full comprehension of the extent of the Commission's powers under the OCSLA, I think the more appropriate course of action would be to be receptive and responsive to filed complaints, with the confidence of assured jurisdiction, as opposed to the exploration through a proposed rulemaking of the very same property.

My belief that the Commission can remedy violations of the competitive principles of the OCS as well as my concern that the extension of jurisdiction, light-handed as it may be, to currently non-jurisdictional OCS companies prevents me from providing the instant NOPR with my support. Accordingly, I dissent from the issuance of this proposed rulemaking.

Respectfully,

Curt Hébert, Jr.,

Commissioner.

[1] 43 U.S.C. 1334(f) (1988).

[2] 127 F.3d at 371.

[FR Doc. 99–17251 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–113909–98]

RIN 1545–AW63

Withdrawal of Guidance Under Subpart F Relating to Partnerships and Branches and Issuance of New Guidance Under Subpart F Relating to Certain Hybrid Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal; Notice of proposed rulemaking; and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations that was published in the **Federal Register** on March 26, 1998, providing guidance under subpart F relating to partnerships and branches. This document contains new proposed regulations relating to the treatment under subpart F of certain transactions involving hybrid branches. These regulations are necessary to provide guidance on transactions relating to such entities. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, and outlines of oral comments to be discussed at the public hearing scheduled for December 1, 1999, must be received by November 10, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–113909–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–113909–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Valerie Mark, (202) 622–3840; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1998 (63 FR 14669, March 26, 1998), the IRS issued proposed regulations (REG–104537–97) relating to the treatment under subpart F of certain partnership and hybrid branch transactions. The provisions of the proposed regulations relating to hybrid branch transactions were also issued as temporary regulations (TD 8767) (63 FR 14613, March 26, 1998). Certain members of Congress and taxpayers raised concerns about the proposed and temporary regulations relating to hybrid branch transactions. On June 19, 1998, the Treasury announced in Notice 98–35 (1998–27 I.R.B. 35) that the temporary regulations would be removed and that the proposed regulations relating to hybrid transactions would be re-proposed with new dates of applicability to give Congress the opportunity to consider in greater depth the issues raised by hybrid transactions.

As provided in Notice 98–35, these proposed regulations substantially restate the regulations relating to hybrid transactions issued in March of 1998. These proposed regulations, however, contain certain clarifications requested by taxpayers. Further, as described in greater detail below, unlike the effective date rules announced in Notice 98–35, these regulations are proposed to be effective only for payments made in taxable years commencing after the date that is five years after the date of finalization of these regulations. The permanent grandfather relief described in Notice 98–35 remains unchanged.

These proposed regulations represent the IRS and Treasury's views of how current law should be enforced. Treasury is currently undertaking a comprehensive study of subpart F. These proposed regulations will not control the results of the study. For example, an objective analysis of the policies and goals of subpart F may lead to the conclusion that subpart F should be significantly restructured.

To the extent, however, that Congress does not restructure subpart F in a manner that would alter the rules enforced by these regulations, Treasury and the IRS believe that these regulations will be necessary to preserve the integrity of the current statutory scheme. The use of hybrid arrangements, which is greatly facilitated by the "check-the-box" entity classification regulations (§§ 301.7701–1 through 301.7701–3), would otherwise give rise to the following inconsistency: if sales income is shifted from one CFC to a related CFC in a different jurisdiction, subpart F income may arise; if sales income is shifted from one CFC to its branch in a different jurisdiction, subpart F income may arise; if income is shifted through interest payments from one CFC to a related CFC in a different jurisdiction, subpart F income may arise; however, if income is shifted through interest payments from one CFC to its hybrid branch in a different jurisdiction, subpart F income will not arise. This final result does not seem an appropriate policy outcome within the framework of current subpart F, and is almost certainly inconsistent with the Congressional intent underlying the rules being interpreted here.

Treasury anticipates that taxpayers will comment both on the appropriateness of these proposed regulations under current law, and on the contents of its subpart F study, including any conclusions that the study might draw about potential changes to subpart F. To allow proper time to consider all these issues, Treasury and the IRS have significantly modified and liberalized the effective date rules set forth in Notice 98–35. New regulations regarding the treatment of a controlled foreign corporation's distributive share of partnership income will be proposed at a later date.

Explanation of Provisions

I. In General

In these proposed regulations, Treasury and the IRS set forth a framework for dealing with issues arising under subpart F (sections 951 through 964) that relate to the use of certain entities that are regarded as fiscally transparent for purposes of U.S. tax law.

II. Hybrid Branches

Treasury and the IRS understand that certain taxpayers are using arrangements involving hybrid branches

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to circumvent the purposes of subpart F. These arrangements generally involve the use of deductible payments to reduce the taxable income of a CFC under foreign law, thereby reducing that CFC's foreign tax and, also under foreign law, the corresponding creation in another entity of low-taxed, passive income of the type to which subpart F was intended to apply. Because of the structure of these arrangements, however, taxpayers take the position that this income is not taxed under subpart F. Treasury and the IRS have concluded that use of these hybrid branch arrangements is contrary to the policies and rules of subpart F.

Under these proposed regulations, hybrid branch payments, as defined in the regulations, between a CFC and its hybrid branch, or between hybrid branches of the CFC may give rise to subpart F income. When certain conditions are present, the non-subpart F income of the CFC, in the amount of the hybrid branch payment, is recharacterized as subpart F income of the CFC. Those conditions include that: the hybrid branch payment reduces the foreign tax of the payor; the hybrid branch payment would have been foreign personal holding company income if made between separate CFCs; and there is a disparity between the effective rate of tax on the payment in the hands of the payee and the hypothetical rate of tax that would have applied if the payment had been taxed in the hands of the payor.

The proposed regulations would make clear that the CFC and the hybrid branch, or the hybrid branches, are treated as separate corporations only to recharacterize non-subpart F income as subpart F income in the amount of the hybrid branch payment, and to apply the tax disparity rule of § 1.954–9(a)(5)(iv). For all other purposes (e.g., for purposes of the earnings and profits limitation of section 952), a CFC and its hybrid branch, or hybrid branches, would not be treated as separate corporations.

The proposed regulations would provide that the amount recharacterized as subpart F income is the gross amount of the hybrid branch payment limited by the amount of the CFC's earnings and profits attributable to non-subpart F income. This amount is the excess of current earnings and profits over subpart F income, determined after the application of the rules of sections 954(b) and 952(c) and before the application of these proposed regulations. To the extent that the full amount required to be recharacterized under this provision cannot be recharacterized because it exceeds earnings and profits attributable to non-subpart F income, there is no requirement to carry such amounts back or forward to another year.

The proposed regulations would provide that, under certain circumstances, the recharacterization rules will also apply to a CFC's proportionate share of any hybrid branch payment made between a partnership in which the CFC is a partner and a hybrid branch of the partnership, or between hybrid branches of such a partnership. When the partnership is treated as fiscally transparent by the CFC's taxing jurisdiction, the recharacterization rules are applied by treating the hybrid branch payment as if it had been made directly between the CFC and the hybrid branch, or as though the hybrid branches of the partnership had been hybrid branches of the CFC, as applicable. If the partnership is treated as a separate entity by the CFC's taxing jurisdiction, the recharacterization rules are applied to the partnership as if it were a CFC.

The proposed regulations would provide that income will not be recharacterized unless there is a disparity between the effective rate at which the hybrid branch payment is taxed to the payee and a hypothetical tax rate that measures the tax savings to the payor from the deductible payment. This provision is similar to the rule in § 1.954–3(b), and adopts the same percentage tests as contained in that provision. The regulations also provide a special high tax exception applicable to the hybrid branch payment that is similar to the one contained in section 954(b)(4).

For purposes of determining the amount of taxes deemed paid under section 960, the amount of non-subpart F income recharacterized as subpart F income is treated as attributable to income in separate foreign tax credit baskets in proportion to the ratio of non-subpart F income in each basket to the total amount of non-subpart F income of the CFC for the taxable year.

III. Related Provisions

These proposed regulations would provide rules, contained in § 1.954–1(c)(1)(i)(B), to prevent expenses, including related person interest expense that would normally be allocable under section 954(b)(5) to subpart F income of a CFC, from being allocated to a payment from which the expense arises. The allocation limit applies: (i) to the extent such payment is included in the subpart F income of the CFC; (ii) if the expense arises from any payment between the CFC and a hybrid partnership in which the CFC is a partner; and (iii) if the payment reduces foreign tax and there is a significant disparity in tax rates between the payor and payee jurisdictions.

These proposed regulations also would address the application of the related person exceptions to the foreign personal holding company income rules in the context of partnership distributive shares and transactions involving hybrid branches. Under section 954(c)(3), foreign personal holding company income does not include certain interest, dividends, rents and royalties received from related corporations. These exceptions apply, in the case of interest and dividends, when the related corporate payor is organized in the country in which the CFC is organized and uses a substantial part of its assets in a trade or business in that country and, in the case of rents and royalties, when the rent or royalty payment is made for the use or privilege of using property within the CFC's country of incorporation.

Under these proposed regulations, if the partnership receives an item of income that reduces the foreign income tax of the payor, the related person exceptions of section 954(c)(3) would apply to exclude the income from the foreign personal holding company income of the CFC partner only where: the exception would have applied if the CFC earned the income directly (testing relatedness and country of incorporation at the CFC partner level); and either the partnership is organized and operates in the CFC's country of incorporation, the partnership is treated as fiscally transparent in the CFC's countries of incorporation and operation, or there is no significant disparity between the effective rate of tax imposed on the income and the rate of tax that would be imposed on the income if earned directly by the CFC partner.

In addition, these proposed regulations contain rules that would apply the related person exceptions to certain payments involving hybrid branches. These rules would apply to payments by a CFC to a hybrid branch of a related CFC. Under these rules, the related person exceptions would apply to exclude the payments from the foreign personal holding company income of the recipient CFC only if the payment would have qualified for the exception if the hybrid branch had been a separate CFC incorporated in the jurisdiction in which the payment is subject to tax (other than a withholding tax).

IV. Request for Comments

Comments on policy issues that relate to subpart F and deferral, generally, including comments on legislative modifications to the current rules, and comments solicited on the broad policy issues mentioned in Notice 98–35, can be submitted in response to the study mentioned above. Treasury and the IRS invite comments on the appropriateness of these regulations under the current subpart F rules.

Proposed Effective Date

These proposed regulations will not be finalized before July 1, 2000. It is proposed that, when finalized, these regulations would be effective only for payments made in taxable years of a controlled foreign corporation commencing after the date that is five years after the date of finalization of these regulations. These regulations would not, however, apply to any payments made under hybrid arrangements entered into before June 19, 1998. This exception is permanent so long as the arrangement is not substantially modified on or after June 19, 1998. An illustrative list of events that would and would not constitute "substantial modification" of an arrangement is included in these regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Request for Comments

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of these proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 1, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by November 10, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Valerie Mark, of the Office of the Associate Chief Counsel (International). Other personnel from the IRS and Treasury Department also participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking and Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking amending 26 CFR parts 1 and 301 that was published in the **Federal Register** on March 26, 1998, 63 FR 14669 (REG–104537–97), is withdrawn. In addition, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.904–5, paragraph (k)(1) is revised to read as follows:

§ 1.904–5 Look-through rules as applied to controlled foreign corporations and other entities.

* * * * *

(k) *Ordering rules*—(1) *In general.* Income received or accrued by a related person to which the look-through rules apply is characterized before amounts included from, or paid or distributed by, that person and received or accrued by a related person. For purposes of determining the character of income received or accrued by a person from a related person if the payor or another related person also receives or accrues income from the recipient and the look-through rules apply to the income in all cases, the rules of paragraph (k)(2) of this section apply. Notwithstanding any other provision of this section, the principles of § 1.954–1(c)(1)(i) will apply to any expense subject to § 1.954–1(c)(1)(i).

* * * * *

Par. 3. Section 1.954–0 (b) is amended as follows:

1. The entry for § 1.954–1(c)(1)(i) is revised.
2. Entries for § 1.954–1(c)(1)(i)(A) through (c)(1)(i)(E) are added.
3. An entry for § 1.954–2(a)(5) is added.
4. An entry for § 1.954–2(a)(6) is added.

The revision and additions read as follows:

§ 954–0 Introduction.

* * * * *

(b) * * *

Section 1.954–1 Foreign Base Company Income

* * * * *

(c) * * *

(1) * * *

(i) Deductions.

(A) Deductions against gross foreign base company income.

(B) Special rule for deductible payments to certain non-fiscally transparent entities.

(C) Limitations.

(D) Example.

(E) Effective date.

* * * * *

Section 1.954–2 Foreign Personal Holding Company Income

(a) * * *

(5) Special rules applicable to distributive share of partnership income.

(i) Application of related person exceptions where payment reduces foreign tax of payor.

(ii) Certain other exceptions applicable to foreign personal holding company income. [Reserved]

(iii) Effective date.

(6) Special rules applicable to exceptions from foreign personal holding company income treatment in circumstances involving hybrid branches.

(i) In general.

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(ii) Exception where no tax reduction or tax disparity.

(iii) Effective date.

* * * * *

Par. 4. Section 1.954–1 is amended as follows:

1. Paragraphs (c)(1)(i) heading and introductory text and (c)(1)(i)(A) through (c)(1)(i)(D) are redesignated as paragraphs (c)(1)(i)(A) heading and introductory text and (c)(1)(i)(A)(*1*) through (c)(1)(i)(A)(*4*), respectively.

2. A heading for paragraph (c)(1)(i) is added.

3. Paragraphs (c)(1)(i)(B) through (c)(1))(i)(E) are added.

The additions read as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(c) * * *

(1) * * *

(i) *Deductions*—(A) *Deductions against gross foreign base company income.* * * *

(B) *Special rule for deductible payments to certain non-fiscally transparent entities.* Notwithstanding any other provision of this section, except as provided in paragraph (c)(1)(i)(C) of this section, an expense (including a distributive share of any expense) that would otherwise be allocable under section 954(b)(5) against the subpart F income of a controlled foreign corporation shall not be allocated against subpart F income of the controlled foreign corporation resulting from the payment giving rise to the expense if—

(*1*) Such expense arises from a payment between the controlled foreign corporation and a partnership in which the controlled foreign corporation is a partner and the partnership is not regarded as fiscally transparent, as defined in § 1.954–9(a)(7), by any country in which the controlled foreign corporation does business or has substantial assets; and

(*2*) The payment from which the expense arises would have reduced foreign tax, under § 1.954–9(a)(3), and would have fallen within the tax disparity rule of § 1.954–9(a)(5)(iv), if those provisions had been applicable to the payment.

(C) *Limitations.* Paragraph (c)(1)(i)(B) of this section shall not apply to the extent that the controlled foreign corporation partner has no income against which to allocate the expense, other than its distributive share of a payment described in paragraph (c)(1)(i)(B) of this section. Similarly, to the extent an expense described in paragraph (c)(1)(i)(B) of this section exceeds the controlled foreign corporation partner's distributive share of the payment from which the expense arises, such excess amount of the expense may reduce subpart F income (other than such payment) to which it is properly allocable or apportionable under section 954(b)(5).

(D) *Example.* The following example illustrates the application of paragraphs (c)(1)(i)(B) and (C) of this section:

Example. CFC, a controlled foreign corporation in Country A, is a 70 percent partner in partnership P, located in Country B. Country A's tax laws do not classify P as a fiscally transparent entity. The rate of tax in country B is 15 percent of the tax rate in country A. P loans $100 to CFC at a market rate of interest. In year 1, CFC pays P $10 of interest on the loan. The interest payment would have caused the recharacterization rules of § 1.954–9 to apply if the payment were made between the entities described in § 1.954–9(a)(2). CFC's distributive share of P's interest income is $7, which is foreign personal holding company income to CFC under section 954(c). Under paragraph (c)(1)(i)(B) of this section, $7 of the $10 interest expense may not be allocated against any of CFC's subpart F income. However, to the extent the remaining $3 of interest expense is properly allocable to subpart F income of CFC other than its distributive share of P's interest income, this expense may offset such other subpart F income.

(E) *Effective date.* Paragraph (c)(1)(i)(B), (C) and (D) of this section shall be applicable for all payments made or accrued in taxable years commencing after [date that is 5 years after publication of the final regulations in the **Federal Register**], under hybrid arrangements, unless such payments are made pursuant to an arrangement that would qualify for permanent relief under § 1.954–9(c)(2) if made between a controlled foreign corporation and its hybrid branch, in which case the relief afforded under that section shall also be afforded under this section.

* * * * *

Par. 5. In § 1.954–2, paragraphs (a)(5) and (a)(6) are added to read as follows:

§ 1.954–2 Foreign personal holding company income.

(a) * * *

(5) *Special rules applicable to distributive share of partnership income*—(i) *Application of related person exceptions where payment reduces foreign tax of payor.* If a partnership receives an item of income that reduced the foreign income tax of the payor (determined under the principles of § 1.954–9(a)(3)), to determine the extent to which a controlled foreign corporation's distributive share of such item of income is foreign personal holding company income, the exceptions contained in section 954(c)(3) shall apply only if—

(A)(*1*) Any such exception would have applied to exclude the income from foreign personal holding company income if the controlled foreign corporation had earned the income directly (determined by testing, with reference to such controlled foreign corporation, whether an entity is a related person, within the meaning of section 954(d)(3), or is organized under the laws of, or uses property in, the foreign country in which the controlled foreign corporation is created or organized); and

(*2*) The distributive share of such income is not in respect of a payment made by the controlled foreign corporation to the partnership; and

(B)(*1*) The partnership is created or organized, and uses a substantial part of its assets in a trade or business in the country under the laws of which the controlled foreign corporation is created or organized (determined under the principles of paragraph (b)(4) of this section);

(*2*) The partnership is regarded as fiscally transparent, as defined in § 1.954–9(a)(7), by all countries under the laws of which the controlled foreign corporation is created or organized or has substantial assets; or

(*3*) The income is taxed in the year when earned at an effective rate of tax (determined under the principles of § 1.954–1(d)(2)) that is not less than 90 percent of, and not more than five percentage points less than, the effective rate of tax that would have applied to such income under the laws of the country in which the controlled foreign corporation is created or organized if such income were earned directly by the controlled foreign corporation partner from local sources.

(ii) *Certain other exceptions applicable to foreign personal holding company income.* [Reserved].

(iii) *Effective date.* Paragraph (a)(5)(i) of this section shall apply to all amounts paid or accrued in taxable years commencing after [date that is 5 years after publication of the final regulations in the **Federal Register**], under hybrid arrangements, unless such payments are made pursuant to an arrangement which would qualify for permanent relief under § 1.954–9(c)(2) if made between a controlled foreign corporation and its hybrid branch, in which case the relief afforded under that section shall also be afforded under this section.

(6) *Special rules applicable to exceptions from foreign personal holding company income treatment in circumstances involving hybrid branches*—(i) *In general.* In the case of a payment between a controlled foreign corporation (or its hybrid branch, as

defined in § 1.954–9(a)(6)) and the hybrid branch of a related controlled foreign corporation, the exceptions contained in section 954(c)(3) shall apply only if the payment would have qualified for the exception if the payor were a separate controlled foreign corporation created or organized in the jurisdiction where foreign tax is reduced and the payee were a separate controlled foreign corporation created or organized under the laws of the jurisdiction in which the payment is subject to tax (other than a withholding tax).

(ii) *Exception where no tax reduction or tax disparity.* Paragraph (a)(6)(i) of this section shall not apply unless the payment would have reduced foreign tax, under § 1.954–9(a)(3), and fallen within the tax disparity rule of § 1.954–9(a)(5)(iv) if those provisions had been applicable to the payment.

(iii) *Effective date.* The rules of this section shall apply to all amounts paid or accrued in taxable years commencing after [date that is 5 years after publication of the final regulations in the **Federal Register**], under hybrid arrangements, unless such payments are made pursuant to an arrangement which would qualify for permanent relief under § 1.954–9(c)(2) if made between a controlled foreign corporation and its hybrid branch, in which case the relief afforded under that section shall also be afforded under this section.

Par. 6. Section 1.954–9 is added to read as follows:

§ 1.954–9 Hybrid branches.

(a) *Subpart F income arising from certain payments involving hybrid branches—(1) Payment causing foreign tax reduction gives rise to additional subpart F income.* The non-subpart F income of a controlled foreign corporation will be recharacterized as subpart F income, to the extent provided in paragraph (a)(5) of this section, if—

(i) A hybrid branch payment, as defined in paragraph (a)(6) of this section, is made between the entities described in paragraph (a)(2) of this section;

(ii) The hybrid branch payment reduces foreign tax, as determined under paragraph (a)(3) of this section; and

(iii) The hybrid branch payment is treated as falling within a category of foreign personal holding company income under the rules of paragraph (a)(4) of this section.

(2) *Hybrid branch payment between certain entities—(i) In general.* Paragraph (a)(1) of this section shall apply to hybrid branch payments between—

(A) A controlled foreign corporation and its hybrid branch;

(B) Hybrid branches of a controlled foreign corporation;

(C) A partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other partnerships) and a hybrid branch of the partnership; or

(D) Hybrid branches of a partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other partnerships).

(ii) *Hybrid branch payment involving partnership—(A) Fiscally transparent partnership.* To the extent of the controlled foreign corporation's proportionate share of a hybrid branch payment, the rules of paragraphs (a)(3), (4) and (5) of this section shall be applied by treating the hybrid branch payment between the partnership and the hybrid branch as if it were made directly between the controlled foreign corporation and the hybrid branch, or as if the hybrid branches of the partnership were hybrid branches of the controlled foreign corporation, if the hybrid branch payment is made between—

(*1*) A fiscally transparent partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other fiscally transparent partnerships) and the partnership's hybrid branch; or

(*2*) Hybrid branches of a fiscally transparent partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other fiscally transparent partnerships).

(B) *Non-fiscally transparent partnership.* To the extent of the controlled foreign corporation's proportionate share of a hybrid branch payment, the rules of paragraphs (a)(3) and (4) and (a)(5)(iv) of this section shall be applied to the non-fiscally transparent partnership as if it were the controlled foreign corporation, if the hybrid branch payment is made between—

(*1*) A non-fiscally transparent partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other partnerships) and the partnership's hybrid branch; or

(*2*) Hybrid branches of a non-fiscally transparent partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other partnerships).

(C) *Examples.* The following examples illustrate the application of this paragraph (a)(2)(ii):

Example 1. CFC, a controlled foreign corporation in Country A, is a 90 percent partner in partnership P, which is treated as fiscally transparent under the laws of Country A. P has a hybrid branch, BR, in Country B. P makes an interest payment of $100 to BR. Under Country A law, CFC's 90 percent share of the payment reduces CFC's Country A income tax. Under paragraph (a)(2)(ii)(A) of this section, the recharacterization rules of this section are applied by treating the payment as if made by CFC to BR. Ninety dollars of CFC's non-subpart F income, to the extent available, and subject to the earnings and profits and tax rate limitations of paragraph (a)(5) of this section, is recharacterized as subpart F income.

Example 2. CFC, a controlled foreign corporation in Country A, is a 90 percent partner in partnership P, which is treated as fiscally transparent under the laws of Country A. P has two branches in Country B, BR1 and BR2. BR1 is treated as fiscally transparent under the laws of Country A. BR2 is a hybrid branch. BR1 makes an interest payment of $100 to BR2. Under paragraph (a)(2)(ii)(A) of this section, the payment by BR1, the fiscally transparent branch, is treated as a payment by P, and the deemed payment by P, a fiscally transparent partnership, is treated as made by CFC. Under Country A law, CFC's 90 percent share of BR1's payment reduces CFC's Country A income tax. Ninety dollars of CFC's non-subpart F income, to the extent available, and subject to the earnings and profits and tax rate limitations of paragraph (a)(5) of this section, is recharacterized as subpart F income.

(3) *Application when payment reduces foreign tax.* For purposes of paragraph (a)(1) of this section, a hybrid branch payment reduces foreign tax when the foreign tax imposed on the income of the payor, or any person that is a related person with respect to the payor (as determined under the principles of section 954(d)(3)), is less than the foreign tax that would have been imposed on such income had the hybrid branch payment not been made, or the hybrid branch payment creates or increases a loss or deficit or other tax attribute which may be carried back or forward to reduce the foreign income tax of the payor or any owner in another year (determined by taking into account any refund of such tax made to the payor, payee or any other person).

(4) *Hybrid branch payment that is included within a category of foreign personal holding company income*—(i) *In general.* For purposes of paragraph (a)(1) of this section, whether the hybrid branch payment is treated as income included within a category of foreign personal holding company income is determined by treating a hybrid branch

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that is either the payor or recipient of the hybrid branch payment as a separate wholly-owned subsidiary corporation of the controlled foreign corporation that is incorporated in the jurisdiction under the laws of which such hybrid branch is created, organized for foreign law purposes, or has substantial assets. Thus, the hybrid branch payment will be treated as included within a category of foreign personal holding company income if, taking into account any specific exceptions for that category, the payment would be included within a category of foreign personal holding company income if the branch or branches were treated as separately incorporated for U.S. tax purposes.

(ii) *Extent to which controlled foreign corporation and hybrid branches treated as separate entities.* For purposes of this section, other than the determination under paragraph (a)(4)(i) of this section, a controlled foreign corporation and its hybrid branch, a partnership and its hybrid branch, or hybrid branches shall not be treated as separate entities. Thus, for example, if a controlled foreign corporation, including all of its hybrid branches, has an overall deficit in earnings and profits to which section 952(c) applies, the limitation of such section on the amount includible in the subpart F income of such corporation will apply. Similarly, for purposes of applying the de minimis and full inclusion rules of section 954(b)(3), a controlled foreign corporation and its hybrid branch, or hybrid branches shall not be treated as separate corporations. Further, a hybrid branch payment that would reduce foreign personal holding company income under section 954(b)(5) if made between two separate entities will not create an expense if made between a controlled foreign corporation and its hybrid branch, a partnership and its hybrid branch, or hybrid branches.

(5) *Recharacterization of income attributable to current earnings and profits as subpart F income*—(i) *General rule.* Non-subpart F income of a controlled foreign corporation in an amount equal to the excess of earnings and profits of the controlled foreign corporation for the taxable year over subpart F income, as defined in section 952(a), will be recharacterized as subpart F income under paragraph (a)(1) of this section only to the extent provided under paragraphs (a)(5)(ii) through (vi) of this section.

(ii) *Subpart F income.* For purposes of determining the excess of current earnings and profits over subpart F income under paragraph (a)(1) of this section, the amount of subpart F income is determined before the application of the rules of this section but after the application of the rules of sections 952(c) and 954(b). Further, such amount is determined by treating the controlled foreign corporation and all of its hybrid branches as a single corporation.

(iii) *Recharacterization limited to gross amount of hybrid branch payment*—(A) *In general.* The amount recharacterized as subpart F income under paragraph (a)(1) of this section is limited to the amount of the hybrid branch payment.

(B) *Exception for duplicative payments.* [Reserved].

(iv) *Tax disparity rule*—(A) *In general.* Paragraph (a)(1) of this section will apply only if the hybrid branch payment falls within the tax disparity rule. The hybrid branch payment falls within the tax disparity rule if it is taxed in the year when earned at an effective rate of tax that is less than 90 percent of, and at least 5 percentage points less than, the hypothetical effective rate of tax imposed on the hybrid branch payment, as determined under paragraph (a)(5)(iv)(B) of this section.

(B) *Hypothetical effective rate of tax*—(*1*) *In general.* The hypothetical effective rate of tax imposed on the hybrid branch payment is—

(*i*) For the taxable year of the payor in which the hybrid branch payment is made, the amount of income taxes that would have been paid or accrued by the payor if the hybrid branch payment had not been made, less the amount of income taxes paid or accrued by the payor; divided by

(*ii*) The amount of the hybrid branch payment.

(*2*) *Hypothetical effective rate of tax when hybrid branch payment causes or increases loss or deficit.* If the hybrid branch payment causes or increases a loss or deficit of the payor for foreign tax purposes, and such loss or deficit can be carried forward or back, the hypothetical effective rate of tax imposed on the hybrid branch payment is the effective rate of tax that would be imposed on the taxable income of the payor for the year in which the payment is made if the payor's taxable income were equal to the amount of the hybrid branch payment.

(C) *Examples.* The application of this paragraph (a)(5)(iv) is illustrated by the following examples:

Example 1. In 2006, CFC organized in Country A had net income of $60 from manufacturing for Country A tax purposes. It also had a branch (BR) in Country B. BR is a hybrid entity under paragraph (a)(1) of this section. CFC made a payment of $40 to BR, which was a hybrid branch payment under paragraph (a)(6) of this section, and was treated by CFC as a deductible payment for Country A tax purposes. CFC paid $30 of Country A taxes in 2006. It would have paid $50 of Country A taxes without the deductible payment. Country A did not impose any withholding tax on the $40 payment to BR. Country B also did not impose a tax on the $40 received by BR. Therefore, the effective rate of tax on that payment is 0%. Furthermore, the hypothetical effective rate of tax on the $40 hybrid branch payment is 50% ($50–$30/$40). The effective rate of tax (0%) is less than 90% of, and more than 5 percentage points less than, this hypothetical rate of tax of 50%. As a result, the $40 hybrid branch payment falls within the tax disparity rule of this paragraph (a)(5)(iv).

Example 2. Assume the same facts as in *Example 1*, except that CFC has a loss of $100 for the year for Country A tax purposes. Under Country A law, CFC can carry the loss forward for use in subsequent years. CFC paid no Country A taxes in 2006. The rate of tax in Country A is graduated from 20% to 50%. If the $40 hybrid branch payment were the only item of taxable income of CFC, Country A would have imposed tax at an effective rate of 30%. The effective rate of tax (0%) is less than 90% of, and more than 5 percentage points less than, the hypothetical effective rate of tax (30%) imposed on the hybrid branch payment. As a result, the $40 hybrid branch payment falls within the tax disparity rule of this paragraph (a)(5)(iv).

Example 3. Assume the same facts as in *Example 1*, except that Country B imposes tax on the $40 hybrid payment to BR at an effective rate of 50%. The effective rate of 50% is equal to the hypothetical effective rate of tax. As a result, the hybrid branch payment does not fall within the tax disparity rule of this paragraph (a)(5)(iv) and, thus, the recharacterization rules of paragraph (a)(1) of this section do not apply. See also the special high tax exception of paragraph (a)(5)(v) of this section.

(v) *Special high tax exception*—(A) *In general.* Paragraph (a)(1) of this section shall not apply if the non-subpart F income that would be recharacterized as subpart F income under this section was subject to foreign income taxes imposed by a foreign country or countries at an effective rate that is greater than 90 percent of the maximum rate of tax specified in section 11 for the taxable year of the controlled foreign corporation.

(B) *Effective rate of tax.* The effective rate of tax imposed on the non-subpart F income that would be recharacterized as subpart F income under this section is determined under the principles of § 1.954–1(d)(2) and (3). See paragraph (b) of this section for the application of section 960 to amounts recharacterized as subpart F income under this section.

(vi) *No carryback or carryforward of amounts in excess of current year earnings and profits limitation.* To the extent that some or all of the amount required to be recharacterized under this section is not recharacterized as subpart F income because the hybrid branch payment exceeds the amount that can be recharacterized, as determined under paragraph (a)(5)(i) of this section, this excess shall not be carried back or forward to another year.

(6) *Definitions for this section.* For purposes of this section:

(i) *Arrangement* shall mean any agreement to pay interest, rents, royalties or similar amounts. It shall also include the declaration and payment of a dividend (but not an agreement or undertaking to pay future, unspecified dividends). An arrangement shall not, however, include the mere formation or acquisition (or similar event) of a hybrid branch that is intended to become a party to an arrangement.

(ii) *Entity* means any person that is treated by the United States or any jurisdiction as other than an individual.

(iii) *Hybrid branch* means an entity that—

(A) Is disregarded as an entity separate from its owner for federal tax purposes and is owned (including ownership through branches) by either a controlled foreign corporation or a partnership in which a controlled foreign corporation is a partner (either directly or indirectly through one or more branches or partnerships);

(B) Is treated as fiscally transparent by the United States; and

(C) Is treated as non-fiscally transparent by the country in which the payor entity, any owner of a fiscally-transparent payor entity, the controlled foreign corporation, or any intermediary partnership is created, organized or has substantial assets.

(iv) *Hybrid branch payment* means the gross amount of any payment (including any accrual) which, under the tax laws of any foreign jurisdiction to which the payor is subject, is regarded as a payment between two separate entities but which, under U.S. income tax principles, is not income to the recipient because it is between two parts of a single entity.

(7) *Fiscally transparent and non-fiscally transparent.* For purposes of this section an entity shall be treated as fiscally transparent with respect to an interest holder of the entity, if such interest holder is required, under the laws of any jurisdiction to which it is subject, to take into account separately, on a current basis, such interest holder's share of all items which, if separately taken into account by such interest holder, would result in an income tax liability for the interest holder in such jurisdiction different from that which would result if the interest holder did not take the share of such items into account separately. A non-fiscally transparent entity is an entity that is not fiscally transparent under this paragraph (a)(7).

(b) *Application of section 960.* For purposes of determining the amount of taxes deemed paid under section 960, the amount of non-subpart F income recharacterized as subpart F income under this section shall be treated as attributable to income in separate categories, as defined in § 1.904–5(a)(1), in proportion to the ratio of non-subpart F income in each such category to the total amount of non-subpart F income of the controlled foreign corporation for the taxable year.

(c) *Effective dates*—(1) *In general.* This section shall be applicable for all amounts paid or accrued in taxable years commencing after [date that is 5 years after publication of the final regulations in the **Federal Register**], under hybrid arrangements, except as otherwise provided.

(2) *Permanent Relief*—(i) *In general.* This section shall not apply to any payments made under hybrid arrangements entered into before June 19, 1998. This exception shall be permanent so long as the arrangement is not substantially modified, within the meaning of paragraph (c)(2)(ii) of this section, on or after June 19, 1998.

(ii) *Substantial modification*—(A) *In general.* Substantial modification of a hybrid arrangement includes—

(*1*) The expansion of the hybrid arrangement (other than de minimis expansion);

(*2*) A more than 50% change in the U.S. ownership (direct or indirect) of any entity that is a party to the hybrid arrangement, other than—

(*i*) A transfer of ownership of such party within a controlled group determined under section 1563(a), without regard to section 1563(a)(4); or

(*ii*) A change in ownership of the entire controlled group (determined under section 1563(a), without regard to section 1563(a)(4)) of which such party is a member;

(*3*) Any measure taken by a party to the arrangement (or any related party) that materially increases the tax benefit of the hybrid arrangement, regardless of whether such measure alters the legal relationship between the parties to the arrangement. For example, in the case of a hybrid branch payment determined with reference to a percentage of sales, a growth in the amount of the hybrid branch payment (and, thus, the tax benefit) caused by a growth of sales will not, in general, be a substantial modification. However, in the case of a significant sales growth resulting from a transfer of assets by a related party, that transfer would be a measure which materially increased the benefit of the arrangement, and that arrangement would be deemed to have been substantially modified.

(B) *Transactions not treated as substantial modification.* Substantial modification of a hybrid arrangement does not include—

(*1*) The daily reissuance of a demand loan by operation of law;

(*2*) The renewal of a loan, license or rental agreement on the same terms and conditions if—

(*i*) The renewal occurs pursuant to the terms of the agreement and without more than a de minimis amount of action of any party thereto;

(*ii*) As contemplated by the original agreement, the same parties agree to renew the agreement without modification; or

(*iii*) The renewal occurs solely by reason of a subsequent drawdown under a grandfathered master credit facility agreement;

(*3*) The renewal of a loan, license, or rental agreement by the same parties on terms which do not increase the tax benefit of the arrangement (other than a de minimis increase);

(*4*) The making of payments under a license agreement in respect of copyrights or patents (or know-how associated with such copyrights or patents), not in existence at the time the agreement was entered into, but only where the development of such property was anticipated by the agreement, and such property is substantially derived from (or otherwise incorporates substantial features of) copyrights and patents (or know-how associated with such copyrights or patents) in existence at the time of, and covered under, the original agreement;

(*5*) A final transfer pricing adjustment made by the taxation authorities of the jurisdiction in which the tax reduction occurs, so long as such adjustment would not have been a substantial valuation misstatement (as defined in section 6662(e)(1)(B)) if the adjustment had been made by the Internal Revenue Service; or

(*6*) A de minimis periodic adjustment by the parties to the arrangement made annually (or more frequently) to conform the payments to the requirements of section 482.

Charles O. Rossotti,

Commissioner of Internal Revenue.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV016–6010b; FRL–6372–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Approval of Revisions to Coal Preparation Plants and Coal Handling Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing new permitting, monitoring, reporting and testing requirements for coal preparation plants and coal handling operations state wide. The revision also provides for additional emission limits on facilities located in the Follansbee PM10 nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 12, 1999.

ADDRESSES: Written comments should be addressed to Ms. Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, at the EPA Region III address above, or by e-mail at knapp.ruth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information on the revisions to West Virginia regulation 45CSR5, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 29, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–17627 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6376–6]

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the national emission standard for hazardous air pollutants (NESHAP) for halogenated solvent cleaning by: permanently exempting nonmajor (or "area") batch cold solvent cleaning machines that use halogenated solvent from the Federal operating permit program; and deferring Federal operating permit requirements until December 9, 1999 for all other nonmajor halogenated solvent cleaning machines. EPA is proposing these revisions to treat these sources under our Federal Operating Permits Program in the same way we allow them to be treated by State operating permit programs adopted under title V of the Clean Air Act. State programs are already allowed to exempt/defer such sources from their requirements for title V operating permits. Absent revisions to the NESHAP, sources located in areas that do not have State title V permit programs (such as Indian country) could be subject to more burdensome requirements than may apply to sources located elsewhere. The proposed revisions would reduce an undue regulatory burden on industry as well as on EPA's Regional Offices.

In the "Rules and Regulations" section of the **Federal Register**, EPA is amending the NESHAP for halogenated solvent cleaning as a direct final rule without prior proposal because EPA view's this as a noncontroversial revision and anticipate no adverse comment. EPA has explained the reasons for this action in the preamble to the direct final rule. If no adverse comment is received, EPA will not take further action on this proposed rule. If EPA receives adverse comment, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by August 12, 1999.

ADDRESSES: *Comments.* If you have comments on this action, you may submit them in writing (in duplicate, if possible) to Docket No. A–92–39 at the following address: Air and Radiation Docket and Information Center (MC–6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. EPA requests that you send a separate copy of the comments to the contact person listed below at the same time that you submit comments to the docket.

Docket. Today's proposed rulemaking and other related materials are available for review in the docket. Copies may be obtained by request from the Air Docket by calling (202) 260–7548. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information about the proposed rule, contact Candace Carraway (telephone 919–541–3189), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

Entities Affected By This Action

Entities affected by this action are stationary air sources that are nonmajor halogenated solvent cleaning machines (typically known as "degreasers") that are (1) subject to subpart T of 40 CFR part 63, and (2) subject to the Federal Operating Permits Program rule at 40 CFR part 71. Examples of affected categories and entities are in the following table:

Category	NAICS code	Examples of affected entities
Halogenated Solvent Cleaners	447	Gasoline Stations.
	332	Fabricated Metal Product Manufacturing.
	333	Machinery Manufacturing.
	334	Computer and Electronic Product Manufacturing.
	335	Electrical Equipment, Appliance, and Component Manufacturing.
	336	Transportation Equipment Manufacturing.

This table is not exhaustive. Numerous industries use halogenated solvent cleaners. Other types of entities not listed in the table could also be affected by this action.

Additional Information Available in Direct Final Action

This document concerns proposed revisions to the NESHAP for halogenated solvent cleaners. For further information, including information on the authority, purpose, and rationale for the proposed rule, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Environmental protection, Operating permits, Hazardous substances, Air pollution control.

Dated: July 6, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–17629 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

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Notices

Federal Register
Vol. 64, No. 133
Tuesday, July 13, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 1999 to June 30, 2000

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof, to be provided in the 2000 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Heddy Turpin, Acting Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 1999 through June 30, 2000

This notice implements mandatory provisions of sections 6(c), 14(f) and 17(h)(1) (B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c), 1762a(f), and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR Part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR Part 226) shall be 14.75 cents for the period July 1, 1999 through June 30, 2000.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 0.19 percent from 129.12 for March, April and May of 1998 to 129.37 for the same three months in 1999. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1999 through June 30, 2000 will be 14.75 cents per meal. This is the same as the school year 1999 rate.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(c) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs."

For the 2000 school year, commodity only schools shall be eligible to receive donated food assistance valued at 33.75 cents for each free, reduced price, and paid lunch served. This amount is based on the sum of the section 6(c) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 2000. Pub. L. 105–336, The William F. Goodling Child Nutrition Reauthorization Act of 1998, modified the method for rounding free and reduced price rates in section 4 so they are rounded down to the nearest whole cent and are consistent with the methods for rounding for paid meals. Therefore, there is one rate for all meals served. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in the NSLP.

Authority: Sections 6(c)(1)(A) and (B), 14(f) and 17(h)(1) (B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B), 1762a(f), and 1766(h)(1)(B)).

Dated: July 6, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–17736 Filed 7–12–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review of Elemental Sulphur from Canada.

SUMMARY: On January 6, 1999, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on elemental sulphur from Canada (64 FR 848) ("*Preliminary Results*"). This period of review ("POR") is December 1, 1996, through November 30, 1997. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of the review, as discussed below. However, the margin remains *de minimis*.

We determine that respondent has not made sales below normal value during the period of review. Thus, we will instruct the U.S. Customs Service to liquidate entries during the POR without regard to antidumping duties.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182 or (202) 482–3818, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1999, the Department published in the **Federal Register** (64 FR 848) the preliminary results of its administrative review of the antidumping duty order on elemental sulphur from Canada. We gave interested parties an opportunity to comment on our preliminary results. We received written comments on February 5, 1999 from Husky Oil, Ltd. ("Husky"), the only respondent in this review, and on February 24, 1999 from petitioner, Freeport McMoRan Sulphur, Inc. ("Freeport").

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit. On March 8, 1999, the Department extended the time limit for the final results in this case. *See Elemental Sulphur from Canada: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review*, 64 FR 10983. We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by these reviews are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule ("HTS") subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

Fair Value Comparisons

To determine whether sales of subject merchandise from Canada to the United States were made at less than fair value, we compared the Export Price ("EP") to the Normal Value ("NV"), as described in the "Export Price" and "Normal Value" sections of the *Preliminary Results*.

Interested Party Comments

Comment 1—Revocation. Husky argues that the Department should reconsider its preliminary decision not to revoke the antidumping duty order in whole or with respect to Husky, based on the unique facts of this case and the U.S. International Trade Commission's ("ITC") determination "to revoke the elemental sulphur antidumping duty order on January 1, 2000."

Husky argues that the Department has the authority to revoke an antidumping duty order if any of the following situations exist: (1) Dumping is no longer occurring and/or dumping is no longer causing injury (citing the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 11); (2) "(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * pertains have expressed a lack of interest in the order, in whole or in part" (citing 19 CFR 351.222(g)(i)); (3) "(o)ther changed circumstances sufficient to warrant revocation or termination exist" (citing 19 CFR 351.222(g)(ii)). Husky also contends that the Department has demonstrated its ability to interpret its regulations in a flexible manner by granting revocation based on an exporter's ability to sell at fair value for several years, despite that exporter's failure to file a timely request for revocation (citing *Color Television Receivers From the Republic of Korea: Final Results of Changed Circumstances Antidumping Duty Review*, 63 FR 46759 (September 2, 1998) ("*Color Television Receivers from Korea*")).

Husky alleges that the Department and petitioner knew that Husky's argument for revocation was partly based on Husky's reliance upon the new intervening year rule at 19 CFR 351.222(d), even though the intervening year Husky relied upon—the 1995/96 review period—would have been reviewed under prior regulatory authority. Husky notes that, in the *Preliminary Results*, the Department determined that the 1995/96 review period cannot be viewed as the second of three consecutive review periods because the new regulations cannot be applied retroactively to cover periods subject to the Department's previously applicable regulations. Husky disputes this conclusion on the grounds that the new regulations, while published on May 19, 1997, were in fact first introduced to the public for comments in February of 1996. Husky argues that, while the new regulations cover reviews requested on or after July 1, 1997, they do not state that the intervening year rule may not apply to reviews conducted under earlier versions of the Department's regulations.

Husky argues that one possible reason why Freeport did not object to Husky's right to request revocation in this review was because the Department had not stated that respondents could not apply the intervening year rule as soon as the final regulations entered into effect. Husky argues that the Department's interpretation of its regulations in the *Preliminary Results* amounts to a finding that the "intervening year rule did not, in fact, become effective in July 1997 as mandated by the regulations." Instead, Husky alleges, the Department's preliminary results decision means that the intervening year rule did not become

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effective until July of 1998. Husky argues that the Department "should enforce the effective date of its regulations and allow Husky's revocation to proceed on the basis that no dumping was found during the 1995/96 intervening year." Husky argues that Freeport would not be prejudiced by application of the intervening year rule in this case because Freeport had the opportunity to request a review of the 1995/96 period.

In addition, Husky contends that the Department should grant Husky's request for revocation based on its claims that it did not sell subject merchandise at less than fair value for three consecutive years, that it will not dump in the future, and that the Department verified that Husky is not likely to dump in the future. Further, argues Husky, because of the ITC's sunset determination, there can be at most two more reviews of this order, covering the 1997/98 and 1998/99 review periods. Accordingly, Husky states, the Department need only determine that Husky will not sell at less than fair value in 1999. Husky points to the fact that it has executed a certification stating that it will not dump in the future.

In summary, Husky argues that the Department should immediately terminate the antidumping duty order on sulphur from Canada because: (1) Husky has not sold at less than fair value since 1994; (2) Husky has certified that it will not sell at less than fair value in the future; (3) the ITC has determined that sulphur from Canada is not causing injury to the U.S. sulphur industry; (4) Freeport has been deemed unrepresentative of the U.S. sulphur industry by the ITC; (5) most of the other Canadian sulphur producers have already been revoked from the order; (6) the intervening year rule was designed to eliminate unnecessary reviews, such as the 1997/98 and 1998/99 reviews; and (7) an antidumping order should not exist if dumping is no longer causing injury (citing the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 11).

Petitioner argues that Husky requested revocation based on three consecutive years of no dumping pursuant to 19 CFR 351.222(b). Petitioner notes that "Husky did not request revocation based on any U.S. producers' lack of interest in the order, other changed circumstances, or any other basis on which the Department could revoke the order." Freeport argues that the Department should therefore reject Husky's recent claims for revocation and only consider Husky's revocation request based on section 351.222(b). Also, Freeport argues that to consider Husky's recent revocation claims on some other regulatory basis would "violate fundamental principles of due process and be prejudicial to petitioner."

Petitioner notes that section 351.222(b) requires that the foreign producer must have sold subject merchandise at not less than normal value for at least three consecutive years as a first step to be considered for revocation. Petitioner cites the Department's preliminary results in this case and supports the Department's preliminary decision not to apply section 351.222(d) retroactively to review periods governed by prior regulations.

Petitioner contends that Husky's reliance on the proposed new regulations is misplaced, because proposed regulations can and often do change before being finalized. Petitioner argues that just because Husky requested revocation after the new regulations entered into effect "does not constitute a basis for applying section 351.222(d) of the Department's new regulations to a review period to which the Department's prior regulations apply." Petitioner argues that Husky's claim that it was on notice of the rule before the deadline for requesting a review of the 1995/96 review period is in error. Petitioner notes that the final rule was published on May 19, 1997—after the deadline for requesting a review of the 1995/96 review period. In addition, petitioner notes that 19 CFR 351.701 states that the Department's regulations "apply to all administrative reviews initiated on the basis of requests made on or after the first day of July, 1997." Thus, petitioner argues that the 1996/97 administrative review is the first review governed by the new regulations.

Petitioner also argues that the Department did not in fact "verify" that Husky is not likely to dump in the future, because the Department only verifies previously submitted facts at verification. Petitioner further argues that the Department does not issue findings at verification, such as a finding of no likelihood of future dumping. Also, petitioner notes that the Department must determine that Husky did not sell sulphur for export to the United States at less than normal value for three consecutive years and that there is no likelihood of future dumping. Petitioner notes that the Department did not preliminarily hold that Husky did not sell at less than normal value for three consecutive years; hence, Husky does not qualify for revocation regardless of Husky's likelihood of future dumping.

Finally, petitioner contends that if the Department were to revoke the order with respect to Husky, Husky would sell the subject merchandise at less than normal value. Petitioner notes that Husky has reduced its U.S. export volume since the 1991/92 review and has taken further steps with regard to limiting those exports subject to antidumping duties. For a further discussion of the petitioner's arguments, which entail proprietary information, see petitioner's July 15, 1998 letter to the Department (proprietary version).

Department's Position: We agree with petitioner. As the Department stated in its Preliminary Results (at 850):

> [T]he Department's policy is not to apply [section 351.222(d)] retroactively to include periods subject to review under earlier versions of the regulations. As we explained in a recent administrative review of the countervailing duty order on agricultural tillage tools from Brazil, "[a]lthough section 351.222(d) of the Department's regulations provides that the Secretary may revoke the order in part when there are unreviewed years in the period upon which revocation is based, the regulations do not provide for the application of this provision retroactively to review periods that would have been controlled by the Department's pre-Uruguay Round regulations." Because the Department does not apply section 351.222(d) of the new regulations retroactively, any unreviewed periods that apply to the three-consecutive-year revocation requirement must be periods reviewed under Part 351. Husky's 1995–96 POR thus cannot be considered the second of three consecutive PORs in this revocation analysis. Therefore, because Husky has not satisfied the threshold requirement that revocation be based upon sales "at not less than normal value for a period of at least three consecutive years," we do not reach the additional criteria for revocation enumerated at 19 CFR 351.222 (b)(2) (ii) and (iii).

We do not agree with Husky's argument regarding the timing of the issuance of the Department's proposed regulations. While the proposed regulations were introduced before the deadline for requesting a review of the 1995/96 review period, those regulations were not final. That the proposed regulations do not constitute enforceable regulations cannot be disputed. Furthermore, the proposed regulations did not contain a proposed provision regarding the applicability dates for the new final regulations.

As noted by petitioner, and as stated in Subpart G of the current regulations, the new regulations apply to all administrative reviews initiated on the basis of requests made on or after July 1, 1997. Under this rule, the 1996/97 administrative review is the first review governed by the new regulations. While we agree with respondent that the new regulations did not explicitly state when the intervening year rule could be applied, we find that the regulations' silence on this issue affords the Department sufficient discretion to interpret Subpart G as prohibiting retroactive application of the intervening year rule set forth in section 351.222(d). Also, retroactive application of the intervening year rule is potentially prejudicial to petitioner, as the regulations governing the 1995/96 POR contained no such rule. It would thus be unfair to petitioner to alter the legal status of the 1995/96 POR subsequent to any opportunity to request a review of that period. Finally, we note that a decision not to apply the intervening year rule retroactively accords with the general preference in administrative law against the retroactive application of new regulations.

We also note that it is not the case, as asserted by Husky, that the ITC in its sunset review "revoked" the antidumping duty order on elemental sulphur from Canada. Rather, the ITC found that revocation of this order would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Elemental Sulphur From Canada*, 64 FR 2232 (January 13, 1999) (Investigation No. AA1921–127). Pursuant to this determination, the order on elemental sulphur from Canada is scheduled to be revoked effective January 1, 2000. However, all entries made before that date will remain subject to the administrative review procedures set forth at section 751 of the Act.

Regarding Husky's other revocation arguments, we find that Husky's reliance on the Department's changed circumstances review in *Color Television Receivers from Korea* is misplaced. In that case, the respondent, Samsung, had satisfied the threshold revocation requirement of three consecutive years of *de minimis* margins. In fact, at the time of that changed circumstances review, Samsung had sold subject merchandise at not less than foreign market value for six consecutive years. *See Color Television Receivers from Korea; Preliminary Results of Changed Circumstances Antidumping Administrative Review*, 62 FR 68256 (December 31, 1997). Further, the Department determined that it was not likely that Samsung would sell subject merchandise at less than foreign market value in the future. *Id.* By contrast, in this case, as explained, the Department does not reach the likelihood analysis because Husky cannot demonstrate three consecutive years of no sales at less than normal value. In this regard, we note that the Department in fact has already considered these arguments in the context of Husky's request that the Department initiate a changed circumstances review, and our position has been placed on the record of this review. Specifically, the Department considered, and rejected, these arguments in full in its *Decision Memorandum from Edward Yang to Joseph A. Spetrini*, dated March 22, 1999.

We agree with petitioner that we did not "verify" that Husky is not likely to dump in the future, as argued by Husky. The purpose of verification is to establish that information submitted on the record of a review or investigation is accurate. It is not the objective of a verification to consider legal arguments and make on-the-spot legal conclusions regarding such information. Thus, the Department's verification team merely reviewed evidence which Husky claims supports its assertion that it is not likely to dump in the future. In any event, as petitioner notes, the issue is moot, since section 351.222(d) does not apply.

Likewise, Husky's assertion that it has demonstrated that it has not sold subject merchandise at less than fair value since 1994 is unpersuasive, because, as noted above, Husky is not eligible for revocation based on three consecutive years of no dumping. For these reasons, we are not altering our determination that Husky has not met the regulatory criteria to be considered for revocation.

Comment 2—General and Administrative ("G&A") and Financial Expenses. Husky alleges that the Department erred when it adjusted Husky's cost of sales ("COS") figures used to calculate Husky's consolidated financial expense ratio and company-wide general and administrative ("G&A") expense ratio for the preliminary results. According to Husky, the Department's preliminary adjustments overstate cost of production ("COP"). Moreover, Husky maintains that the Department had accepted Husky's general and interest expense rate calculation methodology in prior reviews. Husky further elaborates that the COS figure reported on the financial statements cannot be used because these figures do not account for all the costs associated with manufacturing the products for sale. According to Husky, other costs of manufacture, such as depreciation, depletion, and exploration, as well as the cost of manufacture for downstream products, are listed separately in its financial statements (*i.e.*, not included in the COS figure reported on the financial statements).

According to Husky, the COS figure on the financial statements only reflects the cost of its operations and not the value added in the downstream operations. Husky states that the downstream portion of the cost is captured in the sales revenue account, where the margin (the difference between the sales revenue and the cost of sales) is recorded. Therefore, the total sales revenue and the COS are understated, as Husky does not record the revenue from the downstream operations in its revenue figure and does not record the cost of downstream operations in its COS. Therefore, Husky contends that these figures should not be used in calculating G&A and financial expense ratios.

In addition, Husky argues that the Department has, in other cases, adjusted COS to include costs that may not be recorded as part of COS in a company's financial statements, but that the Department nevertheless deems to be part of COS (citing *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory from Taiwan*, 63 FR 8909, 8921–22 (February 23, 1998) ("*SRAM from Taiwan*")).

Petitioner argues that Husky has understated its reported G&A and financial expenses by overstating COS figures used to calculate these amounts. According to petitioner, Husky has inflated its COS figure in the following ways: First, Husky increased COS in its financial statement "purportedly to account for the cost of its 'downstream' operations that Husky claimed was not reflected in its financial-statement cost of sales." However, petitioner claims, Husky has already included this cost in the COS figures. To support its position, petitioner references Husky Oil Operation Ltd's ("HOOL") G&A worksheet submitted as Exhibit 16 of its April 2, 1998 questionnaire response, that indicates that the total cost of downstream merchandise was recorded in HOOL's COS figure.

Second, petitioner notes that Husky's revised COS figures include marketing activities. According to petitioner, this type of expense should not be included in the calculations.

Third, petitioner states that if Husky's assertion is correct, then Husky should have only added to its COS figure the cost of further processing the "upstream" products into the "downstream" products.

Fourth, petitioner argues that Husky did not provide information to allow the Department to "determine whether Husky's 'downstream' lines of business

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incur G&A expenses proportionate to those incurred by Husky's 'upstream' production operations." Petitioner argues that the G&A incurred in respondent's downstream operations may be less than the G&A incurred in its upstream operations. If this is the case, including the COS figures for the downstream operations in the financial-statement COS figures would "inflate" the COS figure.

Finally, petitioner contends that it is the Department's practice for the respondent to bear the burden of "establishing entitlement to an adjustment," citing the following decisions by the Court of International Trade ("CIT"): *Koyo Seiko* v. *United States*, 905 F. Supp. 1112, 1116 (Ct. Int'l Trade 1995); *NSK, Ltd.* v. *United States*, 825 F. Supp. 315, 320 (Ct. Int'l Trade 1993); and *Timken Co.* v. *United States*, 673 F. Supp. 495, 513 (Ct. Int'l Trade 1987). Petitioner argues that, for the above reasons, the Department should not rely on Husky's reported G&A and financial expense ratios for the final results.

Department's Position: We disagree with Husky that it properly calculated its reported COS used to calculate both G&A and interest expenses. Normally, we rely on the COS reported on the audited financial statements of the respondent to allocate general and interest expenses. This methodology avoids any distortions that may result if greater amounts of company-wide general expenses or financial expense are allocated disproportionally between products. *See Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31412, 31433 (Comment 29) (June 9, 1998). In this instance, Husky deviated from the Department's normal methodology and calculated surrogate COS figures. To calculate these surrogate figures, Husky increased the COS figures reported on its income statements to include depletion, exploration, and its downstream production costs. As a result, these COS figures are not on the same basis as the reported cost of manufacturing ("COM") and, in fact, are overstated. Specifically, we disagree with Husky that it is appropriate to include depletion, exploration, and certain additional downstream costs as a component of the COS figures because the reported COM excludes these items. The Department has consistently stated in prior cases that the two figures should be on the same basis (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 FR 17324, 17334 (April 9, 1999); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68434 (December 11, 1998); and *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 63 FR 32833, 32837 (June 16, 1998)).

We also specifically disagree with Husky's inclusion of additional downstream manufacturing costs in the COS figure because the COS figure reported on Husky's financial statements intentionally omits this cost in accordance with Canadian Generally Accepted Accounting Principles ("GAAP"). For example, Husky has classified its operations as either upstream (*e.g.*, production of crude oil, natural gas, sulphur, etc.), downstream (production of refined oil, asphalt, etc.), upgrader, or corporate. In the normal course of business, the upstream operations transfer their finished products to the downstream operations for further processing through intra-company transactions. These operations are not separate entities that require consolidation, but merely separate business units that make up a single corporation. Thus, Husky's COS figures reported on the income statements reflect the upstream operations costs and the appropriate portion of downstream costs in accordance with Canadian GAAP (*see Verification of Cost of Production ("COP") and Constructed Value ("CV") Data for Husky Oil, Ltd.*, dated December 1, 1998, ("*Cost Verification Report*"), Exhibit 22). As a result, intra-company transactions are appropriately eliminated to avoid double counting both sales revenue and costs. Therefore, it would be inappropriate to allocate G&A and financial expense to intra-company transactions since these amounts are normally eliminated when preparing the companies' financial statements. *See Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Round Wire from Canada*, 64 FR 17324, 17334 (April 9, 1999) and *Certain Cut-to-Length Carbon Steel Plate from Brazil*, 63 FR 12744, 12749 (Comment 8) (March 16, 1998).

Petitioner's arguments about whether Husky's marketing activities are reflected in Husky's financial statement COS and whether Husky's downstream operations incur G&A expenses proportionate to Husky's upstream operations are moot because we are not using Husky's submitted COS figures.

We also disagree with Husky's reliance on *SRAM from Taiwan*, where the Department addressed the inclusion of certain costs in the calculation of COP, not COS, as in the instant case. Thus, *SRAM from Taiwan* is unrelated to the calculation of COS, and is inapplicable.

We note that, with respect to Husky's observation that the Department has accepted Husky's G&A calculation in prior reviews, the Department may change its position on a specific issue taken in prior proceedings as long as it provides an explanation for the change (*see Rust* v. *Sullivan*, 500 U.S. 173, 1860187 (1991)). In this case, Husky's increase to COS, which results in the use of a figure expressed on a different basis than COM, does not follow the Department's normal practice for calculating G&A expenses. Furthermore, there is no basis in this record to justify deviating from the Department's normal practice. Consequently, we are following our normal practice in this review, which is to ensure that COS and COM are calculated on the same basis.

For the reasons stated above, we have calculated Husky's G&A and financial expense ratio in accordance with our normal methodology using a COS figure that was on the same basis as the reported COM. For the final results, we calculated a general expense rate that is made up of company-specific G&A and corporate-wide G&A expense. Specifically, we calculated the company-specific (*i.e.*, HOOL) G&A expense rate by dividing HOOL's unconsolidated G&A expense by its unconsolidated COS figure, which we increased to include depreciation expense. We then calculated a company-wide G&A expense rate for general expenses that benefitted all the entities of the consolidated HOOL Group. The denominator in this instance was HOOL's consolidated COS figure, which we increased to include depreciation expense. For the calculation of interest expense, we are continuing to use Husky's consolidated financial statements as we did in the *Preliminary Results. See Analysis Memorandum of Husky for the Final Results of the Administrative Review of Elemental Sulphur from Canada for the period December 1, 1996 through November 30, 1997 ("Analysis Memo: Final")*, dated July 6, 1999, for a complete discussion.

Comment 3—Adjustment to reported interest expenses. Husky alleges that in the preliminary results, the Department incorrectly included interest expenses paid on subordinated debt and dividends of Class C shares in the calculation of Husky's total interest expenses. Husky provides the following reasons as to why this inclusion is incorrect.

First, Husky argues that the interest on subordinated shareholders' loans and dividends on Class C shares are amounts held by external shareholders in proportion to their shareholdings. Therefore, Husky argues that these expenses are not interest expenses but rather dividend and loan payments based on equity positions. Second, Husky argues that under Canadian GAAP, these loans are not treated like normal debt, and that the Department should follow prior reviews of this order, and reverse its preliminary decision. According to Husky, the interest on subordinated shareholders' loans and dividends on Class C shares are "treated as loans for the 'ceiling' test under the full cost method of accounting applicable to the oil and gas industry." Respondent provides a brief summary of the ceiling test as a "calculation to determine if it is necessary to expense any portion of capitalized costs taking into account future revenues and all costs, including financing, but excluding the subordinated interest and Class C shares." Respondent argues that its auditors, in Note 6 of Husky's Consolidated Financial Statements and Auditors' Report, dated December 31, 1997 ("financial statements") "determined that the loans were so subordinated that they could not be treated as debt" and that these "loans are subordinated to all senior debt and other financial debt of the Company."

Petitioner argues that the Department properly included interest on subordinated shareholders' loans and dividends on Class C shares as interest expenses, since Husky's exclusion of these payments improperly understated its financial expense ratio.

First, petitioner argues that Husky did not address the fact that the *Cost Verification Report* notes that company officials stated that "these account balances (*i.e.*, the interest on subordinated shareholders' loans and dividends on Class C shares) reflect the interest expense due to shareholders for lending the organization funds." Petitioner argues that the Department relied on this statement from company officials in determining that these amounts should be included in the calculation of interest expense. Additionally, petitioner notes that the *Cost Verification Report* states that Husky officials identified the following three characteristics of these shareholders' loans: (1) each shareholder charges the same fixed interest rate; (2) Husky accrues the interest expense even if the entity has an operating loss; and (3) the accrued expense is not a dividend.

Second, petitioner argues that Department practice is to "include interest on loans from owners or shareholders in the calculation of a respondent's financial expense ratio used to calculate COP/CV" (citing *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand*, 57 FR 13695, 13704–05 (April 17, 1992) ("*Kiwifruit from New Zealand*"); and *Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings)* and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19077 (May 3, 1989) ("*Antifriction Bearings from Germany*")). Also, petitioner argues that when a respondent's financial statements "classify the holdings as debt rather than equity, the Department includes the amounts paid on the holdings in the calculation of the financial expense ratio," citing *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7039 (February 6, 1995) ("*Roses from Ecuador*"), and *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from Taiwan*, 62 FR 1726, 1731 (January 13, 1997) ("*Melamine Institutional Dinnerware Products from Taiwan*").

Third, petitioner argues that Note Six of respondent's financial statement does not state that the subordinated shareholders' loans and dividends on Class C are not debt. Also, petitioner addresses how respondent's subordinated shareholders' loans and dividends on Class C shares are represented in Husky's financial statement. Because this discussion involves proprietary information, please see *Analysis Memo: Final* for a full discussion of this issue.

Fourth, petitioner argues that respondent's statement that "the holdings [subordinated shareholders' loans and dividends on Class C shares] are not treated like normal debt under Canadian GAAP," in fact acknowledges that the holdings are debt. Also, petitioner notes that under both the statute and the Statement of Administrative Action ("SAA"), COP/CV cannot be calculated using foreign accounting practices that "do not reasonably reflect the costs of producing the subject merchandise." In addition, petitioner argues that the CIT has "made [it] clear that even if a respondent's accounting records are consistent with the respondent's home country GAAP, it is unlawful for the Department to rely on those records when they are unreliable and distortive of 'actual costs' " (citing *Thai Pineapple Pub. Co.* v. *United States*, 946 F. Supp. 11, 20 (Ct. Int'l Trade 1996)). Petitioner argues that the Department has determined that COP/CV must reasonably reflect actual production costs, citing, *e.g., Certain Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review*, 62 FR 18486, 18492 (April 15, 1997), and *Final Determination of Sales at Less Than Fair Value; Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29559 (June 5, 1995). Petitioner notes that the "SAA identifies U.S. GAAP as the standard for determining whether a company's records reflect actual costs." Also, petitioner notes how respondent's subordinated shareholders' loans and dividends on Class C shares may be classified in Husky's financial statement. Because this argument entails the discussion of proprietary information, *see Analysis Memo: Final* (proprietary version).

Department's Position: We disagree with respondent's characterization of the interest on subordinated shareholders' loans and dividends on Class C shares. As petitioner notes above, and as mentioned in the *Cost Verification Report*, Husky officials identified the following three characteristics of these shareholders' loans: (1) each shareholder charges the same fixed interest rate; (2) Husky accrues the interest expense even if the entity has an operating loss; and (3) the accrued expense is not a dividend. These three characteristic descriptions, as well as the statement that the account balances of shareholder loans reflect the interest expense due to shareholders for loaning the organization funds, suggest that these are interest expenses for Husky.

Furthermore, we note that Husky's auditors appear to have implicitly characterized the subordinated shareholders' loan amounts as debt, by stating that these "loans are subordinated to all senior debt and other financial debt of the Company." *See Cost Verification Report*, Exhibit 2 (Husky's Consolidated Financial Statements and Auditors' Report, dated December 31, 1997, Note Six). The loans, while subordinated to other debt, are still identified as debt because they have a specific maturity date and require the payment of interest (Note 12 of the same financial report). Additionally, we agree with petitioner's argument regarding how the subordinated shareholders' loans and dividends on Class C shares are represented in Husky's financial statements. Because this discussion involves proprietary information, *see Analysis Memo: Final* (proprietary

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version) for a full discussion of this issue.

We agree with petitioner that the Department's practice is to include interest on loans from owners or shareholders when calculating a respondent's financial expense ratio. *See, e.g., Kiwifruit from New Zealand* (Department agreed with petitioners that any interest expenses that were necessary to produce kiwifruit should properly be included in the cost of production, since there was no evidence that the interest rate on the related-party loan did not reflect market interest rates.); and *Antifriction Bearings from Germany* (Department stated that the loan to respondent from a shareholder does not differ from other debt. Therefore, the interest paid on that loan was treated as an interest expense.).

In addition, if a respondent's financial statements classify the owners' or shareholders' holdings as a debt or loan, rather than as equity, Department practice is to include the payments on these holdings in the calculation of respondent's financial expense ratio. *See Roses from Ecuador* (Department noted that since the loan in question was not recorded originally as an equity investment and was reflected in the company's books and records as borrowings, we had no basis to reclassify it as equity.) and *Melamine Institutional Dinnerware Products from Taiwan* (Department stated that although respondent may have considered the transactions in question to serve as equity capital infusions, its audited financial statement classified them as long-term loans. Other than respondent's assertions, there was no basis on the record to reclassify these amounts.).

Finally, as stated in section 773(f)(1)(A) of the Act, the Department normally relies on foreign company's books and records for calculating COP/CV if these practices are: (1) consistent with their home country GAAP, and (2) reasonably reflect the costs associated with the production and sale of the merchandise. Due to the economic realities of these loans, Canadian GAAP has required the company to treat these loans as a note payable. Thus, the interest expense incurred on this debt should be reflected in the cost of production as any other interest expense.

Based on our analysis above, we continue to find that these payments by Husky are properly classified as interest expenses in the calculation of its financial expense ratio.

Final Results of Review

As a result of our review of the comments received, we determine that the following margin exists:

Manufacturer/Exporter	Time Period	Margin (percent)
Husky Oil, Ltd. ..	12/01/96–11/30/97	0.37

Because the final calculated margin is *de minimis*, the Department will instruct the U.S. Customs Service to liquidate entries of subject merchandise during the POR without regard to antidumping duties.

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above (except that if the rate is *de minimis, i.e.*, less than 0.5 percent, no cash deposit rate will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the 1993/94 administrative review of these orders (*see Elemental Sulphur from Canada: Final Results of Antidumping Duty Administrative Review*, 62 FR 37970 (July 15, 1997) (1992/93 and 1993/94 Final Results)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1), that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17801 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Antidumping Duty Administrative Reviews of Heavy Forged Hand Tools from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of reviews.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative reviews of the antidumping duty orders on Heavy Forged Hand Tools from the People's Republic of China. These reviews cover five manufacturers/exporters of the subject merchandise to the United States for the period February 1, 1997 to January 31, 1998.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or James Terpstra, AD/CVD Enforcement, Office 4, Group II, Import Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW Washington, DC 20230, telephone: (202)–482–3601, or (202)–482–3965, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the final results of these reviews within the initial time limit established by the

Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the final results until August 4, 1999. *See* Memorandum from Bernard T. Carreau to Robert LaRussa, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building (July 2, 1999).

This extension is in accordance with section 751(a)(3)A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: July 7, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–17800 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: We preliminarily determine that sales of certain helical spring lock washers from the People's Republic of China by Zhejiang Wanxin Group Co., Ltd. were not made below normal value during the period October 1, 1997 through September 30, 1998. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3464 or 482-2815, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On October 19, 1993, the Department published the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) (58 FR 53914). The Department notified interested parties of the opportunity to request an administrative review of this order on October 9, 1998 (63 FR 54440). The petitioner, Shakeproof Industrial Products Division of Illinois Tool Works, Inc., and the respondent, Zhejiang Wanxin Group Co. (ZWG) (also known as Hangzhou Spring Washer Plant), requested that the Department conduct an administrative review of ZWG. These requests were received on October 29 and 30, 1998, respectively. The notice of initiation of this administrative review was published on November 30, 1998 (63 FR 65748). On December 14, 1998, we issued questionnaires to ZWG as well as to the President of China Chamber of Commerce for Machinery and Electronics' Products Import and Export and other PRC governmental entities. We received responses to our questionnaire from ZWG on February 11 and 17, 1999.

The Department is conducting this administrative review in accordance with Section 751 of the Act.

Scope of Review

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

This review covers the period from October 1, 1997 through September 30, 1998.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in nonmarket economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and, (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and, (4) whether each exporter has autonomy from the government regarding the selection of management. (*See Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589.)

In each of the previous administrative reviews of the antidumping duty order on HSLWs from the PRC, covering successive review periods from October 1, 1993 through September 30, 1997, we determined that ZWG merited a separate rate. We have found that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to ZWG's export activities according to the criteria identified in *Sparklers*, and an absence of government control with respect to the additional criteria identified in *Silicon Carbide*. Therefore, we have continued to assign ZWG a separate rate.

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Export Price

Because ZWG sold the subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States and the constructed export price methodology is not otherwise indicated, we have used export price in accordance with section 772(a) of the Act.

We calculated export price based on the f.o.b. price to unaffiliated purchasers. From this price, we deducted amounts for foreign inland freight and brokerage and handling. We valued these deductions using surrogate country cost data. We selected India as the surrogate country for the reasons explained in the "Normal Value" section of this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department has treated the PRC as an NME in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC HSLW industry is a market-oriented industry and, consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors of production (FOP) in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We determined that India is at a comparable level of economic development to that of the PRC. Also, India is a significant producer of comparable merchandise. Therefore, for this review, we have used Indian prices to value the FOP except where the factor was purchased from a market economy supplier and paid for in a market economy currency. (*See* Memorandum to Susan Kuhbach from Jeff May, dated March 15, 1999, "Certain Helical Spring Lock Washers from the PRC: Nonmarket Economy Status and Surrogate Country Selection," which is on file in the CRU-Public File.)

We selected, where possible, publicly available values from India which were: (1) average non-export values; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and, (4) tax-exclusive. We valued the factors of production as follows:

- ZWG purchased a meaningful amount of carbon steel wire rod from the United Kingdom, a market economy supplier, and paid for in a market economy currency. Pursuant to 19 CFR 351.408(c)(1), we valued this factor using the price paid to the market economy supplier. Thus, for carbon steel wire rod values, we used the average cost per metric ton of carbon steel wire rod imported from the United Kingdom by ZWG during the period of review.
- For the value of chemicals used in the production and plating process of HSLWs, we used per kilogram values obtained from the Indian publication *Chemical Weekly* from the *Monthly Statistics of the Foreign Trade of India-Imports* (*MFTI*). We adjusted these values, where appropriate, to reflect inflation through the POR using the Wholesale Price Index (WPI) as reported in the *International Financial Statistics* published by the International Monetary Fund (IMF). We also adjusted these values to account for freight costs incurred between the supplier and ZWG.
- To value coal, we used a per kilogram value obtained from the *MFTI*. We adjusted this value to reflect inflation through the POR using the WPI published by the IMF. We also adjusted this amount to account for freight costs incurred between the supplier and ZWG.
- To value electricity, we used the price of electricity for 1995 reported in *Energy Prices and Taxes, Fourth Quarter 1998*, a publication of the International Atomic Energy Agency. We adjusted the value to reflect inflation through the POR using the WPI published by the IMF.
- To value water, we used the 1997 *Water Utilities Data Book for the Asian and Pacific Region* published by the Asian Development Bank.
- For labor, we used the regression-based wage rate for the PRC in "Expected Wages of Selected NME Countries," located on the Internet at http:0\\www.ita.doc.gov\import_admin\records\wages\. Because of the variability of wage rates in countries with similar per capita GDP's, 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. The source for the wage rates is "Expected Wages of Selected NME Countries—1997 Income Data," *1998 Year Book of Labour Statistics*, International Labour Office, (Geneva: 1998) Chapter 5B: Wages in Manufacturing.
- For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from the January, 1997 *Reserve Bank of India Bulletin* for the Indian industry group "Processing and Manufacturing: Metals, Chemicals, and Products Thereof." From this information, we were able to determine factory overhead as a percentage of the total cost of manufacturing, SG&A as a percentage of the total cost of manufacturing, and the profit rate as a percentage of the cost of manufacturing plus SG&A.
- For packing materials, we used the per kilogram values obtained from the *MFTI*. Where necessary, we adjusted these values to reflect inflation through the POR using the WPI published by the IMF. We also adjusted them to account for freight costs incurred between the PRC supplier and ZWG.
- To value foreign brokerage and handling, we used information reported in *Certain Stainless Steel Wire Rod from India* in a document dated May 12, 1998.
- To value truck freight, we used a rate derived from the April 20, 1994, issue of *The Times of India*. We adjusted the rate to reflect inflation through the POR using the WPI published by the IMF.
- To value rail freight, we used rate information published by the Indian Railway Conference Association for rates in force from April 1, 1995. We adjusted the rate to reflect inflation through the POR using the WPI published by the IMF.
- To value shipping freight, we used a rate reported to the Department in the August, 1993 cable from the U.S. Embassy in India which was submitted for and used in the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833 (September 20, 1993). We adjusted the rate to reflect inflation through the POR using the WPI published by the IMF.

For a complete description of the factor values used, *see* "Memorandum to File: Factor Values Used for the Preliminary Results of the Fourth Administrative Review," dated July 6, 1999 (Factors Memorandum) a public version of which is available in the Public File.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Zhejiang Wanxin Group Co., Ltd.	10/01/97–09/30/98	0.00

Within 5 days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. If there is no change in the margin for the final results, we will instruct Customs to liquidate the entries made during the POR without regard to antidumping duties. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for ZWG, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the PRC rate, which is 128.63 percent, which is the All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17802 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretary Daley's Trade Mission To The Middle East

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of trade mission to the Middle East.

SUMMARY: This notice serves to inform the public of a Secretarial Trade Mission to the Middle East, October 9–18, 1999, and of the opportunity to apply for participation in the mission; sets forth objectives, procedures, and participation criteria for the mission; and requests applications.

DATES: Applications should be submitted to Lucie Naphin by August 18, 1999, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. The mission is scheduled to travel to Egypt, Israel, the West Bank, Jordan, Saudi Arabia, and the United Arab Emirates.

ADDRESSES: Request for and submission of applications—Applications are available from Lucie Naphin, Director of the office of Business Liaison, at (202) 482–1360 or via facsimile at (202) 482–4054. Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to Ms. Naphin. Applications sent by facsimile must be immediately followed by submission of the original application to Ms. Naphin at the following address: Office of Business Liaison, Room 5062, U.S. Department of Commerce, 14th Street and Constitution Ave, N.W. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lucie Naphin at (202) 482-1360. Information is also available via the International Trade Administration's (ITA) Internet home page at: "http://www.ita.doc.gov'

SUPPLEMENTARY INFORMATION:

Trade Mission Description

Secretary of Commerce William M. Daley will lead two trade missions to the Middle East in October, 1999. He will lead a business development mission to Egypt, Israel, Gaza/West Bank, and Jordan October 9–15, 1999 and a business development mission to Saudi Arabia and the United Arab Emirates (U.A.E.) October 15–18, 1999.

Egypt, Israel, Gaza/West Bank, and Jordan

In Jordan, Israel, Gaza/West Bank, and Egypt, the focus of the mission will be on commercial opportunities presented by the liberalization of these countries' economies and the privatization of key industry sectors. The delegation will include 10–15 U.S. company executives of large, medium and small firms representing the following key sectors: information technology, including computer hardware, software development, and telecommunications; energy; environmental technologies; agribusiness, including food processing and fertilizers; health care; tourism, including hotel construction and management; and insurance and banking.

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This mission will reaffirm the U.S. Government's support for the commercial aspects of the peace process, a top foreign and commercial priority.

Saudi Arabia and the United Arab Emirates

In Saudi Arabia and the U.A.E., the focus of the mission will also be on commercial opportunities presented by the liberalization of these countries' economies and the privatization of key industry sectors. The delegation will include 10–15 U.S. company executives of large, medium and small firms representing the following key sectors of: energy, including power generation, and oil and gas exploration and development; information technology, including computer hardware, software development, and telecommunications; environmental technologies; agribusiness; and health care.

This mission will include advocacy for major commercial projects, including the recent interest expressed by Saudi Crown Prince Abdullah in attracting greater U.S. private sector participation in the Saudi energy sector.

Timetable

The mission will depart Washington on October 8. A delegation will visit Jordan, Israel, Gaza/West Bank, and Egypt October 9–15, and a second delegation will visit Saudi Arabia and the U.A.E. October 15–18.

Commercial Setting

Egypt, Israel, Gaza/West Bank, and Jordan

The Government of Egypt has embarked on a significant economic reform program which has made Egypt an attractive emerging market. Egypt plans to privatize much of its power sector, roads, airports, ports, cement companies, and water supply. Egypt has also passed legislation allowing 100 percent foreign ownership of banks and insurance companies. Egypt is seeking U.S. firms for the mobile phone market. Egypt is also interested in U.S. environmental and agricultural export technologies. An increasing number of American firms are looking at Egypt for possible exports and to establish their regional marketing and manufacturing centers there. Egypt is our third largest market in the Middle East with exports totaling $3 billion in 1998.

As our second largest market in the Middle East, Israel offers major export and investment opportunities in environmental technologies, information technologies, and the medical field. Israel has the highest number of high-technology start-ups per capita in the world, and is seeking joint ventures with U.S. firms; eight U.S. state governments have offices in Israel to take advantages of these opportunities. U.S. exports to Israel in 1998 were valued at $7 billion.

Gaza/West Bank benefits from the Duty Free Proclamation, which allows U.S. products to be traded free of tariffs with the Palestinian Authority. U.S. firms also have the opportunity to use industrial facilities at the newly launched industrial park, the Gaza Industrial Estate. The Palestinian business community has long sought to encourage greater U.S. private sector participation in their market, and is eager to serve as agents and distributors for, as well as joint venture partners with, American firms. Telecommunications, tourism, and franchising in a wide range of areas, including food and office products, are particularly promising sectors for U.S. business.

The Jordanian Government has made new commitments to privatize key industries, including telecommunications. The Government has also recently announced that the Aqaba railway will be privatized by a consortium, led by U.S. companies. Moreover, the United States, Jordan, and Israel have instituted several Qualifying Industrial Zones in Jordan, which allow goods to enter the United States free of duties and quotas on a reciprocal basis. The U.S. Government also has a number of aid programs in Jordan that offer export opportunities to U.S. companies in infrastructure and environmental technologies.

Saudi Arabia and the United Arab Emirates

Saudi Arabia is the largest U.S. market in the Middle East, with $10.5 billion in exports in 1998. Recent increases in oil prices have improved the Saudis' ability to purchase goods and services. Saudi Arabia is particularly interested in U.S. firms in energy, telecommunications, environmental technologies, and medical services and equipment. Saudi Arabia is moving forward to develop much of its natural gas potential for the first time.

The United Arab Emirates, which has made great strides in diversifying its economy, represents a booming economy. The U.A.E. is interested in environmental technologies, medical fields, and telecommunications, among other sectors. Last year, the U.A.E. imported $2.4 billion in U.S. products. In 1997, Secretary Daley visited Abu Dhabi and Dubai in the U.A.E. following his participation in the Middle East/North Africa Economic Conference in Doha, Qatar.

New commercial opportunities will develop as a result of growing interest in privatization, which is already occurring in the U.A.E.'s power sector and is proposed for the same sector in Saudi Arabia, as well as additional sectors in both countries. In addition, expanding private sector opportunities is a major emphasis of the U.S.-Gulf Cooperation Council Economic Dialogue and the policies of those two key members of the GCC.

Goals for the Missions

The Secretary's missions to the Middle East will advance specific business interests of the mission members by introducing them to key host government decisionmaking officials and to potential business partners. U.S. companies participating on the missions who are already established in the region will increase their visibility, and new-to-market firms will be able to gain a foothold in these very competitive markets. In addition, the Secretary will support the U.S. Government's efforts to reduce market access problems encountered by American firms in these markets.

The Secretary also will encourage continued progress in economic reforms in each of these stops. These reforms have been the focus of the Gore-Mubarak Economic Partnership, the U.S.-GCC Economic Dialogue, the U.S.-Jordanian Bilateral Economic Committee, and the U.S.-Palestinian Bilateral Committee. The Secretary will also co-chair the semi-annual meeting of the U.S.-Israel Science and Technology Commission.

Mission Scenarios

At each stop, American Embassy officials will provide a detailed briefing on the economic and commercial climate, and the status of regional economic and commercial cooperation. Meetings will be arranged with appropriate government ministers and other senior level government officials. In addition, private meetings will be scheduled with potential buyers, agents/distributors, and/or joint venture or investment partners.

The Secretary will meet with senior government officials as well as his trade counterparts to encourage free market reforms beneficial to the U.S. private sector. The Secretary will also urge host government officials to eliminate market access problems encountered by American firms and to take steps to liberalize their trade and investment regimes. He will also meet with resident American business representatives.

Criteria for Participation of Companies

The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy governing Department of Commerce-led trade missions announced by Secretary Daley on March 3, 1997. Participants will be selected separately for each mission and applicants should complete and submit an application for each mission. Approximately 10–15 companies will be selected for each mission. Companies may apply for the one or both of the missions. Selection for one mission does not confer priority for selection for the other mission.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate only if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service. (At the discretion of the Department, which will generally be exercised on a mission-specific and sector-by-sector basis, the 51 percent U.S. content requirement may be modified or waived.)

Selection Criteria

Companies will be selected for participation on each mission on the basis of:

—Level of seniority of designated company representatives and appropriateness of the company to the mission objectives;
—Relevance of a company's business and product line to the sectors identified below;
—Past, present, and prospective business activity in the region; and
—Diversity of company size, type, location, demographics, and traditional under-representation in business.

In addition, the Department may consider whether the company's overall business objectives, including those of any U.S. or overseas affiliates, are fully consistent with the mission's foreign and commercial policy objectives.

Companies for the Egypt, Israel, Gaza/West Bank, and Jordan business development mission will be drawn from several sectors including, but not limited to:

—Information technology, including computer hardware, software development, and telecommunications;
—Environmental technologies, including waste treatment and water development;
—Agribusiness and food processing, farm machinery, fertilizers;
—Tourism, including hotel construction and management, resort development, and entertainment;
—Insurance and banking;
—Medical services and equipment; and
—Franchising.

Companies for the Saudi Arabia and United Arab Emirates business development mission will be drawn from several sectors, including, but not limited to:

—Energy, including power generation, and oil and gas exploration and development;
—Information technology, including computer hardware, software development, and telecommunications;
—Environmental technologies;
—Agribusiness; and
—Medical services and equipment.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

Time Frame For Applications

Applications for the Middle East trade missions will be made available beginning on or about July 13, 1999. Companies/participants may apply to one or both trade missions, however, separate applications will be required for each trade mission. The fees to participate in these missions have not yet been determined. The fees will not cover travel or lodging expenses. For additional information on these trade missions or to obtain an application for either or both, business persons should be referred to Lucie Naphin, Director of the Office of Business Liaison, or Jennifer Andberg, Office of Business Liaison, at 202–482–1360. Applications should be submitted to Lucie Naphin by August 18, 1999, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

Authority: 15 U.S.C. 1512.

Dated: July 7, 1999.

Thomas Parker,

Director, Office of the Near East, International Trade Administration, Department of Commerce.

[FR Doc. 99–17742 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Notice 2]

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

The National Institute of Standards and Technology (NIST) is publishing this notice for the National Fire Protection Association (NFPA) as a public service. NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests proposals from the public to amend existing NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at the above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The NFPA develops fire safety codes and standards which are known collectively as the "National Fire Codes." Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

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Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council NFPA, at the above address. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office at the same address.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the code or standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that the Committee has received and an account of their disposition by the Committee. Each person who has submitted a written proposal will receive a copy of the report.

Authority: 15 U.S.C. 272.
Dated: July 6, 1999.

Karen H. Brown,
Deputy Director.

NFPA No.	Title	Proposal closing date
15	Standard for Water Spray Fixed Systems for Fire Protection	01/07/00
17	Standard for Dry Chemical Extinguishing Systems	01/05/01
17A	Standard for Wet Chemical Extinguishing Systems	01/05/01
18	Standard on Wetting Agents	06/30/00
25	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems	06/30/00
31	Standard for the Installation of Oil-Burning Equipment	07/02/99
36	Standard for Solvent Extraction Plants	07/02/99
50	Standard for Bulk Oxygen Systems at Consumer Sites	07/02/99
51	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes.	06/30/00
51A	Standard for Acetylene Cylinder Charging Plants	07/02/99
51B	Standard for Fire Prevention During Welding, Cutting, and Other Hot Work	06/30/00
55	Standard for the Storage, Use, and Handling of Compressed and Liquefied Gases in Portable Cylinders	07/06/01
58	Liquefied Petroleum Gas Code	07/02/99
59	Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants	07/02/99
61	Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Products Facilities	01/05/01
68	Guide for Venting of Deflagrations	07/02/99
70	National Electrical Code	11/05/99
72	National Fire Alarm Code	11/03/00
75	Standard for the Protection of Electronic Computer/Data Processing Equipment	06/30/00
76	Standard for the Protection of Telecommunications Facilities	07/30/99
80	Standard for Fire Doors and Fire Windows	06/30/00
85	Combustion Systems Hazards Code	07/02/99
96	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations	10/07/00
97	Standard Glossary of Terms Relating to Chimneys, Vents and Heat-Producing Appliances	07/06/01
101A	Guide on Alternative Approaches to Life Safety	07/02/99
105	Recommended Practice for the Installation of Smoke-Control Door Assemblies	07/02/99
160	Standard for the Flame Effects before an Audience	07/02/99
211	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	07/06/01
258	Standard Research Test Method for Determining Smoke Generation of Solid Materials	07/02/99
284	Standard Test Method for Mattresses for Correctional Occupancies	07/02/99
287	Standard Methods of Tests for Measurement of Material Flammability Using the Fire Propagation Apparatus.	07/02/99
306	Standard for the Control of Gas Hazards on Vessels	01/07/00
407	Standard for Aircraft Fuel Servicing	01/07/00
471	Recommended Practice for Responding to Hazardous Materials Incidents	06/30/00
472	Standard for Professional Competence of Responders to Hazardous Materials Incidents	06/30/00
473	Standard for Competencies for EMS Personnel Responding to Hazardous Materials Incidents	06/30/00
502	Standard for Road Tunnels, Bridges, and Other Limited Access Highways	01/07/00
505	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation.	01/05/01
513	Standard for Motor Freight Terminals	01/07/00
560	Standard for the Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation	01/07/00
664	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities	01/07/00
704	Standard System for the Identification of the Fire Hazards of Materials for Emergency Response	01/07/00
750	Standard on Water Mist Fire Protection Systems	07/06/01
804	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants	07/02/99
901	Standard Classifications for Incident Reporting and Fire Protection Data	07/02/99
909	Standard for the Protection of Cultural Resources	07/02/99
914	Recommended Practice for Fire Protection in Historic Structures	07/02/99
1081	Standard for Industrial Fire Brigade Member Professional Qualifications	01/07/00
1126	Standard for the Use of Pyrotechnics before a Proximate Audience	07/02/99
1192	Standard on Recreational Vehicles	06/30/00
1194	Standard for Recreational Vehicles Parks and Campgrounds	06/30/00
1401	Recommended Practice for Fire Service Training Reports and Records	07/02/99
1404	Standard for a Fire Department Self-Contained Breathing Apparatus Program	07/02/99
1405	Guide for Land-Based Fire Fighters Who Respond to Marine Vessel Fires	07/02/99
8501	Standard for Single Burner Boiler Operation	07/02/99
8502	Standard for Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers	07/02/99
8503	Standard for Pulverized Fuel Systems	07/02/99

NFPA No.	Title	Proposal closing date
8504	Standard on Atmospheric Fluidized-Bed Boiler Operation	07/02/99
8505	Standard for Stoker Operation	07/02/99
8506	Standard on Heat Recovery Steam Generators Systems	07/02/99

*P Proposed NEW drafts are available from the NFPA Codes and Standards Administration, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 99–17782 Filed 7–12–99; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Notice 1]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) is publishing this notice for the National Fire Protection Association (NFPA) as a public service. NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The NFPA revises existing standards and adopts new standards twice a year. At its November meeting or its May meeting, the NFPA acts on recommendations made by its technical committees. The purpose of this notice is to request comments on technical committee reports which will be presented at NFPA's May 2000 Meeting.

DATES: Forty reports appear in the 2000 May Meeting Report on Proposals which becomes available on July 30, 1999. Comments received on or before October 8, 1999, will be considered by the respective NFPA committees before final action is taken on the proposals.

ADDRESSES: The "2000 May Meeting Report on Proposals" is available from NFPA, Fulfillment Center, 11 Tracy Drive, Avon, MA 02322. Comments on the technical committee reports should be submitted to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, NFPA, at the above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by NFPA technical committees have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA codes and standards are known collectively as the "National Fire Codes." Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by NFPA technical committees at the NFPA November meeting or at the May meeting each year. The NFPA invites public comment on its technical committee reports contained in the "2000 May Meeting Report on Proposals."

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the "2000 May Meeting Report on Proposals." Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 8, 1999 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the "2000 May Meeting Report on Comments" by March 31, 2000, prior to the May Meeting. A copy of this report will be sent automatically to each commenter. Action on the reports of the NFPA technical committees (adoption or rejection) will be taken at the May Meeting, May 14–18, 2000 in Denver, Colorado, by NFPA members.

Authority: 15 U.S.C. 272.
Dated: July 6, 1999.

Karen H. Brown,
Deputy Director.

REPORT ON PROPOSALS

Doc.	Title	Action
30	Flammable and Combustible Liquids Code	P
30A	Automotive and Marine Service Station Code	P
32	Standard for Drycleaning Plants	C
33	Standard for Spray Application Using Flammable or Combustible Materials	P
34	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids	P
45	Standard on Fire Protection for Laboratories Using Chemicals	C
73	Residential Electrical Maintenance Code for One- and Two-Family Dwellings	P
77	Recommended Practice on Static Electricity	C
92A	Recommended Practice for Smoke-Control Systems	C
92B	Guide for Smoke Management Systems in Malls, Atria, and Large Areas	C
122	Standard for Fire Prevention and Control in Underground Metal and Nonmetal Mines	R
150	Standard on Fire Safety in Racetrack Stables	P
203	Guide on Roof Coverings and Roof Deck Constructions	P
214	Standard on Water-Cooling Towers	P
221	Standard for Fire Walls and Fire Barrier Walls	P
231D	Standard for Storage of Rubber Tires	W
232	Standard for the Protection of Records	C
232A	Guide for Fire Protection for Archives and Records Centers	W

REPORT ON PROPOSALS—Continued

Doc.	Title	Action
241	Standard for Safeguarding Construction, Alteration, and Demolition Operations	P
303	Fire Protection Standard for Marinas and Boatyards	P
307	Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves	P
312	Standard for Fire Protection of Vessels during Construction, Repair, and Lay-Up	P
318	Standard for the Protection of Cleanrooms	P
481	Standard for the Production, Processing, Handling and Storage of Titanium	P
495	Explosive Materials Code	P
498	Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives	P
501	Standard on Manufactured Housing	P
501A	Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities	P
555	Guide on Methods for Evaluating Potential for Room Flashover	P
650	Standard for Pneumatic Conveying Systems for Handling Combustible Particulate Solids	R
654	Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids.	W C
703	Standard for Fire Retardant Impregnated Wood and Fire Retardant Coatings for Building Materials	P
720	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	C
780	Standard for the Installation of Lighting Protection Systems	P
853	Standard for the Installation of Stationary Fuel Cell Power Plants	N
1000	Standard for Fire Service Professional Qualifications Accreditation and Certification Systems	C
1071	Standard for Emergency Vehicle Technician Professional Qualifications	N
1123	Code for Fireworks Display	P
1145	Guide for the Use of Class A Foam in Manual Structural Fire Fighting	N
1915	Standard for Fire Apparatus Preventative Maintenance Program	N

P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision.

[FR Doc. 99–17781 Filed 7–12–99; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799E]

Reporting Requirements for Commercial Fisheries Under Section 118 of the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 13, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Vicki Cornish, Office of Protected Resources (F/PR2), Room 13700, 1315 East-West Highway, Silver Spring, MD 20910, 301–713–2322, ext. 125.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act prohibits the taking of marine mammals except under permit or exemption. Section 118 of the Act authorizes an exemption for commercial fisheries provided that fishermen register and report all mortalities and serious injuries of marine mammals. NOAA will submit to OMB a request for renewal of approval for the reporting requirements. The information collected is required by statute and is needed by NOAA to determine the impacts of commercial fishing activities on marine mammal populations.

II. Method of Collection

Respondents must submit a standard postage-paid form reporting mortalities or serious injuries within 48 hours after the end of the fishing trip.

III. Data

OMB Number: 0648–0292
Form Number: None
Type of Review: Regular submission
Affected public: Business and other for-profit, individuals
Estimated Number of Respondents: 10,000
Estimated Time Per Response: 9 minutes
Estimated Total Annual Burden Hours: 1,500
Estimated Total Annual Cost to Public: $0

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 1, 1999.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Chief Information Officer.
[FR Doc. 99–17795 Filed 7–12–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799I]

Application for Commercial Fisheries Exemption Under Section 118 of the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS) National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 13, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Vicki Cornish, Office of Protected Resources (F/PR2), Room 13700, 1315 East-West Highway, Silver Spring, MD 20910, 301–713–2322, ext. 125.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act prohibits the taking of marine mammals except under permit or exemption. Section 118 of the Act authorizes an exemption for commercial fisheries provided that fishers in Category I and II fisheries (those with the most likely interactions with marine mammals) to register for a certificate of exemption that will protect the fisher from prosecution for violating the moratorium on the taking of marine mammals.

II. Method of Collection

Respondents must submit a form with a registration fee.

III. Data

OMB Number: 0648–0293
Form Number: None
Type of Review: Regular submission
Affected public: Business and other for-profit, individuals
Estimated Number of Respondents: 22,400
Estimated Time Per Response: 15 minutes
Estimated Total Annual Burden Hours: 5,600
Estimated Total Annual Cost to Public: $616,000

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 1, 1999.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Chief Information Officer.
[FR Doc. 99–17797 Filed 7–12–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799H]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a joint public meeting of its Research Steering and Experimental Fisheries Committee on July 29, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on July 29, 1999, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Council office,

5 Broadway, Saugus, MA 01960–1097; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422.

SUPPLEMENTARY INFORMATION: The committee will establish procedures, approve projects and forward recommendations concerning the one percent Total Allowable Catch (TAC) set-aside earmarked for sea scallop fishery research.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 8, 1999.
Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 99–17793 Filed 7–12–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799F]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

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SUMMARY: The North Pacific Fishery Management Council (Council) will meet jointly with the Alaska Board of Fisheries (Board).

DATES: The meeting will be held on Tuesday, July 27, 1999.

ADDRESSES: The meeting will be held at Hawthorn Suites, 9th Avenue and L Street, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council and Board will meet July 27, 1999, beginning at 10:00 a.m. and concluding by 4:00 p.m.,to discuss the following issues:

1. Review of Council's June meeting in Kodiak, AK.

2. Consultation on the Board's recent action with regard to a trawl stand-down.

3. Review of the Council and Board's joint protocol and discussion of possible improvements.

Although the meeting is open to the public the Board and Council do not plan to take oral public comment at this meeting. Written comments received at the Council office by Thursday, July 22, will be copied and provided to Council and Board members at the meeting.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: July 8, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17791 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799G]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Observer Program Implementation Committee (Observer Committee) will hold a working meeting which is open to the public.

DATES: The Observer Committee working meeting will begin Tuesday, July 27, 1999 and continue through Wednesday, July 28, 1999, from 8 a.m. to 5 p.m., each day.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326-6352.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to continue development of an observer program proposal for 2000. The program proposal will be presented to the Council at its September 13–17, 1999 meeting in Portland, OR.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this agenda.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 8, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17792 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061599B]

Marine Mammals; File No. 486–1506

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Brent S. Stewart, Ph.D., J.D. (Principal Investigator), Senior Research Biologist, Hubbs-Sea World Research Institute 2595 Ingraham Street, San Diego, CA 92109, has been issued a permit to take pinnipeds for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, California 90802–4213 (562–980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 3, 1999, notice was published in the **Federal Register** (64 FR 23607) that a request for a scientific research permit to take northern elephant seals, northern fur seals, harbor seals, and California sea lions and to incidentally harass Steller sea lions and Guadalupe fur seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing endangered species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 7, 1999.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–17796 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062899A]

Marine Mammals; Permit No. 926 (File No. P562)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 926, issued to Dr. Robin Baird, Biology Department, Dalhousie University, Halifax, Nova Scotia, B3H 4J1, Canada, was amended.

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 926 authorizes Dr. Baird to harass various species of cetaceans during the conduct of photo-identification, observational studies, and suction cup tagging of several species of cetaceans in the waters of Washington, Southeast Alaska, Oregon, California, and Hawaii. This amendment authorizes the extension of the expiration date through October 31, 1999.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907–586–7235);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Resources Program Manager, Pacific Islands Area Office, NOAA, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

Dated: June 30, 1999.

Ann Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 99–17798 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The agenda will include a discussion of the Defense Labor-Management Relations Evaluation initiative and other related Partnership topics.

DATES: The meeting is to be held August 11, 1999, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by August 4, 1999, in order to be considered at the August 11 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: July 7, 1999.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17667 Filed 7–12–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards List of 1999 Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Awards System.

Secretariat

Lt. Cen. David L. Vesely

Mr. Harlan Wilder

Ms. Beth Corliss

Mr. Robert Corsi

Ms. Margaret LeClaire

Air Staff and "Others"

Mr. William A. Davidson

Mr. Blaise Durante

Ms. Patricia Zarodkiewicz

Brig. Gen. John L. Clay

Mr. Don Fox

Air Force Materiel Command

Dr. J. Daniel Stewart

Mr. Gerald Yanker

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–17685 Filed 7–12–99; 8:45 am]

BILLING CODE 5001–05–P

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DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 13, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 7, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: Grants to States for Training Incarcerated Youth Offenders—State Plan, Data Collection.
Frequency: Three-year plan.
Affected Public: State, local or Tribal Gov't, SEAs and LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 56.
Burden Hours: 9,520.
Abstract: To receive an award under the Youth Offenders Program, a State Correctional Agency must submit a State plan describing how the program will operate. The data requested from the State is necessary to run the allocation formula.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *vivian—reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically at her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17738 Filed 7–12–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 12, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 7, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: Carl D. Perkins Vocational and Applied Technology Education Act (P.L. 101–392)—Financial Status Report—SF 269.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs and LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 53
Burden Hours: 2,200
Abstract: The Financial Status Report (SF–269) is collected by the Division of Vocational-Technical Education from State agencies to determine compliance with statutory and regulatory spending requirements of formula grants awarded under the Carl D. Perkins Vocational and Applied Technology Education Act of 1990.

Written comments and requests for copies of this information collection

request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *vivian—reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically at her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–17739 Filed 7–12–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–216]

Application To Export Electric Energy; TransAlta Energy Marketing (U.S.) Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: TransAlta Energy Marketing (U.S.) Inc. (TEMUS) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 12, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 23, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from TEMUS to transmit electric energy from the United States to Canada. TEMUS, a Delaware corporation with its principal place of business in Canada, is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised electric service territory in the United States. TEMUS will purchase the electric energy to be exported at wholesale from electric utilities and Federal Power Marketing Administrations in the United States.

TEMUS proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction of each of the international transmission facilities to be utilized by TEMUS, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the TEMUS application to export electric energy to Canada should be clearly marked with Docket EA–216. Additional copies are to be filed directly with Sterling Koch, Solicitor, TransAlta Energy Marketing U.S.) Inc., 8th Floor, 1202—Centre Street South, Calgary, Alberta, Canada T2G 5A5, and Ed De Palezieux, TransAlta Energy Marketing (U.S.) Inc., 8th Floor, 1202—Centre Street South, Calgary, Alberta, Canada T2G 5A5

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on July 7, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Cool & Power Im/Ex, Office of Cool & Power Systems, Office of Fossil Energy.

[FR Doc. 99–17785 Filed 7–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, July 23, 1999, 1:15 p.m. to 5:30 p.m.; Saturday, July 24, 8:30 a.m. to 4:30 p.m.

ADDRESSES: Crestwood Lodge; Snowmass Village Conference Center; Snowmass, CO.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The Committee will discuss and finalize the report from the Goals and Metrics Panel taking into account the results of the Fusion Summer Study.

Tentative Agenda:

Friday, July 23, 1999

1:15 p.m. Japan's Fusion Program by Noboyuki Inoue
2:00 p.m. Discussions of Goals, Metrics and Plans for August FESAC in light of the Fusion Summer Study
3:30 p.m. Public Comment
4:30 p.m. Continue Discussions of the Goals and Metrics
5:30 p.m. Adjourn

Saturday, July 24, 1999

8:30 a.m. Discussions of the Goals and Metrics for August FESAC meeting

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12:30 p.m. Lunch
1:30 p.m. Public Comments; Finalize Goals, Metrics, and Plans for August FESAC meeting
4:30 p.m. Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker @science.doe.gov (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed resolution.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW; Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on July 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–17784 Filed 7–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–389–000]

Algonquin Gas Transmission Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Sixth Revised Sheet No. 678
Third Revised Sheet No. 715

Algonquin states that the purpose of this filing is to comply with Order No. 587–K, Final Rule issued on April 2, 1999 in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Boards which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17699 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–408–000]

Algonquin LNG, Inc.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Fifth Revised Sheet No. 83

ALNG states that the purpose of this filing is to comply with Order No. 587–K, Final Rule issued on April 2, 1999 in Docket No. RM96–1–011. The revised sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17730 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–384–000]

ANR Storage Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below, to be effective on August 1, 1999:

Fourth Revised Sheet No. 132
Second Revised Sheet No. 132B
Second Revised Sheet No. 137
Sixth Revised Sheet No. 153

ANRS states the attached sheets are being filed in compliance with the Commission's Order No. 587–K issued on April 2, 1999, at docket No. RM96–1–011.

ANRS states that copies of this filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17694 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–400–000]

Black Marlin Pipeline Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Black Marlin Pipeline Company (Black Marlin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 1, 1999:

Second Revised Sheet No. 107A
First Revised Sheet No. 108A
First Revised Sheet No. 132A
First Revised Sheet No. 132B
Fifth Revised Sheet No. 201A
First Revised Sheet No. 211A
Fourth Revised Sheet No. 212

Black Marlin states that on April 2, 1999, in Docket No. RM96–1–011, the Commission's issued Order No. 587–K. In Order No. 587–K, the Commission incorporated into its regulations, by reference, the standards set forth in Version 1.3 which were promulgated by the Gas Industry Standards Board (GISB) on July 31, 1998. Order No. 587–K requires pipelines to implement the incorporated regulations by the first day of the month following ninety days after publication in the **Federal Register** and to conform their tariffs to Version 1.3 not more than sixty and not less than thirty days prior to the implementation date. Black Marlin states that the instant filing includes revised tariff sheets in compliance with Order No. 587–K. The revisions do not include the intraday nomination and scheduling standards previously filed by Black Marlin and accepted by the Commission in Docket No. RP99–15, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17724 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–372–000]

Blue Lake Gas Storage Company; Proposed Changes in FERC Gas Tariff

July 7, 1999

Take notice that on July 1, 1999, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below, to be effective August 1, 1999:

Third Revised Sheet No. 132
Third Revised Sheet No. 133A
Second Revised Sheet No. 137
Sixth Revised Sheet No. 153

Blue Lake states the attached tariff sheets are being filed in compliance with the Commission's Order No. 587–K issued on April 2, 1999, at docket No. RM96–1–011.

Blue Lake states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17718 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–417–000]

Canyon Creek Compression Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective August 1, 1999.L

Canyon states that these tariff sheets were filed in compliance with the Commission's Order No. 587–K issued April 2, 1999 in Docket No. RM96–1–011.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheet to become effective August 1, 1999, pursuant to Order No. 587–K.

Canyon states that copies of the filing are being mailed to Canyon's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/

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online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17711 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–398–000]

Caprock Pipeline Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Caprock Pipeline Company (Caprock) tendered for filing as part of its FERC Gas Tariff, First Revised Volumes No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Second Revised Sheet No. 6A
Second Revised Sheet No. 21
Sixth Revised Sheet No. 29A
Fourth Revised Sheet No. 37
Second Revised Sheet No. 39

Caprock is submitting this filing to incorporate latest GISB 1.3 standards. Caprock is complying with FERC Order dated April 2, 1999 in Docket No. RM96–1–011.

Caprock states that copies of this filing have been served upon all affected firm customers of Caprock and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17707 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–364–000]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on June 30, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Forty-Ninth Revised Sheet No. 32

CNG states that the purpose of this filing is to submit CNG's quarterly revision of the Section 18.2.B Surcharge, effective for the three-month period commencing August 1, 1999. The charge for the quarter ending July 31, 1999, has been $0.0194 per Dt, as authorized by Commission order dated April 23, 1999, in Docket No. RP99–277–000. CNG's proposed Section 18.2.B surcharge for the next quarterly period is $0.0224 per Dt. The revised surcharge is designed to recover $144,557 in Stranded Account No. 858 Costs, which CNG incurred for the period of March, 1999, through May, 1999.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such interventions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. A copy of this filing is on file with the Commission and is available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17713 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–365–000]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on June 30, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of August 1, 1999:

Fourth Revised Sheet No. 265
Fifth Revised Sheet No. 266
Third Revised Sheet No. 267
First Revised Sheet No. 268
Third Revised Sheet No. 297
Second Revised Sheet No. 315
Second Revised Sheet No. 316
Eighth Revised Sheet No. 456

Columbia states that this filing is being submitted in compliance with the Commission Order No. 587–K, Standards for Business Practices of Interstate Natural Gas Pipelines, 87 FERC 61,021 (1999) issued on April 2, 1999, in Docket No. RM96–1–011. In this Order, the Commission required pipelines to file revised tariff sheets to conform their tariffs to Version 1.3 of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The Commission directed that pipelines implement these standards by filing revised tariff sheets not more than 60 days and not less than 30 days prior to the August 1, 1999 implementation date required by Order No. 587–K.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such interventions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. A copy of this filing is on file with the Commission and is available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17714 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–356–000]

Columbia Gulf Transmission Company; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on June 30, 1999, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of August 1, 1999:

Fourth Revised Sheet No. 128
Fourth Revised Sheet No. 155A
Fifth Revised Sheet No. 163
First Revised Sheet No. 166A
Fourth Revised Sheet No. 167
Fifth Revised Sheet No. 286

Columbia Gulf states that this filing is being submitted in compliance with the Commission Order No. 587–K, Standards for Business Practices of Interstate Natural Gas Pipelines, 87 FERC 61,021 (1999) issued on April 2, 1999, in Docket No. RM96–1–011. In this Order, the Commission required pipelines to file revised tariff sheets to conform their tariffs to Version 1.3 of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The Commission directed that pipelines implement these standards by filing revised tariff sheets not more than 60 days and not less than 30 days prior to the August 1, 1999 implementation date required by Order No. 587–K.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such interventions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. A copy of this filing is on file with the Commission and is available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17712 Filed 6–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–373–000]

Destin Pipeline Company, L.L.C.; Proposed Changes to FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's Order No. 587–K to become effective August 1, 1999:

Original Sheet No. 38a
Second Revised Sheet No. 71
Original Sheet No. 71a
First Revised Sheet No. 73
First Revised Sheet No. 76a
Original Sheet No. 76b
Second Revised Sheet No. 77
Original Sheet No. 77a
First Revised Sheet No. 78
First Revised Sheet No. 82
Second Revised Sheet No. 136
Original Sheet No. 136a

On April 2, 1999, the Commission issued Order No. 587–K in Docket No. RM96–1–011 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain new and revised business practices standards issued by the Gas Industry Standards Board (GISB) and incorporated by reference in 18 C.F.R. 284.10(b). The standards require pipelines to post certain information on World Wide Web homepages and to comply with the new and revised business practices governing nominations, flowing gas, electronic delivery mechanisms and capacity release.

Destin states that the revisions shown on the Tariff Sheets filed herewith reflect Destin's compliance filing to conform with the new and revised GISB standards approved under Order No. 587–K. Such standards specifically include nomination and confirmation practices, the definition of a gigacalorie for nominations in Mexico and the addition of an allocation methodology. The order required Destin to submit its compliance filing for implementation of the approved standards by August 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17719 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Dynegy Midstream Pipeline, Inc.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Dynegy Midstream Pipeline, Inc. (DMP), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Original Sheet No. 67A, 163
First Revised Sheet Nos. 88, 138, 147, 157, 162, 165, 166
Second Revised Sheet Nos. 32, 33, 34, 35, 36, 38, 39, 63, 71, 74.

DMP states that it is submitting these revised tariff sheets to incorporate the Version 1.3 Gas Industry Standards Board (GISB) standards adopted by Order No. 587–K in Docket No. RM96–1, et al. DMP proposes an August 1, 1999 effective date for these sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

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Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 99–17690 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–409–000]

El Paso Natural Gas Co.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective August 1, 1999.

Fifth Revised Sheet No. 202A
Sixth Revised Sheet No. 202B

El Paso states that the tariff sheets are being filed to implement Version 1.3 of the Gas Industry Standards Board standards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17731 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–367–000]

Florida Gas Transmission Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective August 1, 1999:

Eighth Revised Sheet No. 102B
Third Revised Sheet No. 102C
Seventh Revised Sheet No. 116
Sixth Revised Sheet No. 121
Third Revised Sheet No. 125
Third Revised Sheet No. 129B

FGT states that on April 2, 1999, in Docket No. RM96–1–011, the Federal Energy Regulatory Commission issued Order No. 587–K. In Order No. 587–K, the Commission incorporated into its regulations, by reference, the standards set forth in Version 1.3 which were promulgated by the Gas Industry Standards Board (GISB) on July 31, 1998. Order No. 587–K requires pipelines to implement the incorporated regulations by the first day of the month following ninety days after publication of Order No. 587–K in the **Federal Register**, and to file to conform their tariffs to Version 1.3 not more than sixty and not less than thirty days prior to the implementation date. FGT states that the instant filing includes revised tariff sheets in compliance with Order No. 587–K. The revisions do not include the modifications to the intraday nomination and scheduling standards previously filed by FGT and accepted by the Commission in Docket No. RP99–14, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 384.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17716 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–59–000]

Florida Gas Transmission Company; Refund Report

July 7, 1999.

Take notice that on July 1, 1999, Florida Gas Transmission Company (FGT) tendered for filing with the Federal Energy Regulatory Commission a refund report reflecting a Gas Research Institute (GRI) refund received May 28, 1999, which FGT refunded to its eligible firm shippers on June 11, 1999.

In compliance with the Commission's February 22, 1995 Order in Docket No. RP95–124–000, FGT states that it has allocated refunds of $1,624,840 to firm shippers on a pro rata basis based on amounts paid through GRI surcharges during 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17722 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–382–000]

Garden Banks Gas Pipeline Company, LLC; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Garden Banks Gas Pipeline Company, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix B to the filing, with a proposed effective date of August 1, 1999.

GBGP states that the purpose of this filing is to comply with Part 284 of the Commission's Regulations and Order No. 587–K issued April 2, 1999, in Docket No. RM96–1–011. In Order No. 587–K, the Commission adopted version 1.3 of Gas Industry Standards Board consensus standards. Version 1.3 updated and improved the standards, with the principal changes occurring in the areas of confirmation practices, further standardization of the information provided on pipeline Internet web sites, and revisions to the data sets. The tariff sheets filed herein reflect version 1.3 standards adopted by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17692 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2822–000, ER99–2973–000, ER99–2948–000, ER99–2923–000, ER99–2928–000, ER99–2917–000, ER99–2817–000, ER99–2388–000, and ER99–2404–000 (Not consolidated)]

Green Power Partners I LLC et al.; Issuance of Order

July 7, 1999.

Green Power Partners I LLC, Fibertek Energy, LLC, Baltimore Gas & Electric Company, Phelps Dodge Energy Services, LLC, Cleco Evangeline, LLC, FPL Energy MH50, L.P., UGI Development Company. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. Sithe Maryland Holdings LLC, Sithe Keystone LLC, Sithe Conemaugh LLC, Sithe Hunterstown LLC, Sithe Orrtanna LLC, Sithe Titus LLC, Sithe Warren LLC, Sithe Blossburg LLC, Sithe Tolna LLC, Sithe Mountain LLC, Sithe Piney LLC, Sithe Wayne LLC, Sithe Hamilton LLC, Sithe Shawnee LLC, Sithe Shawville LLC, Sithe Portland LLC, Sithe Seward LLC, York Haven Power Company, Sithe Gilbert LLC, Sithe Sayreville LLC, Sithe Forked River LLC, Sithe Glen Gardner LLC, Sithe Werner LLC, Sithe Power Marketing, L.P.

July 7, 1999.

The above-captioned companies (hereinafter "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants.

On July 1, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's July 1, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 2, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–17735 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–411–000]

Iroquois Gas Transmission System, L.P.; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to become effective August 1, 1999.

Third Revised Sheet No. 57B
Second Revised Sheet No. 59B
Seventh Revised Sheet No. 60
Original Sheet No. 60B.01
Third Revised Sheet No. 60D
Original Sheet No. 60E
Seventh Revised Sheet No. 120

In Order No. 587–K, the Commission amended Section 284.10 of its

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regulations to incorporate by reference the most recent version of the standards, Version 1.3 promulgated July 31, 1998, by the Gas Industry Standards Board (GISB). Specifically, Order No. 587–K adopts Version 1.3 of the GISB standards which updates and improves the standards, with the principal changes occurring in the areas of confirmation practices, further standardization of the information provided on pipeline Internet web sites, and revisions to the data sets.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17733 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–406–000]

KN Interstate Gas Transmission Co.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, KN Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of July 1, 1999:

Third Revised Volume No. 1–B

Second Revised Sheet No. 8A
Fifth Revised Sheet No. 9
First Revised Sheet No. 11A
First Revised Sheet No. 11B
Third Revised Sheet No. 19
Fifth Revised Sheet No. 89A

First Revised Volume No. 1–C

Third Revised Sheet No. 16A
Second Revised Sheet No. 17C
Third Revised Sheet No. 18
Fourth Revised Sheet No. 43
Second Revised Sheet No. 43D
Second Revised Sheet No. 44

First Revised Volume No. 1–D

First Revised Sheet No. 7A
Third Revised Sheet No. 8
Third Revised Sheet No. 18
Fifth Revised Sheet No. 71A

KNI states that it is submitting this filing to incorporate the latest GISB 1.3 standards. KNI is complying with FERC Order dated April 2, 1999 in Docket No. RM96–1–011.

KNI states that copies of this filing have been served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154–210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 99–17728 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–407–000]

KN Wattenberg Transmission LLC; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, KN Wattenberg Transmission LLC (KNW) tendered for filing as part of its FERC Gas Tariff, First Revised Volumes No. 1, the following tariff sheets with an effective date of August 1, 1999.

First Revised Volume No. 1

Second Revised Sheet No. 19
Second Revised Sheet No. 21
Third Revised Sheet No. 22
First Revised Sheet No. 22A
Second Revised Sheet No. 33
Third Revised Sheet No. 35
Second Revised Sheet No. 36
First Revised Sheet No. 44A
Third Revised Sheet No. 67
First Revised Sheet No. 69

KNW states that it is submitting this filing to incorporate the latest GISB 1.3 standards. KNW is complying with FERC Order dated April 2, 1999 in Docket No. RM96–1–011.

KNW states that copies of this filing has been served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17729 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–397–000]

Koch Gateway Pipeline Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective August 1, 1999.

Koch states that this filing is in compliance with the Commission's Final Rule, issued April 2, 1999 (Final Rule), Standards For Business Practice of Interstate Natural Gas Pipelines,

Order No. 587–K, 87 FERC ¶ 61,021 (1999). The revised tariff sheets contain modifications reflecting Koch's compliance with the standards promulgated by the Gas Industry Standards Board (GISB), to become effective as of August 1, 1999. The instant filing addresses the directives contained in the Final Rule.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17706 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–396–000]

Michigan Gas Storage Company; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Michigan Gas Storage Company (MGSCo) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Tariff Sheet No. 41A and Fifth Revised Tariff Sheet No. 54A, with an effective date of August 1, 1999.

MGSCo states that the filing is being made in compliance with Order No. 587–K, regarding Gas Industry Standards Board (GISB) standards.

MGSCo states that copies of this filing are being served on all customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17705 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–392–000]

Mid Louisiana Gas Company; Proposed Changes in FERC Gas Tariff

July 7,1999.

Take notice that on July 1, 1999, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Sixth Revised Sheet No. 78
Original Sheet No. 78A
Fourth Revised Sheet No. 87
First Revised Sheet No. 87A
Second Revised Sheet No. 87A
Original Sheet No. 87B
Fourth Revised Sheet No. 142
First Revised Sheet No. 155B
Third Revised Sheet No. 158
Second Revised Sheet No. 162

Mid Louisiana states that the purpose of this filing is to comply with the Commission Order No. 587–K issued on April 2, 1999 in Docket No. RM96–1–011 wherein the Commission adopted, by reference in Section 284.10(b)(1)(i through v) of its Regulations, certain standardized business procedures, Version 1.3 as submitted by the Gas Industry Standards Board (GISB).

Mid Louisiana states that the modifications evidenced on the enclosed tariff sheets reflect its acceptance and incorporation of the proposed business standards into its general tariff provisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17702 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No RP99–393–000]

Midcoast Interstate Transmission Inc.; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Midcoast Interstate Transmission Inc. (MIT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Third Revised Sheet No. 78
Second Revised Sheet No. 78A
Fifth Revised Sheet No. 80
Fourth Revised Sheet No. 154
Original Revised Sheet No. 154A

MIT states that the purpose of this filing is to comply with the Commission Order No. 587–K issued on April 2, 1999 in Docket No. RM96–1–011 wherein the Commission adopted, by reference in Section 284.10(b)(1)(i through v) of its Regulations, certain standardized business procedures, Version 1.3 as submitted by the Gas Industry Standards Board (GISB).

MIT states that the modifications evidenced on the enclosed tariff sheets reflect its acceptance and incorporation of the proposed business standards into its general tariff provisions. The sheets are submitted, as directed by the Commission's order with a proposed effective date of August 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion

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to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17703 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–377–000]

MIGC, Inc.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 6 with a proposed effective date of August 1, 1999.

MIGC states that the purpose of the filing is to revise and update the fuel retention and loss percentage factors (FL&U factors) set forth in its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the requirement of Section 25 of said tariff.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call (202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc 99–17688 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–395–000]

MIGC, Inc.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain tariff sheets with a proposed effective date of August 1, 1999.

MIGC states that the purpose of the filing is to comply with Order No. 587–K issued in Docket No. RM96–1–011.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17704 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–383–000]

Mississippi Canyon Gas Pipeline, LLC; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, tariff sheets listed in Appendix B to the filing, with a proposed effective date of August 1, 1999.

Mississippi Canyon states that the purpose of this filing is to comply with Part 284 of the Commission's Regulations and Order No. 587–K issued April 2, 1999, in Docket No. RM98–1–011. In Order No. 587–K, the Commission adopted version 1.3 of Gas Industry Standards Board consensus standards. Version 1.3 updated and improved the standards, with the principal changes occurring in the areas of confirmation practices, further standardization of the information provided on pipeline Internet web sites, and revisions to the data sets. The tariff sheets filed herein reflect version 1.3 standards adopted by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–222 for assistance).

David P. Boegers,

Secretary.

[FR Doc. 99–17693 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–375–000]

Mojave Pipeline Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Mojave Pipeline Company (Mojave) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets, with an effective date of August 1, 1999.

Third Revised Sheet No. 202
Third Revised Sheet No. 203
Original Sheet No. 203A

Mojave states that the filing is being filed in compliance with Order No. 587–K issued April 2, 1999 at Docket No. RM96–1–011.

Mojave states that the tariff sheets are being filed to implement Version 1.3 of the Gas Industry Standards Board standards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–17686 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–386–000]

National Fuel Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff Second Revised Sheet No. 408 and Original Sheet No. 408A, with a proposed effective date of August 1, 1999.

National Fuel states that the purpose of the instant filing is to comply with the Commission's Order Approving Settlement issued on April 29, 1998, 83 FERC ¶ 61,093, and the Order on Rehearing issued June 26, 1998, 83 FERC ¶ 61,331 (the Orders). The Orders provide that participating pipelines shall serve as voluntary collection agents for shippers who voluntarily choose to support GRI programs through a "check-the-box" approach on invoices.

National Fuel further states that collections pursuant to the voluntary contribution mechanism are not part of its pipeline rates, and any amount remitted by a shipper pursuant to the voluntary contribution mechanism is not refundable by National Fuel.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17696 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–401–000]

National Fuel Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff Second Revised Sheet No. 457 and Second Revised Sheet No. 458, with a proposed effective date of August 1, 1999.

National Fuel states that the purpose of the instant filing is to comply with the Commission's Order No. 587–K issued April 2, 1999 in Docket No. RM96–1–011 (the Order). The Order amends § 284.10 of the Commission's Regulations to incorporate by reference the most recent standards, version 1.3 promulgated by the Gas Industry Standards Board on July 31, 1998. National Fuel's filing also indicates that a correction was also made to Fourth Revised Sheet No. 457 to remove the reference principles 1.1.17–1.1.19 since no other GISB principles are incorporated by reference in National Fuel's tariff, and since such incorporation is not required.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17725 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–416–000]

Natural Gas Pipeline Company of America; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as

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part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective August 1, 1999.

Natural states that these tariff sheets were filed in compliance with the Commission's Order No. 587–K issued April 2, 1999 in Docket No. RM96–1–011.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999, pursuant to Order No. 587–K.

Natural states that copies of the filing are being mailed to Natural's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such interventions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17710 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–388–000]

Nautilus Pipeline Company, L.L.C., Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix B to the filing, proposed to become effective August 1, 1999.

Nautilus states that the purpose of this filing is to comply with Part 284 of the Commission's Regulations and Order No. 587–K issued April 2, 1999, in Docket No. RM96–1–011. In Order No. 587–K, the Commission adopted version 1.3 of Gas Industry Standards Board consensus standards. Version 1.3 updated and improved the standards, with the principal changes occurring in the areas of confirmation practices, further standardization of the information provided on pipeline Internet web sites, and revisions to the data sets. The tariff sheets filed herein reflect version 1.3 standards adopted by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17698 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–390–000]

Northern Border Pipeline Company; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, the tariff sheets as listed on the filing, to become effective August 1, 1999.

Northern Border states that this filing is made in compliance with Order No. 587–K, issued in Docket No. RM96–1–011 on April 2, 1999. These compliance tariff sheets reflect the GISB standards adopted in Order No. 587–K.

Northern Border states that a copy of the instant filing is being served on all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17700 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–391–000]

Northern Natural Gas Company; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective August 1, 1999:

Sixth Revised Sheet No. 204
Fourth Revised Sheet No. 259
Fifth Revised Sheet No. 260
Fourth Revised Sheet No. 265

Northern states that the above-listed tariff sheets are filed to comply with Order No. 587–K issued April 2, 1999 in Docket No. RM96–1–011, incorporating Version 1.3 of the Gas Industry Standards Board business practice standards.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17701 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–402–000]

Paiute Pipeline Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective August 1, 1999:

Third Revised Sheet No. 56C
Original Sheet No. 56C.1
Second Revised Sheet No. 58A
Fourth Revised Sheet No. 58B
Original Sheet No. 58B.1
Third Revised Sheet No. 61
Second Revised Sheet No. 61A
Original Sheet No. 61A.1
First Revised Sheet No. 61C
Fourth Revised Sheet No. 63C
Third Revised Sheet No. 98A
Original Sheet No. 98B
Fourth Revised Sheet No. 114

Paiute indicates that the purpose of the instant filing is (1) to comply with the directives of Order No. 587–K, issued by the Commission on April 2, 1999 in Docket No. RM96–1–011; and (2) to effectuate changes to the General Terms and Conditions of Paiute's tariff which are necessary to implement the Gas Industry Standards Board standards which were adopted by the Commission in Order No. 587–K.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17726 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–378–000]

Panhandle Eastern Pipe Line Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Second Revised Sheet No. 240
Sixth Revised Sheet No. 339

Panhandle states that the purpose of this filing is to comply with Order No. 587–K, Final Rule issued on April 2, 1999 in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–17689 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–374–000]

Sea Robin Pipeline Company; Proposed Changes to FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets in compliance with the Commission's Order No. 587–K to become effective August 1, 1999:

First Revised Sheet No. 17.01
Second Revised Sheet No. 20
First Revised Sheet No. 21a
Fifth Revised Sheet No. 25
Fourth Revised Sheet No. 30a
Fourth Revised Sheet No. 32
First Revised Sheet No. 33a
Second Revised Fourth Revised Sheet No. 95

On April 2, 1999, the Commission issued Order No. 587–K in Docket No. RM96–1–011 which revised the Commission's regulations governing interstate natural gas pipeline to require such pipelines to follow Version 1.3 of the business practices standards issued by the Gas Industry Standards Board (GISB) and incorporated by reference in Section 284.10(b) of the Commission's Regulations. The standards require pipelines to post certain information on World Wide Web homepages and to comply with the new and revised business practices governing nominations, flowing gas, electronic delivery mechanisms and capacity release.

Sea Robin states that the revisions shown on the Tariff Sheets filed herewith reflect Sea Robin's compliance filing to conform with Version 1.3 of the GISB standards approved under Order No. 587–K. Such standards specifically include nomination and confirmation practices, the definition of a gigacalorie for nominations in Mexico, the addition of an allocation methodology, and the format and content of information postings on Sea Robin's web site. The order required Sea Robin to submit its compliance filing for implementation of the approved standards by August 1, 1999.

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Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17720 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–387–000]

South Georgia Natural Gas Company; Proposed Changes to FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets in compliance with the Commission's Order No. 587–K to become effective August 1, 1999:

Fourth Revised Sheet No. 15a
Original Sheet No. 15b
Second Revised Sheet No. 16b
Fifth Revised Sheet No. 17
Fourth Revised Sheet No. 32a
Eighth Revised Sheet No. 33
Fifth Revised Sheet No. 34
Fifth Revised Sheet No. 35
First Revised Sheet No. 46a
Sixth Revised Sheet No. 98

On April 2, 1999, the Commission issued Order No. 587–K in Docket No. RM96–1–011 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow Version 1.3 of the business practices standards issued by the Gas Industry Standards Board (GISB) and incorporated by reference in Section 284.10(b) of the Commission's Regulations. The standards require pipelines to post certain information on World Wide Web homepages and to comply with the new and revised business practices governing nominations, flowing gas, electronic delivery mechanisms and capacity release. The revisions shown on the Tariff Sheets filed herewith reflect South Georgia's compliance filing to conform with Version 1.3 of the GISB standards approved under Order No. 587–K. Such standards specifically include nomination and confirmation practices, the definition of a gigacalorie for nominations in Mexico, the addition of an allocation methodology, and the format and content of information positings on South Georgia's web site. The order required South Georgia to submit its compliance filing for implementation of the approved standards by August 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Wshington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17697 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–385–000]

Steuben Gas Storage Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below, to be effective August 1, 1999:

Third Revised Sheet No. 132
Third Revised Sheet No. 132B
Second Revised Sheet No. 135
Sixth Revised Sheet No. 154

Steuben states the attached tariff sheets are being filed in compliance with the Commission Order No. 587–K, issued on April 2, 1999 at docket No. RM96–1–011.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 99–17695 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–415–000]

Stingray Pipeline Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective August 1, 1999.

Stingray states that these tariff sheets were filed in compliance with the Commission's Order No. 587–K issued April 2, 1999, in Docket No. RM96–1–011.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999, pursuant to Order No. 587–K.

Stingray states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17709 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–405–000]

TCP Gathering Co.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, TCP Gathering Co. (TCP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Fourth Revised Sheet No. 18
First Revised Sheet No. 18D
Third Revised Sheet No. 19
Second Revised Sheet No. 19A
Second Revised Sheet No. 72
First Revised Sheet No. 88D
Fourth Revised Sheet No. 103A

TCP is submitting this filing to incorporate latest GISB 1.3 standards. TCP is complying with FERC Order dated April 2, 1999 in Docket No. RM96–1–011.

TCP states that copies of this filing have been served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:// ww.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17727 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–58–000]

Tennessee Gas Pipeline Company; Tariff Filing

July 7, 1999.

Take notice that on June 30, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, original and revised tariff sheets pertaining to its pro forma Electronic Data Interchange (EDI) Trading Partner Agreement (TPA).

Tennessee states that this filing will remove its existing pro forma EDI TPA and instead incorporate the Model TPA of the Gas Industry Standards Board (GISB) which GISB filed with the Commission on November 3, 1998 (November 3, 1998 Model TPA). Tennessee further states that this action was suggested by the Commission in Tennessee Gas Pipeline Co., 82 FERC (¶61,182 (1998). Additionally, the filing will modify Tennessee's Agency Authorization Agreement for EDI to include space for additional GISB data sets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17721 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–17–000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing, to become effective August 1, 1999.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime moves.

Texas Eastern states that these revised tariff sheets are being filed to reflect changes in Texas Eastern's projected costs for the use of electric power for the twelve month period beginning August 1, 1999. Texas Eastern states that the rate changes proposed to the primary firm capacity reservation charges, usage rates and 100% load factor average costs for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100%LF
Market 1	$0.006/dth	$0.0005/dth	$0.0007/dth.
Market 2	0.018/dth	0.0014/dth	0.0020/dth.
Market 3	0.027/dth	0.0021/dth	0.0030/dth.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17708 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–414–000]

Trailblazer Pipeline Co.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Trailblazer Pipeline Co. (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective August 1, 1999.

Trailblazer states that these tariff sheets were filed in compliance with the Commission's Order No. 587–K issued April 2, 1999 in Docket No. RM96–1–011.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1 999, pursuant to Order No. 587–K.

Trailblazer states that copies of the filing are being mailed to Trailblazer's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17734 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–380–000]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a revised tariff sheet to its FERC Gas Tariff, Third Revised Volume No. 1. The effective date of such tariff sheet is August 1, 1999.

Transco states that the purpose of the instant filing is to incorporate the standardized procedures for business practices adopted in the GISB standard, Version 1.3, to the extent those standardized procedures currently are not reflected in Transco's tariff.

Additionally, Transco is submitting a table attached as Appendix A to the filing, showing the GISB Version 1.3 standard, the complying tariff sheet number, and an explanatory statement, if necessary, describing any reasons for deviation from or changes to each GISB standard.

Transco has not reflected certain of the Version 1.3 new and revised data dictionary standards in the instant filing. Transco respectfully requests that the Commission grant a waiver of the requirements of Order No. 587–K that it file revised tariff sheets at this time to conform its tariff to reflect the foregoing Version 1.3 data dictionary standards. Transco's current tariff incorporates the Version 1.2 data dictionary standards. Transco has determined that the new and revised data dictionary standards in Version 1.3 involve data sets that its shippers have not used in the past and currently do not use. Developing and testing the modifications to Transco's current business systems in order to incorporate the Version 1.3 data dictionary standards would require that Transco devote substantial resources, in terms of personnel, time and money, to programming data sets that Transco's shippers have thus far not expressed an interest in using.

Transco has embarked, along with its affiliated interstate pipelines, on a project to construct a state of the art, Internet-based interactive service delivery computer system. That system will provide a full range of interactive services to Transco's customers, including on-line contracting, nominations, confirmations, scheduled quantities, imbalance status and trading, and invoicing, and will be fully compliant with the then-effective GISB business and data dictionary standards. Transco currently expects that this new service delivery system will be implemented on its pipeline system in mid-2000.

Transco believes that its resources will be more productively and efficiently employed in the development of the new system, which as noted above will comply with the then-effective GISB business and data dictionary standards, rather than in attempting to separately modify, for the interim period, its existing business systems to program and test the implementation of data sets that Transco's shippers have thus far not expressed an interest in using. In order to ensure, however, that none of its shippers is prejudiced or harmed by a grant of Transco's requested waiver, Transco will commit to programming its exiting system to support any one of the above-listed data sets within ninety days of Transco's receipt of a shipper request for the creation of such data set.

Based on the foregoing, Transco submits that good course exists for the Commission to grant Transco's request for a waiver of the requirements of Order No. 587–K that it file revised tariff sheets at this time to conform its tariff to reflect the Version 1.3 data dictionary standards listed above, and that no party will be prejudiced or harmed by a grant of the requested waiver.

Transco states that copies of the instant filing have been served on customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17691 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–368–000]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

July 7, 1999.

Take notice that on June 30, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets. The proposed effective date of such tariff sheets is August 1, 1999.

Transco states that the filing is submitted pursuant to Section 39 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to adjust its Great Plains Volumetric Surcharge (GPS) 30 days prior to each GPS Annual Period beginning August 1. The GPS Surcharge is designed to recover: i) the cost of gas purchased from Great Plains Gasification Associates (or its successor) which exceeds the Spot Index (as defined in Section 39 of the General Terms) and ii) the related cost of transporting such gas.

The revised GPS Surcharge included therein consists of two components—the Current GPS Surcharge calculated for the period August 1, 1999 through July 31, 2000 plus the Great Plains Deferred Account Surcharge (Deferred Surcharge). The determination of the Deferred Surcharge is based on the balance in the current GPS subaccount plus accumulated interest at April 30, 1999.

Transco states that included in Appendix B attached to the filing are workpapers supporting the calculation of the revised GPS Surcharge of $0.0131 per dt reflected on the tariff sheets included therein.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17717 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–366–000]

Transwestern Pipeline Company; Proposed Changes in FERC Gas Tariff

July 7, 1999.

Take notice that on July 1, 1999, Transwestern Pipeline Company (Transwestern), tendered for filing changes in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective August 1, 1999:

Eighth Revised Sheet No. 49
Second Revised Sheet No. 80A.01

Transwestern states that the above-listed tariff sheets are filed to comply with Order No. 587–K issued April 2, 1999 in Docket No. Rm96–1–011 incorporating Version 1.3 of the Gas Industry Standards Board business practice standards.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–17715 Filed 7–12–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–376–000]

Venice Gathering System, L.L.C., Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Venice Gathering System, L.L.C.(VGS), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Original Sheet No. 193
First Revised Sheet Nos. 48, 90, 104, 163, 178, 187, 192
Second Revised Sheet Nos. 49–42, 54, 56, 78, 83, 86, 196

VGS states that it is submitting these revised tariff sheets to incorporate these Industry Standards Board (GISB) standards adopted by Order No. 587–K in Docket No. RM96–1, et al. VGS proposes an August 1, 1999 effective date for these sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.fere.fed.us/online/rims.htm (call 202–2–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–17687 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–60–000]

Williston Basin Interstate Pipeline Company; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 1999:

Third Revised Sheet No. 375
Seventeenth Revised Sheet No. 776
Twenty-second Revised Sheet No. 777
Sixteenth Revised Sheet No. 778
Sixteenth Revised Sheet No. 825
Seventeenth Revised Sheet No. 826
Twenty-second Revised Sheet No. 827
Seventeenth Revised Sheet No. 828
Twenty-third Revised Sheet No. 829
Twenty-third Revised Sheet No. 830
Thirty-second Revised Sheet No. 831
Thirtieth Revised Sheet No. 832
Twenty-ninth Revised Sheet No. 833
Fourth Revised Sheet No. 834
Second Revised Sheet No. 835

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17723 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–410–000]

Williston Basin Interstate Pipeline Co.; Tariff Filing

July 7, 1999.

Take notice that on July 1, 1999, Williston Basin Interstate Pipeline Co., (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 1999:

Third Revised Sheet No. 175
Fourth Revised Sheet No. 176
Second Revised Sheet No. 176A
Seventh Revised Sheet No. 227
Fifth Revised Sheet No. 227A
Second Revised Sheet No. 227A.1
First Revised Sheet No. 227A.1a
Original Sheet No. 227A.1b
Original Sheet No. 227A.1c
Third Revised Sheet No. 235A
Sixth Revised Sheet No. 371
Third Revised Sheet No. 372

Williston Basin states that the tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Order No. 587–K issued April 2, 1999, in Docket No. RM96–1–011. The tariff sheets reflect the Gas Industry Standards Board (GISB) Version 1.3 standards adopted by the Commission in such Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http:\\www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17732 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–07–M

ENVIRONMENTAL PROTECTION AGENCY

[IL 192;FRL–6377–2]

Final Determination for Prevention of Significant Deterioration Air Quality Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: The purpose of this document is to announce that on March 10, 1999, the EPA Environmental Appeals Board (EAB) issued a Remand Order finding that the West Suburban Recycling and Energy Center, L.P. (WSREC), in the Village of Summit, Illinois, had failed to establish that the incinerator described in its prevention of significant deterioration (PSD) permit application is still viable, and concluded that no PSD permit to construct should be issued to WSREC under these circumstances. The EAB remanded the matter to the Illinois Environmental Protection Agency (Illinois EPA) to issue a final permit decision denying the federal PSD permit. On April 22, 1999, the Illinois EPA denied the WSREC application for a federal PSD permit.

DATES: Judicial review of the PSD permit denial is available pursuant to 307(b)(1) of the Clean Air Act and only by filing a petition for review in the United States Court of Appeals for the Seventh Circuit by September 13, 1999.

ADDRESSES: Documents relevant to the above action are available for public inspection during normal business hours at the following addresses:

Illinois Environmental Protection Agency, Bureau of Air, Permit Section, 1021 N. Grand Ave. East, Springfield, Illinois 62794

United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd. (AR–18J), Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT: Mr. Steve Marquardt, United States Environmental Protection Agency, Region 5, 77 West Jackson (AR–18J), Chicago, Illinois 60604. (312) 353–3214.

SUPPLEMENTARY INFORMATION: On November 4, 1998 the EAB issued an Order to Show Cause Why Appeal Should Not Be Dismissed As Moot ("Show Cause Order") in this case. The Show Cause Order directed the permittee/petitioner, WSREC, to "affirm that it is presently committed to construct the resource recovery facility" that is the subject of this appeal. Show Cause Order at 7. In particular, WSREC was to "demonstrate that it has the means to obtain control over the properties identified in its site plan for purposes of construction.". *Id.* At 8. The purpose of the Show Cause Order was to give WSREC an opportunity to defend against the dismissal of this appeal on the ground that "WSREC does not intend, or is unable, to construct the facility identified in its permit application." *Id.*

In light of WSREC's failure to affirm that it intends to construct the facility described in its PSD permit application and the evidence of property transfers covering the proposed project site, the EAB concluded that there is no realistic prospect that construction will commence within the regulatory time frame specified in 40 CFR 52.21(r). Further, the EAB found that WSREC failed to show cause why this appeal should not be dismissed as moot. The appeal was dismissed by the EAB and the matter was remanded to the Illinois EPA for the purpose of issuing a final permit decision denying the permit. The EAB instructed that the Illinois EPA's final decision shall be considered final agency action for the purposes of judicial review.

Dated: June 23, 1999

Jerri-anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–17770 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6375–2]

RIN 2060–AG59

Consumer and Commercial Products: Wood Furniture, Aerospace, and Shipbuilding and Ship Repair Coatings: Control Techniques Guidelines in Lieu of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: This final determination announces our final decision to list wood furniture manufacturing coatings, aerospace coatings, and shipbuilding and ship repair coatings for regulation in the first group of consumer and commercial product categories to be regulated under section 183(e) of the Clean Air Act (Act). We determined that emissions of volatile organic compounds (VOC) from these coatings have the potential to cause or contribute to ozone levels that violate the national ambient air quality standards (NAAQS) for ozone. Ozone is a major component of smog which causes negative health and environmental impacts when present in high concentrations at ground level.

This final determination also announces our determination under section 183(e) of the Act that control techniques guidelines (CTG) are substantially as effective as national regulations in reducing VOC emissions from wood furniture manufacturing coatings, aerospace coatings, and shipbuilding and ship repair coatings which contribute to violations of the NAAQS for ozone. With this final determination, we may issue CTG in lieu of national regulations for each of these specific categories.

We based our final determination on comparison of the effectiveness of VOC control in the wood furniture manufacturing CTG (61 FR 25223, May 20, 1996), the aerospace CTG (63 FR 15006, March 22, 1998), and the shipbuilding and ship repair CTG (61 FR 44050, August 27, 1996) with the estimated effectiveness of control possible from national regulations for these product categories.

EFFECTIVE DATE: July 13, 1999.

ADDRESSES: *Docket.* Docket No. A–96–23 contains supporting information for this final determination. You can inspect this docket and copy material between 8:30 a.m. and 5:30 p.m., Monday through Friday. The docket is located at our Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. Telephone (202) 260–7546, FAX (202) 260–4400. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Brown, (919) 541–5305, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (*brown.don@epa.gov*).

SUPPLEMENTARY INFORMATION:

Whom does this action affect? Entities potentially affected by this action are those wood furniture manufacturing operations, aerospace manufacturing and rework operations, or shipbuilding and ship repair (surface coating) operations which are (or have the potential to become) "major" sources of VOC emissions and are located in certain ozone nonattainment areas. Potentially affected entities are included in the following table:

Category	Examples of potentially affected entities
Industry	Wood furniture or wood furniture component(s) manufacturing. (SIC Codes 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, 5712). Any manufacturing, reworking, or repairing of aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles. (SIC Codes 3720, 3721, 3724, 3728, 3760, 3761, 3764, 3765, and 4581).

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Category	Examples of potentially affected entities
	Any building or repairing, repainting, converting, or alteration of ships. The term ship means any marine or fresh-water vessel, including self-propelled by other craft (barges), and navigational aids (buoys). Note: Offshore oil and gas drilling platforms and vessels used by individuals for noncommercial, nonmilitary, and recreational purposes that are less than 20 meters in length are not considered ships. (SIC Code 3731)
Federal Government	Federal agencies which undertake aerospace manufacturing or rework operations (see above) such as the Air Force, Navy, Army, and Coast Guard.
	Federal agencies which undertake shipbuilding or ship repair operations (see above) such as the Navy and Coast Guard.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities which are the focus of this action. This table lists the types of entities that we are now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected.

What is the judicial review process for this determination? We proposed this section 183(e) determination on August 22, 1997 (62 FR 44672). Today's final determination is our final administrative action concerning that proposal. Under section 307(b)(1) of the Act, you can challenge this final determination only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 13, 1999. Under section 307(d)(7)(B) of the Act, you can raise an issue during judicial review only if someone raised it with reasonable specificity during the public comment period.

The information presented in this document is organized as follows:

I. Why are we taking this action?
II. What were the significant comments we received and our responses to them?
A. Estimated levels of control for reasonably available control technology (RACT) and best available control (BAC)
1. Comparing BAC and RACT
2. Selecting BAC
B. Emission reductions attributed to CTG
C. Estimated number of affected facilities
III. What is our final action?
IV. Administrative requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866: Regulatory Planning and Review
D. Executive Order 12875: Enhancing Intergovernmental Partnership
E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996
F. Unfunded Mandates Reform Act of 1995
G. Submission to Congress and the General Accounting Office
H. National Technology Transfer and Advancement Act
I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
J. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

I. Why are we taking this action?

Ground-level ozone, which is a major component of "smog," is formed in the atmosphere by reactions of VOC and oxides of nitrogen (NO_X) in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to ground-level ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. Acute health effects are induced by short-term exposures to ozone (observed at concentrations as low as 0.12 parts per million (ppm)), generally while individuals are engaged in moderate or heavy exertion, and by prolonged exposures to ozone (observed at concentrations as low as 0.08 ppm), typically while individuals are engaged in moderate exertion. Moderate exertion levels are more frequently experienced by individuals than heavy exertion levels. The acute health effects include respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits, and pulmonary inflammation. Groups at increased risk of experiencing such effects include active children, outdoor workers, and others who regularly engage in outdoor activities or have preexisting respiratory disease. Available information also suggests that long-term exposures to ozone may cause chronic health effects (e.g., structural damage to lung tissue and accelerated decline in baseline lung function).

In 1990, Congress enacted section 183(e) of the Act, establishing a new regulatory program to control VOC emissions from consumer and commercial products. Section 183(e) directed the Administrator to study the VOC emissions from these products and report to Congress concerning their potential to contribute to levels of ozone which violate the NAAQS for ozone. The statute also directed us to identify, list, and schedule for regulation those categories of products which account for at least 80 percent of VOC emissions from all such products in ozone nonattainment areas.

Following these directions, we studied these products and determined that VOC emissions from consumer and commercial products have the potential to contribute to ozone levels that violate the NAAQS for ozone. We also identified coatings used in wood furniture manufacturing, aerospace, and shipbuilding and ship repair as product categories to regulate to reduce VOC emissions. For a more detailed discussion of our findings, see:

- "Consumer and Commercial Products Report to Congress" (EPA–453/R–94–066–A).
- **Federal Register** document announcing the schedule for regulating consumer and commercial products (60 FR 15264).
- **Federal Register** document summarizing significant public comments and the EPA's responses regarding the section 183(e) study, Report to Congress, and the list and schedule for regulation (63 FR 48792).

Section 183(e) of the Act directs us to regulate consumer and commercial products using best available controls (BAC). The statute defines "consumer and commercial" products as:

> * * * any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds.

The statute defines "BAC" as:

> * * * the degree of emissions reduction the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

Although the statute provides that we may use "any system or systems" of regulation to achieve VOC emission reductions, it provides two primary options for reducing VOC emissions from these products, national regulations or CTG. Because of the difference between the entities subject to regulation under each mechanism, the statute permits us to obtain VOC emission reductions either at the point of manufacture or at the point of use. A regulation under section 183(e) may only apply to certain regulated entities defined in the statute as:

> * * * (i) manufacturers, processors, wholesale distributors, or importers of consumer and commercial products for sale or distribution in interstate commerce in the United States; or (ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

Thus, section 183(e) does not allow us to issue regulations that would directly regulate end users of these products. Alternatively, section 183(e) also includes provisions that allow us to control these emissions at the point of use by issuing CTG. We may issue CTG instead of national regulations, under section 183(e)(3)(C) of the Act, if the Administrator determines that CTG will be "substantially as effective as" regulations in reducing VOC emissions from consumer and commercial products which contribute to ozone in areas that violate the NAAQS.

Although not specifically defined in the Act, a CTG is a guidance document issued by the EPA which, under section 182(b)(2), triggers a responsibility for States to submit reasonably available control technology (RACT) rules for stationary sources of VOC that are covered by the CTG as part of each State's State Implementation Plan. The EPA defines RACT as "the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility" (44 FR 53761, September 17, 1979). Each CTG includes a "presumptive norm" or "presumptive RACT" that we believe satisfies the definition of RACT. If a State submits a RACT rule that is consistent with the presumptive RACT in the CTG, the State does not need to submit additional support to demonstrate that the rule meets the Act's RACT requirement. However, if the State submits an alternative emission limit or level of control for a source or source category for which there is a presumptive RACT and deviates from the CTG, the State must submit independent documentation as to why the rule meets the statutory RACT requirement.

In our proposed determination, we discussed a number of factors we may consider in making our determination that CTG are substantially as effective as rules under section 183(e) (62 FR 44672, August 22, 1997). For these three product categories, we considered the following factors to determine if CTG are substantially as effective as national regulations:

—the product's distribution and place of use;

—the most effective entity to regulate in order to control emissions (in other words, whether it is more effective to achieve VOC reductions at the manufacturer level or the user level);

—consistency with other VOC control strategies; and

—estimates of VOC emission reductions.

As we consider other product categories in future phases of regulation under section 183(e), there may be other factors that will be relevant for given product categories.

The distribution and use of these products is focused on the industrial sector with fewer large users (e.g., industrial facilities), rather than many small users (e.g., individual consumers in the general public). Users often add thinning solvent to these coatings at the industrial facility after purchase from the coating manufacturer. Hence, we believe the industrial facility (i.e., the coating user) will be the most effective entity to target for VOC emission reductions from these products. This approach would be consistent with previous efforts to reduce VOC emissions from industrial coatings by issuing CTG for the industrial facilities where the coatings are applied. Furthermore, the historical use of CTG to control VOC emissions from similar coating operations has proven to be effective in reducing VOC emissions. In order to assess the relative effectiveness of each mechanism, we also compared the VOC emission reductions that we estimated for a CTG with those that we estimated for a national regulation for each product category. For the comparison, we used the existing CTG issued for wood furniture manufacturing (61 FR 25223), aerospace coatings (63 FR 15006), and shipbuilding and ship repair (61 FR 44050) to estimate VOC emission reductions for the CTG. We then made estimates of the projected VOC emission reductions from national regulations by estimating what would constitute BAC for each product category.

For wood furniture manufacturing coatings, aerospace coatings, and shipbuilding and ship repair coatings, we determined that CTG would be substantially as effective as national regulations in reducing VOC emissions in ozone nonattainment areas. For these product categories, the VOC emissions typically occur in fixed industrial settings where CTG enable monitoring and enforcement of controls during use of the product. We described the level of control presumptively established for each category in the proposed determination (62 FR 44672, August 22, 1997) and in the wood furniture manufacturing CTG (61 FR 25223, May 20, 1996), the aerospace CTG (63 FR 15006, March 22, 1998), and the shipbuilding and ship repair CTG (61 FR 44050, August 27, 1996).

II. What were the significant comments we received and our responses to them?

We placed our proposed determination and supporting documentation in a docket open to the public when we published the proposal in the **Federal Register** on August 22, 1997 (62 FR 44672). At that time, we asked for comments and later received comment letters from manufacturers and importers, trade groups, environmental groups, and one private citizen. All of the public comments on our proposed determination, and our responses to the comments, are in the docket (A–96–23), as referenced in the **ADDRESSES** section of this document. We requested but did not receive comments on the listing of these three commercial products in our proposed determination on August 22, 1997 (62 FR 44672). We discuss the most significant issues raised by commenters and our response to them in this document.

A. Estimated Levels of Control for Reasonably Available Control Technology (RACT) and Best Available Controls (BAC)

1. Comparing BAC and RACT

Comment: BAC, the degree of control required for a national regulation under section 183(e), allegedly should be more stringent than RACT, the degree of control required for CTG. The commenter noted that we should base BAC on "best" available controls, whereas we can base RACT on controls that are "reasonably" available. The commenter stated that to show that a CTG would be substantially as effective as a regulation, we would thus have to show that RACT is substantially as effective as BAC. The commenter's essential point is that it would be very difficult to establish that "reasonably" available controls could be substantially as effective as "best" available controls, because "best" implies a higher degree of controls.

Response: We disagree that BAC must automatically be a more stringent level

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of control than RACT. Each of these terms refers to the optimum degree of control within its respective regulatory program and, as discussed in the proposed determination, we believe that BAC is not necessarily more stringent than RACT. We note that although section 183(e) contemplates the implementation of "best" available controls, it does so in terms that direct us to determine what is "best" in light of enumerated factors, including technological and economic feasibility.

We believe the degree of emission reduction in a national regulation based on BAC should reflect nationwide usage of coatings within a category under all conditions. This includes situations where high-VOC coatings are necessary to achieve product performance requirements. The level of control should be achievable considering, among other things, economic impacts. Thus, we believe that it is appropriate to consider the continued availability of high-VOC coatings in the selection of BAC if they are essential to fill a necessary product niche. In addition, we must base BAC (like RACT) on available control technologies that are achievable based on technological feasibility. Therefore, we cannot automatically select lower VOC-emitting products that are not proven for the range of uses in a category as dispositive of BAC simply because they have the lowest VOC emissions.

High-VOC coatings, if essential to fill a necessary product niche, could significantly influence the selection of BAC in development of a national regulation and result in a higher VOC limit to allow their continued production and use. High-VOC coatings would also impact the selection of controls for RACT. However, the impact would be lessened for RACT to the extent that regulations of the "use" of high-VOC coatings through CTG could lead to a lower VOC limit for specific applications and, hence, lower overall VOC emissions. Rules reflecting a CTG's presumptive RACT control level could also include provisions for more efficient coating application equipment, air pollution control devices, process changes, and work practice standards to further reduce VOC emissions. Thus, it is possible that a national regulation utilizing BAC could be less stringent than a RACT rule triggered by issuance of a CTG. We believe that this outcome is likely for many coatings used in industrial manufacturing processes where higher VOC coatings are often essential for product performance, but where on-site emission reduction measures through RACT rules can mitigate the VOC emissions to the atmosphere.

Because Congress explicitly provided for the use of CTG in lieu of a national regulation pursuant to section 183(e), we believe it is reasonable to assume that "reasonably available control technology" can be substantially as effective as "best available control" under certain conditions and for some categories. Congress, however, did not provide a distinct standard or methodology for EPA to consider when determining whether CTG are substantially as effective as regulations. Furthermore, the legislative history does not directly address this issue. Given the ambiguity in the statute, we have chosen to make this comparison based on reasonable considerations as set forth in the proposed determination.

Most importantly, we do not consider the comparison of numerical emission reduction estimates as the sole factor in the evaluation of whether a CTG is "substantially as effective." As discussed in the proposed determination, other factors related to implementation and enforcement are equally important in determining the overall emission reduction effectiveness of each regulatory strategy. Such factors include consideration of the most effective entity to target for reductions (e.g., the product manufacturer or the product user), the distribution and site of product use (e.g., distributed and used in an established stationary facility or widely dispersed for use in varied locations), and consistency with other control strategies (e.g., have existing control strategies proved effective). Thus, in making the determination that CTG for wood furniture, aerospace, and shipbuilding and ship repair operations will be substantially as effective as regulations pursuant to section 183(e), we did not rely solely on the comparison of emission reduction estimates. We believe a proper determination requires consideration of the estimates of BAC, the corresponding emission reduction estimates, and the implementation and enforcement factors described in the proposal.

2. Selecting BAC

Comment: In comparing potential emission reductions from a CTG versus a national regulation, one commenter stated that we used unsupported estimates of the stringency of BAC standards that we would develop under a national regulation. The commenter suggested that our estimated standards were themselves illegal under section 183(e) because we did not consider all of the statutory factors in estimating what would constitute BAC under a projected national regulation.

Response: We maintain that we performed the proper analysis necessary to compare the potential emission reductions from a CTG to the potential emission reductions from a national regulation for each of these three product categories. As an initial matter, we note that section 183(e) does not stipulate how to assess whether a CTG is substantially as effective as a regulation in obtaining VOC emission reductions. As explained in the proposed determination, neither the statute nor the legislative history provides a distinct standard that Congress directed us to use for this analysis (62 FR 44672, 44674, August 22, 1997).

We acknowledge that the statute is ambiguous regarding how we are to make the determination that a CTG for a given product category would be substantially as effective as a national regulation in achieving VOC emission reductions. We believe that it is reasonable to interpret the provisions to allow a comparison of the estimated VOC emission reductions achievable by the alternative mechanisms of a CTG or a regulation. Moreover, we believe it is appropriate to interpret the provisions to allow us to choose a reasonable means to estimate the projected emission reductions. It would be unreasonable to require us, in effect, to perform a complete rulemaking process before making an informed determination that a CTG would be substantially as effective as a national regulation.

As detailed more fully in the proposed determination, we concluded that it would be reasonable to compare the expected VOC emission reductions from existing CTG for these product categories with the projected VOC reductions from national regulations that we might develop for the same products. We noted explicitly in the proposed determination that the projected VOC reductions from a national regulation were, by necessity, estimates based upon the information available to us. Contrary to the assertions of the commenter, we believe that we had adequate information regarding the affected industries and products to make reasonable estimates. For these three product categories, we completed an in-depth and detailed review of the industries during the development of national emission standards for hazardous air pollutants (NESHAP) and CTG. Based upon this information, as described in Docket No. A–96–23, we were informed about the industries and the issues that would

potentially affect development of any national regulation governing these products used in an industrial setting.

The commenter suggested that we had insufficient support for our estimates, thereby invalidating the comparison of CTG to national regulation. Taken to its logical extreme, however, the commenter's argument would require us to proceed through every step of a rulemaking process (e.g., regulatory development, proposal, response to comments, interagency review, and drafting of a final regulation) before we could have sufficient certitude about the level of control possible from a national regulation to make a valid comparison with CTG. We do not believe that section 183(e) requires such an extensive process in order to make a valid comparison between the efficacy of a national regulation and that of a CTG.

The commenter also stated that we underestimated the reductions feasible through a national regulation, thereby invalidating the comparison. We disagree because in making our estimation, we took into account the very issues that would have been relevant in the development of a national regulation. As detailed in the proposed determination, we explained alternative approaches, industry issues, and constraints for regulating each of the three product categories. We could not, of course, predict with perfect accuracy what the emission limits would have been for a national regulation. Such a determination would be possible only after completion of an actual rulemaking process. We did, however, utilize our expertise and familiarity with the issues to give an informed estimation of the VOC limits in a national regulation for these product categories. As the commenter acknowledged, we must consider a variety of factors in assessing what level of control is BAC for a product category. For a regulation with national scope, that level is not necessarily the lowest possible VOC content.

Even if we were conservative in estimating the potential VOC reductions achievable through a national regulation or a CTG, we note that the precise amount of reductions possible through one mechanism or another is but one factor for consideration. As stated in the proposed determination, we believe that we may take into account a variety of different factors related to implementation and enforcement such as the most effective entity to target for reductions (e.g., the product manufacturer or the product user), the distribution and site of use of the product (e.g., distributed and used in an established stationary facility or widely dispersed for use in varied locations), and consistency with other control strategies (e.g., have existing control strategies proved effective) (62 FR 44675). Thus, for example, it might be possible to achieve greater numeric reductions through a national regulation rather than a CTG, but other factors might render a CTG substantially as effective as or more effective than a national regulation.

Simply put, some products are more suitable for control through a national regulation at the point of manufacture and some products are better controlled at the point of use instead. For example, VOC control for a product like house paint is more effective through a regulation governing manufacturers, whereas control of products used by a smaller number of large sophisticated industrial end users is more effective through a CTG. As explained in greater detail in the proposed determination, we believe that these three product categories are appropriate for VOC control through a CTG rather than a regulation for a variety of reasons.

Comment: One commenter claimed that we provided incorrect estimates of the potential VOC emission reductions from a national regulation for wood furniture manufacturing coatings. Because we identified three possible control technologies: waterborne coatings, high solids coatings, and ultraviolet curable coatings, the commenter indicated that properly estimated BAC standards should have reflected some combination of these technologies. The commenter noted that we concluded in the proposed determination that waterborne and high-solids coatings are not necessarily compatible for all products. The commenter stated that the primary reason for our rejection of certain technologies was our concern that manufacturers would not be able to produce the same quality of product and would therefore suffer economically. The commenter stated that the proposed determination did not indicate that we made any effort to verify the assertions of manufacturers or to balance economic consequences against environmental and health benefits.

Response: As previously noted, the data and information that we used to support the BAC estimate came from extensive regulatory negotiations under the Federal Advisory Committee Act (FACA) to support development and promulgation of a NESHAP under section 112 of the Act and a CTG under section 183(b) of the Act. We believe these data are adequate to support an estimate of BAC for a national regulation because we examined all available coating technologies and the total VOC emissions from these coatings in these industries when developing the existing CTG.

In the selection of the level of control that is BAC and evaluation of its potential economic impacts, we believe it is reasonable to consider the impact on coating users if necessary coatings were no longer available. For the wood furniture manufacturing industry, sealer and top-coat coatings must be compatible to ensure acceptable finishes on the wood. Even though there may be lower VOC coatings that could potentially justify a lower level for BAC, we believe it is necessary to evaluate whether a limit based solely on such coatings would eliminate the availability of necessary compatible sealers and top-coats. We established BAC limits for wood furniture coatings based on broadly defined coating types (e.g., top-coats and sealers) so that all of the necessary coating technologies available within the coating type (e.g., waterborne, high solids, and conventional) would remain available to meet the needs of coating users to fill a product niche.

An alternative to establishing a single VOC content limit as BAC considering all coating technologies would be to establish less broadly defined categories of coatings with individual BAC limits for each type of coating technology. As we discussed in the proposed determination, we considered subcategorizing wood furniture coating types into several technology groups: waterborne coatings with a BAC limit based only on waterborne technology, high-solids coatings with BAC based only on high-solids technology, and conventional coatings with BAC based only on conventional coating technology. Although this approach might lead to lower VOC limits for the individual coating technologies, we do not believe it would automatically lead to the use of lower VOC coatings. Regulations under section 183(e) regulate the manufacturer, distributor, or processor of a coating; these regulations do not regulate how or under what circumstances the end user can apply a specific technology. Therefore, under this scenario, a wood furniture manufacturer would be able to use a coating technology with a higher VOC limit (e.g., solvent based) even if a lower VOC coating technology (e.g., waterborne) could achieve the same results.

Alternatively, regulators can specifically address the use of coating technologies with a CTG restricting the use of higher VOC coating technology to

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only those applications where the use of lower VOC technology is not compatible with the specific sealer and top-coat system. Thus, a CTG can include stricter requirements on the actual use of coating technologies whereas a national regulation could not. Furthermore, since regulators can more effectively monitor and enforce compliance with requirements on the use of these products in wood furniture manufacturing facilities, these facilities can be better targeted for effective VOC reductions with a CTG.

In assessing the projected VOC emission reductions from a national regulation, we had to consider the limitations imposed by section 183(e). We believe that for purposes of comparing the potential emission reductions from a regulation for wood furniture coatings, establishing a single BAC level that is the lowest achievable level that does not preclude any necessary coating technology is appropriate.

Regarding our reliance on information provided by manufacturers on coating technologies and economic impacts used to establish the estimated BAC for this category, our assessment was based on information from the regulatory negotiation process under FACA, described above. The FACA committee was comprised of industry groups, public interest groups, and governmental agencies and conducted extensive discussions regarding the feasibility of coating technologies, economic impacts, and environmental benefits. We believe that such a process provided more reliable and less biased information than the commenter suggested. We maintain that the information developed during this FACA process is adequate to support estimates of the VOC emission reductions from a potential national regulation for purposes of making this determination.

Comment: One commenter criticized our estimates of the stringency of BAC standards for aerospace and shipbuilding and ship repair coatings. The commenter questioned our assertion that the best available control measures (BACM) presented in the aerospace and shipbuilding CTG "represent the best performing sources in the industry" and, thus, would be "similar if not equivalent" to BAC. The commenter stated that we did not indicate how BACM standards represent the best performing sources or why the best performing sources would be equivalent to BAC. The commenter concluded that there are indications that properly written national regulations for these products would be more stringent than those we used for comparison purposes, and that it is impossible for us or the public to reach a valid determination that CTG are substantially as effective as national regulations for these product categories without more information and more thorough analysis.

Response: We reaffirm our conclusion that the BACM levels of control we presented in the aerospace and shipbuilding CTG represent the best performing sources in the industry and, thus, would be similar if not equivalent to BAC for these products for purposes of this analysis. We indicated in our proposed determination that BACM was based on data used to support development and promulgation of NESHAP for the aerospace and shipbuilding and ship repair industries under section 112 of the Act and CTG under section 183(b) of the Act. We believe these data are adequate to support an estimate of BAC for a national VOC regulation because we examined VOC emissions from these coatings when developing the NESHAP and CTG.

Data analysis supporting development of the NESHAP includes the selection of maximum achievable control technology (MACT) to reduce emissions from aerospace and shipbuilding and ship repair coatings, after considering the energy, environmental, and economic impacts of the technology, and other costs. The MACT is based on industry sources with the best performing emission reduction technology. While typically there may be differences in the level of emission reduction provided by MACT, BACM, BAC, and RACT, when there is a limited range of control options for a specified industry, such as coating technologies, the level of control may be identical. We determined that MACT, BAC, BACM, and RACT were all identical for these industries based on the lowest achievable emission levels for the aerospace and shipbuilding and ship repair coatings.

In conducting our review of available data to make today's final determination, we did not find any clear indications that properly written national regulations based on BAC would be more stringent. Nor did we receive any such information during the comment period for the proposed determination. We believe that we have sufficient information to make a valid comparison of the projected emission reductions from a CTG and national regulation for each of these product categories. We believe it is appropriate to make such determinations based on readily available information, thereby maximizing the use of limited resources. Furthermore, we believe this was the intent of the Congress in section 183(e)(3)(C), which gives the Administrator discretion to determine if CTG would be substantially as effective as regulations and to issue CTG in lieu of regulations when appropriate.

B. Emission Reductions Attributed to CTG

Comment: A commenter stated that we failed to quantify or support our estimate of VOC emission reductions possible from CTG. The commenter stated that in the discussion of the CTG for aerospace facilities, we indicated that 1,288 tons per year (tpy) of the total 4,288 tpy estimated reductions would come from equipment and work practice standards, but we did not provide any indication of how we reached this number. For the wood furniture manufacturing CTG, the commenter stated that we provided no allocation of the sources of reduction at all. Finally, the commenter stated that we appear to have reached the estimated 1,366 tpy in VOC reductions for the shipbuilding and ship repair category without accounting for any reductions from work practices.

Response: We do not agree that we failed to quantify and support the estimates of VOC reductions from CTG for these three categories. The docket for this action includes memoranda that document the calculations made for each category (Docket No. A–96–23).

As discussed in the proposed determination and in the responses above, the advantage of a CTG is that it targets VOC emission reductions at the source. A CTG can limit the amount of VOC in a coating when applied, including any VOC the user adds to the product as manufactured (e.g., thinning solvents). Additionally, CTG can include requirements for pollution control devices, process changes, work practices, and other means which can further reduce emissions of VOC from coating use and other sources (e.g., VOC emissions from equipment cleaning and coating mixing). National regulations under section 183(e) apply to manufacturers, processors, wholesale distributors, and importers of commercial products such as these industrial coatings and, therefore, could only limit the amount of VOC in the coatings as sold and distributed.

For CTG that include recommended requirements for process changes or control equipment, the additional VOC emission reductions are typically a function of the amount of coating applied. Therefore, with estimates of the amount of coating applied, emission

reductions resulting from such requirements can often be quantified. The aerospace CTG recommended such requirements for coating application equipment. This equipment improves the efficiency of the coating operation resulting in less VOC emissions. Since the VOC reductions correlate with the amount of coating used, we were able to quantify the additional reductions associated with the CTG's recommended requirement and consider them in making our proposed determination (Docket No. A–96–23).

The commenter is correct that we did not allocate and account for additional VOC emission reductions associated with the CTG for shipbuilding and wood furniture manufacturing. As discussed in the proposed determination, we expect the CTG to achieve additional VOC reductions since RACT VOC limits regulate coatings as-applied (i.e., including any VOC added after purchase). It was also discussed that CTG recommend work practice standards for the cleaning of coating equipment. Since VOC are used to clean coating equipment, these work practices will potentially achieve additional VOC reductions from the industrial facilities that we could not achieve with a regulation governing the VOC content of products as manufactured. In making our estimate of VOC reductions from a CTG, we could not definitively quantify additional emission reductions from such limits and work practices, based on available data. In these cases, the full benefit of a CTG over a national regulation may not be completely quantifiable. In this respect, we agree that our estimation of the reductions from the CTG may be conservative and that we would anticipate greater reductions. However, even without quantifying and allocating the precise amount of projected VOC reductions, we concluded that a CTG would be substantially as effective for each category. We do not believe that section 183(e) requires us to quantify precisely the projected reductions from a potential regulation or CTG before we can reasonably make our determination.

Comment: The development of the existing wood furniture manufacturing CTG was a coordinated effort between industry, State, and local agencies and environmental groups. The commenter asserted that the advantage of a CTG over a national regulation is its ability to reduce emissions from coatings as they are used in the actual workplace setting. The commenter suggested that coatings purchased from vendors are often modified prior to application due to the variety of wood species and application equipment used in the industry. Attempting to control VOC emissions by reducing VOC in the product as manufactured would, therefore, be less effective for this product category. The commenter suggested that a CTG is a proven mechanism for reducing VOC emissions from this industry by placing limits on the coatings as applied and including work practice standards to reduce VOC emissions from other associated operations. The commenter supported our determination that CTG are substantially as effective as a national regulation for this product category.

Response: We concur with these comments for this product category. We recently promulgated a NESHAP for the wood furniture manufacturing industry under section 112 of the Act, and issued a final CTG for this industry under section 183(b) of the Act on May 20, 1996. As discussed above, in making our determination under section 183(e), we considered several factors related to implementation, enforcement, and estimated emission reductions from CTG and a national regulation for this product category. In estimating emission reductions, we considered pertinent information regarding the wood furniture industry that was gathered during the development of the NESHAP and CTG. Based on the analysis of this industry information, as documented in Docket No. A–96–23, we determined that a CTG would be substantially as effective as a national regulation under section 183(e) for wood furniture manufacturing coatings.

Comment: One commenter suggested that CTG are better targeted to reduce VOC emissions from solvent use in ozone nonattainment areas and that there are valid reasons for such reductions in most of these areas, except for those that are NO_X-limited. The commenter claimed that national regulations would impose additional restrictions in ozone attainment areas, for which the commenter believes there is no environmental justification. In addition, the commenter asserted that such national regulations would impose unnecessary costs on the users of products and on solvent producers. The commenter supported our determination that CTG are substantially as effective as national regulations under section 183(e) in reducing VOC emissions from these product categories.

Response: As discussed in previous responses, we made our determination to issue CTG for these product categories based upon consideration of various factors including implementation, enforcement, and emission reductions. In weighing whether to implement national regulations versus CTG, we also considered the nature of the product and its use. For example, we believe that a national regulation is an appropriate means to reduce emissions in accordance with section 183(e) for products that are, by their nature, easily transported across area boundaries, are widely distributed, and are used by widely varied types of end users in widely varied locations. Examples of such products are architectural coatings, consumer products (household and personal care), and automobile refinish coatings. Therefore, for this and other reasons, we promulgated national regulations for those three product categories on September 11, 1998 (63 FR 48792).

In the case of wood furniture, aerospace, and shipbuilding and ship repair coatings, we considered the fact that they are industrial coatings which, by their nature, are typically used by specific end users in specific locations. Furthermore, after purchasing these industrial coatings, end users often modify them to meet the specific needs of the industrial application. Because of the fixed location of their use and the ability to identify and locate the end users for compliance assurance and enforcement purposes, we concluded that control of VOC emissions from these product categories is more effectively accomplished through requirements imposed on the user rather than on the coating manufacturer. Thus, a CTG is a better mechanism to achieve VOC emission reductions for these categories of products. We do not agree with the commenter's assertion that there is no environmental benefit to reducing VOC emissions from solvents in ozone attainment areas (see the September 11, 1998 **Federal Register** documents referenced above for a discussion of EPA's position on this issue).

Comment: One commenter stated that since section 183(e) authorizes the imposition of national regulations on only the product manufacturers, processors, wholesalers, distributors, or importers or suppliers thereof, a national regulation could not reach the end-user operations that generate VOC emissions. For this reason, the commenter agreed that a CTG would be substantially as effective, if not more effective, than a national regulation in reducing VOC emissions from aerospace coatings. The commenter's reasons for this were:

—A CTG can affect equipment and work practice standards resulting in additional VOC emission reductions,

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such as those associated with the use of solvents in cleaning operations; and

—A CTG can affect the coatings "as applied" which is the most effective way to control VOC emissions from aerospace coatings since users sometimes add VOC-containing solvents to the coatings before application.

Response: The commenter's points are in agreement with our conclusions regarding aerospace coatings. As noted in the response above, the EPA believes that some products are better suited to regulation through national regulations.

Comment: One commenter stated that Congress recognized that the nature, distribution, and use of some products would make a CTG a more effective control option and, therefore, specifically authorized EPA to issue CTG in lieu of national regulations.

The commenter agreed with us that CTG are substantially as effective as national regulations for the three categories under discussion here. Specifically, the commenter stated that site specific factors and the ability of end-users to control VOC emissions with equipment and work practices support the selection of CTG in lieu of regulations for these three categories.

Response: We agree with these statements regarding these products. There are many sources of VOC emissions from industrial facilities, only one of which is the actual use of commercial coating products. Other steps in the overall process involve the use of VOC and result in VOC emissions. Such steps include the cleaning of surfaces prior to application of a coating, the mixing and amendment of coatings prior to use, the cleaning of equipment and work spaces after coating use, and the storage and transfer of VOC used in these operations.

C. Estimated Number of Affected Facilities

Comment: One commenter claimed that we failed to explain how the difference in the number of facilities covered by CTG and national regulations would affect emission reductions. Specifically, the commenter noted that for wood furniture coatings, we estimated that only 950 of the 4,500 facilities in nonattainment areas would be covered by a CTG. The commenter also noted that we estimated a shipbuilding and ship repair CTG would cover just 100 of the 187 facilities in nonattainment areas. Similarly, with regard to aerospace coatings, the commenter noted that we estimated a CTG would cover only 64 percent of sources. In each case, the commenter questioned our statements that sources not covered by the CTG would not use significant amounts of the coatings. The commenter stated that we failed to support our contention that facilities not covered by CTG would not contribute significantly to VOC emissions.

Response: The commenter is correct that the two regulatory approaches could potentially impact a different number of sources. We do not agree, however, that we failed to explain this fact. As discussed in the proposed determination, CTG affect "major sources" of VOC emissions by triggering requirements for State rules applicable in nonattainment areas. Section 182 of the Act requires certain States to adopt rules for major sources of VOC for which the EPA issues CTG. Therefore, to estimate the number of sources in ozone nonattainment areas potentially affected by a CTG, we assumed that minor sources would not be subject to RACT and, thus, not be covered by the CTG. In contrast, a regulation affecting the manufacturers, processors, distributors, or importers of a product could potentially result in VOC emission reductions at all facilities that use the product, regardless of size. Therefore, we assumed that all facilities using the product in ozone nonattainment areas would be affected by a national regulation.

We estimated the number of potentially affected facilities under each regulatory option (Docket No. A–96–23). In doing so, we relied on estimates of the number, size, and location of facilities from data developed to support NESHAP and CTG for these categories. To determine if facilities were "major" sources of VOC affected by the CTG, we estimated VOC emissions based on both coating usage and other sources of VOC emissions. We estimated that fewer wood furniture manufacturing and shipbuilding and ship repair facilities would be covered by CTG than by a national regulation because some facilities do not use enough coatings to be major sources of VOC. We estimated that all aerospace facilities are major sources of VOC and, therefore, that all such facilities would be affected by either a CTG or a regulation.

To estimate the respective VOC emission reductions from a CTG or a regulation, we assumed that the States would adopt and the entities affected by each of these control strategies would comply with, the recommended VOC limits and equipment and work practice standards specified in the CTG or regulation. The estimated emission reductions are described in Docket No. A–96–23.

Although fewer wood furniture facilities would be affected by a CTG than a regulation, as described in the proposed determination and docket, in ozone nonattainment areas we estimated that VOC reductions per facility would be greater with a CTG and account for greater overall VOC emission reductions compared to a national regulation. Similarly, we estimated that the emission reductions for each aerospace facility are greater with a CTG than a regulation, thereby resulting in greater overall VOC emission reductions from a CTG. We estimated the emission reductions for each shipbuilding and ship repair facility to be comparable for either a CTG or a regulation. As noted above, a national regulation can achieve emission reductions at all sources whereas a CTG will achieve reductions at major sources in most nonattainment areas. Therefore, we estimated greater potential emission reductions from a regulation for this product category since more shipbuilding facilities would be affected by a national regulation than by a CTG. However, as indicated in the above response to "Emission Reductions Attributed to CTG," we were not able to quantify completely, and therefore did not give full credit for, the estimated amount of reductions from a CTG for shipbuilding and ship repair coatings. The estimated VOC emission reductions from a CTG and a national regulation were, however, comparable even without quantifying and allocating the precise amount of projected VOC reductions from a CTG.

As noted in the proposed determination, the numerical amount of emission reductions is not the sole relevant factor in determining whether a CTG will be substantially as effective as a regulation. We believe that a CTG will be substantially as effective as a regulation in reducing VOC emissions from each of these three categories based on consideration of the following:

- Estimates of VOC emission reductions.
- The product's distribution and place of use.
- The most effective entity to target in order to control VOC emissions.
- Consistency with other control strategies.

For each of these three categories we have considered these factors as part of our analysis. With respect to the amounts of emission reduction possible, we have concluded that the CTG will probably provide more reductions than a regulation for wood furniture coatings and aerospace coatings and will probably provide comparable reductions for shipbuilding and ship repair coatings. We have also examined the distribution and typical place of use for these products. Unlike other categories of products such as personal care products, these coatings tend to be used by a relatively small number of large commercial facilities, rather than by a large number of small users. This pattern of use and distribution makes it more feasible to focus upon VOC emission control at the point of use rather than upon reformulation at the place of manufacture. The EPA or States can thus more effectively assure compliance and enforce VOC emission controls for these products through a CTG than for some other product categories.

Finally, we do not contend that facilities excluded from coverage under the CTG approach will not contribute to VOC emissions. We agree that a CTG will not cover all sources and, therefore, that emissions from unaffected sources will not be subject to control under rules reflecting the CTG's presumptive RACT control level. We remain concerned about these VOC emissions. In enacting section 183(e), Congress recognized that even small amounts of emissions from a large number of small sources can, in the aggregate, contribute significantly to ozone nonattainment. The purpose of our regulatory program under section 183(e) is to achieve meaningful aggregate VOC emission reductions from the many sources reflected on the list of categories of consumer and commercial products identified for regulation. However, we must utilize the regulatory tools provided in the statute. As discussed above, section 183(e) allows the EPA to promulgate national regulations or to issue CTG for each product category. Under either approach, we cannot prevent all VOC emissions. Instead, we must choose the method we deem most appropriate to achieve necessary VOC reductions from each product category. We have concluded for the reasons stated above that CTG are the most effective mechanism to obtain VOC emission reductions from the product categories covered by today's final determination and that national regulations are the most effective mechanisms for some other product categories. This should not suggest that we believe that any remaining VOC emissions under either approach are not significant. For purposes of today's final action the determination is which of the two statutorily provided alternatives will best achieve necessary VOC emission reductions for these three product categories.

III. What is our Final Action?

We have made our final decision to list wood furniture manufacturing coatings, aerospace coatings, and shipbuilding and ship repair coatings for regulation in the first group of consumer and commercial product categories to be regulated under section 183(e) of the Act. We have determined that CTG are substantially as effective as regulations under section 183(e) of the Act in reducing VOC emissions from wood furniture manufacturing, aerospace, and shipbuilding and ship repair coatings which contribute to violations of the ozone NAAQS. We based this determination on a comparison of existing CTG and projected national regulations. For CTG, we utilized the final wood furniture manufacturing CTG (61 FR 25223, May 20, 1996), the final aerospace CTG (63 FR 15006, March 22, 1998), and the final shipbuilding and ship repair CTG (61 FR 44050, August 27, 1996). For national regulations, we estimated the level of control possible for each product category. As a result of this comparison, we have concluded that CTG are substantially as effective as national regulations to obtain reductions of VOC emissions which contribute to ozone in areas which violate the ozone NAAQS. Accordingly, we have determined that we may issue CTG in lieu of national regulations for these three product categories.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed determination. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents readily so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (section 307(d)(7)(A) of the Act).

B. Paperwork Reduction Act

This action does not involve any information collection requirements subject to an Office of Management and Budget (OMB) review under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.*

C. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether regulatory actions are significant and, therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the EPA has determined that this action is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates. As such, the EPA submitted this action to OMB for review. Any changes made in response to OMB suggestions or recommendations are documented in the public record.

D. Executive Order 12875: Enhancing Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or unless EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local, or tribal governments. The action does not impose any new enforceable duties on these entities. Accordingly, the

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requirements of section 1(a) of Executive Order 12875 do not apply to this action.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis and coordinate with small entity stakeholders if the EPA determines that a rule will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action because it does not impose any new requirements on small entities. Today's action is a final listing decision and final determination that already existing CTG are substantially as effective as regulations to achieve VOC emission reductions. Because these CTG already exist and those entities required to comply with these CTG are already obligated to do so, today's decision imposes no new requirements on small entities. The EPA has likewise determined that today's action will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA because the final decision to list these categories of products for regulation and the determination that CTG are substantially as effective as national regulations in reducing VOC emissions which contribute to ozone levels in areas which violate the NAAQS for ozone will impose no new obligations on small entities.

In addition, EPA notes that the determination that CTG are substantially as effective as regulations for control of VOC emissions from these product categories will not have an impact on small entities as contemplated by the RFA. The EPA does not directly regulate any small entities through issuance of CTG. Instead, EPA issues CTG to provide States with guidelines on appropriate RACT-based rules to obtain VOC emission reductions from the affected sources within certain nonattainment areas. The EPA's issuance of a CTG does trigger an obligation on the part of the States to issue State regulations, but the States are not obligated to issue regulations identical to the Agency's CTG. The CTG issued by the EPA include a presumptive norm to guide States, but States may deviate from the CTG with a proper showing to the Agency. Thus, States retain discretion in determining to what degree to follow the CTG and in determining which sources would be covered by the resulting State regulations.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the EPA must prepare a written statement, including cost-benefit analysis, for proposed or final rules with "Federal mandates" that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why the EPA did not adopt the alternative. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that because the final listing action and final determination that CTG are substantially as effective as regulations impose no requirements, today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. In addition, EPA has determined that today's action does not include regulatory requirements that would significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of sections 202, 203, and 205 of UMRA.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). This rule will be effective July 13, 1999.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

This action does not involve any technical standards that would require EPA consideration of voluntary consensus standards pursuant to § 12(d) of the NTTAA. This action does not establish any such standards.

I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an "Economically Significant" rule as defined under Executive Order 12866 and because it is based on technology performance and not on health or safety risks.

J. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. Today's action does not impose any new requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Dated: July 1, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–17493 Filed 7–12–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6375–3]

RIN 2060–AG59

Consumer and Commercial Products: Wood Furniture, Aerospace, and Shipbuilding and Ship Repair Coatings: Control Techniques Guidelines in Lieu of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance.

SUMMARY: This notice announces reissuance of control techniques guidelines (CTG) for the wood furniture coatings, aerospace coatings, and shipbuilding and ship repair coatings categories listed in the first group of consumer and commercial product categories to be regulated under section 183(e) of the Clean Air Act (Act). Our final listing of these categories for regulation and our final determination that CTG are substantially as effective as national regulations in reducing emissions of volatile organic compounds (VOC) from these three product categories is published elsewhere in today's **Federal Register**.

We based the final determination, in part, on the previously issued CTG for wood furniture coating (61 FR 25223, May 20, 1996), for aerospace coating (63 FR 15006, March 22, 1998), and for shipbuilding and ship repair coating (61 FR 44050, August 27, 1996) under section 183(b) of the Act. Accordingly, in this notice, we are reissuing these existing CTG as the CTG under section 183(e) for these three commercial product categories.

EFFECTIVE DATE: July 13, 1999.

ADDRESSES: *Control Techniques Guidelines.* Electronic copies of the CTG documents listed above may be obtained from our Technology Transfer Network Website (TTNWeb). The TTNWeb is a collection of related web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the internet via the World Wide Web at the following address, "http://www.epa.gov/ttn." The web site specifically related to this action can be found at the following address, "http://www.epa.gov/ttn/uatw/coat/aerocoat/aero_coat.html" and the CTG can be accessed under the Existing Regulations section of this site.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Brown, (919) 541–5305, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (brown.dan@epa.gov).

SUPPLEMENTARY INFORMATION:

Whom does this notice affect? These CTG, as originally issued, triggered requirements under section 182(b)(2) for States to submit rules requiring reasonable available control technologies for these industries if:

—they are located in areas that exceed the national ambient air quality standards for ozone; and

—they are (or have the potential to become) "major" sources of VOC emissions.

This issuance does not affect any additional entities.

I. Why are we taking this action

The final determination that CTG are substantially as effective as national regulations is published in a separate action in today's **Federal Register** and provides a detailed description of ground level ozone and the steps we are taking under section 183(e) of the Act to reduce emissions of VOC from consumer and commercial products. Our final determination was based, in part, on a comparison of the level of VOC control in the previously issued CTG with the estimated level of control possible from national regulations for these product categories.

Upon making our final determination, we may issue CTG in lieu of national regulations in accordance with section 183(e)(3)(c) of the Act. This notice announces our decision to reissue these CTG as the section 183(e) CTG for these three product categories.

II. Administrative Requirements

1. General

Today's action is not a rule; it is a notice that EPA is reissuing the existing CTG, already issued for other purposes, as CTG for section 183(e). Since EPA has already issued these CTG and because the CTG themselves do not include binding regulations, but rather

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define only presumptively the level of control to be reflected in State regulations for these categories, this notice does not impose any new regulatory requirements or costs. Therefore, the EPA has not prepared an assessment of the potential costs and benefits pursuant to Executive Order 12866, nor an economic impact analysis pursuant to section 317, a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), or a budgetary impact statement pursuant to the Unfunded Mandates Act of 1995. The Congressional Review Act, 5 U.S.C. 108, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Also, this **Federal Register** document does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act (44 USC 3501, *et seq.*). This action does not establish any technical standards that would require the EPA to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995.

2. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

3. Executive Order 12866 and Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether regulatory actions are significant and, therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the EPA has determined that this action is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates. As such, the EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record associated with our final determination that CTG are substantially as effective as national regulations. The final determination is published elsewhere in today's **Federal Register**.

Dated: July 1, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–17494 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6376–8]

RCRA Subtitle C Waste Facility Social Siting Criteria Stakeholders' Roundtable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency's (EPA's) Office of Solid Waste will hold a roundtable discussion on community quality of life issues (i.e. cultural, social, economic, and nuisance) related to the siting of Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste facilities. The roundtable panel will include individuals who have substantial experience in many aspects of facility siting. The purpose of the roundtable panel is to offer their own evaluations and suggestions on an EPA draft social siting criteria brochure and possible mechanisms and tools for conflict resolution regarding facility siting. The discussion is necessary to ensure that quality of life issues in the siting of RCRA Subtitle C facilities are accurately developed and addressed in the EPA brochure. The public is welcome to observe the discussions among participants and will be afforded some opportunities to express their views. However, this meeting is not intended to be a full public meeting.

DATES: The meeting will be held on July 27, 1999, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Crystal City Gateway Marriott at Crystal City, 1700 Jefferson Davis Highway, Arlington, VA 22202.

A copy of the draft brochure is available and meeting notes will be available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification number is F–1999–SSRN–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of the meeting please contact Freya Margand, Office of Solid Waste, U.S. Environmental Protection Agency (Mail Code 5303W), 401 M Street SW, Washington, DC 20460, (703) 605-0633), margand.freya@epamail.epa.gov.

General information on RCRA Subtitle C facility siting and public participation can be found through EPA's OSW web site, http://www.epa.gov/osw and EPA's RCRA Hotline at (800) 824–9346 or TDD (800) 553–7672 (hearing impaired) or in the Washington, D.C. metropolitan area, call (703) 412–9810 or TDD (703) 412–3323; internet address, http://www.epa.gov/epaoswer/hotline.htm.

SUPPLEMENTARY INFORMATION:

Registration

Full participation in roundtable discussions is limited to the roundtable panel. No advanced registration is required to listen to the round table discussions. Observers may register at the registration desk outside the reserved room the day of the roundtable.

Background

As hazardous waste facilities are sited and permitted, local communities often have a variety of legitimate concerns involving perceived and/or real changes in their quality of life (i.e., cultural/social, economic, location, and nuisance concerns). Quality of life concerns encompass a broad array of issues from those that are human health and environmental in nature, to those concerns which are primarily social or economic. Issues regarding human health and the environment should be considered as part of the permitting process for RCRA facilities. However, many of the community quality of life concerns, such as those of a social or economic nature, fall outside of the scope of RCRA and may not be covered by state laws and regulations.

The EPA has developed a draft brochure intended to be used as a vehicle to increase the awareness of community quality of life issues and concerns when dealing with facility siting and operational issues. This brochure will be the subject of roundtable discussions planned for July 27, 1999. The panel will be composed of individuals from State, Tribal, and Local governments/agencies, environmental justice communities, industry, environmental advocacy groups, and other federal agencies with experience in many aspects of facility siting (for example, land use planning, permitting, community outreach, and environmental justice concerns).

To have the most effective discussions, EPA will limit participation in the roundtable panel to invited panel members. However, EPA will provide one brief designated time slot for the general public to provide comments as time allows. EPA will try to accommodate as many requests as possible.

Information concerning this roundtable, including the draft brochure, agenda, and background information will be available, in limited quantities, at the registration desk the day of the roundtable.

Dated: June 28, 1999.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–17771 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6375–6]

Notice of Availability of the Project XL Proposed Final Project Agreement: Imation Corp., Camarillo, CA Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is proposing to implement a project under the Project XL program for the Imation Corp. facility in Camarillo, CA (hereafter "Imation"). The terms of the project are defined in a proposed Final Project Agreement (FPA) which is being made available for public review and comment by this document. EPA is requesting comment on the proposed FPA and the Imation XL Project generally.

DATES: Public comments on this document are requested and must be received on or before August 12, 1999.

ADDRESSES: Comments. Written comments should be submitted in duplicate to: David Albright, Permits Office (AIR–3), Air Division, US Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Comments may also be faxed to Mr. Albright at (415) 744–1076. Comments may also be sent via electronic mail to: albright.david@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the proposed Final Project Agreement contact: David Albright, Permits Office (AIR–3), Air Division, US Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1627 or Daniel Reich, Office of Regional Counsel (RC–2–2), US Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1343. The proposed FPA and related documents are also available on the world wide web at the following location: http://www.epa.gov/ProjectXL. Copies of the proposed Final Project Agreement are also available for inspection at the following location: Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA. To be included on the Imation Project XL mailing list about future public meetings, XL progress reports, and other mailings from Imation on the XL project, contact Mr. Thomas Ferguson, Plant Manager, at (805) 482–1911, 350 S. Lewis Road, Camarillo, CA 93012. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Reinvention, United States Environmental Protection Agency, 401 M Street, SW Room M3802 (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the world wide web at http://www.epa.gov/ProjectXL.

SUPPLEMENTARY INFORMATION:

Outline of this Document

I. Background
  A. Overview of Project XL
  B. Overview of the Imation XL Project
  1. Introduction
  2. Imation XL Project Description
  3. Environmental Benefits
  4. Stakeholder Involvement
  5. Evaluation of the Project
II. Clean Air Act Requirements
  A. Summary of Regulatory Requirements
  B. New Source Review Requirements
  C. Compliance with New Source Performance Standards (NSPS) and Maximum Achievable Control Technology Standards (MACT) Standards for Existing and Future Activities at Imation Camarillo
  D. State Implementation Plan Requirements
  E. Title V Operating Permit
III. Other Requirements

I. Background

A. Overview of Project XL

EPA is proposing to implement a project developed under Project XL, an important EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—for "eXcellence and Leadership"' was announced on March 16, 1995, as a central part of the National Performance Review's and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). In addition, on April 22, 1997, EPA modified its guidance on Project XL, solicited new XL proposals, clarified EPA definitions, and described changes intended to bring greater efficiency to the process of developing XL projects. See 62 FR 19872 (April 22, 1997). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to

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the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project, if any, should be more broadly applied to other regulated entities to the benefit of both the economy and the environment.

In Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria-superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected Federal, state and tribal agencies to be selected.

The XL program is intended to allow EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be required to undertake changes on a nationwide basis. As part of this experimentation, EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. EPA may also modify rules that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first finding out whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, such as sections 101(b) and 103 of the Clean Air Act. In some cases, as in this XL project, such experimentation requires an alternative regulatory approach that, while permissible under the statute, was not the one adopted by EPA historically or for general purposes.

B. Overview of the Imation XL Project

1. Introduction

In today's action, the Agency is soliciting comment on the Project XL proposed Final Project Agreement (FPA) that has been developed by the Imation XL stakeholder group, namely Imation, EPA, California Air Resources Board (CARB), Ventura County Air Pollution Control District (VCAPCD), and community representatives. Several Ventura County organizations offered valuable input and support during the development of this project, including the Environmental Coalition, the American Lung Association, and the Ventura County Economic Development Association. The proposed FPA and related public documents are available from EPA Region IX, Ventura County Air Pollution Control District and on the world wide web as described above in this preamble. In addition, EPA is today making available, for informational purposes only, a pre-draft title V permit for the Imation Camarillo facility and a draft site-specific revision to the California State Implementation Plan (SIP) for the Imation XL Project.

The Ventura County Air Pollution Control District is conducting the official comment period for the draft title V permit, and will initiate its 30-day public comment period at a later date. The draft site-specific SIP revision will be the subject of a Ventura County APCD Board Advisory Committee meeting on June 22, 1999 and a Board hearing on September 14, 1999. EPA will evaluate the proposed SIP revision after the District submits it for SIP approval, and after a period of public comment, will take final action on the proposed SIP. See additional discussion of the site-specific SIP revision and title V permit in sections II.D and II.E, respectively. Copies of these documents are also available with the proposed FPA as noted in the above section **FOR FURTHER INFORMATION CONTACT.**

The proposed FPA outlines how the project addresses the eight Project XL criteria, in particular how the project will produce, measure, monitor, report, and demonstrate superior environmental benefits. EPA seeks comment on the proposed FPA, in light of the criteria outlined in the Agency's May 23, 1995, **Federal Register** document (60 FR 27282) regarding Regulatory Reinvention (XL) Pilot Projects.[1] Those criteria are: (1) Environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden).

2. Imation XL Project Description

Imation Enterprises Corporation, a global technology company

[1] The Imation XL project was proposed, evaluated, and accepted based on the original criteria for XL projects outlined in the Agency's May 1995 document (60 FR 27282), including the requirements for demonstration of superior environmental performance. The Agency refined the Project XL criteria with its April 1997 document (62 FR 19872), and while the Agency believes that this project also meets the slightly modified criteria put forth in the April 1997 FR document, EPA is today seeking comment on the proposed FPA only with respect to the original criteria under which this project was initially accepted. This approach is consistent with the April 1997 FR document which states that for projects where FPAs are already being developed, the guidance contained in the document does not impose new requirements or procedures.

headquartered in Oakdale, Minnesota, was formed on July 1, 1996. Imation owns and operates the plant at 350 South Lewis Road in Camarillo, California, as part of its Data Storage and Information Management Division. The facility, which was operated by Minnesota Mining and Manufacturing Company (3M) between 1963 and 1996, currently employs approximately 550 people and is the world's largest manufacturer of magnetic data storage tape. The Camarillo facility has manufactured magnetic recording products since 1963. The plant's earliest magnetic recording products included audio and video tape, video tape recorders, and high-performance instrumentation recorders. By the early 1970's the plant's focus was converted from audible range tape to data storage tape. The success of personal computers, with a subsequent increase in the use of hard disk drives, increased the need for data storage tape—especially backup systems.

In pushing data storage tape technology to higher capacities and speeds, Imation Camarillo continues to develop and improve both tape media and cartridges. In addition, Imation works with data cartridge drive and tape head manufacturers to advance recording technologies. Imation Camarillo currently manufactures four standard product lines, with a number of new products currently in development. Their four product lines are mini cartridges storing up to 2 Gbytes of information, Travan™ cartridges which have up to 20 Gbytes capacity, data cartridges storing up to 50 Gbytes of information, and single reel cartridges for Digital Information Library systems in excess of 100 Gbytes.

Magnetic tape manufacturing is a high-technology operation that requires frequent changes to plant operations. Streamlining these plant changes will provide Imation Camarillo with the advantage of being able to make modifications without delay, respond to the fast-paced market conditions in the computer data tape industry, and bring their products to market faster. This is especially important to a company such as Imation that is dedicated to producing innovative products.

One of the principal goals of this XL project is to ensure that these frequent changes in operation can occur without lengthy project-by-project reviews, but in a manner that guarantees superior environmental performance. The existing preconstruction air permitting regulations that govern modifications at the facility, specifically the minor New Source Review (NSR) and major non-attainment NSR regulations, require that most changes to Imation's manufacturing processes must be reviewed and approved in advance by the VCAPCD. Typically, the more changes that are made or the larger the change, the more time and resources are necessary for permit review. The complexity of the regulations requires a considerable effort by the facility as well as the regulators to prepare and review permit applications for process modifications.

Imation's XL project seeks to simplify the process of frequent facility modification by imposing an overall emissions cap of 150 tons per year (tpy) for volatile organic compounds (VOCs) and authorizing the facility, through a site-specific SIP revision and federally enforceable permit conditions, to carry out numerous types of modifications and new constructions without undergoing VCAPCD's major or minor NSR. In addition to the 150 tpy VOC emissions cap, Imation will ensure that these changes are carried out in a publicly transparent and environmentally protective manner by: (1) Conducting control technology assessments for proposed modifications and new constructions and applying additional control when necessary to achieve "best available control technology" (BACT) or "toxics best available control technology" (TBACT) limits; (2) using a state-of-the-art continuous emissions monitoring device for all VOC and HAP stack emissions; and (3) providing detailed monthly reports on facility emissions and operations that will be made readily available to the public.

The mechanism for authorizing Imation Camarillo to modify existing coating operations and construct new coating operations is through pre-approvals in their title V permit. Specifically, Imation's permit will pre-approve specific changes that would subject the facility to New Source Performance Standards (NSPS) at 40 CFR part 60, subparts SSS (Standards of Performance for Magnetic Tape Coating Facilities), VVV (Standards of Performance for Polymeric Coating of Supporting Substrates Facilities), RR (Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations), TT (Standards of Performance for Metal Coil Surface Coating), and Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels), a Maximum Achievable Control Technology (MACT) standard at 40 CFR part 63, subpart EE (National Emission Standards for Magnetic Tape Manufacturing Operations), and VCAPCD's SIP-approved Rules 71.2 (Storage of Reactive Organic Compound Liquids) and 74.3 (Paper, Fabric, and Film Coating Operations).

Specific facility changes that would subject Imation to these standards and regulations are being written into the title V permit as alternative operating scenarios (AOSs). Imation's pre-draft title V permit contains AOSs for both equipment modifications and new equipment construction, but only as such modification or construction is subject to one or more of the standards and regulations noted above. Title V permit alternative operating scenarios typically provide permitted facilities some flexibility by allowing the facility to switch from one set of operating conditions (scenario) to another. A simple example is a facility switching from one type of fuel to another. AOSs may be written into title V permits provided the permit clearly identifies the different possible scenarios under which the facility can operate, and contains appropriate conditions to assure compliance with all requirements that apply to each scenario. Permitted facilities with AOSs are further required to maintain an on-site log and to record in the log, contemporaneously with any change in scenario, the permitted scenario under which they are operating.

EPA will ensure that the AOSs in Imation's title V permit meet these requirements. In Imation's pre-draft title V permit, the AOSs range in complexity from switching raw materials to constructing and operating new equipment. Use of AOSs in a title V permit as a means of pre-approving new equipment construction is one of the unique experimental aspects of this project. EPA believes that such advance approval is warranted on an experimental basis in this case because of the general similarity of the various potentially applicable standards, the unique operating conditions at the Imation Camarillo facility, and the ability to reasonably anticipate these pre-approved changes. See section II.E of this preamble for additional discussion of the use of AOSs in Imation's title V permit.

All of the federal and state standards addressed by Imation's pre-approvals regulate coating (and related) operations which emit VOCs and HAPs, and the pre-approved operations will be identical or very similar to the existing coating operations at the facility. As for the operation of the facility, Imation maintains the areas where VOC and HAP-emitting coating operations are conducted under a condition of total enclosure (100 percent capture of all organic compounds). These total

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enclosures, which are vented to a highly-efficient solvent recovery unit (SRU), will allow Imation to conduct various types of coating and related activities in compliance with the VOC/HAP control standards of all relevant NSPS, MACT, and District standards. In addition, several continuous emissions monitoring systems (CEMS) are in place at the facility that will provide further assurance that existing and new operations at the facility are complying with all applicable standards. Any construction outside the existing total enclosures is required by the proposed permit to meet the same rigorous conditions now in place at the facility, including 100% capture of organic compounds within a permanent total enclosure, use of a minimum 95% efficient control device (either the existing SRU or another control device which provides this level of emissions control, such as a thermal or catalytic oxidizer), and continuous emissions monitoring.

3. Environmental Benefits

As noted above, EPA's initial FR document (May 23, 1995) describing the criteria for evaluating XL projects set forth a standard that projects chosen as XL pilots should be able to achieve environmental performance that is superior relative to what would have been achieved through compliance with otherwise applicable requirements. In April 1997, EPA refined its definition of superior environmental performance, adding a two-tiered test that project sponsors and the Agency need to consider when developing and evaluating potential XL pilot projects. Although the Imation XL project was proposed, evaluated, and accepted based on the original criteria for demonstration of superior environmental performance, the Agency believes that this project also meets the more refined definition put forth in the April 1997 FR document (62 FR 19873, April 23, 1997). This XL Project creates some significant environmental benefits that exceed the baseline of performance that would have reasonably occurred in the absence of the project.

Under this project, Imation must meet capture and control efficiencies for VOCs and HAPs that go beyond the requirements of the regulations to which they are subject. For all HAP and VOC emissions, Imation must meet the requirements of the magnetic tape manufacturing maximum achievable control technology (MACT) standard (See 40 CFR part 63, subpart EE), even though some facility operations are subject to less stringent standards. In addition, Imation must conduct BACT/TBACT analyses for most emission-related changes at the facility and apply additional control if BACT/TBACT is determined to be more stringent than their existing control. This requirement could, for example, result in the installation of a thermal or catalytic oxidizer in order to provide even more stringent control technology for VOCs and HAPs than is required by the MACT standard.

Another requirement of the project is that Imation must use an advanced Extractive Fourier Transform Infrared (FTIR) Spectrometry Continuous Emission Monitoring System (CEMS) to monitor all coating-related stack emissions. An FTIR–CEMS allows the facility to speciate and quantify all organic emissions from the stack on a continuous basis. The capabilities of the FTIR–CEMS are well beyond those required by all applicable requirements, and the speciation provided by this equipment allows Imation to optimize the operation of the existing SRU. Moreover, the FTIR–CEMS requirement also applies to the monitoring of emissions from any new control device installed under this project, and its use in such cases would likewise optimize performance. The optimization of VOC and HAP control and destruction that results from use of an FTIR–CEMS translates directly into reduced emissions of these pollutants.

An additional, potential environmental benefit associated with this project involves some of the VOC emission reduction credits (ERCs) donated by Imation to the District. The District will either retire the ERCs or sell them to companies who have been screened according to their environmental track record. The environmental benefit would result from the reduction of VOC emissions represented by retiring the ERCs from the air, or from emission reductions associated with pollution control projects that the District plans to fund with any proceeds from the sale of these ERCs. The types of projects that would be funded with the ERC proceeds are likely to be ozone precursor reduction projects. As noted below, there will be a stakeholder group formed to assist the District in determining appropriate projects to fund with any ERC sale proceeds. The potential emissions reductions associated with retiring the ERCs or through funding of high priority pollution control projects with the ERC sale proceeds would provide an additional environmental benefit that would not be realized had Imation merely sold the credits themselves or otherwise used them for their own economic benefit.

Finally, EPA believes it is important to address the issue of superior environmental performance under this project given Imation's current VOC emission level (30 tpy) as compared to the maximum VOC emission level allowed under the terms of the FPA (150 tpy). First, current utilization of the Imation facility is well below historical utilization patterns, which suggests that VOC emissions of 30 tpy are not representative of normal facility operation. Imation is actually operating the facility at about 25–30 percent of its existing capacity, due to business and market considerations. Second, EPA has suggested in its most recent guidance on determining superior performance for XL Projects (62 FR 19872, April 22, 1997) that for projects which include new facilities that have not yet been built or expansion of existing facilities for additional production (as does this project), such determination needs to consider how the project compares to the level of performance representative of industry practice, instead of focusing on a benchmark of current environmental loadings. This acknowledges that economic growth and expansion can occur in an environmentally superior manner, when emissions from such expansion are stringently controlled, even if overall emissions do not decrease. Such is the case with this project, which although not resulting in a decrease in overall VOC emissions, will result in superior environmental performance for the reasons described above in this section, especially including the application of the most stringent VOC control technology to any expansion of the facility.

4. Stakeholder Involvement

The Imation XL project enhances the involvement of the community and other stakeholders in understanding and evaluating environmental impacts of the Imation Camarillo facility. As outlined in the FPA, an Imation XL Project Stakeholders Group will be formed to evaluate implementation of the XL project during the initial five-year term. Stakeholders will have a unique opportunity to participate in the ongoing evaluation of the XL project and to recommend necessary changes to the project. Evaluation by the Stakeholders Group is not limited to commenting on already implemented aspects of the XL project; it will also include commenting on the ongoing activities under the project. However, the Stakeholders Group is not established under the project for purposes of evaluating or determining the facility's compliance with legal

requirements, such as the enforceable terms and conditions of the facility's title V operating permit. Rather, assuring compliance with all legally enforceable requirements is the responsibility of the appropriate regulatory agencies, VCAPCD and EPA.

In addition to evaluating the implementation of the XL project, the Stakeholders Group serves as a critical link between the community, the regulatory agencies, and the facility. The Group will advise Imation on any local community concerns, provide feedback to the community on implementation of the project, and maintain an ongoing dialogue with Imation to ensure transparency of facility operations related to Project XL and continued superior environmental performance.

The Project Stakeholders Group will consist of five (5) to ten (10) members in total, including one representative each from EPA, VCAPCD, and Imation as well as other interested participants that represent a balance of interests among neighbors, nearby business owners, local environmental organizations or other nonprofit groups, academic institutions, members of the public health community, etc. All members will serve a 5-year term commencing at the time of FPA signing.

The entire Group will meet on at least an annual basis and may meet more frequently as warranted by project developments. During the annual meetings, presentations will be made by Imation on progress and results of the XL project to date. The meetings will be interactive with discussion of results and suggestions made by the Project Stakeholders Group.

The Project Stakeholders Group will prepare an annual report evaluating the implementation of the XL project. It is anticipated that the Stakeholders Group will, as part of its annual evaluation of the XL project, examine the monthly reports which have been submitted by the facility under the title V operating permit and review jointly with the facility any significant concerns. Other aspects of the annual review may include facility or regulatory agency reports and general Stakeholder Group discussion of some or all of the following topics: the applicability of any newly promulgated regulations; the results of the internal audit of the facility's Environmental Management System (EMS), including how the EMS has impacted environmental performance; implementation of the facility's title V permitted AOSs, including a review of the on-site AOS logs and the overall experience with the permitted mechanisms for implementing AOSs; and the Group's satisfaction with the overall stakeholder process, including the availability of information pertinent to the XL Project. The Stakeholder Group's annual report will be made available to the public.

In addition to the Stakeholders Group, the general public may also have an interest in monitoring Imation's XL progress. This will be accomplished in several ways. First, the date and time of all Stakeholder Group meetings will be published in the newspaper at least two weeks in advance and these meetings will be open to all interested parties. Second, as a condition of the FPA and their proposed title V permit, Imation will provide EPA and the VCAPCD with a monthly report of facility operations that will also be made readily available to the public. The monthly report, whose specific content requirements are described in Imation's proposed title V permit, will include: (1) Actual/calculated air emissions of all regulated air pollutants for each month, with a 12-month rolling average of air emissions for each of the pollutants, and a comparison to the annual facility caps; (2) a description of any emission-related modifications to the facility that occurred over the past month, as well as any planned modifications for the upcoming two months; and (3) the results of any control technology analyses or tiered health risk assessments conducted as a result of proposed facility modifications. These monthly reports (as well as the annual reports) will be available for public review at the Ventura County Air Pollution Control District, in the Camarillo Public Library, and on the Internet. A contact name and number at Imation, EPA Region IX, and VCAPCD will be provided for answering any questions related to this XL project.

A second stakeholders group (the ERC Advisory Committee) has already been formed to advise on the distribution of some of the ERCs donated to the District by Imation. VCAPCD formed the ERC Advisory Committee to develop criteria to be used for determining the use of these ERCs. The criteria address the type of business/industry that will be allowed to purchase the ERCs (e.g., companies with good environmental track records). The Advisory Committee consists of local community members along with public officials and industry representatives in order to provide a balanced perspective. Another stakeholder group, likewise comprised of a balance of perspectives and interests (and including EPA as a participant), will participate in recommending to the VCAPCD Board measurable clean air projects to be funded by the income generated as a result of the sale of the ERCs.

The stakeholder processes described above for project implementation represent a continuation of the opportunities for stakeholder involvement during development of the project. EPA expects that the signatories to the FPA will fully consider concerns and issues raised by all the stakeholders before reaching decisions on project changes.

Of course, elements of the stakeholder and general public participation process described here do not supersede any other public participation right, including but not limited to, District Hearing Board procedures for appealing permit decisions.

5. Evaluation of the Project

As noted above in section I.B.4 (Stakeholder Involvement), this XL project will be reviewed annually to evaluate whether the project is meeting its objectives. At the conclusion of the initial five-year term of this project, a more comprehensive Project XL evaluation will examine the extent to which both short-term and long-term goals have been achieved. This evaluation will also examine the appropriateness and success of specific components of the project, such as the pollutant-specific plant-wide applicability limit (PAL) and emission cap levels, pre-approving new equipment under an alternative operating scenario, the capture and control efficiencies, the overall environmental benefit/pollution reduction, the reduction of compliance costs and burdens, the empowerment of local stakeholders and the level of community participation, any regulatory or policy flexibilities granted, and other elements of the XL project. The results of this review will help assess whether innovations piloted by this project are viable alternatives for other sources. It will also provide a basis for suggestions to improve the FPA and title V permit upon renewal, and the Agency's overall XL Program.

At the end of the FPA's five-year term, the Project Stakeholders Group will meet to evaluate the renewal of the Project, and the potential for transferability of the regulatory approaches it tests. At that time, the stakeholders will also review any necessary changes to the project.

II. Clean Air Act Requirements

A. Summary of Regulatory Requirements

Under this XL project, Imation will comply with all current and future

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environmental standards to which its activities are subject. The one regulatory change that will be proposed for this project is a revision to the California State Implementation Plan (SIP). EPA will soon be proposing approval of a site-specific SIP revision for the Imation Camarillo facility. As noted above, a draft of the site-specific SIP revision is being made available by EPA today for informational purposes. The draft SIP revision proposes to establish an alternative approach that would ensure that new and modified emission sources at Imation would not be subject to the VCAPCD New Source Review (NSR) program, so long as Imation keeps its emissions within a source-wide cap. A key element of the draft SIP revision, and this XL project, is the authorization of a plant-wide applicability limit (PAL) for volatile organic compounds (VOCs). The VOC PAL, a voluntary VOC emissions cap accepted by Imation, is based on actual emissions and provides Imation with the flexibility to add and modify emissions units below the PAL level without triggering traditional new source review requirements. Additional details and requirements imposed under the draft site-specific SIP are described in section II.D of this preamble.

This project also involves an innovative part 70 permitting approach. Imation's pre-draft title V permit contains several pre-approved alternative operating scenarios (AOSs) for the construction of new process equipment and the modification of existing units. Specific AOSs pre-approve construction and modification that would subject the facility to a number of different New Source Performance Standards (NSPS), VCAPCD rules, and a Maximum Achievable Control Technology (MACT) standard. Imation's compliance with these multiple potentially applicable standards will be assured by their meeting the most stringent requirements of all of these standards for any equipment newly installed or modified under a pre-approved AOS. EPA and VCAPCD identified the most stringent requirements using a streamlining exercise, conducted in accordance with the guidelines of EPA's White Paper Number 2 for Improved Implementation of the part 70 Operating Permits Program (March 5, 1996). Imation's pre-draft title V permit both describes the reasonably anticipated alternative scenarios under which the facility is authorized to operate, and identifies the applicable requirements for each such scenario. As described in more detail in section II.C of this preamble, Imation's compliance with the most stringent requirements identified in the streamlining assures compliance with all applicable requirements. EPA is today making the pre-draft title V permit available for informational purposes only.

B. New Source Review Requirements

The New Source Review (NSR) program is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Act. In areas not meeting health-based National Ambient Air Quality Standards (NAAQS) the program is implemented under the requirements of part D of title I of the Act for "nonattainment" NSR. The nonattainment NSR provisions of the Act are a combination of air quality planning and air pollution control technology program requirements for new and modified stationary sources. See section 173(a) of the Act. In addition, the Act contains certain other nonattainment NSR permitting requirements that supplement those in section 173. These supplemental nonattainment NSR requirements, which apply only in ozone nonattainment areas, vary in stringency according to the severity of the ozone nonattainment classification (e.g., marginal, moderate, serious, etc.). See section 182 of the Act.

The Imation Camarillo facility is a major stationary source located in an area that does not meet the ozone NAAQS and, thus, the facility is subject to the nonattainment NSR program under part D of title I of the Act. The area in which Imation is located is classified as severe nonattainment for ozone. Below, EPA describes how the proposed project at Imation Camarillo satisfies the statutory nonattainment NSR permitting requirements and the special rules for ozone nonattainment areas in sections 173(a) and 182, respectively, of the Act.

For existing major sources, the current regulations that implement the nonattainment NSR provisions of the Act restrict major NSR applicability to only "major modifications" at the source (i.e., physical or operational changes at the source that would result in a significant net emissions increase of any pollutant regulated by the Act). See 40 CFR 51.165(a)(1)(v). Typically, determinations of major NSR applicability are made using a case-by-case assessment of facility modifications. Modifications trigger major NSR if they result in a net emissions increase exceeding specified significance levels, determined on a pollutant-by-pollutant basis. In severe ozone nonattainment areas, major NSR is triggered if the net emissions of volatile organic compounds (VOCs) increases by 25 tons, when aggregated with all other net increases in VOC emissions from the source over a period of 5 consecutive years. Increases in net emissions of VOC from a source, resulting from a physical or operational change, that total less than 25 tons, when aggregated over 5 years, are considered "de minimis." See section 182(c) of the Act.

As part of EPA's effort to streamline the often complicated assessment of major NSR permitting applicability, EPA proposed that plant-wide applicability limits (PALs) be allowed under certain conditions. See 61 FR 38249 (July 23, 1996) (Prevention of Significant Deterioration and Nonattainment New Source Review; Proposed Rule). A PAL is a "federally enforceable plant-wide emissions limitation established for a stationary source to limit the allowable emissions of a source to a level such that major NSR is not required for changes under the emissions limitation." *Id.* at 38264. EPA believes PALs, which must be established based on a facility's actual emissions, can offer facilities some flexibility by excluding changes at a facility from major NSR so long as the facility stays within its emissions cap.

The Imation XL Project involves an emissions cap for VOCs of 150 tpy (based on actual emissions from the Imation Camarillo facility) which is being treated like a PAL. Although Imation's current emissions are below 150 tpy, the definition of "actual emissions" at 40 CFR 51.165(a)(1)(xii) allows the reviewing authority (in this case, VCAPCD) to use a different time period for establishing a source's actual emissions than the most recent two-year period, upon determination that such period is more representative of normal source operation. VCAPCD determined, based on several years of underutilization of the Imation facility, that the 1991–1992 period is more representative of normal source operation. The Imation VOC PAL is thus being set at 150 tpy, a level that is lower than actual VOC emissions from the facility in the 1991–1992 period, when the facility emitted an average of 165 tpy of VOCs.

As EPA has proposed, generally, in its NSR Reform Proposal (see 61 FR 38258, July 23, 1996), major NSR will not be required for changes at Imation Camarillo that result in emissions less than the 150 tpy PAL. However, this XL Project has several other provisions that make the Imation PAL more protective of the environment than what would be required under EPA's proposed PAL

regulations. Most importantly, in addition to the emissions cap, all new and modified emissions units must apply California BACT. Accordingly, there is not only assurance that the plant is emitting less than the PAL requirement of 150 tpy overall, but also each emissions unit is subject to the same level of control technology that would be required under major NSR.[2] In addition, Imation has agreed to install TBACT on all new and modified emissions units where HAPs are emitted. Finally, regardless of the stringency of emissions control or the fact that VOC emissions will not exceed the PAL, Imation will not construct new emissions units or modify existing ones if such construction or modification would exceed a Ventura County APCD defined health risk level.

For this aspect of the XL project, EPA is interpreting the Clean Air Act to consider all changes made under the 150 tpy VOC PAL as de minimis. As noted above, CAA section 182(c)(6) provides that for severe nonattainment areas, any physical change in, or change in the method of operation of, a stationary source shall not be considered de minimis for purposes of determining the applicability of the permit requirements (major NSR permitting) unless the increase in net emissions of the air pollutant does not exceed 25 tons. For purposes of this XL project, EPA believes that changes at the Imation Camarillo facility (located in a severe ozone nonattainment area) that result in VOC emission increases below the PAL are not considered net emission increases; rather, a net emission increase will only occur at the facility if the VOC PAL of 150 tpy is exceeded. Because the 150 tpy VOC PAL is a condition of the permit, and assuming that Imation does not violate its permit by exceeding 150 tpy of VOC emissions, there will be no emissions changes that result in a net emissions increase. Therefore, pursuant to section 182(c)(6), all emissions changes below the PAL will be considered de minimis because they will never trigger the 25 ton limit for net emissions increases. In accordance with CAA section 182(c)(8), changes that result in de minimis increases from sources such as Imation, that have the potential to emit in excess of 100 tpy, are not subject to the nonattainment (major) new source review permitting requirements at section 173(a) of the Act.

Section 110(a)(2)(C) of the Act requires state programs to institute their own preconstruction review program, generally referred to as "minor NSR." VCAPCD's NSR program (see VCAPCD Rule 26) requires new source review permitting for "any new, replacement, modified, or relocated emissions unit which would have a potential to emit any * * * Reactive Organic Compounds."[3] Such permitting under Rule 26 would typically require BACT for any ROC emissions (no threshold) and offsets for ROC emissions from facilities with emissions over 5 tpy. In order to provide Imation flexibility with regard to Rule 26, VCAPCD will propose a source-specific SIP revision that will apply only to the operations at the Imation Camarillo facility. The source-specific SIP revision would exempt Imation from the requirements of Rule 26, but require the source to remain below the PAL of 150 tpy of ROC emissions, apply California BACT for facility modifications, and follow specified procedures for adding new equipment or modifying existing equipment. The requirements contained in the source-specific SIP revision, in conjunction with Imation's transfer of ROC emission reduction credits (ERCs) to the District, would assure that any new construction or equipment modification allowed under the source's title V permit would be carried out in a manner that is at least as environmentally protective as what would have been required under Rule 26. See additional discussion of the SIP revision in section II.D of this preamble.

C. Compliance with New Source Performance Standards (NSPS) and Maximum Achievable Control Technology (MACT) Standards for Existing and Future Activities at Imation Camarillo

1. Current Situation at Imation Camarillo

40 CFR part 60 contains New Source Performance Standards (NSPS) for new and modified equipment in specific source categories. 40 CFR part 63 contains Maximum Achievable Control Technology (MACT) Standards for certain sources of hazardous air pollutants (HAPs). Magnetic tape manufacturing operations are regulated by both an NSPS (40 CFR part 60, subpart SSS) and a MACT standard (40 CFR part 63, subpart EE). Presently, only one of the four magnetic tape coating lines at Imation Camarillo is subject to the NSPS at SSS. The other three coating lines at Imation are not subject to any NSPS. In addition, because Imation is subject to a standard of performance under 40 CFR part 60, the associated General Provisions (subpart A) from part 60 also apply. The EE MACT is not an applicable standard for any coating operations at the facility because Imation is not a major source of HAPs. Imation's status as a non-major source of HAPs is based on their existing actual HAP emissions being less than 50 percent of the major source thresholds of 25 tons per year of total HAP and 10 tons per year of any single HAP. Imation's title V operating permit will include federally enforceable emission caps of less than 25 tons per year of total HAP and less than 10 tons per year of any single HAP.

2. Future Activities at Imation Camarillo

At some future date, Imation plans to relinquish non-major HAP source status. Upon that date, the HAP caps established in Imation's title V operating permit will no longer apply and Imation Camarillo will be subject to the MACT at 40 CFR part 63, subpart EE and associated requirements in the part 63 General Provisions (40 CFR part 63, subpart A). Imation also expects to trigger additional NSPS applicability by modifying existing coating operations and/or constructing new coating operations (subject to the NSPS at SSS or one of several other coating-related NSPS). For example, Imation anticipates modifying one or more of the existing coating operations not now subject to an NSPS to make them subject to subpart SSS or constructing a new coating operation that would be subject to subpart SSS (such operations would also be subject to part 63, subpart EE, once Imation is a major source of HAP). In addition, as a unique aspect of this XL project, Imation's title V permit will contain pre-approvals for construction and subsequent modification of equipment subject to the following other NSPS at 40 CFR part 60 and VCAPCD rules: subpart VVV (Standards of Performance for Polymeric Coating of Supporting Substrates Facilities); subpart RR (Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations); subpart TT (Standards of Performance for Metal Coil Surface Coating); subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels); VCAPCD Rule 71.2 (Storage of Reactive Organic Compound Liquids) and VCAPCD Rule 74.3 (Paper, Fabric, and Film Coating Operations). These pre-approvals, as described further in section II.E of this preamble, are being written into Imation's title V permit as alternative operating scenarios (AOSs) and are contingent on there being terms

[2] California BACT, as defined in VCAPCD rules, is equivalent to federally defined lowest achievable emissions rate (LAER).

[3] The VCAPCD term reactive organic compound (ROC) is functionally equivalent to EPA's term volatile organic compound (VOC).

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and conditions in the permit assuring compliance with all applicable requirements of each relevant standard, including all monitoring, recordkeeping, and reporting requirements. Imation will assure compliance with newly triggered NSPS and MACT standards as described below.

3. Streamlining Analysis of Multiple Applicable Requirements

The federal new source performance standards and hazardous air pollutant standard that currently apply to existing operations, or will apply to new or modified coating facilities emitting VOC or HAP at the Camarillo site, have been streamlined into a single set of requirements that assures compliance with all.[4] The streamlining exercise, conducted pursuant to the guidelines in EPA's White Paper Number 2, showed that current applicable requirements (40 CFR part 60, subpart SSS) and future or potential applicable requirements (40 CFR part 63, subpart EE, 40 CFR part 60, subparts Kb, RR, TT, and VVV) can be met by a single, distilled set of requirements. The requirements essentially reduce to the pertinent sections of 40 CFR part 63, subpart EE with some slight modification (for example, to account for the fact that subpart EE does not address VOC emissions), and a few selected additions from subsumed standards. The streamlining also demonstrated that the requirements of the General Provisions of part 60, subpart A can be met by complying with the part 63 General Provisions. Therefore, the requirements in part 60, subpart A sections 60.7, 60.8, 60.11, 60.12, 60.13, 60.18, and 60.19 are subsumed under the part 63 General Provisions.

In order to both address the future applicability of the EE MACT and to simplify compliance with the multiple current and potential future applicable requirements, Imation's title V permit will contain conditions to assure compliance with the most stringent emission standards from the streamlining analysis, as well as the necessary monitoring, recordkeeping, and reporting requirements identified by the streamlining analysis. Imation's title V permit will also contain conditions necessary to meet the requirements identified by the streamlining of the parts 60 and 63, General Provisions. All of the conditions necessary to meet the requirements identified by the streamlining will be contained in the title V permit as specific, federally enforceable requirements, and are briefly described in the sections that follow.

In a few instances, the compliance monitoring and performance testing approaches of the standards to which Imation would become subject upon implementation of an AOS do not fit well with the operational scenarios at the Imation facility. In those instances, as described below, this project relies on alternative monitoring schemes and performance test waivers where technically warranted. Such alternatives and waivers are authorized according to the General Provisions of 40 CFR part 63, subpart A and 40 CFR part 60, subpart A. Specifically, the provisions at 40 CFR 60.13(i), 63.7(e), and 60.8(b) allow alternative monitoring schemes for purposes of compliance demonstration, and performance testing waivers where a source has demonstrated by other means to the Administrator's satisfaction that an affected facility is in compliance with a standard. Formal approval of the alternative monitoring and performance test waivers described below for this project are delegated to the permitting authority, the VCAPCD.

4. Compliance with Specific NSPS and MACT Standards

Imation's method of compliance with the NSPS and MACT standards to which it is currently subject (SSS NSPS) and to which it may become subject in the future (EE MACT, and VVV, RR, TT, and Kb NSPS) lies totally within the current regulatory framework. As described below for Imation's facility, and as contained in the standard itself, one method of compliance with the emissions control requirements of subpart SSS relies upon the total enclosure of all affected coating operations and the venting of the resulting mixture of coating operation emissions to a single control device. Continuous monitoring of the single control device assures compliance with the standard by all affected operations. In addition to subpart SSS, this method of compliance is also written in to the EE MACT and the VVV NSPS. Thus, Imation can demonstrate compliance with these two standards (if/when they become applicable) using the same compliance method as they currently rely upon to meet the requirements of SSS.

Two other potential future applicable standards (RR and TT NSPS) do not contain this method of compliance demonstration. However, as noted previously, the General Provisions of 40 CFR part 60 provide the authority to approve alternative monitoring and performance test waivers, which in this case allows Imation to demonstrate compliance with RR and TT (if/when they become applicable) using the same method as they currently rely upon to meet the requirements of SSS. The sections below detail the technical rationale that supports the use of such alternative monitoring and performance test waivers.

Assuring compliance with Kb (if/when it becomes applicable to solvent storage tanks at Imation Camarillo) will not rely on a demonstration like that described above (i.e., total enclosure of all affected operations, etc.). Instead, all storage tanks will have a closed vent system with emissions ducted directly to a 95% efficient control device, as is required under the EE MACT. See discussion below of the streamlining analysis conducted to demonstrate that, for solvent storage tanks, compliance with the EE MACT assures compliance with Kb.

a. *Assuring Compliance with the Currently Applicable Requirements of the NSPS at Subpart SSS.* Imation's Superior Environmental Performance stems in part from their commitment to totally enclose/capture 100% of VOC and HAP emissions from all coating operations and control captured emissions using a highly efficient solvent recovery unit—SRU—(or other similarly efficient device) demonstrated to achieve at least 95% emission reduction. Their existing total enclosures capture 100% of the emissions from multiple coating operations within the production building and route all the emissions to the SRU. As a result, individual coating operations are not controlled separately but rather contribute to an emissions mixture containing the emissions from all coating operations within the total enclosures. The existing SRU receives the combined emissions from all active coating operations. As noted above, the following detailed explanation of how Imation currently meets the requirements of the NSPS at SSS using their unique capture and control set-up is particularly important because the same technical approach is relied upon to ensure compliance with other NSPS. (See section II.C.4.c of this preamble.)

As a result of Imation's control setup as described above, it is not possible to measure inlet and exit emissions from the control device (and thus control device efficiency) for any one coating operation on an ongoing basis. The VOC (and HAP) emissions from the single existing coating operation subject to

[4] The streamlining analysis conducted during the development of Imation's pre-draft title V permit included several applicable VCAPCD SIP rules. Imation's compliance with these District rules, as demonstrated by the streamlining analysis, is discussed in section II.D of this preamble.

subpart SSS are part of the mixture of emissions including the other VOC/HAP sources. In such situations, section 60.713(b)(2) applies requirements for determining the capture efficiency for VOC emissions from an affected facility under subpart SSS (i.e., what fraction of emissions makes it to the control device). Section 60.713(b)(2) indicates that where the emissions from an affected coating operation and other VOC sources are ducted to a common control device, the owner or operator must determine the emissions capture efficiency for each individual affected coating operation. These requirements apply where there is no total enclosure of emission sources. However, Imation uses a permanent total enclosure to capture emissions. Where a total enclosure exists around the affected coating operation, such a determination is made alternatively according to section 60.713(b)(5), which requires demonstration of a total enclosure around each coating operation, and does not require the determination of individual capture efficiency for each coating operation. Imation has already demonstrated compliance with the total enclosure requirement of subpart SSS for the one subject coating operation by showing that a total enclosure exists around the operation (the enclosure meets the criteria in EPA Method 204—Criteria for and Verification of a Permanent or Temporary Total Enclosure (section 5)); the total enclosure will be maintained continually.

Although subpart SSS generally requires determining emissions capture efficiency on an individual affected facility basis (except when a total enclosure is employed), control device efficiency is to be determined for mixed emission streams when "all emission sources" are connected to the device. See section 60.713(b)(3). The owner or operator is not forced to shut down the other VOC emission sources to test the control device efficiency on individual affected facility emissions. Thus, compliance with the required 93% VOC control standard at each SSS affected facility is demonstrated by showing that the common emission control device provides a 95% control efficiency when receiving the mixture of VOC emissions from all SSS affected facilities (housed in a total enclosure) and all other sources of VOC routed to the device.[5] The implicit assumptions in this method of demonstrating compliance with the VOC emission standard for an individual affected facility in subpart SSS are as follows: (1) An emission control device will control the same (and similar) chemicals equally, regardless of their point of emission (i.e., control device X controls chemical Y at Z efficiency whether chemical Y is emitted by affected facility 1, 2, 3, etc.); (2) the "other sources of VOC" ducted to the common emission control device likely have chemical constituents that are the same as or similar to those in the emissions from the affected facility (since they are related operations) and, therefore, the control device performance does not vary on individual emission streams; and (3) performance testing the control efficiency of the newly affected facility emissions only (assuming such emissions contain the same or similar chemical constituents as other operations controlled by the common emission control device) is not necessary to assure compliance with the standard at the newly affected facility (instead compliance can be demonstrated with all VOC sources connected to the common control device).

Imation has performance tested the existing SRU and has demonstrated a >95% emission reduction with all VOC and HAP emission sources connected. Monitoring of continuous compliance at the one coating operation currently subject to Subpart SSS is being demonstrated through Imation's maintenance of the total enclosure and use of an FID–CEMS (flame ionization detector-continuous emission monitoring system) to measure VOC concentrations in both inlet and outlet of the SRU, per section 60.714(c)(1).

b. *Assuring Compliance with Future Requirements under the MACT at Subpart EE and the NSPS at Subparts SSS and VVV.* In the future, Imation will become a major source of HAP, thereby triggering applicability of the MACT standard at subpart EE. Once this occurs, all magnetic tape coating operations at the facility will be subject to the standards at subpart EE. Much like the NSPS at subpart SSS, EE allows for the total enclosure of all emission points and the ventilation of the total enclosure(s) to a common control device operating at 95% or higher efficiency. Imation will demonstrate initial compliance with the MACT standard by demonstrating that all HAP-emitting coating operations are totally enclosed, and that the enclosure is vented to the SRU which is operating at a minimum control efficiency of 95% as monitored at the inlet and outlet of the SRU using the FID-CEMS. See section 63.705(c)(4).

In addition, Imation anticipates modifying one or more of the existing coating operations not now subject to an NSPS to make them subject to subpart SSS or constructing a new coating operation that would be subject to subpart SSS (such operations would also be subject to part 63, subpart EE, once Imation is a major source of HAP). Imation will ensure compliance with subpart SSS and part 63, subpart EE for such operations by maintaining a total enclosure around the operation(s) and controlling emissions by at least 95% as monitored at the inlet and outlet of the SRU using the FID-CEMS.[6]

Imation also anticipates modifying one or more of the existing coating operations or constructing a new coating operation to produce polymeric coatings on supporting substrates. Such modified or new operation(s) would be subject to part 60, subpart VVV (Polymeric Coating of Supporting Substrates). Subpart VVV contains standards and compliance provisions that are nearly identical to those in subpart SSS and part 63, subpart EE (See section 60.743(a)(1)), including provisions for mixed VOC streams, use of a total enclosure, and a 95% efficient control device. Imation would assure compliance with subpart VVV through maintaining the total enclosure around the subject coating operation(s) and reducing emissions by at least 95% as monitored at the inlet and outlet of the SRU using the FID-CEMS (or using a different 95% efficient control device and appropriate monitoring). Imation's pre-draft title V permit contains the requirements of part 63, subpart EE and includes the streamlining analysis demonstrating that compliance with

[5] Subpart SSS contains a standard of 93% control of VOC applied at each affected facility. At the time that subpart SSS was promulgated, the Agency assumed that use of a total enclosure with a 95% efficient control device could yield as low as a 93% level of actual VOC control at the affected facility (because of the possibility that a total enclosure would not actually capture 100% of emissions). The Agency now believes that a total enclosure, meeting the requirements of Method 204, will capture 100% of emissions. Thus, Imation's use of a Method 204 compliant total enclosure around their coating operations in conjunction with a 95% efficient control device will achieve an actual control level of 95% at each affected facility, thereby exceeding the standard as written at subpart SSS.

[6] For future activities, Imation may utilize a device other than the existing SRU to control VOC and HAP emissions (e.g., the BACT analysis may dictate that Imation install a thermal or catalytic oxidizer to control emissions at a level beyond 95%). Although this section refers to assuring compliance by reducing emissions using the SRU and monitoring emission reduction at the inlet and outlet of the SRU, Imation may also comply with these standards through the use of a different control device, as specified in the AOSs in their pre-draft title V permit. Any such device must meet a minimum 95% efficiency, and must be appropriately performance tested and continuously monitored in accordance with 40 CFR part 63, subpart EE.

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these requirements will assure compliance with part 60, subparts SSS and VVV.

c. *Assuring Compliance with Future Requirements under the NSPS at Subparts RR and TT.* In addition to the changes described above, Imation is anticipating modifications or new construction of facilities that potentially would trigger applicability of NSPS in subparts RR (Pressure Sensitive Tape and Label Coating) and/or TT (Metal Coil Surface Coating). Such changes could create an emission stream from the total enclosure containing a mixture of VOC and HAP from affected facilities subject to the MACT standard and two or more different NSPS, or from affected facilities subject to the MACT standard, different NSPS, and other VOC/HAP sources not subject to any NSPS or MACT. Unlike the MACT standard at EE and the NSPS at SSS and VVV, 40 CFR part 60, subparts RR and TT do not specifically address such mixed emission stream situations and how compliance is to be demonstrated for any one affected facility. However, it is reasonable to assume that compliance with the VOC standards by affected facilities subject to these NSPSs can be demonstrated in a manner similar to that for operations subject to part 63, subpart EE and part 60, subparts SSS and VVV, by extending the assumptions and rationale described above to these other two NSPS.

Imation can demonstrate compliance for an individual affected facility subject to subparts RR- or TT by maintaining a total enclosure around the facility and reducing the captured emissions from this facility and all other sources of VOC and HAP by at least 95% as monitored at the control device. EPA believes such a demonstration will be adequate for each RR- and TT-affected facility based on the following. First, the total enclosure captures 100% of VOC/HAP emissions from manufacturing operations. As part of Imation's initial compliance demonstration for the MACT standard, the facility will demonstrate that there is a total enclosure around all coating-related operations that captures all VOC and HAP emissions, and Imation will be required to monitor to assure that such operations remain within a total enclosure. Second, the 95% efficient control device delivers a high enough control efficiency to meet any one of the standards (when combined with the 100% capture of VOC/HAP) and the control device response on an individual or mix of solvents will not vary according to the type of affected facility emitting the solvent. This is a reasonable assumption considering that: (1) The control device already has demonstrated >95% control efficiency and will be required to continue to achieve at least 95% overall reduction continuously (as measured by the FID-CEMS) on the mixed stream, whereas the two potentially applicable NSPS require only 90% VOC reduction, and (2) where the emission streams from the modified or constructed facilities are similar to (i.e., use the same types of solvents as) those already demonstrated to be controlled by at least 95%, the control device can be expected to deliver the same level of control (See this discussion above for compliance with subpart SSS). Finally, emissions of new solvents (not previously tested in the control device) from new or modified operations will be subject to a performance test. Imation will be required to test the control device's performance on operations utilizing new solvents (those that have not been previously tested in the control device) by conducting a performance test whereby the efficiency of the control device is measured when only the equipment utilizing a representative coating containing the new solvent is connected to the device. This test must show that at least 95% control of emissions containing the new solvent is achieved.

In summary, the concept of exhausting emission streams from two or more process lines within a total enclosure through a single control device that controls the mixed streams from the lines, and demonstrating compliance with individual process line VOC/HAP control standards by the efficiency of the common control device when receiving such mixed streams appears in 40 CFR part 63, subpart EE and part 60, subparts SSS and VVV. For this XL project, the Agency is extending this approach to two other NSPSs (subparts RR and TT), where there will also be a requirement for 100% capture of VOC (and HAP) from the different process lines. Such extension is technically warranted due to the points described above, including the total capture and >95% control requirements, and the expected consistency of control by the control device on process solvents regardless of the emitting source. Imation's pre-draft title V permit contains the requirements of part 63, subpart EE and includes the streamlining analysis demonstrating that compliance with these requirements will assure compliance with part 60, subparts RR and TT.

d. *Assuring Compliance with Future Requirements under the NSPS at Subpart Kb.* 40 CFR part 60, subpart Kb contains standards of performance for volatile organic liquid storage vessels. Imation currently has numerous volatile organic liquid storage vessels, however, none are subject to the NSPS at Kb because of their relatively small size (all are less than 5,000 gallons). In the future, Imation may, in accordance with the conditions of their title V permit, install additional storage tanks with a capacity of greater than 5,000 gallons. Any such tanks would be subject to the requirements of part 60, subpart Kb. In addition, once Imation relinquishes their HAP limits and becomes subject to the EE MACT, all HAP-containing volatile organic liquid storage tanks will be subject to that standard, regardless of size.

As part of the streamlining analysis conducted in the development of Imation's pre-draft title V permit, the requirements of the NSPS at Kb were streamlined against the tank-specific requirements of the EE MACT standard. The analysis demonstrated that compliance with the requirements of the MACT for all storage tanks at Imation (regardless of size or VOC/HAP content) would assure compliance with the requirements of the NSPS at Kb. Therefore, in order to assure compliance with potential future applicability of the NSPS at Kb, the requirements that pertain to control of emissions from storage tanks under the EE MACT standard (use of a closed vent system with 95% overall control of emissions) have been written in to Imation's pre-draft title V permit as specific, federally enforceable requirements

e. *Assuring Compliance with New NSPS and MACT Standards.* Imation Camarillo will be subject to the requirements of regulations promulgated after the date the Final Project Agreement (FPA) is executed. If Imation demonstrates to EPA's and VCAPCD's satisfaction that it can achieve greater environmental benefit either through the existing terms of the FPA, or through an alternative strategy, and that doing so will satisfy statutory and regulatory requirements and the criteria for the XL program, the Agencies intend to initiate steps to allow such alternative compliance, including where necessary proposing a site-specific rule. Opportunities for public/stakeholder participation will be provided in connection with such changes consistent with the principles of Project XL and the public participation guidelines in the FPA. Imation's proposals will have the twin goals of achieving superior environmental performance, while ensuring that the installation of new or modified coating equipment or the development of new products will not be delayed.

One potentially applicable regulation on the horizon is the MACT standard for the source category "Paper and Other Web Coatings." The Paper and Other Web Coatings MACT is expected to be promulgated by EPA in November 2000. This standard is likely to apply to some of the activities for which Imation will receive pre-approval in their initial title V permit. Upon promulgation, EPA and VCAPCD will make a determination as to the applicability of the new standard to pre-approved activities contained in Imation's title V permit. If the standard is applicable, it will be necessary to re-open the permit in order to add appropriate requirements from the new Paper and Other Web Coatings MACT (assuming Imation's permit term has more than three years remaining on it upon MACT promulgation). However, in such case, it is the intention of all parties to attempt to maintain in the revised permit the same degree of flexibility afforded Imation in their initial permit if all Project XL elements continue to be met by this facility.

5. Applicability of the Preconstruction Review Requirements Under 40 CFR 63.5

Section 112(i)(1) of the CAA prohibits construction of a new major source, or reconstruction of an existing major source, that is subject to a standard under 112, unless EPA (or its designee) has determined, prior to construction, that the source will comply with the standard. 40 CFR 63.5 contains regulations promulgated to implement section 112(i)(1) of the Act. The preconstruction requirements contained at 40 CFR 63.5 apply to construction of a new major affected source, or to reconstruction either of a major affected source or of a major source such that it becomes a major affected source.

For Imation Camarillo, the requirements of 40 CFR 63.5 do not apply to any activity implemented under a pre-approved alternative operating scenario in Imation's title V permit. None of the pre-approved activities specified in the pre-draft permit involve construction of a new major affected source, reconstruction of a major affected source, or reconstruction of a major source such that it becomes a major affected source. The pre-draft permit does authorize construction of new magnetic tape coating equipment, however, this facility (once the HAP limits are relinquished) will already be a major affected source (subject to 40 CFR part 63, subpart EE) and the construction of additional magnetic tape coating equipment will be considered a part of this existing major affected source; it will not be considered a new major affected source.[7] In addition, pre-approved scenarios in the pre-draft permit do not allow any activity that would constitute "reconstruction" of magnetic tape coating sources (the existing affected source), based on the definition of reconstruction contained at 40 CFR 63.2.

40 CFR 63.5 preconstruction review requirements would apply only if there is construction or reconstruction of a source at Imation Camarillo that is subject to a standard promulgated under 40 CFR part 63, but that is not identified as an alternative operating scenario in the permit. Such construction or reconstruction is not pre-approved in Imation's pre-draft title V permit.

D. State Implementation Plan Requirements

A key element of the Imation XL project is the site-specific California State Implementation Plan (SIP) revision. EPA plans to evaluate and take action on the site-specific SIP revision under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. See 40 CFR part 51, appendix V, 2.3. The SIP revision, which will only apply to the operations at Imation Camarillo, is a critical element of the XL Project at Imation as it will ensure that operations at the Imation facility that are implemented in accordance with the XL project are not in conflict with federally enforceable SIP requirements.

The draft SIP revision is comprised of several of the most critical terms and conditions from the Imation XL Project FPA, a document that represents the intentions of all parties to the agreement but that is not legally enforceable. By incorporating these terms and conditions into a VCAPCD rule that the VCAPCD Board adopts and which is approved into the SIP, the main tenets of the FPA will be made enforceable by EPA and the State. Generally, the draft SIP revision authorizes the establishment of a plant-wide applicability limit (PAL) at the Imation facility, institutes several unique requirements and procedures for operations at the facility, and exempts specified Imation activities from two VCAPCD rules, most notably VCAPCD Rule 26 (New Source Review). EPA and VCAPCD agree that such revision of the SIP on a source-specific basis for this XL Project is an appropriate exercise of regulatory flexibility, and will result in environmental performance that is at least equivalent to what would be achieved under the existing SIP. A more detailed description of the contents of the draft site-specific SIP revision is provided below.

The draft SIP revision would exempt Imation Camarillo from two VCAPCD rules, however, a number of important requirements from these rules remain intact through their inclusion in the draft SIP revision. For example, Imation Camarillo would be exempt from the VCAPCD's NSR program, yet the requirement to apply appropriate control technology to equipment installed or modified at the facility has been carried over as a key element of the draft SIP revision. Under the draft revision, Imation would be required to conduct a Best Available Control Technology (BACT) analysis for new construction or modifications under this project and to apply new or additional controls (e.g., a thermal or catalytic oxidizer) if the existing controls at the facility did not qualify as BACT. Also, for HAP-emitting new or modified equipment, the SIP revision requires Imation to conduct a Toxics Best Available Control Technology (TBACT) analysis and apply identified controls if such controls are not already in place. The proposed SIP's BACT/TBACT requirement provides an assurance that any equipment that is modified or newly installed as part of this project at Imation Camarillo will have no less degree of emissions control than what it would have had under the VCAPCD's current NSR program.

Another important element of the draft SIP revision is a requirement that Imation Camarillo conduct a tiered health risk assessment prior to implementing any project that would increase emissions of an existing HAP or result in the emission of a HAP not previously emitted by the facility. Moreover, the assessment must demonstrate that the aggregate risk from the facility, factoring in both the proposed new HAP emissions and the existing HAP emissions, will not exceed specific human health risk trigger levels established by the VCAPCD. Although this requirement is not found in any of

[7] 40 CFR 63.2 defines affected source as ". . . the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard . . . established pursuant to section 112 of the Act." In addition, 40 CFR part 63, subpart EE states that the requirements apply to, "each new and existing magnetic tape manufacturing operation located at a major source of hazardous air pollutant (HAP) emissions." Subpart EE further defines "magnetic tape manufacturing operation" as "all of the emission points within a magnetic tape manufacturing facility that are specifically associated with the manufacture of magnetic tape."

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the SIP rules from which Imation Camarillo would be exempted (SIP rules address emissions of criteria pollutants and generally do not contain requirements targeted specifically at HAPs), the tiered health risk assessment is a requirement agreed to by all parties and is written into the FPA for this project. Inclusion of the tiered health risk assessment requirement in the proposed SIP makes it a condition that is enforceable by both EPA and VCAPCD. In addition, it assures that emissions from any Project XL-related new construction or equipment modifications at Imation Camarillo will result in risk levels that are acceptable under VCAPCD guidelines.

The draft SIP revision also contains a fairly detailed set of procedures that Imation Camarillo must follow in order to implement the pre-approved activities that are at the core of this XL project. These procedures are important because Imation would not be subject to the VCAPCD new source review permitting program for most new construction and equipment modifications at the facility. Under typical NSR permitting, Imation would be required to apply to the District for an Authority to Construct (ATC) and would negotiate with the District over the details of their proposed project, prior to moving forward with construction. Once constructed, Imation would then need to apply to the District for a Permit to Operate (PTO) the new equipment, once again negotiating with the District to reach agreement on the parameters of operation in order to assure that the equipment is operated in accordance with all applicable standards and regulations. The ATC and PTO approval processes would require a period of public and EPA notice and review.

The procedures in the draft SIP revision maintain some similar steps, but allow for a much more streamlined process leading to new construction, equipment modification, and operation by Imation Camarillo. The key elements of the procedures in the draft SIP revision are: a requirement for Imation to provide, through their Project XL-mandated monthly report, at least 30 days advance notification of any new construction or equipment modifications; requirements for VCAPCD approval of any tiered health risk assessment or BACT/TBACT analysis conducted pursuant to a proposed new construction or equipment modification (unless the facility's existing control device(s) represent BACT/TBACT and the estimated risk is over an order of magnitude lower than the District's level of concern, approval of these analyses must be gained prior to commencement of any new construction or equipment modifications); a requirement to provide operating and engineering details to VCAPCD prior to commencing construction of certain new control devices; and a requirement for Imation to apply for minor modifications to their title V permit in specific instances where they have installed a new control device. These procedures will allow Imation to take advantage of the flexibilities inherent in this project, while ensuring that a sufficient amount of public notification and an adequate level of oversight by VCAPCD and EPA are still in place.

The draft SIP revision would impose numerous requirements on the Imation Camarillo facility that would be in force in lieu of VCAPCD's NSR program. However, for most of the VCAPCD SIP requirements, Imation would merely comply with the requirements as they exist in the SIP. Some of these SIP requirements that Imation would continue to meet under the project are the requirements for non-VOC criteria pollutants, standards for their industrial boilers, regulations governing solvent cleaning operations, and a number of generally applicable SIP requirements such as those for opacity, transfer of ROC liquids, and several short-term activities such as abrasive blasting and asphalt roofing operations. In a few instances, Imation would meet applicable SIP requirements by complying with the EE MACT. The streamlining analysis discussed in section II.C.3 of this preamble provides a demonstration of how compliance with specific requirements of the EE MACT assures compliance with the VCAPCD SIP rules identified in the analysis.

E. Title V Operating Permit

1. Introduction

As part of this XL project, Imation Camarillo is obtaining a title V operating permit, pursuant to the applicable VCAPCD title V program (see VCAPCD Rule 33—part 70 Permits). Although the VCAPCD will provide a separate opportunity for public notice of the draft title V permit for Imation, as is required under their approved program, a pre-draft version of the title V operating permit is available for preliminary review in the docket for today's proposal (and is available on the world wide web as described in the preamble above).

This XL Project is experimenting with pre-approving, in the title V permit, new construction and equipment modifications at Imation Camarillo. Specific new construction and modification activities will be described in Imation's title V permit as alternative operating scenarios (AOSs). The significance to Imation of this innovative permitting approach is that it will create flexibility for the facility to make a limited set of preapproved changes under their title V permit. These changes, implemented as AOSs, will not require a permit revision in most instances, nor the time delays often associated with the permit revision process. This ability to undertake preapproved changes without delay will enable Imation to be more responsive to changing market conditions. From a regulatory perspective, Imation has provided the details necessary for the permitting authority to define reasonably anticipated AOSs and to create permit terms and conditions that assure compliance with all applicable requirements. From an environmental perspective, Imation has agreed to have the most stringent requirements from all potentially applicable standards incorporated into the terms of its title V permit. In many cases, the requirements that Imation would be subject to for a specific AOS are more stringent than the current regulatory structure would require.

40 CFR part 70 and VCAPCD Rule 33.4(B) provide for the establishment in title V operating permits of terms and conditions for reasonably anticipated operating scenarios at a source.[8] A source may then preapprove alternative operating scenarios in its permit and switch among these scenarios in response to operational demands, without obtaining a permit revision to account for the previously approved new operating scenarios and their different applicable requirements. All title V permits, including those implementing alternative scenarios, must contain terms and conditions sufficient to assure that each operating scenario will comply with all applicable requirements and will meet the requirements of part 70. Pursuant to section 70.6(a)(9), the source must identify such scenarios in its permit

[8] The VCAPCD title V program describes alternative operating scenarios in their title V program rules at VCAPCD Rule 33.4(B), which provides, in part:

The owner or operator of any stationary source required to obtain a part 70 permit may submit a description of all reasonably anticipated operating scenarios for the stationary source as part of the part 70 permit application. The operating scenario descriptions shall contain emission information for each scenario and sufficient information for the District to develop reasonable permit conditions defining each scenario.

application and the permitting authority must approve the scenarios for inclusion in the permit. The permit terms and conditions necessary to implement the alternative operating scenarios must also require the source to record contemporaneously in an on-site log the scenario under which it is operating, upon changing from one permitted scenario to another. The contemporaneous record of the present operating scenario that the source maintains on-site serves to document for important inspection and enforcement purposes that the source is in compliance with the source's permit terms and conditions.

The determination of when alternative scenarios are "reasonably anticipated" and would meet the requirements of section 70.6(a)(9) (or VCAPCD Rule 33.4(B)) is not amenable to a rigid legal formula that can dictate through general guidance what types of permit terms and conditions will ensure that a source's future operations comply with these requirements. Instead, there must be legal and practical considerations that inform this determination within EPA's reasonably broad discretion to do so. The Agency has identified certain preliminary legal boundary considerations and conditions for implementing reasonably anticipated operating scenarios as part of this XL project, pending further experience with pilot projects and permits and further guidance or rulemaking on the subject.

The structure and nature of title V permitting determine how permit terms and conditions may be developed to reasonably anticipate alternative operating scenarios. The part 70 regulations govern the content requirements for permit applications and permits in sections 70.5 and 70.6, respectively, and these sections govern how reasonably anticipated AOSs must be addressed in permit applications and permits as well. For example, all part 70 permit applications must contain information "for each emissions unit at a part 70 source," which includes a description of the source's processes and products for each alternate scenario identified by the source (see 40 CFR 70.5(c) and (c)(2)). Section 70.6(a)(9) in turn makes clear that a source must identify in its application each reasonably anticipated operating scenario for which it intends to include permit terms and conditions. For this specific project, Imation was required to identify the new or modified emissions units that are part of their reasonably anticipated AOSs.

2. Compliance with the Permit Application Requirements

As noted above, part 70 permit applications must contain specific information "for each emissions unit at a part 70 source." 40 CFR 70.5(c) contains the minimum permit application requirements. As stated in EPA's White Paper for Streamlined Development of part 70 Permit Applications, July 10, 1995 (White Paper I), "Applications should contain information to the extent needed to determine major source status, to verify the applicability of part 70 or applicable requirements, to verify compliance with applicable requirements, and to compute a permit fee (as necessary)." (*Id.* at 6) The White Paper further articulates how part 70 allows permitting authorities (in this case, VCAPCD) considerable flexibility to make decisions regarding the completeness of permit applications and their adequacy to support initial title V permit issuance. (*Id.* at 2) EPA and VCAPCD have determined that the information provided by Imation as part of their initial title V application, and through subsequent submittal of supplemental information, completely satisfies the permit application content requirements under 70.5(c) for existing emissions units and for reasonably anticipated AOSs. The following is a brief discussion of Imation's compliance with the requirements of section 70.5(c), focused specifically on the information they provided to address reasonably anticipated AOSs.

40 CFR 70.5(c)(2) requires a description of the source's processes and products, including any associated with AOSs at the source. Imation has provided the SIC codes for all existing equipment and all new and modified equipment contained in their AOSs, as is specifically required by section 70.5(c)(2).

40 CFR 70.5(c)(3) requires emission-related information for the source as well as for specific emissions units. In particular, section 70.5(c)(3)(i) requires identification of "all emissions of pollutants for which the source is major, and all emissions of regulated air pollutants." Imation has identified, for existing emissions units and for any new or modified emissions units under the reasonably anticipated AOSs, that they are a major source of VOCs and that they emit NO_X, SO_X, PM, CO, and HAPs in non-major quantities. Section 70.5(c)(3)(i) also requires that a permit application "describe all emissions of regulated air pollutants emitted from any emissions unit." EPA's White Paper I states that this can be a qualitative description of all significant emissions units i.e., that numeric estimates are not required. (*Id.* at 6) Based on this, and the previously noted guidance on the extent and purpose of information to be provided in an application, EPA and VCAPCD have determined that Imation has met this requirement for existing emissions units and for new or modified emissions units under the reasonably anticipated AOSs. Imation has provided lists of all existing emissions units, as well as the specific emissions units that comprise the coating operations contained in their reasonably anticipated AOSs, and they have qualitatively described the emissions from all of these units, namely VOCs and HAPs for emissions units that are part of the existing, new, and modified coating operations (including the ancillary equipment) and NO_X, SO_X, PM, CO, and VOC emissions from the gas-fired boilers. Finally, section 70.5(c)(3)(i) provides that the permitting authority may request additional emissions information to verify which requirements are applicable to the source. VCAPCD and EPA have determined that no additional emissions information is required because the applicability of the requirements of all relevant standards (both currently applicable requirements and requirements applicable to the reasonably anticipated AOSs) is not dependent on emissions information beyond the qualitative information provided by Imation in their permit application.

40 CFR 70.5(c)(3)(ii) requires the source to identify and describe all points of emissions described in section 70.5(c)(3)(i) "in sufficient detail to establish the basis for fees and applicability of requirements of the Act." As already noted, Imation provided lists of existing units and units that are contained in their reasonably anticipated AOSs. Imation has further provided a description of each type of emissions unit, in many cases describing the purpose of different pieces of equipment. For emissions units under the reasonably anticipated AOSs that are subject to standards that regulate down to one or more individual pieces of constituent equipment (e.g., magnetic tape coating and polymeric coating) as opposed to wholly regulating an entire coating line as a single entity, Imation clearly identified the constituent pieces and provided upper-bound estimates of the number of constituent pieces that may be added to the facility under a reasonably anticipated AOS. These details for the specific units subject to such standards

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were provided by Imation as additional information to clearly establish the requirements applicable to the reasonably anticipated AOSs at their facility. VCAPCD-levied permit fees are based on overall facility emissions, which in this case are measured by the FTIR–CEMS. Thus, no additional detail on specific emissions points, whether for existing emissions units or for units under the reasonably anticipated AOSs, is necessary to establish the fee basis.

40 CFR 70.5(c)(3)(iii) requires information on "emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method." White Paper I states that EPA interprets the tpy estimates to not be required at all where they would serve no useful purpose, where a quantifiable emissions rate is not applicable, or where emission units are subject to a generic requirement. White Paper I at 7. EPA and VCAPCD have determined that the tpy estimates are not required because a quantifiable emissions rate is not applicable to any individual emissions unit. Rather, all the relevant standards (both currently applicable standards and standards applicable to the reasonably anticipated AOSs) are written in terms of control efficiency (based on inlet/outlet concentrations) rather than overall emissions rate.

The only applicable requirement described in terms of emissions rate is the overall site emissions cap (PAL) of 150 tpy. This applicable requirement is not emissions unit-specific, but applies to the facility as a whole. White Paper I states that where a PAL or other plantwide emissions limit would be established or defined in a part 70 permit, "more emissions information would presumptively be required to verify emissions levels and monitoring approaches." (*Id.* at 7) Imation has met this added requirement through the provision of continuous emissions monitoring data collected by the source. These data have been deemed sufficient to verify VOC emission levels and to meet the intent of the regulatory requirement at 40 CFR 70.5(c)(3)(iii) and the White Paper I interpretation of this requirement. For future compliance with the plantwide VOC emissions rate, Imation is using the FTIR–CEMS, which provides continuous and highly accurate data on VOC emissions.

40 CFR 70.5(c)(3)(iv) requires the submission of information about fuels, fuel use, raw materials, production rates, and operating schedules, to the extent such information is needed to determine or regulate emissions. VCAPCD and EPA have determined that such information is not needed to determine or regulate emissions associated with the reasonably anticipated AOSs, however, Imation has still provided some of this information for new and modified equipment contained in the alternative scenarios.

Pursuant to the requirements of section 70.5(c)(3)(v), Imation has identified and described its existing air pollution control equipment and the control equipment contained in the reasonably anticipated AOSs, as well as the compliance monitoring devices for the equipment. Imation's existing solvent recovery unit (SRU) is monitored by two FID–CEMS and the FTIR–CEMS. Other VOC/HAP air pollution control devices described in Imation's reasonably anticipated AOSs include a thermal oxidizer, a catalytic oxidizer, and a new SRU. These control devices would be continuously monitored by an FTIR–CEMS, and either continuous combustion temperature monitors (for the oxidizers) or FID–CEMS (for the SRU).

Imation has met the requirements of the remainder of section 70.5(c)(3) in their permit application by addressing the limitations on source operation affecting emissions and the work practice standards for all regulated pollutants at the source (see section 70.5(c)(3)(vi)), by providing all necessary information required by any applicable requirement (section 70.5(c)(3)(vii)), and by providing all necessary calculations for the information in their application (section 70.5(c)(3)(viii)).

Imation has also met the requirements of sections 70.5(c)(4), (5), (6), (8), (9), and (10), as applicable to the existing operations and operations described in their AOSs. Unlike the requirements in section 70.5(c)(3), where a determination of sufficient permit application content may be subject to various interpretations and has been the subject of specific EPA policy guidance, the requirements in these parts of the regulation are very straightforward. For example, section 70.5(c)(6) requires the source to explain any proposed exemptions from otherwise applicable requirements. Imation has fulfilled this requirement (they have no proposed exemptions from otherwise applicable requirements), as well as the remaining requirements of sections 70.5(c)(4), (5), (8), (9), and (10).

40 CFR 70.5(c)(7) requires the source to submit additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to section 70.6(a)(9). EPA and VCAPCD have determined that the information provided by Imation is sufficient and that no additional information is necessary to define alternative operating scenarios identified by the source.

Imation's compliance with the regulatory requirements of section 70.5(c) for permit application content, for both existing equipment and for new and modified equipment contained in their reasonably anticipated AOSs, provided the necessary information for EPA and VCAPCD to develop a title V permit for the source which identifies all applicable requirements and which contains terms and conditions sufficient to assure that each operating scenario will comply with all applicable requirements and will meet the requirements of part 70. As previously noted, a pre-draft copy of the Imation title V permit is available today as part of this document for informational purposes.

3. Overview of the Permit Content Requirements

Along the same lines as the requirements under section 70.5(c), section 70.6 requires that all part 70 permits include emissions limitations and standards, monitoring, recordkeeping, reporting, compliance and other requirements to assure compliance with all applicable requirements. Section 70.6(a)(9) again makes clear that the permit terms and conditions governing alternative scenarios must meet these requirements. Applicable requirements generally fix a source's compliance obligations on an emissions unit or activity, control equipment, process, or combination thereof. Permitting alternative operating scenarios requires the ability to reasonably anticipate future emissions units, future operational details, and the compliance obligations under each applicable requirement associated with each operational state, as necessary to assure compliance with each applicable requirement.

The requirement to ensure that the terms and conditions of each alternative scenario meet all applicable requirements has been simplified somewhat in this project by conducting a comprehensive streamlining analysis, in accordance with White Paper II. See section II.C of this document. This simplifies matters by identifying the most stringent requirements of the five NSPS standards, one MACT standard and District Rule that Imation might trigger, and imposing these most stringent requirements as a single, uniform set of requirements that apply to each alternative scenario (as well as to the current operational scenario). This single, uniform set of requirements includes emissions limitations and standards, monitoring, recordkeeping, reporting, compliance and other requirements to assure compliance with all applicable requirements for each reasonably anticipated AOS. By requiring that Imation meet the most stringent of these requirements the title V permit for Imation is able to assure compliance with all applicable requirements and the requirements of part 70 and the District's title V program in accordance with CAA section 504(a).

Moreover, the permit terms and conditions governing each alternative operating scenario must assure compliance with all part 70 and applicable requirements at all times. This means that the permit terms and conditions must assure compliance with all relevant requirements at the time of initial permit issuance and at the time that changes to alternative operating scenarios are undertaken in the future. Upon a source's change from one operating scenario to another, the terms and conditions of the permit must continue to fully and accurately reflect the source's compliance obligations under all requirements applicable to the change. Imation's title V operating permit clearly states that if Imation changes to an operating scenario that was not provided for in its permit, or if a change undertaken by Imation triggers compliance obligations that are not fully and accurately reflected in the permit, then they will be subject to the permit revision, permit reopening, or section 70.4(b) notification provisions, as applicable, under the part 70 regulations and VCAPCD rules prior to making the change.

4. Permitting Reasonably Anticipated Alternative Operating Scenarios

The permitting of established operating scenarios at a part 70 source that are fully known, identified and expected is straightforward. Such situations are accounted for in part 70 permits through terms and conditions that specify the emissions units and activities, provide required citations to applicable requirements, and supply the additional range of permit provisions required in a complete title V permit. Reflecting current equipment and activities, existing operating configurations, and presently applicable regulatory requirements, these operating scenarios present no difficulty to incorporating into an operating permit sufficient terms to meet the permit content requirements of part 70.

The preapproval and permitting of reasonably anticipated AOSs is somewhat different in that their associated emissions units and activities, operational configurations, and applicable requirements may not be known with the same specificity as previously established operating scenarios. Nonetheless, in order to be included in the permit as alternative operating scenarios, the source must provide sufficient specificity for those scenarios to allow the permitting authority to determine the applicable requirement(s) and establish permit terms and conditions assuring compliance with those applicable requirements and the requirements of part 70. The EPA believes that it is a reasonable interpretation of section 70.6(a)(9) to require only that permit terms and conditions reasonably anticipate the emissions units and activities, operational configurations, compliance obligations, and other relevant information associated with each alternative operating scenario, so long as the permit terms and conditions assure compliance with relevant applicable requirements at all times. Conversely, there may be new or different requirements that attach to an operating scenario at the time that the source changes to that scenario, or other material differences from the permitted operating scenario may have arisen, such that the change and its regulatory requirements are not covered by the permit. If the permit does not reflect those requirements because they were not previously established, then the source, as provided for under the part 70 regulation, must account for all requirements applicable to that operating scenario, whether through a permit revision or advance notification or in response to a permit reopening.

It is helpful to distinguish further among categories of AOSs, on the basis of whether new versus existing process equipment or control devices are involved, and on the basis of the specificity of the equipment identification, operational configurations, and linkages to applicable requirements in the permit. Of the two categories of alternative operating scenarios described below, EPA is experimenting with the pre-approval of equipment modifications and new equipment construction that would trigger one or more specified NSPSs, the MACT standard for Magnetic Tape Manufacturing Operations, and a VCAPCD SIP rule.

First, there are alternative operating scenarios for existing emissions units and activities at a part 70 source, covering specifically identified operational states or configurations for specified emissions units. In its simplest form, this first category is exemplified by an emissions unit such as a fossil fuel-fired boiler that has two fuel burning options, which are each subject to a different applicable requirement with different monitoring obligations. The task of reasonably anticipating the terms and conditions of an alternative operating scenario such as this is furthered by the relative ease of specifying the emissions unit and its activities, operational configurations and conditions, and associated applicable requirements. A source's past operating experience as well as future operational certainty, founded upon existing emissions units and activities, will make permitting of such alternative scenarios more like the task of permitting a source's current operating scenario.

A second category of alternative operating scenario, which is the subject of experimentation in this XL project, covers specific new and modified emissions units and control devices that have not been constructed or modified at the time the operating scenario is established in the permit, but that may be preapproved in the title V permit. The following is a description of the specific new and modified emissions units and control devices that are being pre-approved as part of this category of AOS under the Imation XL Project.

5. Description of the Alternative Operating Scenarios for Imation Camarillo

The new and modified process equipment pre-approved in this project includes four types of surface coating operations and liquid storage tanks used to support these operations. Magnetic tape coating is the only one of the four surface coating types currently conducted by Imation. The other three types, polymeric coating, pressure sensitive tape and label surface coating, and metal coil surface coating are similar to magnetic tape coating in that they all involve a VOC-based coating applied to a supporting web substrate.[9] These operations differ in terms of the substrate material to which the coating is applied, the coating material itself, and the final product being manufactured.

Generally, all of the pre-approved coating types are continuous coating operations where the web substrate is unwound from a roll or coil, coated at

[9] Paper, Fabric, and Film Coating operations, which are defined and regulated by a VCAPCD SIP rule, are also pre-approved under this project. However, these operations are not typically distinct from the surface coating types listed above (i.e., magnetic tape, polymeric, and pressure sensitive tape and label coating operations are all also considered "Paper, Fabric, and Film Coating Operations").

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one or more coating stations, dried/cured in an oven, and then rewound onto the same roll or coil. All operations require ancillary process equipment such as the liquid storage tanks noted above, other tanks, kettles, and mills for handling, mixing, and otherwise preparing the coating solutions for use from raw materials. It is anticipated that some of the ancillary equipment will support operations of more than one coating type. For example, if tetrahydrofuran—THF—is used as a carrier solvent for both magnetic tape and polymeric coating operations, then a single THF storage/holding tank could be used to feed both types of coating line.

All such pre-approved new or modified coating operations, as well as all new or modified ancillary equipment that is not directly hard-piped to the 95% efficient control device, must be installed within a permanent total enclosure (providing 100% capture of emissions) and the captured emissions delivered to the 95% efficient control device. These are the capture/control requirements that are also in place under this project for existing process equipment (four magnetic tape coating lines and all mix preparation equipment).

An additional aspect of the reasonably anticipated AOSs under this project for which Imation is also receiving pre-approval, is the construction and operation of specific devices to control emissions from the new or modified process equipment described above. Specific control devices include a new thermal or catalytic oxidizer, a new SRU (and associated steam stripper, if necessary), and a baghouse or fabric filter for particulate control within the permanent total enclosure. Although these devices are part of the reasonably anticipated AOSs for this facility, and can be constructed and initially operated without first revising the title V operating permit, the project contains several safeguards described below to ensure that these devices will be operated in accordance with all applicable requirements. The reasonably anticipated AOSs in Imation's permit will allow VOC and HAP emissions from new or modified process equipment to be controlled by the existing control set-up at the facility (the existing total enclosure and SRU), or by one of the three VOC/HAP air pollution control devices listed above that has been determined, through a VCAPCD-approved analysis, to meet CA BACT (same as federally defined LAER) and/or Toxics-BACT, whichever is most stringent.

6. Analysis of Factors Considered in Defining Appropriate Permit Terms for Imation's Alternative Operating Scenarios

The permit terms needed to approve alternative operating scenarios to assure compliance with all applicable requirements and to be reasonably anticipated may, in general, be expected to vary by source category, the different types of emissions units and operating scenarios present at sources, and the inherent uncertainty of predicting future operating conditions and market demands. In particular, the authorizing permit limits might vary based on several factors which primarily include, but are not necessarily limited to: the types and specific terms of the applicable requirement(s); the complexity of the facility; whether the type or quantity of emissions will change widely; whether different pollution control devices will be needed; the ability of the permitting authority to develop practicably enforceable permit terms for alternative scenarios and to define the limitations of the control and monitoring approaches; the potential for future technology advances (where such advances are linked to the nature of the applicable requirements); and the presence of discretion in determining the applicability and/or the compliance status of the change. These factors are not always present, are often interdependent, and can range widely in their ability to affect whether compliance with the applicable requirements can be assured and whether operating scenarios can be reasonably anticipated.

In determining the permit terms and conditions needed to approve the AOSs under the Imation XL Project, EPA and VCAPCD considered all of the factors listed above. Below is a brief discussion of several of these factors as they pertain to the Agencies' determination that Imation's AOSs are reasonably anticipated and that compliance with all applicable requirements can be assured by the terms and conditions in their title V operating permit.

One major factor is the type of applicable requirements that attach to the AOSs and the specific terms associated with these applicable requirements. For this project, reasonably anticipated AOSs involve activities subject to several types of applicable requirement. However, as previously noted, all of the requirements associated with every applicable standard that applies or will apply to the reasonably anticipated AOSs and the current operating scenarios have been streamlined into a single set of applicable requirements, using EPA's guidance on streamlining multiple applicable requirements from White Paper II. The requirements essentially reduce to the emissions standards, limitations, monitoring, recordkeeping, reporting, and compliance requirements of the MACT for Magnetic Tape Manufacturing Operations. Thus, regardless of which reasonably anticipated AOS is implemented, there will be no difference in applicable requirements.

In addition, the application of the streamlined set of requirements to activities under reasonably anticipated AOSs should be very straightforward for the facility given their past operating experience. The specific requirements are very similar to those that Imation Camarillo has been operating under for a number of years (e.g., total enclosure of coating operations with emissions routed to a single control device), and the emissions units to which the requirements will need to be applied for any of the alternative scenarios will be very similar to those already operating at the facility. In fact, this general similarity amongst emissions units in the current operating scenario and in the alternative scenarios (and, therefore, the similarity of the multiple standards which apply to the different scenarios) is what allows the streamlining of six federal standards into a single set of applicable requirements.

For example, the requirements for control of emissions from coating lines, whether the lines are for magnetic tape, polymeric, pressure sensitive tape and label, or metal coil coating, are identical—95% VOC and volatile HAP control, accomplished by housing the entire line (unwind/rewind station, coater(s), drying oven(s)) in a permanent total enclosure which is routed to a 95% efficient control device. The application of these requirements to new or modified equipment under any of the reasonably anticipated AOSs will be the same, and will be the same as the application of these requirements to Imation's four existing coating lines.

Another significant factor in evaluating the terms necessary to implement Imation's AOSs is the complexity of the facility. Imation Camarillo is not an extremely complex facility. As described above, it is a manufacturing facility utilizing surface coating operations. The operations defined in Imation's AOSs are all types of surface coating. Surface coating of continuous web substrates involves unwinding the web, passing it through coating stations, then through an oven, and then rewinding it back on to the roll from which it was unwound. This manufacturing operation relies upon support equipment such as tanks, mixers, and kettles for preparing the coatings, and all coatings are directly plumbed to the coating stations. All the emissions units associated with a particular coating operation (except for some closed-vent tanks whose emissions are piped directly to the control device) are within a permanent total enclosure whose room air is routed through a single point of control. Some have likened the operational set-up at Imation Camarillo to a black box, with a single emission point. The reasonably anticipated AOSs allow for the addition of the same or similar types of surface coating lines within the existing black box, as well as the creation of one new black box (permanent total enclosure), also with a single point of emissions, and subject to the identical rigorous parameters of the existing black box.

A third factor for consideration is whether the type or quantity of emissions will change widely under the AOSs. This is particularly important where emission of a new compound or exceedance of a specified emissions threshold might trigger new requirements or modify compliance obligations under an alternative scenario. In this case, the type of emissions from the facility is not expected to change widely from the existing emissions profile. The emissions from units defined in the AOSs will be very similar to the emissions associated with the current operating scenario, namely, VOCs (some of which are HAPs) used as carrier solvents in the surface coating process. As described previously, the aggregate quantity of emissions could increase somewhat as a result of the implementation of an AOS, however, the applicable requirements and their application to existing, new, and modified equipment, are not dependent on the overall quantity (or type) of emissions, as long as the 150 tpy VOC cap is not exceeded.

An additional factor is whether different pollution control devices will be needed to control emissions associated with alternative scenarios. The existing solvent recovery unit (SRU) is highly efficient and should provide the necessary level of VOC and HAP emissions control (at least 95%) for any emissions units associated with Imation's reasonably anticipated AOSs. However, under some circumstances a different pollution control device may be needed. One circumstance is if the BACT/TBACT analysis, which Imation must conduct for any proposed emissions unit construction or modification, demonstrates that a different control device must be utilized to control emissions from the proposed new or modified units. Another circumstance is if the existing SRU has reached its maximum capacity for handling facility emissions. In the event that Imation proposes to install a different control device, in accordance with a specified AOS, several additional safeguards are in place. These safeguards, such as requiring specific pre-construction VCAPCD reviews and minor permit modifications subsequent to control device performance testing, are established as key terms in the operating permit for assuring compliance, and are described more fully below.

A final factor in establishing permit terms for reasonably anticipated AOSs for the Imation XL Project is the ability of the permitting authority, VCAPCD, to develop practically enforceable permit terms for AOSs. The nature of the requirements that apply to Imation's AOSs and the means by which the facility has elected to meet these requirements enhances VCAPCD's ability to develop permit terms for the AOSs that are enforceable as a practical matter. For example, the emissions limitation for each coating line is the same (95% control) so there is no question as to which limitation applies to which line. Furthermore, all coating lines must be located within a permanent total enclosure. The enclosure is vented through a single point to the 95% efficient control device, that is continuously monitored (using appropriate CEMS/CMS) to ensure that an overall control efficiency of 95% is maintained. The control and monitoring approaches are straightforward and apply in the same manner to each alternative scenario.

The consideration of all these factors by EPA and VCAPCD informed the agencies' development of the permit terms and conditions needed to approve Imation's alternative scenarios. In addition, 40 CFR 70.6(a)(9) affords permitting authorities the latitude to impose any necessary permit terms and conditions to assure that alternative operating scenarios meet all applicable requirements and the requirements of part 70. Such terms and conditions may go beyond compliance obligations strictly incorporated from applicable requirements being implemented pursuant to the alternative scenario.

7. Safeguards for Alternative Operating Scenario Implementation to Assure Compliance with all Applicable Requirements

The VCAPCD has determined that in order to assure that Imation's alternative operating scenarios meet all applicable requirements, the following safeguards, which are contained in the title V operating permit as specific, enforceable requirements, are necessary to assure compliance. First, there is a safeguard to assure that any proposed new VOC/HAP control device represents BACT/TBACT for controlling the proposed new or modified emissions units. For any modifications or new construction implemented as an AOS, Imation must conduct a BACT/TBACT analysis for the proposed change, and VCAPCD must approve the analysis. The analysis must be approved prior to commencement of construction if the analysis indicates that a new control device (either a thermal oxidizer, catalytic oxidizer, or new SRU) must be installed, or prior to commencement of operation if the existing SRU meets BACT/TBACT. This will assure that the most stringent controls are applied at the facility, and will prevent the possibility of the facility installing a control device that the permitting authority subsequently deems inadequate for meeting the necessary level of VOC/HAP emissions control.

Second, there are safeguards in the implementation of scenarios which include new VOC/HAP control devices to ensure that permit terms are updated based on documented performance testing. For AOSs involving construction of a new catalytic oxidizer or new SRU (including restarting the warehoused SRU on-site), Imation is required to apply for a minor permit modification once performance testing of the new device is complete. One purpose of the minor permit modification is to establish the specific operating conditions for the device that were demonstrated through performance testing to provide the necessary level of VOC/HAP control efficiency (minimum 95% or higher if required by BACT/TBACT results). This will assure that Imation's specific, enforceable operating parameter commitments for these devices are completely and accurately defined in the permit.

For AOSs involving construction of a new thermal oxidizer, Imation is required to apply for a minor permit modification once performance testing of the new device is complete, if the operating parameters contained in the initial title V permit (minimum 1500

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degrees F and 0.5 second residence time) do not result in the necessary level of VOC/HAP control efficiency (minimum 95% or higher if required by the BACT/TBACT results). Also, if performance testing of the new thermal oxidizer demonstrates the need for more stringent operating conditions (i.e., higher temperature and/or longer residence time), then Imation is required to operate the device at those conditions while their permit modification is pending.

Third, VCAPCD has built into the AOS implementation process several opportunities to intervene prior to the execution of the preapproved alternative operating scenarios, if such intervention is necessary to assure compliance with applicable requirements. The terms of the permit contain a requirement for Imation to provide advance notification of any proposed AOS implementation at least 30 days prior to commencement of the pre-approved change (i.e., prior to commencement of any construction). This notification is provided through the permit-mandated monthly report to the Agencies and the public. In addition, for AOSs involving construction of a new catalytic oxidizer or new SRU (including restarting the warehoused SRU on-site), Imation must provide to VCAPCD the proposed operational details for the device, and appropriate engineering calculations that support the proposed operating conditions at least 30 days prior to commencement of operation of the new device. This is in addition to the previously referenced requirement for VCAPCD approval (prior to construction) of the analysis demonstrating that the proposed new VOC/HAP control device represents BACT/TBACT for controlling new or modified emissions units.

8. Opportunity for EPA and Public Review of Proposed Alternative Operating Scenario Terms and Conditions

In addition to permitting authority review, in this case the VCAPCD, part 70 permits are subject to public and EPA review to ensure that the permit terms and conditions assure compliance with all applicable requirements and the requirements of part 70. An essential consideration in determining whether permit terms and conditions reasonably anticipate operating scenarios is whether the permit provides sufficient information and opportunity for the public and EPA to determine and comment in a meaningful fashion whether the terms and conditions of reasonably anticipated operating scenarios meet, and will continue to meet, all applicable requirements and part 70 requirements. While EPA has participated closely in the development of the permit terms and conditions to date, and will have additional opportunities to review and comment on all aspects of the permit as it is finalized by the VCAPCD, the public will also have an opportunity to review and comment on the permit prior to its finalization. This opportunity will occur when VCAPCD provides its 30-day public notice of the draft permit. In addition, a pre-draft version of the title V operating permit is being made available as part of today's document. The pre-draft permit, made available for informational purposes, contains descriptions of the reasonably anticipated AOSs, including limits on the extent of future construction and on the emissions from new and modified units. It includes a comprehensive streamlining analysis which identifies the most stringent requirements of all current and potential future applicable standards, and contains permit terms and conditions to assure compliance with these most stringent applicable requirements.

Permit terms and conditions reflecting alternative operating scenarios, like all part 70 permit terms and conditions, are subject to the possibility of EPA objection and public petition under section 505(b) of the Act. In addition, operating permits are subject to the possibility of reopening by permitting authorities or EPA under sections 502(b)(5) and 505(e) of the Act. Permit terms and conditions of alternative operating scenarios that fail to reasonably anticipate future operating scenarios, emissions units and activities, and their associated compliance obligations may be subject to EPA objection, public petition, or reopening for cause. Failure by permitting authorities to submit information necessary for the public and EPA to review proposed permits adequately constitutes grounds for an EPA objection under section 70.8(c)(3)(ii). However, as noted previously, EPA believes the information necessary for the review of alternative operating scenarios should be guided by the principle that permit terms and conditions must reasonably, but not perfectly, anticipate alternative operating scenarios.

9. EPA's Regulatory Interpretation of Advance Approvals for the Imation XL Project

The EPA, in August 1994, proposed to allow use of the concept of alternative operating scenarios under section 70.6(a)(9) to provide advance approval to construct and operate new or modified units subject to NSR and section 112(g) (referred to as "advance NSR"). (59 FR 44460, 44472, Aug. 29, 1994). Under the proposal, advance NSR would have allowed permitting authorities to establish the applicable NSR or section 112(g) requirements before a reasonably anticipated project or class of projects was constructed or modified, and then include that project's requirements in the part 70 permit for the facility. As a result, the project would be "preapproved" by the permitting authority, without the need for a later part 70 permit revision since the part 70 permit would already contain the relevant construction and operation requirements for the project.

In August 1995, EPA further clarified its advance NSR proposal by proposing to add a definition of advance NSR to section 70.2, and by explaining that, in EPA's view, a change subject to an advance approval scenario would not be a change under section 502(b)(10) of the Act (60 FR 45530, 45544–45545, Aug. 31, 1995). Rather, it would constitute a switch to an alternative operating scenario under section 70.6(a)(9). As the 1995 preamble noted, this interpretation would have two advantages. First, it would allow the use of advance NSR for title I modifications, and avoid the limitation that changes made under section 502(b)(10) cannot be title I modifications. Second, and more important, the 7-day advance notification under section 502(b)(10) which attaches to each change made under that section would not apply to changes under the advance NSR approval. Consequently, where the State operating permit program allows for advance approval, and the permitting authority approves an alternative scenario containing advance approval, the part 70 permit could allow a source to make the approved change without an advance notice or a part 70 permit revision.

Although the Agency has not finalized revisions to the part 70 regulations to adopt the proposed amendments to sections 70.2 and 70.6(a)(9) discussed above, the Agency is prepared to interpret the existing part 70 regulations for purposes of this XL project to enable alternative operating scenarios to encompass advance approvals in the limited manner described in this document. In other words, for purposes of the approach described in this section, EPA believes that it is a reasonable interpretation of existing section 70.6(a)(9) to cover the advance approval of the new and modified emissions units and control devices described in this document, within the scope of alternative operating scenarios that may be included in part 70 permits. The concept of "reasonably anticipated operating scenarios" is expansive enough to encompass not only existing equipment that may operate under a different operating scenario reasonably anticipated to occur, but also to encompass new and modified equipment housed in a permanent total enclosure, subject to 100% capture and at least 95% control device efficiencies, and subject to the most stringent applicable requirement streamlining provided for in this project. In addition, there must be a reasonable anticipation as to the limits of the advance approval. The limits in this project include future construction of a maximum of six new coating lines during the permit's term, limitation of the types of new construction and modification that may be implemented under an AOS, and the permit's restriction of the source to one new total enclosure housing pre-approved coating activities. As an additional element of the reasonable anticipation of operating scenarios, the permit provides upper-bound estimates of the number of constituent pieces of equipment (e.g., mills, mixing vessels, storage tanks) that may be constructed under specified AOSs.

The Agency is prepared to advance these interpretations under the current regulations prior to any final action on the part 70 revisions that might adopt the proposed amendments, for purposes of this experimental XL project. As previously noted, adoption of alternative approaches or interpretations in the context of a specific XL project does not signal EPA's willingness to adopt that interpretation as a general matter. Depending on the results of this project, as well as the results of other experimental and pilot projects implemented by EPA, the Agency may or may not be willing to adopt an alternative approach or interpretation again, either generally or for other specific facilities. The EPA solicits comment on these interpretations and their application in this project. In addition, members of the public will have the opportunity to comment on the approach discussed above, as well as the title V permit application and permit for the Imation Camarillo Plant, when the draft permit is made available by VCAPCD for a 30-day public comment period.

III. Other Requirements

Environmental Management System (EMS) and Multi-Media Pollution Prevention Reporting

As an additional element of this XL project, Imation Camarillo is developing an EMS modeled after International Standard ISO 14001. The EMS identifies all aspects of the plant's environmental management program and is a tool for ensuring continuous improvement with respect to controlling the environmental impacts associated with the Camarillo plant's activities. In terms of innovation, this project can be used to learn how an EMS can improve the pollution prevention opportunities that are identified within a plant, how the systems management approach is useful in helping a company meet and go beyond compliance, and how the training of employees to implement an effective EMS results in a reduction of environmental risks.

Imation Camarillo will also report a waste ratio number annually that represents the results of pollution prevention measures taken at the facility on an annual basis since 1990. The waste ratio shall be calculated based on the mass of the facility's actual waste output in all media and the mass of products and byproducts produced at the facility. Reporting of the waste ratio as a measure of pollution prevention activities at Imation Camarillo is one of the voluntary elements of this XL project.

Dated: June 23, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–17633 Filed 7–12–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6375–8]

Notice of Availability of Draft Summary of Class V Injection Well Study (EPA Working Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: EPA and the Sierra Club entered into a modified consent decree on January 28, 1997 (D.D.C. No. 93–2644). In accordance with the second action required by this decree, EPA is completing a study of all Class V wells not included in the July 28, 1999 proposed rulemaking on high-risk Class V injection wells (63 FR 40586). The purpose of this document is to seek public comment on the draft summary of this study, which provides general information on the study approach and results, to ensure that the information is accurate, complete and current.

DATES: EPA must receive public comment, in writing, on the draft Class V study by August 12, 1999.

ADDRESSES: Send written comments to the UIC Class V, W–99–12 Comment Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW, EB57, Washington, DC 20460. Comments may be submitted electronically to ow-docket@epamail.epa.gov.

Please submit all references cited in your comments. Facsimiles (faxes) cannot be accepted. Send one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

The draft study summary is available for review in the Water Docket at the above address. For information on how to access docket materials, please call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. Eastern Standard Time, Monday through Friday. If you would like copies of the summary contact the U.S. Environmental Protection Agency; Office of Water Resource Center; RC–4100; 401 M Street, SW; Washington, DC 20460 or call (202) 260–7786. The summary is also available on the EPA, Office of Ground Water and Drinking Water, Underground Injection Control web site: http://www.epa.gov/OGWDW/uic/cl5study.html.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, toll free 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. For technical inquiries, contact Anhar Karimjee, Underground Injection Control Program, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 401 M Street, SW, Washington, DC, 20460. Phone: 202–260-3862. E-mail: karimjee.anhar@epa.gov.

SUPPLEMENTARY INFORMATION: For the Class V study, EPA grouped Class V wells into the following 23 categories:

Agricultural Drainage Wells include all wells receiving agricultural runoff. This includes improved sinkholes and

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abandoned drinking water wells receiving agricultural runoff, wells that recharge aquifers with agricultural tail waters, and wells used to drain flood irrigation.

Storm Water Drainage Wells are shallow injection wells designed for the disposal of rain water and melted snow. These wells typically drain paved areas such as streets and parking lots, or roofs. Improved sinkholes and abandoned drinking water wells receiving storm water runoff are considered to be storm water drainage wells.

Wells Used to Drain Fluids from Carwashes Where No Engine or Undercarriage Washing is Performed include floor drains in bays of coin-operated manual carwashes where people use hand-held hoses to wash only the exterior of cars, trucks, and other vehicles. These kinds of carwashes are sometimes referred to as "wand washes," as opposed to "tunnel washes" or "rollover washes" where automatic washing equipment is used.

Large-Capacity Septic Systems are used to dispose of sanitary waste through a septic tank, used by a multiple dwelling, business establishment, community, or regional business establishment for the injection of wastes. Systems serving single families and non-residential systems serving less than 20 persons are not included.

Wells Used to Inject Fluids from Food Processing Operations are any type of system that accepts food processing wastewater and releases it into or above USDWs. This includes systems used to dispose of wastewaters generated from the preparing, packaging, or processing of food products (e.g., slaughterhouses, seafood or poultry processing facilities, etc.), not septic systems used solely for the disposal of sanitary waste.

Sewage Treatment Effluent Wells are used by privately or publicly owned treatment works (POTW) to inject treated or untreated domestic sewage through a vertical well or a leachfield. Aquifer Recharge wells, Aquifer Storage and Recovery Wells, Subsidence control wells, and Salt water Intrusion Barrier wells injecting treated or untreated wastewater are considered Sewage Treatment Effluent wells for the purposes of this study.

Wells Used to Inject Fluids from Laundromats Where No Onsite Dry Cleaning is Performed or Where No Organic Solvents are Used for Laundering include drains that lead to drywell (open holes) or septic systems at coin-operated laundromats that do not have onsite dry-cleaning services.

Spent Brine Return Flow Wells are used to dispose of the spent brine which results from the extraction of minerals, halogens and other compounds from fluids. These wells are commonly associated with manufacturing facilities that produce specialty chemicals such as boron, bromine, magnesia, or their derivatives.

Mine Backfill Wells are wells which inject water, sand, mill tailings, or other mining byproducts in order to control subsidence caused by mining, to dispose of mining byproducts, or to fill sections of a mine.

Aquaculture Wells dispose of water used for cultivation of marine and freshwater animals and plants.

Solution Mining Wells inject leaching solutions (lixiviants) in order to remove an ore mineral from its original geological setting. The saturated solution is then extracted by a production well, and the target mineral is harvested for processing. Copper, gold, salt, silver, and uranium may all be mined by solution mining processes.

In-Situ Fossil Fuel Recovery Wells are used for in-situ recovery of lignite, coal, tar sands, and oil shale. The wells inject water, air, oxygen, solvents, combustibles, or explosives into underground or oil shale beds to liberate fossil fuels, so they can be extracted for surface use. Underground coal gasification (UCG) and in-situ oil shale retorting are two processes which use in-situ fossil fuel recovery injection wells.

Special Drainage Wells include a variety of wells such as potable water tank overflow, construction dewatering, swimming pool drainage, and mine dewatering wells. These drainage wells receive fluids that cannot be classified as agricultural, industrial, or storm water.

Experimental Wells are used to test new technologies. Wells will not be classified as experimental if the technology can be considered under an established well subclass. For example, a well used for bioremediation will be classified as an aquifer remediation well.

Aquifer Remediation Wells are wells used to clean up, treat, or prevent contamination of underground sources of drinking water (USDWs). Treated ground water (pump and treat), bioremediation agents, or other recovery enhancement materials may be injected into the subsurface via Class V wells. These wells may be associated with RCRA or CERCLA projects.

Geothermal Electric Power Wells dispose of spent geothermal fluids following the extraction of heat for the production of electric power.

Geothermal Direct Heat Return Flow Wells dispose of spent geothermal fluids following the extraction of heat used directly (without conversion to electric power or passed through a heat exchanger) to heat homes, swimming pools, etc.

Heat Pump/Air Conditioning Return Flow Wells reinject ground water that has been passed through a heat exchanger in order to heat or cool buildings. A heat pump takes thermal energy from the ground water and transfers it to the space being heated. When cooling is required, the heat pump removes heat from a building and transfers it to the ground water. For the purposes of the study, only open loop heat pump/AC return flow wells are considered.

Salt Water Intrusion Barrier Wells are used to inject fluids to prevent the intrusion of salt water into an aquifer. These wells may have secondary purposes such as aquifer recharge.

Aquifer Recharge Wells are used to inject fluids to recharge an aquifer. These wells may have secondary purposes such as salt water intrusion prevention, subsidence control, or aquifer storage and recovery (ASR).

Aquifer Storage and Recovery (ASR) Wells are used to inject fluids for later recovery and use. These wells may have a secondary purpose such as aquifer recharge.

Wells Used to Inject Noncontact Cooling Water That Contains No Additives and Has Not Been Chemically Altered are used in conjunction with cooling systems designed to maintain constant separation of the water from process chemicals.

Subsidence Control Wells are used to control land subsidence caused by ground water withdrawal, or over pumping of oil and gas. These wells may have secondary purposes such as aquifer recharge.

Although the Class V study is ongoing and the final methods and results have not yet been fully documented, the draft summary has been compiled and placed in the public docket for review and comment. Based on a workgroup of EPA and State UIC representatives, the Class V study design has two components: (1) An information collection effort for the 23 Class V well categories listed above; and (2) inventory models to estimate the number of storm water drainage wells and large-capacity septic systems.

Data Collection

The information collection for the draft study consisted of four activities: a literature review, State and EPA Regional data collection, request to the public for data, and peer review.

In order to begin the State and EPA Regional data collection process, EPA prepared an Information Collection Request (ICR), approved by OMB (OMB #240–0194) on July 31, 1998. EPA then sent nearly 700 questionnaires to contacts identified for each State, territory, and Indian Land. EPA supplemented the information from the questionnaire through telephone interviews, on-site file searches, and information from other sources.

EPA additionally sought information from the public through: the National Drinking Water Advisory Council (63 FR 66168, 64 FR 18903); two notices in the **Federal Register** (64 FR 1108, 64 FR 1007); presentations at meetings of the Ground Water Protection Council; an Internet Web site (http://www.epa.gov/OGWDW/uic/cl5study.html); and, the July 28, 1998 proposed rule (60 FR 44652).

Well-specific reports were drafted for each well type covered in the study. Although the reports are tailored to the particular issues relevant to the well type, all of the reports address the following basic topics: (1) Well purpose and fluids released; (2) the extent to which the fluids released exceed drinking water standards at the point of injection; (3) generalizations about the characteristics of the underground zone receiving fluids from the wells; (4) contamination incidents or studies, if any; (5) vulnerability of the wells to spills or illicit discharges; (6) prevalence of the wells; and (7) existing State and federal controls.

Most reports have undergone extensive peer and EPA workgroup review (or are currently under review). EPA coordinated peer reviews of draft reports for each of the types of wells studied to ensure technical accuracy and completeness of the documents. Technical experts were located through various sources including the Ground Water Protection Council and three **Federal Register** notices seeking peer sources including the Ground Water Protection Council and three **Federal Register** documents seeking peer reviewers (64 FR 1007–1008). It should be noted that some peer review comments have not yet been addressed and are not reflected in the summary being made available through this document.

Inventory Models

Because States believe that their inventories on storm water drainage wells and large-capacity septic systems are inaccurate, EPA constructed inventory models to predict the national inventories for these two well types. Due to the limited information available, EPA developed the inventory models by analyzing data collected from visits to a sample of census tracts.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–17772 Filed 7–12–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. EverTrust Financial Group, Inc., Everett, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Everett Mutual Bank, Everett, Washington, and Commercial Bank of Everett, Everett, Washington.

Board of Governors of the Federal Reserve System, July 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17680 Filed 7–12–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-16859) published on pages 36016 and 36017 of the issue for Friday, July 2, 1999.

Under the Federal Reserve Bank of New York heading, the entry for Rome, MHC, Rome New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Rome, MHC, Rome, New York; to become a bank holding company by acquiring 51 percent of the voting shares of Rome Bancorp, Inc., Rome, New York, and thereby indirectly acquire The Rome Savings Bank, Rome, New York.

In connection with this application, Rome Bancorp, Inc., Rome, New York, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of The Rome Savings Bank, Rome, New York.

Comments on this application must be received by July 26, 1999.

Board of Governors of the Federal Reserve System, July 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17681 Filed 7–12–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Meeting and Intent To Prepare an Environmental Impact Statement

AGENCY: General Services Administration, National Capital Region; Department of Transportation.

ACTION: Correction of the time and location of meeting for the proposed lease acquisition of a new or renovated headquarters for the Department of Transportation in the Central Employment Area (CEA) of Washington, DC.

SUMMARY: The time and location of the meeting is corrected to read as follows.

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TIME AND LOCATION OF MEETING: The public meeting will be held: At 7:00 p.m., Thursday, July 29, 1999 at the General Services Administration, 1st Floor Auditorium (D Street Entrance), 7th & D Streets, SW, Washington, DC 20407.

The Notice of Public Meeting and Intent to Prepare an Environmental Impact Statement was published in the **Federal Register** on June 30, 1999 at 64 FR 35168.

FOR FURTHER INFORMATION CONTACT: Mr. John Simeon, General Services Administration, (202) 260–9586.

Dated: July 2, 1999.

Anthony E. Costa,

Assistant Regional Administrator, Public Buildings Service.

[FR Doc. 99–17752 Filed 7–12–99; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Hine's Emerald Dragonfly (Somatochlora hineana) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of a draft recovery plan for the Hine's emerald dragonfly (*Somatochlora hineana*), a species that is federally listed as endangered under the Endangered Species Act of 1973, as amended (Act). This species occurs on public and private land in Illinois, Michigan, and Wisconsin. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan received by September 13, 1999 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Chicago, Illinois, Field Office, 1000 Hart Road, Suite 180, Barrington, Illinois 60010, telephone (847) 381–2253. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received will be available for public inspection by appointment during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Louise Clemency at the above address, or telephone at (847) 381–2253, x215.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the federally threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria which when met would result in a determination that the species no longer needs the protection of the Act, and provide estimates of the time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into consideration in the course of implementing approved recovery plans.

The Hine's emerald dragonfly was listed as endangered on January 26, 1994. It inhabits marshes, sedge meadows, wet prairies and fens that have small ground water fed streams and occur in areas of dolomite bedrock. Fragmentation and destruction of habitat are believed to be the main reasons for this species' endangered status and continue to be the primary threats to its recovery. The species also seems to be vulnerable to off-site impacts to the ground water that feeds the habitat. The Hine's emerald dragonfly currently occurs at nine sites in the lower DesPlaines River valley in Illinois, at eleven sites in Door County, Wisconsin, and at seven sites in the Hiawatha National Forest in Mackinac County, Michigan. The Hine's emerald dragonfly has apparently been extirpated from Indiana and Ohio.

Recovery will be achieved and this species may be removed from the list of threatened and endangered plants when at least six viable populations, each composed of at least three subpopulations supporting 500 reproductive adults, are being protected and managed for the dragonfly. Site protection will be accomplished through negotiating cooperative agreements with landowners and working with land managers. Other recovery activities will include managing habitat, restoring populations, monitoring populations to detect trends, research, surveys, and conducting a general information program for the public.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by September 13, 1999 will be considered prior to approval of the plan. Comments should be sent to the Field Supervisor, Chicago, Illinois, Field Office, at the above address.

Authority: The authority for this action is the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 6, 1999.

Charles M. Wooley,

Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–17676 Filed 7–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Applications for Incidental Take Permits for the Delhi Sands Flower-loving Fly Associated With Industrial Developments on the Angelus Block Company Site, City of Rialto, San Bernardino County, California

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that Angelus Block Company, Inc., Edward Antonini Residuary Trust, and E–Z Mix, Inc. (Applicants) have applied to the Fish and Wildlife Service for the approval of a Habitat Conservation Plan and issuance of incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act, 1973, as amended (Act). The Applicants propose to develop various industrial facilities, including: a sacking plant and facility for concrete, pre-blended mortar, asphalt and associated materials; a paver production plant; and a concrete block plant within various lots on the property. Except for those lots within the approximately 30.5-acre on-site Conservation Area, the other lots are expected to be sold to other industrial users for development. The Applicants seek permits for a period of 30 years that would autherize incidental take of the endangered Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) associated with the construction, development, and maintenance of industrial facilities on approximately 65 acres of the 96-acre site. The permit applications include a Habitat Conservation Plan and an Implementation Agreement, both of which are available for public review and comment. The Service also announces the availability of an Environmental Assessment for the proposed issuance of the incidental take permits. All comments on the Environmental Assessment and permit applications will become part of the administrative record and will be available to the public.

DATES: Written comments should be received on or before August 12, 1999.

ADDRESSES: Written comments should be addressed to the Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to telephone (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Mary Beth Woulfe, Fish and Wildlife Biologist, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by calling the Service's Carlsbad Fish and Wildlife Office at the above referenced telephone number. Documents also are available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and its implementing regulations prohibit the "taking" of threatened or endangered species. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). Harm may include significant habitat modification where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. The Service, however, may issue permits to take endangered and/or threatened wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and/or threatened species are found at 50 CFR 17.22 and 17.32.

Under the proposed action, construction, development, and maintenance activities would directly impact the Delhi Sands flower-loving fly by removing about 65 acres of habitat on the 96-acre parcel. The permit applications include a Habitat Conservation Plan and an Implementation Agreement that define the responsibilities of all of the parties under the Plan. The Applicants' Habitat Conservation Plan describes consideration of alternatives to the action and provisions for minimization and mitigation of impacts.

The Applicants propose to dedicate about 30.5 acres of on-site Delhi Sands flower-loving fly habitat to a land manager/conservation organization to be managed and preserved in perpetuity. A 5-acre mitigation bank would be established in the 30.5-acre Conservation Area. Proceeds from the sale of credits would off-set the management endowment cost. The incidental take permit would also address any take that may occur due to management and maintenance activities within the Conservation Area. This action would compensate for the loss of habitat resulting from the project and would benefit the long-term conservation of the Delhi Sands flower-loving fly.

The Habitat Conservation Plan was prepared by the Applicants' representatives and reflects the opinions of the Applicants; whereas, the Environmental Assessment was prepared by the Service and reflects our opinions regarding the proposed action. This fact will account for the differences in opinion and analysis reflected in the Habitat Conservation Plan and the Environmental Assessment.

The Applicants considered going forward without receiving a section 10(a)(1)(B) incidental take permit under the Act. The Service sought and was granted a preliminary injunction by the United States District Court of Los Angeles that prohibited Angelus Block Company, Inc. from proceeding with their planned development. The Service and representatives from Angelus Block Company, Inc. worked out a settlement agreement regarding this injunction that resulted in finalizing the Habitat Conservation Plan.

The Habitat Conservation Plan and the Environmental Assessment considered four alternatives to the proposed project: (1) Abandonment of the industrial facility projects (the "No Project" alternative); (2) abandonment of the industrial facility projects and establishment of a Delhi Sands flower-loving fly habitat mitigation bank; (3) participation in the San Bernardino Valley-wide Multiple Species Plan; and (4) development of 83 acres, dedication of a 13.4-acre Conservation Area, habitat restoration, and an endowment fund for maintenance and management of the Conservation Area. The Applicants also considered the redesign of the industrial facilities and establishing a 24-acre Conservation Area including a mitigation bank. This alternative was within the full range of alternatives considered, and therefore, was not further analyzed by the Service in its Environmental Assessment.

Under the first alternative the Angelus Block facilities would not be constructed on the Site, nor would the remaining lots be used for other industrial uses or sold to other industrial users. Although this alternative would result in no impact by development of the Project Site, the Applicants would not take any measures to enhance the site or establish permanent on-site conservation that is expected to have long-term benefits for the Delhi Sands flower-loving fly.

Under the second alternative the Project Site would not be developed and the Site would be used as a habitat mitigation bank for Delhi Sands flower-loving fly. Establishment of a Delhi Sands flower-loving fly habitat mitigation bank on the Site could possibly result in protection of approximately 73 acres of Delhi Sands flower-loving fly habitat. The success of the mitigation bank would be primarily dependent on the ability and willingness of others to purchase Delhi Sands flower-loving fly habitat credits arising from establishment of a bank on Site. The certainty that such would actually occur is not known.

Under the third alternative the Applicants would mitigate for any potential take of the Delhi Sands flower-loving fly by participating in a larger geographic scale, multiple species Habitat Conservation Plan under development by local jurisdictions for a portion of San Bernardino County, as opposed to their own site-specific Habitat Conservation Plan. Under this alternative, the Applicants would need to delay construction of their project until the San Bernardino Valley-Wide Multiple Species Habitat Conservation Plan is complete.

Under the fourth alternative about 83 acres would be developed, a 13.4-acre conservation area would be dedicated to a conservation organization, Delhi Sands flower-loving fly habitat would be restored in the conservation area, and a long-term maintenance endowment

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would be provided for the conservation area. The conservation area would be used for the recovery and long-term conservation of the Delhi Sands flower-loving fly. This alternative would result in construction within approximately 60 acres of potential Delhi Sands flower-loving fly habitat. Impacts to the Delhi Sands flower-loving fly would be greater than the proposed project and there would be less benefit to the species.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the permit applications, the Habitat Conservation Plan, Environmental Assessment, the associated documents and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If we determine that the requirements are met, we will issue permits for the incidental take of the Delhi Sands flower-loving fly. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: July 7, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California

[FR Doc. 99–17743 Filed 7–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–00]

Resource Advisory Council Meeting; Northeast California Resource Advisory Council; Susanville, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Friday, Aug. 13, 1999, at the BLM Eagle Lake Field Office, 2950 Riverside Dr., Susanville, CA.

SUPPLEMENTARY INFORMATION: The meeting begins at 9 a.m. in the conference room of the BLM Eagle Lake Field Office. Agenda items include discussion of off-highway vehicle management, grass banking, noxious weeds, the recreation fee demonstration project, sage grouse management, and a status report on BLM wilderness study areas in northeastern California and northwestern Nevada. Public comments will be taken at 10 a.m. Depending on the number of persons wishing to speak, a time limit could be set. The entire meeting is open to the public as well.

FOR ADDITIONAL INFORMATION: Contact Tim Burke, BLM Alturas Field Manager, at (530) 233–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 99–17763 Filed 7–12–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–01; N–45098]

Termination of Segregative Effect, and Opening Order for a Portion of Airport Lease N–45098, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates a segregative effect on a portion of Airport Lease N–45098, held by Humboldt County. The land will be opened to the operation of the public land laws, including location and entry under the mining laws, subject to valid existing rights.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445, or 775–623–1500.

SUPPLEMENTARY INFORMATION: The segregative effect for Airport Lease N–45098, also known as the Denio Junction Airport, was made on January 15, 1987, then amended on September 23, 1987 and July 21, 1988. The public lands affected by the above segregative actions, are described as follows:

Mount Diablo Meridian, Nevada

T. 47 N., R. 30 E.,
Sec. 9: W½SW¼SW¼NE¼, W½W½SE¼, W½SE¼SW¼SE¼;
Sec. 16: NW¼, W½W½NE¼, W½E½NW¼NE¼, W½NE¼SW¼NE¼, NW¼SE¼SW¼NE¼, NW¼NE¼NE¼SW¼, N½NW¼NE¼SW¼, N½NE¼NW¼SW¼, NW¼NW¼SW¼;
Sec. 17: S½S½SE¼NE¼, N½N½NE¼SE¼.

Totalling 310 acres more or less in Humboldt County.

The segregation was made pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214) as amended by the Act of August 16, 1941 (55 Stat. 621).

The segregative effect is hereby terminated for all public lands encumbered by Airport Lease N–45098, except the following described lands:

Mount Diablo Meridian, Nevada

T. 47 N., R. 30 E.,
Sec. 9:
W½SW¼SE¼, W½SE¼SW¼SE¼;
Sec. 16: NW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, E½SE¼NW¼, SW¼SE¼NW¼, SE¼SW¼NW¼.

Totalling 135 acres more or less in Humboldt County.

At 9 a.m. on July 21, 1999, the land encumbered by Airport Lease N–45098, except the lands described above, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 21, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 30, 1999.

Terry A. Reed,

Field Manager, Winnemucca.

[FR Doc. 99–17682 Filed 7–12–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–01; N–59006]

Termination of Segregative Effect, and Opening Order for Proposed Exchange, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates the land exchange segregation, dated March 26, 1997, for Proposed Exchange N–59006. The land will be opened to the operation of the public land laws, including location and entry under the mining laws, subject to valid existing rights.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445, or 775–623–1500.

SUPPLEMENTARY INFORMATION: Upon notation to the public land office records, on March 25, 1997, the public lands described below were segregated from all other forms of appropriation under the public land laws including location and entry under the mining laws. On June 21, 1999, the exchange proponent notified the Bureau of Land Management, that he no longer wanted to pursue the proposed exchange. The segregation is hereby terminated on the following described lands:

Mount Diablo Meridian, Nevada

T. 43 N., R. 32 E.,
Sec. 4: SE¼SW¼;
Sec. 9: NE¼NE¼, S½NE¼, NW¼NW¼, E½SW¼, SE¼;
Sec. 17: NW¼SW¼;
Sec. 18: SE¼NE¼SE¼, NE¼NE¼SE¼;
Sec. 31: SE¼NE¼, SE¼SW¼NE¼, NE¼SW¼NE¼.
T. 47 N., R. 31 E.,
Sec. 21: E½NE½, SE¼NW¼, E½SW¼, NE¼SE¼, SW¼SE¼;
Sec. 22: W½SW¼;
Sec. 26: S½NW¼, E½SW¼;
Sec. 27: SE¼NE¼, NE¼NW¼;
Sec. 28: NW¼NE¼;
Sec. 35: NW¼NE¼, NE¼NW¼.

Totalling 1,280 acres in Humboldt County.

At 9 a.m. on July 21, 1999, the land encumbered by Proposed Exchange N–59006, will be opened to the operation of the public land laws, including location and entry under the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 21, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 30, 1999.

Terry A. Reed,

Field Manager, Winnemucca.

[FR Doc. 99–17683 Filed 7–12–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Federal Oil and Gas Royalty-In-Kind Pilot Programs

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of intent.

SUMMARY: This is to give notice that the Minerals Management Service (MMS) intends to adhere to certain practices in exercising the options available to the Secretary of the Interior to take the government's royalty share of production in kind from Federal oil and gas leases. In particular, we would like to set forth the background and a general outline of how we are proceeding and what is expected of lessees and operators in connection with MMS's royalty-in-kind (RIK) projects. The purpose of these projects is to test the feasibility and examine the revenue effects of different ways of taking and disposing of RIK production. We welcome any comments you may have on the information provided in this Notice.

DATES: Comments must be submitted on or before September 13, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bonn Macy, Special Assistant to the Director, Minerals Management Service, 1849 C Street, NW, MS 4230, Washington, DC 20225. You may also comment via the Internet (E-mail) to Bonn.Macy@mms.gov. Please submit Internet comments as a WordPerfect 6.0 or an MS Word 97 document (earlier versions of these formats are acceptable) avoiding the use of special characters and any form of encryption. Please also include your name and return address and phone number in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Bonn Macy directly at (202) 208–3827.

FOR FURTHER INFORMATION CONTACT: Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, NW, MS 4230, Washington, D.C. 20240–0001; telephone number (202) 208–3827; fax (202) 208–3918; e-mail Bonn.Macy@mms.gov.

COMMENTS: Written comments on this notice should be addressed to Mr. Bonn J. Macy at the address given in the Addresses section of the notice.

SUPPLEMENTARY INFORMATION: The contents of this Notice will be discussed at a Public meeting held on July 20, 1999, in Houston, Texas. Please refer to the **Federal Register** Notice published July 1, 1999, for further information. We will post public comments after the comment period closes on the Internet at http://www.rmp.mms.gov. You may arrange to view paper copies of the comments by contacting Bonn Macy, Special Assistant to the Director, Minerals Management Service, (202) 208–3827, FAX (202) 208–3918.

Background

The Department of the Interior has managed mineral leasing on Federal lands since the Mineral Leasing Act was passed in 1920 (30 U.S.C. 181, *et seq.* (1994) (MLA). Under the terms of standard Federal oil and gas leases, the government is entitled to a share (royalty) of production removed or sold from the lease. The terms "in value" and "in kind" refer to the manner in which a mineral owner (lessor) receives the royalty share from the producer (lessee). Like most other royalty owners, the U.S. Government has, for the most part, historically received its royalty share "in value," that is, in cash as a percentage of the sales proceeds received by the lessee.

For most onshore Federal leases, the MLA provides in relevant part at 30 U.S.C. 192 that all royalty accruing to the United States under any oil or gas lease or permit under this chapter on demand of the Secretary of the Interior shall be paid in oil or gas.

For most offshore leases, the Outer Continental Shelf Lands Act, as amended (OCSLA) provides in relevant part at 43 U.S.C. 1353(a)(1) (1994) that, with some minor exceptions, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease issued or maintained in accordance with this subchapter, shall, on demand of the Secretary, be paid in oil or gas.

Section 2 of a typical onshore Federal lease form provides in part that "Lessor reserves the right to specify whether royalty is to be paid in value or in kind." (October 1992, Form BLM–3100–11). By section 6 of the offshore lease form, the lessor reserves "the right to

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determine whether royalty will be taken in the amount or the value of production." (February 1971, Form MMS–2005, and subsequent versions).

Over the years, the Secretary's authority to take RIK has rarely been used. One exception has been the ongoing RIK program that MMS currently operates for certain "eligible refiners" as authorized by specific provisions of the MLA at 30 U.S.C. 192 (1994) and the OCSLA at 43 U.S.C. 1353(b)(2) (1994). Also, during Calendar Year 1995, MMS operated a voluntary RIK pilot in which we took and sold by competitive bid at the lease approximately 45.6 billion cubic feet of natural gas from 14 lessees covering 79 leases in the Gulf of Mexico. This initial pilot provided valuable experience with the operational aspects of working with producers and marketers, as well as useful information on the revenue implications of taking gas in kind.

As a general matter, the collection of royalties in cash as a percentage of the value of production has worked well in most cases. However, as will be discussed below, there are a number of reasons that make it worthwhile now to examine whether the government should receive at least some of its royalties "in kind" by taking physical volumes of oil or gas for sale to the public or for transfer to other Federal agencies.

First, dramatic changes in the energy industry have been occurring over the past 10 to 15 years that may present opportunities for MMS to provide greater certainty and simplify its royalty management programs. Rapidly changing market structures over this period have resulted in product price volatilities and the expansion of active trading in markets across the country with the corresponding development of representative spot prices.

Traditional long-term contracts between producers and pipeline and refiner purchasers have been increasingly replaced by short-term trading by new market participants, such as brokers and resellers. Further, many sellers now regularly use futures markets for risk management and obtain real-time market information directly using personal computers and telecommunications links.

For natural gas, these structural changes have been facilitated by the Federal Energy Regulatory Commission's deregulation of the natural gas transportation industry and the evolving deregulation of retail natural gas and electricity markets.

The challenges presented by these evolving market structures, the "unbundling" of gas transportation services, and changing business practices overall present unique opportunities for us to reexamine the way we manage the revenues earned from the public's oil and gas assets.

Members of Congress, representatives from industry, the public, and State and other Federal agencies have urged MMS over the last few years to consider the potential advantages that might be achieved by taking Federal oil and gas royalties in kind. Over this time, MMS's own examination of RIK suggests that these potential benefits may exist in select cases where conditions favorable to RIK exist.

MMS's stakeholders have focused on a number of possible benefits. As an alternative to the royalty system based on the percent of proceeds, a successfully targeted RIK program might provide improved certainty, administrative efficiencies, and other cost savings. Fulfillment of the royalty obligation by the delivery of physical volumes of oil or gas could decrease the need for extensive reporting, verification, and auditing of lessee sales proceeds. This could benefit industry as well as government and the public. A second possible benefit is that, in select circumstances, taking product in kind and selling to the market directly might yield more revenues for the public than taking a percentage of a given lessee's sale price. In other cases, we might be able to take RIK and transfer it for direct consumption in other Federal agencies and realize real savings in Federal energy costs.

In response to these possibilities and the interest in them, MMS has structured several pilot projects to demonstrate whether taking royalties in kind can actually deliver the potential benefits to the taxpayer. The agency has solicited participation from affected States and consulted with industry in their development.

Currently, we have an oil RIK program operating in conjunction with the State of Wyoming involving 3400 bbls. of royalty crude oil per day, and a small pilot underway with the State of Texas General Land Office (GLO). The GLO program uses production from natural gas leases in the 8(g) zone off the coast of Texas in the Gulf of Mexico. A natural gas pilot in the Federal waters of the Gulf of Mexico will begin in October 1999 and could involve as much as 800 million cubic feet of gas per day over a 3-to 4-year period. Through the experience gained by these pilot projects, we hope to acquire a better understanding of the key factors that determine RIK success.

For example, the pilots could demonstrate that the RIK option works best where leases have certain production characteristics, and where regional markets or transportation arrangements are particularly suited to RIK, as well as demonstrate which methods used to market the RIK production provide the greatest benefit. Depending on the logistics and efficiencies involved, certain production may be more attractive if consumed directly by the government.

Hands-on experience with these pilot projects should give us a good basis for determining whether or not RIK is viable for the Federal Government, and, if so, how, when, and where it makes sense to exercise the Secretary's RIK option.

The authorizing provisions of the MLA and the OCSLA and the relevant lease provisions effectively give the Secretary complete discretion to elect to take the royalty share of production from an oil and gas lease in kind.

Both the MLA and the OCSLA provide that RIK production so taken may either be sold to the public (including to eligible refiners) under certain prescribed terms or be retained or transferred to agencies of the Federal Government.

Public sales of onshore RIK production must be made by an offer for sale "upon notice and advertisement on sealed bids or at public auction" (30 U.S.C. 192 (1998)) and offshore RIK production must be sold "by competitive bidding for * * * not less than its fair market value."(43 U.S.C. 1353 (b)(1) and (b)(2) (1998)).

Public Auctions and Competitive Bidding

One objective of the pilots is to evaluate the relative merits of different bidding methods so we can identify the most effective and appropriate ways for the government to secure a competitive market price for our public assets, as we are required to do by law. In offering RIK production for sale to the public, we intend to consider using any bidding procedure or format that brings us the best return in open and competitive sales.

To assure conformity with the statutory terms "public auction" and "competitive bidding," we would require a bidding format that affords equal access for all qualified potential purchasers and leads to sales made in response to the highest or best bid.

In most cases, we intend to announce the availability of royalty production for sale by advertisement of a "notice of availability." Over the past several years, MMS has found that use of its Internet Home Page is an effective means to rapidly disseminate

information to the oil and gas industry and to the public at large. We continue to use this communication method as well as placing public notices in industry trade journals, on commercial electronic bulletin boards, and other media. In certain cases, especially for sales of natural gas, MMS may invite companies to apply for prequalification as a potential purchaser. Subsequent notices of availability would be sent to prequalified companies.

A notice of availability will identify the production to be made available to the public, the general terms and procedures for any sale, and will include bidder qualification information to determine who may bid in a given sale. Ordinarily, any person would be permitted to bid who is eligible under the terms and conditions specific to the particular bid offering at hand. In this regard, we expect that each notice of availability or solicitation to prequalify as a potential purchaser will prescribe certain minimum financial qualifications for participation in the bidding, and indicate the procedure for prequalifying as a buyer before any sale. Potential buyers may prequalify at any time, but must be prequalified in order to bid for RIK production.

Lessee/Operator Responsibilities

In any situation involving the taking of RIK production, the managing operator of the property will be an active participant in the transaction.

Essentially, the lessee or operator is required to satisfy its royalty obligation by delivery of a volume of "royalty production"—that is, the royalty share to which the Federal Government is entitled to take as a royalty—in the form of physical volumes. The amount of royalty oil, gas, or other products that MMS takes in kind in partial or full satisfaction of a lessee's royalty or net profit share obligations will be determined by whatever lease interest the lessee holds under an applicable mineral leasing law. Generally, royalty production equals that portion of production from or allocated to a Federal lease multiplied by that lease's royalty rate.

When we decide to take RIK from a property, we will give the lessee and operator adequate advance notice sufficient to minimize disruption to the operator's planning for transportation and sales of its share of the production stream. This will generally mean a 30-day prior written notice before we would begin taking or stop taking RIK production from a property.

Unless further experience dictates otherwise, it is our present intention that where we decide to take a lease's royalty production in kind, we will take all such royalty production from the lease in kind until we give notice to the contrary.

In the pilots operated to date, we have set out the terms under which we expect to conduct specific RIK transactions in a "Dear Operator Letter" to all affected parties. The "Dear Operator Letter" generally prescribes terms of delivery, methods for resolving imbalances, and lessee reporting and communication requirements. This approach, together with public meetings held in advance of particular sales and close coordination with operators, has worked well by anticipating and resolving specific problems.

A primary responsibility of the operator will be to deliver the royalty production to MMS in "marketable condition" as is currently required by the lease and regulations for payment of royalties in value. Accordingly, royalty production delivered by an operator must be in a condition that would be accepted by a purchaser under a sales contract typical for the field or area. This has long been considered an obligation imposed by the terms of Federal leases and is reflected in the royalty value regulations at 30 CFR Part 206, including the definition of "marketable condition" set forth at 30 CFR 206.151. It will continue to be the lessee's obligation to perform and bear all costs of gathering, dehydration, separation, compression, sweetening, or other processes that MMS will require in connection with the delivery of RIK production.

It is also expected that the operator will deliver royalty production to the lessor at the same frequency that it is produced and moved through the royalty meter, without interruption, unless specifically approved by MMS.

In general, natural gas taken in kind must be delivered on a daily basis, unless other arrangements are approved by MMS. This is consistent with industry practice so that purchasers are able to make necessary transportation and other arrangements. Approval for less than daily delivery of natural gas may be provided on a case-by-case basis. We do recognize that in some cases, it may be necessary to delay delivery of crude oil for as long as a month to permit aggregation of saleable quantities of production from lower-producing properties.

Operators are also expected to use the same measurement and reporting standards applicable to the payment and reporting of royalties in value as prescribed in the existing regulations at 30 CFR 202 for RIK oil and gas.

It is also expected that lessees, operators, or others dealing in royalty production would retain all related records for a period of 7 years after the records are generated unless MMS notifies the record holder that a longer retention period is required. That is the same period currently applicable to lessees paying royalties as a percentage of value under 30 U.S.C. 1724(f).

Offshore Fair Market Value

The RIK provisions of the OCSLA direct that the public sale of offshore RIK production must be made for not less than its "fair market value."

As a generic term, "fair market value" is generally considered by economists to be the price received by a willing and knowledgeable seller not obligated to sell from a willing and knowledgeable buyer not obligated to buy. For offshore RIK sales, however, the OCSLA prescribes a very specific definition of that term. Section 1331(o) of 43 U.S.C. (1994) defines "fair market value" for purposes of RIK sales to be essentially the average unit price received for production from the same lease or, in some circumstances, from leases sold in the same region during the period.

The 43 U.S.C. 1331(o) (1994) definition states that the term "fair market value" means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the Outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary.

Under this statutory definition, the first applicable paragraph (1) of the provision seems to require that offshore RIK production taken by the Secretary must be sold for at least as much as the average unit price for which the lessee sold the nonroyalty share of production from that lease.

In cases where there were no other sales from the same lease or where the Secretary finds that there were an insufficient number of such sales to equitably determine such a value, the

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fair market value floor may be computed under the next paragraph, paragraph (2). That paragraph provides that fair market value may be computed with reference to average unit prices in sales from "other leases in the same region." Finally if a value cannot be equitably determined under paragraphs (1) or (2), an appropriate price may be determined by the Secretary. In operating the RIK pilot projects that involve public sales of offshore production, we intend to comply with the OCSLA requirement not to sell RIK production for less than its fair market value as defined by that statute. However, we anticipate that there may well be instances in which it may be impractical or otherwise inequitable to determine actual average prices from a lease or region during the same period in which an RIK sale is to be made. Strict conformance with paragraph (1) of the definition would require knowing at the time of the RIK sale what the lessees' actual concurrent sales prices were for the nonroyalty share of production from the lease. Applying paragraph (2) of the definition would also require instantaneous knowledge of the sales prices of other lessees in the region.

In theory, we could require that all RIK purchase prices be subject to post-sale adjustments when the lease price information becomes available to MMS. In our view, this would be excessively burdensome to all concerned and would effectively discourage, if not eliminate, participation in RIK sales. If bidders did participate, they would necessarily bid a lower price for the royalty production than they would otherwise because of the risk of post-sale adjustment, particularly if this adjustment could be made well after the actual sale. It is clear that such a process would not only be inequitable to potential purchasers, but could not effectively capture a fair market value as that term is intended and conventionally understood.

In those instances where it is not possible, practical, or equitable to determine—contemporaneous with an RIK sale—average prices from a lease or the region, we believe we can reliably estimate these values very closely. These close estimates would allow us to proceed under paragraph (3) of the OCSLA "fair market value" definition to "determine such value, at an appropriate price determined by the Secretary" in a way that assures consistency with the intent not to sell RIK production for less than the price obtained by the lessee for its share.

In preparation for each sale of royalty oil or gas from identified Federal leases, MMS would develop a reference price for each specific lease that is consistent with the OCSLA "fair market value" requirement. To establish this reference price, MMS would analyze the pricing relationships for sales in the area and/or market centers appropriate for sales of production from those leases. One source of data for the analysis would be actual historical prices for royalty purposes for the identified leases, or if none are available, from leases in the same area. Other data used in the analysis could include published index prices and bids MMS may have received on other offerings of its royalty oil or gas from that area, as well as the many other factors that could influence the determination of fair market value. These might include: responses to other sales of similar Federal royalty production, seasonality, infrastructural changes (temporary and permanent), and other variable market conditions.

Our analysis of pricing relationships in the market would produce an estimate of the price the lessee will receive. This would form the basis for the lease's reference price. During a sale, this lease reference price would serve as our reserve price, below which bids to purchase RIK production from the lease would be considered inadequate.

To verify that the pricing relationship between lessees' sales prices and the market continues, MMS will require occasional reporting by lessees of sales prices on leases from which MMS is taking production in kind. These reported prices would only be used for information and analytical purposes, are necessary to assure that we continue to receive fair market value for RIK sales, and will not be available for any other use.

Transfer of RIK Oil and Gas to Other Federal Agencies

As authorized by statute, we also plan to transfer royalty production taken in kind to other Federal agencies for direct consumption by the government. The Federal Government's energy requirements are large and are in excess of its royalty share of oil and gas production.

While geography and logistics prevent efficient implementation in all locations where oil and gas are consumed, there are enormous opportunities to build energy supply relationships within the Federal Government. These internal supply relationships have the potential to generate significant synergies and lower the total cost of energy consumed by the Federal Government.

For onshore, the MLA provides in 30 U.S.C. 192 that the Secretary may offer RIK for sale "except whenever in his judgment it is desirable to retain the same for the use of the United States * * *" The OCSLA provides specific authority to the Secretary at 43 U.S.C. 1353(a)(3) to transfer RIK production to other Federal agencies, stating that, title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Secretary of Energy, for disposal within the Federal Government.

We have already developed and implemented innovative arrangements involving the transfer of RIK crude oil to the Department of Energy for the Strategic Petroleum Reserve and transfer of natural gas to the General Services Administration (GSA) for use in Federal facilities. We plan to further explore the potential associated with direct, internal consumption of royalty oil and gas production taken in kind, and expand our relationship with GSA and other Federal agencies as appropriate.

The general principles set forth here are intended to allow flexible operation of RIK programs to adapt the technique efficiently to the wide range of conditions that exist in Federal oil and gas producing areas. MMS firmly believes our approach is market-responsive, consistent with best industry practices, economically and administratively efficient, and minimally disruptive to lessees and operators. We welcome comments from the public on any and all aspects of this notice.

Dated: July 8, 1999.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99–17788 Filed 7–12–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 6, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Pension and Welfare Benefits Administration.

Title: Employee Benefit Plan Claim Procedures under the Employee Retirement Income security Act of 1974 (ERISA).

OMB Number: 1210–0053.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Number of Respondents: 6,690,345.

Number of Responses: 63,317,000.

Total Burden Hours: 504,000.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $54,520,000.

Description: ERISA section 503 and regulations at 29 CFR 2560.503–1 require employee benefit plans to establish procedures for notification on claim denials, disclosure of reasons, and notice of opportunity to obtain review of the denial.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–17665 Filed 7–12–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Renewal

The Secretary of Labor and the United States Trade Representative have taken steps to renew the Labor Advisory Committee for Trade Negotiations and Trade Policy. The Committee and subcommittees will be chartered pursuant to section 135(c)(1–2) of the Trade Act of 1974 (19 U.S.C. 2155(c)(1–2)), as amended by section 1103 of the Trade Agreements Act of 1979, Public Law 96–39, 93 Stat. 308, the Omnibus Trade and Competitiveness Act of 1988, Public law 100–418, 102 Stat. 1107 (1988) and Executive Order No. 11846, March 27, 1975 (19 U.S.C. 2111 nt).

The Labor Advisory Committee for Trade Negotiations and Trade Policy consults with, and makes recommendations to the Secretary of Labor and to the United States Trade Representative on issues of general policy matters concerning labor and trade negotiations, operations of any trade agreement once entered into, and other matters arising in connection with the administration of the trade policy of the United States.

The Committee will meet at irregular intervals at the call of the Secretary of Labor and the United States Trade Representative. The Steering Subcommittee will meet bi-monthly. Other subcommittees may meet on an ad hoc basis.

For further information contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, Frances Perkins Building, Department of Labor, Room S–5325, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 219–7597.

Signed at Washington, DC, this 2nd day of July, 1999.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–17664 Filed 7–12–99; 8:45 am]

BILLING CODE 4510–38–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

International Child Labor Program; Solicitation for Grant Application: Develop and Publicize Factual Information About Child Labor, its Use and Solutions to the Problem of Child Labor Worldwide

AGENCY: Bureau of International Labor Affairs (ILAB) International Child Labor Program.

ACTION: Notice.

SUMMARY: The purpose of this SGA is to award grants to one or more private, nonprofit organizations for the purpose of developing and publicizing factual information about the use of child labor, creating innovative partnerships to address child labor, and organizing a public dialogue about best-practice solutions to the problem of child labor worldwide. The grant or grants will be administered by the International Child Labor Program (ICLP) of the Bureau of International Labor Affairs (ILAB).

DATES: The closing date for receipt of a completed application in response to the SGA will be no later than 4:45 p.m. on July 30, 1999.

FOR COMPLETE APPLICATION SEND WRITTEN REQUEST TO: Lisa Harvey, Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone Number (202) 219–9335.

Signed at Washington, DC this 7th day of July, 1999.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 99–17778 Filed 7–12–99; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection; ETA 203, Characteristics of the Insured Unemployed; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed revision of the collection of the ETA 203, Characteristics of the Insured Unemployed. A copy of the proposed

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information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSEES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 13, 1999.

ADDRESSES: Cynthia Ambler, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave. NW., Washington, DC, 20210. Phone number: 202–219–6209 x129. Fax: 202–219–8506. (These are not toll free numbers.) E–mail: amblerc@doleta.gov.

FOR FURTHER INFORMATION CONTACT: Cynthia Ambler, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave. NW., Washington, DC, 20210. Phone number: 202–219–6209 x129. Fax: 202–219–8506. (These are not toll free numbers.) E–mail: amblerc@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 203, Characteristics of the Insured Unemployed, is a once a month snapshot of the demographic composition of the claimant population. It is based on those who file a claim in the week containing the 19th of the month which reflects unemployment during the week containing the 12th. This corresponds with the BLS total unemployment sample week. Aggregate data is collected on sex, race/ethnic group, age, industry, and occupation.

II. Current Actions

This report continues to be needed as it is the only source of demographic information on the insured unemployed. The revision being proposed will convert the industry classification to be reported from the current Standard Industry Classification (SIC) to the North American Industry Classification System (NAICS) and will convert occupation reporting from the current Dictionary of Occupational Titles (DOT) to the Standard Occupational Classification (SOC) system. The proposed revision will make this reporting conform to standards being adopted throughout government.

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension with change.

Agency: Employment and Training Administration.

Title: Characteristics of the Insured Unemployed.

OMB Number: 1205–0009.

Agency Number: ETA 203.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 203.

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 636.

Average Time per Response: .34.

Estimated Total Burden Hours: Continuing reporting is 212 hours per year. Adjusting computer programs once is estimated at 24 hours per state or 1,272 hours total.

Total Burden Cost (capital/startup): $31,800.

Total Burden Cost (operating/maintaining): $15,900.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 7, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–17779 Filed 7–12–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Independent Contractor Register

AGENCY: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Independent Contractor Register. MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the Addressee section of this notice.

DATES: Submit comments on or before September 13, 1999.

ADDRESSES: Send comments to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at TOMalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act. 30 CFR 45.4(b) requires the mine operator to maintain a written summary of information concerning each independent contractor present on the mine site. The information includes the trade name, business address, and telephone number; a brief description of the work to be performed; MSHA identification number, if any; and the contractor's address of record. This information is required to be provided for inspection and enforcement purposes by the mine operator to any MSHA inspector upon request.

II. Current Actions

The information obtained from the contractors is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Independent Contractor Register.

OMB Number: 1219–0040.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 45.4.

Total Respondents: 14,235.

Frequency: On occasion.

Total Responses: 92,527.

Average Time per Response: 0.1333 hours (8 minutes).

Estimated Total Burden Hours: 12,334.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $200,396.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 8, 1999.

Theresa M. O'Malley,

Chief, Records Management Branch.

[FR Doc. 99–17780 Filed 7–12–99; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–93]

Entela, Inc., Correction of Recognition

AGENCY: Occupational Safety and Health Administration, (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice corrects the expansion of recognition recently granted to Entela, Inc.

EFFECTIVE DATE: This correction becomes effective on July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, D.C. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) is correcting the expansion of recognition granted to Entela, Inc. (ENT), on March 9, 1999 (64 FR 11501). OSHA recognizes an organization as a Nationally Recognized Testing Laboratory (NRTL), and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7), and in Appendix A to this section. This correction notice falls outside the requirements of this section, and will be the only notice that OSHA will publish on this matter.

In the March 9 notice, OSHA expanded the recognition of ENT to include additional test standards. One of the test standards for which ENT requested recognition (see Exhibit 15) is UL 2161 Neon Transformers and Power Supplies. However, the NRTL Program staff excluded this test standard from ENT's expansion pending publication of the resolution of a comment, concerning this test standard, received on a notice for another NRTL (see 64 FR 33913, 6/24/99). If publication of the resolution has already occurred, OSHA would have recognized ENT for the standard in the March 9 notice.

The NRTL Program staff has recommended to the Assistant Secretary that OSHA correct the recognition of ENT to include the UL 2161 (Neon Transformers and Power Supplies) test standard. Based on the recommendation of the staff, the Assistant Secretary is hereby correcting the recognition of ENT to include this additional standard. All other terms and conditions of ENT's recognition as an NRTL remain the same.

Signed at Washington, D.C. this 29th day of June, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–17666 Filed 7–12–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collections: Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). These information collections were originally published on April 29, 1999. No comments were received.

DATES: Comments will be accepted until August 12, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collections of information:

OMB Number: 3133–0143.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 760 Loans in Areas Having Special Flood Hazards.

Description: Federally insured credit unions are required by statute and by

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proposed 12 CFR part 760 to file reports, make certain disclosures and keep records. Borrowers use this information to make valid purchase decisions. The NCUA uses the records to verify compliance.

Respondents: All federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 5,500.

Estimated Burden Hours Per Response: 7 minutes.

Frequency of Response: Recordkeeping and on occasion.

Estimated Total Annual Burden Hours: 101,333.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0121.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 701.14 Notice of Change of Officials and Senior Executive Officers.

Description: The regulation directs newly chartered and troubled credit unions to provide NCUA with 30 days notice before making a management change.

Respondents: Troubled and newly chartered credit unions.

Estimated No. of Respondents/ Recordkeepers: 534.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 1,068.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0108.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 748.2 Monitoring Bank Secrecy Act Compliance.

Description: The collection is needed to allow NCUA to determine whether credit unions have established a program reasonably designed to assure and monitor their compliance with currency recordkeeping and reporting requirements established by Federal statute and Department of the Treasury regulations.

Respondents: Federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 11,127.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden Hours: 33,477.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0068.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 701.31 Non Discrimination Policy.

Description: This regulation requires a federal credit union (FCU) to keep a copy of the property appraisal. It also requires that a FCU using geographical factors in evaluating real estate loan applications must disclose such facts on the appraisal and state for justification. This regulation insures compliance with the Fair Housing anti-redlining requirements.

Respondents: Federally credit unions.

Estimated No. of Respondents/ Recordkeepers: 4,000.

Estimated Burden Hours Per Response: 1 hours.

Frequency of Response: Recordkeeping on occasion.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0142.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 741.6(c) Requirements for Insurance.

Description: Credit Unions that submit late or inaccurate call reports are required to submit a proposal that describes how it will avoid another late or inaccurate report.

Respondents: Federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 630.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 1,260.

Estimated Total Annual Cost: $21,186.60.

By the National Credit Union Administration Board on July 7, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–17740 Filed 7–12–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL PARTNERSHIP FOR REINVENTING GOVERNMENT

Action Formation of a SafeCities Network: Performance Partnerships To Reduce Gun Violence

Authority Citation

Non-statutory.

Background

All of our citizens deserve to live in safe, violence-free communities. The SafeCities Network builds upon the local, state, and federal partnerships that have helped improve the safety of our communities. SafeCities connects and supports innovative communities across the country collaborating to enhance public safety. SafeCities also seeks to minimize administrative barriers to problem solving and help communities maximize currently available federal resources.

The initiative was recommended by the Crime Mapping and Data Driven Management Task Force, a joint task force of the Department of Justice and the National Partnership for Reinventing Government. It builds upon President Clinton's directive on Deterring and Reducing Gun Crime. It was formally announced by Vice President Gore on June 21, 1999 at the "Family Re-Union," an annual discussion of public policy from the perspective of families that he moderates in Nashville, Tennessee.

Announcement

The SafeCities Network announces the formation of performance partnerships between the federal government and community-based partnerships to reduce gun violence. This is our first step toward the creation of a national network of communities working together to enhance public safety for their citizens. The network will encourage communities to collaborate with each other and the federal partners to:

- Reduce gun violence;
- Promote prevention, early intervention, and enforcement;
- Address barriers at the federal, state, and local level—in ways allowable under current law—to increase the flexibility and effectiveness of resources;
- Obtain technical support and facilitate access to best practices employed in various communities; and
- Share lessons with other communities.

What Are the Benefits to Communities and Law Enforcement Agencies?

This initiative is not a grant program. In order to help communities reduce gun violence and promote public safety the SafeCities Network will:

- Connect communities and law enforcement agencies with peers working on similar issues;
- Support partners and share lessons learned via a SafeCities website;
- Give national recognition to innovative communities for their effective strategies and results;
- Link to the U.S. Attorney and ATF integrated firearms violence reduction strategy;

- Link to other federal initiatives such as the Youth Crime Gun Interdiction Initiative, Gang Resistance Education and Training Program, Weed and Seed program, Strategic Approaches to Community Safety Initiative, and Partnerships to Reduce Juvenile Gun Violence;
- Facilitate access to technical support and expertise through a federal champion;
- Support consolidated planning on the community level and provide greater flexibility in administering grant funds with related goals as allowed under current law;
- Provide assistance in assessing factors contributing to gun violence in each community and tailoring strategies and tactics to address them; and
- Help communities and local law enforcement agencies measure results and obtain expert advice in devising strategies for collecting, analyzing, and using data to achieve results.

Who Can Apply To Be a Local Partner?

Expressions of Interest can be submitted by the head of a community-based partnership, local government, network of local governments, state or local law enforcement agency, or network of state or local law enforcement agencies. Where state funds or agencies are involved or where federal funds flow through the state, there must be clear evidence of state partnership.

How Does My Community Express Interest in the SafeCities?

Potential partners should submit a brief Expression of Interest. To minimize any burden, submissions should be under ten pages in length. Communities are encouraged to use existing plans and documents wherever possible.

Selection Criteria

The National Steering Committee will select local partners based on:

- Existence of a partnership with a comprehensive plan to reduce gun violence using a balance of prevention, intervention, and enforcement strategies;
- Existence of explicit community goals or report card for public safety and a demonstrated commitment by the partners to use data to plan, implement, and evaluate strategies to reduce gun violence;
- Effective leadership and participation of key stakeholders such as federal, state, and local law enforcement officials, education officials, faith community representatives, business leaders, or other key community members;
- Readiness and commitment of partners to work together, cut red tape, coordinate operations, use current funding more effectively, and achieve better results;
- Potential impact of proposed performance partnership on the reduction of gun violence and time frame provided in the Expression of Interest; and
- Balance in terms of geography, demographic characteristics, and areas of focus.

National Partners

The SafeCities Network will be supported by a Steering Committee that will include the Office of Community Oriented Policing Services and the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice, The Department of the Treasury, the Bureau of Alcohol, Tobacco and Firearms, the National Partnership for Reinventing Government, the White House Office of Management and Budget, and private sector partners.

Expressions of Interest

Expressions of Interest in partnerships must be received by close of business on August 15, 1999. They may be submitted by mail, fax or electronically to: SafeCities, National Partnership for Reinventing Government, Suite 200, 750 17th Street NW, Washington, DC 20007, Fax: (202) 632–0390, SafeCities @npr.gov

More Information

For questions or additional information, please call:

Jeff Slowikowski, Office of Juvenile Justice and Delinquency Prevention, (202) 307–5929

Malcolm Brady, Bureau of Alcohol, Tobacco and Firearms, (202) 927–7890

Pamela Johnson/Wesley Dickerson, National Partnership for Reinventing Government, (202) 694–0001

Pamela Johnson,

Deputy Director.

[FR Doc. 99–17811 Filed 7–12–99; 8:45 am]

BILLING CODE 3115–01–M

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–160]

Georgia Institute of Technology, Georgia Tech Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a license amendment to Facility Operating License No. R–97, issued to the Georgia Institute of Technology (the licensee) that would allow decommissioning of the Georgia Tech Research Reactor (GTRR) located in Atlanta, Georgia.

Environmental Assessment

Identification of the Proposed Action

The GTRR is on the 330-acre campus of the Georgia Institute of Technology. The campus is just north of the center of downtown Atlanta in a residential and commercial area. The GTRR is in a containment building at the Neely Nuclear Research Center. The Neely Nuclear Research Center also has a high bay area, and a laboratory and office building.

The high bay area contains a hot cell facility, radio-chemistry laboratory, decontamination room and storage facility. The three-story laboratory and office building adjoins the containment building. The GTRR is designed for isolation from the rest of the Neely Nuclear Research Facility.

The heavy water moderated, cooled and reflected GTRR was licensed and first operated in 1964. The 5-megawatt thermal reactor was shut down on November 17, 1995. This shutdown was in preparation to remove the high-enriched uranium fuel. All fuel was removed by the end of February 1996, to allow conversion to low-enriched uranium fuel. Also, the reactor was defueled during the Olympic Games which were held in Atlanta, in the summer of 1996. Since that time no new GTRR fuel has been received. By letter dated July 1, 1997, the Georgia Institute of Technology informed the NRC that the GTRR would be permanently shut down. The licensee applied for a possession only status on August 7, 1997. By License Amendment No. 12 on April 2, 1998, the NRC removed the authority to operate and authorized possession of the residual radioactive materials.

The licensee submitted a decommissioning plan in accordance with 10 CFR 50.82(b) on July 1, 1998, as supplemented on February 8, 1999. Decommissioning, as described in the

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plan, will consist of transferring licensed radioactive equipment and material from the site, and decontamination of the facility to meet unrestricted release criteria (this is called the DECON option). After the Commission verifies that the release criteria have been met, the reactor license will be terminated.

A "Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission Georgia Institute of Technology Georgia Tech Research Reactor" was published in the **Federal Register** on February 1, 1999, (64 FR 4902). It was also published in the Atlanta Journal-Constitution on February 14, 1999, and in the Georgia Technique on February 12, 1999. Comments were received from an individual and from the Georgians Against Nuclear Energy. The NRC staff plans to consider and respond to these comments.

Further, 10 CFR 51.53(d) provides that each applicant for a license amendment to authorize decommissioning of a production or utilization facility shall submit an environmental report that reflects any new information or significant environmental change associated with the proposed decommissioning activities. By letter dated May 28, 1999, the Georgia Institute of Technology provided their environmental report.

Need for the Proposed Action

The proposed action is necessary because of Georgia Institute of Technology's 1997 decision to cease operations permanently. As specified in 10 CFR 50.82, any licensee may apply to the NRC for authority to surrender a license voluntarily and to decommission the affected facility. The Georgia Institute of Technology is planning to use the area for other purposes once it is released for unrestricted use.

Environmental Impact of the Proposed Action

The Commission has completed the environmental assessment of the proposed action and concludes that the associated radiological effects of the decommissioning will be acceptable. As noted in section 3.1.5 of the Decommissioning Plan submitted on July 1, 1998, the collective total effective dose equivalent to all onsite workers for the entire decommissioning program is estimated to be 7.74 person-rem. The licensee established controls to ensure occupational exposure remains below NRC regulatory limits for decommissioning personnel. No estimated exposure to the public from the proposed action was provided, but the licensee established that decommissioning activities will not exceed 10 CFR 20.1301, "Dose Limits for Individual Members of the Public," and established an As Low As Reasonably Achievable (ALARA) program to minimize exposure. Further, the only potential radiological accident scenarios involve contaminations that could occur during decontamination and decommissioning activities. These scenarios would not result in release of radioactive material outside the facility nor in occupational exposures greater than 10 CFR part 20 limits.

Occupational and public exposure may result from offsite disposal of the low-level residual radioactive material from the GTRR. The handling, storage, and shipment of this radioactive material are specified to meet the requirements of 10 CFR 20.2006, "Transfer for Disposal and Manifest," 49 CFR parts 100–177, "Transportation of Hazardous Materials," 10 CFR part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," 40 CFR part 261 "Identification and Listing of Hazardous Waste," and applicable disposal site license conditions. Experience with such disposal has shown that occupational and public exposure associated with such disposal is minimal.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the GTRR, the Commission has determined that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, no significant radiological environmental impacts are associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, no significant non-radiological environmental impacts are associated with the proposed action.

Accordingly, the Commission concludes that no significant environmental impacts are associated with the proposed action.

Alternatives to the Proposed Action

The three alternatives to the proposed action for the GTRR are SAFSTOR, ENTOMB, and no action. SAFSTOR is the alternative in which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use. ENTOMB is the alternative in which radioactive contaminants are encased in a structurally long-lived material, such as concrete, the entombed structure is appropriately maintained and continued surveillance is carried out until the radioactivity decays to a level permitting release of the property for unrestricted use. The no action alternative would leave the facility in its present configuration. However, the regulations in 10 CFR 50.82(b) only allow a limited time for this condition to exist.

The radiological impacts of SAFSTOR would be less because of radioactive decay prior to DECON. The ENTOMB option would result in lower radiological exposure but continued use of resources. Georgia Institute of Technology has determined that the proposed action (DECON) is the most efficient use of the existing facility, since it wants to use the space that will become available for other academic purposes. The SAFSTOR, ENTOMB and no action alternatives would entail continued surveillance and physical security measures to be in place and continued monitoring by licensee personnel.

Alternative Use of Resources

The action does not involve the use of resources different from those previously committed for construction and operation of the GTRR.

Agencies and Persons Contacted

In accordance with its stated policy, the NRC staff consulted with the State of Georgia. In response to the NRC's notice and solicitations for comments on the GTRR decommissioning, Thomas E. Hill, Manager of the Radioactive Materials Program for the Georgia Department of Natural Resources wrote, in part, that "[w]e fully support Georgia Tech's goal of decommissioning the facility to provide for license terminations and release of the facility for unrestricted use."

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 1, 1998, as supplemented by letter dated February 8, and May 28, 1999, which are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd day of July, 1999.

For the Nuclear Regulatory Commission

Ledyard B. Marsh,

Chief Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17747 Filed 7–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System, Washington Public Power Supply System, Nuclear Project No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to the Washington Public Power Supply System (the licensee), for operation of the WPPSS Nuclear Project No.2 (WNP–2), located in Benton County, Washington.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Facility Operating License No. NPF–21 to reflect the change in the licensee's name from the Washington Public Power Supply System to Energy Northwest. In addition, the facility, WPPSS Nuclear Project No. 2, will now be referred to as WNP–2.

The proposed action is in accordance with the licensee's application for amendment dated June 3, 1999.

The Need for the Proposed Action

The proposed action is required to change the operating license to accurately reflect the new name of the licensee.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes, that the name change is administrative in nature and will not affect the operation of WNP–2.

The proposed amendment will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Washington Public Power System Nuclear Project No.2 dated December 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on June 16, 1999, the staff consulted with the Washington State official, Mr. Crowley of the Department of Health, State of Washington Energy Facility Site Evaluation Council, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 3, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 6th day of July 1999.

For the Nuclear Regulatory Commission.

Jack Cushing,

Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17746 Filed 7–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on Redefining the Role of the Division of Licensing Project Management in the Office of Nuclear Reactor Regulation

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: The NRC is sponsoring a workshop involving the Division of Licensing Project Management in the Office of Nuclear Reactor Regulation, licensing officials representing the nuclear industry, and other stakeholders external to the NRC. The purpose of the meeting is to provide a forum for constructive dialogue on the agency's efforts to redefine the responsibilities of the Division of Licensing Project Management. This meeting is open to the public and all interested parties may attend.

Discussion

The Division of Licensing Project Management (DLPM), in the Office of Nuclear Reactor Regulation (NRR), is in the process of redefining its responsibilities. Previous audits and reviews had indicated that the function of project managers needed to be reevaluated, clearly defined, and communicated. In addition, the staff is attempting to correlate the functions of DLPM with the four strategic objectives of maintaining safety, reducing unnecessary regulatory burden, increasing pubic confidence, and increasing efficiency and effectiveness. DLPM management has determined that the project managers have responsibility for the following three major program areas: (1) Licensing authority, (2) interactions, and (3) regulatory improvements. Within each area are several specific tasks and goals regarding timeliness, effectiveness, and quality. A summary of each program area is given below. DLPM is sharing

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these proposed responsibilities with external stakeholders to solicit feedback so that the responsibilities can be further refined. The purpose of this workshop is for the staff to gain insights into the stakeholders views on the functions of the projects organization. Specific questions that the staff is requesting feedback on are listed at the end of this discussion.

Program Areas

Licensing Authority

Licensing Authority is the core program area for DLPM. The project manager (PM) is expected to be the single most knowledgeable member of the staff regarding the licensing agenda for a given facility. The PM is also expected to be the most informed member of the staff in matters pertaining to a facility's licensing basis and any activities undertaken to modify or change the licensing basis. The wide range of issues involving the licensing basis of power reactors require each PM to have a technical background in terms of understanding overall plant design and operating practices as well as a thorough understanding of NRC rules, processes, and licensing requirements. The PMs are therefore expected to be "generalists" in that they must have the ability to work on a diverse number of assignments, which may or may not be interrelated. This is especially relevant when DLPM assesses its contribution and mission in support of office level goals, noting that specific technical expertise resides in other NRR divisions. Having an adequate number of generalists results in routine efficiency gains as well as providing flexibility for and improving the responsiveness of the overall organization. The DLPM example can be readily compared to the regional projects organizations in which residents are viewed as generalists and technical specialists from the regional office or NRR are called upon, as necessary, to address specific issues or inspection needs.

Activities covered in this program area include all DLPM tasks associated with carrying out the regulatory requirements contained in Title 10 of the *Code of Federal Regulations*, Part 50 (10 CFR Part 50) with regard to specific plant activities. These tasks include (1) licensing actions that require prior NRC approval before licensees may proceed with an activity, (2) review of licensing basis documents controlled and submitted to the NRC in accordance with specific regulations or licensee administrative controls, (3) management of NRC processes associated with these activities, and (4) other licensing tasks required by regulation or established NRC procedures.

DLPM activities associated with completing licensing actions comprise the majority of the division's efforts in this program area. Evaluating and responding to licensee requests for amendments to their licenses, requests for reliefs from or alternatives to the requirements specified in the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, and requests for exemptions from NRC regulations are examples of licensing action tasks. The tasks included in the mandated controls category include DLPM's reviews of Updated Final Safety Analysis Reports submitted in accordance with 10 CFR 50.71, descriptions of changes, tests and experiments submitted in accordance with 10 CFR 50.59, updates to the, Quality Assurance, Security, and Emergency plans submitted in accordance with 10 CFR 50.54, and regulatory commitments not addressed by specific NRC regulations.

Other licensing tasks include those items associated with NRR's role as the licensing authority for power reactors but not addressed by the aforementioned categories. DLPM tasks in this area include evaluating information received from licensees in response to requests for information (e.g., generic letters and bulletins), responding to petitions from parties requesting NRC actions pursuant to 10 CFR 2.206, and responding to requests for assistance from other NRC organizations made via the Task Interface Agreement (TIA) procedure.

Operating Reactor Licensing Assistants provide a comprehensive review and quality assurance of licensing correspondence. These reviews ensure licensing products comply with management directives, office letters, and rules in addition to improving uniformity and consistency of effort for all licensees.

The Agency and NRR benefit from having a designated point of contact for all licensing issues associated with each power reactor facility. The project management staff can assess a licensee's performance in the licensing area, evaluate licensees' efforts to make improvements in licensing submittals, and help evaluate key licensee activities that may or may not have a direct bearing on the licensing agenda for the plant. Specifically, requiring the PMs to maintain a sound awareness of the 50.59 process and to participate in NRC's evaluation of each licensee's program for determining which changes require NRC review and approval has a clear nexus in this program area.

In assessing products and evaluating outcomes for this area, the staff has identified products primarily in the licensing action and activity categories. These products are scrutinized by a myriad of stakeholders. NRR products continue to be closely analyzed and evaluated by the industry, individual licensees, and other stakeholders, including public interest groups. Issues of paramount concern associated with these products include assuring high quality, uniformity, consistency, and timeliness. Thus, high importance is placed in assuring all products being issued by the staff can withstand close scrutiny, and are predictable and repeatable. To this end flows the conclusion that the program area of licensing authority receives high marks when weighed against the four pillars. Specifically, licensing actions have a direct bearing on maintaining and assuring safety while also reducing unnecessary regulatory burdens. The ability to process documents in a timely manner, relying on precedents and the broad-based knowledge of plant-specific project managers, is key to ensuring effective and efficient work force outputs and the associated outcomes from this program area. Enhanced public confidence is derived from the quality of NRR products that are technically sound and defensible, completed on schedule, and well communicated to all stakeholders.

Interfaces

The DLPM interface program area covers DLPM tasks involving interactions with NRC internal and external stakeholders. These DLPM interactions include the NRC regional offices, other NRR divisions, other offices at NRC Headquarters, power reactor licensees, owners groups and other industry organizations, government organizations (local, State, and Federal), and the public. From the perspective of DLPM, the interfaces are either integral to its core activity (serving as the licensing authority for power reactor facilities), directly support the licensing authority role by providing its staff with an awareness of plant issues, or result from the project managers serving as a convenient point of contact at NRC Headquarters for plant-specific information. The interface program area presents some challenges in terms of measuring performance because many of the activities do not involve a deliverable product. Feedback from stakeholders as a measure of performance may result in some

changes in or additions to NRC processes.

Project Managers in DLPM routinely interact with their counterparts in the regional offices and with inspectors at reactor sites. A common interface with regional personnel is in the form of participation by the PM in routine status calls between the resident inspectors and the projects organization in the regional office. The PMs' participation in these calls allows DLPM to maintain an awareness of plant status, operating issues, inspection issues, and significant activities being conducted or planned by licensees. This information is used to ensure that ongoing issues are considered in the management of a plant's licensing agenda and that the NRC's inspection/assessment activities can properly account for licensing activities. The project managers also maintain an awareness of, and occasionally offer insights into, licensee performance issues through routine interactions, participation in assessment processes, and reviews of various reports.

Project Managers in DLPM act as the primary interface between NRR and licensees. The primary function of the routine interactions between DLPM and licensees is to ensure that the licensing processes are working effectively. Licensees and project managers discuss plant issues, technical positions, process or procedural matters, generic activities, future licensing submittals, and the appropriate prioritization of licensing reviews. In addition to interacting with specific licensees, DLPM has recently assumed project management and interface responsibilities for licensing activities sponsored by owners groups or other collective groups of licensees (other than the Nuclear Energy Institute).

DLPM serves as the primary interface between NRC Headquarters organizations and licensees or regional offices in matters pertaining to specific power reactor facilities. The need to communicate frequently with the regional offices and the licensees as part of their core activities enables personnel within DLPM to respond to many inquiries. This limits the numbers and types of requests for information to both the regional offices and licensees from the various organizations at NRC Headquarters. DLPM also supports other Headquarters' organizations in terms of answering questions about and coordinating activities with the licensing programs. The NRC's incident response program also calls upon the DLPM staff for support due to their knowledge of plant design features and licensing basis.

Given its licensing authority responsibility and other interface functions, DLPM is often called upon to support the NRC's interactions with the public and other external stakeholders. These activities include responding to public inquiries and supporting the NRC's allegation process. DLPM will participate in the redesign of and long-term maintenance of NRC Internet web pages that provide plant-specific information to the public.

Regulatory Improvements

The regulatory improvements program area includes tasks and activities undertaken by DLPM either at the request of licensees or in response to problems identified by NRC staff. By interacting with licensees and owners' groups in various forums, DLPM has an opportunity to address those issues that result in inefficient or ineffective use of resources and unnecessary regulatory burden. A logical role for DLPM in improving regulatory processes is drawn from the routine responsibilities that DLPM has in the licensing authority program area and the associated knowledge and skills of the DLPM staff. In general, the changes in procedures, policy, and guidance documents are undertaken to simplify existing processes associated with licensing actions and other licensing tasks. As licensee and NRC resources become more scarce, these efforts will become even more important.

The Licensing Action Task Force is currently addressing issues or processes identified by industry and the NRC staff as potential areas of improvement. The improvements being pursued include changing the request for additional information (RAI) process, developing a mechanism to address minor discrepancies in the wording of requirements in the technical specifications, refining the process for issuing changes to technical specification bases sections, enhancing the process for the staff's handling of generic or repetitive licensing actions, refining the guidance for the staff's preparation of safety evaluations, and addressing miscellaneous policy issues such as limiting the use of TIAs to address generic issues. Interactions with owners' groups are invaluable in sharing technical and process information. DLPM interactions with owners' groups and management of generic topical reports facilitates improving the working relationships between licensees and NRC, resulting in a more effective and efficient regulatory process. It is expected that industry groups will play an increasing role in resolving safety concerns by undertaking voluntary initiatives in lieu of responding to generic communications issued by the NRC. NRC resource expenditures will be reduced due to efficiency gains resulting from these interactions. Additionally, public confidence may be enhanced by the increased consistency that comes from resolving issues generically.

Licensing workshops offer a unique and invaluable way for licensees and DLPM to interact on a working level. A goal of the workshops is to improve licensing submittals and associated NRC reviews. Licensees and DLPM staff share experiences and knowledge of their own processes to improve the licensee-NRC regulatory interface. DLPM prepares revisions to existing policies, rules, and guidance documents including office letters (or provides assistance to those with the lead for these activities). DLPM's experience with the licensee-NRC interface can provide valuable insights when process changes or rules are being developed.

Questions

During the course of the July 23, 1999, public workshop, the staff would appreciate feedback from participants on the following questions. This information will be most useful as the staff proceeds with the process to define the role of the NRR/Projects licensing organization for the future.

When providing feedback on the importance of activities, it would be helpful to the staff if comments from the public could be related to the outcome goals that are used by the staff. These outcome goals are: maintaining reactor safety; reducing unnecessary regulatory burden on licensees; increasing public confidence; and increasing NRC internal efficiency and effectiveness.

1. What do you believe should be the principle role of the Projects organization?

2. Given the proposed descriptions of activities encompassed by the licensing authority, interfaces, and regulatory improvements program areas, what five activities do you consider most important for the Projects organization to perform?

3. Why do you consider the five activities identified in response to Question 2 important with respect to the staff outcome goals? If you consider these activities important for a reason not related to the staff outcome goals, what is the reason these activities are important to you?

4. Are there any activities not identified in the licensing authority, interfaces, and regulatory improvements program areas that you consider the Projects organization should perform?

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5. Why do you consider the activities identified in response to Question 4 important with respect to the staff outcome goals? If you consider these activities important for a reason not related to the staff outcome goals, what is the reason these activities are important to you?

6. What types of performance indicators would be useful for the staff to employ to objectively determine its effectiveness in performing licensing activities?

7. What five activities contained in the proposed descriptions of activities encompassed by the licensing authority, interfaces, and regulatory improvements program areas do you consider least important for the Projects organization to perform?

8. Why do you consider the activities identified in response to Question 7 of less importance with respect to the staff outcome goals?

9. Identify any activities in the proposed descriptions for the licensing authority, interfaces, and regulatory improvements program areas that the Projects organization should not perform, and provide an explanation why.

10. As a customer of the licensing organization's output, the staff welcomes any additional input that you feel would be germane to the process of redefining the role of the Projects organization.

DATES: July 23, 1999, from 9 a.m. to 4 p.m.

LOCATION: Auditorium—Two While Flint North, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Marsha Gamberoni, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Mail Stop O 13 E4, Rockville, Maryland; Telephone 301–415–3024; Internet: mkg@nrc.gov.

ADDITIONAL INFORMATION: For members of the public who are unable to attend the public workshop, the staff would welcome written comments by July 30, 1999. Comments should be sent to: Marsha Gamberoni, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Mail Stop O 13 E4, Rockville, Maryland 20852–2738.

Dated at Rockville, Maryland, this 7th day of July 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17748 Filed 7–12–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Facility Tours

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission visits.

SUMMARY: The Commission has scheduled several visits to learn about mailing logistics, technology and trends and to observe operations.

DATES: July 19, 1999 through July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: The Commission has scheduled the following visits: July 19, 1999—Emery Worldwide's Bethpage Priority Mail processing plant tour (Hicksville, NY); July 20, 1999—meeting with Time Warner, Inc. executives and printing facility tour; July 21, 1999—Pitney Bowes facility tours (Shelton and Stamford, CT) and briefing on new technologies.

Dated: July 8, 1999.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 99–17810 Filed 7–12–99; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23891; File No. 812–11678]

Anchor National Life Insurance Company, et al.

July 7, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) and Section 17(b) of the Investment Company Act of 1940 ("1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order of the Commission amending a prior order granted June 9, 1999 (Release No. IC–23868, File No. 812–11450) (the "June 9 Order"), to add Phoenix Home Life Mutual Insurance Company ("Phoenix") and the Phoenix Home Life Variable Universal Life Account ("Phoenix VUL Account", together with Phoenix, the "New Applicants") to the relief granted by the June 9 Order, with respect to certain variable universal life insurance contracts issued by Phoenix through the Phoenix VUL Account. The June 9 Order approved the substitution of: (a) Shares of the Government and Quality Bond Portfolio of the Anchor Series Trust (the "Trust") for shares of the Fixed Income Portfolio of the Trust; and (b) shares of the Strategic Multi-Asset Portfolio of the Trust for shares of the Foreign Securities Portfolio of the Trust, each in connection with the variable annuity contracts offered by the original Variable Account Applicants, as defined below. Together, the Fixed Income Portfolio of the Trust and the Foreign Securities Portfolio of the Trust are referred to as the "Replaced Portfolios"; together, the Government and Quality Bond Portfolio of the Trust and the Strategic Multi-Asset Portfolio of the Trust are referred to as the "Substituted Portfolios".

APPLICANTS: Anchor National Life Insurance Company ("Anchor National"), Variable Annuity Account One of Anchor National ("AN Account"), First SunAmerica Life Insurance Company ("First SunAmerica"), Variable Annuity Account One of First SunAmerica ("FS Account"), Presidential Life Insurance Company ("Presidential"), Presidential Variable Account One ("Presidential Account"), Phoenix, Phoenix VUL Account, and the Trust (applying for relief from Section 17(a) of the 1940 Act only). Together, Anchor National, First SunAmerica, Presidential, and Phoenix are referred to as "Life Company Applicants"; together, AN Account, FS Account, Presidential Account, and Phoenix VUL Account are referred to as "Variable Account Applicants".

FILING DATE: The application was filed on July 1, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on July 28, 1999, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: Anchor National, AN Account, First SunAmerica, FS Account, and Trust c/o Robert M. Zakem, Esq., SunAmerica Asset Management Corporation, The SunAmerica Center, 733 Third Avenue, New York, New York 10017–3204; Applicant Presidential and Presidential Account, c/o Charles Snyder, Presidential Life Insurance Company, 69 Lydecker Street, Nyack, New York 10960; and Applicants Phoenix and Phoenix VUL Account, c/o Edwin Kerr, Esq., Phoenix Home Life Mutual Insurance Company, 1 American Row, 11th Floor, Hartford, Connecticut 06102.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 [tel. (202) 942–8090].

Applicants' Representations

1. Anchor National is a stock life insurance company organized under the insurance laws of the state of California in April 1965. Anchor National redomesticated under the laws of the state of Arizona on January 1, 1996. Anchor National is an indirect wholly-owned subsidiary of American International Group, Inc. ("AIG"). Anchor National is authorized to write annuities and life insurance in the District of Columbia and all states except New York.

2. First SunAmerica is a stock life insurance company organized under the insurance laws of the state of New York on December 5, 1978. First SunAmerica is a wholly-owned subsidiary of AIG. First SunAmerica is authorized to write annuities and life insurance business in the states of New York, New Mexico, and Nebraska.

3. Presidential is a stock life insurance company organized under the laws of the state of New York in 1965. Presidential is a wholly-owned subsidiary of Presidential Life Corporation, a publicly-owned holding company. Presidential offers life insurance and annuities and is admitted to do business in forty-eight states and the District of Columbia.

4. Phoenix is a mutual life insurance company originally chartered in Connecticut in 1851 and redomiciled to New York in 1992. Phoenix is authorized under state law to sell annuities and life insurance.

5. The Variable Account Applicants are segregated investment accounts registered under the 1940 Act as unit investment trusts. Each Variable Account Applicant is further divided into divisions that correspond to the portfolios of the Trust. The AN Account, FS Account, and Presidential Account are used to fund certain variable annuity contracts issued by the corresponding Life Company Applicant. The Phoenix VUL Account is used to fund certain variable universal life insurance policies issued by Phoenix.

6. The Trust is a series type investment company, organized as a Massachusetts business trust on August 26, 1983 (each series of which is referred to individually as a "Portfolio" and collectively as the "Portfolios"). The Trust consists of eleven Portfolios, each of which operates as a separate investment fund, that have differing investment objectives, policies, and sub-advisers. Shares of the Portfolios are currently available to the public only through the purchase of certain variable annuity contracts and variable life insurance policies issued by the Life Company Applicants. Sun America Asset Management Company ("SAAMCo") acts as the Trust's investment adviser. SAAMCo is under common control with and therefore affiliated with Anchor National and First SunAmerica. SAAMCo is unaffiliated with Presidential and Phoenix. SAAMCo has retained an unaffiliated investment adviser to act as sub-adviser for all Portfolios of the Trust.

7. The Life Companies have decided to discontinue offering sub-accounts investing in the Replaced Portfolios as investment options under the Contracts and substitute shares of the Substituted Portfolios, because the Replaced Portfolios have not retained sufficient Contract owner interest. As a result, the Replaced Portfolios are dwindling in size. The Life Company Applicants believe that it no longer is economic to continue to offer the corresponding investment options under the Contracts. Moreover, the small size of the Replaced Portfolios makes it difficult to manage the assets to maximize performance.

8. The Life Companies have determined that the Substitute Portfolios are appropriate replacements for the Replaced Portfolios, because (a) The Government and Quality Bond Portfolio (Substituted Portfolio) has a similar investment objective to the Fixed Income Portfolio (Replaced Portfolio), invests in the same types of securities, i.e., fixed income securities, and has generally better performance and lower expenses; and (b) the Strategic Multi-Asset Portfolio (Substituted Portfolio) has a similar investment objective to the Foreign Securities Portfolio (Replaced Portfolio), generally invests a significant portion of its assets in foreign securities, has generally better performance, and has a similar expense ratio, which may decline as a result of the additional assets resulting from the Substitutions.

9. On June 9, 1999, the Commission issued the June 9 Order, authorizing Anchor National, First SunAmerica, Presidential, and their respective relevant separate accounts (together with the Trust, the "Original Applicants"), pursuant to Section 26(b) of the 1940 Act, to substitute (a) shares of the Government and Quality Bond Portfolio of the Trust for shares of the Fixed Income Portfolio of the Trust; and (b) shares of the Strategic Multi-Asset Portfolio of the Trust for the shares of the Foreign Securities Portfolio of the Trust. The Order also granted relief from Section 17(a) of the 1940 Act to the extent necessary to permit certain in-kind transactions in connection with the substitutions and to permit divisions of the separate accounts of Original Applicants holding the same securities to be combined.

10. Until recently, the Original Applicants mistakenly believed that the June 9 Order covered all of the separate accounts invested in the Replaced Portfolios, and all affected contract holders. In preparing to effect the Substitution, however, the Trust discovered that an additional separate account, the Phoenix VUL Account, owned shares of the Replaced Portfolios. Approximately 75 of Phoenix's contract owners have invested a portion of their contract value in the Replaced Portfolios.

11. The New Applicants would like the relief granted by the June 9 Order to cover Phoenix and the Phoenix VUL Account, so that Phoenix's affected contact holders will have the benefit of the relief granted by the June 9 Order. The New Applicants represent that the Substitution involving the Phoenix VUL Account will be effected on the same basis as the Substitution involving the other Variable Account Applicants and that in effectuating the Substitution Phoenix will follow the procedures described in the original notice of application, dated May 14, 1999 (Release No. IC–23842) except that: (a) Phoenix initially will provide its affected contract holders with notice of the Substitution in a cover letter substantially in the form attached to the application, accompanied by a copy of the current prospectus for the Trust, which contains a description of the Substitution; and (b) Phoenix will not limit the free transfer period after the Substitution to 31 days, because under

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the affected Phoenix variable life contracts the affected contract holders generally may transfer all assets, as substituted, to any other division of the Phoenix VUL Account available under their contracts without limitation or charge.

12. The New Applicants have considered the Substitution, and they believe that the Substitution is in the best interests of Phoenix's contract holders and that the Substituted Portfolios are appropriate replacements for the Replaced Portfolios.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is both to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company. Certain of the Substitutions will be effected partly or wholly in-kind. Moreover, after the Substitutions Phoenix will combine its divisions invested in the Replaced Portfolios with the divisions invested in the corresponding Substituted Portfolios. The combination may be deemed to involve the indirect purchase of shares of the Substituted Portfolios with portfolio securities of the corresponding Replaced Portfolios, and the indirect sale of securities of the Replaced Portfolios for shares of the Substituted Portfolios. Thus, each Portfolio would be acting as principal, in the purchase and sale of securities to the other Portfolio, in contravention of Section 17(a). The Commission has taken the interpretive position that divisions of a registered separate account are to be treated as separate investment companies in connection with substitution transactions. Phoenix could be said to be transferring unit values between their divisions. The transfer of unit values could be said to involve purchase and sale transactions between divisions that are affiliated persons. The sale and purchase transactions between divisions, could be said to come within the scope of Section 17(a)(1) and 17(a)(2) of the 1940 Act, respectively. Therefore, the combination of divisions may require an exemption from Section 17(a) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act.

3. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) upon application if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicants represent that the terms of the proposed transactions, as described in the application, are: reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of each investment company concerned; and are consistent with the general purposes of the 1940 Act.

4. In granting the June 9 Order, the Commission previously found that the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that the terms of the proposed transactions are reasonable and fair and do not involve overreaching, the transactions are consistent with the policy of each investment company concerned and with the purposes of the 1940 Act, and the exemption requested is necessary or appropriate in the public interest. Applicants submit that the same findings apply to the Substitutions involving variable universal life insurance contracts issued by Phoenix through the Phoenix VUL Account, and that accordingly, the proposed amendment to the June 9 Order adding the New Applicants as parties meets the applicable legal requirements.

Conclusions

Applicants submit that, for the reasons summarized above, their requests meet the standards set out in Sections 17(b) and 26(b) of the 1940 Act. Accordingly, Applicants request an order, pursuant to Sections 17(b) and 26(b) of the 1940 Act, amending the June 9 Order to include Phoenix and the Phoenix VUL Account as parties and approving the Substitutions by them.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17753 Filed 7–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23897; 812–11612]

Evergreen Equity Trust, et al.; Notice of Application

July 8, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of registered open-end management investment companies to acquire all of the assets and assume all of the liabilities of certain other series of the investment companies. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Evergreen Equity Trust (the "Equity Trust"), Evergreen Fixed Income Trust (the "Fixed Income Trust"), Evergreen Municipal Trust (the "Municipal Trust"), Evergreen Select Equity Trust (the "Select Equity Trust") (collectively, the "Trusts"), and First Union National Bank ("FUNB").

FILING DATES: The application was filed on May 17, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 28, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, One First Union Center, Charlotte, NC 28288.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trusts, each a Delaware business trust, are registered under the Act as open-end management investment companies. Equity Trust has twenty series. Four of these series, the Evergreen Fund, Evergreen Micro Cap Fund, Evergreen Income and Growth Fund, and Evergreen American Retirement Fund are involved in the proposed transactions. Fixed Income Trust has eight series, two of which, Evergreen U.S. Government Fund and Evergreen Intermediate Term Government Securities Fund, are involved in the proposed transactions. Municipal Trust has seventeen series. Three of these series. Evergreen High Grade Municipal Bond Fund, Evergreen California Municipal Bond Fund, and Evergreen New York Municipal Bond Fund are involved in the proposed transactions. Select Equity Trust has thirteen series, two of which, Evergreen Select Core Equity Fund and Evergreen Select Equity Income Fund, are involved in the proposed transactions.

2. Evergreen Fund, Evergreen Income and Growth Fund, Evergreen U.S. Government Fund, Evergreen High Grade Municipal Bond Fund, and Evergreen Select Core Equity Fund are the "Acquiring Series." Evergreen Micro Cap Fund, Evergreen American Retirement Fund, Evergreen Intermediate Term Government Securities Fund, Evergreen California Municipal Bond Fund, Evergreen New York Municipal Bond Fund, and Evergreen Select Equity Income Fund are the "Acquired Series." Collectively, the Acquiring Series and the Acquired Series are referred to as the "Series." [1]

3. FUNB is a national banking association and a banking subsidiary of First Union Corporation, a publicly-held bank holding company. Evergreen Investment Management ("EIM"), a division of FUNB, is the investment adviser to the Evergreen High Grade Municipal Bond Fund, Evergreen U.S. Government Fund, and Evergreen Intermediate Term Government Securities Fund. First Investment Advisors ("FIA"), another division of FUNB, is the investment adviser to Evergreen Select Core Equity Fund and Evergreen Select Equity Income Fund. Evergreen Asset Management Corp. ("EAMC"), an indirect wholly-owned subsidiary of FUNB, is the investment adviser to the Evergreen Income and Growth Fund, Evergreen American Retirement Fund, Evergreen Fund and Evergreen Micro Cap Fund. Evergreen Investment Management Company ("EIMC"), an indirect wholly-owned subsidiary of FUNB, is the investment adviser to the Evergreen California Municipal Bond Fund and the Evergreen New York Municipal Bond Fund. EIM and FIA, as divisions of FUNB, are not required to register as investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act"). EAMC and EIMC are registered under the Advisers Act.

4. FUNB, as fiduciary for its customers, owns of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series. In addition, FUNB, as fiduciary for its customers, owns of record more than 5% (and in one case, more than 25%) of the outstanding voting securities of certain of the Acquiring Series.[2] All such shares are held by FUNB in a fiduciary capacity, and FUNB does not have an economic interest in any such shares.

5. On March 12, 1999 (May 14, 1999 in the case of Select Equity Trust), the boards of trustees of the Trusts (the "Boards"), including a majority of the trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act (the "Independent Trustees"), approved plans of reorganization (the "Plans"). Under the Plans, on the closing date (the "Closing Date"), which is currently anticipated to be July 30, 1999, the Acquiring Series will acquire all the assets and stated liabilities of the corresponding Acquired Series in exchange for shares of the Acquiring Series that have an aggregate net asset value ("NAV") equal to the aggregate NAV of the Acquired Series at 4:00 p.m. EST on the day before the Closing Date ("Valuation Date"). On or as soon as is reasonably practicable after the Closing Date, each Acquired Series will distribute full and fractional shares of the Acquiring Series pro rata to shareholders of record of the Acquired Series, determined as of the close of business on the Valuation Date (the "Reorganizations"). After the distribution of the share of the Acquiring Series and the winding up of their affairs, the Acquired Series will be liquidated.

6. Applicants state that the investment objectives of each Acquired Series and its corresponding Acquiring Series are similar. The investment restrictions and limitations of each Acquired Series and corresponding Acquired Series are substantially similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Funds. The Acquired Series offer four classes of shares, Class A, Class B, Class C, and Class Y which are identical to the respective classes of the Acquiring Funds.[3] Shareholders of

[1] The Acquired Series and the Acquiring Series correspond with one another as follows: Equity Trust's Evergreen Micro Cap Fund with Evergreen Fund; Equity Trust's Evergreen American Retirement Fund with Evergreen Income and Growth Fund; Fixed Income Trust's Evergreen Intermediate Term Government Securities Fund with Evergreen U.S. Government Fund; Municipal Trust's Evergreen California Municipal Bond Fund and Evergreen New York Municipal Bond Fund with Evergreen High Grade Municipal Bond Fund; and Select Equity Trust's Evergreen Select Equity Income Fund with Evergreen Select Core Equity Fund.

[2] FUNB owns 21.13% of Equity Trust's Evergreen Fund, 12.41% of Fixed Income Trust's Evergreen U.S. Government Fund, 45.22% of Fixed Income Trust's Evergreen Intermediate Term Government Securities Fund, 7.84% of Municipal Trust's Evergreen High Grade Municipal Bond Fund, 99.08% of Select Equity Trust's Evergreen Select Equity Income Fund, and 98.19% of Select Equity Trust's Evergreen Select Equity Fund. Although the proposed transaction between Equity Trust's Evergreen American Retirement Fund and Equity Trust's Evergreen Income and Growth Fund does not currently require exemptive relief, applicants are requesting relief in the event that FUNB's ownership as fiduciary increase to 5% or more of either Series' assets prior to the proposed transactions. If FUNB does not acquire such ownership, the Series will not rely on the requested relief.

[3] Except for Class A shares of the Evergreen Intermediate Term Government Securities Fund,

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the Acquired Series will not incur any sales charges in connection with the Reorganizations. FUNB will be responsible for the fees and expenses related to the Reorganizations other than each Acquiring Series federal and state registration fees.

7. The Boards, including the Independent Trustees, determined that the Reorganizations are in the best interests of the shareholders of each of the Acquired Series and each of the Acquiring Series, and that the interests of the shareholders of the Acquired Series and the Acquiring Series would not be diluted by the Reorganizations. In assessing the Plans, the factors considered by the Boards included, among others, (a) the terms and conditions of the Reorganizations, (b) the expense ratios, fees and expenses of the Acquired Series and Acquiring Series, (c) the fact that FUMB will bear the expenses incurred in connection with the Reorganizations, and (d) the tax-free nature of the Reorganizations.

8. The Plans are subject to a number of conditions precedent, including that: (a) the Plans shall have been approved by the Boards on behalf of each of the Acquiring Series and the Acquired Series and approved by the shareholders of each of the Acquired Series, (b) definitive proxy solitation materials shall have been filed with the Commission and distributed to shareholders of the Acquired Series, (c) the Acquiring and Acquired Series receive an opinion of tax counsel that the Reorganizations will be tax-free for each Series and its shareholders, and (d) applicants receive from the Commission an exemption from section 17(a) of the Act for the Reorganizations. Each Plan may be terminated and the Reorganizations abandoned at any time by mutual consent of the respective Boards of the Acquired Series and the Acquiring Series or by either party in case of a breach of the Plan. Applicants agree not to make any material changes to the Plans without prior Commission approval.

9. Definitive proxy solicitation materials have been filed with the Commission and were mailed to shareholders of the Acquired Series (with the exception of the Evergreen Select Equity Income Fund) on or about June 2, 1999. Proxies were mailed to shareholders of Evergreen Select Equity Income Fund on or about June 25, 1999. A special meeting of shareholders is scheduled for July 23, 1999 (July 30, 1999 in the case of Evergreen Select Equity Income Fund).

which have a maximum front-end sales load of 3.25% and a distribution fee of 0.10% of average daily net assets, while other Class A shares have a maximum front end sales load of 4.75% and a distribution fee of 0.25% of average daily net assets.

Applicant's Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly and indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquiring and Acquired Series may be deemed affiliated persons and thus the Reorganizations may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganizations because the Acquiring Series and Acquired Series may be deemed to be affiliated by reason other than having a common investment adviser, common directors, and/or common officers. FUNB, as fiduciary for its customers, owns of record with power to vote more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series and Acquiring Series. Because of this ownership each Acquiring Series may be deemed an affiliated person of an affiliated person of each of the Acquired Series for a reason other than having a common investment adviser.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the Boards have determined that the transactions are in the best interests of each Series' shareholders and that the interests of the existing shareholders will not be diluted as a result of the Reorganizations. In addition, applicants state that the exchange of the Acquired Series' shares for shares of the Acquiring Series will be based on relative NAV.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17787 Filed 7–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Digitcom Interactive Video Network; Order of Suspension of Trading

July 8, 1999.

It appears to the Securities and Exchange Commission that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning Digitcom Interactive Video Network, relating to the company's financial condition and the nature or existence of agreements and contracts with overseas private and governmental entities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on July 8, 1999, through 11:59 p.m. EDT on July 21, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–17823 Filed 7–8–99; 4:29 pm]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 12, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: The SBA Office of Disaster Assistance Customer Service Survey.

Form No: N/A.

Frequency: On Occasion.

Description of Respondents: Disaster Recipients.

Annual Responses: 3,000.

Annual Burden: 500.

Dated: June 30, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–17744 Filed 7–12–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 99–7–3; Docket OST–99–5288]

Application of Ozark Air Lines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Ozark Air Lines, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 22, 1999.

ADDRESSES: Objections and answers to objections should be filed in the Docket OST–99–5288 and addressed to the Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: July 6, 1999.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–17675 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Hawaii, HI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Hawaii County, Hawaii.

FOR FURTHER INFORMATION CONTACT: Abraham Y. Wong, Division Administrator, Federal Highway Administration, Office Address: 300 Ala Moana Boulevard, Rm #3202, Honolulu, Hawaii 96813; Mailing Address: Box 50206, Honolulu, Hawaii 96850. Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Hawaii Department of Transportation will prepare an environmental impact statement (EIS) for a new arterial connector in the North Kona and South Kohala Districts, of the island of Hawaii. The proposed highway will extend for approximately 12 miles, from the Queen Kaahumanu Highway (State Highway 19) to the junction of Mamalahoa Highway (State Highway 190) and Saddle Road (State Highway 200).

The primary purpose of the project is to provide a more direct inter-regional route for motorists traveling between East and West Hawaii, on the existing Saddle Road. Secondary and supporting purposes to this primary goal are to: (1) Improve the efficiency and operational level of traffic movement between East Hawaii and West Hawaii in general; (2) improve safety; and (3) support special traffic needs, including commercial truck traffic and military traffic utilizing Saddle Road. In addition to various alternative alignments, alternatives being considered include the "no project" alternative, and the widening of Waikoloa Road.

A notice describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and individuals who have expressed an interest in the project. Several interagency scoping meetings have also been scheduled. A public hearing will be held after publication of the Draft EIS. A public notice will be placed in a daily newspaper to announce the date, time and place of the hearing and the availability of the Draft EIS for public and agency review and copying.

To ensure that the full range of issues relating to the proposed action are identified and addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Abraham Y. Wong,

Division Administrator, Hawaii.

[FR Doc. 99–17764 Filed 7–12–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

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SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 8, 1999 [64 FR 6132-6133].

DATES: Comments must be submitted on or before August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Tremont, Ph.D. at the National Highway Traffic Safety Administration, Office of Research and Traffic Records (NTS–31), 202–366–5587. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Survey of Drinking and Driving Attitudes and Behavior: 1999.

OMB Number: 2127—NEW.

Type of Request: New information collection.

Abstract: NHTSA proposes to conduct a survey by telephone among some nationally representative samples of 5,700 adults, including older adults. Participation by respondents would be voluntary. The findings from this proposed collection will assist NHTSA in addressing the problem of alcohol-impaired driving and formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide informational support to states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and injuries.

In conducting the proposed survey, the interviewers would use computer-aided telephone interviewing (CATI) to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers are proposed to minimize language barriers to participation. The proposed survey would be anonymous and confidential.

Affected Public: Randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 1710.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on July 8, 1999.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 99–17754 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8845

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8845, Indian Employment Credit.

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Indian Employment Credit.

OMB Number: 1545–1417.

Form Number: 8845.

Abstract: Under Internal Revenue Code section 45A, employers can claim an income tax credit for hiring American Indians or their spouses to work in a trade or business on an Indian reservation. Form 8845 is used by employers to claim the credit and by IRS to ensure that the credit is computed correctly.

Current Actions: There are no changes being made to Form 8845 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,246.

Estimated Time Per Respondent: 9 hr., 58 min.

Estimated Total Annual Burden Hours: 12,423.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–17813 Filed 7–12–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8379

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8379, Injured Spouse Claim and Allocation.

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Injured Spouse Claim and Allocation.

OMB Number: 1545–1210.

Form Number: 8379.

Abstract: Form 8379 is used by a non-obligated spouse to request the non-obligated spouse's share of a joint income tax refund that would otherwise be applied to the past due obligation owed to a state or Federal agency by the other spouse. The IRS uses the information provided by the injured spouse on Form 8379 to determine the proper allocation of the joint refund.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 1 hour, 50 minutes.

Estimated Total Annual Burden Hours: 549,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–17814 Filed 7–12–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–PC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–PC, U.S. Property and Casualty Insurance Company Income Tax Return.

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Property and Casualty Insurance Company Income Tax Return.

OMB Number: 1545–1027.

Form Number: 1120–PC.

Abstract: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,200.

Estimated Time Per Respondent: 192 hours, 12 minutes.

Estimated Total Annual Burden Hours: 422,840.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–17815 Filed 7–12–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4361

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4361, Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

OMB Number: 1545–0168.

Form Number: 4361.

Abstract: Form 4361 is used by ministers, members of religious orders, or Christian Science practitioners to file for an exemption from self-employment tax on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.

Current Actions: There are no changes being made to Form 4361 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Individuals.

Estimated Number of Respondents: 10,270.

Estimated Time Per Respondent: 59 min.

Estimated Total Annual Burden Hours: 10,167.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–17816 Filed 7–12–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–45–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–45–91 (TD 8529), Limitations on Corporate Net Operating Loss Carryforwards. (§ 1.382–9).

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1275.

Regulation Project Number: CO–45–91.

Abstract: Sections 1.382–9(d)(2)(iii) and (d)(4)(iv) of the regulation allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies for the benefits of Internal Revenue Code section 382(l)(5). Regulation section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulation retroactively, or revoke a prior Code section 382(l)(6) election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Estimated Time Per Respondent: The estimated annual time per respondent with respect to the §§ 1.382–9(d)(2)(iii) and (d)(4)(iv) statements is 15 minutes. The estimated annual time per respondent with respect to the § 1.382–9(d)(6)(ii) election is 1 hour.

Estimated Total Annual Burden Hours: 200 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–17817 Filed 7–12–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8846

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8846, Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

OMB Number: 1545–1414.

Form Number: 8846.

Abstract: Employers in food or beverage establishments where tipping is customary can claim an income tax credit for the amount of social security and Medicare taxes paid (employer's share) on tips employees reported, other than on tips used to meet the minimum wage requirement. Form 8846 is used by employers to claim the credit and by the IRS to verify that the credit is computed correctly.

Current Actions: There are no changes being made to Form 8846 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 8,684.

Estimated Time Per Respondent: 8 hr., 8 min.

Estimated Total Annual Burden Hours: 559,088.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–17818 Filed 7–12–99; 8:45 am]

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H.R. 435/P.L. 106–36

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federal register

Wednesday
July 14, 1999

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV98–925–3 FIR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Revision in Minimum Grade, Container, and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which revised the minimum grade requirements for grapes grown in southeastern California and for grapes imported into the United States for a portion of the 1998 shipping season. The interim final rule also revised container and pack requirements prescribed for California grapes for a limited time. In combination, the revisions allowed California grape handlers to market consumer packages of grapes more economically by increasing the range of allowable bunch sizes for a portion of the 1998 season. Master containers of consumer grape packages were allowed to be marketed if the grape clusters/bunches in the packages consisted of at least 2 berry clusters and the clusters/bunches were not greater than 19 ounces in weight. The increased bunch size range also applied to imported grapes. This action was in the interest of handlers, producers, importers, and consumers.

EFFECTIVE DATE: August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR Part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

An interim final rule (63 FR 28475, May 26, 1998), increased the range of allowable sizes of grape bunches that California handlers could pack in certain containers during the period June 1, 1998, through August 15, 1998. Master containers, containing individual consumer packages of grapes weighing 1½ pounds or less, net weight, were allowed to be marketed if the grape clusters/bunches in the packages consisted of at least 2 berry clusters and the clusters/bunches were not greater than 19 ounces in weight. The increased bunch size range also applied to imported grapes, but no container specifications applied. Grapes packed in this manner by handlers in California had to be marked "DGAC Consumer No. 1 Institutional." The changes in domestic requirements were recommended by the California Desert Grape Administrative Committee (Committee), the agency responsible for local administration of the order. The results of the test marketing effort are being evaluated by the Committee. A decision on whether or not to allow such shipments in future seasons will be made at a later time.

The interim final rule also updated or removed certain obsolete references appearing in § 925.304 of the order's rules and regulations and in § 944.503 of the import regulation. The final rule finalizes these actions.

Under the terms of the order, fresh market shipments of grapes grown in southeastern California are required to be inspected and meet grade, size, maturity, pack, and container

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requirements. Current requirements include minimum grade and net weight requirements. Grapes must also be packed in authorized containers. Such containers must be marked with the minimum net weight of the grapes contained therein, the variety of the grapes, the name of the shipper, and the lot stamp number corresponding to the lot inspection conducted by an authorized inspector.

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304(a) of the order's administrative rules and regulations requires grapes to meet the minimum grade requirements of U.S. No. 1 Table, or U.S. No. 1 Institutional, or to meet all the requirements of U.S. No. 1 Institutional, except that a tolerance of 33 percent is provided for off-size bunches. Grapes meeting U.S. No. 1 Institutional requirements are required to be marked "U.S. No. 1 Institutional." Grapes meeting the modified U.S. No. 1 Institutional requirements may be marked "DGAC No. 1 Institutional." The requirements for the U.S. No. 1 Table and U.S. No. 1 Institutional grades are set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880 through 51.914) (Standards).

Section 925.52(a)(4) of the order provides authority to regulate the size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's administrative rules and regulations requires grapes to be packed in new and clean boxes which meet the requirements of sections 1380.14, 1380.19, 1436.37, and 1436.38 of Title 3: California Code of Regulations (CCR). That section also authorizes nine containers that can be used for domestic and export shipments and specifies dimensions for each such container. An additional container, defined in terms of a net weight of 5 kilograms, is authorized for export shipments only. All 10 of the authorized containers may be used for export shipments. Only the first nine can be used for domestic shipments. Section 925.304(b)(1) also authorizes the Committee to approve other containers for experimental or research purposes.

Section 925.304(b)(2) of the order's administrative rules and regulations provides that grapes in any containers weigh at least 20 pounds based on the average net weight of grapes in a representative sample of containers. An exception is provided for grapes packed in experimental containers, or packed in bags or wrapped in plastic or paper. Containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds. There are no weight requirements specified for experimental containers.

The Committee met on March 24, 1998, and unanimously recommended modifying § 925.304 of the order's administrative rules and regulations to:

(1) Revise the minimum grade requirement for the period June 1, 1998, through August 15, 1998, to allow a pilot test for the marketing of grapes meeting all the requirements of U.S. No. 1 Institutional; except for the weight of clusters/bunches. The revision was intended to allow clusters/bunches as small as a 2 berry cluster and as large as 19 ounces in weight. Grapes meeting the revised quality requirements were to be marked "DGAC Consumer No. 1 Institutional," but could not be marked "Institutional Pack."

(2) Authorize an experimental master container, containing individual consumer packages of grapes weighing 1½ pounds or less, net weight, for use during the pilot test period of June 1, 1998, to August 15, 1998. It further recommended that grapes meeting the "DGAC Consumer No. 1 Institutional" requirements be packed in this container and that this master container could only be used for packing the "DGAC Consumer No. 1 Institutional" grade.

(3) Update or remove certain obsolete references appearing in the regulation.

Revision in Minimum Grade Requirements

Until 1993, the minimum grade requirement under the order was U.S. No. 1 Table. One requirement of that grade is that grape bunches weigh at least 4 ounces.

In 1991, a new U.S. No. 1 Institutional grade was added to the Standards. This grade—used primarily for sales to restaurants and other food service firms—provides for grape lots which have very small bunches. At the request of the table grape industry, this grade was added to meet market demand for individual consumer sized servings of grapes. The Standards were further revised in 1996 to lower the minimum bunch size to a two berry cluster and to specify a separate 4 percent tolerance for off-size bunches.

The minimum grade requirements under the order were changed in 1993 to allow California grape handlers to pack the newly established U.S. No. 1 Institutional grade. Because handlers experienced difficulties in packing this grade, these requirements were further revised in 1994 to provide a tolerance of 33 percent for off-size bunches. This modified U.S. No. 1 Institutional grade is referred to as DGAC No. 1 Institutional.

California grape handlers can ship and importers can import grapes meeting at least U.S. No. 1 Table, U.S. No. 1 Institutional, or DGAC No. 1 Institutional during the period April 20 through August 15 each year. During the period June 1 through August 15, 1998, grapes also could be shipped and imported meeting the requirements of DGAC Consumer No. 1 Institutional. Grapes meeting this requirement were required to meet all of the requirements of the U.S. No. 1 Institutional grade, except for the cluster/bunch size requirements. California grapes meeting this requirement were packed in consumer packages.

The requirements of U.S. No. 1 Institutional are essentially the same as those of the U.S. No. 1 Table grade, with three major exceptions. The first difference relates to bunch size. Under the U.S. No. 1 Table grade, there is a minimum bunch size requirement of 4 ounces and no maximum bunch size. Under the U.S. No. 1 Institutional grade, grapes are to consist of at least a two berry cluster ranging to clusters and/or bunches of grapes not greater than five ounces in weight. A cluster is two or more berries sharing a common point of attachment.

The second difference is that at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional must be legibly marked "Institutional Pack." There are no marking requirements under the U.S. No. 1 Table grade.

The third difference relates to the tolerances for off-size bunches. For grapes grading U.S. No. 1 Table, an 8 percent tolerance is established for all grade requirements, including off-size bunches. The U.S. No. 1 Institutional grade has a separate tolerance of 4 percent for off-size clusters/bunches and an 8 percent tolerance for the remaining grade requirements.

Requirements for the DGAC No. 1 Institutional are the same as for the U.S. No. 1 Institutional, except that the tolerance for off-size bunches is 33 percent. Because grapes meeting these requirements do not meet the U.S. No. 1 Institutional grade requirements, they cannot be marked "Institutional Pack." They may, however, be marked "DGAC No. 1 Institutional."

Prior to the start of the 1998 shipping season, grape handlers expressed

interest in packing grapes in individual consumer packages known as "punits" or "clamshells." These containers, used most commonly to pack strawberries, are made of a clear, hard rigid plastic and typically hold a half pound or a pound of fruit. Some retailers prefer these containers because they are of the same net weight, and can be scanned at check-out. This is particularly convenient for retailers that do not have facilities for weighing produce, such as convenience stores and fast food outlets. Some consumers also prefer the convenience of prepackaged individual portions of fruit.

To meet changing market requirements, California grape handlers wanted to market grapes packed in these consumer packages. Bunch size requirements made it difficult because grape bunches normally range in weight from 1/4 pound to 3 pounds. Thus, portions of bunches needed to be used to fill the new packages to the weights desired by buyers. Handlers determined that increasing the range of permissible bunch sizes to allow for clusters/bunches of two berries to 19 ounces would provide handlers the flexibility needed to pack grapes in the desired consumer containers.

The interim final rule revised § 925.304(a) of the order's rules and regulations and § 944.503 of the import regulation. The revision to § 925.304(a) allowed handlers to ship a new grade of grapes known as "DGAC Consumer No. 1 Institutional" for a portion of the 1998 season. The name recognized that such grapes would be packed in consumer packages and that the grapes would not be packed to the minimum requirements of the U.S. No. 1 Table grade. Grapes meeting this requirement were required to meet the requirements of the U.S. No. 1 Institutional grade, except for the cluster/bunch size requirements. Specifically, the modified requirements allowed shipments with clusters/bunches ranging from 2 berry clusters to clusters/bunches of grapes up to 19 ounces in weight during the period June 1, 1998, to August 15, 1998. The revision to § 944.503 allowed grapes meeting the relaxed requirements to be imported during that period.

Container Requirements

The Committee recommended and the interim final rule established that grapes meeting the requirements of the new "DGAC Consumer No. 1 Institutional" be packed in individual consumer packages. The consumer packages were then required to be packed in a master container.

Typically, the individual consumer packages held either ½ or 1 pound of fruit. To allow for normal shrinkage during handling, handlers generally packed a slightly greater weight than is desired at retail. Section 925.304(b) was revised to provide that DGAC Consumer No. 1 Institutional grade grapes be packed in master containers containing individual consumer packages weighing 1½ pounds or less during the period June 1, 1998, to August 15, 1998.

Additionally, the master containers were required to be marked "DGAC Consumer No. 1 Institutional" to accurately reflect their contents. The individual consumer packages did not need to be so marked. Other container marking requirements appearing in the regulation applied to the master containers as well during the test period.

The master containers used for these grapes typically held 10 consumer packages weighing 1 pound each or 20 packages weighing ½ pound each. Thus, these containers were exempt from the net weight requirements of 18 or 20 pounds specified in § 925.304(b)(2) during the period June 1, 1998, to August 15, 1998.

Application to Imports

Section 8e of the Act specifies that whenever certain commodities, like grapes, are regulated under a Federal order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Pack and container requirements are not authorized by section 8e. Thus, the revised grade requirements implemented by the interim final rule applied to imported grapes; none of the container or container marking requirements applied, however. If desired, importers could have labeled containers of grapes meeting the modified U.S. No. 1 Institutional requirements as "DGAC Consumer No. 1 Institutional." Specifically, the interim final rule modified language in § 944.503(a)(1) of Table Grape Import Regulation 4 for fresh grapes imported into the United States.

Clarification/Removal of Obsolete Language

This rule continues in effect the removal of language in the introductory text of § 925.304 that applied to the 1987 season and is no longer necessary.

This rule also continues in effect several other corrections in both the order's administrative rules and regulations and the import regulation. Specifically, the tolerance percentage of "8 percent" was changed to "4 percent" in §§ 925.304(a) of the order's administrative rules and regulations and in 944.503(a)(1) of the import regulation. This rule continues in effect a correction to those sections to accurately specify the current tolerance for off-size bunches in the U.S. No. 1 Institutional grade. This rule also continues in effect a correction to a Standards reference from section number "51.913" to section number "51.914" in §§ 925.304(a) of the order's rules and regulations and in 944.503(a)(1) of the import regulation. A change to a California Department of Food and Agriculture reference from "California Administrative Code (Title 3)" to "Title 3: California Code of Regulations" in paragraph (a)(1)(ii) of § 944.503 of the import regulation is continued in effect too.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 27 handlers of California grapes who are subject to regulation under the order and approximately 80 grape producers in the production area. In addition, there are approximately 127 importers of grapes. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Ten of the 27 handlers subject to regulation have annual grape sales of at least $5,000,000, excluding receipts from any other sources. In addition, 70 of the 80 producers subject to regulation have annual sales of at least $500,000, and the remaining 10 producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of handlers and a minority of producers

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are classified as small entities. The average importer receives $2.8 million in grape revenue, excluding receipts from other sources. Therefore, we believe that the majority of these importers are small entities.

This action finalizes an interim final rule (63 FR 28475, May 26, 1998), which increased the range of allowable sizes of grape bunches that California handlers could pack in certain containers during the period June 1, 1998, through August 15, 1998. Master containers, containing individual consumer packages of grapes weighing 1½ pounds or less, net weight, were allowed to be marketed if the grape clusters/bunches in the packages consisted of at least 2 berry clusters and the clusters/bunches were not greater than 19 ounces in weight. Grapes meeting the "DGAC Consumer No. 1 Institutional" requirements were required to be packed in the experimental container, and the container was to be used solely for packing the "DGAC Consumer No. 1 Institutional" grade. The changes in domestic requirements were recommended by the Committee, the agency responsible for local administration of the order. These changes were implemented during the test period and the Committee is evaluating the test results. A decision on a future course of action will be made at a later time. The increased bunch size range also applied to imported grapes during that time period, but no container specifications applied.

The interim final rule also updated or removed certain obsolete references appearing in § 925.304 of the order's rules and regulations and in § 944.503 (a)(1) of the import regulation.

Under the terms of the order, fresh market shipments of grapes grown in southeastern California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Current requirements include minimum grade and net weight requirements. Grapes must also be packed in authorized containers. Such containers must be marked with the minimum net weight of the grapes contained therein, the variety of the grapes, the name of the shipper, and the lot stamp number corresponding to the lot inspection conducted by an authorized inspector.

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304(a) of the order's administrative rules and regulations requires grapes to meet the minimum grade requirements of U.S. No. 1 Table, or U.S. No. 1 Institutional, or to meet all the requirements of U.S. No. 1 Institutional, except that a tolerance of 33 percent is provided for off-size bunches. Grapes meeting U.S. No. 1 Institutional requirements are required to be marked "U.S. No. 1 Institutional." Grapes meeting the modified U.S. No. 1 Institutional requirements may be marked "DGAC No. 1 Institutional." The requirements for the U.S. No. 1 Table and U.S. No. 1 Institutional grades are set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880 through 51.914) (Standards).

Section 925.52(a)(4) of the order provides authority to regulate the size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's administrative rules and regulations requires grapes to be packed in new and clean boxes which meet the requirements of sections 1380.14, 1380.19, 1436.37, and 1436.38 of Title 3: California Code of Regulations (CCR). That section also authorizes nine containers that can be used for domestic and export shipments, and specifies dimensions for each such container. An additional container, defined in terms of a net weight of 5 kilograms, is authorized for export shipments only. All 10 authorized containers may be used for export shipments. Only the first nine can be used for domestic shipments. Section 925.304(b)(1) also authorizes the Committee to approve other containers for experimental or research purposes.

Section 925.304(b)(2) of the order's administrative rules and regulations provides that grapes in any containers weigh at least 20 pounds based on the average net weight of grapes in a representative sample of containers. An exception is provided for grapes packed in experimental containers, or packed in bags or wrapped in plastic or paper. Containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds. There are no weight requirements specified for experimental containers.

The Committee met on March 24, 1998, and unanimously recommended modifying § 925.304 of the order's administrative rules and regulations to:

(1) Revise the minimum grade requirement for the period June 1, 1998, through August 15, 1998, to allow a pilot test for the marketing of grapes meeting all the requirements of U. S. No. 1 Institutional, except for the weight of clusters/bunches. The revision was intended to allow clusters/bunches as small as a 2 berry cluster and as large as 19 ounces in weight. Grapes meeting the revised quality requirements were required to be marked "DGAC Consumer No. 1 Institutional," but could not be marked "Institutional Pack."

(2) Authorize an experimental master container, containing individual consumer packages of grapes weighing 1½ pounds or less, net weight, for use during the pilot test period of June 1, 1998, to August 15, 1998. It further recommended that grapes meeting the "DGAC Consumer No. 1 Institutional" requirements be packed in this container and that this master container could only be used for packing the "DGAC Consumer No. 1 Institutional" grade.

During the period April 20 through August 15 each year, California grape handlers can ship grapes meeting at least U.S. No. 1 Table, U.S. No. 1 Institutional, or DGAC No. 1 Institutional. The revision implemented by the interim final rule allowed handlers to ship DGAC Consumer No. 1 Institutional during the period June 1, 1998, to August 15, 1998.

The requirements of the U.S. No. 1 Institutional are essentially the same as those of the U.S. No. 1 Table grade, with three major exceptions. The first difference relates to bunch size. Under the U.S. No. 1 Table grade, there is a minimum bunch size requirement of 4 ounces and no maximum bunch size. Under the U.S. No. 1 Institutional grade, grapes are to consist of at least a two berry cluster ranging to clusters and/or bunches of grapes not greater than five ounces in weight. A cluster is two or more berries sharing a common point of attachment.

The second difference is that at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional must be legibly marked "Institutional Pack." There are no marking requirements under the U.S. No. 1 Table grade.

The third difference relates to the tolerances for off-size bunches. For grapes grading U.S. No. 1 Table, an 8 percent tolerance is established for all grade requirements, including off-size bunches. The U.S. No. 1 Institutional grade has a separate tolerance of 4 percent for off-size clusters/bunches and an 8 percent tolerance for the remaining grade requirements.

Requirements for the DGAC No. 1 Institutional are the same as for the U.S. No. 1 Institutional, except that the tolerance for off-size bunches is 33 percent. Because grapes meeting these

requirements do not meet the U.S. No. 1 Institutional grade requirements, they cannot be marked "Institutional Pack." They may, however, be marked "DGAC No. 1 Institutional."

Prior to the start of the 1998 shipping season, handlers expressed interest in packing grapes in individual consumer packages known as "punits" or "clamshells." These containers, used most commonly to pack strawberries, are made of a clear, hard rigid plastic and typically hold a half pound or a pound of fruit. Some retailers prefer these containers because they are of the same net weight, and can be scanned at check-out. This is particularly convenient for retailers that do not have facilities for weighing produce, such as convenience stores and fast food outlets. Some consumers also prefer the convenience of prepackaged individual portions of fruit.

To meet changing market requirements, California grape handlers wanted to be able to pack these consumer packages. Bunch size requirements made it difficult. Grape bunches normally range in weight from ¼ pound to 3 pounds. Thus, portions of bunches were needed to fill the new packages to the weights desired by buyers. Handlers determined that increasing the range of permissible bunch sizes to allow for clusters/bunches of two berries to 19 ounces would provide handlers the flexibility needed to pack grapes in the desired consumer containers.

The interim final rule revised § 925.304(a) of the order's rules and regulations and § 944.503 of the table grape import regulation allowed handlers and importers to ship a new grade of grapes known as "DGAC Consumer No. 1 Institutional." The name recognized that such grapes would be packed in consumer packages and that the grapes were not packed to the minimum requirements of the U.S. No. 1 Table grade. These grapes had to meet the requirements of the U.S. No. 1 Institutional grade, except for the cluster/bunch size requirements. Specifically, the modified requirements allowed shipments with clusters/bunches ranging from 2 berry clusters to clusters/bunches of grapes up to 19 ounces in weight during the period June 1, 1998, to August 15, 1998.

The Committee recommended and the interim final rule established that grapes meeting the requirements of the new "DGAC Consumer No. 1 Institutional" be packed in a certain way. The grapes were required to be packed in individual consumer packages. The consumer packages were then required to be packed in a master container.

Typically, the individual consumer packages held either ½ or 1 pound of fruit. To allow for normal shrinkage during handling, handlers generally packed a slightly greater weight than is desired at retail. Section 925.304(b) was revised to provide that DGAC Consumer No. 1 Institutional grade grapes be packed in master containers containing individual consumer packages weighing 1½ pounds or less.

Additionally, the master containers were required to be marked "DGAC Consumer No. 1 Institutional" to accurately reflect their contents. The individual consumer packages did not need to be so marked. Other container marking requirements appearing in the regulation applied to the master containers as well.

The master containers used for these grapes typically held 10 consumer packages weighing 1 pound each or 20 packages weighing 1/2 pound each. Thus, the containers were exempted from the net weight requirements of 18 or 20 pounds specified in § 925.304(b)(2) during the period June 1, 1998, to August 15, 1998.

Section 8e of the Act specifies that whenever certain commodities, like grapes, are regulated under a Federal order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Pack and container requirements are not authorized by section 8e. Thus, the revised grade requirements implemented by the interim final rule applied to imported grapes during the test period; none of the container or container marking requirements applied, however. If desired, importers could have labeled containers of grapes meeting the modified U.S. No. 1 Institutional requirements as "DGAC Consumer No. 1 Institutional." Specifically, the interim final rule modified language in § 944.503(a)(1) of the Table Grape Import Regulation 4 for fresh grapes imported into the United States during the period June 1, 1998, to August 15, 1998.

The interim final rule provided handlers and importers more marketing flexibility, was estimated to result in increased shipments of consumer-sized grape packs, and was expected to have a positive impact on California grape handlers and importers of grapes. The changes addressed the marketing and shipping needs of the grape industry, and were in the interest of handlers, producers, importers, and consumers.

During the last several seasons, Mexico has been the largest exporter of grapes to the United States during the June 1 through August 15 period. Chile and Italy have exported small quantities of grapes to the U.S. during this same period. Chile is the dominant exporting country from December through May each year.

During the pilot test period of June 1, 1998, through August 15, 1998, imports were estimated to total 5.5 million lugs from Mexico, 33 thousand lugs from Chile, and approximately 4 thousand lugs from Italy. These estimates were based upon lug weights of 18 pounds.

According to Department inspection officials, minimal quantities of grapes meeting the institutional grades have been imported since the "Institutional Pack" was implemented. Based on historical data, it was estimated that approximately .5 percent to 1 percent of the imported lugs would meet the requirements of either the "U.S. No. 1 Institutional" or the "DGAC No. 1 Institutional" grades. It was further estimated that less than 1 percent of the imported lugs would meet the requirements of the "DGAC Consumer No. 1 Institutional" grade. The majority of imported grapes meet the higher grade requirements of U.S. No. 1 Table, U.S. Fancy Table, or U.S. Extra Fancy Table. It is believed that no "DGAC Consumer No. 1 Institutional" grade grapes were imported during the test period.

The Committee estimated the 1998 domestic crop would be approximately 8 million lugs. Domestic handlers in southeastern California, regulated under the order, were expected to ship approximately 6.2 million lugs during the test period. It was estimated that approximately .5 percent (31,000 lugs) to 1 percent (62,000 lugs) of the crop would be packed as U.S. No. 1 Institutional or DGAC No. 1 Institutional and that less than 1 percent (62,000 lugs) of the crop would be packed as "DGAC Consumer No. 1 Institutional" during the test period. The estimates for the DGAC Consumer No. 1 Institutional were based upon a lug weight of 10 pounds. The Committee estimated that handlers would receive approximately $0.60 to $1.00 per pound for a total estimated value of $372,000 to $620,000 for this new individual consumer pack. It was estimated that handlers would receive approximately $0.10 per pound more for the new consumer packages than for bagged grapes and that consumers would benefit by being able to purchase grapes in preferred containers.

Actual domestic shipments totaled 11.4 million lugs. Domestic handlers in southeastern California, regulated under the order, shipped 10.6 million lugs during the test period. The quantity of

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grapes shipped during the test period meeting the requirements of DGAC Consumer No. 1 Institutional was small. Thus, the level of benefits of the interim final rule are difficult to quantify.

The Committee had requested that the interim final rule be effective by June 1, 1998. When the recommendation was made, the industry expected the California grape shipping season to begin shortly and to continue until August 15, 1998. Therefore, an effective date of June 1 would have allowed handlers and importers approximately 10 weeks to test the market. The season ended early with the last shipments of grapes on July 22, 1998. This allowed a test period of approximately 7 weeks versus the anticipated 10 weeks.

At the meeting, the Committee discussed the potential impact of this rule and determined that this action would not require any changes in grape handling practices. The Committee expected the new grade and pack to generate additional sales that would benefit the grape industry as a whole.

The benefits of this rule were not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities.

The Committee discussed alternatives to this revision, including not having a pilot test, but determined that handlers, producers, importers and consumers would benefit from the pilot test.

The Committee also discussed adding a percentage tolerance for off-size bunches of 33 percent similar to the additional percentage tolerance allowed for the DGAC No. 1 Institutional grade, but determined that the 4 percent tolerance, as contained in the Standards, was adequate to facilitate the packaging of the "punits" or "clamshells".

This action did not impose any additional reporting or recordkeeping requirements on either small or large grape handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 24, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members: 8 are handlers and producers, 1 is a producer only, and 2 are handlers only. The twelfth Committee member is the public member.

The interim final rule concerning this action was published in the **Federal Register** (63 FR 28475, May 26, 1998) with an effective date of June 1, 1998. Copies of the rule were mailed by the Committee staff to all Committee members and grape handlers. A summary of the interim final rule was sent to all importers of record and to foreign embassies known to be interested in table grapes. A copy of the summary was also faxed to the National Institute of Standards and Technology so the Institute could notify the World Trade Organization Secretariat of the action. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided a 30-day comment period which ended June 25, 1998. No comments were received.

A request to extend the final date for comments was received from the European Commission, Brussels, Belgium, on behalf of the European Community. The requester asked the Department to provide a total of 60 days for comments in line with the recommendation of the Committee on Technical Barriers to Trade established under General Agreement on Tariffs and Trade. However, a decision was made not to extend the comment period for 30 additional days. Notice of the short term relaxation was given to government officials in grape exporting countries consistent with trade obligations, the relaxed import requirements provided importers with more marketing flexibility during the test market period that ended August 15, 1998, and finally, no useful purpose would have been gained by extending the comment period for 30 additional days.

In accordance with section 8e of the Act, the United States Trade Representative concurred with the issuance of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 28475, May 26, 1998), will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PART 925—GRAPES GROWN IN A DESIGNATED AREA of SOUTHEASTERN CALIFORNIA

PART 944—FRUITS; IMPORT REQUIREMENTS

Accordingly, the interim final rule amending 7 CFR parts 925 and 944 which was published at 63 FR 28475 on May 26, 1998, is adopted as a final rule without change.

Dated: July 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–17890 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–49–AD; Amendment 39–11224; AD 99–15–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, that requires a one-time visual inspection to determine if all corners of the aft lower cargo doorjamb have been previously modified. This amendment also requires low frequency eddy current inspections to detect cracks of the fuselage skin and doubler at all corners of the aft lower cargo doorjamb, various follow-on repetitive inspections, and modification, if necessary. This amendment is prompted by fatigue cracks found in the fuselage skin and doubler at the corners of the aft lower cargo doorjamb. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Effective August 18, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Contract Data Management, C1–255 (35–22). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, was published in the **Federal Register** on August 11, 1997 (62 FR 42949). That action proposed to require a one-time visual inspection to determine if all corners of the aft lower cargo doorjamb have been previously modified. That action also proposed to require low frequency eddy current inspections to detect cracks of the fuselage skin and doubler at all corners of the aft lower cargo doorjamb, various follow-on repetitive inspections, and modification, if necessary.

New Service Information

Since the issuance of the NPRM, McDonnell Douglas has issued Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. That service bulletin removes reference to a low frequency eddy current inspection after doubler installation and changes the inspection to a high frequency eddy current inspection. Other administrative changes were also included in the revised service bulletin.

Consideration of Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposal.

Request To Allow Designated Engineering Representative (DER) Approval of Certain Repairs

One commenter requests that, rather than require approval of Manager of the Los Angeles Aircraft Certification Office (ACO) for certain repairs [cracking conditions beyond the allowable repair limits specified in the proposal, and for existing repairs that are not accomplished in accordance with the DC–9 Structural Repair Manual (SRM) or Service Rework Drawings], a Boeing/Douglas Aircraft Division Designated Engineering Representative (DER) be designated with the authority to approve such repairs temporarily. The commenter states that this would expedite the approval process yet ensure an adequate level of safety since the Manager of the Los Angles ACO would have final authority to approve the repair as a permanent repair. The commenter states that if the FAA does not approve the temporary repair as a permanent repair, it could then require any corrective action to be accomplished, preferably at the next scheduled major maintenance check.

The FAA does not concur. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not currently authorized to make the discretionary determination as to what the applicable requirement is. However, the FAA has issued a notice (N 8110.72, dated March 30, 1998), which provides guidance for delegating authority to certain type certificate holder structural DER's to approve alternative methods of compliance for AD-required repairs and modifications of individual airplanes. The FAA is currently working with The Boeing Company, Long Beach Division (BLBD), to develop the implementation process for delegation of approval of alternative methods of compliance in accordance with that notice. Once this process is implemented, approval authority for alternative methods of compliance can be delegated without revising the AD.

Request to Revise Paragraph (c) of the Proposed AD

One commenter requests that paragraph (c) of the proposed AD be revised to read as follows:

"(c) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the aft lower cargo doorjamb have been modified by FAA-approved repairs other than the DC–9 SRM or Service Rework Drawing, prior to further flight, accomplish an initial Low Frequency Eddy Current (LFEC) inspection of the fuselage skin adjacent to the repair.

(c)(i) If no cracks are detected, within (6) months after the initial LFEC inspection, accomplish a repair approved by the Manager, Los Angeles ACO.

(c)(ii) If cracks are detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO."

This commenter states that, as paragraph (c) of the AD is currently worded, it will cause an unnecessary operational impact since FAA-approved non-standard SRM or Service Rework Drawing repairs are known to exist in this area of the doorjamb. The commenter contends that obtaining approval for such repairs from the Los Angeles ACO, prior to further flight, will be time consuming and will result in an unwarranted extended ground time for the airplane.

The FAA does not concur with the commenter's request to revise paragraph (c) of the AD. The FAA, in conjunction with the manufacturer, has conducted further analysis of this issue. The FAA has determined that, for cargo doorjambs that are found to be modified previously, but not in accordance with the DC–9 SRM or Service Rework Drawing, an initial LFEC inspection of the fuselage skin adjacent to those existing repairs, as suggested by the commenter, will not detect any cracking under the repairs. The FAA considers that, once cracking emerges from under a repair, crack growth could rapidly occur. In light of these findings, no change to the final rule is necessary.

Request to Revise DC–9 Supplemental Inspection Document (SID)

One commenter requests that, prior to issuance of the final rule, the DC–9 SID be revised to incorporate the actions required by this AD. The commenter states that such a revision will eliminate confusion between the DC–9 SID and the AD. The FAA does not concur. The actions required by this AD are necessary to detect and correct the identified unsafe condition. After issuance of the final rule, the manufacturer may revise the DC–9 SID.

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Other Relevant Rulemaking

The FAA has revised the final rule to include a new paragraph (e). This new paragraph states that accomplishment of the inspection requirements of this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.035 [reference McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume 1, Revision 5, dated July 1997, as required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996)]. Since this new paragraph is being added, "NOTE 3" of the proposal, which discussed the relation of this AD to AD 96–13–03 is no longer necessary. Therefore, the FAA has removed "NOTE 3" of the proposal and renumbered the NOTES in the final rule accordingly.

Other Changes to the Final Rule

Based on new information received from the manufacturer, the FAA has revised the cost estimate for parts that would be needed if an operator were to find it necessary to accomplish the modification specified in this final rule. The Cost Impact section of the NPRM stated that the estimated cost for those parts would be $692 to $990 per airplane. The revised figure for the estimated parts cost is $936 to $2007 per airplane. The final rule has been revised accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 899 McDonnell Model DC–9–10, -20, -30, -40, and -50 series airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 622 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection required by this AD on U.S. operators is estimated to be $37,320, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the eddy current inspections, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspections required by this AD on U.S. operators is estimated to be $37,320, or $60 per airplane.

Should an operator be required to accomplish the modification, it will take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $936 or $2,807 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $1,776 or $3,647 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–15–05 McDonnell Douglas: Amendment 39–11224. Docket 97-NM–49-AD.

Applicability: Model DC–9–10, -20, -30, -40, and -50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin DC9–53–278, dated November 4, 1996, or McDonnell Douglas DC–9 Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the aft lower cargo doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

(a) Prior to the accumulation of 48,000 total landings, or within 3,575 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the aft lower cargo doorjamb have been modified prior to the effective date of this AD.

(b) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the aft lower cargo doorjamb have not been modified: Prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the aft lower cargo doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–278, dated November 4, 1996, or Revision 01, dated April 29, 1999.

(1) If no crack is detected during the LFEC or x-ray inspection required by this paragraph, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) *Option 1.* Repeat the inspections as follows until paragraph (b)(1)(ii) of this AD is accomplished:

(A) If the immediately preceding inspection was conducted using LFEC techniques, conduct the next inspection within 3,575 landings.

(B) If the immediately preceding inspection was conducted using x-ray techniques, conduct the next inspection within 3,075 landings.

(ii) *Option 2.* Prior to further flight, modify the corners of the aft lower cargo doorjamb, in accordance with either service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of that modification, perform a High Frequency Eddy Current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(A) If no crack is detected on the skin adjacent to the modification during any HFEC or x-ray inspection required by paragraph (b) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC or x-ray inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD and the crack is 2 inches or less in length: Prior to further flight, modify it in accordance with McDonnell Douglas Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during the HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) If any crack is found during any LFEC or x-ray inspection required by this paragraph and the crack is greater than 2 inches in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the aft lower cargo doorjamb have been modified, but not in accordance with the DC–9 Structural Repair Manual (SRM) or Service Rework Drawing, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(d) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the aft lower cargo doorjamb have been modified in accordance with DC–9 SRM or Service Rework Drawing, prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,500 landings after the effective date of this AD, whichever occurs later, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(1) If no crack is detected during any HFEC inspection required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Accomplishment of the actions required by this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.033 (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume 1, Revision 5, dated July 1997, as required by AD 96–13–03, amendment 39–9671).

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) Except as provided in paragraphs (b)(1)(ii)(B), (b)(2)(ii), (b)(3), (c), and (d)(2) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–278, dated November 4, 1996, and McDonnell Douglas Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Contract Data Management, C1–255 (35–22). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on August 18, 1999.

Issued in Renton, Washington, on July 7, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17858 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–07–AD; Amendment 39–11222; AD 99–15–03]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model S10–VT Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Model S10–VT sailplanes. This AD requires modifying the wastegate control in order to eliminate heat damage. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the wastegate control from malfunctioning because of heat damage, which could result in loss of automatic manifold pressure control and engine damage.

DATES: Effective August 31, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–07–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

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SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Stemme Model S10–VT sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 26, 1999 (64 FR 20229). The NPRM proposed to require modifying the wastegate control in order to eliminate heat damage. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Stemme Service Bulletin No. A31–10–034, Amendment 01.a, pages 3 and 4, dated July 24, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 6 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $150 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,340, or $390 per sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–15–03 Stemme GMBH & Co. KG: Amendment 39–11222; Docket No. 99–CE–07–AD.

Applicability: Model S10–VT sailplanes, serial numbers 11–004 through 11–006 and 11–008 through 11–013, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the wastegate control from malfunctioning because of heat damage, which could result in loss of automatic manifold pressure control and engine damage, accomplish the following:

(a) Modify the wastegate control in order to eliminate heat damage, in accordance with the Instructions section of Stemme Service Bulletin No. A31–10–034, Amendment 01.a, pages 3 and 4, dated July 24, 1998.

(b) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Stemme Service Bulletin No. A31–10–034, Amendment 01.a, dated July 24, 1998, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The modification required by this AD shall be done in accordance with Stemme GmbH & Co. KG Service Bulletin No. A31–10–034, Amendment 01.a, pages 3 and 4, dated July 24, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–400, dated October 22, 1998.

(f) This amendment becomes effective on August 31, 1999.

Issued in Kansas City, Missouri, on July 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17677 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB59

Land Uses; Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands; Mediation of Grazing Disputes

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing Forest Service administrative appeal regulations pertaining to occupancy and use of National Forest System lands to offer mediation of certain grazing permit disputes in those States that have USDA certified mediation programs. This action is authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. The intended effect is to incorporate mediation for certain grazing disputes into established agency dispute resolution procedures.

EFFECTIVE DATE: This rule is effective August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Berwyn L. Brown, Range Management Staff, Forest Service, (202) 205–1457.

SUPPLEMENTARY INFORMATION: Pursuant to section 502 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101, *et seq.*) (hereafter, the 1987 Act), the Department of Agriculture offers a mediation program that provides borrowers and creditors an opportunity to resolve disputes prior to bankruptcy or litigation. The 1987 Act authorizes the Department of Agriculture to help States develop and participate in certified mediation programs.

Section 282 of Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (hereafter, the 1994 amendments) amended the 1987 Act to expand the number and type of issues available for mediation under a State's mediation program. One of the issues subject to mediation in the 1994 amendments concerned grazing on National Forest System lands.

Under the Secretary's rangeland regulations at 36 CFR 222.4, the Chief of the Forest Service may cancel a permit when one or more of the following conditions exist:

When a permittee refuses to accept modification of the terms and conditions of an existing permit (§ 222.4(a)(2)(i));

When a permittee refuses or fails to comply with eligibility or qualification requirements (§ 222.4(a)(2)(ii));

When a permittee fails to restock the allotted range after the full extent of approved personal convenience non-use has been exhausted (§ 222.4(a)(2)(iv)); and

When a permittee fails to pay grazing fees within established time limits (§ 222.4(a)(2)(v)).

The provisions of this section also authorize the Chief to cancel or suspend a permit when one or more of the following conditions exist:

When a permittee fails to pay grazing fees within established time limits (§ 222.4(a)(3));

When a permittee does not comply with provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based (§ 222.4(a)(4));

When a permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto (§ 222.4(a)(5)); and

When a permittee is convicted for failing to comply with Federal laws or regulations or State laws relating to protection if air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit (§ 222.4(a)(6)).

These cancellation of suspension actions are generally referred to as "permit enforcement actions" and may be appealed under part 251, subpart C, of Title 36 of the Code of Federal Regulations, which pertain generally to enforcement actions by an authorized officer regarding written instruments authorizing occupancy and use of National Forest System lands. Since only holders of such authorization may appeal under 36 CFR part 251, subpart C, it is this rule that the Forest Service has amended to incorporate a mechanism for the mediation of certain grazing disputes, as required by the 1994 amendments.

Section 501 of the 1987 Act, as amended, specifies that, in order to be certified, States shall provide for confidential mediation sessions. This statutory requirement necessitates a rule of rather narrow parameters. The types of decisions subject to mediation under this final rule are not subject to public disclosure and, therefore, can be mediated in confidence, since they relate to grazing permits and involve only the Deciding Officer or designee, the holder of a term grazing permit who seeks relief from a written decision to cancel or suspend a permit, and, in some circumstances, the holder's creditors.

Holders of other written authorizations to occupy and use National Forest System lands who may appeal written decisions of Forest Service line officers (§ 251.86) will not be affected by this final rule.

Response to Comments

A proposed rule was published for public review and comment in the **Federal Register** on February 27, 1998 (63 FR 9987). Thirteen comments were received from six groups and individuals representing private organizations, agricultural mediation programs, State agencies, and private citizens.

No comments were received on § 251.84, Obtaining notice; § 251.90, Content of notice of appeal; § 251.91, Stays; § 251.92, Dismissal; § 251.93, Resolution of issues; § 251.94, Responsive statement; § 251.103(e), Records; or § 251.103(g) Exparte communication. Therefore, these sections are not discussed further and are adopted as proposed.

A summary of major comments received on § 251.103 and the agency response follows:

Section 251.103 Mediation of Term Grazing Permit Disputes

Decisions subject to mediation. Proposed paragraph (a) of § 251.103 stated that in those States with Department of Agriculture certified mediation programs, any holder of a term grazing permit may request mediation as part of an administrative appeal when a Deciding Officer issues a decision to suspend or cancel a term grazing permit, in whole or in part, in accordance with 36 CFR 222.4(a)(2)(i),(ii)(iv),(v) and (a)(3)–(a)(6).

Comment. Several reviewers said that mediation should be available for any appealable decision including allotment management plans and annual operating plans. One reviewer suggested the regulation be left as broad as possible to allow for medication of any issues that may arise that could best be resolved through mediation.

Response. The opportunity for medication is already available, but not mandated, under Forest Service administrative appeal regulation § 215.16(a) for resolution of NEPA-based decisions such as those leading to the preparation of allotment management plans. Also Forest Service administrative appeal regulations at § 251.93 provide for mediation of disputes which may arise from Forest Service decisions about authorized use. While it is true that section 282(a) of the

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1994 amendments expanded the issues covered under State mediation programs to include "Grazing on National Forest System lands," these mediation sessions must be confidential. The reviewers of the proposed rule for mediation of grazing disputes did not provide any compelling arguments to support the notion that the statute requires a rule which encompasses all grazing decisions on National Forest System lands. The Department has determined that the confidentiality requirement necessitates a rule that limits mediation to permit enforcement actions involving the Forest Service and the holder of a term grazing permit. In these cases, the subject of the mediation is the decision by the authorized officer to impose a sanction upon the permittee resulting from a violation of the permit terms and conditions.

Parties. Proposed paragraph (b) of § 251.103 stated that the parties who may participate in mediation of term grazing permit disputes would be limited to the State certified mediator, the Deciding Officer or designee, the permittee who has requested mediation, creditors of the permittee, and, potentially, legal counsel representing the permittee and the Deciding Officer.

Comment. Several respondents urged the Forest Service to expand the category of parties eligible to participate in mediation to include technical experts, State agency personnel, and other Forest Service personnel. One respondent recommended that the permit holder and Deciding Officer have the authority to expand or limit participants. Another respondent stated the holder should be able to invite any party to support them. One respondent stated mediation should include representatives from the affected State fish and wildlife agency and local non-governmental conservation groups. Two respondents wanted the Deciding Officer, and not a designee, to participate in mediation to ensure consistency.

Response. The input of third parties would have no bearing on the outcome of mediation since the scope of the mediation is narrowly focused on a permittee's violation of permit conditions, which led to suspension or cancellation of their permit. Third parties have no cause or reason to participate in a mediation of a term permit dispute between a permittee and the Government. Also as stated in the preamble of the proposed rule, broader participation in mediation would pose a risk to maintaining the required confidentiality.

Given the nature of Forest Service business and scheduling difficulties due to a reduce workforce, the Department has determined that a designee of the Deciding Officer who made the decision could represent the Forest Service in mediation of term grazing permit disputes. Although, the Department agrees that it is desirable to have the Deciding Officer participate in mediation, there likely will be times when Deciding Officer participation will not be possible. Furthermore, the decision that is the subject of the mediation, although made by the Deciding Officer, is still a Forest Service action and a designee should be able to adequately represent the agency in the mediation of the dispute. Therefore, the provision in the proposed rule at § 251.103(b)(2) is retained without revision in the final rule. The Forest Service plans to issue Service-wide direction to require the Deciding Officer to participate in mediation when available.

Timeframe. Proposed paragraph (c) of § 251.103 stated that when an appellant simultaneously requested mediation at the time an appeal is filed, the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that, in order to allow for mediation, the appeal is suspended for 30 calendar days. Proposed paragraph (c) also proposed that if an agreement has not been reached at the end of 30 calendar days but it appears to the Deciding Officer that a mediated agreement may soon be reached, the Reviewing Officer may extend the period for mediation an additional 15 calendar days.

Comment. Several respondents encouraged the Forest Service to increase the timeframe for mediation to 60 to 90 days instead of the 30 to 45 day timeframe set forth in the proposed rule. One respondent requested the addition of a provision to extend the timeframe for mediation beyond 90 days to gather new information.

Response. The decision to limit mediation to 45 days was intended to provide the opportunity for meaningful mediation, while, at the same time, ensure that the Agency's administrative review process would be completed in a timely manner. In the event that mediation was unsuccessful, the 45-day timeframe would minimize the potential for delays and damage to National Forest System lands and resources. However, based on the comments received and experience gathered by the agency through experimenting with mediation of cancellation and suspension actions during the preparation of the proposed rule, the request to provide additional time for the mediation process seems reasonable and offers increased scheduling flexibility and more time for pre-mediation preparation and the actual mediation. Since the issues associated with suspension and cancellation actions are limited and narrowly focused, the agency does not agree that a provision to extend beyond 60 calendar days is warranted. Therefore, the Department has revised the provision in the proposed rule at § 251.103(c) to suspend the appeal for 45 calendar days with an option to extend the period an additional 15 calendar days, if the Deciding Officer believes a mediated resolution to the dispute is imminent. Even after the termination of this time period, discussions intended to resolve the dispute without proceeding with an administrative appeal may continue under 36 CFR 251.93.

Confidentiality. Proposed paragraph (d) specifies that mediation sessions must be confidential and that the terms of a final mediated agreement are subject to public disclosure.

Comment. Reviewers supported confidential mediation sessions between the Forest Service and individual term grazing permit holders; however, several reviewers expressed concern over what information would be included in a "public disclosure of the terms" of a mediated agreement.

Response. The Department agrees that clarification of the information being disclosed is needed. Background material used in mediation would not be included in a mediated agreement. Therefore, the proposed rule at § 251.103(d) has been revised to clarify that only the final agreement signed by both the Forest Service official and the permit holder is subject to public disclosure.

Cost. Paragraph (f) of § 251.103 proposed that the United States Government shall cover only the incurred expenses of its own employees in mediation sessions.

Comment. Reviewers requested changing the proposed cost provision to include dividing the cost for services provided under State certified programs equally between the State, permittee, and the Forest Service or dividing the cost evenly between the Forest Service and the permittee. Primary reasons given by reviewers for the Government to pay additional costs include: (1) While the Department of Agriculture does administer and distribute the mediation grant funds, the funds themselves are provided by Congress through a separate line item appropriation. Thus, the certified mediation programs are not being funded by "agency" funds; (2) Each party to the mediation must be treated equally, including sharing the cost of mediation; otherwise, there is a perception it is part of the Forest Service system and, as such, the outcome will have a bias toward the Service; (3) All other Department of Agriculture agencies participating in the program are paying fees in those States that charge them; (4) Without the Forest Service paying a share of the costs States will be forced to request augmented Department of Agriculture mediation grants to maintain the effectiveness of the program currently established; and (5) Wyoming statutes specifically provide that parties in the mediation process shall share the costs of mediation equally.

Response. After fully considering these comments the Department does not agree that there are compelling arguments to warrant the Government incurring additional responsibility for the cost of mediation because:

(1) The issue of the cost of mediation is not that funds are provided through a line item appropriation but rather that the Department already provides a large share of the funding for State mediation program operating expenses.

(2) The system for allocating the costs of the mediation among the parties should have no bearing on whether the parties will be treated equally. Mediators are specifically trained to serve as a neutral third party with no bias toward either side of the dispute. Although State mediation programs are certified by the Secretary of Agriculture, the mediators are State, not Federal, officials. Furthermore, in light of the fact that the Department of Agriculture already finances a substantial percentage of state mediation programs, additional payments by the Forest Service to cover a portion of the cost of the mediation may create a perception that the system is biased towards the agency.

(3) Regardless of how other agencies of the Department of Agriculture address this issue, it is the Forest Service position that it does not currently have sufficient funds in its rangeland management budget to comply with its basic land management planning and permit responsibilities and also cover state mediation expenses.

(4) The Department would not object to the States seeking additional funding to cover the cost of grazing permit dispute mediation expenses through an increased grant from the Department.

(5) States vary widely in their policies for funding of State certified mediation programs. To the extent that State laws conflict with these regulations, these regulations would prevail.

Other Comments

Comment. Some reviewers indicated that mediation is relatively unknown to most people and that a definition of mediation in the regulation would be helpful to explain what it is and how it works.

Response. Mediation is not a term of art, but a common term with a common meaning; therefore, the term "mediation" does not need to be defined in the Code of Federal Regulations. However, since § 251.84 requires the Deciding Officer to give written notice of the opportunity for mediation in the notice of appeal when the action suspends or cancels a term grazing permit pursuant to 36 CFR 222.4(a)(2)(ii), (iv) and (a)(3) through (a)(6), the Department agrees that describing the mediation process is a good idea. The Forest Service plans to issue national direction instructing the Deciding Officer to include a description of the mediation process in the written notice of adverse action per § 251.84.

Comment. Several respondents requested that mediation be made available to all permit uses on Forest Service lands, instead of limited to only term grazing permit disputes, according to proposed § 251.103.

Response. The opportunities for informal resolution of disputes, including use of mediation, involving other permitted uses of National Forest System lands, is already available under Forest Service administrative appeal regulations. This final rule is limited to implementing the Agricultural Credit Act of 1987, as amended, and, therefore, requires a rule of narrow parameters. Thus, the expansion of mediation to permit disputes, other than grazing permit suspension or cancellation, is not appropriate under this rulemaking.

Comment. Two respondents requested that the regulation allow the permittee and the Deciding Officer to form technical review teams to gather resource information and to provide technical expertise for making sound management decisions.

Response. Because the scope of the mediation is limited to certain types of permit enforcement actions, it is unclear what benefit, if any, would result from authorizing the formation of technical review teams to advise the permittee and the Deciding Officer. In addition, staffing these teams could be costly and time consuming for the parties. Therefore, since the benefits of a technical review team would be minimal, at best, while the costs are substantial, the final rule does not provide for such teams to be involved in the mediation process, either directly or indirectly.

The full text of revisions to 36 CFR part 251, subpart C, is set out at the end of this notice.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this final rule has been considered under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. The final rule does not compel small entities to do anything. Election of mediation of grazing disputes is strictly voluntary at the option of an individual permittee. The requirements of the final rule are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of individuals and small entities to perform.

Controlling Paperwork Burdens on the Public

This final rule does not contain any new recordkeeping or reporting requirements or other new information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Environmental Impact

This final rule would establish uniform direction to allow for mediation of certain types of grazing disputes. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental

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assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12988, Civil Justice reform. By adopting this final rule (1) all State and local laws and regulations that are in conflict with this final rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this final rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

No Taking Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Therefore, after notice and consideration of comments received and for the reasons noted in the preamble, the Secretary of Agriculture is adopting the final rule for implementing section 282 of Title II of the Federal Crop and Insurance Reform and Department of Agriculture Reorganization Act of 1994.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, subpart C of part 251 of title 36 of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

1. Revise the authority citation for subpart C to read as follows:

Authority: 7 U.S.C. 5101–5106; 16 U.S.C. 472, 551.

2. Amend § 251.84 by designating the existing text as paragraph (a) and by adding a paragraph (b) to read as follows:

§ 251.84 Obtaining notice.

* * * * *

(b) In States with Department of Agriculture certified mediation programs, a Deciding Officer shall also give written notice of the opportunity for the affected term grazing permit holder to request mediation of decisions to suspend or cancel term grazing permits, in whole or in part, pursuant to 36 CFR 222.4(a)(2)(i), (ii), (iv), (v) and (a)(3) through (a)(6). Such notice must inform the permit holder that, if mediation is desired, the permit holder must request mediation as part of the filing of an appeal.

3. Amend § 251.90 by revising paragraph (c) to read as follows:

§ 251.90 Content of notice of appeal.

* * * * *

(c) An appellant may also include one or more of the following in a notice of appeal: a request for oral presentation (§ 251.97); a request for stay of implementation of the decision pending decision on the appeal (§ 251.91); or, in those States with a Department of Agriculture certified mediation program, a request for mediation of grazing permit cancellation or suspensions pursuant to § 251.103.

4. Amend § 251.91 by revising paragraph (a) to read as follows:

§ 251.91 Stays.

(a) A decision may be implemented during the appeal process, unless the Reviewing Officer grants a stay or unless a term grazing permit holder appeals a decision and simultaneously requests mediation pursuant to § 251.103. In the case of mediation requests, a stay is granted automatically upon receipt of the notice of appeal for the duration of the mediation period as provided in § 251.103.

* * * * *

5. Amend § 251.92 by adding a new paragraph (a)(8) and by revising paragraph (c) to read as follows:

§ 251.92 Dismissal.

(a) * * *

(8) A mediated agreement is reached (§ 251.103).

* * * * *

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 251.87(d), except when a dismissal decision results from withdrawal of an appeal by an appellant, withdrawal of the initial decision by the Deciding Officer, or a mediated resolution of the dispute.

6. Amend § 251.93 by revising paragraph (b) to read as follows:

§ 251.93 Resolution of issues.

* * * * *

(b) When decisions are appealed, the Deciding Officer may discuss the appeal with the appellant(s) and intervenor(s) together or separately to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal, including mediation pursuant to § 251.103. At the request of the Deciding Officer, the Reviewing Officer may extend the time period to allow for meaningful negotiations, except for appeals under review at the discretionary level. In the event of mediation of a grazing dispute under § 251.103, the Reviewing Officer may extend the time for mediation only as provided in § 251.103.

* * * * *

7. Amend § 251.94 by revising paragraph (b) to read as follows:

§ 251.94 Responsive statement.

* * * * *

(b) *Timeframe.* Unless the Reviewing Officer has granted an extension or dismissed the appeal, or unless mediation has been requested under this subpart, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of receipt of the notice of appeal. Where mediation occurs but fails to resolve the issues, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of the reinstatement of the appeal timeframes (§ 251.103(c)).

* * * * *

8. Add a new § 251.103 to subpart C to read as follows:

§ 251.103 Mediation of term grazing permit disputes.

(a) *Decisions subject to mediation.* In those States with Department of Agriculture certified mediation programs, any holder of a term grazing permit may request mediation, if a Deciding Officer issues a decision to suspend or cancel a term grazing permit, in whole or part, as authorized by 36 CFR 222.4 (a)(2)(i), (ii), (iv), (v), and (a)(3) through (a)(6).

(b) *Parties.* Notwithstanding the provisions addressing parties to an appeal at § 251.86, only the following may participate in mediation of term grazing permit disputes under this section:

(1) A mediator authorized to mediate under a Department of Agriculture State certified mediation program:

(2) The Deciding Officer who made the decision being mediated, or designee;

(3) The holder whose term grazing permit is the subject of the Deciding Officer's decision and who has requested mediation in the notice of appeal;

(4) The holder's creditors, if applicable; and

(5) Legal counsel, if applicable. The Forest Service will have legal counsel participate only if the permittee choose to have legal counsel.

(c) *Timeframe.* When an appellant simultaneously requests mediation at the time an appeal is filed (§ 251.84), the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that, in order to allow for mediation, the appeal is suspended for 45 calendar days from the date of the Reviewing Officer's notice. If agreement has not been reached at the end of 45 calendar days, but it appears to the Deciding Officer that a mediated agreement may soon be reached, the Reviewing Officer may notify, by certified mail, all parties to the appeal that the period for mediation is extended for a period of up to 15 calendar days from the end of the 45-day appeal suspension period. If a mediated agreement cannot be reached under the specified timeframes, the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that mediation was unsuccessful, that the stay granted during mediation is lifted, and that the timeframes and procedures applicable to an appeal (§ 251.89) are reinstated as of the date of such notice.

(d) *Confidentiality.* Mediation sessions shall be confidential; moreover, dispute resolution communications, as defined in 5 U.S.C. 571(5), shall be confidential. However, the final agreement signed by the Forest Service official and the permit holder is subject to public disclosure.

(e) *Records.* Notes taken or factual material received during mediation sessions are not to be entered as part of the appeal record.

(f) *Cost.* The United States Government shall cover only incurred expenses of its own employees in mediation sessions.

(g) *Exparte communication.* Except to request a time extension or communicate the results of mediation pursuant to paragraph (d) of this section, the Deciding Officer, or designee, shall not discuss mediation and/or appeal matters with the Reviewing Officer.

Dated: June 27, 1999.

Anne Kennedy,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 99–17936 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL186–1a; FRL–6374–1]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 14, 1995, May 9, 1996, June 14, 1996, February 1, 1999, and May 19, 1999, the State of Illinois submitted State Implementation Plan (SIP) revision requests to meet commitments related to our conditional approval of Illinois' May 15, 1992, SIP submittal for the Lake Calumet (Southeast Chicago), McCook, and Granite City, Illinois, Particulate Matter (PM) nonattainment areas. EPA is approving the SIP revision request as it applies to the Lake Calumet area, including the attainment demonstration for the Lake Calumet PM nonattainment area. The SIP revision request corrects, for the Lake Calumet PM nonattainment area, all of the deficiencies of the May 15, 1992, submittal (as discussed in the November 18, 1994, conditional approval notice). EPA is also removing the codification of the conditional approval and codifying the final portions of Illinois' part D plan for the Granite City, Lake Calumet, and McCook moderate PM nonattainment areas. EPA is approved the Granite City PM plan, effective May 11, 1998, and the McCook PM plan, effective November 9, 1998.

DATES: This rule is effective on September 13, 1999, unless EPA receives written adverse comments by August 13, 1999. If written adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the revision request and EPA's analysis at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone David Pohlman at (312) 886–3299 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: David Pohlman at (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

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I. What is the background for this action?

Under section 107(d)(4)(B) of the Clean Air Act (Act), as amended on November 15, 1990 (amended Act), certain areas ("initial areas") were designated nonattainment for PM. Under section 188 of the amended Act these initial areas were classified as "moderate". The initial areas included the Lake Calumet, McCook, and Granite City, Illinois, PM nonattainment areas.

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The Lake Calumet PM nonattainment area is located on the Southeast side of Chicago, and is defined as "The area bounded on the north by 79th Street, on the west by Interstate 57 between Sibley Boulevard and Interstate 94 and by Interstate 94 between Interstate 57 and 79th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana State line." (See 40 CFR 81.314) Section 189 of the amended Act requires State submittal of a PM SIP for the initial areas by November 15, 1991. Illinois submitted the required SIP revision for the Lake Calumet, Illinois, PM nonattainment area on May 15, 1992. Upon review of Illinois' submittal, we identified several concerns. Illinois submitted a letter on March 2, 1994, committing to satisfy all of these concerns within one year of final conditional approval. On May 25, 1994, we proposed to conditionally approve the SIP. Final conditional approval was published on November 18, 1994, and became effective on December 19, 1994. The final conditional approval allowed the State until November 20, 1995, to correct the stated deficiencies. Of the five deficiencies, four apply to the Lake Calumet area:

1. Invalid emissions inventory and attainment demonstration, due to underestimated emissions from the roof monitors for the BOF at Acme Steel, the quench towers at Acme Steel and LTV Steel, and the rotary kiln incinerator at CWM Chemical Services.

2. Failure to adequately address maintenance of the PM NAAQS for at least 3 years beyond the applicable attainment date.

3. Lack of an opacity limit on coke oven combustion stacks at Acme Steel and LTV Steel.

4. The following enforceability concerns:

a. Section 212.107, Measurement Methods for Visible Emissions could be misinterpreted as requiring use of Method 22 for sources subject to opacity limits as well as sources subject to limits on detectability of visible emissions.

b. Inconsistencies in the measurement methods for opacity, visible emissions, and "PM" in section 212.110, 212.107, 212.108, and 212.109.

c. Language in several rules which exempts from mass emissions limits those sources having no visible emissions.

Illinois has since made submittals to correct the remaining deficiencies. Based on Illinois' submittals, we are now fully approving the SIP for the Lake Calumet area. At this time, we are only acting on the portions of those submittals that pertain to the Lake Calumet PM nonattainment area, because deficiencies concerning the other areas have been addressed. Our approval of the Granite City PM plan became effective on May 11, 1998 (see 63 FR 11842), and our approval of the McCook PM plan became effective on November 9, 1998 (see 63 FR 47431).

II. How has Illinois corrected the emissions inventory?

The first deficiency was an incomplete emissions inventory and attainment demonstration due to underestimated emissions from the roof monitors for the BOF at Acme Steel, the quench towers at Acme Steel and LTV Steel, and the rotary kiln incinerator at CWM Chemical Services. We pointed out that emissions from these sources were underestimated in the 1992 emissions inventory.

A. Quench Towers

The emissions inventory issue concerning the quench tower emissions calculations involved the use of "clean water" emission factor. (Clean water is defined as water with ≤ 1500 mg/l total dissolved solids (TDS.) Dirty water is defined as ≥ 5000 mg/l TDS.) We had argued that, because Illinois' rules allow weekly averaging and the PM standard is based on 24-hour measurements, Illinois' quench rule could allow significantly dirtier water than the 1200mg/l TDS limit suggests, and should, therefore, be modeled using the dirty water emission factor. Illinois submitted records of quench water TDS concentrations which show that daily concentrations rarely approach 1500 mg/l, let alone 5000 mg/l (Appendix 2 to Attachment 17 of Illinois' May 9, 1996, submittal). Based on the information provided by Illinois, we agree that the use of the clean water emission factor was appropriate.

B. BOF Roof Monitors

To correct the problem of underestimated emissions from the Acme Steel BOF roof monitors, Illinois adopted and submitted to the EPA a 20%, 3 minute average opacity limit on the Acme Steel BOF roof monitors (Attachment 6 of Illinois' February 1, 1999, submittal). Illinois also submitted a revised emissions inventory, which includes emissions from the BOF roof monitors. We agree that the revised emissions estimates are appropriate, given the tightened opacity limit.

C. Rotary Kiln Incinerator at CWM Chemical Services

The final emissions inventory issue was underestimated emissions from the rotary kiln incinerator at CWM Chemical Services. Illinois indicated in the May 9, 1996, submittal that this kiln is no longer operating. Therefore, this is no longer an issue.

III. What does the revised attainment demonstration predict about air quality?

In the submitted modeled attainment demonstration, which uses 5 years of meteorological data, a violation of the 24-hour NAAQS is indicated when six exceedances of the 24-hour standard are predicted. Each receptor's predicted 6th highest 24-hour value is, therefore, compared to the standard. The 24-hour PM standard is 150 micrograms per cubic meter ($\mu g/m^3$). The highest, sixth highest predicted 24-hour PM concentration at any receptor in the Lake Calumet nonattainment area was 119.2 $\mu g/m^3$. Thus, the modeling analysis predicts that the 24-hour NAAQS will be met.

A modeled violation of the annual PM standard is indicated when any receptor's 5 year arithmetic mean annual PM concentration exceeds the annual PM standard of 50 $\mu g/m^3$. The highest arithmetic mean annual PM concentration predicted by the modeling for the Lake Calumet area was 47.01 $\mu g/m^3$. Therefore, the modeling analysis predicts that the annual PM NAAQS will be met.

IV. How has Illinois addressed maintenance of the PM NAAQS?

The second deficiency was Illinois' failure to adequately address maintenance of the PM NAAQS for at least 3 years beyond the applicable attainment date. Because of the length of time it may take to determine whether an area has attained the standards, EPA recommends that PM nonattainment area SIP submittals demonstrate maintenance of the PM NAAQS for at least 3 years beyond the applicable attainment date. (See an August 20, 1991, memorandum from Fred H. Renner, Jr. to Regional Air Branch Chiefs titled "Questions and Answers for Particulate Matter, Sulfur Dioxide, and Lead") Illinois' May 15, 1992, submittal took growth into account in the modeling analysis, but did not adequately address maintenance of the NAAQS for PM.

The attainment date was December 31, 1994. Therefore, Illinois needs to show maintenance up to December 31, 1997. In the May 9, 1996, submittal, Illinois used ambient monitoring data to show that background concentrations of PM were no higher in 1995 than they were in 1991, and there are no significant trends in background PM concentrations from 1989 to 1995.

Illinois concluded from this analysis that the effects of growth on ambient PM concentrations in the Lake Calumet PM nonattainment area will continue to be negligible through the end of the maintenance period. Since the maintenance period has passed, this issue is no longer relevant.

V. What has Illinois done to provide opacity limits for coke oven combustion stacks?

The third deficiency was the lack of an opacity limit on coke oven combustion stacks at Acme Steel and LTV Steel. Because coke oven operations are generally covered by special opacity limits, Illinois' SIP exempts coke oven sources from the statewide 30 percent opacity limit. We approved this State exemption on September 3, 1981. We later realized that this exemption left coke oven combustion stacks without an opacity limit. Coke oven combustion stacks in Illinois are subject to grain loading limits which require stack tests for compliance determinations. Because stack tests can take months to perform and only last a few hours, an opacity limit, for which compliance can be determined by visual observations, is needed to ensure continuous compliance. We cited this deficiency in the November 18, 1994, conditional approval of Illinois' PM nonattainment area SIP submittal.

In response to the conditional approval of Illinois' PM plan, the State adopted a 30 percent opacity limit for coke oven combustion stacks. However, this rule also includes an exemption for "when a leak between any coke oven and the oven's vertical or crossover flue(s) is being repaired * * *" for up to 3 hours per repair. The EPA believes this rule is unacceptable. (See 62 FR 39199.)

In a February 1, 1999, letter, Illinois submitted a revised construction permit for Acme Steel. The permit, which was issued on January 11, 1999, includes a 30 percent opacity limit, and states that coke oven combustion stacks at Acme are not covered by the repair opacity exemption in 35 IAC 212.443(g)(2).

On May 19, 1999, Illinois submitted a revised Federally Enforceable State Operating Permit for LTV Steel which includes a 30 percent opacity limit, and limits the repair opacity exemption in 35 IAC 212.443(g)(2). The permit was issued on May 14, 1999. The permit limits the exemption to a particular type of repair where the ovens are pressurized for purposes of detecting and repairing leaks at tie-in joints. It also limits opacity during exemption periods to 60 percent. The permit further limits excess opacity to 3 hours per day and 20 hours per month. Mass emission limits continue to apply during repair exemption periods. We recognize that this type of repair can cause excess opacity, and that these repairs are necessary at the LTV facility due to tie-in joints resulting from an end-flue rehabilitation. The limits in the permit are stringent enough to ensure that excess opacity during repair periods is kept to a minimum, while still allowing the repairs to occur. We agree that the limits in the May 14, 1999, permit correct the previously-cited deficiency. This issue is resolved as it applies to LTV Steel.

VI. How has Illinois corrected the wording problems with the State rules?

The final issue from the November 18, 1994, conditional approval notice involves wording problems in several of Illinois' rules. The State has corrected these rules, and we approved the revised rules on March 11, 1998 (see 63 FR 11842). See the March 11, 1998, **Federal Register** notice for a discussion of these corrections.

VII. EPA Rulemaking Action

Illinois has corrected all of the deficiencies listed in the November 18, 1994, conditional approval as they relate to the Lake Calumet PM nonattainment area. Because Illinois has met all of the commitments of the conditional approval, we are approving the plan for the Lake Calumet PM nonattainment area. With this approval, Illinois has fulfilled all Clean Air Act requirements for Part D plans for the Lake Calumet, Granite City, and McCook moderate PM nonattainment areas.

Since all issues involving the conditional approval have been resolved, we are removing the codification of the conditional approval from the Code of Federal Regulations, Title 40, § 52.719. We are also fully approving 5 rules which we conditionally approved in our November 18, 1994, action. These rules, 35 Illinois Administrative Code 212.113, 212.210, 212.302, 212.309, and 212.316 were included in the conditional approval, but no deficiencies were identified with them. The rules were later resubmitted by Illinois on June 14, 1996.

We are publishing this rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should written adverse comments be filed. This rule will become effective without further notice unless we receive relevant adverse written comment by August 13, 1999, as indicated above. Should we receive such comments, we will publish a final rule informing you that this rule will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on September 13, 1999.

VIII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

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environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Paperwork Reduction Act

This action does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: June 23, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.719 is removed and reserved.

3. Section 52.720 is amended by adding paragraph (c)(150) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(150) On November 14, 1995, May 9, 1996, June 14, 1996, February 1, 1999, and May 19, 1999, the State of Illinois submitted State Implementation Plan (SIP) revision requests to meet commitments related to the conditional approval of Illinois' May 15, 1992, SIP submittal for the Lake Calumet (Southeast Chicago), McCook, and Granite City, Illinois, Particulate Matter (PM) nonattainment areas. The EPA is approving the SIP revision request as it applies to the Lake Calumet area. The SIP revision request corrects, for the Lake Calumet PM nonattainment area, all of the deficiencies of the May 15, 1992, submittal.

(i) Incorporation by reference.

(A) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 212: Visible and Particulate Matter Emissions, Subpart A: General, Section 212.113; Subpart E: Particulate Matter from Fuel Combustion Sources, Section 212.210; Subpart K: Fugitive Particulate Matter, Sections 212.302, 212.309, and 212.316. Adopted at 20 Illinois Register 7605, effective May 22, 1996.

(B) Federally Enforceable State Operating Permit—Special: Application Number 98120091, Issued on May 14, 1999, to LTV Steel Company, Inc.

4. Section 52.725 is amended by adding paragraph (g) to read as follows:

§ 52.725 Control strategy: Particulates.

* * * * *

(g) Approval—On May 5, 1992, November 14, 1995, May 9, 1996, June 14, 1996, February 3, 1997, October 16, 1997, October 21, 1997, February 1, 1999, and May 19, 1999, Illinois submitted SIP revision requests to meet the Part D particulate matter (PM) nonattainment plan requirements for the Lake Calumet, Granite City and McCook moderate PM nonattainment areas. The submittals include federally enforceable construction permit, application number 93040047, issued on January 11, 1999, to Acme Steel Company. The part D plans for these areas are approved.

[FR Doc. 99–17766 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket # MA–068–7203a; FRL–6377–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves the sections 111(d)/129 State Plan submitted by the Massachusetts Department of Environmental Protection on January 11, 1999. This State Plan is for implementing and enforcing provisions at least as protective as the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

DATES: This direct final rule is effective on September 13, 1999 without further notice unless EPA receives significant, material and adverse comment by August 13, 1999. If EPA receives adverse comment by the above date, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. Gerald Potamis, Chief, Air Permits Unit, Office of Ecosystem Protection, U.S. EPA-New England, Region 1, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Documents which EPA has incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. You may examine copies of materials the DEP submitted to EPA relative to this action during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency-New England, Region 1, Air Permits Unit, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

Massachusetts Department of Environmental Protection, Bureau of Waste Prevention, Division of Business Compliance, One Washington Street, Boston, Massachusetts 02108, (617) 556–1120.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA taking today?

EPA is approving the above referenced State Plan. However, we should note that by approving only the State Plan, EPA is taking no action on the proposed SIP revisions the MADEP also submitted with its State Plan. EPA will take action on these proposed SIP revisions and publish its findings in a future **Federal Register** document.

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by August 13, 1999, this action will be effective September 13, 1999.

If EPA receives significant, material, and adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public

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comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective September 13, 1999.

EPA's approval of MADEP's State Plan is based on our findings that:

(1) MADEP provided adequate public notice of public hearings for the proposed rule-making that allows Massachusetts to carry out and enforce provisions that are at least as protective as the EG for large MWCs, and

(2) MADEP demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

II. When did these requirements first become known?

Some form of the EG was first published in the **Federal Register** in 1989. On December 19, 1995, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the current form of the EG applicable to existing MWCs. The EG are at 40 CFR part 60, subpart

Cb. *See* 60 FR 65387 and the Background section.

III. When Does the State Plan Become Effective?

This direct final rule is effective on September 13, 1999 without further notice unless as explained under A. above, unless EPA receives adverse comment by August 13, 1999.

IV. What Happens to the Federal Plan After the Effective Date of the State Plan?

The Federal Plan is an interim action. On the effective date of this action, the Federal Plan will no longer apply to MWC units covered by the State Plan.

V. Who Must Comply With the Requirements?

The State Plan affects all MWCs:

1. With a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units), and

2. Which commenced construction on or before September 20, 1994 (existing MWC units).

MADEP submitted its Plan after the Court of Appeals vacated 40 CFR part 60, subpart Cb as it applies to small MWC units. Thus, the Massachusetts State Plan covers only large, existing MWC units. Small units are not subject to the requirements of subpart Cb and not subject to this approval.

VI. By What Date Must MWCs in Massachusetts Achieve Compliance?

All existing large MWC units in the state of Massachusetts must comply with these requirements by December 19, 2000.

VII. What Pollutants Must Be Controlled?

Subpart Cb regulates the following pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxin and dibenzofurans.

VIII. What Emission Controls Are Necessary to Achieve Compliance?

The basis for control of each pollutant is as follows:

a. for PM, opacity, Cd, Pb, and Hg.	GCP and SD/ESP/CI, or GCP and SD/FF/CI;
b. for dioxin/furan	GCP and SD/ESP, or GCP and SD/FF;
c. for SO_2 and HCl	GCP and SD/ESP, or GCP and SD/FF;
d. for NO_x	SNCR.

GCP—good combustion practice.
SD—spray dryer.
ESP—electrostatic precipitator.
FF—fabric filter.
CI—carbon injection.
SNCR—selective noncatalytic reduction.

IX. What Happens If An MWC Does Not/Cannot Meet the Requirements By the Final Compliance Date?

Any existing large MWC unit that fails to meet the requirements by December 19, 2000 must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements.

X. What Options Are Available to Operators If They Cannot Achieve Compliance Within One Year of the Effective Date of the State Plan?

If an MWC cannot achieve compliance within one year of the effective date of the State Plan, the operator must agree to meet certain increments of progress until they achieve compliance. The State Rule details the increments of progress for the affected MWCs.

XI. What Did the State Submit as Part of its State Plan?

The MADEP submitted to EPA on January 11, 1999 the following sections 111(d)/129 State Plan components for carrying out and enforcing the emission guidelines for existing MWCs in the State: Legal Authority; Emission Standards and Limitations; Compliance Schedule; MWC Emissions and MWC Plant/Unit Inventories; Procedures for Testing and Monitoring Sources of Air Pollutants; Source Surveillance, Compliance Assurance and Enforcement; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments and Public Hearing Summary; and applicable State regulations (MADEP regulations 310 CMR 7.08(2)).

The State Plan excludes the "Material Separation Plan" provisions and definition that are included in its regulation (310 CMR 7.08(2)(f)(7)). EPA may approve the plan without such provisions, since the material separation plan provisions are not required by the Emission Guidelines. Consequently, these provisions are not necessary to make the plan at least as protective as the Emission Guidelines. The State Plan also excludes the site assignment provisions of its regulations (310 CMR 7.08(2)(a)).

XII. How Did the State Show That Its Plan Is Approvable?

In appendix A of Massachusetts' Plan, MADEP cites the following in support of its demonstration of legal authority: Commonwealth of Massachusetts Attorney General's Demonstration of the Legal Authority to carry out the requirements of sections 111(d) and 129 of the Clean Air Act and to enforce the MWC New Source Performance Standards and Emissions Guidelines.

In appendix B of the State Plan, MADEP cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards are in MADEP's Air Pollution Control Regulations 310 CMR 7.08(2) for Municipal Waste Combustors. On the basis of the Attorney General's Opinion and Demonstration and the statutes of the Commonwealth of Massachusetts, EPA approved these standards and limitations under 310 CMR 7.08(2) as being at least as protective as the Federal requirements contained in subpart Cb for existing large MWC units.

In its State Plan and section 7.08(2) MWC Regulations, MADEP established a compliance schedule and legally enforceable increments of progress for each large MWC. EPA has reviewed and approved this portion of the State Plan as being at least as protective as Federal requirements for existing large MWC units.

On pages 4–7 of Massachusetts' Plan, MADEP submitted an emissions inventory of all designated pollutants for each of its six large MWCs. EPA reviewed and approved this portion of the Plan as meeting the Federal requirements for existing large MWC units.

On page 9, Massachusetts' Plan describes its legal authority to require owners and operators of designated facilities to maintain records and report to the State the nature and amount of emissions and any other information necessary to enable the State to judge the compliance status of the affected facilities. MADEP also cites its legal authority to provide periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with applicable emission standards, available to the general public. MADEP incorporated by reference into 310 CMR 7.08(2) the testing, monitoring, reporting and recordkeeping requirements under 40 CFR part 60. EPA reviewed and approved all of these State rules as being at least as protective as the Federal requirements for existing large MWC units.

As stated on page 9 of the State Plan, Massachusetts is committed to provide annual progress reports of Plan implementation. These progress reports will include the required items according to 40 CFR 51.323 through 51.326 and 40 CFR part 60, subpart B and appendix D. EPA reviewed and approved this portion of the Plan as meeting the minimum Federal requirement for State Plan reporting.

XIII. Will These Requirements Force Some Plants to Close?

EPA has not been notified of any further plant closures. It may be that an older plant may decide to close rather than pay the cost for bringing the plant into compliance with the regulations.

XIV. When Did EPA Publish the Rules?

On December 19, 1995, according to sections 111 and 129 of the Clean Air Act (Act), EPA issued new source performance standards (NSPS) applicable to new MWCs and emissions guidelines (EG) applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxin and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with its opinion in *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

XV. Why Does EPA Need To Approve State Plans?

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR part 60, subpart B. EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

XVI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued E.O. 12875 on October 26, 1993, entitled "Enhancing the Intergovernmental Partnership." Under E.O. 12875, EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the promulgated standards and emission guidelines.

In developing the MWC emission guidelines and standards, EPA consulted with affected State, local, and tribal governments, and kept those parties informed about the MWC standards and guidelines. EPA prepared a written statement pursuant to E.O. 12875 which it published in the 1995 promulgation notice (*see* 60 FR 65412 to 65413). The EPA has determined that this State Plan does not include any new Federal mandates or additional Federal requirements beyond those previously considered during promulgation of the 1995 MWC guidelines. Therefore, E.O. 12875 does not require further consultation or information. To the extent that the State Plan contains requirements that differ from, but that are at least as protective as, the Federal MWC guidelines, EPA notes that it has consulted with State government representatives during the State's development of the Plan, and that affected local and tribal governments have been provided with information and afforded opportunities to comment through Massachusetts' public hearing and comment procedures.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature

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of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not create any new requirements on any entity affected by this State Plan. Thus, the action will not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111(d) and section 129(b)(2) of the Clean Air Act do not create any new requirements on any entity affected by this rule, including small entities. They simply approve requirements that the state is already imposing. Furthermore, in developing the MWC emission guidelines and standards, EPA prepared a written statement pursuant to the Regulatory Flexibility Act which it published in the 1995 promulgation notice (see 60 FR 65413). In accordance with EPA's determination in issuing the 1995 MWC emission guidelines, this State Plan does not include any new requirements that will have a significant economic impact on a substantial number of small entities. Therefore, because the Federal 111(d) Plan approval does not impose any new requirements and pursuant to section 605(b) of the Regulatory Flexibility Act, the Regional Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

In developing the MWC emission guidelines and standards, EPA prepared a written statement pursuant to section 202 of the Unfunded Mandates Act which it published in the 1995 promulgation notice (*see* 60 FR 65405 to 65412). The EPA has determined that this State Plan does not include any new Federal mandates above those previously considered during promulgation of the 1995 MWC guidelines. The State Plan does include an emission limitation for mercury that will be more stringent than the limit required by the EG. However, that limit is not the result of a Federal mandate. In approving the State Plan, EPA is approving pre-existing requirements under State law and imposing no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from EPA's approval of State Plan provisions that may be more stringent than the EG requirements, nor will EPA's approval of the State Plan significantly or uniquely affect small governments. Thus, this action is not subject to the requirements of sections 202, 203, 204, and 205 of the Unfunded Mandates Act.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In approving or disapproving state plans under section 129 of the Clean Air Act, EPA does not have the authority to revise or rewrite the State's rule, so the Agency does not have authority to require the use of particular voluntary consensus standards. Accordingly, EPA has not sought to identify or require the State to use voluntary consensus standards. Furthermore, Massachusetts' Plan incorporates by reference test methods and sampling procedures for existing MWC units already established by the emissions guidelines for MWCs at 40 CFR part 60, subpart Cb, and does not establish new technical standards for MWCs. Therefore, the requirements of the NTTAA are not applicable to this final rule.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: July 3, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart W—Massachusetts

2. Part 62 is amended by adding a new § 62.5340 and a new undesignated center heading to Subpart W to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.5340 Identification of Plan.

(a) Identification of Plan. Massachusetts Plan for the Control of Designated Pollutants from Existing Plants (Section 111(d) Plan).

(b) The plan was officially submitted as follows:

(1) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors, submitted on January 11, 1999. The Plan does not include: the site assignment provisions of 310 CMR 7.08(2)(a); the definition of "materials separation plan" at 310 CMR 7.08(2)(c); and the materials separation plan provisions at 310 CMR 7.08(2)(f)(7).

(c) Designated facilities. The plan applies to existing sources in the following categories of sources:

(1) Municipal waste combustors.

3. Part 62 is amended by adding a new § 62.5425 and a new undesignated center heading to Subpart W to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity to Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.5425 Identification of sources.

(a) The plan applies to the following existing municipal waste combustor facilities:

(1) Fall River Municipal Incinerator in Fall River.

(2) Ogden Martin-Haverhill MWC in Haverhill.

(3) SEMASS RRF in Rochester.

(4) Wheelabrator Millbury Inc. in Millbury.

(5) Saugus RESCO in Saugus.

(6) NESWC MWC in North Andover.

[FR Doc. 99–17768 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300879; FRL–6086–5]

RIN 2070–AB78

Imazamox; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of imazamox, [2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methoxymethyl-3-pyridine-carboxylic acid, applied as the free acid or ammonium salt in or on canola and dry beans. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on canola and dry beans. This regulation establishes a maximum permissible level for residues of imazamox in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on July 15, 2001.

DATES: This regulation is effective July 14, 1999. Objections and requests for hearings must be received by EPA on or before September 13, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300879], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300879], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300879]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 284, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463, madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the herbicide imazamox, in cr on canola and dry beans at 0.05 part per million (ppm). These tolerances will expire and are revoked on July 15, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preeamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

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New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemptions for Imazamox on Canola and Dry Beans and FFDCA Tolerances

Minnesota and North Dakota requested use of imazamox on canola for control of wild mustard. According to the States, there are several factors that have caused an increase in the wild mustard population causing an emergency condition. First, there was above normal rainfall in 4 of 5 years during 1993-1997 and very high rainfall in 1998. Second, there has been an increase in the adoption of reduced-tillage practices to conserve soil moisture and prevent soil erosion. Third, there has been an increase in rotation to crops with limited or no control options. Wild mustard emerges early in the spring and is very competitive with canola. A canola crop containing 5% or more mustard seed will likely be rejected. Weed control is essential for successful oil seed crop production.

Currently there are no herbicides registered for use on canola that control wild mustard. The Agency has issued emergency exemptions for use of glufosinate-ammonium and glyphosate, which will also control wild mustard; however, the States claim the total amount of product available under those exemptions is not enough to control wild mustard infestations in all the canola acreage. In-crop cultivation is not a viable alternative for weed control since canola is commonly seeded in narrow rows.

Colorado, Idaho, Minnesota, Montana, North Dakota and Wyoming requested use of imazamox on dry beans for control of nightshade. Nightshades and velvetleaf have become a severe problem in dry bean production in parts of the Northwest and West Central United States. Hairy and black nightshade germinate throughout the growing season and can successfully tolerate shading. These characteristics allow plants to survive most current control strategies and contaminate fields at harvest. A single plant growing with crop competition can produce up to 1,600 berries per plant. The high moisture content of foliage and berries results in significant reductions in harvest efficiency; berries are poisonous and the purple-black juice from the berries stains the beans and reduces quality. A zero tolerance is established for dry beans grown for seed; one nightshade berry in a 300 pound sample will result in the rejection of an entire field.

Nightshade and velvetleaf have become severe problems due to a combination of reasons. Widespread use of trifluralin and pendimethalin have effectively controlled many grass weed species but have caused an increased prominence of nightshade. Frequent and thorough cultivations have been effective nightshade tools but are unavailable in conservation tillage. Only imazethapyr effectively controls nightshade in dry beans. Imazethapyr is not registered for use on dry beans in Idaho and Montana. Registrations are in place in Colorado, Minnesota, North Dakota, and Wyoming.

Historically, the Agency has determined that crop rotation restrictions are not a basis for an emergency when acceptable alternatives exist. However, imazethapyr has plantback intervals for sugar beets and canola of 40 months plus a successful field bioassy. Dry beans are an important rotational crop of sugar beets because sugar beets cannot be planted continuously due to nematode problems. The States have argued and the Agency agrees that a 40-month plantback restriction into an important cash crop for the region is equivalent to not having a viable alternative.

EPA has authorized under FIFRA section 18 the use of imazamox on canola for control of wild mustard in Minnesota and North Dakota, and use of imazamox on dry beans for control of nightshade in Colorado, Idaho, Minnesota, Montana, North Dakota, and Wyoming. After having reviewed these submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of imazamox in or on canola and dry beans. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on July 15, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola and dry beans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether imazamox meets EPA's registration requirements for use on canola and dry beans or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of imazamox by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Colorado, Idaho, Minnesota, Montana, North Dakota, and Wyoming to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding these emergency exemptions for imazamox, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of imazamox and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of imazamox on canola and dry beans at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imazamox are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* An acute reference dose (RfD) was not identified for imazamox. No toxicity was seen at doses exceeding the highest dose tested (HDT) in long-term studies in mice [no observed adverse effect level (NOAEL) = 1,053 milligrams/kilograms/day (mg/kg/day)], rats (NOAEL = 1,068 mg/kg/day) and dogs (NOAEL = 1156 mg/kg/day). No developmental toxicity was seen at 1,000 mg/kg/day in rats and 900 mg/kg/day in rabbits.

2. *Short- and intermediate-term toxicity.* Neither dermal nor systemic toxicity was seen at the HDT of 1,000 mg/kg/day in a 28-day dermal toxicity study in rats. Therefore, an endpoint was not identified for short- and intermediate-term dermal or inhalation exposure.

3. *Chronic toxicity.* EPA has established the RfD for imazamox at 3 mg/kg/day. This RfD is based on a NOAEL of 300 mg/kg/day from a developmental toxicity study in rabbits. Effects seen at the lowest observed adverse effect level (LOAEL), 600 mg/kg/day, were decreased food consumption during the treatment period; at 900 mg/kg/day, body weight gains were also reduced. An uncertainty factor of 100 (10X for inter-species extrapolation and 10X for intra-species variability) was applied to the NOAEL of 300 mg/kg/day to calculate the RfD of 3 mg/kg/day. EPA has determined that the 10X factor to account for enhanced susceptibility of infants and children, as required by FFDCA section 408(b)(2)(C), can be removed.

4. *Carcinogenicity.* Imazamox has been classified as a "Not Likely" carcinogen.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.508) for the residues of imazamox in or on soybeans. Risk assessments were conducted by EPA to assess dietary exposures and risks from imazamox as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No toxicity was seen at doses exceeding the HDT in long-term studies in mice, rats and dogs. No developmental toxicity was seen at 1,000 mg/kg/day in rats and 900 mg/kg/day in rabbits. Therefore, an acute RfD was not identified for imazamox and acute dietary risk assessments were not conducted.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, the following conservative assumptions have been made: (1) all of the crops having imazamox tolerances will contain imazamox residues, and (2) those residues will be at the level of the tolerance. This results in an overestimation of human dietary exposure. Thus, in making safety determinations for the canola and dry bean tolerances, the Agency is taking into account this conservative exposure assessment.

The combined imazamox tolerances (currently published and the section 18 tolerances established by this action) result in a Theoretical Maximum Residue Contribution (TMRC) that is less than 0.1% of the RfD for the U.S. population and all population subgroups.

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for imazamox. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on Generic Expected Environmental Concentration (GENEEC) and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and Screening Concentration in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. For the proposed uses, based on the GENEEC and SCI-GROW models, the chronic drinking water concentration values are estimated to be 2 parts per billion (ppb) for surface water and 3.4 pbb for ground water.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide

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exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to imazamox, they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Imazamox is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore, EPA expects only dietary and occupational exposure from the use of imazamox.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imazamox has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imazamox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imazamox has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* An acute RfD was not identified for imazamox; therefore, acute dietary risk assessments were not conducted.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to imazamox from food will utilize less than 0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imazamox in drinking water, after calculating a DWLOC (90,000 ppb) for the U.S. population and comparing it to conservative model estimates of concentrations of imazamox in surface and ground water (2 ppb and 3.4 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus other indoor and outdoor non-occupational exposure. Since there are no non-dietary, non-occupational exposures expected from the use of this chemical, no short- and intermediate-term risk assessments were conducted.

4. *Aggregate cancer risk for U.S. population.* Imazamox has been classified as a "Not Likely" carcinogen; therefore, a cancer risk assessment was not conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imazamox residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—* i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of imazamox, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) NOAEL was 500 mg/kg/day, based on minimal decreases in maternal body weight gains during the treatment period at the LOAEL of 1,000 mg/kg/day. The developmental (fetal) NOAEL was ≧ 1,000 mg/kg/day, the highest dose level tested. In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 300 mg/kg/day, based on decreased food consumption at the LOAEL of 600 mg/kg/day. The developmental (pup) NOAEL was ≧ 900 mg/kg/day, the highest dose level tested.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the systemic and reproductive NOAEL was ≧ 1,705/1,469 mg/kg/day for M/F, the highest dose level tested. The developmental (pup) NOAEL was 1,469 mg/kg/day, the highest dose level tested.

iv. *Pre- and postnatal sensitivity.* The toxicological data base for evaluating pre- and postnatal toxicity for imazamox is complete with respect to current data requirements. There are no pre- or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

v. *Conclusion.* There is a complete toxicity data base for imazamox and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency concludes that reliable data support use of a 100-fold margin of exposure/uncertainty factor, rather than the standard 1,000-fold margin/factor, to protect infants and children.

2. *Acute risk.* An acute RfD was not identified for imazamox; therefore, acute dietary risk assessments were not conducted.

3. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to imazamox from food will utilize less than 0.1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imazamox in drinking water, after calculating a DWLOC (30,000 ppb) for non-nursing infants less than 1 year old, the major identifiable subgroup with the highest aggregate exposure and comparing it to conservative model estimates of concentrations of imazamox in surface and ground water (2 ppb and 3.4 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* There are no non-dietary, non-occupational exposures expected from the use of imazamox; therefore, no short- and intermediate-term risk assessments were conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imazamox residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in soybeans data were reviewed in conjunction with a registration for use of imazamox on soybeans under FIFRA section 3. The soybean metabolism data were adequate to determine that the residue of concern is imazamox on soybeans. For these section 18's on canola and dry beans, the regulated residue is imazamox *per se.*

The nature of the residue in animals (poultry and ruminants) data were also reviewed in conjunction with the petition for soybeans. It was determined that no detectable imazamox residues would be expected in any animal commodities; therefore, no tolerances for any animal commodities were needed. Use of canola or dry beans as a feed item is expected to result in a similar or lower dietary burden as soybeans. Therefore, no tolerances are required for any animal commodities to support these commodities.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (residue analytical methods M2248.01 and M2333 using HPLC/UV and HPLC/MS, respectively, have been validated by EPA's Analytical Chemistry Branch and is available to enforce the tolerance expression for soybeans. For canola and dry beans, the registrant proposes a capillary electrophoresis method (M-3076) that has the same LOQ as the previously validated UV and MS methods (0.05 ppm). This method is considered acceptable for the current section 18 registration.

C. Magnitude of Residues

Residues of imazamox are not expected to exceed 0.05 ppm in/on canola or dry beans as a result of these section 18 uses. Based on metabolism studies on goats and hens, the Agency concludes that for these section 18 uses there are no reasonable expectation of finite residues of imazamox *per se* in meat, milk, poultry and eggs; therefore, tolerances for these commodities are not required at this time.

D. International Residue Limits

Imazamox is registered for use in canola in Canada. There are no Codex MRLs and no Mexican uses, as of 1998.

E. Rotational Crop Restrictions

Data that examined the potential for accumulation of [6-pyridine-^{14}C]imazamox in rotational crops indicate that ^{14}C-residues of imazamox did not accumulate (<0.01 ppm) in/on wheat commodities planted 100 days after sandy loam soil treatment at the 1.6X rate with [6-pyridine-^{14}C]imazamox. At the 268-day rotation, radioactive residues were less than 0.01 ppm in/on radish, lettuce, and corn commodities. Tolerances on rotational crops need not be established. Available data support a 3-month plantback interval for wheat, 4-month plantback interval for barley and rye, and the 9-month plantback interval for alfalfa, beans, corn, cotton, oats, peas, peanuts, potatoes, rice, sorghum (grain) and tobacco. Based on the residue data, the plantback intervals for all other crops could be 9 months, however, due to phytotoxicity concerns, some plantback restrictions are longer than 9 months.

V. Conclusion

Therefore, tolerances are established for residues of imazamox in canola and dry bean at 0.05 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 13, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record.

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Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300879] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a, 321q and 371.

2. In § 180.508, by adding paragraph (b) to read as follows:

§ 180.508 Imazamox; tolerances for residues.

(a) * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of imazamox, [2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methoxymethyl-3-pyridine-carboxylic acid, applied as the free acid or ammonium salt in connection with use of the herbicide under section 18 emergency exemptions granted by EPA. Tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ revocation date
Beans, dry	0.05	7/15/01
Canola	0.05	7/15/01

* * * * *

[FR Doc. 99–17352 Filed 7–13–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300883; FRL 6087–5]

RIN 2070–AB78

Bentazon; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the herbicide bentazon and its metabolites in or on succulent peas at 3.0 parts per million (ppm) for an additional 1 1/2 year period. This tolerance will expire and is revoked on December 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on succulent peas. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective July 14, 1999. Objections and requests for hearings must be received by EPA, on or before September 13, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300883], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300883], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300883]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9356; e-mail: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of June 20, 1997 (62 FR 33563) (FRL–5720–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of bentazon and its metabolites in or on succulent peas at 3.0 ppm, with an expiration date of June 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. On May 11, 1998 (63 FR 25775) (FRL–5787–4), EPA published a document extending this tolerance to June 30, 1999.

EPA received a request to extend the use of bentazon on succulent peas for this year's growing season due to infestation with the weed, Canada thistle. Since there are still no effective registered alternatives, this situation continues to be an emergency. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of bentazon on succulent peas for control of Canada thistle in succulent peas.

EPA assessed the potential risks presented by residues of bentazon in or on succulent peas. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of June 20, 1997 (62 FR 33563). Based on the data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional

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1 1/2 year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on succulent peas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 13, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300883] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§180.355 [Amended]

2. In §180.355, by amending the table in paragraph (b), by revising the expiration/revocation date for Peas, succulent from "6/30/99" to read "12/31/00".

[FR Doc. 99–17350 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300886; FRL–6088–8]

RIN 2070–AB78

Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of tebufenozide in or on kiwifruit. Rohm and Haas Company requested the tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 14, 1999. Objections and requests for hearings must be received by EPA on or before September 13, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300886], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300886], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by

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the docket control number [OPP–300886]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph M. Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 222, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6411, tavanojoseph@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 19, 1998 (63 FR 44439) (FRL–6019–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.482 be amended by establishing a tolerance for residues of the insecticide tebufenozide, in or on kiwifruit at 0.5 part per million (ppm). Tebufenozide controls light brown apple moth, green-headed leafroller, and brown-headed leafroller on kiwifruit.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of tebufenozide on imported kiwifruit at 0.5 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed in this unit.

1. Acute toxicity studies with technical grade: Oral LD_{50} in the rat is > 5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligrams/kilograms (mg/kg) for males and females - Toxicity Category III; inhalation LC_{50} in the rat is >4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non- irritant; primary skin irritation in the rabbit >5mg - Toxicity Category IV. Tebufenozide is not a sentizer.

2. In a 21–day dermal toxicity study, Crl:CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day (Limit-Dose) or the formulation 23.1% active ingredient (a.i.) product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the Highest Dose Tested (HDT) 1,000 mg/kg during the 21–day study. Based on these results, the No Observable Adverse Effect Level (NOAEL) for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A Lowest Observable Adverse Effect Level (LOAEL) for systemic toxicity and dermal irritation was not established.

3. A 1–year dog feeding study with a LOAEL of 250 ppm (9 mg/kg/day for male and female dogs) based on decreases in Red Blood Cells (RBC), Hematocrit (HCT), and Hemoglobin (HGB), increases in Heinz bodies, methemoglobin, Mean Corpuscular Volume (MCV), Mean Corpuscular Hematocrit (MCH), reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

4. An 18–month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

5. A 2–year rat carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group) Tebufenozide was administered on gestation days 6–15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 milliliter (ml)/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

7. In a prenatal developmental toxicity study conducted in New Zealand white rabbits (20/group) tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7–19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

8. In a 1993 2-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

9. In a 1995 2-generation reproduction study in rats tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

10. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in Chinese Hampster Ovary (CHO) cells, a CHO/Hypoxanthine guanine phophoribosyl transferase (HGPRT) assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay Unscheduled DNA Synthesis (UDS) in rat hepatocytes.

11. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3–6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992, ^{14}C labeled in 1 of 3 positions (A-Ring, B-Ring or N-butylcarbon). The extent of absorption was not established. The majority of the radio labeled material was eliminated or excreted in the feces within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioacculmulation. Absorption and excretion were rapid.

A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the 3 benzyl carbons, 2 methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be leaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

12. The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72–hour period, biliary excretion accounted for 30% (Female (F)) to 34% (Male (M)) of the administered dose while urinary excretion accounted for equivalent to 5% of the administered dose and the carcass accounted for <0.5% of the administered dose for both males and females. Thus, systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% (F) to 39% (M). The majority of the radioactivity in the bile 20% (F) to 24% (M) of the administered dose was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount, 67% (M) to 70% (F) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified (i.e. - unabsorbed compound) nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primary by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (M and/or F). Bile also contained the previously undetected (in the pharmacokinetics study) "A" Ring ketone and the "B"Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for >5% of the total administered dose. Total bile radioactivity accounted for equivalent to 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

B. Toxicological Endpoints

1. *Acute toxicity.* Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000, or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. Thus, the risk from acute exposure is considered negligible.

2. *Short- and intermediate termtoxicity.* No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical 97.2% product at 1,000 mg/kg/day (Limit- Dose) as well as a formulated 23% a.i. product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21–day period. The Agency noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in

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either rat or rabbit studies. This risk is considered to be negligable.

3. *Chronic toxicity.* EPA has established the chronic population adjusted dose (cPAD) for tebufenozide at 0.018 mg/kg/day. This Reference Dose (RfD) is based on a NOAEL of 1.8 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the chronic toxicity study in dogs where the NOAEL was 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at 8.7 mg/kg/day. EPA determined that the 10x factor to protect children and infants (as required by FQPA) should be reduced to 1x. Therefore, the cPAD is the same as the RfD: 0.018 mg/kg/day. Reducing the 10x factor to 1x is supported by the following factors.

i. Developmental toxicity studies showed no increased sensitivity in fetuses when compared to maternal animals following *in utero* exposures in rats and rabbits.

ii. Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offspring.

iii. There are no data gaps.

4. *Carcinogenicity.* Tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," chemical by EPA.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide in or on a variety of raw agricultural commodities. In today's action a tolerance will be established for the residues of tebufenozide in or on the raw agricultural commodity, kiwifruit at 0.50 ppm. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Estimates of PCT were used for the following crops. In all cases the maximum estimate was used.

Almonds: Average <1% Maximum <1%

Apples: Average 1% Maximum 2%

Beans/Peas, Dry: Average 0% Maximum 1%

Cotton: Average 1% Maximum 4%

Sugarcane: Average 3% Maximum 5%

Walnuts: Average 10% Maximum 16%

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tebufenozide may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligable.

ii. *Chronic exposure and risk.* The residue of concern for tebufenozide in plant and animal commodities is the parent compound *per se.* In performing this analysis, EPA used the Dietary Exposure Evaluation Model (DEEM), which incorporates data from the Continuing Survey of Food Intakes by Individuals (CSFII), 1989 to 1992. Some refinement to the food exposure estimates was made through the use of PCT data. The resulting estimated food exposures for the United States (U.S.) population and various DEEM population subgroups are shown in the following table. Of these subgroups, the highest exposure is projected for children ages 1–6, whose chronic intake is estimated at 73% of the RfD. Generally, in the absence of additional safety factors, EPA is not concerned with exposures less than 100% of the RfD. Thus, for all populations, the chronic human health risk from exposure to tebufenozide in foods is below EPA's level of concern. This estimate should be considered moderately refined. Further refinement to the exposure estimate, through the use of anticipated residues, more PCT data, or market-basket surveys, would likely result in lower exposure estimates.

Chronic Dietary Exposure to Tebufenozide and Associated Risk

Population Subgroup[1]	Eposure, mg/kg body ·wt/day	% of cPAD
U.S. Pop. (48 contiguious states).	0.006549 ...	36
U.S. Pop. (autumn)	0.006634 ...	37
U.S. Pop. (winter) ...	0.006742 ...	38
U.S. Pop. (Western region).	0.007230 ...	40
U.S. Pop. (Pacific region).	0.007419 ...	41
Non-hispanic Blacks	0.006618 ...	37
Not Hispanic, Black, or White.	0.007867 ...	44
All Infants (< 1 yr) ..	0.009369 ...	52
Non-nursing Infants (< 1 yr).	0.011223 ...	62
Children (1–6 yr)	0.013202 ...	73
Children (7–12 yr) ..	0.008301 ...	46
Females (13+ yr, nursing).	0.007604 ...	42
Males (20+ yr)	0.005161 ...	29

[1]Subpopulations include the general U.S. population, infants and children, females, males, and any other groups whose exposure is greater than that of the general U.S. population.

2. *From drinking water*— i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide ranges from moderately persistent to persistent and is mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. There is no established Maximum Contaminant Level (MCL) for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. There is no entry for tebufenozide in the "Pesticides in Groundwater Database."

Monitoring data are not available to assess the human exposure to tebufenozide via drinking water. In lieu of these, EPA has calculated the Tier I estimated concentrations in drinking water (DWECs) for tebufenozide using GENEEC (surface water) and SCIGROW (ground water) for use in the human health risk assessment. The maximum application rate for tebufenozide is 0.25 pound (lb) a.i. with 5 applications per year on pecans. This application scenario was used to calculate the DWECs for the human health risk assessment. Due to the wide range of aerobic soil half-life values, GENEEC and SCIGROW were run based on aerobic half-lives of 66 (California Loam) and 729 (worst-case soil with low microbial activity) days. For surface water, the chronic (56-day) values are 13.3 parts per billion (ppb) and 16.5 ppb for the half-lives of 66 and 729 days, respectively. The ground water screening concentrations are 0.16 ppb and 1.04 ppb for the half-lives of 66 and 729 days, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water due to the use of tebufenozide on pecans.

In performing this risk assessment, EPA has calculated drinking water levels of comparison (DWLOCs) for each of the DEEM population subgroups. Within each subgroup, the population with the highest estimated exposure was used to determine the maximum concentration of tebufenozide that can occur in drinking water without causing an unacceptable human health risk. As a comparison value, EPA has used the 16.5 ppb value in this risk assessment, as this represents a worst-case scenario. The DWLOCs for tebufenozide are above the DWEC of 16.5 ppb for all population subgroups. Therefore, the human health risk from exposure to tebufenozide through drinking water in not likely to exceed EPA's level of concern.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there is no non-dietary chronic, short- or intermediate-term exposure scenario.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

2. *Chronic risk.* Using the Anticipated Residue Contribution (ARC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 36% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1–6 years old) at 73% of the cPAD and is discussed below. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than EPA's DWLOC. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, EPA does not expect the aggregate exposure to exceed 100% of the PAD.

3. *Short- and intermediate-term risk.* Short- and intermediat-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risks do not exist.

4. *Aggregate cancer risk for U.S. population.* Since, tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," this risk does not exist.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using

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the standard uncertainty factor (usually 100 for combined inter- and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

Prenatal and postnatal sensitivity. The toxicology data base for tebufenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

Conclusion. There is a complete toxicity data base for tebufenozide and exposure data are complete and reasonably accounts for potential exposures. For the reasons summarized above, EPA concluded that an additional safety factor is not needed to protect the safety of infants and children.

2. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 73% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD.

4. *Short- or intermediate-term risk.* Short- and intermediate-term risks are judged to be negligible due to the lack of significant toxicological effects observed.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

III. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is adequately understood based upon acceptable apple, sugar beet, and rice metabolism studies. EPA has concluded that the residue of regulatory concern is tebufenozide *per se.* There are no animal feed items associated with kiwifruit; consequently, a discussion of potential transfer of secondary residues to animal commodities is not relevant.

B. Analytical Enforcement Methodology

The High Pressure Liquid Chromatography using ultra-violet detection (HPLC/UV) method (TR 34-95-66) used for determining residues of tebufenozide in/on kiwifruit is adequate for data collection. Adequate method validation and concurrent method recovery data have been submitted for this method. The limit of quantitation (LOQ) is 0.02 ppm for residues of tebufenozide in/on kiwifruit.

The Agency has requested that the petitioner revise the proposed enforcement method to correct the deficiencies noted during Agency method validation. Upon completion of the method revisions, the petitioner will be required to submit a copy suitable for publication in the Pesticide Analytical Manual, Volume II (PAM II).

The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Adequate residue data were provided to support the tolerance for kiwifruit at 0.5 ppm. There are no animal feed items associated with kiwifruit; consequently, a discussion of potential transfer of secondary residues to animal commodities is not relevant. There are no currently regulated processed food or feed items derived from kiwifruit; therefore, a discussion of tolerances for processed commodities is not relevant.

D. International Residue Limits

A proposed Codex MRL of 0.5 ppm in/on kiwifruit is currently at Step 3. This is in harmonization with the proposed tolerance sought in this petition.

E. Rotational Crop Restrictions

As kiwifruit is a perennial crop, confined and field rotational crop studies are not required for establishing a tolerance on kiwifruit.

IV. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in/on kiwifruit at 0.5ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 13, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300886] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Heolth Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 1999.

James Jones.

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.482, in paragraph (a), by adding alphabetically the following commodity to the table and adding footnote 1 to the table to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

(a) * * *

Commodity	Parts per million
* *	* * *
Kiwifruit[1]	0.5
* *	* * *

[1] There are no U.S. registrations on kiwifruit as of June 15, 1999.

* * * * *

[FR Doc. 99–17776 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300889; FRL–6089–8]

RIN 2070–AB78

Fosetyl-Al; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fosetyl-Al [Aluminum tris (O-ethylphosphonate)] in or on succulent peas. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing seed treatment use of the pesticide on peas. This regulation establishes a maximum permissible level for residues of fosetyl-Al in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on September 31, 2000.

DATES: This regulation is effective July 14, 1999. Objections and requests for hearings must be received by EPA on or before September 13, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300889], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300889], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300889]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)308–9362, schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide fosetyl-Al, in or on peas, succulent at 1.0 parts per million (ppm). This tolerance will expire and is revoked on September 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fosetyl-Al on Peas, Succulent and FFDCA Tolerances

According to the Applicant, wet conditions in 1998 contributed to severe outbreak of downy mildew in many pea fields in Washington and Idaho. There is concern that a significant outbreak of downy mildew will occur in 1999 because oospores have the ability to survive for 10–15 years. Because of a lack of resistance to the pathogen in commercially grown pea varieties and development of resistance in the pest population to the commercially used fungicides metalaxyl and menfenoxam, an emergency situation has arisen. EPA has authorized under FIFRA section 18 the seed treatment use of fosetyl-Al on peas for control of downy mildew in Washington and Idaho. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fosetyl-Al in or on peas. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on September 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on peas, succulent after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether fosetyl-Al meets EPA's registration requirements for use on peas or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fosetyl-Al by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Washington and Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fosetyl-Al, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fosetyl-Al and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fosetyl-Al on peas, succulent at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fosetyl-Al are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* No appropriate endpoint attributable to a single dose exposure was identified in acute oral toxicity studies. Therefore, risk assessments for these exposure scenarios were not conducted.

2. *Short- and intermediate-term toxicity.* No toxicological endpoints of concern were identified for short-term and intermediate-term dermal exposure or inhalation exposure for all time periods. Risk assessments for these exposure scenarios were not conducted.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for fosetyl-Al at 2.5 milligrams/kilograms/day (mg/kg/day). This RfD is based on a no observed adverse effect level (NOAEL) of 250 mg/kg/day, taken from a 2-year chronic study in dogs in which testicular degeneration was observed at the lowest observed adverse effect level (LOAEL) of 500 mg/kg/day. An uncertainty factor (UF) of 100 was employed to account for inter- and intraspecies variability. As the 10x safety factor was removed, the chronic

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population adjusted dose (cPAD) is equal to the RfD. The cPAD is calculated by dividing the RfD by the appropriate safety factor in situations where it is decided an additional safety factor should be retained. The cPAD will differ from the RfD in situations where the decision is made to retain either a 10x or 3x safety factor.

4. *Carcinogenicity.* Fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Effects observed in rats occurred under extremely high doses, under conditions not anticipated to occur outside of the laboratory.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.415) for the residues of fosetyl-Al, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from fosetyl-Al as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore, a risk assessment for this exposure scenario was not conducted.

ii. *Chronic exposure and risk.* Tolerance level residues and 100% crop treated were assumed to calculate theoretical maximum residue contributions (TMRCs) from published and proposed uses for the United States (U.S.) population and population subgroups. Chronic exposure for the U.S. population represents 3% of the cPAD.

2. *From drinking water.* Fosetyl-Al is not expected to reach ground or surface water under most conditions. The residues that do reach surface water will likely be rapidly degraded by microbial metabolism. There is no established Maximum Contaminant Level (MCL) for residues of fosetyl-Al in drinking water.

The Agency has calculated drinking water levels of comparison (DWLOCs) for chronic exposure to fosetyl-Al residues in surface and ground water. These DWLOCs are calculated by subtracting from the cPAD the respective chronic dietary exposure attributable to food to obtain the acceptable exposure to fosetyl-Al in drinking water. Default body weights (70 kg for males, 60 kg for females, and 10 kg for infants and children) and default drinking water consumption estimates (2 L/day for adults, 1 L/day for infants and children) are then used to calculate the actual DWLOCs. The DWLOC represents the concentration level in surface water or ground water at which aggregate exposure to the chemical is not of concern.

Using Generic Expected Environmental Concentration (GENEEC) and Screening Concentration in Ground Water (SCI-GROW) models (for surface and ground water, respectively), the Agency has calculated chronic Tier I Estimated Environmental Concentrations (EECs) for fosetyl-Al for use in human health risk assessments. These values represent the upper bound estimates of the concentrations of fosetyl-Al that might be found in surface water and ground water assuming the maximum application rate allowed on the label of the highest use pattern. The EECs from these models are compared to the DWLOCs to make the safety determination.

i. *Acute exposure and risk.* No toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore, a risk assessment for this exposure scenario was not conducted.

ii. *Chronic exposure and risk.* Using the SCI-GROW model, the maximum long-term EEC in ground water is not expected to exceed 0.0046 parts per billion (ppb). The chronic EEC in surface water is 9 ppb. The DWLOC for the U.S. population was calculated to be 85,000 ppb. As even the upper bound concentrations of fosetyl-Al in ground water and surface water are not expected to exceed the DWLOC, the Agency concludes with reasonable certainty that chronic exposure to fosetyl-Al in drinking water is not of concern.

3. *From non-dietary exposure.* Fosetyl-Al is currently registered for use on the following residential non-food sites: lawn, turf, and ornamental plants. However, no toxicological endpoints of concern were identified for short-term and intermediate-term dermal exposure or inhalation exposure for all time periods, and risk assessments for these exposure scenarios were not conducted. Long-term (chronic) exposure is not expected for residential uses.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fosetyl-Al has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fosetyl-Al does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fosetyl-Al has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* No toxicological endpoints were identified which could be attributable to a single dose exposure. Therefore, a risk assessment for this exposure scenario was not conducted.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fosetyl-Al from food will utilize 3% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children, 1–6 years (discussed below). EPA generally has no concern for exposures below 100% of the RfD (cPAD) because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated chronic environmental concentrations of fosetyl-Al in surface water and ground water do not exceed chronic DWLOCs calculated by the Agency. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

No toxicological endpoints of concern were identified for short-term and intermediate-term dermal exposure or inhalation exposure for all time periods. Risk assessments for these exposure scenarios were not conducted.

4. *Aggregate cancer risk for U.S. population.* Fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Effects observed in rats occurred under extremely high doses, under conditions not anticipated to occur outside of the laboratory.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fosetyl-Al residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* —i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fosetyl-Al, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental toxicity study in rats, developmental effects in pups occurred only in the presence of maternal toxicity and at four times the limit dose (developmental LOAEL = 4,000 mg/kg/day). In the prenatal developmental toxicity study in rabbits, no evidence of developmental toxicity was seen at the limit dose.

iii. *Reproductive toxicity study.* In the multi-generation reproduction study in rats, offspring effects occurred only at parentally toxic dose levels.

iv. *Pre- and postnatal sensitivity.* The available studies showed no evidence of increased susceptibility of fetus/pups in the developmental or reproductive toxicity studies. The Agency supports removal of the 10x safety factor for aggregate risk assessment.

v. *Conclusion.* There is a complete toxicity database for fosetyl-Al and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* No toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore, a risk assessment for this exposure scenario was not conducted.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fosetyl-Al from food will utilize 6% of the cPAD/RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated chronic environmental concentrations of fosetyl-Al in surface water and ground water do not exceed chronic DWLOCs calculated by the Agency. EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* No toxicological endpoints of concern were identified for short-term and intermediate-term dermal exposure or inhalation exposure for all time periods. Risk assessments for these exposure scenarios were not conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fosetyl-Al residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants is adequately understood. The residue of concern is parent fosetyl-Al. There are no livestock feed items associated with the proposed seed treatment use on peas.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression (associated with petition number 5F3251). The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues of fosetyl-Al are not expected to exceed 1.0 ppm in/on succulent peas as a result of the proposed seed treatment use on peas. Secondary residues are not expected in animal commodities as there are no feed items associated with succulent peas.

D. International Residue Limits

There are no Codex, Canadian or Mexican Maximum Residue Limits (MRLs) for fosetyl-Al on peas.

E. Rotational Crop Restrictions

No rotational crop restrictions are required for this chemical, due to its extremely short half-life in soil.

V. Conclusion

Therefore, the tolerance is established for residues of fosetyl-Al in peas, succulent at 1.0 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 13, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,

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Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300889] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.415, by revising paragraph (b) to read as follows:

§ 180.415 Aluminum tris (O-ethylphosphonate); tolerances for residues.

* * * * *

(b) *Section 18-emergency exemptions.* A time-limited tolerance is established for residues of the fungicide aluminum tris (O-ethylphosphonate) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. This tolerance will expire and is revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Peas, succulent	1.0	9/31/00

* * * * *

[FR Doc. 99–17777 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–72; RM–9017]

Radio Broadcasting Services; Mullins and Briarcliffe Acres, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Atlantic Broadcasting Co. Inc., reallots Channel 296C2 from Mullins to Briarcliffe Acres, South Carolina, as its first local aural transmission, and modifies Station WWSK(FM)'s license accordingly. *See* 62 FR 9410, March 3, 1997. Channel 296C2 can be reallotted to Briarcliffe Acres in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.7 kilometers (16 miles) northwest at petitioner's authorized site. The coordinates for Channel 296C2 at Briarcliffe Acres are 33–56–14 North Latitude and 78–57–53 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–72, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 296C2 at Mullins, and adding Briarcliffe Acres, Channel 296C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17873 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–211; RM–9349 and RM–9477]

Radio Broadcasting Services; Logan, UT and Evanston, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 252C2 to Evanston, Wyoming, in response to a counterproposal filed by M. Kent Frandsen. *See* 63 FR 68425, December 14, 1998. The coordinates for Channel 252C2 at Evanston, Wyoming, are 41–16–00 and 110–57–48. The original petitioner, L. Topaz Enterprises, Inc., withdrew its interest in the allotment of Channel 252C3 at Logan, Utah, in compliance with Section 1.420(j) of the Commission's Rules. With this action, this proceeding is terminated. A filing window for Channel 252C2 at Evanston, Wyoming, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report

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and Order, MM Docket No. 98–211, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 252C2 at Evanston.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17872 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–125; RM–9301]

Radio Broadcasting Services; Lufkin, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 230A to Lufkin, Texas, in response to a petition filed by Russell L. Lindley. *See* 63 FR 39804, July 24, 1998. The coordinates for Channel 230A at Lufkin, Texas, are 31–20–48 NL and 94–43–30 WL. With this action, this proceeding is terminated. A filing window for Channel 230A at Lufkin, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addresed by the Commission in a subsequent order.

EFFECTIVE DATE: August 16, 1999

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–125, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 230A at Lufkin.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17868 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA 99–5448; Notice 2]

RIN 2127–AH48

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adjusts certain civil penalties authorized for violations of statutes that we enforce. The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires us to take this action periodically. The largest adjustments occur in penalties for related series of violations of 49 U.S.C. Chapter 301—Motor Vehicle Safety, and 49 U.S.C. Chapter 325—Bumper Standards. The maximum penalties for violations of Chapters 301 and 325 are increased from $880,000 to $925,000 according to the formulae set forth in the statute. Adjustments in two other penalties are made as well.

DATES: *Effective Date:* August 13, 1999.

Applicability Date: These adjusted penalties apply to violations occurring on or after August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366-3820, electronic mail "TVinson@nhtsa.dot.gov", 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (("Adjustment Act"), 28 U.S.C. Sec. 2461 note, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 ("Collection Act," Pub. L..104–134), requires us and other Federal agencies to regularly adjust certain civil penalties for inflation. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil penalties, and must make further adjustments of these penalty amounts at least once every four years. The Collection Act limited the initial increase to 10 percent of the penalty being adjusted.

Our initial adjustment of civil penalties under these legislative authorities was published on February 4, 1997 (62 FR 5167). We established 49 CFR Part 578, *Civil Penalties*, which applies to violations that occur on and after March 6, 1997. These adjustments resulted in the maximum permissible increases of 10 percent. For example, the maximum penalty of $1,000 for each violation of 49 U.S.C. Sec. 30112(a), up to $800,000 for a related series of violations, was adjusted to $1,100 and $880,000.

In accordance with the mandate to make further adjustments of civil penalty amounts at least once every four years, on April 6, 1999, we proposed to adjust some of our penalties now in order to enhance their deterrent effect (64 FR 16690). We received no comments on this proposal.

Method of Calculation

Under the Adjustment Act as amended by the Collection Act, we determine the inflation adjustment for each applicable civil penalty by

increasing the maximum civil penalty amount per violation by the cost-of-living adjustment, and then applying a rounding factor. Sec. 5(b) of the Adjustment Act defines the "cost-of-living" adjustment as: "the percentage (if any) for each civil monetary penalty by which—

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law."

Since the current adjustment is effective before July 1, 1999, the "Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment" is the CPI for June 1998. This figure is 488.2. NHTSA's penalties were initially adjusted based on the CPI figure for June 1996. Because the intent of the legislation is for agencies to adjust their civil penalties to account for increases in inflation in order to preserve their remedial impact, we believe that this is realized by adjusting civil penalties according to the CPI base upon "which the amount of such civil monetary penalty was last set or adjusted pursuant to law." This base was the CPI for June 1996. This was 469.5. The factor that we are using in calculating the increase, then, is 488.2 divided by 469.5, or 1.0398296. Any calculated increase under this adjustment is then subject to a specific rounding formula set forth in Sec. 5(a) of the Adjustment Act. Under the formula:

Any increase shall be rounded to the nearest

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

Penalties That We are Increasing

Upon review, we concluded that application of the formulae permit some of our penalties to be increased at this time. We are doing so before the passage of four years in order to enhance the deterrent effect of these penalties because of their importance to our enforcement programs. Even with these increases, these penalties appear less than adequate as a full deterrent to violations of the statutes that we enforce. For example, the maximum penalty for a related series of violations under the National Traffic and Motor Vehicle Safety Act of 1966 as amended in 1974 was $800,000. It would have increased more than threefold, to $2.45 million, in June 1996 if adjusted for inflation. However, the adjustment was capped at $880,000. Further, under this aggregate penalty ceiling, on a per vehicle basis the maximum penalty amounts to less than one dollar per vehicle where a substantial fleet was in violation of the Safety Act (codified in 1994 as 49 U.S.C. Chapter 301—Motor Vehicle Safety).

Odometer Tampering and Disclosure

As shown above, Sec. 5(a)(3) of the amended Adjustment Act permits an increase rounded "to the nearest multiple of $1,000" for penalties between $1,000 and $10,000. Under 49 CFR Sec. 578.6(f)(2), a penalty of $1,650 may be imposed (the original penalty was $1,500). A figure of $1,716 results when the inflation factor is applied. The nearest multiple of $1,000 is $2,000. Therefore, we are amending 49 CFR Sec. 578.6(f)(2) so that a person who violates a requirement on odometer tampering and disclosure, with intent to defraud, will now be liable for three times the actual damages or $2,000, whichever is greater.

Consumer Information

The rounding provisions of Sec. 5(a)(6) of the Adjustment Act permit raises to the nearest multiple of $25,000 where the penalty exceeds $200,000. Sec. 578.6(d) establishes a maximum penalty of $440,000 (originally $400,000) for a related series of violations of consumer information regarding crashworthiness and damage susceptibility. The inflation factor applied to $440,000 gives $457,525. As the nearest $25,000 multiple is $450,000, we are adjusting the penalty to this amount.

Violations of Safety and Bumper Requirements

Both 49 CFR Sec. 578.6(a) and 49 CFR Sec. 578.6(c)(2) establish a maximum penalty of $880,000 (originally $800,000) for related series of violations of Chapter 301—Motor Vehicle Safety, and Chapter 325—Bumper Standards. Multiplying this figure by the inflation factor gives $915,050. Sec. 5(a)(6) permits a rounding to the nearest multiple of $25,000, which is $925,000, and we are adjusting the penalties to this amount.

Effective Date

The amendments are effective August 13, 1999 and the adjusted penalties apply to violations of pertinent statutes and regulations occurring on and after that date.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action is limited to the adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this rule under the Regulatory Flexibility Act. I certify that this rule will have no significant economic impact on a substantial number of small entities. The following is my statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The amendments primarily affect manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market, often specializing in replicas of "classic" cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 1999, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S.

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manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. We do not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles ought not to change as the result of this rule. As explained above, this action is limited to the adoption of a statutory directive, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Finally, this action will not affect our civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (62 FR 37115, July 10, 1997). We shall continue to consider the appropriateness of the penalty to the size of the business charged.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Public Law 96–511), we state that there are no requirements for information collection associated with this rulemaking action.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12612 (Federalism)

We have analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and have determined that it has no significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule does not have a retroactive or preemptive effect. Judicial review of a rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Penalties, Tires.

In consideration of the foregoing, 49 CFR part 578 is amended as follows:

PART 578—CIVIL PENALTIES

1. The authority citation for 49 CFR part 578 is revised to read as follows:

Authority: 49 U.S.C. 30165, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; Pub. L. 101–410, 104 Stat. 890; Pub. L. 104–134, 110 Stat. 1372; delegation of authority at 49 CFR 1.50.

2. Section 578.6 is amended by revising the last sentence in paragraphs (a) and (d) and revising paragraphs (c)(2) and (f)(2) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) *Motor vehicle safety.* * * * The maximum civil penalty under this paragraph for a related series of violations is $925,000.

* * * * *

(c) *Bumper standards.* * * *

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is $925,000.

(d) *Consumer information regarding crashworthiness and damage susceptibility.* * * * The maximum penalty under this paragraph for a related series of violations is $450,000.

* * * * *

(f) *Odometer tampering and disclosure.* * * *

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or $2,000, whichever is greater.

* * * * *

Issued on: July 8, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–17807 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket No. 99–NHTSA–5240; Notice 2]

RIN 2127–AH45

Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's importation regulations to implement a 1998 statutory amendment that adds "show or display" to the special limited purposes for which vehicles or equipment items may be imported without having to comply with the Federal motor vehicle safety standards (FMVSS). Under the amendments, a person who wants to import a vehicle or equipment item for "show or display" must persuade us that the vehicle or equipment item is of such historical or technological significance that it is worthy of being shown or displayed in this country even though it would be difficult or impossible to be brought into compliance with the FMVSS. We intend this provision to accommodate primarily individuals wishing to import an example of a make or model of a vehicle which its manufacturer never sold in the United States and which therefore has no counterpart that was certified to conform to the FMVSS.

We will allow limited use on the public roads of vehicles imported for "show or display." Before entry, an importer must describe the intended on-road use of the vehicle and submit a copy of an insurance contract containing the condition that the maximum annual mileage of the vehicle shall not exceed 2,500 miles.

Pursuant to the 1998 statutory amendment, we are also allowing owners of vehicles already imported into the United States under other exemptions to apply to us for a change in the terms and conditions under which we permitted their vehicles to be imported. The opportunity to apply for such a change is statutorily limited to the period of 6 months after the effective date of the final rule.

DATES: *Effective date:* The final rule is effective August 13, 1999

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: We discussed at some length the background of this rulemaking action in our notice of proposed rulemaking, published on March 22, 1999 (64 FR 13757). Given the fact that we received only one comment by the end of the 45-day comment period, May 6, 1999, we are not repeating this discussion, and interested persons may read the earlier document for background information. That comment, from the Special Vehicle Coalition, supported the proposed rule, with a recommended change in the mileage permissible for on-road use. We discuss this at an appropriate place in the notice. Except for the annual mileage and verification statements, we are adopting a final rule as we proposed it.

1. The 1998 Amendment to the Import Regulations

Sec. 7107(a) of Pub. L. 105–178, which was enacted on June 9, 1998, amended 49 U.S.C. 30114 by adding "show, or display" to the special purposes set forth in that section. As the Conference Report on the Transportation Equity Act for the 21st Century explained:

> Section 7107 reinstates NHTSA's authority to exempt certain motor vehicles imported for the purpose of show or display from certain applicable motor vehicle safety standards. Such authority was unintentionally deleted when title 49, United States Code was recodified in 1988.
>
> (H. Report 105–550, p. 523)

(We note that the deletion of "show" resulted from the 1988 amendments to the importation authority, rather than from the 1994 recodification, which deleted "studies").

2. Amendments to 49 CFR Part 591 That Implement Congress' Amendment of Sec. 30114

A. Sec. 591.5, Declarations Required for Importation

As amended, sec. 30114 now reads:

> The Secretary of Transportation may exempt a motor vehicle or item of motor vehicle equipment from section 30112(a) of this title on terms the Secretary decides are necessary for research, investigations, demonstrations, training, competitive racing events, show or display.

Currently, 49 CFR 591.5(j)(1) implements 49 U.S.C. 30114 by specifying requirements for importation of nonconforming vehicles or equipment for purposes of research, investigations, studies, demonstrations or training, and competitive racing events. In view of the intent of Congress at the time of recodification to include the word "studies" in the word "research," as previously discussed, we are revising Sec. 591.5(j)(1)(iii) to substitute the term "show or display" for "studies." We deem the term "studies" covered by the word "research" and subject to the same terms and conditions imposed on vehicles imported for purposes of "research."

B. Sec. 591.6, Documents Accompanying Declarations

We recognize two types of importers under sec. 591.5(j): one that has received written permission from us to import a vehicle under its provisions (sec. 591.5(j)(2)(i)); and one that is an original manufacturer of motor vehicles (or its wholly-owned subsidiary) and that certifies that its products comply with the Federal motor vehicle safety standards (sec. 591.5(j)(2)(ii)).

Sec. 591.6(f) specifies the procedure for an importer who wishes to obtain written permission from us to import a vehicle or equipment item under sec. 591.5(j)(2)(i). Sec. 591.6(f)(1) requires all such requests to contain information sufficient to identify the vehicle or equipment and the specific purpose of importation, which must include a discussion of the use to be made of the vehicle or equipment. With respect to any such vehicle to be imported for research, investigations, demonstrations or training (but not for studies), if use on the public roads is to be an integral part of the purpose of importation, the statement must request permission for use on the public roads, describing the purpose that makes such use necessary and stating the estimated period of time during which use of the public roads is necessary. The request must also state the intended means of final disposition (and disposition date) of the vehicle or equipment after completion of the purpose for which it is imported.

After review, we have decided that it is appropriate to retain this requirement in implementing the new statutory provision but we will amend sec. 591.6(f)(1) to clarify that it pertains to importations other than those for show or display, which will now be covered by sec. 591.6(f)(2).

Currently, if a sec. 591.5(j)(2)(i) importer wishes to import a vehicle or equipment for "studies," the importer's written request:

> shall explain why the vehicle or equipment item is of historical or technological interest, and describe the studies for which importation is sought. The importer, if other than the National Museum of History and Technology, Smithsonian Institution, shall also provide a copy of the Determination Letter from the Internal Revenue Service approving the importer's status as a tax-exempt corporation or foundation under section 501(c)(3) or section 509, respectively, of the Internal Revenue Code. The time between the date of the Letter and the date of the importer's written request to the Administrator shall be not less than 5 years. The importer shall also provide a statement that it shall not sell, or transfer possession of, or title to, the vehicle, or license it for use, or operate it on the public roads, until the vehicle is not less than 25 years old.

We have concluded that the statutory amendment providing authority to admit vehicles or equipment for show or display, without any qualification on the eligibility of the importer, means that tax-exempt entities as well as individual importers may import vehicles for show or display. For this reason, there is no further need to maintain an exemption for studies. Accordingly, we are amending the regulation to delete the provisions expressly relating to importations for studies. As noted, importations for "studies" are essentially those of importations for "research."

One of the terms and conditions of the allowance of importation for "studies" was that the vehicle not be licensed for use or operated on the public roads. We have reviewed this restriction in view of our new authority to allow importation for "show or display," and have concluded that limited on-road use should be allowed, pursuant to our permission. We believe that the historical and technological significance of a vehicle may be maintained by its limited use of the public roads on an occasional basis in order to ensure that its engine, braking, lighting, and other dynamic systems remain in good working order, in short, so that it may be preserved. Another appropriate use of such a vehicle on the public roads would be to allow it to travel to and from nearby displays of automobiles of similar significance, so that its significance could be appreciated by a greater number of people than were it restricted to off-road use. We proposed that on-road use of these nonconforming vehicles should be limited to a maximum of 500 miles per year. For the reasons discussed below, this proposed restriction has been modified.

Consistent with the previous exemption for "studies," we have decided that a person who wishes to import a vehicle for show or display ought to establish that the vehicle is one of historical or technological interest. This criterion has existed for many years, beginning with the previous "show" exemption, and continuing with the one for "studies."

Our most detailed discussion of the criterion of historical and technical

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interest was contained in a letter of July 12, 1983, to Richard London, and it is worth repeating here. Mr. London asked about the acceptability of importing a Mercedes-Benz 280SL which would be trailered to various auto meets, and which would not be licensed for use or used on the public roads. We advised Mr. London that:

> The agency considers several factors in determining whether to accept a declaration that a vehicle is imported solely for "show." One of these is the nature of the vehicle itself. If it is a unique machine generally considered to be of technological or historical significance, it is more likely to be admitted under the exception than if it were a mass-produced vehicle similar to many that were manufactured to conform to the Federal motor vehicle safety standards. The smaller the production run, the greater the likelihood that it will be considered to be unique. Mechanical components that differ substantially from those commonly in use at the time of manufacturer are evidence of its technological significance. Association with historical personages that would create a desire in the public to see the car is also considered relevant in the agency's interpretation of the word "show."

Examples of vehicles that might qualify under this exemption are high technology vehicles such as the McLaren F1, or certain types of Porsches or Ferraris that were never, in the first instance, sold in the United States. We might consider a vehicle owned by the Pope, the Queen of England, or some other important figure to be a vehicle of historical significance.

We went on to explain to Mr. London that

> In interpreting the word "show" and thereby exercising its discretion whether to allow importation of nonconforming motor vehicles for this purpose, the agency must balance the harm to the public likely to occur through use of the vehicle on the public roads, with the benefit to the public of importation of nonconforming vehicle for show purposes. * * * [t]he agency believes it is less likely that a rare or unique vehicle, part of a collection available to the public will be sold for use on the public roads than a vehicle such as the 1968–72 Mercedes 280SL that has been imported in numerous quantities as a conforming motor vehicle.

This explanation clearly demonstrated our view that nonconforming analogues of certified vehicles sold in the United States were not very likely to be considered of historical or technological significance.

In any event, use on the public roads will not be a matter of right for vehicles imported for "show or display," but subject to such terms and conditions as may be established at the time of entry. In some cases where there are safety concerns, we may refuse to authorize on-road use of a particular vehicle. In order to ensure that any on-road use is limited, the prospective importer, in his or her request letter, must describe the purposes for which on-road use is deemed required.

We proposed that the request be accompanied with an affirmation that the vehicle will not be driven on the public roads more than 500 miles in any 12-month period beginning as of the date of its importation, and that the affirmation be confirmed by the importer's submittal of an annual notarized mileage statement for the vehicle on the anniversary date of its importation, for the first five years after it is imported. We have been requested by the one commenter on the proposal, the Special Vehicle Coalition (the "Coalition"), to increase the permissible annual mileage to 2,500 miles. Describing itself as "a group of vehicle collectors who own limited-production high-performance vehicles," the Coalition asserted that "restricting mileage to 500 miles per year will prohibit participation in many civic and charitable events designed to benefit, entertain, and inspire the American public." More persuasively, the Coalition argued that an annual odometer reading might not accurately reflect actual on-road usage, since it would include mileage attributable to any use of the vehicle off the public roads as well. It brings to our attention that "a 2,500 mile allotment is consistent with current practice for these kind of vehicles, including normal on-road usage of much older collector vehicles that, because of their age, will not meet Federal motor vehicle safety standards." This comment was accompanied by a footnote saying that "Insurance policies for classic cars and vehicles of special interest typically set a maximum mileage allowance of 2,500 miles per year."

We have reconsidered our proposal in light of the Coalition's comments. In proposing a 500-mile limitation, we had not focused on the fact that other vehicles not subject to the Federal motor vehicle safety standards have been permitted to use the public roads under insurance policies that limit their mileage allowance to 2,500 miles per year. While the Coalition did not discuss the kind of insurance policy that would be obtained by importers for show and display, we assume that all vehicles imported for show and display will, in fact, be insured, and that the policy would not deviate materially from those that cover classic and special interest vehicles. Furthermore, the mileage limitation imposed as a condition of insurance appears to remove the need for the importer to submit an annual mileage statement to us. However, we believe that we ought to be able to inspect the vehicle if we wish to verify that the accumulated mileage of the vehicle is not more than 2,500 miles in any 12-month period. Accordingly, our final rule requires the prospective importer to submit with its request the current mileage of the vehicle and a copy of an insurance contract covering the car, which contains as a condition the restriction of annual mileage to a maximum of 2,500 miles (this limitation refers to all mileage, not merely on-road mileage). In addition, the prospective importer must state that (s)he will allow us to inspect the vehicle upon our request. As proposed, the prospective importer will also have to state that the vehicle will not be used on the public roads unless it complies with the requirements of the Environmental Protection Agency. Moreover, as indicated above, we may impose additional requirements or limitations in particular instances when we find such requirements are appropriate.

We have substituted the conditions for an insurance policy and its maintenance until the vehicle is 25 years old for the notarized mileage statement submitted for 5 years after importation which we originally proposed. Under 49 U.S.C. 30112(b)(9), a noncomplying motor vehicle may be imported with no Federal legal requirement to conform it if it is at least 25 years old. Our new provision, thus, serves to release the importer or owner from the restrictions imposed on show or display importations when the vehicle reaches 25 years of age. We retain the right to inspect it for mileage verification until that point.

The current regulation also restricts sale and transfer of possession of a vehicle imported for "studies" until it is 25 years old. While this restriction might not be burdensome to a museum, the agency recognizes that there are circumstances such as the death of an importer where a sale or transfer of a vehicle imported for "show or display" must occur before it is 25 years old. To fully implement its new authority to allow importation for "show or display," the agency is modifying this restriction, and allow sale or transfer of a vehicle imported for "show or display" upon approval by the Administrator.

Accordingly, we are revising sec. 591.6(f)(2) to require that a prospective importer:

> shall explain why the vehicle or equipment item is of historical or technological interest. The importer shall also provide a statement that, until the vehicle is not less than 25 years old, (s)he shall not sell, or transfer possession of, or title to, the vehicle, and shall not license it for use, or operate it on the public roads, except under such terms and conditions as the Administrator may authorize. If the importer wishes to operate the vehicle on the public roads, the request to the Administrator shall include a description of the purposes for which (s)he wishes to use it on the public roads, a copy of an insurance policy or a contract to acquire an insurance policy, which contains as a condition thereof that the vehicle will not accumulate mileage of more than 2,500 miles in any 12-month period and a statement that the importer shall maintain such policy in effect until the vehicle is not less than 25 years old, a statement that the importer will allow the Administrator to inspect the vehicle at any time after its importation to verify that the accumulated mileage of the vehicle is not more than 2,500 miles in any 12-month period, and a statement that the vehicle will not be used on the public roads unless it is in compliance with the regulations of the Environmental Protection Agency.

Failure to allow a mileage inspection or to maintain a policy with an accumulated mileage limitation or the accumulation of more than 2,500 miles in any 12-month period will be regarded as a violation of the terms of entry.

C. Sec. 591.7, Restrictions on Importations

Until now, all importations under sec. 591.5(j)(1) have been "for a temporary period," requiring a U.S. Customs Service Temporary Importation Bond (TIB). Under sec. 591.7(a), the TIB requires that vehicles which it covers shall not remain in the United States for a period that exceeds 3 years from the date of entry. However, under sec. 591.7(b), if the importer decides to liquidate the bond, it may apply to us for permission to keep the vehicle in the country for an additional period of time not to exceed 5 years from the date of entry, unless further written permission has been obtained from us. Such written permission, after 5 years, can result in an "importation for a temporary period" becoming a permanent one. This regulatory scheme has caused uncertainty as to whether we permit permanent importations under sec. 591.5(j).

Because we do permit permanent importations under sec. 591.5(j), we believe that we should clarify this point and simplify this process to allow a permanent importation ab initio, if an importer chooses to pay duty upon entry of the vehicle, rather than treating the entry as a "temporary" one, requiring a TIB and subsequent letters of permission. Amendments of this nature will not affect the existing right under sec. 591.5(j)(1) to import vehicles on a temporary basis with a TIB for those importers who wish to choose this option.

Another restriction is imposed by sec. 591.7(c). If the importer has brought a vehicle into the United States pursuant to sec. 591.5(j)(2)(i), sec. 591.7(c) requires the importer to retain title to and possession of it, forbids its leasing, and allows its use on the public roads only if written permission has been granted by the Administrator pursuant to sec. 591.6(f)(1) (covering importations for research, investigations, demonstrations or training, but not studies or competitive racing events).

The restriction of sec. 591.7(c) implements the statement that an importer is required to make as part of the request letter. Given the fact that limited on-road use is being permitted for importations for "show or display," we are amending sec. 591.7(c) to allow limited on-road use of all vehicles imported under sec. 591.5(j)(2)(i) "under such terms and conditions as the Administrator may authorize in writing." We are also amending the first sentence of sec. 591.7(c) to conform to the statement that an importer gives under sec. 591.6(f)(2), and imposing affirmative obligations not to sell or transfer the vehicle, or license it or operate it on the public roads except upon written approval by the Administrator in place of the presently existing absolute prohibition.

Sec. 591.7(d) specifically provides that any violation of a term or condition that we impose "in a letter authorizing importation or on-road use under sec. 591.5(j) shall be considered a violation" of the Safety Act for which a civil penalty may be imposed. We note that this language could possibly be read as suggesting that a civil penalty would be the only consequence of a violation of a condition imposed as part of an exemption from sec. 30112(a). Therefore, we are modifying sec. 591.7(d) to make it clear that such a violation of a term or condition in an exemption authorization will void the authorization and require exportation of the vehicle. In addition, the statutory reference in sec. 591.7(d) to 15 U.S.C. 1397(a)(1)(A) is changed to 49 U.S.C. 30112(a) to reflect the recodification of the Safety Act into Chapter 301.

Sec. 591.7(e) prohibits the importation for "studies" by any person not recognized as a tax-exempt entity by the Internal Revenue Service for not less than 5 years before the date of its written request. Because we are incorporating the "studies" exemption into the exemption for "research" where this restriction does not exist, this section is moot. Sec. 591.7(e), therefore, is being removed. A new subsection (e) will replace it, to implement the statutory directive of section 7107(b) of Pub. L. 105–178 discussed below.

3. Seeking Exemptions Under Sec. 30114 for Vehicles in the United States at the Time the Amendment Was Enacted

Section 7107(b) of Pub. L. 105–178 provides that:

> (b) TRANSITION RULE—A person who is the owner of a motor vehicle located in the United States on the date of enactment of this Act may seek an exemption under section 30114 of title 49, United States Code, as amended by subsection (a) of this section, for a period of 6 months after the date regulations of the Secretary of Transportation promulgated in response to such amendment take effect.

We interpret sec. 7017(b) as authorizing owners of vehicles imported under sec. 591.5(j) before June 9, 1998, to apply to the Administrator for a change in the terms and conditions under which the vehicle was admitted so that engaging in an act contrary to those original terms and conditions will not be held to be a violation. If the change requested is to reclassify the vehicle as one imported for show or display, we proposed that the request also include a statement that the owner will provide the annual mileage statement required of de novo importers for show or display by sec. 591.6(f)(2). However, the final rule for change-of-status importers is modified to reflect the changes we are adopting in sec. 591.6(f)(2) relating to an increase in maximum mileage subject to insurance limitations, and the right to inspect the vehicle to verify its accumulated mileage. Therefore, we are revising sec. 591.7(d) and (e) to read as follows:

> (d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation or on-road use under § 591.5(j), or a change of status under paragraph (e) of this section, including a failure to allow inspection upon request to verify that the accumulated mileage of the vehicle is not more than 2,500 miles in any 12-month period, shall be considered a violation of 49 U.S.C. 30112(a) for which a civil penalty may be imposed. Such a violation will also act to void the authorization and require the exportation of the vehicle. With respect to importations under § 591.6(f)(2) or a change of status to an importation for show or display as provided under paragraph (e) of this section, if the Administrator has reason to believe that a violation has occurred, the Administrator may tentatively conclude that a term of entry has been violated but shall make no final conclusion until the importer or owner has been afforded an opportunity to present data, views, and arguments as to why there is no

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violation or why a penalty should not be imposed.

(e) The owner of a vehicle located in the United States on June 9, 1998, which the owner had imported pursuant to § 591.5(j), may apply to the Administrator on or before February 14, 2000, for a change in any such term or condition contained in the Administrator's letter. If the owner requests a change to importation for show or display, the request to the Administrator shall contain the information and statements required under § 591.6(f)(2) for a new importation for show or display. All requests for change shall be sent to the Director, Office of Vehicle Safety Compliance (NSA–32), National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590.

4. Effective Date

The final rule is effective 30 days after its publication in the **Federal Register**.

5. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rule has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, NHTSA has determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The only substantive change that this rule makes is to add an additional justification for importing motor vehicles without the need to comply with the Federal motor vehicle safety standards, and to require their importers to submit substantiating information similar to that already required for similar importations (see discussion below on Paperwork Reduction Act). The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action does not have a significant economic impact upon "a substantial number of small entities." The addition of an option to import a vehicle for "show or display" without the need to conform it relieves a previously existing restriction. Because the agency has permitted manufacturers of motor vehicles to import vehicles for purposes similar to "show or display" in the past, NHTSA believes that virtually all who wish to import a vehicle for "show or display" will be individuals. Individuals are not "small entities." Governmental jurisdictions will be affected only to the extent that they must decide whether local laws permit the operation on local public roads of motor vehicles imported for show or display that do not conform to all applicable Federal motor vehicle safety standards, and this decision will not have a significant economic impact.

C. Executive Order 12612 (Federalism)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported will not vary significantly from that existing before the promulgation of this rule.

E. Civil Justice Reform

This final rule does not have any retroactive effect.

F. Paperwork Reduction Act

The procedures in this rule to permit importation of motor vehicles and equipment not originally manufactured for the U.S. market include information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. The original information collection requirements of Part 591 were approved by the OMB pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. Sec. 3501 *et seq.*). NHTSA believes that the existing clearance covers a final rule that is based on implementing a statutory amendment, and has not sought a new or expanded clearance. This collection of information has been assigned OMB Control No. 2127–0002 ("Motor Vehicle Information").

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule will not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 591 is amended as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 is revised to read as follows:

Authority: 49 U.S.C. 322(a), 30114; Pub. L. 100–562, 102 Stat. 2824; Pub. L. 105–178, 112 Stat. 469; delegations of authority at 49 CFR 1.50 and 501.8.

2. Section 591.5 is amended by revising paragraph (j)(1) to read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(j)(1) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards, but is being imported solely for the purpose of:

(i) Research;
(ii) Investigations;
(iii) Show or display;
(iv) Demonstrations or training; or
(v) Competitive racing events;

* * * * *

3. Section 591.6(f)(1) and (f)(2) are revised to read as follows:

§ 591.6 Documents accompanying declarations.

* * * * *

(f) * * *

(1) A declaration made pursuant to § 591.5(j)(1)(i), (ii), (iv), or (v) and (j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to § 591.5(j)(1)(i), (ii), (iv), or (v) and (j)(2)(i). Any person seeking to import a motor vehicle or motor vehicle equipment pursuant to these sections shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle or equipment, its make, model, model year or date of manufacture, VIN if a motor vehicle, and the specific purpose(s) of importation. The discussion of purpose(s) shall include a description of the use to be made of the vehicle or equipment. If use on the public roads is an integral part of the purpose for which the vehicle or equipment is imported, the statement shall request permission for use on the public roads, describing the purpose which makes such use necessary, and stating the estimated period of time during which use of the vehicle or equipment on the public roads is necessary. The request shall also state the intended means of final disposition, and disposition date, of the vehicle or equipment after completion of the purposes for which it is imported. The request shall be addressed to Director, Office of Vehicle Safety Compliance (NSA–32), National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590.

(2) A declaration made pursuant to § 591.5(j)(1)(iii) and (j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to § 591.5(j)(1)(iii) and (j)(2)(i). Any person seeking to import a motor vehicle or motor vehicle equipment pursuant to those sections shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the equipment item or the vehicle and its make, model, model year or date of manufacture, VIN, and mileage at the time the request is made. The importer's written request to the Administrator shall explain why the vehicle or equipment item is of historical or technological interest. The importer shall also provide a statement that, until the vehicle is not less than 25 years old, (s)he shall not sell, or transfer possession of, or title to, the vehicle, and shall not license it for use, or operate it on the public roads, except under such terms and conditions as the Administrator may authorize. If the importer wishes to operate the vehicle on the public roads, the request to the Administrator shall include a description of the purposes for which (s)he wishes to use it on the public roads, a copy of an insurance policy or a contract to acquire an insurance policy, which contains as a condition thereof that the vehicle will not accumulate mileage of more than 2,500 miles in any 12-month period and a statement that the importer shall maintain such policy in effect until the vehicle is not less than 25 years old, a statement that the importer will allow the Administrator to inspect the vehicle at any time after its importation to verify that the accumulated mileage of the vehicle is not more than 2,500 miles in any 12-month period, and a statement that the vehicle will not be used on the public roads unless it is in compliance with the regulations of the Environmental Protection Agency.

* * * * *

4. Section 591.7 is amended by revising the first sentence of paragraph (c) and by revising paragraphs (d) and (e) to read as follows:

§ 591.7 Restrictions on importations.

* * * * *

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j)(2)(i) shall not sell, or transfer possession of, or title to, the vehicle, and shall not license it for use, or operate it on the public roads, except under such terms and conditions as the Administrator may authorize in writing.

* * *

(d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation for on-road use under § 591.5(j), or a change of status under paragraph (e) of this section, including a failure to allow inspection upon request to verify that the accumulated mileage of the vehicle is not more than 2,500 miles in any 12-month period, shall be considered a violation of 49 U.S.C. 30112(a) for which a civil penalty may be imposed. Such a violation will also act to void the authorization and require the exportation of the vehicle. With respect to importations under § 591.6(f)(2) or a change of status to an importation for show or display as provided under paragraph (e) of this section, if the Administrator has reason to believe that a violation has occurred, the Administrator may tentatively conclude that a term of entry has been violated, but shall make no final conclusion until the importer or owner has been afforded an opportunity to present data, views, and arguments as to why there is no violation or why a penalty should not be imposed.

(e) The owner of a vehicle located in the United States on June 9, 1998, which the owner had imported pursuant to § 591.5(j), may apply to the Administrator on or before February 14, 2000 for a change in any such term or condition contained in the Administrator's letter. If the owner requests a change to importation for show or display, the request to the Administrator shall contain the information and statements required under § 591.6(f)(2) for a new importation for show or display. All requests for change shall be sent to the Director, Office of Vehicle Safety Compliance (NSA–32), National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590.

Issued on: July 8, 1999.

Kathleen C. DeMeter,

Acting Associate Administrator for Safety Assurance.

[FR Doc. 99–17806 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 052499C]

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal Shark Species; Commercial Fishery Closure Change

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure change.

SUMMARY: NMFS changes the closure of the large coastal shark (LCS) commercial fishery in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. On June 7, 1999, NMFS announced in the *Federal Register* a closure date of July 12, 1999, for non-ridgeback LCS and a closure date of August 8, 1999, for ridgeback LCS. In a court order by Judge Stephen D. Merryday, the new regulations governing catch quotas and fish counting methods are enjoined until further order of the court. Therefore, based on 1997 and 1998 catch rates, NMFS has determined that the second semiannual subquota for LCS will be reached on or before July 28, 1999.

DATES: This postponement action is effective July 9, 1999. The closure for the commercial LCS fishery is changed to 11:30 p.m., local time, July 28, 1999, and will be in effect through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

On June 30, 1999, the NMFS received a Court Order from Judge Steven D. Merryday relative to the May, 1997 lawsuit challenging commercial harvest

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quotas for Atlantic sharks. Specifically, the order states: " * * * the Court hereby preliminarily, and until further order of the Court, expressly ENJOINS the defendant and his designees from enforcing the 1999 regulations, 64 Fed. Reg. 29090 (May, 28, 1999) with respect to Atlantic shark commercial catch quotas and fish-counting methods (including the counting of dead discards and state commercial landings after federal closures) that are different from the quotas and fish counting methods prescribed by the 1997 Atlantic shark regulations, 62 Fed. Reg. 16648 (April 7, 1997)." Therefore, the LCS quota reverts to its 1997 level of 1,285 metric tons dressed weight (all species of LCS included), with no minimum size on ridgeback LCS, the pelagic and small coastal shark quotas also revert to their 1997 levels, the 1997 prohibited species list now applies in commercial fisheries only (five prohibited species: white, basking, whale, sand tiger and bigeye sand tiger). The limited access provisions do still apply, however, including trip limits for directed and incidental shark permit holders.

Based on projected catch rates, NMFS had previously announced commercial closure dates of July 12, 1999, for non-ridgeback LCS and August 8, 1999, for ridgeback LCS (see Table 1(a) of appendix A to part 635) for the 1999 second semiannual season for LCS in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea (64 FR 30248, June 7, 1999).

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a directed or incidental limited access permit under § 635.4. After 11:30 p.m. local time July 28, 1999, the sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under § 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Commercial fishing for pelagic and small coastal sharks may continue until further notice. When quotas are projected to be reached, the Assistant Administrator will file notification of closure at the Office of the Federal Register. Those vessels that have not been issued a limited access permit under § 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at §§ 635.22(c) and 635.20(d). The recreational fishery is not affected by this action.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 8, 1999

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17925 Filed 7–9–99; 4:41 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 070999B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 11, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1999 TAC of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 6,760 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC of Pacific ocean perch has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,760 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17923 Filed 7–9–99; 4:41 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 070999A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 10, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

Table 2 of the Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the 1999 Initial TAC of Pacific ocean perch for the Eastern Aleutian District as 3,173 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC of Pacific ocean perch in the Eastern Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,973 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the Eastern Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17924 Filed 7–9–99; 4:41 pm]

BILLING CODE 3510–22–F

VOL 64 ISS 134 JL 14 1999 UMI

Proposed Rules

Federal Register
Vol. 64, No. 134
Wednesday, July 14, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–99–004]

RIN 0581–AB54

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges need to be increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

DATES: Comments must be received on or before August 13, 1999.

ADDRESSES: Send written comments to Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, room 3944-South, 1400 Independence Avenue, SW, Washington, DC 20250–0259. Comments may be faxed to (202) 690–0941.

State that your comments refer to Docket No. PY–99–004 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

There are about 400 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2000 revenues for grading services are projected at $22.0 million, costs are projected at $23.4 million, and trust fund balances would be $9.3 million. With a fee increase, FY 2000 revenues are projected at $23.1 million, costs are projected at $23.4 million, and trust fund balances would be $10.5 million.

This action would raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional $1.1 million during FY 2000. The hourly resident rate for grading services will increase by approximately 4.2 percent, while the hourly rates for fee (nonresident) and appeal grading services will increase by approximately 8.0 percent. The costs to entities will be proportional to their use of service, so that costs are shared equitably by all users. The impact of these rate changes in a poultry plant would range from less than 0.003 to 0.05 cents per pound of poultry handled. In a shell egg plant, the range would be less than 0.04 to 0.4 cents per dozen eggs handled.

C. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

Background and Proposed Changes

The Agricultural Marketing Act (AMA) of 1946 authorizes official voluntary grading and certification on a user-fee basis of eggs, poultry, and rabbits. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable. This action would amend the schedule for fees and charges for grading services rendered to the egg, poultry, and rabbit industries to reflect the costs currently associated with them.

A recent review of the current fee schedule, effective October 1, 1998, revealed that anticipated revenue will not adequately cover increasing program costs. Without a fee increase, FY 2000 revenues for grading services are projected at $22.0 million, costs are projected at $23.4 million, and trust fund balances would be $9.3 million. With a fee increase, FY 2000 revenues are projected at $23.1 million, costs are projected at $23.4 million, and trust fund balances would be $10.5 million.

Employee salaries and benefits account for approximately 81 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.54 to 4.02 percent, depending on locality, became effective in January 1999 and has

materially affected program costs. Another general and locality salary increase estimated at 4.4 percent is expected in January 2000. Also, from October 1998 through September 2000, salaries and fringe benefits of federally licensed State employees will have increased by about 6 percent.

The impact of these cost increases was separately determined for resident grading service and fee grading service. To offset projected cost increases for resident grading service, the resident hourly rate would be increased by approximately 4.2 percent. This hourly rate covers graders' salaries and benefits. Administrative volume charges that cover the cost of supervision for this service would also be increased as shown in the table below. To offset projected cost increases for fee and appeal grading services, those rates would be increased by approximately 8.0 percent. The rate for fee service covers graders' salaries and benefits, and the cost of travel and supervision. The rate for an appeal grading or review of a grader's decision covers the time required to perform such service. Appeal gradings are only done occasionally and account for less than $5.000 revenue annually.

The following table compares current fees and charges with proposed fees and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

Service	Current	Proposed
Resident Service (egg, poultry, rabbit grading):		
Inauguration of service	310	310
Hourly charges—Regular hours	27.64	28.80
Administrative charges—Poultry grading Per pound of poultry	.00034	.00035
Minimum per month	225	225
Maximum per month	2,500	2,625
Administrative charges—Shell egg grading Per 30-dozen case of shell eggs	.040	.044
Minimum per month	225	225
Maximum per month	2,500	2,625
Administrative charges—Rabbit grading; Based on 25 % of grader's salary, minimum per month	250	260
Nonresident Service (egg, poultry grading):		
Hourly charges—Regular hours	27.64	28.80
Administrative charges—Based on 25% of grader's salary, Minimum per month	250	260
Fee and Appeal Service (egg, poultry, rabbit grading):		
Hourly charges—Regular hours	44.80	48.40
Weekend and holiday hours	51.60	55.76

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that Title 7, Code of Federal Regulations, parts 56 and 70 be amended as follows:

PART 56—GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.46 is revised to read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $48.40 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $55.76 per hour. Information on legal holidays is available from the Supervisor.

3. In § 56.52, paragraph (a)(4) is revised to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.044, except that the minimum charge per billing period shall be $225 and the maximum charge shall be $2,625. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

4. In § 56.54, paragraph (a)(2) is revised to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $260 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

5. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

6. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook

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rabbits, or specified poultry food products are involved. The hourly charge shall be $48.40 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $55.76 per hour. Information on legal holidays is available from the Supervisor.

7. In § 70.76, paragraph (a)(2) is revised to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $260 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

8. In § 70.77, paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00035, except that the minimum charge per billing period shall be $225 and the maximum charge shall be $2,625. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $260 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: July 9, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–18039 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Docket No. FV99–924–1 PR]

Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $1.00 to $1.50 per ton of fresh prunes established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) under Marketing Order No. 924 for the 1999–2000 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Authorization to assess fresh prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1999–2000 fiscal period began April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 13, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 924, as amended (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington-Oregon fresh prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable fresh prunes beginning April 1, 1999, and continue until modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $1.00 to $1.50 per ton of fresh prunes handled.

The Washington-Oregon fresh prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members and three handler members, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $1.00 per ton that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 27, 1999, and unanimously recommended 1999–2000 expenditures of $7,630 and an assessment rate of $1.50 per ton of fresh prunes handled. In comparison, last year's budgeted expenditures were $7,003. The assessment rate of $1.50 is $0.50 higher than the rate currently in effect. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be smaller than the 5-year average of 4,985 tons, and the current rate would not generate enough income to adequately administer the program. The Committee also plans on hiring an additional part-time staff person which would increase its salary expense.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $3,560 for salaries, $1,000 for travel, $528 for rent and maintenance, and $475 for its annual audit. Budgeted expenses for these items in 1998–99 were $2,880, $1,000, $528, and $475, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington-Oregon fresh prunes. Fresh prune shipments for the year are estimated at 4,600 tons, which should provide $6,900 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $6,013) would be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of fresh prunes in the production area and approximately 12 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently, all of the Washington-Oregon fresh prune handlers ship under $5,000,000 worth of fresh prunes. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington-Oregon fresh prune producers, the average annual producer revenue is approximately $21,000. In view of the foregoing, it can be concluded that the majority of Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $1.00 to $1.50 per ton of fresh prunes handled. The Committee met on May 27, 1999, and unanimously recommended 1999–2000 expenditures of $7,630 and an assessment rate of $1.50 per ton of fresh prunes handled. In comparison, last year's budgeted expenditures were $7,003. The assessment rate of $1.50 is $0.50 more than the rate currently in effect. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be smaller than the 5-year average of 4,985 tons, and the current rate would not generate enough income to adequately administer the program. The Committee also plans on hiring an additional part-time staff person which would increase its salary expense.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $3,560 for salaries, $1,000 for travel, $528 for rent and maintenance, and $475 for its annual audit. Budgeted expenses for these items in 1998–99 were $2,880, $1,000, $528, and $475, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes. Fresh prune shipments for the year are estimated at 4,600 tons, which should provide $6,900 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The reserve is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

The Committee considered alternative levels of assessment but determined that, with the reduced estimate of assessable tonnage, increasing the assessment rate to $1.50 per ton would be appropriate. The Committee decided that an assessment rate of more than

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$1.50 per ton would generate income in excess of that needed to adequately administer the program.

A review of historical information and preliminary information pertaining to the upcoming crop indicates that the producer price for the 1999–2000 marketing season could range between $200 and $500 per ton of fresh prunes handled. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue should range between 0.30 and 0.75 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Washington-Oregon fresh prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 27, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Washington-Oregon fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 1999–2000 fiscal period began on April 1, 1999, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh prunes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 924 is proposed to be amended as follows:

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

1. The authority citation for 7 CFR part 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On and after April 1, 1999, an assessment rate of $1.50 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: July 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–17891 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV99–948–1 PR]

Irish Potatoes Grown in Colorado; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $0.01 to $0.02 per hundredweight of potatoes established for the Colorado Potato Administrative Committee, Area III (Committee) under Marketing Order No. 948 for the 1999–2000 and subsequent fiscal periods handled. The Committee is responsible for local administration of the marketing order which regulates the handling of potatoes grown in Colorado. Authorization to assess Colorado potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1999–2000 fiscal period began July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 13, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 [7 CFR Part 948], both as amended, regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such

assessments. It is intended that the assessment rate proposed herein will be applicable to all assessable potatoes beginning on July 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.01 per hundredweight to $0.02 per hundredweight of potatoes handled.

The Colorado potato order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of five producer members and four handler members, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate.

The current assessment rate of $.01 per hundredweight was recommended by the Committee and approved by the Department for the 1996–97 and subsequent fiscal periods. That rate continues in effect until modified, suspended, or terminated by the Secretary, upon recommendation and information submitted by the Committee, or other information available to the Secretary.

A meeting of the Committee was scheduled for May 13, 1999, to review the current assessment rate and budget needs of the program for the 1999–2000 fiscal period. However, a quorum was not present. Based upon discussion among those Committee members who showed up for the meeting, the manager of the Committee prepared information and voting material that was sent by facsimile copy (fax) to Committee members and alternates. Voting by telegraph, telephone, or other means of communication is provided for in paragraph (c) of § 948.61 Procedure, of the marketing order. Seven members subsequently faxed completed votes back to the manager during the voting period May 14 through May 19, 1999. Thus, a fax vote was used to determined the Committee's level of support for an increased rate of assessment and to establish an operating budget for the 1999–2000 fiscal period. Those voting confirmed their votes at the next scheduled Committee meeting June 20, 1999.

Based on the fax vote, the Committee approved an assessment rate of $0.02 per hundredweight of potatoes handled during the 1999–2000 and subsequent fiscal periods. This is a $0.01 increase over the rate currently in effect. The increased assessment rate is recommended because the current rate of $.01 would not generate enough income to adequately administer the program, given the projected short crop for 1999. The assessment rate increase is based on the 1999–2000 crop estimate, the 1999–2000 fiscal period expenditures estimate, and the current and projected balance of the operating reserve.

The Area III assessable potato crop for 1999–2000 is estimated to be approximately 792,000 hundredweight. This is about 380,000 hundredweight less than the assessed crop of 1998–99 due to a reduction in the acreage planted this season. The increased assessment would ensure that the operating reserve is not depleted at the end of the 1999–2000 fiscal period because of the projected short crop.

The increased assessment rate of $.02 per hundredweight should provide $15,840 in assessment income, (792,000 hundredweight × $.02). This amount would be supplemented with $3,000 interest income, $1,500 rental income from the sublease of office space to the State Inspection Service, and $4,110 from the operating reserve. These income sources would total $24,450, which is the same as the 1999–2000 budget recommended by the Committee by a vote of 6 in favor and 1 opposed. The recommended budget is $1,603 less than the 1998–99 budget of $26,053. Because of fax voting, the reason for the one negative budget vote is not known.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $10,500 for the manager's salary, $3,000 for rent, and $2,000 for office supplies. Budgeted expenses for these items in the 1998–99 fiscal period were $11,500, $3,000, and $2,000, respectively.

The Committee estimates it will have approximately $38,245 in its operating reserve at the end of the current fiscal period. This should be adequate to cover any income shortages for the current fiscal period. This amount is within the maximum permitted by the order of approximately two fiscal periods' expenditures (§ 948.78).

The proposed assessment rate of $.02 would continue in effect for the 2000–2001 and subsequent fiscal periods unless modified, suspended, or terminated by the Secretary, based on recommendation and information submitted by the Committee, or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department and are locally published. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact this rule would have on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of Colorado Area III potatoes who are subject to regulation under the order and approximately 60 potato producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than

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$5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of Colorado Area III potato handlers and producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.01 per hundredweight to $0.02 per hundredweight of potatoes handled. The $0.02 assessment rate was approved by all seven of the Committee members who cast votes during a fax vote held between May 14 and May 19, 1999. The proposed assessment rate is $0.01 greater than the rate currently in effect. The Committee recommended the increased assessment rate because the current rate would not generate enough income to adequately administer the program. The anticipated fresh potato crop of 792,000 hundredweight is approximately 380,000 hundredweight less than the 1998–99 crop. The $0.02 rate should provide $15,840 in assessment income, which, when combined with interest income of $3,000, rental income of $1,500 from the sublease of office space to the State Inspection Service, and $4,110 from the operating reserve, would be adequate to meet the 1999–2000 fiscal period's budgeted expenses.

In a fax vote of six in favor and one opposed, the Committee recommended 1999–2000 expenditures of $24,450, which is $1,603 less than last year's budgeted expenses. Prior to recommending this budget, the Committee considered historical income and expenses, current income and expense levels, the 1999–2000 estimated crop production, current and projected operating reserve levels, and input from the Committee officers. The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $10,500 for the manager's salary, $3,000 for rent, and $2,000 for office supplies. Budgeted expenses for these items in the 1998–99 fiscal period were $11,500, $3,000, and $2,000, respectively.

A review of historical data and preliminary information pertaining to the upcoming season indicates that the price to producers for the 1999–2000 Colorado Area III potato season could average $5.30 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period ($0.02 × 792,000 cwt = $15,840) as a percentage of the projected total revenue at the farm gate ($5.30 × 792,000 cwt = $4,197,600) would be 0.37 percent. This figure indicates that the $0.02 assessment rate recommended by the Committee would have an insignificant impact on the Colorado potato industry.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1999–2000 fiscal period began on July 1, 1999, and the order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; and (3) handlers are aware of this action which is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 948

Potatoes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.215 is revised to read as follows:

§ 948.215 Assessment rate.

On and after July 1, 1999, an assessment rate of $0.02 per hundredweight is established for Colorado Area III potatoes.

Dated: July 8, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–17892 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Correction.

7 CFR part	Marketing area
1000	General Provisions of Federal Milk Marketing Orders.
1001	New England.
1002	New York-New Jersey.
1004	Middle Atlantic.
1005	Carolina.
1006	Upper Florida.
1007	Southeast.
1012	Tampa Bay.
1013	Southeastern Florida.
1030	Chicago Regional.
1032	Southern Illinois-Eastern Missouri.
1033	Ohio Valley.
1036	Eastern Ohio-Western Pennsylvania.
1040	Southern Michigan.
1044	Michigan Upper Peninsula.
1046	Louisville-Lexington-Evansville.
1049	Indiana.
1050	Central Illinois.
1064	Greater Kansas City.
1065	Nebraska-Western Iowa.
1068	Upper Midwest.
1076	Eastern South Dakota.
1079	Iowa.
1106	Southwest Plains.
1124	Pacific Northwest.
1126	Texas.
1131	Central Arizona.
1134	Western Colorado.
1135	Southwestern Idaho-Eastern Oregon.
1137	Eastern Colorado.
1138	New Mexico-West Texas.
1139	Great Basin.

SUMMARY: The Agricultural Marketing Service (AMS), USDA, published in the **Federal Register** of April 2, 1999, a final decision that consolidated the current 31 Federal milk orders into 11 orders to comply with the 1996 Farm Bill and made other order changes. Inadvertent errors and omissions were made in the supplementary information and in the regulatory text. This document makes corrections to the final decision. These corrections do not change the conclusions contained in the final decision and do not substantively alter the regulatory provisions.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John.Borovies@usda.gov.

Corrections

In the final decision published on April 2, 1999 (FR Doc. 99–6547), beginning on page 16026, the following corrections are made in the supplementary information and regulatory text sections. The corrections do not change the conclusions contained in the final decision and do not substantively alter the regulatory provisions. The corrections are being made for several reasons. First, the corrections more accurately reflect the results of the USDA multi-regional economic model. Second, the corrections provide conformity throughout the supplementary information and regulatory text sections. And third, corrections are made to include information inadvertently omitted.

In the supplementary information section of the final decision 28 corrections are made. Eighteen corrections (corrections numbered 1–10, 12–16, 20, and 25–26) are made in connection with the USDA multi-regional dairy sector economic model results. The model quantitatively examined the impacts of the changes under consideration in the classified pricing of milk and dairy products in the milk order system. These were discussed in the supplementary information of the final decision. Inadvertently, the model results contained a pricing point data-entry error. Correction of this error results in minor changes in the results. These corrections do not alter conclusions contained in the final decision. A detailed description of the model is contained in the final decision (64 FR 16110) and in the Regulatory Impact Analysis.

The remaining corrections are as follows: two corrections (corrections numbered 11 and 28) are made to conform the supplementary information to the regulatory text and two corrections (corrections numbered 17 and 18) are made to correct mathematical errors. Three corrections (corrections numbered 21, 23, and 24) are made for the following reasons:

Correction 21 changes the last sentence on page 16099, first column, third paragraph of the final decision, which explains the modification of the protein price calculation in the final decision to incorporate the additional value of butterfat in cheese with the protein price. The final decision differed from the proposal in that valuation of total nitrogen protein was changed to valuation of true protein. However, the description of the factors used to compute the resulting ratio was inadvertently not changed from that contained in the proposal. The sentence is in error and is being corrected to accurately reflect the method of calculating the ratio.

Correction 23 removes the words "in several counties" in reference to the Northeast because there are more than several counties, and adds counties inadvertently omitted.

Correction 24 (which adds a table) is made for the purpose of clarifying the discussion in the final decision of the 1A pricing option differential levels. The decision indicates that changes to the 1A price surface were made, but those changes were not specifically identified. The table lists the changes in detail for purposes of clarification.

One correction (correction numbered 22) clarifies the data used in the model, and two corrections (corrections numbered 19 and 27) are made to correct typographical errors. These corrections and additions do not impact the conclusions contained in the final decision but are provided for clarification purposes.

In the regulatory text of the final decision, 27 corrections are made. Eight corrections (corrections numbered 7, 8, 10, 12, 14, 16, 17, and 19) are made as a result of typographical errors. Eleven corrections (corrections numbered 4, 6, 11, 15, 18, 20–24, and 26) are made to clarify a price computation procedure used in each order. This clarification does not change the price computation in the final decision but more fully explains a step in the price calculation of each order. Six corrections (corrections numbered 1, 3, 5, 9, 13, and 25) add a clarifying word or phrase that was inadvertently omitted. One correction (correction number 2) removes obsolete language which should have been deleted. A final correction is made to the authority citations for each Part (correction numbered 27) to add to the citations a reference to 7 U.S.C. 7253. These corrections do not make any substantive changes to the regulatory text.

Accordingly, for the reasons stated in the preamble, the final decision published on April 2, 1999 (FR Doc. 99–6547) at 64 FR 16026 is corrected as follows:

Supplementary Information Corrections

The corrections to the **SUPPLEMENTARY INFORMATION** of this document are:

1. The fourth and fifth columns of the table on page 16032 should be corrected to read as follows (the numbers followed by an * are corrected):

Final decision	Modified option 1B
−0.29	−0.69
−0.19	−0.49
−0.15*	−0.38
−0.02	−0.10
0.00	−0.05
8.0*	−131.1*
14.8*	−91.2*
42.1*	106.8*
37.8*	99.0*
−2.8*	−128.7*
3.2*	−90.1*
−0.02	−0.04
−80.4*	−215.6*
−79.3*	−209.9*
77.6*	86.9*
82.5	119.8

2. On page 16032, second column, second paragraph, $0.50 is corrected to read $0.56.

3. On page 16032, second column, third paragraph, $222.3 is corrected to read $222.0.

4. On page 16032, third column, first paragraph, $2.5 is corrected to read $2.8.

5. On page 16032, third column, second paragraph, 14 is corrected to read 13 and 17 is corrected to read 18.

6. On page 16033, first column, fourth paragraph, $0.61 is corrected to read $0.66 and $128.4 is corrected to read $128.7.

7. On page 16033, second column, second paragraph, 106.7 is corrected to read 106.8.

8. On page 16040, first column, fifth paragraph, Five is corrected to read Four.

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9. On page 16040, second column, second paragraph, 5 is corrected to read 4.

10. On page 16041, first column, second paragraph, 17 is corrected to read 18, $0.04 is corrected to read $0.02. Ohio Valley is corrected to read Greater Kansas City, 14 is corrected to read 13, $0.08 is corrected to read $0.10, and Greater Kansas City is corrected to read Eastern South Dakota and Indiana.

11. On page 16041, second column, second paragraph, the words "all-metal" are removed.

12. On page 16041, third column, first paragraph, $0.50 is corrected to read $0.56, $222.3 is corrected to read $222.0, and $2.5 is corrected to read $2.8.

13. On page 16041, third column, second paragraph, 209 is corrected to read 206, 74 is corrected to read 73, $0.04 is corrected to read $0.02, 69 is corrected to read 72, 22 is corrected to read 23, and $0.08 is corrected to read $0.10.

14. On page 16041, third column, third paragraph, −$0.61 is corrected to read −$0.66, and $100 is corrected to read $128.7.

15. On page 16042, first column, first paragraph, 98.8 is corrected to read 99.0.

16. On page 16042, first column, fourth paragraph, $482.1 million is corrected to read $104.9 million with adjustments and .02 is corrected to read .01.

17. On page 16051, Table 1 is corrected by changing the total in the column headed "Producer milk" from 7,756,390 to 8,268,876.

18. On page 16052, Table 2 is corrected by changing the total in the column headed "Manufacturing and supply plants" from 669 to 658.

19. On pages 16097 and 16098, all references to $0.015 or $.015 are corrected to read $0.0015.

20. On page 16098, first column, third paragraph, fourteen is corrected to read fifteen.

21. On page 16099, first column, third paragraph, the last sentence is corrected to read as follows: "The ratio of butterfat to protein, 1:1.28 is calculated from the protein and butterfat content of cheese (25.8 percent protein and 33.1 percent butterfat)."

22. On page 16108, second column, third paragraph, the last sentence is corrected to read as follows: "The model uses data from May and October 1995."

23. On page 16110, second column, second paragraph, the second sentence is corrected to read as follows: "The changes only involved adjusting certain county specific differentials to provide for more appropriate price alignment in the northeast, seven counties in Florida, one county in North Carolina, one county in Georgia, and two counties in South Carolina."

24. On page 16110, second column, at the end of the second paragraph add the following table:

FINAL DECISION OPTION 1A DIFFERENTIALS AND CHANGES FROM THE PROPOSED RULE

County/parish/city	State	FIPS __ code	Final decision 1A class I differential adjusted for	Change from proposed 1A differential
FAIRFIELD	CT	09001	3.15	0.05
HARTFORD	CT	09003	3.15	0.05
MIDDLESEX	CT	09007	3.15	0.05
NEW HAVEN	CT	09009	3.15	0.05
NEW LONDON	CT	09011	3.15	0.05
TOLLAND	CT	09013	3.15	0.05
WINDHAM	CT	09015	3.15	0.05
KENT	DE	10001	3.05	0.05
NEW CASTLE	DE	10003	3.05	0.05
SUSSEX	DE	10005	3.05	0.05
DE SOTO	FL	12027	4.00	−0.30
HARDEE	FL	12049	4.00	−0.30
HIGHLANDS	FL	12055	4.00	−0.30
MANATEE	FL	12081	4.00	−0.30
OKEECHOBEE	FL	12093	4.00	−0.30
SARASOTA	FL	12115	4.00	−0.30
ST. LUCIE	FL	12111	4.00	−0.30
MCINTOSH	GA	13191	3.45	0.15
CARROLL	MD	24013	2.90	0.10
CECIL	MD	24015	3.05	0.05
FREDERICK	MD	24021	2.90	0.10
WASHINGTON	NC	37187	3.20	−0.10
ATLANTIC	NJ	34001	3.05	0.05
BURLINGTON	NJ	34005	3.05	0.05
CAMDEN	NJ	34007	3.05	0.05
CAPE MAY	NJ	34009	3.05	0.05
CUMBERLAND	NJ	34011	3.05	0.05
GLOUCESTER	NJ	34015	3.05	0.05
SALEM	NJ	34033	3.05	0.05
ALBANY	NY	36001	2.70	0.10
BROOME	NY	36007	2.70	0.10
CHEMUNG	NY	36015	2.50	0.10
CHENANGO	NY	36017	2.50	0.10
CLINTON	NY	36019	2.30	0.10
COLUMBIA	NY	36021	2.70	−0.10
CORTLAND	NY	36023	2.50	0.10
DELAWARE	NY	36025	2.70	0.10
ESSEX	NY	36031	2.30	−0.10
FRANKLIN	NY	36033	2.30	0.10
FULTON	NY	36035	2.50	−0.10

FINAL DECISION OPTION 1A DIFFERENTIALS AND CHANGES FROM THE PROPOSED RULE—Continued

County/parish/city	State	FIPS __ code	Final decision 1A class I differential adjusted for	Change from proposed 1A differential
GREENE	NY	36039	2.70	0.10
HAMILTON	NY	36041	2.50	0.10
HERKIMER	NY	36043	2.50	0.10
JEFFERSON	NY	36045	2.30	0.10
LEWIS	NY	36049	2.30	0.10
MADISON	NY	36053	2.50	0.10
MONTGOMERY	NY	36057	2.70	0.10
ONEIDA	NY	36065	2.50	0.10
ONONDAGA	NY	36067	2.50	0.10
OTSEGO	NY	36077	2.50	−0.10
RENSSELAER	NY	36083	2.70	0.10
SARATOGA	NY	36091	2.70	0.10
SCHENECTADY	NY	36093	2.70	0.10
SCHOHARIE	NY	36095	2.70	0.10
ST. LAWRENCE	NY	36089	2.30	0.10
TIOGA	NY	36107	2.50	0.10
TOMPKINS	NY	36109	2.50	0.10
WARREN	NY	36113	2.50	−0.10
BRADFORD	PA	42015	2.50	0.10
BUCKS	PA	42017	3.05	0.05
CENTRE	PA	42027	2.50	0.20
CHESTER	PA	42029	3.05	0.05
CLINTON	PA	42035	2.50	0.20
COLUMBIA	PA	42037	2.70	0.10
DELAWARE	PA	42045	3.05	0.05
FULTON	PA	42057	2.70	0.10
JUNIATA	PA	42067	2.70	0.10
LACKAWANNA	PA	42069	2.70	0.10
LANCASTER	PA	42071	2.90	0.10
LUZERNE	PA	42079	2.70	0.10
LYCOMING	PA	42081	2.50	−0.10
MIFFLIN	PA	42087	2.70	0.10
MONTGOMERY	PA	42091	3.05	0.05
MONTOUR	PA	42093	2.70	0.10
NORTHUMBERLAND	PA	42097	2.70	0.10
PERRY	PA	42099	2.70	0.10
PHILADELPHIA	PA	42101	3.05	0.05
POTTER	PA	42105	2.50	0.20
SNYDER	PA	42109	2.70	0.10
SULLIVAN	PA	42113	2.50	−0.10
SUSQUEHANNA	PA	42115	2.50	−0.10
TIOGA	PA	42117	2.50	0.20
UNION	PA	42119	2.70	0.10
WAYNE	PA	42127	2.70	0.10
WYOMING	PA	42131	2.50	−0.10
MARION	SC	45067	3.30	0.20
MCCORMICK	SC	45065	3.10	−0.20
YORK	PA	42133	2.90	0.10
CHITTENDEN	VT	50007	2.50	−0.10
ESSEX	VT	50009	2.40	−0.20
LAMOILLE	VT	50015	2.50	−0.10
WINDSOR	VT	50027	2.80	0.20

25. On page 16114, second column, third paragraph, 4 is corrected to read 2, Ohio Valley is corrected to read Greater Kansas City, 8 is corrected to read 10, and Greater Kansas City is corrected to read Eastern South Dakota and Indiana.

26. On page 16114, third column, first paragraph, 8.3 is corrected to read 1,556.6.

27. On page 16115, second column, first paragraph, "support USDA of" is corrected to read "supporters of".

28. On page 16152, first column, first paragraph, lines 3 and 4 are corrected by removing the words "by up to 10 percentage points".

Regulatory Text Corrections

The corrections to the regulatory text of this document are:

1. On page 16178, second column, in § 1000.50, paragraph (q)(1)(i) is corrected by adding the words "2 most recent" before the word "NASS" to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(q) * * *

(1) * * *

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and an other solids price;

* * * * *

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2. On page 16223, third column, Subpart J-Miscellaneous Provisions, § 1000.90 is corrected by removing the words "or announcement" after the word "payment" to read as follows:

Subpart J—Miscellaneous Provisions

§ 1000.90 Dates.

If a date required for a payment contained in a Federal milk order falls on a Saturday, Sunday, or national holiday, such payment will be due on the next day that the market administrator's office is open for public business.

3. On page 16224, third column, in § 1001.4, paragraph (b)(2) is corrected by adding the words "the removal of water from milk; or" at the end of the paragraph to read as follows:

§ 1001.4 Plant.

* * * * *

(b) * * *

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim milk or the removal of water from milk; or * * *

* * *

4. On page 16228, second column, in § 1001.61, paragraph (c) is corrected to read as follows:

§ 1001.61 Computation of producer price differential.

* * * * *

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75.

* * * * *

5. On page 16231, first column, in § 1005.7, the first sentence of paragraph (a), paragraph (b), and the first sentence of paragraph (c) are corrected by adding the word "physically" before the word "received" to read as follows:

§ 1005.7 Pool plant.

* * * * *

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. * * *

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. * * *

* * * * *

6. On page 16234, first column, in § 1005.61, paragraph (b)(2) is corrected to read as follows:

§ 1005.61 Computation of uniform prices.

* * * * *

(b) * * *

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75.

* * * * *

§ 1005.62 [Corrected]

7. On page 16234, § 1005.62 appears twice. The second appearance of § 1005.62 titled "Announcement of uniform price, uniform butterfat price and uniform skim milk price" at the top of the second column is removed.

§ 1005.75 [Corrected]

8. On page 16235, second column, in § 1005.75 the reference to § 1005.50 is corrected to read § 1005.51.

9. On page 16237, second column, in § 1006.7, the first sentence of paragraph (a), paragraph (b), and the first sentence of paragraph (c) are corrected by adding the word "physically" before the word "received" to read as follows:

§ 1006.7 Pool plant.

* * * * *

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. * * *

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 60 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. * * *

* * * * *

10. On page 16240, first column, in § 1006.61, paragraph (b)(1) the reference to § 1005.60 is corrected to read § 1006.60.

11. On page 16240, first column, in § 1006.61, paragraph (b)(2) is corrected to read as follows:

§ 1006.61 Computation of uniform prices.

* * * * *

(b) * * *

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1006.75.

* * * * *

§ 1006.75 [Corrected]

12. On page 16241, third column, in § 1006.75 the reference to § 1006.50 is corrected to read § 1006.51.

13. On page 16242, third column, in § 1007.7, the first sentence of paragraph (a), paragraph (b), and the first sentence of paragraph (c) are corrected by adding the word "physically" before the word "received" to read as follows:

§ 1007.7 Pool plant.

* * * * *

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or section 7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. * * *

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. * * *

* * * * *

14. On page 16245, second column, in § 1007.61 paragraph(b)(1) the reference to § 1005.60 is corrected to read § 1007.60.

15. On page 16245, second column, in § 1007.61, paragraph (b)(2) is corrected to read as follows:

§ 1007.61 Computation of uniform prices.

* * * * *

(b) * * *

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1007.75.

* * * * *

§ 1007.75 [Corrected]

16. On page 16246, third column, in § 1007.75 the reference to § 1007.50 is corrected to read § 1007.51.

17. On page 16250, second column, in § 1030.10, paragraph (a) is corrected by adding the word "area" after the word "marketing" to read as follows:

§ 1030.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

* * * * *

18. On page 16253, first column, in § 1030.61, paragraph (c) is corrected to read as follows:

§ 1030.61 Computation of producer price differential.

* * * * *

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75.

* * * * *

§ 1032.2 [Corrected]

19. On page 16255, second column, in § 1032.2, subheading "Colorado Counties", the word "Freemont" is corrected to read "Fremont".

20. On page 16259, third column, in § 1032.61, paragraph (c) is corrected to read as follows:

§ 1032.61 Computation of producer price differential.

* * * * *

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75.

* * * * *

21. On page 16266, second column, in § 1033.61, paragraph (c) is corrected to read as follows:

§ 1033.61 Computation of producer price differential.

* * * * *

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75.

* * * * *

22. On page 16273, first column, in § 1124.61, paragraph (c) is corrected to read as follows:

§ 1124.61 Computation of producer price differential.

* * * * *

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75.

* * * * *

23. On page 16278, third column, in § 1126.61, paragraph (c) is corrected to read as follows:

§ 1126.61 Computation of producer price differential.

* * * * *

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75.

* * * * *

24. On page 16284, first column, in § 1131.61, paragraph (b)(2) is corrected to read as follows:

§ 1131.61 Computation of uniform prices.

* * * * *

(b) * * *

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75.

* * * * *

25. On page 16289, third column, in § 1135.60, paragraph (h) is corrected by adding the phrase "and the corresponding step of § 1000.44(b)" after the reference to § 1000.44(a)(3)(i) to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

26. On page 16290, first column, in § 1135.61, paragraph (c) is corrected to read as follows:

§ 1135.61 Computation of producer price differential.

* * * * *

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75.

* * * * *

27. The authority citations for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131 and 1135 are corrected to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Dated: July 8, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–17893 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–12–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 94 and 96

[Docket No. 95–027–1]

Importation of Pork and Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations concerning the importation of pork and pork products into the United States. Specifically, we propose to allow pork that originates in a region

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where African swine fever exists to be imported into the United States if it has been heated to an internal temperature of at least 69 °C after the bones have been removed. We also propose to provide an alternative, dry heat processing method for pork from regions where swine vesicular disease exists. In addition, we propose to make other minor amendments to the regulations for importing pork and pork products from regions where African swine fever, swine vesicular disease, or hog cholera exists. These proposed changes would relieve some restrictions on the importation of pork and pork products from regions where these diseases exist without presenting a significant risk of introducing African swine fever, hog cholera, or swine vesicular disease into the United States.

DATES: We invite you to comment on this docket. We will consider comments that we receive by September 13, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 95–027–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–027–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Masoud A. Malik, Senior Staff Veterinarian, Import/Export Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (the regulations) prohibit or restrict the importation of specified animals and animal products into the United States to prevent the introduction of various animal diseases, including foot-and-mouth disease, rinderpest, African swine fever (ASF), hog cholera (HC), and swine vesicular disease (SVD), into the United States. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.8 of the regulations restricts the importation of pork and pork products into the United States from regions in which ASF exists or is reasonably believed to exist (ASF regions). Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from regions where HC is known to exist (HC regions). Section 94.12 of the regulations restricts the importation into the United States of pork and pork products from regions where SVD is known to exist (SVD regions).

Pork From an ASF Region

Pork and pork products from an ASF region must be processed as specified in the regulations to be eligible for entry into the United States. One of the options for processing pork and pork products in an ASF region is that the bones must be removed and then the pork or pork product heated, by a method other than flash heating, to an internal temperature of at least 69 °C. (156 °F.) throughout. To qualify for this option, the pork or pork products must have originated from swine raised and slaughtered in a region free of ASF. Research [1] has shown that heating the pork or pork products to an internal temperature of at least 69 °C. after bone removal is sufficient, by itself, to destroy the virus that causes ASF. Therefore, we propose to remove the requirement that the pork or pork products originate from swine from an ASF-free region.

Section 94.8 includes several requirements related to the requirement we are proposing to remove. These include requirements that the pork be shipped to the processing facility in the ASF region in a sealed container and accompanied by a certificate of origin. These requirements would not be necessary if we no longer require the pork or pork products to come from swine that originated in an ASF-free region. Therefore, we propose to remove these requirements.

Section 94.8 also contains a number of requirements related to the processing establishment in the ASF region where the pork or pork products are to be heated. Several of these requirements also relate to the origin requirement we are proposing to remove.

Paragraph (a)(3)(iv)(A) of § 94.8 specifies that the processing establishment may not receive or process any live swine, may only use pork or pork products that originate in an ASF-free region, and must process pork or pork products only in accordance with our regulations. In other words, the processing establishment must be a facility dedicated to processing pork or pork products that meet the requirements for export to the United States. These requirements were intended to ensure that the pork or pork products from ASF-free regions would not be contaminated with the ASF virus during processing.

We propose to remove the requirements that the processing establishment may not receive or process any live swine and may only use pork or pork products that originate in an ASF-free region. We propose to replace these restrictions with requirements that the processing establishment take certain steps, explained below, to ensure that the processed pork or pork products are not contaminated after processing and prior to being exported to the United States. As long as the pork or pork products eligible for export to the United States are protected from being contaminated with the ASF virus, the processing establishment could receive and process live swine and would not be limited to processing pork and pork products from ASF-free regions. The processing establishment would not have to be a dedicated facility.

Specifically, we propose to require that all areas, utensils, and equipment likely to contact the pork or pork products to be processed, including skinning, deboning, cutting, and packing areas, and related utensils and equipment, be cleaned and disinfected after processing pork or pork products not eligible for export to the United States and before pork or pork products eligible for export to the United States. We also propose to require that pork or pork products eligible for export to the United States not be handled, cut, or otherwise processed at the same time as any pork or pork products not eligible for export to the United States. We believe that these proposed requirements would protect the pork or pork products from possible contamination with the ASF virus after they have been processed. In addition, we propose to require that pork or pork products intended for export to the United States be packed in clean new packaging that is clearly distinguishable from that containing any pork or pork products not eligible for export to the United States. This requirement would prevent the inadvertent shipment to the United States of pork or pork products not eligible for importation into the United States.

Paragraph (a)(3)(iv)(B) of § 94.8 requires the operators of the processing establishment in the ASF region to have a written compliance agreement with the Animal and Plant Health Inspection Service (APHIS). Under this compliance agreement, APHIS inspects the establishment to ensure that it is meeting our requirements. We propose to remove the requirement for a compliance agreement and the attendant inspections. We would, instead, rely on certification provided by the national government of the region in which the processing facility is located to ascertain that the establishment has met our requirements. This certification is required by § 94.8(a)(3)(vi), which states that the pork or pork products must be accompanied by a certificate issued by an official of the national government of the region in which the processing establishment is located who is authorized to issue the foreign meat inspection certificate required by 9 CFR 327.4, stating that all of the requirements of § 94.8 have been met. Upon arrival of the pork or pork products in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

Paragraph (a)(3)(iv)(C) of § 94.8 specifies that the operators of the processing establishment must have a trust fund agreement with APHIS. The trust fund agreement provides for payment of the cost of inspections performed under the compliance agreement. Because we are proposing to remove the compliance agreement requirement, we also propose to remove the trust fund agreement requirement.

Paragraph (d) of § 94.8 specifies the circumstances for the cancellation of a compliance agreement and the appeal process for such cancellation. We also propose to remove § 94.8(d). Effect of Proposed Changes in § 94.8 on Swine Casings Regulations in § 96.2

The proposed changes to § 94.8 affect the regulations in 9 CFR part 96 (the casings regulations). The casings regulations govern the importation of swine casings into the United States to prevent the introduction of contagious livestock diseases. Swine casings are intestines, stomachs, esophagi, and urinary bladders from swine that are used to encase processed meats, such as sausage.

The ASF virus may be present in, and spread by, swine, pork, pork products, and byproducts, including casings. The regulations in part 96 require that animal casings imported into the United States be accompanied by a Foreign Official Certificate for Animal Casings. On each certificate, the issuing veterinarian certifies, among other things, that the casings were derived from healthy animals that received ante mortem and post mortem veterinary inspections at the time of slaughter, are clean and sound, and were prepared and handled only in a sanitary manner and were not subjected to contagion prior to exportation. Since veterinary inspection cannot detect ASF in its early stages, the veterinary inspection required by the regulations cannot be relied on to assess the presence of ASF in its early stages in swine from an ASF region. In addition, swine casings cannot be processed by heating or any other method that would destroy the ASF virus if it were present, since this would render the casings unusable. Therefore, to remove the possibility that ASF-contaminated casings derived from apparently healthy animals that meet the criteria for certification in § 96.3 might be imported into the United States, § 96.2(a) specifically prohibits the importation of swine casings that originated in an ASF region. Further, § 96.2(a) provides that swine casings that originated in an ASF-free region and are processed in an ASF region may be eligible for importation into the United States only if they are processed in an establishment that meets the criteria in § 94.8(a)(3)(iv) to prevent contamination with ASF.

As discussed above, we propose to revise the requirements for processing establishments in ASF regions that process pork or pork products for export to the United States. These proposed changes would relieve unnecessary restrictions for processing pork or pork products to be exported to the United States. However, the requirements we propose to remove for pork and pork products imported under § 94.8 are necessary to prevent ASF contamination of swine casings. Therefore, we propose to incorporate all of the provisions that are currently in § 94.8(a)(3)(iv) of the regulations into § 96.2, with minor adjustments for clarity and applicability to casings, as follows:

- Swine casings to be processed in an ASF region for importation into the United States must be derived from swine raised and slaughtered in an ASF-free region.
- The swine casings must be shipped from the ASF-free region to the processing establishment in the ASF region in a closed container sealed with serially numbered seals applied by an official of the national government of the region of origin.
- The swine casings must be accompanied to the processing establishment by a certificate written in English and signed by an official of the national government of the region of origin specifying the region of origin, the processing establishment to which they will be consigned, and the numbers of the seals applied.
- The swine casings may only be removed from their closed and sealed containers at the processing establishment after an official of the national government of the region where the processing establishment is located determined that the seals are intact and free of any evidence of tampering, and had so stated on the origin certificate referred to above.
- The swine casings may not be processed at more than one processing establishment in the ASF region.
- The processing establishment in the ASF region must be an establishment approved under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations under the Act (9 CFR, chapter III). As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act and regulations under the Act.
- The processing establishment in the ASF region may not receive or process any live swine and may use only pork or pork products from ASF-free regions that are shipped to the processing establishment in accordance with the requirements listed above.
- The processing establishment must be operated by persons who have entered into a valid written compliance agreement with APHIS to maintain on file at the processing establishment for at least 2 years copies of the origin certificates, to allow APHIS personnel to make unannounced inspections as necessary to monitor compliance with the regulations, and to otherwise comply with the provisions of the regulations.
- The processing establishment is operated by persons who have entered into a cooperative service agreement (previously referred to as a trust fund agreement) with APHIS to pay for the cost of APHIS inspections. The establishment must be current in paying for APHIS personnel to inspect the establishment (it is anticipated that such inspections will occur on average once per year). In addition, the processing

[1] See P. D. McKercher, W. R. Hess, and F. Hamdy, "Residual Viruses in Pork Products," *J. Applied and Environmental Microbiology* 35, 142–145 (1978) and P. D. McKercher, D. O. Morgan, J. W. McVicar, and M. J. Shuot, "Thermal Processing to Interactive Viruses in Meat Products," *Proceedings of the 84th Annual Meeting of the United States Animal Health Association, San Diego, California*, 320–328 (1980).

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establishment must have on deposit with APHIS an unobligated amount equal to the cost for APHIS personnel to conduct one inspection, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds).

• APHIS inspectors who supervise the enforcement of the compliance agreement may cancel a processing establishment's compliance agreement for failure to comply with the regulations. The processing establishment may appeal the cancellation of the compliance agreement.

• The swine casings must be accompanied to the United States by a certificate issued by an official of the national government of the region in which the processing establishment is located who is authorized to issue the foreign meat inspection certificate required by 9 CFR, chapter III, part 327, stating that all of the requirements of the regulations have been met. Upon arrival of the swine casings in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

Bone Removal in Hog Cholera (HC) and Swine Vesicular Disease (SVD) Regions

The regulations at §§ 94.9(b)(1)(ii) and 94.12(b)(1)(ii) provide that pork or pork products may be imported into the United States from an HC or SVD region if the bones have been removed in the region of origin and the pork or pork product is heated to an internal temperature of 69 °C. (As explained below, pork from an SVD region must have received heat treatment in a commercially accepted manner used for perishable canned pork products.) The regulations do not require pork or pork products to originate from swine in a region free of HC or SVD. Thus, there is no reason to specify that the bones must be removed in the region of origin, only that they be removed before the pork or pork product is heated to the required temperature. Therefore, we propose to remove the requirement that the bones be removed in the region of origin and specify, instead, that the bones be removed prior to heating.

Heat Treatment in HC Regions

The regulations at § 94.9(b)(1)(ii)(B) provide that pork or pork products from an HC region must have received heat treatment producing an internal temperature of 69 °C. after bone removal. The regulations do not specify how the pork or pork products must be heated. If a flash-heating method, such as microwave cooking, is used, the HC virus may not be destroyed. Flash heating may not be sufficient to bring the pork or pork products to a full 69 °C. throughout, which is necessary to ensure that the HC virus is destroyed. Therefore, we propose to amend § 94.9(b)(1)(ii)(B) to specify that the pork or pork product must be heated by other than a flash-heating method to an internal temperature of 69 °C. throughout to ensure that the HC virus is destroyed.

Proposed Dry Heat Cooking Option for Pork From SVD Regions

The Government of Italy has requested that we add a dry heat option for processing pork and pork products in SVD regions. This change would allow products such as Mortadella ham to be exported to the United States from SVD regions. Currently, § 94.12(b)(1)(ii) requires the pork to reach at least 69 °C. through heat treatment applied in a commercially accepted manner used for perishable canned pork products (steam or moist heat). Research [2] that studied Mortadella ham prepared according to the method followed in Italian industry showed that when the pork was processed in an oven using dry heat, the SVD virus was destroyed after being cooked for at least 10 hours with the pork reaching a minimum internal temperature of 65 °C. (149 °F.).

Therefore, we propose to add a dry heat cooking method to our regulations that would require the pork to be completely deboned, then continuously heated in an oven for at least 10 hours with oven temperatures starting at a minimum of 62 °C. (143.6 °F.) and reaching at least 85 °C. (185 °F.), so that the pork reaches a minimum internal temperature of at least 65 °C. (149 °F.). We propose to add this dry heat cooking method to § 94.12 as a new paragraph (b)(1)(v).

This proposed dry heat cooking method would provide another option for pork or pork products to be processed in a way that would ensure that the SVD virus would be destroyed, while allowing greater flexibility in the style of preparation and therefore greater diversity of the products that could be prepared for exportation to the United States.

Miscellaneous Changes

We propose several minor, nonsubstantive, editorial changes for clarity and consistency.

[2] See T. Frescura, D. Rutili, and A. Morozzi, Studies on the isolation and persistence of swine vesicular disease virus in meat and meat products, 411–421 (1976), the International Organization of Epizootics (OIE) Bulletin 86.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposal would amend 9 CFR 94.8 to allow pork and pork products that originated in an ASF region to be imported into the United States if the meat has been cooked to a minimum internal temperature of 69 °C. (156 °F.) after removal of the bones.

Regions listed in § 94.8 as regions in which ASF exists or is reasonably believed to exist are all the countries of Africa; Brazil, Cuba, Haiti, and Malta; and the Island of Sardinia, Italy.

Total pork production in the United States in 1996 was 7,764,000 metric tons. Brazil, the largest pork producer of the listed regions, produced 1,600,000 metric tons of pork in 1996. The combined pork production of the other listed regions was 1,033,767 metric tons in 1996. While Brazil's pork production was 21 percent of the U.S. pork production in 1996, the second largest pork producer among the other listed regions was Nigeria. Nigeria produced 278,080 metric tons of pork, only 4 percent of U.S. pork production. Therefore, other than Brazil, none of the listed regions produces enough pork to make the possibility of increased exports from those countries likely. Furthermore, much of the pork produced in Brazil and the other listed regions was consumed in the region of origin. This trend is expected to continue based on the strong pork demand in Brazil and the other listed regions. In 1996, Brazil consumed 97 percent of its pork production, exporting only 56,000 metric tons. According to projections by the Economic Research Service (ERS) of the United States Department of Agriculture, Brazil is expected to consume 94 percent of its increasing pork production in each of the years 2000 through 2005. Even if Brazil exported to the United States the remaining 6 percent of its pork production in those years, those exports would only represent about 1 percent of projected U.S. pork production. Therefore, adoption of this proposed rule is unlikely to significantly affect the pork industry or consumer prices in the United States.

Additionally, ERS projected that U.S. pork imports would decline by more than 1 percent annually between 1998 and 2007. Declining imports are expected due to the restructured U.S. pork industry. One of the results of the restructuring has been production of low-cost pork products. These low-cost pork products are expected, increasingly, to price imported pork out of the domestic U.S. market.

This proposed rule also would allow pork from SVD regions to be processed using dry heat after deboning. This dry heat cooking method can produce Mortadella ham and other meats. Italian producers of Mortadella ham are interested in exporting Mortadella ham to the United States.

The precise volume of Mortadella ham that would enter the United States if this proposed rule is adopted is not available. However, we expect the volume would be minimal. Mortadella ham is a specialty food that is likely to satisfy only a small niche market in the United States. Due to its high fat content, Mortadella ham is not likely to be popular with a broad cross section of American consumers.

Based on this information, we would expect very little additional pork or pork products to be imported into the United States as a result of this proposed rule. Thus, any impact to small domestic swine producers would likely be minimal. In 1997, there were about 109,754 hog and pig farms in the United States, of which an estimated 91 percent would be considered "small" entities (annual sales of less than $0.5 million, according to the Small Business Administration (SBA) size criteria). These small entities maintain about 40 percent of the U.S. hog and pig inventories.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 94 and 96 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 94.8 would be amended as follows:

a. In the introductory paragraph by removing the word "island" and adding the word "Island" in its place.

b. By revising paragraph (a)(3) to read as set forth below.

c. By adding a new paragraph (a)(4) to read as set forth below.

d. By removing paragraph (d).

§ 94.8 Pork and pork products from regions where African swine fever exists or is reasonably believed to exist.

* * * * *

(a) * * *

(3) Such pork or pork product:

(i) Was processed in a single establishment that meets the requirements in paragraph (a)(4) of this section.

(ii) Was heated by other than a flash-heating method to an internal temperature of at least 69 °C. (156 °F.) throughout after the bones had been removed.

(iii) Is accompanied to the United States by a certificate stating that all of the requirements of this section have been met. The certificate must be written in English. The certificate must be issued by an official of the national government of the region in which the processing establishment is located. The official must be authorized to issue the foreign meat inspection certificate required by part 327 of chapter III of this title. Upon arrival of the pork or pork products in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

(4) The processing establishment [8] in a region listed in this section must comply with the following requirements:

(i) All areas, utensils, and equipment likely to contact the pork or pork products to be processed, including skinning, deboning, cutting, and packing areas, and related utensils and equipment, must be cleaned and disinfected after processing pork or pork products not eligible for export to the United States and before pork or pork products eligible for export to the United States.

(ii) Pork or pork products eligible for export to the United States may not be handled, cut, or otherwise processed at the same time as any pork or pork products not eligible for export to the United States.

(iii) Pork or pork products eligible for export to the United States must be packed in clean new packaging that is clearly distinguishable from that containing any pork or pork products not eligible for export to the United States.

* * * * *

3. In § 94.9, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) would be revised to read as follows:

§ 94.9 Pork and pork products from regions where hog cholera exists.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) All bones were completely removed prior to cooking; and

(B) Such pork or pork product was heated by other than a flash-heating method to an internal temperature of 69 °C. (156 °F.) throughout; or

* * * * *

5. Section 94.12 would be amended as follows:

a. By removing "; or" and adding a period in its place at the end of paragraph (b)(1)(i) and at the end of paragraph (b)(1)(iii)(B).

[8] As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR, chapter III, part 327), including requirements that the pork or pork products be prepared only in approved establishments.

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b. By revising paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) to read as set forth below.

c. By adding a new paragraph (b)(1)(v) to read as set forth below.

d. In paragraph (b)(2), by removing the word "; and" and adding a period in its place.

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) All bones were completely removed prior to cooking; and

(B) Such pork or pork product received heat treatment in a commercially accepted manner used for perishable canned pork products so that it reached an internal temperature of 69 °C. (156 °F.) throughout.

* * * * *

(v) Such pork or pork product is in compliance with the following requirements:

(A) All bones were completely removed prior to cooking; and

(B) Such pork or pork product received continual heat treatment in an oven for a minimum of 10 hours so that it reached an internal temperature of 65 °C. (149 °F.) throughout. The oven temperature started at a minimum of 62 °C. (143.6 °F.) and reached at least 85 °C. (185 °F.).

* * * * *

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

6. The authority citation for part 96 would continue to read as follows:

Authority: 21 U.S.C. 111, 136, 136a; 7 CFR 2.22, 2.80, and 371.2(d).

§ 96.10 [Amended]

7. Section 96.10 would be amended by redesignating footnote 1 and its reference as footnote 2.

8. Section 96.2 would be revised to read as follows:

§ 96.2 Prohibition of casings due to African swine fever and bovine spongiform encephalopathy.

(a) *Swine casings.* The importation of swine casings that originated in or were processed in a region where African swine fever exists, as listed in § 94.8 of this subchapter, is prohibited, with the following exception: Swine casings that are processed in a region where African swine fever exists may be imported into the United States under the following conditions:

(1) *Origin of casings.* The swine casings were derived from swine raised and slaughtered in a region not listed in § 94.8(a) of this subchapter.

(2) *Shipping requirements.* The casings were shipped from the region of origin to a processing establishment in a region listed in § 94.8 of this subchapter in a closed container sealed with serially numbered seals applied by an official of the national government of the region of origin.

(3) *Origin certificate.* The casings were accompanied from the region of origin to the processing establishment by a certificate written in English and signed by an official of the national government of the region of origin specifying the region of origin, the processing establishment to which the swine casings were consigned, and the numbers of the seals applied.

(4) *Integrity of seals.* The casings were taken out of the container at the processing establishment only after an official of the national government of the region where the processing establishment is located determined that the seals were intact and free of any evidence of tampering and had so stated on the certificate referred to in paragraph (a)(3) of this section.

(5) *The processing establishment.* The casings were processed at a single processing establishment [1] in a region listed in § 94.8 of this subchapter. The processing establishment does not receive or process any live swine and uses only pork and pork products that originate in a region not listed in § 94.8 of this subchapter and that are shipped to the processing establishment in accordance with paragraphs (a)(2) through (a)(4) of this section.

(6) *Compliance agreement.* The processing establishment is operated by persons who have entered into a valid written compliance agreement with APHIS to maintain on file at the processing establishment for at least 2 years copies of the certificates referred to in paragraph (a)(4) of this section, to allow APHIS personnel to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and to otherwise comply with the provisions of this section.

(7) *Cooperative service agreement.* The processing establishment is operated by persons who have entered into a cooperative service agreement with APHIS. The establishment is current in paying for APHIS personnel to inspect the establishment (it is anticipated that such inspections will occur once per year). In addition, the processing establishment has on deposit with APHIS an unobligated amount equal to the cost for APHIS personnel to conduct one inspection, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds).

(8) *Compliance agreement cancellation.* Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this section or any conditions imposed by this section. If the cancellation is oral, the decision and the reasons will be confirmed in writing, as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision to the Administrator, in writing, within 10 days after receiving written notification of the cancellation. The appeal should state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Administrator will grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve such conflict. Rules of Practice governing such a hearing will be adopted by the Administrator.

(9) *Export certification.* The casings are accompanied to the United States by a certificate stating that all of the requirements of this section have been met. The certificate must be written in English. The certificate must be issued by an official of the national government of the region in which the processing establishment is located. The official must be authorized to issue the foreign meat inspection certificate required by part 327 in chapter III of this title. Upon arrival of the swine casings in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

(b) *Bovine or other ruminant casings.* The importation of casings, except stomachs, from bovines and other ruminants that originated in or were processed in any region listed in § 94.18(a) of this subchapter is prohibited.

(Approved by the Office of Management and Budget under control number 0579–0015)

[1] As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations under the Act (9 CFR, chapter III, part 327), including requirements that the pork or pork products be prepared only in approved establishments.

Done in Washington, DC, this 8th day of July 1999.

A. Cielo,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17937 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98–052–1]

Veterinary Services User Fees; Biosecurity Level Three Laboratory Inspection Fee

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend existing user fees for the inspection for approval of biosecurity level three laboratories. Existing user fees require biosecurity level three laboratories to pay user fees for inspection based on hourly rates. We are proposing to replace the hourly rates for this specific service with a flat rate user fee that would cover all the costs of inspection related to approving a laboratory for handling one defined set of organisms or vectors. We are taking this action in order to ensure that the user fees cover our costs.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 13, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–052–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–052–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations for Veterinary Services, contact Ms. Louise Lothery, Administrative Officer, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning rate development of the proposed user fee, contact Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Service Enhancement Unit, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Section 130.8 lists miscellaneous flat rate user fees. Section § 130.9 lists the hourly rate user fees charged for APHIS' import or entry services, including inspection of laboratories within the United States.

In accordance with 9 CFR part 122, we require inspection of biosecurity level three laboratories prior to their receiving and handling high risk organisms or vectors. Biosecurity level three laboratories are used to conduct research on foreign animal disease agents, especially viruses, with high disease risks. These laboratories utilize containment facilities that use special precautions, such as negative pressure ventilation, to keep the disease agents within the facility and to protect the researchers who work with them.

We are proposing to revise the user fees for inspection of these laboratories based on our review of user fees and the costs of service. Under the current hourly rate user fees in §130.9, APHIS has been unable to recover all of the costs associated with inspecting biosecurity level three laboratories. Under the hourly rate user fee structure, the traveltime allowance provides for a maximum of 6 hours of round-trip ground travel. This traveltime allowance is insufficient in that air travel and overnight lodging are required in order to access more than half of the laboratories APHIS currently inspects.

Under the current hourly rates, the average user fee collected for inspection for approval of biosecurity level three laboratories is approximately $462 per laboratory. The actual average cost of inspecting these laboratories is approximately $977 per laboratory. The portion of the actual cost that we are not currently able to recover is the portion of transportation (i.e., airfare and related expenses) and lodging costs we incur above the 6-hour traveltime allowance for laboratories that are not located near an authorized APHIS inspector's place of duty. We do not believe it is fair to charge those laboratories a higher fee than others based solely on their physical location in relation to authorized inspectors' official duty stations.

Therefore, in order to ensure that we recover all costs, we are proposing to amend 9 CFR part 130 to establish a flat rate user fee of $977 to cover the cost of APHIS' inspection of biosecurity level three laboratories. The flat rate user fee would cover all costs of inspection, including airfare and/or ground travel, lodging, inspection, per diem, and miscellaneous travel expenses. We are also proposing to amend § 130.1 to add a definition for "biosecurity level three laboratory" to read: "A laboratory or production facility that works with foreign or domestic animal disease agents, organisms, or vectors that spread by aerosol route and that have serious or lethal effects, therefore requiring special biocontainment measures."

We are also proposing to clarify that the hourly rate user fees contained in § 130.9 are not applicable to services that are billed under flat rate fees contained in other sections of part 130.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects.

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and

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animal products are contained in 9 CFR part 130. Currently, APHIS charges user fees for the inspection of biosecurity level three laboratories under the hourly rate user fees contained in § 130.9.

APHIS currently inspects several laboratories in the United States that conduct biosecurity level three research on high-risk organisms and vectors. These facilities currently pay an average of $462 for inspections required to be approved to handle a defined set of organisms or vectors. The average actual cost of providing this service, including the cost of air travel and lodging necessary to inspect certain laboratories, is $977 per laboratory. APHIS has not been able to recover all costs of inspection associated with approving these laboratories under the current hourly rate user fee structure, because current regulations only provide for 6 hours of ground travel.

Therefore, we are proposing to amend the regulations in § 130.8 by establishing a flat rate user fee of $977 for this service, which would cover the average cost of inspection related to approving a laboratory to handle one defined set of organisms or vectors.

We arrived at the flat rate user fee that we are proposing by using the average of the number of hours required for an APHIS inspector to complete an inspection, travel costs (including airfare and lodging, when appropriate), per diem, and miscellaneous travel expenses.

Effects on Small Entities

Under Small Business Administration (SBA) Guidelines, a biosecurity level three laboratory with less than $5 million in annual sales is considered a small entity. All of the laboratories we inspect are small entities.

We anticipate that the economic effects of this proposed rule on these laboratories will be minimal. An informal survey of several of the affected laboratories revealed that in some cases inspection costs at laboratories are charged directly to a client if the client requested analysis of the particular organism or vector for which the inspection was undertaken. However, in most cases, laboratories pay for inspections with overhead funds from their operating budget. There are two types of biosecurity level three laboratories that we inspect. Some laboratories are privately owned, for-profit enterprises that charge clients fees to use the laboratory to research biosecurity level three organisms or vectors. These laboratories typically bill their clients for the cost of APHIS' inspection service and, therefore, are not directly affected by the cost of inspections.

Other laboratories are publicly owned and are attached to universities or government agencies. These laboratories typically include anticipated APHIS inspection costs in their yearly budgets. We do not have the data to assess the effect of the proposed rate change on these laboratories. On average, laboratories are inspected twice a year. However, a laboratory working with many different types of organisms could be subject to additional inspections.

The proposed flat rate user fees will enable all laboratories to know in advance what costs they will incur.

Alternatives Considered

In developing this proposed rule, we considered: (1) Making no changes to our existing method of recovering costs for inspecting biosecurity level three laboratories; (2) proposing to charge laboratories the exact costs incurred during each individual inspection, including costs of travel and lodging; or (3) proposing to charge a flat rate user fee for the inspection of biosecurity level three laboratories.

We rejected the first alternative because if we made no changes to the regulations, we would continue to be unable to recover all of the costs associated with the inspection of biosecurity level three laboratories. All costs to APHIS for providing this service must be recovered solely through user fees; there is no other form of funding available to us that would cover this service.

We also rejected the second alternative, in which each laboratory would be charged the exact cost of inspection, including travel and lodging for APHIS personnel. We believe it is unfair to charge certain customers higher fees than others simply because a qualified APHIS inspector may not be stationed nearby. We believe that the fairest method of charging customers for this service is through a flat rate user fee.

The proposed changes to the regulations would result in no new information collection or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would be revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.1, a definition for "biosecurity level three laboratory" would be added in alphabetical order to read as follows:

§ 130.1 Definitions.

* * * * *

Biosecurity level three laboratory. A laboratory or production facility that works with foreign or domestic animal disease agents, organisms, or vectors that spread by aerosol route and that have serious or lethal effects, therefore requiring special biocontainment measures.

* * * * *

3. In § 130.8, paragraph (a), the table would be amended by adding a new entry in alphabetical order to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	User fee
. . .	. . .
Inspection for approval of biosecurity level three laboratories.	$977.00 for all costs of inspection related to approving the laboratory for handling one defined set of organisms or vectors.
. . .	. . .

* * * * *

4. In § 130.9, the introductory text of paragraph (a) would be revised to read as follows:

§ 130.9 User fees for miscellaneous import or entry services.

(a) User fees for import or entry services listed in paragraphs (a)(1) through (a)(4) of this section, except those services covered by flat rate user fees elsewhere in this part, will be calculated at $56.00 per hour, or $14.00 per quarter hour, with a minimum fee of $16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

Done in Washington, DC, this 8th day of July 1999.

A. Cielo,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17938 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 474

[Docket No. EE–RM–99–PEF]

[RIN: 1904–AA40]

Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Petroleum-Equivalent Fuel Economy Calculation

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking and Withdrawal of Previous Notice of Proposed Rulemaking.

SUMMARY: In response to public comments, the Department of Energy (DOE) revises its proposal to amend its regulations on electric and hybrid vehicles to provide a petroleum-equivalency factor (PEF) and procedures for calculating the petroleum-equivalent fuel economy of electric vehicles. The petroleum-equivalent fuel economy values of an automobile manufacturer's electric vehicles may then be included in the calculation of that manufacturer's corporate average fuel economy (CAFE) according to regulations prescribed by the Environmental Protection Agency and the Department of Transportation.

DATES: To ensure your comments are considered, we must receive 7 copies of your comments on or before September 13, 1999.

You may present oral views, data, and arguments at the public hearing which will be held in Washington, DC, on Tuesday, August 17, 1999 beginning at 9:30 a.m. If you would like to speak at this hearing, contact Ms. Andi Kasarsky, (202) 586–3012, by Friday, August 13, 1999. In addition, you may request an opportunity to speak at the hearing itself. Each oral presentation is limited to 10 minutes. The hearing will last as long as there are persons requesting an opportunity to speak. The notice of proposed rulemaking published in the **Federal Register** on February 4, 1994 (59 FR 5336) is withdrawn as of July 14, 1999.

ADDRESSES: Send written comments to: Mr. Rogelio Sullivan, U.S. Department of Energy, EE–32, Docket No. EE–RM–99–PEF, 1000 Independence Avenue, SW, Washington, DC 20585. Questions concerning submitting written comments should be addressed to Ms. Andi Kasarsky, (202) 586–3012. We will hold a public hearing at the following address: U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC. Please bring seven copies of the prepared oral statement to the hearing.

You may read and copy written comments received, a copy of the public hearing transcript, technical reference materials mentioned in this notice, and any other docket material received as a result of this notice at the DOE Freedom of Information Reading Room. The current docket material will be filed under "EE–RM–99–PEF." Copies of the hearing transcript and written comments received regarding the February 4, 1994 proposed rule are filed under Docket No. EE–RM–94–101. Earlier materials related to the calculation of the PEF are contained in Docket No. EE-RM–93–301 and are also available at the DOE Freedom of Information Reading Room, room 1E–190, (202) 586–3142, between the hours of 9:00 a.m.–4:00 p.m., Monday through Friday except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section III of this notice of proposed rulemaking (Opportunities for Public Comment).

FOR FURTHER INFORMATION CONTACT:

Mr. Rogelio Sullivan, U.S. Department of Energy, Office of Transportation Technologies, Office of Advanced Automotive Technologies, EE–32, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–8042

Mr. Eugene Margolis, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9526

SUPPLEMENTARY INFORMATION:

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I. Background

In an effort to conserve energy through improvements in the energy efficiency of motor vehicles, Congress passed the Energy Policy and Conservation Act (Pub. L. 94–163) in 1975. Title III of the Energy Policy and Conservation Act amended the Motor Vehicle Information and Cost Savings Act by mandating fuel economy standards for automobiles produced in, or imported into, the United States. (The Act's provisions appeared initially in the United States Code at 15 U.S.C. 1901 *et seq.* In 1994, Pub. L. 103–272 codified the Act's provisions in Title 49, U.S.C., Subtitle VI, Part C.) This statute, as amended, requires that every manufacturer or importer meet a corporate average fuel economy standard for the fleet of vehicles produced or imported in any model year. Although electric vehicles are included under the definition of the term "automobile" in the Motor Vehicle Information and Cost Savings Act, they do not consume "fuel" as defined in the Act. Therefore, calculation of an electric vehicle manufacturer's corporate average fuel economy is impossible without a petroleum equivalency value.

On January 7, 1980, the President signed the Chrysler Corporation Loan Guarantee Act of 1979 (Pub. L. 96–185). Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979 added a new paragraph (2) to section 13(c) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (Pub. L. 94–413). Part of the new section 13(c) added subsection (a)(3) to section 503 of the Motor Vehicle Information and Cost Savings Act. That subsection, which has been codified at 49 U.S.C. 32904(a)(2), directs the Secretary of Energy to determine petroleum-equivalent fuel economy values for various classes of electric vehicles. The intent of the legislation is to provide an incentive for vehicle manufacturers to produce electric vehicles by including the expected high equivalent fuel economy of these vehicles in their corporate average fuel economy calculation. This will help to accelerate the early commercialization of electric vehicles.

Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979 further amended the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976 by adding a new paragraph (3) to section 13(c) which directed the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, to conduct a seven-year evaluation program of the inclusion of electric vehicles in the calculation of average fuel economy. In May 1980, as required by section 503(a)(3) of the Motor Vehicle Information and Cost Savings Act, DOE proposed a method of calculating the petroleum-equivalent fuel economy of electric vehicles. The rule was finalized in April 1981 (46 FR 22753). The seven-year evaluation program was completed and the calculation of the annual petroleum equivalency factors was not extended past 1987.

DOE published a proposed rule for a permanent PEF for use in calculating petroleum-equivalent fuel economy values on February 4, 1994, (59 FR 5336) and obtained oral and written comments from interested parties. Following consideration of the reviewers' comments, DOE's own internal re-examination of the assumptions underlying the proposed rule, and existing regulations for other classes of alternative fuel vehicles, DOE decided to modify the approach proposed in 1994 with several changes. DOE believes that the approach presented today is simpler, more consistent with the regulatory treatment of other alternative fuel vehicles, and better embodies the Congressional intent.

Administrative responsibilities for the corporate average fuel economy program are assigned to the Department of Transportation and the Environmental Protection Agency under the Motor Vehicle Information and Cost Savings Act. The Secretary of Transportation is responsible for prescribing the corporate average fuel economy standard and enforcing the penalties for failure to meet these standards. The Administrator of the Environmental Protection Agency is responsible for calculating a manufacturer's corporate average fuel economy value. DOE is responsible for developing and promulgating the petroleum equivalency factor, the key component in the calculation of petroleum-equivalent fuel economy values for electric vehicles.

II. Discussion

A. Requirements of the Motor Vehicle Information and Cost Savings Act, as Amended

Section 503(a)(3) of the Motor Vehicle Information and Cost Savings Act (49 U.S.C. 32904(a)(2)) requires DOE to determine the petroleum-equivalent fuel economy values for electric vehicles, taking into account the following parameters:

(i) The approximate electric energy efficiency of the vehicles considering the vehicle type, mission, and weight;

(ii) The national average electricity generation and transmission efficiencies;

(iii) The need of the Nation to conserve all forms of energy, and the relative scarcity and value to the Nation of all fuel used to generate electricity; and

(iv) The specific driving patterns of electric vehicles as compared with those of petroleum-fueled vehicles.

Section 503(a)(3) also provides for revision of such values if necessary.

B. PEF Development Process

When DOE published a proposed rule for a permanent PEF in 1994, many of the comments criticized one of the key factors of the proposed PEF: An intermediate factor that used a complex approach to quantify the relative scarcity and value of all fuels used to generate electricity in the U.S., which was referred to as the "scarcity factor." This proposed scarcity factor was based on estimates of the U.S. share of world reserves of fossil fuels and estimated rates of depletion of world reserves. In general, the criticisms of this approach were more "philosophical" than specific. The comments, however, led DOE to reexamine the issue in greater detail. DOE concluded that faulty assumptions and calculations were present in some of the steps in the development of the scarcity factor.

For example, the number of years until exhaustion of fossil fuel reserves was estimated by using forecast energy consumption growth rates to estimate the length of time needed to deplete the Energy Information Administration-reported "proved reserves" of each fuel. This is misleading because "proved reserves" are defined based on current economic and technical conditions, and have in fact been observed to grow over time. In a subsequent step, the calculation summed the years-to-depletion values for each individual fuel into a total years-to-depletion value. This too, is misleading because once the least-abundant fuel is totally consumed, energy needs will have to be met by increasing the consumption rates of the remaining fuels. In addition, since the scarcity of nuclear and renewable fuels could not be determined by this method (because their "reserves" are essentially unlimited), arbitrary scarcity values were assigned to these fuels. Several other questionable mathematical operations were subsequently performed during the calculation of the scarcity factor. DOE therefore decided to replace the scarcity factor rather than attempt to refine it.

DOE then considered alternative approaches to the determination of suitable factors for quantifying scarcity and value. These included both modifications of the reserves-based approach, as well as market price (of the fuels used to generate electricity) approaches. DOE determined, however, that such approaches were highly sensitive to the assumptions used, and that many possible assumptions were contradictory or highly subjective. Other approaches evaluated included: Factoring in the national average price of electricity; quantifying and comparing the total fuel cycle greenhouse gas emissions from petroleum, and those of electricity generating fuels; and applying an arbitrary scaling factor to the electricity to gasoline conversion. Upon careful examination, each of these approaches was found to have shortcomings of a technical or policy nature, or internal inconsistencies.

In light of the number of criticisms related to the scarcity factor, DOE elected to perform an additional search of the literature regarding reserves of the fuels used to generate electricity. This research led to a very significant conclusion: Although reserves of all fossil fuels are obviously finite, fuels used to produce electricity are in fact widely available from diverse sources at relatively low prices. DOE carefully considered the scarcity of these fuels, as required by Congress, but determined that the fuels used to produce electricity, including renewables, are quite abundant rather than scarce. Thus, scarcity does not appear to be a concern, and should not be a guiding factor in the rulemaking at this time.

DOE then examined existing law (49 U.S.C. 32905 (a) and (c)) that specifies procedures for determining the petroleum-equivalent fuel economy of other types of alternative fuel vehicles. 49 U.S.C. 32905 (a) states that "the fuel economy measured for [post-1992 dedicated alternative fuel vehicles] shall be based on the fuel content of the alternative fuel used to operate the automobile. A gallon of liquid alternative fuel used to operate a dedicated automobile is deemed to contain 0.15 gallon of fuel." Two of the most common liquid alternative fuels are M85 (85 percent methanol and 15 percent unleaded gasoline by volume) and E85 (85 percent ethanol and 15 percent unleaded gasoline by volume). The petroleum equivalent fuel economy of E85 and M85 powered vehicles is then determined by dividing the measured fuel economy value by 0.15.

Section 32905(c) extends this approach to gaseous fueled vehicles, stating that "[the fuel economy of dedicated gaseous fueled vehicles shall be based on the fuel content of the gaseous fuel used to operate the automobile. One hundred cubic feet of natural gas is deemed to contain 0.823 gallon equivalent of natural gas. . . . A gallon equivalent of gaseous fuel is deemed to have a fuel content of 0.15 gallon of fuel." Since gaseous fueled vehicles do not store their fuel in liquid form, a conversion factor must be applied to express the volume of gas consumed as an equivalent liquid volume of gasoline. This factor is based on the volume of natural gas that contains the same chemical energy as a gallon of gasoline. To determine the petroleum-equivalent fuel economy of a gaseous fueled vehicle, the vehicle's gaseous fuel consumption is measured directly (for example, in units of miles per 100 standard cubic feet of gas), and then the conversion factor of 0.823 gasoline-equivalent gallons per 100 standard cubic feet of natural gas is applied. Finally, the result is divided by 0.15 to obtain the petroleum equivalent fuel economy.

Unlike the case of M85 and E85 powered vehicles, the factor of 0.15 serves a different function in the case of gaseous fueled vehicles. since natural gas contains no gasoline whatsoever. The true energy efficiency of both liquid and gaseous fueled alternative fuel vehicles is intentionally and substantially overstated by the methods specified in 49 U.S.C. 32905, since only 15 percent of their actual energy consumption is accounted for in determining their petroleum-equivalent fuel economy. The use of the 0.15 factor for both types of vehicles provides a similar regulatory treatment to both types of alternative fuel vehicles.

DOE proposes to use an approach similar to that in 49 U.S.C. 32905 for calculating petroleum-equivalent fuel economy values for electric vehicles. DOE proposes to adopt the 0.15 factor to be applied in a manner similar to that prescribed for natural gas vehicles. This approach has the following advantages:

(i) It is consistent with existing regulatory and statutory procedures for other types of alternative fuel vehicles,

(ii) It provides a similar treatment to manufacturers of all types of alternative fuel vehicles, including electric vehicles,

(iii) It is relatively simple and straightforward to apply, compared to other approaches considered.

C. Test Procedures

The Environmental Protection Agency is responsible for specifying the test procedures and calculations used to derive the fuel economy values to be used in all CAFE determinations. The energy efficiency values used in CAFE calculations are determined using the test cycles commonly referred to as the "city" and "highway" test cycles described in the Environmental Protection Agency's regulations at 40 CFR Parts 86 and 600. The number of replications of these driving cycles needed to adequately determine the energy efficiency of each vehicle will depend upon the type of storage devices (e.g., lead-acid batteries).

The electrical systems of each vehicle may require special tools and/or measuring equipment to satisfactorily measure the energy consumed during testing. The Environmental Protection Agency has promulgated the "Special Test Procedures" provisions of 40 CFR 86.090–27 to accommodate any such special needs.

D. Calculation Procedures

The proposed PEF is conceptually based on the previously described regulatory approach at 49 U.S.C. 32905 (c) for determining the petroleum-equivalent fuel economy of gaseous fueled vehicles. The proposed PEF converts the measured electrical energy consumption of an electric vehicle into a raw gasoline-equivalent fuel economy value, and then divides this value by 0.15 to arrive at a final petroleum-equivalent fuel economy value which may then be included in the calculation of the vehicle manufacturer's corporate average fuel economy. Two additional factors are present in the equation, but these will normally have a value of unity and thus will not influence the value of the PEF in most cases. The terms comprising the PEF and the procedure for applying the PEF are described in greater detail below.

1. General Form of the PEF Equation

The general form of the PEF equation is:

$PEF = E_g * 1/0.15 * AF * DPF$

Where:

E_g=Gasoline-equivalent energy content of electricity factor
1/0.15="Fuel content" factor
AF=Petroleum-fueled accessory factor
DPF=Driving pattern factor

The development of these factors is described below.

2. Gasoline-Equivalent Energy Content of Electricity Factor

When comparing the fuel economy of two gasoline vehicles to one another, it

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is sufficient to measure the quantity of fuel consumed and the distance each vehicle can travel on that fuel. Since the same fuel is used to power both vehicles, useful comparisons of the relative energy efficiency of the two vehicles can be made without considering the efficiency of the process of getting the fuel to the vehicles.

When comparing gasoline vehicles with electric vehicles, however, it is essential to consider the efficiency of the respective "upstream" processes in the two fuel cycles. A full description of the differences in the processes is beyond the scope of this rulemaking, but the critical difference is that a gasoline vehicle burns its fuel on-board the vehicle, and an electric vehicle burns its fuel (the majority of electricity in the U.S. is generated at fossil fuel burning powerplants) off-board the vehicle. In both cases, the burning of fuels to produce work is the least efficient step of the respective energy cycles. If one considers only the energy supplied as gasoline to the gasoline vehicle (from refueling), or as electricity to the electric vehicle (from recharging), then this inefficient step is counted against the gasoline vehicle but not against the electric vehicle. The result is that the fuel economy of the electric vehicle will be substantially overstated.

For these reasons, the PEF includes a term for expressing the relative energy efficiency of the full energy cycles of gasoline and electricity. This term, the gasoline-equivalent energy content of electricity factor, abbreviated as E_g, is defined as:

$$E_g = \text{gasoline-equivalent energy content of electricity} = \frac{T_g * T_t * C}{T_p}$$

Where:

T_g=U.S. average fossil-fuel electricity generation efficiency = 0.328

T_t=U.S. average electricity transmission efficiency = 0.924

T_p=Petroleum refining and distribution efficiency = 0.830

C=Watt-hours of energy per gallon of gasoline conversion factor=33,440 Wh/gal

$$E_g = \frac{0.328 * 0.924 * 33440}{0.830}$$

$$= 12{,}211 \text{ Wh/gal}$$

Note that T_g and T_t are included in order to satisfy a requirement from Congress (49 U.S.C. 32904(a)(2)(B)) as well as for the technical reasons given above.

The derivation of these values is straightforward but lengthy and is therefore not discussed in this notice. Details on the assumptions, calculations, and data sources (primarily monthly and annual statistical reports from the Energy Information Administration) used to derive these values are described in materials contained in Docket No. EE–RM–99–PEF which may be reviewed at the DOE Freedom of Information Reading Room, at the address and times stated in the **ADDRESSES** section of this notice of proposed rulemaking.

3. "Fuel Content" Factor

The fuel content factor has a value of 1/0.15 and is included in the PEF for the reasons described in section II.B and summarized as follows:

(i) Consistency with existing regulatory and statutory procedures,

(ii) Provision of similar treatment to manufacturers of all types of alternative fuel vehicles,

(iii) Simplicity and directness.

The fuel content factor value of 1/0.15 is equivalent to a multiple of 6.67.

4. Petroleum-Fueled Accessory Factor

Some electric vehicles, particularly those that may be operated in colder climates, may be equipped with auxiliary petroleum-fueled cabin heater/defroster systems. DOE considered the possible use of such petroleum-fueled accessories in the PEF calculations by incorporating an Accessory Factor (AF). This factor has been assigned a usage factor that reduces the PEF by approximately ten percent per accessory, and it is assumed that no vehicle will ever be equipped with more than two such accessories. The majority of electric vehicles are expected to have no petroleum-fueled accessories installed. This results in 3 possible accessory factor values:

Number of petroleum-fueled accessories	Accessory factor (AF)
0	1.00
1	0.90
2	0.81

DOE recognizes that this is a crude accounting of the impact of the petroleum-fueled accessories. However, because this approach penalizes electric vehicles equipped with petroleum-fueled accessories, it provides an incentive for manufacturers to develop vehicles with more-desirable all-electric climate control systems.

Interested persons should also be aware that the definition of an electric vehicle (Zero Emission Vehicle) codified in 40 CFR Part 88.104(g) places certain restrictions on the fuel, operation, and emissions from fuel fired heaters. The definition of "electric vehicle" in section 474.2 of this part incorporates these restrictions.

5. Driving Pattern Factor

One of the factors that DOE must consider in determining petroleum-equivalent fuel economy values for electric vehicles is the relative driving patterns of electric and petroleum-fueled vehicles (49 U.S.C. 32904(a)(1)(B)(iv)). The purpose of the driving pattern factor (DPF) is to recognize the fact that electric vehicles may be used differently than gasoline vehicles, primarily due to their shorter range and longer "refueling" times. However, existing EPA regulations do not make driving-pattern-based adjustments to the fuel economy of various classes of gasoline vehicles when calculating a manufacturer's CAFE, even though gasoline-powered vehicles are also used in a large variety of different ways. Therefore, DOE proposes that for now the DPF be assigned a value of unity (1.00). The driving pattern factor term would be retained in the PEF equation, however, to allow this value to be adjusted if doing so is warranted in the future.

6. Use of the PEF

The value of the PEF is equal to the product of the values of the gasoline-equivalent energy content of electricity (E_g), the fuel content factor of 1/0.15, the petroleum-fueled accessory factor (AF), and the driving pattern factor (DPF):

PEF=E_g * 1/0.15 * AF * DPF

substituting values,

PEF=(12,211 Wh/gal)* 1/0.15 * (1.00 or 0.90 or 0.81) * (1.00)

or,

PEF=81,407 Wh/gal (zero petroleum-fueled accessories)

PEF=73,266 Wh/gal (one petroleum-fueled accessory)

PEF=65,940 Wh/gal (two petroleum-fueled accessories)

Dividing the PEF by the combined (city and highway) energy consumption of an electric vehicle yields the petroleum-equivalent fuel economy of that electric vehicle in miles per gallon:

mpg=PEF (Wh/gal) ÷ combined [electrical] energy consumption (Wh/mile)

Care should be taken to distinguish the assigned petroleum-equivalent fuel economy value from the actual energy-equivalent fuel economy.

7. Sample Calculations

DOE includes sample calculations of the petroleum-equivalent fuel economy of hypothetical electric vehicles in the Appendix of this proposed rule. DOE intends to include these sample calculations as an Appendix to 10 CFR Part 474.

III. Opportunities for Public Comment

A. Participation in Rulemaking

The Department encourages public participation in this rulemaking. Individual vehicle manufacturers, fuel producers and providers, trade groups, associations, vehicle owners and operators, States or other governmental entities, and other affected or interested parties are urged to submit written comments on the proposal.

The Department has established a period of 60 days following publication of this notice for persons to comment on this notice of proposed rulemaking. You may review all public comments and other docket material in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice. The materials will be filed under docket number EE–RM–99–PEF.

B. Written Comment Procedures

Interested persons and organizations are invited to participate in this rulemaking by submitting data, views, or comments with respect to the proposed rulemaking. Please provide seven copies of your comments to the address indicated in the **ADDRESSES** section of this notice. Please include the designation "Inclusion of Electric Vehicles in Corporate Average Fuel Economy Calculation—Notice of Proposed Rulemaking" (Docket No. EE–RM–99–PEF) on the outside of the envelope and on individual documents submitted. DOE will consider all timely-submitted comments and other relevant information before issuing a final rule.

If you are submitting information you believe to be confidential and that may be exempt by law from public disclosure, you should submit one complete copy along with three copies from which you have removed the confidential information. DOE will make its own determination regarding any claim that information submitted be exempt from public disclosure. Our procedures regarding confidential information are in 10 CFR Part 1004.11.

C. Public Hearing

1. Request To Speak Procedures

The time and place of the public hearing are indicated in the **DATES** and **ADDRESSES** sections of this notice. The Department invites any person or organization having an interest in the proposed rulemaking to request to make an oral presentation. Your request should be directed to DOE at the address indicated in the **ADDRESSES** section of this notice. You should bring seven copies of your statement to the hearing. In the event that you cannot provide seven copies, contact Ms. Kasarsky at the number indicated in the **ADDRESSES** section in advance of the hearing to make alternative arrangements.

2. Conduct of the Hearing

DOE will designate an official to preside at the hearing. This will not be an evidentiary or judicial-type hearing but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. Only those conducting the hearing may ask questions. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal or clarifying statement. The statements will be given in the order in which the initial statements were made and will be subject to time limitations.

DOE will prepare a transcript of the hearing. DOE will retain the transcript and other records of this rulemaking and make them available for public inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

IV. Procedural Requirements

A. Environmental Protection Agency Review

Pursuant to section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 766(a)), DOE submitted a copy of this notice to the Administrator of the Environmental Protection Agency for the Administrator's concurrence. The Administrator has concurred.

B. National Environmental Policy Act Review

This rulemaking has been reviewed in accordance with the requirements of the DOE National Environmental Policy Act Final Rule as published in 10 CFR Part 1021. This rulemaking amends 10 CFR Part 474 so that electric vehicles receive similar treatment to what Congress has required for other alternative fuel vehicles under 49 U.S.C. 32905. The Department has determined that this rule is covered by Categorical Exclusion in paragraph A5 to subpart D, 10 CFR Part 1021 (rulemaking, interpreting or amending an existing regulation, no change in environmental effect). Accordingly, neither an Environmental Assessment or an Environmental Impact Statement is required.

C. Regulatory Review

Today's proposed rule has been determined not to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs in the Office of Management and Budget.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency certifies that the rule will not, if promulgated, have a "significant economic impact on a substantial number of small entities."

DOE certifies that this action will not have a significant economic impact on

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a substantial number of small entities. It is directed at vehicle manufacturers that will be concerned with a mix of petroleum and electric fueled vehicles in their annual production. None of these manufacturers is a small entity.

E. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating such a regulation or rule.

This action and 10 CFR Part 474 serve only to provide a method of interpreting 40 CFR Part 600 (Fuel Economy of Motor Vehicles) for electric vehicles. The action does not involve any substantial direct effects on States or other considerations stated in Executive Order 12612. Hence, no federalism assessment is required.

F. "Takings" Assessment Review

It has been determined that pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988), this proposed regulation, if adopted, would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The proposed rule published today does not contain any Federal mandate, so these requirements do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

The notice of proposed rulemaking published in the **Federal Register** on February 4, 1994 (59 FR 5336) is withdrawn as of July 14, 1999.

List of Subjects in 10 CFR Part 474

Electric power, Energy conservation, Motor vehicles, Research.

Issued in Washington, DC, on June 10, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to revise Part 474 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below:

PART 474—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM; PETROLEUM-EQUIVALENT FUEL ECONOMY CALCULATION

Sec.

474.1 Purpose and scope.
474.2 Definitions.
474.3 Petroleum-equivalent fuel economy calculation.
474.4 Test procedures.
474.5 Review and update.

Appendix to Part 474—Sample Petroleum-Equivalent Fuel Economy Calculations

Authority: 49 U.S.C. 32901 *et seq.*

§ 474.1 Purpose and scope.

This part contains procedures for calculating a value for the petroleum-equivalent fuel economy of electric vehicles, as required by 49 U.S.C. 32904(a)(2). The petroleum-equivalent fuel economy value is intended to be used by the Environmental Protection Agency in calculating corporate average fuel economy values pursuant to regulations at 40 CFR Part 600—Fuel Economy of Motor Vehicles.

§ 474.2 Definitions.

For the purposes of this part, the term:

Combined energy consumption value means the weighted average of the Urban Dynamometer Driving Schedule and the Highway Fuel Economy Driving Schedule energy consumption values (weighted 55% / 45%, respectively), as determined by the Environmental Protection Agency in accordance with 40 CFR Parts 86 and 600.

Electric vehicle means a vehicle that is powered by an electric motor drawing current from rechargeable storage batteries or other portable electrical energy storage devices, provided that:

(1) Recharge energy must be drawn from a source off the vehicle, such as residential electric service; and

(2) The vehicle must comply with all provisions of the Zero Emission Vehicle definition found in 40 CFR 88.104(g).

Highway Fuel Economy Driving Schedule energy consumption value means the average number of watt-hours of electrical energy required for an electric vehicle to travel one mile of the Highway Fuel Economy Driving Schedule, as determined by the Environmental Protection Agency.

Petroleum equivalency factor means the value specified in section 474.3(b), which incorporates the parameters listed in 49 U.S.C. 32904(a)(2)(B) and is used to calculate petroleum-equivalent fuel economy.

Petroleum-equivalent fuel economy means the value, expressed in miles per gallon, that is calculated for an electric vehicle in accordance with § 474.3(a), and reported to the Administrator of the Environmental Protection Agency for use in determining the vehicle manufacturer's corporate average fuel economy.

Petroleum-powered accessory means a vehicle accessory (e.g., a cabin heater, defroster, and/or air conditioner) that:

(1) Uses gasoline or diesel fuel as its primary energy source; and

(2) Meets the requirements for fuel, operation, and emissions in 40 CFR 88.104(g).

Urban Dynamometer Driving Schedule energy consumption value means the average number of watt-hours of electrical energy required for an electric vehicle to travel one mile of the Urban Dynamometer Driving Schedule, as determined by the Environmental Protection Agency.

§ 474.3 Petroleum-equivalent fuel economy calculation.

(a) The petroleum-equivalent fuel economy for an electric vehicle is calculated as follows:

(1) Determine the electric vehicle's Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value in units of watt-hours per mile;

(2) Average the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using a weighting of 55% urban/45% highway to determine the combined energy consumption value of the electric vehicle in units of watt-hours per mile; and

(3) Calculate the petroleum-equivalent fuel economy by dividing the appropriate petroleum equivalency factor for the number of petroleum-powered accessories installed (see paragraph (b) of this section) by the combined energy consumption value, and round to the nearest 0.01 miles per gallon.

(b) The petroleum-equivalency factors for electric vehicles are as follows:

(1) If the electric vehicle does not have any petroleum-powered accessories installed, the value of the petroleum equivalency factor is 81,407 watt-hours per gallon.

(2) If the electric vehicle has one petroleum-powered accessory installed, the value of the petroleum equivalency factor is 73,266 watt-hours per gallon.

(3) If the electric vehicle has two petroleum-powered accessories installed, the value of the petroleum equivalency factor is 65,940 watt-hours per gallon.

§ 474.4 Test procedures.

(a) The electric vehicle energy consumption values used in the calculation of petroleum-equivalent fuel economy under § 474.3 will be determined by the Environmental Protection Agency using the Highway Fuel Economy Driving Schedule and Urban Dynamometer Driving Schedule test cycles at 40 CFR parts 86 and 600.

(b) The "Special Test Procedures" provisions of 40 CFR 86.090–27 may be used to accommodate any special test procedures required for testing the energy consumption of electric vehicles.

§ 474.5 Review and update.

The Department will review this part [five years after the date of publication as a final rule] to determine whether any updates and/or revisions are necessary. The Department will publish the results of this review in the **Federal Register**.

Appendix to Part 474—Sample Petroleum-Equivalent Fuel Economy Calculations

Example 1:

An electric vehicle is tested in accordance with Environmental Protection Agency procedures and is found to have an Urban Dynamometer Driving Schedule energy consumption value of 265 watt-hours per mile and a Highway Fuel Economy Driving Schedule energy consumption value of 220 watt-hours per mile. The vehicle is not equipped with any petroleum-powered accessories. The combined electrical energy consumption value is determined by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using weighting factors of 55% urban, and 45% highway:

Combined electrical energy consumption value = (0.55 * urban) + (0.45 * highway) = (0.55 * 265) + (0.45 * 220) = 244.75 Wh/mile

Since the vehicle does not have any petroleum-powered accessories installed, the value of the petroleum equivalency factor is 81,407 watt-hours per gallon, and the petroleum-equivalent fuel economy is:

(81,407 Wh/gal) ÷ (244.75 Wh/mile) = 332.61 mpg

Example 2:

The vehicle from Example 1 is equipped with an optional diesel-fired cabin heater/defroster. For the purposes of this example, it is assumed that the electrical efficiency of the vehicle is unaffected.

Since the vehicle has one petroleum-powered accessory installed, the value of the petroleum equivalency factor is 73,266 watt-hours per gallon, and the petroleum-equivalent fuel economy is:

(73,266 Wh/gal) ÷ (244.75 Wh/mile) = 299.35 mpg

[FR Doc. 99–17786 Filed 7–13–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–381–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes. This proposal would require a one-time inspection to determine the type of engine ignition switch installed in the hinged forward overhead switch panel, and replacement of certain rotary ignition switches with new design rotary ignition switches. This proposal is prompted by reports of smoke in the flight compartment during engine ignition selection. The actions specified by the proposed AD are intended to prevent an internal electrical short in the engine ignition switch, which could result in smoke in the flight compartment.

DATES: Comments must be received by August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–381–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration,

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Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–381–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–381–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of smoke in the flight compartment during engine ignition selection on certain McDonnell Douglas Model DC–9 series airplanes. Investigation has determined the probable cause to be moisture precipitated within the rotary ignition switch, which caused an internal electrical short in the switch. This condition, if not corrected, could result in smoke in the flight compartment.

The subject area on certain McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes is identical to that on the affected Model DC–9 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–74–001, dated May 23, 1997, and McDonnell Douglas Alert Service Bulletin DC9–74A001, Revision 01, dated October 26, 1998, which describe procedures for a one-time inspection to determine the type of engine ignition switch (rotary or toggle) installed in the hinged forward overhead switch panel, and replacement of certain rotary ignition switches with new design rotary ignition switches. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 2,000 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,000 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $60,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 98–NM–381–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–74A001, Revision 01, dated October 26, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an internal electrical short in the engine ignition switch, which could result in smoke in the flight compartment, accomplish the following:

Inspection and Corrective Action

(a) Within 8 months after the effective date of this AD, visually inspect the engine ignition switch to determine what type of switch (rotary or toggle) is installed in the hinged forward overhead switch panel, in accordance with McDonnell Douglas Service Bulletin DC9–74–001, dated May 23, 1997, or McDonnell Douglas Alert Service Bulletin DC9–74A001, Revision 01, dated October 26, 1998.

(1) If the switch is a toggle type, no further action is required by this AD.

(2) If the switch is a rotary type, prior to further flight, determine the switch part number in accordance with the service bulletin.

(i) If the switch has part number 79–2318 (5D0423–2) or 79–2355, no further action is required by this AD.

(ii) If the switch has any part number other than that identified in paragraph (a)(2)(i) of this AD, prior to further flight, replace the engine ignition switch with a new design ignition switch in accordance with the service bulletin.

Spares Affected

(b) As of the effective date of this AD, no person shall install a five position rotary ignition type switch, part number 79–2055 (5D0423–1), 69–1967, 53306–033, or 3600–3076, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 6, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17863 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. This proposal would require revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in icing conditions. This proposal is prompted by an accident report indicating that possible accretion of ice on the wings of the airplane, due to the wing anti-ice system not being activated by the flightcrew, could have contributed to the source of the accident. The actions specified by the proposed AD are intended to prevent undetected accretion of ice on the wings, which could result in reduced controllability of the airplane during normal icing conditions.

DATES: Comments must be received by August 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Rodrigo J. Huete, Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7518; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.99–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 6, 1997, an accident occurred on a Model CL–600–2B19 (Regional Jet Series 100) series airplane. The Canadian Transportation Safety Board (CTSB) report indicated that possible accretion of ice on the wings due to the wing anti-ice system not

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being activated by the flightcrew could have contributed to the source of the accident. Investigation revealed that the procedure in the Canadair Regional Jet Airplane Flight Manual (AFM) that was in effect at the time of the accident specified that the wing anti-ice system be activated when ice was detected by the ice detection system. Upon further analysis and validation, it was determined that "icing conditions" (defined in the AFM) should be used as the primary means for the flightcrew to determine when to activate the wing anti-ice system below 22,000 feet mean sea level (MSL), and that ice detectors should be used only as a backup. Undetected accretion of ice on the wings could result in reduced controllability of the airplane during normal icing conditions.

Explanation of Service Information

Canadair Regional Jet Temporary Revision (TR) RJ/61–2, dated October 30, 1998, was issued in order to assure the continued airworthiness of these airplanes in Canada. That TR describes procedures for amending the Limitations, Normal Procedures, and Emergency Procedures sections of the AFM to provide the flightcrew with modified procedures and limitations for operating in icing conditions.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this proposed AD would require revising the Limitations, Normal, and Emergency Procedures sections of the FAA-approved AFM to provide the flightcrew with modified procedures and limitations for operating in icing conditions. The actions would be required to be accomplished in accordance with the service information described previously.

Cost Impact

The FAA estimates that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $7,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 99–NM–34–AD.

Applicability: All Model CL–600–2B19 (Regional Jet Series 100) series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected accretion of ice on the wings, which could result in reduced controllability of the airplane during normal icing conditions, accomplish the following:

AFM Revision

(a) Within 10 days after the effective date of this AD, Revise the FAA-approved Canadair Regional Jet Airplane Flight Manual (AFM) by inserting a copy of the pages specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD into the AFM.

(1) Revise the Limitations Section to include pages 2 and 3 of Canadair Regional Jet Temporary Revision (TR) RJ/61–2, dated October 30, 1998.

(2) Revise the Emergency Procedures Section to include pages 4 through 6 inclusive of Canadair Regional Jet TR RJ/61–2, dated October 30, 1998.

(3) Revise the Normal Procedures Section to include pages 7 through 27 inclusive of Canadair Regional Jet TR RJ/61–2, dated October 30, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 7, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17862 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, A321, A330, and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, A321, A330, and A340 series airplanes. This proposal would require repetitive inspections to detect missing and incorrectly installed parts of the footrest actuator assembly, and replacement of discrepant parts with new parts. This AD also would provide for optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent detachment of the footrest assembly actuator, which could result in partial blockage of the rudder pedals and reduced controllability of the airplane.

DATES: Comments must be received by August 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–103–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A319, A320, A321, A330, and A340 series airplanes. The DGAC advises that retaining rings (also called retaining clips) used to secure the pins of the footrest actuator installation, if missing or broken, can result in detachment of the footrest actuator. One operator reported such an occurrence on a Model A320 series airplane. Subsequent inspections conducted on the operator's fleet of Airbus Model A320 and A340 series airplanes revealed 7 broken or missing retaining rings on Model A320 series airplanes and 2 broken or missing retaining rings on Model A340 series airplanes. The footrest assembly is of similar design on Model A319, A320, A321, A330, and A340 series airplanes. A detached footrest actuator can hang down into the rudder pedals, partially blocking their movement. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued All Operator Telex (AOT) 25–14 (for Model A319, A320, and A321 series airplanes), and AOT 25–13 (for Model A330 and A340 series airplanes); both dated December 17, 1998; which describe procedures for repetitive inspections to detect missing and incorrectly installed parts of the footrest actuator assembly, and replacement of discrepant parts with new parts. The AOT's also describe procedures for the removal of the footrest assembly, which would eliminate the need for the repetitive inspections. The DGAC classified these AOT's as mandatory and issued French airworthiness directives 1999–047–110(B) (for Model A340 series airplanes) and 1999–048–090(B) (for Model A330 series airplanes), both dated February 10, 1999; and 1999–074–127(B), dated February 24, 1999 (for Model A319, A320, and A321 series airplanes); in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOT's described previously. This proposed AD also would provide for optional terminating action for the repetitive inspections.

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Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD and allow for the footrest assembly to remain installed. Once this modification is developed, approved, and available, the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 208 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $37,440, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Airplane, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 99–NM–103–AD.

Applicability: All Model A319, A320, A321, A330, and A340 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent detachment of the footrest assembly actuator, which could result in partial blockage of the rudder pedals and reduced controllability of the airplane, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection of the footrest actuator assembly for discrepancies (including bent pins and missing or incorrectly installed retaining rings and pins), in accordance with All Operator Telex (AOT) 25–14, paragraph 4.2.1 (for Model A319, A320 and A321 series airplanes), and AOT 25–13, paragraph 4.2.1 (for Model A330 and A340 series airplanes); both dated December 17, 1998.

(1) If no discrepancy is detected: Repeat the inspection thereafter at intervals not to exceed 15 months.

(2) If any discrepancy is detected: Accomplish the actions of paragraphs (a)(2)(i) and (a)(2)(ii).

(i) Prior to further flight, remove the actuator system from the footrest assembly and conduct a detailed visual inspection of the pins for damage, distortion, or wear, in accordance with paragraph 4.2.2 of the applicable AOT. If any damage, distortion, or wear of the pin, or any discrepancy of the pin or the ring is detected, prior to further flight, replace that pin or ring with a new part, in accordance with paragraph 4.2.3 of the applicable AOT. And

(ii) Repeat the detailed visual inspection of the footrest actuator assembly to detect discrepancies at intervals not to exceed 15 months.

(b) Removal of the footrest assembly constitutes terminating action for the repetitive inspection requirements of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 1999–047–110(B) (for Model A340 series airplanes) and 1999–048–090(B) (for Model A330 series airplanes), both dated February 10, 1999; and 1999–074–127(B), dated February 24, 1999 (for Model A319, A320, and A321 series airplanes).

Issued in Renton, Washington, on July 7, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Airplane Certification Service.

[FR Doc. 99–17861 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require modification of the insulation pads in the lower side of the fuselage at the wing aft area. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent loose insulation from interfering with an aileron control cable, which could result in reduced aileron control.

DATES: Comments must be received by August 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–118–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that, as designed, the insulation pads in the lower side of the fuselage at the wing aft area can loosen and might interfere with the aileron control cable. This condition, if not corrected, could result in reduced aileron control.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–53–061, dated April 21, 1999, which describes procedures for modifying the insulation pads in the lower side fuselage at the wing aft area. The insulation pads in the affected area are cut away and removed. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–141, dated April 21, 1999, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 303 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $54,540, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

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is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 99–NM–118–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 459 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loose insulation from interfering with an aileron control cable, which could result in reduced aileron control, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the insulation pads in the lower side fuselage at the wing aft area in accordance with Saab Service Bulletin 340–53–061, dated April 21, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–141, dated April 21, 1999.

Issued in Renton, Washington, on July 7, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17860 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, and –800 series airplanes. This proposal would require installation of a drain at each of the number 2 window frame assemblies in the airplane. This proposal is prompted by reports that flight deck emergency exits (number 2 windows) were found frozen shut after landing. The actions specified by the proposed AD are intended to prevent water accumulation in the lower corners of the flight deck emergency exits (number 2 windows), which can freeze and prevent the exits from being used during an emergency evacuation.

DATES: Comments must be received by August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2207; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–134–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that flight deck emergency exits (number 2 windows) were found frozen shut after landing on Boeing Model 737–600, –700, and –800 series airplanes. The design allows water to accumulate in the lower corner of the number 2 window, which can freeze, preventing the window from opening. This condition, if not corrected, could result in the flight deck emergency exits being unusable by the flight deck occupants during an emergency evacuation.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–56–1011, dated November 19, 1998, which describes procedures for installation of a drain at each of the number 2 window frame assemblies in the airplane. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of a drain at each of the number 2 window frame assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin does not specify a compliance time for accomplishment of installation of a drain at each of the number 2 window frame assemblies in the airplane, this proposal would require that action to be accomplished within 18 months after the effective date of this AD. In developing an appropriate compliance time for this proposed AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to accomplish the proposed actions (approximately 3 hours). In light of these factors, the FAA finds a compliance time of 18 months for accomplishing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 144 airplanes of the affected design in the worldwide fleet. The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $536 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $40,812, or $716 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–134–AD.

Applicability: Model 737–600, –700, and –800 series airplanes; line numbers 1 through 144 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent water accumulation in the lower corners of the flight deck emergency exits (number 2 windows), which can freeze and prevent the exits from being used during an emergency evacuation, accomplish the following:

Installation

(a) Within 18 months after the effective date of this AD, install a drain at each of the number 2 window frame assemblies in the airplane in accordance with Boeing Service Bulletin 737–56–1011, dated November 19, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of

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compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 7, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17859 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that currently requires revision of the Airplane Flight Manual (AFM) to prohibit operation of the fuel boost pumps when fuel quantities are below certain levels, and to add maintenance procedures for operating the airplane with an inoperative fuel boost pump assembly or with an inoperative flight station fuel quantity indicating system. That AD also requires the installation of a placard on the engineer's fuel panel to advise the maintenance crew that operation of the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing fuel tank is prohibited. This action would add a requirement for modification of each fuel boost pump assembly, which would terminate the requirements of the existing AD. This proposal is prompted by reports of internal electrical failures in the fuel boost pump of the wing fuel tanks that could result in either electrical arcing or localized overheating. The actions specified by the proposed AD are intended to prevent such electrical arcing or overheating, which could breech the protective housing of the fuel boost pump and expose it to fuel vapors and fumes, and consequent potential fire or explosion in the wing fuel tank.

DATES: Comments must be received by August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–122–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 16, 1998, the FAA issued AD 98–08–09, amendment 39–10492 (63 FR 20062, April 23, 1998), applicable to certain Lockheed Model L–1011–385 series airplanes, to require revision of the Airplane Flight Manual (AFM) to prohibit operation of the fuel boost pumps when fuel quantities are below certain levels, and to add new maintenance procedures for operating the airplane with an inoperative fuel boost pump assembly or with an inoperative flight station fuel quantity indicating system. That AD also requires the installation of a placard on the engineer's fuel panel to advise the maintenance crew that operation of the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing fuel tank is prohibited. That action was prompted by reports of internal electrical failures in the fuel boost pump of the wing fuel tanks that could result in either electrical arcing or localized overheating. The requirements of that AD are intended to prevent such electrical arcing or overheating, which could breech the protective housing of the fuel boost pump and expose it to fuel vapors and fumes, and consequent potential fire or explosion in the wing fuel tank.

Actions Since Issuance of Previous Rule

In the preamble to AD 98–08–09, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved Lockheed Service Bulletin 093–28–093, Revision 1, dated February 8, 1999, which describes procedures for modification of the fuel boost pump assembly.

The procedures described in the service bulletin include modification of the fuel boost pump, inspection for discrepancies of the fuel boost pump scroll housing, and replacement, if necessary; inspection of the associated scroll housing electrical connector for damage, and replacement, if necessary; and installation of a modified fuel pump. Following installation of the fuel pump, a functional check is performed to verify proper operation of the fuel boost pump assembly. Accomplishment of the actions specified in the service bulletin would eliminate the need for the AFM revision and placard required by the existing AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–08–09 to continue to require revision of the Airplane Flight Manual (AFM) to prohibit operation of the fuel boost pumps when fuel quantities are below certain levels, and to add maintenance procedures for operating the airplane with an inoperative fuel boost pump assembly or with an inoperative flight station fuel quantity indicating system. This proposal also would continue to require the installation of a placard on the engineer's fuel panel to advise the maintenance crew that operation of the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing fuel tank is prohibited. It would also require installation of a modified fuel boost pump assembly, which would terminate the requirements of the existing AD. The installation would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 98–08–09 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $7,020, or $60 per airplane.

The modification that is proposed in this AD action would take approximately 8 work hours (1 hour per fuel pump assembly) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $18,880 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $2,265,120, or $19,360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10492 (63 FR 20062, April 23, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Lockheed Aeronautical Systems Company: Docket 99–NM–122–AD. Supersedes AD 98–08–09, Amendment 39–10492.

Applicability: Model L–1011–385–1, –385–1–14, –385–1–15, and –385–3 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a potential fire or explosion in the wing fuel tank, accomplish the following:

Restatement of Requirements of AD 98–08–09

AFM Revision

(a) Within 50 flight hours or 10 days after April 28, 1998 (the effective date of AD 98–08–09, amendment 39–10492), whichever occurs first, revise the Limitations and Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

Add to Limitations Section:

"*FUEL SYSTEM*

Fuel Pumps

Do not operate the fuel boost pumps of the affected wing tank in the air or on the ground when fuel quantities are less than the following:

Wing tanks 1 and 3: Less than 1,200 lbs (545 kg) in each tank.

Wing tanks 2L and 2R: Less than 1,200 lbs (545 kg) total in the two compartments (inboard and outboard) of each tank.

These quantities should be considered unusable fuel for the purposes of fuel management.

When operating with a fuel boost pump assembly inoperative per Master Minimum Equipment List (MMEL) item number 28–24–01, add the following maintenance procedure:

Pull and collar the affected circuit breaker.

When operating with an inoperative flight station fuel quantity indicating system per MMEL item 28–41–00, do not operate the fuel boost pumps of the affected wing tank in the air or on the ground when fuel quantities are less than the following:

Wing tanks 1 and 3: Less than 7,000 lbs (3,175 kg) in the affected tank.

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Wing tanks 2L and 2R: Less than 1,200 lbs (545 kg) total in the two compartments (inboard and outboard) of the affected tank."

Add to Procedures Section:

"FUEL SYSTEM

Fuel Pumps

If the circuit breaker for any wing tank fuel boost pump (circuit breakers U3, U4, U7, U8, U9, U10, U13, U14) trips, do not reset. If the pump trips while in flight, continue flight in accordance with the procedures in the "Tank Pumps LOW Lights On" portion of the Procedures section of the AFM. If the breaker trips while on the ground, do not reset without first identifying the source of the electrical fault.

ELECTRICAL SYSTEM

Fuel Pumps

If the circuit breaker for any wing tank fuel boost pump (circuit breakers U3, U4, U7, U8, U9, U10, U13, U14) trips, do not reset. If the pump trips while in flight, continue flight in accordance with the procedures in the "Tank Pumps LOW Lights On" portion of the Procedures section of the AFM. If the breaker trips while on the ground, do not reset without first identifying the source of the electrical fault."

Placard Installation

(b) Within 50 flight hours or 10 days after April 28, 1998, whichever occurs first, install a placard on the engineer's fuel panel that states:

"If FQIS is operative, do not operate the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing tanks."

NEW REQUIREMENTS OF THIS AD

Modification

(c) Within 18 months after the effective date of this AD: Modify each fuel boost pump assembly in accordance with Parts 2.A. through 2.I. inclusive of the Accomplishment Instructions of Lockheed Service Bulletin 093–28–093, Revision 1, dated February 8, 1999. Accomplishment of this modification terminates the requirements of this AD. Following accomplishment of the modification, the AFM revision may be removed from the AFM, and the placard may be removed.

Note 2: Modification of the fuel boost pump assemblies, prior to the effective date of this AD, in accordance with Lockheed Service Bulletin 093–28–093, dated January 15, 1999, is considered acceptable for compliance with paragraph (c) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 8, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17969 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

RIN 3095–AA91

Nixon Presidential Materials

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend regulations on preservation and processing of and access to the Presidential historical materials of Richard M. Nixon in NARA's custody to reflect the 1998 decision of the U.S. Court of Appeals that the private or personal segments of the original tape recordings must be returned to the Nixon estate. The amended rule will affect NARA and the Nixon estate. Other members of the public are not affected because no public access to the private and personal segments of the tapes has ever been permitted.

DATES: Comments are due by September 13, 1999.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: The Presidential Recordings and Materials Act (PRMPA), 44 U.S.C. 2111 note, Section 104(a), provides that in processing and providing access to the Nixon Presidential historical materials, the Archivist shall promulgate regulations, taking into account a number of factors including "the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need [to inform the public about abuses of governmental power] and are not otherwise of general historical significance." NARA promulgated its PRMPA regulations in 1986, including a provision (36 CFR 1275.48(a)) to transfer to former President Richard M. Nixon materials determined to be "private or personal" in accordance with the PRMPA.

To fulfill this requirement with regard to the Nixon White House tape recordings, NARA had returned a copy of such materials to the estate of former President Nixon and agreed to identify and return to the Nixon estate a copy of any additional private or personal materials identified on the tapes in the course of NARA's continuing review of the tapes. However, in the mediation leading up to the Settlement Agreement filed April 12, 1996, in *Stanley I. Kutler and Public Citizen* v. *John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate,* Civil Action No. 92–0662–NHJ (D.D.C.) (Johnson, J.), the parties were unable to reach an agreement on whether the Archivist was obligated, under other provisions of the PRMPA, to retain and maintain the original tape recordings in their entirety, including those segments deemed to be private or personal, along with a master preservation copy. Accordingly, the parties agreed to litigate this issue, including the validity of 36 CFR 1275.48(a) and 1275.64(e), which were amended by NARA in 1996 following the Settlement Agreement to reflect the government's position that it was complying with the Act by retaining the original tapes and a master preservation copy, including those portions containing private or personal conversations.

On March 31, 1998, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision affirming the March 31, 1997 ruling of the U.S. District Court (D.D.C.) in favor of the defendant-intervenors (the co-Executors of the estate of former President Richard Nixon). The District Court had directed the Archivist of the United States to "provide [the Nixon estate] forthwith with all personal or private conversations identified to date on the original White House tapes described in Section 101(a) of the [PRMPA] and any copies thereof." The court also ordered NARA to destroy or return portions of the draft tape log that contain descriptions of the private or personal materials. This proposed rule revises the regulations to reflect the District Court's decision.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1275 of title 36, Code of Federal Regulations, as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 continues to read:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Revise paragraph (a) of § 1275.48 to read:

§ 1275.48 Transfer of materials.

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon's estate, or, when appropriate and after notifying the Nixon estate, to the former staff member having primary proprietary or commemorative interest in the materials. Such materials to be transferred include all segments of the original tape recordings which have been or will be identified as private or personal.

* * * * *

3. Revise paragraph (e) of § 1275.64 to read:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(e) The Archivist shall produce and maintain a master preservation copy of the original tape recordings for preservation purposes. The Archivist shall ensure that the master preservation copy, like the portions of the original tape recordings retained by the Archivist, does not contain those segments of the tape recordings which have been identified as private or personal and which have been transferred to the Nixon estate in accordance with § 1275.48.

Dated: July 8, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–17946 Filed 7–13–99; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL186–1b; FRL–6374–2]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 14, 1995, May 9, 1996, June 14, 1996, February 1, 1999, and May 19, 1999, the State of Illinois submitted State Implementation Plan (SIP) revision requests to meet commitments related to our conditional approval of Illinois' May 15, 1992, SIP submittal for the Lake Calumet (Southeast Chicago), McCook, and Granite City, Illinois, Particulate Matter (PM) nonattainment areas. EPA is proposing to approve the SIP revision request as it applies to the Lake Calumet area, including the attainment demonstration for the Lake Calumet PM nonattainment area. The SIP revision request corrects, for the Lake Calumet PM nonattainment area, all of the deficiencies of the May 15, 1992, submittal (as discussed in the November 18, 1994, conditional approval notice). EPA is also proposing to remove the codification of the conditional approval and codify the final portions of Illinois' part D plan for the Granite City, Lake Calumet, and McCook moderate PM nonattainment areas. EPA approved the Granite City PM plan, effective May 11, 1998, and the McCook PM plan, effective November 9, 1998.

DATES: EPA must receive comments by August 13, 1999.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What action is EPA taking today?
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I. What Action Is EPA Taking Today?

We are proposing to approve the SIP revision request as it applies to the Lake Calumet area, including the attainment demonstration for the Lake Calumet PM nonattainment area. The SIP revision request corrects, for the Lake Calumet PM nonattainment area, all of the deficiencies of the May 15, 1992, submittal (as discussed in the November 18, 1994, conditional approval notice). We are also proposing to remove the codification of the conditional approval and codify the final portions of Illinois' part D plan for the Granite City, Lake Calumet, and McCook moderate PM nonattainment areas.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 23, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–17767 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. MA–068–7203b; FRL–6376–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to approve the sections 111(d)/

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129 State Plan submitted by the Massachusetts Department of Environmental Protection (DEP) on January 11, 1999. This State Plan is for carrying out and enforcing provisions that are at least as protective as the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

The Massachusetts DEP submitted the Plan to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of the **Federal Register**, EPA is approving the Massachusetts State Plan submittal as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If EPA does not receive any significant, material, and adverse comments to this proposed rule, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

DATES: EPA must receive comments on this proposed rule in writing by August 13, 1999.

ADDRESSES: You should address your written comments to: Mr. Gerald Potamis, Chief, Air Permits Unit, Office of Ecosystem Protection (CAP), U.S. EPA, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

Massachusetts Department of Environmental Protection, Bureau of Waste Prevention, One Winter Street, Boston, Massachusetts 02108, (617) 556–1120.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at courcier.john@epa.gov. While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is found in the Rules section of this **Federal Register**.

Dated: July 3, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 99–17769 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–241; RM–9480]

Radio Broadcasting Services; Stamps and Fouke, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of In Phase Broadcasting, Inc., permittee of Station KLMZ(FM), Channel 282A, Stamps, Arkansas, requesting the reallotment of Channel 282A from Stamps to Fouke, Arkansas, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for this proposal are 33–15–42 NL and 93–53–06 WL.

DATES: Comments must be filed on or before August 23, 1999, and reply comments on or before September 7, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Esq., Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, NW., Suite 307, Washington, DC 20016–4120.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–241, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17875 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–245, RM–9680]

Radio Broadcasting Services; Johnson City and Owego, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WEBO Radio, Inc., seeking the reallotment of Channel 269A from Owego to Johnson City, NY, as the community's first local aural service, and the modification of Station WLTB's license to specify Johnson City as its community of license. Channel 269A can be allotted to Johnson City in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) south, at coordinates 42–03–44 NL; 75–56–37 WL, to avoid a short-spacing to Station WXHC, Channel 268A, Homer, NY, and to accommodate petitioner's desired transmitter site. Canadian concurrence in the allotment is required since Johnson City is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 23, 1999, and reply comments on or before September 7, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James A. Koerner, Baraff, Koerner & Olender, P.C., 3 Bethesda Metro Center, Suite 640, Bethesda, MD 20814 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–245, adopted August 23, 1999, and released September 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17874 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–244; RM–9678]

Radio Broadcasting Services; Cumberland, KY and Weber City, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Cumberland City Broadcasting Company, proposing the substitution of Channel 274C3 for Channel 274A at Cumberland, Kentucky, the reallotment of Channel 274C3 from Cumberland to Weber City, Virginia, and the modification of Station WSEH(FM)'s license accordingly. Channel 274C3 can be allotted to Weber City in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.9 kilometers (6.8 miles) north at petitioner's requested site. The coordinates for Channel 274C3 at Weber City are 36–31–36 North Latitude and 83–35–14 West Longitude. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 274C3 at Weber City, or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 23, 1999, reply comments on or before September 7, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington III, Post Office Box 403, Westfield, Massachusetts 01086 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–244, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17871 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–240, RM–9503]

Radio Broadcasting Services; Albemarle and Indian Trail, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Susquehanna Radio Corp. seeking the reallotment of Channel 265A from Albemarle, NC, to Indian Trail, NC, as the community's first local aural service, and the modification of Station WABZ's license accordingly. Channel 265A can be allotted to Indian Trail, with a site restriction of 10 kilometers (6.2 miles) northeast, at coordinates 35–06–53 NL; 80–33–44 WL, to accommodate petitioner's desired transmitter site. The allotment requires a waiver of the Commission's minimum distance separation requirements as the allotment would be short-spaced by Station WKXU, Channel 266C, Burlington, NC, by 28.1 kilometers. Station WABZ is a pre-1964 short-spaced station and parties are requested to comment on the appropriateness of permitting grandfathered short-spaced stations to change their community of license where short-spacings would still exist.

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DATES: Comments must be filed on or before August 23, 1999, and reply comments on or before September 7, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark N. Lipp, Shook, Hardy & Bacon, 1850 K Street, NW, Suite 900, Washington, DC 20006–2244 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–240, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17870 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–246; RM–9593]

Radio Broadcasting Services; Winslow and Camp Verde, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Desert West Air Ranchers Corporation, permittee of Station KFMR(FM), Channel 236C, Winslow, Arizona, requesting the reallotment of Channel 236C from Winslow to Camp Verde, Arizona, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for this proposal are 34–58–04 NL and 111–30–30 WL.

DATES: Comments must be filed on or before August 23, 1999, and reply comments on or before September 7, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp and Scott C. Cinnamon, Esqs., Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–246, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17867 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–243, RM–9675]

Radio Broadcasting Services; Thorndale, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Houston Christian Broadcasters, Inc. proposing the allotment of Channel 286A at Thorndale, Texas, reservation of the channel for noncommercial educational use and amendment of the application for Channel 257A, Thorndale, to specify operation on Channel *286A. The channel can be allotted to Thorndale in compliance with the Commission's spacing requirements at coordinates 30–36–54 NL and 97–12–18 WL.

DATES: Comments must be filed on or before August 23, 1999, and reply comments on or before September 7, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Southmayd & Miller, 1220 Nineteenth Street, N.W., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–243, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17866 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–242, RM–9676]

Radio Broadcasting Services; Breckenridge, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Breckenridge Radio Broadcasting Company proposing the allotment of Channel 261A at Breckenridge, Texas, providing additional broadcast service to the community. The channel can be allotted to Breckenridge in compliance with the Commission's spacing requirements at coordinates 32°44′34″ NL and 98°54′32″ WL. There is a site restriction 1.5 kilometers (0.9 miles) south of the community.

DATES: Comments must be filed on or before August 23, 1999, and reply comments on or before September 7, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–242, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17865 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–238, RM–9669]

Television Broadcasting Services, DTV Broadcasting Services; North Pole and Plattsburgh, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Hearst-Argyle Stations, Inc., licensee of TV Station WPTZ, Channel 5, and WPTZ–DT, Channel 14, North Pole, NY, seeking the reallotment of NTSC Channel 5 and DTV Channel 14 from North Pole to Plattsburgh, NY, as the community's second local and first commercial television channels, and the modification of the station's licenses to specify Plattsburgh as its community of license. NTSC Channel 5 and DTV Channel 14 can be allotted to Plattsburgh in compliance with the Commission's minimum distance separation requirements at Station WPTZ's presently licensed transmitter site, at coordinates 44–34–26 North Latitude and 73–40–29 West Longitude.

DATES: Comments must be filed on or before August 23, 1999, and reply comments on or before September 7, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Coe W. Ramsey, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., First Union Capitol Center, Suite 1600, P.O. Box 1800, Raleigh, NC 27602 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–238, adopted June 23, 1999, and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–17869 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register

Vol. 64, No. 134

Wednesday, July 14, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order; FS–7700–40

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to request a reinstatement, without change, of a previously approved information collection. Information will be collected from individuals, corporations, and organizations that request a permit to haul commercial, non-Federal products, commodities, and materials on Forest Service roads. Commercial use is prohibited without a permit. The information will be used to identify the road maintenance required as a direct result of the applicant's vehicular traffic, to calculate the applicant's commensurate share of road maintenance, and to calculate any applicable collections for recovery of past Federal investments in roads.

DATES: Comments must be received in writing on or before September 13, 1999.

ADDRESSES: All comments should be addressed to Director, Engineering Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

Comments also may be sent via facsimile to Director, Engineering Staff, Forest Service (202) 205–0861 or transmitted by email and addressed to: jbell/wo@fs.fed.us.

The public may inspect comments in the Office of the Director, Engineering Staff, 201 14th Street, SW, Washington, D.C. Visitors are encouraged to call (202) 205–1400 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: John Bell, Engineering Staff at (202) 205–1424.

SUPPLEMENTARY INFORMATION:

Background

Authority for Road Use Permits derives from the National Forest Roads and Trails Act (16 U.S.C. 532–538, as amended). Detailed implementing regulations are contained in Title 36 of the Code of Federal Regulations, sections 212.5, 212.9, and 261.54. These statutes and regulations authorize the Forest Service to require commercial users of Forest Service roads to perform road maintenance or pay for road maintenance made necessary by their commercial vehicular use. They also allow the Forest Service to recover, from commercial users, the Federal investment in the development and maintenance of Forest Service roads. Maintenance and cost recovery are accomplished by issuance of a road use permit. Commercial use of Forest Service roads is prohibited without such a permit.

The following information will be requested from individuals, corporations, or organizations that apply for a permit to use Forest Service roads for non-Federal commercial use: name, address, and telephone number; number of miles of roads to be used; purpose of use; use schedule; and plans for future use.

The requestor submits the information to the Forest Supervisor or District Ranger responsible for the Forest Service roads on which commercial vehicular use is requested. The information is evaluated by engineering personnel on the responsible forest.

The information is used by the Forest Service to identify the road maintenance required that is the direct result of the applicant's vehicular traffic, to calculate the applicant's commensurate share of road maintenance, and to calculate any applicable collections for recovery of past Federal investments in roads. These fees are then embodied in clauses in the road use permits issued to the applicant.

Description of Information Collection

Title: Application for Permit Non-Federal Commercial Use of Roads Restricted by Order (FS–7700–40).

OMB Number: 0596–0016.

Expiration Date of Approval: June 30, 1998.

Type of Request: Reinstatement, without change, of a previously approved information collection for which approval has expired.

Abstract: In order to recover maintenance costs on Forest Service roads used for commercial hauling of non-Federal products, commodities, and materials, commercial haulers are assessed for their vehicular use of Forest Service roads. The collected information is used to determine the cost recovery amount. Respondents include individuals and organizations that use Forest Service roads for commercial hauling purposes. Assessing commercial haulers for their vehicular use of Forest Service roads provides for repair and maintenance of road surface deterioration to which commercial vehicles contribute.

Estimate of Burden: 15 minutes.

Type of Respondents: Commercial users of National Forest System Roads.

Estimated Number of Respondents: 2000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purpose or the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

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Dated: July 7, 1999.

Paul Brouha,

Associate Deputy Chief, National Forest System.

[FR Doc. 99–17910 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Pilot Approval and Aircraft Contract Forms

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to request a reinstatement, without change, of a previously approved collection for the administration of aviation contracts. The information helps the Forest Service ensure that pilots and aircraft offered for use by contractors meet the special Forest Service aviation mission parameters. Respondents will include individuals, businesses, corporations, and Federal, State, and local governments.

DATES: Comments must be received in writing on or before September 13, 1999.

ADDRESSES: All comments should be addressed to Director, Fire and Aviation Management Staff, Mail Stop 1107, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 or submitted by FAX to (202) 205–1272 or by email to: *fam/wo@fs.fed.us.*

The public may inspect comments at the office of the Director, Fire and Aviation Staff, 201 14th Street, SW, Washington, DC. Visitors are encouraged to call (202) 205–1483 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Michael Dudley, Aviation Management Specialist, at (202) 205–0995.

SUPPLEMENTARY INFORMATION:

Background

The forms described in this request for reinstatement of this previously approved information collection, are used by the agency to issue and administer aviation contracts. The Forest Service is the largest owner and operator of aircraft in the Federal government outside of the Department of Defense. The majority of Forest Service flying is in support of wildland fire suppression. The Forest Service contracts with approximately 400 pilot and aircraft vendors to provide aviation services for National Forest System land protection and administrative projects. The aircraft and pilots average 63,000 flying hours each year.

Contracts for these services establish rigorous qualification requirements for pilots and specific condition, equipment, and performance requirements for aircraft. These requirements are necessary in order for the Forest Service to maintain an acceptable level of safety, mission preparedness, and cost effectiveness in aviation operations. This is particularly true in fire suppression missions, which are conducted under adverse conditions of weather, terrain, turbulence, smoke reduced visibility, minimally improved landing areas, and congested airspace around wildfires.

The data from this information collection will be used to document the basis for the Forest Service to approve or deny contracts for pilots and aircraft. The completed forms are maintained in Forest Service Regional Headquarters with the Regional Aviation Officers and aircraft inspectors. Information on these forms form the basis for the agency to approve or deny contract agreements with pilots or for aircraft. If the pilots or aircraft meet the agency's requirements, approval cards are issued to each contract pilot and for each contract aircraft. Forest Service personnel verify possession of properly approved cards before utilizing the services of these pilots and aircraft. Without the information supplied on these forms, Forest Service contracting officers, pilot, and aircraft inspectors cannot determine if pilots and aircraft meet the detailed qualification, equipment, and condition requirements essential for safe, efficient accomplishment of Forest service specified flying missions.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–5700–20, Airplane Pilot Qualifications and Approval Record.

OMB Number: 0596–0015.

Expiration Date of Approval: August 31, 1998.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information provided on this form is used by authorized Forest Service pilot and aircraft inspectors to ensure that pilots meet contract specifications for qualifications, such as hours flown in a particular model of fixed-wing aircraft. Forest Service personnel collect information that includes the pilot's medical certificate number, airman certificate number, and hours flown in a specific type of aircraft, including Pilot In Command hours.

Estimate of Burden: .25 hours.

Type of Respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated Number of Respondents: 570.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 143 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–5700–20a, Helicopter Pilot Qualifications and Approval Record.

OMB Number: 0596–0015.

Expiration Date of Approval: August 31, 1998.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information provided on this form is used by authorized Forest Service pilot and aircraft inspectors to ensure that pilots meet contract specifications for qualifications for hours flown in a particular helicopter type. Forest Service personnel collect information that includes the pilot's medical certificate number, airman certificate number, and hours flown in a specific type of helicopter, including Pilot In Command hours.

Estimate of Burden: .25 hours.

Type of Respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated Number of Respondents: 418.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 105 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–5700–21, Airplane Data Record.

OMB Number: 0596–0015.

Expiration Date of Approval: August 31, 1998.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information provided on this form is used by authorized Forest Service pilot and aircraft inspectors to ensure that fixed-wing aircraft meet contract specifications for equipment and condition requirements. Information to be collected includes the aircraft's airworthiness and registration certificate numbers, maintenance records, and inspection records.

Estimate of Burden: 2.1 hours.

Type of Respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated Number of Respondents: 536.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,142 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–5700–21a, Helicopter Data Record.

OMB Number: 0596–0015.

Expiration Date of Approval: August 31, 1998.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information provided on this form is used by authorized Forest Service pilot and aircraft inspectors to ensure that helicopter aircraft meet contract specifications for equipment and condition requirements. Information to be collected includes the aircraft's airworthiness and registration certificate numbers, maintenance records, and inspection records.

Estimate of Burden: 3.7 hours.

Type of Respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated Number of Respondents: 279.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,052 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 7, 1999.

Larry Payne,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 99–17950 Filed 7–13–99; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: July 20, 1999; 11:00 A.M.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The meeting of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the international Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: July 12, 1999.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 99–18072 Filed 7–12–99; 2:34 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census 2000 Partnership and Marketing Program Evaluation (PMPE).

Form Number(s): None, the evaluation will use a computer survey instrument.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 3,000 hours.

Number of Respondents: 9,000.

Avg Hours Per Response: 20 minutes.

Needs and Uses: As part of Census 2000, the Census Bureau is conducting a comprehensive program of evaluations designed to measure how well our programs, operations, and procedures perform. The Census 2000 Partnership and Marketing Program is included in this evaluation program.

The Census 2000 Partnership and Marketing Program has two goals: (1) To increase the awareness of the census, and (2) to increase mailback response rates, especially among historically undercounted populations. For the first time, Census 2000 will include the services of a paid advertising campaign as part of the marketing and promotion strategy. Another major component of the census marketing plan is the Partnership program. This component provides an opportunity for private industry, government and non-government organizations to participate in Census 2000.

The Census Bureau has hired the National Opinion Research Center (NORC), a contractor independent of the Census Bureau to survey 9,000 residents of households in the United States through a mixed mode data collection-telephone and personal interviews. The questionnaire will contain tested questions asked in earlier and similar Census Bureau sponsored surveys that probe individuals about their awareness of the census and the effectiveness of the marketing campaign and the Partnership activities in motivating the The survey will oversample minority populations being targeted by the advertising and partnership programs. The survey will consist of three separate data collections (waves) that will occur at different points in time to coincide with key phases of the Census 2000 awareness and advertising campaign.

Affected Public: Individuals or households.

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Frequency: One-time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 USC, Sections 141 & 193.
OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 9, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–17949 Filed 7–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062999C]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) the Administrative Committee and the Enforcement Committee will hold meetings.

DATES: The meetings will be held on August 9–12, 1999.

ADDRESSES: All meetings will be held at the Marriott's Frenchman's Reef Hotel, #5 Estate Bakkeroe. Charlotte Amalie, St. Thomas, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 98th regular public meeting to discuss the items contained in the following agenda:

Carribean Fishery Management Council Webpage Presentation
Sustainable Fisheries Act
Essential Fish Habitat Amendment
-Habitat Mapping
-Lawsuit
-Mitigating Measures
Coral Fishery Management Plan (FMP)
-Update on Marine Conservation District
Reef Fish FMP
-Letters from Project ReefKeeper
-Fact-Finding Meetings Summary Minutes
-Puerto Rico Update
-U.S.V.I. Update
Queen Conch FMP
-Draft Outline of Possible Amendment
-Survey Report
Wahoo/Dolphin FMP (South Atlantic Fishery Management Council Lead Council)
Overview of Regulations and Amendments to Highly Migratory Species FMPs
Enforcement
-Federal Government
-Puerto Rico
-U.S. Virgin Islands
Administrative Committee Recommendations
Meetings Attended by Council Members and Staff
Other Business
Next Council Meeting

The Council will convene on Wednesday August 11, 1999, from 9:00 a.m. to 5:00 p.m., through Thursday, August 12, 1999, from 9:00 a.m. until noon., approximately.

The Enforcement Committee will meet on Monday, August 9, 1999, from 1:00 p.m. to 5:00 p.m. The Administrative Committee will meet on Tuesday, August 10, 1999, from 2:00 p.m. to 5:00 p.m., to discuss administrative matters regarding Council operation.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 8, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17954 Filed 7–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799J]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold public meetings.

DATES: The CPSMT meeting will begin Tuesday, August 3, 1999, in La Jolla, CA, at 1:00 p.m. and continue through Wednesday, August 4, 1999 until business for the day is completed. The CPSAS meeting will begin on Tuesday, August 24, 1999, in Long Beach, CA, at 10:00 a.m. and may go into the evening until business for the day is completed. Persons wishing to attend these meetings should contact Dr. Doyle Hanan; telephone: (619) 546–7170.

ADDRESSES: The meeting in La Jolla will be held at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA. The meetings in Long Beach will be held at the California Department of Fish and Game Office, Large Conference Room, 330 Golden shore, Suite 50, Long Beach, CA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Doyle Hanan; telephone: (619) 546–7170.

SUPPLEMENTARY INFORMATION: The primary purpose of the CPSMT meeting is to address portions of the CPS fishery management plan that were disapproved by NMFS. This includes development of a maximum sustainable yield specification for squid and bycatch provisions. The CPSMT will also discuss an annual schedule for Council CPS management. The primary purpose of the CPSAS meeting is to review documents developed by the CPSMT.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this agenda.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 8, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17952 Filed 7–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799K]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin on Monday, August 9, 1999, at noon and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m., Tuesday, August 10 through Friday, August 13, 1999.

ADDRESSES: The meeting will be held at the Council office conference room, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 325–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to develop preliminary recommendations for groundfish harvest levels and management measures for 2000. The GMT will review the draft report for an observer program for the West Coast groundfish fishery and preliminary rebuilding plans for overfished groundfish stocks. The GMT will prepare the annual Stock Assessment and Fishery Evaluation document, other reports, and technical advice for the upcoming Council meeting and in support of Council decisions throughout the year. The GMT will discuss, receive reports, and/or prepare reports on the following topics during this working session: (1) Default harvest rate policies; (2) rebuilding plans for lingcod, bocaccio, and Pacific ocean perch, including allocations and bycatch reduction; (3) preparation of preliminary 2000 harvest level and management recommendations, including optimum yield/management line issues and identification of rockfish complexes; (4) fishing community baseline document; (5) inseason management; (6) observer program design and documentation needs; (7) survey of trawl gears; and (8) recreational data issues.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this agenda.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 8, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–17955 Filed 7–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052499I]

Marine Mammals; File No. 932–1489–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Marine Mammal Health and Stranding and Response Program (MMHSRP), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, has been issued a permit to take all species in the Orders Cetacea and Pinnipedia for purposes of scientific research and enhancement.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment: See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 25, 1999, notice was published in the **Federal Register** (64 FR 14435) that a request for a scientific research and enhancement permit to take all species in the Orders Cetacea and Pinnipedia had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Regional Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–9250 (978/281–9250);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, bldg. 1, Seattle, WA 98115–0070;

Regional Administrator, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (727/570–5301);

Regional Administrator, Southwest Region, National Marine fisheries Service, NOAA, 501 west Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/943–1221).

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Dated: July 2, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–17953 Filed 7–13–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Import Limit and Visa and Certification Requirements for a Certain Part-Category Produced or Manufactured in Various Countries

July 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for an import limit and visa and certification requirements.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

To facilitate implementation of the Uruguay Round Agreement on Textiles and Clothing, bilateral textile and textile product agreements, and export visa arrangements, all of which refer to the Harmonized Tariff Schedule (HTS), directives implementing these agreements are being amended, replacing an HTS classification number in part–Category 369–R, for products which are entered into the United States for consumption or withdrawn from warehouse for consumption on and after July 7, 1999 regardless of date of export.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend monitoring, import control, and visa and certification requirements with respect to part–Category 369–R.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 9, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all monitoring and import control directives, and all visa and certification requirement directives, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include cotton and man-made fiber textile products in part-Category 369–R, produced or manufactured in various countries and imported into the United States on and after July 7, 1999, regardless of the date of export.

Effective on July 7, 1999, you are directed to make the change shown below in the aforementioned directives for products entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 7, 1999 for part-Category 369–R, regardless of the date of export:

Category	HTS change
369–R	Delete: 6307.10.2020
.....	Replace: 6307.10.1020

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17921 Filed 7–13–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1999 Correlation

July 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1999 Correlation

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1999) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). The Correlation is being amended to include the changes indicated below. These changes will be effective on July 7, 1999:

Changes to the 1999 Correlation

Delete HTS numbers 6307.10.1000 and 6307.10.2020 (369).

Replace: 6307.10.1020 (369): Bar mops (measuring 46 to 57 centimeters in length and 38 to 43 centimeters in width) of terry fabric.

Replace: 6307.10.1090 (369): Other dustcloths, mop cloths and polishing cloths, of cotton.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17921 Filed 7–13–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, July 20, 1999, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

FY 2001 Budget Request

The staff will brief the Commission on issues related to the Commission's budget for fiscal year 2001.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207; (301) 504–0800.

Dated: July 12, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–18073 Filed 7–12–99; 2:38 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of Evaluation, Marcia Scott, (202) 606–5000, extension 100. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Assessment of the Value-added Effect of National Service Programs on the Communities They Serve.

OMB Number: None.

Agency Number: None.

Affected Public: AmeriCorps*State/National partner organizations and Community representatives including, leaders community groups, and service providers.

Total Respondents: Approximately 540.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 270 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: One of the missions of the Corporation is to "provide opportunities to engage in service that addresses the nation's unmet human, educational, environmental, and public safety needs" (42 U.S.C. 12501(b)). Through the AmeriCorps*State/National program, the Corporation supports the efforts of local, state and national organizations that engage American adults in results-driven community service. Community service efforts include, but are not limited to: providing tutoring and immunization services for pre-school through twelfth grade children, and recruiting and training volunteers in local communities to provide health and independent living assistance to community residents, housing assistance to the homeless, community policing activities, and services to reduce environmental risk.

When originally presented in the **Federal Register**, a sample of 540 community representatives was proposed. However, subsequent statistical power calculations suggested that an average of two respondents from each of the 240 selected sites (a total of 480 respondents) would provide the degree of accuracy required for the proposed assessment. Therefore, the respondent burden is decreased by 60 respondents and 30 hours.

The Corporation has placed a priority on evaluating the outcomes of these efforts. A primary goal of the Corporation is that communities will be made stronger through the services its programs provide. In addition to outcomes, key considerations in determining a number of policy and programming issues in Corporation programs are program impact and net societal benefit. This data collection will address not only the value that communities place on the outcomes achieved by national service programs, but also whether the outcomes would have occurred in the absence of the programs.

The Corporation seeks approval of a survey form for the evaluation of the Corporation's AmeriCorps*State/National programs that it supports through grants. The survey will allow for the enhancement of the Corporation's future efforts in devising methods to measure progress toward its goals. It also may contribute important information to the knowledge base of the community service field by identifying essential program components that lead to valued outcomes and program effectiveness.

Dated: July 8, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–17894 Filed 7–13–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Defense Security Service

Privacy Act of 1974; System of Records

AGENCY: Defense Security Service, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Security Service (DSS) is amending four existing Privacy Act systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, the name of the agency is being changed to 'DEFENSE SECURITY SERVICE' in the preamble to the agency's compilation of systems of records notices.

DATES: The actions will be effective on August 13, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Office of the General Counsel, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake (703) 325-9450.

SUPPLEMENTARY INFORMATION: The Defense Security Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

In addition, the name of the agency is being changed to 'DEFENSE SECURITY SERVICE' in the preamble to the agency's compilation of systems of records notices.

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Dated: July 7, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V1–01

SYSTEM NAME:

Privacy and Freedom of Information Request Records *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Freedom of Information records are located at the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, 22314-1651.

Privacy Act records are located at the Defense Security Service, Privacy Act Branch, P.O. Box 46060, Baltimore, MD 21240–6060.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Director, Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, 22314-1651.'

* * * * *

V1–01

SYSTEM NAME:

Privacy and Freedom of Information Request Records.

SYSTEM LOCATION:

Freedom of Information records are located at the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, 22314-1651.

Privacy Act records are located at the Defense Security Service, Privacy Act Branch, P.O. Box 46060, Baltimore, MD 21240–6060.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests or who were the subject of requests under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of all correspondence by requesters; correspondence and other documentation pertaining to requests for information released or withheld; summaries and logs of actions taken regarding requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552 as amended by Pub. L. 93–502, Freedom of Information Act; 5 U.S.C. 552a, Pub. L. 93–579, the Privacy Act of 1974, as amended; Department of Defense Regulation 5400.7–R, Freedom of Information Act Program (32 CFR part 286); and Department of Defense Regulation 5400.11–R, DoD Privacy Program (32 CFR part 310).

PURPOSE(S):

To facilitate responses to individual requests for information; to document actions taken in subsequent requests (including correction and amendment actions), appeals, or litigation; to provide a basis for reports and implementing directives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, backup copies exist on diskettes or other machine-readable media.

RETRIEVABILITY:

Information is retrieved by the name of the subject of the request.

SAFEGUARDS:

Records are maintained in security containers and only authorized personnel are permitted access.

RETENTION AND DISPOSAL:

Records are destroyed two years after date of reply EXCEPT when access to all or any part of the requested information has been denied, destruction occurs 5 years after date of reply; when subsequent administrative action has occurred under the governing act, all originals and copies shall be destroyed 4 years after final denial by the agency or 3 years after final adjudication by the courts, whichever is later. Destruction of paper records is accomplished by shredding or burning. Machine readable media are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, 22314-1651.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, 22314-1651 for Freedom of Information request records and the Defense Security Service, Privacy Act Branch, P.O. Box 46060, Baltimore, MD 21240–6060 for Privacy Act records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Security Service, P.O. Box 46060 Baltimore, MD 21240-6060.

A request for information must contain the full name of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act Branch, 881 Elkridge Landing Road, Building 10, Linthicum, MD 21090-2902.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from requesters, from other federal agencies with collateral interest in a request, and from records which were the subject of requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

V2–01

SYSTEM NAME:

Inspector General Complaints *(October 22, 1993, 58 FR 54561).*

CHANGES:

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information in the system is collected to resolve a complaint, redress a problem or provide assistance, correct records, take or recommend disciplinary action, reevaluate or rescind previous actions or decisions, conduct or recommend formal investigations or inquiries, provide assistance or guidelines in following prescribed procedures for specific problems, provide advice on how to obtain exception to policy, and to inform the Director of DSS on activities of the Office of Planning and Inspections.'

* * * * *

V2–01

SYSTEM NAME:

Inspector General Complaints.

SYSTEM LOCATION:

Defense Security Service, Office of Planning and Inspections, 1340 Braddock Road, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees of Defense Security Service (DSS) and individuals who have made a complaint, or are the subject of a complaint; or whose request for action, assistance or information has been referred to the Office of Planning and Inspections.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the organization, planning and execution of internal/external investigations, records created as a result of investigations conducted by the Office of Planning and Inspections including reports of investigations, records of action taken and supporting papers. Files may include documents which have been provided by individual complainants or by others. These records include investigations of both organizational elements and individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5105.42, Defense Security Service; DoD Directive 5200.26, Defense Investigative Program.

PURPOSE(S):

Information in the system is collected to resolve a complaint, redress a problem or provide assistance, correct records, take or recommend disciplinary action, reevaluate or rescind previous actions or decisions, conduct or recommend formal investigations or inquiries, provide assistance or guidelines in following prescribed procedures for specific problems, provide advice on how to obtain exception to policy, and to inform the Director of DSS on activities of the Office of Planning and Inspections.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computerized log.

RETRIEVABILITY:

Paper records are filed by subject matter and case/accession number. Electronic records are filed by case/accession numbers.

SAFEGUARDS:

Files are contained in security containers accessible only to the Office of Planning and Inspections staff. Information from this record system is made available only to authorized personnel.

RETENTION AND DISPOSAL:

Records are temporary and are destroyed two years after final action. Paper records are destroyed by shredding or burning. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Security Service, Office of Planning and Inspections, 1340 Braddock Road, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

A request for information must contain the full name of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act Branch.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Personal interviews; DSS personnel office; consolidated civilian personnel offices; DSS comptroller; military personnel offices, finance offices, and medical record repositories; DSS investigative files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V3–01

SYSTEM NAME:

EEO Complaints and Affirmative Employment Program Plans *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete second paragraph and remaining addresses and replace with

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'Decentralized segments and EEO Counselors may be contacted through the DSS Office of Affirmative Action and Equal Opportunity located at the Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '29 CFR part 1614; Federal Personnel Manual 713; DoD 1440.1-R, Department of Defense Civilian Equal Employment Opportunity Program; DSS Regulation 8-11, Defense Security Service, Affirmative Employment and Equal Opportunity Program; Equal Employment Opportunity Commission Management Directive MD-110.

PURPOSE(S):

Delete first parenthetical phrase and replace with 'To administer, monitor, and evaluate the agency's EEO employment discrimination complaint processing system;'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Employment discrimination complaint files are destroyed four years after the date of the last action.'

* * * *

V3–01

SYSTEM NAME:

EEO Complaints and Affirmative Employment Program Plans.

SYSTEM LOCATION:

Primary location: Defense Security Service, Director, Office of Affirmative Action and Equal Opportunity Policy, 1340 Braddock Place, Alexandria, VA 22314–1651.

Decentralized segments and EEO Counselors may be contacted through the DSS Office of Affirmative Action and Equal Opportunity located at the Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DSS employees and applicants for employment who have been counseled by an EEO counselor, and DSS employees and applicants for employment who have filed a complaint of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records and investigative files regarding complaints of discrimination, affirmative action plans and statistical analyses of the work force, Special Emphasis Program Council (SEPC) planning activities, Equal Employment Opportunity Commission mandates and decisions, court decisions, legislative mandates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR part 1614; Federal Personnel Manual 713; DoD 1440.1-R, Department of Defense Civilian Equal Employment Opportunity Program; DSS Regulation 8-11, Defense Security Service, Affirmative Employment and Equal Opportunity Program; Equal Employment Opportunity Commission Management Directive MD-110.

PURPOSE(S):

To administer, monitor, and evaluate the agency's EEO employment discrimination complaint processing system; prepare Affirmative Employment Program plans for the agency; identify and analyze problem barriers relative to equal opportunity in the workplace; perform work force analyses in relation to equal opportunity on all employment practices such as hiring, recruitment, promotion, training, awards, separations, and disciplinary actions to include adverse actions; analyze, develop and evaluate the results of affirmative employment action items; establish agency equal opportunity policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DIS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic media to include disk and tape.

RETRIEVABILITY:

By case number, alphabetically by last name of complainant, and subject.

SAFEGUARDS:

Paper records are kept in locked file cabinets, Access is restricted to authorized DSS personnel having a need for the information. Electronic records are housed in secured areas and access is protected by 'fail-safe' system software.

RETENTION AND DISPOSAL:

Records are considered to be temporary. A select few, based on historical significance, may be determined to be permanent. Employment discrimination complaint files are destroyed four years after the date of the last action. Affirmative employment plans and reports of on site reviews are destroyed five years from the date of the plan.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Director, Office of Affirmative Action and Equal Opportunity Policy, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

A request for information must contain the full name of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

Access to counseling records by individuals concerned may be obtained at the facility where counseling took place.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Employees of DSS, applicants for employment, Equal Employment Opportunity Commission, and Office of Personnel Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V4–04

SYSTEM NAME:

Applicant Records *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Defense Security Service, Deputy Director, Support Services, 881 Elkridge Landing Road, Building 10, Linthicum, MD 21090-2902.

Decentralized locations can be obtained from the above address.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Temporary records submitted before August 1997, of DSS applicants, stated interest in and/or qualifications for employment.'

* * * * *

V4–04

SYSTEM NAME:

Applicant Records.

SYSTEM LOCATION:

Primary location: Defense Security Service, Deputy Director, Support Services, 881 Elkridge Landing Road, Building 10, Linthicum, MD 21090-2902.

Decentralized locations can be obtained from the above address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions with the Defense Security Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Temporary records submitted before August 1997, of DSS applicants, stated interest in and/or qualifications for employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

FPM Chapters 332 and 333; and 5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

Identification of unsolicited applicants and determination of eligibility for positions with DSS; disclosure to other agencies for verification of information submitted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files, loose-leaf binders, paper files of 3x5 cards.

RETRIEVABILITY:

Filed by type of position for which the applicant applied, or alphabetically by last name of applicant, or numerically by sequential control number.

SAFEGUARDS:

Records are maintained in files accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are temporary. Applications of those not interviewed are returned to the applicants. All other records are destroyed two years after the last action.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, (Support Services), Defense Security Service, 881 Elkridge Landing Road, Building 10, Linthicum, MD 21090-2902.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Security Service, Privacy Act Branch, 881 Elkridge Landing Road, Building 10, Linthicum, MD 21090-2902.

A request for information must contain the full name and Social Security Number of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Privacy Act Branch, 881 Elkridge Landing Road, Building 10, Linthicum, MD 21090-2902.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Personnel officers, personnel clerks, and personnel specialists of DSS and the Office of Personnel Management; the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–17668 Filed 7–13–99, 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 13, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

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Dated: July 7, 1999.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0070–16 DASG

SYSTEM NAME:

Immunity Booster Files *(February 22, 1993, 58 FR 10002).*

CHANGE:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Special Immunization System'.

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702-5011.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '10 U.S.C. 3031, Secretary of the Army and Occupational Safety and Health Act of 1970'.

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'By name or Social Security Number'.

* * * * *

A0070–16 DASG

SYSTEM NAME:

Special Immunization System.

SYSTEM LOCATION:

U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702-5011.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian employees of Fort Detrick engaged in research who have been immunized with a biological product or who fall under the Occupational Health and Safety Act or Radiologic Safety Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name of biological agents, individual's name, Social Security Numbers, age, race, date of birth, occupation, titers, immunization schedules, known allergies, amount of dosage, reaction to immunization, radiologic agents, exposure level, health screening test results, health test schedule, similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3031, Secretary of the Army; Occupational Safety and Health Act of 1970; and E.O. 9397 (SSN).

PURPOSE(S):

To create a large data base of immunological data for research purposes, and to manage the scheduling of all health screening tests, immunizations, physicals, and other special procedures required by the U.S. Army Medical Research Institute of Infectious Diseases biosurveillance program, radiologic safety program, and occupational health and safety program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

Records are maintained in controlled areas; access is restricted to authorized persons having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, ATTN: MCMR-UIM, Fort Detrick, MD 21702-5011.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702-5011.

Individual should provide his/her full name, address and telephone number, Social Security Number, date of birth, and any other personal data which would assist in identifying records pertaining to him/her.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702-5011.

Individual should provide his/her full name, address and telephone number, Social Security Number, date of birth, and any other personal data which would assist in identifying records pertaining to him/her.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From medical persons, their interview with individual concerned, laboratory results, immunization results, and other relevant test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–17669 Filed 7–13–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.
ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 13, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TALC-PAD-RP, Stop C, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 7, 1999.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0037–104–3a SAFM

SYSTEM NAME:

Military Pay System-Active Army (Manual) *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notices T7340, Defense Joint Military Pay System-Active Component and T7346, Defense Joint Military Pay System-Reserve Component.

[FR Doc. 99–17670 Filed 7–13–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.
ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on August 13, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: July 7, 1999.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.50 DLA-M

SYSTEM NAME:

Individual Weight Management File *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete 'DLA-M' and replace with 'CAH.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 302(b)(1), Delegation of authority; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 9397 (SSN); and DoD Directive 1308.1, DoD Physical Fitness and Body Fat Program.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete 'Office of Military Personnel, DLA-M' and replace with 'Human Resources, Military Personnel (CAHM)'.

* * * * *

S200.50 CAH

SYSTEM NAME:

Individual Weight Management File.

SYSTEM LOCATION:

Records are maintained by the heads of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

For members assigned to Headquarters DLA, records are maintained by the Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military active duty and reserve personnel assigned to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Member's name, Social Security Number, weight management record, and physical readiness data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 302(b)(1), Delegation of authority; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 9397 (SSN); and DoD Directive 1308.1, DoD Physical Fitness and Body Fat Program.

PURPOSE(S):

The system will be used to record the weight and physical readiness of military members assigned to DLA. It will also be used to monitor the progress of those entered into the weight management program.

Records may be used by member's service for remedial, corrective, or administrative separation actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users.

Access to paper and computerized files is restricted to member's commander, the weight control officer, medical personnel, the director of the military personnel function at the activity where assigned, and the military personnel function of the member's service.

RETENTION AND DISPOSAL:

Records are retained until the member departs, at which time the member collects the record for forwarding to his or her next duty assignment.

SYSTEM MANAGER(S) AND ADDRESS:

The Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the heads of the DLA Primary Level Field Activities. Official mailing addresses are

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published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221; or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221; or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is taken from the record subject, individual weigh-ins, medical personnel, and medical records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–17671 Filed 7–13–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Redesignation of Environmental Impact Statement as Environmental Assessment

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Navy's intent to prepare an Environmental Impact Statement is hereby withdrawn for the following action: Disposal and Reuse of Naval Air Station (NAS) Dallas, Texas. Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy published a Notice of Intent to prepare an Environmental Impact Statement for the Disposal and Reuse of Naval Air Station Dallas, Texas, in the **Federal Register** on May 18, 1994. The Notice of Availability for the Draft EIS (DEIS) was published in the **Federal Register** on July 14, 1995. The DEIS was distributed to various federal, state, and local agencies, elected officials, special interest groups, interested individuals, and the media.

During the preparation of the Final EIS, there was a change to the amount of property being disposed of through surplus. The amount of property subject to NEPA under the BRAC process is now only a small portion of the total base property, and proposed reuse appears to have no significant impacts. This notice announces to the public that this Environmental Impact Statement has been redesignated as an Environmental Assessment (EA).

FOR FURTHER INFORMATION CONTACT: Mr. Laurens Pitts, Southern Division, Naval Facilities Engineering Command, at telephone (843)820–5893, fax (843)820–7472, or e-mail: pittslm@efdsouth.navfac.navy.mil.

Dated: July 7, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–17964 Filed 7–13–99; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Rescheduled Public Hearing and Extension of the Public Comment Period on the Draft Environmental Impact Statement (DEIS) for Disposal and Reuse of Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) the DEIS for Disposal and Reuse of Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94). Navy previously announced locally that a public hearing would be held on July 15, 1999 at the Guam Hilton for the purpose of receiving oral and written comments on the DEIS. This notice announces to the public that Navy is further extending the public comment period for the DEIS until September 15, 1999 and rescheduling the public hearing that was previously announced in the **Federal Register** (64 FR 33274) and locally in Territory of Guam Newspapers and direct mailings. Federal and Government of Guam agencies, interested individuals, and organizations are invited to be present or represented at the public meeting that is hereby rescheduled as shown below.

DATES: The public meeting will be held on August 26, 1999 at 7:00 p.m.

ADDRESSES: Guam Hilton, Marianas Ballroom, 202 Pale San Vitores Road, Tumon, Guam 96931.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Gibbons (PLN231GG), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone (808) 471–9338, facsimile (808) 474–5909.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Navy has prepared and filed with the EPA the DEIS for Disposal and Reuse of Surplus Navy Property Identified in the GLUP '94. A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** on April 10, 1998 (63 FR 17824). A public scoping meeting announcement was published on April 18, 19, and 20, 1998, in the *Pacific Daily News* on Guam. A public scoping meeting was held on May 7, 1998 at the Chamorro Village Main Pavilion, Paseo Complex, Agana, Guam. The Notice of Availability of the DEIS was published in the **Federal Register** on May 21, 1999 (64 FR 27781).

The proposed action is the disposal of approximately 2,798 acres of surplus Navy property in the Territory of Guam in a manner consistent with the reuse identified by the local redevelopment authority, the Guam Economic Development Authority (GEDA), in its Reuse Plan for GLUP '94 Navy Surplus Properties. The property covered in the EIS has been divided into 20 parcels located in Dededo, Tiyan, Tamuning, Barrigada, Nimitz Hill, Apra Heights, Naval Station, Piti, and Santa Rita. Nineteen parcels were identified as releasable in the GLUP '94. One parcel, the Officers Housing site at Naval Air Station (NAS) Agana, was not considered in the GLUP '94 but was recommended for disposal as part of the 1995 Base Realignment and Closure (BRAC) decision. This parcel was included in GEDA's Reuse Plan and is included in the scope of this EIS.

The DEIS evaluates three reuse alternatives and a "No Action" Alternative. The reuse alternatives are based upon conceptual land use plans documented in GEDA's Reuse Plan and approved by Governor Carl T. C. Gutierrez of Guam. Each reuse alternative proposes various land uses, e.g., residential, commercial, etc., as well as roadway improvements. The "No Action" Alternative assumes Navy's retention of the parcels in caretaker status and continuation of existing leases according to their terms.

The Preferred Alternative recommended by GEDA consists of the following elements: retention of open space for recreation and conservation, single-family affordable housing, a golf resort, commercial centers, warehouse and light industrial space, and agricultural activities. The EIS also evaluates reuse alternatives with lower and higher intensities of development. The Lower Intensity Alternative would retain more open space and involve renovation rather than expansion of certain facilities and less new construction. The Higher Intensity Alternative would provide more new construction, and development densities would approach the maximum allowed under local zoning.

Except for traffic and air quality impacts at one intersection, potentially significant impacts under all of the reuse alternatives can be mitigated to nonsignificant levels. The impacts which can be mitigated by the local reuse authority to nonsignificant levels include infrequent exceedance of air quality standards during peak-hour traffic at intersections, incompatible land uses and noise, effects on cultural resources, traffic congestion at key intersections, increases in school enrollment in three districts due to new housing development, and cumulative impacts on health care, police, fire, and civil defense services. Unacceptable traffic conditions at the intersection of Route 1 and Route 16 would occur with or without the proposed reuse. Mitigation would compensate for the reuse component of traffic at this intersection, but it would still remain above capacity. The following potentially significant but mitigable impacts are identified for the Higher Intensity Alternative: inadequate capacity of the Agana wastewater treatment plant during peak flow conditions, cumulative solid waste impacts, and impacts of the proposed power plant at Rizal/Aflleje beach on the marine environment. The "No Action" Alternative has the least potential for environmental impacts and demands on Guam's infrastructure.

The DEIS has been distributed to agencies and other interested parties. Copies may be reviewed at the Agana, Barrigada, Dededo, Merizo, and Yona public libraries. A limited number of single copies are available upon request from the contact listed above.

A public hearing will be held on August 26, 1999 at the Guam Hilton to inform the public of the DEIS findings and to solicit and receive oral and written comments. Government agencies and interested parties are invited to be present at the hearing. Oral comments will be heard and transcribed by a court recorder; written comments are also requested to ensure accuracy of the record. All comments, both oral and written, will become part of the official record. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Mr. Gerald Gibbons at the address given above. Comments must be postmarked no later than September 15, 1999 to be considered in the Final EIS.

Dated: July 9, 1999.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Liaison Officer.

[FR Doc. 99–17965 Filed 7–13–99; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Naval Research Advisory Committee will meet to discuss basic and advanced research and technology. All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to an assessment of unmanned vehicle (UMV) technologies, operational opportunities, and capabilities as they relate to mine countermeasures, surveillance, detection, classification, identification and neutralization, ordnance delivery, and reconnaissance and sensing; and an assessment of the technology opportunities and policy implications for increasing the effectiveness of ship's personnel without sacrificing readiness or mission capability.

DATES: The meetings will be held on Monday, July 19 through Friday, July 23, 1999, from 8:00 a.m. to 5:00 p.m.; Monday, July 26 through Thursday, July 29, 1999, from 8:00 a.m. to 5:00 p.m.; and Friday, July 30, 1999, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, Telephone (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meetings is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to: (1) an assessment of unmanned vehicle (UMV) technologies for the Navy, Marine Corps, Army, Air Force, and foreign and commercial enterprises as they relate to mine countermeasures, surveillance, detection, classification, identification and neutralization, ordnance delivery, and reconnaissance and sensing, and an assessment of the potential options for sea and air operation, vehicle size and weight-bearing capability, remotely piloted and autonomous operation, and complexity and ease of use, real-time communications and avionics, and training and supportability; and (2) an assessment of engineering process change and technology development as they relate to optimized manning and enhanced personnel effectiveness and retention, a survey of emerging technological opportunities and organizational changes to identify those with the potential to improve overall fighting effectiveness while optimizing crew size, and recommendations for changes to policies, procedures and doctrines that block cultural change and the subsequent adoption of technologies and processes to improve overall fighting effectiveness while optimizing manning levels, and improving training and quality of life for the DD–21 and other ship design and construction efforts. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In

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accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1).

Dated: July 9, 1999.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–17935 Filed 7–13–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Delete and amend record systems.

SUMMARY: The Department of the Navy proposes to delete two systems of records and amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on August 13, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete and amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report.

Dated: July 7, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

N01001–2

SYSTEM NAME:

Naval Reserve Law Program Officer Personnel Information (February 22, 1993, 58 FR 10692).

Reason: Records are now covered under the Department of the Navy notice N01001–1, Database of Reserve/Retired Judge Advocates and Legalmen.

N01810–1

SYSTEM NAME:

Directory of Retired Regular and Reserve Judge Advocates (February 22, 1993, 58 FR 10726).

Reason: Records are now covered under the Department of the Navy notice N01001–1, Database of Reserve/Retired Judge Advocates and Legalmen.

N01001–1

SYSTEM NAME:

Roster, Naval Reserve Law Units (February 22, 1993, 58 FR 10692).

Changes

* * * * *

SYSTEM NAME:

Delete entry and replace with "Database of Reserve/Retired Judge Advocates and Legalmen."

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 62), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Reserve and retired officers of the Judge Advocate General's Corps and reserve and retired legalmen.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Personal and professional information such as: full name and nickname; Social Security Number; date of birth; home address; home and office telephone/FAX/pager numbers; e-mail address; gender; spouse's name, school year and degrees earned, etc. Military information [i.e., rank/date of rank; branch of service; lineal number; date of entrance on duty (enlisted); pay entry base data; date commissioned; date retired; military accomplishments; Naval Officer Billet Codes; Naval Enlisted Billet Code; military decorations; Naval Reserve Awards; letters of appreciation; Sailor of the Quarterly/Year; military courses completed and dates attended; military certificates (e.g., Career Counselor, Surface Warfare, Naval Aviator); foreign language skills, Readiness Command; Unit Reserve Unit Identification Code; unit name; current unit; position; date joined unit; primary type of employment; employer/agency; job title; etc). Civilian job information, such as Civilian Occupational Codes; Federal and State Courts admitted; address of employer; etc.'

* * * * *

PURPOSE(S)

Delete entry and replace with 'To facilitate liaison between Naval Reserve Law Units, Law Program Director, Director, Naval Reserve Law Programs, and the Navy's legal assistance program.

To maintain a directory of Naval Reserve Judge Advocates' location, reserve assignment, etc. Information in the directory is made available to Navy Judge Advocates, active and reserve, to enable them to locate and identify the legal expertise of Naval Reserve Judge Advocates in the various states with varying legal qualifications and state licenses, and to permit contact between Navy Judge Advocates.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Department of the Navy, Washington Navy Yard, 1322 Patterson Street, SE, Washington, DC 20374–5066.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual and Navy Personnel Command.'

* * * * *

N01001–1

SYSTEM NAME:

Database of Reserve/Retired Judge Advocates and Legalmen.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 62), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reserve and retired officers of the Judge Advocate General's Corps and reserve and retired legalmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and professional information such as: Full name and nickname; Social Security Number, date of birth; home address; home and office telephone/FAX/pager numbers; e-mail address; gender; spouse's name, school year and degrees earned, etc. Military information [i.e., rank/date of rank; branch of service; lineal number; date of entrance on duty (enlisted); pay entry base data; date commissioned; date retired; military accomplishments; Naval Officer Billet Codes; Naval Enlisted Billet Code; military decorations; Naval Reserve Awards; letters of appreciation; Sailor of the Quarter/Year; military courses completed and dates attended; military certificates (e.g., Career Counselor, Surface Warfare, Naval Aviator); foreign language skills, Readiness Command; Unit Reserve Unit Identification Code; unit name; current unit; position; date joined unit; primary type of employment; employer/agency; job title; etc.). Civilian job information, such as Civilian Occupational Codes; Federal and State Courts admitted; address of employer; etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806 and E.O. 9397 (SSN).

PURPOSE(S):

To facilitate liaison between Naval Reserve Law Units, Law Program Director, Director, Naval Reserve Law Programs, and the Navy's legal assistance program.

To maintain a directory of Naval Reserve Judge Advocates' location, reserve assignment, etc. Information in the directory is made available to Navy Judge Advocates, active and reserve, to enable them to locate and identify the legal expertise of Naval Reserve Judge Advocates in the various states with varying legal qualifications and state licenses, and to permit contact between Navy Judge Advocates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer and paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Computer database is password protected.

RETENTION AND DISPOSAL:

Records are kept until the person is deceased.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Department of the Navy, Washington Navy Yard, 1322 Patterson Street, SE, Washington, DC 20374–5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Department of the Navy, Washington Navy Yard, 1322 Patterson Street, SE, Washington, DC 20374–5066.

The request should contain full name and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Reserve and Retired Personnel Programs), Department of the Navy, Washington Navy Yard, 1322 Patterson Street, SE, Washington, DC 20374–5066.

The request should contain full name and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and Navy Personnel Command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–17672 Filed 7–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend records systems.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on August 13, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record system being amended is set forth below, as amended, published in its entirety.

Dated: July 7, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N0588–02

SYSTEM NAME:

Admiralty Claims Files *(February 22, 1993, 58 FR 10785).*

CHANGES:

* * * * *

PURPOSE(S):

Delete entry and replace with 'To evaluate admiralty claims asserted for and against the Navy for settlement and for litigation support to the Department of Justice.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained at OJAG headquarters as long as necessary and destroyed when no longer required.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington DC 20374-1566.'

* * * * *

N05880-2

SYSTEM NAME:

Admiralty Claims Files.

SYSTEM LOCATION:

Office of the Judge Advocate General; Office of the Commander in Chief, United States Naval Forces Europe; Office of the Commander Sixth Fleet; and the Federal Records Center, Suitland, MD. Local commands with which claims under the Public Vessels Act and the Suits in Admiralty Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101.

PURPOSE(S):

To evaluate admiralty claims asserted for and against the Navy for settlement and for litigation support to the Department of Justice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices and duplicate portions of the records are also stored in computer system.

RETRIEVABILITY:

Name of claimant or ship.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours. Computer files subject to controlled access and maintained on a controlled access server.

RETENTION AND DISPOSAL:

Records are retained at OJAG headquarters as long as necessary and destroyed when no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington DC 20374-1566.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington DC 20374-1566.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington DC 20374-1566.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: X-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports; witnesses; and correspondence from claimants and their representatives.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99-17673 Filed 7-13-99; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 13, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 9, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Report on Appeals Process

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 81; Burden Hours: 162.

Abstract: Form RSA-722 is needed to meet specific data collection requirements in Subsections 102c(8)(A) and (B) of the Rehabilitation Act of 1973, as amended on the number of requests for mediation, hearings and reviews filed. The information collected is used to evaluate the types of complaints made by applicants for and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronically mailed to the internet address *vivian_reese@ed.gov* or should be faxed to 202-708-9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202-708-6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Office of Postsecondary Education

Type of Review: Extension.

Title: Guaranty Agency Monthly Claims and Collections Report.

Frequency: Monthly.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 37; Burden Hours: 2,220.

Abstract: This form is used by a guaranty agency to request payments of reinsurance for default, bankruptcy, death, disability claims paid to lenders and for costs incurred for spa, closed school, false certification and lender of last resort and lender referral fee pay.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronically mailed to the internet address *vivian_reese@ed.gov* or should be faxed to 202-708-9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202-708-9266 or electronically mail him at internet address joe_schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 99-17904 Filed 7-13-99; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 84-10-NG, et al.]

AVISTA Corporation (Formerly The Washington Power Company), et al.; Orders Granting and Amending Authorizations To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting and amending natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586-7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 8, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
62-A and 71-A	06-04-99	Avista Corporation (Formerly The Washington Power Company) 84-10-NG and 85-02-NG.	.....	.....	Name change.
822-A	06-04-99	Avista Corporation (Formerly The Washington Power Company) 93-57-NG.	.....	.....	Name change.

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ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS—Continued

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
664–C	06–04–99	Avista Corporation (Formerly The Washington Power Company) 92–18–NG.			Name change.
1486	06–04–99	Carthage Energy Services, Inc. 99–34–NG.	25 Bcf	25 Bcf	Import and export from and to Canada beginning on April 29, 1999, and extending through April 28, 2001.
1487	06–04–99	Sempra Energy Trading Corp. 99–36–NG.	300 Bcf	300 Bcf	Import and export from and to Canada, and import and export from and to Mexico, beginning on June 16, 1999, and extending through June 15, 2001.
1476–A	06–07–99	TXU Energy Trading Company (Formerly Enserch Energy Services, Inc.) 99–25–NG.			Name change.
1488	06–11–99	Texaco Natural Gas Inc. 99–41–NG		120 Bcf	Export to Mexico over a two-year term, beginning on date of first delivery after June 11, 1999.
1489	06–11–99	Coral Energy Resources, L.P. 99–37–LNG.	100 Bcf		Import LNG from various countries over a two-year term, beginning on the date of first import.
1490	06–11–99	Distribuidora de Gas Natural de Mexicali 99–35–NG.	18.3 Bcf	18.3 Bcf	Import and export from and to Canada beginning on July 31, 1999, and extending through July 30, 2001.
1491	06–14–99	Pan-Alberta Gas (U.S.) Inc. 99–38–NG.	730 Bcf		Import from Canada beginning on July 4, 1999, and extending through July 3, 2001.
1492	06–14–99	Phibro LLC 99–39–NG	200 Bcf	200 Bcf	Import including LNG from Canada, and export to Canada, over a two-year term beginning on initial import or export delivery.
1493	06–14–99	Phibro LLC 99–40–NG	200 Bcf	200 Bcf	Import including LNG from Mexico, and export to Mexico, over a two-year term beginning on initial import or export delivery.
1494	06–15–99	Tractebel Energy Marketing, Inc. 99–43–NG.	150 Bcf		Import and export combined total from and to Canada, over a two-year term beginning on the date of first import or export delivery.
1495	06–17–99	Ocean State Power II 99–42–NG	36.5 Bcf		Import and export combined total from and to Canada, beginning on July 15, 1999, and extending through July 14, 2001.
1496	06–21–99	Howard Energy Marketing, L.L.C. (Formerly Howard Energy Marketing, Inc.) 99–46–NG.	36 Bcf	36 Bcf	Import and export from and to Canada, beginning on July 1, 1999, and extending through June 30, 2001.
1497	06–21–99	Energetix, Inc. 99–45–NG	250,000 MMBTU.		Import from Canada, beginning on September 1, 1999, and extending through August 31, 2001.
1498	06–21–99	Wisconsin Public Service Corporation 99–44–NG.	6 Bcf		Import from Canada, beginning on September 1, 1999, and extending through August 31, 2001.

[FR Doc. 99–17971 Filed 7–13–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE Order and Manual on Radioactive Waste Management, and Implementation Guide

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of a revised DOE Order and Manual on Radioactive Waste Management (DOE O 435.1 and DOE M 435.1–1). These documents set forth the requirements that DOE programs and contractors must follow in managing DOE radioactive waste to provide for radiological protection from DOE facilities, operations, and activities in accordance with the Atomic Energy Act of 1954 (42 U.S. C. 2011 *et seq.*) and other authorities. As part of its mission, DOE generates, stores, treats, and disposes of high-level, transuranic, low-level, and mixed low-level radioactive wastes. Accompanying the Order and Manual is an Implementation Guide, which discusses, in a non-prescriptive manner, acceptable methods for meeting the requirements of the Order and Manual. In addition, DOE has prepared a summary of the significant and most frequent public comments received after the draft Order and Manual were made available for public review on August 6, 1998, and DOE's responses. All public comments received on the draft documents also are available.

FOR FURTHER INFORMATION CONTACT: Martin Letourneau, U.S. Department of Energy, EM–35, 19901 Germantown Road, Germantown, MD 20874, by telephone at 301–903–7656 or by e-mail at: *martin.letourneau@em.doe.gov.*

ADDRESSES: Electronic copies of the Order and Manual and accompanying Implementation Guide are available on the Internet at: http://www.explorer.doe.gov: 1776/htmls/directives/html. A summary of the public comments and DOE's responses is available through an Internet Web Site at *http://www.em.doe.gov.* Copies of the public comments received by DOE are available for viewing at the Center for Environmental Management Information, 955 L'Enfant Plaza, North, SW, Suite 8200, Washington, DC 20024, 1–800–736–3282, in DC 202–863–5084; and DOE Public Reading Rooms. For locations of the DOE Reading Rooms or other public information repositories, please contact the Center for Environmental Management Information at above address and telephone.

SUPPLEMENTARY INFORMATION: The DOE Order and Manual on Radioactive Waste Management (DOE O 435.1 and DOE M 435.1–1) set forth the requirements that DOE programs and contractors must follow in managing DOE radioactive waste to provide for radiological protection from DOE facilities, operations, and activities. These documents replace the previous DOE Order on Radioactive Waste Management, DOE 5820.2A. The new Order and Manual reflect advances in radioactive waste management practices, and changes within DOE, since the previous DOE Order was issued in 1988.

On August 6, 1998, DOE published a Notice of Availability (NOA) of the draft DOE Order and Manual on Radioactive Waste Management (63 FR 42012). In the NOA, DOE requested comments from the public and interested parties on the draft Order and Manual by September 8, 1998.

Overall, approximately 250 comments were received from 18 different entities, including states, Indian Nations, citizen groups, DOE Site-Specific Advisory Boards, national laboratories, private individuals, government agencies, and corporations. The focus of the comments ranged from general Order and Manual process issues to specific technical issues. A summary of the significant and most frequently received public comments on DOE O 435.1, Radioactive Waste Management, and DOE's responses is available at the above locations.

Review Under the National Environmental Policy Act

The objective of the Order, Manual, and Implementation Guide is to continue to ensure that all DOE radioactive waste is managed in a manner that protects worker and public health and safety, and the environment. On July 30, 1998, DOE executed a record of categorical exclusion for the draft of the DOE Order and Manual. On August 8, 1998, DOE made the drafts available to the public for comment. DOE then reviewed each of the comments it received, and revised the draft Order and Manual where appropriate. After considering the public comments and the changes prompted by those comments, DOE believes that the final Order and Manual, and accompanying Guide, also qualify for a categorical exclusion. Because the Order and Manual amend or revise the existing Order but do not change its environmental effect, DOE has determined that this revision fits within the class of actions eligible for categorical exclusion found in DOE's National Environmental Policy Act Implementing Procedures, 10 CFR Part 1021, at paragraph A5 of Appendix A to subpart D. DOE has determined that there are no extraordinary circumstances related to the Order and Manual that may affect the significance of the environmental impacts of the Order and Manual, and that the Order and Manual are not "connected" to other actions with potentially significant impacts or to other proposed actions with cumulatively significant impacts. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Issued in Washington, D.C. July 8, 1999.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 99–17972 Filed 7–13–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–345–002]

Arkansas Western Pipeline, L.L.C.; Tariff Filing

July 8, 1999.

Take notice that on June 30, 1999, Arkansas Western Pipeline, L.L.C. (AWP L.L.C.) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets, with an effective date of June 22, 1999.

AWP L.L.C. asserts that the purpose of this filing is to replace the revised sheets filed by AWP L.L.C. on June 22, 1999, and replacement sheets filed on June 23, 1999, in this proceeding because the docket numbers and citations in the footers on the replacement tariff sheets submitted on June 23, 1999 were incomplete.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17852 Filed 7–13–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–029]

Columbia Gas Transmission Corporation; Report

July 8, 1999.

Take notice that on June 30, 1999, Columbia Gas Transmission Corporation (Columbia) filed a report on the flow back to customers on June 10, 1999, of $5,702.76 representing the time value of money associated with the deferred taxes applicable to non-jurisdictional

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facilities sold to Columbia Natural Resources, Inc. pursuant to Stipulation II, Article III, Section G(2) of Columbia's approved settlement in Docket No. RP95–408, *et al.* Columbia credited its customers' invoices issued on June 10, 1999.

Columbia states that a copy of this report is being provided to all recipients of a share of the flowback and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 16, 1999. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc 99–17843 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–423–000]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

July 8, 1999.

Take notice that on July 2, 1999, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become a part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

First Revised Sheet No. 123A
Sixth Revised Sheet No. 136

On April 2, 1999, the Federal Energy Regulatory Commission issued Order No. 587–K directing gas pipelines to adopt Version 1.3 of the Gas Industry Standards Board standards. The above-described tariff sheets are filed to implement this requirement.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17831 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–428–000]

East Tennessee Natural Gas Company; Tariff Filing

July 8, 1999.

Take notice that on July 2, 1999, East Tennessee Natural Gas Company (East Tennessee), filed revised tariff sheets in compliance with the Order No. 587–K issued on April 2, 1999. Standards for Business Practices Of Interstate Natural Gas Pipelines, 87 FERC ¶ 61,021 (1999). Consistent with Order No. 587–K, East Tennessee proposes an effective date of August 1, 1999.

East Tennessee states that the revised tariff sheets incorporate by reference Version 1.3 of the GISB standards, with the exception of certain Electronic Data Interchange (EDI) datasets.

East Tennessee states that copies of the filing have been mailed to each of the parties that have intervened in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17836 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–573–000]

El Paso Natural Gas Company; Application

July 8, 1999.

Take notice that on June 30, 1999, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP99–573–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Southern Union Gas Company (Southern Union), a local distribution company, pipeline facilities, metering and tap facilities currently used by El Paso to provide transportation service to Southern Union for distribution and sale in and about the City of El Paso, Texas, through Line Nos. 1000 and 2043. In addition, El Paso seeks permission and approval to abandon the certificated service at 10 meter and tap facilities in Ward County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

El Paso proposes to abandon 20.12 miles of Line No. 1000, extending from Valve No. 23 near milepost 186.49 to milepost 206.61, and associated taps and meters in El Paso County, Texas. El Paso states that this segment of Line No. 1000 is currently utilized to deliver gas to Southern Union at 16 meters and 18 taps. El Paso states that it will retain and continue to utilize the remaining 139.85 miles of Line No. 1000, located upstream of Valve No. 23, to deliver fuel gas to El Paso's Pecos River, Guadalupe and Cornudas compressor stations in

support of El Paso's high pressure South System as well as deliver gas to serve Southern Union's distribution system in the City of El Paso, Texas.

In addition, El Paso proposes to abandon 2.92 miles of Line No. 2043, extending from El Paso Electric Co. Line to Southern Union Central Delivery Point, and associated taps and meters in El Paso County, Texas. El Paso states that this segment of Line No. 2043 is currently utilized to deliver gas to Southern Union at one meter and two taps. El Paso states that it will retain and continue to utilize the remaining 3.14 miles of Line No. 2043, located upstream, to provide service to existing direct industrial and residential customers on the west side of El Paso, Texas.

El Paso states that Line Nos. 1000 and 2043 and the associated delivery facilities proposed to be abandoned essentially serve a local distribution, end-use function, rather than an interstate mainline transmission function. El Paso states that such facilities serve customers at numerous delivery points and will, upon transfer, be utilized by Southern Union in conjunction with Southern Union's existing distribution system in the El Paso, Texas, area.

Also, El Paso proposes to abandon the certificated service at one meter and nine taps located in or near the Town of Monahans, Ward County, Texas. El Paso states that it is no longer directly serving Southern Union at these delivery points. El Paso states that Southern Union has informed El Paso that it will obtain gas supply and transportation services for the 10 delivery points from Sid Richardson Gasoline Company.

El Paso states that it will sell the subject facilities to Southern Union at the net book value.

Any questions regarding the application should be directed to Patricia A. Shelton at (915) 496–2600, El Paso Natural Gas Company, Post Office Box 1492, El Paso, Texas 79978.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–17842 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–035]

El Paso Natural Gas Company; Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on July 1, 1999, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective July 1, 1999:

Twenty-Fifth Revised Sheet No. 30
Seventeenth Revised Sheet No. 31
Original Sheet No. 31A

El Paso states that the above tariff sheets are being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17850 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–427–000]

Gulf States Transmission Corporation; Notice of Waiver of Electronic Data Interchange Requirement

July 8, 1999.

Take notice that on July 1, 1999, Gulf States Transmission Corporation (Gulf States), tendered for filing and acceptance a Motion for Waiver of Electronic Data Interchange (EDI) Requirement.

Gulf States states that it is seeking a waiver of the Commission's requirement in Order No. 587–I that interstate pipelines conduct business transactions though an EDI format by June 1, 2000. Gulf States further states that it currently has only two customers with valid contracts and that neither customer uses nor desires EDI transactions with Gulf States. Gulf States further states that it seeks a waiver of only the EDI requirement and that it intends to fully comply with all other Commission approved GISB standards related to communications on the Internet.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 16, 1999. Protests will be

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considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,

Secertary.

[FR Doc. 99–17835 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3240–000]

ISO New England Inc.; Notice of Filing

July 8, 1999.

Take notice that on July 1, 1999, ISO New England Inc. (the ISO), tendered for filing, pursuant to Section 205 of the Federal Power Act, a Request for Acceptance of Supplement to Revisions to NEPOOL Market Rule 5 on an Expedited Basis.

Copies of said filing have been served upon the Participants in the New England Power Pool, non-Participant transmission customers and to the New England State Governors and Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 16, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17909 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–421–000]

K N Interstate Gas Transmission Co.; Notice of Waiver Request

July 8, 1999.

Take notice that on July 2, 1999 K N Interstate Gas Transmission Co. (K N Interstate) filed a request for a one-time waiver of certain notice and timing requirements of Section 18 of its FERC Gas Tariff, Volume No. 1–B, relating to the Right of First Refusal process.

K N Interstate requests that the notice requirement applicable to shippers be waived as to a contract with Midwest Energy, Inc. that expires on September 30, 1999, and that it be allowed to use an iterative bidding process limited to two rounds and, if necessary, to shorten the required time frame between the end of the bidding process and contract expiration from 45 days to 30 days.

K N Interstate states that copies of the filing have been served upon mainline transportation and storage shippers and affected state regulatory bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 16, 1999. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing pay be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17829 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–023]

Koch Gateway Pipeline Company; Negotiated Rate Filing

July 8, 1999.

Take notice that on July 1, 1999, Koch Gateway Pipeline Company (Koch) filed with the Federal Energy Regulatory Commission a contract for disclosure of a recently negotiated rate transaction. As shown on the contracts, Koch requests an effective date of July 1, 1999.

Koch states that copies of the filing are being served upon each and all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17846 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–024]

Koch Gateway Pipeline Company; Negotiated Rate Filing

July 8,1999.

Take notice that on July 1, 1999, Koch Gateway Pipeline Company (Koch) filed with the Federal Energy Regulatory Commission a contract for disclosure of a recently negotiated rate transaction. As shown on the contracts, Koch requests an effective date of July 1, 1999.

Koch states that it has served copies of this filing upon each and all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17847 Filed 7–13–99; 8:45 am]

BILLING CODE 5617–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–429–000]

Midwestern Gas Transmission Company; Compliance Filing

July 8, 1999.

Take notice that on July 2, 1999, Midwestern Gas Transmission Company (Midwestern), filed revised tariff sheets in compliance with the Order No. 587–K issued on April 2, 1999. *Standards for Business Practices Of Interstate Natural Gas Pipelines,* 87 FERC ¶61,021 (1999). Consistent with Order No. 587–K, Midwestern proposes an effective date of August 1, 1999.

Midwestern states that the revised tariff sheets incorporate Version 1.3 of the GISB standards into its tariff, with the exception of certain Electronic Data Interchange ("EDI") datasets.

Midwestern states that copies of the filing have been mailed to each of the parties that have intervened in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17837 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–425–000]

Mississippi River Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on July 2, 1999, Mississippi River Transmission Company (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective August 1, 1999:

Seventh Revised Sheet No. 80
Second Revised Sheet No. 112
First Revised Sheet No. 112A
Second Revised Sheet No. 114
First Revised Sheet No. 114A
Second Revised Sheet No. 120A
Third Revised Sheet No. 121

MRT states that the purpose of this filing is to comply with the Commission's Order No. 587–K, issued April 2, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17833 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–702–001]

Natural Gas Pipeline Company of America; Amended Application

July 8, 1999.

Take notice that on July 2, 1999, Natural Gas Pipeline Company of America (Natural), 747 E. 22nd Street, Lombard, IL 60148, filed an amendment to its application in Docket No. CP98–702–000 pursuant to Subpart A of part 157 of the Commission's Regulations. Natural is amending its original application to provide additional information.

On July 29, 1998, Natural filed under Section 7(b) to abandon by sale to MidCon Texas Pipeline Operator (an intrastate pipeline affiliate), the Sejita Lateral located in Duval and Jim Wells Counties, Texas. On February 1, 1999, the Commission issued an order approving Natural's abandonment of the Sejita Lateral by transfer to MidCon.[1] However, the Order found that MidCon's ownership and operation of the lateral would be subject to the Commission's jurisdiction. On March 3, 1999, Natural filed an Application for Rehearing and Request for Reconsideration.

In this filing Natural withdraws its request for rehearing and supplements its earlier abandonment application. Natural states that it has signed a letter of intent with PG&E Texas Pipeline, L.P., which contemplates the interconnection of the Sejita Lateral with another intrastate pipeline company and the processing of the lateral's volumes at a third party plant. Under this arrangement, all of the volumes currently flowing in the lateral would be diverted for processing and equivalent volumes would be redelivered on behalf of MidCon and its shippers to an existing interconnection with the other intrastate pipeline and Natural. Natural believes that this arrangement provides sufficient basis for a determination by the Commission that the Sejita Lateral will be non-jurisdictional after transfer to MidCon

[1] Natural Gas Pipeline Company of America 86 FERC ¶ 61,100 (1999).

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and request such as an order in this filing.

This proposal to amend is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm. Call 202–208–2222 for assistance. The contact person for Natural is Jansen C. Pollock (630) 691–3536.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that a grant of certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–17841 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–347–016]

Northern Natural Gas Company; Filing

July 8, 1999.

Take notice that on July 1, 1999, pursuant to the Carlton Settlement filed in Docket No. RP96–347 and its FERC Gas Tariff, Northern Natural Gas Company (Northern) has filed various schedules detailing the Carlton surcharge dollars reimbursed to the appropriate parties.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17848 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–31–002]

Northern Natural Gas Company; Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on July 1, 1999, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective November 1, 1998:

Substitute Fourth Revised Sheet No. 204
Substitute Fifth Revised Sheet No. 204

Northern states that the purpose of this filing is to refile Fourth and Fifth Revised Sheet Nos. 204 to reflect the Gas Industry Standards Board (GISB) modifications as filed and approved on Substitute First Revised Third Revised Sheet No. 204, which were inadvertently omitted from Fourth and Fifth Revised Sheet Nos. 204.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17851 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–409–009]

Northwest Pipeline Corporation; Compliance Filing

July 8, 1999.

Take notice that on July 1, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, a number of tariff sheets which apply to the period from February 1, 1996 through February 28, 1997 during which Northwest's rates as established in Docket No. RP95–409–000 are applicable. The specific tariff sheets are enumerated in Appendix A of the filing.

Northwest states that the purpose of this filing is to comply with the Commission's June 1, 1999 Order on Initial Decision in Docket No. RP95–409–000. Northwest states that its compliance filing is consistent with the Commission's orders and directives that have been issued with respect to the Docket No. RP95–409–000 proceeding.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17844 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–399–000]

PG&E Gas Transmission, Northwest Corporation; Compliance Filing and Request for Waiver

July 8, 1999.

Take notice that on June 30, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following revised tariff sheets, with an effective date of August 1, 1999:

Eighth Revised Sheet No. 52
Fifth Revised Sheet No. 61
Third Revised Sheet No. 61A
Seventh Revised Sheet No. 62
Fifth Revised Sheet No. 81A
Fourth Revised Sheet No. 81A
Fourth Revised Sheet No. 81A.03
Fourth Revised Sheet No. 81A.04
Fifth Revised Sheet No. 81A.05
Sixth Revised Sheet No. 91
Fourth Revised Sheet No. 95
Fourth Revised Sheet No. 100
Sixth Revised Sheet No. 105
Fifth Revised Sheet No. 107
Fourth Revised Sheet No. 110
Sixth Revised Sheet No. 144

PG&E GT–NW states that these tariff sheets are filed in compliance with Order No. 587–K.

PG&E GT–NW further requests a limited waiver of GISB EDI Invoicing Standards 3.4.1 through 3.4.4 to allow PG&E GT–NW to complete its Integrated Transportation Management System.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, interested state regulatory agencies and all parties on the Commission's official service list for this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17855 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–394–000]

Pine Needle LNG Company, LLC; Proposed Change in FERC Gas Tariff

July 8, 1999.

Take notice that on July 1, 1999, Pine Needle LNG Company, LLC, (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with an effective date of August 1, 1999:

First Revised Sheet No. 89

Pine Needle states that the purpose of this filing is to comply with Order No. 587K, Final Rule issued April 2, 1999 in Docket No. RM96–1–011. Pine Needle states the revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Pine Needle states that copies of the filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17854 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–426–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on July 2, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective August 1, 1999:

First Revised Sheet No. 277
First Revised Sheet No. 284
Second Revised Sheet No. 288
First Revised Sheet No. 298
First Revised Sheet No. 304
Second Revised Sheet No. 309
First Revised Sheet No. 435

REGT states that the purpose of this filing is to comply with the Commission's Order No. 587–K, issued April 2, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC

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20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17834 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–042]

Reliant Energy Gas Transmission Company; Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on June 30, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective June 6, 1999:

Original Sheet No. 8G

REGT states that the purpose of this filing is to reflect the appropriate pagination and its name change consistent with its recently approved FERC Gas Tariff, Fifth Revised Volume No. 1.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such motions must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17845 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–419–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

July 8, 1999.

Take notice that on July 1, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's Order No. 587–K to become effective August 1, 1999:

Second Revised Sheet No. 98a
Second Revised Sheet No. 124a
Seventh Revised Sheet No. 126
Third Revised Sheet No. 127a
First Revised Sheet No. 129a
Third Revised Sheet No. 132
Fourth Revised Sheet No. 133
Second Revised Sheet No. 134
Sixth Revised Sheet No. 212h

On April 2, 1999, the Commission issued Order No. 587–K in Docket No. RM96–1–011 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow Version 1.3 of the business practices standards issued by the Gas Industry Standards Board (GISB) and incorporated by reference in Section 284.10(b) of the Commission's Regulations. The standards require pipelines to post certain information on World Wide Web homepages and to comply with the new and revised business practices governing nominations, flowing gas, electronic delivery mechanisms and capacity release. The revisions shown on the Tariff Sheets filed herewith reflect Southern's compliance filing to conform with Version 1.3 of the GISB standards approved under Order No. 587–K. Such standards specifically include nomination and confirmation practices, the definition of a gigacalorie for nominations in Mexico, the addition of an allocation methodology, and the format and content of information postings on Southern's web site. The order required Southern to submit its compliance filing for implementation of the approved standards by August 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17828 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP–99–412–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

July 8, 1999.

Take notice that on July 1, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing revised tariff sheets in compliance with the Order No. 587–K issued on April 2, 1999. *Standards for Business Practices of Interstate Natural Gas Pipelines*, 87 FERC ¶ 61,021 (1999). Consistent with Order No. 587–K, Tennessee proposes an effective date of August 1, 1999.

Tennessee states that the revised tariff sheets incorporate Version 1.3 of the GISB standards into its tariff, with the exception of certain Electronic Data Interchange (EDI) datasets.

Tennessee states that copies of the filing have been mailed to each of the parties that have intervened in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17826 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–418–000]

Texas Eastern Transmission Corporation; Notice of Tariff Filing

July 8, 1999.

Take notice that on July 1, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Second Revised Sheet No. 650
Sixth Revised Sheet No. 681

Texas Eastern states that the purpose of this filing is to comply with Order No. 587–K, Final Rule issued on April 2, 1999 in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17827 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–424–000]

Texas-Ohio Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on July 2, 1999, Texas-Ohio Pipeline, Inc. (Texas-Ohio), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with a proposed effective date of August 1, 1999:

Third Revised Sheet No. 41
First Revised Sheet No. 54C
Third Revised Sheet No. 78

Texas-Ohio states that the purpose of this filing is to comply with the requirements of the Commission's Order No. 587–K, issued in Docket No. RM96–1–011 on April 2, 1999.

Texas-Ohio further states that copies of this filing have been served on Texas-Ohio's historic customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17832 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–404–000]

Trunkline Gas Company; Notice of Proposed Change In FERC Gas Tariff

July 8, 1999.

Take notice that on July 1, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Second Revised Sheet No. 171A
Fifth Revised Sheet No. 242

Trunkline states that the purpose of this filing is to comply with Order No. 587K, Final Rule issued April 2, 1999 in Docket No. RM96–1–011. Trunkline states the revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Trunkline states that copies of the filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

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David P. Boergers,

Secretary.

[FR Doc. 99–17825 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–87–000]

Trunkline LNG Company; Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on July 1, 1999, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following tariff sheet to be effective August 1, 1999:

First Revised Sheet No. 5

Trunkline states that this filing is being made in accordance with Section 19 (Fuel Reimbursement Adjustment) and Section 20 (Electric Power Cost Adjustment) of the General Terms and Conditions of TLNG's FERC Gas Tariff, Original Volume No. 1–A. The revised tariff sheet reflects: a 0.26% decrease to the currently effective fuel reimbursement percentage and a $0.0095 per Dt. Increase for the electric power cost adjustment under Rate Schedules FTS and ITS.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17838 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–403–000]

Trunkline LNG Company; Tariff Filing

July 8, 1999.

Take notice that on July 1, 1999, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following tariff sheets to be effective August 1, 1999:

First Revised Sheet No. 67
Third Revised Sheet No. 115

TLNG states that the purpose of this filing is to comply with Order No. 587–K, Final Rule issued on April 2, 1999 in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17856 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–422–000]

WestGas InterState, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on July 2, 1999, WestGas InterState, Inc. (WestGas), tendered for filing as part of its FERC Gas tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of August 1, 1999:

Fourth Revised Sheet No. 29
Second Revised Sheet No. 29A
Fourth Revised Sheet No. 40
Second Revised Sheet No. 40A
Second Revised Sheet No. 46B
Third Revised Sheet No. 92

WestGas states that the purpose of this filing is to comply with the requirements of the Commission's Order No. 587–K, issued in Docket No. RM96–1–011 on April 2, 1999.

WestGas further states that copies of this filing have been served on WestGas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17830 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–258–007 and RP97–454–003]

Williams Gas Pipelines Central, Inc.; Filing of Report

July 8, 1999.

Take notice that on June 29, 1999, Williams Gas Pipelines Central, Inc. (Williams), formerly named Williams Natural Gas Company, tendered for filing its report of activity under its Rate Schedule PS (Pooling Service) during the first year of operation of such service.

Williams states that in its Order Approving Settlement with Modifications issued March 2, 1998, in the above-captioned proceedings, the Commission required Williams to file a report of activity under its Rate Schedule PS (Pooling Service) during the first year of operation of such service. Williams hereby files the required report.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Sercretary.

[FR Doc. 99–17849 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–49–000]

Williston Basin Interstate Pipeline Company; Fuel Reimbursement Charge Filing

July 8, 1999.

Take notice that on July 1, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, with an effective date of August 1, 1999:

Second Revised Volume No. 1

Thirty-second Revised Sheet No. 15
Fourteenth Revised Sheet No. 15A
Thirty-fifth Revised Sheet No. 16
Fourteenth Revised Sheet No. 16A
Thirty-first Revised Sheet No. 18
Fourteenth Revised Sheet No. 18A
Fourteenth Revised Sheet No. 19
Fourteenth Revised Sheet No. 20
Twenty-eighth Revised Sheet No. 21

Original Volume No. 2

Seventy-seventh Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17839 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–14–000]

Williston Basin Interstate Pipeline Company; Tariff Filing

July 8, 1999.

Take notice that on July 1, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 188, with an effective date of July 1, 1999.

Williston Basin is filing the proposed revision to its Tariff to reflect changes in Subsection 7.1 relating to shared facilities. More specifically, Seventh Revised Sheet No. 188 was revised to reflect the office located at 1250 West Century Avenue as a shared facility, and the removal of two office locations no longer utilized by Williston Basin personnel.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17840 Filed 7–13–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–381–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1999.

Take notice that on July 1, 1999, Wyoming Interstate Company, Ltd. (WIC) tendered for proposed changes in its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2.

The proposed rate changes would increase revenues from existing system jurisdictional service by approximately $8.1 million based on the 12-month period ending February 28, 1999, as adjusted. WIC requested an effective date of August 1, 1999. WIC states the rate increase is necessary to: (1) Compensate WIC for increased operating costs; (2) depreciation expense; and (3) allow WIC to earn a rate of return on WIC's assets, at a level that will be competitive in capital markets.

WIC states that a full copy of its filing are being served on all jurisdictional customers, applicable state commissions and interested parties that have requested service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17853 Filed 7–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–181–000, et al.]

PanEnergy Lake Charles Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 7, 1999.

Take notice that the following filings have been made with the Commission:

1. PanEnergy Lake Charles Generation, Inc.

[Docket No. EG99–181–000]

Take notice that on June 29, 1999, PanEnergy Lakes Charles Generation, Inc. (PanEnergy Lake Charles Generation) of 5444 Westheimer Road, Houston, Texas 77056, filed with the Federal Energy Regulatory Commission an application for determination of Exempt Wholesale Generator (EWG) status pursuant to Part 365 of the Commission's regulations.

PanEnergy Lake Charles Generation is in the exclusive business of owning and operating a 16 MW electric generating facility located in Lake Charles, Louisiana. The electric energy generated by this facility will be sold at wholesale. Pan Energy Lake Charles Generation has been previously certified as an EWG for the subject facility. A change in ownership of the stock of Pan Energy Lake Charles Generation necessitates the instant filing.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. NRG Northeast Generating LLC, Dunkirk Power LLC, and Huntley Power LLC

[Docket No. EG99–161–000, Docket No. EG99–162–000 and Docket No. EG99–163–000]

Take notice that on June 18, 1999, NRG Northeast Generating LLC, Dunkirk Power LLC and Huntly Power LLC (collectively, Applicants), tendered for filing with the Federal Energy Regulatory Commission, a clarification to their pending applications.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Broad River Energy LLC

[Docket No. EG99–182–000]

Take notice that on June 30, 1999, Broad River Energy LLC (Applicant) with its principal office at c/o SkyGen Energy LLC, Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, Illinois 60062, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will be engaged in owning and operating the Broad River Energy Center (the Facility) consisting of three natural gas fueled simple cycle combustion turbines having a combined electrical output totaling approximately 500 MW. The Facility will be constructed outside of Gaffney in Cherokee County, South Carolina. The Applicant also states that it will sell electric energy exclusively at wholesale.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Mt. Poso Cogeneration Company, L.P.

[Docket No. EG99–183–000]

Take notice that on June 30, 1999, Mt. Poso Cogeneration Company, L.P., 10000 Stockdale Highway, Suite 100, Bakersfield, CA 93311, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Mt. Poso owns and operates a nominal 49,500 kW, coal-fired, enhanced oil recovery cogeneration power plant that uses a circulating fluidized bed boiler (CFB) combustion system (the Facility). The Facility is located about 15 miles east of Highway 99 and about 25 miles north of Bakersfield in California's San Joaquin Valley.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. PP&L Colstrip III, LLC

[Docket No. EG99–184–000]

Take notice that on July 1, 1999, PP&L Colstrip III, LLC (Applicant), 11350 Random Hills Road, Fairfax, Virginia 22030–6044, filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a limited liability company organized under the laws of the State of Delaware, is acquiring assets from The Montana Power Company that will be used to make sales of electric energy exclusively at wholesale.

Copies of the application have been served upon the Montana Public Service Commission, the Pennsylvania Public Utility Commission, and the Securities and Exchange Commission.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. PP&L Montana, LLC

[Docket No. EG99–185–000]

Take notice that on July 1, 1999, PP&L Montana, LLC (Applicant), 11350 Random Hills Road, Fairfax, Virginia 22030–6044, filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a limited liability company organized under the laws of the State of Delaware, is acquiring assets from The Montana Power Company that will be used to make sales of electric energy exclusively at wholesale.

Copies of the application have been served upon the Montana Public Service Commission, the Pennsylvania Public Utility Commission, and the Securities and Exchange Commission.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Foote Creek II, LLC

[Docket No. EG99–186–000]

Take notice that on July 1, 1999, Foote Creek II, LLC, 1455 Frazee Road, Suite 900, San Diego, California 92108 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Foote Creek II, LLC, is a Delaware limited liability company that intends to construct, own and operate a 1.8 MW generation facility consisting of three (3) Mitsubishi WT Model 450/600 wind turbine generators in Carbon County, Wyoming. Foote Creek II, LLC, is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Newport Electric Corporation

[Docket No. ER99–2469–000]

Take notice that on June 30, 1999, Newport Electric Corporation (Newport), tendered for filing an amendment to its cost of service formula to reduce the cost of common equity to 10.65%. Newport also provided an explanation of the differences between the proposed cost of service formula and the currently-effective formula.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–2779–000]

Take notice that on June 30, 1999, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) tendered for filing an amendment to its May 3, 1999, filing in this proceeding in response to a Letter Order issued in this proceeding on May 26, 1999.

The CSW Operating Companies state that a copy of the filing has been served on all parties to Docket No. ER99–2779–000.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corporation

[Docket No. ER99–3416–000]

Take notice that on June 30, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for DukeSolutions, Inc., an amendment to a previously filed Network Integration Transmission Service Agreement for Buckeye Power Inc., on behalf of Ormet Primary Aluminum Corporation, and service specifications for a number of Long-Term Firm Point-to-Point Transmission Service reservations made on AEP's OASIS. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after June 1, 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER99–3417–000]

Take notice that on June 30, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Madison Gas and Electric Company, providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas Gas and Electric Company

[Docket No. ER99–3418–000]

Take notice that on June 30, 1999, Western Resources, Inc. (Western Resources), on behalf of its wholly-owned subsidiary, Kansas Gas and Electric Company (KGE), tendered for filing a Ninth Revised Exhibit B to the Electric Power, Transmission and Service Contract between KGE and Kansas Electric Power Cooperative, Inc., (KEPCo). KGE states the filing is to update Exhibit B to reflect the installation of the Sharpe point of delivery.

This filing is proposed to become effective June 1, 1999.

A copy of this filing was served upon KEPCo and the Kansas Corporation Commission.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–3419–000]

Take notice that on June 30, 1999, Central Power and Light Company, West

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Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to the City of Coffeyville, Kansas in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of the filing has been served on the City of Coffeyville, Kansas.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Sunbury Generation, LLC

[Docket No. ER99–3420–000]

Take notice that on June 30, 1999, Sunbury Generation, LLC (Sunbury Generation), tendered for filing its application for market-based rate authority pursuant to Section 205 of the Federal Power Act. The application included a tariff providing for sales of electric capacity and/or energy at market-based rates, a code of conduct and a form of service agreement. The tariff also provides for sales of ancillary services at market-based rates into the PJM Power Exchange, the New York ISO Market and the ISO New England market. Sunbury Generation also filed a Transition Power Purchase Agreement with PP&L, Inc.

Sunbury Generation requested that its tariff and related materials, and the Transition Power Purchase Agreement become effective on August 29, 1999, sixty days after the date of this filing.

Sunbury Generation states that it has served its filing on the Pennsylvania Public Utility Commission because Sunbury Generation will own a generating facility which in the past has been used to make power sales within the Commonwealth of Pennsylvania.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of Oklahoma

[Docket No. ER99–3421–000]

Take notice that on June 30, 1999, Public Service Company of Oklahoma (PSO) filed an Interconnection Agreement between PSO and the City of Coffeyville, Kansas (Coffeyville).

PSO requests an effective date for the Interconnection Agreement of July 1, 1999. Accordingly, PSO requests waiver of the Commission's notice requirements.

PSO states that a copy of the filing was served on Coffeyville and the Oklahoma Corporation Commission.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy Corporation

[Docket No. ER99–3422–000]

Take notice that on June 30, 1999, Duke Power, a division of Duke Energy Corporation (Duke), tendered a Service Agreement for Market Rate Sales under Rate Schedule MR, FERC Electric Tariff First Revised Volume No. 3 (the MRSAs), between Duke and the United States of America, Department of Energy acting by and through the Southeastern Power Administration.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. SCC–L1, L.L.C.

[Docket No. ER99–3423–000]

Take notice that on June 30, 1999, SCC–L1, L.L.C. (SCC–L1), tendered for filing a service agreement establishing Enron Power Marketing, Inc. (EPMI), as a customer under SCC–L1's Rate Schedule No. 1.

SCC–L1 requests an effective date of June 1, 1999.

SCC–L1 states that a copy of the filing was served on EPMI.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. SCC–L3, L.L.C.

[Docket No. ER99–3424–000]

Take notice that on June 30, 1999, SCC–L3, L.L.C. (SCC–L3), tendered for filing a service agreement establishing Enron Power Marketing, Inc. (EPMI) as a customer under SCC–L3's Rate Schedule No. 1.

SCC–L3 requests an effective date of June 1, 1999.

SCC–L3 states that a copy of the filing was served on EPMI.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. SCC–L2, L.L.C.

[Docket No. ER99–3425–000]

Take notice that on June 30, 1999, SCC–L2, L.L.C. (SCC–L2), tendered for filing a service agreement establishing Enron Power Marketing, Inc. (EPMI) as a customer under SCC–L2's Rate Schedule No. 1.

SCC–L2 requests an effective date of June 1, 1999.

SCC–L2 states that a copy of the filing was served on EPMI.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. San Diego Gas & Electric Company

[Docket No. ER99–3426–000]

Take notice that on June 30, 1999, San Diego Gas & Electric Company (SDG&E) tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, Original Sheet No. 3 to Vol. No. 7 of SDG&E's FERC Electric Tariff, providing for the sale of electric energy at market-based rates.

SDG&E states that it was authorized by prior Commission orders in Docket No. ER96–1663–000 to make sales of energy at market based rates through the California Power Exchange (the PX). SDG&E now proposes to remove the conditions that such sales be made only through the PX.

In support of its proposal, SDG&E submits a market power analysis reflecting the divestiture of its fossil-fuel generation. SDG&E also tenders the analysis to meet the requirement adopted in Docket No. ER96–1663–000 that it file such an analysis prior to the termination of the "transition period" during which, under state law, its retail rates are fixed at specified levels.

SDG&E states that it has served a copy of its filing on the California Public Utilities Commission.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. SOWEGA Power LLC

[Docket No. ER99–3427–000]

Take notice that on June 30, 1999, SOWEGA Power LLC, tendered for filing, pursuant to Section 205 of the Federal Power Act, a request for blanket approval to make sales at market-based rates from its two generators located in southwestern Georgia.

SOWEGA also requests waiver of the Commission's open access transmission tariff and OASIS requirements to the extent required and requests the waivers traditionally granted to parties authorized to sell power at market-based rates. SOWEGA seeks a waiver of the Commission's 60 day prior notice and filing requirements and an effective date from the Commission of July 2, 1999.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Indianapolis Power & Light Company

[Docket No. ER99–3428–000]

Take notice that on June 29, 1999, Indianapolis Power & Light Company (IPL), tendered for filing a letter agreement extending by one year to August 31, 2000, the service IPL currently provides to PSI Energy, a public utility subsidiary of Cinergy, under an existing interconnection agreement.

Copies of this filing were sent to the Indiana Utility Regulatory Commission and Cinergy.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Energy, Inc.

[Docket No. ER99–3429–000]

Take notice that on June 30, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Cinergy Capital & Trading, Inc. (Cinergy).

A copy of the filing was served upon Cinergy.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER99–3430–000]

Take notice that on June 30, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Calpine Power Services Company (Calpine).

A copy of the filing was served upon Calpine.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Puget Sound Energy, Inc.

[Docket No. ER99–3431–000]

Take notice that on June 30, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Citizens Power Sales (CP Sales).

A copy of the filing was served upon CP Sales.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Energy, Inc.

[Docket No. ER99–3432–000]

Take notice that on June 30, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with City of Anaheim, Public Utilities Department (Anaheim).

A copy of the filing was served upon Anaheim.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Puget Sound Energy, Inc.

[Docket No. ER99–3433–000]

Take notice that on June 30, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with California Department of Water Resources (DWR).

A copy of the filing was served upon DWR.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Puget Sound Energy, Inc.

[Docket No. ER99–3434–000]

Take notice that on June 30, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with City of Burbank (Burbank).

A copy of the filing was served upon Burbank.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Arizona Public Service Company

[Docket No. ER99–3435–000]

Take notice that on June 30, 1999, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Network Integration Transmission Service under APS' Open Access Transmission Tariff to the Navajo Tribal Utility Authority (NTUA).

A copy of this filing has been served on NTUA, the Arizona Corporation Commission, and Walter Wolf, Esq.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Illinois Power Company

[Docket No. ER99–3436–000]

Take notice that on June 30, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing updated specification pages to the existing Network Service Agreement under which Corn Belt Energy Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1999.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Illinois Power Company

[Docket No. ER99–3437–000]

Take notice that on June 30, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing updated specification pages to the existing Network Service Agreement under which Soyland Power Cooperative will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1999.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. New York State Electric & Gas Corporation

[Docket No. ER99–3438–000]

Take notice that on June 30, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 87 filed with FERC corresponding to an Agreement with Consolidated Edison Company of New York, Inc., (Con Ed). The proposed amendment would decrease revenues by $7,901 based on the twelve month period ending August 31, 2000.

This rate filing is made pursuant to Article 3, Sections 1(e) and (f), and Sections 2 (e through g) of the August 23, 1983 Facilities Agreement between NYSEG and Con Ed, filed with FERC. The annual charges for routine operation, maintenance, general expenses, and revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ended December 31, 1998. The revised facilities charge is levied on the cost of Con Ed's use of NYSEG's substation, transmission and distribution facilities required for the supply of Con Ed's distribution feeders to serve its customers in the vicinity of NYSEG's Mohansic Substation.

NYSEG requests an effective date of September 1, 1999.

Copies of the filing were served upon Consolidated Edison Company of New

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York, Inc. and the Public Service Commission of the State of New York.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. New York State Electric & Gas Corporation

[Docket No. ER99–3439–000]

Take notice that on June 30, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 191 filed with FERC corresponding to an Agreement with the Delaware County Electric Cooperative (Delaware). The proposed amendment would increase revenues by $484.92 based on the twelve month period ending June 30, 2000.

This rate filing is made pursuant to Paragraph 3 of the May 8, 1998 Facilities Agreement between NYSEG and Delaware, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ended December 31, 1998. The revised facilities charge is levied on the cost of Delaware's tap of NYSEG's 46 kV transmission line which extends from NYSEG's River Road Substation to NYSEG's Delhi Substation. The tap terminates at Delaware's Delhi Substation and is owned and operated by NYSEG for Delaware's sole use.

NYSEG requests an effective date of July 1, 1999.

Copies of the filing were served upon the Delaware County Electric Cooperative, Inc., and the Public Service Commission of the State of New York.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. New York State Electric & Gas Corporation

[Docket No. ER99–3440–000]

Take notice that on June 30, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 180 filed with FERC corresponding to an Agreement with the Oneida Madison Electric Cooperative (Oneida). The proposed amendment would increase revenues by $203.10 based on the twelve month period ending June 30, 2000.

This rate filing is made pursuant to Paragraph 3 of the December 16, 1996 Facilities Agreement between NYSEG and Oneida, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month ended December 31, 1998. The revised facilities charge is levied on the cost of Oneida's tap of NYSEG's 46 kV transmission line which extends from NYSEG's existing Eaton Tap to NYSEG's Eaton Substation. The new tap terminates at Oneida's Eaton Substation and is owned and operated by NYSEG for Oneida's sole use.

NYSEG requests an effective date of July 1, 1999.

Copies of the filing were served upon the Oneida Madison Electric Cooperative , Inc. and the Public Service Commission of the State of New York.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice

35. South Carolina Electric & Gas Company

[Docket No. ER99–3441–000]

Take notice that on June 30, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing service agreements establishing Snapping Shoals Electric Membership Corporation, Washington Electric Membership Corporation, and Cobb Electric Membership Corporation as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Snapping Shoals Electric Membership Corporation, Washington Electric Membership Corporation, and Cobb Electric Membership Corporation and the South Carolina Public Service Commission.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Duquesne Light Company

[Docket No. ER99–3442–000]

Take notice that June 30, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated June 29, 1999 with Merrill Lynch Capital Services, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Merrill Lynch Capital Services, Inc., as a customer under the Tariff.

DLC requests an effective date of June 29, 1999, for the Service Agreement.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Carolina Power & Light Company

[Docket No. ER99–3443–000]

Take notice that on June 30, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Cleco Corporation under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4

CP&L is requesting an effective date of June 17, 1999 for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Carolina Power & Light Company

[Docket No. ER99–3444–000]

Take notice that on June 30, 1999, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with FPL Energy Power Marketing, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of June 15, 1999 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Carolina Power & Light Company

[Docket No. ER99–3445–000]

Take notice that on June 30, 1999, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Seminole Electric Cooperative, Inc., and Southern Minnesota Municipal Power Agency under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Pacific Gas and Electric Company

[Docket No. ER99–3447–000]

Take notice that on June 30, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing certain recorded cost information for the period ending December 31, 1998, concerning generating units at five power plants under reliability must-run (RMR) contracts with the California Independent System Operator Corporation (CAISO).

Copies of this filing have been served upon the CAISO, the California Public Utilities Commission, and all other participants in the RMR proceedings.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Duquesne Light Company

[Docket No. ER99–3462–000]

Take notice that on June 30, 1999, Duquesne Light Company (DLC), tendered for filing under DLC's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Central Illinois Light Company (Customer).

DLC has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of June 29, 1999.

Copies of this filing were served upon Customer.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. PECO Energy Company

[Docket No. ES99–44–000]

Take notice that on June 30, 1999, PECO Energy Company filed an application under Section 203 of the Federal Power Act seeking authority to issue and reissue from time to time through September 30, 2001 up to $1.5 billion of promissory notes and other evidences of secured and unsecured indebtedness maturing in less than one year from the date of issuance.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

43. New England Power Pool

[Docket Nos. OA97–237–008., *et al.*]

Take notice that on July 1, 1999, Boston Edison Company filed a report of refunds in compliance with the Commission's April 20, 1998 order in this proceeding.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17908 Filed 7–13–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–100146; FRL–6089–4]

Systems Integration Group, Inc. and Micrographic Specialties, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Systems Integration Group, Inc. and its subcontractor, Micrographic Specialties, Inc. have been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Systems Integration Group, Inc. and its subcontractor Micrographic Specialties Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(l)(2), and will enable Systems Integration Group, Inc. and its subcontractor to fulfill the obligations of this contract.

DATES: Systems Integration Group, Inc. and its subcontractor Micrographics Specialties, Inc. will be given access to this information no sooner than July 19, 1999.

FOR FURTHER INFORMATION CONTACT: By Mail: Luis Rivera, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Rm. 230, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 305–5362; e-mail: rivera.luis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract No. GS–35F–4713G, Order Nr. 9W–0516–YBSX, Systems Integration Group, Inc. will provide imaging, micrographic, and blowback services for OPP. The documents to be imaged/filmed include pesticide labels, pesticide studies submitted to OPP, pesticide incident reports, and EPA generated scientific reviews of submitted studies.

I. IMPORTANT INFORMATION

A. Does this apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How can I get additional information or copies of support documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–100146], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not

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include any information claimed as CBI, is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 A.M. to 4:00 P.M., Monday through Friday, excluding legal holidays.

II. INTRODUCTION

Some of the information included in these documents may be entitled to confidential treatment. The information has been submitted to EPA under sections 3,4, and 6 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Systems Integration Group, Inc. prohibits the use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency, and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security manual. In addition, Systems Integration Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release of compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs.

All information provided to Systems Integration Group, Inc. by EPA for use in connection with this contract will be returned to EPA when Systems Integration Group, Inc. has completed its work.

List of Subjects

Environmental Protection, Transfer of data.

Dated: July 8, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–18036 Filed 7–13–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6377–9]

Notice of Advisory Committee Teleconference Meeting of the Clean Air Scientific Advisory Committee (CASAC) Technical Subcommittee for Fine Particle Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Clean Air Scientific Advisory Committee (CASAC) Technical Subcommittee for Fine Particle Monitoring will meet via teleconference on Thursday, July 29, 1999. The teleconference will be hosted out of the Science Advisory Board Conference Room (Room 3709 Mall), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The meeting will begin at 11:00 am and end no later than 2:00 pm Eastern time.

Background: This technical subcommittee of CASAC was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter. The Subcommittee provided such advice on the Federal Reference Method and mass based fine particle network in July 1996. In November 1998, the Subcommittee met to examine EPA's plans and guidance for several components of the fine particle monitoring network and how these components are linked to research priorities for particulate matter (see 63 FR 57295 dated October 27, 1998 for more details). The primary purpose of the July 29, 1999 teleconference meeting will be to review the last half year of progress in the chemical speciation and Supersites programs, with an emphasis on the speciation program and the recent results from the intercomparison study. Review materials will be posted at EPA's internet site: (http://www.epa.gov/ttn/amtic/ln).

FOR FURTHER INFORMATION: Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400), Room 3702G, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–5133; fax at (202) 260–7118; or via e-mail at <flaak.robert@epa.gov>. A copy of the draft agenda is available from Ms. Diana Pozun at (202) 260–8432 or by FAX at (202) 260–7118 or via e-mail at <pozun.diana@epa.gov>.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Friday, July 23, 1999 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization, with a total time allocated to oral public comments of fifteen minutes. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

Providing Oral or Written Comments at SAB Meetings: The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 8, 1999.

John R. Fowle, III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 99–17977 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34133A; FRL–6091–1]

Organophosphate Pesticide: Ethion; Availability of Revised Risk Assessments and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, ethion. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34133A, must be received by EPA on or before September 13, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34133A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply To Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on ethion, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies Of This Document Or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34133A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

III. How Can I Respond To This Action?

A. How And To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–34133A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. PIRIB is open 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34133A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To The Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version

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of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action Is EPA Taking In This Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, ethion. These documents have been developed as part of the pilot public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the ethion preliminary risk assessments, which where released to the public on September 9, 1998 (63 FR 48213) (FRL–6030–2), through a notice in the **Federal Register**.

As part of the pilot public participation process, EPA and USDA may hold public meetings (called Technical Briefings) to provide interested stakeholders with opportunities to become more informed about revised organophosphate risk assessments. During the Technical Briefings, EPA describes the major points (e.g. risk contributors), use data that were used (e.g. data from USDA's Pesticide Data Program (PDP)), and discusses how public comments impacted the assessment. USDA provides ideas on possible risk management. Stakeholders have an opportunity to ask clarifying questions, and all meeting minutes are placed in the OPP public docket. Technical Briefings may not be held for chemicals that have limited use patterns or low levels of risk concern. Ethion's use pattern is predominately citrus, therefore, no Technical Briefing is planned. In cases where no Technical Briefing is held, the Agency will make a special effort to communicate with interested stakeholders in order to better ensure their understanding of the revised assessments and how they can participate in the organophosphate pilot public participation process. EPA has a good familiarity with the stakeholder groups associated with the use of ethion who may be interested in participating in the risk assessment/risk management process, and will contact them individually to inform them that no Technical Briefing will be held. EPA is willing to meet with stakeholders to discuss the ethion revised risk assessments. Minutes of all meetings will be docketed.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for ethion. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific ethion use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commentors may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commentors may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before September 13, 1999 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 8, 1999.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–17945 Filed 7-13-99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66268; FRL 6085–2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by January 10, 2000, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 67 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004—00296	Bonide Turf & Ornamental Herbicide 75% W.P.	Dimethyl tetrachloroterephthalate
000004—00300	Bonide Garden Turf and Ornamental Herbicide 5G	Dimethyl tetrachloroterephthalate
000100 OR—91—0007	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000100 OR—95—0025	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000100 OR—96—0038	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000100 OR—96—0039	Dual Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000100 VA—88—0004	Triumph 4E Insecticide	*O,O*-Dimethyl *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl) phosphorothioate
000241—00293	Amdro Insecticide Roach Control Stations	Tetrahydro-5,5-dimethyl-2(1*H*)-pyrimidinone, (3-(4-(trifluoromethyl)
000241—00304	Amdro Ant Control Stations	Tetrahydro-5,5-dimethyl-2(1*H*)-pyrimidinone, (3-(4-(trifluoromethyl)
000241—00311	Ala-Scept Herbicide	Alachlor (2-Chloro-*N*-(2,6-diethylphenyl)-*N*-(methoxymethyl)acetamide) 2-(4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl)-3-
000241—00320	Amdro Insecticide Pharaoh Ant Control PCO Stations	Tetrahydro-5,5-dimethyl-2(1*H*)-pyrimidinone, (3-(4-(trifluoromethyl)
000241—00329	Ala-Scept ESC Herbicide	Alachlor (2-Chloro-*N*-(2,6-diethylphenyl)-*N*-(methoxymethyl)acetamide) 2-(4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl)-3-
000264—00229	Technical Bromoxynil	3,5-Dibromo-4-hydroxybenzonitrile
000264—00395	Bromoxynil Octanoate Technical	3,5-Dibromo-4-hydroxybenzonitrile octanoate
000305—00031	Repel Insect Repellent Scented Family Formula	*N,N*-Diethyl-meta-toluamide and other isomers
000305—00032	Repel Insect Repellant Unscented Sportsmen Formula	*N,N*-Diethyl-meta-toluamide and other isomers
000305—00033	Repel Insect Repellent Aerosol Spray	*N,N*-Diethyl-meta-toluamide and other isomers
000305—00039	Repel Insect Repellent Scented Family Formula 27	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide *N,N*-Diethyl-meta-toluamide and other isomers
000352—00390	Dupont Lexone DF Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
000352—00448	Dupont Preview Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoicacid,
000352—00549	Dupont Preview SP Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoicacid,
000352—00550	Dupont Lexone SP Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
000352 WA—96—0001	Dupont Lexone DF Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
000432—00046	Rotenone Crystalline	Rotenone Cube Resins other than rotenone
000491—00214	Selig's Ambush	*o*-Isopropoxyphenyl methylcarbamate
000524—00315	Lasso 60% Technical Solution	Alachlor (2-Chloro-*N*-(2,6-diethylphenyl)-*N*-(methoxymethyl)acetamide)
000524—00341	Bronco—herbicide	Alachlor (2-Chloro-*N*-(2,6-diethylphenyl)-*N*-(methoxymethyl)acetamide) Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine)
000538—00180	Scotts Fertilizer Plus Broadleaf Weed Control	Triethylammonium triclopyr

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TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
001203—00039	Foremost 4883-ES Resid-U-Cide Roach and Ant Killer	o-Isopropoxyphenyl methylcarbamate
001685—00072	State Formula 254 IRS Insect Repellent Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
002792—00064	Deco Salt No. 35	2,6-Dichloro-4-nitroaniline
		3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
003095—00023	Pic Tick Shield Repellent Lotion	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
003125 OR—98—0012	Folicur 3.6 F Foliar Fungicide	1*H*-1,2,4-Triazole-1-ethanol, alpha-(2-(4-chlorophenyl)ethyl)-alpha-(1,1-
004691—00152	Americare Flea and & Tick Shampoo Plus	*N*-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004972—00032	Florida Swamp Insect Repellent	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
007401—00047	Ferti-Lome Ant and Roach Killer	o-Isopropoxyphenyl methylcarbamate
007401—00333	Hi-Yield Household Insect Spray Concentrate	o-Isopropoxyphenyl methylcarbamate
008660—00052	Vertagreen Lindane 20% Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
008660—00056	Vertagreen 5% Lindane Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
008660—00076	Borer Killer	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
008660—00081	Vertagreen Borer Killer Aerosol.	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
008660—00114	Vertagreen Baygon 1.5 E.C.	o-Isopropoxyphenyl methylcarbamate
008660—00117	Vertagreen Lindane 12.5% Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
008660—00140	Lindane 20% Insecticide	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
008660—00141	Vertagreen Lindane 12.5% Insecticide	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
009444—00026	Purge Personal Insect Repellent Foam	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
009779—00331	Methomyl 5G Insecticide for Use on Corn	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
010182 DE—98—0003	Abound Fungicide	Azoxystrobin (BSI, ISO)
010182 NJ—98—0003	Abound Fungicide	Azoxystrobin (BSI, ISO)
010182 NY—98—0004	Abound Fungicide	Azoxystrobin (BSI, ISO)
010182 PA—98—0003	Abound Fungicide	Azoxystrobin (BSI, ISO)
010182 VA—98—0005	Abound Fungicide	Azoxystrobin (BSI, ISO)
010806—00086	Contact Insect Repellent	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
010807—00160	Keep Away Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
011715—00106	Magic Guard Residual Insecticide contains Baygon	o-Isopropoxyphenyl methylcarbamate

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
011715—00109	Speer Insect Spray with Propoxur	o-Isopropoxyphenyl methylcarbamate
033688—00008	Bromoxynil Technical 94.0%	3,5-Dibromo-4-hydroxybenzonitrile
033688—00009	Bromoxynil Octanoic Acid Technical	3,5-Dibromo-4-hydroxybenzonitrile octanoate
041878—00002	M-100 Mosquito Repellent Solution	*N,N*-Diethyl-meta-toluamide and other isomers
045639—00177	Hoelon 3EW Herbicide	Methyl 2-(2-(2,4-dichlorophenoxy)phenoxy)propanoate
046515—00035	Sevin 11.7 Flowable	1-Naphthyl-*N*-methylcarbamate
046813—00046	Ccl Quick Breaking Insect Repellent Foam	*N*-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
051036 PA—95—0010	Vertagreen Lindane 20% Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
057476—00001	Liquified Chlorine Gas Under Pressure	Chlorine
064240—00028	Combat Ant Killer Granular Bait 0.65%	Tetrahydro-5,5-dimethyl-2(1*H*)-pyrimidinone, (3-(4-(trifluoromethyl)
064248—00007	Maxforce Ant Killer Granular Bait 0.65%	Tetrahydro-5,5-dimethyl-2(1*H*)-pyrimidinone, (3-(4-(trifluoromethyl)
065247 CA—90—0003	Gnatrol - As	Bacillus *thuringiensis subsp.* israelensis

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000305	Wisconsin Pharmacal Co., Inc., Box 198, Jackson, WI 53037.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000491	Selig Chemical Industries The, 840 Selig Dr., SW., Atlanta, GA 30378.
000524	Monsanto Co., Agent For: Monsanto Agricultural Co., 600 13th Street, NW., Suite 660, Washington, DC 20005.
000538	The Scotts Co., 14111 Scottslawn Rd., Marysville, OH 43041.
001203	Delta Foremost Chemical Corp., 3915 Air Park St., Memphis, TN 38118.
001685	The State Chemical Mfg. Co., 3100 Hamilton Ave, Cleveland, OH 44114.
002792	Elf Atochem N.A. Inc., Decco Division, 1713 S. Califomia Ave, Monrovia, CA 91017.
003095	PIC Corp., 23 S. Essex Ave, Orange, NJ 07050.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004691	Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St Joseph, MO 64506.
004972	Protexall Products Inc., 1075 North CR 427, Longwood, FL 32750.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group In. c/o Voluntary Purchasing Groups, Inc., Box 460, Bonham, TX 75418.
008660	Pursell Industries, Inc., Box 540, Sylacauga, AL 35150.
009444	Waterbury Companies Inc., Box 640, Independence, LA 70443.
009779	Terra International, Inc., 600 Fourth St, Sioux City, IA 51102.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010806	Contact Industries, Div of Safeguard Chemical Corp., 411 Wales Ave, Bronx, NY 10454.
010807	AMREP, Inc., 990 Industrial Dr, Marietta, GA 30062.
011715	Speer Products Inc., 4242 B.F. Goodrich Blvd., Memphis, TN 38181.

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TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
033688	Registration & Regulatory Services, Agent For: CFPI Agro, S.A., 7474 Creedmoor Rd., Suite 239, Raleigh, NC 27613.
041878	LJB Laboratories, 1001 E Cass, St. Johns, MI 48879.
045639	Agrevo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808.
046515	Celex, Division of United Industries Corp., Box 15842, St Louis, MO 63114.
046813	CCL Custom Mfg. Inc., 1 W. Hegeler Ln, Danville, IL 61832.
051036	Micro-Flo Co, Box 772099, Memphis, TN 38117.
057476	Chempura Pools, Ltd., 586 Benjamin's Way, Box 56, Lewisville, TX 75067.
064240	Combat Insect Control Systems, c/o PS&RC, Box 493, Pleasanton, CA 94566.
064248	Maxforce Insect Control Systems, c/o PS&RC, Box 493, Pleasanton, CA 94566.
065247	Forbio America, 2603 E. Ower Terrace, Boise, ID 83706.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before January 10, 2000. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 14, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–17775 Filed 7–13–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[PF–877; FRL–6085–5]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number [PF–877], must be received on or before August 13, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Eugene Wilson	Rm. 235, CM #2, 703–305–6103, e-mail:wilson.eugene@epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
James A. Tompkins	Rm. 239, CM #2, 703–305–5697, e-mail: tompkins.james@epa.gov.	
Bipin Gandhi	Rm. 713J, CM #2 703–308–8380, e-mail:gandhi.bipin@epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–877] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-877]) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25,1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AgrEvo USA Company

PP 8F3607 and 5F4578

EPA has received pesticide petitions (PP 8F3607 and 5F4578) from AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.473(a)(1) and (b)(1) by establishing permanent tolerances for residues of the herbicide, glufosinate-ammonium: butanoic acid-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolite, 3-methylphosphinicopropionic acid expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents in or on the following raw agricultural commodities (RAC): almond hulls at 0.50 parts per million (ppm), apples at 0.05 ppm, bananas at 0.3 ppm (not more than 0.2 ppm shall be present in the pulp after the peel is removed), cattle, fat at 0.05 ppm, cattle, meat at 0.05 ppm, cattle, meat-by-products at 0.10 ppm, eggs at 0.05 ppm, goats, fat at 0.05 ppm, goats, meat at 0.05 ppm, goats, meat-by-products at 0.10 ppm, grapes at 0.05 ppm, hogs, fat at 0.05 ppm, hogs, meat at 0.05 ppm, hogs, meat-by-products at 0.10 ppm, horses, fat at 0.05 ppm, horses, meat at 0.05 ppm, horses, meat-by-products at 0.10 ppm, milk at 0.02 ppm, poultry, fat at 0.05 ppm, poultry, meat-by-products at 0.10 ppm, poultry, meat at 0.05 ppm, sheep, fat at 0.05 ppm, sheep, meat at 0.05 ppm, sheep, meat-by-products at 0.10 ppm, and the tree nuts group at 0.10 ppm.

AgrEvo has also proposed to amend 40 CFR 180.473(c) by establishing permanent tolerances for residues of the herbicide, glufosinate-ammonium: butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolites, 3-methylphosphinicopropionic acid, and 2-acetamido-4-methylphosphinicobutanoic acid expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents in or on the following raw agricultural commodities: aspirated grain fractions at 25.0 ppm, corn, field, forage at 4.0 ppm, corn, field, grain at 0.2 ppm, corn, field, stover at 6.0 ppm, soybean, hulls at 5.0 ppm, and soybeans at 2.0 ppm. The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by gas chromatography.

The preceding tolerances for glufosinate-ammonium and its metabolites have already been established for the aforementioned commodities on a time-limited basis in 40 CFR 180.473 (a)(1), (b)(1) and (c). These time-limited tolerances expire on July 13, 1999. AgrEvo has proposed to re-establish these tolerances on the same crop commodities and at the same levels on a permanent basis.

A notice of filing and petitioner summary of the pesticide petition for EPA Pesticide Petitions 7F4910 and 7E4911 was published in the **Federal Register** of October 8, 1997 (62 FR 52544) (FRL–5746–9). These petitions pertain to additional tolerances for residues of glufosinate-ammonium and its metabolites on sugar beets, canola and potatoes. Data and assessments pertaining to residue chemistry, toxicological profile, endocrine effects, aggregate exposure, cumulative effects, safety determinations and international tolerances for both the existing and the proposed additional crop tolerances are provided in this publication. The petitioner's risk assessment presentation represents the maximum exposure scenario as it assesses the summative exposure from the existing time-limited

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tolerances delineated above in addition to the tolerances proposed in the aforementioned petitions.

2. E. I. DuPont de Nemours and Co., Inc.

4F4391

EPA has received a pesticide petition (4F4391) from DuPont, P.O. Box 80038, Wilmington, DE 19880-0038 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending time-limited tolerance for residues of pyrithiobac sodium salt (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on the raw agricultural commodity (RAC) cottonseed at 0.02 ppm until September 30, 2001. In the **Federal Register** of October 25, 1995 (60 FR 54607) (FRL 4982-8), EPA established a time-limited tolerance pursuant to the FFDCA for residues of the herbicide pyrithiobac sodium salt in or on the RAC cottonseed at 0.02 ppm. In the **Federal Register** of October 22, 1997 (62 FR 54778) (FRL 5746-6), EPA extended the time-limited tolerance pursuant to the FFDCA for residues of the herbicide pyrithiobac sodium salt in or on the RAC cottonseed at 0.02 ppm. This time-limited tolerance expires September 30, 1999. The tolerance was issued and renewed as a time-limited tolerance because EPA required additional residue data on the commodity of cotton gin byproducts. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of pyrithiobac sodium in cotton is adequately understood. Metabolism studies with pyrithiobac sodium indicate the major metabolic pathway being o-dealkylation of the parent compound resulting in o-desmethyl pyrithiobac sodium (O-DPS), both free and conjugated, was the major metabolite identified in cotton foliage. The results of a confined crop rotation study with pyrithiobac sodium revealed the presence of a metabolite 2-chloro-6-sulfobenzoic acid (CSBA) not seen in the cotton metabolism study. This metabolite appeared to originate from soil metabolism of pyrithiobac sodium. Since preemergence applications of pyrithiobac sodium are allowed, crop residues of CSBA were considered a possibility. In consideration of PP 4F4391, Chemistry Branch Tolerance Support (CBTS), EPA, in consultation with the Health Effects Division (HED) Metabolism Committee has previously concluded that for the proposed use on cotton, none of the pyrithiobac sodium metabolites including O-DPS and CSBA warrant inclusion in the tolerance regulation, and that the only residue of concern is the parent, pyrithiobac sodium.

2. *Analytical method.* There is a adequately validated practical analytical method available using HPLC-UV with column switching, to measure levels of pyrithiobac sodium in or on cotton with a limit of quantitation (LOQ) that allows monitoring of cottonseed at or above tolerance levels. EPA has provided information on this method to FDA for future publication in PAM II.

3. *Magnitude of residues.* Crop field trial residue data from a 60– day pre-harvest interval (PHI) study shows that the established pyrithiobac sodium time-limited tolerance on cottonseed of 0.02 ppm will not be exceeded when Staple Herbicide is used as directed. An adequate cottonseed processing study shows that pyrithiobac sodium does not concentrate in cottonseed processed commodities; thus, no tolerances on these commodities are required.

B. Toxicological Profile

1. *Acute toxicity.* Pyrithiobac sodium technical has been placed in EPA Toxicity Category II for acute eye irritation based on the test article inducing irritation in the form of corneal opacity, iritis and conjunctival redness, and discharge in the eyes of rabbits after receiving ocular doses of 36 mg (0.1 ml). Signs of irritation were clear within 14–days of treatment. Pyrithiobac sodium has been placed in Toxicity Category III for acute dermal toxicity based on the test article being nonlethal and nonirritating at the limit dose (LTD) of 2,000 milligrams/kilograms (mg/kg) highest dose tested (HDT). Pyrithiobac sodium has been placed in Toxicity Category III for acute oral toxicity based on acute oral LD_{50} of 3,200 mg/kg for both male and female (M/F) rats. Pyrithiobac sodium has been placed in Category IV for the remaining acute toxicity tests based on the following: a rat acute inhalation study with an LC_{50} of > 6.9 milligrams/per liter (mg/l); and a primary dermal irritation test that did not induce a dermal irritation response. A dermal sensitization test with pyrithiobac sodium technical in guinea pigs demonstrated no significant effects. Based on these results, pyrithiobac sodium does not pose an acute dietary or exposure risk.

2. *Genotoxicity.* Pyrithiobac sodium technical was negative (non-mutagenic and non-genotoxic) in the following tests: Ames microbial mutation assay; the hypoxanthine-guanine phosphoribosyl transferase gene mutation assay using Chinese hamster ovary cells; and induction of unscheduled DNA synthesis (UDS) in primary rat hepatocytes. Pyrithiobac sodium was positive in an *in vitro* assay for chromosome aberrations in human lymphocytes. It was negative for the induction of micronuclei in the bone marrow cells of M/F CD-1 mice administered the test article by oral gavage at 500, 1,000 or 2,000 mg/kg. Based on the weight of these data, pyrithiobac sodium is neither genotoxic nor mutagenic.

3. *Reproductive and developmental toxicity.* A 2-generation, 4 litter reproduction study with CD rats treated at dietary levels of 0, 25, 1,500, 7,500 or 20,000 ppm of pyrithiobac sodium demonstrated a maternal no observed adverse effect level (NOAEL) of 1,500 ppm (103 mg/kg/day) and a maternal lowest observed adverse effect level (LOAEL) of 7,500 ppm (508 mg/kg/day), based on decreased body weight (bwt) gain and food efficacy. An offspring NOAEL of 7,500 ppm (508 mg/kg/day) and LOAEL of 20,000 ppm (1,551 mg/kg/day) were also demonstrated based on decreased offspring bwt. Pyrithiobac sodium was not teratogenic when administered to rats or rabbits.

A developmental toxicity study with pyrithiobac sodium in rats demonstrated a maternal NOAEL of 200 mg/kg and LOAEL of 600 mg/kg due to increased incidence of salivation.

A developmental NOAEL of 600 mg/kg and LOAEL of 1,800 mg/kg were demonstrated based on an increased incidence of skeletal variations.

A developmental toxicity study with pyrithiobac sodium in rabbits demonstrated maternal and developmental NOAELs of 300 mg/kg and a maternal LOAEL of 1,000 mg/kg based on mortality, decreased bwt gain and feed consumption, increased incidence of clinical signs, and an increase in early resorptions. A developmental LOAEL of 1,000 mg/kg was based on decreased fetal bwt gain. Based on the weight of these data, pyrithiobac sodium is not considered a reproductive or developmental hazard.

4. *Subchronic toxicity.* In a 90–day feeding study in rats conducted with pyrithiobac sodium at dietary levels of 0, 10, 50, 500, 7,000 and 20,000 ppm, the NOAEL was 500 ppm (31.8 and 40.5 mg/kg/day, Ms and Fs and the LOAEL

was 7,000 ppm (466 and 588 mg/kg/day, Ms/Fs) based on decreased bwt gains and increased rate of hepatic B-oxidation in Ms.

In a 90–day feeding study in mice conducted with pyrithiobac sodium at dietary levels of 0, 10, 50, 500, 1,500 and 7,000 ppm, the NOAEL was 500 ppm (83.1 and 112 mg/kg/day, Ms/Fs) and the LOAEL was 1,500 ppm (263 and 384 mg/kg/day, Ms/Fs) based on increased liver weight and increased incidence of hepatocellular hypertrophy in Ms and decreased neutrophil count in Fs.

In a 90–day feeding study in dogs conducted with pyrithiobac sodium at dietary levels of 0, 50, 5,000, or 20,000 ppm, the NOAEL was 5,000 ppm (165 mg/kg/day) and the LOAEL was 20,000 ppm (626 mg/kg/day) based on decreased red blood cell count, hemoglobin, and hematocrit in females and increased liver weight in both sexes.

In a 21–day dermal study with rats conducted with pyrithiobac sodium at exposure levels of 0, 50, 500, or 1,200 mg/kg/day, the dermal irritation NOAEL was 500 mg/kg/day and the dermal irritation LOAEL was 1,200 mg/kg/day. There were no systemic effects observed at this high dose; therefore, the systemic NOAEL is considered to be 1,200 mg/kg/day.

5. *Chronic toxicity.* A 1–year feeding study in dogs conducted with pyrithiobac sodium at dietary levels of 0, 100, 5,000, and 20,000 ppm resulted in a NOAEL of 5,000 ppm (143 and 166 mg/kg/day, Ms/Fs) and a LOAEL of 20,000 ppm (580 and 647 mg/kg/day, Ms/Fs) based on decreases in bwt gain and increased liver weight.

A 78–week oncogenicity study in mice was conducted with pyrithiobac sodium at dietary levels of 0, 10, 150, 1,500 and 5,000 ppm. The systemic NOAEL is 1,500 ppm (217 and 319 mg/kg/day, Ms/Fs) and the LOAEL is 5,000 ppm (745 and 1,101 mg/kg/day, Ms/Fs), based on decreased bwt gain and liver lesions. Kidney effects were also observed at 5,000 ppm; however, these were present at low incidence and were of minimal severity and were considered to be of only minimal biological significance. Increased incidence of foci/focus of hepatocellular alteration was observed in males fed 5,000 ppm diets. Increased incidences of hepatocellular neoplasms (adenomas or adenomas plus carcinomas) were observed only in 150 and 1,500 ppm Ms. The incidence of these liver tumors was not significantly increased in the 5,000 ppm Ms or in Fs at any dose level; the 5,000 ppm male tumor incidence was within the historical control range.

A 2–year study in rats was conducted at dietary pyrithiobac sodium levels of 0, 5, 25, 1,500 or 5,000 ppm for Ms and 0, 5, 25, 5,000 or 15,000 ppm for Fs. The NOAEL for systemic effects was 1,500 ppm (58.7 mg/kg/day) for Ms and 5,000 ppm (278 mg/kg/day) for Fs. The lowest effect level (LEL) was 5,000 ppm (200 mg/kg/day for Ms)/15,000 ppm (918 mg/kg/day) for Fs. The LEL was based on the following: decreased bwt gain, and food efficiency (for Fs); mild changes in hematology and urinalysis, clinical signs indicative of urinary tract dysfunction (both sexes); increased incidence of focal cystic degeneration in the liver and increased rate of hepatic peroxisome beta-oxidation (Ms); and an increased incidence of inflammatory and degenerative microscopic lesions in the kidney (Fs). There was evidence of oncogenicity based on an increased trend for kidney tubular combined adenoma/carcinoma on male rats and an increased trend for kidney tubular adenomas in female rats. Although the incidences were low, they were statistically significant. The highest dose level tested (HDLT) in male rats (5,000 ppm) was considered adequate for assessment of oncogenic potential, that in female rats (15,000 ppm) exceeded the maximum tolerated dose (MTD).

6. *Carcinogenicity.* In consideration of PP 4F4391, the HED Carcinogenicity Peer Review Committee has previously concluded that the available data provide limited evidence of the carcinogenicity of pyrithiobac sodium in mice and rats and has classified pyrithiobac sodium as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines published in the **Federal Register** of September 24, 1986 (51 FR 33992) and recommend that for the purpose of risk characterization a low-dose extrapolation model should be applied to the experimental animal tumor data for quantification for human risk (Q1*). This decision was based on liver adenomas, carcinomas and combined adenoma/carcinomas in the male mouse and kidney tubular adenomas, carcinomas and combined adenoma/carcinomas in the male rat. The unit risk, Q1* $(mg/kg/day)^{-1}$, of pyrithiobac sodium is 1.05×10^{-3} $(mg/kg/day)^{-1}$ in human equivalents based on male kidney tumors.

7. *Animal metabolism.* Disposition and metabolism of pyrithiobac sodium were tested in M/F rats using two radio-labeled forms of pyrithiobac sodium. Either phenyl-labeled or pryimidine-labeled compounds were administered orally at 5 or 250 mg/kg. In addition, intravenous administration was evaluated at 5 mg/kg. Essentially all of the dose was excreted in the urine and feces, with greater than 90% being excreted within 48 hours. No label was detected in the expired air. Only minute quantities of radioactivity (at or near the limit of detection (LOD)) were detected in the major organs of metabolism and excretion. This study indicates that pyrithiobac sodium has low toxicity and does not accumulate within the body. The major compound eliminated in urine and feces was O-DPS (desmethyl metabolite), formed by demethylation of the pyrimidine ring. There was evidence that conjugation with glucuronic acid and 5-hydroxylation of the pyrimidine ring of pyrithiobac sodium were additional minor routes of metabolism in the rat.

The ruminant metabolism of pyrithiobac sodium was studied in lactating goats fed at a level of 15 mg/kg for 5 consecutive days, equaling a dose greater than 1,000 times the anticipated residues of pyrithiobac sodium and its metabolites in cottonseed, and greater than 100 times the anticipated residues in cotton gin byproducts. Seventy-six to 80% of the total administered dose was recovered in the excreta plus cage washes. Concentrations of radioactivity in milk, muscle, fat, whole-blood, and plasma were negligible. Biotransformation of the parent compound was not substantial with 90% of urine radioactivity and 40% of fecal extract corresponding to parent test substance. The major biotransformation pathway was O-demethylation. The results of this study indicate low potential for transfer of residues of pyrithiobac sodium and/or its metabolites into edible tissues or milk of ruminants, even at highly exaggerated feeding levels.

8. *Metabolite toxicology.* There is no evidence that the metabolites of pyrithiobac sodium as identified in either the plant metabolism, confined crop rotation, or animal metabolism studies are of any toxicological significance.

9. *Neurotoxicity.* A 90–day rat neurotoxicity screen battery conducted with pyrithiobac sodium resulted in a systemic NOAEL of 7,000 ppm (466 and 588 mg/kg/day, Ms/Fs) and a systemic LOAEL of 20,000 ppm (1,376 and 1,609 mg/kg/day, Ms/Fs) based on reduced bwt gain and food efficiency and increased liver weight. Slight reductions in hind-leg grip strength and slightly increased foot splay in Ms were observed in 20,000 ppm Ms. However, because these were of small magnitude, lacked statistical significance, and corresponding histopathology,

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pyrithiobac sodium was not considered a neurotoxin. The NOAEL for neurotoxicity was 20,000 ppm highest dose tested (HDT).

10. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of pyrithiobac sodium have been conducted. However, the standard battery of required toxicology studies has been completed and found acceptable. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that pyrithiobac sodium has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—*i. *Food.* For purposes of assessing the potential dietary exposure under this tolerance, an estimate of aggregate exposure is made using the tolerance on cottonseed at 0.02 ppm. The potential exposure is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of cottonseed products translated as cottonseed meal and cottonseed oil eaten by various population subgroups. Cottonseed is fed to animals, thus exposure of humans to residues of cottonseed might result if such residues are transferred to meat, milk, poultry, or eggs. However, in consideration of PP 4F4391, CBTS has previously concluded that secondary residues in meat, milk, poultry, and eggs are not expected from the use of cottonseed (undelinted) as an animal feed. There are no other established tolerances or registered uses for pyrithiobac sodium in the United States. Based on a NOAEL of 58.7 mg/kg/day, from the chronic rat toxicity study and a 100-fold safety factor, the reference dose (RfD) is 0.58 mg/kg/day. Assuming residues at tolerance levels and that 100% of the crop is being treated, a theoretical maximum residue contribution (TMRC) of > 0.000001 mg/kg/day is calculated. With the above assumptions which clearly overestimate potential human exposure and are a most conservative assessment of risk, dietary (food) exposure to pyrithiobac sodium will utilize significantly less than 1% of the RfD for the overall U.S. population. For the most highly exposed subgroup, children aged 1–6 years, the TMRC is 0.000001 mg/kg/day, which is still less than 1% of the RfD. The unit risk, $Q1^*$ $(mg/kg/day)^{-1}$, of pyrithiobac sodium is 1.05×10^{-3} $(mg/kg/day)^{-1}$ in human equivalents based on male kidney tumors. Based on this upper bound potency factor ($Q1^*$), a 70–year life span, and the assumption that 100% of the crop is treated with pyrithiobac sodium, the upper-bound limit of a dietary carcinogenic risk is calculated in the range of one incidence in a billion (1.0×10^{-9}).

ii. *Drinking water.* Other potential dietary sources of exposure of the general population to pesticides are residues in drinking water. There is no maxium concentration level (MCL) established for residues of pyrithiobac sodium. The petitioner has reported to the Environmental Fate and Ground Water (EFGWB) branch of EPA the interim results of a prospective ground water monitoring study conducted at a highly vulnerable site. In consideration of this information in support of PP 4F4391, EFGWB has previously concluded by preliminary evaluation, that pyrithiobac sodium may not be stable enough to leach to ground water at most use sites, even in sandy soils. All other environmental fate data requirements for pyrithiobac sodium have been satisfied and based on these studies and the conditions of use, the potential for finding pyrithiobac sodium residues in drinking water is minimal.

2. *Non-dietary exposure.* Pyrithiobac sodium is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

Pyrithiobac sodium is based on a new chemical class; there are no known registered herbicides with similar structure. Therefore, EPA should consider only the potential risks of pyrithiobac sodium in its exposure assessment. The herbicidal activity of pyrithiobac sodium is due to the inhibition of acetolactate synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of pyrithiobac sodium in animals. There is no evidence to indicate or suggest that pyrithiobac sodium has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicity data base, the EPA has adopted an RfD value of 0.58 mg/kg/day using the NOAEL of 58.7 mg/kg/day, from the 2–year chronic toxicity study in rats and a 100-fold safety factor. Using crop tolerance levels and assuming 100% of the crop being treated a TMRC was calculated for the overall U.S. population and 22 population subgroups. This analysis concluded that aggregate exposure to pyrithiobac sodium will utilize significantly less that 1% of the RfD for either the entire U.S. population or any subgroup population. The TMRC for the most highly exposed subgroup identified as children aged 1–6 years was 0.000001 mg/kg/day. EPA generally has no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to pyrithiobac sodium residues. The unit risk, $Q1^*$ $(mg/kg/day)^{-1}$, of pyrithiobac sodium is 1.05×10^{-3} $(mg/kg/day)^{-1}$ in human equivalents based on male kidney tumors. Based on this upper bound potency factor ($Q1^*$) and assuming a 70–year lifetime exposure an upper-bound limit of a dietary carcinogenic risk is calculated in the range of one incidence in a billion (1.0×10^{-9}). This indicates a negligible cancer risk.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of pyrithiobac sodium, data from the previously discussed developmental and reproduction toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide. Based on the weight of these data, pyrithiobac sodium was not a reproductive toxicant. Maternal and developmental effects NOAEL's, LOAEL's were comparable indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on current toxicological data requirements, the data base for pyrithiobac sodium relative to prenatal and postnatal effects for children is complete. The NOAEL of 58.7 mg/kg/day from the 2–year rat study with pyrithiobac sodium, which was used to calculate the RfD, is lower than any of the NOAEL's defined in the developmental and reproductive toxicity studies with pyrithiobac sodium. When the weight of these facts is considered, an additional safety factor is not warranted for developmental effects. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U.S. population or any of 22 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to pyrithiobac sodium residues.

F. International Tolerances

There are no established Codex MRLs for pyrithiobac sodium on cottonseed. An established Mexican tolerance for pyrithiobac sodium on cottonseed is identical to the United States tolerance. Compatibility is not a problem at this time.

3. Magna Bon Corporation

PP 8F4982

EPA has received a pesticide petition [PP 8F4982] from Magna Bon Corporation, 3213 Ocean Drive, Vero Beach, FL 32963 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for copper sulfate pentahydrate on the RAC copper sulfate pentahydrate at 0.050 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Copper sulfate pentahydrate has been used for years as a micronutrient, added to soils for uptake-into plants for sustaining vigorous growth. The metabolism is well-known in plant physiology as a vital component of plant growth. The labeled rate will not exceed any applications given during growth. The product will be applied post-harvest and no additional metabolism of harvested products is expected.

2. *Analytical method.* Standard methodology for copper sulfate is adequate.

3. *Magnitude of residues.* The cover letter (attached) notes the various clearances based on uses in plants, animals, humans and potable water.

The products will be applied according to labels approved by EPA which are at or below the levels on the current labeled rates for application to growing crops. The plants will only be exposed to washes of the product. Since the product is not systemic, the product can be washed from the surface of the plant or animal parts before being consumed.

B. Toxicological Profile

The toxicology of copper compounds are well-known. The toxicology file for Mega Bon Corporation registrations are incorporated by reference.

1. *Acute toxicity.* Copper and the salts are solids. Individuals use copper bracelets, and chains in contact with their skin as jewelry. There is no known skin sensitization. Please refer to 21 CFR 184.1261 when used as a human supplement.

2. *Genotoxic.* There is no known genotoxicity. All studies have been negative.

3. *Reproductive and developmental toxicity.*[1]

4. *Subchronic toxicity.*[1]

5. *Chronic toxicity.*[1]

6. *Animal metabolism.*[1]

7. *Metabolite toxicology.*[1]

C. Aggregate Exposure

1. *Dietary exposure.* Copper is used in vitamins and occurs on a very small part of the daily foods. However, the small amount that may occur on plants is washed off prior to food preparation.

Copper being used as a crop protector or as a post-harvest application may add little to the exposure given the use pattern and general application of new fungicides.

i. *Food.* The total consumption of all agricultural, fish, shell-fish, and meat treated with copper sulfate pentahydrate can be calculated as being at or below daily minimums of mineral requirements for humans. In addition, the plant and meat products are washed before cooking.

ii. *Drinking water.* A food additive tolerance of 2 ppm in potable water is established under 40 CFR 185.1200 for residues of copper from use of copper compounds.

2. *Non-dietary exposure.* The population is exposed to copper compounds on an almost daily basis. Dermal exposure is the most prevalent. There have been several impingements by the copper compounds with little to no effect.

[1]Although there are no guidline studies for this data requirement *per se*, there is adequate information in the extensive open literture on copper sulfate to characterize its toxicity.

D. Cumulative Effects

The amount of copper sulfate pentahydrate used to treat the harvested plant products, fish, shellfish, poultry, and meat would be a way of lowering bacterial, fungi and even-viral organisms from becoming a problem under most circumstances.

E. Safety Determination

1. *U.S. population.* Using the copper sulfate pentahydrate would reduce costs of protecting the above-mentioned products and giving adequate protection to such target post-harvested crops, fish, shellfish, poultry, and meat products without harm to humans, animals, plants, plant products, and the environment.

2. *Infants and children.* Foods are washed and processed. Copper sulfate pentahydrate is a solid, but will be washed. The foods are further processed with little or no detectable levels. The copper in the application is a vital nutrient for infants and children.

F. International Tolerances

The countries of the world have not restricted copper for the purposes we request.

[FR Doc. 99–17317 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00609; FRL–6088–6]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act are transparent and open to public participation, EPA is soliciting comments on a draft science policy paper entitled "The Role of Use-Related Information in Pesticide Risk Assessment and Risk Management." This notice is the tenth in a series concerning science policy documents related to the Food Quality Protection Act and developed through the Tolerance Reassessment Advisory Committee.

DATES: Written comments, identified by docket control number OPP–00609 should be submitted by September 13, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as

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provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, your comments must identify docket control number OPP–00609 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Debby Sisco, Environmental Protection Agency (7503C), 401 M St., SW., Washington, DC 20460, telephone number: (703) 308-8121; fax: (703) 305-8091; e-mail address: sisco.debby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and the draft science policy paper from the Office of Pesticide Programs Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs Home Page select "TRAC" and then look up the entry for this document. You can also go directly to the listings at the EPA Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax on demand.* You may request a faxed copy of this document, as well as supporting information, by using a faxphone to call (202) 401–0527 and selecting item 6039. You may also follow the automated menu.

3. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for the draft science policy paper listed in the "SUMMARY" section, including the public version, has been established under docket control number OPP–00609 (including comments and data submitted electronically as described below). This record not only includes the documents that are physically located in the docket, but also includes all the documents that are referenced in those documents. A public version of each record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch the telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–00609 in the subject line on the first page of your response.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please call the Public Information and Records Integrity Branch. The PIRIB telephone number is (703) 305–5805.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various draft science policy papers, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You

can do this by providing docket control number OPP–00609, along with the name, date, and **Federal Register** citation.

II. Background

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27 through April 29, 1999.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believed were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA has been issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA.

In addition to the nine science policy issues, the Agency has decided to make available several more draft policy documents which are related to the implementation of FQPA, but which are not purely science policy issues. This notice announces the availability of a draft document as identified in the "SUMMARY" section.

III. Summary of "The Role of Use-Related Information in Pesticide Risk Assessment and Risk Management"

In assessing the risks of pesticides and in making risk management (regulatory) decisions, EPA uses a wide range of data and information, such as how each pesticide is applied, where it is used, and how much is actually used. This paper summarizes the types of use-related information used by EPA in risk assessment and risk management, where the data come from, and how the Agency employs these data.

EPA pesticide use data come from a variety of sources for both agricultural and non-agricultural pesticides use sites. There are three general categories of methods for obtaining use data: Agreements with other regulatory entities that produce pesticide-use data; purchases from vendors whose business is to obtain pesticide-use data; and voluntary submissions of data from interested parties who have developed such data.

EPA also obtains use information from a variety of interested parties. For example, registrants who are going through the special review and/or reregistration process may have submitted data in support of a new use, risk mitigation, or in support of a registrant sponsored risk study. Individual states submit data in support of emergency exemption (FIFRA section 18) requests. Growers and food processors have also submitted use data. Additionally, state departments of agriculture, as part of their extension program efforts, provide use data or pesticide use recommendations for crops grown under their jurisdictions.

The kinds of pesticide use information which risk assessors use in developing human dietary risk assessments are equally important to those who develop drinking water and ecological risk assessments. This use-related information is used to assess human exposure to pesticides in drinking water; to assess fish and wildlife exposure to pesticides; and to interpret monitoring results and develop models that can be used to accurately estimate pesticide concentrations in drinking water and surface and ground water.

Use-related information plays a vital, even critical role in EPA's formulation of risk management decisions for pesticides in registration, reregistration, tolerance reassessment, and special review. The availability or lack of use-related information can significantly influence the outcome of EPA's regulatory decisions about pesticides under review, especially if they pose significant risks.

The way in which use information has been incorporated into risk assessments has changed since the passage of the Food Quality Protection Acf in 1996. EPA has been working to enhance its pesticide use data base by working more closely with the U.S. Department of Agriculture, California EPA, registrants, and grower groups as well as other stakeholders. The draft science policy paper lists projects EPA is currently working on for this purpose.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the draft science policy paper, EPA is particularly interested in comments on the following questions and issues.

1. Is the EPA's description of the kinds of use and usage data obtained and evaluated by EPA complete? Are

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there other data or sources which the Agency should consider?

2. Are the ways in which usage data are employed in risk assessment and risk management of pesticides clear?

V. Policies Not Rules

Each draft policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The "revised" guidance will not be unalterable. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VI. Contents of Docket

Documents that are referenced in this notice will be inserted in the docket under docket control number OPP–00609. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: June 29, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–17318 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6377–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Voda Petroleum Inc., Site, Clarksville City, Texas with the parties referenced in the Supplementary Information portion of this document.

The settlement requires the settling parties to pay a total of $62,203.28 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before August 13, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Voda Petroleum Superfund Site, Clarksville City, Texas and EPA Docket Number 6–10–98, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Michael Boydston, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–7376.

SUPPLEMENTARY INFORMATION:

American Norit Company, Inc.
Andrews Transmission
ATP Results Inc.
Ben E. Keith
Billy Cox Trucking
Bright Truck Leasing Corp.
Brown & Root
Burland Enterprises
Carrier Air Conditioning
Central Power and Light
Channel Shipyard
Chaparral Steel
City Motor Supply, Inc.
City of Dallas, TX
City of Jefferson, TX
City of Plano, TX
Clarke Checks
Continental Can Co./Crown Beverage
Coors Dist.
CPL Industries
D & D Radiator and Muffler
Dallas Power and Light
Daniel Oil
Dart
Denfense Reutilization & Marketing (Fort Polk)
Denfense Reutilization & Marketing (Kelly AFB)
Denfense Reutilization & Marketing (Richards Gebaur AFB)
Delta Chemical/Delta Solvents/Delta Distributors
Dowell/Schlumberger
Dunlap Swain
Eaton Corp.
Exxon, USA
Firestone
General Electric Co.
General Telephone Co.
Gentry Trucking
Georgia Pacific
Giffird Hill Cement
Gifford Hill Readymix
Greyhound Lines, Inc
GTE
Harris Brothers Co.
Hertz—Penske Leasing
Highland Pump Co.
Industrial Lubricants
Industrial Solvents
Ingersoll—Rand Company
Inland Container Corporation
J & E Die Casting
Kelly Truck Terminal, Inc.
Kmart
Lance, Inc.
Lockheed missiles & Space Co., Inc.
Lone Star Logistics
Lube-O-Seal
Lubrizol
M Lipsitz & Company, Inc.
MacMilan Bloedel Containers
Marathron Battery Co.
Mathews
Metro Aviation
Metro-Ford Truck

Monsanto Co.
National Oilwell
National Scientific Balloon Facility
National Supply Co.
Noble Trans/Noble Auto
North Highland Mobil
Occidental Electrochemicals
Olympic Fastening Systems
Paramount Packaging Co.
Parrott Oil
Pearl Brewing Company
Performance Friction Products
Peterbilt Motors Co.
Physical Science Laboratory
Pipes Equipment
Pitts Industries
Presbyterian Hospital of Dallas
Prestige Ford
Ralph Wilson Plastic Co.
Reeves Oil
Renewable Energy
Rollins Leasing
Ruan Truck Leasing
Safeway
San Augustine
Santos Radiator
Schepps Dairy
Sears Roebck & Co.
Shell
Shipper Car Line, Inc.
Smith Oil Co.
Snow Coils
South Coast Products
Southern Gulf
Southern Plastics
Southwest Disposal
Southwest Electrical Power Co.
St.Regis Paper
Stemco, Inc.
Sullivan Transfer & Storage
TEC
Texas Gas
Texas Mill Supply
Trinity Industries
Truckstops of America
Tuneup Master
Twin City transmission
TXI
United Gas Pipeline
U.S. Industries/Axelson
Wilson Riley
Witco Ford
Wray Ford
XL Oil and Chemical, Inc.

Dated: July 1, 1999.

W. B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 99–17942 Filed 7–13–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 7, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 13, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith. Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0850.

Title: Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form Number: FCC 605.

Type of Review: Revision to Existing Collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 177,000.

Estimated Time Per Response: .44 hours.

Frequency of Response: On occasion.

Total Annual Burden: 74,800 hours.

Needs and Uses: FCC 605 application is a consolidated application form for Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services and will be utilized as part of the Universal Licensing System currently under development.

The data collected on this form includes the applicant's Taxpayer Identification Number, however, this information will be redacted from public view.

The form is being revised to provide for developmental licensing, military addresses, foreign addresses and compulsory vessel 4 letter call signs. In addition, instructions are being revised to clarify filings for Special Temporary Authority (STAs), filing Proof of Passing Certificates for Commercial Operator and submitting photographs for Commercial Operator T1, T2 and T3 permits. The collection also requests approval for collection of Trustee Primary Station Call Sign, Applicant Classification and a club administrator signature when an application is submitted via batch file for Amateur clubs.

There is no change to the estimated average burden or number of respondents.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17912 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2344]

Petitions for Reconsideration of Action in Rulemaking Proceeding

July 9, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 29, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Hyperian of Tennessee, L.P., Petition for Preemption of Tennessee Code Annotated Sec. 65–4–201(d) and Tennessee Regulatory Authority Decision Denying Hyperian's Application Requesting Authority to

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Provide Service in Tennessee Rural LEC Service Area (CC Docket No. 98–92).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17911 Filed 7–13–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 15, 1999, 10 a.m., meeting open to the public.

The following item was added to the agenda: Status of Regulations.

DATE AND TIME: Tuesday, July 20, 1999 at 10 a.m.

PLACE: 999 E Street. N.W., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, July 21, 1999 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, DC (ninth floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Oral Hearing—Buchanan for President Committee, Inc.

DATE AND TIME: Thursday, July 22, 1999 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–16: Commercial Finance Association by counsel, Michael A. Nemeroff.

Final Rules and Explanation and Justification on the Definition of a "Member" of a Membership Organization.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–18116 Filed 7–12–99; 3:26 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 10573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 203–011117–024.

Title: United States/Australasia Interconference and Carrier Discussion Agreement.

Parties:

United States/Australia New Zealand Association
P&O Nedlloyd Limited
Australia New Zealand Direct Line
Columbus Line
Ocean Star Container Line
Wallenius Wilhelmsen Lines AS
Compagnie Marseille Fret
Compagnie General Maritime S.A.
Fesco Ocean Management Limited, d/b/a Fesco Australia North America Line.

Synopsis: The parties are modifying their agreement to add authority for them to discuss and agree on voluntary guidelines applicable to their individual service contracts.

By Order of Federal Maritime Commission.

Dated: July 9, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–17941 Filed 7–13–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Charter One Financial, Inc., Cleveland, Ohio; to acquire St. Paul Bancorp, Inc., Chicago, Illinois, and its subsidiaries including, St. Paul Federal Bank for Savings, Chicago, Illinois, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y; St. Paul Trust Company, Oak Lawn, Illinois, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; St. Paul Securities, Inc., Chicago, Illinois, Investment Network, Inc., Franklin Park, Illinois, and Investment Network Advisors, Inc., Franklin Park, Illinois, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y, and securities brokerage, private placement, riskless principal, futures commission merchant and other agency transactional services for customers, pursuant to § 225.28(b)(7) of Regulation Y; Community Finance Corporation, Chicago, Illinois, and thereby engage in community development activities, pursuant to § 225.28(b)(12)(i) of Regulation Y; EFS/San Diego Service Corporation, Chicago, Illinois, and thereby engage in leasing personal or real property, pursuant to § 225.28(b)(3) of Regulation Y; Serve Corp Mortgage Corporation, Naperville, Illinois, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; and ATM Connection, Inc., Chicago, Illinois, and thereby engage in data processing and data transmission activities, pursuant to § 225.28(b)(14) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. AmSouth Bancorporation, Birmingham, Alabama; to acquire First American Community Development Corporation, Nashville, Tennessee, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of Regulation Y.

Board of Governors of the Federal Reserve System, July 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17877 Filed 7–13–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 19, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http:\\www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18000 Filed 7–9–99; 4:32 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Promoting Investigator-Initiated Prevention Research in Managed Care, Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Promoting Investigator-Initiated Prevention Research in Managed Care, Program Announcement #99108, meeting.

Times and Date: 8:30 a.m.–9:15 a.m., July 23, 1999 (Open); 9:25 a.m.–4:30 p.m., July 23, 1999 (Closed).

Place: CDC, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, Koger Center, Williams Building.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Acting Director, Office of Program Support, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99108.

Due to administrative delays, this notice is being published less than 15 days prior to the meeting.

Contact Person for More Information: Lisa R. Tylor, CDC Epidemiology Program Office, 1600 Clifton Road, Atlanta, GA 30333, m/s K73. Telephone 770/488–8201, e-mail LRM3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–18018 Filed 7–12–99; 12:16 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research, Subcommittee for Management Review of the Chernobyl Studies: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER), Subcommittee for Management Review of the Chernobyl Studies.

Time and Date: 8:30 a.m.–5 p.m., July 20, 1999.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, D.C. 20202.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 35 people.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This subcommittee is charged with providing guidance to the scientific reviewers and staff, and reporting back to the full ACERER on the charge from the Department and Congress to assess the management, goals, and objectives of the National Cancer Institute (NCI) Chernobyl studies.

Matters to be Discussed: Agenda items will include developing an action plan to address basic questions for the management review and audit of the thyroid and leukemia studies being conducted by the United Sates and the Governments of Belarus and Ukraine; deciding technical, logistical, and personnel support needs; and a public input plan

Agenda items are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Contact Person for More Information: Michael J. Sage, Deputy Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, telephone 770/488–7300, fax 770/488–7310.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and

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Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–18017 Filed 7–13–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health; Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Public Meeting of the Study Team for the Los Alamos Historical Document Retrieval and Assessment Project.

Time and Date: 5:30 p.m.–7:30 p.m., July 27, 1999.

Place: Santa Fe Community College, Lecture Hall Room 216, 6401 Richards Avenue, Santa Fe, New Mexico 87505, telephone 505/428–1675.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) is given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This Study Team is charged with locating, evaluating, cataloguing, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory since its inception. The purposes of this meeting is to review the goals, methods, and schedule of the project, discuss progress to date, provide a forum for community interaction, and serve as a vehicle for members of the public to express concerns to CDC.

Matters to be discussed: Agenda items include presentations from NCEH and/or its contractor regarding the information gathering project that recently began, and presentations from the National Institute for Occupational Safety and Health (NIOSH) and the Agency for Toxic Substances and Disease Registry (ATSDR) regarding the progress of current studies. There will be time for public input, questions, and comments. All agenda items are subject to change as priorities dictate.

Contact persons for additional information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (M/S F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: July 6, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–17899 Filed 7–13–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2244]

Bayer Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bayer Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a terpolymer of styrene, divinyl benzene and ethylvinyl benzene, aminomethylated, then quaternized with methyl chloride as an ion exchange resin for use in treating aqueous solutions of sugar and hydrolyzed starch.

FOR FURTHER INFORMATION CONTACT: Parvin M. Yasaei, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3023.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4677) has been filed by Bayer Corp., 100 Bayer Rd., Pittsburgh, PA 15205, c/o ENVIRON International Corp., 4350 North Fairfax Dr., suite 300, Arlington, VA 22203. The petition proposes to amend the food additive regulations in § 173.25 *Ion-exchange resins* (21 CFR 173.25) to provide for the safe use of a terpolymer of styrene, divinyl benzene and ethylvinylbenzene, aminomethylated, then quaternized with methyl chloride (chemical abstracts name: Benzene, diethenyl-, polymer with ethenylbenzene and ethenylethylbenzene, aminomethylated, chloromethane-quaternized, chloride (CAS Reg. No. 113114–5–9)) as an ion-exchange resin for use in treating aqueous solutions of sugar and hydrolyzed starch.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cummulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 25, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–17821 Filed 7–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2245]

BP Amoco Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BP Amoco Chemicals, Inc. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(oxy[1,1'-biphenyl]-4,4'-diyloxy-1,4-phenylenesulfonyl-1,4-phenylene) prepared by the reaction of biphenol and 4,4'-dichlorodiphenylsulfone as articles or components of articles intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)(21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 9B4672) has been filed by BP Amoco Chemicals, Inc., 28100 Torch Pkwy., Warrenville, IL 60555–4015. The petition proposes to amend the food additive regulations in part 177(21 CFR part 177) by adding a section to provide for the safe use of poly(oxy[1,1'-biphenyl]-4,4'-diyloxy-1,4-phenylenesulfonyl-1,4-phenylene) prepared by the reaction of biphenol and 4,4'-dichlorodiphenylsulfone as articles or components of articles intended for contact with food.

The agency has determined under 21 CFR 25.32(j)that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 25, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–17915 Filed 7–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of the OIG Special Advisory Bulletin on Gainsharing Arrangements and CMPs for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: In its role of identifying and eliminating fraud, waste and abuse in the Department's health care programs, the OIG periodically develops and issues guidance, including Special Fraud Alerts and Advisory Bulletins, to alert and inform health care providers and program beneficiaries about potential problems or areas of special interest. This **Federal Register** notice sets forth the recently-issued OIG Special Advisory Bulletin addressing the civil money penalty (CMP) for hospital payments to physicians as an inducement to reduce or limit services to Medicare or Medicaid beneficiaries, and its application to "gainsharing" arrangements involving hospitals and physicians.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General, (202) 619–1306.

SUPPLEMENTARY INFORMATION:

I. Background

This Special Advisory Bulletin addresses the CMP for hospital payments to physicians to induce reductions or limitations in services to Medicare or Medicaid beneficiaries (section 1128A(b)(1) and (2) of the Social Security Act (the Act)), and its application to "gainsharing" arrangements and potentially to certain other hospital-physician clinical ventures. The OIG has concluded that section 1128A(b)(1) of the Act specifically prohibits any gainsharing arrangements that involve payments by or on behalf of a hospital, directly or indirectly, to induce physicians with clinical care responsibilities to reduce or limit services to Medicare or Medicaid patients.

II. Special Advisory Bulletin: Gainsharing Arrangements and CMPs for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries

A. Introduction

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations and inspections.

The Fraud and Abuse Control Program, established by the Health Insurance Portability and Accountability Act of 1996, authorized the OIG to provide guidance to the health care industry to prevent fraud and abuse, and to promote the highest level of ethical and lawful conduct. To further these goals, the OIG issues Special Advisory Bulletins about industry practices or arrangements that potentially implicate the fraud and abuse authorities subject to enforcement by the OIG.

This Special Advisory Bulletin addresses the application of sections 1128A(b)(1) and (2) of the Social Security Act (the Act) to gainsharing arrangements.[1] The civil money penalty (CMP) set forth in section 1128A(b)(1) of the Act prohibits any hospital or critical access hospital from knowingly making a payment directly or indirectly to a physician as an inducement to reduce or limit services to Medicare or Medicaid beneficiaries under the physician's care.

While the OIG recognizes that appropriately structured gainsharing arrangements may offer significant benefits where there is no adverse impact on the quality of care received by patients, section 1128A(b)(1) of the Act clearly prohibits such arrangements. Moreover, regulatory relief from the CMP prohibition will require statutory authorization.

Some hospitals and physicians may have already implemented programs that involve Medicare or Medicaid beneficiaries. In exercising its enforcement discretion, and in the absence of any evidence that a gainsharing arrangement has violated any other statutes or adversely affected patient care, the OIG will take into consideration whether a gainsharing arrangement was terminated expeditiously following publication of this Bulletin.

B. Prohibition on Hospital Payments to Physicians to Induce Reduction or Limitation of Services

Under section 1128A(b)(1) of the Act, a hospital is prohibited from making a payment, directly or indirectly, to induce a physician to reduce or limit services to Medicare or Medicaid beneficiaries under the physician's direct care. Hospitals that make (and physicians that receive) such payments are liable for CMPs of up to $2,000 per patient covered by the payments (section 1128A(b)(2) of the Act).

The statutory proscription is very broad. The payment need not be tied to an actual diminution in care, so long as the hospital knows that the payment may influence the physician to reduce or limit services to his or her patients. There is no requirement that the prohibited payment be tied to a specific patient or to a reduction in medically necessary care. In short, any hospital incentive plan that encourages physicians through payments to reduce or limit clinical services directly or indirectly violates the statute.

The breadth of the prohibition was intentional. As initially enacted by Congress, section 1128A(b)(1) of the Act prohibited payments by both hospitals and Medicare managed care plans to induce physicians to reduce clinical services.[2] Section 1128A(b)(1) of the Act was subsequently amended to delete the reference to Medicare managed care plans, and to add a new subsection to section 1876 of the Act that permitted

[1] Gainsharing arrangements may also implicate the anti-kickback statute (section 1128B(b) of the Act) and the physician self-referral prohibitions of the Act (section 1876 of the Act).

[2] Section 9313(c) of the Omnibus Budget Reconciliation Act (OBRA) of 1986 (P.L. 99–509).

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Medicare managed care plans to implement physician incentive plans, provided the managed care plan did not induce the reduction of *medically necessary* care to *individual* patients and did not place the physician at substantial financial risk for services not provided by the physician.[3] Further, Congress explicitly gave the Secretary authority to regulate physician incentive plans offered by Medicare risk managed care plans. Because the resulting two provisions address the same issues and were drafted together, the stark difference in otherwise parallel language reflects a congressional decision to prohibit any payment arrangement between hospitals and physicians that is intended to induce a reduction or limitation in services.

This reading of the statute is also consistent with the legislative history surrounding the enactment of section 1128A(b)(1) of the Act. The prohibition was prompted in part by a General Accounting Office (GAO) report for the Chairman of the Subcommittee on Health of the House Ways and Means Committee regarding the physician incentive plans being implemented by hospitals in response to the then-recently enacted diagnostic related group prospective payment system and their potential detrimental effects on quality of care for Medicare patients.[4] The report analyzed four types of hospital-physician incentive plans, of which at least two bear strong similarities, and contain safeguards comparable, to the gainsharing arrangements currently being marketed by the healthcare consulting industry.[5] While the GAO report discussed several features in these plans that reduced the incentive to give substandard care, it concluded that no combination of features could guarantee that such plans would not be subject to abuse.[6]

Congress concurred. The House Committee Report that accompanied the House provision that became section 1128A(b)(1) of the Act stated that "[t]he Committee believes that such incentive payments may create a conflict of interest that may limit the ability of the physician to exercise independent professional judgment in the best interest of his or her patients."[7] In explaining the inclusion of the prohibition in the final budget reconciliation bill that became OBRA 1986, the Chairman of the Subcommittee on Health of the House Ways and Means Committee, who was also a member of the Conference Committee, stated on the floor of the House that:

"[T]he House held firm in its insistence on outlawing certain physician incentive plans. We must not tolerate hospitals paying physicians to reduce or limit services to the elderly."[8]

In sum, we believe that section 1128A(b)(1) of the Act prohibits any hospital payments that induce physicians to reduce or limit clinical services to the physicians' patients.

C. Gainsharing Arrangements

While there is no fixed definition of a "gainsharing" arrangement, the term typically refers to an arrangement in which a hospital gives physicians a percentage share of any reduction in the hospital's costs for patient care attributable in part to the physicians' efforts. In most arrangements, in order to receive any payment, the clinical care must not have been adversely affected as measured by selected quality and performance measures. In addition, many plans require a determination by an independent consultant that the payment represents "fair market value" for the collective physician efforts. Medicare Part B and Medicaid payments to physicians generally are unaffected by a gainsharing arrangement.

Gainsharing arrangements seek to align physician incentives with those of hospitals by offering physicians a share of the hospital's variable cost savings attributable to Medicare and Medicaid reimbursement. Since the institution of the Medicare Part A DRG system of hospital reimbursement and with the growth of managed care, hospitals have experienced significant financial pressures to reduce costs. However, because physicians are paid separately under Medicare Part B and Medicaid, physicians do not have the same incentive to save hospital costs. Gainsharing arrangements are designed to bridge this gap by offering physicians a portion of the hospital's cost savings in exchange for identifying and implementing cost saving strategies.

The OIG recognizes that hospitals have a legitimate interest in enlisting physicians in their efforts to eliminate unnecessary costs. Savings that do not affect the quality of patient care may be generated in many ways, including substituting lower cost but equally effective medical supplies, items or devices; re-engineering hospital surgical and medical procedures; reducing utilization of medically unnecessary ancillary services; and reducing unnecessary lengths of stay. Achieving these savings may require substantial effort on the part of the participating physicians. Obviously, a reduction in health care costs that does not adversely affect the quality of the health care provided to patients is in the best interest of the nation's health care system. Nonetheless, the plain language of section 1128A(b)(1) of the Act prohibits tying the physicians' compensation for such services to reductions or limitations in items or services provided to patients under the physicians' clinical care.

D. Application of Section 1128A(b)(1) of the Act to Gainsharing Arrangements

Gainsharing arrangements that directly or indirectly provide physicians financial incentives to reduce or limit items or services to patients that are under the physicians' clinical care are precisely the kind of physician incentive plans that Congress prohibited when it enacted section 1128A(b)(1) of the Act. The language of the statute, the language of the companion statute on managed care physician incentive plans, and the legislative history compel the conclusion that section 1128A(b)(1) of the Act prohibits any hospital-physician incentive plan that compensates a physician directly or indirectly based on cost savings on items and services furnished to patients under the physician's clinical care. We can perceive no meaningful difference between the kinds of incentive plans proposed in 1986 at the time of enactment of section 1128A(b)(1) of the Act (as reflected in the GAO report) and the variants being promoted by hospitals and health care consultants today.

Moreover, given the clear statutory prohibition on hospital-physician incentive plans, the OIG cannot provide any regulatory relief absent further authorizing legislation. Where Congress intended the Department to regulate physician incentive plans, such as plans offered by risk-based Medicare managed care plans, it did so explicitly. Congress' omission of comparable regulatory authority for the Secretary over hospital-physician incentive plans represents its considered judgment that such plans are flatly prohibited.

We note, however, that hospitals may align incentives with physicians to achieve cost savings through means that do not violate section 1128A(b)(1) of the Act. For example, hospitals and physicians may enter into personal services contracts where hospitals pay physicians based on a fixed fee that is fair market value for services rendered, rather than a percentage of cost savings. Such contracts must meet the requirements of the anti-kickback statute (section 1128B(b) of the Act).

Notwithstanding the statutory prohibition, the OIG has given extensive consideration to whether it would be appropriate to protect individual gainsharing arrangements from OIG administrative sanctions through the issuance of favorable advisory opinions. Based on our review of a number of requests, we have concluded that they contain common elements that preclude our issuance of any favorable opinion. First, to date, the OIG has exercised its discretion to protect various arrangements from sanction only where such arrangements pose a minimal risk of fraud or abuse. By contrast, gainsharing arrangements pose a high risk of abuse. In order to retain or attract high-referring physicians, hospitals will be under pressure from competitors and physicians to increase the percentage of savings shared with the physicians, manipulate the hospital accounts to generate phantom savings, or otherwise game the arrangement to generate income for referring physicians. Given these pressures and the potential adverse impact on patient care from gainsharing arrangements, the OIG believes that immunizing such arrangements from sanction would be imprudent and inappropriate.

Second, gainsharing arrangements will require ongoing oversight both as to quality of care and fraud that is not available through the advisory opinion process. Apart from the potential for fraud and abuse, a critical inquiry is whether the arrangements have adequate and accurate measures of quality of care that would provide assurance that there is no adverse impact on patient care. Based on discussions with experts both within and without the Federal Government, the OIG has determined that any performance measures would require extensive verification through audits or review by an independent party on a continuing basis. The Office of Counsel to the Inspector General, which issues advisory opinions, has neither the resources nor the expertise to police a multitude of such arrangements on an ongoing basis.

Third, case by case determinations by advisory opinions are an inadequate and inequitable substitute for comprehensive and uniform regulation in this area. Were the OIG to issue a favorable opinion to one provider, that provider would have a significant competitive advantage in recruiting and attracting physicians to admit patients to its facility, since the physicians would have the opportunity to earn significant additional income not available at other institutions. The consequences would be that every hospital in the country would request an advisory opinion for its own program, and many would implement their own programs in the hope that their programs were close enough. Given the potentially serious adverse effects on patient care from improperly designed or implemented gainsharing arrangements, regulation of gainsharing arrangements requires clear, uniform, enforceable and independently verifiable standards applicable to all affected providers and not case by case decision-making.

E. Application to Other Arrangements

We are aware of reports that hospitals and physicians are engaging in a number of clinical joint ventures, including both freestanding specialty hospitals (e.g., heart, orthopedic, or maternity hospitals), and arrangements in which a high revenue generating unit or service (e.g., cardiology or cardiac surgery) of an existing hospital is restructured and legally incorporated as a separate hospital.

Typically marketed only to physicians in a position to refer patients to the venture and structured to take advantage of the exception in the physician self-referral law for physician investments in "whole hospitals", these ventures may induce investor-physicians to reduce services to patients through participation in profits generated by cost savings in clinical care. Accordingly, we believe such arrangements may also violate section 1128A(b)(1) of the Act, in at least some circumstances. In addition, such arrangements may implicate the anti-kickback statute (section 1128B(b) of the Act).

F. Conclusion

Absent legislative relief, section 1128A(b)(1) of the Act prohibits any gainsharing arrangements that involve payments by or on behalf of a hospital to physicians with clinical care responsibilities, directly or indirectly, to induce a reduction or limitation of services to Medicare or Medicaid patients. Parties interested in pursuing gainsharing arrangements that are currently prohibited by section 1128A(b)(1) of the Act should seek legislative relief. In the light of reports that some hospitals may already have such arrangements in place, the OIG will, in the absence of any evidence that an arrangement has violated any other statutes or adversely affected patient care, take into consideration in exercising its enforcement discretion whether a gainsharing arrangement was terminated expeditiously following publication of this Bulletin in the **Federal Register**.

Dated: July 6, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99-17889 Filed 7-13-99; 8:45 am]

BILLING CODE 4150-04-P

[3] Sections 4204(a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) (codified at section 1876(i)(8) of the Act).

[4] U.S. General Accounting Office, *Physician Incentive Payments by Hospitals Could Lead to Abuse*, GAO/HRD-86-103 (July 1986).

[5] *Id.* at 14-21.

[6] *Id.* at 23.

[7] H.R. Rep. No. 99-727, at 441 (1986).

[8] 144 Cong. Rec. H11,446 (October 17, 1986).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request, Survey of National Cancer Organizations Served by the NCI Office of Liaison Activities (OLA)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: Title: Survey of National Cancer Organizations Served by the NCI Office of Liaison Activities. Type of Information Collection Request: New. Need and Use of Information Collection: The information to be collected in this survey is of vital importance to the National Cancer Institute's Office of Liaison Activities in determining the communication needs of the national cancer advocacy and voluntary organizations it serves and the desirability and usefulness of NCI's products and services. Information collected in this survey will be used to improve program services and make appropriate programmatic decisions. The respondents are leaders of organizations served by OLA and have a deep commitment to cancer advocacy in areas of cancer prevention, detection, treatment, control, and survivorship. They seek to improve the communication and collaboration between their organizations and the NCI. Frequency of Response: one time. Affected Public: Not-for-profit organizations. Type of Respondents: Organization leaders. The annual reporting burden is as follows: Estimated Number of Respondents: 150; Estimated Number of Responses per Respondent: 1; Average Burden Hours Per Response: .3841 and Estimated Total

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Annual Burden Hours Requested: 57.61. The annualized cost to respondents is estimated at: $1,152.30. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or obtain a copy of the data collection plans and instruments, contact Ms. Kristie Dionne, Program Analyst, Office of Liaison Activities, NCI, NIH, Building 31, Room 10A06, 9000 Rockville Pike, Bethesda, MD 20892–2580, or call non-toll-free number (301) 594–3194 or e-mail your request, including your address, to *liaison@od.nci.nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 2, 1999.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 17927 Filed 7–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The Impact and Costs of Sealants In Young Child Population

SUMMARY: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Dental and Craniofacial Research (NIDCR), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 31, 1999, page 15367, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: The Impact and Costs of Sealants in Young Child Populations.

Type of Information Collection Request: Revision. Need and use of Information Collection; This study will assess the value (costs and effects) of providing dental sealants to the child population with erupted permanent posterior teeth (approximately ages 6–12) under alternative financial support programs in existing oral health care delivery systems and across two socioeconomic groups. The primary objectives of the study are to determine if various levels of dental insurance influence the use of dental sealants, if costs attributable to sealants in a payment program provide value in terms of reduced caries, and if providing dental sealants to specific tooth surfaces of children merits the investment of limited resources within a larger oral health care program. The findings will provide valuable information concerning: 1. Real disease reductions possible using dental sealants for age-appropriate child populations within the existing oral health delivery system, 2. the costs of, and estimated savings from, providing sealants rather than restorative care,and 3. the marginal benefits and cost benefits of adding sealants to "normative" caries prevention efforts in age-appropriate child populations.

Frequency of Response: On occasion. Affected Public: Individuals or Households, Businesses or other For-Profits. Type of respondents: Children, Parents, and Dentists. Estimated Number of Respondents: 1,200. Estimated Number of Responses per Respondent: 1. Average Burden hours per Response: .1200; and Estimated Total Annual Hours Requested: 766. The annualized cost to respondents is estimated at: $964. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The number of required respondents has been reduced significantly due to the proposed modification of the approach to meeting the objectives of the study. Data gathered from approximately 400 children enrolled to date under the study's insurance coverage will be supplemented by administrative data already collected from large numbers of children who are receiving dental care through private insurance, the Children's Health Insurance Program, and Medicaid. No contact with these children is required, and there will be no identifying information in the data obtained. The result of the proposed modification is that the respondent burden for the component of this study that involves direct contact with subjects is reduced substantially. The burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/ response (hour)
Parents	500	4	.125
Children	400	4	.129
Dentists	300	1	.033

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Robert H. Selwitz, Health Policy Analysis and Development Branch, NIDCR, NIH, Natcher Building, Room 3AN–44J, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 594–3977, or e-mail your request, including your address to: Robert.Selwitz@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before August 13, 1999.

Dated: July 7, 1999.

Yvonne H. du Buy,

Executive Officer, NIDCR.

[FR Doc. 99–17926 Filed 7–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing: "Immunotoxin Containing a Disulfide-Stabilized Antibody Fragment Joined to a Pseudomonas Exotoxin that does not Require Proteolytic Activation"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J.R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E-Mail: jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION:

Invention Title: "Immunotoxin Containing a Disulfide-Stabilized Antibody Fragment Joined to a Pseudomonas Exotoxin that does not Require Proteolytic Activation"

Inventors: Drs. Ira H. Pastan (NCI), and Chin-Tsun Kuan (NCI)

DHHS Ref. No. E–163–93/1 & 2 & 3—USPA SN: 08/809,668—Filed August 21, 1997, [=60/005,388—Filed: October 13, 1995, & PCT/US96/16327/WO 97/13529—Filed: October 11, 1996]

Licensing Contract: J.R. Dixon, Ph.D., (301)–496–7056 Ext. 206; E-Mail: jd212g@NIH.GOV

Immunotoxins were initially produced by chemically coupling antibodies to toxins to form chimeric molecules. In these molecules, the antibody portion mediates selective binding to target cells, while the toxin portion mediates translocation into the cytosol and subsequent cell killing. Several toxins have been used to make immunotoxins including ricin A chain, blocked ricin, saporin, pokeweed antiviral protein, diphtheria toxin, and Pseudomonas Exotoxin ("PE").

The technology disclosed in the above mentioned patent application relates to the production and use of Pseudomonas-derived immunotoxins modified to increase their toxicity and potency and therapeutic agents. In particular, the immunotoxins of this invention includes a disulfide-stabilized ("ds") target-binding agent, such as the variable region of an antibody molecule, and a Pseudomonas Exotoxin that does not require proteolytic activation for cytotoxic activity. Specifically, the invention provides for immunotoxins comprising a Pseudomonas Exotoxin that does not require proteolytic activation for cytotoxic activity attached to an Fv antibody fragment having a variable heavy chain region bound through at least one disulfide bond to a variable light chain region. The combination of a "disulfide-stabilized" binding agent fused to a PE that does not require proteolytic activation and provides an immunotoxin having surprising cytotoxic activity.

The above mentioned Invention is available, including any available foreign intellectual property rights, for licensing.

Dated: July 2, 1999.

Jack Spiegel,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–17928 Filed 7–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing: "Methods for Predicting the Efficacy of a Chemotherapeutic Regimen for Gastrointestinal Cancers Using Antibodies Specific for Thymidylate Synthase"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J. R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E-Mail: jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION:

Invention Title: "Methods for Predicting the Efficacy of a Chemotherapeutic Regimen for Gastrointestinal Cancers using Antibodies specific for Thymidylate Synthase"

Inventors: Drs. Patrick G. Johnson (NCI), Edwin R. Fisher (NCI) and Carmen J. Allegra (NCI)

DHHS Ref. No. E–194–95/1 USPA SN: 08/758,034 [= 60/007,825—Filed: December 1, 1995] Filed: November 27, 1996 [E–194–95/1].

Gastric adenocarcinoma is characterized by an extremely virulent behavior and for which mortality approximates the incidence. The vast majority of patients with gastric cancer are diagnosed with advanced stage disease and even after "curative"

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gastrectomy, most will die from recurrent disease. Recently, there has been increasing interest in the use of neoadjuvant or primary chemotherapy, frequently using fluropyrimidine-based combination chemotherapy, in an attempt to increase respectability and improve survival or patients with locally advanced gastric cancer. Neoadjuvant chemotherapeutic treatment provides an early opportunity to assess individual patient response using the in situ primary tumor. Overall response rates in studies using neoadjuvant 5-fluorouracial ("5-FU") based regiments in locally advanced gastric cancer range from 25–45%. Therefore, at least half of all patients treated in this setting are being subjected to unnecessary toxicity and delay in operation with no therapeutic benefit. Strategies that would accurately predict tumor responsiveness to 5-FU therapy would provide an opportunity to selectively treat patients most likely to benefit from treatment and avoid unnecessary toxicity in those who would not.

The '034 invention is directed to methods for determining whether a chemotherapeutic treatment is appropriate for patients afflicted with gastrointestinal cancers, comprising;

a. Obtaining a solid tumor tissue sample from the patient;

b. Measuring a thymidylate synthase expression level in the tissue sample; and

c. Comparing the thymidylate synthase expression level with a group of standard tumor tissue samples, the standards having known thymidylate synthase expression levels and known responses to the chemotherapeutic treatment, to determine if the chemotherapeutic treatment is appropriate for the patient.

The above mentioned Invention is available, including any available foreign intellectual property rights, for licensing.

Dated: July 2, 1999.

Jack Spiegel,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–17929 Filed 7–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Privacy Act of 1974; New System of Records

AGENCY: Program Support Center (PSC), HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the PSC is publishing a notice of a new system of records, 09–40–0013, "PSC Parking Program and PSC Transhare Program Records, HHS/PSC/AOS." We are also proposing routine uses for this new system.

DATES: The PSC invites interested parties to submit comments on the proposed internal and routine uses on or before August 18, 1999. The PSC has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on July 2, 1999. The new system of records will be effective 40 days from the date submitted to OMB unless PSC receives comments which would result in a contrary determination.

ADDRESSES: Address comments to the Privacy Act Officer, Program Support Center, 5600 Fishers Lane, Room 17A–08, Rockville, Maryland 20857. We will make comments received available for public inspection at the above address during normal business hours, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Irene West, Room 17A–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Program Support Center (PSC) proposes to establish a new system of records: 09–40–0013, "PSC Parking Program and PSC Transhare Program Records, HHS/PSC/AQS." This system of records will be used by PSC staff to: (1) Administer the parking program at the Parklawn Building complex; (2) manage the PSC Transhare Program, including receipt and processing of employee applications, and coordination of the fare media distribution to employees; and (3) monitor the use of funds used to support the PSC Transhare Program.

The system will contain records that contain information such as participant's name; pay plan; grade level; employing organization; building and room; duty hours and location; name of supervisor; home address; office telephone number; assigned parking space number; vehicle information, i.e., tag number and State; make and model of car; physician's statement in support of handicapped parking assignments and query to supervisors in support of handicapped parking assignments, where applicable; Transhare commuter card number; commute mode to work; and type of fare media used.

The amount of information recorded on each individual will be only that which is necessary to accomplish the purpose of the system. Each record is established from an application form that has been submitted to the Parking and Information Office, Building Management Branch, Division of Property Management, Administrative Operations Service, PSC, by the applicant.

Authorities: The Federal Property and Administrative Services Act of 1949, as amended; and, Pub. L. 101–509 section 629, as amended, (5 U.S.C. 7905, "Programs to encourage commuting by means other than single-occupancy motor vehicles").

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses proposed for this system are compatible with the stated purposes of the system, i.e., to administer and manage the PSC Parking and Transhare Programs and to monitor the use of funds used to support the PSC Transhare Program.

The PSC will disclose relevant information to third parties outside the Department as follows: Routine use 1: PSC may disclose information from this system of records to city, county, State, and Federal law enforcement agencies should PSC become aware of evidence of a potential violation of civil or criminal law. Routine use 2: Disclosure may be made to a congressional office from the record of an individual upon the written request of the record subject to obtain assistance from his/her congressional representative. Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before HHS. The Member of Congress then writes HHS and HHS must be able to give sufficient information to be responsive to the inquiry. Routine use 3: Disclosure may be made to the Department of Justice, or to a court or other tribunal, in case of litigation where HHS determines that such disclosure is relevant and necessary and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected. Routine use 4: Disclosure may be made to a contractor for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. HHS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HHS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. Routine use 5: Disclosure may be made to officials of labor organizations when relevant and necessary to their duties of exclusive representation concerning practices and matters affecting working conditions. Routine use 6: Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments or utilization review.

SAFEGUARDS:

The PSC has instituted extensive safeguards to protect both the automated and non-automated records. The PSC Systems Security Officer has certified that the safeguards for the system are commensurate with the sensitivity and criticality of the records. The system notice describes: (1) The safeguards that are in effect to ensure that only authorized users have access to the records; (2) the physical security measures used to protect the records; (3) the procedural safeguards to ensure data integrity and prevent unauthorized access and disclosure; and (4) security guidelines for contractors, as applicable.

The system notice is written in the present rather than future tense to avoid the unnecessary expenditure of public funds to republish the notice after the new system becomes effective.

Dated: July 2, 1999.

Lynda M. Regan,

Director, Program Support Center.

09–40–0013

SYSTEM NAME:

PSC Parking Program and PSC Transhare Program Records, HHS/PSC/AOS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Property Management, Administrative Operations Service, Program Support Center, Room 5B–07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current HHS employees and others who use Parklawn Building parking facilities; HHS employees who apply for and participate in the PSC Transhare Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to the administration of the parking permit system and the PSC Transhare Program for the Parklawn Building complex. The records include information such as name; pay plan; grade level; employing organization; building and room; duty hours and location; name of supervisor; home address; office telephone number; assigned parking space number; vehicle information, i.e., tag number and State; make and model of car; physician's statement in support of handicapped parking assignments and query to supervisors in support of handicapped parking assignments, where applicable; Transhare commuter card number, commute mode to work; and type of fare media used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Property and Administrative Services Act of 1949, as amended; and, Pub. L. 101–509 section 629, as amended, (5 U.S.C. 7905, "Programs to encourage commuting by means other than single-occupancy motor vehicles").

PURPOSE(S):

These records are used to:

1. Administer the parking program at the Parklawn Building complex.

2. Manage the PSC Transhare Program, including receipt and processing of employee applications, and coordination of the fare media distribution to employees.

3. Monitor the use of funds used to support the PSC Transhare Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose pertinent information to appropriate city, county, State and Federal law enforcement agencies responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations or orders, when HHS becomes aware of evidence of a potential violation of civil or criminal law.

2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from that congressional office made at the written request of that individual.

3. To disclose information to the Department of Justice, a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tributnal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected.

4. When HHS contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

5. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation, concerning personnel policies, practices, and matters affecting working conditions.

6. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments or utilization review.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, cabinets, on disks and in an automated data base.

RETRIEVABILITY:

These records are retrieved by the name, parking space number, permit number, address, vehicle information and PSC Transhare commuter card number of the individuals on whom they are maintained.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by authorized users who are PSC employees and who are responsible for implementing the program.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours,

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rooms are unlocked but are controlled by on-site personnel.

3. *Procedural and Technical Safeguards:* A password is required to access the terminal, and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users above) protect information from public view and from unauthorized personnel entering an unsupervised office.

4. *Contractor Guidelines.* A contractor who is given records under routine use 4 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

Parking records are maintained for varying periods of time, in accordance with NARA General Records Schedule 11 (parking permits). Disposal of manual records is by shredding; electronic data is erased.

PSC Transhare records are retained for a maximum of two years following the last month of an employee's participation in the PSC Transhare Program. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER(S) AND ADDRESS:

Office Manager, Parking and Information Office, Building Management Branch, Division of Property Management, Administrative Operations Service, PSC, Room 5B–07, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURES:

Same as Access Procedures. The requester is required to specify reasonably the contents of the records being sought.

RECORD ACCESS PROCEDURES:

To determine whether information about themselves is contained in this system, the subject individual should contact the System Manager at the above address. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. Individuals must provide the following information for their records to be located and identified: (a) Full name, (b) parking space number (if appropriate); (c) vehicle license number (if appropriate) and (d) for the PSC Transhare Program, the requester must provide the commuter card number and the dates of participation in the Program. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine. An individual who is the subject of records maintained in this records system may also request an accounting of disclosures that have been made of his or her records.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Records are developed from information supplied by applicants and, for handicapped parking assignments, by physicians and supervisors.

SYSTEM(S) EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–17762 Filed 7–13–99; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Nation Toxicology Program; Meeting

National Toxicology Program Public Meeting to receive comment on the review procedures and listing criteria used in the preparation of the DHHS Report on Carcinogens (RoC); September 15, 1999, Ronald Reagan Building, The International Trade Center, 1300 Pennsylvania Avenue, NW., Horizon Room, Washington, DC, beginning at 9 a.m.

The National Toxicology Program announces a public meeting for the purpose of reviewing nominations for listing in or delisting from the RoC and the current listing criteria used for evaluation of the nominations to the RoC. The purpose of this public meeting is to obtain input and to provide all interested parties an opportunity to express their views about the review process and/or the evaluation criteria and to comment on the views expressed by others.

The meeting will begin at 9 a.m. and will conclude at 5 p.m. or at the conclusion of the public comment and discussion, if sooner. On-site registration will begin at 8:30 a.m. Details regarding registration follow. Attendance at the meeting is limited only by the space available.

Background

The DHHS Report on Carcinogens (RoC) is a public information document prepared for the U.S. Congress by the National Toxicology Program in response to Section 301(b)(4) of the Public Health Service Act, as amended. The intent of the document is to provide a listing of those agents, substances or exposure circumstances which are either "known" or "reasonably anticipated" to cause cancer in humans, and to which a significant number of people in the United States are exposed. The first edition of the report (then known as the Annual Report on Carcinogens) was published in 1980, and similar criteria and review processes were used to consider nominated substances for listing through preparation of the 7th edition published in 1994. In 1994 Dr. Ken Olden, Director of NTP and NIEHS established an ad hoc working group of the NTP Board of Scientific Counselors and charged them to review and make recommendations on two issues: the adequacy of the existing criteria and the incorporation of mechanistic data as part of the criteria for listing substances in future Reports. In addition Dr. Olden directed that the process used to review nominations for listing in or delisting from the Report be revised to allow more public input throughout the process and to add external review to broaden the scope of scientific review. As a consequence, in 1994 and 1995 the criteria were examined by a panel whose membership included academia, industry, labor, public/environmental organizations, state and local health departments and government who met in public session in public meetings. Recommendations were made for revising the listing criteria and the nomination review process which were approved by the Secretary, HHS on September 13, 1996 [**Federal Register:** September 26, 1996, Volume 61, Number 188, Page 50499–50500]. The substances newly included in the 8th edition of the Report on Carcinogens (1998) and the nominations for listing in or delisting from the 9th edition were evaluated using these revised review process and criteria.

Public Review and Comment Encouraged

A panel to include NTP staff and representatives of the NTP Board of Scientific Counselors and the NTP Executive Committee will receive comments and participate in the discussion. NTP staff will summarize the process and the listing criteria. Presentations from the panel will be tentatively from 9–10 a.m. The remainder of the time will be devoted to public comment and discussion.

The NTP welcomes the continued and meaningful input from all stakeholders in reviewing the RoC process and the listing criteria as we move forward to the 10th edition of the RoC. The experience and perspective of all stakeholdres are critical to ongoing evaluations of nominations to the RoC.

Written comments are welcome and can be sent to the address given below. Written comments must include name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any). Comments received by September 15 will be considered for their implications with respect to the reviews of nominations for the 10th edition of the RoC and the December 16–17, 1999, public review.

Oral comments may be presented to the panel described above. Each speaker will be asked to identify their supporting organization (if any). The time allotted for each presentation will be largely dependent upon the number of individuals who register to speak at this one day meeting. Speakers will be registered and assigned time on a first-come, first-served basis. Registration to speak at this meeting will be accepted until the 9 a.m. start of the meeting. It is anticipated that at least 10 minutes will be available for each presenter to address the panel. When oral comments are read from printed copy, it is requested that 10 copies of the text be provided when registering at the meeting to be distributed to the panel members and to supplement the record of the meeting.

RoC Listing/Delisting Procedures and Listing Criteria

The current procedures and listing criteria follow this announcement. Revised criteria were announced first in the **Federal Register** and other publications in 1996 [**Federal Register:** September 26, 1996, Volume 61, Number 188, Page 50499–50500] and clarified in the FR and other publications in April 1999 (FR Vol. 64, No. 63, pp 15983–15984 and Vol. 64, No. 74; pp 19188–19189). The procedures and criteria can also be found on the NTP website located at *www.ntp-server.niehs.nih.gov*

Registration for Meeting

Pre-registration to attend this meeting can be made by notifying Ms. Angie Wilson by mail at NIEHS, Building 101, Room A328, P.O. Box 12233, Research Triangle Park NC 27709, by phone at (919) 541–3971, by FAX at (919) 541–0295, or by e-mail at *wilson9@niehs.nih.gov*. Please indicate if you wish to make an oral presentation. On site registration will be available the morning of September 15, 1999 from 8:30 am to 9:00 am. If possible, those wishing to speak should provide a written copy of their statement before the September 15th meeting, to speak should provide a written copy of their statement before the September 15th meeting, to permit copying for the panel members. Those registering on site are requested to provide 10 copies of their statement for distribution to the panel and to supplement the record of the meeting. Written statements should supplement and may expand on the oral presentation, or may be submitted in lieu of an oral presentation. When registering to comment, please provide your name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any).

Dated: July 1, 1999.

Kenneth Olden,

Director, NTP and NIEHS.

Report on Carcinogens Listing/Delisting Procedures

Petitions for listing or delisting an agent, substance, mixture, or exposure circumstance in the Report on Carcinogens (RoC) should be submitted to the National Toxicology Program (NTP)[1]. Petitions must contain a rationale for listing or delisting as either a "known human carcinogen" or a "reasonably anticipated human carcinogen." Appropriate background information and relevant data (e.g. journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.) which support a petition should be provided or referenced.

An agent, substance, mixture, or exposure circumstance petitioned for listing or delisting will be announced in the **Federal Register**, trade journals, and NTP publications to solicit public comment. The original petition and all comments received will be evaluated by a National Institute of Environmental Health Sciences (NIEHS/NTP) Report on Carcinogens Review Committee (RG1), composed of scientists from the NIEHS/NTP, to determine if the information provided is sufficient to merit further consideration. If it is determined the petition warrants formal consideration, the NTP may initiate an independent search of the literature and prepare a draft review document for the substance under consideration. Draft documents will be prepared according to the following general format:

1.0 Introduction
- 1.1 Chemical Information
  Synonyms, trade names, CAS #'s, molecular formula, molecular structure, etc.
- 1.2 Physical-Chemical Properties
- 1.3 Identification of Structural Analogs

2.0 Exposure Assessment
- 2.1 Production
- 2.2 Use
- 2.3 Environmental Exposure
  Environmental occurrence, environmental release, drinking water and food content, consumer products, occupational exposures, biomarkers of exposure
- 2.4 Regulations
  Occupational Exposure Limits (standards and criteria), "other" standards and criteria

3.0 Human Studies
- 3.1 Epidemiology Studies
  Occupational studies, clinical trials, consumer exposure, other "non-occupational" exposures
- 3.2 Laboratory Studies
  Controlled exposures
- 3.3 Poisonings
  Case reports, accidents, symptoms and clinical signs

4.0 Animal Carcinogenicity Studies
  Subdivided by species

5.0 Genotoxicity

6.0 Mechanistic and Other Relevant Studies

Data used in the preparation of Sections 3 through 6 of the draft document must come from publicly available, peer reviewed sources.

If it is determined that the petition contains insufficient information to warrant consideration by the NTP, it will be returned to the original petitioner who will be invited to resubmit the petition with additional justification, which may include new data, exposure information, etc. A notice, stating the action taken for a petitioned substance found to contain insufficient justification for consideration, will be published in the

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Federal Register, trade journals, and NTP publications, and included in subsequent editions of the RoC with the reason(s) why it was not considered further. This decision will also be forwarded to the NTP Executive Committee and Board of Scientific Counselors.

Formal Review Steps

The following describes the review process for petitions that are considered by the NTP for listing in or delisting from the Report on Carcinogens.

NIEHS/NTP Review Committee for the Report on Carcinogens (RG1)

The original petition and all public comments received in response to a petition will be reviewed by RG1. Assignment of a primary and secondary reviewer will be made upon receipt of a petition. Reviewers will lead discussions concerning the adequacy of the petition. If the petition warrants formal consideration, a search of pertinent databases will be performed and available citations will be reviewed by the primary reviewer. The primary reviewer will identify the relevant articles. After consultation with the secondary reviewer, the identified literature will be obtained and a draft summary of all available information from the original petition and the literature search will be prepared. The primary and secondary reviewers will examine the petition, the literature citations, and the draft document for completeness and adequacy. The draft document will be revised if necessary and presented by the primary reviewer to the RG1. Public comments received in response to announcements of petitions will also be considered. The RG1 will make a formal recommendation for those petitions determined to contain sufficient information for listing or delisting in the RoC. The petition then continues through the review process.

Petitions reviewed by RG1 for which sufficient information could *not* be obtained will not proceed further. The other RoC review groups, as well as the NTP Executive Committee, will be informed of this action. The original petitioner will be notified of the RG1 action and invited to resubmit the petition will additional justification. All petitioned agents, substances, or mixtures reviewed by RG1 but not selected for listing or delisting will be included in the subsequent edition of the RoC with the reason(s) why they were not considered further.

NTP Executive Committee's Interagency Working Group for the Report on Carcinogens (RG2)

The second review phase of petitions will be done by the NTP Executive Committee's Interagency Working Group for the Report on Carcinogens (RG2). RG2 is a Governmental interagency group that assesses whether relevant information on the petitioned agent, substance, or mixture is available and sufficient for listing in or delisting from the RoC. A reviewer for each petition will be assigned from the RG2 who will be responsible for reviewing the draft document and for leading the Working Group's discussion of the petition. Public comments received in response to announcements of petitions will also be considered by RG2 during the review. Upon completion of its review, RG2 will provide comments and recommendations for any changes and/or additions to the draft document and also make its recommendation for listing or delisting. The petition then continues through the review process.

Board of Scientific Counselors RoC Subcommittee (External Peer Review)

The third review phase for petitions will be performed by a subcommittee of the NTP Board of Scientific Counselors. This subcommittee serves as another independent peer review group that assesses whether the relevant information available is sufficient for listing in or delisting. The NTP Board RoC Subcommittee will review petitions in a public meeting. Prior to public review, a notice will be published in the **Federal Register**, trade journals, and NTP publications, soliciting public comment. The notice will also invite interested groups or individuals to submit written comments and/or to address the NTP Board RoC Subcommittee during the review meeting. Reviewers for each petition will be assigned from the NTP Board RoC Subcommittee who will be responsible for reviewing the draft document and leading the subcommittee's discussion of the petition. Upon completion of its review, NTP Board RoC Subcommittee will provide comments and recommendations for any changes and/or additions to the draft document and also make its formal recommendation for listing or delisting the petitioned agent, substance, or mixture.

Upon completion of the reviews by RG1, RG2, and NTP Board RoC Subcommittee, those petitioned agents, substances, mixtures, or exposure circumstance which are recommended for listing in or delisting from the RoC, will be published in the **Federal Register**, trade journals, and NTP publications, and public comment and input on the recommendations will be solicited.

NTP Executive Committee

The independent recommendations of RG1, RG2, and NTP Board RoC Subcommittee and all public comment will be presented to the NTP Executive Committee [2] for review and comment.

NTP Director

The Director, NTP receives the four independent recommendations from RG1, RG2, NTP Board RoC Subcommittee, and the NTP Executive Committee and makes the final decision regarding the proposed listing and/or delisting and submits the RoC to the Office of the Secretary, DHHS. Upon review and approval by the Secretary, DHHS and submission to Congress, a notice of the RoC publication, indicating all newly listed or delisted agents, substances, mixtures, or exposure circumstance will be published in the **Federal Register**, trade journals, and NTP publications.

National Toxicology Program, Report on Carcinogens, P.O. Box 12233, 79 Alexander Drive, Bldg. 4401, Room 3127, MD–EC–14, Research Triangle Park, NC 27709

For information contact: Dr. C.W. Jameson, phone: (919) 541–4096, fax: (919) 541–2242, email: jameson@niehs.nih.gov

Agencies represented on the NTP Executive Committee include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), National Center for Toxicological Research (NCTR), National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), Department of Health and Human Services (DHHS), National Institutes of Health (NIH), National Cancer Institute (NCI), National Library of Medicine (NLM), and National Institute of Environmental Health Sciences/NTP (NIEHS/NTP).

Report on Carcinogens

Criteria for Listing Agents, Substances or Mixtures

1. Known to be Human Carcinogens

There is sufficient evidence of carcinogenicity from studies in humans which indicates a causal relationship between exposure to the agent, substance or mixture and human cancer.

2. Reasonably Anticipated To Be Human Carcinogens

There is limited evidence of carcinogenicity from studies in humans which indicates that causal interpretation is credible but that alternative explanations such as chance, bias or confounding factors could not adequately be excluded; *or*

There is sufficient evidence of carcinogenicity from studies in experimental animals which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors: (1) In multiple species, or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site or type of tumor or age at onset; *or*

There is less than sufficient evidence of carcinogenicity in humans or laboratory animals, however; the agent, substance or mixture belongs to a well defined, structurally-related class of substances whose members are listed in a previous Report on Carcinogens as either a known to be human carcinogen, or reasonably anticipated to be human carcinogen or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

[FR Doc. 99–17930 Filed 7–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Projects for Assistance in Transition from Homelessness (PATH) Annual Report—New

The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.*, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to non-profit private entities (including community-based veterans organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for approval of the annual grantee reporting requirements. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions.

The estimated annual burden for these reporting requirements is summarized below.

Respondent	Number of respondents	Number of responses/respondent	Average burden/response	Total burden hours
States—automated	34	1	26	884
States—hard copy	22	2	28	616
Local provider agencies—automated	213	1	31	6,603
Local provider agencies—hard copy	142	1	24	3,408
Total	411			11,511

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 7, 1999.

Barbara M. Prince,

Acting Executive Officer, SAMHSA.

[FR Doc. 99–17900 Filed 7–13–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4443–N–07]

Notice of Proposed Information Collection for Public Comments, for Family Self-Sufficiency Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

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SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Family Self-Sufficiency Program (FSS).

OMB Control Number: 2577–0178.

Description of the need for the information and proposed use: The FSS Program promotes the development of local strategies that coordinate the use of public housing assistance and assistance under Section 8 rental certificate and voucher programs with public-private resources to enable eligible families to achieve economic independence and self-sufficiency. Housing agencies enter into a Contract of Participation with each eligible family that opts to participate in the program; consult with local officials to develop an Action Plan; and report annually to HUD on implementation of the FSS program.

Agency form numbers, if applicable: Form HUD–52650 and HUD–52652.

Members of affected public: Individuals or households, State or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 50 respondents, annually (Plan), Forms HUD–52650 (10 times a year) and HUD–52652 (50 times a year), 39,000 hours total reporting burden.

Status of the proposed information collection: Extension.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 8, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Family Self-Sufficiency (FSS) Program Contract of Participation

Section 8, Public Housing and Indian Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No 2577-0178 (exp 7/31/99)

This Contract of Participation for the Family Self-Sufficiency (FSS) Program is between _____, Housing Agency (HA), and _____, head of the FSS family

The FSS family includes everyone in the household, and is referred to in this contract as "family".

Type of FSS Program.

The family is a participant in the:(Check only one)

- ☐ Section 8 Rental Certificate or Rental Voucher FSS Program
- ☐ Public Housing FSS Program
- ☐ Indian Housing FSS Program

Purpose of Contract

The purpose of this contract is to state the rights and responsibilities of the family and the HA, the resources and supportive services to be provided to the family, and the activities to be completed by the family.

Term of Contract

This contract will be effective on _____.

This contract will expire on _____.

The HA can extend the term of the contract up to 2 years if the family gives the HA a written request for an extension and the HA finds that good cause exists for the extension.

Resources and Supportive Services

During the term of the contract, the HA will try to provide the resources and services listed in the individual training and services plans. If the resources and services are not available, the HA will try to substitute other resources and services. However, the HA has no liability to the family if the resources and services are not provided.

FSS Escrow Account

The HA will establish an FSS escrow account for the family. A portion of the increases in the family's rent because of increases in earned income will be credited to the FSS escrow account in accordance with HUD requirements.

Listed below are the family's annual income, earned income, and family rent when the family begins the FSS program. These amounts will be used to determine the amount credited to the family's FSS escrow account because of future increases in earned income.

Annual Income $ _____

Earned Income $ _____

Family Rent (Total Tenant Payment or, for rental vouchers, 30% of monthly Adjusted Income)$ _____

The HA will invest the FSS escrow account funds in HUD-approved investments.

The HA will give the family a report on the amount in the family's FSS escrow account at least once a year.

If the family is participating in the Section 8 program and moves outside the HA's jurisdiction under Section 8 portability procedures, the HA may transfer the balance of the family's FSS escrow account to another HA.

Withdrawal of Funds from FSS Escrow Account

The HA may permit the family to withdraw funds from the FSS escrow account before completion of the contract if the family has completed specific interim goals, designated by the HA, and needs some of the FSS escrow account funds to complete the contract (example: to pay for school costs).

The HA will pay the head of the family the amount in the family's FSS escrow account, less any amount owed to the HA, when:

(1) the HA determines that the family has completed this contract, and,

(2) at the time of contract completion, the head of the family provides written certification to the HA that no member of the family is receiving welfare assistance. Welfare assistance means income assistance from Federal or state welfare programs including AFDC, SSI that is subject to an income eligibility test, Medicaid, food stamps, and general assistance. Welfare assistance does not include transitional Medicaid or child care for JOBs participants or SSI payments to guardians of disabled children.

If the head of the family leaves the assisted unit, the remaining family members may, after consulting the HA, name another family member to receive the FSS escrow account funds.

Loss of FSS Escrow Account

The family will not receive the funds in its FSS escrow account if:

(1) the contract of participation is terminated,

(2) the contract of participation is declared null and void; or

(3) the family has not met its family responsibilities within the times specified as stated in this contract.

Family Responsibilities

The head of the family must:

- o Seek and maintain suitable employment after completion of the job training programs listed in the individual training and services plan. The HA, after consulting with the head of the family, will determine what employment is suitable based on the skills, education, and job training of that individual and available job opportunities in the area.

The head of the family and those family members who have decided, with HA agreement, to execute an individual training and services plan, must:

- o Complete the activities within the dates listed in each individual training and services plan.

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- Provide the HA and HUD with information about the family's participation in the FSS program in order to help the HA and HUD evaluate the FSS program. This could include information regarding employment, job interviews, training, educational attendance, and other FSS services and activities.

All family members must:

- Comply with the terms of the lease.
- If receiving welfare assistance, become independent of welfare assistance and remain independent of welfare assistance for at least 12 consecutive months before the contract expires.
- If participating in the Section 8 program, live in the jurisdiction of the HA that enrolled the family in the FSS program at least 12 months from the effective date of this contract and comply with the family obligations under the Section 8 rental certificate or rental voucher program.

Corrective Actions for Failure to meet Family Responsibilities

If any member of the family does not meet his or her responsibilities under this contract, the family will not receive the money in its FSS escrow account and the HA may:

(1) stop supportive services for the family,

(2) terminate the family's participation in the FSS program, and

(3) if the family is participating in the rental certificate or rental voucher program, terminate the Section 8 assistance, when allowed by HUD requirements.

HA Responsibilities

- Attempt to obtain commitments from public and private sources for supportive services for families.
- Establish an FSS escrow account for the family, invest the escrow account funds, and give the family a report on the amount in the FSS escrow account at least once a year.
- Determine which, if any, interim goals must be completed before any FSS escrow funds may be paid to the family; and pay a portion of the FSS escrow account to the family if the HA determines that the family has met these specific interim goals and needs the funds from the FSS escrow account to complete the contract.
- Determine if the family has completed this contract.
- Pay the family the amount in its FSS escrow account, if the family has completed the contract and the head of the family has provided written certification that no member of the family is receiving welfare assistance.

Completion of the Contract of Participation

Completion of the contract occurs when the HA determines that:

(1) the family has fulfilled all of its responsibilities under the contract; or

(2) 30 percent of the family's monthly adjusted income equals or is greater than the Fair Market Rent amount for the unit size for which the family qualifies.

Termination of the Contract of Participation

The HA may terminate this contract if:

(1) the family and the HA agree to terminate the contract;

(2) the HA determines that the family has not fulfilled its responsibilities under this contract;

(3) the family withdraws from the FSS program;

(4) an act occurs that is inconsistent with the purpose of the FSS program; or

(5) the HA is permitted in accordance with HUD requirements.

The HA may declare this contract null and void if the resources and services necessary to complete the contract are not available.

The HA must give a notice of termination or nullification to the head of the family. The notice must state the reasons for the HA decision to terminate or nullify the contract.

If the contract is terminated or declared null and void, the family has no right to receive funds from the family's FSS escrow account. The HA must close the family's FSS escrow account and may use the funds for purposes in accordance with HUD requirements.

If the family is participating in the Section 8 program, the HA will terminate the contract if the family moves outside the HA's jurisdiction under Section 8 portability procedures and enters the FSS program of another HA.

If the family is participating in the Section 8 program, this contract is automatically terminated if the family's section 8 assistance is terminated in accordance with HUD requirements.

Conflict with the Public or Indian Housing Lease

If part of this contract conflicts with the public or Indian housing lease, the lease will prevail.

Compliance with HUD Regulations and Requirements

The contract of participation must be interpreted and administered in accordance with HUD regulations and requirements. Terms and figures, such as the income and rent amount on page 1, are subject to correction by the HA for compliance with HUD regulations and requirements. The HA must notify the family in writing of any adjustments made to the contract.

Signatures:

Family	Housing Agency
_____ (Signature of head of family)	_____ (Name of HA)
_____ (Date Signed)	_____ (Signature of HA Official)
	_____ (Official Title)
	_____ (Date Signed)

Each Housing Agency (HA) must enter into a contract of participation with each eligible family that opts to participate in the FSS program. Each HA must consult with local officials to develop and action plan containing descriptions of the size, characteristics, and needs of the population to be served by its proposed FSS program; the services and activities it will provide; how the program will implemented; the public and private resources through which services and activities will be provided; a time-table for implementation; and other data necessary for HUD to ensure coordinated implementation of program services and activities.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Response to this collection of information is mandatory by law (Section 23 (c) & (g) of the U.S. Housing Act of 1937, as added by Section 554 of the Cranston-Gonzalez National Affordable Housing Act (PL 101-625) for participation in the FSS program.

The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats to ,their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

HA Instructions for Executing the FSS Contract of Participation

Parties to the Contract/Signatures

The head of the participating family must be the adult member of the family who is the head of the household for income eligibility and rent purposes.

Term of Contract

The effective date is the first day of the month following the date the contract was signed by the family and the HA's representative.

The expiration date is five years from the effective date of the contract.

If the HA decides to extend the term of the contract, the original expiration date listed on page one of the contract must be crossed out and the new expiration date added.

If a family moves under Section 8 portability procedures and is going to participate in the receiving HA's FSS program, the effective date of the contract between the family and the receiving HA is the first day of the month following the date the contract was signed by the family and the HA's representative. The expiration date of the contract between the receiving HA and the family must be the same as the expiration date of the contract between the initial HA and the family.

FSS Escrow Account

The income and rent numbers to be inserted on page one may be taken from the amounts on the last reexamination or interim determination before the family's initial participation in the FSS program, unless more than 120 days will pass between the effective date of the reexamination and the effective date of the contract of participation. If it has been more than 120 days, the HA must conduct a new reexamination or interim redetermination.

If a family moves under Section 8 portability procedures and is going to participate in the receiving HA's FSS program, the receiving HA must use the amounts listed for annual income, earned income, and family rent on page one of the contract between the initial HA and the family.

Changes to the Contract

This contract of participation can only be changed to modify the contract term, the head of the family, or the individual training and services plans.

Any change of the head of the family under the contract must be included as an attachment to the contract. The attachment must contain the name of the new designated head of the family, the signatures of the new head of the family and an HA representative, and the date signed.

Any change/s to an individual training and services plan must be included as a revision to the individual training and services plan (attachment) to which the change applies. The revision must include the item changed, signatures of the participant and an HA representative, and the date signed.

For extensions to the contract term, see the "Term of Contract" section.

If, twelve months after the effective date of the contract, a family in the Section 8 FSS program moves outside of the HA's jurisdiction under Section 8 portability procedures, an HA may take one of the following actions:

(1) The initial HA may permit the family to continue to participate in its FSS program, if the family demonstrates to the initial HA's satisfaction that it can meet the family responsibilities of the contract in the new location. In this case, the existing contract remains in effect with no change. The initial HA must transfer the family's FSS escrow account balance when the family is absorbed by the receiving HA.

(2) The receiving HA may permit the family to participate in its FSS program. If so, the initial HA must terminate its contract with the family. The initial HA must also transfer the family's FSS escrow account balance when the family is absorbed by the receiving HA. The receiving HA will execute a new contract with the family.

(3) In cases where the family cannot fulfill its family obligations in the new location, and the receiving HA does not permit the family to participate in its FSS program, the contract between the initial HA and the family shall terminate and the family will lose the funds in its FSS escrow account.

Individual Training and Services Plans

The contract must include an individual training and services plan for the head of the family. Other family members age eighteen and older may choose to execute an individual training and services plan if agreed to by the HA.

The resources and supportive services to be provided to each family member must be listed in the individual training and services plans which are attachments to the contract of participation.

Page one of each participant's individual training and services plan includes space for the final goal and the first interim goal needed to achieve the final goal. The additional pages provide a format for recording each interim goal and specific information related to its achievement. The first page of each participant's plan must be signed by the participant and an HA representative.

Interim goals must be specified along with the activities and services needed to achieve them. For example, a single mother with two children who has an interim goal of completing her secondary education might require several different activities and services to achieve that goal. These could include transportation, tutoring, and child care.

All completion dates included in the individual training and services plan/s must be on or before the contract of participation expires

One of the interim goals for families receiving welfare assistance is to become independent of welfare assistance for at least twelve consecutive months before the end of the contract. Any family that is receiving welfare assistance must have this included as an interim goal in the head of the family's individual training and services plan.

The final goal listed on the individual training and services plan of the head of the family must include getting and maintaining suitable employment specific to that individual's skills, education, job training, and the available job opportunities in the area.

Incentives

If the HA has chosen to offer other incentives in connection with the FSS program, these incentives may be included in the individual training and services plans or as an attachment to this contract.

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Family Self-Sufficiency Program
Individual Training and Services Plan

Attachment _____

Name of Participant | Social Security Number

Final Goal

Interim Goal Number _____

Date Accomplished _____

Activities/Services	Responsible Parties	Date/s

Comments

Signatures

Family	**Housing Agency**
(Participant)	(Signature of HA Representative)
(Date Signed)	(Date Signed)

Previous editions are obsolete | Page 1 of | form **HUD-52650** (12/93) ref. Handbook 7420.8

Family Self-Sufficiency Program
Individual Training and Services Plan

Attachment _____

Name of Participant | Social Security Number

Interim Goal Number _____

Date Accomplished _____

Activities/Services	Responsible Parties	Date/s

Comments

Previous editions are obsolete | Page of | form **HUD-52650** (12/93) ref. Handbook 7420.8

Family Self-Sufficiency Program
Individual Training and Services Plan

Attachment _____

Name of Participant | Social Security Number

Final Goal

Interim Goal Number _____

Date Accomplished _____

Activities/Services	Responsible Parties	Date/s

Comments

Signatures

Family	**Housing Agency**
(Participant)	(Signature of HA Representative)
(Date Signed)	(Date Signed)

Previous editions are obsolete | Page 2 of | form **HUD-52650** (12/93) ref. Handbook 7420.8

Family Self-Sufficiency Program
Individual Training and Services Plan

Attachment _____

Name of Participant | Social Security Number

Interim Goal Number _____

Date Accomplished _____

Activities/Services	Responsible Parties	Date/s

Comments

Previous editions are obsolete | Page of | form **HUD-52650** (12/93) ref. Handbook 7420.8

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Family Self-Sufficiency Program
FSS Escrow Account Credit Worksheet

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0178 (exp. 7/31/99)

Escrow credit must be determined at each reexamination and interim determination occurring after the effective date of the FSS Contract of Participation while the family is participating in the FSS program.

Head of the FSS family	Date
1. Current Annual Income (Enter amount on line 5 of form HUD-50058.)	1.
2. Applicable Lower-Income Limit (Enter the current lower-income limit for the jurisdiction in which the FSS family is living.)	2.
3. Current Adjusted Income (Enter amount on line 10b of form HUD-50058.) **If line 3 is greater than line 2, this family does not qualify for an FSS credit.**	3.
4. Earned income included in line 1 (Add up the income items coded B, M, F, and W in column 3a of form HUD-50058.)	4.
5. Earned income included in Annual Income on effective date of the FSS Contract of Participation. (Enter amount from contract of participation.)	5.
6. Increase in earned income since the effective date of the FSS Contract of Participation. (Subtract line 5 from line 4. If negative, enter 0.)	6.
7. Current Annual Income less increase in earned income since the effective date of the FSS Contract of Participation. (Subtract line 6 from line 1.)	7.
8. Thirty percent of current monthly Adjusted Income (Line 3 divided by 40. The calculated amount should equal the amount on line 11 of form HUD-50058.)	8.
9. Current Adjusted Income less increase in earned income since the effective date of the FSS Contract of Participation. (Subtract line 6 from line 3.)	9.
10. 30% of current monthly Adjusted Income less increase in earned income since the effective date of the FSS Contract of Participation. (Line 9 divided by 40)	10.
11. 10% of current monthly Annual Income less increase in earned income since the effective date of the FSS Contract of Participation. (Line 7 divided by 120)	11.
12. If applicable, welfare rent (enter amount on line 13 of form HUD-50058) or public housing ceiling rent (enter amount on line 16a of form HUD-50058)	12.
13. TTP based on current Annual Income less increase in earned income since effective date of the FSS Contract of Participation. (If rental vouchers, enter the amount on line 10, otherwise, enter the greater of line 10, 11, or 12.)	13.
14. Difference between 30% of current monthly Adjusted Income and TTP adjusted for increases in earned income. (Subtract line 13 from line 8. Enter 0 if negative.)	14.
15. Current TTP (Enter the amount on line 16b of form HUD-50058 or, in the case of rental vouchers, enter the amount on line 8 of this form.)	15.
16. TTP on effective date of the FSS Contract of Participation or, in the case of rental vouchers, 30% of monthly Adjusted Income on effective date of the FSS Contract of Participation. (Enter amount from contract of participation.)	16.
17. Difference between current TTP and TTP on effective date of the FSS Contract of Participation. (Subtract line 16 from line 15. Enter 0 if negative.)	17.
18. Enter the lesser of line 14 or line 17.	18.
19. Applicable Very Low-Income Limit (Enter the current very low-income limit for the jurisdiction in which the FSS family is living.)	19.
20. Amount by which Adjusted Income exceeds the Very Low-Income Limit (Subtract line 19 from line 3.)	20.
21. 30% of the amount by which Adjusted Income exceeds the Very Low-Income Limit (Line 20 divided by 40)	21.
22. Escrow credit (Subtract line 21 from line 18.)	22.

This HUD form is optional and is used here to illustrate the process. PHAs may develop their own FSS Worksheet.

Previous Editions are Obsolete

form **HUD-52652** (12/93)
ref. Handbook 7420.8

Each Housing Agency (HA) must enter into a contract of participation with each eligible family that opts to participate in the FSS program. Each HA must consult with local officials to develop and action plan containing descriptions of the size, characteristics, and needs of the population to be served by its proposed FSS program; the services and activities it will provide; how the program will implemented; the public and private resources through which services and activities will be provided; a time-table for implementation; and other data necessary for HUD to ensure coordinated implementation of program services and activities.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0178), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 .

Do not send this form to the above address.

Response to this collection of information is mandatory by law (Section 23 (c) & (g) of the U.S. Housing Act of 1937, as added by Section 554 of the Cranston-Gonzalez National Affordable Housing Act (PL 101-625) for participation in the FSS program.

The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats to ,their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained.

HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Instructions for Completing the FSS Escrow Account Credit Worksheet

1. An escrow credit must be determined at each reexamination and interim determination occurring after the effective date of the FSS contract of participation while the family is participating in the FSS program.

2. The amount of the escrow credit can be calculated using Form HUD-52652, or another document which incorporates the procedures in Form HUD-52652.

3: The amount of the escrow credit will vary depending on the income level of each FSS family and is based on increases of **earned** income since the effective date of the contract of participation. If the family's adjusted income exceeds the lower-income limit in the jurisdiction in which the FSS family is living (the amount on line 3 is greater than the amount on line 2), the family does not quality for an escrow credit. In such cases, line 4 - line 22 of Form HUD-52652 will not be completed.

Previous Editions are Obsolete

form **HUD-52652** (12/93)
ref. Handbook 7420.8

[FR Doc. 99–17897 Filed 7–13–99; 8:45 am]
BILLING CODE 4210–33–C

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INTER-AMERICAN FOUNDATION

Board Meeting

TIME AND DATE: July 23, 1999, 11:30 a.m.–3:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open session except for the portion specified as closed session as provided in 22 CFR Part 1004.4(f).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the April 21, 1999, Meeting of the Board of Directors
2. President's Report
3. Report on Fiscal Year 1999 Grantmaking Activities
4. Report on Request for Appropriations for Fiscal Year 2000
5. Report on External Affairs Initiative
6. Status Report on the Grant Results Initiative
7. Closed Session To Discuss Personnel Issues. Closed session as provided in 22 CFR Part 1004.4(f).

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 306–4325.

Dated: July 12, 1999.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 99–18053 Filed 7–12–99; 2:35 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Golden-Cheeked Warbler (Dendroica chrysoparia) During Construction of a Single Family Residence on 0.75 acres of the 10.13 Acres on City Park Road in Travis County, Texas

SUMMARY: John and Christine Caster (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–012423–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single family residence on City Park Road, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of whether jeopardy will occur to the species or a Finding of No Significant Impact (FONSI) will not be made until 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 13, 1999.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCPs should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–012423–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: John and Christine Caster plan to construct one single family residence on City Park Road in Austin, Travis County, Texas. This action will eliminate less than one acre of habitat and indirectly impact less than four additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of the golden-cheeked warbler habitat by donating $1,500 into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler and place the remaining balance of the property in a conservation easement in perpetuity.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would increase the impacts.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–17901 Filed 7–13–99; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–99–1310–00]

Price Field Office; Notice of Availability of the Final Environmental Impact Statement and Record of Decision for the Ferron Natural Gas Project

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, a Final Environmental Impact Statement (EIS) and Record of Decision (ROD) have been prepared by the Bureau of Land Management, Price Field Office. The EIS was prepared to analyze impacts of alternatives for a coal bed methane—natural gas development project proposed by Anadarko Petroleum Corporation (Anadarko), Chandler and Associates, LLC (Chandler), Texaco Exploration and Production, Inc (Texaco), and Questar Pipeline Company (Questar). The ROD documents the Bureau of Land Management decision approving development of the Ferron Natural Gas Project located in Carbon and Emery Counties, Utah. The Final EIS and ROD are being released concurrently for review as allowed by 40 CFR 1506.10(b)(2) for agencies that have a formally established appeal process.

DATES: The Final EIS and ROD will be distributed and made available to the public on July 16, 1999. Copies of the Final and ROD will be mailed to individuals, agencies or companies who previously requested copies by responding to an inquiry by the Bureau of Land Management. Parties adversely affected by the Record of Decision have until August 16, 1999, to file a Notice of Appeal in the office issuing this decision (43 CFR 4.411). The decision to allow Anadarko, Chandler, Texaco and Questar to develop oil and gas leases and other related facilities as specified in the ROD will be in full force and effect on August 16, 1999 unless a stay is granted. A petition for a stay of the decision must be filed as specified in 43 CFR 3165.4 and/or 43 CFR 2804.1.

ADDRESSES: Copies of the Final EIS and ROD can be obtained from the Bureau of Land Management Price Field Office, 125 South 600 West, Price, Utah, the Bureau of Land Management, Utah State Office, 324 South State Street, Salt Lake City, Utah or by calling (435) 636–3600 and requesting a copy. The Final EIS and ROD will be available for inspection at the Bureau of Land Management Price Field Office and Utah State Office. Any notice of appeal or petition for stay should be addressed to Sally Wisely, Utah State Director, Bureau of Land Management, P.O. Box 45155, Salt Lake City, UT, 84145–0155.

FOR FURTHER INFORMATION CONTACT: George Diwachak, EIS Team Leader, (801) 539–4043.

SUPPLEMENTARY INFORMATION: The Final EIS analyzes direct, indirect and cumulative impacts from a proposal to develop natural gas from coal seams in the Castle Valley area of Carbon and Emery Counties, Utah. Environmental impacts from the proposed project and alternatives were considered and analyzed in a Draft EIS prepared and released for public review in October 1998. Based on comments received on the DEIS, modifications and revisions were made.

The approved project (Alternative 2, Proposed Action with Environmental Protection Measures) would involve the construction, drilling, completion, and stimulation of approximately 335 natural gas wells drilled into coal beds of the Ferron Formation. Associated access roads, gas and water pipelines, electrical distribution lines, compressor stations, disposal wells and related facilities would also be constructed. A 27 mile long, 20-inch gas transmission line would be constructed to transport produced gas.

The Department of Agriculture, U.S. Forest Service, Manti-La Sal National Forest, participated in the preparation of the EIS as a cooperating agency, as there are FS lands included in the Project Area. The FS is responsible for making a decision on individual drilling and special use permit applications on National Forest lands. The FS will consider a separate Record of Decision for the portions of the Ferron Natural Gas Project within the Manti-La Sal National Forest.

The State of Utah, Division of Oil, Gas, and Mining participated as a cooperating agency to provide technical support during preparation of the EIS.

Dated: July 8, 1999.

Linda Colville,

Acting State Director.

[FR Doc. 99–17902 Filed 7–13–99; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–00]

Recreation Supplementary Regulations in Effect on Public Land Adjacent to the North Fork of the Kaweah River

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rule making.

SUMMARY: The Bureau of Land Management (BLM), Bakersfield (California) Field Office has established the supplementary rules listed below to protect natural resources, prevent wildfires, maintain public health and sanitation, and address occupancy and recreational use of BLM land along the North Fork of the Kaweah River. BLM will also post each supplementary rule near and/or within the lands, sites, or facilities affected.

SUPPLEMENTARY RULES: Pursuant to 43 CFR 8364.1 and 8365.1–6 (Supplementary Rules) the following supplementary rules are in effect on BLM land within Township 16 South, Range 28 East, Sections 13, 23, 24, 26 and 34, Mount Diablo Base and Meridian, under the management of the BLM, Bakersfield Field Office.

A. Camping, parking of vehicles, occupancy or placing private property on BLM land within 500 feet of the North Fork of the Kaweah River or within 200 feet of the North Fork Drive is prohibited between the hours of 9:00 PM to 5:00 AM. However, the Authorized Officer and authorized representatives of the BLM may grant organized groups use of the area consistent with the supplementary regulations listed below.

B. Only portable stoves using gas, jellied petroleum or pressurized liquid fuel or charcoal grills may be used for cooking. Used charcoal may not be dumped or discarded onto the ground or into the river. Campfires, warming or cooking fires using wood, vegetation or any other substance, except as described above, are prohibited. Building, maintaining, attending or using any fire other than the above described stove or grill is prohibited. Fire permits are required at all times. Any emergency fire restriction established by the authorized officer or any government agency of proper jurisdiction will supersede the above upon appropriate signature or required publication.

C. All papers, plastic and paper bags or wrappers must be controlled to prevent their being blown away from the immediate control of their owner. All garbage or food residue such as egg shells, peelings, pits or other waste must be placed in an appropriate container pending proper disposal. Picnic sites must be kept free of refuse. All refuse must be placed into an appropriate container or litter bag pending proper disposal. Refuse means trash, garbage, rubbish, waste papers, empty bottles or cans, debris, litter, oil, solvents, liquid waste, diapers or other items of personal hygiene, or any other discarded materials.

D. The spilling, placing, pumping or other discharge of contaminants, pollutants or other wastes, including human waste, on the ground or into the Kaweah River is prohibited. Used diapers must be placed into an appropriate receptacle as soon as practical and may not be stored or placed within 40 feet of the North Fork of the Kaweah River.

E. The consumption or possession of alcoholic beverages is prohibited on the above defined BLM land. This does not apply to unopened containers in vehicles traveling through BLM land on roads maintained by Tulare County or the State of California.

F. Except for the lawful taking of game, any discharge of firearms is prohibited on the above defined public land. For the purpose of this supplementary rule, a firearm is defined as under Title 18, U.S.C., chapter 44, section 921(a)(3). Federal, State and local law enforcement officers are exempt from this order in the course of their official duties.

G. If you knowingly and willfully violate this supplementary rule, you may be subject to arrest and a fine of not more than $1,000 or imprisonment of not more than 12 months as provided by 43 CFR 8360.0–7.

DATES: The above supplementary rules have been revised following a review of public comment. They will take effect July 14, 1999. These supplementary rules will remain in effect until replaced by a comprehensive Recreation Management Plan for the area.

ADDRESSES: Mail or hand deliver comments to Bureau of Land Management, Bakersfield Office, 3801 Pegasus Drive, Bakersfield, CA 93308; telephone (661) 391–6120.

FOR FURTHER INFORMATION CONTACT: John Hervey at (805) 391–6121 or at the BLM, Bakersfield field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

SUPPLEMENTARY INFORMATION: These supplementary regulations have been effected to curtail the considerable accumulation of refuse and waste on public land adjacent to the North Fork of the Kaweah River. The area receives

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considerable recreational use in limited accessible locations. Public health and safety, sanitation and the pollution of water resources are also of concern.

Public comments following initial publication of these supplementary rules strongly recommended the addition of supplementary rules prohibiting the discharge of firearms for purposes other than the lawful taking of game on the above defined public land. Equestrians, bicycle riders, persons involved in recreational fishing and hiking, and adjacent property owners all requested this change.

Nothing herein is intended to in any way restrict or prevent access to or use of private property within the designated area. Public officers or employees in the performance of their official duties are exempt from these supplementary regulations. These supplementary regulations are not intended to and will not be enforced to hinder or curtail any valid existing right, permit, or authorization. Access and use by owners or legitimate occupants or adjacent private property is permitted at all times. With the exception of supplementary rule E in the above list, these supplementary rules do not apply to individuals involved in the lawful taking of game. These supplementary rules are in conformance with the May 1997 Caliente Resource Management Plan.

Dated: June 15, 1999.

Al Wright,

Acting State Director.

[FR Doc. 99–16295 Filed 7–13–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–09–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Branch of Geographic Services, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 702–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 22, 1999:

The supplemental plat, showing new lottings in the SE¼SW¼, the SW¼SE¼, and the SE¼SE¼ of sec. 8, Township 33 North, Range 70 East, Mount Diablo Meridian, Nevada, was accepted April 19, 1999.

This plat was prepared to meet certain administrative needs of Big Springs Associates and the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on May 20, 1999:

The plat, representing the dependent resurvey of portions of the north and west boundaries and a portion of the subdivisional lines, the subdivision of sections 6 and 7, and a metes-and-bounds survey in section 6, Township 6 South, Range 61 East, Mount Diablo Meridian, Nevada, under Group No. 776, was accepted May 18, 1999.

This survey was executed to meet certain administrative needs of James H. Christianson, Grace K. Christianson, and the Bureau of Land Management.

3. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on June 10, 1999:

The supplemental plat, showing amended lottings in sec. 4, Township 20 North, Range 25 East, Mount Diablo Meridian, Nevada, was accepted June 8, 1999.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on June 24, 1999:

The plat, representing the dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey in section 32, Township 20 South, Range 54 East, Mount Diablo Meridian, Nevada, under Group No. 779, was accepted June 22, 1999.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

5. The above-listed surveys are now the basic records for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 30, 1999.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 99–17876 Filed 7–13–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Change in Noise Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Disposition of Public Comments and Adoption of Final Noise.

Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park

SUMMARY: On January 26, 1999, the National Park Service (NPS) published a Public Notice of agency policy in the **Federal Register** with the above title (64 FR 3969–3972), requesting comments on refinements to NPS' noise evaluation (i.e., impact assessment) methodology for air tour operations over Grand Canyon National Park (GCNP). Specifically, the refinements contemplated a two-zone system for assessing impacts related to substantial restoration of natural quiet at GCNP. In Zone One, which would encompass about one-third of the Park's area, the threshold of noticeability previously used in noise modeling for environmental analyses related to GCNP air tours would continue to be used (i.e., the average A-weighted natural ambient level plus 3 decibels). In Zone Two, which would encompass about two-thirds of the Park's area, the threshold for the onset of impact would be audibility (i.e., the level at which aircraft can begin to be heard by people with normal hearing, determined to be 8 decibels below the average A-weighted natural ambient level at GCNP).

The NPS received 19 comments in response to the Public Notice. Comments were received from industry associations (e.g., United States Air Tour Association, Helicopter Association International, National Air Transportation Association); environmental groups (e.g., Sierra Club, Grand Canyon Trust, Friends of Grand Canyon); air tour operators; representatives of tribal concerns; and the general public. The NPS considered all substantive comments.

DATES: The noise impact assessment methodology presented herein is effective immediately.

FOR FURTHER INFORMATION CONTACT: Tom Hale, National Park Service, Grand Canyon National Park Science Center, 2255 North Gemini Drive, Bldg. 3, Flagstaff, AZ 86001, Telephone (520) 556–7219.

Background

In response to the comments received pursuant to the publication of the NPS Public Notice in the January 26, 1999 **Federal Register** (64 FR 3969–3972), the NPS has attempted to clarify the reasons for and the expected effects of the proposed refinement in the methodology used to assess noise impacts below and in the *Discussion of Comments* to follow.

Reasons for the Proposed Change

This Notice is one of several steps being taken by the Secretary of the Interior, through the NPS, and the Federal Aviation Administration (FAA) to fulfill the mandate established by Congress in Public Law 100–91, the National Parks Overflights Act, to provide for the substantial restoration of natural quiet in the Grand Canyon National Park. Section 3 of the Overflights Act mandated the Secretary of the Interior to submit to the Administrator of the FAA recommendations "regarding actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights." The express statutory goal for these recommendations is the "substantial restoration of natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight." The Overflights Act requires the Administrator to adopt the recommendations of the Secretary of the Interior "without change unless the Administrator determines that implementing the recommendations would adversely affect aviation safety."

Congress did not define natural quiet or substantial restoration of natural quiet in the Overflights Act and, instead, delegated the interpretation of the statute to the Secretary. Under well established rules of statutory construction, the agency's interpretation is given deference so long as it is based on a reasonable construction of the statute. The D.C. Circuit Court of Appeals found that the NPS had reasonable justification for its interpretations of natural quiet and substantial restoration of natural quiet, as set forth in the 1995 Report to Congress and the 1996 FAA Grand Canyon Special Flight Rules Area Final Rule. The court also deferred to the agencies' use of the 3 decibels above natural ambient threshold to assess audibility as consistent with the Act. (See *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455 (D.C. Cir. 1998)).

In its Report to Congress on "Effects of Aircraft Overflights on the National Park System" that stemmed from this public law (published in 1995), the NPS stated:

> Before overflights began, natural quiet existed over most of the park, virtually all of the time. Aircraft sound intrusions are a significant source of mechanical noise that eliminate natural quiet. Since the legislative history of Public Law 100–91 indicates that flight-free zones are to be large areas where visitors can experience the park essentially free from aircraft sound intrusions, and where the sound from aircraft traveling adjacent to the flight-free zone is not *detectable* from most locations within the zone, the primary measure of restoration is the percentage of time that aircraft are *audible*. Based on this definition from the legislative history, the policy decision of Grand Canyon National Park (GCNP) is that a substantial restoration requires that 50% or more of the park achieve "natural quiet [i.e., *no aircraft audible*] for 75–100 percent of the day." (page 182—emphasis added)

From the outset, the consistent policy of the NPS has been that audibility is the basis for assessing progress toward the legislatively mandated goal of substantially restoring natural quiet to the Grand Canyon, and that the time period of interest is the day (i.e., the average 12 daylight hours).

However, in preparation for the 1995 Report and modeling noise impacts, the NPS recognized that aircraft noise management in park environments was an emerging science. The NPS contracted with BBN Systems and Technologies to develop a model which could generate audibility-based metrics. That model became the National Park Service Overflights Decision Support System (NODSS).

Another concern at the time was the reliability of information about the numbers of air tour operations over GCNP (there were no requirements to report such data until 1996). Given the limitations of the data, the NPS and its contractors made a decision to take a very conservative approach to ensure that noise impacts were not overestimated. For that reason, the NPS opted to model noise impacts using "noticeability" as the threshold of impact (for additional information see NPS Responses to Comment # 8, *Audibility and Noticeability* and Comment # 17, *Proposal Conflicts with Definition of Substantial Restoration).* However, the results of this modeling were interpreted with full knowledge that the definition of substantial restoration was based on audibility. Even using the less stringent standard of noticeability, the NPS determined in its 1995 Report that natural quiet had not been substantially restored to GCNP.

The FAA continued this approach when it modified its own INM model for use in the 1996 Environmental Assessment supporting the rules developed for GCNP Special Flight Rules Area (SFRA). Because INM uses only A-weighted sound levels and has no frequency based calculation ability, the threshold used by the NPS and determined from actual Grand Canyon data was translated to an ambient plus 3 decibels threshold for use by the FAA. Again, using a conservative approach, the FAA found that the new rules did not result in the substantial restoration of natural quiet (61 FR 69302–69333).

Since 1996 the agencies have continued to gather additional information and conduct additional research. The NPS and FAA have significantly improved their knowledge and understanding of air tour operations over GCNP as a direct result of the reporting requirements implemented by the 1996 FAA airspace regulation. The NPS has greatly improved its understanding of the natural ambient sound conditions across the Park. Through research, a greater number of ambient sound areas have been identified and the ambient sound levels in each area have been adjusted upwards between 3 and 16 decibels. In addition, NPS acoustic experts have concluded that the most accurate measurements of audibility for models based on A-weighted sound levels is 8 decibels below the average natural ambient. Consequently, the FAA and NPS have been better able to accurately assess the extent of aircraft noise in the park. Based on the more comprehensive data base and understanding of noise impacts on the park, the NPS has appropriately modified and improved its noise impact assessment methodology in GCNP.

Effects of the Proposed Change

The NPS definitions of natural quiet and substantial restoration of natural quiet remain the same. Natural quiet is defined as the natural ambient sound conditions found in the Park. Substantial restoration of natural quiet at GCNP is defined as 50% or more of the Park achieving "natural quiet" (i.e., no aircraft audible) for 75–100 percent of the day. The Notice only has the effect of changing the threshold for measuring the onset of noise impact for certain areas of the Park for noise modeling purposes.

In Zone One, which includes developed areas of the park, the

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threshold for measuring noise will continue to be based on noticeability, 3 decibels above the average natural ambient. NPS believes that using the noticeability threshold in Zone One is appropriate for the activities that occur and characteristics in this area of the park. In Zone Two, the threshold for measuring will be based on audibility, when people can hear aircraft in these areas. Again, because the FAA INM model uses only A-weighted sound levels and has no frequency based calculation, the threshold developed by NPS from actual GCNP data translates to approximately 8 decibels below the average natural ambient. In developing the audibility threshold, the Secretary has exercised his discretion to use the most appropriate measuring methodology which takes into account the resource characteristics in this zone. The thresholds for both Zones One and Two are affected by use of the recently updated average natural ambient sound levels in the respective zones.

These measurements will collectively be used to assess whether natural quiet has been substantially restored to GCNP. NPS's interpretation of modeling results from both zones will take into account that the overall definition of substantial restoration of natural quiet is based on audibility.

The measurements are not "standards" which would prohibit aircraft that generate noise louder than 8 decibels below the average natural ambient from conducting air tours. Neither "audibility" nor "noticeability" are standards for aircraft to meet. They are thresholds for measuring the onset of noise impact.

Discussion of Comments

About one-third of the commenters generally supported the noise impact assessment methodology. Other commenters expressed reservations regarding its validity, applicability, or workability. Still other commenters expressed some level of support for the concept, but rejected the specific threshold levels. Many commenters were critical of the NPS for not providing sufficient discussion of scientific methodology and technical information used in refining the impact assessment methodology. The NPS has provided additional technical information in response to the substantive issues raised by commenters below.

1. Approach and Resolution of Issue

A few comments focused on using a conflict resolution approach to find an acceptable compromise. One commenter indicated that a more productive process would encourage open public deliberation to resolve the conflicting interests at stake. Another commenter urged NPS and FAA to stop the haphazard regulatory approach and seek closure through negotiated settlement.

NPS Response: The FAA and NPS are committed to finding more effective approaches to problem solving in the Grand Canyon. As the NPS and FAA begin to develop a comprehensive noise management plan for GCNP, a forum will be re-established to facilitate discussion among all stakeholders to continue efforts toward consensus-building.

The current action simply takes advantage of better data and experience to update noise impact assessment methodology, allowing more accurate assessment of the onset of impact as previously defined at GCNP. The effects of this action will be apparent in the Draft Supplemental Environmental Assessment for rulemaking actions at Grand Canyon available for public review soon. The FAA rulemaking actions are part of a phased approach to achieve the mandated goal of substantial restoration of natural quiet at GCNP by 2008. The NPS and the FAA welcome suggestions for improvements in ways to achieve that goal. While impact assessment methodology is not normally opened for public review as this action is, the NPS is taking that extra step in this case to ensure open public deliberation in the hope of resolving conflicting interests.

2. Concurrence With Two-Zone System

Several commenters commended the new two-zone geographic system as an improvement over the current system. One commenter wrote that the two-zone geographic system with different noise thresholds appeared to be a long awaited answer to restoring a substantial amount of natural quiet in the Park. Another commenter applauded the NPS for recognizing that its current standard was inconsistent with the Overflights Act, 1994 Report to Congress, and visitor experience. One commenter called the change a welcome, significant, and valuable improvement. Another commenter welcomed NPS' new flexible approach to analyzing noise impacts and agreed that the methodology should take into account the characteristics of specific areas of GCNP. Another also commended the NPS for recognizing that different areas and land uses required distinct standards for measuring noise intrusions and impacts.

NPS Response: The NPS appreciates the positive acknowledgement. Although the NPS believes the proposed change in methodology is a much more realistic and flexible approach to assessing the onset of impacts to natural quiet at GCNP, there is in fact little new in the "new" approach. Audibility (i.e., can aircraft be heard by people with normal hearing) has always been the basis for the definition of substantial restoration of natural quiet and determining whether it has been achieved. Noticeability was used in previous noise modeling for GCNP due to limitations in operations data, ambient sound level data, and the ability of software to manage different impact thresholds. Since that time, software has been improved to address these issues. Results of previous modeling were interpreted with full knowledge that the definition of substantial restoration was based on audibility and that noise modeling used noticeability for impact assessment. Now, with better data available for natural ambient levels as well as when aircraft become audible at GCNP, it is possible to be more accurate and to incorporate the use of audibility for impact assessment. Acknowledging that impact assessment can and should vary across different parts of the Park better aligns park planning in the Grand Canyon with FAA regulatory and noise modeling approaches. In proposing these changes to the noise impact assessment methodology, the NPS attempted to integrate the best acoustic data available with park management policy and FAA noise modeling technology in light of the mandated goal of substantial restoration of natural quiet.

3. Disagreement With Two-Zone System

Commenters claimed that noticeability and audibility could not simultaneously represent the concept of natural quiet and that NPS provided no reason why "natural quiet" should mean different things in different parts of the Park. One of the commenters asserted that NPS reasoning was inconsistent with the "substantial restoration" definition and claimed that the threshold in Zone Two would be exceptionally difficult to attain. The commenter further stated that much of the substantial restoration would likely be achieved in Zone One (noticeability threshold)—a backward result based on NPS' reasoning. The commenter proposed to abandon the two-zone approach and suggested that if there were some parts of the Park that were more noise sensitive (e.g., backcountry), it made sense to identify those critical areas and set standards for them, thereby allowing regulations to directly meet apparent need.

NPS Response: The definitions of "natural quiet" and "substantial restoration of natural quiet" remain unaffected by this action. They remain the same as previously defined, with no differences in any part of the Park.

The concept being proposed simply indicates that the threshold for measuring the onset of impact will vary across the Park for the two zones as described. NPS has made a management decision to use the audibility threshold for measuring in Zone Two. This approach does not set standards for different parts of the Park that industry will be required to meet. For example, aircraft will not be required to meet a "standard" of 8 decibels below the average natural ambient level in Zone 1.

Following the 1996 and 1997 FAA rulemaking actions and environmental assessment, the NPS determined that using a threshold of 3 decibels above the average A-weighted natural ambient level could result in a situation where aircraft could be heard below that threshold as much as 100% of the time, but the noise modeling would show no impact. This result would be possible because the data showed that aircraft can be heard an average of 8 decibels below natural ambient A-weighted sound levels at GCNP. Clearly, this problem was an artifact of the noise modeling threshold and other tools, and the use of single A-weighted decibel values for ambient and aircraft sound levels. This action corrects that potential problem, proposing a more flexible and realistic approach to impact assessment using available modeling tools for the Park as a whole.

As indicated in the Public Notice, it is common to zone areas of National Parks differently for management purposes based on differences in natural and cultural resources, resource protection goals, visitor use, visitor experience goals and opportunities, etc. Because of the varying circumstances affecting these zones, they are managed differently, but for the same ultimate goal. In the context of new ambient sound levels used in modeling and a variety of management actions being proposed, the NPS believes that there will be progress toward the restoration of natural quiet in both zones.

The NPS does not expect to achieve substantial restoration of natural quiet in Zone One, except where Zone One occurs within flight-free zones. Flight-free zones remain the areas where substantial restoration is expected to be achieved. However, by definition, achievement of substantial restoration of natural quiet is calculated on a park-wide basis, not by zones.

4. Noise Threshold for Zone One

Several commenters contended that the Sanup Plateau and Marble Canyon should not be included in Zone One. One commenter submitted that Zone One included many areas that were qualitatively different from one another and did not merit the same treatment. The commenter stated that the areas of the Sanup Plateau, Marble Canyon, Bright Angel Point, and stretches of the South Rim should not use the same noise threshold as the developed South Rim Area and that the NPS should apply the audibility threshold to 99% of the Park, instead of only 67%. In agreement with this point, another commenter asserted that there should be a distinct difference in noise thresholds for developed areas and backcountry/wilderness areas. Another commenter further stated that one-third of the Park (Zone One) should not receive a weaker standard, noting that the Sanup Plateau, Marble Canyon, and North Rim backcountry were all part of NPS' wilderness recommendation because of their wild and pristine qualities. The commenter contended that those areas should receive the highest level of protection. One commenter strongly objected to exempting one-third of the Park from the objective standard of audibility. The commenter claimed there was no scientific justification for this, because Marble Canyon and the Sanup Plateau are among the least developed areas of the Park and are therefore the most noise sensitive. This commenter asserted that use of the noticeability standard was inconsistent with the "wild" and "primitive" designations these areas have in the Backcountry Management Plan. Another commenter wrote that he was disappointed that the NPS was leaving one-third of the Park in a noise sacrifice zone and that inclusion of the Sanup Plateau and Marble Canyon in that zone rested on failures to properly correct existing air tour noise, not on their lack of natural character or pristine quality.

NPS Response: Again, these are not standards to be achieved, but simply points from which the onset of impact will be modeled. They result partially from the need to use single A-weighted decibel values in the noise modeling for GCNP. They are not meant to directly reflect physical properties of the Park's natural environment or of the aircraft flying over the Park.

In the Notice, the NPS stated that there are multiple reasons for including diverse areas within Zone One, and the NPS believes that these remain valid. The Sanup Plateau and Marble Canyon were included in Zone One after consultations with FAA regarding safety considerations. FAA has the sole authority to make safety determinations. The safety measures employed in these areas create the potential for greater noise and NPS has made a management decision to include the Sanup Plateau and Marble Canyon in Zone One. In the event FAA modifies any safety measures in these areas, NPS will revisit their inclusion in Zone One.

Zones do not set standards, zones are in fact described in terms of indicators and standards. A difference in the threshold of impact does not turn Zone One into a noise sacrifice zone. The NPS definition of "substantial restoration of natural quiet" allows for some level of impact in all parts of the Park, and the two-zone impact assessment proposal does not change that. As with most complex management issues, it is easy to generalize the apparent outcome of a given action. Ultimately, the end result relies on the interplay of many variable elements (e.g., impact assessment thresholds, location of air tour routes, natural ambient levels, air tour operation levels). Different combinations of these elements may or may not result in increased noise levels in particular portions of the Park. Substantial restoration is calculated on a park-wide basis, not by zone. Adjusting the thresholds for impact assessment in the two zones is appropriate and consistent with NPS management philosophy.

Respondents will better understand the effect of the thresholds and zones when they see the Supplemental Environmental Assessment for FAA rulemaking actions to be published soon. The NPS and FAA are committed to an adaptive management approach and new comments or criticisms are welcomed at any point.

5. Noise Threshold for Zone Two

One commenter disagreed that a lower threshold (audibility) should be used over areas where the numbers of visitors were very few. Instead, noise should be regulated to benefit the visitor experience. For this reason, the commenter claimed the threshold for Zone Two was illogical.

NPS Response: The NPS does not and cannot regulate national parks solely on the basis of visitor attitudes, annoyance, or experience. The NPS is required by law to preserve park resources in an unimpaired condition for the benefit of present as well as future generations. Where and how to protect park resources and provide various visitor experience opportunities are addressed in park legislation and planning documents that address resource

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protection and visitor services. In this context, the NPS manages park resources to minimize impacts and to ensure that future generations have similar or better opportunities to experience these national treasures. The proposal in this notice is consistent with Park legislation and management plans for the GCNP. The threshold for Zone Two is based upon the NPS definition of substantial restoration of natural quiet, which is based upon audibility (i.e., can a person with normal hearing hear aircraft).

6. Tribal Trust Resources

Regarding the Sanup Plateau, one commenter questioned the Park Service's acceptance of noise generated by tour flights over the Sanup Plateau as inevitable and charged that the FAA and NPS were shirking their responsibility to consider all alternatives to restore natural quiet to the Park, the Grand Canyon, and to protect tribal trust resources.

Related to the issue of zonation and appropriate threshold levels for modeling, the commenter requested standards that accurately reflected uses of tribal lands, similar to the zones and thresholds developed for the GCNP. The commenter asserted that the residential noise threshold of 65 dB(A) was not appropriate for most tribal land uses and that some areas of the Hualapai reservation deserved the stricter standard of 8–12 dB below ambient.

NPS Response: The NPS has authority to establish policy regarding noise impact assessment methodology for Grand Canyon National Park under Section 3 of PL 100–91. For purposes of this notice, PL 100–91 limits the application of the methodology to areas within the boundaries of Grand Canyon National Park. NPS may not exceed its delegated authority and establish similar thresholds for areas of the Hualapai Reservation or other neighboring lands. Regarding the inclusion of the Sanup Plateau in Zone One, please refer back to NPS Response to Comment #4, Noise Threshold for Zone One. As to the use of the residential noise standard, refer back to NPS Response to Comment #3, Disagreement with Two-zone System, which explains that this is not a standard, but rather a way of assessing impacts on GCNP.

7. Ambient Sound Levels

One commenter stated that a fundamental component of the establishment of any threshold sound value keyed to "ambient levels" must be the completion of a scientifically unbiased and methodologically rigorous ambient sound measurement program within the Park. In addition, some commenters pointed out that current data show some areas of the Grand Canyon (and other parks) have ambient levels that are, at times, below the human threshold of hearing. Some commenters were of the opinion that typical daytime, not overall minimum, sound levels should be used to characterize ambient levels.

Regarding the use of ambient levels, a commenter asserted that it was possible to develop effective regulations concerning aircraft overflights of GCNP without reference to ambient sound levels (e.g., routes should stay in areas that have low visitor usage or where natural sounds mask aircraft noise).

NPS Response: The NPS agrees that the data show Grand Canyon to be a very quiet place, with A-weighted natural ambient levels near the threshold of human hearing in many places. In the presence of such quiet natural ambient levels, it is not surprising that aircraft can be heard at A-weighted decibel levels for the aircraft also near the threshold of human hearing. This occurs because the A-weighted decibel level collapses the frequency spectra into a single number. Aircraft noise levels in part of the frequency spectra may be well above the threshold of hearing (and well above the same part of the natural ambient environment's spectra) and still have an A-weighted decibel value at or near the threshold of human hearing. The NPS agrees to further explore the situation where aircraft are audible close to the threshold of human hearing, to see if any additional refinements to this methodology might be warranted in the future development of the comprehensive noise management plan.

The NPS agrees that the best data available on natural ambient sound levels should be used in impact assessment, since hearing aircraft depends upon both the aircraft and the natural ambient sound levels throughout their entire frequency spectra. The NPS has recently updated natural ambient levels used in the noise modeling based upon a recent analysis of the best available data for GCNP. Natural ambient levels vary both over time and from place to place. Currently, the best available A-weighted data have been used to estimate the natural ambient levels in the Canyon.[1] However, in the interest of improving currently available data, the NPS is developing a rigorous data collection program to refine these levels for future use in a comprehensive noise management plan.

All natural ambient sound level values currently being used by GCNP for noise modeling purposes are derived from daytime acoustic measurements. This is consistent with its definition of the substantial restoration of natural quiet (i.e., aircraft not audible in 50 percent of the Park for 75 percent of the *day*).

The resource of natural quiet is not meant to represent the "average" natural ambient sound environment. In the 1994 Report to Congress, the NPS sets forth that "The quiet to be preserved is the lower end of the ambient sound level range that occurs regularly between wind gusts, animal sounds, etc., not just the average sound level." (pg. 83). Further, it states: "In considering natural quiet as a resource, the ability to hear clearly the delicate and quieter intermittent sounds of nature, the ability to experience interludes of extreme quiet for their own sake, and the opportunity to do so for extended periods of time is what natural quiet is all about." (pg. 78, emphasis added).

In terms of protecting park resources, the NPS agrees that it is desirable to place air tour operations over areas with higher natural ambient levels to help minimize impacts of aircraft noise. However, given the NPS' audibility-based definition of the substantial restoration of natural quiet, it is not possible to restore natural quiet without establishing natural ambient levels. Detailed acoustic information on the natural ambient and aircraft noise levels is essential for accurate noise modeling.

8. Audibility and Noticeability

Many commenters expressed opinions about the use of audibility of aircraft as a threshold for evaluating whether natural quiet is substantially restored. While some supported its use as the only "truly scientific standard," others were strongly opposed, stating that the audibility threshold was unreasonably low and that the use of noticeability was a more appropriate threshold. Several commenters preferred the use of noticeability, and one used data from an NPS report.

NPS Response: The NPS has consistently used an audibility-based definition for the "substantial restoration of natural quiet." While it is true that NPS noise modeling in the 1994 Report to Congress used a noticeability threshold (as 10 log d = 17), the modeling results were interpreted with full knowledge that the definition of substantial restoration was based on audibility (see NPS Responses to Comments # 2, Concurrence with Two-zone System and #17, Proposal

Conflicts with Definition of Substantial Restoration). This conservative approach was taken so that noise impacts, based on limited data, were not overestimated. The FAA followed this approach in its 1996 and 1997 GCNP rulemaking. Now, with more accurate data available, including better information on natural ambient sound levels, numbers of air tour operations, etc., it is possible to make the modeling conform better to the NPS definition of substantial restoration of natural quiet by moving to the proposed two zone approach to noise impact assessment.

Because of numerous misperceptions, the following information is provided to clarify the definitions of audibility and noticeability, how they are quantified, and how they relate to the concept of natural quiet. One misperception seems to be that NPS is trying not only to restore natural quiet, but to restore 8 decibels below natural quiet. This is not the case. Natural quiet remains the same as "no aircraft audible" in this context. Due to the nature of A-weighted decibel values, the data indicates that aircraft become audible at GCNP on average at 8 decibels below the ambient A-weighted levels, as explained below. In order to adequately model how much of the time aircraft are audible, the modeling must start measuring the impact of aircraft noise on natural quiet when it first becomes audible (i.e., 8 decibels below the ambient A-weighted level, on average) not at the much higher level called for by the use of noticeability.

Audibility and Hearing Aircraft. In common usage, audibility (also called detectability) refers to the ability of a human, free of external distractions, to hear a specific sound in a particular setting.[2] In this context, the question concerning audibility at GCNP is: Can a person with normal hearing hear aircraft in the presence of the natural ambient Park soundscape? Whether one can hear aircraft noise or not depends on the interplay of several variables including natural ambient level, volume of the sound ("loudness"), and frequency distribution of the sound ("pitch"). The importance of frequency is discussed below. Clearly there are degrees of audibility, from a condition where the sound cannot be heard at all, all the way to where the sound is deafening. For the purposes of this discussion, the sound to be heard will be termed the "target" sound.

The two most important factors affecting audibility of the target sound are the frequency-based sound levels of both the target sound and the ambient or "background" sound. If the two sets of frequencies are similar and completely overlap, the target sound will not be heard. But the less these frequencies overlap, the more audible the target sound will be. With even a few non-overlapping frequencies, the target sound will become audible.

Over the past 30 to 40 years, considerable research has been directed at understanding how humans hear or detect one sound in the presence of another. Listening tests, using a wide variety of specialized sounds have been employed to determine how people process the combined target and background sounds to do the best possible job of hearing and identifying (detecting) the target sound. Three important findings of these tests are: (1) Humans can listen to sound in narrow regions of pitch, called frequency bands, and determine the presence or absence of the target sound separately in each frequency band;[3] (2) there is little variation in detection performance across a population of healthy young adults;[4] and (3) the results of these tests can be reduced to a series of mathematical equations that describe the physiological detection process.[5] Given moderately detailed knowledge of both the target and background sounds, the probability of detecting the target sound can be predicted from these equations.

The ability of humans to listen to sound in frequency bands has significance in many activities. For example, during a concert if we listen for a high note on the piccolo, only the portion of the background sound (e.g., the rest of the orchestra) that is of nearly the same pitch can interfere with our ability to hear the piccolo. The base violins can play as loudly as they like without the piccolo becoming inaudible. On the other hand, loud high notes on the violins could interfere with hearing the piccolo as long as the violins were playing in the same frequency band as the piccolo. Hence, the relative overall "loudness" of the background and the target sounds is not the key factor in the detection process. For a target sound to be audible, it must contain more sound energy (be "louder" than) background sounds in the same frequency band.

The equations that predict when a target sound is audible calculate a metric called "acoustic detectability," abbreviated d (pronounced "dee-prime"). The d calculation is performed in each narrow frequency band (one-third Octave Bands), using both the target and background sounds. The d calculation yields a result in each band; the results from each band are then summed and averaged to yield a composite total.[6] The band or bands with the highest d values are the ones that most influence the result and that are most likely to be audible. In the laboratory setting, a target sound is likely to become audible to trained listeners when the acoustical detectability, in decibels (computed as 10 log d) lies between 3 dB and 5dB.

In the fall of 1989 and spring of 1990, tape recordings were made at 13 different sites in the Grand Canyon. During each recording session, an observer identified air tour aircraft and pressed a button whenever the aircraft could be heard. By using the tape recorded natural ambient sound level information just before each aircraft was audible, and the total level at the onset and offset of observed audibility, the acoustic detectability level (10 log d) was computed for 163 air tour aircraft overflights at 11 of the measurement sites. These computations yielded an average value of 7.3 dB. "The grand average of 10 log d of 7.3 (rounded to 7) can therefore be taken as a typical 10 log d value for a vigilant observer, and thus provides a useable working definition of audibility under field conditions."[7]

From this research and field work, aircraft overflights of the Grand Canyon are judged to be audible when, compared with the local ambient level, the detectability level equals 7 dB or greater. It is important to keep in mind that any determination of audibility depends upon the levels and frequency content of both the aircraft and ambient sounds present at the location under consideration. Hence, to fully determine audibility, both the sound levels of the target sound and of the ambient or background sound must be known as a function of frequency.

Audibility and A-Weighted Sound Levels. In examining the effects of tour operations on 'natural quiet' across a large area, computer modeling is necessary to judge how natural quiet might be substantially restored through changes in airspace use, increased use of quieter aircraft, etc. The most widely used program for analysis of the noise effects of changes in airspace or aircraft operations is the Integrated Noise Model (INM) developed and supported by the FAA. The INM currently uses only "A-weighted" sound levels to compute sound levels and display results.

The A-weighted level of a sound is a single number determined by combining the sound levels in all frequencies. This combining de-emphasizes the low and high frequencies in a manner similar to the sensitivities of human hearing. The A-weighted level is widely accepted as one of the best over-all sound level metrics for analysis of transportation noise. It has been shown to correlate

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well with human assessment of the loudness or noisiness of a sound. It has not, however, been used as a measure for evaluating audibility.

Because it uses only A-weighted sound levels, the INM does not currently compute audibility directly because it contains no frequency based calculation ability. It can, however, compute the time that aircraft sound levels exceed a specific A-weighted threshold. If the threshold can be chosen to be approximately equal to the level at which an aircraft becomes audible, then it can compute, to a reasonable approximation, the time that aircraft sound is predicted to be audible.

This threshold of audibility depends not only upon the sound level of the aircraft, but on the level of the natural ambient as well, so adequate A-weighted approximations of aircraft and natural ambient sound levels must also be provided. Hence, each natural ambient level in the Park requires identification of a different A-weighted audibility threshold. The method used to determine these thresholds is through determining the typical difference between the natural ambient level and the aircraft level at the onset of aircraft audibility.

Five different national park natural ambient spectra and eight different aircraft spectra were examined to determine the differences in the natural ambient and the aircraft A-weighted sound levels when the aircraft spectra were adjusted so that the acoustic detectability (10 log d') equaled 7.[8] Average A-weighted differences between seven non-jet, tour type aircraft and three Grand Canyon ambient environments were computed from these data. (The 117.4 mile camp ambient was omitted because it included higher frequency noise, such as water noise, which affects the ambient A-weighted level, but does not affect aircraft audibility.) From these data, helicopter sound levels were computed to become audible (10 log d' = 7) on average when their A-weighted level was 7.2 dB below the ambient; propeller aircraft become audible when their A-weighted level was 9.5 dB below the ambient, on average. For the noise impact assessment method presented in the **Federal Register** notice, the average of these two of 8.4 dB (or 8 dB) was used as the typical difference between natural ambient and aircraft at onset of audibility.

Noticeability. Several research efforts have addressed the premise that people who are engaged in some activity other than listening may not be aware that a new or intruding sound is present, though it is audible. Three different studies have examined the acoustic detectability of sounds when subjects engaged in a specific task first "notice" the presence of a specific sound.[9] Different types of background sounds were played, and different types of activities were used, such as reading, playing video games, or maintaining a specific speed in an automobile set up to run in place. In general, the target sound needed to be about 10 decibel units above the threshold of audibility for the people in these experiments to take a positive action (such as pushing a button) indicating they had heard the sound.

As noted above, several commenters preferred the use of noticeability, and one used data from an NPS report[10] to determine a noticeability threshold. This method used A-weighted sound level data measured at 13 different sites, and applied what is generally a technically reasonable method to derive a noticeability threshold. Two aspects of this method, however, are inapplicable to this situation and inconsistent with NPS policy. First, audibility (rather than noticeability) is the criterion upon which the definition of substantial restoration of natural quiet at GCNP is based: "substantial restoration requires that 50 percent or more of the Park achieve 'natural quiet' (i.e. no aircraft audible) for 75–100 percent of the day." Second, the resulting threshold from the suggested method is an absolute level (i.e., 30 dB(A)), dependent upon the ambient levels at just the 13 sites, which are not necessarily representative of all ambient environments in the Canyon (see also the NPS Response to Comment #10 below). The NPS approach overcomes these issues by: (1) Using natural ambient levels characteristic of various areas of the Park; and (2) determining the difference between aircraft and ambient A-weighted levels at the onset of audibility.

9. Hearing Aircraft Below Ambient Levels

Some commenters said that hearing an aircraft when its sound level is below the average A-weighted ambient level was not intuitive and made no sense to the lay person.

NPS Response: Although perhaps not intuitive to the lay person, aircraft can be heard when their average A-weighted noise level is below average A-weighted values for the natural ambient. This is because one or more specific aircraft tones are, in fact, louder than ambient tones in the same frequency. This phenomenon is more easily understood using the piccolo example offered previously (see NPS Response to Comment #8, Audibility and Noticeability). This comment may arise from trying to understand audibility strictly through the use of average A-weighted sound levels for the comparison of aircraft and natural ambient sound levels. Since A-weighted levels are computed from all the individual levels at specific frequencies, important information concerning differences in the individual frequency bands is lost.

For example, at the onset of audibility (detectability level = 7 dB), the A-weighted level of a propeller plane measured at Point Imperial (Prop 1[11]) is about 11 dB lower than the Point Imperial ambient A-weighted level. However, in the 125 Hz one-third Octave Band, the sound level of the propeller plane is about 4 dB louder than the ambient level in the band; hence the aircraft is clearly audible to visitors at Point Imperial even though the A-weighted levels would suggest that the aircraft noise is not audible.

In general, for the target sound to be audible in the presence of background sound, the target will either exceed the background level in at least one one-third Octave Band, or be within one or two decibels of the background sound levels in several one-third Octave Bands.[12]

10. Threshold of Impact is 30 dB(A)

Some commenters identified 30 dB(A) [A-weighted average of 30 decibels] as an appropriate threshold for impacts because this level was the approximate average of the level at onset and offset of audibility, as reported in Report NPOA Report No. 93–1.[13] One commenter proposed a method for deriving the threshold of noticeability from these data.

NPS Response: The NPS-determined threshold for impact assessment is audibility or noticeability, depending upon the zone. Although thirty dB(A) may be noticeability for certain natural ambient sound areas, it is not an appropriate threshold of impact assessment for the whole Park. Nor is any other single value an appropriate acoustic threshold for the entire Park. Natural ambient values have been found to vary by vegetation communities, the presence of water-produced sounds from perpetually running water sources, and size and distance from water falls and rapids. Commenters may also have misinterpreted the data in NPOA Report No. 93–1. Specifically, the A-weighted levels reported in Table E–3 of that report are total sound levels, not those produced by aircraft alone. Because the aircraft are audible when their A-weighted level is below the A-weighted natural ambient levels, the onset and offset levels reported are primarily a measure of the average ambient A-weighted levels, not the aircraft levels (as verified by the authors of that report).

11. HMMH Memorandum on A-Weighted Level Differences[14]

In response to requests for additional information from several commenters, the NPS provided copies of a memorandum: "A-weighted Level Differences Compared with Detectability," Memorandum to W. R. Henry, HMMH Job No. 294530.22, May 15, 1997. Several commenters saw no relevance in the information presented in this memorandum, stating that it provided no new information and that it gave only calculations using previous data. Some also commented that it identified thresholds of audibility that were below the human threshold of hearing.

NPS Response: The purpose of the memorandum was to provide: (1) A-weighted differences between measured park environment sound levels and measured aircraft overflight sound levels at the onset of audibility; (2) values of the acoustic detectability level for situations where the aircraft A-weighted sound level is 3 dB greater than the A-weighted park background level. This information was computed from available tape recordings of only park environment sounds (natural ambient) and of only aircraft overflight sounds. All recorded samples used were carefully checked for absence of other non-park, non-aircraft sounds, so that the frequency information analyzed was either pure park environment sound or pure overflight sound. Because the purpose was to determine differences only, only the differences in sound level by frequency band were of interest, not the absolute level of the sounds. Hence, the data of this memorandum should be used only for analysis of differences between sounds, not for determining absolute levels of either the background or of the aircraft.

Because the INM uses A-weighted levels and cannot reproduce the standard calculations to determine onset of audibility, a method was needed to accommodate this limitation. The INM does calculate the time a specific threshold (as an A-weighted level) is exceeded by aircraft sound. The method chosen was to use existing data to compute a typical difference between representative A-weighted national park ambient sound environments and A-weighted aircraft sound levels at the onset of audibility (detectability level = 7 dB) and to compute detectability levels when aircraft A-weighted levels equal ambient A-weighted levels plus 3 dB.

This memorandum used frequency band levels and A-weighted levels tape recorded for five national park environments and eight different aircraft overflights. It computed and provided first the A-weighted differences for all 40 combinations of background and aircraft levels by adjusting the aircraft spectra to yield the onset of audibility (detectability level = 7 dB). At onset of audibility, aircraft A-weighted levels ranged from about 4dB below the ambient to about 22 dB below the ambient. Using just the three most relevant Grand Canyon ambients and the tour type aircraft, the aircraft A-weighted noise level averaged 8 dB below the average A-weighted ambient level (the 117.4 mile camp ambient was omitted because it included higher frequency noises, such as water noise, which affects the ambient A-weighted level, but does not affect aircraft audibility).

Second, the memorandum sought to answer the question: What is the detectability level when aircraft sound is 3dB above the background? This question arose because the FAA's 1996 and 1997 Environmental Assessments used 3 dB above the ambient in the INM modeling as the threshold sound level that indicates when natural quiet is lost. The threshold of audibility occurs at a detectability level (10 log d') of 7 dB; the memorandum shows that the detectability level, when A-weighted aircraft sound is 3 dB greater than the background, averages about 18 dB or about 10 dB higher than the threshold of audibility. In other words, aircraft sound 3 dB above the ambient is approximately equivalent in detectability level to the detectability level needed for people to notice a target sound in the laboratory tests of noticeability.

Finally, it should be emphasized that the information in the memorandum was derived from tape recordings made separately of ambient and of aircraft sounds. The goal, as stated, was to use ambient-only and aircraft-only spectra to conduct the calculations. Thus, there was no need to derive aircraft spectra from recordings made at the on-set of audibility; rather, the aircraft spectra were derived from portions of the recordings when only the aircraft were the dominant source of sound.

12. Use of Attentive Listeners

Some commenters claimed that the use of technicians actively seeking to hear aircraft noise did not reasonably represent the disruption of natural quiet for park visitors and that listening for aircraft was not the same as enjoying natural quiet. Other commenters objected to the use of attentive listeners to determine at what point aircraft could be heard and said that this method was subjective and not associated with what would be considered credible research.

NPS Response: Park visitors sitting quietly and enjoying the natural sounds of the Park are equivalent to technicians actively seeking to hear aircraft noise. The definition of substantial restoration is very clearly based on audibility, not noticeability (see earlier discussion in NPS Response to Comment #8, Audibility and Hearing Aircraft and Noticeability sections). Audibility is the ability of a human with normal hearing, free of external distractions, to hear a specific sound in a particular setting. Noticeability is much more difficult to measure, and much more variable and difficult to reproduce because of the variability of activities people might be engaged in. One of the activities people engage in at the Grand Canyon is sitting quietly and enjoying the natural ambient sound environment—this represents a more stable and reproducible measuring point because it depends on the ambient. Anyone with normal hearing will begin to hear aircraft at very close to the same audibility point (10 log d = 7) given the same ambient level.

13. Laboratory Tests

One commenter suggested that laboratory tests did not necessarily reflect actual audibility in the Grand Canyon.

NPS Response: As discussed in the NPS Response to Comment #8, Audibility and Noticeability, considerable scientific research has developed equations for predicting when a target sound is audible in the presence of background sounds. These equations that compute the audibility metric have been developed from laboratory tests, and relate to human physiology; that is, to basic properties of human hearing, and these properties vary little across a population of healthy young adults.

These equations were then applied to field data, gathered in the Canyon, of some 163 tour aircraft overflights at onset and offset of audibility. The results yielded an average acoustic detectability level of 7 dB which "* * * provides a useable working definition of audibility under field conditions." Hence, the scientific laboratory work determined the basic ability of human hearing to detect one sound in the presence of a second, and the field data provided the value of the

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detectability level that applies to the audibility of tour aircraft at GCNP.

14. NPS Statutory Authority

Some commenters asserted that the NPS' Notice was not authorized by the Overflights Act. One commenter summarized this sentiment as follows: "Continued regulation is unnecessary and illegal if NPS is citing PL 100–91 as its authority to act." The commenter alleged that NPS had discharged its obligation under the act by submission of its original Report to Congress and with the completion of that requirement, NPS' authority under the act was expired.

NPS Response: Section 3 of PL 100–91 authorizes the Secretary to provide continued advice and recommendations to the FAA regarding the interpretation of policy on noise impact assessment. The NPS may issue this guidance to assist the FAA in the development of its regulations. In reviewing the Special Flight Rules in the Vicinity of Grand Canyon National Park, 61 Fed. Reg. 69,302 issued by FAA in December, 1996, the Court of Appeals for the D.C. Circuit upheld NPS's and FAA's pursuit of additional measures to substantially restore natural quiet after NPS submitted its Report to Congress in 1994. (*Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455 (D.C. Cir. 1998).

15. No Need for Further Action

One commenter stated that NPS surveys showed that relatively small percentages of visitors (about 5% for the Grand Canyon) reported annoyance with aircraft noise. The commenter also stated that in 1995, 30 of 5 million visitors complained of aircraft noise and this was attributable to the notion that the current SFAR 50–2 and noise thresholds were working.

Many commenters expressed the opinion that there was no need for this or any other regulatory action, as the substantial restoration of natural quiet had already been achieved under SFAR 50–2 and that the NPS was addressing a problem that did not exist. One commenter wrote that Flight-free zones had already substantially restored natural quiet to the Park. Another commenter recommended that the Public Notice be retracted and that the air tour route structure in SFAR 50–2 be maintained, as it has already achieved substantial restoration.

NPS Response: The NPS protects resources and provides visitor services on the basis of policy, legislation, and careful public planning. The purpose of SFAR 50–2 was to provide for the substantial restoration of natural quiet to Grand Canyon, not low annoyance levels among ground visitors. The NPS agrees that SFAR 50–2 has subsequently been responsible for some increase in the percent of substantial restoration at GCNP and that SFAR 50–2 has certainly benefited the Park. However, substantial restoration of natural quiet is not based on visitor annoyance. It is based on audibility of aircraft. As the Report to Congress clearly states: "When visitors can hear the sound of aircraft, they cannot experience natural quiet." [15] In addition, continuing industry growth results in a perpetual decline in the percent of substantial restoration achieved.

Furthermore, using somewhat different procedures, INM and NODDS each independently indicate that the implementation of SFAR 50–2 has not resulted in substantial restoration of natural quiet (i.e., 50% or more of the Park 75–100% of the day no aircraft audible). Noise measurements confirming that tour aircraft are still clearly audible within the flight-free zones further bear this out. Achieving the mandated goal will require implementation of a variety additional management actions that will contribute to a reduction of air tour-produced noise.

16. Focus on Visitor Experience

One commenter suggested that the NPS had ignored actual visitor experience in developing the new thresholds and indicated that the Overflights Act required that NPS' recommendations to the FAA provide for "substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse affects associated with aircraft overflights." The commenter stated that it did not speak of "substantial restoration of natural quiet" in isolation and that the context clearly stated the purpose of substantial restoration was to reduce the effect of aircraft overflights on disturbing visitors' park experience.

NPS Response: The NPS has not ignored visitor experience in developing its proposed policy. Visitor experience is just one of many factors involved in NPS policy and planning. The NPS manages national parks based on the NPS Organic Act, as amended by the Redwoods Act (16 U.S.C. 1 to 1a–1) individual park legislation, and a variety of park management plans that have gone though extensive public review. These address the most salient resource protection and visitor services in the park.

The commenter is correct that the NPS is required to consider both resources and visitor experiences in managing parks. However, the commenter incorrectly asserts that the phrase applies only to visitor experience; as with virtually everything else in parks, it applies both to resources (i.e., natural quiet) and visitor experience.

17. Proposal Conflicts With Definition of Substantial Restoration

A commenter claimed that the two-zone noise threshold system conflicted with the current definition and interpretation of "substantial restoration." The commenter said that the new noise standard arbitrarily departed from its previously settled definition of "substantial restoration of natural quiet" and asserted that natural quiet was defined as "no more than 3 dB above ambient background noise" in the 1994 Report to Congress.

NPS Response: The two-zone proposal for assessing noise impacts does not conflict with or affect the current definition and interpretation of the "substantial restoration of natural quiet;" it still requires that 50% or more of the Park achieve natural quiet (i.e., no aircraft audible) for 75–100% of the day.[16] The definition of substantial restoration has always been based on audibility, and this is not changed.

However, early in the modeling process, the NPS took a fairly conservative approach in setting an impact threshold for noise modeling used in predicting the achievement of substantial restoration in the Park. This stemmed primarily from having coarse natural ambient levels and limited air tour operations data to work with and was also driven by the inability of INM to calculate audibility directly. The NPS used a conservative metric of 10 log d = 17 (approximating the threshold of noticeability) to make certain that even with limited data, it could be certain that noise impacts were not overestimated. This is the threshold that was used for the modeling in the Report to Congress. However, because INM uses only A-weighted sound levels and has no frequency based calculation ability, the 10 log d = 17 metric used by the NPS was roughly translated to an ambient plus 3 dB threshold for use in the FAA's 1996 Environmental Assessment. The rationale given in the FAA document (page 4–4) for use of the ambient plus 3 dB threshold was that "an aircraft was audible if it increased the ambient noise level by three decibels, the smallest change perceptible to the human ear" (see NPS Responses to Comment #8, Audibility and Noticeability and Comment #11, HMMH Memorandum on A-Weighted Level Differences for additional information).

Now that the GCNP is approaching its goal of substantial restoration of natural quiet and with the availability of more accurate natural ambient and air tour operations data, the NPS is proposing the two-zone approach to further refine its impact assessment methodology to more closely coincide with the audibility-based definition of substantial restoration. This will allow the NPS to be more accurate in determining the level of substantial restoration of natural quiet being achieved at GCNP.

18. Premature Release of Notice

One commenter asserted that the proposal was premature with the ongoing efforts of the FAA to develop Special Flight Rules in the vicinity of GCNP. A commenter also stated that because the Notice did not present the scientific methodology used in deciding the new standard, the Notice should be rescinded or the comment period lengthened so the public would have a chance to review the methodology. Another commenter claimed that the NPS did not fulfill its obligation to ensure an adequate factual basis for rulemaking before implementing a new regulation.

NPS Response: This action is not a regulation; it simply announces a change in impact assessment methodology related to noise modeling at GCNP.

The FAA and NPS are committed to an adaptive management approach as they continue to work cooperatively to develop regulations in a phased manner that assist in meeting the mandated goal of substantial restoration of natural quiet at GCNP. At any appropriate point in this process the agencies must make adjustments to approaches and methodologies where new knowledge or better science make the changes warranted. This change in impact assessment methodology recognizes that different areas of the Park need to be treated differently in impact assessment and represents an effort to bring the current methodology more in line with the goal of substantial restoration, which is based on audibility. The new approach starts measuring aircraft noise and counting it against the substantial restoration goal as soon as aircraft are audible, as the definition requires. Using the former single impact assessment threshold, aircraft could theoretically be audible to ground visitors 100% of the time over 100% of the Park without being counted against the goal.

While NPS did not provide all the details of field data collection, data reduction, and analyses used in the study referred to in the Notice, sufficient information was provided in a reasonably understandable format to adequately describe the purpose and justification for the action. In response to this and similar comments, however, the NPS is providing substantial additional technical detail in this disposition of comments to better portray the justification for changes in the noise impact assessment methodology. The NPS also provided copies of technical memoranda to anyone who requested such additional detailed information during the public comment period. See the NPS Response to Comment #8, *Audibility and Hearing Aircraft*, for a more detailed treatment of methods.

FAA's 1996 EA used the best data and analysis approaches available at that time. However, some of the public comments criticized some of the approaches. Therefore, in consideration of the comments and when it became apparent that additional rulemaking actions and NEPA analysis would be needed to meet the mandate to substantially restore natural quiet to GCNP, the NPS cooperated with the FAA and asked HMMH, Inc. to determine if better approaches or data were currently available that should be used in subsequent analyses. The subsequent HMMH analysis found, using actual Grand Canyon data and the findings of the previous BBN work, that aircraft noise could be heard considerably below the A-weighted ambient levels.[17] Based upon this analysis, and the limits of using A-weighted ambient and aircraft values rather than values based upon frequency spectral characteristics, the NPS subsequently recommended to FAA that the best data available in 1998 indicated that the A-weighted ambient level minus 8dB was the best single A-weighted surrogate for 10 log d = 7 (detectability level at which aircraft can begin to be heard by people with normal hearing) in the Park.

19. Model Validation Study

A few commenters asserted that the noise model validation study currently underway should be completed prior to any additional rulemaking. Supporting this, one commenter wrote that the Notice was prematurely issued and should be withdrawn until the model validation study is completed, as the acoustic modeling upon which it is based has been challenged as bad science.

NPS Response: As noted in the NPS Response to Comment #18, *Premature Release of Notice*, the FAA and NPS are committed to an adaptive management approach as they continue to work cooperatively to develop regulations that assist in meeting the mandated goal of a substantial restoration of natural quiet at GCNP. At appropriate points in this process the agencies will make adjustments to approaches and methodologies where new knowledge or better science make the changes warranted. This will also be true if the FAA–NPS noise model validation study points to the need for further adjustments. Calling it a "validation" study does *not* imply that the current modeling is somehow "invalid." On the contrary, it is the best science available and seems to produce results quite consistent with available data. In this context, "validation" is equivalent to "improvement." As with all scientific modeling, it will improve over time with the addition of new information and research. It is prudent to constantly question methodologies in order to incrementally improve them. It is imprudent, however, to indefinitely delay management efforts with the expectation that methodologies may be perfected.

The Notice proposes one step in the process of assessing the impacts of air tour-produced noise and measuring the relative progress toward the mandated goal of substantial restoration of natural quiet. The step establishes the acoustic thresholds at which air tour-produced noise begins to be counted against the goal using current INM noise modeling technology. These thresholds are critical as inputs used in the noise modeling process. The model validation study may be another important step in strengthening methodologies, to the extent that it may allow the FAA and NPS to more accurately predict noise impacts and monitor the level of substantial restoration in the Grand Canyon. However, since the thresholds proposed are used as inputs for modeling and have no bearing on the internal workings of the models (i.e., the algorithms and assumptions upon which the models are built) that are addressed in the validation study, there is no reasonable basis to postpone implementation of the changes to the assessment process.

20. Rulemaking Process and Public Comment

Some commenters viewed the publication of the Notice as ignoring established rulemaking procedures. One commenter stated that the Notice circumvented any reasonable attempt to

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work with the air tour industry and that it was a clear statement of the Park Service's intention to implement the new noise threshold immediately.

Regarding public involvement, one commenter stated that the NPS has an obligation to explain and make available to the public the research behind the decision. The commenter continued to say that at the very least, the Notice itself should have offered to make this information available to commenters that may have wanted to review it. As previously noted, another commenter suggested that the new noise standard departs from the previously settled definition of "substantial restoration of natural quiet" and that the Notice amends that key statutory definition without opportunity for notice or comment. Further, the commenter submitted that NPS actions require notice and comment rulemaking and reiterated that NPS' own regulations require that actions of a "* * * highly controversial nature, shall be published as rulemaking in the **Federal Register**."

NPS Response: This Notice falls under the interpretive rule and policy statement provisions of the Administrative Procedure Act, 5 U.S.C. 552(a)(D) and is a statement of agency policy. Although not required, the NPS is following the more rigorous notice and comment procedures under 5 U.S.C. 553 to encourage public participation in this Notice. The Notice is an attempt to notify concerned publics that the NPS is refining its methodologies for assessing aircraft noise impacts, an internal policy decision. As explained previously, the Notice does not change the definition of substantial restoration of natural quiet. The NPS has in fact provided notice and the opportunity for public comment, and has considered such comments in this Disposition of Public Comments. As mentioned previously, the effects of these thresholds will be readily apparent in the noise modeling conducted for the supplemental environmental assessment accompanying FAA rulemaking actions that will soon be available for public review. The NPS embraces an adaptive management approach and welcomes any new comments or criticism regarding this methodology.

21. Effect of Proposal on Air Tour Industry

Many commenters from the air tour industry felt that the action was an aggressive move against air tour businesses and that it was not in keeping with the assurances offered by the NPS that it supported the air tour industry at Grand Canyon. One commenter said that implicit in this Notice was that air tours were unwelcome anywhere over the Grand Canyon. Another commented that the Notice was evidence that the public statements made by NPS/DOI in support of the air tour industry were not true. One commenter called the Notice an act of bad faith.

Many commenters were also concerned that the proposed noise thresholds would have substantial impacts on the viability of area air tour businesses. One commenter claimed that if the new noise standard was adopted, commercial air tours in the Grand Canyon would cease. Another commented that imposing these new standards would further restrict already limited aircraft operations and would jeopardize the existence of the areas air tour businesses. Another commenter asserted that this new benchmark would effectively ground every air tour aircraft in service at the Grand Canyon today.

NPS Response: A refinement in the NPS approach to noise impact assessment may have indirect effects on the commercial air tour industry. As was previously mentioned, specific effects rely on the complex interplay of several elements (e.g., impact assessment thresholds, location of air tour routes, sensitive cultural sites, natural ambient levels, air tour operation levels). Different combinations of these elements may make it easier or harder to reach natural quiet in particular areas of the Park. For example, desert scrub areas have been recently reevaluated as having a natural ambient level of 20 dB (an increase of 5 dB, from 15dB). Thus, there would be less noise impacts on desert scrub areas in Zone One (noticeability threshold) than before (i.e., the impact threshold would be 5 dB higher than before). Another simple example: Air tour flights over coniferous forest (with a reassessed natural ambient of 31 dB, from 26 dB) in Zone Two may have a greater impact than before (i.e., the impact threshold would be 6 dB lower than before). However, substantial restoration of natural quiet is calculated for the Park as a whole, not by zones or other discrete areas.

It should be noted that even if increased noise impacts are indicated, the decision regarding what should be done would be addressed through subsequent policymaking. Future effects on the industry is dependent upon other policy decisions that the FAA will make in cooperation with the NPS. The NPS policy that commercial air tours are a part of visitor services at GCNP remains unchanged. The NPS cannot make good management decisions on GCNP noise management and recommend these to the FAA unless it accurately assesses the impact of aircraft noise on GCNP. That is the purpose of the methodological refinements.

The proposal is consistent with recommendations the NPS made in the 1994 Report to Congress and with NPS policies that require the agency to accurately assess impacts in the process of determining management actions. However, there is a difference between accurately assessing impacts and deciding what to do about those impacts. The Public Notice addressed how impacts were to be assessed. It did not set management standards or actions. This change in methodology *does not* require aircraft to be quieter than the noise impact thresholds in order to fly over the Park. It does not restrict air traffic in any way. The thresholds are simply the point at which aircraft noise will begin to be measured against the mandated goal of substantial restoration. This action reflects the obligation NPS has to provide the FAA with the most accurate information possible about impacts on park resources and with recommendations on how to best achieve substantial restoration of natural quiet. Impact assessment is only one of many factors considered in policymaking. The FAA, in cooperation with the NPS, will propose and implement management actions designed to achieve the mandated goal of substantial restoration of natural quiet and allow a safe air tour industry to operate within the context of that legislative mandate. Application of the methodological refinements may, in conjunction with FAA rulemaking, require reductions in operations, changes to routes or other measures to achieve the statutory goal.

22. Need for Economic Analysis

A few commenters pointed out the need for the NPS to consider potential economic impacts on air tour operators as a result of the action. One commenter stated that the NPS is required by the Overflights Act and the Small Business Regulatory Flexibility Act to consider the economic impacts of this action on the small business entities that comprise the air tour industry.

NPS Response: As noted above in the NPS Response to Comment #21, Effect of Proposal on Air Tour Industry, the NPS is providing notice of a policy related to refinements in its noise impact assessment. The Notice, in and of itself, does not prescribe mitigation or management actions that lead to impacts on air tour operators. Neither the Overflights Act, nor the Regulatory Flexibility Act require an economic impact analysis for this Notice.

Economic impacts on the small business entities that comprise the air tour industry will be conducted in any FAA rulemaking actions employing the methodology in this Notice.

23. FAA Authority and Role

Several commenters asserted that through this and other actions the NPS was essentially usurping the FAA's authority to make decisions regarding the use of air space. Commenters contended that by establishing a noise threshold which prohibits aircraft from accessing certain air space the NPS was exercising de facto control over that air space, an authority provided solely to the FAA by Congress. They stated that land management agencies, including the NPS, do not have the jurisdiction, mandate, or expertise needed to safely regulate the use of our nation's air space. Commenters emphasized that the FAA must remain the leader in dealing with all air space issues.

NPS Response: Federal law and Congressional policy mandate that the authority to control the use of our nation's airspace resides solely with the FAA, while the NPS is charged with the management of the natural and cultural resources and values associated with units of the National Park System. Part of the NPS management responsibility is to determine the nature and extent of impacts on parks from all uses of the parks. The noise thresholds proposed in the Public Notice are strictly related to NPS noise impact assessment; they are not directly related to FAA's management authority of the airspace.

The FAA retains its full authority to manage the air space, and in cooperation with the NPS, will continue to consider how to best address these impacts through its rulemaking process. The FAA evaluates all NPS proposals related to GCNP noise management and mitigation, rejecting any that it considers unsafe. The NPS believes that through continued cooperation with the FAA, alternatives that are both safe and sensitive to noise impacts can be developed and implemented.

24. Safety

One commenter was concerned that the action would effectively restrict where operators could fly, resulting in increased congestion and potential adverse impacts on safety. Another commenter expressed that safety should not be forsaken in an effort to reduce sound and that if the NPS changes route structures that result in additional safety risks, they should be prepared to accept responsibility.

NPS Response: Safety issues are of paramount importance to both the FAA and the NPS. The NPS always defers to FAA on all issues associated with aviation safety. Rulemaking for GCNP can only proceed if FAA concludes it to be safe. (See NPS Response to Comment #23, FAA Authority and Role.)

25. Terminology Used in the Notice

Commenters questioned the use of various terms throughout the Public Notice. One commenter suggested that a "day" be defined universally as 24 hours. Another commenter requested consistency in the use of terms to avoid confusion, e.g., what was the difference, if any, between the terms "quiet to be preserved" (as stated in the 1994 Report to Congress) and "average natural ambient" as stated in this Notice. Finally, a few commenters claimed that the action was not a "refinement" of the current methodology, but that it was a departure from "noticeability" to "detectability."

NPS Response: In its definition of substantial restoration, the Report to Congress carefully used the phrase "of the day" rather than "of the time" (an earlier version) to distinguish that it referred to the daylight hours when air tours were flying. For modeling purposes, this refers to the 12 hour time period from 7 AM to 7 PM. Air tour aircraft do not operate at night, so that is how the definition was framed. To change that to a 24 hour period would require a redefinition of "substantial restoration of natural quiet."

In the 1994 Report to Congress "quiet to be preserved" refers to the lower end of the ambient sound level range that occurs regularly between wind gusts, animal sounds, etc., not just the average sound level (pg. 83). The "average natural ambient" in the Notice refers to the average background sound level for a given location, less any mechanical noise from aircraft or other sources. Again, the definitions are not changed by this action.

As has been mentioned previously, these changes are to bring current impact assessment methods more in line with the goal of substantial restoration, which is based on audibility.

26. Refining the Definition of Substantial Restoration of Natural Quiet

Several commenters suggested that the current definition of substantial restoration of natural quiet was not adequate to protect GCNP resources.

NPS Response: Though appreciated, these comments do not directly apply to the refinement of noise impact assessment methodology presented in the Public Notice. The NPS does not currently have any plans to redefine the substantial restoration of natural quiet.

27. Restrictions at Higher Altitudes

One commenter expressed concern that though the current action is focused on air tour operations, noise thresholds could ultimately lead to restrictions at higher altitudes.

NPS Response: No such restrictions are being contemplated. In any case, the GCNP SFRA has an effective ceiling of 17,999 feet MSL.

28. Proposed Wilderness

One commenter suggested that any future actions should speak to the possible enactment of a wilderness area at the Park.

NPS Response: This point is an important one and will be addressed in the development of the comprehensive noise management plan, in light of the Park's General Management Plan and Wilderness and Colorado River Management Plan.

29. Future Studies

A few commenters indicated that future acoustical studies at the Park should use defensible methods and employ peer review to ensure scientific validity.

NPS Response: The NPS concurs. The generation of solid, reliable scientific data is essential to inform sound resource management decisions.

Summary of the Proposal

In summary, the proposal is to refine the current noise impact assessment methodology to incorporate a two-zone geographic system with different noise thresholds applicable to the circumstances of each of the two zones. Zone One would be composed of (1) the developed areas of GCNP as generally identified in GCNP's 1995 General Management Plan (except Tuweep, Phantom Ranch, and the North Rim paved roads), encompassing, on the South Rim, the area from approximately Desert View to Hermits Rest, and, on the North Rim, the developed area on Bright Angel Point; (2) the area of the Park west of Whitmore Rapids, including the Sanup Flight-free Zone; and (3) the Marble Canyon Sector. Zone One comprises approximately one-third of the area of GCNP.

Zone Two would encompass, in a large contiguous area in the center of GCNP, approximately the remaining two-thirds of the Park's area .

Under this proposal, the noise threshold for Zone One is set at 3 decibels above the average natural ambient A-weighted sound levels found to exist in those areas of the Park as determined by previous scientific acoustic measurement studies. This is the same as the single standard used in

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previous assessments (i.e., noticeability). The threshold for Zone Two will be set at 8 decibels below the average natural ambient A-weighted sound levels (i.e., audibility). The noise thresholds will be used in noise modeling for impact assessment to determine the onset of impact to natural quiet at GCNP.

Conclusion

As discussed above, the National Park Service has carefully considered and responded to the comments received on the Public Notice published in the **Federal Register** on January 26, 1999 (64 FR 3969–3972), concerning a change in the noise impact assessment methodology for air tour operations over Grand Canyon National Park. Based on this consideration, and the additional data and experience explained above which led to the Public Notice, the NPS decision is to adopt the proposed noise impact assessment methodology, and to request the FAA to use it for current rulemaking related to GCNP air tour overflight management and mitigation.

Future application of these refinements of the impact assessment methodology in FAA rulemaking measures are likely to make more challenging the agencies' efforts to achieve the substantial restoration of natural quiet. However, the use of the two noise thresholds and two geographic zones will better achieve the preservation of the GCNP resources and visitor experiences the NPS is charged to protect, and be more in line with the definition of substantial restoration of natural quiet.

Robert Stanton,

Director.

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[FR Doc. 99–17907 Filed 7–9–99; 2:30 pm]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from September 13, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* No Agency Form Number (File No. OMB–20). Office of Investigations, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. This information collection is contained in a MOU outlined in proposed rule INS No. 1848–97. The information will be used by the Service to identify those recommended by the state to receive consideration for early release prior to completion of sentence of imprisonment and to determine eligibility in accordance with relevant statute, regulation and policy.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 33,050 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,050 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestion regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center Building, 1001 G Street, NW., Washington, DC 20530.

Dated: July 7, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 17888 Filed 7–13–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: July 21, 1999, U.S. Department of Labor, 2:00 pm–3:30 pm, S–2217, 200 Constitution Ave., NW, Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, D.C. this 8th day of July 1999.

Andrew James Samet,

Deputy Under Secretary International Affairs.

[FR Doc. 99–17896 Filed 7–13–99; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–096)]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: Monday, July 26, 1999, 8:30 a.m. to 5:00 p.m. and Tuesday, July 27, 1999, 8:00 a.m. to 12:00 p.m.

ADDRESSES: Ames Research Center, Building 200, Committee Room, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Pathways to the Future
—Information Technology Presentations
—Technology Implementation at Ames Research Center

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 7, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–17968 Filed 7–13–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–095)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Wednesday, August 4, 1999, 3:00 p.m.–4:30 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National

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Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Discuss the IOR Task Force—Utkin Advisory Expert Council's Joint Final Report on the ISS Phase 1 program.

—Review the status of the fact-finding meetings conducted by the IOR Task Force and the Utkin Advisory Expert Council held May 24–28, 1999, at the Kennedy Space Center, Florida.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: July 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–17967 Filed 7–13–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/ conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Committee on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATES: September 15, 1999, 12:00 noon–1:00 p.m. edt.

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Lois T. Keck, Ph.D., Research Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), lkeck@ncd.gov (e-mail).

Agency Mission

The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meeting/Conference Call

This advisory committee meeting/ conference call of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/ conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 7, 1999.

Ethel D. Briggs,

Executive Director.

[FR Doc. 99–17951 Filed 7–13–99; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

FirstEnergy Nuclear Operating Company

[Docket No. 50–346]

Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by FirstEnergy Nuclear Operating Company (the licensee) to withdraw its September 29, 1995, application for an amendment to Facility Operating License No. NPF–3, issued to the licensee for operation of the Davis-Besse, Unit No. 1, located in Ottawa County, Ohio. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on November 27, 1995 (60 FR 58405).

The purpose of the licensee's amendment request was to revise the Technical Specifications to increase the allowable as-found pressure lift setting tolerance of the two Pressurizer Code Safety Valves.

By letter dated June 7, 1999, the licensee informed the staff that it was withdrawing the license amendment application for further evaluation.

For further details with respect to this action, see the application for amendment dated September 29, 1995, and the letter withdrawing the application dated June 7, 1999. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 8th day of July 1999.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management.

[FR Doc. 99–17920 Filed 7–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 111th meeting on July 19–21, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Monday, July 19, 1999—8:30 a.m. until 6:00 p.m.

Tuesday, July 20, 1999—8:30 a.m. until 6:00 p.m.

Wednesday, July 21, 1999—8:30 a.m. until 4:00 p.m.

The following topics will be discussed:

A. *ACNW Planning and Procedures*—The Committee will hear a briefing from its staff on issues to be covered during this meeting. The Committee will also consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

B. *Risk Communications*—The Committee will continue to prepare for sessions with the local stakeholders to be held this fall in the Las Vegas, Nevada, area.

C. *Revised Design for the Proposed Yucca Mountain Repository*—Representatives from the Department of Energy and its contractor will discuss the license application design selection process and describe the current final revised repository design.

D. *Results of the Arthur Andersen Review of the Division of Waste Management Activities*—The Deputy Director, NMSS, will discuss the results of recent strategic planning activities within the Division of Waste Management and potential impacts on ACNW activities.

E. *DOE Presentation on the Draft Environmental Impact Statement (DEIS) for the Proposed Yucca Mountain Repository*—A DOE representative will discuss the scope of the DEIS and the review process, providing additional background information for the Committee's future comments once the document is made public.

F. *Spent Fuel Project Office (SFPO) Briefing*—A representative of the SFPO will present an update and overview of their activities. Also to be discussed is the relationship of current spent fuel transportation study initiatives to sites such as Yucca Mountain and the Private Fuel Storage facility.

G. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: a White Paper on Repository Design Issues at Yucca Mountain, a White Paper on Near-Field Chemistry issues, a joint ACRS/ACNW letter report on an NMSS approach to risk-informed, performance-based regulation in NMSS and other topics discussed during this and previous meetings as the need arises.

H. *Meeting with the Director, Division of Waste Management*—The Committee will meet with the Director informally to discuss items of mutual interest.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51967). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Associate Director for Technical Support, ACRS/ACNW, Dr. Richard P. Savio, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Associate Director for Technical Support, ACRS/ACNW, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Savio as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Richard P. Savio, Associate Director for Technical Support, ACRS/ACNW (Telephone 301/ 415–7363), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: July 7, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–17973 Filed 7–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 12, 19, 26, and August 2, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 12

Tuesday, July 13

9:30 a.m. Briefing on Treatment of Existing Programs for License Renewal (Public Meeting) (Contact Sam Lee, 301–415–3109)

Thursday, July 15

10:00 a.m. Briefing on Existing Event Response Procedures (Including Federal Response Plan and Coordination of Federal Agencies in Response to Terrorist Activities) (Public Meeting) (Contact Charlie Miller, 301–415–7482)

11:30 a.m. Affirmation Session (Public Meeting) (If needed)

Week of July 19—Tentative

There are no meetings scheduled for the Week of July 19.

Week of July 26—Tentative

Thursday, July 29

2:00 p.m. Briefing on Implementation of the License Termination Rule and Program on Complex Decommissioning Cases (Public Meeting) (Contact: Larry Camper, 301–415–7234)

Friday, July 30

9:30 a.m. Briefing on Performance Assessment Progress in LLW, HLW, and SDMP (Public Meeting) (Contact: Norman Eisenberg, 301–415–7285)

Week of August 2—Tentative

Thursday, August 5

10:00 a.m. Briefing on EEO Program (Public Meeting)

3:30 p.m. Affirmation Session (Public Meeting) (If needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 4–0 on July 7, the Commission determined

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pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "International Uranium (USA) Corporation Envirocare's Appeals of LBP–99–11 and LBP–99–20 (Environcare's Dismissal for Lack of Standing)" (PUBLIC MEETING) be held on July 7, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 9, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–18052 Filed 7–12–99; 1:08 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from June 19, 1999, through July 2, 1999. The last biweekly notice was published on June 30, 1999 (64 FR 35199).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 13, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 15, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications to incorporate the performance-based 10 CFR 50 Appendix J, Option B for Type A tests (containment integrated leakage rate tests). Option B will be implemented for Type A testing in accordance with NRC Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," dated September 1995, and Nuclear Energy Institute (NEI) Guideline 94–01, Revision 0, "Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J," dated July 26, 1995. Type B and C testing (containment penetration leakage tests) will continue to be performed in accordance with 10 CFR 50 Appendix J, Option A.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Harris Nuclear Plant (HNP) Type A testing history provides justification for the proposed test schedule change to one test in a 10 year period. With the successful Type A tests of September 1992 and May 1997, and a greater than 24 month elapsed time between the two tests, CP&L considers the requirement of two consecutive Type A tests to have been met. This testing has affirmed the acceptable reliability of the containment structure to minimize leakage as designed, and provides assurance that its performance to continuously function as designed is not challenged due to this test schedule extensinn to once in 10 years.

This proposed change to revise the test schedule frequency does not impact or alter the design of any system, structure or component. The limit on allowable leakage is not increased. Type A testing provides periodic verification of the leak tight integrity of the containment and the components that penetrate the containment structure. NUREG–1493, Section 10.1.2, "Leakage-Testing Intervals," states that reducing the frequency of Type A tests from the current three per 10 years to one per 20 years was found to lead to an imperceptible increase in risk.

Therefore, based on these considerations, and the previous plant-specific Type A test results, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes only incorporate the performance-based testing approach authorized in 10 CFR 50 Appendix J, Option B, and are justified based on previous plant-specific Type A test results. Plant structures, systems, and components will not be operated in a different manner as a result of these proposed changes and no physical modifications to equipment are involved. The interval extensions allowed by Option B of 10 CFR 50 Appendix J do not have the potential for creating the possibility of a new or different type of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes do not change the allowable leak rate from the containment; they only allow an extension of the interval between the performance of Type A leak rate testing. NUREG–1493 provides the technical basis for the NRC's rulemaking to revise containment leakage testing requirements for nuclear power reactors in 10 CFR 50 Appendix J. NUREG–1493, Section 10.1.2, "Leakage-Testing Intervals," states that increasing the interval between integrated leakage-rate tests is possible with minimal impact on public risk.

Based on these considerations and the previous plant-specific Type A test results, the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

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standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: June 15, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification 4.7.D.6 by replacing the leakage limit of 11.5 standard cubic feet per hour (scfh) for each main steam isolation valve (MSIV) with a limit of 46 scfh on the total combined leakage from all four main steam lines.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the Technical Specifications, Appendix A, modifies the allowed MSIV leakage limit to an aggregate value with no change to the total allowed leakage rate. This change does not affect either the automatic or manual features that would close the MSIVs. Performance of the leakage tests do not adversely affect any accident previously evaluated. Consequently, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The safety function of the MSIVs is to provide a timely steam line isolation to mitigate the release of radioactive steam and limit reactor inventory loss under certain accident and transient conditions. The MSIVs are designed to automatically close whenever plant conditions warrant main steam line isolation. Changing the leakage limits to include an aggregate value does not affect the isolation function. No new equipment will be installed or utilized, and no new operating conditions will be initiated as a result of this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The total allowed leakage rate for all MSIVs remains unchanged at 46 scfh. Therefore, there will be no change in the types or significant increase in the amounts of any effluents released offsite, and, thus, the radiological analyses remain unchanged and within the guidelines of 10 CFR 100 and General Design Criteria 19. Therefore, these changes do not involve a significant reduction in the margin of safety.

Therefore, based upon the above evaluation, ComEd has concluded that these changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: May 19, 1999.

Description of amendment request: The proposed amendments would relocate Technical Specification Section 3/4.4.4, "Chemistry" from the TS to the Updated Final Safety Analysis Report and Administrative Technical Requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes simplify the TS, meet regulatory requirements for relocated TS, and implement the recommendations of the NRC's Final Policy Statement on TS improvements. The Chemistry requirements will be relocated to the Updated Final Safety Analysis Report (UFSAR) and Administrative Technical Requirement that has been incorporated into the UFSAR by reference. Future changes to these requirements will be controlled by 10 CFR 50.59. The proposed changes are administrative in nature and do not involve any modification to any plant equipment or affect plant operation. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any previously evaluated accident.

Consequently, this proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature, do not involve any physical alterations to any plant equipment, and cause no change in the method by which any safety related system performs its function. Therefore, this proposed TS amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed amendment represents the relocation of current requirements that are based on generic guidance or previously approved provisions for other stations. The proposed changes are administrative in nature and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The proposed changes have been evaluated and found to be acceptable for use at Duane Arnold Energy Center and Quad Cities Nuclear Power Station. Since the proposed changes are administrative in nature, and are based on NRC accepted provisions which have been adopted at other nuclear facilities, and maintain the necessary levels of system reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 3, 1999.

Description of amendment request: The proposed amendment would delete sections of the Technical Specifications that no longer apply to the Haddam Neck Plant's permanently shutdown and defueled condition; increase the weight of loads allowed over the spent fuel pool; relocate certain definitions and requirements from the Technical Specifications to the Technical Requirements Manual (TRM), Connecticut Yankee Quality Assurance Program (CYQAP), or the Radiological Effluent Monitoring and Offsite Dose Calculation Manual (REMODCM); and correct typographical errors, renumber sections, and repaginate the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee's summary of its analysis is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the present plant configuration, the reactor-related accidents previously evaluated (i.e., LOCA [loss-of-coolant accident], MSLB [main steamline break], etc.) are no longer possible. The accidents previously evaluated that are still applicable to the plant are fuel handling accidents and gaseous and liquid radioactive releases. The following events are presently considered as bounding of all other events:

—Fuel handling and cask drop accidents in the spent fuel building,
—Criticality in the spent fuel pool,
—Loss of spent fuel cooling,
—Resin fire (gaseous release), and
—Rupture of a tank containing radioactive liquid.

There is no significant increase in the probability of a fuel handling accident since refueling operations have ceased, with a corresponding decrease in the frequency of fuel movement. The radiological consequences of a fuel handling accident, should one occur, decrease the longer the spent fuel is allowed to decay. As discussed previously, the spent fuel inventory of radioactive iodine and noble gases [, with the exception of Kr–85,] have decayed more than 20 half-lives since shutdown and are no longer a release concern. With this reduced source the results of the fuel handling accident show that the filters of Specification 3.9.12 are no longer necessary. The allowed weight over the spent fuel pool is still less than that previously [evaluated]. Therefore, there has been no increase in the probability or consequences of a fuel handling or cask drop accident.

Criticality controls are imposed by specifications 3/4.9.13 and 3/4.9.14 * * * [The requirements of these specifications have not been changed.] Therefore, there has been no increase in the probability or consequences of a criticality event.

Spent fuel cooling is maintained by keeping the pool temperature below 150°F. Should normal cooling be lost, the availability of an abundant supply of water ensures that sufficient time is available prior to boiling to restore cooling. This is controlled by specifications 3/4.9.11 and 3/4.9.16 * * * [The requirements of these specifications have not been changed. Technical specification 3/4.9.15 does not apply to the permanently defueled condition of the plant. Therefore, there has been no increase in the probability or consequences of a loss of cooling event.]

The probability of a gaseous or liquid radioactive release is not changed by the proposed revisions. As the plant undergoes decommissioning, the previous limiting events [such as a loss-of-coolant-accident] are no longer applicable, and previous non-limiting events [such as a resin fire] now become limiting. These * * * events have not changed from how they might have occurred in the past. The radiological consequences of a gaseous or liquid radioactive release are bounded by the fuel handling accident during defueled operation and a spent resin fire during processing of resin from the reactor coolant system decontamination. The rupture of a tank containing radioactive liquid was assessed and found to be bounded by these events. With the plant defueled and permanently shutdown, the demands on the radwaste systems are lessened since no new radioisotopes are being generated by irradiation or fission. Therefore, there is no increase in the probability or consequences of a gaseous or liquid radioactive release.

* * * * *

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are generally of an administrative nature and do not have an effect on the physical plant. The events considered bound other potential events and are considered the limiting cases for potential gaseous or liquid releases to the environment.

With the plant undergoing decommissioning, the types of accidents one might be concerned with involve criticality of the spent fuel, or draining of the spent fuel pool. None of the proposed changes affect the possibility of such an event. Also, none of the proposed changes could lead to a radiological release of a greater magnitude than for the events considered, such as might occur with the accumulation of a greater quantity of radioactive material in one location, or with damage to a greater number of fuel assemblies than considered in the fuel handling accident.

The proposed changes restrict the operations that can be conducted at the plant, and do not permit any new type of activity from what had previously been authorized. The effect on systems, structures and components affected by the proposed changes have no adverse impact on the storage of fuel nor on the processing of radioactive wastes presently at the site. The present set of limiting events are a subset of events previously considered. Therefore these changes do not create the possibility of a new or different kind of accident from any accident previously considered.

* * * * *

3. Involve a significant reduction in a margin of safety.

The proposed changes have no impact on the analyses of postulated design basis events remaining applicable to the Haddam Neck Plant. Analysis of the limiting events show that their consequences to the public are within the limits of 10 CFR [Part] 20 and the EPA PAGs [Environmental Protection Agency Protective Action Guides]. The consequences to members of the operating staff are within the limits of 10 CFR [Part] 50, Appendix A, General Design Criterion 19, "Control Room Habitability". Therefore there is no reduction in a margin of safety.

* * * * *

Based on the above, the proposed changes to the operating license and technical specifications do not involve a reduction in the margin of safety due to the reduced decay heat load, the decay of radionuclides since shutdown, and by maintaining the heavy load restriction.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut, 06457.

Attorney for licensee: Mr. J. A. Ritsher, Ropes & Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Section Chief: Michael T. Masnik.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: June 10, 1999.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to adopt a Ventilation Filter Testing Program in TS Section 6.0, "Administrative Controls," and remove the specific ventilation filter surveillance requirements from TS 3/4.6.4.4, "Hydrogen Purge System," TS 3/4.6.5.1, "Shield Building Emergency Ventilation System," and TS 3/4.7.6.1, "Control Room Emergency Ventilation System."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards

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consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit Number 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. The replacement of the specific Technical Specification (TS) ventilation filter testing Surveillance Requirements for the Containment Hydrogen Purge System 3/4.6.4.4), Shield Building Emergency Ventilation System (3/4.6.5.1), and the Control Room Emergency Ventilation System (3/4.7.6.1), with a reference to the newly created Ventilation Filter Testing Program contained in TS Administrative Controls Section 6.8.4.f, Ventilation Filter Testing Program, is a removal and relocation of certain TS details. The proposed TS 6.8.4.f will, however, add controls to maintain similar operation, maintenance, testing and system operability for these three ventilation systems. The TS Bases changes reflect the use of the Ventilation Filter Testing Program. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. No physical alterations of the DBNPS are involved, nor are plant operating methods being changed. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated. No new or different types of failures or accident initiators are being introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because no inputs into the calculation of any Technical Specification Safety Limit, Limiting Safety System Settings, Technical Specification Limiting Condition for Operation, or other previously defined margins for any structure, system, or component important to safety are being affected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: May 10, 1999.

Description of amendment request: The proposed amendment would correct the regulation referenced in Section 5.8, "High Radiation Area," of the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS). The ITS currently references 10 CFR 20, Paragraph 20.1601(2) and (3), whereas the correct reference is 10 CFR 20.1601(c).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS) is editorial in nature. The change involves revising the incorrect reference in ITS Section 5.8.1 to the correct Code of Federal Regulations reference that pertains to controlling access to high radiation areas. The proposed ITS change does not involve any change to plant design, operation, maintenance, or procedures. As a result, no changes to the plant are being made which would impact either the contributors to an accident or to the consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed editorial change to the ITS does not involve any changes to any plant structure, system, or component (SSC) or to its operation or maintenance. There is no impact on any equipment that would be considered as contributors to either new or different accidents. Thus, the change to the ITS does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety?

The proposed change to the ITS involves a reference change and does not involve the design or operation of any plant SSC. No changes to the methods for controlling access to high radiation areas are proposed. No changes to the methods for controlling personnel and/or activities in high radiation areas are proposed. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A 5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Sheri R. Peterson.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: May 17, 1999.

Description of amendment request: The proposed amendment would revise a note in Surveillance Requirement (SR) 3.3.8.1 in the Crystal River Unit 3 Improved Technical Specifications (ITS). The note currently states that, when Emergency Diesel Generator (EDG) Loss Of Power Start instrumentation is placed in an inoperable status solely for performance of this surveillance, entry into associated Conditions and Required Actions may be delayed for up to four hours provided the two channels monitoring the Function for the bus are OPERABLE or tripped. The proposed revision to the note states that entry into the Conditions and Required Actions of ITS Section 3.3.8 is not required provided the applicable Conditions and Required Actions of ITS Section 3.8.1, "Electrical Power Systems, AC Sources—Operating," are entered for the EDG being made inoperable. The proposed amendment would also delete a superceded 60-day surveillance frequency and the associated note which indicated that the frequency was not effective after November 23, 1997.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Proposed Improved Technical Specifications (ITS) Change A—Revision of Surveillance Note

The note in Surveillance Requirement (SR) 3.3.8.1 involves the timing for placing Crystal River Unit 3 (CR–3) into the applicable Conditions and Required Actions when performing the surveillance. The proposed revision will make the note consistent with the actual method of performing the surveillance at CR–3. The design and testing configuration does not allow CR–3 to use the relief provided by the note. As a result, the Conditions and Required Actions of ITS Section 3.3.8 are entered at the start of the surveillance performance. The design and testing configuration requires entry into ITS Section 3.8.1 Conditions prior to performing SR 3.3.8.1. The revised note would require entering the applicable Conditions and Required Actions of ITS Section 3.8.1 for one Emergency Diesel Generator (EDG) being inoperable. This approach and the proposed note are conservative relative to the current note. The proposed note results in no changes to the method or to the timing of performing SR 3.3.8.1. Direct entry into ITS Section 3.8.1 Conditions will achieve the same final ITS condition as if Section 3.3.8 Conditions and Required Actions were entered. Therefore, the probability of occurrence and the consequences of any accident previously evaluated are unaffected by this change.

Proposed ITS Change B—Deletion of Frequency Note

The note under Frequency in SR 3.3.8.1 involves the period of time that the 60 day surveillance frequency would be in effect. The 60 day frequency was a temporary extension that was needed to implement modifications to the EDG during the 1997 CR–3 design outage. This was a one-time extension of the frequency. The note indicates this temporary nature of the 60 day frequency. Deleting the note is an editorial change since the surveillance has reverted back to its 31 day frequency and the note is no longer effective. Because the proposed deletion of the note is an editorial change, and no change is proposed to the current 31 day frequency, the probability of occurrence and the consequences of any accident previously evaluated are unaffected by this change.

2. Create the possibility of a new or different kind of accident from previously evaluated accidents?

Proposed ITS Change A—Revision of Surveillance Note

The proposed revision of the note in SR 3.3.8.1 involves only the timing of entry into associated ITS Conditions and Required Actions. No changes are proposed to the existing ITS Conditions and Required Actions. The proposed change is conservative since it will require entering the appropriate Conditions and Required Actions immediately upon starting SR 3.3.8.1. Changing the timing for entry into ITS Conditions and Required Actions does not create the possibility of a new or different kind of accident from those evaluated previously.

Proposed ITS Change B—Deletion of Frequency Note

Deletion of the note under SR 3.3.8.1 Frequency is an editorial change since the note is no longer effective. The current frequency for performing SR 3.3.8.1 is 31 days. This is the same frequency that was in effect prior to the one-time, temporary change of the frequency to 60 days. The editorial change of deleting the note that is no longer effective does not create the possibility of a new or different kind of accident from those evaluated previously.

3. Involve a significant reduction in a margin of safety?

Proposed ITS Change A—Revision of Surveillance Note

One manner in which a margin of safety related to a Surveillance Requirement might be affected would be if entry into a Limiting Condition for Operation (LCO) were delayed. The result of a delay in entering an LCO would be an increase in the time before a Required Action was taken, such as commencing a plant shutdown. Generally, such allowed times reflected in ITS Required Actions are based on some margin. Increasing the time allowed before starting a certain Required Action might result in a reduction of a margin of safety. However, the proposed ITS change allows entry into Section 3.8.1 Conditions immediately rather than after a delay. The proposed ITS change does not change the final plant condition required by the ITS. Therefore, the proposed ITS change does not result in a reduction in a margin of safety.

Proposed ITS Change B—Deletion of Frequency Note

Another manner in which a margin of safety related to a surveillance requirement might be affected would be if the frequency of performance were changed. Generally, margin might be reduced if the frequency were reduced (i.e., the interval between performing surveillances were increased). This proposed editorial change to delete the note in SR 3.3.8.1 Frequency does not result in a change to the surveillance frequency. Thus, the proposed deletion of the note does not affect the existing margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Sheri R. Peterson.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 11, 1999.

Description of amendment request: The proposed amendment makes various plant organization title changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR [Updated Final] Safety Analysis Report] transient analyses. No Technical Specification Limiting Condition for Operation, Action statement or Surveillance Requirement is affected by any of the proposed changes. These proposed changes do not reduce the level of qualification, authority or accountability associated with the affected Technical Specification responsibilities. Further, the proposed changes do not alter the design, function, or operation of any plant component. Therefore, the proposed amendment does not affect the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license, or Technical Specifications that preserve safety analysis assumptions. The proposed changes do not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed changes do not alter the design, function, or operation of any plant components. Therefore, the proposed amendment does not affect the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a reduction in a margin of safety. The proposed changes are administrative in nature. There is no reduction in the organization position qualifications, authority and accountability associated with the affected Technical Specification responsibilities. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Technical Specification Limiting Condition for Operation, Action statement, or Surveillance Requirement is affected. Therefore, the proposed amendment does not reduce the margin of safety.

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The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: S. Singh Bajwa.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 12, 1999.

Description of amendment request: The proposed amendment would revise Duane Arnold Energy Center (DAEC) Technical Specification (TS) Surveillance Requirement (SR) 3.6.1.3.7 to allow a representative sample of reactor instrumentation line excess flow control valves (EFCV) to be tested every 24 months, instead of testing each EFCV every 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current SR frequency requires each reactor instrumentation line EFCV to be tested every 24 months. The EFCVs at DAEC are designed so that they will not close accidentally during normal operation, will close if a rupture of the instrument line is indicated downstream of the valve, can be reopened when appropriate, and have their status indicated in the control room (reference DAEC UFSAR [updated final safety analysis report] 1.8.11). This proposed change allows a reduced number of EFCVs to be tested every 24 months. There are no physical plant modifications associated with this change. Industry operating experience demonstrates a high reliability of these valves. Neither EFCVs nor their failures are capable of initiating previously evaluated accidents; therefore there can be no increase in the probability of occurrence of an accident regarding this proposed change.

Instrument lines connecting to the Reactor Coolant Pressure Boundary (RCPB) with EFCVs installed also have a flow-restricting orifice upstream of the EFCV. The consequences of an unisolable rupture of such an instrument line [have] been previously evaluated in response to Regulatory Guide (RG) 1.11 (DAEC UFSAR 1.8.1.1). That evaluation assumed a continuous discharge of reactor water for the duration of the detection and cooldown sequence (3.5 hours). Therefore, although not expected to occur as a result of this change, the postulated failure of an EFCV to isolate as a result of reduced testing is bounded by this previous evaluation. Therefore, there is no increase in the previously evaluated consequences of the rupture of an instrument line and there is no potential increase in the consequences of an accident previously evaluated as a result of this change.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change allows a reduced number of EFCVs to be tested each operating cycle. No other changes in requirements are being proposed. Industry operating experience demonstrates the high reliability of these valves. The potential failure of an EFCV to isolate by the proposed reduction in test frequency is bounded by the previous evaluation of an instrument line rupture. This change will not physically alter the plant (no new or different type of equipment will be installed). This change will not alter the operation of process variables, structures, systems, or components as described in the safety analysis. Thus, a new or different kind of accident will not be created.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The consequences of an unisolable rupture of an instrument line [have] been previously evaluated in response to RG 1.11 (reference DAEC UFSAR 1.8.1.1). That evaluation assumed a continuous discharge of reactor water for the duration of the detection and cooldown sequence (3.5 hours). The only margin of safety applicable to this proposed change is considered to be that implied by this evaluation. Since a continuous discharge was assumed in this evaluation, any potential failure of an EFCV to isolate postulated by this reduced testing frequency is bounded and does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869

NRC Section Chief: Claudia M. Craig

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 30, 1999.

Description of amendment request: The proposed amendment would revise Duane Arnold Energy Center (DAEC) Technical Specification (TS) Surveillance Requirement (SR) 3.4.3.1 to revise the safety function lift setpoint tolerance limits for the main safety valves (SVs) and the safety/relief valves (SRVs). The current tolerance bands for the SVs and SRVs would be revised from −3% to +1% to a new band of plus or minus 3%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change allows an increase in the as-found SV and SRVs safety mode setpoint tolerance, determined by test after the valves have been removed from service, from +1%/−3% to plus or minus 3%.

The proposed change does not alter the TS requirements on the nominal SV or SRV safety mode lift setpoints, the SRV relief mode setpoints, the required frequency for the SV or SRV lift setpoint tests, or the number of SVs and SRVs required to be operable.

Consistent with current requirements, this change continues to require that these valves be adjusted to within plus or minus 1% of their nominal lift setpoints following testing. This change does not change the behavior and operation of any SV or SRV and therefore has no significant impact on reactor operation. It also has no significant impact on response to any perturbation of reactor operation including transients and accidents previously analyzed in the Updated Final Safety Analysis Report (UFSAR).

This change does not involve physical changes to the valves, nor does it change the operating characteristics or safety function of the valves. The proposed TS revision involves no significant changes to the operation of any systems or components in normal or accident operating conditions and no changes to existing structures, systems, or components. Therefore these changes will not increase the probability of an accident previously evaluated.

Generic considerations related to the change in setpoint tolerance were addressed in NEDC–31753P, "BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report," and were reviewed and approved by the NRC in a Safety Evaluation (SE) dated March 8, 1993. The plant specific evaluations, required by the NRC's SE and performed to support this proposed change, show that there is adequate margin to the design core thermal limits and to the reactor vessel pressure limits using a plus or minus 3% setpoint tolerance. They also show that operation of the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) systems will not be adversely affected and the containment response from a loss of coolant accident will be acceptable. The plant systems associated with these proposed changes will still be capable of meeting all applicable design basis requirements and retain the capability to mitigate the consequences of accidents described in the UFSAR. Therefore, these changes will not involve a significant increase in the consequences of any accident previously evaluated.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes were developed in accordance with the provisions contained in the NRC SE, dated March 8, 1993, for the "BWR Owners Group Inservice Pressure Relief Technical Specification Revision Licensing Topical Report," NEDC–31753P. The revised SV and SRV setpoint tolerance limit will not adversely impact the operation of any safety related component or equipment. Since the proposed changes involve no significant hardware changes, no significant changes to the operation of any systems or components, and no changes to existing structures, systems, or components, there can be no impact on the occurrence of any accident.

The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change to allow an increase in the SV and SRV safety mode setpoint tolerance from +1%/−3% to plus or minus 3% does not alter the nominal SV or SRV lift setpoints or the number of SVs or SRVs required to be operable. This change does not involve physical changes to the valves, nor does it change the operating characteristics or the safety function of the valves. The proposed change does not involve a physical alteration of the plant. No new or different equipment is being installed. There is no alteration to the parameters within which the plant is normally operated. As a result no new failure modes are being introduced. There are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. Establishment of the plus or minus 3% SV and SRV setpoint tolerance limit will not adversely impact the operation of any safety related component or equipment. Engineering evaluations concluded that there are no significant impacts on fuel thermal limits, safety related systems, structures or components, and no significant impact on the accident analyses associated with the proposed changes.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: May 10, 1999.

Description of amendment request: The proposed amendment would revise Duane Arnold Energy Center (DAEC) Technical Specification (TS) Section 2.1.1.2, to revise the Safety Limit Minimum Critical Power Ratio (SLMCPR) to support operation with GE–12 fuel with a 10x10 pin array.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no change to any plant equipment other than the fuel. The SLMCPR protects the fuel in accordance with the design bases. The SLMCPR calculations limit the bundle power to ensure the critical power ratio remains unchanged. Therefore, there is not an increase in the probability of transition boiling. The basis of the SLMCPR calculation remains the same, ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. Therefore, there is no increase in the probability of occurrence of a previously evaluated accident.

The fundamental sequences of accidents have not been altered. The Minimum Critical Power Ratio (MCPR) Operating Limits are selected such that potentially limiting accidents do not cause the MCPR to decrease below the SLMCPR anytime during the accident. Therefore, there is no impact on any of the limiting accidents. Therefore there is no increase in the consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR values are designed to ensure that fuel damage from transition boiling does not occur in at least 99.9% of the fuel rods as a result of the limiting postulated accident. The values are calculated in accordance with NRC-approved General Electric methods. The approved General Electric methods are comprehensive for ensuring that fuel designs will perform within acceptable bounds. The SLMCPR ensures that the fuel is protected in accordance with the design basis. The function, location, operation, and handling of the fuel remain unchanged. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The SLMCPR values do not alter the design or function of any plant system. The new values were calculated using NRC-approved methods to maintain the same margin of safety as presently exists for the prevention of transition boiling. At least 99.9% of the fuel rods will avoid transition boiling if the SLMCPR is not violated. Therefore, a significant reduction in a margin of safety is not involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: May 10, 1999.

Description of amendment request: The proposed amendment would revise Duane Arnold Energy Center (DAEC) Technical Specification (TS) to: (1)

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insert NOTE for Limiting Condition for Operation (LCO) 3.7.4 that would allow intermittent opening of the control building boundary under administrative control; (2) add a CONDITION, REQUIRED ACTION and COMPLETION TIME to LCO 3.7.4 for when both standby filter unit (SFU) subsystems are inoperable due to inoperable control building boundary in MODES 1, 2, and 3; (3) re-letter items in LCO 3.7.4 for consistency; and (4) revise LCO 3.7.4 CONDITION D (new CONDITION E) to add "for reasons other than CONDITION B."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Requiring the plant to enter LCO 3.0.3 when the control building pressure envelope is not intact is excessively restrictive. This change provides less restrictive requirements for operation of the facility. These less restrictive requirements do not result in operation that will increase the probability of initiating an analyzed event. The proposed change is acceptable because of the low probability (less than 3.04×10^{-8}) of a DBA [design basis accident] occurring during the 24 hour Completion Time, and the availability the SFU system to provide a filtered environment (albeit with potential control room in-leakage).

Intermittent opening of the control building boundary requires controls which consist of stationing a dedicated individual at the opening who is in continuous communication with the control room. This individual will have a method to rapidly close the opening when a need for control room isolation is indicated. For entry and exit through doors the administrative control is performed by the person entering or exiting the area. As a result, the consequences of any accident previously evaluated are not significantly increased.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not involve new or different equipment being installed at the facility. The proposed change is acceptable because of the low probability (less than 3.04×10^{-8}) of a DBA occurring during the 24 hour Completion Time, and the availability of the SFU system to provide a filtered environment (albeit with potential control room in-leakage).

Intermittent opening of the control building boundary requires controls which consist of stationing a dedicated individual at the opening who is in continuous communication with the control room. This individual will have a method to rapidly close the opening when a need for control building isolation is indicated. For entry and exit through doors the administrative control is performed by the person entering or exiting the area.

3. The proposed amendment will not involve a significant reduction in a margin of safety. Requiring the plant to enter LCO 3.0.3 when the control room ventilation envelope is not intact is excessively restrictive. The proposed change is acceptable because of the low probability (less than 3.04×10^{-8}) of a DBA occurring during the 24 hour Completion Time.

Intermittent opening of the control room boundary requires controls which consist of stationing a dedicated individual at the opening who is in continuous communication with the control room. This individual will have a method to rapidly close the opening when a need for control building isolation is indicated. For entry and exit through doors the administrative control is performed by the person entering or exiting the area.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 8, 1999.

Description of amendment request: The proposed change corrects the described method by which the Standby Gas Treatment system heaters are to be tested. This change is necessary because the reference provided in Technical Specification Section 5.5.7e is in error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The correction of an error and clarification of a testing method does not alter any of the precursors assumed in the CNS [Cooper Nuclear Station] accident analysis. The proposed wording for testing SGT [Standby Gas Treatment] heaters is in accordance with ASME N510–1989, Section 14.5.1, "Testing of Nuclear Air Treatment Systems." Since the proposed change does not affect this portion of plant design and operation, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not create the possibility of a new or different kind of accident than evaluated in the Updated Safety Analysis Report (USAR). The proposed change does not result in any physical change to CNS structures, systems, or components, nor does it change the fit, form, or function of any equipment or components taken credit for in the accident analyses described in the USAR. Therefore, correction of a test reference and specific description of the testing method for the SGT heaters does not create the possibility of a new or different kind of accident.

The proposed change will not create a significant reduction in the margin of safety. The proposed change does not alter the design or administrative controls necessary to ensure the required performance of the physical barriers during acticipated operational occurrences and postulated accidents. This conclusion is based on the fact that the proposed change corrects an erroneous reference, conforms to industry standards, and is consistent with past and current operating practice at CNS; therefore, the proposed change does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 15, 1999.

Description of amendment request: The proposed change would allow the use of the service water (SW) system to directly supply cooling water to the reactor equipment cooling (REC) system during a loss-of-coolant accident (LOCA) event. The present maximum allowable REC water leakage rate is based on the requirement that there will be sufficient water in the REC surge tank to allow the REC system to fulfill its safety function for 30 days post-LOCA condition. A proposed Updated Safety Analysis Report (USAR) revision would allow Cooper Nuclear Station (CNS) to revise the maximum allowable REC system leakage during normal power operation such that the REC system surge tank would assure that the REC would fulfill its safety function for at least the first 7 days following a large break LOCA. The SW system would fulfill the safety functions of the REC system, if required, for the remaining duration of the accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The licensee states that the proposed request:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability of an accident previously evaluated in the USAR since there are no hardware changes associated with this USAR change. Procedure changes associated with this USAR change are limited to direction on which division of SW/REC backup to initiate first, and incorporation of new system leakage limits into surveillance procedures.

The proposed change also does not involve a significant increase in the consequences of an accident previously evaluated in the USAR. This conclusion is based on the safety evaluation (Attachment 2 [of the June 15, 1999, application]) which demonstrates that the SW system will fulfill the safety functions of the REC system in a post LOCA condition and thus the proposed change will not affect the performance and reliability of the REC system. The emergency systems cooled by the REC system, the ECCS [emergency core cooling] systems and their room coolers, will therefore also fulfill their safety function when directly supplied by the SW system.

2. Does not create the possibility for a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the USAR. The proposed license amendment does not introduce any new equipment or hardware changes. It does, however, allow the SW system to perform a different type of function than it is presently licensed to perform in a post LOCA condition. This SW system post LOCA function has been previously demonstrated to fulfill the functions of the REC in a non LOCA emergency shutdown which are the same as the functions required following a LOCA.

3. Does not create a significant reduction in the margin of safety.

The proposed activity does not involve a significant reduction in the margin to safety. The safety evaluation (Attachment 2) demonstrates that the SW system will perform the required REC post LOCA functions. There is an added required operator action which is to align the SW system to directly supply cooling water to the REC critical loops. As discussed in the safety evaluation [of the June 15, 1999, application], this action can be performed from the main control room utilizing one control switch and there is sufficient control room indication for the operator to be alerted to the need for the use of service water backup. There is also sufficient time for the operator to perform the task. Trending (prior to a postulated LOCA) routinely provides the control room operator with REC system leakage information. In a post LOCA situation, this leakage information would assist the operator in taking timely action to initiate the service water back-up before the need is alarmed in the control room.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 15, 1999.

Description of amendment request: The purpose of the requested license amendment is to revise the Updated Safety Analysis Report (USAR) to incorporate the latest analysis to demonstrate adequate net positive suction head (NPSH) for the low pressure emergency core cooling system (ECCS) pumps following a large break loss-of-coolant accident (LOCA). Specifically, the change would allow (1) reliance on a slightly larger amount of containment overpressure for residual heat removal (RHR) and core spray (CS) pump operation during worst-case long-term LOCA conditions (greater than 1000 seconds) while still maintaining original license margins of 3 and 6 pounds per square inch (psi), respectively, for the difference between minimum available containment pressure and the pressure required for minimum pump NPSH, (2) reliance on a small amount of containment overpressure for CS pump runout during worst-case short-term LOCA conditions (less than 10 minutes) while still maintaining an adequate pressure margin of at least 5 psi, and (3) the use of ANS 5.1 decay heat model in the USAR Section 5.2.6 as currently presented based on analysis justifying the use of this model as described in the amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve an increase in the probability of an accident previously evaluated in the USAR. There are no changes being proposed to the maintenance, operation, or design of plant systems or equipment postulated to initiate accidents or transients.

The proposed change does not involve an increase in the consequences of an accident previously evaluated in the USAR. This conclusion is based on the conclusions of the safety evaluation (Attachment 2 [of the June 15, 1999, application]). This safety evaluation demonstrates that the containment overpressure is sufficiently conservative, and that the calculated margins between the available containment overpressure and the overpressure required to assure adequate low pressure ECCS pump NPSH are such that ECCS pump operation, as credited in the CNS [Cooper Nuclear Station] accident analysis, remains unchanged.

2. Does not create the possibility for a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the USAR. The proposed license amendment does not introduce any new equipment or hardware changes. The attached safety evaluation demonstrates that the only equipment affected by this License Amendment are the low pressure ECCS pumps and that these will retain their ability to function following a LOCA.

3. Does not create a significant reduction in the margin of safety.

The proposed activity does not involve a significant reduction in the margin of safety. The safety evaluation (Attachment 2) demonstrates that, although there is an increased reliance on containment overpressure to assure adequate low pressure ECCS pump NPSH, there remains sufficient margin to provide confidence that the ECCS pumps will operate as required. Sufficient margin is demonstrated with the added conservatism of a 2-sigma (2 standard deviation) uncertainty in the decay heat model, increased suction strainer debris loading, increased RHR heat exchanger tube plugging margin, and increases in SW [Service Water] and Suppression Pool temperatures. The minimum margin available between available overpressure and required overpressure is at least 5 psi for CS (just prior to 10 minutes) and at least 3 psi for RHR (well after 10 minutes).

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 23, 1999.

Description of amendment request: The proposed change to the Technical Specifications would increase the allowed outage time for the Control Room Air Conditioning Subsystem from 30 days to 60 days, on a one-time basis only, for each train.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operational requirements for the Control Room Air Conditioning Subsystems (CRACS) are contained in Technical Specification 3.7.6.2 "Control Room Subsystems Air Conditioning." This Limiting Condition for Operation (LCO) requires that two independent Control Room Air Conditioning Subsystems (trains) be operable during all modes of operation. The LCO action statement for operational modes 1, 2, 3 and 4, with one Control Room Air Conditioning Subsystem inoperable, states: "restore the inoperable system to operable status within 30 days or be in at least Hot Standby [Mode 3] within the next 6 hours and in Cold Shutdown within the following 30 hours." The LCO action statement for operational modes 5 and 6 with one Control Room Air Conditioning Subsystem inoperable, states: "restore the inoperable system to operable within 30 days or initiate and maintain operation of the remaining OPERABLE Control Room Air Conditioning Subsystem or immediately suspend all operations involving CORE ALTERATIONS or positive reactivity changes."

The proposed change adds the following note: "* For cycle 7, the allowable outage time may be extended to 60 days, on a one-time basis, for each train, to implement modifications to the control room air conditioning subsystems. The provisions of specifications 3.0.4 and 4.0.4 are not applicable during the implementation of modifications to the air conditioning subsystems."

This change is a one-time only change to Technical Specification 3.7.6.2 in order to facilitate the installation of a design change to the CRACS during the present operating cycle. This change will not affect the existing 30 [day] AOT period presently in place in Technical Specification 3.7.6.2 which requires specific actions in the event that the CRACS is determined to be inoperable for any other reason. The design basis accidents are not affected as a result of the proposed one-time change to the Technical Specifications. The CRACS are support subsystems which can only contribute to the initiation of an accident if the whole function is lost. The plant would be required to shutdown before this occurred. The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility (other than the CRACS) or the manner in which the plant is operated nor does it adversely affect the response of the plant to a transient or accident. This one-time change is to be utilized only during the present operating cycle (cycle 7) in order to facilitate the implementation of a design change to modify the existing safety-related refrigerant subsystems (one train at a time) and replace them with safety-related chilled water subsystems. This design change is being implemented to improve the overall reliability of the safety-related subsystems.

The consequences of an extended loss of the operating CRACS and the non-safety related chilled water subsystem, during all modes of operation, would result in a slow gradual rise in control room temperature. The temperature of the control room is normally maintained between 70 to 72°F at the discretion of the Unit Shift Supervisor utilizing a non-safety-related train of CRACS. In the event that the control room temperature increased to a temperature greater than 75°F, plant procedures require starting other equipment in the non-safety-related chilled water subsystem or a safety-related train of CRACS to restore control room temperature to its normal operating band. In the unlikely event that the non-safety-related chilled water subsystems and the operable safety-related train of CRACS fail during the proposed 60 day AOT period, Technical Specification 3.7.6.2 would require that actions be commenced to place the plant in a shutdown condition. Additionally, alternative actions to reduce control room temperature could also be initiated as identified in a plant procedure. It has been conservatively determined that safety-related equipment in the control room can be operated continuously up to 90°F in an environment without affecting the capability of the equipment.

The exception to specifications 3.0.4 and 4.0.4 as stated in the proposed one-time change to Technical Specification 3.7.6.2 will not involve an increase in the probability or consequences of an accident. TS 3.0.4 prohibits entry into a mode when the conditions for the LCO are not met and the associated action(s) requires a shutdown if they are not met within a specified time interval. Surveillance Requirement 4.0.4 prohibits entry into a mode unless the associated surveillance requirement(s) has been performed within the stated interval. During the implementation of the modification, when one safety-related train of CRACS is inoperable, it is possible that a plant shutdown could occur due to reasons unrelated to the planned modifications of the CRACS. As stated above, the CRACS are support subsystems which do not contribute to the initiation of any accident previously evaluated. Entry of the plant into an operational mode from a shutdown mode as a result of the proposed modification does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility (other than the CRACS) or the manner in which the plant is operated nor does it adversely affect the response of the plant to a transient or accident. The functions of the CRACS to provide a controlled environment inside of the control room complex to ensure the comfort of the plant operators and to ensure adequate climate conditions for the operability of equipment will not be impaired in any way as a result of a plant mode change. The remaining actions identified in TS 3.7.6.2 are unchanged as a result of the proposed change. The risk significance involved with removing a safety-related train of the CRACS during power operation or during refueling conditions is low based on the short period (60 days per train) and consequences of losing this function. The CRACS is excluded from modeling in the Seabrook Station Probabilistic Risk Assessment (PRA) due to its extremely low risk significance.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated since it is a support system and the loss of function will require a plant shutdown. The proposed change adds the following note which pertains to both affected action statements: "* For cycle 7, the Allowable Outage Time may be extended to 60 days, on a one-time basis, for each train during the implementation of modifications to the control room air conditioning subsystems. The provisions of specifications 3.0.4 and 4.0.4 are not applicable during the implementation of modifications to the air conditioning subsystems." As previously identified, this change is a one-time only change to Technical Specification 3.7.6.2 in order to facilitate the installation of a design change to CRACS during the present operating cycle.

The CRACS are support subsystems which do not contribute to the creation of a new or different kind of accident from any previously evaluated nor is it used to mitigate the consequences of a transient or accident. The functions of the CRACS are to provide a controlled environment inside of the control room complex to ensure the comfort of the plant operators and to ensure adequate climate conditions for the operability of equipment. The CRACS consists of two independent safety-related air conditioning trains that provide cooling of recirculated control room air. Due to previous reliability problems with the CRACS, an additional non-safety chilled water subsystem has been installed to provide control room cooling on a continuous basis. Baseload operation of the non-safety related chilled water subsystem to provide control room cooling reduces the operational load on the safety-related refrigerant trains.

Implementation of the modification to the CRACS subsystems during the 60 day AOT duration in no way affects the availability of the non-safety-related chilled water subsystem or the operable safety-related train of the CRACS to meet the control room cooling requirements. The proposed modification removes freon from the control room complex and the quantity of chilled water in the closed loop system is too small to become a flood hazard. The consequences of an extended loss of the operating CRACS train and the non-safety related chilled water subsystem would result in a slow gradual rise in control room temperature. In the event that control room temperature increased to a temperature greater than 75°F, plant procedures require starting either the non-safety-related chilled water subsystem or a safety-related train of CRACS to restore control room temperature. Additionally, in the unlikely event of a loss of the non-safety related chilled water subsystem and the operable safety-related train of the CRACS, Technical Specification 3.7.6.2 would require that actions be taken to place the plant in a shutdown condition.

It has been conservatively determined that safety-related equipment in the control room can be operated continuously in an environment up to 90°F without affecting the capability of the equipment. This proposed change will not affect the existing 30 day AOT period presently in place in Technical Specification 3.7.6.2 which requires specific actions in the event that the CRACS is determined to be inoperable for any other reason.

The exception to specifications 3.0.4 and 4.0.4 as stated in the proposed one-time change to Technical Specification 3.7.6.2 will not involve the creation of an accident of any type. During the implementation of the proposed modification, when one safety-related train of CRACS is inoperable, it is possible that a plant shutdown could occur due to reasons unrelated to the planned modifications of the CRACS. Entry of the plant into an operational mode from a shutdown mode as a result of the proposed modification does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated nor the manner that it responds to a transient or accident. The functions of the CRACS to provide a controlled environment inside of the control room complex to ensure the comfort of the plant operators and to ensure adequate climate conditions for the operability of equipment will not be impaired in any way as a result of a plant mode change. The remaining actions identified in TS 3.7.6.2 are unchanged as a result of the proposed change.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed one-time change to Technical Specification 3.7.6.2 will not involve a significant reduction in the margin of safety. The functions of the CRACS are to provide a controlled environment inside of the control room complex to ensure the comfort of the plant operators and to ensure adequate climate conditions for the operability of equipment. The CRACS consists of two independent safety-related air conditioning trains that provide cooling of recirculated control room air. Additionally, the Seabrook Station design incorporates the use of a non-safety chilled water subsystem (which is not within the scope of the Technical Specifications) to provide baseload cooling of the control room on a continuous basis.

Implementation of the modification to the CRACS subsystems during the 60 day AOT duration does not result in a significant reduction in the plant margin of safety. As previously identified, the CRACS is a support subsystem and the existing Technical Specifications will require a plant shutdown on a loss of function. The risk significance involved with removing a safety-related train of the CRACS is extremely low based on the short period (60 days per train) and the consequences of losing this function. The potential that the non-safety-related chilled water subsystem and the operable safety-related train of CRACS simultaneously fail during the proposed 60 day AOT period of each safety-related train (120 days total) is considered unlikely. In the event that control room temperature increased to a temperature greater than 75°F, plant procedures require starting either the non-safety-related chilled water subsystem or a safety-related train of CRACS to restore control room temperature. Additionally, in the unlikely event of a loss of the non-safety related subsystem and the operable safety-related train of the CRACS, Technical Specification 3.7.6.2 would require that actions be taken to place the plant in a shutdown condition. Alternative actions to reduce control room temperature could also be initiated as identified in a plant procedure. It has been conservatively determined that safety-related equipment in the control room can be operated continuously in an environment up to 90°F without affecting the capability of the equipment.

The exception to specifications 3.0.4 and 4.0.4 as stated in the proposed one-time change to Technical Specification 3.7.6.2 will not reduce the margin of safety. During the implementation of the proposed modification, when one safety-related train of CRACS is inoperable, it is possible that a plant shutdown could occur due to reasons unrelated to the planned modifications of the CRACS. Entry of the plant into an operational mode from a shutdown mode as a result of the proposed modification does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The functions of the CRACS to provide a controlled environment inside of the control room complex to ensure the comfort of the plant operators and to ensure adequate climate conditions for the operability of equipment will not be impaired in any way as a result of a plant mode change. The remaining actions identified in TS 3.7.6.2 are unchanged as a result of the proposed change.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 17, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) section 4.4.6.2.2.e to replace the reference to American Society of Mechanical Engineers (ASME) Code paragraph IWV–3472(b) which pertains to the frequency of leakage rate testing for 6-inch, nominal pipe size valves and larger with the requirement that the surveillance interval and frequency of surveillance leakage rate testing for these valves be performed pursuant to the requirements of TS 4.0.5, "Operations and Surveillance Requirements."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the NRC its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Eliminating the reference to ASME Code paragraph IWV–3427(b) and

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performing pressure isolation valve (PIV) testing pursuant to TS 4.0.5 does not change the test conditions for PIV leakage testing and is consistent with the currently analyzed configurations. This change eliminates an unnecessary test requirement and incorporates Westinghouse Owner's Group (WOG) Standard Technical Specifications (STS) frequency requirements that are deemed to substantially reduce the probability of an intersystem loss-of-coolant-accident. This change in testing frequency requirements does not affect the accident mitigation capabilities of the reactor coolant system (RCS) PIVs. This change is bounded by existing accident analyses. Therefore, it is concluded that, with the reduced probability of previously analyzed accidents, and no effect on accident mitigation, the proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Eliminating the IWV–3427(b) trending for 6-inch and larger valves (and the accompanying increased frequency testing requirement) does not significantly change actual testing frequencies since the frequencies continue to be addressed by the remaining TS requirements. This change does not affect the ability of a PIV to perform its required RCS pressure isolation safety function of limiting RCS leakage to prevent overpressure failure of attached low pressure systems. The frequency of testing or the testing itself are not initiating events to postulated accidents. Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

There is no impact on the Margin of Safety as defined in the bases of any TS, the Updated Final Safety Analysis Report, or other licensing basis commitments resulting from the elimination of the reference to ASME Code paragraph IWV–3427(b). Periodic surveillances provide continued assurance in the capability of safety related equipment to perform its design safety (accident mitigating) function and are not used to establish the margin of safety for accident mitigation. Therefore, the frequency of surveillance testing of the PIVs has no impact on the margins of safety assumed in analyzed accidents.

In its evaluation, NNECO concluded, based on its evaluation as required by 10 CFR 50.92, that the proposed revision does not involve a SHC.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment requests: May 13, 1999.

Description of amendment requests: The proposed amendments would modify Technical Specification (TS) 6.2.A.2, "Onsite and Offsite Organizations," to reflect a change in the organizational structure implemented on March 1, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is administrative in nature and does not significantly affect any system that is a contributor to initiating events for previously evaluated accidents. Neither does the change significantly affect any system that is used to mitigate any previously evaluated accidents. Therefore, the proposed change does not involve any significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change is administrative in nature and does not alter the design, function, or operation of any plant component nor does the proposed change install any new or different equipment, therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

The proposed change is administrative in nature and does not involve a significant reduction in the margin of safety associated with the safety limits inherent in either the fuel cladding, RCS [reactor coolant system] boundary, reactor containment, or other structures, systems, or components (SSCs).

NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Claudia M. Craig.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 7, 1999.

Description of amendment request: The proposed amendments, if approved, would revise Technical Specifications (TS) Section 3/4.4.3 and its associated TS Bases to reflect changes to refine and clarify the action statement concerning inoperable reactor coolant leakage detection systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes directly establish the minimum acceptable level of Reactor Coolant System (RCS) leakage detection instrumentation required to support plant power operations. The level of RCS leakage detection capability inherent with the proposed TS change will continue to provide acceptable early warning detection of potential RCS pressure boundary degradation as required under 10 CFR 50.36 (c)(2)(ii) (A) Criterion 1.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes only affect systems associated with the detection of accidents involving degradation of the RCS pressure boundary. The proposed TS changes do not involve any physical changes to plant structures, systems, or components. The RCS Leakage Detection Systems will continue to function as designed in all modes of operation. No new accident type is created as a result of the proposed changes. No new failure mode for any equipment is created. The changes are consistent with the guidance provided in [Standard Technical Specifications General Electric Plants BWR/4 dated April 1995] NUREG–1433, Revision 1, pertaining to RCS Leakage Detection.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in the margin of safety.

The TS Limiting Conditions for Operation (LCO) specify for systems and equipment important to safety, the minimum level of operability required to permit continued power operation. The proposed TS changes revise this minimum level of operability by permitting long term plant operation with the removal of the Drywell Unit Coolers Condensate Flow Rate Monitoring System from service. Currently, this condition would permit the plant to continue to operate for up to 30 days. This change is not a reduction in the margin of safety since:

The proposed Technical Specification LCO change for RCS Leakage Detection Systems maintains four (4) diverse methods of detecting RCS leakage and permits continuous operation with the Drywell Unit Coolers Condensate Flow Rate Monitors out of service provided that more frequent surveillance checks are provided for the containment atmosphere monitoring system. The proposed TS change institutes the additional surveillance requirements.

The LGS reactor coolant pressure boundary was designed to ASME Class 1, Seismic Category I design criteria with no special dispensation which would warrant such additional RCS leakage detection capability or more stringent LCO criteria than those generically approved under the Improved Standard Technical Specifications.

Review of the TS Bases Section and UFSAR identified no discussions regarding margin of safety for the RCS Leakage Detection Systems, which would be reduced by the proposed Technical Specification LCO change. It is further demonstrated that an acceptable margin of safety exists based on the generic regulatory approval of the Improved Standard Technical Specifications which will remain bounded by the proposed LGS TS changes.

Therefore, the proposed TS changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Portland General Electric Company, Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 27, 1998.

Description of amendment request: The proposed amendment would revise the Facility Operating (Possession-Only) License and the Permanently Defueled Technical Specifications. Multiple license conditions and technical specification requirements are proposed to be deleted to reflect the transfer of the nuclear spent fuel from the existing 10 CFR Part 50 licensed area to the 10 CFR Part 72 Independent Spent Fuel Storage Installation (ISFSI) area.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed amendment reflects removal of the spent nuclear fuel from the 10 CFR 50 licensed area and transfer of the spent nuclear fuel to the 10 CFR 72 ISFSI licensed area. The probability and consequences of accidents associated with storage of spent nuclear fuel within the TNP [Trojan Nuclear Plant] ISFSI were evaluated as part of PGE's 10 CFR 72 license application. Following completion of the transfer of the spent nuclear fuel to the 10 CFR 72 licensed ISFSI and in light of the revised Appendix A Technical Specification, Section 4.2, that precludes storage of spent nuclear fuel within the 10 CFR 50 licensed area, the potential for accidents associated with the storage and handling of fuel in the 10 CFR 50 licensed area will be eliminated. Therefore, deleting those technical specifications associated with spent nuclear fuel will not result in a significant increase in the probability or consequences of accidents previously analyzed.

The proposed license amendment also relocates administrative requirements from Section 5.0 of the Technical Specifications to topical report PGE–8010, "TNP Nuclear Quality Assurance Program." Relocation of administrative requirements follows the guidance provided in NRC Administrative Letter 95–06. Relocating these administrative requirements will not result in changes in method of operation of any plant equipment, therefore these changes will not result in a significant increase in the probability or consequences of accidents previously evaluated.

The proposed license amendment will delete the on duty shift manning requirements (Technical Specification 5.2.2a). With removal of the spent nuclear fuel from the 10 CFR 50 licensed area, there are no remaining important to safety systems required to be monitored. With removal of the spent nuclear fuel from the 10 CFR 50 licensed area, there are no remaining credible accidents which require the actions of a Shift Manager or non-certified operator to prevent occurrence or mitigate consequences. Therefore, deleting the shift manning requirements will not result in an increase in the probability or consequences of an accident previously analyzed.

Deleting the Independent Review and Audit Committee (IRAC) is also proposed in this license amendment request. The responsibility of IRAC is to review and advise the Plant General Manager on matters relating to the safe storage of irradiated fuel. Since approval of this license amendment request is contingent upon removal of the spent nuclear fuel from the 10 CFR 50 licensed area and a revised Technical Specification Section 4.2 prevents future storage, deleting IRAC will not result in an increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to revise and relocate License Condition 2.C.(8), Fire Protection, to the TNP Quality Assurance Program (PGE-8010). The revised text removes requirements associated with making changes that could adversely impact the safe storage of irradiated fuel. Following removal of the spent nuclear fuel from the 10 CFR 50 licensed area and implementation of the proposed revision to Technical Specification Section 4.2, irradiated fuel will not be stored within the 10 CFR 50 licensed area so this change will not result in an increase in the probability of occurrence or consequences of accidents previously analyzed. Relocation of the remaining requirements contained in this license condition to the TNP Quality Assurance Program (PGE–8010) will provide the necessary administrative control to ensure that changes to the fire protection program will not increase the likelihood of an offsite release of radioactive material due to a fire. Therefore, this change will not result in an increase in the probability of occurrence or consequence of accidents previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment reflects the reduced operational risks within the 10 CFR 50 licensed area after the spent nuclear fuel has been transferred to the ISFSI. In addition, administrative controls contained in Section 5.0 of the Technical Specifications will [be] relocated to PGE–8010, TNP Nuclear Quality Assurance Program. These changes have no impact on plant equipment and only an administrative impact on some of the procedures used for operating plant equipment, which may still be needed within the 10 CFR 50 licensed area following the

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transfer of the spent nuclear fuel to the 10 CFR 72 ISFSI license area. This proposed amendment does not result in the addition of new equipment or result in the alteration of the operation of existing structures, systems, or components. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed 10 CFR 50 license amendment eliminates those technical specifications and license conditions associated with the storage of spent nuclear fuel. Following transfer of the spent nuclear fuel to the 10 CFR 72 ISFSI, the potential for fuel related accidents will be eliminated from the 10 CFR 50 licensed area. Therefore, removal of those technical specifications and license conditions associated with the safe storage of spent nuclear fuel will not involve a significant reduction in a margin of safety.

Relocating administrative programs in Technical Specification, Section 5.0, "Administrative Controls," follows the guidance of NRC Administrative Letter 95–06. With the exception of deleting those administrative controls associated with storage of spent nuclear fuel, the administrative programs will be relocated to the TNP Quality Assurance Program (PGE–8010). This administrative relocation of requirements does not involve a significant reduction in a margin of safety.

This proposed amendment also requests deleting several license conditions and relocating License Condition 2.C.(8), "Fire Protection." The deleted license conditions were related to either power operations or activities which have been completed and are no longer required. Relocating License Condition 2.C.(8), "Fire Protection," to the TNP Quality Assurance Program (PGE–8010) will continue to maintain the required level of administrative control for the fire protection program since changes to PGE–8010 are controlled in accordance with the requirements of 10 CFR 50.54(a)(3). Deleting these license conditions will, therefore, not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Section Chief: Michael T. Masnik.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 7, 1999, as supplemented by letter dated June 24, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 2.0, Safety Limits and Limiting Safety System Settings, TS 3.2.5, DNB [Departure from Nucleate Boiling] Parameters, and the associated Bases, and Administrative Controls Section 6.9.1.6, Core Operating Limits Report (COLR), by relocating cycle-specific reactor coolant system-related parameter limits from the TSs to the COLR. This would allow for flexibility to enhance plant operating margin and/or core design margins without the need for cycle-specific license amendment requests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is a programmatic and administrative change that does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

The cycle-specific limits in the Core Operating Limits Report will continue to be controlled by the STP [South Texas Project] programs and procedures. Each accident analysis addressed in the UFSAR [Updated Final Safety Analysis Report] will be examined with respect to changes in the cycle-dependent parameters, which are obtained from the use of NRC-approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be conducted per the requirements of 10CFR50.59, will ensure that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety limits imposed in Technical Specification 2.1.1.1 and 2.1.1.2 are consistent with the values stated in the STP Updated Final Safety Analysis Report. The Reactor Coolant System Flow value in the Technical Specifications will be changed from the Minimum Measured Flow to the Thermal Design System Flow (approved by the Nuclear Regulatory Commission in Amendments 97 and 84 on September 29, 1998) consistent with WCAP–14483–P–A ['Generic Methodology for Expanding Core Operating Limits Reports']. This change does not involve an increase in the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of cycle specific variables has no influence or impact on, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC-approved methods, and submitted to the NRC to allow the staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the core operating limits, and appropriate actions will be required if these limits are exceeded. The safety limits imposed in Technical Specification 2.1.1.1 and 2.1.1.2 are consistent with the values stated in the STP Updated Final Safety Analysis Report. The Reactor Coolant System Flow value in the Technical Specifications will be changed from the Minimum Measured Flow to the Thermal Design Flow (approved by the Nuclear Regulatory Commission in Amendments 97 and 84 on September 29, 1998) consistent with WCAP–14483–P–A. This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from NRC-approved reload design methodologies, and the actions to be taken if a limit is exceeded remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10CFR50.59 safety review to assure that operation of the unit within cycle-specific limits will not involve a significant reduction in the margin of safety.

The safety limits imposed in Technical Specification 2.1.1.1 and 2.1.1.2 are consistent with the values stated in the STP Updated Final Safety Analysis Report. The Reactor Coolant System Flow value in the Technical Specifications will be changed from the Minimum Measured Flow to the Thermal Design System Flow (approved by the Nuclear Regulatory Commission in Amendments 97 and 84 on September 29, 1998) consistent with WCAP–14483–P–A ['Generic Methodology for Expanding Core Operating Limits Reports']. This change does not involve an increase in the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of cycle specific variables has no influence or impact on, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC-approved methods, and submitted to the NRC to allow the staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the core operating limits, and appropriate actions will be required if these limits are exceeded. The safety limits imposed in Technical Specification 2.1.1.1 and 2.1.1.2 are consistent with the values stated in the STP Updated Final Safety Analysis Report. The Reactor Coolant System Flow value in the Technical Specifications will be changed from the Minimum Measured Flow to the Thermal Design Flow (approved by the Nuclear Regulatory Commission in Amendments 97 and 84 on September 29, 1998) consistent with WCAP–14483–P–A. This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from NRC-approved reload design methodologies, and the actions to be taken if a limit is exceeded remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10CFR50.59 safety review to assure that operation of the unit within cycle-specific limits will not involve a significant reduction in the margin of safety.

The safety limits imposed in Technical Specification 2.1.1.1 and 2.1.1.2 are consistent with the values stated in the STP Updated Final Safety Analysis Report. The Reactor Coolant System Flow value in the Technical Specifications will be changed from the Minimum Measured Flow to the Thermal Design System Flow (approved by the Nuclear Regulatory Commission in Amendments 97 and 84 on September 29, 1998) consistent with WCAP–14483–P–A. This proposed change does not involve a significant reduction in the margin of safety.

The proposed amendment is a programmatic and administrative change that provides assurance that plant operations continue to be conducted in a safe manner. As stated previously, the proposed amendment does not physically alter safety-related systems, nor does it affect the way in which safety-related systems perform their functions. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: June 3, 1999.

Description of amendment request: The proposed amendment would modify the Technical Specifications to reduce the Allowable Value (Av) used for Reactor Vessel Water Level—Low, Level 3 for several instrument functions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Vessel Water Level—Low, Level 3 functions are in response to water level transients and are not involved in the initiation of accidents or transients. Therefore, reducing the Level 3 Av does not increase the probability of an accident previously evaluated. Additionally, the results of the safety evaluation associated with the lowering of the Level 3 Av concludes that the previously evaluated transient and accident consequences are not significantly affected by the change. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to lower the BFN Units 2 and 3 Reactor Vessel Water Level—Low, Level 3 Av does not involve a hardware change and the purpose of the Level 3 function is not affected. The Level 3 functions will continue to fulfill their design objective. Therefore, reduction of the Av does not result in the possibility of a new or different kind of accident.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The results of the safety evaluation associated with the reducing the BFN Units 2 and 3 Reactor Vessel Water Level—Low, Level 3 Av concluded that transient and accident consequences remain within the required acceptance criteria. Therefore, the margin of safety is not reduced for any event evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: June 23, 1999.

Brief description of amendments: The proposed license amendments would change the way in which the Emergency Diesel Generator (EDG) automatic trips are tested in Surveillance Requirement (SR) 3.8.1.13. A note would also be added to specify the CPSES, Unit 2, test schedule in SR 3.8.1.13.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The emergency diesel generators are used to support mitigation of the consequences of an accident and are not considered to be initiator of any previously analyzed accident. Revising the surveillance to verify the bypass of non-critical EDG trips on both LOOP [loss of offsite power] and SI [safety injection] separately enhances the ability of the EDG to perform its safety function by ensuring continued operation during DBAs [design-basis accidents].

Therefore, this change will not result in an increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the surveillance requirement involves an EDG start circuit modification. The circuit modification has been previously installed on Unit 2 during 2RF04 [CPSES Unit 2, fourth refueling outage] for reasons other than the issue associated with the FWLB [feedwater line break]. As a part of the Unit 2 installation a 50.59 evaluation was performed and it was determined that the modification did not represent an unreviewed safety question. The modification similar to Unit 2 will be implemented on Unit 1 and therefore, as concluded in the safety evaluation for the original modification, no new failure mechanisms will be introduced by the proposed change. The EDGs are designed to provide electrical power to equipment important to safety in the event of a loss of offsite power. The proposed change to the SR enhances the confidence that the EDGs will start and fulfill their safety related function.

Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed change will not alter any accident analysis assumptions, initial conditions, or results. Revising the surveillance requirement to verify the EDG trip bypass for the LOOP and SI separately will enhance the confidence that the EDG starts as assumed in the safety analyses and does not create any new failure scenarios and no margin is reduced.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gram.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: April 16, 1999, as superseded on June 9, 1999.

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Description of amendment request: The licensee proposed clarifying the inservice inspection requirements for Vermont Yankee Nuclear Power Station regarding the granting of relief from ASME Code requirements by the NRC. The licensee also proposed changes to reflect the previous NRC approval of the use of ASME Code Case N–560 at Vermont Yankee Nuclear Power Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated?

This change is only an administrative change that: (1) clarifies the NRC's authority to grant relief to a specific requirement, and (2) conforms the TS language regarding GL 88–01 to agree with the NRC's acceptance of ASME Code Case N–560 for use at VY. This conclusion is justified in that:

(a) The pursuit of relief from the ASME code and the imposition of alternative requirements are governed by 10CFR50.55a and require NRC approval. There are several sections in the regulations under which such relief can be granted. The removal of reference to a specific section of CFR that may be used to grant relief has no effect on plant equipment or its operation.

(b) Adding words to clarify the relationship between GL 88–01 and Code Case N–560 eliminates a contradiction in sample selection criteria and does not affect any equipment or its operation.

These changes can be considered administrative in nature and do not change any of the accident analyses for the facility. Thus, there are no changes to the probability or consequences of accidents previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revision of the wording in the TS to generalize the granting of relief to the ASME code does not result in any changes to the plant equipment or its operation. Similarly, adding words to allow use of the NRC-approved alternative to the sample selection guidance provided in GL 88–01 does not impact plant equipment or its operation. These changes are administrative in nature and do not result in the creation of any new or different kinds of accidents.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

This change primarily revises the wording in the TS to clarify the NRC's authority to grant relief to ASME Section XI requirements. The change maintains the requirement for NRC approval to be obtained for such relief. Secondly, this change conforms the TS language regarding GL 98–01 to agree with a previous relevant NRC disposition [Reference (e)]. [The staff notes that reference (e) is an NRC letter dated November 9, 1999, which approved the use of Code Case N–560 at Vermont Yankee Nuclear Power Station.] These administrative changes do not result in a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: June 24, 1999

Description of amendment request: The amendment clarifies the basis for the reactor protection system bypass of the turbine stop valve (TSV) closure and turbine control valve (TCV) fast closure scram signals at low power. The amendment clarifies that the analytical basis for this bypass corresponds to a fraction of reactor rated thermal power and not other measures of power, for instance, turbine power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change clarifies the basis for the reactor protection system bypass of the turbine stop valve closure and turbine control valve fast closure scram signals. Consideration of the bypass function itself only applies to certain pressurization transients and not accident analyses.

The change properly states the basis for the scram bypass and relates it to reactor thermal power and precludes potential misinterpretation of the basis for the bypass setpoint. Turbine power lags reactor power over the range of concern. Therefore, changing terminology related to "power" to mean "reactor power" instead of "turbine power" is conservative. Accordingly, this change can not be less restrictive.

The low power (TSV closure and TCV fast closure) scram signal bypass does not initiate or mitigate any accident considered in the Updated Final Safety Analysis Report. This function is enabled at higher power to mitigate the effects of the pressurization transient which results from TSV closure or TCV fast closure. This change will not alter assumptions relative to the initiation or mitigation of any accident event.

This change will not involve a significant increase in the probability or consequences of an accident previously evaluated since there is no physical alteration of the plant configuration or relaxation of setpoints or operating parameters.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reactor protection system bypass of the turbine stop valve closure and turbine control valve fast closure scram signals is not considered an initiator of any accident. This change to clarify the basis for applicability of the bypass does not create any new or different kind of accident since it does not involve any change in the physical configuration of the plant, nor relaxation of setpoints or operating parameters.

VY has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the change merely adds a more restrictive interpretation to current terminology.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The change involves reducing the potential for misinterpreting the basis for the reactor protection system bypass of the turbine stop valve closure and turbine control valve fast closure scram signals and consequent potential for nonconservative operation of the plant. As a result, the potential for operation of the plant in an unsafe condition is reduced, thereby maintaining the margin of safety.

VY has determined that the proposed change does not involve a significant reduction in a margin of safety since operation of the plant consistent with analytical bases of operation is further assured.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Notice of Issuance of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: March 30, 1999.

Brief description of amendments: The amendments revised license conditions in each of the operating licenses to delete those license conditions that no longer apply, make an editorial change in the Unit 1 license, and provide clarifying information regarding the license condition in each license concerning equalizer valve restrictions.

Date of issuance: June 25, 1999.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 188 & 185.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the licenses.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24195).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 30, 1999.

Brief description of amendment: The amendment adds Section 4.0.2 to allow a 24-hour grace period for performing inadvertently missed surveillance.

Date of issuance: June 25, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 202.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 19, 1999 (64 FR 27317).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 30, 1999.

Brief description of amendment: The amendment adds Section 4.0.2 to allow a 24-hour grace period for performing inadvertently missed surveillance.

Date of issuance: June 25, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 202.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 19, 1999 (64 FR 27317).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: August 6, 1998, as supplemented by letter dated May 18, 1999.

Brief description of amendment: The amendment approves a change to Technical Specification (TS) 3.1.3.2, "Position Indicator Channels—Operating," which adopts requirements that are consistent with NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants." In addition, the amendment approves the relocation of TS Table 3.8–1, "Containment Penetration Conductor Overcurrent Protective Devices," to licensee control procedures in accordance with the guidance provided in Generic Letter 91–08, "Removal of Component Lists From Technical Specifications."

Date of issuance: June 29, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 208.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56245).

The May 18, 1999, letter provided clarifying information that did not change the scope of the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 17, 1996, as supplemented by letters dated October 22, 1998, and January 12 and February 5, 1999.

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Brief description of amendment: The amendment extends the surveillance test interval for the reactor trip circuit breakers from monthly to quarterly and revises the appropriate Bases page.

Date of issuance: June 29, 1999.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 153.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48261).

The October 22, 1998, and January 12 and February 5, 1999, letters provided additional information that did not extend the scope of the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: October 27, 1998, supplemented March 19, 1999.

Brief description of amendment: This amendment relocates a TS surveillance requirement from TS Section /4.6.5.1, "Shield Building—Emergency Ventilation System" to TS Section 3/4.6.5.2, "Shield Building Integrity." Administrative and bases changes have also been made.

Date of issuance: June 22, 1999.

Effective date: June 22, 1999.

Amendment No.: 233.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64125). The March 19, 1999, supplement to the application did not expand the scope of the original application as noticed, and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: August 31, 1998, as revised on March 18, 1999.

Brief description of amendment: The amendment approves changes to the Improved Technical Specifications to allow a repair roll process which would be used to repair steam generator tubes with defects within the upper tubesheet. Changes to inservice inspection and reporting requirements and several format and editorial changes were also included.

Date of issuance: June 28, 1999.

Effective date: As of date of issuance, to be implemented prior to commencing Cycle 12 operation.

Amendment No.: 179.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56249). The revised submittal dated March 18, 1999, expanded the scope of the amendment request as originally noticed, and the application was renoticed on April 21, 1999 (64 FR 19557).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: February 7, 1997, as supplemented October 24, 1998

Brief description of amendment: The amendment incorporates changes to more accurately reflect current plant design, adopts changes in surveillance requirements consistent with the Standard Technical Specifications, identifies changes to plant systems and revisions to Technical Specifications system descriptions not involving Limiting Conditions for Operations, and makes editorial or typographical corrections.

Date of issuance: June 21, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 212.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1998 (63 FR 14486) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: June 11, 1998.

Brief description of amendment: The amendment revises Technical Specification 6.12.1 to allow use of an alternative high radiation area control consistent with Regulatory Guide 8.38.

Date of issuance: July 1, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 213.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1998 (63 FR 43204) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of application for amendment: December 22, 1998, as supplemented March 19, 1999.

Brief description of amendment: The amendment replaces specific titles in Section 6.0 of the Technical Specifications of all three Millstone units with generic titles.

Date of issuance: June 3, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 105, 235, and 171.

Facility Operating License Nos. DPR–21, DPR–65, and NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1999 (64 FR 4158). The March 19, 1999, letter provided clarifying information that did not change the scope of the December 22, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 4, 1999, as supplemented April 7, 1999.

Brief description of amendment: The amendment changes Technical Specifications 3.5.2, "Emergency Core Cooling Systems—ECCS Subsystems—Tavg greater than or less than 300 °F;" 3.6.2.1, "Containment Systems—Depressurization and Cooling Systems—Containment Spray and Cooling Systems;" 3.7.1.2, "Plant Systems—Auxiliary Feedwater Pumps;" 3.7.3.1, "Plant Systems—Reactor Building Closed Cooling Water System;" and 3.7.4.1, "Plant Systems—Service Water System." The changes were made to the system pump flow requirements to incorporate the results of revised hydraulic and accident analyses.

Date of issuance: June 29, 1999.

Effective date: As of the date of issuance and shall implemented within 60 days from the date of issuance.

Amendment No.: 236.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 1999 (64 FR 2523). The April 7, 1999, supplemental letter did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 9, 1999, as supplemented May 3, 1999

Brief description of amendments: The amendments delete the requirement to have an independent safety engineering group (ISEG) from the Technical Specifications and applies the substantive requirements now applicable to the ISEG to other organizations and relocates those requirements from the Technical Specifications to Chapter 16 of the Operational Quality Assurance Plan (OQAP). In the letter of May 3, 1999, the licensee submitted the changes to Chapter 16 of the OQAP to incorporate the substantive Technical Specification requirements currently applicable to the ISEG into the OQAP in the form of an independent technical review program, and stated that these changes to the OQAP will become effective upon approval of the amendments.

Date of issuance: June 23, 1999.

Effective date: June 23, 1999, to be implemented within 30 days. Implementation includes incorporating the OQAP pages into the OQAP.

Amendment Nos.: Unit 1–112 ; Unit 2–99.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 7, 1999 (64 FR 17030) The May 3, 1999, supplement provided additional clarifying information within the scope of the original notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: May 27, 1999, as supplemented May 28, 1999.

Brief description of amendments: The amendments add a footnote to Technical Specfiication 4.8.2.1e, "D.C. Sources—Operating," which would, on a one-time basis for Unit 1 Battery BT1ED2, allow TU Electric to substitute a performance discharge test "...in lieu of the battery service test required by Specification 4.8.2.1d, twice within a 60 month interval."

Date of issuance: June 28, 1999.

Effective date: As of the date of issuance.

Amendment Nos.: 65 and 65

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 31881 dated June 14, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by July 14, 1999, but indicated that if the Commission makes a final determination, any such hearing would take place after issuance of the amendments.

The May 28, 1999, letter provided clarifying information that did not change the scope of the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and final NSHC determination are contained in Safety Evaluation dated June 28, 1999.

Attorney for Licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC, 20036.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: February 16, 1999.

Brief Description of amendments: These amendments revise TS Section 4.2 for Units 1 and 2. The changes relax the surveillance requirements for reactor coolant pump (RCP) flywheels. The flywheels provide extended reactor coolant flow coastdown capability if electric power for the RCPs is lost. Previously, the flywheel inspections included an ultrasonic examination (UT) of areas of high stress

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concentration at the base and keyway every 3 years, and complete UT every 10 years. The changes require only a 10-year UT based upon an analysis presented in a Westinghouse topical report which has been reviewed and accepted by the NRC staff.

Date of issuance: July 1, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 221 and 221.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register:** May 5, 1999 (64 FR 24204). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By August 13, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Unit 2, Matagorda County, Texas

Date of amendment request: July 1, 1999.

Brief description of amendment: The amendment provides for a one-time change to Technical Specifications 3.3.2 and 3.7.8 for Unit 2 to allow all fuel handling building exhaust air system components to be inoperable for a period not to exceed 8 hours to facilitate repair of the Train B exhaust booster fan.

Date of issuance: July 2, 1999.

Effective date: From the date of amendment issuance until July 14, 1999.

Amendment No.: Unit 2–100.

Facility Operating License No. NPF–80: The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 2, 1999.

Local Public Document Room location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Dated at Rockville, Maryland, this 7th day of July 1999.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17750 Filed 7–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–3014 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 1 of Regulatory Guide 3.66, "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72." This proposed revision is being developed to update the NRC's guidance on how to demonstrate financial assurance for decommissioning. The guide also establishes a standard format for presenting the information to the NRC.

The draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW, Washington, DC. Comments will be most helpful if received by September 30, 1999.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*. For information about the draft guide and the related documents, contact Mr. L.M. Bykoski, (301) 415–6754; e-mail LMB1@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or

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improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301)415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 24th day of June 1999.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 99–17919 Filed 7–13–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Karen Jacobs, Acting Director, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on June 22, 1999 (62 FR 33328). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1, 1999, and May 31, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during June 1999.

The following Schedule A authorities were revoked during June 1999:

Department of Commerce

One position above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Department of Defense

Two positions above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Federal Emergency Management Agency

One position above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Department of Justice

Two positions above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Department of Transportation

Two positions above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Thrift Depositor Protection Oversight Board

All positions. Effective June 21, 1999.

Schedule B

No Schedule B authorities were established or revoked during June 1999.

Schedule C

The following Schedule C authorities were established during June 1999.

Department of Agriculture

Staff Assistant to the Deputy Chief of Staff. Effective May 5, 1999.

Special Assistant to the Director, Office of Civil Rights. Effective May 5, 1999.

Confidential Assistant to the Administrator, Agricultural Research Center. Effective May 18, 1999.

Department of the Air Force (DOD)

Secretary (Steno/OA) to the General Counsel of the Air Force. Effective May 7, 1999.

Department of Commerce

Director of Public Affairs to the Under Secretary for International Trade Administration. Effective May 6, 1999.

Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective May 10, 1999.

Ombudsman to the Under Secretary for Oceans and Atmosphere. Effective May 10, 1999.

Department of Defense

Defense Fellow to the Special Assistant for White House Liaison. Effective May 6, 1999.

Protocol Specialist to the Director of Protocol. Effective May 11, 1999.

Department of Education

Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Service. Effective May 5, 1999.

Deputy Assistant Secretary for Intergovernmental and Constituent Relations to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective May 20, 1999.

Department of Energy

Special Assistant to the Director of Scheduling and Advance. Effective May 6, 1999.

Associate Chief Financial Officer for Budget, Planning and Financial Management to the Chief, Financial Management. Effective May 24, 1999.

Staff Assistant to the Assistant Secretary for Policy and International Affairs. Effective May 27, 1999.

Department of Health and Human Services

Special Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective May 13, 1999.

Special Assistant to the Chief of Staff. Effective May 20, 1999.

Department of the Interior

Special Assistant to the Commissioner, Bureau of Reclamation. Effective May 6, 1999.

Special Assistant to the Director, Office of Congressional and Legislative Affairs. Effective May 20, 1999.

Department of Justice

Staff Assistant to the Attorney General. Effective May 7, 1999.

Department of Labor

Special Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration. Effective May 5, 1999.

Special Assistant to the Administrator, Office of Job Training Programs, Employment and Training Administration. Effective May 6, 1999.

Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 14, 1999.

Director, Intergovernmental Affairs to the Assistant Secretary, Congressional and Intergovernmental Affairs. Effective May 27, 1999.

Secretary's Representative to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective May 27, 1999.

Department of the Navy (DOD)

Special Assistant to the Residence Manager/Social Secretary. Effective May 18, 1999.

Staff Assistant to the Assistant Secretary of the Navy for Research, Development and Acquisition. Effective May 19, 1999.

Department of Transportation

Policy Advisor to the Assistant Secretary for Transportation Policy. Effective May 7, 1999.

Deputy Assistant Secretary for Budget and Programs to the Assistant Secretary for Budget and Programs. Effective May 14, 1999.

Special Counsel to the General Counsel. Effective May 18, 1999.

Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective May 21, 1999.

Department of the Treasury

Senior Policy Advisor to the Deputy Assistant Secretary for Policy Enforcement. Effective May 7, 1999.

Environmental Protection Agency

Press Secretary to the Associate Administrator, Office of Communications, Education and Media Relations. Effective May 11, 1999.

Deputy Chief of Staff (Scheduling) to the Chief of Staff. Effective May 13, 1999.

Special Assistant to the Regional Administrator. Effective May 24, 1999.

Federal Emergency Management Agency

Director, Office of Congressional and Legislative Affairs to the Director, Federal Emergency Management Agency. Effective May 6, 1999.

Federal Trade Commission

Congressional Liaison Specialist to the Director of Congressional Relations. Effective May 27, 1999.

Securities and Exchange Commission

Secretary to the Director. Effective May 6, 1999.

United States Tax Court

Secretary (Confidential Assistant) to the Judge. Effective May 18, 1999.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–17822 Filed 7–13–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation 13D and 13G

Schedules 13D and 13G

SEC File No. 270–137

OMB Control No. 3235–0145

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedules 13D and 13G are filed pursuant to Section 13(d) and 13(g) of the Securities Exchange Act and Regulation 13D and 13G thereunder to report beneficial ownership of equity securities registered under Section 12 of the Exchange Act. Regulation 13D and 13G is intended to provide investors and subject issuers with information about accumulations of securities that may have potential to change or influence control of the issuer. Schedule 13D and 13G are used by persons including small entities to report their ownership of more than 5% of a class of equity securities registered under Section 12. The information required to be filed with the Commission permits verification of compliance with federal securities laws and assures the public availability and dissemination of such information. The Commission uses very little of the information provided (except in the enforcement of the federal securities laws).

It is estimated that approximately 10,690 respondents file Schedules 13D and 13G for a total burden of 114,718 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: June 30, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17878 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–2(e)

SEC File No. 270–37

OMB Control No. 3235–0031

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemption from the fingerprinting requirements of Rule 17f–2 to prepare and maintain a statement supporting their claim for exemption. This requirement assists the Commission and other regulatory agencies with ensuring compliance with Rule 17f–2.

Notices prepared pursuant to Rule 17f–2(e) must be maintained for as long as the covered entity claims an exemption from the fingerprinting requirements of Rule 17f–2. The recordkeeping requirement under Rule 17f–2(e) is mandatory to assist the Commission and other regulatory

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agencies with ensuring compliance with the Rule 17f–2. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17879 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

[Extension: Rule 17Ac3–1(a) and Form TA–W; SEC File No. 270–96; OMB Control No. 3235–0151]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following rule and form: Rule 17Ac3–1(a) and Form TA–W.

Subsection (c)(3)(C) of section 17A of the Securities Exchange Act of 1934 ("Exchange Act") authorizes transfer agents registered with an appropriate regulatory agency ("ARA") to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of Section 17A.

In order to implement section 17A(c)(3)(C) of the Exchange Act the Commission, on September 1, 1977, promulgated rule 17Ac3–1(a) and accompanying Form TA–W. Rule 17Ac3–1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA–W. Form TA–W requires the withdrawing transfer agent to provide the Commission with certain information, including (1) The locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA–W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister, if so, whether the Commission should attach to the granting of the application any terms or conditions necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of section 17A of the Exchange Act. Without Rule 17Ac3–1(a) and Form TA–W, transfer agents registered with the Commission would not have a means for voluntary deregistration when necessary or appropriate to do so.

Respondents file approximately thirty Form TA–Ws with the Commission annually. The filing of a Form TA–W occurs only once, when a transfer agent is seeking deregistration. In view of the ready availability of the information requested by Form TA–W, its short and simple presentation, and the Commission's experience with the Form, we estimate that approximately one half hour is required to complete Form TA–W, including clerical time. Thus, the total burden of fifteen hours of preparation for all transfer agents seeking deregistration in any one year is negligible.

The Commission estimates a cost of approximately $35 for each half hour required to complete a Form TA–W. Therefore, based upon a total of fifteen hours, transfer agents spend approximately $1,050 each year to complete thirty Form TA–Ws.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 7, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17931 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Bowne & Co., Inc., Common Stock, Par Value $.01 per Share, and Associated Preferred Stock Purchase Rights) File No. 1–5842

July 7, 1999.

Bowne & Co., Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the securities specified above ("Securities") from listing and regulation on the American Stock Exchange LLC ("Amex" or "Exchange").

The Securities have been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A filed with the Commission which became effective on May 27, 1999, as amended thereafter on the New York Exchange, Inc. ("NYSE"). Trading in the Securities on the NYSE commenced at the opening of business on July 1, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolution adopted by the Company's Board or Directors authorizing the withdrawal of its Securities from listing on the Exchange and by setting forth in detail to the Amex the reasons for such proposed withdrawal, and the facts in support thereof. The Amex has in turn informed the Company that it would not interpose any objection to the withdrawal of the Company's Securities from listing on the Exchange.

In making the decision to withdraw its Securities from listing on the Amex and to list them instead on the NYSE, the Company has considered, among other factors, its visibility in the investment community and the opportunities that may be available to it as a company listed on the NYSE to make investors more aware of its efforts at diversification of its business.

The Company's application relates solely to the withdrawal of the Securities from listing on the Amex and shall have no effect upon the continued listing of the Securities on the NYSE.

Moreover, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission and the NSYE under Section 13 and other applicable sections of the Act.

Any interested person may, on or before July 28, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609 facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–17887 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23892; 813–166]

CIBC World Markets Corp., Notice of Application

July 7, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations under those sections.

SUMMARY OF APPLICATION: Applicant, CIBC World Markets Corp. ("CIBC WN"), requests an order to exempt certain entities formed for the benefit of key employees of CIBC WM and its affiliates from certain provisions of the Act, and to permit the funds to engage in certain joint transactions. Each entity will be an "employees' securities company" as defined in section 2(a)(13) of the Act.

FILING DATES: The application was filed on March 11, 1997 and amended on February 27, 1998, and August 7, 1998. Applicant has agreed to file an additional amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 2, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the requests, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, One World Financial Center, 200 Liberty Street, New York, NY 10281.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant, a Delaware corporation and subsidiary of The Canadian Imperial Bank of Commerce, is a brokerage and investment banking firm.[1] Applicant is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Applicant and its affiliates, as defined in rule 12b-2 under the Securities Exchange Act of 1934 (the "Exchange Act"), are referred to in this notice collectively as the "CIBC WM Group."

2. Applicant proposes to organize one or more limited partnerships, limited liability companies, or other entities under the laws of the state of Delaware or another state (each, a "Partnership," and collectively, the "Partnerships") for the benefit of certain key employees. Each Partnership will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end management investment company. The goal of the Partnerships is to create investment opportunities that are competitive with those at other brokerage and investment banking firms for employees and to facilitate the recruitment of high caliber employees. Participation in a Partnership will be voluntary.

3. It is currently anticipated that the initial Partnership will be a limited liability company and that an independent board of managers ("Independent Board") will have overall responsibility for its operations. All of the members of the Independent Board will be individuals who are not "interested persons" (as defined in section 2(a)(19) of the Act) of CIBC WM or any other entity in the CIBC WM Group (collectively, a "CIBC WM Company"). Applicant proposes to use the independent board of managers structure so that the Partnerships will not be considered "subsidiaries" of a CIBC WM Company for bank regulatory purposes. Applicant states that the independent board of managers structure will not undermine the community of interest between the Partnerships and the CIBC WM Group. In the case of any General Partner that is an Independent Board, the Board members will not be eligible to purchase Interests (as defined below) in a Partnership. Subsequently established Partnerships will be structured in the same manner or, alternatively, a CIBC WM Company may act as general partner (or functional equivalent with respect to any Partnership organized as a limited liability company, business trust or other entity) of those Partnerships. As used in this notice, the term "General Partner" refers to the Independent Board or a CIBC WM Company which acts as general partner of a Partnership (or functional equivalent). The General Partner will be responsible for the overall management of each Partnership and will have the authority to make all decisions regarding the acquisition, management and disposition of Partnership investments, except that the General Partner may delegate certain of its responsibilities regarding the acquisition, management and disposition of Partnership investments to an Investment Adviser (as defined below); provided, further, that if the General Partner is an Independent Board, such Board will delegate all decisions regarding the acquisition, management and disposition of

[1] Applicant was known as Oppenheimer & Co., Inc. until November 4, 1997, when the stock of its parent, Oppenheimer Holdings, was acquired by CIBC Wood Gundy Securities Corp., which was then merged into Oppenheimer & Co., Inc.

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Partnership investments to an Investment Adviser. The General Partner also may delegate administrative responsibilities to a CIBC WM Company or to an unaffiliated third party administrator.

4. A. CIBC WM Company will serve as investment adviser to the Partnerships. The investment adviser will either be: (a) Registered as an investment adviser under the Advisers Act; (b) exempt from the registration requirements of the Advisers Act by virtue of section 203(b)(3) of the Advisers Act; or (c) excluded from the definition of investment adviser under the Advisers Act because it is a bank or a bank holding company. The term "Investment Adviser" as used in this notice refers to a CIBC WM Company which acts as investment adviser to a Partnership. With respect to some or all Partnerships, the Investment Adviser may delegate certain of its responsibilities to one or more subadvisers, each of which will be a CIBC WM Company and registered under the Advisers Act is required under applicable law; provided, however, that if the Investment Adviser elects to enter into any side-by-side investment with an unaffiliated entity, the Investment Adviser will be permitted to engage as sub-investment adviser the entity responsible for the management of such side-by-side investment.

5. In the case of certain Partnerships, the General Partner will have the authority to terminate the agreement with the Investment Adviser on 120 days' prior written notice to the Investment Adviser. In the event that the General Partner terminates an agreement with an Investment Adviser, the General Partner will: (a) cause the Partnership to cease making new investment commitments; (b) cause the Partnership to dissolve; or (c) appoint a replacement investment adviser with the concurrent affirmative vote of at least a majority in interest of the Limited Partners (or functional equivalent with respect to any Partnership organized as a limited liability company, business trust or other entity). If the replacement investment adviser is not a CIBC WM Company, the Partnership will cease to rely upon the order granting the requested relief and the General Partner will cause the Partnership to register under the Act, unless it obtains such exemptive relief from the Act as may be necessary. Each limited partnership agreement or other organizational document of the Partnership (the "Partnership Agreement") will provide that, in the event the General Partner gives notice of termination to the Investment Adviser, the affirmative vote of at least a majority in interest of the Limited Partners will be effective to retain the Partnership's agreement with the Investment Adviser in full force and effect. Each Partnership Agreement also will provide that the Limited Partners may direct the Partnership to cease making new investment commitments upon the affirmative vote of a majority in interest of the Limited Partners.[2]

6. Interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act") or Regulation D under the Securities Act, and will be sold without a sales load or similar fee. Interests will be sold only to "Limited Partners," which will be: (a) current or former key employees, officers, directors, partners and persons on retainer of the CIBC WM Group ("Eligible Employees"); (b) spouses, parents, children, spouses of children, brothers, sisters and grandchildren of Eligible Employees ("Qualified Family Members"); or (c) trusts or other investment vehicles established for the benefit of Eligible Employees or Qualified Family members ("Qualified Investment Vehicles" and, collectively with Qualified Family Members, "Qualified Participants"). Interests will not be transferable except with the express consent of the General Partner and then only to Eligible Employees or Qualified Participants.

7. Prior to offering Interests to an Eligible Employee or Qualified Family Member, a CIBC WM Company must reasonably believe that the Eligible Employee or Qualified Family Member will be capable of understanding and evaluating the merits and risks of participation in the Partnership. Eligible Employees will be professionals engaged in various aspects of the investment banking or financial services business, or in related administrative, financial, accounting, legal or operational activities.

8. Eligible Employees and Qualified Family Members must be "accredited investors" meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the Securities Act, except that a maximum of 35 Eligible Employees who are sophisticated investors but who do not meet the definition of an accredited investor may become Limited Partners of a Partnership if each such Eligible Employee falls into one of the following categories: (a) Eligible Employees who (i) have a graduate degree in business, law or accounting, (ii) have a minimum of five years of consulting, investment banking or similar business experience, and (iii) will have had reportable income from all sources (including any profit shares or bonus) in the calendar year immediately preceding the Eligible Employee's admission as a Limited Partner in excess of $120,000 and will have a reasonable expectation of reportable income of at least $150,000 in the years in which the Eligible Employee invests in a Partnership. In addition, an Eligible Employee in this category (a) will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately preceding year in the aggregate in the Partnership and in all other Partnerships in which he has previously invested; or (b) Eligible Employees who have primary responsibility for operating the Partnership. These responsibilities include identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the Limited Partners, maintaining the books and records of the partnership, and making recommendations with respect to investment decisions by the Investment Adviser. Each Eligible Employee in this category (b) will: (i) be closely involved with and knowledgeable with respect to the Partnership's affairs, (ii) be an officer or employee of a CIBC WM Company, and (iii) have had reportable income from all sources (including any profit shares or bonus) in the calendar year immediately preceding the Eligible Employee's admission as a Limited Partner in excess of $120,000 and will have a reasonable expectation of reportable income of at least $150,000 in the years in which the Eligible Employee invests in the Partnership. Qualified Investment Vehicles must meet the standards for an "accredited investor" under rule 501(a) of Regulation D.

9. The terms of each Partnership will be disclosed to the Eligible Employees

[2] The duration of a particular Partnership will be set forth in its Partnership Agreement. Each Partnership may be dissolved prior to its expiration upon the occurrence of the following events: (i) the resignation, withdrawal, dissolution or bankruptcy of the General Partner (or, where applicable, the resignation of the members of the Independent Board), (ii) the insolvency or bankruptcy of the Partnership, (iii) the sale of all or substantially all of the Partnership's assets, (iv) the conversion of the Partnership to corporate form pursuant to the terms of the applicable Partnership Agreement, (v) a determination by the General Partner that it is in the best interests of the Limited Partners to dissolve the Partnership, or (vi) any other event requiring dissolution of the Partnership under applicable law. Upon dissolution of a Partnership, the Partnership's assets will be distributed in accordance with the applicable Partnership Agreement.

at the time they are offered the right to subscribe for Interests in the Partnerships, at which time the Eligible Employees will be furnished with a copy of the Partnership Agreement. The Partnership Agreement will set forth in full the terms applicable to a Limited Partner's investment in the Partnership.

10. A CIBC WM Company may purchase Interests, which it may offer to new Eligible Employees joining the CIBC WM Group after the closing of the Partnership or which it may award to Eligible Employees as a bonus or similar compensation. A CIBC WM Company will acquire these Interests in the same manner of payment, at the same time, and at the same price as Interests purchased by the Limited Partners. A CIBC WM Company may sell the Interests it has so acquired to any Eligible Employee or Qualified Participant at any time during the life of the Partnership at a price no greater than the net asset value of the Interests on the previous appraisal date as defined in the Partnership Agreement after the date of sale.

11. If a Limited Partner terminates employment with a CIBC WM Company or is in bankruptcy, the Interests may be acquired by a CIBC WM Company, or by any Eligible Employee or Qualified Participant designated by a CIBC WM Company. If a CIBC WM Company does not exercise the right to acquire the Interest, it will continue to be held by the Limited Partner. In addition, in the event of a Limited Partner's death, total disability or adjudication of incompetence, the Limited Partner or a representative of the Limited Partner may have the right, during an established time period following the occurrence of any of those events, to tender the Limited Partner's Interest to a CIBC WM Company or any Eligible Employee or Qualified Participant designated by a CIBC WM Company for mandatory purchase (subject to applicable banking regulations) by a CIBC WM Company or any Eligible Employee or Qualified Participant designated by a CIBC WM Company.

12. If an investment program provides for vesting, an Eligible Employee's Interest at the beginning of the program will be treated as "unvested," and "vesting" will occur either: (a) through the passage of time; or (b) upon the occurrence of a specified event. The termination of an Eligible Employee's employment will not affect the Eligible Employee's rights with respect to the vested portion of the Interest, unless certain specified events disclosed in the relevant Partnership Agreement occur, including the termination of employment for cause. The portion of an Eligible Employee's Interest that is "unvested" at the time of the Eligible Employee's termination of employment, and the portion that is vested in the event the specified events disclosed in the relevant Partnership Agreement occur, may be subject to repurchase by a CIBC WM Company or reallocation to other Limited Partners in the relevant Partnership.

13. Upon repurchase or reallocation of a former Eligible Employee's unvested or vested Interest, a CIBC WM Company will, at a minimum, pay the Eligible Employee the lesser of: (a) the amount actually paid by the Eligible Employee; or (b) the fair market value of the Interest, as determined in good faith by a CIBC WM Company. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

14. An Investment Adviser may be paid an advisory fee for its services to a particular Partnership, which may be determined as a percentage of assets under management or aggregate commitments. In addition, an Investment Adviser may be entitled to a performance-based fee based on the Partnership's net gains ("carried interest").[3] In the case of a Partnership in which the General Partner is an Independent Board, the Board members may receive compensation for their services from either the Partnership or a CIBC WM Company.

15. It is anticipated that a CIBC WM Company may contribute capital to each Partnership in an amount equal to at least 1% of the aggregate amount of capital contributed by the Limited Partners. A CIBC WM Company also may undertake to contribute additional capital to a Partnership, which may be in an amount representing some multiple of the aggregate amount of capital contributed by the Limited Partners. With respect to a specified portion of the capital contribution of a CIBC WM Company ("Non-Allocable Portion"), a CIBC WM Company may receive, instead of a pro rata allocation of profits and losses, a cumulative return. The cumulative return may be equal to its Applicable Rate (as defined below) with respect to, and expenses incurred in connection with, the Non-Allocable Portion (the "Return"), or some other reasonable return which may be less than its pro rata allocation of profits. The Return generally will be allocable annually out of Partnership profits and will be payable to a CIBC WM Company when profits are realized by the Partnership, or to the extent not previously paid, upon the liquidation of the Partnership.

16. A CIBC WM Company may lend money to a Partnership at an interest rate that is the lowest rate that applicant determines is permissible under applicable banking regulations (the "Applicable Rate"), provided that the Applicable Rate will be no less favorable than the rate obtainable on an arm's length basis. A CIBC WM Company may, in its sole discretion, adopt the method for determining the calculation of the Applicable Rate. Any indebtedness of the Partnership will be the debt of the Partnership and without recourse to the Limited Partners. Applicant states that the Partnership will retain the right to require the payment of any unfunded capital contributions from the Limited Partners for any appropriate Partnership purpose, including the payment of Partnership indebtedness, and will be permitted to assign this right to any lender to the Partnership.

17. Partnerships may co-invest with or through investment vehicles sponsored and/or managed by a CIBC WM Company or by unaffiliated entities.

18. A Partnership will not purchase or otherwise acquire any security issued by a registered investment company if, immediately after the purchase or acquisition, the Partnership will own in the aggregate more than 3% of the total outstanding voting stock of the registered investment company.

19. As soon as practicable after the end of the fiscal year of each Partnership, each Partnership will send audited annual financial statements to its Limited Partners. In addition, each Partnership will send a report to its Limited Partners setting forth tax information necessary for the preparation of tax returns.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) further provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section

[3] Any "carried interest" charged by a registered investment adviser will be structured to comply with section 205 of the Advisers Act.

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2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned by (i) current or former employees, or persons on retainer, of one or more affiliated employers, (ii) immediate family members of those persons or employers, or (iii) the employer or employers together with any of the persons in (i) or (ii).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though that company was registered under the Act.

3. Applicant requests an order under sections 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations under those sections.

4. Section 17(a) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as prinicpal, from knowingly selling to or purchasing any security or other property from that company. Applicant requests an exemption from section 17(a) to permit each Partnership to: (a) purchase portfolio investments from or sell portfolio securities to CIBC WM, or any other affiliated person of a Partnership, or an affiliated person of that person ("collectively, Affiliated Entities"), on a principal basis; (b) purchase interests or property in a company or other investment vehicle in which CIBC WM, or an Affiliated Entity, already owns securities, or, where such company or other investment vehicle is otherwise affiliated with CIBC WM or a Partnership; (c) sell, put or tender, or grant options in securities or interests in a company or other investment vehicle back to that entity, where that entity is affiliated with CIBC WM or an Affiliated Entity; (d) participate as a selling security holder in a public offering that is underwritten by CIBC WM or an Affiliated Entity or in which CIBC WM or an Affiliated Entity acts as a member of the underwriting or selling group; (e) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by CIBC WM or an Affiliated Entity (collectively, "CIBC WM Sponsored Vehicles"), or to purchase securities from CIBC WM Sponsored Vehicles; (f) invest in securities of, or lend money to, entities with which CIBC WM or an Affiliated Entity has performed investment banking or other services and from which they may have received fees; and (g) purchase securities that are underwritten by CIBC WM or an Affiliated Entity (including a member of a selling group) on terms at least as favorable to the Partnership as those offered to investors other than affiliated persons of CIBC WM.

5. Applicant submits that an exemption from section 17(a) is consistent with the protection of investors. Applicant states that the Limited Partners will have been fully informed of the possible extent of the Partnership's investment with affiliated persons and will be able to evaluate the attendant risks. Applicant asserts that the community of interest among the Limited Partners and the CIBC WM Group will provide the best protection against any risk of abuse.

6. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of that person or underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Rule 17d–1 under the Act permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether participation of the investment company in the arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

7. Applicant requests relief to permit affiliated persons of each Partnership or affiliated persons of any of those persons, to participate in any joint arrangement in which the Partnership is a participant. Applicant submits that the flexibility to structure co-investments and joint investments in the manner described in the application will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicant further states that the concern that permitting joint investments with CIBC WM or another CIBC WM affiliated person on the one hand, and a Partnership on the other, might lead to disadvantageous treatment of the Partnership will be mitigated by the fact that CIBC WM is acutely concerned with its relationship with the key employees who invest in the Partnerships. Applicant also asserts that, in light of CIBC WM's purpose of establishing the Partnerships to reward Eligible Employees and to attract highly qualified personnel to CIBC WM, it is unlikely that an affiliated co-investor will enter into a transaction with a Partnership with the intent of disadvantaging the Partnership. Applicant also states that any investment by a Partnership made concurrently with an affiliated co-investor will on the same terms as the investment by the affiliated co-investor.

8. Section 17(f) of the Act designates the entities that may act as custodians of investment company assets. Rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicant requests an exemption from section 17(f) and rule 17f–1 to the extent necessary to permit a CIBC WM Company to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicant also requests an exemption from the requirement in rule 17f–1(b)(4) that an independent account periodically verify the assets held by the custodian. Applicant states that, because of the community of interest between the Partnerships and the CIBC WM Group and the existing requirement for an independent annual audit, compliance with these requirements would be unnecessarily burdensome and expensive. The Partnerships will comply with all other requirements of rule 17f–1.

9. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. In the case of any Partnership for which a CIBC WM Company is the General Partner, applicant requests exemptive relief to permit the General Partner, applicant requests exemptive relief to permit the General Partner's board of directors or similar body (the "Board"), who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicant states that, because all of the members of the Board will be interested persons, applicant could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the directors of the Board take actions and make determinations as are set forth in rule 17g–1. Applicant states that each Partnership will comply with all other requirements of rule 17g–1.

10. Section 17(j) of the Act and paragraph (a) of rule 17j–1 under the Act prohibit certain enumerated persons from engaging in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from these provisions of rule 17j–1 because they are unnecessarily burdensome as applied to the Partnerships. Applicant will remain subject to rule 17j–1(a).

11. Applicant requests an exemption from the requirements of sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections. These provisions require registered investment companies to prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicant contends that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Limited Partners. Applicant requests exemptive relief to the extent necessary to permit each Partnership to report annually to its Limited Partners. Applicant also requests an exemption from section 30(h) of the Act to the extent necessary to exempt the General Partner (including any of its members) of each Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicant asserts that, because there will be no trading market for the Interests and the transfer of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if the Investment Adviser determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Limited Partners and do not involve overreaching of the Partnership or its Limited Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Limited Partners, the Partnership's organizational documents, and the Partnership's reports to its Limited Partners. In addition, the Investment Adviser will record and preserve a description of the Section 17 Transactions, the Investment Adviser's findings, the information or materials upon which the Investment Adviser's findings are based, and the basis for those findings. These records will be maintained for the life of the Partnership and at least two years thereafter, and will be subject to examination by the SEC and its staff.[4]

2. In connection with the Section 17 Transactions, the Investment Adviser will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of the transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of that person, promoter, or principal underwriter.

3. The Investment Adviser will not invest the funds of any Partnerships in any investment in which an "Affiliated Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and an Affiliated Co-Investor are participants, unless the Affiliated Co-Investor, prior to disposing of all or part of its investment: (a) gives the Investment Adviser sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to, or concurrently with, on the same terms as, and pro rata with, the Affiliated Co-Investor. The term "Affiliated Co-Investor" means any person who is: (i) an "affiliated person" (as that term is defined in the Act) of the Partnership; (ii) CIBC WM or a CIBC WM Company; (iii) an officer or director of CIBC WM or CIBC WM Company; (iv) a company, partnership, or other investment vehicle offered, sponsored, or managed by CIBC WM or a CIBC WM Company; (v) any entity with respect to which CIBC WM or a CIBC WM Company provides management, investment management or similar services as manager, investment manager, or general partner or in a similar capacity, for which it may receive compensation, including without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains or similar compensation; or (vi) a company in which an officer, director, or member of the General Partner acts as an officer, director, or General Partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (i) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to Qualified Family Members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family member; (iii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (iv) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under that Act; (v) when the securities are government securities as defined in section 2(a)(16) of the Act; (vi) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities, or (vii) when any entity with respect to which CIBC WM or a CIBC WM Company provides management, investment management, or similar services as manager, investment manager, or general partner or in a similar capacity, if CIBC WM or such entity does not have the actual investment discretion over the sale or disposition of the entity's securities.

4. Each Partnership and its General Partner and Investment Adviser will maintain and preserve, for the life of the Partnership and at least two years thereafter, the accounts, books, and

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

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other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of the Partnership required by the terms of the applicable Partnership Agreement to be sent to the Limited Partners, and agree that these records will be subject to examination by the SEC and its staff.[5]

5. The General Partner will send or cause to be sent to each Limited Partner who had an interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year,the General Partner will make or cause to be made a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of each Partnership, the General Partner will send or cause to be sent a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Limited Partners of their federal and state income tax returns, and a report of the investment activities of the Partnership during that year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a CIBC WM Group director, officer, or employee, that individual will not participate in the Investment Adviser's determination of whether or not to effect the purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17882 Filed 7–13–99; 8:45 am]

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[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Hasbro, Inc., Common Stock, Par Value $.50 per Share, and Related Preference Share Purchase Rights), File No. 1–6682

July 7, 1999.

Hasbro, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the securities specified above ("Securities") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Securities have been listed for trading on the Amex and, pursuant to Registration Statements on Form 8–A filed with the Commission which became effective on June 9, 1999, on the New York Stock Exchange, Inc. ("NYSE"). Trading in the Securities on the NYSE commenced at the opening of business on June 23, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the Exchange and by setting forth in detail to the Amex the reasons for such proposed withdrawal, and the facts in support thereof. The Amex has in turn informed the Company that it would not interpose any objection to the withdrawal of the Company's Securities from listing on the Exchange.

In making the decision to withdraw its Securities from listing on the Amex, the Company considered it expedient to avoid the direct and indirect costs and the division of the market which might result from listing the Securities simultaneously on the Amex and the NYSE.

The Company's application relates solely to the withdrawal of the Securities from listing on the Amex and shall have no effect upon the continued listing of the Securities on the NYSE. Moreover, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before July 28, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–17880 Filed 7–13–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23899; 812–11266]

The Short Term Bond Portfolio, et al.; Notice of Application

July 8, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash in affiliated money market funds.

APPLICANTS: The Short Term Bond Portfolio, The U.S. Fixed Income Portfolio, The Tax Exempt Bond Portfolio, The New Tax Exempt Bond Portfolio, The U.S. Equity Portfolio, The U.S. Small Company Portfolio, The International Equity Portfolio, The Emerging Markets Equity Portfolio, The Diversified Portfolio, The Series Portfolio, Series Portfolio II (collectively, the "Investing Master Funds"); The Prime Money Market Portfolio, The Federal Money Market Portfolio, The Tax Exempt Money Market Portfolio, and The Treasury Money Market Portfolio, a subtrust of Series Portfolio II (collectively, the "Underlying Master Funds"); J.P. Morgan Series Trust ("Series Trust"), J.P. Morgan Institutional Funds

("Institutional Funds"), J.P. Morgan Funds ("Morgan Funds"), Morgan Guaranty Trust Company of New York ("MGT"), J.P. Morgan Investment Management Inc. ("JPMIM," together with MGT, the "Advisers").[1]

FILING DATES: The application was filed on August 21, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 2, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o John E. Baumgardner, Jr., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20459–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Investing Master Funds and the Series Trust are registered under the Act as open-end management investment companies. The Investing Master Funds and the Series Trust are advised by JPMIM. The Advisers are wholly-owned subsidiaries of J.P. Morgan & Co., Inc., a bank holding company. JPMIM is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act").

2. The Institutional Funds and the Morgan Funds are registered under the Act as open-end management investment companies. The Institutional Funds and the Morgan Funds (collectively, the "Underlying Feeder Funds") invest all of their assets, in reliance on section 12(d)(1)(E) of the Act, in securities of the Underlying Master Funds, which are corresponding open-end management investment companies registered under the Act. The Underlying Master Funds are advised by JPMIM. The Underlying Feeder Funds together with the Underlying Master Funds are collectively referred to as the "Money Market Funds." Each of the Money Market Funds is subject to the requirements of rule 2a–7 under the Act.

3. The Investing Master Funds and the Series Trust ("Investing Funds") have, or may be expected to have, uninvested cash ("Uninvested Cash") held by their custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors. Currently, the Investing Funds can invest uninvested cash directly in money market instruments.

4. Applicants request relief to permit the Investing Funds to invest their Uninvested Cash in the Money Market Funds. Any investment of Uninvested Cash in shares of the Money Market Funds will be in accordance with each Investing Fund's investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information (or registration statement with respect to the Investing Master Funds). Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns on Uninvested Cash, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's outstanding total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use uninvested Cash to acquire shares of the Money Market Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases the Investing Fund's aggregate investment of Uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Investing Fund's total assets at any time. Applicants also request relief to permit a Money Market Fund to sell its securities to an Investing Fund in excess of the percentage limitations in section 12(d)(1)(B). Applicants represent that Money Market Funds that are the Underlying Master Funds will not acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act; and Money Market Funds that are Underlying Feeder Funds will invest only in Underlying Master Funds in compliance with section 12(d)(1)(E) of the Act.

3. Applicants believe that the proposed arrangement does not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Monday Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. If the Money Market Fund shares are subject to a sales load, redemption fee, asset-based distribution fee or service fee, applicants state that the Advisers will waive their investment advisory fees in an amount that offsets these charges or, if necessary, reimburse any such Investing Fund out of the Adviser' own resources. In addition, the Advisers will waive their investment

[1] Applicants also request relief for any other registered open-end management investment company that is advised by the Advisers or an entity controlling, controlled by, or under common control with the Advisers. All investment companies that currently intend to rely on the requested order are named as applicants. Any other existing or future open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

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advisory fees for each Investing Fund in an amount that offsets the amount of the advisory fees of Money Market Funds incurred by the Investing Fund either directly if the investment is in shares of an Underlying Master Fund or indirectly if the investment is in shares of an Underlying Feeder Fund. The Advisers have voluntarily agreed to waive their advisory fees for each Investing Fund and/or reimburse any such Investing Fund, in an amount that offsets the amount of administrative services fees of the Money Market Fund incurred by the Investing Fund and payable to MGT, the administrator of the Money Market Funds.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include any investment adviser to the investment company and any person directly or indirectly controlling, controlled by, or under common control with the investment adviser. The Investing Funds and the Money Market Funds are advised by the Advisers and have identical boards of trustees and thus may be deemed to be under common control. In addition, if an Investing Fund were to acquire 5% or more of a Money Market Fund, applicants state that an Investing fund could become an affiliate of a Money Market Fund. Accordingly, applicants state that section 17(a) would prohibit the sale of the shares of Money Market Funds to the Investing Funds, and the redemption of the shares by the Money Market Funds.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions, or classes of persons or transactions, from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief satisfies the standards in sections 17(b) and 6(c) of the Act. Applicants state that the Investing Funds will retain their ability to invest Uninvested Cash directly in money market instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher rate of return, or for any other reason. Similarly, the Money Market Funds have the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's board of trustees determines that such sales would adversely affect its portfolio management and operations. Applicants also state that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants believe that the Investing Funds and the Money Market Funds, by participating in the proposed transactions, and the Advisers, by managing the assets of the Investing Funds and the Money Market Funds, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1 under the Act.

8. In considering whether to approve a transaction under rule 17d–1, the Commission considers whether the investment company's participation in such joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on a basis not different from or less advantageous than that of any other participant and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealer's Conduct Rules), or if such shares are subject to any such sales load, redemption fee, distribution fee or service fee, each Adviser will waive its advisory fee for each Investing Fund, and/or reimburse any such Investing Fund out of the Adviser's own resources, in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Each Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fee of the Money Market Funds incurred by the Investing Fund either directly or indirectly if the investment is in shares of an Underlying Feeder Fund.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment of Uninvested Cash in shares of the Money Market Funds will be in accordance with each Investing Fund's investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information (or registration statement with respect to an Investing Master Fund).

5. Each Investing Fund, each Money Market Fund, and any future registered open-end management investment company that may rely on the order will be advised by the Advisers or an entity controlling, controlled by, or under common control with the Advisers.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by Section 12(d)(1)(E) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Depty Secretary.

[FR Doc. 99–17881 Filed 7–13–99; 8:45 am]

BILLING CODE 8020–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23900; 812–11646]

The Wachovia Funds, et al., Notice of Application

July 9, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain common trust funds to transfer their assets to certain series of registered open-end management companies in exchange for shares of the series.

APPLICANTS: The Wachovia Funds ("Trust"); Wachovia Bank, N.A. ("Wachovia"), Wachovia Corporation, Wachovia Capital Management Special Values Fund ("Special Values Fund"), and Wachovia Stock Fund ("Stock Fund").

FILING DATES: The application was filed on June 9, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 29, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o William Stoyko, Esq., Wachovia Bank, N.A., 1021 East Cary Street, P.O. Box 27602 Richmond, VA 23261.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisory at (202) 942–0569, or Michael W. Mundt, Branch Chief at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company which offers fourteen series, including the Wachovia Special Values Fund and Wachovia Quantitative Equity Fund ("Mutual Funds"). Wachovia Asset Management, a business unit of Wachovia, acts as investment adviser to each Mutual Fund. As a "bank" within the meaning of section 202(a)(2) of the Investment Advisers Act of 1940 (the "Advisers Act"), Wachovia is exempt from registration under the Advisers Act.

2. Wachovia, a national bank, is a wholly-owned subsidiary of Wachovia Corporation, a bank holding company. Special Values Fund and Stock Fund are maintained by Wachovia as trustee and are "common trust funds" as defined in section 584(a) of the Internal Revenue Code of 1986, as amended ('CTFs"). Participants in the CTFs are persons or entities for which Wachovia acts as trustee, executor, administrator, guardian, or custodian) ("Participants"). Wachovia is trustee for the Wachovia Pension Plan ("WPP"), an employee benefit plan maintained for employees of Wachovia Corporation and its subsidiaries. WPP holds more than 5% of the outstanding voting shares of each of the Mutual Funds.

3. Applicants propose to transfer in-kind the assets of Special Values Fund to Wachovia Special Values Fund and of Stock Fund to Wachovia Quantitative Equity Fund in exchange for Mutual Fund shares having an aggregate net asset value equal to the market value of the transferred securities (the "Conversions"). The CTF assets to be transferred to the Mutual Funds will be valued in accordance with the provisions of rule 17a–7(b) under the Act. The Mutual Fund shares received in the Conversions will not be subject to a sales charge, redemption fee or rule 12b–1 distribution fee. The Mutual Fund shares received by the CTFs will be credited to the account of each Participant, pro rata, according to the Participant's interest in the relevant CTF immediately prior to the Conversions. Following the Conversions, the CTFs will be terminated and the Mutual Fund shares will be held by Wachovia directly for the benefit of the Participants. Wachovia will pay all expenses incurred in connection with the Conversions.

4. Applicants request relief to effect the Conversions, which are expected to occur on August 1, 1999. Applicants also request relief for similar future transactions in which assets of a CTF maintained by Wachovia as trustee are exchanged for shares of a registered open-end management investment company advised by Wachovia or any entity controlling, controlled by, or under common control with Wachovia, and in which, at that time, WPP or other employee benefit plans maintained for the benefit of Wachovia or its affiliates own 5% or more of the shares ("Future Transactions"). Applicants state that they will rely on the requested relief for Future Transactions only in accordance with the terms and conditions contained in the application.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines "affiliated person" to include: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser of the investment company. Applicants state that, because the CTFs may be viewed as acting as principals in the Conversions and because the CTFs and the Mutual Funds may be viewed as being under the common control of Wachovia within the meaning of section 2(a)(3)(C) of the Act, the Conversions may be subject to the prohibitions contained in section 17(a).

2. Rule 17a–7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the security. Applicants state that rule 17a–7 is not available for the Conversions because WPP currently owns more than 5% of the outstanding voting securities of the Mutual Funds and Wachovia may be deemed to have an indirect pecuniary interest in the performance of the assets held by WPP. As a result, the affiliation between the

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CTFs and the Mutual Funds may not be solely by reason of having a common investment adviser, common directors, and/or common officers. In addition, the Conversions will be effected as in-kind transfers, rather than in cash.

3. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of assets of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each investment company makes certain determinations. Applicants state that rule 17a–8 is not available for the Conversions because the CTFs are not registered investment companies and because the CTFs and the Mutual Funds have affiliations other than those covered by the rule.

4. Section 17(b) of the Act provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Section 6(c) provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants seek an order under sections 6(c) and 17(b) of the Act to permit the Conversions and Future Transactions. Applicants submit that the proposed transactions satisfy the standards for relief under sections 6(c) and 17(b). Applicants assert that the terms of the Conversions are reasonable and fair and do not involve overreaching on the part of any person; the investment objectives and policies of the CTFs are compatible with and similar to the applicable Mutual Fund's investment objectives and policies; and the Conversions and the requested exemption are in the public interest, consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

7. Applicants state that the Conversions will meet all of the conditions of rules 17a–7 and 17a–8, except as noted above. Applicants state that the Conversions are in accordance with procedures previously adopted by the Mutual Funds' board of trustees (the "Board") pursuant to rule 17a–7(e), and the provisions of rule 17a–7(b), (c), (d), and (f) will be satisfied. The Conversions will take place as in-kind transfers from the CTFs to the Mutual Funds, rather than cash transactions as required by rule 17a–7(a). Applicants assert that if the Conversions were effected in cash, the CTFs and the Mutual Funds would have to bear unnecessary expense and inconvenience in transferring assets to the Mutual Funds. In addition, applicants state that the Board, including a majority of the disinterested members, has determined that the participation of each Mutual Fund in the Conversions is in the best interests of that Mutual Fund and that the interests of existing shareholders of the Mutual Fund will not be diluted as a result of a Conversion. Such findings and the basis on which they were made will be fully recorded in the minute books of the Mutual Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Conversions will comply with the terms of Rule 17a–7(b) through (f).

2. The Conversions will not occur unless and until the Board (including a majority of the disinterested members) finds that participation by the Mutual Funds in the Conversions is in the best interests of each Mutual Fund and that the interests of the existing shareholders of the Mutual Funds will not be diluted as a result of the Conversions. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Trust.

3. The Conversions will not occur unless and until Wachovia, as trustee and fiduciary of each CTF and the Participants therein, has determined in accordance with its fiduciary duties that the Conversions are in the best interests of Participants in the CTFs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–17970 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23898; 812–11482]

Wayne Hummer Investment Trust, et al.; Notice of Application

July 8, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to use uninvested cash to purchase shares of affiliated money market funds.

APPLICANTS: Wayne Hummer Investment Trust ("Trust"), all existing and future series thereof, and any other registered open-end management investment company and its series that are currently or in the future advised by Wayne Hummer Management Company (the "Adviser") or any entity controlling, controlled by, or under common control with the Adviser (collectively, the "Funds"), the Adviser, and Wayne Hummer Investments L.L.C. ("WHILLC").

FILING DATES: The application was filed on January 27, 1999, and amended on May 18, 1999. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 29, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–

0609. Applicants, 300 South Wacker Drive, Suite 1500, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942–0674, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and is an open-end management investment company registered under the Act. The Wayne Hummer Investment Trust currently consists of two series, a growth fund and an income fund (together with any future Funds that are not money market funds, the "Non-Money Market Funds") and as of July 31, 1999 will add two more series, one of which will be a money market fund (together with any future Funds that are money market funds, the "Money Market Funds").[1] The Adviser, an Illinois corporation, serves as investment adviser to each Fund and is registered as an investment adviser under the Investment Advisers Act of 1940. WHILLC, a Delaware limited liability company, acts as the distributor for each of the existing Funds.

2. Each Non-Money Market Fund has, or may be expected to have, uninvested cash ("Uninvested Cash") held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from the liquidation of investment securities, and new investor capital.

3. Applicants request an order to permit a Non-Money Market Fund to use its Uninvested Cash to purchase shares of a Money Market Fund, and the Money Market Fund to sell shares to and redeem from the Non-Money Market Fund, provided that the Non-Money Market Fund's aggregate investment in Money Market Funds does not exceed 25% of the Non-Money Market Fund's total assets at any time.

[1] All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future registered management investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

Applicants believe that the ability to invest Uninvested Cash in Money Market Funds will benefit the Non-Money Market Funds by providing high rates of return, ready liquidity, and increased diversification.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Non-Money Market Funds to use Uninvested Cash to purchase shares of the Money Market Funds and the Money Market Funds to sell the shares in excess of the limitations in sections 12(d)(1) (A) and (B), provided that no Non-Money Market Fund will invest more than an aggregate of 25% of its total assets in all Money Market Funds at any time.

3. Applicants submit that the proposed transactions do not implicate the abuses that sections 12(d)(1) (A) and (B) were intended to prevent, which include the exercise of undue influence by an acquiring fund over an acquired fund and layering of fees. Applicants state that each of the Money Market Funds will be managed specifically to maintain a highly liquid portfolio and will not be susceptible to undue control due to the threat of large-scale redemptions. Applicants also submit that there will be no layering of fees because no sales load, redemption fee, asset-based distribution fee or service fee will be charged in connection with the purchase and sale of shares of the Money Market Funds. Applicants state that the Adviser currently intends to credit to the Non-Money Market Fund, or waive, the investment advisory fees that it earns as a result of the investment in the Money Market Funds.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that because the Funds are advised by the Adviser and share a common board of trustees, the Funds may be deemed to be under common control and affiliated persons of one another. As a result, section 17(a) would prohibit the sale of shares of a Money Market Fund to a Non-Money Market Fund and the redemption of the shares by the Non-Money Market Fund.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

6. Section 6(c) of the Act permits the SEC to exempt any person, security, or transaction from any provision of the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c). Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because shares of the Money Market Fund will be purchased and redeemed by the Non-Money Market Funds at net asset value. Applicants also note that Non-Money Market Funds will retain their ability to invest their Uninvested Cash directly in money market instruments in accordance with their investment objectives and policies if a higher return can be obtained or for any other reason. Applicants assert that each Money Market Fund may discontinue selling its shares to any of the Non-Money Market Funds if the board of trustees of the Money Market Fund determines that the sale would adversely affect the Money Market Fund's portfolio management and operations.

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8. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company. Applicants assert that the Non-Money Market Funds, by purchasing shares of the Money Market Funds, the Money Market Funds, by selling shares to Non-Money Market Funds, and the Adviser, by managing the proposed transactions, could be deemed to be participants in a joint arrangement.

9. Rule 17d–1 under the Act permits the SEC to approve a joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from, or less advantageous than, that of other participants. Applicants assert that the Funds will participate in the proposed transactions on a basis not different from or less advantageous than that of other participants and that the transactions will be consistent with the purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Non-Money Market Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Rules of Conduct).

2. If the Adviser collects a fee from a Money Market Fund for acting as its investment adviser with respect to assets invested by a Non-Money Market Fund, before the next meeting of the board of trustees of a Non-Money Market Fund that invests in the Money Market Funds ("Board") is held for the purpose of voting on an advisory contract for the Non-Money Market Fund under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory contract attributable to, managing the assets of the Non-Money Market Fund that can be expected to be invested in such Money Market Funds. Before approving any advisory contract under section 15, the Board, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser should be reduced to account for the fee indirectly paid by the Non-Money Market Fund because of the advisory fee paid by the Money Market Fund to the Adviser. The minute books of the Non-Money Market Fund will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Non-Money Market Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Non-Money Market Fund's total assets. For purposes of this limitation, each Non-Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions and policies set forth in its prospectus and statement of additional information.

5. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Non-Money Market Fund, Money Market Fund, and any future Fund that may rely on the requested order will be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17932 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41599; File No. SR–CBOE–99–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Exchange's Rapid Opening System

July 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 21, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 6.2A, *Rapid Opening System*, which governs the operation of the Exchange's Rapid Opening System, to allow for two Floor Officials to adjust effected trades in cases where an underlying stock has been opened at an erroneous price and later corrected on the underlying market. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to add sub-paragraph (a)(iii) to CBOE Rule 6.2A to provide that two Floor Officials may adjust trades executed through the Exchange's Rapid Opening System ("ROS") when the primary market for the underlying has opened a security at an erroneous price and then later corrects that opening price.

In the period of time since CBOE Rule 6.2A was approved by the Commission on a pilot basis,[3] the Exchange has had a very positive experience with ROS. ROS has enabled the Exchange to open classes of options within seconds of the opening of the underlying security thus, enabling firms and customers to enter orders in open trading almost immediately after the opening bell. In those classes where it has been employed, ROS additionally has prevented backlogs of orders from developing during the opening. During the time ROS has been employed on the floor, there have been a very few instances. however, where ROS has opened the option class at a price based upon an erroneous opening price of the underlying security disseminated by the primary market which is later corrected by the primary market only after ROS had opened the option class.[4]

In those instances where ROS has opened on an erroneous print, staff of the Exchange has had to expend a substantial amount of time working with the participants in the trades to get their agreement to adjust the trades and to determine which customer orders should have been filled on the opening. The staff has had to work to get the parties to the trade to agree before the trades have been adjusted. The market-makers in the particular class where ROS is employed have suffered significant deleterious financial consequences from these openings on an erroneous print because, under the current circumstances, only those market-maker trades the occurred at a price that disfavored a customer will be adjusted while the market-makers will retain those trades done at a price that favored a customer. As a result, the Exchange believes market-makers may become discouraged from participating in ROS because, even though the expected incidences where an erroneous print occur are rare, the financial consequences to a particular market-maker can be substantial.

It should also be noted that when ROS is opened based upon an incorrect price of the underlying there are customer orders that are not being filled that might otherwise have been filled had ROS opened at the correct price. Also, there are customer to customer trades that will be executed at a price based upon an incorrect underlying price. Floor Officials would have the authority to assign trades for these customers to market-makers in the crowd as well and to adjust the execution price of the customer to customer trades. Floor Officials would use their judgment to adjust trades as necessary to maintain a fair and orderly market.

After these problems first occurred, Exchange staff has educated trading crowds about methods that they may employ to help prevent these problems from occurring in the future. For example, the trading crowds may wait to send their AutoQuote values until after the initial bid/ask quotes on the underlying are disseminated to ensure that the initial disseminated opening price for the underlying security is in line with the bid/ask quotes. Also, a system enhancement has been put in place that will provide an indication to crowds when ROS is being opened at a price that appears erroneous. There is no guarantee that these methods can prevent every occurrence where a class is opened on ROS at an erroneous price. The Exchange believes therefore, it is necessary to grant Floor Officials the authority to adjust opening trades in the event that the class is opened at an erroneous price. This authority is similar to the authority Floor Officials currently have with respect to RAES trades.[5] The Exchange believes this change will prevent market-makers from becoming discouraged from participating on ROS and will save time spent by Exchange staff negotiating with participants on trades that occur on erroneous prints. At the same time the rule change will give Floor Officials the authority to determine which trades should be adjusted so that a fair and equitable result is achieved for all market participants, including those customers that might not have been filled on the opening but who might have been had the class been opened at the correct price.

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of Act in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–20 and should be submitted by August 4, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17884 Filed 7–13–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41033 (February 9, 1999) 64 FR 8156 (February 18, 1999).

[4] Because ROS employs the Exchange's AutoQuote system and the Exchange's AutoQuote system relies on feed of the underlying to determine the option's price, an inaccurate underlying price can lead to an inaccurate ROS opening price.

[5] CBOE Rule 6.8(a)(ii) states in part: "A trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval."

[6] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41605; File No. SR–CHX–99–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 by the Chicago Stock Exchange, Inc. Relating to the Minimum for Nasdaq-100 Shares and Disclaimer of Liability With Respect to the Nasdaq-100 Index

July 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 1999, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change, as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The filing was subsequently amended on July 1, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously approving the filing.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Rule 22 of Article XX, to amend interpretation and policy .05 thereunder, to permit dealings in Nasdaq-100 Shares of the Nasdaq 100 Trust ("Nasdaq-100 Shares") in increments smaller than the minimum variation, and to amend CHX Rule 25 of Article XXVIII relating to disclaimer of liability with respect to the Nasdaq-100 Index.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend CHX Rule 22 of Article XX, to amend interpretation and policy .05 thereunder, to permit dealings in Nasdaq-100 Shares in increments of 1/64 of $1.00. The Nasdaq 100 Trust is a unit investment trust sponsored by Nasdaq-Amex Investment Product Services, Inc. with a portfolio based on the component stocks of the Nasdaq-100 Index. The Exchange intends to trade the Nasdaq-100 Shares pursuant to unlisted trading privileges ("UTP") under the Exchange's Investment Company Unit rules.[5] These securities are currently traded on the American Stock Exchange ("Amex") in increments of 1/64 of $1.00 and, thus, the Exchange believes it is appropriate to trade these securities on the Exchange with the same minimum increment of 1/64 of $1.00 as well.[6]

In connection with the Exchange's license agreement with the Nasdaq Stock Market ("Nasdaq") relating to, among other things, the use of the name "Nasdaq-100 Shares," and the disclaimers of liability relating to the Nasdaq-100 Index, the Exchange is proposing to amend CHX Rule 25 of Article XXVIII to add a new subsection (h) to codify a rule governing disclaimers of liability relating to the Nasdaq-100 Index.[7] The proposed CHX Rule 25 of Article XXVIII will reflect the disclaimers of liability language adopted by the Amex in its Rule 1006.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–06 and should be submitted by August 4, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the CHX's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act[12] because it will facilitate transactions in securities by permitting

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange moved a new section proposed under CHX Rule 24 of Article XXVIII, Investment Company Units, to CHX Rule 25 of Article XXVIII, Portfolio Depository Receipts; as well as made a typographic correction to the proposed rule change. *See* Letter from Kirsten M. Carlson, Foley & Lardner, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 30, 1999 ("Amendment No. 1").

[4] *See* Amendment No. 1, *supra* note 3.

[5] *See* CHX Rule 24 of Article XXVIII.

[6] *See* Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (SR–Amex–98–34).

[7] *See* Amendment No. 1, *supra* note 3.

[8] *Id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

the CHX: (1) To trade Nasdaq-100 Shares, on a UTP basis, in increments of 1/64th of $1.00, and (2) to adopt a disclaimer of liability rule relating to the Nasdaq-100 Index, consistent with the license agreement between Nasdaq and the Exchange.

The Exchange has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after the publication of the proposal in the **Federal Register**. The Commission believes that such action is appropriate, in that the proposed rule change establishes the same minimum trading variation as the Amex has adopted for Nasdaq-100 Shares. Further, the proposed rule relating to the disclaimer of liability with respect to the Nasdaq-100 Index is also identical to the disclaimer of liability adopted by the Amex.[13] For the reasons set forth above, the Commission does not believe that this proposal raises any new regulatory issues. Accordingly, the Commission finds that there is good cause for approving the proposed rule change prior to the thirtieth day after the publication of the proposal in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17934 Filed 7–13–99; 8:45 am]

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[13] The Amex Disclaimer of liability provision was approved in Securities Exchange Act Release Nos. 41119 (February 26, 1999), and 41562 (June 25, 1999). It was subject to the full notice and comment process in Securities Exchange Act Release No. 41119 and no comments were received with respect to the disclaimer.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41604; File No. SR–MSRB–99–6]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board To Revise the Test Specifications and Study Outline for the Board's Municipal Securities Representative Qualification Examination (Test Series 52)

July 7, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 1999,[3] the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepare by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing the proposed rule change to revise the test specifications and study outline for the Board's Municipal Securities Representative Qualification Examination (Test Series 52). The Board requests that the Commission delay the effectiveness of the revised study outline until August 1, 1999, in order to provide time to modify the examination to reflect the changes to the test specifications in the study outline and to circulate to the industry information concerning the revisions.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Series 52 examination qualifies a candidate as a municipal securities representative.[4] A candidate may also qualify as a municipal securities representative by taking the General Securities Representative Examination (Test Series 7), which borrows questions from the Series 52 examination. Specific subjects and questions have been updated from time to time in the Series 52 examination to reflect changes in Board rules or applicable federal regulations. An ad hoc committee from the Board's Professional Qualifications Advisory Committee ("PQAC")[5] determined that coverage of certain subject areas in the study outline should either be expanded to provide greater detail to candidates studying for the Series 52 examination or de-emphasized to reflect changed practices and products within the municipal securities industry. Topics that are no longer relevant were deleted and other topics were added or revised to reflect additions to or changes in practices,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Board filed the proposed rule change to replace the File No. SR–MSRB–99–05, which it withdrew on June 23, 1999. The proposed rule change has been filed by the Board as a non-controversial rule change under Rule 19b–4(f)(6) under the Act. On May 20, 1999, the Board provided the Commission with written notice of its intent to file the proposed rule change, which was at least five days prior to the filing date, as required by Rule 19b–4(f)(6).

[4] MSRB Rule G–3(a)(i) defines the term "municipal securities representative" as: a natural person associated with a broker, dealer or municipal securities dealer, other than a person whose functions are solely clerical or ministerial, whose activities include one or more of the following: (A) Underwriting, trading or sales of municipal securities; (B) financial advisory or consultant services for issuers in connection with the issuance of municipal securities; (C) research or investment advice with respect to municipal securities; or (D) any other activities which involve communication, directly or indirectly, with public investors in municipal securities; provided, however, that the activities enumerated in subparagraphs (C) and (D) above shall be limited to such activities as they relate to the activities enumerated in subparagraphs (A) and (B) above.

[5] PQAC is composed of the Representative Examination Subcommittee and the Principal Examination Subcommittee. The subcommittees are composed of individuals with extensive experience in the securities industry. The committee members are employed by securities firms and bank dealers and come from diverse geographic locations.

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products, and Board rules since the outline was last revised. The revised outline also provides for the inclusion of new Board rules as they are promulgated.

In the revised study outline, existing topics have been expanded to include the following terms, products, or concepts:

- taxable municipals
- multi-modal
- tax-exempt commercial paper
- forwards (forward delivery)
- capital appreciation bonds (zeros)
- current refundings
- advance refunding
- de minimis exemption on OID bonds
- Bloomberg, BOND EXPRESS and BONDTRAC
- swing coupon
- locked market
- municipal bond contract
- municipal over bond (MOB) spread
- growth
- speculation
- tax law changes
- construction fund
- enhanced securities
- letters of credit
- guaranteed investment contract (GIC)
- advance refunded
- insured
- average life (sinking fund)
- dollar value of a basis point
- convexity
- derivatives
- value of a plus (1/64)
- Consumer Price Index (CPI)
- unemployment rate
- housing starts
- foreign trade deficits
- purchasing manager's report
- leading/lagging/co-existent indicators
- Producer Price Index (PPI)
- gross domestic product
- international economic activity
- compression

Major topics added since the last published revision of the study outline are:

- duration (under the heading of mathematical calculations and methods)
- rule G–37, on political contributions and prohibitions on municipal securities business
- rule G–38, on consultants
- rule G–39, on telemarketing

Major topics deleted since the last published revision of the study outline are: [6]

- New/Public Housing Authority (NHA/PHA) bonds
- Mortgage backed bonds
- Pass-through securities
- Flower bonds
- Arbitration (rule G–35)

The test specifications allocate exam questions among the various topics. The test specifications have been revised to provide for greater emphasis under the topic areas of Economic Activity, Government Policy and Factors Affecting Interest Rates and Federal Legal Considerations. The examination will remain a three-hour 100 question examination administered by NASD Regulation, Inc. using the PROCTOR system.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(A) [7] of the Act, which requires the Board to propose and adopt rules that ensure that no municipal securities broker or dealer effects transactions in municipal securities without meeting the standards of training, experience, competence, and other qualifications determined by the Board to be necessary or appropriate in the public interest or for the protection of investors. Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act, and Rule 19b–4(f)(6) [9] thereunder, in that it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five days prior to the filing date; and (iv) does not become operative for thirty (30) days from the date of its filing on June 23, 1999. In particular, the Commission believes the proposed rule change qualifies as a non-controversial filing because the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to the File No. SR–MSRB–99–6 and should be submitted by August 4, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17886 Filed 7–13–99; 8:45 am]

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[6] Phone call between Ronald W. Smith, Senior Legal Associate, MSRB, and Sonia Patton, Attorney, Division of Market Regulation, Commission, on July 6, 1999.

[7] 15 U.S.C. 78*o*–4(b)(2)(A).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41608; File No. SR–NYSE–99–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Equity-Linked Debt Securities

July 8, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend paragraph 703.21 of its Listed Company Manual ("Manual") regarding the listing of equity-linked debt securities ("ELDS"). The amendment deals with the minimum required term of such securities, and substitutes a one-year minimum for all ELDS (domestic and non-U.S.) for the current requirement that the securities have a term of two to seven years (three year maximum for non-U.S. securities). The text of the proposed rule change is as follows. New text is italicized and deleted text is bracketed.

NYSE Listed Company Manual

703.21 Equity-Linked Debt Securities

* * * * *

(B) Equity-Linked Debt Security Listing Standards

The issue must have:

* * * * *

• *Minimum life of one year* [A term of two to seven years; provided that if the issuer is a non-U.S. company, the issue may not have a term of more than three years].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ELDS are non-convertible debt of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock. Because ELDS are a derivative product related to the underlying stock, the Exchange trades ELDS on the equity trading Floor together with the underlying stock (if such stock is listed).

Paragraph 703.21 of the Manual details the Exchange's listing standards for ELDS. Among other things, these standards require that the ELDS have a term of two to seven years, but not more than three years for ELDS based on the price of a non-U.S. issuer. The Exchange initially proposed these limits as a conservative measure to help ensure that the trading of ELDS does not have an adverse effect on the liquidity of the underlying stock, and is not used in a manipulative manner. The limits on the terms for ELDS contrast with the Exchange's general requirements of derivative instruments. Specifically, for warrants (Paragraph 703.12 of the Manual), foreign currency and currency index warrants (Paragraph 703.15 of the Manual), contingent value rights (Paragraph 703.18 of the Manual) and "other securities" (Paragraph 703.19 of the Manual), the Exchange requires only that the security have a minimum life of one year.

In the nearly six years that the Exchange has traded ELDS, it has not discovered any adverse effects of this instrument. Indeed, ELDS appear to be an instrument that complements the trading of the underlying stock, and the continued popularity of the instrument demonstrates its appeal in the market. Accordingly, the Exchange sees no reason to retain more stringent requirements on these instruments compared to other derivative products. Thus, the purpose of this filing is to apply to ELDS the one-year minimum term requirement generally applicable to other derivative products regardless of whether based on a domestic or non-U.S. security.

The Exchange believes that this rule change will provide issuers with more flexibility in developing ELDS and thus provide greater investment choices in the market. Specifically, the Exchange notes that many corporate debt instruments have terms well in excess of seven years, and that this rule change will allow the structuring of ELDS with terms to maturity comparable to such debt instruments. Furthermore, extending the term of ELDS will provide issuers with the ability to offer variations on ELDS, such as principal protection and call features that may not be as desirable on debt instruments with a shorter term. The Exchange believes that this added flexibility will encourage innovation without having an adverse effect on investor protection.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act [3] requiring that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(5).

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–22 and should be submitted by August 4, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17933 Filed 7–13–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41595; File No. SR–PCX–98–02]

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Order Approving Proposed Rule Change To Allow Staffing of the Public Limit Order Book by Employees of the LMM

July 2, 1999.

I. Introduction

On January 23, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand its Lead Market Maker ("LMM") Book Program ("Program") to allow qualified LMMs to manage their own employees in operating the options public limit order book ("Book"). The proposed rule change was published for comments [3] in the **Federal Register** on April 22, 1998.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.[5]

II. Description of the Proposal

On October 11, 1996, the Commission approved an Exchange proposal to adopt a one-year pilot program under which a limited number of LMMs would be able to assume operational responsibility for the options public limit order book in certain option issues.[6] Initially, the Program's participation was limited to three LMMs and 40 option symbols.[7] On April 1, 1997, the Commission approved an Exchange proposal to expand the Program limits to nine LMMs and 150 option symbols.[8] On September 22, 1997, the Commission approved an Exchange proposal to extend the pilot program for an additional year.[9] Subsequently, the Commission approved an Exchange proposal to make the Program permanent.[10]

Under the Program,[11] approved LMMs may manage the Book function with the assistance of Exchange personnel, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.[12] Presently, an LMM must be certified as qualified by the Exchange's Options Floor Trading Committee ("OFTC") before an employee of that LMM may assist with Book operation. Certification of an LMM is based on some or all of the following factors: experience with trading an options issue as a market maker or LMM and willingness to assume LMM responsibilities; trading volume of the options issue(s); adequacy of capital; willingness to promote the Exchange as a marketplace; history of adherence to Exchange rules and securities laws; trading crowd/LMM evaluations conducted pursuant to Options Floor Procedure Advice B–13; and ability to manage the Book operation.[13]

The Exchange now proposes to expand the Program to allow qualified LMMs to manage their own employees in operating the Book. Currently, the Exchange required participating LMMs to use Exchange personnel to assist the LMM in performing the Order Book Official ("OBO") function, for which the Exchange charges the LMM a staffing charge.[14] LMMs who opt to manage their own employees in the Book operation would continue to set their own rates for Book executions, and would only be required to use Exchange staff, and pay a staffing charge, under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On April 13, 1998, the PCX submitted a letter, in response to Commission staff questions, providing a brief explanation of its proposed method for admitting employees to participate in the LMM Program and concerning its proposed surveillance of the LMM Program employees and operations. The substance of this letter is incorporated into this order. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marie D'Aguanno Ito, Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 13, 1998 ("PCX Letter No. 1").

[4] Securities Exchange Act Release No. 39875 (April 15, 1998), 63 FR 19994.

[5] On March 15, 1999, the PCX submitted a letter further explaining the supervision and training of LMM-employed Order Book Officials. The letter also clarifies that for purposes of the proposed rule change LMMs operating the Book will assume the duties and liabilities of the Exchange. The substance of this letter is incorporated into this order. *See* letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division, Commission, dated February 10, 1999 ("PCX Letter No. 2").

[6] *See* Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996) (approving File No. SR–PSE–96–09).

[7] *Id.*

[8] *See* Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997).

[9] *See* Exchange Act Release No. 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997).

[10] *See* Exchange Act Release No. 40548 (October 14, 1998), 63 FR 56283 (October 21, 1998).

[11] Only multiple-listed option issues are currently eligible to be traded unde the Program. *See* Exchange Act Release No. 38273 (February 12, 1997), 62 FR 7489 (February 19, 1997).

[12] *See* Exchange Act Release No. 37874 (October 28, 1996), 61 FR 56597 (November 1, 1996) (approving SR–PSE–96–38, establishing a staffing charge for LMMs who participate in the pilot program).

[13] *See* Exchange Act Release No. 37810, note 6, *supra.*

[14] *Id. Also see* PCX Rule 6.82(h)(1)(a).

unusual circumstances.[15] If an LMM is not currently participating in the Program and wished to use its own employees to staff the Book, that LMM would apply to the OFTC for approval. An LMM currently participating in the Program wishing to begin using its own employees to staff the Book would also need to apply to the OFTC for approval.

Under the proposal, employees of qualified LMMs operating the Book will be required to perform OBO functions, pursuant to PCX Rules 6.51 through 6.59, as if they were Exchange employees. Like OBOs who are Exchange employees, the LMM staff handling the OBO functions will have the duty to: (1) Assist in the maintenance of a fair, orderly and competitive market; [16] (2) report any unusual activity, transactions or price changes or other unusual market conditions or circumstances that are detrimental to the maintenance of a fair, orderly and competitive market to an Options Floor Official; [17] and (3) disclose to members, upon request, the price and number of contracts that are bid below or that are offered above the Book information displayed.[18] The Exchange has represented that the LMM employees who will most likely operate the Book initially will be former Exchange OBOs and LMM employees who presently work with Exchange OBOs in apprentice-like fashion.[19] For the purposes of this proposal, LMMs will assume the liabilities of the Exchange under PCX Rules 6.59(a) and 13 for any loss, expense, damage or claim arising out of errors or omissions of their Book staff.[20]

The Exchange believes that allowing LMMs to use their own employees to operate the Book will have no negative impact on the Exchange's oversight and regulation of activities on the Options Trading Floor. LMMs who operate the Book will continue to be subject to higher capital requirements than other LMMs or Market Makers.[21] The Exchange will continue to employ Exchange staff to monitor the operations of all LMMs.[22] Exchange staff will also continue to prepare all Unusual Activity Reports that are forwarded to the Surveillance Department for review and to monitor the activities of LMMs, including those activities that are brought to the attention of Floor Officials by members of the trading crowd.[23] Finally, in addition to the on-site monitoring, Exchange staff will also use automated reports for the LMM Limit Order Book and Opening Price Surveillance to help ensure that the LMM is meeting its duties regarding the Book.[24]

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act [25] and, in particular, with Section 6(b) of the Act.[26] Specifically, the Commission finds that the proposal is consistent with the Section 6(b)(5) [27] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is reasonably designed to maintain, without disruption to activities on the Exchange's Options Trading Floor, the effective operation of the Book. Under the proposal, LMMs must be certified as Program qualified by the Exchange's OFTC based on a number of factors, including the LMM's ability to manage the Book operation. Additionally, the employees of qualified LMMs operating the Book will be required to perform OBO functions, pursuant to PCX Rules 6.51 through 6.59, as if they were Exchange employees. Like OBOs who are Exchange employees, the LMM staff handling the OBO functions will have the duty to, amongst other things: (1) Assist in the maintenance of a fair, orderly and competitive market; and (2) report any unusual activity, transactions or price changes or other unusual market conditions or circumstances that are detrimental to the maintenance of a fair, orderly and competitive market to an Options Floor Official. The LMM will be responsible for the proper execution of OBO functions by their employees, and for the purposes of this proposal, the LMMs will assume the liabilities of the Exchange under PCX Rules 6.59(a) and 13 for any loss, expense, damage or claim arising out of errors or omissions of their Book staff. Thus, all the OBO functions that are currently administered by Exchange employees should continue to be executed by LMM employees under the proposal.

The Commission also believes that the Exchange's proposal is reasonably designed to provide LMM-employed OBOs with adequate supervision. The Exchange has represented that LMMs who operate the Book will be subject to heightened scrutiny as compared to LMMs who do not operate the Book. The Exchange also represents that Floor Officials will continue to supervise the LMM trading crowds to which they are assigned. As a result, members seeking information or wishing to file a complaint may go to a Floor Official or Exchange Floor managers. Additionally, LMMs who undertake the operation of the Book under the proposal will continue to be subject to higher capital requirements than other LMMs or Market Makers; Exchange staff will continue to prepare all Unusual Activity Reports that are forwarded to the Surveillance Department for review; and Floor Officials will continue to monitor the activities of LMMs, including those activities that are brought to the attention of Floor Officials by members of the trading crowd.

The Commission believes that the Exchange's proposal is reasonably designed to provide for the adequate training of LMM employees operating the Book. The Exchange has represented that initially, the LMM employees who will most likely operate the Book will be former Exchange OBOs or present LMM employees who currently work with Exchange OBOs in apprentice-like fashion in the Program. Additionally, the Exchange has stated its willingness to assist LMM training efforts with their staff and facilities although participating LMMs will retain the primary responsibility to ensure the adequate training of their Book staff. The Commission believes that the structure of the Program, along with the supervision and oversight by the LMMs and Exchange, should help to ensure that LMM-employed OBOs are adequately trained.

The Commission also believes that the proposal should help LMMs control their operational costs, as LMMs using their own staff to administer book functions will no longer have to pay Exchange personnel staffing charges, except during unusual market

[15] In the event of unusual market circumstances, the Exchange will make Exchange staff available to assist the LMMs in performing their CBO functions on a temporary basis, and will charge such LMMs a reasonable fee for such services. The Exchange intends to file with the Commission a proposed rule change to establish temporary staffing charges for LMMs.

[16] *See* PCX Rule 6.53.

[17] *See* PCX Rule 6.54.

[18] *See* PCX Rules 6.55 and 6.57.

[19] *See* PCX Letter No. 2, note 5, *supra.*

[20] *Id.*

[21] *See* PCX Rule 6.82, Commentary .05 (requiring LMMs who run the Book to maintain "minimum net capital," as provided in Exchange Act Rule 15c3–1, and also to maintain a cash or liquid asset position of at least $500,000, plus $25,000 for each issue over 5 issues for which they perform the function of an OBO).

[22] *See* PCX Letter No. 2, note 5, *supra.*

[23] *Id.*

[24] *Id.*

[25] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

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circumstances. Additionally, the proposal should reduce Exchange costs associated with providing staff to operate the Book.[28] By permitting the Exchange to reduce Program costs and allocate its resources to other regulatory areas the Commission finds that the proposal is consistent with the Act. The Commission believes that the proposal is reasonably designed to maintain, without disruption to activities on the Exchange's Options Trading Floor, the effective operation of the Book functions and therefore is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change, as amended, (SR–PCX–98–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17885 Filed 7–13–99–; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41600; File No. SR–Phlx–99–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Participation on the Auto-X Wheel

July 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is heregy given that on June 21, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Options Floor Procedure Advice ("Advice") F–24, Auto-X, Contra-Party Participation (The Wheel) to allow Registered Options Traders ("ROTs") to only sign-on the Wheel in one Wheel assignment area (two contiguous quarter turrets) during an expiration month, unless the ROT is replacing another ROT from the same firm. The Exchange also proposes to delete references to "brief interval" in Advice F–24(c)(iii), to begin requiring ROTs to sign-off the Wheel if they leave the Wheel assignment area for any period of time. The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summeries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Wheel is an automated mechanism for assigning trade participation among specialists and ROTs on a rotating basis, as contra-side participants to Auto-X orders. Auto-X is the automatic execution feature of the Exchange's Automated Options Market ("AUTOM") system,[4] which provides customers with automatic executions of eligible option orders at displayed markets. The purposes of the Wheel is to increase the efficiency of order execution through Auto-X by including floor traders in the automated assignment of contra-parties to incoming Auto-X orders. Thus, the Wheel is intended to make Auto-X more efficient, as contra-side participation is assigned automatically, and no longer entered manually.

Currently, an ROT may sign-on to as many Wheels as that ROT maintains an ROT assignment, as long as the ROT is present in Wheel assignment area and actively making markets. However, pursuant to Advice F–24(c)(i), the ROT may not sign-on in more than one Wheel assignment area (two contiguous quarter turrets) at a given time. The Exchange proposes that an ROT only sign-on the Wheel in one Wheel assignment area per expiration month at any given time. For example, if an ROT signs-on following the June expiration in Wheel assignment area X, the ROT may sign-on or off the Wheel in Wheel assignment area X during that expiration month (*i.e.,* July). The ROT may not sign-on to the Wheel in Wheel assignment area Y until after the July expiration. The Exchange believes that placing this restriction will encourage ROTs to better fulfill their market making obligations in the trading crowd as well as receive the benefits of participation on the Wheel. In addition, the Exchange recognizes the need for flexibility within member firms to replace ROTs in different trading crowds on a temporary basis. Thus, the Exchange proposes that an ROT who replaces another ROT from the same firm on a temporary basis would be able to sign-on the Wheel for the duration of his replacement.[5]

Secondly, an ROT must currently sign-off the Wheel if he leaves the trading crowd for more than a "brief interval." A brief interval is defined as five minutes or less or in matters of dispute, the amount of time that it takes to call a Floor Official and inform him/her of the issue at hand.[6] The Exchange proposes to delete the reference to "brief interval" from section (c)(iii) of Advice F–24, thus requiring ROTs to sign-off the Wheel if they leave the trading crowd for any period of time. The Exchange believes that this proposal will clarify the ROTs' responsibilities regarding sing-on/sign-off procedures on the Wheel and facilitate the administration of fines by eliminating the subjectivity as to the time period.

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent

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[28] Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX and Marc McKayle, Attorney, Division, Commission on June 23, 1999.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange provided the Commission with written notice and the text of the proposed rule change on June 10, 1999 pursuant to Rule 19b–4(f)(6)(iii).

[4] AUTOM is an electronic order routing and delivery system for option orders. *See* Phlx Rule 1080.

[5] The replacement ROT must maintain an assignment in the issue where he is acting as the replacement consistent with his obligations as a market maker pursuant to Phlx Rule 1014.

[6] *See* Securities Exchange Act Release No. 38881 (July 28, 1997) 62 FR 41986 (August 4, 1997) (SR–Phlx–97–21).

and manipulative practives and to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by clarifying the ROTs' responsibilities in this area and requiring the ROTs to fulfill their market making requirements on the trading floor in order to receive the benefits of contra-side Auto-X transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–18, and should be submitted by August 4, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17883 Filed 7–13–99; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 07/07–0102]

Eagle Fund I, L.P.; Notice of Issuance of a Small Business Investment Company License

On December 1, 1998, an application was filed by Eagle Fund I, L.P. at 2301 S. Kingshighway, St. Louis, Missouri 63110–3498 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 07/07–0102 on April 22, 1999, to Eagle Fund I, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 6, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–17948 Filed 7–13–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act 1974; Computer Matching Program (Agreement for SSA/Individual Source Jurisdictions Match of Data on Certain Fugitives and Probation or Parole Violators, Match #5001)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 597–0841 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support at the above address.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for or receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protection for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

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(2) Obtain approval of the match agreements by any appropriate Federal agency Data Integrity Boards;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 2, 1999.

Susan M. Daniels, Ph.D.,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with Individual Source Jurisdictions

A. Participating Agencies

SSA and various individual law enforcement jurisdictions.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards and procedures for the disclosure to SSA by individual source jurisdictions, information on individuals who are fugitives from justice or parole or probation violators. Individual source jurisdictions will disclose information on certain individuals through a computer matching operation for SSA's use in verifying eligibility under title XVI of the Social Security Act. SSA's Office of the Inspector General will use this information to conduct investigations into program fraud and to assist law enforcement jurisdictions with the apprehension of fugitives and parole or probation violators.

C. Authority for Conducting the Matching Program

This matching operation is carried out under the authority of sections 202(x)(1)(A)(i), and 1611(e)(5) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Match

Individual jurisdictions will submit names and other identifying information of individuals who are fugitives from justice or parole or probation violators. The SSA Master Files of Social Security Number (SSN) Holders and SSN Applications (SSA/OSR 09–60–0058) contains the SSNs and identifying information for all SSN holders and the Supplemental Security Income Record (SSR 09–60–0103) contains payment information. SSA will match data from these record systems with data received from individual jurisdictions as a first step in detecting certain fugitives and probation or parole violators who should not be receiving SSI benefits.

E. Inclusive Dates of the Match

This matching program shall become effective no sooner than 40 days after notice of the program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 99–17824 Filed 7–13–99; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 3089]

60-Day Notice of Proposed Information Collection; Medical Examination of Applicants for United States Visas, Form OF–157

AGENCY: Department of State.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of Form.

Originating Office: CA/VO/F/P.

Title of Information Collection: Medical Examination of Applicants for United States Visas.

Frequency: 700,000.

Form Number: OF–157.

Respondents: Immigrant Visa Applicants.

Estimated Number of Respondents: 700,000.

Average Hours Per Response: .1 hours.

Total Estimated Burden: 70,000 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Jeff Abasolo, 2401 E ST, NW, RM L–703, Tel: 202–663–1164, U.S. Department of State, Washington, DC 20520.

Dated: June 29, 1999.

Mildred Patterson,

Acting Deputy, Assistant Secretary of State for Visa Services.

[FR Doc. 99–17956 Filed 7–13–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 3090]

60-Day Notice of Proposed Information Collection; Application for A, G, or NATO Visa, Form DS–1648

AGENCY: Department of State.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of Form.

Originating Office: CA/VO/F/P.

Title of Information Collection: Application for A, G, or NATO Visas.

Frequency: 20,000.

Form Number: DS–1648.

Respondents: Foreign Applicants.

Estimated Number of Respondents: 20,000.

Average Hours Per Response: .5 hours.

Total Estimated Burden: 10,000 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Jeff Abasolo, 2401 E ST NW, RM L–703, Tel: 202–663–1164, U.S. Department of State, Washington, DC 20520.

Dated: June 29, 1999.

Mildred Patterson,

Acting Deputy Assistant Secretary of State for Visa Services.

[FR Doc. 99–17957 Filed 7–13–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 3091]

60-Day Notice of Proposed Information Collection; Supplemental Registration for Diversity Immigrant Visa Program, Form DSP–122

AGENCY: Department of State.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of Form.

Originating Office: CA/VO/F/P.

Title of Information Collection: Supplemental Registration for Diversity Immigrant Visa Program.

Frequency: 55,000.

Form Number: DSP–122.

Respondents: Foreign Applicants.

Estimated Number of Respondents: 55,000.

Average Hours Per Response: .5 hours.

Total Estimated Burden: 27,500 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Jeff Abasolo, 2401 E ST, NW, RM L–703, Tel: 202–663–1164, U.S. Department of State, Washington, DC 20520.

Dated: June 29, 1999.

Mildred Patterson,

Acting Deputy Assistant Secretary of State for Visa Services.

[FR Doc. 99–17958 Filed 7–13–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 3092]

Overseas Citizens Services; Office of Children's Issues; 60-Day Notice of Proposed Information Collection; Application for Assistance Under the Hague Convention on Child Abduction; OMB Number 14050076; Form Number DSP–0105

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement.

Originating Office: CA/OCS/CI.

Title of Information Collection: Application for Assistance Under the Hague Convention on Child Abduction.

Frequency: On occasion.

Form Number: DSP–0105.

Respondents: Individuals.

Estimated Number of Respondents: 500.

Average Hours Per Response: 1.

Total Estimated Burden: 500.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Mary B. Marshall, CA/OCS/CI, Room 4811, 2201 C St. NW, U.S. Department of State, Washington, DC 20520, (202) 647–2598.

Dated: March 22, 1999.

Frank Moss,

Executive Director, Bureau of Consular Affairs.

[FR Doc. 99–17959 Filed 7–13–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3093]

Office of Visa Services; 60-Day Notice of Proposed Information Collection; Petition to Classify Special Immigrants Under INA 203(b)(4) as an Employee Or Former Employee of the U.S. Government Abroad, Form DS–1884

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of Form.

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Originating Office: CA/VO/F/P.
Title of Information Collection: Petition to Classify Special Immigrants Under INA 203(b)(4) as an Employer or Former Employee of the U.S. Government Abroad.
Frequency: 500.
Form Number: DS–1884.
Respondents: Foreign Applicants.
Estimated Number of Respondents: 500.
Average Hours Per Response: .5 hours.
Total Estimated Burden: 250 hours.
Public comments are being solicited to permit the agency to:
• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Jeff Abasolo, 2401 E ST NW, RM L–703, Tel: 202–663–1164, U.S. Department of State, Washington, DC 20520.

Dated: June 29, 1999.

Mildred Patterson,

Acting Deputy Assistant Secretary of State for Visa Services.

[FR Doc. 99–17960 Filed 7–13–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice No. 3094]

Proposed Unidroit Convention on International Equipment Finance and a Protocol on Aircraft Transactions; Meeting Notice

AGENCY: Department of State.

ACTION: The International Commercial Finance Study Group of the Department's Advisory Committee on Private International Law will hold its next meeting in Washington, DC at the Department of Transportation on Friday, July 23 from 10:00 am to 1:00 pm. The subject will be international efforts to enhance through a new treaty system to enhance the use of secured financing for mobile equipment, with a particular focus at this stage on the air transportation industry.

Agenda

The agenda, subject to available time, will include: a review of the purpose of the proposed UNIDROIT Convention on international interests in mobile equipment; the results of the first intergovernmental meeting in February 1999 at Rome co-sponsored by UNIDROIT and ICAO, and issues expected to be on the table at the second intergovernmental meeting scheduled for August at Montreal; proposals for establishment of an internationally-linked registry system for finance interests; the proposed treaty structure and its intersection with national commercial and civil aviation laws and he Chicago and Geneva Conventions on civil aviation; and time permitting, possible future treaty protocols on railway rolling stock, space equipment and satellites, and possibly other types of equipment.

Background

The United States has been participating with other countries in preliminary negotiations on a proposed multilateral convention (UNIDROIT Convention) to protect international secured interests in mobile equipment, including aircraft, space and satellite equipment, railroad rolling stock, cargo containers, etc. Other international organizations participate as co-sponsors as appropriate, such as ICAO with respect to aircraft and airline issues. The first intergovernmental meeting was held in Rome in February, 1999. Completion of the basic convention, as well as the first equipment protocol concerning aircraft, is expected by the end of year 2000.

The proposed Convention and Aircraft Equipment Protocol together, when and if adopted and enacted into law by contracting states would provide a comprehensive international system to protect leasing and financing interests and stimulate the development of airline industries in countries in all world regions.

Significant features are expected to include parties' ability to create internationally enforceable interests pursuant to the Convention; default remedies, priorities, and establishment of an international registration system to record international consensual interests; treatment of non-consensual interests; assignments, prospective assignments, and subordinations; and optional provisions on key finance issues such as timeliness of remedies, relation to insolvency, etc. It is anticipated that an international registration system would be primarily an electronic notice system, and would not interfere with countries' national registration and recordation systems under existing civil aviation treaties.

Attendance

The meeting will be held in Conference Room 3202 at the Department of Transportation, 301 7th Street, SW Washington, DC, and is open to the public. Persons wishing to attend should contact Peter Bloch, Department of Transportation, Office of General Counsel at 202–366–9183, fax 366–9188, or Harold Burman, Department of State, Office of Legal Adviser, at 202–776–8421, fax 776–8482. Copies of relevant documents will be provided free of charge by contacting Mr. Burman at the above numbers.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, United States Department of State.

[FR Doc. 99–17961 Filed 7–13–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3095]

Office of the Deputy Assistant Secretary for Energy, Sanctions, and Commodities

Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States

AGENCY: Department of State.

SUMMARY: The Department of State has received an application from Dakota Gasification Company requesting a Presidential permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, authorizing Dakota Gasification Company to construct, connect, operate, and maintain a carbon dioxide (CO_2) pipeline crossing the international boundary between North Dakota and Saskatchewan, Canada at a point approximately 7 miles northeast of Crosby, North Dakota at T164N, R97W, S25. The project consists of one pipeline approximately 167 miles in length.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew McManus, Division Chief, Energy Producer Country Affairs, Department of State, Washington, D.C. 20520. (202) 647–4557.

Matthew McManus,

Division Chief.

[FR Doc. 99–17962 Filed 7–13–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Inland Aviation Services, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 99–7–4), Docket OST–98–3857.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Inland Aviation Services, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 26, 1999.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–98–3857 and addressed to the Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: July 8, 1999.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–17905 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of a Current Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on a currently approved public information collection which will be submitted to OMB for renewal.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on the following current collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following is a short synopsis of the currently approved public information collection activity, which will be submitted to OMB for review and renewal: 2120–0640, FAA Flight Standards Service Year 2000 Readiness Questionnaire.

The information collected from this questionnaire will be used by the FAA to assess the year 2000 readiness of air carriers/operators, repair stations and training facilities. The actual survey has already been sent. However, the FAA is requesting an extension of 6 months on the clearance in order to send out follow-up letters to non-respondents. It is difficult to estimate a burden for this publication, because at this time, we do not know how many follow-up letters will need to be sent. However, for the purpose of this request, we will estimate 6000 letters sent. If the 6000 respondents answer the questionnaire, the burden would be 4,500 hours at a cost to the respondents of $180,000.

Issued in Washington, DC, on July 7, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–17939 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–05–C–00–MGW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Morgantown Municipal Airport, Morgantown, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Morgantown Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 13, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, 176 Airport Circle, Rm. 101, Beaver, WV 25813–9350.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Bott, Assistant Airport Director of the City of Morgantown at the following address: 389 Spruce Street, Morgantown, WV 26505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Morgantown under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, 176 Airports Circle, Beaver, West Virginia, 25813 (Tel. (304) 252–6216). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Morgantown Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 1, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Morgantown was

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substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 2, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–05–C–00–MGW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2001.

Proposed charge expiration date: June 30, 2005.

Total estimated PFC revenue: $192,739.

Brief description of proposed project(s):

—Rehabilitate Access Roads
—Install Access Road Lights
—Acquire ARFF Equipment
—Rehabilitate Runway 18–36 (Design)
—Rehabilitate Runway 18–36 (Construction)
—Install Perimeter Fence
—Construct ARFF Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All carriers operating under FAR Part 135, FAR Part 91 and any unscheduled carriers operating under FAR Part 121. Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional airports office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, NY 114309.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Morgantown.

Issued in Jamaica, New York on July 7, 1999.

Thomas Felix,

Manager, Planning and Programming Branch, Eastern Region.

[FR Doc. 99–17940 Filed 7–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") called for the submission of Large Position Reports by those entities whose reportable positions in the 5½% Treasury Notes of May 2009 equaled or exceeded $2½ billion as of close of business July 9, 1999.

DATES: Large Position Reports must be received before noon Eastern time on July 16, 1999.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Market Reports Division, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212–720–5030.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Acting Executive Director; Lee Grandy, Associate Director; or Nadir Isfahani, Government Securities Specialist; Bureau of the Public Debt, Department of the Treasury, at 202–691–3632.

SUPPLEMENTARY INFORMATION: Pursuant to the Department's large position rules under the Government Securities Act regulations (17 CFR Part 420), the Treasury, in a press release issued on July 12, 1999, and in this **Federal Register** notice, called for Large Position Reports from those entities whose reportable positions in the 5½% Treasury Notes of May 2009, Series B–2009, equaled or exceeded $2½ billion as of the close of business Friday, July 9, 1999. This call for Large Position Reports is a test. Entities whose reportable positions in this note equaled or exceeded the $2½ billion threshold must report these positions to the Federal Reserve Bank of New York. Entities with positions in this note below $2½ billion are not required to file Large Position Reports. Large Position Reports, which must include the required position and administrative information, must be received by the Market Reports Division of the Federal Reserve Bank of New York before noon Eastern time on Friday, July 16, 1999. The Reports may be filed by facsimile at (212) 720–5030 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 5½% Treasury Notes of May 2009 have a CUSIP number of 912827 5G 3, a STRIPS principal component CUSIP number of 912820 DV 6, and a maturity date of May 15, 2009.

The press release and a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR Part 420, can be obtained by calling (202) 622–2040 and requesting document number 4. These documents are also available at the Bureau of the Public Debt's Internet site at the following address: http://www.publicdebt.treas.gov.

Questions about Treasury's large position reporting rules should be directed to Public Debt's Government Securities Regulations Staff at (202) 691–3632. Questions regarding the method of submission of Large Position Reports may be directed to the Market Reports Division of the Federal Reserve Bank of New York at (212) 720–8023.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535–0089.

Dated: July 8, 1999.

Gary Gensler,

Under Secretary, Domestic Finance.

[FR Doc. 99–18040 Filed 7–12–99; 12:16 pm]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Certification of Secure Gun Storage or Safety Devices.

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Charles Bartlett, National Licensing Center, Atlanta, Georgia, 30301, (404) 679–5040.

SUPPLEMENTARY INFORMATION:

Title: Certification of Secure Gun Storage or Safety Devices.

OMB Number: 1512–0551.

Form Number: ATF F 5300.42.

Abstract: The requested information on ATF 5300.42 will be used to ensure that applicants for a Federal firearms license are in compliance with the requirements pertaining to the availability of secure gun storage or safety devices.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 31,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 600.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–17916 Filed 7–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Open Letter to Federal Firearms Licensees.

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Vivian Pena, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

SUPPLEMENTARY INFORMATION:

Title: Open Letter to Federal Firearms Licensees.

OMB Number: 1512–0552.

Abstract: The FBI has informed ATF that thousands of licensees have failed to enroll with them to conduct a national instant criminal background check system (NICS). The Open Letter to Federal Firearms Licensees informs the non-enrolled licensees that they cannot transfer a firearm to a nonlicensed individual without first contacting the FBI and conducting a NICS check.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 18,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 306.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–17917 Filed 7–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Fireams

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Permit Under 26 U.S.C. Chapter 52 Manufacturer of Tobacco Products or Proprietor of Export Warehouse and Application for Amended Permit Under 26 U.S.C. 5712 Manufacturer of Tobacco Products or Proprietor of Export Warehouse.

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Application for Permit Under 26 U.S.C. Chapter 52 Manufacturer of Tobacco Products or Proprietor of Export Warehouse and Application for Amended Permit Under 26 U.S.C. 5712 Manufacturer of Tobacco Products or Proprietor of Export Warehouse.

OMB Number: 1512–0398.

Form Number: ATF F 2093 (5200.3) and ATF F 2098 (5200.16).

Abstract: These forms and any additional supporting documentation

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are used by tobacco industry members to obtain and amend permits necessary to engage in business as a manufacturer of tobacco products or proprietor of export warehouse.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 328.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 492.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 7, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–17918 Filed 7–13–99; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register

Vol. 64, No. 134

Wednesday, July 14, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

Correction

In notice document 99–15453 beginning on page 32915 in the issue of Friday, June 18, 1999, make the following correction(s):

1. On page 32918, in the third column, in *Section M*, in paragraph (c), in the fifth line, the heading "9907.73.01" should read "9907.73.02".

2. On the same page, in the same column, in the same section, in the same paragraph, in the 20th line, the heading "9907.84.01" should read "9907.85.01".

[FR Doc. C9–15453 Filed 7–13–99; 8:45 am]

BILLING CODE 1505–01–D

THE PRESIDENT

3 CFR

Presidential Determination No. 99–31 of June 30, 1999

Eligibility of the Organization for Security and Cooperation in Europe to be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Correction

In Presidential document 99–17595 appearing on page 37033 in the issue of July 9, 1999, the dateline following the President's signature was inadvertently omitted and should read as follows:

THE WHITE HOUSE,

Washington, June 30, 1999.

[FR Doc. C9–17595 Filed 7–13–99; 8:45 am]

BILLING CODE 1505–01–D

THE PRESIDENT

3 CFR

Presidential Determination No. 99–32 of July 1, 1999

Military Drawdown for Tunisia

Correction

In Presidential document 99–32 appearing on page 37035 in the issue of July 9, 1999, the dateline following the President's signature was inadvertently omitted and should read as follows:

THE WHITE HOUSE,

Washington, July 1, 1999.

[FR Doc. C9–17596 Filed 7–13–99; 8:45 am]

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Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Safety Standards for Fall Protection in the Construction Industry; Proposed Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218–AA66

[Docket No. S–206C]

Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: In this advance notice of proposed rulemaking (ANPRM), OSHA requests comments and information on fall protection for workers engaged in certain construction activities currently covered by OSHA's Standards for Fall Protection in the Construction Industry, published in volume 29 of the Code of Federal Regulations at §§ 1926.500–1926.503 (referred to here as the "rule"). Since the rule was published on August 4, 1994, OSHA has received numerous communications requesting interpretations and claiming that compliance with the rule is sometimes infeasible in certain activities, such as in residential and post-frame construction, while climbing reinforced steel, erecting precast concrete, drilling shafts, and when providing prompt rescue. We are asking the public for information and data on fall protection for employees in these situations.

Information provided to the Agency in support of a claim of infeasibility should explain, in detail, why the rule cannot be complied with in certain circumstances, what fall protection methods could be used to protect workers engaged in these activities, and the degree of protection such methods would provide. In addition, such claims should be supported by data demonstrating that the current rule is not feasible for a particular activity and data demonstrating the effectiveness of any alternative approaches suggested. Respondents should also provide any information on the costs of alternative approaches and the reduction in injuries likely to be experienced if alternatives were to be adopted. With respect to OSHA Instruction STD 3–0.1A (interim fall protection compliance guidelines for residential construction), the Agency intends to rescind that directive unless persuasive evidence is submitted in response to this ANPRM demonstrating that for most residential construction employers complying with the rule is infeasible or presents significant safety hazards.

DATES: Comments in response to this ANPRM must be received by October 22, 1999.

ADDRESSES: Two copies of comments must be submitted to the OSHA Docket Office, Docket S206C, Room N2625, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210, 202–693–2350. Comments consisting of 10 pages or less may be faxed to the Docket Office at the following FAX number: 202–693–1648. However, two hard copies must be mailed to us within two days. Electronic comments can be submitted on the Internet at *http://www.osha-slc.gov/e-comments/e-comments-fallprotection.html*. The exhibits referred to throughout this document are available for inspection and copying at the OSHA Docket Office (see address and telephone number above), which is open weekdays from 10:00 am to 4:00 pm.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, Telephone: 202 693–1999. Anyone with questions regarding the technical content of this document should contact Ms. Jule Jones at 202 693–2345. For electronic copies, contact OSHA's web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 1986, OSHA proposed to revise the fall protection standard. The rulemaking record, developed over a nine-year period, resulted in a more performance-oriented rule, issued on August 9, 1994 (published in volume 29 of the Code of Federal Regulations, part 1926, subpart M, and in volume 59 of the **Federal Register**, beginning on page 40,672). You can view the rule on OSHA's Internet site at www.osha.gov. In general, the rule requires that an employee exposed to a fall hazard of six feet or more must be protected by equipment that prevents or arrests the fall.

Subsequently, some employers have claimed that parts of the rule are not appropriate for their operations. The residential, precast concrete, and post-frame construction industries state that different fall protection provisions are needed for their activities. Some vendors who deliver roofing material believe the rule should not apply to them. Reinforcing steel (rebar construction) employers request that workers who climb rebar walls and assemblies be permitted to climb without fall protection and only be required to tie off upon reaching their work location. Also, some persons familiar with safety harnesses, restraint systems and positioning devices have raised concerns regarding the standard's performance criteria for fall protection systems.

In response to feasibility issues about the rule raised by the residential construction industry, on December 8, 1995, we issued interim fall protection procedures for residential construction employers ("OSHA Instruction STD 3.1") that differ from those in the rule (on June 18, 1999, we issued a plain language re-write of STD 3.1. The re-write, STD 3–0.1A, replaces STD 3.1). We stated that we would undertake further rulemaking to address these fall protection issues. STD 3–0.1A permits employers to use specified work practices instead of conventional fall protection (systems/devices that physically prevent a worker from falling or arrest a worker's fall) for foundation work, some installation work on roofs and in attics, and some residential roofing work.

This notice begins our evaluation of these and other fall protection practices and of STD 3–0.1A. OSHA emphasizes that the extensive rulemaking process completed in 1994 established that the fall protection requirements in the rule are reasonably necessary and appropriate to protect employees from the significant risks of fall hazards. Providing such protection was demonstrated to be both technologically and economically feasible. (See the complete discussion in the preamble to the final rule for subpart M (volume 59 of the **Federal Register** at pages 40672–40722. That preamble is available at OSHA's Internet web site at www.osha.gov.) However, because of the concerns raised by employers engaged in the operations listed above, we are seeking additional information.

OSHA needs to hear the views of interested parties on all issues raised in this notice. After reviewing your comments and data, OSHA will decide what further steps, if any, may be appropriate.

We encourage interested parties to respond to the questions raised in Section IV— Summary and Explanation of Issues, where we detail each issue that you have brought to our attention.

II. Advisory Committee on Construction Safety and Health

A summary of the issues addressed by this notice was presented to the Advisory Committee on Construction Safety and Health (ACCSH). The full committee was initially briefed April 8, 1998, with updates provided on both July 22 and October 8 of that year.

III. Explanation of Issues

OSHA solicits information on a variety of issues pertaining to the fall protection standard. We are addressing 10 issues, most of which have been raised by interested parties who believe that alternatives to some of the rule's provisions should be permitted. They generally recommend that OSHA allow work practices rather than personal fall arrest systems and guardrails to protect employees against falls. The 10 issues identified for discussion and comment are as follows:

Issue 1. Whether There Is A Need for Alternative Procedures for Residential Construction
Issue 2. Whether There Is A Need for Alternative Procedures for Precast Concrete Erection
Issue 3. Whether There Is A Need for Alternative Procedures for Post-Frame Construction
Issue 4. Whether There Is A Need For Alternative Procedures For Vendors Delivering Construction Materials
Issue 5. Whether There Are Alternative Methods of Fall Protection While Climbing Reinforcing Steel (Rebar Walls and Cages)
Issue 6. What Criteria Should Be Used for Restraint Systems
Issue 7. Whether the Strength Requirements for Anchorage Points for Personal Fall Arrest Systems, Positioning Device Systems and Restraint Systems Should Be Changed
Issue 8. Whether the Standard's Prompt Rescue Requirements Should Be Revised
Issue 9. Whether There Is A Need for Alternative Procedures for Drilling Shafts
Issue 10. Whether Body Belts Incorporated Into Full Body Harnesses Provide Appropriate Employee Protection in a Fall

Issue 1. Whether There Is A Need For Alternative Procedures for Residential Construction

Alternative Measures Allowed by the Rule

Section 1926.501(b)(13) contains the fall protection requirements for residential construction, which state:

> Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of § 1926.502.

When promulgating this standard, OSHA acknowledged that some employers in the residential construction industry might have difficulty providing conventional fall protection for certain operations. Difficulties were expected during the erection of roof trusses and the installation of roof sheathing, exterior wall panels, floor joists, and floor sheathing. Accordingly, the final rule allows some flexibility for the residential construction employer. The rule states that conventional fall protection in residential construction is presumed to be feasible. However, where the employer can show that conventional fall protection is infeasible at a particular worksite, the employer may implement a written "alternative fall protection plan." The plan must be in writing, designed for the particular work site, and specify alternative measures that are as protective as possible.

Alternative Procedures Allowed by Appendix E of the Rule

OSHA published a sample fall protection plan for residential construction that outlined acceptable alternative fall protection measures for each of the operations mentioned above. That plan is published in Appendix E to the rule (it begins on page 343 of the July 1, 1998 version of volume 29 of the Code of Federal Regulations, Part 1926). The Appendix E procedures consist of training requirements, supervision and administration of the plan by a designated competent person, use of a controlled access zone to minimize access to the work area, and use of a safety monitor. It has additional work practice requirements for each of the listed work activities. Workers may work on the "top plate" of stud walls and on the peaks of roof trusses and ridge beams without fall protection, under certain circumstances. Roof sheathing operations must be done with slide guards and certain work practice requirements. Work practice requirements are also delineated for installation of floor joists, floor sheathing, and the erection of exterior walls.

Alternative Measures Permitted by OSHA Instruction STD 3–0.1A That Differ From the Rule

After the rule was enacted, homebuilder representatives identified three additional categories of residential work where the use of conventional fall protection systems was, in their judgment, infeasible or would present a greater hazard to their workers: (1) Working on foundation walls and formwork used to build the walls; (2) installing drywall, insulation, heating/cooling systems, electrical systems, plumbing and carpentry in attics and on roofs, and (3) roofing work (the installation of weatherproofing roofing materials). These commenters asserted that, when doing these activities, nets could not be used and there was no place available and/or strong enough to anchor fall arrest equipment. They also stated that conventional fall protection for these activities was infeasible, or would create a greater hazard, in all residential projects, so it did not make sense to require employers to have written, site-specific alternative procedure plans for each site.

OSHA Instruction STD 3–0.1A provides a list of work practice measures that employers engaged in residential construction may use instead of fall protection for work on foundation walls/formwork, installation work in attics and on roofs and for roofing work. In addition, it provides that an employer's alternative fall protection plan does not have to be written or site-specific as long as it follows either Appendix E or, for these additional types of work, the procedures in STD 3–0.1A. Further, it permits employers to use these procedures without first having to show that conventional fall protection is infeasible or creates a greater hazard.

Procedures for Foundation/formwork Activities and Installation Work in Attics and On Roofs

The work practices allowed as alternatives to fall protection for working on foundation walls and related formwork consist of limiting the work to trained workers, minimizing their fall exposure, adequately supporting the wall/formwork, not working in bad weather, staging materials and equipment in locations that are convenient to those on the formwork, and eliminating impalement hazards. The procedures for installation work in attics and on roofs require limiting the work to trained employees, limiting their exposure, staging materials, eliminating impalement

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hazards, limiting access to affected work areas, and not working in bad weather.

Procedures for Roofing Work

STD 3–0.1A also contains alternative procedures for some roofing work. Shortly after OSHA issued the rule, the National Roofing Contractors Association (NRCA) and the National Association of Home Builders (NAHB) asked OSHA to clarify how the roofing provisions applied to residential construction and asserted that more flexibility was warranted. They provided information on industry practices in support of their claims.

NAHB suggested that the sample fall protection plan found in Appendix E be expanded to specifically address roofing work at residential sites. The Association considered the use of conventional fall protection systems in residential roofing to be either infeasible or to pose a greater hazard. Roofing contractors claimed that requiring conventional fall protection is extreme and would not improve safety. They stated that their workers are skilled professionals who wear the proper footwear and understand the consequences of falling, and do not believe that fall protection is necessary during roofing activities. They further believe that full compliance with the rule is too costly and interferes with their ability to remain competitive, especially since, in their view, their competitors do not use conventional fall protection. To a large extent, information from the NAHB formed the basis of the alternative procedures in STD 3–0.1A for residential roofing work.

The STD 3–0.1A alternative procedures for roofing work may only be used where the roof slope is no more than 8 inches (vertical) in 12 (horizontal) and the fall distance, from the eave of the roof to the ground level, is 25 feet or less. Workers must be trained on slip hazards, and access to the rake edge must be minimized. Work must be suspended in bad weather, and impalement hazards must be eliminated.

In addition, for roofs with a slope of up to 4 in 12 inches, the employer has the option of using either a safety monitor or slide guards. A slide guard is typically a 2″ x 6″ board attached along the roof. STD 3–0.1A specifies certain materials, configurations, and locations for slide guards, depending on the steepness of the roof.

With two exceptions, slide guards must be used on any roof with a slope of over 4 in 12, up to 8 in 12. Those two exceptions are for roofs made of tile or metal, in which case a safety monitor may be used instead of slide guards. Fall protection must be used for all roofs with a roof slope steeper than 8 in 12.

Since the rule was enacted, there have been advances in the types and capability of commercially available fall protection equipment. OSHA specifically solicits comment on the alternatives to the rule permitted for roofing work by STD 3–0.1A. Specific questions on the various operations are listed later in this document.

Definition of Residential Construction

Although the rule has specific requirements for residential construction, it does not define that term. NAHB and others have asserted that "residential construction" should be defined to include light commercial structures in which the materials, methods and work environment are essentially the same as in homebuilding. They asserted that many homebuilders construct light commercial structures and that the hazards on both residential and these light commercial structures are essentially the same. NRCA has also asked that we clarify the term "residential construction." NRCA asserts that homebuilding and similarly constructed light commercial structures should be treated in the same way with respect to providing fall protection during roofing work.

In STD 3–0.1A, OSHA defined residential construction as including work on structures where the working environment, construction materials, methods, and work procedures are essentially the same as those used for building typical single family homes and townhouses. Also, STD 3–0.1A stated that work on discrete parts of a large commercial structure could be considered residential construction as long as the working environment, materials, methods, and procedures were similar to those used for single family homes and townhouses.

We have received a number of inquiries and comments about this definition. A number of commenters have stated that the definition fails to adequately distinguish between work that is residential and work that is commercial. Some have suggested that some fall protection devices and methods that may not be economically feasible in constructing single family homes and townhouse residences are economically feasible when similar structures are built for commercial use. Others have suggested that as long as the materials, methods and work environment are the same, the alternative procedures allowed in STD 3–0.1A should apply, without regard to whether the building will be occupied as a residence or used for commercial purposes.

Request for Comments and Supporting Information

OSHA solicits comments on the alternative fall protection measures for residential construction work in Appendix E of the rule and in STD 3–0.1A, as well as on the STD 3–0.1A definition of residential construction. We seek comments and supporting information on whether the alternative procedures in STD 3–0.1A are the most protective and feasible methods currently available for protecting residential construction workers from falls. We request that comments include detailed information on fall protection methods, equipment, injuries and accidents, and personal experience related to these topics in both residential and light commercial construction.

Questions on Installing Floor Joists and Floor Sheathing

A fall protection system that is currently available consists of three components: a body harness, an anchor, and an adjustable strap with snap hooks at each end (Ex. 1–1). The anchor consists of a strap, which looks similar to a seat belt strap, with a D-ring at one end. For a floor sheathing operation, the anchor is installed by nailing the strap end to the first course of floor sheathing with double-headed nails. The nails are installed through the floor sheathing and into a floor joist.

The adjustable strap has snap hooks at each end—one connects to the anchor's D-ring and the other connects to the harness. As the leading edge advances, or as the worker moves about, the strap can be lengthened or shortened by depressing an adjustment device and letting out or pulling in the strap. When the anchor is no longer needed, the nails are removed (facilitated by the double headed nail) and the strap is discarded.

Is there a reason why this system is not feasible in floor joist and floor sheathing installations? Are there situations where movable catch platforms could not be used below the areas where workers are installing floor joists and floor sheathing to protect against falls?

Another way of providing fall protection for some construction activities is to set up a lifeline, to which individual workers attach their lanyards. As work progresses, the lifeline is moved forward. Is there a reason why this type of system could not be used when installing floor joists and floor sheathing? Are there retractable lanyards that will engage fast enough to prevent a worker installing floor joists and floor sheathing approximately 10 feet above the next lower level from being injured in an arrested fall?

Questions on Installing Roof Sheathing

There are a number of commercially available products designed to serve as anchor points in wood framed structures for fall arrest systems. Most of these are designed to be attached to a roof truss, rafter or sheathing. Some provide a single attachment point, while others have multiple attachment points. Some are designed to be used to support a lifeline to which two workers can attach their lanyards. Some incorporate a swivelling, retractable lanyard (Exhibits 1–2 through 1–5).

Most of these products are designed to withstand a 5,000 pound load (the rule requires fall arrest system anchors to support a 5,000 pound load or to have a safety factor of two). A key question in determining the viability of these anchors in roof sheathing operations is the strength of the part of the structure to which the anchor is attached. Some contractors are adding bracing to roof trusses so that the strap anchors can be used during part of the sheathing operation. Are there other anchor systems available that can be installed before some (or any) sheathing is in place and still withstand a 5,000 pound load? How much sheathing (and in what arrangement) has to be installed before an anchor will support this load?

Various "shock-absorbing" lanyards and fall protection devices have been developed. The loads imposed in an arrested fall on the anchor point when using shock-absorbing equipment is less than when using conventional equipment. How much less are those loads? What is the minimum strength needed for anchors when shock-absorbing equipment is used?

The rule's 5,000 pound/factor of two requirement is for an anchor that is used as part of a fall protection system. A fall protection system arrests a person's fall. In contrast, a fall restraint system is a system that prevents a worker from falling any distance at all. The anchor for such a system is not called upon to withstand the forces of an arrested fall—it only has to withstand the forces of restraining a worker from moving further than the length of the lanyard. What is an appropriate minimum strength for an anchor in a restraint system? Is there a reason why a restraint system could not be used when installing roof sheathing?

Some roof sheathers use the strap anchor in conjunction with the following sheathing method: The strap anchor is nailed to (and wrapped around) one or more roof trusses before it is erected. Sheathing is installed by workers by standing on platforms on the inside of the second floor, starting from the eaves and working upward toward the ridge (top) of the roof (this eliminates the fall hazard to the exterior). The final (top) course is installed by workers on the roof who tie-off to the strap anchor. At that point the trusses are braced by all but the final course of sheathing. Is there a reason why this system is not feasible in roof sheathing installations?

Questions on Setting and Bracing Roof Trusses and Rafters

The procedures in Appendix E of the rule call for the first two trusses or rafters to be set from ladders. After the first two are set, a worker is permitted to climb a ladder onto the interior top plate to secure the peaks. The worker may remain on the top plate, using the (now stabilized) trusses or rafters for support, while the other trusses or rafters are erected. Also, workers may be stationed on the peaks of trusses or the ridge beam to detach trusses from cranes and to secure trusses (and also to secure rafters to the ridge beam, where there is no other feasible means of doing this).

There is now at least one commercially available device that eliminates the need for a worker to be on a truss to install bracing. This device is a temporary, reusable brace which is attached on one end to the truss before the truss is erected. Once the truss is raised, a worker on the floor level pulls the other end of the brace down onto the adjoining truss by a rope (Ex. 1–6). This eliminates the need for a worker to be on the truss or ridge to attach bracing. There are also devices available that permit a load to be detached from a crane remotely, rather than having to be on a peak or ridge beam to detach it manually.

We are interested in hearing from those who are familiar with these types of systems and have used them in residential construction or similar situations. Is there a reason why these types of systems are not feasible or present a greater hazard to workers performing this type of work? Is there a reason why some of this work could not be done from platforms? Are there other ways of protecting against the fall hazards facing workers performing residential construction or similar work?

The sample plan in Appendix E of the rule contains the following sample statement of why ladders may be a greater hazard on a particular site: "requiring workers to use a ladder for the entire installation process [of roof trusses and rafters] will cause a greater hazard because the worker must stand on the ladder with his back or side to the front of the ladder. While erecting the truss or rafter the worker will need both hands to maneuver the truss and therefore cannot hold onto the ladder. In addition, ladders cannot be adequately protected from movement while trusses are being maneuvered into place. Many workers may experience additional fatigue because of the increase in overhead work with heavy materials, which can also lead to a greater hazard."

There are commercially available hooking devices for the tops of ladders. Is there a reason why these or similar devices could not be used to help secure the ladder? When a ladder is used while erecting a truss, the ladder and the worker are on the inside of the exterior wall. If the worker were to fall, the worker would fall to the inside floor. In contrast, a worker on the top plate could fall to the exterior. On a second story, that fall would be a significantly greater distance than the interior fall. Is there a reason why it would be safer to erect the truss while standing on the top plate than to use a ladder with a securing device? OSHA seeks comment on these statements and questions, particularly from equipment manufacturers and those who have used or seen devices or methods other than working from the top plate, peak or ridge.

The sample plan in Appendix E of the rule also states that "exterior scaffolds cannot be utilized on this job because the ground, after recent backfilling, cannot support the scaffolding. In most cases, the erection and dismantling of the scaffold would expose workers to a greater fall hazard than erection of the trusses/rafters." OSHA seeks comments on whether the problem of recently backfilled soil is unique to residential construction and whether this is an impediment to using exterior scaffolds. We also ask for comment on the extent to which different types of scaffolding are suitable to this work.

Questions on Working on Concrete and Block Foundation Walls and Related Formwork

STD 3–0.1A permits workers to work on the top of the foundation wall or formwork to the extent necessary to do the work. The only protective measures required when working on the top of the foundation wall or formwork are training, not working in bad weather, staging materials, and eliminating impalement hazards. Are there reasons why this work could not be done from ladders and/or scaffolds? Is there formwork available for this type of work

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to which scaffolds can be attached? We are particularly interested in hearing from workers or employers who have done this work without standing on the tops of the walls or formwork.

Questions on Installation Work (Drywall, Insulation, Heating and Cooling Systems, Alarms, Telephone Lines and Cable TV, Plumbing and Carpentry) in Attics and on Roofs

The only protective measures required in STD 3–0.1A for these types of installation work are training, staging materials, eliminating impalement hazards, restricting access, and suspending work in bad weather. The strap anchor mentioned above, when attached to roof trusses before installation, can be left in place to provide tie-off points for this type of work in attics and on roofs (after all work is completed, the strap is cut off). Is there a reason why that system is infeasible for this work? Is there a reason why it is not feasible to use platforms, scaffolds or ladders when doing some or all of this work? Is there a reason why other fall arrest or fall restraint systems could not be used? In particular, with respect to the work on roofs, is there a reason why a fall restraint or fall arrest system could not be anchored to the roof structure during this work?

Questions on Roofing Work

The alternative procedures in STD 3–0.1A for roofing work consist of work practices and, depending on the steepness of the roof, monitors or slide guards. For roofs with a slope of up to 4 in 12 inches, monitors may be used instead of slide guards. Are monitors an effective means of preventing falls? What experience have you had using monitors? Is there a reason why slide guards are infeasible on roofs with slopes of less than 4 in 12?

STD 3–0.1A permits monitors to be used in place of slide guards for tile or metal roofs with a slope of up to 8 to 12 inches. Since these roof surfaces are more slippery than most other types of roofing, is there a reason why monitors should be allowed in place of slide guards for these roofs? Are there slide guard brackets/devices that can be used on these roofs?

STD 3–0.1A contains specifications for the configuration and installation of slide guards. Are these specifications appropriate? Are slide guards effective as replacements for personal fall protection?

OSHA has received a number of comments stating that roof anchors cannot be used on unsheathed or partially sheathed roofs because the structure to which the anchor is attached cannot withstand a 5,000 pound load. However, there are anchors on the market that are advertised as being suitable for use on a fully sheathed roof. Since roofing work is done after the roof is fully sheathed, are there technical or other reasons why roof anchors could not be used for roofing work? Some commenters have suggested that there are liability issues associated with installing roof anchors and then leaving them in place for others to use once the job is done. The strap anchors can be removed by simply cutting the strap. Why is it infeasible to remove a roof anchor (please specify how much time/expense is needed)? Are there other roof anchors that are designed to be readily removed? OSHA is particularly interested in comments from workers, employers and manufacturers who have studied, used or designed roof anchors for roofing work.

Questions on the Definition of Residential Construction

STD 3–0.1A defines residential construction as any construction project where the working environment, materials, methods and procedures are essentially the same as those used for typical single family homes and townhouses. Therefore, many buildings that will not be occupied as residences, but will be used for light commercial purposes, are included in the definition. Also, the STD 3–0.1A definition would include portions of commercial structures where the environment, materials and methods are similar to those used in building homes and townhouses. Is this an appropriate definition of residential construction for the purposes of the rule? Does this definition adequately distinguish between projects where conventional fall protection is feasible and those where, for some operations, it is not? Is this a workable definition—can employers readily use it to determine whether their project is considered residential construction? OSHA has received letters asking how the STD 3.1 definition applies to stick frame and brick apartment buildings; single story stick-framed commercial malls; and single story stick-framed retail structures. Does the STD 3–0.1A definition adequately deal with these type of projects? Should OSHA define residential construction in terms of the end use of the structure? Should the economic scale of the project be a factor in determining the fall protection options available to the builder? Would it be appropriate for OSHA to allow the use of alternative fall protection procedures on portions of a commercial structure that meet the definition of residential construction?

Issue 2. Whether There Is A Need for Alternative Procedures for Precast Concrete Erection

The precast concrete erection rule in subpart M, § 1926.501(b)(12), generally requires protection for employees exposed to fall hazards of 6 feet or more. Fall protection options are guardrails, safety nets, or personal fall arrest systems. In addition, if the employer demonstrates that it is infeasible or creates a greater hazard to use these systems, alternative measures may be used. When using alternative measures, the employer must implement a fall protection plan meeting the requirements of section 1926.502(k).

To meet the section 1926.502(k) requirements, a precast erection employer may follow the sample plan spelled out in Appendix E to subpart M (this is printed beginning on page 343 of the July 1, 1998 edition of volume 29 Code of Federal Regulations Part 1926). Under certain circumstances, that plan permits work without conventional fall protection during leading edge erection, initial connecting and grouting. The Precast Concrete Institute (PCI) thinks that fall protection should not be required for precast concrete erection activities occurring at heights below fifteen (15) feet and thirty (30) feet, the same fall protection thresholds as those in the recently proposed rule for steel erection (volume 63 of the **Federal Register** at pages 43452-43513) (Ex. 1–7).

On August 13, 1998, OSHA issued a proposed rule for fall protection in steel erection. This proposal is a product of negotiated rulemaking, conducted under the Negotiated Rulemaking Act (printed in volume 5 of the Unites States Code at section 561). The proposed rule would require fall protection for most steel erection workers above 15 feet. In that rule, however, there are exceptions for steel erection employees engaged in connecting activity and for deckers. Employees engaged in connecting work would be allowed to work at heights up to 30 feet without fall protection (but they must wear fall protection equipment and the employer must provide an attachment point). Deckers would also be allowed to work without fall protection up to 30 feet as long as they work in a Controlled Decking Zone. Conventional fall protection, such as safety nets, guardrail systems, or personal fall arrest systems would be required for all steel erection workers at heights over 30 feet.

PCI believes that the 15 foot threshold used in the proposed steel erection rule should also apply to the precast erection industry. They state that overhead attachment points (anchorages) are not always available when performing precast concrete work and that workers tied off at foot level need at least 12–19 feet of clearance below, depending on the type of system chosen.

PCI believes that the steel erection industry will have an unfair economic advantage over their industry if the threshold heights for fall protection differ in each industry. In support of this assertion, PCI has submitted data which it claims show that the use of fall protection equipment causes a 25 percent reduction in productivity. (Ex. 1–8)

PCI also argues that there are structures where both precast concrete and steel is erected and the same workers on such sites may be required to operate under two different rules. In such situations, under the steel erection proposal, workers doing the steel erection would be under the 15/30 foot thresholds. When the precast concrete is erected, with concrete members placed directly on the structural steel, the 6 foot threshold of subpart M would apply. This precast work is sometimes done by the same crews that erected the steel. PCI believes there should be one rule for these operations.

OSHA specifically requests comment on the extent to which the technical limitations of fall protection systems, and the limitations on the ways those systems can be used, forecloses the option of using conventional fall protection in precast erection. For example, the 15 foot minimum clearance limitation alluded to by PCI relates to assertions that have been made on the limitations of three types of fall protection systems: fixed lanyards anchored at floor level, some retractable lanyards, and nets. However, no minimum clearance is needed for temporary guardrails. The strap system described above is designed to work when anchored at floor level. The adjustable strap lanyard permits a worker to be tied-off at a fixed point and to move to various distances by extending and shortening the strap as needed. We believe that other lanyard systems connected to a lifeline can be installed so that a worker can work at and along a leading edge and be prevented from stepping past the edge, or to limit a leading edge worker's fall to six feet. We seek information on whether there are specific instances where these types of systems would not work in precast erection.

Questions on Precast Concrete Erection

In what specific situations are guardrails not useable in precast erection? Are there situations where lanyards connected to lifelines are not useable in precast concrete erection? Are there situations where the strap system would not be feasible? How do these limitations compare to those used in steel erection? Are there other fall protection devices that are useable in precast erection at 6 feet? In what specific way does the current rule for precast concrete erection, which gives alternatives when employers can show infeasibility or greater hazard, have insufficient flexibility to account for the technical limitations of fall protection systems?

Issue 3. Whether There Is A Need for Alternative Procedures for Post-Frame Construction

Post-frame construction employers believe there are many similarities between their work and residential construction, and that they too should be allowed to protect employees by using alternatives to conventional fall protection systems without showing on a site-specific basis that conventional fall protection is infeasible or creates a greater hazard.

The National Frame Builders Association (NFBA) suggested (in a letter to OSHA dated August 16, 1995, Ex. 1–9) that their work was similar to steel erection and that OSHA should exempt them from any fall protection rules up to a height of 25 feet. They assert that OSHA's requirements for residential construction, along with Appendix E of the rule and STD 3.1, are reasonable and appropriate for post frame construction operations.

Questions on Post-frame Construction

OSHA seeks comments and/or data on the following: under what specific circumstances are there problems with using conventional fall protection when building a post-frame structure? In what particular phases and parts of the operation do those problems arise? What factors limit the usability of fall protection systems in post-frame construction? Are there reasons why ladders, work platforms, scaffolds, restraint systems or fall protection systems cannot be used in post-frame construction? Are workers in post-frame construction exposed to unique fall hazards? We are particularly interested in hearing from safety product manufacturers or dealers, familiar with post-frame construction, who know of fall protection systems that can be used during post-frame construction and the limitations of those systems. We are also interested in hearing from builders and employees engaged in post-frame construction. What experiences do you have with fall protection systems in these operations? What accidents and/or near misses have occurred in your post-frame construction operations?

Issue 4. Whether There Is A Need For Alternative Procedures For Vendors Delivering Construction Materials

Employees of vendors delivering materials to a construction site can be exposed to the same fall hazards that construction workers face every day. However, some vendors have stated that fall protection for their workers is often infeasible, for several reasons. One is that the strength of a roof under construction is limited; if the weight of the materials being delivered collapses the structure, being tied-off to the structure will obviously not provide protection. Second, they assert that in the limited work area provided by the roof under construction, the use of fall protection systems creates a greater hazard because workers may trip over each other's lanyards. Finally, they point out that "rope grab" systems are infeasible for their workers. Those systems require the user to pull the lanyard with one hand in order to move across a work surface. Workers delivering materials would need to hold the rope grab with one hand and, at the same time, carry the materials, which are often large and/or heavy, with the other.

In February 1995 OSHA addressed fall protection issues related to vendors delivering materials by issuing two interpretations, designated Interpretation M–1 and Interpretation M–2 (Ex. 1–10). In Interpretation M–1, OSHA clarified when vendor employees are engaged in construction. They are defined as being so engaged "when they deliver products or materials to the construction site that are used during the construction activity or when they are engaged in an activity that completes the construction work, such as final cleaning of buildings and structures." The Interpretation also made clear that if a construction contractor picks up materials at the vendor's store or outlet (rather than having the vendor deliver the materials), the vendor is not engaged in construction. Therefore, vendor employees delivering materials to a construction site and exposed to fall hazards of 6 feet (1.8 m) or more are covered by subpart M (Interpretation M–1).

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Interpretation M–2 explained how OSHA would apply the fall protection requirements to vendor employees:

Gaining Access to the Roof: A handhold (rope, chain, or other railing) must be attached to the conveyer belt so that the employee has something to steady himself with as he gains access to the roof or a ladder must be used to gain access to the roof.

Distributing the Roofing Materials: Once on the roof the vendor's employee will receive the roofing products from a conveyor belt (lift truck or similar equipment) and then distribute the products onto the roof at various locations. During this distribution process, OSHA will not require the vendor's employees to install an anchorage point for fall protection equipment regardless of the slope of the roof or the fall distance.

However, if an anchorage point is already available on the roof, the employees must use fall protection equipment.

Questions on Fall Protection for Vendor Employees

Is there a reason why conventional fall protection for vendors is infeasible? Although the use of lanyards may pose a tripping hazard, that hazard—falling while protected by a fall protection system—must be compared with falling six or more feet to a lower level or to the ground. Why would tripping and being in an arrested fall be a greater hazard than the risk of falling, unprotected, to the ground?

We believe that there are fall protection devices available for this work other than rope grabs. For example, retractable lanyards and lanyards attached to lifelines permit workers to move across a surface while still being protected from falls. We believe that, when using these systems, a worker can use both hands and not have to hold onto the fall protection equipment. Are there reasons why these types of systems cannot be used to protect vendor employees?

There are now commercially available fall protection anchors that are designed to be placed on top of roof sheathing (Ex. 1–2). Is there a reason why vendors delivering supplies to a roof could not install this type of anchor and use it for fall protection for their employees? Also, the strap anchor can be installed to the trusses and be left available for the roofing work. Is there a reason why these systems are infeasible or would pose a greater hazard? We are particularly interested in hearing from safety product manufacturers or dealers, familiar with these operations, who are aware of fall protection systems (and their limitations) that can be used when delivering materials to roofs. We would also like to hear from vendors and vendor employees who have knowledge of industry practice and the use of fall protection for workers delivering construction materials.

Issue 5. Whether There Are Alternative Methods of Fall Protection While Climbing Reinforcing Steel (Rebar Walls and Cages)

Paragraph (b)(5) of § 1926.501, titled "Formwork and reinforcing steel," requires employers to protect employees from falls by a safety net system, personal fall arrest system, or a positioning device system. These requirements are essentially the same ones that applied before we revised the rule. The issue concerning climbing rebar (steel rods used to reinforce concrete) is whether fall protection is infeasible for employees while climbing rebar walls and assemblies. In late December 1994, the National Association of Reinforcing Steel Contractors (NARSC) and the International Association of Bridge, Structural, and Ornamental Iron Workers (IWI) asked OSHA to clarify the requirements for workers climbing built-in-place rebar walls. They felt that employees were safer if allowed to climb the rebar without fall protection; only upon reaching their work location should they have to attach their personal fall arrest system or positioning device system (such as a rebar chain assembly).

Usually when placing and tying built-in-place rebar walls (as opposed to preassembled units, which are built on the ground and lifted into position), workers carry lengths of rebar cradled in their arms as they climb. Because of this, and the need to constantly connect and disconnect the lanyard while climbing, the NARSC and IWI felt their workers would encounter a greater risk of falling if required to comply with the rule. Also, the chain length in a rebar chain assembly, or the length of the lanyard in a positioning device system, ranges from 18 to 24 inches. This restricts the worker's movement and increases the frequency of disconnecting and reconnecting, according to these commenters.

In December 1994 and January 1995 (Ex. 1–11), OSHA issued interpretation letters that responded to these concerns by allowing employees to climb vertically and/or horizontally on the face of reinforcing steel walls and cages, up to a height of 24 feet, without being protected from falls. Over 24 feet, employees could not free climb.

Subsequently, on July 18 and August 5, 1996, the NARSC and the IWI submitted another interpretation request, which focused on preassembled reinforcing steel units. NARSC and IWI wanted us to expand our earlier interpretation for built-in-place units to cover preassembled units. Several interested parties supported NARSC's and IWI's request.

In a letter of interpretation dated May 19, 1997 (Ex. 1–12), we stated that, pending future rulemaking, employees could climb or move on both built-in-place and preassembled rebar units without fall protection until they reached their work location or until they reached a fall distance of 24 feet. Over 24 feet, continuous fall protection would be required.

Questions on Climbing Rebar

Are there ways of transporting lengths of rebar, other than having workers carry them in their arms? How far do workers typically have to move on the rebar in order to get to their initial work station, and to get to subsequent work stations? What portion is typically vertical, how much is horizontal, and for what part of the work? How many cycles of connecting disconnecting/reconnecting a fall protection device would be required in these point-to-point moves? To what extent is moving vertically on the rebar similar to climbing a fixed ladder? What problems are involved with providing fall protection for horizontal climbing? How are they different from those in vertical climbing? When employees climb without carrying rebar, are there any problems using positioning devices or personal fall arrest systems? Are there reasons why employees engaged in work other than rebar assembly work cannot use fall protection while climbing rebar? We are particularly interested in hearing from employers and employees engaged in placing and tying rebar walls and assemblies, and the type of fall protection methods they currently use. We would also like to receive information, including accident experience or data, as well as comments, comparing the risk of falling while moving horizontally and the risk while moving vertically.

Issue 6. What Criteria Should Be Used for Restraint Systems?

Subpart M does not mention "restraint systems." Employers have asked for criteria for restraint systems and have questioned whether they can use a body belt with a restraint system instead of a full body harness to comply with the rule (Ex. 1–13). They have questioned whether the anchorage requirements for a restraint system need to be as strong as those for a personal fall arrest system, since a restraint system prevents a fall. Since restraint systems prevent falls, they can be used to meet the requirements of the rule, according to some employers.

Is there is a need for a definition clarifying how restraint systems differ from other types of fall protection? In recent interpretation letters (Exs. 1–14 and 1–15), OSHA defined a restraint system as a means of preventing an employee from reaching a fall hazard. In other words, there will be no fall distance because the fall is prevented. For example, a restraint system would prevent an employee from stepping past the edge of a floor or roof. In contrast, a positioning device permits a fall, but the fall is arrested after no more than two feet. A personal fall arrest system arrests a fall after no more than six feet.

There are several reasons to consider adopting a definition and criteria for restraint systems. When using a restraint system, there is no fall to arrest—which means that no load is imposed on the body from an arrested fall. That may obviate the need for a body harness. Also, restraint system components may not need to be as strong as those for fall arrest systems; they need only be strong enough to hold an employee back from the edge.

One drawback to having diminished strength requirements for restraint systems may be that restraint system components may get mixed up with fall arrest system components and fail when used in a personal fall arrest system. This may be a particular problem with anchors—fall arrest systems may be inadvertently anchored to a restraint system anchor, which would not be adequate in an arrested fall.

Questions About Restraint System Criteria

OSHA requests comments on whether it should adopt separate requirements in § 1926.502 for restraint systems. Specifically, what are the maximum loads expected to be imposed on a system designed to restrain an employee from stepping past an edge? What are the appropriate strength requirements for restraint system anchors and other components? Is there a need for the requirements in subpart M for snap hooks and other connecting hardware also to apply to restraint systems? Alternatively, should components of a restraint system meet the same strength and other criteria as those for personal fall arrest systems? Is there a significant likelihood that restraint system components would get mixed up with personal fall arrest system components?

Issue 7. Whether the Strength Requirements for Anchorage Points for Personal Fall Arrest Systems, Positioning Device Systems, and Restraint Systems Should Be Changed

This issue addresses whether the anchorage requirement for positioning device systems should be changed. Commenters point out that, in some circumstances, the strength requirements for positioning device anchors are greater than those for personal fall arrest system anchors (Ex. 1–16). They assert that this does not make sense because positioning devices do not have to withstand as much force as fall arrest systems.

The rule requires fall arrest system anchorages to be capable of supporting at least 5,000 pounds (22.2 Kn) per employee or that the system maintain a safety factor of two. These commenters have calculated that, in some circumstances, a safety factor of two can be achieved in a 6 foot fall using an anchor strength of 2,000 pounds.

In contrast, positioning device anchors must always have a strength of at least 3,000 pounds. (Under § 1926.502(e)(2), positioning device anchors must be capable of supporting at least twice the potential impact load of an employee's fall, or 3,000 pounds, whichever is greater.) Since a positioning device limits a fall to only two feet, while a personal fall arrest system must sustain the much higher loads imposed by a six foot fall, these commenters suggest that the positioning device anchor requirements in § 1926.502(e)(2) be changed to require a support capability of 3,000 pounds, or two times the potential impact, whichever is less, rather than the current rule's requirement of whichever is greater.

Questions on Strength Requirements for Positioning Device Anchors

We request comments on whether the strength requirement for positioning device anchors should be changed to permit a capability based on the calculated potential impact. Are there circumstances when a positioning device anchor would have to be stronger than a fall arrest system anchor, as suggested by these commenters? What are the factors that a strength calculation should be based on? Should it be similar to the approach taken for fall arrest system anchors?

Issue 8. Whether the Standard's Prompt Rescue Requirements Should Be Changed

The rule requires employers to ensure that workers in an arrested fall either be promptly rescued from the fall arrest system or be able to rescue themselves, § 1926.502(d)(20). Some employers state that they cannot comply with this requirement when an employee is working alone in a remote location. Commenters say that self-rescue is rarely possible, since the worker is hanging in a harness in mid-air, often at least six feet down from the anchor point. Providing a mobile telephone or two-way radio will not always work, because these devices may be out of range in remote areas. Even in less remote areas, there are "dead spots" where these communication devices will not work. They also claim that it is often impossible to determine in advance if a construction crew will be working in a dead spot. A further complication is that in some remote areas, even if rescue personnel can be reached by telephone or radio, it may take a long time for help to arrive.

In some cases, providing an additional worker would ensure a prompt rescue. Some commenters have asserted that in many situations this second person would have no work to do other than to "stand by" in the event of an arrested fall. Others have questioned the need for this provision, pointing out that rescue is not required when employees are protected from falls by a positioning device or while tethered or restrained. They assert that rescue is only required when employees are performing construction work and using a personal fall arrest system—that there is no comparable rescue requirement while employees are performing maintenance work.

Most of the general industry standards do not explicitly require prompt rescue, although OSHA interprets the general industry standard for electric power generation, transmission and distribution (volume 29 of the Code of Federal Regulations at section 1910.269) as incorporating the rescue provision of 1926 subpart M. For other work, an employee who must be protected by the rescue requirement while doing construction work would not have to be protected in this way when engaged in maintenance work.

Questions on Prompt Rescue

OSHA seeks comments and information on the rule's prompt rescue requirement. We specifically seek information on the extent to which there have been instances where rescue has been necessary from arrested falls, or where workers have fallen unprotected by a fall arrest system, but would have needed to be rescued had they been protected. Is there a need to define "prompt"? How long can an employee

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be suspended in a harness without being harmed?

Issue 9. Whether There Is a Need for Alternative Procedures for Drilling Shafts

The rule (§ 1926.501(b)(7)(ii)) requires employees at the edge of a well, pit, shaft, or similar excavation, 6 feet or more in depth, to be protected from falling by the use of a guardrail system, fences, barricades, or covers. OSHA's policy is that where these options are infeasible, this requirement can be met by the use of a personal fall arrest system.

The International Association of Foundation Drilling and others are concerned that excavating shafts using drilling rigs presents unique fall protection problems and that requiring conventional fall protection while performing certain tasks creates a greater hazard to workers. They assert that lanyards and lifelines can get entangled with equipment and that self-retracting lanyards may be rendered inoperable by mud and/or wet concrete. They do not consider guardrails, fences, barricades, or covers as viable fall protection options around an active shaft because these would prevent the drilling workers from doing their work.

When addressing the fall hazards associated with holes, OSHA stated in the preamble to the rule (located at volume 59 of the **Federal Register** at page 40686) that it did not intend a guardrail to be erected around holes while employees were working at the hole and that, if a hole cover was removed while work was in progress, guardrails would not be required because they would interfere with the performance of work. The drilling industry commenters believe that this statement should apply to shafts that are actively being drilled and that only after the shaft has been completed should fall protection be required.

These commenters also suggest that the diameter of a shaft should be considered in determining when fall protection is required. They assert that small diameter shafts do not pose the same hazards as larger diameter shafts—that workers around shafts with a diameter of 18–30" do not necessarily need fall protection.

Questions on Fall Protection While Drilling Shafts

OSHA requests comments with supporting information on any difficulties or hazards associated with providing fall protection during the drilling of shafts. With respect to the entanglement issue, what equipment at a drilling or shaft excavation site can entangle a fall protection system, and under what specific circumstances can that occur? Where is the fall protection equipment anchored when the entanglement potential exists? What movement of which equipment could catch the safety lines? What work activities are being performed near the excavation? Is there a reason why the entanglement problem could not be avoided by using different safety equipment, coordinating work or modifying work practices? Are there retractable lanyards that are not adversely affected by mud and wet concrete? Are there ways of covering the lanyards to protect them from mud and concrete? Is there a reason why catenary lifeline systems could not be used? Under what circumstances are guardrails infeasible? Does the diameter of the shaft have a bearing on the extent to which fall protection is infeasible or on the degree of hazard present? Under what circumstances is the installation of a collar on top of a caisson, or simply allowing the caisson to extend above grade, infeasible?

Issue 10. Whether Body Belts Incorporated Into Full Body Harnesses Provide Appropriate Employee Protection in a Fall

Interested parties have raised a concern about full body harnesses that incorporate body belts into the harness system. Their concern is that, during a fall, these types of body harnesses impose loads on the user that are similar to those imposed by a body belt, since the belt portion of the harness transmits the arresting forces directly to the abdomen. They claim that workers may attach their lanyards to the belt portion of the harness, thus defeating the advantages of using a harness instead of a body belt. Under § 1926.502(d), body belts are not permitted as part of a personal fall arrest system because of their potential to cause injury to a worker who falls.

The rule currently defines a body harness as "straps which may be secured about the employee in a manner that will distribute the fall arrest forces over at least the thighs, pelvis, waist, chest and shoulders with means for attaching it to other components of a personal fall arrest system." OSHA solicits comments on full body harnesses that incorporate body belts. OSHA encourages individuals familiar with these types of harness systems to comment on the possible benefits or detriments of their use.

Questions on Body Harnesses

Should OSHA revise its definition of a body harness to prohibit harnesses that, in effect, incorporate body belts? Does this type of harness transmit excessive forces to the waist/abdomen area in an arrested fall when the harness is properly attached?

IV. Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655).

Signed at Washington, D.C. this 1st day of July, 1999.

Charles N. Jeffress,

Assistant Secretary.

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July 14, 1999

Part III

Department of Labor

Employment and Training Administration

Unemployment Insurance Program: Unemployment Insurance Program Letter No. 37–99, UI PERFORMS Performance Measures and Minimum Performance Criteria for Tier 1 Measures; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Insurance Program:

Unemployment Insurance Program Letter No. 37–99, UI PERFORMS Performance Measures and Minimum Performance, Criteria for Tier I Measures

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: UI PERFORMS is the Department of Labor's management system for promoting continuous improvement in Unemployment Insurance (UI) operational performance. Unemployment Insurance Program Letter (UIPL) No. 41–95 (August 24, 1995) described in detail the features of the UI PERFORMS performance management system, including Tier I performance measures, for which uniform national criteria representing minimum levels of acceptable performance would be established, and Tier II measures, for which no uniform national criteria would be established.

The proposed minimum performance criteria for UI PERFORMS Tier I measures were published in UIPL No. 4–99 (October 20, 1998) and the **Federal Register** (FR) at 63 FR 63544 (November 13, 1998). These issuances also proposed additional Tier II measures beyond those initially identified in UIPL No. 41–95 and invited the comments of State Employment Security Agency (SESA) Administrators and the public. This notice consists of the Department of Labor's responses to the comments that were submitted, and a UIPL which disseminates the minimum performance criteria for Tier I measures and their effective dates and describes the relationship of the Tier I and Tier II measures to the State Quality Service Plan (SQSP) process.

EFFECTIVE DATES: The effective dates for each of the minimum performance criteria for UI PERFORMS Tier I measures are provided in the summary table in section four of the UIPL.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra King, Director, Division of Performance Review, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room S–4231, Washington, DC 20210 (telephone: 202–219–5223, extension 160); or Andrew Spisak, who can be contacted at the same address or by telephone at 202–219–5223, extension 157. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Background

When the State-Federal Performance Enhancement Work Group (PEWG) established the outlines of the UI PERFORMS system for promoting continuous improvement in UI operational performance, it identified ten key measures for which uniform national criteria would be set. It called these "Tier I" measures. The criteria for these measures were to be interpreted as minimum levels which States always would be required to meet.

In November 1997, the Performance Enhancement Group (PEG) met for the first time in Washington, DC. The PEG is the successor to the PEWG, and, like the PEWG, is comprised of State and Federal employment security administrators. The PEG was convened to complete the design and implementation of the UI PERFORMS system.

The PEG ratified the PEWG's definitions of the performance measures and established three workgroups—Appeals, Benefits, and Tax—to develop recommendations for the criteria. Each group included Federal staff from the National and Regional Offices, and representatives from at least two States. The PEG developed guidelines for the workgroups to follow in developing their recommendations. The PEG also deferred setting a criterion for one Tier I measure, cashiering timeliness, until a data collection methodology can be developed for that measure that can be applied uniformly by all States.

The workgroups' reports were presented to the PEG at its meeting in Washington, DC, on September 28–30, 1998. The PEG reviewed the workgroups' recommendations, both in terms of the individual Tier I measures and in light of their cumulative burden, and recommended appropriate adjustments. UIPL No. 4–99 and the November 13, 1998 FR Notice identified and discussed the proposed minimum performance criteria for UI PERFORMS Tier I measures and solicited the comments of the SESA administrators and the public on the proposed performance criteria.

Summary of Comments and Department of Labor Responses

A total of 26 States submitted comments in response to UIPL No. 4–99. Six States submitted comments in response to the November 13, 1998 FR Notice, which provided a 60-day period for public comment on the proposed criteria. The comments of three of these States were the same as the comments these States submitted in response to the UIPL. In addition to the States, two public interest groups submitted comments in response to the FR Notice.

The following sections identify the minimum criteria for the nine Tier I measures that were proposed in UIPL No. 4–99 and the November 13, 1998 FR Notice; summarize the comments; and give the Department of Labor's responses.

I. First Payment Timeliness

Proposed criteria effective fiscal year (FY) 2000: One aggregate measure combining total and partial/part-total first payments for intrastate and interstate State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX):

1. 87 percent within 14 days of the week-ending date of the first compensable week for States requiring a waiting week of unemployment and 21 days of the week-ending date of the first compensable week for non-waiting week States.

2. 93 percent within 35 days.

Proposed criteria effective FY 2002 or the first SQSP cycle following the issuance of the regulation governing UI PERFORMS, whichever is later:

One aggregate measure combining total and partial/part-total first payments for intrastate and interstate State UI, UCFE, and UCX:

1. 90 percent within 14 days of the week-ending date of the first compensable week for States requiring a waiting week of unemployment and 21 days for non-waiting week States.

2. 95 percent within 35 days.

Summary of Comments and the Department's Response: Thirteen States commented on this measure.

Two States supported the proposed criteria for the aggregate measure of first payment timeliness. One of these States also endorsed the proposal to establish separate Tier II measures for UI interstate, UCFE, and UCX first payments. Two States expressed their expectations of meeting the proposed criteria without commenting on the merits of the proposed criteria.

Nine States objected to the proposed criteria for the aggregate measure, although one of these States supported the current criterion for compliance in 20 CFR 640.5 of 87 percent of first payments issued within 14 days from the week-ending date of the first compensable week in States that require a waiting week and 21 days in States that do not require a waiting week. These nine States cited several reasons

for objecting, such as the inclusion in the measure of interstate UI, UCFE, and UCX claims (for which prompt first payments might be more difficult), State alternative base period provisions, the fact-finding efforts required to satisfy the nonmonetary quality review, the inclusion of payments resulting from appeals reversals, and State law provisions such as backdating claims for partial unemployment.

The Department believes that the proposed minimum criteria are administratively feasible, and that differences in State UI laws and procedures will not affect the ability of States to meet the criteria. For the period April 1998 through March 1999, 46 States met the current 14/21-day timeliness criterion for compliance in 20 CFR 640.5 for first payment of benefits for weeks of total unemployment for intrastate claims under the State UI program, and five of the seven States that did not meet the criterion were within five percentage points of meeting it. Fifty-two States met the 35-day timeliness criterion for compliance in 20 CFR 640.5 for first payment of benefits for weeks of total unemployment for intrastate claims under the State UI program. For first payment of benefits for weeks of total unemployment for interstate claims under the State UI program, 49 States met the 14/21-day criterion, and 51 States met the 35-day criterion in 20 CFR 640.5.

Performance data do not support the contention that including payments for interstate UI, UCFE, and UCX claims in the measure will preclude States from meeting the minimum criteria. From April 1998 through March 1999, only 3 of the 46 States that met the 14/21-day timeliness criterion for compliance in 20 CFR 640.5 for first payment of benefits for weeks of total unemployment for intrastate claims under the State UI program would fail to meet the same criterion applied to an aggregate timeliness measure that included first payments for weeks of total and partial/part-total unemployment for interstate and intrastate claims in the State UI, UCFE, and UCX programs.

For the same period, none of the 52 States that met the 35-day timeliness criterion for compliance in 20 CFR 640.5 for first payment of benefits for weeks of total unemployment for intrastate claims under the State UI program would fail to meet the same criterion applied to an aggregate timeliness measure.

The Department intends to issue a notice for comment on a proposed regulation establishing a UI PERFORMS management system. The Department intends that this regulation will supersede 20 CFR Part 640. Comments submitted in response to the UI PERFORMS proposed regulation will be considered along with the comments submitted in response to UIPL No. 4-99 and the November 13, 1998 FR Notice prior to publishing a UI PERFORMS Final Rule. Until the UI PERFORMS Final Rule takes effect, the existing criteria for compliance with the Secretary's Standard for Unemployment Compensation benefit payment promptness (20 CFR 640.5) continues to be the minimum performance criteria for the first payment timeliness Tier I measure.

For first payments of weeks of total unemployment for intrastate State UI claims, consistent with 20 CFR 640.5, the minimum Tier I performance criteria are:

1. 87 percent within 14 days of the week-ending date of the first compensable week for States requiring a waiting week of unemployment and 21 days of the week-ending date of the first compensable week for non-waiting week States.

2. 93 percent within 35 days.

For first payments of weeks of total unemployment for interstate State UI claims, consistent with 20 CFR 640.5, the minimum Tier I performance criteria are:

1. 70 percent within 14 days of the week-ending date of the first compensable week for States requiring a waiting week of unemployment and 21 days of the week-ending date of the first compensable week for non-waiting week States.

2. 78 percent within 35 days.

II. Nonmonetary Determinations Timeliness

Proposed criteria effective FY 2002: Single aggregate measure including determinations for intrastate and interstate claims for State UI, UCFE, and UCX:

1. 80 percent of separation determinations issued within 21 days from date of detection by the SESA of any nonmonetary issue which had the potential to affect the claimant's past, present, or future benefit rights to date of the determination.

2. 80 percent of nonseparation determinations issued within 14 days from date of detection by the SESA of any nonmonetary issue which had the potential to affect the claimant's past, present, or future benefit rights to date of the determination.

Summary of Comments and the Department's Response: Fourteen States and one public interest group commented on this measure.

Six States objected to the disparate treatment of separation and nonseparation determinations, because separation and nonseparation issues are detected often at the same time.

With respect to the point of time at which separation and nonseparation issues are detected, although both separation and nonseparation issues that must be adjudicated can arise when a new initial claim for UI benefits is filed, most nonseparation issues arise from continued claims. The Department believes that the proposed timeliness intervals for separation and nonseparation determinations ensure that UI claimants receive payments expeditiously while taking into account differences in the extent of fact-finding that is required to adjudicate separation and nonseparation issues. Recognizing that nonmonetary determinations vary in their degree of complexity, separation issues, in general, require that the agency contact and gather information from the claimant, one or more employers, and, in some instances, third parties in order to decide eligibility. Nonseparation issues can, more frequently than separation issues, be adjudicated on the basis of information obtained from the claimant or agency records. Therefore, a shorter time interval is justified for nonseparation issues.

Five States believed there was an inconsistency between the proposed criteria for the timeliness of nonmonetary determinations and the proposed criteria for first payment promptness. Three States cited examples in which nonmonetary determinations are required prior to the date by which the first payment must be issued. For example, one State cited a separation issue detected on a new initial claim on the 2nd of the month. In order to meet the proposed timeliness criteria, an eligibility decision would have to be issued by the 23rd, and, assuming the claimant was determined to be eligible for benefits, the first payment would be due within 14 days of the first compensable week. If the first compensable week ended on the 14th, the first payment must be issued no later than the 28th.

The Department does not agree that there is a conflict between the proposed timeliness criteria for first payment of benefits and nonmonetary determinations. The Department believes that it is, in fact, logical to require the nonmonetary issues to be adjudicated and claimant eligibility determined prior to the date by which a first payment must be issued.

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Six States cited adjudication procedures, including due process requirements for notification and response and the practice of issuing nonmonetary determinations only after a week of unemployment has been claimed, as factors making it difficult to meet the proposed criteria.

The Department believes that many of the concerns cited by the States arise from a small number of more complex claims that are not typical of the majority of nonmonetary adjudications, so that for the totality of nonmonetary adjudications, the proposed criteria are administratively feasible.

With respect to States that do not issue nonmonetary determinations until a claim is filed, ET Handbook No. 301, page V–9, states that the issue detection date is, "[T]he date the SESA first detected the issue to which the nonmonetary determination applies. The exception to this rule is a case where the claimant fails to file a timely certification and the State has a policy of waiting for a week to be claimed prior to making a determination. In such cases, the detection date for the original unresolved issue(s) is the date the claimant subsequently files an additional or reopened claim."

Two States commented that the majority of States currently perform below the proposed criteria, and that it is unrealistic to expect dramatically improved performance by FY 2002. Conversely, the public interest group questioned the justification for delaying the effective date until FY 2002 when so many States are failing to achieve the criteria and questioned whether the Department currently has the authority to sanction these States.

The PEG discussed the issue of an appropriate effective date and agreed that, given the number of States currently performing below the minimum levels (34 States for the period April 1998 through March 1999) and the degree of improvement that is needed for several of the States to meet the criteria (only 5 of the 34 States not meeting the criteria were within 5 percentage points), an effective date prior to FY 2002 would not be realistic. A two-year delay in implementing these criteria will provide additional time for States to work with the Federal partner to identify those areas of UI operations that need to be addressed and to undertake actions required to improve performance and meet the criteria.

With respect to the ability to sanction States, the Department notes that currently there are no criteria specified in regulation for this measure. States which do not meet the minimum performance criteria for this measure will be required to submit plans identifying the steps the State will take to achieve those criteria, and must demonstrate progress toward meeting them. However, the Department will not initiate formal action if State performance fails to meet a new criterion prior to its effective date, provided the Department has received and approved a satisfactory corrective action plan, and there is evidence of continuing progress in its achievement.

The public interest group commented also that timeliness should be measured from the date the claim is filed rather than from the date of detection. Measuring timeliness from the date of detection might discourage adjudicators from finding out what the actual issues are or pursuing leads of issues that are disclosed through fact-finding from sources other than the employer. The group also believes that it would also be easier to monitor timeliness measured from the claim date.

The Department notes that State nonmonetary adjudications are reviewed each quarter to evaluate the quality of the SESA's fact-finding efforts with respect to claimants, employers, and other interested parties. The Department has no evidence that measuring timeliness from the date of detection has an adverse effect on fact-finding. The Department also notes that, as defined in ET Handbook No. 401 (page V–3–6), "The issue detection date is the date the new, additional, or reopened claim is filed. If no issue exists at the time a claim is filed but information is later received that presents an issue, then the issue detection date is the date this information is received by the agency."

One State "strongly opposed" the requirement to produce improvement plans prior to the effective date of the criteria.

(**Note:** this State also applied this comment to the proposed criterion for nonmonetary quality.)

In order to achieve the goal of continuous program improvement, the Department believes that it is essential for the Department and the States to work cooperatively in identifying those practices and procedures that are necessary to raise the State's level of performance, especially for those States not meeting performance floors.

One State did not comment specifically on the proposed criteria but noted that it had previously expressed its concerns about the UI PERFORMS process.

III. Nonmonetary Determinations Quality

Proposed criterion effective FY 2002: 75 percent of all determinations with scores greater than 80 points, based on evaluation results of quarterly samples of nonmonetary determinations selected from the universe of nonmonetary determinations for intrastate and interstate claims for State UI, UCFE, and UCX, reported on the ETA 9052 report. Nonmonetary determination samples will be evaluated as instructed in ET Handbook No. 301 (rev. January 1998).

Summary of Comments and the Department's Response: Thirteen States and one public interest group commented on this measure.

Five States supported the proposed criterion in general. However, one of these States commented that the quality evaluation should be limited to discharge, voluntary quit, able and available, and job refusal issues. This State felt that inclusion of such issues as full-time employment and holiday pay will inflate the scores of some States. Another of these States urged the Department to increase its support and scheduling of benefits quality training.

The Department believes that it is important to include all nonmonetary issues in order to conduct a comprehensive evaluation of quality. Because the State quality samples are representative of the population of nonmonetary determinations, the State's aggregate score will reflect the relative importance of the four issue areas cited by the State. Further, the Department is committed to continue to schedule benefits quality training at various times and locations.

Three States questioned the scoring system used to evaluate the quality of nonmonetary determinations. One State felt that the quality evaluation is a *de facto* pass/fail system, because a deduction of points other than for an inadequate written determination will result in a score of less than 80 points, which is a failing score.

The Department believes that the nonmonetary quality measurement instrument produces a comprehensive and fair evaluation of the critical indicators of the quality of State nonmonetary procedures: adequacy of claimant, employer, and third party fact-finding; opportunity for rebuttal to the interested parties; correct application of State law and policy; and the adequacy of the written determination. Evaluators assign scores which reflect the State agency's performance in these critical areas. Scoring is conducted as a tripartite review in which at least one, and preferably two, of the reviewers are nonmonetary experts from outside the State which is being evaluated. Five tripartite review options are available, depending on the composition of the review team (i.e., the mix of staff from the State being evaluated, staff from other States, and Federal staff) and the method used to resolve scoring disagreements. The tripartite review procedure is described in detail in ET Handbook No. 301, chapter IV and Appendix B.

Three States urged the Department to identify the reasons so many States fail to meet the criterion, including a reexamination of the evaluation measurement tool. One of these States urged that the States that are meeting the criterion share information with the other States on the reasons for their success, and another State urged the Department to collect information on State best practices, share these with all States, and use this information to provide technical and financial assistance to the States. Two States urged the Department to defer implementation of a minimum performance criterion until the Department and the States identify the reasons why so many States are failing to meet the proposed criterion.

As stated in UIPL No. 4–99 and the November 13, 1998 FR Notice, the Department will study the reasons why States fail to meet the minimum level of performance and will share this information with the States. The Department will also encourage States that are performing above the minimum level to share best practices with other States.

The PEG discussed the issue of an appropriate effective date and agreed that a two-year delay in implementing this criterion will provide States with sufficient time to undertake actions required to improve performance and meet the criterion. The Department believes that an effective date of FY 2002 is realistic, given the number of States currently performing below the minimum levels (26 States in calendar year 1998) and the degree of improvement that is needed for several of the States to meet the criterion (only 7 of the 26 States not meeting the criterion were within 5 percentage points).

One State commented that it would have to improve its performance for this measure without commenting on the merits of the proposed criterion. Another State did not comment specifically on the proposed criterion but noted that it had previously expressed its concerns about the UI PERFORMS process.

IV. Lower Authority Appeals Timeliness

Proposed criteria effective FY 2000:

1. 60 percent of decisions within 30 days. (Existing Secretary's Standard at 20 CFR 650.4(b))

2. 80 percent of decisions within 45 days. (Existing Secretary's Standard at 20 CFR 650.4(b))

Proposed criteria effective FY 2002 or the first SQSP cycle following the issuance of the regulotion governing UI PERFORMS, whichever is later:

1. 60 percent of decisions within 30 days.

2. 85 percent of decisions within 45 days.

3. 95 percent of decisions within 75 days.

Summary of Comments and the Department's Response: Ten States commented on this measure.

Although two of the States that submitted comments supported the proposed criteria, eight States expressed concerns that centered on three issues: (1) The concern that improvements in timeliness will compromise quality and/or due process; (2) the ability to meet the proposed criteria during periods of high workloads; and (3) the justification for raising the 45-day performance criterion and adding a third criterion.

State performance data on lower authority appeals timeliness (ETA 9054 report) and quality (ETA 9057) do not support the contention that there is a trade-off between quality and promptness. For calendar year 1998, 48 States met the 30-day criterion for compliance in 20 CFR 650.4(b) for lower authority appeals promptness, and 50 States met the 45-day criterion for compliance in 20 CFR 650.4(b) for lower authority appeals promptness. Only four of the States meeting the 45-day timeliness criterion failed to meet the proposed lower authority appeals quality criterion of 80 percent of all benefit appeals with combined scores equal to at least 85 percent of the potential points that could be awarded for the evaluation. Only one of the States meeting the 45-day timeliness criterion failed to meet the current lower authority appeals quality desired level of achievement of 80 percent of all benefit appeals with combined scores equal to at least 80 percent of the potential points that could be awarded for the evaluation.

These quarterly evaluations of lower authority appeals quality include several elements addressing due process. Based on the results of these evaluations, the Department believes that the timeliness criteria will not compromise the due process rights of the interested parties.

With respect to the ability of States to meet the proposed criteria during periods of high workloads, the PEWG established, as one of the performance criteria guidelines, the principle that States would be expected to meet or exceed the criteria, unless attaining the established levels was not "administratively feasible" for the period measured. State workload is one of several factors that the State and the Department will consider when assessing administrative feasibility.

The proposal to raise the performance criterion for the 45-day timeliness measure and add a third criterion reflects the Department's goal of ensuring that a greater percentage of the cases are disposed of as efficiently as possible; that cases are not allowed to accumulate for long periods of time; and that parties to an appeal receive a hearing and decision in a reasonable amount of time. The third criterion for the issuance of 95 percent of lower authority appeals decisions within a specified period will encourage States to reduce the number of cases that have not been decided within 45 days.

Six States cited concerns about the effect on quality of the proposed new criterion for issuing 95 percent of lower authority appeals decisions within 75 days. Two States proposed modifying the criterion to require that States issue 90 percent of lower authority appeals decisions within 75 days.

The Department believes that in order to adequately address the case-aging concerns that motivated the PFG to propose a third criterion, the criterion must require that 95 percent of the lower authority appeals decisions be issued within a designated time period. This will ensure the disposition of all but the most complex cases within a reasonable time period. However, in order to provide States with more flexibility to adapt their lower authority appeals practices and procedures to the new criterion, the Department proposed, and the PEG agreed, to modify the criterion to require that States issue 95 percent of lower authority appeals decisions within 90 days, rather than 75 days.

One State suggested that the time lapse measure be replaced with an "average pendency level" measure, defined as the total number of days all appeals have been pending divided by the number of appeals.

The PEG decided that consideration of this measure should be deferred pending further study of State performance based on this measure and changes in State data collection procedures that would be required for its implementation.

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The Department intends to issue a notice for comment on a proposed regulation establishing a UI PERFORMS management system. The Department intends that this regulation will supersede 20 CFR Part 650. Comments submitted in response to the UI PERFORMS proposed regulation will be considered along with the comments submitted in response to UIPL No. 4-99 and the November 13, 1998 FR Notice prior to publishing a UI PERFORMS Final Rule. Until the UI PERFORMS Final Rule takes effect, the existing criteria for compliance with the Secretary's Standard for Unemployment Compensation appeals promptness (20 CFR 650.4(b)) continues to be the minimum performance criteria for the lower authority appeals timeliness Tier I measure:

1. 60 percent of decisions within 30 days.
2. 80 percent of decisions within 45 days.

V. Higher Authority Appeals Timeliness

Proposed criteria effective FY 2000:

1. 50 percent of decisions within 45 days.
2. 80 percent of decisions within 75 days.
3. 95 percent of decisions within 120 days.

Summary of Comments and the Department's Response:

Nine States and one public interest group commented on this measure. A second public interest group endorsed the comments of the first.

One State described the proposed criteria as "fair and reasonable", and another State did not comment on the merits of the proposed criteria but stated that it would have no problem in meeting them.

Seven States expressed concerns that centered on one or more of three issues: (1) The ability to meet the proposed criteria during periods of high workloads; (2) the justification for adding a third criterion; and (3) the concern that improvements in timeliness will compromise quality and/or due process.

With respect to the ability of States to meet the proposed criteria during periods of high workloads, the PEWG established, as one of the performance criteria guidelines, the principle that States would be expected to meet or exceed the criteria, unless attaining the established levels was not "administratively feasible" for the period measured. State workload is one of several factors that the State and the Department will consider when assessing administrative feasibility.

The proposal to add a third criterion reflects the Department's goal of ensuring that a greater percentage of the cases are disposed of as efficiently as possible; that cases are not allowed to accumulate for long periods of time; and that parties to an appeal receive a hearing and decision in a reasonable amount of time. The third criterion for the issuance of 95 percent of higher authority appeals decisions within a specified period will encourage States to reduce the aging of cases that have not been decided within 75 days.

Four States disagreed with the proposed time interval for the 95 percent completion criterion and suggested alternative completion percentages and/or time intervals.

The Department believes that in order to adequately address the case-aging concerns that motivated the PEG to propose a third criterion, the criterion must require that 95 percent of the higher authority appeals be issued within a designated time period. This will ensure the disposition of all but the most complex cases within a reasonable time period. However, in order to provide States with more flexibility to adapt their higher authority appeals practices and procedures to the new criterion, the Department proposed, and the PEG agreed, to modify the criterion to require that States issue 95 percent of higher authority appeals decisions within 150 days, rather than 120 days.

Three States commented that due to the precedential and policy setting implication of their decisions, higher authority appeals often require additional time for fact finding, hearings, research, and drafting opinions. One of these States commented that appellants prefer the thoroughness and quality of the review process and the due process guarantees of their State law, to a speedy decision that does not include a careful review of the facts.

Based on State performance data, the Department believes that the proposed minimum performance criteria for higher authority appeals timeliness are reasonable and achievable, given the need to meet the due process requirements of State law and policy. For the period April 1998 through March 1999, 44 of the 50 States that provide for a higher authority appeals process met the 45-day and 75-day timeliness criteria, and 43 States met the proposed 150-day timeliness criterion.

The public interest group urged the establishment of a quality criterion for higher authority appeals, in addition to the timeliness measure. A second public interest group endorsed this recommendation.

The Department notes that developing a cost-effective method to measure higher authority appeals quality that all States can apply uniformly might be difficult. Nevertheless, because higher authority appeals quality is important, the PEWG established such a measure under Tier II, and the Department is committed to its development. As a Tier II measure, higher authority appeals quality will not have a minimum performance criterion. However, all UI PERFORMS measures, including their categorization as Tier I or Tier II measures, will be periodically reviewed.

VI. Lower Authority Appeals Quality

Proposed criterion effective FY 2000: 80 percent of all benefit appeals with combined scores equal to at least 85 percent of potential points, based on the results of quarterly samples of lower authority benefit appeals hearings selected and evaluated as instructed in ET Handbook No. 382 (2nd ed.).

Summary of Comments and the Department's Response: Six States commented on this measure.

Comments were generally positive, although one State commented that setting the minimum passing score at 85 percent of the potential points is a significant change from the current desired level of achievement, for which the minimum passing score is 80 percent of the potential points, and increases the likelihood that a case will fail the evaluation. This State urged postponement of the higher criterion until FY 2002 to allow States to correct any problems developing from the criterion.

Data for calendar year 1998 show that 46 States met the proposed criterion and 2 other States were within 5 percentage points of meeting the criterion. Therefore, based on State performance, the Department believes the criterion is reasonable and should not be postponed.

One State recommended that any hearing that fails any of the eight critical elements should fail the quality review.

The Department believes that it would be premature to propose a criterion for minimum performance with respect to the critical elements. After additional data are collected, State performance on these critical elements can be evaluated, and the role of these elements in setting minimum performance criteria can be considered when the Tier I measures are next reviewed.

VII. Timeliness of New Employer Status Determinations

Proposed criteria effective FY 2002:

1. 60 percent of determinations made within 90 days of the quarter ending date (QED).
2. 80 percent of determinations made within 180 days of the QED.

Summary of Comments and the Department's Response: Nine States commented on this measure.

Comments were generally positive, although one State proposed that for those employer determinations for which the tax office has not been notified timely that liability has occurred, the notification date (comparable to the date of detection for nonmonetary determinations) should be used to calculate timeliness instead of the QED.

The Department does not agree with this proposal, because relying on the employer notification date will remove any incentive for States to actively identify new employers. Further, the current reporting system does not use the notification date and, therefore, does not support this proposal.

VIII. New Employer Status Determinations Accuracy

Proposed criterion effective FY 2002: No more than 6 cases from an acceptance sample of 60 cases can fail the evaluation. This criterion implies that at least 95 percent of the samples will *pass* (that is, 6 or fewer cases will fail the evaluation) if State accuracy rate is greater than or equal to 94.5 percent, and that at least 90 percent of the samples will *fail* (that is, more than 6 cases will fail the evaluation) if State accuracy rate is less than or equal to 82.4 percent.

Summary of Comments and the Department's Response: Nine States commented on this measure.

Comments were generally positive, although 2 States questioned whether the proposed criterion of 6 failures in a sample of 60 cases should apply also to other Tax Performance System (TPS) measures.

Currently, no more than 2 cases in an acceptance sample of 60 cases may fail an evaluation for a TPS measure. This standard implies a level of performance higher than the level that is appropriate for Tier I measures, which are minimum performance levels. New Employer Status Determinations Accuracy is the only TPS acceptance sample measure that is in Tier I and, therefore, should be subject to a different criterion from other TPS measures.

One State sought clarification of whether this measure includes the accuracy of both the determination and the posting of the determination (that is, the accurate recording of the accounts maintenance function information in the agency's records).

This measure will apply to the accuracy of the determination only. This includes the accuracy of the liability decision, whether the State followed correct procedures and obtained proper documentation, and whether it assigned the correct tax rate. Accuracy of the posting will be evaluated as a Tier II measure.

IX. Timeliness of Transfer From Clearing Account to Trust Fund

Proposed criterion effective for the FY 2000 and FY 2001 SQSP: A maximum of two days to transfer funds from the State clearing account to the State account in the Unemployment Trust Fund.

Effective with the FY 2002 SQSP: Maintenance of an annual ratio of the monthly average daily available balance (line 10, ETA 8414 report) to the average daily transfer to the trust fund (line 3, ETA 8405 report, divided by the number of days in the month) less than or equal to 1.75.

Effective with the FY 2005 SQSP: Maintenance of an annual ratio less than or equal to 1.0.

Summary of Comments and the Department's Response: Fourteen States commented on this measure.

Comments were mixed, with six States offering outright or qualified support for the proposed criteria. However, four States strongly objected to both the current timeliness and proposed ratio criteria on the grounds that States which finance banking services through clearing account balances would not be able to meet either the time lapse or ratio criteria. Two States noted that States would be forced to eliminate a source for paying for banking services in order to meet the criterion. Another State suggested that this measure be moved to Tier II, because State performance cannot be measured in a uniform manner, or that separate measures be developed for States funding lockbox operations through clearing account balances. One State urged the Department to provide States with incentives to make the transition to electronic filing and payment. One State "strongly" urged the Department to consider the funding of banking services in developing cash management performance measures.

The Department acknowledges the States' desire to maintain compensating balances in the clearing account to support State banking services and lockbox operations. However, the PEWG considered it important to establish a Tier I measure that reflects the immediate deposit and withdrawal requirements. The PEG ratified this decision. Compensating balances in the clearing account are in direct conflict with Federal law governing the "immediate deposit" (section 3304(a)(3) of the Federal Unemployment Tax Act (FUTA) and section 303(a)(4) of the Social Security Act (SSA)) and "withdrawal" (section 3304(a)(4) of FUTA and section 303(a)(5) of the SSA) requirements. Under the "immediate deposit" standard, in order for employers in a State to receive credit against the Federal unemployment tax, and for States to receive their administrative grants, all UI taxes must be transferred to and deposited in the Unemployment Trust Fund immediately after going through the State's clearing account. Under the "withdrawal" standard, money must be withdrawn from the State's unemployment fund solely for payment of unemployment compensation. The use of such funds for "expenses of administration" is explicitly prohibited. Therefore, the constructive use of compensating balances by States is inconsistent with Federal law.

The President's FY 2000 budget proposal committed the Department to discuss UI and employment service reform with stakeholders and Congress for purposes of developing a comprehensive bipartisan legislative reform proposal. As a result of discussions which have occurred so far, two proposals are under consideration which, if enacted, would affect this criterion. The first would allow States to use earnings on moneys in the clearing account to pay routine banking costs. The second would allow also for the payment of additional costs such as those incurred in operating a lockbox. Should either of these changes become law, the criterion for this measure will be revised accordingly.

Two States sought a more complete discussion of the data reporting issues that need to be resolved as a prerequisite to the implementation of the ratio measure.

The Department believes that the proposal provides adequate time to resolve data reporting inconsistencies before the proposed ratio measure is introduced. The Department is committed to resolving these issues with the full participation of the States.

Two States expressed concern that use of the average daily available balance in the ratio measure would produce a skewed or misleading result due to the commingling of funds in the State clearing account that are not transferred to the trust fund.

The Department notes that States must identify and report separately

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funds other than employer contributions that are deposited in the clearing account, which eliminates the potential for skewed or misleading results.

Three States believed the proposed ratio criterion will be more difficult to meet than the time lapse measure.

Performance data do not support the contention that States which are able to meet the 2-day time lapse criterion would have difficulty meeting the proposed ratio of 1.75 or less. For the reporting period April 1998 through March 1999, only 2 of the 31 States that met the 2-day time lapse criterion had ratios greater than 1.75. On the other hand, 7 States that failed to meet the 2-day time lapse criterion had ratios less than 1.75.

General Comments

Nine States and two public interest groups offered comments that were not specific to any measure.

- Two States requested clarification of the term "administratively feasible".

The Department measures administrative feasibility by observing and evaluating State performance. If States are performing at or above a minimum performance level of quality, promptness, etc., this constitutes evidence that a criterion is administratively feasible. However, a variety of evidence may be used to measure administrative feasibility. Because circumstances in States vary, the Department reserves the right to evaluate administrative feasibility on a case-by-case basis.

- One State requested that the reference to "persistent performance below the established criterion" be described or defined.

The period must be long enough to establish that the poor performance is not transitory, and also to allow the State a reasonable time to improve performance. In general, the Department believes that two years of continuous performance below the criterion demonstrates sustained poor performance. However, since circumstances in States vary, the Department reserves the right to handle performance problems on a case-by-case basis.

- Two States pointed out the difficulty of applying universal criteria to diverse State operations. One of these States expressed concern that States might be forced into standardizing their operations to meet national criteria, thereby compromising their rights in the State/Federal partnership.

The Department believes that uniform performance criteria must be applied as a matter of fairness and equity for States, employers, and UI claimants across all jurisdictions. The application of different criteria in an attempt to take into account differences in State laws and administrative practices inevitably invites subjective judgements, which would be inconsistent with a national program improvement system such as UI PERFORMS. Among the principles for Tier I performance measures established by the PEWG and ratified by the PEG is the requirement that Tier I measures would have the same meaning in all States so that interstate comparisons are valid. In contrast, the PEWG and PEG recognized that some performance measures inherently reflect interstate variability and, accordingly, designated these as Tier II measures.

The Department believes that the Tier I measures represent core or critical areas of UI customer service and that the criteria are minimum levels, at or above which all States should be able to perform, regardless of differences in State operations.

- One State recommended that a customer satisfaction survey be added as a performance measure.

The Department will require States to include information on their plans for evaluating customer satisfaction and utilizing customer input to promote continuous improvement in the SQSP narrative. However, the Department does not agree that the results of State customer satisfaction surveys can be used as a Tier I measure. The Department believes that the results of State customer satisfaction surveys will reflect differences in survey design and administration. Therefore, these results cannot be used to establish uniform national criteria for Tier I measures.

We note that the Department's Unemployment Insurance Service (UIS) conducted a national survey of customer satisfaction and transmitted the final report to Regional Administrators via UIS Information Bulletin 6–99 (February 19, 1999). States may obtain copies by contacting their respective Regional Office.

- One State questioned whether resources in small States are adequate to achieve the performance criteria, given the commitment of resources required to achieve Y2K compliance of automated systems, and the need to commit resources to continuous program improvement, which have placed a strain on UI program operations, particularly in smaller States.

Although the Department is aware of the many demands on program resources, the Department believes that all States have the resources necessary to meet these minimum levels of UI program performance. State data do not indicate that there is any correlation between State UI workload and State performance for the Tier I measures. An examination of the most recent annual performance data shows that the smaller States were no more likely to fail to meet the proposed criteria than were the larger States.

- One State questioned why no large States were represented on the PEG.

The Department asked the Interstate Conference of Employment Security Agencies (ICESA) to solicit State participation on both the PEWG and PEG and selected members from the State volunteers identified by ICESA.

- The public interest groups strongly urged the Department to implement all of the performance measures and minimum criteria in regulation, rather than through a UIPL and FR Notice, to provide added weight in achieving compliance.

The Department intends to establish a regulation governing the structure of the UI PERFORMS system. A principal goal of UI PERFORMS is the continuous improvement of the UI system. The Department believes that achieving this goal requires flexibility, especially in the early stages, and that the specification of performance measures and criteria through UIPLs and FR Notices, instead of through regulation, provides this flexibility and simplifies the process of changing the measures or criteria as needed. However, the Department will make no changes in the performance measures without providing advance notice and an opportunity for comment.

The Department is committed to reviewing performance measures and criteria periodically, as agreed to by the PEWG and affirmed by the PEG. Final determination of the criteria for the two current Secretary's Standards—first payment timeliness and lower authority appeals timeliness—will occur in conjunction with proposed UI PERFORMS rulemaking. The first periodic review of the full set of Tier I measures will occur not more than five years from the date of issuance, with the exception of the criteria for nonmonetary determinations timeliness, nonmonetary determinations quality, and new employer status determinations accuracy, which will be reviewed after two years.

- With respect to all of the timeliness measures, one of the public interest groups noted that the criteria do not impose any requirements with respect to those matters, above the maximum percentage listed, which do not meet the longest time interval. The group noted that both the Department and others need information on what has happened to those cases, because they, too, are

governed by the "payment of unemployment compensation when due" requirement of section 303(a)(1) of the Social Security Act. The group commented that State reports must continue to include information on the precise time lapses for these cases, and that the Department should review this data, make a factual inquiry into why those decisions have been delayed, and assess whether the State has met the administrative feasibility standard of the "when due" clause of section 303(a)(1), SSA, as interpreted in *California Dept. of Human Resources Development* v. *Java*, 402 U.S. 121, 91 S.Ct. 1347 (1971).

The Department will continue to require that States report UI program data for all time intervals defined in ET Handbook No. 401, including intervals greater than the maximum intervals specified for the Tier I timeliness measures. The Department will use this information as part of the SQSP process to achieve the UI PERFORM's goal of continuous program improvement.

Attached is UIPL No. 37–99, titled "UI PERFORMS Tier I and Tier II Performance Measures, and Minimum Performance Criteria for Tier I Measures".

Signed at Washington, DC, on June 28, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

Date: July 1, 1999.

Directive: Unemployment Insurance Program Letter No. 37–99.

To: All State Employment Security Agencies.

From: Grace A. Kilbane, Director, Unemployment Insurance Service.

Subject: UI PERFORMS Tier I and Tier II Performance Measures, and Minimum Performance Criteria for Tier I Measures.

1. *Purpose.* To disseminate the performance measures that will be used to assess program operations and plans for program improvement, establish the minimum performance criteria for Tier I measures and their effective dates, and discuss the relationship of the Tier I and Tier II measures to the State Quality Service Plan (SQSP) process.

2. *References.* Unemployment Insurance Program Letter (UIPL) No. 41–95 (August 24, 1995), UIPL No. 19–98 (March 30, 1998), UIPL No. 34–98 (July 23, 1998), UIPL No. 4–99 (October 20, 1998), and **Federal Register** Notice (FRN) 63 FR 63544 (November 13, 1998).

3. *Background.* The State-Federal Performance Enhancement Work Group (PEWG) established the outlines of the UI PERFORMS system for promoting continuous improvement in UI operational performance and identified performance measures for the performance management system. Ten of these measures were designated "Tier I" measures, for which uniform national criteria representing minimum levels of acceptable performance would be established.

UIPL No. 41–95 provided a detailed description of the UI PERFORMS system and solicited comments on the proposed system from State Employment Security Agency (SESA) administrators.

UIPL No. 41–95 included:

- A discussion of the principles of the State and Federal partnership, including the roles and responsibilities of each party.
- The identification of key performance measures, which were designated as either Tier I or Tier II measures.
- Ten Tier I measures were identified. These measures represent core or critical areas of UI customer service for which uniform national criteria would be established. States would address their performance for the Tier I measures annually through the SQSP.
- The Tier II measures were established for other important UI activities. States would report performance data on a regular basis to the Department of Labor; however, no performance criteria were established for Tier II measures. States would set performance targets for the Tier II measures in consultation with the Federal partner and plan for performance improvement through the SQSP process. The Tier II measures are listed in the Attachment.
- A general description of the continuous improvement, "Plan-Do-Check-Act" cycle, and a detailed discussion of the SQSP and the planning process, including the plan narrative, quantitative displays of performance data, and criteria to identify performance needing improvement.
- A discussion of Federal oversight, including technical assistance, financial assistance, rewarding State accomplishments, and actions to improve performance. This last activity includes the development of corrective action plans by States that fail to meet the minimum performance criteria, and conformity/compliance actions to address exceptional instances of continued failure to meet minimum levels of performance.

The PEWG's successor, the Performance Enhancement Group (PEG), ratified the performance criteria principles established by the PEWG. These principles were included in UIPL No. 4–99. PEG materials related to the establishment of performance criteria for the Tier I measures were provided in UIPL No. 19–98, and UIPL No. 34–98 described the process for establishing the performance criteria.

The PEG also deferred setting a criterion for one of the ten Tier I measures, cashiering timeliness, until a data collection methodology can be developed for that measure that can be applied uniformly by all States.

The PEG established three workgroups—Appeals, Benefits, and Tax—to develop recommendations for the criteria for the nine other Tier I measures. Each workgroup included Federal staff from the National and Regional Offices and representatives from at least two States. The PEG developed guidelines for the workgroups to follow in developing their recommendations.

The workgroups' reports were presented to the PEG at its meeting in Washington, DC, on September 28–30, 1998. The PEG reviewed the workgroups' recommendations, both in terms of the individual Tier I measures and in light of their cumulative burden, and recommended appropriate adjustments.

UIPL No. 4–99 disseminated the proposed criteria and solicited the comments of the SESA Administrators. The November 13, 1998 FRN disseminated the proposed criteria and provided a 60-day period for public comment on the proposed criteria.

A total of 26 States submitted comments in response to UIPL No. 4–99. Six States submitted comments in response to the November 13, 1998 FRN. However, the comments of three of these States were the same as the comments these States submitted in response to the UIPL. In addition to the States, two public interest groups submitted comments in response to the FRN.

4. *Definitions, Criteria, and Effective Dates.* Tier I criteria will be used to assess State performance beginning with the SQSP cycle shown in the following Tier I performance measure table. States which do not meet minimum performance criteria which become effective in fiscal year (FY) 2002 (or later) will be required to submit plans identifying the steps the State will take to achieve those criteria, and must demonstrate progress toward meeting them. However, the Department of Labor will not initiate formal action if State performance fails to meet a new criterion prior to its effective date, provided the Department of Labor has received and approved a satisfactory corrective action plan and evidence of continuing progress in its achievement.

State performance assessment is discussed in detail in the State Quality Service Plan Handbook (ET Handbook No. 336, 16th Edition).

Tier I measure	Effective date/criterion Fiscal year—		
	2000 SQSP	2002 SQSP	2005 SQSP
First Payment Timeliness: Number of days elapsed from week-ending date of the first compensable week in benefit year to date payment is made in person, mailed, or offset or intercept is applied on the claim. Source: ETA 9050 report.			
Percent of 1st Payments within 14/21 days: Intrastate UI, full weeks	87		

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Tier I measure	Effective date/criterion Fiscal year—		
	2000 SQSP	2002 SQSP	2005 SQSP
Percent of 1st Payments within 35 days: Intrastate UI, full weeks	93	.....	.....
Percent of 1st Payments within 14/21 days: Interstate UI, full weeks	70	.....	.....
Percent of 1st Payments within 35 days: Interstate UI, full weeks	78	.....	.....
Percent of 1st Payments within 14/21 days: Intrastate + Interstate UI, UCFE, UCX programs, full + partial/part-total weeks	.....	*90	*90
Percent of 1st Payments within 35 days: Intrastate + Interstate UI, UCFE, UCX programs, full + partial/part-total weeks	.....	*95	*95
Nonmonetary Determinations Timeliness: Number of days elapsed from date of detection by the SESA of any nonmonetary issue which had the potential to affect the claimant's past, present or future benefit rights to date of the determination. Source: ETA 9052 report.			
Percent of separation determinations within 21 days of detection date: Intrastate + Interstate UI, UCFE, UCX	.....	80	80
Percent of nonseparation determinations within 14 days of detection date: Intrastate + Interstate UI, UCFE, UCX	.....	80	80
Nonmonetary Determinations Quality: Evaluation results of quarterly samples of nonmonetary determinations selected from the universe of nonmonetary determinations reported on the ETA 9052 report, as instructed in ET Handbook No. 301 (revised January 1998). Source: ETA 9056 report.			
Percent of separation and nonseparation determinations with quality scores >80 points: Intrastate + Interstate UI, UCFE, UCX	.....	75	75
Lower Authority Appeals Timeliness: Number of days elapsed from the date the request for a lower authority appeals hearing is filed to date of the decision. Source: ETA 9054 report.			
Percent of lower authority appeals decided within 30 days of filing: Intrastate + Interstate UI, UCFE, UCX	60	*60	*60
Percent of lower authority appeals decided within 45 days of filing: Intrastate + Interstate UI, UCFE, UCX	80	*85	*85
Percent of lower authority appeals decided within 90 days of filing: Intrastate + Interstate UI, UCFE, UCX	.....	*95	*95
Higher Authority Appeals Timeliness: Number of days elapsed from the date a higher authority appeal is filed to date of the decision. Source: ETA 9054 report.			
Percent of higher authority appeals decided within 45 days of filing: Intrastate + Interstate UI, UCFE, UCX	50	50	50
Percent of Higher authority appeals decided within 75 days of filing: Intrastate + Interstate UI, UCFE, UCX	80	80	80
Percent of higher authority appeals decided within 150 days of filing: Intrastate + Interstate UI, UCFE, UCX	95	95	95
Lower Authority Appeals Quality: Evaluation results of quarterly samples of lower authority benefit appeals hearings selected and evaluated as instructed in ET Handbook No. 382 (2nd Edition). Source: ETA 9057 report.			
Percent of lower authority appeals with quality scores equal to at least 85% of the potential points: Intrastate + Interstate UI, UCFE, UCX	80	80	80
New Employer Status Determinations Timeliness: Number of days elapsed from last day of the quarter (Quarter Ending Date—QED) in which liability occurred to date of determination (date that the status information was officially entered into the State's system). Source: ETA 581 report.			
Percent of status determinations for newly established employers made within 90 days of the QED	60	60	60
Percent of status determinations for newly established employers made within 180 days of the QED	80	80	80
New Employer Status Determinations Accuracy: Accuracy of status determinations based on the application of a review instrument for an annual acceptance sample selected from a universe of all status determinations for new and reactivated employers made during one complete calendar year, as instructed in ET Handbook No. 407 (revised December 1998). This measure includes only the accuracy of the determination, not the posting.			
Pass new employer status determinations accuracy acceptance sample: No more than 6 failed cases in a sample of 60	.....	Pass	Pass

Tier I measure	Effective date/criterion Fiscal year—		
	2000 SQSP	2002 SQSP	2005 SQSP
Timeliness of Transfer from Clearing Account to Unemployment Trust Fund (UTF):			
Average number of days funds are on deposit in the State clearing account before transfer to the State account in the UTF, estimated from total deposits to the clearing account and total daily ledger balance reported on the ETA 8414 report	<=2 days	.....	.....
Ratio of average daily loanable balance in clearing account to average daily transfer to UTF: Ratio of the monthly average daily loanable balance (line 10, ETA 8414 report) to the average daily transfer to the Trust Fund (line 3, ETA 8405 report, divided by the number of days in the month)	.....	<=1.75	<=1.0
Timeliness of Deposit to the Clearing Account: Elapsed time from the State's receipt of employer contributions to their deposit in the clearing account, estimated from a random sample of contributions received by the State during a specified time interval.			
Criterion deferred until uniform measurement methodology is developed	.....	.....	.....

*The criteria proposed for First Payment Timeliness and Lower Authority Appeals Timeliness will not be effective unless and until the final UI PERFORMS regulation replaces the existing criteria for compliance in 20 CFR 640.5 and 20 CFR 650.4(b).

5. *Periodic Review and Affirmation or Revision.* The Department of Labor is committed to reviewing performance measures and criteria periodically, as agreed to by the PEWG and affirmed by the PEG. Final determination of the criteria for the two current Secretary's Standards—first payment timeliness and lower authority appeals timeliness—will occur in conjunction with proposed UI PERFORMS rulemaking. The first periodic review of the full set of Tier I measures will occur not more than five years from the date of issuance, with the exception of the criteria for nonmonetary determinations timeliness, nonmonetary determinations quality, and new employer status determinations accuracy, which will be reviewed after two years. The reviews will include all State performance data for these measures available at the time of the review.

6. *Action Required.* SESA Administrators are requested to provide this information to appropriate staff.

7. *Inquiries.* Please refer inquiries to the appropriate Regional Office.

8. *Attachment.* UI PERFORMS Tier II measures.

Attachment

UI PERFORMS Tier II Measures

Benefits Payment Timeliness Measures

1. Intrastate UI First Payments Timeliness*
2. Interstate UI First Payments Timeliness*
3. UI First Payments Timeliness (Partials/Part Totals)
4. UCFE First Payments Timeliness
5. UCX First Payments Timeliness
6. Continued Weeks Payments Timeliness*
7. Continued Weeks Payments Timeliness (Partials/Part Totals)
8. Workshare First Payments Timeliness
9. Workshare Continued Weeks Payment Timeliness

*Includes Total and Partials/Part-Total payments.

Nonmonetary Determinations Timeliness Measures

10. Intrastate Separation Determinations Timeliness
11. Intrastate Nonseparation Determinations Timeliness
12. Interstate Separation Determinations Timeliness
13. Interstate Nonseparation Determinations Timeliness
14. Nonmonetary Issue Detection Timeliness
15. Nonmonetary Determinations Implementation Timeliness

Appeals Timeliness Measures

16. Implementation of Appeals Decision Timeliness
17. Employer Tax Appeal Timeliness [to be developed]
18. Lower Authority Appeals, Case Aging
19. Higher Authority Appeals, Case Aging

Combined Wage Claims Timeliness Measures

20. Combined Wage Claim Wage Transfer Timeliness
21. Combined Wage Claim Billing Timeliness
22. Combined Wage Claim Reimbursements Timeliness

Tax Timeliness Measures

23. Contributory Employer Report Filing Timeliness
24. Reimbursing Employer Report Filing Timeliness
25. Securing Delinquent Contributory Reports Timeliness
26. Securing Delinquent Reimbursing Reports Timeliness
27. Resolving Delinquent Contributory Reports Timeliness
28. Resolving Delinquent Reimbursing Reports Timeliness
29. Contributory Employer Payments Timeliness
30. Reimbursing Employer Payments Timeliness
31. Successor Status Determination Timeliness (within 90 days of Quarter End Date)
32. Successor Status Determination Timeliness (within 180 days of Quarter End Date)

Appeals Quality Measures

33. Lower Authority Appeals Due Process Quality
34. Higher Authority Appeals Quality—[to be developed]

Tax Quality Measures

35. Employer Tax Appeals Quality—[to be developed]
36. Delinquent Reports Resolution Quality
37. Collection Actions Quality
38. Turnover of Contributory Receivables to Tax Due
39. Turnover of Reimbursing Receivables to Tax Due
40. Writeoff of Contributory Receivables to Tax Due
41. Writeoff of Reimbursing Receivables to Tax Due
42. Contributory Accounts Receivable as a Proportion of Tax Due
43. Reimbursing Accounts Receivable as a Proportion of Tax Due
44. Field Audits Quality
45. Field Audit Penetration, Employers
46. Field Audit Penetration, Wages
47. Percent Change as a Result of Field Audit

Benefits Accuracy Measures

48. Paid Claim Accuracy
49. Denied Claim Accuracy [under development]

Tax Accuracy Measures

50. Posting New Determinations Accuracy
51. Successor Determinations Accuracy
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53. Inactivating Employer Accounts Accuracy
54. Posting Inactivations Accuracy
55. Employer Reports Processing Accuracy
56. Contributory Employer Debits/Billings Accuracy
57. Reimbursing Employer Debits/Billings Accuracy
58. Employer Credits/Refunds Accuracy
59. Benefit Charging Accuracy
60. Experience Rating Accuracy

Benefit Payment Control Measures

61. Benefit Payment Control, Establishment Effectiveness [under development]
62. Benefit Payment Control, Collection Effectiveness [under development]

[FR Doc. 99–17895 Filed 7–13–99; 8:45 am]
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The President

Memorandum of July 9, 1999—Delegation of Authority To Conclude an Agreement With the Russian Federation Concerning the Importation of Certain Steel Products

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Title 3—

The President

Memorandum of July 9, 1999

Delegation of Authority To Conclude an Agreement With the Russian Federation Concerning the Importation of Certain Steel Products

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the power to conclude an agreement between the United States and the Russian Federation regarding restrictions on the importation of certain steel products into the United States in accordance with Article XI of the 1990 Agreement on Trade Relations Between the United States of America and the Russian Federation and Title IV of the Trade Act of 1974.

As you may direct, the Assistant Secretary for Import Administration is authorized to exercise the authority vested in you by this delegation of authority.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 9, 1999.

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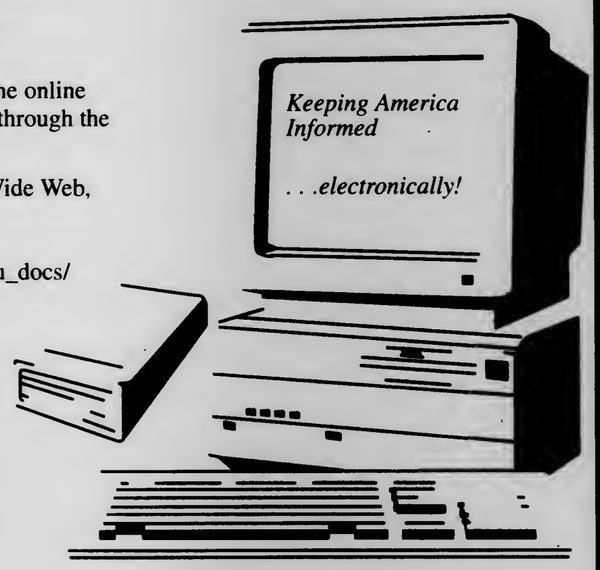
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 47

[Docket Number FV98–358]

Amendments to Rules of Practice Under the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is amending the Rules of Practice under the Perishable Agricultural Commodities Act (other than formal disciplinary proceedings). In addition to bringing several sections of the Rules of Practice into compliance with the PACA Amendments of 1995, USDA is making other changes to enhance customer service.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 720–4180, Email—charles.parrott@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trading practices for the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The Act requires that parties fulfill their contractual obligations, and provides a forum where firms that buy and sell fruits and vegetables can settle commercial disputes outside of the civil court system. Under the PACA, these disputes, or reparation complaints, are handled first on an informal basis in an attempt to achieve an amicable settlement between the disputing parties. About 75 percent of all reparation complaints are resolved informally, generally within eight weeks. However, if an informal settlement is not reached, there is a formal complaint procedure available under which USDA's Judicial Officer issues a binding decision in the case. The Rules of Practice applicable to reparation proceedings inform the industry of USDA's procedures and requirements for the handling of informal and formal complaints under the PACA.

A proposed rule to amend the regulations was published in the **Federal Register** on January 28, 1999 (64 FR 4342). The proposal amended several sections of the Rules of Practice to comply with the PACA Amendments of 1995, and made numerous other changes to enhance customer service. Comments on the proposed rule were to be submitted by March 1, 1999. The Agricultural Marketing Service (AMS) received two comments.

We received comments from JSG Trading Corp. (JSG), Tinton Falls, New Jersey and McCarron & Associates (McCarron), Washington, D.C. JSG objected to the Department of Agriculture's (USDA) handling of reparation cases in general. McCarron suggested some additional revisions to further enhance customer service.

In its comment, JSG objected to the preparation of draft reparation decisions by PACA Branch personnel (§ 47.2(i)). The commentor questioned whether PACA personnel could be impartial in the preparation of such drafts. We believe that the commentor's concern is misplaced because the knowledge and expertise of PACA personnel have always been utilized in resolving disputes involving perishable agricultural commodities. These services are routinely sought by the parties involved. USDA, of course, has no vested interest in the outcome of any complaints. PACA Branch personnel have a widely recognized history of professional impartiality. Moreover, we believe that the commentor's concern is more than adequately addressed by the provision which requires that all draft decisions prepared by PACA Branch personnel be reviewed by an attorney employed by the Office of the General Counsel. Therefore, AMS is making no change based on this comment.

McCarron's comments touched on several points. With regard to § 47.6(a), he suggested that the appropriate period of time to elapse before a file is permanently closed be left to the judgment of the Deputy Administrator, and that it not exceed 20 days. The proposed amendment to § 47.6(a) allowed a complainant nine months to file a formal complaint after informal handling had been completed. After further consideration, we agree that a 9-month period allows more time than is needed for a complainant to decide to proceed with a formal complaint. However, the suggested 20-day period is considered too short. Therefore, the final rule provides a complainant with 90 days to file a formal complaint after the informal handling by the PACA Branch has been completed. McCarron further suggested that the wording of this section clarify that the waiver of further proceedings applies only to actions before the Secretary of Agriculture. The Rules of Practice under the Perishable Agricultural Commodities Act (other than formal disciplinary proceedings) apply, however, only to reparation proceedings filed before the Secretary of Agriculture. Therefore, with the exception of the change discussed above, § 47.6(a) will remain as proposed.

With regard to § 47.9, McCarron addressed the proposed requirement that complainant in a reparation complaint respond to a counterclaim or be held to have admitted the respondent's allegations contained in the counterclaim. McCarron stated that this alteration is overly legalistic, adds nothing to assist the decision-maker, and unduly delays resolution of the matter. We are making no change to the rule based on this comment because a counterclaim has the same weight in the formal complaint process as does a complaint, and it is a matter of equity that both parties be treated equally and be required to answer any positive charges against them. No changes to the final rule are necessary.

With regard to §§ 47.15(a)(1) and 47.16(a), McCarron stated that it is not clear that the examiner who may grant a hearing or authorize taking depositions in connection with an oral hearing, is the presiding officer or an agency employee. This was addressed in the change to § 47.2(i), where it is made clear that agency employees are to act as

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examiners solely in cases handled through the documentary procedure. No change in the final rule is necessary.

With regard to § 47.20, McCarron suggested the addition of language to clarify that the $30,000 figure for determining whether a complaint may be handled through oral hearing, should be the principal amount of the claim only, and should not include interests and/or costs associated with the claim. We agree with his suggestion. Therefore, we have changed the final rule to reflect that the $30,000 threshold amount for an oral hearing not include accrued interest.

Finally, McCarron suggested that a time limit be placed on USDA for the resolution of informal complaints and for the issuance of decision and orders. from the time the case is ready for decision. Such restricted deadlines could, however, run afoul of conditions outside the control of the agency. In fact, most informal complaints are at present being resolved within 90 days of their opening, and the great majority of documentary procedure decisions are being issued within 90 days from the time the case is ready for decision.

Agricultural Marketing Service (AMS) believes that the amendments to the Rules of Practice will enhance customer service by allowing certain documents in formal PACA reparation proceedings to be served via private or commercial mail delivery, in addition to service by certified or registered mail.

The amendments clarify certain regulations and definitions. Throughout the Rules of Practice, the term "shortened procedure" was replaced with "documentary procedure" to reflect more accurately a formal reparation process that does not involve an oral hearing.

Due to the reorganization of AMS, the definition of the "Fruit and Vegetable Programs" was substituted for the definition of "Division," the definition of "Associate Administrator" was substituted for the definition of "Deputy Administrator," and the definition of "Deputy Administrator" was substituted for the definition of "Director." Additionally, the words "Program" and "Deputy Administrator" were substituted for "Division" and "Director" respectively, wherever they appeared in Part 47. The term "examiner", § 47.2(i)(1) was expanded to indicate that senior marketing specialists may also prepare decisions in shortened or "documentary procedure" cases subject the review of USDA's Office of the General Counsel (OGC). The definition of "examiner's report" in § 47.2(j) was shortened to eliminate the references to Administrative Law Judges because they do not participate in reparation cases and do not write examiner's reports. The definitions of "mail" and "re-mail" were expanded to allow for additional methods of service to include commercial or private mail delivery services. The section regarding informal complaints, § 47.3, was revised to require that the complaint be in writing and allow for the filing of an informal complaint by facsimile transmission. In addition, the information required in an informal complaint was revised for clarification purposes. The revision changed "car initial and number, if carlot;" to read "carrier identification;" and corrected a typographical error in § 47.3(a) (2) (vii) by inserting the word "and" between the words "gross net." A statement regarding the required filing fee of $60.00 was added to the text. Additionally, paragraph (c) of that section regarding the "Status of person filing informal complaint" was eliminated because it is not pertinent to these regulations.

Section 47.4, which addresses service matters, was revised to permit the commercial or the private delivery of certain documents and now describes when service is perfected under the various mailing options. Additionally, the reference to the service of the Chief's determination that a person was responsibly connected with a licensee was deleted from paragraph (b)(1) because this issue is addressed in § 47.49 of the regulations (7 CFR 47.49).

The section that delineates formal complaints in the Rules of Practice was changed to include the requirement that a formal complaint be filed within ninety days of notification that complainant may proceed formally, or the complainant loses the opportunity to proceed with a formal complaint. Additionally, the rules were revised to require that a $300.00 handling fee must accompany the filing of a formal complaint or counterclaim before AMS will serve the complaint on the respondent(s). The handling fee for formal complaints was included in the Rules of Practice to comform with the PACA Amendments of 1995.

Significant changes were made to § 47.9, which addresses the reply to a counterclaim or set-off. The counterclaim or set-off will now be treated as a formal complaint filed by the respondent, and therefore, failure to reply will be a default on complainant's part as to the counterclaim or the set-off. In the previous rules, a failure to file a reply was treated as a denial of the allegations of the counterclaim or set-off, whereas the revised rules have created a parallel between the filing of a complaint and the filing of a counterclaim or set-off.

With the new expanded definition of examiner in § 47.2(i), § 47.11 was amended to clarify that only OGC attorneys, and not other USDA employees, are granted certain powers under this section of the regulations because only OGC attorneys conduct oral hearings. The examiner's powers now include the ability to require parties to provide copies of exhibits prior to hearings and depositions in any type of hearing.

The Rules of Practice were amended to comply with the 1995 PACA Amendments which raised the minimum claim for damages required for an oral hearing from $15,000 to $30,000. Sections 47.11 and 47.16 were amended to clarify that subpoenas or orders for depositions are made over the facsimile signature of the Secretary. In addition, the regulations regarding oral hearings no longer permit a complainant to submit evidence in the form of depositions in lieu of appearing in person or by counsel. Instead, all parties are now required to appear in person or through a representative at oral hearings.

The section which discusses the deposition process was expanded to include references to the possibility of depositions in a case that is converted from an oral hearing case to a documentary procedure case.

In order to ensure sufficient opportunity for review by the examiner and sufficient notice to the individual who is subpoenaed, § 47.17 was amended to require that applications for subpoena be received at least thirty days prior to the hearing or deposition date, and that the subpoena be issued at least twenty days before the date of appearance. An exception may be made for good cause shown.

All filings with regard to claims for fees and expenses in oral hearing cases and the resultant objections will now be filed with the Hearing Clerk instead of the examiner in order to ensure that the documents are properly filed into the official record kept by the Hearing Clerk. The Hearing Clerk's Office is now the appropriate place to file petitions for rehearing, reargument, reconsideration of orders, reopening of hearings and reopening after a default. The regulations were revised by replacing the words "hearing clerk" with the words "Hearing Clerk'.

As previously stated, the term "shortened procedure" was changed to "documentary procedure". In the documentary procedure section, the rule regarding verification of pleadings or statements was expanded to note that certification by a notary public alone is not sufficient; rather, a signed verifying statement must be appended to the document.

Procedures for requesting a reopening after a default were removed from the provision that covers filing, extensions of time, effective date of filing, computations of time, and official notice and were moved to the more appropriate section that deals with rehearing, reargument, reconsideration of orders, and reopening of hearings. In addition, the provision for reopening after a default was revised to permit a petition to reopen the proceedings to be filed before the expiration of 30 days from the date of issuance of the default order. This revision eliminates any confusion that existed in the previous regulation because it did not provide a time certain for filing. The amendment clarified that the filing must be made before the Default Order becomes final. For all filings, the provision for computation of time was revised to include Saturdays as well as Sundays and holidays.

Executive Orders 12866 and 12988

This final rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR part 121) as those whose with less than 500 employees. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, a majority of which may be classified as small entities.

The revisions to the PACA Rules of Practice streamline USDA procedures and requirements for handling of informal and formal complaints under the PACA. In Fiscal Year 1998, there were 2198 informal reparation claims, 21 counterclaims, and 563 formal reparation cases filed with USDA under the PACA. The revisions to the reparation Rules of Practice apply only to firms that utilize USDA's service for resolving commercial disputes under the PACA. AMS believes that these revisions to the Rules of Practice will enhance customer service to the industry by expediting the handling of documents in PACA reparation proceedings. Most of the revisions provide notice to claimants of the procedure that AMS will now follow in adjudicating claims. For example, the proposed revision that provides for additional methods of service of formal documents by AMS will not produce any economic effect on licensees initially. But, if the use of commercial and/or express delivery services take the place of certified mail, licensees may be required to absorb the additional costs through marginally higher user fees.

There are some revisions, however, that will affect the rights and obligations of claimants. For example, claimants must be certain to adhere to the filing requirements for both informal and formal complaints, which require the payment of statutorily mandated filing and handling fees, respectively. If the required fees do not accompany a filing, a claimant may lose access to the reparation forum. These revisions, and others, may affect a claimant's due process rights, which are difficult to quantify. However, since the reparation forum is but one available means to resolve contract disputes concerning perishable agricultural products in interstate commerce, AMS has determined that the provisions of this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 does not apply to this final rule since it does not seek answers to identical questions or reporting or recordkeeping requirements imposed on ten or more persons, and the information collected is not used for general statistical purposes.

List of Subjects in 7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set forth in the preamble, 7 CFR part 47 is amended as follows:

PART 47—[AMENDED]

1. The authority citation for part 47 is revised to read as follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.22(a)(1)(viii)(L), 2.79(a)(8)(xiii).

2. Section 47.2 is amended by removing paragraph (j)(2) and redesignating paragraph (j)(1) as paragraph (j) and revising paragraphs (e), (g), (h), (i), (s), and (t) to read as follows:

§ 47.2 Definitions.

* * * * *

(e) *Associate Administrator* means the Associate Administrator of the Service, or any officer or employee of the Service to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his or her stead.

* * * * *

(g) *Fruit and Vegetable Programs* means the Fruit and Vegetable Programs of the Agricultural Marketing Service.

(h) *Deputy Administrator* means the Deputy Administrator of the Fruit and Vegetable Programs or any officer or employee of the Fruit and Vegetable Programs to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated by the Deputy Administrator, to act in his stead.

(i) *Examiner.* In connection with reparation proceedings, the term "examiner" is synonymous with "presiding officer" and means any attorney employed in the Office of the General Counsel of the Department, or in connection with reparation proceedings conducted pursuant to the documentary procedure in § 47.20, the term "examiner" may mean any other employee of the PACA Branch whose work is reviewed by an attorney employed in the Office of the General Counsel of the Department.

* * * * *

(s) *Mail* means to deposit an item in the United States Mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified mail or registered mail if specified, or to cause a properly addressed item to be delivered by a commercial or private mail delivery service to the address shown.

(t) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail or

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by a commercial or private mail delivery service.

5. In § 47.3, the first sentence in paragraph (a)(2) and paragraph (a)(2)(iv) are revised, in paragraph (a)(2)(vii) the word "and" is added between the words "gross" and "net", paragraph (c) is removed, and a new paragraph (a)(4) is added to read as follows:

§ 47.3 Institution of proceedings.

(a) * * *

(1) * * *

(2) Informal complaints may be made in writing by telegram, by letter, or by facsimile transmission, setting forth the essential details of the transaction complained of. * * *

* * * * *

(iv) Carrier identification;

* * * * *

(4) The informal complaint shall be accompanied by a filing fee of $60 as required by the Act.

* * * * *

7. Section 47.4 is amended by revising the section heading and paragraphs (b)(1), (b)(3), (c)(1), and (d)(1) to read as follows:

§ 47.4 Service and proof of service.

* * * * *

(b) *Service on Party.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, a final order, or other document specifically ordered by the presiding officer or Judicial Officer to be served by certified or registered mail, or commercial or private mail delivery service, shall be deemed to be received by any party to a proceeding on the date of delivery by certified or registered mail, or commercial or private mail delivery service to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, last known residence of such party if an individual: Provided, That, if any such document or paper is sent by certified, registered, commercial, or private mail, but is returned, it shall be deemed to be received by such party on the date of the re-mailing by ordinary mail to the same address.

* * * * *

(3) Any document or paper served other than by certified, registered, commercial, or private mail on any party to a proceeding shall be deemed to be received by such party on the date of:

* * * * *

(c) * * *

(1) Delivery by certified, registered, commercial, private or mail to the last known principal address of such person, last know principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

* * * * *

(d) * * *

(1) A certified or registered mail receipt returned by the postal service with a signature, or a signed receipt returned by a private or commercial mail delivery service;

* * * * *

8. In § 47.6, paragraphs (a) and (c) are revised to read as follows:

§ 47.6 Formal complaints.

(a) *Filing; contents; number of copies.* (1) If the procedure provided in § 47.3(b) fails to effect an amicable or informal settlement, the person who filed the informal complaint may, if further proceedings are desired, file a formal complaint with the Fruit and Vegetable Programs. The formal complaint shall be filed within ninety days of notification of the opportunity to proceed formally. Failure to file a formal reparation complaint within the time prescribed shall result in the waiver of further proceedings on the claim alleged in the informal complaint.

(2) The formal complaint shall set forth the information and be accompanied by the papers indicated in § 47.3(a)(2) and (3), including a statement of the amount of damages claimed, with the basis therefor, and the method of determination. The original and three copies shall be furnished for filing, and service on the respondent. If there is more than one respondent, a further copy shall be furnished for each additional respondent.

* * * * *

(c) *Service upon respondent; proof of service.* Upon receipt by the Fruit and Vegetable Programs of the formal complaint, the accompanying papers and the $300 handling fee required by the Act, a copy thereof shall be served by the Fruit and Vegetable Programs upon the respondent in accordance with § 47.4. If the complaint is not in the proper form, the Fruit and Vegetable Programs shall return it and inform the complainant of the deficiencies therein.

* * * * *

9. In § 47.8, paragraph (a) is amended by adding a sentence at the end of the section to read as follows:

§ 47.8 The answer.

(a) * * * If the answer includes a counterclaim, the answer shall be accompanied by the $300 handling fee required by the Act for formal complaints.

* * * * *

10. In § 47.9, paragraphs (b) and (c) are revised to read as follows:

§ 47.9 The reply.

* * * * *

(b) *Contents.* The reply shall be confined strictly to the matters alleged in the counterclaim or set-off in the answer. It shall contain a precise statement of the facts which constitute the grounds of defense to the counterclaim or set-off, and shall specifically admit, deny, or explain each of the allegations of the counterclaim or set-off, unless the complainant is without knowledge, in which case the reply shall so state; or a statement that the complainant admits all of the allegations of the counterclaim or set-off; or a statement containing an admission of liability in an amount less than that alleged in the counterclaim or set-off and a denial of liability for the remaining amount.

(c) *Failure to file reply.* Failure to file a reply shall be deemed a waiver of hearing on the counterclaim or set-off and an admission of the allegations contained in the counterclaim or set-off. If no reply is filed, the allegations of the counterclaim or set-off shall be deemed admitted.

11. In § 47.11, the introductory text of paragraph (c), and paragraphs (c)(4), (c)(9), (c)(10) and (c)(13) are revised to read as follows:

§ 47.11 Examiners.

* * * * *

(c) *Powers.* Subject to review by the Secretary, as provided in this Part, the examiner who is an attorney employed in the Office of the General Counsel of the Department, in any proceeding assigned to him or her, shall have power to:

* * * * *

(4) Issue subpoenas over the facsimile signature of the Secretary requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;

* * * * *

(9) Require each party, prior to any hearing, to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence;

(10) Require each party, prior to any deposition, to provide all other parties and the examiner with a copy of any document that the party intends to use to examine a deponent;

* * * * *

(13) Do all acts and take all measures necessary for the maintenance of order and for the efficient conduct of the proceeding.

* * * * *

12. In § 47.12, the introductory text is revised to read as follows:

§ 47.12 Intervention.

At any time after the institution of a proceeding and before it has been submitted to the Secretary for final consideration, the Secretary or the examiner as defined in § 47.2(i)(1) may, upon petition in writing and for good cause show, permit any person to intervene therein. The petition shall state with preciseness and particularity:

* * * * *

13. In § 47.15, paragraphs (a)(1), (a)(2), (b) and (d)(1) are revised to read as follows:

§ 47.15 Oral hearing before the examiner.

(a) *When permissible.* (1) Where the amount of the damages claimed, either in the complaint or in the counterclaim, does not exceed $30,000 (excluding interest), an oral hearing shall not be held, unless deemed necessary or desirable by the Fruit and Vegetable Programs or unless granted by the examiner as defined in § 47.2(i)(1), upon application of complainant or respondent setting forth the peculiar circumstances making an oral hearing necessary for a proper presentation of the case.

(2) Where the amount of damages claimed, either in the complaint or in the counterclaim, is in excess of $30,000 (excluding interest), the procedure provided in this section (except as provided in § 47.20(b)(2)) shall be applicable.

(b) *Request for hearing.* Any party may request an oral hearing on the facts by including such request in the complaint. Failure to request an oral hearing within the time allowed for filing of the reply, or within 10 days after the expiration of the time allowed for filing an answer, shall constitute a waiver of such hearing, and any party so failing to request an oral hearing will be deemed to have agreed that the proceeding may be decided upon a record formed under the documentary procedure provided in § 47.20.

* * * * *

(d) *Appearances*—(1) *Representation.* In any proceeding under the Act, the parties may appear in person or by counsel or other representative.

* * * * *

14. In § 47.16, the introductory text of paragraph (a), and paragraph (b)(1) are revised to read as follows:

§ 47.16 Depositions:

(a) *Application for taking deposition.* Upon the application of a party to the proceeding, the examiner as defined in § 47.2(i)(1) may, except as provided in paragraph (b) of this section, at any time after the filing of the moving papers, order, over the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing, shall be filed with the Hearing Clerk, and shall set forth:

* * * * *

(b) *Examiner's order for taking deposition.* (1) If, after examination of the application, the examiner is of the opinion that the deposition should be taken, or if the parties are using depositions in lieu of affidavits pursuant to § 47.20(b)(2), the examiner shall order the taking of the deposition. In no case, except for good cause shown, may the examiner order the taking of a deposition less than 10 days prior to the designated date of deposition. The order shall be filed with the Hearing Clerk upon the parties in accordance with § 47.4.

* * * * *

15. In § 47.17, a sentence is added at the end of paragraph (a) to read as follows:

§ 47.17 Subpoenas.

(a) *Issuance of subpoenas.* * * * Except for good cause shown, applications for subpoenas shall be filed with the Hearing Clerk at least 30 days prior to the designated date of hearing or deposition. Except for good cause shown, the examiner shall not issue subpoenas less than 20 days prior to the designated date of hearing or deposition.

* * * * *

16. In § 47.19, paragraphs (d)(1), (d)(4), (d)(5) and (d)(6) are revised to read as follows:

§ 47.19 Post-hearing procedure before the examiner.

* * * * *

(d) *Claim for award of fees and expenses*—(1) *Filing.* Prior to the close of the hearing, or within 20 days thereafter, each party may file with the Hearing Clerk a claim for the award of the fees and expenses which he incurred in connection with the oral hearing. No award of fees and expenses to the prevailing party and against the losing party shall be made unless a claim therefor has been filed, and failure to file a claim within the time allowed shall constitute a waiver thereof.

* * * * *

(4) *Service of claim.* A copy of each such claim filed shall be served by the Hearing Clerk on the other party or parties to the proceeding.

(5) *Objections to claim.* Within 20 days after being served with a copy of a claim for fees and expenses, the party so served may file with the Hearing Clerk written objections to the allowance of any or all of the items claimed. If evidence is offered in support of an objection, it must be in affidavit form. A copy of any such objections shall be served by the Hearing Clerk on the other party or parties.

(6) *Reply to objections to claim.* A claimant who is served with a copy of objections to his or her claim may, within 20 days after such service, file with the Hearing Clerk a reply to such objection. If evidence is offered in support of a reply, it must be in affidavit form. A copy of any such reply shall be served by the Hearing Clerk on the other party or parties.

* * * * *

17. In § 47.20, the section heading, the first sentence in paragraph (a), paragraphs (b)(1), (b)(2), and the introductory text of paragraph (h) are revised to read as follows:

§ 47.20 Documentary procedure.

(a) *In general.* The documentary procedure described in this section shall, whenever it is applicable as provided in paragraph (b) of this section, take the place and serve in lieu of the oral hearing procedure hereinbefore provided. Under the documentary procedure, the pleadings of the parties, if verified in accordance with paragraph (h) of this section, and any report of investigation filed with the hearing clerk pursuant to § 47.7 will be considered as evidence in the proceeding. * * *

(b) *When applicable*—(1) *Where damages claimed do not exceed $30,000.* The documentary procedure provided for in this section shall (except as provided in § 47.15(a)) be used in all reparation proceedings in which the amount of damages claimed, either in the complaint or in the counterclaim, does not exceed $30,000 (excluding interest).

(2) *Where damages claimed exceed $30,000.* In any proceeding in which the amount of damages claimed, either in the complaint or in the counterclaim, is greater than $30,000 (excluding interest), the examiner, whenever he or she is of the opinion that proof may be fairly and adequately presented by use of the documentary procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Parties are free to consent to such procedure if they

choose, and declination of consent will not affect or prejudice the rights or interests of any party. A party, if he or she has not waived oral hearing, may consent to the use of the documentary procedure on the condition that depositions rather than affidavits be used. In such case, if the other party agrees, depositions shall be required to be filed in lieu of verified statements. If any party who has not waived oral hearing does not consent to the use of the documentary procedure, the proceeding will be set for oral hearing. The suggestion that the documentary procedure be used need not originate with the examiner. Any party may address a request to the examiner asking that the documentary procedure be used.

* * * * *

(h) *Verification.* Verification shall be made under oath of any facts set forth in the pleading or statement, by the person who signs the pleading or statement. Certification by a notary public is insufficient. The form of verification may be as follows:

* * * * *

18. Section 47.21 is revised to read as follows:

§ 47.21 Transmittal of record.

The Hearing Clerk, immediately after the filing of the examiners' report, shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; motions and requests filed, and rulings thereon; the report of investigation conducted by the Fruit and Vegetable Programs; the transcript or record of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the documentary procedure; any documents or papers filed in connection with conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with the hearing as provided in § 47.19(b) and (c); such statements of objections, and briefs in support thereof, as may have been filed in the proceeding; and the examiner's report.

* * * * *

19. In § 47.24, the section heading and paragraph (a) are revised and a new paragraph (d) is added to read as follows:

§ 47.24 Rehearing, reargument, reconsideration of orders, reopening of hearings , reopening after default.

(a) *Petitions to rehear, reargue, and reconsider.* A petition for rehearing or reargument of the proceeding, or for reconsideration of the order, shall be made by petition to the Secretary filed with the Hearing Clerk within 20 days after the date of service of the order. Every such petition shall state specifically the matters claimed to have been erroneously decided and the alleged errors. If the Secretary concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, the Secretary shall dismiss the petition without service on the other party. Otherwise, the Secretary shall direct that a copy of the petition be served upon such party by the Hearing Clerk. The filing of a petition to rehear or reargue a proceeding, or to reconsider an order, shall automatically operate to set aside the order pending final action on the petition. Only one petition to rehear, reargue, or reconsider will be accepted from each party, except when a mathematical or typographical error appears in either the original decision and order or in the decision on reconsideration.

* * * * *

(d) *Reopening after default.* The party in default in the filing of an answer or reply required or authorized under this part may petition to reopen the proceeding at any time prior to the expiration of 30 days from the date of service of the default order. If, in the judgment of the examiner, after notice to and consideration of the views of the other party(ies), there is good reason for granting such relief, the party in default will be allowed 20 days from the date of the order reopening the proceeding to file an answer.

20. In § 47.25, the section heading and paragraph (d) are revised, paragraph (e) is removed and paragraph (f) is redesignated as paragraph (e) to read as follows:

§ 47.25 Filing; extensions of time; effective date of filing; computations of time; official notice.

* * * * *

(d) *Computations of time.* Saturdays, Sundays and holidays shall be included in computing the time allowed for the filing of any document or paper: Provided, That, when such time expires on a Saturday, Sunday or Federal holiday, such period shall be extended to include the next following business day.

* * * * *

21. Part 47 is amended by removing the words "hearing clerk" and adding in their place the words "Hearing Clerk", everywhere they appear.

22. Part 47 is amended by removing the word "Division" and adding in its place the words "Fruit and Vegetable Programs", everywhere they appear.

23. Part 47 is amended by removing the words "Director" and "Director's", and adding in their place the words "Deputy Administrator" and "Deputy Administrator's" respectively, everywhere they appear.

Dated: July 12, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–18047 Filed 7–14–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–021–2]

Cut Flowers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the cut flowers regulations to provide that APHIS inspectors will issue a written notice when pests are detected and action on the part of the importer is required. We are also amending the regulations to make it clear that the importer of cut flowers is responsible for all costs of destroying or otherwise disposing of pest-infested cut flowers should the importer choose not to treat or reexport them. These changes will help reduce the risk of cut flowers introducing plant pests into the United States by ensuring that any necessary treatment or other required actions are completed.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–6799; or e-mail: Ronald.C.Campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and related materials to prevent the introduction of foreign plant pests into the United States. The regulations in §§ 319.74 through 319.74–4 (referred to below as the regulations) govern the importation of cut flowers into the United States and require, among other things, that all cut flowers be inspected for injurious insects and plant diseases at the port of entry.

On January 28, 1999, we published in the **Federal Register** (64 CFR 4347–4350, Docket No. 98–021–1) a proposal to amend the cut flowers regulations to:

- Provide that Animal and Plant Health Inspection Service (APHIS) inspectors will issue a written notice when pests are detected at the port of entry and action is required on the part of the importer.
- Make it clear that the importer of cut flowers is responsible for all costs of destroying or otherwise disposing of pest-infested cut flowers should the importer choose not to treat or reexport them.

We solicited comments concerning our proposal for 60 days ending March 29, 1999. We received four comments by that date. They were from trade associations and representatives of State and Federal governments. All responses were in favor of the proposal.

One State requested that APHIS inform the State Department of Agriculture when it issues an emergency action notification (EAN) at a port of entry in that State under this rule. Currently, APHIS' policy is to make individual EANs available upon request, pursuant to the Freedom of Information Act. We intend to discuss other options with the State concerning the notification of issuance of EANs.

We have also made one nonsubstantive editorial change to clarify that cut flowers must be made available for inspection at the port of first arrival.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, with one change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic effect of this rule on small entities.

This rule amends the cut flowers regulations to provide that inspectors will issue a written notice when pests are detected in shipments of imported cut flowers and action on the part of the importer is required. This rule also makes it clear that the person importing cut flowers, and not APHIS, is responsible for the costs of destroying cut flowers when pests are detected and the cut flowers will not be treated or reexported.

In our proposal, we solicited comments on the potential effects of this action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of this rule. We received no comments on our Initial Regulatory Flexibility Analysis.

This rule will help reduce the risk of cut flowers introducing plant pests into the United States by ensuring that any necessary treatment or other required actions are completed. This rule will also help reduce costs for the Federal Government because it explicitly requires that the costs of destroying infested or infected cut flowers be the responsibility of the importer, owner, or agent or representative of the importer or owner. We estimate that approximately 200 to 400 boxes of cut flowers are abandoned each month at Miami International Airport, the port of entry for more than 90 percent of foreign cut flowers. Estimates of the annual cost to APHIS for the disposal or destruction of cut flowers range from $100,000 to $240,000.

The entities potentially affected by this rule are importers and others in the United States who are involved in the importation of cut flowers. This rule will increase costs for importers, who will be required to absorb the cost of destroying infested or infected flowers at U.S. ports of entry. The number and size of those entities potentially affected by this rule are unknown.

It is reasonable to assume that most of the entities potentially affected by this rule are small by U.S. Small Business Administration (SBA) standards. In 1992, 99 percent of 4,322 wholesalers of flowers, nursery stock, and florists' supplies were considered small entities. The magnitude of the potential economic effect of this rule on small entities cannot be determined.

There is reason to believe that the overall economic effect of this rule on small entities will be insignificant, given that the volume of cut flowers abandoned at U.S. ports of entry is very small compared to the total volume of imported cut flowers allowed entry into the United States. In 1996, the United States imported approximately 2.5 billion fresh cut flower stems through Miami International Airport. No more than 72,000 cut flowers are abandoned yearly at Miami International Airport. Abandoned cut flowers, therefore, represent only a small percentage of the overall volume of cut flower importations into the United States.

Two alternatives to this rule were considered: (1) To make no changes in the regulations and (2) to begin charging importers for destruction by APHIS of abandoned cut flowers without making changes to the regulations. We rejected the first alternative (making no change in the regulations) after determining that the costs to APHIS are too high to continue destroying or disposing of abandoned cut flowers at APHIS' expense. We also rejected the second alternative (charging importers for destruction by APHIS of abandoned cut flowers without making changes to the regulations) because we believe it is necessary to clarify our regulations regarding this issue since they do not currently state that importers are responsible for abandoned cut flowers. Because we have elected to exercise our authority to recover all costs that we incur when disposing of abandoned cut flowers, we are amending the cut flowers regulations to make them more consistent with our regulations elsewhere in title 7, chapter III, by requiring that the importer, owner, or agent or representative of the importer or owner of cut flowers pay all additional costs associated with the importation of cut flowers. APHIS will continue to provide the services of an inspector during regular hours of duty at the usual place of duty at no cost to the importer.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c)

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2. Subpart—Cut Flowers is revised to read as follows:

Subpart—Cut Flowers

319.74–1 Definitions.
319.74–2 Conditions governing the entry of cut flowers.
319.74–3 Importations by the Department.
319.74–4 Costs and charges.

Subpart—Cut Flowers

§ 319.74–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Cut flower. The highly perishable commodity known in the commercial flower-producing industry as a cut flower, which is the severed portion of a plant, including the inflorescence and any parts of the plant attached to it, in a fresh state. This definition does not include dried, bleached, dyed, or chemically treated decorative plant materials; filler or greenery, such as fern fronds and asparagus plumes, frequently packed with fresh cut flowers; or Christmas greenery, such as holly, mistletoe, and Christmas trees.

Inspector. Any individual authorized by the Administrator to enforce this subpart.

United States. All of the States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories or possessions of the United States.

§ 319.74–2 Conditions governing the entry of cut flowers.

(a) *Inspection.* All cut flowers imported into the United States must be made available to an inspector for examination at the port of first arrival and must remain at the port of first arrival until released, or authorized further movement, by an inspector.

(b) *Actions to prevent the introduction of plant pests; notice by an inspector.* If an inspector orders any disinfection, cleaning, treatment, reexportation, or other action with regard to imported cut flowers that are found to be infested with injurious plant pests or infected with diseases, the inspector will provide an emergency action notification (PPQ Form 523) to the importer, owner, or agent or representative of the importer or owner of the cut flowers. The importer, owner, or agent or representative of the importer or owner must, within the time specified in the PPQ Form 523 and at his or her own expense, destroy the cut flowers, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments, clean, or apply other safeguards to the cut flowers as prescribed by the inspector on the PPQ Form 523. Further, if the importer, owner, or agent or representative of the importer or owner fails to follow the conditions on PPQ Form 523 by the time specified on the form, APHIS will arrange for destruction of the cut flowers, and the importer, owner, or agent or representative of the importer or owner will be responsible for all costs incurred. Cut flowers that have been cleaned or treated must be made available for further inspection, cleaning, and treatment at the option of the inspector at any time and place indicated by the inspector before the requirements of this subpart will have been met. Neither the Department of Agriculture nor the inspector may be held responsible for any adverse effects of treatment on imported cut flowers.

(c) *Fumigation for agromyzids.* (1) Cut flowers imported from any country or locality and found upon inspection to be infested with agromyzids (insects of the family Agromyzidae) must be fumigated at the time of importation with methyl bromide in accordance with paragraph (c)(2) of this section, with the following exceptions:

(i) Fumigation will not be required for cut flowers imported from Canada (including Labrador and Newfoundland) or Mexico because of the finding of agromyzids.

(ii) Fumigation will not be required for cut flowers of *Chrysanthemum* spp. imported from Colombia or the Dominican Republic because of the finding of agromyzids, when such agromyzids are identified by an inspector to be only agromyzids of the species *Liriomyza trifolii* (Burgess).

(2) *Fumigation schedules.* Fumigation of cut flowers for agromyzids (insects of the family Agromyzidae) must consist of fumigation with methyl bromide at normal atmospheric pressure in a chamber or under a tarpaulin in accordance with one of the following schedules:

1½ lbs. per 1,000 cu. ft. for 2 hours at 80–90 °F.
(19 oz. concentration at first ½ hour)
(12 oz. concentration at 2 hours); or
2 lbs. per 1,000 cu. ft. for 2 hours at 70–79 °F.
(24 oz. concentration at first ½ hour)
(16 oz. concentration at 2 hours); or
2½ lbs. per 1,000 cu. ft. for 2 hours at 60–69 °F.
(30 oz. concentration at first ½ hour)
(20 oz. concentration at 2 hours); or
3 lbs. per 1,000 cu. ft. for 2 hours at 50–59 °F.
(36 oz. concentration at first ½ hour)
(24 oz. concentration at 2 hours); or
3½ lbs. per 1,000 cu. ft. for 2 hours at 40–49 °F.
(41 oz. concentration at first ½ hour)
(27 oz. concentration at 2 hours)

Note: There is a possibility that some cut flowers could be damaged by such fumigation.

(d) *Refusal of entry.* If an inspector finds that imported cut flowers are so infested with a plant pest or infected with disease that, in the judgment of the inspector, they cannot be cleaned or treated, or if they contain soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

§ 319.74–3 Importations by the Department.

The U.S. Department of Agriculture may import cut flowers for experimental or scientific purposes under such conditions and restrictions as the Administrator may prescribe to prevent the dissemination of plant pests.

§ 319.74–4 Costs and charges.

The Animal and Plant Health Inspection Service, U.S. Department of Agriculture, will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty (provisions relating to costs for other services of an inspector are contained in 7 CFR part 354). The importer, owner, or agent or representative of the importer or owner of cut flowers is responsible for all additional costs of inspection, treatment, movement, storage, or destruction ordered by an inspector under this subpart, including the costs of any labor, chemicals, packing materials, or other supplies required.

Done in Washington, DC, this 9th day of July 1999.

A. Cielo,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18049 Filed 7–14–99; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB76

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Management; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 615 on May 28, 1999 (64 FR 28884). The final rule amends the regulations to help Farm Credit System banks and associations respond to rapid and continual changes in financial markets and instruments. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 15, 1999.

EFFECTIVE DATE: The regulation amending 12 CFR part 615 published on May 28, 1999 (64 FR 28884) is effective July 15, 1999.

FOR FURTHER INFORMATION CONTACT:
Laurie A. Rea, Senior Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;
or
Richard Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: July 9, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–18096 Filed 7–14–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 257 and 258

[Docket Nos. OST–95–179, OST–95–623, and OST–95–177]

RIN: 2105–AC10, 2105–AC17

Petitions Involving the Effective Dates of the Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases Final Rule and the Disclosure of Change-of-Gauge Services Final Rule

AGENCY: Office of the Secretary (OST), Transportation.

ACTION: Final rule and notice of proposed disposition of petitions.

SUMMARY: Two new rules that the Department of Transportation adopted on March 15, 1999, the Final Rule on Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases, 14 CFR part 257 ("Code-Share Rule"), and the Final Rule on Disclosure of Change-of-Gauge Services, 14 CFR part 258 ("Change-of-Gauge Rule"), are both scheduled to go into effect on July 13, 1999. These rules will enable consumers to make informed choices about their air transportation and to travel without undue confusion. We have received one petition requesting a waiver until October 15, 1999, of the Code-Share Rule's requirement that the transporting carrier's corporate and network names be disclosed. We grant this petition. We have also received seven petitions requesting delay of both rules' effective date, one to mid-October, 1999, and six to March 15, 2000; one of these seeks an additional grace period until September 15, 2000, for tour operators. These latter petitions cite Computer Reservations Systems' ("CRSs") and other information systems' programming and software problems related to the year 2000 ("Y2K") as justification for delaying the rules' effective date. We are postponing the effective date of both rules until August 25, 1999, and we are requesting comments on our tentative findings that those parts of the rules that are not affected by CRS reprogramming should take effect on August 25, that the effective date of those parts of the rules that are affected by CRS reprogramming should be further postponed until March 15, 2000, and that as a matter of discretion we should refrain from enforcing both rules in their entirety against the tour operators for an additional grace period of six months.

DATES: *Effective Dates:* The effective date of the rule adding 14 CFR part 257 and removing 14 CFR 399.88, published at 64 FR 12838 on March 15, 1999, is delayed until August 25, 1999. The effective date of the rule adding 14 CFR part 258, published at 64 FR 12854 on March 15, 1999, is delayed until August 25, 1999.

Comment Date: Comments on further delaying the effective date of these rules, or particular provisions of these rules, must be received by July 30, 1999 for consideration to be assured. Comments received after that date will be considered to the extent practicable. If the Department decides to further delay the effective date of these rules, or particular provisions of these rules, it will publish a document in the **Federal Register** announcing the new effective date.

ADDRESSES: Comments may be submitted by one of the following methods:

(1) By mail to the Docket Management Facility (OST–95–179, OST–95–623, OST–95–177), U.S. Department of Transportation, Room PL–401, 400 Seventh St. SW, Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh St. SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–366–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Betsy L. Wolf, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings (202–366–9359), Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 1999, the Department issued two new rules under 49 U.S.C. 41712, our authority to prohibit unfair and deceptive practices and unfair methods of competition. These rules will protect consumers of air transportation in two ways: by ensuring that they are told what kind of service they are considering before they decide to buy it and by giving them written information that will help them avoid confusion and other mishaps in the course of their transportation. Among other things, the Code-Share Rule requires air carriers involved in code-sharing arrangements or long-term wet leases to identify these arrangements in the written or electronic schedule information they provide to the public, in the Official Airline Guide ("OAG") and comparable publications, and in CRSs with an asterisk or comparable mark and to disclose the transporting carrier's corporate name and any other name under which the service is held out to the public. The rule also requires air carriers and ticket agents to disclose this same information orally to prospective passengers before booking transportation, and it requires these sellers to provide this information in a written notice once a consumer has booked a flight involving a code-share arrangement or a long-term wet lease.[1] The Change-of-Gauge rule has

[1] In the interest of clarity and brevity, in the remainder of this notice, we refer in most instances to the disclosures that the Code-Share Rule specifically requires and that are not specifically required under existing law or policy—namely, disclosure of the transporting carrier's corporate name and any other name under which a code-share or long-term wet-lease service is held out to the public—as "the new code-share and long-term wet-lease disclosures."

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comparable requirements for service with one flight number that requires a change of aircraft en route. For many if not most carriers and for all ticket agents, the ability to comply fully with these requirements hinges on the ability of the CRSs both to display all of the relevant information and to print it as the required written notice.

Requests for Postponement

On April 29, 1999, American Airlines, Inc., American Eagle Airlines, Inc., and Executive Airlines, inc. d/b/a American Eagle (collectively, "American") requested a waiver of the Code-Share Rule until October 15, 1999 for disclosure of Executive's corporate name. American is in the process of merging Executive into AMR Corporation, American's parent company. When the merger is complete, Executive will surrender its certificate of public convenience and necessity and conduct all further operations as American Eagle. American expects to complete the merger by October 15 and asked for a waiver in order to avoid the time and expense of reprogramming software to comply with the rule in the short time remaining before then after the rule takes effect. Under these circumstances, we agree with American that compliance with the rule would be unreasonably burdensome, so we grant its petition with regard to Executive.

On May 4, Midwest Express Airlines requested a 90-day extension of the effective dates of both rules, claiming that the CRS enhancements that it has ordered from SABRE will not be ready by July 13. Similarly, on May 24, the Air Transport Association of America, Inc. ("ATA") filed a petition asking the Department to postpone the rules' effective date until March 15, 2000. ATA stated that its member carriers and the CRSs have been working to reprogram and reconfigure their various information systems to be able to comply with both rules by July 13, but they have found this task, which requires coordination among all affected entities, more complex and time-consuming than they had anticipated. ATA stated that these efforts are coinciding unavoidably with the industry's commitment of considerable information services resources to "pressing Y2K needs." With Y2K commanding the highest priority, ATA reported that "many industry information services are planning to 'lock down' their systems early in the fourth quarter of 1999 and until after leap year day 2000."

ATA's petition drew supporting answers from the OAG, Aeropostal Alas de Venezuela, C.A., The SABRE Group, and EDS. The SABRE Group, which operates the SABRE CRS, stated that SABRE also serves as the internal reservation system of over 50 domestic and international carriers. Claiming that SABRE, like every other technology system, is "working diligently to avoid any problems associated with the [Y2K] issue," The SABRE Group confirmed that SABRE intends to impose a freeze, during which it will permit no new implementations of any kind, from November 1, 1999, to early in March of 2000. EDS, which operates the SHARES computer systems to provide hosting services to multiple domestic and international air carriers, states that it will be imposing a similar freeze from November 1, 1999, through the end of January.

On June 14, the United States Tour Operators Association, Inc. ("USTOA") filed a petition asking not only for an extension of both rules' effective date until March 15, 2000, in support of ATA's petition, but also for a grace period for tour operators of another six months—i.e., until September 15, 2000. USTOA agreed with ATA that much work remains to be done by the air carriers and CRSs before the former will be able to comply with the rules and that Y2K issues should take top priority. USTOA stated that tour operators use CRSs as a source of information for their own "'front-end information systems'," which "are extensive and complex because they include functionality to book air, along with hotel, rental car, airport transfers, dining, sightseeing activities, compute total retail price, print out itinerary and pay vendors." According to USTOA, tour operators will need to reprogram these front-end information systems in order to comply with both rules, and this endeavor will in turn entail "knowing the specifications set by the originators of the information—the airlines and CRSs." USTOA requested an additional six-month grace period for tour operators to reprogram their own systems.

On June 25, four foreign carriers, AVIATECA, S.A., LACSA Airlines, TACA International Airlines, S.A., and NICARAGUENSE DE AVIACION, requested an extension of the rules' effective date until March 15, 2000. These carriers are multi-hosted in SABRE, which, as noted, has announced that it will not be able to provide the requisite enhancements to enable these carriers to comply with the rules as of July 13.[2]

[2] On May 25, Aer Lingus Limited ("Aer Lingus") requested a temporary waiver of the Code-Share Rule until October 31, 1999, for reasons unrelated to the issues raised by the other parties. We have disposed of Aer Lingus's request elsewhere.

The Department's Concerns

We recognize that it is critical that information systems in the air transportation industry be prepared to continue functioning normally through the end of the 20th century and into the 21st. The Department has actively sought to avoid imposing any substantial information burdens on the industry that would interfere with its ability to become Y2K-compliant. In fact, when we adopted the two rules at issue here in March, all information available to us indicated that the CRSs and major airline reservations systems were or would be Y2K compliant. We had attempted to gauge the rules' effect on Y2K compliance by reviewing statements from Annual Reports, 10–K and 10–Q Statements filed with the Securities and Exchange Commission, news reports, press releases, and other documents of the four CRSs, the nine largest U.S. air carriers, and other relevant entities. While recognizing that there could be no guarantees, we found that most entities expected to be Y2K compliant on time and had made contingency plans to use in the event that they are not. We concluded that the public interest would best be served by issuing the rules in March and making them effective in July rather than waiting until next year, because the need for effective disclosure has been pressing and is likely to increase as air carriers' relationships and operations grow ever more complex. *See* 64 *Fed. Reg.* 12838, 12850–12851 (March 15, 1999) (Code-Share Rule) and 64 *Fed. Reg.* 12854, 12859 (March 15, 1999) (Change-of-Gauge Rule).

Because of the rules' implications for consumer welfare and because the technological problems suggested by the parties do not apply to all parts of the new rules, we concluded initially that the public interest would not be served by extending the effective date for both rules in their entirety until March 15, 2000. Without more detailed and concrete information from the parties, however, we could not make an informed decision on which parts of the rules might have to be postponed or for how long. We believed that Y2K compliance might no longer be an issue for the entire industry; we knew that sellers and providers of air transportation could comply with some parts of the rule without any reprogramming by the CRSs. The rules do add several new disclosure requirements, including requiring ticket agents as well as air carriers to provide both oral and written notice of code-sharing arrangements and change-of-gauge services, but they also retain and consolidate existing disclosure requirements that already apply to air carriers.[3] Several of the new requirements do require reprogramming on the part of the CRSs: the new code-share and long-term wet-lease disclosures in schedules, the OAGs, and the CRSs, these same disclosures via oral notice to consumers before booking transportation, these same disclosures via written notice to purchasers, and a generic written notice of change-of-gauge services to purchasers. CRS reprogramming does not come into play for the Code-Share Rule's advertising requirement. Furthermore, CRS listings already indicate code-share services and change-of-gauge services, so travel agents are able now to comply with existing oral disclosure requirements that apply only to air carriers.[4]

Additional Information from Interested Parties

Because of our need to resolve these issues quickly and craft a solution that both accommodates legitimate Y2K concerns and allows only those delays to the rules' consumer benefits that are unavoidable, we met with interested parties at the Department on Tuesday, June 29.[5] Those in attendance gave us more detailed information than the parties had provided in their pleadings on how Y2K compliance issues relate to compliance with the rules, on why CRSs cannot be reprogrammed to allow all parties to comply with the new rules in their entirety by July 13, and on why the parties need until March of next year (and, in the case of USTOA, an additional six months) to be ready to comply. The following five paragraphs contain the gist of this information.

First, for air carriers and ticket agents to comply with the rules' new requirements, the CRSs must be reprogrammed (1) to allow carriers to input the new code-share and long-term wet-lease disclosures, (2) to display all of this information on screens viewed by travel agents, and (3) to print both these new disclosures and the generic written disclosure required for change-of-gauge services. Additionally, OAG must make changes to be able to assimilate and list all of the new information from air carriers, and carriers themselves have reprogramming work to do to be able, among other things, to provide written notice of code-share services, long-term wet leases, and change-of-gauge services at airports when this notice is not sent to passengers earlier along with a ticket or itinerary. USTOA's members sell tour packages, mostly through travel agents but in some cases directly to the public; they cannot begin to reprogram their own front-end information systems until after the CRSs have completed their reprogramming.

Second, the CRSs cannot accomplish all of the reprogramming they must do by July 13.[6] To ingest, process, display, and dispense all of the additional information the new rules require, the CRSs must more than double the size of their existing data fields, from 19 characters to 39 characters. This task requires massive reprogramming, consuming considerable resources for considerable amounts of time, and is further complicated by the need for a standard, industry-wide solution.

Third, the CRSs, the other information systems, and the carriers initially failed to apprehend the enormity of the task before them. Meanwhile, as Y2K looms ever larger, the information systems are all imposing freezes on new implementations from November through at least the beginning of next year. They will use the initial months of these freezes to arrange things so that they can quickly identify, analyze, and fix any problems that may arise during the transition to the next century. They do not have unlimited resources. Therefore, not only can they not possibly finish the reprogramming required by the Code-Share and Change-of-Gauge Rules by July 13, but they deem it highly unlikely that they will be able to finish, test, and implement this reprogramming before their freezes commence in November even though they will continue their good-faith efforts.

Fourth, while the reprogramming necessary for the new code-share and long-term wet-lease disclosures plus the generic written notice of change-of-gauge services constitute the barrier to compliance with both new rules in their entirety by July 13, CRS displays do already indicate code-share service and identify the transporting carrier, and they do already indicate change-of-gauge service. Virtually all travel agents now use CRSs to book transportation and issue tickets. Therefore, with the exception of USTOA's members discussed below, ticket agents[7] should already be able to comply with the oral disclosure requirements currently in effect for air carriers and foreign air carriers.

Fifth, USTOA's members are tour operators. They do most of their business through travel agents, but they do have some direct dealings with consumers. Unlike conventional travel agents, they use their own front-end systems rather than CRSs, as noted. Not only will they need six months after the CRSs are reprogrammed to reprogram their own systems to display and process all of the information required for compliance with the two rules, as also noted, but unlike the CRSs, these systems do not currently indicate code-share service, identify the transporting carrier, or indicate change-of-gauge service. Therefore, unlike conventional travel agents, USTOA's members are not already able to comply with the oral disclosure requirements currently in effect for carriers.

Disposition

On the one hand, the parties have satisfied us that they cannot comply with the two rules in their entirety by July 13 and will not be able to comply before the information systems' freezes on implementation take effect in November. Moreover, we must continue to take care not to impose information burdens on the industry that could interfere with Y2K compliance. On the other hand, the rules will give consumers information that is of critical importance to them in making informed decisions about their travel purchases and in avoiding problems during travel.

[3] The Department's policy on airline designator code-sharing, 14 CFR § 399.88, requires air carriers to give reasonable and timely disclosure of code-sharing arrangements by identifying them in schedules given to the public, the OAG, and CRSs, by disclosing them in discussions with consumers, and by providing frequent, periodic notice of them in advertisements. The Department's orders approving code-sharing arrangements involving foreign air carriers apply these same requirements to the foreign carriers. *See, e.g.*, Order 94–5–31. As for change-of-gauge service, the Department's CRS rules, 14 CFR § 255.4(b)(2), require that CRS displays give notice of any flight that involves a change of aircraft en route, and we require as a matter of policy that carriers give consumers notice of aircraft changes for change-of-gauge flights. *See* Order 89–1–31 at 5.

[4] USTOA's members are not able at present to comply with these requirements, as discussed below.

[5] Specifically, the Acting Assistant Secretary for Aviation and International Affairs, the General Counsel, and Department staff met with representatives from ATA, American, Continental, Delta, Midwest Express, Northwest, TWA, US Airways, Aeropostal, Canadian, OAG, and SABRE.

[6] Although only SABRE has commented on the record and sent representatives to the meeting, the parties confirmed that the other CRSs are situated similarly.

[7] As a technical matter, both rules apply to ticket agents as that term is defined in 49 U.S.C. 40102 (40): a ticket agent is "a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation." Thus, all travel agents are ticket agents, but not all ticket agents are travel agents.

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Compliance with some parts of the rules does not require any CRS reprogramming. For example, travel agents, who still sell most air transportation, are in a position to begin providing some of this information by complying with the oral disclosure portions of the rules that already apply to carriers. We have therefore tentatively decided to dispose of the requests for postponement by granting them only insofar as necessary—*i.e.*, by only postponing the effective date until March 15, 2000, for those parts of the rules with which carriers and ticket agents cannot fully comply until the CRSs have completed their reprogramming, as specified below. To this end, we are postponing the effective date of both rules until August 25, 1999, and giving interested parties fifteen days to submit comments on our tentative findings and the actions they contemplate. We will issue a final notice on or before August 25.

Accordingly, this document postpones the effective date of the Code-Sharing Rule, 14 CFR part 257, the Change-of-Gauge Rule, 14 CFR part 258, and the removal of 14 CFR 399.88, until August 25, 1999.

This document also invites comment on whether the effective date of certain parts of the rule should be further extended. In this regard, based on the petitions and public input received since parts 257 and 258 were adopted, the Department believes that the effective date of the following parts of the Code-Share Rule should not be further postponed:

- § 257.1 Purpose.
- § 257.2 Applicability.
- § 257.3 Definitions.
- § 257.4 Unfair and deceptive practice.
- § 257.5 Notice requirement.
  (b) Oral notice to prospective consumers, but only insofar as compliance with this section does not require reprogramming by CRSs.[8]
  (d) Advertising.

Similarly, the Department believes the effective date of the following parts of the Change-of-Gauge Rule should not be further postponed:

- § 258.1 Purpose.
- § 258.2 Applicability.
- § 258.3 Definitions.
- § 258.4 Unfair and deceptive practice.
- § 258.5 Notice requirement.
  (a) Notice in schedules.
  (b) Oral notice to prospective consumers.

[8] In other words, carriers, which are currently required to disclose code-share and change-of-gauge services in discussions with consumers, would be required as of August 25 to make these disclosures before booking transportation, and the same requirements would apply to travel agents. The new code-share and long-term wet-lease disclosures would not be required at this time.

However, if the Department views are not altered by the comments we are inviting here, the Department will take further action by August 25, 1999, to postpone the effective date of the following parts of the Code-Share Rule until March 15, 2000:

- § 257.5 Notice requirement.
  (a) Notice in schedules.
  (b) Oral notice to prospective consumers, except as specified in paragraph (1).
  (c) Written notice.[9]

Similarly, we would postpone the effective date of the following part of the Change-of-Gauge Rule until March 15, 2000:

- § 257.5 Notice requirement.
  (c) Written notice.

Finally, we believe that USTOA has shown good cause for the Department to refrain as a matter of discretion from enforcing both rules in their entirety against tour operators until six months after March 15, 2000.[10]

In closing, we strongly encourage the CRSs and other information systems to proceed with their reprogramming efforts with all possible expedition. Any affected parties that can comply with the rules before they become effective should do so. For example, while we are tentatively agreeing to postpone the effective date of both rules' written notice requirements, we are aware that some carriers and some travel agents are already disclosing much of the required information in the itineraries they provide to passengers, and we encourage all sellers of air transportation to do so who have the capability.

Regulatory Analyses and Notices

The Department has determined that this action is not an economically significant regulatory action under Executive Order 12866 or the Department's Regulatory Policies and Procedures, and it has not been reviewed by the Office of Management and Budget. This rule is significant under the Department's Regulatory Policies and Procedures because of congressional and public interest. The rule does not impose unfunded mandates or requirements that will have any effect on the quality of the human environment. A summary of the regulatory analyses of the rules whose effective date is being extended here was published at 64 FR 12850–12851 and 12859, March 15, 1999. Also published there were discussions of the rules' effects on small businesses and their Federalism and Paperwork Reduction Act implications. Apart for the Y2K implications recently brought to light and addressed above, the determinations made previously are not significantly affected by the limited extensions of the effective date made and proposed here.

Authority: 49 U.S.C. 41712.

Issued in Washington, DC on July 9, 1999, under authority delegated by 49 CFR 1.56a(h)2.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–17963 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–62–P

[9] It is our understanding that carriers are already complying with those parts of the schedule notice requirement that go beyond 14 CFR 257.5(a) and the oral notice requirement imposes no new requirement on carriers.

[10] We tentatively find that imposing the same requirements on tour operators that those parts of the rules that are to take effect on August 25 will impose on travel agents would burden the tour operators excessively by forcing them to reprogram their front-end systems not once but twice.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in August 1999. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during August 1999.

For annuity benefits, the interest assumptions will be 6.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent an increase (from those in effect for July 1999) of 0.30 percent for the first 20 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent an increase (from those in effect for June 1999) of 0.50 percent for the period during which a benefit is in pay status and are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during August 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 70 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_1	for t =	i_1	for t =	i_1	for t =
. . .	.	.	.	.	.	.
August 1999	.0630	1–20	.0525	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$ interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y - n_1 - n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
70	08–1–99	09–1–99	5.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 8th day of July 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–18032 Filed 7–14–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 210 and 216

RIN 1010–AC40

Electronic Reporting

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations to require reporters to submit selected royalty and production reports electronically, to extend the due date for production reports filed electronically, and to eliminate the reporting of most wells that are in drilling status. This rulemaking provides electronic reporting exceptions for reporters who meet certain criteria. These amendments will reduce administrative costs and increase operating efficiencies for industry and MMS.

EFFECTIVE DATES: This final rule will be effective on November 1, 1999.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, MMS; telephone (303) 231–3432; fax (303) 231–3385; e-mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Mary Williams, Ralph Spencer, Barbara Lambert, Tim Allard, and Gail Solaas of the Royalty Management Program (RMP), MMS.

I. Background

MMS published a proposed rulemaking entitled "Electronic Reporting" on April 8, 1998 (63 FR 17133). The proposed rulemaking provided a 60-day public comment period which ended on June 8, 1998. We have analyzed the comments we received and amended our proposed rule to meet public concerns when prudent and necessary.

II. Comments on Proposed Rule

General Comments

Comment—One industry trade association commented that it does not believe MMS has a legal basis for requiring electronic reporting. The commenter stated that the proposed rule has only a vague reference to various mandates to use new technologies to improve programs. The commenter recommended MMS withdraw the proposed rule.

Response—Our authorities for issuing this rule are cited at the beginning of each part. One of the primary purposes of this rule is to comply with 44 U.S.C. 3506 which requires Federal agencies to carry out information management activities efficiently, effectively, and economically. The Secretary of the Interior can also prescribe necessary and proper rules and regulations to administer mineral leases in accordance with 30 U.S.C. 189 and 1701. We believe we have the legal authority to require electronic reporting; therefore, we have no reason to withdraw the rule.

Comment—One industry association commented that because the majority of lines are already reported to MMS electronically and MMS will be revising reporting formats in the near future, MMS should not mandate electronic reporting at this time. The commenter suggested that MMS use other methods to encourage electronic reporting.

Response—We agree with the commenter that a majority of our lines—80 percent of our royalty lines and 60 percent of our production lines—are reported electronically. However, the electronic lines are submitted primarily by very large companies and are a small number of our total reports. We continue to receive over 20,000 paper reports monthly, generally from small reporters. These paper reports must be manually keyed, filed, boxed, and stored until they can be destroyed in accordance with Federal record disposal requirements. These manual tasks are costly for the Government and taxpayers.

We also agree with the commenter that our royalty and production reports may be revised as a result of reengineering efforts that are currently ongoing. One of the most important reengineering proposals is to eliminate the Form MMS–3160, Report of Monthly Operations, within 2 years. Because we are proposing to eliminate the Form MMS-3160 in 2 years, we have decided to remove the requirement contained in § 210.20 of our proposed rule to report the Form MMS–3160 electronically. We are also eliminating all other references to mandatory electronic reporting of Form MMS–3160 in this final rulemaking.

The proposal to eliminate the Form MMS–3160 was published in the **Federal Register**, along with other production reporting changes, on February 23, 1999 (64 FR 8844). Most operators of onshore properties report production on Form MMS–3160, although they have the option of reporting on Form MMS–4054, Oil and Gas Operations Report. All offshore operators, however, must report their production on Form MMS–4054. Consequently, MMS and those operators having both onshore and offshore production must maintain and support two separate reporting systems—one for the Form MMS–3160 and one for the Form MMS–4054. We are proposing that operators use one form, a revised Form MMS–4054, to report both onshore and offshore production because we believe it is more efficient for MMS and industry.

With respect to the commenter's suggestion that MMS use other means to encourage electronic reporting, we have promoted electronic reporting for many years by offering various options other than this rule. However, we have numerous indicators—such as cost savings from less data to key manually, fewer reporting errors to correct, and less paper records to file and store—that show electronic reporting is more accurate, efficient, and economical than paper reporting. Companies reporting electronically also experience cost and time savings over paper reporting. Moreover, technology is currently available to easily expand the use of electronic reporting and reduce or eliminate paper reporting. This rulemaking enables us to take greater advantage of electronic reporting and storage technologies that will save time and money for both MMS and industry.

For all the reasons discussed above, we believe there is no justification for delaying the requirement for electronic reporting of Forms MMS–2014 and MMS–4054.

Comment—Two companies commented on the need to file paper reports for adjustments or adding lines after an electronic report is ready to send. One company stated they would have to build an elaborate reporting system costing tens of thousands of dollars. One company wanted a "grandfather" clause for adjustments prior to the implementation date.

Response—We currently receive manual adjusting reports from many companies who report most or all of their initial data electronically. Typically, these manual reports are facsimiles generated from a computer. Facsimile reporting indicates that the company is entering the data into a computer but is unable to convert these adjustments into an electronic format. In these cases, we suggest the company use one of our other electronic reporting options to convert these adjusting entries so they can be filed electronically. For example, many companies use a Microsoft Excel spreadsheet which can be easily converted to a Comma Separated Values format and sent via e-mail or diskette. We recognize that the electronic format for adjustments under this scenario

would be different from the format for the current month's report. However, MMS systems have the flexibility to accept different electronic formats for the same time period. We do not believe that this simple conversion would cost tens of thousands of dollars because the data is already compiled in a company's computer. For these reasons, we did not modify the final rule to "grandfather" adjustments for periods prior to the effective date.

Comment—One commenter was concerned with the statement in the background section that "Reporters who use electronic reports experience few problems with converting or submitting their monthly reports." The company stated that they have experienced problems with generating the Electronic Data Interchange (EDI) transmission, with MMS receiving the transmission, and with sending large volumes of data. When these problems occurred, MMS required submission by tape. The company had also experienced an increase in the costs of reporting via EDI versus magnetic or cartridge tape.

Response—MMS was not aware of the problems this company encountered when generating a "live" EDI transmission. We usually discover and correct EDI transmission problems during sample testing and subsequent EDI files are generated without difficulties.

Regarding large volume transmissions, the Value Added Network (VAN) service provider MMS currently uses is unable to receive EDI transmissions containing file sizes larger than 10 megabytes. Although it is unusual to exceed this file size, the following solutions to this problem are available to reporters:

1. The reporter can ask MMS to assist in the creation of smaller reports for multiple EDI transmissions, which do not increase the reporter's cost;
2. The reporter can ask the VAN service provider to suggest unique solutions on an individual basis; and
3. Reporters can submit data in a magnetic tape format.

Regarding MMS's request that the reporter submit data by tape, we do not mandate a specific primary method of transmission. However, we strongly recommend that a reporter have a backup method available in case its primary method fails as apparently happened in this instance. MMS technical staff can assist reporters in resolving implementation problems with any method they choose.

We agree with the commenter that reporting via EDI has higher initial costs. In an effort to reduce VAN charges, we eliminated some reference data elements when we initially established the EDI format. However, both Government and industry benefit from standardized reporting inputs, improved data integrity, proven VAN reliability, and the enhanced confidentiality and security.

Specific Comments

Section 210.20(b)(2)(i)—now § 210.21(a)(2)(i)—One commenter requested additional information to determine if electronic reporting would be helpful. The commenter's questions are: Has the MMS improved the Monthly Report of Operations, Form MMS–3160, software? Does it now print single-page versions of the report? What do the printed Form MMS–2014 reports look like? Are the Form MMS–3160 and Form MMS–2014 reports integrated in any way? Can the templates be incorporated into our Lotus 1–2–3 worksheets?

Response—As noted earlier, we have removed the requirement that reporters submit the Form MMS–3160 electronically from this final rule. However, if reporters should voluntarily choose to submit the Form MMS–3160 electronically, we offer the following information.

MMS has not changed the Form MMS–3160 template software. This software prints the Form MMS–3160 on two pages as it always has. The printed Form MMS–2014 reports generated by our new 2014 template software mirrors the paper Form MMS-2014. The Forms MMS–2014 and MMS–3160 are not integrated in any way. Neither of these templates can be incorporated into any spreadsheet or database software applications. However, if reporters have stored their report data electronically, it is a relatively easy process to download the required information into either a Comma Separated Values (CSV) or ASCII format once you have the appropriate MMS-approved record layouts in your possession. You may find these record layouts on our Internet site at http://www.rmp.mms.gov, Customer Services, Publication Services, Forms.

Section 210.20(d)—now § 210.21(c)—One industry commenter wanted to know about the electronic reporting guidelines, getting samples approved, electronic commerce agreements and security measures. What are they? How cumbersome will they be to implement? How will we prove that our reports have been electronically filed on time? When the MMS sends out error notices with their accompanying bills for penalties, how do you prove what was submitted?

Response—To answer most of these questions, we have published our EDI Handbook, Template User Guide, and Floppy Diskette and Magnetic Tape Reporting instructions on our Internet site at http://www.rmp.mms.gov under Customer Services, Publication Services, Handbooks. We can also mail a paper copy of these guides to any company interested in converting to electronic reporting. The user guides provide detailed instructions on how to use the two template reporting options currently available to reporters. Additional reporting information can be found at http://www.rmp.mms.gov, see Customer Services, Publication Services, Forms, Electronic Commerce Information. Reporters may be particularly interested in the Electronic Commerce Brochure found at this last site. This 2-page document details all the electronic reporting options currently available at MMS.

MMS will approve a sample electronic report in 3 to 5 working days, depending upon the date during the month the sample is received. This process is a simple one in which MMS will notify a reporter that either the sample report is acceptable and approved for live processing, or that the sample report must be changed in one or more fields and re-submitted. Thereafter, each reporter submitting an electronic report will receive an electronic acknowledgment from MMS stating the date and time a report was received. Reporters can use this acknowledgment as proof that they submitted the report timely.

We maintain a record of each company's original report to support any bills for erroneous reporting. We will continue to contact any company whose lines are rejected and corrected within our Auditing and Financial System. Our error correction process will not change simply because we receive reports electronically.

With respect to security measures, we believe security is an integral part of electronic reporting. For example, reporters selecting the EDI reporting option must utilize a VAN to process their transmissions to MMS. VANs are private networks that provide confidentiality and security through user authentication, non-repudiation, and data encryption. For e-mail transmissions over the Internet, all users must register with RMP to establish themselves as an authorized reporter. MMS will not process data files submitted by reporters who have not registered. Additionally, e-mail files are compressed using PKZip software with a password for added security. This compression measure prevents others from seeing actual report data. Both the reporter and MMS must use the correct

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PKZip password before actual data becomes available for processing.

With respect to the Electronic Commerce Agreement (ECA), the information about electronic reporting contained in an ECA is now contained in this rule. Also, as discussed above, the passwords used in electronic reporting will ensure the confidentiality of information formerly contained in the ECA. Thus, we decided to eliminate the ECA which was required under proposed § 210.20(d)(2). We want to make reporting electronically to MMS as simple and easy as possible.

Section 210.20(f)—now § 210.22(a)—One commenter is unclear on how much time payors will be given to make the appropriate system changes, have reports approved, sign electronic commerce agreements, etc. The 90 days allowed for a new reporter, as noted in this section, would appear inadequate for initial development and implementation.

Response—The 90-day timeframe (equivalent to 3 months) for new reporters assumes that most new reporters will be using an automated system to account for their production and sales or, at the very least, have a computer. We have two templates available upon request. One requires a 386 computer using Microsoft Windows 3.1 or better, while the other requires a 486 computer and Microsoft Windows 95. We have several other electronic reporting options available and are developing an Internet application for the near future.

The approval process is not time-consuming. For example, we try to use the sample electronic report as the actual report for the month submitted unless we encounter problems that we cannot resolve over the telephone. On average, a company can select one of the templates or any of our other electronic reporting options and receive approval within 30 days. As noted earlier, we have eliminated the requirement to file an ECA in an effort to simplify and speed the process.

Given the various reporting options that are available and the quick approval process, we believe 3 months are sufficient for a new reporter to begin electronic reporting. Current reporters submitting 6 lines or more will have until November 1, 1999—the effective date of this rule—to convert to electronic reporting. See § 210.20 and 210.22 for electronic reporting conversion dates and exceptions, respectively.

Section 210.20(g)—now eliminated—One commenter was concerned with occasional equipment/electrical failure and what MMS thinks is "reasonable" in terms of a fixed fee per report line for noncompliance. The commenter suggested MMS include a clause to cover exceptions for occasional equipment/electrical failure. Another commenter stated that the proposed rule is unclear about whether the provision for the fee applies only to new reporters or to current reporters who fail to comply. The commenter also questioned the need to assess a fee for noncompliance. Because MMS is already processing paper reports and this proposal will encourage reporters to switch to electronic reporting, the Government cost to process paper reports will decrease, rather than increase. Also, under RMP's reengineering initiative, the data entry burden should be further reduced.

Response—We have eliminated proposed § 210.20(g) which stated that we would assess a fee if a reporter did not convert to electronic reporting. We remind reporters, however, that they are subject to civil penalty procedures under 30 CFR part 241 if they fail to comply with any MMS regulation. These penalty procedures would pertain to reporters who do not comply with the scheduled conversion dates provided in § 210.20(a). In addition, we have extended the effective date of this rule from December 31, 1998 to November 1, 1999, to allow reporters sufficient time to convert to electronic reporting. Over the next few months, we will be working very hard to help reporters convert to electronic reporting as soon as possible.

Section 210.52—One commenter wanted clarification on the statement "You must submit a completed Report of Sales and Royalty Remittance (Form MMS–2014) with all payments * * *." The commenter wants to know if reporters can submit the Form MMS–2014 electronically independent of the electronic payments.

Response—Yes, the Form MMS–2014 can be submitted electronically independent of the electronic payment. The payor assigned document number is used to link reports and payments. Many companies currently send electronic and paper reports and a single electronic payment. We allow reporters to send their electronic payment on the due date and their electronic reports a few days before the payment. These independent submissions provide flexibility to meet individual company needs.

Section 216.50(c)—One company commented that extending the due date for production reports by 10 days to the 25th of the second month following production will place them in jeopardy of meeting the Form MMS–2014 due date of the last day of the second month for making estimated royalty payments to MMS. The company reports and pays royalties for 12 clients. They recommend that we change the due date to a 5-day extension for production reports or extend the due date for the Form MMS–2014 by 5 days.

Response—The extended due date assists in reducing the number of amended production reports without impacting the timeliness of data we must process and send to States, tribes, and other Federal agencies. Because automated reports are entered into our computer system the same day they are received, they take less time to process than paper documents. We piloted the 10-day extension for 1 year and received no information indicating that companies were dependent upon the production report to complete the Form MMS–2014. Royalty is typically calculated using run tickets for liquids, meter readings for gas, and other documents that are provided by lease operators. We believe you should use the information on these documents to prepare the Form MMS–2014, not the production report. We cannot change the due date of the Form MMS–2014 and the associated royalty payment because of lease terms and requirements in the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1711 *et seq.* We must have the Form MMS–2014 in order to distribute royalty payments timely to the proper Federal, State, and Indian recipients. MMS will continue the 10-day extension of the production reporting due date not only as an incentive for electronic reporting but also to reduce the number of amended reports.

III. Section-by-Section Analysis

The following paragraphs summarize the most significant changes we made to our proposed rule that was published on April 8, 1998 (63 FR 17133):

Section 210.20

We eliminated the requirement to file the Form MMS–3160 electronically.

Section 210.20(a)

We added a timetable to § 210.20(a) which phases small reporters into electronic reporting over the next 2¼ years. We added the timetable in order to: (1) Minimize the impacts, if any, on small businesses; and (2) give small businesses time to make any operational changes necessary to comply with our electronic reporting requirements. In addition to the table, we added a new paragraph (b) to clarify what we mean by "line" and a new paragraph (c) to clarify what we mean by "form" because both terms are referred to in the timetable in paragraph (a). For purposes of this part, multiple submissions of the same form in one month equals one form. For example, if you submitted 10 Form MMS–4054's containing 3 lines each, MMS would consider that to be one form with 30 lines.

Section 210.20(b)

We moved proposed § 210.20(b) to new § 210.21(a) for clarity purposes.

Section 210.20(c)

We moved proposed § 210.20(c) to new § 210.21(b) and added the phrase "or by accessing our Internet site at www.rmp.mms.gov" to provide reporters with an additional source for our electronic commerce brochure.

Section 210.20(d)

We moved proposed § 210.20(d) to new § 210.21(c) and deleted § 210.20(d)(2) which required reporters to submit an Electronic Commerce Agreement.

Section 210.20(e)

We combined the provisions in this proposed § 210.20(e) with new § 210.21(c) for further clarification.

Section 210.20(f)

We removed proposed § 210.20(f) and included the 3-month grace period for new reporters in new § 210.22(a).

Section 210.20(g)

We deleted this proposed § 210.20(g) which stated that we would assess a fee if a reporter did not convert to electronic reporting. For further information, see our response to public comments under § 210.20(g).

New § 210.22

We added new § 210.22 which provides two grace periods and two exclusions to our electronic reporting requirements.

- The first grace period MMS will allow is if you become a new MMS reporter after any of the required conversion dates. In such cases, MMS will allow you 3 months from the day your first report is due to begin reporting electronically (this grace period was originally contained in proposed § 210.20(f) and defined as 90 days). For example, if you become an MMS reporter by leasing 6 new producing properties (equivalent to 6 lines) on April 16, 2000, your first Form MMS–2014 for April 2000 sales will be due May 31, 2000. You will have 3 months—or until August 31, 2000—to begin submitting the Form MMS–2014 electronically. MMS will continue to accept paper forms during the grace period.
- The second grace period is for when you exceed the maximum number of lines you are allowed to report on paper under § 210.20(a). In that case, you have 3 months from the last day of the month in which you exceeded the line limit to begin reporting electronically. For example, assume that you currently report 5 lines per month on your Form MMS–2014. On June 8, 2000 (7 months after the 6-line conversion date of November 1, 1999), you lease two new producing properties (equivalent to 2 new lines per month). You will have 3 months from the last day of the month in which you exceeded the 6-line limit—or until September 30, 2000—to begin submitting the Form MMS–2014 electronically. MMS will continue to accept paper forms during the grace period.

The two exceptions to our electronic reporting requirements provided in § 210.22 are as follows:

- You do not have to report electronically if you report only rent, minimum royalty, or other annual obligations on the Form MMS–2014; and
- You do not have to report electronically if you are a small business as defined by the U.S. Small Business Administration, and you have no computer, no resources to purchase a computer or contract with an electronic reporting service, nor access to a computer at a local library or other public facility.

The two exceptions to our electronic reporting requirements which we added to this final rule are directed primarily at small reporters who might suffer financial hardship if forced to comply with this rule. For a detailed explanation of these exceptions, see our discussion of small business issues under the Regulatory Flexibility Act section of the preamble in caption IV. Procedural Matters.

Section 216.50(a)

We added a sentence to this paragraph to clarify that you may submit the Form MMS–3160 electronically.

Section 216.50(c)(1) and (2)

We clarified that you will have a 10-day extension from the 15th to the 25th day of the second month following the month for which you are reporting if you voluntarily choose to submit the Form MMS–3160, Monthly Report of Operations, electronically.

Section 216.53(c)(1) and (2)

We clarified that you will have a 10-day extension from the 15th to the 25th day of the second month following the month for which you are reporting if you submit the Form MMS–4054, Oil and Gas Operations Report, electronically.

Section 216.55(c)(1) and (2)

We clarified that you will have a 10-day extension from the 15th to the 25th day of the second month following the month for which you are reporting to submit your Form MMS–4056, Gas Plant Operations Report, on paper if you submit the Form MMS–4054, Oil and Gas Operations Report, electronically.

Section 216.56(c)(1) and (2)

We clarified that you will have a 10-day extension from the 15th to the 25th day of the second month following the month for which you are reporting to submit your Form MMS–4058, Production Allocation Schedule Report, on paper if you submit the Form MMS–4054, Oil and Gas Operations Report, electronically.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under E.O. 12866. Generally, this rule will require many Federal and Indian mineral revenue and production reporters to convert from paper to electronic reporting by November 1, 2001. MMS uses the reports to account for and distribute Federal and Indian mineral revenues. This rule will not affect the timeliness of revenue distribution to recipients or information dissemination to other Federal agencies. Based on this and other information detailed below, we conclude:

(1) This rule will not have an effect of $100 million or more on the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Governments

This rule will have no effect on tribal governments but will have positive effects on the amount of revenues shared with States and possibly local governments. We expect net receipts sharing costs to States—that is, the MMS operating costs deducted from States' shares of royalty revenue—to decrease as MMS realizes savings from electronic reporting. We estimate the total annual savings to States to be

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$33,000 in the first year and $134,000 each year thereafter.

Private Sector

(1) This rule establishes the type of media that reporters in the oil and gas industry must use to report mineral revenues and production to MMS. We estimate that electronic reporting will generate net savings to industry of $1.2 million in the first year and $1.8 million each year thereafter;

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

In our April 8, 1998, proposed rule (63 FR 17133), we concluded that the rule would not have a significant economic impact on small businesses primarily because of the various low-cost electronic reporting options available to reporters. We received several public comments that disagreed with our conclusion. In response to those comments, we modified the rule substantially to minimize the negative impact on the largest number of small businesses and still increase the number of reports received electronically.

Comments Received on Small Business Impact

One industry trade group and three companies disagreed with our conclusion that the impact of requiring electronic reporting for small reporters would not be significant. They were concerned that: (1) MMS was shifting data entry costs to the small reporters; (2) many companies do not have a computer and cannot afford to buy one or pay someone else to report electronically for them; and (3) this rule would require a significant change in the way their business is conducted.

Additionally, the industry trade group disputed our conclusion that reporting electronically will reduce the reporting burden for companies who report only a few lines each month. The trade group believes it will be a costly, time-consuming burden to convert to electronic reporting. The industry trade group is concerned that MMS permits no exception to the proposed rule, especially for small lessees who are trying to produce from marginal wells in a time of extremely low prices.

The industry trade group and one company recommended that we establish a reasonable threshold by number of lines or royalties paid per year. The industry trade group also recommended that MMS establish a means by which reporters could request an exemption to the rule based on various circumstances or hardships. One company also recommended that, for the few non-electronic reporters remaining, MMS reduce the reporting burden for both MMS and the reporter by developing an abbreviated paper report.

MMS Response to Comments

It is not our intent to cause economic hardship for any small business by requiring electronic reporting. We devoted substantial time and effort to identify the possible negative economic impacts of this rule on small businesses and to take steps to eliminate or lessen adverse impacts whenever possible. The following are examples of the many actions we took to mitigate negative economic impacts and still increase the number of reports submitted electronically:

• *Free software.* We developed template software (see response to § 210.20(b)(2)(i) under specific comments) primarily for those small companies that report only a few lines each month. We provide this software at no charge to reporters. If a company should choose to purchase a computer to use the software, the minimum software requirements permit the company to purchase a very inexpensive model.

The template software is easy to install, requires no programming or computer expertise, and provides companies with the static or reference data that must be reported each month. This software also permits companies to save the report to a file which they can use to amend their report later, if necessary.

This software has significant benefits for both MMS and industry. It could ultimately allow us to cease printing and mailing over 4,000 model paper reports each month. The model contains the static or reference data contained in our system for each reporter. This process is very costly to MMS and, in many cases, companies are not using the model to report but only as a reference. The model report is also cumbersome to industry because each company must wait for the model to be received, complete the model with the current month's data, make copies, and mail the report back to MMS. With electronic reporting, companies can complete the report anytime during the month and easily amend prior reports if necessary;

• *Internet filing.* We are also developing an Internet application that will permit small companies that do not have computers to submit reports from remote locations, such as public libraries, without purchasing a computer. We anticipate this alternative to be available before the effective date of this rule. This alternative will eliminate the need to purchase a computer;

• *Advice and assistance.* We offer advice and assistance to the hundreds of small companies that currently use a computer-generated paper facsimile to report each month to help them transition to electronic reporting. Our goal is to eliminate as much data entry as possible for both the companies and MMS. For example, a company may enter data in its automated system and possibly again on its facsimile reports. Subsequently, MMS must manually enter the data from the paper copy into our system. Electronic reporting will eliminate these two stages of manual data entry without shifting costs. One of the commenting companies uses Lotus 1–2–3 for its accounting functions. The Lotus spreadsheet can be converted to an ASCII format (based upon an ASCII record layout we provide) and sent to MMS via e-mail or diskette. While Lotus does not offer a direct file conversion to a Comma Separated Values (CSV) format, a user can compose a macro that saves Lotus files in a CSV format. We will provide any reporter with a CSV and/or ASCII record layout for both production and royalty reports upon request;

• *Elimination of the requirement to file the Form MMS–3160, Monthly Report of Operations, electronically.* As part of our reengineering efforts, MMS is proposing to eliminate the Form MMS–3160 and replace it with a revised Form MMS–4054. Consequently, we determined that it would not be cost effective to require reporters to convert to electronic reporting of the Form MMS–3160 at this time;

• *Phased compliance over 2¼ years.* In § 210.20(a), we established a timetable that phases the smallest reporters into electronic reporting over 2¼ years. These extended compliance dates will allow additional time for small businesses to obtain computer equipment or contract with an electronic reporting service to comply with our electronic reporting requirements; and

• *Exceptions to electronic reporting.* In response to public comments, MMS will allow some exceptions to the electronic reporting requirements in this final rule. The exceptions at § 210.22 are directed primarily at small reporters who might suffer financial hardship if forced to comply with this rule. The two exceptions to electronic reporting are as follows:

(1) *You do not have to report electronically if you report only rent, minimum royalty, or other annual obligations on the Form MMS–2014.* This category covers reporters who submit one line per lease per year for any number of leases. We determined that it would not be economically feasible for a reporter to develop an electronic reporting method for this very limited reporting situation; and

(2) *You do not have to report electronically if you are a small business as defined by the U.S. Small Business Administration, and you have no computer, no resources to purchase a computer or contract with an electronic reporting service, nor access to a computer at a local library or other public facility.* This exception will allow any small business facing severe financial hardship to continue submitting paper reports rather than convert to electronic reporting. Excluding these small payors and reporters from electronic reporting requirements will avoid causing undue financial hardship for the smallest companies.

We did not choose to develop an abbreviated paper report in addition to the current forms as one commenter suggested because this action would not further our goal to eliminate paper reporting. One of the significant advantages of electronic reporting is that a company can store and submit only those data elements that are required for its operation. Maintaining two different reporting forms or data collection instruments is duplicative and confusing for MMS and reporters. In addition, MMS is in the process of reengineering our systems and attempting to reduce or modify the data elements currently required. However, we probably will not complete this effort for several years.

Conclusion. Based on the numerous mitigating actions we have taken in response to public comments, the Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will have no effect on tribal governments or other small governmental jurisdictions.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–888–734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. Net revenues distributed to States may increase $33,000 in the first year and $134,000 each year thereafter due to cost savings realized by MMS through increased electronic reporting. Net savings to industry from converting to electronic reporting is estimated to be $1.2 million in the first year and $1.8 million each year thereafter.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. See discussion under Regulatory Flexibility Act.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. See discussion under Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Governments. This rule does not affect local or tribal governments. States that request to perform the delegable function of processing royalty and production reports under 30 CFR part 227 are required to accept multiple forms of electronic media from reporters as specified by MMS. States are compensated for the costs of performing delegable functions up to the amount it would reasonably cost MMS to perform the same function. We conclude that this rule would not impose an unfunded mandate on States.

Private sector. This rule establishes the type of media that reporters in the oil and gas industry must use to report mineral revenues and production to MMS. We estimate net savings to industry from converting to electronic reporting to be $1.2 million in the first year and $1.8 million each year thereafter.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule does not have significant takings implications. This rule does not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not impose any requirements on oil and gas reports submitted to States or limit State policymaking discretion in any way; consequently, a Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

In our April 8, 1998, proposed rule (63 FR 17133), we stated that this rule will reduce burden hours associated with two existing information collections approved by the Office of Management and Budget (OMB):

(1) OMB Control Number 1010–0022, Report of Sales and Royalty Remittance (Form MMS–2014); and

(2) OMB Control Number 1010–0040, Production Accounting and Auditing System (PAAS) Reports (Facility and Measurement Information Form (FMIF), Form MMS–4051; Oil and Gas Operations Report (OGOR), Form MMS–4054; Gas Analysis Report (GAR), Form MMS–4055; Gas Plant Operations Report (GPOR), Form MMS–4056; Monthly Report of Operations (MRO), Form MMS–3160; and Production Allocation Schedule Report (PASR), Form MMS–4058)].

One industry commenter believes that if a free-form layout is allowed using existing spreadsheet software (for example, Microsoft Excel), it would take closer to the 7 minutes per line to complete the Form MMS–2014 (similar to the paper submission) versus 2 minutes for electronic reporting. The commenter believes the 2 minutes per line, the burden estimate we used in our OMB submission, could only be realized

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if such data were systematically loaded on the spreadsheet. The commenter is currently submitting his adjustments on paper.

Our estimate of 2 minutes per line is based on the assumption that a company is already using spreadsheet software or other automated options to submit its Form MMS–2014 or similar State reports. We also offer electronic alternatives to facilitate compatibility with a company's system, including submission of ASCII files on diskette or submission of regular reports on magnetic tape with adjustments on a diskette. We will work with any company to determine the simplest, most efficient alternative for reporting electronically.

On May 30, 1998, OMB approved the reduction in burden which we estimated in the proposed rule for both of the above-referenced information collections (OMB Control Numbers 1010–0022 and 1010–0040). Both collections have an expiration date of August 31, 2001.

As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burdens associated with these information collections. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior, Washington, D.C. 20503. Send copies of your comments to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; e-mail address is RMP.comments@mms.gov.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal Action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

List of Subjects

30 CFR part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 30, 1999.

Sylvia V. Baca,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, MMS amends 30 CFR parts 210 and 216 as follows:

PART 210—FORMS AND REPORTS

1. The authority citation for part 210 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

2. Section 210.10 paragraphs (c)(1), (c)(2), (c)(7), and (d) are revised to read as follows:

§ 210.10 Information collection.

* * * * *

(c) * * *

(1) *MMS–2014*—Used monthly to report lease-related transactions essential for royalty management to determine the correct royalty amount due, reconcile or audit data, and distribute payments to appropriate accounts. Public reporting burden for paper submission is estimated to average 7 minutes to complete each line item on the form, including the time necessary to assemble data, calculate value and royalty, and enter data on the form. Companies reporting electronically may average 2 minutes to complete each line item on the form. Comments submitted relative to this information collection should reference the information collection titled Report of Sales and Royalty Remittance, OMB Control Number 1010–0022.

(2) *MMS–3160*—Used by onshore oil and gas lease operators to report monthly oil and gas production to MMS. Public reporting burden for paper submission is estimated to average 15 minutes per form, including the time necessary to assemble data, ensure that production and disposition numbers are accurate, and enter data on the form. Companies reporting electronically may average 7.5 minutes per month to complete the form. Comments submitted relative to this information collection should reference the information collection titled PAAS Oil and Gas Reports, OMB Control Number 1010–0040.

* * * * *

(7) *MMS–4054*—This three-part form identifies all oil and gas lease production from Federal and Indian lands. MMS uses information from this form to track oil and gas from the point of production to the point of first sale or other disposition. Respondents will generally not use all three parts of the form. Public reporting burden for paper submission is estimated to average 30 minutes per month, including the time necessary to assemble data, ensure that production and disposition numbers are accurate, and enter data on the form. Companies reporting electronically may average 15 minutes per month to complete the form. Comments submitted relative to this information collection should reference the information collection titled PAAS Oil and Gas Reports, OMB Control Number 1010–0040.

* * * * *

(d) *Comments on burden estimates.* Send comments on the accuracy of this burden estimate or suggestions on reducing this burden to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, NW, Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U.S. Department of the Interior, OMB Control Number 1010–_____ (insert appropriate OMB Control Number), Washington, DC 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

3. Sections 210.20–210.22 are added to subpart A to read as follows:

§ 210.20 When is electronic reporting required?

(a) You must submit Forms MMS–2014 and MMS–4054 to MMS electronically. You must begin reporting electronically according to the following timetable unless you qualify for the exceptions to electronic reporting listed in § 210.22:

If you report the following number of lines each month on a required form . . .	Then, you must submit that form electronically beginning . . .
(1) 6 or more	November 1, 1999.
(2) 4–5	November 1, 2000.
(3) 1–3	November 1, 2001.

(b) See § 218.40(c) for the definition of a royalty report line on Form MMS–2014 and § 216.40(c) for the definition of a production report line on Form MMS–4054; and

(c) For purposes of this part, multiple submissions of the same form in one month equals one form.

§ 210.21 How do you report electronically?

(a) You may use any of the following electronic media types, unless MMS instructs you differently:

(1) Electronic Data Interchange (EDI) [1]—The inter-organizational, computer-to-computer exchange of structured information in a standard, machine-processable format;

(2) Electronic Mail (e-mail) [1]—Any communication service used to electronically transmit and store messages and attach files. MMS has three electronic file options:

(i) Template—MMS-provided software that generates blank forms on a personal computer to assist companies in preparing MMS regulatory reports (this option is not available for Form MMS–4054);

(ii) Comma Separated Values (CSV)—A file format where attribute fields are separated by commas; and

(iii) American Standard Code for Information Interchange (ASCII)—A file format of fixed-length records with fixed-length attribute fields;

(3) Reporter-Prepared Diskette (3½ inch)—A data storage medium used to transmit report data using one of the following file formats:

(i) Template;

(ii) CSV; and

(iii) ASCII;

(4) Magnetic or Cartridge Tape—A data storage medium used to transmit report data in an ASCII file format.

(b) MMS prefers that you use the media types in the order presented in paragraph (a) of this section to the extent it is cost effective and practical. As technology changes, MMS will consider other media types and the order of MMS preference may change. Refer to our electronic commerce brochure for the most current reporting options. You can receive a copy of our brochure by calling your MMS representative or by accessing our Internet site at www.rmp.mms.gov.

(c) Before you may begin reporting electronically:

(1) You must submit an electronic sample of your report for MMS approval using the MMS-supplied electronic reporting guidelines;

(2) MMS must notify you that your sample report has been approved;

(3) MMS must assign you a sender identification number and security code for any EDI transmissions; and

(4) MMS must assign you an originating address and compression software password for any e-mail transmissions.

§ 210.22 What are the exceptions to the electronic reporting requirements?

MMS will allow the following grace periods and exceptions to the electronic reporting requirements in § 210.20:

(a) If you become a new MMS reporter after any of the dates you are required to submit electronic reports under § 210.20(a), you have 3 months from the day your first report is due to begin reporting electronically;

(b) If you exceed the maximum number of lines you are allowed to report on paper under § 210.20(a), you have 3 months from the last day of the month in which you exceeded the line limit to begin reporting electronically;

(c) You are not required to report electronically if you report only rent, minimum royalty, or other annual obligations on the Form MMS–2014; and

(d) You are not required to report electronically if you are a small business as defined by the U.S. Small Business Administration, and you have no computer, no resources to purchase a computer or contract with an electronic reporting service, nor access to a computer at a local library or other public facility.

4. Section 210.52 is revised to read as follows:

§ 210.52 Report of sales and royalty remittance.

(a) You must submit a completed Form MMS–2014 (Report of Sales and Royalty Remittance) to MMS with:

(1) All royalty payments; and,

(2) Rents on nonproducing leases, where specified.

(b) When you submit Form MMS–2014 data electronically, you must not submit the form itself.

(c) Completed Forms MMS–2014 for royalty payments are due by the end of the month following the production month.

(d) Where applicable, completed Forms MMS–2014 for rental payments are due no later than the anniversary date of the lease.

(e) This section does not prohibit you from making early payments voluntarily.

PART 216—PRODUCTION ACCOUNTING

5. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

Subpart A—General Provisions

6. Add § 216.11 to subpart A to read as follows:

§ 216.11 Electronic reporting.

You must submit your Oil and Gas Operations Report, Form MMS–4054, in accordance with electronic reporting requirements in 30 CFR part 210.

Subpart B—Oil and Gas, General

7. Section 216.50 is added by redesignating paragraphs (b) through (d) as paragraphs (f) through (h), revising paragraph (a), and adding new paragraphs (b) through (e) to read as follows:

§ 216.50 Monthly report of operations.

(a) You must submit a Monthly Report of Operations, Form MMS–3160, if you operate either an onshore Federal or Indian lease or an onshore federally-approved agreement that contains one or more wells that are not permanently plugged and abandoned. You may submit Form MMS–3160 electronically.

(b) You must submit a Form MMS–3160 for each well for each calendar month, beginning with the month in which you complete drilling, unless you have only test production from a drilling well or MMS tells you in writing to do otherwise.

(c) MMS must receive your completed Form MMS–3160 according to the following table:

If you submit your form . . .	We must receive it by . . .
(1) Electronically	The 25th day of the second month following the month for which you are reporting.
(2) Other than electronically.	The 15th day of the second month following the month for which you are reporting.

(d) You must continue reporting until either:

(1) BLM approves all wells as permanently plugged or abandoned and you dispose of all inventory; or

(2) The lease or agreement is terminated.

(e) You are not required to submit Form MMS–3160 if:

(1) You are authorized to submit an Oil and Gas Operations Report, Form MMS–4054, instead of a Form MMS–3160; or

[1] MMS has developed security measures, authentication procedures, and automated acknowledgments for this electronic media type.

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(2) You operate a gas storage agreement. You must report gas storage agreements to the appropriate BLM office.

* * * * *

8. Section 216.53 is revised to read as follows:

§ 216.53 Oil and gas operations report.

(a) You must file an Oil and Gas Operations Report, Form MMS–4054, if you operate one of the following that contains one or more wells that are not permanently plugged or abandoned:

(1) An OCS lease or federally-approved agreement; or

(2) An onshore Federal or Indian lease or federally-approved agreement for which you elected to report on a Form MMS–4054 instead of a Form MMS–3160.

(b) You must submit a Form MMS–4054 for each well for each calendar month, beginning with the month in which you complete drilling, unless you have only test production from a drilling well or MMS tells you in writing to do otherwise.

(c) MMS must receive your completed Form MMS–4054 according to the following table:

If you submit your form . . .	We must receive it by . . .
(1) Electronically	The 25th day of the second month following the month for which you are reporting.
(2) Other than electronically.	The 15th day of the second month following the month for which you are reporting.

(d) You must continue reporting until either:

(1) BLM or MMS approves all wells as permanently plugged or abandoned and you dispose of all inventory; or

(2) The lease or agreement is terminated.

9. Section 216.55 is revised to read as follows:

§ 216.55 Gas plant operations report.

(a) You must submit a Gas Plant Operations Report, Form MMS–4056, if you operate either:

(1) A gas plant that processes gas originating from an OCS lease or federally-approved agreement before the point of final royalty determination; or

(2) A gas plant that processes gas from an onshore Federal or Indian lease or federally-approved agreement before the point of final royalty determination, and MMS has asked you to submit a Form MMS–4056.

(b) You must submit a Form MMS–4056 for each calendar month beginning with the month gas processing is initiated.

(c) MMS must receive your completed Form MMS–4056 according to the following table:

If you submit your Form MMS–4054 . . .	We must receive your Form MMS–4056 by . . .
(1) Electronically	The 25th day of the second month following the month for which you are reporting.
(2) Other than electronically.	The 15th day of the second month following the month for which you are reporting.

(d) Your report must show 100 percent of the gas.

(e) You are not required to file a Form MMS–4056 if:

(1) Your plant has not processed gas that originated from a Federal onshore, OCS, or Indian lease, or federally-approved agreement before the point of final royalty determination for 6 months; and

(2) You notified MMS in writing within 30 days after the end of the 6-month period.

(f) You must file a Form MMS–4056 when your plant resumes processing gas that originated from a Federal onshore, OCS, or Indian lease, or federally-approved agreement before the point of final royalty determination.

10. Section 216.56 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 216.56 Production allocation schedule report.

* * * * *

(b) You must submit a Production Allocation Schedule Report, Form MMS–4058, for each calendar month beginning with the month in which you first handle production covered by this section.

(c) MMS must receive your Form MMS–4058 according to the following table:

If you submit your Form MMS–4054 . . .	We must receive your Form MMS–4058 by . . .
(1) Electronically	The 25th day of the second month following the month for which you are reporting.
(2) Other than electronically.	The 15th day of the second month following the month for which you are reporting.

[FR Doc. 99–18005 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 306

General Regulations Governing U.S. Securities

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We're publishing a final rule to eliminate the reissuance of bearer securities and to eliminate provisions relating to the handling of definitive securities by Federal Reserve Banks.

DATES: Effective July 15, 1999.

ADDRESSES: You can download this final rule at the following World Wide Web address: <http://www.publicdebt.treas.gov>. You may also inspect and copy this final rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT:

- Maureen Parker, Director, Division of Securities Systems, Office of Securities and Accounting Services, Bureau of the Public Debt, at (304) 480–7761 or <mparker@bpd.treas.gov>.
- Susan J. Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–3688 or <sklimas@bpd.treas.gov>.
- Edward C. Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304)480–5192 or <egronset@bpd.treas.gov>.

SUPPLEMENTARY INFORMATION: This rule eliminates the reissue of bearer securities. We have removed language referring to the reissue of bearer securities in various sections of part 306. We have added specific language:

- to § 306.17 to eliminate the reissue of registered securities into bearer form;
- To § 306.19 to eliminate denominational exchange of bearer securities; and
- To § 306.117 to eliminate the conversion of securities from book-entry form into bearer form.

We stopped offering bearer securities on original issue after December 31, 1982, in response to the Tax Equity and Fiscal Responsibility Act (TEFRA), which prohibited the original issuance of bearer certificates after 1982. TEFRA was designed, in large part, to improve compliance with tax laws and to reduce the opportunity for illegal activities associated with bearer securities. However, we have continued to reissue bearer securities for denominational exchange, for the exchange of registered securities into bearer form, and for the conversion of certain book-entry securities into bearer form.

The number of securities in physical form and related transactions have decreased significantly over the past few years. However, the per transaction costs have increased substantially due to relatively fixed overhead costs. There are currently 17 bond issues remaining that can be held in bearer form. In 1989, we reissued approximately 4,900 bearer certificates; by 1998, we reissued only 66 certificates, for the benefit of only three investors. We reissued 56 of the certificates to two investors who have repeatedly requested bearer certificates over the past several years. Although we reissue only a minimal number of bearer certificates each year, we continue to incur the expense of maintaining an inventory of unissued bearer stock. Clearly, the elimination of bearer reissues impacts only a minimal number of investors. We have conducted a very expensive operation for a few customers a year.

A United States security is a contract between the owner and the United States. The terms of the contract consist of the authorizing statutes, regulations, and applicable circulars. Therefore, any change to the regulations is a change to the terms of the contract. Section 306.127 provides that existing rights that holders of securities have acquired under the regulations may not be limited or restricted. Section 306.128 provides that amendments may be made to the regulations with respect to securities. Thus, the existing contract contemplates that changes can be made to the regulations.

We believe that our core obligations are to make payment on the security on the date due, and to pay interest when due. We are clearly not attempting to avoid these fundamental obligations by eliminating bearer reissuance. The proposed changes are not fundamental, as the liability of the parties is not changed as a result. The owner of a bearer certificate may continue to hold the bearer certificate until maturity and collect interest on the security. The owner of a definitive security wanting reissue into bearer form will have other options available. Both bearer and registered owners who desire an engraved paper certificate can have a security reissued in registered form. Bearer and registered securities can also be converted to book-entry form in TRADES or *TreasuryDirect*. An eligible security withdrawn from TRADES or *TreasuryDirect* may be reissued in registered form.

We have concluded that the elimination of bearer reissues is the type of change that is permissible to make. The elimination of bearer reissues, while not mandated by TEFRA, is consistent with the Congressional intent in its enactment. Given the cost-effectiveness of this new way of doing business and the available alternatives to continue to obtain securities in certificate form, we believe we are justified in making this change.

We have also eliminated any mention of the handling of definitive securities by Federal Reserve Banks. This operation will be consolidated and handled solely by Public Debt at its Parkersburg, WV office for reasons of economy. In addition, § 306.28 has been deleted, since Treasury bonds eligible for payment of estate taxes (so-called Flower Bonds) are no longer offered and the last eligible issue has reached maturity.

While we have written the preamble in plain language, we did not write this rule in plain language, because we are in the process of rewriting part 306 in its entirety to conform to plain language requirements. We welcome any comments or suggestions relating to our plain language rewrite of part 306.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action," as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures and delayed effective date requirements of the Administrative Procedure Act are inapplicable pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR part 306

Bonds, Government Securities, Federal Reserve System, Securities.

For the reasons set forth in the preamble, 31 CFR part 306 is amended as follows:

PART 306—REGULATIONS GOVERNING U.S. SECURITIES

1. The authority citation for part 306 continues to read as follows:

Authority: 31 U.S.C. chapter 31; 5 U.S.C. 301; and 12 U.S.C. 391.

2. Revise § 306.1 to read as follows:

§ 306.1 Official agencies.

The Bureau of the Public Debt of the Department of the Treasury is charged with matters relating to transactions in securities. Correspondence concerning transactions in securities and requests for appropriate forms may be addressed to the Division of Customer Service, Parkersburg, WV 26102.

3. Amend § 306.2 by revising paragraph (c) to read as follows:

§ 306.2 Definitions of words and terms as used in these regulations.

* * * * *

(c) Bureau refers to the Bureau of the Public Debt, Division of Customer Service, Parkersburg, WV 26102.

* * * * *

4. Revise § 306.3 to read as follows:

§ 306.3 Transportation charges and risks in the shipment of securities.

The following guidelines apply to the transportation of reissued securities or securities presented for authorized transactions:

(a) The securities may be presented in person by the owner or the owner's agent.

(b) If securities are not presented in person, shipment of the securities is at the owner's risk and expense.

(c) Reissued securities will be delivered by certified mail or by other means, at the risk of the registered owner and at the expense of the Department.

§ 306.12 [Amended]

5. Amend § 306.12 by removing the comma after the word "Bureau", and by removing the words "a Federal Reserve bank or branch".

6. Amend § 306.15 as follows:

a. Revise paragraph (a) to read as set forth below.

b. Amend the fourth sentence of paragraph (b) by removing the words "or exchange for coupon securities".

c. Amend the fifth sentence of paragraph (b) by removing the words "or exchange for bearer securities".

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d. Revise paragraph (b)(2) to read as set forth below.

§ 306.15 Transfers and exchanges of securities—closed periods.

(a) *General.* The transfer of registered securities should be made by assignment in accordance with subpart F of this part. Transferable registered securities are eligible for denominational exchange. Specific instructions for issuance and delivery of the new securities, signed by the owner or his authorized representative, must accompany the securities presented. (Form PD 3905 or PD 1827, as appropriate, may be used.) Denominational exchanges may be made at any time. Securities presented for transfer must be received by the Bureau not less than 1 full month before the date on which the securities mature or become redeemable pursuant to a call for redemption before maturity. Any security so presented which is received too late to comply with this provision will be accepted for payment only.

* * * * *

(2) Payment of principal will be made to the assignee under a proper assignment of the securities.

7. Revise § 306.17 to read as follows:

§ 306.17 Exchanges of registered securities for coupon securities.

Exchanges of registered securities for bearer securities are not permitted.

8. Revise § 306.19 to read as follows:

§ 306.19 Denominational exchanges of coupon securities.

Denominational exchanges of bearer securities are not permitted.

9. Amend § 306.23 as follows:

a. Revise paragraph (c) to read as set forth below.

b. Amend paragraph (g) in the heading by removing the word "definitive" and adding in its place the word "registered", and by removing the words "or bearer" in the second sentence.

§ 306.23 Securities eligible to be held in the TreasuryDirect Book-entry Securities System.

* * * * *

(c) *Procedure for conversion of bearer security.* To convert a bearer security to TREASURY DIRECT, the owner must present it to the Department of the Treasury, accompanied by a request for conversion, which must include the information needed for establishing a *TREASURY DIRECT* account, unless such account has been previously established, and is identified by its number in the request.

* * * * *

§ 306.24 [Amended]

10. Amend § 306.24 by removing the word "definitive" and adding in its place the word "registered" in the first sentence.

11. Amend § 306.25 as follows:

a. Revise the third sentence of paragraph (a) to read as set forth below.

b. Remove and reserve footnote 4 in paragraph (a).

§ 306.25 Presentation and surrender.

(a) * * * Registered and bearer securities should be presented and surrendered for redemption to the Bureau. * * *

* * * * *

12. Revise § 306.26 to read as follows:

§ 306.26 Redemption of registered securities at maturity, upon prior call, or for prerefunding or advance refunding.

Registered securities presented and surrendered for redemption at maturity or pursuant to a call for redemption before maturity need not be assigned, unless the owner desires that payment be made to some other person, in which case assignments should be made to "The Secretary of the Treasury for redemption for the account of (inserting name and address of person to whom payment is to be made). Specific instructions for the issuance and delivery of the redemption check, signed by the owner or his authorized representative, must accompany the securities, unless included in the assignment. (Form PD 3905 may be used.) Payment of the principal will be made by check drawn on the United States Treasury to the order of the persons entitled and mailed in accordance with the instructions received. Securities presented for prerefunding or advance refunding should be assigned as provided in the prerefunding or advance refunding offer.

13. Amend § 306.27 by revising the last sentence to read as follows:

§ 306.27 Redemption of bearer securities at maturity, upon prior call, or for advance refunding or prerefunding.

* * * Under appropriate circumstances, payment to a financial institution for detached past due coupons may be made by crediting the amount of the proceeds to the account maintained by the financial institution at the Federal Reserve bank of its district.

§ 306.28 [Removed]

14. Remove § 306.28.

15. Amend § 306.37 by revising paragraph (d) to read as follows:

§ 306.37 Interest on registered securities.

* * * * *

(d) *Nonreceipt, loss, theft, or destruction of interest checks.* If an interest check is not received within a reasonable period after an interest payment date, or if a check is lost, stolen, or destroyed after receipt, notification should be sent to the Bureau of the Public Debt, Division of Customer Service, Parkersburg, WV 26102. Notification should include the name and address of the owner, his taxpayer identifying number, and the serial number, denomination, and title of the security upon which the interest was payable. If the check is subsequently received or recovered, the Bureau should be notified.

16. Amend § 306.38 by revising the second sentence to read as follows:

§ 306.38 Interest on bearer securities.

* * * Such coupons are payable at participating Federal Reserve banks or by the Bureau. * * *

§ 306.40 [Amended]

17. Amend § 306.40 by adding a period after the word "Bureau" in the second sentence and by removing the words "a Federal Reserve bank or Branch".

§ 306.41 [Amended]

18. Amend § 306.41 by removing the words "to the Secretary of the Treasury for exchange for coupon securities,".

§ 306.43 [Amended]

19. Amend § 306.43 by removing the words "or a Federal Reserve bank or branch" from the third sentence.

§ 306.56 [Amended]

20. Amend § 306.56 by removing the words "or exchanged for coupon bonds" from the first sentence of paragraph (a).

21. Amend § 306.56 by removing the words "bearer securities or" from the last sentence of paragraph (b).

§ 306.57 [Amended]

22. Amend § 306.57 by removing the words "or exchange for bearer securities," from paragraph (c)(1).

23. Amend § 306.117 as follows:

a. Revise the heading to read as set forth below.

b. Remove the words "A Reserve Bank" from paragraph (b) and add the words "Public Debt" in their place, and remove the word "definitive" and add in its place the word "registered".

c. Revise paragraph (d) to read as set forth below.

§ 306.117 Withdrawal of eligible book-entry Treasury securities for conversion to registered form.

* * * * *

(d) Treasury securities which are to be delivered upon withdrawal may be issued in registered form, to the extent permitted by the applicable offering circular.

Dated: June 28, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 99–18060 Filed 7–14–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 989

RIN: 0701–AA56

Environmental Impact Analysis Process (EIAP)

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has revised its instruction to improve the Air Force process for compliance with the National Environmental Policy Act (NEPA) and Executive Order (E.O.) 12114, *Environmental Effects Abroad of Major Federal Actions.* The revisions integrate environmental analysis and align environmental document approval levels with the Air Force decision-making process. It also expands Air Force environmental participants and responsibilities of the Environmental Planning Function (EPF) and the proponent of an action.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jack C. Bush (HQ USAF/ILEVP), 1260 Air Force Pentagon, Washington, DC 20330–1260, (703) 604–0553.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the *Regulatory Flexibility Act,* 5 U.S.C. 601–612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use.

Responses to Proposed Rule 32 CFR Part 989

Discussion of Major Issues

Comment: Commenters recommend that paragraph (r) in the Discussion of Major Issues that §§ 989.18(b), 989.19(c)(3), and § A2.2.8 of Attachment B[1] be changed to refer to disproportionately high and adverse human health or environmental effects on "minority or low-income populations."

Response: Accepted. This change is necessary to be consistent with E.O. 12898 on environmental justice. A population can be low income and not minority and visa versa.

1. Responsibilities

Comment: Commenters state that the Air Force needed to include a special provision regarding government-to-government relations with federally recognized Indian tribes, consistent with the special role for tribes under the Council on Environmental Quality (CEQ) regulations, in order to assess the impacts of federal actions on tribal resources.

Response: Section 989.3(c)(4) includes Tribal governments as key participants in the Air Force environmental impact analysis process. Additionally, § 989.1(b) states that the CEQ regulations and this proposed document must be used together in order to comply with NEPA. Individually and in combination with the CEQ regulations, this final rule provides for proper tribal involvement.

2. Requests From Non-Air Force Agencies or Entities

Comment: Commenters recommend clarifying the use of the term "proponent," in particular "proponents" that are non-Air Force entities, in the final rule.

Response: The term "proponent" throughout the document, as defined in Attachment 1, refers to the office, unit, or activity that proposes to initiate an action. The "proponent" may not always be an Air Force organization. When an action affects Air Force properties or programs, the "proponent" organizations must comply with § 989.7. However, we changed references from "proponent" to "Air Force" or the appropriate Air Force organization in order to clarify §§ 989.8(b), 989.14(l), and § 989.19(b).

Comment: Commenters recommend adding the following statement: "For EAs the Air Force must make its own evaluation of the environmental issues and take responsibility for the scope and content of the Environmental Assessment."

Response: Accepted. Section 989.7(b) allows the Air Force to ask the requester to provide an analysis of the environmental impacts. However, as stated in § 989.7(c), the Air Force must independently evaluate and approve the scope and content of the analyses before using the analyses to fulfill environmental impact analysis process requirements.

Comment: Commenters recommend adding the following statement related to requests from non-Air Force agencies or entities: "EISs must be prepared directly by the Air Force or a contractor selected by the Air Force or where appropriate under 40 CFR 1501.6(b), a cooperating agency."

Response: Accepted. Section 989.7(b) states an EA or EIS can be prepared by either the Air Force or a contractor that is selected and supervised by the Air Force.

3. Analysis of Alternatives

Comment: Commenters recommend adding the word "explicitly" to the § 989.8(c) to change the phrase to read: "Except in those rare instances where explicitly excused by law . . ."

Response: The language in § 989.8(c), as currently stated, sufficiently highlights the legally narrow exceptions where the environmental impacts of no-action alternatives are not considered.

4. Cooperation and Adoption

Comment: Commenters recommend that § 989.9 should include a requirement for the Air Force to advocate for serving as a cooperating agency for those environmental documents that it intends to later adopt. Otherwise, such documents must follow appropriate CEQ guidelines for recirculating the documents.

Response: The language in § 989.9, as currently stated, sufficiently addresses the requirement to serve as a cooperating agency or to otherwise follow the appropriate CEQ guidelines for environmental documents that the Air Force intends to later adopt.

5. Categorical Exclusion

Comment: Commenters note that § 989.13(e) references § 989.28. Recommend the reference be made to § 989.30.

Response: Accepted.

Comment: Commenters contend that it is unclear how the Air Force is determining no significance in terms of categorical exclusions, and request that the Air Force define existing environment.

Response: The Air Force decided not to define the phrase as requested. The Air Force agrees that the term "existing environment" may have different

[1] **Note:** Attachments 1, 2, and 3 in the proposed rule published December 24, 1997 (62 FR 67305) have been redesignated as Appendices A, B, and C to conform to **Federal Register** style.

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meanings in different circumstances. The term may, for example, sometimes include expected future conditions as well as existing conditions. The Air Force prefers that those performing the analysis apply judgment about this on a case-by-case basis, taking into account the nature and context of the proposed action. Further, the purpose of § 989.13(b) is to identify the various characteristics of actions that usually do not require an EA or an EIS. Section 989.13(b) is intended to identify those actions that usually do not warrant further environmental analysis because they do not meaningfully change the status quo. It would undercut the intent of the paragraph were "existing environment" here defined to include something other than the status quo. Nor is it necessary to do so to avoid overlooking potentially significant impacts, since Appendix B, § A2.2 already addresses those extraordinary situations where a normally excluded action may have a significant environmental effect. For similar reasons, the Air Force also has decided not to change the wording of §§ A2.3.7 and A2.3.11.

6. Environmental Assessment

Comment: Commenters recommend the phrase "no decision" in § 989.14(a) be clarified.

Response: We agree that the phrase "no decision" should be replaced with "no action." We updated § 989.14(a) accordingly.

Comment: Commenters indicate that many Native American interests may not be adequately represented by working only with Tribal governments. They recommend broadening involvement of Native Americans in the EIAP, where appropriate, to consider all Native Americans.

Response: Section 989.14(l) states the Air Force proponent will involve other federal agencies, state, Tribal, and local governments, and the public in the preparation of the EAs. As written, the final rule considers input from Tribal governments and the public as a whole in the EIAP. This comprehensive engagement provides for broad involvement of all Native Americans, through both Tribal governments and individual Native Americans.

Comment: Commenters state that the document uses the word mitigation, but Appendix A does not include a definition for mitigation. They recommend clarification of the term mitigation, make the definition explicit that if it is a mitigated FONSI, that significant impacts were noted but reduce to the insignificant level.

Response: We adopt the definition of the term mitigation from 40 CFR 1508.20. As defined, mitigation includes avoidance, minimization, restoration, preservation, and compensation. Additionally, the EA and unsigned FONSI of an action that is mitigated to insignificance are made available for public review for at least 30 days before FONSI approval, in accordance with § 989.15(e)(2)(iv).

7. Finding of No Significant Impact

Comment: Commenters note § 989.15(5)(d) references § 989.23. Recommend the reference be made to § 989.24.

Response: Accepted.

Comment: Commenters recommend adding the following phrase in § 989.15(e)(2), "and appropriate resource agencies be notified."

Response: The Air Force involves resource agencies as a standard procedure from the beginning and throughout the entire EIAP process. Therefore, we read § 989.15(e)(2) to be appropriate as written.

8. Environmental Impact Statement

Comment: Commenters note that § 989.16(b)(1) states that, if there are public land withdrawals of over 5,000 acres, an EIS is normally required. They recommend adding the following, "unless, of course, if there is significance for under 5,000, then an EIS would be required."

Response: Section 989.14(a) states that every EA must lead to either a FONSI, a decision to prepare an EIS, or no action on the proposal. Therefore, an EA would include a FONSI, a decision to prepare EIS, or a decision to take no action on the proposal.

9. Record of Decision (ROD)

Comment: Commenters recommend in § 989.21 that the Air Force should note the CEQ requirement that no ROD can be issued on a proposed action until the later of the following dates: (1) 90 days after publication of the DEIS; or (2) 30 days after publication of the FEIS.

Response: Accepted.

10. Classified Actions (40 CFR 1507.3(c))

Comment: Regarding § 989.26, Classified Actions, commenters recommend that the Air Force should make the EPA guidance on reviewing classified NEPA documents available to appropriate Air Force officials and staff to ensure appropriate EPA staff are included in the classified review process.

Response: We appreciate this recommendation and will note its merit in ensuring Air Force officials are aware of and follow appropriate EPA guidance.

11. Air Quality

Comment: Commenters suggest that the Air Force may want to allow more flexibility to air quality (§ 989.30) conformity analysis to either be developed parallel with EIAP, or prepared later when the alternative has been selected.

Response: Air conformity analysis has been a critical component of the EIAP and is often a significant constraint in Air Force planning. Therefore, air conformity must remain an integral component of the EIAP—not as a separate, parallel, or subsequent process.

12. Noise

Comment: Commenters recommend additional or alternative analysis for noise effects for the special nature of the national parks system and their special legislative mandates.

Response: The Air Force currently includes analysis on the impacts of noise during the Environmental Impact Analysis Process. The Air Force will continue to work with other agencies to address analysis of specific situations and potential noise impacts in general.

13. Environmental Justice

Comment: Commenters recommended using the phrases "minority populations and low-income populations" or "minority populations or low-income populations" to be consistent with E.O. 12898 on environmental justice.

Response: Accepted.

14. Appendix B—Categorical Exclusions

Comment: Commenters recommend deleting the last three words of § A2.1: ". . . and so on."

Response: Accepted.

Comment: Commenters recommend the Air Force clarify § A2.3.18 to account for instances where the administrative transfer may require a NEPA document.

Response: As the commenters indicate, some actions, normally categorically excluded, may have a significant environmental impact that may generate a requirement for further environmental analysis, per §§ A2.1 and A2.2. As written, the final rule provides appropriate guidance for actions, normally categorically excluded, that may have significant impacts in actuality. The responsibility for performing additional analysis is incumbent upon the environmental planning function, which must consider each action on a case by case basis.

Comment: Commenters recommend the Air Force add a statement about hazardous waste disposal activities, and clarify how the Air Force intends to deal with transportation issues associated with hazardous materials and wastes.

Response: Consideration of hazardous waste disposal sites are important and require an EA. However, a special provision for discussion of hazardous waste disposal activities is not a topic that is appropriate for consideration in this final rule. Per §§ A2.1, A2.2, and § A2.3.28, transportation issues associated with hazardous materials typically qualify for categorical exclusion. However, actions that may have a significant environmental impact may require further environmental analysis. As written, the final rule provides for appropriate discussion of transportation issues associated with hazardous materials and wastes.

Comment: Commenters recommend the Air Force request written concurrence from the superintendent of any affected National Park Service units in determining "minimal adverse effect on environmental quality," regarding categorical exclusions.

Response: Per §§ A2.1 and A2.2, actions that qualify for categorical exclusions must still comply with all other related environmental requirements, such as regulatory agency review of plans. Actions, normally categorically excluded, may have a significant environmental impact that may generate a requirement for further environmental analysis. As written, the final rule provides for appropriate involvement of affected agency officials, such as a superintendent of a National Park Service unit.

Comment: Commenters indicate in §§ A2.3.35 and A2.3.36 that it cannot always be assumed that flights at 3,000 feet or higher above ground level will have insignificant impacts on federal lands. This is especially true if "above ground level" is interpreted literally, rather than "above the highest rims of canyons or valleys" as in FAA Advisory Circular 91-36C, and if it does not include a horizontal separation in addition to the vertical separation. Recommend adding, "except where Federal lands are involved, unless the Federal land manager agrees in writing that a categorical exclusion is appropriate."

Response: Per §§ A2.1 and A2.2, actions that qualify for categorical exclusions must still comply with all other related environmental requirements, such as regulatory agency review of plans. Actions, normally categorically excluded, may have a significant environmental impact that may generate a requirement for further environmental analysis. As written, the final rule provides for appropriate involvement of affected agency officials, such as Federal land managers.

List of Subjects in 32 CFR Part 989

Environmental Protection, Environmental Impact Statements.

Therefore 32 CFR Part 989 is revised to read as follows:

PART 989—ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)

Sec.

989.1 Purpose.
989.2 Concept.
989.3 Responsibilities.
989.4 Initial considerations.
989.5 Organizational relationships.
989.6 Budgeting and funding.
989.7 Requests from Non-Air Force agencies or entities.
989.8 Analysis of alternatives.
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989.10 Tiering.
989.11 Combining EIAP with other documentation.
989.12 AF Form 813, Request for Environmental Impact Analysis.
989.13 Categorical exclusion.
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989.15 Finding of no significant impact.
989.16 Environmental impact statement.
989.17 Notice of intent.
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989.19 Draft EIS.
989.20 Final EIS.
989.21 Record of decision (ROD).
989.22 Mitigation.
989.23 Contractor prepared documents.
989.24 Public notification.
989.25 Base closure and realignment.
989.26 Classified actions (40 CFR 1507.3(c)).
989.27 Occupational safety and health.
989.28 Airspace and range proposals.
989.29 Force structure and unit move proposals.
989.30 Air quality.
989.31 Pollution prevention.
989.32 Noise.
989.33 Environmental justice.
989.34 Special and emergency procedures.
989.35 Reporting requirements.
989.36 Waivers.
989.37 Procedures for analysis abroad.
989.38 Requirements for analysis abroad.
Appendix A to Part 989—Glossary of References, Abbreviations, Acronyms, and Terms.
Appendix B to Part 989—Categorical Exclusions.
Appendix C to Part 989—Procedures for Holding Public Hearings on Draft Environmental Impact Statements (EIS).

Authority: 10 U.S.C. 8013.

§ 989.1 Purpose.

(a) This part implements the Air Force Environmental Impact Analysis Process (EIAP) and provides procedures for environmental impact analysis both within the United States and abroad. Because the authority for, and rules governing, each aspect of the EIAP differ depending on whether the action takes place in the United States or outside the United States, this part provides largely separate procedures for each type of action. Consequently, the main body of this part deals primarily with environmental impact analysis under the authority of the National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190, 42 United States Code (U.S.C.) Sections 4321 through 4347), while the primary procedures for environmental impact analysis of actions outside the United States in accordance with Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, are contained in §§ 989.32 and 989.33.

(b) The procedures in this part are essential to achieve and maintain compliance with NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR Parts 1500 through 1508, referred to as the "CEQ Regulations"). Further requirements are contained in Department of Defense Directive (DoDD) 4715.1, Environmental Security, Department of Defense Instruction (DoDI) 4715.9, Environmental Planning and Analysis, DoDD 5000.1, Defense Acquisition, and Department of Defense Regulation 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.[1] To comply with NEPA and complete the EIAP, the CEQ Regulations and this part must be used together.

(c) Air Force activities abroad will comply with this part, E. O. 12114, and 32 CFR Part 187 (DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31, 1979). To comply with E.O. 12114 and complete the EIAP, the Executive Order, 32 CFR Part 187, and this part must be used together.

(d) Appendix A is a glossary of references, abbreviations, acronyms, and terms. Refer to 40 CFR 1508 for definitions of other terminology used in this part.

§ 989.2 Concept.

(a) This part provides a framework on how to comply with NEPA and E.O. 12114 according to Air Force Policy Directive (AFPD) 32-70[2]. The Air Force specific procedures and requirements in

[1] Copies of the publications are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 989.1.

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this part are intended to be used by Air Force decision-makers to fully comply with NEPA and the EIAP.

(b) Major commands (MAJCOM) provide additional implementing guidance in their supplemental publications to this part. MAJCOM supplements must identify the specific offices that have implementation responsibility and include any guidance needed to comply with this part. All references to MAJCOMs in this part include the Air National Guard Readiness Center (ANGRC) and other agencies designated as "MAJCOM equivalent" by HQ USAF.

§ 989.3 Responsibilities.

(a) *Office of the Secretary of the Air Force:*

(1) The Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health (SAF/MIQ):

(i) Develops environmental planning policy and provides oversight of the EIAP program.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EAs) and all Environmental Impact Statements (EISs) prepared for Air Force actions, whether classified or unclassified, except as specified in paragraph (c)(3) of this section.

(iii) Is the liaison on environmental matters with Federal agencies and national level public interest organizations.

(iv) Ensures appropriate offices in the Office of the Secretary of Defense are kept informed on EIAP matters of Defense-wide interest.

(2) The General Counsel (SAF/GC). Provides final legal advice to SAF/MI, HQ USAF, and HQ USAF Environment, Safety and Occupational Health Committee (ESOHC) on EIAP issues.

(3) *Office of Legislative Liaison (SAF/LL):*

(i) Assists with narrowing and defining key issues by arranging consultations with congressional delegations on potentially sensitive actions.

(ii) Distributes draft and final EISs to congressional delegations.

(iii) Reviews and provides the Office of the Secretary of Defense (OSD) with analyses of the Air Force position on proposed and enrolled legislation and executive department testimony dealing with EIAP issues.

(4) *Office of Public Affairs (SAF/PA):*

(i) Reviews and clears environmental documents in accordance with Air Force Instruction (AFI) 35–205, Air Force Security and Policy Review[3] prior to public release.

(ii) Assists the environmental planning function and the Air Force Legal Services Agency, Trial Judiciary Division (AFLSA/JAJT), in planning and conducting public scoping meetings and hearings.

(iii) Ensures that public affairs aspects of all EIAP actions are conducted in accordance with this part and AFI 35–202, Environmental Community Involvement.[4]

(iv) The National Guard Bureau, Office of Public Affairs (NGB-PA), will assume the responsibilities of SAF/PA for the EIAP involving the National Guard Bureau, Air Directorate.

(b) Headquarters U.S. Air Force (HQ USAF). The Civil Engineer (HQ USAF/ILE) is responsible for execution of the EIAP program. The National Guard Bureau Air Directorate (NGB–CF) oversees the EIAP for Air National Guard actions.

(c) MAJCOMs, the Air National Guard, Field Operating Agencies (FOAs), and Single Manager Programs. These organizations establish procedures that comply with this part wherever they are the host unit for preparing and using required environmental documentation in making decisions about proposed actions and programs within their commands or areas of responsibility.

(1) Air Force Center for Environmental Excellence (AFCEE). The AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC) is available to provide technical assistance and has the capability to provide contract support to the proponent, EPF, and MAJCOMs in developing EIAP documents.

(2) Air Force Regional Environmental Offices (REOs). REOs review non-Air Force environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper REO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The REO:

(i) Notifies the proponent, after receipt, that the REO is the single point of contact for the Air Force review of the document.

(ii) Requests comments from potentially affected installations, MAJCOMs, the ANG, and HQ USAF, as appropriate.

(iii) Consolidates comments into the Air Force official response and submits the final response to the proponent.

(iv) Provides to HQ USAF/ILEVP and the appropriate MAJCOMs and installations a copy of the final response and a complete set of all review comments.

(3) Single Manager Acquisition Programs (system-related NEPA). The proponent Single Manager (i.e., System Program Director, Materiel Group Managers, and Product Group Managers) for all programs, regardless of acquisition category, shall comply with DoD Regulation 5000.2–R. SAF/AQR, as the Air Force Acquisition Executive Office, is the final approval authority for all system-related NEPA documents. SAF/AQR is responsible for accomplishing appropriate Headquarters EPC/ESOHC review. The Single Manager will obtain appropriate Product Center EPC approval prior to forwarding necessary EIAP documents (i.e., Notices of Intent (NOIs) and preliminary draft and final EAs and EISs) to SAF/AQR. The Single Manager will allow for concurrent review of EIAP documents by HQ AFMC/CEV and the Operational Command (HQ ACC, HQ AMC, HQ AFSPC, etc.) The Single Manager is responsible for budgeting and funding EIAP efforts, including EIAP for research, development, testing, and evaluation activities.

(4) *Key Air Force environmental participants.* The EIAP must be approached as an integrated team effort including key participants within the Air Force and also involving outside federal agencies, state, Tribal, and local governments, interested outside parties, citizens groups, and the general public. Key Air Force participants may include the following functional areas, as well as others:

Proponent
Civil Engineers/Environmental Planning Function
Staff Judge Advocate
Public Affairs
Medical Service (Bioenvironmental Engineer)
Safety Office
Range and Airspace Managers
Bases and Units
Plans and Programs
Logistics
Personnel
Legislative Liaison

(d) *Proponent.* Each office, unit, single manager, or activity at any level that initiates Air Force actions is responsible for:

(1) Complying with the EIAP and shall ensure integration of the EIAP during the initial planning stages of proposed actions so that planning and decisions reflect environmental values, delays are avoided later in the process, and potential conflicts are precluded.

(2) Notifying the EPF of a pending action and completing Section I of AF Form 813, Request for Environmental

[3] See footnote 1 to § 989.1.

[4] See footnote 1 to § 989.1.

Impact Analysis. Prepare the Description of Proposed Action and Alternatives (DOPAA) through an interdisciplinary team approach including the EPF and other key Air Force participants.

(3) Identifying key decision points and coordinating with the EPF on EIAP phasing to ensure that environmental documents are available to the decision-maker before the final decision is made and ensuring that, until the EIAP is complete, resources are not committed prejudicing the selection of alternatives nor actions taken having an adverse environmental impact or limiting the choice of reasonable alternatives.

(4) Determining, with the EPF, as early as possible whether to prepare an EIS. The proponent and the EPF will conduct an early internal scoping process as part of the EIAP process. The internal scoping process should involve key Air Force environmental participants (see § 989.3(c)(4)) and other Air Force offices as needed and conclude with preparation of a DOPAA. For complex or detailed EAs or EISs, an outside facilitator trained in EIAP may be used to focus and guide the discussion. Department of the Air Force personnel, rather than contractors, should generally be used to prepare the DOPAA.

(5) Presenting the DOPAA to the EPC for review and comment.

(6) Coordinating with the EPF, Public Affairs, and Staff Judge Advocate prior to organizing public or interagency meetings which deal with EIAP elements of a proposed action and involving persons or agencies outside the Air Force.

(7) Subsequent to the decision to prepare an EIS, assisting the EPF and Public Affairs Office in preparing a draft NOI to prepare an EIS. All NOIs must be forwarded through the MAJCOM EPF to HQ USAF/ILEV for review and publication in the **Federal Register**. Publication in the **Federal Register** is accomplished in accordance with AFI 37–120, **Federal Register**.[5] (See § 989.17.)

(8) Ensuring that proposed actions are implemented as described in the final EIAP decision documents.

(e) *Environmental Planning Function (EPF).* At every level of command, the EPF is one of the key Air Force participants responsible for the EIAP. The EPF can be the environmental flight within a civil engineer squadron, a separate environmental management office at an installation, the CEV at MAJCOMs, or an equivalent environmental function located with a program office. The EPF:

(1) Supports the EIAP by bringing key participants in at the beginning of a proposed action and involving them throughout the EIAP. Key participants play an important role in defining and focusing key issues at the initial stage.

(2) At the request of the proponent, prepares environmental documents using an interdisciplinary approach, or obtains technical assistance through Air Force channels or contract support. Assists the proponent in obtaining review of environmental documents.

(3) Assists the proponent in preparing a DOPAA and actively supports the proponent during all phases of the EIAP.

(4) Evaluates proposed actions and completes Sections II and III of AF Form 813, subsequent to submission by the proponent and determines whether a Categorical Exclusion (CATEX) applies. The responsible EPF member signs the AF Form 813 certification.

(5) Identifies and documents, with technical advice from the Bioenvironmental Engineer and other staff members, environmental quality standards that relate to the action under evaluation.

(6) Supports the proponent in preparing environmental documents, or obtains technical assistance through Air Force channels or contract support and adopts the documents as official Air Force papers when completed and approved.

(7) Ensures the EIAP is conducted on base-level and MAJCOM-level plans, including contingency plans for the training, movement, and operations of Air Force personnel and equipment.

(8) Prepares the NOI to prepare an EIS with assistance from the proponent and the Public Affairs Office.

(9) Prepares applicable portions of the Certificate of Compliance for each military construction project according to AFI 32–1021, Planning and Programming of Facility Construction Projects.[6]

(10) Submits one hard copy and one electronic copy of the final EA/Finding of No Significant Impact (FONSI) and EIS/Record of Decision (ROD) to the Defense Technical Information Center.

(f) *Environmental Protection Committee (EPC).* The EPC helps commanders assess, review, and approve EIAP documents in accordance with AFI 32–7005, Environmental Protection Committees.[7]

(g) *Staff Judge Advocate (SJA).* The Staff Judge Advocate:

(1) Advises the proponent, EPF, and EPC on CATEX determinations and the legal sufficiency of environmental documents.

(2) Advises the EPF during the scoping process of issues that should be addressed in EISs and on procedures for the conduct of public hearings.

(3) Coordinates the appointment of the independent hearing officer with AFLSA/JAJT and provides support for the hearing officer in cases of public hearings on the draft EIS. The proponent pays administrative and Temporary Duty (TDY) costs. The hearing officer presides at hearings and makes final decisions regarding hearing procedures.

(4) Promptly refers all matters causing or likely to cause substantial public controversy or litigation through channels to AFLSA/JACE (or NGB–JA).

(h) *Public Affairs Officer.* This officer:

(1) Advises the EPF, the EPC, and the proponent on public affairs activities on proposed actions and reviews environmental documents for public involvement issues.

(2) Advises the EPF of issues and competing interests that should be addressed in the EIS or EA.

(3) Assists in preparation of and attends public meetings or media sessions on environmental issues.

(4) Prepares, coordinates, and distributes news releases and other public information materials related to the proposal and associated EIAP documents.

(5) Notifies the media (television, radio, newspaper) and purchases advertisements when newspapers will not run notices free of charge. The EPF will fund the required advertisements.

(6) Determines and ensures Security Review requirements are met for all information proposed for public release.

(7) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35–202.[8]

(i) *Medical Service.* The Medical Service, represented by the Bioenvironmental Engineer, provides technical assistance to EPFs in the areas of environmental health standards, environmental effects, and environmental monitoring capabilities. The Air Force Armstrong Laboratory, Occupational and Environmental Health Directorate, provides additional technical support.

(j) *Safety Office.* The Safety Office provides technical review and assistance to EPFs to ensure consideration of safety standards and requirements.

[5] See footnote 1 to § 989.1.

[6] See footnote 1 to § 989.1.

[7] See footnote 1 to § 989.1.

[8] See footnote 1 to § 989.1.

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§ 989.4 Initial considerations.

Air Force personnel will:

(a) Consider and document environmental effects of proposed Air Force actions through AF Forms 813, EAs, FONSIs, EISs, RODs, and documents prepared according to E.O. 12114.

(b) Evaluate proposed actions for possible CATEX from environmental impact analysis (appendix B).

(c) Make environmental documents, comments, and responses, including those of other federal agencies, state, Tribal, and local governments, and the public, part of the record available for review and use at all levels of decisionmaking.

(d) Review the specific alternatives analyzed in the EIAP when evaluating the proposal prior to decisionmaking.

(e) Ensure that alternatives to be considered by the decisionmaker are both reasonable and within the range of alternatives analyzed in the environmental documents.

(f) Pursue the objective of furthering foreign policy and national security interests while at the same time considering important environmental factors.

(g) Consider the environmental effects of actions that affect the global commons.

(h) Determine whether any foreign government should be informed of the availability of environmental documents. Formal arrangements with foreign governments concerning environmental matters and communications with foreign governments concerning environmental agreements will be coordinated with the Department of State by the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health (SAF/MIQ) through the Deputy Under Secretary of Defense (Environmental Security). This coordination requirement does not apply to informal working-level communications and arrangements.

§ 989.5 Organizational relationships.

(a) The host EPF manages the EIAP using an interdisciplinary team approach. This is especially important for tenant-proposed actions, because the host command is responsible for the EIAP for actions related to the host command's installations.

(b) The host command prepares environmental documents internally or directs the host base to prepare the environmental documents. Environmental document preparation may be by contract (requiring the tenant to fund the EIAP), by the tenant unit, or by the host. Regardless of the preparation method, the host command will ensure the required environmental analysis is accomplished before a decision is made on the proposal and an action is undertaken. Support agreements should provide specific procedures to ensure host oversight of tenant compliance, tenant funding or reimbursement of host EIAP costs, and tenant compliance with the EIAP regardless of the tenant not being an Air Force organization.

(c) For aircraft beddown and unit realignment actions, program elements are identified in the Program Objective Memorandum. Subsequent Program Change Requests must include AF Form 813.

(d) To ensure timely initiation of the EIAP, SAF/AQ forwards information copies of all Mission Need Statements and System Operational Requirements Documents to SAF/MIQ, HQ USAF/ILEV (or ANGRC/CEV), the Air Force Medical Operations Agency, Aerospace Medicine Office (AFMOA/SG), and the affected MAJCOM EPFs.

(e) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses.

§ 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. Each year, the EPF programs for anticipated out-year EIAP workloads based on inputs from command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding.

§ 989.7 Requests from Non-Air Force agencies or entities.

(a) Non-Air Force agencies or entities may request the Air Force to undertake an action, such as issuing a permit or outleasing Air Force property, that may primarily benefit the requester or an agency other than the Air Force. The EPF and other Air Force staff elements must identify such requests and coordinate with the proponent of the non-Air Force proposal, as well as with concerned state, Tribal, and local governments.

(b) Air Force decisions on such proposals must take into consideration the potential environmental impacts of the applicant's proposed activity (as described in an Air Force environmental document), insofar as the proposed action involves Air Force property or programs, or requires Air Force approval.

(c) The Air Force may require the requester to prepare, at the requester's expense, an analysis of environmental impacts (40 CFR 1506.5), or the requester may be required to pay for an EA or EIS to be prepared by a contractor selected and supervised by the Air Force. The EPF may permit requesters to submit draft EAs for their proposed actions, except for actions described in § 989.16(a) and (b), or for actions the EPF has reason to believe will ultimately require an EIS. For EISs, the EPF has the responsibility to prepare the environmental document, although responsibility for funding remains with the requester. The fact that the requester has prepared environmental documents at its own expense does not commit the Air Force to allow or undertake the proposed action or its alternatives. The requester is not entitled to any preference over other potential parties with whom the Air Force might contract or make similar arrangements.

(d) In no event is the requester who prepares or funds an environmental analysis entitled to reimbursement from the Air Force. When requesters prepare environmental documents outside the Air Force, the Air Force must independently evaluate and approve the scope and content of the environmental analyses before using the analyses to fulfill EIAP requirements. Any outside environmental analysis must evaluate reasonable alternatives as defined in § 989.8.

§ 989.8 Analysis of alternatives.

(a) The Air Force must analyze reasonable alternatives to the proposed action and the "no action" alternative in all EAs and EISs, as fully as the proposed action alternative.

(b) "Reasonable" alternatives are those that meet the underlying purpose and need for the proposed action and that would cause a reasonable person to inquire further before choosing a particular course of action. Reasonable alternatives are not limited to those directly within the power of the Air Force to implement. They may involve another government agency or military service to assist in the project or even to become the lead agency. The Air Force must also consider reasonable alternatives raised during the scoping process (see § 989.18) or suggested by others, as well as combinations of alternatives. The Air Force need not analyze highly speculative alternatives, such as those requiring a major, unlikely change in law or governmental policy. If the Air Force identifies a large number of reasonable alternatives, it may limit alternatives selected for detailed environmental analysis to a reasonable range or to a reasonable number of examples covering the full spectrum of alternatives.

(c) The Air Force may expressly eliminate alternatives from detailed analysis, based on reasonable selection standards (for example, operational, technical, or environmental standards suitable to a particular project). In consultation with the EPF, the appropriate Air Force organization may develop written selection standards to firmly establish what is a "reasonable" alternative for a particular project, but they must not so narrowly define these standards that they unnecessarily limit consideration to the proposal initially favored by proponents. This discussion of reasonable alternatives applies equally to EAs and EISs.

(d) Except in those rare instances where excused by law, the Air Force must always consider and assess the environmental impacts of the "no action" alternative. "No action" may mean either that current management practice will not change or that the proposed action will not take place. If no action would result in other predictable actions, those actions should be discussed within the no action alternative section. The discussion of the no action alternative and the other alternatives should be comparable in detail to that of the proposed action.

§ 989.9 Cooperation and adoption.

(a) *Lead and cooperating agency (40 CFR 1501.5 and 1501.6).* When the Air Force is a cooperating agency in the preparation of an EIS, the Air Force reviews and approves principal environmental documents within the EIAP as if they were prepared by the Air Force. The Air Force executes a ROD for its program decisions that are based on an EIS for which the Air Force is a cooperating agency. The Air Force may also be a lead or cooperating agency on an EA using similar procedures, but the MAJCOM EPC retains approval authority unless otherwise directed by HQ USAF. Before invoking provisions of 40 CFR 1501.5(e), the lowest authority level possible resolves disputes concerning which agency is the lead agency.

(b) *Adoption of EA or EIS.* The Air Force, even though not a cooperating agency, may adopt an EA or EIS prepared by another entity where the proposed action is substantially the same as the action described in the EA or EIS. In this case, the EA or EIS must be recirculated as a final EA or EIS but the Air Force must independently review the EA or EIS and determine that it is current and that it satisfies the requirements of this part. The Air Force then prepares its own FONSI or ROD, as the case may be. In the situation where the proposed action is not substantially the same as that described in the EA or the EIS, the Air Force may adopt the EA or EIS, or a portion thereof, by circulating the EA or EIS as a draft and then preparing the final EA or EIS.

§ 989.10 Tiering.

The Air Force should use tiered (40 CFR 1502.20) environmental documents, and environmental documents prepared by other agencies, to eliminate repetitive discussions of the same issues and to focus on the issues relating to specific actions. If the Air Force adopts another Federal agency's environmental document, subsequent Air Force environmental documents may also be tiered.

§ 989.11 Combining EIAP with other documentation.

(a) The EPF combines environmental analysis with other related documentation when practicable (40 CFR 1506.4) following the procedures prescribed by the CEQ regulations and this part.

(b) The EPF must integrate comprehensive planning (AFI 32–7062, Air Force Comprehensive Planning[9]) with the requirements of the EIAP. Prior to making a decision to proceed, the EPF must analyze the environmental impacts that could result from implementation of a proposal identified in the comprehensive plan.

§ 989.12 AF Form 813, Request for Environmental Impact Analysis.

The Air Force uses AF Form 813 to document the need for environmental analysis or for certain CATEX determinations for proposed actions. The form helps narrow and focus the issues to potential environmental impacts. AF Form 813 must be retained with the EA or EIS to record the focusing of environmental issues. The rationale for not addressing environmental issues must also be recorded in the EA or EIS.

§ 989.13 Categorical exclusion.

(a) CATEXs define those categories of actions that do not individually or cumulatively have potential for significant effect on the environment and do not, therefore, require further environmental analysis in an EA or an EIS. The list of Air Force-approved CATEXs is in Appendix B. Supplements to this part may not add CATEXs or expand the scope of the CATEXs in Appendix B.

(b) Characteristics of categories of actions that usually do not require either an EIS or an EA (in the absence of extraordinary circumstances) include:

(1) Minimal adverse effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Socioeconomic effects only.

(5) Similarity to actions previously assessed and found to have no significant environmental impacts.

(c) CATEXs apply to actions in the United States and abroad. General exemptions specific to actions abroad are in 32 CFR part 187. The EPF or other decision-maker forwards requests for additional exemption determinations for actions abroad to HQ USAF/ILEV with a justification letter.

(d) Normally, any decision-making level may determine the applicability of a CATEX and need not formally record the determination on AF Form 813 or elsewhere, except as noted in the CATEX list.

(e) Application of a CATEX to an action does not eliminate the need to meet air conformity requirements (see § 989.30).

§ 989.14 Environmental assessment.

(a) When a proposed action is one not usually requiring an EIS but is not categorically excluded, the EPF supports the proponent in preparing an EA (40 CFR 1508.9). Every EA must lead to either a FONSI, a decision to prepare an EIS, or no action on the proposal.

(b) Whenever a proposed action usually requires an EIS, the EPF responsible for the EIAP may prepare an EA to definitively determine if an EIS is required based on the analysis of environmental impacts. Alternatively, the EPF may choose to bypass the EA and proceed with preparation of an EIS.

(c) An EA is a written analysis that:

(1) Provides analysis sufficient to determine whether to prepare an EIS or a FONSI.

(2) Aids the Air Force in complying with the NEPA when no EIS is required.

(d) The length of an EA should be as short and concise as possible, while matching the magnitude of the proposal. An EA briefly discusses the need for the proposed action, reasonable alternatives to the proposed action, the affected environment, the environmental impacts of the proposed action and alternatives (including the "no action" alternative), and a listing of agencies and persons consulted during preparation. The EA should not contain long descriptions or lengthy, detailed data. Rather, incorporate by reference background data to support the concise discussion of the proposal and relevant issues.

[9] See footnote 1 to § 989.1.

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(e) The format for the EA may be the same as the EIS. The alternatives section of an EA and an EIS are similar and should follow the alternatives analysis guidance outlined in § 989.8.

(f) The EPF should design the EA to facilitate rapidly transforming the document into an EIS if the environmental analysis reveals a significant impact.

(g) EAs for actions where the Air Force has wetlands or floodplains compliance responsibilities (E.O. 11988 and E.O. 11990) require SAF/MIQ approval. As a finding contained in the draft FONSI, a Finding of No Practicable Alternative (FONPA) must be submitted (five hard copies and an electronic version) through the MAJCOM EPF to HQ USAF/ILEVP when the alternative selected is located in wetlands or floodplains, and must discuss why no other practicable alternative exists to avoid impacts. See AFI 32–7064, Integrated Natural Resources Management.

(h) EAs and accompanying FONSIs that require the Air Force to make Clean Air Act General Conformity Determinations shall be submitted (five hard copies and an electronic version) through the MAJCOM EPF to HQ USAF/ILEVP for SAF/MIQ approval. SAF/MIQ signs all General Conformity Determinations and will also sign the companion FONSIs, when requested by the MAJCOM (see § 989.30).

(i) In cases potentially involving a high degree of controversy or Air Force-wide concern, the MAJCOM, after consultation with HQ USAF/ILEVP, may request HQ USAF ESOHC review and approval of an EA, or HQ USAF may direct the MAJCOM to forward an EA (five hard copies and an electronic version) for HQ USAF ESOHC review and approval.

(j) As a minimum, the following EAs require MAJCOM approval because they involve topics of special importance or interest. Unless directed otherwise by HQ USAF/ILEVP, the installation EPF must forward the following types of EAs to the MAJCOM EPF, along with an unsigned draft FONSI: (MAJCOMs can require other EAs to receive MAJCOM approval in addition to those types specified here.)

(1) All EAs on non-Air Force proposals that require an Air Force decision, such as use of Air Force property for highways, space ports, and joint-use proposals.

(2) EAs where mitigation to insignificance is accomplished in lieu of initiating an EIS (§ 989.22(c)).

(k) A few examples of actions that normally require preparation of an EA (except as indicated in the CATEX list) include:

(1) Public land withdrawals of less than 5,000 acres.

(2) Minor mission realignments and aircraft beddowns.

(3) New building construction on base within developed areas.

(4) Minor modifications to Military Operating Areas (MOAs), air-to-ground weapons ranges, and military training routes.

(l) The Air Force will involve other federal agencies, state, Tribal, and local governments, and the public in the preparation of EAs (40 CFR 1501.4(b) and 1506.6). The extent of involvement usually coincides with the magnitude and complexity of the proposed action and its potential environmental effect on the area. For proposed actions described in § 989.15(e)(2), use either the scoping process described in § 989.18 or the public notice process in § 989.24.

§ 989.15 Finding of no significant impact.

(a) The FONSI (40 CFR 1508.13) briefly describes why an action would not have a significant effect on the environment and thus will not be the subject of an EIS. The FONSI must summarize the EA or, preferably, have it attached and incorporated by reference, and must note any other environmental documents related to the action.

(b) If the EA is not incorporated by reference, the FONSI must include:

(1) Name of the action.

(2) Brief description of the action (including alternatives considered and the chosen alternative).

(3) Brief discussion of anticipated environmental effects.

(4) Conclusions leading to the FONSI.

(5) All mitigation actions that will be adopted with implementation of the proposal (see § 989.22).

(c) Keep FONSIs as brief as possible. Only rarely should FONSIs exceed two typewritten pages. Stand-alone FONSIs without an attached EA may be longer.

(d) For actions of regional or local interest, disseminate the FONSI according to § 989.24. The MAJCOM and NGB are responsible for release of FONSIs to regional offices of Federal agencies, the state single point of contact (SPOC), and state agencies concurrent with local release by the installations.

(e) The EPF must make the EA and unsigned FONSI available to the affected public and provide the EA and unsigned FONSI to organizations and individuals requesting them and to whomever the proponent or the EPF has reason to believe is interested in the action, unless disclosure is precluded for security classification reasons. Draft EAs and unsigned draft FONSIs will be clearly identified as drafts and distributed via cover letter which will explain their purpose and need. The EPF provides a copy of the documents without cost to organizations and individuals requesting them. The FONSI transmittal date (date of letter of transmittal) to the state SPOC or other equivalent agency is the official notification date.

(1) Before the FONSI is signed and the action is implemented, the EPF should allow sufficient time to receive comments from the public. The time period will reflect the magnitude of the proposed action and its potential for controversy. The greater the magnitude of the proposed action or its potential for controversy, the longer the time that must be allowed for public review. Mandatory review periods for certain defined actions are contained in § 989.15(e)(2). These are not all inclusive but merely specific examples. In every case where an EA and FONSI are prepared, the proponent and EPF must determine how much time will be allowed for public review. In all cases, other than classified actions, a public review period should be the norm unless clearly unnecessary due to the lack of potential controversy.

(2) In the following circumstances, the EA and unsigned FONSI are made available for public review for at least 30 days before FONSI approval and implementing the action (40 CFR 1501.4(e)(2)):

(i) When the proposed action is, or is closely similar to, one that usually requires preparation of an EIS (see § 989.16).

(ii) If it is an unusual case, a new kind of action, or a precedent-setting case in terms of its potential environmental impacts.

(iii) If the proposed action would be located in a floodplain or wetland.

(iv) If the action is mitigated to insignificance in the FONSI, in lieu of an EIS (§ 989.22(c)).

(v) If the proposed action is a change to airspace use or designation.

(vi) If the proposed action would have a disproportionately high and adverse environmental effect on minority populations and low-income populations.

(f) As a general rule, the same organizational level that prepares the EA also reviews and recommends the FONSI for approval by the EPC. MAJCOMs may decide the level of EA approval and FONSI signature, except as provided in § 989.14(g), (h), (i), and (j).

§ 989.16 Environmental impact statement.

(a) Certain classes of environmental impacts normally require preparation of an EIS (40 CFR 1501.4). These include, but are not limited to:

(1) Potential for significant degradation of the environment.

(2) Potential for significant threat or hazard to public health or safety.

(3) Substantial environmental controversy concerning the significance or nature of the environmental impact of a proposed action.

(b) Certain other actions normally, but not always, require an EIS. These include, but are not limited to:

(1) Public land withdrawals of over 5,000 acres (Engle Act, 43 U.S.C. 155 through 158).

(2) Establishment of new air-to-ground weapons ranges.

(3) Site selection of new airfields.

(4) Site selection of major installations.

(5) Development of major new weapons systems (at decision points that involve demonstration, validation, production, deployment, and area or site selection for deployment).

(6) Establishing or expanding supersonic training areas over land below 30,000 feet MSL (mean sea level).

(7) Disposal and reuse of closing installations.

§ 989.17 Notice of intent.

The EPF must furnish, through the MAJCOM, to HQ USAF/ILEV the NOI (40 CFR 1508.22) describing the proposed action for congressional notification and publication in the **Federal Register**. The EPF, through the host base public affairs office, will also provide the approved NOI to newspapers and other media in the area potentially affected by the proposed action. The EPF must provide copies of the notice to the SPOC and must also distribute it to requesting agencies, organizations, and individuals. Along with the draft NOI, the EPF must also forward the completed DOPAA, through the MAJCOM, to HQ USAF for information.

§ 989.18 Scoping.

(a) After publication of the NOI for an EIS, the EPF must initiate the public scoping process (40 CFR 1501.7) to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Methods of scoping range from soliciting written comments to conducting public scoping meetings (see 40 CFR 1501.7 and 1506.6(e)). The scoping process is an iterative, pro-active process of communicating with individual citizens, neighborhood, community, and local leaders, public interest groups, congressional delegations, state, Tribal, and local governments, and federal agencies. The scoping process must start prior to official public scoping meetings and continue through to preparation of the draft EIS. The purpose of this process is to de-emphasize insignificant issues and focus the scope of the environmental analysis on significant issues (40 CFR 1500.4(g)). Additionally, scoping allows early and more meaningful participation by the public. The result of scoping is that the proponent and EPF determine the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). The EPF must send scripts for scoping meetings to AF/ILEV (or ANGRC/CEV) no later than 30 days before the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see Appendix C). Public scoping meetings should generally be held at locations not on the installation.

(b) Where it is anticipated the proposed action and its alternatives will have disproportionately high and adverse human health or environmental effects on minority populations or low-income populations, special efforts shall be made to reach these populations. This might include special informational meetings or notices in minority and low-income areas concerning the regular scoping process.

§ 989.19 Draft EIS.

(a) *Preliminary draft.* The EPF supports the proponent in preparation of a preliminary draft EIS (PDEIS) (40 CFR 1502.9) based on the scope of issues decided on during the scoping process. The format of the EIS must be in accordance with the format recommended in the CEQ regulations (40 CFR 1502.10 and 1502.11). The CEQ regulations indicate that EISs normally contain fewer than 150 pages (300 pages for proposals of unusual complexity). The EPF provides a sufficient number of copies of the PDEIS to HQ USAF/ILEV for HQ USAF ESOHC security and policy review in each member's area of responsibility and to AFCEE/EC for technical review.

(b) *Review of draft EIS.* After the HQ USAF ESOHC review, the EPF assists the appropriate Air Force organization in making any necessary revisions to the PDEIS and forwards it to HQ USAF/ILEV as a draft EIS to ensure completion of all security and policy reviews and to certify releasability. Once the draft EIS is approved, HQ USAF/ILEV notifies the EPF to print sufficient copies of the draft EIS for distribution to congressional delegations and interested agencies at least 7 calendar days prior to publication of the Notice of Availability (NOA) in the **Federal Register**. After congressional distribution, the EPF sends the draft EIS to all others on the distribution list. HQ USAF/ILEV then files the document with the U.S. Environmental Protection Agency (USEPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) *Public review of draft EIS (40 CFR 1502.19 and 1506.6).* (1) The public comment period for the draft EIS is at least 45 days starting from the publication date of the NOA of the draft EIS in the **Federal Register**. USEPA publishes in the **Federal Register** NOAs of EISs filed during the preceding week. This public comment period may be extended by the EPF. If the draft EIS is unusually long, the EPF may distribute a summary to the public with an attached list of locations (such as public libraries) where the entire draft EIS may be reviewed. The EPF must distribute the full draft EIS to certain entities, for example, agencies with jurisdiction by law or agencies with special expertise in evaluating the environmental impacts, and anyone else requesting the entire draft EIS (40 CFR 1502.19 and 1506.6).

(2) The EPF sponsors public hearings on the draft EIS according to the procedures in Attachment 3. Hearings take place no sooner than 15 days after the **Federal Register** publication of the NOA and at least 15 days before the end of the comment period. Scheduling hearings toward the end of the comment period is encouraged to allow the public to obtain and more thoroughly review the draft EIS. The EPF must provide hearing scripts to HQ USAF/ILEV (or ANGRC/CEV) no later than 30 days prior to the first public hearing. Public hearings should generally be held at off-base locations. Submit requests to deviate from procedures in Attachment 3 to HQ USAF/ILEVP for SAF/MIQ approval.

(3) Where analyses indicate that a proposed action will potentially have disproportionately high and adverse human health or environmental effects on minority populations or low-income populations, the EPF should make special efforts to ensure that these potentially impacted populations are brought into the review process.

(d) *Response to comments (40 CFR 1503.4).* The EPF must incorporate in the Final EIS its responses to comments on the Draft EIS by modifying the text and referring in the appendix to where the comment is addressed or providing a written explanation in the comments section, or both. The EPF may group comments of a similar nature together to

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allow a common response and may also respond to individuals separately.

(e) *Seeking additional comments.* The EPF may, at any time during the EIS process, seek additional public comments, such as when there has been a significant change in circumstances, development of significant new information of a relevant nature, or where there is substantial environmental controversy concerning the proposed action. Significant new information leading to public controversy regarding the scope after the scoping process is such a changed circumstance. An additional public comment period may also be necessary after the publication of the draft EIS due to public controversy or changes made as the result of previous public comments. Such periods when additional public comments are sought shall last for at least 30 days.

§ 989.20 Final EIS.

(a) If changes in the draft EIS are minor or limited to factual corrections and responses to comments, the proponent and EPF may, with the prior approval of HQ USAF/ILEV and SAF/MIQ, prepare a document containing only comments on the Draft EIS, Air Force responses, and errata sheets of changes staffed to the HQ USAF ESOHC for coordination. However, the EPF must submit the Draft EIS and all of the above documents, with a new cover sheet indicating that it is a final EIS (40 CFR 1503.4(c)), to HQ USAF/ILEV for filing with the EPA (40 CFR 1506.9). If more extensive modifications are required, the EPF must prepare a preliminary final EIS incorporating these modifications for coordination within the Air Force. Regardless of which procedure is followed, the final EIS must be processed in the same way as the draft EIS, including receipt of copies of the EIS by SAF/LLP, except that the public need not be invited to comment during the 30-day post-filing waiting period. The Final EIS should be furnished to every person, organization, or agency that made substantive comments on the Draft EIS or requested a copy. Although the EPF is not required to respond to public comments received during this period, comments received must be considered in determining final decisions such as identifying the preferred alternative, appropriate mitigations, or if a supplemental analysis is required.

(b) The EPF processes all necessary supplements to EISs (40 CFR 1502.9) in the same way as the original Draft and Final EIS, except that a new scoping process is not required.

(c) If major steps to advance the proposal have not occurred within 5 years from the date of the Final EIS approval, reevaluation of the documentation should be accomplished to ensure its continued validity.

§ 989.21 Record of decision (ROD).

(a) The proponent and the EPF prepare a draft ROD, formally staff it through the MAJCOM EPC, to HQ USAF/ILEV for verification of adequacy, and forwards it to either SAF/MIQ or SAF/AQR, as the case may be, for approval and designation of the signator. A ROD (40 CFR 1505.2) is a concise public document stating what an agency's decision is on a specific action. The ROD may be integrated into any other document required to implement the agency's decision. A decision on a course of action may not be made until the later of the following dates:

(1) 90 days after publication of the DEIS; or

(2) 30 days after publication of the NOA of the Final EIS in the **Federal Register**.

(b) The Air Force must announce the ROD to the affected public as specified in § 989.23, except for classified portions. The ROD should be concise and should explain the conclusion, the reason for the selection, and the alternatives considered. The ROD must identify the course of action, whether it is the proposed action or an alternative, that is considered environmentally preferable regardless of whether it is the alternative selected for implementation. The ROD should summarize all the major factors the agency weighed in making its decision, including essential considerations of national policy.

(c) The ROD must state whether the selected alternative employs all practicable means to avoid, minimize, or mitigate environmental impacts and, if not, explain why.

§ 989.22 Mitigation.

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. Discuss mitigation measures in terms of "will" and "would" when such measures have already been incorporated into the proposal. Use terms like "may" and "could" when proposing or suggesting mitigation measures. Both the public and the Air Force community need to know what commitments are being considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) The proponent funds and implements mitigation measures in the mitigation plan that is approved by the decision-maker. Where possible and appropriate because of amount, the proponent should include the cost of mitigation as a line item in the budget for a proposed project. The proponent must ensure compliance with mitigation requirements, monitoring their effectiveness, and must keep the EPF informed of the mitigation status. The EPF reports its status, through the MAJCOM, to HQ USAF/ILEV when requested. Upon request, the EPF must also provide the results of relevant mitigation monitoring to the public.

(c) The proponent may "mitigate to insignificance" potentially significant environmental impacts found during preparation of an EA, in lieu of preparing an EIS. The FONSI for the EA must include these mitigation measures. Such mitigations are legally binding and must be carried out as the proponent implements the project. If, for any reason, the project proponent later abandons or revises in environmentally adverse ways the mitigation commitments made in the FONSI, the proponent must prepare a supplemental EIAP document before continuing the project. If potentially significant environmental impacts would result from any project revisions, the proponent must prepare an EIS.

(d) For each FONSI or ROD containing mitigation measures, the proponent prepares a plan specifically identifying each mitigation, discussing how the proponent will execute the mitigations, identifying who will fund and implement the mitigations, and stating when the proponent will complete the mitigation. The mitigation plan will be forwarded, through the MAJCOM EPF to HQ USAF/ILEV for review within 90 days from the date of signature of the FONSI or ROD.

§ 989.23 Contractor prepared documents.

All Air Force EIAP documents belong to and are the responsibility of the Air Force. EIAP correspondence and documents distributed outside of the Air Force should generally be signed out by Air Force personnel and documents should reflect on the cover sheet they are an Air Force document. Contractor preparation information should be contained within the document's list of preparers.

§ 989.24 Public notification.

(a) Except as provided in § 989.26, public notification is required for various aspects of the EIAP.

(b) Activities that require public notification include:

(1) An EA and FONSI.
(2) An EIS NOI.
(3) Public scoping meetings.
(4) Availability of the draft EIS.
(5) Public hearings on the draft EIS (which should be included in the NOA for the draft EIS).
(6) Availability of the final EIS.
(7) The ROD for an EIS.

(c) For actions of local concern, the list of possible notification methods in 40 CFR 1506.6(b)(3) is only illustrative. The EPF may use other equally effective means of notification as a substitute for any of the methods listed. Because many Air Force actions are of limited interest to persons or organizations outside the Air Force, the EPF may limit local notification to the SPOC, local government representatives, and local news media. For all actions covered under § 989.15(e)(2), and for all EIS notices, the public affairs office must purchase with EPF funds an advertisement in a prominent section of the local newspaper(s) of general circulation (not "legal" newspapers or "legal section" of general newspapers).

(d) For the purpose of EIAP, the EPF begins the time period of local notification when it sends written notification to the state SPOC or other equivalent agency (date of letter of notification).

§ 989.25 Base closure and realignment.

Base closure or realignment may entail special requirements for environmental analysis. The permanent base closure and realignment law, 10 U.S.C. 2687, requires a report to the Congress when an installation where at least 300 DoD civilian personnel are authorized to be employed is closed, or when a realignment reduces such an installation by at least 50 percent or 1,000 of such personnel, whichever is less. In addition, other base closure laws may be in effect during particular periods. Such nonpermanent closure laws frequently contain provisions limiting the extent of environmental analysis required for actions taken under them. Such provisions may also add requirements for studies not necessarily required by NEPA.

§ 989.26 Classified actions (40 CFR 1507.3(c)).

(a) Classification of an action for national defense or foreign policy purposes does not relieve the requirement of complying with NEPA. In classified matters, the Air Force must prepare and make available normal NEPA environmental analysis documents to aid in the decision-making process; however, Air Force staff must prepare, safeguard, and disseminate these documents according to established procedures for protecting classified documents. If an EIAP document must be classified, the Air Force may modify or eliminate associated requirements for public notice (including publication in the **Federal Register**) or public involvement in the EIAP. However, the Air Force should obtain comments on classified proposed actions or classified aspects of generally unclassified actions, from public agencies having jurisdiction by law or special expertise, to the extent that such review and comment is consistent with security requirements. Where feasible, the EPF may need to help appropriate personnel from those agencies obtain necessary security clearances to gain access to documents so they can comment on scoping or review the documents.

(b) Where the proposed action is classified and unavailable to the public, the Air Force may keep the entire NEPA process classified and protected under the applicable procedures for the classification level pertinent to the particular information. At times (for example, during weapons system development and base closures and realignments), certain but not all aspects of NEPA documents may later be declassified. In those cases, the EPF should organize the EIAP documents, to the extent practicable, in a way that keeps the most sensitive classified information (which is not expected to be released at any early date) in a separate annex that can remain classified; the rest of the EIAP documents, when declassified, will then be comprehensible as a unit and suitable for release to the public. Thus, the documents will reflect, as much as possible, the nature of the action and its environmental impacts, as well as Air Force compliance with NEPA requirements.

(c) Where the proposed action is not classified, but certain aspects of it need to be protected by security classification, the EPF should tailor the EIAP for a proposed action to permit as normal a level of public involvement as possible, but also fully protect the classified part of the action and environmental analysis. In some instances, the EPF can do this by keeping the classified sections of the EIAP documents in a separate, classified annex.

(d) For § 989.26(b) actions, an NOI or NOA will not be published in the **Federal Register** until the proposed action is declassified. For § 989.26(c) actions, the **Federal Register** will run an unclassified NOA which will advise the public that at some time in the future the Air Force may or will publicly release a declassified document.

(e) The EPF similarly protects classified aspects of FONSIs, RODs, or other environmental documents that are part of the EIAP for a proposed action, such as by preparing separate classified annexes to unclassified documents, as necessary.

(f) Whenever a proponent believes that EIAP documents should be kept classified, the EPF must make a report of the matter to SAF/MIQ, including proposed modifications of the normal EIAP to protect classified information. The EPF may make such submissions at whatever level of security classification is needed to provide a comprehensive understanding of the issues. SAF/MIQ, with support from SAF/GC and other staff elements as necessary, makes final decisions on EIAP procedures for classified actions.

§ 989.27 Occupational safety and health.

Assess direct and indirect impacts of proposed actions on the safety and health of Air Force employees and others at a work site. The EIAP document does not need to specify compliance procedures. However, the EIAP documents should discuss impacts that require a change in work practices to achieve an adequate level of health and safety.

§ 989.28 Airspace and range proposals.

(a) *EIAP Review.* Airspace and range proposals require review by HQ USAF/XOO prior to public announcement and preparation of the DOPAA. Unless directed otherwise, the airspace proponent will forward the DOPAA as an attachment to the proposal sent to HQ USAF/XOO.

(b) *Federal Aviation Administration.* The DoD and the Federal Aviation Administration (FAA) have entered into a Memorandum of Understanding (MOU) that outlines various airspace responsibilities. For purposes of compliance with NEPA, the DoD is the "lead agency" for all proposals initiated by DoD, with the FAA acting as the "cooperating agency." Where airspace proposals initiated by the FAA affect military use, the roles are reversed. The proponent's action officers (civil engineering and local airspace management) must ensure that the FAA is fully integrated into the airspace proposal and related EIAP from the very beginning and that the action officers review the FAA's responsibilities as a cooperating agency. The proponent's airspace manager develops the preliminary airspace proposal per appropriate FAA handbooks and the FAA-DoD MOU. The preliminary

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airspace proposal is the basis for initial dialogue between DoD and the FAA on the proposed action. A close working relationship between DoD and the FAA, through the FAA regional Air Force representative, greatly facilitates the airspace proposal process and helps resolve many NEPA issues during the EIAP.

§ 989.29 Force structure and unit move proposals.

Unless directed otherwise, the MAJCOM plans and programs proponent will forward a copy of all EAs for force structure and unit moves to HQ USAF/ILXB for information only at the preliminary draft and preliminary final stages.

§ 989.30 Air quality.

Section 176(c) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7506(c), establishes a conformity requirement for Federal agencies which has been implemented by regulation, 40 CFR 93, Subpart B. All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations are developed in parallel with EIAP documents, but are separate and distinct requirements and should be documented separately. To increase the utility of a conformity determination in performing the EIAP, the conformity determination should be completed prior to the completion of the EIAP so as to allow incorporation of the information from the conformity determination into the EIAP. See AFI 32–7040, Air Quality Compliance.[10]

§ 989.31 Pollution prevention.

The Pollution Prevention Act of 1990, 42 U.S.C. 13101(b), established a national policy to prevent or reduce pollution at the source, whenever feasible. Pollution prevention approaches should be applied to all pollution-generating activities. The environmental document should analyze potential pollution that may result from the proposed action and alternatives and must discuss potential pollution prevention measures when such measures are feasible for incorporation into the proposal or alternatives. Where pollution cannot be prevented, the environmental analysis and proposed mitigation measures should include, wherever possible, recycling, energy recovery, treatment, and environmentally safe disposal actions (see AFI 32–7080, Pollution Prevention Program[11]).

[10] See footnote 1 to § 989.1.

[11] See footnote 1 to § 989.1.

§ 989.32 Noise.

Aircraft noise data files used for analysis during EIAP will be submitted to HQ AFCEE for review and validation prior to public release, and upon completion of the EIAP for database entry. Utilize the current NOISEMAP computer program for air installations and the Assessment System for Aircraft Noise for military training routes and military operating areas. Guidance on standardized Air Force noise data development and analysis procedures is available from HQ AFCEE/EC. Develop EIAP land use analysis relating to aircraft noise impacts originating from air installations following procedures in AFI 32–7063, Air Installation Compatible Use Zone. Draft EIAP aircraft noise/land use analysis associated with air installations will be coordinated with the MAJCOM AICUZ program manager.

§ 989.33. Environmental justice.

During the preparation of environmental analyses under this instruction, the EPF should ensure compliance with the provisions of E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Memorandum of February 11, 1994, regarding E.O. 12898.

§ 989.34 Special and emergency procedures.

(a) *Special procedures.* During the EIAP, unique situations may arise that require EIAP strategies different than those set forth in this part. These situations may warrant modification of the procedures in this part. EPFs should only consider procedural deviations when the resulting process would benefit the Air Force and still comply with NEPA and CEQ regulations. EPFs must forward all requests for procedural deviations to HQ USAF/ILEV (or ANGRC/CEV) for review and approval by SAF/MIQ.

(b) *Emergency procedures (40 CFR 1506.11).* Emergency situations do not exempt the Air Force from complying with NEPA, but do allow emergency response while completing the EIAP. Certain emergency situations may make it necessary to take immediate action having significant environmental impact, without observing all the provisions of the CEQ regulations or this part. If possible, promptly notify HQ USAF/ILEV, for SAF/MIQ coordination and CEQ consultation, before undertaking emergency actions that would otherwise not comply with NEPA or this part. The immediate notification requirement does not apply where emergency action must be taken without delay. Coordination in this instance must take place as soon as practicable.

§ 989.35 Reporting requirements.

(a) EAs, EISs, and mitigation measures will be tracked at bases and MAJCOMs through an appropriate environmental management system.

(b) Proponents, EPFs, and public affairs offices may utilize the World Wide Web, in addition to more traditional means, to notify the public of availability of EAs and EISs. When possible, allow distribution of documents electronically. Public review comments should be required in writing, rather than by electronic mail.

(c) All documentation will be disposed of according to AFMAN 37–139, Records Disposition—Standards.[12]

§ 989.36 Waivers.

In order to deal with unusual circumstances and to allow growth in the NEPA process, SAF/MIQ may grant waivers to those procedures contained in this instruction not required by NEPA or the CEQ Regulations. Such waivers shall not be used to limit compliance with NEPA or the CEQ Regulations but only to substitute other, more suitable procedures relative to the context of the particular action. Such waivers may also be granted on occasion to allow experimentation in procedures in order to allow growth in the EIAP. This authority may not be delegated.

§ 989.37 Procedures for analysis abroad.

Procedures for analysis of environmental actions abroad are contained in 32 CFR Part 187. That directive provides comprehensive policies, definitions, and procedures for implementing E.O. 12114. For analysis of Air Force actions abroad, 32 CFR Part 187 will be followed.

§ 989.38 Requirements for analysis abroad.

(a) The EPF will generally perform the same functions for analysis of actions abroad that it performs in the United States. In addition to the requirements of 32 CFR Part 187, the following Air Force specific rules apply:

(b) For EAs dealing with global commons (geographic areas beyond the jurisdiction of the United States or any foreign nation), HQ USAF/ILEV will review actions that are above the MAJCOM approval authority. In this instance, approval authority refers to the same approval authority that would apply to an EA in the United States. The EPF documents a decision not to do an EIS.

[12] See footnote 1 to § 989.1.

(c) For EISs dealing with the global commons, the EPF provides sufficient copies to HQ USAF/ILEV for the HQ USAF ESOHC review and AFCEE/EC technical review. After ESOHC review, the EPF makes a recommendation as to whether the proposed draft EIS will be released as a draft EIS.

(d) For environmental studies and environmental reviews, forward, when appropriate, environmental studies and reviews to HQ USAF/ILEV for coordination among appropriate federal agencies. HQ USAF/ILEV makes environmental studies and reviews available to the Department of State and other interested federal agencies, and, on request, to the United States public, in accordance with 32 CFR Part 187. HQ USAF/ILEV also may inform interested foreign governments or furnish copies of studies, in accordance with 32 CFR Part 187.

Appendix A to Part 989—Glossary of References, Abbreviations, Acronyms, and Terms

References

Legislative

10 U.S.C. 2687, *Base Closures and Realignments*

42 U.S.C. 4321–4347, *National Environmental Policy Act of 1969*

42 U.S.C. 7506(c), *Clean Air Act Amendments of 1990*

42 U.S.C. 13101(b), *Pollution Prevention Act of 1990*

43 U.S.C. 155–158, *Engle Act*

Executive Orders

Executive Order 11988, *Floodplain Management*, May 24, 1977

Executive Order 11990, *Protection of Wetlands*, May 24, 1977

Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, January 4, 1979

Executive Order 12372, *Intergovernmental Review of Federal Programs*, July 14, 1982

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 11, 1994

U.S. Government Agency Publications

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508

Department of Defense Directive (DoDD) 4715.1, *Environmental Security*

Department of Defense Directive (DoDD) 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*, March 31, 1979 (32 CFR Part 187)

Department of Defense Instruction (DoDI) 4715.9, *Environmental Planning and Analysis*

DoDD 5000.1, *Defense Acquisition*

Department of Defense Regulation 5000.2–R, *Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems*

Air Force Publications

AFPD 32–70, *Environmental Quality*

AFI 32–1021, *Planning and Programming of Facility Construction Projects*

AFI 32–7002, *Environmental Information Management System*

AFI 32–7005, *Environmental Protection Committees*

AFI 32–7040, *Air Quality Compliance*

AFI 32–7062, *Air Force Comprehensive Planning*

AFI 32–7063, *Air Installation Compatible Use Zone Program*

AFI 32–7064, *Integrated Natural Resources Management*

AFI 32–7080, *Pollution Prevention Program*

AFI 35–202, *Environmental Community Involvement*

AFI 35–205, *Air Force Security and Policy Review Program*

AFMAN 37–139, *Records Disposition—Standards*

Abbreviations and Acronyms

Abbreviation or Acronym	Definition
AFCEE	Air Force Center for Environmental Excellence
AFCEE/EC	Air Force Center for Environmental Excellence/Environmental Conservation and Planning Directorate
AFI	Air Force Instruction
AFLSA/JACE	Air Force Legal Services Agency/Environmental Law and Litigation Division
AFLSA/JAJT	Air Force Legal Services Agency/Trial Judiciary Division
AFMAN	Air Force Manual
AFMOA/SG	Air Force Medical Operations Agency/Aerospace Medicine Office
AFPD	Air Force Policy Directive
AFRES	Air Force Reserve
ANG	Air National Guard
ANGRC	Air National Guard Readiness Center
CATEX	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DOPAA	Description of Proposed Action and Alternatives
EA	Environmental Assessment
EIAP	Environmental Impact Analysis Process
EIS	Environmental Impact Statement
E.O.	Executive Order
EPA	Environmental Protection Agency
EPC	Environmental Protection Committee
EPF	Environmental Planning Function
ESOHC	Environmental Safety and Occupational Health Committee
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FOA	Field Operating Agency
FONPA	Finding of No Practicable Alternative
FONSI	Finding of No Significant Impact
GSA	General Services Administration
HQ AFMC	Headquarters, Air Force Materiel Command
HQ USAF	Headquarters, United States Air Force
HQ USAF/ILE	The Air Force Civil Engineer
MAJCOM	Major Command
MGM	Materiel Group Manager
MOA	Military Operating Area
MOU	Memorandum of Understanding

Abbreviation or Acronym	Definition
MSL	Mean Sea Level
NEPA	National Environmental Policy Act of 1969
NGB–CF	National Guard Bureau Air Directorate
NGB–JA	National Guard Bureau Office of the Staff Judge Advocate
NGB–PA	National Guard Bureau Office of Public Affairs
NOA	Notice of Availability
NOI	Notice of Intent
OSD	Office of the Secretary of Defense
OSHA	Occupational Safety and Health Administration
PDEIS	Preliminary Draft Environmental Impact Statement
PGM	Product Group Manager
REO	Air Force Regional Environmental Office
ROD	Record of Decision
SAF/AQR	Deputy Assistant Secretary of the Air Force (Science, Technology, and Engineering)
SAF/GC	Air Force General Counsel
SAF/LL	Air Force Office of Legislative Liaison
SAF/MI	Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment
SAF/MIQ	Deputy Assistant Secretary of the Air Force (Environment, Safety, and Occupational Health)
SAF/PA	Air Force Office of Public Affairs
SJA	Staff Judge Advocate
SM	Single Manager
SPD	Single Program Director
SPOC	Single Point of Contact
TDY	Temporary Duty
U.S.C.	United States Code

Terms

Note: All definitions in the CEQ Regulations, 40 CFR part 1508, apply to this part. In addition, the following definitions apply:

Description of Proposed Action and Alternatives (DOPAA)—An Air Force document that is the framework for assessing the environmental impact of a proposal. It describes the purpose and need for the action, the alternatives to be considered, and the rationale used to arrive at the proposed action. The DOPAA often unfolds as writing progresses. The DOPAA can change during the internal scoping and public scoping process, especially as ideas and issues become clearer, and as new information makes changes necessary.

Environmental Impact Analysis Process (EIAP)—The Air Force program that implements the requirements of NEPA and requirements for analysis of environmental effects abroad under E.O. 12114.

Finding of No Practicable Alternative (FONPA)—Finding contained in a FONSI or ROD, according to Executive Orders 11988 and 11990, that explains why there are no practicable alternatives to an action affecting a wetland or floodplain, based on appropriate EIAP analysis or other documentation.

Interdisciplinary—An approach to environmental analysis involving more than one discipline or branch of learning.

Pollution Prevention—"Source reduction," as defined under the Pollution Prevention Act, and other practices that reduce or eliminate pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or in the protection of natural resources by conservation.

Proponent—Any office, unit, or activity that proposes to initiate an action.

Scoping—A process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action. Scoping includes affirmative efforts to communicate with other federal agencies, state, Tribal, and local governments, and the public.

Single Manager—Any one of the Air Force designated weapon system program managers, that include System Program Directors (SPDs), Product Group Managers (PGMs), and Materiel Group Managers (MGMs).

United States—All states, commonwealths, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include American Samoa, Guam, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, Palmyra Island, the Virgin Islands, and Wake Island.

Appendix B to Part 984—Categorical Exclusions

A2.1. Proponent/EPF Responsibility

Although a proposed action may qualify for a categorical exclusion from the requirements for environmental impact analysis under NEPA, this exclusion does not relieve the EPF or the proponent of responsibility for complying with all other environmental requirements related to the proposal, including requirements for permits, state regulatory agency review of plans, and so on.

A2.2. Additional Analysis

Circumstances may arise in which usually categorically excluded actions may have a significant environmental impact and, therefore, may generate a requirement for further environmental analysis. Examples of situations where such unique circumstances may be present include:

A2.2.1. Actions of greater scope or size than generally experienced for a particular category of action.

A2.2.2. Potential for degradation (even though slight) of already marginal or poor environmental conditions.

A2.2.3. Initiating a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

A2.2.4. Use of unproved technology.

A2.2.5. Use of hazardous or toxic substances that may come in contact with the surrounding environment.

A2.2.6. Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

A2.2.7. Proposals adversely affecting areas of critical environmental concern, such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

A2.2.8. Proposals with disproportionately high and adverse human health or environmental effects on minority populations or low-income populations.

A2.3. CATEX List

Actions that are categorically excluded in the absence of unique circumstances are:

A2.3.1. Routine procurement of goods and services.

A2.3.2. Routine Commissary and Exchange operations.

A2.3.3. Routine recreational and welfare activities.

A2.3.4. Normal personnel, fiscal or budgeting, and administrative activities and decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and records keeping).

A2.3.5. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that do not, themselves, result in an action being taken.

A2.3.6. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that implement (without substantial change) the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies with superior subject matter jurisdiction.

A2.3.7. Continuation or resumption of pre-existing actions, where there is no substantial change in existing conditions or existing land uses and where the actions were originally evaluated in accordance with applicable law and regulations, and surrounding circumstances have not changed.

A2.3.8. Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building.

A2.3.9. Repairing and replacing real property installed equipment.

A2.3.10. Routine facility maintenance and repair that does not involve disturbing significant quantities of hazardous materials such as asbestos and lead-based paint.

A2.3.11. Actions similar to other actions which have been determined to have an insignificant impact in a similar setting as established in an EIS or an EA resulting in a FONSI. The EPF must document application of this CATEX on AF Form 813, specifically identifying the previous Air Force approved environmental document which provides the basis for this determination.

A2.3.12. Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, data processing cable, and similar electronic equipment that use existing rights of way, easements, distribution systems, or facilities.

A2.3.13. Installing or modifying airfield operational equipment (such as runway visual range equipment, visual glide path systems, and remote transmitter or receiver facilities) on airfield property and usually accessible only to maintenance personnel.

A2.3.14. Installing on previously developed land, equipment that does not substantially alter land use (i.e., land use of more than one acre). This includes outgrants to private lessees for similar construction. The EPF must document application of this CATEX on AF Form 813.

A2.3.15. Laying-away or mothballing a production facility or adopting a reduced maintenance level at a closing installation when (1) agreement on any required historic preservation effort has been reached with the state historic preservation officer and the Advisory Council on Historic Preservation, and (2) no degradation in the environmental restoration program will occur.

A2.3.16. Acquiring land and ingrants (50 acres or less) for activities otherwise subject to CATEX. The EPF must document application of this CATEX on AF Form 813.

A2.3.17. Transferring land, facilities, and personal property for which the General Services Administration (GSA) is the action agency. Such transfers are excluded only if there is no change in land use and GSA complies with its NEPA requirements.

A2.3.18. Transferring administrative control of real property within the Air Force or to another military department or to another Federal agency, not including GSA, including returning public domain lands to the Department of the Interior.

A2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use Air Force controlled property for activities that, if conducted by the Air Force, could be categorically excluded in accordance with this attachment. The EPF must document application of this CATEX on AF Form 813.

A2.3.20. Converting in-house services to contract services.

A2.3.21. Routine personnel decreases and increases, including work force conversion to either on-base contractor operation or to military operation from contractor operation (excluding base closure and realignment actions which are subject to congressional reporting under 10 U.S.C. 2687).

A2.3.22. Routine, temporary movement of personnel, including deployments of personnel on a TDY basis where existing facilities are used.

A2.3.23. Personnel reductions resulting from workload adjustments, reduced personnel funding levels, skill imbalances, or other similar causes.

A2.3.24. Study efforts that involve no commitment of resources other than personnel and funding allocations.

A2.3.25. The analysis and assessment of the natural environment without altering it (inspections, audits, surveys, investigations). This CATEX includes the granting of any permits necessary for such surveys, provided that the technology or procedure involved is well understood and there are no adverse environmental impacts anticipated from it. The EPF must document application of this CATEX on AF Form 813.

A2.3.26. Undertaking specific investigatory activities to support remedial action activities for purposes of cleanup of Defense Environmental Restoration Program (DERP) and Resource Conservation and Recovery Act (RCRA) corrective action sites. These activities include soil borings and sampling, installation, and operation of test or monitoring wells. This CATEX applies to studies that assist in determining final cleanup actions when they are conducted in accordance with legal agreements, administrative orders, or work plans previously agreed to by EPA or state regulators.

A2.3.27. Normal or routine basic and applied scientific research confined to the laboratory and in compliance with all applicable safety, environmental, and natural resource conservation laws.

A2.3.28. Routine transporting of hazardous materials and wastes in accordance with applicable Federal, state, interstate, and local laws.

A2.3.29. Emergency handling and transporting of small quantities of chemical surety material or suspected chemical surety material, whether or not classified as hazardous or toxic waste, from a discovery site to a permitted storage, treatment, or disposal facility.

A2.3.30. Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention and Response Plan or Spill Contingency Plan or that are otherwise consistent with the requirements of the National Contingency Plan.

A2.3.31. Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or the total number of aircraft operations, a change in flight tracks, or an increase in permanent personnel or logistics support requirements at the receiving installation. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts. The EPF must document application of this CATEX on AF Form 813.

A2.3.32. Temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts.

A2.3.33. Flying activities that comply with the Federal aviation regulations, that are dispersed over a wide area and that do not frequently (more than once a day) pass near the same ground points. This CATEX does not cover regular activity on established routes or within special use airspace.

A2.3.34. Supersonic flying operations over land and above 30,000 feet MSL, or over water and above 10,000 feet MSL and more than 15 nautical miles from land.

A2.3.35. Formal requests to the FAA, or host-nation equivalent agency, to establish or modify special use airspace (for example, restricted areas, warning areas, military operating areas) and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level or higher. The EPF must document application of this CATEX on AF Form 813, which must accompany the request to the FAA.

A2.3.36. Adopting airfield approach, departure, and en route procedures that are less than 3,000 feet above ground level, and that also do not route air traffic over noise-sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas. The EPF may categorically exclude such air traffic patterns at or greater than 3,000 feet above ground level regardless of underlying land use.

A2.3.37. Participating in "air shows" and fly-overs by Air Force aircraft at non-Air Force public events after obtaining FAA coordination and approval.

A2.3.38. Conducting Air Force "open houses" and similar events, including air shows, golf tournaments, home shows, and the like, where crowds gather at an Air Force installation, so long as crowd and traffic control, etc., have not in the past presented significant safety or environmental impacts.

Appendix C to Part 989—Procedures for Holding Public Hearings on Draft Environmental Impact Statements (EIS)

A.3.1. General Information

A3.1.1. The Office of the Judge Advocate General, through the Air Force Legal Services Agency/Trial Judiciary Division (AFLSA/JAJT) and its field organization, is responsible for conducting public hearings and assuring verbatim transcripts are accomplished.

A3.1.2. The EPF, with proponent, AFLSA/JAJT, and Public Affairs support, establishes the date and location, arranges for hiring the court reporter, funds temporary duty costs for

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the hearing officer, makes logistical arrangements (for example, publishing notices, arranging for press coverage, obtaining tables and chairs, etc.).

A3.1.3. The procedures outlined below have proven themselves through many prior applications. However, there may be rare instances when circumstances warrant conducting public hearings under a different format, e.g., public/town meeting, information booths, third party moderator, etc. In these cases, forward a request with justification to deviate from these procedures to USAF/ILEVP for SAF/MIQ approval.

A3.2. Notice of Hearing (40 CFR 1506.6)

A3.2.1. Public Affairs officers:

A3.2.1.1. Announce public hearings and assemble a mailing list of individuals to be invited.

A3.2.1.2. Distribute announcements of a hearing to all interested individuals and agencies, including the print and electronic media.

A3.2.1.3. Place a newspaper display advertisement announcing the time and place of the hearing as well as other pertinent particulars.

A3.2.1.4. Distribute the notice in a timely manner so it will reach recipients or be published at least 15 days before the hearing date. Distribute notices fewer than 15 days before the hearing date when you have substantial justification and if the justification for a shortened notice period appears in the notice.

A3.2.1.5. Develop and distribute news release.

A3.2.2. If an action has effects of national concern, publish notices in the **Federal Register** and mail notices to national organizations that have an interest in the matter.

A3.2.2.1. Because of the longer lead time required by the **Federal Register**, send out notices for publication in the **Federal Register** to arrive at HQ USAF/CEV no later than 30 days before the hearing date.

A3.2.3. The notice should include:

A3.2.3.1. Date, time, place, and subject of the hearing.

A3.2.3.2. A description of the general format of the hearing.

A3.2.3.3. The name and telephone number of a person to contact for more information.

A3.2.3.4. A suggestion that speakers submit (in writing or by return call) their intention to participate, with an indication of which environmental impact (or impacts) they wish to address.

A3.2.3.5. Any limitation on the length of oral statements.

A3.2.3.6. A suggestion that speakers submit statements of considerable length in writing.

A3.2.3.7. A summary of the proposed action.

A3.2.3.8. The location where the draft EIS and any appendices are available for examination.

A.3.3. Availability of the Draft EIS to the Public.

The EPF makes copies of the Draft EIS available to the public at an Air Force installation and other reasonably accessible place in the vicinity of the proposed action and public hearing (e.g., public library).

A3.4. Place of the Hearing

The EPF arranges to hold the hearing at a time and place and in an area readily accessible to military and civilian organizations and individuals interested in the proposed action. Generally, the EPF should arrange to hold the hearing in an off-base civilian facility, which is more accessible to the public.

A3.5. Hearing Officer

A3.5.1. The AFLSA/JAJT selects a military trial judge to preside over hearings. The hearing officer does not need to have personal knowledge of the project, other than familiarity with the Draft EIS. In no event should the hearing officer be a judge advocate from the proponent or subordinate command, be assigned to the same installation with which the hearing is concerned, or have participated personally in the development of the project, or have rendered legal advice or assistance with respect to it (or be expected to do so in the future). The principal qualification of the hearing officer should be the ability to conduct a hearing as an impartial participant.

A3.5.2. The primary duties of the hearing officer are to make sure that the hearing is orderly, is recorded, and that interested parties have a reasonable opportunity to speak. The presiding officer should direct the speakers' attention to the purpose of the hearing, which is to consider the environmental impacts of the proposed project. Speakers should have a time limit to ensure maximum public input to the decision-maker.

A3.6. Record of the Hearing

The EIS preparation team must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The EIS preparation team should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The EIS preparation team should also append a list of persons who spoke at the hearing and submitted written comments and a list of the organizations or interests they represent with addresses. The EIS preparation team must make sure a verbatim transcript of the hearing is provided to the EPF for inclusion as an appendix to the Final EIS. The officer should also ensure that all persons who request a copy of the transcript get a copy when it is completed. Copying charges are determined according to 40 CFR 1506.6(f).

A3.7. Hearing Format

Use the format outlined below as a general guideline for conducting a hearing. Hearing officers should tailor the format to meet the hearing objectives. These objectives provide information to the public, record opinions of interested persons on environmental impacts of the proposed action, and set out alternatives for improving the EIS and for later consideration.

A3.7.1. Record of Attendees. The hearing officer should make a list of all persons who wish to speak at the hearing to help the hearing officer in calling on these individuals, to ensure an accurate transcript of the hearing, and to enable the officer to send a copy of the Final EIS (40 CFR 1502.19) to any person, organization, or agency that provided substantive comments at the hearing. The hearing officer should assign assistants to the entrance of the hearing room to provide cards on which individuals can voluntarily write their names, addresses, telephone numbers, organizations they represent, and titles; whether they desire to make a statement at the hearing; and what environmental area(s) they wish to address. The hearing officer can then use the cards to call on individuals who desire to make statements. However, the hearing officer will not deny entry to the hearing or the right to speak to people who decline to submit this information on cards.

A3.7.2. Introductory Remarks. The hearing officer should first introduce himself or herself and the EIS preparation team. Then the hearing officer should make a brief statement on the purpose of the hearing and give the general ground rules on how it will be conducted. This is the proper time to welcome any dignitaries who are present. The hearing officer should explain that he or she does not make any recommendation or decision on whether the proposed project should be continued, modified, or abandoned or how the EIS should be prepared.

A3.7.3. Explanation of the Proposed Action. The Air Force EIS preparation team representative should next explain the proposed action, the alternatives, the potential environmental consequences, and the EIAP.

A3.7.4. Questions by Attendees. After the EIS team representative explains the proposed action, alternatives, and consequences, the hearing officer should give attendees a chance to ask questions to clarify points they may not have understood. The EIS preparation team may have to reply in writing, at a later date, to some of the questions. While the Air Force EIS preparation team should be as responsive as possible in answering questions about the proposal, they should not become involved in debate with questioners over the merits of the proposed action. Cross-examination of speakers, either those of the Air Force or the public, is not the purpose of an informal hearing. If necessary, the hearing officer may limit questioning or conduct portions of the hearing to ensure proper lines of inquiry. However, the hearing officer should include all questions in the hearing record.

A3.7.5. Statement of Attendees. The hearing officer must give the persons attending the hearing a chance to present oral or written statements. The hearing officer should be sure the recorder has the name and address of each person who submits an oral or written statement. The officer should also permit the attendees to submit written statements within a reasonable time, usually two weeks, following the hearing. The officer should allot a reasonable length of time at the hearing for receiving oral statements. The officer may waive any announced time limit at his or her discretion. The hearing officer may allow those who have not previously indicated a desire to speak to identify themselves and be recognized only after those who have previously indicated their intentions to speak have spoken.

A3.7.6. Ending or Extending a Hearing. The hearing officer has the power to end the hearing if the hearing becomes disorderly, if the speakers become repetitive, or for other good cause. In any such case, the hearing officer must make a statement for the record on the reasons for terminating the hearing. The hearing officer may also extend the hearing beyond the originally announced date and time. The officer should announce the extension to a later date or time during the hearing and prior to the hearing if possible.

A3.8. Adjourning the Hearing

After all persons have had a chance to speak, when the hearing has culled a representative view of public opinion, or when the time set for the hearing and any reasonable extension of time has ended, the hearing officer adjourns the hearing. In certain circumstances (for example, if the hearing officer believes it is likely that some participants will introduce new and relevant information), the hearing officer may justify scheduling an additional, separate hearing session. If the hearing officer makes the decision to hold another hearing while presiding over the original hearing he or she should announce that another public hearing will be scheduled or is under consideration. The officer gives notice of a decision to continue these hearings in essentially the same way he or she announced the original hearing, time permitting. The Public Affairs officer provides the required public notices and directs notices to interested parties in coordination with the hearing officer. Because of lead-time constraints, SAF/MIQ may waive **Federal Register** notice requirements or advertisements in local publications. At the conclusion of the hearing, the hearing officer should inform the attendees of the deadline (usually 2 weeks) to submit additional written remarks in the hearing record. The officer should also notify attendees of the deadline for the commenting period of the Draft EIS.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–17684 Filed 7–14–99; 8:45 am]

BILLING CODE 5001–05–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 6103

Rules of Procedure for Transportation Rate Cases

AGENCY: Board of Contract Appeals, GSA.

ACTION: Final rule.

SUMMARY: This document contains nomenclature changes to the rules of procedure of the GSA Board of Contract Appeals applicable to the Board's review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(g)(1). The General Services Administration Office of Transportation Audits (OTA) has been renamed the Audit Division of the General Services Administration Office of Transportation and Property Management (the Audit Division). All references in the Board's rules to "OTA" are changed to "the Audit Division." This rule also revises the authority citation for Part 6103.

EFFECTIVE DATE: July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret S. Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, telephone (202) 501–0272, Internet address Margaret.Pfunder@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose record keeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.*

D. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 48 CFR part 6103

Administrative practice and procedure, Freight forwarders, Government procurement.

For the reasons set forth in the preamble, 41 CFR part 6103 is amended as follows:

PART 6103—RULES OF PROCEDURE FOR TRANSPORTATION RATE CASES

1. The authority citation for part 6103 is revised to read as follows:

Authority: 31 U.S.C. 3726(g)(1); 41 U.S.C. 601–613; Sec. 202(o), Pub. L. 104–316, 110 Stat. 3826.

6103.1 [Amended]

2. Section 6103.1 is amended in paragraph (a) by removing the citation "201(o)" and adding in its place the citation "202(o)" and in paragraph (b) by removing the words "General Services Administration Office of Transportation Audits (OTA)" and adding in their place the words "Audit Division of the General Services Administration Office of Transportation and Property Management (the Audit Division)".

6103.2 [Amended]

3. Section 6103.2 is amended in paragraph (a)(5) by removing the acronym "OTA" and inserting in its place the words "Audit Division", and in paragraphs (c) and (d) by removing the acronym "OTA" wherever it appears and adding in its place the words "the Audit Division".

6103.3 [Amended]

4. Section 6103.3 is amended by removing the acronym "OTA" wherever it appears and adding in its place the words "the Audit Division."

5. Section 6103.4 is revised to read as follows:

6103.4 Reply to Audit Division and agency responses [Rule 304].

A claimant may file with the Board and serve on the Audit Division and the agency a reply to the Audit Division and agency responses within 30 calendar days after receiving the responses (or within 60 calendar days after receiving the responses, if the claimant is located outside the 50 states and the District of Columbia). To expedite proceedings, if the claimant does not wish to respond, the claimant should so notify the Board, the Audit Division, and the agency.

6103.5 [Amended]

6. Section 6103.5 is amended by removing the acronym "OTA" wherever it appears and adding in its place the words "the Audit Division".

6103.6 [Amended]

7. Section 6103.6 is amended by removing the acronym "OTA" wherever it appears and adding in its place the words "the Audit Division".

6103.7 [Amended]

8. Section 6103.7 is amended by removing the acronym "OTA" and adding in its place the words "the Audit Division".

Dated: July 12, 1999.

Stephen M. Daniels,

Chairman.

[FR Doc. 99–18114 Filed 7–14–99; 8:45 am]

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Proposed Rules

Federal Register
Vol. 64, No. 135
Thursday, July 15, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1131

[DA–99–05]

Milk in the Central Arizona Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; suspension.

SUMMARY: This document invites written comments on a proposal to suspend until completion of Federal Order Reform certain sections of the Central Arizona Federal milk marketing order at the beginning of the next marketing period. The proposed rule would reinstate a suspension that expired on March 31, 1999, which eliminates the requirement that a cooperative association that operates a manufacturing plant ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of its manufacturing plant. United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the producers who supply milk to the Central Arizona market, has requested continuation of the suspension. UDA asserts that the suspension is necessary to prevent the uneconomical and inefficient movements of milk.

DATES: Comments must be submitted on or before July 22, 1999.

ADDRESSES: Comments (two copies) should be filed with USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552. Reference should be given to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address: clifford.carman@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1999, the milk of 100 producers was pooled on the Central Arizona milk order. Of these producers, 3 produced below the 326,000-pound production guideline and are considered small businesses. Of the total number of producers whose milk was pooled during that month, 97 were members of UDA and 3 were independent producers.

For March 1999, there were 5 handlers operating pool plants under the Central Arizona milk order. Of these handlers, 2 are considered small businesses.

This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Central Arizona marketing area is being considered until completion of Federal Order Reform:

In § 1131.7, paragraph (c), the words "50 percent or more of", "(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)", and "or the previous 12-month period ending with the current month."

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the start of the next marketing period.

All written submissions made pursuant to this notice will be made available for public inspection in Dairy Programs during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend certain provisions of the Central Arizona order until completion of Federal Order Reform. The proposed suspension would remove the requirement that a cooperative association which operates a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or the previous 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

The order permits a cooperative association's manufacturing plant, located in the marketing area, to be a pool plant if at least 50 percent of the producer milk of members of the cooperative association is physically received at pool plants of other handlers during the current month or the previous 12-month period ending with the current month.

Reinstatement of the suspension which expired on March 31, 1999, was requested by United Dairymen of Arizona (UDA), a cooperative association which represents nearly all of the dairy farmers who supply the Central Arizona market. UDA contends that the pool status of their manufacturing plant would be threatened if the suspension is not reinstated. UDA states that the same marketing conditions that warranted the suspension for the past four years still exist. UDA maintains that members who increased their milk production to meet the projected demands of fluid handlers for distribution into Mexico continue to suffer the adverse impact of the collapse of the Mexican peso. Absent a suspension, UDA projects that costly and inefficient movements of milk would have to be made to maintain the pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area.

Accordingly, it may be appropriate to suspend the aforesaid provisions at the beginning of the next marketing period until completion of Federal Order Reform.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: July 9, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–18051 Filed 7–14–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 98–121–1]

Animal Welfare; Draft Policy on Environment Enhancement for Nonhuman Primates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Draft policy statement and request for comments.

SUMMARY: Under the Animal Welfare Act, our regulations require that dealers, exhibitors, and research facilities that maintain nonhuman primates develop and follow a plan for environment enhancement adequate to promote the psychological well-being of the nonhuman primates. We have developed a draft policy to clarify what we believe must be considered and included in the plan in order for dealers, exhibitors, and research facilities to adequately promote the psychological well-being of nonhuman primates. We are seeking public comment on the draft policy before we implement it.

DATES: We invite you to comment. We will consider all comments that we receive by September 13, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–121–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–121–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Natalie Roberts, Ph.D., Program Evaluation and Monitoring, PPD, APHIS, 4700 River Road Unit 120, Riverdale, MD 20737–1234, (301) 734–8937; or e-mail: Natalie.A.Roberts@usda.gov.

SUPPLEMENTARY INFORMATION: The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. The APHIS Animal Care program ensures compliance with the AWA regulations by conducting inspections of premises with regulated animals.

Subpart D of 9 CFR part 3 contains requirements for the humane handling, care, treatment, and transportation of nonhuman primates. Under subpart D, § 3.81 requires that dealers, exhibitors, and research facilities that maintain nonhuman primates develop, document, and follow an appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates. Section 3.81 further requires that the plan be in accordance with currently accepted professional standards, as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian. At a minimum, § 3.81 requires the plan to address:

- The social needs of nonhuman primates known to exist in social groups;
- Enrichment of the physical environment of the nonhuman primates by providing means of expressing noninjurious species-typical behavior;
- Special considerations for infant and young nonhuman primates; nonhuman primates that show signs of psychological distress, are restricted in their activities, or are individually housed; and great apes weighing over 110 lbs.

Further guidance and specific examples are provided in § 3.81 for determining when social grouping of nonhuman primates is inappropriate and ways to provide environmental enrichment. In

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addition, § 3.81 places restrictions on the use of restraint devices and prescribes when and how individual nonhuman primates may be exempted from participation in the plan.

History of APHIS Regulations on Psychological Well-Being of Nonhuman Primates

The regulations in § 3.81 were established as part of a final rule published in the **Federal Register** on February 15, 1991 (56 FR 6426–6505, Docket No. 90–218). The final rule stipulated that plans for promoting the psychological well-being of nonhuman primates must be implemented by August 14, 1991. The establishment of these regulations was in response to amendments to the Animal Welfare Act made by Congress in 1985. Among other things, the 1985 amendments directed the Secretary of Agriculture to promulgate new regulations for a physical environment adequate to promote the psychological well-being of nonhuman primates.

Nonhuman primates include more than 240 species, ranging from the tiny marmoset to great apes. They live in different habitats in nature, and their nutritional, activity, social, and environmental requirements vary. As a result, the conditions appropriate for one species do not necessarily apply to another. In addition, the 1985 amendments to the Animal Welfare Act, while mandating that we establish regulations for a physical environment adequate to promote the psychological well-being of nonhuman primates, did not give us the authority to interfere with actual research.

With these things in mind, we intentionally made the regulations regarding promotion of psychological well-being flexible. The regulations we established in § 3.81 are performance standards, meaning they state a goal that must be met (an environment adequate to promote the psychological well-being of nonhuman primates) and provide minimum requirements on how to meet the goal. Within the minimum requirements, dealers, exhibitors, and research facilities have the flexibility to develop a plan that will address the specific needs of the nonhuman primates they maintain and, for research facilities, that will address the scientific needs of research.

Further, what constitutes psychological well-being in each species and each primate does not lend itself to precise definition. After consultation with primate experts and using the accepted professional standards available at the time, we based the regulations on the concept that, to promote the psychological well-being of nonhuman primates, a balance of several factors or areas of concern must be addressed. As noted above, this concept, as set forth in § 3.81, involves providing methods of social interaction with other nonhuman primates or humans; providing methods to physically and mentally stimulate the nonhuman primates and occupy some of their time; and considering the special needs of certain nonhuman primates, such as infants and young juveniles or great apes. Stipulating areas of concern that must be addressed, as opposed to more rigid design standards, allows dealers, exhibitors, and research facilities flexibility to tailor the plan so that it is appropriate to the species or individual being maintained.

The performance standards in § 3.81 require first and foremost that the plan for environment enhancement be in accordance with currently accepted professional standards, as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian. This allows flexibility for dealers, exhibitors, and research facilities in developing their guides as advances are made in the understanding of ways to assess and promote psychological well-being in nonhuman primates.

Draft Policy on Psychological Well-Being of Nonhuman Primates

In 1996, after 5 years of experience enforcing § 3.81, we evaluated the effectiveness of the performance standards by surveying our inspectors about their experience in reviewing environment enhancement plans developed under § 3.81. The results of our evaluation indicated that dealers, exhibitors, and research facilities did not necessarily understand how to develop an environment enhancement plan that would adequately promote the psychological well-being of nonhuman primates. In addition, there has been considerable disagreement in various sectors of the public over the adequacy of the performance standards in § 3.81, as well as confusion among the regulated public concerning on what basis they will be judged by inspectors as meeting or not meeting the requirements. Our inspectors requested information and clarification on how to judge whether someone was meeting the requirements in § 3.81.

While we continue to believe that the flexibility of the performance standards in § 3.81 is in the best interests of the animals covered by the regulations, we do believe that additional information on how to meet the standards in § 3.81 is necessary. We have, therefore, developed a draft policy on environment enhancement for nonhuman primates. The draft policy appears at the end of this document. We intend this policy to be used by dealers, exhibitors, and research facilities as a basis in developing plans under § 3.81 for environment enhancement to promote the psychological well-being of nonhuman primates.

We based the draft policy on an extensive review of the available primate literature, professional journals, and reference guides. We also consulted veterinarians, primatologists, and our inspectors. The draft policy represents what we believe are the currently accepted professional standards for promoting the psychological well-being of nonhuman primates through enhancement of the primates' environment. We believe this draft policy will assist regulated entities by clarifying what actions we consider necessary in order to comply with the requirements of § 3.81.

We state in the draft policy that dealers, exhibitors, and research facilities who house nonhuman primates will meet the requirements of § 3.81 if they develop and follow environment enhancement plans that are in accordance with the draft policy. However, we recognize that there may be other options that would also meet the requirements of § 3.81. Our adoption of this draft policy would not prevent regulated entities from developing practices other than those in the draft policy, as long as those practices meet the requirements of § 3.81. Likewise, our adoption of this draft policy would not prevent regulated entities from using alternative sources or research materials in developing their environment enhancement plans, as long as the resulting plans meet the requirements of § 3.81. If a dealer, exhibitor, or research facility wants assurance that an alternative plan (not in accordance with the draft policy) is in compliance with § 3.81, they may request approval of the plan in writing from the Deputy Administrator of Animal Care.

The draft policy identifies five general elements that we believe are critical to environments that adequately promote the psychological well-being of nonhuman primates: Social grouping, social needs of infants, structure and substrate, foraging opportunities, and manipulanda. These five elements are represented in the minimum requirements in § 3.81 concerning social grouping and environmental enrichment. The five elements, and detailed information provided for each, describe what we believe to be the currently accepted professional standards to meet the minimum requirements in § 3.81. We also state in the draft policy that facilities are encouraged to explore additional elements and innovations and to exceed the requirements of the draft policy and the regulations.

In addition, we have prepared a report that describes the scientific basis for the draft policy and the methods we used in developing the draft policy, including a literature review and discussion and a list of references. You can obtain a copy of this report by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this document. The report can also be viewed at any Animal Care Regional Office and in our comment reading room. The address for our comment reading room appears in the **ADDRESSES** section at the beginning of this document. Finally, the report is posted on the Animal Care home page at http://www.aphis.usda.gov/ac/info.html.

We are seeking public comment on the content of the draft policy before we implement it. The draft policy is as follows:

Draft Policy on Environment Enhancement for the Psychological Well-Being of Nonhuman Primates

The regulations in 9 CFR 3.81 require that dealers, exhibitors, and research facilities develop, document and follow an appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates, and that the plan be in accordance with currently accepted professional standards as cited in appropriate professional journals or reference guides and as directed by the attending veterinarian. We have developed this policy to clarify what we believe must be considered and included in an environment enhancement plan developed under § 3.81 in order to meet the requirement of adequately promoting the psychological well-being of nonhuman primates. We have based this policy on a review of the available primate literature, professional journals and reference guides, and the collective experience of field inspectors, veterinarians, and primatologists.

Dealers, exhibitors, and research facilities who house nonhuman primates will meet the requirements of § 3.81 if they develop and follow an environment enhancement plan (referred to below as "plan") in accordance with this policy. If a plan is not developed in accordance with this policy, the plan may or may not meet the requirements of § 3.81. If a dealer, exhibitor, or research facility wants assurance that an alternative plan (not in accordance with this policy) is in compliance with § 3.81, they may request approval of the plan in writing from the Deputy Administrator of Animal Care.

Based on our research, we have identified five elements that are critical to environments that adequately promote the psychological well-being of nonhuman primates:

A. Social Grouping
B. Social Needs of Infants
C. Structure and Substrate
D. Foraging Opportunities
E. Manipulanda

The remainder of this policy contains what we believe are the currently accepted professional standards to address these five critical elements, based on our research and review of the available literature, as explained above. The first two critical elements, Social Grouping and Social Needs of Infants, are a clarification of § 3.81(a), which deals with the impact of social grouping on psychological well-being. Structure and Substrate, Foraging Opportunities, and Manipulanda are critical elements which clarify § 3.81(b), Environmental Enrichment.

Facilities are encouraged to explore additional elements and innovations and to exceed what is in this policy.

A. Social Grouping

Section 3.81(a) requires that a plan must address the social needs of nonhuman primates of species known to exist in social groups in nature. According to our research, primates are clearly social beings and social housing is the most appropriate way to promote normal social behavior and meet social needs. In order to address the social needs of nonhuman primates under § 3.81(a), the plan must provide for each primate of a species known to be social in nature to be housed with other primates whenever possible. The housing options listed below are listed in a hierarchy of preference, with group housing being the most desirable plan. Housing should maximize opportunities for a full range of species-appropriate contact, except that reproduction may be limited or prevented entirely. Social housing should be designed to reduce the risk of injury from others in the enclosure. Compatibility must be determined as described in 9 CFR 3.81(a)(3). Housing options include:

1. Housing in an enclosure with one or more compatible primates. For group-living species, species-typical groupings are strongly encouraged.

2. Housing in an enclosure without another compatible primate, but with the animal having the opportunity for continuous visual, auditory, olfactory, and tactile contact with another compatible primate (such as through adjacent wire mesh or bars). For primate species in which grooming other primates is an important social function, sufficient tactile contact range is particularly important.

3. Housing without the animal having the opportunity for continuous visual, auditory, olfactory, and tactile contact, but with such contact on a periodic basis, through scheduled social interaction with one or more compatible primates.

4. Housing without the animal having the opportunity for continuous visual, auditory, olfactory, and tactile contact with a compatible primate, but with daily positive interaction with compatible human care givers. The human contact should be of sufficient type and duration to compensate for restricted social housing. We do not consider basic routine husbandry or medical or experimental manipulation to be sufficient human contact.

We consider pair or group housing (Option 1) to be the most desirable housing option and we expect this option to be used whenever possible. We consider this particularly important for chimpanzees, gorillas, gibbons, and siamangs, which seem to suffer particularly from being housed individually. If Option 1 is not utilized, the plan must provide an explanation and justification for each diminished degree of social interaction. Social housing also facilitates important primate behaviors associated with signals that communicate emotional states or other information between individuals. Acceptable reasons for choosing Options 2, 3, or 4 would include:

1. The health and well-being of the individual primate;

2. Documented unavailability of compatible individuals;

3. The scientific requirements of a protocol approved by an Institutional Animal Care and Use Committee (IACUC) (for registered research facilities); or

4. The animal's assignment to an IACUC-approved project that will result in euthanasia or disposition within a short period (normally less than 60 days).

Virtually any social change can be stressful to the nonhuman primates. In order to effectively manage social groups and minimize stress, the plan should include procedures for introduction, separation, and socialization, including minimizing unnecessary separations for established

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compatible pairs or groups, whether temporary or permanent, and minimizing the negative effects of necessary separations.

If individual primates are strongly socialized toward humans and distressed by other primates, the plan should provide for daily, extensive positive human interaction in addition to that associated with routine husbandry, medical care, experimental manipulation, training, or exhibition.

Without some socialization to humans, contact with humans becomes an environmental stressor for the primates, over which they have no control. When contact with human facility personnel is a necessary part of the primate's life, the plan must include a program of husbandry conditioning and habituation to human manipulation. This is particularly important for any primate subjected to frequent conscious manipulation or restraint that may cause more than momentary or slight pain or distress, or frequent chemical restraint to accomplish minor procedures or manipulations.

B. Social Needs of Infants

Section 3.81(c)(1) requires that special attention be given to infants and young juveniles. Nonhuman primate infants and their care-giving parents have specific social needs. The psychological well-being of nonhuman primate infants depends on appropriate infant development. In most situations, the optimal environment for infant development is one that allows the infant to remain with its biological mother through weaning in the company of a species-normal social group. Additionally, reproductive success (including reproductive behaviors, fertility, prenatal adequacy, parturition, and parental care) is generally considered to be one of the strongest indicators of psychological well-being in adult captive nonhuman primates.

All facilities with one or more breeding groups of primates should include in their plan a program to ensure species-typical sensory, motor, psychological and social development of infants. The plan should also include criteria for removal of any infants from the care-giving parent(s) if necessary. Separation should be directed by the attending veterinarian or other qualified professional and should be customized to the characteristics of the individual primate.

Infants should not be permanently removed from the care giving parent(s) before an age that approximates the age of infant independence in nature, except where necessary for the health and well-being of the infant or dam.

Although we stress that it is important not to disrupt the bond between the infant and its parents, there may be situations when infants must be separated earlier than is optimal. When infants must be separated from the care giving parent(s) prior to the approximate age of separation in nature, our research indicates that at least the following separation procedures should be included in the plan in order to minimize distress and ensure appropriate sensory, motor, psychological, and social development of the infant:

- Details of separation procedures used to minimize distress for the infant and the care-giving parent(s);
- Details of any hand-raising or fostering practices. There should be specific provisions, in accordance with the professional literature, to provide the infant with a level of sensory, motor, psychological, and social stimulation approximating that which it would receive from its care giving parent(s), natal group and/or peer group under normal circumstances. Hand raising practices that are likely to be detrimental to the development of species-appropriate behavior or to the well-being of the individual at a later time, such as those involving social restriction from primates of their own species, should not be used;
- A suitable surrogate parent for artificially reared monkey or ape infants.

The plan should include a program to develop and maintain species-typical social competence through exposure to peers and/or adults of the same or compatible species. Socialization to humans and to other animals, such as dogs, may be simultaneously maintained when desirable.

C. Environmental Enrichment—Structure and Substrate

The social, developmental, and physical environment are interdependent in ensuring psychological well-being of nonhuman primates. Section 3.18(b) requires that the physical environment in primary enclosures must be enriched by providing means of expressing noninjurious species-typical activities. The most basic components of the physical environment are the enclosure structure (its size, shape, and design) and the substrates within it (flooring, bedding, and furnishings, including perches, nest boxes, etc.). In order to promote psychological well-being for nonhuman primates, primary enclosures for housing and/or exercise need to be of adequate shape and design, and have adequate furnishings, to accommodate species-appropriate behaviors by all inhabitants. Each primate should be able to, at a minimum, engage in:

1. Species-typical postures and positions for resting, sleeping, feeding, exploration, and play;
2. Species-typical locomotion; and
3. Social adjustments.

Primary enclosures should contain elevated resting structures appropriate for the species. The type, number, and orientation of the structures in each enclosure should be appropriate to the number and social arrangement of the animals in the enclosure. Structures should be positioned to facilitate social adjustments and not interfere with normal locomotion.

Primates of species that normally hang from limbs and/or tails should be provided with structures and complexities that enable them to do so comfortably.

Primates of species with long tails should be provided with sufficient vertical space to permit normal upright resting postures without restriction of tail position or placement of the tail outside the enclosure or into waste pans.

Primates of species that normally rest or sleep in cavities, or which are nocturnal or partly nocturnal, should be provided with nest boxes or similar structures. Primates of species that construct nests for sleeping or resting should be provided with artificial or natural nest materials such as hay, browse, or blankets.

Enclosures should be designed, constructed, and furnished so that individual primates may reasonably avoid other individuals or frightening stimuli. Flight distances, visual barriers, and placement of structures such as perches or shelters should be considered during design and furnishing.

Primarily terrestrial species should have access to suitable flooring and resting areas. Patas monkeys should have regular access to large exercise areas that accommodate running.

Primate species that scent-mark should be provided with suitable scent-retaining surfaces. The surfaces may be part of the cage structure, part of cage furniture, or in the form of temporary objects and should be replaced or sanitized as appropriate.

Enclosures should be designed, constructed, and furnished to facilitate social introduction, reintroduction, separation, or temporary restraint.

Aged, physically impaired, or debilitated individuals should be provided with structures suited to their physical abilities.

D. Environmental Enrichment—Foraging Opportunities

In the wild, nonhuman primates spend a significant proportion of their time foraging for food. "Working" for food is one of the most frequently found species-typical activities for nonhuman primates. Captive nonhuman primates that are not provided with enough time-consuming foraging tasks may self-mutilate, over-groom, or become aggressive.

As part of enriching the physical environment under § 3.81(b), the plan should provide for each primate to have, on a daily basis, some type of time-consuming foraging opportunity. The foraging enrichment can include a wide variety of time-consuming activities. These activities may include providing something as simple as whole fruits or vegetables with high processing time, providing standard monkey biscuits in novel ways to increase food acquisition times, providing more complex types of devices such as puzzle feeders, or scattering food in substrates. Food items and foraging options should be chosen with consideration for the species and abilities of the individuals involved so that each primate can readily obtain its minimum daily nutritional requirements. The diet for each primate should contain a variety of tastes, smells, and textures. Gnawing or gouging wood should be provided for marmosets and tamarins.

For primates on continuously restricted diets as part of medical treatment or experimental protocol, the plan should provide a substitution for foraging, meaning opportunities to engage in time-consuming cognitive activities or foraging involving nonfood rewards (such as ice cubes or toys). The cognitive activities should be voluntary—we do not consider activities that are part of experimental manipulation to be adequate.

E. Environmental Enrichment—Manipulanda

Manipulanda are objects that can be moved, used, or altered in some manner by the primate's hands. Manipulanda can stimulate several senses and permit the animal to experience novelty and a sense of control over part of its environment. Manipulanda have been shown to be effective in increasing species-appropriate behavior and decreasing abnormal behavior.

As part of enriching the physical environment under § 3.81(b), our research indicates that the plan should provide for each primate to have a variety of portable or moveable items for manipulation available to them. The size and type of item(s) and its presentation should be safe and suitable for the species, age, sex, and characteristics of the individuals. The number of items and their presentation should take into account hoarding or aggressive behavior by animals in a social group and changed as often as necessary to maintain appropriate novelty. Primate species that groom others of their own species but must be caged without tactile contact should have daily access to suitable objects or substrates for grooming.

Considerations for Meeting the Critical Elements

There are other criteria which our research showed must be considered in relation to all five critical elements:

- Documentation
- Novelty
- Control over the environment
- Sensory stimulation
- Exemptions
- Individuals in persistent psychological distress.

Documentation

The plan should be designed with consideration for the species, age, sex, health status, rearing, and behavioral history of the primate. The plan should document:

- Scientific justification for all aspects of the plan, including professional journals and reference guides consulted.
- Changes in the facility's primate population.
- Changes in the needs of individual primates.
- Assessments of the effectiveness of the program in promoting species-appropriate behavior.

Novelty

The plan should provide for appropriate levels of novelty in the items or strategies chosen. Novelty is variation in enrichment devices and strategies. Appropriate novelty includes both the physical properties inherent in any object or situation and the timing or duration that the novelty is provided. Novel items should be provided in sufficient quantity and located within the environment so as to be accessible to all primates. The cognitive abilities of primates should be considered in the choice of novelty provided. Novel stimuli should sustain their interest, encourage activity, and redirect inappropriate activity to behaviors appropriate for their species. Each facility should document in its plan how and with what frequency novelty is maintained.

Control Over the Environment

The plan should provide individual primates with the opportunity to exercise control over some aspects of their environment. Complex objects or environments that can be altered or controlled by the animals provide them with enhanced opportunities to utilize their cognitive abilities. Examples of control include opening doors and peep holes, moving indoors or outdoors, and influencing the temperature and lighting in the cage, as well as avoiding noxious stimuli.

Sensory Stimulation

The plan should provide for each of the five senses to be stimulated in a species-appropriate and non-distressing manner. Exemptions may be made for individuals with sensory impairment.

The plan should provide for primates to be given the opportunity to avoid or distance themselves from objects that may be frightening. Levels of stimulation should not be excessive or discernibly distressing, and individuals must have the opportunity to avoid excessive exposure to such stimuli.

Exemptions

In accordance with § 3.81(e), exemptions for individual primates from various aspects of the plan may be made as part of an IACUC-approved protocol. Section 3.81(e) also allows exemptions to be made by the attending veterinarian because of the animals health or condition or in consideration of its well-being. As required by § 3.81(e), the basis for exemptions must be documented. Exemptions should be only to the extent and length of time necessary. Section 3.81(e) requires that exemptions be reviewed at least every 30 days by the attending veterinarian or, for IACUC-approved protocols, at least annually. Exemptions should be reviewed more often if appropriate to the circumstances and should be adjusted as circumstances change. If, due to medical treatment or experimental protocol, a critical element cannot be satisfied, additional enrichment must be provided as compensation.

Individuals in Persistent Psychological Distress

The plan should provide that, for primates in persistent psychological distress, a primate behaviorist or veterinarian with formal training and experience in primate behavior will be consulted.

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Done in Washington, DC, this 9th day of May 1999.

A. Cielo,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18050 Filed 7–14–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–220–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that would have required repetitive inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers; and corrective actions, if necessary. That proposal also would have required cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and installation of new fasteners, which would have constituted terminating action for the repetitive inspections proposed by that AD. That proposal was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by adding repetitive x-ray inspections. The actions specified by this new proposed AD are intended to prevent failure of the front spar due to fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by August 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–220-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM–220-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–220-AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 18, 1999 (64 FR 8029). That NPRM would have required repetitive inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers; and corrective actions, if necessary. That proposal also would have required cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and installation of new fasteners, which would have constituted terminating action for the repetitive inspections proposed by that AD. That NPRM was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. Fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, if not detected and corrected, could result in failure of the front spar and consequent reduced structural integrity of the airplane.

Comments

Due consideration has been given to the comments received in response to the NPRM.

Request To Revise Certain Inspection Requirement of the Proposed Rule

One commenter, the airplane manufacturer, requests that the originally proposed rule be revised to clarify certain requirements. The commenter notes that the originally proposed rule would require, among other things, repetitive eddy current inspections to be accomplished in accordance with Saab Service Bulletin 340–55–033, Revision 04, dated December 1, 1998. The commenter points out that the Saab service bulletin recommends performing both eddy current and x-ray inspections. Under the compliance section of the service bulletin, the general term "NDT inspection" is used. The commenter suggests that either "NDT inspection" or "eddy current and x-ray inspection" be specified in the requirements.

The FAA concurs with this request. The FAA inadvertently omitted the reference to repetitive x-ray inspections in paragraphs (a) and (b) of the proposed AD, and has revised this supplemental NPRM accordingly. Additionally, the reference to x-ray inspections has been added to the cost impact section of this supplemental NPRM. The original cost estimate in the NPRM included all costs associated with both the eddy current and x-ray inspections.

Since adding an inspection expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Clarification of the Inspection Requirements

Additionally, the FAA has clarified certain wording in the supplemental NPRM to more accurately describe the inspection requirements. This clarification is in addition to the previously discussed omission. Paragraphs (a) and (b) of the proposed rule require performing inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer. For clarification of the types of inspections required, paragraphs (a) and (b) of the supplemental NPRM have been revised to specify that detailed visual, eddy current, and x-ray inspections are required in accordance with paragraph 2.D. of the Accomplishment Instructions of the service bulletin.

Cost Impact

The FAA estimates that 279 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to perform the proposed detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $66,960, or $240 per airplane, per inspection cycle.

It would take approximately 6 work hours per airplane to accomplish the proposed eddy current and x-ray inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $100,440, or $360 per airplane, per inspection cycle.

It would take approximately 42 work hours to accomplish the cold working of the fastener holes, at an average labor rate of $60 per work hour. Required parts would cost approximately $400 per airplane. Based on these figures, the cost impact of the cold work proposed by this AD on U.S. operators is estimated to be $814,680, or $2,920 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB AIRCRAFT AB: Docket 98–NM–220–AD.

Applicability: Model SAAB SF340A series airplanes, manufacturer's serial numbers –004 through –159 inclusive; and SAAB 340B series airplanes, manufacturer's serial numbers –160 through –439 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the front spar due to fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, which could result in reduced structural integrity of the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) For Model SAAB SF340A series airplanes with manufacturer's serial numbers –004 through –159 inclusive: Perform the inspections (detailed visual, eddy current, and x-ray) specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin 340–55–033, Revision 04, dated December 1, 1998, to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer, in accordance with the service bulletin, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Thereafter, repeat only the eddy current and x-ray inspections at intervals not to exceed 12,000 flight cycles until the requirements of paragraph (d) of this AD are accomplished.

(1) For airplanes that have accumulated less than 22,000 total flight cycles as of the effective date of this AD: Perform an eddy current and an x-ray inspection prior to the accumulation of 22,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 22,000 or more total flight cycles and less than 30,000 total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Perform a detailed visual inspection within 800 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 30,000 or more total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD.

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 1,200 flight cycles after the effective date of this AD.

Initial and Repetitive Inspections

(b) For Model SAAB 340B series airplanes with manufacturer's serial numbers –160 through –439 inclusive: Perform the inspections (detailed visual, eddy current, and x-ray) specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin 340–55–033, Revision 04, dated

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December 1, 1998, to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer, in accordance with the service bulletin, at the time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable. Thereafter, repeat only the eddy current and x-ray inspections at intervals not to exceed 6,000 flight cycles until the requirements of paragraph (d) of this AD are accomplished.

(1) For airplanes that have accumulated less than 12,000 total flight cycles as of the effective date of this AD: Perform an eddy current and an x-ray inspection prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 12,000 or more total flight cycles and less than 16,000 total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Perform a detailed visual inspection within 800 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 16,000 or more total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (b)(3)(i) and (b)(3)(ii) of this AD.

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 1,200 flight cycles after the effective date of this AD.

Corrective Actions

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, either repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV) (or its delegated agent); or accomplish the requirements of paragraph (d) of this AD.

Note 2: Inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers that have been accomplished prior to the effective date of this AD in accordance with Saab Service Bulletin 340–55–033, Revision 03, dated January 22, 1998, are considered acceptable for compliance with the applicable action specified by this AD.

Terminating Action

(d) For all airplanes: Except as provided by paragraph (e) of this AD, accomplish cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and install new fasteners; in accordance with Saab Service Bulletin 340–55–034, dated October 16, 1998; at the time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable. Accomplishment of this action constitutes terminating action for this AD.

(1) For all airplanes that have accumulated less than 26,000 total flight cycles as of the effective date of this AD: Within 10,000 flight cycles after the effective date of this AD.

(2) For all airplanes that have accumulated 26,000 or more total flight cycles and less than 30,000 total flight cycles as of the effective date of this AD: Within 6,000 flight cycles after the effective date of this AD.

(3) For all airplanes that have accumulated 30,000 or more total flight cycles as of the effective date of this AD: Within 3,000 flight cycles after the effective date of this AD.

(e) If any crack is detected during the accomplishment of paragraph (d) of this AD, and if the service bulletin listed in paragraph (d) of this AD specifies to contact the manufacturer for an appropriate corrective action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the LFV (or its delegated agent).

Alternative Method of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Swedish airworthiness directives 1–110R2, dated December 7, 1998, and 1–133, dated October 20, 1998.

Issued in Renton, Washington, on July 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18100 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–344–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace BAe Model ATP airplanes. This proposal would require repetitive tests for the serviceability of the nose landing gear compensator; and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a nose wheel shimmy, which could lead to the collapse of the nose landing gear during landing.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–344–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–344–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–344–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace BAe Model ATP airplanes. The CAA advises that a nose wheel shimmy resulted in the collapse of the nose landing gear during landing. The steering compensator was found to be unserviceable due to a high leakage rate of hydraulic fluid through the unit. The existing design of the nose landing gear steering system may not adequately prevent such leakage. This condition, if not corrected, could lead to the collapse of the nose landing gear.

Explanation of Relevant Service Information

British Aerospace has issued Alert Service Bulletin ATP–A32–94, dated October 3, 1998, which describes procedures for repetitive tests for the serviceability of the nose landing gear compensator, and replacement of the compensator with a new or serviceable part, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 016–10–98, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed test, and that the average labor rate is $60 per work hour. Required parts would cost approximately $50 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,700, or $170 per airplane, per test.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BRITISH AEROSPACE REGIONAL AIRCRAFT [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 98–NM–344–AD.

Applicability: All BAe Model ATP airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a nose wheel shimmy, which could lead to the collapse of the nose landing gear during landing, accomplish the following:

Serviceability Test

(a) Within 250 flight cycles after the effective date of this AD, perform a test for the serviceability of the nose landing gear compensator in accordance with British Aerospace Alert Service Bulletin ATP–A32–94, dated October 3, 1998. Thereafter, repeat the test at intervals not to exceed 4,000 flight cycles. If the compensator does not pass the serviceability test, within 50 flight cycles after the accomplishment of the test, replace the compensator with a new or serviceable compensator in accordance with the service bulletin.

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Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 016–10–98.

Issued in Renton, Washington, on July 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18101 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This proposal would require a detailed visual inspection to detect damage to the terminal lugs on the 12XC and 15XE connectors and the mounting lugs on the 15XE connector; and repair or replacement of the terminal lugs or the 15XE connector with new parts, if necessary. This proposal is prompted by the issuance of a mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct broken terminal and mounting lugs on the 15XE and 12XC connectors in the 101VU panel in the avionics compartment, which could result in loss of electrical power from the standby generator.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–110–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that operators have reported cases of broken terminal lugs on the three-phase wiring to the 12XC and 15XE connectors located on the essential part of the 101VU panel in the avionics compartment on airplanes equipped with a standby generator. The DGAC also advises that the mounting lugs on the 15XE connector were also found broken. Preliminary indications are that the mounting configuration of connector 15XE is transmitting vibration to the terminal lugs of both connectors and to the mounting lugs of 15XE. Such failures, if not detected and corrected, could result in loss of electrical power from the standby generator.

Explanation of Relevant Service Information

Airbus has issued an All Operators Telex (AOT) 24–09, Revision 01, dated August 13, 1998, which describes procedures for inspecting the terminal lugs on the 12XC and 15XE connectors and the mounting lugs on the 15XE connector for damage; and repair or replacement of the terminal lugs or the 15XE connector with new parts, if necessary.

The DGAC classified Airbus AOT 24–09 as mandatory and issued French airworthiness directive 1999–077–278(B), dated February 24, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus AOT 24–09, described previously.

Interim Action

This is considered to be an interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that approximately 109 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $13,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AIRBUS INDUSTRIE: Docket 99–NM–110–AD.

Applicability: Model A310 series airplanes on which Airbus Modification 05911 has been installed, and Model A300–600 series airplanes on which Airbus Modification 06214 has been installed; equipped with a standby generator (FIN 25XE); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct broken terminal lugs on the 12XC and 15XE connectors, and mounting lugs on the 15XE connector in the 101VU panel in the avionics compartment, which could result in loss of electrical power from the standby generator, accomplish the following:

Inspection and Corrective Actions

(a) Prior to the accumulation of 5,000 total flight hours, or within 600 flight hours after the effective date of this AD, whichever occurs later, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus All Operators Telex (AOT) 24–09, Revision 01, dated August 13, 1998.

(1) Perform a detailed visual inspection of the terminal lugs on the 12XC and 15XE connectors to detect damage (i.e., overheat, cracking, twisting, or total rupture). If any damage is detected, prior to further flight, replace the terminal lugs with new terminal lugs, part number NSA936501TA1004.

(2) Perform a detailed visual inspection of the mounting lugs on connector 15XE to detect damage (i.e., cracking or breaking). If any damage is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace connector 15XE with a new connector, part number 25811BOHUNTKL vendor code F0214 ECE. Or,

(ii) Repair connector 15XE in accordance with Airbus AOT 24–09, Section 4.2.2.3. Repeat the detailed visual inspection required by paragraph (a)(2) of this AD of the repaired connector thereafter at intervals not to exceed 1 week, and repeat the repair with new cable ties thereafter at intervals not to exceed 3 months, until the replacement required by paragraph (a)(2)(i) of this AD is accomplished.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive, 1999–077–278(B), dated February 24, 1999.

Issued in Renton, Washington, on July 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18102 Filed 7–14–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–345–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require repetitive replacements of the weight on wheels microswitch harness subassembly with a new microswitch harness subassembly. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a nose wheel shimmy, which could result in the collapse of the nose landing gear during takeoff or landing and possible injury to the flightcrew and passengers.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–345–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–345–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–345–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that internal corrosion due to inadequate sealing within the operating plunger of the nose landing gear weight on wheels microswitch harness subassembly can prevent the switch from operating when the wheels are lowered during landing. The failure will cause loss of nose wheel steering by preventing hydraulic pressure from being applied to the steering actuator. If this occurs to an aircraft on which the steering compensator (located in the hydraulic return line) has an excessive leak rate, the shimmy damping of the nose leg is greatly reduced. This condition, if not corrected, could result in the collapse of the nose landing gear during takeoff or landing and possible injury to the flightcrew and passengers.

Explanation of Relevant Service Information

British Aerospace has issued Alert Service Bulletin ATP–A32–93, dated October 3, 1998, which describes procedures for repetitive replacements of the weight on wheels microswitch harness subassembly with a new microswitch harness subassembly. The Civil Aviation Authority (CAA) classified this service bulletin as mandatory and issued British airworthiness directive 014–10–98, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive replacements of the weight on wheels microswitch harness subassembly with a new microswitch harness subassembly.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,300 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $54,800, or $5,480 per airplane, per replacement cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 98–NM–345–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a nose wheel shimmy, which could result in the collapse of the nose landing gear during takeoff or landing and possible injury to the flightcrew and passengers, accomplish the following:

Replacement

(a) Within 4 years after the initial installation of the weight on wheels microswitch harness subassembly or 3 months after the effective date of this AD, whichever occurs later, replace the weight on wheels microswitch harness subassembly with a new microswitch harness subassembly in accordance with British Aerospace Alert Service Bulletin ATP–A32–93, dated October 3, 1998. Repeat the replacement thereafter at intervals not to exceed 4 years.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 014–10–98.

Issued in Renton, Washington, on July 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18103 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–115–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require a one-time visual inspection of the conduit pipe for distortion or repairs, and replacement of the conduit pipe with a new pipe, if necessary. This proposal would also require replacement of the cable assemblies to the fuel standby pumps with new cable assemblies that have improved sheathing protection. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent electrical arcing due to damaged fuel standby pump cable assemblies and conduit pipes, which could create a possible ignition source, and consequent fire hazard.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–115–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be

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examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–115–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–115–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace (Jetstream) Model 4100 series airplanes. The CAA advises that, on some aircraft, an operator has found damage to the insulation of the wires in the cable assemblies to the fuel standby pumps. This damage was caused by circumferential cuts to the cable insulation, which exposed the wires. The cuts are thought to have been caused when the cable outer sheath and braid were removed during cable installation. The CAA also advises that, in the same area, but unrelated to the insulation damage, the metal conduit pipe that carries the cable assembly into the dry bay of the wing had been found in a distorted condition. Distortion of the metal conduit pipe is thought to have been caused by incorrect maintenance practices during standby pump canister removal. These conditions, if not corrected, could result in electrical arcing which could create a possible ignition source, and consequent fire hazard.

Explanation of Relevant Service Information

British Aerospace has issued Jetstream Service Bulletin J41–28–010, dated April 5, 1999, which describes procedures for a one-time visual inspection of the conduit pipe (left and right) for distortion or repairs, and replacement of the conduit pipe with a new pipe, if necessary. It also describes procedures for replacement of the cable assemblies (left and right) to the fuel standby pumps with new cable assemblies that have improved sheathing protection. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–04–99, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $56,640, or $960 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–115–AD.

Applicability: All Jetstream Model 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing due to damaged fuel standby pump cable assemblies and conduit pipes, which could create a possible ignition source, and consequent fire hazard, accomplish the following:

Corrective Actions

(a) Within 6 months after the effective date of this AD, accomplish the following actions required by paragraphs (a)(1) and (a)(2) of this AD in accordance with Jetstream Service Bulletin J41–28–010, dated April 5, 1999.

(1) Perform a one-time visual inspection of the conduit pipe (left and right), which carries the fuel standby pump cable assembly into the dry bay of the wing, for distortion (i.e., damage) or repairs. If any distortion or repair is found, prior to further flight, replace the conduit pipe with a new pipe, part number 14128032–403 (left) or part number 14128032–405 (right).

(2) Replace fuel standby pump cable assemblies (left and right) with new cable assemblies, part number F5–71–1.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 005–04–99.

Issued in Renton, Washington, on July 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18104 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contract Market Rule Review Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing automatically to approve certain exchange rule amendments upon adoption and to require their subsequent submission to the Commission in a single summary filing, rather than individually as currently mandated. In addition, the Commission is proposing to reorganize in a clearer and more accessible format its rules on expedited approval procedures of proposed exchange rule amendments. The proposed comprehensive reorganization of these rules is intended to further the Commission's overall regulatory reform program by reducing unnecessary regulatory burdens and costs on United States exchanges associated with the Commission's review and approval of proposed exchange rules and rule amendments while maintaining the basic public protections of the Commodity Exchange Act.

DATES: Comments must be received August 16, 1999.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov].

FOR FURTHER INFORMATION CONTACT: Richard H. Shilts, Director, Market Analysis Section or Kimberly A. Browning, Attorney/Advisor, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5260. E-mail:[RShilts@cftc.gov] or [KBrowning@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

Over the years the Commission has updated and streamlined its procedures for reviewing proposed exchange rules. Section 5a(a)(12) of the Commodity Exchange Act (Act), 7 U.S.C. 7a(a)(12), provides that all rules of a contract market [1] which relate to a futures contract's terms and conditions must be submitted to the Commission for prior approval.[2] This requirement is premised on considerable regulatory experience indicating that Commission review and approval of proposed exchange rules before their implementation, among other things, is the preferred way to minimize the possibility of market manipulation or distortions due to improperly designed contract terms. Moreover, the proposed amendment of an existing futures contract potentially may affect adversely traders, producers or commercials. Commission pre-approval review of such changes enables those persons or entities to have their views considered.

The Commission, while preserving the important public protections of prior review, has aggressively sought to reduce unnecessary cost and regulatory burdens associated with this requirement. For example, the Commission has long established an expedited review and automatic approval of proposed exchange rule amendments falling within a number of categories. In addition, since 1997, the Commission has carried out a far-

[1] Commission Rule 1.41(a)(1) defines "rule" of a contract market as follows: Any constitutional provision, article of incorporation, bylaw, rule regulation, resolution, interpretation, stated policy, or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board thereof or any committee thereof.

[2] Section 5a(a)(12) further requires that contract markets submit all other rules to the Commission except those relating to setting of margins or that the Commission may specify by rule. Such other rules may be made effective ten days after Commission receipt unless, within the ten-day period, the exchange requests Commission approval of the Commission notifies the exchange that it intends to review the rules for approval.

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reaching program of regulatory reform. As part of that on-going program, the Commission established fast track procedures[3] for Commission review and approval of applications for new contracts and for proposed exchange rules and rule amendments not eligible for expedited review. These initiatives have modernized and streamlined the Commission's review processes, reducing unnecessary burdens and their associated costs to United States exchanges.

Together, the expedited review, automatic approval and fast track procedures have been uniquely effective in reducing the time for Commission review and approval of proposed exchange rules and rule amendments. In fiscal year 1998, the Commission processed 290 changes to contract terms and conditions, of which 152 were processed under expedited procedures. Of the 152, 47 were treated as approved upon exchange adoption and 105 were approved on an expedited basis within 10 days after receipt. Of the remaining 138 that the Commission approved under non-expedited procedures, seven were approved under the fast track procedure. Of the 131 that were approved under regular review procedures, 36 were approved in 10 days of fewer, 101 were approved in 30 days or fewer and all but nine were approved within 60 days.[4]

In keeping with this record, the Commission continues to innovate in finding additional ways further to reduce unnecessary burden on United States exchange, and is proposing herein to expand the types of exchange rules and rule amendments that it approves automatically upon exchange adoption, to streamline dramatically the required filing notice of those rule amendments with the Commission, to add a new three-day expedited review procedure and to expand the types of proposed contract terms and conditions which are eligible for such expedited rule approval.

[3] See, Commission Rules 5.1 and 1.41(b). 62 FR 10434 (March 7, 1997).

[4] In addition, the Commission adopted fast track review procedures for new contract designation applications. Since June 1997, the Commission has approved a total of 70 contracts under fast track procedures, 36 under the 10-day procedure and 34 under its 45-day procedure. Forty-two additional contracts were approved under non-fast-track review procedures.

Most recently, the Commission revised the rules governing the designation application itself, replacing over five pages of rules with three, user-friendly application forms that make extensive use of checklists and charts. (See, 64 FR 29217 June 1, 1999).

II. The Proposed Amendments

A. Rule 1.41(b)

Based upon its experience in administering the current review procedures, the Commission is proposing to expand the categories of rules eligible for automatic approval in proposed new Rule 1.41(b)(5). Exchange rule amendments eligible for approval upon their adoption include routine changes to an index, other than a stock index, used as the settlement of a futures contract compiled by a third party, typographical, renumbering and other types of non-material changes, trading hours and trading months, and discretionary option strike prices. The routine changes to an index eligible for this treatment are those types of changes that are frequent and anticipated to be needed in order to maintain the continuity and integrity of a pricing algorithm or formula which has been defined in the contract's terms. It does not include non-routine or unanticipated changes to the basic construction of an index as defined in the contract, for example, by changing the geographic pricing point of an agricultural index. The listing of trading months are not eligible for this treatment if the trading month cycle has been interrupted by the delisting of a contract, unless the listing of relisting is in conjunction with, or subsequent to, the approval of the Commission of substantive changes to the contract's terms or conditions.

The Commission also is proposing to reduce the associated filing requirements for automatically approved exchange rule amendments. Specifically, the Commission would replace the current requirement that the exchange file a separate notice of each such amendment, with a single, summary filing of all automatically approved rule amendments adopted by an exchange during the preceding week.[5] This proposal should significantly streamline the filing process for exchanges.

The Commission also is proposing to add a new, faster category of expedited review. This category would be for exchange rules that would be deemed to be approved three days after receipt of the Commission, and includes amendments to the terms and conditions of major currency[6] futures contracts which meet the standards of Guideline No. 1, amendments to the terms and conditions of options on futures contracts,[7] and proposed revisions to the relating to the minimum price fluctuation and daily price limits.

These review categories reflect the Commission's experience in the time necessary to review proposed amendments to particular types of contract terms and conditions. The contract amendments eligible for these procedures are routine in nature and have clearly defined, often objective, standards regarding their permissibility under the Act and Commission regulations and it can be determined on its face whether the particular rule amendment complies with the applicable standard. Moreover, such rule amendments generally do not raise any issues relating to the contract's susceptibility to manipulation or whether its trading would be in the public interest.

In addition to the proposed new categories and expanded eligibility for such procedures, the Commission is proposing to reorganize its rules on expedited approval procedures into a more accessible and clearer format.[8] As proposed, Rule 1.41(b) would be reorganized into paragraphs reflecting the time permitted the Commission for review, 180 day review period, 45 day fast track review, 10 or 3 day expedited review (currently Rules 1.41(i)–(t)) and rules approved on adoption.

To further its goal of streamlining the filing process, the Commission is also encouraging exchanges to file their submissions electronically. Electronic filing of submissions will reduce unnecessary burdens and costs associated with the submission process to both the exchanges and the Commission.

[5] Under this proposed requirement, an exchange, if it so desired, could continue to file a separate notice of an automatically approved rule amendment as is currently required.

[6] Major currencies have nearly inexhaustible deliverable supplies, exhibit extremely deep and liquid markets, are not subject to convertibility or delivery restrictions and are easily arbitraged between cash and futures markets. For this rule, they are defined as the Australian dollar; British pound; Euro (and its component currencies); Japanese yen; Canadian dollar; Swiss franc; New Zealand dollar; Swedish krona; and Norwegian krone.

[7] Under the proposal, changes to the cabinet trade provisions of an option contract, which currently are eligible for expedited approval under Commission regulation 1.41(q), would now qualify for expedited approval under the three day provision as provided in proposed Rule 1.41(b)(4). In this regard, a cabinet trade is defined as an option transaction whereby the per contract value of the cabinet trade is less than the per-contract value of a trade at the specified minimum premium fluctuation for the option contract. Cabinet trades, thus, are incorporated in Chart C of Guideline No. 1 as part of an option contract's minimum premium fluctuation rules.

[8] As discussed above, these procedures and standards currently are provided in a number of different Commission rules, including Rule 1.41(b) (which includes the fast-track procedures), and Rules 1.41(i) through (t) (expedited procedures).

B. Commission Rule 1.41(d)

Commission Rule 1.41(d) sets forth the submission requirements for contract market rules that are exempt from the requirements of section 5a(a)(12)(A) of the Act. These rules involve non-substantive, routine and administrative matters such as exchange standards of decorum and typographical error corrections. The Commission is proposing that rather than filing Rule 1.41(d) submissions on an individual basis, the exchanges be allowed to make these filings on a weekly basis and in electronic form if so desired.[9] The Commission believes that, to the extent that an exchange might otherwise make multiple Rule 1.41(d) filings in a particular week, this proposal will significantly streamline the filing process, thus making compliance easier to achieve.

C. Commission Rule 1.45

The Commission is proposing to remove Commission Rule 1.45. This Rule requires that the terms and conditions of all exchange traded futures contracts specify that the grades of the underlying commodities conform to U.S. standards, if the Commission has adopted such standards. The Commission as a matter of practice, does not officially promulgate specific standards for commodity futures contracts. Instead, the Commission has adopted the requirement that contract terms and conditions must be in conformance with customary cash market practices; provided that variances from cash market practices are permitted if necessary or appropriate for the contract. These requirements are currently set forth under the procedures of Guideline No. 1. Guideline No. 1, in effect, requires that contract terms and conditions submitted for approval must be based on U.S. standards if those standards represent cash market standards. The Commission approves rules requiring delivery of commodities using applicable U.S. standards based upon its assessment of the cash market. Given these procedures under Guideline No. 1, the Commission believes that requirements Rule 1.45 imposes are redundant and, therefore, Rule 1.45 should be removed.

These proposals should significantly reduce the regulatory burden for United States exchanges, while maintaining the public protections of an effective system of Commission review of exchange rule amendments.

The Commission believes that the proposed revisions streamlining current review procedures offer the best balance between protection of the public and reducing regulatory and cost burdens on United States exchanges, thereby enabling them to compete better. In addition to relieving U.S. exchanges of any unnecessary burdens, the proposed rules will enable the Commission to devote its staff resources to the review of rules which raise more substantive issues. The Commission invites comment from the public regarding additional categories of contract terms and conditions that can be included within the relief proposed, or other additional steps that the Commission can take under its regulatory reform program.

[9] Section 5a(a)(1) of the Act requires that a contract market "*promptly* furnish the Commission with copies of all bylaws, rules, regulations, and resolutions made or issued by it." (emphasis added). While in these proposed rules a contract market must furnish rules within seven days, this is not to suggest that the term "prompt," which may appear in other sections of the Act or rules, is seven days.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA. 5 U.S.C., 601 *et seq.* 47 FR 18618 (April 30, 1982). These amendments propose to establish streamlined procedures for Commission review and approval of proposed exchange amendments to its rules. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. However, the Commission invites comments from any firms or other persons that believe that the promulgation of these rules might have a significant impact upon their activities.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act (PRA) of 1995 {Pub. L. 104–13 (May 1, 1995)} imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information defines by the PRA. In compliance with the Act, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

The Commission has previously submitted these rules and their associated information collection requirements to the Office of Management and Budget (OMB). The Office of Management and Budget approved the collection of information associated with these rules on October 24, 1998 and assigned OMB control number 3038–0022 to the rules. The burden associated with the entire collection (3038–0022), including these proposed rules is as follows:

Average burden hours per response: 3,609.89.

Number of respondents: 15,893.

Frequency of response: On Occasion.

Persons wishing to comment on the information which would be required by the proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from the Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract market rules, Rule review procedures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 5, 5a and 8a thereof, 7 U.S.C. 6c, 7, 7a, and 12a, the Commission hereby proposes to amend Part 1 of Chapter I of Ttitle 17 of the Code of Federal Regulations as follows:

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PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.41 is proposed to be amended by revising paragraphs (b)(1)(i) introductory text, (b)(1)(i)(A), and (b)(2), by removing paragraphs (b)(3) and (b)(4), by adding new paragraphs (b)(3), (b)(4) and (b)(5), by revising paragraph (d)(2) and by removing paragraphs (i) through (t) to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(b) Rules that relate to contract terms and conditions.—(1) Pre-approval review procedures. (i) Except as provided in paragraphs (b)(5) and (f) of this section, all proposed contract market rules that relate to terms and conditions must be submitted to the Commission for approval pursuant to section 5a(a)(12)(A) of the Act prior to their proposed effective dates. One copy of each rule submitted under this section shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commission at its Washington, DC headquarters. If a hard copy is furnished for submissions under appendix A to part 5 of this chapter, two additional hard copies shall be furnished to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Each submission under this paragraph (b) shall be in the following order:

(A) Label the submission as being submitted pursuant to Regulation 1.41(b)—regular review procedures.

* * * * *

(2) Fast track 45 day review. (i) All proposed contract market rules that relate to terms and conditions submitted for review under paragraph (b)(1) of this section shall be deemed approved by the Commission under section 5a(a)(12)(A) of the Act, 45 days after receipt by the Commission, unless notified otherwise within that period, if:

(A) The contract market labels the submission as being submitted pursuant to Commission Rule 1.41(b)—Fast Track Review;

(B) The submission complies with the requirements of paragraph (b)(1)(i)(A) through (E), of this section or for dormant contracts, the requirements of § 5.2 of this chapter;

(C) The contract market does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period; and

(D) The contract market has not instructed the Commission in writing during the review period to review the proposed rule under the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section.

(ii) The Commission, within 45 days after receipt of a submission filed pursuant to paragraph (b)(2)(i) of this section, may notify the contract market making the submission that the review period has been extended for a period of 30 days where the proposed rules raises novel or complex issues which required additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraph (b)(2)(i) of this section shall be extended for a period of 30 days.

(iii) During the 45-day period for fast track review, or the 30-day extension when the period had been enlarged under paragraph (b)(2)(ii) of this section, the Commission shall notify the contract market that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section if it appears that the proposed rule may violate a specific provision of the Act, regulation, or form or content requirement of this section. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation or form or content requirement of this section that the proposed rule appears to violate. Within 10 days of receipt of this termination notification, the contract market may request that the Commission render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(a)(12)(A) of the Act by notifying the Commission that the contract market views its submission as complete and final as submitted.

(3) Expedited 10 day review. (i) Notwithstanding the provisions of paragraph (b)(1) of this section, the following changes to contract terms and conditions shall be deemed approved by the Commission ten business days after receipt:

(A) Specifically approved standards. Changes to terms and conditions that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the contract market of the applicability of this paragraph; provided, however, that the Commission may at any time alter or revoke the applicability of such a notice to any particular contract;

(B) Financial standards for delivery facilities. Changes in the financial standards or requirements for regular delivery facilities or comparable entities; provided that:

(1) The amended rule does not affect the regularity or delivery status of any existing facility declared regular by the contract market for the relevant commodity(ies) or likely candidates for regularity status,

(2) The requirement is stated in the rules and applies uniformly to all applications for regularity, and

(3) The requirement is related solely for the purpose of ensuring the financial integrity of the regular facility(ies); and

(C) Delivery standards set by third parties. Changes to grades or standards of commodities deliverable on futures contracts which are established by an independent third party and which are incorporated by reference as terms of the contract; provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading.

(ii) The contract market must label filings under this paragraph as submitted for "10 Day Expedited Review."

(iii) The Commission will, within 10 business days after receipt of the submission, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section.

(4) Expedited three day review, (i) Notwithstanding the provisions of paragraph (b)(1) of this section, the following changes to contract terms and conditions shall be deemed approved by the Commission three business days after receipt:

(A) Specifically approved standards. Changes to terms and conditions that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the contract market of the applicability of this paragraph;

provided, however, that the Commission may at any time alter or revoke the applicability of such a notice to any particular contract;

(B) Options on futures contracts. (1) Changes to terms and conditions for options on futures contracts that are consistent with the Act, Commission regulations and the standards set forth in Part 5, Appendix A(c)(3) of this chapter;

(2) Changes to exchange rules governing option trading months, including a procedure for listing options with different expiration dates based on the same underlying futures contract month (option serial months), that are specified and automatic; and

(3) Changes to option automatic exercise procedures that are specified and objective, apply only to in-the-money options and provide an opportunity for option holders to override the automatic exercise provision.

(C) Currency futures contracts. Changes to terms and conditions that are consistent with the Act, Commission regulations and the standards set forth in Part 5, Appendix A(a)(3)(1)–(15) of this chapter for futures and options on physicals contracts based on the following currencies (including currency cross rates); Australian dollar, British pound; Euro (and its component currencies); Japanese yen; Canadian dollar; Swiss franc; New Zealand dollar; Swedish krona; and Norwegian krone.

(D) Minimum price fluctuation limits. Changes to the minimum tick provisions for futures contracts that do not increase tick size; and

(E) Price limit provisions for futures contracts. Changes to price limit rules for futures contracts, except for equity index contracts, provided that the change does not reduce the existing price limit.

(ii) The contract market must label filings under this paragraph as submitted for "Three Day Expedited Review."

(iii) The Commission will, within three business days after receipt of the submission, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section.

(5) Pre-approved rules. (i) Notwithstanding the provisions of paragraph (b)(1) of this section, the following changes to contract terms and conditions shall be deemed approved by the Commission at the time the change is adopted by the contract market:

(A) Specifically approved standards. Changes to terms and conditions that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the contract market of the applicability of this paragraph; provided, however, that the Commission may at any time alter or revoke the applicability of such a notice to any particular contract;

(B) Index contracts. Routine changes in the composition, computation, or method of selection of component entities of an index other than a stock index referenced and defined in the contract's terms, made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures of option contract;

(C) Survey lists for cash settled contracts. Proposals relating to the initial listing or changes to the lists of banks, brokers, dealers or other entities which provide price or cash market information to a contract market for purposes of computing cash settlement prices or a cash price series or for defining the deliverable supply for physical delivery contracts, if consistent with a rule approved by the Commission establishing standards or criteria for the persons or entities which qualify for the list;

(D) Non-material revisions. Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of contract terms and conditions that have no effect on the economic characteristics of the contract;

(E) Trading hours. Changes to trading hours; provided that for changes that permit trading between 6:00 p.m. and 7:00 am local time where the contract market is located, the contract market has previously received Commission approval for trading in such hours in at least one designated contact, and that the change does not provide for the initial listing of a contract on an automated trading system;

(F) Trading months. Proposals to list initially or to change the listing of trading months for futures and options on physicals contracts which are not outside of a previously approved listing cycle and were not previously delisted, unless the delisted month is being relisted subsequent to the amendment of a contract term or condition approved or deemed to be approved by the Commission under this section and proposals to delist trading months having no open interest;

(G) Discretionary option strike prices. The non-routine listing of option strike prices not required to be listed under the automatic listing procedures; and

(H) Listings on supplemental trading sessions. Changes to the months or strike prices listed for trading during supplemental trading sessions outside normal trading hours where such listings represent all or a subset of the months or strikes listed during regular trading hours.

(ii) The contract market must provide to the Commission at least weekly a summary notice of all rule changes made pursuant to this paragraph during the preceding week. Such notice must be labeled "Weekly List of Pre-Approved Rule Changes" and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

(iii) The Commission will, within three business days after receipt of the submission, notify the contract market making the submission if it appears that change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section.

* * * * *

(d) * * *

(2) Rules that are exempt from the requirements of section 5a(a)(12)(A) of the Act in accordance with the provisions of this paragraph (d) shall nonetheless be submitted to the Commission pursuant to the provisions of section 5a(a)(1) of the Act. Each such submissions shall be labeled as being submitted pursuant to section 5a(a)(1) of the Act and paragraph (d) of this section. The contract market may instead provide to the Commission, at least weekly, a summary notice of all rule changes made pursuant to this paragraph during the preceding week. One copy of each such submissions shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commodity Futures Trading Commission, Three Lafayette Centre,

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1155 21st Street NW., Washington, DC 20581.

* * * * *

3. Section 1.45 is removed and reserved.

Issued in Washington, DC, this 7th day of July, 1999 by the Commodity Futures Trading Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 99–17812 Filed 7–14–99; 8:45 am]

BILLING CODE 6351–01–M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 516

RIN 3141–AA20

Administrative Practice and Procedure; Testimony; Information; Response to Subpoena

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission proposes to issue regulations describing the duties of its personnel with respect to litigation involving the National Indian Gaming Commission or the official responsibilities of National Indian Gaming Commission employees.

DATES: Comments may be submitted on or before August 16, 1999.

ADDRESSES: Comments may be mailed to: Testimony Regulation Comments, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Schiff at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Because the National Indian Gaming Commission is regularly associated with a variety of matters which have the potential for resulting in litigation, the National Indian Gaming Commission has a requirement for regulations describing the duties of its personnel with respect to such litigation. This proposed rule promulgates for the National Indian Gaming Commission the regulations contemplated by the United States Supreme Court in *United States Ex. Rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Because this rule is procedural in nature, and affects principally the actions of personnel of the National Indian Gaming Commission, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

Although the proposed regulation mandates that litigants seeking the testimony of National Indian Gaming Commission personnel submit a written request, the requirement is simply a formal embodiment of existing practice and in some cases a substitute for a subpoena or other process. In any event it is at most a de minimus requirement.

National Environmental Policy Act

The National Indian Gaming Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 516

Administrative practice and procedure, Gambling, Indians—lands, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR Chapter III by adding a new Part 516 as follows:

PART 516—TESTIMONY OF COMMISSIONERS AND EMPLOYEES AND FORMER COMMISSIONERS AND FORMER EMPLOYEES RESPECTING OFFICIAL DUTIES; RESPONSE TO SUBPOENA

Sec.

516.1 What is the purpose of this part and to whom does it apply?
516.2 When may a person to whom this part applies give testimony, make a statement or submit to interview?
516.3 When may a person to whom this part applies produce records?
516.4 How are records certified or authenticated?

Authority: 25 U.S.C. 2706; 25 U.S.C. 2716(a); 18 U.S.C. 1905.

§ 516.1 What is the purpose of this part and to whom does it apply?

(a) The purpose of this part is to promulgate regulations regarding the release of official National Indian Gaming Commission information and provision of testimony by National Indian Gaming Commission personnel with respect to litigation or potential litigation and to prescribe conduct on the part of National Indian Gaming Commission personnel in response to a litigation-related request or demand.

(b) This part applies to litigation-related requests or demands (including subpoena, order or other demand) for interview, testimony (including by deposition) or other statement, or for production of documents relating to the business of the National Indian Gaming Commission, whether or not the National Indian Gaming Commission or the United States is a party to the litigation. It does not, however, apply to document requests covered by 25 CFR parts 515 and 517.

(c) To the extent the request or demand seeks official information or documents, the provisions of this part are applicable to Commissioners, employees, and former Commissioners and former employees, of the National Indian Gaming Commission.

§ 516.2 When may a person to whom this part applies give testimony, make a statement or submit to interview?

(a) No person to whom this part applies, except as authorized by the Chairman or the General Counsel pursuant to this part, shall provide testimony, make a statement or submit to interview.

(b) Whenever a subpoena commanding the giving of any testimony has been lawfully served upon a person to whom this part applies, such individual shall, unless otherwise authorized by the Chairman or the General Counsel, appear in response thereto and respectfully decline to testify on the grounds that it is prohibited by this part.

(c) A person who desires testimony or other statement from any person to whom this part applies may make written request therefor, verified by oath, directed to the Chairman setting forth his or her interest in the matter to be disclosed and designating the use to which such statement or testimony will be put in the event of compliance with such request: *Provided*, that a written request therefor by an official of any federal, state or tribal entity, acting in his or her official capacity need not be verified by oath. If it is determined by the Chairman or the General Counsel that such statement or testimony will be in the public interest, the request may be granted. Where a request for a statement or testimony is granted, one or more persons to whom this part applies may be authorized or designated to appear and testify or give a statement with respect thereto.

§ 516.3 When may a person to whom this part applies produce records?

(a) Any request for records of the National Indian Gaming Commission shall be handled pursuant to the procedures established in 25 CFR parts 515 and 517 and shall comply with the rules governing public disclosure as provided in 25 CFR parts 515 and 517.

(b) Whenever a subpoena duces tecum commanding the production of any record, has been lawfully served upon a person to whom this part applies, such person shall forward the subpoena to the General Counsel. If commanded to appear in response to any such subpoena, a person to whom this part applies shall respectfully decline to produce the record on the ground that production is prohibited by this part and state that the production of the record(s) of the National Indian Gaming Commission is a matter to be determined by the General Counsel.

§ 516.4 How are records certified or authenticated?

(a) Upon request, the person having custody and responsibility for maintenance of records which are to be released under this part or 25 CFR parts 515 or 517 may certify the authenticity of copies of records that are requested to be provided in such format.

(b) A request for certified copies of records or for authentication of copies of records shall be sent to the National Indian Gaming Commission, Attention: Freedom of Information Act Officer.

This proposed rule was prepared under the direction of Barry W. Brandon, General Counsel, National Indian Gaming Commission, 1441 L St. NW., Suite 9100, Washington, DC 20005.

Signed at Washington, DC, this 1st day of July, 1999.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 99–17903 Filed 7–14–99; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–140–FOR; State Program Amendment No. 98–4]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes additions of rules concerning blaster certification. Indiana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., e.s.t., August 16, 1999. If requested, we will hold a public hearing on the amendment on August 9, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on July 30, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232-1291.

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

By letter dated July 1, 1999 (Administrative Record No. IND–1659), Indiana sent us an amendment to its program under SMCRA. Indiana sent the amendment at its own initiative. Indiana proposes to amend the Indiana Administrative Code. Below is a summary of the changes proposed by Indiana. The full text of the proposed program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. 310 IAC 12–8–4.1, Application for Certification

Indiana proposes to add this section to require persons wishing to become certified blasters to submit an application for certification to the department. The application must be in writing, on forms supplied by the department, and completed in accordance with the application instructions. If an application form is incomplete, the department will notify the applicant of the deficiencies. The applicant will then have thirty days to provide the required information. If the applicant does not provide the required information, the department will terminate the application. The director or an authorized representative may verify the information shown on the application. Finally, if the department terminates the application, the applicant will not be considered for certification. However, the applicant may submit a new application at any time.

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B. 30 IAC 12–8–8.1, Renewal

Indiana proposes to add this section to require a certified blaster to renew his or her certification every three years. The request for renewal must be submitted to the department in writing, on forms supplied by the department, within thirty days prior to expiration of the certificate. The department will approve the renewal request if the certified blaster has worked at least twelve months of the preceding thirty-six as a certified blaster and is not in violation of 310 IAC 12–8–9. If the certified blaster does not renew his or her certification within one year after expiration, the certificate will no longer be renewable. A blaster must then submit a new application for certification. The department will send a renewal notice to each registrant at least two months before expiration of certification. Finally, the renewal notice and all other communications will be sent to the last address the registrant gave to the department. Failure to receive a renewal notice does not relieve the certified blaster of the obligation to renew his or her certification.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on July 30, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 7, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–17981 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–99–008]

RIN 2115–AA98

Anchorage Regulation; Los Angeles-Long Beach Harbors, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to revise the anchorage ground regulations for Los Angeles and Long Beach Harbors. The proposed regulations have been reorganized to improve readability and to update references to other sections of the Code of Federal Regulations. Additionally, construction activity in the port complex has resulted in the creation of landfills in some areas currently designated as anchorages. This proposal eliminates or reconfigures these anchorages to conform with changes in the geography of the harbors. Finally, the Coast Guard proposes additional notification and operating requirements on some vessels which are necessary to ensure the safety of the port complex.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Comments should be mailed to Commanding Officer, USCG Marine Safety Office, Los Angeles-Long Beach, 165 N. Pico Ave., Long Beach, CA 90802. The comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rob Coller, Chief, Waterways Management Division, Marine Safety Office, Los Angeles-Long Beach, telephone (562) 980–4426.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments to the office listed under **ADDRESSES** in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for the regulations (CGD11–99–008), the specific section of the proposal which their comments apply, and give reasons for each comment.

The regulations may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, however, one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rule making process.

Background and Purpose

The Coast Guard proposes to revise the anchorage ground regulations, 33 CFR 110.214, for Los Angeles and Long Beach Harbors. The proposed regulations are designed to simplify the current regulations, reconfigure the anchorages with respect to changed geographic conditions and the current chart datum, and incorporate appropriate safety standards where necessary to ensure safe navigation.

Discussion of Proposed Regulations

The current regulation, may be confusing because they mix information of an advisory nature with mandatory regulatory requirements and it is difficult to determine which activities can be performed in various anchorages. Currently, many requirements are listed in paragraph (a), which describes the physical layout of the anchorages, instead of paragraph (b), which contains the general regulations. The proposed regulations are rewritten so that paragraph (a) discusses general requirements relating to all anchorages in this section, including those activities which require Captain of the Port (COTP) permits under the various regulations enforced by the COTP. Proposed paragraph (b) describes only the physical location of each anchorage; the designation of "non-anchorage" areas has been eliminated because the general requirement that vessels may not anchor anywhere outside of designated anchorage areas makes the designation of "non-anchorage" areas redundant and confusing. Proposed paragraph (c) describes specific requirements applicable to individual anchorages, and has been placed in table format. Proposed paragraph (d) describes explosives anchorage requirements.

The proposed regulations eliminate or reconfigure several anchorages to reflect completed and ongoing construction of new faciltieis in the port complex.

Existing commercial anchorage area "A" will be eliminated by the proposed regulations. As part of the Port of Los Angeles Pier 400 expansion project, this existing anchorage has been replaced by a shallow water habitat area, which is unsuitable as a commercial vessel anchorage. A new commercial anchorage area "A" will be established within a portion of the existing commercial anchorage "C".

Existing commercial anchorages "B" and "C" are also affected by the Pier 400 construction project. The Pier 400 facility will occupy much of these existing anchorage areas, eliminating entirely those portions of these anchorages within the Port of Los Angeles boundaries. Proposed anchorage area "B" will be located entirely within the southwestern portion of the Port of Long Beach, replacing existing anchorage "C" and naval anchorage "J". Naval anchorage "J" will be eliminated. Anchorage "C" will move from its present location to a new location in the northeast portion of the Port of Long Beach.

Existing commercial anchorage "D" and naval anchorage "K" will be consolidated into a new commercial anchorage "D".

Although naval anchorages "J" and "K" will be eliminated (becoming part of the reconfigured "B" and "D" commercial anchorages, respectively), the Department of Defense will retain priority for using the eastern portion of proposed anchorage "D".

The boundary of anchorage "E" is being adjusted as a result of a breakwater constructed in the Port of Long Beach adjacent to Pier J. This breakwater reduced the area suitable for anchoring as it extends into existing anchorage "E" and if left unchanged would make it difficult for vessels to enter or depart the Pier J facility when vessels were anchored there. Accordingly, proposed anchorage "E" is being modified to allow vessels an unobstructed passage when entering or departing the terminal at Pier J. Anchorage Area "E" is also being subdivided with the western portion of existing anchorage "E" retaining this designation and the eastern portion of anchorage "E" being slightly re-configured and renamed as Anchorage "G".

The northern boundary of General Anchorage "N" has been adjusted due to the establishment of boating slips in the northern portion of the anchorage. These boating slips provide the opportunity to moor to a dock instead of anchoring.

General Anchorage Area "O" will be eliminated by the proposed regulations. This area is being filled and is not currently used as an anchorage.

Boundaries for the explosives anchorage and existing anchorages "F" and "G" will not change. Finally, this rulemaking does not affect anchorage Area "A–2" which is established as a special anchorage area described in 33 CFR 110.100.

Although several anchorages are being eliminated or reconfigured by the proposed regulations, a sufficient number of anchorages are believed available to meet the both current and anticipated future needs of the port complex. Importantly, the construction of terminals and/or landfills in U.S.

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navigable waters was the subject of a separate permit process administered by the U.S. Army Corps of Engineers. The proposed anchorage areas are designed to most effectively meet the demands of vessels desiring to anchor within Los Angeles and Long Beach Harbors.

Finally, certain outdated practices and procedures have been eliminated or changed and new procedures to better ensure the safety of navigation and the protection of the environment have been added. The regulations also conform to the current definitions of explosives, cargoes of particular hazard and certain dangerous cargoes which have been revised in other sections of 33 CFR. Requirements to obtain permits for certain activities such as the handling or carriage of explosives, and extended anchorage stays are all explicitly detailed. Watchkeeping and other general requirements pertinent to commercial vessels at anchorage are set forth in section (a). Additionally, some activities such as bunkering and lightering are permissible only in specified anchorage locations and are prohibited in others. These are outlined in section (c) which discusses requirements and procedures which vary from anchorage to anchorage.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require and assessment of potential costs and benefits under section 6 (a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the Department of Transportation Regulatory Policies and Procedures (DOT) (44 FR 11040, February 26, 1979). The Cost Guard expects the impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The proposed regulation only make substantive changes in anchorage designations to conform with the changed geography of the harbor and to best make use of available water. Some of the proposed designated procedures reflect various additions to, and changes in, existing regulatory requirement; however, they are all proposed in the interest of safe navigation and protection of the port complex, and most of the mariners affected already practice these procedures as a matter of prudent seamanship.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominate in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rule making process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LT Rob Coller, Coast Guard Marine Safety Office Los Angeles-Long Beach, at the address listed in **ADDRESSES**.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule making does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(f), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. No new anchorage areas are being established, and existing anchorages are merely being reconfigured or eliminated. A Categorical Exclusion Determination and Environmental Analysis Checklist have been completed and are available in the rulemaking docket.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this proposed rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

For the reasons set out in the preamble, Coast Guard proposes to amend Subpart B of Part 110, Title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 49 CFR 1.46; and, 33 CFR 1.05–1(g).

2. Section 110.214 is revised to read as follows:

§ 110.214 Los Angeles, and Long Beach Harbors, California.

(a) *General Regulations.*

(1) *Anchorage Assignment.* (i) Unless otherwise directed by the Captain of the Port Los Angeles-Long Beach, the pilot stations for the Port of Long Beach and the Port of Los Angeles will assign the use of commercial anchorages within their jurisdictions (Long Beach and Los Angeles Harbors respectively). All anchorages outside (seaward) of the federal breakwater will be assigned by the Los Angeles-Long Beach Vessel Traffic Information Service (VTIS). The master, pilot, or person in charge of a vessel must notify the appropriate pilot station (for anchorages inside the federal breakwater) or the VTIS (for anchorages outside the federal breakwater) of their intention to anchor, upon anchoring, and at least fifteen minutes prior to departing an anchorage. All anchorage assignments will be made as described in this part unless modified by the Captain of the Port.

(ii) Radio communications for port entities governing anchorages are as follows: Los Angeles-Long Beach Vessel Traffic Information Service, call sign "LA-Long Beach Traffic," Channel 14 VHF–FM; Los Angeles Port Pilots, Channel 73 VHF–FM; Long Beach Port Pilots, Channel 74 VHF–FM.

(iii) The exact boundary separating the Port of Long Beach from the Port of Los Angeles is published in local Port Tariffs. For purposes of this rule, Long Beach waters are those east, and Los Angeles waters are those west, of the following locations:

(A) Inner Harbor: The Henry Ford (Badger Avenue) Bridge.

(B) Middle Harbor: The Pier 400 Transportation Corridor.

(C) Outer Harbor: The western boundary of Commercial Anchorage B.

(2) *Required approvals, permits and notifications.*

(i) No vessel may anchor anywhere within Los Angeles or Long Beach harbors for more than 10 consecutive days unless an extended anchorage permit is obtained from the captain of the Port. In determining whether an extended anchorage permit will be granted, consideration will be given, but not necessarily limited to: the current and anticipated demands for anchorage space within the harbor, the duration requested, the condition of the vessel, and the reason for the request.

(ii) No vessel while carrying, loading, or unloading diversion 1.1 or 1.2 materials as defined in 49 CFR 173.50, or Cargoes of Particular Hazard (COPH) as defined in 33 CFR 126.10, or Certain Dangerous Cargoes (CDC) as defined in 33 CFR 160.203, may anchor without first obtaining a permit issued by the Captain of the Port.

(iii) Vessels requiring use of an explosives anchorage should contact the Captain of the Port at least 24 hours prior to the anticipated need for the explosives anchorage to allow for proper activation of that anchorage.

(iv) Except with the prior approval of the Captain of the Port, or, in the case of an emergency, with approval of the Captain of the Port immediately subsequent to anchoring, no commercial vessel greater than 1600 gross tons may anchor in Los Angeles-Long Beach Harbor unless it maintains the capability to get underway within 30 minutes. Any vessel unable to meet this requirement must immediately notify the Captain of the Port and make arrangements for an adequate number of tugs to respond to the vessel within 30 minutes notice.

(v) In anchorages where lightering is authorized, the Captain of the Port must be notified at least 4 hours in advance of a vessel conducting lightering operations (see 33 CFR 156.118).

(3) *Other General Requirements.*

(i) When at anchor, all commercial vessels greater than 1600 gross tons shall, at all times, have a licensed deck officer on watch and maintain a continuous radio listening watch unless subject to one of the exemptions in paragraph 3(i)(a) through 3(i)(c). The radio watch must be on CH–13 VHF–FM when anchored inside the federal breakwater, and on CH–14 VHF–FM or on CH–16 VHF–FM when anchored outside the federal breakwater, except for unmanned barges; vessels which have less than 100 gallons of oil or fuel onboard regardless of how the fuel is carried; and other vessels receiving advance approval from the Captain of the Port.

(ii) When sustained wind speeds exceed 40 knots, all anchored commercial vessels greater than 1600 gross tons shall ensure their propulsion plant is placed in immediate standby and a second anchor is made ready to let go. Vessels unable to comply with this requirement must immediately notify the Captain of the Port. In such case, the Captain of the Port may require the vessel to have one or more tugs standing by to render immediate assistance.

(4) *Prohibitions.* Within Los Angeles Harbor, Long Beach Harbor, and the Los Angeles-Long Beach Precautionary Area, except for emergency reasons, or with the prior approval of the Captain of the Port, vessels are prohibited from anchoring outside of designated anchorage areas. In the event a vessel anchors outside a designated anchorage area for emergency reasons, the master, pilot, or person in charge of the vessel shall:

(i) position the vessel so as to minimize the danger to other vessels and facilities;

(ii) immediately notify the Captain of the Port by the most expeditious means of the vessel's location and the reason(s) for the emergency anchoring; and

(iii) move the vessel as soon as the emergency condition prompting anchoring outside a designated area abates, or as soon as ordered to move by the Captain of the Port, whichever occurs sooner.

(5) *Exemption from rules.* The Captain of the Port may, upon request, or whenever he/she deems appropriate, authorize a deviation from any rule in this section.

(b) *The anchorage grounds.* Locations of anchorage grounds are as described in this section. Specific requirements for individual anchorages are contained in paragraphs (c) and (d) of this section. All coordinates referenced use datum: NAD 83.

(1) *Commercial Anchorage A (Los Angeles Harbor).* A circular area with a radius of 400 yards (approximately 366 meters), centered in position 33° – 43′ – 19.2″N, 118° – 14′ – 18.5″W.

(2) *Commercial Anchorage B (Long Beach Harbor).*

An area enclosed by a line joining the following coordinates:

	Latitude	Longitude
Beginning point	33° – 44′ – 37.0″N	118° – 13′ – 00.0″W
Thence south/southeast to	33° – 44′ – 12.0″N	118° – 12′ – 36.2″W
Thence southeast to	33° – 43′ – 38.2″N	118° – 11′ – 36.9″W
Thence southwest to	33° – 43′ – 26.1″N	118° – 11′ – 47.2″W

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	Latitude	Longitude
Thence west to	33° – 43′ – 26.1″N	118° – 12′ – 22.7″W
Thence west/southwest to	33° – 42′ – 58.9″N	118° – 13′ – 53.0″W
Thence north/northwest to	33° – 44′ – 15.3″N	118° – 14′ – 26.6″W
Thence northeast to	33° – 44′ – 25.1″N	118° – 14′ – 15.6″W
Thence southeast to	33° – 44′ – 22.8″N	118° – 13′ – 51.0″W
Thence east/northeast to the beginning point.		

(3) *Commercial Anchorage C (Long Beach Harbor).*
An area enclosed by a line joining the following coordinates:

	Latitude	Longitude
Beginning point	33° – 44′ – 20.0″N	118° – 08′ – 26.2″W
Thence west to	33° – 44′ – 23.5″N	118° – 09′ – 32.6″W
Thence north to	33° – 44′ – 52.8″N	118° – 09′ – 33.2″W
Thence southeast to	33° – 44′ – 25.2″N	118° – 08′ – 26.2″W
Thence south to the beginning point.		

(4) *Commercial Anchorage D (Long Beach Harbor).*
An area enclosed by a line beginning near the east end of the Long Beach Breakwater and joining the following coordinates:

	Latitude	Longitude
Beginning point	33° – 43′ – 27.2″N	118° – 08′ – 12.6″W
Thence west to	33° – 43′ – 27.2″N	118° – 10′ – 46.5″W
Thence north to	33° – 43′ – 51.0″N	118° – 10′ – 46.5″W
Thence northeast to	33° – 44′ – 18.5″N	118° – 10′ – 27.2″W
Thence east to	33° – 44′ – 18.5″N	118° – 08′ – 12.6″W
Thence south to the beginning point.		

(5) *Commercial Anchorage E (Long Beach Harbor).*
An area enclosed by a line joining the following coordinates:

	Latitude	Longitude
Beginning point	33° – 44′ – 55.3″N	118° – 09′ – 40.2″W
Thence southwest to	33° – 44′ – 18.5″N	118° – 09′ – 56.8″W
Thence west to	33° – 44′ – 18.5″N	118° – 10′ – 27.2″W
Thence northwest to	33° – 44′ – 27.6″N	118° – 10′ – 41.0″W
Thence west/northwest to	33° – 44° – 29.0″N	118° – 10′ – 57.4″W
Thence north/northwest to	33° – 45′ – 06.4″N	118° – 11′ – 09.5″W
Thence northeast to	33° – 45′ – 15.2″N	118° – 10′ – 46.1″W
Thence southeast to the beginning point.		

(6) *Commercial Anchorage F (outside of Long Beach Breakwater).*
The waters southeast of the Long Beach Breakwater bounded by a line connecting the following coordinates:

	Latitude	Longitude
Beginning point	33° – 43′ – 05.1″N	118° – 07′ – 59.0″W
Thence west to	33° – 43′ – 05.1″N	118° – 10′ – 36.5″W
Thence south/southeast to	33° – 40′ – 23.0″N	118° – 08′ – 35.3″W
Thence east to	33° – 40′ – 23.0″N	118° – 06′ – 03.0″W
And thence north/northwest to the beginning point.		

(7) *Commercial Anchorage G (outside of the Middle Breakwater).*
The waters south of the Middle Breakwater bounded by a line connecting the following coordinates:

	Latitude	Longitude
Beginning point	33° – 43′ – 05.4″N	118° – 11′ – 18.0″W
Thence west to	33° – 43′ – 05.4″N	118° – 12′ – 18.7″W
Thence west/southwest to	33° – 42′ – 25.9″N	118° – 14′ – 19.2″W
Thence southeast to	33° – 41′ – 40.3″N	118° – 13′ – 05.2″W
Thence east/northeast to	33° – 42′ – 08.8″N	118° – 11′ – 36.8″W
And thence north/northeast to the beginning point.		

(8) *General Anchorage N (Los Angeles Harbor).*
The waters near Cabrillo Beach shoreward of a line connecting the following coordinates:

	Latitude	Longitude
	33° – 42′ – 55.9″N	118° – 16′ – 44.4″W
	33° – 42′ – 26.8″N	118° – 16′ – 33.9″W

(9) *General Anchorage P (Long Beach Harbor).*
The waters within an area beginning at Alamitos Bay West Jetty Light "1" and connecting the following coordinates:

	Latitude	Longitude
Beginning point	33° – 44′ – 14.5″N	118° – 07′ – 19.2″W
Thence northwest to	33° – 44′ – 20.6″N	118° – 07′ – 31.7″W
Thence northwest	33° – 45′ – 06.5″N	118° – 09′ – 34.0″W
Thence along the eastern shoreline of Island White to the lighted marker at	33° – 45′ – 13.5″N	118° – 09′ – 34.0″W
Thence northwest to	33° – 45′ – 37.1″N	118° – 10′ – 38.5″W
Thence north/northwest to	33° – 45′ – 49.4″N	118° – 10′ – 38.8″W
And thence east/southeast along the Long Beach shoreline and the Alamitos Bay West Jetty to the beginning point.		

(10) *General Anchorage Q (Long Beach Harbor/Alamitos Bay/Anaheim Bay).*
The waters within an area described as follows:

	Latitude	Longitude
Beginning point	33° – 44′ – 36.0″N	118° – 08′ – 13.0″W
Thence east/southeast to	33° – 44′ – 20.6″N	118° – 07′ – 31.7″W
Thence along a line described as an arc, radius of 460 meters (approximately 1509 feet) centered on	33° – 44′ – 12.5″N	118° – 07′ – 16.5″W
	33° – 44′ – 04.8″N	118° – 07′ – 1.0″W
Thence northwest to	33° – 44′ – 11.1″N	118° – 07′ – 13.0″W
Thence north/northeast to	33° – 44′ – 24.0″N	118° – 07′ – 04.1″W
Thence east/southeast to	33° – 44′ – 22.5″N	118° – 06′ – 57.0″W
Thence along the shoreline of Seal Beach and Anaheim Bay W. Jetty to	33° – 43′ – 39.1″N	118° – 06′ – 06.8″W
Thence west/southwest to	33° – 43′ – 27.8″N	118° – 07′ – 39.9″W
Thence northwest to	33° – 43′ – 38.4″N	118° – 07′ – 48.2″W
Thence west to	33° – 43′ – 38.4″N	118° – 08′ – 12.9″W
and thence north to the beginning point.		

(11) *Explosives Anchorage (Long Beach Harbor).*

A circular area with a radius of 1,909 yards (1,745 meters), centered in position 33°43′37.0″ N, 118°09′05.3″ W.

(c) *Individual anchorage requirements:*

(1) Table 110.214(c) lists anchorage grounds, identifies the purpose of each anchorage, and contains specific regulations applicable to certain anchorages. Requirements for the explosives anchorage are contained in paragraph (d) of this section.

(2) The geographic boundaries of each anchorage are contained in paragraph (b) of this section.

TABLE 110.214(C)

Anchorage	General location	Purpose	Specific regulations
A	Los Angeles Harbor	Commercial	Note a.
B	Long Beach Harbor	....do	Do.
C	....do	....do	Notes a,g.
D	....do	Comm'l and Naval	Notes a,b,g.
E	....do	Commercial	Notes c.
F	Outside Breakwater	....do	Notes c,g.
G	....do	....do	Notes c,d.
N	Los Angeles Harbor	Small Craft	Note e.
P	Long Beach Harbor	....do	Note f.
Q	....do	....do	Notes c,g.

Notes: a. Bunkering and lightering are permitted.
b. West of 118°–09′–48″ W priority for use of the anchorage will be given to commercial vessels over 244 meters (approximately 800 feet). East of 118°–09′–48″ W priority for use of the anchorage will be given to Naval and Public vessels, vessels under Department of Defense charter, and vessels requiring use of the explosives anchorage.
c. Bunkering and lightering are prohibited.
d. This anchorage is within a Regulated navigation area and additional requirements apply as set forth in 33 CFR 165.1109(e).
e. This anchorage is controlled by the Los Angeles Port Police. Anchoring, mooring and recreational boating activities conforming to applicable City of Los Angeles ordinances and regulations are allowed in this anchorage.
f. This anchorage is controlled by the Long Beach Harbor Master. Anchoring, mooring and recreational boating activities conforming to applicable City of Long Beach ordinances and regulations are allowed in this anchorage.
g. When the explosives anchorage is activated portions of this anchorage lie within the explosives anchorage and the requirements of paragraph (d) of this section apply.

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(d) *Explosives Anchorage (Long Beach Harbor):*

(1) Priority for use of this anchorage shall be given to vessels carrying, loading, or unloading division 1.1, 1.2, 1.3, or 1.4 (explosive) materials as defined in 49 CFR 173.50, or Cargoes of Particular Hazard (COPH) as defined in 33 CFR 126.10, or Certain Dangerous Cargoes (CDC) as defined in 33 CFR 160.203.

(2) Vessels requiring the use of this anchorage shall notify the Captain of the Port at least 24 hours in advance of their intentions including the estimated times of arrival, departure, net explosive weight, and whether the vessel will be loading or unloading. Vessels may not use this anchorage without first obtaining a permit issued by the Captain of the Port.

(3) No vessel containing more than 680 metric tons (approximately 749 tons) of net explosive weight (NEW) may anchor in this anchorage;

(4) Bunkering and lightering operations are permitted in the explosives anchorage, except that vessels engaged in the loading or unloading of explosives shall not simultaneously conduct bunkering or lightering operations.

(5) Each anchored vessel loading, unloading or laden with explosives, must display a red flag of at least 1.2 square meters (approximately 16 square feet) in size by day, and at night the flag must be illuminated by spotlight;

(6) When a vessel displaying the red flag occupies the explosives anchorage, no other vessel may anchor within the Explosives Anchorage.

Note: When the explosives anchorage is activated, portions of Anchorages "C", "D", "F" and "Q" are encompassed by the explosives anchorage.

Dated: June 18, 1999.

T.H. Collins,

Vice Admiral, USCG, Commander, Eleventh Coast Guard District.

[FR Doc. 99–17906 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2530

[WO–320–00–4212–02]

Indian Allotments

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that it is reopening the comment period on a Notice of Proposed Rule, which was published in the **Federal Register** on October 16, 1996 (61 FR 53887). The comment period for the proposed rule expired on November 15, 1996. The proposed rule erroneously stated that the information requirements in the rule were not subject to the provisions of the Paperwork Reduction Act. BLM is reopening the comment period on the proposed rule for 60 days to accept comments on the information requirements and on any other aspects of the proposed rule.

DATES: Submit all comments by September 13, 1999. Comments received after the closing date may not be considered in preparing the final rule.

ADDRESSES: Send all comments related to the information aspects of the proposed rule to: Office of Information and Regulatory Affairs, Office of Management and budget, Attn: Interior Desk Officer (1004–NEW), 725 17th St., NW, Washington, DC. Please send a copy of your comments to: Administrative Record, Bureau of Land Management, 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240 or e-mail them to *WoComment@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, Lands and Realty Group, (202) 452–7779, e-mail: *jeff_holdren@blm.gov*, for information about BLM's Indian allotment program. Carole Smith, Regulatory Affairs Group, (202) 452–0367, e-mail: *carole_smith@blm.gov*, for the information collection aspects of the proposed rule. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service between 8 a.m. and 8 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On October 16, 1996, BLM published a notice of a proposed rule in the **Federal Register**. This rule at 43 CFR part 2530 would revise the provisions on Indian allotments to: (1) Identify the requirements for Indian allotments, (2) describe the steps that a person must take to file an application for an Indian allotment on BLM-administered lands and on public domain lands within national forests, (3) impose an application processing fee of $100 per application, (4) clarify various requirements, including how to apply for a trust patent, and (5) present the material in plain language.

The comment period closed on November 15, 1996. Only one comment was received. To give individuals who did not comment during the initial 30-day comment period a chance for a longer time to consider the proposed regulations, BLM is reopening the comment period for an additional 60 days.

Discussion of Statute and Proposed Regulations

Section 4 of the Indian General Allotment Act of February 8, 1887 (43 U.S.C. 1740) provides that, if you are an Indian eligible for an allotment, you may apply for an allotment to the BLM office having jurisdiction over the lands covered by your application. Your eligibility depends upon your being able to furnish documentation from the Bureau of Indian Affairs that shows you are an Indian who meets the requirements ot the Act. if you are eligible, your minor child is also qualified to file for an allotment under the Act.

The regulations at 43 CFR part 2530 implement the provisions of the Act. The proposed regulations update the current regulations to incorporate changes that have occurred since 1972, when the current regulations became effective. These include changes describing how BLM will process applications to include provisions relating to the National Environmental Policy Act, the Federal Land Policy and Management Act (FLPMA), and the laws relating to hazardous substances. FLPMA requirements including meeting the planning requirements and the 2-year notification to grazing permittees and lessees.

The proposed regulations would also require a $100 filing fee to reimburse BLM partially for processing each application.

The proposed regulations at § 2530.10 specify what lands are available for an Indian allotment and would: (1) Affirm that approving an Indian allotment is at BLM's discretion, (2) require that BLM ensure that the lands under application are valuable for agriculture or grazing, and suitable physically and economically, and (3) provide that lands otherwise appropriated or segregated from surface entry are not available for selection.

The proposed regulations would also:

- Renumber current sections of the regulations, as described in the earlier notice (61 FR 53888),
- Add provisions at § 2530.10 to inform applicants of the need to select lands properly classified for settlement under the Act,
- Substantially streamline current regulatory provisions at § 2530.13 by substituting a general reference to the requirement that an applicant for an Indian allotment submit documentation of eligibility from the Bureau of Indian Affairs to BLM,
- Clarify at § 2530.14 the eligibility requirements of children of living allotment applicants and orphaned children,
- Itemize at § 2530.16 the information applicants need to provide in their applications,
- Describe the requirements for obtaining a trust patent at subpart 2531, including successfully completing the 2-year settlement period on the allotment and meeting all other requirements, and
- At subpart 2533, address the requirements for getting applications approved for Indian allotments on public domain national forest lands. These include submitting applications to the District Ranger or Forest Supervisor and documentation to show one or more of the following: (1) You are not entitled to an allotment on an existing reservation, (2) you belong to a tribe without a reservation, or (3) you belong to a reservation that is insufficient in size to accommodate allotments for the members of the tribe.

Paperwork Reduction Act Requirements

The proposed regulations inadvertently stated that the information requirements in the rule were not subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and did not require approval from the Office of Management and Budget (OMB). The information requirements are in fact subject to OMB approval. We therefore request your comments on the information requirements, including any comments you may have in the following areas;

- Whether collecting the information is necessary for the proper functioning of BLM, including whether the information will have practical utility;
- The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

The information requirements in the proposed regulations and the estimated burden for complying with the requirements are as follows:

Type of information	Estimated burden (in hours)
Pre-application visit to BLM	1
Application for new allotment, including plan of development and certificate of eligibility	0.5
List of heirs and their relationship to allottee	0.25
Application for trust patent	2
Application for extension of time to meet requirements ..	1

BLM estimates that the following average annual number of respondents for each of the actions given in the table: Five pre-application visits; five applicants for new allotments filing applications with BLM; three applicants giving a list of heirs; two applicants filing for trust patents, and one applicant filing for an extension of time in which to prove the allotment. Based on the burden estimates given in the table, the total annual burden for complying with the information is 13 hours.

If you would like a copy of the proposed information collection or the proposed rule, please contact the BLM Information Collection Officer listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: June 25, 1999.

Michael Schwartz,

Manager, Regulatory Affairs Group.

[FR Doc. 99–18082 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket RSPA–99–5455]

RIN 2137–AC34

Areas Unusually Sensitive to Environmental Damage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of initiating pilot testing.

SUMMARY: RSPA is pilot testing a model that identifies areas unusually sensitive to environmental damage from a hazardous liquid pipeline release, commonly referred to as unusually sensitive areas (USAs). The USA model was created through a series of public workshops and the work of the American Petroleum Institute (API). RSPA and API will be working together on this pilot test. Other government agencies, environmental groups, and academia will be evaluating the final results of this pilot test. The pilot test will be conducted in three states: Texas, Louisiana, and California. The purpose of the pilot testing is to determine if the model can be used to identify and locate unusually sensitive drinking water and ecological resources using available data from government agencies and environmental organizations. The pilot test will also help evaluate the USA model, determine if the model identifies the majority of unusually sensitive drinking water and ecological resources, and the appropriateness and accessibility of environmental data to support the model. RSPA will publish for public comment the results of the pilot test, technical analysis, and the proposed USA model once the pilot test and analysis are complete.

ADDRESSES: Persons interested in receiving future information, including copies of the final pilot results, should send their name, affiliation, address, and phone number to Christina Sames, U.S. Department of Transportation, Office of Pipeline Safety, 400 Seventh Street SW, DPS–11, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Christina Sames, (202) 366–4561, or e-mail *christina.sames@rspa.dot.gov*, about this document, or the Dockets Unit, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–5046, for copies of this document or other material in the docket, including material from previous workshops. The public may also review material in the docket by accessing the Docket Management System's home page *at http://dms.dot.gov*. An electronic copy of any document published in the **Federal Register** may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

SUPPLEMENTARY INFORMATION:

Legislative History

The pipeline safety statute (49 U.S.C. 60109) requires the Secretary of Transportation to prescribe standards that establish criteria for identifying each hazardous liquid pipeline facility and gathering line, whether or not the pipeline is subject to safety regulation under 49 U.S.C. Chapter 601, located in an area that the Secretary, in consultation with the Environmental Protection Agency (EPA), describes as unusually sensitive to environmental damage in the event of a hazardous liquid pipeline accident. When describing USAs, the Secretary is to

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consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage. These areas are to include:

1. Locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and

2. Locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.

Public Workshops

RSPA has held five public workshops on USAs. Participants at the workshops have included representatives from the EPA; the hazardous liquid pipeline industry; the Departments of Interior, Agriculture, Transportation, and Commerce; non-government agencies; academia; and the public.

The first workshop was held on June 15 and 16, 1995, and focused on criteria being considered to determine USAs (60 FR 27948, May 26, 1995; Docket PS–140(a)). A second workshop held on October 17, 1995, focused on developing a process that could be used to determine whether an area is a USA (60 FR 44824, August 29, 1995; Docket PS–140(b)). The third workshop on January 18, 1996, focused on guiding principles for determining USAs (61 FR 342, January 4, 1996; Docket PS–140(c)). The fourth workshop held April 10–11, 1996, (61 FR 13144, March 26, 1996; Docket PS–140(d)) focused on criteria, components, and parameters of terms that have been used when describing USAs and the scope and objectives of additional USA workshops.

A fifth workshop was held June 18–19, 1996, (61 FR 27323, May 31, 1996; Docket PS–140(e)) and focused on identifying critical drinking water resources and possible filtering criteria that could be used to identify drinking water resources that are unusually sensitive to a hazardous liquid pipeline release. The critical drinking water resources that were identified in that workshop include public water systems, wellhead protection areas, and sole source aquifers. Filtering criteria include the depth and geology of a drinking water resource and if the public water system has an adequate alternative drinking water supply. Transcripts of and information presented at these public workshops are in the Docket.

API Work

In addition to the five public workshops, the American Petroleum Institute (API) held two meetings with technical experts to discuss unusually sensitive ecological resources. The meetings were held on October 23–24, 1996, and June 25–26, 1997. Representatives of RSPA, EPA, the Departments of Interior, Commerce, and Agriculture, and The Nature Conservancy attended these meetings. Attendees discussed possible ecological USA candidates and filtering criteria that could be used to determine which ecological resources are unusually sensitive to damage from a hazardous liquid pipeline release. The significant ecological resources that were identified during the meetings include threatened and endangered species, critically imperiled and imperiled species, depleted marine mammals, and areas containing a large percent of the world's population of a migratory waterbird species. Filtering criteria focused on the extent to which a species is endangered, areas that are critical to multiple sensitive species, and areas where a large percent of a species population could be impacted. Notes from these technical meetings are in the Docket.

Guiding Principles

Attendees at the third public workshop identified guiding principles to be used in the process of determining USAs. Government agencies, industry, environmental groups and the public created these guiding principles to help us identify which resources we should concentrate on (areas of primary concern), determine which areas of primary concern are the most sensitive to a hazardous liquid release, decide how to collect and process resource data, and determine what happens to USAs after they are identified. The guiding principles created in the workshop discuss resources to be protected and a process for identifying USAs. The following is the list of the guiding principles that pertain to the pilot test:

- Human health and safety and serious threat of contamination are always to be considered.
- A functional definition of significant must be developed to determine USAs.
- Only areas in the trajectory of a potential spill, e.g. down gradient, should be considered.
- It is expected that no pipeline operator will be required to collect natural field resource data to determine USAs.
- USAs should be subject to a systematic review process. USAs may change through time as species migrate, change location or for other reasons. The USA definition should be explicit and practical in application.
- All phases of the USA definition process should be pilot tested for validity, practicality, and workability, to the extent practical.
- The government agencies must describe and identify USAs so that the data will be applied consistently and will not be subject to various interpretations. The standards and criteria for resource sensitivity should be uniform on a national basis such that equivalent resources receive equivalent sensitivity assessments regardless of regionally based response priorities.
- Sources of USA data must be readily available to the public and uniform in criteria and standards. The standards and criteria for resource sensitivity should be uniform on a national basis so that equivalent resources receive equivalent sensitivity assessments regardless of regionally based priorities.

In addition to the guiding principles, workshop attendees discussed the following items, but did not consider them guiding principles:

- Workshops for each phase of developing a USA definition should include technical experts, representatives, and field personnel with appropriate experience from agencies as well as from industry.
- Public workshops should be used to gather information on the criteria that will determine USAs.
- The USA definition should be complete before its use in a rulemaking.
- The implementation of resource assessment and protection under the USA definition could be phased.
- All terms in the USA definition should be defined.
- National consistency in application of the USA definition should be the goal.
- Guidelines for data quality should include consistency, accuracy, and scope.
- Encourage open communication with land or resource managers in USAs.
- The ranking of resources or adding of values of several resources to reach a threshold USA quantity, as proposed in the May 1995 workshop, is not practical for many pipeline operators.

Pilot Test

RSPA and API will be working together on this pilot test. Other Federal and state government agencies, environmental organizations, and academia will be evaluating the final results of this pilot in a technical review. The purpose of the pilot test is to determine if the model can be used to identify and locate unusually sensitive drinking water and ecological resources using available data from government agencies and environmental organizations.

RSPA and API will conduct the pilot test in the states of Texas, California, and Louisiana. These states were chosen because of the large number of liquid pipelines and drinking water and ecological resources within these states. API will use the results of the pilot test to create a voluntary industry guidance document on USAs. RSPA will use the pilot results to verify that the model identifies the majority of unusually sensitive areas, the accessibility and appropriateness of environmental data to support the model, and to move toward completing a definition of unusually sensitive areas.

The USA pilot test will include the following tasks:

- Identify pertinent drinking water data that have been created and maintained by Federal or state government agencies, environmental groups, or private organizations. This includes data on public drinking water systems, aquifers, sole source aquifers, wellhead protection areas, alternative drinking water resources, and aquifer vulnerabilities.
- Identify pertinent ecological data that have been created and maintained by Federal or state government agencies, environmental groups, or private organizations. This includes data on threatened and endangered species, critically imperilled and imperilled species, depleted marine mammal species, and areas containing a large percentage of the world's population of a migratory waterbird species.
- Identify data on land features, such as the location of wetlands, rivers, transportation networks, and water routes (including flow direction).
- Obtain, where possible, all pertinent drinking water, ecological, and land feature data. Document all problems encountered in gathering the data.
- Determine if the obtained data can be used with the draft USA model to identify and locate USAs. This would include reviewing the data for accuracy, attributes, format, restrictions on use, and determining if the resources and features were mapped with sufficient precision.
- Process the data, using a geographic information system (GIS), according to the draft USA model. Identify all problems encountered in processing the data.
- Compare the USA pilot results to other preservation area identification efforts, where possible, and to all threatened and endangered specie areas.
- Provide the final USA pilot results to other drinking water and ecological resource experts within Federal and state government agencies (e.g., the Departments of Interior, Agriculture, Commerce, Environmental Protection Agency, state drinking water agencies), academia, environmental organizations (e.g., The Nature Conservancy, state heritage programs), and private industry for review of whether the model results identify the majority of "unusually" sensitive areas within the three states.
- Modify, if necessary, the USA model based on the pilot test and comments received from drinking water and ecological resource experts.
- Publish the results of the pilot test, the technical review, and the draft USA model for public comment.

Technical Review

Drinking water and ecological resource experts will conduct a technical review of the pilot test to determine whether the model results identify the majority of "unusually" sensitive areas within the three states. These experts include the Department of Interior's Office of the Secretary, Fish and Wildlife Service, and National Park Service; the Department of Agriculture's Forest Service; the Department of Commerce's National Marine Fisheries Service; the Environmental Protection Agency's Office of Groundwater and Drinking Water, Office of Solid Waste and Emergency Response, and regional offices; state nature conservancies and heritage programs; state drinking water resource agencies; academia and other environmental experts.

These peer reviewers will help to identify other data sets that might be utilized and other resources that might be considered, and to improve the model's capability to identify the majority of "unusually" sensitive areas within the three states. The technical review will include experts that have not been directly involved in drafting the USA model.

RSPA will publish for public comment the final pilot test results and the USA model, including the criteria for defining unusually sensitive drinking water and ecological resources. Persons interested in receiving and reviewing this information should send their name, affiliation, address, and phone number to Christina Sames, U.S. Department of Transportation, Office of Pipeline Safety, 400 Seventh Street SW, DPS–11, Washington, DC 20590–0001. RSPA will also publish the final results of the USA pilot on the Office of Pipeline Safety's Web page: *http://ops.dot.gov*. RSPA will use the final pilot results and comments received to move toward completing a USA model and definition through publication of a NPRM. RSPA intends to publish the NPRM by the end of this year.

RSPA will also present the USA pilot project and its results to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The THLPSSC is responsible for reviewing proposed federal hazardous liquid pipeline safety standards and reporting on their feasibility, reasonableness, and practicability. Representatives on the THLPSSC include the Minerals Management Service, City of Fredericksburg Virginia, U.S. Department of Agriculture, U.S. Department of Commerce, Virginia State Corporation Commission, Environmental Defense Fund, The Nature Conservancy, Kenai Peninsula, Atlantic Consultants, Southwest Research Institute, Buckeye Pipe Line, Lakehead Pipe Line, Kinder Morgan Energy Partners, and Mobil Pipe Line.

Issued in Washington, DC.

Stacey L. Gerard,

Director, Policy, Regulations and Training.

[FR Doc. 99–18024 Filed 7–14–99; 8:45 am]

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Notices

Federal Register
Vol. 64, No. 135
Thursday, July 15, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southeast Galena Restoration, Malheur National Forest, Grant County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice intent to prepare environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to improve the ecosystem health within a portion of the 127,000 acre Galena Watershed. The proposed restoration activities will be in compliance with the 1990 Malheur National Forest Land and Management Plan (Forest Plan), as amended, which provides overall guidance for management of this area. Proposed restoration activities are located on the Long Creek Ranger District within the Galena Watershed. The watershed is located about 20 air miles northeast of John Day, Oregon. Implementation of proposed restoration activities are scheduled to begin in late fiscal year 2001. The Malheur National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by August 16, 1999.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Douglas V. Robin, District Ranger, PO Box 849, John Day, Oregon 97845.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to: Michael Hutchins, Resource Planner, PO Box 849, John Day, Oregon 97845, phone 541–575–3000.

SUPPLEMENTARY INFORMATION: The purpose and need for activities are, one, improve the health, vigor, and resiliency of forest vegetation to insects, disease, and wildfire. Two, reduce road related impacts, specifically impacts to water quality, fish habitat, and wildlife habitat. Three, improve riparian conditions in reaches of streams that do not presently meet riparian management objectives (RMOs).

The proposed action includes a variety of activities to meet the three purpose and need statements. One, improve stand conditions so they are more resilient to insects, disease, and wildfire. Restoration activities include prescribed fire to reduce excess fuel accumulations and reducing stocking levels through thinning to reduce severity of future wildfires. Another component of improving watershed health is reducing existing noxious weed sites through manual, mechanical, and chemical methods and reducing the potential for additional sites becoming established. Two, reduce road related impacts to water quality, fish habitat, and wildlife habitat. Specific actions include closing or decommissioning roads excess to resource needs, especially existing roads within sensitive areas such as riparian habitat conservation areas (RHCAs). An access and travel management (ATM) plan would be prepared to meet this action. Some roads may only need seasonal closures during wet months if they are needed for resource needs and do not cause adverse impacts to resources when they are open. Three, improve riparian conditions in streams not meeting RMOs by planting riparian vegetation and protecting plantings from browsing; increasing large wood to deficient reaches (possibly with helicopters and other equipment); performing instream activities such as installing baffles, log weirs, culverts capable of passing fish; rehabilitating key channels where flow regime has been modified by past activities; and reintroducing fire to key RHCAs.

The Galena Watershed is comprised of about 127,000 acres, of which about 10,200 acres are privately owned and about 4,000 acres are administered by other Federal agencies. Of the 113,000 acres administered by the Malheur National Forest, about 56,800 acres are proposed to be analyzed for possible restoration activities by this EIS. About 29,475 acres (52%) are in management area 1—general forest, about 10,580 acres (19%) are in management area 4—big game winter range maintenance, about 1,125 acres (2%) are in management area 7—scenic area, about 1,900 acres (3%) are in management area 13—old growth, about 1,730 acres (3%) are in management area 14—visual corridors, about 2,900 acres (5%) are in management area 21—wildlife emphasis with non-scheduled timber harvest, and about 9,090 acres (16%) are within RHCAs. The Southeast Galena Restoration EIS will focus restoration activities within the following subwatersheds: Davis/Placer, Vinegar, Vincent, Little Boulder/Deerhorn, Tincup/Little Butte, Butte, Granite Boulder, Beaver/Ruby (portion unburned by the Reed or Summit Fires), Dry/Sunshine (portion on south side of Middle Fork John Day River), and Coyote/Balance (portion on south side of MFJD River).

Preliminary issues identified will include effects on threatened, endangered, and proposed species; riparian habitat conservation areas (RHCAs); water quality; stand conditions (especially as they relate to increased insect populations and fuel levels); roadless areas; road densities; and forest wood products.

The scoping process will include: (1) Identifying potential issues; (2) identifying issues to be analyzed in depth; (3) eliminating non-significant issues or those which have been covered by a previous environmental analysis; (4) exploring additional alternatives; and (5) identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

A full range of alternatives will be considered, including a no-action alternative. The no-action alternative will serve as a baseline for comparison of alternatives. This alternative will be no change from the current management of the Forest and will be fully analyzed. The proposed action will be considered and additional alternatives developed around the proposed action to address significant issues identified during the scoping and public involvement process. Issues gathered may vary action alternatives in the number, location, and type of project activities.

Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215 and 217. Additionally, pursuant to 7 CFR 1.27(d); any person may request the agency to withhold a submission from the public record by showing how the freedom of information act (FOIA) permits such confidentiality should be aware that, under FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Public meetings are anticipated to occur following issuance of the draft EIS. Public meetings will be announced in the Malheur National Forest's newspaper of record, the *Blue Mountain Eagle*.

The Forest Service is seeking information and comments from other Federal, State, and Local agencies; Tribes; organizations; and individuals who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft EIS.

Comments will be appreciated throughout the analysis process. The draft EIS will be filed with the Environmental Protection Agency (EPA) and is anticipated to be available for public review by June 2000. The comment period on the draft EIS will be 45 days from the date of EPA's Notice of Availability in the **Federal Register**. It is important that those interested in the management of the Malheur National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1002 (9th Cir. 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

After the 45 day comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by March 30, 2001. In the final EIS, the Forest Service is required to respond to substantive comments received during the public comment period. The responsible official, Acting Forest Supervisor, Bonnie Wood, will consider in the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the Galena Watershed EIS decision and rational for the decision in the Record of Decision (ROD). That decision will be subject to review under Forest Service Appeal Regulations 36 CFR part 215.

Dated: July 8, 1999.

Bonnie Wood,

Acting Forest Supervisor.

[FR Doc. 99–18019 Filed 7–14–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Mann Creek Timber Sale and Other Activities Within the Mann Creek Subwatersheds, Payette National Forest, Washington County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service is proposing the following for the Mann Creek Subwatersheds: harvest and regeneration of timber; road decommissioning or obliteration to protect watershed conditions; and prescribed fire to reduce fuels and enhance plant growth and mountain quail habitat.

The agency gives notice of the environmental analysis and decision-making process so that interested and affected people know how they may participate and contribute to the final decision. The agency invites written comments and suggestions on the scope of the analysis and the issues it should address.

DATES: Comments on the scope of the analysis must be received by August 13, 1999.

ADDRESSES: Send written comments to: David Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Dautis Pearson, NEPA Coordinator, phone (208) 253–0134; or John Baglien, District Ranger, phone (208) 549–4201.

SUPPLEMENTARY INFORMATION: The USDA Forest Service is proposing projects within the 26,438 acre Mann Creek Subwatersheds. Approximately 6–8 MMBF of timber from about 2,000 acres will be harvested by thinning and regeneration methods, using tractor, skyline, and helicopter logging systems. Approximately 800 acres will be regenerated.

This proposal follows direction in the Payette National Forest Land and Resource Management Plan. About 2–4 miles of road construction or reconstruction are planned. About 10–30 miles of road decommissioning or obliteration are planned.

Prescribed fire activities would occur on a total of about 4,000 acres of open ponderosa pine stands, dry Douglas-fir stands, aspen communities, and grass/shrublands to enhance plant growth and diversity.

Preliminary issues identified are forest health in stringer habitat, and the economic and resource effects of longer return intervals into the subwatershed.

Initial scoping began in June, 1999. Preliminary analysis is currently being conducted. The Forest Service will be seeking additional information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may

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be interested or affected by the proposed projects. Additional input will be used to help identify key issues and develop alternatives. This input will be used in preparation of the draft EIS.

The Forest Service expects to file the draft EIS with the Environmental Protection Agency and have it available for public review by August 20, 1999. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' positions and contentions. *Vermont Yankee Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, courts may waive or dismiss environmental objections that could be raised at the DEIS stage, but that are not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritagees, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest, McCall, ID 83638.

Dated: July 2, 1999.

David F. Alexander,

Forest Supervisor.

[FR Doc. 99–18013 Filed 7–14–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Otter Lake Timber Sale(s), Tongass National Forest; Hoonah Ranger District, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of proposed actions within the Otter Lake Project Area. The proposed action provides for: (1) Harvest of seven units covering 588 acres, from a unit pool of 14 units totalling 849 acres and containing 19.4 million board feet, and regeneration of new stands of trees; (2) construction of 3.2 miles of specified road and 0.5 miles of temporary road, as well as reconstruction of 2.5 miles of specified road; and (3) the use of the existing log transfer facility at Eight Fathom Bight (terminus of Forest Development Road 8580). This level of development would result in the harvest of an estimated 12.4 million board feet of sawlog and utility timber volume over a three year period following the approval of this document and award of contract(s). The proposed action is one alternative to achieve the purpose and need for this project. A map of the unit and road pool, and the proposed action, is available from the address provided.

DATES: Comments concerning the scope of the analysis should be received in writing by August 23, 1999.

LEAD AGENCY: USDA Forest Service, Tongass National Forest.

ADDRESSES: Send written comments to Otter Lake Planning Team, USDA Forest Service, 204 Siginaka Way, Sitka, Alaska 99835.

COOPERATING AGENCIES: U.S. Army Corps of Engineers, U.S. Environmental Protection Agency will be invited to participate as Cooperating Agencies.

FOR FURTHER INFORMATION CONTACT: Michael E. Fox, USDA Forest Service, 204 Siginaka Way, Sitka, Alaska 99835, (907) 747–4328, e-mail at mfox/r10_chatham@fs.fed.us or FAX at (907) 747–4281.

SUPPLEMENTARY INFORMATION:

Background

This environmental impact statement (EIS) will tier to the Tongass Land and Resource Management Plan Environmental Impact Statement and Modified 1997 Tongass Land and Resource Management Plan (April 1999 Record of Decision). The Tongass Land and Resource Management Plan (TLRMP) provides the overall guidance (Goals, Objectives, Standards, Guidelines, and Management Area direction) to achieve the desired condition for the area in which the project is proposed..

The EIS will be prepared by a contractor working under the supervision of the Forest Service. Work to be done by the contractor includes the field investigations, development of resource reports, preparation of a draft EIS, and the preparation of the final EIS. The Forest Service will prepare the Record of Decision. The Forest Service will provide oversight and review at all steps of the process.

The Otter Lake Project Area is located about 60 air miles north of Sitka, Alaska and 12 air miles west of Hoonah, Alaska. The project area (7,580 acres) is located on north Chichagof Island, just north of Neka Bay, and north and west of Port Frederick. The project area encompasses part or all of R 59 E, T 43 S, Sec. 31, 32, 33, 34, 35, & 36; R 59 E, T 44 S, Sec. 1 through 18, 20, & 21, and R 60 E, T 45 S, Sec. 6 (Eight Fathom Bight Log Transfer Facility (LTF) site). The LTF is approximately 6.5 road miles south of the project area. The Otter Lake Project Area lies within Value Comparison Unit (VCU) 2010. The project area is administered by the Hoonah Ranger District, Tongass National Forest.

Purpose and Need for the Proposed Action

The purpose and need for the project is to implement the direction, goals, and objectives in the modified 1997 Tongass Land and Resource Management Plan (TLMPR), dated May 23, 1997 and the Record of Decision, dated April 13, 1999. The project is planned to move timber stands to a managed condition resulting in a healthier, faster growing stand, to increase growth and yield from the managed stands, to reduce volume loss associated with disease and decay and to recover timber volume that might otherwise be lost for human use.

The project is planned to contribute an estimated 12 million board feet of sawlog and utility timber in support of the Tongass National Forest timber program, in order to meet the direction, in the Tongass Timber Reform Act, section 101, to "seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meet market demand from such forest for each planning cycle" to the extent consistent with multiple use and sustained yield from

all renewable forest resources. This environmental impact statement may result in one or more timber sales under the sale program.

Decisions To Be Made

Fred S. Salinas, Assistant Forest Supervisor, Tongass National Forest, is the Responsible Official and will decide whether or not to authorize timber harvest within the Otter Lake Project Area. He will decide: (1) If the design of the timber sale offerings are consistent with meeting resource protection standards and guidelines in the Modified 1997 Tongass Land and Resource Management Plan; (2) how much timber volume to make available and what the logical sale offerings are; (3) the location and design of the arterial and collector road system needed to develop the project area, and the post-sale transportation options; (4) the location and design of timber harvest units (including silvicultural prescriptions and logging systems), and log transfer and camp facilities; (5) mitigation and monitoring measures for sound resource management; and (6) subsistence determinations required by Secton 810 of the Alaska National Interest Lands Conservation Act (ANILCA).

Management Objectives

The project area is in Value Comparison Unit (VCU) 2010, and is located totally within the Timber Production Land Use Designation (LUD). An Old-growth Habitat Reserve is located immedately adjacent to the south and east of the project boundary. The existing Eight Fathom Bight Log Transfer Facility (LTF), located approximately five air miles to the south, lies within a Scenic Viewshed LUD.

Management direction that the proposed action is designed to address include: Desired Condition—Suitable timber lands are managed for the production of sawtimber and other products on an even-flow, long-term sustained yield basis. A road system provides access for timber management activities, recreation, hunting and fishing, and other administration uses; some roads may be closed seasonally or permanently to address resource concerns. Management activities will generally dominate the landscape. Tree stands are healthy and in a balanced mix of age classes from young stands to trees of harvestable age, often in 40- to 100-acres stands. Recreation opportunities associated with roaded settings are available. A variety of wildlife habitats, predominately in the early to middle successional stages, are present.

Goals—Manage the timber resource for production of saw timber and other wood products from suitable timber lands made available for timber harvest, on an even-flow, long-term sustained yield basis, and in an economically efficient manner. Provide a diversity of opportunities for resource uses that contribute to the local and regional economies of Southeast Alaska.

Objectives—Seek to provide a timber supply sufficient to meet the annual market demand for Tongass National Forest timber, and the market demand for the planning cycle. Support a wide range of natural resource employment opportunities within Southeast Alaska's communities.

Tentative Issues

Scoping has not yet been done for this project; however, issues identified for the Supplement to the Environmental Impact Statement, 1981–86 & 1986–90 Operating Periods (SEIS) and the Eight Fathom Timber Sale(s) Project for the same general area are considered to still be applicable. The issues as expressed below have been modified to reflect the reduced project area.

Issue 1—Project Effects on Recreation and Tourism: This issue focuses on how timber harvest and road building would affect recreational opportunities and the visual character of the landscape. This includes potential disruptions to fish and wildlife resources that drive recreation/tourism businesses, extent of additional access for recreational users via logging roads, and if there would be impacts on areas of concern such as Neka Bay.

Issue 2—Subsistence Impacts: This issue focuses on whether or not proposed activities will significantly restrict subsistence use through effects on wildlife, fish, and plant resources for customary and traditional uses. Concerns include whether harvest activities would displace subsistence users, whether additional use from logging personnel, increased traffic from logging, and increased future recreation use on new logging roads would displace or reduce abundance of subsistence resources, including deer.

Issue 3—Potential Economic Impacts: The issue focuses on the capability of the project area to provide a long-term sustained yield of timber and other resources, and whether this associated level of outputs is sufficient to meet the needs of dependent local communities. These concerns include whether timber production and productivity can be maximized to achieve positive economic return; whether the short-term timber obligations will be balanced with long-term maintenance of other natural resources, whether the economic analysis would consider the economics of resources other than timber, and whether the road system for the project would remain in place to facilitate future harvest and minerals activities.

Issue 4—Protection of Fish and Wildlife Resources: This issue focuses on the effects of timber harvest and associated road construction on water quality, fish, and wildlife, including protection of fish and wildlife habitat during harvest activities, whether biodiversity and population viability will be affected, whether sediments from roads and logging will affect salmon production downstream, and extent of effects on deer, marten, and bear habitats.

Issue 5—Cultural and Historical Resource Protection: This issue focuses on the protection of heritage resources, and concerns a project design to avoid damage to cultural or historical resources, and coordination with the State's Scenic Byway Program to address proposed projects within areas designated for corridors of scenic, historic, cultural, recreational, or archaeological significance.

Issue 6—Protection of Caves and Karst Features: This issue focuses on the potential presence of karst features in the project locale.

Issue 7—Alternatives to Clearcutting: The issue is focused on public concerns that silvicultural systems other than even-aged management be considered in the alternatives, and implementation of a reforestation program to speed recovery after harvest and to reduce the duration of scenic effects, and the presence of clearcuts in high public use, highly visible areas.

Proposed Action

The proposed action is the harvesting of seven units of a 14-unit pool totalling 849 acres with 19.4 million board feet. The total area harvested, including road right-of-way, is 595 acres yielding an estimated 12.4 million board feet. Logging systems include three helicopter units totalling 240 acres for 5.6 million board feet, as well as four units with a ground-based logging system (skyline or shovel) with 326 acres yielding 6.2 million board feet. All units are planned as clearcuts. The proposed road system consists of 3.2 miles of new specified road construction, 0.5 miles of temporary road construction, and 2.5 miles of reconstruction of existing specified road. Road construction right-of-way area is 22 acres, yielding 0.6 million board feet. Nineteen percent of the 3,170

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acres of timber suitable and available for harvest would be harvested under this scenario. All units and roads will conform to the standards and guidelines in the TLMPR, including stream buffers, retention of green trees within units, marten habitat requirements, and the avoidance of extreme hazard soils and over-steepened slopes.

Permits

To proceed with the timber harvest as proposed, various permits must be obtained from other agencies. Federal agencies and their responsibilities are as follows: U.S. Army Corps of Engineers has the responsibility for approval of discharge of dredged or fill material into the waters of the United States (section 404 of the Clean Water Act), and approval of construction of structures or work in navigable waters of the United States (section of the Rivers and Harbors Act of 1899); the Environmental Protection Agency has responsibility for the National Pollution Discharge System review (section 402 of the Clean Water Act); the U.S. Coast Guard has responsibility for Coast Guard Bridge Permits (General Bridge Act of 1946) required for all structures constructed within the tidal influence zone. Other agencies which will participate are as follows: State of Alaska, Department of Natural Resources has responsibility for authorization for occupancy and use of tidelands and submerged lands; State of Alaska, Department of Environmental Conservation has responsibility for the Solid Waste Disposal Permit (section 402 of the Clean Water Act, 18 AAC 60.230) and the Certificate of Reasonable Assurance (section 401 of the Clean Water Act). Both the Environmental Protection Agency and the U.S. Army Corps of Engineers will be invited to participate as cooperating agencies in the preparation of the environmental impact statement.

Process Steps

Preparation of the environmental impact statement will include the following steps: (1) Public notification and scoping (comments due in approximately 45 days, beginning with the publication of this Notice in the **Federal Register**; (2) identification of significant issues related to the proposed action to be analyzed in depth; (3) development of a reasonable range of alternatives to the proposed action which meet the stated purpose and need for the proposed action and address significant issues; and (4) identification of the potential environmental effects of the alternatives.

Scoping announcements will be published during the week of July 12, 1999 in the *Juneau Empire* and *Daily Sitka Sentinel*, and copies of the announcement will be mailed to interested persons. This announcement will describe the timing and location of public involvement meetings. Scoping meetings will be held in Hoonah in August 1999. Comments received from public scoping will be analyzed to determine significant issues within the scope of this project. Alternatives to the proposed action will be developed to address significant issues. One of these will be the "No Action" alternative in which there will be no project-related activities such as timber harvest or road construction. Other alternatives may consider various levels and locations of activities in response to issues and other resource objectives. The direct and indirect effects of each alternative will be analyzed and documented. Mitigating measures will be identified and their effectiveness evaluated.

Public Participation Encouraged

In addition to commenting on the proposed action and the Draft Environmental Impact Statement when it is released, agencies and other interested persons or groups are invited to contact Forest Service Officials at any time during the planning process.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) in September 2000. The comment period for the Draft Environmental Impact Statement will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Statement may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 (E.D. Wis 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made to the Forest Service at a time when it can meaningfully consider and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft Environmental Statement. Comments may also address the adequacy of the Draft Environmental Statement or the merits of the alternatives formulated and discussed in the document. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.

The Final Environmental Impact Statement and Record of Decision is expected to be released in June 2001. The Assistant Forest Supervisor, Sitka Assistant Forest Supervisor's Office, Tongass National Forest, will, as the responsible official for the environmental impact statement, make a decision regarding this proposal considering the comments, responses, environmental consequences disclosed in the final environmental impact statement, and applicable laws, regulations, and policies. The decision and supporting reasons will be documented in the record of decision.

Fred S. Salinas,

Assistant Forest Supervisor.

[FR Doc. 99–18068 Filed 7–14–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on August 2, 1999, at the Marriott Hotel, 700 Grand Avenue, Des Moines, Iowa 50309. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 7, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–18070 Filed 7–14–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12:30 p.m. on August 12, 1999, at the Days Inn, 2309 Iowa, Lawrence, Kansas. The purpose of the meeting is to plan future activities and conduct new member orientation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 7, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–18069 Filed 7–14–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on August 24, 1999, at the Crowne Plaza Hotel, 4445 Main, Kansas City, Missouri. The purpose of the meeting is to plan future activities and projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 7, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–18071 Filed 7–14–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of July 1999, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings	
Armenia: Solid Urea, A–831–801	7/1/98—6/30/99
Azerbaijan: Solid Urea, A–832–801	7/1/98—6/30/99
Belarus: Solid Urea, A–822–801	7/1/98—6/30/99
Brazil:	
Industrial Nitrocellulose, A–351–804	7/1/98—6/30/99
Silicon Metal, A–351–806	7/1/98—6/30/99
Chile: Fresh Atlantic Salmon, A–337–803	7/1/98—6/30/99
Estonia: Solid Urea, A–447–801	7/1/98—6/30/99
Georgia: Solid Urea, A–833–801	7/1/98—6/30/99
Germany: Industrial Nitrocellulose, A–428–803	7/1/98—6/30/99
Iran: In-Shell Pistachio Nuts, A–507–502	7/1/98—6/30/99
Italy: Pasta, A–475–818	7/1/98—6/30/99
Japan:	
Cast Iron Pipe Fittings, A–588–605	7/1/98—6/30/99
Clad Steel Plate, A–588–838	7/1/98—6/30/99
Electric Cutting Tools, A–588–823	7/1/98—6/30/99
E L Flat Panel Displays	7/1/98—6/30/99
High Power Microwave Amplifers	7/1/98—6/30/99
Industrial Nitrocellulose, A–588–812	7/1/98—6/30/99
Synthetic Methionine, A–588–041	7/1/98—6/30/99
Kazakhstan:	
Solid Urea, A–834–801	7/1/98—6/30/99

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	Period
Solid Urea, A–835–801	7/1/98—6/30/99
Latvia: Solid Urea, A–449–801	7/1/98—6/30/99
Lithuania: Solid Urea, A–451–801	7/1/98—6/30/99
Moldova: Solid Urea, A–841–801	7/1/98—6/30/99
Republic of Korea: Industrial Nitrocellulose, A–580–805	7/1/98—6/30/99
Romania: Solid Urea, A–485–601	7/1/98—6/30/99
Russia: Ferrovanadium, A–821–807	7/1/98—6/30/99
Russia: Solid Urea, A–821–801	7/1/98—6/30/99
Tajikistan: Solid Urea, A–842–801	7/1/98—6/30/99

	Period
Thailand:	
Butt-Weld Pipe Fittings, A–549–807	7/1/98–6/30/99
Canned Pineapple, A–549–813	7/1/98–6/30/99
Furfuryl Alcohol, A–549–812	7/1/98–6/30/99
The People's Republic of China:	
Butt-Weld Pipe Fittings, A–570–814	7/1/98–6/30/99
Industrial Nitrocellulose, A–570–802	7/1/98–6/30/99
Persulfates, A–570–847	7/1/98–6/30/99
Sebacic Acid, A–570–825	7/1/98–6/30/99
The Ukraine: Solid Urea, A–823–801	7/1/98–6/30/99
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/98–6/30/99
Turkmenistan: Solid Urea, A–843–801	7/1/98–6/30/99
Turkey: Pasta, A–489–805	7/1/98–6/30/99
Uzbekistan: Solid Urea, A–844–801	7/1/98–6/30/99
Countervailing Duty Proceedings	
European Economic Community: Sugar, C–408–046	1/1/98–12/31/98
Italy: Pasta, C–475–819	1/1/98–12/31/98
Turkey: Pasta, C–489–806	1/1/98–12/31/98
Suspension Agreements	
None.	

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. In recent revisions to its regulations, the Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to section 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of July 1999. If the Department does not receive, by the last day of July 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 9, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–18110 Filed 7–14–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

May 1997 Lake Barre, Louisiana Oil Spill; Notice of Availability and Request for Comments on a Draft Damage Assessment and Restoration Plan/Environmental Assessment

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior (DOI); Louisiana Oil Spill Coordinators Office (LOSCO); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); Louisiana Department of Wildlife and Fisheries (LDWF).

ACTION: Notice of availability of a draft Damage Assessment and Restoration Plan and Environmental Assessment, and 30-day period for public comment on the plan.

SUMMARY: Pursuant to 15 CFR 990.23 and 15 CFR 990.55(c), notice is hereby given that a document entitled, "Draft Damage Assessment and Restoration Plan and Environmental Assessment for the May 16, 1997 Texaco Pipeline Company Lake Barre Oil Spill" (Draft DARP/EA) is available for public review and comment. This document was prepared by the agencies listed above (the Trustees) to address natural resource injuries and losses of service following the May 1997 pipeline rupture and subsequent discharge of crude oil into Lake Barre, Louisiana (the Incident). This document presents the Trustees' assessment of the natural resource injuries and losses of service attributable to this Incident, and their proposed plan to restore, replace or acquire resources or services equivalent to those lost as a basis for compensating for the natural resource injuries and losses of service that occurred. The Trustees will consider comments received during the public comment period before finalizing the document. Public review of the Draft DARP/EA is consistent with all state and federal laws and regulations that apply to the natural resource damage assessment process, including section 1006 of OPA, the regulations for Natural Resource Damage Assessment under the Oil Pollution Act of 1990 (OPA) (15 CFR part 990), National Environmental Policy Act (NEPA) (42 U.S.C. 4371, *et seq.*), and implementing regulations (40 CFR part 1500, *et seq.*).

DATES: Comments must be submitted in writing on or before August 16, 1999.

ADDRESSES: Requests for copies of the draft DARP/EA should be sent to John Kern of NOAA, 9721 Executive Center Drive, N., Suite 114, St. Petersburg, FL 33702 or Warren Lorentz, LOSCO, 625 N. Fourth Street, Suite 800, Baton Rouge, LA 70802. Written comments on the plan should be sent to either John Kern of NOAA or to Warren Lorentz of LOSCO at the same addresses as listed above.

FOR FURTHER INFORMATION CONTACT: John Kern, at (727) 570–5391, email: *john.kern@noaa.gov*, or Warren Lorentz, at (225) 219–5800, email: loscolorentz@linknet.net.

SUPPLEMENTARY INFORMATION: At around 1600 hours Central Daylight Savings time on May 16, 1997, a discharge from a 16-inch crude oil transmission pipeline was discovered by Texaco Pipeline Inc. (hereafter "Texaco") in Lake Barre, Louisiana. The discharge was caused by a 34-inch long gash in the pipeline, which had been buried five or more feet below the sediment surface. The site of the pipeline rupture was at 29° 14.8' N latitude, 90° 29.3' W longitude, which is approximately 27 miles southeast of Houma, in Terrebonne Parish. Texaco estimated that approximately 6,561 barrels (275,562 gallons) of crude oil were discharged as a result of the pipeline rupture into Lake Barre. Although Texaco undertook response actions, these actions did not prevent exposure of natural resources including marsh, shorelines, birds, and estuarine water column organisms to the oil. A variety of injuries and lost uses of natural resources were documented as a result of that exposure.

The incident is subject to the authority of OPA, 33 U.S.C. 2701–2761 (OPA), the Federal Water Pollution Control Act, 33 U.S.C. 1321 *et seq.* (FWPCA) and the Louisiana Oil Spill Prevention and Response Act, LSA L.S.R. 30:2451 *et seq.* (OSPRA). NOAA, DOI, LOSCO, LDEQ, LDNR, and LDWF are Trustees for natural resources pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*) OPA, the FWPCA, subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600–300.615, and, in the case of the Louisiana Trustees, OSPRA LSA L.S.R. 30:2451, and in the case of the Federal Trustees, Executive Order 12777. As a designated Trustee, each agency is authorized to act on behalf of the public under state and/or federal law to assess and recover natural resource damages, and to plan and implement actions to restore natural resources and resource services injured or lost as the result of an incident.

Pursuant to section 1006 of the Oil Pollution Act of 1990 (OPA), designated natural resource Trustees have conducted a damage assessment for this Incident to evaluate potential injuries to natural resources and services, and to determine the need for and scale of restoration actions required. The draft DARP/EA discusses the natural resources and services believed to be affected by the Incident, details the assessment procedures used, outlines the restoration alternative selection and scaling process, and identifies the preferred restoration alternative to address natural resource injuries and losses of service. The Trustees determined that injured natural resources have largely returned to baseline conditions, and are expected to fully return to baseline without requiring any further actions. However, the Trustees have determined that there have been interim losses to marsh habitat services, birds, and aquatic fauna that require compensatory restoration to make the environment and the public whole for these losses. Under the preferred restoration alternative, 18.6 acres on East Timbalier Island will be planted with marsh vegetation, and, due to the planting design, another 39.4 acres is expected to be gained from natural spreading from the planted area over the anticipated lifetime of the project. The 58 total acres of marsh expected to result from implementation of the preferred restoration alternative will be sufficient to satisfy compensatory restoration requirements.

Interested members of the public are invited to request a copy of the Draft DARP/EA form and to submit written comments to either John Kern or Warren Lorentz at the addresses given above. All written comments will be considered by NOAA, DOI, LOSCO, LDEQ, LDNR, and LDWF in finalizing the DARP/EA.

Dated: July 6, 1999.

Captain Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–17783 Filed 7–14–99; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Applications Concerning Dengue Vaccines

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, and 404.7, announcement is made of the availability for licensing of Provisional U.S. Patent Applications, Serial Numbers 60/126,311 (filed March 26, 1999) and entitled "Live Attenuated Dengue–3 Vaccine"), 60/126,313 (filed March 26, 1999 and entitled "Live Attenuated Multivalent Dengue

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Vaccine"), 60/126,316 (filed March 26, 1999 and entitled "Adaptation of Virus to Vero and Other Vertebrate Cells"), 60/126,317 (filed March 26, 1999 and entitled "Dengue–1 Virus Vaccine"), 60/126,318 (filed March 26, 1999 and entitled "Live Attenuated Dengue–4 Vaccine"), and 60/126,319 (filed March 26, 1999 and entitled "Live Attenuated Dengue–2 Vaccine"). These inventions have been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commanding General, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harris, Patent Attorney, 301–619–2065, or FAX 301–619–5034.

SUPPLEMENTARY INFORMATION: The inventions describe a novel strain of dengue virus derived by empirical passage of the virus in primary dog kidney cell cultures. Passage of these cells selected for modified strains of dengue virus that are attenuated in humans. Human inoculation has demonstrated that the strains are safe, cause minimal side reactions, but result in infections that stimulate immune responses to the virus. It is thought that this immunity will protect the recipients from natural infection and diseases caused by the virus strains. The invention of Provisional Application SN 60/126,316 relates to the description of the use of Vero and other cell lines for the production and manufacture of dengue vaccines.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–18012 Filed 7–14–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure; Naval Air Station, Agana, Guam

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Station, Agana, Guam, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

ADDRESSES: For information regarding particular properties identified in this Notice (i.e. acreage, floor plan, sanitary facilities, exact street address, etc.), contact: Ken Alexanderson, Realty Specialist, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300, telephone (808) 474–5926.

Submit Expressions of Interest to: Guam Economic Development Authority: BRAC GOVGUAM, Steering Committee, Office of the Governor, PO Box 2950, Agana, Guam 96932.

FOR FURTHER INFORMATION CONTACT: Rich A. Engel, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 1322 Patterson Avenue, SE, Suite 1000, Washington, DC 20374–5065, telephone (202) 685–9203; or J. M. Kilian, Director, Real Estate Division, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300, telephone (808) 471–3217.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Air Station, Agana, Guam, was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended. Further, in 1995, this designation was revised to reflect complete closure. Pursuant to this revised designation, the remaining land and facilities at these installations were on October 5, 1995, declared surplus to the Federal Government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies.

Also, pursuant to paragraph (7)(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and surplus property at the Naval Air Station, Agana, Guam is published in the **Federal Register**.

Redevelopment Authority

The local redevelopment authority for the Naval Air Station, Agana, Guam for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Government of Guam, represented by the Guam Economic Development Authority: BRAC GOVGUAM Steering Committee, Office of the Governor, PO Box 2950, Agana, Guam 96932. The point of contact is Mr. Joe T. San Agustin, Administrator, BRAC GOVGUAM Steering Committee, telephone (671) 475–1080.

Surplus Property Description

The following is a listing of the remaining land and facilities at Naval Air Station, Agana, Guam which includes SRF Guam, NAS Agana Officer Housing Area and the appropriate Guam Land Use Plan (GLUP) 94 parcels that were declared surplus to the Federal Government on March 18, 1999.

Land

Approximately 2,903 acres of improved and unimproved fee simple land designated at the following locations: SRF GUAM 100 acres; COMNAVMARIANAS 1,853 acres; PWC Guam 858 acres and NAS Agana 92 acres. In general, all areas will be available upon the closure of the Naval Air Station, Agana anticipated for July 1999.

Buildings

The following is a summary of the buildings and improvements located at the following locations:

SRF GUAM—71 structures/improvements consisting of 496,192 total square feet;
COMNAVMARIANAS—12 structures/improvements consisting of 35,798 square feet;
PWC—43 structures/improvements consisting of 105,539 square feet, and;
NAS Agana—74 structures/improvements consisting of 245,600 square feet.

Property numbers are available on request.

SRF Guam Ship Repair Facility, Facility R96, Berth/Pier, no area available, Berths L1,L2, M, N, O, P, Q, approximately 3,450 lineal feet

Miscellaneous cranes and shipyard related equipment as determined excess by Navy.

Bldg. 20, Administrative Office/Various Shops, 138,734 SF Various Trade Shops, 72,750 SF
Bldg. 22, Paint and Blasting Building, 26,400 SF
Bldg. 23, Ready Storage, 1,920 SF
Bldg. 24, Public Toilet, 738 SF
Bldg. 25, Installation Restaurant, 3,840 SF
Bldg. 26, Sound Survey Facility, no area specified
Bldg. 28, Quebec Compressed Air Plant, 1,824 SF
Bldg. 29, Electrical Shop, 144 SF
Bldg. 30, Foundry, 11,880 SF
Bldg. 31, Utility System Storage, 488 SF
Bldg. 33, Utility System Storage, 440 SF
Bldg. 36, Ready Storage, 1,350 SF
Bldg. 38, Utility System Storage, 600 SF
Bldg. 39, Ready Storage, 1,350 SF
Bldg. 40, Operational Storage, 742 SF
Bldg. 41, Paint and Blasting Building, 900 SF
Bldg. 42, Operational Storage, 2,000 SF
Bldg. 43, Ready Storage, 9,000 SF
Bldg. 93–1, Instructional Building/Shop, 4,138 SF
Bldg. 94, Driver Change House, 120 SF
Facility 95, Playing Field, no area available
Bldg. 102, Electronics Shop, 2,560 SF
Facility 107, Flagpole, no area available
Bldg. 2001A, Temporary Service Shop, 5,640 SF
Bldg. 2002, Storage, 6,000 SF
Bldg. 2003, Fire Protection Building, 315 SF
Bldg. 2004, Maintenance Storage Building, 4,336 SF
Bldg. 2006, Administrative Office, 4,000 SF
Bldg. 2008, Administrative Office, Gymnasium, 9,556 SF
Bldg. 2009, Operational Storage, 4,500 SF
Bldg. 2010, Operational Storage, 4,500 SF
Bldg. 2013, Boilermaking Shop, 1,760 SF
Bldg. 2014, Hazardous Waste Storage, 1,600 SF
Facility 2015, Paved Areas, 3,996 SF
Bldg. 2015, Paved Areas, 3,996 SF
Bldg. 2016, Service Shop, 4,150 SF
Bldg. 2028, Operational Storage, 6,150 SF
Bldg. 2030, Sentry House, 72 SF
Bldg. 2031, Tool Shop, 2,400 SF
Bldg. 2032, Loading Ramp, 1,800 SF
Bldg. 2039, Service Shop, 5,200 SF
Bldg. 2040, Temporary Service Shop, 1,200 SF
Bldg. 2041, Wood Working Shop, 1,200 SF
Bldg. 2042, Operational Storage, 4,500 SF
Bldg. 2043, Operational Storage, 4,500 SF
Bldg. 2044, Operational Storage, 4,500 SF
Bldg. 2049, Ready Storage, 6,800 SF
Bldg. 2053, Ready Storage, 4,000 SF
Bldg. 2054, Ready Storage, 4,000 SF
Bldg. 2055, Ready Storage, 9,400 SF
Bldg. 2056A, Operational Storage, 4,600 SF
Bldg. 2057, Boilermaker Shop, 2,500 SF
Bldg. 2060, Administrative Office, 39,125 SF
Bldg. 2061, Electric Shop, 1,200 SF
Bldg. 2062, Gymnasium, 1,200 SF
Bldg. 2063, Boilermaker/Boat Shop, 6,600 SF
Bldg. 2064, Ready Storage, 2,064 SF
Bldg. 2068, Temporary Service Shop, 5,814 SF
Bldg. 2069, Temporary Service Shop, 1,232 SF
Bldg. 2070, Service Shop, 4,265 SF
Bldg. 2071, Public Toilet, 27 SF SF
Bldg. 2072, Filling Station, no area available
Bldg. 2073, Hazardous Storage Building, 999 SF
Bldg. 2074, Electrical Shop, 4,200 SF
Bldg. 2075, Weather Shelter, 72 SF
Bldg. 2076, Sentry House, 72 SF
Bldg. 2077, Sentry House 294 SF
Bldg. 2078, L.P. Air Compressor Bldg., 2,400 SF
Bldg. 2081, Temporary Service Shop, 300 SF
Bldg. 2100, Paint and Blasting Shelter, 2,400 SF
Bldg. 2102, Public Toilet, 192 SF
Bldg. 2108, Quality Assurance Office, 8,330 SF
Bldg. 2109, Ship/Spare Storage Facility, 29,544 SF

Commander, U.S. Forces Marianas Parcels (GLUP 94 Parcels)

GLUP 1994 Parcel N3, Harmon Annes (Former Naval Printing Facility) (Map 2) Area: 7 acres, Improvements: Bldg. 50, Former Printing Plant, 13, 428 SF
GLUP 1994 Parcel N5, NCTAMS Barrigada (Map 3) Area: 773 acres, Improvements: Bldg. 31, Helix House, 594 SF; Bldg. 31A, Loran Building, 3,960 SF
GLUP 1994 Parcel N10B, NIMITZ Hill vacant lands (Map 4), Area: 183 acres, Improvements: none
GLUP 1994 Parcel N12, SASA Valley/Tenjo Vista fuel Farm area (Map 5) Area: 573 acres, Improvements: none
GLUP 1994 Parcel N14, Polaris Point (Map 6) Area: 82 acres, Improvements: none
GLUP 1994 Parcel N15, New APRA Heights (Map 7) Area: 102 acres, Improvements: none
GLUP 1994 Parcel N16, Route 2a (Map 8) Area: 15 acres, Improvements: none
GLUP 1994 Parcel N17, Rizal Beach (Map 9) Area: 16 acres, Improvements: none
GLUP 1991 Parcel N19, NAVACTS Ordnance Annex North Parcels (Map 10), Area: 102 acres, Improvements: 17 housing units in 9 buildings and related structures, 17,816 SF

Navy Public Works Center Parcels (GLUP 94 Parcels)

GLUP 94 Parcel N2, former FAA Parcel (Map 11), Area: 698 acres, Improvements: none
GLUP 94 Parcel N4B, Marine Drive Utility Parcel (Map 12), Area: 25 acres Note: Harmon electric substation is not included in this notice of availability and will be conveyed pursuant to terms of enabling legislation covering Navy electric utility facilities on Guam. Improvements: Bldg. 691, Cable House, 2,250 SF
GLUP 94 Parcel N4C, Tamuning Telephone Exchange (Map 13) Area: 2 acres, Improvements: Bldg. 405, Telephone Exchange Building 4,867SF
GLUP 94 Parcel N4D, Agana Power Plant (Map 13) Area: 6 acres, Improvements: Power Plant building totaling 16,902SF Conditions for release under BRAC program: determination that property cannot be processed for disposal in accordance with the Customer Service Agreement.
GLUP 94 Parcel N10A, MIMITZ Hill enlisted housing (Map 14) Area: 120 acres, Improvement: 80 housing units in 40 buildings and related structures, 81,520 SF
GLUP 94 Parcel N18, Old APEA Heights (Map 15) Area: 13 acres, Improvements: none
Former Naval Air Station, Agana(Tiyan) Officer Housing Area Parcel (Map 16) Area: 92 acres, Improvement: 136 housing units in 73 buildings and related structures, 233,600 SF
Bldg. 1307, Minimart facility, 12,000 SF

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Agana, Guam, shall submit to the redevelopment authority a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7(C) and (D) of said section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Guam the date by which expressions of interest must be submitted.

Dated: July 7, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18074 Filed 7–14–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for and Availability of the Draft Environmental Impact Statement for Disposal and Reuse of Naval Air Station (NAS) South Weymouth, MA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) the Draft Environmental Impact Statement (DEIS) for Disposal and Reuse of NAS South Weymouth, MA. A public hearing will be held to receive oral and written comments on the DEIS. Federal, state, and local agencies and interested parties are invited to be present at the hearing.

DATES: The meeting will be held on Wednesday, August 4, 1999 at 7 p.m.

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ADDRESSES: Abigail Adams Intermediate School, 89 Middle Street, Weymouth, MA 02189.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ostermueller, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MSC 82, Lester, PA 19113, telephone (610) 595–0759.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), Navy has prepared and filed with the U.S. EPA the DEIS for the Disposal and Reuse of NAS South Weymouth, MA.

In response to the recommendations of the 1995 Base Closure and Realignment Commission and to the legislative requirements of the 1990 Base Realignment and Closure Act, NAS South Weymouth was officially closed in September 1997.

Navy has prepared a DEIS which addresses the environmental impacts of disposing of NAS South Weymouth and of its potential reuse. It is Navy's policy to adopt the local community's reuse plan as its preferred alternative. The preferred alternative presented in the DEIS is the Final Reuse Plan developed and approved by the South Shore Tri-Town Development Corporation.

The Final Reuse Plan alternative is a combination of land uses to include: Business/research and development (regional headquarters, small businesses, high-technology, etc.), retail (super-regional retail entertainment center/retail along Route 18), residential (new senior housing), institutional (homeless services), recreation (public golf course), open space (wetlands and parks), and infrastructure (roads). The preferred alternative would generate over 9,540 jobs at full 20-year buildout, and would increase traffic and demand on utility systems in the area substantially.

A Notice of Availability for the DEIS was published in the **Federal Register** on July 2, 1999 and the DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, the public, and the media. In addition, copies are available for review at three repositories around NAS South Weymouth: Burton L. Wales Library, Abington MA; Rockland Memorial Library, Rockland, MA; Hingham Town Library, Hingham, MA; and Weymouth Tufts Library, Weymouth, MA. Single copy requests for the DEIS may be directed to the point of contact listed previously.

One public hearing will be held to inform the public of the DEIS findings and to solicit and receive oral and written comments. The hearing will be held on Wednesday, August 4, 1999 at the Abigail Adams Intermediate School, 89 Middle Street, Weymouth, MA 02189. The hearing will begin at 7 p.m.

Federal, state, and local agencies and interested parties are encouraged to attend or be represented at the meeting. Oral statements will be heard and transcribed by a stenographer; however, to assure the accuracy of the record, statements should be submitted in writing. All statements, both oral and written, will become part of the public record for this study and will be responded to in the Final Environmental Impact Statement. Equal weight will be given to oral and written statements.

In the interest of available time, each speaker will be asked to limit his/her oral comments to five minutes. If longer statements are to be presented, they should be summarized for the public hearing and submitted in written long-form at the hearing or mailed to the point of contact address listed above. All written comments must be postmarked by August 16, 1999 to become part of the official record.

Dated: July 12, 1999.

Ralph W. Corey,

CDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18075 Filed 7–14–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy:

Sensate Liner for Determining Hole Size and Location

ADDRESS: Requests for copies of the patent application cited should be directed to the Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765. Kindly refer to N.C. 77311 when inquiring about this application.

FOR FURTHER INFORMATION CONTACT: Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: July 17, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18076 Filed 7–14–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Athena Ventures

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of a prospective license to Athena Ventures to the Government-owned invention described as "SENSATE LINER FOR DETERMINING HOLE SIZE AND LOCATION."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 13, 1999.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: July 7, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18077 Filed 7–14–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 8, 1999, a 60-day notice inviting comment from the public was inadvertently published for the Federal Direct Stafford/Ford Loan and/or Federal Direct Unsubsidized Stafford/Ford Loan Borrower Promises to Repay His or Her Loan in the **Federal Register** (64 FR 130) dated July 8, 1999. The Leader, Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503.

Requests for copies of the information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address Vivian_Reese@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 708–9266.

Dated: July 9, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

[FR Doc. 99–18015 Filed 7–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.299A, 84.299B]

Indian Education Discretionary Grant Programs—Demonstration Grants for Indian Children and Professional Development

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose of Program: The purpose of each program is included in this notice under the programmatic information for the program.

Deadline for Transmittal of Applications: August 16, 1999.

Deadline for Intergovernmental Review: October 18, 1999.

Applications Available: July 16, 1999.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts, 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) for the Professional Development Program, the payback provisions of 34 CFR 263.1(b), 263.3, and 263.35 through 263.37.

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria were established based on the regulations for evaluating discretionary grants found in 34 CFR 75.200 through 75.210.

84.299A Demonstration Grants for Indian Children

Purpose of Program

The purpose of this program is to provide financial assistance to projects to develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary Indian children, through activities such as—

(a) Innovative programs related to the education needs of educationally deprived children;

(b) Educational services that are not available to such children in sufficient quantity or quality, including remedial instruction, to raise the achievement of Indian children in one or more of the core academic subjects of English, mathematics, science, foreign languages, art, history, and geography.

(c) Bilingual and bicultural programs and projects;

(d) Special health and nutrition services, and other related activities, that address the special health, social, and psychological problems of Indian children;

(e) Special compensatory and other programs and projects designed to assist and encourage Indian children to enter, remain in, or reenter school, and to increase the rate of secondary school graduation;

(f) Comprehensive guidance, counseling, and testing services;

(g) Early childhood and kindergarten programs, including family-based preschool programs that emphasize school readiness and parental skills, and the provision of services to Indian children with disabilities;

(h) Partnership projects between local educational agencies (LEAs) and institutions of higher education that allow secondary school students to enroll in courses at the postsecondary level to aid these students in the transition from secondary school to postsecondary education;

(i) Partnership projects between schools and local businesses for school-to-work transition programs designed to provide Indian youth with the knowledge and skills they need to make an effective transition from school to a first job in a high-skill, high-wage career;

(j) Programs designed to encourage and assist Indian students to work toward, and gain entrance into, an institution of higher education; or

(k) Other services that meet the purpose of this program.

Eligible Applicants

Eligible applicants for this program include a State educational agency, LEA, Indian tribe, Indian organization, federally supported elementary and secondary school for Indian students, Indian institution, including an Indian institution of higher education, or a consortium of such institutions that meet the requirements of 34 CFR 75.127 through 75.219.

Available funds: $1,265,000.

Estimated Range of Awards: $150,000 to $220,000.

Maximum Annual Award Amount: $220,000.

Estimated Average Size of Awards: $210,000.

Estimated Number of Awards: 6.

Project Period: Up to 24 months.

Priorities

Competitive Preference

(1) In making multiyear grants under this program, the Secretary will award five (5) additional points to applications that present a plan for combining two or more of the activities described above over a period of more than one year.

Authority: Section 9121(d)(1)(B) of Subpart 2 of Part A of Title IX, Indian Education Programs, of the Elementary and Secondary Education Act of 1965 (the Act).

(2) In making grants under this program, the Secretary will award five (5) additional points to applications submitted by Indian tribes, organizations, and institutions of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, organization, or institution of higher education shall be considered eligible to receive the five (5) additional priority points.

Authority: 20 U.S.C. 7873.

Invitational Priorities

While applicants may propose any project within the scope of section 9121(c) of the Act, the Secretary is particularly interested in applications that meet one or more of the following

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invitational priorities. However, an application that meets one or more of the invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1—School readiness projects that provide age appropriate educational programs and language skills to three- and four-year old Indian students to prepare them for successful entry into school at the Kindergarten school level.

Invitational Priority 2—Partnership projects between LEAs and institutions of higher education that provide programs and coursework for high school Indian students to prepare them for successful entry into an accredited post-secondary institution of higher education.

Program Authority: 20 U.S.C. 7831.

84.299B Professional Development

Purpose of Program

The purposes of this program are to (1) increase the number of qualified Indian individuals in professions that serve Indian people; (2) provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (3) improve the skills of qualified Indian individuals who serve in the capacities described in (2). Activities may include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support.

Grants for training educational personnel may be for preservice or inservice training. For individuals who are being trained to enter any field other than education, the training received must be in a program resulting in a graduate degree.

Eligible Applicants

Eligible applicants for this program are institutions of higher education, including Indian institutions of higher education; State or local educational agencies, in consortium with institutions of higher education; and Indian tribes or organizations, in consortium with institutions of higher education. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129.

Available Funds: $2,000,000.

Estimated Range of Awards: $250,000 to $300,000.

Esitmated Average Size of Awards: $285,714.

Maximum Annual Award Amount: $300,000.

Estimated Number of Awards: 7.

Project Period: Up to 24 months.

Fiscal Information

For the payment of stipends to project participants being trained, the Secretary expects to set the stipend maximum at $1000 per month for full-time students and $125 allowance per month per dependent during the academic year. The terms "stipend," "full-time student," and "dependent allowance" are defined in 34 CFR 263.3.

Priorities

Competitive Preference

(1) The Secretary will award five (5) additional points to applications for programs that include only Indian individuals as training participants.

Authority: Section 9122(e)(2); 20 U.S.C. 7832(e)(2).

(2) The Secretary will award five (5) additional points to applications submitted by Indian tribes, organizations, and institutions of higher education. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, organization or institution of higher education shall be considered eligible to receive the five (5) additional priority points.

Authority: 20 U.S.C. 7873.

Invitational Priority: Pre-service training programs in education or related areas that will enable participants to complete a bachelor's degree and meet state certification requirements for teachers at the elementary, middle or secondary school level by conclusion of the project period. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Program Authority: 20 U.S.C. 7832.

For Applications or Information Contact: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–3774. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request of the person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official version of this document is published in the **Federal Register.**

Dated: July 9, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–17974 Filed 7–14–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–254–002]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

July 9, 1999.

Take notice that on July 2, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Substitute, Original Sheet No. 94(a), to become effective September 1, 1999.

Destin states that the purpose of this filing is to comply with the Commission's letter order dated June 17, 1999 in the above-referenced docket by clarifying that Destin will provide shippers with information regarding the points at which scheduled volumes are being bumped due to capacity allocation. Destin has requested that this sheet be made effective as of September 1, 1999.

Destin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section

385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17991 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–572–000]

Distrigas of Massachusetts Corporation; Notice of Application

July 9, 1999.

Take notice that on June 30, 1999, Distrigas of Massachusetts Corporation (DOMAC) file an abbreviated application for a certificate of public convenience and necessity and request for shortened procedures requesting authority to install, operate, and maintain a new supplemental hot water heater at its liquefied natural gas (LNG) terminal in Everett, Massachusetts. This filing may be viewed on the web at http://www. ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

DOMAC states that it requires the new supplemental hot water heater to replace an inoperable supplemental heater, in order to ensure operational reliability and flexibility during ship unloadings and periods of high demand and to provide supplemental service to the hot water system supporting DOMAC's medium-pressure vaporization facilities. DOMAC has also requested issuance of temporary authority by August 9, 1999, if the Commission has not granted a certificate by that date, in order to complete installation and testing by the beginning of an anticipated period of increased terminal send out.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. The authorized contact person is Robert A. Nailling, Senior Counsel, Distrigas of Massachusetts Corporation, 75 State Street, 12th Floor, Boston, Massachusetts 02109, (617) 526–8300.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DOMAC to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17983 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–42–001]

Kern River Gas Transmission Company; Notice of Correction to Refund Report

July 9, 1999.

Take notice that on July 2, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing a corrected schedule detailing the Gas Research Institute (GRI) refunds made to its customers, to replace the inaccurate schedule originally submitted in this docket.

Kern River states that a copy of this filing has been served upon its affected customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17984 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–430–000]

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1999.

Take notice that on July 2, 1999, Petal Gas Storage Company (Petal) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 129, with a proposed effective date of August 1, 1999.

Petal states that its filing is made in compliance with the directive of Order No. 587–K, issued on April 2, 1999, in Docket No. RM96–1–011, requiring interstate pipelines to file tariff sheets to conform their tariffs to Version 1.3 of the standards and data sets promulgated by the Gas Industry Standards Board.

Petal states that Fourth Revised Sheet No. 129 has been revised to incorporate by reference the Version 1.3 standards and data sets identified in Order No. 587–K.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will

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be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17995 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–92–000]

Trust Created Under the Agreement Dated As of June 15, 1978 For the Use and Benefit of PSEG Resources Inc., Sanwa Bank California, Trustee; Notice of Surrender of Exempt Wholesale Generator Status

July 9, 1999.

Take notice that on July 2, 1999, pursuant to section 365.7 of the Commission's regulations, 18 CFR 365.7, the Trust Created Under the Agreement Dated As Of June 15, 1978 For the Use and Benefit of PSEG Resources Inc., Sanwa Bank California, Trustee, filed notification that it surrenders its status as an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17996 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2494–002]

Puget Sound Energy, Inc.; Notice of Meeting

July 9, 1999.

A meeting will be convened by staff of the Office of Hydropower Licensing on July 20, 1999, at 9:30 a.m. EDT at the Commission's Headquarters, room 62–26, located at 888 First Street, NE, Washington, DC. By letter dated July 2, 1999, Puget Sound Energy requested a meeting to provide an update on the White River collaborative settlement process and the role (if any) of Commission staff in these ongoing negotiations.

We will not discuss issues dealing with the pending rehearing of the Commission's December 19, 1997, order issuing license for the project. We will restrict discussion primarily to process issues related to setting up and conducting a collaborative settlement process.

If a federal agency wishes to participate by teleconference, they need to call 1–700–991–1540 and enter access code 43165. A non-federal agency should call 1–800–545–4387 and an operator will answer. They will need to give the operator the conference identification number: M36541. The operator will ask them for their name and phone number. The AT&T conference operator will then call them back and they will be part of this conference call.

Any person wishing to attend or needing additional information should contact John Smith at (202) 219–2460 or e-mail at john.smith@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17987 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–252–004]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

July 9, 1999.

Take notice that on July 2, 1999, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Substitute, First Revised Sheet No. 93, to become effective September 1, 1999.

Sea Robin states that the purpose of this filing is to comply with the Commission's letter order dated June 17, 1999 in the above-referenced docket. Sea Robin has stated that it will provide shippers with notice of scheduled quantities at delivery points that are being bumped.

Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 99–17992 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–574–000]

Southern Natural Gas Company; Notice of Application

July 9, 1999.

Take notice that on July 2, 1999, Southern Natural Gas Company (Southern), AmSouth-Sonat Tower, 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed, in Docket No. CP99–574–000, an application pursuant to Sections 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment by sale to Texas Southeastern Gas Gathering Company (Texas Southeastern) of certain pipelines, receiving stations, and appurtenant facilities located in Plaquemines and St. Bernard Parishes, Louisiana, as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Southern states that the proposed abandonment by sale to Texas Southeastern will not affect the capacity of Southern's pipeline system. Southern asserts that this abandonment is in the public interest because the sale of the facilities will reduce its operation and maintenance cost, fuel and gas loss, and capital expenditures for upgrading of lines and receiving stations through the elimination of approximately 54.2 miles from Southern's pipeline system.

Southern maintains that, after the sale, the facilities can be classified as gathering facilities in accordance with the Commission's "modified primary function" test. Southern indicates that Texas Southeastern plans to use these facilities to expand its pipeline facilities and operations in the immediate areas and continue to deliver gas into Southern's pipeline system. Southern states that it will also save Texas Southeastern the cost of building duplicate facilities. Southern says that there will be no loss of service since any request for service on the facilities will be performed by the new owner.

Prior to the transfer of facilities, Southern will construct, install and operate at the terminus of the facilities a new receiving station under its blanket certificate pursuant to section 157.208(a) of the Commission's regulations. Southern reports that the total cost of the station will be borne solely by Texas Southeastern. Southern states that, subsequent to the sale, Southern's shippers, If they so choose, will be able to nominate receipt volumes at the new receiving station. Southern says these receipt volumes could include existing sources from the current gathering system as well as the sources developed by Texas Southeastern.

Southern currently provides firm and interruptible transportation service through the facilities. After the transfer of the facilities, Texas Southeastern intends to offer gathering services comparable to those offered by other gas gathers, at negotiated rates.

Any questions regarding this application should be directed to R. David Hendrickson at (205) 325–7114 or Margaret M. Morton at (205) 325–7354, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17997 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–302–001]

Viking Gas Transmission Company; Notice of Tariff Filing

July 9, 1999.

Take notice that on July 6, 1999, Viking Gas Transmission Company (Viking) tendered or filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective June 3, 1999:

Substitute Original Sheet No. 86A

Viking states that the purpose of this filing is to comply with the Commission's June 3, 1999 Letter Order issued in Docket No. RP99–302–000, 87 FERC ¶ 61,280 (June 3, 1999 Order). In the June 3, 1999 Order, the Commission directed Viking to remove the proposed revised language to Section XXIII(4) of the General Terms and Conditions of Viking's FERC Gas Tariff and to reinstate Section XXIII(d).

Vikings states that copies of this filing have been served upon each person or company named on the Commission's service list in the above-captioned proceeding, on Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17993 Filed 2–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–413–000]

Viking Gas Transmission Company; Notice of Tariff Filing

July 9, 1999.

Take notice that on July 6, 1999, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective August 1, 1999.

Viking states that the purpose of this filing is to comply with Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–K, issued on April 2, 1999 in Docket No. RM96–1–011, FERC Regulations Preambles ¶ 31,072.

Viking states that copies of this filing have been served on all of Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

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Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).'

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–17994 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1478–016, et al.]

Electrade Corporation, et al. Electric Rate and Corporate Regulation Filings

July 8, 1999.

Take notice that the following filings have been made with the Commission:

1. Electrade Corporation

[Docket No. ER94–1478–016]

Take notice that on June 30, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. Nordic Electric, L.L.C. and Alliance Energy Services

[Docket No. ER96–127–007 and Docket No. ER99–1945–001]

Take notice that on June 28, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Wisconsin Power & Light Company

[Docket No. ER98–3722–000]

Take notice that on July 1, 1999, Wisconsin Power & Light Company tendered for filing an amendment to its December 10, 1998 filing, in the above-referenced docket.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company

[Docket No. ER99–3448–000]

Take notice that on July 1, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with West Penn Power Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

CP&L is requesting an effective date of June 23, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER99–3449–000]

Take notice that on July 1, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing four (4) service agreements for firm point-to-point transmission service between SCS, as agent for Southern Company, and (i) Public Service Company of Colorado, (ii) AEP Companies, (iii) Alabama Electric Cooperative. and (iv) El Paso Power Services Company; one (1) service agreement for non-firm point-to-point transmission service between SCS, as agent for Southern Company, and Public Service Company of Colorado; and one Notice of Cancellation of the non-firm point-to-point transmission service agreement between SCS, as agent for Southern Company, and Engage Energy US, L.P., under the Open Access Transmission Tariff of Southern Company (FERC Electric Tariff, Original Volume No. 5).

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Foote Creek II, LLC

[Docket No. ER99–3450–000]

Take notice that on July 1, 1999, Foote Creek II, LLC a Delaware limited liability company, tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission including authority to sell electricity at market-based rates and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on June 30, 1999.

Foote Creek II, LLC's FERC Electric Rate Schedule No. 1 provides for sales under the Power Purchase Agreement between Foote Creek II, LLC and Bonneville Power Administration. Foote Creek II, LLC is a Delaware limited liability company that proposes to engage in the wholesale sale of Electric power in the state of Wyoming and has its address in San Diego, California.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER99–3452–000]

Take notice that on July 1, 1999, the New England Power Pool Participants Committee tendered for filing for acceptance six signature pages to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by American Electric Power Service Corporation (AEP Service Corporation), Kentucky Power Company (Kentucky Power), Indiana Michigan Power Company (Indiana Michigan Power), Ohio Power Company (Ohio Power), Columbus Southern Power Company (Columbus Southern) and Appalachian Power Company (Appalachian Power). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of the signature pages of AEP Service Corporation, Kentucky Power, Indiana Michigan Power, Ohio Power, Columbus Southern and Appalachian Power (the AEP Companies) would permit NEPOOL to expand its membership to include the AEP Companies. The Participants Committee further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make the AEP Companies members in NEPOOL.

The Participants Committee requests an effective date of July 1, 1999, for commencement of participation in NEPOOL by the AEP Companies.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. The Dayton Power and Light Company

[Docket No. ER99–3454–000]

Take notice that on July 1, 1999, The Dayton Power and Light Company (Dayton), tendered for filing service agreements with Consumers Energy Company under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Consumers Energy Company and the Public Utilities Commission of Ohio.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. The Dayton Power and Light Company

[Docket No. ER99–3455–000]

Take notice that on July 1, 1999, The Dayton Power and Light Company (Dayton), tendered for filing service agreements with South Carolina Electric & Gas Company under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon South Carolina Electric & Gas Company and the Public Utilities Commission of Ohio.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER99–3456–000]

Take notice that on July 1, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing Service Agreements with Cinergy Services, Inc., Southern Energy Trading and Marketing, Inc., and Avista Energy, Inc. The service agreements provide for the sale, from time to time, of transmission services by Central Vermont pursuant to its FERC Electric Tariff Original Volume No. 7 (Tariff No. 7). Central Vermont also tendered for filing an amendment to its Index of purchasers under Tariff No. 7.

Central Vermont requests the Commission to waive its notice of filing requirement to permit the service agreements to become effective on the day they were filed. Central Vermont states that it has not yet provided service under the agreements.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Union Electric Company

[Docket No. ER99–3457–000]

Take notice that on July 1, 1999, Union Electric Company (UE), tendered for filing an Amendment to the Wholesale Electric Service Agreement between UE and the City of Owensville, Missouri (Owensville). UE states that the amendment will allow Owensville to participate in a voluntary curtailment program similar to that applicable to its retail electric service customers in Missouri.

UE has proposed to make the Second Amendment effective on July 2, 1999.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER99–3458–000]

Take notice that on July 1, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Route 20 Consortium, Inc., (Route 20). This Transmission Service Agreement specifies that Route 20 has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Route 20 to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for Route 20 as the parties may mutually agree.

Niagara Mohawk requests an effective date of June 24, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Route 20.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER99–3459–000]

Take notice that on July 1, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Agway Energy Services, Inc. (Agway). This Transmission Service Agreement specifies that Agway has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Agway to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for Agway as the parties may mutually agree.

Niagara Mohawk requests an effective date of June 24, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Agway.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER99–3460–000]

Take notice that on July 1, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a Network Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. " Energy Commodities Business Unit (CSI ECBU).

An Application For Network Integration Service for the City of Williamstown, Kentucky has been included as part of the service agreement under the Tariff.

Cinergy and CSE ECBU are requesting an effective date of June 1, 1999.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER99–3461–000]

Take notice that on July 1, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between PacifiCorp and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on PacifiCorp and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of June 18, 1999.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER99–3463–000]

Take notice that on July 1, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and City of Pasadena for acceptance by the Commission.

The ISO states that this filing has been served on City of Pasadena and the California Public Utilities Commission.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

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16. West Texas Utilities Company

[Docket No. ER99–3464–000]

Take notice that on July 1, 1999, West Texas Utilities Company (WTU), tendered for filing Amendment No. 1 to the Power Supply Agreement (PSA), dated June 21, 1996, between WTU and the City of Weatherford, Texas (Weatherford). Amendment No. 1 extends service under the PSA beyond the initial five-year term and provides for market-based rates at the end of the initial term.

WTU seeks an effective date of January 1, 2002 and, accordingly, seeks waiver of the Commission's notice requirements.

WTU served copies of the filing on Weatherford and the Public Utility Commission of Texas.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–3465–000]

Take notice that on July 1, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a proposed First Revised Attachment J to the NSP Open Access Transmission Tariff (Tariff). The filing incorporates the Mid-Continent Area Power Pool (MAPP) regional Line Loading Relief (LLR) transmission curtailment procedures into Attachment J to the NSP OATT, in compliance with ordering paragraphs (C) and (D) of the Commission's December 16, 1998 order in North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998).

The Commission previously accepted the NSP Attachment J procedure for filing effective May 1, 1999, in Docket No. ER99–2013–000. The Commission recently accepted the MAPP LLR regional procedures for filing effective June 1, 1999. Mid-Continent Area Power Pool, 87 FERC ¶ 61,333 (MAPP Order). NSP is a MAPP member pursuant to the MAPP Restated Agreement and is therefore subject to the LLR procedures.

NSP proposes the change be effective June 1, 1999, the date provided in the MAPP Order. NSP also makes minor conforming changes to its Tariff.

The NSP Companies state they have served a copy of the filing on the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin and affected transmission service customers.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Company Services, Inc.

[Docket No. ER99–3466–000]

Take notice that on July 1, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), tendered for filing an agreement with the Alabama Municipal Electric Authority (AMEA) whereby APC will construct a second feed into the City of Fairhope 115 kV delivery point. APC provides wholesale service to AMEA at that delivery point under the Amended and Restated Agreement for Partial Requirements and Complimentary Services Between Alabama Power Company and the Alabama Municipal Electric Authority (APCo No. 168).

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Montaup Electric Company

[Docket No. ER99–3467–000]

Take notice that on July 1, 1999, Montaup Electric Company (Montaup), tendered for filing its modification to its open access transmission tariff, reducing the rate of return on common equity from 11.1% to 10.65%.

Montaup asks that this filing become effective on August 1, 1999.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER99–3468–000]

Take notice that on July 1, 1999, Delmarva Power & Light Company tendered for filing an unexecuted Interconnection Agreement with Commonwealth Chesapeake Company, LLC (CCC).

Delmarva requests that the Interconnection Agreement become effective on July 1, 1999.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Pool

[Docket No. ER99–3469–000]

Take notice that on July 1, 1999, the New England Power Pool (NEPOOL) Participants Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to Central Vermont Public Service Corp., in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented. A retroactive effective date of June 1, 1999 for commencement of transmission service has been requested. Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Pool

[Docket No. ER99–3470–000]

Take notice that on July 1, 1999, the New England Power Pool (NEPOOL) Participants Committee tendered for filing a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to PG&E Energy Trading—Power LP, in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

A retroactive effective date of June 1, 1999 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Pool

[Docket No. ER99–3471–000]

Take notice that on July 1, 1999, the New England Power Pool (NEPOOL) Participants Committee tendered for filing a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to Morgan Stanley Capital Group Inc., in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

A retroactive effective date of June 1, 1999 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Pool

[Docket No. ER99–3472–000]

Take notice that on July 1, 1999, the New England Power Pool Participants Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by StratErgy, Inc. (StratErgy). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of StratErgy's signature page would permit NEPOOL to expand its membership to include StratErgy. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make StratErgy a member in NEPOOL.

The Participants Committee requests an effective date of July 1, 1999, for commencement of participation in NEPOOL by StratErgy.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. California Power Exchange Corporation

[Docket No. ER99–3473–000]

Take notice that on July 1, 1999, the California Power Exchange Corporation (PX), on behalf of its newly-created division, CalPx Trading Services (CTS), tendered for filing an amendment to the CTS Administrative Fee Schedule for its Block Forward Market. The sole purpose of the amendment is to provide the option for CTS to discount its administrative fees below the levels already authorized by the Commission. The amendment is proposed to take effect on the date of filing.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. The Dayton Power and Light Company

[Docket No. ER99–3453–000]

Take notice that on July 1, 1999, The Dayton Power and Light Company (Dayton), tendered for filing service agreement establishing Cargill-Alliant, LLC and Consumers Energy Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Cargill-Alliant, LLC and Consumers Energy Company and the Public Utilities Commission of Ohio.

Comment date: July 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17998 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

July 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2016–000.

c. *Applicant:* Tacoma Power.

d. *Name of Project:* Cowlitz River Hydroelectric Project.

e. *Location:* On the Cowlitz River, in Lewis County, Washington. About 5 acres are located on the Gifford Pinchot National Forest.

f. *Applicant Contact:* Toby Freeman, Tacoma Power, 3628 South 35th Street, Tacoma, WA 98411; (253) 502–8862.

g. *FERC Contact:* David Turner (202) 219–2844, Email:david.turner@ferc.fed.us.

h. Tacoma mailed a copy of the Preliminary Draft Environmental Assessment and draft application to interested parties on June 30, 1999. The Commission received a copy of the PDEA and draft application on July 1, 1999.

i. With this notice we are soliciting preliminary terms, conditions, and recommendations on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, David P. Boergers, Secretary, 888 First St. NE, Washington, DC 20426. All comments must include the project name and number, and bear the heading "Preliminary Comments," Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions." Any party interested in commenting must do so before September 28, 1999.

j. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–0371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. (Call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17985 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of an Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Revised Project Boundary.

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b. *Project No.:* 2206–013.
c. *Date Filed:* February 4, 1999.
d. *Applicant:* Carolina Power & Light Company.
e. *Name of Project:* Yadkin-Pee Dee River Project, Tillery Hydroelectric Development.
f. *Location:* On the Yadkin-Pee Dee River in Anson, Richmond, Montgomery, and Stanly Counties, North Carolina. The amendment of license will not affect any federal lands.
g. *Filed Pursuant to:* 18 CFR 4.200.
h. *Applicant Contact:* Mr. Larry Yarger, P.O. Box 1551, 411 Fayetteville Street Mall, Raleigh, NC 27602, (919) 546–6196.
i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at mohamad.fayyad@ferc.fed.us or 202–219–2665.
j. *Deadline for filing comments and/or motions:* August 16, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (2206–013) on any comments or motions filed.

k. *Description of Filing:* Carolina Power & Light Company (CP&L) filed revised exhibit K drawings showing the project boundary of the Tillery Development of the Pee Dee River Project. CP&L proposes to remove some encroaching structures from the project boundary, and to add small portions of land owned by CP&L. The net gain for the project is about 361 acres.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS" "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17986 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

July 9, 1999.

Take notice that the following applications have been filed with the Commission and are available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.
b. *Project Nos:* 2503–050, 2503–052, and 2503–053.
c. *Date Filed:* June 2, 1999.
d. *Applicant:* Duke Energy Corporation.
e. *Name of Project:* Keowee & Jocassee Hydroelectric Project.
f. *Location:* Adjacent to Cliffs at Keowee Vineyards subdivision, on Lake Keowee, in Pickens County, South Carolina. The project does not utilize federal or tribal lands.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation P.O. Box 1006 (EC12V), Charlotte, NC 28201–1006, (704) 382–5778.
i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.
j. *Deadline for filing comments and or motions:* August 5, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (2503–050, –052, or 053) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Cliffs at Keowee Vineyards the following parcels and uses of project lands and waters: Project No. 2503–050—2.68 acres for the development of a commercial marina. This facility will have 6 docks with a total of 88 boat slips, a boat access ramp, and a fuel dock with gasoline pumps and a waste pump-out facility. This facility will be provided for residents of the Cliffs at Keowee Vineyards subdivision. Project No. 2503–052—4.25 acres for the development of a residential docking facility. This facility will have 10 docks containing a total of 138 boat slips. This facility is to provide access to the reservoir for residents of the Cliffs at Keowee Vineyards subdivision. Project No. 2503–053—approval of a water withdrawal of 1.44 million gallons per day, on an as needed basis, for the irrigation of the golf course associated with the Cliffs at Keowee Vineyards subdivision.

No dredging is proposed in conjunction with these applications.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17988 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2722–008.
c. *Date filed:* August 21, 1998.
d. *Applicant:* PacifiCorp.
e. *Name of Project:* Pioneer Hydroelectric Project.
f. *Location:* On the Ogden River, near the town of Ogden, in Weber County, Utah, within the Cache National Forest. Water is supplied from the U.S. Bureau of Reclamation's Pineview Reservoir.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Randy Landolt, Director Hydro Resources, PacifiCorp, 920 SW Sixth Avenue Portland, Oregon 97204 (503) 464–5339.
i. *FERC Contact:* Any questions on this notice can be addressed to Gaylord W. Hoisington, E-mail address gaylord.hoisington@ferc.fed.us, or telephone (202) 219–2831.
j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of that document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing project consists of: (1) the existing intake structure; (2) a 75-inch diameter, 5.5-mile-long flowline; (3) a 27-foot-high by 28-foot-diameter surge tank; (4) a 6-foot-diameter, 4,000-foot-long steel penstock; (5) a brick powerhouse with two generating units with a total installed capacity of 5.0 megawatts; (6) a 3,000-foot-long, tailrace canal; (6) an 11,000-foot-long, 66-kV transmission line; and (7) other appurtenant facilities. No new construction is planned.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission

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in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17989 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11785–000.

c. *Date Filed:* June 29, 1999.

d. *Applicant:* City of Broken Bow, Oklahoma.

e. *Name of Project:* Pine Creek Lake.

f. *Location:* On Little River, near the town of Wright City, McCurtain County, Oklahoma, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald B. Davenport, Hall, Estill, Hardwick, Gable, Golden and Nelson, P.C., 320 S. Boston Avenue, Suite 400, Tulsa, OK 74103.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First, NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11667–000, Date Filed: February 1, 1999, Date Due: June 1, 1999.

l. The proposed project would utilize the existing US Army Corps of Engineers' Pine Creek Dam and would consist of: (1) A new diversion structure; (2) a new penstock; (3) a new 30-foot-long, 50-foot-wide, 20-foot-high powerhouse containing one 4,000-kW generating unit; (4) a new tailrace; (5) a new step-up substation; (6) a new 6.9-kV transmission line; and (7) appurtenant facilities.

Applicant estimates that the average annual generation would be 15 GWh and that the cost of the studies to be performed under the terms of the permit would be $350,000. Project energy would be utilized to supply a portion of Applicant's energy requirements.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 358.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17990 Filed 7–14–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6378–1]

Notice of Approval of Prevention of Significant Deterioration (PSD) Permits to Kawaihae Cogeneration Partnership (Hawaii CSP No. 0001–01–C), Maui Electric Company, Limited for the Maalaea Generating Station Units M17 & M19 (Hawaii CSP No. 0067–01–C), and Encogen Cogeneration Facility (Hawaii CSP No. 0243–01–C)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Hawaii Department of Health, acting under authority of a PSD delegation agreement, issued PSD permits to the following applicants:

Kawaihae Cogeneration Partnership granting approval to construct two 21 megawatt combustion turbine generators with waste heat recovery steam generators and one 16 megawatt steam turbine generator to be located at Kawaihae on the island of Hawaii. The permit became effective on April 28, 1997 and includes the following emission limits: NO_X at 15 ppm (maximum 13.8 lbs/hr), SO_2 at 78.8 ppm (maximum 97.2 lbs/hr), PM10 at 0.042 gr/dscf (maximum 10.0 lbs/hr), CO at 302.5 ppm (maximum 144.8 lbs/hr), and VOC at 18.6 ppm (maximum 6.1 lbs/hr).

The Maui Electric Company granting approval to construct two 20 megawatt simple cycle combustion turbine generators, M17 and M19, at the Maalaea Generating Station located on the island of Maui. The permit became effective on September 10, 1998 and includes the following emission limits: NO_X at 42 ppm (maximum 42.3 lbs/hr), SO_2 at 79 ppm (maximum 110 lbs/hr), PM10 at 0.045 gr/dscf (maximum 19.7 lbs/hr), CO at 44 ppm (maximum 26.8 lbs/hr), and VOC at 10 ppm (maximum 3.8 lbs/hr).

Encogen Hawaii, L.P. granting approval to construct two 23 megawatt combustion turbine generators with heat recovery steam generators and one 19 megawatt steam turbine generator to be located at Hiana, on the island of Hawaii. The permit became effective on March 26, 1999 and includes the following emission limits: NO_X at 15 ppm (maximum 11.7 lbs/hr), SO_2 at 11.5 ppm (maximum 15 lbs/hr), PM10 at 0.02 gr/dscf (maximum 4.7 lbs/hr), CO at 57.5 ppm (maximum 28 lbs/hr), and VOC at 6.5 ppm (maximum 2 lbs/hr).

DATES: The PSD permits are reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Robert Baker (AIR–3), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1258.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include water/steam injection for all three facilities and SCR on the Kawaihae and Encogen facilities for the control of NO_X emissions, low sulfur fuels for the control of SO_2 and PM10 emissions, and good combustion design and operation for the control of PM10, CO, and VOC emissions. Air quality impact modelling was required for NO_X, SO_2, CO and PM10. Continuous emission monitoring is required for NO_X, CO and opacity and all three sources are subject to New Source Performance Standards, subparts A and GG.

Dated: June 27, 1999.

Kenneth Bigos,

Acting Director, Air Division, Region 9.

[FR Doc. 99–18045 Filed 7–14–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 98–20; WT Docket No. 95–69; FCC 99–140]

Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides for public access via the Internet to application and licensing information in our Universal Licensing System (ULS) for wireless services. It also provides for similar access via the Internet to application data in our auctions database. The intended effect is to make application and licensing information more widely available to the public while greatly reducing the total costs of obtaining such information.

FOR FURTHER INFORMATION CONTACT: David Furth, Wireless Telecommunications Bureau, at (202) 418–0600.

SUPPLEMENTARY INFORMATION: This *Second Report and Order* in WT Docket No. 98–20, WT Docket No. 95–69, adopted June 10, 1999, and released June 15, 1999, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036 (202) 857–3800. The document is also available via the internet at http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index.html.

Synopsis of Second Report and Order

I. Introduction

In this Second Report and Order, the Commission provides for public access via the Internet to application and licensing information in the Wireless Telecommunications Bureau's Universal Licensing System (ULS). This Second Report and Order also provides for similar access via the Internet to application data in our auctions database.

II. Discussion

A. Internet Access to ULS Application and Licensing Information

In this *Second Report and Order*, we adopt changes to our rules and procedures that will allow for public access through the Internet to application and licensing information in our Universal Licensing System (ULS) for wireless services. We provide for similar access via the Internet to application data in our auctions database. Specifically, we have taken a number of steps in this order to allow the public to have access to much of our licensing information at the lowest possible cost.

We authorize public access through the Internet to ULS, as soon as technically feasible, for purposes of viewing application and licensing information. This will significantly enhance the ability of the public to access public record information regarding wireless licensees at reduced cost. To ensure the security and reliability of the database, however, parties filing applications or notifications in ULS will continue to dial directly into the Commission's Wide Area Network (FCC WAN) by means of an 800 or 900 number.

Additionally, we authorize access on the Internet to short form applications (Form 175) that have been filed in our auctions database. This will be permitted as soon as it is technically feasible. This will enable interested parties and the public to review application data pertaining to bidders in ongoing auctions, as well as application data from previously completed auctions. Auction participants will continue to use the 900 number to access the FCC WAN for purposes of bidding electronically and reviewing updated auction round results.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–17999 Filed 7–14–99; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, National Dam Safety Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 8(h) of the National Dam Safety Program Act (Pub. L. 104–303), the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: National Dam Safety Review Board.

DATE OF MEETING: July 27–28, 1999.

PLACE: Federal Emergency Management Agency, 500 C Street, SW, rooms 331 and 212A, Washington, DC 20472.

TIMES: July 27: 9:00 a.m. to 3:00 p.m., room 331: and July 28: 9:00 a.m. to 1:00 p.m., room 212A.

PROPOSED AGENDA: July 27–28, 1999, Review National Dam Safety Program Activities.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Donald Bathurst, Director, National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2753 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Rita Henry, Federal Emergency Management Agency, 500 C Street SW., room 444, Washington, DC 20472, telephone (202) 646–2704 or Bud Andress at (202) 646–2801 or by facsimile at (202) 646–4596 on or before July 23, 1999.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the National Dam Safety Review Board.

Dated: July 8, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–18046 Filed 7–14–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 29, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. James M. Seneff, Robert A. Bourne, Curtis B. McWilliams, Jean A. Wall, all of Winter Park, Florida, Phillip M. Anderson, Jr., James W. Kersey, Kelley P. Mossburg, Jack L. Parker, Lynn E. Rose, Michael T. Shepardson, John T. Walker, Beverly S. Walker, all of Orlando, Florida, and Edgar James McDougall, Maitland, Florida; to acquire voting shares of Alliance Bancshares, Inc., Orlando, Florida, and thereby indirectly acquire voting shares of Alliance Bank, Orlando, Florida.

Board of Governors of the Federal Reserve System, July 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18002 Filed 7–14–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Fidelity Company, Dyersville, Iowa; to acquire 100 percent of the voting shares of First Postville Bancorporation, Inc., Postville, Iowa, and thereby indirectly acquire Citizens State Bank, Postville, Iowa.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Inwood Bancshares, Inc., Dallas, Texas, and Inwood Delaware, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of Provident Bank, Dallas, Texas.

2. Prosperity Bancshares, Inc., El Campo, Texas; to merge with South Texas Bancshares, Inc., Beeville, Texas, and thereby indirectly acquire CNB Delaware Company, Dover, Delaware, and The Commercial National Bank of Beeville, Beeville, Texas.

Board of Governors of the Federal Reserve System, July 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18001 Filed 7–14–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Electronic Posting System

AGENCY: General Services Administration.

ACTION: Correction to Notice of public meeting.

SUMMARY: The General Services Administration (GSA) and the Office of Federal Procurement Policy (OFPP) will hold a public meeting to familiarize Electronic Commerce vendors with the Electronic Posting System (EPS) and to solicit input from vendors on enhancements to EPS. The original notice of this meeting was published in the **Federal Register** on June 30, 1999, at 64 FR 35169.

DATES: The meeting will be held August 11, 1999, from 9 a.m.–1 p.m.

ADDRESSES: The meeting will be in the GSA Auditorium, at the GSA Headquarters Building, 1800 F St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Fontaine, ARNet Program Manager, GSA, Paul.Fontaine@gsa.gov, (202) 501–6941, or Julie Basille, OFPP, Julie_Basile@OMB.EOP.GOV, (202) 395–4821.

SUPPLEMENTARY INFORMATION: The Electronic Posting System (EPS) is being considered for adoption as the "single point of entry" for notice of Federal business opportunities. This is based upon a highly successful pilot project wherein EPS was used and later adopted by the General Services Administration (GSA), National Aeronautics and Space Administration (NASA), Department of the Treasury, Department of Transportation and Department of the Air Force. The EPS project team at GSA, and the Office of Federal Procurement policy (OFPP), are conducting a public forum on EPS for Electronic Commerce vendors entitled "Building the Single Point of Entry". The intended audience is both the technical and marketing staffs of companies, which market Electronic Commerce products, and services for the Federal Government. The two purposes of the meeting are to first, introduce vendors to EPS and second, to solicit input from vendors on what EPS can do to enhance their market within the Federal EC arena.

Dated: July 8, 1999.

Ida M. Ustad,

Deputy Assistant Administrator for Acquisition Policy.

[FR Doc. 99–17982 Filed 7–14–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and Its Subcommittees

July 1, 1999.

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on October 4–5, 1999, at the Radisson-Barcelo, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, October 4 and Tuesday, October 5 from 8:30 a.m. to 6:00 p.m. at the Radisson-Barcelo, 2121 P Street, NW, Washington, DC 20037. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Appropriations, Discrimination, International, Prevention, Prison, Racial Ethnic Populations, Research, and Services Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Andrea Hall at (301) 986–4870 no later than September 17, 1999.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS.

[FR Doc. 99–17979 Filed 7–14–99; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0077]

Draft Guidance for Industry: Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)." The draft guidance is intended to stimulate discussion about designing clinical programs for the development of drugs, devices, and biological products intended for the treatment of osteoarthritis (OA). This draft guidance reflects comments received in response to a previous draft version of the guidance available in February 1998.

DATES: Written comments on the draft guidance document may be submitted by September 13, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance and appended questions are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of the draft guidance and appended questions to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; FAX: 1–888–CBERFAX or 301–827–3844, mail: the Voice Information System at 800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sandra N. Cook, Center for Drug Evaluation and Research (HFD–550), 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2090.

SUPPLEMENTARY INFORMATION: Currently, treatment for OA is fundamentally symptomatic, with no data available on long-term outcomes. Clinical trial experience with OA has been limited to short-term studies in patients with knee or hip OA and generalized OA normally has not been appropriate for assessing OA agents. A number of novel approaches are under study for the treatment of OA, as companies, clinicians, and patients search for more

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effective treatments. The design of clinical programs for developing drugs, devices, or biological products intended for the treatment of OA was the subject of a previous draft guidance issued in February 1998 (63 FR 8208, February 18, 1998). The February 1998 draft guidance generated several comments and was the subject of discussion at the Arthritis Advisory Committee meeting held on February 20, 1998.

The agency found the comments and the discussion at the advisory committee meeting very helpful in developing the recommendations to industry, contained in the guidance, on the design of clinical programs for developing drugs, devices, or biological products intended for the treatment of OA. However, the agency believes that more public input would be beneficial in preparing a final version of the guidance. Accordingly, the agency has decided to issue this revised version of the guidance as a draft.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on developing drugs, devices, or biological products intended for the treatment of OA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before September 13, 1999, submit to the Dockets Management Branch (address above) written comments on the draft document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft document, appended questions, and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–18031 Filed 7–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–9042]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Request for Accelerated Payments and Supporting Regulations in 42 CFR 412.116 and 413.64;

Form No.: HCFA–9042;

Use: Medicare reimbursements are usually arranged through a fiscal intermediary who serves as the Secretary's agent for reviewing claims and making payments equal to the provider's reasonable costs. When a delay in Medicare payment by a fiscal intermediary, for covered services, causes financial difficulties for a provider, the provider may request an accelerated payment. An accelerated payment may also be made in highly exceptional situations where a provider has incurred a temporary delay in its bill processing beyond the provider's normal billing cycle. An accelerated payment can be requested by a provider that is not receiving periodic interim payments. These forms are used by fiscal intermediaries to access a provider's eligibility for accelerated payments.

Frequency: On occasion;

Affected Public: Business or other for-profit, and Not for-profit institutions;

Number of Respondents: 890;

Total Annual Responses: 890;

Total Annual Hours Requested: 445.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 16, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18007 Filed 7–14–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–0209 and HCFA–1557]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or

other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1–493.2001; *Form No.:* HCFA–0209 (OMB #0938–0151); *Use:* CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. Information on personnel qualifications of all technical personnel is needed to ensure the sample is representative of all laboratories; *Frequency:* Biennially; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 26,500; *Total Annual Responses:* 13,250; *Total Annual Hours:* 6,625.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Survey Report Form Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1–493.2001; *Form No.:* HCFA–1557 (OMB #0938–0544); *Use:* CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. In order for the State survey agency to report to HCFA its findings on facility compliance with the individual standards on which HCFA determines compliance, the surveyor completes the Survey Report Form. The Survey Worksheet provides space to document the surveyor's notes; *Frequency:* Biennially; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 30,512; *Total Annual Responses:* 15,526; *Total Annual Hours:* 7,628.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 8, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18079 Filed 7–14–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–484]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) The following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations in 42 CFR 410.38 and 424.5;

Form No.: HCFA–484 (OMB# 0938–0534);

Use: To determine if oxygen is reasonable and necessary pursuant to Medicare Statute, Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information including estimate length of need (# of months), diagnosis codes (ICD–9) and:

1. Results and date of the most recent arterial blood gas PO^2 and/or oxygen saturation tests.

2. The most recent arterial blood gas PO^2 and/or oxygen saturation test performed EITHER with the patient in a chronic stable state as an outpatient, OR within two days prior to discharge from an inpatient facility to home.

3. The most recent arterial blood gas PO^2 and/or oxygen saturation test performed at rest, during exercise, or during sleep.

4. Name and address of the physician/provider performing the most recent arterial blood gas PO^2 and/or oxygen saturation test.

5. If ordering portable oxygen, information regarding the patient's mobility within the home.

6. Identification of the highest oxygen flow rate (in liters per minute) prescribed.

7. If the prescribed liters per minute (LPM), as identified in item 6, are greater than 4 LPM, provide the results and date of the most recent arterial blood gas PO^2 and/or oxygen saturation test taken on 4 LPM.

If the $PO^2 = 56–59$, or the oxygen saturation = 89%, then evidence of the beneficiary meeting at least one of the following criteria must be provided.

8. The patient having dependent edema due to congestive heart failure.

9. The patient having cor pulmonale or pulmonary hypertension, as documented by pulmonale on an EKG or by an echocardiogram, gated blood pool scan or direct pulmonary artery pressure measurement.

10. The patient having a hematocrit greater than 56%.

Form HCFA–484 obtains all pertinent information and promotes national consistency in coverage determinations.;

Frequency: Other (as needed);

Affected Public: Business or other for-profit, and Federal Government;

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Number of Respondents: 500,000;
Total Annual Responses: 500,000;
Total Annual Hours: 50,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 15, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18008 Filed 7–14–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–278]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: National Hospital Malpractice Insurance Survey;

Form No.: HCFA–R–278 (OMB# 0938–NEW);

Use: The Data collected from this survey will be used to collect two years of malpractice insurance costs data from a nationally representative sample of 800 hospitals. Along with the survey of hospitals, we will collect rate schedules from the commercial insurers and the offices of state insurance commissioners. As compared to the survey of hospitals which is a statistical sampling survey, the survey of the offices of state insurance commissioners and commercial insurance companies will not be a statistical sampling survey. We will match collected data in the rate schedules to the data from sampled hospitals in order to convert malpractice insurance costs of different level of coverage into costs of a constant level of coverage. The primary statistics will be used to rebase the input price index through weight adjustment and the annual percent change to update the operating prospective payment rates. Therefore, the NHMIS must allow estimates of the primary statistics for each hospital be adjusted by their rating basis, coverage elements, and types of coverage. The survey results will be used to estimate the weight of malpractice insurance costs in relation to goods and services hospitals purchase in order to furnish inpatient care and to calculate the malpractice insurance cost to change over time at the national level. The analytic results will be used to adjust Medicare operating reimbursement rates to Medicare participating hospitals and to prepare statistical summaries.

Frequency: Annually;
Affected Public: Not-for-profit institutions, Business or other for-profit, and State, Local, or Tribal Govt.;
Number of Respondents: 600;
Total Annual Responses: 600;
Total Annual Hours: 300.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 28, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18009 Filed 7–14–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–0254]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* National Medicare Education Program (NMEP) Community Survey of Medicare Beneficiaries; *Form No.:* HCFA–R–0254 (OMB# 0938–0738); *Use:* A survey of Medicare beneficiaries in six communities will be conducted in January 2000 and again in January 2001 to monitor the NMEP implementation. Beneficiaries in these same communities were interviewed in September 1998 and February 1999. This approach will gather information on changes in: awareness of Medicare+Choice expansions and options; knowledge about Medicare and the Medicare+Choice options; where beneficiaries go to find more information; and whether they are aware of the many information resources available to them; and satisfaction with their information/knowledge; *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 2,400; *Total Annual Responses:* 2,400; *Total Annual Hours:* 600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 8, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18078 Filed 7–14–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: June 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party, The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
Alvarez, Emperatriz Miami, FL	07/20/1999
Alvarez, Manuel J Atlanta, GA	07/20/1999
Anderson, Thomas R Middleville, MI	07/20/1999
Barnes, James Omaha, AR	07/20/1999
Bennett, Camelia Hunt Fayetteville, NC	07/20/1999
Bolin, Royce Lendal Conway, AR	07/20/1999
Burton, Leslie M Randolph, VT	07/20/1999
Caceres, Rolando Miramar, FL	07/20/1999
Caceres, Silvia Miramar, FL	07/20/1999
Cannon, Jerri Lynn Chowchilla, CA	07/20/1999
Carideo, IDA Wayside, NJ	07/20/1999
Daniel, Linda Decatur, GA	07/20/1999
Davis, Anthony A Decatur, GA	07/20/1999
Dawson, Robert Forestville, MD	07/20/1999
Dekorte, Garth Lansing, MI	07/20/1999
Delgado, Jorge Miami, FL	07/20/1999
Delgado, Linda Miami, FL	07/20/1999
Fletcher, James E Riverdale, GA	07/20/1999
Gardner, Lorna Fay Grand Prairie, TX	07/20/1999
Grossman, Norman Stanley Malibu, CA	07/20/1999
Hicks, Ingrid Milwaukee, WI	07/20/1999
Higgins, Gina Hialeah, FL	07/20/1999
Hogue, Alina Malisa Winston-Salem, NC	07/20/1999
Kabinoff, Larry's. Rydal, PA	
Kim, John Don Irvine, CA	07/20/1999
Lindley, Frank A Philadelphia, PA	07/20/1999
Mack, Ann Decatur, GA	07/20/1999
Makarem, Anis Hussein Westlake, CA	07/20/1999
May, Samuel Washington, DC	07/20/1999
McCoy, Gary K Atlanta, GA	07/20/1999
Mehta, Ravindra S Coral Springs, FL	07/20/1999
Metro Med Ambulette, Inc E Rockaway, NY	07/20/1999
Michkovits, John F South Haven, MI	07/20/1999
Morris, Brenda Sue Rancho Cordova, CA	07/20/1999
Nguyen, Hoang Mau San Diego, CA	07/20/1999
Nguyen, Dat Tat San Diego, CA	07/20/1999
Nguyen, Dung My Thi San Diego, CA	07/20/1999
Norton, Robert G Barrington, RI	07/20/1999
Paez, Armando Miami, FL	07/20/1999
Perez, Barbara Miami, FL	07/20/1999
Perez, Ramiro Miami, FL	07/20/1999
Professional Case Management Lansing, MI	07/20/1999
Revis, Harley Sapulpa, OK	07/20/1999
Rode, Ruth Grand Junction, MI	07/20/1999
Rollins, Bonnie J Glendive, MT	07/20/1999
Rollins, Keith Anthony Scarborough, ME	07/20/1999
Sardinas, Maria J Hialeah, FL	07/20/1999
Schiller, Marcelos S Miami, FL	07/20/1999
Seawell, Paul Darrell El Paso, TX	07/20/1999
Smith, Garland O Robeline, LA	07/20/1999
Stacy, Marcia Charlevoix, MI	07/20/1999
Tablada, Luis H Jr Miramar, FL	07/20/1999
Triplett, Ronald Lee Wheelwright, KY	07/20/1999
Triplett, Anna Jean Faubush, KY	07/20/1999
Tucker, Karen E Marlton, NJ	07/20/1999
Valdes, Nelson Coleman, FL	07/20/1999
Varela, Guido N Bay Village, FL	07/20/1999
Varela, Natalia Tampa, FL	07/20/1999
Vasquez, Noriela Miami, FL	07/20/1999
Vasquez, Jesus Miami, FL	07/20/1999
Veksler, Natalya Marblehead, MA	07/20/1999
Watson, Donnie W El Segundo, CA	07/20/1999
We Care Living Enrichment Ctr Saginaw, MI	07/20/1999
Williams, Marijane Quapaw, OK	07/20/1999
Wisdom, Regina Renee N Little Rock, AR	07/20/1999
Yedidsion, David	07/20/1999

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Subject city, state	Effective date
Sheridan, OR	
FELONY COVICTIONS FOR HEALTH CARE FRAUD	
Lombardo, Mount Franklin Chickasaw, AL	07/20/1999
FELONY CONTROL SUBSTANCE CONVICTIONS	
Fairley, James T Gulph Mills, PA	07/20/1999
Hitchon, Kimberly Ann Quakertown, PA	07/20/1999
Mammarelli, Denise Doyle Norwood, PA	07/20/1999
McCauley, Kevin T Costa Mesa, CA	07/20/1999
PATIENT ABUSE/NEGLECT CONVICTIONS	
Bailey, Anna M Tacoma, WA	07/20/1999
Barys, Kristine Renea Strongsville, OH	07/20/1999
Baslow, Linda S Middlebury, VT	07/20/1999
Bryan, Happie R Zanesvile, OH	07/20/1999
Bustamante, Delfido Albuquerque, NM	07/20/1999
Cakora, Lonaya Mountain Home, AR	07/20/1999
Daniels, Kelly T Lawton, OK	07/20/1999
Davis, Ronald J Bristol, RI	07/20/1999
Dellefratt, Paula A Providence, RI	07/20/1999
Dill, Stacy Don Eucha, OK	07/20/1999
Dunbar, Roy Thomas Baxter Sprints, KS	07/20/1999
Eidt, James D Jr Marks, MS	07/20/1999
Ferger, Claude Dean Spokane, WA	07/20/1999
Gomez, Sherry Lynn Denver, CO	07/20/1999
Goodin, John A Higginsville, MO	07/20/1999
Greenwald, Charles Alan Grand Coteau, LA	07/20/1999
Hall, Janice M Oklahoma City, OK	07/20/1999
Knox, Shirley M Heath Springs, SC	07/20/1999
Law, William Everett Huntsville, TN	07/20/1999
Leonardo, Robert Anthony Noel, MO	07/20/1999
Moss, Kristi Lee Madill, OK	07/20/1999
Nelson, Carita Ware Shoals, SC	07/20/1999
Ramirez, Miguel Pena Denver, CO	07/20/1999
Revis, Deborah Clinton, NC	07/20/1999
Riley, Andrea Shuntae Little Rock, AR	07/20/1999
Shine, Carrie Bell Homer, LA	07/20/1999
Silva, Larry Gilbert Denver, CO	07/20/1999
Stiller, Ernest William, Jr Three Oaks, MI	07/20/1999
Todd, Vernesia A Waterloo, SC	07/20/1999
Walker, Jeffery Wallace Oklahoma City, OK	07/20/1999
Walker, Latessa Cleveland, OH	07/20/1999
Wallace, Scott Lynn, MA	07/20/1999
Warren, Valerie Oakwood Village, OH	07/20/1999
Wilson, Matteal M Delhi, LA	07/20/1999
CONVICTION FOR HEALTH CARE FRAUD	
Clark, Patricia Ann Church Point, LA	07/20/1999
Cruz, Tracy Dawn Tuscon, AZ	07/20/1999
Hancock, Laurie Marie Littleton, CO	07/20/1999
Jones, Mary Ann Lafayette, LA	07/20/1999
Phillips, Kenya Lee New Orleans, LA	07/20/1999
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
Abel, Elizabeth Denver, CO	07/20/1999
Anderson, William J Dayton, ME	07/20/1999
Bales, Michelle Renee Woodland, CA	07/20/1999
Barnwell, Joyce A Piedmont, AL	07/20/1999
Barton, Sylvia Madge Richmond, VA	07/20/1999
Barton, Tracy Yvette Los Banos, CA	07/20/1999
Beeny, Patricia L Nathalie, VA	07/20/1999
Bhatt, Kiran Anaheim, CA	07/20/1999
Blake, Paula B Wake, VA	07/20/1999
Brenot, Darlene Venango, PA	07/20/1999
Cardinelli, Georgia Reno, NV	07/20/1999
Cook, Rebecca A Cedar Rapids, IA	07/20/1999
Cook, Elmer E Phoenix, MD	07/20/1999
Cooper, Catherine A Orwigsburg, PA	07/20/1999
Davis, Betth H Vernon Hill, VA	07/20/1999
Donnini, Richard M Centerville, OH	07/20/1999
Dugas, Jean E Sacramento, CA	07/20/1999
Eisaman, Lynette J Irwin, PA	07/20/1999
Esper, James M Erie, PA	07/20/1999
Faust, Wanda Grove Calera, AL	07/20/1999
Formigoni, David P Annville, PA	07/20/1999
Gass, Neil D Roswell, GA	07/20/1999
Gedge, Veronica Sarnia Ontario	07/20/1999
Geissler, Kelly Betters W Homestead, PA	07/20/1999
Graff, Sally A Kittanning, PA	07/20/1999
Gregg, Kim M Moneta, VA	07/20/1999
Grosch, Renee Heeter Clarendon, PA	07/20/1999
Guyne, Samuel Keith Anderson, CA	07/20/1999
Harter, Claire A Alger, OH	07/20/1999
Hastings, Ronald L Salem, IL	07/20/1999
Hayes, Betty Jean Van Nuys, CA	07/20/1999
Herman, Michael L Canfield, OH	07/20/1999
Hill, Dana S Providence, RI	07/20/1999
Hill, Teresa Biloxi, MS	07/20/1999
Hobart, Sandra Newport News, VA	07/20/1999
Hooper, Linda Anderson, IN	07/20/1999
Isaacs, Tanya Ann Yorktown, VA	07/20/1999
Ishie, Archie Pascagoula, MS	07/20/1999
Jasper, Lee Charles Palo Cedro, CA	07/20/1999
Johnson, Katherine S Waynesboro, VA	07/20/1999
Johnson, Joyce L Norfolk, VA	07/20/1999
Kelly, Eugene W Jr Alexandria, VA	07/20/1999
Kirby, Robert Joseph Bensalem, PA	07/20/1999
Kroplesky, Tamara L Honey Brook, PA	07/20/1999
Lee, Margaret Donithan Winston Salem, VA	07/20/1999
Love, Cecelia P Oak Park, IL	07/20/1999
Lucas, Darla R Hannibal, MO	07/20/1999
Luchsinger, Patrick J Hoopeston, IL	07/20/1999
Luckey, Robert Carne Richland, WA	07/20/1999
Lynn, Kristin Zierle Cogan Station, PA	07/20/1999
MacArthur, Kimberly Raean Quartz Hill, CA	07/20/1999
Mann, Valerie E Norfolk, VA	07/20/1999
Martin, Elizabeth A Lexington, VA	07/20/1999
Martinez, Elisa Ann Indio, CA	07/20/1999
Mashburn, Holly Lynnett Muscle Shoals, AL	07/20/1999
McDonald, Anna Maria San Luis Obispo, CA	07/20/1999
Metz, Max	07/20/1999

Subject city, state	Effective date
San Diego, CA	
Mleczko, Krystine J Chicago, IL	07/20/1999
Monguia, Albert Ureno San Bernardino, CA	07/20/1999
Montgomery, Ola Chicago, IL	07/20/1999
Morton, Arlin James San Bernardino, CA	07/20/1999
Nguyen, Hai Van San Leandro, CA	07/20/1999
Nunnally, Ronald Hembree Gordon, AL	07/20/1999
Orton, Randall K San Diego, CA	07/20/1999
Ott, Mary J Pittsburgh, PA	07/20/1999
Ovington, Diane Thayer, IL	07/20/1999
Pace, Tracy Thomas Lititz, PA	07/20/1999
Pathak, Nirmal Endu Montgomery, AL	07/20/1999
Peck, Barry L Altoona, PA	07/20/1999
Perciful, Michael David Mt Vernon, OH	07/20/1999
Pollard, Karen M Manassas, VA	07/20/1999
Prokopowicz, David Stanley San Diego, CA	07/20/1999
Richards, Mark R Upland, CA	07/20/1999
Roberts, Donald Lee Las Vegas, NV	07/20/1999
Rogers, Douglas D Tuscaloosa, AL	07/20/1999
Rosporski, Janice Pittsburgh, PA	07/20/1999
Sabatine, John William Ozark, AL	07/20/1999
Sanchez, Barbara Vernell Baldwin Park, CA	07/20/1999
Schlachter, Kaye Frances Sandusky, OH	07/20/1999
Schmidt, Aurel Z Jr Garfield, NJ	07/20/1999
Scott, Terry Grimm Dover, PA	07/20/1999
Sellers, Patricia A W Chester, PA	07/20/1999
Silvers, Aracely Santos Palmdale, CA	07/20/1999
Smith, Edythe Jeanne San Francisco, CA	07/20/1999
Smith, Scott Don Westwood, CA	07/20/1999
Stetar, Diane N Versailles, PA	07/20/1999
Streib, Homer F Bonita, CA	07/20/1999
Styles, Joann Portsmouth, VA	07/20/1999
Taylor, Teresa Ann Los Angeles, CA	07/20/1999
Taylor, Claire Lynn Portsmouth, VA	07/20/1999
Thacker, Nancy S Broadnax, VA	07/20/1999
Thomas-McCauley, Tina Marie Oklahoma City, OK	07/20/1999
Tran, Hong Thuy Palmdale, CA	07/20/1999
Trynoski, Donna Marie Stafford, VA	07/20/1999
Uruchurtu, Richard A Yuma, AZ	07/20/1999
Waldrop, Janie C Moulton, AL	07/20/1999
Walsh, Barbara Natrona Hgts, PA	07/20/1999
Weert, Barbara E Oak Forest, IL	07/20/1999
Wiley, Stacey S Rancho Mirage, CA	07/20/1999
Willis, Charlene L Beloit, WI	07/20/1999
Winslow, Roger Dee Sr Sonoma, CA	07/20/1999
Woods, Charles A Jr Philadelphia, PA	07/20/1999
Yisrael, Yaakova Chicago, IL	07/20/1999
FEDERAL/STATE EXCLUSION/ SUSPENSION	
Caldwell, Earl N Chicago, IL	07/20/1999
Howell, Joe Frank Prattville, AL	07/20/1999
Kim, Young Chicago, IL	07/20/1999
Lim, Camilla Willowbrook, IL	07/20/1999
Musa, Mahmoud Nimir Toledo, OH	07/20/1999
Rodriguez, Jose Chicago, IL	07/20/1999
Yeom, Yang Prospect Hgts, IL	07/20/1999
FRAUD/KICKBACKS	
Dreskin, Oscar Herman Cincinnati, OH	09/17/1999
Indigo Rehab Center Georgetown, SC	03/05/1999
Jones, Deborah C Bass Georgetown, SC	03/05/1999
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
Aloha Home II Grans Pass, OR	07/20/1999
BBC Health Inc Miami Lakes, FL	07/20/1999
Curative Care Miami Lakes, FL	07/20/1999
Dade Medical Billing Services Miami, FL	07/20/1999
Deidre J Little Chiropractic Solana Beach, CA	07/20/1999
DeKalb Referrals, Inc Atlanta, GA	07/20/1999
DJ and Associates, Inc Miami, FL	07/20/1999
Emerald City Chiropractic Seattle, WA	07/20/1999
Family Foot Specialists, Ltd Hayes, VA	07/20/1999
Future Care Corp Hialeah, FL	07/20/1999
GAV Health Care Corp Miami, FL	07/20/1999
General Health Care of FL, Inc Miami Lakes, FL	07/20/1999
Genesis Advocacy Program Beaumont, TX	07/20/1999
George Referral, Inc Decatur, GA	07/20/1999
Jermany & Associates Baltimore, MD	07/20/1999
Joseph Haeckel Chiropractic Gilroy, CA	07/20/1999
Leader Health Care Corp Hialeah, FL	07/20/1999
Life Health Care, Inc Miami Lakes, FL	07/20/1999
McAn's City Link, Inc Decatur, GA	07/20/1999
Neway Health Care Corp Hialeah, FL	07/20/1999
Oak Cliff Imaging Center Denton, TX	07/20/1999
Prime Care, Inc Miami, FL	07/20/1999
Ravin Mehta, DDS, PA Lauderhill, FL	07/20/1999
Remephy Medical Supplies Miami, FL	07/20/1999
Stormin Transportation, Inc Decatur, GA	07/20/1999
The Aloha Home, Inc Grants Pass, OR	07/20/1999
The Human Resource Inc Concept Atlanta, GA	07/20/1999
Todd Kaufmann Chiropractic Corte Madera, CA	07/20/1999
Ulta Plus Health Care Miami, FL	07/20/1999
DEFAULT ON HEAL LOAN	
Belka, John C Telluride, CO	07/20/1999
Born, Thomas J Atlanta, GA	07/20/1999
Farkas, Larry R Bergenfield, NJ	07/20/1999
Koris, Kenneth L Fernont, NE	07/20/1999
Lane, Craig R Baltimore, MD	07/20/1999
MacKay, Douglass S Loma Linda, CA	07/20/1999
Mills, Randell Malvern, PA	07/20/1999
Pryharski, Lareen A Jefferson, LA	07/20/1999
VoBoril, William, R Jr Carlisle, IA	07/20/1999
Worsham, Cynthia, A High Springs, FL	07/20/1999
Zywocinski, Cynthia A Lancaster, MA	07/20/1999

Dated: July 2, 1999.

Joanne Lanahan,

Director, Health Care Administrotive Sanctions, Office of Inspector General.

[FR Doc. 99–18006 Filed 7–14–99; 8:45 am]

BILLING CODE 4150–04–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Engineered Isogenic Cell Lines with Relevant Cancer Targets.

Date: July 30, 1999.

Time: 1:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, Executive Plaza North, 6130 Executive Boulevard, Bethesda, MD 20892, 301/435–9050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18063 Filed 7–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Clinical Drug Analysis of Anticancer Agent.

Date: August 9, 1999.

Time: 2:30 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Harvey Stein, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301–496–7481.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18061 Filed 7–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Phase II Next Generation Internet (NGI) Contract Proposals.

Date: July 19–20, 1999.

Time: July 19, 1999, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Time: July 20, 1999, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Paul A Fontelo, BS, MD, MPH, Special Expert, High Performance Computing & Communications, Lister Hill Nat'l Ctr for Biomed Communications, National Library of Medicine, 8600 Rockville Pike, Bldg 38A, RM B1N30P, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 7, 1999.

Laverne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18062 Filed 7–14–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–18]

Notice of Proposed Information Collection: Comment Request; Budget-Based Rent Increase

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on this subject proposal.

DATES: Comments Due Date: September 13, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Veronica Lewis, Office of Multifamily Housing Programs, Office of Business Products, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–2866 (this is not a toll free number) or copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Budget-based Rent Increase.

OMB Control Number, if applicable: 2502–0324.

Description of the need for the information and proposed use: The Budget Worksheet allows certain owners of multifamily hosing projects to plan for expected increases in expenditures. Those owners are required to submit the Budget Worksheet when requesting a rent increase. The Department of Housing and Urban Development uses the Budget Worksheet as a tool for determining the reasonableness of expense increases.

Agency form numbers, if applicable: HUD–92547–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 12,500, frequency of responses is once a year, annual reporting hours are 15 minutes for project bookkeepers, and 1 hour for project managers for a total annual burden of 15,625 hours.

Status of the proposed information collection: Reinstatement without change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 9, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–17980 Filed 7–14–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–32]

Submission for OMB Review: Request for Proposals—Contract Administrators for Project-Based Section 8 Housing Assistance Contract

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: This request for OMB approval seeks clearance for information collections related to HUD's Request for Proposals-Contract Administrators for Project-Based Section 8 Housing Assistance Payment Contracts Request. Under this Request, HUD will select contract administrators to provide contract administration services for project-based Section 8 Housing Assistance Payment contract currently being administered directly by HUD staff.

DATES: *Comments due date:* August 16, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0528) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the

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description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 9, 1999.

David S. Cristy,

Director, Information Technology Capital Planning Staff.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Request for Proposals—Contract Administrators for Project-Based Section 8 Housing Assistance Contracts.

Office: Housing.

OMB Approval Number: 2502–0528.

Description of the Need for the Information and Its Proposed Use: The requested information is needed for HUD's selection of contract administrators to provide contract administration services for project-based Section 8 Housing Assistance Payments (HAPS) contracts currently being administered directly by HUD.

Form Number: None.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	250		10		600		5,000

Total Estimated Burden Hours: 5,600.

Status: Reinstatement without changes.

Contact: Marc Harris and Nick Hluchyj, HUD, (202) 708–0216; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–18067 Filed 7–14–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent To Negotiate Agreements Among the Central Utah Water Conservancy District, Sanpete Water Conservancy District, Sanpete County, and Department of the Interior for Implementation of Projects in Sanpete County, UT

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate agreements among the Central Utah Water Conservancy District (CUWCD), Sanpete Water Conservancy District (SWCD), Sanpete County, and the Department of the Interior for implementation of Projects in Sanpete County, Utah.

SUMMARY: Public Law 102–575, section 206(a)(1) provides: "After two years from the date of enactment of this Act, the District shall, at the option of an eligible county as provided in paragraph (2), rebate to such county all of the ad valorem tax contributions paid by such county to the District, with interest but less the value of any benefits received by such county and less the administrative expenses incurred by the District to that date." Sanpete County desires to pursue local water development projects and is requesting a rebate of a portion of the ad valorem taxes it has paid to CUWCD, plus interest, to provide the required 35 percent local funding for such projects and a Federal grant of up to 65 percent of the total costs as authorized by section 206(b)(1) of CUPCA.

In a letter dated October 7, 1996, Sanpete County requested federal funding, as set forth in section 206(b)(1), to implement the projects. Section 206(b)(1) states: "Upon the request of any eligible county that elects not to participate in the project as provided in subsection (a), the Secretary shall provide as a grant to such county an amount that, when matched with the rebate received by such county, shall constitute 65 percent of the cost of implementation of measures identified in paragraph (2)."

Sanpete County is located within the Sevier River Basin in Central Utah. The main stem of the Sevier River passes through Sanpete County west of the towns of Centerfield and Gunnison. Four major canals divert water from the Sevier River and serve lands in Sanpete County " Piute, Gunnison-Fayette, Dover, and Westview. The SWCD was formed to assist Sanpete County in developing, managing, and conserving its water resources. The SWCD has proposed to develop a county-wide water resources master plan to collect and summarize current water resource information so that the SWCD can easily assess and prioritize the County's water resource needs. SWCD has also proposed to develop a secondary water system for the community of Centerfield, Sanpete County, Utah. Two agreements will be negotiated. One to provide funding for the Master Plan and another for the Centerfield water system.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154; Telephone: (801) 379–1237; Internet: rmurray@uc.usbr.gov.

Dated: July 8, 1999.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 99–18022 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Fort Niobrara National Wildlife Refuge and Draft Comprehensive Conservation Plan and Environmental Assessment for Valentine National Wildlife Refuge, Valentine, NE

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Fort Niobrara Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Assessment and the Valentine National Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Assessment. These Plans describes how the FWS intends to manage both the Fort Niobrara and Valentine NWRs for the next 10–15 years.

ADDRESSES: A copy of either of the Plans may be obtained by writing to U.S. Fish and Wildlife Service, Fort Niobrara/Valentine NWR Complex, HC 14, Box 67, Valentine, NE 69201.

The Plans can also be obtained electronically through the U.S. Fish and Wildlife Service Region 6 Land Acquisition and Refuge Planning HomePage. The Internet address to access the Plans is as follows: http://www.r6.fws.gov/larp. Follow the link to "CCP Status in Region 6," click on Nebraska on the Region 6 map, and look under the "Refuge" column for links to both the Fort Niobrara and Valentine Draft CCPs.

FOR FURTHER INFORMATION CONTACT: Bernardo Garza, U.S. Fish and Wildlife Service, P.O. Box 25486 DFG, Denver, CO 80225, 303/236–8145 extension 672; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: For Niobrara and Valentine NWRs are located in north central Nebraska. These Plans and their supporting documents outline a vision for the management of each of these Refuges and specify how one of the largest contiguous blocks of federally owned Nebraska Sandhills grass-stabilized regions can be managed to conserve indigenous wildlife and provide enjoyment to people. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

The comment period for these documents will be reopened until August 19, 1999. All comments need to be addressed to: Bernardo Garza, Fish and Wildlife Biologist, Land Acquisition and Refuge Planning, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, Colorado 80225.

Dated: July 9, 1999.

Terry T. Terrell,

Regional Director, Denver, Colorado.

[FR Doc. 99–18020 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Public knowledge and perception of Black Tailed Prairie Dogs in the Midwest region of the United States.

OMB Approval No: New collection.

Abstract: The ability to identify knowledge gaps in the public's understanding of the issues concerning Black-tailed Prairie Dog (*Cynomys ludovicianus*) is necessary while conservation efforts involving this species are in the early planning stages. The object of this study is to provide information that is needed to understand the complexities of wildlife/human interactions and current land use and management practices. Any additional information about this species can provide data that can help determine if the species needs to be included on the Federal list of threatened and endangered wildlife and plants. As a result of rapidly declining populations, increased pressure to develop habitats, and controversies about disease vectors associated with prairie dog communities attention has focused in the past few years on the status of this species. The issue of listing Prairie Dog as threatened or endangered species has become a very important subject for fish and wildlife managers, political leaders, and community groups in a 10 state area of the Midwest (Texas, New Mexico, Colorado, Arizona, Utah, Montana, Wyoming, North Dakota, South Dakota and Nebraska). Although the subject has achieved wide attention, no studies have been conducted that evaluate public knowledge, perception, or economic value of prairie dog communities and management practices in these area. Understanding public knowledge, perception, and values is a vital component of wildlife management. Improved understanding will guide future management practices.

Bureau Form No: None.

Frequency: One time.

Description of Respondents: Individual or households.

Estimated Completion Time: 12 minutes per respondent (approximate).

Number of Respondents: 2880 (3,600 mail surveys).

Burden hours: 576 hours. (the burden estimates are based on 12 minutes to complete each questionnaire and an 80% return rate.)

All comments concerning this notice should be addressed to Berton Lee Lamb, Supervisory Administrative Analyst, 970–226–9314; or Phadrea Ponds, Wildlife Biologist, 970–226–9445, U.S. Geological Survey, Biological Resources Division, Social, Economic and Institutional Analysis Section, 4512 McMurry Avenue, Fort Collins, CO 80525–3400.

For Additional Information Please Contact: Phadrea Ponds, (970) 226–9445, phadrea____ponds@usgs.gov

Bureau clearance officer: John Cordyack (703) 648–7313.

Dated: July 21, 1999.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 99–18080 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–932–1430–01; COC–60906]

Public Land Order No. 7399; Withdrawal of Public Lands for Recreation Sites; Colorado

AGENCY: Bureau of Land Management, Interior.

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ACTION: Public land order.

SUMMARY: This order withdraws 129.80 acres of public lands from surface entry and mining for 20 years for the Bureau of Land Management to protect three recreation sites with developed facilities. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not the mineral leasing laws, to protect three Bureau of Land Management recreation sites with developed facilities:

Sixth Principal Meridian

Mud Springs Recreation Site

T. 13 S., R. 102 W.,
Sec. 24, S½NW¼SE¼ and N½SW¼SE¼.

Dominguez Recreation Site

T. 15 S., R. 100 W.,
Sec. 15, SW¼NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, and NW¼SE¼SE¼.

Miracle Rock Recreation Site

T. 12 S., R. 103 W.,
Sec. 26, West 10 chains of lot 3, and that portion of the SE¼SW¼ within acquired parcel C–832;
Sec. 35, West 10 chains of lot 2, and that portion of the NE¼NW¼ within acquired parcel C–832.

The areas described aggregate 129.80 acres in Mesa County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land and Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 1, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–18083 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 023270, et al.]

Public Land Order No. 7400; Partial Revocation of Executive Order Dated July 12, 1911, Secretarial Order Dated March 18, 1918, and Public Land Order No. 2760; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order, a Secretarial order, and a public land order (PLO) insofar as they affect 801.64 acres of public lands withdrawn for the Bureau of Land Management's Reservoir Site Reserve No. 4 and Stock Driveway No. 11, Montana 1, and the Bureau of Reclamation's Missouri River Basin Project. The lands are no longer needed for these purposes and the revocations are needed to permit disposal of the lands through exchange. The lands are temporarily closed to surface entry and mining due to pending land exchange proposals. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. a. The Executive order dated July 12, 1911, which withdrew public lands for the Bureau of Land Management's Reservoir Site Reserve No. 4, is hereby revoked insofar as it affects the following-described lands:

Principal Meridian, Montana

T. 14 S., R. 4 W.,
Sec. 5, SE¼SW¼;
Sec. 7, SE¼NE¼;
Sec. 8, SW¼NE¼ and N½S½.

The area described contains 280 acres in Beaverhead County.

b. The Secretarial order dated March 18, 1918, which withdrew public land for the Bureau of Land Management's Stock Driveway No. 11, Montana No. 1, is hereby revoked insofar as it affects the following-described land:

Principal Meridian, Montana

T. 8 S., R. 7 W.,
Sec. 23, SE¼;
Sec. 26, E½.

The area described contains 480 acres in Madison County.

c. PLO No. 2760, which withdrew public lands for the Bureau of Reclamation's East Bench Unit of the Pick-Sloan Missouri River Basin Reclamation Project, is hereby revoked insofar as it affects the following-described land:

Principal Meridian, Montana

T. 5 S., R. 6 W.,
Sec. 6, lot 1.

The area described contains 41.64 acres in Madison County.

2. The lands described in paragraph 1(a), 1(b), and 1(c) are hereby made available for exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994).

Dated: July 1, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–18081 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–1010–00–IDI–16438–02]

Notice of Realty Action (NORA), Direct Sale of Public Land in Bingham County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action (NORA), Direct Sale of Public Land in Bingham County, Idaho.

NOTICE: The following described lands in Bingham County have been examined and found suitable for classification and direct sale to the Cedar Hills Gun Club under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Cedar Hills Gun Club currently holds a lease on the land for a shooting range but desires to gain patent to the land. The land would continue to be used for non-profit shooting range purposes.

Boise Meridian

T. 01 S., R. 35 E.
Section 25: NE¼, E½NW¼, NE¼SW¼, W½SE¼.
Containing 360 acres, more or less.

The lands under lease are not needed for other federal purposes. Conversion of the Cedar Hills Gun Club's lease to a patent is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations issued by the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed under authority of the Act of August 30, 1980.

3. A mineral reservation of all minerals to the United States together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401.

The subject public lands were segregated from all appropriations, including location under the mining laws, except for leasing under the mineral leasing laws and leasing under the Recreation and Public Purposes Act (R&PP), on July 29, 1980. Upon publication of this notice in the **Federal Register**, the lands will be classified for conveyance under the R&PP Act and will continue to be segregated from the general mining laws as noted above. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to Joe Kraayenbrink, Area Manager, Idaho Falls Field Office, at the address noted above.

Any adverse comments submitted as a result of this notice will be reviewed by the BLM Area Manager. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: July 1, 1999.

Joe Kraayenbrink,

Area Manager.

[FR Doc. 99–18085 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–50265, Group 160, Wisconsin

Notice of Filing of Plat of Survey; Wisconsin, Stay Lifted

On Thursday, May 27, 1999 there was published in the **Federal Register**, Volume 64, Number 102, on page 28833 a notice entitled "Notice of Filing of Plat of Survey; Wisconsin, Stayed". Said notice referenced the stay of the plat of the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of sections 7 and 18, in Township 35 North, Range 15 West, of the 4th Principal Meridian, Wisconsin, accepted March 30, 1999.

Consideration of all questions regarding technical aspects of the survey have been made, and the plat of survey accepted March 30, 1999, was officially filed in Eastern States Office. Springfield. Virginia, at 7:30 a.m. on June 29, 1999.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: June 28, 1999.

Stephen G. Kopach,

Chief, Cadastral Surveyor.

[FR Doc. 99–18011 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–010; COC–63080]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 24,000 acres of National Forest System land for 20 years to protect the Wahatoya Recreation Area. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before October 13, 1999.

ADDRESSES: Comments should be sent to the Colorado State Director, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On June 21, 1999, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch 2), subject to valid existing rights:

Sixth Principal Meridian

San Isabel National Forest

T. 30 S., R. 67 W.,
Sec. 19, lots 1 thru 4, inclusive, E½and E½W½;
Sec. 20, S½S½;
Sec. 21, S½S½;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 thru 4, inclusive, E½ and E½W½;
Sec. 31, lots 1 thru 4, inclusive, E½ and E½W½;
Sec. 32, all;
Sec. 33, all.
T. 30 S., R. 68 W.,
Sec. 24, all;
Sec. 25, all;
Sec. 26, S½N½ and S½;
Sec. 31, lots 2, 3, 4, E½ and E½W½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 31 S., R. 67 W.,
Sec. 5, lots 1 thru 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 thru 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Sec. 7, lots 1 and 2, NE¼ and E½NW¼;
Sec. 8, N½.
T. 31 S., R. 68 W.,
Sec. 1, lots 1 thru 8, inclusive, and S½;
Sec. 2, lots 1 thru 8, inclusive, and S½;
Sec. 3, lots 1 thru 12, inclusive, and S½;
Sec. 4, lots 1 thru 12, inclusive, and S½;
Sec. 5, lots 1 thru 12, inclusive, and S½;
Sec. 6, lots 1, 2, 3, 5 thru 14, inclusive, E½SW¼, and SE¼;
Sec. 7, lots 1 thru 4, inclusive, E½W½ and E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 15, NW¼;
Sec. 16, N½;
Sec. 17, N½;
Sec. 18, lots 1 and 2, E½NW¼ and NE¼.
T. 31 S., R. 69 W.,
Sec. 1, lots 9, 10, and S½;
Sec. 2, lots 1 thru 12, inclusive, and S½;
Sec. 11, N½ and N½S½;
Sec. 12, all;
Sec. 13, N½.

The area described contains approximately 24,103.27 acres of National Forest System land in Huerfano and Las Animas Counties.

The purpose of this withdrawal is to protect the area's outstanding scenic and recreational values.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, may present their views in writing to the Colorado State Director. A public meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the time and

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place of the meeting will be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above, unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 99–18084 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, California

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of availability of supplement to a Draft Programmatic Environmental Impact Statement (DPEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) has prepared a supplement to the DPEIS for the Central Valley Project Improvement Act (CVPIA). The original DPEIS was released for public review on November 7, 1997, and numerous comments addressing a wide range of issues were received on the document. Reclamation is preparing this supplement in response to a general group of comments received on the DPEIS. These comments addressed an inconsistency that was discovered in the Project Simulation Model (PROSIM) hydrology shortly before the DPEIS was completed.

DATES: Public comments on the supplement to the DPEIS should be submitted on or before September 13, 1999.

Public information forums and public hearings have been arranged. The dates for these forums and hearings are listed in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Written comments on the supplement to the DPEIS should be addressed to Mr. Alan Candlish, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento, CA 95825. Requests for a copy of the supplement to the DPEIS should be addressed to Ms. Alisha Sterud, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento, CA 95825, telephone: (916) 978–5190.

See **SUPPLEMENTARY INFORMATION** section for addresses of public information forums and public hearings. Copies of the supplement to the DPEIS are available for public inspection and review in libraries in the project area, and at the following locations:

- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington, DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303) 236–6963.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: If requesting copies of the DPEIS, please contact Ms. Alisha Sterud at the address above, or by telephone at (916) 978–5190. For additional information contact Mr. Alan Candlish at the address above, or by telephone at (916) 978–5197.

SUPPLEMENTARY INFORMATION:

Locations and Dates for Public Information Forums

- July 20, 1999, at 7 p.m. at the Elks Lodge, 355 Gilmore Road, Red Bluff, California.
- July 21, 1999, at 7 p.m. at the Ramada Inn, 13070 South Highway 33 (at Interstate 5), Los Banos, California.
- July 22, 1999, at 3 p.m. at Expo Inn, 1413 Howe Avenue, Sacramento, California.

Locations and Dates for Public Hearings

- August 17, 1999, at 7 p.m. at Elks Lodge, 355 Gilmore Road, Red Bluff, California.
- August 18, 1999, at 7 p.m. at Ramada Inn, 1370 South Highway 33 (at Interstate 5), Los Banos, California.
- August 19, 1999, at 3 p.m. at the Expo Inn, 1413 Howe Avenue, Sacramento, California.

Dated: July 7, 1999.

Robert F. Stackhouse,

Acting Deputy Regional Director.

[FR Doc. 99–18034 Filed 7–14–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 19, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–393–396 and 731–TA–829–840 (Preliminary)(Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 19, 1999. The Commission will transmit its opinions to the Secretary of Commerce on July 26, 1999.)
5. Outstanding action jackets:

(1.) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).

(2.) Document No. GC–99–057: Regarding Inv. No. 337–TA–412 (Certain Video Graphics Display Controllers and Products Containing Same).

(3.) Document No. GC–99–065: Regarding Inv. No. 337–TA–380 (Certain Agricultural Tractors Under 50 Power Take-Off Horsepower) (Enforcement Proceeding).

(4.) Document No. GC–99–066: Regarding Inv. No. 731–TA–752 (Final) (Crawfish Tail Meat from China).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued July 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18136 Filed 7–12–99; 4:51 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed consent decree in the case captioned *United States* v. *Cuyahoga Management Corporation, et al.*, Civil Action No. IP97–1599C Y/S (S.D. Ind.), was lodged with the United States District Court for the Southern District of Indiana on June 30, 1999. The proposed consent decree relates to the Ingram-Richardson Superfund Site and the Augustus-Hook Superfund Site, both located near Frankfort in Clinton County, Indiana. The proposed consent decree would resolve certain civil claims of the United States for recovery of past response costs under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9607, against all seven defendants in the pending litigation concerning the two Sites, namely Cuyahoga Management Corporation; John B. Hook; Albert A. Augustus; Edward P. Cawley; Hook Associates; 815 Realty, Inc.; and Augustus & Hook Associates (f/k/a Chester Associates). The proposed consent decree would require the seven Settling Defendants to pay the United States a total of $2.75 million ($1419 million for the Ingram-Richardson Site and $1.331 million for the Augustus-Hook Site)

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cuyahoga Management Corporation, et al.*, Civil Action No. IP97–1599C Y/S (S.D. Ind.) and DOJ Reference Nos. 90–11–2–1202 and 90–11–3–06374.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Southern District of Indiana, United States Courthouse—Fifth Floor, 46 E. Ohio Street, Indianapolis, IN 46204 (contact Harold R. Bickham (317–226–6333)); (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Karen L. Peaceman (312–353–5751)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). Copies of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting copies, please refer to the referenced case and DOJ Reference Numbers and enclose a check for $11.75 (47 pages at 25 cents per page reproduction cost), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–18089 Filed 7–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree

In accordance with 28 CFR 50.7(b), notice is hereby given that proposed Consent Decree in *United States* v. *Equus Farms, Inc.*, Civil Action No. 99–WM–1215 (D. Colo.), was lodged with the United States District Court for the District of Colorado on June 29, 1999. Final approval of the proposed Consent Decree is subject to the requirements of 28 CFR 50.7.

In this case, the Untied States filed suit against Equus Farms, Inc. and The Anschutz Corporation for alleged violations of Clean Water Act section 301 and 404. The Complaint states that the defendants discharged dredged or fill material into waters of the United States at a site near the town of Masters, Colorado, without a permit issued by the United States Army Corps of Engineers.

The United States and the defendants have reached agreement on the terms of a proposed consent Decree. Under the proposed settlement, the defendants would perform restoration and mitigation, and pay a civil penalty.

The Department of Justice will receive written comments on the proposed Consent Decree or a period of 30 days from the date of publication of this notice. Comments should be addressed to Joshua E. Swift, Trial Attorney, U.S. Department of Justice, Environment & Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026, and refer to *United States* v. *Equus Farms, Inc.*, Civil Action No. 99–WM–1215 (D. Colo.), DJ# 90–5–1–1–05453.

The proposed Concent Decree may be examined at the Clerk's Office, United States District Court for the District of Colorado, 1929 Stout Street, Room C–145, Denver, Colorado (303) 844–3433).

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 99–18091 Filed 7–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 28, 1999, a Complaint and a proposed Consent Decree in *United States* v. *Lion Oil Company*, (W.D. AK) (Civil No. 99–1080), were lodged with the U.S. District Court for the Western District of Arkansas, El Dorado Division. The United States filed its Complaint in this action simultaneously with the Consent Decree, on behalf of the Environmental Protection Agency ("EPA") pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413. The Complaint seeks injunctive relief and civil penalties for violations of the Clean Air Act ("CAA" or "the Act") and regulations promulgated thereunder at Lion Oil's refinery in El Dorado, Arkansas.

The Complaint alleged that Lion Oil Company violated numerous testing, reporting and emission minimization requirements of the CAA's New Source Performance Standards ("NSPS"), 40 CFR part 60, Subparts A, Kb, J, VV and GGG, promulgated under section 111 of the CAA 42 U.S.C. 7411. The violations stemmed primarily from Oil's failure to conduct required tests of various units at the refinery. Because Lion Oil never conducted the tests, the company also violated notification and reporting requirements under the Act and implementing regulations.

Under the terms of the settlement, Lion Oil will pay a $90,000 civil penalty and will perform three Supplemental Environmental Projects ("SEPs") at an estimated cost to the company of $687,635 and with a demonstrated aggregate net present value under the Decree of $311,364.50. The SEPs involve water conservation reuse measures that will greatly reduce Lion Oil's draw on the local qualifer, which is the sole source of drinking water in the area, as well as minimize the discharge of thermal pollution in the El Dorado community.

Lion Oil's satification of all the requirements of the Decree will constitute a full settlement of the violations alleged in the United States' Complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer

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to *United States* v. *Lion Oil Company*, D.J. ref. 90–5–2–1–06064.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Arkansas, El Dorado Division, 6th & Rogers Avenue, Isass C. Parker Federal Building, Room 216, Fort Smith, Arkansas, 72901, and at the Consent Decree Library, 1120 G. Street, NW, 3rd Floor, Washington, DC 20005. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.00 ($0.25 per page for reproduction costs) payable to: Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 99–18087 Filed 7–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Under 28 CFR 50.7, notice is hereby given that on June 16, 1999, a proposed consent decree ("Consent Decree") in *United States* v. *Meydenbauer Development Co.*, Civil Action No. 2:98–CS–00147 WFN was lodged with the United States District Court for the Eastern District of Washington.

In this action, the United States sought to recover costs incurred and to be incurred in response to the release of hazardous substances at the Deaconess Hospital Superfund Site in Chelan County, Washington ("Site") pursuant to 42 U.S.C. 9607(a). The Consent Decree requires Defendants Meydenbauer Development Co. and M. Tyrone Morgan to pay to the EPA Hazardous Substance Superfund $5,000 in reimbursement of the United States past response costs. The settlement amount is based upon the Defendants ability to pay. In exchange, the United States will grant the Defendants a covenant not to sue pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for past response costs incurred by the United States. The Defendants also will receive contribution protection for the United States' past response costs pursuant to section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Meydenbauer Development Co.*, Civ. No. 2:98–CS–00147 WFN (E.D. Wash.), DJ No. 90–11–2–1365.

The Consent Decree may be examined at the Office of the United States Attorney, 300 United States Courthouse, Spokane, WA 99210–1494, at U.S. EPA Region X, 1200 Sixth Ave., Seattle, WA 98101, and at the Consent Decree Liberty, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check payable to the Consent Decree Library in the amount of $5.25.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–18092 Filed 7–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on June 29, 1999, a proposed Consent Decree in *United States* v. *Robert Neal* Civil Action No. 1: 99–0264–08 was lodged with the United States District Court for the District of South Carolina. The Consent Decree represents a settlement with one of the potential responsible parties listed in the Amended Complaint for violations of Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607. Under the Consent Decree, Robert Neal has agreed to pay the United States $300.000. This Consent Decree represents the second settlement to be lodged with the Court regarding the Clearwater Finishing Superfund Site. The United States has incurred approximately $1,182,000.00. The Amended Complaint names two additional parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Robert Neal*, D.J. Ref. Number 90–11–3–06135.

The proposed Consent Decree may be examined at the Office of the United States Attorney, for the District of South Carolina, First Union Building, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, at U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–18093 Filed 7–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that separate consent decrees were lodged in *U.S.* v. *Nevada Cogeneration Associates, #1, et al.*, Civil Action No. CV–S–99–00107–PMP (D. Nev.) on June 29, 1999, with the United States District Court for the District of Nevada. The case is a civil action under section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b), for violation of provisions of the Act and of the regulations for Prevention of Significant Deterioration ("PSD") that require owners and operators of any new stationary source to install and operate Best Available Control Technology ("BACT") to control emissions of relevant air pollutants.

The violations of the PDS regulations involved construction and operation of five gas turbines at two facilities near Las Vegas, Nevada, on which Defendants failed to install and operate BACT.

The Complaint in the civil action seeks injunctive relief to ensure future compliance with the PSD regulations. Under the consent decrees, the defendants will install and operate selective catalytic reduction units ("SCRs") to control emissions of oxides of nitrogen ("NO_x"). After retrofitting the turbines with SCRs, each defendant is required to operate the emissions control equipment specified by its consent decree in compliance with the Clean Air Act and its consent decree and is required to obtain necessary revised authority to construct permits from the Clark County Health District for the SCRs. In addition the defendants will pay a civil penalty of $200,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nevada Cogeneration Associates #1, et al.*, DOJ No. 90–5–2–1–2130.

The proposed consent decrees may be examined at the office of the United States Attorney, District of Nevada, 701 East Bridger Avenue, Suite 800, Las Vegas 8910; at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of any of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy the consent decree in *United States* v. *Nevada Cogeneration Associates, #1, et al.*, please refer to that case and DOJ No. 90–5–2–1–2130 and enclose a check in the amount of $7.50 (25 cents per page reproduction costs). Your check should be payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–18090 Filed 7–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 1, 1999, the United States filed a proposed Consent Decree in *United States* v. *Waste Management Disposal Services of Pennsylvania, Inc.*, Civ. Action No. 99CV3351 (E.D. Pa.), in the United States District Court for the Eastern District of Pennsylvania.

The United States' claims resolved by the Decree are described in a Complaint filed contemporaneously with the Decree, and pertain to the Elizabethtown Landfill Superfund Site in Lancaster County, Pennsylvania. The Complaint seeks: (1) An injunction, pursuant to section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606(a), to implement EPA's Record of Decision for the Site, (2) the recovery of EPA's past costs under Section 107 of CERCLA, 42 U.S.C. 9607; and (3) a declaratory judgment on the Defendants' liability for future costs under Section 113(g)(2) of CERCLA.

The Consent Decree resolves the United States' claims against the current owner of the Site, Waste Management Disposal Services of Pennsylvania, Inc., and other Defendants namely AMP, Inc., Furnvial Machinery Company, New Standard Corporation, and Wyeth-Ayerst Laboratories (collectively, the "Settling Defendants"), who allegedly sent materials containing hazardous substances to the Elizabethtown Site. The Decree requires the Settling Defendants to perform the Remedial Design and Remedial Actions necessary to implement EPA's Record of Decision, and to reimburse EPA for some of its past and future costs. In return, the Settling Defendants will obtain: (1) Protection from contribution actions by other responsible parties; (2) covenants not to sue from the United States; (3) forgiveness of almost $1 million of EPA past costs; (4) roughly $1.1 million in preauthorized mixed funding from EPA; and (5) roughly $781,000 of the funds collected by EPA to date from other settlements with parties contributing only small amounts of hazardous substances to the Site. The Decree is also based on the EPA's 1995 Model RD/RA consent decree.

EPA estimates the remedy to be implemented by the Settling Defendants will cost roughly $26 million. The Consent Degree and EPA's Record of Decision provide, however, that the Settling Defendants may not have to implement ground water and surface water treatment portion of the remedy if they can demonstrate to EPA that the groundwater and surface water cleanup levels can be met, within a reasonable time, without such treatment. This contingent remedy is estimated to cost no more than $16 million. The Settling Defendants have also agreed to immediately begin the remedial design work called for in the Record of Decision, pursuant to an Administrative Order on Consent.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Waste Management Disposal Services of Pennsylvania, Inc.*, DOJ Ref. 90–11–2–1097A.

The proposed consent decree may be examined at either U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, or the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $26.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc 99–18086 Filed 7–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

This notice announces a change in benefit period eligibility under the EB Program for Alaska.

Summary: The following change has occurred since the publication of the last notice regarding the State's EB status:

- July 3, 1999—Alaska's 13-week insured unemployment rate for the week ending June 12, 1999 fell below 6.0 percent and was less than 120 percent of the average for the corresponding period for the prior two years, causing Alaska to trigger "off" EB effective July 3, 1999.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State ending an EB period, the State employment security agency will furnish a written notice to each individual who is currently filing a claim for EB of the forthcoming end of the EB period and its effect on the

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individual's rights to EB (20 CFR 615.13(c)(4)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on July 6, 1999.

Raymond Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 99–18004 Filed 7–14–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend Without Revision, a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 18639 (April 15, 1999), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to : Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

DATES: Comments regarding this information collection are best assured of having their full effect if received on or before August 16, 1999. Copies of the submission(s) may be obtained by calling 703–306–1125 X 2017.

FOR FURTHER INFORMATION OR COMMENTS ADDITIONAL CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 X 2017; or send email to splimpto@nsf.gov. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Fellowship Applications and Award Forms.

OMB Approval Number: 3145–0023.

Type of Request: Intent to seek approval to extend without revision, an information collection for three years.

Abstract: Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that "The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time."

The Foundation Fellowship Programs are designed to meet the following objectives:

- To assure that some of the Nation's most talented students in the sciences obtain the education necessary to become creative and productive scientific researchers.
- To train or upgrade advanced scientific personnel to enhance their abilities as teachers and researchers.
- To promote graduate education in the sciences, mathematics, and engineering at institutions that have traditionally served ethnic minorities.
- To encourage pursuit of advanced science degrees by students who are members of ethnic groups traditionally under-represented in the Nation's advanced science personnel pool.

The list of fellowship award programs sponsored by the Foundation includes, but may not be limited to, the following:

NSF Graduate Research Fellowships

- NSF Graduate Research Fellowships Including Women in Engineering and Computer and Information Science Awards (NSF 98–143).
- NSF–NATO Postdoctoral Fellowships in Science and Engineering Including Special Fellowship Opportunities for Visiting Scientists from NATO Partner Countries (NSF 98–149).
- NSF Postdoctoral Fellowships in Science, Mathematics, Engineering, and Technology Education (NSF 99–17).
- Minority Postdoctoral Research Fellowships and Supporting Activities (NSF 94–133).
- Postdoctoral Research Fellowships in Biological Informatics (NSF 98–162—electronic dissemination only).
- International Research Fellow Awards.
- Mid-Career Methodological Opportunities (NSF 99–33—electronic dissemination only).
- Mathematical Sciences Postdoctoral Research Fellowships (w/Research Instructorship option).
- Mathematical Sciences University/Industry Postdoctoral Research Fellowships.
- Japan Society for the Promotion of Science Postdoctorals Awards for U.S. Researchers.
- Science and Technology Agency of Japan Postdoctoral Awards for U.S. Researchers.
- Ridge Interdisciplinary Global Experiments Postdoctoral Research Fellowships.
- CISE Postdoctoral Research Associates in Experimental Computer Science (NSF 97–169).
- NSF Earth Sciences Postdoctoral Research Fellowships.

Estimate of Burden: These are annual award programs with application deadlines varying according to the fellowship program. Public burden may also vary according to program, however it is estimated that each submission is averaged to be 12 hours per respondent.

Respondents: Individuals.

Estimated Number of Responses: 13,000.

Estimated Total Annual Burden on Respondents: 156,000 hours.

Frequency of Responses: Annually.

Dated: July 9, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 99–18016 Filed 7–14–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development, Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–473, as amended), the National Science Foundation announces the following meeting:

Name: Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development (5270).

Date/Time: July 19 (3:00–5:00 pm) July 20–Public Hearing (8:00 am–5:00 pm) and July 21, 1999 (8:30–11:30 am).

Place: National Science Foundation, Room 1235, 4201 Wilson Blvd., Arlington, VA, 22230.

Type of Meeting: Open.

Contact Person: Kay Rison, Executive Secretary, CAWMSET, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 22230. Phone (703) 306–1004.

Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: CAWSET was established by Congress on October 14, 1998 to research and recommend ways to improved the recruitment, retention, and representation of women, minorities, and persons with disabilities in science, engineering and technology education and employment. The Public Hearing will serve to inform the Commission of best practices for recruiting, developing, utilizing, promoting, and retaining women, members of racial and ethnic minority groups traditionally underrepresented in the SET enterprise, and persons with disabilities.

Agenda

Monday, July 19

3:00–5:00 p.m.
Preparation for Public Hearing

Tuesday, July 20—Public Hearing

8:00 a.m.
Welcome—Rita R. Colwell, Director, National Science Foundation
8:00 a.m.
Keynote speaker: Martha A. Krebs, Director, Office of Science, U.S. Department of Energy "Women in Science and Technology: The President's Interagency Council on Women"
9:00 a.m.
Panel 1: SET Recruitment and Hiring Initiatives
10:00 a.m.
Panel 2: SET Education and Career Development
11:00 a.m.
Public Comment
12:35 p.m.
Keynote speaker: Kenneth J. Disken, Vice President, Human Resources, Electronics Sector, Lockheed Martin Corporation
1:50 p.m.
Panel 3: Utilization of SET Students and Professionals
2:50 p.m.
Panel 4: Advancement of Individuals in Science, Engineering, and Technology
4:00 p.m.
Topic 5: Retention Initiatives in SET Education and Employment
5:00 p.m.
Public Comment

Wednesday, July 21

8:30–11:30 a.m.
Follow up for Public Hearing

Dated: July 9, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–18014 Filed 7–14–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529 and STN 50–530]

Arizona Public Service Company, (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3); Exemption

I

Arizona Public Service Company (the licensee) is the holder of Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, which authorize operation of Palo Verde Nuclear Generating Station (Palo Verde), Unit Nos. 1, 2, and 3. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of three pressurized water reactors located at the licensee's site in Maricopa County, Arizona.

II

Section 50.71 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the FSAR] does not exceed 24 months." The three Palo Verde units share a common UFSAR; therefore, this rule requires the licensee to update the same document annually or within 6 months after a refueling outage for each unit.

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states that

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are:

(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule...." The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its FSAR revisions 6 months after refueling outages for its facility; but the rule did not provide for multiple unit facilities sharing a common FSAR. Rather, the Commission stated that "With respect to...multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case by case basis" (57 FR 39355 (1992)).

By letter dated June 9, 1998, as supplemented December 21, 1998, the licensee requested an exemption from the requirements of 10 CFR 50.71(e)(4) to allow revisions to the UFSAR, changes to the quality assurance program made in accordance with 10 CFR 50.54(a)(3), and reports of changes, tests, and experiments made in accordance with 10 CFR 50.59(b)(2) to be submitted to the Commission on a 24-month periodicity.

As noted in the staff's safety evaluation, the licensee's proposed schedule for UFSAR updates will ensure that the Palo Verde UFSAR and quality assurance program will be maintained current within 24 months of the last revision and the interval for submission of the 10 CFR 50.59 design change report will not exceed 24 months. The proposed schedule fits within the 24-month duration specified by 10 CFR 50.71(e)(4). Revising the UFSAR annually or 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule.

Accordingly, the Commission has determined that special circumstances

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are present as defined in 10 CFR 50.12(a)(2)(ii).

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Arizona Public Service Company an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the Palo Verde UFSAR annually or within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the Palo Verde UFSAR, the quality assurance program, and the 10 CFR 50.59 safety evaluation summary reports to the NRC no later than 24 months from the previous revision.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (64 FR 36410).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of July 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing and Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18057 Filed 7–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company, Turkey Point Nuclear Plant, Units 3 and 4; Confirmatory Order Modifying License Effective Immediately

I

Florida Power and Light Company (FPL or the Licensee) is the holder of Facility Operating Licenses, Nos. DPR–31 and DPR–41, which authorize operation of Turkey Point, Units 3 and 4, located in Dade County, Florida.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC, the Commision) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter 92–08, "Thermo-Lag 330–1 Fire Barriers" and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. For plants that have completion action scheduled beyond 1997, the NRC staff has met with these licensees to discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. In addition, the NRC staff discussed with licensees the possibility of accelerating their completion schedules.

FPL was one of the licensees with which the NRC staff held meetings. Based on the information submitted by FPL in its December 9, 1998, letter, the NRC staff has concluded that the schedules presented by FPL are reasonable. This conclusion is based on (1) the amount of installed Thermo-Lag, (2) the complexity of the plant-specific fire barrier configurations and issues, (3) the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power, and (4) integration with other significant, but unrelated issues that FPL is addressing at its plant. In order to remove compensatory measures such as fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by FPL must be completed in accordance with current FPL schedules. By letter dated January 29, 1999, the NRC staff notified FPL of its plan to incorporate FPL's schedule commitment into a requirement by issuance of an order and requested consent from the Licensee. By letter dated February 8, 1999, as modified by letter dated May 27, 1999, the Licensee provided its consent to issuance of a Confirmatory Order.

III

The Licensee's commitment as set forth in its letter of February 8, 1998, as modified by letter dated May 27, 1999, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in the February 8, 1999 letter, as modified by letter dated May 27, 1999, be confirmed by this Order. The Licensee has agreed to this action by letter dated May 27, 1999. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered*, effective immediately, that:

FPL shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Turkey Point Plant, Units 3 and 4, described in the FPL submittal to the NRC dated December 9, 1998, by December 31, 2001.

The resolution of any new Thermo-Lag corrective actions resulting from a potential Fire Protection Functional Inspection or the on-going Fire Protection Functional Inspection Self-Assessment at Turkey Point Units 3 and 4, are not considered part of this confirmatory order.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, Atlanta Federal Center, M/S 23T85, 61 Forsyth Street, SW, Atlanta, GA 30303–3415 and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland, this 9th day of July 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18058 Filed 7–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42 issued to Wolf Creek Nuclear Operating Corporation (the licensee) for operation of the Wolf Creek Generating Station (WCGS) located in Coffey County, Kansas.

The proposed amendment request dated June 30, 1999, would revise Technical Specification (TS) 3/4.7.5 of the current TSs by adding a temporary action statement that would allow the plant to operate for up to 12 hours with an inlet temperature up to but less than 95 degrees F. The current TS limit is 90 degrees F. This new action statement would be temporary in that it would be effective until September 30, 1999, after the summer. This action statement was added to the current TSs in Amendment 118 dated July 18, 1998, but it was only effective until September 30, 1998. Amendment 118 was issued because in 1998 the WCGS cooling lake that provides inlet water to the plant exceeded 89 degrees F and, due to predictions for continuing harsh meteorological conditions throughout the summer of 1998, the concern existed that the plant inlet temperature would exceed 90 degrees F and the plant would be forced to have an unnecessary shutdown. The licensee submitted a permanent change to TS 3/4.7.5 on January 12, 1999; however, the Commission considers this proposed change to be generic in nature and should be reviewed as a change to NUREG–1431, Standard Technical Specifications, Westinghouse Plants." NUREG–1431 is the standard for the Improved Technical Specifications that were issued for WCGS in Amendment 123 dated March 31, 1999. To allow the Commission sufficient time to review the generic change to NUREG–1431, the licensee was requested to resubmit the temporary change approved in Amendment 118 with the temporary change being effective until September 30, 1999, for the warm weather of this summer. This is the change submitted by the licensee on June 30, 1999.

The proposed change is only to the current TSs because the improved TSs issued in Amendment 123 will become effective after September 30, 1999, when this temporary change is no longer valid.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change provides an allowed time [12 hours] for the plant to continue operation with plant inlet water temperature in excess of the current technical specification limit of 90°F, but less than the design limit of 95°F for plant components. The plant inlet water temperature is not assumed to be an initiating condition of any accident analysis evaluated in the updated safety analysis report (USAR). Therefore, the allowance of a limited time for the water temperature to be in excess of the current limit does not involve an increase in the probability of an accident previously evaluated in the USAR. The UHS [ultimate heat sink] supports operability of safety related systems used to mitigate the consequences of an accident. Plant operation for brief periods with plant inlet water temperature greater than 90°F but less than 95°F will not adversely affect the operability of these safety-related systems and will not adversely impact the ability of these systems to perform their safety-related functions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve any physical alteration of plant systems, structures or components. The temperature of the plant inlet water being greater than 90°F but less than 95°F for a short period [12 hours] does not introduce new failure mechanisms for systems, structures or components not already considered in the USAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change will allow an increase in plant inlet water temperature above the current technical specification limit of 90°F for the Ultimate Heat Sink, and delay the requirement to shutdown the plant when the plant inlet water system temperature limit is exceeded for 12 hours. The proposed change does not alter any safety limits, limiting safety system settings, or limiting conditions for operation [except for TS 3/4.7.5], and the proposed temperature increase will remain below the design limit cooling water input value for safety-related equipment. Thus, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 16, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 30, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 8th day of July 1999.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18056 Filed 7–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Pilot Program Evaluation Panel; Meeting

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC) announced the establishment of the Pilot Program Evaluation Panel (PPEP). The PPEP will function as a management-level Oversight group to monitor and evaluate the success of the Commission's Reactor Oversight Process Improvements program. A Charter governing the PPEP functions as a Federal Advisory Committee was filed on June 30, 1999, after consultation with the Committee Management Secretariat, General Services Administration. The PPEP will hold its first meeting on July 28, 1999, in Conference Room T–2B1, Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland.

The PPEP meeting participants are listed below along with their affiliation:

Frank P. Gillespie—Nuclear Regulatory Commission
Mohan C. Thadani—Nuclear Regulatory Commission
James T. Wiggins—Nuclear Regulatory Commission
Bruce Mallet—Nuclear Regulatory Commission
Geoffrey Grant—Nuclear Regulatory Commission
Kenneth E. Brockman—Nuclear Regulatory Commission
James Lieberman—Nuclear Regulatory Commission
Steve Floyd—Nuclear Energy Institute
David Garchow—Public Service Electric and Gas
Masoud Bajestani—Tennessee Valley Authority
George Barnes—Commonwealth Edison Company
James Chase—Omaha Public Power District
Gary Wright—Illinois Department of Nuclear Safety
David Lochbaum—Union of Concerned Scientists

A tentative agenda of the meeting is outlined as follows:

9:00–9:30 a.m.	Introduction and opening remarks • Role of the Designated Federal Employee • Noticing requirements • Public participation
9:30–11:00 a.m.	Discuss conduct of panel and rules of operation • Frequency of meetings • Location of meetings • Formation of subcommittees • Distribution of transcripts and other information • Approach to report generation • Use of facilities
11:00 a.m.–12:00 n. ..	Staff presentation on how pilot data are being collected and analyzed
12:00 n.–1:00 p.m.	Lunch
1:00–2:00 p.m.	NEI Presentation on Industry evaluation efforts and what would be available to the Panel
2:00–3:00 p.m.	Panel discussion on need for any additional data or analyses
3:00 p.m.	Discussion and public presentations • Future invited speakers • Public's oral presentations
4:00 p.m.	Meeting Adjourned

Meetings of the PPEP are open to the members of the public. Formal procedures for the conduct of the Panel meetings will be developed during the July 28, 1999 meeting. In the interim, at the July 28, 1999, meeting, oral or written views may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make oral statements should notify Mr. Frank P. Gillespie (Telephone 301/415–1004, e-mail FPG@nrc.gov) or Mr. Mohan C. Thadani (Telephone 301/415–1476, e-mail MCT@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; and the Panel Chairman's ruling regarding requests to present oral statements and time allotted, may be obtained by contacting Mr. Frank P. Gillespie or Mr. Mohan C. Thadani between 8:00 a.m. and 4:30 p.m. EDT.

PPEP meeting transcripts and meeting reports will be available from the Commission's Public Document Room. Transcripts will be placed on the agency's web page when a web site for PPEP is established.

Dated: July 9, 1999.

Andrew Bates,

Advisory Committee Management Officer.

[FR Doc. 99–18054 Filed 7–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study Licenses, Availability of Draft NUREG

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability and request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of and requesting comments on draft NUREG–1556, Volume 14, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Well Logging, Tracer, and Field

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Flood Study Licenses," dated May 1999. This draft NUREG report is the14th program-specific guidance document developed to support an improved material licensing process. NRC is using Business Process Redesign (BPR) techniques to redesign its material licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports.

This draft guide has been developed in parallel with the proposed revision of 10 CFR part 39, "Energy Compensation Sources for Well Logging and Other Regulatory Clarifications," published as a Proposed Rule on April 19, 1999 (64 FR 19089). Comments received in response to publication of this draft guidance will be considered in developing the final guide. Finalization of the guidance will continue to parallel the rulemaking resulting in a guidance document that is consistent with the final rule. It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel.

This draft report takes a more risk-informed, performance-based approach to licensing of well logging, tracer, and field flood study operations, and reduces the information (amount and level of detail) needed to support an application to use these devices. Note that this document is strictly for public comment and is not for use in preparing or reviewing applications until it is published in final form.

DATES: The comment period ends September 13, 1999. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 14, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 14, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC specifically requests comments on this licensing guidance NUREG regarding the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: *slm2@nrc.gov*.

Electronic Access

Draft NUREG–1556, Vol. 14 is available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 22nd day of June, 1999.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 99–18055 Filed 7–14–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in July 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 1999. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in July 1999 is 5.13 percent (*i.e.*, 85 percent of the 6.04 percent yield figure for June 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between August 1998 and July 1999.

For premium payment years beginning in:	The assumed interest rate is:
August 1998	4.83
September 1998	4.71
October 1998	4.42
November 1998	4.26
December 1998	4.46
January 1999	4.30
February 1999	4.39
March 1999	4.56
April 1999	4.74
May 1999	4.72
June 1999	4.94
July 1999	5.13

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 1999, as announced by the IRS, is 8 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	12/31/96	9
1/1/97	3/31/97	9
4/1/97	6/30/97	9
7/1/97	9/30/97	9
10/1/97	12/31/97	9
1/1/98	3/31/98	9
4/1/98	6/30/98	8
7/1/98	9/30/98	8
10/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	6/30/99	8
7/1/99	9/30/99	8

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the third quarter (July through September) of 1999 (*i.e.*, the rate reported for June 15, 1999) is 7.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Rate (percent)
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	12/31/96	8.25
1/1/97	3/31/97	8.25
4/1/97	6/30/97	8.25
7/1/97	9/30/97	8.50
10/1/97	12/31/97	8.50
1/1/98	3/31/98	8.50
4/1/98	6/30/98	8.50
7/1/98	9/30/98	8.50
10/1/98	12/31/98	8.50
1/1/99	3/31/99	7.75
4/1/99	6/30/99	7.75
7/1/99	9/30/99	7.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in August 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of July, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–18033 Filed 7–14–99; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Information-Based Indicia Program (IBIP) Performance Criteria for Information-Based Indicia and Security Architecture for Open IBI Postage Evidencing Systems (PCIBI–O)

AGENCY: Postal Service.

ACTION: Notice of availability of Performance Criteria, with request for comments.

SUMMARY: The Postal Service has compiled a revised draft functional Performance Criteria for open systems of the IBI program, as defined in this release. The current release contains the performance criteria for the Indicium, the Postal Security Device (PSD), the Host System, and the IBIP Key Infrastructure components of an open IBI system. The Postal Service also seeks comments on intellectual property issues raised by IBIP Performance Criteria, policy, and procedures if adopted in present form. If an intellectual property issue includes patents or patent applications covering any implementations of the Performance Criteria, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

ADDRESSES: Copies of the Performance Criteria noted above may be downloaded from the IBIP website at http://www.usps.com/ibip/welcome.htm, or obtained from Edmund Zelickman, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P–801, Washington DC 20260–2444. Copies of all written comments may be inspected, by appointment, between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

DATES: All written comments must be received on or before September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Dan Lord, (202) 268–4599.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–18097 Filed 7–14–99; 8:45 am]

BILLING CODE 7710–12–P

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41606; File No. SR–NASD–98–08]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change, by the National Association of Securities Dealers, Inc. Relating to Trade Reporting Rules

July 8, 1999.

I. Introduction

On February 2, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] Nasdaq filed Amendment No. 1 to the proposed rule change on May 19, 1998.[3] On June 5, 1998, the proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register.**[4] The Commission received one comment letter in response to the solicitation of comments.[5] On March 1, 1999, Nasdaq filed Amendment No. 2 to the proposed rule change.[6] For the reasons discussed below, the Commission is granting partial approval of the proposed rule change and Amendment No. 1 (as requested in Amendment No. 2), and accelerated approval of Amendment No. 2 to the proposed rule change.

II. Description of the Proposal

Nasdaq proposes to amend various trade reporting rules of the Association. Specifically the proposal would: (1) Implement a new trade report modifier to identify trades effected at a prior reference price; (2) eliminate the 10,000 share limitation on individual trades that may be "bunched" for trade reporting purposes; and (3) address riskless principal trades involving exchange-listed securities traded in the Third Market.[7]

A. New Modifier for Trades Based on Prior Reference Price

Recently, there have been situations where NASD members execute certain transactions that, although reported timely, actually relate to an obligation to trade that arose at an earlier point in the day or that refer to a prior reference price. These situations may include obligations to trade arising from a preferenced SelectNet order that was not executed timely, orders that are owed the opening or closing price ("market on open" or "market on close") but that are not executed within 90 seconds of the open or close, respectively, and orders that may have been lost or misplaced. In effect, these trades are late executions, not late reports of executions. Nasdaq, therefore, proposes to implement a trade report modifier for firms to append to certain trade reports to more accurately identify transactions that are at a price which is based on a prior reference point in time.[8] The modifier would apply to trade reports in Nasdaq securities (both Nasdaq National Market and SmallCap) as well as non-Nasdaq OTC Equity Securities (*e.g.*, OTC Bulletin Board and Pink Sheets). The modifier would not, however, apply to exchange-listed securities traded in the Third Market.[9]

B. Eliminating the 10,000 Share Limitation on Aggregating Trades in Nasdaq Securities That May Be Bunched for Trade Reporting

Nasdaq proposes to eliminate the 10,000 share limitation on the maximum number of shares in an individual trade that can be aggregated for purposes of reporting a "bunched" trade in Nasdaq securities, but only in the context of IPOs.

Rules governing the reporting of transactions in Nasdaq securities (both National Market and SmallCap) currently permit the aggregation of transactions into a "bunched" trade report in a variety of situations. Most notably, there is a provision whereby a firm may aggregate transactions at the same price that would be impractical to report individually, provided that no individual order of 10,000 shares or more may be aggregated.[10] These reports have a ".B" modifier appended by the reporting firm and disseminated to the Nasdaq tape and vendors.

C. Trade Reporting Rules for Riskless Principal Trades in the Third Market

Nasdaq proposes to amend the trade reporting rules for exchange listed securities traded in the Third Market to ensure that all riskless principal trades, including those effected by market makers, are reported only once.[11]

Nasdaq believes that the exception applicable to non-market makers (which treats riskless principal trades as one trade for reporting purposes) should be extended to market makers in exchange-listed stocks. For example, if a market maker in an exchange-listed security does not assume a risk position on an Intermarket Trading System ("ITS") commitment sent to another market, the market maker should not be reprinting it in its own market when it receives confirmation of an execution on the commitment. The fact that the firm is a market maker is irrelevant. Nasdaq also believes that this analysis should apply to transactions that result from orders sent to the floor even when sent outside of the ITS linkage (*e.g.*, through a floor broker or other automated execution system of the exchange).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, May 13, 1998("Amendment No. 1").

[4] Securities Exchange Act Release No. 40047 (May 29, 1998), 63 FR 30791.

[5] The original filing proposed that every electronic communications network ("ECN") be required to report all trades executed within the ECN on behalf of its subscribers. The Commission received one comment letter, which addressed the original filing's proposed ECN reporting requirements. *See* letter from Charles R. Hood, Senior Vice President and General Counsel, Instinet, to Jonathan Katz, Secretary, SEC, dated June 25, 1998.

[6] Letter from Robert Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, SEC, March 1, 1999 "(Amendment No. 2"). Amendment No. 2 requests that the Commission grant a partial approval of the original filing. Specifically, Amendment No. 2 requests approval of all the proposed changes in the original filing with the exception of the proposed ECN trade reporting requirements. Amendment No. 2 states that the NASD intends to submit a separate response to the Commission regarding the Instinet comment letter received on the proposed ECN trade reporting requirements.

[7] The text of the proposed rule change is in the form of an amendment to Rule 6420(d)(3)(B).

[8] The text of the proposed rule change to implement the new modifier is contained in NASD Rules 4632(a)(9), 4642(a)(9), 4652(a)(8), and 6620(a)(6).

[9] The NASD intends that the modifier would not apply to "stopped" stock situations. Moreover, by using the modifier, a member would not be absolved of its obligation to provide best execution. in terms of both price and timely execution. The modifier would not be required if the report was made within 90 seconds of the prior reference time.

[10] This rule was originally adopted in 1982 with a limitation of 5,000 shares. *See* Securities Exchange Act Release No. 18602 (March 26, 1982), 47 FR 14642 (April 5, 1982) (notice of filing and order granting accelerated approval of File No. SR–NASD–82–4). The rule was subsequently increased to 10,000 shares in 1984, but has remained at that level ever since. *See* Securities Exchange Act Release No. 21202 (August 3, 1984), 49 FR 31971 (August 9, 1984) (order approving File No. SR–NASD–84–12).

[11] In addition to the amendment to Rule 6420, Nasdaq proposes the corresponding interpretations:

(1) Nasdaq notes that a riskless principal trade generally is one that involves a conditional order rather than one immediately executable by the firm as principal. This condition may involve a customer order, the execution of which is dependent upon finding the other side, or a transaction dependent upon the execution of a part of the order placed with another firm or market; and

(2) Nasdaq notes that, in certain situations, a "marker" order may be a riskless principal trade. Marker orders, usually of nominal size, are used to trigger obligations to other orders the firm may be holding. Under the interpretation of a riskless principal trade, a marker order appears to merit riskless principal treatment for the size of the marker order. Nasdaq, however, believes that, given the purpose for which marker orders are used, the order need not be broken into two separate components to distinguish between a risk and riskless portion, provided, however, that the marker order is no larger than 10% of the size of an execution or group of executions that it would trigger. Nasdaq believes that the nominal size of the marker order does not, to any material extent, change the overall risk profile of the order.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to the NASD and, in particular, with the requirements of Section 15A(b)(6) of the Act.[12] Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster, cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Most specifically, the Commission finds that this rule change will result in more accurate and reliable, information regarding last sale transaction reports consistent with the requirements of Section 15A(b)(6).

The Commission finds that requiring a separate identifier to accurately reflect "out of sequence" trades would provide better information to market participants and the public as to what these trades actually represent. The new modifier would inform the market that the price of the trade is based on an earlier reference point and may bear no relationship to the current market price. In addition, the Commission finds that the removal of the 10,000 share limitation for bunching on the first day of secondary market trading following an IPO will facilitate more efficient and timely reporting of large numbers of trades in the IP aftermarket.

The Commission agrees with the NASD that, for reporting purposes, it is appropriate to treat riskless principal trades as one trade. The Commission finds that discontinuing the distinction between market makers and non-market makers in the context of exchange-listed securities, and thus extending the riskless principal exception to market makers, will provide more accurate trade reporting.[13] The Commission believes that because this proposal would ensure that only one trade report results for transactions that are clearly one trade, transaction reports will be more accurate.

The Commission notes that Rule 10b–10 under the Act[14] requires a broker-dealer acting as market maker in a riskless principal transaction in an exchange-listed security to confirm to its customer the reported trade price, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer. Under Rule 10b–10, the broker-dealer is required to report, as the reported trade price, the price at which the security was reported to the tape when the member purchased the security for, or sold the security to, its customer. This requirement remains in effect regardless of the fact that there is no corresponding requirement in the NASD rules to report that second leg of a riskless principal transaction to the tape. For example, when a market maker receives an execution report from an exchange in a listed security, through ITS or otherwise, and completes a riskless principal transaction by filling a customer order, the market maker must conform to its customer the price of the transaction that was reported to the CTA by the exchange and any mark-up or mark-down charged by the market maker. A failure by a broker-dealer to confirm to its customer the price of the security that was reported to the tape would constitute a violation of Rule 10b–10.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of this amendment in the **Federal Register**. Amendment No. 2 asks only that the Commission approve all of the proposed changes in the original filing and Amendment No.1, with the exception of the proposed ECN trade reporting requirements. Furthermore, Amendment No. 2 states that the NASD will submit a separate response to the Commission regarding the Instinet comment letter addressing the proposed ECN trade reporting requirements. The Commission does not believe that Amendment No. 2 raises any new regulatory issues. The original proposal and Amendment No. 1 were published for the full 21-day comment period, and the Commission received no comments on the proposal other than the Instinet letter addressing ECN trade reporting requirements. Accordingly, the Commission finds good cause, consistent with sections 15A(b)(6)[15] and 19(b)[16] of the Act, to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, section 15A(b)(6). In addition, in granting a partial approval of this rule change, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–98–08) be, and hereby is, approved with the exception of the proposed amendment to Rule 4623 "Electronic Communication Networks."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18111 Filed 7–14–99; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78o–3(b)(6).

[13] The Commission recently approved a proposed rule change to allow an NASD member acting as a market maker to report riskless principal transactions in Nasdaq securities as one transaction. *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

[14] 17 CFR 240.10b–10.

[15] 15 U.S.C. 78o–3(b)(6).

[16] 15 U.S.C. 78(b).

[17] 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41598; File No. SR–NYSE–98–41]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposal Amending Opening Imbalance Publication Procedures for Expiration Days

July 6, 1999.

I. Introduction

On November 25, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its opening imbalance publication procedures for expiration days.[3] On March 22, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on May 11, 1999.[5] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange currently utilizes auxiliary opening procedures on expiration days.[6] Currently, the auxiliary procedures require, among other things, that market order imbalances of 50,000 shares or more in stocks on the Exchange's "special stock" list[7] be published as soon as practicable after 9:00 a.m. on expiration days. The Exchange proposes to amend its auxiliary opening procedure requiring market order imbalance publication on expiration days by eliminating the use of the special stock list. The proposed rule change would require publication of market order imbalances for all stocks with imbalances of 50,000 shares or more. In addition, the proposal would permit the publication of market order imbalances of less than 50,000 shares upon floor official approval.[8]

III. Definition

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change expands the number of stocks for which opening market order imbalances must be published. The current procedures require that market order imbalances be published for stocks contained on the Exchange's special stock list. The proposal, however, requires that market order imbalances of 50,000 or more shares be published for all stocks. Moreover, market order imbalances of under 50,000 shares will be permitted to be published upon approval of a floor official.

The proposed rule change is consistent with the requirements of the Act because it should provide market participants with more complete information concerning market order imbalances in all stocks at the opening on expiration days. The expansion of the coverage of the market order imbalance publication procedure should help specialists attract order flow, which could minimize volatility and lead to more orderly openings on expiration days.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–98–41), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 99–18112 Filed 7–14–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "expiration day" refers to the last business day prior to the expiration or settlement of derivative products.

[4] Letter from Donald Siemer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulations, SEC, dated March 18, 1999 ("Amendment No. 1"). Amendment No. 1 clarified the Exchange's opening procedures for stocks underlying derivative index-related products on expiration days.

[5] Securities Exchange Act Release No. 41359 (May 3, 1999), 64 FR 25387.

[6] Modified opening procedures were first used on a pilot basis for the quarterly expiration on June 19, 1987. *See* Securities Exchange Act Release No. 24596 (June 16, 1987), 52 FR 23618 (June 23, 1987). These procedures were approved permanently in Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474 (June 22, 1998) (File Nos. SR–NYSE–87–11) and SR–NYSE–88–04).

[7] The special stock list consists of the 50 most highly capitalized stocks in the S&P 500 Stock Price Index, any stocks in the Major Market Index (XMI) that are not among the 50, and the 10 most highly capitalized stocks in the S&P 400 MidCap Index. *See* Securities Exchange Act Release No. 31732 (January 14, 1993), 58 FR 6036 (January 25, 1993).

[8] The Exchange submitted a similar proposal eliminating the use of the special stock list for order imbalances published at the close and mandating that market-at-the-close ("MOC") imbalances of 50,000 shares or more be published for all stocks on any trading day and permitting the publication of order imbalances under 50,000 shares upon floor official approval. *See* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998); and NYSE Information Memo No. 98–20 (June 22, 1998).

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "HUB Zone Empowerment Contracting Program Application.

Form No: 2103.

Description of Respondents: SBA Businesses Seeking Certification as a Qualified HUB Zone Small Business Concern.

Annual Responses: 20,000.

Annual Burden: 20,000.

Comments: Send all comments regarding this information collection to Michael McHale, Acting Associate Administrator, Office of HUB Zone, Small Business Administration, 409 3rd Street SW, Suite 8500, Washington, DC 20416. Phone No: 202–205–6731.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Vanessa Piccioni,

Acting Chief, Administrative Information Branch.

[FR Doc. 99–17947 Filed 7–14–99; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Permanent Residence in the United States Under Color of Law (PRUCOL)–0960–0451. Under Pub. L. 104–193, the Personal Responsibility and Work Opportunity Act of 1996, which was effective August 22, 1996, a noncitizen must be a "qualified alien" and meet certain additional requirements in order to be eligible for Supplemental Security Income (SSI). This law also established an exception to the new requirements for certain "nonqualified" aliens (i.e., noncitizens who are not "qualified aliens") to remain on the roles for a temporary period of time. Pub. L. 105–306, Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, enacted October 28, 1998, provided that nonqualified aliens who were receiving SSI on August 22, 1996 would remain eligible for SSI as long as all other requirements for eligibility were met (e.g., income and resources, etc.). Title 20 § 416.1618 of the Code of Federal Regulations requires nonqualified aliens to give SSA certain evidence which proves that they are lawfully admitted to the United States in order to qualify for SSI benefits. PRUCOL aliens must present evidence of their status at the time of application for SSI benefits and periodically thereafter. The respondents are nonqualified aliens who apply for or receive SSI benefits.

Number of Respondents: 9,000.
Frequency of Response: Annually.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 750 hours.

2. Application for Widow's or Widower's Insurance Benefits–0960–0004. The Social Security Administration (SSA) uses the information collected on Form SSA–10–BK to determine whether the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for widow(er)'s benefits.

Number of Respondents: 288,850.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 72,213 hours.

3. Request for Waiver of Overpayment Recovery or Change in Repayment Notice—0960–0037. Form SSA–632 collects information on the circumstances surrounding overpayment of Social Security Benefits to recipients. SSA uses the information to determine whether recovery of an overpayment amount can be waived or must be repaid and, if repaid, how recovery will be made. The respondents are recipients of Social Security, Medicare, Black Lung or Supplemental Security Income overpayments.

Number of Respondents: 500,000.
Frequency of Response: 1.
Average Burden Per Response: 120 minutes.
Estimated Annual Burden: 1,000,000 hours.

4. Voluntary Customer Surveys in Accordance with E.O. 12862 within the Social Security Administration—0960–0526. These voluntary customer surveys will be used to ascertain customer satisfaction with the Social Security Administration in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are the direct or indirect beneficiaries of SSA services. The average burden per response for these activities is estimated to range from 5 minutes for a simple comment card to 2 hours for participation in a focus group.

FY 2000:
Number of Respondents: 1,328,264.
Frequency of Response: 1.
Estimated Annual Burden: 123,231 Hours.

FY 2001:
Number of Respondents: 1,325,760.
Frequency of Response: 1.
Estimated Annual Burden: 122,274 Hours.

FY 2002:
Number of Respondents: 1,327,400.
Frequency of Response: 1.
Estimated Annual Burden: 121,734 Hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Annual Earnings Test—Direct Mail Follow-Up Program Notices—0960–0369. As part of the effort to reinvent government, in 1997 SSA began to use the information reported on W–2's and self-employment tax returns to adjust benefits under the earnings test rather than have beneficiaries make a separate report, which often showed the same information. Since SSA eliminated the annual report forms (formerly Forms SSA–L9778–SM and SSA–L9779–SM), the Mid-Year Mailer (Forms SSA–L9778–SM–SUP, SSA–L9779–SM–SUP and SSA–L9781–SM) has become an even more important tool in helping us to ensure the correct payment of Social Security benefits. The Mid-Year Mailer is used by beneficiaries to update their current year estimate of earnings and to give SSA an estimate of earnings for the following year.

Number of Respondents: 400,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 66,667 hours.

2. Marriage Certification—0960–0009. Form SSA–3 is used by SSA to determine whether the claimant's spouse has the necessary relationship to the worker as required by section 216(h)(1) of the Social Security Act (the Act).

The respondents are applicants for Spouse's Benefits.

Number of Respondents: 180,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.

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Estimated Annual Burden: 15,000 hours.

3. Claimant's Work Background—0960–0300. The information collected on Form HA–4633 is used by SSA in cases in which claimants for disability benefits have requested a hearing, which is a statutory right granted to claimants under the Act, on the decision regarding their claim. A completed form provides an updated summary of a claimant's past relevant work and helps the Administrative Law Judge better decide whether or not the claimant is disabled. The respondents are claimants who request a hearing on entitlement to disability benefits, under titles II and/or XVI of the Act.

Number of Respondents: 120,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 30,000 hours.

4. Report on Individual with Childhood Impairment—0960–0084. Form SSA–1323 is used by SSA to determine the claimant's medical status prior to making disability determinations. The respondents are public and nonpublic schools and agencies who provide status reports on claimants applying for disability benefits.

Number of Respondents: 7,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 2,333 hours.

5. Medicare Buy-In Part B Screening Guide—0960–0601. Pub. L. 105–277 authorizes SSA to conduct a Medicare buy-in demonstration project to evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act. A lack of awareness about the Medicare buy-in programs appears to be one of the major obstacles to enrollments. Other obstacles to enrollment include the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local Medicaid offices.

SSA will screen respondents voluntarily for potential Medicare Part B buy-in eligibility using a screening guide developed for this purpose. The screening guide will collect information from SSA beneficiaries regarding income, resources, marital status, and living arrangements and also ask questions about their awareness of Medicare Part B buy-in programs. SSA will gather this information to identify and overcome obstacles to Medicare Part B buy-in enrollments and to determine potential eligibility for Medicare Part B benefits. The screening guide will be in use from March 1, 1999 through December 31, 1999.

Number of Respondents: 130,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 43,333 hours.

6. State Report of Incorrect Bendex Information—0960–0517. SSA uses the information collected on Form SSA–1086 to correct its master database and to facilitate the electronic exchange of data. The respondents are State agencies administering programs for Aid to Families with Dependent Children.

Number of Respondents: 123.
Frequency of Response: 2.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 41 hours.

(SSA Address)
Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address)
Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503.

Dated: July 9, 1999.

Frederick W. Brickenkamp,
Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–18059 Filed 7–14–99; 8:45 am]
BILLING CODE 4190–29–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Anchorage International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the State of Alaska, Department of Transportation and Public Facilities. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Anchorage International Airport were in compliance with applicable requirements effective January 26, 1999. The proposed noise compatibility program will be approved or disapproved on or before January 4, 2000.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is July 9, 1999. The public comment period ends September 6, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia A. Sullivan, Federal Aviation Administration, Alaskan Region, Airports Division, AAL–600, 222 West 7th Avenue, #14, Anchorage, Alaska 99513, 907–271–5454.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Anchorage International Airport which will be approved or disapproved on or before January 4, 2000. This notice also announces the availability of this program for public review and comment. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Anchorage International Airport, effective on July 9, 1999. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 4, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden in interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Interested persons are invited to comment on the purposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Alaskan Region, Airports Division, AAL–600, 222 West 7th Avenue, #14, Anchorage, Alaska 99513

Maryellen Tuttell, Noise Program Manager, Anchorage International Airport, P.O. Box 196960, Anchorage, Alaska 99519–6960.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Anchorage, Alaska on July 9, 1999.

Ronnie V. Simpson,
Manager, Airports Division, AAL–600, Alaskan Region.

[FR Doc. 99–18030 Filed 7–14–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Final Supplemental Environmental Impact Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Final Supplemental Environmental Impact Statement.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the availability of the Final Supplemental Environmental Impact Statement (FSEIS) for Indianapolis International Airport. This FSEIS concerns the environmental impact of implementing the Air Traffic Noise Abatement Measures described within the FSEIS and the federal funding associated with the land use measures. The FAA will be accepting comments on the document on or before August 16, 1999.

POINT OF CONTACT: Mr. George M. Bebble, Environmental Specialist, AGL–520.E, FAA Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, IL 60018, Telephone (847) 294–7832.

SUPPLEMENTARY INFORMATION: A Final Supplemental Environmental Impact Statement (FSEIS) will be available for public review at the following locations.

(1) Federal Aviation Administration, Air Traffic Division Office, 2300 East Devon Avenue, Des Plaines, IL 60018,

(2) Indianapolis Airport Authority, South High School Road, Indianapolis International Airport, Indianapolis, IN,

(3) Decatur Township Branch Library, 5301 Kentucky Avenue, Indianapolis, IN 46241,

(4) Marion County Public Library, 40 East St. Clair, Indianapolis, IN 46204,

(5) Mooresville Public Library, 220 W. Harrison Street, Mooresville, In 46158,

(6) Plainfield Public Library, 1120 Stafford Road, Plainfield, In 46208,

(7) Wayne Township Branch Library, 198 South Girls School Road, Indianapolis, IN 46214.

Written comments may be addressed to Mr. George M. Bebble, Environmental Specialist, AGL–520.E, FAA Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, IL 60018.

Issued in Des Plaines, Ill., at the above address on July 8, 1999.

David B. Johnson,
Assistant Manager, Air Traffic Division.

[FR Doc. 99–18029 Filed 7–14–99; 8:45 am]
BILLING CODE 4910–17–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint RTCA Special Committee 181/Eurocae Working Group 13, Standards of Navigation Performance

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint Special Committee 181/EUROCAE Working Group 13 meeting to be held July 26–30, 1999, starting at 9 a.m. The meeting will be held at the Transport Canada Place de Ville, Tower C, 330 Sparks Street, Ottawa, Ontario KIA ON8, Canada. The host, Mr. Jim Gregory, may be reached at (613) 991–9923 (phone), (613) 998–7416 (fax).

The agenda will be as follows: Monday, July 26–Tuesday, July 27, 9 a.m.–5 p.m. (1) Working Groups 1 and 2 to meet separately; Wednesday, July 28, (2) Working Groups 1 and 2 to meet separately; Thursday, July 29, 9 a.m.–5 p.m.–Friday, July 30, 9 a.m.–noon, Plenary Session: (3) Chairman's Remarks: (4) Plenary Review DO–201A/ED–77; (5) Working Groups Reports; (6) Dates and Locations of Future Meetings; (7) New Business; (8) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 9, 1999.

Gregory D. Burke,
Designated Official.

[FR Doc 99–18026 Filed 7–14–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172, Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held August 10–13, 1999, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: Tuesday, August 10:

(1) Plenary Convenes at 9 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda. (9:30 a.m.) (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space Minimum Aviation System Performance Standards, continue work on VDL Mode 3. Wednesday, August 11: (a.m.) (5) WG–2 continues work on VDL Mode 3: (p.m.) (6) WG–3, Review of VHF Digital Radio Minimum Operational Performance Standards Document progress and furtherance of work. Thursday, August 12: Plenary Reconvenes at 9 a.m.: (7) Review Summary Minutes of Previous Plenary of SC–172; (8) Reports from WG–2 and WG–3 on Activities; (9) Report on ICAO Aeronautical Mobile Communications

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Panel 6; (10) EUROCAE WG–47 Report and discuss schedule for further work with WG–3; (11) Review Issues List and Address Future Work; (12) Other Business; (13) Dates and Places of Future Meetings; (p.m.) (14) WG–3 continues. Friday, August 13; (15) Working Group's Continue as Required.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 9, 1999.

Gregory D. Burke,

Designated Official.

[FR Doc. 99–18027 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint Special Committee 182/ Eurocae Working Group 48, Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–182/EUROCAE Working Group (WG)–48 meeting will be held August 17–19, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of the Agenda; (3) Review of Meeting Report: Joint RTCA SC–182/EUROCAE WG–48 Meeting, May 11–13, 1999; (4) Review and Disposition Comments to MOPS version 3.0; (5) Finalize MOPS version 4.0 and recommend adoption by RTCA and EUROCAE; (6) Review draft FAA TSO for ACR Applicance; (7) Draft letter to SC–190 regarding reuse tables (Annex E); (8) Date and Place of next meeting; (9) Chairman's Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 9, 1999.

Gregory D. Burke,

Designated Official.

[FR Doc. 99–18028 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: District of Columbia, Prince George's County, Maryland and City of Alexandria and Fairfax County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for a proposed bridge project in the District of Columbia, Prince George's County, Maryland and the City of Alexandria and Fairfax County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John Gerner, Project Manager, Woodrow Wilson Bridge Center, 1800 Duke Street, Suite 200, Alexandria, Virginia 22314, Telephone: (703) 519–9800.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the District of Columbia Department of Public Works, Virginia Department of Transportation, and Maryland State Highway Administration, will prepare a supplement to the final environmental impact statement (FEIS) for a proposal to enhance mobility while addressing community and environmental concerns along I–95/I–495 (Capital Beltway) from west of Telegraph Road to east of MD 210 in the vicinity of the Woodrow Wilson Bridge. The original FEIS for the improvements (FHWA–MD–VA–DC–EIS–91–01–F) was approved on September 2, 1997 and a Record of Decision (ROD) was issued on November 25, 1997. The proposed improvements documented in that FEIS provide for replacing the existing bridge with a new bridge crossing consisting of two new parallel drawbridges, one for eastbound traffic and the other for westbound traffic, constructed approximately thirty feet south of and twenty feet higher than the existing bridge. Each span would have five general purpose traffic lanes (separated into two express and three local lanes), and one lane reserved for future use by public transit or high occupancy vehicle use. Thus, the new bridge would have a total ten general purpose traffic lanes and two lanes reserved for limited future use. Four interchanges adjacent to the bridge, two in Maryland and two in Virginia, will also be reconstructed to provide for roadway widening associated with the larger bridge, smoother traffic flow, and improved access to the bridge.

The location and preliminary design of the project have been approved. However, a U.S. District Court ruling, *City of Alexandria* v. *Slater*, 1999 U.S. DIST. LEXIS 5254 (D. DC April 14, 1999), found that the FEIS was inadequate because a ten lane alternative had not been fully considered, the presentation of construction impacts associated with the project was not detailed enough, and the impact on cultural resources in yet to be selected mitigation sites and possible sites in the construction area were not described (on the last point, the Court also found that the National Historic Preservation Act had been violated). The Federal Government is appealing the Court's decision. The Federal Government is not appealing other portions of the decision dealing with the Clean Air Act.

Although the Federal Highway Administration is appealing this decision, in recognition of the need for timely action on this bridge replacement project, the Federal Highway Administration has decided to begin processing a supplemental environmental impact statement (SEIS) to address the issues raised by the Court and to present information on changes to the project which were not evaluated in the FEIS, even while the appeal of the Court decision is pending. In addition, and since the publication of the FEIS in 1997, the development of the final design has led to a number of changes in the project, resulting in some changes in the boundaries of the project, the configuration of the interchanges, the amount of dredging in the Potomac River, and other relatively limited changes. These changes are best addressed in an SEIS, irrespective of the District Court decision.

This "Alternatives SEIS" is being undertaken to: (1) Do preliminary engineering and design work necessary to develop 10 lane alternative designs, (2) consider these 10 lane alternatives along with the current 12 lane design, (3) address construction impacts and effects upon cultural resources and historic sites in the area, and (4) address changes to the project since the issuance of the ROD.

If the appeal is resolved favorably and the mandate to more fully consider 10 lane alternatives, construction impacts, and yet to be identified historic sites in an SEIS is vacated, development of a "limited scope SEIS" (23 CFR 773.130(f)) only dealing with the changes which have occurred since the 1997 ROD would continue. Work would stop on those matters which flow directly from the District Court's decision, as an SEIS on these issues would then be unnecessary and limiting the scope of the SEIS would allow the project to remain on its original schedule.

If the appeal is not successful, the "Alternatives SEIS" addressing changes to the project since the ROD was issued as well as evaluating various 10 lane alternatives and other issues required by the District Court would be completed.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens and citizen groups who have previously expressed or are known to have an interest in this proposal. It is anticipated that Scoping Meetings will be held both in Virginia and Maryland early in August, 1999.

If the appeal is not successful and an "Alternatives SEIS" is prepared, Public Information Workshops will be held both in Maryland and Virginia in December, 1999 and Public Hearings will be held both in Maryland and Virginia in May, 2000. If the appeal is successful and a "limited scope SEIS" is prepared, the Public Information Workshop will not be conducted, but Public Hearings will be held both in Maryland and Virginia in January, 2000 to present the results of the evaluations of proposed changes to the project since the FEIS and ROD were issued in 1997. In either case, the draft SEIS will be available for public and agency review and comment prior to the Public Hearing. Public notice will be given of the availability of the Draft SEIS for review and of the time and place of the public meetings and hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning these proposed actions and SEIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Nelson J. Castellanos,

Division Administrator, Baltimore, Maryland.

[FR Doc. 99–18095 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Town of Grundy, Virginia

AGENCY: Federal Highway Administration.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to adopt the environmental impact statement prepared by the U.S. Army Corps of Engineers for a flood protection project for the Town of Grundy, which includes an upgrade of existing Route 460, and issue its own Record of Decision.

FOR FURTHER INFORMATION CONTACT: Edward Sundra, Environmental Specialist, Sr., Federal Highway Administration, Post Office Box 10249, 400 North 8th Street, Room 750, Richmond, Virginia 23240–0249, Telephone 804–775–3338.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers (Corps), in cooperation with the Virginia Department of Transportation (VDOT), prepared a draft Environment Impact Statement (EIS) for a joint project to alleviate the potential for flood damages in the Town of Grundy and made it available to the public in August 1993. Included as part of the proposed flood control measures is a highway component involving the upgrade of Route 460 from two to four lanes. The roadway profile would be elevated and the fill slope along with retaining walls used to control the flooding of the Levisa Fork River. A final environmental impact statement was issued in October 1995, and a Record of Decision was issued on September 23, 1997, by the Corps.

Although the FHWA reviewed and commented on the Corp's environmental impact statement when it was originally developed, they were never officially requested to be a cooperating agency in the process. VDOT has expressed an intent to use Federal-aid funds for the highway upgrade component of the project, therefore, the environmental impact statement is being reviewed by FHWA to determine if the EIS can be readily adopted for purposes of complying with NEPA. FHWA will solicit comments by circulating the final environmental impact statement and send out letters describing our intentions and changes that have occurred to the project to the appropriate Federal, State, and local agencies, private organizations, and citizens who have previously been involved or are known to have an interest in this proposal. Finally, notice of the document's availability will be published in local newspapers. Following this review and consideration of any comments received, FHWA, will issue its own Record of Decision.

To ensure that the full range of issues related to this proposed action are identified and addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 9, 1999.

Edward S. Sundra,

Environmental Specialist, Sr.

[FR Doc. 99–18094 Filed 7–14–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33753 (Sub–No. 1)]

South Plains Switching, Ltd. Co.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

South Plains Switching, Ltd. Co. (South Plains), a Class III rail common carrier, has filed a verified notice of exemption under 49 CFR 1150.41 [1] to

[1] On June 7, 1999, a notice of exemption under 49 CFR 1150.41 was served and published (64 FR 30375) for South Plains. *See South Plains Switching, Ltd. Co.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33753. Subsequently, on June 25, 1999, South Plains filed an amended verified notice of exemption. Because the amendment extended the trackage being acquired and decreased the incidental trackage rights being acquired, Board staff notified South Plains' representative that the amended verified notice of exemption would be treated as a new filing under a new docket number and that the filing would require a new filing fee. The notice of exemption in STB Finance Docket No. 33753 (Sub-No. 1) supersedes the earlier notice of exemption served and published on June 7, 1999.

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acquire approximately 74,384 feet of rail lines from The Burlington Northern and Santa Fe Railway Company (BNSF)[2] in Lubbock, TX, as follows: (1) former ATSF side tracks 0310–0313, 0320, 0330–0332, 0340–0341, 0370, 0372–0373, 0380–0382, 0385, 0387, and 0390; and (2) former BN side tracks 9200–9205, 9208, 9220, 9298, 9310, 9320, 9322, 9330, Orchard Lead, 9304, 9311–9312, 9321, 9323–9326, 9331, 9333, 9401–9406, 9409–9412, 9415, and 9420–9424. In conjunction with the acquisition of these rail lines, South Plains will acquire approximately 3 miles of incidental trackage rights over BNSF's mainline between track 9298 and BNSF's Lower Yard at Lubbock.

South Plains reported that it intended to consummate the transaction on or shortly after July 4, 1999. The earliest the transaction can be consummated is July 8, 1999, the effective date of the exemption (7 days after the exemption was filed).[3]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33753 (Sub-No. 1), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William R. Power, Esq., 260 Cordovan Park, 5840 West Interstate Twenty, Arlington, TX 76017.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 8, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18108 Filed 7–14–99; 8:45 am]

BILLING CODE 4915–00–P

[2] On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company (ATSF) merged with and into Burlington Northern Railroad Company (BN). The name of the surviving corporation of the merger is The Burlington Northern and Santa Fe Railway Company.

[3] While the amended verified notice of exemption was received at the Board on June 25, 1999, it was not officially filed until July 1, 1999, when South Plains submitted the required filing fee.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 8, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 16, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0058.
Form Number: IRS Form 1028.
Type of Review: Extension.
Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Service.
Description: Farmer's cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code (IRC) section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 50.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—44 hr., 14 min.
Learning about the law or the form—1 hr., 44 min.
Preparing the form—4 hr., 23 min.
Copying, assembling, and sending the form to the IRS—32 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 2,545 hours.

OMB Number: 1545–0284.
Form Number: IRS Form 5309.
Type of Review: Extension.
Title: Application for Determination of Employee Stock Ownership Plan.
Description: Form 5309 is used in conjunction with Form 5300 or Form 5303 when applying for a determination letter as to a deferred compensation plan's qualification status under section 409 or 4975(e)(7) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 462.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hr., 44 min.
Learning about the law or the form—2 hr., 5 min.
Preparing and sending the form to the IRS—2 hr., 16 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 4,666 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–18107 Filed 7–14–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–23]

Delegation of Authority With Respect to Retirement Programs for District of Columbia Employees

June 23, 1999.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), I hereby delegate to the Assistant Secretary for Management and Chief Financial Officer all duties, powers, rights and obligations of the Secretary under the National CapitalRevitalization and Self-Government Improvement Act of 1997 (Title XI of Public Law 105–33), as amended (the "Revitalization Act"), with respect to the retirement programs for District of Columbia police officers, fire fighters, teachers, and judges (the "Retirement Programs").

2. The duties, powers, rights and obligations delegated to the Assistant Secretary for Management and Chief Financial Officer include, but are not limited to, the authority to issue regulations with respect to the Retirement Programs as authorized by the Revitalization Act.

3. The Assistant Secretary for Management and Chief Financial Officer shall be the "Secretary's designee" for purposes of section 11003(15) of the Revitalization Act, and for any similar statutory provision with respect to the administration of the Retirement Programs.

4. Redelegation:

a. The duties, powers, rights, obligations and functions delegated under this Order to the Assistant Secretary for Management and Chief Financial Officer may be redelegated. Any person receiving such a redelegation shall be the "Secretary's designee" for that purpose.

b. To the extent authorized by the Revitalization Act, the Assistant Secretary for Management and Chief Financial Officer may confer upon any person or other entity outside the Department of the Treasury any duties, rights, powers, obligations, and functions delegated under paragraph 1 of this Order, except the function described in paragraph 2 above. Any person or other entity upon whom such authority is conferred shall be the "Secretary's designee" for that purpose.

5. Any action by an officer or employee of the Department previously taken pursuant to Treasury Order 101–5, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," or other authority in connection with the Retirement Programs, is hereby ratified and approved.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99–18098 Filed 7–14–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–52]

Customs Approval of VIP Chemical Incorporated as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Approval of VIP Chemical, Incorporated, of Corpus Christi, Texas, as a Commercial Gauger.

SUMMARY: VIP Chemical, Incorporated, of Corpus Christi, Texas, has applied to US Customs for approval to gauge petroleum and petroleum products, organic chmeicals and vegetable oils under § 151.13 of the Customs Regulations (19 CFR § 151.13). Customs has determined that this company meets all of the requirements for approval as a commercial gauger. Therefore, in accordance with 151.13(f) of the Customs Regulations, VIP Chemical, Incorporated, of Corpus Christi, Texas is hereby approved to gauge the products named above in all Customs ports.

LOCATION: VIP Chemical Incorporated approved site is located at: Poth Lane (Hess Oil Terminal) Corpus Christi, Texas, 78408.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Parker, Science Officer, Laboratories and Scientific Services, US Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5–B, Washington, DC 20229 at (202) 927–2666.

Dated: July 9, 1999.

Ira S. Reese,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 99–18035 Filed 7–14–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Cuba Travel Declaration

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's Cuba Travel Declaration information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, (tel.: 202/622–2490), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Electronic Form for OFAC License Applications.
OMB Number: 1505–0118.
Abstract: Declarations are to be completed by persons traveling from the United States to Cuba. The declarations will provide the United States Government with information to be used in administering and enforcing economic sanctions imposed against Cuba pursuant to the Cuban Assets Control Regulations, 31 CFR Part 515.
Current Action: Extension.
Type of Review: Extension.
Affected Public: Individuals.
Estimated Number of Respondents: 70,000.
Estimated Time Per Respondent: 2.5 minutes.
Estimated Annual Burden Hours: 175,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 9, 1999.

Lois K. Holland,

Departmental Reports Management Officer, Department of the Treasury.

[FR Doc. 99–18105 Filed 7–14–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Electronic License Application Form

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of

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Foreign Assets Control's Electronic License Application Form information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, (tel.: 202/622–2490), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Electronic Form for OFAC License Applications.

OMB Number: 1505–0170.

Abstract: Transactions prohibited pursuant to the Trading With The Enemy Act, 50 U.S.C. App. 1–44, and the International Emergency Economic Powers Act, 50 U.S.C. 1701, may be authorized by means of specific licenses issued by the Office of Foreign Assets control (OFAC). Such licenses are issued in response to applications submitted by persons or institutions whose property has been blocked or who wish to engage in transactions that would otherwise be prohibited. This form—which provides a standardized method for all applicants and is available in electron form on our website—was new upon OMB's initial approval in December 1998. Applicants are not required to use the form. However, its use greatly facilitates and speeds applicants' submissions and OFAC's processing of applications and obviates the need for applicants to write lengthy letters to OFAC, thus reducing the overall burden of the application process.

Current Action: Extension.

Type of Review: Extension.

Affected Public: Individuals/businesses and other for-profit institutions/banking institutions.

Estimated Number of Respondents: 2,751.

Estimated Time Per Respondent: 30 minutes.

Estimated Annual Burden Hours: 1,376.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 9, 1999.

Lois Holland,

Department Reports Management Officer, Department of the Treasury.

[FR Doc. 99–18106 Filed 7–14–99; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Educational Advising in Mexico City, Mexico

NOTICE: Request for proposals.

SUMMARY: The Office of Academic Programs/Advising Teaching, and Specialized Programs Division of the Bureau of Educational and Cultural Affairs of the United States Information Agency announces an open competition to operate an educational advising center in Mexico City, Mexico. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals for administering an advising center in Mexico City. The educational advising center would be part of USIA's worldwide network of 450 affiliated centers. These centers provide comprehensive and unbiased information to interested students, scholars, and other individuals about study opportunities in the US.

For applicants' information, on October 1, 1999, the Bureau will become part of the United States Department of State without affecting the content of this announcement or the nature of the program described.

Program information

Overview

The advising center in Mexico City should provide access to comprehensive and unbiased information about study opportunities in the US. Services provided by the center must include group and/or individual advising informational sessions. The advising center should provide accurate information and advising on the following topics: US colleges, universities, and other higher education institutions; the application process to a US university; majors and fields of study; testing requirements; life in the US; scholarship programs and financial aid; and predeparture orientation. Advisers will be eligible for training opportunities sponsored by the Agency, which will also provide a limited selection of reference books and materials to the center.

Guidelines

The period of this grant is October 1, 1999 to September 30, 2000.

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $70,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Salaries and benefits.

(2) Office supplies and expenses, including rent, communications, postage and shipping.

(3) Outreach and publicity costs.

(4) Indirect costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number *E/ASA–00–03.*

FOR FURTHER INFORMATION CONTACT: The Advising and Student Services Branch, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, phone: (202) 619–4731, email: ssheehan@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA E/ASA Program Officer Sharen Sheehan on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposals copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on *Monday, August 2, 1999.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *6* copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASA–00–03,* Office of Grants Management, E/XE, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principal both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that in carrying out programs of educational cultural exchange in countries whose people do not fully enjoy freedom and democracy, USIA shall take appropriate step to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange from USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Western Hemsphre Area Office and the USIA posts overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful programs in international education, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

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8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner countries.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: July 7, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–17976 Filed 7–14–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Regional Educational Advising Coordinator (REAC) for Mexico, Central America, and the Caribbean (MCAC) Region; Request for Proposals

SUMMARY: The Office of Academic Programs/Advising, Teaching, and Specialized Programs Division of the bureau of Educational and Cultural Affairs of the United States Information Agency announces an open competition for a Regional Educational Advising Coordinator (REAC) for Mexico, Central America, and the Caribbean (MCAC) Region. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals for a REAC candidate to expand and enhance the sharing of information and materials with the region's advising centers, follow trends in U.S. education and regional exchange, disseminate information on the latest developments in technology and provide direct guidance such as site visits, internships, training and workshops in Mexico, Central America and the Caribbean. The region boasts 53 advising centers in the USIA network. These centers provide comprehensive and unbiased information to interested students, scholars, and other individuals about study opportunities in the US.

For applicants' information, on October 1, 1999, the Bureau will become part of the U.S. Department of State without affecting the content of this announcement or the nature of the program described.

Program Information

Overview: The Regional Educational Advising Coordinator (REAC) will be responsible for providing on-site technical assistance and training to existing centers in the Mexico, Central America, and the Caribbean Region (MCAC) and for coordinating the establishment of any new advising centers, as directed by individual embassies in consultation with E/ASA. The REAC should support any USIA-affiliated center located in the following countries: Mexico, Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Guyana, Surinam, Anguilla, Antigua, Aruba, Bahamas, Barbados, British Virgin Islands, Cayman Islands, Dominica, Dominican Republic, Grand Cayman Island, Grenada, Haiti, Jamaica, Martinique, Montserrat, Nevis, St. Kitts, St. Lucia, St. Vincent and the Grenadines, Tobago, Tortola, and Trinidad. The MCAC REAC, acting as educational advising coordinator for the area, should work impartially with all organizations, binational centers, USIS Posts, universities, libraries, etc. involved in educational advising in the MCAC region to enable them to provide accurate and timely information on U.S. higher educational opportunities. The REAC must work closely with E/ASA and USIS posts throughout the region to help establish priorities for educational advising.

Guidelines: The period of this grant is October 1, 1999 to September 30, 2000.

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $50,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Salary and benefits.

(2) Budget for REAC travel and per diem.

(3) Costs for training materials.

(4) Costs for Regional Adviser Conference.

(5) Office supplies and expenses.

(6) Indirect costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number *E/ASA–00–02.*

FOR FURTHER INFORMATION CONTACT: The Advising and Student Services Branch, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–4731, email: ssheehan@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA E/ASA Program Officer Sharen Sheehan on all other inquiries and correspondence.

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Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

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Review Process

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4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program of project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

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8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner countries.

Authority

Overall grant making authority for this program is contained in the mutual Educational And Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice

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Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated an committed through internal USIA procedures.

Dated: July 8, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–17978 Filed 7–14–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 64, No. 135
Thursday, July 15, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-6337-1]

RIN 2060-AH97

Test Methods: Three New Methods for Velocity and Volumetric Flow Rate Determination in Stacks or Ducts

Correction

In the rule correction C9-11796, printed on page 37196 in the issue of Friday, July 9, 1999 (and rule document 99–11796 beginning on page 26484 in the issue of Friday, May 14, 1999), make the following correction:

Appendix A to Part 60-[Corrected]

Method 2H-Determination of Stack Gas Velocity Taking Into Account Velocity Decay Near the Stack Wall [Corrected]

On page 37196,third column, instruction 35 (and at 64 FR 26558, May 14, 1999, in the first column, equation 2H-10 is) corrected to read as follows:

$$Q_{d_1 \rightarrow d_{last}} = \sum_{d=1}^{d_{last}} Q_d \qquad \text{Eq. 2H-10}$$

[FR Doc. C9–11796 Filed 7–14–99; 8:45 am]

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federal register

Thursday
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Part II

Department of Labor

Employment and Training Administration

Developing USDOL/ETA's Five-Year Research Plan for 2000–2004; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

Developing USDOL/ETA's Five-Year Research Plan for 2000–2004

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of development of USDOL/ETA's Five-Year Research Plan; request for comment; and notice of research symposium.

SUMMARY: Notice is given on the development of the U.S. Department of Labor, Employment and Training Administration's (USDOL/ETA) Five-Year Research Plan for 2000–2004, which plan is required under the Workforce Investment Act (WIA) of 1998, Section 171. The Research Plan will identify the potential research and evaluation efforts that will most assist USDOL/ETA in carrying out workforce development programs under the WIA. Comments on draft Research Plans are requested as part of the iterative process for developing the final Research Plan, which must be transmitted to Congress by July 1, 2000. Notice of the Workforce Development Research Symposium is also given, which is part of USDOL/ETA's broad efforts to obtain public input on the draft Research Plan, including suggestions on areas where future research is needed in employment and training. To obtain additional information on the Research Plan and Research Symposium, and to provide comments, visit the website at the following address: http://www.heldrich.rutgers.edu/USDOL-ETA-ResearchPlan.

DATES: A. An initial July 6, 1999 draft of the Research Plan is currently available for comment, and a revised draft will be available for comment on September 30, 1999. Comments on the July 6, 1999 draft must be received by August 30 for incorporation into the September 30, 1999 draft. Comments on the September 30, 1999 draft must be received by October 30 for incorporation into the final draft of the Research Plan.

B. The National Workforce Development Research Symposium will be held on Tuesday, July 27, 1999, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: A. All written comments on the USDOL/ETA Research Plan should be sent by mail to USDOL/ETA Research Plan, c/o Heldrich Center for Workforce Development, Rutgers University, 33 Livingston Avenue, 5th Floor, New Brunswick, NJ 08901; by fax at (732) 932–3454, by e-mail to hcwd@rci.rutgers.edu; or through the Internet at the website address http://www.heldrich.rutgers.edu/USDOL-ETA-ResearchPlan. B. The National Workforce Development Research Symposium will be held at the Capitol Hilton Hotel, 16th and K Streets, NW, Washington, DC 20036. All interested parties are encouraged to attend. There is no registration fee, but prior registration is required. Seating is limited to 100 attendees, and will be available on a first-come, first-served basis. Instructions for registration are provided below under the supplementary information.

FOR FURTHER INFORMATION CONTACT: A. For information related to the Research Plan, contact Janet Javar, USDOL/ETA, Office of Policy and Research, N–5637, 200 Constitution Ave., NW, 20210; fax: (202) 219–5455; e-mail: jjavar@doleta.gov. B. For information related to the Research Symposium, contact Aaron Fichtner, Heldrich Center for Workforce Development at Rutgers University, USDOL/ETA Research Plan, c/o Heldrich Center for Workforce Development, Rutgers University, 33 Livingston Avenue 5th Floor, New Brunswick, NJ 08901; fax: (732) 932–3454; e-mail: hcwd@rci.rutgers.edu.

SUPPLEMENTARY INFORMATION:

A. Why Is the U.S. Department of Labor/Employment and Training Administration (USDOL/ETA) Developing a Five-Year Research Plan?

Under the Workforce Investment Act (WIA) of 1998, Section 171, the Secretary of Labor is required to prepare a Five-Year Research Plan every two years. The first Research Plan under the WIA must be published in the **Federal Register** and transmitted to Congress by July 1, 2000. By requiring such a plan, the WIA has given USDOL/ETA the unique opportunity to conduct a literature review of previous employment and training studies and the research methodologies used for these studies, and to propose an agenda for the next five years (beginning July 2000) for pilots, demonstrations, research, and evaluation studies in areas related to workforce development programs and policies.

B. What Is the Purpose of the Research Plan, and How Is It Structured?

The Five-Year Research Plan will identify the potential research and evaluation efforts that will most assist USDOL/ETA in carrying out workforce development programs under WIA. The Research Plan will focus primarily on proposing an agenda for applied research and demonstration topic areas in employment and training that endeavor to test new approaches, and describe the most successful and best practices, with the aim of providing a learning opportunity for policy-makers and practitioners.

The Research Plan will consist of the following sections:

—A review of relevant literature in employment and training research, such as research sponsored by USDOL, research by individuals and research institutions, and related research by the U.S. Department of Health and Human Services (HHS), the U.S. Department of Education (DoEd), and other federal agencies;
—An analysis of alternative research methodologies that should be used for various types of employment and training research;
—A presentation of potential research topics and evaluations that might be conducted in the next five years; and
—Recommendations for high priority topic areas which should be initiated over the next several years.

C. What Is the Process for Developing the Research Plan?

The John J. Heldrich Center for Workforce Development at Rutgers University is providing staff assistance to USDOL/ETA in developing the Research Plan, including preparing drafts of the plan. Available drafts of the Research Plan are for discussion only, and not for reproduction or quotation. These drafts are being developed by the Heldrich Center, and thus do not necessarily represent the official policies or positions of the U.S. Department of Labor. The USDOL/ETA has the responsibility for revising the submitted draft Research Plan into a final Research Plan, formally clearing the final Research Plan, publishing the final version of the plan in the **Federal Register**, and transmitting the final plan to Congress, as required by WIA.

The Research Plan is being developed through the input of a wide range of individuals and organizations, including research and policy offices of the USDOL, program offices of ETA, research departments of other Federal agencies, State and local levels of workforce development agencies, members of an Expert Panel, and other stakeholders in employment and training. In addition to publishing in the **Federal Register**, efforts to obtain input include establishing a website and convening the National Workforce Development Research Symposium.

D. What Is the National Workforce Development Research Symposium?

On July 27, 1999, the U.S. Department of Labor/Employment and Training Administration and the Heldrich Center for Workforce Development at Rutgers University will convene a National Workforce Development Research Symposium in Washington, DC. This one-day symposium will bring together a variety of individuals with expertise in research in employment and training. The goal of the Research Symposium is to identify, through structured discussion, priorities for future research in employment and training. Concurrent sessions will focus on topic areas such as understanding the labor market, interventions to assist in-school and out-of-school youth, interventions to assist dislocated workers, interventions to assist adults (including welfare recipients and disadvantaged adults), interventions to assist individuals with disabilities and other special populations, unemployment insurance, new tools in employment and training (including reemployment incentives and self-employment/ microenterprise development), alternative methodologies for employment and training research, and national datasets needed for employment and training research.

Individuals interested in attending the Research Symposium should register by July 16, 1999. There is no registration fee, but prior registration is required. Seating is limited to 100 attendees, and will be available on a first-come, first-served basis. Persons with disabilities, needing special accommodations, should contact Aaron Fichtner of the Heldrich Center by July 16, 1999.

You can register for the Research Symposium by the following:

Mail: Mail your name, e-mail address, organization, telephone number, address, fax number, city, state, and zip code to USDOL/ETA Research Plan, c/o Heldrich Center for Workforce Development, Rutgers University, 33 Livingston Avenue 5th Floor, New Brunswick, NJ 08901.

Fax: Fax your name, e-mail address, organization, telephone number, address, fax number, city, state, and zip code to the Heldrich Center for Workforce Development at Rutgers University at (732) 932–3454.

Internet: Visit the Research Plan website at *http://www.heldrich.rutgers.edu/USDOL-ETA-ResearchPlan* to register online.

You will receive confirmation of your registration by mail, fax, or e-mail; the method will correspond to your registration method. Background materials for the Research Symposium, including the agenda for the day, is currently available on the Research Plan website.

E. To Contribute to the Development of the Research Plan

To make a suggestion, offer a comment, or request a written copy of an early draft of the Research Plan, please contact the Heldrich Center by mail at USDOL/ETA Research Plan, c/o Heldrich Center for Workforce Development, Rutgers University, 33 Livingston Avenue 5th Floor, New Brunswick, NJ 08901, by fax at (732) 932–3454, or by e-mail to hcwd@rci.rutgers.edu. You can also visit *http://www.heldrich.rutgers.edu/USDOL-ETA-ResearchPlan*. This website was developed by the Heldrich Center to allow a wide variety of individuals to provide input into the Research Plan as it is being developed.

Review an Early Draft of the Research Plan

An early draft of the Research Plan is currently available for your review. You can request this draft to be mailed to you or you can download it directly from the website. This early draft contains the first two parts of the plan:

—Section I: Review of Recent Research, Evaluation and Demonstration Initiatives and Identification of Needs, and
—Section II: Review of Alternative Methodologies for Employment and Training Research.

Section III (List of Potential Research Topics/Subject Areas) and Section IV (Recommendations for High-Priority Subject Areas) will be developed during the summer and fall of 1999, based upon further input from the U.S. Department of Labor, other Federal agencies, the Expert Panel, and the larger stakeholder community.

Comment on the Drafts of the Research Plan

Please submit your written comments on various drafts of the Research Plan by mail, fax, e-mail, or through the website. Include your name, address and contact information with your comments.

Suggest Areas Where Future Research Is Needed in Employment and Training

Section III of the Research Plan—List of Potential Research Topics/Subject Areas, and Section IV—Recommendations for High Priority Subject Areas—will be developed based upon extensive public input. Please submit your written suggestions for areas where you think future research is needed in employment and training by mail, fax, e-mail, or through the website. Include your name, address and contact information with your comments.

Signed at Washington, DC, this 9th day of July, 1999.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 99–18003 Filed 7–14–99; 8:45 am]

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Part III

Department of Education

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Inviting Applications for New Awards Under Certain Programs for Fiscal Year 2000; Notice

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DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, and 84.133P]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 2000

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR part 356.
Field-Initiated Projects—34 CFR part 350.
Advanced Rehabilitation Research Training Projects—34 CFR part 350.

Note: Research activities involving human subjects supported by awards under these programs are subject to Department of Education Regulations for the protection of human subjects. Applicants answering "Yes" to item 11 on form ED 424 whose research activities are nonexempt must complete the six-point narrative on protection of human subjects described in the Attachment to form ED 424. Copies of the Department of Education regulations for the protection of human subjects are available from the Grants Policy and Oversight Staff (GPOS), Office of the Chief Financial Officer, Washington, DC, telephone: (202) 708–8263 and on the protection of human subjects in research Web Site at: http://ocfo.ed.gov/humansub.htm

Program Title: Research Fellowships.
CFDA Number: 84.133F.

Purpose: The purpose of the Research Fellowship program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities. Fellows may conduct original research in any area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows may address problems encountered by persons with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships. To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

The Fellowship awards are for twelve months and include a fixed stipend and a flat rate allowance for research and research-related expenses including travel expenses. Applicants are not required to submit budget proposals.

Selection Criteria: The Secretary evaluates applications for Fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of the Institute.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Only individuals are eligible to be recipients of Fellowships. Institutions are not eligible to be recipients of Fellowships.

Program Authority: 29 U.S.C. 762(e).

APPLICATION NOTICE FOR FISCAL YEAR 2000 RESEARCH FELLOWSHIPS, CFDA NO. 84.133F

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Research Fellowships	September 30, 1999	10	Merit: $45,000; Distinguished: $55,000.	12

Program Title: Field-Initiated Projects.

CFDA Number: 84.133G.

Purpose: Field-Initiated (FI) projects must further one or both of the following purposes: (1) develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; or (2) improve the effectiveness of services authorized under the Act.

Field-Initiated projects carry out either research activities or development activities.

In carrying out a research activity, a grantee must identify one or more hypotheses, and based on the hypotheses identified, perform an intensive systematic study directed toward new or full scientific knowledge or understanding of the subject or problem studied.

In carrying out a development activity, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

Target population means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved since a project may affect those who receive services, provide services, or administer services.

There are two different sets of selection criteria for FI projects: one set to evaluate applications proposing to carry out research activities, and a second set to evaluate applications proposing to carry out development activities. The set of FI selection criteria that will be used to evaluate an application will be based on the applicant's designation of the type of activity that the application proposes to carry out.

Note: An applicant for a field-initiated project should clearly identify on the cover page of the application whether the proposal is for a research project or for a development project.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are: (1) Collaborative international assistive technology and rehabilitation engineering projects including, but not limited to, projects that could be carried out under Science and Technology Agreements between the U.S. and other countries; (2) projects that address the impact of managing medication therapies on work transition issues for persons with HIV-AIDS; (3) projects to develop rehabilitation techniques for children and youth with receptive language disorders using objective measures of functional and neurological outcomes; (4) projects that address the problems of interface to information technology systems for persons with cognitive disabilities, such as mental retardation, brain injury, and dementia; and (5) projects to identify and develop methodologies appropriate for use in community-based research on various aspects of disability, rehabilitation, and living independently in the community.

Selection Criteria: Research Project

The Secretary uses the following criteria to evaluate a Field-Initiated Project application that proposes to carry out research activities.

(a) *Importance of the problem* (15 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the extent to which the applicant clearly describes the need and target population.

(b) *Design of research activities* (50 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (10 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (10 points);

(C) Each sample population is appropriate and of sufficient size (10 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (10 points); and

(E) The data analysis methods are appropriate (10 points).

(c) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments.

(d) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (13 points).

(e) *Adequacy and accessibility of resources* (10 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (5 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (5 points).

Selection Criteria: Development Project

The Secretary uses the following criteria to evaluate a Field-Initiated Project application that proposes to carry out development activities.

(a) *Importance of the problem* (15 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (5 points).

(ii) The extent to which the proposed activities further the purposes of the Act (4 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (6 points).

(b) *Design of development activities* (50 points total).

(1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2)(i) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(ii) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) the proposed project will use the most effective and appropriate technology available in developing the new device or technique (10 points);

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology (10 points);

(C) The new device or technique will be developed and tested in an appropriate environment (5 points);

(D) The new device or technique is likely to be cost-effective and useful (10 points);

(E) The new device or technique has the potential for commercial or private

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manufacture, marketing, and distribution of the product (5 points); and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products (10 points).

(c) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments.

(d) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (13 points).

(e) *Adequacy and accessibility of resources* (10 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (5 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (5 points).

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 764.

APPLICATION NOTICE FOR FISCAL YEAR 2000 FIELD-INITIATED PROJECTS, CFDA NO. 84.133G

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Field-Initiated Projects	September 30, 1999	30	$150,000	36

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Advanced Rehabilitation Research Training Projects.

CFDA Number: 84.133P.

Purpose: Advanced Rehabilitation Research Training (ARRT) Projects must provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience. ARRT Projects train rehabilitation researchers, including individuals with disabilities, with particular attention to research areas that support the implementation and objectives of the Rehabilitation Act and that improve the effectiveness of services authorized under the Act.

ARRT Projects must carry out all of the following activities: recruit and select candidates for advanced research training; provide a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and may involve collaboration among institutions; provide research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involves each individual in clinical research and in practical activities with organizations representing individuals with disabilities; provide academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions; and provide opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings as appropriate for the individual's field of study and level of experience.

Selection Criteria: Advanced Rehabilitation Research Training Projects

The Secretary uses the following criteria to evaluate an Advanced Rehabilitation Research Training Project application.

(a) *Importance of the problem* (10 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers (10 points).

(b) *Design of training activities* (40 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (5 points).

(ii) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (6 points).

(iii) The extent to which the applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities (7 points).

(iv) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers (6 points).

(v) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers (6 points).

(vi) The extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers (5 points).

(vii) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate (5 points).

(c) *Plan of operation* (10 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (5 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (5 points).

(d) *Collaboration* (5 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (2 points).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (1 point).

(e) *Adequacy and reasonableness of the budget* (10 points).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (4 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (3 points).

(iii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner (3 points).

(f) *Plan of evaluation* (10 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (2 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (2 points).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(g) *Project staff* (10 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the project staff includes outstanding scientists in the field (1 point).

(iv) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(h) *Adequacy and accessibility of resources* (5 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The quality of an applicant's past performance in carrying out a grant (1 point).

(iii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (1 point).

(iv) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 762(k).

APPLICATION NOTICE FOR FISCAL YEAR 2000 ADVANCED REHABILITATION RESEARCH TRAINING PROJECTS, CFDA NO. 84.133P

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Advanced Rehabilitation Research Training Projects.	September 30, 1999	5	$150,000	60

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

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Instructions for Application Narrative

Recommended Page Limits: Field Initiated and Advanced Rehabilitation Research Projects

The Secretary strongly recommends that applicants for FI or ARRT projects:

(1) Include a one-page abstract in their application;

(2) Limit Part III—Application Narrative to no more than 50 double-spaced 8.5 x 11" pages (on one side only) with one inch margins (top, bottom, and sides);

(3) Double-space (no more than 3 lines per vertical inch) all sections of text in the application narrative; and

(4) Use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch.

The recommended application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resume or resumes, bibliography, or letters of support, while considered part of the application, are not subject to the recommended page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed previously. The recommendations for double-spacing and font do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable.

Note: An applicant for a field-initiated project should clearly identify on the cover page of the application whether the proposal is for a research or for a development project.

Strict Page Limits: Research Fellowships

The research proposal for a Fellowship application must be limited to no more than 12 pages.

Note: The Secretary will reject without consideration or evaluation any application for a Research Fellowship that does not adhere to the 12-page limit.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room # 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 1/12/99)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(**Note:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service completed application form has been received. Team, U.S. Department of Education, 400 Maryland Avenue SW., room 3317, Switzer Building, Washington, DC 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3423, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 760–762.

Dated: July 8, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register.** However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. Applicants for an Advanced Rehabilitation Research Training project must limit indirect charges to 8 percent. Applicants for a Field-Initiated project program should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Fellowship awards are made to individuals, therefore indirect cost rates do not apply.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date.

Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name:
Address:
City | State | County | ZIP Code + 4
Organizational Unit

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 → Title:

4. Project Director:
Address:
City | State | ZIP Code + 4
Tel. #: ( ) - Fax #: ( ) -
E-Mail Address:

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)*
A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify):*

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #:
OR
b. Assurance of Compliance #:
c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) - Fax #: ( ) -
d. E-Mail Address:
e. Signature of Authorized Representative | Date: ___/___/_____

REV. 1/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of Item 11 are then not applicable.**

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of Item 11.**

If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

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PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

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OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Previous Edition Usable

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Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

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U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350

Research Training and Career Development Program - (CFDA No. 84.133P) 34 CFR Part 350.

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establiahing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such

conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.);
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ (Signature)

_____ (Date)

_____ (Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

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OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ___ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offe./application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ___ Prime ___ Subawardee Tier_____, if Known: **Congressional District, if known:**		**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**
6. Federal Department/Agency:		**7. Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*		**9. Award Amount,** *if known:* **$**
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*		**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only		**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99–17975 Filed 7–14–99; 8:45 am]
BILLING CODE 4000–01–C

federal register

Thursday
July 15, 1999

Part IV

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility Under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840–AC75

Institutional Eligibility Under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations amend the regulations that govern institutional eligibility for and participation in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the Campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) programs, the Federal Pell Grant Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly known as the State Student Incentive Grant (SSIG) Program). These proposed regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments). Many of the proposed regulatory changes merely conform current regulatory provisions to the statutory changes.

DATES: We must receive your comments on or before September 13, 1999.

ADDRESSES: Address all comments about these proposed regulations to Cheryl Leibovitz, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: *IENPRM@ed.gov*

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Cheryl Leibovitz. Telephone: (202) 708–9900. If you use a telecommunications device for the deaf (TDD), you may call the Federal information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General

The proposed regulations revise the current Institutional Eligibility regulations, 34 CFR part 600, and the Student Assistance General Provisions regulations, 34 CFR part 668, which govern institutional eligibility for, and participation in, the title IV, HEA programs. The revisions implement the 1998 Amendments, Pub. L. 105–244, enacted October 7, 1998.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process of why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over the course of several months beginning in January. Except as noted elsewhere in this preamble, the proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of Committee IV on the issues addressed in this notice of proposed rulemaking (NPRM). Committee IV was made up of the following members:

- American Association of Collegiate Registrars and Admissions Officers
- American Association of Community Colleges
- American Association of Cosmetology Schools
- American Association of State Colleges and Universities
- American Council on Education
- Association of American Universities
- Association of Jesuit Colleges and Universities
- Career College Association
- Council for Higher Education Accreditation
- Council of Recognized National Accrediting Agencies
- Council for Regional Accrediting Commissions
- Education Finance Council
- Legal Services Counsel (a coalition)
- National Association of College and University Business Officers
- National Association for Equal Opportunity in Higher Education
- National Association of Independent Colleges and Universities
- National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)
- National Association of State Universities and Land-Grant Colleges
- National Association of Student Financial Aid Administrators
- National Direct Student Loan Coalition
- National Women's Law Center
- State Higher Education Executive Officers Association
- The College Board
- The College Fund/United Negro College Fund
- United States Department of Education
- United States Student Association
- U.S. Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all the proposed regulations contained in this NPRM except for the regulations governing the implementation of the "90/10 rule," which is part of the definition of an eligible "proprietary institution of higher education" that can be found in § 600.5.

Discussion of the proposed regulations will first cover those areas on which the negotiators reached a consensus, and will then cover the proposed regulations implementing the 90/10 rule.

Section 600.2 Definitions

Prior to the 1998 Amendments, a State was defined to include the "Trust Territory of the Pacific Islands." Now, instead of that term, a State includes the "Freely Associated States." The Freely Associated States include the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The proposed regulations would amend the definition of the term "State" to reflect those changes.

Section 600.4 Institution of Higher Education; § 600.5 Proprietary Institution of Higher Education; and § 600.6 Postsecondary Vocational Institution

Each of these sections has a provision that states that the Secretary does not currently recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to "binding" arbitration. The proposed regulations would change these provisions to require an institution to agree to submit any such dispute to "initial" arbitration to conform them to the literal language of the statute imposing that requirement (section 496(e) of the HEA).

Section 600.7 Conditions of Institutional Ineligibility

The proposed regulations would amend § 600.7(a) to make technical changes to § 600.7(a)(1) (iii) and (iv) to more accurately reflect the statute (section 102(a)(3) (C) and (D) of the HEA). Section 600.7(a)(1)(iii) currently provides that an educational institution does not qualify as an eligible institution if twenty-five percent or more of the institution's regular enrolled students were incarcerated. Section 600.7(a)(1)(iv) provides that an educational institution does not qualify as an eligible institution if fifty-percent or more of its regularly enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma. The proposed regulations would change these provisions to read "more than twenty-five percent" and "more than fifty percent," respectively, to reflect the wording of the statute (sections 102(a)(3)(C) and (D) of the HEA).

The proposed regulations would amend § 600.7(c) to reflect a change made by the 1998 Amendments that expands the waiver provision for institutions whose enrollment of incarcerated students exceeds 25 percent. Prior to the 1998 Amendments, a public or nonprofit private institution could obtain a waiver of this limitation only if it provided a two- or four-year program for which it awarded an associate degree or bachelor's degree. As amended, the institution could also obtain a waiver if it provides a two- or four-year program for which it awards a "postsecondary diploma."

Section 600.8 Treatment of a Branch Campus

The proposed regulations would amend this section to reflect a change made by the 1998 Amendments that clarifies that a branch campus must exist as a branch campus for at least two years after the Secretary certifies it as a branch campus before seeking to be certified as a main or free-standing campus. The proposed regulations would also conform changes in § 600.5(b)(3)(i) and § 600.6(b)(3)(iii).

Section 600.31 Change in Ownership Resulting in a Change of Control

As amended by the 1998 Amendments, section 498(i)(4) of the HEA authorizes the Secretary to permit an institution undergoing a change in ownership that results in a change in control to continue to participate in the title IV, HEA programs on a provisional basis if the institution meets certain requirements. Those requirements include submitting a materially complete application that is received by the Department within 10 business days of the date on which the change of ownership takes place.

The proposed regulations would amend § 600.31 by deleting § 600.31(f), which prohibits an institution from submitting a materially complete application before the change of ownership takes place. Because section 498(i)(4) of the HEA supersedes the limitation in § 600.31(f), the revised regulations would permit institutions to submit applications before a change in ownership takes place.

Section 600.55 Additional Criteria for Determining Whether a Foreign Medical School is Eligible To Apply To Participate in the FFEL Programs

Section 600.55(a)(5)(i)(A) is amended to reflect the amendment to section 484(a)(5) of the HEA made by the 1998 Amendments. Section 484(a)(5) contains

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citizenship and residency requirements that the Secretary is required to reference under section 102(a)(2)(A)(i)(I) of the HEA in fashioning criteria to determine the comparability of foreign graduate medical schools to domestic graduate medical schools.

Section 600.56 Additional Criteria for Determining Whether a Foreign Veterinary School is Eligible To Apply To Participate in the FFEL Programs

The 1998 Amendments added special eligibility provisions for foreign veterinary schools. Those schools are now subject to many, but not all, of the same special eligibility requirements that the statute previously applied to foreign medical schools. Most notably, a foreign veterinary school is now ineligible to apply to participate in the FFEL Program unless either its clinical training program has been approved by a State continuously since 1992, or its students complete clinical training at an approved veterinary school located in the United States. The proposed regulation follows the amendments, treating foreign veterinary schools and foreign medical schools identically for eligibility purposes to the extent indicated by the statute.

Section 668.12 Application Procedures

As previously noted with regard to § 600.31, amended section 498(i)(4) of the HEA authorizes the Secretary to permit an institution seeking approval of a change in ownership to continue to participate in the title IV, HEA programs on a provisional basis if the institution meets certain requirements. One of those requirements is the submission of a materially complete application that is received by the Department within 10 business days of the date on which the change of ownership takes place.

If an institution submits a materially complete application in a timely manner, the institution may continue to participate in the title IV, HEA programs on a provisional basis until the earlier of (1) the date the Secretary approves or disapproves the application, or (2) the end of the month following the month in which the change in ownership occurred. However, if the Secretary has not issued a decision on the application within that period, the institution may continue to participate provisionally on a month-to-month basis until the Secretary issues a decision on the institution's application, provided the institution submits any additional documentation requested by the Department promptly.

The proposed regulations would implement these provisions in § 668.12(f) and (g). In particular, proposed § 668.12(f) specifies the documents that must be submitted to be considered a "materially complete application." Proposed § 668.12(g) contains the terms and conditions under which the institution may continue to participate in the title IV, HEA programs while its application is being reviewed. This paragraph also includes the additional documents that must be submitted before the Secretary will issue a decision on the application or extend the institution's participation on a month-to-month basis. The Secretary wishes to clarify that all institutions that undergo a change of ownership must submit a "same day" balance sheet showing the financial position of the institution, as of the date of the ownership change, in order to continue participation in the Title IV, HEA programs.

Section 668.13 Certification Procedures

The proposed regulation would change the maximum period of time that an institution may be certified to participate in the Title IV, HEA programs from four years to six years. This change implements a statutory change in the HEA made by the 1998 Amendments.

Section 668.14 Program Participation Agreement

As a result of a statutory change to the HEA by the 1998 Amendments, an institution that has undergone a change in ownership that results in a change in control does not have to use a Default Management Plan during the first two years of its participation in the FFEL or Direct Loan Programs if certain conditions are met. These conditions are (1) that the institution, including any branch campus, does not have a cohort default rate in excess of 10 percent, and (2) that the institution's owners do not own and have not owned an institution with a cohort default rate in excess of 10 percent. The proposed regulations would amend § 668.14 to reflect that change.

The proposed regulations would combine the provisions requiring Default Management Plans currently included in § 668.14(b)(15) and (b)(16) into a single paragraph, § 668.14(b)(15), and remove and reserve § 668.14(b)(16).

The proposed regulations would revise § 668.14(b)(20) to require that a co-educational institution that has an intercollegiate athletic program agree to comply with the provisions of § 668.48. This change conforms the regulations to changes made to the HEA by the 1998 Amendments.

The proposed regulations would simplify the regulations by removing § 668.14(d) and (e), which govern collection and reporting of information concerning athletically-related aid, because those requirements also are contained in § 668.48. In a separate NPRM, the proposed amendments to § 668.48 would implement statutory changes made to the HEA by the 1998 Amendments on that issue.

The proposed regulations would amend § 668.14(b)(24) to clarify that the institution is agreeing to comply with the requirements of § 668.22, currently titled "Institutional Refunds and Repayments." Another NPRM proposes to incorporate into § 668.22 the new statutory requirements for the return of Title IV, HEA program funds.

The proposed regulations would add a new § 668.14(d) to reflect the addition of section 487(a)(23) to the HEA. That new section requires an institution to make a good faith effort to distribute mail voter registration forms to its students. The 1998 Amendments, however, prohibit any officer of the Executive Branch from instructing an institution in the manner in which this provision is carried out. Therefore, the proposed regulations incorporates the provisions of section 487(a)(23) *verbatim* into § 668.14(d) with minor changes to incorporate plain language requirements.

The amended HEA provides that section 487(a)(23) applies only to institutions that are located in States to which section 4(b) of the National Voter Registration Act, 42 U.S.C. 1973gg–2(b) does not apply.

If an institution must comply with § 668.14(d), it must make a good faith effort to distribute mail voter registration forms to its students for elections for governor and for elections defined in section 301(1) of the Federal Election Campaign Act of 1971, 2 U.S.C. 431(1). That section defines the term "election" to be "(A) a general, special, primary, or runoff election; (B) a convention or caucus of a political party which has authority to nominate a candidate; (C) a primary election held for the selection of delegates to a national nominating convention of a political party; and (D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President."

Section 668.27 Waiver of Annual Audit Submission Requirement

As amended by the 1998 Amendments, the HEA authorizes the waiver of the requirement that an institution submit on an annual basis a compliance audit of its administration of the Title IV, HEA programs and audited financial statements. If the waiver is granted, the waiver may extend for up to three fiscal years.

The proposed regulations would add § 668.27 to implement the following waiver requirement. The 1998 Amendments provide that in order to receive a waiver, the institution must have delivered less than $200,000 of Title IV, HEA program funds in each of the two award years preceding the waiver period. The 1998 Amendments further provide that the institution must also post a letter of credit in an amount equal to 50 percent of the institution's "annual potential liability."

What is being proposed to be waived under this provision is the annual audit submission requirement for compliance audits. The institution is still required to have its administration of the Title IV, HEA programs audited for the waiver period. Therefore, if an institution is granted a waiver for three years, when the waiver period expires and the institution must submit its next compliance audit, that audit must cover the institution's administration of the Title IV, HEA programs since the end of the period covered by its last submitted compliance audit.

For example, an institution's fiscal year coincides with an award year. It submits a compliance audit for its fiscal year that ends on June 30, 2000, and then receives a waiver so that its next compliance audit is due six months after the end of its 2002–2003 fiscal year. When it submits that audit, the audit must cover its administration of the Title IV, HEA programs for the 2000–2001 and 2001–2002 fiscal years as well as the 2002–2003 fiscal year.

With regard to the audited financial statement, an institution will need to submit an audit only of its latest fiscal year.

However, the auditor who conducts its compliance audit or prepares its audited financial statement must determine that the institution satisfied the conditions of institutional eligibility set forth in § 600.7 (dealing with, for example, correspondence courses and students, and incarcerated students) for each year covered by the waiver. Similarly, if the institution is a proprietary institution of higher education, the auditor must audit the institution's determination that it satisfied the 90/10 rule for each year covered by the waiver.

In implementing this provision, the committee recognized that for this provision to have any practical value, an institution's cost of obtaining a letter of credit in an amount equal to 50 percent of "annual potential liability" must be less than the cost of performing the required audits. The committee concluded that a letter of credit in an amount equal to 10 percent of an institution's Title IV, HEA programs disbursements for an award year was the appropriate amount to satisfy that purpose. However, such a low amount is reasonable only for a low-risk institution that is strong financially and has a history of proper administration of the Title IV, HEA programs. Accordingly, the committee agreed to permit waivers only for institutions that met the criteria in § 668.27(c).

Section 668.92 Fines

The 1998 Amendments revised the HEA to provide that an individual who exercises substantial control over an institution and willfully fails to pay refund obligations on student loans must pay those refunds, and is subject to the penalty established under section 6672(a) of the Internal Revenue Code of 1986 with respect to nonpayment of taxes. The committee determined that this provision applies to both individuals who fail to pay refunds under the terms of § 668.22 when that section refers to refund obligations, *i.e.*, up to and including June 30, 2000, and to individuals who fail to return Title IV, HEA program funds when that section refers to the return of Title IV, HEA program funds, *i.e.*, on or after July 1, 2000.

Section 668.95 Reimbursements, Refunds and Offsets; Section 668.113 Request for Review

The proposed regulations would add paragraph (d) to § 668.95 to implement the statutory change to the HEA made by the 1998 Amendments that allows institutions to correct or cure an error that results from administrative, accounting, or recordkeeping error, if that error was not part of a pattern of error and there is no evidence of fraud or misconduct related to the error. Section 668.92(d) provides that the Secretary will not limit, suspend, terminate, or fine the institution if such an error is cured.

A similar addition has been made to § 668.113(d). That paragraph provides that the Secretary will permit an institution to correct or cure an error and will not impose a liability if the institution eliminates the basis of the liability by curing or correcting the error.

90/10 Rule

Section 600.5 Proprietary Institution of Higher Education

Prior to the 1998 Amendments, an eligible proprietary institution had to derive at least 15 percent of its revenues from non-title IV, HEA sources. The 1998 Amendments reduced that percent to 10 percent. The proposed regulations would amend § 600.5(a)(8) to reflect that change.

Cash Basis of Accounting. Treatment of Institutional Scholarships and Loans

The Committee IV negotiators did not reach consensus on how to implement the statutory provision that requires a proprietary institution of higher education to derive a portion of its revenue from sources outside of the Title IV, HEA programs.

The Higher Education Amendments of 1992 changed the statutory definition of a proprietary institution of higher education to require that such an institution derive at least 15 percent of its revenue from non-Title IV, HEA program funds. The Secretary implemented that provision with the so-called 85/15 rule that is contained primarily in § 600.5(d).

In the notice of proposed rulemaking for the 85/15 rule that was published in the **Federal Register** of February 10, 1994 (59 FR 6446–64675), the Secretary proposed that, in calculating their compliance with the 85/15 rule, institutions could report the amount of Title IV, HEA program funds in the numerator of the 85/15 rule fraction (Title IV revenue over total revenue) using the cash basis of accounting, and total revenue generated in the denominator using the accrual basis of accounting. The Secretary received overwhelming negative comments on that proposal. The commenters pointed out that it did not make sense to calculate the numerator and denominator under different bases of accounting.

The Secretary agreed, and in the final rule required that institutions use the cash basis of accounting to report Title IV revenue in the numerator and total revenue in the denominator. The Secretary chose that method because institutions report and account for their Title IV, HEA program expenditures under that basis of accounting.

After § 600.5(d), which set forth the 85/15 rule, was published as a final regulation in the **Federal Register** of April 29, 1994 (59 FR 22324, 22328), questions arose with regard to the treatment of institutional scholarships and loans under the cash basis of accounting.

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Therefore, to remove any apparent or perceived ambiguities that may exist with regard to the current regulations, the Secretary is proposing a number of clarifications regarding compliance with the "85/15 rule", including its application to institutional scholarships and loans. These revisions are in addition to those needed to reflect the new statutory minimum percentage of income that such an institution must derive from non-Title IV HEA program funds.

In these proposed regulations, the Secretary makes explicit in § 600.5(d)(2) that an institution must use the cash basis of accounting in reporting Title IV, HEA program funds in the numerator and revenues generated in the denominator of the fraction in § 600.5(d)(1). Further, in § 600.5(d)(3), the Secretary describes the circumstances under which institutional scholarships and loans may be considered as revenue generated by the institution in the denominator of the fraction.

During the course of the regulatory negotiations, some negotiators expressed the view that the circumstances under which the proposed regulations permit institutional scholarships to be included as revenue were too narrow. The Department's negotiator, as well as others disagreed. The Department's position on this matter is based on the following.

It is the Secretary's understanding that, in general, as an accounting matter, revenue is an inflow or other enhancement of assets to an entity, or a reduction of its liabilities, resulting from the delivery or production of goods or services. Under the cash basis of accounting, revenue is recognized by an entity when that entity receives cash, *i.e.*, when there is an inflow of cash to the entity. In contrast, under the accrual basis of accounting, an entity recognizes revenue when it earns that revenue, regardless of whether there is any inflow of cash at the point revenue is recognized.

As a result, in order for an institution to recognize revenue under the cash basis of accounting, that revenue must represent cash received from a source outside the institution. With regard to institutional loans, when an institution makes a loan to a student, it does not receive cash from an outside source; in fact, it does not receive any cash. Accordingly, cash revenue from institutional loans are recognized only when those loans are repaid, because that is when there is an inflow of cash from an outside source.

Similarly, institutional grants and scholarships awarded to students do not generally result in revenue for the institution. In fact, the American Institute of Certified Public Accountants (AICPA) and the National Association of College and University Business Officers (NACUBO) instruct institutions to treat institutional scholarships as a reduction in revenue or as an expense. However, the Secretary proposes to allow institutional grants or scholarships that represent funds that originated from a source outside of the institution, to be considered to be income to the institution. For example, if an alumnus of the institution donated funds to the institution and expressly provided that the funds were to be used for institutional scholarships, scholarships from an account designated for scholarships and made up solely of those funds (and earnings on those funds) would be considered to represent income to the institution.

Institutional grants in the form of tuition waivers do not count as revenue because no new revenue is generated. Similarly, internal transfers of cash among accounts are generally not considered revenue to the institution because they do not represent an inflow of cash to the institution. An exception to this general rule would be a case, like the one noted previously, in which the account in question that is the source of a scholarship is a scholarship account made up of funds that originated from outside of the institution that represent income (and of interest on those funds). The proposed rule would allow an institution to include institutional grants and scholarships in the calculation of compliance with the rule if the institution can demonstrate that those funds represent an increase in cash to the institution that would be counted as income. Examples of cash that does not represent income include borrowing money and using the proceeds from the borrowing to make institutional scholarships or the sale of stock where the institution uses the proceeds to make institutional scholarships.

Treatment of FWS, LEAP and Matching Funds

In proposed § 600.5(e)(1), the Secretary clarifies that, in calculating compliance with the rule, an institution does not count, in the numerator or denominator, funds it receives under the Federal Work Study or LEAP (formerly SSIG) Program, and does not include in the denominator any funds it uses to satisfy a required match in a Title IV, HEA program.

Presumption That Title IV, HEA Program Funds Are Used To Pay Institutional Charges

Some negotiators objected to the current rule contained in § 600.5(d)(v) that provides that Title IV, HEA programs funds disbursed to students must be presumed to be used to pay the students' tuition, fees and other institutional charges so that those funds are included in the numerator of the fraction. These negotiators proposed exceptions to this rule over and above those already included in § 600.5(d)(2)(v)(A) and (B). (In this NPRM, § 600.5(d)(2)(v) is redesignated as § 600.5(e)(2), and § 600.5(d)(2)(v)(A) and (B) is redesignated as § 600.5(e)(3)(i) and (ii)).

The Secretary has agreed to include one additional exception, prepaid State tuition plans, and has included that exception in proposed § 600.5(e)(3)(iii). The rationale for including this exception is that funds from this type of plan are generally transmitted directly from the State to the institution for institutional charges. The Secretary did not agree to include other potential sources of payment of institutional charges because funds from those other sources, such as Education IRAs, are either no different from other types of family investments, or the tracking of those funds would be extremely problematic.

Several other changes have been made to this section that simply remove references that dealt with periods of time that are no longer relevant.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

Summary of Potential Costs and Benefits

Elsewhere in this preamble we discuss the potential costs and benefits of these proposed regulations under the following headings: *Regulatory Flexibility Act Certification* and *Paperwork Reduction Act of 1995.*

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

- The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:
- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 600.5 Proprietary institution of higher education.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these proposed regulations are institutions of higher education that participate in the Title IV, HEA programs. These institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. These proposed regulations would ease administrative and regulatory burden, without requiring significant changes to current institutional system operations, by: reducing the required percentage of revenue that a proprietary institution must derive from non-Title IV sources; expanding institutional eligibility for the FFEL program to include foreign veterinary schools with clinical training programs that have been approved by a State since January 1, 1992; simplifying application and certification procedures; expanding the timeframe for institutional certification to six years; and providing for a waiver of the annual audit submission requirement.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Section 600.7 contains an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Conditions of Institutional Eligibility

Institutions of higher education must maintain certain conditions and requirements to remain eligible to participate in Title IV, HEA programs. Moreover, an institution may become ineligible if it fails to meet, or exceeds certain thresholds as prescribed in the HEA. This regulation monitors the composition of regular student enrollment in the following areas: telecommunications courses, correspondence courses, ability-to-benefit students and incarcerated students, and also enhances the waiver provisions for institutions whose enrollment of incarcerated students exceeds twenty-five percent. The Department needs and uses this information to gauge continuing eligibility.

Every six years, the institution must collect and report this information to the Department. The questions asked to determine compliance are now affirmatively structured, so that an institution will report to the Department if it does exceed any of the prescribed thresholds. There are approximately 5,800 respondents that we anticipate will be reviewed over the six-year period. We estimate the annual reporting and recordkeeping burden for this collection of information to average two hours per respondent for approximately 1,500 respondents in a given year. This measure includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 3,000 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

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Intergovernmental Review

The campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Opportunity Grant (FSEOG) programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) programs, the Federal Pell Grant Program, and the LEAP Program are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office, toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program.)

List of Subjects in

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: July 9, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is amended to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099(c), unless otherwise noted.

2. In § 600.2, the definition of the term "State" is revised to read as follows:

§ 600.2 Definitions.

* * * * *

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also know as the Freely Associated States.

* * * * *

3. In § 600.4, paragraph (c) is revised to read as follows:

§ 600.4 Institution of higher education.

* * * * *

(c) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

* * * * *

4. In § 600.5, paragraph (h) is removed; paragraph (i) is redesignated as paragraph (h); and paragraphs (a)(8), (b)(3)(i), (d), (e), (f), (g), and redesignated paragraph (h) are revised to read as follows:

§ 600.5 Proprietary institution of higher education.

(a) * * *

(8) Has no more than 90 percent of its revenues derived from title IV, HEA program funds, as determined under paragraph (d) of this section.

(b) * * *

(3) * * *

(i) Counts any period during which the applicant institution has been certified as a branch campus; and

* * * * *

(d)(1) An institution satisfies the requirement contained in paragraph (a)(8) of this section by examining its revenues under the following formula for its latest complete fiscal year:

Title IV, HEA program funds the institution used to satisfy its students' tuition, fees, and other institutional charges to students.

The sum of revenues including title IV, HEA program funds generated by the institution from: tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in 34 CFR 668.8; and activities conducted by the institution, to the extent not included in tuition, fees, and other institutional charges, that are necessary for the education or training of its students who are enrolled in those eligible programs.

(2) An institution must use the cash basis of accounting when calculating the amount of title IV, HEA program funds in the numerator and the total amount of revenue generated by the institution in the denominator of the fraction contained in paragraph (d)(1) of this section.

(3) Under the cash basis of accounting—

(i) In calculating the amount of revenue generated by the institution from institutional loans, the institution must include only the amount of loan repayments received by the institution during the fiscal year; and

(ii) In calculating the amount of revenue generated by the institution from institutional scholarships, the institution must include only the amount of funds it disbursed during the fiscal year from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or interest accrued on those funds.

(e) With regard to the formula contained in paragraph(d)(1) of this section—

(1) The institution may not include as title IV, HEA program funds in the numerator nor as revenue generated by the institution in the denominator—

(i) The amount of funds it received under the Leveraging Educational Assistance Partnership (LEAP) or Federal Work-Study (FWS) programs. (The LEAP Program was formerly called the State Student Incentive Grant or SSIG Program.);

(ii) The amount of institutional funds it used to match title IV, HEA program funds;

(iii) The amount of title IV, HEA program funds that must be refunded or returned under § 668.22; or

(iv) The amount charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) In determining the amount of title IV, HEA program funds received by the institution under the cash basis of accounting, except as provided in paragraph (e)(3) of this section, the institution must presume that any title IV, HEA program funds disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, and therefore must include those funds in the numerator and denominator.

(3) In paragraph (e)(2) of this section, the institution may not presume that title IV, HEA program funds were used to pay tuition, fees, and other institutional charges to the extent that those charges were satisfied by—

(i) Grant funds provided by non-Federal public agencies, or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement described in § 600.7(d), or

(iii) Funds provided by State prepaid tuition plans.

(4) With regard to the denominator, revenue generated by the institution from activities it conducts, that are necessary for its students' education or training, includes only revenue from those activities that—

(i) Are conducted on campus or at a facility under the control of the institution;

(ii) Are performed under the supervision of a member of the institution's faculty; and

(iii) Are required to be performed by all students in a specific educational program at the institution.

(f) An institution must notify the Secretary within 90 days following the end of the fiscal year used in paragraph (d)(1) of this section if it fails to satisfy the requirement contained in paragraph (a)(8) of this section.

(g) If an institution loses its eligibility because it failed to satisfy the requirement contained in paragraph (a)(8) of this section, to regain its eligibility it must demonstrate compliance with all eligibility requirements for at least the fiscal year following the fiscal year used in paragraph (d)(1) of this section.

(h) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

* * * * *

5. In § 600.6, paragraphs (b)(3)(iii) and (c) are revised to read as follows:

§ 600.6 Postsecondary vocational institution.

* * * * *

(b) * * *

(3) * * *

(iii) Counts any period during which the applicant institution has been certified as a branch campus; and

* * * * *

(c) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

* * * * *

6–7. In § 600.7, paragraphs (a)(1)(iii), (a)(1)(iv), and (c) are revised to read as follows:

§ 600.7 Conditions of institutional ineligibility.

(a) * * *

(1) * * *

(iii) More than twenty-five percent of the institution's regular enrolled students were incarcerated;

(iv) More than fifty percent of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively;

* * * * *

(c) *Special provisions regarding incarcerated students*—(1) *Exception.* The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma.

(2) *Waiver for entire institution.* If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) *Other waivers.* If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section—

(i) For the four-year and two-year programs for which it awards a bachelor's degree, an associate degree or a postsecondary diploma; and

(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

* * * * *

8. Section 600.8 is revised to read as follows:

§ 600.8 Treatment of a branch campus.

A branch campus of an eligible institution must be in existence for at least two years as a branch campus after the branch is certified as a branch campus before seeking to be designated as a main campus or a free-standing institution.

(Authority: 20 U.S.C. 1099c)

9. In § 600.31, paragraph (f) is removed.

10. In § 600.55, paragraph (a)(5)(i)(A) is revised to read as follows:

§ 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.

(a) * * *

(5) * * *

(i) * * *

(A) During the academic year preceding the year for which any of the school's students seeks an FFEL program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class were persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); and

* * * * *

11. Section 600.56 is redesignated as § 600.57.

12. A new § 600.56 is added to read as follows—

§ 600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the FFEL programs.

(a) The Secretary considers a foreign veterinary school to be eligible to apply to participate in the FFEL programs if,

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in addition to satisfying the criteria in § 600.54 (except the criterion that the institution be public or private nonprofit), the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom veterinary instruction that is supervised closely by members of the school's faculty, and that is provided either—

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction; or

(ii) In the United States, through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(2) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(3) The school employs for the program described in paragraph (a)(1) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at veterinary schools in the United States.

(4) Either—

(i) The veterinary school's clinical training program was approved by a State as of January 1, 1992, and is currently approved by that State; or

(ii) The veterinary school's students complete their clinical training at an approved veterinary school located in the United States.

(Authority: 20 U.S.C. 1082 and 1088)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

13. The authority citation for part 668 is amended to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

14. In § 668.12, paragraphs (f) and (g) are added and the authority citation is revised to read as follows:

§ 668.12 Application procedures.

* * * * *

(f)(1) *Application for provisional extension of certification.* If an institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in § 600.31, the Secretary may continue the institution's participation in those programs on a provisional basis, if the institution under the new ownership submits a "materially complete application" that is received by the Secretary no later than 10 business days after the change occurs.

(2) For purposes of this section, an institution submits a materially complete application if it submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution's State license or equivalent document that—as of the day before the change in ownership—authorized or will authorize the institution to provide a program of postsecondary education in the State in which it is physically located;

(ii) A copy of the document from the institution's accrediting association that—as of the day before the change in ownership—granted or will grant the institution accreditation status, including approval of the non-degree programs it offers;

(iii) Audited financial statements of the institution's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of § 668.23; and

(iv) Audited financial statements of the institution's new owner's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of § 668.23, or equivalent information for that owner that is acceptable to the Secretary.

(g) *Terms of the extension.* (1) If the Secretary approves the institution's materially complete application, the Secretary provides the institution with a provisional Program Participation Agreement (PPA). The provisional PPA extends the terms and conditions of the program participation agreement that were in effect for the institution before its change of ownership.

(2) The provisional PPA expires on the earlier of—

(i) The date on which the Secretary signs a new program participation agreement;

(ii) The date on which the Secretary notifies the institution that its application is denied; or

(iii) The last day of the month following the month in which the change of ownership occurred, unless the provisions of paragraph (f)(3) of this section apply.

(3) If the provisional PPA will expire under the provisions of paragraph (f)(2)(iii) of this section, the Secretary extends the provisional PPA on a month-to-month basis after the expiration date described in paragraph (f)(2)(iii) of this section if, prior to that expiration date, the institution provides the Secretary with—

(i) A "same day" balance sheet showing the financial position of the institution, as of the date of the ownership change, that is prepared in accordance with "GAAP" (Generally Accepted Accounting Principles published by the Financial Accounting Standards Board) and audited in accordance with "GAGAS" (Generally Accepted Government Auditing Standards published by the U.S. General Accounting Office);

(ii) If not already provided, approval of the change of ownership from the State in which the institution is located by the agency that authorizes the institution to legally provide postsecondary education in that State;

(iii) If not already provided, approval of the change of ownership from the institution's accrediting agency; and

(iv) A default management plan unless the institution is exempt from providing that plan under 34 CFR 668.14(b)(15).

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

15. In § 668.13, paragraph (b)(1) is amended by removing "four years" in the second sentence, and adding, in its place, "six years".

16. Section 668.14 is amended by removing paragraphs (d) and (e); by redesignating paragraphs (f), (g), (h), and (i) as paragraphs (e), (f), (g), and (h), respectively; by removing and reserving paragraph (b)(16); by revising paragraphs (b)(15), (b)(20), and (b)(24); and by adding a new paragraph (d), to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(15)(i) Except as provided under paragraph (b)(15)(ii) of this section, the institution will use a default management plan approved by the Secretary with regard to its administration of the FFEL or Direct Loan programs, or both for at least the first two years of its participation in those programs, if the institution—

(A) Is participating in the FFEL or Direct Loan programs for the first time; or

(B) Is an institution that has undergone a change of ownership that results in a change in control and is participating in the FFEL or Direct Loan programs.

(ii) The institution does not have to use an approved default management plan if—

(A) The institution, including its main campus and any branch campus, does not have a cohort default rate in excess of 10 percent; and

(B) The owner of the institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent.

(iii) The Secretary approves any default management plan that incorporates the default reduction measures described in appendix D to this part;

* * * * *

(20) In the case of an institution that is co-educational and has an intercollegiate athletic program, it will comply with the provisions of § 668.48;

* * * * *

(24) It will comply with the requirements of § 668.22;

* * * * *

(d)(1) The institution, if located in a State to which section 4(b) of the National Voter Registration Act (42 U.S.C. 1973gg–2(b)) does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make those forms widely available to students at the institution.

(2) The institution must request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution is not liable for not meeting the requirements of this section during that election year.

(3) This paragraph applies to elections as defined in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1)), and includes the election for Governor or other chief executive within such State.

* * * * *

17. A new § 668.27 is added to read as follows:

§ 668.27 Waiver of annual audit submission requirement.

(a) *General.* (1) At the request of an institution, the Secretary may waive the annual audit submission requirement for the period of time contained in paragraph (b) of this section if the institution satisfies the requirements contained in paragraph (c) of this section and posts a letter of credit in the amount determined in paragraph (d) of this section.

(2) An institution requesting a waiver must submit an application to the Secretary at such time and in such manner as the Secretary prescribes.

(b) *Waiver period.* (1) If the Secretary grants the waiver, the institution need not submit its next annual compliance or audited financial statement until six months after—

(i) The end of the third fiscal year following the fiscal year for which the institution last submitted a compliance audit and audited financial statement; or

(ii) The end of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits if the award year in which the institution will apply for recertification is part of the third fiscal year.

(2) The Secretary does not grant a waiver if the award year in which the institution will apply for recertification is part of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits.

(3) When an institution must submit its next compliance and financial statement audits under paragraph (b)(1) of this section—

(i) The institution must submit a compliance audit that covers the institution's administration of the title IV, HEA programs for the period from the last waiver, and an audited financial statement for its last fiscal year; and

(ii) The auditor who conducts the audit must audit the institution's annual determinations for the period subject to the waiver that it satisfied the 90/10 rule in § 600.5(d) and (e) and the other conditions of institutional eligibility in § 600.7, and disclose the results of the audit of the 90/10 rule for each year in accordance with § 668.23(d)(4).

(c) *Criteria for granting the waiver.* The Secretary grants a waiver of the annual audit requirement to an institution if the institution—

(1) Is not a foreign institution;

(2) Did not disburse $200,000 or more of title IV, HEA program funds during each of the two completed award years preceding the institution's waiver request;

(3) Agrees to keep records relating to each award year in the unaudited period for two years after the end of the record retention period in § 668.24(e) for that award year;

(4) Has participated in the title IV, HEA programs under the same ownership for at least three award years preceding the institution's waiver request;

(5) Is financially responsible under § 668.171, and does not rely on the alternative standards of § 668.175 to participate in the title IV, HEA programs;

(6) Is not on the reimbursement or cash monitoring system of payment;

(7) Has not been the subject of a limitation, suspension, fine, or termination proceeding, or emergency action initiated by the Department or a guarantee agency in the three years preceding the institution's waiver request;

(8) Has submitted its compliance audits and audited financial statements for the previous two fiscal years in accordance with and subject to § 668.23, and no individual audit disclosed liabilities in excess of $10,000; and

(9) Submits a letter of credit in the amount determined in paragraph (d) of this section, which must remain in effect until the Secretary has resolved the audit covering the award years subject to the waiver.

(d) *Letter of credit amount.* For purposes of this section, the letter of credit amount equals 10 percent of the amount of title IV, HEA program funds the institution disbursed to or on behalf of its students during the award year preceding the institution's waiver request.

(e) *Rescission of the waiver.* The Secretary rescinds the waiver if the institution—

(1) Disburses more than $200,000 of title IV, HEA program funds for an award year;

(2) Undergoes a change in ownership that results in a change of control; or

(3) Becomes the subject of an emergency action or a limitation, suspension, fine, or termination action initiated by the Department or a guarantee agency.

(f) *Renewal.* An institution may request a renewal of its waiver when it submits its audits under paragraph (b) of this section. The Secretary grants the waiver if the audits and other information available to the Secretary show that the institution continues to satisfy the criteria for receiving that waiver.

(Authority: 20 U.S.C. 1094)

18. In § 668.92, a new paragraph (d) is added and the authority citation is revised to read as follows:

§ 668.92 Fines.

* * * * *

(d)(1) Notwithstanding any other provision of statute or regulation, any individual described in paragraph (d)(2) of this section, in addition to other penalties provided by law, is liable to the Secretary for amounts that should have been refunded or returned under § 668.22 of the title IV program funds not returned, to the same extent with respect to those funds that such an

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individual would be liable as a responsible person for a penalty under section 6672(a) of Internal Revenue Code of 1986 with respect to the nonpayment of taxes.

(2) The individual subject to the penalty described in paragraph (d)(1) is any individual who—

(i) The Secretary determines, in accordance with § 668.174(c), exercises substantial control over an institution participating in, or seeking to participate in, a program under this title;

(ii) Is required under § 668.22 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower, or was required under § 668.22 in effect on June 30, 2000 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower; and

(iii) Willfully fails to return those funds or willfully attempts in any manner to evade that payment.

(Authority: 20 U.S.C. 1094 and 1099c)

19. In § 668.95, a new paragraph (d) is added and the authority citation is revised to read as follows:

§ 668.95 Reimbursements, refunds and offsets.

* * * * *

(d) If an institution's violation in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error. If the institution corrects or cures the error, the Secretary does not limit, suspend, terminate, or fine the institution for that error.

(Authority: 20 U.S.C. 1094 and 1099c–1)

20. In § 668.113, a new paragraph (d) is added and the authority citation is revised to read as follows:

§ 668.113 Request for review.

* * * * *

(d)(1) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

(2) If the institution is charged with a liability as a result of an error described in paragraph (d)(1) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

* * * * *

(Authority: 20 U.S.C. 1094 and 1099c–1)

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Part V

Department of Housing and Urban Development

24 CFR Part 290

Multi-Family Housing; Up-Front Grants and Loans in the Disposition; Proposed Rulemaking

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 290

[Docket No. FR–4310–P–01]

RIN 2502–AH12

Up-Front Grants and Loans in the Disposition of Multifamily Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish generally applicable requirements to govern the use of up-front grants and loans in the disposition of HUD-owned multifamily properties by defining the projects, sales, and purchasers eligible for up-front grants and loans, and setting both a maximum per-unit and overall cap for up-front grant amounts. This proposed rule would promote the affordability and viability of multifamily housing projects.

DATES: *Comments Due Date:* September 13, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Marc Harris, Supervisory Project Manager, Office of Portfolio Management in Multifamily Housing, Department of Housing and Urban Development, Room 6164, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2654. Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD's statutory authority to manage and dispose of HUD-held multifamily housing projects is contained in section 207(k) and (l) of the National Housing Act, in section 203 of the Housing and Community Development Amendments of 1978 (HCDA 1978) and in section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (approved September 26, 1996, Public Law 104–204), (FY 1997 Appropriations Act). HCDA 1978 section 203 was amended by the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Public Law 102–233, approved April 11, 1994) which authorized the use of up-front grants for the necessary cost of rehabilitation and other related development costs at section 203(f)(4). This section also authorizes project-based assistance under section 8 of the United States Housing Act of 1937 as the source of funding for the up-front grants.

The Department's authority and discretion in matters relating to the disposition of multifamily housing projects was expanded by section 204 which permits HUD to manage and dispose of multifamily properties owned by the Secretary, "on such terms and conditions as the Secretary may determine". Section 204 was amended by section 213 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (approved October 27, 1997, Public Law 105–65) (FY 1998 Appropriations Act). Section 213 clarified that the General Insurance Fund could be used to provide grants and loans for the necessary costs of rehabilitation or demolition, but limited this authority to FYs 1997 and 1998. Section 206 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, (approved October 21, 1998, Pub.L. 105–276) (FY 1999 Appropriations Act) extends this authority for an additional year, through FY 1999. The use of the General Insurance Fund as authorized in these appropriations Acts, however, is limited to grants and loans for rehabilitation or demolition activities. Section 8 project-based assistance is the only source of up-front grant funding for total rebuilding. The FY 1999 Appropriations Act, however, did not provide any Section 8 project-based funds for property disposition.

The discretion conferred under section 204 of the FY 1997 Appropriations Act, as amended by the FYs 1998 and 1999 Appropriations Acts, is very broad, and HUD is, therefore, proposing this rule to implement generally applicable requirements for up-front grants and loans. The procedures in this rule would be followed for all up-front grants and loans made with whatever funds are authorized and available. If Section 8 project-based assistance is not available, or if the authorization to use the General Insurance Fund is not extended beyond FY 1999, up-front grants and loans will not be available as an option in the disposition of multifamily projects.

This rule would add a new § 290.27 to part 290 to implement generally applicable requirements for eligible projects, sales and purchasers, and for a maximum grant or loan amount on a per-unit basis. Until the regulation takes effect, those portions of the Guidance Memorandum issued February 27, 1997, which conform with applicable statutes and regulations, may be used on a case-by-case basis.

HUD's goal in promulgating generally applicable eligibility requirements for up-front grants and loans is to promote the affordability and viability of multifamily housing projects. Under this proposed rule, to be eligible for an up-front grant or loan, a project would have to be currently serving very low-income residents (at least 50% of units occupied by very low-income residents at the time HUD approves a Disposition Program); be located in a housing market with a need for affordable housing (vacancy rate of habitable, affordable, multifamily housing is 4% or less); and generate sufficient income after rehabilitation or rebuilding to be viable and provide affordable housing for at least 20 years or the term of the loan, whichever is shorter.

The rule would also limit the use of up-front grants or loans in negotiated sales, which involve no competitive bidding among prospective purchasers, to three categories of purchasers: (1) the unit of general local government, including a public housing agency in the area in which the project is located, (2) the State in which the project is located, or (3) an agency of the federal government. Otherwise, an up-front grant or loan will only be considered as a possible option in a competitive sale. HUD has determined that these general limitations are appropriate measures to limit its exposure to loss and conserve housing resources. Making an up-front grant or loan an option in a negotiated sale with a unit of government is consistent with the statutory right, under HCDA 1974 section 203, of first refusal accorded such entities. State and local governments would also be more familiar and involved with local plans and needs, and would have greater authority and capacity to control local factors that could affect the viability and affordability of the project. In all other cases, a competitive sale is more appropriate to permit choice among a range of plans and ensure the best use of up-front grant or loan amounts.

This rule would also provide for a grant or loan limit of 50 percent of the total development cost (TDC) per project, which may not exceed $40,000 per affordable, finished unit. The actual grant or loan amount provided within these limits will be determined on a case-by-case basis depending upon rehabilitation, demolition, rebuilding, and other development costs approved by HUD. It will be the responsibility of the purchaser to obtain funds for the remaining rehabilitation, demolition or development costs. HUD has determined that it is appropriate to give the purchaser this responsibility because the purchaser's ability to raise the balance of funds necessary to complete the project provides assurance that other lenders or contributors have made an independent determination that the proposed plan for the project is viable, and that they are willing to commit to its success.

II. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements for the disposition of multifamily housing projects under 24 CFR part 290 have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0204. This rule does not contain additional information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410.

Regulatory Planning and Review

This rule has been reviewed in accordance with Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. These requirements address only one aspect (up-front grants) of the requirements governing the management and disposition of HUD-owned multifamily housing projects, and should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell. Nevertheless, HUD is soliciting comment specifically to elicit issues of importance to small entities.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, *Federalism*, that this rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The specific requirements of this rule do not impose any additional terms and conditions on States or local governments that acquire projects under this rule, and therefore no further review is necessary or appropriate.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 290

Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 290 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS AND CERTAIN MULTIFAMILY PROJECTS SUBJECT TO HUD-HELD MORTGAGES

1. The authority citation for 24 CFR part 290 continues to read as follows:

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d) and 3535(i).

2. A new § 290.27 is added to subpart A to read as follows:

§ 290.27 Up-front grants and loans.

(a) *General.* HUD may provide up-front grants and loans for rehabilitation, demolition, rebuilding and other related development costs as part of the disposition of a multifamily housing project that is HUD-owned, upon making a determination that such a grant or loan would be more cost-effective than project-based rental assistance.

(b) *Eligible projects.* An up-front grant or loan can be made available in the sale of a HUD-owned multifamily housing project that:

(1) Has more than 50% of the units in the project occupied by very low-income residents at the time a disposition plan is approved by HUD;

(2) Is located in a housing market or submarket in which there is not sufficient habitable, affordable, rental housing, as defined in § 290.3;

(3) Will generate, after rehabilitation or rebuilding, sufficient rental income in a competitive market to cover all operating expenses, meet after sale debt service requirements, fund required reserves and throw-off positive cash flow;

(4) Will provide affordable housing for at least 20 years or the term of the loan, whichever is shorter, after the rehabilitation and/or rebuilding is completed; and

(5) Meets such other requirements, including deed restrictions, loan provisions, and monetary penalties for non-performance, as HUD may determine are appropriate on a case-by-case basis.

(c) *Eligible sales and purchasers*—(1) *Negotiated sales to governmental entities.* A negotiated sale of a project with an up-front grant or loan can only be made to the unit of general local government, which includes public housing agencies, in the area in which the project is located; or a State agency designated by the chief executive officer of the State in which the project is located; or an agency of the Federal government.

(2) *Other sales and purchasers.* All sales which provide up-front grants or loans to entities other than those described in paragraph (c)(1) of this section must be conducted through a competitive selection process. All general and limited partnerships or their nominees, joint ventures or other entities assembled for purposes of purchasing the project and which have

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a governmental entity as a partner or other participant are considered profit motivated purchasers and not governmental entities, whether or not there is a non-profit, public, corporate or individual general partner.

(d) *Up-front grant or loan amount.* The maximum that HUD will fund per project in an up-front grant or loan is 50 percent of total development cost (TDC), or $40,000 per affordable, finished unit, whichever amount is less. TDC covers construction materials, artisan services, professional services, developers services, and overhead, relocation and operating losses that are incurred to plan, perform and complete repairs or rebuilding.

Dated: March 25, 1999.

William Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–18066 Filed 7–14–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 through 285

[Amdt. No. 373]

RIN 0584–AB38

Food Stamp Program: 1995 Quality Control Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On September 10, 1996, the Department of Agriculture published proposed technical changes to the Food Stamp Program's quality control system which were intended to reduce the workload on State agencies and improve the efficiency of the quality control system. This final rule addresses significant comments received in response to the regulatory changes proposed in the proposed rule and finalizes regulatory changes to the Food Stamp Program's quality control system in the following areas: negative case reviews, State agency minimum sample sizes for active and negative case reviews, state sampling procedures, Federal subsample size formulas, error dollar tolerance level, home visits, case completion standards, and miscellaneous technical corrections.

DATES: *Effective Dates:* 7 CFR 275.23(e)(6)(iii) is effective on July 16, 1999. All remaining provisions are effective on October 1, 1999.

Implementation Dates: 7 CFR 275.23(e)(6)(iii) is to be implemented on July 16, 1999. The following provisions are to be implemented on October 1, 2000, with the start of the Fiscal Year 2001 quality control review period: 7 CFR 271.2; 7 CFR 275.3(c)(3)(ii); 7 CFR 275.10(a); 7 CFR 275.11(c)(1); 275.11(e)(2); 7 CFR 275.11(f)(2); 7 CFR 275.13(a); 275.13(b); 275.13(c)(1); 275.13(c)(2); 7 CFR 275.13(f) and 275.23(c)(4). All remaining provisions are to be implemented October 1, 1999, with the start of the Fiscal Year 2000 quality control review period.

FOR FURTHER INFORMATION CONTACT: Retha Oliver, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. It has been determined that the following cost-benefits would result from adoption of the provisions of this rule:

1. State agency sample size. The provision reducing the minimum sample size for active and negative case reviews will benefit those State agencies opting to use the "smaller range" in their sample plans when their minimum active or negative case sample sizes are currently above the new minimum sample sizes. In Fiscal Year (FY) 1992, before the waiver to reduce current minimum sample sizes was available, State agencies reviewed nearly 52,000 active and over 30,000 negative cases. Assuming a 15 percentage reduction in cases, under this change to the regulatory provision, State agencies will be required to review nearly 8,000 fewer active cases and about 4,500 fewer negative cases. Estimating that each active case review costs $180 and each negative case review costs $40, combined potential savings for State agencies and Food and Nutrition Service (FNS) is an estimated $1.6 million. Savings for State agencies are estimated at $800,000.

2. Home visits. It is estimated that minimal savings in quality control (QC) expenditures will result from this provision, as it is expected that State agencies will channel the resources into other aspects of quality control operations.

3. Error dollar tolerance level. The provision to modify the error dollar tolerance level from $5.00 to $25.00 will benefit those State agencies which qualify for enhanced funding. Based on FY 1997 data, it is estimated that State agencies could qualify for an additional $7.5 million in enhanced funding with this modification.

The Department has examined the impact on potential State agency liability calculations from the effect of changing the error dollar tolerance level. Data from FY 1997 has been analyzed to determine how the $25 tolerance could effect liability amounts. The data shows that in 1997 the estimated liability would increase by $3.9 million if there are no other changes made to the QC system.

It is not anticipated that any other provisions of this rule will have any significant impact on the costs or benefits to either the State agencies or FNS.

Executive Order 12372

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the FSP the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

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Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Sec. 601 through 612). Samuel Chambers, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the FSP.

Paperwork Reduction Act

This rule contains information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. In the proposed rule (61 FR 47680), FNS solicited comment from the general public and other public agencies on a related information collection, form FNS 380, the QC Review Worksheet (OMB Number 0584–0074). The proposed rule did not change the reporting and recordkeeping burden for 0584–0074. However, OMB's approval for the burden, contained in 0584–0074, was scheduled to expire. The comment period for 0584–0074 closed November 12, 1996. No comments were received. OMB approved the burden of 558,019 hours through November 30, 1999.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, the more cost-effective or the least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Civil Rights Impact Analysis

In accordance with USDA Regulation 4300–4, "Civil Rights Impact Analysis", Samuel Chambers, Administrator of the Food and Nutrition Service, has determined that this rule does not in any way limit or deny participation in benefits, conferences, or training opportunities or employment benefits on the basis of an individual or group's race, color, national origin, sex, religion, age, disability, or political beliefs. This rule makes discretionary technical changes to the Food Stamp Program (FSP) quality control process. FSP applicants and participants are selected randomly for a QC review.

Background

On September 10, 1996, the Department of Agriculture's (the "Department") Food and Nutrition Service (FNS) proposed regulations (61 FR 47680) to amend the food stamp QC system in order to reduce the workload on State agencies and enhance the efficiency of the system. A full explanation of the rationale and purpose of these regulatory changes was provided in the preamble of the proposed rulemaking. The Department received comment letters from twenty-one organizations. The preamble of this final rule addresses significant issues raised by those comments. It is recommended that the reader reference the proposed rulemaking, as well as this final rulemaking for a more complete understanding of the regulatory changes that the Department is implementing.

Negative Case Reviews

The proposed rule clarified issues surrounding the review of negative cases and expanded the universe of cases to be reviewed. These clarifications were the culmination of FNS' examination of the QC review process for negative cases, which included, in part the results of research undertaken by Abt Associates on behalf of FNS to develop and pilot test alternative approaches to measuring the extent of nonpayments to eligible households. The proposed clarifications also took into consideration recommendations made by the General Accounting Office on the accuracy of State reported error rates.

Sixteen organizations commented on the proposed regulatory changes to clarify issues surrounding the review of negative cases and the expansion of the universe of cases to be reviewed.

1. Federal Monitoring of State Agency Error Rates for Negative Case Reviews

The Department clarifies in this final rule the requirements and procedures for Federal monitoring of the negative case reviews conducted by State agencies. Regulations at 7 CFR 275.3(c) are revised to clarify that FNS has the authority to review negative cases as determined appropriate. Section 275.3(c) also is modified to indicate that negative cases would require validation when the State agency's payment error rate appears to entitle the State agency to enhanced funding and when the negative error rate is less than two percentage points above the national weighted mean negative case error rate for the prior period.

The Department received twelve comments on these clarifications. Three comments supported the proposed clarifications. Four were neutral or commented that the clarifications would have no impact on their States. Five comments opposed the clarifications. Of the opposition comments, one objected to any increase in Federal review beyond the current minimum level. Another was concerned about an anticipated increase in workload for QC staff. A third comment questioned the greater scrutiny that negative cases receive for States potentially eligible for enhanced funding. Two comments opposed the revisions on the basis that Federal validation of negative cases should be required for all States to ensure the accuracy of the negative error rate.

In response to these concerns, it should be noted that the proposed changes do not increase Federal authority for review activities beyond what can be or has been done under current practice or is permitted under current statutory and regulatory authority. State and Federal agencies have always had the option to expand their reviews beyond the guidelines in the regulations to the extent necessary to assure the validity of error rates. Given that these revisions do not extend authority for Federal reviews, FNS does not anticipate a significant increase in Federal review activity as a result of this clarification. Any increase in Federal review activity should have a minimal impact on a State agency's QC staff since Federal reviewers conduct this activity.

Validation of the negative error rate for States potentially eligible for enhanced funding is not only justified but has the potential to benefit State agencies. State agencies achieving a certain level of accuracy in their negative cases could be entitled to receive additional funds.

The Department determined that Federal validation of negative cases for all States, as recommended in two comments, is not necessary at this time. However, if such validations are determined to be prudent in the future, FNS has the authority to conduct them.

The changes to this section will be adopted as proposed, effective October 1, 1999, for the FY 2000 QC review period.

2. Inclusion of Suspended Cases in the Negative Sample Universe

The Department proposed to include suspended cases in the negative case universe and sample frame. There were twelve comments on this proposal. Four favored the change, four were neutral (although three of the four raised concerns about having adequate lead time for implementation should the proposal be adopted), and four opposed the proposal. Comments that objected to the inclusion of suspended cases said reviewing these cases is not cost effective, implementing this change would be difficult or time consuming (generally because of computer changes), or including suspended cases in the negative universe could increase the negative error rate.

The Department must ensure that all households served by the FSP are handled in accordance with federal law and regulations. The Department has determined that an examination of suspended cases through the QC review process is an efficient way to determine whether these cases are dealt with properly. Inclusion of suspended cases in the negative universe would not increase subsample sizes, and therefore would not adversely impact on the workload of QC reviewers. There is no data to indicate whether suspended cases are more or less error prone than other classes of cases in the negative case universe. Since the number of suspended cases is thought to be relatively small, these cases should have only a negligible impact on the negative error rate. Thus, the Department has concluded that the review of suspended cases as a negative case will not significantly impact the negative error rate.

In the matter of implementing this change, there is a general Federal effort to avoid computer changes, other than Y2K improvements, until March 2000. Since adding suspended cases to the negative frame requires a computer change, suspended cases will not be included in the negative frame until October 1, 2000, for the first full QC review period after March 2000. No State agency can include suspensions in the negative frame until that date. The delay in implementing this change should address State concerns about having enough notice to make the necessary computer changes.

This final rule includes suspended cases in the negative sample effective for the FY 2001 review period, which begins October 1,2000.

3. Use of the Action Date To Determine the Month in Which Negative Cases are Included in the Sample Universe; and Clarification of the Meaning of "Break in Participation" for Suspended and Terminated Cases

The Department proposed to allow State agencies to sample by the action date rather than the effective date to make sampling easier. In addition, the Department proposed to revise the regulations to include denied, suspended, and terminated cases in the negative case universe in the month in which the action to deny, suspend, or terminate food stamp benefits was taken. The Department also clarifies that an action to terminate or suspend a household has actually resulted in a suspension or termination if the household experiences a break in participation in the program as a result of deliberate State agency action. The intent of these changes is to allow State agencies to construct consistent and reliable sampling plans for negative actions, and to ensure that negative actions which have the result of denying benefits to clients are subject to review. These cases are subject to review even if the actions are subsequently reversed, unless their reversal comes under specified conditions (e.g. the State reverses itself without a new application by the client) and within specified time frames (e.g. before the effective date of the termination or suspension action).

There were eight comments on these modifications. None were opposed to the change or clarification. Two comments recommended that the options discussed in the preamble to the proposed rule be included in the regulatory language. The Department agrees that the regulatory language should be revised to include the guidance discussed in the preamble. Therefore, the Department revised the definitions of "negative case" and "review date" at § 271.2, added language at § 275.11(e)(2)(i) and (ii) concerning negative cases in the sample frame, and added clarifying language in the general section at § 275.13(a).

In this final rule the Department is also further clarifying the definition of "review date" at § 271.2. The first sentence in this definition will read as follows: "*Review date* for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day a certification action was taken to authorize the allotment, whichever is later." The clarification is in bold print. The meaning of the term "review date" is not affected by this clarification.

As mentioned under (2) above, there is a general Federal effort to avoid computer changes other than Y2K improvements until March 2000. The revisions discussed in the paragraphs above include references to suspended cases. Since suspended cases cannot be added to the negative sample frame until October 1, 2000, for the Fiscal Year 2001 quality control review period, these changes will be implemented October 1, 2000.

4. FNS Will Not Establish a Dollar Loss Rate for Negative Cases

One aspect of negative case reviews that was of interest to Congress was the establishment of a dollar loss rate. For reasons specified in the preamble to the proposed rule, the Department decided not to pursue this option. All four comments on this decision supported not establishing a dollar loss rate for negative cases.

State Agency Minimum Sample Sizes for Active and Negative Case Reviews

FNS has previously granted waivers of the regulations on the minimum sample sizes for active case reviews to improve the efficiency of the QC system without impairing the reliability of QC information. The Department proposed: (1) To include the terms of these waivers in the FSP regulations; (2) to offer State agencies a choice of ranges to use in determining minimum sample sizes for negative case reviews that is similar to the choice of ranges for determining minimum sample sizes for active case reviews; and (3) to reduce the size of the "smaller range" for minimum sample sizes for active case reviews.

The proposed range for the minimum sample size for active cases is 300 to 1020 reviews, a 15 percent reduction from the top of the current range. To use the minimum sample size, a State agency would be required to include in its sampling plan the statement from current § 275.11(a)(2)(iv) that it "will not use the size of the sample chosen as a basis for challenging the resulting error rate." The purpose of the statement, as described in the February 17, 1984, preamble to the rule that established the requirement for the statement, was to serve as "a means of assuring that State agencies consider what degree of reliability they need." (49 FR 6295). There are no other conditions on a State agency's use of the revised smaller range. State agencies may elect to review more cases than the minimum sample defined in

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regulations. State agencies may also continue to use the current smaller range of 300 to 1200 reviews per year.

FNS also proposed the creation of a "smaller range" for the minimum sample size for negative case reviews. The "smaller range", representing a 15 percent reduction from the highest end of current requirements, would be 150 to 680 reviews per year.

The current required range of 150 to 800 reviews per year would be retained as the larger range for minimum sample sizes for negative case reviews. If a State agency chose to use the "smaller range" to calculate its minimum sample size for negative case reviews, it would also be required to include in its sampling plan the statement that it "will not use the size of the sample chosen as a basis for challenging the resulting error rates." If a State agency did not include that statement, it would be required to calculate its minimum sample size for negative case reviews according to the larger range. As with active cases, there would be no other conditions on a State agency's use of the revised smaller range. Also, as with active cases the ranges define minimum sample sizes, State agencies may select more.

The Department received ten comments on the proposed changes to State sampling requirements. All ten supported the changes. One comment, while favoring the changes, stipulated that the statement that the State agency would not use the size of the sample chosen as the basis for challenging the resulting error rates should apply only to challenges directly attributable to the reduced sample size and not other statistical issues. The Department did not intend that this statement preclude States from making other statistical challenges to the error rate, only those that can be attributed to use of the smaller sample size.

In addition to the above, one comment identified an incorrect reference to active cases in proposed regulatory language at § 275.11(b)(2)(i). The Department corrected this error in the final rule.

The proposed revisions to State sample sizes are adopted in the final rule, to be implemented October 1, 1999, for the FY 2000 QC review period.

Federal Sample Sizes

The Department proposed to change the headings to the tables which set out the formulas for calculation of the Federal subsample size. These tables appear at § 275.3(c)(1)(i) and § 275.3(c)(3)(i) in current regulations; they appear in paragraphs 275.3(c)(1)(i)(A) and (B) and 275.3(c)(3)(i) in the proposed rule. The phrase "Federal subsample target" would appear, rather than the current phrase "Federal annual sample size." This change would not permit FNS to select a smaller subsample for any reason other than a State agency's failure to complete the minimum number of reviews in its required sample size. There were no significant comments on this change. It is adopted in the final rule, effective October 1, 1999, the start of the FY 2000 review period.

State Sampling Procedures

The Department proposed four sets of technical clarifications to the sampling regulations so that the regulations will match the way State agencies design and implement their sampling plans.

1. Selection of One-twelfth of the Sample Each Month

The Department determined that provisions requiring that sampling procedures conform to the standard principles of probability sampling and that state samples produce estimates with an acceptable, mandated level of reliability are sufficient to ensure that deviations, minor or otherwise, from equal monthly sample sizes will not jeopardize the validity nor the precision of those error rate estimates. Therefore, in § 275.11, the Department proposed to delete paragraph (a)(2)(iii) and renumber paragraph (a)(2)(iv) as (a)(2)(iii). The Department also proposed technical corrections to regulatory references appearing in § 275.11(b)(1)(ii) and (b)(1)(iii). There were no significant comments on these proposed changes so they are adopted as proposed in the final rule, effective for the FY 2000 QC review period, which begins October 1, 1999.

2. Sampling Plans Must Conform to Accepted Statistical Theory

The Department proposed to amend the regulations at § 275.11(a)(3) to require that all sample designs conform to commonly acceptable statistical theory and application. There were no significant comments on these proposed changes so they are adopted as proposed in the final rule, effective for the FY 2000 QC review period, which begins October 1, 1999.

3. Basis for Final Sample Size

Current regulations at § 275.11(b)(3) provide that FNS will not penalize a State agency if its caseload increases by less than 20 percent from the estimated caseload number that the State agency used to determine the size of its sample. The Department proposed to clarify that this estimated caseload number was the one *initially* used to determine the sample size. Sample sizes will be found to be adequate if at least the minimum required sample size for the estimated caseload is chosen, and the actual caseload is no larger than 120% of the estimated caseload. There were no significant comments on this proposed change so it is adopted as proposed in the final rule, effective for the FY 2000 QC review period, which begins October 1, 1999.

4. Number of Households Subject to Review Is the Basis for the Sample Size

The Department proposed to clarify the wording in the headings in the tables in proposed § 275.3(c)(1)(i)(A) and (B) and in current § 275.3(c)(3)(i), § 275.11 (b)(1)(ii) and (iii), and proposed § 275.11(b)(2)(i) and (ii). There were no significant comments on these proposed changes so the changes are adopted as proposed in the final rule, effective for the FY 2000 QC review period, which begins October 1, 1999.

Federal Subsample Size Formulas

Because the Department proposed a change in the State sampling size, use of the current formulas for calculating subsample sizes would result in a decrease in the size of the minimum Federal subsample for a State agency that chooses the proposed "smaller ranges." However, the Department does not intend to reduce the Federal subsample. Without a regulatory change, the formula for determining FNS' minimum subsample sizes would not accurately indicate the number of reviews that FNS would actually select for the subsample.

The Department proposed revised formulas for the minimum active and negative Federal subsamples. These proposed formulas, when applied to the new proposed "smaller ranges" for State samples, would yield the current ranges for the Federal subsample. Federal reviewers could still select and review more cases than the minimum subsample.

The Department received four comments on this provision. Two favored the change, one was neutral and one opposed the change. The opposition was based on a concern about FNS having the authority to review more cases than the minimum subsample. However, the authority to review active or negative cases to the extent necessary is an existing authority and was not introduced or increased by the proposed modifications to regulatory language in this rule.

The proposed changes to the formulas are adopted in the final rule, to be implemented October 1, 1999, effective for the FY 2000 QC review period.

Error Dollar Tolerance Level

The Department proposed to raise the tolerance for excluding small dollar errors at § 275.12(f)(2) from $5.00 to $10.00 to address State agency concerns about inflation and the increases in the Thrifty Food Plan. Only those overissuances to eligible households or underissuances to eligible households which exceeded the $10.00 tolerance figure would be reported and coded in the completion of QC reviews.

Eighteen organizations commented on this proposed regulatory change. All eighteen comments supported an increase in the tolerance level. Four comments recommended that the tolerance level be increased further, two recommended a $25 tolerance, one recommended a $20 tolerance and another recommended a higher tolerance without specifying a figure. State reasons given for a higher tolerance included a need to account for inflation more fully and that the focus of administration should be on larger error amounts.

Since the Department's original proposal of a $10 tolerance, circumstances have changed. The strength of the economy, the success of welfare reform in moving families from welfare to work and restrictions on eligibility for many legal immigrants and unemployed childless adults have led to a decrease in Food Stamp Program participation. For many people, Food Stamps can make the difference between living in poverty and moving beyond it. It is imperative to the success of welfare reform, and more fundamentally the nutritional well-being of eligible persons, that the Program serves eligible low-income families, particularly the working poor. However, since the income and deductions for working poor families tend to be volatile, these households are more error prone and their participation could increase error rates of States trying hardest to serve them. The Department believes that increasing the tolerance to $25 will support State efforts to serve eligible needy families by reducing State concerns about increased error rates attributable to the participation of working poor families. In view of State comments and the above, the QC tolerance will be increased to $25.

In the final rule, a $25 tolerance will be implemented by all State agencies on October 1, 1999, effective for the FY 2000 QC review period.

Home Visit Requirement

The Department proposed to amend the regulatory requirement for the face-to-face interview to take place at the client's home in most instances. The proposed revision would simply require a face-to-face interview. There were 19 comments on this proposal.

The Department considers face-to-face interviews an essential component to ensure the accuracy of certification decisions. There was no change or intent to change the requirement that a face-to-face interview be conducted, only a revision of the location of the face-to-face interview. However, the Department received nine comments that proposed alternatives to the face-to-face interview. Suggested alternatives included phone interviews, questionnaires or elimination of face-to-face interviews for some categories of cases. None of these alternatives are considered acceptable.

Seventeen of the nineteen comments on the proposed change favored the flexibility to conduct interviews at a location other than the client's home. Two opposed the change. Opposition was based on concerns about the impact of this change on the accuracy of error rates. In view of better monitoring of household circumstances through data bases, the Department no longer considers an interview at the client's home a necessity in all cases to ensure the accuracy of the review. However, interviews with clients at their homes is still the preferred practice and the Department encourages State reviewers to continue to interview clients at their homes when practical. One comment stated that using authorized representatives as information sources for households, as allowed by this provision, is not always a good practice since they often just transact authorization to participate cards or coupons for households. FNS expects that these individuals would be used as a primary source of information on households only if they can demonstrate sufficient knowledge about the household's situation in order to answer questions on the household's behalf. Indiscriminate use of these individuals as information sources would not be an acceptable practice.

The changes to regulations are adopted in the final rule as proposed and are to be implemented effective October 1, 1999, effective for the FY 2000 QC review period.

Conducting QC Reviews Against Federal Regulations

The Department solicited comments from all interested parties on the appropriateness and potential consequences of a variance exclusion for erroneous payments which result from the State agency having followed State agency policies or directives under certain conditions. There were 17 comments on this proposal. Fifteen favored the change, one was noncommittal and one opposed it. Despite their general support of this proposal, five of the 15 comments favoring the proposal raised concerns. Three questioned how this provision would be implemented. Three other comments raised issues concerning what should be excluded from error, whether all State agencies would be alerted to identified differences in other State agencies, or whether other current practices would be maintained. Another comment objected to the proposal, indicating that a variance exclusion was appropriate when something new is being implemented but not when errors are made after the implementation period. In light of the issues raised, FNS has decided not to pursue this proposal.

QC Review Case Completion Standard

The Department proposed to amend the current requirement that a State agency complete 100 percent of its minimum required sample size. The new standard for State agency completion will be 98 percent of its minimum required sample size. In the event that a State agency fails to complete 98 percent of its minimum required sample size, error rates would be adjusted using the current regulatory formula which is based on a 100 percent completion requirement.

All 15 comments the Department received on this change supported a reduction of the completion rate standard. Five recommended that the standard be lowered to 95 percent. One recommended that the standard be based on the annual national average instead of a flat percentage.

FNS has modified QC review procedures over the years so that cases can be completed if sufficient effort is put into conducting the review. A 98 percent completion rate, permitting a two percent flexibility, is a reasonable reduction from the current 100 percent standard. In order to preserve the integrity of the system, the highest accuracy of error rates must be maintained. The Department does not support a further reduction in the completion standard as proposed by these comments.

The 98 percent completion standard will be adopted in the final rule effective October 1, 1999 for the start of the FY 2000 QC review period.

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Changing Federal Case Findings and Disposition

The Department proposed to codify into regulations the policies and practices which dictate when and under what circumstances FNS will change the Federal findings or disposition for a specific case. Ten organizations commented on this proposal.

There were three comments on the issue of whether FNS should codify the circumstances under which Federal findings or case dispositions would be changed. One comment supported codification, another supported codification but did not agree with some of the proposed practices. Another comment objected to the codification of this information in regulations on the basis that more restrictive limitations will be applied in those instances in which circumstances do not easily fall into one of the five categories in the proposed regulation. The Department agrees that codification probably would make it more difficult for FNS to change Federal findings or dispositions for cases when their circumstances do not fit in the five categories defined in regulations. Therefore, the Department has decided against codifying in regulations the circumstances in which Federal decisions or case dispositions will be changed.

The comments received on the five proposed policies and practices for changing Federal findings or disposition of cases are discussed below.

1. Informal Resolution

FNS proposed to change the Federal finding or disposition if, as a result of the informal resolution process, both the State agency and FNS agreed on a new finding or disposition. The Department received seven comments on the informal resolution process. There were no comments that objected to this practice. Two offered general support of the process while five relayed concerns about a reduction of time frames for informal resolution as a result of the Mickey Leland Childhood Hunger Relief Act of 1993, ("Leland Act"), Chapter 3, Title XIII of the Omnibus Reconciliation Act of 1993, Public Law 103–66.

Due to changes mandated by the Leland Act, FNS shortened the period of time State agencies have to request arbitration from 28 days to 20 days in the rule entitled FSP: QC Provisions of the Leland Act ("Leland Rule") (62 FR 29652) published June 2, 1997.

It should be noted that the Department is required to implement changes that enable it to meet requirements set by law, such as the deadlines set by the Leland Act. Shortening timeframes for informal resolution was necessary to ensure that the timeframes in the Leland Act could be met. The preamble to the Leland Rule discusses these timeframes in more detail. Please refer to that publication for further discussion.

2. Ruling by an Arbitrator

FNS proposed to change the Federal finding or disposition whenever an arbitrator's decision requires that a change be made.

There was one comment on this provision. This comment was concerned that the arbitrator is an employee of FNS and made two proposals to address the concern. According to this comment, arbitrator decisions should be reviewed by the Secretary on request of the State agency and the arbitrator should be independent of FNS. Arbitration is the final decision of the process. As such, once the arbitrator has made a decision, that decision is final, with two exceptions. The first would be to implement a change in law or regulations. The other would be if FNS learned that it had not properly implemented the decision of the arbitrator. FNS has explored the option of having an arbitrator independent of the agency. However, given the importance of these decisions and the tight time periods for making decisions, the arbitrator needs to be familiar with statutory requirements, Departmental decisions and policies. After making inquiries with other organizations/offices about taking over this function, FNS concluded that outsourcing was not plausible, primarily due to the lack of technical expertise and anticipated delays in decision-making.

The Final Leland Rule changed the arbitration process from a two-tiered system to a one-tiered system. This change was driven primarily by reductions in timeframes for completing cases as required by the Leland Act.

3. Implementation of a Regulation, Law, or Waiver

FNS proposed to change Federal findings or dispositions to implement a change in regulations, an amendment to the Food Stamp Act, or retroactive provisions to a waiver.

Two comments questioned the intent of implementing a regulation or amendment through changing case findings or dispositions. FNS anticipates that this action will rarely be necessary. To date this circumstance has happened only once, when Congress mandated that a change be implemented retroactively. This action did not negatively impact State agencies. FNS must implement changes required by Law.

4. Correct any Application of Incorrect Written Policy

The Department would change Federal findings or disposition of a case whenever it became aware that an error was the result of correct State application of an incorrect written policy provided by a Departmental employee authorized to issue FSP policy. It is likely that the State agency and FNS will not become aware of the problem until well after the State agency's deadline for requesting arbitration. Therefore, in order to ensure that the State agency is not harmed by any potential incorrect policy, the Department proposed that the variance exclusion at § 275.12(d)(2)(viii) may be made in the Federal findings at any time that such a problem is discovered.

There was one comment on the discussion of this provision in the preamble to the proposed rule. While the comment did not object to the variance exclusion, it did object to FNS not allowing new factual information to be considered in the final disposition of the case. The comment characterized FNS' reasons for taking this position as administrative and stated that those concerns should not outweigh the system's primary mission of establishing an accurate error rate.

The Department is opposed to making changes based on new "factual" information for three reasons. First, State agencies are responsible for obtaining all necessary information at the time the State QC reviewer conducts the review.

Second, if the household's circumstances were not reasonably certain at the time of the State agency's review, the case should have been disposed of as "not completed." It does not seem likely that reasonably verified information would be contradicted at a later time.

Third, the Department recognizes the need for final closure in the resolution process. Section 13951 of the Leland Act specifies that "no later than 180 days after the end of the fiscal year, the case review and arbitration of State-Federal difference cases shall be completed." The Department believes that without providing some limit on the resolution process this mandated deadline can not be achieved. For example, if FNS permitted new "factual" information to be presented after the case was under review for arbitration, FNS would be obligated to investigate and confirm or repudiate the new "facts" even if these facts were questionable and unlikely to have a bearing on the outcome of the case. This would delay resolution of the case and ultimately the determination of the national average error rate. The Department maintains that resolution of the "facts" of a case in question should be accomplished prior to it's submission as a completed case.

5. Conflict in a Federal Finding/Disposition

If, for any reason, the Federal findings or disposition in the Food Stamp Quality Control System (FSQCS) conflicted with the finding letter transmitted to the State agency, FNS would ensure the FSQCS was correct. If the FSQCS coding was incorrect, it would be corrected. If the finding letter was incorrect, it would be corrected. Either way, FNS would transmit a new finding letter to the State agency explaining what had occurred. There were no comments on this provision.

If, in any of the five circumstances specified above, FNS were to make changes to the finding and disposition of a case, these changes would be made as proposed regardless of the effect on the amount of error in the case. A State agency would be notified of the change and entitled to arbitration of the new Federal finding or disposition, with one exception. If FNS changed the Federal findings or disposition to comply with the decision of the arbitrator, the State agency would have no further right to arbitration. This is because the arbitrator's decisions are final, with two exceptions. The first would be to implement a change in law or regulations. The other would be if FNS learned that it had not properly implemented the decision of the arbitrator.

As discussed above, the Department has decided against codifying in regulations the policies and practices which dictate when and under what circumstances FNS will change Federal findings or the disposition of a specific case. Therefore, the policies and practices discussed above are not detailed in the final rule.

Miscellaneous Technical Corrections

The Department received no significant comments regarding the proposal to effect technical corrections to various paragraphs appearing in Part 275 of the regulations. These modifications are retained in this final rule. The Department has adopted all of the proposed technical changes in this final rule. The modifications will become effective and are to be implemented October 1, 1999, effective for the FY 2000 QC review period which begins with the October 1999 sample month. Since publication of the proposed rule, the Department published a final rule on June 2, 1997, the previously referenced Leland Rule, which modified regulatory language at § 275.23(e)(9).

In the final rule the Department is making a technical revision to regulations at § 275.23(e)(6)(iii) to restore language that provides State agencies protection against double billings for the same dollar losses under both the QC liability system and the negligence provisions at § 276.3. This language was inadvertently deleted from this provision by the final rule entitled "Food Stamp Program: Hunger Prevention Act of 1988 and Mickey Leland Childhood Hunger Relief Act; Rules of Practice; Administrative Law Judges," published July 6, 1994. This change will be effective upon publication of the final rule.

Implementation

The provision at § 275.23(e)(6)(iii) is effective and to be implemented on July 16, 1999. The following provisions are effective on October 1, 1999 and are to be implemented on October 1, 2000, with the start of the Fiscal Year 2001 quality control review period: § 271.2; § 275.3(c)(3)(ii); § 275.10(a); § 275.11(c)(1); § 275.11(e)(2); § 275.11(f)(2); § 275.13(a); § 275.13(b); § 275.13(c)(1); § 275.13(c)(2); § 275.13(f)(2) and § 275.23(c)(4). The remaining provisions of this rule are effective and are to be implemented October 1, 1999, with the start of the Fiscal Year 2000 quality control review period, which begins with the October 1999 sample month.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

For the reasons set out in the preamble, Parts 271 through 285 of Chapter II of Title 7 Code of Federal Regulations are amended as follows:

1. The authority citation for Parts 271 through 285 is revised to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definitions of "Error", "Negative case", "Negative case error rate", "Quality control review", and "Review date" are revised to read as follows:

§ 271.2 Definitions.

* * * * *

Error for active cases results when a determination is made by a quality control reviewer that a household which received food stamp benefits during the sample month is ineligible or received an incorrect allotment. Thus, errors in active cases involve dollar loss to either the participant or the government. For negative cases, an "error" means that the reviewer determines that the decision to deny, suspend, or terminate a household was incorrect.

* * * * *

Negative case means a household whose application for food stamp benefits was denied or whose food stamp benefits were suspended or terminated by an action in the sample month or by an action effective for the sample month.

Negative case error rate means an estimate of the proportion of denied, suspended, or terminated cases where the household was incorrectly denied, suspended, or terminated. This estimate will be expressed as a percentage of completed negative quality control reviews excluding all results from cases processed by SSA personnel or participating in a demonstration project identified by FNS as having certification rules that are significantly different from standard requirements.

* * * * *

Quality control review means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

* * * * *

Review date for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day a certification action was taken to authorize the allotment, whichever is later. The "review date" for negative cases, depending on the characteristics of individual State systems, could be the date on which the eligibility worker makes the decision to suspend, deny, or terminate the case, the date on which the decision is entered into the computer system, the date of the notice

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to the client or the date the negative action becomes effective. For no case is the "review date" the day the quality control review is conducted.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(155) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(155) *Amendment No. 373.* The provision at § 275.23(e)(5)(iii) is effective and is to be implemented on July 16, 1999. The following provisions are effective on October 1, 1999 and are to be implemented on October 1, 2000, with the start of the Fiscal Year 2001 quality control review period: § 271.2; § 275.3(c)(3)(ii); § 275.10(a); § 275.11(c)(1); § 275.11(e)(2); § 275.11(f)(2); § 275.13(a); § 275.13(b); § 275.13(c)(1); § 275.13(c)(2); § 275.13(f)(2) and § 275.23(c)(4). The remaining provisions of this rule are effective and are to be implemented October 1, 1999, with the start of the Fiscal Year 2000 quality control review period, which begins with the October 1999 sample month.

PART 275—PERFORMANCE REPORTING SYSTEM

4. In § 275.3:

a. the introductory text of paragraph (c) is amended by revising the third sentence and adding a new sentence between the third and fourth sentences;

b. paragraph (c)(1)(i) introductory text is revised, and the table following the introductory text is removed;

c. paragraphs (c)(1)(i)(A), (c)(1)(i)(B), and (c)(1)(i)(C) are redesignated as paragraphs (c)(1)(i)(C), (c)(1)(i)(D), and (c)(1)(i)(E), respectively, and new paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) are added;

d. newly redesignated paragraph (c)(1)(i)(C) introductory text is amended by removing the words "n is the" and adding in their place the words "n' is the";

e. paragraph (c)(3)(i) introductory text, and the table following the introductory text, are revised;

f. paragraph (c)(3)(i)(A) introductory text is amended by removing the words "n is the" and adding in their place the words "n' is the";

g. paragraph (c)(3)(ii) is amended by adding the word ", suspend," between the words "deny" and "or".

The revisions and additions read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency error rates.* * * * FNS must validate the State agency's negative case error rate, as described in § 275.23(d), when the State agency's payment error rate for an annual review period appears to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2) of this chapter, and its reported negative case error rate for that period is less than two percentage points above the national weighted mean negative case error rate for the prior fiscal year. However, this requirement will not preclude the Federal review of any negative case for other reasons as determined appropriate by FNS. * * *

(1) *Payment error rate.* * * *

(i) FNS will select a subsample of a State agency's completed active cases, as follows:

(A) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(ii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n')
31,489 and over	n'=400
10,001 to 31,488	n'=.011634 N+33.66
10,000 and under	n'=150

(B) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(iii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n')
60,000 and over	n'=400
10,001 to 59,999	n'=.005 N+100
10,000 and under	n'=150

* * * * *

(3) *Negative case error rate.* * * *

(i) FNS will select a subsample of a State agency's completed negative cases, as follows:

Average monthly reviewable negative caseload (N)	Federal subsample target (n')
5,000 and over	n'=160
501 to 4,999	n'=.0188 N+65.7
Under 500	n'=75

* * * * *

[§ 275.10 Amended]

5. In § 275.10(a):

a. the second sentence is amended by adding the word ", suspended," between the words "denied" and "or";

b. the fifth sentence is amended by adding the word ", suspend," between the words "deny" and "or".

6. In § 275.11:

a. paragraph (a)(2)(iii) is removed, paragraph (a)(2)(iv) is redesignated as paragraph (a)(2)(iii) and a new paragraph (a)(2)(iv) is added;

b. paragraph (a)(3) is revised;

c. paragraph (b)(1)(ii) is amended by removing the reference to "(a)(2)(viii)" and adding in its place the reference to "(a)(2)(iii)" and by revising the table;

d. paragraph (b)(1)(iii) is amended by removing the reference to "(a)(2)(viii)", and adding in its place the reference to "(a)(2)(iii)", and by revising the table;

e. paragraph (b)(1)(iv) is amended by removing the word "anticipated" in the third sentence;

f. paragraph (b)(2) is revised;

g. paragraph (b)(3) is revised;

h. the last sentence in paragraph (c)(1) is amended by adding the word ", suspension," between the words "denial" and "or";

i. paragraph (e)(2) is revised;

j. the introductory text of paragraph (f)(2) is revised;

k. paragraph (f)(2)(iv) is revised and paragraphs (f)(2)(v) through (f)(2)(ix) are added.

The additions and revisions read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* * * *

(2) *Criteria.* * * *

(iv) If the State agency has chosen a negative sample size as specified in paragraph (b)(2)(ii) of this section, include a statement that, whether or not the sample size is increased to reflect an increase in negative actions as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FNS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation. Whatever the design, it must conform to commonly acceptable statistical theory and application (see paragraph (b)(4) of this section).

* * * * *

(b) *Sample size.* * * *

(1) *Active cases.* * * *

(ii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=2400
10,000 to 59,999	n=300+[0.042(N − 10,000)]
Under 10,000	n=300

(iii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=1020
12,942 to 59,999	n=300+[0.0153(N − 12,941)]
Under 12,942	n=300

* * * * *

(2) *Negative cases.*

(i) Unless a State agency chooses to select and review a number of negative cases determined by the formulas provided in paragraph (b)(2)(ii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(iv) of this section, the minimum number of negative cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=800
500 to 4,999	n=150+[0.144(N − 500)]
Under 500	n=150

(ii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(iv) of this section may determine the minimum number of negative cases to be selected and reviewed during each annual review period as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=680
684 to 4,999	n=150+[0.1224(N − 683)]
Under 684	n=150

(iii) In the formulas in this paragraph (b)(2), n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(iv) In the formulas in this paragraph (b)(2), N is the average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. FNS shall not penalize a State agency that does not adjust its sample size if the actual caseload during a review period is less than 20 percent larger than the estimated caseload initially used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger

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sample size appropriate for the actual caseload will be used in computing the sample completion rate.

* * * * *

(e) *Sample frame.* * * *

(2) *Negative cases.* The frame for negative cases shall list:

(i) All households whose applications for food stamp benefits were denied by an action in the sample month or effective for the sample month except those excluded from the universe in paragraph (f)(2) of this section. If a household is subject to more than one denial action in a single sample month, each action shall be listed separately in the sample frame; and

(ii) All households whose food stamp benefits were suspended or terminated by an action in the sample month or effective for the sample month except those excluded from the universe in paragraph (f)(2) of this section.

* * * * *

(f) *Sample universe.* * * *

(2) *Negative cases.* The universe for negative cases shall include all households whose applications for food stamps were denied or whose food stamp benefits were suspended or terminated by an action in the sample month or effective for the sample month except for the following:

* * * * *

(iv) A household which is under active investigation for Intentional Program Violation;

(v) A household which was denied, but subsequently certified within the normal 30 day processing standard, using the same application form;

(vi) A household which was suspended or terminated but the suspension or termination did not result in a break in participation that is the result of deliberate State agency action. There would be no break in participation if the household is authorized to receive its full allotment in the month for which the suspension or termination was effective other than continuation of benefits pending a fair hearing. Pro rated benefits are not considered to be a full allotment;

(vii) A household which has been sent a notice of pending status but which was not actually denied participation;

(viii) A household which was terminated for failure to file a complete monthly report by the extended filing date, but reinstated when it subsequently filed the complete report before the end of the issuance month;

(ix) Other households excluded from the negative case universe during the review process as identified in § 275.13(e).

* * * * *

7. In § 275.12:

a. paragraph (c)(1) introductory text is revised;

b. the first sentence of paragraph (f)(2) is amended by removing the reference to "$5.00" and adding in its place a reference to "$25.00";

c. paragraph (g)(2) introductory text is revised.

The revisions and additions read as follows:

§ 275.12 Review of active cases.

* * * * *

(c) *Field investigation.* * * *

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to conducting the personal interview, the reviewer shall notify the household that it has been selected, as part of an ongoing review process, for review by quality control, and that a personal face-to-face interview will be conducted in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. The personal interview may take place at the participant's home, at an appropriate State agency certification office, or at a mutually agreed upon alternative location. The State agency shall determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at § 273.2(e)(2) of this chapter. Those regulations provide that an office interview must be waived under certain hardship conditions. Under such hardship conditions the quality control reviewer shall either conduct the personal interview with the participant's authorized representative, if one has been appointed by the household, or with the participant in the participant's home. Except in Alaska, when an exception to the field investigation is made in accordance with this section, the interview with the participant may not be conducted by phone. During the personal interview with the participant, the reviewer shall:

* * * * *

(g) *Disposition of case reviews.* * * *

(2) *Cases not subject to review.* Active cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(1), these shall include:

* * * * *

8. In § 275.13:

a. paragraph (a) is revised;

b. the first sentence of paragraph (b) is revised;

c. the third sentence of paragraph (b) is amended to add the word ", suspension," between the words "denial" and "or";

d. the first sentence of paragraph (c)(1) is amended by adding the word ", suspended," between the words "denied" and "or";

e. the second sentence of paragraph (c)(1) is amended by adding the word ", suspend," between the words "deny" and "or";

f. the first sentence of paragraph (c)(2) is amended by adding the word ", suspended," between the words "denied" and "or";

g. paragraph (e)(1) is amended by adding a heading to the paragraph;

h. paragraph (e)(2) is revised;

i. the first sentence of paragraph (f) is amended by adding the words "suspended or" between the words "been" and "terminated".

The addition and revisions read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of households whose applications for food stamp benefits were denied or whose food stamp benefits were suspended or terminated by an action in the sample month or effective for the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny, suspend, or terminate the household, as of the review date, was correct. Depending on the characteristics of individual State systems, the review date for negative cases could be the date of the agency's decision to deny, suspend, or terminate program benefits, the date on which the decision is entered into the computer system, the date of the notice to the client, or the date the negative action becomes effective. However, State agencies must consistently apply the same definition for review date to all sample cases of the same classification. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings, including procedural problems with the action regardless of the validity of the decision to deny, suspend or terminate.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial, suspension, or termination is correct or whether the denial, suspension, or termination is correct for any other reason documented in the casefile. * * *

* * * * *

(e) *Disposition of case review.* * * *

(1) *Cases reported as not complete.*

* * *

(2) *Cases not subject to review.* Negative cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(2), these shall include:

(i) A household which was dropped as a result of a correction for oversampling;

(ii) A household which was listed incorrectly in the negative frame.

* * * * *

9. In § 275.23:

a. paragraph (c)(4) is amended by adding the word ", suspension," between the words "denial" and "or";

b. paragraph (e)(6)(i) is amended by removing everything but the first sentence;

c. paragraph (e)(6)(iii) is revised.

d. the introductory text of paragraph (e)(8)(iii) is amended by removing the word "all" and adding in its place the words "98 percent".

e. paragraph (e)(9) is revised.

The revisions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(6) * * *

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter. While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of § 276.3 of this chapter for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable for dollar loss under both the QC liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

* * * * *

(9) *FNS Timeframes.* FNS shall determine and announce the national average payment error rate for the fiscal year within 30 days following the completion of the case review process and all arbitrations of State agency-Federal difference cases for that fiscal year, and at the same time FNS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. The case review process and the arbitration of all difference cases shall be completed not later than 180 days after the end of the fiscal year. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. Such appeals include requests for good cause waivers and administrative and judicial appeals pursuant to Section 14 of the Food Stamp Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c) of this chapter, FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability. FNS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate a State's payment error rate and payment error rate liability within the prescribed timeframe.

* * * * *

Dated: July 12, 1999.

Shirley R. Watkins,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 99–18164 Filed 7–15–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0560–AF38

Implementation of Preferred Lender Program and Streamlining of Guaranteed Farm Loan Programs Loan Regulations; Correction

AGENCIES: Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Correction to final regulations.

SUMMARY: This document corrects the amendatory language contained in the final rule published February 12, 1999, (64 FR 7358) establishing the regulations that govern the Farm Service Agency (FSA) guaranteed farm loan program. These corrections are necessary to change some erroneous references, clarify some provisions, and correct sections that conflict with statute or other program requirements. The effect will be to ensure the original intent of each provision is stated and implemented correctly. This correction will apply retroactively to those loans approved since the effective date of the final rule.

DATES: Effective on July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Phillip Elder (202) 690–4012; Electronic mail: phillip_elder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The final rule being corrected by this publication was promulgated under 7 CFR part 762 to replace the regulations under 7 CFR part 1980, subparts A and B, as they pertain to the guaranteed farm loan programs of FSA, to update and streamline program requirements, and to implement a preferred lender program.

Need for Correction

As published, the final rule (64 FR 7358–7403) contains several technical errors which may prove misleading and cause unintentional results if not clarified.

Discussion of Changes

The corrections being made are described as follows:

(1) Section 762.122(a)(1) states, "The total outstanding combined Direct and Guaranteed FO and OL principal balance cannot exceed $700,000 and,". This conflicts with the combined direct and guaranteed loan maximum of $900,000 provided by paragraph (a)(4) of § 762.122. Paragraph (a)(1) should read, "The total outstanding combined guaranteed FO and OL principal balance cannot exceed $700,000 and,". This change is consistent with the intended policy for loan limits as discussed in the preamble of the final rule. Paragraph (a)(4) also needs to be amended to refer to "principal balance" rather than "balance" for consistency and clarity.

(2) Section 762.122(c)(1) states, "No guaranteed OL shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, first received direct or guaranteed OL." Since the 15 year limit is based on the

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number of years of actual loan assistance the borrower has received and not the year in which the borrower "first" received loan assistance, this section should state, "No guaranteed OL shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, received a direct or guaranteed OL." This change is consistent with former Agency policy under 7 CFR § 1980.175. No policy change was intended in the final rule.

(3) Section 762.145(e)(7), in the last sentence provides that an interest assistance agreement will be canceled if a writedown is approved. This provision was unintentionally retained from the previous regulation and will be deleted. Cancellation of the interest assistance agreement in the case of a writedown is not necessary due to changes in the way the subsidy is calculated under § 762.150. This cancellation requirement conflicts directly with the second to last sentence of § 762.150(g)(3) which states that the interest assistance agreement will not be canceled if a debt writedown is approved.

(4) Section 762.150(e)(2) provides requirements for the continuation of interest assistance subsidy for the next year and states, "The loan will be eligible for the continuation of interest assistance if a feasible plan, including interest assistance, can be projected for the plan period." As written, this sentence provides a minimum threshold for continuation without providing policy for subsidy on multiple loans. Thus, this provision implies that subsidy may be approved on multiple loans even if a positive cash flow is achieved with subsidy applied to only one loan. This error may cause subsidy to be awarded above the amount necessary to achieve a positive cash flow and, therefore, increase the costs of the loan to the Government. Previously, the Agency required, at a minimum, a positive cash flow (with a 10-percent margin) to be eligible for continuation of the subsidy. The 10 percent margin requirement was removed. The Agency intended to prohibit subsidy when it was not required to achieve a 10 percent margin but failed to state this expressly. Under the corrected rule, the Agency will, at a maximum, continue to provide subsidy to as many loans as necessary in a multiple loan situation to achieve a positive cash flow for the plan period. Thus, the first sentence of § 762.150(e)(2) is removed and two sentences are inserted in its place to state, "The loan will be eligible for continuation of interest assistance if the cash flow budget projects a feasible plan with interest assistance applied. However, in the case of multiple loans with interest assistance, subsidy can be applied only to as many loans as necessary to achieve a positive cash flow for the plan period."

(5) Section 762.150(g)(4) is also erroneous due to changes made in the annual review procedure for interest assistance. This paragraph limits the timing of rescheduling and deferral of loans with interest assistance to the claim date or anniversary date of the agreement. Those limits were imposed due to the effect of restructuring actions on the annual calculation of subsidy. The formula for this calculation has been simplified under this section, so this restriction is no longer necessary. Thus, the last three sentences of § 762.150(g)(4) are removed as a conforming change.

(6) The final rule published February 12, 1999, contained the following erroneous cross references to other sections within the rule that are corrected by this rule:

(A) Sections 762.106(g)(2)(ix) and 762.160(a)(2)(ii) refer to § 762.146(c)(7) but should refer to § 762.144(c)(7).

(B) Section 762.150(g)(7), in the last sentence refers to § 762.145(b)(3)(v) but should refer to § 762.143(b)(3)(v).

Correction of Publication

Accordingly, the final rule published in the **Federal Register**, FR Doc. 99–3256, (64 FR 7358) on February 12, 1999, is corrected as follows:

1. At 64 FR 7384, in the first column, § 762.106(g)(2)(ix) is corrected to read as follows:

§ 762.106 Preferred and certified lender programs.

* * * * *

(g) * * *

(2) * * *

(ix) Failure to comply with the reimbursement requirements of § 762.144(c)(7).

* * * * *

2. At 64 FR 7386, in the second column, §§ 762.122(a)(1), (a)(4), and (c)(1) are corrected to read as follows:

§ 762.122 Loan limitations.

(a) * * *

(1) The total outstanding combined guaranteed FO and OL principal balance cannot exceed $700,000 and,

* * * * *

(4) The total combined outstanding direct and guaranteed FO and OL principal balance cannot exceed $900,000.

* * * * *

(c) * * *

(1) No guaranteed OL shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, received a direct or guaranteed OL.

* * * * *

3. At 64 FR 7395, in the first column, § 762.145(e)(7) is corrected by removing the last sentence.

4. At 64 FR 7400, in the second column, § 762.150(e)(2) is corrected to read as follows:

§ 762.150 Interest assistance program.

* * * * *

(e) * * *

(2) The loan will be eligible for continuation of interest assistance if the cash flow budget projects a feasible plan with interest assistance applied. However, interest assistance can be applied only to as many loans as necessary to achieve a positive cash flow for the plan period. If the cash flow budget indicates that the borrower requires a level of interest assistance greater than 4 percent to project a feasible plan, then the Agency will deny the continuation of interest assistance. Interest assistance will be reduced to zero during that period. See § 762.102(b) for the definition of feasible plan.

5. At 64 FR 7401, in the first column, § 762.150(g)(4) is corrected by removing the last three sentences.

6. At 64 FR 7401, in the first column, the last sentence of § 762.150(g)(7) is corrected by removing "§ 762.145(b)(3)(v)" and adding "§ 762.143(b)(3)(v)" in its place.

7. At 64 FR 7401, in the second column, § 762.160(a)(2)(ii) is corrected to read as follows:

§ 762.160 Sale, assignment and participation.

(a) * * *

(2) * * *

(ii) The lender has not complied with the reimbursement requirements of § 762.144(c)(7), except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.

* * * * *

Signed at Washington, DC on July 7, 1999.

August Schumacher Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 99–17799 Filed 7–15–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–31–AD; Amendment 39–11221; AD 99–15–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines, that requires initial and repetitive in-shop eddy current and on-wing ultrasonic inspections of the Combustion Chamber Outer Casing (CCOC) forward flange (L-flange) fillet radius for cracking, and replacing cracked L-flanges with serviceable parts. Replacement with an improved L-flange constitutes terminating action to the repetitive inspections. This amendment is prompted by reports of CCOC rupture due to cracking in the L-flange fillet radius. The actions specified by the proposed AD are intended to prevent CCOC rupture due to cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective date August 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines was published in the **Federal Register** on December 21, 1998 (63 FR 70352). That action proposed to require initial and repetitive in-shop eddy current and on-wing ultrasonic inspections of the Combustion Chamber Outer Casing (CCOC) forward flange (L-flange) fillet radius for cracking, and replacing cracked L-flanges with serviceable parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed actions contained in the notice of proposed rulemaking (NPRM).

One commenter notes that the aircraft applicability may be incorrect because it includes the A300 Aircraft. The commenter believes that the JT9D–7R4 is the only model being installed on the A300 and that the service bulletin (SB) may be incorrect. The commenter is correct. Pratt & Whitney indicates that the JT9D–3/–20 models were never installed on the A300 Aircraft, and that the documents referenced are in error. The Applicability paragraph has been changed accordingly. The listing of aircraft installations in an AD that applies to engines, however, is informative only and does not affect the applicability of the AD to the identified engine models.

One commenter notes that Chromalloy makes a replacement CCOC under a supplemental type certificate (STC) P/N CFL758479, that the FAA should consider as acceptable terminating action to the AD. The commenter also states that Chromalloy makes a replacement CCOC L-flange under a parts manufacturing approval (PMA) which the commenter claims is the equivalent to the flange introduced by PW SB 4482, and should also be considered as acceptable terminating action for the AD. The FAA agrees. These part numbers have been added to the list of parts whose installation will constitute terminating actions to the AD in a new paragraph (e).

One commenter utilizes Standard Practice Operating Procedure (SPOP) 82 florescent penetrant inspection (FPI) of the L-flange when the part is in their shop. For cases that have used SPOP 82 FPI at last shop visit, the commenter requests that the FAA extend the 250 cycle limit to the 500 cycle limit for the initial on-wing inspection. The FAA does not agree. The performance of SPOP 82, when compared to the required ultrasonic inspection, does not raise the probability of detecting a crack sufficiently to increase the initial inspection requirement from 250 cycles to 500 cycles.

One commenter requested that the effective date of the AD be changed from 30 days after publication in the **Federal Register** to 60 days. The commenter states that he often receives the ADs weeks after their publication date, leaving little time to update his tracking system. The FAA does not agree. All AD's are published in the Federal Register and are available on a subscription basis from the Government Printing Office within days of publication. In addition, all ADs are available on the **Federal Register's** Internet web site the day they are published and are listed on the **Federal Register's** preview web site the day before publication. Additionally, the FAA mails hard copies of ADs to all registered owner/operators within a week of their publication in the **Federal Register**.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD. The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

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Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–15–02 Pratt & Whitney: Amendment 39–11221. Docket 98–ANE–31–AD.

Applicability: Pratt & Whitney (PW) JT9D–3A, –7, –7H, –7A, –7AH, –7F, –7J, –20, and –20J series turbofan engines, with Combustion Chamber Outer Casing (CCOC), part numbers (P/Ns) 644801, 693294, 709016, 729237, 729238, and 729239, installed. These engines are installed on but not limited to certain models of Boeing 747 and McDonnell Douglas DC–10 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent CCOC rupture due to cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Perform initial on-wing ultrasonic inspections of the CCOC forward flange (L-flange) fillet radius for cracking in accordance with PW Alert Service Bulletin (ASB) No. A6343 Revision 1, dated October 8, 1998, as follows:

(1) For engines that have not had the L-flange fillet radius eddy current inspected using the JT9D Engine Manual (P/N 646028, P/N 770407, P/N 770408, as appropriate) Revision No. 104; or Temporary Revision No. 72–6517, Temporary Revision No. 72–6334, or Temporary Revision No. 72–6206, all of which were superseded by manual Revision No. 104; at the last shop visit, inspect within 250 cycles in service (CIS) after the effective date of this AD, or the next shop visit, whichever occurs first.

(2) For engines that did have the L-flange fillet radius eddy current inspected using the JT9D Engine Manual (P/N 646028, P/N 770407, P/N 770408, as appropriate) Revision No. 104; or Temporary Revision No. 72–6517, Temporary Revision No. 72–6334, or Temporary Revision No. 72–6206, all of which were superseded by manual Revision No. 104; at the last shop visit, inspect within 2,000 CIS, or the next shop visit after the effective date of this AD, whichever occurs first.

(b) Thereafter, ultrasonically inspect on-wing at intervals not to exceed 500 CIS since last on-wing inspection in accordance with PW Alert Service Bulletin (ASB) No. A6343 Revision 1, dated October 8, 1998, or 2000 cycles in service (CIS) since last in-shop ECI inspection, whichever occurs later.

(c) If a crack is found during on-wing inspection, remove the part from service, and replace with a serviceable part as follows:

(1) For cracks found to be over the inspection threshold limit, but less than 2 inches, remove within 5 CIS.

(2) For cracks found to be over the inspection threshold limit and equal to or greater than 2 inches, remove prior to further flight.

(d) If a crack in the L-flange fillet radius of the CCOC is found during in-shop inspection, remove the CCOC and replace with a serviceable part or replace the L-flange with an improved L-flange P/N 734515 or 056–1133–1 in accordance with the accomplishment instructions of PW ASB No. 6343 Revision 1, dated October 8, 1998.

(e) Installation of CCOC's containing improved L-flange P/N's 734515 or 056–1133–1, or installation of CCOC's with P/N's 758479 or CFL758479, constitute terminating action to the repetitive inspection requirements of this AD.

(f) Inspect the CCOC L-flange fillet radius during every CCOC shop visit in accordance with JT9D Engine Manual (P/N 646028, P/N 770407, P/N 770408, as appropriate) Revision No. 104 (or Temporary Revision No. 72–6517, Temporary Revision No. 72–6334, or Temporary Revision No. 72–6206, which were superseded by manual Revision No. 104); that details eddy current inspection procedures for the L-flange fillet radius.

(g) For the purpose of this AD, a shop visit is defined as anytime the L-flange is separated in the process of performing engine repair.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(j) The inspections must be done in accordance with the following Pratt & Whitney SBs:

Document No.	Pages	Revision	Date
JT9D A6343	1–5	Rev. 1	October 8, 1998.
	6–9	Original	July 31, 1998.
	10–11	Rev. 1	October 8, 1998.
	12	Original	July 31, 1998.
	13	Rev. 1	October 8, 1998.
Total Pages: 13.			
4482	1	Rev. 1	July 8, 1976.
	2	Original	September 5, 1975.
	3	Rev. 1	July 8, 1976.
	4	Original	September 5, 1975.
	5	Rev. 1	July 8, 1976.
	6–8	Original	September 5, 1975.
	9	Rev. 1	July 8, 1976.
	10	Original	September 5, 1975.
Total pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–8770. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(k) This amendment becomes effective on August 16, 1999.

Issued in Burlington, Massachusetts, on July 6, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–17555 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–55–AD; Amendment 39–11220; AD 99–15–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney PW4000 series turbofan engines, that reduces life limits of certain 4th stage low pressure turbine (LPT) disks. It also allows the original life limits of the disks to be restored if reoperation is performed to incorporate the original slotted cooling hole configuration. This amendment is prompted by reports that a change of a cooling hole geometry, which was introduced in the design of certain 4th stage LPT disks, inadvertently caused a reduction on the cooling air flow to the disk and an increased level of stress. The actions specified by this AD are intended to prevent an uncontained disk failure and damage to the aircraft.

DATES: Effective September 14, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7147, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney Model PW4056, PW4152, PW4156A, PW4164, PW4168, and PW4460 turbofan engines was published in the **Federal Register** on March 9, 1998 (63 FR 11381). That action proposed to reduce life limits of affected 4th stage low pressure turbine (LPT) disks, identified by serial number (S/N). It would also allow the original life limits to be restored, if reoperation is performed to incorporate the slotted cooling air configuration.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that it does not own any of the disks affected by this AD, and will therefore not be affected by it. The commenter, however, states that the 4th stage LPT disk was subjected to a design change but retained the same part number. The commenter states that for tracking purposes it is desirable to change the part number. The FAA agrees with the concept; however, this issue addresses practices at the manufacturer and not this action, since both part number and serial numbers are identified for tracking purposes. The FAA will communicate this request to the manufacturer for future considerations.

One commenter states that the economic analysis should be revised to note that the labor cost is accurate when the engine is torn down to obtain access to the LPT. The FAA concurs and has added this language to the economic analysis of this final rule.

Two commenters state that they do not own any of the affected disks and that therefore would not be affected by the proposed rule.

One commenter supports the rule as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 27 engines of the affected design in the worldwide fleet. The FAA estimates that there are currently no engines installed on aircraft of U.S. registry that will be affected by this AD, but if one were installed, it would take approximately 4 work hours per engine to accomplish the required actions when the engine is torn down to obtain access to the LPT, and that the average labor rate is $60 per work hour. Required parts will cost approximately $240 per engine. Based on these figures, the total cost impact per engine is estimated to be $480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–15–01 Pratt & Whitney: Amendment 39–11220. Docket 97–ANE–55–AD.

Applicability: Pratt & Whitney Model PW4056, PW4152, PW4156A, PW4164, PW4168, and PW4460 turbofan engines, with 4th stage low pressure turbine (LPT) disks, part number (P/N) 50N924, serial numbers (S/Ns) CLDL BX2061, CLDL BX6620, CLDL BX2054, CLDL BX2055, CLDL BX6596, CLDL BX2059, CLDL BX2060, CLDL BX6600, CLDL BX6597, CLDL BX6599, CLDL BX6601, CLDL BX6598, CLDL BX6604, CLDL BX6605, CLDL BX6602, CLDL BX6609, CLDL BX6607, CLDL BX6612, CLDL BX6611, CLDL BX6610, CLDL BX6608, CLDL BX6606, CLDL BX6615, CLDL BX6616, CLDL BX6619, CLDL BX2058, and CLDL BX6603 installed. These engines are installed on but not limited to Airbus Industrie A330, Boeing 747, and McDonnell Douglas MD–11 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent and uncontained disk failure and damage to the aircraft, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, prior to accumulating 7,500 cycles in service (CIS), remove the affected 4th stage LPT disks and replace them with new or serviceable parts.

Note 2: A list of the affected 4th stage LPT disks, identified by P/N and S/N, appears in the "Applicability" paragraph for this AD.

(b) Restoration of the original life limits on the affected disks may be accomplished as follows:

(1) Reoperation performed on the LPT disks installed in PW4164 and PW4168 model engines, in accordance with Pratt & Whitney (PW) Service Bulletin (SB) No. PW4G 100–72–105, dated November 12, 1997, prior or 7,000 CIS to incorporate the slotted cooling air configuration may restore the life limit to 15,000 CIS.

(2) Reoperation performed on the LPT disks installed in PW4156A and PW4460 model engines in accordance with PW SB No. PW4ENG 72–657, dated November 25, 1997, prior to 5,500 CIS to incorporate the slotted cooling air configuration may restore the life limit to 15,000 CIS.

(3) Reoperation performed on the LPT disks installed in PW4056 and PW4152 model engines in accordance with PW SB No. PW4ENG 72–657, dated November 25, 1997, prior to 4,500 CIS to incorporate the slotted cooling air configuration may restore the life limit to 20,000 CIS.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following PW SBs:

Document No.	Pages	Dates
PW4G=100–72–105 Total Pages: 19	1–19	November 12, 1997.
PW4ENG 72–657 Total Pages: 22	1–22	November 25, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 14, 1999.

Issued in Burlington, Massachusetts, on July 6, 1999.

David A. Downey,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–17554 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–25]

Modification of Legal Description of the Class D Airspace; Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the legal description of the Class D airspace at Cincinnati Municipal Airport Lunken Field, OH. The legal description for this airspace includes a reference to excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. This Class C airspace designation is being revoked, and effective at 0901 UTC, July 15, 1999, a Class B airspace area for the Cincinnati/Northern Kentucky International Airport will be established (Airspace Docket No. 93–AWA–5, final rule published in the **Federal Register** on November 30, 1998, 63 FR 65972, effective date delayed on December 14, 1998, 63 FR 68675, and confirmation of effective date on April 12, 1999, 64 FR 17934). The reference to Class C airspace in the legal description for the Class D airspace at Cincinnati Municipal Airport Lunken Field is incorrect, and this action changes that reference to Class B airspace.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 4, 1999, the FAA proposed to amend 14 CFR part 71 to modify the legal description of the Class D airspace at Cincinnati, OH (64 FR 23805). The proposal was to correct the legal description of the existing controlled airspace to reflect the correct reference to the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the legal description of the Class D airspace at Cincinnati, OH, by changing the reference to the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area to Class B. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL OH D Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH

(Lat. 39°06′12″N., long. 84°25′07″W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.1-mile radius of the Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on July 6, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–18205 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–16]

Establishment of Class E Airspace; Minden, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Minden, NV. The establishment of a Global Positioning System (GPS) GPS–A and GPS–B Standard Instrument Approach Procedure (SIAP) at Minden-Tahoe Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS–A and GPS–B SIAP to Minden-Tahoe Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Minden-Tahoe Airport, Minden, NV.

EFFECTIVE DATE: 0901 UTC September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On May 18, 1999, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Minden, NV (64 FR 26922). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS–A and GPS–B SIAP at Minden-Tahoe Airport. This action will provide adequate controlled airspace for aircraft executing the GPS–A and GPS–B SIAP at Airport, Minden, NV.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Minden, NV. The development of a GPS–A and GPS–B SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS–A and GPS–B SIAP at Minden-Tahoe Airport, Minden, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have

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a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Minden, NV [New]

Minden-Tahoe Airport, NV
(Lat. 39°00'02" N, long. 119°45'11" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Minden-Tahoe Airport.

* * * * *

Issued in Los Angeles, California, on June 30, 1999.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 99–18210 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–33]

Proposed Establishment of Class E Airspace; Imperial County, CA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Imperial County Airport, CA. Additional controlled airspace is required for departure procedures at Imperial County Airport. A review of airspace classification and air traffic procedures has made this action necessary.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 13, 1999, the FAA proposed to establish additional Class E airspace at Imperial County Airport, Imperial County, CA (64 FR 17983).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace 700 feet or more above the surface of the earth is published in Paragraph 6005 FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, through September 15, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations establishes Class E airspace at Imperial County Airport, CA. This action provides the additional controlled airspace required for departure procedures at Imperial County Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Imperial County Airport, CA [NEW]

Imperial County, CA
(Lat. 32°50'03"N, long. 115°34'43"W)
El Centro NAF, CA
(Lat. 32°49'45"N long. 115°40'18"W)
Brawley Municipal Airport, CA
(Lat. 32°59'35"W long. 115°31'01"W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Imperial County Airport; excluding that portion within the El Centro NAF, CA, Class D airspace area and excluding that airspace within the Brawly Municipal Airport, CA Class E airspace area.

* * * * *

Issued in Los Angeles, California, on June 22, 1999.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–18209 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–24]

Modification of Class E Airspace; Barnesville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Barnesville, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Barnesville-Bradfield Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airsport.

EFFECTIVE DATE: 0901 UTC, November 04, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 4, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Barnesville, OH (64 FR 23808). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Barnesville, OH, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP at Barnesville-Bradfield Airport by modifying the existing controlled airspace. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1997); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated import is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number or small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O., 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Barnesville, OH [Revised]

Barnesville-Bradfield Airport OH
(Lat. 40° 00' 09"N., long. 81° 11' 31"W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of Barnesville-Bradfield Airport.

* * * * *

Issued in Des Plaines, Illinois on July 6, 1999.

Chistopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–18208 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–26]

Modification of Class E Airspace; Indianapolis, IN; and Revocation of Class E Airspace; Greenwood, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace at Indianapolis, IN, and revokes the Class E airspace at Greenwood, IN. The legal description for the Class E airspace for the Greenwood Municipal Airport has been published in duplicate, once as part of the Indianapolis, IN, Class E airspace, and once as Greenwood, IN, Class E airspace. Neither legal description for the Class E airspace for the Greenwood Municipal Airport, as published, is correct. Because the Class E airspace for Greenwood Municipal Airport is an integral part of the Indianapolis, IN, Class E airspace area, this action modifies the Class E airspace for Indianapolis, IN, to correctly describe the Class E airspace required for Greenwood Municipal Airport, and revokes the duplicate, and therefore unneeded, Class E airspace at Greenwood, IN.

EFFECTIVE DATE: 0901 UTC, September 09, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 4, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Indianapolis, IN, and revoke Class E airspace at Greenwood, IN (64 FR 23809). The proposal was to correct the legal description of the existing controlled airspace to reflect the actual configuration of that controlled airspace. Interested parties were invited to participate in this rulemaking proceeding by submitting written

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comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 712 modifies the Class E airspace at Indianapolis, IN, by correctly describing the Class E airspace for the Indianapolis, Greenwood Municipal Airport and revokes the duplicate incorrect Class E airspace at Greenwood, IN. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follow:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Fedeal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Greenwood, IN [Removed]

* * * * *

AGL IN E5 Indianapolis, IN [Revised]

Indianapolis International Airport, IN
(Lat. 39° 43'02"., long. 86°17'40" W.)
Indianapolis, Greenwood Municipal Airport, IN
(Lat. 39°37'42" N., long. 86°05'16" W.)
Indianapolis, Eagle Creek Airpark, IN
(Lat. 39°49'51" N., long. 86°17'40" W.)
Indianapolis, Helicopter VOR/DME 287° Approach Point in Space
(Lat. 39°42'12" N., long. 86°06'28" W.)
Brickyard VORTAC
(Lat. 39°48'53" N., long. 86°22'03" W.)

That airspace extending upward from 700 feet above the surface within an 7.4-mile radius of the Indianapolis International Airport, within a 7.0-mile radius of the Greenwood Municipal Airport, within a 6.3-mile radius of Eagle Creek Airpark, and within 2.6 miles each side of the Brickyard VORTAC 257° radial, extending from the 6.3-mile radius of the Eagle Creek Airpark and the 7.4-mile radius of the Indianapolis International Airport to 7.0 miles west of the VORTAC, and within a 6.0-mile radius of the Point in Space serving the helicopter VOR/DME 287° approach.

* * * * *

Issued in Des Plaines, Illinois on July 6, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–18207 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–35]

RIN 2120–AA66

Amendment of VOR Federal Airways; Kahului, HI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on June 3, 1999 (Airspace Docket No. 97–AWP–35). In that rule, seven Hawaiian Very High Frequency Omnidirectional Range (VOR) Federal airway legal descriptions contained inadvertent errors. This action corrects those errors.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: **Federal Register** Document 99–14078, Airspace Docket No. 97–AWP–35, published on June 3, 1999 (64 FR 29785), modified the legal descriptions of seven VOR Hawaiian Federal airways, V–1, V–5, V–6, V–11, V–15, V–17, and V–22, located in Kahului, HI, due to the relocation of the Maui, HI, Very High Frequency Omnidirectional Range/Tactical Air Navigation Aid. However, subsequent flight inspection information has revealed that several of the associated fixes used to define the seven VOR Federal airways require realignment. This realignment of fixes has caused some of the radials of the airways to be in error by one or two degrees. This action corrects the legal descriptions by removing the inaccurate information.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designations for VOR Federal airways V–1, V–5, V–6, V–11, V–15, V–17, and V–22 published in the **Federal Register** on June 3, 1999 (64 FR 29785); **Federal Register** Document 99–14078, and incorporated by reference in 14 CFR 71.1, are corrected as follows:

§71.1 [Corrected]

1. On page 29786, columns one and two, correct the airspace descriptions for VOR Federal airways V–1, V–5, V–6, V–11, V–15, V–17, and V–22 to read as follows:

Paragraph 6010(c) Hawaiian VOR Federal airways

* * * * *

V–1 [Corrected]

From Kona, HI, via INT Kona 323° and Maui, HI, 180° radials; INT Maui 180° and Upolu Point, HI, 305° radials; INT Maui 199° and Upolu Point 305° radials; to Maui.

* * * * *

V–5 [Corrected]

From Kona, HI, via INT Kona 338° and Maui, HI, 180° radials.

V–6 [Corrected]

From INT Molokai, HI, 067° and Maui, HI, 331° radials, to Maui.

* * * * *

V–11 [Corrected]

From INT Kona, HI, 323° and Upolu Point, HI, 211° radials; via Upolu Point; INT Upolu Point 349° and Maui, HI, 080° radials; to Maui.

* * * * *

V–15 [Corrected]

From INT South Kauai, HI, 288° radial and long. 162°37'11" W., via South Kauai; Lihue, HI; INT Lihue 121° and Honolulu, HI, 269° radials; Honolulu; Koko Head, HI; Molokai, HI; Maui, HI; INT Maui 096° and Hilo, HI, 336° radials; Hilo to INT Hilo 099° radial and long. 151°53'00" W.

* * * * *

V–17 [Corrected]

From INT Lanai, HI, 106° and Maui, HI, 199° radials; Maui.

From INT Koko Head, HI, 071° and Maui 348° radials; to INT Maui 348° and Lihue, HI, 065° radials.

* * * * *

V–22 [Corrected]

From Molokai, HI, via INT Molokai 082° and Maui, HI, 331° radials; Maui; INT Maui 096° and Hilo, HI, 321° radials; Hilo; to INT Hilo 078° radial and long. 152°14'00" W.

* * * * *

Issued in Washington, DC, on July 9, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–18025 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–97–2353; 96–20]

RIN 2125–AD63

National Standards for Traffic Control Devices; Metric Conversion; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; correction of effective date under the CRA.

SUMMARY: On Thursday, June 24, 1999, the FHWA published a final rule which adopted as final, with changes, the interim rule concerning national standards for traffic control devices, metric conversion, published on Tuesday, June 11, 1996. This document corrects the effective date of the June 24, 1999 rule to be consistent with the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, 808. The incorporation by reference approval date is also corrected to conform to the effective date.

DATES: *Effective Date:* July 16, 1999.

Incorporation by Reference: The incorporation by reference of certain publications listed in the regulations was re-approved by the Director of the Federal Register as of July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations (HOTO) (202) 366–9064, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The CRA, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

The effective date of the final rule on National Standards for Traffic Control Devices; Metric Conversion, published at 64 FR 33751, is corrected from June 24, 1999 to July 16, 1999 in order to comply with the CRA. The incorporation by reference approval date is also corrected to conform to the effective date.

Administrative Procedure Act

The Administrative Procedure Act provides that an agency may dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). The FHWA has determined that prior notice and comment are unnecessary, because the FHWA is merely correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, and Traffic regulations.

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Issued on: July 1, 1999.

Karen E. Skelton,

Chief Counsel.

[FR Doc. 99–17805 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300705A; FRL–6089–2]

RIN 2070–AB78

Myclobutanil; Pesticide Tolerances for Emergency Exemptions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of September 16, 1998, a regulation establishing time-limited tolerances for combined residues of myclobutanil in or on artichokes, asparagus, and peppers (bell and non-bell). This document is being issued to correct the amendatory language.

EFFECTIVE DATE: This correction is effective July 16, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone

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number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9358, e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 16, 1998 (63 FR 49472) (FRL–6025–1), EPA, issued a final rule establishing time-limited tolerances for combined residues of myclobutanil in or on artichokes, asparagus, and peppers (bell and non-bell). The entry for peppers (bell and non-bell) should have been a revision of the tolerance level instead of an addition. This document is being issued to correct the amendatory language.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this ruie in the **Federal Register**. This is a technical correction to the **Federal Register** and is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

In FR Doc. 98–24845 published on September 16, 1998 (63 FR 49472), make the following correction:

§ 180.443 [Corrected]

On page 49479, in the third column, the amendatory language for § 180.443 is corrected to read as follows:

2. Section 180.443 is amended in paragraph (b), in the table, by adding "artichokes" and "asparagus" and by revising the tolerance level for "peppers (bell and non-bell)" to read as follows.

[FR Doc. 99–18189 Filed 7–15–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 7

RIN 3067–AC99

Extension of Filing Date for Discrimination Complaints

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule amends our (FEMA) regulation on nondiscrimination in federally assisted programs by extending the filing deadline for discrimination complaints from 90 to 180 days from the alleged discriminatory act. This amendment will make our regulation comparable to the Title VI rules of other Federal agencies, and to the filing deadline in our own rule for federally conducted programs.

EFFECTIVE DATE: This rule is effective August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Alan Clive, Civil Rights Program Manager, Office of Equal Rights, Federal Emergency Management Agency, 500 C Street SW., room 407, Washington DC 20472; telephone: (202) 646–3957, or (email) alan.clive@fema.gov.

SUPPLEMENTARY INFORMATION: This final rule amends our (FEMA) regulation on nondiscrimination in federally assisted programs by extending the filing deadline for discrimination complaints from 90 to 180 days from the alleged discriminatory act. This amendment will make our regulation comparable to the rules of other Federal agencies under Title VI of the Civil Rights Act of 1964 and to the filing deadline for federally conducted programs to provide aggrieved parties additional time to file their complaints.

Administrative Procedure Act Determination

FEMA is publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. This final rule is a rule of agency procedure or practice that is excepted from the prior public comment requirements of § 553(b). The rule makes nonsubstantive, nonsignificant changes to 44 CFR part 7 by extending the time for filing discrimination complaints from 90 to 180 days from the alleged discriminatory act.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this rule under E.O. 12866.

Regulatory Flexibility Act

I certify that this rule is not a major rule under Executive Order 12291. It will not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities. We have not prepared a regulatory flexibility analysis of this rule.

Paperwork Reduction Act

This final rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 7

Civil rights.

Accordingly, we amend 44 CFR part 7 as follows:

PART 7—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS (FEMA REG. 5)

1. The authority citation for part 7 continues to read as follows:

Authority: FEMA Reg. 5 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000 d–1; 42 U.S.C. 1855–1885g; 50 U.S.C. 404.

2. We revise § 7.11(b) to read as follows:

§ 7.11 Conduct of investigations.

* * * * *

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this regulation may by himself or by a representative file a written complaint with the National Headquarters or any Regional Office of the Federal Emergency Management Agency. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

* * * * *

Dated: July 12, 1999.

James L. Witt,

Director.

[FR Doc. 99–18179 Filed 7–15–99; 8:45 am]
BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7717]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed

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in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Minnesota:				
Blue Earth County, unincorporated areas.	275231	March 19, 1971, Emerg; November 24, 1972, Reg; July 21, 1999, Susp.	July 21, 1999	July 21, 1999.
Cleveland, city of, Le Sueur County	270560	September 7, 1979, Emerg; July 21, 1999, Reg; July 21, 1999, Susp.	do	Do.
Kasota, city of, Le Sueur County	270247	April 28, 1975, Emerg; November 1, 1979, Reg; July 21, 1999, Susp.	do	Do.
Le Sueur County, city of, Le Sueur County.	270248	February 1, 1974, Emerg; September 29, 1978, Reg; July 21, 1999, Susp.	do	Do.
Le Sueur County, unincorporated areas	270246	March 23, 1973, Emerg; October 15, 1980, Reg; July 21, 1999, Susp.	do	Do.
New Prague, city of, Le Sueur County	270249	April 30, 1974, Emerg; November 1, 1978, Reg; July 21, 1999, Susp.	do	Do.
Waterville, city of, Le Sueur County	270251	April 23, 1974, Emerg; July 2, 1981, Reg; July 21, 1999, Susp.	do	Do.
Courtland, city of, Nicollet County	270314	June 5, 1996, Emerg; July 21, 1999, Reg; July 21, 1999, Susp.	do	Do.
Nicollet County, unincorporated areas	270625	April 17, 1974, Emerg; October 16, 1984, Reg; July 21, 1999, Susp.	do	Do.
North Mankato, city of, Nicollet County	275245	November 6, 1970, Emerg; April 28, 1972, Reg; July 21, 1999, Susp.	do	Do.
St. Peter, city of, Nicollet County	270317	September 29, 1972, Emerg; April 17, 1978, Reg; July 21, 1999, Susp.	do	Do.
Ohio: Solon, city of, Cuyahoga County	390130	July 28, 1975, Emerg; February 4, 1981, Reg; July 21, 1999, Susp.	do	Do.
Region VI				
Arkansas:				
Fayetteville, city of, Washington County	050216	July 26, 1974, Emerg; January 20, 1982, Reg; July 21, 1999, Susp.	do	Do.
Holly Grove, city of, Monroe County	050157	June 13, 1975, Emerg; March 15, 1982, Reg; July 21, 1999, Susp.	do	Do.
Johnson, city of, Washington County	050218	April 28, 1976, Emerg; July 16, 1980, Reg; July 21, 1999, Susp.	do	Do.
Monroe County, unincorporated areas	050154	February 16, 1983, Emerg; September 4, 1985, Reg; July 21, 1999, Susp.	do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Washington County, unincorporated areas.	050212	January 24, 1991, Emerg; September 18, 1991, Reg; July 21, 1999, Susp.	do	Do.
Louisiana:				
Hammond, city of, Tangipahoa Parish	220208	April 14, 1975, Emerg; December 15, 1981, Reg; July 21, 1999, Susp.	do	Do.
Pohnchtoula, city of, Tangipahoa Parish.	22021.1	June 5, 1975, Emerg; April 17, 1979, Reg; July 21, 1999, Susp.	do	Do.
Texas:				
Caldwell County, unincorporated areas	480094	May 15, 1975, Emerg; March 15, 1982, Reg; July 21, 1999, Susp.	do	Do.
Victoria, city of, Victoria County	480638	May 22, 1970, Emerg; July 23, 1971, Reg; July 21, 1999, Susp.	do	Do.
Region VII				
Iowa:				
Buchanan County, unincorporated areas.	190848	December 17, 1990, Emerg; September 1, 1991, Reg; July 21, 1999, Susp.	do	Do.
Quasqueton, town of, Buchanan County.	190332	May 6, 1977, Emerg; July 2, 1987, Reg; July 21, 1999, Susp.	do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–18181 Filed 7–15–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7716]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

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Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Alabama:			
Red Level, town of, Covington County	010243	May 3, 1999	January 10, 1975.
Spanish Fort, city of, Baldwin County	010429	.....do	
Utah: Saratoga Springs, town of, Utah County	490250		May 10, 1999
Nebraska: Dix, village of, Kimball County	310270	May 12, 1999	September 26, 1975.
Maine: Newcastle, town of, Lincoln County	230218	May 18, 1999	May 17, 1977.
Wyoming: Riverton, city of, Fremont County	560021	.....do	August 6, 1976.
New Eligibles—Regular Program			
New York: Weddington, town of, Union County[1]	370518	May 3, 1999	January 17, 1997.
Texas: Olmos Park, city of, Bexar County	481540	May 28, 1999	February 16, 1996.
Reinstatements			
New York:			
Danube, town of, Herkimer County	360300	February 14, 1984, Emerg; July 3, 1985, Reg; November 4, 1992, Susp; May 12, 1999, Rein.	July 3, 1985.
Poquott, village of, Suffolk County	361518	March 29, 1976, Emerg; August 1, 1983, Reg; September 16, 1988, Susp; May 28, 1999, Rein.	May 4, 1998.
Regular Program Conversions			
Region V			
Michigan: Ionia, township of, Ionia County	260832	May 2, 1999, Suspension Withdrawn	May 2, 1999.
Region VI			
Oklahoma:			
Pryor Creek, city of, Mayes County	400117	May 4, 1999, Suspension Withdrawn	May 4, 1999.
Mayes County, unincorporated areas	400458	.....do	do.
Region IX			
California: Los Angeles, city of, Los Angeles County	060137	.....do	do.
Region II			
New York:			
Camillus, village of, Onondaga County	360571	May 18, 1999, Suspension Withdrawn	May 18, 1999.
Camillus, town of, Onondaga County	360570	.....do	do.
Region III			
Pennsylvania:			
Bedminster, township of, Bucks County	421049	.....do	do.
Bensalem, township of, Bucks County	420181	.....do	do.
Bridgeton, township of, Bucks County	420182	.....do	do.
Bristol, township of, Bucks County	420984	.....do	do.
Buckingham, township of, Bucks County	420985	.....do	do.
Chalfont, borough of, Bucks County	420184	.....do	do.
Doylestown, township of, Bucks County	420185	.....do	do.
Durham, township of, Bucks County	420186	.....do	do.
East Rockhill, township of, Bucks County	420187	.....do	do.
Falls, township of, Bucks County	420188	.....do	do.
Haycock, township of, Bucks County	421127	.....do	do.
Hilltown, township of, Bucks County	420189	.....do	do.
Hulmeville, borough of, Bucks County	420190	.....do	do.
Langhorne, borough of, Bucks County	421074	.....do	do.
Lower Makefield, township of, Bucks County	420191	.....do	do.
Lower Southampton, township of, Bucks County.	420192	.....do	do.
Milford, township of, Bucks County	422337	.....do	do.
Morrisville, borough of, Bucks County	420194	.....do	do.
New Britain, borough of, Bucks County	420986	.....do	do.
New Hope, borough of, Bucks County	420195	.....do	do.
Newtown, borough of, Bucks County	420196	.....do	do.
Newtown, township of, Bucks County	421084	.....do	do.
Nockamixon, township of, Bucks County	420197	.....do	do.
Northampton, township of, Bucks County	420988	.....do	do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Perkasie, borough of, Bucks County	420198	.....do	do.
Plumstead, township of, Bucks County	420199	.....do	do.
Quakertown, borough of, Bucks County	420200	.....do	do.
Richland, township of, Bucks County	421095	.....do	do.
Riegelsville, borough of, Bucks County	420201	.....do	do.
Sellersville, borough of, Bucks County	420203	.....do	do.
Silverdale, borough of, Bucks County	422338	.....do	do.
Solebury, township of, Bucks County	420202	.....do	do.
Springfield, township of, Bucks County	420204	.....do	do.
Tinicum, township of, Bucks County	420205	.....do	do.
Tullytown, borough of, Bucks County	420206	.....do	do.
Upper Makefield, township of, Bucks County	420207	.....do	do.
Upper Southampton, township of, Bucks County.	420989	.....do	do.
Warminster, township of, Bucks County	420990	.....do	do.
Warrington, township of, Bucks County	420208	.....do	do.
Warwick, township of, Bucks County	420209	.....do	do.
West Rockhill, township of, Bucks County	421123	.....do	do.
Wrightstown, township of, Bucks County	421045	.....do	do.
Yardley, borough of, Bucks County	420210	.....do	do.
Region VI			
Arkansas: Clarksville, city of, Johnson County	050112	.....do	do.
Texas: Chambers County, unincorporated area	480119	.....do	do.

[1] The Town of Weddington adopted the Union County (CID# 370234) Flood Insurance Rate Map dated January 17, 1997, panels 60 and 70.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–18180 Filed 7–15–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 97–207; FCC 99–137]

Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: This document finds that service offered with a Calling Party Pays option qualifies as Commerical Mobile Radio Service (CMRS) under the Communications Act, meets the criteria of the definition for a Commercial Mobile Radio Service under the Commission's rules, and thus falls under the regulatory structure set out in the Communications Act. The document is needed to clarify any uncertainty regarding the regulatory status of Calling Party Pays offerings.

DATES: Effective July 7, 1999.

FOR FURTHER INFORMATION CONTACT: David Siehl or Joseph Levin at (202) 418–1310, TTY at (202) 418–7233, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission. Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: The following synopsis concerns only the Declaratory Ruling in the Commission's Declaratory Ruling and Notice of Proposed Rulemaking in WT Docket No. 97–207, adopted June 10, 1999, and released July 7, 1999. The synopsis of the document containing the Notice of Proposed Rulemaking is being published separately in the **Federal Register**. The complete text of the entire released item, including the Declaratory Ruling, is available for inspection and copying during normal business hours in the FCC Reference Information Center (Courtyard Level), 445 12th Street, S.W., Washington, D.C. 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 445 12th Street, S.W., CY–B400, Washington, D.C. 20054.

Synopsis of Declaratory Ruling

1. In this Declaratory Ruling we clarify that Calling Party Pays (CPP) offerings qualify as Commercial Mobile Radio Service (CMRS) under the Communications Act and thus would fall under the regulatory structure set out in section 332(c)(3) of the Act.[1] Therefore, providers of CPP would be treated as common carriers, and state regulation of rates and entry for CPP would generally be preempted.

2. The record reveals disagreement regarding how CPP should be classified, and the significance of prior Commission statements regarding CPP. Some commentators in the Notice of Inquiry (NOI) (62 FR 58700 (Oct. 30, 1997)) record argue that states have jurisdiction over CPP as a billing practice, while other commenters support Commission jurisdiction, relying on the rationale that CPP is a CMRS service.

3. The Commission finds that CPP offerings are properly classified as CMRS services pursuant to section 332 of the Act.[2] In order to determine whether a particular service could constitute CMRS, the Commission looks to section 332(d) of the Act. As provided by the statute,[3] the term "commercial mobile service" means any mobile service (as defined in section 3 of the Act) that is "provided for profit, and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission * * *." Section 3 of the Act and § 20.3 of the Commission's Rules, in turn, define the term "mobile service" in pertinent part as "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile

[1] 47 U.S.C. 332(c)(3).

[2] 47 U.S.C. 332.

[3] 47 U.S.C. 332(d)(1).

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stations communicating among themselves."[4] The Act further specifies the definition of radio communication as follows: "The term 'radio communication' or 'communication by radio' means the transmission by radio of writing, signs, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission."[5]

4. The Commission finds, first, that CPP offerings would meet the "mobile service" part of the definition. In CPP, the calling party, whether from a land or mobile station, would be seeking to use radio spectrum and related wireless network facilities to transmit writing, signs, pictures and sounds to a mobile station. CPP would also be provided "for profit," as required by the statute.[6] Whether the payment for a call to a mobile subscriber comes from the calling party or from the mobile subscriber under CPP, the payment accrues directly to and compensates the CMRS provider of the mobile "communications service" for providing service to the mobile subscriber. The Commission further finds that CPP would meet the "interconnected service" criterion of the definition for commercial mobile radio service.[7] Under CPP, a calling party would be sending a message over the "public switched network," as those terms are defined by the regulation, to reach the mobile phone of the CMRS subscriber. Finally, the Commission finds that CPP would satisfy the statutory requirement of being "available * * * to the public."[8] Based on the record, CMRS providers who will offer CPP service would be making it available on nondiscriminatory terms and conditions to all potential subscribers and to calling parties who want to reach the mobile subscribers who have the CPP service option.[9] Thus, CPP offerings would satisfy the relevant statutory definition for CMRS.

5. Moreover, the Commission finds that there is no reference in the statutory language definition to who pays for the call, and no suggestion that CPP, which would satisfy all requirements of the definition, should be excluded because the calling party pays the airtime charges." Whether the payment obligation to the CMRS provider for using that airtime falls on the party initiating the call (CPP) or on the party receiving the call, the underlying transmission and wireless network facilities remain the same as those currently used to provide CMRS and, as described, would be subject to section 332 of the Act.[10] In agreeing to pay for the call to the CMRS subscriber, the calling party becomes, for the purpose of completing the call, a customer of the CMRS provider. Placement of a CPP call by the calling party thus operates similarly to casual calling services whereby the call to a mobile user does not require the calling party to establish an account, or presubscribe, with the CMRS provider. Thus, a CPP offering, while transferring some payment aspects of the call to a customer other than the owner of the mobile phone, does not in any fashion alter the regulatory classification of the call.

6. The Commission also rejects the view that classifying CPP as CMRS is inconsistent with the *Arizona Decision*.[11] In that decision, the Commission gave only limited attention to the regulatory classification of CPP, but instead focused on addressing Arizona Corporation Commission's case for continued rate regulation of CMRS generally. That decision did not address explicitly the statutory criteria of section 332(d) as to whether CPP is CMRS, or describe CPP in any detail. Even so, the Commission agrees with BAM that the underlying premise of that order is that the Commission considered CPP as CMRS, as evidenced by the fact that the *Arizona Decision* addressed the issues there in the context of section 332. Indeed, the discussion of CPP-related billing practices in the *Arizona Decision* simply concerned whether such practices fall within the scope of "'other terms and conditions' of CMRS offerings." Thus, the *Arizona Decision* implicitly characterized CPP as a CMRS offering.

7. The Commission also regards the discussion of CPP in the *Arizona Decision* as dicta. In the *Arizona Decision*, the Commission rejected ACC's argument that it needed continued rate regulation authority on the basis of two examples, including CPP. In discussing this decision, the Commission found that it could not conclude that "these isolated incidents constitute a pattern of anticompetitive practice that might warrant continued state rate regulation." The conclusion regarding "*these isolated incidents*" holds true whether or not Arizona's intervention into a CPP matter involved a CMRS service or a billing practice. Accordingly, we find that the possible characterization of CPP as a "billing practice" was not essential to the decision and therefore dicta. Finally, to the extent that the *Arizona Decision* is found as holding that CPP does not constitute a CMRS service, the Commission hereby overturns any such holding.

Ordering Clauses

Accordingly, *it is ordered* That the action reflected in the Declaratory Ruling is taken pursuant to sections 1, 4(i), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 403, and 47 CFR 1.2.

It is further ordered that the Declaratory Ruling is effective immediately upon release of this Declaratory Ruling and Notice of Proposed Rulemaking.

It is further ordered that parties have until August 16, 1999 to seek review of the Declaratory Ruling.

List of Subjects in 47 CFR Part 20

Communications common carrier; Commercial mobile radio services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18231 Filed 7–15–99; 8:45 am]

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[4] 47 U.S.C. 3(27); 47 CFR 20.3.

[5] 47 U.S.C. 3(33).

[6] Section 20.3(a)(1) adds to the phrase, "provided for profit," the following language: "*i.e.*, with the intent of receiving compensation or monetary gain." Section 20.3(a)(1) of the Commission's Rules, 47 CFR 20.3(a)(1).

[7] 47 U.S.C. 332(d); 47 CFR 20.3. The Commission is authorized to define "public switched network," pursuant to section 332(d) (defining the term "interconnected service" as "service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) * * *." 47 U.S.C. 332(d)(2).

[8] 47 U.S.C. 332(d)(1).

[9] *See* 47 CFR 20.3(b).

[10] 47 U.S.C. 332.

[11] Petition of Arizona Corporation Commission to Extend State Authority over Rate and Entry Regulation of All Commercial Mobile Radio Services and Implementation of Sections 3(n) and 332 of the Communications Act, PR Docket No. 94–104 and GN Docket No. 93–252, Report and Order and Order on Reconsideration, 10 FCC Rcd 7824, 7837 (1995).

Proposed Rules

Federal Register
Vol. 64, No. 136
Friday, July 16, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket No. LS–98–09]

Notice of Public Meeting on Voluntary, User-Fee Funded Program to Inspect and Certify Equipment Used to Process Livestock and Poultry Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance Notice of Proposed Rulemaking; Notice of public meeting.

SUMMARY: The Agricultural Marketing Service (AMS) is developing a voluntary, user-fee funded program to inspect and certify equipment used to process livestock and poultry products under the Agricultural Marketing Act of 1946. This program is required under the provisions of the 1999 Omnibus Appropriations Bill. Comments received concerning this notice and information provided at the public meeting will assist AMS in the issuance of the proposed rule concerning the establishment of this program.

DATES: Comments must be received by September 14, 1999. A public meeting will be held August 10, 1999, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: Interested persons are invited to submit one original and two copies of written comments concerning this program to Craig Morris, Docket No. LS–98–09, Room 2092 South Agriculture Building, 1400 Independence Ave., SW., Washington, DC 20250–0249.

The public meeting will be held in Room 107-A at the USDA Jamie L. Whitten Building, 12th and Jefferson Drive, SW., Washington, DC. To register for the meeting or to schedule a presentation, contact Christine Miles by telephone at 202–720–5705 or by FAX at 202–720–3499. If a sign language interpreter or other special accommodation is necessary, contact Christine Miles at the above number.

Submit one original and two copies of written presentations to Craig Morris, Docket No. LS–98–09, Room 2092 South Agriculture Building, 1400 Independence Ave., SW., Washington, DC 20250–0249. All comments received in response to this notice will be considered part of the public record and will be available for viewing in Room 2092 South Agriculture Building, 1400 Independence Ave., SW., Washington, DC 20250–0249, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barry Carpenter, Deputy Administrator, Livestock and Seed Program, by telephone at 202–720–5705 or by Fax at 202–720–3499.

SUPPLEMENTARY INFORMATION: The 1999 Omnibus Appropriations Bill requires development of a voluntary, user-fee funded program to inspect and certify agricultural processing equipment, including equipment used to process livestock and poultry products (Pub. L. 105–277, sec. 747). Previously, this function was carried out by USDA on a mandatory prior approval basis by the Food Safety and Inspection Service (FSIS) as a prerequisite for equipment use in Federally inspected meat and poultry packing and processing establishments. FSIS continues to verify that equipment is of such material and construction as will facilitate its thorough cleaning and otherwise avoid adulteration and misbranding of product. However, to provide Federally inspected establishments with the flexibility to design equipment in the manner they deem best to maintain a sanitary environment for food production without having to seek prior approval, FSIS published a document in the **Federal Register** of August 25, 1997 (62 FR 45016) which eliminated the mandatory FSIS prior approval program.

At the time FSIS announced its intention to discontinue its prior approval program, equipment manufacturers and meat and poultry processors expressed interest in continuing the FSIS program, or developing a new program through AMS on a voluntary, user-fee funded basis to inspect and certify equipment used to process livestock and poultry products to a sanitary standard. Subsequently, passage of the 1999 Omnibus Appropriations Bill required development of a program to inspect and certify agricultural processing equipment which would be similar to other inspection and certification programs under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

Accordingly, AMS is issuing this advance notice of proposed rulemaking to assist in the development of an inspection and certification program for equipment used to process livestock and poultry products. Further, a public meeting will be held on August 10, 1999, in Room 107-A at the USDA Jamie L. Whitten Building, 12th and Jefferson Drive, SW, Washington, DC. Through this advance notice of proposed rulemaking and the public meeting, AMS will be seeking information which will enable the Agency to develop an efficient and cost-effective program for inspecting and certifying equipment used to process livestock and poultry products.

Specifically, AMS will be seeking information concerning:

(1) Initiatives underway in the industry to develop a voluntary, consensus sanitary standard for the design and manufacture of equipment used to process livestock and poultry products;

(2) Comments on the validity and usability of standards presented to AMS for consideration for adoption;

(3) Suggestions of criteria to be used by AMS to select a sanitary standard; and

(4) Any other information which would aid AMS in implementing and administering this program.

Authority: 7 U.S.C. 1621–1627

Dated: July 13, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–18216 Filed 7–15–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–151–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 1329–23 and 1329–25 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model 1329–23 and 1329–25 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tom Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–151–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions:

The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Lockheed Model 1329–23 and 1329–25 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

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This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model, G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models, F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale Models, ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model, BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model, 4101 Airplanes	99–NM–146–AD.
British Aerospace Model, HS 748 Series Airplanes	99–NM–147–AD.
Saab Model, SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA Model, C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model, 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model, 1329–23 and 1329–25, (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model, DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27, Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA, Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

There are approximately 91 Model 1329–23 and 1329–25 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 99–NM–151–AD.

Applicability: Model 1329–23 and 1329–25 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17551 Filed 7–15–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model HS 748 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–147–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally,

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the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for British Aerospace Model HS 748 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model, G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model 4101 Airplanes	99–NM–146–AD.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker Model F27, Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft (Formerly British Aerospace, Aircraft Group): Docket 99–NM–147–AD.

Applicability: Model HS 748 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17550 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Model F27 and FH227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fairchild Model F27 and FH227 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 256–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–143–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1 ½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial

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boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Fairchild Model F27 and FH227 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale, Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

There are approximately 426 Model F27 and FH227 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,820, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Maryland Air Industries, Inc.: Docket 99–NM–143–AD.

Applicability: Model F27 and FH227 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with §§21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17549 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–3 and DC–4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–3 and DC–4 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

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p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–139–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for McDonnell Douglas Model DC–3 and DC–4 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale, Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.

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Airplane models	Docket No.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

There are approximately 300 Model DC–3 and DC–4 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 166 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,960, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–139–AD.

Applicability: Model DC–3 and DC–4 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17548 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30, SD3–60, SD3-SHERPA, and SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

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Request for Information

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this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

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The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Short Brothers SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
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Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
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Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 138 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,280, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 99–NM–154–AD.

Applicability: Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing

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conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17547 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTAY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–150–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation-

of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data

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regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Dornier Model Dornier 328–100 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model 4101 Airplanes	99–NM–146–AD.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27, Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3-SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,860, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GMBH: Docket 99–NM–150–AD.

Applicability: Model 328–100 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17546 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–146–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–146–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

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The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1 ½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Jetstream Model 4101 airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale, Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

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Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,100, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft: [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–146–AD.

Applicability: Model 4101 airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17545 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–14 and L–18 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model L–14 and L–18 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tom Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–142–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-U.S. civil aviation

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authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Lockheed Model L–14 and L–18 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale, Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.

Airplane models	Docket No.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

There are approximately 120 Model L–14 and L–18 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 109 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,540, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 99–NM–142–AD.

Applicability: Model L–14 and L–18 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA. Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17544 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Model G–159 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

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directive (AD) that is applicable to certain Gulfstream Aerospace Model G–159 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–138–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Neil Berryman, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6098; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–138–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Gulfstream Aerospace Model G–159 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

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Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale, Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 141 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour.

Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,460, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream Aerospace Corporation (Formerly Grumman): Docket 99–NM–138–AD.

Applicability: Model G–159 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17543 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes and Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–153–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as

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soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging a id other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model 4101 Airplanes	99–NM–146–AD.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model 1329–23 and 1329–25, (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not

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a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 99–NM–153–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA–approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17542 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) C–212 and CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA C–212 and CN–235 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–149–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

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Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for CASA C–212 and CN–235 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model 4101 Airplanes	99–NM–146–AD.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model 1329–23 and 1329–25, (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27, Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,160, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. (CASA): Docket 99–NM–149–AD.

Applicability: Model C–212 and CN–235 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17541 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–145–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORAMTION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and

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be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–145–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–145–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice.

That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions:

The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training.

Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Jetstream Model BAe ATP airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
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Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD.

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Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model 4101 Airplanes	99–NM–146–AD.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model 1329–23 and 1329–25, (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27, Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $600, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft: [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–145–AD.

Applicability: BAe Model ATP airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17540 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–141–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Efran Esparza,, Aerospace Engineer, Airplane Certification Office, ASW–150, FAA, Rotorcraft Directorate, 1601 Meacham Boulevard, Fort Worth, Texas 76137–4298; telephone (817) 222–5130; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–141–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation

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of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model 4101 Airplanes	99–NM–146–AD.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model 1329–23 and 1329–25, (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27, Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $300, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

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in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream American (Frakes Aviation): Docket 99–NM–141–AD.

Applicability: Model G–73 (Mallard) and G–73T series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane Certification Office, ASW–150, FAA, Rotorcraft Directorate . The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Airplane Certification Office, ASW–150 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Airplane Certification Office, ASW–150 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17539 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–137–AD]

RIN 2120–AA64

Airworthiness Directives; Sabreliner Model NA–265–40, NA–265–60, NA–70, and, NA–265–80 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Sabreliner Model NA–265–40, NA–265–60, NA–70, and, NA–265–80 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–137–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tina Miller, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–137–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–137–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

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The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Sabreliner Model NA–265–40, NA–265–60, NA–70, and, NA–265–80 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale, Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.

Airplane models	Docket No.
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

There are approximately 283 Model NA–265–40, NA–265–60, NA–70, and, NA–265–80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,560, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rockwell International: Docket 99–NM–137–AD.

Applicability: Model NA–265–40, NA–265–60, NA–70, and, NA–265–80 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17538 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 and DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–7 and DHC–8 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–152–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Bombardier Model DHC–7 and DHC–8 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

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This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale, Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 183 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,980, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 99–NM–152–AD.

Applicability: Model DHC–7 and DHC–8 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17537 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–148–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was

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flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1 ½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding

cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Saab SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale, Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream, Model 4101 Airplanes	99–NM–146–AD.
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD.
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $13,440, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this

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proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 99–NM–148–AD.

Applicability: Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17536 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR–42 and ATR–72 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 99–NM–144–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions:

The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the

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FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Aerospatiale Model ATR–42 and ATR–72 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model 4101 Airplanes	99–NM–146–AD.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3-SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 158 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,480, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 99–NM–144–AD.

Applicability: Model ATR–42 and ATR–72 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17535 Filed 7–15–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Model YS–11 and YS–11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Mitsubishi Model YS–11 and YS–11A series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

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they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–140–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 99–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on "Inflight Operations in Icing Conditions", in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about "ice bridging" on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the "sheath" of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the

onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with "modern" deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Mitsubishi Model YS–11 and YS–11A series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD.
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD.
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD.
Fairchild Models, F27 and FH227 Series Airplanes	99–NM–143–AD.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD.
Jetstream Model 4101 Airplanes	99–NM–146–AD.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.

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Airplane models	Docket No.
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

There are approximately 76 Model YS–11 and YS–11A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,280, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Mitsubishi Heavy Industries, Ltd.: Docket 99–NM–140–AD.

Applicability: Model YS–11 and YS–11A series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17534 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Models 500, 501, 550, 551, and 560 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Models 500, 501, 550, 551, and 560 airplanes.

This proposal would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This proposal is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carlos Blacklock, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4166; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

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Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that specify not using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

FAA's Determinations

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, an historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for Cessna Models 500, 501, 550, 551, and 560 airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed ADs being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Additionally, certain other airplanes are also being reviewed by the Small Airplane Directorate to determine specifically which airplanes may be subject to the identified unsafe condition. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

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CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD.
Fokker Model F27, Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA, Series Airplanes	99–NM–154–AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

There are approximately 1,710 Models 500, 501, 550, 551, and 560 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,427 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $85,620, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cessna Aircraft Company: Docket 99–NM–136–AD.

Applicability: Models 500, 501, 550, 551, and 560 airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

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Issued in Renton, Washington, on June 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17533 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–366–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection to measure the offset of the de-icing tubing adjacent to the refueling panel on the right-hand wing, and replacement with new improved tubing, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a blockage in the de-icing tubing which could result in a malfunction of the de-icing boot. This malfunction would be unknown to the flight crew, and could lead to reduced controllability of the airplane during flight in icing conditions.

DATES: Comments must be received by August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–366–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–366–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–366–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that a water trap in the de-icing tubing could cause a blockage inside the tubing if water in the trap freezes. The manufacturer has told the FAA that water, which penetrates through small cracks and holes in the de-icing boot, would be collected in the water trap. A blockage in the de-icing tubing could result in a malfunction of the de-icing boot. This malfunction would be unknown to the flight crew. This condition, if not corrected, could result in reduced controllability of the airplane when flying in icing conditions.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–30–265, dated July 24, 1998, which describes procedures for a one-time detailed inspection of the de-icing tubing adjacent to the refueling panel on the right-hand wing, and replacement with new improved tubing, if the de-icing tubing does not conform with the dimension shown in the service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 1998–423, dated November 5, 1998, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,620 or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GMBH: Docket No. 98–NM–366–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3042 through 3105 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a blockage inside the de-icing tubing, which could result in a malfunction of the de-icing boot, and consequent reduced controllability of the airplane during flight in icing conditions, accomplish the following:

Inspection and Corrective Action

(a) Within two months after the effective date of this AD, perform a one-time detailed inspection to measure the offset of the de-icing tubing adjacent to the refueling panel on the right-hand wing in accordance with Dornier Service Bulletin SB–328–30–265, dated July 24, 1998.

(1) If the de-icing tubing offset measurement conforms to the dimension shown in the service bulletin, no further action is required by this AD.

(2) If the de-icing tubing does not conform to the dimension shown in the service bulletin, prior to further flight, replace it with new improved tubing in accordance with instructions provided in the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in German airworthiness directive 1998–423, dated November 5, 1998.

Issued in Renton, Washington, on July 7, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17864 Filed 7–15–99; 8:45 am]

BILLING CODE 4912–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–277–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections of the lower engine mount to determine if the tangential link upper bolt and nut are oriented properly, and if the tangential link upper bolt nut is torqued within certain limits. Additionally, that AD requires replacement of the bolt and nut with serviceable parts, if necessary, and requires certain follow-on actions for airplanes on which the upper bolt is missing. That AD also provides for replacement of the safety links with modified links as an optional terminating action for the repetitive inspections. This action would require accomplishment of either the previously optional terminating action or a new, alternative terminating action. This proposal is prompted by development of a new terminating action by the manufacturer. The actions specified by the proposed AD are intended to prevent separation of the engine from the airplane due to migration of the tangential link upper bolt.

DATES: Comments must be received by August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–277–AD, 1601 Lind Avenue, SW.,

Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–277–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 22, 1996, the FAA issued AD 96–03–01, amendment 39–9496 (61 FR 3550, February 1, 1996), applicable to certain Boeing Model 747 series airplanes. That AD requires inspections of the lower engine mount to determine if the tangential link upper bolt and nut are oriented properly, and if the tangential link upper bolt nut is torqued within certain limits. Additionally, that AD requires replacement of the bolt and nut with serviceable parts, if necessary, and certain follow-on actions for airplanes on which the upper bolt is missing. Terminating action is also provided by that AD. That action was prompted by reports of migration of bolts completely from the tangential link of the aft engine mount, a condition which would reduce the capability of the retention system for the engine. The requirements of that AD are intended to prevent separation of the engine from the airplane due to migration of the tangential link upper bolt.

Subsequently, on March 6, 1996, the FAA issued a correction to that AD, AD 96–03–01 R1, amendment 39–9538 (61 FR 10270, March 13, 1996), to clarify an incorrect description of a part.

Actions Since Issuance of Previous Rule

In the preamble to AD 96–03–01, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

Since the issuance of AD 96–03–01 R1, the FAA has reviewed and approved Boeing Service Bulletin 747–71A2277, Revision 1, dated May 21, 1998, and Revision 2, dated January 14, 1999. That service bulletin describes procedures for an alternative modification that would eliminate the need for the repetitive inspections required by AD 96–03–01 R1. That modification involves replacement of the tangential link upper bolt on the aft engine mount with a reworked bolt and a new nut retainer. The service bulletin also describes procedures for reworking the tangential link upper bolt and fabricating the nut retainer. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–03–01 R1 to continue to require inspections of the lower engine mount to determine if the tangential link upper bolt and nut are oriented properly, and if the tangential link upper bolt nut is torqued within certain limits; replacement of the bolt and nut with serviceable parts, if necessary; and certain follow-on actions for airplanes on which the upper bolt is missing. This proposed AD also would require either replacement of the safety links with modified safety links, or replacement of the tangential link upper bolt on the aft engine mount with a reworked bolt and a new nut retainer. Accomplishment of either such replacement would constitute terminating action for the repetitive inspection requirement.

The inspections would be required to be accomplished in accordance with Boeing Alert Service Bulletin 747–71A2277, dated November 29, 1995, or the service bulletins described previously. The replacement of the safety links, if accomplished, would be required to be accomplished in accordance with Boeing Service Bulletin 747–71–2206, dated April 16, 1987; or Boeing Service Bulletin 747–71–2206, Revision 1, dated November 12, 1987, as revised by Boeing Notice of Status Change No. 747–71–2206 NSC 1, dated December 4, 1987, and Boeing Notice of Status Change No. 747–71–2206 NSC 2, dated March 17, 1988. The replacement of the tangential link bolt, if accomplished, would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 421 airplanes of the affected design in the worldwide fleet. The FAA estimates that 185 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 96–03–01 R1 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $177,600, or $960 per airplane, per inspection cycle.

The replacement of the safety link that is proposed as one option for compliance with this AD action would take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $30,228 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $31,308 per airplane.

In lieu of replacement of the safety link, this proposed AD provides for replacement of the tangential link upper bolt on the aft engine mount with a reworked bolt and a new nut retainer. Such replacement, which is proposed as an additional option for compliance with this AD action, would take approximately 20 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,888 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $3,088 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9538 (61 FR 10270, March 13, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–277–AD. Supersedes AD 96–03–01 R1, amendment 39–9538.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–71A2277, dated November 29, 1995; or Boeing Service Bulletin 747–71A2277, Revision 1, dated May 21, 1998, or Revision 2, dated January 14, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent separation of the engine from the airplane, accomplish the following:

Restatement of Requirements of AD 96–03–01 R1, Amendment 39–9538

Inspections and Corrective Actions

(a) Within 90 days after February 16, 1996 (the effective date of AD 96–03–01 R1, amendment 39–9538), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Boeing Alert Service Bulletin 747–71A2277, dated November 29, 1995, or Boeing Service Bulletin 747–71A2277, Revision 1, dated May 21, 1998, or Revision 2, dated January 14, 1999.

(1) Perform a visual inspection to ensure that installation of the tangential link upper bolt nut is on the forward side of the engine mount fitting.

(i) If the tangential link upper bolt nut is installed on the forward side of the engine mount fitting, repeat the visual inspection at intervals not to exceed 18 months.

(ii) If the tangential link upper bolt nut is not installed on the forward side of the engine mount fitting, prior to further flight, remove the nut, bolt, and washers, and reinstall the nut, bolt, and washers in accordance with the service bulletin. Thereafter, repeat the visual inspection at intervals not to exceed 18 months.

(iii) If the tangential link upper bolt is missing from the engine mount fitting, prior to further flight, perform the various follow-on actions in accordance with the service bulletin. (The follow-on actions include visual inspections, magnetic particle inspections, replacement of the lower engine mount fitting with a serviceable part, if necessary; installation of new safety links, bolts, and nuts; and installation of a new tangential link upper bolt.) Thereafter, repeat the visual inspection at intervals not to exceed 18 months.

(2) Perform an inspection to verify that the torque value of the tangential link upper bolt (on both sides of the mount) is within the limits specified in the service bulletin.

(i) If the torque value of the tangential link upper bolt nut is within the limits specified in the service bulletin, repeat the inspection (verification) at intervals not to exceed 18 months.

(ii) If the torque value of the tangential link upper bolt nut is outside the limits specified in the service bulletin, prior to further flight, perform a visual inspection of the tangential link upper bolt and washer for any damage or discrepancy, in accordance with the service bulletin.

(A) If no damage or discrepancy of the tangential link upper bolt and washers is found, prior to further flight, replace the bolt nut with a new or serviceable part in accordance with the service bulletin. Thereafter, repeat the inspection (verification) specified in paragraph (a)(2) of this AD at intervals not to exceed 18 months.

(B) If any damage or discrepancy of the tangential link upper bolt and washers is found, prior to further flight, replace the damaged or discrepant part with a new or serviceable part, and replace the bolt nut with a new or serviceable part, in accordance with the service bulletin. Thereafter, repeat the inspection (verification) specified in paragraph (a)(2) of this AD at intervals not to exceed 18 months.

New Requirements of This AD

Replacement

(b) Within 18 months after the effective date of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD. Accomplishment of either paragraph (b)(1) or (b)(2) of this AD constitutes terminating action for the repetitive inspection requirements of this AD.

(1) Replace the safety links on the aft engine mount with modified safety links in accordance with Boeing Service Bulletin 747–71–2206, dated April 16, 1987; or Boeing Service Bulletin 747–71–2206, Revision 1, dated November 12, 1987, as revised by Boeing Notice of Status Change No. 747–71–2206 NSC 1, dated December 4, 1987, and Boeing Notice of Status Change

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No. 747-71-2206 NSC 2, dated March 17, 1988.

(2) Replace the tangential link upper bolt on the aft engine mount with a reworked bolt and a new nut retainer, in accordance with Parts 2 and 3 of Boeing Service Bulletin 747-71A2277, Revision 1, dated May 21, 1998, or Revision 2, dated January 14, 1999.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 96-03-01 R1, amendment 39-9538, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-18202 Filed 7-15-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-374-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777-200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777-200 series airplanes. This proposal would require the application of sealant to the front spar and upper surface of the wing center section to ensure the integrity of the secondary fuel barrier. This proposal is prompted by reports from the airplane manufacturer that the sealant was inadvertently not applied to portions of the wing center section on certain Boeing Model 777-200 series airplanes. The actions specified by the proposed AD are intended to prevent fuel or fuel vapors from entering the cargo and passenger compartments in the event of a failure of the primary seal or development of a crack in the wing center section structure. Leakage of fuel or fuel vapors into the cargo and passenger compartments could be hazardous to personnel, and could cause a fire in those compartments.

DATES: Comments must be received by August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-374-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle Washington, 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2683; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-374-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-374-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report that, due to an error during airplane manufacture, the sealant that serves as a secondary fuel barrier may not have been applied to the front spar and upper surface of the wing center section on certain Boeing Model 777-200 series airplanes. This condition, if not corrected, could permit fuel or fuel vapors to enter the passenger and cargo compartments of the airplane if there is a failure of the primary seal or a crack develops in the center section structure. Leakage of fuel or fuel vapors into the cargo and passenger compartments could be hazardous to personnel, and could cause a fire in those compartments.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 777-57-0033, dated March 26, 1998, which describes procedures for accessing the overwing stub beams on the left and right sides of the airplane, and for application of a sealant to the front spar and upper surface of the wing center section to ensure the integrity of the secondary fuel barrier. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require application of sealant to the front spar and upper surface of the wing center section to ensure the integrity of the secondary fuel barrier. These actions

would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and the Service Bulletin

Operators should note that, although the service bulletin recommends accomplishment of the application of sealant prior to the accumulation of 4,000 total flight cycles or within 750 days (after receipt of the service bulletin), whichever occurs earlier, this proposed AD would require the application of sealant within 24 months after the effective date of this AD. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions (two hours). In light of all of these factors, the FAA finds a compliance time of 24 months after the effective date of this AD for accomplishing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. The FAA also finds that such a compliance time will provide operators with approximately the same amount of time to accomplish the proposed actions as what was specified in the service bulletin.

Cost Impact

There are approximately 37 airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,760, or $220 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98-NM-374-AD.

Applicability: All Model 777-200 series airplanes, line numbers 41 through 91 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel or fuel vapors from entering the passenger and cargo compartments of the airplane in the event of a failure of the primary seal or development of a crack in the wing center section structure, accomplish the following:

Corrective Actions

(a) Within 24 months after the effective date of this AD, apply sealant to the front spar and upper surface of the wing center section under the overwing stub beams on the left and right sides of the airplane, in accordance with Boeing Service Bulletin 777-57-0033, dated March 26, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-18201 Filed 7-15-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-46-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require removal of cable guards in the lateral control system and replacement with

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new, improved cable guards. This proposal is prompted by reports of high control wheel forces and restricted control wheel movement. The actions specified by the proposed AD are intended to prevent deterioration of cable guards in the lateral control system, which could result in a jam of the lateral control system and consequent reduced lateral controllability of the airplane.

DATES: Comments must be received by August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–M–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–46–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that operators of Boeing Model 747 series airplanes have experienced high control wheel forces or restricted control wheel movement. Physical inspection of the cable runs revealed that the cable guards had deteriorated due to exposure to Boeing Material Specification (BMS) 3–24 aircraft grease. Deteriorated cable guards can splinter and fall into the cable pulley covers. This condition, if not corrected, could result in a jam of the lateral control system and consequent reduced lateral controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2364, dated September 3, 1998, which describes procedures for removal of cable guards in the lateral control system and replacement with new cable guards. The new, improved cable guards are made of a material that shows no signs of deterioration when exposed to either BMS 3–24 or BMS 3–33, a newer general purpose aircraft grease. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

The FAA has also reviewed Boeing Service Letter 747–SL–27–134, dated December 23, 1993, which provides an acceptable procedure for removal of cable guards in the lateral control system and replacement with new, improved cable guards between Stations 300 and 420.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal of cable guards in the lateral control system and replacement with new, improved cable guards. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

There are approximately 956 airplanes of the affected design in the worldwide fleet. The FAA estimates 219 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $11,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,540,400, or $11,600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–46–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2364, dated September 3, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent deterioration of cable guards in the lateral control system, which could result in a jam of the lateral control system and consequent reduced lateral controllability of the airplane, accomplish the following:

Replacement

(a) Within 2 years after the effective date of this AD, remove existing cable guards in the lateral control system and replace with new, improved cable guards in accordance with Boeing Alert Service Bulletin 747–27A2364, dated September 3, 1998.

Note 2: Removal of existing cable guards and replacement with new, improved cable guards between Stations 300 and 420 accomplished prior to the effective date of this AD in accordance with Boeing Service Letter 747–SL–27–134, dated December 23, 1993, is considered acceptable for compliance with paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install a cable guard with a part number and dash number listed in Table 1 of this AD, on any airplane.

TABLE 1.—CABLE GUARDS NOT TO BE INSTALLED

Part No.	Part dash No.
65B82025	65B82025–2 through 65B82025–4 inclusive. 65B82025–9 through 65B82025–10 inclusive. 65B82025–17 through 65B82025–22 inclusive. 65B82025–25. 65B82025–27 through 65B82025–46 inclusive. 65B82025–48 through 65B82025–57 inclusive.
65B82204	65B82204–9 through 65B82204–10 inclusive. 65B82204–18 through 65B82204–22 inclusive. 65B82204–25. 65B82204–31 through 65B82204–40 inclusive. 65B82204–43 through 65B82204–44 inclusive. 65B82204–61 through 65B82204–76 inclusive. 65B82204–81 through 65B82204–86 inclusive.
65B82443	65B82443–9 through 65B82443–10 inclusive. 65B82443–12. 65B82443–14 through 65B82443–18 inclusive. 65B82443–21 through 65B82443–22 inclusive. 65B82443–26 through 65B82443–31 inclusive.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18200 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–27]

Proposed Establishment of Class E Airspace; Gwinn, MI; Proposed Revocation of Class E Airspace; Sawyer, MI, and K.I. Sawyer, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to establish Class E airspace at Gwinn, MI, and revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. The NRPM is being withdrawn as a result of the change of the associated city for Sawyer Airport, and will be reissued in the near future.

DATES: [The withdrawal is effective July 16, 1999].

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

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The Proposal

On May 4, 1999, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish Class E airspace at Gwinn, MI, and revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. The legal description for the Sawyer Airport has changed from Sawyer, MI, to Gwinn, MI, and K.I. Sawyer AFB has been closed; therefore, action was initiated to correct the legal description for the Class E airspace.

Summary of Comments

Documentation was received from the Board of Commissioners, County of Marquette, MI, that on April 20, 1999, the Marquette County Board of Commissioners unanimously passed an action changing the name of the Sawyer Airport (formerly K.I. Sawyer Air Force Base) to Sawyer International Airport, and changing the associated city for the airport from Gwinn, MI, to Marquette, MI.

Conclusion

In consideration of the aforementioned changes, the airspace action as proposed was incomplete; there, the airspace action including these changes will be reissued in the near future.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 99–AGL–27, as published in the **Federal Register** on May 4, 1999, (64 FR 23806), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Des Plaines, Illinois on July 6, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–18206 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–13]

Proposed Establishment of Class E Airspace; Pikeville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Pikeville, KY. A Global Positioning System (GPS) Runway (RWY) 8 Standard Instrument Approach Procedure (SIAP) and a GPS RWY 26 SIAP have been developed for Pike County—Hatcher Field Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Pike County—Hatcher Field Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of SIAP.

DATES: Comments must be received on or before August 16, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–13, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Pikeville, KY. A GPS RWY 8 SIAP and a GPS RWY 26 SIAP have been developed for Pike County—Hatcher Field Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Pike County—Hatcher Field Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIQURSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103,40113, 40120. E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspoce oreas extending upward for 700 feet or more above the surface of the eorth.

* * * * * * *

ASO KY E5 Pikeville, KY [New]

Pike County—Hatcher Field Airport, KY
(Lat. 37°33′44″N, long. 82°33′56″W)
Prestonburg, Big Sandy Regional Airport, KY
(Lat. 37°45′04″N, long. 82°38′13″W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Pike County—Hatcher Field Airport; excluding that airspace within the Prestonburg, KY Class E airspace area.

* * * * *

Issued in College Park, Georgia, on July 8, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 99–18204 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Dive Sticks; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission has reason to believe that certain dive sticks may present an unreasonable risk of injury. Such dive sticks are constructed in such a manner that children can become impaled on them when jumping into shallow water where the dive sticks are oriented in an upright position. This impalement can result in serious injuries. Dive sticks are one of several types of devices used for underwater retrieval activities in swimming pools. They are typically made of rigid plastic, and are or can be weighted so that when dropped into water they sink and stand upright on the bottom. Dive sticks have a variety of shapes, but many have a hollow tube cross section or a solid X-shaped cross section. Dive sticks are sold under a variety names such as dive sticks, diving sticks, fish sticks, sticks and batons.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding that could result in a rule banning dive sticks with certain characteristics that cause them to be hazardous. This proceeding is commenced under the Federal Hazardous Substances Act.

The Commission solicits written comments concerning the risks of injury associated with dive sticks, the regulatory alternatives discussed in this ANPR, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this ANPR.

DATES: Written comments and submissions in response to this ANPR must be received by September 14, 1999.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301)504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Dive Sticks."

FOR FURTHER INFORMATION CONTACT: Scott R. Heh, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1308.

SUPPLEMENTARY INFORMATION:

A. The Product

Dive sticks are one of several types of devices used for underwater retrieval activities in swimming pools. They are typically made of rigid plastic, and are, or can be weighted so that when dropped into water they sink and stand upright on the bottom. Dive sticks have a variety of shapes, but many have a hollow tube cross section or a solid X-shaped cross section. Dive sticks are sold under a variety of names such as dive sticks, diving sticks, fish sticks, sticks and batons.

The Commission's technical staff preliminarily considers a dive stick that has all of the following characteristics to pose a hazard for traumatic injuries to the perineum, including laceration and perforation injuries associated with rectal and vaginal impalement:

1. The product is essentially rigid.
2. The product is weighted, or can be weighted, so that when dropped in the water, it sinks to the bottom and stands upright.
3. The product has an elongated shape with a top end that is small enough in cross section to concentrate the force of impact and allow penetration of the rectum or vagina. (As examples, a hazardous dive stick could have a cylindrical shape with a blunt end or it may have a more pointed end, such as one product that is shaped like a shark silhouette.)

B. The Risk of Injury

1. Description of Injury

When used in shallow water, serious rectal or vaginal impalement injuries can occur when a child accidentally falls on or jumps buttocks-first into the water, and lands on a dive stick. Facial and eye injuries are also possible when a child attempts to retrieve a dive stick under the water.

While penetrating injuries account for only a very small percentage of traumatic injuries in children, they are severe. Falls on vertical objects may result in traumatic injuries to the perineum. The severity of rectal or vaginal lesions after impalement depends on the degree of penetration by

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the object. This in turn is dependent on the force of impact and the physical properties of the involved object (size and surface characteristics). The severity of injury could range from laceration of the rectum and sphincter, to puncture wounds and tears of the colon. High impact forces may also cause injuries to the vulva, vaginal canal, and blood vessels beneath the perineal skin in females. In males, such impacts may cause perforation injuries to the genitalia, urethra, ureter and bladder. All these types of perforation and impalement injuries in males and females require hospitalization and surgery.

Because of the septic nature of the area, the main complication after perineum injuries is lesion infection, which may lead to abscess and possible sepsis in extreme cases. To avoid subsequent septic complications, the management of these pediatric injuries often requires aggressive and drastic surgical means. Perineal injuries (with or without rectal injury) often require fecal diversion (proximal colostomy), wound drainage, and the use of a broad-spectrum antibiotic in pre- and post-operative stages. The damage caused by deep penetration into the rectal or vaginal area may have devastating effects on children's health. In addition to long-term physiological effects on children, these types of injuries have the potential to cause long-lasting emotional trauma.

2. Injury Data

The Commission has learned of seven incidents in which dive sticks caused serious injury to young children. Six of these were impalement incidents that resulted in serious vaginal or rectal injuries. The seventh incident was a facial laceration just below the eye. All the victims were children ranging in age from six to nine years old. Each of the incidents occurred with vertical-standing toy dive sticks. The eye/facial injury was from a shark-shaped dive stick. All of the vaginal and rectal injuries were from baton-shaped dive sticks, approximately 7⅞ to 8⅝ inches long and ⅞ to one inch in diameter. The victims were injured while playing in shallow water. Three incidents occurred in small wading pools with water levels between 12 and 24 inches. One occurred in a spa with unknown water depth and one in a 3-foot pool with approximately 27 inches of water. Another incident occurred in a swimming pool with an unknown depth of water. The incidents are as follows:

a. July 22, 1990—The 7-year-old female victim was playing with her cousins in an above-ground swimming pool. She jumped up and out of the water, tucked her knees to her chest to do a "cannon ball" jump and re-entered the water. The victim entered the water buttocks first and rapidly descended to the bottom of the pool, where her buttocks came in contact with the upright, cylindrical toy dive stick. The toy dive stick caused lacerations around the victim's rectum. No stitches were required and the victim has recovered fully.

b. July 22, 1993—The 8-year-old girl was sitting on the edge of her family's spa with her feet in the water. She used her arms to push off the edge and sit on a lower step of the spa, without seeing the vertical-standing, cylindrical toy dive stick on the same lower step. The toy dive stick slipped past the victim's swimsuit and penetrated her vagina. Immediate medical attention was sought, and surgery was performed to repair multiple internal, vaginal lacerations. Additional surgery was necessary 5 months later. No recovery records are available.

c. July 24, 1995—The 9-year-old female victim jumped into a swimming pool and landed on a toy dive stick causing deep vaginal lacerations.

d. August 3, 1997—The 6-year-old female victim jumped into her inflatable wading pool. The victim's buttocks area landed on top of the vertical-standing, cylindrical toy dive stick. The product and the girl's swimsuit were projected into her rectum. The victim was admitted to a children's hospital for surgery to repair perineal and external sphincter lacerations. The victim has recovered from the incident, but will be examined periodically.

e. June 10, 1998—The eight-year-old female victim was playing with her brother in a wading pool. She fell backwards in the pool, landing on the cylindrical toy dive stick that was standing upright on the bottom of the pool. The toy dive stick penetrated the vagina. A physician surgically repaired the laceration with both internal and external sutures. The victim has recovered.

f. June 28, 1998—The 7-year-old boy and his brother had been playing with the cylindrical toy dive sticks prior to the incident. The victim ran and jumped buttocks first into the wading pool. He impaled himself via the rectum on a toy dive stick that was standing upright in the water. Surgery was performed to repair a laceration of the rectum, and a temporary colostomy was performed to repair the perforated intestine. The victim healed, but continues to complain of abdominal pain.

g. August 13, 1998—The 6-year-old female victim and three other children were in a small wading pool playing with toy dive sticks that were shaped like sharks. The victim stuck her face into the pool to retrieve the toy dive stick and hit her face on the toy. She received a ¾ inch laceration below her left eye, which required sutures to close. The victim has recovered.

C. Relevant Statutory Provisions

This proceeding is conducted pursuant to the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury or illness "(3) from points or other protrusions, surfaces, edges, openings, or closures, * * * or (9) because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262 (f)–(i), governs a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding is commenced by issuance of this ANPR. After considering any comments submitted in response to this ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i).

D. Regulatory Alternatives

One or more of the following alternatives could be used to reduce the identified risks associated with dive sticks.

1. *Mandatory rule.* The Commission could issue a rule declaring certain dive sticks to be banned hazardous substances. This rule could define the banned products in terms of physical or performance characteristics, or both.

2. *Labeling rule.* The Commission could issue a rule banning dive sticks that did not contain specified warnings and instructions.

3. *Voluntary standard.* If the industry developed, adopted, and conformed to an adequate voluntary standard, the Commission could defer to the voluntary standard in lieu of issuing a mandatory rule.

4. *Reliance on recalls.* The Commission has obtained voluntary corrective actions with respect to certain dive sticks. The Commission could continue to rely on corrective actions, both voluntary and mandatory, in lieu of or in addition to a mandatory rule.

E. Existing Standards

The Commission is not aware of any state, voluntary, foreign, international, or other standards dealing with the described risk of injury.

F. Market Information

1. The Product

Dive sticks are one of several types of devices used for underwater retrieval activities in swimming pools. They are typically made of rigid plastic, and are or can be weighted so that when dropped into water they sink and stand upright on the bottom. They are usually cylindrical in shape, but some have shapes that resemble such things as fish, sharks, or other sea creatures. Typically, the length is 8 inches or less and the diameter is one inch or less. Dive sticks and other dive toys are often numbered with a point value (e.g., 10 through 60) for counting up totals in games. In some cases, the units with the higher point values may be shorter than those with lower point values.

Dive sticks are usually sold in sets of 3 to 6 sticks. They are often sold as part of a package that contains other toys, such as dive disks, eggs, and rings (e.g., a package may include 3 dive sticks, 3 dive rings, and 3 dive disks). They are also sold with things such as masks, goggles, or snorkels. At retail they cost from $4 to $7 per set, or about $1 per individual stick. Even when sold with other products such as disks, rings, and snorkels, they usually cost less than $10.

Dive sticks and other dive toys are widely available. They are often sold in the seasonal aisles of grocery and drug stores and can be purchased at many department and variety stores. Dive toys are also available through some mail order catalogs and at various pool dealers.

2. Substitutes

A wide range of substitutes is available for dive sticks. The closest substitute may be dive rings since these are also weighted so that they stand up on the bottom of the pool. Other substitutes are dive disks, which are flat, plastic disks that sink to the bottom of the pool, but lie flat rather than on end. There are also a variety of dive eggs. In general, these substitutes are manufactured and sold by the same companies that manufacture and sell dive sticks, often in the same package. The retail prices of these substitutes are about the same as the retail prices for the dive sticks.

3. Sales and Number Available for Use

Dive sticks have been sold for over 20 years. However, historical sales data are not available to determine whether or not there has been a trend in their use. Based on information that several companies provided to the CPSC, over 19 million dive sticks have been sold. Current sales of individual dive sticks appear to be at least 4 million units annually. Since they are usually sold in packages of 3 to 6 sticks each, this indicates that around 1 million packages are purchased annually.

In trade publications, dive sticks are classified in the water/pool/sand toys category. This category includes products such as water guns, floats, wading pools, and sand buckets. Sales vary with season, with more sold in the summer than in the winter. Sales of water/pool/sand toys also tend to vary from year to year depending on how hot the summer or swimming season is. In 1997, retail sales of water/pool/sand toys exceeded $450 million, according to a trade publication. Since dive sticks retail for approximately $1 per stick, dive sticks likely make up less than one percent of retail sales in this category.

A substantial number of dive sticks are likely available for use for several years after their purchase. Since several million dive sticks have been sold annually for the last few years, the total number available for use could easily exceed 10 million units. Assuming dive sticks are sold in sets of 3 to 6 each, this indicates that several million households are likely to own dive sticks.

4. Suppliers

The CPSC's staff has identified at least 15 firms that manufacture or import dive sticks into the United States. Most of the firms that import dive sticks obtain their product from China, Hong Kong, or Taiwan. There may be other manufacturers or importers that the staff has not identified. Additionally, because of the simplicity of the product, there are few barriers to entry into the market.

The staff's initial research indicates that most of the firms that have been identified are small businesses according to the Small Business Administration guidelines because they have fewer than 100 employees for importers or 500 employees for manufacturers. However, in all cases, dive sticks probably account for a very small percentage of any firm's sales. Several of the manufacturers market various types of pool toys. Others have additional lines such as other types of toys or pool equipment.

5. Economic Considerations

The CPSC is aware of 7 injuries involving dive sticks since 1990 that resulted when a child hit a dive stick standing upright on the bottom of a pool. Although the number of injuries is low, some of the injuries are severe. Some of the injuries have resulted in damage to the victim's rectal or vaginal areas. At least four of these incidents required hospitalization, and in one case a temporary colostomy was performed.

The societal costs of these incidents include primarily medical costs, lost productivity, and pain and suffering. The total societal costs of the incidents are likely to be relatively low since the incidents of concern appear to be relatively rare. However, the severity of some of the incidents indicates that the average societal costs of the incidents requiring hospitalization may exceed $100,000, based on estimates obtained from the Directorate for Economic's Injury Cost Model for hospitalized cases involving punctures or lacerations to the victims lower trunk area.

The cost of modifying dive sticks to reduce or remove the risk is likely to be low. For example, dive sticks could be modified so that they lie horizontally on or at an angle at the bottom of the pool, rather than vertically. Such a change may involve some changes in tooling, molds, and design, but little in terms of production and material costs. Such a change is unlikely to substantially reduce the utility of the product to consumers. Another option may be to manufacture dive sticks from a material that is less rigid and unlikely to cause serious injury to a person who falls on the product. Moreover, commercial substitutes for dive sticks already are available. These substitutes are not dangerous but provide the same play experience. If hazardous dive sticks were banned altogether, there is little, if any, reason to doubt that these

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substitutes would enjoy increased purchases.

G. Solicitation of Information and Comments

This ANPR is the first step of a proceeding that could result in a mandatory rule for dive sticks to address the described risk of injury. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. The models and numbers of dive sticks produced for sale in the U.S. each year from 1990 to the present;
2. The names and addresses of manufacturers and distributors of dive sticks;
3. The expected useful life of dive sticks.
4. Comparisons of the utility obtained from dive sticks versus substitute products (e.g., dive rings or disks or dive sticks that lie horizontally, rather than vertically);
5. The number of persons injured or killed by the hazards associated with dive sticks;
6. The circumstances under which these injuries and deaths occur, including the ages of the victims;
7. An explanation of designs that could be adapted to dive sticks to reduce the described risk of injury;
8. Physical or performance characteristics of the product that could or should not be used to define which products might be subject to a rule;
9. The costs to manufacturers involved in either redesigning dive sticks to remove the risk or removing dive sticks from the market.
10. Other information on the potential costs and benefits of potential rules;
11. Steps that have been taken by industry or others to reduce the risk of injury from the product;
12. The likelihood and nature of any significant economic impact of a rule on small entities;
13. The costs and benefits of mandating a banning, labeling or instructions requirement.

Also, in accordance with section 3(f) of the FHSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.
2. Any existing standard or portion of a standard which could be issued as a proposed regulation.
3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Dive Sticks." All comments and submissions should be received no later than September 14, 1999.

Dated: July 12, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–18113 Filed 7–15–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Negotiated rulemaking committee notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are "multiple employer welfare arrangements" (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 to approximately 5 pm on each day on Wednesday, August 25, 1999, and Thursday, August 26, 1999.

ADDRESSES: This Committee meeting will be held at the offices of the US Department of Labor, Room N–3437, Conference Room C/D. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend who need special accommodations should contact, at least 4 business days in advance of the meeting, Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, US Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

Agenda

The Committee will continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA, (29 U.S.C. 1002(40)). Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Wednesday, August 18, 1999, to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Goodwin or telephone (202) 219–4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Goodwin at the address above. Papers will be accepted and included in the record of the meeting if received on or before August 18, 1999.

Signed at Washington, DC, this 12th day of July, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–18170 Filed 7–15–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–220–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Kentucky regulatory program (hereinafter the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kentucky regulations pertaining to reclamation in lieu of cash payment of civil penalties. The amendment is intended to revise the Kentucky program as required by 30 CFR 917.16(c)(3).

DATES: Written comments must be received by 4:00 p.m., [E.S.T.], August 2, 1999.

ADDRESSES: Written comments should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2494.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2494.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated December 22, 1999 (Administrative Record No. KY–1449), Kentucky submitted a proposed amendment at 405 KAR 7:097, which authorizes the cabinet to allow a permittee, person, or operator to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution—instead of making cash payment of a civil penalty assessed under KRS 350.990(11). The proposed amendment was announced in the January 25, 1999, **Federal Register** (64 FR 3670).

On April 19, 1999, a Statement of Consideration of public comments received by Kentucky was filed with the Kentucky Legislative Research Committee. As a result of the comments, by letter dated April 19, 1999, Kentucky made changes to the original submission (Administrative Record No. KY–1458). By letter dated June 10, 1998 (Administrative Record No. KY–1461), Kentucky submitted the final version of the proposed amendments. Following are the changes to 405 KAR made in the final submission and not previously described in the January 25,1999, **Federal Register** notice. Revisions concerning nonsubstantive wording, format, or organizational changes will not be described in this notice.

Subsections (1) through (5) of Section 2 of the original amendment stipulated the conditions under which a permittee, person, or operator becomes ineligible for reclamation in lieu of cash payment for civil penalties. Kentucky has deleted these subsections. Section 2 of the revised amendment now reads in its entirety: "The cabinet shall not authorize a permittee, person, or operator to perform activities under this administrative regulation if the permittee, person or operator is ineligible receive a permit under KRS Chapter 350 and 405 KAR Chapters 7–24 for a reason other than nonpayment of a civil penalty."

Kentucky has also revised Section 7, Subsection (5) of the amendment, which stipulates when a permittee, person, or operator must file a request for reclamation in lieu of cash payment of civil penalties. Subsection 7(5) now reads: "(5)(a) For a civil penalty assessed by final order of the Secretary on or after July 1, 1999, the request shall be filed within thirty (30) days after the date of the final order. (b) For a civil penalty assessed by final order of the Secretary prior to July 1, 1999, the request shall be filed not later than June 30, 2000."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revisions described above to the original submission. If the

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amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–18192 Filed 7–15–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–044–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of proposed amendments to the Maryland regulatory program (Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revisions to the Maryland regulations regarding the design, construction and maintenance of haul roads. The amendments are intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: If you submit written comments, they must be received by 4:00 p.m., E.D.T., August 16, 1999. If requested, a public hearing on the proposed amendment will be held on August 10, 1999. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T., on August 2, 1999.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to George Rieger, Manager, Oversight and Inspection Office, at the address listed below.

You may review copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220. Telephone: (412) 937–2153; E-mail: grieger@osmre.gov

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532. Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding the design, construction and maintenance of haul roads in a letter dated August 4, 1998. OSM completed its review of the informal amendment and submitted

comments to Maryland in a letter dated May 19, 1999. By letter dated May 27, 1999 (Administrative Record No. MD–581–00), Maryland submitted its response to OSM's comments in the form of a proposed amendment to its program pursuant to SMCRA.

The provisions of the Code of Maryland Regulations (COMAR) that Maryland proposes to amend are as follows:

1. COMAR 26.20.01.02B Definitions

Specifically, Maryland proposes to revise the existing definition at (82), "road" by adding the words "surface coal" before "mining and reclamation operations"; adding the words "and from" after "leading to"; and deleting the reference to active spoil disposal areas and substituting the phrase that "road" does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

2. COMAR 26.20.02.13 Description of Proposed Mining Operations

Paragraph BB.(1) is modified by adding the following requirements: design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low water crossings, and drainage structures;

Existing paragraph BB.(2) is deleted and new paragraph BB.(2) is added as follows:

Drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the Bureau in accordance with COMAR 26.20.19;

New paragraph BB.(3) is added as follows:

Drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the Bureau in accordance with COMAR 26.20.19;

Existing paragraph BB.(3) is renumbered as BB.(4).

Existing paragraph BB.(5) is deleted and replaced with the following:

Drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the Bureau can maximize the protection of the stream in accordance with COMAR 26.20.19:

Existing paragraph BB.(4) is renumbered as BB.(6).

New paragraph BB.(7) is added as follows:

A description of the plans to remove and reclaim each road that will not be retained under an approved postmining land use, and the schedule for this removal and reclamation; and

New paragraph BB.(8) is added as follows:

Design and certification of the plans and drawings for each primary road by a qualified registered professional engineer in accordance with COMAR 26.20.19.01G.

New paragraph CC. is added as follows:

A description of each support facility to be constructed, used, or maintained within the proposed permit area, including plans and drawings. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with COMAR 26.20.19.08 and .09.

3. COMAR 26.20.19.01 General

New paragraphs A., B., and C. are added as follows:

A. Each road, as defined in §§ B and C of this regulation shall be classified as either a primary road or an ancillary road.

B. A primary road is any road which is:

(1) Used for transporting coal or spoil;

(2) Frequently used for access or other purposes for a period in excess of six months; or

(3) To be retained for an approved postmining land use.

C. An ancillary road is any road not classified as a primary road.

Existing paragraph A. is re-lettered as D. and further modified by adding the word "locate" before "design, construction * * *" and deleting the phrase "control or minimize erosion and siltation, air and water pollution, and damage to public or private property."

Additionally, the following new subparagraphs are added to paragraph D.:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or federal water quality standards applicable to receiving streams;

(5) Refrain from seriously altering the normal flow of water in stream beds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of the U.S. Congress; and

(7) Use nonacid and nontoxic-forming substances in road surfacing.

Existing paragraph B. is deleted and existing paragraph C. is re-lettered as E.

Existing paragraph D. is deleted and new paragraphs F. and G. are added as follows:

F. The plans and drawings for primary roads shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of this chapter and any prudent engineering practices.

G. The construction or reconstruction of primary roads shall be certified in a report to the Bureau by a qualified registered professional engineer The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

4. COMAR 26.20.19.02 Location

This section is now re-titled Location of Primary Roads.

Paragraph A. is modified to include the word "primary".

Paragraph B. is modified by adding the phrase "in accordance with the applicable requirements of COMAR 26.20.20 and COMAR 26.20.21.02, .03, and .04."

Paragraph C. is modified by including the phrase "on perennial or intermittent streams by primary roads".

5. COMAR 26.20.19.03 Design and Construction

This section is re-titled as Design and Construction of Primary Roads and paragraph A. is modified to include the word "primary".

Paragraph D., Road Embankments, is modified by adding the following subparagraphs:

(9) Each primary road embankment shall have a minimum static safety factor of 1.3.

(10) Each road embankment shall be constructed of fill material that contains sufficient moisture content to achieve proper compaction.

(11) A primary road embankment that is designed and constructed to meet the

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criteria of this section with an embankment slope not steeper than 2:1 and a foundation slope equal to or less than 25 percent shall be considered to meet the minimum static safety factor under § D(9) of this regulation.

6. COMAR 26.20.19.04 Drainage

This section is re-titled as Drainage Control for Primary Roads.

Subparagraph A.(1) is modified by adding the word "primary", including "bridges", substituting the word "drainage" for water and substituting a 2-year 24-hour precipitation event for the existing 1 year.

Existing subparagraph 2. is deleted and a new subparagraph 2. is added as follows:

Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

New subparagraphs (3) and (4) are added as follows:

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

Paragraph C., Culverts, is modified by substituting a 2-year 24-hour precipitation event for the existing 1 year.

7. COMAR 26.20.19.06 Maintenance

New paragraph D. is added as follows:

A road damaged by a catastrophic event, such as a flood, shall be repaired as soon as is practicable after the damage has occurred.

8. COMAR 26.20.19.07 Removal of Roads

This section is re-titled as Reclamation of Roads.

The existing paragraph is deleted and replaced with the following:

A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts, unless approved as part of the postmining land use;

(3) Removing or disposing of road surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage pattern by installing dikes or cross drains, as necessary, to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on August 2, 1999. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–18193 Filed 7–15–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1083–N]

Medicare Program; Meetings of the Negotiated Rulemaking Committee on Ambulance Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the dates and location for the fifth meeting of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule. This meeting is open to the public.

The purpose of this committee is to develop a proposed rule that establishes a fee schedule for the payment of ambulance services under the Medicare program through negotiated rulemaking, as mandated by section 4531(b) of the Balanced Budget Act (BBA) of 1997.

DATES: The fifth meeting is scheduled for August 2, 1999 from 9:00 a.m. until 5 p.m. and August 3, 1999 from 8:30 a.m. until 4 p.m. E.D.T.

ADDRESSES: The 2-day August meeting will be held at The Phoenix Park Hotel, 520 North Capitol Street NW, Washington, D.C., (202) 638–6900.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding this meeting should be addressed to Bob Niemann ((410) 786–4569) or Margot Blige ((410) 786–4642) for general issues related to ambulance services or to Lynn Sylvester, ((202) 606–9140) or Elayne Tempel, ((207) 780–3408) facilitators.

SUPPLEMENTARY INFORMATION: Section 4531(b)(2) of the Balanced Budget Act (BBA), Public Law 105–33, added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act mandates implementation, by January 1, 2000, of a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) also provides that in establishing such fee schedule, the Secretary will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and
- Phase in the fee schedule in an efficient and fair manner.

The Negotiated Rulemaking Committee on the Ambulance Fee Schedule has been established to provide advice and make recommendations to the Secretary with respect to the text and content of a proposed rule that establishes a fee schedule for the payment of ambulance services under Part B of the Medicare program.

The Committee held its third meeting on May 24 and 25, 1999. At this meeting, the Committee heard presentations from HCFA staff, including a data presentation. The Committee requested another presentation by HCFA's Office of Actuary to obtain clarification about its calculation of the fee schedule payment cap. Additionally, a Medical Issues workgroup was formed.

The Committee held its fourth meeting on June 28 and 29, 1999. At this meeting a presentation was made by a HCFA Office of the Actuary staff member. The presentation clarified that budget neutrality will be evaluated by using all ambulance claims for the most current year and comparing the results of the proposed models with those paid claims. HCFA staff presented more historical Medicare hospital and supplier ambulance billing data. Consensus was reached on one possible basic structure for the fee schedule. HCFA indicated that the fee schedule must be effective as soon as operationally possible after January 1, 2000. Subcommittees were formed to produce, by July 19, proposals for:

(1) A rural/urban adjustment; and

(2) A fee schedule model based on the structure agreed to at the June meeting combined with relative values. These proposals, along with the results of the medical issues workgroup, will serve as the basis for the Committee's next meeting.

During the August meeting, the Committee will work toward achieving consensus on the criteria to be considered in evaluating options for the fee schedule. Discussions will then begin on the options.

The announced meeting is open to the public without advanced registration. Public attendance at the meeting may be limited to space available. Interested parties can file statements with the Committee. *Mail written statements to the following address: Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, D.C. 20427, Attention: Lynn Sylvester.* Notice of future meetings will be published in the **Federal Register** at a later date. A summary of all proceedings will be available for public inspection in room 443–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890), and can be accessed through the HCFA Internet site at http://www.hcfa.gov/medicare/ambmain.htm. Additional information related to the Committee will also be available on the web site.

Authority: Sec. 1834(l) of the Social Security Act (42 U.S.C. 1395m).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

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Dated: July 11, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–18117 Filed 7–15–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 97–207; FCC 99–137]

Calling Party Pays Service Offering in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks to remove regulatory obstacles to the offering to consumers of Calling Party Pays (CPP) services by Commercial Mobile Radio Services (CMRS) providers. CPP allows a CMRS provider to make available to its subscribers an offering whereby the party placing the call to a CMRS subscriber pays at least some of the charges associated with terminating the call, including most prominently charges for the CMRS airtime. The Commission is issuing this document to help facilitate the wider availability of CPP, and to consider possible actions this Commission could take to address several key issues associated with the offering of CPP service.

DATES: Comments are due on or before August 18, 1999, and reply comments are due on or before September 8, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Legal Information: David Siehl, 202–418–1310; Economic Information: Joseph Levin, 202–418–1310; [TTY: 202–418–7233].

SUPPLEMENTARY INFORMATION: The following synopsis concerns only the Notice of Proposed Rulemaking (NPRM) of the Commission's Declaratory Ruling and Notice of Proposed Rulemaking in WT Docket No. 97–207, FCC 99–137, adopted June 10, 1999, and released July 7, 1999. The synopsis of the section of the document containing the Declaratory Ruling is being published separately in the **Federal Register**. The complete text of the entire released document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Courtyard level), 445 12th Street, S.W., Washington, D.C. 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857-3800, 445 12th Street, S.W., CY–B400, Washington, D.C. 20054.

Synopsis of Notice of Proposed Rulemaking

1. The Commission is initiating this NPRM for two fundamental reasons. First, the availability of CPP as a service offering for wireless telephone subscribers has the potential to expand wireless market penetration and minutes of use and, in so doing, offers an opportunity to provide a near-term competitive alternative to incumbent local exchange carriers (ILECs) for residential customers. Second, the Commission believes that there may be obstacles to the widespread introduction of CPP, and that market forces alone may not eliminate these obstacles.

2. The Commission finds that CPP could provide several important tangible benefits to telecommunications consumers in the United States. One major benefit envisioned is the possibility that CPP could ultimately lead to wireless services becoming a true competitive alternative to the local exchange services offered by ILECs, particularly for residential customers. Another potential benefit is that CPP could spur competition within the CMRS market by offering consumers a different and less expensive wireless service option.

3. Many carrier commenters have argued that subcribership to wireless services would be expected to increase substantially because, in no longer paying for incoming calls, consumers would have a much more, valuable service, even at current prices. Independent market analysts have indicated that CPP would make prepaid wireless services, a critically important and growing segment of the CMRS market, more attractive to consumers by eliminating airtime charges for incoming calls. Because prepaid wireless telephone service is attracting many new wireless customers from socioeconomic groups that have not previously subscribed to wireless service, the broad availability of a prepaid option, in which the subscriber pays only to make calls, would reinforce the trend to much greater wireless penetration.

4. Many industry analysts and commentators anticipate that CPP is the catalyst needed to create a significant increase in wireless usage by U.S. subscribers. First, CMRS subscribers who select CPP would be much more likely to leave their wireless phones in an activated mode in order to receive calls because they would not be responsible for paying the associated charges. Also, because CPP customers would be expected to be more willing to give out their wireless phone numbers if they did not have to pay for incoming calls, they would be much more likely to receive incoming calls. As a result, it is likely that more calling parties will place calls to wireless subscribers and take advantage of the opportunity to reach someone who is not tied to one location. The calling party will have an increased likelihood of being able to complete a call to a CPP subscriber, as compared to calling a wireless subscriber with called party pays service. Second, according to these analysts, to the extent that subscribers are comfortable with paying a set amount per month for wireless service, CPP will encourage them to increase the number of calls they make, up to the amount of their monthly CMRS budget, since they no longer will need to pay for, or budget for, incoming calls.

5. The Commission would like to update its record on the experience with CPP and the impacts of it on the use of mobile services in other countries. The NPRM seeks comment on any recent international developments, and in addition, on domestic competitive trends that may be relevant to a CPP service offering in the U.S.

6. In its Notice of Inquiry regarding CPP,[1] the Commission asked about possible obstacles to greater availability of this service option. In summary, the responses indicate three areas that need to be addressed: (1) technical standards to control leakage; (2) calling party notification to protect consumers; and (3) arrangements for reasonably priced billing and collection services. The technical standards to collect and pass information needed to bill the calling party for calls to a wireless phone are being developed by an industry group, based on a working paper developed through Cellular Telecommunications Industry Association (CTIA) and released in January 1998. There has been no indication in the comments that the Commission needs to intervene in this process.

7. The NPRM notes based on the record to this point, that it appears the lack of a nationwide notification has hindered successful CPP offerings in this country. The record strongly supports the conclusion that some effective form of calling party notification is critically important to avoid consumer confusion with CMRS provider introduction of CPP offerings. Further, the comments almost unanimously indicate that without a uniform notification system, conflicting state notifications would increase consumer confusion about calls to CPP subscribers if CPP were to be implemented more widely. Another consequence of conflicting notifications would be increased costs to wireless carriers in their efforts to provide notifications to calling parties in different jurisdictions. The Commission believes that it is essential to develop a uniform notification system, in cooperation with the states, and seeks comment on what elements that notification system should contain.

8. A threshold issue concerning notification is whether there should be a uniform nationwide standard that specifies the manner in which a CMRS carrier must indicate to a caller that the caller will be billed for his or her call to the CMRS phone or pager. A second issue is how to develop and implement such a notification standard, particularly how we may incorporate the knowledge and concerns of the states with regard to consumer notification and protection.

9. The Commission agrees with the commenters that a uniform nationwide notification system is necessary to facilitate the implementation of CPP. The NPRM finds that such a notification would significantly alleviate confusion on the part of calling parties by providing them the capability to make an informed decision on whether to proceed with completing the call. In addition, as several commenters submit, a uniform nationwide standard for notification announcement would likely minimize the cost to wireless carriers of providing a notification, especially where they service multi-state areas. The NPRM seeks comment on what additional consumer protection measures states could take that would be consistent with a uniform notification announcement and within the scope of their authority to protect consumers.

10. The NPRM concludes that the Commission has jurisdiction to implement a uniform nationwide notification under sections 201(b) and section 332(c)(3)(A) of the Act.[2] In addition, the Commission recognizes the traditional role of the states in the areas of consumer notification and protection. Indeed section 332(c)(3)(A) provides that States may regulate "other terms and conditions" of any CMRS service.[3]

11. The Communications Act establishes as a primary mission of the Commission regulation of interstate and foreign communication so as to make available to all the people of the United States a rapid, efficient Nation-wide, and world-wide wire and radio communications service.[4] The NPRM also notes that section 201(b) declares unlawful any unjust and unreasonable practices, which clearly governs CMRS calls that originate and terminate in different states.[5] Based on its determination in the Declaratory Ruling that CPP is a form of CMRS, the Commission believes that it may have authority under section 332 of the Act to establish uniform rules in furtherance of our statutory mandate to "establish a federal regulatory framework to govern the offering of all [CMRS]."[6] In the alternative, the NPRM seeks comment on other jurisdictional grounds for establishing a nationwide system for CPP notification, and on the extent to which the Commission should prohibit inconsistent or conflicting state notification regulations.[7]

12. The Commission further recognizes, however, as the record reflects, that the states have a legitimate interest, pursuant to the "other terms and conditions" exception provided by section 332(c)(3)(A),[8] to regulate matters concerning aspects of consumer protection involved, *e.g.*, in customer billing practices.[9]

13. The Commission believes that a process should be initiated that considers the role and interest of the states in consumer protection. The NPRM invites comment on how the Commission might tailor a nationwide notification system that would provide the states a way, consistent with statutory authority, to protect intrastate interests in a manner that would not conflict with the nationwide benefits of a uniform notification system for CPP. The NPRM directs the Wireless Telecommunication Bureau to work actively with the states, through the National Association of Regulatory Utility Commissioners (NARUC), as well as with interested wireless industry and consumer representatives, to seek to develop a consensus implementation of our calling party notification proposal.

14. The Commission seeks to ensure calling party notification that protects all consumers, including those with disabilities, that reflects the knowledge and experience of the states, and that can be implemented on a cost-effective basis.

15. The NPRM proposes that the calling party notification for CPP should consist of a verbal message provided by the CMRS provider to the calling party. Because CPP will represent a significant change to consumers calling a wireless telephone or pager, the Commission believes that initially it is important that notification include the following elements:

(1) Notice that the calling party is making a call to a wireless phone subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of airtime charges.

(2) Identification of the CMRS provider.

(3) The per minute rate, or other rates, that the caller will be charged by the CMRS provider.

(4) An opportunity to terminate the call prior to incurring any charges.

16. Although the Commission acknowledges that specific rate information may be superfluous in certain situations, the Commission tentatively concludes that rate information would be considered relevant by a substantial majority of calling parties. The rate information would have to include all of the additional charges billed by the CMRS provider to the calling party for the call. For example the Commission understands that CPP offerings envisioned by CMRS providers would include per minute charges for terminating airtime. It is possible that a CMRS providers may also include other charges now paid by the CMRS subscriber receiving the call, for instance, for roaming or for long-distance service. If so, the notification must include all of the per minute and other charges to be billed to the calling party. The NPRM seeks comment on this element in a proposed notification system.

17. The Commission seeks comment on the desirability of moving to a simpler, more streamlined notification

[1] Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97–207, Notice of Inquiry, 62 FR 58700 (Oct. 30, 1997), 12 FCC Rcd 17693 (1997) (Notice of Inquiry).

[2] 47 U.S.C. 201(b), 332(c)(3)(A).

[3] *See* 47 U.S.C. 332(c)(3)(A); *see also House Report* at 261 (explaining that other "terms and conditions" of CMRS include such matters as customer billing information and practices, billing disputes and "other consumer protection matters.").

[4] 47 U.S.C. 151.

[5] 47 U.S.C. 201(b).

[6] H.R. Conf. Rep. No. 103–213 at 490 (1993). *See* CTIA Comments to NOI at 20, n. 42 (referring to this report in arguing for a nationwide notification, and also, referring to the Senate version, Sec. 402(13)).

[7] For example, CITA contends that "the Commission retains jurisdiction to ensure that inconsistent State regulation does not thwart uniformity of nationwide CPP notification mechanisms." *See* CTIA Comments at NOI at 17–18 n.37 (citing Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986)).

[8] *See* 47 U.S.C. 332(C)(3)(A).

[9] *See House Report* at 261.

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system that would not include rate information, after consumers have become accustomed to CPP and are aware of the additional charges involved. The NPRM in addition seeks comment on whether our proposed method of notification, as well as the simpler version described above, will be accessible to people with disabilities. The NPRM also requests proposed solutions to any problems that are identified.

18. The NPRM also seeks comment on other options for ensuring that calling parties have adequate notification. There are a number of notification options being used in states, such as Arizona, where CPP is now being offered. Some carriers rely on 1+ dialing as the means to indicate to the caller that a toll is involved. Other options include the use of dedicated NXX [10] codes for CPP subscribers and the use of special numbers with a 500 Service Area Code (SAC) to identify the number as a CPP call. The Commission seeks comment on what additional notification measures states might be able to adopt that would not conflict with uniform nationwide notification.

19. The Commission recognizes that businesses need to restrict the ability of telephone users to make various types of billable calls from certain lines (*e.g.*, toll restricted lines on private branch exchanges (PBXs)). The NPRM asks for comment on the number of companies and other organizations that use PBXs or Centrex and could be adversely affected by the broader implementation of CPP, as well as projections of the magnitude of potential losses they might incur because of the inability to identify calls beings placed from their systems to CPP subscribers.

20. The NPRM also seeks comment on the ways businesses and other organizations can meet the need for restricted access, particularly if the telecommunications industry moves to more widespread number portability. In light of the number portability, number pooling, and other signaling system based solutions, the NPRM seeks comments on the viability of signaling solutions, perhaps combined with line class codes.[11] Commenters should address the viability of proposed solutions and whether the solutions can be implemented with current network capabilities. The NPRM seeks comment on whether establishing service codes would sufficiently address these issues. The Commission also seeks comment on the impact on business users, who use restricted access, if dedicated service codes were not established.

21. The NPRM seeks comment on the desirability of establishing a dedicated service code or codes to assign to CPP subscribers so that callers may more readily identify a CPP call. The NPRM also seeks comment on whether it is necessary or desirable to treat the notification for paging the same as mobile telephony. In particular, the use of a distinct code would appear to be unworkable in the context of the Source One approach to CPP. Therefore, the NPRM solicits comments that address the best ways of balancing the need for a uniform CPP notification approach using special numbering codes, with the need to work within the special operating constraints of paging carriers. Although such specially assigned telephone numbers could be used as the sole means of notifying consumers that they are calling a CPP number, the Commission tentatively concludes that if special numbers are to be established, they should serve to supplement the above notification system, not replace it. Comment is sought on this tentative conclusion. Finally, the NPRM seeks comment on the effect of calling party notification through assignment of numbering codes on number exhaust and number portability, and on possible means to mitigate any significant negative effects.

22. The NPRM finds that the Commission has jurisdiction to establish calling party notification through dedicated numbering codes pursuant to section 251(e)(1), which confers exclusive jurisdiction on the Commission over the North American Numbering Plan as it pertains to the United States, along with the power to delegate to the states certain portions of this jurisdiction.[12] The Notice of Inquiry record indicates that the Commission could rely on this provision if it were to implement a CPP notification scheme based on "1+dialing" or use of specialized area codes. The NPRM tentatively concludes that section 251 of the Act does provide a jurisdictional basis to implement such a method and seeks comment on this tentative conclusion.

23. The Commission notes that in a 1997 decision regarding "casual calling" it suggested that carriers have reasonable options other than tariffs to establish contractual relationships with casual callers that would legally obligate such callers to pay for their services, and that providing the caller the rates, terms, and conditions prior to the completion of a call would establish an enforceable contract between the caller and the carrier.[13] The Commission believes that these same principles should apply in the context of CPP.

24. The NPRM seeks comment on whether the proposed notification method ought to be sufficient to establish an "implied in fact" contractual arrangement between the CMRS provider and the calling party, and, if not, what else may be necessary.

25. Furthermore, the NPRM urges commenters to discuss whether market conditions exist or are likely to develop in the United States that would exert competitive pressure on CPP rates to be charged a calling party by a CMRS carrier. Under this approach, the Commission would defer regulatory intervention until there is clear evidence that Commission action is necessary to resolve rate issues. In addition, the NPRM seeks comment on any other approaches that would help safeguard consumers who wish to place calls to CPP subscribers. In this regard, the NPRM notes that the Commission's Rules require that the rates charged for calls placed through TRS be no greater than the rates charged for a functionally equivalent call that does not use TRS facilities.[14] The requests comment on whether methods are needed to ensure that the CPP rates charged for voice and TTY calls placed through TRS centers do not exceed those that do not use such facilities.

Relationship Between LEC Billing and Collection Services and CPP Offerings

26. The record contains a variety of views on the need for the Commission to mandate LEC billing and collection. On the other hand, some LECs and wireless carriers submit that there is no evidence yet of a strong market demand for CPP, and that the Commission should let the market operate. In considering the regulatory treatment of billing and collection services, the Commission observes that it has generally declined to regulate the provision of billing and collection services unless regulation is needed to protect competition. In 1983, shortly after the Modified Final Judgment, the Commission regulated billing and

[10] NXX is the three-digit number identifying the central office. *See* 47 CFR 52.7(c).

[11] A line class code is a code used at the PBX or Centrex switch to restrict a specific number within the PBX or Centrex system from making a particular type of call.

[12] Section 251(e)(1) states that "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertains to the United States. * * *" 47 U.S.C. 251(e)(1).

[13] *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96–61, Order on Reconsideration, 62 FR 59583 (Nov. 4, 1997), 12 FCC Rcd 15014, 15026–27 n. 74 (para. 18) (1997).

[14] Section 64.604(c)(3) of the Commission's Rules, 47 CFR 64.604(c)(3).

collection services by establishing a separate access charge for billing and collection provided to IXCs and requiring exchange carriers that provided billing and collection services to one IXC to provide such services to all IXCs. In 1986, however, the Commission de-tariffed billing and collection services provided by LECs and found regulation of such services to be unnecessary. In 1992, the Commission clarified that billing and collection service was a communications service within the meaning of section 3(a) of the Act,[15] but that it was not subject to regulation under Title II because it was not a "common carrier" service (although it could be regulated under the Commission's ancillary jurisdiction under Title I of the Act). In 1993, the Commission refused to require IXCs to provide billing and collection services to providers of 900 services.

27. In some instances where the provision of billing and collection services has not been required, there have been nondiscrimination requirements. For instance, in the 1996 Telecommunications Act, Congress added section 272 [16] requiring Bell Operating Companies (BOCs) who wished to provide certain types of services to provide them through separate affiliates. Section 272(c)(1) of the Act provides that BOCs may not discriminate between such affiliates and "any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. * * *" [17] In implementing that section, we held that to the extent a BOC provides billing and collection services to an affiliate, such services were subject to the non-discrimination requirements of section 272(c)(1).[18] The Commission's Rules also defined the term "entity" as including "telecommunications carriers, ISPs, and manufacturers." [19]

28. At this point, the record is not sufficient to decide, as a policy matter, whether the Commission should require CPP-related LEC billing and collection. The NPRM seeks comment on whether such billing and collection is needed for the regional or nationwide offering of CPP, and, if so, whether that need reflects market failure or some anti-competitive conduct. In addition, the NPRM asks whether the offering of CPP would be cost-prohibitive in the absence of incumbent LEC billing and collection services. The Commission also seeks specific comment on the availability of alternatives, such as third party billing through credit card companies or clearinghouses. The NPRM notes that with technological developments, CMRS carriers interested in providing a CPP service option may want to develop their own capabilities to rate and record billing information, with LECs making use of that information if the LECs were to bill LEC customers directly. The NPRM seeks comment on these developments and their impact on implementing CPP, particularly in regard to LEC billing and collection, third party billing, and CMRS carrier billing.

29. The NPRM seeks comment on whether the Commission should mandate that LECs provide to CMRS providers billing information sufficient for the CMRS provider or third parties to bill calling parties for CPP-related calls or that LECs provide any CPP-related billing and collection on a nondiscriminatory basis.

30. The NPRM seeks comment on whether calls placed through Telecommunications Relay Service (TRS) facilities, including those from pay telephones, or calls between two text telephone (TTY) users, implicate any additional billing and collection issues that may need to be addressed in this proceeding. Commenters are requested to be as specific as possible about the nature of the TRS and/or TTY related problems in billing and collection and should propose solutions. The NPRM also solicits comment on any other problems or issues that may affect consumers, including those with disabilities, if CPP were to be implemented on a broader scale by wireless carriers in the United States.

Potential Jurisdictional Bases for Commission Action

31. Assuming that the Commission concludes in this proceeding as a policy matter that requires the provision of LEC billing and collection for CPP in the U.S., the NPRM seeks comment concerning our statutory authority to promulgate such a requirement. Specifically, the NPRM seeks comment on several potential sources of jurisdiction raised by the commenters in response to the Notice of Inquiry.

32. The NPRM seeks comment on whether the statutory objectives of the Act support the assertion of ancillary jurisdiction here, and on AirTouch's contentions that the exercise of jurisdiction over LEC billing and collection in the CPP context is distinguishable from other instances where the Commission has declined to exercise ancillary jurisdiction over LEC billing and collection.[20] Finally, the NPRM seeks comment on whether other provisions of the Act, such as section 332,[21] provide an independent jurisdictional basis for a federal requirement regarding CPP-related billing and collection.

33. The NPRM also seeks comment on whether we have jurisdiction under any of the theories described above over the provision of billing information by LECs to support CPP-related billing and collection by others. Some commenters argue that in the case of ILECs, we have authority to require the provision of billing information under section 251(c)(3) of the Act, which requires that ILECs provide nondiscriminatory access to "network elements" on an unbundled basis.[22] These commenters argue that billing and collection information constitutes a unbundled network element (UNE) that is subject to this statutory requirement. The NPRM seeks comment on this view, particularly in light of the fact that the definition of "network element" in section 3(29) of the Act includes "information sufficient for billing and collection." [23] The Commission seeks comment on whether such information would need to be unbundled under the statutory "necessary" and "impair" standard. The Commission plans to apply the criteria developed on remand from the Supreme Court's decision in Iowa *Utilities Board*.[24]

34. Assuming that a LEC is providing CPP-related billing and collection services or information, the NPRM also seeks comment on whether we have jurisdiction to require that LEC to provide such services or information on a reasonable, non-discriminatory basis. Assuming that the Commission is to determine that CPP-related billing information qualifies as a UNE subject to section 251(c)(3), the Act requires that incumbent LECs provide nondiscriminatory access to UNEs "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[25] In view of this requirement, the NPRM seeks comment on whether, if an ILEC

[15] 47 U.S.C. 3(a) (current version at 47 U.S.C. 3(51) (1996)).

[16] 47 U.S.C. 272(a).

[17] 47 U.S.C. 272(c)(1).

[18] Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, *as amended*, CC Docket No. 96–149, First Report and Order and Further Notice of Proposed Rulemaking, 62 FR 2991 (Jan. 21, 1997), 11 FCC Rcd 21905, 22007–22008 (paras. 216–219) (1996).

[19] *Id.*

[20] 47 U.S.C. 4(i).

[21] 47 U.S.C. 332.

[22] 47 U.S.C. 251(c)(3).

[23] 47 U.S.C. 153(29).

[24] AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999).

[25] 47 U.S.C. 251(c)(3).

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elects to provide billing and collection for CPP for any CMRS carrier, the ILEC must offer the same services on a reasonable, non-discriminatory basis to all CMRS carriers who request such services. Further, the NPRM invites comment on whether the Commission has authority, based on ancillary jurisdiction or any other statutory provisions, to impose similar non-discrimination requirements with respect to CPP-related billing information on incumbent LECs and on non-incumbent LECs, *i.e.*, competitive LECs and LECs serving rural areas, who are not subject to section 251(c)(3).

35. The NPRM seeks comment on jurisdictional issues relating to state regulation of LEC CPP-related billing and collection. Under section 332 of the Act, states are preempted from regulating entry by CMRS providers. Similarly, section 253(a) prohibits any state or local statute or regulation that constitutes a barrier to entry to any telecommunications service provider, although section 253(b) preserves intact state regulatory authority to "safeguard the rights of consumers."[26] Some commenters contend that if a state were to prohibit LECs from providing billing and collection services in support of CPP, this would effectively preclude CMRS carriers from providing CPP within the state, and would therefore constitute *de facto* entry regulation subject to preemption under section 332 or a barrier to entry under section 253. The NPRM seeks comment on this view. In addition, some commenters point out that the California PUC has recently denied a petition by AirTouch to compel Pacific Bell to provide billing and collection for a CPP trial based on Pacific Bell's tariff for billing and collection of wireless services. The denial was based on language in a California PUC decision that prohibits a LEC from billing its wireline customers at wireless rates for calls placed to wireless phones. The NPRM seeks comment on whether this decision raises jurisdictional issues that the Commission should address.

CPP, Interconnection, and Reciprocal Compensation

36. The Notice of Inquiry also sought comment regarding whether the implementation of reciprocal compensation for LEC–CMRS interconnection requirements provides a sufficient market incentive for CMRS carriers not to charge their subscribers for incoming calls. The Notice of Inquiry noted that CPP and reciprocal compensation may address a similar issue regarding the means by which a CMRS provider recoups the cost of completing a call that does not originate on the CMRS network. The Commission asked for comment regarding whether reciprocal compensation would eliminate or reduce the need for CPP.

37. The Commission agrees with parties who contend that, under existing interconnection agreement, compensation for transport and termination generally does not cover the costs of terminating airtime. As a result, the Commission does not believe that the availability of reciprocal compensation renders moot any issues regarding CPP.

38. Some parties contend that, although CPP can be distinguished from and is not the same thing as reciprocal compensation, CPP-like service can be offered by expanding existing interconnection agreements. Sprint Spectrum indicates that implementation of CPP through interconnection agreements is done in Europe and elsewhere. Under these agreements, the caller is billed by the LEC based on published LEC rates for fixed-to-mobile calls. The LEC is solely entitled to the caller's account and has sole responsibility for bad debt. The LEC pays the wireless carrier an interconnection charge to terminate traffic on the wireless network. The interconnection charges are determined either by regulators or negotiated bilaterally by the carriers involved. Under the European model, the wireless carrier for the called party imposes a wireless termination access charge on the LEC, or the wireless carrier originating the call. The LEC or the wireless carrier serving the originating caller may, in turn, bill its customer, the calling party, to recoup the charge (if it so chose). Such implementation of a CPP service would amount to "asymmetrical compensation," such that the symmetrical rates between wireline and wireless carriers for transport and termination under a reciprocal compensation arrangement would not be operative. With the asymmetrical, or non-symmetrical, compensation approach, CMRS carriers would not need to recover their costs with a distinct "airtime" charge for use of the CMRS carriers' network if all of the costs related to completing a call to a wireless phone are included in the "asymmetrical" rate.

39. Thus, the NPRM invites parties generally to comment on these and any other issues relating to the possible provision of CPP-like service by CMRS carriers wanting to use an interconnection approach. The Commission also seeks comment on the impact of such an approach on LECs, including competitive LECs (CLECs), and upon CMRS (such as paging) providers.

Administrative Matters

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained in the Notice of Proposed Rulemaking (NPRM) should be submitted to David Sieh, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and a reference to WT Docket No. 97–207. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get from <your E-Mail address>."

All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments will be available for public inspection during regular business hours in the Commission's Reference Center and through ITS, Inc., the Commission's duplicating contractor.

For purposes of this proceeding, the Commission waives those provisions of the rules that require formal comments to be filed on paper, and encourages parties to file comments electronically. Electronically filed comments that conform to the guidelines specified in this summary will be considered part of the record in this proceeding and accorded the same treatment as comments filed on paper pursuant to Commission rules. To file electronic comments in this proceeding, parties may use the electronic filing interface available on the Commission's World Wide Web site at: <http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.hts>. Further information on the process of submitting comments electronically is available at that location and at: <http://www.fcc.gov/e-file/>.

For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the "Sunshine Agenda" period, provided they are disclosed under the Commission's rules.

Ordering Clauses

Accordingly, *it is ordered* That the actions reflected in the Notice of Proposed Rulemaking of this Declaratory Ruling and Notice of Proposed Rulemaking are taken pursuant to sections 1, 4(i), 7, 201, 202, 303(r), and 332 of Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 201, 202, 303(r), 332.

It is further ordered That notice is hereby given of the proposed regulatory changes described in the Notice of Proposed Rulemaking, and that comment is sought on these proposals.

It is further ordered That the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1980).

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[27] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 77 of the full text of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[28] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[29]

A. Need for, and Objectives of, the Proposed Rules

In this NPRM, the Commission proposes solutions to obstacles that may be impeding the ability of carriers interested in offering Calling Party Pays (CPP) from doing so. CPP holds the potential for making mobile wireless services more attractive to large numbers of customers who do not subscribe today, and for spurring the acceptance and development of services offered by mobile wireless telecommunications providers as competitive alternatives to the services of local exchange carriers (LECs). There is significant evidence that CPP would help encourage Commercial Mobile Radio Service (CMRS) subscribers to leave their handsets on and available to receive incoming calls because they would not be incurring as high a cost for receiving calls on a usage-sensitive basis. This increases the use of mobile wireless services, and provides certain benefits to both calling parties, who otherwise would not be able to complete calls to CMRS subscribers who keep their phones off, and CMRS subscribers, who would no longer have an economic incentive to avoid or minimize the acceptance of calls. These benefits may be especially significant for price-conscious customers who find that the flat-rate plans that come with large numbers of minutes included are too expensive. CPP would also be beneficial to those consumers concerned with the ability to control their monthly telecommunications expenses. Thus, CPP holds the potential for making mobile wireless services more effectively available to large numbers of customers who do not subscribe today or who strictly limit their usage, and to spur further competition by offering a different service option that may be particularly attractive to low-income, and low-volume and mid-volume consumers.

Because the Commission finds that there is some uncertainty about the regulatory status of CPP, the Commission issued a Declaratory Ruling clarifying that service offered with a CPP option, as defined in paragraph 2 of the full text of the NPRM, still qualifies as CMRS service. The NPRM considers important calling party notification issues. The Commission there considers a uniform notification standard to protect calling parties by providing them with sufficient information to make an informed decision before completing a CPP call to a wireless subscriber and incurring charges. The Commission also asks how it may work cooperatively with the states to develop such a notification system. The Commission also seeks comment on possible additional measures. Second, the Commission discusses and seeks comment on whether the proposed notification is sufficient to create an "implied-in-fact" contract between the caller and the CMRS carrier. Third, the Commission discusses whether there is any need for Commission action to protect callers from unreasonably high charges for CPP calls. Fourth, the Commission discusses how CMRS providers may bill and collect from the calling party for calls to CPP subscribers, including LEC billing and collection. The Commission also seeks comment at various points on issues relating to the accessibility of CPP offerings to people with disabilities, including Telecommunications Relay Service (TRS) and text telephone (TTY) users.

B. Legal Basis for Proposed Rules

The proposed action is authorized under sections 1, 4(i), 7, 201, 202, 303(r), and 332 of Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 201, 202, 303(r), 332.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[30] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[31] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[32] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[33] Nationwide, as of 1992, there were approximately 275,801 small organizations.[34] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a

[26] 47 U.S.C. 253(a)–(b).

[27] *See* 5 U.S.C. 603.

[28] *See* 5 U.S.C. 603(a).

[29] *See id.*

[30] 5 U.S.C. 603(b)(3).

[31] 5 U.S.C. 601(3).

[32] Small Business Act, 15 U.S.C. 632 (1996).

[33] 5 U.S.C. 601(4).

[34] 47 U.S.C. 33.

population of less than 50,000."[35] As of [illegible] have 1,500 or fewer employees. The

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population of less than 50,000." [35] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[36] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by the rules, herein adopted.

Common Carrier Services and Related Entities

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report. According to data in the most recent report, there are 3,528 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[37] Below, the Commission discusses the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and then attempts to refine further those estimates to correspond with the categories of telephone companies that are commonly used under its rules.

Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, the Commission does not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, the Commission will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns." [38]

Total Number of Telephone Companies Affected

The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated." [39] For example, a reseller that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules.

Wireline Carriers and Service Providers

The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[40] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules.

Local Exchange Carriers

Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent telecommunications industry revenue data, 1,410 carriers reported that they were engaged in the provision of local exchange services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,410 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules.

Pay Telephone Operators

Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[41] According to the most recent *Trends in Telephone Service* data, 509 carriers reported that they were engaged in the provision of pay telephone services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 509 small entity pay telephone operators that may be affected by the proposed rules.

Resellers (including debit card providers)

Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[42] According to the most recent *Trends in Telephone Service* data, 358 reported that they were engaged in the resale of telephone service. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 358 small entity resellers that may be affected by the proposed rules.

International Services

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[43] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data.

Wireless and Commercial Mobile Services

Cellular Licensees

Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[44] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 732 small cellular service carriers that may be affected by the proposed rules.

220 MHz Radio Service-Phase I Licensees

The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHZ Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service-Phase II Licensees

The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz **Third Report and Order**, the Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

Private and Common Carrier Paging

The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500

[35] 5 U.S.C. 601(5).

[36] Commission regulation, as adopted pursuant to the CMRS *Second Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket 93–252, Second Report and Order, 9 FCC Rcd 1411, 1425, 1427–28 (paras. 39 through 43) (1994) (*CMRS Second Report and Order*), *recon. pending* (adopting section 20.3), further delineates the statutory definition. Section 20.3(a)(1) adds to the phrase, "provided for profit," the following language: "*i.e.*, with the intent of receiving compensation or monetary gain." 47 CFR 20.3(A)(1).

[37] 13 CFR 121.201.

[38] 13 CFR 121.201, SIC code 4813.

[39] *See generally*, 15 U.S.C. 632(a)(1).

[40] 13 CFR 121.201, SIC code 4813.

[41] 13 CFR 121.201, SIC code 4813.

[42] *Id.*

[43] 13 CFR 120.121, SIC code 4899.

[44] 13 CFR 121.201, SIC code 4812.

persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service* data, 137 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 137 small paging carriers that may be affected by the proposed rules, if adopted. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Mobile Service Carriers

Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[45] and the most recent *Telecommunications Industry Revenue* data shows that 23 carriers reported that they were engaged in the provision of SMR dispatching and "other mobile" services. Consequently, the Commission estimates that there are fewer than 23 small mobile service carriers that may be affected by the proposed rules.

Broadband Personal Communications Service (PCS)

The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

Narrowband PCS

The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service

The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[46] The Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[47] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service

The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[48] Accordingly, the Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[49] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

Specialized Mobile Radio (SMR)

The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[50] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. The proposed rules in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

Offshore Radiotelephone Service

This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[51] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

[45] 13 CFR 121.201, SIC code 4812.

[46] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[47] 13 CFR 121.201, SIC code 4812.

[48] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[49] 13 CFR 121.201, SIC code 4812.

[50] 47 CFR 90.814(b)(1).

[51] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

CMRS carriers interested in offering their subscribers CPP would be required to provide a notification to those placing calls to the CPP subscriber that include the following elements: (1) Notice that the calling party is making a call to a wireless phone subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of airtime charges; (2) Identification of the CMRS provider; (3) The per minute rate, or other rates, that the caller will be charged by the CMRS provider; and (4) An opportunity to terminate the call prior to incurring any charges. In addition, LECs may be required to provide billing name and address information to CMRS carriers for parties who call CPP subscribers. Comments are also requested on the possible need for billing and collection services to be provided for CPP by LECs. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The Commission has minimized burdens to the maximum extent possible. CPP is an optional CMRS offering that carriers may provide to their wireless subscribers, at the sole discretion of the carrier. As to the provision of caller billing name and address information, or billing and collection services, it is anticipated that any such services would be provided to CMRS carriers at negotiated rates that would enable LECs to recover all associated costs. The Commission seeks comment on significant alternatives that commenters believe should be adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules: None

List of Subjects in 47 CFR Part 20

Communications common carrier; Communications radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18232 Filed 7–15–99; 8:45 am]

BILLING CODE 6712–01–P

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Notices

Federal Register
Vol. 64, No. 136
Friday, July 16, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting (field trip).

SUMMARY: The Olympic PIEC Advisory Committee will meet on August 12, 1999. The meeting will be limited to a one day field trip on the Quinault Ranger District in conjunction with the President's NW Forest Plan Implementation monitoring. The Advisory Committee will meet with the monitoring team on August 12th following the monitoring teams field work to review with them their findings. The schedule is as follows: Meet at the Quinault Ranger Station in Quinault on August 12 at 9:30 a.m. The committee will travel by vehicles to several sites in the Matheny watershed. The field trip will conclude approximately 2:30 p.m. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd. Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: July 9, 1999.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 18134 Filed 7–15–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed collection; comment request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the annual certifications of nonprofit agencies serving people who are blind or who have other severe disabilities (Forms 403 and 404).

DATES: Comments must be submitted on or before September 14, 1999.

ADDRESSES: Written comments should be sent to: Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for information, including copies of the form and supporting documentation, should be directed to: Beverly L. Milkman, Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The Committee has two annual certification forms, one for nonprofit agencies serving people who are blind and one for nonprofit agencies primarily serving people who have other severe disabilities. The information included on the forms is required to ensure that nonprofit agencies participating in the Committee's program continue to meet the requirements of 41 USC 46–48c.

The form has been modified to request that the previously reported JWOD direct labor hours be broken down into two separate categories: those generated from services, and those generated from products. The form has also been revised so that previously reported non-JWOD sales are broken down to show any sales from other Federal Government contracts separately.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–18199 Filed 7–15–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Collection; Comment Request.

TITLE: Nonprofit Agency Responsibilities.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled has submitted an Information Collection Request to the Office of Management and Budget (OMB) for review and clearance under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This notice solicits comments on requirements relating to the record keeping requirements of nonprofit agencies serving people who are blind or severely disabled.

DATES: Comments must be submitted on or before August 16, 1999.

ADDRESSES: Written comments should be sent to: Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for information should be directed to: Beverly L. Milkman, Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The Committee imposes record keeping requirements on nonprofit agencies serving people who are blind or severely disabled. The requirements are for records of direct labor hours performed for the nonprofit agency by each worker and are for files which document the disability and competitive employability of each worker. Such records and files are required to ensure that nonprofit agencies seeking to participate in the Committee's program meet the requirements of 41 U.S.C. 46–48c.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–18194 Filed 7–15–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: August 16, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 26, April 16, May 14, 21, and 28, and June 4, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 14687, 18877, 26360, 27752, 28971, 28972 and 29992) of proposed additions to and deletion from the Procurement List:

Additions

The Following Comments Pertain to Gloves, Patient Examining

Comments were received from a private company both directly and through a Member of Congress who urged consideration of the company's comments. The company claimed that addition of the patient examining gloves to the Procurement List would violate the antitrust laws and affect a large number of businesses, contrary to the Regulatory Flexibility Act certification in the **Federal Register** notice of proposed addition of the gloves to the Procurement List. The company proposed that the nonprofit agency employing blind people which will provide the gloves to the Government be given a bid preference in a competitive procurement instead of being made a mandatory procurement source. The antitrust laws are designed to prevent restraint of trade in the commercial marketplace. It is the Committee's understanding that the Government is immune from suit under the antitrust laws for actions taken in its sovereign capacity, such as procurement of goods and services for its own use. This addition to the Procurement List concerns just such a procurement. Also, Congress specifically authorized this type of sole-source procurement to benefit people with blindness and other severe disabilities when it passed the Javits-Wagner-O'Day (JWOD) Act.

Prior to its standardization of its patient examining glove procurements on the type offered by the nonprofit agency which will provide them under the Procurement List, the Department of Veterans Affairs (VA) did not buy a single type of glove on a nationwide basis, as it is now doing. The nonprofit agency which will provide the gloves under the Procurement List is also the only contractor which VA has had for the new nationwide requirement. Under Committee regulations, the nonprofit agency is the contractor on whom impact of the Procurement List addition would be assessed. We are not aware of the possible impact on any other companies in any detail, and the commenting company has provided no information on which the Committee could base an impact determination. It should also be noted that the Regulatory Flexibility Act certification concerned impact on a substantial number of small entities. As just noted, the Committee is aware of only one affected small entity in this case, the nonprofit agency, although the commenting company may also be in this category. To the extent this comment represents an objection by the company to losing the possibility of selling examining gloves to VA, it should be noted that VA permits the purchase of the gloves through distributors as well as directly from the nonprofit agency, so the commenting company may be able to mitigate its losses by entering into a distribution agreement with the nonprofit agency.

In enacting the JWOD Act, Congress did not provide for the type of competitive bid preference the commenting company advocated. Consequently, the Committee is unable to accommodate the company's idea, even if it considered such an approach a desirable way of accomplishing its statutory mission of creating jobs for people who are blind or have other severe disabilities.

The Following Material Pertains to All of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Fiberboard Half Size MM Trays and Sleeves
PSIN 3916B (Tray)
PSIN 3916C (Sleeves)
Gloves, Patient Examining
6515–01–461–3208
6515–01–461–3209
6515–01–455–5293
6515–01–461–8271
6515–01–455–5281
6515–01–455–2778
6515–01–455–2782
6515–01–461–8414
6515–01–455–2768

6515–01–455–2759
6810–00–873–2554

The Applicable Statute

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6515–01–455–2759
6515–01–461–8507
6515–01–455–5278
Office Furniture
7110–00–151–6485
7110–00–177–4901
7110–00–177–4902
7110–00–194–1613
7110–00–281–5689
7195–00–242–3503

Services

Base Supply Center
Aberdeen Proving Ground, Aberdeen, Maryland
CD–ROM Duplication Services
U.S. Army Corps of Engineers, 100 Liberty Avenue, Pittsburgh, Pennsylvania
(75% of the Corps' Requirement)
Hospital Housekeeping Services
U.S. Army Medical Activity & U.S. Army Dental Activity (including Evans Army Community Hospital), Fort Carson, Colorado

Janitorial/Custodial

Internal Revenue Service, Fresno Service Center (FSC), 5045 E. Butler Avenue, Fresno, California
VA Medical Center, 3350 La Jolla Village Drive, San Diego, California
Veterans Administration Outpatient Clinic, 2900 Veterans Way, Melbourne, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodity.
3. The action may result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Ion Exchange Compound
6810–00–873–2554

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–18195 Filed 7–15–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 16, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the prqposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Sachet Bag Assorted Scents & Oil Crystal Assorted Scents
M.R. 1733
M.R. 1779
NPA: Envision, Inc., Wichita, Kansas

Services

Family Housing Maintenance
Travis Air Force Base, California
NPA: PRIDE Industries, Roseville, California
Janitorial/Custodial
Basewide
Brooks Air Force Base, Texas
NPA: Willing Hearts, Inc., San Antonio, Texas
Janitorial/Custodial
National Institute for Occupational Safety and Health (NIOSH), Morgantown, West Virginia
NPA: PACE Training and Evaluation Center, Inc., Star City, West Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–18196 Filed 7–15–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of new shipper review.

EFFECTIVE DATE: July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Andrew Nulman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0648 or (202) 482–4052, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Background

On September 30, 1998, the Department of Commerce (the Department) received a request from Yancheng Baolong Biochemical Products Co., Ltd. for a new shipper review of the antidumping order on freshwater crawfish tail meat from the People's Republic of China. On October 30, 1998, the Department initiated this new shipper review covering the period of March 26, 1997 through August 31, 1998 (63 FR 59762, published November 5, 1999).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Preliminary Results of Antidumping Duty New Shipper Review of Freshwater Crawfish Tail Meat from the PRC*, dated July 7, 1999, it is not practicable to complete these reviews within the time limits mandated by sections 751(a)(2)(B)(iv) of the Act.

Therefore, the Department is extending the time limits for the preliminary results to August 26, 1999. This extension of time limits is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: July 8, 1999.

Edward Yang,

Acting Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 99–18228 Filed 7–15–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of administrative review and new shipper reviews.

EFFECTIVE DATE: July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Nulman or Laurel LaCivita, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4052 or (202) 482–4236, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Background

The Department of Commerce (the Department) received a request from petitioner and from respondent, Ningbo Nanlian Frozen Foods Company, Ltd., to conduct an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). On October 26, 1998, the Department initiated this antidumping administrative review covering the period of March 26, 1997 through August 31, 1998 (63 FR 58010, published October 29, 1998).

On September 29, 1998, the Department received requests from Lianyungang Haiwang Aquatic Products Co., Ltd. and Qingdao Rirong Foodstuff Co., Ltd. for new shipper reviews of the antidumping order on freshwater crawfish tail meat from the PRC. On October 30, 1998, the Department initiated these new shipper reviews covering the period of March 26, 1997 through August 31, 1998 (63 FR 59762, published November 5, 1998).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews of Freshwater Crawfish Tail Meat from the PRC*, dated July 7, 1999, it is not practicable to complete these reviews within the time limits mandated by sections 751(a)(3)(A) of the Act.

Therefore, the Department is extending the time limits for the preliminary results to September 30, 1999. This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 8, 1999.

Edward Yang,

Acting Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 99–18229 Filed 7–15–99; 8:45 am]

BILLING CODE 3510–OS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 990702181918l–01]

International Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and Call for Applications for the FY 2001 International Buyer Program (October 1, 2000 through September 30, 2001).

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with the U.S. Department of Commerce's International Buyer Program (IBP), to support domestic trade shows. Selection is for the International Buyer Program for Fiscal Year 2001.

The International Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the U.S. Department of Commerce (DOC) and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-

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users, representatives and distributors. The worldwide promotion is executed through the offices of the United States and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in 70 countries representing America's major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices. The Department expects to select approximately 24 shows for FY2001 from among applicants to the program. Shows selected for the International Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets. Successful applicants will be required to enter into a Memorandum of Understanding (MOU) that sets forth the specific actions to be performed by the show organizer and the DOC. The MOU constitutes an agreement between the DOC and the show organizer specifying which services are to be rendered by DOC as part of the IBP and, in turn, what responsibilities are agreed to be performed by the show organizer. Anyone wishing to apply will be sent a copy of the MOU along with the application package. The services to be rendered by DOC will be carried out by the Commercial Service.

DATES: Applications must be received within August 30, 1999. Contributions are for shows selected and promoted during the October 1, 2000 and September 30, 2001, period.

ADDRESSES: Export Promotion Services/ International Buyer Program, Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230. Telephone: (202) 482–0146 (Facsimile applications will not be accepted).

FOR FURTHER INFORMATION CONTACT: Jim Boney, Product Manager, International Buyer Program, Room 2116, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230. Telephone (202) 482–0146 or Fax: (202) 482–0115.

SUPPLEMENTARY INFORMATION: The Commercial Service is accepting applications for the International Buyer Program (IBP) for events taking place between October 1, 2000 and September 30, 2001. A contribution of $6,000 for shows of five days or less, or $8,000 for shows more than five days in duration, or requiring more than one International Business Center is required for the shows selected.

Under the IBP, the Commercial Service seeks to bring together international buyers with U.S. firms by selecting and promoting in international markets domestic trade shows in industries with high export potential. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. If the event occurs more than once in the 12-month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service will select approximately 24 events to support between October 1, 2000, through September 30, 2001. The Commercial Service will select those events that, in its judgment, most clearly meet the Commercial Service's objective and selection criteria mentioned below.

The Department selects events which it determines to be a leading international trade show appropriate for participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of the show's success. Selection is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

Exclusions: Trade shows will not be considered that are either first-time or horizontal (non-industry specific) events. Annual trade shows will not be selected for this program more than twice in any three-year period (e.g., shows selected for fiscal years 1999 and 2000 are not eligible for inclusion in this program in fiscal year 2001, but can be considered in subsequent years.).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Office of Management and Budget has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 2501 et. seq.) (OMB control no. 0625–0151).

General Selection Criteria: Those events will be selected that, in the judgment of the Department, most clearly meet the following criteria:

(a) *Export Potential:* The products and services to be promoted at the trade show are from U.S. industries that have high export potential, as determined by U.S. Department of Commerce sources, i.e., best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides).

(b) *International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (e.g. best prospect lists). Previous international attendance at the show may be used as an indicator.

(c) *Scope of the Show:* The trade show offers a broad spectrum of U.S.-made products and/or services for the subject industry. Trade shows with a majority of United States businesses, as defined in 15 U.S.C. 4724, will be given preference.

(d) *Stature of the show:* The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or services in that industry.

(e) *Exhibitor Interest:* There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) *Overseas Marketing:* There has been demonstrated effort made to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance.

(g) *Logistics:* The trade show site, facilities, transportation services and availability of accommodations are in the stature of an international-class trade show.

(h) *Cooperation:* The applicant demonstrates a willingness to cooperate with the Commercial Service of the United States of America to fulfill the program's goals and to adhere to target dates set out in the Memorandum of Understanding and the event timetable, both of which are available from the program office (see For Further Information on When, Where, and How to apply). Past experience in the IBP will be taken into account in evaluating current applications to the program.

Legal Authority: The Commercial Service has the legal authority to enter into the above-mentioned memorandum of understanding with the show organizer under the provisions of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2455(f)). The statutory authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724.

John Klingelhut,

Director, Office of Public/Private Initiatives, The Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 99–18213 Filed 7–15–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Decision of Binational Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Corrected Notice of Decision of Binational Panel.

SUMMARY: On June 18, 1999 the Binational Panel issued its decision in the matter of Gray Portland Cement and Clinker from Mexico, Secretariat File No. USA–97–1904–01.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information

On May 6, 1997, Cemex, S.A. de C.V. ("CEMEX") and Cementos de Chihuahua. S.A. de C.V. ("CDC") filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of Antidumping Duty Administrative Review made by the International Trade Administration respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** on April 9, 1997 (62 FR 27238–39). The request was assigned File No. USA–97–1904–01.

Panel Decision

The Panel affirmed in part and remanded in part with one dissenting opinion. The Panel determined that by stipulation between CEMEX and the Department announced at the hearing on December 15, 1998, the Panel remanded the final results of the Fifth Review to the Department for the purpose of correcting the ministerial errors identified by CEMEX in its May 9, 1997 letter to the Department. On remand, the Department shall correct the errors identified by CEMEX in its May 9, 1997 letter to the Department identified as Number 1, A and B, and Number 2. CEMEX has agreed to abandon its claim for ministerial error identified in its May 9, 1997 letter to the Department as Number 3. Pursuant to the stipulation, once the ministerial errors are corrected, the Department shall publish in the **Federal Register** notice of the corrections and then instruct the U.S. Customs Service to give effect to the corrections.

The Panel ordered the Department to issue a determination on remand consistent with the instructions and findings set forth in the Panel's decision. The determination on remand shall be issued within ninety (90) days of the date of the Order (not later than September 16, 1999).

Dated: July 12, 1999.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 99–18126 Filed 7–15–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062999B]

Mid-Atlantic Fishery Management Council; Meetings; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Change of dates of public meetings.

SUMMARY: The agenda for the Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee, Scup Monitoring Committee, Black Sea Bass Monitoring Committee, and Bluefish Monitoring Committee meeting was published on July 8, 1999. See **SUPPLEMENTARY INFORMATION** for revision to the meetings.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The initial agenda was published in the **Federal Register** on July 8, 1999 (64 FR 36857). The following revisions are to be made.

The **DATES** caption is corrected to read as follows:

On July 27, 1999 the Black Sea Bass Monitoring Committee will begin meeting at 10:00 a.m. The Scup Monitoring Committee will meet from 2:00–5:00 p.m. On July 28, 1999, the Summer Flounder Monitoring Committee will meet from 8:00 a.m. until noon. The Bluefish Monitoring Committee will meet from 1:00–4:00 p.m.

All other information remains unchanged.

Dated: July 12, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18211 Filed 7–15–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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ACTION: Issuance of photography permit no. 955–1518–00

SUMMARY: Notice is hereby given that Dr. Julian Hector, The Natural History Unit, BBC, Whiteladies Road, Bristol, BS8 2LU, United Kingdom, has been issued a permit to take by Level B harassment northern fur seals (*Callorhinus ursinus*) for purposes of commercial/educational photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, Alaska 99802 (907/586–7235).

SUPPLEMENTARY INFORMATION: On June 2, 1999, notice was published in the **Federal Register** (64 FR 29626) that the above-named applicant had submitted a request for a permit to take northern fur seals by Level B harassment during the course of commercial/educational photographic activities on St. Paul Island and surrounding waters. The requested permit has been issued, under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: July 9, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–18212 Filed 7–15–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, July 22, 1999, 9:30 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 13, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 18381 Filed 7–14–99; 3:21 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Panel on Military Operations on Vieques; Meeting

ACTION: Notice.

SUMMARY: The Panel will conduct two public meetings to receive and discuss information associated with military operations at Vieques, Puerto Rico and in the adjoining ocean range complex. The panel will receive information from Congressman Carlos A. Romero-Barceló on July 16 and from the Department of the Navy on July 23. Because of the short timeframe of the panel's review, and the accelerated pace of the meeting schedule, this announcement must be made less than 15 days before the meetings will take place.

DATES: July 16 and July 23, 1999 from 8:30 to 11:00 a.m. and 9 a.m. to 12:00 p.m., respectively.

ADDRESSES: 1401 Wilson Boulevard, Room 409, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Hector O. Nevarez, the Designated Federal Officer, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209, phone (703) 696–9456, fax (703) 696–9482, or via Email at *Hector Nevarez@osd.pentagon.mil.* Written comments must be sent to Dr. Nevarez and received no later than Wednesday, July 21, 1999. Copies of the draft meeting agenda can be obtained by contacting Debra Crnkovic at (703) 695–5493.

SUPPLEMENTARY INFORMATION: Seating in the panel meeting room is limited, and spaces will be reserved only for panel members and invited representatives. The remaining seating is available on a first-come, first-served basis. No teleconference lines will be available. Written comments for the record may be mailed to the Panel and will be distributed to the Panel members after the adjournment of the July 16 and 23, 1999 meetings.

Dated: July 12, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–18127 Filed 7–15–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for the Record of Decision (ROD) for the Disposal and Reuse of Fort McClellan (FMC), Alabama

AGENCY: Department of the Army, DoD.

ACTION: Record of decision.

SUMMARY: The Department of the Army announces the availability of the Record of Decision (ROD) for the disposal and reuse of Fort McClellan, Anniston, Alabama. It has been determined that the Final Environmental Impact Statement (FEIS) for the disposal and reuse of the installation adequately assesses the impacts of the proposed action and related alternatives on the biological, physical and cultural environment. The Army installation is being closed in accordance with the Defense Base Closure and Realignment Act of 1990. A 22,567 acre National Guard Enclave will remain after Fort McClellan closes. The ROD establishes the Army's decision to proceed with disposal of excess properties and facilities in accordance with the Army's preferred alternative (Encumbered Disposal) described in the FEIS.

ADDRESSES: Copies of the ROD and/or FEIS may be obtained by contacting Mr. Curtis Flakes, US Army Corps of Engineers, Mobile District (ATTN: CESAM–PD–EC), P.O. Box 2288, Mobile, AL 36602–3630.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Flakes at (334) 690–2777 and telefax: (334) 690–2727.

SUPPLEMENTARY INFORMATION: The FEIS analyzed three disposal alternatives: (1) The No Action Alternative, which entails maintaining the property in caretaker status after closure; (2) the Encumbered Disposal Alternative, which entails transferring the property to future owners with Army-imposed limitations, or encumbrances, on the future use of the property; and (3) the Unencumbered Disposal Alternative, which entails transferring the property to future owners with fewer or no Army-imposed restrictions on the future use of the property. The preferred action identified in the FEIS is Encumbered Disposal of excess property at Fort McClellan. Based upon the analysis contained in the FEIS, encumbrances and deed restrictions associated with the Army's disposal actions for Fort McClellan will be mitigation measures.

Planning for the reuse of the property to be disposed of is a secondary action resulting from closure. The local community established the Fort McClellan Development Commission (FMDC) to produce a reuse development plan for the surplus property. The impacts of reuse are evaluated in terms of land use intensities. This reuse analysis is based upon implementing one of three reuse alternatives, all of which are based upon the FMDC reuse plan. The Army has not selected one of these three alternatives as the preferred action. Selection of the preferred reuse plan is a decision that will be made by the local community. This ROD allows the Army to initiate action to dispose of the excess property at Fort McClellan in accordance with the Fort McClellan Comprehensive Reuse Plan.

Dated: July 8, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 99–18118 Filed 7–15–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of Army, Corps of Engineers

Intent to Prepare a Feasibility Study and Draft Environmental Impact Statement (DEIS) for the Anacostia Levee Corridor Feasibility Study—Prince George's County, Maryland

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: A U.S. House of Representatives resolution dated September 8, 1988, authorized a study on the Anacostia River and several of its tributaries. In accordance with that resolution and with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers is initiating the Anacostia Levee Corridor Feasibility Study and Draft Environmental Impact Statement (DEIS). This feasibility study is the third study conducted by the U.S. Army Corps of Engineers in the Anacostia watershed. The feasibility study will focus on the Prince George's County, Maryland, portion of the Anacostia River watershed. The study area is near the confluence of the Northeast and Northwest Branches of the Anacostia River and involves the towns of Bladensburg, Brentwood, Colmar Manor, Cottage City, Edmonston, Hyattsville, and Riverdale. An existing levee system, authorized by the Flood Control Act of 1950 (Pub. L. 516), was completed in the mid-1950s and is in place along portions of the Anacostia River and the Northeast and Northwest Branches. The existing levee project includes approximately 14,400 feet of flood control channels, 28,100 feet of levees, four pumping stations, and one pressure conduit.

The Anacostia Levee Corridor Feasibility Study will have four components: flood damage reduction, fish and wildlife habitat restoration, aesthetics, and recreation. The flood damage reduction component will evaluate the existing levee system's capacity to provide adequate protection from the 100-year flood event. Based on that evaluation, the study team will identify and design modifications that will provide 100-year flood protection for the levee corridor. (The study will also evaluate alternative flood damage reduction options for high priority flood-prone areas and the residual flood hazard risk.) The fish and wildlife habitat restoration component of the study will evaluate the potential for re-establishing wetland, instream, and upland habitats within the levee corridor. Restoring habitat would benefit water quality and the biological communities both in the study area and downstream of the project. The study components concerned with improving aesthetics and recreational improvements in the levee area and in the surrounding urban environment. A DEIS will be integrated into the feasibility report to document existing conditions, project actions, and project effects and products. Prince George's County, Maryland, the Maryland National Capital Park and Planning Commission—Prince George's County, and the Maryland Department of the Environment are the project sponsors.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Ms. Kathryn Conant, Study Team Leader, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, PO Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–5175. E-mail address: kathryn.j.conant@usace.army.mil.

SUPPLEMENTARY INFORMATION: 1. The Anacostia Levee Corridor Feasibility Study is the third study to be initiated under the original 1988 authority. The first study, titled the Anacostia River and Tributaries Feasibility Study was completed by the Corps in 1994 and determined that previous Corps activity in the Anacostia River watershed has had a detrimental impact to the ecosystem of the watershed. That first study was a broad overview of the watershed and recommended environmental restoration projects in various watershed locations. The study also recommended that additional feasibility studies focusing on environmental restoration should be pursued. Based on that recommendation, the Baltimore District Corps of Engineers, Montgomery County, and Prince George's County identified the potential for additional environmental restoration opportunities within the Anacostia watershed. A second study, initiated by the Corps and Montgomery County in 1996, is investigating potential projects along the Northwest Branch. This third feasibility study, being initiated by the Corps and Prince George's County, will focus on potential projects along the stream reaches upstream and downstream of the Northeast-Northwest Branch confluence and two small tributaries that flow into the levee corridor.

2. The study area is in the western central portion of Prince George's County, within a mile of the Maryland-District of Columbia border. The study will focus on modifications to and within the existing levee project along the Anacostia River and the Northeast and Northwest Branches. During the study, the team will gather baseline data on the level of protection currently provided by the existing local flood protection project and on existing environmental conditions within the study area. Information gathered will include the hydraulic capacity and physical condition of the existing levee. Alternatives for improving local flood protection will include a variety of possible levee heights, lengths, and types of structure. Alternative environmental improvements will include a range of locations, targeted habitat types or communities, and project sizes for instream and terrestrial habitat restoration and wetland restoration projects.

3. The study will include coordination and preparation for a series of public involvement activities, such as workshops or information meetings and newsletters. In addition to meetings organized by the study team, it is anticipated that the study team will participate in a number of locally sponsored meetings with citizen interest groups or other entities. The purpose of the first public scoping workshop, to be held in the summer 1999, will be to provide information on the existing conditions data and to identify public

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interest in and ideas about potential projects. The purpose of the second public meeting will be to provide information on preliminary alternatives and to gather public comments on the alternatives. It is anticipated that the first two meetings will be somewhat informal, informative, and highly interactive. A third public meeting will be held after the release of the draft feasibility report and draft environmental impact statement (DEIS) to present, discuss, and receive comments on the report and the recommended plan.

a. The public involvement program will include workshops, meetings, and other coordination with interested individuals and organizations, as well as with concerned Federal, state and local agencies. Information about the study will be provided through mailings, news releases, advertisements, and other media. Approximately 150 coordination letters and newsletters announcing the study initiation were sent to appropriate agencies, organizations, and individuals in April 1999.

b. The Baltimore District is preparing a DEIS which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. The DEIS will document all factors which may be relevant to the proposal, including the cumulative effects thereof. If applicable, the DEIS will also apply guidelines issued by the Environmental Protection Agency, under the authority of section 404(b)(1) of the Clean Water Act of 1977 (Pub. L. 95–217).

Environmental issues will focus on, but are not limited to, effects on air quality, wetlands, water quality; fish and wildlife resources (including threatened and endangered species); hazardous, toxic, and radioactive waste; aesthetic resources; and cultural resources (including archaeological sites and historic architecture). Benefits, costs, and impacts will be examined in detail to determine which elements of the water resources plan are justified. The team will evaluate the environmental impacts (both adverse and beneficial) of the proposed actions.

The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, will be balanced against its reasonably foreseeable costs.

c. In addition to the Corps, the Maryland Department of the Environment, Prince George's County, and the Maryland National Capital Park and Planning Commission-Prince George's County, other participants that will be involved in the study and DEIS process include the U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. National Park Service; Maryland Department of Natural Resources; Interstate Commission on the Potomac River Basin; Natural Resource Conservation Service; and the Prince George's County Soil Conservation District. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

4. The Anacostia Levee Corridor Feasibility Study and integrated DEIS are scheduled for public review in October 2001.

David S. Ladd,

Acting Chief, Planning Division.

[FR Doc. 99–18177 Filed 7–15–99; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Red River Navigation, Southwest Arkansas, Feasibility Report

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DoD.

ACTION: Notice of Intent.

SUMMARY: Three or four locks and dams may be required to extend navigation on the Red River upstream of Shreveport/Bossier City, Louisiana, to the vicinity of Index, Arkansas.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin Cannon (telephone (601) 631–5437), CEMVK–PP–PQ, 4155 Clay Street, Vicksburg, Mississippi 39183–3435.

SUPPLEMENTARY INFORMATION: Authority for this feasibility study is contained in section 402 of the Water Resources Development Act of 1996 (Pub. L. 104–303).

1. *Proposed Action:* The proposed action includes the construction of three or four locks and dams to extend navigation from Shreveport-Bossier City to the vicinity of Index, Arkansas (134 miles).

2. *Alternatives:* Four reasonable alternatives were identified during the reconnaissance study. These alternatives included a no-action alternative; extension of navigation from Shreveport-Bossier City to the vicinity of Garland, Arkansas; extension of navigation from Shreveport-Bossier City to the vicinity of Fulton, Arkansas; and extension of navigation from Shreveport-Bossier City to the vicinity of Index, Arkansas.

3. a. Two public scoping meetings will be held. One meeting will probably be held in Texarkana, Arkansas, and the other one will probably be held in Shreveport/Bossier City, Louisiana. These meetings will probably be held in August-September 1999. The U.S. Coast Guard, Environmental Protection Agency, U.S. Fish and Wildlife Service, Arkansas Department of Environmental Quality, Louisiana Department of Environmental Quality, Arkansas Game and Fish Commission, Louisiana Department of Wildlife and Fisheries, and the Arkansas Soil and Water Conservation Commission will be invited to become cooperating agencies. These agencies will review data and the feasibility report and appendixes. A public meeting will be held once the DEIS is completed, and all agencies, groups, tribes, and individuals will be sent copies of the DEIS and final EIS. Any significant issues identified in the scoping meetings will be analyzed in depth in the DEIS. Cooperating agencies will review data and appendixes.

b. The DEIS is estimated to be completed in September 2002.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–18176 Filed 7–15–99; 8:45 am]

BILLING CODE 3710–P–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–519–001, FERC–519]

Information Collection Submitted for Review and Request for Comments

July 12, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under the provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in responses to an earlier **Federal Register** notice of May 29, 1999 (64 FR 14893) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before August 16, 1999.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Michael Miller, 888 First Street, NW, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–519 "Application for Sale, Lease or Disposition, Merger or Consolidation of Facilities or for Purchase or Acquisition of Securities of a Public Utility"

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0082.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection of data. There is an increase in the reporting burden due to an increase in the number of entities that submit this collection of information. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of this information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Section 203 of the Federal Power Act (FPA), 16 U.S.C. Section 203 authorizes the Commission to grant approval for transactions in which a public utility disposes of jurisdictional facilities, merges such facilities with the facilities owned by another person or acquires the securities of another pubic utility. Under the statute, the Commission must find that the proposed transaction will be consistent with the public interest. Section 318 of the FPA exempts certain persons from the requirements of Section 203 which would otherwise concurrently apply under the Public Utility Holding Company Act of 1935. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 33.

5. *Respondent Description:* The respondent universe currently comprises on average 125 entities subject to the Commission's jurisdiction.

6. *Estimated Burden:* 10,000 total burden hours, 125 respondents, 1 response annually, 80 hours per response.

7. *Estimated Cost Burden to Respondents:* 10,000 hours ÷ 2,080 hours per year × $109,889 per year $528,313, average cost per respondent = $4,226.50.

Statutory Authority: Sections 203 and 318 of the Federal Power Act, 16 U.S.C. 824(b) and 16 U.S.C. 825(q).

David P. Boergers,

Secretary.

[FR Doc. 99–18139 Filed 7–15–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EL99–75–000, et al.]

California Electricity Oversight Board, et al.; Electric Rate and Corporate Regulation Filings

July 9, 1999.

Take notice that the following filings have been made with the Commission:

1. California Electricity Oversight Board

[Docket No. EL99–75–000]

Take notice that on July 7, 1999, the California Electricity Oversight Board (Board) tendered for filing, a Petition for Declaratory Order and Exemption of Filing Fee. The Board's petition for declaratory relief requests that the Commission order that Senate Bill (SB) 96 resolves disputed issues in the Commission Docket Nos. EC96–19, *et al.* and ER96–1663, *et al.* and pending before the United States Court of Appeals for the District of Columbia Circuit in Docket Nos. 98–1225, 98–1226 and 99–1133, and that the authorities and responsibilities to be exercised by the State of California, through the Board, as set forth in SB 96 are consistent with federal law.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. NFR Power, Inc., The Furst Group, Inc., Nicor Energy Management Services Company, National Fuel Resources, Inc.

[Docket Nos. ER96–1122–012, ER98–2423–003, RR97–1816–008 and ER95–1374–015]

Take notice that on July 2, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Eagle Gas Marketing Company and Granger Energy, L.L.C.

[Docket No. ER96–1503–013 and ER97–4240–004]

Take notice that on July 7, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. Sunoco Power Marketing, L.L.C.

[Docket No. ER97–870–010]

Take notice that on July 1, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation and Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, Power Authority of the State of New York and New York Power Pool

[Docket Nos. ER97–1523–006, OA97–470–000, and ER97–4234–000 (not consolidated]

Take notice that on July 2, 1999, the Member Systems of the New York Power Pool (Member Systems) tendered

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for filing a revised proposal relating to the governance structure of the New York Independent System Operation (NYISO).

The Member Systems state that this filing was made in compliance with the Commission's orders dated April 30, 1999. *See Central Hudson Gas & Electric Corp., et. al.*, 87 FERC ¶ 61,135 (1999).

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Alliant Energy Industrial Services, Inc., Golden Valley Power Company, Energetix, Inc., Vanpower, Inc., Prairie Winds Energy, Eclipse Energy, Inc., Kastex Energy Ventures, Inc., ECONnergy Energy Co., Alpha Energy Corporation and NAP Trading and Marketing, Inc.

[Docket Nos. ER99–1775–001, ER98–4334–003, ER97–3556–008, ER96–552–014, ER95–1234–013, ER94–1099–021, ER95–295–019, ER98–2553–003, ER98–2553–004, ER97–4730–005, ER97–4730–006 and Docket No. ER95–1278–011]

Take notice that on July 6, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. California Independent System Operator Corporation

[Docket No. ER99–1971–002]

Take notice that on July 2, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a compliance filing in the above-referenced docket which included a number of revisions to the ISO Tariff. The ISO states that this filing was submitted to comply with the Commission's May 26, 1999 Order, 87 FERC ¶ 61,208 (1999), in the above-referenced docket.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3475–000]

Take notice that on July 2, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 24 to add four (4) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of June 7, 1999, to Avista Energy, Inc., Constellation Power Service, Inc., Entergy Power Marketing Corporation and Williams Energy Marketing & Trading Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Orange and Rockland Utilities, Inc.

[Docket No. ER99–3476–000]

Take notice that on July 2, 1999, Orange and Rockland Utilities Inc. (Orange and Rockland) filed a Service Agreement between Orange and Rockland and Southern Energy Lovett, L.L.C. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland's Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 1, 1999 for the Service Agreement.

Orange and Rockland has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Orange and Rockland Utilities, Inc.

[Docket No. ER99–3477–000]

Take notice that on July 2, 1999, Orange and Rockland Utilities Inc. (Orange and Rockland) filed a Service Agreement between Orange and Rockland and Southern Energy Bowline, L.L.C. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland's Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 1, 1999 for the Service Agreement.

Orange and Rockland has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Orange and Rockland Utilities, Inc.

[Docket No. ER99–3478–000]

Take notice that on July 2, 1999, Orange and Rockland Utilities Inc. (Orange and Rockland) filed a Service Agreement between Orange and Rockland and Southern Energy NY-Gen, L.L.C. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland's Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 1, 1999 for the Service Agreement.

Orange and Rockland has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Electric Company

[Docket No. ER99–3479–000]

Take notice that on July 2, 1999, Commonwealth Electric Company (Commonwealth) tendered for filing a firm point-to-point transmission service agreement between Commonwealth and Entergy Nuclear Generating Company (Entergy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide firm point-to-point transmission service to Entergy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Electric Company

[Docket No. ER99–3481–000]

Take notice that on July 2, 1999, Commonwealth Electric Company (Commonwealth) tendered for filing a Related Facilities Agreement between Commonwealth and Tiverton Power Associates Limited Partnership.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER99–3482–000]

Take notice that on July 2, 1999, Public Service Company of New Mexico (PNM) submitted for filing an executed service agreement, for short-term firm point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Arizona Public Service Company, dated June 18, 1999. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER99–3484–000]

Take notice that on July 2, 1999, Commonwealth Edison Company, (ComEd), submitted for filing a revised Firm Service Agreement with Wisconsin Electric Power Company (WEPCO), under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd also submitted for filing three Non-Firm Service Agreements with Detroit Edison Company (DE), West Penn Power dba Allegheny Energy (WPP), and Alliant Energy Industrial Services, Inc. (AEIS), as customers under the terms of ComEd's OATT.

ComEd requests an effective date of June 7, 1999 for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on WEPCO, DE, WPP and AEIS.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER99–3485–000]

Take notice that PacifiCorp on July 2, 1999, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Notice of Filing of a Mutual Netting/Closeout Agreement (Netting Agreement) between PacifiCorp and City of Santa Clara (Santa Clara), Utah Municipal Power Agency (UMPA) and Western Resources, Inc. (WRI).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3486–000]

Take notice that on July 2, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. The Montana Power Company

[Docket No. ER99–3487–000]

Take notice that on July 2, 1999, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement Network and Operating Agreement with Central Montana Electric Power Cooperative Inc. under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Central Montana Electric Power Cooperative Inc.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER99–3488–000]

Take notice that on July 2, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to FPL Energy Power Marketing, Inc. and a Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to FPL Energy Power Marketing, Inc.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of June 7, 1999, the date service was first requested under the Non-Firm Service Agreement.

Copies of the filing were served upon FPL Energy Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. CMS Generation Michigan Power, L.L.C.

[Docket No. ER99–3489–000]

Take notice that on July 2, 1999, CMS Generation Michigan Power, L.L.C. (Michigan Power) tendered for filing an executed service agreement for unbundled wholesale power service with CMS Marketing, Services and Trading Company pursuant to Michigan Power's Cost-Based Power Sales Tariff, accepted for filing in Docket No. ER99–1970–000.

The service agreement has an effective date of June 7, 1999.

Copies of the filing have been served on the Michigan Public Service Commission and CMS Marketing, Services and Trading Company.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Citizens Utilities Company

[Docket No. ER99–3490–000]

Take notice that on July 2, 1999, Citizens Utilities Company filed its compliance filing pursuant to the Commission's orders in North American Electric Reliability Council, et al., 86 FERC ¶ 61,275 (1999) and 85 FERC ¶ 61,353 (1998).

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. PP&L Montana, LLC, PP&L Colstrip I, LLC, PP&L Colstrip II, LLC, and PP&L Colstrip III, LLC

[Docket No. ER99–3491–000]

Take notice that on July 2, 1999, PP&L Montana, LLC, PP&L Colstrip I, LLC, PP&L Colstrip II, LLC, and PP&L Colstrip III, LLC tendered for filing with the Commission an application for an expedited order approving market-based and/or flexible rates, granting waiver of compliance with Order Nos. 888 and 889, and granting waivers of regulations. The applicants are wholly-owned subsidiaries of PP&L Global, Inc.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

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23. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3492–000]

Take notice that on July 2, 1999, Allegheny Power Service Corporation on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy) filed Amendment No. 1 to Supplement No. 8 to the Market Rate Tariff and Amendment No. 1 to Supplement No. 33 to the Standard Generation Service Tariff to incorporate Netting Agreements with New Energy Ventures, Inc. into the tariff provisions.

Allegheny Power requests a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 2, 1999 for Amendment No. 1 to Supplement No. 33 and May 28, 1999, for Amendment No. 1 to Supplement No. 8.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18145 Filed 7–15–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2530–021]

Central Maine Power Company; Availability of Final Environmental Assessment

July 12, 1999.

A final environmental assessment (FEA) is available for public review. The FEA is for an application for the Hiram Project (FERC No. 2530) to amend the license to incorporate the applicable terms of the Instream Flow Agreement for Hydroelectric Projects on the Saco River dated April 30, 1997. The project is located on the Saco River in Cumberland and Oxford Counties, Maine. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA are available for review in the Commission's Public Reference Branch, Room 2A, 888 First Street, N.E., Washington, DC 20426 or by calling (202) 208–1371. The FEA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Please call (202) 208–2222 for assistance. For further information, please contact John K. Novak at (202) 219–2828.

David P. Boergers,

Secretary.

[FR Doc. 99–18143 Filed 7–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2487–006 New York]

John M. Skorupski; Availability of Environmental Assessment

July 12, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the existing Hoosick Falls Hydroelectric Project located on the Hoosic River in Rensselaer County, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, NE, Room 2A, Washington, DC 20426, and may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, contact John Costello at (202) 219–2914 or by E-mail at john.costello@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–18142 Filed 7–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10865–001 and 11495–000]

Warm Creek Hydro, Inc.; Nooksack River Hydro, Inc.; Public Meeting to Discuss Draft Environmental Impact Statement

July 12, 1999.

The Federal Energy Regulatory Commission (Commission) is reviewing the applications for license for the construction, operation, and maintenance of the Warm Creek Project No. 10865 and Clearwater Creek Project No. 11495 filed by Warm Creek Hydro, Inc. and Nooksack River Hydro, Inc., respectively. The projects are located in the Middle Fork Nooksack River Basin, in Whatcom County, Washington. On June 25, 1999, the Commission staff mailed the draft Environmental Impact Statement (draft EIS) to the Environmental Protection Agency, resource agencies, non-governmental organizations (NGOs) and other interested individuals. The draft EIS evaluates the environmental consequences of the proposed projects.

The DEIS was noticed in the **Federal Register** on July 2, 1999 (volume 64, page 35999), and comments are due August 16, 1999. The DEIS may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). The DEIS evaluates the environmental consequences of the construction, operation, and maintenance of the Warm Creek and Clearwater Creek Projects in Washington. It also evaluates the environmental effects of implementing the applicant's proposals, agency and NGO recommendations, staff's recommendations, and the no-action alternative.

The Commission staff will hold a public meeting on July 28, 1999, in Bellingham, Washington. The purpose of the meeting is to discuss the draft EIS, the draft EIS findings, and the Commission staff's recommendations. At the meeting, the Commission staff will summarize the status of the licensing proceedings, as well as the major draft EIS findings and recommendations. We invite all interested agencies, NGOs, and individuals to attend the meeting. The time and location of the meeting is shown below.

Project No. 10865–001

Date: July 28, 1999.
Time: 7:00 p.m.
Place: Hampton Inn, 3985 Bennett Road, Bellingham, Washington.

The meeting will be recorded by a court reporter, and all statements (oral and written) will become part of the Commission's public record for the projects. All individuals who attend will be asked to sign in. Individuals that intend to make statements during the meeting will be asked to clearly identify themselves for the record prior to speaking. Time allotted for presentations will be determined by staff based on the length of the meeting and the number of people wanting to speak.

Interested parties who choose not to speak, or who are unable to attend the public meeting, may file written comments. An original and eight copies of written comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The first page of all filings should indicate "Warm Creek Project No. 10865–001" and/or "Clearwater Creek Project No. 11495–000" at the top of the page. Furthermore, participants in this proceeding are reminded that if they file comments with the Commission, they must serve a copy of their filing to the parties on the Commission's service list.

For further information, please contact Timothy Looney at (202) 219–2852, or by E-mail at timothy.lonney@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–18144 Filed 7–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Filed With the Commission and Soliciting Comments and Recommendations, Motions To Intervene, and Protests

July 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.
b. *Project No.:* 2197–035.
c. *Date Filed:* July 1, 1999.
d. *Applicant:* Yadkin, Inc.
e. *Name of Project:* Yadkin Hydroelectric Project.
f. *Location:* The Yadkin Hydroelectric Project is on the Yadkin/Pee Dee River in Montgomery, Stanly, Davidson and Rowan Counties, North Carolina. The Project includes High Rock, Tuckertown, Narrows (Badin Lake) and Falls Reservoirs.
g. *Filed Pursuant to:* Federal Power Act, 18 CFR 4.200.
h. *Applicant Contact:* Mr. Gene Ellis, Yadkin, Inc., P.O. Box 576, Badin, NC 28009–0576, (704) 422–5606.
i. *FERC Contact:* Questions about this application can be answered by Steve Hocking, E-mail address steve.hocking@ferc.fed.us, or telephone (202) 219–2656.
j. Deadline for filing comments and recommendations, motions to intervene, and protests: *August 23, 1999.*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Please include the project number (2197–035) on any comments and recommendations, motions to intervene and protests.

k. *Description of Application:* Yadkin, Inc. (Yadkin), licensee for the Yadkin Hydroelectric Project, has filed a Shoreline Management Plan (SMP) for Commission approval. Yadkin says its SMP identifies important natural resources around project reservoirs and designates portions of the reservoir shoreline as "Conservation Zones." The SMP is intended to promote wise use of the reservoirs by encouraging development in areas where the impact of development of the natural environment can be controlled or minimized. Further, the SMP would supersede the project's existing Bald Eagle Management Plan for Narrows Reservoir.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals may get their name and address added to this project's mailing list by written request to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be

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obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18140 Filed 7–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Waters.

b. *Project No.:* 2336–041.

c. *Date Filed:* February 9, 1999.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Lloyd Shoals.

f. *Location:* the Lloyd Shoals Project is located on the Ocmulgee, South, and Yellow rivers in Henry, Butts, Jasper, and Newton Counties, Georgia. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Larry J. Wall, Georgia Power Company, 241 Ralph McGill Boulevard NE, Atlanta, Georgia 30308–3374 (404) 506–2054.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at *Jon.Cofrancesco@ferc.fed.us* or telephone 202–219–0079.

j. *Deadline for filing comments and or motions:* August 16, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number on any comments or motions filed.

k. *Description of Project:* Georgia Power Company, licensee for the Lloyd Shoals Project, requests Commission authorization to permit Lambert Sand and Gravel Company to remove sediments, sand, and gravel from project waters by mechanical dredging. The proposed dredging activities would occur in the center of the river channel along a 1.33 mile long section of the Yellow River and a 2.4 mile long section of the South River. A 25-foot-wide buffer would be maintained on each side of the river and approximately 32 acres of land outside the project boundary would be occupied by processing equipment and sediment ponds necessary for the dredging operation. The license states the proposed dredging activities would perform maintenance of the river channels necessary to improve wildlife habitat, reduce the incidence of flooding of adjacent properties during high flow events, and enhance recreational boating and the project reservoir's capacity.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction of the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferec.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Response Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18141 Filed 7–15–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6379–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS, Bulk Gasoline Terminals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart XX, Bulk Gasoline Terminals, OMB Control Number 2060–0006, expiration date August 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 16, 1999.

FOR FURTHER INFORMATION CONTRACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0664.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart XX, Bulk Gasoline Terminals, OMB Control No. 2060–0006; EPA ICR No. 0664.06, expires August 31, 1999. This request is an extension of a currently approved collection.

Abstract: Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Monitoring requirements specific to bulk gasoline terminals consist mainly of identifying and documenting vapor tightness for each gasoline tank truck that is loaded at the affected facility, and notifying the owner or operator of each tank truck that is not vapor tight. The owner or operator must also perform a monthly visual inspection for liquid or vapor leaks, and maintain records of these inspections at the facility for a period of two years.

The reporting requirements for this industry currently include only the initial notifications and initial performance test report listed above. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to ensure that the pollution control devices are properly installed and operated. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 5, 1999 , 64 FR 499; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .13 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Bulk Gasoline Terminals.

Estimated Number of Respondents: 40.

Frequency of Response: Initial.

Estimated Total Annual Hour Burden: 11,420 hours.

Estimated Total Annualized Capital and Operations and Maintenance Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0664.06 and OMB Control No.2060–0006 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 8, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–18187 Filed 7–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements
Filed July 5, 1999 Through July 9, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990228, Draft EIS, COE, NJ, Barnegat Inlet to Little Egg Inlet Hurricane and Storm Damage Protection, Implementation, Long Beach Island, Ocean County, NJ, Due: August 30, 1999, Contact: Randy Piersol (215) 656–6577.

EIS No. 990229, Draft EIS, AFS, MT, NB, WY, ND, SD, Dakota Prairie Grasslands, Nebraska National Forest Units and Thunder Basin National Grassland, Land and Resource Management Plans 1999 Revisions, Implementation, MT, NB, WY, ND and SD, Due: October 13, 1999, Contact: Pam Gardner (308) 432–0300.

EIS No.990230, Draft EIS, AFS, UT, Trout Slope East Timber Project, Timber Harvest and Associated Activities, Implementation, Vernal Ranger District, Ashley National Forest, Uintah County, UT, Due: August 30, 1999, Contact: Brad Exton (435) 789–1181.

EIS No. 990231, Draft EIS, FHW, CO, Colorado Forest Highway 80, Guanell Pass Road (also known as Park County Road 62/Clear Creek County Road 381/Forest Development Road 118) from US 285 in Grant to Georgetown, Improvements, Funding and COE Section 404, NPDES and Special Use Permits Issuance, Park and Clear Creek Counties, CO, Due: August 30, 1999, Contact: Richard Cushing (303) 716–2138.

EIS No. 990232, Final EIS, BLM, UT, Ferron Natural Gas Project, Proposal to Construct, Maintain and Operate a Natural Gas Transmission Pipeline, Application for Permit to Drill (APD), Special-Use-Permit and Right-of-Way Grant, Carbon and Emery Counties, UT, Due: August 16, 1999, Contact: George Diwachak (801) 539–4043.

EIS No. 990233, Draft EIS, FHW, LA, North-South Expressway Const. I–220 in Shreveport, LA to the Arkansas State Line, Funding and COE Section 404 Permit Issuance, Caddo Parish, LA, Due: September 3, 1999, Contact: William C. Farr (225) 389–0464.

EIS No. 990234, Final EIS, BLM, WY, Newcastle Resource Management Plan, Implementation, Evaluates Alternatives for the Use of Public Lands and Resources in Portions of Wyoming, Crook, Niobrara and Weston Counties, WY, Due: August 16, 1999, Contact: Floyd Ewing (307) 746–4453.

EIS No. 990235, Final EIS, AFS, WA, I–90 Land Exchange between Forest Service and Plum Creek, within the Vicinity of the Wenatchee, Mt. Baker-Snoqualmie and Gifford Pinchot

National Forests, Kittitas, King, Pierce, Lewis, Cowlitz and Skamania Counties, WA, Due: August 16, 1999, Contact: Floyd Rogalski (509) 674–4411.

EIS No. 990236, Final EIS, BLM, CO, Yankee Gulch Sodium Minerals Project, To Produce Sodium Products, Piceance Basin, Right-of-Way Permit and COE Section 404 Permit, Rio Blanch County, CO, Due: September 13, 1999, Contact: Larry Shults (970) 878–3601.

Amended Notices

EIS No. 990163, Draft EIS, BLM, CA, Soledad Canyon Sand and Gravel Mining Project, Proposal to Mine, Produce and Sell, "Split Estate" Private Owned and Federally Owned Lands, Transit Mixed Concrete, Los Angeles County, CA, Due: September 13, 1999, Contact: Ms. Elena Misquez (760) 251–4804.

Published FR 05–21–99—Review Period extended from 07–06–99 to 09–13–99.

Dated: July 13, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–18223 Filed 7–15–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6400–3]

Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Under Section 10(a)(2) of Public Law 920423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on July 21 and 22, 1999, from 9:00 a.m. to 5:00 p.m. eastern time at RESOLVE, Inc., 1255 23rd Street, NW, Suite 275 Washington DC 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting will be to discuss a framework to evaluate reproductive and developmental health effects data; and provide an overview of current and ongoing epidemiological and toxicological data on developmental and reproductive health effects.

Statements from the public will be taken if time permits.

For more information, please contact Martha M. Kucera, Designated Federal Officer, Microbial Disinfectants/ Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 401 M Street, SW, Washington, D.C. 20460. The telephone number is 202–260–7773 or E-mail kucera.martha@epamail.epa.gov.

Dated: July 9, 1999.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–18316 Filed 7–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00169B; FRL–6093–5]

Consumer Labeling Initiative; Notice of Availability of Draft Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability for public review and comment of a draft version of the Consumer Labeling Initiative (CLI) Phase II Report. The draft Phase II Report describes qualitative and quantitative consumer research performed during 1998, summarizes the research findings and conclusions, describes other project activities ongoing since 1997, and identifies recommendations for Agency and voluntary industry action. The final version of the Phase II Report is expected to be published in the fall of 1999.

DATES: Comments on the CLI project or on the Phase II Report can be submitted at any time. For comments to be incorporated into the final Phase II Report, they must be received by the Agency or its agent, Abt Associates Inc., on or before July 29, 1999.

ADDRESSES: The draft Phase II Report is available electronically and in hard copy; for availability refer to Unit I. of the "SUPPLEMENTARY INFORMATION" section. Comments on the draft Phase II Report may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION" section.

FOR FURTHER INFORMATION CONTACT: Mary Dominiak, CLI Task Force Co-Chair, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Rm. E-213B, 401 M St., SW., Washington, DC 20460, (202) 260–7768; fax: (202) 260–1096; e-mail: consumer.label@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This notice is directed to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the contact person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information or Copies of These Documents?

1. *Electronically.* The draft Phase II Report can be downloaded from the Internet in PDF file format at http://www.abtdemo.com/cli.

You may also obtain electronic copies of this document and the draft Phase II Report from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/

2. *In person:* Persons interested in viewing the draft Phase II Report in hard copy should contact the TSCA Nonconfidential Information Center (NCIC). The TSCA NCIC is located at EPA Headquarters in Rm. NE–B607, 401 M St., SW., Washington, DC. The telephone number is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number "OPP–00169B" and "AR-139-Consumer Labeling Initiative" in the subject line on the first page of your response.

1. *By mail.* Submit comments to: OPPT Document Control Officer (7407), AR-139-Consumer Labeling Initiative, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G099, East Tower, Washington, DC 20460.

Comments on the draft Phase II Report only may also be mailed to: Srabani Roy, Abt Associates Inc., 55 Wheeler St., Cambridge, MA 02138–1168. No CBI should be submitted to Abt Associates either electronically or by mail.

2. *In person:* Deliver your comments to either location listed immediately above.

3. *Electronically.* Submit electronic comments by e-mail to: "oppt-ncic@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Electronic comments on the draft Phase II Report may be submitted alternatively to Abt Associates Inc., which is under contract to EPA on this project, at: srabani_roy@abtassoc.com. All comments submitted directly to Abt Associates Inc., will also be entered into the official record for this action.

Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6/7/8 or ASCII file format. All comments in electronic form must be identified by the docket control number "OPPTS–00169B" and "AR-139-Consumer Labeling Initiative." Electronic comments may also be filed online at many Federal Depository Libraries.

II. Background

EPA launched a voluntary Consumer Labeling Initiative (CLI) in 1996 (61 FR 12011, March 22, 1996) (FRL-4956-8) to explore ideas from consumers, industry, and health and safety professionals on ways to make the environmental, safe use, and health information on household product labels easier for consumers to find, read, understand, and use. The CLI was designed as a pilot project addressing indoor insecticides, outdoor pesticides, and household hard surface cleaners. The first stage of the CLI concluded with publication of the CLI Phase I Report (EPA–700–R–96–001) in September 1996. Phase II of the project, which began in 1997 and ran through early 1999, included qualitative research with consumers conducted by EPA, as well as quantitative research undertaken voluntarily by the Agency's industry and trade association partners. The raw data from these surveys were placed in the CLI Administrative Record (AR-139) for public inspection and comment (63 FR 57298, October 27, 1998) (FRL–6040–3).

The draft CLI Phase II Report contains the detailed findings, conclusions, and recommendations developed from the survey information and other ongoing CLI activities. Comments received on or before July 29, 1999, will be incorporated in the final version of the CLI Phase II Report, which is expected to be published in the fall of 1999. The draft Phase II Report can be downloaded in PDF file format at: http://www.abtdemo.com/cli. The draft Report is approximately 165 pages, with Appendices of approximately 200 pages. PDF files require the use of the Adobe Acrobat Reader, which can be downloaded without charge at: http://www.adobe.com. The draft Phase II Report can also be reviewed in hard copy in the CLI Administrative Record (AR-139).

III. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. Public Record

The Agency has established an official record for this action under administrative record AR–139. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

List of Subjects

Environmental protection.

Dated: July 13, 1999.

Wardner Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–18341 Filed 7–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6379–8]

Report on the Shrimp Virus Peer Review Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a final report.

SUMMARY: This notice announces the availability of a final report of a peer review and risk assessment workshop on nonindigenous pathogenic shrimp viruses, which was held January 7–8, 1998. The report was sponsored by the U.S. Environmental Protection Agency (EPA), National Center for Environmental Assessment, on behalf of the Joint Subcommittee on Aquaculture (JSA), under the National Science and Technology Council. Completed under contract to the EPA, the document, "Report on the Shrimp Virus Peer Review and Risk Assessment Workshop: Developing a Qualitative Risk Assessment" (EPA/600/R–99/027), describes the potential risks of nonindigenous pathogenic shrimp viruses on wild shrimp populations in U.S. coastal waters. Expert conclusions and recommendations contained in the report have undergone an independent scientific review. The results of this independent review and the draft final report were used as the basis for a risk management workshop on shrimp viruses held on July 28–29, 1998, in New Orleans [see **Federal Register** 63(130)36895–36896 (July 8, 1998)].

ADDRESSES: An electronic version of the final report will be available from the EPA's National Service Center for Environmental Assessment home page at http://www.epa.gov/ncea/ .

A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513-489–8695. Please provide your name and mailing address and the

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title and EPA number of the document, "Report on the Shrimp Virus Peer Review and Risk Assessment Workshop: Developing a Qualitative Risk Assessment' (EPA/600/R–99/027).

FOR FURTHER INFORMATION CONTACT: Dr. H. Kay Austin, U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment (8601D), 401 M Street, SW, Washington, DC 20460; telephone: (202) 564–3328; fax: (202) 565–0090; e-mail: austin.kay@epa.gov. For technical assistance contact Dr. Tom McIlwain, Chairperson of the JSA Shrimp Virus Work Group, National Marine Fisheries Service, 3209 Frederick Street, Pascagoula, MS 39567, (601) 762–4591.

SUPPLEMENTARY INFORMATION: Public concerns over the potential introduction and spread of nonindigenous pathogenic shrimp viruses to the wild shrimp fishery and shrimp aquaculture industry in U.S. coastal waters have been increasing. Although these viruses pose no threat to human health, outbreaks on U.S. shrimp farms, the appearance of diseased shrimp in U.S. commerce, and new information on the susceptibility of shrimp and other crustaceans to these viruses prompted calls for action. In response, the JSA tasked the Federal interagency Shrimp Virus Workgroup with assessing the shrimp virus problem. The JSA includes representatives of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (DOC/NOAA/NMFS); the U.S. Department of Agriculture, Cooperative State Research, Education and Extension Service (DOA/CREES); Animal Plant Health Inspection Service (DOA/APHIS); and Agricultural Research Service (DOA/ARS); U.S. Department of Energy; U.S. Department of Defense; Army Corp of Engineers (DOD/ACE); U.S. Department of Health and Human Services, Food and Drug Administration (HHS/FDA); Tennessee Valley Authority (TVA); the EPA; and the U.S. Fish and Wildlife Service (FWS)). The Federal interagency Shrimp Virus Workgroup includes individuals from DOC/NMFS, EPA, FWS, and USDA/APHIS.

Publication of this final report is one of a series of related activities sponsored by EPA, in cooperation with DOC/NMFS, USDA/APHIS, and FWS, on behalf of the JSA. In June 1997, the Shrimp Virus Workgroup summarized the available information on shrimp viruses in a report to the JSA entitled, "An Evaluation of Potential Shrimp Virus Impacts on Cultured Shrimp and on Wild Shrimp Populations in the Gulf of Mexico and Southeastern U.S. Atlantic Coastal Waters' [JSA Shrimp Virus Report (JSVR)]. The JSVR was reviewed at four stakeholder meetings [see Federal Register 62(112):31790–31791 (June 11, 1997)], jointly sponsored by EPA, DOC/NMFS, and USDA/APHIS on behalf of the JSA, during July and August 1997. Available products of these efforts include the JSVR (see http://www.nmfs.gov/trade/special.html) and the Minutes of the Stakeholder Meetings Report (EPA/630/R–92/001) (see http://www.epa.gov/ncea/pdfs/shrimp5.pdf). These products and additional stakeholder (public) comments formed the basis for the shrimp virus peer review and risk assessment workshop. The workshop participants considered several potential pathways of nonindigenous pathogenic shrimp viruses to wild shrimp populations, including shrimp aquaculture, shrimp processing and "other" sources and pathways, and independently assessed risks using a qualitative risk assessment approach developed by the Aquatic Nuisance Species Task Force.

As described in the report, workshop participants concluded that viruses could survive in pathways leading to coastal environments, and that there is potential for viruses to affect native shrimp in localized areas, such as an estuary or bay. However, many participants believed that local populations of shrimp would recover rapidly as a result of reintroduction of shrimp or increases in reproduction. Although there was high uncertainty, most workshop participants believed that the risks from viral introductions to the entire population of native shrimp in U.S. coastal waters is relatively low. Limitations in time and information during the workshop prevented the participants from fully considering impacts to organisms besides shrimp, although they believed these organisms deserved further consideration.

Finally, while qualitative evaluations are valuable, workshop participants noted that they are associated with a great deal of uncertainty. However, given the limited information currently available, participants believed that it is not feasible to conduct a more comprehensive, quantitative assessment of the risks associated with nonindigenous pathogenic shrimp viruses at this time. Participants noted that there is a need to conduct further systematic research efforts to reduce uncertainty.

The workshop report and the results of the independent scientific review of its conclusions and recommendations were used as the basis for a risk management workshop on shrimp viruses held on July 28–29, 1998, in New Orleans. A report of the risk management workshop (jointly sponsored by the EPA Gulf of Mexico Program, DOC/NMFS, and DOA/CREES/ARS) that develops options and strategies for managing the threat of shrimp viruses to cultured and wild stocks of shrimp in U.S. coastal waters is currently being developed.

Dated: June 21, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–18185 Filed 7–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6378–9]

South Bay Asbestos Superfund Site Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed prospective purchaser agreement associated with the South Bay Asbestos Superfund Site was executed by the United States Environmental Protection Agency ("EPA") on June 16, 1999. The proposed prospective purchaser agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against Legacy Partners 2335 LLC (the "Purchaser"). The proposed settlement would require the purchaser to pay EPA a one-time payment of $75,000.

For thirty (30) calendar days following the date of publication of this document, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the effected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before August 16, 1999.

AVAILABILITY: The proposed prospective purchaser agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Kara Christenson, Assistant Regional Counsel (ORC–2), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "Legacy Partners 2335 LLC, South Bay Asbestos Area Superfund Site," and "Docket No. 96–09" and should be addressed to Kara Christenson at the above address.

FOR FURTHER INFORMATION CONTACT: Kara Christenson, Assistant Regional Counsel (ORC–2), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: christenson.kara@epa.gov; phone: (415) 744–1330.

Dated: July 2, 1999.

John Kemmerer,

Acting Director, Superfund Division, Region IX.

[FR Doc. 99–18186 Filed 7–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51930; FRL–6090–5]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 16, 1999 to June 11, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51930. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

C. *By phone.* If you need additional information about this action, you may also contact the person identified in the "FOR FURTHER INFORMATION CONTACT " section.

III. Why is EPA taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME, and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 16, 1999 to June 11, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

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I. 97 Premanufacture Notices Received From: 05/16/99 to 06/11/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0819	05/17/99	08/15/99	CBI	(S) Aqueous dispersion of polyurethane for leather finishing	(G) 2-oxepanone, polymer with dimethylolpropionic acid,substituted diisocyanate, alkyl diamine, cmpd. with trialkylamine
P–99–0820	05/19/99	08/17/99	Angus Chemical Company	(S) Site-limited intermediate	(S) Propane, 2-chloro-2-nitro*
P–99–0821	05/17/99	08/15/99	CBI	(G) Adhesive component	(G) Polymer of methylenebis[isocyantobenzene] and mixed polyether polyols
P–99–0822	05/17/99	08/15/99	CBI	(G) Adhesive component	(G) Polymer of methylenebis[isocyantobenzene], mixed polyether polyols, mixed esters, and an alkene
P–99–0823	05/17/99	08/15/99	CBI	(G) Adhesive component	(G) Polymer of methylenebis[isocyantobenzene], mixed polyether polyols, mixed esters, and an alkene
P–99–0824	05/17/99	08/15/99	CBI	(G) Adhesive component	(G) Polymer of methylenebis[isocyantobenzene], mixed polyether polyols, mixed esters, substituted trialkoxysilane, and an alkene
P–99–0825	05/18/99	08/16/99	CBI	(G) Ink jet dispersing agent	(G) Acrylic copolymer
P–99–0826	05/18/99	08/16/99	CBI	(G) Binder component	(G) Epoxidized copolymer of phenol and aromatic hydrocarbon
P–99–0827	05/18/99	08/16/99	CBI	(G) Binder component	(G) Epoxidized copolymer of phenol and aromatic hydrocarbon
P–99–0828	05/20/99	08/18/99	CBI	(G) Colorant for leather products	(G) Counter ions of substituted disulfonic acid naphthalene triazo dye
P–99–0829	05/20/99	08/18/99	CBI	(G) Colorant for leather products	(G) Counter ions of substituted disulfonic acid naphthalene triazo dye
P–99–0830	05/21/99	08/19/99	CBI	(S) Dye for cotton fiber	(G) Synthetic indigo solution
P–99–0831	05/20/99	08/18/99	CBI	(G) Open non dispersive (stabilizer)	(G) Metal salt of a phosphorus compound
P–99–0832	05/20/99	08/18/99	CBI	(S) Aqueous dispersion of polyurethane for leather finishing	(G) Substituted polyurethane alkylamine salt
P–99–0833	05/24/99	08/22/99	CBI	(G) Resin coating	(G) Acrylate ester
P–99–0834	05/20/99	08/18/99	CBI	(G) Component of coating with open use	(G) Aryl sulfonamide
P–99–0835	05/20/99	08/18/99	CBI	(G) Component of coating with open use	(G) Aryl sulfonamide
P–99–0836	05/20/99	08/18/99	CBI	(G) Component of coating with open use	(G) Aryl sulfonamide
P–99–0837	05/20/99	08/18/99	CBI	(G) Component of coating with open use	(G) Aryl sulfonamide
P–99–0838	05/20/99	08/18/99	CBI	(G) Adhesive components	(G) Polymer of hexamethylene diisocyanate, alkanepolyols, and alkanepolycarboxylic acid
P–99–0839	05/20/99	08/18/99	CBI	(G) Adhesive components	(G) Hexamethylene diisocyanate, polymer with a polyether polyol, alkanepolyols, dimethyl terephthalate, benzenepolycarboxylic acid and alkanepolycarboxylic acid
P–99–0840	05/20/99	08/18/99	CBI	(G) Adhesive components	(G) Hexamethylene diisocyanate, polymer with alkanepolyols, dimethyl terephthalate, benzenepolycarboxylic acid and alkanepolycarboxylic acid
P–99–0841	05/24/99	08/22/99	CBI	(G) Emulsifier	(G) Modified alkanolamide
P–99–0842	05/24/99	08/22/99	CBI	(G) Fuel additive	(G) Polybutene phenol mannich base
P–99–0843	05/24/99	08/22/99	CBI	(G) Component of inks and clear varnishes	(G) Polyester acrylate
P–99–0844	05/25/99	08/23/99	E. I. Dupont de Nemours - Dupont Nylon	(G) Polymer additive	(G) Aliphatic acid metal salt

I. 97 Premanufacture Notices Received From: 05/16/99 to 06/11/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0845	06/01/99	08/30/99	CBI	(S) Negative charge control agent	(G) Aluminate, bis[[(substituted)azo][hydroxyphenylbenzenesulfonamidato] hydrogen compound with tetramethylpiperidinamine
P–99–0846	06/01/99	08/30/99	CBI	(G) Surfactant	(G) B-alanine, *n*-(2-carboxyethyl)-*n*-[3-][2-carboxyethyl)amino] propyl]-*n*-[isoalkyloxypropyl]derivs.
P–99–0847	05/28/99	08/26/99	Cerdec Corporation; Drakenfeld Products	(G) Pigment	(G) Mixed metal oxide
P–99–0848	05/28/99	08/26/99	CBI	(S) Emulsifier for metalworking fluids	(G) Alkenyl carboxylate, metal salt
P–99–0849	06/02/99	08/31/99	CBI	(G) Open non-dispersive (process additive)	(G) Stryene / acrylate copolymer aqueous dispersion
P–99–0850	06/01/99	08/30/99	Zeon Chemicals L.P.	(S) Adhesive modifier for painting of olefinic rubber	(G) Polyester polymer of aromatic polycarboxylic acid with aliphatic polyalcohols
P–99–0851	06/01/99	08/30/99	CBI	(G) Open destructive use as a gas generant for automotive inflators	(G) Metal ammine nitrate complex
P–99–0852	06/02/99	08/31/99	CBI	(G) Open, non-dispersive (additive)	(G) Fatty acid polyester
P–99–0853	05/26/99	08/24/99	CBI	(G) Additives for plastics	(G) Polyester
P–99–0854	05/26/99	08/24/99	CBI	(G) Packing	(G) Acrylate copolymer
P–99–0855	05/26/99	08/24/99	CBI	(S) Ambient temp. cure agent for metal primer coatings	(G) Cashew nutsheli liq., reaction products with formaldehyde and aliphatic amine
P–99–0856	06/02/99	08/31/99	CBI	(G) Coating component	(G) Polymer of phenols, bisphenol a and epichlorohydrin
P–99–0857	06/01/99	08/30/99	H. B. Fuller Company	(S) Textile lamination	(G) Polyester polyether isocyanate polymer
P–99–0858	06/01/99	08/30/99	H. B. Fuller Company	(S) Textile lamination	(G) Polyester polyether isocyanate polymer
P–99–0859	06/01/99	08/30/99	H. B. Fuller Company	(S) Textile lamination	(G) Polyester polyether isocyanate polymer
P–99–0860	06/01/99	08/30/99	H. B. Fuller Company	(S) Textile lamination	(G) Polyester polyether isocyanate polymer
P–99–0861	06/01/99	08/30/99	H. B. Fuller Company	(S) Textile lamination	(G) Polyester polyether isocyanate polymer
P–99–0862	06/01/99	08/30/99	H. B. Fuller Company	(S) Textile lamination	(G) Polyester polyether isocyanate polymer
P–99–0863	06/02/99	08/31/99	CBI	(G) Component of adhesives, inks, and coatings	(G) Silicone acrylate
P–99–0864	06/07/99	09/05/99	CBI	(G) Polyester urethane glass fiber sizing agent	(G) Polyester urethane aqueous dispersion
P–99–0865	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0866	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0867	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0868	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0869	06/07/99	09/05/99	CBI	(G) Resin coating	(G) Urethane methacrylate
P–99–0870	06/07/99	09/05/99	CBI	(G) Adhesive	(G) Polyester polyurethane
P–99–0871	06/07/99	09/05/99	Daicolor-pope, Inc.	(S) Matting agent for paint	(G) Polyacrylate ester
P–99–0872	06/07/99	09/05/99	Daicolor-pope, Inc.	(S) Matting agent for paint	(G) Polyacrylate ester
P–99–0873	06/03/99	09/01/99	Reichhold, Inc.	(S) Binder for industrial coatings	(G) Multifunctional aromatic aldimine
P–99–0874	06/03/99	09/01/99	Marubeni Specialty Chemicals, Inc.	(G) Modified polyvinyl alcohol	(G) Modified polyvinyl alcohol
P–99–0875	06/03/99	09/01/99	CBI	(G) Adhesive component	(G) Methylenebis[isocyanatobenzene], polymer with alkanepolyols, dimethyl terephthalate, benzenepolycarboxylic acid and alkanepolycarboxylic acids
P–99–0876	06/03/99	09/01/99	CBI	(G) Sealant component	(G) Methylenebis[isocyanatobenzene], polymer with alkanepolyols, dimethyl terephthalate, caprolactone, benzenepolycarboxylic acid and alkanepolycarboxylic acids
P–99–0877	06/03/99	09/01/99	CBI	(G) Adhesive component	(G) Methylenebis[isocyanatobenzene], polymer with alkanepolyols, caprolactone, and alkanepolycarboxylic acids

I. 97 Premanufacture Notices Received From: 05/16/99 to 06/11/99—Continued

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I. 97 Premanufacture Notices Received From: 05/16/99 to 06/11/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0878	06/03/99	09/01/99	CBI	(G) Sealant component	(G) Methylenebis[isocyanatobenzene], polymer with alkanepolyols, an alkene, caprolactone, mixed esters and alkanepolycarboxylic acids
P–99–0879	06/03/99	09/01/99	CBI	(G) Adhesive component	(G) Methylenebis[isocyanatobenzene], polymer with alkanepolyols, polyether polyols and alkanepolycarboxylic acid
P–99–0880	06/03/99	09/01/99	CBI	(G) Adhesive component	(G) Methylenebis[isocyanatobenzene], polymer with polyether polyols, substituted polyalkene, benzenepolycarboxylic acid and benzenepolycarboxylic acid derivative, alkanepolycarboxylic acid, and an alkanepolyol
P–99–0881	06/01/99	08/30/99	CBI	(S) Azo-sulfur dye for coloring of leather	(G) Benzenediazonium, [[[[[[[(substituted)phenyl]azo] (substituted) naphthalenyl]azo]phenyl] sulfonyl]amino]-, chloride, reaction products with leuco sulphur dye and [[[[[(substituted)azo]phenyl] azo]phenyl]sulfonyl]amino] benzenediazonium chloride
P–99–0882	06/04/99	09/02/99	Environmental Test Systems, Inc	(G) Additive in a urine screening test	(S) 5-isoquinolinesulfonic acid*
P–99–0883	06/03/99	09/01/99	Ciba Specialty Chemicals Corporation/ Consumer Care Division	(G) Textile dyeing auxiliary	(G) Ethanol, 2-[(substituted)amino]phenyl]sulfonyl]-, hydrogen sulfate (ester), monosodium salt
P–99–0884	06/04/99	09/02/99	CBI	(G) Multipurpose adhesive; open, nondispersive use; laminating adhesive; open, nondispersive use	(G) Polyurethane prepolymer; polyurethane adhesive
P–99–0885	06/04/99	09/02/99	CBI	(G) Component of coating with open use	(G) Aryl sulfonamide
P–99–0886	06/04/99	09/02/99	CBI	(G) Component of coating with open use	(G) Aryl sulfonamide
P–99–0887	06/04/99	09/02/99	CBI	(G) Component of coating with open use	(G) Aryl sulfonamide
P–99–0888	06/04/99	09/02/99	CBI	(G) Component of coating with open use	(G) Aryl sulfonamide
P–99–0889	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0890	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0891	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0892	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0893	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0894	06/03/99	09/01/99	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–99–0895	06/04/99	09/02/99	3M Company	(S) Curing agent for inorganic coatings	(G) Isocyanate terminated polymer
P–99–0896	06/08/99	09/06/99	CBI	(G) Open, non-dispersive (resin)	(G) Ketimine
P–99–0897	06/08/99	09/06/99	CBI	(G) Material for optical disk	(G) Substituted benzothiazole metal complex
P–99–0898	06/11/99	09/09/99	CBI	(G) Fluorescence quencher for paper and paperboard industries	(G) Fluorescence quencher-polycationic condensation product
P–99–0899	06/09/99	09/07/99	CBI	(S) Additive for fluorocarbons to enhance wash durability	(G) Blocked diisocyanatohexane, homopolymer
P–99–0900	06/09/99	09/07/99	CBI	(G) Open non-dispersive (additive)	(G) Quinoline dyestuff
P–99–0902	06/10/99	09/08/99	CBI	(G) Fluid retention polymer	(G) Dialkyldiallylammonium halide with unsaturated phosphonic acid, acrylamido alkyl propane sulfonic acid ammonium salt, and two acrylic monomers
P–99–0903	06/11/99	09/09/99	CBI	(G) Adhesive	(G) Aromatic saturated copolyester
P–99–0904	06/11/99	09/09/99	CBI	(G) Open non-dispersive (resin)	(G) Ketimine

I. 97 Premanufacture Notices Received From: 05/16/99 to 06/11/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0905	06/10/99	09/08/99	CBI	(G) A destructive use as a chemical intermediate	(G) Alkylbenzene
P–99–0906	06/11/99	09/09/99	Degussa-Huls Corporation	(G) Chemical intermediate	(S) Platinum (2+), tetraammine-, (sp-4-1)-carbonate (1:2)*
P–99–0907	06/11/99	09/09/99	CBI	(G) Open, non-dispersive use	(G) Alkyl aryl phenol polymer
P–99–0908	06/11/99	09/09/99	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–99–0909	06/11/99	09/09/99	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–99–0910	06/11/99	09/09/99	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–99–0911	06/11/99	09/09/99	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–99–0912	06/11/99	09/09/99	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–99–0913	06/11/99	09/09/99	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–99–0914	06/11/99	09/09/99	CBI	(G) Fuel additive	(G) Alkylphenolpolyetheramine
P–99–0915	06/07/99	09/05/99	CBI	(S) Acid dye for the coloring of anodized aluminum	(G) Chromate, [[[(substituted)nitrophenyl] azo]naphthalenedisulfoanto][[[(substituted) phenyl]azo]phenylbutanamidato]-, trisodium; chromate, bis[[[(substituted) nitropheny-l]azo]naphthalenedisulfoanto]-, pentasodium; chromate, bis[[[(substituted)phenyl] azo]phenylbutanamidato]-, sodium*
P–99–0922	06/02/99	08/31/99	CBI	(G) Binder for printing ink	(G) Polyacrylic resin

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 Test Marketing Exemption Notice Received From: 05/16/99 to 06/11/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–99–0003	06/10/99	07/25/99	Kiwi Brands	(G) Household cleaning surfactant	(S) Ethanol, 2-[2-(C_{12}-14-alkyloxy)ethoxy] derivs., hydrogen sulfates, compds. with triisopropanolamine*

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 41 Notice of Commencement From: 05/16/99 to 06/11/99

Case No.	Received Date	Commencement/ Import Date	Chemical
P–93–0210	06/02/99	05/25/99	(G) Carboxylated styrene-butadiene copolymer latex
P–93–0580	06/11/99	03/05/99	(G) Polyester isocyanate polymer
P–97–0126	05/24/99	05/12/99	(G) Aromatic tetraphenyl phosphate ester
P–97–0666	05/26/99	05/16/99	(G) Fluoroalkyl derivative
P–97–0709	06/11/99	06/08/99	(G) Complex synthetic ester produced from aliphatic alcohol and aliphatic acids including oxidates (petroleum)
P–97–0814	06/02/99	05/05/99	(G) Aliphatic polyamide
P–97–0973	05/20/99	04/21/99	(G) Alkyl functional silicone
P–98–0409	06/04/99	05/23/99	(G) Cross linking stoving polyurethane resin
P–98–0759	06/09/99	05/10/99	(G) Cycloaliphatic amine
P–98–0946	06/02/99	05/03/99	(G) Polydimethylsiloxane with acrylate groups
P–98–0951	06/01/99	05/21/99	(G) Polyester polyether urethane block copolymer
P–98–0976	05/18/99	04/06/99	(G) Dialkyl methylamine
P–98–1116	06/04/99	05/14/99	(S) Silane, trichloro(3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10- heptadecafluorodecyl)-*
P–98–1168	06/11/99	05/17/99	(G) Aliphatic acid, calcium salt
P–98–1176	06/04/99	01/27/99	(G) Polyfluoroalkylether
P–98–1254	05/21/99	05/13/99	(G) Alkali metal amino carboxylate

III. 41 Notice of Commencement From: 05/16/99 to 06/11/99—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–99–0014	06/07/99	05/25/99	(S) 2-oxazolidinone*
P–99–0114	06/07/99	05/20/99	(G) Chromate, bis[hydroxy-[hydroxynaphthalenyl)azo]-[(substitutedphenyl)azo]-naphthalenesulfonato-, sodium salt*
P–99–0185	06/07/99	05/20/99	(S) Amines, dicoco alkyl, reaction products with ditallow alkyl amines and 1-hexadecene-maleic anhydride- polyethylene glycol allyl me ether-1-tetradecene polymer*
P–99–0192	06/02/99	05/03/99	(G) Cationic resin
P–99–0206	05/17/99	05/10/99	(G) Benzopyranone
P–99–0227	05/24/99	05/18/99	(G) Hydroxylamine citrate salt
P–99–0262	05/17/99	04/20/99	(G) Organo aluminum halide
P–99–0264	06/04/99	03/31/99	(S) Mixture of 2-butenoic acid, 4-oxo-4-[[3-(triethoxysilyl)propyl]amino]-, (z)- and 1-propanamine, 3-(triethoxysilyl)-, (z)-2-butenedioate (1:1)*
P–99–0300	05/17/99	04/20/99	(G) Organo aluminium halide
P–99–0386	06/07/99	05/11/99	(G) Perylene derivative
P–99–0390	06/07/99	05/04/99	(S) 9,10-anthracenedione, 2-ethyl-, spent catalyst, from hydrogen peroxide manuf.*
P–99–0391	06/07/99	05/04/99	(S) 9,10-anthracenedione, 2-(1,1-dimethylethyl)-, spent catalyst, from hydrogen peroxide manuf.*
P–99–0392	06/07/99	05/04/99	(S) 9,10-anthracenedione, 2-(1,1-dimethylpropyl)-, spent catalyst, from hydrogen peroxide manuf.*
P–99–0393	06/07/99	05/04/99	(S) 9,10-anthracenedione, 2-(1,2-dimethylpropyl)-, spent catalyst, from hydrogen peroxide manuf.*
P–99–0409	06/01/99	05/18/99	(S) Propanenitrile, 3-[bis(2-hydroxyethyl)amino]-*
P–99–0417	05/24/99	05/06/99	(S) 4h-4a, 9-methanoazuleno[5,6-d]-1,3-diaxole, octahydro-2,2,5,8,8,9a-hexamethyl-, (4ar, 5r, 7as, 9r)-*
P–99–0427	05/17/99	04/28/99	(S) Ethene, hydroformylation products, by-products from*
P–99–0428	05/17/99	05/12/99	(S) Propene, hydroformylation products, by-products from*
P–99–0429	05/17/99	04/28/99	(S) Butene, hydroformylation products, by-products from*
P–99–0430	05/17/99	04/28/99	(S) Butanal, condensation products, hydrogenated, by-products from*
P–99–0432	05/17/99	04/28/99	(S) 4-heptanone, 2,6-dimethyl, hydrogenated, by-products from*
P–99–0464	06/08/99	05/11/99	(G) Polyester-polyamide block copolymer
P–99–0466	06/08/99	05/11/99	(G) Polyester-polyamide block copolymer
P–99–0479	06/09/99	06/15/99	(G) Polysubstituted bis phenylazonapthalene disulfonic acid
P–99–0516	06/08/99	05/25/99	(G) Polyether polyurethane

List of Subjects

Environmental protection, Premanufacture notices.

Dated: July 12, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–18188 Filed 7–15–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–9]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (FHLBank) members it has selected for the 1998–99 sixth quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which FHLBank members selected for review must submit Community Support Statements (statements) to the Finance Board.

DATES: FHLBank members selected for the 1998–99 sixth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before August 30, 1999.

ADDRESSES: FHLBank members selected for the 1998–99 sixth quarter review cycle must submit completed statements to the Finance Board either by regular mail to the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, or by electronic mail to MAXWELLA@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, Housing Finance Officer, Office of Policy, Research and Analysis, Program Assistance Division, at 202/408–2882; at the following electronic mail address: MAXWELLA@FHFB.GOV; or at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service that FHLBank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), *id.* 2901 *et seq.*, and record of lending to first-time homebuyers. *Id.* 1430(g)(2).

Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a FHLBank member must meet in order to maintain access to long-term advances and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 936. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. *Id.* § 936.3. Only members subject to the CRA must meet the CRA standard. *Id.* § 936.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. *Id.* § 936.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each FHLBank district for community support review each calendar quarter. *Id.* 936.2(a). The Finance Board will not review an institution's community support performance until it has been a FHLBank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each FHLBank member selected for review must complete a statement and submit it to the Finance Board by the August 30, 1999 deadline prescribed in this notice. *Id.* § 936.2(b)(1)(ii) and (c). On or before July 31, 1999, each FHLBank will notify the members in its district that have been selected for the 1998–99 sixth quarter community support review cycle that they must complete and submit a statement to the Finance Board by the deadline. *Id.* § 936.2(b)(2)(i). The member's FHLBank will provide a blank statement form, which also is available on the Finance Board's web site at WWW.FHFB.GOV. Upon request, the member's FHLBank also will provide assistance in completing statement.

The Finance Board has selected the following members for the 1998–99 sixth quarter community support review cycle:

FEDERAL HOME LOAN BANK OF BOSTON—DISTRICT 1

Charter Oak Federal Credit Union	Groton, CT
Salisbury Bank and Trust Company	Lakeville, CT
Hometown Bank	Moodus, CT
The New Milford Bank and Trust Company	New Milford, CT
Chelsea Groton Savings Bank	Norwich, CT
Dime Savings Bank of Norwich	Norwich, CT
Savings Bank of Rockville	Rockville, CT
Thomaston Savings Bank	Thomaston, CT
American Bank of Connecticut	Waterbury, CT
North American Bank and Trust Company	Waterbury, CT
Wilton Bank	Wilton, CT
Asian American Bank and Trust Company	Boston, MA
The Community Bank	Brockton, MA
Bay State Federal Savings Bank	Brookline, MA
Chicopee Savings Bank	Chicopee, MA
Weymouth Co-operative Bank	East Weymouth, MA
Easthampton Savings Bank	Easthampton MA
Dukes County Savings Bank	Edgartown, MA
Bank of Fall River, a Co-operative Bank	Fall River, MA
Foxborough Savings Bank	Foxboro, MA
MetroWest Bank	Framingham, MA
Gloucester Bank & Trust Company	Gloucester, MA
Gloucester Cooperative Bank	Gloucester, MA
Family Bank, FSB	Haverhill, MA
Hudson Savings Bank	Hudson, MA
Lee Bank	Lee, MA
Lenox Savings Bank	Lenox, MA
Washington Savings Bank	Lowell, MA
Community Credit Union of Lynn	Lynn, MA
Eastern Bank	Lynn, MA
National Grand Bank	Marblehead, MA
Summit Bank	Medway, MA
Nantucket Bank	Nantucket, MA
Middlesex Savings Bank	Natick, MA
First and Ocean National Bank	Newburyport, MA
Newburyport Five Cents Savings Bank	Newburyport, MA
North Easton Savings Bank	North Easton, MA
Norwood Cooperative Bank	Norwood, MA
Seamen's Bank	Provincetown, MA
Granite Savings Bank	Rockport, MA
Rockport National Bank	Rockport, MA
The Co-operative Bank	Roslindale, MA
Bank of Western Massachusetts	Springfield, MA
Randolph Savings Bank	Stoughton, MA
The Savings Bank	Wakefield, MA
Walpole Co-operative Bank	Walpole, MA
Watertown Savings Bank	Watertown, MA
Northern Bank and Trust Company	Woburn, MA
Kennebec Savings Bank	Augusta, ME
Bath Savings Institution	Bath, ME
Barco Federal Credit Union	Hampden, ME
Kingfield Bank	Kingfield, ME
Androscoggin Savings Bank	Lewiston, ME
Saco and Biddeford Savings Institution	Saco, ME
Sanford Institution for Savings	Sanford, ME

The First Colebrook Bank	Colebrook, NH
Merrimack County Savings Bank	Concord, NH
New Hampshire Federal Credit Union	Concord, NH
Laconia Savings Bank	Laconia, NH
Mascoma Savings Bank, FSB	Lebanon, NH
Southern New Hampshire Bank and Trust	Windham, NH
First Bank and Trust Company	Providence, RI
Granite Savings Bank and Trust Company	Barre, VT

FEDERAL HOME LOAN BANK OF NEW YORK—DISTRICT 2

Bridge View Bank	Englewood Cliffs, NJ
Skylands Community Bank	Hackettstown, NJ
Haddon Savings Bank	Haddon Heights, NJ
Trenton Savings Bank	Lawrenceville, NJ
New Community Federal Credit Union	Newark, NJ
The Rahway Savings Institution	Rahway, NJ
Interchange Bank	Saddle Brook, NJ
Merrill Lynch Trust Company, FSB	Somerset, NJ
Minotola National Bank	Vineland, NJ
Albion Federal Savings & Loan Association	Albion, NY
Bath National Bank	Bath, NY
Flatbush FS&LA of Brooklyn	Brooklyn, NY
Manufacturers and Traders Trust Company	Buffalo, NY
Landmark Community Bank	Canajoharie, NY
Greene County Savings Bank	Catskill, NY
Ontario National Bank	Clifton Springs, NY
Bank of Richmondville	Cobleskill, NY
Champlain National Bank	Elizabethtown, NY
Fairport Savings & Loan Association	Fairport, NY
Highland Falls FS&LA	Highland Falls, NY
Steuben Trust Company	Hornell, NY
Ulster Savings Bank	Kingston, NY
Suffolk Federal Credit Union	Medford, NY
Atlantic Bank of New York	New York, NY
Habib American Bank	New York, NY
Sterling National Bank	New York, NY
The Merchants Bank of New York	New York, NY
Rome Savings Bank	Rome, NY
Trustco Bank, N.A.	Schenectady, NY
Sleepy Hollow National Bank	Sleepy Hollow, NY
Solvay Bank	Solvay, NY
The Troy Savings Bank	Troy, NY
European American Bank	Uniondale, NY
Walden Savings Bank	Walden, NY
Banco Popular de Puerto Rico	San Juan, PR

FEDERAL HOME LOAN BANK OF PITTSBURGH—DISTRICT 3

Enterprise Bank	Allison Park, PA
Apollo Trust Company	Apollo, PA
Farmers and Merchants Trust Company	Chambersburg, PA
Cambria County FS&LA	Cresson, PA
Premier Bank	Doylestown, PA
Elderton State Bank	Elderton, PA
East Penn Bank	Emmaus, PA
PFC Bank	Ford City, PA
First National Bank of Fredericksburg	Fredericksburg, PA
PeoplesBank, a Codorus Valley Company	Glen Rock, PA
Gratz National Bank	Gratz, PA
Harleysville National Bank & Trust Company	Harleysville, PA
Harris Savings Bank	Harrisburg, PA
Irwin Bank and Trust Company	Irwin, PA
Jersey Shore State Bank	Jersey Shore, PA
The Farmers National Bank of Kittanning	Kittanning, PA
Bank of Landisburg	Landisburg, PA
First National Bank of Liverpool	Liverpool, PA
Mars National Bank	Mars, PA
Fulton County National Bank & Trust Company	McConnellsburg, PA
Union National Bank of Mount Carmel	Mount Carmel, PA
Nazareth National Bank and Trust Company	Nazareth, PA
First Federal Savings Bank of New Castle	New Castle, PA
The New Tripoli National Bank	New Tripoli, PA
The National Bank of North East	North East, PA
Jefferson Bank	Philadelphia, PA
Police and Fire Federal Credit Union	Philadelphia, PA
Reliance Standard Life Insurance Company	Philadelphia, PA

St. Edmond's Federal Savings Bank	Philadelphia, PA
Phoenixville FS&LA	Phoenixville, PA
PNC Mortgage Bank, N.A.	Pittsburgh, PA
Portage National Bank	Portage, PA
Security National Bank	Pottstown, PA
LA Bank, N.A.	Scranton, PA
Sun Bank	Selinsgrove, PA
Guaranty Bank, N.A.	Shamokin, PA
Orrstown Bank	Shippensburg, PA
Progressive Bank, N.A.—Buckhannon	Buckhannon, WV
First Exchange Bank	Mannington, WV
One Valley Bank North, Inc.	Moundsville, WV
First Community Bank of Mercer County, Inc.	Princeton, WV
F&M Bank—Blakeley	Ranson, WV
First National Bank of Romney	Romney, WV
Ameribank	Welch, WV

FEDERAL HOME LOAN BANK OF ATLANTA—DISTRICT 4

AuburnBank	Auburn, AL
BankSouth	Dothan, AL
First Commercial Bank	Huntsville, AL
Peachtree Bank	Maplesville, AL
North Jackson Bank	Stevenson, AL
First Bradenton Bank	Bradenton, FL
Liberty National Bank	Bradenton, FL
Riverside National Bank	Fort Pierce, FL
First City Bank of Florida	Fort Walton Beach, FL
First National Bank & Trust	Fort Walton Beach, FL
First Northwest Florida Bank	Fort Walton Beach, FL
The Bank of Brevard	Melbourne, FL
PineBank	Miami, FL
SunTrust Bank, Miami, N.A.	Miami, FL
First National Bank of Florida	Milton, FL
Sun Trust Bank, Central Florida, N.A.	Orlando, FL
Palm Beach National Bank and Trust Company	Palm Beach, FL
Horizon Bank of Florida	Pensacola, FL
Tarpon Coast National Bank	Port Charlotte, FL
Citizens Federal Savings Bank of Port St. Joe	Port St. Joe, FL
First Commercial Bank of Tampa	Tampa, FL
The Bank of Tampa	Tampa, FL
Indian River National Bank	Vero Beach, FL
First National Bank of South Georgia	Albany, GA
First American Bank and Trust	Athens, GA
Appalachian Community Bank	Blairsville, GA
Fannin County Bank, N.A.	Blue Ridge, GA
Atlantic National Bank	Brunswick, GA
First National Bank of Grady County	Cairo, GA
Main Street Bank	Covington, GA
First State Bank of Randolph County	Cuthbert, GA
Chestatee State Bank	Dawsonville, GA
Fairburn Banking Company	Fairburn, GA
First Citizens Bank of Fayette County	Fayetteville, GA
Georgia First Bank	Gainesville, GA
Farmers and Merchants Bank	Lakeland, GA
Premier Bank	Marietta, GA
Southwest Georgia Bank	Moultrie, GA
Atlantic States Bank	Norcross, GA
Carver State Bank	Savannah, GA
Eastside Bank & Trust Company	Snellville, GA
The First State Bank	Stockbridge, GA
Bank of Upson	Thomaston, GA
Thomasville National Bank	Thomasville, GA
Farmers Bank of Maryland	Annapolis, MD
Kopernik Federal Savings Association	Baltimore, MD
Liberty Federal Savings & Loan Association	Baltimore, MD
Slavie Federal Savings & Loan Association	Baltimore, MD
Chesapeake Bank and Trust Company	Chestertown, MD
Chestertown Bank of Maryland	Chestertown, MD
American Trust Bank	Cumberland, MD
FCNB Bank	Frederick, MD
First Bank of Frederick	Frederick, MD
Hagerstown Trust	Hagerstown, MD
Lafayette F.C.U.	Kensington, MD
First United National Bank and Trust	Oakland, MD
National Bank of Rising Sun	Rising Sun, MD

Taneytown Bank and Trust Company	Taneytown, MD
Bank of Stanly	Albemarle, NC
Home Savings Bank of Albemarle	Albemarle, NC
Self-Help Credit Union	Durham, NC
Gibsonville Community Savings Bank	Gibsonville, NC
Farmers and Merchants Bank	Granite Quarry, NC
Stone Street Bank and Trust	Mocksville, NC
Carolina Community Bank	Murphy, NC
First National Bank of Shelby	Shelby, NC
FirstBank of the Midlands, N.A.	Columbia, SC
Farmers & Merchants Bank of South Carolina	Holly Hill, SC
Carolina First Bank, FSB	Travelers Rest, SC
TeleBank	Arlington, VA
The Bank of Northern Virginia	Arlington, VA
American National Bank and Trust Company	Danville, VA
United Bank	Fairfax, VA
The Bank of Fincastle	Fincastle, VA
Marshall National Bank and Trust Company	Marshall , VA
The Middleburg Bank	Middleburg, VA
First Sentinel Bank	Richlands, VA
Bank of Ferrum	Rocky Mount, VA
First Bank	Strasburg, VA
F&M Bank—Peoples	Warrenton, VA
Northern Neck State Bank	Warsaw, VA

FEDERAL HOME LOAN BANK OF CINCINNATI—DISTRICT 5

NCF Bank and Trust Company	Bardstown, KY
Bedford Loan and Deposit Bank	Bedford, KY
Berea National Bank	Berea, KY
South Central Bank of Bowling Green, Inc.	Bowling Green, KY
Meade County Bank	Brandenburg, KY
Campbellsville National Bank	Campbellsville, KY
Edmonton State Bank	Edmonton, KY
Fifth Third Bank of Northern Kentucky	Florence , KY
First Security Bank and Trust	McLean Island, KY
Lawrenceburg National Bank	Lawrenceburg, KY
Farmers National Bank	Lebanon, KY
Square D Employees' Federal Credit Union	Lexington, KY
Fifth Third Bank of Kentucky, Inc.	Louisville, KY
Jefferson Banking Company	Louisville, KY
Citizens National Bank	Russellville, KY
Bank of McCreary County	Whitley City, KY
Williamsburg National Bank	Williamsburg, KY
First National Bank of Ohio (FirstMerit)	Akron, OH
Firelands Federal Credit Union	Bellevue, OH
Bethel Building and Loan Company	Bethel, OH
The Equitable Savings and Loan Company	Cadiz, OH
CinFed Employees Federal Credit Union	Cincinnati, OH
Firstar Bank, N.A.	Cincinnati, OH
Harvest Home Savings Bank	Cincinnati, OH
Lenox Savings Bank	Cincinnati, OH
Mt. Washington Savings & Loan Company	Cincinnati, OH
Shore Bank and Trust Company	Cleveland, OH
Community First Bank, N.A.	Forest, OH
First Ohio Credit Union, Inc.	Fostoria, OH
Galion Building and Loan Association	Galion, OH
Greenville National Bank	Greenville, OH
Second National Bank	Greenville, OH
Citizens Bank of London	London, OH
First FS&LA of Lorain	Lorain, OH
United National Bank and Trust Co.	Massillon, OH
River Valley Federal Credit Union	Miamisburg, OH
New Richmond National Bank	New Richmond, OH
Citizens National Bank of Norwalk	Norwalk, OH
Ripley Federal Savings and Loan Association	Ripley, OH
Ripley National Bank	Ripley, OH
The First National Bank of Shelby	Shelby, OH
Strasburg Savings Bank	Strasburg, OH
Toledo Area Catholic Credit Union	Sylvania, OH
Peoples Savings Bank	Urbana, OH
First Federal Savings and Loan Association	Van Wert, OH
Second National Bank of Warren	Warren, OH
Perpetual Savings Bank	Wellsville, OH
First Federal Savings Bank	Zanesville, OH
Citizens National Bank	Athens, TN

Heritage Bank	Clarksville, TN
Bank of Putnam County	Cookeville, TN
Farmers Bank	Cornersville, TN
First Federal Savings Bank	Dickson, TN
Carter County Bank	Elizabethton, TN
Jackson Bank and Trust	Gainesboro, TN
Gates Banking and Trust Company	Gates, TN
Tennessee State Bank	Gatlinburg, TN
Bank of Gleason	Gleason, TN
Greene County Bank	Greeneville, TN
Bank of Halls	Halls, TN
Commercial Bank	Harrogate, TN
Union Bank	Jamestown, TN
Bank of Tennessee	Kingsport, TN
First Bank	Lexington, TN
Enterprise National Bank	Memphis, TN
The Bank of Milan	Milan, TN
Cavalry Banking	Murfreesboro, TN
Rutherford Bank and Trust	Murfreesboro, TN
Commercial Bank and Trust Company	Paris, TN
Farmers Bank	Portland, TN
Central Bank	Savannah, TN
First Community Bank of Bedford County	Shelbyville, TN
Farmers and Merchants Bank	Trezevant, TN
American City Bank of Tullahoma	Tullahoma, TN
Reelfoot Bank	Union City, TN

FEDERAL HOME LOAN BANK OF INDIANAPOLIS—DISTRICT 6

ONB Bloomington, N.A.	Bloomington, IN
First National Bank	Cloverdale, IN
First Federal Bank, a F.S.B.	Corydon, IN
CSB State Bank	Cynthiana, IN
Blue River Federal Savings Bank	Edinburgh, IN
Bright National Bank	Flora, IN
Three Rivers Federal Credit Union	Fort Wayne, IN
Grabill Bank	Grabill, IN
Fifth Third Bank of Central Indiana	Indianapolis, IN
Landmark Savings Bank, F.S.B.	Indianapolis, IN
Meridian Security Insurance Company	Indianapolis, IN
Peoples Bank and Trust Company	Indianapolis, IN
Union Federal Savings Bank of Indianapolis	Indianapolis, IN
First FS&LA of Clark County	Jeffersonville, IN
Lafayette Savings Bank, F.S.B.	Lafayette, IN
Peoples Savings & Loan Association	Monticello, IN
First State Bank	Morgantown, IN
New Washington State Bank	New Washington, IN
First Citizens State Bank	Newport, IN
Citizens State Bank of Petersburg	Petersburg, IN
United Southwest Bank	Washington, IN
American Trust & Savings Bank of Whiting	Whiting, IN
Bank of Alma	Alma, MI
Great Lakes Bancorp, a FSB	Ann Arbor, MI
Signature Bank	Bad Axe, MI
Lake Osceola State Bank	Baldwin, MI
Central State Bank	Beulah, MI
Community Bank	Caro, MI
Eastern Michigan Bank	Croswell, MI
State Bank of Ewen	Ewen, MI
Oakland Commerce Bank	Farmington Hills, MI
Grand Bank	Grand Rapids, MI
LSI Credit Union	Grand Rapids, MI
National Bank of Hastings	Hastings, MI
Valley Ridge Bank	Kent City, MI
Co-op Services Credit Union	Livonia, MI
Firstbank	Mount Pleasant, MI
First National Bank of Norway	Norway, MI
League Life Insurance Company	Southfield, MI
Sterling Bank and Trust, FSB	Southfield, MI
Macomb Federal Savings Bank	St. Clair Shores, MI
The Empire National Bank of Traverse	Traverse City, MI

FEDERAL HOME LOAN BANK OF CHICAGO—DISTRICT 7

Amcore Bank Aledo	Aledo, IL
Merchants National Bank	Aurora, IL
National Bank of Commerce	Berkeley, IL

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Prairie Bank and Trust Company	Bridgeview, IL
Cerro Gordo Building and Loan, s.b.	Cerro Gordo, IL
Firstar Bank Illinois	Chicago, IL
Marquette National Bank	Chicago, IL
South Shore Bank	Chicago, IL
Sterling Savings Bank	Chicago, IL
The First Commercial Bank	Chicago, IL
Resource Bank, N.A.	DeKalb, IL
Du Quoin State Bank	Du Quoin, IL
Crossroads Bank	Effingham, IL
Midwest Bank and Trust Company	Elmwood Park, IL
Heartland National Bank	Herrin, IL
Midwest Bank	Hinsdale, IL
Jacksonville Savings Bank	Jacksonville, IL
Commonwealth Credit Union	Kankakee, IL
Kankakee Federal Savings Bank	Kankakee, IL
Union Federal Savings and Loan Association	Kewanee, IL
The Peoples National Bank of Lawrenceville	Lena, IL
Brickyard Bank	Lincolnwood, IL
Citizens National Bank of Macomb	Macomb, IL
First Suburban National Bank	Mavwood. IL
Farmes & State	Meredosia, IL
Community National Bank	Metropolis, IL
Morris Building and Loan, s.b.	Morris, IL
Smith Trust and Savings Bank	Morrison, IL
First National Bank of Nokomis	Nokomis, IL
Nokomis Savings Bank	Nokomis, IL
Orangeville Community Bank	Orangeville, IL
First National Bank of Pana	Pana, IL
First State Bank of Red Bud	Red Bud, IL
Capaha Bank	Tamms, IL
AmeriMark Bank	Villa Park, IL
North Shore Trust and Savings	Waukegan, IL
Waukegan Savings & Loan Association	Waukegan, IL
Prospect Federal Savings Bank	Worth, IL
First National Bank of Xenia	Xenia, IL
State Bank of Arcadia	Arcadia, WI
First National Bank of Barron	Barron, WI
Blackhawk State Bank	Beloit, WI
First National Bank of Berlin	Berlin, WI
Badger State Bank	Cassville, WI
State Bank of Chilton	Chilton, WI
American Bank	Eau Claire, WI
F&M Bank—Fennimore	Fennimore, WI
American Bank	Fond du Lac, WI
Franklin State Bank	Franklin, WI
State Financial Bank Hales	Hales Corners, WI
Peoples National Bank	Hayward, WI
Horicon State Bank	Horicon, WI
Farmers and Merchants Bank of Jefferson	Jefferson, WI
F&M Bank—Kaukauna	Kaukauna, WI
Farmers State Bank	Markesan, WI
Mid-Wisconsin Bank	Medford, WI
Lincoln State Bank	Milwaukee, WI
Mitchell Bank	Milwaukee, WI
AMCORE Bank	Montello, WI
Bank of Monticello	Monticello, WI
The Bank of New Glarus	New Glarus, WI
The First National Bank of New Richmond	New Richmond, WI
RiverBank	Osceola, WI
Bank of Poynette	Poynette, WI
Johnson Bank	Racine, WI
Citizens Bank, N.A.	Shawano, WI
Shell Lake State Bank	Shell Lake, WI
Eagle Valley Bank, N.A.	St. Croix Falls, WI
State Bank of Stockbridge	Stockbridge, WI
Westland Savings Bank	Tomah, WI
ALLCO Credit Union	Wauwatosa, WI
The Equitable Bank, S.S.B.	Wauwatosa, WI
Fortress Bank of Westby	Westby, WI
Westby Co-op Credit Union	Westby, WI

FEDERAL HOME LOAN BANK OF DES MOINES—DISTRICT 8

Ackley State Bank	Ackley, IA
Exchange State Bank	Adair, IA

First State Bank	Belmond, IA
Iowa State Savings Bank	Clinton, IA
Iowa State Savings Bank	Creston, IA
Security Bank and Trust Company	Decorah, IA
AmerUS Life Insurance Company	Des Moines, IA
Norwest Bank Iowa, N.A.	Des Moines, IA
Dupaco Community Credit Union	Dubuque, IA
State Bank	Everly, IA
Grundy National Bank	Grundy Center, IA
Hartwick State Bank	Hartwick, IA
Hiawatha Bank and Trust Company	Hiawatha, IA
Community State Bank	Indianaola, IA
Green Belt Bank and Trust	Iowa Falls, IA
Farmers Savings Bank	Kalona, IA
First National Bank in LeMars	Le Mars, IA
Western Bank & Trust	Moville, IA
First National Bank of Muscatine	Muscatine, IA
Security State Bank	New Hampton, IA
Citizens State Bank	Oakland, IA
Oakland State Bank	Oakland, IA
First National Bank of Sioux Center	Sioux Center, IA
The Security National Bank of Sioux City	Sioux City, iA
Heartland Bank	Somers, IA
Farmers Trust & Savings Bank	Spencer, IA
First Bank & Trust	Spirit Lake, IA
Citizens First National Bank	Storm Lake, IA
West Chester Savings Bank	Washington, IA
Community National Bank	Waterloo, IA
First National Bank of Waverly	Waverly, IA
Peoples Savings Bank	Wellsburg, IA
Farm Bureau Life Insurance Company	West Des Moines, IA
Farm Bureau Mutual Insurance Company	West Des Moines, IA
Farmers Savings Bank	Wever, IA
State Bank	Worthington, IA
Atwater State Bank	Atwater, MN
First National Bank of Brewster	Brewster, MN
City-County Federal Credit Union	Brooklyn Center, MN
Buffalo National Bank	Buffalo, MN
Peoples Bank of Commerce	Cambridge, MN
First National Bank	Chisholm, MN
Clinton State Bank	Clinton, MN
First State Bank of Eden Prairie	Eden Prairie, MN
Eitzen State Bank	Eitzen, MN
The County Bank	Forest Lake, MN
Citizens State Bank of Glenville	Glenville, MN
Marquette Bank N.A.	Golden Valley, MN
First Security Bank—Hendricks	Hendricks, MN
First National Bank of Henning	Henning, MN
Jackson Federal Savings and Loan Association	Jackson, MN
Janesville State Bank	Janesville, MN
Citizens State Bank of Kelliher	Kelliher, MN
Security State Bank of Kenyon	Kenyon, MN
First Security Bank—Lake Benton	Lake Benton, MN
State Bank of Long Lake	Long Lake, MN
Lake Country State Bank	Long Prairie, MN
United Prairie Bank	Madison, MN
Bank of Maple Plain	Maple Plain, MN
Superior Guaranty Insurance Company	Minneapolis, MN
First National Bank in Montevideo	Montevideo, MN
Mountain Iron First State Bank	Mountain Iron, MN
Citizens Bank of New Ulm	New Ulm, MN
State Bank and Trust Company of New Ulm	New Ulm, MN
Community National Bank	Northfield, MN
Minnwest Bank Ortonville	Ortonville, MN
Pine River State Bank	Pine River, MN
Northland Security Bank	Ramsey, MN
Border State Bank	Roseau, MN
First Security Bank—Sanborn	Sanborn, MN
Americana Community Bank	Sleepy Eye, MN
Bremer Bank, N.A.	St. Cloud, MN
Western Bank	St. Paul, MN
Community Bank of St. Peter	St. Peter, MN
Vermillion State Bank	Vermillion, MN
Northern State Bank of Virginia	Virginia, MN
First State Bank of Wabasha	Wabasha, MN
Heritage Bank N.A.	Willmar, MN

Merchants National Bank of Winona	Winona, MN
First State Bank of Wyoming	Wyoming, MN
Bank of Zumbrota	Zumbrota, MN
Jefferson Heritage Bank	Ballwin, MO
Hometown Bank, N.A.	Carthage, MO
Boone County National Bank	Columbia, MO
Tri-County State Bank	El Dorado Springs, MO
Commercial Trust Company of Fayette	Fayette, MO
Home Exchange Bank of Jamesport	Jamesport, MO
Jefferson Bank of Missouri	Jefferson City, MO
Central Bank of Kansas City	Kansas City, MO
Community America Credit Union	Kansas City, MO
Kearney Trust Company	Kearney, MO
Lawson Bank	Lawson, MO
United State Bank	Lewistown, MO
Sun Security Bank of America	Mountain Grove, MO
First Missouri State Bank	Poplar Bluff, MO
First State Bank of Purdy	Purdy, MO
The Seymour Bank	Seymour, MO
State Bank of Slater	Slater, MO
Citizens Bank of Sparta	Sparta, MO
Heritage Bank of St. Joseph	St. Joseph, MO
Southwest Bank of St. Louis	St. Louis, MO
Webb City Bank	Webb City, MO
Security State Bank of Edgeley	Edgeley, ND
Bremer Bank, N.A.	Grand Forks, ND
Community National Bank of Grand Forks	Grand Forks, ND
Stutsman County State Bank	Jamestown, ND
Bank of Steele	Steele, ND
Peoples State Bank	Westhope, ND
Security State Bank, Wishek	Wishek, ND
Dakota State Bank	Blunt, SD
Security State Bank	Madison, SD
BankWest, Inc.	Pierre, SD
American Memorial Life Insurance Company	Rapid City, SD
First National Bank of White	White, SD
First Dakota National Bank	Yankton, SD

FEDERAL HOME LOAN BANK OF DALLAS—DISTRICT 9

Bank of Cave City	Cave City, AR
First National Bank of Crossett	Crossett, AR
Simmons First National Bank of Dumas	Dumas, AR
National Bank of Commerce	El Dorado, AR
Bank of Arkansas	Fayetteville, AR
Greers Ferry Lake State Bank	Heber Springs, AR
First National Bank of Phillips County	Helena, AR
Malvern National Bank	Malvern, AR
Merchants and Planters Bank	Manila, AR
McGehee Bank	McGehee, AR
TrustBanc	Mountain Home, AR
Citizens National Bank	Nashville, AR
Merchants and Planters Bank	Newport, AR
American State Ban	Osceola, AR
Bank of Pocahontas	Pocahontas, AR
The Farmers & Merchants Bank	Prairie Grove, AR
First United Bank	Stuttgart, AR
Commercial National Bank of Texarkana	Texarkana, AR
American Founders Life Insurance Company	Phoenix, AZ
Union Planters Bank of Louisiana	Baton Rouge, LA
The Cottonport Bank	Cottonport, LA
Kaplan State Bank	Kaplan, LA
Resource Bank	Mandeville, LA
Sabine State Bank and Trust Company	Many, LA
Minden Bank and Trust Company	Minden, LA
Exchange Bank and Trust Company	Natchitoches, LA
Liberty Bank and Trust Company	New Orleans , LA
American Bank of Ruston, N.A.	Ruston, LA
Sicily Island State Bank	Sicily Island, LA
St. Martin Bank and Trust Company	St. Martinville, LA
Concordia Bank and Trust Company	Vidalia, LA
The Evangeline Bank and Trust Company	Ville Platte, LA
Progressive Bank	Winnsboro, LA
First Security Bank	Batesville, MS
Peoples Bank of Franklin County	Bude, MS

Bank of the South	Crystal Springs, MS
Commercial Bank of DeKalb	DeKalb, MS
Community Bank	Ellisville, MS
Community Bank of Mississippi	Forest, MS
Community Bank, Indianola	Indianola, MS
Century Bank	Lucedale, MS
Great Southern National Bank	Meridian, MS
Newton County Bank	Newton, MS
First National Bank of Oxford	Oxford, MS
Citizens Bank	Philadelphia, MS
The Peoples Bank and Trust Company	Tupelo, MS
Bank of Belen	Belen, NM
Carlsbad National Bank	Carlsbad, NM
Community Bank	Espanola, NM
First National Bank of Farmington	Farmington, NM
Western Bank	Lordsburg, NM
Centinel Bank of Taos	Taos, NM
Peoples Bank	Taos, NM
First Community Bank, N.A.	Alice, TX
Amarillo National Bank	Amarillo, TX
First National Bank of Bastrop	Bastrop, TX
Citizens State Bank	Buffalo, TX
Zavala County Bank	Crystal City, TX
National Bank of Daingerfield	Daingerfield, TX
First National Bank	Edinburg, TX
First National Bank	Fabens, TX
First National Bank	Fairfield, TX
Town North National Bank	Farmers Branch, TX
First National Bank in Graham	Graham, TX
First State Bank, Granger	Granger, TX
CompuBank	Houston, TX
First Bank	Houston, TX
First Community Credit Union	Houston, TX
First National Bank of Huntsville	Huntsville, TX
Community Bank of Texas	Kirbyville, TX
The Laredo National Bank	Laredo, TX
First State Bank of Livingston	Livingston, TX
First National Bank in Lockney	Lockney, TX
Franklin National Bank	Mount Vernon, TX
First State Bank	Smithville, TX
First National Bank of Sudan	Sudan, TX
Texline State Bank	Texline, TX
Randolph-Brooks Federal Credit Union	Universal City, TX
Citizens National Bank	Victoria, TX
American Bank, N.A.	Waco, TX
Union Square Federal Credit Union	Wichita Fa ls, TX

FEDERAL HOME LOAN BANK OF TOPEKA—DISTRICT 10

FirstBank of Arvada, N.A.	Arvada, CO
FirstBank of Aurora, N.A.	Aurora, CO
FirstBank of Douglas County, N.A.	Castle Rock, CO
Mountain Bell Credit Union	Colorado Springs, CO
Western National Bank of Colorado	Colorado Springs, CO
Dove Creek State Bank	Dove Creek, CO
Bank of Colorado—Western Slope	Grand Junction, CO
FirstBank of Lakewood, N.A.	Lakewood, CO
First Bank of Littleton, N.A.	Littleton, CO
Olathe State Bank	Olathe, CO
FirstBank of Silverthorne, N.A.	Silverthorne, CO
First National Bank of Strasburg	Strasburg, CO
First National Bank, Telluride	Telluride, CO
WestStar Bank	Vail, CO
FirstBank of Wheat Ridge, N.A.	Wheat Ridge, CO
First National Bank of Yuma	Yuma, CO
First State Bank of Burlingame	Burlingame, KS
Emporia State Bank and Trust Company	Emporia, KS
Home State Bank	Erie, KS
Union State Bank of Everest	Everest, KS
Emprise Bank, N.A.	Hillsboro, KS
The Farmers State Bank	Holton, KS
First Community Bank	Kansas City, KS
Guaranty Bank and Trust	Kansas City, KS
Linn County Bank	La Cygne, KS
First National Bank & Trust Company in Larned	Larned, KS
The Bank	Oberlin, KS

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First National Bank of Onaga	Onaga, KS
First National Bank and Trust Company	Parsons, KS
First State Bank and Trust	Tonganoxie, KS
Capital City Bank	Topeka, KS
Commerce Bank and Trust	Topeka, KS
Security Benefit Life Insurance Company	Topeka, KS
Wellsville Bank	Wellsville, KS
Boeing Wichita Employees Credit Union	Wichita, KS
First National Beatrice Bank & Trust Company	Beatrice, NE
Exchange Bank	Gibbon, NE
First State Bank	Gothenburg, NE
West Gate Bank	Lincoln, NE
Home State Bank	Louisville, NE
Bank of Mead	Mead, NE
Farmers and Merchants Bank	Milford, NE
Norwest Bank Nebraska, N.A.	Omaha, NE
First State Bank	Scottsbluff, NE
The Cattle National Bank	Seward, NE
The First National Bank of Unadilla	Unadilla, NE
First National Bank of Valentine	Valentine, NE
CharterWest National Bank	West Point, NE
Winside State Bank	Winside, NE
Atoka State Bank	Atoka, OK
WestStar Bank	Bartlesville, OK
First National Bank of Chelsea	Chelsea, OK
Alfalfa County Bank	Cherokee, OK
American Heritage Bank	El Reno, OK
Grand Federal Savings Bank	Grove, OK
American Fidelity Assurance Company	Oklahoma City, OK
Bank One Oklahoma, N.A.	Oklahoma City, OK
Weokie Credit Union	Oklahoma City, OK
American National Bank and Trust Company	Shawnee, OK
First National Bank and Trust Company	Weatherford, OK
First National Bank in Wewoka	Wewoka, OK

FEDERAL HOME LOAN BANK OF SAN FRANCISCO—DISTRICT 11

Heritage Bank	Phoenix, AZ
Norwest Bank Arizona, N.A.	Phoenix, AZ
Western Sierra Bank	Cameron Park, CA
First Central Bank, N.A.	Cerritos, CA
First Coastal Bank, N.A.	El Segundo, CA
Crown American Bank	El Segundo, CA
Farmers & Merchants Bank—Central California	Lodi, CA
Southern Pacific Thrift & Loan Association	Los Angeles, CA
County Bank	Merced, CA
Omni Bank, N.A.	Monterey Park, CA
CivicBank of Commerce	Oakland, CA
Bay Area Bank	Redwood City, CA
Central Sierra Bank	San Andreas, CA
Santel Federal Credit Union	San Diego, CA
Bank of San Francisco	San Francisco, CA
Sequoia National Bank	San Francisco, CA
Santa Barbara Bank and Trust	Santa Barbara, CA
Coast Commercial Bank	Santa Cruz, CA
Del Amo Savings Bank, FSB	Torrance, CA
Silver State Bank	Henderson, NV
Comstock Bank	Reno, NV

FEDERAL HOME LOAN BANK OF SEATTLE—DISTRICT 12

Honolulu City & County Employees FCU	Honolulu, HI
Valley Bank of Belgrade	Belgrade, MT
Rocky Mountain Bank	Billings, MT
Blackfeet National Bank	Browning, MT
Mountain West Bank, N.A.	Helena, MT
Three Rivers Bank of Montana	Kalispell, MT
Bitterroot Valley Bank	Lolo, MT
Missoula Federal Credit Union	Missoula, MT
Glacier Bank of Whitefish	Whitefish, MT
Western Bank of Wolf Point	Wolf Point, MT
Rogue Federal Credit Union	Medford, OR
First National Bank of Layton	Layton, UT
Orem Community Bank	Orem, UT
Deseret First Credit Union	Salt Lake City, UT
Anchor Mutual Savings Bank	Aberdeen, WA
The Bank of Grays Harbor	Aberdeen, WA

Bank NorthWest	Bellingham, WA
Whatcom Educational Credit Union	Bellingham, WA
Security State Bank	Centralia, WA
North Cascades National Bank	Chelan, WA
Bank of Whitman	Colfax, WA
Islanders Bank	Friday Harbor, WA
Community First Bank	Kennewick, WA
Bank of Latah	Latah, WA
Bank of the Pacific	Long Beach, WA
Washington Credit Union	Lynnwood, WA
Bank of Pullman	Pullman, WA
Credit Union of the Pacific	Seattle, WA
Freemont First National Bank	Seattle, WA
Home Security Bank	Sunnyside, WA
Bank of the West	Walla Walla, WA
Yakima National Bank	Yakima, WA
Yakima Valley Credit Union	Yakima, WA
First National Bank of Wyoming	Laramie, WY
Bank of Lovell, N.A.	Lovell, WY
Rawlins National Bank	Rawlins, WY
First State Bank of Wheatland	Wheatland, WY

II. Public Comments

To encourage the submission of public comments on the community support performance of FHLBank members, on or before July 31, 1999, each FHLBank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 1998–99 sixth quarter review cycle. 12 CFR 936.2(b)(2)(II). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. *Id.* 936.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 1998–99 sixth quarter review cycle must be delivered to the Finance Board on or before the August 30, 1999 deadline for submission of statements.

Dated: July 8, 1999.

By the Federal Housing Finance Board.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–17914 Filed 7–15–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Brisk International Express, Inc., 8542 NW 66th Street, Miami, FL 33166; Officers: Sandra Reis Monteiro, President (Qualifying Individual), Amauri Carlos Monteiro, Secretary

Dit (USA), Inc., 1805 W. Hovey, Suite B, Normal, IL 61761; Officers: Mark Boulware, Assistant Secretary (Qualifying Individual), Fuyuo Asahina, President and Director

FPS Logistic (USA) Inc., 111 W. Ocean Blvd., Suite 1150, Long Beach, CA 90802; Officers: Quincy Ho Sung Tan, President (Qualifying Individual), Tong Tsun Wai, Director

Hana Worldwide Shipping Co., Inc., 533 Division Street, Elizabeth, NJ 07201; Officer: Ki Hun Yoo, President (Qualifying Individual)

Pacific & Atlantic Ocean Container Line Inc., 45 Rockefeller Plaza, Suite 3162, New York, NY 10020; Officers: Oscar Anthony Poli, Executive Vice President (Qualifying Individual), Ivo Giovannini, Director

Transcontainer (USA) Inc., 1001 North Mittel Drive, Wood Dale, IL 60191; Officers: Shoichi Nakamura, Executive Vice President (Qualifying Individual), Shunjlr Iwaya, President

Twin Modal, Inc., 2621 Fairview Avenue North, Roseville, MN 55113; Officers: Christopher J. Wojtowicz, FMC Compliance Officer (Qualifying Individual), Robert J. (Chip) Smith, President/Director

WCS International, Inc. d/b/a World Class Shipping, 515 Rockaway Avenue, Suite 21, Valley Stream, NY 11581; Officers: William C. Shaw III, President (Qualifying Individual), Ellen A. Shaw, Secretary/Treasurer

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Everpole Shipping Incorporated, 19191 South Vermont, Avenue, Suite 510, Torrance, CA 90502; Officer: Thomas Chan, President, (Qualifying Individual), Kit Ying Tam, Director

AB Shipping, 4297 Walnut Grove Avenue, Rosemead, CA 91770; Abby An, Sole Proprietor

Double Ace Cargo, Inc., 5086 N.W. 74 Avenue, Miami, FL 33166; Officers: Ernesto Vila, President (Qualifying Individual), Rolgues Rodridgues, Vice President

PLS International, Inc.: 2060 Pennsylvania Avenue, Monaca, PA 15061, Officers: Warren M. Rojas, Executive Director, (Qualifying Individual), Patrick A. Gallagher, Director

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Gen Trading Machinery, Inc. d/b/a GTM Cargo & Logistics, Inc., 1246 NW 125 Terrance, Sunrise, FL 33312; Officers: Gisella Noya Garrison, President (Qualifying Individual), Michael L. Garrison, Vice President

Combined Forwarding, Inc., 1275 Sawgrass Corporate Parkway, Sunrise, FL 33323; Officer: Clive N. Smith, President (Qualifying Individual)

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J.D. Senese & Associates, Inc., Sentek International of Illinois, 1420 Renaissance Drive, Suite 301F, Park Ridge, IL 60068; Officers: Teresa Rae Purcell, Vice President, (Qualifying Individual), James D. Senese, President

Southeastern Freight Forwarding, Inc., 6448 Hillcrest Crossing South, Mobile, AL 36695; Officers: Jacqueline Ann Wilkie, President (Qualifying Individual), Stanley A. Wilkie, Vice President

Transport Specialists, Inc., 21641 Beaumeade Circle, 316–319, Ashburn, VA 20147; Officer: George S. Northern, President (Qualifying Individual)

Jet International Forwarding, Inc. d/b/a J.I.F., 9811 W. Okeechoee, Road, #105, Hialeah, FL 33016; Officers: Christina Santana, Registered Agent, (Qualifying Individual), Francisco D. Ferrey, President

Kallista Shipping Corporation, 4345 NW 97th Avenue, Miami, FL 33178; Officers: Irene M. Chizmar, Vice President, (Qualifying Individual), Israel Garcia, President

Dated: July 13, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–18165 Filed 7–15–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 30, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Robert A. Olson, Orono, Minnesota; to acquire voting shares of St. Stephen BanGroup, Inc., Minneapolis, Minnesota, and thereby indirectly acquire voting shares of St. Stephen State Bank, St. Stephen, Minnesota.

Board of Governors of the Federal Reserve System, July 12, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18130 Filed 7–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 2, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Peter R. Kerndt, Santa Monica, California; to acquire additional voting shares of Kerndt Bank Services, Inc., Lansing, Iowa, and thereby indirectly acquire additional voting shares of Kerndt Brothers Savings Bank, Lansing, Iowa.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Caren L. Coffee, Miles City, Montana; to acquire voting shares of Stockman Financial Corporation, Miles City, Montana, and thereby indirectly acquire voting shares of Stockman Bank of Montana, Miles City, Montana

Board of Governors of the Federal Reserve System, July 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18220 Filed 7–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Great Northern Corporation, St. Michael, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Great Northern Bank, St. Michael, Minnesota.

Board of Governors of the Federal Reserve System, July 12, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18129 Filed 7–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)

(BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Fayette Bancorporation, Marion, Iowa; to acquire approximately 70 percent of the voting shares of Shell Rock Bancorporation, Shell Rock, Iowa, and thereby indirectly acquire Security State Bank, Waverly, Iowa.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Pritchard Acquisition Co., Inc., San Antonio, Texas; to become a bank holding company by acquiring, through merger, InterContinental BankShares Corporation, San Antonio, Texas, and thereby indirectly acquire InterContinental National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, July 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18222 Filed 7–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Union Corporation, Charlotte, North Carolina; to acquire EVEREN Capital Corporation, Chicago, Illinois, and thereby indirectly acquire EVEREN Securities, Inc., Chicago, Illinois, and thereby engage in underwriting and dealing in, to a limited extent, all types of debt and equity securities other than interests in open–end investment companies, *see, J.P. Morgan & Co., Inc., et al.*, 75 Fed. Res. Bull. 192 (1989); underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8)(i) of Regulation Y; acting as investment or financial advisor, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage services, , buying and selling all types of securities as a"riskless principal," acting as agent for the private placement of securities, acting as a futures commission merchant, and providing other agency transactional services, pursuant to § 225.28(b)(7)(i)–(v) of Regulation Y; engaging as principal in foreign exchange, forward contracts, options, futures, options on futures, swaps, and similar contract, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal approved by the Board), nonfinancial asset, or group of assets other than bank–ineligible securities, pursuant to § 225.28(b)(8)(ii) of Regulation Y; and engaging in community development activities, pursuant to § 225.28(b)(12) of Regulation Y. In addition, First Union Corporation requests Board approval to acquire up to 19.9 percent of the voting shares of the EVEREN Capital Corporation, Chicago, Illinois, under certain circumstances.

Board of Governors of the Federal Reserve System, July 12, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18128 Filed 7–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99–17526) published on pages 37535 and 37536 of the issue for Monday, July 12, 1999.

Under the Federal Reserve Bank of Sam Francisco heading, the entry for Wells Fargo & Company, San Francisco, California, Norwest Mortgage, Inc., Des Moines, Iowa, and Southwest Partners, Des Moines, Iowa, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Southwest Partners, Des Moines, Iowa; to engage *de novo* through their subsidiary, Gold Coast Mortgage, San Diego, California, in a joint venture with Werner & Simmons Real Estate, Inc., San Diego, California, and RAS Financial Services, Inc., Palos Verdes Estates, California, in making, acquiring, brokering and servicing loans or other extensions of credit, including

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residential mortgage loans, pursuant to § 225.28(b)(1) of Regulation Y.

Comments on this application must be received by July 26, 1999.

Board of Governors of the Federal Reserve System, July 12, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18131 Filed 7–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Popular, Inc., Hato Rey, Puerto Rico, to acquire GM Group, Inc., Rio Piedras, Puerto Rico, and thereby engage in management consulting, pursuant to § 225.28(b)(9)(i) of Regulation Y, and data processing and data transmission activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18221 Filed 7–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 2:30 p.m., Tuesday, July 20, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposed amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) to establish a Century Date Change Special Liquidity Facility (proposed earlier for public comment; Docket No. R–1038).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: July 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18267 Filed 7–13–99; 4:48 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 3:00 p.m., Tuesday, July 20, 1999, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18268 Filed 7–13–99; 4:48 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Revised Form OCSE–100, State Plan for Child Support Collection and Establishment of Paternity Under Title IV–D of the Social Security Act.

OMB No.: 0970–0017.

Description: The State plan preprint and amendments serve as a contract with OCSE in outlining the activities the States will perform as required by law in order for States to receive Federal funds to meet the costs of these activities. This final rule serves to eliminate regulations, in part or in whole, which were rendered obsolete by or inconsistent with, the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), the Balanced Budget Act of 1997 (BBA) and the Adoption and Safe Families Act of 1997. All of the required new and revised State plan preprints were approved by OMB July 7, 1997 (expiring July 31, 2000) and February 18, 1998 (expiring February 28, 2001), both under OMB No. 0970–0017. Also, new forms were approved by OMB No. 0970–0085 (Standard Interstate Forms), 0970–0152 (Lien and Subpoena Forms), and 0970–0154 (Wage Withholding Form). The final rule will update the State plan by removing the State plan preprint page for Section 3.12, Payment of Support thorough the IV–D agency or Other Entity. Section 314(c) of PRWORA repealed Section 466(c) of the Act. 45 CFR 302.57 is being removed by the final rule as it implemented Section 466(c). The requirements for State plan preprint page 3.12 are now covered by Section 3.14, Collection and Disbursement of Support Payments. The information collected on the State plan pages is necessary to enable OCSE to monitor compliance with the requirements in Title IV–D of the Social Security Act and implementing regulations.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
State Plan for Child Support	54	1	43 min.	39

Estimated Total Burden Hours: 39.

ADDITIONAL INFORMATION: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: ACF Desk Officer.

Dated: July 13, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–18167 Filed 7–15–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2248]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidances on Efficacy of Anthelmintics: General Recommendations (#90), Efficacy of Anthelmintics: Specific Recommendations for Bovines (#95), Efficacy of Anthelmintics: Specific Recommendations for Ovines (#96), and Efficacy of Anthelmintics: Specific Recommendations for Caprines (#97); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of four draft guidance documents entitled: "Efficacy of Anthelmintics: General Recommendations (#90)," "Efficacy of Anthelmintics: Specific Recommendations for Bovines (#95)," "Efficacy of Anthelmintics: Specific Recommendations for Ovines (#96)," and "Efficacy of Anthelmintics: Specific Recommendations for Caprines (#97)." These related draft guidance documents have been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). They are intended to standardize and simplify methods used in the evaluation of new anthelmintics submitted for approval to the European Union, Japan and the United States.

DATES: Submit written comments by August 16, 1999. FDA must receive comments before the deadline in order to ensure their consideration at the next VICH Committee.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance documents and the docket number found in the heading of this document.

Copies of the draft guidance documents entitled "Efficacy of Anthelmintics: General Recommendations," "Efficacy of Anthelmintics: Specific Recommendations for Bovines," "Efficacy of Anthelmintics: Specific Recommendations for Ovines," and "Efficacy of Anthelmintics: Specific Recommendations for Caprines" may be obtained on the Internet from the CVM home page at "http://www.fda.gov/cvm/fda/TOCs/guideline.html". Persons without Internet access may submit written requests for single copies of the draft guidances to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson (HFV–3), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798; e-mail: "sthompso@cvm.fda.gov".

Regarding the guidance documents: Thomas Letonja (HFV–130), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7576, e-mail: "tletonja@cvm.fda.gov".

SUPPLEMENTARY INFORMATION:

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I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation (ICH) of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the registration of human pharmaceutical products among the European Union, Japan and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the registration of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Épizooties (OIE). The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Japanese Veterinary Pharmaceutical Association; the Japanese Ministry of Agriculture, Forestry and Fisheries; the U.S. Animal Health Institute; the U.S. FDA; and the U.S. Department of Agriculture.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/ New Zealand, one representative from industry in Australia/ New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay and Paraguay), and one representative from Federacion Latino-Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative participates in the VICH Steering Committee meetings.

The VICH Steering Committee held meetings and agreed that the four draft guidance documents should be made available for public comment. On October 20 through 22, 1998, the Committee agreed to the draft guidance document entitled "Efficacy of Anthelmintics: General Recommendations." On March 16 through 18, 1999, the Committee agreed on the three draft guidance documents entitled "Efficacy of Anthelmintics: Specific Recommendations for Bovines," "Efficacy of Anthelmintics: Specific Recommendations for Ovines," and "Efficacy of Anthelmintics: Specific Recommendations for Caprines."

The draft guidance entitled "Efficacy of Anthelmintics: General Recommendations" is intended to standardize and simplify the methods used for the effectiveness evaluation of new anthelmintics and generic copies for use in domesticated animals. Animal welfare will benefit by the elimination of duplicate studies, which will reduce the number of animals required for necessary studies. Likewise this will benefit the industry by reducing research and development costs. The three draft guidances entitled "Efficacy of Anthelmintics: Specific Recommendations for Bovines," "Efficacy of Anthelmintics: Specific Recommendations for Ovines," and "Efficacy of Anthelmintics: Specific Recommendations for Caprines" should be read in conjunction with the "Efficacy of Anthelmintics: General Recommendations (EAGR)." The guidances for bovines, ovines, and caprines are part of the EAGR, and the aim of these three draft guidances is to: (1) Be more specific for certain issues not discussed in the general guidance, (2) highlight differences with the EAGR on efficacy data recommendations, and (3) give explanations for disparities with the EAGR. Comments about the draft guidance documents will be considered by the FDA and the VICH Anthelmintic Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidances and publish them as future guidances.

These draft documents, developed under the VICH process, have been revised to conform to FDA's good guidance practices regulations (62 FR 8961, February 27, 1997). For example, the documents have been designated "guidance" rather than "guideline." Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as "must," "shall , " and "will" in the original VICH documents have been substituted with "should." Similarly, words such as "requirement" or "acceptable" or phrases such as "minimum standards" or "minimum needed" have been replaced by "recommendation" or "recommended" as appropriate to the context. Additionally, the term(s) "veterinary medicinal products" and "veterinary pharmaceuticals products" may require revision to be consistent with product terms used in other VICH guidance documents.

These draft documents represent current FDA thinking on efficacy requirements for anthelmintic medicinal products. These documents do not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

II. Comments

Interested persons should submit written comments on or before August 16, 1999 to the Dockets Management Branch (address above) regarding the guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except for Federal Holidays.

Dated: July 12, 1999.

Margaret M. Dotzel,

Acting Associcote Commissioner for Policy Coordination.

[FR Doc. 99–18166 Filed 7–13–99; 12:06 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Health Service Corps (NHSC) Professional Training and Information Questionnaire (PRIQ) OMB No. 0915–0208: Revision

The Health Resources and Services Administration, Bureau of Primary Health Care, NHSC, assists medically underserved communities through the placement of primary health care professionals in health professional shortage areas.

The PTIQ is used to collect data related to professional issues, family concerns, and assignment preferences from NHSC obligated Scholarship Program Recipients including physicians, physician assistants (PAs), nurse practitioners (NPs), certified nurse midwives (CNMs), and other disciplines in the current year's placement cycle. These data are used to match an individual health care professional with the most appropriate clinical practice setting.

The PTIQ will be mailed twelve months in advance of the intended service availability date.

The burden estimate is as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response (minutes)	Total hour burden
Health care professionals	339	1	12	68
Total	339			68

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 12, 1999.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 99–18123 Filed 7–15–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–FA–09]

FY 1998 Comprehensive Improvement Assistance Program; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the FY 1998 Super Notice of Funding Availability (SuperNOFA) for the Comprehensive Improvement Assistance Program. This announcement contains the names and addresses of the competition award recipients and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Michael Diggs, Director, Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20410, telephone (202) 358–0221, extension 101. (This is not a toll-free number). A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

The Comprehensive Improvement Assistance Program is authorized by sec. 14, United States Housing Act of 1937 (42 U.S.C. 14371); Sec. 7 (d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

The objective of the Comprehensive Improvement Assistance Program (CIAP) is to provide funds to improve the physical condition and upgrade the management and operation of existing Public projects to assure that they continue to be available to serve low-income families.

On March 31, 1998 (63 FR 15566), the Department published a SuperNOFA in the **Federal Register** informing Public Housing Agencies that own or operate fewer than 250 units of the availability of FY 1998 CIAP funding. The FY 1998 awards announced in this Notice were selected for funding consistent with the provisions of the SuperNOFA.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Action of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing, in this notice, the names and addresses of the PHAs that received funding awards under the FY 1998 CIAP SuperNOFA, and the amount of the awards. This information is set forth in Appendix A to this notice.

The Catalog of Federal Domestic Assistance number for the CIAP Program is 14.852.

Dated: July 2, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Appendix A

RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS

Applicant name	Address	Amount funded
ALBERTVILLE HA	P.O. BOX 1126, ALBERTVILLE, AL 35950–0000	$200,000.00
HA OF THE CITY OF ALICEVILLE	P.O. BOX 485, ALICEVILLE, AL 35442–0485	500,000.00
HA ARAB	P.O. BOX 452, ARAB, AL 35016–0000	157,500.00
HA ASHFORD	100 BRUNNER STREET, ASHFORD, AL 36302–0000	50,000.00
HA OF THE CITY OF COLUMBIA	100 BRUNNER STREET, ASHFORD, AL 36312–0000	42,500.00
HA OF THE TOWN OF ASHLAND	155 RUNYAN COURT, ASHLAND, AL 36251,	187,000.00
HA OF THE CITY OF ATHENS	5TH AVE., BLDG J, ATHENS, AL 35611–0853	235,000.00
HA BAY MINETTE	400 SOUTH STREET, BAY MINETTE, AL 36507–0000	267,599.00
HA OF THE TOWN OF BERRY	P.O. BOX 387, BERRY, AL 35546–0387	90,000.00

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RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
HA OF THE CITY OF CENTRE	P.O. BOX 733, BOAZ, AL 35957	750,000.00
RAINSVILLE HA	P.O. BOX 733, BOAZ, AL 35957	350,000.00
HA OF THE CITY OF BRANTLEY	P.O. BOX 32, BRANTLEY, AL 36009	500,000.00
HA OF THE CITY OF BRENT	P.O. BOX 263, BRENT, AL 35034	304,200.00
HA OF THE CITY OF BREWTON	P.O. BOX 344, BREWTON, AL 36427–0344	120,000.00
BRUNDIDGE HA	P.O. BOX 595, BRUNDIDGE, AL 36010–0595	500,000.00
HA OF THE TOWN OF CALERA	P.O. BOX 136, CALERA, AL 35040–0136	473,100.00
CHILDERSBURG HA	P.O. BOX 396, CHILDERSBURG, AL 35044–0396	165,000.00
HA OF THE CITY OF CLANTON	P.O. BOX 408, CLANTON, AL 35045–0408	267,000.00
HA COLUMBIANA	P.O. BOX 498, COLUMBIANA, AL 35051–0000	241,500.00
HA OF THE CITY OF DALEVILLE	101 DONNELL CIRCLE, DALEVILLE, AL 36322	100,000.00
HA ENTERPRISE	NELL COURT OFFICE—MILDRED STREET, ENTERPRISE, AL 36330–0000	225,000.00
HA OF THE CITY OF EUTAW	100 CARVER CIRCLE, EUTAW, AL 35462	75,000.00
HA OF THE CITY OF GEORGIANA	P.O. BOX 279, GEORGIANA, AL 36033	150,000.00
HA OF THE CITY OF GOODWATER	P.O. BOX 507, GOODWATER, AL 35072	60,000.00
HA GREENVILLE	P.O. BOX 521, GREENVILLE, AL 36037–0000	500,000.00
HA OF GUIN	P.O. BOX 712, GUIN, AL 35563–0712	201,100.00
HA OF THE TOWN OF BLOUNTSVILLE	P.O. BOX 172, GUNTERSVILLE, AL 35976–0172	482,400.00
HA PHIL CAMPBELL INC	P.O. BOX 209, HACKLEBURG, AL 35564–0000	96,000.00
HA OF THE CITY OF HARTFORD	P.O. BOX 87, HARTFORD, AL 36344–0000	150,000.00
HA OF THE TOWN OF HOBSON CITY	800 ARMSTRONG ST., HOBSON CITY, AL 36201	90,000.00
HA JACKSONVILLE	895 GARDNER DRIVE, JACKSONVILLE, AL 36265–0000	262,500.00
HA LEEDS	P.O. BOX 513, LEEDS, AL 35094–0000	500,000.00
HA LINEVILLE	P.O. BOX 455, LINEVILLE, AL 36266–0000	250,000.00
HA OF THE CITY OF LUVERNE	P.O. BOX 311, LUVERNE, AL 36049–0311	50,000.00
TRIANA HA	250 ZEIRDT RD, MADISON, AL 35758	36,000.00
HA MIDLAND CITY	ROUTE 1 BOX 100, MIDLAND CITY, AL 36350–0000	100,000.00
HA MILLPORT	P.O. BOX 475, MILLPORT, AL 35576–0000	100,000.00
HA MONROEVILLE	P.O. BOX 732, MONROEVILLE, AL 36461–0000	145,000.00
HA OF THE TOWN OF MONTEVALLO	P.O. BOX 13, MONTEVALLO, AL 35115–0013	100,000.00
HA OF THE CITY OF MOULTON	P.O. BOX 546, MOULTON, AL 35650–0546	87,000.00
HA OF THE TOWN OF NEW BROCKTON.	P.O. BOX 159, NEW BROCKTON, AL 36351–0159	500,000.00
H A ONEONTA	1 HILLCREST CIRCLE, ONEONTA, AL 35121–0000	270,000.00
HA OF THE CITY OF VALLEY	P. O. BOX 786, OPELIKA, AL 36801–0786	500,000.00
HA OPP	P O DRAWER 579, OPP, AL 36467–0000	231,200.00
PELL CITY HA	P. O. BOX 681, PELL CITY, AL 35125–0681	800,000.00
HA PIEDMONT	P O BOX 420, PIEDMONT, AL 36272–0000	316,500.00
HA OF THE CITY OF PRATTVILLE	318 WATER STREET, PRATTVILLE, AL 36067–	500,000.00
HA OF RED BAY	P. O. BOX 1426, RED BAY, AL 35582	246,000.00
HA RUSSELLVILLE	P O BOX 9866, RUSSELLVILLE, AL 35653–0000	500,000.00
HA SAMSON	P O BOX 307, SAMSON, AL 36477–0000	375,243.00
HA STEVENSON	DRAWER E, STEVENSON, AL 35772–0000	141,000.00
HA OF THE CITY OF SULLIGENT	P. O. BOX 656, SULLIGENT, AL 35586–0656	150,000.00
HA TALLASSEE	904 HICKORY ST, TALLASSEE, AL 36078–0000	150,000.00
TARRANT HA	624 BELL AVE, TARRANT, AL 35217–0000	250,000.00
CITY OF UNION SPRINGS HA	100 SPRING RD., TROY, AL 36081	137,500.00
HA OF THE CITY OF TUSCUMBIA	P. O. BOX 350, TUSCUMBIA, AL 35674	500,000.00
HA UNIONTOWN	P O BOX 633, UNIONTOWN, AL 36786–0000	235,650.00
HA OF THE CITY OF VERNON	ROUTE 2, BOX 28, VERNON, AL 35592	217,500.00
WINFIELD HA	P.O. BOX 609, WINFIELD, AL 35594–	231,000.00
HA OF THE TOWN OF YORK	P O BOX 9, YORK, AL 36925–0009	100,000.00
HA OF THE CITY OF ALMA	#9 WEST MAIN ST., ALMA, AR 72921–0537	209,790.00
HA OF THE CITY OF AUGUSTA	100 RIVERDALE, AUGUSTA, AR 72006–2733	262,199.00
HA OF THE CITY OF BEEBE	P.O. DRAWER C–2, BEEBE, AR 72012–	316,171.00
LONOKE CTY. HA	P.O. BOX 74, CARLISLE, AR 72024–0000	306,971.00
HA OF THE CITY OF CLARKSVILLE	P.O. BOX 407, CLARKSVILLE, AR 72830–0407	454,399.00
HA OF THE CITY OF COTTON PLANT	P.O. DRAWER 599, COTTON PLANT, AR 72036–599	186,826.00
HA OF THE CITY OF DOVER	200 DAVIS ST., DOVER, AR 72837–0106	91,548.00
HA OF THE CITY OF DUMAS	P.O. BOX 115, DUMAS, AR 71639–0115	698,112.00
LITTLE RIVER CTY. HA	P.O. DRAWER A, FOREMAN, AR 71836–0000	193,224.00
NW REG. HA	P.O. BOX 2568, HARRISON, AR 72602–2568	209,966.00
HA OF THE CITY OF EMMET	720 TEXAS STREET, HOPE, AR 71801–	37,851.00
JONESBORO URBAN RENEWAL HA	330 UNION STREET, JONESBORO, AR 72401–0000	223,926.00
HA OF THE CITY OF JUDSONIA	P.O. BOX 549, JUDSONIA, AR 72081–0549	168,309.00
HA OF THE CITY OF LEACHVILLE	410 FIFTH STREET, AR 72438	472,567.00
HA OF THE CITY OF MANILA	P.O. BOX 590, MANILA, AR 72442–0600	338,754.00
HA OF THE CITY OF MCCRORY	P.O. BOX 468, MCCRORY, AR 72101–0468	163,853.00
HA OF THE CITY OF MONETTE	P.O. DRAWER 387, MONETTE, AR 72447–0387	232,082.00
HA OF THE CITY OF MORRILTON	P.O. BOX 229, MORRILTON, AR 72110–0000	440,074.00
PIKE CTY. HA	P.O. BOX 241, MURFREESBORO, AR 71958–0000	26,200.00

RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
PARAGOULD HA	P O BOX 137, PARAGOULD, AR 72451–0000	140,517.00
HA OF THE CITY OF POCAHONTAS	1403 HOSPITAL DR., POCAHONTAS, AR 72455–	394,115.00
HA OF THE CITY OF VAN BUREN	P.O. BOX 387, VAN BUREN, AR 72956–0387	535,364.00
WARREN HA	801 WEST CENTRAL, WARREN,AR 71671–0000	97,642.00
WYNNE HA	P. O. BOX 552, WYNNE, AR 72396–0000	453,108.00
CITY OF GLENDALE HA	6842 NORTH 61ST AVENUE, GLENDALE, AZ 85301–3199	453,335.00
NOGALES HA	P.O. BOX 777, NOGALES, AZ 85628–0777	263,129.00
YUMA CTY. HSNG. DEPT.	8450 W HIGHWAY 95 SUITE 88, SOMERTON, AZ 85350–2534	558,984.00
SOUTH TUCSON HA	1713 S THIRD AVE, SOUTH TUCSON, AZ 85713–0000	1,175,894.00
WILLIAMS HA	113 S. FIRST STREET, WILLIAMS, AZ 86046–0000	169,925.00
YUMA CITY HA	1350 W. COLORADO STREET, YUMA, AZ 85364–3824	395,825.00
CITY OF ALAMEDA HA	701 ATLANTIC AVENUE, ALAMEDA, CA 94501	1,013,972.00
CTY. OF SAN MATEO HA	264 HARBOR BL., BLDG. A, CA 94402–0000	775,050.00
CITY OF BENICIA HA	28 RIVERHILL DRIVE, BENICIA, CA 94510–0000	598,100.00
SANTA CRUZ CTY. HA	2160—41ST AVE, CAPITOLA, CA 95010–0000	1,486,750.00
CITY OF EUREKA HA	735 W EVERDING ST, EUREKA, CA 95503–0000	262,000.00
DUBLIN HA	22941 ATHERTON ST., HAYWARD, CA 94541–6613	159,500.00
ALAMEDA CTY. HA	22941 ATHERTON STREET, HAYWARD, CA 94541–6633	473,500.00
HA OF THE CITY OF PASO ROBLES	P.O. BOX 817, PASO ROBLES, CA 93446–1047	130,130.00
PORT HUENEME HA	250 NO VENTURA RD, PORT HUENEME, CA 93041–0000	328,193.00
CITY. OF PLUMAS HA	P.O. BOX 319, QUINCY, CA 95971–0000	99,500.00
HA OF THE CITY OF RIVERBANK	3309 STANISLAUS STREET, RIVERBANK, CA 95367	74,800.00
CTY. OF SAN DIEGO	3989 RUFFIN ROAD, SAN DIEGO, CA 92123–1815	102,850.00
HA OF THE CITY OF SAN PABLO	1 ALVARADO SQUARE, SAN PABLO, CA 94806–	341,000.00
MENDOCINO CTY	COMMUNITY DEVELOPMENT COMMISSION, UKIAH, CA 95482	130,200.00
UPLAND CITY HA	1226 N CAMPUS AVE, UPLAND, CA 91786–3337	252,281.00
YOLO CTY. HA	P.O. BOX 1867, WOODLAND, CA 95698–0000	146,669.00
CENTER HA	POST OFFICE BOX 179, CENTER, CO 81125–0000	463,795.00
CONEJOS CTY. HA	5291 EAST 60TH AVE, COMMERCE CITY, CO 80022–	1,024,195.00
CONEJOS CTY. HA	5291 EAST 60TH AVE, COMMERCE CITY, CO 80202–	182,404.00
ENGLEWOOD HA	BX 40305-MILE HI STN, ENGLEWOOD, CO 80202–0305	126,697.00
HA OF THE TOWN OF HOLLY	P.O. BOX 487, HOLLY, CO 81047	28,000.00
DELTA HA	P.O. BOX 376, LA JUNTA, CO 81050–0000	937,215.00
LAKEWOOD HA	445 S. ALLISON PARKWAY, LAKEWOOD, CO 80226–0000	1,841,250.00
LITTLETON HA	5844 S DATURA ST, LITTLETON, CO 80120–0000	727,300.00
LOVELAND HA	375 WEST 37TH STREET, LOVELAND, CO 80538–0000	132,301.00
HA OF THE CITY OF WALSENBURG,	P.O. BOX 312, WALSENBURG, CO 81089	472,562.00
HA OF THE TOWN OF YUMA	700 W. THIRD AVE., YUMA, CO 80759	231,194.00
GLASTONBURY HA	25 RISLEY ROAD, GLASTONBURY, CT 06033–0000	381,450.00
NAUGATUCK HA	16 IDA STREET, NAUGATUCK, CT 06770–0000	324,786.00
NEW LONDON HA	78 WALDEN AVE, NEW LONDON, CT 06320–0119	74,687.00
NORWICH HA	10 WESTWOOD PARK, NORWICH, CT 06360–0000	422,930.00
PUTNAM HA	123 LACONIA AVENUE, PUTNAM, CT 06260–0000	135,000.00
ROCKVILLE HA	P.O. BOX 963, ROCKVILLE, CT 06066–0000	510,800.00
HA OF THE TOWN OF SEYMOUR	LOCK DRAWER 191, SEYMOUR, CT 06483	156,562.00
WEST HARTFORD HA	759 FARMINGTON AVE, WEST HARTFORD, CT 06119–0000	145,000.00
WINDSOR LOCKS HA	41 OAK STREET, WINDSOR LOCKS, CT 06096–0000	125,000.00
WINCHESTER HA	80 CHESTNUT STREET, WINSTED, CT 06098–0000	193,700.00
HA OF THE CITY OF APALACHICOLA	P.O. BOX 730, APALACHICOLA, FL 32320	120,000.00
HA OF AVON PARK	P.O. BOX 1327, AVON PARK, FL 33826–1327	452,250.00
HA OF BARTOW	P.O. BOX 1413, BARTOW, FL 33831–0000	264,760.00
HA BOCA RATON	201 WEST PALMETTO PARK ROAD, BOCA RATON, FL 33432–0000	333,681.00
GILCHRIST CTY. HA	P.O. BOX 38, BRONSON, FL 32621–0038	31,200.00
LEVY CTY. HA	P.O. BOX 38, BRONSON, FL 32621–0038	363,000.00
BROOKSVILLE HA	800 CONTINENTAL DR., BROOKSVILLE, FL 34601	240,000.00
BEACHCHIPLEY HA	P.O. BOX 388, CHIPLEY, FL 32428–0388	187,300.00
PASCO CTY. HA	14517 7TH STREET, DADE CITY, FL 33525–2703	151,000.00
HA OF THE CITY OF DEERFIELD BEACH.	425 N.W1ST TERRACE, DEERFIELD BEACH, FL 33441–0000	534,500.00
DEFUNIAK SPRINGS HA	120 OERTING DRIVE, DEFUNIAK SPRINGS, FL 32433	128,500.00
DELAND HA	300 SUNFLOWER CIRCLE, DELAND, FL 32724–5556	630,000.00
DELRAY BEACH HA	770 S W 12TH TERRACE, DELRAY BEACH, FL 33444–0000	475,194.00
HA OF THE CITY OF FERNANDINA	1300 HICKORY ST, FERNANDINA BEACH, FL 32034–0000	120,000.00
FT WALTON BEACH HA	27 ROBINWOOD DR. SW, FORT WALTON BEACH, FL 32548–0000	396,800.00
HA HOLLYWOOD	7300 NORTH DAVIE ROAD, HOLLYWOOD, FL 33024–0000	135,900.00
UNION CTY. HA	715 W. MAIN STREET, LAKE BUTLER, FL 32054	559,962.00
LAKE WALES HA	P.O. BOX 426, LAKE WALES, FL 33859–0426	467,000.00
MACCLENNY HA	P.O. BOX 977, MACCLENNY, FL 32063–0977	168,000.00
HA OF THE CITY OF MARIANNA	337 ALBERT ST., MARIANNA, FL 32446–0000	162,000.00
MILTON HA	1498B BYROM ST., MILTON, FL 32570–3827	204,800.00
HA OF NEW SMYRNA BEACH	P.O. BOX 688, NEW SMYRNA BEACH, FL 32170–0688	500,000.00

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RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
NICEVILLE HA	500 BOYD CIRCLE, NICEVILLE, FL 32578	75,000.00
HA LEE CTY.	14170 WARNER CIRCLE NW, NO. FORT MYERS, FL 33903–0000	430,627.00
ORMOND BEACH HA	100 NEW BRITAIN AVE, ORMOND BEACH, FL 32175–0998	21,000.00
SEMINOLE CTY. HA	662 ACADEMY PLACE, OVIEDO, FL 32765	246,240.00
HA OF SPRINGFIELD	3806 EAST 8TH STREET, PANAMA, FL 32401–5389	114,000.00
PLANT CITY HA	1306 LARRICK LANE, PLANT CITY, FL 33566–0000	612,700.00
HA OF POMPANO BEACH	P.O. BOX 2006, POMPANO BEACH, FL 33061–0000	72,250.00
PUNTA GORDA HA	P.O. BOX 51–1146, PUNTA GORDA, FL 33951–1146	317,352.00
RIVIERA BEACH HA	2014 WEST 17TH COURT, RIVIERA BEACH, FL 33404–5002	469,000.00
HA OF THE CITY OF STUART	P.O. BOX 1787, STUART, FL 33494–0000	526,735.00
TARPON SPRINGS HA	500 S. WALTON AVENUE, TARPON SPRINGS, FL 34689–4740	814,600.00
WINTER HAVEN HA	2670 AVENUE C SW, WINTER HAVEN, FL 33880–0000	165,719.00
HA OF THE CITY OF WINTER PARK	718 MARGARET SQUARE, WINTER PARK, FL 32789–1952	469,540.00
HA OF THE CITY OF ABBEVILLE	P.O. BOX 546, ABBEVILLE, GA 31001–0306	214,182.00
HA OF THE CITY OF ACWORTH	P.O. BOX 347, ACWORTH, GA 30101–0347	225,000.00
HA OF THE CITY OF ASHBURN	200 PERRY DRIVE, OFFICE 412, ASHBURN, GA 31714	129,432.00
HA OF THE CITY OF BAXLEY	P.O. BOX 56, BAXLEY, GA 31513–0056	200,000.00
HA OF THE CITY OF BLUE RIDGE	P.O. BOX 3226, BLUE RIDGE, GA 30513–0088	153,900.00
HA OF THE CITY OF BUCHANAN	P.O. 355, BUCHANAN, GA 30113	100,050.00
HA OF THE CITY OF CANTON	1400 OAKSIDE DRIVE-#76, CANTON, GA 30114	341,100.00
HA OF THE CITY OF CLAXTON	P.O. BOX 849, CLAXTON, GA 30417–0849	639,200.00
HA OF THE CITY OF CLAYTON	P.O. BOX 1271, CLAYTON, GA 30525	390,316.00
HA OF THE CITY OF COCHRAN	P.O. BOX 32, COCHRAN, GA 31014–0032	555,750.00
HA OF THE CITY OF BUENA VISTA	P.O. BOX 630, COLUMBUS, GA 31993	534,489.00
HA OF THE CITY OF FT GAINES	P.O. BOX 403, CUTHBERT, GA 31740–1496	75,000.00
HA OF THE CITY OF DALLAS	P.O. BOX 74, DALLAS, GA 30132–0074	629,922.00
HA OF THE CITY OF DANIELSVILLE	P.O. BOX 339, DANIELSVILLE, GA 30633–0039	392,255.00
HA OF THE CITY OF DAWSON	P.O. BOX 724, DAWSON, GA 31742–0724	67,000.00
HA OF THE CTY. OF DOUGLAS	8474 POUNDS CIRCLE, DOUGLASVILLE, GA 30134	1,231,480.00
HA OF THE CITY OF EASTMAN	P.O. BOX 100, EASTMAN, GA 31023–0100	278,751.00
HA OF THE CITY OF ELBERTON	12 NORTH MCINTOSH ST., ELBERTON, GA 30635–1552	383,465.00
HA OF THE CITY OF ELLIJAY	P.O. BOX 426, ELLIJAY, GA 30540–0426	886,380.00
HA OF THE CITY OF FOLKSTON	P.O. BOX 397, FOLKSTON, GA 31537–0397	109,150.00
HA OF THE CITY OF FT OGLE THORPE.	P.O. BOX 2034, FORT OGLETHORPE, GA 30742–0034	124,440.00
HA OF THE CITY OF GIBSON	P.O. BOX 146, GIBSON, GA 30810–0086	68,760.00
HA OF THE CITY OF GLENWOOD	P.O. BOX 237, GLENWOOD, GA 30428–0237	414,893.00
HA OF THE CITY OF GREENSBORO	P.O. BOX 217, GREENSBORO, GA 30642–0217	380,000.00
HA OF THE CITY OF HAWKINSVILLE	P.O. BOX 718, HAWKINSVILLE, GA 31036–0052	182,166.00
HA OF THE CITY OF HAZLEHURST	P.O. BOX 838, HAZELHURST, GA 31539–0838	1,263,496.00
HA OF THE CITY OF HAZLEHURST	P.O. BOX 838, HAZELHURST, GA 31539–0838	518,050.00
HA OF THE CITY OF HINESVILLE	301 OLIVE STREET, HINESVILLE, GA 31313–2915	974,160.00
HA OF THE CITY OF HOGANSVILLE	P.O. BOX 127, HOGANSVILLE, GA 30230	894,200.00
HA OF THE CITY OF HOMERVILLE	P.O. BOX 416, HOMERVILLE, GA 31634	317,000.00
HA OF THE CITY OF JASPER	164 LANDRUM CIRCLE, JASPER, GA 30143–1209	660,960.00
HA OF THE CITY OF JASPER	164 LANDRUM CIRCLE, JASPER, GA 30143–1209	48,000.00
HA OF THE CITY OF JEFFERSON	P.O. BOX 905, JEFFERSON, GA 30549	877,500.00
HA OF THE CITY OF KINGSLAND	P.O. BOX 1377, KINGSLAND, GA 31548–0438	527,000.00
HA OF THE CITY OF MCDONOUGH	345 SIMPSON STREET, MCDONOUGH, GA 30253–0073	100,000.00
HA OF THE CITY OF MENLO	ROUTE 1, BOX 19–B, W, MENLO, GA 30731–0019	280,000.00
HA OF THE CITY OF METTER	P.O. BOX 207, METTER, GA 30439–0207	3,651,935.00
HA OF THE CITY OF MOUNT VERNON	P.O. BOX 335, MT. VERNON, GA 30445–0035	328,564.00
HA OF THE CTY. OF ATKINSON	P.O. BOX 278, NASHVILLE, GA 31639–0278	26,000.00
HA OF THE CITY OF HAHIRA	P.O. BOX 278, NASHVILLE, GA 31639–0278	62,000.00
HA OF THE CITY OF NORCROSS	19 GARNER STREET, NORCROSS, GA 30071	206,000.00
HA OF THE CITY OF ROCHELLE	P.O. BOX 156, ROCHELLE, GA 31079–0156	414,850.00
HA OF THE CITY OF ROCHELLE	P.O. BOX 156, ROCHELLE, GA 31079–0156	24,950.00
HA OF THE CITY OF SPARTA	P.O. BOX 327, SPARTA, GA 31087–0021	636,015.00
HA OF THE CITY OF STATESBORO	P.O. BOX 552, STATESBORO, GA 30458–0552	181,800.00
HA OF THE CITY OF BOSTON	216 SOUTH COLLEGE ST, THOMASVILLE, GA 31792–6432	349,925.00
HA OF THE CITY OF HOMER	P.O. DRAWER J, TOCCOA, GA 30577–0257	313,614.00
HA OF THE CITY OF CORNELIA	P.O. DRAWER J, TOCCOA, GA 30577–0257	105,000.00
HA OF THE CITY OF CLARKESVILLE	P.O. DRAWER J, TOCCOA, GA 30577–0257	330,220.00
HA OF THE CITY OF CLEVELAND	P.O. DRAWER J, TOCCOA, GA 30577–0257	120,384.00
HA OF THE CITY OF UNADILLA	P.O. BOX 447, UNADILLA, GA 31091–0407	95,368.00
HA OF THE CITY OF VIDALIA	P.O. BOX 508, VIDALIA, GA 30474–0508	838,055.00
HA OF THE CTY. OF HOUSTON	P.O. BOX 2048, WARNER ROBINS, GA 31099–2048	209,207.00
HA OF THE CITY OF BLACKSHEAR	P.O. BOX 1407, WAYCROSS, GA 31502–1407	230,580.00
HA OF THE CITY OF MILLEN	P.O. BOX 628, WAYNESBORO, GA 30830–0597	1,528,580.00
HA OF THE CTY. OF SCREVEN	P.O. BOX 628, WAYNESBORO, GA 30830–0597	132,200.00
HA OF THE CITY OF TALBOTTON	P.O. BOX 220, WOODLAND, GA 31836	127,500.00

RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
HA OF THE CITY OF WOODLAND	P.O. BOX 220, WOODLAND, GA 31836–0220	82,500.00
HA OF THE CTY. OF TALBOT	P.O. BOX 220, WOODLAND, GA 31836	35,800.00
AREA XV MULTI-CTY. HSNG. AGENCY	417 NORTH COLLEGE, AGENCY, IA 52530–0000	95,000.00
AUTHORITYLOW RENT HSNG. AGENCY OF.	2830 WINEGARD DR, BURLINGTON, IA 52601–0000	65,000.00
CHARLES CITY HSNG. & REDEV	1000 SOUTH GRAND AVE, CHARLES CITY, IA 50616–2704	50,000.00
LOW RENT HSNG. AGENCY OF CLINTON.	215 6TH AVENUE S. SUITE 33, CLINTON, IA 52732–2958	125,000.00
SOUTHERN IOWA REG HA	219 N PINE, CRESTON, IA 50801–2413	75,000.00
DAVENPORT HSNG. COMM	501 WEST THIRD STREET, DAVENPORT, IA 52801–0000	100,000.00
CENTRAL IOWA REG. HA	1111 NINTH STREET, DES MOINES, IA 50314–0000	75,000.00
EASTERN IOWA REG. HA	SUITE 330, NESLER CENTRE, DUBUQUE, IA 52004–1140	50,000.00
BURLINGTON-ESSEX LOW RENT HSNG. AGENCY.	SOUTHVIEW VILLAGE, ESSEX, IA 51638	40,000.00
LOW RENT HSNG. AGENCY OF FARRAGUT.	804 JACKSON, FARRAGUT, IA 51639	50,000.00
FT DODGE MUNICIPAL HSNG. AGENCY.	700 SOUTH 17TH STREET, FORT DODGE, IA 50501–0000	230,000.00
LOW RENT HSNG. AGENCY OF BANCROFT.	700 SOUTH 17TH STREET, FT. DODGE, IA 50501	100,000.00
IOWA CITY HA	410 E. WASHINGTON STREET, IOWA CITY, IA 52240–0000	200,000.00
VALLEYKEOKUK HA	111 SOUTH 2ND STREET, KEOKUK, IA 52632–0000	75,000.00
KNOXVILLE LOW RENT HSNG. AGENCY.	305 S THIRD STREET, KNOXVILLE, IA 50118–0000	65,000.00
NORTH IOWA REG. HA	217 2ND STREET, SW, MASON CITY, IA 50401–0000	30,000.00
LOW RENT HSNG. AGENCY OF MISSOURI.	505 E. HURON ST., MISSOURI VALLEY, IA 51555–1656	55,000.00
LOW RENT HSNG. AGENCY OF MOUNT AYR.	306 EAST MONROE, MOUNT AYR, IA 50854–0468	60,000.00
LOW RENT HSNG. AGENCY OF RED OAK.	1805 N. EIGHTH ST., RED OAK, IA 51566–1656	44,725.00
ROCK RAPIDS MUNICIPAL HSNG. AGENCY.	P.O. BOX 403, ROCK RAPIDS, IA 51246	90,000.00
LOW RENT HSNG. AGENCY OF SIDNEY.	P.O. BOX 421, SIDNEY, IA 51652	30,000.00
VILLISCA LOW RENT HSNG. AGENCY	600 E. THIRD ST., VILLISCA, IA 50864	80,000.00
IDAHO HSNG. AGENCY	P.O. BOX 7899, BOISE, ID 83707–1899	135,000.00
BOISE CITY HA	680 CUNNINGHAM PLACE, BOISE, ID 83702–0000	460,000.00
EDWARDS CTY. HA	125 WEST CHERRY STREET, ALBION, IL 62806-	14,000.00
PIKE CTY. HA	POST OFFICE BOX 123, BARRY, IL 62312–0123	176,596.00
THE HA OF THE CTY. OF CASS	RURAL ROUTE #2, BOX 92, BEARDSTOWN, IL 62618–0092	455,000.00
R&OLPH CTY. HA	214 OPDYKE STREET, CHESTER, IL 62233–	285,000.00
WHITE CTY. HA	POST OFFICE BOX 64, CROSSVILLE, IL 62827–0064	1,047,060.00
LEE CTY. HA	1000 WASHINGTON AVENUE, DIXON, IL 61021–	405,897.00
HA OF THE CTY. OF HARDIN	POST OFFICE BOX 322, ELIZABETHTOWN, IL 62931–0322	196,000.00
HA OF POPE CTY	ROUTE 3 BOX 75, GOLCONDA, IL 62938–0075	340,203.00
HA OF CALHOUN CTY	POST OFFICE BOX 426, HARDIN, IL 62047–0426	187,740.00
MASON CTY. HA	201 EAST HURST, HAVANA, IL 62644–0442	150,000.00
HA OF THE CTY. OF JERSEY	505 HORN DRIVE, JERSEYVILLE, IL 62052-	832,700.00
HA OF THE CTY. OF LAWRENCE	1109 TWELFTH STREET, LAWRENCEVILLE, IL 62439–	117,000.00
HA OF THE CTY. OF CLARK	POST OFFICE BOX 282, MARSHALL, IL 62441–0282	13,000.00
MASSAC CTY. HA	POST OFFICE BOX 528, METROPOLIS, IL 62960–0528	1,789,500.00
GRUNDY CTY. HA	1700 NEWTON PLACE, MORRIS, IL 60450–	369,150.00
HA OF PULASKI CTY	POST OFFICE BOX 246, MOUNDS,IL 62964–0246	624,100.00
HA OF THE CITY OF NORTH CHICAGO.	1440 JACKSON STREET, NORTH CHICAGO, IL 60064–	475,000.00
HA OF THE CTY. OF RICHLAND	129 EAST SCOTT STREET, OLNEY, IL 62450–	19,200.00
MENARD CTY. HA	POST OFFICE BOX 168, PETERSBURG, IL 62675–0176	1,813,800.00
OGLE CTY. HA	407 NORTH UNION STREET, POLO, IL 61064–	118,130.00
HA OF THE CTY. OF VERMILION	P O BOX 146, ROSSVILLE, IL 60963–0146	12,000.00
HA OF THE CTY. OF SHELBY	POST OFFICE BOX 252, SHELBYVILLE, IL 62565–0252	1,556,520.00
HA OF THE CTY. OF CUMBERLAND	POST OFFICE BOX 160, TOLEDO, IL 62468–0475	516,404.00
HA OF JOHNSON CTY	POST OFFICE BOX 188, VIENNA, IL 62995–0188	548,970.00
MCHENRY CTY. HA	POST OFFICE BOX 1109, WOODSTOCK, IL 60098–	18,500.00
HA OF THE CITY OF BEDFORD	1305 "K" STREET, BEDFORD, IN 47421–0000	44,000.00
BLOOMFIELD HA	100 WEST MAIN STREET, BLOOMFIELD, IN 47424–	1,507,000.00
FREMONT HA	P. O. BOX 189, FREMONT, IN 46737–0000	80,000.00
HA OF THE CITY OF KENDALLVILLE	240 ANGLING ROAD, KENDALLVILLE, IN 46755–	239,513.00
LINTON HA	RURAL ROUTE 2, BOX 461, LINTON, IN 47441–0000	616,595.00
MOUNT VERNON HA	1500 JEFFERSON DRIVE, MOUNT VERNON, IN 47620–	75,000.00
DELAWARE CTY. HA	2401 SOUTH HADDIX AVENUE, MUNCIE, IN 47302–0000	563,001.00

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RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
ROME CITY HA	P O BOX 415, ROME CITY, IN 46784–0000	$422,100.00
ATCHISON HA	103 S. 7TH STREET, ATCHISON, KS 66002–0000	$200,000.00
ATWOOD HA	801 SOUTH 3RD STREET, ATWOOD, KS 67730–	$47,411.00
BELLEVILLE HA	1815 24TH ST., BELLEVILLE, KS 66935–	$70,000.00
BELOIT HA	200 CEDAR AVENUE, BELOIT, KS 67420–	$200,000.00
BIRD CITY HSNG.	209 N. RICH, BIRD CITY, KS 67731–	$5,550.00
BLUE RAPIDS HA	504 EAST 5TH STREET, BLUE RAPIDS, KS 66411–	$70,000.00
BONNER SPRINGS HA	420 NORTH PARK, BONNER SPRINGS, KS 66012–1498	$64,500.00
BURRTON HA	460 EAST ADAMS, BURRTON, KS 67020–	$17,600.00
CAWKER CITY HA	125 SUNRISE DR., CAWKER CITY, KS 67430–9791	$50,000.00
CHANUTE HA	110 SOUTH RONDA LANE, CHANUTE, KS 66720–1954	$71,684.00
CHERRYVALE HA	621 W. 4TH STREET, CHERRYVALE, KS 67335–	$70,000.00
CLAY CENTER HA	330 WEST COURT, CLAY CENTER, KS 67432–	$94,000.00
FT SCOTT HA	315 SCOTT AVENUE, FORT SCOTT, KS 66701–	$312,550.00
GALENA HA	1301 ELM ST., GALENA, KS 66739–	$270,000.00
GARDEN CITY HA	606 PERSHING, GARDEN CITY, KS 67846–	$50,000.00
GOODLAND HA	515 E. 5TH STREET, GOODLAND, KS 67735–	$124,100.00
GREENLEAF HA	300 HILLCREST LANE, GREENLEAF, KS 66943–	$84,000.00
HALSTEAD HA	815 WEST 6TH STREET, HALSTEAD, KS 67056–	$329,000.00
HAYS HA	1709 SUNSET TRAIL, HAYS, KS 67601–	$90,000.00
HOWARD HA	134 E. WASHINGTON, HOWARD, KS 67349–0386	$76,400.00
HUMBOLDT HA	410 SOUTH 9TH, HUMBOLDT, KS 66748–	$30,000.00
IOLA HA	217 NORTH WASHINGTON, IOLA, KS 66749–	$105,000.00
LEBANON HA	1225 MAPLE LANE, LEBANON, KS 65536–0000	$500,000.00
LIBERAL HA	1401 NORTH NEW YORK AVENUE, LIBERAL, KS 67901–2764	$95,000.00
LURAY HA	201 NORTH MAIN, LURAY, KS 67649–	$55,000.00
MANKATO HA	525 NORTH CLINTON, MANKATO, KS 66956–	$55,647.00
NICODEMUS HA	RURAL ROUTE 2, BOX 135-O, NICODEMUS, KS 67625–	$25,500.00
NORTH NEWTON HA	PO BOX 377, NORTH NEWTON, KS 67117–0377	$51,488.00
NORTON HA	213 HORACE GREELEY AVE., NORTON, KS 67654–	$30,000.00
OLATHE HA	300 NORTH CHESTNUT, OLATHE, KS 66061–	$69,830.00
PAOLA HA	310 S IRON, PAOLA, KS 66071–	$54,500.00
PARSONS HA	1900 BELMONT, PARSONS, KS 67357–	$250,307.00
PLEASANTON HA	902 PALM, PLEASANTON, KS 66075–	$211,000.00
RUSSELL HA	330 W. 4TH ST., RUSSELL, KS 67665–	$21,600.00
SALINA HA	469 SOUTH 5TH STREET, SALINA, KS 67402–	$200,000.00
SENECA HA	504 EDWARDS STREET, SENECA, KS 66538–	$80,000.00
ST. FRANCIS HA	200 N. ASH, ST. FRANCIS, KS 67756–	$17,500.00
WAMEGO HA	1201 CRYSLER DR., WAMEGO, KS 66547–	$112,000.00
WASHINGTON HA	350 WASHINGTON ST., WASHINGTON, KS 66963–	$107,000.00
HA OF BARBOURVILLE	P. O. BOX 69, BARBOURVILLE, KY 40906–	$250,000.00
HA OF BARDSTOWN	513 WEST BROADWAY, BARDSTOWN, KY 40004	$140,000.00
HA OF BEATTYVILLE	227 BOONE AVENUE, #31, BEATTYVILLE, KY 41311	$150,000.00
HA OF CADIZ	P.O. BOX 830, CADIZ, KY 42211–0830	$110,000.00
HA OF CARROLLTON	P.O. BOX 305, CARROLLTON, KY 41008	$505,000.00
HA OF CATLETTSBURG	210 24TH ST., CATLETTSBURG, KY 41129	$900,000.00
HA OF COLUMBIA	P.O. BOX 205/120 CARRIE BOLIN, COLUMBIA, KY 42728	$300,000.00
HA OF CORBIN	1336 MADISON STREET, CORBIN, KY 40702	$600,000.00
HA OF CUMBERLAND	178 RUSSELL DRIVE, CUMBERLAND, KY 40823	$520,000.00
HA OF LYON CTY	P.O. BOX 190/425 LINDEN AVENUE, EDDYVILLE, KY 42038	$200,000.00
HA OF FALMOUTH	412 BEECH STREET, FALMOUTH, KY 41040	$119,340.00
HA OF FLEMINGSBURG	142 CIRCLE DRIVE, FLEMINGSBURG, KY 41041	$25,000.00
HA FRANKFT	590 WALTER TODD DRIVE, FRANKFORT, KY 40601–0000	$779,215.00
HA OF FRANKLIN	1301 CRESTMORE DRIVE, FRANKLIN, KY 42134	$527,000.00
HA OF FULTON	200 N. HIGHLAND DR., FULTON, KY 42041	$325,000.00
HA OF GREENVILLE	613 REYNOLDS DRIVE, GREENVILLE, KY 42345	$285,000.00
HA OF TODD CTY	P.O. BOX 69, GUTHRIE, KY 42234	$100,000.00
HA OF HARLAN	P.O. BOX 855, HARLAN, KY 40831	$365,000.00
HA OF HODGENVILLE	501 MIAMI COURT, HODGENVILLE, KY 42748	$200,000.00
HA OF STANTON	P.O. BOX 132, IRVINE, KY 40336	$200,000.00
HA OF IRVINE	200 WALLACE COURT, IRVINE, KY 40336	$756,000.00
HA OF IRVINGTON	BOX 399/HILLVIEW HOMES, IRVINGTON, KY 40146	$366,000.00
HA OF LANCASTER	P.O. BOX 207/109 KINNAIRD AVENUE, LANCASTER, KY 40444	$230,000.00
HA LEBANON	100 SUNSET TERRACE, LEBANON, KY 40033	$1,062,000.00
HA OF LONDON	100 SCOTT STREET, LONDON, KY 40741	$800,000.00
HA LAWRENCE	ROUTE 6, RAY WILLIAMS VILLA, #200, LOUISA, KY 41230–0000	$100,000.00
HA OF JEFFERSON CTY	801 VINE STREET, LOUISVILLE, KY 40204	$288,000.00
HA MADISONVILLE	211 PRIDE AVENUE, MADISONVILLE, KY 42431–0000	$700,000.00
HA OF MARTIN	P.O. BOX 806, MARTIN, KY 41649	$100,000.00
HA MAYFIELD	P.O. BOX 474/312 BROOKSIDE DRIVE, MAYFIELD, KY 42066–0000	$400,000.00
HA OF MORGANTOWN	P. O. BOX 628/300 KENT MANOR DRIVE, MORGANTOWN, KY 42261	$550,000.00

RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
HA OF MURRAY	716 NASH DRIVE, MURRAY, KY 42071	$248,000.00
HA OF PARIS	P.O. BOX 468, PARIS. KY 40361	$358,000.00
HA OF PINEVILLE	911 ALABAMA AVENUE, PINEVILLE, KY 40977	$200,000.00
HA FLOYD CTY.	36 BLAINE HALL STREET, APT. 37, PRESTONSBURG, KY 41653–	$200,000.00
HA OF PRINCETON	100 HILLVIEW COURT, PRINCETON, KY 42445	$50,000.00
HA OF RADCLIFF	P. O. BOX 755, RADCLIFF, KY 40160	$100,000.00
HA OF RUSSELLVILLE	940 HICKS STREET, RUSSELLVILLE, KY 42276	235,000.00
H A SOMERSET	P.O. BOX 449, SOMERSET, KY 42502	$445,000.00
HA OF STANFORD	100 LACY STREET STANFORD, KY 40484	276,000.00
HA OF WILLIAMSBURG	600 BRUSH ARBOR APARTMENTS, WILLIAMSBURG, KY 40769	400,000.00
HA OF THE TOWN OF ARCADIA	P.O. BOX 210, ARCADIA, LA 71001–0210	1,263,336.00
HA OF THE TOWN OF BASILE	P.O. BOX 820, BASILE, LA 70515–0820	107,290.00
HA OF ST. CHARLES PARISH	P O BOX 448, BOUTTE, LA 70039–0000	277,961.00
HA OF THE PARISH OF CALDWELL	729 ALVIN STREET, COLUMBIA, LA 71418–0000	50,904.00
HA OF THE TOWN OF COTTONPORT	426 JACOB DRIVE, COTTONPORT, LA 71327	514,320.00
HA OF THE CITY OF DENHAM SPRINGS.	P O BOX 910, DENHAM SPRINGS, LA 70727–0910	339,000.00
HA OF THE CITY OF EUNICE	P.O. BOX 224, EUNICE, LA 70535–0224	387,680.00
HA OF FERRIDAY	3001 HIGHWAY 15, FERRIDAY, LA 71334	296,202.00
HA OF GRANT PARISH	P O BOX 10, GEORGETOWN, LA 71432–0000	45,500.00
HA OF THE TOWN OF GRAMBLING	P O BOX 626, GRAMBLING, LA 71245–0000	580,405.00
HA OF SOUTH LANDRY	P.O. DRAWER E, GRAND COTEAU, LA 70541	389,860.00
HA OF HOMER	P. O. BOX 547, HOMER, LA 71040–0547	1,118,929.00
HA OF JENA	P.O. BOX 36, JENA, LA 71342–0036	101,003.00
HA OF THE TOWN OF LAKE ARTHUR	P.O. DRAWER R, LAKE ARTHUR, LA 70549	419,772.00
HA OF VERNON PARISH	P O BOX 1247, LEESVILLE, LA 71496–1247	77,500.00
HA OF THE TOWN OF LOGANSPORT	P.O. BOX 470, LOGANSPORT, LA 71049–0470	143,464.00
HA OF THE TOWN OF MAMOU	1016 MAPLE AVENUE, MAMOU, LA 70554–0000	495,181.00
HA OF THE TOWN OF MANSFIELD	600 SCHLEY STREET, MANSFIELD, LA 71052,	1,092,302.00
HA OF THE TOWN OF MARKSVILLE	100 NORTH HILLSIDE D, MARKSVILLE, LA 71351,	581,090.00
HA OF THE TOWN OF PATTERSON	P.O. BOX 329, PATTERSON, LA 70392–0329	213,225.00
HA OF THE TOWN OF RAYVILLE	P.O. BOX 780, RAYVILLE, LA 71269–0780	951,546.00
HA OF THE CITY OF ST. MARTINVILLE.	P.O. BOX 913, ST MARTINVILLE, LA 70582–0913	343,880.00
HA OF THE CITY OF SULPHUR	P O BOX 271, SULPHUR, LA 70664–0271	764,500.00
HA OF VILLE PLATTE	724 NORTH THOMPSON, VILLE PLATTE, LA 70586–	550,933.00
HA OF WINNFIELD	P.O. BOX 1413, WINNFIELD, LA 71483–1413	923,263.00
HA OF THE TOWN OF WINNSBORO	P.O. BOX 267, WINNSBORO, LA 71295–0267	37,800.00
BEVERLY HA	137 (REAR) BRIDGE STREET, BEVERLY, MA 01915–0503	348,500.00
CLINTON HA	58 FITCH ROAD, CLINTON, MA 01510–1899,	226,000.00
DANVERS HA	14 STONE STREET, DANVERS, MA 01923–1899	440,000.00
DEDHAM HA	163 DEDHAM BOULEVARD, DEDHAM, MA 02026–0000	161,200.00
FALMOUTH HA	115 SCRANTON AVENUE, FALMOUTH, MA 02540–3598	259,225.00
FITCHBURG HA	50 DAY STREET, FITCHBURG, MA 01420–0000	380,000.00
FRAMINGHAM HA	1 JOHN J. BRADY DRIVE, FRAMINGHAM, MA 01701–2300	423,000.00
GLOUCESTER HA	99 PROSPECT STREET, GLOUCESTER, MA 01931–1599	155,000.00
HUDSON HA	8 BRIGHAM CIRCLE, HUDSON, MA 01749–0221	216,000.00
BARNSTABLE HA	146 SOUTH STREET, HYANNIS, MA 02601–0000	187,030.00
MEDWAY HA	MAHAN CIRCLE, MEDWAY, MA 02053–2010	127,500.00
METHUEN HA	24 MYSTIC STREET, METHUEN, MA 01844–2468	310,000.00
NEEDHAM HA	28 CAPTAIN ROBERT COOK DR, NEEDHAM, MA 02194–0000	157,500.00
NEWBURYPORT HA	25 TEMPLE STREET, NEWBURYPORT, MA 01950–0000	42,220.00
NEWTON HA	82 LINCOLN STREET, NEWTON HIGHLANDS, MA 02161–0000	789,000.00
NORTH ANDOVER HA	ONE MOREKESKI MEADOWS, NORTH ANDOVER, MA 01845–0373	175,000.00
PEMBROKE HA	KILCOMMONS DRIVE, PEMBROKE, MA 02359–2624	269,457.00
PITTSFIELD HA	65 COLUMBUS AVENUE, PITTSFIELD, MA 01201–0000	390,000.00
REVERE HA	70 COOLEDGE STREET, REVERE, MA 02151–0000	552,428.00
SAUGUS HSNG. AUTHORITY	19 TALBOT STREET, SAUGUS, MA 01906–0000	305,000.00
SHREWSBURY HA	36 NORTH QUINSIGAMOND AV, SHREWSBURY, MA 01545–0000	170,000.00
WAKEFIELD HA	26 CRESCENT STREET, WAKEFIELD, MA 01880–0000	148,000.00
WEBSTER HA	10 GOLDEN HEIGHTS, WEBSTER, MA 01570–0000	492,500.00
WEYMOUTH HA	402 ESSEX STREET, WEYMOUTH, MA 02188–000	210,000.00
WINCHENDON HA	108 IPSWICH DRIVE, WINCHENDON, MA 01475–0000	548,000.00
HA OF CAMBRIDGE	700 WEAVER AVE., CAMBRIDGE, MD 21613–2198	256,400.00
QUEEN ANNE'S CTY HA	P.O. BOX 327, CENTREVILLE, MD 21617–0000	37,000.00
HA OF ALLEGANY CTY	701 FURNACE STREET, CUMBERLAND, MD 21529–0250	122,490.00
HA OF THE TOWN OF EASTON	900 DOVERBROOK, EASTON, MD 21601	143,600.00
ELKTON HA	150 EAST MAIN STREET, ELKTON, MD 21921–0000	169,000.00
HA OF FROSTBURG	MESHACH FROST VILLAGE, FROSTBURG, MD 21532–	130,000.00
GLENARDEN HA	8639 GLENARDEN PARKWAY, GLENARDEN, MD 20801	128,359.00
WASHINGTON CTY. HA	33 WEST WASHINGTON STREET, HAGERSTOWN, MD 21740–0000	154,346.00

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RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
HAVRE DE GRACE HA	101 STANSBURY COURT, HAVRE DE GRACE, MD 21078–0000	62,220.00
CALVERT CTY. HA	P.O. BOX 2509, PRINCE FREDERICK, MD 20678–0000	115,000.00
HA OF THE CITY OF ROCKVILLE	14 MOORE DRIVE, ROCKVILLE, MD 20850–0000	381,040.00
ST. MICHAELS HA	P.O. BOX 296, ST. MICHAELS, MD 21663–0000	93,800.00
AUBURN HA	P O BOX 3037, AUBURN, ME 04212–0000	153,300.00
MOUNT DESERT HA	15 EAGLE LAKE ROAD, BAR HARBOR, ME 04609–0000	98,000.00
BAR HARBOR HA	15 EAGLE LAKE ROAD, BAR HARBOR, ME 04609–0000	225,000.00
BATH HA	80 CONGRESS AVE., BATH, ME 04530–0000	56,800.00
BREWER HA	ONE COLONIAL CIRCLE, BREWER, ME 04412–0000	121,000.00
BRUNSWICK HA	12 STONE STREET, BRUNSWICK, ME 04011–2725	154,000.00
ELLSWORTH HA	WATER STREET, ELLSWORTH, ME 04605–0000	101,000.00
OLD TOWN HA	165 SOUTH MAIN STREET, OLD TOWN, ME 04468–0404	243,100.00
PRESQUE ISLE HA	58 BIRCH STREET, PRESQUE ISLE, ME 04769–0356	138,500.00
SANFORD HA	29 YALE STREET, SANFORD TOWN, ME 04073–0000	209,000.00
SOUTHWEST HARBOR HA	80 MOUNT DESERT STREET, SOUTHWEST HARBOR, ME 04609–0000	110,000.00
TREMONT HA	TREMONT HOUSING AUTHORITY, TREMONT, ME 04609–0028	27,000.00
WESTBROOK HA	30 LIZA HARMON DRIVE, WESTBROOK, ME 04092–4766	9,500.00
WESTBROOK HA	30 LIZA HARMON DRIVE, WESTBROOK, ME 04092–4766	221,095.00
ALBION HGS COMM	507 WEST BROADWELL P.O. BOX 62, ALBION, MI 49224–0000	123,800.00
ALPENA HSNG. COMM	2340 S. FOURTH ST., ALPENA, MI 49707–3027	467,500.00
BARAGA HSNG. COMM	416 MICHIGAN AVENUE, BARAGA, MI 49908–0000	270,000.00
BELDING HSNG. COMM	41 BELHAVEN, BELDING, MI 48809–0000	1,030,000.00
BESSEMER HSNG. COMM	P. O. BOX 46, BESSEMER, MI 49911–0033	155,000.00
BOYNE CITY HSG CM	829 SOUTH PARK STREET, BOYNE CITY, MI 49712–0000	483,000.00
BRONSON HSNG. COMM	P. O. BOX 33, BRONSON, MI 49028,	298,400.00
CADILLAC HSNG. COMM	111 SIMON STREET, CADILLAC, MI 49601–0000	552,700.00
CHARLEVOIX HSNG. COMM	210 W GARFIELD ST, CHARLEVOIX, MI 49720	449,000.00
DOWAGIAC HSNG. COMM	100 CHESTNUT ST., DOWAGIAC, MI 49047–0000	64,000.00
DUNDEE HSNG. COMM	501 RAWSON ROAD, DUNDEE, MI 48131–1073	233,891.00
ECORSE HSNG. COMM	266 HYACINTH STREET, ECORSE, MI 48229–	371,000.00
ESCANABA HSNG. COMM	110 S FIFTH ST, ESCANABA, MI 49829	292,000.00
BAY CTY. HSNG. COMM	798 NORTH PINE ST., ESSEXVILLE, MI 48732–2134	816,000.00
FERNDALE HSNG. COMM	415 WITHINGTON, FERNDALE, MI 48220–0000	1,059,000.00
ROYAL OAK TOWNSHIP HSNG. COMM.	21312 WYOMING AVE, FERNDALE, MI 48220–2125	608,000.00
GLADSTONE HSNG. COMM	217 DAKOTA AVENUE, GLADSTONE, MI 49837	42,000.00
GLADWIN CITY HSNG. COMM	215 SOUTH ANTLER, GLADWIN, MI 48624–2051	353,200.00
GREENVILLE HSNG. COMM	308 EAST OAK STREET, GREENVILLE, MI 48838	674,000.00
HILLSDALE HSNG. COMM	45 N WEST ST, HILLSDALE, MI 49242	291,400.00
IRONWOOD HSNG. COMM	515 EAST VAUGHN ST, IRONWOOD, MI 49938	423,400.00
ISHPEMING HSNG. COMM	111 BLUFF ST, ISHPEMING, MI 49849	25,000.00
KINGSFORD HSNG. COMM	1025 WOODWARD AVE, KINGSFORD, MI 49801	402,000.00
LIVONIA HSNG. COMM	19300 PURLINGBROOK, LIVONIA, MI 48152–1902	466,000.00
MENOMINEE HSNG. COMM	1801 8TH AVENUE, MENOMINEE, MI 49859–0414	461,000.00
MUNISING HS CM 200 CITY PARK DR	MUNISING, MI 49862–1131	381,900.00
NEGAUNEE HSNG. COMM	98 CROIX STREET, NEGAUNEE, MI 49866	640,000.00
NEW HAVEN HSNG. COMM	30100 JOHN RIVERS DR, NEW HAVEN, MI 48048	75,100.00
NILES HSNG. COMM	251 CASS STREET, NILES, MI 49120	600,054.00
PLYMOUTH HSNG. COMM	1160 SHERIDAN, PLYMOUTH, MI 48170–0000	100,000.00
ROCKFORD HSG COMM	59 SOUTH MAIN ST., ROCKFORD, MI 49341–0000	450,600.00
ROMULUS HSNG. COMM	34200 BEVERLY ROAD, ROMULUS, MI 48174–4454	238,000.00
STERLING HEIGHTS HSNG. COMM	40555 UTICA ROAD, STERLING HEIGHTS, MI 48311–8009	600,000.00
WAYNE HSNG. COMM	4001 SOUTH WAYNE ROAD, WAYNE, MI 48184–0000	255,000.00
ALBERT LEA HRA	221 EAST CLARK STREET, ALBERT LEA, MN 56007–2421	75,000.00
DOUGLAS CTY. HRA	715 ELM STREET, SUITE 1060, ALEXANDRIA, MN 56308–0000	18,680.00
HRA OF BEMIDJI	619 AMERICA AVENUE NW, BEMIDJI, MN 56601–0000	417,000.00
ITASCA CTY. HRA	P.O. BOX 355, CALUMET, MN 55716–0355	576,000.00
HRA OF CAMBRIDGE	121 SOUTH FERN STREET, CAMBRIDGE, MN 55008–1454,	232,000.00
HRA OF CROSBY	300 THIRD AVENUE NE, CROSBY, MN 56441-	310,000.00
EDHA OF EAST GRAND FORKS	P.O. BOX 439, EAST GRAND FORKS, MN 56721–0439	158,495.00
CLAY CTY. HRA	116 CENTER AVENUE, EASTDILWORTH, MN 56529–0099	150,000.00
HRA OF ELY	114 NORTH 8TH AVENUE, #111, ELY, MN 55731–	372,000.00
HRA OF FAIRMONT	500 HOME STREET, FAIRMONT, , MN 56031–	771,000.00
HRA OF HUTCHINSON	133 THIRD AVENUE SW, HUTCHINSON, MN 55350–2469	1,018,000.00
HRA OF LAKE BENTON	106 WEST BLUFF ST., #30, LAKE BENTON, MN 56149–1203	334,164.00
HRA OF LONG PRAIRIE	601 CENTRAL AVENUE, LONG PRAIRIE, MN 56347–	1,000,000.00
BLUE EARTH CTY. HRA	P.O. BOX 3368, MANKATO, MN 56002–3368	591,000.00
MANKATO EDA	P.O. BOX 3368, MANKATO, MN 56002–3368	932,000.00
HRA OF CITY OF MELROSE	16 EAST 1ST STREET SOUTH, MELROSE, MN 56352–	675,000.00
HRA OF MONTEVIDEO	501 NORTH FIRST STREET, MONTEVIDEO, MN 56265–1426	1,000,000.00
HRA OF MORRIS	100 SOUTH COLUMBIA AVENUE, MORRIS, MN 56267–0438	165,000.00

RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
HRA OF ST. JAMES	415 ARMSTRONG BOULEVARD NORTH, ST. JAMES, MN 56081–1271	100,000.00
HA OF ST LOUIS PARK	5005 MINNETONKA BLVD., ST. LOUIS PARK, MN 55416–1785	385,000.00
SOUTHEAST MN MULTI-CTY. HRA	134 EAST SECOND STREET, WABASHA, MN 55981–0000	579,000.00
HRA OF WARREN	411 NORTH FOURTH STREET, WARREN, MN 56762–1315	474,000.00
HRA OF WORTHINGTON	819 TENTH STREET, WORTHINGTON, MN 56187–2758	995,000.00
LANAGAN HA	P.O. BOX 396, ANDERSON, MO 64831–0396	31,500.00
ANDERSON HA	P.O. BOX 396, ANDERSON, MO 64831–0396	81,000.00
HA OF THE CITY OF BOONVILLE	506 POWELL COURT, BOONVILLE, MO 65233–0000	118,350.00
BROOKFIELD HA	61 JOYCE PLACE, BROOKFIELD, MO 64628–	15,000.00
BRUNSWICK HA	510 NORTH ADAMS, BRUNSWICK, MO 65236–	200,000.00
CARROLLTON HA	107 N. MONROE, CARROLLTON, MO 64633–1351	315,000.00
CHILLICOTHE HA	320 PARK LANE, CHILLICOTHE, MO 64601–	115,000.00
CLINTON HA	7 BRADSHAW DR., CLINTON, MO 64735–	390,000.00
HA OF THE CITY OF DEXTER	1 JENNINGS LANE, DEXTER, MO 63841–	86,500.00
HA OF THE CITY OF GIDEON	135 HAVEN ST., GIDEON, MO 63848–	175,100.00
HA OF THE CITY OF HAYTI	212 N. 4TH ST., HAYTI, MO 63851–	559,025.00
HIGGINSVILLE HA	419 FAIRGROUND AVE., HIGGINSVILLE, MO 64037–	140,000.00
LEE'S SUMMIT HA	111 SOUTH GRAND, LEE'S SUMMIT, MO 64063–	77,000.00
MARCELINE HA	229 WEST HAUSER, MARCELINE, MO 64658–	401,000.00
MARSHALL HA	275 SOUTH REDMAN, MARSHALL, MO 65340–	200,000.00
MARYVILLE HA	DAVISON SQUARE, MARYVILLE, MO 64468–0000	220,000.00
MOUND CITY HA	801 EVANS CIRCLE DRIVE, MOUND CITY, MO 64470–	133,500.00
HA OF THE CITY OF MOUNTAIN GROVE.	301 WEST FIRST STREET, MOUNTAIN GROVE, MO 65711–0000	44,780.00
NEOSHO HA	321 SOUTH HAMILTON ST., NEOSHO, MO 64850–	209,000.00
NEVADA HA	1117 N. WEST STREET, NEVADA, MO 64772–	220,000.00
NOEL HA	624 JOHNSON DRIVE, NOEL, MO 64854–0305	52,200.00
OSCEOLA HA	102 GOODRICH DR., OSCEOLA, MO 64776–	232,000.00
PLATTSBURG HA	107 BROADWAY, PLATTSBURG, MO 64477–0371	198,400.00
HA OF THE CITY OF POTOSI	103 W. CITADEL POTOSI, MO 63664–	126,685.00
HA OF THE CITY OF ROLLA	1440 FORUM DRIVE, ROLLA, MO 65401–2557	132,690.00
SEDALIA HA	400 ROBINSON COURT, SEDALIA, MO 65301–	550,000.00
SMITHVILLE HA	161 COUNTY ROAD F, SMITHVILLE, MO 64089–	160,000.00
HA OF THE CITY OF HILLSDALE	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121–	105,900.00
HA OF THE CITY OF PAGEDALE	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121–	269,900.00
TARKIO HA	218 SOUTH MAPLE ST., TARKIO, MO 64491–	43,000.00
HA OF THE CITY OF V&ALIA	1001 SOUTH MAPLE, VANDALIA, MO 63382–2403	36,000.00
HA OF THE CITY OF WELLSTON	1584 OGDEN AVE., WELLSTON, MO 63133–2413	1,609,550.00
THE HA OF THE CITY OF ABERDEEN	P.O. BOX 69, ABERDEEN, MS 39730	1,000,000.00
THE HA OF THE CITY OF BALDWYN	P.O. BOX 307, BALDWYN, MS 38824–0307	437,021.00
THE HA OF THE CITY OF WALNUT	P.O. BOX 1329, CORINTH, MS 38835–1329	600,000.00
THE HA OF THE CITY OF FOREST	518 FOURTH AVENUE NORTH, FOREST, MS 39074–	73,528.00
THE HA OF THE CITY OF HOLLY	P.O. BOX 550, HOLLY SPRINGS, MS 38635	18,000.00
THE HA OF THE CITY OF ITTA BENA	P.O. BOX 682, ITTA BENA, MS 38941	47,410.00
MISSISSIPPI REG. HA NO. VI	P.O. DRAWER 8746, JACKSON, MS 39284–8746	80,000.00
THE HA OF THE CITY OF LUMBERTON.	P.O. BOX 192, LUMBERTON, MS 39455	96,505.00
THE HA OF THE CITY OF MOUND BAYOU.	P.O. BOX 565, MOUND BAYOU, MS 38762–0565	624,767.00
THE HA OF THE CITY OF WAVELAND	P.O. BOX 90, WAVELAND, MS 39576	1,062,979.00
SPRINGSTHE HA OF THE CITY OF WEST POINT.	P.O. BOX 158, WEST POINT, MS 39773	800,000.00
THE HA OF THE CITY OF WINONA	P.O. BOX 127, WINONA, MS 38967–0127	199,550.00
MISSOULA HA	1319 E. BROADWAY, MISSOULA, MT 59802–0000	274,393.00
HA ALBEMARLE	P.O. DRAWER 1367, ALBEMARLE, NC 28002	101,100.00
ANDREWS HA	101–C WHITAKER ST., ANDREWS, NC 28901	246,000.00
HA ASHEBORO	P.O. BOX 609, ASHEBORO, NC 27204–0609	100,000.00
COMM. DEV.TOWN OF AYDEN, DEPT. OF HSNG..	P.O. BOX 482, AYDEN, NC 28513	200,500.00
HA OF THE TOWN OF BEAUFT	716 MULBERRY ST., BEAUFORT, NC 28516	250,000.00
BELMONT HA	P.O. BOX 984, BELMONT, NC 28012	147,750.00
BENSON HA	P.O. BOX 26, BENSON, NC 27504	205,995.00
HA BLADENBORO	P.O. BOX 339, BLADENBORO, NC 28320	165,000.00
CLARKTON HA	P.O. BOX 339, BLADENBORO, NC 28320	160,000.00
HA NORTHWESTERN REG.	P.O. BOX 2510, BOONE, NC 28607–2510	200,000.00
CITY OF CONCORD	P.O. BOX 308, CONCORD, NC 28025–0000	189,300.00
DUNN HA	P.O. BOX 1028, DUNN, NC 28334	224,950.00
TOWN OF EDENTON, DEPT. OF HSNG..	P.O. BOX 28, EDENTON, NC 27932	164,500.00
ELIZABETHTOWN HA	P.O. BOX 716, ELIZABETHTOWN, NC 28337	331,235.00
FAIRMONT HA	P.O. BOX 661, FAIRMONT, NC 28340	159,028.00

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RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
FARMVILLE HA	P.O. BOX 282, FARMVILLE, NC 27828	200,000.00
FOREST CITY HA	A204 SPRUCE ST., FOREST CITY, NC 28043	230,415.00
HAMLET HA	P.O. BOX 1188, HAMLET, NC 28345	177,500.00
HERTFORD HA	104 WHITE STREET, HERTFORD, NC 27944	235,000.00
LENOIR HA	P.O. BOX 1526, LENOIR, NC 28645	192,400.00
MADISON HA	P.O. BOX 9, MADISON, NC 27025	114,000.00
MARS HILL HA	P.O. BOX 186, MARS HILL, NC 28754	236,000.00
MARSHALL HA	P.O. BOX 176, MARSHALL, NC 28753	187,100.00
MAXTON HA	P.O. BOX 126, MAXTON, NC 28364	253,200.00
HA MONROE	P.O. BOX 805, MONROE, NC 28110–0000	248,200.00
MOORESVILLE HA	P.O. BOX 1087, MOORESVILLE, NC 28115	63,300.00
MOUNT GILEAD HA	P.O. BOX 158, MOUNT GILEAD, NC 27306	150,000.00
CITY OF MOUNT HOLLY, DEPT. OF HSNG..	P.O. BOX 465, MOUNT HOLLY, NC 28120	143,775.00
HSNG. PROGRAMS OF THE TOWN OF MURPHY.	P.O. BOX 357, MURPHY, NC 28906	330,100.00
NORTH WILKESBORO DEPT. OF HSNG. &.	P.O. BOX 1373, NORTH WILKESBORO, NC 28659	150,000.00
PEMBROKE HA	P.O. DRAWER 910, PEMBROKE, NC 28372	195,890.00
THE NEW RANDLEMAN HA	606 SOUTH MAIN ST., RANDLEMAN, NC 27317	188,000.00
HA REIDSVILLE	928 JEFFREY COURT, REIDSVILLE, NC 27320–0509	143,900.00
AHOSKIE HA	P.O. BOX 1195, ROANOKE RAPIDS, NC 27870	132,000.00
ROBERSONVILLE HA	P.O. BOX 637, ROBERSONVILLE, NC 27871	200,000.00
HA ROCKINGHAM	P.O. BOX 160, ROCKINGHAM, NC 28379–0000	243,400.00
ROXBORO HA	P.O. BOX 996, ROXBORO, NC 27573	203,000.00
SELMA HA	711 LIZZIE ST., SELMA, NC 27576	200,000.00
SOUTHERN PINES HA	801 S. MECHANIC ST., SOUTHERN PINES, NC 28387	241,000.00
SPRUCE PINE HA	P.O. BOX 645, SPRUCE PINE, NC 28777	209,725.00
PRINCEVILLE HA	51 PIONEER COURT, TARBORO, NC 27886	167,050.00
REDEV. COMM TARBORO	P.O. BOX 1144, TARBORO, NC 27886–0000	226,775.00
TROY HA	201 STANLEY ST., TROY, NC 27371	255,200.00
VALDESE HA	P.O. BOX 310, VALDESE, NC 28690	200,000.00
WHITEVILLE HA	504 BURKHEAD ST., WHITEVILLE, NC 28472	347,320.00
RAMSEY CTY. HA	BOX 691, DEVILS LAKE, ND 58301–0000	78,280.00
AINSWORTH HA	P.O. BOX 153, AINSWORTH, NE 69210–0153	89,000.00
ALBION HA	827 W. COLUMBIA, ALBION, NE 68620–1575	52,500.00
ALLIANCE HA	300 SOUTH POTASH #27, ALLIANCE, NE 69301–0000	21,500.00
ALMA HA	P.O. BOX 1036, ALMA, NE 68920–1036	25,900.00
AURORA HA	1505 P ST., #1003, AURORA, NE 68818–1366	108,000.00
BURWELL HA	P.O. BOX 490, BURWELL, NE 68823–0490	43,000.00
CAMBRIDGE HA	P.O. BOX 484, CAMBRIDGE, NE 69022–0484	108,000.00
CLARKSON HA	P.O. BOX 377, CLARKSON, NE 68629–0377	37,700.00
COZAD HA	421 WEST 9TH STREET, COZAD, NE 69130–0000	18,000.00
EMERSON HA	207 E. FIFTH ST., EMERSON, NE 68733–3608	60,000.00
FAIRMONT HA	P.O. BOX 158, FAIRMONT, NE 68354–0158	283,500.00
FRIEND HA	1027 SECOND ST., FRIEND, NE 68359–1145	83,050.00
SCOTTS BLUFF HA	89A WOODLEY PARK ROAD, GERING, NE 69341–0000	224,163.00
GIBBON HA	P.O. BOX 39, GIBBON, NE 68840–0039	216,012.00
GOTHENBURG HAY	810 20TH STREET, GOTHENBURG, NE 69138–0035	49,500.00
KEARNEY HA	2715 AVENUE I, KEARNEY, NE 68847–3769	151,700.00
NEBRASKA CITY HA	200 NORTH THIRD STREET, NEBRASKA CITY, NE 68410–2553	198,600.00
NELSON HA	P.O. BOX 288, NELSON, NE 68961–0288	68,000.00
NEWMAN GROVE HA	P.O. BOX 100, NEWMAN GROVE, NE 68758–0100	63,800.00
NIOBRARA HA	P.O. BOX 198, NIOBRARA, NE 68760–0198	49,500.00
DOUGLAS CTY. HA	5404 NORTH 107TH PLAZA, OMAHA, NE 68134–1100	221,657.00
ORD HA	PARKVIEW VILLAGE, ORD, NE 68862	322,726.00
PAWNEE CITY HA	418 11TH ST., PAWNEE CITY, NE 68420–	24,500.00
PLATTSMOUTH HA	801 WASHINGTON AVE., PLATTSMOUTH, NE 68048–1255	20,500.00
RAVENNA HA	1011 GRAND AVE., RAVENNA, NE 68869–1015	71,300.00
RED CLOUD HA	P.O. BOX 247, RED CLOUD, NE 68970–0247	93,000.00
ST. PAUL HA	P.O. BOX 86, ST. PAUL, NE 68873–0086	7,700.00
STANTON HA	P.O. BOX 658, STANTON, NE 68779–0658	51,500.00
SUTHERLAND HA	P.O. BOX 247, SUTHERLAND, NE 69165–0247	32,000.00
SYRACUSE HA	P.O. BOX 388, SYRACUSE, NE 68446–0388	107,500.00
TECUMSEH HA	BOX 30, TECUMSEH, NE 68450–	132,150.00
VERDIGRE HA	P.O. BOX 10, VERDIGRE, NE 68783–0010	66,500.00
WILBER HA	P.O. BOX 577, WILBER, NE 68465–0577	18,485.00
WOOD RIVER HA	P.O. BOX 337, WOOD RIVER, NE 68883–0337	68,000.00
YORK HA	215 E 6TH, YORK, NE 68467–0000	145,000.00
EXETER HA	277 WATER STREET, EXETER, NH 03833–1719	165,500.00
KEENE HA	105 CASTLE STREET, KEENE, NH 03431–3334	310,259.00

RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
NEWMARKET HA	34 GORDON AVENUE, NEWMARKET, NH 03857–0000	175,000.00
ROCHESTER HA	WELLSWEEP ACRES, ROCHESTER, NH 03867–2357	253,000.00
SOMERSWORTH HA	9 BARTLETT AVENUE, SOMERSWORTH, NH 03878–0031	177,000.00
SOMERSWORTH HA	9 BARTLETT AVENUE, SOMERSWORTH, NH 03878–0031	235,000.00
LEBANON HA	31 RIVERSIDE CIRCLE, WEST LEBANON, NH 03784–5475	143,000.00
BEVERLY HA	100 MAGNOLIA ST., BEVERLY, NJ 08010–1158	939,257.00
BOONTON HA	125 CHESTNUT STREET, BOONTON, NJ 07005–3761	450,000.00
BURLINGTON HA	800 WALNUT STREET, BURLINGTON, NJ 08016	65,000.00
COLLINGSWOOD HA	30 WASHINGTON AVE., COLLINGSWOOD, NJ 08108–1545	500,000.00
BOROUGH OF EDGEWATER HA	300 UNDERCLIFF AVENUE, EDGEWATER, NJ 07002–0000	100,000.00
EDISON HA	BUILDING #1—WILLARD DUNHAM DRIVE, EDISON NJ 08837–3570	713,344.00
FLORENCE HA	620 W. THIRD & EYRE ST., FLORENCE, NJ 08518–1122	458,500.00
FT LEE HA	1403 TERESA DRIVE, FORT LEE, NJ 07024–2102	56,000.00
GLASSBORO HA	737 LINCOLN BLVD PO BOX 563, GLASSBORO, NJ 08028–0563	500,000.00
GLOUCESTER CITY HA	101 MARKET ST., GLOUCESTER CITY, NJ 08030–2047	132,335.00
HIGHLAND PARK HA	242 SOUTH SIXTH AVENUE, HIGHLAND PARK, NJ 08904–2824	195,500.00
HIGHLANDS HA	215 SHORE DR., HIGHLANDS, NJ 07732–2122	245,820.00
HIGHTSTOWN HA	131 ROGERS AVE., HIGHTSTOWN, NJ 08520–3725	276,850.00
KEANSBURG HA	25 HANCOCK STREET, KEANSBURG, NJ 07734–1456	448,000.00
LINDEN HA	1601 DILL AVE., LINDEN, NJ 07036–1723	355,000.00
MIDDLETOWN HA	2 OAKDALE DRIVE—TOMASO PLAZA, MIDDLETOWN, NJ 07748–1618	97,595.00
BUENA HA	600 CENTRAL AVE., MINOTOLA, NJ 08341	208,000.00
MORRIS CTY. HA	99 KETCH ROAD, MORRISTOWN, NJ 07960–0000	241,000.00
NEWTON HA	32 LIBERTY ST., NEWTON, NJ 07860–1723	188,175.00
PENNS GROVE HA	BUILDING #1—PENN TOWERS—SOUTH BROAD ST., PENNS GROVE, NJ 08069–1327.	186,153.00
PRINCETON HA	50 CLAY ST., PRINCETON, NJ 08542–3108	225,000.00
RED BANK HA	P.O. BOX 2158 EVERGREEN TERRACE, RED BANK, NJ 07701–5234	151,100.00
WEEHAWKEN HA	525 GREGORY AVENUE, WEEHAWKEN, NJ 07087–5713	190,000.00
WILDWOOD HA	P.O. BOX 1379, WILDWOOD, NJ 08260–6135	133,400.00
HA OF THE CITY OF ALAMOGORDO	P.O. BOX 336, ALAMOGORDO, NM 88310–	294,465.00
HA OF THE CITY OF ARTESIA	P.O. BOX 1326, ARTESIA, NM 88210–	348,650.00
HA OF THE TOWN OF BAYARD	P.O. BOX 768, BAYARD, NM 88023–	214,500.00
HA OF THE VILLAGE OF CHAMA	P.O. BOX 695, CHAMA, NM 87520–0695	41,000.00
HA OF THE VILLAGE OF CIMARRON	P.O. BOX 355, CIMARRON, NM 87714–0355	105,270.00
HA OF THE VILLAGE OF CUBA	P.O. BOX 2230, CUBA, NM 87013–	39,204.00
HA OF THE CTY. OF RIO ARRIBA	P.O. BOX 310, ESPANOLA, NM 87532–	74,580.00
HA OF THE CITY OF GRANTS	P.O. BOX 357, GRANTS, NM 87020	106,100.00
HA OF THE CITY OF LORDSBURG	1001 AVENIDA DEL SOL, LORDSBURG, NM 88045	71,000.00
HA OF THE CITY OF LOVINGTON	P.O. BOX 785, LOVINGTON, NM 88260–0785	95,700.00
HA OF THE VILLAGE OF SANTA CLARA.	P.O. BOX 275, SANTA CLARA, NM 88026–	59,490.00
HA OF THE CTY. OF SANTA FE	52 CAMINO DE JACOBO, SANTA FE, NM 87501–	220,000.00
REGION V HA	P.O. BOX 3015, SILVER CITY, NM 88062–	62,200.00
HA OF THE TOWN OF SPRINGER	P.O. BOX 207, SPRINGER, NM 87747–	335,720.00
HA OF THE CTY. OF TAOS	BOX 4239, TAOS, NM 87571	110,000.00
HA OF THE CTY. OF TAOS	BOX 4239, TAOS, NM 87571	708,214.00
HA OF THE TOWN OF TAOS	BOX 5201, TAOS, NM 87571	289,850.00
HA OF THE CITY OF TRUTH OR CONSEQUENCES.	108 SOUTH CEDAR STREET, TRUTH OR CONSEQUENCES, NM 87901	798,710.00
ALBANY HA	4 LINCOLN SQUARE, ALBANY, NY 12202–1638	260,300.00
HA OF BEACON	ONE FORRESTAL HEIGHTS, BEACON, NY 12508–3701	317,400.00
WEST CARTHAGE HA	63 MADISON ST., CARTHAGE, NY 13619–1161	232,336.00
CATSKILL HA	P.O. BOX 362, CATSKILL, NY 12414–0362	317,140.00
DUNKIRK HA	15 N. MAIN ST., DUNKIRK, NY 14048–1731	1,119,690.00
HA OF ELLENVILLE	10 EASTWOOD AVE., ELLENVILLE, NY 12428–1228	198,808.00
GLENS FALLS HA	STICHMAN TOWERS, GLENS FALLS, NY 12801–4515	490,600.00
VILLAGE OF GREAT NECK HA	700 MIDDLE NECK RD., GREAT NECK, NY 11023–1242	172,800.00
HA OF NORTH HEMPSTEAD	POND HILL RD., GREAT NECK, NY 11020–1599	204,000.00
HERKIMER HA	315 N. PROSPECT ST., HERKIMER, NY 13350–1952	385,350.00
HORNELL HA	87 EAST WASHINGTON ST. HORNELL, NY 14843–1643	182,775.00
HUDSON HA	41 NORTH SECOND ST., HUDSON, NY 12534–2415	908,510.00
TOWN OF HUNTINGTON HA	1–A LOWNDES AVENUE, HUNTINGTON STATION, NY 11746–1223	120,000.00
JAMESTOWN HA	110 WEST THIRD ST., JAMESTOWN, NY 14701–5199	798,540.00
KINGSTON HA	132 RONDOUT DR., KINGSTON, NY 12401–5513	157,900.00
MECHANICVILLE HA	HARRIS AVE., MECHANICVILLE, NY 12118–2210	64,800.00
VILLAGE OF KIRYAS JOEL HA	51 FOREST ROAD, MONROE, NY 10950–0566	84,000.00
HA OF MONTICELLO	76 EVERGREEN DR., MONTICELLO, NY 12701–1630	178,900.00
MOUNT KISCO HA	200 CARPENTER AVE., MOUNT KISCO, NY 10549–1602	212,470.00
HA OF NEWBURGH	40 WALSH RD., NEWBURGH, NY 12550–3601	568,000.00
PORT JERVIS HA	39 PENNSYLVANIA AVE., PORT JERVIS, NY 12771–2132	157,000.00

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Applicant name	Address	Amount funded
ROCKVILLE CENTRE HA	160 NORTH CENTRE AVE., ROCKVILLE CENTRE, NY 11570–3979	98,000.00
NORTH TARRYTOWN HA	126 VALLEY ST., SLEEPY HOLLOW, NY 10591–2826	146,020.00
VILLAGE OF SPRING VALLEY HA	76 GESNER DR., SPRING VALLEY, NY 10977–3998	279,000.00
TOWN OF RAMAPO HA	PONDVIEW DRIVE, SUFFERN, NY 10901–6599	128,000.00
TARRYTOWN MUNICIPAL HA	50 WHITE ST., TARRYTOWN, NY 10591–3621	169,100.00
TUCKAHOE HA	4 UNION PL., TUCKAHOE, NY 10707–4236	592,900.00
TUPPER LAKE HA	IVY TERRACE, TUPPER LAKE, NY 12986–1419	679,350.00
HA OF GREENBURGH	9 MAPLE ST., WHITE PLAINS, NY 10603–2623	619,262.00
WOODRIDGE HA	P.O. BOX 322, WOODRIDGE, NY 12789–0322	133,503.00
ATHENS MET HA	490 RICHLAND AVENUE, ATHENS, OH 45701–0000	220,000.00
CLERMONT MET.HA.	P.O. BOX 151–65 S. MARKET STREET, BATAVIA, OH 45103–0000	366,594.00
LOGAN CTY. MHA	105W HIGH ST, BELLEFONTAINE, OH 43311–0000	240,000.00
HARRISON METRO HA	P.O. BOX 146, CADIZ, OH 43907–0000	163,000.00
NOBLE METRO HA	P.O. BOX 744, CAMBRIDGE, OH 43725–0000	191,545.00
CAMBRIDGE METRO HSG. AUTH.	P.O. BOX 744, CAMBRIDGE, OH 43725–0744	210,000.00
GEAUGA METRO HA	385 CENTER ST., CHARDON, OH 44024–0000	604,750.00
PICKAWAY METRO HA.	176 RUSTIC DRIVE, CIRCLEVILLE, OH 43113–0000	235,000.00
COSHOCTON MET.HA	P.O. BOX #721, COSHOCTON, OH 43812–0000	260,000.00
PERRY CTY. METRO. HSG. AUTHORITY.	SENIOR CITIZENS BUILDING, CROOKSVILLE, OH 43731–0000	240,000.00
SANDUSKY METRO HA	1358 MOSSER DRIVE, FREMONT, OH 43420–0000	186,641.00
BROWN METRO HA	200 S GREEN STREET, GEORGETOWN, OH 45121–0000	138,760.00
FAIRFIELD MHA	1506 AMHERST PL, LANCASTER, OH 43130–0000	240,000.00
WARREN MET.HA	P.O. BOX 63, LEBANON, OH 45036–0000	158,213.00
ALLEN MHA 160001003A/C#	600 SOUTH MAIN ST., LIMA, OH 45804–0000	240,000.00
HOCKING MET HA	50 SOUTH HIGH STREET, LOGAN, OH 43138–0000	220,000.00
LONDON METRO HA	179 S. MAIN STREET, LONDON, OH 43140	220,000.00
ADAMS MET.HA	900 CEMETERY ST, MANCHESTER, OH 45144–0000	219,800.00
LICKING METRO HA	P.O. BOX 1029, MANSFIELD, OH 44901–0000	250,000.00
MORGAN MET HA	4512 NORTH STATE ROUTE #376 NW, MCCONNELSVILLE, OH 43756–0000	270,000.00
MEDINA METRO HA	860 WALTER RD., MEDINA, OH 44256–0000	241,000.00
LAKE METRO HA	189 FIRST STREET, PAINESVILLE, OH 44077–0000	360,500.00
PIKE METROPLITAN HA	2626 SHYVILLE ROAD, PIKETON, OH, 45661–0000	250,000.00
MIAMI MET. HA	1695 TROY-SIDNEY ROAD, TROY, OH, 45373–0000	329,519.00
JACKSON CTY. HA	P.O. BOX #619, WELLSTON, OH, 45692–0000	250,000.00
CLINTON METRO HA	478 THORNE AVENUE, WILMINGTON, OH, 45177–0000	202,280.00
WAYNE METRO HA	200 S MARKET ST, WOOSTER, OH, 44691–0000	96,000.00
HA OF THE CITY OF ANADARKO	615 E. TEXAS ST., ANADARKO, OK, 73005–	350,000.00
HA OF THE TOWN OF ANTLERS	105 NW 3RD ST., ANTLERS, OK, 74523–	127,560.00
HA OF THE TOWN OF APACHE	P.O. BOX 337, APACHE, OK, 73006–	33,530.00
HA OF THE CITY OF ATOKA	P.O. BOX 1050, ATOKA, OK, 74525–	303,115.00
HA OF THE CITY OF BEGGS	P.O. BOX 569, BEGGS, OK, 74421–	100,000.00
HA OF THE TOWN OF CACHE	P.O. BOX 582, CACHE, OK, 73527–	50,000.00
HA OF THE TOWN OF CHEYENNE	P.O. BOX 327, CHEYENNE, OK, 73628–	50,000.00
HA OF THE CITY OF COALGATE	P.O. BOX 469, COALGATE, OK, 54538–	468,083.00
DEL CITY HA	4613 TINKER DIAGONAL, DEL CITY, OK, 73115–	150,000.00
HA OF THE CITY OF DRUMRIGHT	P.O. BOX 1242, DRUMRIGHT, OK, 74030–	65,550.00
FT. GIBSON HA	P.O. BOX 426, FORT GIBSON, OK, 74434–	106,110.00
HA OF THE CITY OF HARTSHORNE	615 WICHITA AVE., HARTSHORNE, OK, 74547–	87,800.00
HA OF THE CITY OF HAILEYVILLE	615 WICHITA AVE., HARTSHORNE, OK, 74547–	86,785.00
HA OF THE CITY OF HOBART	329 S. LINCOLN ST., HOBART, OK, 73651–	324,820.00
HA OF THE CITY OF HOLDENVILLE	301 CRESTVIEW, HOLDENVILLE, OK, 74848–	244,617.00
HUGO HA	P.O. BOX 727, HUGO, OK, 74743–	146,250.00
HA OF THE CITY OF IDABEL	P.O. BOX 838, IDABEL, OK, 74745–0838	1,091,441.00
HA OF THE CITY OF KONAWA	P.O. BOX 186, KONAWA, OK, 74849–	50,000.00
HA OF THE CITY OF KREBS	P.O. BOX 1439, KREBS, OK, 74554–	76,532.00
HA OF THE CADDO ELECTRIC COOPERATIVE.	RT. 1, BOX 3C, LOOKEBA, OK, 73053–	12,250.00
MIAMI HA	P.O. BOX 848, MIAMI, OK, 74355–	151,460.00
NORMAN HA	700 NORTH BERRY RD, NORMAN, OK, 73069–	255,599.00
HA OF THE CITY OF OILTON	P.O. BOX 729, OILTON, OK, 74052–	394,860.00
HA OF THE CITY OF PAULS VALLEY	P.O. BOX 874, PAULS VALLEY, OK, 73075–	56,600.00
HA OF THE TOWN OF ROOSEVELT	P.O. BOX 177, ROOSEVELT, OK, 73564–	80,000.00
HA OF THE TOWN OF RYAN	P.O. BOX 147, RYAN, OK, 73565–	329,045.00
SEMINOLE HA	P.O. BOX 1253, SEMINOLE, OK, 74818–	176,263.00
HA OF THE CITY OF STIGLER	200 SE B ST., STIGLER, OK, 74462–	425,316.00
HA OF THE CITY OF STILLWATER	807 S. LOWRY, STILLWATER , OK, 74074–	188,582.00
HA OF THE TOWN OF TEMPLE	P.O. BOX 307, TEMPLE, OK, 73568–	116,150.00
HA OF THE KIAMICHI ELECTRIC COOPERATIVE.	HC 64BOX 4060, KUSKAHOMA, OK, 74502–	859,912.00
HA OF THE CITY OF WALTERS	P.O. BOX 452, WALTERS, OK, 73572–	32,500.00

RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
HA OF THE CITY OF WAURIKA	P.O. BOX 307, WAURIKA, OK, 73573–	25,000.00
HA OF THE CITY OF WYNNEWOOD	806 E. COLBERT ST., WYNNEWOOD, OK, 73098–	53,400.00
HA OF JACKSON CTY	2231 TABLE ROCK ROAD, MEDFORD, OR, 97501–	288,080.00
H.A. OF LINCOLN CTY	P.O. BOX 1470, NEWPORT, OR, 97365–	460,000.00
CENTRAL ORE REG HA	2445 S.W. CANAL BOULEVARD, REDMOND, OR, 97756–	700,000.00
CENTRE CTY. HA	602 E. HOWARD STREET, BELLEFONTE, PA, 16823–0000	127,102.00
BRADFORD CITY HA	2 BUSHNELL STREET, BRADFORD, PA, 16701–0000	1,023,450.00
CUMBERLAND CTY. HA	114 NORTH HANOVER STREET, CARLISLE, PA, 17013–2445	142,000.00
CLEARFIELD CTY. HA	222 LEAVY AVENUE, CLEARFIELD, PA, 16830–0000	178,490.00
CLEARFIELD CTY. HA	222 LEAVY AVENUE, CLEARFIELD, PA, 16830–0000	305,635.00
CONNELLSVILLE HA	315 N. ARCH STREET, CONNELLSVILLE, PA, 15425–9208	223,800.00
CARBON CTY. HA	215 SOUTH THIRD STREET, LEHIGHTON, PA, 18235–0000	214,700.00
SUSQUEHANNA CTY. HAORIT	61 CHURCH STREET, MONTROSE, PA, 18801–1204	153,000.00
NORTHAMPTON CTY. HA	P.O. BOX 252–15 S. WOOD ST., NAZARETH, PA, 18064–0000	190,000.00
WYOMING CTY. HA	P.O. BOX 350, NICHOLSON, PA, 18446–0350	162,058.00
OIL CITY HA	MORAN TOWERS, 110 MORAN STREET, OIL CITY, PA. 16301–0000	203,180.00
BERKS CTY. HA	1803 BUTTER LANE, READING, PA, 19606–0000	373,266.00
SHAMOKIN HA	1 EAST INDEPENDENCE STREET, SHAMOKIN, PA, 17872–5861	407,865.00
WARREN CTY. HA	108 OAK STREET, WARREN, PA, 16365–0000	854,648.00
WILLIAMSPORT HA	505 CENTER STREET, WILLIAMSPORT, PA, 17701–0000	313,000.00
COVENTRY HA	14 MANCHESTER CIRCLE, COVENTRY, RI, 02816–0000	60,000.00
CUMBERLAND HA	ONE MENDON ROAD, CUMBERLAND, RI, 02864–5327	140,000.00
EAST GREENWICH HA	146 FIRST AVE, EAST GREENWICH, RI, 02818–0000	10,000.00
SMITHFIELD HA	7 CHURCH STREET, GREENVILLE, RI, 02828–0000	25,000.00
BURRILLVILLE HA	ASHTON COURT CHAPEL STREET, HARRISVILLE, RI, 02830–1119	50,000.00
JAMESTOWN HA	P.O. BOX 464, JAMESTOWN, RI, 02835–0464	30,000.00
JOHNSTON HA	8 FORAND CIRCLE, JOHNSTON, RI, 02919–6243	150,000.00
NARRAGANSETT HA	P.O. BOX 38825 FIFTH AVENUE, NARRAGANSETT, RI, 02882–0000	73,642.00
NORTH PROVIDENCE HA	945 CHARLES STREET, NORTH PROVIDENCE, RI, 02904–5654	420,000.00
SOUTH KINGSTON HA	P.O.BOX 6, PEACE DALE, RI, 02883–0000	180,000.00
TIVERTON HA	99 HANCOCK STREET, TIVERTON, RI, 02878–0000	20,000.00
TOWN OF WESTERLY H A	5 CHESTNUT ST, WESTERLY TOWN, RI, 02891–0000	170,000.00
HA OF THE CITY OF ABBEVILLE	P.O. BOX 609, ABBEVILLE, SC, 29620–	205,000.00
HA OF THE CITY OF ANDERSON	1335 E RIVER STREET, ANDERSON, SC, 29624–2908	300,000.00
HA OF THE CITY OF ATLANTIC BEACH.	P.O. BOX 1326,BARNWELL, SC, 29812–1326	75,000.00
HA OF THE CITY OF BENNETTSVILLE	253 FLETCHER ST, BENNETTSVILLE, SC, 29512–3777	250,000.00
HA OF THE CITY OF CHERAW	345 DIZZY GILLESPIE DRIVE, CHERAW, SC, 29520–	250,000.00
HA OF THE CITY OF CHESTER	P.O. BOX 773, CHESTER, SC, 29706–0773	155,000.00
HA OF THE CITY OF CAYCE	1917 HARDEN STREET, COLUMBIA, SC, 29204–1015	51,000.00
HA OF THE CITY OF DARLINGTON	P.O. DRAWER 1440, DARLINGTON, SC, 29532–1440	229,000.00
HA OF THE CITY OF EASLEY	P.O. BOX 1060,EASLEY, SC, 29641–1060	229,167.00
MARLBORO CO HSNG. & REDEV	P.O. DRAWER 969, FLORENCE, SC, 29503–0969	80,000.00
HA OF THE CITY OF MCCOLL	P.O. DRAWER 969, FLORENCE, SC, 29503–0969	45,000.00
AUTHORITYHA OF THE CITY OF FT MILL.	105 BOZEMAN DRIVE, FORT MILL, SC, 29715–2527	195,000.00
HA OF THE CITY OF GREENWOOD	P.O. BOX 973, GREENWOOD, SC, 29646–0973	250,000.00
HA OF THE CITY OF GREER	103 SCHOOL STREET, GREER, SC, 29651–0000	265,000.00
HA OF THE CITY OF HARTSVILLE	P.O. DRAWER 1678, HARTSVILLE, SC, 29551–1678	144,000.00
HA OF THE CITY OF KINGSTREE	1022 FRIERSON HOMES, KINGSTREE, SC, 29556–1017	189,000.00
HA OF THE CITY OF LANCASTER	P.O. BOX 1235, LANCASTER, SC, 29721–1235	187,000.00
HA OF THE CITY OF LAURENS	P.O. BOX 326, LAURENS, SC, 29360–0326	250,000.00
HA OF THE CITY OF MULLINS	P.O. BOX 766, MULLINS, SC, 29574–0766	190,000.00
HA OF THE CITY OF MYRTLE BEACH	P.O. BOX 2468, MYRTLE BEACH, SC, 29578–2468	50,000.00
HA OF THE CITY OF WOODRUFF	P.O. BOX 715, WOODRUFF, SC, 29388–0715	145,000.00
HA OF THE CITY OF YORK	P.O. BOX 687, YORK, SC, 29745–0687	150,000.00
DE SMET HSNG. & REDEV. COMM	408 CALUMET N, DE SMET, SD, 57231–	37,015.00
HOT SPRINGS HSNG. & REDEV. COMM.	201 S. RIVER ST., HOT SPRINGS, SD, 57747	503,675.00
PARKER HSNG. & REDEV. COMM	120 SOUTH MAIN, PARKER, SD, 57053–	336,500.00
MEADE CTY. HSNG. & REDEV. COMM	1220 CEDAR STREET, STURGIS, SD, 57785–	114,074.00
CLINTON HA	825 MCADOO STREET, CLINTON, TN, 37716–3199	26,500.00
SOUTH CARTHAGE HA	P.O. BOX 1923, GALLATIN, TN, 37066–0197	242,535.00
HARTSVILLE HA	P.O. BOX 44, HARTSVILLE, TN, 37074–0044	770,279.00
HOHENWALD HA	323 MILL STREET, HOHENWALD, TN, 38462–1515	853,000.00
HUNTINGDON HA	433 HILLCOURT CIRCLE, HUNTINGDON, TN, 38344–	825,000.00
JEFFERSON CITY HA	942 E. ELLIS STREET, JEFFERSON CITY, TN, 37760–2699	69,900.00
HA JELLICO	P.O. BOX 240,JELLICO, TN, 37762–0000	653,420.00
LENOIR CITY HA	101 OAKWOOD DRIVE, LENOIR CITY, TN,37771–	1,234,311.00
LEWISBURG HA	P.O. BOX1846, LEWISBURG, TN, 37091–1846	500,000.00
LEXINGTON HA	P.O. BOX 559, LEXINGTON, TN, 38351–0559	532,153.00

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RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
MT. PLEASANT HA	138 THOMAS CIRCLE, MOUNT PLEASANT, TN, 38474–0000	831,774.00
HA OAK RIDGE	10 VAN HICKS LANE, OAK RIDGE, TN, 37830–0000	615,480.00
OLIVER SPRINGS HA	131 BRITTAIN VILLAGE, OLIVER SPRINGS, TN, 37840–1709	638,363.00
PARIS HA	917 MINOR DRIVE, PARIS, TN, 38242–	997,615.00
PARSONS-DECATURVILLE HA	301 ROSE AVENUE, PARSONS, TN, 38363–	373,083.00
PULASKI HA	2006 ROLLING MEADOWS DRIVE, PULASKI, TN, 38478–0000	652,048.00
SMITHVILLE HA	P.O. BOX 117,SMITHVILLE, TN, 37166–0000	957,000.00
WAVERLY HA	P.O. BOX 766, WAVERLY, TN, 37185–	64,897.00
WOODBURY HA	401 MCFERRIN STREET, WOODBURY, TN, 37190–	760,000.00
HA OF ABILENE	P.O. BOX 60, ABILENE, TX, 79604–0060	732,650.00
ALICE HA	P.O. BOX 1407, ALICE, TX, 78333–0000	500,000.00
HA OF ALTO	RT. 1, BOX 309, ALTO, TX, 75925–	64,000.00
ARANSAS PASS HA	254 N 13TH STREET, ARANSAS PASS, TX, 78336–0000	100,000.00
HA OF ASPERMONT	P.O. BOX 545, ASPERMONT, TX, 79502–0545	281,700.00
TRAVIS CTY. HA	P.O. BOX 1748, AUSTIN, TX, 78767–0000	27,985.00
HA OF BAIRD	P.O. BOX 1028, BAIRD, TX, 79504–1028	984,903.00
HA OF BALLINGER	1401 N. 13TH. ST., BALLINGER, TX 76821–	1,504,856.00
HA OF BALMORHEA	P.O. BOX 305, BALMORHEA, TX 79718–0305	125,382.00
BASTROP HA	P.O. BOX 707, BASTROP, TX 78602–0000	300,000.00
HA OF THE CITY OF BAY CITY	3012 SYCAMORE, BAY CITY, TX 77414–0000	300,000.00
HA OF THE CITY OF BAYTOWN	805 NAZRO STREET, BAYTOWN, TX 77520–0000	55,882.00
BEEVILLE HA	P.O. BOX 427, BEEVILLE, TX 78104–0000	200,000.00
HA OF THE CITY OF BELLVILLE	P.O. BOX 247, BELLVILLE, TX 77418–0247	584,154.00
BRACKETTVILLE HA	P.O. BOX 371, BRACKETTVILLE, TX 78832–0371	150,000.00
HA OF BRADY	P.O. BOX 28, BRADY, TX 76825–0028	1,454,109.00
HA OF THE CITY OF BREMOND	P.O. BOX A, BREMOND, TX 76629	570,000.00
HA OF THE CITY OF CALDWELL	P.O. BOX 596, CALDWELL, TX 77836–0596	360,000.00
HA OF CAMERON	P.O. BOX 549, CAMERON, TX 76520–0549	104,820.00
HA OF THE CITY OF CENTERVILLE	P.O. BOX 746, CENTERVILLE, TX 75833–0055	327,000.00
HA OF CLARENDON	P.O. BOX 945, CLARENDON, TX 79226–0945	1,067,000.00
HA OF CLEVELAND	801 S. FRANKLIN ST., CLEVELAND, TX 77327–	534,800.00
HA OF COOLIDGE	P.O. BOX 23, COOLIDGE, TX 76635–0023	154,777.00
HA OF CORRIGAN	600 S. HOME ST., CORRIGAN, TX 75939–	677,000.00
COTULLA HA	101 KERR STREET, COTULLA, TX 78014–0000	175,000.00
HA OF CROSS PLAINS	P.O. BOX 487, CROSS PLAINS, TX 76443–0487	103,478.00
CUERO HA	P.O. BOX 804, CUERO, TX 77954–0000	275,000.00
HA OF CUMBY	P.O. BOX 707, CUMBY, TX 75433–0707	25,600.00
HA OF DELEON	200 E. NAVARRO, DELEON, TX 76444–1156	129,300.00
HA OF DENISON	P.O. BOX 475, DENISON, TX 75020–0475	1,153,104.00
DONNA HA	P.O. BOX 667, DONNA, TX 78537–0000	250,000.00
HA OF DUBLIN	201 MAY SREET, DUBLIN, TX 76446–2751	844,300.00
EDCOUCH HA	P.O. BOX 92, EDCOUCH, TX 78538–0000	350,000.00
ELSA HA/LA HACIENDA	P.O BOX 98, ELSA, TX 78543–0000	425,000.00
HA OF EL PASO CTY	P.O. BOX 279, FABENS, TX 79838–0279	1,251,130.00
HA OF FRISCO	P.O. BOX 264, FRISCO, TX 75034–0264	329,500.00
HA OF GATESVILLE	P.O. BOX 52, GATESVILLE, TX 76528–0052	55,840.00
HA OF GLADEWATER	P.O. BOX 1009, GLADEWATER, TX 75647–1009	331,050.00
GOLIAD HA	360 N. FORT STREET, GOLIAD, TX 77963–0401	342,513.00
HA OF GRANBURY	503 NORTH CROCKETT, GRANBURY, TX 76048–2134	924,463.00
GRANGER HA	P.O. BOX 728, GRANGER, TX 76530–0728	235,000.00
HA OF GRAPEVINE	131 STARR PL, GRAPEVINE, TX 76051–	13,880.00
GREGORY HA	P.O. BOX 206, GREGORY, TX 78359–0000	300,000.00
HA OF HAMILTON	P.O. BOX 468, HAMILTON, TX 76531–0468	750,000.00
HA OF HENRIETTA	P.O. DRAWER 590, HENRIETTA, TX 76365–0590	823,050.00
HA OF HENRIETTA	P.O. DRAWER 590, HENRIETTA, TX 76365–0590	23,100.00
HA OF HICO	P.O. BOX 249, HICO, TX 76457–0249	27,520.00
HA OF HUGHES SPRINGS	P.O. BOX 717A, AHUGHES SPRINGS, TX 75656–0717	10,000.00
INGLESIDE HA	P.O. DRAWER Z, INGLESIDE, TX 78362	150,000.00
HA OF JEFFERSON	RT. 5., BOX 50, JEFFERSON, TX 75657–	130,300.00
KARNES CITY HA	P.O. BOX 276, KARNES CITY, TX 78118–0276	100,000.00
KENEDY HA	P.O. BOX 627, KENEDY, TX 78119–0000	250,000.00
HA OF KILLEEN	P.O. BOX 125, KILLEEN, TX 76541–0125	672,730.00
KINGSVILLE HA	1000 W CORRAL, KINGSVILLE, TX 78363–0000	400,000.00
HA OF KIRBYVILLE	310 W. LEVERT ST., KIRBYVLLE, TX 75956–	636,500.00
LA JOYA HA	P.O. BOX 1409, LA JOYA, TX 78560–0000	80,000.00
HA OF LOMETA	P.O. DRAWER 220, LOMETA, TX 76853–0220	45,779.00
HA OF LORAINE	P.O. BOX 28, LORAINE, TX 79532–0028	121,500.00
HA OF LOTT	P.O. BOX 336 LOTT, TX 76656–0336	162,000.00
LULING HA	P.O. BOX 229, LULING, TX 78648–0229	132,000.00
HA OF MABANK	P.O. BOX 1026, MABANK, TX 75147–1026	68,403.00
HA OF THE CITY OF MADISONVILLE	601 S. MADISON ST, MADISONVILLE, TX 77864–	450,000.00

RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
MARBLE FALLS HSG. AUTHORITY	P.O. BOX 668, MARBLE FALLS, TX 78654–0668	335,000.00
HA OF MARLIN	P.O. BOX 39, MARLIN, TX 76661–0039	137,045.00
MATHIS HA	300 W FULTON, MATHIS, TX 78368–0000	400,000.00
HA OF MONAHANS	209 S. DWIGHT ST., MONAHANS, TX 79756–	1,135,300.00
HA OF MOUNT PLEASANT	P.O. BOX 1051, MOUNT PLEASANT, TX 75455–1051	798,000.00
HA OF MOUNT VERNON	P.O. BOX 639, MOUNT VERNON, TX 75457–0639	93,500.00
HA OF NACOGDOCHES	715 SUMMIT ST., NACOGDOCHES, TX 75961–	52,530.00
HA OF CITY OF NAVASOTA	P.O. BOX 967, NAVASOTA, TX 77868–0000	50,000.00
HA OF NEW BOSTON	P.O. BOX 806, NEW BOSTON, TX 75570–0806	624,000.00
NIXON HA	P.O. BOX 447, NIXON, TX 78140–0000	180,000.00
HA OF ODESSA	P.O. DRAWER 154, ODESSA, TX 79760–0154	92,000.00
HA OF OMAHA	P.O. BOX 667, OMAHA, TX 75571–0667	256,500.00
HA OF PADUCAH	P.O. BOX 698, PADUCAH, TX 79248–0698	81,000.00
PEARSALL HA	501 WEST MEDINA ST, PEARSALL, TX 78061–0000	435,000.00
HA OF PECOS	P.O. BOX 1499, PECOS, TX 79772–1499	1,361,430.00
HA OF PITTSBURG	P.O. BOX 435, PITTSBURG, TX 75686–0435	282,120.00
PLEASANTON HA	402 W ADAMS STREET, PLEASANTON, TX 78064–0000	400,000.00
PORT LAVACA HA	627 WEST GEORGE #174, PORT LAVACA, TX 77979–0000	80,000.00
HA OF ROCKWALL	100 LAKE MEADOWS DR., ROCKWALL, TX 75087–	736,793.00
ROUND ROCK HA	P.O. BOX 781, ROUND ROCK, TX 78680–0781	550,000.00
SCHULENBURG HA	P.O. BOX 207, SCHULENBURG, TX 78956–0207	263,000.00
HA OF SEYMOUR	205 E. IDAHO, SEYMOUR, TX 76380–1765	598,000.00
SINTON HA	P.O. BOX 1302, SINTON, TX 78387–0000	300,000.00
HA OF SPEARMAN	P.O. BOX 607, SPEARMAN, TX 79081–0607	309,470.00
STOCKDALE HA	P.O. BOX 65, STOCKDALE, TX 78160–0065	260,000.00
HA OF STRAWN	P.O. BOX 579, STRAWN, TX 76475–0579	381,750.00
TAFT HA	223 AVENUE, C, TAFT, TX 78390	350,000.00
THREE RIVERS HA	P.O. BOX 306, THREE RIVERS, TX 78071–0306	250,000.00
HA OF VAN ALSTYNE	P.O. BOX 668, VAN ALSTYNE, TX 75495–0668	84,000.00
HA OF VERNON	P.O. BOX 1780, 0VERNON, TX 76385–1780	448,000.00
HA OF ORANGE CTY.	205 VIDOR DR., VIDOR, TX 77662–	306,691.00
WAELDER HA	P.O. BOX 38, WAELDER, TX 78959–0038	270,000.00
WESLACO HA	P.O. BOX 95, WESLACO, TX 78596–0095	340,000.00
HA OF WOODVILLE	1114 ALBERT DR., WOODVILLE, TX 75979–	248,200.00
HA OF WORTHAM	P.O. BOX 265, WORTHAM, TX 76693–0356	144,236.00
YOAKUM HA	P.O. BOX 250, YOAKUM, TX 77995–0250	275,000.00
YORKTOWN HA	ROUTE 5 BOX H–1, YORKTOWN, TX 78164–0645	210,000.00
DAVIS CTY. HA	P.O. BOX 328, FARMINGTON, UT 84025–0000	617,167.00
HA OF CARBON CTY	251 S 1600 E #2647, PRICE, UT 84501–0000	173,518.00
UTAH CTY. HA	240 EAST CENTER, PROVO, UT 84606	245,039.00
ST. GEORGE HA	975 N. 1725 W. #101, ST. GEORGE, UT 84770–0000	57,155.00
SCOTT CTY. REDEV. & H/A	P.O. BOX 266 DUFFIELD, VA 24244–0000	25,000.00
FRANKLIN REDEV. & H/A	601 CAMPBELL AVENUE, FRANKLIN, VA 23851	364,000.00
MARION REDEV. & HA	237 MILLER AVENUE, MARION, VA 24354	265,000.00
STAUNTON REDEV. & HA	P.O. BOX 1369, STAUNTON, VA 24401	50,000.00
WAYNESBORO REDEV. & H/A	1700 NEW HOPE ROAD, WAYNESBORO, VA 22980–2566	33,000.00
WAYNESBORO REDEVE. & H/A	P.O. BOX 411, WILLIAMSBURG, VA.	
WYTHEVILLE REDEV. & HA	P.O. BOX 62, WYTHEVILLE, VA 24382–0062	200,000.00
BENNINGTON HA	10 WILLOW ROAD, BENNINGTON, VT 05201–0000	150,000.00
BENNINGTON HA	10 WILLOW ROAD, BENNINGTON, VT 05201–0000	121,000.00
RUTLAND HA	TEMPLEWOOD COURT, RUTLAND, VT 05701–3533	896,366.00
SPRINGFIELD HA	80 MAIN STREET, SPRINGFIELD, VT 05156–2907	180,000.00
HA CITY OF ANACORTES	719 "Q" AVENUE, ANACORTES, WA 98221–4128	1,199,210.00
HA OF ASOTIN CTY	1212 FAIR STREET, CLARKSTON, WA 99403–2229	774,000.00
HA OF GRANT CTY	1139 LARSON BOULEVARD, MOSES LAKE, WA 98837–3308	883,000.00
HA CITY OF SEDRO WOOLLEY	15455 65TH AVENUE SOUTH, SEATTLE, WA 98188–2583	201,000.00
HA CITY OF SPOKANE	WEST 55 MISSION STREET, SPOKANE, WA 99201–2344	343,000.00
HA CITY OF WALLA WALLA	501 CAYUSE ST., WALLA WALLA, WA 99362–	65,000.00
HA CITY OF YAKIMA	P.O. BOX 2910, YAKIMA, WA 98907–	376,000.00
ALTOONA HA	2404 SPOONER AVENUE, ALTOONA, WI 54720–1362	267,838.00
AMERY HA	228 NORTH KELLER, AMERY, WI 54001–0000	343,690.00
APPLETON HA	525 NORTH ONEIDA, STR, APPLETON, WI 54911–4749	660,000.00
ASHLAND HA	319 CHAPPLE AVENUE, ASHLAND, WI 54806–0000	489,500.00
BARABOO CDA	227 FIRST AVENUE, BARABOO, WI 53913–2466	348,135.00
BELOIT HA	100 STATE ST, BELOIT, WI 53511–0000	602,917.00
BRILLION HA	214 S. PARKWAY DRIVE, BRILLION, WI 54110–0040	221,040.00
FREDERIC HA	104 THIRD AVENUE SOU, FREDERIC, WI 54837–8901	27,300.00
GRANTSBURG HA	213 WEST BURNETT AVE, GRANTSBURG, WI 54840–7809	99,450.00
HURLEY HA	410 THIRD AVENUE SOU HURLEY, WI 54534	618,600.00
KAUKAUNA HA	125 WEST 10TH STREET, KAUKAUNA, WI 54130–0000	95,770.00
MARINETTE HA	1520 LUDINGTON STREET, MARINETTE, WI 54143–1329	268,315.00
MARSHFIELD CDA	601 S. CEDAR, MARSHFIELD, WI 54449–0000	500,000.00
MENOMONIE HA	1202 10TH STREET, MENOMONIE, WI 54751–0296	385,600.00
DANE CTY. HA	2001 W. BROADWAY, SUITE 1, MONONA, WI 53713–3707	669,751.00

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RECIPIENTS OF FISCAL YEAR 1998 COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AWARDS—Continued

Applicant name	Address	Amount funded
OCONTO HA	407 ARBUTUS AVENUE, OCONTO, WI 54153–1600	175,445.00
REEDSVILLE HA	431 MADISON STREET, REEDSVILLE, WI 54230	291,720.00
RHINELANDER HA	411 W. PHILLIP ST, RHINELANDER, WI 54501–0000	51,440.00
RICHLAND CENTER HA	701 WEST SEMINARY STREET, RICHLAND CENTER, WI 53581–2169	196,400.00
RIVER FALLS HA	625 NORTH MAIN STREET, RIVER FALLS, WI 54022–0000	380,671.00
VIROQUA HA	200 BIGLEY PLAZA, VIROQUA, WI 54665–1567	134,200.00
WASHBURN HA	420 EAST THIRD STREET, WASHBURN, WI 54891–0000	139,825.00
WATERTOWN HA	201 NORTH WATER STREET, WATERTOWN, WI 53094–7683	371,306.00
WAUSAU CDA	550 EAST THOMAS STREET, WAUSAU, WI 54403–0000	55,000.00
BURNETT CTY. HA	P.O. BOX 41, WEBSTER, WI 54893–0000	254,700.00
WISCONSIN RAPIDS HA	2521 TENTH STREET SOUTH, WISCONSIN RAPIDS, WI 54494–6392	98,700.00
HA OF RALEIGH CTY	P.O. BOX BD, BECKLEY, WV 25802–2852	200,716.00
HA OF THE CITY OF MCMECHEN	2200 MARSHALL STREET, BENWOOD, WV 26031	21,600.00
HA OF THE CITY OF BENWOOD	2200 MARSHALL STREET, BENWOOD, WV 26031–0000	101,000.00
HA OF BOONE CTY	BLACK DIAMOND ARBORS, DANVILLE, WV 25053–0000	93,200.00
HA OF THE CITY OF DUNBAR	900 DUTCH HOLLOW ROAD, DUNBAR, WV 25064–	317,000.00
HA OF THE CITY OF ELKINS	STODDARD AVENUE, ELKINS, WV 26241	397,600.00
HA OF THE CITY OF FAIRMONT	517 FAIRMONT AVENUE, FAIRMONT, WV 26554–	203,000.00
HA OF THE CITY OF GRAFTON	131 EAST MAIN STREET, GRAFTON, WV 26345–1365	140,000.00
HA OF THE CITY OF KEYSER	440 VIRGINIA STREET, KEYSER, WV 26726–0000	159,600.00
HA OF THE CITY OF MOUNT HOPE	9B MIDTOWN TERRACE, MOUNT HOPE, WV 25880–	94,500.00
HA OF THE CITY OF PARKERSBURG	1901 CAMERON AVENUE, PARKERSBURG, WV 26101–9316	37,700.00
HA OF THE CITY OF PIEDMONT 51 JONES STREET, PIEDMONT, WV 26750–.	295,000.00.	
HA OF THE CTY. OF JACKSON	TANGLEWOOD VILLA, RIPLEY, WV 25271–1357	87,500.00
HA OF THE CITY OF ROMNEY	100 VALLEY VIEW DRIVE, ROMNEY, WV 26757–	171,300.00
HA OF THE CITY OF SOUTH CHARLESTON.	520 GOSHORN STREET, SOUTH CHARLESTON, WV 25309	197,200.00
HA OF THE CITY OF SPENCER	601 MARKET STREET, SPENCER, WV 25276–	505,100.00
HA OF THE CITY OF ST. ALBANS	650 SIXTH STREET, ST. ALBANS, WV 25177–	216,200.00
HA OF THE CITY OF WEIRTON	525 COVE ROAD, WEIRTON, WV 26062–	85,000.00
HA OF MINGO CTY	P.O. BOX 2239, WILLIAMSON, WV 25661–0000	42,100.00
HA OF THE CITY OF WILLIAMSON	P.O. BOX 1758, WILLIAMSON, WV 25661–1758	620,000.00
HANNA HA	P.O. BOX 208, HANNA, WY 82327	207,817.00
ROCK SPRINGS HA	233 C STREET, ROCK SPRINGS, WY 82901–0000	702,212.00

[FR Doc. 99–18065 Filed 7–15–99; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *DOT:* Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; *GSA;* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *NAVY:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: July 8, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report For 7/16/99

Suitable/Available Properties

Buildings (by State)

Maine

Bldg. 4
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930005
Status: Excess
Comment: 16,644 sq. ft., presence of asbestos/lead paint, most recent use—headquarters building, off-site use only

Bldg. 8
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930006
Status: Excess
Comment: 7413 sq. ft., presence of asbestos/lead paint, most recent use—public works building, off-site use only

Bldg. 12
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930007
Status: Excess
Comment: 25,354 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 41
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930008
Status: Excess
Comment: 10,526 sq. ft., presence of asbestos/lead paint, most recent use—security building, off-site use only

Bldg. 224
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930009
Status: Excess
Comment: 8000 sq. ft., presence of asbestos/lead paint, most recent use—thrift shop, off-site use only

Minnesota

Army Reserve Center
620 Turill St.
Le Sueur Co: MN 56058–
Landholding Agency: GSA
Property Number: 54199920007
Status: Excess
Comment: 4316 sq. ft., possible asbestos/lead paint, most recent use—educational and support facilities
GSA Number: 1–D–MN–568

New Jersey

Barnegat Recreation Facility
Corner 7th St/Longbeach Blvd
Barnegat Light Co: NJ 08006–
Landholding Agency: GSA
Property Number: 54199930001
Status: Surplus
Comment: 2700 sq. ft. cottage on 0.69 acres, presence of asbestos/lead paint, eligible for Historic Register, floodplain, endangered species in area
GSA Number: 1–U–NJ–0641

Texas

Fairfield Federal Building
E. Main & Keechi St.
Fairfield Co: Freestone TX 75840–1556
Landholding Agency: GSA
Property Number: 54199920006
Status: Excess
Comment: 10,314 sq. ft., needs repair, most recent use—post office/Fed. Bldg
GSA Number: 7–G–TX–1051

Unsuitable Properties

Buildings (by State)

California

Bldgs. 20106, 20195
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199930001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Guam

Structures 312, 1792
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930002
Status: Excess
Reasons: Secured Area

Structures 2020, 2021
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930003
Status: Excess
Reasons: Secured Area

Bldg. 3171
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930004
Status: Excess
Reasons: Secured Area; Extensive deterioration

Mississippi

Bldg. 7
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 75
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 179
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy

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Property Number: 77199930012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Structure 262
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930013
Status: Unutilized
Reasons: Secured Area
Bldg. 279
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Bldg. 326
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Bldg. 412
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930016
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

New Jersey

Bldgs. 220, 234, 236
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199930017
Status: Unu'ilized
Reason: Extensive deterioration

Pennsylvania

Bldg. 152
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930018
Status: Excess
Reason: Extensive deterioration
Bldg. 185
Willow Grove Co: Montgomery PA 19113–
Grove
Willow Grove Co: Montgomery, PA 19113–
Landholding Agency: Navy
Property Number: 77199930019
Status: Excess
Reason: Extensive deterioration

Rhode Island

Bldg. 52
Gould Island, Naval Station
Newport Co: RI 00000–
Landholding Agency: Navy
Property Number: 77199930020
Status: Excess
Reasons: Not accessible by road; Extensive deterioration

Washington

Bldg. 210A
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 511
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 527
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Quarters 8, 10, 12, 14
USCG Station Cape Disappointment
Ilwaco Co: Pacific WA 98624–
Landholding Agency: DOT
Property Number: 87199930001
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 99–17790 Filed 7–15–99; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Habitat-Based Recovery Criteria for the Grizzly Bear (*Ursus arctos horribilis*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability for public review of draft habitat-based recovery criteria for the grizzly bear (*Ursus arctos horribilis*) in the Yellowstone Ecosystem. Final habitat-based recovery criteria will be appended to the Grizzly Bear Recovery Plan. We solicit review and comment from the public on this draft information.

DATES: Comments on the draft habitat-based recovery criteria must be received on or before September 14, 1999 to ensure that they will be received in time for our consideration prior to finalization of the criteria.

ADDRESSES: Persons wishing to review the draft habitat-based recovery criteria may obtain a copy by contacting the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. Written comments and materials regarding this information should be sent to the Recovery Coordinator at the address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's endangered species program. To help guide the recovery effort, we prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for reclassifying or delisting the species, and estimate time and cost for implementing the recovery measures needed.

The grizzly bear was listed under the Endangered Species Act of 1973 (Act) as amended as a threatened species in the 48 conterminous States on July 28, 1995 (40 FR 31734). Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, and illegal mortality.

In May 1994 The Fund For Animals, Inc., and 22 other organizations and individuals filed suit in the U.S. District Court for the District of Columbia over the adequacy of the Plan approved in 1993. Later in May 1994 the National Audubon Society and 19 other organizations and individuals also filed suit in the same court. The two cases were eventually consolidated. In September 1995 the court issued an opinion. The motions for summary judgment of both the plaintiffs and the defendants were granted in part and denied in part. The court remanded five issues that might affect grizzly bear recovery for our reconsideration. Those issues were: disease and parasites; livestock interactions and mortality; the effects of genetic isolation; population monitoring methods; and our reliance

on Canada for recovery of the grizzly bear.

On September 10, 1997, we published a Notice of Availability (62 FR 47677, Sept. 10, 1997) for the draft supplemental information on the five remanded issues. We provided our final finding on the issues to the court on May 15, 1999, and a notice of availability of that document will be published in the **Federal Register** in the near future.

Under the provisions of the Act we approved the revised Grizzly Bear Recovery Plan on September 10, 1993. Task 423 in the 1993 Grizzly Bear Recovery Plan (USFWS 1993) states: "Establish a threshold of minimal habitat values to be maintained within each Cumulative Effects Analysis Unit in order to ensure that sufficient habitat is available to support a viable population." This task, developing habitat-based recovery criteria, is specific to each ecosystem, as the habitat necessary to support a viable grizzly bear population will vary between ecosystems due to differences in foods, vegetation, habitat, and human activities.

As part of a 1997 court settlement on the Recovery Plan, all parties agreed that:

1. Prior to our release of the draft habitat-based recovery criteria for the grizzly bear in Yellowstone, plaintiffs could submit comments to us and such comments would be considered as part of the administrative record. We would convene a workshop during the public comment period on the draft habitat-based recovery criteria where all interested parties could present their ideas on the habitat needs for grizzly bear recovery and discuss proposals for habitat-based recovery criteria. This workshop was held in Bozeman, Montana, on June 17, 1997.

2. The information and views presented at the workshop, together with all other information submitted to us during the public comment period on the draft habitat criteria would be considered by us before the habitat-based recovery criteria are finalized. When we finalize the habitat-based recovery criteria, we will address significant public comments in writing, including those significant public comments offered at the workshop.

We received 1,167 comments at or in response to the grizzly bear habitat workshop. Of these, 132 were letters, 3 were form letters, 923 were postcards with preprinted form comments, 44 were postcards with preprinted form comments and written comments, and 65 were written remarks delivered at the workshop. Major issues identified in the comments included: using science and data to the best extent possible, using cumulative effects modeling, maintaining habitat security, identifying important seasonal foods and ensuring their monitoring and availability, the role of private lands and impacts of private land development, road densities and access management, maintaining roadless habitat and habitat security in such areas, ensuring effective road closures, minimizing human development and activities that result in human-bear conflicts, and minimizing actions that result in nuisance bears. The comments were carefully considered, reviewed, and discussed by a team of specialists from the Fish and Wildlife Service, Geological Survey, Forest Service, Park Service, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Wyoming Game and Fish Department. This group of agency specialists developed these draft habitat criteria using the information and ideas in the public comments from the workshop, as well as the best available scientific information on the grizzly bear habitat and population in the Yellowstone ecosystem.

Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal land management agencies also will take these comments into account in the course of implementing approved recovery plans.

We now seek public comment on the draft habitat-based recovery criteria for the Yellowstone ecosystem to both address Task 423 in the Grizzly Bear Recovery Plan and the lawsuit settlement agreement.

Public Comments Solicited

We solicit written comments on the information described above. All comments received by the date specified in the DATES section above will be considered prior to finalization of the habitat-based recovery criteria. Appropriate portions of these criteria will be appended to, and become part of, the Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 9, 1999.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–18137 Filed 7–15–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Supplemental Information Regarding the Recovery Plan for the Grizzly Bear (*Ursus arctos horribilis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our finding on supplemental information relative to the recovery plan for the grizzly bear (*Ursus arctos horribilis*). Portions of the information will be added to the Grizzly Bear Recovery Plan after appropriate public notice and comment.

ADDRESSES: Persons wishing to receive a copy of the supplemental information finding may obtain a copy by contacting the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

The primary goal of our endangered species program is to restore endangered or threatened animals or plants to the point where they are secure, self-sustaining members of their ecosystem. To help guide the recovery effort, we prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1995 (40 FR 31734). Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, and illegal mortality.

Under the provisions of the Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*), we approved the revised Grizzly Bear Recovery Plan on September 10, 1993.

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In May 1994 The Fund For Animals, Inc., and 22 other organizations and individuals filed suit in the U.S. District Court for the District of Columbia over the adequacy of the Plan approved in 1993. Later in May 1994 the National Audubon Society and 19 other organizations and individuals also filed suit in the same court. The two cases were eventually consolidated. In September 1995 the court issued an opinion. The motions for summary judgment of both the plaintiffs and the defendants were granted in part and denied in part. The court ordered us to reconsider certain portions of the Plan, and to provide supplemental information. The court remanded five issues that might affect grizzly bear recovery for our reconsideration. Those issues were: disease and parasites; livestock interactions and mortality; the effects of genetic isolation; population monitoring methods; and our reliance on Canada for recovery of the grizzly bear.

On September 10, 1997, we published a Notice of Availability (62 FR 47677, Sept. 10, 1997) for the draft supplemental information on the five remanded issues. We provided our final finding on the issues to the court on May 15, 1999, and this notice announces that the document is available for public distribution.

We are also in the process of developing draft grizzly bear habitat-based recovery criteria, which are being made available for public review and comment under a separate notice of availability.

Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will provide a public comment period prior to approval of each new amendment to the recovery plan. We and other Federal land management agencies also will take these comments into account in the course of implementing approved recovery plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 9, 1999.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–18138 Filed 7–15–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Midway Atoll National Wildlife Refuge Historic Preservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has issued the Midway Atoll National Wildlife Refuge Historic Preservation Plan as part of its responsibilities for the long-term management of historic properties on Midway Atoll. This plan defines a program to integrate historic preservation planning with the wildlife conservation mission of the Service. By this notice, the public is informed that the plan is available and that copies may be obtained on request to the Service.

ADDRESSES: Written requests for copies should be addressed to: U.S.A. Fish and Wildlife Service—Pacific Islands Ecoregion, Box 50088, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Manager, telephone (808) 541–2749.

SUPPLEMENTARY INFORMATION: Midway's historically important buildings and structures are primarily associated with World War II. Nine structures specifically associated with the June 1942 Battle of Midway were designated as National Historic Landmarks in 1986. Archaeological and architectural studies conducted in 1993 and 1994 identified and evaluated buildings, structures, and objects on the atoll's two main islands and determined that an additional 69 properties were eligible to the National Register of Historic Places.

The Base Realignment and Closure Act of 1990, Pub. L. 101–510, as amended, led to the closure of Midway's Naval Air Facility on October 1, 1993 and transfer of the property to the Service on October 31, 1996. Transition from a Naval Air Facility to a wildlife refuge necessitated a reduction in personnel and operational facilities. Therefore, identifying excess property was accomplished by the U.S. Navy and the Service in consultation with the Advisory Council on Historic Preservation (Council), the Hawaii State Historic Preservation Officer, and interested parties. Treatment of Midway's 78 historic properties during the Base Closure and transfer led to a Programmatic Agreement in 1996. One of the stipulations in the agreement was for the Service to prepare a Historic Preservation Plan for the long-term management of historic properties.

Midway and Midway's Historic Preservation Plan are unique in several respects: first, the plan focuses on treatment of properties that have been previously identified and evaluated; second, some treatment options for Midway were determined by the Programmatic Agreement and implemented, with adverse effects mitigated by completion of documentation for all historic properties; third, the mission statement and primary goals of Midway Atoll National Wildlife Refuge include preservation of historic resources. This Historic Preservation Plan focuses on long-term management conditions and goals for preserving and stabilizing historic properties, and recommends procedures for treating new discoveries, caring for museum collections, and implementing a public outreach program that includes historic preservation.

Dated: July 9, 1999.

Thomas Dwyer,

Acting Regional Director, Pacific Region.

[FR Doc. 99–18158 Filed 7–15–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[FES–99–18]

Notice of Availability of Final Environmental Impact Statement

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Colorado Sodium Products Development Project (Project), located in Rio Blanco County and Garfield County, Colorado. Written comments and recommendations on this Final EIS should be received on or before September 13, 1999.

ADDRESSES: Address all comments concerning this EIS to Mr. Larry Shults, Natural Resources Specialist, U.S. Bureau of Land Management, White River Field Office, 73544 Highway 64, Meeker, CO 81641.

FOR FURTHER INFORMATION CONTACT: Larry Shults, (970) 878–3601.

SUPPLEMENTARY INFORMATION: American Soda, L.L.P. (American Soda) intends to construct and operate a commercial nahcolite solution mining operation in the northcentral portion of the Piceance Creek Basin in Rio Blanco County, Colorado. Nahcolite is naturally occurring sodium bicarbonate that is found in association with oil shale deposits. After the nahcolite is removed from the ground, it would be processed into a sodium carbonate solution and transported by a 44-mile pipeline south to a processing operation to be located at an existing industrial site in the Parachute Valley in Garfield County, Colorado. There it would be further processed to commercial grade sodium carbonate, sodium bicarbonate, and other sodium products which would then be shipped from the processing facility via a 4-mile long dedicated rail spur to an interstate rail connection near the town of Parachute.

John J. Mehlhoff,

Resource Area Manager, White River Field Office.

[FR Doc. 99–17857 Filed 7–15–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet Monday, August 16, 1999, from 8 a.m. to 5 p.m. local time, and on Tuesday, August 17, 1999, from 8 a.m. to 12 noon local time.

Submit written comments pertaining to the advisory board meeting no later than close of business August 24, 1999.

ADDRESSES: The Advisory Board will meet at the Nightengale Building, Room 5, Westminster College, 1840 South 1300 East, Salt Lake City, Utah.

Send written comments pertaining to the advisory board meeting to Bureau of Land Management, WO–610, Mail Stop 406 LS, 1849 C Street, NW, Washington, DC 20240. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Mary Knapp, Wild Horse and Burro Public Affairs Specialist, (202) 452–5176. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. Knapp at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, August 16, 1999

Old Business/April 1999 Recommendations

—Approval of January and April, 1999 minutes;
—Ely field trip;
—Establishing aml;
—Scenarios for attaining AMLs (appropriate management levels);
—Prioritization of herd management areas;
—Forage allocation;
—Strategic plan amendment time frame;
—Public comment.

Tuesday, August 17, 1999

New Business

—2000–2001 WH&B Advisory Board;
—1999 End of Year Congressional Report;
—Funding process for 2000 & 2001;
—Advisory Board recommendations;
—Agenda for November 1999 Meeting;
—Adjournment

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations (41 CFR 101–6.1015(b)), require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Field Trip

There will be an optional field trip to BLM's Salt Lake City Holding Facility Tuesday afternoon, August 17, 1999 after adjournment of the meeting. BLM will provide Transportation for Advisory Board members and BLM staff. The public will have to provide its own transportation.

III. Public Comment Procedures

Members of the public may make oral statements to the advisory board on August 16, 1999, at the appropriate point in the agenda. This is anticipated to occur at 3:45 p.m. local time. Persons wishing to make statements should register with the BLM by noon on August 16, 1999, at the meeting location. Depending on the number of speakers, the advisory board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the advisory board meeting is not a prerequisite for submittal of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by law. BLM will release all submissions from organizations or businesses, and from individuals identifying as representatives or officials or organizations or businesses, in their entirety, including names and address (or e-mail addresses).

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Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: Mary_Knapp@blm.gov or mknapp@wo.blm.gov. Please include the identifer "WH&B" in the subject of your message and your name and address in the body of your message.

Henri R. Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 99–18219 Filed 7–15–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 174

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale 174.

On August 25, 1999, the Minerals Management Service (MMS) will open and publicly announce bids received for blocks offered in Sale 174, Western Gulf of Mexico, pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256). Bidders can obtain a "Final Notice of Sale 174 Package" containing this Notice of Sale and several supporting and essential documents referenced herein, from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Gulf of Mexico Region's Internet site at http://www.gomr.mms.gov. The MMS also maintains a 24-hour Fax-on-Demand Service at (202) 219–1703. The "Final Notice of Sale 174 Package" contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package.

Location and Time

Public bid reading will begin at 9 a.m., Wednesday, August 25, 1999, at the Hyatt Regency Conference Center (Cabildo Rooms), 500 Poydras Plaza, New Orleans, Louisiana. All times referred to in this document are local New Orleans time.

Filing of Bids

Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, during normal business hours (8 a.m. to 4 p.m.) prior to the Bid Submission Deadline at 10 a.m., Tuesday, August 24, 1999. If the bids are mailed, mark on the envelope containing all the sealed bids the following:

Attention: Mr. John Rodi

Contains Sealed Bids for Sale 174

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, August 24, 1999. In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0537 for information about the possible extension of the bid submission deadline due to such an event.

Areas Offered for Leasing

The MMS is offering for leasing all the blocks and partial blocks listed in the document "List of Blocks Available for Leasing, Sale 174" included in the Sale Notice Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit).

Outer Continental Shelf Leasing Maps—Texas, Nos. 1 through 8 (latest revisions are dated March 15, 1999). This is a set of 16 maps which sells for $18.00.

Outer Continental Shelf Official Protraction Diagrams (these diagrams sell for $2.00 each):

NG 14–3 Corpus Christi (rev. 01/27/76)
NG 14–6 Port Isabel (rev. 09/09/98)
NG 15–1 East Breaks (rev. 01/27/76)
NG 15–2 Garden Banks (rev. 03/15/99)
NG 15–4 Alaminos Canyon (rev. 04/27/89)
NG 15–5 Keathley Canyon (rev. 09/09/98)
NG 15–8 (No Name) (rev. 04/27/89)

Acreage of all blocks is shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this sale is shown in the document "List of Blocks Available for Leasing, Sale 174" included in the Sale Notice Package. Some of these blocks may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line, or partially included in the Flower Garden Banks National Marine Sanctuary (in accordance with the President's June 1998 withdrawal directive, portions of blocks lying within National Marine Sanctuaries are no longer available for leasing). Information on the unleased portions of such blocks, including the exact acreage, is found in the document titled "Western Gulf of Mexico Lease Sale 174—Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease," included in the Sale Notice Package.

Areas not Available for Leasing

The following blocks in the Western Gulf of Mexico Planning Area are not available for leasing:

blocks currently under lease; and the following unleased blocks or partial blocks:

High Island Area Block 170, and Galveston Area, South Addition, Block A–125 (which are currently under appeal); and

High Island Area, East Addition, South Extension, Blocks A–375 and A–398 (at the Flower Garden Banks), and the portions of other blocks within the boundary of the Flower Garden Banks National Marine Sanctuary: portions of High Island Area, East Addition, South Extension, Block A–401; High Island Area, South Addition, Block A–513; and Garden Banks Area Block 135; and

Mustang Island Area Blocks 793, 799, and 816 (blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel; and

The following blocks which are beyond the United States Exclusive Economic Zone and have been temporarily deferred from leasing by the Department of the Interior due to ongoing negotiations with the Government of Mexico:

Keathley Canyon (area NG 15–05)	Area NG 15–08
Blocks:	Blocks:
722 through 724	11 through 34.
764 through 770	56 through 81.
807 through 816	102 through 128.
849 through 861	148 through 173.
892 through 907	194 through 217.
934 through 953	239 through 261.
978 through 999	284 through 305.
	336 through 349.

Leasing Terms and Conditions

Primary lease terms, minimum bids, annual rental rates, royalty rates, and royalty suspension areas are shown on the map "Lease Terms and Economic Conditions, Sale 174, Final" for leases resulting from this sale:

Primary lease terms: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in water depths of 800 meters or deeper;

Minimum bids: $25 per acre or fraction thereof for blocks in water depths of less than 800 meters and $37.50 per acre or fraction thereof for blocks in water depths of 800 meters or deeper;

Annual rental rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper; until initial production is obtained;

Royalty rates: 16⅔percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in waters depths of 400 meters or deeper, except during periods of royalty suspension;

Royalty Suspension Areas: Royalty suspension *may* apply for blocks in water depths of 200 meters or deeper; see the map for specific areas. See 30 CFR 203 for the final rule specifying royalty suspension terms.

The map titled "Stipulations and Deferred Blocks, Sale 174, Final" depicts the blocks where the Topographic Features, Military Areas, and Naval Mine Warfare Area stipulations apply. The texts of the lease stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 174, Final" included in the Sale Notice Package. Also shown on this map are the deferred blocks noted above.

Rounding

The following procedure must be used to calculate minimum bid, rental, and minimum royalty on blocks with fractional acreage: Round up to the next whole acre and multiply by the applicable dollar amount to determine the correct minimum bid, rental, or minimum royalty.

Note: For the minimum bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing, Sale 174" included in the Sale Notice Package.

Method of Bidding

For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 174, not to be opened until 9 a.m., Wednesday, August 25, 1999." The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the Sale Notice Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 64 FR 14751, on March 26, 1999 (revised at 64 FR 19193 on April 19, 1999). Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the ⅛th bonus on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the Sale Notice Package).

Bid Deposit

Bidders will have the option of submitting the ⅛ cash bonus by cashier's check, bank draft, or certified check with the bid, or by using electronic funds transfer (EFT) procedures. Detailed instructions for submitting the ⅛ bonus payment by EFT are contained in the document "Instructions for Making EFT ⅛ Bonus Payments" included in the Sale Notice Package. Any payments will be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Note: Bidders submitting the ⅛ bonus payment by cashier's check, bank draft, or certified check with their bid(s) must make the check payable to the order of the United States Department of the Interior—Minerals Management Service. For identification purposes, the following information must appear on the check or draft: company name, GOM Company Number, and the area and block bid on (abbreviation acceptable).

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, "Modifications to the Bid Adequacy Procedures" (64 FR 37560), is available from the MMS Gulf of Mexico Regional Office Public Information Unit.

Successful Bidders

The MMS will require each person who has submitted a bid accepted by the authorized officer to execute copies of the lease (Form MMS–2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued by EFT in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each person involved as a bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification that the person is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should

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review the requirements of 43 CFR, Part 12, Subpart D. A copy of the certification form is contained in the Sale Notice Package.

Equal Opportunity

The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the MMS Gulf of Mexico Regional Office prior to lease award.

Information to Lessees

The Sale Notice Package contains a document titled "Information to Lessees." These Information to Lessees items provide information on various matters of interest to potential bidders.

WC Rosenbusch,

Director, Minerals Management Service.

Dated: July 12, 1999.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–18155 Filed 7–15–99; 8:45 am]

BILLING CODE BILLING CODE: 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology which meets the definition of "unassociated funerary object" under Section 2 of the Act.

The one cultural item is an iron spoon.

In 1869, this spoon was excavated from a burial by George Hachenberg of the United States Army on behalf of the U.S. Army Medical Museum. In 1876, this iron spoon was gifted to the Peabody Museum of Archaeology and Ethnology by the U.S. Army Medical Museum.

Primary accession and catalog documents for this iron spoon, currently on file at the Smithsonian, indicate this cultural item was removed from a Brule Indian grave located 15 miles up the east bank of the Missouri River from Fort Randall Dakota Territory in present-day South Dakota. Catalog records indicate the human remains with whom this cultural item was associated are in the possession of the Smithsonian Institution. Brule Sicangu Sioux oral traditions and historical documents indicate the Fort Randall area was part of the Brule Sicangu Sioux traditional territory during the time of this burial in the mid-19th century. The attribution of such a specific cultural affiliation to the human remains by the collector, as well as the presence of an iron object indicate the interment post-dates sustained contact between indigenous groups and Europeans beginning in the 18th century. Based on this evidence, the age of this cultural item and the occupation of the area by the Brule Sicangu Sioux coincide. The Brule Sicangu Sioux are represented by the Lower Brule Sioux Tribe of the Lower Brule Reservation and the Rosebud Sioux Tribe of the Rosebud Indian Reservation. Because the human remains associated with this cultural item are in the possession of the Smithsonian Institution, which operates under its own repatriation statute, this cultural item is considered an unassociated funerary object.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this one cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Lower Brule Sioux Tribe of the Lower Brule Reservation and the Rosebud Sioux Tribe of the Rosebud Indian Reservation.

This notice has been sent to officials of the Lower Brule Sioux Tribe of the Lower Brule Reservation and the Rosebud Sioux Tribe of the Rosebud Indian Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 022138; telephone (617) 495-2254 before August 16, 1999. Repatriation of these objects to the Lower Brule Sioux Tribe of the Lower Brule Reservation and the Rosebud Sioux Tribe of the Rosebud Indian Reservation may begin after that date if no additional claimants come forward.

Dated: July 9, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–18124 Filed 7–15–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Southwest Museum, Los Angeles, CA

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Southwest Museum, Los Angeles, CA.

A detailed assessment of the human remains was made by Southwest Museum professional staff in consultation with representatives of the Organized Village of Kasaan.

In 1919, human remains representing one individual were recovered from "an old Indian graveyard" at Old Kasaan, AK by Dr. M.A. Winningham while on a hunting and fishing trip in Alaska. No known individuals were identified. No associated funerary objects are present.

In 1946, Dr. Winningham gave these human remains to L.S. Keeton, and were housed at the L.S. Keeton Museum in Edmonds, WA. In 1985, these human remains were donated to the Southwest Museum by Mr. and Mrs. Ivan Curtis (L.S. Keeton was the maternal grandfather of Mr. Curtis). Ethnographic sources indicate Kasaan village existed at the time of European contact and was abandoned in 1902, when its inhabitants were persuaded by the Kasaan Bay Mining Company to move to the vicinity of the mining operation, which led to the establishment of the present-day Kasaan.

Based on the above mentioned information, officials of the Southwest Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Southwest Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Organized Village of Kasaan.

This notice has been sent to officials of the Organized Village of Kasaan. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Duane King, Southwest Museum, P.O. Box 41558, Los Angeles, CA 90041-0558; telephone: (323) 221-2164, before August 16, 1999. Repatriation of the human remains to the Organized Village of Kasaan may begin after that date if no additional claimants come forward.

Dated: July 9, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist. Manager, Archeology and Ethnography Program.

[FR Doc. 99–18125 Filed 7–15–99; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

Certain Bearings From China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on certain bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on certain bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On July 2, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to all subject bearings from China, Germany, Hungary, Italy, Japan, Romania, Singapore, and the United Kingdom, ball and spherical plain bearings from France, and ball bearings from Sweden, the Commission found that both the domestic interested party group responses [2] and the respondent interested party group responses [3] to its notice of institution [4] were adequate and voted to conduct full reviews.[5]

With regard to cylindrical roller bearings from France and Sweden, the Commission found that the domestic interested party group responses were adequate and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[6] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18152 Filed 7–15–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–265, 267 and 268 (Review) and Investigations Nos. 731–TA–297–299, 304 and 305 (Review)]

Certain Cooking Ware From China, Korea, Mexico, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty and antidumping duty orders on porcelain-on-steel and top-of-the-stove cooking ware from China, Korea, Mexico, and Taiwan.

[1] The countries and investigation numbers for tapered roller bearings are as follows: China is 731–TA–344 (Review); Hungary is 731–TA–341 (Review); Japan is AA1921–143 (Review) for 4 inches and under and 731–TA–343 (Review) for over 4 inches; and Romania is 731–TA–345 (Review). The countries and investigation numbers for ball, cylindrical roller, and spherical plain bearings are as follows: France is 731–TA–392–A–C (Review); Germany is 731–TA–391–A–C (Review); and Japan is 731–TA–394–A–C (Review). The countries and investigation numbers for ball and cylindrical roller bearings are as follows: Italy is 731–TA–393–A–B (Review); Sweden is 731–TA–397–A–B (Review); and the United Kingdom is 731–TA–399–A–B (Review). The countries and investigation numbers for ball bearings are as follows: Romania is 731–TA–395 (Review) and Singapore is 731–TA–396 (Review).

[2] Commissioner Crawford dissenting with respect to spherical plain bearings from France, Germany, and Japan.

[3] Chairman Bragg dissenting with respect to tapered roller bearings and ball bearings from Romania; Commissioner Crawford dissenting with respect to spherical plain bearings from Germany, ball bearings from France and Germany, and cylindrical roller bearings from Germany, Italy, Japan, and the United Kingdom.

[4] The notice of institution for all of the subject reviews was published in the **Federal Register** on Apr. 1, 1999 (64 FR 15783).

[5] Commissioner Crawford dissenting with respect to cylindrical roller bearings from Germany, Italy, Japan, and the United Kingdom, and with respect to spherical plain bearings from France, Germany, and Japan.

[6] Commissioner Crawford dissenting.

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SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on porcelain-on-steel cooking ware from China, Mexico, and Taiwan and on top-of-the-stove stainless steel cooking ware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 F.R. 27295, May 19, 1999). A record of the Commissioners' votes and the Commission's statement on adequacy are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on November 15, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on December 14, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 6, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 9, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 3, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 4, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 4, 2000. On January 26, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 28, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18147 Filed 7–15–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Certain Fresh Cut Flowers From Chile, Ecuador, Mexico, and Peru [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty orders on standard carnations from Chile and pompon chrysanthemums from Peru and antidumping duty orders on standard carnations from Chile and standard carnations, standard chrysanthemums and pompon chrysanthemums from Ecuador and Mexico.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty orders on standard carnations from Chile and pompon chrysanthemums from Peru and antidumping duty orders on standard carnations from Chile and standard carnations, standard chrysanthemums and pompon chrysanthemums from Ecuador and Mexico would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 9, 1999.

FOR FURTHER INFORMATION CONTACT: Dong Jun Na (202–708–4724), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 F.R. 31609, June 11, 1999). A record of the Commissioners' votes and the Commission's statement on adequacy are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on November 8, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on November 30, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 22, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 24, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is November 18, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is December 9, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before December 9, 1999. On January 10, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 20, 2000, but such final comments must not contain new factual information and must otherwise comply

[1] The investigation numbers are as follows: Chile is 701–TA–276 (Review) and 731–TA–328 (Review), Ecuador is 731–TA–331 (Review), Mexico is 731–TA–333 (Review), and Peru is 303–TA–18 (Review).

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with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18151 Filed 7–15–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–286 (Review) and 731–TA–365 (Review)]

Industrial Phosphoric Acid From Israel and Belgium

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order and antidumping duty order on industrial phosphoric acid from Israel and Belgium.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order and/or revocation of the antidumping duty order on industrial phosphoric acid from Israel and Belgium would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 F.R. 31610, June 11, 1999) . A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report

The prehearing staff report in the reviews will be placed in the nonpublic record on December 20, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on January 11, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 3, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 6, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing .

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 30, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 21, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 21, 2000. On February 15, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 17, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18150 Filed 7–15–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on internal combustion industrial forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On July 2, 1999, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (64 FR 15786, April 1, 1999) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18153 Filed 7–15–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–384 (Review)

Nitrile Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on nitrile rubber from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on nitrile rubber from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

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accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1999, the Commission determined that both the domestic interested party group response and respondent interested party group response to its notice of institution (64 F.R. 15788, April 1, 1999) of the subject five-year review were inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 9, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 12, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 12, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18149 Filed 7–15–99; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission, with Chairman Bragg and Commissioners Crawford and Askey dissenting, has found the response submitted by Zeon Chemicals L.P. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–339 (Review) and 731–TA–340–A through 340–I (Review)]

Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 3, 1999, the Commission established a schedule for the conduct of the expedited five-year reviews of the subject investigations (64 FR 31610, June 11, 1999). Subsequently, the Department of Commerce extended the date for its final results in the expedited reviews from June 29, 1999 to August 30, 1999 (64 FR 36333, July 6, 1999). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: the staff report will be placed in the public record on September 28, 1999; the deadline for interested party comments (which may not contain new factual information) is October 1, 1999; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the reviews by any person that is neither a party to the five-year reviews nor an interested party is October 1, 1999.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18148 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–401 (Preliminary) and 731–TA–852–855 (Preliminary)]

Certain Structural Steel Beams From Germany, Japan, Korea, and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase countervailing duty investigation No. 701–TA–401 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of certain structural steel beams,[1] principally provided for in subheadings 7216.32.00 and 7216.33.00 of the Harmonized Tariff Schedule of the United States (HTS),[2] that are alleged to be subsidized by the Government of the Republic of Korea.

The Commission also gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–852–855 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Germany, Japan, the Republic of Korea, and Spain of certain structural steel beams,[1] principally provided for in subheadings 7216.32.00 and 7216.33.00 of the HTS,[2] that are alleged to be sold in the United States at less than fair value.

Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)) or pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in these investigations in 45 days, or in this case by August 23, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by August 30, 1999.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Pamela Luskin (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on July 7, 1999, by counsel on behalf of Northwestern Steel & Wire Co., Sterling, IL; Nucor-Yamato Steel Co., Blytheville, AR; TXI-Chaparral Steel Co., Midlothian, TX; and The United Steelworkers of America AFL–CIO, Pittsburgh, PA.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 28, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Pamela Luskin (202–205–3189) not later than July 26, 1999, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 2, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

[1] The imported products subject to these investigations consist of certain structural steel beams, which for purposes of these investigations consist of rolled doubly-symmetric steel shapes having at least one dimension of their cross-section of at least 80 millimeters (3.15 inches) or more, not of stainless steel but otherwise regardless of metallurgical classification (e.g., carbon steel, alloy steel, or high-strength-low-alloy steel). These products include, but are not limited to, wide-flange beams, H-piles, standard I-beams, and M-sections. Excluded from the imported products subject to these investigations are (1) structural steel beams greater than 181.44 kilograms (400 pounds) per linear foot or with a section height over 101.6 centimeters (40 inches); (2) structural steel beams specially manufactured for use in forklift truck masts that consist of forklift mast section I-beams, quality C1027M, with a flange of no more than 12.7 centimeters (5 inches) and a length of a maximum of 6.5 meters (21.33 feet), which have been produced according to a specific drawing or blueprint for use as forklift mast sections in the manufacture of forklift trucks; and (3) structural steel beams processed sufficiently in a North American Free Trade Agreement (NAFTA) or non-NAFTA country, which if processed in a NAFTA country, would be deemed "goods originating in the territory of a NAFTA party" after processing.

[2] Imports may also enter under HTS subheadings 7216.50.00, 7216.99.00, 7228.70.30, or 7228.70.60.

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Issued: July 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18154 Filed 7–15–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1212F]

RIN 1121–ZB46

Fiscal Year 1999 Missing and Exploited Children's Program Plan

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Announcement of Fiscal Year 1999 Missing and Exploited Children's Program Plan.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is issuing its Missing and Exploited Children's Program Final Program Plan for Fiscal Year 1999.

DATES: Not applicable.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Missing and Exploited Children's Program, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: On March 8, 1999 at 64 FR 11366, OJJDP published the Fiscal Year 1999 Missing and Exploited Children's Program Proposed Program Plan and Announcement of Discretionary Competitive Grant and requested public comments. Three individuals wrote to comment on the Proposed Plan. Two of them expressed support for the plan, specifically mentioning the proposal to prevent computer-related sexual exploitation of children. The third writer provided comments on two specific topics. These comments and the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) responses are summarized below.

Comment: The writer asked that funds "be earmarked for research into the number of child support payors who abduct children because visitation is being refused."

Response: All fiscal year 1999 Missing and Exploited Children's Program (MECP) research funds are needed to support the ongoing National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children and the Federal Bureau of Investigation's Child Abduction and Serial Killer Unit (CASKU) research project. However, the writer's suggestion will be included for consideration in future MECP research planning.

Comment: The writer objected to funding for CASKU, indicating that an "independent research project in academia would provide much more scientific data."

Response: Because it involves interviews of convicted sex offenders and the need to make appraisals regarding the truthfulness of those being interviewed, this project requires unrestricted access to law enforcement records not normally available to academia. CASKU has such access and will be able to build on previous research efforts through this project.

Based on consideration of these three public comments, OJJDP has determined that the Proposed Program Plan does not need to be modified in any way. Accordingly, the Proposed Plan as published on March 8, 1999 at 64 FR 11366 is now the Final Program Plan for Fiscal Year 1999.

Dated: July 9, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–18159 Filed 7–15–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 8, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Permit-Required Confined Space (29 CFR 1910.146).

OMB Number: 1218–0203.

Frequency: Varies (on occasion, annually, or daily).

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 2,700,000.

Estimated Time Per Respondent: From 5 minutes (.08) to 16 hours.

Total Burden Hours: 1,634,663.

Total Annualized capital/startup costs: $0.

Total annual costs (operation/maintaining systems or purchasing services): $0.

Description: The collections of information are needed by employers and employees involved in the entry of permit-required confined spaces to prevent injuries and death from exposure to the hazards associated with such entries. The standard was promulgated under the authority in section 6(b) of the Occupational Safety and Health Act of 1970.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–18171 Filed 7–15–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 9, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

*Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

*Enhance the quality, utility, and clarity of the information to be collected; and

*Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Veterans Supplement to the CPS.

OMB Number: 1220–0102.

Frequency: Biennially.

Affected Public: Individuals or households.

Number of Respondents: 12,000.

Estimated Time Per Respondent: 1 minute.

Total Burden Hours: 200 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The veterans supplement provides information on the number and characteristics of disabled veterans who served in the Vietnam War Theater, and recently separated veterans, including their employment status. The supplement also provides data on veterans' participation in various employment and training programs. Data are necessary to evaluate veterans programs and to meet a legislative mandate for a labor market study.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–18172 Filed 7–15–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts

MA990001 (Mar. 12, 1999)
MA990002 (Mar. 12, 1999)
MA990003 (Mar. 12, 1999)
MA990006 (Mar. 12, 1999)
MA990007 (Mar. 12, 1999)
MA990009 (Mar. 12, 1999)
MA990017 (Mar. 12, 1999)
MA990018 (Mar. 12, 1999)
MA990019 (Mar. 12, 1999)
MA990021 (Mar. 12, 1999)

Volume II

None

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Volume III

None

Volume IV

None

Volume V

Iowa
IA990003 (Mar. 12, 1999)
IA990004 (Mar. 12, 1999)
IA990005 (Mar. 12, 1999)
IA990010 (Mar. 12, 1999)
IA990012 (Mar. 12, 1999)
IA990013 (Mar. 12, 1999)
IA990014 (Mar. 12, 1999)
IA990015 (Mar. 12, 1999)
IA990016 (Mar. 12, 1999)
IA990017 (Mar. 12, 1999)
IA990019 (Mar. 12, 1999)
IA990024 (Mar. 12, 1999)
IA990029 (Mar. 12, 1999)
IA990038 (Mar. 12, 1999)
IA990070 (Mar. 12, 1999)
IA990071 (Mar. 12, 1999)
IA990072 (Mar. 12, 1999)
IA990078 (Mar. 12, 1999)
IA990079 (Mar. 12, 1999)
IA990080 (Mar. 12, 1999)
Nebraska
NE990001 (Mar. 12, 1999)
NE990003 (Mar. 12, 1999)
NE990005 (Mar. 12, 1999)
NE990007 (Mar. 12, 1999)
NE990009 (Mar. 12, 1999)
NE990010 (Mar. 12, 1999)
NE990011 (Mar. 12, 1999)
NE990019 (Mar. 12, 1999)
NE990025 (Mar. 12, 1999)
NE990038 (Mar. 12, 1999)
NE990044 (Mar. 12, 1999)

Volume VI

Alaska
AK990001 (Mar. 12, 1999)
Oregon
OR990001 (Mar. 12, 1999)
OR990017 (Mar. 12, 1999)
Washington
WA990026 (Mar. 12, 1999)

Volume VII

California
CA990029 (Mar. 12, 1999)
Hawaii
HI990001 (Mar. 12, 1999)
Nevada
NV990001 (Mar. 12, 1999)
NV990003 (Mar. 12, 1999)
NV990004 (Mar. 12, 1999)
NV990005 (Mar. 12, 1999)
NV990006 (Mar. 12, 1999)
NV990007 (Mar. 12, 1999)
NV990009 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 9th day of July 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–17913 Filed 7–15–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–26; Exemption Application No. D–10702, et al.]

Grant of Individual Exemptions; Hanson Operating Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Hanson Operating Company, Inc., Defined Benefit Pension Plan (the Plan), Located in Roswell, New Mexico

[Prohibited Transaction Exemption 99–26; Exemption Application No. D–10702]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain closely-held stock (the Stock) to Douglas L. McBride and Basil R. Willis, parties in interest with respect to the Plan, provided that the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Plan pays no commissions nor other expenses relating to the sale; and (c) the Plan receives an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 27, 1999 at 64 FR 28836.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Gaetano Lombardo Individual Retirement Account (the IRA), Located in St. Louis, Missouri

[Prohibited Transaction Exemption 99–28; Exemption Application No. D–10749]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the the Code, shall not apply to the proposed sale by the IRA of 26,306 shares of stock (the Stock) of Courtesy Manufacturing Company (Courtsey) to Courtesy, a disqualified person with respect to the IRA, provided that the following conditions are satisfied: (1) The sale of Stock by the IRA is a one-time transaction for cash; (2) no commissions or other expenses are paid by the IRA in connection with the sale; and (3) the IRA receives the greater of: (a) The fair market value of the Stock as determined by a qualified independent appraiser as of October 31, 1998, or (b) the fair market value of the Stock as of the time of the sale. [1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does

[1] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 12th day of July, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, Department of Labor.

[FR Doc. 99–18122 Filed 7–15–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Analysis of the Veterans Automated Resume Referral System

AGENCY: Veterans' Employment and Training Service, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)].

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This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently the Veterans' Employment and Training Service (VETS) is soliciting comments concerning the proposed information collection request for the Analysis of the Veterans Automated Resume Referral System.

DATES: Written comments must be submitted by September 14, 1999.

ADDRESSES: Comments are to be submitted to the Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 693–4719. Written comments limited to 10 pages of fewer may also be transmitted by facsimile to (202) 693–4755.

FOR FURTHER INFORMATION CONTACT: Stanley Seidel, Chief, Employment and Training Programs, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW, Washington, DC 20210, telephone: (202) 693–4719.

Copies of the referenced information collection request are available for inspection and copying through VETS and will be mailed to persons who request copies by telephoning Stanley Seidel at (202) 693–4719.

SUPPLEMENTARY INFORMATION:

I. Background

The State Employment Service Agencies (SESA's) and employers are increasing their use of the America's Job Bank (AJB) and America's Talent Bank (ATB). VETS wants to ensure that our Nation's veterans continue to receive priority in the Employment Service referral process.

In an effort to ensure that veterans do receive priority consideration in the referral process, VETS and the Employment and Training Administration have agreed to a pilot project. The pilot began on January 4, 1999 and will run through September 1999. Four States, North Carolina, Florida, Kansas, and Washington (State) have been selected to participate in the pilot.

The pilot will address veterans' priority of referral on the ATB. When a job order is placed on the AJB, the ATB system will automatically search for any qualified veterans resume and send it to the employer. Upon completion of the pilot, an evaluation will be conducted to measure the effectiveness of both projects to determine if they have demonstrated veterans priority in the referral process.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, included through the use of appropriate automated, electronic, mechanical, or other technology collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

This notice requests the Office of Management and Budget approval of the Paperwork requirements for the Analysis of the Veterans Automated Resume Referral System.

Type of Review: Regular Submission (new).

Agency: Veterans' Employment and Training Service.

Title: The Analysis of the Veterans Automated Resume Referral System.

OMB Number: New.

Affected Public: Individuals or households.

Total Respondents: 919.

Average Time per Response: 15 minutes.

Total Annualized Capital/startup costs: $0.

Total Initial Annual Costs: (operating/maintaining systems or purchasing services) $33,730.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

Dated: July 8, 1999.

Espiridion "AL" Borrego,

Assistant Secretary for Veterans' Employment and Training Service.

[FR Doc. 99–18173 Filed 7–15–99; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before August 30, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business.

Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Labor, Office of the Secretary of Labor (N9–174–99–1, 12 items, 12 temporary items). Electronic copies of records created using electronic mail and word processing accumulated by the Office of Public Affairs. Included are electronic copies associated with such records as news releases, publications, transcripts of speeches and testimony, briefing books, biographies, schedules, and correspondence. This schedule follows Model 1 as described in the Supplementary Information section of this notice. Recordkeeping copies of these files are included in Disposition Jobs N1–174–94–2 and N1–174–96–6.

2. Tennessee Valley Authority, Agency-wide (N9–142–99–1, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that relate to transportation, budget and finance, library services, copier management, and other administrative services. Included are electronic copies of records pertaining to such subjects as the operation and maintenance of aircraft and motor vehicles, flight schedules, the leasing or purchase of copy machines, fuel inventories, vanpool operations, and budget preparation. This schedule follows Model 2 as described in the Supplementary Information section of this notice. Recordkeeping copies of these files are included in the Administrative Services chapter of the TVA Comprehensive Records Schedule.

Dated: July 12, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–18178 Filed 7–15–99; 8:45 am]

BILLING CODE 7515–01–P

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NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34610–ML; ASLBP No. 99–768–02–ML]

Atomic Safety and Licensing Board Panel; Hearing

July 12, 1999.

Before Administrative Judges: Charles Bechhoefer, Presiding Officer; Dr. Linda W. Little, Special Assistant.

In the matter of the Department of the Army, Aberdeen Proving Ground, Maryland; Denial of Materials License for M22/GID–3 Automatic Chemical Agent Detector/Alarm.

Notice is hereby given that, by Memorandum and Order dated July 12, 1999, the Presiding Officer in this proceeding has granted the June 4, 1999 request for a hearing of the Department of the Army (Army or Applicant). On May 17, 1999, the Nuclear Regulatory Commission Staff denied Army's application for registration and licensing of the model M22/GID–3 Automatic Chemical Agent Detector/Alarm for distribution pursuant to 10 CFR 32.26. The hearing will involve Army's appeal from this Staff ruling.

This proceeding will be conducted under the Commission's Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, set forth in 10 CFR Part 2, Subpart L. Further details appear in the July 12, 1999 Memorandum and Order referenced above. Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L St. NW, Washington, DC 20555.

The Army and the NRC Staff are parties to this proceeding. As requested by the Staff, the hearing is being deferred to accommodate ongoing settlement negotiations. If settlement is not achieved, a contested proceeding will be conducted.

In accordance with 10 CFR 2.1205(j), and notwithstanding the ongoing settlement negotiations, any person whose interest may be affected by this proceeding may within 30 days of publication of this Notice file a petition for leave to intervene. Such petition must identify (1) the interest of the petitioner in the proceeding, (2) how that interest may be affected by the results of the proceeding, with particular reference to the factors set out in 10 CFR 2.1205(h) (and, in particular, whether the petitioner's specified areas of concern are germane to the subject matter of the proceeding), (3) the petitioner's area of concern about the licensing activity that is the subject matter of the proceeding, and (4) the circumstances establishing that the request is timely (in accord with the standards set forth in this Notice).

Each petition must be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies should be served upon the Presiding Officer, the Special Assistant, the Assistant General Counsel for Hearings and Enforcement, and the Applicant, through its project manager, Col. Stephen V. Rooves, NBC Defense Systems, U.S. Army Soldier and Biological Chemical Command, 5232 Fleming Road, Aberdeen Proving Ground, MD 21010–5423, and the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Pursuant to 10 CFR 2.1205(k)(2), any party (including the NRC Staff) may file an answer to a petition to intervene within 10 days of service of such petition.

As provided by 10 CFR 2.1211(b), within 30 days of publication of this Notice, the representative of an interested State, county, municipality, or an agency thereof, may request an opportunity to participate in this proceeding. The request for an opportunity to participate must state with reasonable specificity the requestor's areas of concern about the licensing activity involved in this proceeding. Upon receipt of a properly filed request, the Presiding Officer will afford the representative a reasonable opportunity to make written and oral presentations in accordance with 10 CFR 2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues.

In addition, pursuant to 10 CFR 2.1211(a), any member of the public who is not a party to the proceeding may make a limited appearance in order to state his or her views on the issues involved in this proceeding. Although these statements are not evidence and do not become part of the decisional record, the Presiding Officer may ask the Staff to consider in its licensing review information concerning matters raised in such limited appearance statements and not directly covered by issues identified by the parties. Limited appearances are usually in writing although, if the Presiding Officer conducts an oral argument or in-person prehearing conference, the Presiding Officer may hear oral statements. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of statements and requests should also be forwarded to the Presiding Officer.

Dated: July 12, 1999, Rockville, MD.

Charles Bechhoefer,

Presiding Officer, Administrative Judge.

[FR Doc. 99–18160 Filed 7–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Public Service Electric and Gas Company (the licensee) for an amendment to Facility Operating License Nos. DPR–70 and DPR–75 issued to the licensee for operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on September 9, 1998 (63 FR 48264).

The purpose of the licensee's amendment request was to revise Technical Specification 3/4.7.6, "Control Room Emergency Air Conditioning System." Specifically, the licensee requested that the acceptance criteria for the control room envelope be revised to maintain a ⅛-inch positive pressure with respect to the outside atmosphere, the work control center and control room equipment rooms, and a ½₀-inch water gauge positive pressure with respect to the relay rooms and the auxiliary building.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated July 9, 1999.

By August 16, 1999, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated July 30, 1998, as supplemented on February 22, 1999, and (2) the Commission's letter to the licensee dated July 9, 1999.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 9th day of July 1999.

S. Singh Bajwa,

Acting Director, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18162 Filed 7–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric and Gas Company; Hope Creek Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57, issued to Public Service Electric and Gas Company (the licensee), for operation of the Hope Creek Generating Station (HCGS), located in Salem County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would correct typographical and editorial errors in the HCGS Technical Specifications (TSs) in accordance with the licensee's application for amendment dated May 24, 1999, as supplemented June 21, 1999.

The Need for the Proposed Action

The proposed action would provide clarity and administrative correctness to the TSs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the changes to the TSs are administrative in nature. The proposed action does not affect the assessment of environmental impacts described in the "Final Environmental Statement related to the operation of Hope Creek Generating Station" (NUREG–1074).

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alterative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the HCGS.

Agencies and Persons Consulted

In accordance with its stated policy, on June 8,1999, the staff consulted with the New Jersey State official, Mr. Richard Pinney of the New Jersey Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 24, 1999, as supplemented by letter dated June 21, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 8th day of July 1999.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18163 Filed 7–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Design and Assessment Issues in Safety-Critical Digital Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of seminar.

SUMMARY: The NRC has committed through its Strategic Plan to incorporate risk insights, conduct anticipatory research on issues of potential regulatory and safety significance, engage in cooperative research agreements, and provide timely information to our stakeholders. As part of this commitment, a seminar has been established to present on-going anticipatory research in the safety assessment of digital systems. This research is conducted through a cooperative agreement between academia and the government. The goal of this seminar is to inform our stakeholders of current research activities and to solicit their perspectives and interest in safety assessment of digital systems.

DATE: August 5, 1999—The seminar will begin at 8:00 a.m. and end at 5:00 p.m.

LOCATION: Thornton Hall, Room 316, University of Virginia, Charlottesville, VA 22903.

CONTACT:

Registration—Francine Randolph, Phone: (301) 415–6798, E-mail: *fxr1@nrc.gov*

General—John Calvert, Phone: (301) 415–6323, E-mail: *jac4@nrc.gov*

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Terry Jackson, Phone: (301) 415–6486.
E-mail: *twj@nrc.gov*

ATTENDANCE: This seminar is free and open to the general public. All individuals planning to attend should pre-register with Ms. Francine Randolph by telephone or e-mail and provide their name, affiliation, phone number, and e-mail address.

PROGRAM: This seminar presents a survey of safety assessment practices found in nuclear, aviation, medical, railway, and other applications where the correct operation of a digital system is crucial to system safety. It also presents new research results related to digital design and safety assessment. The seminar is partitioned into two half-day sessions. The morning session examines the design of safety-critical digital systems, and the afternoon session addresses the assessment of safety-critical systems. Both sessions demonstrate techniques by illustrating their application to real industrial systems.

I. Issues in the Design of Safety-Critical Systems

- Important terminology and concepts.
- Industry approaches and applications of safety-critical systems.
- Design methodologies and processes for safety-critical systems.
- Impact of commercial-off-the-shelf (COTS) hardware and software on safety-critical system design.
- Design principles for safety-critical systems.
- A safety-critical digital design methodology, architecture, application, and implementation.

II. Issues in the Assessment of Safety-Critical Systems

- Safety assessment methodologies and processes for digital systems.
- Probabilistic modeling techniques for digital systems.
- Critical digital system parameters that impact safety.
- Fault coverage modeling and estimation.
- Impact of fault coverage on digital system safety.
- Example assessment of an industrial safety-critical digital system.

For the Nuclear Regulatory Commission.

Dated in Rockville, Maryland this 12th day of July 1999.

John W. Craig,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research

[FR Doc. 99–18161 Filed 7–15–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Interim OPM Criteria for IRS Broadbanding System

AGENCY: Office of Personnel Management.

ACTION: Notice with request for comments.

SUMMARY: This notice publicizes interim criteria for broadbanding systems for the Internal Revenue Service (IRS). The Internal Revenue Service Restructuring and Reform Act of 1998 authorizes the Secretary of the Treasury to establish one or more broadbanding systems covering all or any portion of the IRS workforce under the General Schedule (GS). Title 5, United States Code, directs the Office of Personnel Management (OPM) to prescribe criteria for IRS broadbanding systems and specifies certain principles that such criteria must follow, at a minimum.

DATES: Submit comments on or before August 16, 1999.

ADDRESSES: Send written comments to Gregory Zygiel, U.S. Office of Personnel Management, 1900 E Street, NW. Room 7305, Washington, DC 20415–8320, or submit comments electronically to totalcomp@opm.gov.

FOR FURTHER INFORMATION CONTACT: Gregory Zygiel, 202–606–8047.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206) authorizes the Secretary of the Treasury to establish one or more broadbanding systems covering all or any portion of the IRS workforce under the General Schedule (GS). 5 U.S.C. 9509(b) directs OPM to prescribe criteria for IRS broadbanding systems and specifies certain principles that such criteria must follow, at a minimum. The criteria were developed after conferring with the Department of the Treasury, the Internal Revenue Service, and the National Treasury Employees Union. They are designed to incorporate the lessons learned from previous experience with broadbanding under personnel demonstration projects.

5 U.S.C. 9509(b)(3) requires that employees covered by IRS broadbanding systems will remain subject to the laws and regulations covering General Schedule employees (e.g., locality payments, the aggregate limitation on pay, premium pay, and recruitment and relocation bonuses and retention allowances), except as otherwise provided in the criteria.

The publication of these criteria permits IRS to implement broadbanding systems under this authority. Before implementing any broadbanding system under this authority, IRS must develop written plans, policies, and implementing procedures that address each relevant criterion, including descriptions of broadbanding structure(s), classification criteria, positions covered, the method of pay progression within a band, pay-setting policies, policies for paying supervisors or management officials, and policies for converting positions into broadbanding systems. Any public comments may assist OPM in working with IRS as it develops such plans, policies, and procedures.

Dated: July 9, 1999.

Office of Personnel Management.

Janice R. Lachance,

Director.

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I. Authority

Section 9509 of title 5, United States Code, as added by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (Public Law 105–206), provides the Secretary of the Treasury with the authority to establish one or more broadbanding systems covering all or any portion of the IRS workforce under the General Schedule (GS). Section 9509(b) directs the Office of Personnel Management (OPM) to prescribe criteria for IRS broadbanding systems and specifies certain principles that such criteria must follow, at a minimum.

II. Applicability

Section 9509(a) defines a "broadbanded system" as a system for grouping positions for pay, job evaluation, and other purposes that is different from the General Schedule pay and classification system established under chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Employees covered by IRS broadbanding systems are not covered by subchapter III of chapter 53 or by those provisions of chapter 51 that define General Schedule grades. However, selected provisions from those parts of law are used in applying parallel features to employees in IRS broadbanding systems, as provided in these criteria.

As required by 5 U.S.C. 9509(b)(3), employees covered by IRS broadbanding systems are to be treated as if they are General Schedule employees for the purpose of applying other laws and regulations governing General Schedule employees, except as otherwise provided in these criteria. Applicable laws and regulations include, but are not limited to: 5 U.S.C. 5304, authorizing locality-based comparability payments; 5 U.S.C. 5307, establishing a limitation on aggregate pay; 5 U.S.C. chapter 55, subchapter V, authorizing various forms of premium pay; and 5 U.S.C. 5753 and 5754, authorizing recruitment and relocation bonuses and retention allowances.

Note: Many title 5 provisions apply to Federal employees on a more general basis and do not base coverage on whether an employee is covered by the General Schedule system (e.g., severance pay, leave, retirement, and insurance).

Employees in IRS broadbanding systems are not covered by the special salary rate program established under 5 U.S.C. 5305. However, IRS broadbanding systems may use a parallel authority to establish staffing supplements, which are linked to established special salary rates, as described in Appendix A.

These criteria apply only to broadbanding systems that cover General Schedule positions. 5 U.S.C. 9509(b)(1)(B) authorizes the Secretary of the Treasury, with the prior approval of the Director of OPM, to include in a broadbanding system positions that otherwise would be subject to subchapter IV of chapter 53 (prevailing rate systems) or 5 U.S.C. 5376 (senior-level positions). Including such positions would require OPM's separate review and approval of a specific plan for that purpose. The criteria presented here are not intended to apply to broadbanding systems that include such positions.

III. Broadbanding System Plan

Before implementing any broadbanding system under this authority, IRS must develop a written plan that includes policies and implementing procedures to address each criterion that is relevant to the broadbanding system, including descriptions of broadbanding structure(s), positions covered, classification criteria, the method of pay progression within a band, policies for setting and adjusting pay, policies for paying supervisors or managerial employees, and policies for converting positions into broadbanding systems.

IV. Definitions

Under these criteria—

Band means a pay level or work level within a career path containing one or more General Schedule grades and related ranges of pay.

Broadbanding system means a system for grouping positions for pay, job evaluation, and other purposes that is different from the General Schedule system established under chapter 51 and subchapter III of chapter 53 of title 5, United States Code, as a result of combining the grades and related ranges of pay for one or more occupational series.

Career path means a grouping of one or more occupational series into broad occupational families or career tracks for job evaluation, pay, or other purposes. A career path may contain one or more bands.

Employee means an individual who would otherwise be covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code, if not covered by a broadbanding system.

Supervisor and *managerial employee* have the meaning given those terms in OPM's General Schedule Supervisory Grade Evaluation Guide.

V. Broadbanding Criteria

Criteria are provided below under the applicable principles listed in 5 U.S.C. 9509(b)(3)(A)–(F) (labeled A–F) and an additional principle (labeled G).

A. Ensure That the Structure of Any Broadbanding System Maintains the Principle of Equal Pay for Substantially Equal Work

IRS broadbanding systems must—

1. Link to the General Schedule.

2. Assign occupations to career paths based on the nature of work performed, the qualifications required, the normal career and pay progression, and other characteristics of those occupations.

3. Combine General Schedule grades into bands following the criteria in B. The range of difficulty and responsibility of each band must be the same as the range of difficulty and responsibility of the band's constituent grades (i.e., consistent with the grade level criteria in standards published by OPM in accordance with 5 U.S.C. 5105) and must represent the normal range of work performed in the organization.

4. Place positions into bands within career paths in accordance with—

a. Classification standards published by OPM under 5 U.S.C. 5105; or

b. Any agency guidance which places a position within its correct band and career path (but which need not be sufficient to determine a position's correct General Schedule grade).

5. Not include law enforcement officers covered by special salary rates under section 403 of the Federal Employees Pay Comparability Act of 1990 in the same band as non-law enforcement officers when the maximum grade in the band is any one of grades 3 through 10.

6. Use established General Schedule rates of pay (including any applicable locality rates or special salary rates) for premium pay purposes under subchapter V of chapter 55 of title 5, United States Code, and 5 CFR part 550, subpart A (i.e., for the purpose of determining the maximum hourly overtime rate and the biweekly premium pay limitation).

B. Establish the Minimum and Maximum Number of Grades That May Be Combined Into Bands

A band under an IRS broadbanding system may contain—

1. A minimum of one General Schedule grade.

2. A maximum of—

a. Eight General Schedule grades when grades 13, 14, and 15 are not included in the band;

b. Five General Schedule grades when grade 13 is included, but neither grade 14 nor 15 is included in the band;

c. Three General Schedule grades when grade 14 is included, but grade 15 is not included in the band; and

d. Two General Schedule grades when grade 15 is included in the band.

C. Establish the Requirements for Setting the Minimum and Maximum Rates of Pay in a Band

1. The minimum rate of basic pay for each band must equal the minimum rate of basic pay payable under 5 U.S.C. 5332 for the lowest General Schedule grade in that band. The maximum rate of basic pay for each band must equal the maximum rate of basic pay payable under 5 U.S.C. 5332 for the highest General Schedule grade in that band.

a. Notwithstanding C1, preceding, the maximum rates of basic pay for bands covering law enforcement officers must equal the maximum special salary rates for grades 3 through 10 established under section 403 of the Federal Employees Pay Comparability Act of 1990, where applicable.

b. The minimum and maximum rates of basic pay that define each band must be adjusted at the same time and in the same manner as adjustments are made in the corresponding minimum and maximum General Schedule rates of basic pay under 5 U.S.C. 5303 or similar provision of law.

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2. The maximum rate of basic pay for any band may not exceed the maximum rate of basic pay for grade 15.

3. Employees in IRS broadbanding systems are not covered by the special salary rate authority in 5 U.S.C. 5305. However, IRS broadbanding systems may provide for the use of staffing supplements instead of special salary rates under Appendix A of these criteria. If special salary rates are not replaced with staffing supplements, special rate employees must be converted into a broadbanding system under the procedures established in Appendix B of these criteria.

4. Only employees receiving retained rates of pay under subchapter VI of chapter 53 of title 5, United States Code, as applied in the broadbanding system, or in an approved staffing supplement category may receive rates of pay that exceed the locality-adjusted band maximum rates.

D. Establish the Requirements for Adjusting the Pay of an Employee Within a Band

1. IRS broadbanding systems must include—

a. Policies for adjusting the pay of an employee within a band, including—

(1) Adjustments made in accordance with paragraphs D2a and D3a; and

(2) Increases based on individual factors such as an employee's performance, skills, or competencies and/or time at pay level, except that such increases may not be based solely on time at pay level. Increases that advance an employee's relative position in a band (i.e., exceed the adjustments made in accordance with paragraphs D2a and D3a) may be paid only to employees whose performance meets or exceeds retention standards.

b. Policies concerning which level of management will make pay adjustment decisions for employees.

c. Principles for managing pay progression and payroll costs associated with basic pay adjustments. IRS must provide funding for salary increases under its broadbanding systems. Because broadbanding systems provide more choices on how to distribute pay to employees, it is necessary to have an overall budget to manage the costs associated with such choices. At a minimum, the salary increase budget must include funds equal to the amounts that would be required for individual pay adjustments made at the time of schedule adjustments under 5 U.S.C. 5303 (or similar provision of law) and locality-based comparability payments under 5 U.S.C. 5304 (or similar provision of law). A salary increase budget must meet salary cost objectives and be consistent with policies and procedures for adjusting pay under a broadbanding system that are established to ensure equal pay for work of equal value.

2. IRS broadbanding systems must provide for—

a. Making adjustments in the rates of basic pay for all employees who are not supervisors or managerial employees equivalent to the annual adjustments provided to General Schedule employees under 5 CFR 531.205. Employees on pay retention must be granted 50 percent of the increase in the maximum rate of basic pay for their band.

b. The payment of locality-based comparability payments for employees covered by 5 U.S.C. 5304 and 5 CFR part 531, subpart F, and special geographic adjustments for law enforcement officers covered by section 404 of the Federal Employees Pay Comparability Act of 1990 and 5 CFR part 531, subpart C. (See Appendix A for information on possible staffing supplements.)

3. IRS pay adjustment policies may provide for—

a. Determining the circumstances under which adjustments in rates of basic pay may be granted to supervisors or managerial employees up to the equivalent of the annual adjustments provided to General Schedule employees under 5 CFR 531.205. However, an employee's rate of basic pay may not fall below the minimum rate of his or her band as a result of receiving less than the full adjustment.

b. Reducing an employee's rate of basic pay within a band, but only for unacceptable performance, misconduct, or loss of supervisory status (if such loss results in reversal of a within-band adjustment granted at the time of placement in a supervisory position). Any reductions based on unacceptable performance or misconduct are adverse actions under 5 U.S.C. 7512.

c. Control points within bands. Control points are dollar points within bands that limit or restrict pay-setting or the movement of employees through the rate range of the band. If control points are used, IRS broadbanding systems must include policies on the number of control points within bands and how they are derived (e.g., as a percentage of the rate range) and applied (i.e., the circumstances under which an employee's rate of pay may be set or adjusted at, above, or below a control point).

E. Establish the Requirements for Setting the Pay of a Supervisory Employee Whose Position Is in a Broad Band or Who Supervises Employees Whose Positions Are in Broad Bands

1. IRS broadbanding systems may provide for a separate broadbanding system or career path for supervisors and managerial employees.

2. A supervisor's or managerial employee's rate of pay may not be based on the salaries of the employees he or she supervises or manages.

F. Establish the Requirements and Methodologies for Setting the Pay of an Employee Upon Conversion to a Broadbanding System, Initial Appointment, Change of Position or Type of Appointment (Including Promotion, Demotion, Transfer, Reassignment, Reinstatement, Placement in Another Broad Band, or Movement to a Different Geographic Location), and Movement Between a Broadbanding System and Another Pay System

1. Conversion into a broadbanding system. IRS broadbanding systems must include policies for determining the career path, band, and pay rate for employees upon conversion into the system consistent with the provisions in Appendix B. IRS broadbanding systems may also include policies for making prorated within-grade increase or career-ladder promotion payments to employees as an adjustment in basic pay or a lump-sum payment upon conversion from the General Schedule to a broadbanding system consistent with the provisions in Appendix B.

2. Pay-setting policies. IRS broadbanding systems must include policies for determining an employee's career path, band, and rate of basic pay upon initial appointment, promotion, demotion, transfer, reassignment, or placement in a different band or career path. The methods used to set pay must be consistent with the principle of equal pay for substantially equal work.

a. Pay must be set at least at the minimum rate and must not exceed the maximum rate of basic pay of the band to which assigned (unless pay retention applies).

b. Policies must specify the conditions under which pay may be set above the minimum rate of the band and the amount of any minimum or maximum pay increase upon promotion. The time-in-grade provisions in 5 CFR 300.601–605 do not apply to employees under a broadbanding system.

c. Upon movement to a different geographic area, locality-based comparability payments and special pay adjustments for law enforcement officers must be redetermined and paid in accordance with 5 CFR part 531, subparts F and C, respectively. Staffing supplements must also be redetermined consistent with the provisions in Appendix A.

d. Movement of an employee to a band with a lower maximum rate of basic pay than the employee's former band is equivalent to a reduction in grade for the purpose of chapters 43 and 75 of title 5, United States Code.

3. Conversion to the General Schedule. Agencies must use the procedures in Appendix C of these criteria for determining an employee's GS equivalent grade and pay rate upon conversion from a broadbanding system to the General Schedule.

G. Conform Related Provisions of Law and Regulations to Broadbanding Systems

1. For provisions of chapter 51 that apply to the determination of General Schedule grades, other than sections 5104 and 5105, the term "grade" is deemed to mean "band within a career path.

2. The provisions in these criteria related to grade and pay retention are based on the current grade and pay retention authority in subchapter VI of title 5, United States Code, and 5 CFR part 536. When applying the grade and pay retention provisions, users must substitute "band" for "grade". Under 5 U.S.C. 9509(c), the Secretary of the Treasury may provide for variations from the grade and pay retention authority for employees who are covered by broadbanding systems with prior approval of the Director of OPM and in accordance with a plan for implementing such variations.

3. In applying the severance pay provisions in 5 CFR part 550, subpart G, to employees covered by IRS broadbanding systems, the beginning of the first sentence in paragraph (c)(4) of the definition of "reasonable offer" at § 550.703 is deemed to read as follows:

(4) Not lower than two grade or pay levels (or one band level, in the case of a broadbanding system under which the next lower band comprises two or more grades) below the employee's current grade, pay, or band level. * * *

Appendix A—Staffing Supplements

Internal Revenue Service (IRS) broadbanding systems may use staffing supplements instead of the special salary rate authority in 5 U.S.C. 5305 under the following terms and conditions:

A. If an employee is assigned to an occupational series and geographic area covered by a special salary rate under 5 U.S.C. 5305 and is in a band where the maximum adjusted rate for the banded GS grades is a special rate that exceeds the maximum GS locality rate under 5 U.S.C. 5304 (or similar provision of law) for the banded grades, the employee is eligible for a staffing supplement.

B. Conversion. Upon conversion, the employee's broadbanding rate of basic pay is established by dividing the employee's old GS adjusted rate (the higher of the special rate or locality rate) by the staffing factor. The staffing factor is determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's staffing supplement is derived by multiplying the employee's broadbanding rate of basic pay by the staffing factor minus one. The employee's final staffing supplement-adjusted rate equals the employee's broadbanding rate of basic pay plus the staffing supplement. This amount will equal the employee's former GS adjusted rate of pay. Since the employee's total pay immediately after conversion into the broadbanding system will be the same as immediately before conversion, adverse action and pay retention provisions do not apply.

C. Formulas. The conversion rules in paragraph B are expressed by the following formulas:

1. Staffing Factor = Maximum special rate for banded grades Unadjusted GS rate corresponding to that special rate

2. Broadbanding Basic Rate = Old GS adjusted rate (special or locality rate) Staffing Factor

3. Staffing Supplement = Broadbanding Basic Rate × (Staffing Factor − 1)

4. Salary at conversion = Broadbanding Basic Rate + Staffing Supplement (sum will equal old GS adjusted rate)

D. If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, the broadbanding basic rate upon conversion into a broadbanding system is derived by dividing the employee's former GS adjusted rate (the higher of the locality rate or special rate) by the applicable locality pay factor (e.g., 1.0787 in the Washington-Baltimore locality pay area in 1999). The employee's broadbanding locality-adjusted rate will equal the employee's former GS adjusted rate. Adverse action and pay retention provisions do not apply because there is no change in total salary.

E. The staffing supplement is added to the employee's broadbanding basic rate much like locality adjustments are added to basic pay. Any General Schedule or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may, over time, supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule on which staffing supplements are based, pay retention rules will be applied, as appropriate. Upon geographic movement, an employee who receives a staffing supplement will have the supplement removed or recomputed to reflect any applicable special rates in the new location, consistent with paragraph C. Any resulting reduction in pay is not an adverse action or a basis for pay retention.

F. The employee's broadbanding basic rate adjusted by the staffing supplement is basic pay for the same purposes as a locality rate under 5 CFR 531.606(b)—i.e., for retirement, life insurance, premium pay, and severance pay purposes, and for advances in pay. The staffing supplement is also basic pay under 5 U.S.C. 5363 and subchapter II of chapter 75 for the limited purpose of determining whether a reduction in basic pay occurs at the point of an employee's conversion into a broadbanding system. The staffing supplement will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

G. The Office of Personnel Management may approve staffing supplements for categories of employees within an IRS broadbanding system who are not in approved special rate categories for General Schedule employees, consistent with the provisions in 5 U.S.C. 5305 (a) and (b).

Appendix B—Conversion Into Broadbanding Systems

Internal Revenue Service (IRS) broadbanding systems must include policies for determining the career path, band, and pay rate for employees upon conversion into a broadbanding system under the following terms and conditions:

A. Employees may not suffer a reduction in total pay upon initial conversion to a broadbanding system.

B. If conversion into a broadbanding system is accompanied by a simultaneous geographic move, the employee's General Schedule pay entitlements in the new geographic area must be determined before converting the employee into the broadbanding system.

C. IRS broadbanding systems may include policies for making prorated within-grade increase or career-ladder promotion payments to employees as an adjustment in basic pay or a lump-sum payment upon conversion from the General Schedule to a broadbanding system under the following conditions:

1. The amount of any within-grade increase or career-ladder promotion payment may not be more than the prorated value of the employee's within-grade increase or career-ladder promotion at the time of conversion, based on the number of weeks of creditable service the employee has performed as of the date of initial conversion into the broadbanding system. There is no restriction on when such payments may be made.

2. A prorated within-grade increase or career-ladder promotion payment may be made only to an employee whose performance meets or exceeds retention standards at the time of conversion into a broadbanding system.

3. A within-grade increase payment may not be made to an employee receiving the maximum rate of pay for his or her grade (or band, if made after conversion into a broadbanding system) or a retained rate.

4. For employees receiving special rates before conversion into an IRS broadbanding

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system, the pay conversion described in paragraph D must be applied before making any prorated within-grade increase or career-ladder promotion payment.

D. Special salary rate employees. If an IRS broadbanding system uses staffing supplements instead of special rates under 5 U.S.C. 5305, special rate employees must be converted into the system consistent with the provisions in Appendix A. If an IRS broadbanding system eliminates special salary rates, a new locality-adjusted rate of pay must be derived for each employee, as follows:

1. Divide the employee's adjusted rate of basic pay (the higher of the special rate or locality rate or similar adjusted rate) by the locality pay factor for the area (e.g., 1.0787 for the Washington-Baltimore locality pay area in 1999) to determine the new broadbanding rate of basic pay. If the employee's broadbanding rate of basic pay exceeds the maximum rate of basic pay for the employee's band, the employee must be placed on pay retention.

2. Add the full locality adjustment to the employee's broadbanding rate of basic pay, including any retained rate. The locality adjustment is basic pay under 5 U.S.C. 5363 and subchapter II of chapter 75 for the limited purpose of determining whether a reduction in basic pay occurs at the point of an employee's conversion into a broadbanding system.

E. Employees on pay retention. Upon conversion, employees on pay retention must be placed in the band commensurate with the grade of their position. If possible, an employee's rate of basic pay will be placed within the assigned band. If not possible (because the employee's retained rate is higher than the maximum rate of basic pay of the band), the employee will be placed on pay retention.

F. Employees on grade retention. Upon conversion, employees on grade retention must be placed in the band that encompasses their retained grade until the original 2-year grade retention period expires. When the 2-year period expires, employees must be moved to the band that encompasses the grade of their position. If the rate of basic pay exceeds the maximum rate of the new band, the employee is entitled to pay retention.

Appendix C—Procedures for Converting Employees Back to the General Schedule Pay System

When an employee covered by a broadbanding system moves to a General Schedule (GS) position, the following procedures must be used to convert the employee's band and pay rate to a GS equivalent grade and rate of pay. The converted GS-equivalent grade and rate of pay must be determined before movement or conversion out of the broadbanding system and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments and lateral transfers, the converted GS grade and rate of pay becomes the employee's actual GS grade and rate of pay, unless the employee is immediately affected by a simultaneous geographic movement or another pay action. For non-lateral transfers, promotions, and other actions, the converted GS grade and rate of pay are deemed to be the employee's grade and rate of pay at the time of movement out of the broadbanding system and must be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the broadbanding system (e.g., rules for promotions, highest previous rate, and pay retention).

A. GS grade level determination—Upon conversion of an employee out of a broadbanding system to the GS pay system, the employee's GS-equivalent grade level must be determined in accordance with the following rules:

1. An employee in a band encompassing a single GS grade must be converted to that grade.

2. For an employee in a band encompassing more than one GS grade, the employee's adjusted rate of pay under the broadbanding system (including any locality adjustment (or similar geographic adjustment) or staffing supplement, as applicable) must be compared with the rates of pay in the highest applicable GS rate range for each grade encompassed by the band. (For this purpose, a "GS rate range" includes a rate range in (1) The GS basic pay schedule, (2) the locality pay schedule (including any special geographic-adjusted schedule for law enforcement officers (LEOs)) for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series and geographic location, as applicable). If the employee's occupational series is a two-grade interval series, consider only odd-numbered grades between GS–5 and GS–11.

3. If the employee's adjusted rate of pay under the broadbanding system fits into an area of the rate range for a GS grade in the band that does not overlap with the rate range of the next higher or lower grade in the same band, the employee is converted to that GS grade.

4. If the employee's adjusted rate of pay fits into an area of a rate range for a GS grade in the band that overlaps with the rate range of the next higher or lower grade in the same band, compare the employee's adjusted rate of pay with the dollar midpoint of the overlap area. If the employee's adjusted rate of pay is lower than the dollar midpoint of the overlap area, convert the employee to the lower grade. If the employee's rate of pay is equal to or higher than the dollar midpoint of the overlap area, convert the employee to the higher grade.

5. Exception: An employee may not be converted to a lower grade than the grade held by the employee immediately preceding conversion, lateral reassignment, or lateral transfer into the broadbanding system, unless since that time the employee has undergone a reduction in band.

B. GS pay rate determination—An employee's pay within the converted GS grade must be set by converting the employee's adjusted rate of pay under the broadbanding system to a GS-equivalent rate of pay in accordance with the following rules:

1. The employee's adjusted rate of basic pay under the broadbanding system (including any locality adjustment (or similar geographic adjustment) or staffing supplement, as applicable) must be converted to a GS adjusted rate on the highest applicable rate range for the converted GS grade. (For this purpose, a "GS rate range" includes a rate range in (1) the GS basic pay schedule, (2) an applicable locality pay schedule (including any special geographic-adjusted schedule for LEOs), or (3) an applicable special rate schedule.)

2. If the highest applicable GS rate range is under a locality pay schedule, the employee's adjusted rate of pay under the broadbanding system must be converted to a GS locality rate of pay. If this rate falls between two steps of the locality pay schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay is the rate corresponding to the converted GS locality rate of pay. (If such an employee is also covered by a special rate schedule as a GS employee, the converted special rate must be determined based on the GS step position.)

3. If the highest applicable GS rate range is a special rate range, the employee's adjusted rate of pay under the broadbanding system must be converted to a special rate. If this rate falls between two steps of the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay is the rate corresponding to the converted special rate.

C. Apply the following procedures to determine the converted GS-equivalent grade and pay rate for employees retaining a band before conversion or for employees entitled to a retained rate exceeding the maximum rate of the highest applicable rate range. The employee's GS-equivalent grade and rate of pay derived using the procedures below must be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the broadbanding system.

1. If an employee is retaining a band, apply the procedures in A1–A5 and B1–B3, preceding, using the grades encompassed by the employee's retained band to determine the employee's GS-equivalent retained grade and pay rate. The time in a retained band counts toward the 2-year limit on grade retention in 5 U.S.C. 5382.

2. If the employee's rate of pay under the broadbanding system is a retained rate, the employee's GS-equivalent grade is the highest grade encompassed in his or her band.

If the employee's adjusted retained rate:	Then:
(i) Is less than the maximum rate of the highest applicable rate range ..	Apply the procedures in B1–B3 to determine the employee's GS-equivalent pay rate.

If the employee's adjusted retained rate:	Then:
(ii) Exceeds the maximum rate of the highest applicable rate range and the employee is not in a special rate category.	Convert the employee's unadjusted retained rate to a GS-equivalent retained rate.
(iii) Exceeds the maximum rate of the highest applicable rate range and the employee is in a special rate category.	Convert the employee's adjusted retained rate to a GS-equivalent retained rate.

D. Within-grade increase "equivalent increase" determinations—Service under a broadbanding system is creditable for within-grade increase purposes upon conversion to the GS pay system. Basic pay increases (excluding general structural increases) under a broadbanding system are "equivalent increases" for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(h). A performance-based increase in basic pay of any amount (including a zero increase) is considered an "equivalent increase" for this purpose.

[FR Doc. 99–18191 Filed 7–15–99; 8:45 am]
BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Appointment of an Examiner and Request for Views and Comments: Public Hearing

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to 20 CFR Part 258 the Railroad Retirement Board has appointed an examiner to consider the following issue: Whether an entity, which itself does not operate a line of railroad, but which leases to or contracts with another entity to operate all or part of a line of railroad should be considered an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act. *See,* Railroad Ventures, Inc., reconsideration currently pending before this Board.

DATES: A hearing will be held to receive views and comments on this issue on August 19, 1999, at 10 a.m. (CDT) at the headquarters of the Railroad Retirement Board, Room 836, 844 North Rush Street, Chicago, Illinois 60611. Notice of appearance and summary of proposed testimony must be received by August 12, 1999, in order to present oral testimony. Otherwise, written views and comments must be received by August 20, 1999.

ADDRESSES: Send views, comments, or notice of appearance and summary of proposed testimony to Thomas W. Sadler, Designated Hearing Examiner, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Designated Hearing Examiner, (312) 751–4513.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board is an independent agency in the executive branch of the Federal government which administers the Railroad Retirement Act and Railroad Unemployment Insurance Act. These statutes provide retirement, disability and unemployment benefits to railroad workers and their families. Benefits are financed primarily by taxes levied on employers and employees under the Acts.

Under the Railroad Retirement Act the term "employer" includes any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49 of the United States Code. 45 U.S.C. 231(a)(1). A similar provision is found in the Railroad Unemployment Insurance Act. 45 U.S.C. 351(a) and (b). The Railroad Retirement Board, through appointment of an examiner, now requests views and comments on whether an entity, which itself does not operate a line of railroad, but which leases to or contracts with another entity to operate all or part of a line of railroad should be considered an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act. *See,* Railroad Ventures, Inc., reconsideration currently pending before this Board.

In framing your views and comments, you should consider what factors, if any, should be considered in deciding whether the lessor or non-operating entity is an employer. Some factors which the Railroad Retirement Board has considered in the past in making such determinations are:

(a) Whether the non-operating entity has previously been determined to be an employer under the Acts;

(b) Whether the non-operating entity has the capability to operate a railroad;

(c) Whether the non-operating entity is a government entity;

(d) Whether the non-operating entity by agreement or law must maintain the rail line;

(e) Whether the non-operating entity by agreement or law must adopt alterations, improvements or betterments to the rail line;

(f) Whether the non-operating entity is required by agreement or law to operate the rail line in event of default of the operating entity; and

(g) Whether the non-operating entity has any employees.

Dated: July 9, 1999.

By Authority of the Board.
For the Board,
Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 99–18135 Filed 7–15–99; 8:45 am]
BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27047]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 9, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 3, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 3, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Sempra Energy, et al. (70–9511)

Sempra Energy ("Sempra"), 101 Ash Street, San Diego, California 92101, a California holding company exempt from regulation under section 3(a)(1) of

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the Act,[1] and its wholly owned subsidiary, Bangor Pacific, Inc. ("Bangor Pacific"), 555 West Fifth Street, Suite 2900, Los Angeles, California 90013–1001 (collectively, "Applicants"), have filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

Applicants seek authority for Sempra to acquire indirectly, through Bangor Pacific, a Maine corporation, a 50% membership interest in Bangor Gas Company, LLC ("Bangor Gas"), a Maine limited liability company formed in 1997 to construct and operate a gas distribution system in the greater Bangor, Maine area. In addition, Applicants seek an order under section 3(a)(1) of the Act exempting Sempra, Bangor Pacific and each of their subsidiary companies from all provisions of the Act, except section 9(a)(2).

Sempra has two principal subsidiaries, Pacific Enterprises ("Pacific") and Enova Corporation ("Enova"), each of which is an exempt holding company under section 3(a)(1) of the Act. Pacific's sole utility subsidiary is Southern California Gas Company ("SoCalGas"), which purchases, transports and distributes natural gas at retail to approximately 4.8 million customers within a service territory of 23,000 square miles in central and southern California. Enova is the parent company of San Diego Gas and Electric Company ("SDG&E"). SDG&E is engaged in the generation, transmission, distribution, and sale of electricity and the distribution and sale of natural gas. SDG&E serves approximately 1.2 million electricity customers within a franchised service territory that includes San Diego County and southern Orange County, California, and provides natural gas service to more than 700,000 customers in San Diego County. SoCalGas and SDG&E are subject to regulation by the California Public Utilities Commission.

For the year ended December 31, 1998, Sempra reported consolidated operating revenues of $5.481 billion, of which $2.772 billion represented gas utility revenues (including revenues from transporting customer-owned gas) and $1.865 billion represented electric revenues. At December 31, 1998, Sempra had total assets of approximately $10.456 billion, of which $5.441 billion consisted of net utility (electric and gas) plant. During 1998, the total gas throughput on the Sempra system was 962 Bcf, of which 521 Bcf (or about 54%) represented deliveries of customer-owned gas for which the company provides only transportation service. Electric sales in 1998 totaled 17,955 million kwhrs.

Sempra also has an indirect public-utility subsidiary, Frontier Energy, LLC ("Frontier Energy"), a North Carolina limited liability company. Frontier Energy is completing construction of a new gas utility distribution system in a four-county area of western North Carolina.

Sempra's principal nonutility subsidiaries include Sempra Energy Trading Corp. ("Sempra Trading"), a marketer of natural gas, electricity, and other energy products, and Sempra Energy Utility Ventures ("SEUV"), which currently owns all of the outstanding voting securities of Bangor Pacific. SEUV engages in the acquisition, development, and operation of regulated energy utilities in the eastern United States and Canada. SEUV was instrumental in completing the development of the Frontier Energy system in North Carolina and has been directly involved, in cooperation with Bangor Hydro-Electric Company ("Bangor Hydro-Electric"), an exempt holding company, in the planning and development of the Bangor Gas system.

Through Bangor Pacific, Sempra has indirectly acquired 50% of the membership interests in Bangor Gas. The remaining membership interests in Bangor Gas have been acquired by Penobscot Natural Gas Company, Inc. ("Penobscot Gas"),[2] a Maine corporation and a subsidiary of Bangor Hydro-Electric, an electric utility company which serves portions of eastern Maine.

The Maine Public Utilities Commission ("MPUC") has granted Bangor Gas full authroity and unconditional certification to construct, won and operate a gas distribution service system in Bangor, Maine and several nearby towns. The MPUC also approved terms of a proposed Support Services Agreement among Bangor Gas, SEUV and Bangor Hydro-Electric under which SEUV and Bangor Hydro-Electric will provide various administrative, engineering, operations, marketing, risk management, finance, accounting and other management services to Bangor Gas at or below market rates, as well as a financing plan for Bangor Gas.

Bangor Gas commenced construction of the new system in the greater Bangor area during the second quarter of 1998. When completed, the system will consist of approximately 25 miles of transmission mains and at least 200 miles of distribution mains. The system will interconnect directly with the Maritimes & Northeast Pipeline, which is currently under construction with a planned in-service date of November 1999. Bangor Gas, when it commences operation in late 1999 or early 2000, will be a "gas utility company" within the meaning of section 2(a)(4) of the Act. Bangor Gas estimates that, by the end of the tenth year following commencement of construction, it will serve up to 13,000 residential, commercial, and industrial customers in a 70 square-mile area in Main having an estimated population of 75,000. Bangor Gas will be subject to regulation by the MPUC. Based on current projections, the 50% share of Bangor Gas's revenues attributable to Sempra is expected to account for far less than 1% of the consolidated utility revenues of Sempra on a *pro forma* basis. Thus, Sempra states that it will not derive any material part of its income from Bangor Gas.

Following the proposed transactions, Sempra contends that it and each of its material utility subsidiaries, will be organized in California. Applicants contend that they, and each of their subsidiaries, will qualify for a section 3(a)(1) exemption upon consummation of the proposed transactions because they and each of their material public utilities are, and will continue to be, intrastate in character and will continue to carry on their businesses substantially in California, the state in which each is organized.

Bangor Hydro-Electric Company, et al. (70–9509)

Bangor Hydro-Electric Company ("Bangor Hydro-Electric"), 33 State Street, Bangor, Maine 04401, a Maine holding company exempt from registration under section 3(a)(2) of the Act by rule 2 under the Act, and its wholly owned subsidiary, Penobscot Natural Gas Company ("Penobscot Gas"), 21 Main Street, Bangor, Maine 04401 (collectively, "Applicants"), have filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

Applicants seek authority for Bangor Hydro-Electric to acquire indirectly, through Penobscot Gas, a 50% membership interest in Bangor Gas Company, LLC ("Bangor Gas"), a Maine limited liability company formed in 1997 to construct and operate a gas distribution system in the greater Bangor, Maine area. In addition, Applicants seek an order under section 3(a)(1) of the Act exemption Bangor Hydro-Electric, Penobscot Gas and each of their subsidiary companies from all

[1] *See Sempra Energy*, Holding Co. Act Release No. 26890 (June 26, 1998).

[2] Bangor Hydro-Electric has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act requesting, among other things, authorization to acquire a 50% interest in Bangor Gas, *See* File No. 70–9509.

provisions of the Act, except section 9(a)(2).

Bangor Hydro-Electric is engaged in the purchase, transmission and distribution of electricity in eastern Maine. Bangor Hydro-Electric is also a holding company by reason of its ownership of 14.188% of the outstanding common stock of Maine Electric Power Company ("Maine Electric"), a Maine corporation that owns and operates a 345 kilovolt transmission line extending between Wiscasset, Maine and the Maine-New Brunswick international border at Orient, Maine.[1]

For the year ended December 31, 1998, Bangor Hydro-Electric reported consolidated electric operating revenues of $195,144,007, operating income of $35,135,768, and net income of $11,465,317. At December 31, 1998, Bangor Hydro-Electric and its consolidated subsidiaries had total assets of $605,687,827, of which $251,342,103 consisted of net utility plant. In 1998, Bangor Hydro-Electric sold approximately 1.9 billion kilowatt hours ("KWH") of electricity at retail and wholesale. As of March 17, 1999, Bangor Hydro-Electric had issued and outstanding 7,363,424 shares of common stock, $5 par value, and three series of preferred stock.

Through Penobscot Gas, Bangor Hydro-Electric holds a 50% membership interest in Bangor Gas. The remaining 50% membership interest in Bangor Gas is held by a subsidiary of Sempra Energy ("Sempra").[2] Bangor Gas, when it commences operation in late 1999 or early 2000, will be a "gas utility company" within the meaning of section 2(a)(4) of the Act.

The Maine Public Utilities Commission ("MPUC") has granted Bangor Gas full authority and unconditional certification to construct, own and operate a gas distribution service system in Bangor, Maine and several nearby towns. The MPUC also approved the terms of a proposed Support Services Agreement among Bangor Gas, Sempra Energy Utility Ventures ("SEUV") and Bangor Hydro-Electric, under which SEUV and Bangor Hydro-Electric will provide various administrative, engineering, operations, marketing, risk management, finance, accounting and other management services to Bangor Gas at or below market rates, as well as a financing plan for Bangor Gas.

Bangor Gas commenced construction of the new system in the greater Bangor area during the second quarter of 1998. When completed, the system will consist of approximately 25 miles of transmission mains and at least 200 miles of distribution mains. The system will interconnect directly with the Maritimes & Northeast Pipeline, which is currently under construction with a planned in-service date of November, 1999. Bangor Gas plans to commence gas service in some locations in time for the 1999–2000 heating season. Bangor Gas estimates that, by the end of the twenty year following commencement of construction, it will serve up to 13,000 residential, commercial, and industrial customers in a 70 square-mile area in Maine having an estimated population of 75,000. Bangor Gas will be subject to regulation by the MPUC.

Following the proposed transactions Bangor Hydro-Electric, Penobscot Gas, Maine Electric and Bangor Gas will be organized in Maine. Applicants contend that they, and each of their subsidiaries, will qualify for a second 3(a)(1) exemption upon consummation of the proposed transactions because they and each of their public utility subsidiaries are, and will continue to be, intrastate in character and will continue to carry on their business in Maine, the state in which each is organized.

New England Electric System, et al. (70–9417)

New England Electric System ("NEES"), a registered holding company, and Metrowest Realty, L.L.C. ("Metrowest"), a nonutility subsidiary of NEES, both located at 25 Research Drive, Westborough, Massachusetts 01582–0001, have filed a post-effective amendment under sections 9(a), 10 and 12(f) of the Act and rule 54 under the Act to an applicaton previously filed under the Act.

By order dated January 27, 1999 (HCAR No. 26969) ("Order"), the Commission authorized NEES to form one or more new special purpose subsidiaries ("Property Companies") to acquire interests in office and warehouse space that would be leased to associated companies. The initial capitalization of the Property Companies was not to exceed an aggregate amount of $50 million. In accordance with the Order, NEES formed and capitalized Metrowest with a $1 million capital contribution and made available to Metrowest $10 million of open account advances.

NEES and Netrowest now request authority for Metrowest and any other Property Company to acquire or lease any interest in real estate for use by associate utility or nonutility companies. In addition, NEES and Metrowest request authority to lease, sell, or otherwise dispose of unused or unneeded real estate in the NEES system ("Additional Properties") to associate companies or to nonassociate companies, and to manage the Additional Properties for future sale or use. Finally, NEES requests authority to capitalize the Property Companies in an amount not exceeding $50 million.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18146 Filed 7–15–99; 8:45 am]

BILLING CODE 8010–01–M

[1] *See Bangor Hydro-Electric Co.*, Holding Co. Act Release No. 16533 (November 24, 1969).

[2] Sempra has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act requesting, among other things, authorization to acquire a 50% interest in Bangor Gas. *See* File No. 709511.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 19, 1999.

Closed meetings will be held on Tuesday, July 20, 1999, at 11:00 a.m. and on Thursday, July 22, 1999 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters will be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 20, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Institution and settlement of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.

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The subject matter of the closed meeting scheduled for Thursday, July 22, 1999 at 11:00 a.m. will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Commissioner Johnson, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

July 13, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–18305 Filed 7–14–99; 11:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Sagamore Trading Group, Inc.; Order of Suspension of Trading

July 14, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information regarding the securities of Sagamore Trading Group, Inc. ("Sagamore") because of recent market activity in the stock that may have been the result of manipulative conduct.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, July 14, 1999, through 11:59 p.m. EDT, on July 27, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–18304 Filed 7–14–99; 12:25 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41609; File No. SR–CBOE–99–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Participation Rights for Firms Crossing Orders

July 8, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby proposes to amend its rule governing the crossing of equity option orders of 500 contracts or more by brokers, to give the firm from which an order originates a participation right in trades that are proposed to be crossed in certain circumstances. The text of the proposed rule change follows. Additions are italicized.

* * * * *

Chicago Board Options Exchange, Inc. Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor

Section D: Floor Brokers

* * * * *

"Crossing" Orders

RULE 6.74.

(a)–(c) No change.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an equity option order of 500 or more contracts ("original order"), the Floor Broker is entitled to cross a certain percentage of the order with other customer orders from the same firm from which the original order originated ("originating firm") that he is holding or with a facilitation order of the originating firm after requesting bids and offers for such option series. The percentage of the order which a Floor Broker is entitled to cross is determined as follows:

(i) *20% of the order if the order is traded at the best bid or offer given by the crowd in response to the broker's initial request for a market; or*

(ii) *40% of the order if the order is traded between the best bid or offer given by the crows in response to the broker's initial request for a market.*

In determining whether an order satisfies the 500 contract requirement, any multi-part or spread order must contain one leg alone which is for 500 contracts or more. If the originating firm is also the Designated Primary Market-Maker ("DPM") for the particular class of options to which the order relates, then the DPM is not entitled to the DPM guaranteed participation rate.

. . . Interpretations and Policies:

No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to add a new paragraph (d) to CBOE Rule 6.74, *"Crossing" Orders*, to give a firm that is holding either (i) customer equity option orders to buy and sell the same series, or (ii) a customer equity option order and a facilitation order, certain rights to cross the orders or to facilitate the customer order in certain circumstances. To take advantage of the new provision, a particular equity option order must be for 500 or more contracts. For a multi-part or spread order, at least one leg of the order alone must be for 500 contracts or more.

Paragraph (a) of CBOE Rule 6.74 sets forth the procedures to be followed currently by a floor broker to cross customer orders. Paragraph (b) sets forth the procedures to be followed by a floor broker to facilitate a customer order. In both cases, market-makers in the trading crowd currently are given the opportunity to accept a floor broker's better bid or offer for orders which he intends to cross or facilitate before the floor broker can cross or facilitate the orders himself. Under current rules, therefore, if the market-makers are willing to take the entire order, the floor broker will not be able to cross of facilitate any part of the order.

Generally, new paragraph (d) will provide that, in those circumstances where a floor broker has an equity option order for 500 contracts or more that he is holding to execute ("original order"), that floor broker will have priority to cross a certain percentage of the original order against other customer orders from the same firm from which the original order originated ("originating firm") that he is holding to execute or against a firm proprietary order of the originating firm (*i.e.*, facilitation order).

The percentage to which the floor broker is entitled to execute depends upon a comparison between the original market quoted by the crowd in response to a request from the broker and the price at which the orders are traded. If the orders are traded at the best bid or offer provided by the market-makers in the trading crowd in response to the broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the orders are traded at a price between the best bid and offer provided by the market-makers in the crowd (*i.e.*, at a price that improves the market provided by the market-makers) in response to the broker's initial request for a market, then the floor broker is entitled to cross 40% of the order.

There is precedent in the Exchange's rules for providing a participation right to the firm that has brought the order to the floor. Paragraph (e)(iii) of CBOE Rule 24A.5, *FLEX Trading Procedures and Principles*, provides for the Submitting Member of a FLEX trade (as defined in CBOE Rule 24A.1) to 25% of a trade in certain circumstances.

In the event that the originating firm is also the Designated Primary Market-Maker ("DPM") for that option class and the floor broker takes advantage of the participation right provided by this new paragraph (d) of CBOE Rule 6.74, then the DPM also shall not be entitled to the guaranteed participation rate provided by paragraph (c)(7) of CBOE Rule 8.80 for that particular trade.

The Exchange believes that the effect of this liberalization of its crossing rule will be to provide market-makers with an additional incentive to quote tighter markets in response to a request for quotes at the same time it will encourage member firms to bring their order flow to the CBOE. The Rule will also provide floor brokers with an incentive to trade at a price between the quoted bid and ask. The benefits of the tighter markets will inure to the customers. In addition, by establishing a minimum participation right, the Rule will provide firms with the ability to participate on these trades in a more efficient manner than is available today.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[3] of the Act, in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on whether the proposed rule change will result in fair executions for the various orders and parties represented in the crossing transaction. Also, commenters are requested to provide their views on this rule revision in light of the proposed rule change contained in SR–CBOE–99–07, relating to "cross-only contingency" orders.[4] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the CBOE. All submissions should refer to File No. SR–CBOE–99–10 and should be submitted by August 6, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18168 Filed 7–15–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41610; File No. SR–CBOE–99–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to "Cross-Only" Orders

July 8, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rules 6.43, 6.53, and 6.74 to permit a broker to represent a "cross-only" contingency. The text of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(5).

[4] Securities Exchange Act Release No. 41610 (July 8, 1999).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

proposed rule change follows. Additions are italicized and deletions are bracketed.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor

* * * * *

Manner of Bidding and Offering

Rule 6.43.

Bids and offers to be effective must be made at the post by public outcry, except that bids and offers made by the Board Broker or Order Book Official shall be effective if displayed in a visible manner in accordance with Rule 7.7. All bids and offers shall be general ones and shall not be specified for acceptance by particular members.

. . . *Interpretations and Policies:*

.01 Notwithstanding the provision in the above Rule that all bids and offers must be general ones, a broker may represent orders with a cross-only contingency as defined in Rule 6.53.

* * * * *

Certain Types of Orders Defined

Rule 6.53.

(a) to (b) Unchanged.

(c) Contingency Order. A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post.

(i) to (iv) Unchanged.

(v) Cross-Only Orders. A cross-only order is a contingency order which is to be executed in whole or in part in equity options only, the amount determined by the member organization placing the order, in a cross transaction with an order for another customer or the member organization itself. If the trading crowd does not allow the cross to take place, the member organization placing the orders may withdraw the order from consideration by the crowd.

(d) to (m) Unchanged.

* * * * *

"Crossing" Orders

Rule 6.74

(a) A floor Broker who holds orders to buy and sell the same option series may cross such orders, provided that he or she proceeds in the following manner:

(i) In accordance with [his responsibilities for] due diligence *responsibilities*, a Floor Broker shall request bids and offers for such option series and make all persons in the trading crowd, including the Board Broker or Order Book Official, aware of his *or her* request.

(ii) After providing an opportunity for such bids and offers to be made, [he] *the broker* must

(A) Bid above the highest bid in the market and give a corresponding offer at the same price or at prices differing by the minimum fraction or

(B) Offer below the lowest offer in the market and give a corresponding bid at the same price or at prices differing by the minimum fraction.

(iii) If such higher bid or lower offer is not taken, *the broker* [he] may cross the order at such higher bid or lower offer by announcing by public outcry that he is crossing and giving the quantity and price.

(b) A Floor Broker who holds an order for a public customer of a member organization and a facilitation order may cross such orders provided that he proceeds in the following manner.

(i) The member organization must disclose on its order ticket for the public customer order which is subject to facilitation, all of the terms of such order, including any contingency involving, and all related transactions in, either options or underlying or related securities.

(ii) In accordance with [his responsibilities for] due diligence *responsibilities*, the Floor Broker shall disclose all securities which are components of the public customer order which is subject to facilitation and then shall request bids and offers for the execution of all components of the order.

(iii) After providing an opportunity for such bids and offers to be made, the Floor Broker must, on behalf of the public customer whose order is subject to facilitation, either bid above the highest bid in the market of offer below the lowest offer in the market, identify the order as being subject to facilitation, and disclose all terms and conditions of such order. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the Floor Broker may cross all or any remaining part of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that he is crossing and by stating the quantity and price(s). Once such bid or offer has been made, the public customer order which is subject to facilitation has precedence over any other bid or offer in the crowd to trade immediately with the facilitation order.

(c) A Floor Broker who holds cross-only orders as defined in 6.53(c)(v) may cross the orders by proceeding in the following manner. Prior to representing the orders to the trading crowd, the broker must make the crowd aware of the total amount of contracts the broker wishes to cross, that the orders are to be executed on a cross-only basis, and the price that he wishes to cross the orders. The price must be at or within the bid or offer.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to amend certain Exchange Rules to permit a member to enter and a Floor Broker to represent orders with a cross-only contingency. The purpose of the proposed rule change is to allow a Floor Broker is disclose to the trading crowd, prior to execution, that the broker wishes to cross two orders for a certain amount of contracts, at a certain price within or at the quoted bid or offer. If the crowd does not permit the broker to do this, then the cross-only contingency provides that the member placing the orders may withdraw the orders, as if they never existed in the trading crowd. The two orders the broker holds to cross under this contingency may be two customer orders or between a customer and the firm itself. There are no restrictions on who the customer may be, e.g., a customer feasibly could be a market-marker, broker-dealer, or a public customer. The cross would be done at or between the bid and offer, which benefits the customer.

The Exchange believes that by allowing for the cross-only contingency, the Exchange will help to develop public customer business and will expedite crosses yielding a similar result to what occurs on the floor currently, although currently it is done by a much more circuitous route. With the current competition in the marketplace, the Exchange believes that by providing the cross-only contingency more firms will want to bring business to the CBOE, since the firm will have the ability to take the order elsewhere if the crowd does not allow the cross.

Although Exchange Rules currently allow a similar result as the cross-only contingency, it is much more cumbersome. The proposed rule changes provide that the broker may make the crowd aware in advance of the amount of contracts the broker wishes to cross; the price at which the cross would take place, at or between the quoted prices; and if the crowd bars the cross from taking place, the member may withdraw the orders. As the Rules stand currently, a broker does not disclose in advance that he is holding two orders to cross; the broker must bid above the highest bid or offer below the lowest offer in the open market; if the bid or offer is not taken by the crowd, then the broker may cross at the higher bid or lower offer. Thus, the difference in result between the proposed Rule and the current Rule is not substantial; however it is a much quicker result since the broker will know immediately whether the trading crowd will allow the cross to take place, and the member placing the order may withdraw the order if the cross is not allowed by the crowd.

The Exchange believes that this rule change is for the benefit of the public customer and expedites Exchange processes.

2. Statutory Basis

By permitting a broker to represent a cross-only contingency, the proposed rule change is consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5)[3] in particular in that it is designed to promote just and equitable principles of trade, enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[3] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on whether the proposed rule change will result in fair executions for the various orders and parties represented in the crossing transaction.[4] Also, commenters are requested to provide their views on this rule revision in light of the proposed rule change contained in SR–CBOE–99–10, relating to participation rights for firms crossing orders.[5] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the CBOE. All submissions should refer to File No. SR–CBOE–99–07 and should be submitted by August 6, 1999.

[4] The Exchange submitted a letter responding to several questions posed by the staff about the application of the proposed rule change. *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, dated May 27, 1999.

[5] Securities Exchange Act Release No. 41609 (July 8, 1999).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18169 Filed 7–15–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3193]

State of Alabama (Amendment #1)

The above-numbered declaration is being amended to extend the incident period for this disaster, which is hereby established as beginning on June 14 and continuing through June 30, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 20, 1999 and for economic injury the deadline is March 21, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 6, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–18133 Filed 7–15–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3194]

State of Alabama

Madison County and the contiguous counties of Jackson, Limestone, Marshall, and Morgan in the State of Alabama, and Lincoln and Franklin Counties in the State of Tennessee constitute a disaster area as a result of damages caused by flash flooding that occurred June 14 through July 1, 1999. Applications for loans for physical damages may be filed until the close of business on Sept. 7, 1999 and for economic injury until the close of business on April 6, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437

[6] 17 CFR 200.30–3(a)(12).

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	Percent
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE ...	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE ...	4.000

The numbers assigned to this disaster for physical damage are 319406 for Alabama and 319506 for Tennessee. For economic injury the numbers are 9D2000 for Alabama and 9D2100 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 6, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–18132 Filed 7–15–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4765]

Coast Guard "Optimize Training Infrastructure" Initiative

AGENCY: Coast Guard, DOT.

ACTION: Notice of selection of preferred alternative.

SUMMARY: The Coast Guard announces the selection of a preferred alternative for the "Optimize Training Infrastructure" (OTI) Initiative. The OTI Initiative examines the ability of the Coast Guard's training infrastructure (training methods, personnel, and facilities) to support changing technological and operational conditions in an efficient, cost-effective manner.

DATES: In approximately four weeks, we will publish a notice in the **Federal Register** that announces the availability of the Programmatic Environmental Assessment (PEA) and proposed Finding of No Significant Impact (FONSI) for public review, announces public meetings to be held in Petaluma, CA, Cape May, NJ, and Yorktown, VA, and requests comments.

ADDRESSES: Copies of the PEA and the proposed FONSI will be available at local libraries in Cape May, NJ, Petaluma, CA, and Yorktown, VA, and through the web site for the Department of Transportation's Docket Management System at http://dms.dot.gov (located at docket USCG–1998–4765). All documents posted in the docket are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, on the Plaza level of the Nassif Building between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, the NEPA process, and NEPA documents, contact Ms. Susan Boyle, Commander(se), USCG–MLC Pacific, Coast Guard Island, Building #54D, Alameda, CA 94501, at 510–437–3973 or at e-mail CoastGuard@ttsfo.com. For questions on the OTI Initiative, contact LCDR Keith Curran, Reserve and Training Directorate (G–WT), Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, at 202–267–2429 or at e-mail CoastGuard@ttsfo.com.

SUPPLEMENTARY INFORMATION:

The Preferred Alternative

Under the preferred alternative, we would retain all four training centers and, where cost effective, fill any excess training capacity with non-training and training-related functions.

This preferred alternative is based on the fact that the Coast Guard is currently experiencing a surge of new recruits—significantly increasing the demand on the Coast Guard's training system. Student flow has increased at the recruit and apprentice level training centers as recruiting efforts have increased. Additionally, many of our ships and stations have reduced crews, requiring individuals to be fully trained upon arrival at their new duty station, thereby increasing training demands. Therefore the Coast Guard plans to continue operations of all Training Centers and look into establishing "Centers of Excellence" to improve training development and delivery.

Training and non-training units not currently located at one of the training centers will be evaluated for possible relocation to the TRACENs. Once specific units are identified for relocation, we would conduct and prepare any necessary additional environmental analyses and documentation.

Dated: July 7, 1999.

J.B. Willis,

Captain, U.S. Coast Guard, Acting Director of Training.

[FR Doc. 99–17808 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–5946]

Crowley American Transport, Inc.; Application for Approval of the Proposed Transfer of Maritime Security Program Operating Agreements (MA/MSP–13 Through MA/MSP–15)

Counsel for Crowley American Transport, Inc. (Crowley) and American Automar, Inc. (Automar), by letter dated July 2, 1999, has notified the Maritime Administration (MARAD), of the proposed transfer of three Maritime Security Program (MSP) Operating Agreements (MA/MSP–13 through 15) from Crowley to Automar International Car Carriers Inc. (AICC), a wholly-owned subsidiary of Automar, pursuant to section 652(j) of the Merchant Marine Act of 1936, as amended (Act). Crowley was awarded three MSP Operating Agreements for the U.S.-flag vessels, SEA FOX, SEA LION and SEA WOLF on December 20, 1996.

Automar has entered into an agreement with Crowley, whereby Automar or its wholly-owned subsidiaries will purchase certain container vessel assets of Crowley. The assets will include the two vessels formerly known as the SEA LION and SEA WOLF (renamed "LTC CALVIN P. TITUS" and "SP 5 ERIC G. GIBSON" respectively), which had been operating under MSP contracts, but are now intended to be operated under long-term contract to the U.S. Navy commencing in July 1999. Additionally, Crowley and Automar propose that certain related vessel assets and the three referenced MSP Operating Agreements be transferred from Crowley to Automar.

With respect to the transfer of MSP Operating Agreements, section 652(j) of the Act provides that "A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that Operating Agreement under this subtitle after notification of the Secretary [of Transportation] in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of notification. A person to whom an Operating Agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b)."

Assuming MARAD does not disapprove the proposed transfer within 90 days of its acceptance of the completed application, Crowley and Automar have stated their intention to transfer MSP Operating Agreement MA/MSP–13 from the SEA FOX to the FAUST and MA/MSP–14 from the SEA LION to the FIDELIO. The FAUST and FIDELIO are existing U.S.-flag roll-on/roll-off (Ro/Ro) vessels and Automar has asserted that they are MSP eligible vessels under section 651(b) of the Act. Crowley and Automar have advised that this transfer is scheduled to occur on or before August 20, 1999. The third MSP Operating Agreement proposed for transfer is MA/MSP–15 from the SEA WOLF to the Ro/Ro vessel TANABATA, or an equivalent vessel, which is asserted to be an eligible vessel under section 651(b) of the Act, and would be reflagged to U.S.-registry no later than March 31, 2000.

In implementing the transaction, it is asserted that under a U.S. citizen owner trust structure, the vessels will be bareboat chartered to Automar's subsidiary (AICC) which will then time charter the FAUST, FIDELIO and TANABATA to American Roll-On Roll-Off Carrier LLC (ARC), a Delaware limited liability company, which will engage American V. Ships Marine, Ltd. (V Ships), to provide technical and management support to operate the FAUST, FIDELIO, TANABATA. These three vessels and a fourth existing U.S.-flag, non-MSP Ro/Ro vessel, the TELLUS, will be operated in U.S.-flag commercial service between the United States and Europe.

The application contains reference to section 804 of the Act concerning foreign-flag vessels which call on the United States and which are owned or chartered by a foreign corporation with connections to Automar. Automar asserts that the foreign involvement is limited to Fram Shipping Limited (Fram), a Bermuda corporation, which owns or charters foreign-flag vessels that may call on the United States from time to time, and which owns approximately 20 percent of the issued and outstanding shares of common stock of Automar. A foreign citizen director of Fram is also a director of Automar, however, the application states that Fram is only a portfolio investor and does not have the ability to divert any MSP payments to the foreign corporation or elect any director to Automar's board. Automar asserts that there is not sufficient foreign affiliation to require the application of section 804 restrictions.

Crowley and Automar have requested that MARAD allow the proposed transfers to become effective in accordance with the application and pursuant to law. This notice invites comments on legal and policy issues that may be raised by the Crowley and Automar proposal relating to the sale of the ships and the transfer of the three subject MSP Operating Agreements. MARAD has received one comment in advance of this notice, questioning whether one or more MSP contracts may be transferred without a simultaneous transfer of the vessel operated under that contract (namely SEA FOX) to the same purchaser.

A redacted copy of the transfer application will be available for inspection at the DOT Dockets Facility and on the DOT Dockets website (address information follows). Any person, firm, or corporation having an interest in this proposal and desiring to submit comments concerning the application may file comments as follows. You should mention the docket number that appears at the top of this document. You should submit your written comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401 Nassif Building, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit/. All comments will become part of the docket. You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m., EDT, Monday through Friday, except Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov. Comments must be received no later than the close of business on July 23, 1999. This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. MARAD will consider any comments timely submitted and take such action with respect thereto as may be deemed appropriate.

Dated: July 12, 1999.

By Order of the Maritime Administration.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–18120 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)

AGENCY: Maritime Administration, DOT.

ACTION: Notice of open season for enrollment in fiscal year (FY) 2000 VISA Program.

Introduction

The VISA program was established pursuant to section 708 of the Defense Production Act of 1950, as amended (DPA), which provides for voluntary agreements for emergency preparedness programs. VISA was approved for a two year term on January 30, 1997, and published in the **Federal Register** on February 13, 1997, (62 FR 6837). Approval was extended through February 13, 2001, and published in the **Federal Register** on February 18, 1999 (64 FR 8214).

As implemented, VISA is open to U.S.-flag vessel operators of militarily useful vessels, including bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to the bareboat charterer for purposes of VISA: By order of the Maritime Administrator on August 4, 1997, participation of U.S.-flag deepwater tug/barge operators in VISA was encouraged. Time, voyage, and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

VISA Concept

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal equipment and related management services, to the Department of Defense (DoD), as necessary, to meet national defense contingency requirements or national emergencies.

VISA provides for the staged, time-phased availability of participants' shipping services/systems to meet contingency requirements through prenegotiated contracts between the Government and participants. Such arrangements will be jointly planned with MARAD, U.S. Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, to provide DoD assured contingency access, and to minimize commercial disruption, whenever possible.

VISA Stages I and II provide for prenegotiated contracts between the DoD and participants to provide sealift

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capacity to meet all projected DoD contingency requirements. These contracts will be executed in accordance with approved DoD contracting methodologies. VISA Stage III will provide for additional capacity to the DoD when Stages I and II commitments or volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DoD contracting practices or U.S. Government treaty agreements.

FY 2000 VISA Enrollment Open Season

The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to participate in the program for FY 2000 (October 1, 1999 through September 30, 2000). Current participants in the VISA program are not required to apply for FY 2000 reenrollment, as VISA participation will be automatically extended for FY 2000. This is the second annual enrollment period since the commencement of VISA. The annual enrollment was initiated because VISA has been fully integrated into DoD's priority for award of cargo to VISA participants. It is necessary to link the VISA enrollment cycle with DoD's peacetime cargo contracting cycle.

New applicants are required to enroll for the FY 2000 VISA program as described in this Notice. This alignment of VISA enrollment and eligibility for VISA priority will solidify the linkage between commitment of contingency assets by VISA participants and receiving VISA priority consideration for award of FY 2000 DoD peacetime cargo.

It is the only planned enrollment period for carriers to join VISA and derive benefits for DoD peacetime contracts during FY 2000. The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may join VISA upon completion of reflagging at any time during the fiscal year.

Advantages of Peacetime Participation

Because enrollment of carriers in VISA provides the DoD with assured access to sealift services during contingencies based on a level of commitment, as well as a mechanism for joint planning, the DoD awards peacetime cargo contracts to VISA participants on a priority basis. This applies to liner trades and charter contracts alike. Award of DoD cargoes to meet DoD peacetime and contingency requirements is made on the basis of the following priorities:

- U.S.-flag vessel capacity operated by VISA participants, and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants.
- U.S.-flag vessel capacity operated by non-participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants.
- Foreign-owned or operated foreign-flag vessel capacity of non-participants.

Participants

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program. While vessel brokers and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DoD cargo, they may not become participants in the VISA program due to lack of requisite vessel ownership or operation. However, brokers and agents should encourage the carriers they represent to join the program.

Commitment

Any U.S.-flag vessel operator desiring to receive preference in the award of DoD peacetime contracts must commit no less than 50 percent of its total U.S.-flag militarily useful capacity in Stage III of the VISA program. A participant desiring to bid on DoD peacetime contracts will be required to provide commitment levels to meet DoD-established Stages I and/or II minimum percentages of the participant's military useful, oceangoing U.S-flag fleet capacity on an annual basis. The USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic Jones Act trades are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCA's) to satisfy commercial or DoD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCA's must be submitted to MARAD for coordination with the Department of Justice for approval, before they can be utilized.

Compensation

In addition to receiving priority in the award of DoD peacetime cargo, a participant will receive compensation during contingency activation. During enrollment, each participant may choose a compensation methodology which is commensurate with risk and service provided. The compensation methodology selection will be completed the with the appropriate DoD agency.

Enrollment

New applicants may enroll by obtaining a VISA application package from the Director, Office of Sealift Support, at the address indicated below. The application package will include the February 18, 1999 VISA Agreement, instructions for completing and submitting the application, blank VISA Application forms, and a request for information regarding the operations and U.S. citizenship of the applicant company in order to assist MARAD in making a determination of the applicant's eligibility. An applicant company must be able to provide an affidavit that demonstrates that the company is a citizen of the United States, at least for purposes of vessel documentation, within the meaning of 46 U.S.C., section 12102, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to VISA. VISA applicants must return completed FY 2000 VISA application documents to MARAD not later than August 31, 1999. Once MARAD has reviewed the application and determined VISA eligibility, MARAD will sign the VISA application document which completes the eligibility phase of the VISA enrollment process.

In addition, the applicant will be required to enter into a contingency contract with the DoD. For the FY 2000 VISA open season, and prior to being enrolled in VISA, eligible VISA applicants will be required to execute a joint Voluntary Enrollment Contract (VEC) with the DoD [Military Traffic Management Command (MTMC) and Military Sealift Command (MSC)] which will specify the participant's Stage III commitment for FY 2000. Once the VEC is completed, the applicant completes the DoD contracting process by executing a Drytime Contingency Contract (DCC) with MSC (for Charter Operators) and/or as applicable, a VISA Contingency Contract (VCC) with MTMC (for Liner Operators). Once the DoD contingency contract(s) are completed, the Maritime Administrator will confirm the participant's enrollment by letter agreement, with a copy to all appropriate parties.

FOR ADDITIONAL INFORMATION AND APPLICATIONS CONTACT: Raymond Barberesi, Director, Office of Sealift Support, U.S. Maritime Administration, Room 7307, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–2323. Fax (202) 493–2180. The full text of this **Federal Register** Notice and other information about the VISA can be found on MARAD's Internet Web Page at *http://www.marad.dot.gov.*

By Order of the Maritime Administrator.
Dated: July 9, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–18119 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Potential Service Interruptions in Supervisory Control and Data Acquisition Systems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA is issuing this advisory bulletin to notify to owners and operators operators of natural gas and hazardous liquid pipeline systems of to advise them to review the capacity of their Supervisory Control and Data Acquisition (SCADA) system to ensure that the system has resources to accommodate normal and abnormal operations on its pipeline system. In addition, SCADA configuration and operating parameters should be periodically reviewed, and adjusted if necessary, to assure that the SCADA computers are functioning as intended. Further, operators should ensure that system modifications do not adversely affect overall performance of the SCADA system. We recommend that the operator consult with the original system designer.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: For further information, contact Chris Hoidal, Director, OPS Western Region at 303–231–5701, or by e-mail at chris.hoidal@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

During an Office of Pipeline Safety (OPS) investigation of a recent pipeline incident, OPS inspectors identified inadequate SCADA performance as an operational safety concern. Immediately prior to and during the incident, the SCADA system exhibited poor performance that inhibited the pipeline controllers from seeing and reacting to the development of an abnormal pipeline operation.

Preliminary review of the SCADA system indicates that the processor load (a measure of computer performance utilization) was at 65 to 70 percent during normal operations. Immediately prior to an upset condition occurring on the pipeline, the SCADA encountered an internal database error. The system attempted to reconcile the problem at the expense of other processing tasks. The database error, coupled with the increased data processing burden of the upset condition, hampered controller operations. In fact, key operator command functions were unable to be processed immediately prior to and during the abnormal operation. It is possible that post installation modifications may have hampered the system's ability to function appropriately.

The combination of the database error, the inadequate reserve capacity of the SCADA processor, and the unusually dynamic changes that occurred during the upset condition, appear to have combined and temporarily overburdened the SCADA computer system. This may have prevented the pipeline controllers from reacting and controlling the upset condition on their pipeline as promptly as would have been expected.

II. Advisory Bulletin (ADB–99–03)

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipelines

Subject: Potential Service Interruptions in Supervisory Control and Data Acquisition Systems

Purpose: Inform pipeline system owners and operators of potential operational limitations associated with Supervisory Control and Data Acquisition (SCADA) systems and the possibility of those problems leading to or aggravating pipeline releases.

Advisory: Each pipeline operator should review the capacity of its SCADA system to ensure that the system has resources to accommodate normal and abnormal operations on its pipeline system. In addition, SCADA configuration and operating parameters should be periodically reviewed, and adjusted if necessary, to assure that the SCADA computers are functioning as intended. Further, operators should assure system modifications do not adversely affect overall performance of the SCADA system. We recommend that the operator consult with the original system designer.

Stacey L. Gerard,

Director, Policy, Regulations and Training.

[FR Doc. 99–18023 Filed 7–15–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33767]

CSX Transportation, Inc.—Trackage Rights Exemption—Grand Trunk Western Railroad Incorporated

Grand Trunk Western Railroad Incorporated (GTW), a wholly owned subsidiary of Canadian National Railway Company (CN), has agreed to grant non-exclusive overhead trackage rights to CSX Transportation, Inc. (CSXT), over main line track of GTW between the proposed CN/Consolidated Rail Corporation (CRC) connection at Milwaukee Junction, Detroit, MI, near milepost 54.6 and the existing CN connection with Norfolk Southern Railway Company (NSR) at West Detroit, MI,[1] near milepost 50.2, on CN's Shoreline Subdivision, a total distance of approximately 4.4 miles.[2] The purpose of the trackage rights is to improve service to customers by reducing congestion and delays in the

[1] CSXT has the right to enter and exit the involved trackage at the proposed Milwaukee Junction connection and the existing connection at West Detroit or at other points that may be agreed upon by the parties.

[2] A redacted version of the trackage rights agreement between CSXT, CRC, NSR and GTW was filed with the notice of exemption. The full version of the agreement was concurrently filed under seal along with a motion for a protective order, which will be addressed in a separate decision. CRC and NSR are also apparently filing similar notices of exemption with the Board.

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West Detroit, Delray and Ecorse Junction, MI areas. The transaction was expected to be consummated on or after July 6, 1999 (the effective date of the exemption was July 5, 1999, 7 days after notice of the exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—B.N*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease & Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33767, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street (J150), Jacksonville, FL 32202.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 12, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18214 Filed 7–15–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Oceanmark Bank, F.S.B.; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Oceanmark Bank, F.S.B., North Miami Beach, Florida, OTS No. 8327, on July 9, 1999.

Dated: July 12, 1999.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 99–18182 Filed 7–15–99; 8:45 am]

BILLING CODE 6720–01–P

federal register

Friday
July 16, 1999

Part II

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC73

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing student eligibility for the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The proposed regulations implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments). Most of the proposed changes simply conform current regulatory provisions to the statutory changes.

DATES: We must receive your comments on or before September 14, 1999.

ADDRESSES: Address all comments about these proposed regulations to Lloyd Horwich, U.S. Department of Education, P.O. Box 23272, Washington, DC 20202–3272. If you prefer to send your comments through the Internet, use the following address: senprm@ed.gov.

FOR FURTHER INFORMATION CONTACT: Lloyd Horwich. Telephone (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations at Regional Office Building 3, 7th and D Streets, SW, Room 3045, Washington, DC, between 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday (excluding Federal holidays).

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you can call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Summary of Proposed Changes

The Secretary proposes to revise the current Student Assistance General Provisions, 34 CFR part 668, concerning student eligibility for financial assistance programs authorized under Title IV, HEA. The revisions implement changes made by the 1998 Amendments (Public Law 105–244, enacted October 7, 1998).

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this NPRM reflect the final consensus of Committee III, which was made up of the following members:

Accrediting Commission of Career Schools and Colleges of Technology
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Career College Association
Coalition of Higher Education Assistance Organizations
Education Finance Council
Legal Services Counsel/Legal Aid (a coalition)
National Association of College and University Business Officers
National Association for Equal Opportunity in Higher Education
National Association of Graduate/Professional Students
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Direct Student Loan Coalition
The College Board
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
U.S. Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Section 668.32 Student Eligibility—General

Home-Schooled Students

Section 484(d) of the HEA, as amended by the 1998 Amendments, allows a student who completes a secondary school education in a home school that is treated as a home school or private school under State law to be eligible to receive Title IV, HEA program funds. The Secretary proposes to amend § 668.32(e) to reflect that change.

The negotiating committee discussed the language of the 1998 Amendments, and how different States oversee home schools, and concluded that the statute would be implemented best by not adding any additional eligibility requirements for a home-schooled student beyond his or her State's home-school completion requirements.

Under proposed § 668.32(e)(4), to be eligible to receive Title IV, HEA program funds, a home-schooled student must satisfy the home-school completion requirements of the State in which the student was home-schooled. Thus, if a State requires a home-schooled student to obtain a secondary school completion credential for home-school study that is more than an attestation that the student was exempt from the State's mandatory school attendance law, the student must obtain such a credential to be eligible for Title IV, HEA program funds. If the State does not require the student to obtain such a credential, the student will satisfy § 668.32(e)(4) based on the exemption from the State's mandatory school attendance law.

For purposes of Title IV, HEA program aid, the Secretary will allow a home-schooled student to self-certify his or her eligibility in the same way a high school graduate or GED recipient may.

Statement of Educational Purpose

The proposed regulations amend § 668.32(h), which governs a student's filing of his or her Statement of Educational Purpose, to comply with changes made to the HEA by the 1998 Amendments. Previously, a student who received a loan under the FFEL program had to file the Statement with the lender. Under proposed § 668.32(h), a student simply would be required to file the Statement with the Secretary.

Technical Corrections and Cross-References

The Secretary proposes to amend § 668.32(k)(7) to reflect the name-change of the SSIG program to the LEAP program. The Secretary proposes to add as § 668.32(l) a cross-reference that reflects the student eligibility criterion concerning drug convictions added by the 1998 Amendments and implemented by the proposed addition of § 668.40.

Section 668.38 Enrollment in Telecommunications and Correspondence Courses

Prior to the 1998 Amendments, section 484(l) of the HEA provided that a student enrolled in a telecommunications course would not be considered to be enrolled in a correspondence course under certain circumstances, including that the student was enrolled in a program that led to an associate, bachelor, or graduate degree. The 1998 Amendments amended section 484(l) by adding another category of students to be similarly treated: students who are enrolled in programs of one academic year or longer that lead to a certificate. The proposed regulations amend § 668.38(b) to reflect that change.

Thus, under proposed § 668.38(b), the Secretary does not consider a student enrolled in a telecommunications course at an institution of higher education (as defined in § 668.38(b)(2)) to be enrolled in a correspondence course, if the student is enrolled in a program described in the preceding paragraph, and the number of telecommunications and correspondence courses offered by the institution is less than half the total number of courses offered by the institution.

The 1998 Amendments also restricted the type of institution at which telecommunications courses can be considered not to be correspondence courses. Proposed § 668.38(b)(2) reflects that restriction. It defines an institution of higher education as one which is not described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act, and at which at least half of the programs of study lead to an associate, bachelor, or graduate degree. If the student is enrolled in telecommunications courses at an institution other than an institution of higher education as defined by proposed § 668.38(b)(2), those courses are considered correspondence courses.

Section 668.40 Suspension of Eligibility for Drug-Related Offenses

The 1998 Amendments added section 484(r) to the HEA. Under that subsection, a student who has been convicted under Federal or State law of possession or sale of a controlled substance, regardless of when the conviction occurred, is ineligible for Title IV, HEA program funds for the period specified in that subsection.

The periods of ineligibility, which begin as of the date of the conviction, are as follows:

If convicted of an offense involving the possession of a controlled substance, the ineligibility period is:

First offense	1 year.
Second offense	2 years.
Third offense	Indefinite.

If convicted of an offense involving the sale of a controlled substance, the ineligibility period is:

First offense	2 year.
Second offense	Indefinite.

The Secretary proposes to add § 668.40(a) and (b) to implement those statutory provisions. Note that for purposes of determining a student's

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eligibility for Title IV assistance, a conviction means a conviction that is on a student's record at the time the student's eligibility is being determined. Therefore, a conviction that was reversed, set aside, or removed from the student's record is not relevant.

Because the statutory ineligibility periods begin on the date of conviction, if a student has been convicted of both possession and sale of a controlled substance and the two ineligibility periods overlap, the periods run concurrently for the time during which they overlap. The start of the ineligibility period for the later conviction is not postponed until the ineligibility period for the earlier conviction ends. For example, if a student is convicted on July 1, 2000 for the first time for possession of a controlled substance and convicted on January 1, 2001 for the first time for sale of a controlled substance, the student will regain eligibility on January 1, 2003.

Section 484(r) of the HEA further provides that a student can regain eligibility, regardless of the number or type of convictions on the student's record, by successfully completing a drug rehabilitation program that complies with criteria established by the Secretary and that includes two unannounced drug tests. The proposed regulations establish criteria for an acceptable drug rehabilitation program in § 668.40(d)(2). Under the proposed criteria, a drug rehabilitation program must (1) have received or be qualified to receive funds directly or indirectly under a Federal, State, or local government program, (2) be administered or recognized by a Federal, State, or local government agency or court, (3) have received or be qualified to receive payment directly or indirectly from a State-licensed insurance company, or (4) be administered or recognized by a State-licensed hospital, health clinic or medical doctor. The Secretary believes, and the rest of Committee III concurs, that these criteria would ensure the availability of a wide-range of opportunities for students to regain their eligibility, and that an acceptable drug rehabilitation program would have to be approved by an entity qualified to make such an assessment.

Having reviewed the language of the new statutory provision and its legislative history, the Secretary believes, and the rest of Committee III concurs, that Congress intended the drug rehabilitation relief provision to be available at the same time students are subject to the loss of eligibility. Members of Congress specifically indicated in statements on the floor of Congress that students should be able to regain Title IV, HEA program eligibility if they complete a rehabilitation program. Since the HEA requires that acceptable rehabilitation programs comply with criteria prescribed by the Secretary in regulations and such regulations (as proposed in this NPRM) will not be effective until July 1, 2000, this new student eligibility provision will not be implemented until July 1, 2000. Until that time no student will be determined to be ineligible for Title IV assistance under the new provision.

Nonetheless, a student's actions between now and the effective date of the regulations may affect eligibility. For example, a first conviction for possession of a controlled substance on February 1, 2000, will make a student ineligible for Title IV assistance from July 1, 2000—the effective date of the regulations—through January 31, 2001—one year from the date of the conviction. If the conviction were the student's second, the student would not regain eligibility until February 1, 2002. Because of the serious consequences to some students of the new provision and because there are certain actions that they could take to mitigate those consequences, the Secretary strongly encourages, but is not requiring, institutions to inform their students of this provision and to help students understand how their actions might affect their future eligibility. For example, students whose Title IV assistance otherwise would be jeopardized under the new law can avoid a loss of eligibility by completing an acceptable drug rehabilitation program before July 1, 2000.

The Secretary will not require institutions to question their Federal aid applicants about drug-related matters. The Secretary intends to use the 2000–2001 aid applicantion processes—Free Applications for Federal Student Aid (FAFSA) and Student Aid Report (SAR)—to collect needed informatiom from applicants and to report the results to schools on Institutional Student Information Records (ISIRs). The Secretary has been working with representatives from the higher education community in planning these new and sensitive processes, and will keep the community updated as these plans are developed.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

Elsewhere in this preamble, we discuss the potential costs and benefits of these proposed regulations under the heading *Regulatory Flexibility Act Certification.*

2. Clarity of the Regulations

Executive Order 12866 and the Presideni's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.32, *Student eligibility—general.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these regulations are institutions of higher education that participate in the Title IV, HEA programs. These institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The regulations would benefit both small and large institutions, without requiring significant changes to current institutional system operations, through: the further simplification of the filing of a student's Statement of Educational Purpose; and the expansion of Title IV eligibility provisions regarding home-schooled students and students enrolled in telecommunications and correspondence courses. These proposed regulations also implement the new statutory criterion for Title IV eligibility concerning convictions for possession or sale of a controlled substance. This provision was discussed extensively as part of the negotiated rulemaking process, and the Secretary believes that the proposal to implement this change through the use of the student aid application processes is the best approach and would prevent unnecessary administrative burden on institutions.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: July 8, 1999.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is amended to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

2. Section 668.32 is amended as follows:

A. In paragraph (e)(2), by removing "or";

B. In paragraph (e)(3), by removing the period at the end of the paragraph and adding in its place a semi-colon, and adding "or" after the semi-colon;

C. By adding a new paragraph (e)(4) to read as follows;

D. In paragraph (h), by removing "or in the case of a loan made under the FFEL Program, with the lender";

E. In paragraph (i), by removing the "and" after the semi-colon;

F. In paragraph (k)(7), by removing "SSIG" and adding in its place, "LEAP," by removing the period at the end of the paragraph and adding in its place a semi-colon, and adding "and" after the semi-colon; and

G. By adding paragraph (l) to read as follows.

§ 668.32 Student eligibility—general.

* * * * *

(e) * * *

(4) Was home-schooled, and either—

(i) Obtained a secondary school completion credential for home school (other than a high school diploma or its recognized equivalent) provided for under State law; or

(ii) If State law does not require a home-schooled student to obtain the credential described in paragraph (e)(4)(i) of this section, has completed a secondary school education in a home school setting that qualifies as an exemption from compulsory attendance requirements under State law.

* * * * *

(l) Is not ineligible under 34 CFR 668.40.

3. Section 668.38 is amended by revising paragraph (b) to read as follows:

§ 668.38 Enrollment in telecommunications and correspondence courses.

* * * * *

(b) (1) For purposes of this section, a student enrolled in a telecommunications course at an institution of higher education is not enrolled in a correspondence course, if—

(i) The student is enrolled in a program that leads to a certificate for a program of study of 1 year or longer, or an associate, bachelor, or graduate degree; and

(ii) The number of telecommunications and correspondence courses the institution offered during its latest completed

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award year was fewer than 50 percent of all the courses the institution offered during that same year.

(2) For purposes of paragraph (b)(1) of this section, an institution of higher education is one—

(i) That is not an institute or school described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Act; and

(ii) At which at least 50 percent of the programs of study offered by the institution during its latest completed award year led to an associate, bachelor, or graduate degree.

(3) For purposes of paragraph (b)(1)(ii) of this section, the institution must calculate the number of courses using the provisions contained in 34 CFR 600.7(b)(2).

4. Section 668.40 is added to read as follows:

668.40 Conviction for possession or sale of illegal drugs.

(a)(1) A student is ineligible to receive Title IV, HEA program funds if the student has been convicted of an offense involving the possession or sale of illegal drugs for the period described in paragraph (b) of this section. However, the student may regain eligibility before that period expires under the conditions described in paragraph (c) of this section.

(2) For purposes of this section, a conviction means only a conviction that is on a student's record at the time the student's eligibility is being determined. A conviction that was reversed, set aside, or removed from the student's record is not relevant for purposes of this section.

(3) For purposes of this section, an illegal drug is a controlled substance as defined by section 102(6) of the Controlled Substances Act (21 U.S.C. 801(6)), and does not include alcohol or tobacco.

(b)(1) *Possession.* Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for possession of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for one year after the date of conviction;

(ii) Two times for possession of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for two years after the date of the second conviction; or

(iii) Three or more times for possession of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for an indefinite period after the date of the third conviction.

(2) *Sale.* Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for sale of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for two years after the date of conviction; or

(ii) Two or more times for sale of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for an indefinite period after the date of the second conviction.

(c) If a student successfully completes a drug rehabilitation program described in paragraph (d) of this section after the student's most recent drug conviction, the student regains eligibility on the date the student successfully completes the program.

(d) A drug rehabilitation program referred to in paragraph (c) of this section is one which—

(1) Includes at least two unannounced drug tests; and

(2)(i) Has received or is qualified to receive funds directly or indirectly under a Federal, State, or local government program;

(ii) Is administered or recognized by a Federal, State, or local government agency or court;

(iii) Has received or is qualified to receive payment directly or indirectly from a State-licensed insurance company; or

(iv) Is administered or recognized by a State-licensed hospital, health clinic or medical doctor.

(Authority: 20 U.S.C. 1091(r))

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federal register

Friday
July 16, 1999

Part III

Department of the Treasury

Fiscal Service

Federal Agency Disbursements; Electronic Funds Transfer; Notice

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DEPARTMENT OF THE TREASURY

Fiscal Service

RIN 1510–AA56

Electronic Transfer Account

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of Electronic Transfer Account features.

SUMMARY: The Debt Collection Improvement Act of 1996 (Act) amends 31 U.S.C. 3332 to provide that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by electronic funds transfer (EFT) after January 1, 1999. The Department of the Treasury (Treasury) published a final rule implementing this mandate, 31 CFR Part 208 (Part 208), on September 25, 1998. 63 FR 51490. Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account, or "ETA℠," at any Federally insured financial institution that elects to offer ETAs℠. This notice describes the required features of the ETA℠. In addition, Treasury is publishing, as an appendix to this notice, the ETA℠ Financial Agency Agreement (FAA) that Treasury will enter into with financial institutions that offer ETAs℠.

DATES: This notice is effective July 16, 1999.

ADDRESSES: This notice is available on the Financial Management Service's ETA℠ web site at the following address: http://www.fms.treas.gov/eta.

FOR FURTHER INFORMATION CONTACT: Sally Phillips, Senior Financial Program Specialist, at (202) 874–7106; Matthew Friend, Financial Program Specialist, at (202) 874–7032; Natalie H. Diana at (202) 874–6590; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Margaret Marquette, Attorney-Advisor, at (202) 874–6681. In addition, inquiries about the ETA℠ may be submitted electronically via e-mail to eta.inquiries@fms.sprint.com or by filling out an inquiry form available on the ETA℠ web site at http://www.fms.treas.gov/eta. Financial institutions may call 1–888–ETA–FRBK (382–3725) for more information about enrolling in the ETA℠ program.

SUPPLEMENTARY INFORMATION:

A. Background

On September 25, 1998, Treasury issued Part 208, which provides, in part, that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an account called an ETA℠ at any Federally insured financial institution that chooses to offer ETAs℠. 63 FR 51490, 51504. The ETA℠ has been developed to maximize opportunities for individuals required to receive Federal payments electronically to have access to an account at reasonable cost and with the same consumer protections available to other account holders at the same financial institution.

On November 23, 1998, Treasury published for comment in the **Federal Register** a notice setting forth proposed terms, conditions, and attributes of the ETA℠ (hereafter the "Notice"). 63 FR 64820. Treasury received 198 comment letters in response to the Notice. Comments were received primarily from financial institutions, financial institution trade associations, and consumer and community-based organizations. Recipients, non-financial institution trade associations, non-financial institution payment service providers, and Federal agencies also commented on the Notice.

The majority of comments on the proposed ETA℠ features were supportive of Treasury's efforts to design a low-cost account for those recipients without accounts at financial institutions in order to bring them more fully into the financial services mainstream. The comments reflected divergent views on many proposed ETA℠ features, including account eligibility, fees associated with the account, number of cash withdrawals, methods of access, and whether a monthly statement should be provided. Comments were also divided on the question of whether to allow financial institutions the option of offering, as part of the ETA℠, certain additional features at an additional cost, if any, to the recipient.

Based on the comments received, Treasury has developed a listing of required attributes and optional features for the ETA℠, which are the subject of this notice. In addition, Treasury is publishing, as an appendix to this notice, the FAA that Treasury will enter into with each financial institution that elects to offer ETAs℠.

B. Compensation to Financial Institutions

In order to maximize the number of financial institutions that choose to offer ETAs℠, Treasury will offer financial institutions compensation to establish the account. Treasury will reimburse each financial institution that offers the ETA℠ a one-time fee of $12.60 per account established, in order to offset the costs of setting up the account. The fee will be paid regardless of whether the recipient has or had an existing account.

Financial institutions that commented on the proposed amount of compensation were divided as to whether $12.60 is adequate to cover the cost of opening the account. However, almost all financial institutions that commented on this question agreed that the amount of compensation should not depend on whether the customer is new or existing, pointing out that the costs of opening the account are the same in either circumstance. Comments from some consumer organizations similarly stated that the amount of compensation paid should not differ based on whether a recipient has or does not have an existing account.

There was little comment on the question of whether compensation should increase as the number of accounts opened increases. In general, large financial institutions favored increased compensation whereas small institutions did not. Treasury has determined that a standard compensation amount of $12.60 per account is appropriate regardless of the number of ETAs' a financial institution opens.

C. Availability of ETAs℠

In order to provide a convenient source of information for recipients regarding the availability of ETAs℠, Treasury will maintain and make publicly available to recipients and program agencies, by telephone and other electronic means, a list of participating ETA℠ providers. In addition, financial institutions offering ETAs℠ will be required to display prominently a logo to be supplied by Treasury indicating that the ETA℠ is available at that financial institution.

Some financial institutions have indicated that they already offer low-cost accounts that may meet the requirements for the ETA℠ and have inquired whether they can receive compensation for offering those accounts. Any account that has the attributes set forth in this notice can qualify as an ETA℠ provided that the financial institution opens the account after entering into an FAA with Treasury, and that the account is identified to the public as an ETA℠. As with all other ETAs℠, a low-cost account that is designated as an ETA℠ may offer only those features set forth in this notice. It may not offer additional features, such as a check writing feature, even if the cost of providing such a feature falls within the maximum

monthly fee. Compensation for opening these accounts will be provided to the financial institution on the same basis as for opening all other ETAs℠.

Some commenters on the Notice asked whether Community Reinvestment Act (CRA) credit would be available for financial institutions that offer ETAs℠. The Federal Financial Institutions Examination Council recently supplemented and republished in the **Federal Register** its Interagency Questions and Answers Regarding Community Reinvestment. Interagency Question & Answer 3 addressing §§ __.12(j) [1] and 563e.12(i) has been amended to state that providing ETAs℠ qualifies as a community development service. *See* 64 FR 23618, 23630 (May 3, 1999).

D. Summary of ETA℠ Attributes

After considering the comments received, Treasury has determined that the ETA℠ account will have the following attributes. These attributes are explained in more detail below. The ETA℠ shall:

- Be an individually owned account at a Federally insured financial institution;
- Be available to any individual who receives a Federal benefit, wage, salary, or retirement payment;
- Accept electronic Federal benefit, wage, salary, and retirement payments and such other deposits as a financial institution agrees to permit;
- Be subject to a maximum price of $3.00 per month;
- Have a minimum of four cash withdrawals and four balance inquiries per month, to be included in the monthly fee, through (a) the financial institution's proprietary (on-us) automated teller machines (ATMs),[2] (b) over-the-counter transactions at the main office or a branch of the financial institution, or (c) any combination of on-us ATM access and over-the-counter access at the option of the financial institution;[3]
- Provide the same consumer protections that are available to other account holders at the financial institution, including, for accounts that provide electronic access, Regulation E protections regarding disclosure, limitations on liability, procedures for reporting lost or stolen cards, and procedures for error resolution;
- For financial institutions that are members of an on-line point-of-sale (POS) network, allow on-line POS purchases, cash withdrawals, and cash back with purchases at no additional charge by the financial institution offering the ETA℠;
- Require no minimum balance, except as required by Federal or State law;
- At the option of the financial institution, be either an interest-bearing or a non-interest-bearing account; and
- Provide a monthly statement.

E. Discussion of ETA℠ Attributes

Individually Owned Account at Federally Insured Financial Institution

Treasury proposed in the Notice that the ETA℠ be an individually owned account established at a Federally insured financial institution. Many commenters stated that the account should be available as a jointly held account at the option of the recipient in order to maximize the utility of the account. Other commenters asked that Treasury clarify whether or not the ETA℠ could be held by a representative payee receiving payments on behalf of the recipient.

It was not Treasury's intention to require that ETAs℠ be titled only in the name of the recipient. By characterizing the ETA℠ as an individually owned account, Treasury intended to indicate that the ETA℠ would not be a Treasury owned account or an account owned by a corporation, organization, or other entity. An ETA℠ may be titled in any way that meets the requirements of 31 CFR 208.6 and 31 CFR 210.5, except that an ETA℠ may not be established in the name of a corporation or other entity. 31 CFR 208.6 and 31 CFR 210.5 provide that all Federal payments, other than vendor payments, made by electronic funds transfer, including those made through an ETA℠, shall be deposited into an account at a financial institution in the name of the recipient, with certain exceptions, including payments made to a representative payee. As discussed in the supplementary information accompanying the promulgation of 31 CFR Part 210, 210.5 does not require that the recipient's name be the only name on the account, and thus would not prohibit the use of a joint account.

Most consumer organizations supported the requirement that financial institutions be Federally insured as an important consumer protection. Several credit unions commented that credit unions which are privately insured should be permitted to offer ETAs℠.

Treasury believes that Federal deposit or share insurance is an important consumer protection which should be afforded to ETA℠ holders. Accounts at institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA) are insured for the full amount in the account, up to $100,000. In contrast, accounts at some institutions that are other than Federally insured are insured for only 50% of the amount in the account. In addition, Federally insured financial institutions are subject to comprehensive Federal regulation and oversight through examinations for safety-and-soundness and compliance with consumer protection laws. Accordingly, Treasury is requiring that in order to be eligible to offer ETAs℠, a financial institution must be Federally insured.

As proposed in the Notice, financial institutions offering ETAs℠ are prohibited under the FAA from entering into arrangements with non-financial institutions to provide access to ETAs℠, other than access through a national or regional ATM/POS network. Treasury continues to be concerned that such arrangements might be confusing or misleading to recipients and, therefore, will not permit financial institutions to enter into such arrangements with respect to the offering of the ETA℠.

Available to any Individual Who Receives a Federal Benefit, Wage, Salary, or Retirement Payment

With two exceptions, a financial institution that chooses to offer ETAs℠ must open an ETA℠ for any recipient of a Federal benefit, wage, salary, or retirement payment who requests an ETA℠ and who, by enrolling through the institution in the Federal Government's Direct Deposit program, agrees to have such payments electronically transferred to the ETA℠. Each financial institution may establish its own account-opening procedures for the ETA℠. For example, some institutions may choose to open ETAs℠ through a telephone application process whereas others may choose to require recipients to apply in person.

The two exceptions to the account-opening requirement are: (a) A financial institution may not open an ETA℠ for any individual if the institution does not have authority under its charter to maintain a deposit or share account for the individual (for example, where a

[1] The Interagency Questions and Answers employ an abbreviated method to cite to the relevant regulations. Because the CRA regulations of the four Federal banking agencies are substantially identical, corresponding sections of the different regulations usually bear the same suffix. Therefore the Interagency Questions and Answers typically cite only to the suffix. *See* 64 FR 23618, 23619.

[2] As explained below in the discussion of ETA℠ attributes, the term proprietary (on-us) ATM refers to an ATM which a financial institution's customers may use without being subject to a fee of any kind, including a surcharge.

[3] Financial institutions may provide additional withdrawals or balance inquiries at no charge or for a fee.

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recipient does not meet a credit union's field of membership requirements); and (b) a financial institution is not required to open an ETA℠ for any individual if (i) the institution is aware that the individual previously was the owner of an ETA℠ that was closed because of fraud at that institution or any other financial institution, or (ii) the institution, for reasons of account misuse, previously closed an ETA℠ held by the individual at that institution.

The Notice indicated that financial institutions would not be permitted to deny an ETA℠ to any eligible recipient, and that financial institutions would be permitted to close an ETA℠ only in certain circumstances to be delineated by Treasury. This requirement drew extensive comment from financial institutions.

In general, financial institutions commented that it is essential that they be able to refuse an account to an individual who has a history of abusing accounts, such as repeated overdrafts or fraud. Many institutions commented that denying accounts to individuals who have a history of previous account misuse or credit problems is their primary method for reducing the risk of account fraud and losses. Some institutions expressed concern that they might be faced with overwhelmingly large numbers of ETA℠ applicants. Other institutions commented that the prohibition against denying ETAs℠ to eligible individuals would impose an unacceptable risk of loss to banks and violate bank "safety and soundness" principles.

Most consumer organizations, on the other hand, supported making the ETA℠ available to all Federal payment recipients so that all eligible recipients would have the opportunity to enter the financial services mainstream regardless of their credit history.

Several financial institutions were concerned with how long they would be committed to participating as ETA℠ providers. Some institutions urged Treasury to permit them to offer ETAs℠ for a "trial period," after which they could close the accounts if they were not profitable. Similarly, institutions commented that they must have the ability to close an ETA℠ for overdrafts, fraud, or excessive Regulation E claims.

31 CFR 208.5 provides that any individual who receives a Federal benefit, wage, salary or retirement payment is eligible to open an ETA℠. Treasury believes that it is important to ensure that even individuals who may have experienced prior checking account management problems or credit problems have access to an ETA℠. Accordingly, a financial institution will be required to open an ETA℠ for any eligible recipient, regardless of the recipient's previous account experience, except where the individual has engaged in fraud with respect to another ETA℠ or where the individual has misused an ETA℠ at that same institution. The distinction between fraud and misuse in this context is that although a recipient could unintentionally or negligently misuse an account in various ways (for example, by inadvertently causing an overdraft to the account or failing to safeguard a PIN number), fraud represents actions by an individual with the intent to obtain funds wrongfully from the financial institution (for example, where an individual authorizes a third party to withdraw funds from an account using an ATM card and then falsely represents to the financial institution that the withdrawal was unauthorized). Treasury takes seriously this distinction and reserves the right to take corrective action to address any violation of the account-opening requirements, including by terminating a financial institution's participation in the ETA℠ program.

Treasury believes that the risk of fraud or misuse of an ETA℠ is minimal because of the way in which the account has been designed. For example, as discussed below, the potential for overdrafts will be very low, in contrast to a checking account or an account with off-line debit card access. In addition, financial institutions that provide POS access will be permitted to impose overdraft fees (subject to certain limitations discussed below) or withdraw a recipient's POS access if a POS card is misused, including by overdrawing the account.

In light of the fact that financial institutions will not be permitted to deny an ETA℠ to an eligible individual except in limited circumstances, Treasury recognizes that it is important for financial institutions to have the ability to close an individual ETA℠ that is misused. Accordingly, a financial institution will be permitted to close an ETA℠ where the financial institution has cause to believe that fraud has occurred in connection with the account or that the account has been misused. Any determination that fraud or misuse has occurred must be consistent with the financial institution's usual criteria for closing accounts. Those criteria could include, for example, where the institution determines that fraud has occurred after conducting the investigation required under Regulation E; excessive overdrafts; negligence in safeguarding an ATM and/or POS card or personal identification number (PIN); or failure to pay an overdraft within a reasonable period of time.

In addition to the foregoing provisions, Treasury intends to monitor any issues that may arise as institutions begin offering ETAs℠ and to work with institutions where necessary to deal with any unanticipated problems, including working with institutions that experience an overwhelming number of requests by eligible recipients to open ETAs℠.

Accept Electronic Federal Benefit, Wage, Salary, and Retirement Payments and Such Other Deposits as a Financial Institution Agrees to Permit

Treasury had proposed to limit the types of funds that could be deposited to an ETA℠ to electronic Federal benefit, wage, salary, and retirement payments. Most commenters supported allowing deposits other than electronic Federal benefit, wage, salary, and retirement payments into the ETA℠. Many financial institutions commented that permitting other electronic deposits into the ETA℠ would enhance utility for the recipient. Some financial institutions commented that their systems cannot distinguish among, and restrict, types of electronic deposits which are sent to an account. All consumer organizations supported allowing other electronic (and non-electronic) deposits into the account as a way to make the account a more meaningful entry into the financial services mainstream.

In view of the comments received, Treasury will permit (but not require) financial institutions to offer recipients the option of depositing to the ETA℠ other funds in addition to electronic Federal benefit, wage, salary, and retirement payments. A financial institution may choose to limit such other deposits to electronic deposits or may allow recipients to deposit cash and/or checks in addition to other electronic deposits. Financial institutions may specify whether deposits of other funds can be made by mail, at an ATM, and/or over-the-counter. Financial institutions may not charge any fee in connection with allowing deposits of other funds.

Attachment

One of the reasons that Treasury had proposed to limit the types of funds that could be deposited to an ETA℠ was to reduce the potential that funds in an ETA℠ would be subject to attachment. Several consumer organizations requested that Treasury prohibit attachment of all funds. These commenters stated that recipients may not understand the implications of an attachment, and may be unable to organize a defense against the attachment. One consumer organization suggested that when presented with an attachment order, financial institutions should determine which funds are attachable (or not attachable) as a way to assist recipients.

Financial institutions opposed any shifting of the burden for defending against an attachment in this manner. A number of financial institutions commented that they should not have any disclosure requirement with respect to the potential attachment of ETAs℠, noting that this would be expensive and would constitute the provision of legal advice, for which they could be subject to litigation risk. Some institutions commented that Treasury should provide model disclosure language regarding attachment. Others commented that it must be made clear that it is not the financial institution's responsibility to claim any exemption from attachment.

Most Federal benefit payments deposited to an account at a financial institution, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Federal Railroad Retirement benefits, are protected from attachment and the claims of judgment creditors by Federal law, subject to certain limited exceptions.[4] If a financial institution receives an order of attachment or garnishment for an ETA℠, it must immediately send a copy of the order and the name of the creditor and contact person, if any, to the recipient. In addition, in order to ensure that recipients understand that Federal benefit payments deposited to an ETA℠ generally are protected from attachment, Treasury will require institutions that open an ETA℠ to provide the following disclosure, in writing, to the holder:

Many Federal benefit payments, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Railroad Retirement benefits, are protected from attachment under Federal law. This means that your creditors do not have the right to have these funds taken out of your ETA℠. There are a few exceptions, however. For example, funds in your ETA℠ can be taken to satisfy child support or alimony obligations you owe. [If you deposit funds other than Federal benefit payments to your ETA℠, your creditors may be able to have those funds taken out of your account, but your Federal benefits would still be protected.][5]

If we/[name of Institution] receive an order of attachment, garnishment, or levy, we will immediately send you a copy of the order and the name of the creditor and contact person, if any.

If you have questions about a creditor's right to remove funds from your ETA℠, contact your benefit agency or your local legal services organization.

Set Off

Treasury had proposed to prohibit financial institutions that elect to offer ETAs℠ from exercising any right of set off against an ETA℠, with the exception of the monthly account fee or charges for additional cash withdrawals or balance inquiries. All consumer organizations who commented on the issue opposed any right of the financial institution to set off funds held in an ETA℠ under any circumstances. In contrast, financial institutions strongly objected to any prohibition against their right of set off. They argued that a financial institution's right of set off is essential to mitigate the risks posed by overdrafts, amounts mistakenly credited to an account, and amounts provisionally credited to accounts as required under Regulation E. They also argued that prohibiting set off will reduce the incentives for cross selling other bank services to recipients, thereby reducing the potential profitability of servicing these customers and the attractiveness of offering the ETA℠. Financial institutions commented that eliminating incentives for cross selling will reduce the availability of credit and other bank services, such as cashing checks, that are often provided to customers on the basis of an available account balance. Several institutions requested clarification as to whether the prohibition against set off would prevent recipients from pledging the account or having automatic loan payments debited from the account.

In response to the comments requesting clarification of Treasury's intent, Treasury will permit financial institutions to deduct from an ETA℠ amounts representing certain obligations of the recipient that are directly related to the maintenance of the ETA℠ itself. Those obligations include: (a) The monthly fee; (b) any other fees incurred by the recipient in connection with the maintenance of the ETA℠; (c) any amount mistakenly credited to an ETA℠ to which the recipient has no legal right; (d) the amount of any overdraft on an ETA℠; and (e) any amount for which the recipient is liable under Regulation E, including any amount provisionally credited to the ETA℠ for which the financial institution determines, after conducting the investigation required under Regulation E, that the recipient is liable.

Treasury will not permit financial institutions to set off against an ETA℠ obligations incurred by a recipient in connection with other products or services offered by the institution. In response to questions raised by commenters, this prohibition means that recipients may not pledge the account or have automatic loan payments transferred from the account to another account. Treasury encourages financial institutions offering ETAs℠ to market other products and services to recipients, but will not allow payment for such products and services to be set off against the account.

Subject to a Maximum Price of $3.00 Per Month

Financial institutions that choose to offer ETAs℠ may charge a fee not to exceed $3.00 per month. Treasury will evaluate the appropriateness of this fee from time to time, and will make adjustments periodically as warranted. All attributes listed in the "Summary of ETA℠ Attributes" section of this notice must be included within the monthly fee to the recipient.

In general, consumer and community-based organizations commenting on the Notice favored the establishment of a maximum monthly fee for the ETA℠. Some of these organizations expressed a concern that $3.00 a month would be too expensive for some recipients. On the other hand, many financial institutions indicated that $3.00 per month would not cover the costs of maintaining the ETA℠ as proposed. A number of financial institutions requested clarification that they would be allowed to charge additional fees for account research, card replacement, overdrafts, cashier's checks, money orders and other special services. Consumer organizations urged Treasury to regulate any fees for additional withdrawals so they do not exceed actual financial institution costs or some other reasonable cost.

Treasury believes that $3.00 represents a reasonable maximum monthly fee for the ETA.[6] However, in

[4] *See* 42 U.S.C. 407(a); 42 U.S.C. 1383; 38 U.S.C. 530; and 45 U.S.C. 231m(a). The prohibition against attaching such funds is subject to certain exceptions, including to satisfy child support and alimony obligations. *See, e.g.*, 42 U.S.C. § 659. *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413, 416 (1973).

[5] This sentence must be included only if the financial institution permits the recipient to deposit into the ETA℠ funds other than Federal benefit, wage, salary, and retirement payments.

[6] In response to a question raised by some credit unions, Treasury will not regard the membership share which an individual is required to purchase in order to become a credit union member to constitute a fee. Treasury understands that the

Continued

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recognition of costs that may be incurred by financial institutions for providing services beyond those required by this notice. Treasury will permit financial institutions to charge the holder of an ETA℠ for other services for which the institution usually charges fees to its customers. Examples of such fees include fees for ATM withdrawals in excess of four per month; replacement card fees; and account research fees. Financial institutions may impose such fees at their customary rates, except that the amount of any overdraft fee may not exceed $10.00. In addition, a financial institution may not charge a recipient more than one overdraft fee during a 24-hour settlement period even if several items on the recipient's account are returned during that period. Treasury believes that $10.00 represents a fee that, in the context of the ETA℠, is reasonable both for financial institutions and recipients, particularly in view of the very limited risk of overdraft in the ETA℠.

Prior to opening an ETA℠, a financial institution must clearly and conspicuously disclose, in writing, the amount of any applicable fees to the recipient, as described more fully in the FAA.

Have a Minimum of Four Cash Withdrawals and Four Balance Inquiries Per Month Included in the Monthly Fee

Access to funds and balance information may be provided by ETA℠ providers through one of three methods: (1) The financial institution's proprietary (on-us) ATMs, (2) over-the-counter at the ETA℠ provider's main office or branch locations, or (3) through a combination of ATM and over-the-counter transactions. In addition, access to balance information may be provided over the telephone or, if the recipient agrees, through other electronic means. Any of these methods may be used at the option of the financial institution as long as a minimum of four cash withdrawals and four balance inquiries are provided within the $3.00 monthly fee and provided that, as discussed below, institutions that are members of on-line POS networks provide on-line POS access.

A majority of consumer organizations supported the proposed methods of access to the account, although some commented that the number of cash withdrawals included in the monthly fee should be increased. Financial institutions generally commented that two or three withdrawals per month would be more reasonable in light of the cost structure of the account. Some financial institutions requested clarification on the meaning of "proprietary" ATMs.

By using the term proprietary (on-us) ATMs, Treasury is referring to those ATMS which a financial institution's customers may use without being subject to a fee of any kind, including a surcharge. In determining the number of cash withdrawals and balance inquiries to include in the monthly account fee, Treasury weighed the advantages of providing multiple withdrawals and inquiries against their cost, recognizing that the more transactions provided, the higher the monthly cost. With regard to transaction fees, it should be noted that Treasury is not restricting the imposition of ATM fees or surcharges generally, provided that the ETA℠ holder has four cash withdrawals and four balance inquiries within the monthly fee.

In the Notice, Treasury requested comment on one other kind of account access, i.e., whether financial institutions should be permitted to offer preauthorized Automated Clearing House (ACH) debit capability as an additional feature, at the option of the financial institution and at an additional fee, if any, to the recipient. Comments from all sources were evenly divided over whether Treasury should allow ETA℠ providers to offer this feature. Supporters of the feature pointed to increased utility to the recipient, in that it would provide a convenient and cost-saving means for recipients to pay certain recurring bills such as utility, insurance, and car payments. Some financial institutions commented that it is beyond their capability to know about, or restrict, ACH debits to the account.

Institutions that opposed allowing ACH debit capability were concerned that the account could compete with other products, that this feature would complicate account management and confuse consumers, and that the occurrence of overdrafts would increase. Some commenters opposing the inclusion of this feature pointed to the potential for fraud against the account holder. Commenters observed that ACH debit capability could be very expensive for the financial institution, given the costs of servicing the account and dealing with customer inquiries.

In response to the issues raised by commenters as well as low public acceptance at this time, Treasury is not including ACH debit as a feature of the ETA℠, optional or otherwise. However, in light of the operational concerns expressed by some commenters, financial institutions will not be required to reject preauthorized ACH debit transactions, if any, initiated by recipients.

Consumer Protections

ETAs℠ will be subject to those consumer protections available to other account holders at the same financial institution. Most commenters supported this requirement. Thus, an ETA℠ will be protected by Federal deposit or share insurance, subject to the Truth in Savings Act disclosures found in Regulation DD (12 CFR Part 230) and, if electronic access is provided, subject to Regulation E (12 CFR Part 205).

For Financial Institutions That Are Members of an On-line Point-of-Sale (POS) Network, Allow On-line POS Transactions

A majority of consumer organizations and other non-financial institution commenters supported on-line POS access to the account. Many financial institutions opposed the on-line POS access requirement because of the cost of providing POS access, as well as the increased possibility of overdrafts. Some financial institutions who offer off-line POS access to customers through VISA Check and MasterMoney cards questioned whether they would be required to provide such cards to ETA℠ holders.

By referring to on-line POS access, Treasury is excluding access to the ETA℠ through off-line debit systems. Treasury is aware that off-line debit systems carry the same risks of overdraft as check writing capability. Therefore, institutions that generally offer this type of POS access to customers are not permitted to offer off-line POS access to the ETA℠. On-line POS access, in contrast to off-line, carries minimal risk of overdraft in most situations. For small institutions that rely on batch processing for on-line POS access, which presents a greater possibility for overdraft, Treasury believes that the risk presented is mitigated by the right to offset overdrafts against an ETA℠, to charge a fee for overdrafts or returned items, and to discontinue POS access or close the ETA℠ for repeated overdrafts.

Financial institutions that provide POS access may not impose a fee in connection with POS purchases, cash withdrawals, and cash back with purchases. Treasury is aware that some merchants impose fees on cardholders for such transactions, and is not prohibiting or regulating merchant fees.

No Minimum Balance

In general, financial institutions may not require that a recipient maintain a minimum balance in his or her ETA℠. The only exception to this requirement is where a minimum balance is mandated by Federal or State law. For example, in the case of credit unions, under 12 U.S.C. 1759, a Federal credit union member must subscribe to at least one share of stock.

Consumer organizations generally were supportive of this requirement. Most financial institutions did not indicate that a minimum balance would be necessary, except in order to support the payment of interest on an ETA℠, as discussed below.

At the Option of the Financial Institution, be Either an Interest-bearing or a Non-interest-bearing Account

Consumer organizations generally supported allowing financial institutions to pay interest on the ETA℠, though most conceded that any interest paid might be negligible. Some organizations pointed out that the benefit of interest to recipients could be partially or fully offset if additional fees were imposed in connection with the payment of interest. A few consumer organizations opposed allowing interest because it would complicate the account, indicating that the account should be kept simple and understandable in order to attract those recipients who have avoided accounts at financial institutions in the past.

A majority of financial institutions were opposed to allowing the payment of interest on the ETA℠. Many commented that, given the pricing structure of the account and the prohibition against a minimum balance, it would not be feasible to pay interest on the account. Other financial institutions commented that the account should be kept simple so as not to confuse recipients. A number of institutions indicated that paying interest on the ETA℠ would compete with existing products and therefore they would be reluctant to offer the ETA℠.

Treasury believes that the availability of interest-bearing ETAs℠ could encourage and facilitate savings by low income recipients. Treasury believes that recipients may find the payment of interest to be an attractive feature that could encourage more individuals to sign up for interest-bearing ETAs℠ at financial institutions that choose to offer them. At the same time, Treasury understands that some financial institutions may not find it economically viable to offer an interest-bearing ETA℠, and does not wish to discourage those institutions from offering ETAs℠. Accordingly, the payment of interest will be offered solely at the option of the financial institution.

Financial institutions may not require a minimum balance in connection with the payment of interest. If a financial institution offers both interest-bearing and non-interest-bearing ETAs℠, the institution may charge a higher monthly fee for the interest-bearing ETA℠, than it charges for the non-interest-bearing ETA℠, but in no case may the monthly fee exceed $3.00.

Financial institutions are prohibited by Federal law from paying interest (which includes certain premiums and other payments) on demand deposit accounts. *See, e.g.*, 12 U.S.C. §§ 371a, 1828(g), and 1464(b)(1)(B); 12 CFR § 217.101. In order for a financial institution to pay interest (or certain other amounts) on an ETA℠, it must reserve the right to require the holder of an account to provide at least seven days' written notice prior to withdrawal of any funds in the ETA℠. *See* 12 CFR 204.2(b)(3)(ii). (Such accounts are sometimes known as NOW accounts and are authorized under 12 U.S.C. 1832(a).) Treasury understands that financial institutions rarely exercise this right. In order to ensure that ETA℠ holders are treated like other NOW account holders in this respect, the FAA will provide that if a financial institution, in order to establish the ETA℠ as a NOW account, reserves the right to require seven days' written notice prior to withdrawal of any funds in the ETA℠, the institution shall not exercise this right with respect to any ETA℠ holder unless the institution requires such notice of all its NOW account holders.[7]

In addition, to ensure that recipients are aware of both their rights and the financial institution's rights, financial institutions that pay interest on an ETA℠ must provide the following disclosure, in writing, to the holder:

Under Federal regulations, financial institutions that offer interest-bearing transaction accounts (including ETAs℠) must reserve the right to require you to provide at least seven days' written notice prior to withdrawing any funds in your ETA℠. We/[name of Institution] agree that we will not require this notice from you unless we require it for all interest-bearing transaction accounts we offer.

Monthly Statement

Most consumer organizations supported the requirement that a monthly statement be provided for the ETA℠. A number of financial institutions objected to the requirement that a monthly statement be provided, on the basis of the associated costs. Several institutions commented that the statement requirements of Regulation E should be adequate. Others commented that balance information via a voice response unit or ATM would be more useful to recipients. Some said a passbook should be sufficient.

Treasury believes that it is important to provide recipients with a monthly statement, particularly since the ETA℠ allows for POS withdrawals and purchases, and account balances may not always be provided in connection with such transactions. A monthly statement will facilitate a recipient's ability to track their withdrawals and POS transactions and thus be helpful for financial planning and account management purposes. The monthly statement may be provided electronically (e.g., at an ATM) if the recipient agrees, subject to the requirements of Regulation E. *See* 63 FR 14527, March 25, 1998.

Dated: July 13, 1999.

Richard L. Gregg,

Commissioner.

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membership share is returned to the individual when the account is closed.

[7] The legal staff of the Board of Governors of the Federal Reserve System has informally advised Treasury that such a restriction will not preclude treating the ETA℠ as a NOW account.

Appendix

OMB Control # 1510-0073

ETA
Electronic Transfer Account

Financial Agency Agreement

The undersigned financial institution, _____ [name of institution], a _____ [type of institution], (hereafter "Institution") hereby applies to the Department of the Treasury ("Treasury") for designation as a Financial Agent of the United States for the purpose of offering and maintaining Electronic Transfer Accounts (ETAs℠). This agreement, which shall be executed on behalf of Treasury by its Fiscal Agent, the Federal Reserve Bank of Dallas (hereafter "Reserve Bank"), is made pursuant to 31 CFR § 208.5, as amended from time to time, which is incorporated by reference herein.

Representations and Warranties. Institution represents and warrants to Reserve Bank and Treasury that:

1. Authority. Institution possesses under its charter and the regulations issued by its chartering authority either general or specific authority to offer and maintain ETAs℠.

2. Execution and Delivery. The execution and delivery of this Agreement and the offering and maintenance of ETAs℠ by Institution is authorized by due action of its board of directors, as evidenced by the resolutions of such body, submitted with this Agreement.

3. Insured Status. Institution is a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. Chapter 16 or the member accounts of which are insured by the National Credit Union Share Insurance Fund under 12 U.S.C. Chapter 14, Subchapter II.

4. Year 2000 Readiness. Institution meets the standards for Year 2000 system readiness established by the Federal Financial Institutions Examination Council (FFIEC).

Obligations of Institution. Institution hereby agrees as follows:

1. Offering of ETAs℠. Within 60 days of the date of execution of this Agreement by Reserve Bank, or as otherwise agreed to in writing by the Reserve Bank, Institution will commence the offering and maintenance of ETAs℠ in accordance with the requirements set forth in the ETA℠ Notice dated [Treasury will insert date of publication of this document in the Federal Register] and published in the Federal

Register at [Treasury will insert citation for this document], as may be amended from time to time (hereafter "Notice"). The Notice is incorporated by reference in this Agreement. Institution will offer ETAs℠ at all of its branch locations.

2. Insured Status. For the duration of the term of this Agreement, Institution shall maintain its status as a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. Chapter 16 or the member accounts of which are insured by the National Credit Union Share Insurance Fund under 12 U.S.C. Chapter 14, Subchapter II.

3. Account Opening. Except as provided in subparagraphs (a) and (b), Institution shall open an ETA℠ for any Eligible Individual who requests an ETA℠ and who authorizes the deposit of Eligible Payments to the ETA℠. Institution may establish account-opening procedures for the ETA℠ provided that the procedures do not conflict with any provision of this agreement. "Eligible Payment" means any electronically transferred Federal benefit, wage, salary, or retirement payment. "Eligible Individual" means any individual who receives a Federal benefit, wage, salary, or retirement payment.

(a) Institution shall not open an ETA℠ for any individual if Institution does not have authority under its charter to maintain a deposit or share account for the individual.

(b) Institution is not required to open an ETA℠ for any individual if:

(i) Institution is aware that the individual previously was the owner of an ETA℠ that was closed because of fraud at Institution or any other financial institution, or

(ii) Institution, for reasons of account misuse, previously closed an ETA℠ held by the individual at Institution.

4. Fees. Institution may charge the holder of an ETA℠ a fixed monthly account fee in an amount established by Treasury and set forth in the Notice (hereafter "Monthly Fee"). Institution may not charge any other fee in connection with any required attribute of the ETA℠ listed in the Notice. Subject to the foregoing restriction, Institution may charge the holder of an ETA℠ other account-related fees that Institution usually and customarily charges to its other retail customers. Examples of such fees include (but are not limited to): fees for ATM withdrawals in excess of the minimum specified in the Notice; replacement card fees; and account research fees. Institution may impose such fees at its customary rates; provided, however, that the amount of any overdraft fee may not exceed the amount established by Treasury and set forth in the Notice. All fees shall be disclosed in accordance with the requirements set forth in paragraph 10(a) of this Agreement.

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5. Set Off. Institution shall not exercise any right of set off against an ETA℠ for any obligation of the account holder to Institution, except that Institution may set off against an ETA℠: (a) the Monthly Fee; (b) any fee(s) incurred by the holder of an ETA℠ in connection with the maintenance of the ETA℠ as provided in this Agreement; (c) any amount mistakenly credited to an ETA℠ by Institution and to which the account holder has no legal right; (d) the amount of any overdraft on an ETA℠; and (e) any amount for which the account holder is liable under Regulation E, including any amount provisionally credited to the ETA℠ by Institution in accordance with Regulation E for which Institution determines, after investigation, that the holder of the ETA℠ is liable.

6. Additional Deposits. Institution may offer recipients who open ETAs℠ the option of depositing to the ETA℠ other funds in addition to electronic Federal benefit, wage, salary, and retirement payments. At its discretion, Institution may limit such other deposits to electronic deposits, may allow recipients to deposit checks and/or cash in addition to other electronic deposits, and may specify whether deposits can be made by mail, at an ATM, and/or over the counter. Notwithstanding any other provision of this Agreement, Institution may not charge a fee in connection with this option.

7. Payment of Interest. Institution is not required to pay interest on ETA℠ balances, but may elect to do so in its sole discretion. Institution may not require a minimum balance in connection with the payment of interest. If Institution offers both interest-bearing and non-interest-bearing ETAs℠, Institution may charge a different Monthly Fee for the interest-bearing and non-interest-bearing ETAs℠, but may in no case charge a Monthly Fee that exceeds the maximum amount specified by Treasury in the Notice. If Institution, in order to establish the ETA℠ as a NOW account, reserves the right to require the account holder to provide at least seven days' written notice prior to withdrawal of any funds in the ETA℠, Institution shall not exercise this right with respect to any ETA℠ holder unless Institution requires such notice of all its NOW account holders. If Institution pays interest on an ETA℠, Institution shall provide the disclosure set forth in paragraph 10(d) of this Agreement to the holder of the account.

8. Access Arrangements. Institution shall not enter into any arrangement with any non-financial institution provider of payment services, other than a national or regional ATM/POS network, for the purpose of providing access to payments deposited to an ETA℠ maintained by Institution.

9. Account Closing. Institution may close an ETA℠ where Institution has cause to believe that fraud has occurred in connection with the account or that the account has been misused. A determination that fraud or misuse has occurred shall be based on, and consistent with, Institution's usual and customary criteria for closing accounts. Such criteria may include (but shall not be limited to): where Institution determines that fraud has occurred after conducting the investigation required under Regulation E; excessive overdrafts; negligence in safeguarding an ATM and/or POS card or PIN number; or failure to pay an overdraft within a reasonable period of time. Institution

shall not close any ETA℠ for any reason other than fraud or misuse unless (a) so requested by the holder of the ETA℠; (b) the ETA℠ ceases to be used for the receipt of Eligible Payments; or (c) this Agreement is terminated in accordance with its terms.

10. Disclosures.

(a) Prior to opening an ETA℠, Institution shall provide to the holder of the account the following disclosures, which shall be made clearly and conspicuously in writing in a form the account holder may retain:

(i) the amount of any fee(s) that Institution may impose on the holder of the ETA℠ in accordance with this Agreement;

(ii) a list of Institution's local ATM and branch locations, hours of service, and telephone numbers; and

(iii) the following disclosure regarding attachment of an ETA℠:

"Many Federal benefit payments, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Railroad Retirement benefits, are protected from attachment under Federal law. This means that your creditors do not have the right to have these funds taken out of your ETA℠. There are a few exceptions, however. For example, funds in your ETA℠ can be taken to satisfy child support or alimony obligations you owe. [If you deposit funds other than Federal benefit payments to your ETA℠, your creditors may be able to have those funds taken out of your account, but your Federal benefits would still be protected.][1]

If we/[name of Institution] receive an order of attachment, garnishment, or levy, we will immediately send you a copy of the order and the name of the creditor and contact person, if any.

If you have questions about a creditor's right to remove funds from your ETA℠, contact your benefit agency or your local legal services organization."

(iv) In addition, if Institution pays interest on an ETA℠, Institution shall provide the following disclosure to the holder of the account:

"Under Federal regulations, financial institutions that offer interest-bearing transaction accounts (including ETAs℠) must reserve the right to require you to provide at least seven days' written notice prior to withdrawing any funds in your

[1] This sentence should be included in disclosure only if Institution permits additional deposits to the ETA℠.

ETA℠. We/[name of Institution] agree that we will not require this notice from you unless we require it for all interest-bearing transaction accounts we offer."

(b) Institution shall provide the following disclosure in its account agreement with the ETA holder:

"[Name of Institution] is required by the Department of the Treasury to ensure that your ETA℠ meets certain criteria and to provide you with certain disclosures about your ETA℠. These obligations are set forth in an ETA℠ Financial Agency Agreement between [name of Institution] and the Department of the Treasury. The text of the ETA℠ Financial Agency Agreement is publicly available and is published in the Federal Register at [Treasury will insert citation for this document], dated [Treasury will insert date of publication of this document in the Federal Register]."

11. Provision of Information. Institution shall complete and provide to Reserve Bank the enrollment form attached to this Agreement. Institution shall report to Treasury by the 15th day of each month the number of ETAs℠ opened and closed by Institution during the previous month and the number of ETAs℠ open at the Institution as of the end of the previous month (hereafter "Monthly Report"). Institution shall also provide an account number for the Institution to which payment shall be made. In addition, Institution shall provide Treasury with such information and documentation as reasonably may be required from time to time, including internal audit reports, in order for Treasury to verify the number and status of ETAs℠, facilitate payment of Set Up Fees, and ensure compliance with the terms of this Agreement.

Use of ETA℠ Mark. Treasury grants to Institution a license to use the ETA℠ mark in advertising and promoting ETAs℠ in accordance with the graphics standards established by Treasury (hereafter "Graphics Standards"). Treasury shall provide to Institution one or more logos containing the ETA℠ mark that Institution must display in each branch, in accordance with the Graphics Standards. Treasury has the right to revoke such license immediately if Treasury, in its sole discretion, determines that Institution is using the ETA℠ mark in a misleading or inappropriate manner. Institution's license to use the ETA℠ mark shall cease upon termination of this Agreement.

Set Up Fee. Treasury shall pay Institution a one-time fee, the amount of which shall be determined by Treasury and published in the Notice, for each ETA℠ that Institution establishes for an Eligible Individual (hereafter "Set Up Fee"). Treasury shall pay the Set Up Fee within 30 days of receipt of the Monthly Report documenting the number of ETAs℠ opened.

No Liability. Institution acknowledges that, except for the payment of the Set Up Fee (as defined above), neither Reserve Bank nor Treasury shall have any liability to Institution for any loss or liability incurred by Institution in connection with or resulting from opening or

maintaining an ETA℠ or the actions of any holder of an ETA℠, including any loss to Institution resulting from fraud or misuse of an account.

Amendment. Treasury may amend this Agreement at any time upon 60 days prior written notice to Institution.

Term and Termination. The term of this Agreement is two years from the date of its execution by Reserve Bank; provided, however, that the term of this Agreement shall be extended automatically and without any action by either party for subsequent one-year terms unless Institution informs Reserve Bank and Treasury of its intent to terminate the Agreement at least 60 days prior to the end of any term, by written notice to the following addresses:

Director, Program Compliance Division
Financial Management Service
401 14th Street, N.W., Room 424
Washington, D.C. 20227

Federal Reserve Bank of Dallas
Securities Department
P.O. Box 655906
Dallas, TX 75265-5906

Treasury may terminate this Agreement at any time prior to the expiration of its term upon written notice to Institution. Institution may not terminate this Agreement prior to the expiration of its initial or any subsequent term without Treasury approval. Upon termination of this Agreement, Institution shall provide all assistance necessary to effect the orderly transfer of ETAs℠ to another financial institution. Treasury may extend a termination date if, in Treasury's sole discretion, additional time is required to complete the orderly transfer of accounts.

Limited Purpose Designation. Institution acknowledges that by entering into this Agreement Institution shall be designated as a Financial Agent of United States exclusively for the purpose of offering and maintaining ETAs℠, and not for any other purpose.

Execution. Institution shall mail a duly executed original of this Agreement, together with all attachments, to the following address:

Federal Reserve Bank of Dallas
Securities Department
P.O. Box 655906
Dallas, TX 75265-5906

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Institution agrees that upon its execution by the Federal Reserve Bank of Dallas, acting as Fiscal Agent of the United States, this document shall evidence the agreement entered into between the Secretary of the Treasury and Institution.

Signed on behalf of Institution by the undersigned corporate officer, who certifies that he/she is duly authorized to execute this document as evidenced by the attached resolutions of the _____.
Governing Body

By: _____ _____
Signature Name of Institution

_____ _____
Name and Title of Authorized Officer (Print) Street Address

_____ _____
Telephone Number City or Town, State

_____
Date

Designation

The undersigned, on behalf of the Federal Reserve Bank of Dallas, acting as Fiscal Agent of the United States, hereby designates _____ as an ETA℠ Financial Agent under the terms of this agreement commencing on the date indicated below.

Federal Reserve Bank of Dallas as Fiscal Agent of the United States.

By: _____
Signature

_____
Name and Title of Official (Print)

_____
Date

Department of the Treasury
Financial Management Service

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BURDEN ESTIMATE STATEMENT

We estimate that it will take you about two hours to complete the monthly report referred to in paragraph 11 of this Agreement. You are not required to provide the information requested unless a valid OMB control number is displayed on this form. Comments or suggestions regarding the above estimate or ways to simplify this form should be forwarded to Financial Management Service, Administrative Programs Division, Room 144, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project 1510-0073, Washington, DC 20530.

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ATTACHMENT A

OFFICER'S CERTIFICATE
RESOLUTIONS AUTHORIZING FINANCIAL INSTITUTION AGREEMENT AND APPLICATION FOR DESIGNATION AS FINANCIAL AGENT FOR THE OFFERING OF ETAs℠

This is to certify that, at a meeting of the _____ of
Type of Governing Body, e.g., Board of Directors
undersigned financial institution, _____, a
Name of Institution
_____, which meeting was duly called and held on the _____
Type of Institution
day of _____, ____, a quorum being present, the following resolutions were duly adopted; and are reflected in the attached minutes of the meeting.

1. That, after review of the "ETA℠ Financial Agency Agreement," in accordance with 31 CFR § 208.5 and the Notice dated [Treasury will insert date of publication of this document in the Federal Register] and published in the Federal Register at [Treasury will insert citation for this document], this financial institution is authorized to apply for designation as a Financial Agent of the United States for the purpose of offering and maintaining ETAs℠.

2. That _____ of the undersigned financial
Name and Title of Authorized Officer
institution hereby is authorized and directed to apply for designation of the financial institution as a Financial Agent for the purpose of offering and maintaining ETAs℠ by execution of the ETA℠ Financial Agency Agreement, and to submit said agreement and application to the Federal Reserve Bank of Dallas.

3. That these resolutions and attached minutes, and the ETA℠ Financial Agency Agreement, are official records of the financial institution and will be maintained continuously as such.

In witness whereof, I have hereunto signed my name and affixed the seal of this financial institution.

_____
Name of Financial Institution

_____
Address

_____
Signature of Certifying Officer

Department of the Treasury
Financial Management Service

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ATTACHMENT B

Electronic Transfer Accounts (ETAs℠)
Enrollment Form

In accordance with Paragraph 11 of the ETA℠ Financial Agency Agreement, this information is being collected by the Department of the Treasury to develop an electronic listing of designated ETA℠ providers. This listing will allow Federal payment recipients to ascertain the names and locations of financial institutions that offer ETAs℠ within the recipients' zip code areas. Recipients can access this information through a voice response unit or the ETA℠ Internet web site. In order to be accurately listed as an ETA℠ provider, please complete the information requested below.

Financial Institution Headquarters Information

Name: _____

Address: _____

_____

_____

Customer Service Telephone Number: _____
(Optional) *(The customer service telephone number is the central telephone number for public inquiries concerning the financial institution's* ETA℠ *offering and its branch locations. This telephone number will be published on the Internet at http://www.eta-find.gov.)*

Primary Financial Institution Contact
(The following information will be used for Government purposes only.)

Name: _____

Title: _____

Telephone No.: _____

Routing and Transit Number: _____
(The Routing and Transit Number will be used to access branch location information for the financial institution from the National Information Center (NIC) Database of the Federal Reserve System. ***Note to Thrifts and Credit Unions:*** *Your branch locations may not be included on the NIC database. Please attach a listing of all full service locations to this form so that these locations may be added to the listing of designated* ETA℠ *providers.)*

Effective Date

Effective Date: _____
(The effective date is the date by which the financial institution will begin offering the ETA℠ to eligible recipients. The name and address of the financial institution and its branches will be posted on the listing of designated ETA℠ providers as of this effective date.)

Department of the Treasury
Financial Management Service

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federal register

Friday
July 16, 1999

Part IV

General Services Administration

41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71 and 301–76

Federal Travel Regulation; Mandatory Use of the Travel Charge Card; Interim Final Rule

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71 and 301–76

[FTR Interim Rule 8]

RIN 3090–AG92

Federal Travel Regulation; Mandatory Use of the Travel Charge Card

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Federal Travel Regulation (FTR) provisions pertaining to payment by the Government of expenses connected with official Government travel. This interim rule implements the requirements of Pub. L. 105–264, October 19, 1998, regarding the required use of the travel charge card, collection of amounts owed, and reimbursement of travel expenses. This interim rule also implements the Administrator of General Services' authority under 5 U.S.C. 5701 to require agencies to pay expenses in connection with official Government travel.

DATES: Effective Date: This interim rule is effective July 16, 1999, and applies to payment of expenses in connection with official Government travel performed on or after December 31, 1999.

Comment Date: Comments must be received by September 14, 1999.

ADDRESSES: Written comments should be sent to:

Ms. Sharon Kiser, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW, Washington, DC 20405.

E-mail comments may be sent to RIN.3090__AG92@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Sandra Batton, Travel and Transportation Management Policy Division, at (202) 501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to Public Law 105–264, section 2(a), the Administrator of General Services is required to issue regulations "after consultation with the Secretary of the Treasury" requiring Federal employees to use the travel charge card established pursuant to the United States Travel and Transportation Payment and Expense Control System, or any Federal contractor-issued travel charge card, for all payments of expenses of official Government travel.

Additionally, Pub. L. 105–264 requires the Administrator of General Services to issue regulations on reimbursement of travel expenses and collection of delinquent amounts upon written request of a Federal contractor.

B. Regulatory Flexibility Act

This interim rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

The General Services Administration (GSA) has determined that this interim rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71, and 301–76

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR Chapter 301 is amended as follows:

1. Part 301–51 is revised to read as follows:

Sec.

PART 301–51 PAYING TRAVEL EXPENSES

301–51.1 What is the required method of payment for official travel expenses?
301–51.2 What expenses are exempt from the mandatory use of the Government contractor-issued travel charge card?
301–51.3 Who in my agency has the authority to grant exemption from this requirement?
301–51.4 How may I pay for official travel expenses if I receive an exemption from use of the Government contractor-issued travel charge card?
301–51.5 May I use the Government contractor-issued travel charge card for purposes other than those associated with official travel?
301–51.6 What are the consequences of using the Government contractor-issued travel charge card for non-official travel purposes?
301–51.7 When must I use excess or near-excess foreign currencies owned by the United States to pay travel expenses?

Authority: 5 U.S.C. 5707.

§301–51.1 What is the required method of payment for official travel expenses?

You are required to use the Government contractor-issued travel charge card for all official travel expenses unless you have an exemption.

§301–51.2 What expenses are exempt from the mandatory use of the Government contractor-issued travel charge card?

(a) Expenses incurred at a vendor that does not accept the Government contractor-issued travel charge card are exempt. Typical expenses of this type include:

(1) Laundry/dry cleaning;
(2) Parking;
(3) Local transportation system; and
(4) Taxi and tips.

(b) Any other expenses may be exempted, but such exemptions require written approval.

§301–51.3 Who in my agency has the authority to grant exemption from this requirement?

The head of your agency or his/her designee(s).

§301–51.4 How may I pay for official travel expenses if I receive an exemption from use of the Government contractor-issued travel charge card?

Your agency will authorize one or a combination of the following methods of payment:

(a) Centrally billed account;
(b) Government contractor-issued travelers check;
(c) Personal funds, including cash or personal charge card;
(d) Travel advances; or
(e) Government Transportation Request (GTR).

Note to § 301–51.4: City pair contractors are not required to accept payment by the methods in paragraphs (b), (c) or (d) of this section.

§301–51.5 May I use the Government contractor-issued travel charge card for purposes other than those associated with official travel?

No.

§301–51.6 What are the consequences of using the Government contractor-issued travel charge card for non-official travel purposes?

Your agency may take appropriate disciplinary action.

§301–51.7 When must I use excess or near-excess foreign currencies owned by the United States to pay travel expenses?

Your agency Travel Management System (TMS) should have available information from the Department of State or Office of Management and Budget bulletins when the use of excess or near excess foreign currency will be required to pay for travel expenses.

PART 301–52—CLAIMING REIMBURSEMENT

2. The authority citation for 41 CFR part 301–52 continues to read as follows:

Authority: 5 U.S.C. 5707.

3. Part 301–52 is amended by adding sections 301–52.17 through 301–52.21 to read as follows:

§301–52.17 Within how many calendar days after I submit a proper travel voucher must my agency reimburse my allowable expenses?

Your agency must reimburse you within 30 calendar days after you submit a proper voucher to your approving official.

§301–52.18 Within how many calendar days after I submit a travel voucher must my agency notify me of any error that would prevent payment within 30 calendar days after submission?

Your agency must notify you within seven calendar days after its receipt of the voucher, and must provide the reasons why the voucher is not proper.

§301–52.19 Will I receive a late payment fee in addition to the amount due me if my agency fails to reimburse me within 30 calendar days after I submit a proper travel voucher?

Yes.

§301–52.20 How are late payment fees calculated?

Late payment fees are calculated using the prevailing Prompt Payment Act Interest Rate beginning on the 31st day after the required payment date and ending on the date on which payment is made. In addition to this fee, your agency must also pay you an amount equivalent to any late payment charge that the card contractor would have been able to charge you had you not paid the bill.

§301–52.21 Does this change my obligation to pay my travel card bill by the due date?

No, you must still pay your bill in accordance with your cardholder agreement.

4. Part 301–54 is added to subchapter C to read as follows:

PART 301–54—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED ON BEHALF OF THE CONTRACTOR ISSUING THE GOVERNMENT CONTRACTOR-ISSUED INDIVIDUALLY BILLED TRAVEL CHARGE CARD

Subpart A—General Rules

Sec.

301–54.1 Is my agency allowed to collect undisputed delinquent amounts that I owe to a Government travel charge card contractor from my disposable pay?
301–54.2 What is disposable pay?

Subpart B—Policies and Procedures

301–54.100 Are there any due process requirements with which my agency must comply?
301–54.101 Can my agency initiate collection of undisputed delinquent amounts if they have not reimbursed me for amounts reimbursable under the applicable travel regulations?
301–54.102 What is the maximum amount my agency may deduct from my disposable pay?

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c).

Subpart A—General Rules

Note to subpart A: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee.

§301–54.1 Is my agency allowed to collect undisputed delinquent amounts that I owe to a Government travel charge card contractor from my disposable pay?

Yes, upon written request from the contractor.

§301–54.2 What is disposable pay?

Your compensation remaining after the deduction from your earnings of any amounts required by law to be withheld. These deductions do not include discretionary deductions such as health insurance, savings bonds, charitable contributions, etc. Deductions may be made from any type of pay you receive from your agency, *e.g.*, basic pay, special pay, retirement pay, or incentive pay.

Subpart B—Policies and Procedures

Note to Subpart B: Use of pronouns "I", "you", and their variants throughout this subpart refers to the employee.

§301–54.100 Are there any due process requirements with which my agency must comply?

Yes, your agency must:

(a) Provide you with written notice of the type and amount of the claim, the intention to collect the claim by deduction from your disposable pay, and an explanation of your rights as a debtor;

(b) Give you the opportunity to inspect and copy their records related to the claim;

(c) Allow an opportunity for a review within the agency of its decision to collect the amount; and

(d) Provide you with an opportunity to make a written agreement with the contractor to repay the delinquent amount of the claim.

§301–54.101 Can my agency initiate collection of undisputed delinquent amounts if they have not reimbursed me for amounts reimbursable under the applicable travel regulations?

No.

§301–54.102 What is the maximum amount my agency may deduct from my disposable pay?

The maximum amount it may deduct from your disposable pay is 15 percent a pay period, unless you agree in writing to a larger percentage.

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

5. The authority citation for 41 CFR part 301–70 continues to read as follows:

Authority: 5 U.S.C. 5707.

6. Part 301–70 is amended by adding Subpart H to read as follows:

Subpart H—Policies and Procedures Relating to Mandatory Use of the Government Contractor-Issued Travel Charge Card for Official Travel

Sec.

301–70.700 Must our employees use a Government contractor-issued travel charge card for official travel?
301–70.701 Who has the authority to grant exemptions to mandatory use of Government contractor-issued travel charge care for official travel?
301–70.702 What methods of payment for official travel expenses may we authorize when an exemption from use of the Government contractor-issued travel charge card is granted?
301–70.703 What expenses are exempt from the mandatory use of the Government contractor-issued travel charge card?
301–70.704 Must we notify the Administrator of General Services when we grant an exemption?
301–70.705 May an employee use the Government contractor-issued travel charge card for purposes other than those associated with official travel?
301–70.706 What are the consequences of using the Government contractor-issued travel charge card for non-official travel purposes?

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Subpart H—Policies and Procedures Relating to Mandatory Use of the Government Contractor-Issued Travel Charge Card for Official Travel

§ 301–70.700 Must our employees use a Government contractor-issued travel charge card for official travel?

Yes, unless:

(a) A vendor does not accept the travel charge card;

(b) The Administrator of General Services has granted an exemption; or

(c) Your agency head or his/her designee has granted an exemption.

§ 301–70.701 Who has the authority to grant exemptions to mandatory use of Government contractor-issued travel charge card for official travel?

(a) The Administrator of General Services will exempt any payment, person, type or class of payments, or type or class of personnel in any case in which—

(1) It is in the best interest of the United States to do so;

(2) Payment through a travel charge card is impractical or imposes unreasonable burdens or costs on Federal employees or Federal agencies; or

(3) The Secretary of Defense or the Secretary of Transportation (for the Coast Guard) requests an exemption for the members of the uniformed services.

(b) The head of a Federal agency or his/her designee(s) may exempt any payment, person, type or class of payments, or type or class of agency personnel if the exemption is determined to be necessary in the interest of the agency. Not later than 30 days after granting such an exemption, you must notify the Administrator of General Services in writing of such exemption stating the reasons for the exemption.

§ 301–70.702 What methods of payment for official travel expenses may we authorize when an exemption from use of the Government contractor-issued travel charge card is granted?

You may authorize one or a combination of the following methods of payment:

(a) Centrally billed account;

(b) Government contractor-issued travelers check;

(c) Personal funds, including cash or personal charge card;

(d) Travel advances; or

(e) Government Transportation Request (GTR).

Note to § 301–70.702: City pair contracts are not required to accept payment by the methods in paragraphs (b), (c) or (d) of this section.

§ 301–70.703 What expenses are exempt from the mandatory use of the Government contractor-issued travel charge card?

(a) Expenses incurred at a vendor that does not accept the Government contractor-issued travel charge card are exempt. Typical expenses of this type include:

(1) Laundry/dry cleaning;

(2) Parking;

(3) Local transportation system; and

(4) Taxi and tips.

(b) Any other expenses may be exempted, but such exemptions require written approval.

§ 301–70.704 Must we notify the Administrator of General Services when we grant an exemption?

Yes, you must notify the Administrator of General Services in writing within 30 days after granting the exemption, stating the reasons for the exemption.

§ 301–70.705 May an employee use the Government contractor-issued travel charge card for purposes other than those associated with official travel?

No.

§ 301–70.706 What are the consequences of using the Government contractor-issued travel charge card for non-official travel purposes?

You may take appropriate disciplinary action.

PART 301–71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS

7. The authority citation for 41 CFR part 301–71 continues to read as follows:

Authority: 5 U.S.C. 5707.

8. Part 301–71 is amended by revising section 301–71.204 and by adding sections 301–71.208 through 301–71.211 to Subpart C to read as follows:

§ 301–71.204 Within how many calendar days after the submission of a proper travel voucher must we reimburse the employee's allowable expenses?

You must reimburse the employee within 30 calendar days after the employee submits a proper voucher to the approving official.

§ 301–71.208 Within how many calendar days after receipt of the travel voucher must we notify the employee of any errors in the voucher?

You must notify the employee within seven calendar days after agency receipt of the voucher and provide the reasons why the voucher is not proper.

§ 301–71.209 Must we pay a late payment fee in addition to the amount due the employee if we fail to reimburse the employee within 30 calendar days after receipt of a proper travel voucher?

Yes.

§ 301–71.210 How do we calculate late payment fees?

Late payment fees must be calculated using the prevailing Prompt Payment Act Interest Rate beginning on the 31st day after the required payment date and ending on the date on which payment is made. In addition to this fee, you must also pay an amount equivalent to any late payment charge that the card contractor would have been able to charge the employee had the bill not been paid. Payment of this additional fee will be based upon the effective date that a late payment charge would be allowed under the agreement between you and the card contractor.

§ 301–71.211 Does this change the employee's obligation to pay their travel card bill by the due date?

No, the employee must still pay their bill in accordance with their cardholder agreement.

9. Part 301–76 is added to read as follows:

PART 301–76—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS ON BEHALF OF THE CONTRACTOR ISSUING THE GOVERNMENT CONTRACTOR-ISSUED INDIVIDUALLY BILLED TRAVEL CHARGE CARD

Subpart A—General Rules

Sec.

301–76.1 May we collect undisputed delinquent amounts owed to a Government travel charge card contractor by an employee (including members of the uniformed services) from the employee's disposable pay?

301–76.2 What is disposable pay?

Subpart B—Policies and Procedures

301–76.100 Are there any due process requirements with which we must comply?

301–76.101 Who is responsible for ensuring that all due process and legal requirements have been met?

301–76.102 Can we collect undisputed delinquent amounts if we have not reimbursed the employee for amounts reimbursable under applicable travel regulations?

301–76.103 What is the maximum amount we may deduct from the employee's disposable pay?

Authority: 5 U.S.C. 5707.

Subpart A—General Rules

§ 301–76.1 May we collect undisputed delinquent amounts owed to a Government travel charge card contractor by an employee (including members of the uniformed services) from the employee's disposable pay?

Yes, upon written request from the contractor and in accordance with the procedures specified in § 301–76.100. You must promptly forward all amounts deducted to the contractor.

§ 301–76.2 What is disposable pay?

The part of the employee's compensation remaining after the deduction of any amounts required by law to be withheld. These deductions do not include discretionary deductions such as health insurance, savings bonds, charitable contributions, etc. Deductions may be made from any type of pay, *e.g.*, basic pay, special pay, retirement pay, or incentive pay.

Subpart B—Policies and Procedures

§ 301–76.100 Are there any due process requirements with which we must comply?

Yes, you must:

(a) Provide the employee with written notice of the type and amount of the claim, the intention to collect the claim by deduction from his/her disposable pay, and an explanation of his/her rights as a debtor;

(b) Give the employee the opportunity to inspect and copy your records related to the claim;

(c) Allow an opportunity for a review within the agency of your decision to collect the amount; and

(d) Provide the employee an opportunity to make a written agreement with the contractor to repay the delinquent amount.

§ 301–76.101 Who is responsible for ensuring that all due process and legal requirements have been met?

You are responsible for ensuring that all requirements have been met.

§ 301–76.102 Can we collect undisputed delinquent amounts if we have not reimbursed the employee for amounts reimbursable under applicable travel regulations?

No.

§ 301–76.103 What is the maximum amount we may deduct from the employee's disposable pay?

The maximum amount you may deduct from the employee's disposable pay is 15 percent per pay period, unless the employee consents in writing to deduction of a greater percentage.

Dated: July 13, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–18291 Filed 7–15–99; 8:45 am]

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Part V

Pension Benefit Guaranty Corporation

29 CFR Part 4044
Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits; Correction; Final Rule

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule document published by the Pension Benefit Guaranty Corporation on July 15, 1999 (at 64 FR 38114). The rule prescribes interest assumptions for valuing benefits under terminating single-employer plans.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. Among the actuarial assumptions prescribed in part 4044 are interest assumptions. On July 15, 1999, the PBGC published in the **Federal Register** (at 64 FR 38114) a final rule amending the regulation to adopt interest assumptions for plans with valuation dates in August 1999. In that final rule document, the i_1 rate was erroneously published as 4.00 percent rather than 4.25 percent.

Accordingly, the final rule document is corrected as follows:

1. In the preamble, the last two sentences in the second full paragraph on page 38115 are corrected to read as follows: "For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which a benefit is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions represent an increase (from those in effect for July 1999) of 0.50 percent for the period during which a benefit is in pay status and 0.25 percent for the seven years directly preceding that period; they are otherwise unchanged."

Appendix B to Part 4044 [Corrected]

2. On page 38115, the entry in Table II is corrected to read as follows:

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
•	•	•	•	•	•	•	•	•
70	08–1–99	09–1–99	5.00	4.25	4.00	4.00	7	8

Issued in Washington, DC on this 15th day of July 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–18404 Filed 7–15–99; 10:19 am]

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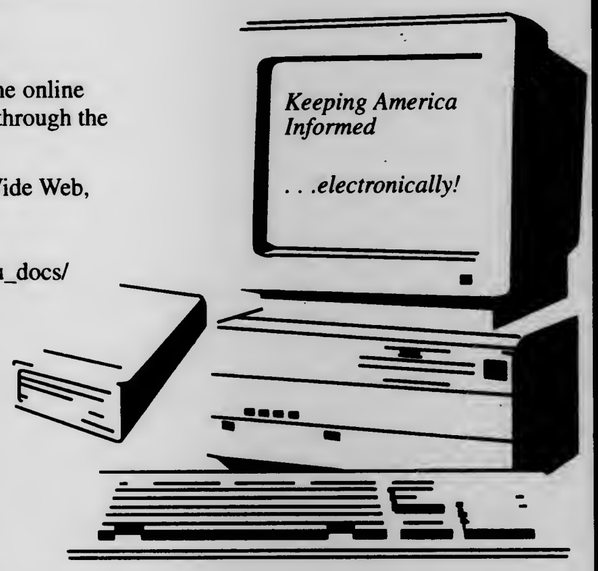
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Presidential Documents

Title 3—

The President

Executive Order 13130 of July 14, 1999

National Infrastructure Assurance Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to support a coordinated effort by both government and private sector entities to address threats to our Nation's critical infrastructure, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the National Infrastructure Assurance Council (NIAC). The NIAC shall be composed of not more than 30 members appointed by the President. The members of the NIAC shall be selected from the private sector, including private sector entities representing the critical infrastructures identified in Executive Order 13010, and from State and local government. The members of the NIAC shall have expertise relevant to the functions of the NIAC and shall not be full-time officials or employees of the executive branch of the Federal Government.

(b) The President shall designate a Chairperson and Vice-Chairperson from among the members of the NIAC.

(c) The National Coordinator for Security, Infrastructure Protection and Counter-Terrorism at the National Security Council (National Coordinator) will serve as the Executive Director of the NIAC.

(d) The Senior Director for Critical Infrastructure Protection at the National Security Council will serve as the NIAC's liaison to other agencies.

(e) Individuals appointed by the President will serve for a period of 2 years. Service shall be limited to no more than 3 consecutive terms.

Section 2. *Functions.* (a) The NIAC will meet periodically to:

(1) enhance the partnership of the public and private sectors in protecting our critical infrastructure and provide reports on this issue to the President as appropriate;

(2) propose and develop ways to encourage private industry to perform periodic risk assessments of critical processes, including information and telecommunications systems; and

(3) monitor the development of Private Sector Information Sharing and Analysis Centers (PSISACs) and provide recommendations to the National Coordinator and the National Economic Council on how these organizations can best foster improved cooperation among the PSISACs, the National Infrastructure Protection Center (NIPC), and other Federal Government entities.

(b) The NIAC will report to the President through the Assistant to the President for National Security Affairs, who shall assure appropriate coordination with the Assistant to the President for Economic Policy.

(c) The NIAC will advise the lead agencies with critical infrastructure responsibilities, sector coordinators, the NIPC, the PSISACs and the National Coordinator on the subjects of the NIAC's function in whatever manner the Chair of the NIAC, the National Coordinator, and the head of the affected entity deem appropriate.

(d) Senior Federal Government officials will participate in the meetings of the NIAC as appropriate.

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(e) The Department of Commerce shall perform the functions of the President under the Federal Advisory Committee Act for the NIAC, except that of reporting to the Congress, in accordance with the guidelines and procedures established by the Administrator of General Services.

Section 3. *Administration.* To the extent permitted by law:

(a) The NIAC may hold open and closed hearings, conduct inquiries, and establish subcommittees as necessary.

(b) All executive departments and agencies shall cooperate with the NIAC and provide such assistance, information, and advice to the NIAC as it may request, as appropriate.

(c) Members of the NIAC shall serve without compensation for their work on the NIAC. While engaged in the work of the Council, members will be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons serving intermittently in the Government service.

(d) To the extent permitted by law, and subject to the availability of appropriations, the Department of Commerce, through the Critical Infrastructure Assurance Office, shall provide the NIAC with administrative services, staff, and other support services, and such funds as may be necessary for the performance of its functions.

(e) The Council shall terminate 2 years from the date of this order, unless extended by the President prior to that date.

Section 4. *Judicial Review.* This order is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
July 14, 1999.

[FR Doc. 99–18476
Filed 7–16–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 64, No. 137
Monday, July 19, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

RIN 0563–AB15

7 CFR Part 400

General Administrative Regulations; Submission of Policies and Provisions of Policies, and Rates of Premium

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific General Administrative Regulations. The effect of this action is to prescribe the guidelines necessary to implement and administer sections 506 and 508 of the Federal Crop Insurance Act, as amended (Act), with respect to the submission of policies and provisions of policies and rates of premium to FCIC's Board of Directors (Board) for review, approval or disapproval, publication, and implementation.

EFFECTIVE DATE: August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–3707.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant for the purposes of Executive Order 12866 and, therefore, this rule has been reviewed by OMB.

Impact Analysis

An Impact Analysis has been completed and is available to interested persons at the address listed above. In summary, the guidelines contained in this regulation are administrative in nature. They are intended to facilitate the review for approval of policy terms and conditions, endorsements, actuarial documents, underwriting rules, administrative procedures, and rates of premium for new insurance products submitted to FCIC under section 508(h) of the Act for Board approval/disapproval. They contain very little in the way of program policy. While some comments on the proposed rule were received that new products were being held to a "higher standard" than FCIC's traditional products, there is nothing in the regulation that differs from standard operating procedure for the existing crop insurance program. In most cases, the provisions of the regulation are dictated by statutory requirements, for example, the requirement for an actuarially appropriate premium rate structure.

Paperwork Reduction Act of 1995

It has been determined by OMB that this rule is exempt from the information collection requirement contained under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The rule provides the guidelines to be used by all approved insurance providers, or any other applicant, FCIC, and the Board for the submission, review, and approval of policies, provisions of policies, or rates of premium which, if approved by the Board, will be sold to producers through approved insurance providers and reinsured by FCIC or incorporated into policies reinsured by FCIC. Any submission is entirely voluntary. This regulation will not impose more stringent requirements on small entities than on large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR 400.169 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate

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unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, September 11, 1997, FCIC published a notice of proposed rule making in the **Federal Register** at 62 FR 47772 to make available guidelines necessary to carry out the requirements of the Act with respect to the submission of policies and materials to the Board. FCIC makes available standard policies and forms for use by insurance providers in insuring certain crops against various agricultural production risks and perils. Under section 508(h) of the Act, any person may submit or propose other crop insurance policies, provisions of policies, or rates of premium for insuring wheat, soybeans, field corn, and any other crop determined by the Secretary of Agriculture. The Act states that these policies may be submitted without regard to limitations contained in the Act. The Act also requires that FCIC issue regulations to establish guidelines for the submission and FCIC Board review of policies or other materials submitted to the Board. This regulation provides such guidelines.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 53 comments were received from an insurance service organization and from several reinsured companies. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization asked if under section 400.700(c)(3) which states that: "rates of premiums for multiple peril crop insurance" may be submitted for consideration, means that insurance companies may submit rates for "regular" multiple peril crop insurance coverage other than those published in FCIC's actuarial documents.

Response: Section 508(h)(1)(B) of the Act allows a person to submit rates of premiums to the Board for the multiple peril crop insurance program for those wheat, soybeans, field corn, or any other crops determined by the Secretary, if the provisions for insurance are materially different from FCIC's provisions of insurance as published at 7 CFR chapter IV.

Comment: An insurance service organization questioned the difference between the definition of "MPCI" contained in section 400.701 and the term "multiple peril crop insurance" as referenced in section 400.700(c)(3). The commenter suggested adding a definition of multiple peril crop insurance to distinguish the difference between the two terms.

Response: There is no distinction between the term "multiple peril crop insurance" in section 400.700(c)(3) and the definition of MPCI in section 400.701. However, FCIC has amended the definition of MPCI to mean FCIC multiple peril crop insurance policies codified in 7 CFR chapter IV.

Comment: An insurance service organization suggested changing the definition of "policy" contained in section 400.701 as new crop insurance provisions submitted for approval may not always need all of the provisions and endorsements listed in the definition. They suggested using "the appropriate policy provisions and endorsements" in lieu of listing all the provisions and endorsements.

Response: FCIC has amended the definition of "policy."

Comment: An insurance service organization and a reinsured company recommended clarifying the term "all information" contained in section 400.702(b) by specifying "all information submitted by the reinsured company, including statistical modeling and data * * *"

Response: FCIC has amended section 400.702(b) accordingly although FCIC has substituted the term "applicant" in place of "reinsured company" since any person can provide a submission or proposal to the Board.

Comment: An insurance service organization and three reinsured companies expressed concern with the provisions of section 400.703(a) in the proposed rule (redesignated 400.703) which state: "Since policies vary in complexity and availability of required data, neither FCIC nor RMA make any assurance that approval will be given in time for sales in any crop year." One commenter stated the provision is unnecessary as there is no guarantee a submission will be approved at all. Three of the commenters indicated the provision conflicts with the minimum requirement for submissions to be received no later than 240 days prior to the first sales closing date. The commenters stated that since this provision sets rigorous time requirements for reinsured companies yet does not set such requirements for FCIC, a deadline for response from FCIC should be imposed. One reinsured company stated the deadline precludes the alteration or expansion of an existing program from one year to the next or from one planting season (*e.g.*, spring planted crops) to the next (*e.g.*, fall planted crops) and questioned when the clock starts and restarts. One reinsured company suggested adding language to allow an accelerated time frame to accommodate unusual circumstances.

Response: There is no guarantee that a submission will be approved. However, FCIC has determined that the 240 day period is the minimum time needed for FCIC to review and evaluate a submission, determine actuarial appropriateness, obtain an opinion of legal sufficiency, obtain Board approval, and to make a Board approved submission available to all insurance providers for the upcoming crop year. The time period is intended to provide sufficient time for review and approval of most submissions. However, there may be instances where program complexities, data availability or dispute between FCIC and the applicant delay the review and approval process. FCIC has revised the section to clarify the priority that will be used to review submissions. Unusual circumstances will be addressed on a case-by-case basis.

Comment: An insurance service organization states that the requirement in section 400.703(b) of the proposed rule (redesignated as section 400.705(d)) for six copies suggests a submission must be provided in hard copy format. The service organization requested clarification as to acceptability of submitting electronically, or on computer diskette as is indicated in section 400.707(d)(6)(ii) (redesignated as 400.707(d)(5)).

Response: Sections 400.705(d) and 400.707(d)(5) have been revised to allow for electronic submission or on computer diskettes.

Comment: A reinsured company suggested that the language in the introductory text of section 400.705 of the proposed rule which states: "at a minimum, it must include the following identified material * * *", could be deleted as that language is also repeated in section 400.705(a).

Response: FCIC has deleted the introductory text of section 400.705 of the proposed rule.

Comment: A reinsured company stated the minimum submission requirements contained in section 400.705(a) of the proposed rule constitutes a list of information, statements and product documentation that will require a thorough development process and review. This will require that the submitting company invest an enormous amount of capital but provides no commercial incentive or ownership of the product if the submission is approved and all supplementary information becomes available to the public under the provisions of section 400.708(a) and (b) of the proposed rule (redesignated as

400.708(b) and (c)). The reinsured company suggested that FCIC, which does not release such complete information for FCIC products and programs, should follow the same guidelines required of the submitting company, including public disclosure.

Response: When applicants voluntarily submit proposals, development and review of such proposals may require a large expenditure of resources. However, it is Congress that has determined that the information be released to the public once the proposal has been approved by the Board. Congress has imposed no such requirement on FCIC. Further, unless specifically exempted, much of the information compiled by FCIC in the development of its products is available to the public under the Freedom of Information Act. Therefore, no change has been made.

Comment: An insurance service organization requested clarification in the language contained in section 400.705(a)(10). An insurance service organization asked what "circumstances" might change and how would the applicant know in order to develop procedures to accommodate such changes.

Response: FCIC has revised this section to specify that any subsidy paid will be limited to an amount authorized by law.

Comment: An insurance service organization recommended combining the provisions contained in section 400.705(a)(11) with those contained in section 400.705(a)(11)(i) because there is no section 400.705(a)(11)(ii).

Response: FCIC has deleted section 400.705(a)(11) (i)(A) through (H) of the proposed rule and reformatted section 400.705(a). These provisions that were duplicative with other provisions were removed. The remainder were incorporated into other more appropriate areas of the section.

Comment: A reinsured company expressed concern in the proposed language contained in section 400.705(a)(11)(i)(J)(1) of the proposed rule (redesignated as section 400.705(a)(12)(i)) that requires the submission to identify the parties and responsibilities for addressing the policy and procedural issues and questions that arise in administering the approved program. The commenter stated that once the program is approved, FCIC becomes the responsible party for those areas. FCIC assumes that responsibility with the approval of the program, and it becomes an FCIC program the same as MPCI or GRP or any other FCIC approved or designed crop insurance program.

Response: Section 508(h) of the Act only requires FCIC to provide reinsurance and risk subsidy, if appropriate, and publish the policy in the **Federal Register** once it is approved. None of these activities results in FCIC, as the reinsurer, assuming liability or ownership for the approved policy or being solely responsible for addressing policy and procedural issues and questions that arise in administering the approved program. This responsibility resides with the party who assumes the obligation. However, FCIC will assist in resolving such issues and then provide the information to other insurance providers. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended deleting the provisions contained in section 400.705(a)(11)(i)(J)(2) of the proposed rule (redesignated as section 400.705(a)(12)(ii)). Two of the commenters stated the reason for an approval process is for FCIC to assess the liability of a new product and that if FCIC intends to avoid any product or legal liability, there seems to be no reason for such an approval process. One commenter stated the party responsible for product liability including flaws in product design must be FCIC; otherwise the FCIC approval process is meaningless. Upon the approval of the program, the program becomes an FCIC program.

Response: Before FCIC can approve a private submission under section 508(h) of the Act, it must determine that the interests of producers are adequately protected and that premiums charged to the producers are actuarially appropriate. However, this submission usually involves new and innovative products for which FCIC has no experience and, therefore, FCIC must rely on the information provided by the applicant. FCIC uses its best judgment in evaluating and approving these products but the ultimate responsibility for product design, rating, and development of procedures remains with the submitter. FCIC's role is only as a reinsurer of these submissions. Therefore, since designed by the applicant, the liability for flaws in the design remain with the applicant. Approval for reinsurance does not convert a submission to an FCIC program. Therefore, no change has been made.

Comment: A reinsured company suggested that the annual reviews required by section 400.705(a)(11)(i)(K) of the proposed rule (redesignated as section 400.705(a)(13)) should be conducted by FCIC since after approval of the submission, it is an FCIC program.

Response: As stated in the previous response, FCIC, as a reinsurer, does not assume responsibility or ownership for private crop insurance policies submitted and approved for FCIC reinsurance under section 508(h) of the Act. The applicant submitting the policy is responsible for establishing performance goals for the policy and to conduct annual reviews to determine if such goals are being met. Based on these reviews, the applicant is responsible for making changes to the policy to meet the established goals. As a reinsurer for these types of crop insurance policies, FCIC will monitor their performance to revise reinsurance terms or to withdraw approval if necessary. In addition, if assistance is requested, FCIC will assist the applicant in correcting identified problems. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company recommended that dates be established in section 400.705(a)(11)(i)(K)(3) of the proposed rule (redesignated as section 400.705(a)(13)(iii)). Both commenters suggested that the dates and language established in the Memorandum of Understanding be utilized. The commenters indicated the Memorandum of Understanding states that the insurance provider shall submit annual rate evaluations and any suggested program improvements for the following crop year to FCIC by July 1 of each year for spring-planted crops and by March 1 for fall-planted crops. In the event of unforeseen circumstances, the commenters recommended that changes may be submitted to FCIC after the July 1 and March 1 deadlines, so long as they are submitted not later than 30 days prior to the contract change date.

Response: The Memorandum of Understanding provides the responsibilities of FCIC and the submitter and does establish the dates by which certain materials must be provided to FCIC. However, not every submission will require a Memorandum of Understanding and not all will require the same dates so flexibility must be maintained. Notwithstanding the dates in the Memorandum of Understanding or provided by the submitter under this rule, if there is a flaw in the policy that requires a change, such change may be submitted to FCIC at any time prior to the contract change date. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company recommended that the provisions in

section 400.705(a)(12)(i) of the proposed

equipment in the event the producers

400.705(c)(2)) that requires statements

be scheduled one year in advance to

policy, procedures or other related

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section 400.705(a)(12)(i) of the proposed rule (redesignated as section 400.705(a)(14)(i)) be deleted. Both commenters expressed concern that if RMA enforces the requirement of "sample survey results from producers, producer groups, agents, lending institutions, and other interested parties," approval will be impossible. One commenter questioned who will define "sample survey" and if the definition would be changed "from day to day." In addition, both commenters recommended deleting the provision because an unofficial survey may not be credible and a professional survey would be cost-prohibitive.

Response: Before FCIC can dedicate resources to a submitted product, FCIC must be assured there is adequate need and interest for the product submitted. FCIC has changed "sample survey" to "market research" for clarification. This does not require a professional market research but one that provides a summary of the groups or persons contacted, the number of persons or groups responding, and the results of the research so that the demand for the submitted product can be verified.

Comment: An insurance service organization and a reinsured company stated the language contained in section 400.705(a)(14) of the proposed rule (redesignated as section 400.705(a)(16)) that requires an "explanation of those provisions not authorized under the Act and the premium apportioned to those provisions" substantiates the concern that the same submission standards should apply to public and private products. The commenters stated the private sector should not be held to higher standards than the government and that sales of the MPCI program would not have been approved if FCIC had to meet those same requirements.

Response: This is not an issue of the private sector being held to a higher standard than those imposed on the MPCI program. Programs offered by FCIC must be in compliance with all provisions of the Act. Congress has relaxed the requirement for section 508(h) submissions, and allows the private sector to offer products not otherwise authorized under the Act. FCIC is only requiring the applicant to explain any provision contained in the submission that are not authorized under the Act. Further, since Congress has limited the amount of risk subsidy to an amount authorized under the MPCI program, FCIC needs an explanation of the premium apportioned to any aspect of the submission not authorized under the Act. An example could be a provision that provides a daily rate for rental of equipment in the event the producers equipment is inoperable. Therefore, no change has been made.

Comment: An insurance service organization questioned if the word "stochastic" contained in section 400.705(b)(3)(ii) meets the readability guidelines. The commenter suggested that it may be helpful to add a parenthetical definition or replace the term with "statistical" or "probability."

Response: FCIC has added a definition of stochastic.

Comment: An insurance service organization and two reinsured companies stated the language contained in section 400.705(b)(5) created standards that are too high to attain. Two commenters indicated certification need only meet current industry standards and suggested the language should read: "A certification that the submission is consistent with sound insurance principles, practices, and requirements of the Act." Both reinsured companies stated it is difficult, if not impossible, to find uninterested third parties who are qualified to review crop insurance. One reinsured company stated that FCIC does not require its employees who develop rates and policies to hold an associate or fellow of the Casualty Actuarial Society (CAS) designation and should not require it of a private submission. This commenter also indicated that paid certifications by CAS designees or a graduate degree economist does not demonstrate much more than an extra expenditure of time and money. All commenters expressed concerns that RMA should not require submissions to provide more certification or review than RMA does on its current product inventory.

Response: FCIC does not believe more stringent requirements are being placed on private submissions. FCIC's premium rating methodology has been evaluated by a private actuarial firm. This firm has determined that FCIC's rating methodologies are consistent with sound insurance principles, practices, and requirements of the Act. Given the problems that have arisen between FCIC and applicants with respect to the submission of rates, FCIC determined that it is prudent to have the methodology review by trained, disinterested parties. Especially since the terms of reinsurance must be based, in part, on the quality of the evidence submitted. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended deleting section 400.705(c)(4) of the proposed rule (redesignated as section 400.705(c)(2)) that requires statements from at least three commercial reinsurers or reinsurance brokers regarding the availability of commercial reinsurance. Each of the commenters stated there is no purpose in going through the formalities of acquiring statements from reinsurance brokers regarding the availability of commercial reinsurance because if a proposed product was insurable in the commercial sector, a company would not submit it to FCIC. One reinsured company suggested that if FCIC is concerned whether the submitting company has the capacity to write the proposed amount of policies, a reinsurance plan utilizing the company's own capacity and reinsurance would be reasonable.

Response: There may be cases where a commercial reinsurance market may exist but the applicant merely is attempting to obtain better terms from the Government. FCIC has revised section 400.705(c) so that this requirement is not mandatory but FCIC may require such information if it suspects that a commercial market exists. The clause "* * * and, if applicable, any past insurance experience of the submission or similar crop program" has been deleted because it is contained in section 400.705(a)(15).

Comment: A reinsured company recommended that the rules proposed in section 400.706 contain provisions that RMA will provide the submitting applicant an acknowledgment within 30 days of receipt, an inventory of minimum requirements, a time line of its review process, a list of the responsible parties, and a contact person who is knowledgeable of the submission.

Response: Since this rule contains the minimum requirements for a submission and the documents are submitted by the applicant, an inventory is not necessary. Acknowledgment is not needed since the submitter retains a proof of submission. The contact person is the submission addressee until FCIC notifies the submitter of other responsible parties. Since the information contained in the documents may need corrections or clarifications before FCIC can complete its review, a time line cannot be included at this date.

Comment: A reinsured company and an insurance service organization suggested that the provisions of section 400.707(b) include language to ensure that the Manager convenes the Board in time to meet all deadlines contained in the proposed regulation. Both commenters suggested Board meetings

be scheduled one year in advance to assure that a submission would not fail to gain approval because the Board did not meet in time to meet FCIC's deadlines.

Response: Since FCIC cannot predict when a submission will be received and the time required to prepare the submission for the Board, it cannot set a Board meeting date. If the submission is submitted timely and contains all information required by this rule, there should be no problem in scheduling a Board meeting to approve or disapprove the submission. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company stated the language contained in section 400.707(d)(3) of the proposed rule (redesignated as 400.708(a)(1)) that requires a Memorandum of Understanding to be in place at least 60 days before the earliest crop sales closing date was in reverse order. Each of the commenters indicated that FCIC will not sign a Memorandum of Understanding before the Board has approved the product, thus the Memorandum of Understanding will follow the approval, not precede it.

Response: The Memorandum of Understanding should follow Board approval and the provisions have been revised accordingly. Within 30 days of Board approval, the Memorandum of Understanding should be completed, which will provide approximately 60 days for marketing the product. These provisions have been modified and moved to section 400.708(a)(1) for clarification.

Comment: Two reinsured companies and an insurance service organization expressed concerns about the provisions of section 400.707(d)(4) of the proposed rule (redesignated as 400.707(d)(3)). The commenters stated the provision gives FCIC the authority to make changes at the last minute, despite the requirements for timeliness imposed on the company. The commenters indicated that when FCIC requires an adjustment, it should follow the deadlines set out elsewhere in the proposed rule. The insurance service organization questioned if FCIC's Board will only approve the submission if the applicant "agrees to make any adjustment FCIC may suggest," and whether these suggestions will be separated into "substantive" and "non-substantive" categories, with the applicant not having to accept the non-substantive suggestions in order to get approval. One reinsured company suggested this statement would be more accurate if it stated the Board will not approve any submission unless the policy, procedures or other related material meet FCIC's approval. The reinsured company stated this would reinforce that FCIC's approval is conditioned on its approval of all aspects of the program, further defining that any approved program is an FCIC program.

Response: Section 400.707(d)(3) does not give FCIC the right to make last minute or untimely changes or adjustments to the submission and is not intended to force the applicant to make all changes FCIC may suggest. Before the Board can approve a submission for reinsurance under section 508(h) of the Act, the Board is required to determine that the rights of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate. Any recommended changes to make the submission conform with these requirements will be considered as substantive changes and must be incorporated into the submission before it can be approved. FCIC will inform the applicant of any such change as soon as possible during FCIC's review of the submission. Suggested changes to the submission should be separated into "substantive" and "non-substantive" categories and FCIC has revised section 400.707(d)(3). Failure of the applicant to incorporate non-substantive changes will not serve as a basis for the Board to disapprove the submission. However, FCIC will work with the applicant to resolve all issues during FCIC's review of the submission. As stated in a previous response, although the Board may approve a submission, FCIC as a reinsurer, does not assume sole responsibility or ownership for private crop insurance policies submitted.

Comment: An insurance service organization questioned if the time frame provided in section 400.707(d)(6)(i) of the proposed rule is sufficient for the applicant to market the new program, since policies and related forms must be available to producers at least 30 days before the earliest sales closing date.

Response: The 30 days before the sales closing date cited by the commenter refers to carry-over insureds, of which there are none for a new product. FCIC realizes the importance of having sufficient sales time for the product. If the review is completed, FCIC will forward the recommendation to the Board at least 90 days before the first crop sales closing date. Within 30 days of Board approval, the reinsurance agreement should be completed which will provide approximately 60 days for marketing the product. These provisions have been modified and moved to section 400.708(a)(2) for clarification.

Comment: An insurance service organization and a reinsured company suggested the references to rates and rating procedures contained in section 400.707(d)(6)(ii) of the proposed rule (redesignated as 400.707(d)(5)) need clarification and suggested adding language to require definitions for the determination of each variable used in rating.

Response: FCIC has added the phrase "defining each variable used in any rating formulae" after rates.

Comment: A reinsured company commented that the provisions of section 400.707(e) indicates the Board may disapprove submissions if all specified requirements are not met. The commenter questioned the purpose of a submission being provided to Research and Development staff if the Board will be presented and charged with determining if a submission does or does not meet all requirements. The commenter stated the Board should not be tasked with review of all minute details, it should only receive for consideration submissions that fulfill all requirements.

Response: FCIC staff do not have the authority to approve or disapprove a submission. Staff will make a recommendation to the Board, but the Board ultimately decides whether producers are adequately protected and rates are actuarially appropriate. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company suggested that the language in section 400.707(e)(1) be changed to state: "Such notice will contain the basis for approval, and will include recommended changes necessary for Board approval." The insurance service organization also questioned how provisions that state the Board will notify the applicant of disapproval "not later than 30 days prior to taking such action will fit into the overall time frame when section 400.703(a) (redesignated as 400.703) states a minimum of 240 days before the first sales closing date is to be used for marketing as well as for review and approval. The commenter ask if the language "not later than 30 days prior" means more than 30 days before official disapproval, or within that 30 day period and suggested the language be revised to "at least 30 days prior."

Response: FCIC may not know what changes may be required to obtain Board approval. Therefore, the provision must provide FCIC with the discretion to provide recommendations when known. FCIC has revised the

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provision to state "at least 30 days prior."

Comment: A reinsured company suggested that the provisions of section 400.708(b) be clarified to indicate that any solicitation, sales, marketing or advertising before FCIC has made the material available to all interested parties through its official issuance system will result in denial of reinsurance, risk subsidy, and administrative and operating (A&O) subsidy for the first approved crop year for the party which solicited, sold, marketed or advertised early.

Response: FCIC has clarified that any solicitation, sales, marketing, or advertising of the program before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for such policies.

Comment: A reinsured company and an insurance service organization recommended changing the wording "full subsidy" contained in section 400.710 to "subsidy."

Response: The term full subsidy meant the maximum risk subsidy and A&O subsidy allowed under the Act. An applicant may request less than the maximum allowable subsidies. FCIC has revised the provision to specifically refer to risk and A&O subsidy.

Comment: An insurance service organization and a reinsured company questioned the applicability of the provisions contained in section 400.711 that allow the Board at any time after approval to request additional information, require appropriate amendments, revisions or program changes for the purpose of actuarial soundness or program integrity. Both commenters stated those changes should be made by FCIC because the program is an FCIC program after approval. The insurance service organization recommended clarification of the provision because the approval process should be thorough enough that such cases are rare and there is nothing that indicates whether such reviews, requests and requirements would be effective for the subsequent crop year or whether approval could be revoked retroactively. The service organization recommended the Board's approval be effective for at least the first year.

Response: As stated above, approval of a submission does not convert it to an FCIC program. Further, if problems arise during the crop year, FCIC may need to take corrective action immediately for the purpose of maintaining actuarial soundness of the program, program integrity, or protection of the interests of producers. If this situation arises, FCIC will work closely with the applicant to determine the appropriate corrective actions to be taken. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization expressed concern about the standards set forth in the proposed regulation. All commenters stated that FCIC appears to have approval authority over submissions but takes no responsibility for those programs approved by the Board. The commenters suggested that if FCIC approves a submission, then FCIC must be the regulator, manager, maintainer and administrator of that program. In this role, FCIC will accomplish what was intended by the Act by providing a process and mechanism under which organizations, in addition to FCIC, can design programs that are needed in the marketplace and make them available to producers under the FCIC product umbrella. All commenters stated that if FCIC is not willing to assume that role, then submissions should not be approved.

Response: Section 508(h) of the Act was enacted for the sole purpose to allow private insurance companies to create and manage their own crop insurance policies. FCIC's only role in these private programs is to provide financial assistance if FCIC determines that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate. There is nothing in the Act which states that the submission must be made available "under the FCIC product umbrella." FCIC need only publish the policy and disseminate information produced by the applicant. This is fully in keeping with the intent of the Act. As stated in a previous response, FCIC does assume the responsibility of a regulator because the submission is approved by FCIC for financial assistance with taxpayers' funds. The approval process is necessary to assure that taxpayers' dollars are supporting a sound crop insurance product. Therefore, no change has been made.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following:

1. Section 400.700(d) has been clarified to specify those provisions of the Act that are not applicable under section 508(h).

2. Section 400.701—Amended the definitions of "person," " replacement program," "submission," and "supplemental program" for clarification.

3. Section 707(d)(5) has been redesignated as section 707(d)(4).

4. Section 400.708(a) has been redesignated as section 400.708(c).

5. Section 400.709(b) has been revised to clarify the changes that are considered material.

List of Subjects in 7 CFR Part 400

Administrative practice and procedures, Claims, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) by adding subpart V as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

Sec.

400.700 Basis, purpose, and applicability.
400.701 Definitions.
400.702 Confidentiality of submission.
400.703 Timing of submission.
400.704 Type of submission.
400.705 Contents of submission.
400.706 FCIC review.
400.707 Presentation to and review by the Board for approval or disapproval.
400.708 Approved submission.
400.709 Review of an approved program.
400.710 Preemption and premium taxation.
400.711 Right of review, modification, and amendment.

Authority: 7 U.S.C. 1506(1), 1506(p).

Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

§ 400.700 Basis, purpose, and applicability.

(a) The Act requires FCIC to issue regulations that establish guidelines for the submission of policies or other material to the FCIC Board under section 508(h) of the Act. These guidelines prescribe the timing, submission and approval process so that the Board may timely consider any submission for approval and, if approved, make it available for sale to producers by any approved insurance provider in the first crop year that the submission is authorized for reinsurance, subsidy, or other financial support that may be available under the Act. These guidelines also authorize FCIC and the Board to monitor the submission to ensure continued compliance with the requirements of the

Act, this subpart, and changes required by the Board.

(b) These regulations apply to all applicants.

(c) An applicant may submit for consideration by the Board:

(1) Crop insurance policies that are not currently reinsured or subsidized by FCIC;

(2) Provisions of policies that may amend existing crop insurance policies that are approved by FCIC; or

(3) Rates of premiums for MPCI policies pertaining to wheat, soybeans, field corn, or any other crop authorized by the Secretary of Agriculture.

(d) A policy or other material submitted to the Board under section 508(h) of the Act may be prepared without regard to the limitations contained in the Act. Only the provisions in the Act directly relating to the terms of the insurance policy, such as coverage, premium rates, or price elections, are considered as the limitations referenced in section 508(h) of the Act.

(e) Any FCIC payment of a portion of the premium may not exceed the amount authorized under section 508(e) of the Act, and payment of administrative and operating expense subsidy may not exceed the amount authorized under section 508(d).

§ 400.701 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

A&O subsidy. The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the insurance provider.

Applicant. Any person who submits a policy, provisions of a policy, or premium rates to the Board for approval under section 508(h) of the Act.

Board. The Board of Directors of FCIC.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Insurance provider. A private insurance company that has been approved by FCIC to provide crop insurance coverage under the Act.

Manager. The Manager of FCIC.

MPCI. The FCIC multiple peril crop insurance policies authorized under the Act and codified in 7 CFR chapter IV.

NASS. National Agricultural Statistics Service, an agency of the United States Department of Agriculture, or a successor agency.

Person. Any individual or legal entity possessing the capacity to contract.

Policy. A crop insurance contract between a person and an insurance provider, consisting of the accepted application, the applicable policy provisions and endorsements, if applicable, and the applicable actuarial material for the insured crop.

Rate of premium. The dollar amount per insured unit or percentage rate per dollar of liability that is needed to pay expected losses and provide for a reasonable reserve.

Replacement program. A crop insurance program that provides coverage at least equal to that provided under the MPCI program with similar terms, conditions, and covered causes of loss approved by the Board under the authority of section 508(h) of the Act.

Revenue insurance. Plans of insurance providing protection against loss of income, which are designated as such by FCIC.

Risk subsidy. That portion of the FCIC approved insurance premium for the risk of loss paid by FCIC on behalf of the policyholders to the insurance provider.

Secretary. The Secretary of the United States Department of Agriculture.

Stochastic. A randomly determined sequence of observations, each of which is considered as a sample of one element for a probability distribution.

Submission. Any policy provisions, rates of premium, and related material submitted to FCIC that differs from the present MPCI program or replacement programs or that request a material change in an existing insurance program.

Supplemental program. A submission requesting reinsurance only that provides coverage in addition to, and is written concurrently with, an MPCI policy or a replacement program.

§ 400.702 Confidentiality of submission.

(a) A submission made to the Board under section 508(h) of the Act will be considered as confidential, commercial, or financial information for purposes of 5 U.S.C. 552(b)(4) until approved by the Board. An applicant may waive such confidentiality by advising FCIC in writing, or by releasing such information to a person or entity other than FCIC.

(b) Once a submission is approved, all information provided by the applicant to the Board, including statistical modeling and data, will be made public.

(c) Any submission disapproved by the Board will remain confidential, commercial, or financial information in accordance with 5 U.S.C. 552(b)(4).

§ 400.703 Timing of submission.

Any submission for Board review must be received not later than 240 days prior to the first sales closing date for which sales are requested for a crop to provide adequate time for review, approval, and marketing of the program. If the submission applies to more than one crop, the earliest applicable crop sales closing date controls. However, any submission received by FCIC less than 240 days prior to the first sales closing date may be considered if all parties agree the submission can be reviewed, approved, and information disseminated to insurance providers in a timely manner without creating excessive risk and exposure to the crop insurance program or disruptions in the market place. Such a submission must meet all statutory requirements, specifically that the approved submission can be made available to all persons reinsured by FCIC in a manner permitting the persons to participate in the sales of the product in the first crop year for which it is approved by the Board for reinsurance, premium subsidy, or other support offered by the Act. Otherwise, the submission will be considered for the subsequent crop year. Since submissions vary in complexity and availability of required data, FCIC makes no assurances that approval will be given in time for sales in any crop year. In the event FCIC receives more submissions than it can process for an upcoming crop year, the date received, complexity, and completeness of the submission will determine when FCIC's review of the submission will be initiated and the crop year for which the submission is approved.

§ 400.704 Type of submission.

An applicant may submit to the Board:

(a) Policies and related material identified as one of the following types:

(1) A supplemental program;

(2) A replacement program; or

(3) Any other submission authorized under section 508(h) of the Act but not classified by paragraphs (a) and (b) of this section.

(b) One or more proposed revisions of any MPCI policy, revenue insurance policy, or any other policy approved by the Board; and

(c) Premium or rates of premiums for MPCI policies.

§ 400.705 Contents of submission.

(a) Each submission may contain any information that the applicant wishes to provide but, at a minimum, must include the following material:

(1) Applicant's name;

(2) Type of submission;

(3) Proposed crops, types, varieties, or practices, as applicable, to be covered by the submission;

(4) Geographical areas in which the submission will be applicable;

(5) Potential crop acreage, production made available to the producers at least

(ii) By means of a stochastic

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(5) Potential crop acreage, production, and liability that could be written (estimated by crop and state);

(6) Percentage of the crop acreage, production, and liability that is expected to be written (estimated by crop and state);

(7) Crop year in which the submission is proposed to be effective;

(8) Proposed duration of the approval, if applicable;

(9) A statement of the applicant's intent to expand the program in future crop years to different geographical areas or crops, types, varieties, or practices, as applicable;

(10) A statement of whether the applicant is requesting reinsurance, risk subsidy, or A&O subsidy for the submission, and if so, the proposed methods of calculating the risk subsidy or A&O subsidy (The allowable subsidies cannot exceed the amount authorized by law);

(11) A determination whether:

(i) The submission will be filed with the applicable Commissioner of Insurance for each state proposed for sales, and if not, the reasons such submission will not be forwarded for review by the Commissioner; and

(ii) The submission complies in all material respects with the standards established by FCIC for processing and acceptance of data as specified in its Manual 13 "Data Acceptance System Handbook," unless FCIC has agreed otherwise as part of the development process (This handbook is available from the Actuarial Division, P.O. Box 419293, Kansas City, MO 64141);

(12) Identification of:

(i) Parties responsible for addressing the policy and procedural issues and questions that may arise in administering the approved program; and

(ii) Parties responsible for the product liability and the basis for such responsibility including liability for flaws in product design if such results in litigation against the applicant or FCIC;

(13) Procedures for annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements executed between the applicant and FCIC:

(i) The title of the person responsible for completing each task;

(ii) The date by which each task will be completed; and

(iii) The date by which the information or documents will be made available to FCIC, the policyholder, other insurance providers, or the Commissioner of Insurance, if applicable (Policy information, forms and other related documents must be made available to the producer at least 30 days prior to the earliest crop sales closing date for the crops to which the submission applies.);

(14) A description of the benefits of the submission:

(i) To producers that demonstrate how the submission offers coverages or costs that differ significantly from existing programs and that such coverage is generally not available from the private sector (Such descriptions should be supported by market research results from producers, producer groups, agents, lending institutions, and other interested parties, which should also include a summary of those persons or organizations contacted and the number of persons or organizations responding) that provides verifiable evidence of the demand for the submitted product; and

(ii) To taxpayers that demonstrate how the submission meets the public policy goals and objectives as stated in the Act, the statements of the Secretary, or similar officials and laws (This must include the rationale and data supporting the request for FCIC's financial commitment to the submission);

(15) Any accumulated insurance experience from all years and in all states in which the submission has been offered for sale and a comparison of the submission's performance with other crop insurance programs; and

(16) An explanation of those provisions not authorized under the Act and the premium apportioned to those provisions.

(b) With respect to any submission that impacts the amount of premium charged to the producer, the applicant must provide with the submission:

(1) A detailed description of the rating methodology, including all mathematical formulae and equations used in determining all unsubsidized and subsidized premiums or rates of premium;

(2) A list of the assumptions used in the formulation of the premiums or rates of premium;

(3) Simulations of the performance of the proposed premiums or rates of premium based on one or more of the following:

(i) By determining the total premiums and anticipated losses that would be paid under the submission and comparing these totals to a comparable insurance plan offered under the authority of the Act (Such simulations must use all experience available to the applicant and must include at least one year in which indemnities for the submission and the comparable crop exceed total premiums);

(ii) By means of a stochastic simulation of the submission that is based on the same assumptions as those used to develop the premiums or rates of premium, including sensitivity tests with regard to each assumption that demonstrates the probable impact of an erroneous assumption; or

(iii) By means of any simulation that can be proven to provide results comparable to those described in paragraphs (b)(3)(i) and (ii) of this section;

(4) Worksheets that provide the calculations in sequential order and in sufficient detail to allow verification that the premiums charged for the coverage are consistent with policy provisions (Any unique premium component must be explained in sufficient detail to determine whether the existence or amount of the premium or premium rate is appropriate); and

(5) A certification that includes, but is not limited to, an evaluation of all supporting documentation and analysis from an accredited associate or fellow of the Casualty Actuarial Society or a similar uninterested third party who did not participate in the primary development, or peer review panel or both. The evaluation must demonstrate that the submission is consistent with sound insurance principles, practices, and requirements of the Act.

(c) With respect to those submissions that involve new crop insurance programs or revision of an existing crop insurance program:

(1) The applicant must provide with the submission:

(i) An application and related policy forms together with the instructions for completing and processing such forms;

(ii) The insurance policy provisions;

(iii) A sample of the actuarial documents;

(iv) The underwriting rules, including but not limited to:

(A) The procedures for accepting the application;

(B) The rules for determining program eligibility, including but not limited to, minimum acreage, premium requirements, sales closing dates, production reporting requirements, and inception or termination dates of the policy;

(C) The application of administrative fees as required by the Act;

(D) A description of available options that are different from any existing crop insurance program;

(E) Any information needed to establish coverage and determine claims, including prices that must be made available during the insurance period (This information must specify how and when such determination is made and that the process is in compliance with policy provisions);

(F) Any other applicable underwriting requirements that may be required by FCIC; and

(G) The agent training plans;

(2) The applicant may be required to submit statements from at least three commercial reinsurers or reinsurance brokers regarding the availability of commercial reinsurance, the amount of commercial reinsurance available, and the proposed terms of reinsurance;

(3) Loss adjustment procedures and calculations that include, but are not limited to:

(i) Procedures that clearly specify the methods for determining the existence of and the amount of any payable loss under the submission and that demonstrate that such determinations are consistent with policy provisions; and

(ii) Examples and worksheets that provide the steps for calculating the amounts of any payment for indemnity (loss in yield or price), prevented planting payment or replant payment in sequential order and in sufficient detail to allow review and verification that the indemnity calculations are consistent with policy provisions. Any unique component must be explained in sufficient detail to determine whether the existence or amount of the claim is appropriate;

(4) A detailed calculation for determining commodity prices, coverage levels, the amounts of insurance, and production guarantees; and

(5) A detailed description of the causes of loss covered and excluded under the submission.

(d) The submission must be sent to the Deputy Administrator, Research and Development, Federal Crop Insurance Corporation, 9435 Holmes Road, Kansas City, MO 64131. The submission must also include computer disks or other electronic media in a format acceptable to RMA.

§ 400.706 FCIC review.

Each submission will be reviewed by FCIC to determine if all necessary and appropriate documentation is included. The submission may be returned to the applicant if it does not comply in all material respects with these requirements. Any returned submission must be resubmitted in its entirety unless otherwise determined by FCIC.

§ 400.707 Presentation to and review by the Board for approval or disapproval.

(a) Upon completion of staff review, all recommendations will be forwarded to the Board.

(b) After scheduling the submission to be presented to the Board, the Manager will inform the applicant of the date, time, and place of such meeting.

(c) The applicant will be given the opportunity to present the submission to the Board. The applicant must notify FCIC in writing in advance of the Board meeting as to whether the applicant will present the submission to the Board. If the applicant plans to present the submission and fails to appear, or if the applicant requests FCIC to present the submission, an FCIC representative will present the submission to the Board.

(d) The Board may consider for approval the submission for sale to producers as an additional risk management tool if:

(1) Producers interests are adequately protected;

(2) Premiums charged are actuarially appropriate;

(3) The applicant agrees to make any requested FCIC substantive changes in the submission to ensure compliance with the Act and to protect the interests of producers and the integrity of the program. FCIC will categorize recommended changes in a submission into substantive and non-substantive. (Failure of the applicant to incorporate non-substantive changes suggested by FCIC will not serve as a basis for the Board to disapprove the submission);

(4) The insurance provider's resources, procedures, and internal controls are adequate to make the product available to producers in a timely manner in the proposed market areas; and

(5) The applicant provides rates, defining each variable used in any rating formulae, forms, guidelines, standards, actuarial material, rating procedures, indemnity procedures, and related documents.

(e) The Board may disapprove the submission for financial assistance if all the requirements of paragraph (d) of this section are not met. When the Board indicates its intention to disapprove, it will:

(1) Notify the applicant in writing of its intent to disapprove the submission at least 30 days prior to taking such action (Such notice will contain the basis for disapproval, and may include changes necessary for Board approval);

(2) Consider any resubmission as a new proposal and complete the review process at a later time; and

(3) Reserve the right to act upon an applicant's revised submission or defer action to a later time or for a subsequent crop year.

§ 400.708 Approved submission.

(a) Within 30 days of Board approval, the following must be completed:

(1) A Memorandum of Understanding or other such agreement between the applicant and FCIC that specifies the responsibilities of each with respect to the implementation, delivery and oversight of the submission, and;

(2) A reinsurance agreement between FCIC and the applicant that specifies the amount of reinsurance coverage, risk subsidy, and A&O subsidy, as applicable.

(b) Any solicitation, sales, marketing, or advertising of the program before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy and A&O subsidy for those policies in violation of this provision.

(c) A submission approved by the Board under this subpart will be published as a notice of availability in the **Federal Register**, and be made available to all persons contracting with or reinsured by FCIC under the same terms and conditions as required of the submitting company.

§ 400.709 Review of an approved program.

(a) Responses to procedural issues, questions, problems or needed clarification regarding an approved submission shall be jointly addressed by the applicant and FCIC. All such resolutions shall be communicated to all insurance providers through FCIC's official issuance system. Any corrected material must be presented to FCIC in a format specified in § 400.705(d).

(b) Any change causing a material impact upon a submission previously approved by the Board must be resubmitted for Board consideration and approval. (A material impact is any one that may affect the premium charged or liability under the policy.)

(c) The approved submission will be administered in accordance with all terms of the reinsurance agreement, any applicable Memorandum of Understanding, or any other requirement deemed appropriate by the Board.

§ 400.710 Preemption and premium taxation.

A policy that is approved by the Board for FCIC reinsurance only, or FCIC reinsurance and risk and A&O subsidies, and published in the **Federal Register** as a notice of availability is preempted from state and local taxation. Any changes to policy provisions requested under state and local laws

and regulations must be submitted to FCIC for review and Board approval.

§ 400.711 Right of review, modification, and amendment.

At any time after approval, if sufficient material, documentation or cause arises, the Board may review any approved program, request additional information, and require appropriate amendments, revisions or program changes for purposes of actuarial soundness, program integrity or protection of the interests of producers.

Signed in Washington, DC, on July 12, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–18263 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. 97–018–4]

RIN 0579–AA95

Licensing Requirements for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Decision and policy statement.

SUMMARY: This document announces our response to a petition submitted to us by the Doris Day Animal League. The petition requested that we amend the definition of "retail pet store" to include only nonresidential business establishments and that we regulate dealers of hunting, breeding, and security dogs in the same manner as dealers of other types of dogs.

We have decided to retain our current definition of "retail pet store." Based on our experience enforcing the regulations, we have determined that the current definition is sufficient to ensure the humane handling, care, and treatment of dogs and cats and is consistent with the congressional intent of the Animal Welfare Act.

We have also decided to begin regulating wholesale dealers of dogs intended for hunting, breeding, and security purposes. We will regulate these dealers under the same regulations currently in place for wholesale dealers of other dogs. We believe this action will help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye K. Walters, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION: Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in title 9, parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3. Part 2 contains general requirements for regulated parties. Part 3 contains specific requirements for the care and handling of certain animals. Subpart A of part 3 contains the requirements applicable to dogs and cats.

On March 25, 1997, we published in the **Federal Register** (62 FR 14044–14047, Docket No. 97–018–1) a petition for rulemaking, sponsored by the Doris Day Animal League, that requested two changes to the regulations in parts 1 and 3. The requested changes were: (1) To redefine the term "retail pet store" in part 1 as "a nonresidential business establishment used primarily for the sale of pets to the ultimate customer"; and (2) to regulate dealers of dogs intended for hunting, security, and breeding under the provisions applicable to dealers of other types of dogs in part 3.

Based on comments we received from the public on the petition and our review of the issues, on June 24, 1998, we published in the **Federal Register** (63 FR 34333–34335, Docket No. 97–018–2) an advance notice of proposed rulemaking to explain changes to the regulations that we were considering and to solicit public comments on the effect those changes could have on affected persons. Specifically, we were considering:

- Amending the definition of "retail pet store" to include only nonresidential, commercial retail stores;
- Increasing the total number of breeding female dogs and/or cats that a person may maintain on his or her premises and be exempt from licensing and inspection requirements; and
- Regulating dealers of hunting, breeding, and security dogs in the same manner as dealers of other types of dogs.

We solicited comments on the advance notice of proposed rulemaking for 60 days, ending August 24, 1998. However, on August 26, 1998, at the request of several commenters, we published in the **Federal Register** (63 FR 45417, Docket No. 97–018–3) a document to reopen and extend the comment period for 30 days, ending September 23, 1998. By September 23, 1998, we received approximately 11,472 comments. They were from dealers of dogs and cats, representatives of industry, members of animal protectionist organizations, and other interested persons.

After careful consideration of the experience we have gained from more than 30 years of implementing the AWA and careful review of the comments we received from the public, we have decided to:

- Retain our current definition of "retail pet store";
- Retain our current threshold for the total number of breeding female dogs and/or cats a person may maintain on his or her premises and be exempt from licensing and inspection requirements; and
- Require licensing and inspection for wholesale dealers of dogs intended primarily for hunting, breeding, and security purposes.

A discussion of each of these decisions follows.

Definition of Retail Pet Store

In accordance with the AWA, retail pet stores are exempt from the licensing and inspection requirements in part 2. Other retail dealers and wholesale pet dealers must be licensed and inspected in accordance with the regulations. The definition of retail pet store in 9 CFR part 1 was established to ensure that the appropriate retail facilities were exempt from licensing and inspection requirements.

We define "retail pet store" in 9 CFR part 1, § 1.1, as "any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species." The definition of "retail pet store" goes on to describe certain establishments that do not qualify as retail pet stores, even if they sell animals at retail. Those establishments that do not qualify as retail pet stores are: (1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes; (2) establishments or persons exhibiting,

selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warm-blooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.; (3) establishments or persons selling warm-blooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; (4) establishments wholesaling any animals (except birds, rats, and mice); and (5) establishments exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

All retail facilities that meet the definition of retail pet store, even those that are not traditional retail pet stores, are exempt from licensing and inspection requirements.

As part of our continuing efforts to ensure that animals covered by the AWA receive humane handling, care, and treatment, we considered amending the definition of "retail pet store" to cover only traditional "stores"—nonresidential, commercial retail businesses—that sell primarily pets and pet products. If this change had been adopted, many retail pet dealers would no longer have been considered retail pet stores, and, unless otherwise exempt under the regulations, would have been required to be licensed and inspected in accordance with part 2.

However, after careful consideration of comments we received from the public and further review of this issue, we have decided to retain the current definition of "retail pet store." We based this decision on our experience enforcing the regulations, specifically the several factors discussed below.

First, we believe that our current definition of "retail pet store" conforms with Congress' intention that the AWA focus primarily on dealers who sell wholesale. During congressional revisions to the AWA, Congress has not challenged our definition of "retail pet store." Therefore, we are confident that our current definition accurately reflects the original and continuing intent of Congress.

Further, we believe our implementation of the AWA has significantly improved the well-being of animals owned by the wholesale dealers we regulate, as well as that of the animals owned by retail dealers. Many retail outlets have improved the living standards of their animals in order to meet the standards of their wholesale counterparts.

Second, we have determined that retail dealers, especially those who sell from their homes, are already subject to a degree of self-regulation and oversight by persons who purchase animals from the retailers' homes, as well as by breed and registry organizations. Breed and registry organizations, such as kennel clubs, require their registrants to meet certain guidelines related to the health and genetic makeup of animals bred and to the education of the registrants. These organizations also monitor the conditions under which animals are bred and raised. Wholesale dealers typically do not have this type of oversight from the public.

Third, we have determined that amending the definition of "retail pet store" to include only nonresidential, commercial retail businesses would not offer us the regulatory flexibility we need to concentrate our resources on those facilities that present the greatest risk of noncompliance with the regulations. If we were to amend the definition of "retail pet store," it is conceivable that a significant portion of our annual personnel and financial resources would be used to regulate a very small fraction of the animals covered under our regulations. This disproportionate expenditure of funds would not be in the best interest of animal welfare.

Fourth, retail outlets are not unregulated. There are already many State and local laws and ordinances in place to monitor and respond to allegations of inhumane treatment of and inadequate housing for animals owned by private retail dealers. If we were to regulate these dealers along with State and local officials, it would clearly not be the most efficient use of our resources.

Fifth, our inspectors would have to enforce cleaning, sanitation, handling, and other regulatory requirements in private homes, because most small retail dealers operate from their homes. Many commenters stated that they would regard this as an unnecessary intrusion by the Federal Government and a serious invasion of privacy.

Based on these factors, we have determined that a change to the definition of "retail pet store" would not improve animal welfare in general or our current regulatory program. Therefore, we are retaining our current definition of "retail pet store."

Number of Breeding Females

In 9 CFR part 2, § 2.1, paragraph (a)(3) lists those persons who are exempt from licensing requirements. In addition to retail pet stores, those who are exempt from licensing requirements include any person who maintains a total of three or fewer breeding female dogs and/or cats and who sells the offspring of these dogs or cats, which were born and raised on his or her premises, for pets or exhibition, and who is not otherwise required to obtain a license (see § 2.1(a)(3)(iii)).

We considered raising this threshold so that fewer establishments would become subject to our licensing and inspection requirements if we amended the definition of retail pet store. The current threshold of three or fewer breeding female dogs and/or cats maintained on a premises is based on a determination that small facilities usually pose less risk to the welfare of animals than do large facilities. We still agree with that determination.

Further, if the threshold were increased, hundreds of wholesale dealers of dogs and cats who are currently required to be licensed would no longer have to be licensed. We do not think that exempting these wholesale dealers from regulatory requirements is in the best interest of animal welfare because, as discussed earlier, wholesale dealers typically do not have the same degree of oversight from potential customers, breed or registry organizations, or other members of the public as retail dealers. This means that, if the threshold were raised, many wholesale dealers of dogs and cats would go essentially unmonitored. Any decision to cease regulation of small wholesale dealers could lead to a significant drop in animal well-being at many of these premises. We believe that maintaining the current threshold will help ensure the continued humane care, treatment, and handling of dogs and cats.

For these reasons, we have decided to retain the current threshold of three for the number of breeding female dogs and/or cats a person may maintain on his or her premises and be exempt from licensing and inspection requirements.

Regulation of Dealers of Hunting, Breeding, and Security Dogs

The AWA defines a dealer as, among other things, a person who sells any dog for hunting, breeding, or security purposes (7 U.S.C. 2132). The AWA goes on to require that a dealer have a valid license to:

- Sell or offer to sell any animal to a research facility, or for exhibition or use as a pet; or
- Sell any animal to another dealer or exhibitor. (7 U.S.C. 2134).

Because hunting, breeding, and security dogs are sold for purposes other than research, exhibition, or use as a pet, dealers of hunting, breeding, and security dogs do not have to be licensed under the first set of conditions in 7 U.S.C. 2134. Therefore, the AWA

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requires licensing of only wholesale dealers (i.e., those dealers who sell animals to other dealers) of hunting, breeding, and security dogs.

In accordance with the AWA, we will now require licensing and inspection for wholesale dealers of dogs intended primarily for hunting, breeding, and security purposes. We are instituting this policy to help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

Although it has been our policy until now not to require dealers of hunting, breeding, and security dogs to be licensed and inspected, our regulations do. Specifically, the regulations at § 2.1 require that all dealers of dogs must be licensed and inspected. Our current definition of "dealer" in § 1.1 includes both wholesale and retail dealers of hunting, breeding, and security dogs. These dealers are not provided any exemption from licensing and inspection under the definition of "retail pet store" in § 1.1. Therefore, in the near future, we will publish a document in the **Federal Register** to propose changing the regulations to require only wholesale dealers of hunting, breeding, and security dogs to be licensed and inspected. This action will bring our regulations into accord with the AWA and with our new policy, now in effect, to regulate wholesale dealers of hunting, breeding, and security dogs. The proposal will also solicit public comment on the new policy.

The AWA licensing requirements for animal dealers are contained in 9 CFR part 2, subpart A, and the care standards for dogs and cats are contained in 9 CFR part 3, subpart A. For information about becoming licensed as a dealer under the AWA, contact the person listed above under **FOR FURTHER INFORMATION CONTACT.**

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, his 12th day of July 1999.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18319 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–028–2]

Importation of Poultry Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for importing animal products to allow the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping. This action removes some restrictions on the importation of poultry products from regions where END is considered to exist. We believe the conditions for importation will continue to protect the United States from END.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals and Germplasm Programs, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–5034; or e-mail: michael.j.david@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 govern the importation of certain animals, birds, poultry, meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of communicable diseases of livestock and poultry. The regulations in § 94.6 (referred to below as the regulations) govern, among other things, the importation of poultry carcasses, parts, and products from regions where exotic Newcastle disease (END) is considered to exist.

Under the regulations in place when our proposed rule was published, poultry carcasses and parts or products of poultry carcasses could be imported into the United States from regions where END was considered to exist if certain conditions were met, such as the poultry carcasses were sent to an approved museum, were hermetically sealed and cooked, or were thoroughly cooked. The regulations were described in greater detail in the proposed rule.

On December 9, 1998, we published in the **Federal Register** (63 CFR 67809–67813, Docket No. 98–028–1) a proposal to amend § 94.6 to allow poultry carcasses and parts or products of poultry carcasses to be imported into the United States from regions where END is considered to exist if they originated in a region free of END and meet certain requirements with respect to processing and shipping.

We solicited comments concerning our proposal for 60 days ending February 8, 1999. We received six comments by that date. They were from representatives of State governments, trade associations, and the scientific community. Four commenters supported the proposed rule. Two commenters expressed concern that the proposed rule would have negative effects on the U.S. domestic poultry processing industry. Their concerns are addressed below.

Comment: The proposed "system" of poultry carcass export, processing, and reimportation cannot be assured to be risk free. There is no inspection or enforcement system strong enough to ensure that END will not be introduced into the United States.

Response: If zero tolerance for disease risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh animal product to any other country. There will always be some degree of disease risk associated with the movement of animal products; APHIS' goal is to reduce that risk to an insignificant level. For the reasons explained in the proposed rule, we believe that the safeguards contained in this final rule will reduce the disease risk associated with the importation of poultry carcasses and parts or products of poultry carcasses to an insignificant level.

Comment: The current import restrictions for Mexican poultry are consistent with the United States obligations under the North American Free Trade Agreement (NAFTA), Article 712.1, and do not require amendment.

Response: Article 712.1 of NAFTA states.

> Each [country] may, in accordance with this Section, adopt, maintain, or apply any sanitary or phytosanitary measure necessary for the protection of human, animal, or plant life or health in its territory, including a measure more stringent than an international standard, guideline, or recommendation.

While Article 712.1 allows a country to adopt measures more stringent than an international standard, we believe other NAFTA Articles, including

Articles 712.5 and 715.3, obligate us to take this action. Under Article 712.5:

> Each [country] shall ensure that any sanitary or phytosanitary measure that it adopts, maintains, or applies is applied only to the extent necessary to achieve its appropriate level of protection . . .

Further, Article 715.3 states:

> Each [country], in establishing its appropriate level of protection . . . should take into account the objective of minimizing negative trade effects.

The Mexican Government requested the change we are making in this rule. This rule will allow poultry carcasses and parts or products of poultry carcasses from regions that are free of END to be imported into the United States via another region where END is considered to exist, provided the meat or other products have been safeguarded as specified in this rule to prevent contamination. We have determined that such poultry meat or other poultry products will not present a significant risk of introducing END into the United States. Therefore, we believe we are obligated under NAFTA to proceed with this action.

Comment: The major result of the proposal would be to encourage the export of poultry carcasses from the United States to Mexico for processing with the finished product returned to the United States for final sale. The proposal would lead to the establishment of a poultry processing industry in Mexico, where worker safety and health and environmental standards are lax.

Response: As stated below in our Final Regulatory Flexibility Analysis, we cannot determine the extent to which this rule will encourage, or result in, increased volumes of poultry to be exported from the United States for processing in Mexico. However, it is likely that any increased poultry production would be a small percentage of Mexico's total poultry production. Further, we believe it is highly unlikely that new processing facilities will be constructed specifically to process poultry eligible for export to the United States under this rule, since there is already a large poultry processing industry in place in Mexico. Because the poultry eligible for export under this rule would likely be processed in existing facilities and would represent a small percentage of Mexico's total production, this rule would likely have a minimal effect on worker health and safety and the environment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register.** This action removes some restrictions on the importation of poultry products from regions where END is considered to exist. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic effects of this rule on small entities.

This rule amends the regulations for importing animal products to allow the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping. This rule removes some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist. As stated in our proposal, the most likely outcome of this rule is that U.S.-origin poultry carcasses and parts or products of poultry carcasses would be shipped to Mexico for processing and then returned to the United States.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received no comments providing specific data in relation to the proposed rule's Initial Regulatory Flexibility Analysis, but two of the commenters expressed concern that the proposal could negatively affect U.S. poultry processing establishments that could lose business to less costly Mexican processing operations.

Our Initial Regulatory Flexibility Analysis agreed that it is possible that, under this rule, U.S. producers would ship poultry carcasses or products to Mexico for processing to take advantage of lower processing costs or to use Mexican processing plants as supplements to the existing U.S. workforce and facilities. However, we stated that we could not predict to what extent U.S. firms would elect to send poultry to Mexico for processing, nor could we determine what effect this rule would have on the volume of poultry processed in U.S. processing facilities. The commenters did not provide any data. Therefore, we are unable to determine the effect of this rule on small or large poultry processors in the United States.

This rule may benefit U.S. truckers and haulers, wholesale traders, and poultry producers and packers, who stand to benefit from increased Mexican trade. However, as stated above, because we are unable to predict the volume of processed poultry meat or other poultry products that would be imported into the United States under this rule, we cannot determine the effect of this rule on the U.S. entities listed above, whether small or large.

Trade Relations

This rule removes some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist. Consequently, the rule could encourage a positive trading environment between the United States and Mexico and other regions where END is considered to exist by stimulating economic activity and providing export opportunities to foreign poultry processing industries.

Alternatives Considered

In developing this rule, we considered: (1) Making no changes to the regulations governing the importation of poultry from regions where END is considered to exist; (2) allowing the importation of poultry carcasses and parts or products of poultry carcasses that originated in a region free of END but that were processed in a region where END is considered to exist under conditions different from those proposed; or (3) allowing the importation of poultry carcasses and parts or products of poultry carcasses that originated in a region free of END but that were processed in a region where END is considered to exist under the conditions in this document.

We rejected the first alternative because we believe this rule provides a way to remove trade restrictions while maintaining adequate safeguards against the introduction of END into the United States. Under these circumstances,

of poultry carcasses to be imported into

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making no changes to the regulations would be contrary to trade agreements entered into by the United States.

We also rejected the second alternative because we believe that conditions less stringent than those proposed would increase the risk of the introduction of END into the United States to more than a negligible level and that more stringent conditions would be unnecessarily restrictive. We consider the conditions in this rule to be both effective and necessary in keeping at a negligible level the risk of imported poultry products introducing END into the United States.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0141.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.18 Amended]

2. In § 94.18, footnotes 15 and 16 and their references are redesignated as footnotes 17 and 18, respectively.

§ 94.17 [Amended]

3. In § 94.17, footnote 2 is redesignated as footnote 16 and is revised to read: "See footnote 15 in § 94.17(e) of this part."

§§ 94.6, 94.8, 94.9, 94.12, 94.16, and 94.17 [Amended]

4. In §§ 94.6, 94.8, 94.9, 94.12, 94.16, and 94.17, footnotes 5 through 14 and their references are redesignated as footnotes 6 through 15, respectively.

5. In § 94.12 the newly redesignated footnote 13 is revised to read: "See footnote 10 in § 94.9 of this part."

6. In § 94.6, the section heading is revised, paragraph (c)(5) is redesignated as paragraph (c)(6), and a new paragraph (c)(5) is added to read as follows:

§ 94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease (END) or S. enteritidis is considered to exist.

* * * * *

(c) * * *

(5) Poultry carcasses or parts or products of poultry carcasses that originated in a region considered to be free of END and are processed (cut, packaged, and/or cooked) in a region where END is considered to exist may be imported under the following conditions:

(i) *Shipment to approved establishments.* (A) The poultry carcasses or parts or products of poultry carcasses must be shipped from the END-free region where they originated in closed containers sealed with serially numbered seals applied by an official of the national government of that region. They must be accompanied by a certificate that is signed by an official of that region's national government and that specifies the products' region of origin, the processing establishment to which the poultry carcasses or parts or products of poultry carcasses are consigned, and the numbers of the seals applied to the shipping containers.

(B) the poultry carcasses or parts or products of poultry carcasses may be removed from containers at the processing establishment in the region where END is considered to exist only after an official of that region's national government has determined that the seals are intact and free of any evidence of tampering. The official must attest to this fact by signing the certificate accompanying the shipment.

(ii) *Handling of poultry carcasses or parts or products of poultry carcasses.* Establishments [5] in regions where END is considered to exist that process poultry carcasses or parts or products of poultry carcasses for export to the United States:

(A) May not receive or handle any live poultry.

(B) Must keep any records required by this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections.

(C) May process poultry carcasses or parts or products of poultry carcasses that originate in both END-free regions and regions where END is considered to exist, provided that:

(*1*) All areas, utensils, and equipment likely to contact the poultry carcasses or parts or products of poultry carcasses to be processed, including skimming, deboning, cutting, and packing areas, are cleaned and disinfected between processing poultry from regions where END is considered to exist and poultry carcasses or parts or products of poultry carcasses from END-free regions.

(*2*) Poultry carcasses or parts or products of poultry carcasses intended for export to the United States are not handled, cut, or otherwise processed at the same time as any poultry not eligible for export to the United States.

(*3*) Poultry carcasses or parts or products of poultry carcasses intended for export to the United States are packed in clean new packaging that is clearly distinguishable from that containing any poultry not eligible for export to the United States.

(*4*) Poultry carcasses or parts or products of poultry carcasses are stored in a manner that ensures that no cross-contamination occurs.

(iii) *Cooperative service agreement.* Operators of processing establishments must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS in inspecting the establishment. APHIS anticipates that such inspections will occur once a year. The cooperative service account must always contain a balance that is at least equal to the cost of one inspection. APHIS will charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

(iv) *Shipment to the United States.* Poultry carcasses and parts or products of poultry carcasses to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where the poultry was processed that lists the numbers of the seals applied and states that all of the conditions of this section have been met. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

* * * * *

Done in Washington, DC, this 13th day of July, 1999.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18320 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–34–M

[5] As a condition of entry into the United States, poultry or poultry products must also meet all of the requirements of the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) and regulations thereunder (9 CFR part 381), including requirements that the poultry or poultry products be prepared only in approved establishments.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF95

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its power reactor safety regulations to require that licensees assess the effect of equipment maintenance on the plant's capability to perform safety functions before beginning maintenance activities on structures, systems, and components (SSCs) within the scope of the maintenance rule. The amendments clarify that these requirements apply under all conditions of operation, including shutdown, and that the assessments are to be used so that the increase in risk that may result from the maintenance activity will be managed to ensure that the plant is not inadvertently placed in a condition of significant risk or a condition that would degrade the performance of safety functions to an unacceptable level. These amendments permit licensees to limit the scope of the assessments to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety.

EFFECTIVE DATE: The final rule becomes effective 120 days after issuance of Revision 3 to Regulatory Guide 1.160, "Monitoring the Effectiveness of Nuclear Power Plants." The NRC will publish a document in the **Federal Register** that announces the issuance of the revised guidance and that specifies the effective date.

FOR FURTHER INFORMATION CONTACT: Richard P. Correia, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 301–415–1009, e-mail rpc@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC's maintenance team inspections of all nuclear power plant licensees in the late 1980s found the lack of consideration of plant risk in prioritizing, planning, and scheduling maintenance activities to be a common weakness. To address that weakness, paragraph (a)(3) of 10 CFR 50.65, the maintenance rule, currently includes the provision that "(l)n performing monitoring and preventive maintenance activities, an assessment of the total plant equipment that is out of service should be taken into account to determine the overall effect on performance of safety functions." The maintenance rule was issued on July 10, 1991 (56 FR 31306).

During plant visits in mid-1994, several NRC senior managers expressed concerns that licensees were increasing both the amount and frequency of maintenance performed during power operation without adequately evaluating safety when planning and scheduling these maintenance activities. The NRC Executive Director for Operations (EDO) addressed these concerns regarding the safety implications of performing maintenance while at power to the President of the Institute of Nuclear Power Operations (INPO) in a letter dated October 6, 1994. In this letter, the EDO noted that it appeared that some licensees were either not following INPO guidelines for the conduct of maintenance and management of outages or had adopted only portions of the guidance. The EDO also recommended that INPO support the Nuclear Energy Institute (NEI) and appropriate utility managers during meetings with NRC senior managers to discuss the concerns they raised during the site visits.

The growing amount of on-line maintenance (i.e., maintenance during power operations) being performed by licensees and the quality of pre-maintenance assessments have merited the Commission's concern. To address this concern, to clarify the plant operating conditions under which the maintenance rule is applicable, and to make the requirements fully enforceable, the Commission published proposed revisions to 10 CFR 50.65 in the **Federal Register** on September 30, 1998 (63 FR 52201–52206). The 75-day comment period closed December 14, 1998.

II. Comments on the Proposed Rule

Twenty-nine comments were submitted during the comment period, and five were submitted after the comment period closed. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC. The last public comment was received on December 29, 1998. All comments were considered in formulating the final rule. The 34 comments were submitted by 26 utilities with operating power reactors, one utility with a decommissioning status facility, three nuclear industry service companies or consultants, one individual, one State agency, NEI, and one law firm representing several utilities. Twenty-nine commentors endorsed the NEI comments. NEI stated in its comment letter that the industry generally supports the Commission's intent in the proposed rule but has a number of significant concerns that should be addressed before rulemaking proceeds. Of the commentors who did not endorse the NEI comments, one (combined State agencies) supported the concept of the proposed rule and provided comments to enhance it, and two others (an individual and a utility) provided recommendations in specific areas to enhance the proposed rule. Two of the commentors (a consultant and a consulting firm) stated that the rule was unnecessary and presented supporting reasons.

The comments have been grouped under the following general topics:

1. Rule issuance
2. New, vague, ambiguous, undefined terminology in the proposed rule
3. Scope issues
4. Suggestions for wording modifications
5. Regulatory controls overlapping technical specifications
6. Performing assessments
7. Assessing and managing risk
8. Emergent maintenance requirements
9. Documentation of the assessment
10. Definition of availability
11. Backfit and regulatory analyses
12. Regulatory analysis cost estimates
13. Application to decommissioning plants

Summaries of the grouped comments and discussions of the NRC responses follow.

1. *Rule issuance*

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1. Rule Issuance

Comment. One commentor, a utility, stated that they consider the proposed rule unnecessary, and NEI and other utilities stated that the proposed rule, as written, should be withdrawn. However, they also stated that if the rule is approved, Regulatory Guide 1.160 should be revised and issued before finalizing the changes to the rule.

Response. The NRC has determined that the rule is necessary and believes that the performance of this type of assessment is prudent because of changes in industry maintenance practices and findings during NRC inspections of maintenance rule programs. When the maintenance rule was first promulgated in 1991, the NRC had not foreseen the significant changes licensees would be making in maintenance practices. To enhance operational efficiency, made increasingly necessary by the rate deregulation of the electric utility industry, licensees are shortening their refueling outages by performing more maintenance while the plant is at power. At-power maintenance practices have evolved to the point that not only are major systems, subsystems, and components taken off line, but also multiple systems, subsystems, and components are taken off line simultaneously. Taking systems and components off line for maintenance could result in an increase in risk because of the reduced capability to mitigate the consequences of an accident or a transient, compared to risk that occurs from expected random equipment failures. In addition, although the maintenance rule baseline inspections of all operating nuclear power plant sites found that all licensees have implemented programs to perform the assessments, about half of the sites had programs with discernable weaknesses in this area, including instances in which, in accordance with the licensees' own programs, assessments should have been made but were not.

The NRC agrees that it is appropriate to revise Regulatory Guide 1.160 to incorporate clarifying guidance before the final rule's effective date. Accordingly, Revision 3 to Regulatory Guide 1.160 will be prepared for public comment and will be published in final form 120 days before the effective date of the rule.

2. New, Vague, Ambiguous, Undefined Terminology in the Proposed Rule

Comment. Most commentors identified concerns related to the proposed rule's introduction of new, vague, ambiguous, or undefined terminology and recommended that the rule be withdrawn and reissued for public comment after substantial modification. NEI and utilities indicated that terms such as "risk-significant condition" and "unacceptable level" should be explicitly defined.

Response. Paragraph (a)(4) has been reworded. Guidance for the revised terminology appears below in Item 4 of Section III, "The Final Rule."

3. Scope Issues

Comment. Many commentors stated that assessments required by the proposed rule should apply only to high safety-significance SSCs. NEI and utilities expressed concerns that the scope of SSCs subject to assessments was impractical. Such broad scope would dilute attention from high safety-significance SSCs by requiring too many detailed assessments.

Response. Paragraph 50.65(b) defines the scope of SSCs that are covered by the rule (with the exception of SSCs for decommissioning plants). Chapter 11.0 of NUMARC 93–01, "Industry Guidelines for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," Revision 2, dated April 1996 (which has been endorsed by Regulatory Guide 1.160, Revision 2, dated March 1997), is entitled "Evaluation of Systems to be Removed from Service." Chapter 11.0 guidance makes the evaluation, or assessment, a three-step process: (1) Identify key plant safety functions to be maintained, (2) identify SSCs that support key plant safety functions, and (3) consider the overall effect of removing SSCs from service on key plant safety functions. Requiring, instead of recommending, those assessments does not change the expectation that the assessments need only involve SSCs associated with initiating and mitigating impacts on key plant safety functions. To codify this expectation, paragraph (a)(4) of the final rule contains a second sentence as follows: "The scope of the assessment may be limited to structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety."

4. Suggestions for Wording Modifications

Comment. Five commentors provided suggestions clarifying regulatory text. Two of these commentors stated that the plant configuration should be defined as "SSCs within the scope of the rule," and three commentors suggested limiting the scope of maintenance activities to those that result in removing equipment from service.

Response. The NRC disagrees with these suggested language changes. The rule currently applies only to SSCs within the scope of the rule. A revision to specify that fact is not needed, although this rule is being revised to permit licensees to limit the scope of their assessments to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. Additionally, certain maintenance activities are performed that do not remove equipment from service but have the potential for challenging safety systems. One example is valve testing on certain balance-of-plant systems during which open valves are cycled shut and reopened. If such a valve were to inadvertently stick shut, a transient could ensue. Those scenarios must be assessed and managed to ensure that the risks associated with these activities are properly identified and controlled.

5. Regulatory Controls Overlapping Technical Specifications

Comment. Several commentors stated that there is a need to reconcile the overlapping regulatory regimes of the maintenance rule, technical specifications (TS), and the configuration risk management program (CRMP) (described in Regulatory Guide 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications"). NEI and the utilities were mainly concerned with the overlap of regulatory controls in the revised rule and TS.

Response. The NRC agrees that some overlap exists among these regulatory controls. Under certain conditions, a plant's TS may allow an SSC to be out of service, while a pre-maintenance assessment proposing the removal of that same SSC from service may indicate a need to take other actions to preclude that configuration. It is possible that allowed outage times of TS may not be in complete agreement with reasonable out-of-service times resulting from the required assessments. However, TS limiting conditions for operation were, in part, developed to address random single failures of plant SSCs; they were not intended to be used by licensees as rationale for removing multiple SSCs from service to perform on-line maintenance. In general, TS may serve as a pre-analyzed assessment, when used with sound judgement, when a licensee proposes to remove a single SSC from service for maintenance. Paragraph (a)(4) is intended to cause the licensee to determine its options and follow a prudent course of action. Nevertheless, while performing on-line or shutdown maintenance, the licensee will remain in conformance with its TS.

In NRC staff requirements memorandum dated June 29, 1998, for SECY–98–067, the Commission directed the NRC staff to take actions to ensure that CRMP regulatory guidance conforms to the provisions of the final maintenance rule. After revisions to the maintenance rule are completed, the NRC will expeditiously support licensee requests to remove the CRMP requirements from plant TS.

6. Performing Assessments

Comment. NEI and the utilities expressed the need for clarification of when an assessment would be required, the level of complexity necessary in the assessment, and the criteria to be used to evaluate the adequacy of the assessment process.

Response. Please refer to the discussion in Item 4 of Section III, "The Final Rule," below.

7. Assessing and Managing Risk

Comment. Three commentors expressed similar views related to high-risk activities. One noted that, under suitable controls, a shorter time in a more risk-significant configuration may be safer than a longer time in a less risk-significant configuration. Another noted that high risk-significant activities should be recognized and avoided, where practical, and limited in duration when they are necessary. The third noted that the proposed rule does not address situations in which failure to perform a maintenance activity may have a greater impact on risk than performing the high safety-significant activity.

Response. The NRC agrees that the proposed rule precluded entering risk-significant configurations, no matter the duration, when, in fact, situations may exist that would yield a net safety benefit by performing maintenance in a risk-significant configuration for a short time. The rule has been revised to require licensees to understand their options with respect to risk and to manage their maintenance activities according to their best judgment, considering insights from operating experience and deterministic and probabilistic analyses.

8. Emergent Maintenance Requirements

Comment. Two commentors stated that the proposed rule does not address expectations for revising assessments upon the discovery of a previously unknown condition requiring maintenance (emergent maintenance). They also expressed concerns that if certain emergent maintenance activities are not completed immediately, the plant could be at greater risk.

Response. Under the revised rule, an assessment is required to be initiated following the discovery of emergent failures or changes in plant conditions to determine the safety impact of the failure or the change in plant conditions. For additional information on this subject, please see the discussion in Item 4 of Section III, "The Final Rule," below.

9. Documentation of the Assessment

Comment. Three utility commentors stated that the proposed rule is not explicit enough regarding assessment documentation expectations.

Response. The rule has no explicit documentation requirements. Instead, the rule emphasizes performance. A licensee's assessment process is expected to identify the impact on safety that is caused by the performance of maintenance. Licensees should use documentation to the extent necessary to assure themselves that the requirement for an assessment has been acknowledged and performed adequately. NRC expectations are that a licensee will have a requirement for the assessments and an explanation of the process to be followed in its maintenance rule program, along with a description of assessment tool(s) to be used and their limitations, implementing procedures, and explicit direction covering instances when the plant configuration is or is proposed to be outside the span of the assessment tool. Further, the assessment process is expected to be incorporated into the maintenance planning and scheduling process and into work package requirements. Moreover, control room operators, who are expected to understand, use, and know the limitations of the assessment tools, generally use and maintain a variety of documents, such as logs and checklists, that contain information relating to out-of-service SSCs.

10. Definition of Availability

Comment. Three commentors stated that the definition of availability will be key to this rulemaking. They also stated that the availability definition should take into account the time required to restore the functionality of an SSC and should also be risk informed.

Response. A definition of availability for licensee maintenance rule programs is set forth in NUMARC 93–01, Revision 2, which was endorsed by the NRC in Regulatory Guide 1.160, Revision 2, of March 1997. According to that document, availability is "(t)he time that a(n) SSC is capable of performing its intended function (expressed) as a fraction (usually as percent) of the total time that the function may be demanded." Also according to that document, under the definition of "unavailability," is the following statement: "An SSC that is required to be available for automatic operation must be available and respond without human action." Additionally, in the instance where an SSC is taken out of service for testing but could be manually activated, the NRC has accepted that, as long as the dedicated operator's written procedure specifies a single action that would permit an automatic initiation of the out-of-service SSC in the event of an accident or transient during the test, the SSC could be considered available. (Meeting Summary—November 19, 1991, NRC/NUMARC Public Meeting on the Development of Guidance Documents for the Implementation of the Maintenance Rule (10 CFR 50.65), R.P. Correia, Office of Nuclear Reactor Regulation, memorandum to E.W. Brach, Office of Nuclear Reactor Regulation, dated November 23, 1991.) The NRC's expectation is that, by procedure, the dedicated operator is stationed at the equipment and is ready and qualified to perform that single action in a moment. An acceptable single action could be the rapid repositioning of a switch or a lever; an unacceptable action would be racking in a breaker or, in some instances, opening a manual gate valve.

With respect to risk-informing the maintenance rule definition of availability, the reliance of initial availability performance measures on probabilistic risk assessment (PRA) data provided such a basis. However, in quality maintenance programs, availability is monitored to identify and trend the performance of equipment, thereby permitting certain conclusions to be drawn about the effectiveness of the equipment's maintenance program. Paragraph (a)(3) of the rule requires that the prevention of SSC failures (reliability) through maintenance is appropriately balanced against the objective of minimizing unavailability. Omitting unavailability time from the maintenance effectiveness determination analysis is flawed logic. Omitting unavailability time because, in an accident scenario, the equipment may not be needed for the time it may take to restore its safety function recognizes the role of the equipment but masks the actual requirement for maintenance. The maintenance rule requires licensees to monitor the effectiveness of their maintenance

programs. Omitting significant details, controls the degree of complexity of the may result from the proposed

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programs. Omitting significant details, such as how much maintenance time an SSC requires in order to attain the objective of preventing failures, is contrary to the purpose of the rule.

Note also that maintenance rule "availability" is not technical specification "operability."

11. Backfit and Regulatory Analyses

Comment. One commentor stated that the regulatory analysis does not justify the expansion of the maintenance rule to "normal shutdown operations" and that a revision of the analysis to better consider such expansion would show through backfit considerations that the expansion is not justified. Another commentor also presented a concern that the overall implications of the rule were not supported by the backfit analysis.

Response. The new preamble to the rule is an introductory sentence clarifying that the rule applies under all operating conditions, including normal shutdown. The Commission intended the rule to apply to all operating conditions, and it has been implemented by the NRC staff consistent with such an interpretation. Moreover, Section 11.2.3 of NUMARC 93–01 specifically states that "assessment applies during all modes of plant operation." The overall implications of the rule were assessed in the backfit analysis for the original maintenance rule, which was issued July 10, 1991.

12. Regulatory Analysis Cost Estimates

Comment. One commentor raised the concern that if facilities are required to develop numerical models for every combination of low safety-significance SSCs, the cost of implementing the program would be significantly higher than estimated in the regulatory analysis.

Response. The NRC does not expect licensees to develop numerical models for assessing all possible combinations of low risk-significant SSCs. The regulatory analysis states that the complexity of assessments to be performed can vary, depending upon the configuration of SSCs to be maintained on line or out of service. It was presumed that assessments involving SSCs having little bearing on safety could be performed in an uncomplicated, deterministic manner and that the cost of the overall program would be dominated by the need for assessment of combinations of SSCs, which, when taken out of service simultaneously, could have an adverse effect on the safe operation of the facility. Additionally, the licensee controls the degree of complexity of the proposed configuration and thereby controls the level of sophistication required for the assessment. Consequently, the licensee should not propose to enter a plant configuration the complexity of which exceeds the licensee's ability to assess.

13. Application to Decommissioning Plants

Comment. One commentor presented concerns regarding the application of the rule to plants in a decommissioning status. The commentor requested that, as part of this rulemaking, the NRC remove the applicability of the rule to decommissioning status plants following some modest level of fission product decay.

Response. This rulemaking is focused on requiring pre-maintenance assessments of plant risk. However, the NRC is considering the issue in a separate rulemaking activity.

III. The Final Rule

The final rule amends 10 CFR 50.65 as follows:

1. An introductory paragraph has been added to 10 CFR 50.65 clarifying that the rule applies under all conditions of operation, including shutdown. This introductory language reads as follows: "The requirements of this section are applicable during all conditions of plant operation, including normal shutdown operations." The intent of this paragraph is to ensure that assessments are performed before maintenance activities when the plants are shut down as well as when the plants are at power. (Note that the word "section," as used in this rulemaking, means all of § 50.65.)

2. The second sentence in paragraph (a)(3) has been revised as follows: "The evaluations shall take into account, where practical, industry-wide operating experience." The change was made only to simplify the language and is purely editorial.

3. The last sentence of paragraph (a)(3), containing the current, non-mandatory provision for performing safety assessments, is deleted. The revised paragraph (a)(3) now contains only the requirement for periodic, programmatic, long-term review.

4. A new paragraph, (a)(4), has been added requiring the performance of assessments. The first sentence of the new (a)(4) paragraph states: "Before performing maintenance activities (including but not limited to surveillance, post-maintenance testing, and corrective and preventive maintenance), the licensee shall assess and manage the increase in risk that may result from the proposed maintenance activities." Separating the assessment requirement from the long-term review requirement in paragraph (a)(3) will more clearly distinguish between the two types of activity.

The intent of this requirement is to have licensees appropriately assess the risks related to proposed maintenance activities that will directly, or may inadvertently, result in equipment being taken out of service and then, using insights from the assessment, suitably minimize the time needed for the proposed maintenance activities while also controlling the configuration of the total plant to maintain and support the key plant safety functions.

Risk is the result of the likelihood of an event with due consideration of the consequences of that same event. The term "risk" is used to address what can go wrong, its likelihood, and its consequences. The risk perspective can be assessed deterministically or probabilistically.

In general, a risk assessment is necessary before all planned maintenance activities. Assessments should also be performed when an unexpected SSC failure initiates required maintenance activities or when changes to plant conditions affect a previously performed assessment. However, the reevaluation of a previous assessment should not interfere with, or delay, the plant staff's taking timely actions to restore the appropriate SSC to service or taking compensatory actions necessary to ensure that plant safety is maintained. If the SSC is restored to service before performing the assessment, the assessment need not be conducted.

Assessments may vary from simple and straightforward to highly complex. However, the degree of sophistication required for the assessment notwithstanding, the NRC intends that the assessment process will examine the plant condition existing before the commencement of the maintenance activity, examine the changes expected by the proposed maintenance activity, and identify the increase in risk that may result from the maintenance activity. The assessments are expected to provide insights for identifying and limiting risk-significant maintenance activities and their durations.

The level of complexity necessary in the assessment would be expected to differ from configuration to configuration. When a licensee proposes to perform maintenance on a single SSC from service for maintenance while no other SSC is out of service, a simple deterministic assessment may suffice. If the SSC is covered by TS, a qualitative assessment based on TS allowed outage time pertinent to the SSC and the informed judgement of a trained, licensed operator is sufficient. When one SSC is out of service and the licensee proposes to remove a second SSC from service for maintenance, the assessment could be simplified through the use of a table of results for pre-analyzed combinations, typically high safety-significance SSCs paired against each other. However, more detailed assessments are required if a licensee proposes to remove multiple SSCs from service during power operations or to remove from service systems necessary to maintain safe shutdown during shutdown or startup operations. These more detailed assessments are expected to involve probabilistic analyses where possible, and to also include considerations of key plant safety functions to be maintained and defense in depth.

The NRC believes that an appropriate assessment and management process should include the following considerations:

a. The likelihood that the maintenance activity will increase the frequency of an initiating event;
b. The probability that the activity will affect the ability to mitigate the initiating event;
c. The probability that the activity will affect the ability to maintain containment integrity;
d. Whether multiple trains are affected;
e. How probabilistic insights are used;
f. How non-probabilistic insights are used;
g. Component and system dependencies;
h. Measures to prevent concurrent unavailabilities of equipment necessary for accident mitigation;
i. Methods to determine the duration of the activity and account for the projected duration;
j. The analytical basis for allowed configurations (quantitative or qualitative consideration);
k. Provisions for accommodating configurations not encompassed by preanalyzed, acceptable configurations; and
l. Scope and quality of analysis for quantified assessments.

In general, it is the NRC's expectation that the processes for managing the risk are scrutable and control the risk increase of the proposed maintenance activities. This process should include an understanding of the nature (i.e., affecting the core damage, or large early release frequency) and significance of the risk implications of a maintenance configuration on the overall plant baseline risk level. For example, risk-significant plant configurations should generally be avoided, as should conditions where a key plant safety function would be significantly degraded while conducting maintenance activities. The effective control of potentially significant risk increase due to an unexpected failure of another risk-important SSC can be reasonably assured by planning for contingencies, or coordinating, scheduling, monitoring, and modifying the duration of planned maintenance activities.

5. The second sentence in the new (a)(4) paragraph states: "The scope of the assessments may be limited to structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety." In response to public comments on the proposed rule, this second sentence has been added so that licensees may reduce the scope of SSCs subject to the pre-maintenance assessment to those SSCs which, singularly or in combination, can be shown to have a significant effect on the performance of key plant safety functions. The focus of the assessments should be on the SSCs modeled in the licensee's PRA, in addition to all SSCs evaluated as risk significant (high safety-significance) by the licensee's maintenance rule expert panel. Typically, these SSCs have been analyzed as causing potential initiating events, if failed, and as accident mitigators, or as high safety-significance SSCs with their support systems. Such SSCs may be identified by operating experience or by deterministic or probabilistic analyses.

Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51 that this final rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The environmental assessment that forms the basis for this determination reads as follows:

Identification of the Proposed Action

The Commission is amending its regulations to require commercial nuclear power plant licensees to perform assessments of changes to the plant's status that would result from maintenance activities before performing the maintenance activities on structures, systems, and components (SSCs) within the scope of 10 CFR 50.65, the maintenance rule. Thus, the maintenance rule has been modified by adding an introductory sentence to clarify that the rule applies under all conditions of operation, including normal shutdown; by making editorial revision to the second sentence of paragraph (a)(3); by deleting the last sentence of paragraph (a)(3); and by creating a new paragraph, (a)(4), that requires licensees to assess and manage the risk that may result from proposed maintenance activities and gives licensees an option to limit the scope of SSCs subject to the assessments.

The Need for the Proposed Action

Formerly, paragraph (a)(3) of the maintenance rule was in the form of a recommendation because it read as follows: "(I)n performing monitoring and preventive maintenance activities, an assessment of the total plant equipment that is out of service should be taken into account to determine the overall effect on performance of safety functions." The Commission believes that the performance of this type of assessment is prudent. The maintenance rule baseline inspections, performed at each operating nuclear power plant site, found that all licensees have implemented programs to perform the assessments. However, about half of the sites had programs with discernable weaknesses in this area, including instances in which, in accordance with the licensee's own programs, assessments should have been made but were not. Because of the hortatory nature of the assessment provision in § 50.65(a)(3), the Commission cannot ensure that licensees perform the assessments. Moreover, licensees are free to remove the performance of the assessments from their programs as they so desire. This final rule permits the Commission to ensure that licensees perform the assessments, as appropriate.

Removing the provision regarding safety assessments from paragraph (a)(3) and creating for it a new, separate paragraph, (a)(4), disassociates the new requirement from the more time-dependent requirement for evaluating the program and the program's effectiveness at maintaining an appropriate balance between reliability and availability for each SSC. In the new paragraph, the requirement for assessment performance is stipulated to ensure that licensees will perform those assessments. There were questions regarding when the assessments are to be performed, which plant conditions are to be evaluated, how the assessments are to be used, and which SSCs are subject to the assessments. The new paragraph (a)(4) was revised to describe that the assessments are to be performed before proposed maintenance activities and are to examine pre-maintenance plant conditions and

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expected changes as a result of the proposed maintenance activities. The assessments may be limited to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. The assessments are to be used to manage the increase in risk that may result from the maintenance activity.

Environmental Impacts of the Proposed Action

This final rule requires that commercial nuclear power plant licensees perform certain assessments of the status of plant equipment before performing proposed maintenance activities. The purpose of this change is to increase the effectiveness of the maintenance rule by requiring licensees to—

(1) Perform an assessment of the plant conditions before the proposed maintenance and the changes expected to result from the proposed maintenance activity;

(2) Ensure that the assessments are performed when the plant is shut down as well as at power; and

(3) Manage the increase in risk that may result from the proposed maintenance activity.

The Commission believes that proper implementation of the rule will reduce the likelihood and consequences of an accidental release of radioactive material caused by imprudently prioritized, planned, or scheduled maintenance.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. The NRC has also committed to complying with Executive Order (EO) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," dated February 11, 1994, in all its actions. The NRC has determined that there are no disproportionate, high, or adverse impacts on minority or low-income populations. In the letter and spirit of EO 12898, the NRC requested public comment on any environmental justice considerations or questions that the public thinks may be related to this rule but somehow were not addressed. No public comments on this issue were received.

States Consulted and Sources Used

The NRC sent a copy of the proposed rule to every State Liaison Officer and requested his or her comments on the environmental assessment. No comments were received on this issue.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a final regulatory analysis for this rule. The analysis examined the costs and benefits of the alternatives considered by the Commission for revising 10 CFR 50.65, the maintenance rule. Those alternatives were to (1) make no change to the rule, (2) require the safety assessments currently recommended in paragraph (a)(3) of the rule, and (3) make comprehensive revisions to paragraph (a)(3) of the rule. The analysis supported the selection of Alternative 2 as the preferred course of action. Details of the alternative selection are contained in the regulatory analysis, which is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Richard P. Correia, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 301–415–1009, e-mail rpc@nrc.gov.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC (10 CFR 2.810).

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for this final rule. The Commission has determined, on the basis of this analysis, that backfitting to comply with the requirements of this rule provides a substantial increase in protection to the public health and safety or the common defense and security at a cost that is justified by the increased protection.

When the maintenance rule was issued, the NRC had not foreseen the rate deregulation of the electric utility industry and the changes to maintenance practices that licensees would make to enhance operational efficiency. Specifically of concern is the significant increase in maintenance while the plant is at power, permitting shortened refueling outages. At-power maintenance practices have evolved to the point that multiple systems, trains, and components are simultaneously out of service. Compared to the risk that occurs from expected random equipment failures, the risk of an accident or transient caused by taking systems, trains, and components off line for maintenance or from performing maintenance on systems, trains, or components while they remain on line could be increased.

The objective of this rule is to require that—

(1) Licensees assess the impact of equipment maintenance on the capability of the plant to perform key plant safety functions; and

(2) Licensees use the results of the assessment before undertaking maintenance activities at operating nuclear power plants to manage the increase in risk caused by those activities.

Thus, the rule adds a new paragraph, (a)(4), that requires the performance of assessments, specifies that the scope of the requirement for performing those assessments covers proposed maintenance activities, specifies that the scope of SSCs to be assessed may be limited to those that a risk-informed evaluation process has shown to be significant to public health and safety, and specifies that the increase in risk that may occur from the maintenance activity must be managed.

This final rule also adds an introductory sentence to 10 CFR 50.65 clarifying that the rule applies under all conditions of operation, including normal shutdown; revises the second sentence of paragraph (a)(3) to simplify the language; and deletes the last sentence of paragraph (a)(3) of the rule.

The details of this backfit analysis have been incorporated in the regulatory analysis. For the reasons elaborated in the regulatory analysis, which also contains cost information, the Commission concludes that this modification to the maintenance rule will result in a substantial increase in the overall protection to the public health and safety, and that the net costs of the rule are justified in view of this increased level of safety.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. There are no industry consensus standards that apply to the area of maintenance. Thus, the provisions of the Act do not apply to this rulemaking.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.65, an introductory paragraph is added, paragraph (a)(3) is revised, and a new paragraph (a)(4) is added to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

The requirements of this section are applicable during all conditions of plant operation, including normal shutdown operations.

(a) * * *

(3) Performance and condition monitoring activities and associated goals and preventive maintenance activities shall be evaluated at least every refueling cycle provided the interval between evaluations does not exceed 24 months. The evaluations shall take into account, where practical, industry-wide operating experience. Adjustments shall be made where necessary to ensure that the objective of preventing failures of structures, systems, and components through maintenance is appropriately balanced against the objective of minimizing unavailability of structures, systems, and components due to monitoring or preventive maintenance.

(4) Before performing maintenance activities (including but not limited to surveillance, post-maintenance testing, and corrective and preventive maintenance), the licensee shall assess and manage the increase in risk that may result from the proposed maintenance activities. The scope of the assessment may be limited to structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety.

* * * * *

Dated at Rockville, Maryland, this 13th day of July, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–18325 Filed 7–16–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–42–AD; Amendment 39–11225; AD 99–15–06]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. (Formerly Textron Lycoming) Model ALF502R–5 and ALF502R–3A Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. Model ALF502R–5 and ALF502R–3A turbofan engines, that requires incorporation of an improved fan core inlet anti-ice system. This amendment is prompted by reports of uncommanded reduction of engine thrust (rollback) and loss of thrust control in icing conditions. The actions specified by this AD are intended to prevent ice accretion on the fan core inlet stator vane surfaces, which can result in engine rollback and loss of thrust control in icing conditions.

DATES: Effective September 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, P.O. Box 5218, Phoenix, AZ 85072–2181; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. Model ALF502R–5 and ALF502R–3A turbofan engines was published in the **Federal Register** on December 14, 1998

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(63 FR 68708). That action proposed to require installation of an improved fan core inlet anti-ice system, at the next shop visit, but no later than December 31, 2002.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters state that they should be allowed to use the altitude and operating restrictions, currently mandated by AD 96–14–09, rather than to require incorporation of the proposed engine anti-icing system modifications. One of the commenters proposes adoption of the altitude and operating restrictions regardless of icing conditions being present; while the other commenter proposes permanent use of AD 96–14–09 restrictions in icing conditions only. The commenters state that no rollback events have occurred below 26,000 feet, and that the unsafe icing conditions are not prevalent at altitudes below 26,000 feet. The commenters also state that the modifications are economically burdensome due to increased engine operating costs, and airplane air traffic control restrictions in congested areas. The FAA does not concur. The FAA acknowledges that no known rollback events have occurred below 26,000 feet altitude. However, the FAA considers the total operating hours accrued below that altitude, and the hours accrued in icing conditions below that altitude, to be insufficient to conclude that the interim restrictions, successfully imposed by AD 96–14–09, would provide an acceptable level of safety for long-term unrestricted operation of an unmodified engine below that altitude. In addition, the technical data available to the FAA, including that provided by the commenters, does not show that significant mixed phase icing conditions are isolated to altitudes above 26,000 feet, or that the unmodified ALF502R–5 and ALF502R–3A engines are capable of long-term unrestricted operation in the icing conditions present below that altitude.

Moreover, the FAA is aware of two instances of ALF502R–5 engine rollback which occurred during inadvertent encounters of icing conditions at altitudes above 26,000 feet, after altitude and operating restrictions we originally established by AD 94–07–09, and superseded by AD 06–14–09. Accordingly, the FAA considers the current altitude restriction and operating procedures in icing conditions to be acceptable only for a finite period as necessary for implementation of engine modifications, rather than relying on interim changes to operating procedures.

Therefore, based on the relatively limited fleet experience below the altitude limitation of 26,000 feet, the absence of sufficient engine and meteorological data to confidently isolate the ALF502R–5 engine rollback phenomenon to altitudes above 26,000 feet, and the demonstrated possibility of inadvertent operation in icing conditions above 26,000 feet, the FAA does not concur that an acceptable long-term level of safety would be provided by limiting the operating envelope of unmodified engines to altitudes below 26,000 feet.

One commenter proposes that the AD allow temporary installation of a single unmodified engine without requiring re-imposition of airplane operating restrictions. The change was proposed in order to reduce the frequency of aircraft being reidentified from restricted operation to unrestricted operation and back, to minimize airplane flight manual changes, and to reduce the likelihood of mis-placarding or pilot error. The commenter further states that the change is justifiable by statistical analysis of rollback likelihood. The FAA does not concur. The proposed AD is intended to require specific actions for incorporating ALF502R–5 engine modifications, rather than to address broader requirements with regard to airplane operation. Therefore, this submitted comment and response would not directly impact the requirements of the proposed rule.

The actions proposed by the submitted comment would intentionally allow operation of an engine beyond its known operating capability, including unrestricted operation in icing conditions associated with engine rollback and power loss. The FAA recognizes that reinstallation of a single unmodified engine may require more instances of airplane flight manual changes and cockpit placard than would be required otherwise. However, the FAA does not consider the need for these additional tasks to warrant allowing operation of an unmodified engine beyond its known operating capability. Moreover, installation of cockpit placards and airplane flight manual revisions are currently required by AD 96–14–09, and these tasks are considered appropriate for notifying crews of applicable altitude restrictions and operating procedures for unmodified engines. Accordingly, the FAA does not consider that the potential for mis-placarding or crew error to necessitate consideration of other measures.

In summary, because of the likelihood of rollback and power loss if ALF502R–5 engines are allowed to operate unrestricted in icing conditions, the FAA considers it necessary to continue to impose the operating restrictions in AD 96–14–09 if a single unmodified engine is installed and operated in icing conditions. The FAA continues to consider the installation of cockpit placards and flight manual revisions as acceptable means to identify when an unmodified engine is installed and requires AD 96–14–09 restrictions.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 982 engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75,000 per engine. Based on these figures, the cost impact of the AD's required incorporation of engine modifications for U.S. operators is estimated to be $7,680,000.

In addition to the above engine modifications, further aircraft modifications specified by BAe SB No. 71–68–01581A, and BAe SB No. 26–40–01601A, Revision 1, are required prior to installation of modified engines onto BAe 146 aircraft. The FAA estimates that 20 aircraft of U.S. registry will be affected by this proposed AD, that it will take approximately 33 work hours per aircraft to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,400 per aircraft. Based on these figures, the cost impact for incorporation of aircraft modifications required by the AD on U.S. operators is estimated to be $87,600.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,767,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–15–06 AlliedSignal Inc.: Amendment 39–11225. Docket 98–ANE–42–AD.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) ALF502R–5 and ALF502R–3A model turbofan engines, installed on but not limited to British Aerospace (BAe) 146–100A, –200A and –300A series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operated must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe conditions addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded reduction of engine thrust and loss of thrust control in icing conditions, accomplish the following:

(a) At the next engine shop visit after the effective date of this AD, but not later than December 31, 2002, install an improved fan core inlet anti-ice system in accordance with Accomplishment Instructions, Paragraphs 2.B. through 2.I.(1–4), of AlliedSignal Inc. Service Bulletin (SB) No. ALF/LF 72–1020, Revision 2, dated September 30, 1998. In order to install engines with the required modifications onto BAe 146–100A, –200A and –300A series aircraft, accomplish BAe Regional Aircraft SB No. 26–40–01601A, dated March 25, 1998, and BAe Regional Aircraft SB No. 71–68–01581A, Revision 1, dated March 25, 1998.

(b) For the purpose of this AD, an engine shop visit is defined as maintenance that includes separation of either the fan module or the combustor turbine module from the remainder of the engine.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following SBs:

Document No.	Pages	Revision	Date
AlliedSignal Inc. No. ALF/LF 72–1020	1	2	September 30, 1998.
	2	1	June 3, 1998.
	3–14	Original	March 11, 1998.
	15	1	June 3, 1998.
	16	Original	March 11, 1998.
	17	1	June 3, 1998.
	18–20	2	September 30, 1998.
	21, 22	Original	March 11, 1998.
	23, 24	1	June 3, 1998.
	25	Original	March 11, 1998.
	26–29	2	September 30, 1998.
	30–33	Original	March 11, 1998.
	34, 35	2	September 30, 1998.
	36	1	June 3, 1998.
	37	2	September 30, 1998.
	38	1	June 3, 1998.
Total Pages: 38.			
BAe Regional Aircraft No. 26–40–01601A	1–7	Original	March 25, 1998.
Total Pages: 7.			
BAe Regional Aircraft No. 71–68–01581A	1–3	1	March 25, 1998.
	4–18	Original	August 14, 1997.
Total Pages: 18.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Engines, P.O. Box 5218, Phoenix, AZ 85072–2181, telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 17, 1999.

Issued in Burlington, Massachusetts, on July 9, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–18099 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–02]

Revision of Class D and Class E Airspace; Cannon AFB, Clovis, NM.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class D and Class E airspace extending upward from the surface to and including 6,800 feet mean sea level (MSL), within a 4.6-mile radius of Cannon Air Force Base (AFB), NM. This action is prompted by the requirement to contain aircraft operations within controlled airspace. The Class D airspace will revert to Class E airspace when the control tower is not in operation. The intended effect of this rule is to provide adequate controlled airspace for aircraft operating in the vicinity of Cannon AFB, NM.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On March 4, 1999, proposal to amend 14 CFR Part 71 to revise Class D and Class E airspace at Cannon AFB, NM, was published in the **Federal Register** (64 FR 10411). The proposal was to revise Class D and Class E airspace extending upward from the surface to and including 6,800 feet MSL, at Cannon AFB NM. This action is prompted by the requirement to contain aircraft operations within controlled airspace. The Class D airspace will revert to Class E airspace when the control tower is not in operation. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Cannon AFB, NM.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed, with the exception of minor editorial changes.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D and Class E airspace areas are published in paragraphs 5000 and 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 revises Class D and Class E airspace, at Cannon AFB, NM, extending upward from the surface to and including 6,800 feet MSL, at Cannon AFB, NM.

The FAA has determined that this regulation only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW NM D Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″ N., long. 103°19′20″ W.)
Cannon ILS Localizer
(Lat. 34°22′25″ N., long. 103°20′09″ W.)
Cannon TACAN
(Lat. 34°22′51″ N., long. 103°19′21″ W.)

That airspace extending upward from the surface to and including 6,800 feet MSL within a 4.6-mile radius of Cannon AFB and within 1.8 miles each side of the Cannon ILS Localizer northeast course, extending from the 4.6-mile radius to 5.1 miles northeast of the airport and within 1.8 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5.1 miles northwest of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW NM E2 Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″ N., long. 103°19′20″ W.)
Cannon ILS Localizer
(Lat. 34°22′25″ N., long. 103°20′09″ W.)
Cannon TACAN
(Lat. 34°22′51″ N., long. 103°19′21″ W.)

That airspace extending upward from the surface within a 4.6-mile radius of Cannon AFB and within 1.8 miles each side of the Cannon ILS Localizer northeast course, extending from the 4.6-mile radius to 5.1 mile northeast of the airport and within 1.8 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5.1 miles northwest of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Forth Worth, TX on June 15, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18350 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29642; Amdt. No. 1940]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South Macarthur Blvd. Oklahoma City, OH 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 9, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	SIAP
06/04/99	ME	Wiscasset	Wiscasset	9/3841	NDB Rwy 25 Amdt 5.
06/24/99	AL	Tuscaloosa	Tuscaloosa Muni	9/4373	NDB Rwy 4, Amdt 10A.
06/24/99	AL	Tuscaloosa	Tuscaloosa Muni	9/4374	VOR or TACAN Rwy 4, Amdt 11A.
06/25/99	SC	Aiken	Aiken Muni	9/4418	NDB Rwy 24 Amdt 9A.
06/25/99	SC	Aiken	Aiken Muni	9/4419	GPS Rwy 24 Orig.
06/25/99	SC	Aiken	Aiken Muni	9/4420	GPS Rwy 6 Orig.
06/25/99	SC	Aiken	Aiken Muni	9/4421	VOR/DME or GPS–A, Orig–A.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4455	GPS Rwy 23, Orig.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4456	ILS Rwy 23, Amdt 10A.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4457	VOR Rwy 23, Amdt 19A.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4458	NDB Rwy 23, Amdt 10B.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4459	GPS Rwy 5, Orig.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4461	VOR Rwy 5, Amdt 20A.
06/29/99	FL	Titusville	Space Coast Regional	9/4525	GPS Rwy 9, Orig.
06/30/99	NC	Asheville	Asheville Regional	9/4540	ILS Rwy 34, Amdt 23C.
07/01/99	KS	Concordia	Blosser Muni	9/4562	NDB–A, Orig.
07/01/99	KS	Concordia	Blosser Muni	9/4563	GPS Rwy 17, Orig.
07/01/99	KS	Concordia	Blosser Muni	9/4564	GPS Rwy 35, Orig.

[FR Doc. 99–18355 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29641; Amdt. No. 1939]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 9, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 41113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 12, 1999

Provo, UT, Provo Muni, GPS RWY 13, Orig

. . . Effective September 9, 1999

Mobile, AL, Mobile Regional, VOR OR TACAN OR GPS–A, Amdt 1
Akron, CO, Akron-Washington County, GPS RWY 11, Orig
Akron, CO, Akron-Washington County, GPS RWY 29, Orig
Leadville, Co, Lake County, GPS RWY 16, Orig
Fort Myers, FL, Southwest Florida Intl, GPS RWY 6, Orig
Fort Myers, FL, Southwest Florida Intl, GPS RWY 24, Orig
Key West, FL, Key West Intl, VOR/DME OR GPS RWY 27, Amdt 2, CANCELLED
Key West, FL, Key West Intl, VOR OR GPS–B, Amdt 10, CANCELLED
Key West, FL, Key West Intl, GPS RWY 9, Orig
Key West, FL, Key West Intl, NDB OR GPS–A, Amdt 15
Key West, FL, Key West Intl, GPS RWY 27, Orig
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, GPS RWY 17L, Orig
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, GPS RWY 35R, Orig
Bainbridge, GA, Decatur County Industrial Air Park, NDB OR GPS RWY 27, Amdt 1
Bloomington/Normal, IL, Central IL Regl Arpt at Bloomington-Normal, GPS RWY 11, Orig
Mount Sterling, KY, Mount Sterling-Montgomery County, GPS RWY 21, Amdt 1
Paducah, KY, West Kentucky Airpark, GPS RWY 4, Orig
Paducah, KY, West Kentucky Airpark, GPS RWY 22, Orig
Baltimore, MD, Martin State, VOR/DME OR TACAN RWY 15, Amdt 5
Bigfork, MN, Bigfork Muni, GPS RWY 15, Orig
Charlotte, NC, Charlotte/Douglas, Intl, ILS RWY 23, Amdt 1
Rockingham, NC, Rockingham-Hamlet, GPS RWY 31, Orig
Wadesboro, NC, Anson County, NDB RWY 17, Amdt 2
Van Wert, OH, Van Wert County, NDB RWY 9, Amdt 2
Van Wert, OH, Van Wert County, GPS RWY 9, Orig
Van Wert, OH, Van Wert County, GPS RWY 27, Orig
Austin, TX, Austin Executive Airpark, GPS RWY 18, Orig, CANCELLED
Neillsville, WI, Neillsville Muni, NDB RWY 27, Amdt 6
Neillsville, WI, Neillsville Muni, GPS RWY 27, Orig

[FR Doc. 99–18354 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 98F–0894]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on fruits and vegetables that are not raw agricultural commodities without the requirement of a potable water rinse following treatment. This action is in response to a petition filed by Ecolab, Inc.

DATES: This regulation is effective July

DATES: This regulation is effective July 19, 1999; submit written objections and requests for a hearing by August 18, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 20, 1998 (63 FR 56035), FDA announced that a food additive petition (FAP 8A4622) had been filed by Ecolab, Inc., 370 North Wabasha St., St. Paul, MN 55102. The petition proposed to amend the food additive regulation in § 173.315 *Chemicals used in washing or to assist in the peeling of fruits and vegetables* (21 CFR 173.315) to provide for the safe use of a mixture of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent to wash or assist in the lye peeling of fruits and vegetables that are not raw agricultural commodities without the requirement of a potable water rinse following treatment. The use of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid is currently approved under § 173.315 provided its use is followed by a potable water rinse (§ 173.315(c)).

The current approval under § 173.315 for the use of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid is to control the microbial growth in water that contacts fruits and vegetables that are not raw agricultural commodities (61 FR 46374, September 3, 1996). This intended technical effect is unchanged by this regulation. Under the Antimicrobial Regulation Technical Corrections Act (Pub. L. 105–324), such use in water that comes into contact with the food in the preparing, packing, or holding of the food for commercial purposes is subject to regulation by FDA as a food additive under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) and is not subject to regulation by the Environmental Protection Agency (EPA) as a pesticide chemical under section 408 of the act (21 U.S.C. 346a). However, this intended use of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid may nevertheless be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, manufacturers intending to use this food additive for this intended use should contact EPA to determine whether this use requires a pesticide registration under FIFRA.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulation in § 173.315 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for the petition. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before August 18, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in the brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.315 is amended in the table in paragraph (a)(2) by removing the entries for "1-Hydroxyethylidene-1, 1-diphosphonic acid," "Hydrogen Peroxide," and "Peroxyacetic acid", and by adding paragraph (a)(5) to read as follows:

§ 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables.

* * * * *

(a) * * *

(5) Substances identified in this paragraph (a)(5) for use on fruits and vegetables that are not raw agricultural commodities and subject to the limitations provided:

Substances	Limitations
Hydrogen peroxide	Used in combination with acetic acid to form peroxyacetic acid. Not to exceed 59 ppm in wash water.
1-Hydroxyethylidene-1,1-diphosphonic acid	May be used only with peroxyacetic acid. Not to exceed 4.8 ppm in wash water.
Peroxyacetic acid	Prepared by reacting acetic acid with hydrogen peroxide. Not to exceed 80 ppm in wash water.

* * * * *

Dated: July 7, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–18300 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA–98–4743]

RIN 2125–AE57

Indian Reservation Road Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule.

SUMMARY: Section 1115 of the Transportation Equity Act for the 21st Century establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. The FHWA, Federal Lands Highway (FLH), and the Bureau of Indian Affairs, Division of Transportation (BIADOT), intend to implement the IRR bridge program (IRRBP) to promptly address the deficient IRR bridges. Toward that end, the FLH and the BIADOT, in consultation with Indian tribal governments (ITG)s and other public commenters, have developed interim project selection/fund allocation procedures for uniform application of the legislation. In this document, the FHWA is announcing interim project selection/fund allocation procedures for the IRRBP.

DATES: This rule is effective on July 19, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit your comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Wade F. Casey, Federal Lands Highway, HFPD–9, (202) 366–9486; or Ms. Grace Reidy, Office of Chief Counsel, HCC–32, (202) 366–6226; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Section 1115 of TEA–21, amended title 23, U.S.C., to require the Secretary to establish a nationwide priority program for improving deficient IRR bridges. Of the amounts authorized to be appropriated for IRRs for each fiscal year beginning with FY1998 and continuing through FY2003, section 1115 requires the Secretary, in cooperation with the Secretary of the Interior, to reserve not less than $13 million for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions, or install scour countermeasures for deficient IRR bridges, including multiple-pipe culverts.

The statute provides that, to be eligible to receive funding under the Nationwide Priority Bridge Program, a bridge must: (i) Have an opening of 20 feet or more; (ii) be on an IRR; (iii) be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and (iv) be recorded in the national bridge inventory (NBI) administered by the Secretary under 23 U.S.C. 144(b). The statute further provides that the funds to carry out IRR bridge projects shall be made available only on approval of plans, specifications, and estimates (PS&E) by the Secretary.

In order to implement the IRRBP established in section 1115 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, codified at 23 U.S.C. 202(d)(4)(A), and in order to promptly address the deficient IRR bridges, the FHWA and the BIADOT, in consultation with Indian tribal governments (ITG)s and other interested parties, have developed project selection/fund allocation procedures which will be incorporated in the Code of Federal Regulations (CFR) as an interim final rule.

Comments Received on the IRRBP

The FHWA solicited comments through informal meetings with tribal representatives in early December, 1998. A two page summary requesting comment on interim guidance was provided to the tribal representatives and also sent out to tribes not in attendance at those meetings. The two page summary was forwarded via the tribal local technical assistance program centers and the BIA area offices to Indian tribal governments(ITG)s. Following this, the FHWA published a notice in the **Federal Register** on February 12, 1999, requesting comments on the project selection/fund allocation procedures being considered for the IRRBP. The notice provided for a 30-day public comment period ending March 15, 1999 Comments were received from five ITGs, seven Bureau of Indian Affairs (BIA) offices, one county, and one State Department of Transportation. The FHWA considered all comments

received in developing project selection/fund allocation procedures that are set forth in this notice as interim final rules for the IRRBP.

While FHWA is issuing these interim final rules to make funds available as soon as possible this fiscal year, we welcome any comments on them. As discussed subsequently in the "RULEMAKING ANALYSES" portion of this preamble, there exists good cause in this instance for adopting interim final rules to ensure that funds may be readily dispersed under the IRRBP. We emphasize that the rule adopted here will be "interim" in nature. Prior to issuance of the final rule, the FHWA will invite and actively consider comments introduced concerning this action and will assess how the IRRBP is working, including the fund allocation process based on experience with these rules. As the FHWA gathers more experience and feedback with the project selection/fund allocation process under the interim final rules, the FHWA will revisit the funding allocation process and propose appropriate changes as necessary to insure the operational effectiveness of the IRRBP. The FHWA intends to fully utilize IRRBP funds and to continually monitor the performance of the program to insure that all IRRBP funds are fully utilized. The funding allocation procedures will be influenced by our experience under these interim final rules.

Comments introduced in response to general issues concerning the IRRBP raised in the prior notice are addressed in the Section-by-Section Analysis, that follows.

Section-by-Section Analysis

1. What is the Total Funding Available for the IRR Bridge Program? (§ 661.15)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: Total funding available for the IRR Bridge Program remains unchanged from that set forth in the prior notice since funding is that specifically prescribed by statute. The statute provides a total program funding of not less than $13 million for each fiscal year.

2. When Will These Funds Become Available? (§ 661.17)

The majority of commenters made no remark on this issue. Two commenters indicated that they mostly agree or generally agree.

FHWA Position: The statute states that these funds become available on October 1 of each fiscal year.

3. When Does an Eligible Project Receive Funding? (§ 661.19)

The majority of commenters made no remark on this issue. Two commenters indicated that they mostly agree or generally agree.

FHWA Position: The statute provides that these funds are provided after the Secretary of Transportation approves a completed PS&E.

4. How Long Will These Funds be Available? (§ 661.21)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: The statute provides that the funds for each fiscal year are available for the year authorized plus three years (a total of four years).

5. What Can These IRR Bridge Funds be Used for? (§ 661.23)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: The statute provides that these funds can be used to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for deficient IRR bridges, including multiple pipe culverts.

6. Which Bridges are Eligible? (§ 661.25)

The majority of commenters made no remark on this issue. Five commenters indicated that they mostly agree, generally agree, agree or that no comment was necessary regarding including the provision that if a bridge has been rehabilitated or replaced in the last 10 years, its eligibility would be limited to seismic retrofit or installation of scour countermeasures.

FHWA Position: We modified our position announced in the prior notice that any bridges constructed within the last ten years be excluded from the program. This position is consistent with FHWA policy. It reads as follows. The statute provides that to be eligible to receive funding, a bridge must: (i) have an opening of 20 feet or more; (ii) be on an IRR; (iii) be unsafe because of structural deficiencies, physical deterioration or functional obsolescence; and (iv) be recorded in the NBI maintained by the FHWA. In view of the limited availability of funds, and under 23 U.S.C. 204(a), recognition of the need for all Federal roads to be treated under uniform policies that apply to Federal-aid highways, if a bridge has been constructed, rehabilitated or replaced in the last 10 years, its eligibility would be limited to seismic retrofit or installation of scour countermeasures.

7. When is a Bridge Eligible for Replacement? (§ 661.27)

The majority of commenters made no remark on this issue. Four commenters indicated that they generally agree or agree with the eligibility requirements for bridge replacement.

FHWA Position: As discussed in the previous notice, given that 23 U.S.C. 204(a) recognizes the need for all Federal roads to be treated under uniform policies that apply to Federal-aid highways, to be eligible for replacement, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. The bridge also must have a sufficiency rating of less than 50 to be eligible for replacement.

The BIA Navajo Area Office felt that the procedures should include a provision for replacement of deficient bridges which otherwise would be only eligible for rehabilitation, in cases where a section of roadway is reconstructed to meet current roadway standards.

FHWA Response: The proposed procedures allow for a deficient bridge, which is eligible for rehabilitation, to be replaced if the total life cycle costs for rehabilitation exceed the replacement costs. Hence, when a bridge is eligible for replacement it would be upgraded to meet current standards.

Another commenter, the Eastern Band of Cherokee Indians, wanted a definition for functional obsolescence.

FHWA Response: A functional obsolete bridge is one in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part. We will include this definition in the rules at § 661.5.

8. When is a Bridge Eligible for Rehabilitation? (§ 661.29)

The majority of commenters generally agree with the eligibility requirements for bridge rehabilitation.

FHWA Position: As discussed in the prior notice, for reasons corresponding

to those addressed in item 7 concerning replacement eligibility, to be eligible for rehabilitation, a bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, a bridge must have a sufficiency rating of less than or equal to 80 to be eligible for rehabilitation. A bridge would be eligible for replacement if the total life cycle cost for bridge rehabilitation exceeds the costs to replace.

The BIA Phoenix Area Office commented that the IRRBP should only address bridges with sufficiency ratings (SR) under 50 at this time.

FHWA Response: The IRRBP was established to reduce the number of deficient IRR bridges. In addition to bridges with SR less than 50, the IRRBP would include IRR bridges having a sufficiency rating of 80 or less and having a status of either structurally deficient (SD) or functionally obsolete (FO), assuming that the bridge meets the other eligibility requirements of the IRRBP.

9. How Does Ownership Impact Project Selection? (§ 661.31)

The majority of commenters made no remark on this issue.

FHWA Position: As discussed in the prior notice, since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration would be given to funding construction projects for deficient BIA owned IRR bridges. We emphasize that consideration could also be given to the funding of construction projects for the deficient non-BIA, IRR bridges.

On this question four commenters wanted to see all IRRBP funds going toward BIA owned IRR bridges.

FHWA Response: The IRRBP was established to reduce the number of deficient IRR bridges, not just BIA owned IRR bridges.

The Eastern Band of Cherokee Indians commented that ownership should not be an issue.

FHWA Response: ITGs do provide input as to what bridges are to be chosen for rehabilitation or replacement following eligibility requirements for the IRRBP, regardless of who owns the bridge. However, ownership is an issue since the State and counties have ownership and primary responsibility for their bridges. Therefore, a smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and because 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. For these reasons, the IRRBP should not fully fund non-BIA owned IRR bridges.

10. Do IRRBP Projects Have to be on a Transportation Improvement Program (TIP)? (§ 661.33)

The majority of commenters made no remark on this issue. Three commenters indicated that they agree with the discussion in our prior notice.

FHWA Position: As discussed in the prior notice, yes, all IRRBP projects have to be listed on an approved TIP. Under 23 U.S.C. 204(j), IRR bridges must appear on the BIA's IRRBP TIP and be forwarded to the State.

11. What Percent of the Contract Authority in any Fiscal Year is Available for Use on BIA Owned Bridges and non-BIA Owned IRR Bridges? (§ 661.35)

The majority of the commenters wanted to see 100 percent of the IRRBP funds going toward BIA owned IRR bridges.

FHWA Response: The statute established this program for deficient IRR bridges and did not simply prescribe the IRRBP funds for sole use on BIA owned IRR bridges.

The Eastern Band of Cherokee Indians commented that there should be no distinction in ownership. Another commenter, Isabella County in Michigan, felt that non-BIA IRR bridges serve Tribal communities and to limit the annual funding for these bridges would be a disservice to the Tribal community.

FHWA Response: While the Federal government has both a trust responsibility and ownership of the BIA bridges on Indian reservations, States and counties also have a responsibility and themselves own other IRR bridges. Therefore, the IRRBP which is funded exclusively by the Federal government, should not bear the full burden of rehabilitation and replacement costs associated with non-BIA owned IRR bridges. Ownership is relevant in determining the percentage of funding for non-BIA IRR bridges and is an issue since the States and counties have ownership and primary responsibility for their bridges.

The Saginaw Chippewa Indian Tribe of Michigan stated that the eastern tribes were being penalized.

FHWA Response: Under the former "not less than 1 percent" Highway Bridge Replacement and Rehabilitation Program (HBRRP), funding was State specific and the bulk of funding was provided for the tribes east of the Mississippi River. The IRRBP is correcting an inequity that the HBRRP created. Under the IRRBP, funding is not State specific, but can be used in any State. The only tribes that are penalized are ones which fail to submit PS&E packages for IRRBP funding.

The Cherokee Nation commented that the Oklahoma tribes are not treated fairly under the proposed procedures.

FHWA Response: While the 80–20 split is designed to provide the bulk of the funding for BIA bridges, it also takes into account the need to fund non-BIA owned IRR bridges. The $2.6 million provided each fiscal year (1998–2003) will enable the elimination of numerous deficient non-BIA owned IRR bridges in Oklahoma or any other State regardless of geographic location to the extent ITGs are willing to participate. Presently there is $5.2 million available for non-BIA owned IRR bridges under the 80–20 split approach (representing FY 1998 and FY 1999 available funds).

We modified our position announced in the prior notice to provide carryover funding for non-BIA owned IRR bridges from one fiscal year to the next, to provide a uniform carryover policy for both BIA and non-BIA owned IRR bridges. It reads as follows. Up to 80 percent ($10.4 million) of funding in any fiscal year would be available for use on BIA owned IRR bridges. This would leave 20 percent ($2.6 million) of funding in any fiscal year that would be available for use on non-BIA owned IRR bridges. A smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

12. What Percent of a Specific Project's Construction Costs is Covered Under This Program? (§ 661.37)

The majority of commenters had no remark on this issue.

FHWA position: As discussed in our prior notice, the following funding provisions apply in administration of the IRRBP: (i) 100 percent funding would be provided for a BIA owned IRR bridge; (ii) up to 80 percent of the funding would be provided for a State, county, or locally owned non-BIA IRR bridge; (iii) States, counties, local and tribal governments would be required to provide at least 20 percent of the funds for non-BIA IRR bridges; (iv) the funding ceiling for any single non-BIA

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IRR bridge project would be $1.5 million.

Addressing this question, four commenters wanted to see 100 percent of funding going towards BIA owned IRR bridges.

FHWA Response: We recognize the need to include non-BIA owned IRR bridges in this program since the statute does not exclude them.

The Pueblo of Zuni commented that they wanted to see the 80 percent for non-BIA owned IRR bridges changed to 75 percent.

FHWA Response: The 80–20 split is consistent with other FHWA programs and we believe that this allocation of funds is reasonable.

Another commenter, the BIA Great Lakes Agency, recommended changing the funding ceiling for any single non-BIA IRR bridge project from $1.5 million to $500,000.

FHWA Response: There is presently $5.2 million available in FY 1998 and 1999 funds for non-BIA owned IRR bridges. The FHWA believes the $1.5 million is a reasonable limit.

13. When are IRR Bridge Projects Eligible for Funding? (§ 661.39)

Six commenters had no remark on this issue.

FHWA position: We have modified our position announced in the prior notice by deleting "control schedule" and replacing with "IRRBP TIP" in order to reduce some of the documentation requirements. It reads as follows. The statute provides that IRR funds to carry out IRRBP projects shall be made available only on approval of the PS&E by the Secretary. Approval consists of having completed and approved bridge design, specifications and estimates. The project must be ready for construction, right of way must have been acquired, and the project must be awarded within 120 calendar days of funding. A copy of the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP must be forwarded by the area office to the BIADOT/FLH for review and acceptance. Submittal of an incomplete application package would form the basis for project disapproval and the BIA area office would have to revise and resubmit the package.

Three commenters, the BIA Navajo Area Office, the Navajo Nation and the BIA Aberdeen Area Office were concerned with the 120 calendar day award period.

FHWA Response: If the BIA Area office cannot award a contract within 120 days, those funds should be made available to ones that can. The BIA Area offices in partnership with ITGs, all need to be pro-active in awarding bridge construction contracts once they receive approval and funding. It is important that obligation limitation in a given fiscal year be fully utilized so as not to impact regular IRR program obligation limitation in the next fiscal year.

The BIA Billings Area Office stated that there is no requirement in some area certification acceptance plans for FHWA approval.

FHWA Response: Based on the current BIA/FHWA Stewardship plan, there are no BIA Area offices with second level approval authority for IRR bridge projects.

The Confederated Salish and Kootenai Tribes of the Flathead Nation, wanted to know what funding can be used for project development.

FHWA Response: Regular IRR program funds can be used for project development. The IRRBP funds can only be used for construction and construction engineering (CE) and may not be used for project development. We will address this comment in § 661.13 of the rules.

The New York State DOT seemed concerned that somehow the FHWA would override State, local or ITG selection of projects. The ITG should be involved in selection of candidate bridge projects.

FHWA Response: We are not establishing the priority of which IRR bridges should be chosen but will provide a list of bridges which are in fact deficient. We do however, have approval authority via review of the application packages being submitted.

The BIA Aberdeen Area Office, was concerned with insufficient staffing levels at the FHWA Division Offices.

FHWA Response: Because of the concern for the ability of an FHWA Division Office to review a PS&E package in a timely manner, the term "FHWA Division Office" will be replaced with "FHWA or BIADOT" in § 661.39 of the rules.

14. What Does a Complete Application Package Consist of? (§ 661.41)

Six commenters had no remark on this issue. The BIA Navajo Area Office stated that the FHWA was requiring too much documentation.

FHWA Response: We have modified our position announced in the prior notice by deleting "control schedule" and replacing it with "IRRBP TIP" in order to reduce some of the documentation requirements. Aside from this, in order for the 12 BIA area offices to operate consistently and fairly with each other, we believe that it is a reasonable requirement for sufficient documentation to be supplied with each application, to ensure that the PS&E package is complete and the project is ready for construction.

FHWA Position: The FHWA has also included a requirement that non-BIA IRR bridge projects be supported with a tribal resolution. The FHWA is including this requirement to insure that public authorities confer with the ITGs on the issue of replacement and rehabilitation of deficient non-BIA owned IRR bridges if and when public authorities apply for IRRBP funding. This will be included in § 661.31, § 661.39 and § 661.41 of the rules.

The BIA Aberdeen Area Office was concerned with insufficient staffing levels at the FHWA Division Offices which may not be sufficient enough to review PS&Es.

FHWA Response: The term "Division Office" is deleted and "or BIADOT" is added. In cases where the divisions are not sufficiently staffed to review PS&Es, the review can be accomplished by the BIADOT or the FHWA Federal Lands Highway Division offices. This is delineated in the FHWA/BIADOT Stewardship plan of July 1996. Based on the preceding discussions, the response to this question is as follows: Therefore, a complete application package would consist of the following: the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP. In addition to the preceding items, for non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project.

15. How are the FY 1998 Projects To Be Treated? (§ 661.43)

The majority of commenters had no remark on this issue. Two commenters agreed with the discussion in our prior notice.

FHWA Position: As discussed in our prior notice, in order not to penalize any BIA area office which completed PS&E packages in FY 1998 that were not funded because the project selection/fund allocation procedures for distribution of funds for FY 1998 were not in place, the funds for approved projects would be made available to the BIA area offices on receipt and acceptance of their application packages.

Two commenters, the BIA Navajo Area Office and Navajo Nation, were concerned regarding bridge projects where the award for the construction contract occurred in FY 1998 using regular IRR program funds. These commenters wanted reimbursement from the IRRBP funds.

FHWA Response: This issue has been addressed in a FHWA policy letter dated February 19, 1999, to allow for reimbursement on a case-by-case basis within one year of award.

The BIA Aberdeen Area Office expressed concern with obtaining "accurate detour length."

FHWA Response: Detour length is national bridge inventory (NBI) item number 19, which is included with each bridge file. This item should be checked along with other condition data by the bridge inspectors performing the biennial inspections for the BIA and by the BIADOT which performs oversight quality assurance/quality control checks of the inspection data.

16. How is a List of Deficient Bridges To Be Generated? (§ 661.45)

The majority of commenters had no remark on this issue.

FHWA position: As discussed in our prior notice, in consultation with the BIA, a list of deficient BIA IRR bridges would be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges would be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) would be developed and would include, at a minimum, the following: (i) Sufficiency rating; (ii) status (structurally deficient or functionally obsolete); (iii) average daily traffic (NBI item 29); (iv) detour length (NBI item 19); and (v) truck average daily traffic (NBI item 109). These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA area offices, ITGs, and State and local governments.

The BIA area offices in consultation with Indian tribal governments, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with high truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

The New York State DOT was concerned that the decision of which bridge will be programmed for the IRRBP would be accomplished at the local level.

FHWA Response: There is nothing in the current language to preclude this. BIA area offices in consultation with ITGs must be involved in selection of candidate bridge projects since, as users of the facility, they are most familiar with local needs, and safety implications, as well as other factors related to priorization. The master list based on the national bridge inventory (NBI) would identify bridges which are deficient; however, prioritization would be made at the local level. We are not establishing the priority—merely providing a list of IRR bridges which are deficient.

Three commenters, the Navajo Nation, BIA Billings Area Office and BIA Fort Belknap Agency, thought only one list would be necessary, i.e., one for BIA owned IRR bridges.

FHWA Response: In order to include non-BIA owned IRR bridges two lists will need to be developed.

17. In the Event of Project Cost Overruns, How Would They be Funded? (§ 661.47)

Seven commenters had no remark and four agreed with the FHWA on this issue. The New York State DOT wanted the States to retain any "cost savings."

FHWA Response: The IRRBP funds are reimbursable and project specific. As such they are to be returned to the BIADOT/FLH in cases where "under runs" or "savings" occur.

The BIA Phoenix Area Office wanted to see specific language to clarify the process for handling overruns and further argued that under runs also should be considered.

FHWA Response: The question of under runs is addressed in item number 21. We have provided the following additional language to the rules: The BIA area road engineer (ARE) would request additional funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional funding is necessary.

Based on the preceding discussion, the response to the question of cost overrun treatment is as follows: Because of the critical nature of this program, BIA area road engineer approved costs in excess of the project estimate could be funded out of this program depending on the availability of funds and subject to BIADOT/FLH project approval procedures. The AREs would request additional IRRBP funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional IRRBP funding is necessary. Likewise, project cost over runs may be funded out of regular IRR program funds.

18. Could Regular IRR Funds be Used to Fund a Bridge Project? (§ 661.49)

Seven commenters had no comment and two agreed with the FHWA position set forth in the prior notice.

FHWA Position: Regular IRR construction funds can be used to fund a bridge project with the concurrence of the FHWA, BIADOT and the ARE.

The BIA Billings Area Office expressed concern that the IRR funds would be provided for non-BIA owned IRR bridges. The same commenter noted the desire to strike, "Note, IRR funds may not be used to match state HBRRP funds."

FHWA Response: In response to this comment, the ITG may elect to use their IRR funds for non-BIA IRR bridges. Title IX of Pub. L. 105–206, sec. 1115(f)(3), changed the ability to use IRR funds to match State HBRRP funds. The use of the HBRRP funds is outside the scope of this document.

The BIA Aberdeen Area Office wanted to know why the concurrence of the FHWA and the BIADOT is needed to use IRR program funds to fund a bridge construction project?

FHWA Response: The BIADOT and the FHWA have approval authority for all IRR projects which appear on a TIP, therefore concurrence is a requirement.

19. Could Bridge Maintenance Be Performed With These Funds? (§ 661.51)

Eight commenters have no comment and three agree with the FHWA position stated in the prior notice.

FHWA Position: As discussed in our prior notice, the response to this question is as follows. No, bridge maintenance type repairs would not be within the scope of funding, e.g., guard rail replacement, deck timber repair, delineators replacement, etc. There are maintenance funds available through annual Department of the Interior appropriations for use on BIA owned bridges. These Department of the Interior bridge maintenance funds would be the appropriate funding source for bridge maintenance.

20. Once Eligibility of a Bridge Project has Been Determined, how Will the Project be Funded/Programmed? (§ 661.9)

Several alternatives were set forth in the prior notice and we considered them fully in our review. For ease of

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reference, the alternatives are presented in tabular form at the end of this topic.

For BIA owned IRR bridges, the Pueblo of Zuni, BIA Aberdeen Area Office and BIA Great Lakes Agency generally preferred alternative 1; the Eastern Band of Cherokee Indians preferred alternative 1 along with a modified alternative 4; the New York State DOT preferred alternative 2; the Cherokee Nation preferred a combination of alternatives 2, 3 and 5 coupled with an Indian population factor; the Navajo Nation and the BIA Navajo Area Office preferred alternative 3; the BIA Billings Area Office and BIA Fort Belknap Agency preferred alternative 4; and the Confederated Salish and Kootenai Tribes of the Flathead Nation preferred alternative 5. The BIA Phoenix Area Office wanted to see a triage approach involving funding of the "worst first".

Most commenters did not want to see funding for non-BIA owned IRR bridges. Four commenters, the Cherokee Nation, Eastern Band of Cherokee Indians, Saginaw Chippewa Indian Tribe of Michigan and Isabella County, desire funding for non-BIA owned IRR bridges.

FHWA Response: The purpose of the IRRBP is to optimize the number of IRR bridges rehabilitated or replaced with the intent of eliminating as many deficient IRR bridges as possible during the TEA–21 period of authorization. Alternative 4 provides a first in and first out approach to fund these projects and, as such, would meet the program objective. Alternative 5, priorization of projects, would be used in cases where application packages arrive at the same time and the procedure outlines a method to settle any issues if such a situation were to occur. Alternative 4 is believed to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year. Funding for the IRRBP should be fully utilized in a given fiscal year to eliminate deficient IRR bridges which pose a potential safety problem for the Tribes and motoring public; to maximize the number of bridges participating in the IRRBP; and to reduce the impact of obligation limitation deductions on the IRR program from one fiscal year to the next by fully obligating available IRRBP funding. We realize that this whole program hinges on ITGs using their regular IRR program funds for development of PS&E packages regardless of the approach being used.

For non-BIA IRR bridges, the procedures using 20 percent of the IRRBP funds should parallel the same procedures adopted for the BIA owned IRR bridges.

While alternative 1, deficient bridge deck area percentage, provides allocation of funds to be set aside for at a specific BIA Area Office, it has the potential to tie bridge program funds up among the 12 BIA area offices for an unknown period of time. There is the likelihood of some BIA Area Offices not having PS&E packages in order to use up all of the available funding under this alternative. This being the case, it would impact the other BIA Area Offices regarding the amount of regular IRR funds available in the following fiscal year. Alternative 1 is not likely to maximize the rehabilitation and replacement of deficient IRR bridges. Alternative 2, deficient bridge deck area percentage—State specific, follows along the same line as alternative 1, but would be State specific.

Alternative 3, percentage of deficient bridges, does not reflect a true measure for programming bridges since it is based on numbers of deficient bridges. A small bridge will have the same value as a larger, more costly bridge. The costs will not be proportional and therefore not maximize the use of the IRRBP funding.

Alternatives 1, 2 and 3 essentially have similar limitations imposed on the bridge program as the previous "not less than 1 percent" HBRRP which many people complained about. Congress eliminated the "not less than 1 percent" HBRRP with the TEA–21 Restoration Act. The basis of the complaints had to do with inequities in funding with more going toward bridges east of the Mississippi River when a greater number of deficient IRR bridges are actually to the west of the Mississippi River. In some cases the HBRRP funding was not being fully utilized.

We believe that after determination of bridge project eligibility, funding and/or programming should consist of a combination of alternatives 4 and 5. Based on the preceding discussion, the response to the question of how projects will be funded/programmed is as follows: Funding and/or programming of construction projects for BIA owned IRR bridges would be based on the order of receipt of a complete application package, i.e., eligibility requirements met, PS&E package is complete, etc. All application packages would be placed in a queue upon submission to the BIADOT and date stamped. This submission queue would form the basis for prioritization during any fiscal year. After the queue for the FY is filled up, that is, the obligation limitation is used up, a queue for the following FY would be established.

In those cases where application packages have arrived at the same time, application packages would be ranked and prioritized based on: (i) Bridge sufficiency rating; (ii) bridge status with structurally deficient having precedence over functionally obsolete; (iii) bridges on school bus routes; (iv) detour length; (v) ADT; and (vi) truck ADT. Funding and approval would be based on this priority ranking.

ALTERNATIVES FOR THE IRR BRIDGE PROGRAM

	Deficient IRR Bridges			
	Alt No.	BIA	Alt No.	Non-BIA
Bridge funds to be allocated to the BIA Area Offices:				
Based on bridge deck area for deficient bridges.	1	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State.	1	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges

ALTERNATIVES FOR THE IRR BRIDGE PROGRAM—Continued

	Deficient IRR Bridges			
	Alt No.	BIA	Alt No.	Non-BIA
Based on bridge deck area for deficient bridges but State specific.	2	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent only against bridge projects in the specific state on which the deficient bridge funds were generated (similar to the not less than 1 percent HBRRP).	1	Intentionally left blank
Based on *number* of deficient bridges.	3	Calculation made of the number of deficient bridges within a given BIA Area Office. Based on the number of deficient bridges, a percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State.		Intentionally left blank
Based on order of receipt of the PS&E package (first in first out).	4	Bridges are placed in a queue based on the order of receipt of a complete PS&E package. Funds are made available to the BIA Area Office based on the order of submission.	2	Bridges are placed in a queue based on the order of receipt of a complete PS&E package. Funds are made available to the BIA Area Office based on the order of submission. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges
Based on ranking of received PS&E Packages.	5	Bridges are prioritized and ranked based on SR, status, school bus route, detour length, ADT, and truck ADT. Funds are allocated to the BIA Area Office based on the ranking.	3	Submitted complete PS&E packages are ranked and priontized by sufficiency rating, etc. Funds are made available to the Area Office based on the priority ranking. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges

21. Under Alternative Procedures Presented Above, After a Bridge Project Has Been Completed, What Happens With the Excess or Surplus Contract Authority? (§ 661.11)

The majority of commenters had no comment on this issue.

Three commenters, the BIA Navajo Area Office, the Navajo Nation and the BIA Great Lakes Agency, wanted to see excess funds reserved for use on another bridge project involving that BIA Area office. The BIA Billings Area Office and the BIA Fort Belknap Agency, wanted to see excess funds being sent back to BIADOT/FHWA for use on additional approved IRR bridge projects. The New York State DOT, wanted the funds to be reserved for use within the State.

FHWA Response: Since the funding is project specific, once a bridge construction project has been completed under this program, any excess or surplus funding would be returned to BIADOT/FHWA. These surplus funds would be for use on additional approved deficient IRR bridge projects. This is based on the need for maximizing the numbers of bridges to be either replaced or rehabilitated in a nationwide program. Since this is a cost reimbursable program, there are no savings and cost underruns shall be returned to BIADOT/FHWA.

Rulemaking Analyses and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to public interest. For the reasons set forth below, the FHWA has determined that prior notice to the public on this action is unnessary and contrary to the public interest.

The FHWA has determined that prior notice and opportunity for comment are unnecessary because comments regarding the project selection/fund allocation procedures proposed for the IRRBP were solicited in a February 12, 1999, **Federal Register** notice along with informal meetings on this subject that were held at various locations during December 1998. We have reviewed all comments received in response to the published notice and those introduced at the public meetings and have incorporated changes to the original document where necessary.

The criticality of having in place the project selection/fund allocation procedures for the IRRBP cannot be over emphasized since there are deficient IRR bridges which are both on and off reservation which require remedy to safety, functional and structural deficiencies. These deficient IRR bridges pose a safety threat to residents of the Indian reservation as well as the motoring public.

The agency has currently identified 163 deficient BIA owned IRR bridges where IRRBP funds can be used to alleviate the safety deficiencies identified in bridge inspection reports and subsequent data submitted to the NBI. Likewise, there are approximately 940 non-BIA owned IRR bridges which are also deficient. While the IRRBP may not be able to replace or rehabilitate all bridges which are deficient, it attempts to correct ones which have a dire need; these are ones that have been chosen for participation in the IRRBP by the Indian tribal governments.

By proceeding with implementation of the program procedures prescribed herein, the FHWA plans to fully utilize IRRBP funding by eliminating deficient IRR bridges which pose a potential safety problem for the Tribes and motoring public; maximizing the number of bridges participating in the IRRBP; and reducing the impact of obligation limitation deductions on the IRR program from one fiscal year to the next.

The IRRBP funds were available in

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The IRRBP funds were available in the fourth quarter of FY 1998; however, the project selection/fund allocation procedures were not in place at that time to allow the FHWA to legally release these funds. We have essentially lost use of these funds for one year (FY1998) of the four year funding provided in TEA–21. Unless these procedures are put in place very soon, we also may not be able to provide the IRRBP funds to the BIA with enough time to obligate against the bridge projects which are waiting to be funded in the current fiscal year (FY1999).

In summary: (1) The regulations are necessary to put in place the project selection/fund allocation procedures for the IRRBP immediately; (2) the IRRBP is vitally important to alleviate deficient IRR bridges, bridges which are crucial to the well being of Native Americans living both on and off reservations, as well as the motoring public using these bridges; (3) IRR bridges play an important role in support of the transportation infrastructure on reservations; and (4) the regulations govern a program designed to alleviate safety, structural and functional deficiencies for IRR bridges of which there is a immediate and critical need.

In conclusion, any further delay in adopting the prescribed procedures may impact safety of the motoring public in general and the Tribes in particular using these deficient IRR bridges. Accordingly, we believe that imposition of notice and comment procedures prior to adoption of this rule would prove potentially detrimental to safety and, thus, contrary to the public interest.

Nevertheless, we will invite public comment in response to the interim final rule. Comments received will be carefully considered in evaluating whether any change to the interim rule adopted here is warranted.

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately upon publication, 5 U.S.C. 553(d)(3). The FHWA has determined that good cause exists in this instance to make this rule effective for the following reasons: (1) The regulations are necessary to put in place the project selection/fund allocation procedures for the IRRBP immediately; (2) the IRRBP is vitally important to alleviate deficient IRR bridges, bridges which are crucial to the well being of Native Americans living both on and off reservations, as well as the motoring public using these bridges; (3) IRR bridges play an important role in supporting the transportation infrastructure on reservations; and (4) the regulations govern a program designed to alleviate safety, structural and functional deficiencies for IRR bridges of which there is a immediate and critical need. We emphasize that making these rules effective immediately will ensure that IRRBP funds may be readily dispersed and, thus, will be responsive to the goal of fully utilizing IRRBP funding in a given fiscal year to maximize the number of bridges participating in the program.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities including Indian Tribal and local governments. The funding available under the IRRBP is thought to have a beneficial economic impact on small entities; however, the funding impact is not expected to be significant. Accordingly, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities, except in a positive manner.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Polices and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking action will be minimal; therefore, a full regulatory evaluation is not required. The $13 million in IRRBP funds comprises only 6 percent of the overall IRR program funds (FY 1999) and does not have a significant economic impact on the IRR program. Therefore, the economic impact is considered minimal.

Unfunded Mandates Reform Act of 1995

This interim rule does not impose a Federal mandate as defined by the unfunded mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205 Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 661

Bridges, Highways and roads, Indian reservation roads and bridges.

Issued on: July 9, 1999.

Kenneth R. Wykle,

Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, Chapter I, as set forth below:

1. Add part 661 to read as follows:

PART 661—INDIAN RESERVATION ROAD BRIDGE PROGRAM

Sec.

661.1 What is the purpose of this regulation?
661.3 Who must comply with this regulation?
661.5 What definitions apply to this regulation?
661.7 What is the Indian Reservation Road Bridge Program (IRRBP)?
661.9 How will the bridge project be funded/programmed once eligibility has been determined?
661.11 After a bridge project has been completed what happens with the excess or surplus funding?
661.13 What restrictions are there on the use of the IRRBP funds?
661.15 What is the total funding available for the IRR Bridge Program?
661.17 When will these funds become available?
661.19 When does an eligible project receive funding?
661.21 How long will these funds be available?
661.23 What can these IRR bridge funds be used for?
661.25 What are the criteria for bridge eligibility?
661.27 When is a bridge eligible for replacement?
661.29 When is a bridge eligible for rehabilitation?
661.31 How does ownership impact project selection?
661.33 Do IRRBP projects have to be on a transportation improvement program (TIP)?
661.35 What percent of the funding in any fiscal year is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges?
661.37 What percent of a specific project's construction costs is covered under this program?
661.39 When are IRR bridge projects eligible for funding?
661.41 What does a complete application package consist of?
661.43 How are the FY 1998 projects to be treated?
661.45 How is a list of deficient bridges to be generated?
661.47 In the event of project cost over runs, how would they be funded?
661.49 Could regular IRR funds be used to fund a bridge project?
661.51 Could bridge maintenance be performed with these funds?

Authority: 23 U.S.C. 120(j) and (k), 202, and 315; 49 CFR 1.48.

§ 661.1 What is the purpose of this regulation?

The purpose of this regulation is to prescribe policies for project selection and fund allocation procedures for administering the Indian Reservation Road Bridge Program (IRRBP).

§ 661.3 Who must comply with this regulation?

Public authorities must comply to participate in the IRRBP by preparing plans, specification and estimates (PS&E) for deficient Indian Reservation Road (IRR) bridges and make application for construction funds for the replacement or rehabilitation of these bridges.

§ 661.5 What definitions apply to this regulation?

The following definitions apply to this regulation:

Construction engineering (CE) is the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials

incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

Functional obsolescence (FO) is the state or process of being one in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part.

Indian reservation road means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

Indian reservation road bridge means a structure located on an Indian reservation road (IRR), including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Structural deficient (SD) bridge means a bridge that has been restricted to light vehicles only, is closed or requires immediate rehabilitation to remain open.

Sufficiency rating (SR) means the numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

§ 661.7 What is the Indian Reservation Road Bridge Program (IRRBP)?

Section 202(d)(4) of title 23, U.S.C., establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves not less than $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. This program which addresses the replacement of deficient IRR bridges is referred to as the IRRBP.

§ 661.9 How will the bridge project be funded/programmed once eligibility has been determined?

(a) Funding and/or programming of construction projects for IRR bridges would be based on the order of receipt of a complete application package, i.e., eligibility requirements met, PS&E package is complete, etc. All application packages would be placed in a queue upon submission to the BIADOT and date stamped. This submission queue would form the basis for prioritization during any fiscal year (FY). After the queue for the FY is filled up, that is, the IRRBP funding is used up, a queue for the following FY would be established.

(b) In those cases where application packages have arrived at the same time, application packages would be ranked and prioritized based on the following criteria:

(1) Bridge sufficiency rating (SR);

(2) Bridge status with structurally deficient (SD) having precedence over functionally obsolete (FO);

(3) Bridges on school bus routes;

(4) Detour length;

(5) Average daily traffic; and

(6) Truck average daily traffic.

§ 661.11 After a bridge project has been completed what happens with the excess or surplus funding?

Since the funding is project specific, once a bridge construction project has been completed under this program, any excess or surplus funding would be returned to BIADOT/FHWA for use on additional approved deficient IRR bridge projects.

§ 661.13 What restrictions are there on the use of the IRRBP funds?

The IRRBP funds can only be used for construction and construction engineering (CE) and may not be used for project development.

§ 661.15 What is the total funding available for the IRR Bridge Program?

The statute provides a total program funding of not less than $13 million for each fiscal year.

§ 661.17 When will these funds become

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§ 661.17 When will these funds become available?

These funds become available on October 1 of each fiscal year.

§ 661.19 When does an eligible project receive funding?

The statute provides that these funds are provided after the Secretary of Transportation (FHWA) approves a completed PS&E.

§ 661.21 How long will these funds be available?

The statute provides that the funds for each fiscal year are available for the year authorized plus three years (a total of four years).

§ 661.23 What can these IRR bridge funds be used for?

The statute provides that these funds can be used to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for deficient IRR bridges, including multiple pipe culverts.

§ 661.25 What are the criteria for bridge eligibility?

(a) Bridge eligibility requires the following:

(1) Have an opening of 20 feet or more;

(2) Be on an IRR;

(3) Be unsafe because of structural deficiencies, physical deterioration or functional obsolescence; and

(4) Be recorded in the national bridge inventory (NBI) maintained by the FHWA.

(b) Bridges that were constructed, rehabilitated or replaced in the last 10 years, will be eligible only for seismic retrofit or installation of scour countermeasures.

§ 661.27 When is a bridge eligible for replacement?

To be eligible for replacement, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, the bridge must have a sufficiency rating of less than 50 to be eligible for replacement.

§ 661.29 When is a bridge eligible for rehabilitation?

To be eligible for rehabilitation, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, the bridge must have a sufficiency rating of less than or equal to 80 to be eligible for rehabilitation. A bridge would be eligible for replacement if the total life cycle cost for bridge rehabilitation exceeds the costs to replace.

§ 661.31 How does ownership impact project selection?

Since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration would be given to funding construction projects for deficient BIA owned IRR bridges. We emphasize that consideration could also be given to the funding of construction projects for the deficient non-BIA, IRR bridges, however; these projects must be supported by a tribal resolution.

§ 661.33 Do IRRBP projects have to be on a transportation improvement program (TIP)?

Yes. All IRRBP projects have to be listed on an approved TIP. Under 23 U.S.C. 204(j), IRR bridges must appear on the BIA's IRRBP TIP and be forwarded to the State.

§ 661.35 What percent of the funding in any fiscal year is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges?

Up to 80 percent ($10.4 million) of funding in any fiscal year would be available for use on BIA owned IRR bridges. This would leave 20 percent ($2.6 million) of funding in any fiscal year that would be available for use on non-BIA owned IRR bridges. A smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

§ 661.37 What percent of a specific project's construction costs is covered under this program?

The following funding provisions apply in administration of the IRRBP:

(a) 100 percent IRRBP funding would be provided for a BIA owned IRR bridge;

(b) Up to 80 percent of the IRRBP funding would be provided for a State, county, or locally owned non-BIA IRR bridge;

(c) States, counties, local and tribal governments would be required to provide at least 20 percent of the funds for non-BIA owned IRR bridges;

(d) The IRRBP funding ceiling for any single non-BIA owned IRR bridge project would be $1.5 million.

§ 661.39 When are IRR bridge projects eligible for funding?

The statute provides that IRR funds to carry out IRRBP projects shall be made available only on approval of the PS&E by the Secretary (FHWA). Approval consists of having completed and approved bridge design, specifications and estimates. The project must be ready for construction, right of way must have been acquired, and the project contract must be awarded within 120 calendar days of funding. A copy of the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP must be forwarded by the area office to the BIADOT/FLH for review and acceptance. For non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project. Submittal of an incomplete application package would form the basis for project disapproval and the BIA area office would have to revise and resubmit the package.

§ 661.41 What does a complete application package consist of?

A complete application package would consist of the following: the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP. In addition to the preceding items, for non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project.

§ 661.43 How are the FY 1998 projects to be treated?

In order not to penalize any BIA area office which completed PS&E packages in FY 1998 that were not funded because the project selection/fund allocation procedures for distribution of funds for FY 1998 were not in place, the funds for approved projects would be made available to the BIA area offices on receipt and acceptance of their application packages.

§ 661.45 How is a list of deficient bridges to be generated?

(a) In consultation with the BIA, a list of deficient BIA IRR bridges will be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges will be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) will be developed and will include, at a minimum, the following:

(1) Sufficiency rating (SR);

(2) Status (structurally deficient or functionally obsolete);

(3) Average daily traffic (NBI item 29);

(4) Detour length (NBI item 19); and

(5) Truck average daily traffic (NBI item 109).

(b) These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA area offices, Indian tribal governments (ITG)s, and State and local governments.

(c) BIA area offices in consultation with ITGs, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with higher truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

§ 661.47 In the event of project cost over runs, how would they be funded?

(a) Because of the critical nature of this program, BIA area road engineer (ARE) approved costs in excess of the project estimate could be funded out of this program depending on the availability of funds and subject to BIADOT/FLH project approval procedures. The ARE would request additional IRRBP funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional IRRBP funding is necessary.

(b) In addition, project cost over runs may be funded out of regular IRR program funds.

§ 661.49 Could regular IRR funds be used to fund a bridge project?

Yes. Regular IRR construction funds can be used to fund a bridge project with the concurrence of the FHWA, BIADOT and the BIA ARE.

§ 661.51 Could bridge maintenance be performed with these funds?

No. Bridge maintenance repairs would not be within the scope of funding, e.g., guard rail repair, deck repairs, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc. There are maintenance funds available through annual Department of the Interior appropriations for use on BIA owned bridges. The Department of the Interior maintenance funds would be the appropriate funding source for bridge maintenance.

[FR Doc. 99–18308 Filed 7–16–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA36

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Extension of the Active Duty Dependents Dental Plan to Overseas Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements statutory authority for the extension of the Active Duty Dependents Dental Plan to overseas areas.

EFFECTIVE DATE: September 1, 1997.

ADDRESSES: TRICARE Management Activity, 16401 East Centretech, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Brian Grassi, TRICARE Management Activity, (303) 676–3496.

SUPPLEMENTARY INFORMATION:

I. Overview of the Final Rule

On June 25, 1997, an interim final rule regarding the benefit and operational issues associated with the implementation of the extension of the Active Duty Dependents Dental Plan to overseas areas was published (62 FR 33940).

Military force reductions in Europe, the Middle East, and the Pacific have resulted in diminished medical services for many areas, particularly those areas where the active duty end strengths have fallen below levels which would support a military medical facility. Service members and their families, particularly those in remote areas, have experienced access problems in obtaining dental services at military facilities. This rule is based on section 703 of the National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103–337, and section 732 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, which amended Title 10, United States Code, section 1076a. These laws allow the Department to extend the Active Duty Dependents Dental Plan to overseas areas and waive or reduce required cost-shares to the extent the Secretary determines appropriate for the effective and efficient operation of the Plan.

Family members enrolled in the Active Duty Dependents Dental Plan will be allowed to receive dental care from host nation providers and have the dental claims processed by a dental contractor. Where applicable, host nation providers who meet accepted professional dental practice standards will be identified by the local military dental treatment facility (DTF) commander and the overseas lead agents.

Enrolled family members overseas will be eligible to obtain the same basic dental benefits offered to enrollees in the Active Duty Dependents Dental Plan (also referred to as the TRICARE Family Member Dental Plan or TFMDP) in the Continental United States subject to availability and accessibility of these services. For the purposes of this program, the Continental United States is defined as the forth-eight contiguous states, as well as Alaska, Hawaii, Guam, Puerto Rico, the District of Columbia, the U.S. Virgin Islands and Canada. Overseas is defined as those countries not previously mentioned.

In order to participate, beneficiaries must voluntarily enroll in the TFMDP and pay the standard monthly premium. In countries with a military DTF, the local military DTF commander will refer enrollees to designated host nation providers for all covered dental services. These referrals will be contingent upon the lack of availability of these dental services in the DTF and the Department's designation of qualified host nation providers.

In countries without a military DTF, enrollees can receive treatment for non-orthodontic dental care without a referral from any qualified host nation provider meeting professionally accepted standards. The Department encourages enrollees residing in these countries to first contact their respective overseas lead agent, U.S. Embassy or Consulate or other local representatives of the U.S. Government before seeking non-orthodontic care to determine if any of these agencies can assist in identifying a qualified host nation provider in their local area. For orthodontic care in these countries, the overseas lead agent will refer enrollees to designated host nation providers.

Where a referral is required, the issuing activity must complete a Non-Availability Statement (NAS) and provide this statement to the enrollee before care can be received and the claim can be processed by the dental contractor. To obtain a referral and NAS, family members are not restricted to visiting a DTF of their sponsor's branch of service, rather, they should contact their primary servicing military DTF.

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Basic dental care encompasses diagnostic and preventive (exams, x-rays, cleanings, etc), sealants, restorative (fillings, crowns, etc), endodontics (root canals, etc.), periodontics (gum surgery, etc.), oral surgery (extractions, etc.), and prosthodontics (bridges, dentures, etc.) While the annual cap of $1,000 and lifetime cap of $1,200 for orthodontic care is applicable in these overseas locations, the Department will pay the enrollee's cost-share for some non-orthodontic services as well as any difference between the provider's billed charge and the dental claims processor's allowance, subject to the amount remaining on the enrollee's annual or lifetime maximum.

This final rule will allow dental claims to be paid on a "billed charge" basis. Billed charges are charges submitted by host nation dental providers for the costs of dental care in their country. These charges are not based on Diagnostic Related Groups nor are they expected to be developed based on American Dental Association current dental terminology codes.

Since publication of the interim final rule, section 732 of the National Defense Authorization Act for Fiscal Year 1998 authorized the Secretary to waive or reduce cost-shares in overseas areas. Therefore, the Department has implemented procedures to waive the cost shares for certain non-orthodontic benefits as long as the enrollee has not exceeded their annual maximum. The previous procedures for waivers to the annual and lifetime maximums are no longer applicable.

Additionally, the interim final rule stated that enrollees in remote locations would not be required to obtain an NAS to receive dental services. The Department has changed that provision so that enrollees in remote locations will be required to obtain an NAS from their respective overseas lead agent prior to receiving orthodontic care. This change provides an opportunity for the overseas lead agent to make referrals to designated host nation orthodontists, monitor and approve treatment plans and advise enrollees of other options. It also provides appropriate oversight in a benefit area where only a one-time lifetime benefit is available.

Finally, the interim final rule limited the benefit to family members accompanying their active duty sponsors while overseas. That provision has been deleted because the overseas extension was designated to be portable and available to enrolled family members traveling or residing overseas with or without their sponsor.

II. Public Comments

The interim final rule was published on July 25, 1997 (62 FR 33940). We did not receive any public comments.

III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities and Military personnel.

Accordingly, 32 CFR part 1999 is amended as follows:

PART 1999—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. Chapter 55.

2. Section 199.13 is amended by revising paragraph (i) to read as follows:

§ 199.13 Active duty dependents dental plan.

* * * * *

(i) *Extension of the Active Duty Dependents Dental Plan to areas outside the United States.* The Assistant Secretary of Defense (Health Affairs) (ASD(HA) may, under the authority of 10 U.S.C. 1076a(h), extend the Active Duty Dependents Dental Plan to areas other than those areas specified in paragraph (a)(2)(i) of this section for the eligible beneficiaries of members of the Uniformed Services. In extending the program outside the Continental United States, the ASD(HA), or designee, is authorized to establish program elements, methods of administration and payment rates and procedures to providers that are different from those in effect under this section in the Continental United States to the extent the ASD(HA), or designee, determines necessary for the effective and efficient operation of the plan outside the Continental United States. This includes provisions for preauthorization of care if the needed services are not available in a Uniformed Service overseas dental treatment facility and payment by the Department of certain cost-shares and other portions of a provider's billed charges. Other differences may occur based on limitations in the availability and capabilities of the Uniformed Services overseas dental treatment facility and a particular nation's civilian sector providers in certain areas. Otherwise, rules pertaining to services covered under the plan and quality of care standards for providers shall be comparable to those in effect under this section in the Continental United States and available military guidelines. In addition, all provisions of 10 U.S.C. 1076a shall remain in effect.

Dated: July 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–18250 Filed 7–16–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ39

Veterans Education: Effective Date for Reducing Educational Assistance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations pertaining to the effective dates of reductions or discontinuances of monthly payments of educational assistance under the Montgomery GI Bill—Active Duty. Pursuant to statutory authorization, VA requires veterans or servicemembers to certify their continued pursuit of a program of education before they may receive such monthly payments. VA further provides for reductions in the rates of educational assistance in the event the veteran or servicemember reduces the rate of training by withdrawing from part of a course. By statute, the effective date of an adjustment of benefits made on the basis of a monthly certification by a veteran or person is the date of the change. This document revises the regulations to reflect the statutory effective date.

DATES: Effective Date: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 3680(g) allow VA to require eligible veterans and eligible persons to certify their continued pursuit of a program of education before they may receive their monthly payment of educational assistance.

VA requires such certification by regulation for individuals receiving educational assistance under the Montgomery GI Bill—Active Duty (MGIB) (38 CFR 21.7154). Further, VA regulations provide for reduction of educational benefits where a veteran or servicemember withdraws from part of a course (38 CFR 21.7135(f)). By statute, any adjustment of benefits made on the basis of certification is effective as of the date of the occurrence (38 U.S.C. 5113(b)).

Previously, 38 CFR 21.7135(f)(1) provided that the effective date for reduction of a veteran's or servicemember's educational assistance was the earlier of the end of the month or the end of the term in which the withdrawal from part of a course occurred. The regulations are now revised to reflect the statutory requirement that the date of change is the effective date.

Nonsubstantive changes also are made for the purpose of clarity.

Substantive changes made by this final rule merely reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612 and does not directly affect small entities. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 22, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7135, paragraph (f)(1) introductory text and the authority citations for paragraphs (f)(2) and (f)(3) are revised to read as follows:

§ 21.7135 Discontinuance dates.

* * * * *

(f) * * *

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the veteran's or servicemember's educational assistance effective the date on which the withdrawal occurs when either:

* * * * *

(2) * * *

(Authority: 38 U.S.C. 3680(a))

(3) * * *

(Authority: 38 U.S.C. 3034, 3680(a), 5113(b))

* * * * *

[FR Doc. 99–18379 Filed 7–16–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA52–1–7422a; FRL–6378–3]

Approval and Promulgation of Air Quality State Implementation Plans; Louisiana; Approval of Clean Fuel Fleet Substitution Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on approving Louisiana's State Implementation Plan (SIP) revision because it adequately demonstrates that the Louisiana Clean Fuel Fleet (CFF) substitute program achieves equivalent or better long term reductions in emissions of ozone producing and toxic air pollutants than the Federal CFF program. A detailed rationale for the approval is set forth in the accompanying Technical Support Document.

DATES: This rule is effective on September 17, 1999 without further notice, unless we receive adverse comment by August 18, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of the documents about this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least two working days in advance before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section, (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana, 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7354 or via e-mail at scoggins.paul@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region 6 address.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

What action is EPA taking?
What is the background?
What did the State submit?
What is the process for EPA approval of this action?

What Action is EPA Taking?

After review of the SIP revision request, we find the Louisiana's substitution plan for the Federal CFF program requirements to be approvable because the revision adequately demonstrated Volatile Organic Compounds (VOC) emission reductions that are sufficient to meet or exceed the

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emission reductions of the Federal CFF program.

The information submitted by Louisiana demonstrated that the substitution of the State's Clean Fuel Fleet program with above Reasonable Available Control Technology (RACT) VOC emission reductions achieved from tank fitting controls pursuant to Louisiana Administrative Code (LAC) 33:III.2103 will not result in new National Ambient Air Quality Standards (NAAQS) violations, nor increase the frequency or severity of existing NAAQS violations, nor delay attainment and maintenance of the NAAQS in the Baton Rouge Ozone nonattainment area.

We believe the SIP revision submitted by Louisiana meets the requirements of a substitute program that achieves equivalent long term emission reductions of ozone precursors in the Baton Rouge ozone nonattainment area. The State surveyed nine storage tanks in Baton Rouge area which show, over a ten year period equivalent to the Federal CFF program, an estimated total VOC emission reduction of 2,010 tons. The emission reductions over the ten year period from the Federal CFF program were estimated to be 1,264 tons.

What is the Background?

On November 15, 1990, Congress enacted amendments to the 1997 Clean Air Act; Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Part C of Title II was added to the Act to establish two programs: a clean-fuel vehicle pilot program in the State of California (the California Pilot Test Program) and the Federal CFF program in certain ozone and carbon monoxide nonattainment areas. The CFF program is required by section 182(c)(4), 42 U.S.C., section 7511a(c)(4) and the underlying requirements are in sections 246 of the Act, 42 U.S.C., section 7586.

On November 10, 1994, the Louisiana Department of Environmental Quality submitted a SIP revision to the EPA, Region 6, which contained provisions for a state CFF program. The SIP submittal was in response to publication of the EPA's final CFF program rule (58 FR 11888, March 1, 1993) which established the 40 CFR part 88, subpart C regulations required by the Act. The Louisiana CFF program SIP revision was reviewed and subsequently approved by EPA on October 23, 1995 (60 FR 54305). State regulations governing the CFF program are codified in LAC 33:III.1951–1973. The Louisiana CFF program would have required covered vehicle fleet owners in the Baton Rouge ozone nonattainment area to purchase specified percentages of clean fuel vehicles beginning in September, 1998.

Section 182(c)(4) of the Act, 42 U.S.C. 7511a, allows States to opt-out of the Federal CFF program by submitting, for EPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emissions reductions in ozone producing and toxic air emissions as the Federal CFF program. We may approve such a revision "only if it consists exclusively of provisions other than those required under this Act for the area."

After a thorough evaluation of their CFF program's costs and marginal benefits, the State of Louisiana elected to opt-out of the CFF program requirements.

What did the State Submit?

Louisiana submitted a SIP revision, on April 1, 1999, that substitutes the long term emissions reductions resulting from a CFF program for the Baton Rouge nonattainment area. The revision was adopted after reasonable public notice and public hearing as required by sections 110(a)(2) and 110(l) of the Act and 40 CFR 51.102(f). The submission was reviewed and determined to be administratively complete on April 6, 1999. The submittal was then reviewed for approvability by EPA Region 6 and EPA headquarters.

The State of Louisiana is substituting emission reductions achieved from LAC 33:III.2103 which impose controls beyond the Act requirements (i.e., RACT) for storage tanks in the Baton Rouge nonattainment area. The VOC storage tank rule LAC 33:III.2103 goes beyond Act requirements by requiring guide pole and stilling well controls on external floating roof tanks. The resultant long term emission reductions were greater than the Louisiana CFF program emission reductions in the ozone nonattainment area.

The SIP submittal contains: (1) Letter dated March 21, 1999, from Governor Mike Foster replacing the CFF program submitted on November 10, 1994, and subsequently approved by EPA on October 23, 1995; (2) plan revision dated March 22, 1999, and received at EPA on April 1, 1999; (3) documentation of the public notice dated December 21, 1998, and a transcript of the public hearing dated January 25, 1999; and (4) supplemental information dated January 22, 1999.

The areas affected by this substitute program include the parishes of Ascension, Iberville, East Baton Rouge, Livingston, and West Baton Rouge. These five parishes comprise the Baton Rouge ozone nonattainment area.

A more detailed discussion of the Louisiana CFF substitute program elements and control strategy can be found in the Technical Support Document available from the U.S. EPA Region 6 office.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

What is the Process for EPA Approval of this Action?

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the action if adverse comments are received.

This rule will be effective on September 17, 1999 without further notice unless we receive adverse comment by August 18, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not initiate a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is: (1) "economically significant," as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the order has the potential to influence the regulation.

This final rule is not subject to E.O. 13045 because it approves a state program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 60 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective September 17, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 1999. Filing a petition for reconsideration with the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Implementation plans, Reporting and recordkeeping requirements.

Dated: July 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

2. In § 52.970(e) the second table is amended by revising the title to the table to read "EPA approved Louisiana nonregulatory provisions and quasi-regulatory measures", revising the first column title "Control measures" to read "Name of SIP provision", revising the last column title "Comments" to read "Explanation" and adding a new entry to the end of the table to read as follows:

§ 52.970 Identification of plan.

* * * * *

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

* * * * *

EPA Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanation
Clean Fuel Fleet Program Substitution.	Baton Rouge, LA	03/21/99	7/19/99 64 FR 38580.	Substituted above RACT VOC emission reductions from storage tank rule LAC 33:III.2103

[FR Doc. 99–18037 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–207–1–9924a; TN–214–1–9925a; FRL–6379–4]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee SIP Regarding National Emission Standards for Hazardous Air Pollutants and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to Rule 1200–3–2–.01 and Rule 1200–3–9–.01 of the Tennessee State Implementation Plan (SIP) that were submitted to EPA by the Tennessee Department of Air Pollution Control (TDAPC), on June 16, 1998 and February 11, 1999. Rule 1200–3–2–.01 is revised to include a definition for national emission standards for hazardous air pollutants (NESHAPs). Rule 1200–3–9–.01 is revised to incorporate by reference the definition for volatile organic compounds (VOCs) contained in 40 CFR part 51, subpart F.

DATES: This direct final rule is effective September 17, 1999 without further notice, unless EPA receives adverse comment by August 18, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531, 615/532–0554.

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA is approving revisions to Rules 1200–3–2–.01 and 1200–3–9–.01 of the Tennessee SIP. Rule 1200–3–2–.01 is amended to include a subparagraph establishing a definition for NESHAPs. Rule 1200–3–9–.01 is revised to incorporate by reference an updated definition for VOCs contained in 40 CFR part 51, subpart F.

II. Analysis of State's Submittal

Rule 1200–3–2–.01 is being amended to include the following definition for NESHAPs: "standards for the emissions of hazardous air pollutants promulgated by the Administrator of the Environmental Protection Agency and published in the **Federal Register**." The purpose for this addition is to ensure that the Tennessee SIP includes an accurate description of these emission standards, which are applied to new major sources and modifications through implementation of the construction permitting programs that were approved into the SIP via Rule 1200–3–2.

The definition for VOCs in Rule 1200–3–9–.01 is revised to be consistent with the definition for this term that was approved by EPA on October 8, 1996 (61 FR 52848). The revision adds HFC 43–10mee and HCFC 225ca and cb to the list of compounds excluded from the definition of VOCs on the basis that these compounds have negligible contribution to tropospheric ozone formation. The definition is revised for use in preparing SIPs to attain the National Ambient Air Quality Standard (NAAQS) for ozone under Title I of the Clean Air Act.

III. Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with Clean Air Act and EPA requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 17, 1999 without further notice unless the Agency receives adverse comments by August 18, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 17, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 14, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2220(c) is amended by revising the entries for Section 1200–3–2–.01 and Section 1200–3–9–.01 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED TENNESSEE REGULATIONS FOR TENNESSEE

State citation	Title/subject	Adoption date	EPA approval date	Federal Register notice
Section 1200–3–2–.01	General Definitions	07/29/93	7/19/99	[64 FR 38582
• •	•	•	•	• •
Section 1200–3–9–.01	Construction Permits	01/26/99	7/19/99	[64 FR 38582

[FR Doc. 99–18043 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY31–192a, FRL–6379–2]

Approval and Promulgation of State Plans For Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving the State Plan submitted by New York implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State Plan establishes performance standards for existing MSW landfills located in New York State and provides for the implementation and enforcement of those standards, which will reduce the designated pollutants.

DATES: This direct final rule is effective on September 17, 1999 without further notice, unless EPA receives adverse comment by August 18, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Craig Flamm or Kirk Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background
II. State Submittal
III. Review of State Submittal
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B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted
C. Inventory of Existing MSW Landfills in the State Affected by the State Plan
D. Emission Limitations for MSW Landfills
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V. Administrative Requirements
A. Executive Order 12866
B. Executive Order 12875
C. Executive Order 13045
D. Executive Order 13084

E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. Petitions for Judicial Review

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA established procedures for states to submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards are set under sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act.

As required by section 111(d) of the Act, EPA established a process, at title 40 of the Code of Federal Regulations (CFR) part 60, subpart B which states must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes emission guidelines in accordance with 40 CFR section 60.22 which contain information pertinent to the control of the designated pollutant from existing sources for that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a state's section 111(d) plan for a designated facility must comply with the emission guidelines for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published emission guidelines (EG) for existing Municipal Solid Waste (MSW) landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and the NSPS for new MSW landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). *See*, 61 FR 9905 (March 12, 1996). The NSPS and EG regulate MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. To determine if emissions control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991. Under 40 CFR 60.23(a), states were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG (by December 12, 1996).

On June 16, 1998, EPA published in the **Federal Register** (63 FR 32743) a direct final action which amended, corrected errors in, and clarified the regulatory text of the "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," which was promulgated on March 12, 1996. The Background section of the amended rule (63 FR 32744) states, "These changes do not significantly modify the requirements of the regulation." No adverse comments were received on the amended landfill rule, and as a result, it became effective on August 17, 1998.

II. State Submittal

On October 8, 1998, the New York State Department of Environmental Conservation (NYSDEC) submitted its "Section 111(d) State Plan for MSW Landfills" for implementing EPA's MSW landfill EG. New York's submittal included: the necessary legal authority; an enforceable mechanism; some of the increments of progress of an enforceable compliance schedule; an emissions inventory; emission standards; testing, monitoring, recordkeeping, and reporting requirements; a process to review design plans; a provision for annual state progress reports; and the record of public hearing. New York held a public hearing on January 15, 1998 for all of the required elements of the MSW landfill State Plan.

III. Review of State Submittal

EPA has reviewed New York's section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subpart B and subpart Cc, as follows:

A. Identification of Enforceable State Mechanism for Implementing the EG

40 CFR 60.24(a) requires that a section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions." New York has adopted revisions to State rules to control air emissions from existing landfills in the State. The New York State rules for MSW Landfills are primarily found in part 360–2 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled, "Landfills". Part 360–2 became effective on November 21, 1998.

B. Demonstration of the State's Legal Authority To Carry out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires that a section 111(d) plan demonstrate that the state has the necessary legal authority to adopt and implement the plan. In order to make this demonstration, the plan must show that the state has the legal authority to adopt emission standards and compliance schedules for the designated facilities; enforce the applicable laws, regulations, emission standards and compliance schedules, including the ability to obtain injunctive relief; the authority to obtain information from the designated facilities in order to determine compliance, including the authority to require recordkeeping from the facilities, to make inspections and to conduct tests at the facilities; the authority to require designated facilities to install, maintain and use emission monitoring devices; the authority to require periodic reporting to the state on the nature and amounts of emissions from the facility; and the authority for the state to make such emissions data available to the public. New York has demonstrated all these elements. As a result, New York has demonstrated that it has sufficient authority to adopt rules governing MSW landfills and that the NYSDEC has sufficient legal authority to enforce these rules and to develop and administer this MSW landfill plan.

C. Inventory of Existing MSW Landfills in the State Affected by the State Plan

The regulation at 40 CFR 60.25(a) requires that the section 111(d) plan include a complete source inventory of all existing MSW landfills (i.e., those MSW landfills that were constructed, reconstructed, or modified prior to May 30, 1991) in the state that are subject to the plan. This includes all existing landfills that have accepted waste since November 8, 1987, or that have additional capacity for future waste deposition. 40 CFR 60.25(a) also requires an estimate of the regulated pollutant, which is NMOC for landfills. A list of the existing MSW landfills in New York and an estimate of NMOC emissions from each landfill has been submitted as part of the State's landfill 111(d) plan (see Table 1 below).

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TABLE 1.—NEW YORK STATE MSW LANDFILLS EMISSIONS INVENTORY

Landfill name	Mass (1,000 tons)	Status—year opened/closed	NMOC emission rate (tons/year)	NSPS or EG
Brookhaven	17,200	opened in 1974	1,395	EG
Babylon LF	6,000	closed in 1990	356	EG
Islip	6,200	closed in 1990	262	EG
E. Northport SLF	3,800	closed in 1991	40	EG
Oceanside SLF	2,750	closed in 1989	88	EG
Freshkills	126,000	opened in 1948	2,273	EG
Orange County	3,800	opened in 1974	512	EG
Al Turi LF	4,800	opened in 1968	772	EG
Sullivan Co. LF	2,800	opened in 1962	300	EG
Albany LF	2,750	opened in 1969	335	NSPS
Colonie LF	3,000	opened in 1972	320	NSPS
Fulton Co. LF	5,000	opened in 1989	136	EG
DANC	5,500	opened in 1992	3	NSPS
Nanticoke	3,200	opened in 1969	390	EG
Chemung Co. LF	2,750	opened in 1973	210	EG
High Acres (WMI)	5,630	opened in 1972	1,942	NSPS
Mill Seat	6,930	opened in 1993	88	NSPS
Ontario Co. LF	3,600	opened in 1975	27	EG
Seneca Meadows	5,300	opened in 1981	1,104	NSPS
Monroe Livingston	5,210	closed in 1989	129	EG
Niagara Recycling	3,700	opened in 1970	226	EG
Modern LF	6,300	opened in 1983	865	EG
Niagara LF (BFI)	8,000	closed in 1993	334	EG
CID SLF	5,600	opened in 1957	792	EG
Chautauqua Co. LF	6,500	opened in 1981	228	EG

D. Emission Limitations for MSW Landfills

The regulation at 40 CFR 60.24(c) specifies that the state plan must include emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met). 40 CFR 60.33c contains the emissions standards applicable to existing MSW landfills. Part 360–2.21(c) requires existing MSW landfills to comply with the same equipment design criteria and level of control as prescribed in the NSPS. The controls required by the NSPS are the same as those required by the EG. Thus, the emission limitations/standards are "no less stringent than" subpart Cc, which meets the requirements of 40 CFR 60.24(c).

E. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans

The provision of the EG at 40 CFR 60.33c(b) requires state plans to include a process for state review and approval of site-specific design plans for required gas collection and control systems. New York's regulation, part 360–2.21(c), requires the submission of design plans from all applicable MSW Landfills. The process for state review and approval of site specific gas collection and control systems is specified in the State's Title V operating permit review process, to which these landfills are subject. Thus, New York's section 111(d) plan adequately addresses this requirement.

F. Compliance Schedules

A state's section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. Under 40 CFR 60.24(e)(1) any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including: (1) deadlines for the submittal of a final control plan, (2) awarding of contracts for emission control systems, (3) initiation of on-site construction or installation of emission control equipment, (4) completion of on-site construction/installation of emission control equipment, and (5) final compliance. 40 CFR 60.36c of the EG gives the general deadline that the planning, the awarding of contracts, and the installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a state emission standard for MSW landfills. Meant to be a guideline for a state developing a plan rather than a plan itself, the EG does not give specific deadlines for each increment of progress required in a compliance schedule under 40 CFR 60.21(h).

Part 360–2 of New York's regulation addresses the above increments of progress, including final compliance, except for increments 2 and 3; awarding of contracts for emission control systems and initiation of on-site construction or installation of emission control equipment. Thus, all the required increments of progress are not included in New York's regulation.

However, 40 CFR 60.24(e)(2) provides that the compliance schedules for individual sources may be submitted after the submittal of the state plan, as long as the compliance schedules are submitted no later than the deadline for the first annual report required under 40 CFR 60.25(e). After the approval of its landfill plan, it is New York's intention to incorporate the two missing increments of progress (the awarding of contracts and the initiation of on-site construction), as well as the other three increments of progress into compliance schedules in existing state permits for each facility or in each facility's Title V operating permit when issued. The incorporation of the compliance schedule into each facility's permit will include a public hearing for each affected facility, therefore, making the compliance schedules, including all increments of progress, legally enforceable. In a letter dated May 4, 1999 from NYSDEC to EPA, New York committed to submit the applicable

Title V operating permits or state permits within one year of EPA approval of New York's plan in accordance with 40 CFR 60.24(e)(2). Thus, EPA is conditionally approving New York's State Plan based on the condition that New York will submit the state permits or Title V permits for each facility, which will include compliance schedules with all five increments of progress specified in 40 CFR part 60, subpart B, section 60.21(h), and within one year of the effective date of this approval.

If New York does not make the required submittal to EPA within one year of the effective date of this action, EPA's conditional approval will convert to a disapproval. In that event, EPA would issue a letter to notify the State that the condition has not been met, and the approval has converted to a disapproval.

G. Testing, Monitoring, Recordkeeping and Reporting Requirements

The regulation at 40 CFR 60.34c specifies the testing and monitoring provisions that state plans must include (section 60.34c specifically refers to the requirements found in 40 CFR 60.754 to 60.756), and 40 CFR 60.35c specifies the reporting and recordkeeping requirements (section 60.35c refers to the requirements found in 40 CFR 60.757 and 60.758). Part 360-2.21(l) requires that all landfills subject to this rule keep appropriate records of the operation and maintenance of the collection and control systems. Part 360–2.21(f)(3) requires monitoring of surface methane concentrations every three months. If the concentration of methane exceeds 500 parts per million, the landfill owner must take corrective action. Part 360–2.21(h) requires annual reporting of operation of the collection and control systems. Thus, the State's rule satisfies the requirements of 40 CFR 60.34c.

H. Submittal of Annual State Progress Reports to EPA

The regulation at 40 CFR 60.25(e) and (f) requires states to submit to EPA annual reports on the progress of plan enforcement. New York will submit to EPA annual reports on the progress in the implementation of the State Plan. These will be incorporated into the reports required by 40 CFR part 51, section 51.321, "Annual source emissions and state action report". These reports will include compliance status, enforcement actions, increments of progress, identification of landfills that have closed and ceased to operate a collection and control system, emissions inventory for MSW landfills that were not in operation or were not identified at the time of plan development, updated emission data and compliance information, and copies of initial performance test reports, including control device operating conditions.

IV. Conclusion

EPA has evaluated the Municipal Solid Waste Landfill State Plan submitted by New York for consistency with the Act, EPA guidelines and policy. EPA has determined that New York's State Plan contains all approvable elements and critical compliance dates, in addition New York has committed to submit the remaining increments of progress for compliance. Therefore, EPA is conditionally approving New York's Plan to implement and enforce subpart Cc, as it applies to existing MSW Landfills. If New York does not make the required submittal to EPA within one year of the effective date of this action, EPA's conditional approval will convert to a disapproval.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan revision should adverse comments be filed. This rule will be effective September 17, 1999 without further notice unless the Agency receives adverse comments by August 18, 1999.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This State Plan approval is not subject to E.O. 13045 because it proposes approval of a state program implementing a Federal standard, and it is not economically significant under E.O. 12866.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds

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necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because Conditional approvals of State Plan submittals under section 111 of the Act does not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 111(d), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final approval action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: July 6, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart HH—New York

2. Part 62 is amended by adding § 62.8104 and an undesignated heading to subpart HH to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.8104 Identification of plan

(a) The New York State Department of Environmental Conservation submitted to the Environmental Protection Agency a "State Plan for implementation and enforcement of 40 CFR part 60, subpart Cc, Emissions Guidelines for Municipal Solid Waste Landfills' on October 8, 1998.

(b) Identification of sources: The plan applies to all existing municipal solid waste landfills for which construction, reconstruction or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 99–18041 Filed 7–16–99; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 85]

RIN 3090–AH06

Federal Travel Regulation; Maximum Per Diem Rates in California, Illinois, New Jersey, North Carolina, Utah, and Virginia

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) Amendment 75, as corrected, published in the **Federal Register** on Wednesday, February 10, 1999 (64 FR 6550), to combine, add, and remove certain localities and increase the maximum lodging amounts in the States of California, Illinois, New Jersey, North Carolina, Utah, and Virginia.

DATES: This final rule is effective July 19, 1999, and applies to travel performed on or after July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Office of Governmentwide Policy, Travel and Transportation Management Policy Division, at 202–501–1538 .

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA), after an analysis of additional data, has determined that current lodging allowances for the localities of San Diego, San Luis Obispo, and Los Angeles, California; Chicago, Illinois; Belle Mead, New Jersey; Durham and Research Triangle Park, North Carolina; Ogden, Utah; and Londoun County, Virginia, do not adequately reflect the cost of lodging in those areas. To provide adequate per diem reimbursement for Federal employee travel to those areas, the maximum lodging allowances are changed. Also, the per diem localities of Orange County, California; Durham and Research Triangle Park, North Carolina; and Ogden and Davis County, Utah, are revised.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

Appendix A to chapter 301 is amended by—

(a) Removing the entries for Orange County, under the State of California; Durham and Research Triangle Park under the State of North Carolina; and Ogden and Davis County, under the State of Utah;

(b) Revising the entries for Los Angeles, San Diego, and San Luis Obispo, under the State of California; Chicago, under the State of Illinois; and Loudoun County, under the State of Virginia; and

(c) Adding entries for Belle Mead under the State of New Jersey; Durham/Research Triangle Park, under the State of North Carolina; and Layton/Ogden under the State of Utah.

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for Conus

* * * * *

Per diem locality: Key city 1	County and/or other defined location 2, 3	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
CALIFORNIA						
Los Angeles	Los Angeles and Orange County; Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake.	95		46		141
San Diego	Dan Diego	96		46		142
San Luis Obispo	San Luis Obispo.					
(June 1–September 30)		79		38		117
(October 1–May 31)		69		38		107
ILLINOIS						
Chicago	Cook	109		46		155

Per diem locality: Key city 1	County and/or other defined location 2, 3	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
NEW JERSEY						
Belle Mead	Somerset	129		38		167
NORTH CAROLINA						
Durham/Research Triangle Park	Durham	85		42		127
UTAH						
Layton/Ogden	Davis and Weber	69		34		103
VIRGINIA						
Loudoun County	Loudoun	102		38		140

Dated: July 8, 1999.
David J. Barram,
Administrator of General Services.
[FR Doc. 99–18297 Filed 7–16–99; 8:45 am]
BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–35

RIN 3090–AG03

Relocation of FIRMR Provisions Relating to the Use of Government Telephone Systems and GSA Services and Assistance

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule; extension of expiration date.

SUMMARY: The General Services Administration (GSA) is extending the expiration date of an interim rule on Federal Property Management Regulations provisions regarding management and use of telecommunications resources.

DATES: *Effective Date:* The interim rule published at 61 FR 41003 was effective August 8, 1996.

Expiration Date: The expiration date of the interim rule published at 61 FR 41003 is extended through August 8, 2000.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., Office of Governmentwide Policy, telephone 202–501–4469.

SUPPLEMENTARY INFORMATION: FPMR interim rule F–1 was published in the **Federal Register** on August 7, 1996, 61 FR 41003. The expiration of the interim rule was August 8, 1998. A supplement published in the **Federal Register** on May 20, 1998, 63 FR 27682, extended the expiration date through August 8, 1999. This supplement further extends the expiration date through August 8, 2000.

List of Subjects in 41 CFR Part 101–35

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

Therefore the expiration date for interim rule F–1 adding 41 CFR part 101–35 published at 61 CFR 41003, August 7, 1996, and extended until August 8, 1999 at 63 FR 27682, May 20, 1998, is further extended through August 8, 2000.

Dated: July 8, 1999.
David J. Barram,
Administrator of General Services.
[FR Doc. 99–18115 Filed 7–16–99; 8:45 am]
BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–171, RM–8846, 9145]

FM Broadcasting Services; Indian Springs, Nevada; Mountain Pass, California; Kingman, Arizona; and St. George, Utah

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the rulemaking proposal (RM–8846) filed by Claire B. Benezra and set forth in *Notice of Proposed Rulemaking*, 61 FR 44,287, published August 28, 1996, to substitute Channel 257C for Channel 257A at Indian Springs, Nevada, and to modify the construction permit of Station KPXC(FM) to specify operation on the upgraded channel. To accommodate the allotment at Indian Springs, Channel 259B is substituted for Channel 258B at Mountain Pass, California; Channel 261C2 is substituted for Channel 260C2 at Kingman, Arizona; and Channel 260C is substituted for Channel 259C at St. George, Utah. Station KHYZ(FM) at Mountain Pass is authorized to retain its Class B superpower status on Channel 259B (facilities of 8.4 kilowatts effective radiated power (ERP)and 551 meters antenna height above average terrain (HAAT)). The licenses of Stations KHYZ(FM), KGMN(FM), and KZEZ(FM) are modified accordingly. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes and J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 96–171, adopted July 2, 1999 and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. Channel 257C can be allotted to Indian Springs in compliance with the Commission's minimum distance separation requirements at petitioner's desired transmitter site restricted to 21.2 kilometers (13.2 miles) southwest of the community at coordinates 36–25–18 North Latitude and 115–48–35 West Longitude. Channel 259B can be allotted to Mountain Pass, California at Station KHYZ(FM)'s licensed transmitter site at coordinates 35–29–27 North Latitude and 115–33–27 West Longitude. Channel 261C2 can be allotted to Kingman, Arizona at Station KGMN(FM)'s licensed transmitter site at coordinates 35–06–37 North Latitude and 113–52–55 West Longitude. Channel 260C can be allotted to St. George, Utah at Station KZEZ(FM)'s licensed transmitter site at coordinates 36–50–49 North Latitude and 113–29–28 West Longitude. Concurrence by the Mexican government as to the allotments at Kingman and at Mountain Pass (using superpower Class B facilities of 8.4 kilowatts ERP and 551 meters HAAT) has been received, given that both communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border.

List of Subjects in 47 CFR Part 73

Radio broadcasting

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 260C2 and adding Channel 261C2 at Kingman.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 258B and adding Channel 259B at Mountain Pass.

4. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 257A and adding Channel 257C at Indian Springs.

5. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 259C and adding Channel 260C at St. George.

Federal Communications Commission.
John Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99–18237 Filed 7–16–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–64; RM–9485]

Radio Broadcasting Services; Genoa, Mt. Morris and Oregon, Illinois

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission at the request of Farm Belt Radio, Inc., makes two simultaneous amendments to the FM Table of Allotments. First it reallots Channel 291A from Oregon, Illinois to Genoa, Illinois, substitutes Channel 292A for Channel 291A at Genoa and modifies the construction permit of Station WOXM(FM) accordingly. Second, it reallots Channel 239A from Mt. Morris, Illinois to Oregon, Illinois with no change of channel with and modifies Station WSEY(FM)'s construction permit accordingly. *See* 64 FR 8785 (February 23, 1999). The coordinates for Channel 292A at Genoa are North Latitude 42–01–00 and West Longitude 88–49–00. The coordinates for Channel 239A at Oregon are North Latitude 41–59–04 and West Longitude 89–29–52. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–64, adopted June 30, 1999, and released July 9, 1999.

The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (Room CY–A257) at its headquarters, 445 12th Street, SW Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 291A from Oregon and adding Channel 292A to Genoa and removing Channel 239A from Mt. Morris and adding Channel 239A to Oregon.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99–18239 Filed 7–16–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–33; RM–9453]

Radio Broadcasting Services; Burdett, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 228A to Burdett, Kansas, as that

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community's first local aural transmission service in response to a petition for rule making filed by Dana Puopolo. *See* 64 FR 7844, February 17, 1999. Coordinates used for Channel 228A at Burdett are 38–11–30 NL and 99–31–30 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 228A at Burdett, Kansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–33, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Burdett, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18240 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–32; RM–9445]

Radio Broadcasting Services; Rye, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 285A to Rye, Colorado, as that community's first local commercial FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 7844, February 17, 1999. Coordinates used for Channel 285A at Rye are 37–55–18 NL and 104–55–48 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 285A at Rye, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–32, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information

Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Rye, Channel 285A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18241 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–31; RM–9444]

Radio Broadcasting Services; Palisade, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 253C3 to Palisade, Colorado, in lieu of previously proposed Channel 295C3, as that community's first local aural transmission service, in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 7845, February 17, 1999. The channel substitution was required to avoid a conflict with counterproposals filed in the context of MM Docket No. 98–186. Coordinates used for Channel 253C3 at Palisade are 39–06–30 NL and 108–21–06 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 253C3 at Palisade, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–31, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Palisade, Channel 253C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18242 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–30; RM–9443]

Radio Broadcasting Services; Aberdeen, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258C2 to Aberdeen, Idaho, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 7845, February 17, 1999. Coordinates used for Channel 258C2 at Aberdeen are 43–00–27 NL and 112–41–54 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 258C2 at Aberdeen, Idaho, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–30, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Aberdeen, Channel 258C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18243 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–29; RM–9439]

Radio Broadcasting Services; Walden, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231C2 to Walden, Colorado, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 7845, February 17, 1999. Coordinates used for Channel 231C2 at Walden are 40–41–54 NL and 106–29–48 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 231C2 at Walden, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–29, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Walden, Channel 231C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18244 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–27; RM–9437]

Radio Broadcasting Services; New Castle, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to New Castle, Colorado, as that community's first local commercial FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 7842, February 17, 1999. Coordinates used for Channel 233A at New Castle, Colorado, are 39–34–12 NL and 107–31–54 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 233A at New Castle, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–27, adopted June 30, 1999, and released July

9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding New Castle, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18245 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–3; RM–9427]

Radio Broadcasting Services; Rozel, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This documents allots Channel 273A to Rozel, Kansas, as that community's first local aural transmission service in response to a petition filed by Dana Puopolo. *See* 64 FR 3913, January 26, 1999. Coordinates used for Channel 273A at Rozel are 38–11–42 NL; 99–24–24 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 273A at Rozel, Kansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–3, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Rozel, Channel 273A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18246 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–2; RM–9347]

Radio Broadcasting Services; Saltillo, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275C3 to Saltillo, Mississippi, as that community's first local aural transmission service in response to a petition for rule making filed on behalf of Broadcasters & Publishers, Inc. *See* 64 FR 3913, January 26, 1999. Coordinates used for Channel 275C3 at Saltillo are 34–23–56 NL and 88–34–06 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 275C3 at Saltillo, Mississippi, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–2, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Saltillo, Channel 275C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18247 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 829

RIN 2900–AJ32

VA Acquisition Regulation: Taxes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Veterans Affairs' Acquisition Regulation (VAAR) by deleting procedures and controls prescribed in the VAAR whereby facilities or institutions owned or controlled by State governments, territories, and the District of Columbia, can, under supervision of a Federal agency, obtain tax-free tobacco products for gratuitous distribution to present and former members of the Armed Forces of the United States. These procedures and controls are inconsistent with VA policy against promotion of the use of tobacco products. Accordingly, we are deleting the provisions concerning tax-free tobacco products. Further, this document removes provisions stating that contracting officers will submit requests for legal advice, through channels, to the General Counsel. These provisions are internal VA instructions to contracting officers and are not required to be published in the **Federal Register** or the Code of Federal Regulations. In addition, this document removes provisions stating that the VAAR contains refund procedures for State and local taxes, since the VAAR does not contain such provisions.

DATES: Effective Date: August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, telephone number (202) 273–8819.

SUPPLEMENTARY INFORMATION: On January 29, 1999, we published in the **Federal Register** (64 FR 4607) a proposal to amend the Department of Veterans Affairs Acquisition Regulation (VAAR). We solicited comments concerning the proposal for 60 days, ending March 30, 1999. We did not receive any comments. Based on the rationale set forth in the proposed rule document and this document, we are adopting the provisions of the proposed rule as a final rule with no changes. The actions taken by this document are described in the SUMMARY portion of this document.

The Secretary of Veterans Affairs hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would have a minuscule effect, if any, on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

List of Subjects in 48 CFR part 829

Government procurement, Taxes.

Approved: June 30, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR part 829 is amended as follows:

PART 829—TAXES

1. The authority citation for part 829 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

2. Section 829.000 is revised to read as follows:

829.000 Scope of part.

This part prescribes policies and procedures for exemptions from Federal excise taxes imposed on alcohol products purchased for use in the Department of Veterans Affairs medical care program.

Subpart 829.1 [Removed]

3. Subpart 829.1 consisting of 829.101 is removed.

829.270 through 829.270–2 [Removed]

4. Sections 829.270 through 829.270–2 are removed.

[FR Doc. 99–18157 Filed 7–16–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA–99–5937]

RIN 2127–AH49

Vehicle Certification; Contents of Certification Labels for Altered Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulations on vehicle certification that specify the contents of the certification labels that vehicle alterers are required to affix to motor vehicles that they alter. The amendment requires the certification label affixed by the alterer to state that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards affected by the alteration. The prior regulations did not require the certification labels on altered vehicles to state that the vehicles, as altered, complied with the Theft Prevention Standard. This amendment makes the certification requirements for vehicle alterers consistent with those for vehicle manufacturers.

DATES: 1. *Effective Date:* The amendment established by this final rule will become effective on September 2, 1999.

2. *Deadline for Submission of Petitions for Reconsideration:* Any petitions for reconsideration must be received by NHTSA not later than September 2, 1999.

3. *Compliance Date:* The amendment established by this final rule applies to vehicles manufactured on or after January 1, 2000. However, any alterer who wishes to voluntarily affix certification labels that meet the requirements of this final rule to vehicles manufactured before that date may do so.

ADDRESSES: Any petitions for reconsideration should refer to the docket number above and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9 am to 5 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (202–366–5238).

SUPPLEMENTARY INFORMATION:

A. Background

This rule was preceded by a notice of proposed rulemaking (NPRM) published on February 11, 1999 (64 FR 6852). As explained in the NPRM, a final rule published on February 11, 1999 (64 FR 6815), had amended the regulations on vehicle certification at 49 CFR 567.4 to require the certification label for multipurpose passenger vehicles (MPVs) and trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. This amendment was prompted by a letter that NHTSA had received from a vehicle manufacturer noting that under a provision of the Anti Car Theft Act of 1992, now codified at 49 U.S.C. 33101, the definition of vehicles subject to the major parts marking requirements of the Theft Prevention Standard was expanded to include "a multi-purpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight."

One of the comments submitted in response to the notice of proposed rulemaking (NPRM) (published on June 25, 1998 at 63 FR 34623) that preceded the final rule on the contents of certification labels for MPVs and light duty trucks was from John Russell Deane III, the General Counsel of the Speciality Equipment Market

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Association (SEMA). In his comment, Mr. Deane recommended that NHTSA amend 49 CFR 567.7, the provision in the certification regulations that prescribes requirements for persons who alter certified vehicles, so that it is consistent with the amendments to the certification requirements for manufacturers that the agency was proposing.

The certification requirements in section 567.7 apply to a person who alters a previously certified vehicle before it is first purchased for purposes other than resale. The certification requirements are triggered only when the vehicle is altered "other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting," or when the vehicle is altered "in such a manner that its stated weight ratings are no longer valid."

In his comment, Mr. Deane noted that although vehicle alterers have a statutory responsibility to certify that any vehicle they alter that is subject to the Theft Prevention Standard remains in compliance with that standard following the completion of the alterations, section 567.7 was never amended to reflect that requirement.

In its response to Mr. Deane's comment, NHTSA acknowledged the validity of the issue that he raised, and stated that the agency would commence a rulemaking to address the disparity between the certification responsibilities for manufacturers and those for alterers with regard to the Theft Prevention Standard.

Accordingly, NHTSA proposed to amend the certification regulations to require the label affixed by vehicle alterers to state that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards affected by the alteration. The NPRM stated that this requirement would apply to vehicles manufactured on or after September 1, 1999 so that vehicle alterers have adequate lead time to exhaust their existing inventory of certification labels and have new labels printed if the amendment were adopted.

B. Comments

Three comments were submitted in response to the NPRM. The first of these was from John Russell Deane III, who was again commenting on behalf of SEMA. Mr. Deane stated that SEMA was pleased to see that the agency was proposing to adopt the amendment to the certification requirements for altered vehicles that he had recommended. Mr. Deane expressed concern, however, that the proposal for the amendment to apply to vehicles manufactured on or after September 1, 1999 would not provide sufficient lead time for label makers and vehicle alterers to be apprized of the changes that will be required in the contents of the certification label.

As stated in the NPRM, NHTSA proposed September 1, 1999 as the compliance date for this amendment because it assumed that this would provide vehicle alterers with adequate lead time to exhaust their existing inventory of certification labels and have new labels printed. The agency was additionally motivated by the belief that a September 1, 1999 compliance date would eliminate confusion for vehicle alterers because that date also coincides with the commonly recognized start of production for model year (MY) 2000 vehicles.

In a comment responding to the NPRM on certification requirements for manufacturers of MPVs and light duty trucks, the Association of International Automobile Manufacturers (AIAM) requested that manufacturers be given 120 days lead time to implement the proposed changes and to exhaust their existing supply of certification labels. Based on this comment, NHTSA assumed that 120 days would provide adequate lead time for vehicle alterers as well.

The agency notes, however, that owing to a delay in the publication of this final rule, a September 1, 1999 compliance date will no longer provide vehicle alterers with 120 days of lead time. Accordingly, the agency has decided to postpone the compliance date of this amendment for an additional 120 days. As a consequence, the amendment will apply to vehicles manufactured on or after January 1, 2000. The additional delay in the compliance date of this amendment should address Mr. Deane's concern that there be adequate lead time for label makers and vehicle alterers to be apprised of the required changes in the contents of the certification label for altered vehicles.

The second comment was submitted by the National Truck Equipment Association (NTEA), a trade association representing distributors and manufacturers of multi-stage produced, work-related trucks, truck bodies, and equipment. In its comment, the NTEA questioned the need for amending the certification label for altered MPVs and light duty trucks because those vehicles will already have labels affixed by their manufacturers certifying the vehicles' compliance with all applicable Federal motor vehicle safety and theft prevention standards as a result of the February 11, 1999 amendment to 49 CFR 567.4. The NTEA noted that the manufacturer's label will remain on these vehicles after they are altered. As a consequence, the NTEA contended that it would be redundant to require the alterer's certification label to also state that the vehicles comply with the Theft Prevention Standard.

The NTEA also requested six months lead time if the agency decided to change the required contents of certification labels for altered vehicles so that it has adequate time to redesign the labels, have them printed, and sufficiently reduce its current inventory of labels to mitigate the cost of the change. The NTEA noted that many of its members obtain labels far in advance of their intended use and that it is not unusual for a member company to purchase labels once a year.

With respect to the first issue raised by the NTEA, the agency notes that the certification responsibilities of vehicle alterers are distinct from those of vehicle manufacturers. A manufacturer must certify that its vehicle conforms to all applicable standards in effect on the vehicle's date of manufacture, while an alterer must certify that the vehicle, as altered, remains in conformity with those standards. As such, any statement on the certification label affixed by the manufacturer that a MPV or light duty truck conforms to the Theft Prevention Standard as of the date of the vehicle's manufacture does not relieve the alterer from certifying that the vehicle, as altered, remains in conformity with that standard. Because of the different function they serve, NHTSA sees no redundancy between the certification statements made by the vehicle manufacturer and those made by the vehicle alterer.

Addressing the second issue raised by the NTEA, the agency notes that the January 1, 2000 compliance date that is being adopted for this final rule will provide an amount of lead time for changing the contents of certification labels for altered vehicles that is close to what the organization has requested for its members.

The third comment was received from the National Automobile Dealers Association (NADA). In its comment, NADA expressed the opinion that NHTSA is relying on 49 U.S.C. 33108(c) to expand the contents of the certification label for altered vehicles to include a reference to the Theft Prevention Standard. NADA stated that it is concerned that section 33108(c) "fails to vest NHTSA with the necessary discretion and authority to require an alterer to certify conformity with the theft prevention standard."

Section 33108(c) states, in relevant part, that the "manufacturer of a motor vehicle subject to the standard * * * shall provide at the time of delivery of the vehicle * * * a certification that the vehicle * * * conforms to the applicable motor vehicle theft prevention standard." The section further authorizes the Secretary of Transportation to prescribe the type and form of the certification by regulation. NHTSA has accordingly relied on this section, and other similar provisions, as statutory authority for the vehicle certification regulations at 49 CFR part 567, which, as previously noted, include requirements for persons who alter certified vehicles at 49 CFR 567.7. The alteration of certified vehicles is not a subject that is specifically addressed within 49 U.S.C. 33108(c) or the other sources of statutory authority for the vehicle certification regulations. Because the operations performed by vehicle alterers could affect a vehicle's compliance with applicable Federal motor vehicle safety, bumper, and theft prevention standards, and potentially introduce safety-related defects into the vehicle, NHTSA has identified alterers as having the same duties and responsibilities as vehicle manufacturers, and has accordingly regulated them as such. The statutes that authorize NHTSA to prescribe the manner and form in which manufacturers are to certify compliance with applicable safety, bumper, and theft prevention standards apply equally to vehicle alterers.

In its comment, NADA also observed that no reference to the Theft Prevention Standard need be provided in an alterer's label for a vehicle that is exempted by NHTSA from that standard under 49 CFR Part 543. The agency disagrees with this observation. As part of the rulemaking that established Part 543, NHTSA solicited comments on whether the exemption status of a vehicle with respect to the Theft Prevention Standard should be reflected on the vehicle's certification label. Most of the comments that were received disfavored this requirement because it would have imposed additional costs on manufacturers to have different labels printed for vehicle lines that were subject to, exempted from, and not subject to the standard, without providing any apparent benefit to law enforcement organizations that the standard was intended to assist. See Final Rule published on September 8, 1987 at 52 FR 33821, 33823–24. Based on these comments, NHTSA concluded that it was unnecessary for the exemption status of a vehicle to be reflected on the vehicle's certification label. As a consequence, the certification regulations at 49 CFR 567.4(g)(5) require manufactures to state that 1987 and subsequent model year passenger cars conform to "all applicable Federal motor vehicle safety, bumper, and theft prevention standards." The agency notes that this certification statement is appropriate for vehicle lines that are exempted from the Theft Prevention Standard, because that standard is not "applicable" to those vehicles. In like manner, where a vehicle has been exempted from the Theft Prevention Standard, alterers will face no additional burden in certifying that the vehicle conforms to all "applicable," standards, including the Theft Prevention Standard.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rule was not reviewed under E.O. 12866. NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment resulting from this final rule will not have a significant economic impact on a substantial number of small entities. Although most vehicle alterers are likely to qualify as small entities, the amendment will have no adverse economic impact upon them because they are being afforded adequate lead time to exhaust their existing inventory of certification labels and have new labels printed. This amendment also will have no effect on small organizations and small governmental units. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

5. Civil Justice Reform

This rule does not have any retroactive effect. It modifies an existing Federal regulation to make it consistent with a statutory requirement. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, § 567.7, *Requirements for persons who alter certified vehicles*, in Title 49 of the Code of Federal Regulations at Part 567 is amended as follows:

PART 567—[AMENDED]

1. The authority citation for Part 567 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50

2. Section 567.7 is amended by revising paragraph (a) to read as follows:

§ 567.7 Requirements for persons who alter certified vehicles.

* * * * *

(a) The statement: "This vehicle was altered by (individual or corporate name) in (month and year in which alterations were completed) and as altered it conforms to all applicable Federal Motor Vehicle Safety Standards affected by the alteration and in effect in (month, year)." The second date shall be no earlier than the manufacturing date of the original vehicle, and no later than the date alterations were completed.

(1) In the case of passenger cars manufactured on or after January 1, 2000, the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety".

(2) In the case of multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less manufactured on or after January 1, 2000, the expression "and theft

prevention" shall be included in the statement following the word "safety".

* * * * *

Issued on: July 14, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–18324 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 64, No. 137
Monday, July 19, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV99–906–2 PR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit established for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1999–2000 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 9, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable oranges and grapefruit beginning on August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.11 per 7/10 bushel carton that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 8, 1999, and unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton of oranges and grapefruit handled. In comparison, last year's

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budgeted expenditures were $1,181,950. The assessment rate of $0.12 is $0.01 higher than the rate currently in effect. The Committee has operated under a lower assessment rate in recent years and used available reserve funds to make up most of the difference between assessment income and expenses. Since 1994, the Committee's reserve has decreased from almost $400,000 to slightly under $120,000. Thus, the Committee recommended increasing the assessment rate because the current rate would not generate enough income to cover 1999–2000 expenses, and the Committee only wants to use a limited amount of reserve funds to meet expenses. The Committee wants to ensure that adequate reserve funds are available to meet unexpected expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the program, and $73,369 for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 9.5 million 7/10 bushel cartons, which should provide $1,140,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $119,402) would be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 315 producers of oranges and grapefruit in the production area and 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Texas orange and grapefruit producers and handlers may be classified as small entities.

Last year, 5 of the 16 handlers (31 percent) each shipped over 625,000 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $8.00 per carton, these handlers could be considered large businesses by the SBA, and the remaining 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit. The Committee unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton. The proposed assessment rate of $0.12 is $0.01 higher than the 1998–99 rate. The Committee recommended increasing the assessment rate because the current rate would not generate enough income to cover 1999–2000 expenses, and the Committee only wants to use a limited amount of reserve funds to meet expenses. The Committee wants to ensure that adequate reserve funds are available to meet unexpected expenses. The quantity of assessable oranges and grapefruit for the 1999–2000 season is estimated at 9.5 million 7/10 bushel cartons. Assessment income, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising and promotion, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the marketing order program, and $73,369 for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

Many producers are still recovering from the devastating freezes of 1983 and 1989 that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and profit to the producers is marginal. Also, a general oversupply of citrus from other domestic sources and foreign countries depressed prices. The Committee recommended that the 1999–2000 rate of assessment be increased to $0.12 per 7/10 bushel carton. The Committee recommended increasing the assessment rate because the current rate would not generate enough income to cover 1999–2000 expenses, and the Committee only wants to use a limited amount of reserve funds ($5,850) to meet expenses. Interest income totaling $3,000 will also be used to cover program expenses in 1999–2000. At the end of the 1999–2000 fiscal period, the reserve is expected to be $113,552.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $1,148,850, which included a decrease in the advertising and promotion program. Budgeted expenses for the Mexican Fruit Fly program were left the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established lower assessment rate unchanged. The Committee, however, concluded that

retaining the current $0.11 per 7/10 bushel carton assessment rate for the 1999–2000 fiscal period would reduce the Committee's reserve to an unacceptable level. Alternative expenditure levels were discussed based upon the relative value of the advertising and promotion program to the Texas citrus industry. The proposed assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and grapefruit was determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit estimated at 9.5 million 7/10 bushel cartons for the 1999–2000 fiscal period. The $0.12 rate should provide $1,140,000 in assessment income. The additional $8,850 would come from the Committee's reserve and interest income.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the f.o.b. price for the 1999–2000 season could range from $4.75 to $12.50 per 7/10 bushel carton of oranges and grapefruit depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of the total pack-out revenue could range between .96 and 2.5 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 20-day comment period is provided to allow interested persons to respond to this proposed rule. Twenty days is deemed appropriate because: (1) The 1999–2000 fiscal period begins on August 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period, and handlers will begin harvesting their fruit in early September; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is proposed to be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 1999, an assessment rate of $0.12 per 7/10 bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: July 14, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–18318 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–095–1]

Pork and Pork Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The importation and in-transit movement of fresh (chilled or frozen) pork and pork products from Mexico into the United States is restricted because of the presence of hog cholera in some areas in Mexico. We are proposing to amend the regulations to allow fresh (chilled or frozen) pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States, under certain conditions, for export to another country. We are proposing this action because there has been no outbreak of hog cholera in any of the States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, or Quintana Roo since 1993, and it appears that fresh (chilled or frozen) pork and pork products from each of the above States could transit the United States under seal with an insignificant risk of introducing hog cholera.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 17, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–095–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–095–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737, (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations)

prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. Section 94.9 of the regulations prohibits the importation of pork and pork products into the United States from countries where hog cholera exists, unless the pork or pork products have been treated in one of several ways, all of which involve heating or curing and drying.

Because hog cholera exists in certain areas in Mexico, pork and pork products from most Mexican States must meet the requirements of § 94.9 to be imported into the United States. Section 94.20 provides an exception, allowing the importation of fresh (chilled or frozen) pork and pork products from the Mexican State of Sonora.

Under § 94.15, pork and pork products that are from certain Mexican States and that are not eligible for entry into the United States in accordance with the regulations in § 94.9 or § 94.20 may transit the United States for immediate export if certain conditions are met. These provisions were added to the regulations in 1992, following a United States Department of Agriculture investigation of the hog cholera situation in Sonora, Mexico, and a determination that pork and pork products from Sonora could transit the United States, under certain conditions, with minimal risk of introducing hog cholera. Final rules published in the **Federal Register** in 1995, 1996, and 1997 applied the provisions to Chihuahua, Yucatan, and Baja California, respectively.

Mexico's Director of Animal Health has requested that we allow pork and pork products from additional Mexican States to transit the United States under the same conditions. The additional Mexican States are Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo.

In response, officials of the Animal and Plant Health Inspection Service (APHIS) have met with Mexican representatives knowledgeable in disease prevention, epidemiology, and diagnostic methods. The team reviewed the information supplied by these representatives (discussed below) and found two factors contributing to the seven States' apparent successes in remaining free of hog cholera: The States' locations and controls by Mexico's Division of Animal Health on the movement into the States of pork, pork products, and live swine. Based on this review, the team recommended granting Mexico's request.

General Information

As required by the Mexican Government, pork from Mexico that is currently eligible to transit the United States under § 94.15 must be processed and packaged in Tipo de Internacional Federal (TIF) plants that are approved by the Mexican Government and that are subject to strict Federal supervision to ensure that international health standards are maintained. A "TIF" may be a slaughter facility or a processing plant, or a combination of the two.

The seven States that are subject to this proposed rule and other States recognized by Mexico as free of hog cholera may import live swine only from other hog cholera-free States and countries. The Mexican Government requires shipments of swine from hog cholera-free countries to be accompanied by a certificate of origin issued by that country's veterinary authorities and by a certificate of import issued by the Mexican veterinary authorities. States recognized by Mexico as free of hog cholera also require and issue their own permits and health certificates, further ensuring that the products originate in a hog cholera-free region. In addition, live swine and pork imported into these hog cholera-free States must be shipped in sealed trucks, and all shipments are inspected at inspection stations located either on State lines or at international ports of entry.

The Mexican government also requires that any fresh pork or pork products that are shipped for processing to a hog cholera-free State from a region where hog cholera is believed to exist arrive at TIF processing plants in sealed, numbered containers. The seals must show no evidence of tampering, and the shipment must be accompanied by a certificate signed by an authorized official in the region of origin. Once they arrive at the TIF plant in a hog cholera-free State, such pork and pork products must be clearly labeled and set apart from pork that is eligible for importation into the United States to ensure that no commingling occurs. Mexico further protects its swine population from hog cholera by requiring that pork that originates in non-hog cholera-free regions may only enter commerce in hog cholera-free States after it is heated or cured and dried.

Baja California Sur

The last outbreak of hog cholera in the Mexican State of Baja California Sur occurred in May 1993. Vaccination for hog cholera was discontinued in 1980. Mexico officially recognized Baja California Sur as free of hog cholera in December 1993.

Baja California Sur is bordered on the north by the Mexican State of Baja California, which Mexico recognizes as free of hog cholera. To the west of Baja California Sur is the Pacific Ocean and to the east is the Gulf of California.

There is little swine production in Baja California Sur and there are no TIF plants that handle swine and pork in the State. According to 1997 production data, Baja California Sur produced 788 metric tons of pork (less than one tenth of one percent of Mexico's total pork production for that year).

Coahuila

The last outbreak of hog cholera in the Mexican State of Coahuila occurred in 1984. Vaccination for hog cholera was discontinued in 1984. Mexico officially recognized Coahuila as free of hog cholera in July 1995.

Coahuila is bordered on the northwest by the Mexican State of Chihuahua, which Mexico recognizes as free of hog cholera. Coahuila is bordered on the southwest by the Mexican States of Durango and Zacatecas, both of which are in the eradication phase of Mexico's National Campaign Against Classical Swine Fever (hog cholera). To the southeast of Coahuila is the Mexican State of Nuevo Leon, which Mexico declared free of hog cholera in July 1995. To the north and east of Coahuila is the United States, which is free of hog cholera.

Three TIF plants handle swine and pork in the State of Coahuila. According to 1997 production data, Coahuila produced approximately 13,423 metric tons of pork (less than 1.5 percent of Mexico's total pork production for that year).

Nuevo Leon

The last outbreak of hog cholera in the Mexican State of Nuevo Leon occurred in 1990. Vaccination for hog cholera was discontinued in 1993. Mexico officially recognized Nuevo Leon as free of hog cholera in July 1995.

Nuevo Leon is bordered on the northwest by the Mexican State of Coahuila, on the northeast by the United States, and on the northeast and southeast by the Mexican State of Tamaulipas, which Mexico considers free of hog cholera. To the southwest of Nuevo Leon is the Mexican State of San Luis Potosi, which is in the eradication phase of Mexico's National Campaign Against Classical Swine Fever.

Eight TIF plants handle swine and pork in the State of Nuevo Leon. According to 1997 production data, Nuevo Leon produced approximately 17,416 metric tons of pork (less than 2 percent of Mexico's total pork production for that year).

Tamaulipas

The last outbreak of hog cholera in the Mexican State of Tamaulipas occurred in 1984. Vaccination for hog cholera was discontinued in 1993. Mexico officially recognized Tamaulipas as free of hog cholera in July 1995.

Tamaulipas is bordered on the northwest by the Mexican State of Nuevo Leon and on the northeast by the United States. To the southeast of Tamaulipas is the Gulf of Mexico. To the south and west of Tamaulipas are the Mexican States of San Luis Potosi and Veracruz. San Luis Potosi is in the eradication phase of Mexico's National Campaign Against Classical Swine Fever, and Veracruz is in the control phase.

One TIF plant handles swine and pork in the State of Tamaulipas. According to 1997 production data, Tamaulipas produced approximately 6,490 metric tons of pork (less than 1 percent of Mexico's total pork production for that year).

Sinaloa

The last outbreak of hog cholera in the Mexican State of Sinaloa occurred in April 1990. Vaccination for hog cholera was discontinued in 1990. Mexico officially recognized Sinaloa as free of hog cholera in November 1993.

Sinaloa is bordered on the west by the Gulf of California and the Pacific Ocean. To the north and northeast of Sinaloa are the Mexican States of Sonora and Chihuahua, both of which are considered free of hog cholera by Mexico. To the east and south of Sinaloa are the Mexican States of Durango and Nayarit. Both Durango and Nayarit are in the eradication phase of Mexico's National Campaign Against Classical Swine Fever.

Three TIF plants handle swine and pork in the State of Sinaloa. According to 1997 production data, Sinaloa produced approximately 12,968 metric tons of pork (less than 1.5 percent of Mexico's total pork production for that year).

Campeche

The last outbreak of hog cholera in the Mexican State of Campeche occurred in 1989. Vaccination for hog cholera was discontinued in 1995. Mexico officially recognized Campeche as free of hog cholera in December 1997.

Campeche is bordered on the northeast and east by the Mexican States of Yucatan and Quintana Roo, respectively, both of which are considered free of hog cholera by Mexico. To the northwest of Campeche is the Gulf of Mexico. South and southwest of Campeche are Guatemala and the Mexican State of Tabasco. Hog cholera is believed to exist in Guatemala. Tabasco is currently in the control phase of Mexico's National Campaign Against Classical Swine Fever.

According to 1997 production data, Campeche produced approximately 3,363 metric tons of pork (less than one half of 1 percent of Mexico's total pork production for that year).

Quintana Roo

The last outbreak of hog cholera in the Mexican State of Quintana Roo occurred in 1980. Vaccination for hog cholera was discontinued in 1994. Mexico officially recognized Baja California as free of hog cholera in July 1996.

Quintana Roo is bordered on the north and west by the Mexican States of Yucatan and Campeche, both of which are considered free of hog cholera by Mexico. To the east of Quintana Roo is the Caribbean Sea. South of Quintana Roo is Belize, which has not been officially recognized as free of hog cholera and, therefore, does not export pork or live swine to Mexico.

There are no TIF plants that handle swine and pork in the State of Quintana Roo. According to 1997 production data, Quintana Roo produced approximately 7,250 metric tons of pork (less than 1 percent of Mexico's total pork production for that year).

Conditions for Movement Through the United States

The following conditions for in-transit movement currently apply to pork and pork products from Baja California, Chihuahua, Sonora, and Yucatan. Under this proposed rule, they would also apply to pork and pork products from Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo.

1. Any person wishing to move pork or pork products from one of these States through the United States for export must first obtain a permit for importation from APHIS. The application for the permit tells APHIS who will be involved in the transportation, how much and what type of pork and pork products will be transported, when they will be transported, and the method and route of shipment.

2. The pork or pork products must be packaged prior to movement from the State in a leakproof container and sealed with a serially numbered seal approved by APHIS. The container must remain sealed at all times while transiting the United States.

3. The person moving the pork or pork products through the United States must inform the APHIS officer at the United States port of arrival, in writing, of the following information before the pork or pork products arrive in the United States: The time and date that the pork or pork products are expected at the port of arrival in the United States, the time schedule and route of the shipments through the United States, the permit number, and the serial numbers of the seals on the containers.

4. The pork or pork products must transit the United States under Customs bond.

5. The pork or pork products must be exported from the United States within the time period specified on the permit.

Any pork or pork products exceeding the time limit specified on the permit or transiting in violation of any of the requirements of the permit or the regulations may be destroyed or otherwise disposed of at the discretion of the Administrator, APHIS, pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

These safeguards are intended to prevent tampering with the shipments, ensure that the shipments actually leave the United States, and otherwise ensure that the shipments do not present a risk of introducing hog cholera into the United States.

Under these circumstances—the low risk associated with the pork and pork products coupled with the safeguards for in-transit shipments—we believe that there would be little, if any, risk of introducing hog cholera into the United States by allowing pork and pork products from Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States for export. Therefore, we are proposing to amend § 94.15 to allow pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States for export under the same conditions that currently apply to pork and pork products from Baja California, Chihuahua, Sonora, and Yucatan.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the effects of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effects on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States, and the interstate dissemination within the United States, of communicable diseases of livestock and poultry.

This proposed rule would allow fresh (chilled or frozen) pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States, under certain conditions, for export to another country.

There appears to be little risk of hog cholera exposure from shipments of pork and pork products from Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo transiting the United States. Assuming that proper risk management techniques continue to be applied in Mexico, and that accident and exposure risk are minimized by proper handling during transport, the risk of exposure to hog cholera from pork in transit from Mexico through the United States would be minimal.

The proposed rule would have no direct effect on U.S. producers and consumers of pork because Mexican pork would only transit the United States and would not enter U.S. marketing channels. Neither the quantity or price of pork traded in U.S. domestic markets, nor U.S. consumer or producer surplus would be affected by the proposed rule.

Effects on Small Transport Firms

This proposed rule, if implemented, could directly affect U.S. trucking companies in the border states of Texas and California. These companies would benefit from transporting an estimated 5 to 6 thousand metric tons annually of Mexican pork and pork products from U.S. land border ports to U.S. maritime ports. Additional annual revenues generated by the proposed rule would range from $2,000 to $3,000 for California transport firms (based on an additional 5 to 7 trips annually), and from $10,000 to $57,000 for Texas transport firms (based on an additional 15 to 18 trips annually). The majority (98 percent) of trucking firms in Texas and California meets the Small Business Administration's definition of small firm (less than $18.5 million in receipts annually). However, based on the limited number of trips and negligible amount of revenue generated by these trips, it is safe to conclude that the proposed rule would not have a significant economic impact on a substantial number of small trucking firms.

Effects on U.S. Pork Exporters

The extent to which the proposed rule would affect U.S. pork exporters is unclear, but, based on historical data on Mexican pork exports, it appears that the overall effect of the proposed rule would be to increase the quantity of Mexican pork destined for the Japanese frozen pork market. According to Japanese import statistics, Japan imported 382,000 metric tons of frozen swine cuts valued at roughly $1.9 billion in 1997. Denmark, Taiwan, and the United States were the top three suppliers, but Mexico and Canada, who are relative newcomers to the Japanese frozen pork market, have gained market share in recent years. As discussed above, we estimate that an additional 5,000 to 6,000 metric tons annually of frozen pork from Mexico would transit the United States for Japan after adoption of the proposed rule. This is roughly 1.4 percent of the total quantity imported by Japan in 1997.

During the period 1996 through 1997, Mexican frozen pork exports to Japan increased from 12,953 metric tons (valued at $76 million) to 24,408 metric tons (valued at $122 million). During the same period, U.S. frozen pork exports to Japan decreased from 64,500 metric tons valued at $360 million to 48,000 metric tons valued at $244 million. Analysts cite price advantage and the willingness of Mexican packers to tailor pork cuts to Japanese specifications as key reasons for Mexico's increased market share in 1997.

Since this rule simply allows pork from additional Mexican States to transit the United States for immediate export, it is unclear whether this rule would result in increased volumes of Mexican exports to foreign regions (e.g., Japan), though it would likely result in increased volumes of pork transiting the United States. It is possible that the volume of Mexico's total pork exports would remain constant, though the volume of pork in transit through the United States would increase. This scenario would likely have a minimal economic effect on U.S. pork exporters, whether small or large. However, since we are unable to determine whether this rule will result in increased volumes of Mexican pork exports, we cannot determine the effect of this rule on U.S. pork exporters, whether small or large.

Trade Relations

This proposal would remove some restrictions on the importation of pork and pork products from Mexico and would encourage a positive trading environment between the United States and Mexico and other regions where hog cholera is considered to exist by stimulating economic activity and providing export opportunities to foreign pork processing industries.

The proposed changes to the regulations would result in new information collection or recordkeeping requirements, as described below under the heading, "Paperwork Reduction Act."

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–095–1. Please send a copy of your comments to: (1) Docket No. 98–095–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations to allow fresh (chilled or frozen) pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States, under certain conditions, for export to another country.

Implementing this proposed rule would necessitate the use of several information collection activities, including the completion of an import permit application, the placement of serially number seals on product containers, and the forwarding of a written, pre-arrival notification to APHIS port personnel.

We are asking OMB to approve these information collection activities in connection with our efforts to ensure that fresh pork and pork products transiting the United States from Mexico pose a negligible risk of introducing hog cholera into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .744 hours per response.

Respondents: Exporters in Mexico, and full-time, salaried veterinarians of Mexico's Animal Health Inspection Service.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 12.5.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 186 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 94.15, paragraph (b) introductory text would be revised to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(b) Pork and pork products from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan, Mexico, that are not eligible for entry into the United States in accordance with this part may transit the United States for immediate export if the following conditions are met:

* * * * *

Done in Washington, DC, this 13th day of July, 1999.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18321 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–378–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This proposal would require modification of the pressure web of the nose landing gear wheel well. This proposal is prompted by reports of fatigue cracks in the pressure web of the nose landing gear wheel well. The actions specified by the proposed AD are intended to prevent cracking of the pressure web of the nose landing gear wheel well, which could result in loss of airplane pressurization.

DATES: Comments must be received by September 2, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–378–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

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identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–378–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–378–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1990, the FAA issued AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990), which required incorporation of certain structural modifications on certain Boeing Model 727 series airplanes, in accordance with Boeing Document No. D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727." One of those modifications was installation of reinforcement straps and stiffeners on the sidewall, top, and forward bulkhead panels of the pressure web of the nose landing gear wheel well. That AD was prompted in part by reports of fatigue cracks in the pressure web of the nose landing gear wheel well.

Since the issuance of AD 90–06–09, the airplane manufacturer has notified the FAA that certain Model 727 series airplanes were inadvertently not included in the effectivity listing of Boeing Document No. D6–54860, Revision C, and hence, were also omitted from the applicability of that AD. Because such cracking has been attributed to fatigue, those airplanes may also be subject to the same unsafe condition. Cracking in the pressure web of the nose landing gear wheel well could result in loss of airplane pressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0145, Revision 1, dated December 7, 1989, which describes procedures for repetitive inspections of the sidewall, top, and forward bulkhead panels of the pressure web of the nose landing gear wheel well, and repair, if necessary. The service bulletin also describes procedures for a modification that involves installation of reinforcement straps and stiffeners on the sidewall, top, and forward bulkhead panels of the pressure web of the nose landing gear wheel well. Such installation would eliminate the need for the repetitive inspections in that area. Accomplishment of the modification specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin describes procedures for repetitive inspections of the pressure web of the nose landing gear wheel well, and repair, if necessary, this AD proposes to mandate only the modification of the pressure web of the nose landing gear wheel well. The FAA has determined that long-term continued operational safety will be better assured by design changes to prevent cracks, rather than repetitive inspections. Long-term inspections may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The decision to propose mandating only the modification and not the repetitive inspections described previously is in consonance with these conditions.

Operators should also note that this proposed AD would be applicable to airplanes not included in the effectivity listing of the service bulletin. AD 90–06–09 mandated the modification of the pressure web of the nose landing gear wheel well for airplanes listed in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727." The airplanes to which this proposed AD would be applicable are included in the effectivity listing of Revision H, dated May 9, 1996, of that document.

Cost Impact

There are approximately 24 airplanes of the affected design in the worldwide fleet. The FAA estimates that 13 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 82 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $701 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $73,073, or $5,621 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98-NM–378-AD.

Applicability: Model 727 series airplanes; line numbers 124, 126, 130, 146, 221, 287, 331, 339, 345, 355, 416, 439, 516, 532, 540, 608, 631, 650, 717, 777, 788, 791, 837, and 1087; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the pressure web of the nose landing gear wheel well, which could result in loss of airplane pressurization, accomplish the following:

Modification

(a) Prior to the accumulation of 60,000 total flight cycles, or within 4 years after the effective date of this AD, whichever occurs later, install reinforcement straps and stiffeners on the sidewall, top, and forward bulkhead panels of the pressure web of the nose landing gear wheel well, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0145, Revision 1, dated December 7, 1989.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 13, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18368 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–110–AD]

RIN 2120–AA64

Airworthineas Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes. That action would have required a one-time inspection to determine if the rigging bushings in the rudder control system protrude above the surface of the flange in which they are installed, and replacement of any discrepant bushing with a new bushing. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that shows that all affected airplanes have already been inspected and modified (if necessary) in accordance with the proposed rule. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager,International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on September 25, 1997 (62 FR 50264). The proposed rule would have required a one-time inspection to determine if the rigging bushings in the rudder control system protrude above the surface of the flange in which they are installed, and replacement of any discrepant bushing with a new bushing. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The proposed actions were intended to prevent jamming in the rudder control system, and consequent reduced controllability of the airplane.

Actions that Occurred Since Issuance of the NPRM

Since the issuance of that NPRM, Dornier has provided information that shows that all affected airplanes in the worldwide fleet have already been inspected in accordance with the proposed NPRM. Additionally, for any airplane on which a bushing was found to protrude, that bushing has been replaced with a new bushing of correct length. Therefore, the unsafe condition that was addressed in the NPRM no longer exists. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 97–NM–110–AD, published in the **Federal Register** on September 25, 1997 (62 FR 50264), is withdrawn.

Issued in Renton, Washington, on July 13, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate,

Aircraft Certification Service.

[FR Doc. 99–18369 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–26–AD]

RIN 2120–AA64

Airworthiness Directives; Avions Mudry et Cie Model CAP 10B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Avions Mudry et Cie (Avions Mudry) Model CAP 10B airplanes. The proposed AD specifies restricting the entry speed for performing flick maneuvers to 97 knots. Inserting a copy of the proposed AD into the Limitations Section of the CAP 10B flight manual is also proposed, along with fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view) that indicates this limitation. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to provide the flight information necessary for the pilot to prevent the pilot from using excessive speed during aerobatic maneuvers, which could result in the wing separating from the airplane.

DATES: Comments must be received on or before August 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–26–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Avions Mudry & Cie, 9, rue de l'Aviation, 21121 Darois, France; telephone: 03 80 356 65 10; facsimile 03 80 35 65 15. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–26–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Avions Mudry Model CAP 10B airplanes. The DGAC reports that there is currently no airspeed limitation for performing flick maneuvers during aerobatic flight. The speeds listed in sections 4 and 7 of the CAP 10B flight manual are only recommendations instead of required speeds.

Without required entry speeds for flick maneuvers when performing aerobatic flight, the pilot could use excessive speed and cause the wing to separate from the airplane.

Relevant Service Information

Avions Mudry has issued Service Bulletin No. 990501, dated May 20, 1999, which specifies restricting the entry speed for performing flick maneuvers to 97 knots by installing a placard in the cockpit of the aircraft that indicates this limitation.

The DGAC classified this service bulletin as mandatory and issued French AD T1999–222(A), not dated, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Mudry Model CAP 10B airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD specifies restricting the entry speed for performing flick maneuvers to 97 knots. Inserting a copy of the proposed AD into the Limitations Section of the CAP 10B flight manual is also proposed, along with fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view) that indicates this limitation. The placard will incorporate the following language:

"THE NEVER-EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK-MANEUVERS IS 180 KM/H (97 KTS)"

Cost Impact

The FAA estimates that 39 airplanes in the U.S. registry would be affected by the proposed AD. Accomplishing the proposed flight manual and placard requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the flight manual and fabricate and install the placard.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the limitation of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Avions Mudry & Cie: Docket No. 99–CE–26–AD.

Applicability: Model CAP 10B airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To provide the flight information necessary for the pilot to prevent the pilot from using excessive speed during aerobatic maneuvers, which could result in the wing separating from the airplane, accomplish the following:

(a) Restrict the entry speed for performing flick maneuvers to 97 knots through the incorporation of the following information into the CAP 10B flight manual. Accomplish this by inserting a copy of this AD into the Limitation Section of the flight manual:

"The never-exceed airspeed for positive or negative flick-maneuvers is 180 km/h (97 knots)."

(b) Fabricate a placard that incorporates the following words (using at least 1/8-inch letters), and install this placard on the instrument panel within the pilot's clear view:

"THE NEVER-EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK-MANEUVERS IS 180 KM/H (97 KTS)"

Note 2: Although not required by this AD, the FAA recommends that the bonds between the plywood skins and the ribs are checked and corrected through the "tapping" method specified in Avions Mudry Service Bulletin No. 15. This procedure is especially recommended if it is suspected that the above-referenced speed limitation was exceeded during a previous flight.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Avions Mudry Service Bulletin No. 990501, dated May 20, 1999, should be directed to Avions Mudry & Cie, 9, rue de l'Aviation, 21121 Darois, France; telephone: 03 80 356 65 10; facsimile 03 80 35 65 15. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in French AD T1999–222(A), not dated.

Issued in Kansas City, Missouri, on July 13, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate,

Aircraft Certification Service.

[FR Doc. 99–18370 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–34]

Amendment of Class E Airspace; Kansas City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace area at Kansas City International Airport, MO. The Kansas City VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) has been relocated from its present position to the Kansas City International Airport, MO. Relocating the Kansas City VORTAC requires amending the radial for the VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or Tactical Air Navigation (TACAN) Runway (RWY) 27, Standard Instrument Approach Procedure (SIAP). Also, a review of the Class E airspace area for Kansas City International Airport indicates it does not comply with the criteria for 700 feet Above

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Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. This document proposes to enlarge the Class E airspace to conform to the criteria of FAA Order 7400.2D. The review indicated the Instrument Landing System (ILS) localizer RWY 19R, ILS RWY 19L, ILS RWY 1L, ILS RWY IR, and coordinates should be included in the text header for the Kansas City International Airport, MO.

The intended effect of this proposed rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the coordinates of the Kansas City VORTAC, include the ILS RWY 19R, ILS RWY 19L, ILS RWY 1L, ILS RWY 1R and coordinates, amend the radial for the VOR/DME or TACAN RWY 27 SIAP, and comply with the criteria of FAA Order 7400.2D.

DATES: Comments must be received on or before August 24, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 99–ACE–34, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ACE–34." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to provide additional controlled Class E airspace area for Instrument Flight Rules (IFR) procedures at Kansas City International Airport, MO. The Kansas City VORTAC has been relocated from its present position to the Kansas City International Airport, MO. A review of the Class E airspace for Kansas City International Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Revised]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE MO E5 Kansas City International Airport, MO

Kansas City International Airport, MO
(Lat. 39°17'51"N., long. 94°42'50"W.)
Kansas City Downtown Airport, MO
(Lat. 39°07'24"N., long. 94°35'34"W.)
Fort Leavenworth, Sherman Army Airfield (AAF), KS
(Lat. 39°22'06"N., long. 94°54'53"W.)
Kansas City VORTAC
(Lat. 39°17'07"N., long. 94°44'13"W.)
DOTTE LOM
(Lat. 39°13'15"N., long. 94°45'00"W.)
Riverside VOR/DME
(Lat. 39°07'14"N., long. 94°35'48"W.)
ILS RWY 19R localizer
(Lat. 39°17'24"N., long. 94°43'49"W.)
ILS RWY 19L localizer
(Lat. 39°16'44"N., long. 94°42'35"W.)
ILS RWY IL localizer
(Lat. 39°19'30"N., long. 94°43'12"W.)
ILS RWY 1R localizer
(Lat. 39°18'34"N., long. 94°42'03"W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Kansas City International Airport and within 4.4 miles west of the Kansas City International Runway 19R ILS localizer north course and within 4.4 miles east of the Kansas City International Runway 19L ILS localizer north course extending from the 7.6-mile radius to 21.7 miles north of the DOTTE LOM and within 4.4 miles each side of the 093° radial of the Kansas City VORTAC extending from the Kansas City International Airport 7.6-mile radius to 12 miles east of the Kansas City VORTAC, and within 2.5 miles west of the Kansas City International Runway 1L ILS localizer south course and within 2.5 miles east of the Kansas City International Runway 1R ILS localizer course extending from the 7.6-mile radius to 9.5 miles south of the DOTTE LOM and within a 6.7-mile radius of the Kansas City Downtown Airport and within 3 miles each side of the 210° radial of the Riverside VOR/DME extending from the 6.7-mile radius to 12.6 miles southwest of the Downtown Airport, and within a 6.5-mile radius of the Sherman AAF.

* * * * *

Issued in Kansas City, MO, on June 18, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18346 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–12]

Proposed Establishment of Class E Airspace; Rockport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace extending upward from the surface within a 4.1-mile radius of Aransas County Airport, Rockport, TX. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Aransas County Airport, Rockport, TX.

DATES: Comments must be received on or before September 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–12, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped postcard containing the following statement: "Comments to Airspace Docket No. 99–ASW–12." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to establish Class E airspace, controlled airspace extending upward from the surface within a 4.1-mile radius of Aransas County Airport, Rockport, TX. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Aransas County Airport, Rockport, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in paragraph 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002: Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW TX E2 Rockport, TX [Established]

Rockport, Aransas County Airport, TX,
(Lat. 28°05'12"N., long. 97°02'41"W.)

That airspace extending upward from the surface within a 4.1-mile radius of Aransas County Airport, Rockport, TX.

* * * * *

Issued in Fort Worth, TX on June 15, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18352 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission" or "FTC"), is commencing a rulemaking proceeding to amend its Rules relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the "Amplifier Rule" or the "Rule"). The Commission proposes amending the Rule to: exempt sellers who make power output claims in media advertising from the requirement to disclose total rated harmonic distortion and the associated power bandwidth and impedance ratings; clarify the manner in which the Rule's testing procedures apply to self-powered subwoofer-satellite combination speaker systems; and reduce the preconditioning power output requirement from one-third of rated power to one-eighth of rated power. The Commission is commencing this rulemaking because of the comments filed in response to its Advanced Notice of Proposed Rulemaking ("ANPR"), and other information discussed in this notice. The notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in a hearing where oral testimony could be presented.

DATES: Written comments must be submitted on or before September 17, 1999. Notifications of interest in testifying must be submitted on or before September 17, 1999. If interested parties request the opportunity to present testimony, the Commission will publish a document in the **Federal Register**, stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before September 17, 1999, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given. If there is no interest in a hearing, the Commission will base its decision on the written rulemaking record.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Comments and requests to testify should be identified as "16 CFR Part 432 Comment—Amplifier Rule" and "16 CFR Part 432 Request to Testify—Amplifier Rule," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Dennis Murphy, Economist, Division of Consumer Protection, Bureau of Economics, (202) 326–3524, or Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3038, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Introduction

This Notice of Proposed Rulemaking ("NPR") is being published pursuant to section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of part 1, subpart B of the Commission's rules of practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need.[1]

The Amplifier Rule was promulgated on May 3, 1974 (39 FR 15387), to assist consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics of the equipment. On April 7, 1997, the Commission published a **Federal Register** Notice ("FRN") seeking comment on the rule as part of an ongoing project to review all Commission rules and guides to determine their current effectiveness and impact (62 FR 16500). This FRN sought comment on the costs and benefits of the Rule, what changes in the Rule would increase its benefits to purchasers and how those changes would affect compliance costs, and whether technological or marketplace changes have affected the Rule. The FRN also sought comment on issues related to the Rule's product coverage,

[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, Untied States Senate, and the Chairman of the Committee on Commerce, United States House of Representatives, 30 days prior to its publication in the **Federal Register**.

test procedures,and disclosure requirements.

The comments in response to the FRN generally expressed continuing support for the Rule, stating that it has given consumers a standardized method of comparing the power output of audio amplifiers, and has created a level playing field among competitors. The comments also suggested that there have been technological and marketplace changes that may warrant modifications to the Rule's testing and disclosure requirements, and a clarification of the Rule's applicability to self-powered loudspeakers for use with personal computers and home stereo systems. Certain comments also recommended that the Commission expand the Rule's coverage to include automotive sound amplification products. On the basis of this review, the Commission determined to retain the Rule, but to seek additional comment on possible amendments to the Rule.

The Commission published an Advanced Notice of Proposed Rulemaking ("ANPR") on July 9, 1998 (63 FR 37238), seeking public comment on whether it should initiate a rulemaking proceeding by publishing a Notice of Proposed Rulemaking ("NPR") under section 18 of the FTC Act, 15 U.S.C. 57a. The ANPR solicited specific comment on whether the Commission should (1) eliminate certain disclosure requirements in media advertising; (2) clarify testing procedures for self-powered speakers; and (3) amend certain required test procedures that may impose unnecessary costs on manufacturers. The ANPR also announced that the Commission had determined not to initiate a proceeding to amend the Rule to cover power ratings for automotive sound amplification equipment. Finally, the Commission published elsewhere in the July 9, **Federal Register** a Notice of Final Action announcing a non-substantive technical amendment to the Rule clarifying that the Rule covered self-powered loudspeakers for use in the home (63 FR 37234).

The ANPR elicited five written comments on the possible amendments described therein.[2] Based on the comments and the evidence discussed below, the Commission proposes to amend the Rule in the following ways.

Part B—Analysis of Proposed Amendments

1. Proposed Amendment to Required Disclosures Section of the Amplifier Rule

a. Background

Section 432.2 of the Rule requires disclosure of maximum rated total harmonic distortion ("THD"), power bandwidth, and impedance whenever a power claim is made in any advertising, including advertising by retail stores, direct mail merchants, and manufacturers. In the ANPR, the Commission concluded tentatively that improvements in amplifier technology since the Rule's promulgation in 1974 appeared to have reduced the benefits to consumers of disclosure of THD in medic advertising in the ANPR, the Commission also concluded tentatively that an insufficient number of consumers would understand the meaning and significance of the remaining triggered disclosures concerning power bandwidth and impedance to justify their publication in media advertising. Accordingly, the ANPR sought comment on whether the Commission should initiate a rulemaking proceeding to amend the Rule to exempt media advertising, including advertising on the Internet, from disclosure of THD and the associated power bandwidth and impedance ratings when a power output claim is made. In the ANPR, the Commission tentatively concluded further that the proposed exemption should be conditioned on the requirement that the primary power output specification disclosed in any advertising distributed through the media be the manufacturer's rated minimum sine wave continuous average power output, per channel, at an impedance of 8 ohms, or, if the amplifier is not designed for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed.

Finally, the ANPR explained the Commission's tentative conclusion that publication of all other power output claims currently subject to the Rule, including those appearing in manufacturer specification sheets that are either in print or reproduced on the Internet, should continue to trigger the requirement that the seller provide the full complement of disclosures concerning power bandwidth, maximum harmonic distortion, and impedance, so that interested consumers could obtain this information prior to purchase.

The Commission received four comments on the tentatively proposed exemption of THD, bandwidth, and impedance disclosures in media advertising. CEMA, the principal trade association for the electronics industry, supported the proposed exemption, including the requirement that the primary power output specification disclosed in media advertising be continuous per-channel output at an 8-ohm impedance (unless the amplifier is designed primarily for a different impedance level).[3] Velodyne, a manufacturer of powered loudspeakers, also supported the exemption of THD and bandwidth disclosures in media advertising, stating that they contain little useful information for today's consumer.[4] This commenter suggested, however,that the standardized impedance value for power output claims be 4 ohms rather than the proposed 8 ohms.[5] No explanation was provided for this suggestion. A third commenter, Wass, opposed elimination of the required THD, bandwidth, and impedance disclosures in advertising, stating that sellers could take unfair advantage of the consumer through in-store sales techniques that obscure the true performance capabilities of an amplifier.[6] Finally, a fourth commenter, Sonance, stated simply that the relationship between power and distortion is vital to specifying power output, and recommended against the tentatively proposed exemption.[7]

b. Proposed Amendment and Reasons Therefore

Based on its review of the comments on its ANPR, the Commission has reason to believe that the disclosure of THD, power bandwidth, and impedance in media advertising that contains a triggering power output claim no longer provides sufficient consumer benefit to justify the associated increase in advertising costs. Two of the commenters stated that the disclosures were of little value. Two commenters opposed the tentatively proposed exemption, with one expressing concern that eliminating the disclosure requirements in media advertising would allow sales personnel to take advantage of consumers at retail stores. As the Commission noted in the ANPR, however, very few amplifiers in today's market generate high levels of THD (*e.g.*, more than one percent) using the FTC testing protocol. Further, those few

[2] The commenters were: Consumer Electronics Manufacturers Association (CEMA)(1); Wass Audio=Digital (Wass)(2); Sonance (Sonance)(3); PHI Acoustics (PHI)(4), and Velodyne Acoustics, Inc. (Velodyne)(5). The comments are cited as "(name of commenter), Comment (designated number), p. __." All Rule ANPR comments are on the public record and are available for public inspection in the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday, except federal holidays.

[3] CEMA, (1), pp. 2–3.
[4] Velodyne, (5) p. 1.
[5] *Id.*
[6] Wass, (2), p. 3.
[7] Sonance, (3), p. 1.

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amplifiers that do generate appreciable levels of THD tend to be very expensive vacuum tube designs that are sold to a specialized group of consumers that may not consider THD specifications an important consideration in their purchase decisions. Thus, it would not appear that sales personnel at retail stores would have an appreciable incentive to mislead consumers concerning the distortion characteristics of an amplifier. Finally, consumers who are interested in the Rule's THD, power bandwidth, and impedance specifications should be able to find such information relatively easily in product brochures at retail stores or on the Internet.

Commenters on the ANPR did not agree on which impedance value should serve as the standard for power output claims in media advertising under the tentatively proposed disclosure exemption. CEMA endorsed the value of 8 ohms suggested in the ANPR. Velodyne, however, commented that the standardized impedance value should be 4 ohms. The Commission notes that, under the proposed exemption, for amplifiers designed to drive a specific loudspeaker in an integrated powered configuration, the seller could base power output claims on an impedance of 4 ohms, if the amplifier is powering a loudspeaker that is rated at a nominal impedance of 4 ohms. Although the Commission has reason to believe that the majority of non-powered loudspeakers are rated at a nominal impedance of 8 ohms, and that this value should therefore be adopted as the basis for power output claims in media advertising for separate stand-alone amplifiers, this NPR solicits further comment on whether the Commission's tentative conclusion on this issue is correct.

Accordingly, the Commission proposes amending § 432.2 of the Rule to exempt advertising disseminated through the media, including advertising on the Internet, from disclosure of total rated harmonic distortion and the associated power bandwidth and impedance ratings when a power output claim is made. The exemption for advertising disseminated through the media would be conditioned on the requirement that the primary power output specification disclosed in any media advertising be the manufacturer's rated minimum sine wave continuous average power output, per channel, at an impedance of 8 ohms, or, if the amplifier is not designed for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed. Publication of all other power output claims currently subject to the Rule, including those appearing in manufacturer specification sheets that are either in print or reproduced on the Internet, would continue to trigger the requirement that the seller provide the full complement of disclosures concerning power bandwidth, maximum harmonic distortion, and impedance, so that interested consumers could obtain this information prior to purchase.

2. Proposed Amendment Relating to Self-Powered Loudspeakers

a. Background

When the FRN was published, the Rule did not specifically mention self-powered speakers as an example of sound amplification equipment manufactured or sold for home entertainment purposes. In the FRN, the Commission solicited comment on its tentative conclusion that the Rule covers: (A) Self-powered speakers for use with (i) home computers, (ii) home sound systems, (iii) home multimedia systems; and (B) other sound power amplification equipment for home computers. On July 9, 1998, the Commission published in the **Federal Register** a non-substantive technical amendment to the Rule to clarify that the Rule applies to the types of self-powered loadspeakers enumerated above (63 FR 37234).

In the ANPR published elsewhere in the July 9, 1998 **Federal Register** (63 FR 37238), the Commission explained that comments received in response to the FRN indicated that a clarification was needed concerning the testing procedure that should be followed in applying the Rule's continuous power rating protocol to self-powered subwoofer-satellite combination speaker systems that employ two or more power amplifiers sharing a common power supply. These comments contained recommendations for two alternative approaches for such combination self-powered speakers. The first proposed procedure was for power measurements to be made with all associated channels of both the subwoofer and satellite amplifiers driven simultaneously to full power using a test tone at the system's crossover frequency. The second proposal was to allow manufacturers of such equipment to test the subwoofer and satellite amplifiers separately over their respective frequency bandwidth.

In the ANPR, the Commission announced its tentative conclusion that the second procedure was more appropriate, given the types of power demands combination self-powered speakers would most likely encounter in actual home use. Accordingly, in the ANPR the Commission sought comment on whether to initiate a rulemaking proceeding to clarify the Amplifier Rule by amending § 432.2 of the Rule to included a note stating that, for self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven to rated per channel power under § 432.2(a)(2).

The Commission received three comments on the tentatively proposed clarification of testing procedures for self-powered combination subwoofer-satellite loudspeaker systems. CEMA supported the Commission's clarification. CEMA stated that this approach would allow self-powered subwoofers to be rated over their operating frequency range and at their appropriate impedance value.[8] Sonance also endorsed the tentative proposal to restrict the power tests of such equipment to each amplifier's intended operating range.[9] The final commenter, Velodyne, disagreed with the Commission's tentative proposal and stated that power rating tests for self-powered combination subwoofer-satellite loudspeakers should be conducted with all channels operating simultaneously. Velodyne proposed that the amplifiers driving the subwoofer and satellites should be given a test signal within each amplifer's typical range, and suggested a combination 60Hz–1,000Hz tone.[10] Velodyne stated that the power supply was the most costly and critical component determining an amplifier's continuous power output capability, and that the primary quantitative measurement of interest to consumers is the amount of watts the power supply can deliver.[11]

b. Proposed Amendment and Reasons Therefore

Based on the comments submitted in response to the FRN and the ANPR, the Commission tentatively concludes that the most appropriate method of testing self-powered combination subwoofer-satellite loudspeaker systems under the Rule is to require simultaneous operation only of those channels dedicated to the same portion of the audio frequency spectrum. As noted in the ANPR, the Commission does not have sufficient evidence to concluded that in-home use, under even strenuous conditions, typically would place

[8] CEMA, (1), p. 3.
[9] Sonance, (3), p. 1.
[10] Velodyne, (5), p. 3.
[11] *Id.*

maximum continuous power demands simultaneously on both the subwoofer and satellite amplifiers at the crossover frequency. Rather, it is the Commission's understanding that such demands are more likely to occur in portions of the audio spectrum that would be assigned primarily either to the subwoofer amplifier or the satellite amplifier. In contrast, conventional stand-alone stereo amplifiers, which incorporate left and right-channel amplifiers that must reproduce signals covering the full musical frequency bandwidth, will more commonly be required to meet simultaneous continuous power demands that are present in both channels (such as might occur when a pipe organ play a sustained pedal tone in the deep bass.

In addition, a simultaneous power test of both the subwoofer and the satellite amplifiers would, from a practical standpoint, require a single test signal at the crossover frequency, or a single combination set of tones, such as the 60Hz–1,000Hz composite signal suggested by Velodyne. This would mean that the resulting power and THD specifications might not be valid over the full frequency range over which each amplifier was designed to operate.

Accordingly, the Commission proposed amendment 432.2(a)(2) of the Rule to include a clarifying note stating that, when measuring maximum per channel output of self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven to rated per channel power.

3. Proposed Amendment to the Amplifier Rule Preconditioning Requirement

a. Background

Section 432.3(c) of the Rule specifies that an amplifier must be preconditioned by simultaneously operating all channels at one-third of rated power output for one hour using a sinusoidal wave at a frequency of 1,000Hz. The ANPR sought comment on whether the Commission should amend the Rule to reduce the preconditioning power output requirement from one-third of rated power to a lower figure, such as one-eighth of rated power.

CEMA supported reducing the preconditioning power output requirement to below the current one-third power. CEMA stated that the current one-third power requirement is "beyond what can be expected through normal use in the home" and is "harsh and unrealistic."[12] CEMA claimed that in order to meet the physical conditions presented by the Rule's existing preconditioning requirement, manufacturers must design and incorporate in amplifiers larger and costlier heat sinks.[13] CEMA listed several alternative solutions, including operation at idle during preconditioning, operation at a small fixed power representative of average power during typical in-home operation, or preconditioning at one-eighth power. CEMA went on to state that the one-eighth power option "has the virtue of being consistent with current industry and international testing specification."[14]

A second commenter, Velodyne, stated that a preconditioning period is not really necessary, but that the Commission should follow Underwriters Laboratories' ("UL") one-eighth power requirement if the preconditioning requirement is retained.[15] Velodyne did not provide any explanation for its conclusion that no preconditioning period of any kind was necessary under the Rule.

A third commenter, Wass, concluded from a series of calculations that reducing the preconditioning requirement from one-third to one-eighth power would reduce the thermal stress (expressed in "watts of heat" delivered to an amplifer's heatsink) by approximately 24 percent.[16] Wass, however, opposed amending the Rule to provide such a reduction in specified preconditioning power output because the consumer would get "a poorer unit."[17] Wass did not provide any evidence, however, that would allow the Commission to compare the magnitude of the alleged reduction in amplifier quality with the magnitude of the associated reduction in manufacturing costs resulting from the one-eighth power preconditioning standard.

Finally, a fourth commenter, Sonance, stated that the one-third power preconditioning requirement should be retained and enforced evenly.[18] Sonance saw no technical problem with the requirement, stating that many generations of consumer electronic products have been built to this standard.[19]

[12] CEMA, (1), p. 2
[13] *Id.*
[14] *Id.*
[15] Velodyne, (5), p. 1.
[16] Wass, (2), p. 2.
[17] *Id.*
[18] Sonance, (3), p. 1.
[19] *Id.*

b. Proposed Amendment and Reasons Therefore

Based on the aforementioned comments, the Commission tentatively concludes that the current one-third power preconditioning requirement imposes unnecessary costs on amplifier manufacturers and is not needed to measure amplifiers accurately under conditions that represent actual in-home use. Two of the commenters, including the principal trade association for the electronics industry, did not believe that there was any benefit to consumers that would justify the increased heat-sink capacity needed to withstand the current preconditioning requirement. A third commenter provided evidence that lowering the preconditioning requirement to one-eighth power would in fact reduce thermal stress significantly, and thus allow manufacturers to provide less costly heat sink capacity.

None of the commenters provided any evidence that lowering the preconditioning standard to one-eighth power, or some other value, would lead to a reduction in the actual in-home performance capabilities of amplifiers. In addition, both commenters that supported a reduction in the preconditioning power-output requirement either recommended the UL's one-eighth-power preconditioning standard explicitly, or considered the UL standard an acceptable choice among several alternatives.

Accordingly, the Commission proposes amending § 432.3(c) of the Rule by reducing the specified per-channel power output during preconditioning from one-third of rated power output for one hour to one-eighth of rated power output for one hour.

c. Additional Preconditioning Issue and Proposed Amendment

As discussed in Part B(2) above, the Commission is proposing to amend the Rule to clarify the manner in which power tests should be conducted for self-powered subwoofer-satellite combination loudspeaker systems. In reviewing the technical issues related to this proposed amendment, the Commission has tentatively concluded that clarification also is required concerning the manner in which powered subwoofers should be preconditioned under the Rule.

Section 432.3(c) of the Rule specifies a preconditioning sinusoidal test tone of 1,000Hz. Most self-powered subwoofer systems, however, incorporate crossover circuitry that filters out frequencies above the bass range. Depending upon the crossover frequency and the

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steepness of the crossover slope, such crossover circuitry may severely attenuate a test tone of 1,000Hz and prevent the subwoofer amplifier from being driven to one-third of rated power (as currently required by the Rule), or even to one-eighth of rated power (as specified in the proposed amendment). Thus, it would appear that testers of self-powered subwoofers would need to select a preconditioning frequency considerably lower than 1,000Hz.

The Commission, therefore, has tentatively concluded that the Rule should be amended to clarify the preconditioning procedure for self-powered subwoofers. The Commission does not currently believe, however, that any such amendment should specify the precise frequency of the test tone that is to be used in preconditioning powered subwoofers. Powered subwoofers may differ widely in the portion of the bass spectrum over which they are designed to operate, and, consequently, there may not be a single preconditioning frequency that is appropriate for all powered subwoofers. The Commission has tentatively concluded, therefore, the testers of powered subwoofers should have the flexibility to choose for the sinusoidal preconditioning signal any frequency (within the intended operating bandwidth of the subwoofer amplifier) that will allow the amplifier to be driven for one hour to the required proportion of rated power output.

Accordingly, the Commission proposes amending § 432.3(c) of the Rule by adding an explanatory note stating that for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's intended operating bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour.

Part C—Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. Using expedited procedures will support the Commission's goals of clarifying existing regulations, when necessary, and eliminating obsolete or unnecessary regulation without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should amend the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register**.

Part D—Requests for Public Hearings

Because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this notice.

Part E—Section-by-Section Description of Proposed Amendments

1. Amendment Relating to Exemption from Required Disclosures in Media Advertising

The Commission proposes to amend § 432.2 to exempt media advertising, including advertising on the Internet, from disclosure of maximum total rated harmonic distortion, power bandwidth, and load impedance. This exemption would be conditioned on the requirement that the primary power output specification disclosed in any media advertising be the manufacturer's rated minimum sine wave continuous average power output, per channel, at an impedance of 8 ohms, or, if the amplifier is not designed for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed. All other power output claims currently subject to the Rule, including those appearing in manufacturer specification sheets that are either in print or reproduced on the Internet, would continue to trigger the full complement of disclosures concerning power bandwidth, maximum rated harmonic distortion, and impedance.

2. Clarifying Amendment Relating to Testing Procedures for Self-Powered Speakers

The Commission proposes to amend § 432.2(a) by adding a clarifying note stating that, for self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven simultaneously to rated per channel power.

3. Amendments Relating to Preconditioning

The Commission proposes to amend § 432.3(c) to read as follows:

> The amplifier shall be preconditioned by simultaneously operating all channels at one-eighth of rated power output for one hour using a sinusoidal wave at a frequency of 1,000Hz;

The Commission also proposes to amend § 432.3(c) by adding an explanatory note stating that, for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour.

Part F—Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy, on the cost of sound amplification equipment, or on covered businesses or consumers. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entitles. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Amplifier Rule covers manufacturers and importers of power amplification equipment for use in the home, the Commission believes that any amendment to the Rule may affect a substantial number of small businesses. Nevertheless, the proposed amendments would not appear to have a significant economic impact upon such entities. Specifically, the proposed change in the preconditioning protocol and the proposed exemption of disclosure of THD, bandwidth, and impedance specifications in media advertising should allow a moderate reduction in amplifier manufacturing and advertising costs that should benefit both small and larger businesses. The proposed clarification of testing procedures for combination subwoofer-satellite self-powered loudspeaker systems is the least burdensome application of the Rule among the alternative proposals suggested by commenters, and should not have a significant disproportionate impact on the testing costs of small manufacturers of such power amplification equipment.

Based on available information, therefore, the Commission certifies that amending the Amplifier Rule as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

Part G—Paperwork Reduction Act

The Amplifier Rule contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget ("OMB") Control Number 3084–0105. As noted above, for purposes of performing the tests necessary for affected entities to make the disclosures required under the Rule, § 432.3(c) of the Rules requires that an amplifier be preconditioned by simultaneously operating all channels at one-third of rated power output for one hour using a sinusoidal wave at a frequency of 1,000Hz. In addition, § 432.2 of the Rules requires disclosure of the manufacturer's rated minimum sine wave continuous average power output, in watts per channel, maximum rated total harmonic distortion, power bandwidth, and impedance whenever a power claim is made in advertising, including advertising by retail stores, direct mail merchants, and manufacturers.

The proposed amendments would not increase the paperwork burden associated with the aforementioned paperwork requirements. Three of the amendments proposed by the Commission would not increase or alter the Rule's paperwork requirements, and one amendment proposed by the Commission would reduce the paperwork burden for businesses. Consequently, there are no additional "collection of information" requirements included in the proposed amendments to submit to OMB for clearance under the Paperwork Reduction Act. A separate Notice soliciting public comment on extending the OMB clearance for the Rule through March 31, 2002, was published in the **Federal Register** on January 8, 1999 (64 FR 1203). If, as expected, OMB extends clearance for the Rule as presently written, any reduction of the paperwork burden associated with the Rule's requirements that may result from this proceeding will be reflected in subsequent reviews of the Rule for OMB clearance.

The Commission's proposed amendment to reduce the specified per-channel power output of amplifiers during preconditioning from one-third of rated power output for one hour to one-eighth of rated power output for one hour would not alter or increase the paperwork burden associated with this requirement because amplifiers must continue to be preconditioned for one hour. Also, with respect to preconditioning, the proposed amendment to add a note to the Rule stating that, for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's intended operating bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour, would not increase the Rule's paperwork burden. The note would not change the Rule's requirements, but merely would clarify the preconditioning procedure for self-powered subwoofers.

Similarly, the proposed amendment to add a note to the Rule stating that, for self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven to rated per channel power also would not increase the Rule's paperwork burden. The note would not alter the Rule's requirements, but merely would clarify the test procedure that should be followed in applying the Rule's continuous power rating protocol to self-powered subwoofer-satellite combination speaker systems that employ two or more power amplifiers sharing a common power supply.

The proposed amendment of the Rule to exempt from media advertising, including advertising on the Internet, disclosure of an amplifier's total rated harmonic distortion and the associated power bandwidth and impedance ratings when a power output claim for an amplifier is made would result in reducing the Rule's paperwork burden. Although the exemption for media advertising would be conditioned on the requirement that the amplifier's primary power output specification continue to be disclosed in any media advertising, the net effect of the proposed amendment would be to reduce the Rule's paperwork burden for businesses.

Thus, the Commission concludes that the proposed amendments would not increase the paperwork burden associated with compliance with the Rule. To ensure that no significant paperwork burden is being overlooked, however, the Commission requests comments on this issue.

Part H—Additional Information for Interested Persons

1. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

2. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of "Sunshine" Meetings.[20]

[20] See 15 U.S.C. 57a(i)(2)(A); 45 FR 50814 (1980); 45 FR 78626 (1980).

Part I—Invitation to Comment and Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Amplifier Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals, as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

The written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Federal Trade Commission, 600 Pennsylvania Ave., NW, Room 130, Washington, DC 20580, (202) 326–2222.

Questions

A. Exemption From Rule-Required Disclosures in Media Advertising

(1) Should the Commission amend § 432.2 of the Rule to exempt disclosure of total rated harmonic distortion and the associated power bandwidth and impedance ratings when a power output claim is made in media advertising?

(2) If the Commission amends the Rule to allow the above exemption, should this exemption be conditioned on the requirement that the primary power output specification disclosed in any media advertising be the manufacturer's rated minimum sine wave continuous average power output, per channel, at an impedance of 8 ohms, or, if the amplifier is not designed primarily for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed?

(3) What is the most common nominal impedance rating for the majority of home loudspeakers that are designed to be driven conventionally by separate sound amplification equipment?

B. Rule Coverage of Self-Powered Loudspeakers for Use in the Home

(4) Should the Commission amend § 432.2(a) of the Rule to clarify that, for self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven to rated per channel power under § 432.2(a)(2) of the Rule? If not, how should the Commission amend the Rule to clarify testing procedures for such self-powered combination speaker systems?

C. The Rule's Preconditioning Requirement

(5) Should the Commission amend § 432.3(c) of the Rule to reduce the preconditioning power output requirement from one-third of rated power to one-eighth of rated power?

(6) Should the Commission amend § 432.3(c) of the Rule to explain that, for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's normal operating bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour? If not, how should the Commission amend the Rule to clarify the preconditioning protocol for self-powered subwoofers?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–18302 Filed 7–16–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA52–1–7422b; FRL–6378–4]

Approval and Promulgation of Air Quality State Implementation Plans; Louisiana; Approval of Clean Fuel Fleet Substitution Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Louisiana's State Implementation Plan (SIP) Clean Fuel Fleet (CFF) substitute program revision because it adequately demonstrates that their substitute program achieves equivalent or better long term reductions in emissions of ozone producing and toxic air pollutants than the Federal CFF program.

In the "Rules and Regulations" section of this **Federal Register**, we are approving the State's SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received by August 18, 1999.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, of the EPA Region 6 Air Planning Section at (214) 665–7354 at the address above.

SUPPLEMENTARY INFORMATION: This document concerns approval of the Louisiana Clean Fuel Fleet substitution program SIP revision. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–18038 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–207–1–9924b; TN–214–1–9925b; FRL–6379–3]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Tennessee SIP Regarding National Emission Standards for Hazardous Air Pollutants and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Tennessee on June 16, 1998 and February 11, 1999, for the purposes of establishing a definition for national emission standards for hazardous air pollutants in Rule 1200–3–2–.01 and incorporating by reference the definition for volatile organic compounds contained in 40 CFR part 51, subpart F into Rule 1200–3–9–.01. In the Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 18, 1999.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562-9030.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: June 14, 1999.

A. Stanley Meinburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–18044 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY31–192b, FRL–6379–1]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the State Plan submitted by New York to fulfill the requirements of section 111(d) of the Clean Air Act for Municipal Solid Waste (MSW) Landfills. The revisions concern the implementation and enforcement of the Emissions Guidelines applicable to existing MSW Landfills. The State Plan imposes landfill gas emissions limits and control requirements for the existing MSW Landfills in New York which will reduce the designated pollutants. In the "Rules and Regulations" section of this **Federal Register**, EPA is conditionally approving New York's State Plan submittal, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the conditional approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before August 18, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Craig Flamm or Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 6, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–18042 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22 and 101

[WT Docket No. 97–81; FCC 99–101]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document addresses the impact of the Balanced Budget Act of 1997 (Balanced Budget Act) on the ongoing Multiple Address Systems (MAS) rulemaking proceeding. The Commission's objective is to supplement the record received in response to a previous *Notice*, which was released prior to the passage of the Balanced Budget Act. This document examines the impact of the Balanced Budget Act on various proposals in the *Notice*, seeks comment on whether the

Balanced Budget Act has affected the proposals in the *Notice*, seeks comment on how to resolve mutually exclusive MAS applications received from parties filing applications in some of the MAS bands, assuming that channels in these bands are reserved for public safety radio services, seeks comment on specific size standards to be applied to the "small business" definition for bidding credits, and the proposed offering of "tiered bidding credits" for the different sizes of small businesses, and suspends the acceptance and processing of applications in the 928/952/956 MHz bands.

DATES: Comments are due on or before September 17, 1999. Reply comments are due on or before October 19, 1999.

ADDRESSES: Federal Communications Commission, Room TW–B204F, 445 12th St., SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ronald E. Quirk, Jr. or Shellie Blakeney, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418–0680, or via E-mail to "rquirk@fcc.gov" or "sblakene@fcc.gov". *TTY:* (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making and Order (Further Notice)*, WT Docket No. 97–81, FCC 99–101, adopted May 18, 1999, and released on July 1, 1999. The full text of this *Further Notice* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, *TTY* (202) 418–2555, or, at mcontee@fcc.gov. The full text of the *Further Notice* can also be downloaded at:

http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99101.txt or
http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99101.txt.wp

Summary of the Further Notice of Proposed Rule Making and Order

1. On August 10, 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act) which authorized the Commission to select licensees applying for initial license grants by competitive bidding for certain classes of radio licenses. The 1993 Budget Act, *inter alia*, permitted the Commission to employ competitive bidding procedures to choose among mutually exclusive applications wherein the "principal use" of the spectrum would involve receiving compensation for their services (*i.e.* "subscriber-based services"). *See* 47 U.S.C. 309(j)(2)(A) (1993).

2. In 1997, the Commission released the *Notice* (62 FR 11407, March 12, 1997) which sought comment on various Commission proposals to streamline the MAS service rules, increase technical and operational flexibility for MAS licensees, license most MAS channels by geographic area, and award mutually exclusive licenses by competitive bidding. In the *Notice*, the Commission tentatively concluded that, because the vast majority of pending applications for the 932/941 MHz bands proposed subscriber-based services, the 932/941 MHz bands should be designated for subscriber-based services, and thus be subject to competitive bidding. Accordingly, the Commission proposed to dismiss, without prejudice, all the pending 932/941 MHz band applications, which were originally slated to be awarded by random selection procedures. The Commission also tentatively concluded that because the majority use of the 928/959 MHz bands was to provide subscriber-based services, the 928/959 MHz bands should be designated for such services, and be subject to competitive bidding. Additionally, the Commission tentatively concluded that some MAS channels should be exempted from competitive bidding. The Commission, therefore, proposed to: (a) Set aside five channel pairs in the 932/941 MHz bands for public safety/Federal Government use; (b) designate the 928/952/956 MHz bands exclusively for private, internal use; and (c) exempt applications for these bands from competitive bidding. Additionally, the Commission suspended acceptance of applications for new licenses, amendments and major modifications for the 932/941 MHz bands, the 928/959 MHz bands, and applications to provide subscriber-based services in the 928/952/956 MHz bands.

3. Subsequently, Congress enacted the Balanced Budget Act, which eliminated the Commission's authority to use lotteries (with an exception not relevant to the MAS context) to assign any license issued after July 1, 1997, 47 U.S.C. 309(i)(5) (1997). The Balanced Budget Act also expanded the Commission's authority—and statutory mandate—to use competitive bidding to select among mutually exclusive applications for any initial license, with no exceptions for pending mutually exclusive applications. 47 U.S.C. 309(j)(1) (1997). (Accordingly, in September, 1998, the Public Safety and Private Wireless Division of the Commission's Wireless Telecommunications Bureau dismissed the pending applications for the 932/941 MHz bands, without prejudice. *Order* (63 FR 53350, Oct. 5, 1998)). Further, the Balanced Budget Act changed the criteria for determining the auctionability of spectrum, removing the requirement that the principal use of the subject spectrum be for subscriber-based services. 47 U.S.C. 309(j)(1) (1997). The Balanced Budget Act also altered the criteria for determining exemptions to competitive bidding. 47 U.S.C. 309(j)(2) (1997). The exemption pertinent to MAS is for "public safety radio services" (public safety exemption). The public safety exemption applies to services that "(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public." 47 U.S.C. 309(j)(2)(A) (1997).

4. Due to the changes brought about by the Balanced Budget Act, which was enacted subsequent to the release of the *Notice*, parties have not had an opportunity to assess the impact of the Balanced Budget Act on the Commission's outstanding proposals for MAS spectrum. Accordingly, the Commission concludes that the public interest would be served by giving interested parties a further opportunity to comment in this proceeding.

5. The Commission tentatively concludes that, as a general matter, the use of competitive bidding to select between mutually exclusive applications for initial MAS licenses is consistent with Section 309(j), as amended by the Balanced Budget Act. The Commission seeks comment on this tentative conclusion. The Commission additionally seeks comment on whether Congress' highlighting in the Balanced Budget Act, the Commission's obligation under 47 U.S.C. 309(j)(6)(E) to use various means to avoid mutual exclusivity in application and licensing proceedings, has any effect on its tentative conclusion that competitive bidding should be used to resolve mutually exclusive applications for initial MAS licenses.

6. The Commission also tentatively concludes that the proposed use of the 932/941 MHz bands, and the current MAS use of the 928/959 MHz bands, do not fall within the public safety exemption, and therefore licenses for

these bands should be subject to competitive bidding. The Commission seeks comment on this tentative conclusion. Regarding the 928/952/956 MHz bands, the Commission seeks comment on the level of representation of public safety radio services in the current use of these bands. If it appears that these bands are predominantly used for public safety purposes, the Commission seeks comment on allocating all, or part, of the 928/952/956 MHz bands for public safety radio services, and whether the Commission should grandfather all existing services currently being provided in these bands. Additionally, if the Commission reserves the 928/952/956 MHz bands for public safety radio services, it tentatively concludes that site-by-site licensing should be retained, but if the current and foreseeable use of these bands do not comport with the statutory definition of public safety radio services, the Commission tentatively concludes that the bands should be subject to competitive bidding and that a system of geographic licensing should be adopted. The Commission seeks comment on these tentative conclusions.

7. In the interest of implementing the Congressional intent of increasing the public safety community's access to frequencies without having to participate in an auction, the Commission tentatively concludes that its proposal in the *Notice* to set aside five of the 40 channel pairs in the 932/941 MHz bands for public safety/Federal Government use should be retained. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment as to how it should determine eligibility for such a set-aside. For example, should it use the traditional public safety service categories outlined in the Commission's rules (*see* 47 CFR part 90, Subpart B), or should eligibility be expanded to encompass services that fall under the public safety exemption in the Balanced Budget Act? The Commission further seeks comment on the need for this set-aside if all or part of the 928/952/956 MHz bands is reserved for public safety radio services.

8. If the Commission does not set aside five channels in the 932/941 MHz bands for public safety/Federal Government use, it seeks comment on how to treat applications for the 932/941 MHz bands that propose to provide public safety radio services. The Commission tentatively concludes that such applicants should be required to participate in the competitive bidding process, because the subject spectrum would not be specifically allocated for public safety radio services. The Commission seeks comment on this tentative conclusion.

9. The Commission tentatively concludes that if it reserves channels in either the 932/941 MHz bands or the 928/952/956 MHz bands, or both, for public safety radio services, thereby exempting them from competitive bidding, licensing should be on a first-come, first-serve basis. Because these site-based applications would be frequency coordinated prior to filing, and would be subject to a filing window, mutual exclusivity would be rare. Because mutual exclusivity is still possible, however, the Commission seeks comment on a proposal offered by Microwave Data Systems that if mutually exclusive applications are filed, the Commission should grant all applications that reach the frequency coordinator on the day that the mutual exclusivity is created, provided that they are in order, and that the licensees be required to share the channels under whatever private arrangements they negotiate. The Commission also seeks comment on other possible alternatives.

10. In the *Notice*, the Commission sought comment generally on establishment of a "small business" definition for MAS. In the *Further Notice*, the Commission seeks comment on the specific size standards that should be applied to any small business definition the Commission decides to adopt for MAS. The Commission proposes to define a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million, and it proposes to define a "very small business" as an entity with average gross revenues for the preceding three years not exceeding $3 million. The Commission seeks comment on those proposals.

11. The Commission also seeks comment on its proposal to offer "tiered bidding credits" for different sizes of small businesses. The Commission proposes to establish two levels of bidding credits: small businesses will receive a 25 percent bidding credit, and very small businesses will receive a 35 percent bidding credit. Bidding credits will not be cumulative. The Commission believes that tiered bidding credits will help achieve its statutory objective to provide varying sizes of small businesses with a meaningful opportunity to participate in the MAS auction. *See* 47 U.S.C. 309(j)(3)(B) (1997).

12. The Commission maintains the current suspension of the acceptance of MAS applications for new licenses, amendments, or modifications for the 932/941 MHz and 928/959 MHz bands. Additionally, effective as of the date of the release of the *Further Notice*, the Commission suspends acceptance of all MAS applications for new licenses, amendments, or modifications for the 928/952/956 MHz bands, regardless of the type of service proposed by the applicant. The application suspension is extended because of the uncertainty regarding whether to employ geographic area licensing and auctioning for these bands. This suspension will remain in effect until further notice. The Commission will continue to accept and process applications for minor modifications, or for license assignment or transfer of control under existing procedures. This exception will also apply to amendments to applications for minor amendments.

13. Regarding MAS applications for new licenses, amendments, or non-minor modifications which were filed prior to the applicable deadlines and remain pending, the Commission will process such applications provided that they are not mutually exclusive with other applications as of the applicable deadline, and the relevant period for filing competing applications has expired as of the applicable deadline. Previously-filed applications not meeting this criteria will be held in abeyance until the conclusion of this proceeding. The Commission will determine later, in accordance with such new rules as they are adopted, whether to process or return any such pending applications.

Ex Parte Rules

14. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally*, 47 CFR 1.1202, 1.203, and 1.1206.

Comment Filing Procedures

15. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before September 17, 1999 and reply comments on or before October 19, 1999. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

16. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-mail/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking

numbers appear in the caption of this proceeding, however, commenters must transmit an electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

17. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Room TW–A325, Washington, DC 20554. In addition, a courtesy copy should be delivered to Ronald E. Quirk, Jr., Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, SW, Room 4 C–405, Washington, DC 20554.

18. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554.

Initial Regulatory Flexibility Analysis

Regulatory Flexibility Act

19. Pursuant to the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *Further Notice*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and are to be filed by the deadlines for comments on this *Further Notice*, as described *supra* in section VI. The Commission's Office of Public Affairs (OPA) shall cause a copy of this *Further Notice* to be sent to Chief Counsel for Advocacy of the Small Business Administration (SBA), in accordance with 5 U.S.C. 603(a).

20. This *Further Notice* requests further public comment on our proposals to maximize the use of spectrum allocated to MAS in the Microwave Services. The *Notice* in this proceeding offered proposals that included: (1) Converting licensing of MAS spectrum for "subscriber-based" services from site-based licensing to geographic area licensing; (2) simplifying and streamlining the MAS licensing process and rules; (3) increasing licensee flexibility to provide communications services that are responsive to dynamic market demands; and (4) employing competitive bidding procedures, or auctions, to resolve mutually exclusive applications for initial licenses or permits for MAS spectrum for which the principal use would involve, or reasonably likely involve, subscriber-based services. In this *Further Notice*, we seek comment on whether, and to what extent, the Balanced Budget Act's amendment of Section 309(j) of the Communications Act affects these proposals. Specifically, the Commission is now directed to use competitive bidding to resolve mutually exclusive applications, with an exemption for "public safety radio services." This *Further Notice* also extends the temporary suspension of the acceptance and processing of MAS applications to include all applications for new licenses, major amendments, or modifications.

21. In attempting to maximize the use of MAS spectrum, we continue our efforts to establish a flexible regulatory framework for spectrum allocations that will, among other things, provide opportunities for the continued development of competitive new service offerings by allowing flexible use of spectrum, expedite market entry through modified licensing procedures, and promote technological innovation by eliminating unnecessary regulatory burdens.

22. The authority for this action is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended. 47 U.S.C. 154(i), 303(r), and 309(j). *See also* Administrative Procedures Act, 5 U.S.C. 553.

23. Pursuant to the Contract with America Advancement Act of 1996, Pub. L. No. 101–121, 110 Stat. 847 (1996) (CWAAA), the Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. The Regulatory Flexibility Act states that a "small business" is the equivalent of a "small business concern" under the Small Business Act unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). To assist the Commission in this analysis, commenters are requested to provide information regarding how many MAS entities, total, would be affected by the various proposals on which the Commission seeks comment in this *Further Notice*. In particular, we seek estimates of the number of affected entities that will be considered "small businesses." We ask commenters to note that we requested comment in the *Notice* regarding the establishment of a small business definition for MAS for the purpose of competitive bidding.

24. The proposals first announced in the *Notice* would affect MAS licensees and applicants for licenses. Such entities, in general, fall into two broad categories: (1) Those using MAS spectrum for the offering of commercial services and (2) those using MAS spectrum to meet their internal communications needs, including for public safety radio services. It is possible that an entity could be categorized as both.

25. With respect to the first category, neither the Commission nor the SBA has developed a specific definition of small entities applicable to MAS commercial licensees. The applicable definition of small entity in this instance appears to be the definition under the SBA rules applicable to establishments engaged in radiotelephone communications. This definition provides that a small entity is any entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms operating during 1992 had 1,000 or more employees. Therefore, whether or not any or all of these 12 firms are MAS commercial service providers, nearly all MAS commercial service providers are small businesses under the SBA's definition. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service.

26. Alternatively, under the SBA rules, the applicable definition of small entity for MAS licensees that provide commercial services may also be applicable to establishments primarily engaged in furnishing telegraph and other message communications. This definition provides that a small entity is an entity with annual receipts of $5 million or less. 13 CFR 121.201, Standard Industrial Classification (SIC) code 4822. 1992 Census data, which is the most recent information available, indicates that, of the 286 firms under this category, 247 had annual receipts of $4.999 million or less. We seek comment on whether the appropriate definition for such MAS licensees is SIC Code 4812, SIC code 4822, or both.

27. The Commission seeks comment on the number of small entities that currently provide commercial MAS subscription service, and the number of small entities that would anticipate filing applications to provide such service under the various proposals described in this *Further Notice* and the *Notice*. We seek comment on whether we should conclude, for purposes of the Final Regulatory Flexibility Analysis in this matter, that all MAS commercial communications service providers are small entities.

28. With respect to second category, which consists of entities that use, or seek to use, MAS spectrum for the meeting of their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. Because of the array of users, the Commission has not developed (nor would it be possible to develop) a definition of small entities specifically applicable to such MAS users. Nor is there a precise SBA definition. In this context we again seek comment on whether the appropriate definition of small entity under the SBA rules is that applicable to radiotelephone companies: any entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Code (SIC) Code 4812. Again, alternatively, we seek comment on the appropriateness of defining such MAS licensees under SIC Code 4822, concerning establishments primarily engaged in furnishing telegraph or other message communications, or perhaps under both Codes 4812 and 4822. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private mobile service.

29. We seek comment on the number of small entities that use MAS spectrum for their internal communications needs. Further, we seek comment on the number of small entities that are likely to apply for licenses, under the various proposals described in this *Further Notice* and the *Notice*, to obtain spectrum for their own internal communications needs. Because any entity engaged in a business or commercial activity is eligible to hold an MAS license, the proposals could prospectively affect any small business in the United States interested in using MAS for its own communications needs. In other words, the universe of prospective or possible MAS licensees includes all U.S. small businesses.

30. The RFA also includes small governmental entities as part of the regulatory flexibility analysis. The definition of a small governmental entity is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or about 81,600, are small entities that may be affected by our rules.

31. Again, we have requested comment, in the initial *Notice*, regarding the establishment of a refined small business definition for MAS for the specific purpose of competitive bidding. Neither the *Notice* nor this *Further Notice* propose any specific definition, rather the *Notice* merely sought comment on this issue.

Paperwork Reduction Act

32. This *Further Notice* contains a proposed information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public, the Office of Management and Budget (OMB), and other agencies to take this opportunity to comment on the information collections contained in the *Further Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on the *Further Notice*; OMB comments are due 60 days after the publication of the *Further Notice* summary in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to *both* of the following: Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th St., SW., Washington, DC 20554, or via the Internet to lsmith@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington DC 20503, or via the Internet to fain_t@al.eop.gov.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18248 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–252, RM–9648]

Digital Television Broadcast Service; Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Journal Broadcast Corporation, licensee of station KTNV, NTSC Channel 13, Las Vegas, Nevada, proposing the substitution of DTV Channel 12 for station KTNV's assigned DTV Channel 17. DTV Channel 12 can be allotted to Las Vegas, Nevada, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 35–56–43 N and

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115–02–32 W. As requested, we propose to modify station KTNV's authorization to specify operation on DTV Channel 12 at Las Vegas, Nevada, with a power of 26.4(kW) and an antenna HAAT of 610 meters.

DATES: Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John T. Scott, III, Jessica R. Herrera, Crowell & Moring LLP, 1001 Pennsylvania, NW, Washington, D.C. 20004–2595 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–252, adopted July 13, 1999, and released July 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–18301 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–220; RM–9399]

Radio Broadcasting Services; Sioux Rapids, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of ALALATEX, dismisses its petition proposing the allotment of Channel 252A at Sioux Rapids, Iowa, as the community's second local FM transmission service. *See* 63 FR 68719, December 24, 1998. A showing of continuing interest is required before a channel can be alloted to a community. It is Commission policy, absent such an expression of interest, to refrain from allotting the channel. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order. MM Docket No. 98–220, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18238 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 64, No. 137

Monday, July 19, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Monitor/Hot Creek Forest Plan Amendment EIS; Humboldt-Toiyabe National Forest; Nye, Eureka and Lander Counties, NV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Humboldt-Toiyabe National Forest will prepare an environmental impact statement (EIS) to consider amending the Toiyabe National Forest Land and Resource Management Plan (Forest Plan). The amendment will be comprehensive, covering a wide variety of issues needed to update the Forest Plan for the Monitor and Hot Creek Mountain Ranges.

DECISION TO BE MADE: The Forest Service will decide whether or not to amend the Forest Plan for the Monitor and Hot Creek Mountain Ranges of the Austin and Tonopah Ranger Districts. The amendment will consider improving the management direction of portions of the Forest Plan and affirm continuation of other aspects of the Forest Plan's management direction for the next 10–15 years. No irreversible or irretrievable commitment of resources (site specific actions) will be taken as a result of this decision.

DATES: The public is asked to provide any information they believe the Forest Service should consider and to submit any issues regarding alternatives or potential impacts by October 15, 1999. The agency expects to file the draft EIS with the Environmental Protection Agency and make it available for public comment in January, 2000. The agency expects to file the final EIS in October 2000.

MEETINGS: The Humboldt-Toiyabe National Forest will hold several public meetings to discuss the proposed Forest Plan amendment. Comments from the public, other agencies and tribal councils are welcomed. Dates, locations and topics to be discussed for these meetings are: July 8, 1999, 6:00 to 9:00 pm at the Tonopah Convention Center, Tonopah, NV, Topic: Access, Roadless Areas and Transportation Systems; August 19, 1999, 6:00 to 9:00 pm at the Eureka Opera House, Eureka, NV, Topic: Livestock Grazing, Wild Horses and Wildlife; September 9, 1999, 6:00 to 9:00 pm at the Austin Community Hall, Austin, NV, Topic: Recreation Opportunities and Scenic Values; September 30, 1999 6:00 to 9:00 pm at the Hadley Community Center, Hadley, NV, Topic: Mining and Associated Activities; and October 21, 1999, 6:00 to 9:00 pm at the Hadley Community Center, Hadley, NV, Topic: Community Well Being. Additional meetings to be held in Reno and Las Vegas will be scheduled for October, 1999.

COMMENTS: Written comments on the information presented here should be submitted to the Central Nevada Planning Team, Attn. Dave McMorran, USDA Forest Service, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely NV 89301. Comments should be received by October 15, 1999.

ADDITIONAL INFORMATION: For additional information contract Dave McMorran, Ecosystem Planner, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely, NV 89301, (775) 289–3031.

RESPONSIBLE OFFICAL: The Regional Forester for the Intermountain Region located at 324 25th Street, Odgen, Utah 84401 is the responsible official for the action.

SUPPLEMENTARY INFORMATION: The proposed amendment will address management of National Forest System lands in the Monitor and Hot Creek Mountain Ranges, which includes portions of Nye, Eureka and Lander Counties, Nevada. This area is part of the Austin and Tonopah Ranger Districts.

The substantive changes that will be addressed in the amendment of the Forest Plan are described in the regulations implementing the National Forest Management Act (NFMA). The amendment process begins with monitoring and evaluation of Forest Plan implementation (36 CFR 219.12(k)). It includes public involvement in monitoring and identification of opportunities for improvements to improve management.

This NOI signals the development of an EIS for the amendment of the Forest Plan. Based upon monitoring and evaluation results and the information obtained in the Analysis of the Management Situation (AMS), Humboldt-Toiyabe National Forest is proposing to make several improvements to the long-term management direction for the Monitor and Hot Creek Mountain Ranges. The public is invited to comment on the preliminary alternatives which have been identified.

Proposed Action

The proposed action is to amend the Toiyabe Land and Resource Management Plan to improve management direction. The purpose of the proposed action is to provide long term management direction for the Monitor and Hot Creek Mountain Ranges. The proposed action is needed because existing guidance is more than a decade old. That guidance does not reflect the substantial additions to the National Forest System in the area, the rapidly growing and diversifying population, or the advances in science that have occurred over the last decade. Four alternatives have been prepared to address the topics outlined below. A preferred alternative will be selected during the preparation of the draft EIS based on public comments from this scoping process and the analysis of environmental impacts of the alternatives.

Amendment Topics

Based on the analysis of the existing direction, monitoring and evaluation of resource conditions, and public comments, the following topics have been identified as having a need for change in management direction: Heritage Resources, American Indian Religious and Cultural Use, Watershed Protection, Species and Ecosystem Viability, Wilderness Management, Roadless Areas, Access, Transportation Systems, Recreation, Visual Resources, Forest Products Management, Livestock Grazing, Wild Horses, Wildlife, and Mining.

Public Comments on the Draft EIS

The Draft Environmental Impact Statement is expected to be available for public review and comment in January, 2000. The comment period on the draft environmental impact statement will be

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at least 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the comment period so that substantive comments are made available to the Forest Service when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be specific and refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft statement or the merits of the alternatives discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 1, 1999.

Monica Schwalbach,

Acting Forest Supervisor, Humboldt-Toiyabe National Forest.

[FR Doc. 99–18010 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Snowcreek Golf Course Expansion Project, Inyo National Forest, Mono County, California

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of record of decision for the proposed snowcreek golf course expansion project.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will withdraw the Record of Decision of June 20, 1997 signed by Dennis W. Martin, Forest Supervisor. No implementation of this decision has ever taken place.

This action is taking place because we have decided to explore other options to address the needs of the Town of Mammoth Lakes for additional golfing opportunities.

FOR FURTHER INFORMATION CONTACT: Direct questions about the withdrawal to Glen Stein, Forest Planner, Inyo National Forest, by mail at Inyo National Forest, 873 N. Main Street, Bishop, California 93514, or by phone at (760) 873–2400.

Dated: July 13, 1999.

Bill Bramlette,

Deputy Forest Supervisor, Inyo National Forest.

[FR Doc. 99–18362 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Florida

AGENCY: Natural Resources Conservation Service (NRCS) in Florida, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Florida for review and comment.

SUMMARY: It is intention of NRCS in Florida to issue the following conservation practice standards for Florida: Hedgerow Planting (Code 422); Incinerator (Code 769); Wetland Wildlife Habitat Management, in Section IV of the FOTG.

DATES: Comments will be received on or before August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to T. Niles Glasgow, State Conservationist, Natural Resources Conservation Service (NRCS), P.O. Box 141510, Gainesville, Florida 32614–1510. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Florida will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Florida regarding disposition of those comments and a final determination of change will be made.

Dated: June 30, 1999.

Jesse T. Wilson,

Acting State Conservationist, Natural Resources Conservation Service, Gainesville, Florida.

[FR Doc. 99–17472 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Census Bureau

Quarterly Survey of Residential Alterations and Repairs

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to George A. Roff, Jr., U.S. Census Bureau, Room 2126 Building 4, Washington, DC 20233–6916 on (301) 457–1605.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The Census Bureau, under the authority of Title 13, United States Code, Section 182, conducts this survey which allows us to prepare estimates of the expenditures for residential improvement and repairs. This segment of the construction industry amounted to over $120 billion in 1998. A portion of these data are collected on form SORAR–705, which is mailed quarterly to owners of rental or vacant residential properties. Since residential improvement and repairs are a large and growing economic activity, any measure of the construction industry is incomplete without inclusion of these data.

The Census Bureau uses the information to publish improvement and repair expenditures for rental or vacant properties. Data on improvement and repairs to owner-occupied properties are collected in the Consumer Expenditures Survey. Combined published estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts and assessments of the construction industry. They also provide all levels of government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis (BEA) uses the improvement statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

II. Method of Collection

The universe for this survey are the owners or designated representatives of the more than 40 million rental and vacant units in the United States. A sample of these owners—i.e., those identified in the Consumer Expenditures Survey—is mailed a questionnaire to report detailed improvement and repair expenditures for their entire property. Approximately 2,800 owners are queried each quarter.

The sample design uses a rotation procedure which brings one-fourth of the sample (approximately 700 properties) into the survey each quarter and takes one-fourth out of the survey each quarter. The data collected are adjusted for unreturned or unusable forms by region and metropolitan statistical area (MSA) status. The weights are adjusted so that sample counts of renter occupied and vacant housing units agree with independently derived controls from the Current Population Survey.

III. Data

OMB Number: 0607–0130.
Form Number: SORAR–705.
Type of Review: Regular Review.
Affected Public: Individuals or Households, Businesses or Other For-Profit Organizations, and State, Local or Tribal Governments.
Estimated Number of Respondents: 2,800 per quarter.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 2,800.
Estimated Total Annual Cost: The only cost to respondents is that of their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 12, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–18264 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 1 of the 2000 Panel

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of 3 to 4 years. The 2000 panel is currently scheduled for one year which will include 3 waves beginning February 2000. The duration of the 2000 panel is subject to approval of a budget initiative which may lengthen the panel to 3 years. Respondents are interviewed once every four months in monthly rotations. Approximately 11,500 households are in the 2000 panel.

The SIPP represents a source of

Type of Review: Regular

titanium, vanadium, and molybdenum

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information on taxes, the ownership and contributions made to the Individual Retirement Account, Keogh and 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 2000 Panel Wave 1 collect information about:

- Recipiency History
- Employment History

Wave 1 interviews will be conducted from February 2000 through May 2000.

II. Method of Collection

All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2000 panel, respondents are interviewed a total of 3 times (3 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: Not Available.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 24,150.
Estimated Time Per Response: 30 minutes per person.
Estimated Total Annual Burden Hours: 24,400.
Estimated Total Annual Cost: The only cost to respondents is their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: July 13, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–18265 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket No. 990517135–9135–01]

Change in Report Series from Print Publication to CD–ROM and Internet Access

AGENCY: Census Bureau, Commerce.

ACTION: Notice of Publication Program Change.

SUMMARY: The Census Bureau will cease printed publication of the "Census Catalog and Guide" with the 1998 edition. This publication's information, and additional data, will be available as the "Product Catalog" on the Internet at www.census.gov. Also, the information will be distributed annually on CD–ROM.

EFFECTIVE DATE: August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Aldrich, Marketing Services Office/Customer Services Center, U.S. Census Bureau, Washington, DC 20233, telephone: 301–457–1225.

SUPPLEMENTARY INFORMATION: The "Census Catalog and Guide" is a comprehensive description of all data products issued by the Census Bureau. The catalog provides abstracts of CD–ROMs, publications, maps, computer tapes, diskettes, and items available via the Internet. These abstracts include the data time, the geographic scope, and the subject content, along with ordering information. For additional information about the catalog, please contact the official named above.

Dated: July 14, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–18314 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski or Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3208 or (202) 482–0165, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Final Determination

We determine that hot-rolled flat-rolled carbon-quality steel products ("hot-rolled steel") from the Russian Federation ("Russia") are being sold in the United States at less than fair value

("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Petitioners in this investigation are Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., IPSCO Steel Inc., Steel Dynamics, Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America.

Respondents in this investigation are JSC Severstal ("Severstal"), Novolipetsk Iron & Steel Corporation ("NISCO"), and Magnitogorsk Iron & Steel Works ("MMK").

Since the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 9312 (February 25, 1999) (*"Preliminary Determination"*), the following events have occurred:

On March 1 and March 2, 1999, respectively, respondents NISCO and MMK submitted letters informing the Department that they were withdrawing from further participation in the proceeding. On March 8, 1999, NISCO submitted a letter alleging clerical errors in the preliminary determination.

In April 1999, we conducted sales and factors of production verifications of Severstal's responses to the antidumping questionnaires (*see Verification Report for Severstal* dated April 14, 1999 (*"Verification Report"*)). Petitioners and Severstal submitted case briefs on April 19, 1999, and rebuttal briefs on April 26, 1999.

On April 12, 1999, General Motors Corporation ("GM") requested a scope exclusion for hot-rolled carbon steel that both meets the standards of SAE J2329 Grade 2 and is of a gauge thinner than 2 mm with a 2.5 percent maximum tolerance. On April 22, 1999, petitioners requested that certain ASTM A570–50 grade steel be excluded from the investigation. We adjusted the scope of this investigation pursuant to the decisions detailed in the *Scope Amendments Memorandum*, dated April 28, 1999.

On July 12, 1999, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation (the Agreement). If the ITC determines that material injury exists, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms.

On July 7, 1999, we received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%.

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1 through June 30, 1998.

Nonmarket Economy Country Status

The Department has treated Russia as a nonmarket economy ("NME") country in all past antidumping duty investigations and administrative reviews (*see, e.g., Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (November 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30, 1995); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Ferrovanadium and Nitridid Vanadium from the Russian Federation*, 60 FR 438 (January 4, 1995)). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). Therefore, for this final determination, the Department is continuing to treat Russia as an NME.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in an NME country. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). The Department may, however, consider requests for a separate rate from individual exporters. Severstal, NISCO, and MMK have each requested a separate, company-specific rate. Because NISCO and MMK withdrew from this proceeding, we were only able to verify information provided by Severstal and thus, we are only considering granting Severstal's request for a separate rate for this final determination. To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test

arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities. For a complete analysis of separate rates, *see Memorandum to Edward C. Yang from Lesley Stagliano Re: Separate Rates for Exporters that Submitted Questionnaire Responses ("Separate Rates Memo")*, dated February 22, 1999.

1. Absence of De Jure Control

An individual company may be considered for separates rates if it meets the following *de jure* criteria: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Severstal has placed on the administrative record a number of documents to demonstrate absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the central government of Russia, describing the deregulation of Russian enterprise as well as the deregulation of the Russian export trade, except for a list of products that may be subject to central government export constraints. Severstal claims that the subject merchandise is not on this list. This information supports a final finding that there is an absence of *de jure* government control for Severstal. *See Separate Rates Memo.*

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices ("EP") are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. Severstal has reported that it is a publicly-owned company and that there is not aggregate government ownership greater than 25 percent.

Severstal has asserted that the company establishes its prices in negotiation with its customers, and that theses prices are not subject to review or guidance from any government organization. Furthermore, Severstal's management has the authority to negotiate and sign contracts, also without review or guidance from outside organizations. Severstal stated that it can retain all export earnings, and that there are no restrictions on the use of the company's export revenues or utilization of profits. Severstal further reported that its management is appointed by the company's shareholders, and that the government has no role in, and is not advised of, the selection of its management. At verification for Severstal, we verified reported information substantiating Severstal's separate rates claim (*see Verification Report* at 4–5).

In addition, the respondent's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a final finding that there is an absence of *de facto* governmental control of the export functions of Severstal. Consequently, for this final determination, we determined that Severstal meets the criteria for application of a separate rate. For a further discussion of this issue, *see Separate Rates Memo.*

Russia-Wide Rate

After sending questionnaires to the 16 companies identified as potential respondents in the petition, we received complete Section A responses from only three producers—Severstal, MMK and NISCO. In the *Respondent Selection Memorandum* from Edward Yang to Joseph Spetrini dated November 19, 1998, we limited our examination of producers of subject merchandise to these three companies. However, two of the companies (MMK and NISCO) subsequently withdrew from the investigation. Furthermore, U.S. import statistics indicate that the total quantity and value of U.S. imports of hot-rolled steel from Russia is greater than the total quantity and value of hot-rolled steel reported by Russian companies that submitted responses that were subsequently verified (*see Memorandum on Final Determination of Critical Circumstances* from Edward Yang to Joseph Spetrini dated July 12, 1999 ("*Final Critical Circumstances Memo*")). Accordingly, we are applying a single antidumping rate—the Russia-wide rate—to all exporters in Russia based on our presumption that those respondents who failed to respond to the initial questionnaire or withdrew from the investigation (*i.e.*, MMK and NISCO) constitute a single enterprise under common control by the Russian government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("*Bicycles*"). The Russia-wide rate applies to all entries of subject merchandise except for entries from Severstal.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Facts Available

Severstal

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information in the form and manner requested or when necessary information is not available on the record. In this case, we find that Severstal failed to provide the Department with normal value data in the form and manner requested and that factors of production (FOP) data for each specific control number (CONNUM) were not available on the record.

As described below (*see* Comment 2), Severstal did not report CONNUM-specific FOP data as requested in the original and supplemental questionnaires and instead explained that the limitations of its accounting system prevented it from reporting FOPs

on a CONNUM-specific basis. Therefore,

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on a CONNUM-specific basis. Therefore, we find that the application of facts available for Severstal in the final determination is appropriate because Severstal's FOP data: (1) is not allocated sufficiently to discrete grades or qualities, resulting in NVs which are not accurate reflections of the grades to which they relate; and (2) does not measure the factors relevant to individual products actually being produced. We note that we were unable to adjust the reported FOPs due to the broad basis on which the costs were accumulated and the lack of information on the record on how to adjust these costs. As a result, the normal values calculated from Severstal's reported FOP database cannot serve as a reliable basis for reaching a final determination (*see* section 782(e)(3) of the Act), and we have instead relied on facts available for Severstal for this final determination.

Although the reported FOPs were not on a CONNUM-specific basis, we found that the FOPs reported by Severstal were consistent with the data kept by the company in the normal course of business. Also, in the aggregate, we did not find any reason to suggest that the reported costs did not accurately reflect the costs associated with all subject merchandise in its entirety. Therefore, as facts available, we have calculated one weighted-average normal value and compared all U.S. prices to the single normal value.

Notwithstanding the Department's decision to use Severstal's reported FOP data in this manner, this decision does not represent an endorsement by the Department of Severstal's methodology for reporting factor data. As explained in detail below in Comment 2, there are serious flaws in Severstal's methodology which render ineffective the Department's established methodology of calculating dumping margins on the basis of comparisons of sales prices for individual U.S. products to product-specific normal values. In particular, the Department is advising Severstal that the reporting methodology used in this investigation will be unacceptable for future segments of this proceeding. The use of Severstal's factor data in an administrative review, in which assessment rates for antidumping duties are calculated, could result in an understated margin due to the effects of averaging Severstal's FOP data into one normal value. In such future segments, Severstal risks the application of adverse facts available in the event that it fails to report FOP data that (1) is allocated sufficiently to discrete grades or qualities; (2) yields NVs which are reflective of the grades to which they relate; and (3) measures the factors of production of merchandise actually being produced.

Russia-Wide Rate

Section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been requested by the Department. Additionally, section 782(i)(1) of the Act provides that the Department must rely on verified information for making a final determination in an antidumping duty investigation. In this case, some exporters of the single enterprise failed to respond to the Department's request for information and MMK and NISCO withdrew from the investigation prior to verification of their questionnaire responses. Thus, consistent with section 782(e)(2) of the Act, we have declined to consider information submitted by either MMK or NISCO (including information regarding their eligibility for separate rates) because it could not be verified. Pursuant to section 776(a) of the Act, in reaching our final determination, we have used total facts available for the Russia-wide rate because certain entities did not respond and we could not verify MMK's and NISCO's questionnaire responses.

Adverse Facts Available

Russia-Wide Rate

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See* also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 ("SAA"). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

Because certain exporters in the single entity did not respond to our questionnaire and others (*i.e.*, MMK and NISCO) withdrew from this proceeding, we consider the single entity to be uncooperative. Therefore, the Department has determined that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases in which a respondent has been uncooperative, as adverse facts available, we have applied a margin based on information in the petition (*see* Comment 1 below and *Initiation Checklist: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, Brazil, and the Russian Federation, Attachment: Revised NVs and Margins for Russia* (October 19, 1998) ("*Initiation Checklist*")).

Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used for corroboration may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see id.*).

In order to determine the probative value of the petition margins for use as adverse facts available for the purposes of this determination, we have examined evidence supporting the petition calculations. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the petition margin was based. In corroborating U.S. price data, we compared the data used in the petition to the reported sales database of Severstal, the only Russian respondent whose questionnaire response was verified. In corroborating NV information, we made certain adjustments to account for surrogate values used in the final determination. Based on this analysis, we have corroborated the highest margin in the petition, as adjusted by the Department for this final determination. *See Facts Available Corroboration Memorandum*, date July 12, 1999.

For these reasons, we have chosen the highest petition margin, as adjusted, as the basis for using total adverse facts available for the single Russian entity. *See Facts Available Corroboration Memorandum*. The revised highest petition rate, which we have used as the Russia-wide rate, is 184.56 percent.

Fair Value Comparisons

To determine whether sales of hot-rolled steel products from Russia to the United States by Severstal were made at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

For Severstal, we preliminarily calculated EP in accordance with section 772(a) of the Act because the subject merchandise was sold to the first

unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NV based on factors of production.

We calculated EP based on either packed FOB prices or FCA (free carrier) prices to unaffiliated trading companies. When appropriate, for FOB sales, we made deductions from the starting price for brokerage and handling. These services were assigned a surrogate value based on public information from *Certain Circular Welded Carbon Steel Pipe and Tube from Turkey. See Memorandum to Edward C. Yang; Re: Factor Valuation for Severstal, MMK, and Novolipetsk* ("*Factor Valuation Memo*"), dated February 22, 1999. We also made adjustments for foreign inland freight, which was valued using Polish transportation rates, since public information on Turkish values was unavailable. Because the mode of transportation reported by Severstal is proprietary, for a further discussion, *see Factor Valuation Memo* (proprietary version).

In a pre-verification correction, Severstal reported that certain sales were erroneously included in the sales database due to miscoding of the specification date. For the final determination, we excluded these sales for purposes of our margin calculation. *See Calculation Memorandum for the Final Determination for JSC Severstal from Lyn Baranowski to The File dated July 12, 1999* ("*Final Calculation Memo*").

Normal Value

A. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We calculated NV based on factors of production reported by Severstal with the following exceptions: Severstal's "charge by-products," packing bands, and cleaning gas. For further discussions of these exceptions, *see Factor Valuation Memo, Final Calculation Memo*. We valued all the input factors using publicly available information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

At verification, we discovered that Severstal did not include labor costs for supervisors, specialists, and administrative personnel in their calculation of labor expenses. We also note that there is no indication that the overhead ratio derived from the Turkish data is inclusive of factory overhead that includes these kind of employees. As facts available, we have adjusted the reported labor factor in the manner explained in the *Final Calculation Memo*.

At verification, we discovered that EAF slab inputs were overreported while BOF slab inputs were underreported at hot-shop two (*see Verification Report* at 16–17). We have determined that because the change has a minimal effect and the misreported slab inputs effectively offset one another, we will continue to value these inputs as reported. *See Final Calculation Memo*.

At verification, we additionally found that Severstal underreported the amount of recycled materials at two shops: at hot-shop two for certain products and at the sintering shop (*see* Verification Report at 17). We have continued to value the by-product as reported by Severstal, because the use of the reported values is conservative. *See Final Calculation Memo*.

We also discovered at verification that Severstal excluded one supplier of iron ore from its calculation of iron ore usage at the sintering shop, thereby underreporting iron ore usage for every CONNUM (*see* Verification Report at 17). Because of the complex calculations this change involves and because of its minimal effect, we have used the reported iron ore usage rates. *See Final Calculation Memo*.

We found at verification that Severstal underreported natural gas usage at hot-shop one (*see* Verification Report at 19), a change which affects all cost codes. As facts available, we recalculated natural gas usage for one cost code and applied the percent change for that cost code to all other cost codes for natural gas input. *See Final Calculation Memo*.

We also found at verification that Severstal underreported the benzoil by-product credit at the coke furnace. Because of the complex calculations this change involves and its minimal effect, and because the use of the reported by-product credit is more conservative, we have used the reported benzoil by-product credit. *See Final Calculation Memo*.

Finally, we note that in the preliminary determination, we included packing labor, as reported by Severstal, in overall packing cost. However, we have since found that Severstal included packing labor in the reported direct labor factor. Therefore, to avoid double-counting of packing labor, we reduced Severstal's direct labor factor by the packing labor factor. *See Final Calculation Memo* for additional details.

B. Factor Valuations

In the preliminary determination, we used Turkey as the surrogate country but said that we would re-evaluate that choice for the final determination. Although there is now more Polish information on the record, we are continuing to use Turkey as the surrogate country (*see* Comment 4).

The selection of the surrogate values was based on the quality and contemporaneity of the data. When possible, we valued material inputs on the basis of tax-exclusive domestic prices in the surrogate country. When we were not able to rely on domestic prices, we used import prices to value factors. When appropriate, we adjusted import prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using producer or wholesale price indices, as appropriate, published in the International Monetary Fund's International Financial Statistics.

To value coal, iron ore concentrate, iron ore pellets, recycled materials, and scrap, we used public information published by the United Nations Trade Commodity Statistics for 1997 ("UNTCS"). Severstal did not provide information on the record regarding iron content for iron ore pellets; however, we determined at verification the iron content of Severstal's iron ore. For the final determination, we have continued to value iron ore pellets based on the same data as was used for the preliminary determination, because the iron content of the pellets for this data is comparable to the iron ore pellets used by Severstal. *See Factor Valuation Memo*, Attachment 6.

For limestone, coal tar, and kerosene, we used information from 1996 UNTCS. For packing, Severstal reported that it uses a certain material for bands, and we discovered at verification that the same material is used for fasteners. Therefore, we have used the 1996 UNTCS data for valuing bands and fasteners for the final determination.

We have valued by-products in the production of hot-rolled steel reported

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by Severstal. We have valued non-solid by-products at their natural gas equivalents. We have valued solid by-products based on 1996 and 1997 UNTCS data.

For some of the energy inputs reported (natural gas, blast furnace gas, coke oven gas, and electricity), we relied on public information from "Energy Prices and Taxes: 2nd Quarter 1998," published by the International Energy Agency, OECD.

For movement, because we were unable to obtain publicly available Turkish values, we used Polish transport information to value transportation for raw materials. Since the mode of transportation reported by Severstal is proprietary, for a full discussion of this issue, *see Factor Valuation Memo* (proprietary version).

For labor, we used the Russian regression-based wage rate at Import Administration's homepage, Import Library, Expected Wages of Selected NME Countries, revised in May 1999. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of this wage rate data on Import Administration's homepage is found in the *1998 Year Book of Labour Statistics*, International Labour Office ("ILO") (Geneva: 1998), Chapter 5B: Wages in Manufacturing. This value differs from that used in the preliminary determination, because it reflects a more contemporaneous period.

As in the preliminary determination, to value overhead, general expenses and profit, we used public information reported in the 1997 financial statements of Eregli Demir ve Celik Fabrikalari TAS ("Erdemir"), a Turkish steel producer. We adjusted Erdemir's depreciation expenses for the effects of high inflation, and we reduced its financial expenses by including estimated short-term interest income and excluding estimated long-term foreign exchange losses. For a further discussion of this issue, see Attachment 10 of the *Factor Valuation Memo*.

For the final determination, we adjusted Erdemir's profit ratio to account for the adjustment made to the financial expense ratio, as explained above. For a further explanation, *see* Comment 4 below and the *Memorandum from Lyn Baranowski and Bill Jones to Rick Johnson* dated July 12, 1999 ("*Final Cost Memo*").

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Severstal for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records and original source documents provided by respondents. Our findings are contained in the *Verification Report*.

Critical Circumstances

Section 735(a)(3) of the Act provides that, in a final determination, the Department will determine whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

1. History or Knowledge of Dumping and Material Injury

In determining whether there is a history of dumping and material injury by reason of dumped imports, the Department considers evidence of an existing antidumping order on hot-rolled steel from Russia in the United States or elsewhere to be sufficient. In this case, petitioners alleged that Chile, Indonesia, and Mexico all have current antidumping duty orders covering hot-rolled steel from Russia. Our research shows that the Chilean antidumping order is no longer in effect; therefore, we are not considering it for purposes of this determination. However, presently, there are antidumping duty orders in effect in Indonesia and Mexico on Russian hot-rolled steel. As a result, we find that with respect to hot-rolled steel from Russia, there is a history of dumping causing material injury. Since we have found a history of dumping causing material injury with respect to Russia, there is no need to examine importer knowledge.

2. Massive Imports

In order to determine whether imports of the merchandise have been massive over a relatively short period, in accordance with 19 CFR 351.206(h), we consider: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Consistent with 19 CFR 351.206(h), unless imports in the comparison period have increased by at least 15 percent over the imports during the base period, we normally will not consider the imports to have been "massive." In addition, pursuant to 19 CFR 351.206(i), the Department may use an alternative period if we find that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely. In this case, petitioners argue that prior to the filing of the petition, importers, exporters, or producers of Russian hot-rolled steel had reason to believe that an antidumping proceeding was likely. We find that press reports, particularly in March and April 1998, indicate that, by the end of April 1998, importers, exporters, or producers knew or should have known that a proceeding was likely concerning hot-rolled products from Russia (*see Final Critical Circumstances Memo*). Therefore, to determine whether imports of subject merchandise have been massive over a relatively short period, we examined Severstal's export volumes from May–September 1998, as compared to December 1997–April 1998 and found that there were massive imports from Severstal over this period. Because this analysis involves proprietary information, *see* the *Final Critical Circumstances Memo* for additional details.

Concerning seasonal trends, we have no reason to believe that seasonal trends affected the import levels in this case. Therefore, in determining whether imports were massive over the "relatively short period," we did not analyze the affects of seasonal trends.

When examining the share of domestic consumption accounted for by the imports from Severstal, we find that Severstal accounted for an increasing percentage of the U.S. market from the period December 1997–April 1998 when compared to May 1998–September 1998. As this analysis involved proprietary information, please refer to the *Final Critical Circumstances Memo* for additional details.

Based on the history of dumping causing material injury with respect to Russia and the massive imports noted above, the Department determines that critical circumstances exist for Severstal.

3. Russia-Wide Entity Results

With respect to companies subject to the Russia-wide rate (which will apply to NISCO, MMK, and companies which

did not participate in the investigation), we have determined that there is a history of dumping and material injury by reason of dumped imports because we found evidence of existing antidumping duty orders on hot-rolled steel from Russia in Indonesia and Mexico (*see* discussion above). Since we have found a history of dumping causing material injury with respect to Russia, there is no need to examine importer knowledge.

In order to determine whether imports of the merchandise have been massive over a relatively short period, in accordance with 19 CFR 351.206(h), we have examined the volume and value of the imports in question in the manner described above and find that there was a 98 percent increase in imports from the Russia-wide entity from May-September 1998, as compared to December 1997-April 1998. *See Final Critical Circumstances Memo* for an additional description.

Concerning seasonal trends, we have no reason to believe that seasonal trends affected the import levels in this case. Therefore, in determining whether imports were massive over the "relatively short period," we did not analyze the affects of seasonal trends.

When examining the share of domestic consumption accounted for by the imports from the Russian entity, we find that imports from Russia accounted for an increasing percentage of the U.S. market from the period December 1997—April 1998 when compared to May 1998-September 1998. Based on our analysis of these criteria, we have determined that there were massive imports from the Russia-wide entity over this period.

Based on the history of dumping causing material injury with respect to Russia and the massive imports noted above, the Department determines that critical circumstances exist for the Russia-wide entity.

Interested Party Comments

Comment 1: Adverse Facts Available for MMK and NISCO

Petitioners assert that the Department should draw an adverse inference from MMK's and NISCO's withdrawal and base the final margins for these companies on the highest individual margins calculated for each in the Department's preliminary determination. Specifically, petitioners maintain that the statute requires that the Department "use the facts otherwise available in reaching the applicable determination" when an interested party "provides such [necessary] information but the information cannot be verified as provided in section 1677m(i) of this title." 19 U.S.C. 1677e(a) (section 776(a) of the Act). Likewise, citing the *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela*, 63 FR 8946, 8947 (February 23, 1998) ("*Steel Wire Rod from Venezuela*") and *Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan*, 62 FR 45623, 45623, 45625–45 (August 28, 1997) ("*Vector Supercomputers*"), petitioners contend that it is the Department's longstanding practice to use total facts available to establish the dumping margin when the party prevents the Department from verifying its data and withdraws from participation in an investigation. Finally, petitioners argue that in its application of facts available, the Department should draw an adverse inference based on MMK's and NISCO's failure to cooperate to the best of their ability. They claim that the statute and Departmental practice support drawing an adverse inference when a respondent has withdrawn, citing 19 U.S.C. 1677e(b) (section 776(b) of the Act); *Steel Wire Rod from Venezuela* at 63 FR 8947; and *Vector Supercomputers* at 62 FR 45625–45626. Also, petitioners maintain that central to the Department's use of facts available is the need to ensure that a respondent does not benefit from its refusal to cooperate. Citing *Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review; Roller Chain, Other than Bicycle, from Japan*, 62 FR 60472, 60477 (November 10, 1997), petitioners assert that in considering whether the selected facts available are sufficiently "adverse," one factor the Department considers is the "extent to which a party may benefit from its own lack of cooperation." Without the application of adverse inferences, petitioners assert that MMK and NISCO stand to benefit from their refusal to cooperate.

Respondents MMK and NISCO did not comment.

Department's Position

We agree in part with petitioners. We find that, with respect to MMK and NISCO, for the reasons discussed above in the Facts Available section, we are applying facts available and have determined that an adverse inference is appropriate. However, we disagree with petitioners' proposal to use the highest individual margins calculated in the preliminary determination. Under section 782(i)(1) of the Act, the Department must rely on verified information for making a final determination in an antidumping duty investigation. MMK's and NISCO's withdrawal prior to verification of their questionnaire responses prevents the Department from using their information to calculate a weighted-average margin for our final determination. In addition, the Department does not normally use any of such information as facts available. We also note that because MMK's and NISCO's information could not be verified, they are not entitled to a separate rate in this proceeding. As such, MMK and NISCO are part of the Russia-wide entity, as explained above in the *Facts Available* section of this notice. Moreover, contrary to petitioners' claims, using MMK's and NISCO's unverified information as the basis for the final margin could potentially benefit them by assigning a margin lower than what would have been calculated using verified information. As noted above, in cases such as this one, the Department relies on the facts otherwise available, normally data from the petition, in making its determination. In this instance, we have no basis to depart from this practice. Therefore, we find that the highest rate alleged in the petition, as corroborated by the Department, is the appropriate facts available rate in this determination.

Comment 2: Severstal's Factors of Production Methodology

Petitioners state that section 776 of the Act mandates that the Department employ total facts available if "necessary information is not on the record," respondent's information "cannot be verified," or if respondent "fails to provide information...in the form and manner requested" (*see* 19 U.S.C. 1677e(a)). Petitioners claim that in this proceeding, each of these statutory criteria is satisfied and the Department must employ facts available for Severstal as a result.

First, petitioners claim that for some of its U.S. sales, Severstal failed to report yield strength, despite being instructed to do so twice by the Department (referencing *Sections C and D Questionnaire* (October 30, 1998) (*Questionnaire*) at C–10 and V–4 and the *Sections C and D Supplemental Questionnaire* (January 4, 1999) (*Supplemental Questionnaire*) at number 10). Petitioners argue that Severstal's explanation that yield strength was not reported when the relevant specification did not require yield strength is unpersuasive; a qualified metallurgist, they claim, could determine the likely yield strength of every ASTM grade reported by

Severstal. Alternatively, petitioners cite what they claim to be a standard reference work which would permit extrapolation of the yield strength of numerous steel products (*Modern Steels and Their Properties: Carbon and Alloy Steel Bars*, 6th Ed., Bethlehem Steel Corporation (1961)). Petitioners suggest applying facts available to Severstal's U.S. sales dataset by matching all sales where Severstal reported a "4" for yield strength to COSTCODE "1," the COSTCODE which contains the highest reported factor usage amounts in the factors of production (FOP) database.

Second, Severstal's failure to report CONNUM-specific (model-specific) FOPs, as requested by the Department (*see* the *Questionnaire* at C–42 and D–3 and the *Supplemental Questionnaire* at number 38) merits facts available treatment, petitioners contend. Petitioners point out that products were assigned to seven cost codes based on broad categories which do not match the Department's model match criteria. Petitioners assert that Severstal's cost codes do not account for yield strength, width, pickling, or edge trimming. Additionally, petitioners contend that Severstal does not classify its products based on the characteristics of merchandise actually produced. Instead, products are classified on the basis of the requirements contained in the order specification and costed in this manner. Costs, therefore, reflect merchandise grouped together at the time the order is placed, and do not reflect the cost of the merchandise actually produced, which can vary from the original order.

Petitioners assert that Severstal's claim that it was unable to report CONNUM-specific factors is unavailing. Petitioners state that most companies, in the normal course of business, do not maintain data that corresponds to the product groups identified by the Department for purposes of the margin calculation. Respondents routinely allocate costs maintained in their normal accounting records to CONNUMs, petitioners argue. According to petitioners, Severstal has made no attempt to allocate costs in this manner, and therefore the Department should not allow Severstal to be exempt from these fundamental reporting requirements. Petitioners assert that these requirements are consistent with instructions to every respondent in antidumping proceedings (citing *Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico*, 64 FR 76, 77–78 (January 4, 1999)).

Petitioners argue that Severstal could have derived the total volume of each input used to produce subject merchandise and, using information on which CONNUMs require more or less of a given input, could have arrived at an allocation which would allow CONNUM-specific factor reporting. Severstal's failure to attempt this kind of exercise indicates that Severstal did not act to the best of its ability in reporting factors, petitioners assert.

Another point raised by petitioners is that there are numerous inconsistencies with respect to Severstal's assignment of cost codes to CONNUMs. For example, petitioners assert that Severstal has assigned distinct grades and qualities of steel to the same cost code, indicating that the cost associated with producing each of these grades is the same. Additionally, petitioners contend that Severstal has assigned distinct grades to one CONNUM, indicating that the physical characteristics of these grades are the same. Petitioners also contend that the factor amounts (and resulting total manufacturing costs and normal values) reported by Severstal do not appear to bear any relationship to the products for which they were reported. Finally, petitioners maintain that Severstal's reporting of its internal product information is inconsistent between cost codes and the corresponding product codes.

In summary, petitioners believe that 1) Severstal's reported factors and costs bear no relationship to CONNUMs; 2) Severstal has failed to provide information requested by the Department; and 3) the information that Severstal did provide is inconsistent, inaccurate, and unreliable. As a result, petitioners argue that the normal values derived from Severstal's factors "cannot serve as a reliable basis for reaching the applicable determination" and that the submitted costs cannot "be used without undue difficulties" (citing section 776 of the Act). Therefore, petitioners maintain that total adverse facts available is warranted for Severstal in this proceeding.

Concerning the reporting of yield strength for U.S. sales, Severstal contends that reported yield strength plays no role in the calculation of Severstal's margin and, therefore, Severstal's failure to report yield strength for all sales does not effect the outcome of this proceeding. Severstal maintains that because U.S. sales are not matched to home market sales on the basis of physical characteristics in an NME case, precise reporting of all the product characteristics used to generate CONNUMs is not necessary. Severstal additionally states that the Department verified that yield strength plays no role in the calculation of FOPs and that Severstal did report yield strength to the best of its ability. Severstal states that although a metallurgist could have determined likely yield strength for the sales for which no yield strength was reported, Severstal, in accordance with the Department's instructions, reported yield strength only where there was documentary evidence for such an assignment, and not based on unverifiable estimates by Severstal personnel. As such, Severstal urges the Department to dismiss petitioners' request for facts available treatment due to the failure to report yield strength for all U.S. sales.

Severstal claims that petitioners' second argument, that the Department should apply total adverse facts available to Severstal's cost system, should be rejected by the Department. Severstal first states that it reported its factors of production to the greatest level of detail permitted by the applicable Factory Cost Ledgers. Severstal asserts that it accurately assigned the factors to individual U.S. sales by identifying the physical characteristics of the merchandise sold against the definition of the products included within its product groups. Severstal states that it assigned FOPs to individual transactions on the basis of cost codes because that is most representative of the manner in which it conducts business. Severstal contends that it cannot allocate factors calculated according to the internal product groups to individual CONNUMs. Should the Department decide to calculate an average cost on the basis of CONNUM, Severstal argues that it would need only to calculate a simple average of the cost codes assigned to transactions with the same CONNUM in Severstal's U.S. sales database (consistent with the approach taken for the preliminary determination).

Severstal argues that if petitioners are suggesting that a more complex method of allocating factors to individual CONNUMs is possible in this case, then petitioners misunderstand the record in this case. Severstal states that: (1) Its records permit it to identify the volume of inputs in each of the cost code groupings included in the Factory Cost Ledgers; (2) it does not know whether the production of certain CONNUMs requires more or less of a given output; and (3) it is impossible, based on their system, for the company to rank the factor inputs required to produce each of the reported CONNUMs. Severstal contends that petitioners offer many proposals concerning what Severstal should have done in the abstract, but do not offer any suggestions regarding how these proposals would be implemented. Severstal states that its cost system simply does not have a framework that would allow it to allocate its factors to CONNUMs.

Severstal states that the inconsistencies to which petitioners refer each have logical explanations. Where Severstal has assigned distinct grades and qualities to the same cost code, Severstal states that the Department verified that these grades are pooled within the same cost code category in the normal course of business. Where Severstal has assigned distinct grades to the same CONNUM, Severstal states that it is possible for different grades to have the same physical characteristics, which is the basis for assigned CONNUMs. Pursuant to petitioners' claim that the factor input amounts do not appear to have any relationship to the product to which they relate, Severstal asserts that its dataset reveals that some of the individual FOPs assigned to the cost codes do differ and that in these cases, the fact that the total manufacturing costs are similar is pure coincidence. Concerning petitioners' argument that there are inconsistencies in Severstal's reporting of cost codes and product codes, Severstal states that the inconsistency to which petitioners refer is simply caused by petitioners' misunderstanding of the cost code group to which they refer.

In summary, Severstal argues that the Department should find that: (1) Severstal does not maintain FOP information on a CONNUM-specific basis; (2) it submitted factors data to the greatest level of detail permitted by its normal books and records; and 3) Severstal's reporting system is complete and reliable. As such, Severstal contends that the Department should reject petitioners' demand for adverse facts available treatment for Severstal in the final determination.

Department's Position

We agree, in part, with petitioners and disagree with respondents. We determine that the application of facts available is appropriate, because Severstal repeatedly failed to provide CONNUM-specific FOP data and the data which it did supply did not reasonably reflect the actual costs of producing the subject merchandise during the POI.

For purposes of calculating margins in an NME proceeding, the Department first calculates weighted-average U.S. prices by model (*i.e.*, by CONNUM) and compares these prices to NVs by CONNUM created from a respondent's FOP data. The respondent's U.S. sales database includes product characteristic data, which the Department instructs respondent to use in reporting CONNUM-specific FOP data. In both the original and supplemental questionnaires in this proceeding, the Department instructed Severstal to report CONNUM-specific FOP data; however, Severstal stated that its accounting system did not allow it to develop CONNUM-specific FOP data. In fact, for 61 distinct CONNUMs (as defined in accordance with the Department's instructions), Severstal calculated only seven discrete sets of factors and assigned each CONNUM one (or more) of these seven sets of factors. At verification, the Department found that, even when using Severstal's own overly general FOP reporting methodology, Severstal could have calculated eleven discrete sets of factors based on the system it employed to report FOP data; however, Severstal chose to combine several of its internal product classification categories to report only seven.

The Department's review of Severstal's accounting system revealed that the company does not assign product-specific costs to each of the models reported in the sales database. In order to comply with the Department's CONNUM-specific FOP reporting requirements, an allocation of usages to grades would have been necessary (although not necessarily sufficient). Severstal failed to develop a reasonable allocation methodology for purposes of this proceeding and instead reported FOPs based on internally recorded costs. Specifically, at verification, the team found that, in its normal course of business, Severstal pools its costs into broad categories. These categories do not correspond to international commercially-acceptable standards (upon which the Department's product concordance is based). For example, merchandise which was reported as "commercial" quality in Severstal's U.S. sales database is assigned to multiple sets of cost categories. The considerable overlap in Severstal's internal designations and Severstal's failure to develop a methodology to relate internal costs to the Department's product concordance characteristics (such as "quality") resulted in FOP reporting which has little to do with the reported product characteristics for the U.S. sales. For an in-depth discussion of this issue, *see Final Calculation Memo* (proprietary version) and the attached tables. It is clear that a comparison of normal values calculated from overly general, and often inconsistent, factor information would result in an inaccurate margin calculation.

Given the nature of the FOP data on the record, it is not feasible for the Department to develop accurate CONNUM-specific FOPs using Severstal's data. The normal values calculated for the preliminary determination, which are based on Severstal's reported factor information, are not accurate depictions of the costs for merchandise to which they purport to relate. Specifically, the Department's analysis of Severstal's normal values reveals anomalies in the relative costs, based on the steelmaking process. For specific examples of anomalies in the relative costs, *see Final Calculation Memo* (proprietary version). These anomalies result directly from the reported FOPs. This review of Severstal's normal values indicates that Severstal's cost reporting system did not accurately associate cost differences (and thus usages) to particular grades and qualities of steel.

An additional problem is that Severstal's cost system does not track costs of merchandise actually produced; rather, it tracks the cost of merchandise as ordered by the customer. At verification, we found that when a product is ordered, it is assigned a product grouping and costed within the assigned grouping, regardless of the actual production or chemical composition of the finished product. Specifically, the Department verified one instance in which two customers ordered products which were categorized within separate cost categories. However, notwithstanding the merchandise's chemical composition at the time of production and shipment (the mill certificates indicate that the merchandise was, in all relevant aspects, identical), each product was costed within the product group it was assigned when the customer placed the order. *See Final Calculation Memo*. Therefore, we conclude that Severstal's reported "product-specific" FOP data, do not reflect merchandise actually produced.

In sum, Severstal did not report CONNUM-specific FOP data as requested in the original and supplemental questionnaires and instead explained that the limitations of their accounting system prevented them from reporting FOPs on such a basis. Severstal made no attempt to develop an alternative methodology that would allow the company to assign production factors on a more consistent, product-specific basis, despite the Department's expressed concern with the overly generalized FOP methodology used. Therefore, we find that the application of facts available for Severstal in the final determination is appropriate because Severstal's FOP data: (1) Is not allocated sufficiently to discrete grades

or qualities, resulting in NVs which are

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or qualities, resulting in NVs which are not accurate reflections of the grades to which they relate; and (2) does not measure the FOPs of merchandise actually being produced. As a result, the normal values calculated from Seversta's FOP database, as reported, cannot serve as a reliable basis for reaching a final determination (*see* 776(e)(3) of the Act), and we are instead relying on facts available for Seversta for this final determination in the manner described above (*see* Facts Available section of this notice).

With respect to petitioners' argument that the Department should apply total adverse facts available, we find that the use of adverse facts available is not appropriate in this case notwithstanding the deficiencies in Seversta's Section D response. As stated above, the Department verified that, in its normal course of business, Seversta records costs on the basis of the above-described product groups. Thus, while necessary information is not available on the record to calculate CONNUM-specific normal values for Seversta, we cannot conclude that Seversta failed to cooperate by not acting to the best of its ability. That is, the Department finds no reason to conclude that Seversta did not make a good faith effort to report the requested FOP data utilizing an internal system which it believed to be adequate. As noted above, the need to resort to facts available stems from the fact that the data Seversta provided, calculated based on an inadequate internal accounting system, is unuseable.

We also disagree with petitioners' argument that the Department should apply adverse facts available for those sales where there is no specified minimum yield strength by assigning to them the cost code with the highest reported factor of production inputs. As noted by Seversta, it relied on ASTM grade descriptions to determine the yield strength of the merchandise sold to the United States, and in cases where the ASTM description did not include a description of yield strength of the covered product, it coded those sales as having no specified yield strength. At verification, the Department asked Seversta personnel why there was no specified yield strength for the ASTM A–569 specification despite the fact that the ASTM book maintained by the Department specifies a yield strength for A–569. We verified that the ASTM A–569 specification used during the POI (1993 version) does not require yield strength. *See Verification Report* at pg. 10. Based on the above, we do not find that application of adverse facts available is appropriate for those sales with no specified yield strength.

Furthermore, the Department's decision to calculate one weighted-average normal value renders the lack of a yield strength insignificant.

Comment 3: Surrogate Freight Value

Petitioners argue that, should the Department not employ total adverse facts available for Seversta, then it must revise the surrogate rail freight information. Petitioners argue that due to the size of Russia as compared to Poland, a rate schedule for a country the size of Russia would include rates for distances greater than 1200 kilometers. Accordingly, petitioners contend that it is inappropriate to base the freight rates for distances greater than 1200 kilometers on rates that reflect the limited traveling distances within Poland. For the final determination, petitioners urge the Department to recalculate the freight rate for distances exceeding 1200 kilometers by dividing the per-metric ton rate by 1200 and multiplying the resulting amount by the relevant distance.

Seversta first argues that the tariff chart used to derive the freight rates clearly shows that as the distance over which freight is transported increases, the per-kilometer tariff rate decreases. Therefore, Seversta argues, the Department's use of the per-kilometer rate equivalent to 1200 kilometers used to value shipments which travel more than 1200 kilometers is appropriate; the incrementally smaller per-kilometer tariff for shipments at greater distances properly reflects the fact that as the distance increases, the shipping expense declines.

Second, Seversta contends that to calculate and apply a per-kilometer freight value to transportation in Russia based on the distance categories in Poland would improperly penalize Russia for its size. Seversta maintains that the Department should not assume that the per-kilometer freight cost incurred in the shorter distances in smaller countries would apply to the distances in Russia.

Finally, Seversta argues that nothing in the information obtained from the Polish source suggests that if longer distances existed in Poland, the tariffs that would apply to shipments over those longer distances would be calculated as a straight per-kilometer amount based on the tariff for 1200 kilometer shipments. Seversta states that the evidence on the record suggests that for distances greater than 1200 kilometers, the flat rate shown in the Polish tariff chart applies. In Seversta's opinion, the Department should maintain the methodology established for the preliminary determination in valuing surrogate freight expenses.

Department's Position

We agree with respondents that our calculation of surrogate freight rates in the preliminary determination was appropriate based on the information on the record for this proceeding. Because none of the relevant distances exceed 1200 kilometers, this issue with respect to Seversta is moot (*see Final Calculation Memo*). For the final determination, we have continued to apply the same methodology adopted in the preliminary determination in valuing surrogate freight.

Comment 4: Surrogate Country Selection

Seversta argues that the Department should use Poland as the primary surrogate country for the final determination in this proceeding. Seversta notes that in the preliminary determination, the Department relied on information from Turkey as the primary surrogate, stating that although Turkey and Poland are economically comparable and are both significant producers of subject merchandise, Turkey was preferable due to data (specifically, financial data) availability. Seversta notes that it submitted information clarifying the data from Poland on both February 2 and April 2, 1999. Additionally, the April 2, 1999 submission contains a complete set of surrogate values which are reasonably contemporaneous and publicly available, Seversta maintains. Therefore, Seversta urges the Department to reconsider the selection of surrogate country.

Seversta argues that Poland is superior to Turkey as a surrogate country when examining other criteria used by the Department in past cases. Specifically, Seversta contends that the distribution of the labor force in Poland is more similar to that in Russia than is the labor force distribution in Turkey.

Moreover, Seversta maintains that financial data from Erdemir, upon which the Department relied in the preliminary determination, is flawed for a number of reasons. First, Seversta argues that the depreciation figure used is inflated because a substantial portion of the amortization amount resulted from the revaluation of assets required to counteract the impact of hyperinflation in 1997. Although the Department adjusted depreciation for the preliminary determination, Seversta contends that the Department should not burden itself with the complexities that arise from the use of a hyperinflationary economy like Turkey as the primary surrogate when an alternative exists that meets all the criteria for an acceptable surrogate and is not hyperinflationary.

Second, Seversta argues that the depreciation would need to be additionally reduced to account for an additional adjustment noted in the Auditor's Opinion of Erdemir's financials. Seversta notes that the Department instructed petitioners to recalculate depreciation to account for this reduction for the purposes of initiation (*see Supplemental Questionnaire on Petition on Certain Hot-Rolled Carbon Steel Flat Products from the Russian Federation*, 8–9 and Attachment L (October 9, 1998) (*Supplemental Questionnaire on Petition*)), and petitioners recalculated depreciation accordingly. However, for the preliminary determination, Seversta argues, the Department did not reduce depreciation to account for this reduction. Seversta argues that the Department's failure to do so should be corrected for the final determination.

Additionally, Seversta contends that the financial ratio calculated by petitioners was "swollen" due to aberrational foreign exchange differences. Although Seversta admits that the Department corrected for this problem in the preliminary determination, Seversta again contends that the Department should not burden itself with the complexities that arise from the use of a hyperinflationary economy like Turkey as the primary surrogate when an alternative exists that meets all the criteria for an acceptable surrogate and is not hyperinflationary.

Seversta also argues that the financing expenses portion of the financial ratio and the development expenses were aberrational due to the massive construction and development projects ongoing at Erdemir. Seversta contends that Erdemir is not an appropriate surrogate due to the fact that its productive assets are new and expanding while Seversta's assets are contracting. Erdemir's data, in Seversta's view, is aberrational when compared to the Russian industry and should therefore not be used for the final determination (citing *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland*, 59 FR 37205, 37207 (July 9, 1993), *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 58818, 58820 (November 15, 1994), *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964, 61987 (November 20, 1997) and *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61764 (November 19, 1997)).

Seversta argues that the Department should not accept Erdemir's data for the overhead expense ratio calculation, because that calculation is based on what Seversta believes to be unsubstantiated and unaudited figures contained in a fax from Erdemir to counsel for petitioners. Seversta maintains that this overhead data does not meet the Department's preference for publicly available information.

Seversta argues that the reliance on Erdemir's expense category for the overhead expense ratio calculation may double-count some of the expenses (all energy inputs other than natural gas, fuel oil, and electricity, which are broken out separately) that Seversta has reported as individual FOPs. Seversta speculates that the other energy types not specifically listed are included in either the "general materials" or "other operating expenses" figures in Erdemir's chart. Seversta contends that the inclusion of the entire amount of the two expense categories as well as Seversta's full range of energy factors would effectively double-count all of the energy categories listed by Seversta beyond the three mentioned in Erdemir's list (natural gas, fuel oil, and electricity).

For the above reasons, Seversta urges the Department to select Poland as the primary surrogate country in this proceeding.

Petitioners argue that the Department's use of Turkey as the surrogate country in this proceeding is within its statutory mandate, citing 19 U.S.C. 1677b(c)(4) (section 773(c)(4) of the Act). Specifically, petitioners submit that Turkey is: (1) at a level of economic development comparable to Russia; and (2) a significant producer of hot-rolled steel. Furthermore, data from Turkey is publicly available, fulfilling another of the Department's preferences in selecting surrogate values, petitioners claim.

Petitioners maintain that Seversta's data supporting its argument that the distribution of Poland's labor force is more similar to Russia's than is Turkey's is unavailing. Specifically, they state that Seversta's argument that the Turkish economy is less developed than the Polish economy is contradicted by Seversta's statement that the Turkish steel industry is new and expanding.

Concerning the merits of the financial data, petitioners believe that Erdemir's financial data is much more reliable than that of the Polish producer, Sendzimira. Petitioners submit that there is no indication that the untranslated Sendzimira financial report submitted on April 2, 1999 was ever made available to the public, raising the issue of whether the information contained therein is publicly available. Regardless of its availability, petitioners argue that there is no indication that any of the Sendzimira information was examined by an independent auditor and therefore there is no confirmation that the data conforms with Poland's generally accepted accounting principles (GAAP). Additionally, petitioners argue that the financial statements are not accompanied by notes, which are necessary to understand the methods used to derive the information provided in the financial statements.

Third, petitioners point out that Sendzimira's financial information does not segregate the manufacturing and non-manufacturing components of expenses, and many of the expense accounts (such as labor and other operating costs) are incurred for both manufacturing and non-manufacturing costs. Petitioners claim that it is necessary to segregate the manufacturing and non-manufacturing components because the depreciation, SG&A and interest expense ratios used by the Department are derived from only the manufacturing expenses (*i.e.*, cost of sales) portion. An accurate calculation of financial ratios depends on accurate identification of the expenses, argue petitioners.

In addition, petitioners argue that Seversta overstated manufacturing expenses and understated SG&A in the worksheets in which it calculated financial ratios. As a result, petitioners argue, Sendzimira's financial statements are inaccurate, incomplete, and invalid and should be rejected for the final determination.

Unlike the Polish financial data, petitioners argue, Erdemir's financial data are audited, accompanied by notes, and separately identify many detailed accounts on the income statement. First, petitioners refute Seversta's argument that there are anomalies within Erdemir's financial data which render the data unuseable. Petitioners state that Erdemir's currency exchange losses and its adjustment of depreciable assets to account for inflation reflect ordinary financial activity, for which the Department made simple adjustments in the preliminary determination.

Concerning the calculation of depreciation, petitioners state that the Department already adjusted Erdemir's depreciation ratio to account for the effects of inflation in the preliminary

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determination. Petitioners also argue that the Department should not reduce Erdemir's depreciation expense to account for an item mentioned in the company's auditor's letter, as requested by Severstal. Petitioners contend that, as they informed the Department in the supplemental questionnaire response on the petition (*see* the submission dated October 9, 1998 at pp. 8–9), this item in the auditor's statement indicates that Erdemir's change in depreciation practice was not approved by the Turkish tax authorities and as a result, the lower depreciation figure was not employed in reporting depreciation on the financial statement. Petitioners, therefore, claim that Severstal's requested adjustment to depreciation is inappropriate.

Concerning the calculation of financial expenses, petitioners state that the Department already adjusted Erdemir's financial expense ratio to account for non-current assets (principal foreign exchange differences) in the preliminary determination. Petitioners therefore claim that Severstal's requested adjustment to the financial expenses ratio is inappropriate.

Concerning the calculation of overhead, petitioners contend that the information upon which the Department relied to calculate overhead in the preliminary determination is as publicly available as is the Polish financial information placed on the record by Severstal. Moreover, petitioners argue that this information is the only information on the record relating to factory overhead.

With regard to Severstal's claim that the Department's overhead calculation may double-count energy costs, petitioners argue that there is no evidence that the "other operating expenses" category includes any additional sources of energy. Petitioners state that it is likely that Erdemir grouped the costs of all energy sources into three major categories (natural gas, electricity, and fuel oil), which it separately identified in its breakout of the components of cost of sales. Petitioners argue that natural gas, fuel oil, and electricty account for a substantial percent of energy costs included in the calculation of normal value and that the energy costs not broken out on Erdemir's financials could not exceed the remaining portion not accounted for in the cost buildup of NV.

Finally, petitioners note that the Department should have made an upward adjustment to Erdemir's profit amount in the preliminary determination to offset the Department's downward adjustment to Erdemir's reported financial expense and request that the Department, to the extent that it makes a downward adjustment to Severstal's financial expense amount in the final determination, make a corresponding upward adjustment to Erdemir's profit amount.

Department's Position

In determining a surrogate country for use in a NME proceeding, the Department, in accordance with section 773(c)(4) of the Act, shall value a respondent's factors of production at the prices or costs in a surrogate country that is at a comparable level of economic development and is a significant producer of comparable merchandise. In the event that more than one country satisfies both of the statutory criteria, the Department may choose a single country on the basis of data availability. For the preliminary determination in the instant case, we used Turkey as the primary surrogate country, stating that the data from Turkey is superior to that from Poland (*see Preliminary Determination* at 64 FR 9315). However, we stated in the *Preliminary Determination* that we would reexamine this issue for this final determination should parties submit additional information.

Having examined the new information placed on the record concerning the Sendzimira financial statements, we have decided to continue to use Turkey as the primary surrogate country for the final determination. In this case, we find that the financial statements from the Turkish producer Erdemir are more reliable than those from the Polish producer Sendzimira.

First, concerning the distribution of the labor forces, the Department considered all of the countries included in the *Memorandum from Jeff May to Rick Johnson on Nonmarket Economy Status and Surrogate Country Selection* dated December 21, 1998 ("*Policy Surrogate Memo*") to be equally comparable in terms of economic development (*see* page 1 of *Policy Surrogate Memo*). We did not determine any country included in the *Policy Surrogate Memo* to be preferable for surrogate country purposes to any other included therein on the basis of distribution of labor forces. Furthermore, as noted in the *Surrogate Country Selection Memorandum* dated February 22, 1999 ("*Surrogate Country Selection Memo*"), the Department finds that the fact that the World Bank did not indicate the percentage of the Russian labor force in agriculture in its World Development Report for 1998/99 to be a strong indicator of the lack of knowledge concerning the present labor distribution in Russia. *See Surrogate Country Selection Memo.*

Concerning the Erdemir financial statements, we first note that many of the alleged problems with Erdemir's financial data that Severstal cites were remedied by the Department for the preliminary determination. Specifically, in the preliminary determination, the Department: (1) adjusted the depreciation figure to account for the revaluation of assets required to counteract the impact of hyperinflation in 1997; and (2) adjusted Erdemir's financial expense ratio to account for non-current assets (principal foreign exchange differences).

Concerning Severstal's argument that depreciation should be further adjusted to account for an additional adjustment noted in the Auditor's Opinion, we agree with petitioners that although we adjusted depreciation in this manner for the initiation of this investigation, we now find that the statement in the Auditor's Opinion at issue indicates that Erdemir revised its useful life estimates in 1996 but then reverted to the original useful lives because it was unable to obtain approval from the Turkish tax authorities for the revision. Thus, we believe that the amount reported for depreciation on the financial statements reflects the useful lives of Erdemir's fixed assets. The depreciation expense listed on the financial statements, therefore, should not be reduced because Erdemir has not received approval for the revisions to the useful lives of its assets.

We find that Severstal's argument that Erdemir is not an appropriate surrogate because its assets are expanding due to construction and development projects, and that this data, therefore, is aberrational, is unavailing. First, we note that whether a country's economy is growing or shrinking is one of the factors examined when developing a list of economically comparable countries. Additionally, there is no evidence on the record that the kinds of activities that Erdemir engaged in during 1997 are not representative of the kinds of activities that a steel producer in a country of Turkey's level of economic development would undertake in the normal course of business. Furthermore, nothing in the statute, the Department's regulations or past Department practice obligates the Department to consider the specific activities in which a producer engages for any given year when analyzing its data for purposes of surrogate country suitability. We also note that a review of the financial statements from Sendzimira shows that this company was also expanding, engaging in significant capital

investments in 1997. Specifically, the Financial and Economic Results portion of the financial statements (*see* the February 2, 1999 submission) refers to "very high costs of the on-going modernization" and discusses construction and modernization projects completed in 1997.

Concerning the calculation of overhead and the Department's use of a fax from Erdemir to petitioners' counsel, we find that because it is the only source of information on the record which specifically breaks out factory overhead, it is appropriate to use this information for the final determination. We also note that the fax at issue comes directly from Erdemir, as certified by petitioners.

Concerning the potential double-counting of energy expenses raised by Severstal, we find that there is no evidence that either "other operating expenses" or "general materials" contains costs for energy sources. Moreover, percent usage of all energy fields accounted for by natural gas, fuel oil, and electricity is further indication that any double-counting, if it exists, is negligible. *See Final Calculation Memo* for a further description, because this analysis involves proprietary information.

With regard to the profit rate calculation, we agree with petitioners that because of the adjustment the Department made to the financial expense ratio, we should have taken this adjustment into account when calculating Erdemir's profit ratio, and have done so for the final determination. *See Final Cost Memo* for a further description of this adjustment.

Concerning the relative useability of the Polish and Turkish financial data, although we believe that both sets of financial statements at issue are useable, we believe that Erdemir's are ultimately preferable given the following problems associated with the Polish financial data.

First, neither the financial statements nor the detailed schedules in the Polish financial statements are audited, and thus, there is no confirmation that the data was prepared in accordance with Poland's GAAP. Although it is not required that financial statements be audited, the Department has established a clear preference to use audited financial statements when available (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9740 (1997) (noting Department's preference for audited financials over the same company's tax returns)).

Second, neither the financial statements nor the detailed schedules in the Polish financial statements break out expenses between manufacturing and non-manufacturing (*i.e.*, G&A) expenses. This methodology could result in some G&A expenses being classified by Sendzimira as cost of manufacturing (COM), thus understating G&A in the normal value calculation, since these G&A expenses would be excluded from the derivation of the G&A ratio.

Third, Sendzimira was a government-owned and -operated entity for one third of the year, and, although the financial data breaks out amounts incurred before and after the government ceded control, we normally prefer to use a full year's worth of operations to calculate costs in order to eliminate fluctuations that may occur over shorter periods (*see, e.g., Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 37014 (1997). We also note that the financial statements indicate that privatization is not yet complete.

Therefore, for all of the above reasons, we are continuing to use Turkey as the surrogate country in this investigation.

Comment 5: Severstal's Pre-Verification Corrections

Severstal argues that the Department should correct two clerical errors submitted at the beginning of verification. The first clerical error was one affecting the FOP calculations for two of the reported seven cost codes. Severstal argues that because the Department has accepted the underlying correction to the factual data (namely, revised Exhibit D–7), the Department must make revisions in the calculation of the FOPs for both cost codes. Severstal alleges that the information it attempted to provide at verification (Exhibit D–9) was minor in nature because it provides corrected calculations of the FOPs based on mathematical manipulations of the data already submitted. Exhibit D–9, Severstal argues, serves as a "bridge" from the data submitted in various exhibits to the FOP information included on the Section D computer file. Severstal claims that the Department's refusal to accept the information violates the Court of Appeals' standard for accepting corrections submitted by respondents in *NTN Bearing Corp.* v. *United States* (74 F.3d 1204 (Fed. Cir. 1995) (*NTN*)). Severstal maintains that if the Department persists in its refusal to accept the revised Exhibit D–9 that Severstal attempted to submit at verification, then the Department must determine the impact that the March 24 correction has on the calculation of the FOPs for the two cost codes and create its own corrected version of Exhibit D–9 for the cost codes.

Severstal contends that the Department should correct a second clerical error described by Severstal at the outset of verification, namely, the inclusion of data for two cost codes as one (reported aggregately as cost code 5). Severstal argues that information on the record clearly shows the error, no new information was submitted, and Exhibits D–7, D–8, and D–22 contain breakouts for the cost code which was inadvertently combined. Therefore, Severstal argues, only the mathematical manipulations necessary to generate the factors of production (Exhibit D–9) are required to calculate the FOPs for this cost code.

Severstal contends that the identity of the CONNUMs affected by this error are readily identifiable in Severstal's sales database, because it would be impossible for sales of merchandise which was reported with the relevant product code to be combined with factors information for the relevant cost code.

Severstal also maintains that the error in pooling the factor data for the cost code at issue was a result of the conditions surrounding this investigation, including the accelerated schedule imposed by the Department and the response deadlines. Severstal argues that the Department adopted this schedule in response to political pressures in the United States, which is inappropriate for the fundamental purpose underlying the antidumping process (*see, e.g., D&L Supply Co.* v. *United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997), *Borlem S.A.—Empreedimentos Industriais* v. *United States*, 913 F.2d 933, 939 (Fed. Cir. 1990), *NTN*, and *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990)). Severstal suggests that should the Department refuse to accept this clerical error on the basis that it is not "minor" in nature, the Department will be compounding the difficulties imposed on the respondent by its artificially accelerated schedule.

Petitioners argue that the Department was correct in rejecting Severstal's efforts to submit a substantially revised FOP dataset. Concerning the first clerical error, petitioners argue that Severstal's March 24, 1999 submission gave no indication that the error discovered in Exhibit D-7 affected more than just Exhibit D–7. At verification, petitioners argue, Severstal confronted the Department verifiers with a new

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exhibit showing that the one number corrected in the March 24 submission actually affected a huge range of other figures on the record (*i.e.*, all the reported FOPs for cost codes 1 and 2). This correction, petitioners claim, would result in the revision of the normal values associated with many of Seversta1's U.S. sales. Concerning the second clerical error, petitioners maintain that the creation of an entirely new cost code (and an eighth set of FOP data) would impact a significant portion of Seversta1's U.S. sales.

Petitioners argue that a major revision to most of Seversta1's FOP data would render meaningless the Department's verification, since the Department would not have been able to examine the new calculations or data prior to its verification. Petitioners state that respondent bears the burden of preparing and providing the Department with an accurate submission within the statutory deadline (*see NSK Ltd.* v. *United States*, 825 F. Supp. 315, 318–319 (CIT 1993)) and cannot expect the Department to serve as a surrogate to guarantee the correctness of submissions (*see Murata Mfg. Co., Ltd.* v. *United States*, 820 F.Supp. 603, 607 (CIT 1993)).

Petitioners argue that the U.S. Court of Appeals, in *NTN*, considered three primary factors for determining whether to allow untimely clerical error corrections requested by respondents: first, the correction must not require the Department to begin anew, thus wasting effort; second, it must not delay the final determination; and third, the parties must have exercised due care during the course of the proceeding. Petitioners contend that Seversta1 meets none of these criteria. First, petitioners assert that the corrections would require much more than a mathematical adjustment, as Seversta1 claims. The effect of the change is significant and pervasive, in petitioners' opinion; such an effect would fundamentally change the Department's analysis and overall understanding of the dataset, requiring the Department to "begin anew." Petitioners point out that Seversta1 devoted over a page in their case brief describing the calculations required to adjust the data for one single product.

Second, petitioners argue that accepting the new FOP dataset would delay the final determination. Because the Department is required to verify information in an antidumping duty investigation, verification of this information would require the Department to re-verify Seversta1's response once it had become familiar with the data, which is a time-consuming undertaking.

Third, petitioners maintain that Seversta1 has not exercised due care in its preparation of questionnaire responses. Petitioners believe that Seversta1's data contains inaccuracies and inconsistencies, and lacks specificity. In addition, petitioners contend that corrected data was not submitted until over two months after it was due under the Department's extended questionnaire deadline. In petitioners' opinion, Seversta1 should have evaluated its reported data well before its preparation for verification.

Petitioners conclude that the Department was well within its statutory requirements to reject the revised Exhibit D–9 and new cost code information.

Department's Position

We agree in part with both petitioners and respondents.

Concerning Seversta1's first clerical error, the error affecting the FOP calculations for two of the reported seven cost codes, we agree with respondent. The information (revised Exhibit D–7) affected two of the reported seven cost codes. This underlying error was obviously clerical in nature and represented a minor change to the pre-existing Exhibit D–7. We find that in this case, the change did not require the Department to begin anew and did not delay the final determination, and that Seversta1 informed the Department of this error prior to verification.

As a result, we have used information on revised FOPs for cost codes 1 and 2 for our final determination. Please refer to the *Final Calculation Memo* for additional details.

However, concerning Seversta1's second clerical error, the inclusion of data for two cost codes as one, we agree with petitioners. We find that Seversta1 failed to provide the Department with necessary information related to components of each cost code to which this clerical error relates.

In its original Section D response dated December 21, 1998, Seversta1 reported seven discrete cost codes and did not provide the Department with any narrative description of the reported cost code categories.

The March 15, 1999 verification outline informed Seversta1 that "at verification, the Department cannot accept new information or revisions to previously submitted information which would substantially alter some or all of the questionnaire responses" and that the Department considered appropriate reporting of FOP data, based on internal cost codes, to be central to the calculation of a valuable margin. Consequently, Seversta1 was made aware of the importance the Department placed on this issue prior to the deadline for submitting new factual information in this proceeding (under section 351.301(b)(1) of the Department's regulations, Seversta1 had until seven days before the date on which verification began, or March 29, 1999, to submit new factual information), and did not inform the Department at that time of any revisions to the factors associated with the cost code at issue. At verification, Seversta1 attempted to provide information to the Department which would have created an eighth cost code, which represented a major revision to Seversta1's questionnaire response.

Moreover, because Seversta1 did not provide the Department with both a narrative description of the cost code and the worksheets demonstrating the calculations needed to derive the factors associated with the cost code, it was impossible for the Department to determine that Seversta1 maintained an additional unreported cost code. As the Court held in *NSK*, "an error in the original information submitted by a respondent must be obvious from the administrative record in existence at the time the error is brought to the ITA's attention." Unlike the clerical error discussed above, because information was not provided for the affected cost code, the correction respondent attempted to make was not obvious from the administrative record at the time the error was brought to the Department's attention.

Moreover, we disagree with Seversta1's argument that it is being unfairly penalized as a result of the "artificially accelerated schedule." We note that the Department has acted in accordance with the governing statute and regulations in this case. Specifically, the Department has afforded respondent sufficient time, including several extensions, to answer its questionnaires, and also has afforded respondent the opportunity, as provided in section 782(d) of the Act of the statute, to address deficiencies.

For the reasons discussed above, we have disallowed Seversta1's reported clerical error, the inclusion of data for two cost codes as one, because the information included therein constituted substantial new factual information which was submitted in an untimely fashion. Additionally, because we verified that Seversta1 relied upon a complete universe of data relating to subject merchandise to report its FOPs, no adjustment is necessary to account for the unreported cost code described above, due to the Department's

calculation of normal value, as discussed above in Comment 2.

Comment 6: Preliminary Critical Circumstances Determination

Seversta1 argues that because the Department's preliminary critical circumstances determination (*see Preliminary Determination of Critical Circumstances: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan and the Russian Federation*, 63 FR 65750 (November 30, 1998) ("*Preliminary Critical Circumstances Determination*")) was issued more than two months before the Department's preliminary determination in this proceeding, the Department was compelled to rely on information from a period long before the period used in every other antidumping investigation. As a result, Seversta1 contends that the Department's haste in issuing an early preliminary critical circumstances decision has generated an unlawful determination.

Specifically, in examining whether there were massive imports, Seversta1 contends that the Department deviated from standard practice (to compare import volumes 90 days after the filing of the petition to the volume entered 90 days prior to filing of the petition) and instead accepted petitioners' urgings to use the end of April 1998 as the benchmark, thus comparing import volumes 5 months before and after April 30, 1998 to determine if the increase was "massive." Seversta1 notes that the Department stated that the April 1998 date was selected based on the press coverage during that period, stating that there were significant increases in imports of hot-rolled steel from Russia and that an antidumping case might be filed by the domestic industry on hot-rolled steel. *See Preliminary Critical Circumstances Determination*. Seversta1 submits that the press reports do not form the basis upon which importers should have been aware of the likelihood of cases filed against hot-rolled steel from Russia. Similarly, the Department cannot assume, in Seversta1's opinion, that the press reports themselves caused the massive imports (in the same way that a petition may trigger a sudden, massive increase). Seversta1 argues that the most the Department can deduce is that importers, exporters and foreign producers were aware that the U.S. industry was engaging in the common tactic of threatening future trade cases if market conditions did not improve. Seversta1 contends that these press reports are routinely used as a tactical weapon by competitors to gain market share. These kinds of press articles, Seversta1 maintains, cannot serve as a basis of legal liability under the critical circumstances element of the antidumping law.

Furthermore, Seversta1 argues that the Department's action cedes a vital element of the critical circumstances determination to the domestic industry, which is now empowered to issue press reports in a strategic manner. Seversta1 asserts that these kinds of press reports are commonplace and often do not lead to the filing of an antidumping investigation. The critical circumstances provision of the antidumping law is too significant for the Department to permit petitioners to manipulate the temporal trigger for liability with press releases, argues Seversta1. In its opinion, the Department should base a final critical circumstances determination on data before and after the date of the filing of the petition.

Petitioners argue that the Department's determination of critical circumstances with respect to hot-rolled steel from Russia was anchored firmly in the Department's statutory and regulatory requirements. Petitioners additionally contend that the Department's analysis is in full accord with its legal mandates.

In choosing to base its analysis of whether there were massive imports on a date earlier than the filing of the petition, the Department was well within its statutory and regulatory mandate. Specifically, petitioners cite section 351.206(i) of the Department's regulations, which state that "if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of a proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time." Thus, according to petitioners, the Department's regulations are clear that the Department does not need to use the date the proceeding begins.

Petitioners argue that there was a link between the news coverage regarding potential antidumping cases and the subsequent massive increase in Russian steel imports, as the Department acknowledged in its *Preliminary Critical Circumstances Determination*. For the above reasons, petitioners urge the Department to maintain its critical circumstances finding in the final determination.

Department's Position

We agree with petitioners that in issuing an early preliminary critical circumstances determination, the Department acted within statutory and regulatory authority. As the statute (*see* sections 705(a)(2)(B) and 735(a)(3)(B) of the Act), our regulations (*see* 19 CFR 351.206(i)), and the Policy Bulletin (*see Changes in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, October 15, 1998 (63 FR 55364)) make clear, the Department may issue a preliminary critical circumstances determination prior to making a preliminary determination of dumping, assuming adequate evidence of critical circumstances is available. Moreover, if the facts of a case show that importers, exporters, or producers had reason to believe that a case was likely to be filed, the regulations provide that an earlier base period can be used to measure the existence of massive imports.

In this case, consistent with the above cited provisions, we have found that press articles from March and April 1998 indicated that a dumping investigation on hot-rolled steel from Russia was likely, thus giving importers, exporters, or producers reason to believe so. Therefore, we have measured imports using the April 30, 1998 date as the end of the benchmark period for purposes of determining whether there were "massive imports." Consistent with this analysis, we found that there were massive imports after the April 30, 1998 date.

In conclusion, we find that our analysis and resulting preliminary determination of critical circumstances was in full accord with both the governing statute and regulations.

Continuation of Suspension of Liquidation

On July 12, 1999, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation (the Agreement). Therefore, we will instruct Customs to terminate the suspension of liquidation of all entries of hot-rolled steel from Russia. Any cash deposits of entries of hot-rolled steel from Russia shall be refunded and any bonds shall be released.

On July 7, 1999, we received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Company	Margins (percent)
JSC Seversta1	73.59
Russia-Wide Rate	184.56

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ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the Agreement will have no force of effect, and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If the ITC determines that such injury does exist, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. See section 734(f)(3)(B) of the Act.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 12, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18371 Filed 7–16–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has suspended the antidumping duty investigation involving hot-rolled flat-rolled carbon-quality steel products ("hot-rolled steel") from the Russian Federation ("Russia"). The basis for this action is an agreement between the Department and the Ministry of Trade of the Russian Federation ("MOT") accounting for substantially all imports of hot-rolled steel from Russia, wherein the MOT has agreed to restrict exports of hot-rolled steel from all Russian producers/exporters to the United States and to ensure that such exports are sold at or above the agreed reference price.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Rick Johnson at (202) 482-1131 and (202) 482–3818, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930 ("the Act"), as amended, to determine whether imports of hot-rolled steel from Russia are being or are likely to be sold in the United States at less than fair value (63 FR 56607 (October 22, 1998)). On November 16, 1998, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary finding of threat of material injury in this case (*see* ITC Investigation Nos.701-TA–384 and 731-TA–806–808). Additionally, on November 25, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Russia (63 FR 65221). On February 22, 1999, the Department preliminarily determined that hot-rolled steel is being, or is likely to be sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act (64 FR 9312 (February 25, 1999)).

The Department and the MOT initialed a proposed agreement suspending this investigation on February 22, 1999. On February 23, 1999, we invited interested parties to provide written comments on the agreement. We received comments from petitioners (Bethlehem Steel Corp., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., U.S. Steel Group (a Unit of USX Corp.), California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., Ipsco Steel Inc., Steel Dynamics, Weirton Steel Corporation, and Independent Steelworkers Union), respondents in the investigation (JSC Severstal, Novolipetsk, and Magnitorgorsk) and other interested parties (Caterpillar Inc., Nucor Corporation, and Thyssen Inc., NA). We have taken these comments into account in the final version of the suspension agreement.

The Department and MOT signed the final suspension agreement on July 12, 1999.

Scope of Investigation

For a complete description of the scope of the investigation, *see, Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation,* Appendix III, signed July 12, 1999, attached hereto.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation (*see Price Suppression Memorandum,* dated July 12, 1999), that the agreement is in the public interest, and that the agreement can be monitored effectively (*see Public Interest Memorandum,* dated July 12, 1999). We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this agreement, signed July 12, 1999, are set forth in Appendix 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of hot-rolled steel from Russia entered, or withdrawn from warehouse, for consumption, as directed in our notices of *Preliminary Determination of Sales at Less than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation* (64 FR 9312 (February 25, 1999)), *Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation* (64 FR 24329 (May 6, 1999)), and *Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation* (64 FR 31179 (June 10, 1999)) is hereby terminated. Any cash deposits on entries of hot-rolled steel from Russia pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: July 12, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

Appendix 1—Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation

For the purpose of encouraging free and fair trade in certain hot-rolled flat-rolled carbon quality steel products ("Hot-Rolled Steel") from the Russian Federation ("Russia"), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the like product in the United States, the United States Department of Commerce ("DOC") and the Ministry of Trade of the Russian Federation ("MOT") of Russia enter into this suspension agreement ("the Agreement").

MOT will restrict exports of hot-rolled steel from all Russian producers and exporters to the United States, as provided below. DOC, pursuant to the U.S. antidumping law (see Appendix II), on the Effective Date of this Agreement, will suspend its antidumping investigation of Hot-Rolled Steel from Russia and instruct the U.S. Customs Service ("Customs") immediately to terminate the suspension of liquidation and release any cash deposit or bond posted for entries of Hot-Rolled Steel covered by this Agreement.

Accordingly, DOC and MOT agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. "Apparent U.S. Domestic Consumption" means apparent U.S. domestic consumption determined using official statistics of the U.S. Bureau of the Census regarding imports and exports, and data from the American Iron and Steel Institute regarding domestic shipments, based on the methodology described in Appendix IV of this Agreement.

B. "Date of Export" of Hot-Rolled Steel into the United States shall be the date on which MOT issued the Export License.

C. "Date of Sale" means the date on which price and quantity become firm, e.g., the date the contract is signed or the specification date if the price and quantity become firm on that date, as reflected in Russian producers' records kept in the ordinary course of business.

D. "Effective Date" of this Agreement means July 12, 1999.

E. "Export License" is the document issued by MOT that serves as both an export limit certificate and a certificate of origin.

F. "Hot-Rolled Steel" means the certain hot-rolled, flat-rolled, carbon quality steel products from Russia described in Appendix III.

G. "Indirect Exports" means exports of Hot-Rolled Steel from Russia to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin.

H. "Moratorium Period" means February 22, 1999, through December 31, 1999.

I. "Party to the Proceeding" means any producer, exporter, or importer of Hot-Rolled Steel, union of workers engaged in the production of Hot-Rolled Steel, associations of such parties, or the government of any country from which such merchandise is exported, that actively participated in the antidumping investigation, through written submission of factual information or written argument, as described in more detail in Appendix II.

J. "Export Limit Period" means one of the following periods:

Initial Export Limit Period—The Initial Export Limit Period shall begin on January 1, 2000, and end on December 31, 2000.

Subsequent Export Limit Periods—The Subsequent Export Limit Periods shall consist of each subsequent one-year period, the first of which will begin the day after the Initial Export Limit Period ends and end one year later.

K. "Reference Price" means the floor price calculated by DOC for sales of Hot-Rolled Steel for export to the United States, as described in Section III.

L. "United States" means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

M. "U.S. Purchaser" means the first purchaser in the United States that is not affiliated with the Russian producer or exporter and all subsequent purchasers, from trading companies to consumers.

N. "Violation" means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

II. Export Limits

A. No Hot-Rolled Steel covered by this Agreement, whether exported directly or indirectly from Russia, shall be entered into the United States unless, when cumulated with all prior entries of Hot-Rolled Steel exported from Russia during the Export Limit Period in which that Hot-Rolled Steel was exported, it does not exceed the export limits set forth below.

1. The export limit for the Moratorium Period shall be zero.

2. The export limit for the Initial Export Limit Period (January 1, 2000, to December 31, 2000) shall be 325,000 metric tons of Hot-Rolled Steel.

3. The export limit for each subsequent Export Limit Period shall be as follows:

January 1, 2001, to December 31, 2001—500,000 MT
January 1, 2002, to December 31, 2002—675,000 MT
January 1, 2003, to December 31, 2003—725,000 MT

4. The export limit for each subsequent Export Limit Period will be adjusted by:

(a) First, the export limit for the previous Export Limit Period shall be increased by three per cent of that export limit;

(b) Second, the number obtained under paragraph (a) shall be increased or decreased by the result of multiplying the export limit for the previous Export Limit Period by the percent change (up to three percent) in apparent U.S. domestic consumption of Hot-Rolled Steel during the most recent 12 months for which data is available at the time the DOC makes this calculation, compared to the previous 12 months (as described in Appendix IV).

(c) Third, if MOT has elected to adopt a premium Reference Price for any Export Limit Period under Paragraph III.F., the export limit calculated pursuant to paragraphs (a) and (b) above shall be augmented by an additional allowance of five percent. This additional allowance shall apply only during the Export Limit Period in which the premium Reference Price applies.

5. DOC shall determine export limits for each Subsequent Export Limit Period no later than 60 days prior to the beginning of that Export Limit Period.

B. When Hot-Rolled Steel is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, or further processed (but still covered by this Agreement) and re-exported, the amount re-exported shall be deducted from the amounts of exports that have been counted against the export limit for the Export Limit Period in which the re-export takes place. The deduction will be applied only after DOC has received, and has had the opportunity to verify,

evidence demonstrating the original importation, any repackaging or further processing, and subsequent exportation.

C. MOT will not issue Export Licenses authorizing the exportation to the United States of Hot-Rolled Steel covered by this Agreement in any half of any Export Limit Period that exceeds 60 percent of the export limit for that Export Limit Period.

D. Notwithstanding any other provision of this Agreement, up to 15 per cent of the export limit for any Export Limit Period may be carried over to the Subsequent Export Limit Period and up to 15 per cent of the export limit for any Export Limit Period may be carried back to the last 60 days of the previous Export Limit Period. Any carried over or carried back allowance shall be counted against the export limit for the subsequent or previous Export Limit Period, respectively.

E. If any Hot-Rolled Steel from Russia is entered into the United States during the Moratorium Period, DOC shall notify MOT of those entries and provide to MOT all of the information concerning those entries that DOC is able to disclose consistent with U.S. law. MOT shall respond within 15 days. If DOC determines that entries of Hot-Rolled Steel from Russia have occurred during the Moratorium Period, DOC shall provide MOT with an opportunity for prompt consultations, which shall be completed within 60 days after DOC notifies MOT of the excessive entries. Once the consultations have been completed, unless DOC has concluded that entries did not occur during the Moratorium Period, DOC shall count against the export limit for the Initial Export Limit Period (and, if necessary, Subsequent Export Limit Period(s)) twice the volume of the entries during the Moratorium Period. Where a Russian producer or exporter was responsible for the entries during the Moratorium Period, MOT shall deny that producer or exporter Export Licenses for one year following the last date of entry. Where any other entity was involved with the entries, MOT shall, for one year after the last date of entry, deny Export Licenses for the distribution of any Hot-Rolled Steel involving that entity.

F. If DOC receives information indicating that Hot-Rolled Steel from Russia may have entered into the United States in excess of the export limits established in Section II.A or below the reference price established in Section III.C, DOC shall notify MOT of those entries and provide to MOT all of the information concerning those entries that DOC is able to disclose consistent with U.S. law. MOT shall respond within 15 days. If the information continues to indicate that these entries were in excess of the export limits or below the reference price, DOC shall provide MOT with an opportunity for prompt consultations, which shall be completed within 60 days after DOC's initial notification. Once the consultations have been completed, unless DOC concludes that the entries were not in excess of the export limits or below the reference price, DOC shall count against the export limit for either the current or subsequent Export Limit Period, as appropriate, 125 percent of the volume of the entries in excess of the export limits or below the reference price. When a Russian producer or exporter was responsible for the entries in excess of the export limits or below the reference price, MOT shall deny that producer or exporter Export Licenses for six months following the last date of entry. When any other entity was involved with the entries in excess of the export limits or below the reference price, MOT shall, for one year after the last date of entry, deny Export Licenses for the distribution of any Hot-Rolled Steel involving that entity. The provisions of this section do not supercede the provisions of section IX of this Agreement if DOC determines that the entries were in excess of the export limits or below the reference price.

III. Reference Price

A. MOT will ensure that Hot-Rolled Steel covered by this Agreement will not be sold at a price below the reference price in effect on the Date of Sale.

B. DOC shall issue Reference Prices for each quarter of each calendar year 30 days before the beginning of that quarter.

C. The Reference Prices for the first quarter of the Initial Export Limit Period shall be as follows:

Grade(s)	Price per metric ton
A36, A568, A569	$255
A572, A607, A715	280

D. Until such time as DOC and MOT agree, after consultations, upon Reference Prices for other grades of Hot-Rolled Steel, only the above grades may be exported to the United States. Consultations regarding Reference Prices for other grades of Hot-Rolled Steel shall be held within 30 days of a request and shall be completed within 15 days.

E. Thirty days before the start of each quarter of each Export Limit Period (beginning with the second quarter of 2000) the Reference Price will be increased or decreased to reflect the change in the weighted-average unit import values for Hot-Rolled Steel from all countries not subject to antidumping duty orders or investigations over the most recent three months for which data is available, as compared to the previous three months. If the weighted-average unit import value for such Hot-Rolled Steel during the last of those three months has risen or fallen by more than six percent from the average of the first two of those months, the Reference Price will be adjusted on the basis of the last month, but that adjustment may not raise or lower the Reference Price by more than 10 percent. The source of the unit import values will be publicly available import statistics from the U.S. Bureau of the Census. DOC will provide MOT with the worksheets supporting its calculation of each quarterly Reference Price at the time it provides the Reference Price to MOT.

F. At the time DOC calculates the Reference Price for the first quarter of each Subsequent Export Limit Period under Paragraph III.E, MOT may elect to adopt a premium reference price that will apply throughout that Subsequent Export Limit Period. The premium reference price must be a minimum of ten percent above the Reference Price DOC calculates under Paragraph III.E. If MOT agrees to adopt a premium Reference Price, DOC will calculate adjustments to the Reference Price for the remaining three quarters of the Subsequent Export Limit Period on the basis of the premium price determined for the first quarter of the Subsequent Export Limit Period. The Reference Price for the first quarter of any Subsequent Export Limit Period following an Export Limit Period in which a premium Reference Price has applied, however, shall be determined on the basis of whatever non-premium Reference Price would have applied during the last quarter of the previous Export Limit Period if MOT had not elected to use a premium Reference Price for that Export Limit Period. If MOT adopts a premium Reference Price for any Export Limit Period, the export limit for that period will be increased as provided in Paragraph II.A.4(c).

G. Reference Prices are F.O.B. port of export. If the sale for export is on terms other than F.O.B. port of export, MOT will ensure that the F.O.B. port of export price is not lower than the Reference Price.

IV. Implementation

A. The United States shall require presentation of an original stamped Export License as a condition for entry into the United States of Hot-Rolled Steel covered by this Agreement, except where there are multiple shipments under a single license. For multiple shipments at multiple ports or multiple entries at one port, the original license shall be presented with the first entry and the volume entered at that time will be noted on the original license. Customs will provide the importer with a certified copy for presentation to Customs with the importer's next entry under that license. Subsequent entries at that port can be made from copies of the original which reflect all of the deductions made from the original license.

B. Export Licenses must contain, for each grade of Hot-Rolled Steel covered by the license, the quantity in metric tons, dimensions (gauge, width, and length (in the case of coils, length, if appropriate)) unit price, and F.O.B. sales value. If necessary, additional information may be included on the Export License or, if necessary, a separate page attached to the Export License. DOC will deduct the quantity listed on each Export License from the export limit for the Export Limit Period in which the Date of Export falls. However, if the bills of lading for all of the shipments under an Export License establish that the actual imports into the United States under that license were less than the total volume listed on the license, DOC will reflect the actual amount as having been deducted from the volume listed on the export license, but, notwithstanding the carry-over and carry-back limitations in Paragraph II.D, will authorize MOT to issue a new Export License in the same or Subsequent Export Licensing Period authorizing additional exports equal in volume to the volume of the undershipment. Exports under such additional licenses will be counted against the export limit for the Export Limit Period containing the Date of Export of the undershipment. The United States will prohibit the entry of any Hot-Rolled Steel from Russia not accompanied by an original stamped Export License, except as provided in Paragraph A.[1]

C. MOT will ensure compliance with all of the provisions of this Agreement. In order to ensure such compliance, MOT will take at least the following measures:

1. Ensure that no steel subject to this Agreement is exported from Russia for entry into the United States during the Moratorium Period and that no steel subject to this Agreement is exported from Russia for entry into the United States during any Export Limit Period that exceeds the export limit for that Export Limit Period or that is priced below the Reference Price in effect on the date of sale.

2. Establish an export limit licensing and enforcement program for all direct and indirect exports of Hot-Rolled Steel to the United States no later than 120 days after the Effective Date.

3. Require that applications for Export Licenses be accompanied by a report containing all of the information listed in part A of Appendix I (Exports to the United States).

4. Refuse to issue an Export License to any applicant that does not permit full verification and reporting under this Agreement of all of the information in the application.

5. Issue Export Licenses sequentially, endorsed against the export limit for the relevant Export Limit Period, and reference any notice of export limit allocation results for the relevant Export Limit Period. Export Licenses shall remain valid for entry into the United States for six months. DOC and MOT may agree to an extension of the validity of the Export License in extraordinary circumstances.

6. Issue Export Licenses in the English language and, at the discretion of MOT, also in the Russian language.

7. Issue Export Licenses no earlier than 90 days before the day on which the Hot-Rolled Steel is accepted by a transportation company, as indicated in the bill of lading or a comparable transportation document, for export.

8. Collect all existing information from all Russian producers, exporters, brokers, if applicable, traders of Hot-Rolled Steel, and their relevant affiliated parties, as well as relevant trading companies/resellers utilized by Russian producers, on the sale of Hot-Rolled Steel, and report such information pursuant to Article VI of this Agreement.

9. Permit full verification of all information related to the administration of this Agreement on an annual basis or more frequently, as DOC deems necessary, to ensure that MOT is in full compliance with this Agreement and that all Russian producers and exporters are in compliance with the requirements that MOT has placed upon them under this Agreement. This requirement applies to both Russian State documents and non-State documents, such as sales contracts. Such verifications will take place in association with scheduled consultations whenever possible.

10. Ensure compliance with all procedures established in order to effectuate this Agreement by any official Russian institution, chamber, or other authorized Russian entity, and any Russian producer, exporter, broker, and trader of Hot-Rolled Steel, their relevant affiliated parties, and any relevant trading company or reseller utilized by a Russian producer to make sales to the United States.

11. Impose strict measures, such as prohibition from participation in the export limits allowed by the Agreement, in the event that any Russian entity does not comply in full with the requirements established by MOT pursuant to this Agreement.

V. Anticircumvention

A. MOT will take all necessary measures to prevent circumvention of this Agreement, including at least the following:

1. Require that all Russian exporters of Hot-Rolled Steel agree, as a condition of being permitted to export any Hot-Rolled Steel, regardless of destination, not to engage in any of the following activities:

a. Exporting to the United States Hot-Rolled Steel subject to this Agreement that is not accompanied by an Export License issued pursuant to this Agreement.

b. Transshipping Hot-Rolled Steel that is subject to this Agreement to the United States through third countries unaccompanied by an Export License.

c. Arranging for processing of Hot-Rolled Steel subject to this Agreement either in Russia or in any third country for exportation to the United States not accompanied by an Export License, but only if such processing is covered by the definition of "indirect exports" in Section I (G).

d. Exchanging ("swapping") Hot-Rolled Steel subject to this Agreement for non-subject Hot-Rolled Steel, so as to cause the non-subject steel to be entered into the United States in place of the subject Hot-Rolled Steel, thereby evading the export limits under this Agreement. "Swaps" include, but are not limited to:

i. Ownership swaps—involve the exchange of ownership of Hot-Rolled Steel without physical transfer. These may include exchange of ownership of Hot-Rolled Steel in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of Hot-Rolled Steel produced in different countries, so that the parties obtain ownership of products of different national origin.

ii. Flag swaps—involve the exchange of indicia of national origin of Hot-

[1] The validity of an Export License will not be affected by a subsequent change of an HTS number.

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Rolled Steel, without any exchange of ownership.

iii. Displacement Swaps—involve the sale or delivery of Hot-Rolled Steel from Russia to an intermediary country (or countries) which, regardless of the sequence of events, results in the ultimate sale or delivery into the United States of displaced hot-rolled steel, where the Russian exporter knew or had reason to know that the export sale would have that result.

2. Require that all Russian exporters of Hot-Rolled Steel agree, as a condition of being permitted to export any Hot-Rolled Steel, regardless of destination, require all of their customers to agree, as part of the contract for sale:

a. Not to engage in any of the activities listed in Section V.A.1 of this Agreement. This requirement does not apply to exports to the United States that are accompanied by a valid Export License.

b. To include that same requirement in any subsequent contracts for the sale or transfer of such steel, and to report to MOT subsequent arrangements entered into for the sale, transfer exchange, or loan to the United States of Hot-Rolled Steel covered by this Agreement.

3. When MOT has received an allegation that circumvention has occurred, including an allegation from DOC, MOT shall promptly initiate an inquiry, normally complete the inquiry within 45 days and notify DOC of the results of the inquiry within 15 days after the conclusion of the inquiry.

4. If MOT determines that a Russian entity has participated in a transaction circumventing this Agreement, MOT shall impose penalties upon such company including, but not limited to, denial of access to export certificates for Hot-Rolled Steel under this Agreement.

5. If MOT determines that a Russian entity has participated in the circumvention of this Agreement, MOT shall count against the export limit for the Export Limit Period in which the circumvention took place an amount of Hot-Rolled Steel equivalent to the amount involved in such circumvention and shall immediately notify DOC of the amount deducted. If sufficient tonnage is not available in the current Export Limit Period, then the remaining amount shall be deducted from the subsequent Export Limit Period or Periods.

6. If MOT determines that a company from a third country has circumvented the Agreement and DOC and MOT agree that no Russian entity participated in or had knowledge of such activities, then the Parties shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the Parties are unable to reach mutual agreement within 45 days, then DOC may take appropriate measures, such as deducting the amount of Hot-Rolled Steel involved in such circumvention from the export limit for the then-current Export Limit Period or a subsequent Period. Before taking such measures, DOC will notify MOT of the facts and reasons constituting the basis for DOC's intended action and will afford MOT 15 days in which to comment.

B. DOC will direct the U.S. Customs Service to require all importers of Hot-Rolled Steel into the United States, regardless of the stated country of origin of those imports, to submit a written statement, on the last day of every quarter, listing all entries of such merchandise and certifying that the Hot-Rolled Steel imported during that quarter was not obtained under any arrangement in circumvention of this Agreement. Where DOC has reason to believe that such a certification has been made falsely, DOC will refer the matter to the U.S. Customs Service or U.S. Department of Justice for further action.

C. DOC will investigate any allegations of circumvention which are brought to its attention, both by asking MOT to investigate such allegations and by itself gathering relevant information. MOT will respond to requests from DOC for information relating to the allegations under Section VI.A.4. In distinguishing normal arrangements, swaps, or other exchanges in the Hot-Rolled Steel market from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement, DOC will take the following factors into account:

1. Existence of any verbal or written arrangement leading to circumvention of this Agreement;

2. Existence and function of any subsidiaries or affiliates of the parties involved;

3. Existence and function of any historical and traditional patterns of production and trade among the parties involved, and any deviation from such patterns;

4. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for Hot-Rolled Steel delivered or swapped by another party;

5. Sequence and timing of the arrangements; and

6. Any other information relevant to the transaction or circumstances.

D. In the event that DOC determines that a Russian entity has participated in circumvention of this Agreement, DOC and MOT shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If DOC and MOT are unable to reach mutual agreement within 60 days, DOC may take appropriate measures, such as deducting the amount of Hot-Rolled Steel involved in such circumvention from the export limit for the current Export Limit Period (or, if necessary, the Subsequent Export Limit Period) or instructing the U.S. Customs Service to deny entry to any Russian Hot-Rolled Steel sold by the entity found to be circumventing the Agreement. Before taking such measures, DOC will notify MOT of the basis for DOC's intended action and will afford MOT 30 days in which to comment. DOC will enter its determinations regarding circumvention into the record of the Agreement. MOT may request an extension of up to 15 days for any of the deadlines mentioned in this Section.

VI. Monitoring and Notifications

A. MOT will collect and provide to DOC such information as is necessary and appropriate to monitor the implementation of, and compliance with, this Agreement, including the following:

1. Thirty days following the allocation of export rights for any Export Limit Period, MOT shall notify DOC of each allocation recipient and the volume granted to each recipient. MOT also shall inform DOC of any changes in the volume allocated to individual quota recipients within 60 days of the date on which such changes become effective.

2. MOT shall collect and provide to DOC information on exports to the United States in the format in Appendix I to this Agreement, and on the aggregate quantity and value of exports of Hot-Rolled Steel to all other countries. In addition to this information, MOT will also provide a list of heat numbers for each shipment to the United States. This information will be subject to verification. This information will be based on semi-annual periods (January 1 through June 30 and July 1 through December 31), and will be provided no later than 90 days following the end of each half-year period, beginning on September 30, 1999.

3. Upon request by DOC, MOT shall also collect and provide to DOC, within 45 days of the request, transaction-specific data for sales of Hot-Rolled Steel within the Russian home market or to any third country or countries, in the format provided in Appendix I.

4. Within 15 days of a request from DOC for information concerning alleged circumvention or other violation of this Agreement, MOT shall share with DOC all information received or collected by MOT regarding its inquiries, its analysis of such information, and the results of such inquiries.

5. MOT will inform DOC of any violations of any provisions of this Agreement that come to its attention and of the measures taken with respect thereto.

6. MOT and DOC recognize that the effective monitoring of this Agreement may require that MOT provide information additional to that identified above. Accordingly, after consulting with MOT, DOC may establish additional reporting requirements consistent with the U.S. antidumping law, as appropriate, during the course of this Agreement. MOT shall also collect and provide to DOC, within 45 days of the request, any such additional information requested by DOC.

B. MOT may request an extension of up to 30 days of any deadline in this section.

C. DOC may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

D. DOC shall provide MOT with the following information relating to implementation and enforcement of this Agreement.

1. Semi-annual reports indicating the volume of U.S. imports of Hot-Rolled Steel subject to this Agreement, together with such additional information as is necessary and appropriate to monitor compliance with the export limits. Such reports and information shall be provided within 120 days after the end of the last semi-annual period.

2. Notice of any violations of any term of this Agreement.

E. DOC will also monitor the following information relevant to this Agreement, and provide such information that is public to MOT upon request.

1. Publicly available data as well as U.S. Customs entry summaries and other official import data from the U.S. Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

2. U.S. Bureau of the Census computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, DOC may request the U.S. Customs Service to provide such information. DOC may request other additional documentation from the U.S. Customs Service.

F. DOC may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of Hot-Rolled Steel during the period this Agreement is in effect.

VII. Disclosure and Comment

A. DOC shall make available to representatives of each Party to the Proceeding, under appropriately-drawn administrative protective orders consistent with U.S. laws and regulations, business proprietary information submitted to DOC semi-annually or upon request pursuant to this Agreement, and in any administrative review of this Agreement.

B. Not later than 45 days after the date of disclosure under Section VII.A, the Parties to the Proceeding may submit written comments to DOC, not to exceed 30 pages.

C. At the end of the Moratorium Period and each Export Limit Period, each Party to the Proceeding may request a hearing on issues raised during the Moratorium Period or the preceding Export Limit Period. If such a hearing is requested, it will be conducted in accordance with U.S. laws and regulations.

VIII. Consultations

A. If, in response to a request by MOT at any time, DOC determines that the Reference Price calculated under Section III prevents Russian producers from participating in the U.S. market, MOT and DOC will promptly enter into consultations in order to review the market situation and the appropriateness of the Reference Price level.

B. MOT and DOC shall hold consultations concerning the implementation, operation (including the calculation of Reference Prices) and enforcement of this Agreement each year during the anniversary month of this Agreement.

C. Additional consultations on any aspect of this Agreement shall be held as soon as possible, but no later than 30 days, after a request by either MOT or DOC.

D. If DOC receives information indicating that there has been a violation of this Agreement, DOC shall promptly request special consultations with MOT. Such consultations shall begin no later than 21 days after the day of DOC's request, and must be completed within 40 days after commencement. After completion of the consultations, DOC will provide MOT 20 days within which to provide comments.

E. Two years after the effective date of this Agreement, DOC and MOT shall enter into additional consultations to review the extent to which this Agreement is accomplishing the purposes set forth in the preamble and make any revisions consistent with U.S. law that are appropriate in light of their mutual conclusions.

IX. Violations

A. DOC will investigate any information relating to circumvention or other violations of this Agreement which is brought to its attention, both by asking MOT to investigate such allegations and by itself gathering relevant information. Prior to making a determination that a violation has occurred, DOC will engage in consultations with MOT, pursuant to Section V.D or VIII.D. of this Agreement.

B. DOC will determine whether a violation has occurred within 30 days after the date for submission of comments by MOT upon the allegation under Section VIII.D.

C. If DOC determines that this Agreement is being or has been violated, DOC will take such action as it determines is appropriate under U.S. law and regulations.

X. Duration

A. This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. antidumping law.

B. DOC will, upon receiving a proper request made by MOT, conduct an administrative review of this Agreement under U.S. laws and regulations.

C. MOT or DOC may terminate this Agreement at any time upon written notice to the other party. Termination shall be effective 60 days after such notice is given. Upon termination of this Agreement, the provisions of U.S. antidumping law and regulations shall apply. In addition, DOC shall terminate this agreement if MOT withdraws from "The Agreement Concerning Trade In Certain Steel Products From The Russian Federation." Termination shall be effective 60 days after the written notice of MOT's withdrawal.

XI. Other Provisions

A. DOC finds that this Agreement is in the public interest, that effective monitoring of this Agreement by the United States is practicable, and that this Agreement will prevent the

suppression or undercutting of price levels of United States domestic Hot-Rolled Steel products by imports of the Hot-Rolled Steel subject to this Agreement.

B. DOC does not consider any of the obligations concerning exports of Hot-Rolled Steel to the United States undertaken by MOT pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

C. The English and Russian language versions of this Agreement shall be authentic, with the English version being controlling.

D. All provisions of this Agreement, including the provisions of the Preamble, shall have equal force.

E. For all purposes hereunder, the signatory Parties shall be represented by, and all communications and notices shall be given and addressed to:

DOC:
U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

MOT:
Department for State Regulation of External Economic Activities, Ministry of Trade of the Russian Federation, 18/1 Ovchinnikovskaya naberezhnaya, Moscow, 1 13324, Russia

Signed on this 12th of July, 1999.

For DOC:

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For MOT:

Roald Piskoppel,

Deputy Minister Ministry of Trade of the Russian Federation.

Appendix I

In accordance with the established format, MOT shall collect and provide to DOC all information necessary to ensure compliance with this Agreement. This information will be provided to DOC on a semi-annual basis.

MOT will collect and maintain data on exports to the United States on a continuous basis. Sales data for the home market, and data for exports to countries other than the United States, will be reported upon request.

MOT will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

A. Exports to the United States

MOT will provide all Export Licenses issued to Russian entities, which shall contain the following information with the exception that information requested in item #9, date of entry, item #110, importer of record, item #116, final destination, and item #117, other, may be omitted if unknown to MOT and the licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and or entry.
2. Description of Merchandise: Include the 10 digit HTS category, the ASTM or equivalent grade, and the width and thickness of merchandise.
3. Quantity: Indicate in metric tons.
4. F.O.B. Sales Value: Indicate value and currency used.
5. Unit Price: Indicate unit price per metric ton and currency used
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License/ Temporary Document is Issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Russian exporter.
14. Allocation to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Allocation Remaining: Indicate the remaining export limit allocation available to the individual exporter during the export limit period.
16. Final Destination: The complete name and address of the U.S. purchaser.
17. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/ U.S. purchaser.

B. Exports Other Than to the United States

Pursuant to Section VI, paragraph A, MOT will provide country-specific volume and value information for exports of Hot-Rolled Steel to third countries, upon request, regardless of whether MOT licenses exports of Hot-Rolled Steel to such country(ies). The following information shall be provided except that information requested in item #16, date of entry, #17, importer of record, and item #110, other, may be omitted if unknown to MOT and the Russian licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and/or entry, if any.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date Export License/ Temporary Document is issued, if any.
6. Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.
7. Importer of Record: Name and address.
8. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
9. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
10. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

C. Home Market Sales

Pursuant to Section VII, paragraph A, the MOT will provide home market volume and value information for sales of Hot-Rolled Steel, upon request. The following information shall be provided with the exception of item #6, other, if unknown to MOT and the Russian producer/exporter.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
2. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
4. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
6. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

Appendix II

Section 734 (1) of the Tariff Act of 1930 as amended, provides, in part, as follows:

(1) Special Rule for Non-Market Economy Countries.

(I) In General.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a non-market economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that

(A)—such agreement satisfies the requirements of subsection (d), and

(B)—will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of Agreements—If the administering authority determines that the agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (I) shall apply.

Section 771(9) of the Tariff Act of 1930, as amended, provides in part, as follows:

(9) Interested Party—The term "interested party" means—

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise under this title or a trade or business association a majority of the members of which are producers, exporters, or importers of such mer chandise,

(B) The government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) A manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) An association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product, and

* * * * *

Appendix III

For the purposes of this Agreement, "Hot-rolled steel" means certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness.

Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this agreement.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum;
Thickness = 0.063—0.198 inches;
Yield Strength = 50,000 ksi minimum;
Tensile Strength = 70,000—88,000 psi.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;

Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max.

Width = 44.80 inches maximum;
Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%.

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Width = 39.37 inches;
Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches;
Tensile Strength = 80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inches nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered include: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the covered merchandise is dispositive.

Appendix IV

For purposes of this Agreement, Apparent U.S. Domestic Consumption will be estimated as follows, using data provided by the American Iron and Steel Institute and the U.S. Bureau of the Census in the following manner:

Apparent Consumption =

Domestic Shipments of Hot-Rolled Steel [2]
+Imports of Hot-Rolled Steel [3]
−Exports of Hot-Rolled Steel [4]

The definition of shipments used here, while as close as practically possible, is not identical to the imports as defined in Paragraph I.F and Appendix III of this Agreement.

[FR Doc. 99–18372 Filed 7–16–99; 8:45 am]
BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

July 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 340/640 is being increased for recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 53878, published on October 7, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Laos and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 21, 1999, you are directed to increase the current limit for Categories 340/640 to 167,513 dozen [1], as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the Lao People's Democratic Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–18299 Filed 7–16–99; 8:45 am]
BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

July 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60306, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on July 21, 1999, you are directed to adjust the current limits for the following categories, as provided for under the current bilateral textile agreement between the Governments of the United States and the Sultanate of Oman:

Category	Adjusted twelve-month limit [1]
334/634	160,580 dozen.
335/635	268,159 dozen.
338/339	616,454 dozen.
340/640	286,380 dozen.
341/641	222,814 dozen.
347/348	1,065,332 dozen.
647/648/847	359,756 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–18298 Filed 7–16–99; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–17, with attached transmittal, policy justification, Sensitivity of Technology, and Sec. 620C(d) of the Foreign Assistance Act of 1961.

Dated: July 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

[2] Hot-Rolled Steel = Carbon Plates In Coils (AISI Data) + Carbon Hot-Rolled Sheets (AISI Data) + Carbon Hot-Rolled Strip (AISI Data).

[3] Imports of Hot-Rolled Steel = Carbon Plates In Coils (AISI Data) + Carbon Hot-Rolled Sheets (AISI Data) + Carbon Hot-Rolled Strip (AISI Data) + Imports of HTS Numbers 7225303050, 7225307000, 7225407000, 7226917000, 7226918000 (Data from the U.S. Bureau of the Census on Imports for Consumption, as reported by the International Trade Commission's Trade DataWeb).

[4] Exports of Hot-Rolled Steel = Carbon Plates in Coils (AISI Data) + Carbon Hot-Rolled Sheets (AISI Data) + Carbon Hot-Rolled Strip (AISI Data).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

1 JUL 1999
In reply refer to:
I-99/05463

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-17, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $52 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$49 million
Other	$ 3 million
TOTAL	$52 million

(iii) Description of Articles or Services Offered: Three hundred fifty-eight M26A1 Extended Range Rocket pods (six rockets per pod) with M77 grenades for the Multiple Launch Rocket System, production verification testing, spare and repair parts, support vehicles, publications and technical documentation, support and test equipment, and other related elements of program support.

(iv) Military Department: Army (XJO and XIR, Amd 1)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See annex attached

(vii) Date Report Delivered to Congress: 1 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

Greece - Extended Range Rocket Pods for the Multiple Launch Rocket Systems

The Government of Greece (GOG) has requested a possible sale of 358 M26A1 Extended Range Rocket (ERR) pods (six rockets per pod) with M77 grenades for the Multiple Launch Rocket System, production verification testing, spare and repair parts, support vehicles, publications and technical documentation, support and test equipment, and other related elements of program support. The estimated cost is $52 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and enhancing weapon system standardization and interoperability of this important NATO ally.

The GOG will use these ERR pods with their MLRS which have already been delivered in FY 95 and FY 97. Greece has previously purchased ERR pods and, therefore, will have no difficulty absorbing these additional pods. The pods will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The prime contractor will be Lockheed Martin Vought Systems, Dallas, Texas. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The highest level of classified information required to be released for training, operation and maintenance of the Multiple Launch Rocket System (MLRS) Extended Range Rocket (ERR) pods is Confidential. The highest level of information which could be revealed through reverse engineering or testing of the end item is Secret. MLRS-ERR technical data and information includes Confidential and Secret reports and data, as well as performance and capability data, classified Confidential/Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Greece can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to $ 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of March 30, 1999, I hereby certify that the furnishing to Greece of 358 M26A1 ERR pods (six missiles per pod) with M77 grenades for use in the MLRS systems, production verification testing, spare and repair parts, support vehicles, publications and technical documentation, support and test equipment, and other related elements of program support is consistent with the principles contained in $ 620(b) of the Act.

This certification will be made part of the notification to Congress under $ 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Senior Adviser for Arms Control and International Security

[FR Doc. 99-18251 Filed 7-16-99; 8:45 am]
BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: July 29, 1999 (800 a.m. to 1600 p.m.).

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd, Arlington, VA 22201-5300.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340-1328, (202) 231-4930. .

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-18253 Filed 7-16-99; 8:45 am]
BILLING CODE 5001-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8 a.m. to 5 p.m. on September 9, 1999, and from 8:00 a.m. to 5:00 p.m. on September 10, 1999. The meeting will be held at The Morrison House, 116 South Alfred Street, Alexandria, Virginia 22314. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271, no later than August 9, 1999.

Dated: July 13, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-18252 Filed 7-16-99; 8:45 am]
BILLING CODE 5000-10-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on August 18, 1999, unless comments are received that would result in a contrary determination.

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ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: July 13, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFAA C

SYSTEM NAME:

Employee Training and Career Development File *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and insert '10 U.S.C. 8013, Secretary of the Air Force.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and insert 'The Auditor General, Secretary of the Air Force (SAF/AG), 1120 Air Force Pentagon, Washington, DC 20330-1120.'

* * * * *

F036 AFAA C

SYSTEM NAME:

Employee Training and Career Development File.

SYSTEM LOCATION:

Air Force Audit Agency Training Division (AFAA/RMT), March Air Force Base, CA 92518-1852.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Audit Agency military and civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include but are not limited to: Correspondence and application documents requesting, approving, disapproving, recommending and coordinating the assignment of personnel to: Long-term, full-time training programs; short-term government and non-government schools, seminars, short courses and symposiums; certified public accounting review courses; certified internal auditor review courses; non-government job-related, off-duty training, and the grades, completion certificate, and budget information related thereto. Includes information on prior academic achievements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

Provides basis for determining those selected for training programs; record of individuals who applied for the

programs; progress reports of those in the programs; and history of the training received by employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is given to the Office of Personnel Management through the Air Force Civilian Personnel Management Information System, and, in the case of CPA candidates, to state boards of accountancy.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and on computer and computer output products.

RETRIEVABILITY:

Retrieved by name, course name or course number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Auditor General, Secretary of the Air Force (SAF/AG), 1120 Air Force Pentagon, Washington, DC 20330-1120.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Auditor General, Secretary of the Air Force (SAF/AG), 1120 Air Force Pentagon, Washington, DC 20330-1120.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Auditor General, Secretary of the Air Force (SAF/AG), 1120 Air Force Pentagon, Washington, DC 20330-1120.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individual, source of training, school, and automated system interface.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–18254 Filed 7–16–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on August 18, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: July 13, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFRE B

SYSTEM NAME:

Personnel Files on Statutory Tour Officers *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Personnel Division, Office of Air Force Reserve (AF/REP), Headquarers, U.S. Air Force, Washington, DC 20330-2404 and Air Force Personnel Center (AFPC/DPWR), Randolph Air Force Base, TX 78150-4717.

* * * * *

F036 AFRE B

SYSTEM NAME:

Personnel Files on Statutory Tour Officers.

SYSTEM LOCATION:

Personnel Division, Office of Air Force Reserve (AF/REP), Headquarers, U.S. Air Force, Washington, DC 20330-2404 and Air Force Personnel Center (AFPC/DPWR), Randolph Air Force Base, TX 78150-4717.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force Reserve Officers applying for or selected for assignment as statutory tour officer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for extended active duty with United States Air Force, military career brief, resume of prior military and civilian experience, officer effectiveness report overall rating, correspondence and special orders relative to the tour.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 10211, Policies and regulations: Participation of reserve officers in preparation and administration.

PURPOSE(S):

Documentary support of tour applications; approval/disapproval; initiation, termination and extension of statutory tours; historical reference not to exceed two years after tour termination; used by Air Force Manpower and Personnel Center/ Assistant for Personnel Plans, Programs

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and Analysis, Reserve Forces Division (AFPC/DPWR); used for AFPC/DPWR as record of approval/disapproval, authority to issue Department of the Air Force Special Orders (DAFSOs); by Office of the Air Force Reserve (AF/RE), Director Air National Guard, National Guard Bureau (NGB/CF) and SAF/MRR as record of approval/disapproval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and computers for local statistical analysis.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know and stored in security file containers/cabinets. Database is password access only.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-2404.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-2404.

Include full name and Social Security Number. Individuals may visit the Personnel Division, Office of Air Force Reserve, 2404 Air Force Pentagon, Washington, DC 20330-2404. Military identification card or driver's license required for identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-2404.

Include full name and Social Security Number. Individuals may visit the Personnel Division, Office of Air Force Reserve, 2404 Air Force Pentagon, Washington, DC 20330-2404. Military identification card or driver's license required for identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AFRE C

SYSTEM NAME:

Files on Reserve General Officers; Colonels Assigned to General Officer Positions *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force, Personnel Directorate (HQ USAF/REP) Washington, DC 20330-1150.'

* * * * *

F036 AFRE C

SYSTEM NAME:

Files on Reserve General Officers; Colonels Assigned to General Officer Positions.

SYSTEM LOCATION:

Headquarters United States Air Force, Personnel Directorate (HQ USAF/REP) Washington, DC 20330-1150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force Reserve General Officers and Colonels assigned to General Officer positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resume of prior military and civilian experience, correspondence and Special Orders, Record of Reserve participation, personnel data listings, last five officer effectiveness reports, record of personal interview and assignment recommendation made by Chief, Air Force Reserve.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

To determine qualifications for initial/continued assignment to General Officer positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and computers for local statistical analysis.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets. Database is password access only.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Air Force Reserve, Headquarters United States Air Force (HQ USAF/REP), Washington, DC 20330-2404.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief of Air Force Reserve (HQ USAF/REP), Headquarters United States Air Force, Washington, DC 20330-2404.

Full name and Social Security Number must be provided. Individuals

may visit the Personnel Division Office of Air Force Reserve (HQ USAF/REP), 2404 Air Force Pentagon, Washington, DC 20330-2404.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-2404.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as reports from individual officers, and from personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–18255 Filed 7–16–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on August 18, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend four systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record systems being amended are set forth below, as amended, published in their entirety.

Dated: July 13, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.10 DLA-M

SYSTEM NAME:

Information Military Personnel Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete 'DLA-M' and replace with 'CAH.'

SYSTEM NAME:

Delete 'Information' and replace with 'Individual'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'and reserve' from entry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Files include name; rank; Social Security Number; home and address of record; general and special orders; evaluations; and details pertaining to classification, duties, assignment, promotion, proposed disciplinary actions, advancement, performance, training, education, qualifications, readiness, personal affairs, and benefits/entitlements.'

* * * * *

PURPOSES(S):

Delete entry and replace with 'The records are maintained as a local repository of documents generated during the service member's assignment at DLA. The files are used to manage, administer, and document the service member's assignment; to provide career advice to service members; and to advise local Commanders and the Director of incidents.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Upon reassignment from DLA, records are offered to the military service concerned.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'Special' and replace with 'Information is provided by the individual, rating officials, and taken from'.

* * * * *

S200.10 CAH

SYSTEM NAME:

Individual Military Personnel Records.

SYSTEM LOCATION:

Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty personnel assigned to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include name; rank; Social Security Number; home and address of record; general and special orders; evaluations; and details pertaining to classification, duties, assignment, promotion, proposed disciplinary actions, advancement, performance, training, education, qualifications, readiness, personal affairs, and benefits/entitlements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397 (SSN).

PURPOSE(S):

The records are maintained as a local repository of documents generated during the service member's assignment at DLA. The files are used to manage, administer, and document the service member's assignment; to provide career advice to service members; and to advise local Commanders and the Director of incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Upon reassignment from DLA, records are offered to the military service concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, rating officials, and taken from orders, service records, in/out processing documents, and computer listings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S200.20 DLA-M

SYSTEM NAME:

Active Duty Military Personnel Data Bank System *(February 22, 1993, 58 FR 10854).*

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete 'DLA-M' and replace with 'CAH'.

* * * * *

PURPOSES(S):

Delete entry and replace with 'The records are maintained to ensure effective personnel management and to assist assigned personnel in their career management. The data is also used for statistical studies and reports on force effectiveness, contingency planning, training requirements, and manpower deficiencies. Rating official data is included in the database for management oversight purposes; however, the files are not retrieved or retrievable by rater name, social security number, or other rater attributes'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Upon reassignment from DLA, records are offered to the military service concerned.'

* * * * *

S200.20 DLA-M

SYSTEM NAME:

Active Duty Military Personnel Data Bank System.

SYSTEM LOCATION:

Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel assigned to the Defense Logistics Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains name, grade, Social Security Number, organization, position data, branch of service and specialty, dates of rank, civilian and professional education, position requirements, dates of assignment and rotation, and retirement and separation data. The system also contains the rater's name, grade, service, Social Security Number, and rotation date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397 (SSN).

PURPOSE(S):

The records are maintained to ensure effective personnel management and to assist assigned personnel in their career management. The data is also used for statistical studies and reports on force effectiveness, contingency planning, training requirements, and manpower deficiencies. Rating official data is included in the database for management oversight purposes; however, the files are not retrieved or retrievable by rater name, social security number, or other rater attributes

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Upon reassignment from DLA, records are offered to the military service concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the heads of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the individual and taken from military personnel records and position distribution reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–18256 Filed 7–16–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Navy Recruiting Command

AGENCY: Department of the Navy, DOD.

ACTION: Notice of proposed information collection.

SUMMARY: The Commander, Navy Recruiting Command announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 17, 1999.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 39054.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mr. Dave Garrison at (901) 874–9119/9120.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application for Commission or Warrant Rank, USN or USNR; OMB Control No. 0703–0029

Needs and Uses: All persons interested in entering the U.S. Navy or Naval Reserve in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or Naval Reserve.

Affected Public: Individuals or households.

Annual Burden Hours: 23,400.

Number of Respondents: 11,700.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: July 8, 1999.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18327 Filed 7–16–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Air Station, Agana, Guam

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice is an amended Determination of Surplus for the remaining areas at the former NAS Agana identified for release in the BRAC 93 program. The amended declaration includes additional property, which was previously the subject of federal transfer requests which have been withdrawn, and corrects the area (acreage) of the surplus property. Information is provided regarding (a) the redevelopment authority that has been established to plan the reuse of the Naval Air Station, Agana, Guam, (b) the surplus property that is located at that base closure site, and (c) the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: For further general information, contact Rich A. Engel, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 1322 Patterson Avenue SE Suite 1000, Washington, DC 20374–5065, telephone (202) 685–9203, or J. M. Kilian, Director, Real Estate Division, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300, telephone (808) 471–3217. For more detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plan, sanitary facilities, exact street address, etc.), contact Ken Alexanderson, Realty Specialist, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI, 96860–7300, telephone (808) 474–5926.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Air Station, Agana, Guam,

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was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended. Further, in 1995, this designation was revised to reflect complete closure. Pursuant to this revised designation, the remaining land and facilities at these installations were on October 5, 1995, declared surplus to the Federal Government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. Also, pursuant to paragraph (7)(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, following information regarding the redevelopment authority for and surplus property at the Naval Air Station, Agana, Guam is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Air Station, Agana, Guam for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, the local redevelopment Authority is the Government of Guam, represented by the Guam Economic Development Authority: BRAC GOVGUAM Steering committee, Office of the Governor, P.O. Box 2950, Agana, Guam 96932. The point of contact is Mr. Joe T. San Agustin, Administrator, BRAC GOVGUAM Steering committee, telephone (671) 475–1080.

Surplus Property Descriptions

The following is a listing of the remaining land and facilities at the Naval Air Station, Agana, Guam which were declared surplus to the federal government on March 18, 1999.

Approximately 1,939 acres of which 1,731 acres are fee simple and 208 acres are encumbered by easements for flight clearance and drainage purposes. In general, all areas will be available upon the closure of the Naval Air Station, Agana anticipated for July 1999.

Buildings

The following is a summary of the buildings and improvements located at the Naval Air Station, Agana: 433 structures/improvements consisting of 1,850,648 square feet.

Naval Air Station Agana Facility

Improvements

Residential Facilities

176 duplex housing units (352 total units) former enlisted housing area 3 hotel-type units consisting of 74 single rooms (including some suites) with restaurant/bar 17 bachelor enlisted housing barracks buildings containing approximately 396 rooms.
All operational and administrative buildings, including aircraft hangers aircraft operating areas, including runways, taxiways and aircraft parking areas.
Warehouses
Chapel
Messhall (restaurant type facility)
Retail store
Medical facility
Coin operated laundry
Two child development centers

Recreational Facilities

Two clubs (with restaurant/bar)
Bowling alley
Gymnasium
Four tennis courts
Two ball fields
Basketball/volleyball courts
Swimming pool
Two hobby shops
Theater

Related Utility Systems

Electric
Water
Sewer
Telephone
Other miscellaneous facilities

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Agana, Guam, shall submit to the redevelopment authority a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7(C) and (D) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Guam the date by which expressions of interest must be submitted.

Dated: July 8, 1999.

Michael I. Quinn,

CDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18326 Filed 7–16–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Smart Surfaces, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Smart Surfaces, LLC., a revocable, nonassignable, exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent No. 5,449,553 entitled "Nontoxic Antifouling Systems" issued September 12, 1995 and U.S. Patent No. 5,593,732 entitled "Nontoxic Antifouling Systems" issued January 14, 1997; in the field of manufacture and application of fouling release coatings to boat and ship hulls and power plant cooling tunnels.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 17, 1999.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: July 8, 1999.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18328 Filed 7–16–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Submission of OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On July 8, 1999, a 60-day notice inviting comment from the public was inadvertently published for the Program for North America Mobility in Higher Education (A Special Focus Competition for FIPSE) in the **Federal Register** (64 FR 130) dated July 8, 1999. This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collection (1890–0001). Therefore, this notice amends the public comment period for this program to 30 days. The Leader, Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995. Since an incorrect public notice was published on July 8, the Department of Education is correcting the end date to the 30 days as required for discretionary grants instead of 60 days.

DATES: Interested persons are invited to submit comments on or before August 18, 1999.

ADDRESSES: Written comment should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address *vivian—reese@ed.gov* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 708–9266.

Dated: July 13, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

[FR Doc. 99–18290 Filed 7–16–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–329–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

July 13, 1999.

Take notice that on July 8, 1998, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 18, to be effective July 2, 1999 in order to implement the GISB Standards adopted under Order No. 587–K.

Chandeleur states that the revised tariff sheet are being filed in compliance with the Commission's Letter Order No. 587–K issued June 22, 1999 in the above-referenced docket.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18260 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–434–000]

Gulf States Transmission Corporation; Notice of Tariff Filing

July 13, 1999.

Take notice that on July 8, 1999, Gulf States Transmission Corporation (Gulf States), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1999:

Fourth Revised Sheet No. 51
Second Revised Sheet No. 51B
First Revised Sheet No. 53A
First Revised Sheet No. 53B
Second Revised Sheet No. 53C
Fourth Revised Sheet No. 58G

Gulf States states that the tendered sheets are filed in compliance with Order No. 587–K issued in Docket No. RM96–1–011 by the Federal Regulatory Energy Commission on April 2, 1999, and implement Version 1.3 of the standards promulgated by the Gas Industry Standards Board.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18262 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–433–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 13, 1999.

Take notice that on July 8, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff First Revised Sheet No. 451, with a proposed effective date of August 7, 1999.

National Fuel states that the purpose of the instant filing is to revise the minimum bidding periods for open seasons for available firm capacity pursuant to GT&C Section 26 of its tariff. The revised tariff sheet specifies minimum bidding periods of one (1) business day for capacity which will be available for less than five months, three (3) business days for capacity that will be available for five months or more but less than twelve months, and five (5) business days for capacity that will be available for twelve months or longer.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18261 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–364–003 and RP99–251–003]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

July 13, 1999.

Take notice that on July 2, 1999, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Substitute, First Revised Sheet No. 88, to become effective September 1, 1999.

South Georgia states that the purpose of this filing is to comply with the Commission's letter order dated June 18, 1999 in the above-referenced dockets. Sea Robin has stated that it will provide shippers with notice of scheduled quantities at delivery points that are being bumped.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18258 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–363–003 and RP99–253–005]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

July 13, 1999.

Take notice that on July 2, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, First Substitute, First Revised Sheet No. 155, to become effective September 1, 1999.

Southern states that the purpose of this filing is to comply with the Commission's letter order dated June 17, 1999 in the above-referenced dockets.

Southern has stated that it will provide shippers with notice of scheduled quantities at delivery points that are being bumped.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc/fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18257 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–432–000]

West Texas Gas, Inc.; Notice of Gas Cost Reconciliation Report

July 13, 1999.

Take notice that on July 1, 1999, West Texas Gas, Inc. (WTG) submitted for filing, pursuant to Section 19 of the General Terms and Conditions of its FERC Gas Tariff its annual purchased gas cost reconciliation for the period ending April 30, 1999. Under Section 19, any difference between WTG's actual purchased gas costs and its spot market-based pricing mechanism is refunded or surcharged to its two jurisdictional customers annually, with interest. The report indicates that WTG undercollected its actual costs by $50,798 during the reporting period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 19, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18259 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–62–001, *et al.*]

Aquila Energy Marketing Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 12, 1999.

Take notice that the following filings have been made with the Commission:

1. Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation, Niagara Mohawk Energy Marketing Corporation

[Docket No. EL99–62–001]

Take notice that on July 6, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its First Compliance Report in the above-referenced docket. Niagara Mohawk states that this filing was submitted to comply with the Commission's June 18, 1999 Order, 87 FERC ¶ 61,328 (1999), in the above-referenced docket.

Niagara Mohawk states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York and New York Power Pool

[Docket Nos. ER97–1523–000, OA97–470–000, and ER97–4234–000 (not consolidated)]

Take notice that on July 6, 1999, the Member Systems of the New York Power Pool (Member Systems), tendered for filing a revised New York State Reliability Council Agreement (NYSRC Agreement).

The Member Systems state that this filing was made in compliance with the Commission's Order dated April 30, 1999. *See Central Hudson Gas & Electric Corp., et al.*, 87 FERC ¶ 61,135 (1999).

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey, and Pennsylvania.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER99–3493–000]

Take notice that on July 6, 1999, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed form of Service Agreement between NMPC and H.Q. Energy Services (US), Inc. (Purchaser). The Service Agreement specifies that the Purchaser has signed on to, and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, original Volume No. 2. This Tariff, approved by FERC on April 15, 1994 and which as an effective date of March 13, 1993, will allow NMPC and the purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for the purchaser.

NMPC is: (a) Requesting an effective date of July 1, 1999 for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State public Service Commission and the Purchaser.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER99–3494–000]

Take notice that on July 6, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to Avista Energy Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Avista Energy Inc.

NUSCO requests that the Service Agreement become effective July 30, 1999.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER99–3495–000]

Take notice that on July 6, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing with the Federal Energy Regulatory Commission, a Service Agreement to provide Firm Point-To-Point Transmission Service to TransAlta Energy Marketing (U.S.) Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to TransAlta Energy Marketing (U.S.) Inc.

NUSCO requests that the Service Agreement become effective July 30, 1999.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. San Diego Gas & Electric Company

[Docket No. ER99–3496–000]

Take notice that on July 6, 1999, San Diego Gas & Electric Company (SDG&E) tendered for filing revisions to its Transmission Owner Tariff to implement the planned sale of Firm Transmission Rights by the California Independent System Operator.

Copies of this filing have been served upon the California Public Utilities Commission, the California Independent

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System Operator, California Independent System Operator-registered Scheduling Coordinators, Pacific Gas and Electric Company, and Southern California Edison Company.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Madison Gas and Electric Company

[Docket No. ER99–3497–000]

Take notice that on July 6, 1999, Madison Gas and Electric Company (MGE) tendered for filing a service agreement under MGE's Power Sales Tariff with Kansas City Power and Light company.

MGE requests an effective date of July 1, 1999.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3498–000]

Take notice that on July 6, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER99–3499–000]

Take notice that on July 6, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing, an Executed Service Agreement to provide Non-Firm Point-To-Point Transmission Service to TransAlta Energy Marketing (U.S.) Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to TransAlta Energy Marketing (U.S.) Inc.

NUSCO requests that the Service Agreement become effective July 30, 1999.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER99–3500–000]

Take notice that on July 6, 1999, Pacific Gas & Electric Company (PG&E) tendered for filing proposed revisions to its Transmission Owner Tariff to implement the planned sale of Firm Transmission Rights proposed by the California Independent System Operator Corporation.

Copies of this filing have been served upon the California Public Utilities Commission, the California Independent System Operator Corporation, the California Independent System Operator, Southern California Edison Company, San Diego Gas and Electric Company, and the active parties to the proceeding that addresses the non-rates terms and conditions of the Transmission Owner Tariffs and Wholesale Distribution Tariffs of PG&E, San Diego Gas & Electric Company, and Southern California Edison Company, Docket Nos. ER97–2358–002, *et al.*, ER97–2364–002, *et al.*, and ER97–2355–002, *et al.*, respectiveiy.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER99–3501–000]

Take notice that on July 6, 1999, Southern California Edison Company (SCE) tendered for filing revisions to its Transmission Owner Tariff to implement the planned sale of Firm Transmission Rights by the California Independent System Operator.

Copies of this filing have been served upon the California Public Utilities Commission, the California Independent System Operator, California Independent System Operator-registered Scheduling Coordinators, Pacific Gas and Electric Company, and San Diego Gas & Electric Company.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Berkshire Power Company, LLC

[Docket No. ER99–3502–000]

Take notice that on July 6, 1999, Berkshire Power Company, LLC (Berkshire Power) tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Berkshire Power proposed that its Rate Schedule No. 1 become effective upon commencement of service of the Berkshire Power Plant (the Plant), a generation project currently being developed by Berkshire Power in the State of Massachusetts. The Plant will commence the sale of test power on July 23, 1999, but will not be commercially operable until November 1, 1999.

Berkshire Power intends to sell energy and capacity from the Plant at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18311 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6379–7; Docket No. A–99–23]

Petition to Delist Methanol From the List of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of a complete petition.

SUMMARY: This notice announces the receipt of a complete petition from the American Forest and Paper Association (AF&PA) requesting EPA to remove the chemical methanol (CAS No. 67–56–1) from the list of hazardous air pollutants HAPs) contained in section 112(b)(1) of the 1990 Clean Air Act (Act). We have determined that the AF&PA's original petition submittal dated March 8, 1996 and the supplemental materials provided by AF&PA through February 18, 1999 will support an assessment of the human health impacts associated with people living in the vicinity of facilities emitting methanol. In addition, the data submitted by AF&PA will support an assessment of the environmental impacts associated with

emissions of methanol to the ambient air and deposited onto soil or water. Consequently, we have concluded that AF&PA's petition is complete as of February 18, 1999, the date of the last supplement, and is ready for public comment and the technical review phase of our delist petition evaluation process.

This notice invites the public to comment on the petition and to provide additional data, beyond that filed in the petition, on sources, emissions, exposure, health effects and environmental impacts associated with methanol that may be relevant to our technical review.

DATES: Comments and additional data will be accepted if received on or before August 18, 1999.

ADDRESSES:

Documents

A copy of the complete petition is contained in a docket available at the Air and Radiation Docket and Information Office, 401 M Street SW, Room M–1500 (6102), Waterside Mall, Washington DC 20460. The docket number for this action is A–99–23. The docket is an organized file of all the information received and considered in making the decision on the completeness of AF&PA's petition. The main purpose of the docket is to allow you to readily identify and locate documents that record the process we followed in making our decision. You may inspect the petition and copy it for offsite review between 8:30 a.m. and 5:30 p.m. EST, Monday through Friday. A reasonable fee may be charged for copying.

Comments and Data Submissions

Comments and additional data should be submitted (in duplicate if possible) to: The Docket Clerk, Air and Radiation Docket and Information Office, 401 M Street SW, Room M–1500 (Mail Code 6102), Waterside Mall, Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Chuck French, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–0467, electronic mail address: french.chuck@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. What Is the List of Hazardous Air Pollutants?

Hazardous air pollutants include a wide variety of organic and inorganic substances released from large and small industrial operations, fossil fuel combustion, gasoline and diesel-powered vehicles, and many other sources. The HAPs have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects. The health effects associated with the various HAPs may differ depending upon the toxicity of the individual HAP and the particular circumstances of exposure, such as the amount of chemical present, the length of time a person is exposed, and the stage in life of the person when the exposure occurs. The list of HAPs, which includes methanol, can be found in section 112(b)(1) of the Act. The HAPs list provides the basis for research, regulation, and other related EPA activities under section 112 of the Act.

B. What Is a HAP Delist Petition?

A HAP delist petition is a formal request to the EPA from an individual or group to remove a specific HAP from the HAPs list. The removal of a HAP from the list eliminates it from consideration in EPA's program to promulgate national, technology-based emissions control standards. This technology-based standards program is commonly referred to as the maximum achievable control technology (MACT) program.

Petitions to add or delete chemicals from the HAPs list are allowed under section 112(b)(3)(A) of the Act. The Act specifies that any person may petition the Administrator to modify, by addition or deletion, the list of HAPs, and the EPA Administrator is required to either grant or deny a petition to delist a specific HAP within 18 months of the receipt of a complete petition.

To delete a substance from the HAPs list, section 112(b)(3)(C) requires that the petitioner must provide adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, and bio-accumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or adverse environmental effects.

C. How Does EPA Review a Petition To Delist a HAP?

The petition review process proceeds in two phases: a completeness determination and a technical review. During the completeness determination, we conduct a broad review of the petition to determine whether or not all the necessary subject areas are addressed and whether reasonable information and analyses are presented for each of these subject areas. Once the petition is determined to be complete, we place a notice of receipt of a complete petition in the **Federal Register**. That **Federal Register** notice announces a public comment period on the petition and starts the technical review phase of our decision-making process. The technical review involves a more thorough scientific review of the petition to determine whether the data, analyses, interpretations, and conclusions in the petition are appropriate and technically sound. The technical review will also determine whether or not the petition satisfies the necessary requirements of section 112(b)(3)(C) and adequately supports a decision to delist the HAP. All comments and data submitted during the public comment period are considered during the technical review.

D. How Is the Decision To Delist a HAP Made?

The decision to either grant or deny a petition is made after a comprehensive technical review of both the petition and the information received from the public to determine whether the petition satisfies the requirements of section 112(b)(3)(C) of the Act. If the Administrator decides to grant a petition, a notice of proposed rulemaking is published in the **Federal Register**. That notice proposes a modification of the HAPs list and presents the reasoning for doing so. However, if the Administrator decides to deny a petition, a notice setting forth an explanation of the reasons for denial will be published instead. A notice of denial constitutes final Agency action of nationwide scope and applicability and is subject to judicial review as provided in section 307(b) of the Act.

II. Completeness Determination and Request for Public Comment

On March 8, 1996, we received a petition from the AF&PA to remove methanol (methyl alcohol, methyl hydroxide, wood alcohol, wood spirit) (CAS No. 67–56–1) from the HAPs list. The petition was presented on behalf of the producers and consumers of methanol in the United States. After our initial review of the petition, we determined that additional information was needed on estimated ambient air concentrations of methanol as well as on the derivation of the safe exposure level (SEL) for methanol. The petitioner submitted several additional documents in 1997 and early 1998 to address the information gaps. After further review, we determined that the additional documents that AF&PA submitted

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improved the petition, but that there were still information gaps, particularly in the identification of sources, exposure modeling assessment, and atmospheric chemistry. The petitioner submitted additional documents in 1998 and early 1999 to address these remaining information gaps.

After reviewing all of the supplemental information, we have now determined that the essential subject areas have been addressed and that the petition is complete and ready for technical review. The AF&PA's last supplement which occurred February 18, 1999 marked the start of the 18 months decision period. Today's notice initiates our comprehensive technical review of the petition and invites public comment on the substance of the petition as described above.

III. Description of the Petition

The complete petition provided by AF&PA contains the following information:

A. Background data on methanol, including chemical and physical properties data and production and use data.

B. A review of available scientific literature documenting human, animal, in vitro, and other toxicity studies concerning methanol, with copies of the relevant literature citations.

C. A review of available scientific literature concerning environmental effects of methanol, with copies of the relevant literature citations.

D. An assessment of the human heath and environmental effects of methanol including AF&PA's proposed calculation of the air inhalation SEL. The petition asserts that the proposed SEL is a quantitative estimate of an inhalation exposure to humans that is likely to be without appreciable risk of adverse impacts over a lifetime.

E. A characterization of the fate of methanol emitted to the atmosphere including atmospheric residence time, solubility, information on atmospheric transformations, and potential degradation or transformation products.

F. A screening assessment to demonstrate that only sources emitting greater than 500 tons per year (tpy) have a theoretical possibility of exceeding the SEL.

G. Estimated emissions of methanol for sources that emit greater than 500 tpy of methanol derived from the toxic release inventory (TRI), as well as other data sources such as State air toxics emissions inventories. The TRI is an emissions inventory database developed under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.

H. Tiered air dispersion modeling that provides estimates of the ambient concentrations of methanol adjacent to facilities that emit over 500 tpy of methanol and the potential human exposures to methanol due to these emissions. Tiered modeling involves the use of successive modeling techniques to move from conservative "worst case" estimates of the ambient concentrations of a substance emitted from a source toward more realistic site specific estimates of the ambient concentrations.

I. Characterization of the potential exposures and risks from methanol to human health and the environment.

The petition describes methanol as a simple alcohol containing one carbon atom. Methanol is reported to occur naturally as an emission resulting from metabolism in vegetation, microorganisms, and insects. It has also been found in volcanic gases. Methanol is produced during the natural biodegradation of organic wastes of all kinds, including sewage and wastewater sludge, by microorganisms normally found in the environment.

In the original petition submittal (dated March 8, 1996), it is stated that based on the 1993 TRI, 2,303 facilities reported emissions of methanol for a total of 86,155 tons of methanol emitted to the air in the United States in 1993. Based on the 1993 TRI data, the paper and allied products industry accounted for about 52 percent of the methanol emissions. The next largest source category was the chemical and allied products industry which accounted for 25 percent of the methanol emissions. Six facilities reported emissions over 1,000 tpy, 195 facilities reported emissions over 100 tpy and 828 facilities reported emissions over 10 tpy. Subsequent petition submittals present emissions estimates based on more recent data sources (e.g., the 1995 TRI) for sources emitting greater than 500 tpy of methanol.

The petition presents the derivation of a SEL of 83 milligrams of methanol per cubic meter of air (i.e., 83 mg/m^3). The petitioner asserts that exposures below this SEL can be expected to produce no potential adverse human effects from lifetime inhalation exposures. The petition claims the SEL is based on standard EPA methodology, which incorporates the identification of the most sensitive toxic endpoint and the corresponding no-observable-adverse-effect-level (NOAEL) (in this case an exposure level of 1,300 mg/m^3 for pregnant mice), adjustment of the NOAEL from an animal exposure concentration to an equivalent human exposure concentration, and application of appropriate uncertainty factors: To determine the human equivalent concentration of methanol, the petition used the NOAEL derived from the mouse study and converted it to a human-equivalent NOAEL following EPA guidelines by multiplying the animal species NOAEL by the ratio of a breathing rate divided by the body weight of the animal species to the same parameters for humans. The human-equivalent NOAEL, along with uncertainty factors, was then used to determine the SEL.

The petition asserts that inhalation is the only significant route of human exposure to methanol emissions. Since methanol rapidly biodegrades and volatilizes in water, it is highly unlikely that humans are exposed to significant amounts of methanol through fallout or impaction upon soils or directly upon water bodies. Using the TRI data as input in a tiered air dispersion modeling approach, the petition develops estimates of the maximum annual and 24-hour concentrations anticipated to occur at the boundaries of facilities known to emit methanol in excess of 500 tpy. The maximum predicted 24-hour concentration for any of these facilities was about 7.5 mg/m^3. After comparing the estimated exposure levels to the SEL, the AF&PA concludes that concentrations of methanol anticipated to occur due to emissions from these sources cannot reasonably be anticipated to cause either acute or chronic adverse health effects to people living nearby these facilities.

The petition also provides data to support the AF&PA's position that in the concentrations expected to occur in the environment, methanol is nontoxic to plants and animals. It is readily degradable through natural process and does not tend to accumulate in living organism.

Dated: July 9, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–18356 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6379–9]

National Environmental Justice Advisory Council's (NEJAC) International Subcommittee; Notification of Environmental Justice Roundtable on the U.S.-Mexico Border, Open Meeting and Public Comment Period(s) and Concurrent Meeting of NEJAC's Enforcement Subcommittee (All Times are Pacific Daylight Time)

The National Environmental Justice Advisory Council (NEJAC) and the Environmental Protection Agency will sponsor a Roundtable on Environmental Justice on the U.S.-Mexico Border, August 19, 20, 21, 1999, in National City, California. A broad range of stakeholders and constituent groups from all the border states are invited to participate in the Roundtable to help develop a framework and general recommendations to address environmental justice issues on the U.S.-Mexico border. Roundtable activities will include public comment/community participation periods, speaker presentations, and panel-led discussions pertaining to environmental justice issues on the border. At general and break-out group sessions participants will dialogue, analyze, and develop policy recommendations on environmental justice, health, labor, immigration and environment, Indigenous People's issues, and trade and environment on the U.S.-Mexico border. The Roundtable will start with a public comment period 7:00 p.m. to 9:30 p.m., Thursday, August 19, 1999. On Friday, August 20, general sessions and break-out groups will meet from 9:00 a.m. to 6:00 p.m., with an additional public comment period from 7:00 p.m. to 9:00 p.m., if necessary. The Roundtable will conclude on Saturday, August 21, 9:00 a.m. to 12:30 p.m., with a general session at which reports from break-out groups and next steps will be discussed. A report and recommendations from the Roundtable proceedings will be prepared by the International Subcommittee and submitted to NEJAC for review and consideration before forwarding them to the Administrator of the U.S. EPA.

Members of the public who wish to make a brief oral presentation should contact Tetra Tech EM Inc. by August 9 to have time reserved on the agenda. Individuals or groups making oral presentations will be limited to a total time of five minutes. We should receive written comments of any length by August 9. Comments received after that date will be provided as logistics allow. Send your written comments to Tetra Tech EM Inc., 1881 Campus Commons, Suite 200, Reston, Virginia 20191.

A limited number of scholarships are available for representatives of impacted border community groups to participate in the Roundtable. For more information or to pre-register, please call the NEJAC Registration Toll-Free Hotline Telephone number at 1–888–335–4299 (English & Spanish). For scholarship information, please call ICMA, Amparo Macias (Spanish) or Angele White (English) toll-free on 1–877–278–0083.

Concurrent Meeting of NEJAC Enforcement Subcommittee: August 20, 21, 1999

The NEJAC Enforcement Subcommittee will hold a meeting concurrent with the International Roundtable in San Diego. The Subcommittee will meet on both August 20 and 21 to discuss a variety of environmental enforcement issues. For additional information, please contact Shirley Pate at (202) 564–2607 or via e-mail at *pate.shirley@epa.gov.*

Dated: July 12, 1999.

Alan D. Hecht,

Acting Assistant Administrator, Office of International Activities.

[FR Doc. 99–18357 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 8, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 17, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0584.

Title: Administration of U.S. certified accounting authorities in maritime mobile and maritime mobile-satellite radio services.

Form Number: FCC Form 44 and FCC Form 45.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals and households; businesses and other for-profit.

Number of Respondents: 25.

Estimated Time Per Response: Three hours per response for Application for Certification of Accounting Authority form; one hour per response for the Annual Statistical Report of Settlement Operations form; and one hour per response for the Report of Additions/Modifications/Deletions to Inventory.

Frequency of Response: Semi-Annually; Annually; One time.

Total Annual Burden: 150.

Needs and Uses: The Commission will use the information in this information collection to determine eligibility of applicant; to create internal studies and to ensure compliance. The Commission will also use the information to identify the accounting authorities of U.S. licensed vessels and to update the reporting of changes in accounting authority functions to the International Telecommunication Union for inclusion in their List of Ship Stations Report. The Report and Order is modified to reduce a monthly reporting of changes to the inventory of ships for which the accounting authority performs settlements to a semi-annual requirement. A requirement for this information was included in the Notice of Proposed Rulemaking, 58 FR 246, December 27, 1993; however, the burden of the requirement was not adequately addressed at that time.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18249 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

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FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting Notice

Deletion of Agenda Items From July 14th Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the July 14, 1999, Open Meeting and previously listed in the Commission's Notice of July 7, 1999. Items 1 and 2 have been adopted by the Commission.

Item No.	Bureau	Subject
1	Common Carrier	Title: 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171). Summary: The Commission will consider a Report and Order that would simplify reporting requirements for contributors to the numbering administration, local number portability, Telecommunications Relay Services, and universal service support mechanisms.
2	Common Carrier	Title: Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I. Summary: The Commission will consider a Notice of Proposed Rulemaking that commences Phase I of a comprehensive review of its accounting and reporting requirements.
3	Wireless Telecommunications.	Title: Amendment of the Commission's Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands (ET Docket No. 95–183, RM–8553); and Implementations of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz 38.6–40.0 GHz Bands (PP Docket No. 93–253). Summary: The Commission will consider a Memorandum Opinion and Order addressing petitions for reconsideration regarding licensing and service rules in the 39 GHz service.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–18506 Filed 7–15–99; 3:35 pm]
BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control and Prevention (CDC)

Agency for Toxic Substances and Disease Registry (ATSDR)

The Research Agenda Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following conference call meeting.

Name: Research Agenda Subcommittee of the Board of Scientific Counselors, ATSDR.

Time and Date: 1:30p.m.-3p.m., July 30, 1999.

Place: The Conference Call will originate from the Agency for Toxic Substances and Disease Registry, in Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports. (There will be 10 telephone ports available.)

Purpose: This subcommittee will advise the Board of Scientific Counselors and the Agency on areas of emphasis and focus for the ATSDR five-year environmental public health research agenda. The subcommittee will report jointly to the Board of Scientific Counselors and the ATSDR Associate Administrator for Science.

Matters to be Discussed: The conference call agenda is to establish a plan of action for the beginning and intermediate phase of developing the ATSDR five-year environmental public health research agenda.

Supplementory Information: This conference call is scheduled to begin at 1:30 p.m., EDT. To participate in the conference call, please dial 1–800–713–1971 and enter conference code 950512. You will then be automatically connected to the call.

For Further Information Contact: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Telephone 404/639–0708, e-mail: rys2@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: July 12, 1999.

Carolyn J. Russell,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).
[FR Doc. 99–18294 Filed 7–16–99; 8:45 am]
BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notices of Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Study Protocol Peer Review Meeting: Evaluation of Factors Affecting Disease Transmission in Commercial Aircraft Cabins.

Time and Date: 9 a.m.–3 p.m., August 3, 1999.

Place: NIOSH, Alice Hamilton Laboratory, Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213, telephone 515/841–4106.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: The purpose of this meeting is to obtain expert input regarding technical and scientific aspects of the study "Evaluation of Factors Affecting Disease Transmission in Commercial Aircraft Cabins" being conducted at NIOSH. Designated reviewers will individually critique the study protocol and provide comments on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies and the public are invited.

Matters to be Discussed: The agenda will include opening remarks/introductions, project overview, individual comments from formal reviewers, and a general discussion.

Contact Person for More Information: Ms. Jennifer Topmiller, Engineering Control Technology Branch, Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, M/S R–5, Cincinnati, Ohio 45226, telephone 513/841–4292.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 9, 1999.

Carolyn J. Russell,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.
[FR Doc. 99–18293 Filed 7–16–99; 8:45 am]
BILLING CODE 4160–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2097]

Agency Information Collection Activities: Proposed Collection; Comment Request; Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for Humanitarian Use Devices, 21 CFR part 814 subpart H.

DATES: Submit written comments on the collection of information by September 17, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26; Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. A collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Humanitarian Use Devices—21 CFR Part 814—Subpart H (OMB No. 0910–0332—Extension)

This collection implements the humanitarian use device (HUD) provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and 21 CFR part 814 subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnosis a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnosis the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection herein will allow FDA to determine whether to: (1) Grant HUD designation of a medical device, (2) exempt a HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making these determinations. Also, this information enables FDA to determine whether the holder of a humanitarian device exemption (HDE) is in compliance with the HDE requirements.

Description of Respondents: Businesses or others for-profit.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMANITARIAN DEVICE EXEMPTION SPONSORS[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.102	20	1	20	40	800
814.104(b) and 814.104(c)	15	1	15	320	4,800
814.106	15	4	60	50	3,000
814.108	12	1	12	80	960
814.116(d)(3)	1	1	1	1	1
814.124(a)	5	1	5	1	5
814.124(b)	1	1	1	2	2
814.126(b)(1)	15	1	15	120	1,800

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMANITARIAN DEVICE EXEMPTION SPONSORS[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					11,368

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMANITARIAN DEVICE EXEMPTION SPONSORS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	15	1	15	2	30
Total					30

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

A. Explanation of Report Burden Estimate:

Generally, the information requested from respondents represents an accounting of information already in the possession of the applicant.

In the original publication in the **Federal Register** of the final rule for HUD's on June 26, 1996, FDA based its estimates on comments received to the proposed rule, industry contact, and internal FDA benchmark factors (such as the number of PMA's processed). The numbers generated in the current estimate as shown in Tables 1 and 2 of this document and described in the following paragraphs, are based upon those prior estimates, and they have only been modified if actual numbers over the past 3 years have indicated a significantly different trend.

The first HUD rule became effective in fiscal year 1997, and FDA has only a few years of actual data to compare to original estimated numbers. Although actual numbers are less than the estimated numbers for this information collection, FDA believes that as manufacturers become more familiar with the program, FDA will experience a larger number of submissions under the provisions discussed as follows:

§ 814.102—It is estimated that 20 sponsors per year will submit a request for HUD designation. It is estimated to require 40 staff hours to complete each HUD designation request.

§ 814.104—FDA estimates 15 sponsors per year will submit an HDE application after receiving HUD designation. FDA estimates that it will require an average of 320 staff hours to complete each HDE application. § 814.110(a) requires that a new indication for use of a HUD approved under this part be submitted as a new HDE application complying with § 814.104. All burden under this section is included under the estimate for § 814.104.

§ 814.106—It is estimated that 4 times per year FDA will request or the sponsor will submit additional information or resubmit an HDE or HDE supplement for approximately 15 of the submitted HDE applications. FDA estimates that it will require the respondents to take an average of 50 staff hours to complete each amendment or resubmitted application. If the FDA refuses to file the HDE application, requests for an informal conference (under § 814.112(b)) will be processed as an HDE amendment. Responses to approvable and not approvable letters (§ 814.116(b), (c), and (d)) will be processed as HDE amendments. A request for an opportunity for an informal hearing, prior to FDA issuing an order withdrawing approval, under § 814.118(d), will be processed as an HDE amendment. Because FDA only tracks amendments, and not the reasons for the amendment, the burden estimates for the sections listed in the Tables 1 and 2 of this document are included in the burden estimate for § 814.106.

§ 814.108—FDA anticipates that it will receive approximately 12 supplements for the submitted HDE applications. It is estimated that it will take approximately 80 staff hours to complete each supplemental application.

§ 814.116(d)(3)—FDA believes that it will receive approximately 1 request to withdraw an HDE application per year, based on withdrawals submitted in FY 1997 and FY 1998. FDA estimates it will take no longer than 1 staff hour to complete each written withdrawal notice.

§ 814.124(a)—FDA anticipates that 5 physicians will use HUD's in emergency situations before obtaining institute and review board (IRB) approval. FDA estimates that notification under this section will take an average of 1 hour per response.

§ 814.124(b)—FDA anticipates that one holder of an approved HDE will notify FDA of IRB withdrawal of approval. FDA estimates that it will take an average of 2 staff hours to notify FDA of IRB withdrawal.

§ 814.126(b)(1)—Following FDAMA, § 814.126 was amended to incorporate section 520(m)(5) of the act (21 U.S.C. 360j), which provides FDA the authority to require an HDE applicant to demonstrate continued compliance with the HDE requirements, if the agency believes that such a demonstration is necessary to protect the public health or has reason to believe that the criteria for the HDE exemption are no longer met. FDA amended this section to delete the requirement of an annual report and to include instead a periodic reporting requirement that will be established by the approval order for the HDE. This provision permits the agency to obtain sufficient information for it to determine whether there is reason to question the continued exemption of the device from the act's effectiveness requirements.

FDA anticipates that because of this amendment, the 15 HDE holders will remain active and therefore, estimates that 15 periodic reports will be received. FDA also estimates that it will take an average of 120 staff hours to complete a periodic report as a result of this amendment.

B. Explanation of Recordkeeping Burden Estimate:

§ 814.126(b)(2)—FDA anticipates that 15 HDE holders per year will maintain records of certain required information. It is estimated that it will take an average of 2 staff hours to maintain this information.

Dated: July 12, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–18234 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1833]

SoloPak Laboratories, Inc.; Withdrawal of Approval of 1 New Drug Application and 38 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 21, 1999 (64 FR 33097). The document announced the withdrawal of approval of 1 new drug application (NDA) and 38 abbreviated new drug applications (ANDA's) held by SoloPak Laboratories, Inc. The document omitted language explaining that the sponsor voluntarily removed the products from the market because of discrepancies concerning the data submitted to support continued approval of the applications. This document corrects that omission.

EFFECTIVE DATE: JULY 19, 1999.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

In FR Doc. 99–15581, appearing on page 33097 in the **Federal Register** of Monday, June 21, 1999, the following correction is made: Onpage 33098, immediately preceding the table, add the following two paragraphs to read as follows:

Recently, FDA became aware of discrepancies concerning the data submitted to support continued approval of the following ANDA's held by SoloPak:

ANDA 88–457; Heparin Lock Flush Solution USP, 10 units/milliliter (mL); and

ANDA 88–519; Phenytoin Sodium Injection USP, 50 milligrams (mg)/mL.

After careful review of inspectional findings, the agency determined that there was sufficient justification to initiate proceedings to withdraw approval of the two products listed above. SoloPak was notified in writing of the determinations and, in accordance with § 314.150(d) (21 CFR 314.150(d)), was offered an opportunity to permit FDA to withdraw the applications. Subsequently, in letters dated December 15, 1998, and March 31, 1999, SoloPak requested withdrawal under § 314.150(d) of the applications listed in the following table, thereby waiving its opportunity for a hearing.

Dated: July 8, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–18235 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 6, 1999 (64 FR 36361). The document announced that FDA is being restructured to create a more streamlined and efficient Office of the Commissioner that will provide leadership without compromising programmatic effectiveness. The restructuring document, which became effective on June 20, 1999, was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

In FR Doc. 99–17019, appearing on page 36361 in the **Federal Register** of Tuesday, July 6, 1999, the following correction is made:

1. On page 36362, in the first column, in the fourth paragraph, beginning in the twelfth line "Center for Devices and Radiological Health" is corrected to read "Center for Drug Evaluation and Research."

Dated: July 12, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–18236 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Availability of New E-mail Service for Government-Owned Inventions Available for Licensing and Cooperative Research Opportunities

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The Office of Technology Transfer (OTT), National Institutes of Health desires to announce the availability of a new e-mail service concerning government-owned inventions available for licensing and cooperative research opportunities.

OTT has initiated a Techbrief e-mail list service to inform companies, institutions and anyone interested in biomedical technology transfer about NIH and FDA technologies available for licensing, as well as Cooperative Research and Development (CRADA) opportunities with PHS scientists.

ADDRESSES: Persons may subscribe to the list at no charge upon request to: Dr. George Keller, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852 (telephone: (301) 496–7735, extension 246; fax: (301) 402–0220, e-mail: gk40j@nih.gov). Please include: company affiliation, title, address, phone and fax numbers, and e-mail address. A convenient form is available at the OTT web site: http://www.nih.gov/od/ott/.

Dated: July 12, 1999.

Jack Spiegel, PhD.,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–18373 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of

federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Quantitative Assessment of Changes in Tissue Status in Disease, Development, Aging, or Degeneration Using Diffusion Tensor Magnetic Resonance Imaging

Peter J. Basser (NICHD), Sinisa Pajevic (CIT)

DHHS Reference No. E–192–99/0 filed 21 May 1999

Licensing Contact: John Fahner-Vihtelic; 301/496–7735, ext. 270; e-mail: jf36z@nih.gov

This invention significantly enhances the quality and utility of diffusion tensor magnetic resonance imaging (DT–MRI) data. The patent application for the invention describes quantitative statistical methodology to extract novel clinical and biological information from DT–MRI data. These parametric and non-parametric statistical methods help distinguish changes in tissue state from background noise inherent in all MRI measurements. The invention also includes hypothesis tests to determine the statistical significance of changes observed in MRI "stains" (e.g., the Trace of the diffusion tensor, Trace (D), and the mean apparent diffusion coefficient, ADC), which are widely used in the diagnosis of stroke. Further, this invention describes how to detect systematic artifacts in each pixel of a diffusion weighted image (e.g., artifacts caused by patient motion). Indeed, this new statistical methodology for analyzing and interpreting diffusion tensor MIR data should improve the efficacy of drug screening studies, as well as streamline multi-site and longitudinal studies designed to assess the safety and efficacy of drugs undergoing clinical evaluation.

Magnetic Resonance Tracking of Magnetically Labeled Cells

J. Bulte, I. Duncan, and J. Frank (CC)

DHHS Reference No. E–013–99/0 filed 21 May 1999

Licensing Contact: Leopold J. Luberecki, Jr..J.D.; 301/496–7735, ext. 223; e-mail: LL87A@NIH.GOV

Demyelination is a common pathological finding in human neurological diseases and frequently persists as a result of failure of endogenous repair. It has recently been demonstrated that transplanted oligodendrocytes and their precursor cells can remyelinate axons. The survival, acute dispersion, and migratory pattern of these cell lines is crucial for the extent and limit of remyelination. Presently, the assessment of survival and migratory pattern is unpredictable and requires invasive, irreversible procedures. This invention describes a real time in vivo imaging of neural cells using nuclear magnetic resonance (NMR) imaging. The technique involves an ex vivo delivery of the contrasting agent into the target cells, which are then either injected or transplanted into the subject. These target cells can then be non-invasively monitored for their translocation. This technique has been successfully applied to the imaging of spinal cord samples and has potential for monitoring the treatment of neurodegenerative diseases and for monitoring the successful delivery and location of genetically modified cells for treatment of Parkinson's Disease. It may also have possible applications in the monitoring of cellular differentiation.

Oligodeoxynucleotide and Its Use To Induce an Immune Response

Dennis Klinman (FDA), Daniela Verthelyi (FDA), Kenji Ishii (NINDS)

Serial No. 60/128,898 filed 12 Apr 1999

Licensing Contact: Peter Soukas; 301/496–7056, ext. 268; e-mail: ps193c@nih.gov

This invention comprises oligodeoxynucleotides (ODNs) having at least 10 nucleotides with an unmethylated central CpG motif that are immunostimulatory in humans. The inventors have shown that the various ODNs of this invention (having different CpG notifs and backbones) induce immune responses from human non-B and B cells. The motif that stimulates non-B cells induces production and release of multiple T cell cytokines and chemokines; specifically, the Th1 cytokine IFN–γ, which facilitates the development of a cytotoxic T cell response. In contrast, the motif that stimulates B cells induces production and release of various cytokines, including, but not limited to IL–6, which supports a Th2 antibody response. The inventors have generated in vitro and ex vivo data showing the ODNs of this invention have utility in precisely regulating the type and magnitude of the immune response in human cells. The present invention has multiple therapeutic uses, including but not limited to cancer, vaccine adjuvants, treating autoimmune disorders and immune system deficiencies, as well as an anti-infective agent and in combination with any antisense therapy.

Methods of Treating Colitis Using STAT–4 Antisense Oligonucleotide

Warren Strober, Ivan Fuss, Markus Neurath, Atsushi Kitani (NIAID)

Serial No. 60/125,877 filed 24 Mar 1999

Licensing Contact: Richard U. Rodriguez; 301/496–7056, ext. 287; e-mail: rr154z@nih.gov

This invention described in this patent application relates to compositions and methods which can be used to treat diseases such as Crohn's disease, a form of inflammatory bowel disease. This disease has been linked to the interferon gamma (IFNγ) response induced by interleukin 12 (IL–12) production. Recent work has shown that IFNγ production is also a product of the activation of the signal transduction molecule Signal Transducer and Activator of Transcription-4 (STAT–4). Therefore, regulation of IFNγ production rather than IL–12 production may be a more effective means of treatment.

The methods and compositions described in this patent application are antisense oligonucleotides derived from STAT–4 which inhibit the STAT–4 pathway. The antisense compositions have been studied in animal models, IL–10 knockout mice and mice having TNBS colitis. In these studies local administration of the antisense oligonucleotides rapidly reversed intestinal inflammation.

Ac-HEHA and Related Compounds, Methods of Synthesis and Methods of Use

Martin W. Brechbiel, Kim Deal (NCI)

Serial No. 60/125,764 filed 23 Mar 1999 Licensing Contact: Girish C. Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

The invention is directed to a chelation complex comprising ^{225}Actinium (^{225}Ac) and 1,4,7,10,13,16-hexaazacyclohexadecane-N,N′, N″,N‴,N⁗,N⁗′-hexaacetic acid (HEHA) as well as bi-functional complexes consisting of ^{225}Ac, HEHA and targeting agents in various combinations. Radioisotopes are chosen, in part, by the type of disease to be treated, and two important functions are tissue penetration of the emitted particles and the toxicity of the treatment agents. ^{225}Ac, an alpha-emitter, offers high cytotoxicity with a short tissue range, and HEHA chelates ^{225}Ac in such a manner as to provide increased in vivo stability to enable its use as a radiotherapeutic agent. Additionally, ^{225}Ac's radioactive decay chain ends in a non-radiocative material. A targeting agent can be conjugated to ^{225}Ac–HEHA in order to selectively affect a defined population of cells through a receptor, a substrate, an antigenic determinant or any other binding site on the target cell population. Therefore, the invention yields improvements over existing related technologies for the radiotherapeutic treatment of disease states such as cancer. The disclosed complexes could also be used in radioimaging, decontamination and detoxification protocols.

Low Level Exposure to Extract of Neurotoxin for Protection From Brain Injury

WB Jonas (OD) and FC Tortella (U.S. Army) Serial No. 09/271,009 filed 17 Mar 1999 Licensing Specialist: Leopold J. Luberecki, Jr., J.D.; 301/496–7735 ext. 223; e–mail: LL87A@NIH.GOV

Approximately 438,000 persons will suffer a stroke per year; approximately 200,000 deaths can be attributed to stroke, thereby ranking stroke as the third leading cause of death in the United States. Strokes may affect anyone, but strokes strike approximately two-thirds of those individuals over 65 years of age. Reducing brain damage due to strokes or ischemic events would save many lives and significantly reduce the associated long-term health care costs associated of a stroke victim. This technology embodies an injectable preparation of the plant-derived neurotoxin and combinations with low doses of the amino acid glutamate, and has been shown to have the ability to reduce the damage in an animal stroke model by 50%. In addition to the neuroprotective qualities when given post trauma, a formulation, in preliminary tests, indicates that the neurotoxin may have preventive neuroprotective qualities when given prior to the trauma. This would be very beneficial for individuals at high risk.

A Novel Chimeric Protein for Prevention and Treatment of HIV Infection

Edward A. Berger (NIAID), Christie M. Del Castillo Serial No. 60/124,681 filed 16 Mar 99 Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: cs253n@nih.gov

This invention relates to bispecific fusion proteins effective in viral neutralization. Such proteins have two different binding domains, an inducing-binding domain and an induced-binding domain, functionally linked by a peptide linker. More specifically, the invention is a genetically engineered chimeric protein containing a region of CD4 attached via a flexible polypeptide linker to a human single chain MAb directed against CD4-induced, highly conserved HIV gp120 determinants involved in binding to coreceptor. The molecule is expected to have the properties of a potent, broadly cross-reactive neutralizing antibody against HIV. This novel agent will have considerable potential in the prevention of infection during or immediately following HIV exposure (e.g. vertical transmission; post-exposure prophylaxis) and possibly in the treatment of chronic infection. Such proteins, nucleic acid molecules encoding them, and their production and use in preventing or treating viral infections are claimed.

UPA, a Universal Protein Array System for Quantitative Detection of Protein-Protein, Protein-DNA, Protein-RNA and Protein-Ligand Interactions

Dr. Hui Ge (NICHD), Serial No. 60/123,586 filed 08 Mar 1999, Licensing Contact: Marlene Shinn; 301/496–7057 ext. 285; e-mail: ms482m@nih.gov

The Universal Protein Array (UPA) system is a newly developed research tool for the analysis and screening of potential drug targets. This technology uses the three dimensional structure of active proteins (without denaturation and renaturation) to determine specific protein-protein, protein-DNA, protein-RNA, protein-ligand or protein-chemical interactions. Unlike most conventional DNA chips or DNA microarrays currently on the market, the UPA system requires no sophisticated equipment and is in fact more sensitive than existing methods. The UPA system is able to analyze thousands of protein samples in a single experiment, thereby making it a highly efficient way to screen proteins for potential drug targets. Also, because it can be used multiple times for different targets, it is economically affordable for most laboratories or hospitals.

In addition to being useful as a screening tool, the UPA system can also be used to study gene regulation pathways such as transcription, RNA processing, replication, translation, and signal transduction, to name a few. The technology found in the UPA system could also potentially be commercialized in a kit form and be applied to the diagnosis of disease states in patients in the clinical setting.

Methods for Mitochondrial Gene Therapy

Steven J. Zullo (NIMH), Jerome M. Eisenstadt, Wayne A. Fenton, DHHS Reference No. E–121–99/0 filed 08 Mar 1999, Licensing Contact: Dennis Penn; 301/496–7056 ext. 211; e-mail: dp144q@nih.gov

Although the role of the mitochondrion in providing energy for the cell by the process of oxidative phosphorylation has been known for a long time, the role of the mitochondrial genome and the consequences of defects in the mitochondrial genome are just being understood. These mutations or defects in the mitochondrial genome are responsible for many diseases, conditions, or syndromes.

This invention is directed to methods for functionally complementing at least one defect, mutation, or deletion in the mitochondrial genome which comprises: (1) Selecting a mitochondrial gene; (2) determining the nucleic acid sequence of the gene; (3) optionally, where the nucleic acid sequence encodes a protein and at least one of the codons encoding the protein has a different meaning in the mitochondrial genetic code and the universal genetic code, mutating the nucleic acid sequence to reflect the difference between the mitochondrial and universal genetic codes so that, in the mutated sequence, a polypeptide that is expressed as the result of nuclear transcription of the nucleic acid sequence, and cytoplasmic translation of the messenger RNA, has the same amino acid sequence as the polypeptide originally expressed in the mitochondrion; (4) optionally, attaching the coding sequence of a functional mitochondrial protein targeting sequence to the nucleic acid sequence for nuclear expression; (5) operatively linking the protein targeting sequence, if present, and the nucleic acid sequence to at least one control element that provides constitutive expression to generate a nucleic acid construct; and (6) inserting the nucleic acid construct into the nuclear genome of a eukaryotic cell for expression of the nucleic acid segment in the cell to provide functional complementation of at least one defect, mutation, or deletion in the mitochondrial genome. The method can also be used for the total replacement of mitochondrial genome function, including the use of transgenic techniques.

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Monoclonal Antibodies Specific and Inhibitory to Human Cytochrome P450 2C8, 2C9, 2C18 And 2C19—New Avenues for Drug Discovery

Harry V. Gelboin, Frank J. Gonzalez, Kristopher W. Krausz, (NCI),

DHHS Reference No. E–077–99/0 filed 12 Feb 99

Licensing Contact: Dennis Penn; 301/496–7056 ext. 211; e-mail: dp144q@nih.gov

The cytochrome P450 family of enzymes has primary responsibility for the metabolism of xenobiotic drugs and non-drug carcinogens and environmental chemicals, as well as some endobiotics. This laboratory has isolated monoclonal antibodies (MAbs) that are specific to and inhibit the ten major human cytochrome P450s (CYPs) that are responsible for the metabolism of most drugs. The MAb based analytic system identifies the P450s responsible for metabolism of a drug and is thus an entirely new system for Drug Discovery. Drug-drug toxicity can be due to drug partners competing for an individual P450 and be a cause of drug toxicity. Certain drugs given to genetically polymorphic individuals that are defective in a specific P450 can cause serious toxicity to the defective individual. In one case 6–10% of the world population are missing an important P450 (2D6).

The 2C family of cytochrome P450s metabolizes a very large and extensive number of drugs which include tolbutamide, S-Warfarin, mephenytoin, diazepam and taxol. The invention reports the production of inhibitory MAbs to the P450 2C family. The invention describes MAb 5–1–5 and 281–1–1 that specifically inhibit CYP 2C8. MAb 292–2–3 that specifically inhibit CYP 2C9 and MAb 592–2–5 that specifically inhibit both CYP 2C9 and 2C18. MAb 5–7–5 specifically inhibits CYP 2C9, 2C18, and 2C19. In addition MAb 1–68–11 previously reported specifically inhibits all four members of the 2C family, 2C8, 2C9, 2C18, and 2C19. The MAbs may be used as diagnostic probes identifying the single or several P450s responsible for a drugs metabolism and also yield important information on inter-individual differences. The MAb system identifies and characterizes the P450 based metabolism of drugs currently in use and drugs in the screening and development stages of Drug Discovery.

Dated: July 13, 1999.

Jack Spiegel, Ph.D.

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–18374 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the US Government and is available for licensing in the US in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application listed below may be obtained by contacting Susan S. Rucker, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 245; fax: 301/402–0220; e-mail:sr156v@nih.gov. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Immunoadhesins and Methods of Production Thereof

KG Csaky, E Anglade, DM Sullivan (all of NEI), WJ Larochelle (NCI)

Serial No. 08/814,567 filed 10 Mar 97

This patent application relates to the field of immunoadhesins. Immunoadhesins, also known as immunoligands, Ig- or Fc- fusion proteins or chimeras are chimeric molecules comprised of a non-immunoglobulin binding region (e.g., cell surface receptor, ligand, cell adhesion molecule) and an antibody constant domain. Such molecules can be used to identify receptors or ligands, in structure-function studies or as therapeutic agents.

In particular, the application describes a method for producing immunoadhesins which utilizes a replication-deficient adenoviral expression system. This system addresses some of the defects of other immunoadhesion production systems utilizing transfection of plasmid DNA in either a transient or stable system by providing efficient, high level gene expression, appropriate assembly/post-translation modification and ease of purification. Particular immunoadhesins which have been produced using this system are incorporate IL–10, IL–2, IL–13, IL2ra, IL–1ra, mutant IL–4, ICAM, TGF–1β1, or TGF-$\beta1^{223,225}$ as the non-immunoglobulin portion.

This research has been published, in part, in Anglade, et al. "Interleukin-10 immunoadhesin production by a replication-defective adenovirus" J. Immunol. Methods 202(1): 41–8 (March 10, 1997).

Dated: July 13, 1999.

Jack Spiegel, Ph.D.,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–18375 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Review Group; Subcommittee A—Cancer Centers.

Date: August 5–6, 1999.

Time: 7:00 PM to 1:00 PM.

Agenda: to review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact: David E. Maslow, PHD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—EPN

643A, Bethesda, MD 20892–7405, 301/496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18275 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Human Genome Research Institute Special Emphasis Panel, July 22, 1999, 8:30 AM to July 23, 1999, 6 PM, Hyatt Regency, One Metro Center, Bethesda, MD, 20814 which was published in the **Federal Register** on July 1, 1999, 64 FR 35673.

The meeting will be held in its entirety on July 23 instead of July 22–23. The meeting is closed to the public.

Dated: July 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18270 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: August 4, 1999.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW, Chevy Chase, MD 20015.

Contact Person: Katherine Woodbury, PHD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18269 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Clinical Trials and Clinical Markers for Immunologic Diseases.

Date: July 29–30, 1999.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Bethesda, Versailles Room 4, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Madelon C. Halula, Acting Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550, mh30x@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18271 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

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would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Cooperative Clinical Trial: Pediatric Renal Transplantation.

Date: July 29, 1999.

Time: 9 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday in Bethesda, Versailles Room 4, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Madelon C. Halula, Acting Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550, mh30x@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18273 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Immunological Phenotyping of Mouse Mutants.

Date: August 5, 1999.

Time: 8 A.M to 5 P.M.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, Crystal III Room, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Allen C. Stoolmiller, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18276 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–8 (01).

Date: July 27, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 6AS–25N, 45 Center Drive, MSC 6600, Bethesda, MD 28092 (Telephone Conference Call).

Contact Person: Roberta J. Haber, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, MD 20892, (301) 594–8898.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–7 (02)P.

Date: July 28–30, 1999.

Time: 7:30 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hotel Inter-Continental Chicago, 505 North Michigan Avenue, Chicago, IL 60611–3807.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB1 (01)S.

Date: August 2–3, 1999.

Time: 8:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–43A, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–18277 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ZDK1 GRB–8 (01).

Date: July 27, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 6AS–25N, 45 Center Drive, MSC 6600, Bethesda, MD 28092 (Telephone Conference Call).

Contact Person: Roberta J. Haber, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, MD 20892, (301) 594–8898.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; P01 Grant Application Review.

Date: July 19–20, 1999.

Time: 7:30 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Providence Biltmore Hotel, Kennedy Plaza, Providence, RI 02903.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18278 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Studies of Language, Cultures, and Tools.

Date: July 12–13, 1999.

Time: 7:30 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton Gateway Hotel, 1900 Sullivan Road, Atlanta, GA 30034.

Contact Person: Gopal M. Bhatnagar, Phd, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18279 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 29–30, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Ploce: Mariott Wardman Park Hotel, 2660 Woodley Road N.W., Washington, DC 20008.

Contact Person: Paul A. Sheehy, Phd, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93–853, Clinical Research Related to Neurological Disorders; 93.853, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield;

Committee Management Offier, NIH.

[FR Doc. 99–18282 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

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The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Genetics.

Date: July 23, 1999.

Time: 8:30 PM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS13, Bethesda, MD 20892, (301) 594–2886.

This notice is being published less than 15 days to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18284 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Special Emphasis Panel.

Date: August 12–13, 1999.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

Contact Person: Sheila O'Malley,, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18285 Filed 9–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 21, 1999.

Time: 1:30 pm to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd. Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 10, 1999.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18286 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, July 29, 1999, 9:00 AM to July 30, 1999, 5:00 PM, Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD, 20815 which was published in the **Federal Register** on July 2, 1999, 64 FR 36026.

The meeting will now be held August 9, 1999, 9:00 AM to adjournment on August 10, at the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037. The meeting is closed to the public.

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18287 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Medication Discovery Using Rat Models of Relapse to Cocaine Self-Administration".

Date: July 22, 1999.

Time: 9 AM to 1 PM.

Agenda: To review and evaluate contract proposals.

Place: Ramada Hotel Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18288 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 15, 1999.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institute of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18289 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 1999.

Time: 6:30 p.m. to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda MD 20892, (301) 435–1167.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 22–23, 1999.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Nancy Hicks, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda MD 20892, (301) 435–0695.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

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Dated: July 12, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–18272 Filed 7–16–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 9, 1999.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To provide concept review of proposed grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: Gopal C. Sharma, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 12, 1999.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To provide concept review of proposed grant applications.
Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Wisconsin at Western Avenue, Washington, DC 20015.
Contact: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 19–20, 1999.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genome Study Section, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, 301–435–1045, corsaroc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–HEM–1(02).
Date: July 19, 1999.
Time: 8:00 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientifice Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less then 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 20–21, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Bethesda, MD 20814.
Contact Person: Joan Hanley-Hyde, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5016, MSC 7852, Bethesda, MD 20892, (301) 435–1192.

This notice is being published less then 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 21, 1999.
Time: 1:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892.
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientifice Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less then 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 21, 1999.
Time: 2:00 PM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Bethesda, MD 20814.
Contact Person: Joan Hanley-Hyde, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5016, MSC 7852, Bethesda, MD 20892, (301) 435–1192.

This notice is being published less then 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Cell Development and Function Initial Review Group International and Cooperative Projects Study Section.
Date: July 22–23, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.
Contact Person: Sandy Warren, DMD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 22–23, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 60461, MSC 7890, Bethesda, MD 20892, 301–435–1159, ameros@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG–1 AARR 1 (04).
Date: July 22, 1999.
Time: 1:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call)
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 22, 1999.
Time: 2:45 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call)
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93,892, 93.893, National Institutes of Health, HHS)

Dated: July 8, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–18274 Filed 7–16–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 29–30, 1999.
Time: 8:30 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 7, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–18281 Filed 7–16–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center Executive Committee.
Date: July 30, 1999.
Time: 9:00 AM to 10:00 AM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individuals.
Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.
Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: July 12, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–18283 Filed 7–16–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Glycoprotein Hormone Superagonists

AGENCY: National Institutes of Health, Public Health Service, DHHS.
ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 09/185,408 filed May 6, 1996 entitled "Glycoprotein Hormone Superagonists", to University of Maryland, having a place of business in Baltimore, Maryland. The United States of America is the assignee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before September 17, 1999 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Charles Maynard, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804: Telephone: (301) 496–7056, ext. 243; Facsimile: (301) 402–0220; e-mail: CM251n@NIH.GOV.

SUPPLEMENTARY INFORMATION: This invention relates generally to modified glycoprotein hormones and specifically to modifications to a human glycoprotein, which create superagonist activity. Glycoprotein hormones comprise a family of hormones, which are structurally related heterodimers consisting of a species common α sub-unit and a distinct β sub-unit that confers the biological activity for each hormone. However, this invention is not limited to specific hormones, specific subjects such as humans as well as non-humans mammals, specific amino acids, specific clinical conditions, specific analogs, or specific methods.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 12, 1999.
Jack Spiegel,
Director, Division of Technology Development and Transfer, Office of Technology Transfer.
[FR Doc. 99–18376 Filed 7–16–99; 8:45 am]
BILLING CODE 4140–01–M

VOL 64 ISS 137 JL 19 1999 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Opportunity for Licensing: Vasostatin, an Inhibitor of Endothelial Cell Growth and Angiogenesis

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Health (NIH), Public Health Service (PHS), Department of Health and Human Services (DHHS), seeks licensee(s) to develop a therapeutic anti-angiogenic agent(s) that would be effective in the treatment of a variety of disease states, in particular, cancer. Scientists at the Food and Drug Administration (FDA) have isolated at NH_2-terminal fragment (1–180 a.a.), vasostatin, from calreticulins which can inhibit endothelial cell proliferation in vitro, suppress neovascularizion in vivo and prevent or reduce growth of experimental tumors while having minimal effect on other cell types. Vasostatin is the most conserved domain among calrecticulins so far cloned and has no homology to other protein sequences. Data suggests that the antitumor effects of vasostatin are related to inhibition of *new* blood vessel formation rather than a detrimental effect on established tumor vasculature.

The NIH seeks licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR § 404), has the most meritorious plan for the development of a therapeutic agent(s) to meet the needs of the public and with the best terms for the government. NIH intends to grant the selected firm(s) a world-wide royalty-bearing license(s) to practice the inventions embodied in USSN 60/103,438 from Dr. Giovanna Tosato and Dr. Sandra Pike entitled "Use of Calreticulin and Calreticulin Fragments to Inhibit Endothelial Cell Growth and Angiogenesis, and Suppress Tumor Growth" (DHHS Ref. No. E–082–98/0). The patent rights in these inventions have been assigned to the United States of America.

EFFECTIVE DATE: In view of the priority for developing new antitumor agents, all proposals for either exclusive or non-exclusive licensing must be received on or before September 17, 1999.

ADDRESSES: Licensing information, copy of the U.S. patent application referenced above or a copy of the NIH License Application may be obtained by contacting Richard U. Rodriguez, M.B.A., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 287, fax 301/402–0220; and E-mail rr154z@nih.gov). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: Vasostatin has key differences from other inhibitors of angiogenesis, for example, angiostatin, thrombospondin and endostatin. It is small, soluble, stable for greater than 9 months in aqueous solution and is easily produced and delivered. By comparison, angiostatin, endostatin and thrombospondin can be difficult to isolate, purify and deliver. Additionally, studies have shown that the effective dose of vasostatin is 4–10 fold lower than the effective doses of endostatin and angiostatin. Therefore, this new and potent and anti-angiogenic molecule should prove highly useful for the prevention and treatment of human disease states that involve mis-regulated endothelial cell proliferation and/or angiogenesis.

In addition to the criteria set forth in 37 CFR § 404.7(a)(1) (ii)–(iv), the NIH is particularly interested in the following capabilities:

1. Prior manufacturing experience for GMP (Good Manufacturing Practice) production of a therapeutic agent(s) and a production plan for said agent(s);

2. Experience in preclinical and clinical drug development;

3. Experience in the evaluation, monitoring and interpretation of data for investigational biologics under an IND;

4. Experience in the evaluation, monitoring and interpretation of data from Phase I and Phase II clinical studies;

5. Ability to produce, package, market and distribute pharmaceutical products in the United States;

6. Willingness to sustain the cost of vasostatin development as outlined above (i.e., bulk drug synthesis, data management, animal studies, clinical studies, etc.);

7. Agreement to be bound by DHHS rules involving human and animal studies; and

8. An aggressive development plan that includes appropriate milestones and deadlines for preclinical and clinical development and for marketing approval.

Dated: July 12, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–18377 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10c of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–013804.

Applicant: Michael Barrett, Finley, California

The applicant requests a permit to import 4.3 Hawaiian goose (*Branta sandvicensis*), 1.1 Blyth's tragopan (*Tragopan blythii*), and 2.0 Cabot's tragopan (*Tragopan caboti*) from Qualicum Beach, British Columbia, Canada, for scientific research and enhancement of the survival of the species through captive propagation.

PRT–013176.

Applicant: University of New Mexico, Albuquerque, NM

The applicant request a permit to import wild and captive bred samples from chimpanzees (*Pan troglodytes*), bonobo chimpanzee (*Pan paniscus*), gorilla (Gorilla gorilla), and orangutan (Pongo pygmaeus) from various countries for the purpose of scientific research.

PRT–011201.

Applicant: Denver Museum of Natural History

The applicant requests a permit to import and re-export museum artifacts made by the indigenous peoples of Brazil that contain jaguar (*Panthera onca*) and harpy eagle (*Harpia harpyja*), for enhancement of survival of the species.

PRT–012019 and 012020.

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to re-export and re-import wild Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–014554.

Applicant: San Diego Wild Animal Park, Escondido, CA

The applicant requests a permit to import one captive-held Somali wild ass (*Equus africanus somalicus*) from Hai Bar Reserve, Israel for the purpose of enhancement of the species through captive breeding.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT 014704

Applicant: The Toledo Zoo, Toledo, OH

Permit Type: Import for Public Display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 1.

Summary of Activity to be Authorized: The applicant requests a permit to import 1 captive born female polar bear for public display purposes and scientific study.

Source of Marine Mammals: Born 12 November 1997, Cologne Zoo, Cologne, Germany.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–013353

Applicant: Randy Pope, Reno, NV

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 13, 1999.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–18233 Filed 7–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Applicant: Hayworth, Meyer, and Boleyn, Inc. (HAB.), Frankfort, Kentucky (Peggy A. Measel, P.I.)

The applicant requests a permit to take (capture and release) endangered Gray bats (*Myotis grisescens*) and Indiana bats (*Myotis sodalis*) in the State of Indiana. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: July 13, 1999.

T.J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–18363 Filed 7–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice of meeting.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council. The one-day business meeting will be held on August 20, 1999 Wilcox, Arizona. The RAC meeting will be begin at 9:30 a.m. and will conclude at approximately 3:00 p.m. The meeting will be held at the Best Western-Plaza Inn located at 1100 W. Rex Allen Drive. The agenda items to be covered at the meeting include review of April 9, and June 11, 1999, meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Briefings on the Empire-Cienega Plan Amendment, FWS Proposal to designate Pygmy-owl and Huachuca Water Umbel Critical Habitat, and San Pedro River Water Issues and Visitor Use Information; Updates on Secretarial Initiatives, regarding Proposed Arizona National Monument and Empire Cienega National Conservation Area, and proposed legislation; Update on Wild Horse and Burro Herd Management Areas, Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines; Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion on future meetings. A public comment period will be provided at 11:30 a.m. on August 20, 1999, for any interest publics who wish to address the Council. For Further Information Contact: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Gary D. Bauer,

Acting Arizona State Director.

[FR Doc. 99–18295 Filed 7–16–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1410–01; WYW–143283]

Notice of Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Direct Sale of Public Lands in Carbon County.

SUMMARY: The following public land in Carbon County has been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian, Wyoming

T. 13 N., R. 91 W.,
Sec. 31, lot 6 and N½NE¼.

These lands contain approximately 120 acres.

FOR FURTHER INFORMATION CONTACT: Larry Jackson, Natural Resource Specialist, Bureau of Land Management, Rawlins Field Office, P.O. Box 2407 Rawlins, Wyoming 82301 307–328–4231.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate of the above-described lands, to the Baggs Solid Waste Disposal District, pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713. The Disposal District wishes to acquire the land for landfill expansion purposes, because the current landfill is nearing its capacity.

The proposed direct sale to the Baggs Solid Waste Disposal District would be made at fair market value.

The proposed direct sale is consistent with the Great Divide Resource Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no other known public values. The planning document and environmental assessment covering the proposed sale is available for review at the Rawlins Field Office, Bureau of Land Management, 1300 North Third Street, Rawlins, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights documented on the official public land records at the time of conveyance.

4. The patentee shall comply with all applicable Federal and State laws, including laws dealing with the disposal, placement, or release of hazardous substances.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever comes first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: July 9, 1999.

Kurt J. Kotter,

Field Manager.

[FR Doc. 99–18266 Filed 7–16–99; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–269–270 (Review) and 731–TA–311–317 and 379–380 (Review)]

Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, The Netherlands, and Sweden

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty and antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 F.R. 27294, May 19, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on November 23, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on December 15, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 7, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 10, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 3, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is December 23, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the review on or before December 23, 1999. On January 21, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 25, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18332 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–828 (Preliminary)]

Bulk Acetylsalicylic Acid (Aspirin) From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of bulk acetylsalicylic acid (aspirin), provided for in subheadings 2918.22.10 and 3003.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). [2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Carol T. Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports from China that are alleged to be sold in the United States at LTFV.

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Background

On May 28, 1999, a petition was filed with the Commission and the Department of Commerce by Rhodia, Inc., Cranbury, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of bulk aspirin from China. Accordingly, effective May 28, 1999, the Commission instituted antidumping investigation No. 731-TA-828 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 7, 1999 (64 FR 30355). The conference was held in Washington, DC, on June 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 12, 1999. The views of the Commission are contained in USITC Publication 3211 (July 1999), entitled Bulk Acetylsalicylic Acid (Aspirin) from China: Investigation No. 731-TA-828 (Preliminary).

By order of the Commission.
Issued: July 13, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-18335 Filed 7-16-99; 8:45 am]
BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-367-370 (Review)]

Color Picture Tubes From Canada, Japan, Korea, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On June 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 31609, June 11, 1999) . A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List—

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on December 13, 1999, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on January 13, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 29, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 4, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing .

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is December 22, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 24, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 24, 2000. On February 9, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 11, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 13, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-18336 Filed 7-16-99; 8:45 am]
BILLING CODE 7020-02-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-397-400 (Preliminary) and 731-TA-842-845 (Preliminary)]

Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202-205-3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 29, 1999, the Commission established a schedule for the conduct of the subject investigations (64 FR 36919, July 8, 1999). Subsequently, the Department of Commerce extended the date for its initiation of the investigations from July 19 to August 9, 1999. The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: Requests to appear at the conference must be filed with Fred Ruggles not later than August 9; the conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on August 12; and the deadline for filing written briefs is August 17, 1999.

For further information concerning these investigations see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 14, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-18338 Filed 7-16-99; 8:45 am]
BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-827 (Preliminary)]

Nitrile Rubber From Korea

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of acrylonitrile-butadiene rubber (nitrile rubber),[2] provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 27, 1999, a petition was filed with the Commission and the Department of Commerce by Zeon Chemicals, L.P., Louisville, KY, and Uniroyal Chemical Company, Inc., Middlebury, CT, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of nitrile rubber from Korea. Accordingly, effective May 27, 1999, the Commission instituted antidumping investigation No. 731-TA-827 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 4, 1999 (64 FR 30059). The conference was held in

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] For purposes of this investigation, Commerce has defined "nitrile rubber" as the synthetic rubber produced by the copolymerization of butadiene and acrylonitrile, not in latex form, and not containing additives, rubber processing chemicals, and/or other materials used for further processing beyond the copolymerization process.

Washington, DC, on June 17, 1999, and

Washington, DC, on June 17, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 12, 1999. The views of the Commission are contained in USITC Publication 3210 (July 1999), entitled Nitrile Rubber from Korea: Investigation No. 731–TA–827 (Preliminary).

By order of the Commission.

Issued: July 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18334 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–69]

Certain Steel Wire Rod

Determination

On the basis of the information in the investigation, the Commission—

(1) Was equally divided on the question of whether certain steel wire rod [1] is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article pursuant to section 202(b) of the Trade Act of 1974; [2]

(a) Chairman Lynn M. Bragg, Vice Chairman Marcia E. Miller, and Commissioner Stephen Koplan made an affirmative determination; [3]

(b) Commissioners Carol T. Crawford, Jennifer A. Hillman, and Thelma J. Askey made a negative determination. In light of their negative determination, Commisssioners Crawford, Hillman, and Askey do not believe any import relief is appropriate in this investigation;

(2) Makes negative findings, [4] pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3371(a)), with respect to imports of certain steel wire rod from Canada and Mexico.

Recommendations With Respect To Remedy

Vice Chairman Marcia E. Miller and Commissioner Stephen Koplan recommend:

(1) That the President impose an additional duty on imports of certain steel wire rod that are the subject of this investigation, as follows:

First year: 15.0 percent *ad valorem;*
Second year: 13.0 percent *ad valorem;*
Third year: 11.0 percent *ad valorem;* and
Fourth year: 9.0 percent *ad valorem;*

(2) That the additional duty apply to imports of certain steel wire rod from beneficiary countries of the Caribbean Basin Economic Recovery Act;

(3) That the additional duty not apply to certain specialty steel wire rod items, specifically, tire cord quality wire rod, pipe wrap quality wire rod, and valve spring quality wire rod;

(4) Having made negative findings with respect to imports of certain steel wire rod from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the additional duty; and

(5) That the additional duty not apply to any imports of certain steel wire rod entered duty-free from beneficiary countries under the Andean Trade Preference Act, or to imports of certain steel wire rod from Israel.

Chairman Lynn M. Bragg recommends:

(1) That the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of steel wire rod that are the subject of this investigation without exclusion except as provided below, as follows:

First year: 7 percent *ad valorem;*
Second year: 6.5 percent *ad valorem;*
Third year: 6.0 percent *ad valorem;* and
Fourth year: 5.5 percent *ad valorem;*

(2) That the additional duty described above apply to imports of steel wire rod from Canada under section 311(a) of the NAFTA Implementation Act;

(3) Having made a negative finding with respect to imports of steel wire rod from Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the increase in duty described above;

(4) That the additional duty described above apply to imports of steel wire rod entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act, but that it not apply to imports of steel wire rod entered duty-free from beneficiary countries under the Andean Trade Preference Act or imports of steel wire rod from Israel.

Background

Following receipt of a properly filed petition on January 12, 1999, by counsel on behalf of Atlantic Steel Industries, Inc., Atlanta, GA; Birmingham Steel Corp., Birmingham, AL; Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; North Star Steel Co., Minneapolis, MN; North Star Steel Texas Inc., Beaumont, TX; Northwestern Steel & Wire Co., Sterling, IL; the Independent Steel Workers Alliance, Bartonville, IL; and the United Steelworkers of America AFL-CIO, Pittsburgh, PA, the Commission instituted investigation No. TA–201–69, Certain Steel Wire Rod, under section 202 of the Trade Act of 1974 to determine whether certain steel wire rod is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 27, 1999 (64 F.R. 4123). The hearing in connection with the injury phase of the investigation was held on April 15, 1999, and the hearing on the question of remedy was held on June 8, 1999. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The imported article covered by this investigation is defined as hot-rolled bars and rods, in irregularly wound coils, of circular or approximately circular solid cross section, having a diameter of 5 mm or more but less than 19 mm, of non-alloy or alloy steel, except such bars and rods of free-machining steel or of alloy steel containing by weight 24 percent or more of nickel. Free-machining steel is any steel product containing by weight one or more of the following elements, in the specified proportions: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Certain steel wire rod is provided for in subheadings 7213.91, 7213.99, 7227.20 and 7227.90.60 of the Harmonized Schedule of the United States (HTS). The scope of this investigation does not cover concrete reinforcing bars and rods, or bars and rods of stainless steel or tool steel, which are provided for in other HTS subheadings.

[2] Section 330(d)(1) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)) provides that when the Commission is equally divided on the question of injury under section 202(b) of the Trade Act of 1974, "then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission."

[3] Chairman Lynn M. Bragg made an affirmative determination of threat of serious injury. Vice Chairman Marcia E. Miller and Commissioner Stephen Koplan made an affirmative determination of serious injury. Commissioners Carol T. Crawford, Jennifer A. Hillman, and Thelma J. Askey made a negative determination.

[4] Chairman Lynn M. Bragg dissenting with respect to Canada. Only Commissioners making an affirmative determination, i.e., Chairman Bragg, Vice Chairman Marcia E. Miller, and Commissioner Stephen Koplan, were required to make findings with respect to imports of certain steel wire rod from Canada and Mexico.

The Commission transmitted its determination in this investigation to the President on July 12, 1999. The views of the Commission are contained in USITC Publication 3207 (July 1999), entitled Certain Steel Wire Rod: Investigation No. TA–201–69.

By order of the Commission.

Issued: July 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18333 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–115 (Review)]

Synthetic Methionine From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on synthetic methionine from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on August 3, 1998 (63 FR 41290) and determined on November 5, 1998 that it would conduct a full review (63 FR 63748, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 31, 1998 (63 FR 72327). The hearing was held in Washington, DC, on May 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 12, 1999. The views of the Commission are contained in USITC Publication 3205 (July 1999), entitled Synthetic Methionine from Japan: Investigation No. AA1921–115 (Review).

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

By order of the Commission.

Issued: July 14, 1999

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18337 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Revision to Existing Collection in Use Without an OMB Control Number; Comment Request

ACTION: Notice of information collection under review; Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

Office of Management and Budget approval is being sought for the information collection listed below. This information collection was previously published in the **Federal Register** on May 3, 1999, at 64 FR 23685, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until August 18, 1999.

Written comments and or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may also be submitted to the Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530.

The agency requests written comments and suggestions from the public and affected agencies concerning this existing collection of information in use without an OMB Control Number. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revisions to existing collection in use without an OMB Control Number.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice Sponsoring the collection:* Form EOIR–27, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* The information collected on EOIR–27 will be used (i) to determine whether or not a responding attorney or representative is duly authorized to represent aliens before the Board of Immigration Appeals, (ii) provide the responding represented party an opportunity to expressly consent to such representation and to the release of Executive Office for Immigration Review records to the representative as required by law, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* <26,000 responses per year at 6 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,600 annual burden hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 14, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–18315 Filed 7–16–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act and Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in *United States* v. *Denver Water Board,* Civil Action No. 99–S–1156, was lodged on June 15, 1999 with the United States District Court for the District of Colorado. The United States filed this action pursuant to the Clean Water Act and the Resource Conservation and Recovery Act to obtain civil penalties and an injunction to address the illegal disposal of hazardous wastes and discharges to the South Platte River. The Consent Decree requires the Board to pay a penalty of $48,000, and to implement supplemental environmental projects including the construction of a new paint shop that will reduce the amount of hazard wastes being produced, construction of a new car wash that will reduce the amount of water and detergent being used, construction of a waste storage and training area, and the re-vegetation of certain banks of the South Platte River. In addition, the Consent Decree requires the Board to comply with the Clean Water Act and Resource Conservation and Recovery Act by, among other things, taking steps to characterize its wastes and post required information in hazardous waste storage areas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Denver Water Board,* DOJ Ref. #90–5–1–1–4492.

The proposed consent decree may be examined at the office of the United States Attorney, 1961 Stout Street, Suite 1200, Denver, Colorado 80294; the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.75 (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross

Chief, Environmental Section, Environment and Natural Resources Division.

[FR Doc. 99–18088 Filed 7–16–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 13, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: State Alien Labor Certification Activity Report.

OMB Number: 1205–0319.

Frequency: Semi-annually.

Affected Public: Federal Government; State, Local, or Tribal govt.

Number of Respondents: 54.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 216 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This form will be used to collect information from State Employment Security Agencies on the activities they perform under the alien certification reimbursable grant. The information collected will be used for program management, budget formulation, State funding distribution, and monitoring for compliance with the grant's Statement of Work.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–18317 Filed 7–16–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 2, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, United States Travel and Tourism Administration (N1–377–99–1, 1 item, 1 temporary item). Newspaper and press clipping files, dating from 1963–1973, consisting of newspaper clippings and scrapbooks of articles and press clippings relating to United States Travel Service activities to encourage and promote travel in the United States. The newspaper clippings and articles were used to provide information to foreign and domestic travel editors, travel companies, and travel agents.

2. Department of Defense, Office of the Inspector General, (N1–509–99–4, 15 items, 12 temporary items). Electronic copies of documents created using electronic mail and word processing relating to White House and Congressional correspondence and to legislation reviews. There are minor changes in cutoff dates for recordkeeping copies of routine White House correspondence and routine Congressional correspondence that were previously approved for disposal. There are minor changes in the transfer dates for previously approved permanent recordkeeping copies of policy-related White House correspondence, historically valuable Congressional correspondence, and legislation reviews.

3. Department of Health, Education, and Welfare, Agency-wide (N1–235–99–1, 18 items, 9 temporary items). Older records accumulated by the Department of Health, Education, and Welfare and its predecessor agencies, approximately 1938–1981, which relate to administrative matters. Included are records relating to budget, personnel, and other housekeeping activities, files on terminated contracts and grants, liquidated Federal Credit Union case files, and card files containing data on State agencies involved in social welfare activities. Records proposed for permanent retention include drafts of manuals relating to claims matters, correspondence and reports from the Office of the Secretary, subject files of the President's Council on Physical Fitness and Sports, and records documenting the activities of the Office of Family Benefits Planning, the Office of Native American Programs, the Administration on Aging, and the Grants and Contracts Management Division.

4. Department of Justice, Agency-wide (N1–60–99–7, 5 items, 4 temporary items). General correspondence files associated with selected categories of the Department's filing system, including Amicus Participation in Private Antitrust Suits, Unfair Immigration Employment Practices, Criminal Environmental Matters, Childhood Vaccine Injury, Inter-American Convention on Letters Rogatory and Additional Protocol, Radiation Exposure Compensation Act, Public Accommodations under Americans with Disabilities Act (Title III), Money Laundering Control Act/Bank Secrecy Act, State/Local Governments under Americans with Disabilities Act (Title II), Freedom of Access to Clinic Entrances Act of 1994, Pattern and Practice of Police Misconduct, and Church Arson Prevention Act of 1996. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are the recordkeeping copies of general correspondence associated with file categories that pertain to executive orders and presidential proclamations, policies and procedures, and definitions and interpretations.

5. Department of Justice, INTERPOL-United States National Central Bureau (N1–60–99–8, 3 items, 3 temporary items). Reduction of the retention period for Interpol Case Files which were previously scheduled for disposal. Included are paper, electronic, and microfilm versions of fingerprint records, photographs, investigative reports and case notes, log sheets, letters, and memoranda.

6. Department of Justice, Immigration and Naturalization Service (N1–85–99–3, 4 items, 4 temporary items). Case files relating to complaints against non-agency attorneys for unethical activities or unprofessional behavior. Files

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contain records of investigations, State Bar grievance proceedings, criminal convictions, copies of petitions, court transcripts, and Executive Office for Immigration Review pleadings. Also included are electronic copies of documents created using electronic mail and word processing.

7. Department of Labor, Employment and Training Administration (N1–369–97–1, 4 items, 3 temporary items). Incoming and outgoing correspondence of the Deputy and Deputy Assistant Secretary of Labor for the Employment and Training Administration. Files proposed for disposal include electronic copies of documents created using electronic mail and word processing, an electronic correspondence tracking system, and routine correspondence, such as requests for general information, invitations, thank you letters, and requests for publications. Recordkeeping copies of correspondence relating to significant issues and the mission of the agency are proposed for permanent retention.

8. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–98–2, 3 items, 3 temporary items). Notices issued and comments received relating to information proposed for collection by the agency. Included are electronic copies of records created using electronic mail and word processing.

9. Federal Energy Regulatory Commission, Office of Electric Power Regulation (N1–138–98–5, 2 items, 2 temporary items). Annual one-page reports filed by persons holding interlocking positions in public utilities and certain other entities, such as financial institutions.

10. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–98–16, 3 items, 3 temporary items). Surveys measuring the public's satisfaction with services provided in the agency's public reference room and records maintenance center. Included are electronic copies of records created using electronic mail and word processing.

11. Tennessee Valley Authority, Resource Group (N1–142–97–26, 2 items, 1 temporary item). Contracts, proposals, announcements, training documents, and related records for energy projects completed by agency employees at non-agency sites. Similar records for projects at agency sites are proposed for permanent retention.

12. United States Agency for International Development, Bureau for Administrative Services (N1–286–99–1, 4 items, 4 temporary items). System data, input data, output data, and documentation for an electronic system used to track the status of correspondence that originates in or is sent to the Office of the Administrator, Deputy Administrator, Acting Administrator, Chief of Staff, or Executive Secretary.

13. United States Agency for International Development, Bureau for Administrative Services (N1–286–99–2, 3 items, 3 temporary items). System data, input data, and documentation for the agency's electronic telephone directory system. The system allows users to search by name, location, and telephone number.

Dated: July 12, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services Washington, DC.

[FR Doc. 99–18310 Filed 7–16–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection was originally published on May 11, 1999. No comments were received.

DATES: Comments will be accepted until August 18, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0144.

Form Number: NA.

Type of Review: Revision to the currently approved collection.

Title: Examination Survey.

Description: To provide federal credit unions with an opportunity to give NCUA feedback on its examination procedures. NCUA uses the information to evaluate and improve the examination process.

Respondents: Federal credit unions.

Estimated No. of Respondents/Recordkeepers: 6,799.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: Reporting and Annually.

Estimated Total Annual Burden Hours: 567.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on July 13, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–18312 Filed 7–16–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 10 a.m., Thursday, July 22, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Three (3) Appeals from Federal Credit Unions of the Regional Director's Denial of Community Charters.
3. Advance Notice of Proposed Rulemaking: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
4. Proposed Rule: Request for Comments Regarding Section 701.34, NCUA's Rules and Regulations, Secondary Capital Accounts.
5. Final Rule: Adoption of Part 715 and Amendments to Parts 701 and 741, NCUA's Rules and Regulations, Supervisory Committee Audits.
6. Reprogramming of NCUA's 1999 Budget.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 22, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Two (2) Administrative Actions under Part 704 of NCUA's Rules & Regulations. Closed pursuant to exemption (8).
2. Y2K Delegations. Closed pursuant to exemptions (2), (8), (9)(A)(ii), and (9)(B).
3. Five (5) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–18460 Filed 7–15–99; 2:21 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Meeting Notice

Agenda

TIME AND DATE: 9:30 a.m., Wednesday, July 21, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, DC 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: 7055b Railroad/Highway Accident Report: Collision of Northern Indiana Commuter Transportation District Train 102 with a Tractor-trailer on June 18, 1998 in Portage, Indiana.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100. Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, July 16, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

July 14, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–18390 Filed 7–14–99; 4:36 pm]

BILLING CODE 7533–01–P

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.

DATES: The meeting is scheduled for 1 p.m. on Wednesday, August 4, 1999.

ADDRESSES: The meeting will be held at Briggs Opera House (Northern Stage Company), South Main Street, White River Junction, Vermont.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: July 13, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–18296 Filed 7–16–99; 8:45 am]

BILLING CODE 1650–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–22, SEC File No. 270–202, OMB Control No. 3235–0196

Rule 17Ab2–1 and Form CA–1, SEC File No. 270–203, OMB Control No. 3235–0195

Rule 15c2–5, SEC File No. 270–195, OMB Control No. 3235–0198

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 17a–22 under the Securities Exchange Act of 1934 ("Exchange Act")[1] requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 generally are registered clearing agencies.[2] The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies, but on average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a–22 to all registered clearing agencies is approximately $4,930. This represents one dollar per filing in postage, or a total of $3,400. The remaining $1,530 (or approximately 31% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses. (The estimated total cost per response is $1.45 per page representing $1.00 per page in postage plus $0.45 for printing, envelopes, and other administrative expenses.)

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitates modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Securities Exchange Act of 1934 ("Exchange Act"), (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

[1] 15 U.S.C. 78a *et seq.*

[2] Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a–22.

There are currently 15 registered

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There are currently 15 registered clearing agencies, three clearing agencies that have been granted an exemption from registration, and two entities with pending applications for an exemption from clearing agency registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $16,391.

Rule 15c2–5 prohibits a broker-dealer from arranging or extending a loan to customers, not subject to Regulation T (12 CFR 220), in connection with the offer or sale of securities unless, before entering the transaction, the broker-dealer: (i) delivers to the customer a written statement containing specific information concerning the terms, obligations, risks and charges of the loan; (ii) obtains from the customer sufficient financial information to determine that the entire transaction is suitable for the customer, and (iii) retains on file and makes available to the customer a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by the Rule is necessary to execute the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 50 respondents that require an aggregate total of 600 hours to comply with the Rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $25.00 (based on an annual salary of $52,000 for clerical labor), resulting in a total compliance cost of $15,000 (600 hours @ $25.00 per hour).

Although Rule 15c2–5 does not specify a retention period or record keeping requirement under the Rule, nevertheless broker-dealers are required to preserve the records for a period no less than six years pursuant to Rule 17a–4(c). The information required under Rule 15c2–5 is necessary for broker-dealers to engage in the lending activities prescribed in the Rule. Rule 15c2–5 does not assure confidentiality for the information retained under the Rule.[3]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell. Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 12, 1999.

Margaret H. Mcfarland

Deputy Secretary.

[FR Doc. 99–18306 Filed 7–16–99; 8:45 am]

BILLING CODE 8010–01–M

[3] The records required by Rule 15c2–5 would be available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda rising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending July 9, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5939.
Date Filed: July 8, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR-ME 0080 dated 6 July 99—r1, PTC2 EUR-ME 0081 dated 6 July 99—r2—r12, PTC2 EUR-ME 0082 dated 2 July 99—r13, TC2 Europe-Middle East Expedited Resolutions, Intended effective dates: 14 August/15 August/1 October 1999.

Docket Number: OST–99–5940.
Date Filed: July 8, 1999.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0191 dated 16 June 1999 (issuance), CTC COMP 0201 dated 9 July 1999 (technical correction/adoption), Mail Vote 012—Resolution 010nn Special Cargo Amending Resolution Except to/from USA/US Territories (to delete rates covered by nil add-ons), Intended effective date: 1 October 1999.

Docket Number: OST–99–5941.
Date Filed: July 8, 1999.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0192 dated 16 June 1999 (issuance), CTC COMP 0202 dated 9 July 1999 (adoption), Mail Vote 013—Resolution 010oo, Special Cargo Amending Resolution to/from USA/US Territories (to delete rates covered by nil add-ons), Intended effective date: 1 October 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–18323 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 9, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5945.
Date Filed: July 9, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 6, 1999.
Description: Application of Pan American Airways Corp. pursuant to 49 U.S.C. Sections 204.5(a) and 204.7(b), requests that it be granted authority to resume its currently suspended scheduled service operations. Pan Am requests the Department to issue an expedited order authorizing Pan Am to resume scheduled interstate and overseas air transportation operations with respect to persons, property and mail without limitation.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–18322 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Task 1b Meeting on Icing Terminology

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's task 1b team to discuss the FAA's proposed changes to current icing terminology as well as the FAA's proposal to include a table of icing effects and changes to the pilot reporting format in the Aeronautical Information Manual (AIM).

DATES: July 28–29, 1999, at 9 a.m.

ADDRESSES: The meeting will be held at the Hyatt Arlington Hotel Rosslyn, 1325 Wilson Blvd. Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dan Meier, Flight Standards, AFS–220, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–3749, FAX (202) 267–5229.

SUPPLEMENTARY INFORMATION: The meeting will be held on July 28 & 29, 1999, at the Hyatt Arlington Hotel Rosslyn, 1325 Wilson Blvd. Arlington, VA. The telephone number for the Hyatt Arlington is (703) 525–1234.

The agenda will include:

- Opening remarks.
- Discussion of the FAA proposed changes to icing terminology and the Aeronautical Information Manual.

Attendance is open to the public, but will be limited to space available. The public must make arrangements by July 26, 1999, to present oral statements at the meeting. Written statements may be presented to the task 1b team any time by providing 16 copies at the meeting or to Dan Meier at the Federal Aviation Administration, AFS–220, 800 Independence Ave., SW, or via FAX at (202) 267–5229.

Issued in Washington, DC, on July 14, 1999.

L. Nicholas Lacey,

Director, Flight Standard Service, Federal Aviation Administration.

[FR Doc. 99–18343 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–03–C–00–DRO) To Impose Only and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Durango-La Plata County Airport, Submitted by the Durango-La Plata County Airport, Durango, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only and impose and use PFC revenue at Durango-La Plata County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before August 18, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ron Dent, A.A.E., Director of Aviation, at the following address: Durango-La Plata County Airport, 1000 Airport Road, Durango, CO 81301.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Durango-La Plata County Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–03–C–00–DRO) to impose only and impose and use PFC revenue at Durango-La Plata County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 12, 1999, the FAA determined that the application to impose only and impose and use the revenue from a PFC submitted by the Durango-La Plata County Airport, Durango, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 14, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: August 1, 2000.
Proposed charge expiration date: September 1, 2003.
Total requested for approval: $763,627.00.
Brief description of proposed project: Impose and use projects: Construct connector Taxiway "A2"; Acquire rotary snowblower; Update airport master plan; Install glycol retrieval system; Replace aircraft rescue and fire fighting (ARFF) vehicle; Replace snowplow blades; Impose only projects: Rehabilitate and friction course Runway 2/20; Install distance remaining signs.
Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Durango-La Plata County Airport.

Issued in Renton, Washington on July 12, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–18353 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–99–5942]

Notice of Request for Clearance of a New Information Collection: Graduated Commercial Driver's License (CDL) Survey

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995,

this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to approve a new information collection to query the motor carrier (truck and bus) industry, drivers, driver training schools, insurance companies, and driver licensing and law enforcement agencies about the need for, benefits of, potential acceptance of, institutional barriers and practicality of a graduated commercial driver licensing system and the likely improvements in highway safety, employment opportunities and transportation efficiency.

DATES: Comments must be submitted on or before September 17, 1999.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Transportation Specialist, (202) 366–4001, Driver Division, Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Graduated Commercial Driver's License (CDL) Survey.

Background: Conference Report 104–286 to accompanying H.R. 2002 to the Department of Transportation Appropriation Bill (Pub. L. 104–50) directed the FHWA to contract, during FY 1996, with the American Trucking Associations Foundation, Inc., Transportation Research Institute (TRI) to perform applied research to address a number of highway safety issues, such as: driver fatigue and alertness; the application of emerging technologies to ensure safety, productivity and regulatory compliance; and commercial driving licensing, training and education. The amount allocated was to be not less than $4 million. A survey of industry opinion pertaining to a graduated CDL is one of these projects under the congressionally-mandated cooperative agreement with the TRI.

Section 4019 of the Transportation Equity Act for the 21st Century (Pub. L. 105–179) directed the Secretary of Transportation to identify the benefits and costs of a graduated CDL system as part of a review of the current CDL testing procedures and to identify methods to improve the testing and licensing standards. The trucking industry alone projects a need for 300,000 new and replacement drivers every year until the turn of the century. In addition to those newly entering the truck driving field, others are constantly transitioning from one type of commercial motor vehicle operation to another. For example, moving from straight trucks to combinations, from tractor-semis to doubles or even triples, from hauling general commodities to motor vehicles or even hazardous materials, moving from school buses to transit buses or motorcoaches, or moving back and forth between various trucks and buses.

A graduated or provisional CDL program might go beyond today's CDL requirements to provide for safe introduction of younger drivers into the industry and assure the measured progression of drivers, by proper training and supervision, into more complex driving jobs.

Before considering the recommendation and development of a provisional CDL program, it is necessary to better identify the need for and quantify the potential benefits and costs of such a program. TRI, in cooperation with representatives of all segments of the truck and bus industries, will survey representatives of the motor carrier (truck and bus) industry, drivers, driver training schools, insurance companies, and driver licensing and law enforcement agencies, using approximately 15 short response questions with the ability to add narrative comments, about the need for, benefits of, potential acceptance of, institutional barriers and practicality of a graduated commercial driver licensing system and the likely improvements in highway safety, employment opportunities and transportation efficiency. The questions for the written survey will be based on information gathered during previously conducted focus group sessions and will include the importance of certain elements in a graduated driver licensing program such as training, driving record, driving experience, age, testing and restrictions.

The study data will be compiled and statistically evaluated. The results of the evaluation and conclusions will be presented in a final report which will address the potential benefits, costs and feasibility of implementing a graduated or provisional CDL program. The results will be used by the FHWA in evaluating the potential for pilot testing the graduated CDL concept and developing a rulemaking based on the results of the pilot study.

Respondents: The respondents to the planned survey will include approximately 2,000 selected representatives of the motor carrier (truck and bus) industry, drivers, driver training schools, insurance companies, and driver licensing and law enforcement agencies.

Average Burden Per Response: The estimated average burden per response is 15 minutes. This includes the time needed for reading the survey instructions, searching existing data sources, completing the survey instrument and returning the information by mail or transmission by facsimile.

Estimated Total Annual Burden: The estimated total annual burden is 500 hours.

Frequency: The survey will be conducted once.

Public Comments Invited

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. For Internet users, all comments received will be available for examination at the universal source location: *http://dms.dot.gov*. Please follow the instructions on-line for additional information and guidance.

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

Issued on: July 14, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–18342 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–4973; Notice 2]

Nissan Motors Corp. U.S.A.; Grant of Application for Decision of Inconsequential Noncompliance

Nissan Motor Corporation U.S.A. (Nissan) of Gardena, California, has determined that some of its vehicles fail to meet the display requirements of paragraph S3.1.4.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, "Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect," and has filed an appropriate report pursuant to 49 CFR part 573 , "Defects and Noncompliance Reports." Nissan has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

A notice of receipt of the application was published in the **Federal Register** (64 FR 3739) on January 25, 1999. Opportunity was afforded for public comment until February 24, 1999. No comments were received.

Under S3.1.4.1 of FMVSS No. 102, if a vehicle's transmission shift lever sequence includes a park position, identification of the shift lever positions (including the positions in relation to each other and the position selected) shall be displayed in view of the driver under two conditions: if the ignition is in a position where the transmission can be shifted, or if the transmission is not in park.

From September 1997 to August 1998, Nissan produced approximately 22,000 Frontier trucks that use an electronic display in the instrument panel to indicate transmission gear position. In these vehicles, when the ignition key is in either the "OFF" or "ACCESSORY" position, the selected gear position is not displayed. "OFF" refers to the range of movement of the ignition key between the "LOCK" and "ACCESSORY" positions. The gear selector lever can be moved while the ignition switch is in "OFF" or "ACCESSORY." There is no detent for "OFF" as the key is rotated nor is "OFF" labeled on the ignition switch. There is a detent for "ACCESSORY" and it is labeled on the ignition switch. Nissan states that the affected vehicles comply with all other requirements of FMVSS No. 102.

Nissan supports its application for inconsequential noncompliance with the following statements:

The situation involving the Frontier trucks is essentially the same as that described in an inconsequentiality petition filed by General Motors Corporation in 1993 and granted by NHTSA. See 58 FR 16735, March 30, 1993 and 58 FR 33296, June 16, 1993. The petitioner in that matter stated that, on certain of its vehicles, the PRNDL display would not be illuminated if the transmission was left in a position other than "PARK" when the ignition key was turned "OFF." The petitioner noted that the vehicles in question complied with FMVSS 102 during normal ignition activation and vehicle operation. In that matter, NHTSA concluded that since the noncompliance did not occur during times that the affected vehicles were operated, "the noncompliance presents no discernible threat to safety." See 58 FR 33297.

As NHTSA noted in proposing the current version of the standard (49 FR 32409, August 25, 1988), the purpose of the display requirement is to "provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors." In all but the rarest circumstances, the primary function of the transmission display is to inform the driver of gear selection and relative position of the gears while the engine is running.

In the case of the Nissan trucks, the selected gear position and PRNDL display are always visible when the engine is running. The selected gear position is not shown in the instrument panel electronic display if the engine is turned off. If the ignition key is rotated to the "ON" position, the selected gear position immediately illuminates. If the transmission is in "PARK" and the engine is started, the selected gear position becomes immediately visible.

If the driver seeks to start the truck when the transmission is not in the "PARK" or "NEUTRAL" position, ignition would be impossible, as required under FMVSS 102. As soon as the ignition key is rotated to the "ON" or "START" position, the selected gear would become immediately apparent as the display is illuminated under these conditions. This means that the engine will only start under the condition that the PRNDL and selected gear position are visible to the driver.

Because the movement of the shift lever to place the transmission in "PARK" is the same on all vehicles using a column-mounted shift lever, that is, pulled toward the driver and then moved all the way to the left, most drivers do not rely on the PRNDL display to ensure the transmission is in "PARK." This means that it is highly unlikely a driver attempting to place the transmission in "PARK" would fail to do so even if the gear position was not visible on the PRNDL display.

If the driver were to attempt to remove the key before exiting the vehicle while erroneously believing that the transmission is in "PARK" (with the ignition key being in the "OFF" or "ACCESSORY" position), it would be impossible to remove the key from the ignition. This would alert drivers that the transmission was not in "PARK" and cause them to put it in "PARK" so that they could remove the key. If the driver opens the door before attempting to remove the key, the FMVSS 114 audible warning would sound when the door is opened, providing further indication of the improper gear selection. As stated by NHTSA, exiting the vehicle in these circumstances "would be limited to the rare situation." See 54 FR 29042, 29044 (July 11, 1989).

Nissan believes that the theoretical risk of one of the subject vehicles rolling away after the driver exits the vehicle because they failed to place the transmission in "PARK" and/or to engage the parking brake while leaving the key in the ignition switch in the "OFF" or "ACCESSORY" position so that the selected gear is not displayed in the PRNDL is no higher than in a vehicle in which the PRNDL display is working properly.

Although there may be rare circumstances when it would be useful to know the gear position when the engine is off, this information is provided by the shift lever position. Moreover, the electronic display can be illuminated simply by turning the key to the "ON" position. As noted above and as stated in the final notice granting the General Motors petition, "in all but the rarest circumstances, the primary function of the PRNDL display is to inform the driver of gear selection and relative position of the gears while the engine is running." See 58 FR 33297.

The gear selector lever on these trucks cannot be moved from the "PARK" position if the key is not in the ignition switch. Therefore, the fact that the selected gear is not displayed in the PRNDL with the ignition key in the "OFF" or "ACCESSORY" position has no relevance when the key is not in the switch.

Nissan has no record of any customer complaint or accident report that could be associated with or attributed to this condition.

We have reviewed the application and agree with Nissan that the noncompliance is inconsequential to motor vehicle safety. Because all of the approximately 22,000 vehicles comply with the display requirements of FMVSS No. 102 during normal ignition activation and vehicle operation, the vehicle's ignition would have to be in the "OFF" or "ACCESSORY" positions for the noncompliance to occur. Of these two positions, "OFF" has no detent, but "ACCESSORY" does. Because "OFF" has no detent position,

we agree with Nissan that it is highly unlikely that a driver would actually leave the ignition in this position.

The only situations in which the noncompliance would affect the vehicle operator would be if the operator turns the ignition switch to the "OFF" or "ACCESSORY" position without the transmission being placed in the "PARK" position. In this situation, the operator would not be able to remove the key from the ignition due to the transmission shift interlock. We agree with Nissan that, if this situation occurs, only two scenarios are possible. The operator will exit the vehicle without the key or the operator will remain in the vehicle.

In the first situation, if the operator attempts to exit the vehicle without the key, an audible warning, as required in FMVSS No. 114, will sound, alerting the operator that the key is in the ignition. We believe that the audible warning signal requirement of FMVSS No. 114 should reduce the possibility of the operator leaving the vehicle without the key.

In the second situation, if the driver remains in the vehicle, he or she will attempt to restart the vehicle. However, the engine cannot be started if the vehicle's transmission is not in the "PARK" position. But, since turning the ignition forward to the "ON" position will activate the PRNDL display, the operator will be alerted that the transmission is not in the "PARK" position.

Further, as Nissan points out, we granted a similar application from General Motors Corporation (GM) in 1993 (58 FR 33296). In this case, certain GM vehicles were found to be out of compliance with the display requirements of FMVSS No. 102, namely, the PRNDL displays on the subject GM vehicles would not be illuminated if the transmission was left in a position other than "PARK" when the ignition was in the "OFF" position. We did conclude that, because the noncompliance did not occur during times of operation, "the noncompliance presents no discernible threat to safety."

In view of the arguments offered by Nissan, we do not deem this noncompliance to be a serious safety problem warranting notification and remedy. Accordingly, we have decided that the applicant has met its burden of persuasion that the noncompliance it described above is inconsequential to motor vehicle safety. Therefore, its application is granted and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118 and from remedying the noncompliance as required by 49 U.S.C. 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 14, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–18309 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub.L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund) within the Department of the Treasury is soliciting comments concerning its streamlining surveys of prior CDFI Fund applicants and awardees.

DATES: Written comments should be received on or before September 17, 1999 to be assured of consideration.

ADDRESSES: Direct all comments, in writing, to the Director, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005, Facsimile (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed, in writing, to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005, or by calling (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: Streamlining Surveys.

OMB Number: 1505–0171.

Abstract: The Fund continually seeks to improve its processes and procedures so that it may better meet the needs of CDFI Fund applicants while minimizing the burden on applicants and Fund staff. To assist in this effort, each year the Fund will send out one or more brief surveys to a sample of applicants and/or awardees to get their feedback on particular Fund programs.

Current Actions: The Fund is in the process of improving the application process to the Core and Intermediary Components of the CDFI Program. The Fund is sending surveys to past applicants and awardees for comments regarding the process.

Type of review: Extension with change.

Affected Public: Community development financial institutions, insured depository institutions, microenterprise organizations and organizations that provide support to microenterprise organizations.

Estimated Number of Respondents: 60.

Estimated Annual Time Per Respondent: 0.5 hours.

Estimated Total Annual Burden Hours: 30 hours.

REQUESTS FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4718; chapter X, Pub.L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Dated: July 13, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–18303 Filed 7–16–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Pub. L. 94–409 that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Crowne Plaza Hotel, 1001 14th Street, NW, Washington, DC on July 28 through July 29, 1999.

The session on July 28th and July 29th, are scheduled to begin at 8:30 a.m. and end at 6:30 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the July 28th session from 8:30 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 28th, from 9 a.m. through July 29th, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which would lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, phone (202) 275–0023.

Dated: July 13, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Acting, Committee Management Officer.

[FR Doc. 99–18380 Filed 7–16–99; 8:45 am]

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Part II

Environmental Protection Agency

National Air Toxics Program: The Integrated Urban Strategy; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6376–7; Docket No. A–97–44]

National Air Toxics Program: The Integrated Urban Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document provides an overview of EPA's national effort to reduce air toxics, including stationary and mobile source standards, cumulative risk initiatives, assessment approaches, and education and outreach. This national air toxics program includes activities under multiple Clean Air Act (Act) authorities to reduce air toxics emissions from all sources, including major industrial sources, smaller stationary sources, and mobile sources such as cars and trucks. By integrating activities under different parts of the Act, EPA can better address cumulative public health risks and adverse environmental impacts posed by exposures to multiple air toxics in areas where the emissions and risks are most significant.

In addition, this document describes a new major component of our national effort, the Integrated Urban Air Toxics Strategy (Strategy) developed under the authority of sections 112(k) and 112(c)(3) of the Act. The Strategy reflects the public comments received on the draft Strategy, which was published on September 14, 1998 (63 FR 49240).

The Strategy includes a description of risk reduction goals; a list of 33 hazardous air pollutants (HAPs) judged to pose the greatest potential threat to public health in the largest number of urban areas, including 30 HAPs specifically identified as being emitted from smaller industrial sources known as "area" sources; and a list of area source categories which emit a substantial portion of these HAPs, and which are being considered for regulation under section 112(d). Because mobile sources are an important contributor to the urban air toxics problem, the Strategy also describes actions under Title II (including section 202(l)) of the Act to reduce toxics from these sources, including those which address diesel particulate matter (PM).

The Strategy by itself doesn't automatically result in regulation or control of emissions. The EPA will perform further analyses of HAP emissions, control methods, and health impacts, as appropriate, for stationary and mobile sources. These analyses will inform any ultimate regulatory requirements that EPA develops under the Strategy.

ADDRESSES: A docket containing information relating to the development of this notice (Docket No. A–97–44) is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, in the Air and Radiation Docket and Information Center (MC–6102), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket office may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Laura McKelvey, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5497, electronic mail address: McKelvey.Laura"epa.gov.

SUPPLEMENTARY INFORMATION:

Plain Language

In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in Government Writing, this package is written using plain language. Thus, the use of "we" in this package refers to EPA. The use of "you" refers to the reader and may include State, local or Tribal government agencies, industry, environmental groups, or other interested individuals.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4,1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may either: (1) have an annual effect on this economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This notice was submitted to OMB for review. Any written comments from OMB and written EPA responses are available in the docket.

Docket

The docket is an organized file containing information related to the development of the Strategy. The main purpose of this docket is to allow you to readily identify and locate documents relevant to the development of the Strategy. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this document.

Electronic Access and Filing Addresses

You can get this notice and other background information in Docket No. A–97–44 by contacting our Air and Radiation Docket and Information Center (see **ADDRESSES**), or by visiting our website at "http://www.epa.gov/ttn/uatw/urban/urbanpg.html" for electronic versions of the notice and other information. For assistance in downloading files, call the TTN HELP line at (919) 541–5384.

Outline

The information in this document is organized as follows:

I. National Efforts to Reduce Air Toxics
  A. What is our overall air toxics program?
  B. Why are we concerned about urban air in particular?
  C. What is the Integrated Urban Air Toxics Strategy?
II. Federal Activities Related to the Integrated Urban Air Toxics Strategy
  A. What HAPs pose the greatest threat in urban areas?
  B. How does EPA plan to address requirements for area sources of HAPs?
  C. What regulatory actions will EPA take to implement the Strategy?
  D. How do the various Federal authorities help EPA implement the Strategy?
III. State, Local and Tribal Activities
  A. Why are State, local and Tribal programs integral to the process?
  B. What are the objectives of State, local and Tribal activities?
  C. What were comments on the State/local/Tribal programs and how are they being addressed in the Strategy development?
  D. How can State, local or Tribal agencies participate in the Strategy?
  E. What elements should a State, local or Tribal program contain?
IV. Assessment Activities
  A. How will we assess progress toward goals?
  B. What methods, tools, and data will we use to estimate risk?
  C. What is our overall risk assessment approach for the Strategy?
  D. How will we design future assessments?
V. Knowledge and Tools
  A. How will we review and expand ambient monitoring networks?
  B. How will we update and maintain the emission inventory?
  C. What air quality and exposure models will we use to implement the Strategy?
  D. What are the research needs and what is EPA doing to address them?
VI. Public Participation and Communication
  A. How will we encourage stakeholder involvement?
  B. What is our overall timeline for action?
  C. What reports will we prepare to communicate with the public?
Appendix A. Summary of other authorities, laws, rules, and programs to help reduce HAP emissions

I. National Efforts to Reduce Air Toxics

The 1990 Clean Air Act Amendments provided the foundation for our current air toxics program. This program is designed to characterize, prioritize and equitably address the serious impacts of HAPs on the public health and the environment through a strategic combination of regulatory approaches, voluntary partnerships, ongoing research and assessments, and education and outreach. Since 1990, we've made considerable progress in reducing emissions of air toxics [1] through regulatory, voluntary and other programs. To date, our overall air toxics program, summarized in section I.A., has focused on reducing emissions of toxic air pollutants from major stationary sources through the implementation of technology-based emissions standards as required in section 112(d). These actions have resulted, or are projected to result, in substantial reductions in HAP emissions.[2] Additionally, actions to address mobile and stationary sources under other Clean Air Act programs are achieving reductions in HAP emissions (for example, the phase-out of lead from gasoline). However, we expect that the emission reductions that will result from these other actions are only part of what will be necessary to protect public health and the environment from toxic air pollutants. In identifying additional steps, we'll use a risk-based focus to develop, implement and facilitate additional Federal and local regulatory and voluntary measures.

In considering additional steps towards protecting human health and the environment, we need to identify and focus on issues of highest priority. Current information indicates that there are potentially significant health risks associated with air toxics exposures affecting large numbers of people in urban areas, as discussed in section I.B. Recognizing this, Congress instructed us to develop a strategy for air toxics in urban areas that includes specific actions to address the large number of smaller, area sources,[3] and that contains broader risk reduction goals encompassing all stationary sources. More specifically, section 112(k)(1) states:

> The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to the public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced.

As the ambient concentrations of HAPs in urban areas result from a combination of different sources (e.g., area, major,[4] and mobile [5]) emitting many of the same pollutants, we need to recognize contributions from all types of sources in achieving the reductions in ambient concentrations referred to in this subsection. Therefore, in addition to addressing specific statutory requirements for area sources, we've devised an integrated strategy for reducing cumulative public health risks in urban areas posed by the aggregated exposures to air toxics from all sources. The Integrated Urban Air Toxics Strategy (the Strategy) presented here, and summarized in section I.C. below, is one part of our overall national effort to reduce toxics. The basic components of the Strategy consist of the same basic elements as those of the overall air toxics program but with a specific focus on the particular needs of urban areas.

Before we describe the national efforts to control air toxics in more detail, we want to provide a brief overview of what air toxics are, their health and environmental effects, and their sources. These topics are discussed in more detail later in the notice, but their introduction here will help ensure that the remaining discussion in section I is based on a common understanding of the nature of the air toxics problem.

- What are air toxics?

The Act identifies 188 compounds as HAPs. They include pollutants like benzene found in gasoline, perchloroethylene emitted from dry cleaners, methylene chloride used as an industrial solvent, heavy metals like mercury and lead, polychlorinated biphenyls (PCBs), dioxins and some pesticides. These pollutants may cause cancer or other serious effects in humans or in the environment. Health concerns result from both short-and long-term exposures to these pollutants. They may disperse locally, regionally, nationally, or globally and after deposition may persist in the environment and/or bioaccumulate in the food chain, depending on their characteristics (such as vapor pressures, atmospheric transformation rates). Although not specifically listed as a HAP in section 112(b) of the Act, diesel emissions contain many HAPs, and are thus collectively considered under our overall program and the Strategy.

- What health and environmental effects do they cause?

Hazardous air pollutants can cause many health effects. More than half are known or suspected to be human carcinogens. Many are known to have respiratory, neurological, immune or reproductive effects, particularly for more susceptible or sensitive populations, such as children. Many of the HAPs are known to also cause adverse effects in many fish and animal species, including toxicity in fish or causing reproductive decline in bird species, including endangered species. These environmental effects may be felt by individual species within a single level of the food chain or by the entire ecosystem where multiple species are affected.

- What are the sources of air toxics?

There are literally millions of sources of air toxics, including large industrial complexes like chemical plants, oil refineries and steel mills; small (area) sources such as dry cleaners, gas stations, and small manufacturers; and mobile sources including cars, trucks, buses, and nonroad vehicles like ships and farm equipment.

[1] Our use of the terms "air toxics" or "toxic air pollutants" in this notice refers specifically to those pollutants which are listed under section 112(b) of the Act as "hazardous air pollutants" or HAPs. There are currently 188 HAPs listed.

[2] We project that by 2002, the full implementation of section 112(d) maximum achievable control technology (MACT) standards adopted to date will yield emissions reductions of approximately one million tons of HAPs per year. Within the next six years, completion and full implementation of section 112(d) technology-based standards for the remaining stationary source categories listed pursuant to section 112(c) will contribute additional emissions reductions.

[3] Area sources are those stationary sources that emit, or have the potential to emit, less than 10 tons per year of any one HAP or less than 25 tons per year of a combination of HAPs. Examples include hospital sterilizers and small publicly owned treatment works.

[4] Major stationary sources are sources that emit, or have the potential to emit, more than 10 tons per year of any one HAP or 25 tons per year of a combination of HAPs. Examples include chemical plants, oil refineries, aerospace manufacturers and steel mills.

[5] Mobile sources include motor vehicles (e.g., cars and trucks) and off-road equipment (e.g., construction equipment and lawn mowers), and their fuels.

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A. What is Our Overall Air Toxics Program?

Our overall approach to reducing air toxics reflects the mandates under the Act to develop technology-based standards and then subsequently to implement a risk-based program to ensure the protection of public health and the environment. For example, in amending the Act in 1990, Congress required us to establish national standards to reduce emissions of air toxics from stationary and mobile sources. Under section 112(d), Congress emphasized the implementation of technology-based standards for stationary source categories emitting air toxics. These emission standards are known as maximum achievable control technology (MACT) standards, and generally available control technology (GACT) standards. Section 112(k) requires us to list area source categories and to ensure 90 percent of the emissions from area sources are subject to standards pursuant to section 112(d). In addition, under section 202, Congress requires us to set standards to control HAPs from motor vehicles and their fuels.

Further, the Act contains additional provisions that have a risk-based focus. Section 112(f) of the Act requires us to evaluate the risk remaining after implementation of MACT standards (i.e., the "residual risk") in order to evaluate the need for additional stationary source standards to protect public health and the environment.

Under section 112(k), the Act specifically mandated that we develop a Strategy (the subject of this notice) to address public health risks posed by air toxics from area sources in urban areas and report to Congress on this issue. In addition, section 112(k) of the Act also mandates that the Strategy achieve a 75-percent reduction in cancer incidence attributable to HAPs emitted by stationary sources.

Other sections of the Act call for study of other types of specific air toxics problems including a focus on certain HAPs that persist and bioaccumulate in the environment. These studies include the deposition of air toxics to Great Waters,[6] HAP emissions from electric utilities, and the health and environmental effects of mercury emissions, in particular.[7]

Our current national air toxics goal was developed to meet requirements of the Government Performance and Results Act (GPRA), which requires us to report on the status of our progress in implementing our programs. That goal is to reduce air toxics emissions by 75 percent from 1993 levels and to significantly reduce the risk to the public of cancer and other serious adverse health effects caused by airborne toxics. Because our knowledge and tools to assess the impacts of these emissions on public health and the environment were limited when we set this current goal, it reflects the straightforward intent to reduce total air toxics emissions as a means to reduce risks associated with exposure to air toxics. However, as we extend our knowledge, develop better assessment tools and begin to address the risks associated with these emissions as required by the Clean Air Act, we intend to modify our goal to one directed specifically at risk reductions associated with exposure to air toxics. In working toward such a risk-based goal, we'll focus particularly on populations and areas disproportionately impacted, including, for example, densely populated areas, children at risk of developmental effects and people who are highly exposed to water and food affected by air toxics (e.g., subsistence fishers living near contaminated water bodies). For more information on assessments, see section IV for an explanation of the assessment methods.

We intend to progress toward the program goal through a combination of our authorities, regulatory activities and voluntary initiatives. The overall approach to reducing air toxics consists of the following four key components:

- *Source-specific standards and sector-based standards.* As previously mentioned, section 112 specifies MACT/GACT standards, and residual risk standards, as well as those area source standards which are contemplated by the Integrated Urban Air Toxics Strategy. Additionally, section 129 requires standards for solid waste incineration and section 202(l) requires EPA, based on the mobile-source related Air Toxics Study, to promulgate reasonable requirements to control HAPs from motor vehicles and their fuels.
- *National, regional, and community-based initiatives to focus on multi-media and cumulative risks.* Section 112(k)(4) requires us to "encourage and support area wide strategies developed by the State or local air pollution control agencies." Our risk initiatives will include State, local and Tribal program activities consistent with the Integrated Urban Air Toxics Strategy on the local level as well as Federal and regional activities associated with the multimedia aspects of HAPs, such as the Great Waters program[8] and initiatives concerning mercury, and other persistent bioaccumulative toxics (PBTs). Other Agency initiatives include collaboration between the air and water programs on the impact of air deposition on water quality (e.g., by accounting for the contribution of air deposition to the total maximum daily load (TMDL) of pollutants to a water body), and collaboration between offices within EPA's air program to assess the risks from exposures to air toxics indoors and to develop non-regulatory, voluntary programs to address those risks.
- *National air toxics assessments (NATA).* National air toxics assessments will help us identify areas of concern, characterize risks, and track our progress toward meeting our overall air toxics program goals, as well as the risk-based goals of the various activities and initiatives within the program, such as the Integrated Urban Air Toxics Strategy. The NATA activities include expansion of air toxics monitoring, improving and periodically updating emissions inventories, national- and local-scale air quality, multi-media and exposure modeling (including modeling which considers stationary and mobile sources), continued research on health effects and exposures to both ambient and indoor air, and use and improvement of exposure and assessment tools. These activities will provide us with improved characterizations of air toxics risk and risk reductions resulting from emissions control standards and initiatives for both stationary and mobile source programs.
- *Education and outreach.* In light of the scientific complexity inherent in air toxics issues, we recognize that the success of our overall air toxics program depends in part on our ability to communicate effectively with the public about air toxics risks and activities necessary to reduce those risks. This includes education and outreach efforts on air toxics in the ambient as well as indoor environments.

Following is a more detailed discussion of the activities under each of the four components of the national program.

[6] The Great Lakes, Chesapeake Bay, Lake Champlain and coastal waters are collectively referred to as the "Great Waters."

[7] These studies are required by sections 112(m), 112(n)(1)(A), and 112(n)(1)(B), respectively.

[8] Under section 112(m) of the Act, we assess and report to Congress on the deposition of air pollutants in the Great Lakes, Chesapeake Bay, Lake Champlain, and coastal waters. The third report to Congress on "The Deposition of Air Pollutants to the Great Waters" will be released later this year.

1. Source-specific Standards and Sector-based Standards

Maximum achievable control technology. The 1990 Clean Air Act Amendments required us to use a "technology-based" and a performance-based approach to significantly reduce emissions of air toxics from major sources of air pollution. These reductions are to be followed by a risk-based approach to address any remaining, or residual risks. Under the "technology-based" approach we develop standards for controlling the "routine" emissions of air toxics from each major source within an industry group (or "source category"). These standards—known as "maximum achievable control technology (MACT) standards"—are based on emissions levels that are already being achieved by the better controlled sources in an industry. This approach assures citizens nationwide that each major source of HAPs will be required to employ effective measures to limit its emissions.

Under this program, we listed for regulation 174 source categories that emit the 188 HAPs listed under section 112(b). To date, we've promulgated 43 standards regulating 78 source categories. We've proposed an additional 7 standards covering 8 source categories. Five source categories have been delisted. We're continuing to develop standards to cover the remaining source categories.

Combustion standards. We've also issued final rules to control emissions of certain air toxics from certain types of solid waste combustion facilities. These rules, required under section 129 of the Act, set emission limits for new solid waste combustion facilities and provide emissions guidelines for existing solid waste combustion facilities. These rules affect municipal waste combustors and hospital/medical/infectious waste incinerators, which account for 30 percent of the national mercury emissions to the air. By the time these rules are fully implemented we expect them to reduce mercury emissions from these sources by about 90 percent from current levels, and reduce dioxin/furan emissions by more than 95 percent from current levels. We're working on additional rules to address industrial and commercial waste incinerators, other solid waste incinerators and small municipal waste combustor units.

Residual risk. The residual risk program, required under section 112(f) of the Act, is designed to assess the risk from source categories after MACT standards are implemented. If we find a remaining, or residual, risk, we're required, within 8 years of the promulgation of the MACT standard, to set additional standards if the level of residual risk doesn't provide an "ample margin of safety to protect public health" or "to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect."[9]

In analyzing residual risk, we'll conduct risk assessments consistent with the Agency's human health and ecosystem risk assessment technical guidance and policies. We'll use a tiered approach, usually first conducting a screening level assessment for a source category, and move to a refined assessment only where the risks identified in the screening assessment appear unacceptable. Depending on the characteristics of the HAPs, these assessments will address single or multiple pathways of exposure as well as human and ecological endpoints.

Risk management decisions will be consistent with Agency policies. For carcinogens, we'll use a linear dose-response model unless data support nonlinear mechanisms. We'll follow the Agency's mixtures guidelines where a source category emits multiple HAPs.

For non-cancer effects, we'll use the EPA reference concentration or comparable criteria from other government agencies. As with the cancer effects, we'll follow the mixtures guidelines for emissions of multiple non-carcinogens.

In general, we'll base decisions on exposures predicted from modeling HAP emissions in air and, where appropriate, other media. Where available, we'll include monitoring data as part of our analysis for refined assessments. We'll estimate the size and characteristics of the exposed population, and conduct uncertainty and variability analysis where appropriate.

Currently we're conducting analyses on 13 of the earliest standards that we promulgated. We're conducting these analyses on a source category basis. Depending on the outcome of these analyses, we may find it necessary to modify our residual risk approach.

Mobile source standards. We started enforcing the first federal emission standards for passenger cars in 1968. Since then, acting under specific mandates from the Congress and under general authority, we've developed emission standards for all types of highway vehicles, their fuels, and engines used in virtually all varieties of mobile or portable nonroad equipment such as tractors, construction vehicles, recreational and commercial vessels, and lawn and garden equipment. We've also made the emission standards more stringent over time. New highway vehicles using gasoline are now all equipped with advanced catalysts and computer-controlled fuel systems. Diesel vehicles and most nonroad engines have been substantially redesigned to meet our emission standards as well. Diesel buses in urban areas are subject to a special limit on their emissions of particulate matter. All gasoline and highway diesel fuel used in the United States is subject to emission-reducing standards for volatility and sulfur, respectively. About one-quarter of the gasoline used in the United States is now subject to our reformulated gasoline program, and has lower volatility, reduced concentrations of benzene and other aromatics, and other beneficial changes. In May of this year, we proposed stringent new standards for all cars and light trucks, and the gasoline they use. At the same time we issued an advanced notice of proposed rulemaking to solicit information relating to control of diesel fuel quality. This year, we're also reviewing our standards for heavy-duty highway vehicles. In 2001, we'll do the same for heavy-duty nonroad engines.

To date, most of our emission standards have been aimed at improving urban air quality for the criteria pollutants carbon monoxide, ozone, and PM10. However, the emission control equipment on engines and vehicles, along with the fuel changes that have been needed to meet our emission standards, are also effective at reducing emissions of many HAPs. Our requirement to reduce and then end the use of lead additives in gasoline is an example of a standard that specifically reduced emissions of toxic pollutants. The reformulated gasoline program is another example, as it includes a performance standard for the emissions of several important HAPs.

Because of the time it takes for older vehicles to retire and be replaced with newer vehicles that comply with the latest emission standards, total mobile source toxics emissions will decline for many years into the future.

While the toxic reductions from our emission standards have been large, prior to 1990 we had no specific directions from Congress for a planned program to control toxic emissions from mobile sources. However, section 202(l), added by the Clean Air Act Amendments of 1990, requires us to complete a study of motor vehicle-related air toxics, and to promulgate

[9] The Residual Risk Report to Congress, March 3, 1999, describes our approach on risk assessment methods for use across the air toxics program, and our approach for conducting residual risk analyses. (EPA–453–/R–99–001)

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requirements for the control of HAPs from motor vehicles based on that study. We completed the required study in 1993, and are presently preparing an update to that study, and considering rulemaking under section 202(l)(2). In addition, the 1990 Amendments give us discretionary authority to control toxic emissions from nonroad mobile engines. We plan to study the role of nonroad engines in the air toxics problem over the next couple of years, and may propose standards if appropriate.

2. National, Regional, and Community-based Initiative to Focus on Multi-media and Cumulative Risks

The Clean Air Act requires a number of risk studies to help us better characterize risk to the public and the environment from HAPs. Information from these studies will provide information for rulemaking in some cases but will also provide information to support national and local efforts to address risks through other voluntary and pollution prevention programs. The following paragraphs describe these studies.

Utility study. Section 112(n)(1)(A) of the Act requires "a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection [112(b)]." We completed this study in February of 1998. We're currently collecting additional information to support a determination on whether regulations are appropriate and necessary to address risks from HAPs from these sources. We expect all test reports required under our information requests by May 31, 2000. We'll use this information to conduct additional analysis of the emissions of mercury from utilities and potential control technologies. In addition, we'll continue the analysis of health-related issues. We plan to make our determination about the need for regulation by December 15, 2000.

Great Waters Program. Section 112(m) requires us to monitor, assess and report on the deposition of HAPs to the "Great Waters," which include the Chesapeake Bay, Lake Champlain, the Great Lakes, National Estuary Programs, and National Estuarine Research Reserves. We're required to assess deposition to these waters by: establishing a deposition monitoring network; investigating the sources of pollution; improving monitoring methods; evaluating adverse effects; and sampling for the pollutants in aquatic plants and wildlife. Pollutants of concern to the Great Waters include mercury, lead, cadmium, nitrogen compounds, polycylic organic matter/polynuclear aromatic hydrocarbons (POM/PAHs), dioxin and furans, PCBs and seven banned or restricted pesticides.

We're also required to provide an update to Congress every two years on any new information relating to deposition of HAPs to the Great Waters. We issued the first two reports to Congress in 1994 and 1997. In addition, in March 1998, we made a determination under section 112(m)(6) that we have enough authority under the Act to address the HAPs impacting the Great Waters. The third report to Congress is scheduled for September 1999, and will focus on the contribution of atmospheric deposition, environmental and public health effects, sources of pollution, and exceedences of standards.

As part of the Great Waters Program, we're funding special monitoring studies at 13 different coastal areas. In addition, we're expanding the National Atmospheric Deposition Program to include more coastal sites for long-term deposition records. We'll continue to develop a coastal monitoring network and to improve air deposition monitoring methods.

In an effort to coordinate programs under the Clean Air Act and the Clean Water Act, we're conducting a pilot study to link air dispersion and deposition models with watershed fate and transport models. The results of this study will help us to improve our multimedia analysis efforts and will allow us to look at the connection between our legal authorities under the two Acts.

Mercury study. Section 112(n)(1)(B) requires that we issue a report to Congress on the sources and impacts of mercury. We released the report in December 1997. The report included an assessment of the emissions of mercury from all known anthropogenic sources in the United States, the health and environmental implications of these emissions, and the availability and cost of control of these emissions.

Urban Air Toxics Strategy. Section 112(k) of the Act requires us to develop a strategy to identify and address risks to the public in urban areas. We'll describe the Integrated Urban Air Toxics Strategy in more detail in later sections of this document.

3. National Air Toxics Assessments (NATA)

As mentioned previously, in order for the national air toxics program to move to a more risk-based program, it's imperative that we have strong analytical tools to support activities to identify risks, to track progress toward risk goals and to help prioritize our efforts to address emissions and risks from air toxics. Several assessment activities are under way to support the national air toxics program, as described in the following paragraphs.

Federal air toxics monitoring. Ambient air toxics information is a key component in supporting assessment activities, helping to determine exposure, tracking progress of the air toxics program goals, and evaluating models and other assessment tools. Because of the importance of this information, we're currently developing an approach to monitoring air toxics nationally and locally with State and local agencies. We envision a monitoring network with some monitors operated on the national level to track overall national trends. This monitoring network may include both new monitoring sites located for air toxics monitoring, as well as information leveraged from other national monitoring networks including Photochemical Assessment Monitoring Stations (PAMS) (which collect at least eight HAPs) and the PM2.5 sites (which collect most of the metals). We'll also compile data from the State toxics monitoring networks.

In order to optimize our monitoring resources, we're working with our regulatory partners to expand monitoring networks by adding new sites; merging existing Federal and States sites where appropriate (e.g., PACS, PM2.5 and Speciation Trends sites); targeting urban population-oriented sites; developing a common Acore" list of compounds to monitor; and implementing a phased approach to expanding the number of sites and compounds to fill the data gaps.

Emissions inventories. Over the past several years we've worked to build a program for a national inventory of air toxics emissions. We now have data sets for the 1990 to 1993 period and a draft for 1996. The 1996 National Toxics Inventory (NTI) will be used as part of the NATA for modeling and data analyses. It includes information generated from MACT standards development, as well as information provided by 36 States and various industries. The 1996 NTI is currently under review by the State and local agencies. We expect the 1996 NTI to be final in the fall of 1999.

Modeling. The NATA will include modeling efforts using information from the emissions inventory and supported by the monitoring data. We're working toward a future focus on integrated multi-media/multipathway assessments. We intend to conduct assessments on the national, regional, and local scales

to support activities at all levels of the air toxics program. Initially we'll use the Assessment System for Population Exposure Nationwide (ASPEN) model (used in the Cumulative Exposure Project) to conduct national level assessments.

In the fall and winter of 1999, we'll conduct national level assessments to estimate ambient concentrations of HAP and predict the exposures that would result. This information will be released in the spring of 2000. These assessments are described in more detail in section IV.D.

In addition, we intend to use air quality and exposure models for source-specific assessments and to look at selected urban areas. In the near future, we expect to use the Total Risk Integrated Model (TRIM) to address local or neighborhood scale applications. This model will have the capability to address human health and ecological impacts. We expect this to be available late in 2000. In addition, we're working on a Models-3/Community Multi-scale Air Quality (CMAQ) Modeling System. Initially, this model will support assessments on the urban- to regional-scale. Eventually, however, it will be used for neighborhood-scale assessments. By the end of 2000, we expect to have an operational evaluation of the model using mercury and some semi-volatile compounds, with a final evaluation completed by 2001. This model includes capabilities to address ozone and PM, together with air toxics, and will be able to link with a human exposure model.

4. Education and Outreach

We believe that public participation is vitally important in the implementation of the overall air toxics program. We're committed to work with cities, communities, State, local and Tribal agencies, and other groups and organizations that can help implement our approach to reducing toxics emissions. For example, we expect to work with the cities, our regulatory partners, and other interested stakeholders in the national air toxics assessments that will be conducted. In addition, we'll continue to work with stakeholders on regulation development. We intend to involve local communities and industries in development of local risk initiatives such as the total maximum daily load (TMDL) initiatives.

B. Why Are We Concerned About Urban Air in Particular?

In urban areas, toxic air pollutants raise concerns because sources of emissions and people are concentrated in the same geographic area, leading to large numbers of people exposed to the emissions of many HAPs from many sources. Additionally, while urban exposures to some pollutants may be fairly similar across the country, studies in a number of urban areas indicate that exposures to other pollutants, and any associated risks, may vary significantly from one urban area to the next. The tools we rely on in our efforts to better characterize urban health risks from air toxics each have associated uncertainties, which may add to our concerns. We intend our NATA activities to improve our ability to describe these uncertainties and where possible, reduce them. As currently available, the various types of information (e.g., emissions, ambient air quality monitoring and modeling) that will be central to our NATA activities illustrate the importance of focusing on urban areas.

First, our baseline national emissions inventory [10] for the air toxics program indicates that the vast majority of HAP emissions (approximately 75 percent of the total HAP emissions of all 188 HAPs from all sources) are within counties with urban areas.[11] Additionally, a greater number of different HAPs may be emitted from the multiple sources present in urban areas than from the more limited number and variety of sources present in rural areas. This is particularly important because even in cases where individual pollutant levels are low enough that exposure to any one pollutant wouldn't be expected to pose harm, some pollutants may work together such that their potential for harm increases and exposure to the mixture poses harm. Thus, depending on exposure levels and characteristics of the pollutants, multiple pollutant exposures, which may be prevalent in urban populations, may pose increased public health risks.

Second, ambient air monitoring information collected by States in certain metropolitan areas during the 1990s demonstrate the simultaneous presence of many HAPs in urban air and, thus, the potential for urban population exposures to multiple HAPs. In assessing the implications of these monitored HAP concentrations for potential public health concerns, we combined the measured ambient HAP concentrations with quantitative estimates of each HAP's cancer potency. This limited evaluation of a subset of the small number of HAPs monitored indicates the presence of HAPs in some cities that when evaluated cumulatively is suggestive of upper bound estimates of additional cancer risks at or above one in ten thousand.[12] This type of limited evaluation can provide indications of potential public health concerns, but should not be considered a characterization of actual health risks.

Third, an early effort by the Agency to model ambient HAP concentrations on a national scale performed for EPA's Cumulative Exposure Project (CEP) suggests that HAP exposures are prevalent nationwide, and that for some HAPs, in some locations, concentrations are significantly higher than the concentrations that, if exposures are continuous over a lifetime, are associated with a one-in-one million lifetime excess cancer risk.[13] [14] As stated above, estimated concentrations greater than risk-based concentrations should be viewed as indicators of a potential public health problem and not as characterizations of actual health risks. Illustrating the need for special attention in urban areas, the early modeling analysis found that for 75 percent of the HAPs modeled, the average estimated concentrations in urban census tracts [15] were greater, and in some cases much greater, than the overall national average concentrations.

The concentration of activities in urban areas leads to the presence of multiple emission sources and

[10] The baseline national toxics inventory (NTI) that we've compiled over the past few years is representative of the years 1990–93. We believe that this is an appropriate baseline because these years represent the "pre-MACT" emissions for HAP sources. This baseline inventory contains information on major, area and mobile sources for all 188 HAPs and provides information on whether the emissions are urban or rural. A subset of this baseline inventory is information collected and extensively reviewed by the public to support analyses for this Strategy and regulatory actions under section 112(c)(6).

[11] In estimating the amount of emissions from urban areas, we've totaled emissions from all U.S. counties that include a metropolitan statistical area with a population greater than 250,000 or for which more than 50 percent of the population has been designated "urban" by the U.S. Census Bureau. For a more detailed description of emissions allocation, see the emissions information prepared to support this Strategy ("Emissions Inventory of 40 Candidate Section 112(k) Pollutants; Supporting Data for EPA's 112(k) Regulatory Strategy"), available at www.epa.gov/ttn/uatw/112k/112kfac.html.

[12] The technical support documentation for this assessment analysis is available from the public docket and includes a presentation of ambient monitoring data in 17 cities for a variety of HAPs. Also presented are the upper bound estimates of excess cancer associated with continuous lifetime exposures at those concentrations.

[13] SAIC. 1998. Final Report, Modeling cumulative outdoor concentrations of hazardous air pollutants.

[14] Woodruff, et al. 1998. Public Health Implications of 1990 Air Toxics Concentrations across the United States. Environ. Health Persp. 106(5):245–251.

[15] Census tracts with residential population density greater than 750 persons per square kilometer.

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proportionately higher emissions of multiple HAPs. Many of these emission sources are area or mobile sources, and their emissions are more likely to be released at ground level, where people are more likely to be exposed to them. Because approximately 80 percent of the U.S. population lives in metropolitan areas,[16] exposures resulting from urban air toxics emissions may pose a significant risk to public health. Additionally, the prevalence of minority and low income communities in urban industrial and commercial areas, where ambient concentrations of HAPs may be greater, increases the likelihood of elevated HAP exposures among these subgroups. The potential for air toxics in urban areas, either directly or indirectly, to contribute to elevated health risks among these and other subgroups (especially including children, the elderly and persons with existing illness or other potential vulnerability) demonstrates the need to assess risk distributions across urban populations in order to address disproportionate impacts of air toxics hazards.[17]

As described earlier in this notice, we have been and are continuing to develop various Federal standards for stationary and mobile sources as part of the air toxics program and under other Clean Air Act authorities. These standards, as well as standards developed by State and local authorities, are expected to improve air quality in urban areas. As part of the air toxics program, we will be assessing what additional actions, both at the national and local level, are needed to further improve air quality in urban areas. This is a primary focus of the Integrated Urban Air Toxics Strategy, described more fully in the rest of this notice. We will include State and local authorities, and in particular mayors, in planning activities to assess local air quality and to address concerns.

C. What is the Integrated Urban Air Toxics Strategy?

The Strategy presented in this notice has been developed in response to the requirements of sections 112(k) and 112(c)(3) of the Act, and also reflects activities to control mobile source emissions required under section 202(l). As stated previously, the Strategy represents an integration of our authorities to identify and address risks from both stationary and mobile sources. In this section of the notice, we describe the goals and major components of the Strategy, while later sections describe more fully those components. Additionally, section 112(k) of the Act also requires us to report to Congress, on two occasions, regarding actions taken under the Strategy and current information regarding public health risks posed by HAP emissions in urban areas. We're currently preparing the first of these two reports to Congress, and its release is planned for later this year.

1. Goals of the Strategy

Our goals for the Strategy reflect both statutory requirements stated in section 112(k) and the goals of our overall air toxics program. These goals consist of the following:

- *Attain a 75-percent reduction in incidence of cancer attributable to exposure to HAPs emitted by stationary sources.* This is relevant to all HAPs from both major and area stationary sources, in all urban areas nationwide. Reductions can be the result of actions by Federal, State, local and/or Tribal governments, achieved by any regulations or voluntary actions.
- *Attain a substantial reduction in public health risks posed by HAP emissions from area sources.* This includes health effects other than cancer posed by all HAPs. Reductions can be the result of actions by Federal, State, local and/or Tribal governments, achieved by any regulations or voluntary actions.
- *Address disproportionate impacts of air toxics hazards across urban areas.* This will necessarily involve consideration of both stationary and mobile source emissions of all HAPs, as well as sources of HAPs in indoor air. We intend to characterize exposure and risk distributions both geographically and demographically. This will include particular emphasis on highly exposed individuals (such as those in geographic Ahot spots") and specific population subgroups (e.g., children, the elderly, and low-income communities).

The Act includes certain specific requirements for the Strategy. First, we're required to identify at least 30 HAPs, "which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas" (section 112(k)(3)(B)(i) of the Act). Second, we're required to assure that sources accounting for 90 percent of the emissions of identified area source HAPs are subject to standards (section 112(k)(3)(B)(ii) and section 112(c)(3)). These steps will contribute to our progress toward the Strategy's goals.

In meeting the Strategy's goals, we'll consider reductions in HAPs resulting, not only from actions under our overall air toxics program (e.g., MACT, residual risk standards, mobile source emission controls) and measures resulting from programs to attain the national ambient air quality standards for particulate matter and ozone (as well as our other regulatory programs), but also from State, local and Tribal measures. Further, we'll consider cumulative risks presented by exposures to emissions of HAPs from sources in the aggregate. This is consistent with the language of section 112(k)(1) of the Act, quoted earlier. Further, consistent with the direction of section 112(k)(4) to encourage and support area-wide strategies developed by State or local air pollution control agencies, we'll work with State, local, and Tribal air pollution control programs for additional progress toward these goals.

Continuous advances in our knowledge and activities within the broader air toxics program, both of which are expected to contribute especially relevant information, will be integral to the implementation of the Strategy. For example, certain air toxics, such as mercury, may be deposited from the air into soil and/or water, taken up by organisms into the food chain, and bioaccumulate so that concentrations increase through each level of the food chain. The result is that humans and wildlife can be exposed to these "air" toxics by eating contaminated food, especially predatory fish from affected water bodies. We're concerned about individuals in urban areas that eat more than the average amount of fish from local sources, including urban subsistence fishers. Under the Great Waters program, we monitor air toxics deposition and evaluate potential adverse effects on public health and the environment including those related to contaminated ecosystems and fish. This information will assist us in assessing the potential for certain HAPs to pose multipathway health risks to urban residents of coastal areas (e.g., risks from both inhalation of HAPs and consumption of fish contaminated by deposition of HAPs to waterways).

The indoor environments program is another Agency activity with particular relevance to the Strategy because people in urban settings spend as much as 80 to 90 percent of their time indoors.[18] Additionally, outdoor air is brought indoors through infiltration and mechanical ventilation and there are also many sources of air toxics indoors. As part of this Strategy, EPA will assess the current information on indoor emissions and air concentrations of air toxics, and will use the data, to the extent possible, to estimate exposures to air toxics in indoor environments. As we continue to develop and enhance our knowledge of exposures and risks from indoor air toxics through the indoor environments program, we'll seek to include information on indoor exposures in our characterization of risk associated with outdoor sources and in the development of risk management options for air toxics. We also intend to conduct additional research on indoor air exposures to HAPs and on the relative significance of outdoor and indoor concentrations of HAPs, as well as on the relationship between outdoor emission sources and indoor concentrations of HAPs.

2. Developing the Strategy

To address the problem of exposure to air toxics in urban areas, we published a draft strategy on September 14, 1998 (63 FR 49240) that addressed the urban air toxics risks from both stationary and mobile sources. We asked for, and received, extensive public comment on the draft strategy. We received over 120 letters and heard from numerous speakers at stakeholder meetings in Alexandria, VA; Durham, NC; Chicago, IL; and San Francisco, CA, as well as at other meetings including a public meeting in New York City and meetings with the National Environmental Justice Advisory Council. As discussed throughout the following sections of this notice, we considered these comments in developing the final Strategy. Comment letters, meeting summaries, and material developed to analyze and respond to comments are in the public docket (Docket No. A–97–44).

The Strategy being published today will produce a set of actions in response to the cumulative public health risks presented by exposures to emissions of multiple HAPs from multiple sources. We believe that by considering urban air toxics emissions from all sources, we'll better understand and address the relative risks posed by any one pollutant and/or source category. Thus, by integrating activities under different parts of the Act, we can more realistically address aggregate exposure in areas where the emissions and risks are most significant and controls are the most cost effective.

3. Components of the Strategy

Consistent with the broader overall air toxics program (described in section I.A.), the Strategy is made up of four interrelated parts or components for addressing the public health risk associated with urban air toxics. Information from each of the four components provides feedback to the others to inform the decisions needed to make progress toward meeting our goals.

The first component includes our regulatory tools and programmatic activities for source-specific and sector-based standard setting, as well as those of States, local agencies, and Tribes, which contribute to reductions in emissions of air toxics from major, area, and mobile sources. This component includes activities such as selecting urban HAPs, setting emission standards, conducting studies, developing policies, and conducting enforcement and compliance assistance activities. These actions result in emission reductions, as well as associated reductions in risk. Sections II and III of this document describe the regulatory activities we'll pursue to implement the Strategy.

The second component of the Strategy involves local and community-based initiatives to focus on multi-media and cumulative risks within urban areas. These may include activities such as pilot projects to identify and address risk, and may rely on some of the assessment activities and tools described below. Section III of this document describes the nature of some of these activities.

The third component is the urban component of NATA, which will provide us with meaningful information and allow us to describe progress that we've made in meeting our overall program and strategy-specific goals. We'll identify the pollutants and sources that contribute to any failures in meeting our risk reduction goals, and provide meaningful information to support regulatory and policy decisions needed to move us closer to meeting them. Section IV of this document, Assessment Activities, describes how we'll design and conduct these assessments. These activities rely on our improving base of knowledge (e.g., concerning health effects and exposure characteristics) and tools (e.g., emissions inventories, monitoring networks, and computer models), which are described in section V, along with our plans for their improvement and related research.

The fourth component, communicating about risk through education and outreach to the public, ensures that the activities we undertake are responsive to your concerns. We'll depend on stakeholder involvement at the national and local levels to implement the Strategy. Section VI explains how we'll communicate with the public on these issues.

We've formulated an integrated Strategy to characterize, prioritize, and equitably address the public health impacts of HAPs in urban areas. The Strategy relies on a strategic combination of regulatory approaches and voluntary partnerships, both of which are based on ongoing research and assessments, and include educational outreach. Sections II through VI of this document explain how the components described above work, how they'll be expanded and improved, and how we expect to meet our goals to reduce risk from HAPs.

4. Overview of the Strategy

The Integrated Urban Air Toxics Strategy, in conjunction with the overall air toxics program, will continue to lower human exposure to air toxics by reducing emissions. Progress will be achieved by:

- Completing MACT standards.
- Addressing residual risk.
- Implementing the urban air toxics strategy.
- Enhancing our ability to characterize risk and estimate exposures.
- Developing new tools for monitoring progress with the goals of the air toxics program.
- Developing a monitoring network.
- Effectively implementing and enforcing standards.

We'll achieve these objectives by following the guiding principles of the air toxics program:

- Working cooperatively and effectively with State and local communities.
- Focusing on communities, susceptible populations, and sensitive ecosystems.
- Providing cost-effective, common-sense solutions to problems, through flexible strategies.
- Developing and executing an effective education and outreach program.

[16] U.S. Department of Commerce. 1997. *Population Profile of the United States.* Current population reports, special studies P23–194. Economic and Statistics Administration, Bureau of the Census, Washington, D.C.

[17] The reader should note that all of these examples illustrate that there are different ways of representing urban areas. These are all individually valid, but the result is that different definitions lead to different approximations of the affected population. In the remainder of the Strategy, we'll explain which definition we're using in each particular context.

[18] The indoor environments program is a non-regulatory program, working under the authority of Superfund Amendments and Reauthorization Act (SARA) Title IV to perform research and provide information to the public on the health problems associated with air pollutants in the indoor environment. Most of the guidance provided by the indoor environments program focuses on reducing pollutants throughout buildings through proper building design, operation, and maintenance, including management of indoor sources. The program works through an extensive network of partners in providing training and information on indoor air environmental issues throughout the United States.

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The Strategy will bring together the four basic components (standards, initiatives, assessment, and outreach). It will be an iterative and evolving process that will use existing programs and tools to target risk reduction and to continually assess risk and measure progress.

II. Federal Activities Related to the Integrated Urban Air Toxics Strategy

A. What HAPs Pose the Greatest Threat in Urban Areas?

This section provides further discussion of what air toxics are, the concerns they present, and describes how we evaluated and selected a list of HAPs to guide our actions under the Strategy. In brief, we evaluated the health effects information available for the 188 HAPs, estimated emissions from all known sources using a variety of techniques, assessed available air quality monitoring data, reviewed existing studies, and produced a list of pollutants based on the relative hazards they pose in urban areas, considering toxicity, emissions, and related characteristics. From this effort, we established a list of urban HAPs which pose the greatest threats to public health in urban areas, considering emissions from major, area and mobile sources. Among these urban HAPs are a subset of the 30 HAPs having the greatest emissions contribution from area sources (the "area source HAPs").

1. Air Toxics Defined

Section 112(b) of the Act identifies 188 toxic chemicals as HAPs. Hazardous air pollutants include a wide variety of organic and inorganic substances released from industrial operations (both large and small), fossil fuel combustion, gasoline and diesel-powered vehicles, and many other sources. The major categories of toxic air pollutants include volatile organic compounds (known as VOCs), metals and inorganic chemicals, and semi-volatile organic chemicals. Volatile chemicals are usually released into the air as vapor, while semi-volatile organics and metals may be released in the form of particles. Additionally, 17 of the 188 HAPs are defined as chemical groups rather than unique chemicals. In evaluating the health effects, emissions and monitoring information for these chemical groups we made specific decisions regarding our treatment of the available information for the group or the individual chemicals represented by the group (see the technical support document in the public docket for the identification of the urban HAPs).

Of the 17 chemical groups, polycyclic organic matter (POM) posed particular complications. Polycyclic organic matter is defined in section 112(b) of the Act as organic compounds with more than one benzene ring and a boiling point greater than or equal to 100 °C, which encompasses a complex mixture of thousands of polynuclear aromatic hydrocarbons (PAH). Among the many PAH constituents of POM are seven compounds (benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, chrysene, dibenzo[a,h]anthracene, and indeno[1,2,3-c,d]pyrene) that we've identified as probable human carcinogens. For the evaluation of POM as a potential public health threat in urban areas, and for the subsequent source category analysis, we used this group (referred to as 7-PAH) as a surrogate for the much larger, more complex and diverse mixture of POM.

The 188 HAPs have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects and developmental effects. Additionally, the specific health effects associated with the various HAPs may differ, depending on the particular circumstances of exposure (e.g., the amount of chemical, the length of time a person is exposed, the stage in life of the person exposed). We've classified many of the HAPs as "known," "probable," or "possible" human carcinogens and have included this information in our Integrated Risk Information System.[19] The HAPs can also be described with regard to the part of the human body to which they pose threats of harm. For example, neurotoxic pollutants cause harm to the nervous system. Other effects include cardiovascular, and respiratory effects, as well as effects on the immune system and reproductive system. The severity of harm can range from headaches and nausea to respiratory arrest and death. The level of severity differs both with the amount and length of exposure and the chemical itself (e.g., how it interacts with individual components of the nervous system). Some chemicals pose particular hazards to people of a certain age or stage in life or even based on their ethnic background. For example, some HAPs are developmental toxicants. That is, exposure to certain amounts of these chemicals during a woman's pregnancy or exposure of infants or children can prevent normal development into a healthy adult. Other HAPs are reproductive toxicants, meaning they may have the potential to affect the ability of adults to conceive or give birth to a healthy baby.

In addition, we're currently investigating the health risks associated with the mixture of compounds that comprise diesel exhaust which originates primarily from mobile sources. While not specifically listed as one of the 188 HAPs, diesel exhaust includes many HAPs, including chemicals that fall into the group of POM chemicals, as well as some HAP metals and volatile organic compounds. In addition, we're concerned about the potential health risks from the particulate matter component of diesel exhaust. Diesel particles are characteristically small and fall within the size range of inhalable particles addressed by the national ambient air quality standards for particulate matter.[20] Our draft health assessment of diesel emissions identifies lung cancer as well as several other adverse respiratory health effects, including respiratory tract irritation, immunological effects, and changes in lung function, as possible concerns for long-term exposures to diesel exhaust.[21] If new diesel engine models are used in an increasing share of the light duty fleet,[22] concerns regarding potential

[19] The Integrated Risk Information System (IRIS), prepared and maintained here at EPA, is an electronic data base containing information on human health effects that may result from exposure to various chemicals in the environment. IRIS was initially developed in response to a growing demand for consistent information on chemical substances for use in risk assessments, decision-making and regulatory activities. The information in IRIS is intended for those without extensive training in toxicology, but with some knowledge of health sciences. Further information about IRIS, including the information it contains, can be found on the IRIS website at http://www.epa.gov/iris.

[20] Inhalable particles are defined es particles of aerodynamic diameter less than or equal to 10 micrometers.

[21] Health Assessment Document for Diesel Emissions, SAB Review Draft, U.S. Environmental Protection Agency, Washington, D.C. EPA/600/8–90–057C, February 1998. The evidence comes from studies involving occupational exposures and/or high exposure animal studies. The Health Assessment, when completed, will recommend how the data should be interpreted for lower environmental levels of exposure. The draft Health Assessment is currently being revised to address comments from a peer review panel of the Clean Air Science Advisory Committee (CASAC Review of the Draft Diesel Health Assessment Document, U.S. Environmental Protection Agency Science Advisory Board, Washington, D.C. EPA–SAB–CASC–99–001. The CASAC will review these revisions later this year.)

[22] Diesel engines in highway and nonroad mobile sources are numerous and widespread. Heavy-duty highway and nonroad diesel engines are the largest sources of diesel exhaust emissions. While diesel engines are used in a relatively small number of cars and light-duty trucks today, vehicle and engine manufacturers are developing new engine models that may be used in an increasing share of the light-duty fleet, particularly light-duty trucks.

health risks from diesel exhaust will become more significant.

As described above, HAPs and mixtures containing HAPs have the potential to pose a variety of health risks depending on their chemical characteristics, as well as the circumstances of human exposure. In the following two sections, we describe our identification of HAPs of particular concern in urban areas nationally.

2. The URBAN HAPs

Although information is limited regarding actual health risks posed by specific HAP emissions, the availability of various other types of information is sufficient to achieve our objective of identifying those HAPs posing the greatest potential public health concern in the largest number of urban areas. For the purpose of meeting the requirements of section 112(k) and section 112(c)(3), we've listed in Table 1 the 33 HAPs that, on a national scale, we believe pose the greatest threat to public health in the largest number of urban areas. Of these 33 HAPs, 29 appeared on the draft urban HAPs list published in our September 14, 1998 **Federal Register** document (63 FR 49240). Changes to the list resulted from changes made to the method for urban HAPs selection, the input data and the final selection criteria upon consideration of comments received on the draft list and its supporting methodology.[23]

TABLE 1.—LIST OF URBAN HAPS FOR THE INTEGRATED URBAN AIR TOXICS STRATEGY

["Urban HAPs List"]

HAP	CAS No.+ HAP
acetaldehyde	75070
acrolein	107028
acrylonitrile	107131
arsenic compounds	
benzene	71432
beryllium compounds	
1,3-butadiene	106990
cadmium compounds	
carbon tetrachloride*	56235
chloroform	67663
chromium compounds	
coke oven emissions*	8007452
1,2-dibromoethane*	106934
1,2-dichloropropane (propylene dichloride)	78875
1,3-dichloropropene	542756
ethylene dichloride (1,2-dichloroethane)	107062
ethylene oxide	75218
formaldehyde	50000
hexachlorobenzene	118741
hydrazine	302012
lead compounds	
manganese compounds	
mercury compounds	
methylene chloride (dichloromethane)	75092
nickel compounds	
polychlorinated biphenyls (PCBs)	1336363
polycyclic organic matter (POM)	
quinoline	91225
2,3,7,8-tetrachlorodibenzo-p-dioxin (and congeners and TCDF congeners)	1746016
1,1,2,2-tetrachloroethane	79345
tetrachloroethylene (perchloroethylene)	127184
trichloroethylene	79016
vinyl chloride	75014

+ Chemical Abstracts System number.
* HAPs with less significant emissions contributions from area sources.

This list of 33 urban HAPs includes not only those with emissions from area sources, but reflects the integrated nature of the Strategy by including those posing public health concerns in urban areas regardless of emissions source type. Included among the 33 urban HAPs are the 30 HAPs with greatest emissions contributions from area sources (i.e., the area source HAPs").

In response to publication of our draft list of urban HAPs, we received comments regarding our inclusion of HAPs emitted predominantly from non-area sources. Several commenters said that it was inappropriate to include HAPs for which area source contribution was low or negligible. Although section 112(k)(3)(B)(i) only requires that we list HAPs emitted from area sources, we believe that the public is exposed to complex mixtures of pollutants, and that these pollutants are emitted by all types of sources. In other words, the risk from exposure to HAPs has public health implications regardless of the source or source type from which they are emitted. Therefore, in the interests of best protecting public health in urban areas, we've listed the 33 HAPs in Table 1 considering the aggregate exposure potential of mobile,

[23] The final list includes beryllium compounds, hexachlorobenzene, polychlorinated biphenyls and 1,1,2,2 tetrachloroethane, which hadn't appeared on the draft list, and doesn't include bis(2-ethylhexyl)phthalate (DEHP), 1,4-dichlorobenzene, methyl chloride and methylene diphenyl diisocyanate (MDI), which were on the draft list.

area, and major stationary source emissions combined. At the same time, as described below, we've also identified the 30 HAPs with the greatest area source contribution. Under section 112(k), there aren't any specific regulatory implications of listing the other three HAPs. However, we'll use all 33 HAPs in prioritizing efforts to address risk.

Section 112(k)(3)(B) of the Act requires us to identify not less than 30 HAPs that are estimated to pose the greatest threat to public health in the largest number of urban areas "as the result of emissions from area sources." The Act, however, doesn't state that such threats must be exclusively the result of emissions from area sources. Therefore, from the list of 33 urban HAPs (i.e., the HAPs that pose the greatest threat to public health in urban areas because they ranked highest relative to the other HAPs in the analysis discussed above), we identified those 30 HAPs with the greatest contributions of national urban emissions from area sources, thus ensuring consistency with the specification in section 112(k)(3)(B)(i). Without these contributions from area sources, the threat from these HAPs would not be as great. Emissions of only the 30 area source HAPs were considered in the area source category listing required under section 112(c)(3) and section 112(k) and described in section II.B. of this document. The other three HAPs in Table 1 for which area sources are less significant contributors to total emissions (i.e., those HAPs noted on Table 1 with an asterisk), can be addressed, as appropriate, using our other existing authorities, as described in section II.C. of this document.

During the public comment period on the draft Strategy, we received substantial comment regarding the role of diesel engine emissions among urban air pollutants, with several commenters suggesting that we include diesel exhaust among the priority urban HAPs. As described earlier, diesel exhaust, although not specifically listed among the 188 HAPs in section 112(b) of the Act, is a particular type of emission which is composed of many HAPs. We agree with commenters that diesel exhaust plays an important role among urban air pollutants, and, as previously mentioned, we're investigating the health risks associated with diesel exhaust. Meanwhile, we plan to address diesel exhaust in our section 202(l) rulemaking for air toxics from motor vehicles and their fuels.

It's important to note that the list in Table 1 was generated based on our best estimates representing 1990 national baseline air toxics emissions and ambient concentrations for urban areas. For example, implementation of technology-based standards for coke ovens has reduced the benzene, coke oven gases, and POM from these sources by 80 percent (or 1,408 tons per year) since 1993. In addition, certain urban areas have reduced other benzene emissions by as much as 30 or 40 percent. Much of this reduction is attributable to the implementation of mobile source reformulated gasoline requirements. To insure that we appropriately target reductions of urban air toxics to support the protection of public health, it will be important to reevaluate our priorities as we develop emissions estimates and obtain more comprehensive monitoring information for more recent years.

3. Method to Identify the Urban HAPs.

This section summarizes how we identified HAPs for the urban HAPs list. Our identification methodology included three separate analyses. The results of these analyses were compared using specific criteria in order to identify the urban HAPs. The three analyses relied on a variety of information types including toxicity information, emissions estimates, ambient monitoring, and air quality modeling. The methodology is summarized here and more fully described in the technical support document ("Ranking and Selection of Hazardous Air Pollutants"), which is available through the public docket and on our website.

In 1997, we conducted an initial screening evaluation using a preliminary methodology. In addition to identifying HAPs for which we separately conducted a public review of our national emissions inventory information, this evaluation provided us with the opportunity for peer review of our preliminary methodology. Like the methodology relied on for our final list, this preliminary methodology relied on various types of information relevant to potential health risks posed by the 188 HAPs, and it integrated the results of three relative rankings using the different types of information. This initial screening run provided a starting point for focusing improvements in the national emissions inventory and for evaluating and refining our methodology for selecting the list of urban HAPs.

The preliminary methodology and screening analysis were reviewed by a panel of outside experts. In early January of 1998, the preliminary methodology was presented to the peer review panel in a written report. A full day session of the peer review panel was held on January 21, 1998 to discuss the methodology and underlying data. The reviewers evaluated all facets of the methodology and its suitability for identifying HAPs for the urban HAPs list, the relative value of various data sources, the availability of additional data sources, the scientific validity of assumptions, consistency across the methodology and appropriate presentation formats. Reviewers provided oral comments at the January 21 meeting, as well as written comments before and after the meeting. The final methodology described here has incorporated revisions made to address comments raised by the January 1998 peer review.

Comments were also received from the public in response to our publication of the draft list of urban HAPs (September 14, 1998, 63 FR 49240). Consideration of issues raised by some commenters led us to modify certain aspects of both the identification methodology and the underlying data inputs. These changes were not inconsistent with recommendations made by the 1998 peer review panel. Consistent with peer reviewer recommendations to use the available information in the most robust manner, our final identification methodology integrates the results of three separate analyses. These ranking analyses are discussed in the following sections. Because each analysis focused on different aspects of the available information, such that no one analysis fully captured all important aspects of the urban air toxics information, we and the peer reviewers agreed that all three of the analyses should be performed and their results integrated, to yield a more comprehensive methodology.

a. Analysis 1: Risk-related ranking indices. In the first of the three analyses, we ranked HAPs by combining surrogates for toxicity with surrogates for exposure into ranking indices. The surrogates for toxicity were risk-based concentrations (RBCs) for inhalation or risk-based doses (RBDs) for ingestion. The RBCs and RBDs were derived from acute and chronic (cancer and non-cancer) health-based reference values.[24]

[24] Acute RBCs were set equal to risk management exposure guideline levels (e.g., Acute Exposure Guideline Levels (62 FR 58839–51) or Emergency Response Planning Guidelines (American industrial Hygiene Association, 1998. Emergency response planning guidelines and workplace environmental exposure guidelines.) for mild, transient or no effects from short exposure periods, when available. Additionally, two chronic RBCs and two chronic RBDs were derived for each HAP for which the requisite data were available. For carcinogenic HAPs, we compared the continuous exposure levels associated with predicted upper-bound lifetime

Types of information used as surrogates for exposure included measured ambient concentrations and yearly emission estimates from area, major and mobile sources in all urban areas nationwide. To address the potential for certain HAPs to pose significant risks of exposure through pathways other than inhalation (primarily by consuming food with accumulated HAPs), one set of indices also incorporated measures of bioaccumulation potential. As described in more detail in the technical support document, a total of seven separate indices[25] were calculated using these different types of toxicity and exposure information. Lack of the requisite data prevented all seven indices from being calculated for all of the 188 HAPs. The indices were combined into a single HAP ranking.

During the public comment period, we received comments stating that the role of monitoring information in the methodology should be strengthened. Because ambient concentrations directly influence people's exposure to HAPs and there are differences among HAPs in the many variables affecting their behavior after being emitted into the air, we agree that it is important that the monitoring information play a strong role in this analysis. Relying solely on emissions information in selection of the urban HAPs would ignore the many factors which influence ambient HAP concentrations. Since the publication of the draft list, we've expanded our monitoring database to increase both the number of pollutants for which we have monitoring information and the number of measurement values. We've also improved our treatment of non-detect measurements, first by assuming undetected HAPs are present at one half the detection limit (instead of omitting the observation), and by omitting data altogether for HAPs having fewer than ten percent of observations above the detection limit. These changes have improved the technical basis of the ambient indices.

We also received comment stating that inappropriate weight was assigned to those HAPs for which the acute index was developed. In the analysis for the draft Strategy, the requisite information for calculating this index (both an acute RBC and an estimate of short-term peak exposure) were available for only 21 of the 188 HAPs. We appreciate the issue raised by the commenter that, because of the relatively small number of HAPs for which this index could be calculated, it was not necessarily assigning HAPs the appropriate emphasis. Through our improvements to the ambient database described above, and by increasing the number of acute RBCs, we have addressed this issue and reduced bias in this index.

Commenters also recommended increased emphasis on persistent, bioaccumulative and multipathway pollutants for which non-inhalation exposure pathways may be important. It's important to recognize that persistent bioaccumulative toxics (PBTs) are also often multipathway pollutants, because the pattern of exposure is frequently other than inhalation. However, not all multipathway pollutants are PBTs.

One commenter said "EPA should consider multi-pathway exposures under 112(k) when there is sufficient evidence demonstrating that airborne emissions of the listed HAP have both direct and indirect exposure pathways, which have been clearly identified." Another said, "It is appropriate to include compounds with exposure pathways other than inhalation because these pathways are a true concern in urban areas where atmospheric deposition of particulate phase HAPs is occurring (i.e., lead, mercury, cadmium, dioxin and PCBs) and being taken up by fish, garden vegetables or hand-to mouth activity observed in infants." With regard to the PBTs, some commenters said PBTs should have been given more thorough consideration for listing. They said the risks from PBT exposure are high, and the concentrations of many PBTs are higher in the urban than non-urban areas. We support the use of the multipathway analysis to assess total human exposure, particularly in the case of PBTs.

Additionally, commenters said that indices should be calculated so that the size of index value differences among HAPs could be more clearly observed, and any bias related to different numbers of HAPs ranked by each index removed. Because we believe that both of these issues are important, we changed the index calculation methodology to address these recommendations. This change had its greatest impact on the food chain pathway index, in which HAPs with high bioaccumulation potential and ingestion toxicity received much higher index values. Primarily as a result of this change, Table 1 now includes two additional persistent, bioaccumulative HAPs—PCBs and hexachlorobenzene—that were absent from the September 1998 draft list. Hexachlorobenzene and PCBs, as well as mercury, cadmium, lead, POM and dioxin (also identified as urban HAPs in Table 1), are among the pollutants of concern for our Great Waters program. Additionally, PCBs, mercury and dioxin were identified as pollutants of concern in the Great Lakes by the International Joint Commission of the United States and Canada. Hexachlorobenzene, PCBs, dioxins, mercury, and alkyl-lead were targeted for virtual elimination in the Great Lakes in the 1997 Canada-United States "Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes", known as the "Binational Toxics Strategy".

Some commenters said that the identification methodology emphasized cancer as a health effect and didn't consider other health effects including asthma, birth defects and reproductive effects. The methodology does, however, consider health effects other than cancer. Reference values (RBCs and RBDs) for each HAP used in the analysis were developed for the health effects believed to occur at the lowest exposure. In the case of HAPs which, in addition to these other health effects, also pose cancer risks, we developed RBC/RBD values for one-in-one million and one-in-ten thousand predicted lifetime cancer risk levels. These risk levels have historically been used to inform environmental regulatory action. The cancer risk-based values were compared to RBC/RBD values for the most sensitive non-cancer health effect, and the lowest two RBC/RBD values for each HAP were used in the calculation of the chronic indices. This step, and the inclusion among the seven indices of an acute toxicity index based entirely on effects other than cancer, was intended specifically to recognize the importance of health effects other than cancer for some HAPs. Thus, we believe that the assessment methodology provides a balanced consideration of all health effects associated with each HAP, with index calculation and the resultant ranking depending significantly on effects other than cancer.

We also received comments regarding the toxicity information used in the analysis. More specifically, commenters

increased cancer risks of one-in-one million end one-in-ten thousand to the continuous exposure level (e.g., EPA's reference concentration) estimated to be without adverse non-cancer effects in human populations, including sensitive subgroups. We then set the two chronic RBC or RBD values to the lower two of those three levels. For other HAPs, both of the two chronic RBC or RBD values were set to the continuous exposure level estimated to be without adverse non-cancer effects in human populations, including sensitive subgroups. A fuller discussion of these steps is included in the technical support document.

[25] Four of the indices relied on chronic RBCs and emissions or monitoring information, two other indices relied on chronic RBDs plus emissions and bioaccumulation information, and the seventh index relied on acute RBCs and monitoring information.

suggested that in the case of 1,3-butadiene and vinyl chloride, we should rely on draft assessments in progress rather than on assessments currently available on IRIS. In the case of 1,3-butadiene, we agree that the IRIS risk estimate is not an appropriate basis from which to extrapolate human risk and the updated assessment has progressed to the point where it is appropriate for use here.[26] Use of this new assessment, however, does not affect the presence of 1,3-butadiene on the urban HAPs list. In the case of vinyl chloride, we've chosen to use the Agency consensus assessment currently in IRIS rather than a draft assessment that may yet change significantly. However, we've confirmed that using the draft assessment for vinyl chloride wouldn't change its status on the final urban HAPs list.

Some commenters questioned the use of cancer-based RBC or RBD values for certain HAPs to which the Agency has assigned a "C" weight of evidence for carcinogenicity ("possible human carcinogens"). We evaluated the supporting data for each "C" carcinogen that had been proposed for listing to verify the appropriateness of the assessments for use in this analysis. Many of these substances are currently the subjects of research studies and EPA reassessment activities. In the case of 1,4-dichlorobenzene, the currently available information led us to modify our analysis so that the RBC and RBD values were based on effects other than cancer. For all other "C" carcinogens, we retained the RBC and RBD values. As updated information and assessments become available for these and other HAPs, we intend to use that information in analyses supporting future regulatory actions under the Strategy.

Other commenters questioned our assumptions as to the predominant species of chromium and nickel in emissions and monitoring data. Because the national monitoring and emissions data used in this analysis don't differentiate among species of metals, we had to make certain assumptions. To address the likelihood, supported by limited available data, that all nickel present in emissions or ambient air isn't in the form that is thought to have carcinogenic potential (e.g., nickel subsulfide and other insoluble forms), we applied the cancer-based RBC for nickel subsulfide to 25 percent of the total emissions and the ambient measurements for total nickel. We based this decision on the assumption that no more than 50 percent of ambient nickel is present in the insoluble form and no more than 50 percent of that is present in the crystalline form. In the case of the ingestion pathway, the non-cancer-based RBD was used. Regarding chromium, the limited emissions and monitoring information available for both hexavalent and total chromium indicated that approximately two thirds of the chromium present in ambient air or national emissions is likely to be other than the hexavalent form. Thus, we applied the cancer-based RBC for hexavalent chromium to 35 percent of the total emissions and to 35 percent of the ambient measurement.

A few commenters requested an analysis of uncertainties surrounding the calculations. To the extent that it's possible to conduct an uncertainty analysis, we believe the process already includes one. The calculation and presentation of seven different ranking indices, instituted in response to comments from the January 1998 peer review panel, is presented in graphic form in the technical support document. These graphs show the range of ranking indices for each HAP, which we regard as a measure of some of the uncertainty associated with this identification methodology.

b. Analysis 2: Review of existing risk assessments and hazard rankings. For the second analysis, we reviewed a number of air toxics risk assessments or hazard rankings conducted previously by EPA staff, State agencies or others.[27] We selected 14 of the available studies for use in this analysis, because they were sufficiently broad in the pollutants evaluated, they included area sources of HAPs, and they focused on the risks presented in urban areas. Each study provided a risk-based ranking of HAPs, with separate rankings for cancer and, when available, other health effects. The rankings within each study were converted to a scale common to all of the studies, and the values were summed across the studies, providing a total score for each HAP. Because section 112(k) places special emphasis on area sources of HAPs, scores were developed both for studies that considered combined emissions from major, area, and mobile sources, and for studies that considered emissions from area sources alone. From this analysis, we identified those HAPs that, when compared across studies, consistently ranked high.

c. Analysis 3: Cumulative Exposure Project (CEP). In the third analysis, we used information provided by the CEP.[28] In the CEP, the Assessment System for Population Exposure Nationwide (ASPEN) model was used with preliminary estimates of 1990 HAP emissions from all source types to predict long-term average concentrations at the census tract level for 148 HAPs. For some pollutants, modeled concentrations were augmented with estimates of background levels that were intended to represent contributions from natural sources, as well as historic emissions of persistent pollutants. The estimated ambient concentrations were then compared to risk-based concentrations (termed benchmarks by the authors) intended to represent either continuous exposure levels associated with a one-in-a-million upper bound estimate of excess lifetime cancer risk, or continuous lifetime exposure levels associated with no significant risks of adverse non-cancer effects (e.g., EPA's Inhalation Reference Concentration (RfC)). As stated earlier, estimated concentrations greater than risk-based concentrations should be viewed as indicators of a potential health problem, and not as a characterization of health risks. While we recognize certain limitations associated with this initial attempt at modeling HAP concentrations nationwide, and its inappropriateness for use in drawing conclusions at small geographic scales, this modeling effort is useful as a national screening tool. In this analysis, we used the information generated by the CEP for urban areas and identified those HAPs for which the modeled concentrations exceeded risk-based concentrations in the greatest number of urban census tracts.

We received comments on several aspects of our use of the CEP analysis in our method for identifying the draft urban HAPs list. Some commenters felt that the addition of background concentrations was inappropriate. Additionally, some commenters questioned the appropriateness of the reference values used for some HAPs. We recognized that the background value for one of the HAPs (bis(2-ethylhexyl)phthalate or DEHP) was wrong, and we agreed that we should focus the analysis on modeled concentrations resulting from controllable sources. Additionally, we're currently using updated risk-based concentrations which, in some cases, differ from those used in the CEP analysis. Consequently, prior to using this analysis as part of our final methodology, we repeated the analysis

[26] See April 27, 1999 internal memo, available in the public docket.

[27] These assessments and rankings, and the details of this analysis, are described in the technical support document for the identification of the urban HAPs, which is available in the public docket.

[28] See footnotes 13 and 14.

for the subset of affected HAPs using the modeled concentrations resulting only from current area, major and mobile sources (i.e., without addition of a background value) and an updated set of risk-based concentrations. We've described the details of this reanalysis in the technical support document in the public docket.

d. Integration of the three analyses. In selecting the urban HAPs for the integrated Strategy, we compared the results of these three separate ranking analyses and applied the following criteria when integrating their results. We selected those HAPs for which a publicly reviewed baseline national emissions inventory was available[29] and which had been either:

- Identified by at least two of the three analyses (regardless of area source contribution); or
- Identified by at least one of the three analyses and having an area source contribution to total emissions of at least 25 percent.

The second criterion was set in recognition of the area source emphasis of this integrated Strategy. These criteria produced an integrated list of 33 urban HAPs.

As discussed earlier, section 112(k)(3)(B) of the Act requires us to identify not less than 30 HAPs that are estimated to pose the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources ("the area source HAPs"). To identify these 30 area source HAPs, we ranked the list of 33 urban HAPs by percent contribution to national urban emissions from area sources and selected the 30 urban HAPs with the greatest area source contributions. The remaining three urban HAPs (i.e., coke oven emissions, 1,2-dibromoethane, and carbon tetrachloride) have less significant emissions contributions from area sources and aren't among the 30 area source HAPs considered in the area source category listing described in section II.C.

Some commenters on the draft Strategy were concerned that the percent contribution to national urban emissions from area sources was too low for some of the HAPs on the draft area source HAPs list, thus not placing enough emphasis on risks from area sources. While we note that the percent contribution from area sources for the area source HAPs ranges down to as low as 2.9 percent, these values apply to total urban emissions nationally. In individual urban areas as well as in local communities within large areas, area sources may play a much larger role. Because the Act requires us to select not less than 30 area source HAPs and because the percentage of emissions from area sources will vary, we consider this an appropriate approach to identify the area source HAPs on which the Strategy will focus in reducing area source emissions and any associated health risks in individual urban areas nationwide.[30] Accordingly, this list of 30 area source HAPs was used in identifying the list of new area source categories for which standards will be addressed as required by section 112(c)(3) and section 112(k)(3)(B)(ii).

B. How does EPA Plan to Address Requirements for Area Sources of HAPs?

1. Area Source Category Selection Approach in Draft Strategy

The Clean Air Act includes two provisions—sections 112(c)(3) and 112(k)(3)(B)(ii)—that instruct us to identify and list source categories that contribute to the emissions of the 30 "listed" (or area source) HAPs, and that are, or will be, subject to standards under section 112 of the Act. The language in these two sections differs slightly. Section 112(c)(3) requires us to list, pursuant to section 112(k)(3)(B), sufficient categories of sources "to ensure that area sources representing 90 percent of the area source emissions of the 30 [listed] hazardous air pollutants" are subject to regulation under section 112. As explained in the draft Strategy, this would seem to allow us to regulate sources accounting for either 90 percent of the combined emissions of all of the 30 area source HAPs, or 90 percent of the emissions of each of the 30 area source HAPs. By contrast, section 112(k)(3)(B)(ii) requires us to identify sufficient categories to "assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants" are subject to standards under section 112(d). This language explicitly requires us to regulate sources accounting for 90 percent of the emissions of each of the 30 area source HAPs. As a result, in the draft Strategy we adopted the interpretation that allowed us to read the two provisions consistently, and assembled a draft list of area source categories representing 90 percent of the emissions of each of the 30 area source HAPs.

We adopted a two-step process for selecting the source categories for the draft list. First we listed all of the area source categories already subject to area source standards. For each of these source categories we identified their percentage contribution to the total area source emissions for each of the 30 area source HAPs. We then listed additional area source categories as necessary, listing the largest contributors first, until the list of area sources represented 90 percent of the emissions for each of the 30 area source HAPs.

2. Improvements in Area Source Category Information

Since issuing the draft Strategy, we've significantly improved our emissions inventory data for many area source categories. (The final information on the subset of pollutants of the baseline inventory used in this analysis and a description of the changes made is in the technical support document "Emissions Inventory of 40 Candidate Section 112(k) Pollutants: Supporting Data for EPA's Section 112(k) Regulatory Strategy" available at www.epa.gov/ttn/uatw/112k.) The draft inventory for the subset of the HAPs of the baseline emission inventory was available twice for public review. From this extensive review, we received over 200 comments on the inventory, which were addressed where data were provided. Based on the large number of public comments, and information from internal comments, we've made many changes to the baseline emissions inventory used to identify HAP sources. In particular, better emission information for many of the sources subject to section 112(d) MACT standards made a significant difference in the inventory. The percent

[29] On June 20, 1997 we published notice of a draft listing of source categories for regulation under section 112(c)(6) of the Act (62 FR 33625). As part of this notice, we requested public review and comment on the baseline national emissions inventory for the seven pollutants identified under section 112(c)(6). In the fall of 1998, we requested and obtained public review on our baseline national emissions inventory for 40 HAPs, five of which had also been reviewed as part of the rulemaking process under section 112(c)(6). During both of these public reviews, many comments were received on various aspects of the emissions information, and we considered these comments in making improvements to the baseline national emissions inventory for those HAPs. Details concerning these two public reviews and documentation of the resultant inventory information are presented in two documents ("1990 Emissions Inventory of Section 112(c)(6) Pollutants: Final Report" and "1990 Emissions Inventory of 40 Candidate Section 112(k) Pollutants") available at www.epa.gov/ttn/uatw/112c6/112c6fac.html and www.epa.gov/ttn/uatw/112k/112kfac.html, respectively. The public reviews provided us with an inventory that was appropriate for our use on a national scale, in the identification of the urban and area source HAPs. However, this baseline inventory may require certain modifications for small scale detailed analyses such as those described in section II.B.

[30] Given the uncertainties and limitations associated with the information upon which the 30 area source HAPs selection was based, we don't believe that identifying greater than the statutory minimum of 30 HAPs is warranted at this time.

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contribution from major versus area sources for each source category was also refined and updated based on better information. For many MACT standards, we now have lists of regulated facilities, which allows for better designation of major facilities in the inventory.

We received several comments requesting that the area source categories designated as "SIC combined" be broken down into individual SIC (or Standard Industrial Classification) codes. Examples of these source categories from the draft Strategy were Electronic and other Electric Equipment Manufacturing (SICs combined), Food Products (SICs combined) and Instruments and Related Products (SICs combined). The way in which the SIC codes were combined didn't reflect a technical analysis of whether these SIC codes could in fact be combined into single source categories for regulatory purposes. In general, the combinations included large numbers of different industry types which would later have to be broken down into separate projects and separate source categories for regulation. In addition, it was difficult to discern from the list which subsets of the multiple SIC codes were actually emitting the pollutants of concern and would eventually be subject to regulation.

For the final Strategy, we listed source categories (presented in Table 3) that primarily represent single SIC codes in order to more accurately identify the sources that may ultimately be subject to regulation. The exception to this is when the source category was derived directly from information obtained during the development of a section 112(d) standard (e.g., Paint Stripping Operations), in which case the area source category described for the standard may incorporate multiple SIC codes.

Despite these improvements in the baseline, there are still uncertainties in the emissions reported in some categories and in some of the TRI reporting. Our awareness of these uncertainties is based on our improved knowledge of some source categories and emission estimation methods, and also on an improved recognition of the limits of our data for other source categories. For the development of the area source category listing, we needed to use the baseline inventory information on a more refined scale (at the source category level) than we did in development of the HAPs list where we used the baseline inventory on a national scale. For this reason, we sometimes modified the individual source category information in various ways, such as by combining source categories' emission information. In a few cases, we changed the emission information related to tonnage for some source categories. These adjustments to tonnage didn't affect the total emissions used on a national scale. As a result of these changes, the information presented in the area source category analysis (source category names and tonnage) may not always match the way source categories are presented in the final baseline inventory.

Examples of some changes made in the area source category analysis include combining all the emissions from human and animal cremation, because they will be addressed under one rulemaking (Other Solid Waste Incinerators). For the same reason, we combined all the emissions from institutional and commercial heating, as this will be addressed under one rulemaking (Institutional/Commercial Boilers). We also included the area emission estimates for the source category Paint Stripping Operations, because they were inadvertently excluded from the final baseline inventory. We changed the name of the source category listed as Chlorine Production in the baseline to Mercury Cell Chlor-Alkali Plants. This revised source category name better represents the portion of the industry which will be "subject to standards". Additional changes are described in the technical support document for identifying area source categories.

As discussed in section II.A.2., several of the 30 area source HAPs listed in the draft Strategy have been replaced based on updated information. The result is the addition of the following HAPs to the list of 30 area source HAPs: beryllium compounds, hexachlorobenzene, polychlorinated biphenyls (PCBs), quinoline, vinyl chloride, and 1,1,2,2,-tetrachloroethane. Quinoline was included in the draft Strategy list for major sources only, but based on updated information is now included for area sources. These changes in the area source HAPs list have also led to changes in the area source categories list.

3. Area Source Category Selection Approach In Final Strategy

We've reviewed the provisions in sections 112(c)(3) and 112(k)(3)(B)(ii), and believe the most reasonable interpretation of the Act is still the interpretation adopted in the draft Strategy. In order to comply with the requirements of both sections, we must list those source categories representing 90 percent of the emissions of each of the 30 area source HAPs.

We have, however, changed our criteria for selecting the source categories contributing to emissions of the 30 area source HAPs. Again we've adopted a two-step approach with the first step being similar to that in the draft Strategy. In the first step we've identified area sources that contribute to emissions of the 30 area source HAPs, and that are subject to existing standards, or will be subject to standards that are currently being developed. These area source categories have already been listed for regulation under the Act. As in the draft Strategy, for each of these source categories we identified the percent contribution to the total area source emissions for each of the 30 area source HAPs.

In the second step, we've decided, at this time, to add only those area source categories that contribute at least 15 percent of the total area source emissions of any of the individual area source HAPs to the list of source categories. We've adopted this criterion to account for the uncertainties in our current inventory data. While we've been able to significantly improve our baseline emissions inventory data, data gaps and uncertainty still remain. This is particularly true as we move to a more refined scale to determine emissions at a source category level. As a result, we've decided to only list new categories of area sources at this time if the inventory data demonstrate that each newly listed area source category contributes at least 15 percent to the national urban emissions of at least one of the 30 area source HAPs. Once listed, we've counted the percent contribution, even if less than 15 percent, to emissions of any other area source HAPs, because once the source is subject to regulation its emissions of any of the 30 area source HAPs can be counted toward the 90-percent goal for each of the area source HAPs. Likewise, when we subject these source categories to regulation we'll evaluate regulation of all 188 HAPs, not just the 33 urban HAPs listed under this Strategy.

The result of these new criteria for the source selection process is that the current list doesn't, at this time, contain area source categories representing 90 percent of the emissions of each individual HAP. It's important to make clear that we still intend to meet our statutory obligation to list area sources accounting for 90 percent of the emissions of each of the 30 area source HAPs. We've chosen to complete this list in stages, adding to, deleting from, or shuffling the list as we gather more and improved data. This first stage lists those area source categories that contribute at least 15 percent, and, therefore, we're confident add real contributions to the total area source emissions of a particular area source HAP. As discussed in section IV.D., we'll be conducting an initial national risk assessment in the spring of 2000 that will be used in part to prioritize which standards to pursue first. This initial assessment will use the much better-developed 1996 NTI. We'll use this information as part of our process to reevaluate the source categories listed in the Strategy. Based on this updated information, we may decide to remove an area source category listed here if, for example, the reason for the listing was inaccurate (e.g., faulty reporting to TRI) or if no urban area sources exist. We'll also use this assessment to evaluate area source categories to be added to the list.

We believe this iterative approach is consistent with the general scheme for listing and regulating area sources under section 112 of the Act. Section 112 establishes two distinct steps for regulating emissions of HAPs—one for listing source categories under 112(c) and one for setting standards under 112(d). Section 112(k) incorporates this two-step approach. The source category listing step (see for example, sections 112(c)(1) and (9)) is intended to be an ongoing process. Under section 112(e)(4), listing of a particular source category isn't considered final agency action until EPA issues emission standards for that source category. Thus, we feel the list of area source categories is flexible both for the addition of new area source categories and/or removal of area source categories, through public notice. We believe our current approach for fulfilling the 90-percent requirements in sections 112(k)(3)(B) and 112(c)(3) is consistent with the overall structure of section 112 which authorizes us to treat the list of area source categories as a work in progress.

One alternative to this iterative approach would be to attempt to list all sources accounting for 90 percent of the emissions of each individual area source HAPs as we did in the draft Strategy, and to make changes in the future as data are collected and improved. We decided against this approach because it would involve listing many area source categories contributing very small amounts of a particular HAP based on data that we consider in many instances to still have significant uncertainty despite numerous improvements. In the end, we believe the two approaches aren't meaningfully different. Even if we officially "listed" these small contributors, their status on the list would be tentative at best. Under the current approach, we've identified all of these small contributors in the supporting materials for this rulemaking, but we've chosen not to list them under section 112(c)(3) at this time, if the emissions currently appear to be less than 15 percent of the total area source emissions of any individual area source HAP. Under both approaches the list will likely change with new and improved inventory data.

4. New Area Source Category List

With the two-step approach described above, we identified the area source categories listed in Tables 2 and 3. In step one, we identified those area source categories that contribute to emissions of the 30 area source HAPs, and that are subject to existing standards, or will be subject to standards that are currently being developed. These source categories are provided in Table 2. We've included Hazardous Waste Combustors on this list, despite the fact that information related to the percentage contribution from area source Hazardous Waste Combustors hasn't yet been completely defined, because the Hazardous Waste Combustor NESHAP (as proposed) would subject area sources to the same standards as major sources. Once we determine the percentage of urban area emissions from the area source categories affected by this rule, their emissions will be counted toward the 90-percent requirement for the appropriate HAPs.

Table 3 includes those new area source categories being listed under section 112(c)(3) for the first time. These area source categories were identified in step two of our selection process, which identified area source categories contributing at least 15 percent of the total area source emissions of any of the 30 area source HAPs.

TABLE 2.—AREA SOURCE CATEGORIES ALREADY SUBJECT TO STANDARDS OR WHICH WILL BE SUBJECT TO STANDARDS

Chromic acid anodizing	Industrial boilers
Commercial Sterilization Facilities	Institutional/Commercial Boilers.
Other Solid Waste Incinerators (Human/Animal Cremation)	Medical Waste Incinerators.
Decorative Chromium Electroplating	Municipal Waste Combustors.
Dry Cleaning Facilities	Open Burning Scrap Tires.
Halogenated Solvent Cleaners	Portland Cement.
Hard Chromium Electroplating	Secondary Lead Smelting.
Hazardous Waste Combustors	Stationary Internal Combustion Engines.

TABLE 3.—NEW AREA SOURCE CATEGORIES BEING LISTED

Cyclic Crude and Intermediate Production	Municipal Landfills.
Flexible Polyurethane Foam Fabrication Operations	Oil and Natural Gas Production.
Hospital Sterilizers	Paint Stripping Operations.
Industrial Inorganic Chemical Manufacturing	Plastic Materials and Resins Manufacturing.
Industrial Organic Chemical Manufacturing	Publicly Owned Treatment Works.
Mercury Cell Chlor-Alkali Plants	Synthetic Rubber Manufacturing.
Gasoline Distribution Stage I.	

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5. Meeting the Requirement To List Area Sources Representing 90 Percent of Emissions

The current list of area source categories doesn't include categories representing 90 percent of the emissions of each of the 30 area source HAPs. The current list meets the 90-percent or greater requirement for 11[31] of the 30 area source HAPs. For 10[32] other HAPs, the list accounts for at least 80 percent of the emissions, and for ethylene dichloride the list accounts for approximately 78 percent of the emissions. Improved inventory data may demonstrate that the current list of area sources already meets the 90-percent requirement for some of these HAPs. The remaining HAPs on the list represent less than 75 percent of the emissions: arsenic compounds, cadmium compounds, chromium compounds, hexachlorobenzene, lead compounds, manganese compounds, nickel compounds, and polychlorinated biphenyl.

In the case of the metal compounds for arsenic, cadmium, chromium, lead, manganese and nickel, we know we haven't listed enough new area source categories to say that we've completely addressed the emissions from these area source HAPs. In the case of the metal HAPs, there tend to be numerous source categories, each contributing only a small percentage of the HAPs. In many cases, this is because the source categories have already reduced emissions due to other control programs in place. However, because these pollutants can have significant health effects, we'll be developing a separate strategy to specifically address emissions of these metals. As part of our initial evaluation of the area sources of these HAPs, we're including the following source categories for further evaluation (our current data indicate that each contributed five to twelve percent of area source emissions of one or more of these metal HAPs):

- Sewage Sludge Incineration.
- Aluminum Foundries (castings).
- Steel Foundries.
- Secondary Copper Smelting.
- Stainless and Nonstainless Steel Manufacturing—Electric Arc Furnaces (EAF).
- Iron Foundries.
- Plating and Polishing.
- Cadmium Refining and Cadmium Oxide Production.
- Autobody Refinishing Paint Shops (called Paint Applications in the baseline inventory).
- Pressed and Blown Glass and Glassware Manufacturing.

We aren't listing these categories for possible regulation at this time; however, after further evaluation of these categories, some or all may be added to our area source category list.

We haven't listed any area source categories which specifically contribute emissions of PCBs or hexachlorobenzene, although some of the source categories listed may emit one or both of these HAPs. We've decided to wait on listing any source categories contributing to area source emissions of hexachlorobenzene or PCBs, because these HAPs weren't included in the candidate list of HAPs for which we collected detailed inventory data in preparation for the Strategy; therefore the emissions inventory baseline for these HAPs didn't receive the same level of review. We've already begun efforts that may supplement our inventory data for these HAPs, and, as appropriate, we'll list new area source categories when we collect more data and make the list available through public notice. For example, we're currently researching the sources of PCBs, and whether PCBs may be the product of incomplete combustion. The findings of this research could significantly change the emissions inventory for this pollutant. Even though we're not listing source categories of these pollutants at this time, like the metals, we're concerned about the potential health effects of these pollutants, and we have a number of programs across EPA working to address them (e.g., the PBT initiative and the Binational Toxics Strategy).

We anticipate evaluating the source categories for these and the other remaining HAPs for which we haven't reached a 90-percent emission reduction, including the six metal HAPs, PCBs and hexachlorobenzene, when we conduct the initial risk assessment in the spring of 2000 (discussed in section IV.D.). We intend to adjust this list in the event that new information comes forward and will complete the list by 2003.

6. Comments on Specific Source Category Listings

Several comments on the draft Strategy addressed the need to add or delete certain source categories. Many of these comments have been addressed with the changes described above to the emissions inventory and the urban HAPs list. Many of these commenters asked that we add several source categories (such as dry cleaners, retail gas stations, print shops, autobody shops, and beauty shops). Some of these source categories are already addressed by area source MACT standards (e.g., dry cleaners). Many of the others involve organic emissions from consumer products such as surface coatings, metal cleaning, solvents, personal care products, and household cleaning products. While these products may be responsible for a significant fraction of the emissions of several of the 30 area source HAPs, we believe section 112 isn't necessarily the most appropriate regulatory mechanism for controlling them. For many of these emissions, we believe section 183(e) provides the more useful authority. For example, in September 1998, we published a VOC rule under section 183(e) for household consumer products. This rule will affect approximately 220 consumer product manufacturers and importers nationwide. At the same time we published two other national rules which address VOC emissions from consumer and commercial products: Architectural Coatings and Automobile Refinishing coatings. These combined rules should provide reductions of over 2.4 million tons of VOC per year. Automobile Refinishing is also included on our list for further evaluation due to metals emissions.

Similarly, we don't believe section 112 is the most appropriate tool to address refueling emissions at gas stations. Instead, consistent with Congress' intent, we've chosen to regulate these emissions through sections 182(b)(3) and 202(a)(6). The "stage II" and "onboard requirements" programs developed under these authorities will lead to reductions of VOCs and HAPs of 300,000 to 400,000 tons per year (63 FR 17844, April 10, 1998).

Commenters also said the list should focus on source categories emitting the deadliest HAPs. As we explained in section II.A., toxicity was one of the key criteria in all of the rankings used to develop the list of 30 area source HAPs. As a result, pollutants such as dioxins and beryllium compounds, because of their high toxicities, are included on the list of 30 area source HAPs, despite relatively small overall emissions in urban areas. Thus, toxicity is built into the list of source categories selected for regulation because toxicity is built into the list of pollutants used to select these source categories.

[31] Including 1,1,2,2-tetrachloroethene, 1,2-dichloropropane, polycyclic organic matter, acetaldehyde, acrolein, benzene, dioxin, furans, ethylene oxide, formaldehyde, quinoline, and tetrachlorethylene.

[32] Including 1,3-butadiene, 1,3-dichloropropene, acrylonitrile, beryllium compounds, chloroform, hydrazine, mercury compounds, methylene chloride, trichloroethylene, and vinyl chloride.

7. Additional Requirements for Area Source Categories Already Subject to MACT

Several of the source categories listed today (e.g., Municipal Landfills, and Publicly Owned Treatment Works) are already in source categories covered by MACT standards for major sources. As discussed in section II.C.1., we'll develop area source standards for the listed area source categories. When it's practical during our rulemaking activities, we'll attempt to combine information gathering for area and major sources. A good example is the development of the MACT standard for municipal landfills. This source category is required to be evaluated for major sources as a MACT standard, and we've expanded our data base to include area sources as well. In other instances, such as for Publicly Owned Treatment Works, the MACT standard was already proposed and is near promulgation, so it isn't possible to coordinate rulemaking for the major and area sources at the same time.

In the cases where standards already apply to listed area sources (e.g., Municipal Waste Combustors, Medical Waste Incinerators, Chromium Electroplating, and Halogenated Solvent Cleaning), we'll coordinate the need for additional regulation through assessments we'll be conducting under the section 112(f) residual risk program. Information on how we'll conduct assessments on residual risk are discussed in the residual risk report.[33] We'll also be evaluating the effectiveness of the standards that are already in place through information provided by State, local and Tribal air agencies. Also, as we continue to assess our progress in meeting our air toxics Strategy goals, we'll reevaluate the need for additional area source standards to ensure that the 90-percent requirement and our other goals are met.

C. What Regulatory Actions Will EPA Take To Implement the Strategy?

Consistent with our goals, we intend to assess cumulative risks to the public from HAP exposures resulting from stationary (area and major) and mobile sources. Based on the outcome of these assessments, we'll undertake the needed regulatory actions using the appropriate authorities. These actions include developing area source standards, which are discussed in sections II.C.1. though II.C.5. We'll also regulate motor vehicle and fuel HAPs as described in section II.C.6. Finally, we'll develop additional major source standards under section 112(d), section 112(f), and other programs under the Act, as needed to reach our goals. The role of major stationary sources in the Strategy is discussed in more detail in section II.C.7. Our approach for addressing combinations of source types (e.g., at airports) is described in section II.C.8.

1. Our Approach to Developing Area Source Standards

We plan to pursue a tiered approach that will consider three standard setting processes. The specific process selected for a particular source category will depend on the criteria outlined below. The three tiers of standard setting processes that will be considered are:

- Tier 1—MACT standard process;
- Tier 2—Source category specific GACT standard process; and
- Tier 3—Flexible GACT process.

We received a number of comments on the draft Strategy stating that our regulatory intentions for area sources were unclear. In addition, we received comments requesting flexibility for State/local/Tribal governments and for emission sources in implementing these area source standards. The following discussion attempts to provide the needed clarifications and to explain our approach to developing a flexible regulatory development process.

Tier 1—MACT standards. We'll develop MACT standards in accordance with the process outlined in section 112(d)(3) for those area sources whose emissions pose the greatest threat to human health and the environment and for which the technology to achieve maximum reductions in HAP emissions is appropriate. Section 112(d)(3) requires the standards to reduce HAP emissions as much as is achievable, considering the cost of these reductions, effects on health or the environment (other than air), and energy requirements.

Section 112(d)(3) requires us to use a minimum statutory baseline ("floor") when setting MACT standards. For new sources, the MACT standards for a source category or subcategory must be at least as stringent as the emission control achieved in practice by the best controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they can't be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories or subcategories with 30 or more sources, or by the best-performing 5 sources for categories or subcategories with fewer than 30 sources.

We've issued MACT standards for area sources in previous cases. For example, in the chromium electroplating national emission standards for hazardous air pollutants (NESHAP), we developed MACT standards for area sources because of the high toxicity of chromium. Similarly, in the Portland Cement NESHAP, we determined that MACT controls were appropriate because of the quantity and toxicity of the HAPs being emitted from area sources. In addition, both of these source categories have numerous, widespread sources.

Tier 2—Source category specific GACT standards. While we may develop MACT standards for some area sources, we expect most sources will be subject to GACT standards developed in accordance with section 112(d)(5). As with MACT standards, GACT standards would be developed for a specific source category, but they would be based on the use of GACT as opposed to the use of MACT. This approach will be used to address source categories that present a human health risk or environmental concern, but where GACT is a more appropriate approach for reducing HAP emissions than MACT. To make these standard-setting decisions, we'll consider economic feasibility and other factors that could lead us to GACT.

Tier 3—Flexible GACT process. Considering the large number and diversity of area sources and limitations in the data and information currently available for many of them, we expect it may be appropriate in some cases to develop flexible requirements that would apply to several area source categories where more flexibility is appropriate (e.g., where there are very few area sources, they are confined to a limited geographic area or areas, or they contribute to localized public health or environmental risks). Under this option, we might develop general requirements such as a process rule similar to section 112(g), which would be applicable to area sources in several source categories. These general requirements could outline procedures for determining what constitutes "generally available control technology" in this context. By following these procedures, States, local governments, and Tribal agencies could elect to develop GACT for the area sources. We'd review the resulting standards to ensure they were developed following the procedures contained within the general requirements and, if appropriate, we'd adopt the standards as GACT for these area sources.

We believe this approach presents several advantages. It could be implemented in a manner that permits State, local and Tribal agencies to

[33] U.S. EPA. Residual Risk Report to Congress. EPA–453/R–99–001. March 1999.

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address cumulative risk posed by exposures to HAP emissions from many different source categories. It also permits greater flexibility in tailoring GACT to individual area sources or area source categories which may contribute to an undue public health risk in a particular area. For example, a State, local or Tribal agency could tailor GACT to a particular source by requiring potentially more stringent controls when the source contributes emissions that, when aggregated with emissions from other sources in the area, pose health risk concerns. They could also require less stringent controls when the source is in an area where exposures to aggregated emissions don't present significant concern.

To supplement our general requirements, we may choose to issue control technique guidelines or alternative control technology documents to provide information on generally available control technologies for controlling HAP emissions.

2. The Legal Basis for Using GACT for Area Source Categories

Section 112(k)(3)(B)(ii) directs us to assure that the listed area sources are subject to standards under section 112(d), which includes two levels of standards—"maximum achievable control technology" (MACT) and "generally available control technology" (GACT). We read the requirement in section 112(k)(3)(B)(ii) to give us flexibility in deciding which level of control to apply to a given source category.

Unlike MACT, which is specifically described in sections 112(d)(2) and (3), the meaning of GACT, or of what is "generally available," is not defined in the Act. Section 112(d)(5) authorizes the Administrator to:

> [P]romulgate standards or requirements applicable to [area] sources * * * which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

Section 112(d)(5) thus doesn't limit us to strict "standard setting" in order to provide for the use of GACT. We read section 112(d)(5) to authorize promulgation of at least two types of rules: rules that set emission levels based on specific controls or management practices (analogous to MACT standard setting), and rules that establish permitting or other regulatory processes that result in the identification and application of GACT. As long as the result of the section 112(d)(5) rulemaking is that sources use enforceable generally available control technologies or management practices, section 112(d)(5) appears to give us flexibility in choosing between the adoption of numerical emission limits and the promulgation of other requirements that result in sources applying GACT.

As discussed previously, we intend to determine which of these regulatory approaches is most appropriate when we conduct rulemaking on the individual source categories. However, it's important to bear in mind that we retain authority under section 112(d) to regulate any listed area sources more stringently, under MACT, where appropriate, to effectively address risk. In addition, we can lower the emission thresholds for defining sources as "major" and, therefore, subject what would have otherwise been area sources to major source requirements (MACT).

3. Issues on the National vs. Local Scope of Area Source Standards

Section 112(k) requires that listed area source categories be subject to standards under section 112(d).

Many commenters on the draft Strategy addressed the implications of selecting a national versus a local scope for the area source standards. Some said national area source standards are unfair and inefficient, because they apply to sources located outside of urban areas where they may pose less risk. However, others said failing to apply the standards nationally creates an unlevel playing field for businesses in urban areas, encourages urban sprawl, and creates a disincentive for new businesses in brownfield and urban development areas.

As indicated by our initiatives on urban development and brownfield redevelopment, we share the concern of many commenters that applying standards only in the urban areas could negatively impact economic opportunities in the urban areas and could, in some cases, encourage urban sprawl. In addition, we're also concerned about the disproportionate public health risk for people, particularly sensitive populations such as children, in smaller cities or rural areas that might be located near area sources. However, we're aware that for some area source categories it may be more practical and appropriate to limit the applicability to urban areas. Thus, our expectations are to apply area source standards under section 112(k) nationally; however, for each individual area source category, we'll determine whether it's more appropriate for area source standards to apply nationally or only in urban areas.

For those area source categories where the standards only apply in urban areas, we'll look to the consolidated metropolitan statistical area (C/MSA) boundaries as a starting point to define the urban area. Although we used the urban 1 and urban 2 definitions[34] for the development of the inventory to support the HAPs and source category analysis, we believe the C/MSAs are more appropriate for defining applicability of area source standards because the C/MSAs better reflect the nature of population density, commercial development, area growth, and air emissions that represent urban areas.

Although we generally believe that urban areas are those C/MSAs with populations of more than 50,000, we recognize that the appropriate area in which standards should apply may vary among area source categories. Consequently, we believe the determination of the area in which standards will apply should be made separately for each source category.

4. Title V Permits for Area Sources

Under section 502(a) of the Act, area sources can be exempted from Title V permitting if the Administrator determines that compliance with Title V requirements is impracticable, infeasible, or unnecessarily burdensome for the area sources in question. As specified in 40 CFR 63.1(c)(2), 70.3(b)(2) and 71.3(b)(2), individual standards promulgated under part 63 will specify whether Title V permits are required for area sources. Consequently, we'll determine in each subpart that is developed for the Strategy whether area sources affected by the subpart are subject to, or exempt from, Title V permitting.

Factors that might influence this determination were raised by commenters. For example, many commenters felt that area sources are often small businesses, and that requiring Title V permits for these sources places an unfair resource burden on them. Other commenters felt that these sources should be covered by Title V permits in order to provide resources to the States through the collection of Title V fees, and to provide an opportunity for community input on the establishment of area source requirements. Title V, which is implemented through regulations codified in 40 CFR parts 70 and 71, generally requires owners or operators of area sources subject to section 112 standards to obtain Title V permits.

[34] Urban 1 areas are those counties that have a population of more than 250,000. Urban 2 areas are counties where at least 50 percent of the population is considered to be urban.

We also received a number of comments in regard to Title V fees and the Strategy. Some commenters requested that area sources subject to the Title V program be charged an annual fee, rather than a per ton fee. How Title V fees are assessed is determined by the individual permitting authority and is subject to approval by EPA as part of the permitting authority's Title V program submittal to the Agency. Permitting authorities are free to assess fees based on criteria other than emissions, including application fees or service-based fees. Moreover, permitting authorities can assess fees differently among Title V sources. Therefore, we don't have the authority under section 112(k) of the Act to establish a new basis for assessing Title V fees.

Other commenters requested that Title V fees be used to fund state toxics reduction programs. We must emphasize that, according to 40 CFR 70.9(a), Title V fees are to be used solely to fund a permitting authority's Title V program and not non-Title V activities.

5. Schedule for Area Source Standards

We've revised the time line we presented in the draft Strategy for area source standards development. We believe the following milestones reflect a more realistic estimate of the average 4 years it takes to develop MACT/GACT standards. We intend to address the source categories newly listed here by 2004, and address additional source categories listed later in the process of implementing the Strategy in later years (i.e., 2006–2009).

- 2004—promulgate the area source standards newly listed in today's Strategy. We'll attempt to meet this demanding schedule as expeditiously as practicable.
- 2006—promulgate additional area source standards to meet the 90-percent requirement.
- 2009—promulgate all remaining area source standards necessary to meet the 90-percent requirement.
- 2012—expected compliance under all standards.

We'll prioritize the order in which we regulate source categories to address those posing the greatest risks first. This will be a part of our initial assessments, which will be done in the spring of 2000. We'll be developing standards between now and 2009. Compliance with these standards is required within 3 years of promulgation. Therefore, compliance with all standards is anticipated by no later than 2012.

6. Our Approach for Mobile Source Hazardous Air Toxic Controls

Title II of the Act provides several mechanisms to achieve reductions in hazardous air pollutants from mobile sources. The most direct of these is section 202(l) which requires us to identify the need for and consider regulations for control of HAPs from motor vehicles and their fuels.

Pursuant to section 202(l)(1) of the Act, we released the "Motor Vehicle-Related Air Toxics Study" in 1993.[35] This study summarized information on emissions of toxic air pollutants associated with motor vehicles and motor vehicle fuels, as well as estimated exposures, and potential risks. The study also provided cancer risk estimates for several air toxics for different years under various control scenarios. We've recently completed draft analyses to update the emissions and exposure analyses done for this study to account for new information.[36, 37] These draft analyses include base scenarios for 1990, 1996, 2007, and 2020, and control scenarios in 2007 and 2020. We modeled toxic emissions and exposure for the following urban areas: Chicago, Denver, Houston, Minneapolis, New York, Philadelphia, Phoenix, Spokane, and St. Louis. We assessed emissions and exposure from benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel particulate. Experts and stakeholders are currently reviewing the methodologies and assumptions used in the analyses, and work is on-going to extend and revise the analyses.

As mentioned before, diesel particulate matter (PM), which is emitted primarily by mobile sources, isn't included on the section 112(b) list of 188 HAP, and, as a result, isn't included on the urban HAP list. However, we're currently investigating the health risks associated with diesel PM and assessing its role in the urban air toxics problem. We're concerned about the potential health risks associated with exposures to the emissions of this pollutant mixture.

Diesel PM is a complex pollutant mixture that is emitted primarily by mobile sources. Heavy-duty highway and nonroad diesel engines are the largest sources of diesel PM, with the total on-road and non-road diesel PM emissions for 1997 being 516,373 thousand tons.[38] While diesel engines are used in a relatively small number of cars and light-duty trucks today, vehicle and engine manufacturers are developing new engine models that may be used in an increasing share of the light-duty fleet, particularly light-duty trucks. If sales of car and light trucks with diesel engines increase substantially over time, the potential health risks from diesel PM could also increase substantially.

Diesel PM typically consists of a solid core, composed mainly of elemental carbon, which has a coating of various organic and inorganic compounds. The characteristically small particle size increases the likelihood that the particles and the attached compounds will reach and lodge in the deepest and more sensitive areas of the human lung. Both the diesel particle and the attached compounds may be influential in contributing to a potential for human health hazard from long term exposure.

Section 202(l)(2) of the Act directs us to set standards to control HAPs from motor vehicles, their fuels, or both. Those standards are to be set based on available technology, taking existing standards, costs, noise, energy and safety factors into account. The Act also specifies that, at minimum, benzene and formaldehyde emissions must be addressed. We're currently working on a proposal in compliance with section 202(l)(2).

In developing the section 202(l)(2) proposal, we'll draw on the 1993 study, and more recent analyses when completed, to describe the magnitude of exposure and potential health risk to the public from toxic emissions from motor vehicles and their fuels. We'll examine exposure and potential risk in a number of urban areas, as well as on a nationwide basis. With regard to control strategies, several of the existing emission control programs developed under section 202(a) (motor vehicle

[35] Motor Vehicle-Related Air Toxics Study, U.S. Environmental Protection Agency, Office of Mobile Sources, Ann Arbor, MI. EPA Report No. EPA 420–R–93–005. April 1993.

[36] Estimation of Motor Vehicle Toxic Emissions and Exposure in Selected Urban Areas. Prepared by Sierra Research, Inc., Radian International Corp., and Energy & Environmental Analysis, Inc. for U.S. EPA, Office of Mobile Sources, Assessment and Modeling Division, Ann Arbor, MI. Report No. EPA420–D–99–002, March 1999.

[37] Sierra Research, Inc. "On-Road Motor Vehicle National Toxics Exposure Estimates". Memorandum from Philip Heirigs to Rich Cook, U.S. EPA. October 15, 1998.

[38] EPA National Air Pollutant Emissions Trends Update, 1970–1997. December 1998, EPA–454/E–98–007. This number also represents PM10 emissions, while PM–2.5 emissions are approximately 474 million tons. Non-road emissions include locomotives, and the on-road calculation excludes tire and brake wear.

[38] EPA National Air Pollutant Emissions Trends Update, 1970–1997, December 1998, EPA–454/E–98–007. This number also represents PM10 emissions, while PM–2.5 emissions are approximately 474 million tons. Non-road emissions include locomotives, and the on-road calculation excludes tire and brake wear.

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controls) and section 211 (fuel controls) of the Act already limit many HAP emissions from motor vehicles and their fuels. We'll consider these programs, as well as our on-going regulatory activities (such as our recent proposal for new light-duty "Tier 2" emission standards and gasoline sulfur controls and our recent Advanced Notice of Proposed Rulemaking for diesel fuel control), in our assessment of whether additional controls are appropriate under section 202(l)(2).

In addition to fulfilling the requirement to examine emissions and health risks from motor vehicles and their fuels, we'll continue our efforts to ensure coordinated use of our standard-setting authorities to address priority risks from mobile sources. In particular, as we review existing regulations for a number of motor vehicle and nonroad engine categories, the goal of reducing air toxics risks will be considered. In addition, we envision that work done in the early stages of implementing the Strategy, such as improving monitoring and inventories, will help us compare options related to the various emissions sources in urban areas and control authorities to provide the best relative reduction of risk to the urban public.

7. Role Major Stationary Sources Play in the Strategy

As discussed in section I.C., section 112(k)(3)(B) requires that we ensure that area sources accounting for 90 percent of the aggregate emissions of each of the 30 area source HAPs are subject to standards. However, in achieving required reductions in cancer incidences, section 112(k)(3)(C) permits us to consider reductions in public health risks resulting from actions to reduce emissions from "all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws." Therefore, we'll consider emission reductions from a combination of major and area sources in conducting risk assessments to address this requirement.

These assessments will support regulatory efforts under the Clean Air Act and other authorities, as necessary, to address the identified risk. For example, any reductions resulting from MACT, the national ambient air quality standards, and other programs that achieve reductions in HAPs can be included in the assessment of reductions in risks. Therefore, if we determine that a source category or an individual source is presenting a significant health risk, then we'll address it using the appropriate regulatory authority. For example, if needed to provide an ample margin of safety to protect human health, section 112(f) residual risk standards will be developed for source categories currently subject to MACT. Additionally, if our analyses reveal a major source category that is currently unregulated or unlisted, but poses a public health risk, we'll list that source category under the authority of section 112(c) and develop the necessary regulations under section 112(d), or we may address it through other activities like pollution prevention or voluntary programs. Similarly, if a specific source is contributing to a local risk problem, then the State, local or Tribal program may be more appropriate for addressing that risk.

8. Our Approach for Combinations of Sources

We also intend to coordinate our authorities in addressing cumulative risks posed by exposures to aggregate emissions from multiple source types. For example, many commenters raised concerns about the risks from airports to the communities that surround them. Airports can be viewed as mini-cities, which produce numerous pollutants from multiple sources and are governed by many different authorities. We'll need to have an integrated strategy to reduce air emissions and the many other environmental impacts associated with aviation activities.

Although airports don't meet the definition of "area" or "major" source under section 112 of the Act, we're involved with numerous efforts to better understand and reduce the environmental impacts of aviation-related activities and their associated human health risks. For example, we co-chair the EPA/Federal Aviation Administration Voluntary Aircraft Emissions Reduction Initiative, a multi-stakeholder process designed to identify and evaluate technically feasible and cost-effective voluntary measures to reduce aviation emissions. We're also participating with other stakeholders in the development of the South Coast Ground Service Equipment memorandum of understanding (MOU) in California to identify ways to achieve additional emissions reductions from the commercial aviation community. Implementation of the MOU, which should be finalized in the summer of 1999, should yield emission reductions through increased use of cleaner engines, electrification, and alternative fuels. In addition, we're developing a Green Airport Initiative to demonstrate innovative strategies for reducing the environmental impacts of aviation-related activities at an airport undergoing expansion. In April 1999, we released a report that assesses the current and potential impact of aircraft emissions on local air quality at ten selected airports.[39] The regulatory and voluntary actions underway for aviation will produce data that can inform this Strategy and begin to address the environmental impacts of aviation-related activities and their associated risks to the communities that surround them.

D. How do the Various Federal Authorities Help EPA Implement the Strategy?

We've already made progress in addressing air toxics emissions using existing programs. To put the problem in perspective, we estimate that approximately 8.1 million tons of 188 HAPs were released in the United States in 1993.[40] We've already issued at least 43 MACT and GACT standards and two section 129 standards with post-1993 compliance dates, which will address these emissions. Emission controls for the nation's cars, trucks and off-road equipment, and standards for fuels add even more to these reductions. In this section, we'll discuss the utility of these programs and others to achieve additional air toxics emissions reductions.

Federal Regulatory Activities—Clean Air Act Section 112 Authorities

Section 112 of the Act provides several authorities for us to use in meeting our air toxics goals. We've promulgated section 112(d) MACT and GACT standards that are projected to reduce air toxics emissions by approximately 1 million tons per year once fully implemented. Within the next 10 years, as we complete more MACT and GACT standards, the air toxics program is estimated to reduce emissions of toxic air pollutants by well over 1.5 million tons per year.[41] These nationwide emission reductions will contribute significantly to reductions needed in urban areas.

The need for section 112(f) standards, or "residual risk" standards, is under consideration for some of the early source categories covered by MACT standards. Where justified, these standards will address remaining public health and environmental impacts of HAPs to ensure an ample margin of safety to protect public health and, in consideration of other factors, to prevent adverse environmental effects.

[39] "Evaluation of Air Pollutant Emissions from Subsonic Commercial Jet Aircraft," U.S. EPA, April 1999.

[40] "Latest Finding on the National Air Quality: 1997 Status and Trends," December 1998.

[41] See footnote 40.

Consistent with the requirements of the Act, we'll evaluate the need for residual risk standards for those area source categories covered by MACT standards, and will consider such evaluation for those area source categories for which GACT standards have been promulgated.

The chemical accident prevention regulations ("Risk Management Program requirements" or "RMP rule"), were promulgated under section 112(r). These regulations require owners and operators handling more than a threshold quantity of any substance listed in 40 CFR 68.130 in a process, to develop risk management plans to prevent and address accidental releases. Eighteen of these listed substances are HAPs. By preventing accidental releases, the RMP rule will help reduce or prevent emissions of these HAPs in the future.

We've already received several requests for permits under the section 112(g) construction and reconstruction rule. This rule applies to new or reconstructed major sources and requires them to install MACT to reduce HAP emissions. In addition, the section 112(i)(5) rule (early reductions) provides incentives for sources to reduce emissions by up to 95 percent from 1990 levels prior to proposal of MACT for that source category. Approximately 27 Title V permit applications have been received, representing HAP reductions of over 6,800 tons.

Other CAA Authorities

Other programs under the Act also contribute to the reduction of HAPs in urban areas. For example, section 109 requires States to develop State implementation plans to attain compliance with the national ambient air quality standards (NAAQS). Many of the activities that are designed to address criteria pollutants (e.g., ozone, particulate matter and lead) and attain the NAAQS also achieve reductions in air toxics. For example, many of the VOCs that form ozone are also air toxics, such as benzene and 1,3-butadiene. In addition, some VOCs can react in the atmosphere to form HAPs such as formaldehyde. Thus, controlling VOCs leads to reductions in air toxics. Similarly, compliance with the PM standards will provide incidental, but potentially significant, reductions in HAPs that are either emitted in the form of particulate matter or that condense to form particles in the atmosphere. These include polycyclic organic matter (POM), chromium, mercury, and other metals. In addition, lead is a criteria pollutant and lead compounds are listed as a HAP, so reducing lead emissions through the lead NAAQS also reduces HAPs.

With regard to mobile sources, in addition to authority under section 202(1) to address hazardous air toxics, other sections of Title II that address mobile sources, including other parts of section 202 (motor vehicles), section 211 (fuel requirements), section 213 (emission standards for nonroad engines and vehicles), and section 219 (urban bus standards), are resulting in reductions in urban air toxics by limiting VOCs, oxides of nitrogen, and particulate matter.

We've established section 129 performance standards for two source categories for combustion sources. These are expected to result in over 50,000 tons per year in HAP reductions, much of which may be in urban areas. Finally, actions taken under Title IV, the acid rain program, and Title VI, stratospheric ozone layer protection, also reduce or eliminate certain urban air toxic emissions.

Other Federal Laws

There are a number of other authorities, laws, rules, and programs that will also help reduce emissions of HAPs and consequent exposures and risks. We're evaluating the appropriateness of these statutes for controlling emissions of HAPs as described under section 112(k)(3) and intend to take further actions under these statutes as appropriate. The contribution of other Federal programs to achieving the goals of the strategy is discussed in more detail in Appendix A. Following is a list of some relevant programs:

- Superfund Amendments and Reauthorization Act (SARA) Title IV.
- Toxic Substances Control Act (TSCA).
- Resource Conservation and Recovery Act (RCRA).
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- Clean Water Act (CWA).
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).
- Emergency Planning and Community Right-To-Know Act (EPCRA) of 1986, especially Toxics Release Inventory requirements.
- Pollution Prevention Act (PPA) of 1990.
- Oil Pollution Act of 1990.

III. State, Local and Tribal Activities

A. Why are State, Local and Tribal Programs Integral to the Process?

The Act requires that the Strategy achieve the risk reduction goals considering control of emissions of HAPs from all stationary sources, using measures implemented by us under the Clean Air Act or other laws or by the States. In addition, section 112(k)(4) requires us to encourage State and local programs. By providing for State reductions in achieving the goals, Congress acknowledged that there are many State programs achieving HAP emissions reductions and, therefore, reducing the chance for exposure and health risks, including cancer. For example, before the Act was amended in 1990, many State, local and Tribal governments developed their own programs for the control of air toxics from stationary sources. Some of these programs have now been in place for many years and, for some of the source categories, they may have succeeded in reducing air toxics emissions to levels at or below those required by the Federal standards. It's clear that Congress intended State and local governments to be important partners in carrying out the mandates of the Federal air toxics program, and this Strategy provides a mechanism to recognize the reductions made by them.

Because of the varied nature of the emissions sources, legislative structures, and other factors, the State, local and Tribal government programs address air toxics in a number of ways. For example, some programs have enacted technology standards for source categories that require controls for specific HAPs, much like the MACT program. Other programs apply a risk standard that prohibits emissions that result in exceedances of a certain level of risk, or they use an ambient air standard for air toxics that is based on threshold or exposure levels. Still others may rely on reductions achieved through volatile organic compound, particulate matter, or lead regulations developed under section 110 or subpart D of the Act to meet national ambient air quality standards. Regardless of the approaches used to address air toxics, State, local and Tribal governments have accomplished and continue to accomplish reductions in HAPs. As we proceed to implement the Strategy, we'll work with these governments to better characterize these reductions in emissions and the resulting reductions of public health risks, including risk of cancer.

Developing the Strategy is a challenge at the national level because urban air toxics problems vary significantly across the country. Because of this variability, the Strategy works best if approached as a partnership between EPA and State, local and Tribal governments. These governments (including municipal

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offices other than pollution control departments) have the most experience with local air pollution issues, and can lend their expertise and knowledge to address and resolve air toxics concerns that are unique to cities. Many of these governments also have existing air pollution control programs that currently address, and can effectively continue to address, some or all of these issues. In addition, these governments are often able to act much more quickly than we can to address local concerns, which leads to less overall pollution, particularly in the areas where pollution is of greatest concern.

At the Federal level, we can contribute Federal standards and requirements using our authorities to develop and implement a national regulatory program. We also have the resources and expertise to evaluate, or to help other agencies evaluate, toxic pollution problems. By integrating our relative strengths, we can provide a stronger, more efficient, and more effective program to address toxic air pollution in urban areas.

B. What Are the Objectives of State, Local and Tribal Activities?

The Strategy will be a partnership between EPA and State, local and Tribal governments to address the risks from air toxics in urban areas. Section I.C. of this document describes the goals of the Strategy. Listed below are the objectives that we've identified to guide the actions taken by us and our governmental partners, so that those actions will be effective and efficient in achieving the goals of the Strategy:

• *Establish appropriate Federal measures, through guidance, policies, and rulemaking, which enable State, local and Tribal agencies to be full partners.* Many of the State, local and Tribal agencies may be unable to do more than the Federal laws and rules require. These agencies could benefit from Federal rulemaking guidance in addressing local issues. At the same time, we recognize the need for flexibility for these agencies to identify and address the local issues. We need State, local and Tribal agencies' help to reach the Act's goals for healthy air, and they'll benefit by being able to tailor the Strategy to their specific needs.

• *Provide flexibility for strong State, local and Tribal programs.* Many of these governments have developed their own air programs. In fact, we received many comments requesting that the Strategy acknowledge programs that are already in place. Those governments that have been pro-active in controlling air toxics can benefit by tailoring the Strategy to their own needs, or by being able to implement a program earlier than we can.

• *Provide incentives for State, local and Tribal action.* Since enabling through standards, policies and guidance and providing flexibility can result in more effective and earlier controls of urban HAPs, it will be beneficial to State, local, and Tribal governments, to us, and to the public to facilitate State, local and Tribal actions.

• *Set priorities among urban areas and source categories.* Given the broad scope of the Strategy and the time it may take to implement, it may be most effective to first identify and address those areas and sources with the highest air toxic emissions or exposure levels (including consideration of multipathway exposure where appropriate).

• *Provide information to the public on HAPs and potential risk in urban areas.* The public benefits by having a sound basis to use in setting their pollution control priorities and communicating their priorities to us. Providing information to the public is also our responsibility, and an informed public will be better equipped to help us set priorities for appropriate State, local and Tribal HAP control actions. This public outreach will include not only information on exposure to air toxics, but also information on the link between water quality and the deposition of air toxics.

• *Facilitate a focus on areas with disproportionate impacts and greatest risks.* The Strategy is intended to recognize the potential for disproportionate impacts of air toxics hazards across urban areas. State, local and Tribal governments can be particularly effective in identifying and addressing disproportionate impacts of HAPs. We'll work with our regulatory partners to provide technical and policy guidance to help identify and address disproportionate impacts from HAPs, including consideration of multipathway exposure as appropriate.

C. What Were Comments on the State/Local/Tribal Programs and How Are They Being Addressed in the Strategy Development?

Commenters expressed a general desire for more information on the State/local/Tribal agencies' roles and responsibilities in the development and implementation of the Strategy. The nature of the discussion in this part of the Strategy is general because our efforts to develop urban air toxics strategies with State, local, and Tribal governments are in an early stage of development. As described in a later section, we plan to conduct assessments to better understand our status with regard to the goals of the Strategy. We intend to use this information and also gather more input from relevant parties in the development of those programs through stakeholder meetings.

Commenters had a wide variety of opinions beyond a general desire for more information. Some State, local or Tribal governments have well-developed programs and ample resources for both the scientific and regulatory aspects of an air program, while many others have less experience and/or inadequate resources and don't do more than the Federal government requires. As a result, some States believe that their programs are mature enough to be given the flexibility to identify HAPs and source categories to address the section 112(k) requirements for themselves, and they and large industries located in these States requested local flexibility. Other regulatory agencies, small businesses and public health/environmental advocacy groups recommended against such flexibility and requested national Federally-mandated programs with Federal enforceability. We believe there are valid points from all sides. Those wanting flexibility note that risk reductions tailored to the local situation can be more effective than national solutions and that this approach takes advantage of work they already have in progress. Those wanting Federally-imposed programs note that without such Federal mandates, the playing field wouldn't be level for small businesses across different areas. In addition, some State, local or Tribal programs wouldn't be able to address urban air toxics without a Federal requirement. We will convene stakeholder meetings early in the next fiscal year to resolve these issues on State, local and Tribal programs. This time frame will allow for consideration of information from our national assessment. We plan to bring stakeholders together regularly for approximately six months and then take their input, along with comments already received on the Strategy, to develop a plan for implementing the State program. We intend to release this plan no later than six months after the end of the stakeholder meetings.

D. How Can State, Local or Tribal Agencies Participate in the Strategy?

The Strategy needs to be a partnership between EPA and State, local and Tribal agencies in order to focus on local urban air toxics concerns. But our relative roles may vary according to the needs of particular urban areas and any limitations faced by State, local and Tribal governments. With our regulatory partners, we'll discuss and explore options for how the State, local and Tribal agencies should participate in developing and implementing the Strategy to address public and other environmental issues related to air toxics.

We see a broad range of possibilities for State, local and Tribal agency participation. For example, as indicated above, many regulatory agency programs are designed to implement delegated Federal requirements. However to provide additional flexibility, we may be able to provide a Federal program that allows the agencies to either develop and substitute their own requirements for an existing Federal program, or, if they wish, to simply adopt and implement a risk reduction program designed by us. For example, we could promulgate a Federal rule describing how we'd develop and implement a local risk reduction program. State, local or Tribal agencies could then either develop and implement a program modeled on ours, or submit an alternative program for our approval.

Alternatively, instead of promulgating a Federal rule setting out the details of an acceptable risk reduction program, we could promulgate a set of minimum elements that any local risk reduction program—whether implemented by us or a State, local or Tribal agency—must contain. This would provide agencies with more flexibility to design and implement their own risk reduction programs that we could approve.

The Federal role in developing additional risk reduction strategies for urban areas could be smaller still. It may not be necessary for us to directly guide development of State, local and Tribal programs. It may be enough for us to encourage them to meet the goals of the Strategy, and to provide necessary guidance. In the end, we (or the State, local or Tribal agency) would still need to measure progress against the mandatory goals of the Act. We might then need to determine whether additional Federal action is warranted to meet the goals.

In evaluating and comparing the options we develop together, we and our regulatory partners and other stakeholders will need to consider how well each option addresses the objectives described in section III.B. We'll also need to consider such other issues as practicality of implementation, resource burden at each governmental level, and possible adverse impacts on other Federal, State, local or Tribal programs.

E. What Elements Should a State, Local or Tribal Program Contain?

No matter who develops and implements State, local or Tribal programs, they should contain certain basic elements to allow them to meet the risk reduction goals of the Strategy. For example, the following list of elements should be considered:

• Locally-focused assessment using existing information and sufficiently refined tools to identify significant contributors to urban risk, problem chemicals and sources, geographic "hot spots" within an urban area, and characteristics of at-risk populations.

• A process, regulatory or otherwise, to develop strategies aimed at reducing risk from those sources.

• Opportunity for public review of both the baseline assessment and the proposed risk reduction strategies.

• A process and schedule for implementing the risk reduction strategies.

• Evaluation of whether the goals of the Strategy have been met.

• Provisions to implement additional risk reduction strategies if the goals have not been met.

• A process to encourage public participation.

At this point, this list is fairly general, because we don't have enough information to more fully develop this program structure. However, over the next couple of years, we'll be working to further develop this aspect of the Strategy, to develop and use information from assessments and other tools to guide our thinking, and to get input from our stakeholders. For example, once we've completed the initial assessment in the spring of 2000 (as described in section IV), we'll know better our status with regard to risk reduction goals of the Strategy. This will inform us about additional Federal activities needed to meet those goals, and what additional State, local and Tribal activities are needed to complement these activities. As described in section IV, periodic assessments will continue to inform us about needed programs over time. In the interim, while we're waiting for completion of the initial assessment, we plan to meet with our State, local and Tribal partners. We'll be reviewing the goals and the various components of the Strategy and how they interrelate. In particular, we'll focus on the assessment tools and their role in defining Federal, State and local activities, and we'll exchange information to help better refine the tools.

IV. Assessment Activities

This discussion of our assessment activities first focuses on how we generally intend to assess progress in meeting the goals of the Strategy. We then discuss our methods and tools for estimating health risks and describe more specifically how we intend to apply these risk assessment methods and tools in assessing progress and in supporting implementation of the Strategy. However, it is important to remember that the NATA assessments are designed to address all of the goals and activities of our overall air toxics program.

Historically, Agency risk assessment and decision-making have focused on the likelihood of health effects associated with exposure to individual environmental contaminants. In recent years, as we move from a focus on emissions reductions toward a focus on estimated risk reduction, our risk assessment emphasis has shifted increasingly to a greater consideration of multiple endpoints, pathways and routes of exposure and holistic reduction of risk. This more complex assessment is often called "cumulative risk assessment," defined according to who or what is at risk of adverse effects—from identifiable sources and stressors—through several routes of exposure over varied time frames. While various integrated approaches are now being used within the Agency, we realize that there are significant gaps in methods, models and data that limit our ability to assess cancer and non-cancer risks associated with cumulative exposure to mixtures of pollutants having different endpoints. We've identified both short-term and long-term research needs to fill these gaps, highlighted in section V.D. of this notice. Progress toward more refined assessments of cumulative risks will depend upon the pace and evolution of our policy and guidance on cumulative risk and the underlying research.

A. How Will We Assess Progress Toward Goals?

Assessing progress in reducing cumulative risk from HAPs will require us to move away from a focus on assessing reductions in tons per year emitted, toward a focus on estimating reductions in cancer and non-cancer risks associated with lower emissions.

"Cancer" describes a group of related diseases that affect a variety of organs and tissues. Cancer results from a combination of genetic damage and non-genetic factors that favor the growth of damaged cells. At current cancer incidence rates, approximately one third

of U.S. residents may be expected eventually to contract some form of cancer. Cancer is associated with a wide range of factors, of which exposure to HAPs is only one. Other causes of cancer, including genetic susceptibility, diet, smoking, background radiation, and lifestyle, are thought to be the dominant factors determining total cancer incidence. Given these complexities, the rate of cancers associated with HAPs alone cannot be observed directly. Attributing cancer to specific factors is also complicated by the fact that many cancers do not appear for years, or decades, after exposure and, therefore, may have been caused by exposures long past and in different locations. As a result, we'll need to rely on modeled estimates of cancer risk rather than on direct measurements for assessing the Strategy's progress toward the goal of 75-percent reduction in cancer incidence associated with HAPs.

Adverse health effects other than cancer ("non-cancer risks") include a wide range of health endpoints in all organ systems (for example, cardiovascular, immune, liver, kidney).[42] As with cancer, other factors such as diet, lifestyle, and other exposures (for example, smoking) may exert a dominant influence over incidence of adverse non-cancer health effects. Therefore, as with carcinogens, we expect to rely primarily on risk estimates to assess progress, rather than on direct measurements of changes in the incidence of adverse non-cancer health impacts due to reductions in emissions.

The Act sets a clear numerical goal for reduction in cancer incidence, but specifies only a "substantial" reduction in public health risks for effects other than cancer. We see a need to define and clarify this goal more fully as we work to implement this Strategy, but we haven't yet developed a specific numerical goal for risk reduction for various non-cancer effects. One major purpose of our non-cancer risk assessments will be to provide a sound technical basis for developing and defining non-cancer goals that are quantifiable, attainable, and consistent with the Act.

Since cancer and non-cancer health impacts can't be directly isolated and measured, we and others have spent more than two decades developing an extensive set of risk assessment methods, tools and data that serve the purpose of estimating health risks for many of our programs. Our risk assessment science has been extensively peer-reviewed, is widely used and understood by the scientific community, and continues to expand and evolve as scientific knowledge advances. We intend to use the most current and appropriate risk estimation methods in tracking progress under the Strategy.

Our risk assessments, reflecting the risk paradigm set forth by the National Academy of Sciences in 1983,[43] are based in general on a combination of two types of analyses. The first type of analysis examines what adverse effects a substance causes (the "hazard identification"), and the specific exposures at which these effects occur (the "dose-response assessment"), and is usually based on human or animal studies of high quality published in peer-reviewed scientific journals. This type of analysis allows us to evaluate a chemical's potential to cause cancer and other adverse health effects.

The second type of analysis estimates the levels of exposure that people receive within the environment. We develop this "exposure assessment" in stepwise fashion for air pollutants, with the first step being the compilation of emissions data. Second, these data are input to a dispersion model, which estimates ambient air concentrations. These modeled ambient concentrations may be compared to monitoring data in order to test and validate the models. Third, we estimate exposures to ambient concentrations by applying models of human behavior patterns, and incorporate measured personal exposure information when available.

These two types of analyses—the exposure that causes harm and the exposure people actually receive—are combined in a "risk characterization" that describes the potential for real-world exposures to cause harm, and the uncertainties surrounding the characterization.

B. What Methods, Tools, and Data Will We Use To Estimate risk?

1. Evaluating a Chemical's Potential To Cause Cancer

Our dose-response assessments for carcinogens are based on mathematical models and assumptions that support extrapolation from high to low doses and from non-human test species to humans. As a matter of science policy, many of these assumptions are protective, to avoid underestimating cancer risks where data are incomplete. The most important of these assumptions for most carcinogenic chemicals is that risk is proportional to dose, with no threshold dose below which there is no risk. Our dose-response assessments for inhalation of carcinogens are expressed as a "unit risk," that is, risk per microgram per cubic meter of daily exposure during a lifetime. The unit risk is defined as a conservative estimate of an individual's excess probability of contracting cancer at the end of 70 years exposure to a continuous level of one microgram per cubic meter. Risks from exposures to concentrations other than one microgram per cubic meter are modeled as proportional, with half the concentration producing half the estimated risk, and so on.

Each word in the above definition of unit risk carries significant meaning. First, the unit risk is a conservative rather than a "best" estimate. This means that the actual unit risk is unknown, and is very likely to be lower than estimated and very unlikely to be higher. Second, as already described, risks are estimated rather than measured. Third, the unit risk applies to an individual, although cancer incidence in a population can be estimated across a group by aggregating the risk of each person. Fourth, unit risk estimates focus only on the route of exposure being analyzed. Fifth, unit risks are expressed in terms of probability. For example, we may determine the unit risk of a particular HAP to be one in ten thousand per microgram per cubic meter. This means that, of ten thousand people who continuously inhale an average of one microgram per cubic meter of this particular HAP for 70 years, no more than one would be expected to contract cancer from the exposure. Sixth, risks are generally expressed in terms of contracting cancer, not dying from it. Finally, exposures are averaged over a 70-year lifetime, to account for long-term exposures to low levels of carcinogens.

We intend to use unit risk estimates as the dose-response component in estimating plausible reductions in cancer incidence achieved by this Strategy.

2. Evaluating a Chemical's Potential To Cause Adverse Effects Other Than Cancer

Adverse health effects other than cancer ("non-cancer risks") cover a wide range of health endpoints in all organ systems (for example, cardiovascular, immune, liver, kidney).

[42] Some HAPs that cause cancer may also cause adverse non-cancer health effects at environmentally relevant doses. Thus, when we discuss "non-carcinogens," we mean substances that may potentially cause non-cancer effects in humans. Some of the same substances may also be evaluated as carcinogens.

[43] National Research Council (NRC). 1983. Risk assessment in the federal government: Managing the process. National Academy Press, Washington, D.C.

For this reason, we've developed our non-cancer dose-response assessment methods to address several additional sources of complexity beyond those found in cancer assessments. First, organisms possess varying abilities to eliminate, detoxify, and sequester many toxic substances, and to repair some amount of damage that those toxic substances may cause to tissues and organs. For this reason, most chemicals don't cause observable adverse non-cancer health effects until some threshold dose has been exceeded. Second, the appearance of a toxic response when the threshold dose is exceeded is seldom proportional to dose. The shape of "dose-response curves" (for example, a graph of the number of individuals affected at varying dose levels) varies substantially among chemicals, so there is no single model that can be applied to all non-carcinogens. Third, available information for most HAPs comes from animal studies, and significant uncertainty is associated with extrapolating these results to humans to support predictions of human dose-response curves.

For these reasons, non-cancer dose-response assessments for inhalation are usually expressed in terms of a "reference concentration," defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious non-cancer effects during a lifetime. We intend to use reference concentrations as the dose-response component for estimating reductions in non-cancer risk achieved by this Strategy.[44]

3. Assessing Exposures and Characterizing Risks

In general, the choice of appropriate risk characterization approaches will be influenced by both the availability of data to support exposure assessment, and the level of detail and resolution needed to support the purpose of the assessment. Possible approaches span a wide range, from simple weighting adjustments of emissions data or ambient concentrations, to detailed multipathway risk assessments. We've identified four basic approaches that we plan to use for various assessments to evaluate the progress of the Strategy in reducing estimated risk. Each of these approaches uses the same dose-response information described above, but relies on different types of data to represent exposures. The four basic approaches we intend to use are: (1) Emissions or ambient concentration weighting;(2) comparisons between ambient concentrations and risk-based concentrations (RBCs)[45]; (3) comparisons between estimated exposures and RBCs, that may yield quantitative estimates of risk; and (4) quantitative estimates of carcinogenic risk for individuals and populations.

Approaches (1) and (2) are considered hazard-based approaches, in that they lack the dispersion and/or human exposure modeling steps of an exposure assessment and therefore cannot provide quantitative estimates of risk. However, they can provide valuable information, subject to substantial uncertainty, that may be useful in evaluating progress toward risk reduction goals. In contrast, approaches (3) and (4) are considered risk-based approaches, in that they do incorporate exposure assessments and thereby can provide quantitative risk estimates.

(1) Weighted emissions or ambient concentrations. Weighting of emissions or ambient concentrations is the least resource-intensive approach of the four in terms of data needs and computational requirements.[46] This hazard-based approach combines HAP emissions or monitored HAP concentrations (acting as surrogates for exposure) with weighting factors (developed from unit risks and reference concentrations) that account for differences in relative toxicity among HAPs. Other weighting factors could also potentially be developed to account for differences in dispersion characteristics or variations in population density or behavior.

The toxicity adjustment is intended to account for differences in toxic potency among substances, placing all emissions data on the same scale of hazard potential. For example, acrylamide is approximately 160 times more potent a carcinogen than benzene, such that weighting by toxicity would consider one ton of acrylamide emissions equivalent to 160 tons of benzene. In a cumulative analysis, emissions or concentrations of each HAP would be weighted by its relative toxicity to allow for direct comparison and aggregation across HAPs (with carcinogenic and non-carcinogenic estimates aggregated separately). This type of analysis permits comparisons of relative hazard between pollutants with large mass emissions and low toxicity (for example, many non-chlorinated volatile compounds) against pollutants with small mass emissions but high toxicity (for example, dioxin).

As discussed above, the weighted emissions-or concentration-based approach lacks the last two steps of an exposure assessment, and therefore doesn't provide a quantitative estimate of risk. Also, because of the absence of these important exposure assessment steps, it isn't possible to say how closely changes in weighted emissions or concentrations will be related to changes in health risk. Nevertheless, emissions and ambient concentrations clearly have a strong influence over exposure and risk, and we anticipate that the toxicity-weighting approach will provide useful information to estimate progress where appropriate data for more refined assessment approaches aren't available.

(2) Ratios of ambient concentrations to RBCs. A second type of hazard-based approach is the comparison of ambient HAP concentrations with RBCs.[47] Ambient concentrations may be measured (as discussed in section V.A.) or modeled (section V.C.). Appropriate modeling approaches for estimating ambient concentrations at different spatial scales using emissions data include national-scale and urban-to neighborhood-scale air quality models, as well as multi-media models for urban-to neighborhood-scale analyses.

The RBCs used for comparison are derived from unit risks or reference concentrations. Specifically, cancer RBCs can be defined in terms of a fixed risk level (for example, HAP concentrations conservatively estimated to result in a one-in-ten-thousand or a

[44] The uncertainty surrounding reference concentrations (RfCs) varies substantially among HAPs, depending on the strength of the supporting data. As a result, RfCs vary in their level of protectiveness, with RfCs supported by strong toxicological data tending to be less protective. We recognize this important limitation to the use of RfCs, and may use more advanced dose-response models for specific HAPs where they can be applied.

[45] Risk-based concentrations for cancer are ambient concentrations associated with specific levels of cancer risk, assuming 70 years of continuous exposure. RBCs for non-cancer effects are ambient concentrations that pose no appreciable risk to humans, assuming continuous exposure. The use of RBCs does not imply a judgement that the concentrations are either acceptable or unacceptable, only that they have been derived in the same way for all HAPs.

[46] Peer-reviewed examples of this approach include the EPA/OPPT Risk-Screening Environmental Indicators, the EPA/OSW Waste Prioritization Management Tool, and the EPA/OAQPS ranking analysis for urban HAPs. See the public docket for a detailed list of risk assessment references.

[47] Peer-reviewed examples of the use of this approach include the concentration-toxicity screen used by EPA's Superfund program to select contaminants and exposures for detailed risk assessment, and EPA's Cumulative Exposure Project, which compared modeled ambient air concentration estimates with RBCs (termed Ahealth benchmarks" by the authors) for 148 HAPs nationwide. See the public docket for a detailed list of risk assessment references.

one-in-one-million upper-bound risk of contracting cancer from a lifetime exposure at the RBC). Non-cancer RBCs can be defined in terms of estimates of continuous exposure levels at which even sensitive subgroups are likely to be without any appreciable risk of adverse effects during a lifetime.

Because it is more complex than emissions-weighting, this type of analysis brings two significant advantages. First, it supports a more complete treatment of ambient HAP concentrations that are already below non-cancer RBCs, for which further reductions may not carry significant health benefits. Second, the use of dispersion models to predict ambient concentrations can potentially account for variations in factors such as location of exposed populations relative to sources of HAPs, differences in meteorological conditions, and differences in fate and transport characteristics among HAPs.

Nevertheless, this approach still lacks the third, human behavior-related, step in an exposure assessment. Therefore, it doesn't provide a quantitative estimate of risk, and its use in estimating progress is subject to greater uncertainty than approaches (3) and (4), below. Changes in health risk may not precisely track changes in concentration/RBC ratios. However, because ambient concentrations are important determiners of exposure and risk, we anticipate that the concentration/RBC approach will provide useful information to estimate progress where exposure assessment is not possible.

(3) Ratios of exposures to RBCs. A third type of approach begins with measured or modeled ambient HAP concentrations, and adds further refinement by overlaying estimates or measurements of population exposures. Thus, this risk-based approach is qualitatively different from the first two hazard-based approaches because it incorporates all three steps of an exposure assessment.

While human exposures are directly affected by ambient concentrations, they're also influenced by behavioral factors such as time spent outdoors, periodic movements (such as commuting) within an urban area, and activity levels. Exposures may be estimated with exposure models, as discussed in section V.C., that simulate the behavioral factors that determine exposure. Human exposure may also be directly measured by personal monitoring, in which subjects wear small air samplers and record their daily activities.

These estimated or measured exposures are then compared to RBCs[48] (as described above for approach (2)). Analogous to the comparisons in approach (2), hazard potential would typically be presented in terms of ratios of the exposure concentrations divided by RBCs. The additional complexity of estimating exposure provides three significant advantages over considering ambient concentrations alone. First, it provides a more realistic comparison with RBCs, which are based on unit risks and reference concentrations usually derived from doses actually received by test organisms. Second, exposure estimates can take into account behavioral differences between populations in different cities, or between different demographic groups. Third, exposure estimates support combining effects of multiple HAPs, considering non-additivity and similarities or differences in toxic mechanisms. Comparison of exposures with reference concentrations for non-cancer effects (acting as RBCs) is currently the most advanced approach available for assessing non-carcinogenic HAPs, although this may change in the future for some substances.

(4) Risk estimation. A fourth type of approach that can be used to estimate cancer incidence is comprehensive risk estimation, focusing on the most exposed individual or on entire populations or subgroups.[49] We'll derive risk estimates by combining exposure estimates with dose-response assessment results in terms of unit cancer risk estimates. Risk estimates will also consider non-standard dose-response models and complex interactions among different HAPs, if information is available. Such risk estimates represent the most refined analysis of the four approaches considered. Comprehensive assessments may contain modeling to account for environmental fate and transport of released pollutants, estimation of exposures to different subpopulations, detailed dose-response assessments for each HAP, and information on complex, non-additive interactions among HAPs. Results are expressed in terms of probabilities of developing cancer during a lifetime. Cancer risks are usually aggregated across HAPs by addition, but non-additive interactions are included if data permit.

In its most complete form, risk estimation produces results in probabilistic form (that is, with calculations considering a range of cancer risks and the likelihood of each), expressed in terms of a frequency distribution rather than as a single deterministic estimate. Of currently available approaches, risk estimation, presented probabilistically, provides the most complete, best-supported, and most accurate presentation of both risk and the variability and uncertainty surrounding it. However, this risk-based approach is much more resource- and calculation-intensive than are simpler approaches.

4. Summary

We anticipate tracking progress in reducing estimated cumulative risks from air toxics in urban areas by relying on estimates of health risk rather than by directly observing reductions in adverse health impacts in human populations. We consider these health risk estimates to be reasonable and appropriate indicators of progress toward meeting the goals of the Strategy. Their use is made necessary by the long latency period for cancer, the high background rate of human cancer from all sources, and complexities involved in attributing various non-cancer health effects to specific environmental causes. Our assessments will use a variety of approaches, including some that do not include all exposure assessment steps. In some cases the information may be too uncertain to support conclusions. We intend to evaluate these approaches against each other, in terms of their ability to estimate risk and their resource and data requirements, when supporting data become available in early 2000. These results will assist us in determining the scope, refinement, and precision of future assessments developed to reflect different purposes under the Strategy.

C. What Is Our Overall Risk Assessment Approach for the Strategy?

In section I, we discussed the key role that assessing air quality, exposure, and estimated risks will play in assessing progress toward meeting the goals of this Strategy. In addition, these assessment activities will, over time, also serve the following broader purposes:

- Improve the definition of the goal for "substantial" reduction in non-cancer risk.

[48] Peer-reviewed analyses of this type of analysis include many single-substance risk assessments. Several examples concern the fuel additives methylcyclopentadienyl manganese tricarbonyl (MMT) and methyl tertiary butyl ether (MTBE). See the public docket for a detailed list of risk assessment references.

[49] Examples of such multi-chemical, multipathway risk assessments include many performed by EPA's Superfund program under the Risk Assessment Guidelines for Superfund. See the public docket for a detailed list of risk assessment references.

- Support development of Federal area (as described earlier) and mobile (as appropriate under section 202(l)) source standards.
- Support decisions on how to conduct future risk assessments.
- Evaluate the effectiveness of each of the four approaches to characterizing risk reductions, described above.
- Provide guidance for State, local and Tribal agency efforts in conducting local assessments and developing risk reduction programs at the state and local levels.

Our assessment approach will be basically iterative in nature, so as to take advantage of emerging science, new data, and improved tools that become available at the time future assessments are performed. Consistent with this approach, beginning in early 2000, we'll conduct an initial set of assessments that will be based on final, updated emissions data, as discussed in section IV.D. Subsequent assessments will reflect the best available data, methods, and tools available at the time the assessments are performed.

Our national database of air toxics emissions from major, area, and mobile sources (including diesel exhaust), the NTI, will be a fundamental component of our risk assessments. We are now completing a baseline NTI representing the 1990–1993 period, and obtaining State review of a draft 1996 NTI suitable for use as input data for dispersion and exposure models (scheduled for completion in the fall of 1999). We plan to update the NTI every three years, and to conduct subsequent risk assessments to coincide with these revisions. Monitored air toxics concentrations will also be an important component of our assessment activities, in part to help us evaluate and refine our air quality models. We are now working with the States to design and implement a national air toxics monitoring network that will provide important information for future assessment activities. Our plans for the ambient monitoring network are described in more detail in section V.A.

1. How We Will Design Our Assessments

We'll tailor each assessment to the purpose(s) it is to serve (e.g., measuring progress against the 75-percent estimated cancer incidence reduction goal). Accordingly, assessments will vary in scope, level of refinement, and, thus, data and resource requirements. The scope of each assessment will generally be defined by the following characteristics:

- The number of HAPs to be evaluated (all 188 or some subset);
- Types of source included (area, major, mobile);
- Spatial resolution (for example, aggregation of results on the national, state, urban, or neighborhood scale); and
- Pathways/media to be evaluated (inhalation/air only or multipathway/multimedia).

Further, for each assessment, we need to specify an appropriate approach to use in estimating progress toward our risk reduction goals, since, as discussed above, it will not be possible to directly measure reduction in cancer incidence or non-cancer risks attributable to hazardous air pollutant emissions. Alternative approaches, discussed in section IV.B., range from rough approximations to more precise risk estimates, with data and resource requirements increasing for more precise assessments that require greater refinement.

2. How Our Assessments Will Address Disproportionate Risks

Disparities in risks from air toxics in the urban environment may exist between different cities, between neighborhoods or demographic groups within a city, or within a similarly-exposed population that includes sensitive groups. In our assessments, we intend to pay particular attention to areas, populations, and sensitive groups with substantially higher-than-average risks.

While differences in risk between different urban areas may be discernible from national screening-level modeling, more refined modeling will generally be needed to evaluate localized disparities within any one urban area. This is because highly localized disparities may be obscured by the simplifying assumptions that are necessarily inherent in national screening-level assessments. For this reason, the ability of EPA or State and local authorities to assess localized risk disparities will depend on the availability of detailed data on emissions and population distribution, local-scale models, and sufficient resources.

D. How Will We Design Future Assessments?

We'll conduct a series of assessments starting in early 2000 and periodically thereafter at appropriate times during the implementation of the Strategy. The assessments will include both national-scale and urban-scale analyses. All assessments will incorporate the most current data, information, and assessment tools available at the time they are performed. As the Strategy progresses, we may eventually use risk assessment tools that are now only in early development, or perhaps have not yet been envisioned. For this reason, we can't describe in detail assessments that will be conducted several years from now.

1. Initial Assessments—National

We'll conduct an initial national assessment in early 2000. This assessment will define an appropriate hazard-or risk-based approach consistent with the limited available information on HAP emissions and ambient concentrations. The principal limitation of the baseline emissions information is that, although the baseline NTI will be a comprehensive county-level inventory, it will lack the source-specific information necessary to support air quality modeling.[50] Thus, any assessment of progress relative to the base year will be limited to using either a weighted emissions or a weighted ambient concentration analysis, since the other approaches include an air quality modeling step. Future assessments, however, will not be limited in this way because emission inventory data, beginning in 1996, will include information needed for modeling.

The initial assessment will serve several purposes. First, we'll develop an estimate of progress that has already been made toward the goals of the Air Toxics Program and the Strategy. Consistent with section 112(k) of the Act as amended in 1990, which focuses on reductions "below those currently experienced," we've established 1990 as the base year for assessing progress. To estimate progress since the base year, we'll compare the base year emissions inventory to the inventory for 1996, due to be completed in fall of 1999, using a weighted emissions analysis. This assessment will be limited to the weighted-emissions approach because the base year inventory (although a comprehensive county-level inventory) will lack the source-specific information

[50] We note here, as discussed in sections I.B. and II.A., that as part of the Agency's Cumulative Exposure Project, the ASPEN model to estimate HAP ambient concentrations nationwide was developed and tested using a 1990 emissions inventory that was based on the limited HAP information available in the mid-1990s prior to the substantial improvements that are now reflected in the baseline NTI. While that first national-scale modeling exercise provided screening-level information that we've used in conjunction with other information in selecting the urban HAP list, we believe that the uncertainties in the CEP's 1990 emission inventory are too large to support a meaningful comparison with modeled concentrations for future years that will result from the application of the ASPEN model using updated emissions inventories. These updated inventories, starting with the 1996 NTI, are specifically designed to include sufficient source-specific information to support air quality modeling.

necessary to support air quality

necessary to support air quality modeling. Subsequent assessments, however, will not be limited in this way because emission inventory data, beginning in 1996, will include information needed for modeling.[51]

Second, the initial national assessment will provide basic information to assist us in prioritizing HAPs and area, mobile, and major source categories for regulations to be developed consistent with section 112(k), section 202(l) and other authorities (e.g., residual risk), respectively, based on their relative importance as contributors of risk. Third, the assessment will provide the clearest and most current picture of inter-urban and demographic disparities in risk, and will provide insight on more refined analyses that may be appropriate to identify types of sources associated with particularly high risk levels. Fourth, we intend to use information from the initial assessment to develop a more complete and quantitative goal for a "substantial" reduction in non-cancer risk. Finally, we'll use the initial assessment to compare different hazard- and risk-based approaches. In particular, we intend to correlate results of assessment approaches (1) and (2) (which lack exposure assessments) with exposure assessment-based approaches, to determine their relative accuracy and to quantify uncertainties. These comparisons, in combination with data and resource availability, will help us to scope the details of future assessments and finalize our estimates of progress from 1990 to 1996.

We'll use all four types of approaches (emissions weighting, comparisons between ambient concentrations and exposure estimates and RBCs, and modeled estimates of risk) in the initial national assessments, to the extent possible. As discussed in section V.C., we plan to use the ASPEN model to estimate national air quality concentrations in conjunction with the use of the Hazardous Air Pollutant Exposure Model (HAPEM) to estimate national exposures. We'll conduct screening level analyses before progressing to more refined analyses, to ensure that we're allocating appropriate amounts of resources to each assessment, given our information needs. The assessment will focus on inhalation exposures, with the expectation of including multipathway exposures, as appropriate, in subsequent assessments. The initial assessment will include all urban areas in the United States, and we anticipate presenting results with county- and/or urban-scale resolution. The assessment will address as many HAPs as the data support, but will include at least the 33 urban HAPs and diesel PM.

2. Initial Assessments—Urban

We plan to conduct urban-scale assessments for a number of selected cities to serve as case studies that may be particularly useful as guidance for State, local and Tribal program assessments. We'll also provide technical support and risk assessment tools for authorities that wish to conduct their own local assessments to analyze area-specific progress and intra-urban disparities. The experience we gain through these analyses will also help us refine future assessments.

We'll develop these initial urban assessments using the specific approaches that are appropriate for the quality of data available. Each assessment will describe a single urban area, and we anticipate presenting the results with high spatial resolution (for example, a 1-kilometer grid). The scope of each assessment will address a subset of HAPs that we identify as being priority HAPs for the particular urban area being assessed. We plan to consider both inhalation and multipathway exposures as appropriate and as available data permit.

3. Periodic Assessments

In the years following the initial national assessment, we'll conduct new analyses at appropriate intervals as new data become available. These periodic assessments will serve two principal purposes. First, they'll measure progress toward the goals of the Strategy, considering all actions taken that reduce HAP emissions (including Federal, State, local and Tribal actions, as well as voluntary initiatives by local communities and industry) for any purpose. Second, they'll assist us in prioritizing which future regulatory actions would be most effective in making needed further progress. We'll develop the periodic assessments using the specific approaches that have proved most efficient (that is, the least resource-intensive approach that accomplishes the purpose of the assessment). Assessments will include all urban areas in the United States, with results presented on county- and urban-scale level resolution. Assessments will address the full list of 188 HAPs, to the extent to which emissions, monitoring, and health data are available. If appropriate tools become available, periodic assessments for bioaccumulative HAPs will include multipathway exposures.

By measuring ongoing progress, periodic assessments will also inform us when we have met our goals, and will help us to measure the degree to which we have reduced disparities in risk. The approaches used for such goal-specific comparisons will be determined by the results of earlier assessments, and developed to fit the Strategy's purpose.

V. Knowledge and Tools

This section describes the activities we'll undertake to improve our base of knowledge (e.g., concerning health effects and exposure characteristics) and tools (e.g., emissions inventories, monitoring networks, and computer models), along with our plans for their improvement and related research.

A. How Will We Review and Expand Ambient Monitoring Networks?

1. Need for Ambient Data

As described in section IV, our iterative approach to risk characterization looks at emissions as a rough surrogate for risks in the near-term, while providing for a plan to periodically conduct more refined analyses as risk tools and data are developed. In order to base the air toxics program on risk assessments backed by sound science, we'll need emissions and monitoring data to conduct good assessments. Emissions data are one way we can attribute HAP exposures to specific sources. On the other hand, ambient monitoring data allow us to continually evaluate and improve our models and inventories, to deal credibly with the difficult issue of background HAP concentrations, and to measure progress more directly. Furthermore, each type of data (source emissions data and ambient monitoring data) can be used to improve our understanding of the other. For example, ambient data can warn us when our inventory or models are seriously flawed, and modeled exposures can be used in siting monitors and directing analyses for both short- and long-term measurements.

2. Ambient Monitoring Network Program Design

Currently, we have limited data on ambient concentrations of air toxics, because existing networks are limited, were developed for other purposes, or weren't specifically designed to develop the data needed to meet our current air toxic program goals. In fact, many commenters raised concerns that the current monitoring network was

[51] Peer-reviewed examples of this approach include the EPA/OPPT Risk-Screening Environmental Indicators, the EPA/OSW Waste Prioritization Management Tool, and the EPA/OAQPS ranking analysis for urban HAPs. See the public docket for a detailed list of risk assessment references.

inadequate and that the draft Strategy didn't adequately address this concern. Another problem is that ambient data can be both difficult and expensive to obtain. Our long-term plan is to build an air toxics monitoring network consistent with the goals of the air toxics program and the Strategy.

Since it's not possible to monitor everywhere, we must develop a monitoring network that is representative of air toxics problems on a national scale, but that still provides a means of obtaining data on a more localized basis as appropriate and necessary. The appropriateness of a candidate monitoring site with respect to the projected uses of its data is a key consideration in identifying sites for the national network. For example, in selecting monitor locations we must evaluate how well the location allows us to directly evaluate public exposure and environmental impacts in the vicinity of the monitors. We'll also need to site monitors to allow us to obtain data that can help us establish an ambient baseline for toxics risk characterization, track trends in ambient levels to assess progress in meeting our emission and risk reduction goals, and assess the effectiveness of specific emission reduction activities.

We'll design the monitoring network to address all of the needs of the air toxics program and the Strategy, which should satisfy the following objectives:

- Measure pollutants of concern to the overall air toxics program and the Strategy.
- Use scientifically sound monitoring protocols to ensure nationally consistent data of high quality.
- Collect a sufficient amount of data to estimate annual average concentrations at each monitoring site.
- Complement existing national and State/local monitoring programs.
- Reflect Acommunity-oriented" (i.e., neighborhood-scale) population exposure, including inhalation and non-inhalation exposure.
- Represent geographic variability in average ambient concentrations.

3. Network Implementation Schedule

For the first 2 years of monitoring, we'll maximize our use of existing State/local air toxics monitoring sites, Photochemical Assessment Monitoring Stations (PAMS) sites, or planned particulate matter chemical speciation sites. These sites should provide coverage of both the largest metropolitan areas and neighborhood-scale sites, which fits with our focus on population-oriented urban sites. If existing platforms aren't suitable for characterization of population exposure to air toxics, we'll strive to establish new community-oriented monitoring stations or upgrade existing ones to include urban HAP analyses. We'll also work to establish appropriate quality assurance, data management, data analysis, and data submission procedures, and will use established monitoring protocols in the next few years.

After 2000, we expect the air toxics monitoring network to continue to grow to cover more urban areas and to include monitors in rural areas to permit estimates of background concentrations. We also expect to place other fixed-site monitors in areas that may be subject to localized high concentrations of air toxics. In some cases, temporary or mobile monitors may be used to evaluate these areas. The long term goal for a national network includes monitoring of sensitive ecosystems and other environmental concerns. To this end, the national network should incorporate the separately funded deposition monitoring activities associated with the Great Waters Program. Our tentative projection of the national network is 200 sites, but this will be revised as additional information becomes available and as the network itself expands.

B. How Will We Update and Maintain the Emission Inventory?

We plan to update the NTI every 3 years using the same principles that we used when developing the 1996 NTI. The next version will be known as the 1999 NTI. The 1996 and subsequent NTIs will be compiled from State and local air toxics inventories. The State and local emission inventory data are supplemented with data gathered to support the development of MACT standards and Toxic Release Inventory (TRI) as well as calculated emission estimates for the majority of area and mobile sources. Unlike the baseline inventory developed for the Strategy, the 1996 and subsequent NTIs will contain location- and facility-specific data making the inventory suitable for input to dispersion and exposure modeling. These additional data are used to determine the exact types and location of facilities in urban and rural areas. We also expect that the quality of information available to use in developing future inventories will improve as data quality does and as we learn more about the locations and sources we are studying.

As discussed in the rest of section V, we plan to obtain improved monitoring data that will influence our inventory efforts, as well as to undertake research projects to address our data needs. One tool we're in the process of developing is the consolidated emissions reporting rule, whose purpose is to simplify reporting, offer options for data exchange, and unify reporting dates for various categories of inventories.

C. What Air Quality and Exposure Models Will We Use To Implement the Strategy?

A variety of mathematical models are often employed to assist in risk assessment activities. While not designed specifically to address urban areas, several models are currently available or under development to help describe the fate and transport of toxic air pollutant emissions. Although there is much associated uncertainty, the output of such models is then used as input to models that estimate human exposure and risk. This section discusses the model development activities and models that will be used in the air toxic assessments discussed in section IV.

We'll rely on a variety of fate and transport modeling tools that vary in their complexity and the scale of the geographic area that they're capable of handling. For example, we plan to use the Assessment System for Population Exposure Nationwide (ASPEN) model to conduct national screening modeling for ambient (i.e., outdoor) air toxic concentrations. This model estimates annual average ambient air toxic concentrations by modeling the dispersion of a nationwide inventory of HAP emissions from major, area, and mobile sources. It can also address simple chemical transformations of air toxics in the atmosphere. Current developmental efforts are underway to add increased model functionality to allow for testing of various "what-if" emission reduction scenarios using the ASPEN model. We'll use the Industrial Source Complex Short-Term (ISCST3) model to estimate both short-term (one-hour) and long-term (annual) average concentrations at locations from the urban to neighborhood scales. The ISCST3 model can predict not only ambient air toxic concentrations, but the amount of air toxic pollutants that will settle to the soil and/or into bodies of water. These settling rates are sometimes used to track the fate of air toxic pollutants where multimedia (air, water and/or soil) exposure and risk are of concern (e.g., with mercury). When multimedia considerations are of concern, we'll use the environmental fate and transport module of the Total Risk Integrated Methodology (TRIM) to determine urban and neighborhood scale impacts. Likewise, when a HAP

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associated with complex chemical reactions in the atmosphere is being considered, we'll use the Community Multiscale Air Quality (CMAQ) Model. This model is currently being developed in the EPA's Models-3 Framework, and it can be used to predict regional and urban wide concentrations values. The Models-3 Framework also employs a state-of-the-art meteorological pre-processor for accurate and detailed simulation of the meteorological data for input into the CMAQ model.

Model estimates of HAPs in the ambient air (and water and soil, when appropriate) will provide input necessary for modeling exposures. An exposure assessment takes into account the fact that most people don't spend the majority of their lives in an outdoor environment. An exposure model can track day-to-day activity patterns, simulating the movement of population subgroups (e.g, children under 5 years of age) through different "micro-environments" (e.g., in homes, vehicles, school, work, or while bathing). These activity pattern relationships are then used to estimate levels of exposures of population subgroups to the HAPs. One such model that we've developed for determining inhalation exposures is the Hazardous Air Pollutant Exposure Model (HAPEM4). This model can work in tandem with the ASPEN model to predict long-term nationwide-scale inhalation exposures to HAPs. Applications requiring exposure estimates through multipathway routes (e.g., through inhalation, ingestion and dermal contact) can use the TRIM module, TRIM.Expo, which is currently under development. We're currently developing several other exposure models for specific applications that we may also consider in our air toxic assessments.

As is the case with any mathematical simulation, the more detailed and accurate the simulation required, the more complex the input data requirements become. The availability, type, and quality of input data will directly influence the choice of the model or models selected for specific assessment purposes. Where gaps between input data and the required level of detail and accuracy are identified, we're making efforts to supplement and improve our data sets (e.g., improvements in the NTI, establishment of national monitoring networks) to make use of the most state-of-the-art models available.

D. What are the Research Needs and What is EPA Doing to Address Them?

The Strategy describes the process we'll use for identifying the various risks that may be present in an urban environment. Part of that process is to determine gaps in our scientific information and to identify the tools we'll need to assess urban risks and to implement the risk reduction elements of the Strategy. To address this concern, we plan to include a "research needs" chapter in our forthcoming "Integrated Urban Air Toxics Report to Congress" (Urban Report), which will describe the activities and research that will be needed to assist in our assessment and management of risks in urban environments.[52] The Urban Report will describe the research activities we'll undertake with the support of our Office of Research and Development, the research activities to be done by organizations outside of EPA and funded through our Grants program, and the research activities described in various other EPA reports that have relevance to the Strategy. We're also developing an "Air Toxics Research Strategy" (Research Strategy) which will expand on the planned urban "research needs" chapter, to include information that would assist in assessing risks on a national or regional basis.[53] This Research Strategy would reflect the needs of other elements of the air toxics program, such as the residual risk and Great Waters elements.

In our Urban Report, we plan to present research needs using the risk assessment/risk management paradigm developed by the National Academy of Sciences as the basis for the requested research. This paradigm includes activities related to health and dose-response, emissions and exposure characterization, a risk assessment, and risk management. Briefly, the following identifies the research areas and describes some of our current activities:

Urban HAP health effects and dose response needs.

- Additional knowledge of both cancer and non-cancer health effects will be accumulated. This will include determinations of specific toxicities (determined from animal and human studies) as well as the development of models to extrapolate across HAPs, species, time, and routes of exposure. Any such determinations should address the effects of HAPs or other factors which make sensitive subpopulations (e.g., children, the elderly, persons with existing illnesses) more vulnerable to exposure and effects.
- Development and updating of HAP health reference values, such as inhalation reference concentrations, acute reference exposure values, and cancer unit risk factors.
- Statistical methods for quantifying and reducing uncertainty in risk assessments using acute and chronic data.

Emission characterization needs.

- Development of methods for measuring HAPs in emissions and for monitoring the ambient and indoor air, and the environment (e.g., deposition to water). The resulting measurements will be used to improve the spatial characterization of potential exposures and to establish a baseline against which modeling concentrations may be compared.
- Improved procedures to estimate and assess HAP emissions in a representative number of cities, and to extrapolate results to other locations.
- Improved models that include multiscale air dispersion models (neighborhood, urban, and regional) which consider atmospheric transport, fate, and their potential transformation products and which can simulate microenvironments when estimating inhalation exposures to urban HAPs.

Exposure characterization needs.

- Improved data to better understand the potential for disproportionate impacts on those who are more susceptible to HAP exposures including minority and low-income communities.
- Improved understanding of human indoor and outdoor activity patterns in urban environments, especially for children.
- Improved understanding of the relationship between outdoor and indoor air and HAP concentrations.
- Improved monitoring to assess multipathway exposures to foods, such as fish, vegetables and beef, contaminated by deposition of urban HAPs.

Risk assessment needs.

- Improved risk assessment methods for chemical mixtures.

Risk management needs.

- Cost-effective control technologies for all HAPs and more effective controls for those HAPs posing residual risks even after applying currently available controls.

Some of the major air toxic research activities currently planned or being undertaken by EPA include:

Health effects and dose-response assessment research highlights.

- A proposed test rule under Toxics Substance Control Act (TSCA) that would require testing of 21 HAPs.
- Dose-response assessment efforts for mobile source pollutants (such as benzene, 1,3-butadiene, and various fuel additives, including methylcyclopentadienyl manganese tricarbonyl (MMT)) and urban HAPs shown in Table 1.
- Reducing uncertainty in acute and chronic dose-response assessments through the use of statistical (and other) methods.
- Improved methods for identifying and quantifying the health effects associated with exposures to mixtures of pollutants.
- Development of a mixtures database to facilitate assessments involving more than one chemical.

Emissions and exposure characterization research highlights.

- A national air toxics monitoring network.
- An updated, comprehensive emissions inventory of air toxics (the National Toxics Inventory).
- Various toxic emission characterization studies that include addressing emissions speciation for HAPs such as mercury.
- Improved nonroad and highway emission prediction models.
- Improved air quality models, including long-range transport models, a new model of acid deposition, and a modeling system, the Total Risk Integrated Methodology (TRIM), which will provide a framework for better assessing health and ecological risks from multipathway exposure to air toxic (as well as criteria) pollutants.
- Various exposure assessment studies and methodologies.

Risk management research highlights.

- Identification of processes contributing to the HAP emissions from area source categories, and listing of control options and Pollution Prevention alternatives for these processes.

In addition to those research needs and activities that will be identified in the Urban Report, research designed to improve quantitative risk assessment and management which may have relevance to urban HAPs, can be found in various other EPA documents. For example, we're developing a "Mercury Research Strategy," which describes the key research questions for mercury that we plan to address over the coming 5 years. We expect that the mercury strategy will be finalized during 1999 (following consideration of peer review comments). A summary description of this and other research activities and the documents in which they are found will be included in a separate chapter of the Urban Report. As discussed earlier, we're also developing an "Air Toxics Research Strategy" that, building on the summary research descriptions in the Urban Report, will identify key research questions and the additional research that will be conducted to address those questions.

[52] We hope to release the "Integrated Urban Air Toxics Report to Congress" this summer.

[53] The "Air Toxics Research Strategy" will be finalized in fall 1999.

VI. Public Participation and Communication

A. How Will we Encourage Stakeholder Involvement?

Because of the scope of the Strategy, we realize that various interests may perceive it differently. As a result, we'll make every effort to address the unique perspectives of the key stakeholders to this process, and we'll welcome their input to support an equitable approach to meeting our risk reduction goals. As described earlier, we intend to hold stakeholder meetings starting early in the next fiscal year to discuss State, local, and Tribal authority and implementation of the Strategy. With comments already received on the Strategy and through input from various stakeholders in these meetings, we will develop a plan for implementing the State, local and tribal programs. Below we have also provided more information on different groups that we plan to involve in implementing various aspects of the Strategy.

State, Local, and Tribal Governments

National standards for mobile and major sources may not adequately address the human health risks in urban areas because of the combined emissions from these sources and the many different types of sources. For this reason, we expect State, local, and Tribal agencies to play an active role in tailoring local approaches to reduce risks in urban areas, and we'll ask for their help in developing practical programs to implement the Strategy. More information on their role is presented in section III.

In a parallel effort to address the issue of roles and responsibilities, we'll be holding a series of meetings with State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) to develop a plan for the most efficient and effective interaction among regulators. Additionally, over the next year, we plan to meet with other regulatory partners including Tribal leaders and city mayors to help shape the coordination process. In conducting urban scale assessments as discussed in section IV, we'll work with local communities as appropriate to characterize the air toxics emissions within a community (through monitoring and emission inventories), estimate the risks associated with these emissions, and identify actions which could be taken to reduce air toxics. We'll also explore to what extent and how to address air toxics indoors.

Environmental Justice Communities

The cumulative impact of multiple emission sources on minority populations and low income populations in urban areas is of special concern. The Strategy will help identify and plan actions to decrease emissions that affect these communities. We're already coordinating with the National Environmental Justice Advisory Council (NEJAC) to establish mechanisms to work with communities to help solve urban air toxics problems. We'll work with NEJAC to explore the formation of groups such as round tables and panels as a means to involve communities, and other stakeholders, including representatives from universities and hospitals. These round tables/panels would explore issues related to rulemaking coordination, risk assessments, and the process of defining roles and responsibilities for Federal and State, local and Tribal agencies in implementing the Strategy.

Public Health Groups and Environmental Groups

Public health concerns are a priority in this Strategy, especially the impact of air toxics on susceptible groups like children. We plan to identify and address health risks to children and seniors and welcome input on these key issues. We'll also encourage these groups to work with us on various aspects of the Strategy, such as defining the roles and responsibilities of State, local, and Tribal agencies.

Small Business and Industry

Because the Strategy focuses on reducing emissions from area sources, impacts of the ultimate standards may be felt by small businesses. We'll strive, however, to ensure that regulations don't unfairly impact them. We also plan to involve small businesses in pilot projects to assess and design solutions to local air toxics risks.

An example of how we'll provide concrete support to small businesses is our EPA Small Business Innovative Research (SBIR) Program. Under this program, we can award Phase I contracts of up to $70,000 over 6 months to small businesses with fewer than 500 employees to develop and commercialize new environmental technologies. The awards are based on the scientific merit and technical feasibility of the proposed technology. The results of Phase I determine whether the research idea is technically feasible, whether the firm can do high-quality research, and whether sufficient

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progress has been made to justify a larger Phase II effort. We can award Phase II contracts for up to $295,000 over 2 years to commercialize the technology or product. The FY2000 Phase I Solicitation will open on August 11, 1999 and close on October 13, 1999. Copies of the solicitation will be posted on August 11, 1999 on our website at: http://www.epa.gov/ncerqa. The solicitation will also be available by fax at the EPA SBIR Helpline: 800–490–9194.

In addition, large businesses could be affected by programs and regulations developed to implement the Strategy. As always, we'll work with industry representatives to try to develop technically sound, effective regulations that minimize the burden to affected sources.

Urban Developers

In designing the Strategy, we've tried to avoid unfairly limiting the efforts of developers interested in creating business opportunities in urban industrial sites or areas needing revitalization. We plan to work with these interests to ensure that public health protection is achieved and economic development is encouraged.

As with our previous air toxics regulatory development efforts, our efforts under the Strategy will involve stakeholders as early as possible in the process. We recognize that opportunities for public participation beyond the required notice and comment process help ensure we develop the most workable requirements that still achieve our environmental goals. We'll use the established urban air toxics Strategy website on the Internet (www.epa.gov/ttn/uatw/urban/urban.pg.html) to update the public on ongoing activities and opportunities to participate in implementation of the Strategy. This will include updates on rule development, assessment activities, and progress toward meeting all of the Strategy goals. You can find information on all of our air toxics regulations at the following website on the Internet: www.epa.gov/ttn/uatw.

B. What is our Overall Timeline for Action?

Many of the activities identified in the Strategy will require further public notice and comment, and we'll provide further opportunities for stakeholder input as they are developed. The public will also be able to measure the progress of the Strategy by tracking the following milestones projected in the coming five years:

- 1999
  - —Publish the Integrated Urban Air Toxics Strategy, including the urban HAPs list and the area source category list.
  - —Issue the first Integrated Urban Air Toxics Strategy report to Congress under section 112(k)(5).
  - —Complete 1996 NTI update.
  - —Begin State/local/Tribal stakeholder communication and information exchange on implementing the Strategy.
  - —Propose motor vehicle and fuel standards under section 202(l).
- 2000
  - —Complete initial national and urban scale assessment.
  - —Complete motor vehicle and fuels standards development under section 202(l).
  - —Start development of additional area source standards.
- 2002
  - —Complete 1999 NTI update.
- 2003
  - —Complete 1999 assessment.
  - —Finalize source category list.
- 2004
  - —Promulgate standards for the area source categories newly listed in today's strategy.

We'll attempt to meet this demanding schedule as expeditiously as practicable. We're currently engaged in significant efforts to develop standards for stationary sources that were previously listed under section 112(c). In addition, realistic schedule and resource constraints suggest that our efforts to develop additional standards should be phased in over time.

C. What Reports Will we Prepare To Communicate With the Public?

We're required under section 112 of the Act to provide two reports to Congress on actions taken to reduce the risks to public health posed by the release of HAPs from area sources. The Act also requires that the reports identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

We'll submit our first report in late 1999. This report will provide more specific information about our Strategy, including further details on the methodologies we used to develop the final urban HAPs list and the list of source categories. The report will also provide an overview of previous studies conducted in various cities to characterize their respective urban air toxics problems and contain a detailed discussion of the research needed to achieve the goals of the Strategy. We also expect to report to the public about air toxics emissions trends and air quality in urban and other areas in our annual Air Quality and Emissions Trends Reports.

Dated: July 6, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

Appendix A—Summary of Other Authorities, Laws, Rules, and Programs to Help Reduce HAP Emissions

There are a number of other authorities, laws, rules, and programs that will help reduce emissions of HAPs and consequent exposures and risks. Some of these are discussed below. We're currently evaluating the appropriateness of these statutes for controlling emissions of HAPs as described under section 112(k)(3) and intend to take further actions under these statutes as appropriate.

As discussed in section I., the Strategy involves collaboration between offices within the air program to assess the risks from exposures to air toxics indoors and will assimilate non-regulatory, voluntary programs developed to address those risks. Title IV of the Superfund Amendments and Reauthorization Act (SARA) provides EPA with the authority to perform research and provide information to the public on the health problems associated with air pollutants in the indoor environment.

Under the Toxic Substances Control Act (TSCA), chemicals produced or imported into the United States are evaluated as to toxicity to human health and the environment. To prevent adverse consequences of the many chemicals developed each year, TSCA requires that any chemical that will reach the consumer marketplace be tested for possible toxic effects prior to commercial manufacture. Any existing chemical that is determined to pose health and environmental hazards is tracked and reported under TSCA. Procedures also are authorized for corrective action under TSCA in cases of cleanup of toxic materials contamination. The TSCA is a complementary authority to the Clean Air Act and has contributed to decreased emissions of several HAPs. For example, concern over the toxicity and persistence in the environment of polychlorinated biphenyl (PCB) compounds led Congress to include in TSCA prohibitions on the manufacture, processing, and distribution in commerce of PCBs (TSCA section 6(e), 15 U.S.C. 2605(e)). In 1990, TSCA authority was relied upon to eliminate chromium use in, and emissions from, comfort cooling towers (i.e., industrial process cooling towers used exclusively for cooling, heating, ventilation, and air conditioning systems).

There are several provisions of the Resource Conservation and Recovery Act (RCRA) and its amendments which may yield reductions of urban air toxics. One impact evidenced in the 1990's is increased recycling and recovery of hazardous waste, including solvents which through volatilization contribute to HAP emissions. Section 3004(n) of RCRA has been the basis of a three-phased regulatory program to control air emissions from hazardous waste

treatment, storage and disposal facilities. The third phase would address any risks remaining after implementation of the control regulations issued in 1990 and 1994, which were estimated to reduce organic emissions by more than one million tons per year. Any resulting emissions and risk reductions can be considered in assessing progress toward the 75-percent reduction in cancer incidence from the baseline.

Under the Comprehensive Environmental Response, Compensation and Liability Act, commonly known as Superfund, the clean-up of abandoned hazardous waste sites may also reduce emissions of HAPs. Where significant health risks from chemical releases to the air have been identified at Superfund sites in urban areas, clean-up will reduce risks from urban air toxics.

Under the Clean Water Act (CWA), controls on the discharge of pollutants to surface water can also reduce the amount of HAPs entering the environment. These controls may take the form of national technology-based standards under the effluent guidelines program or site-specific water quality-based controls to achieve State water quality standards. In addition to providing control by establishing discharge limitations on pollutants (including HAPs) in the wastewater, process changes made in order to comply with these limitations may also reduce fugitive emission sources.

As part of the effluent guidelines program under the CWA, we've issued effluent limitations for the pharmaceuticals industry. Human health benefits from these guidelines include reductions in excess cancer risk through inhalation. The regulatory impact assessment prepared for these guidelines estimates that the number of excess cancer cases avoided per year nationwide ranges from 0.02 to 0.35. These reductions are due to reductions in VOC emissions, including 10 carcinogens (principally chloroform and methylene chloride). We can also point to air toxics benefits from the effluent guidelines for the pulp, paper, and particleboard industry. These regulations, coupled with the associated NESHAP, are expected to decrease background emission of HAPs by 121,200 megagrams annually.

If a waterbody isn't meeting water quality standards even after all technology-based controls under the effluent guidelines program are in place, the State, local agency, or Tribe must list the water as "water quality limited" and prepare a "total maximum daily load" (TMDL) calculation that allocates the maximum amount of pollution, with a margin of safety, that the waterbody can absorb from point and nonpoint (including air deposited) sources. A plan must then be developed to implement the TMDL, which might include provisions to address air sources under Federal or State (or local or Tribal) programs. We're conducting a pilot project in two waterbodies to develop TMDLs identifying the relative contributions of mercury from various air sources. This project will also examine how Federal and State water programs can work together to reduce mercury contamination of water.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) provides Federal control of pesticide distribution, sale, and use. Several HAPs listed in Clean Air Act section 112(b) have been used as pesticides. An EPA registration is required of all pesticides sold in the United States and is intended to ensure that pesticide use, when in accordance with label specifications, doesn't cause unreasonable harm to people or the environment. It's a violation of FIFRA to use a pesticide in a manner inconsistent with its label. Registered pesticides classified as "restricted use" may only be used by registered applicators who have passed a certification exam. This restricted use requirement minimizes the number of persons having access to certain pesticides. The FIFRA regulations may also reduce emissions and exposures by banning (canceling or denying registration) or severely restricting pesticide use. Seven individual HAPs and members of three HAP compound groups have been banned or severely restricted in their use as pesticides.

Two other Federal laws, the Emergency Planning and Community Right-To-Know Act (EPCRA) of 1986 and the Pollution Prevention Act (PPA) of 1990, while not directly regulating air emissions of HAPs, may influence decisions regarding chemical usage and storage, and yield significant reductions in air toxics risks in urban areas. The goal of EPCRA is to reduce risks to communities through informing communities and citizens of chemical hazards in their areas. Sections 311 and 312 of EPCRA require certain facilities to report the locations and quantities of chemicals stored at their facilities to State and local governments. This information is used by State and local agencies in preparing for, and responding to, chemical spills and similar emergencies.

Through EPCRA, Congress mandated that a Toxics Release Inventory be made public. The TRI provides citizens with information about potentially hazardous chemicals stored, manufactured and used in their community. Section 313 of EPCRA specifically requires certain manufacturers and all Federal facilities to report to EPA and State governments, all releases of any of more than 600 designated toxic chemicals to the environment (including most of the 188 HAPs). Each year, more than 20,000 manufacturing facilities and 200 Federal facilities submit information to us on the releases of chemicals to the environment. We compile these data in an on-line, publicly accessible national database, which is a significant source of information regarding HAP emissions. Reporting requirements for TRI became more comprehensive in 1991, highlighting the importance of pollution prevention. In 1997 we added seven industry groups (metal mining, coal mining, RCRA subtitle C TSD and solvent recovery, petroleum distribution, electricity generating, and chemical distribution). We believe that for the manufacturing sector this public spotlight on releases and other waste management of toxic chemicals has led to reductions in their environmental release. We're also planning to lower the reporting thresholds under the TRI for several persistent, bioaccumulative toxic chemicals, including mercury and dioxin, that can cause human health and environmental damage at very low levels, so that additional information on releases will be available to the public.

The passage of the Pollution Prevention Act (PPA) established an environmental hierarchy that establishes pollution prevention as the first choice among waste management practices. Traditionally, much environmental protection has involved controlling, treating or cleaning up pollution. Pollution prevention, which eliminates or minimizes pollution at the source, is most effective in reducing health and environmental risks because it (1) eliminates any pollutant associated risks, (2) avoids shifts of pollutants from one medium (air, water or land) to another, which can result from certain waste treatments, and (3) reduces waste of natural resources. For waste that cannot be avoided at the source, recycling is considered the next best option. A waste generator should turn to treatment or disposal only after source reduction and recycling have been considered. Pollution prevention strategies include redesigning products, changing processes, substituting raw materials for less toxic substances, increasing efficiency in the use of raw materials, energy, water, land and other techniques. The EPA implements the PPA by promoting voluntary pollution reduction programs, engaging in partnerships, providing technical assistance, funding demonstration projects and incorporating cost-effective pollution prevention alternatives into regulations and other initiatives.

In addition, we've developed the "Waste Minimization National Plan," a voluntary, long-term effort to reduce the quantity and toxicity of hazardous waste through waste minimization. The plan was built on extensive stakeholder involvement and was released in 1994. The plan focused on the following key objectives:

- Prioritize pollution prevention efforts based on risk.
- Promote source reduction over recycling.
- Adopt a multi-media approach and prevent cross media transfers.
- Provide flexibility in implementing pollution prevention activities.
- Provide accountability and measure progress.
- Involve the public.

The plan calls for a 50-percent reduction in the presence of the most persistent, bioaccumulative and toxic (PBT) chemicals in hazardous waste by 2005.

The starting point for selecting chemicals for the national waste minimization list is EPA's "Waste Minimization Prioritization Tool," which is a software program that provides a screening-level assessment of the potential chronic risks that chemicals pose to human health and the environment, based on their persistence, bioaccumulative potential, and human and ecological toxicity. This software program contains full or partial PBT data for approximately 4,200 chemicals. The draft "Waste Minimization Prioritization Tool" was released for public comment on June 23, 1997 (62 FR 33868). We made significant changes in response to public comment and published a revised version on November 9, 1998 (63 FR 60332). The revised software, in conjunction with a publicly

reviewed methodology, was used to generate

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reviewed methodology, was used to generate a draft list of 53 PBT chemicals, which is now in the process of being finalized.

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Part III

Department of Commerce

International Trade Administration

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil; Notices

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard, Group II, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to Companhia Siderugica Nacional (CSN), Usinas Siderugicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) producers and exporters of certain hot-rolled flat-rolled carbon-quality steel products from Brazil. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., IPSCO Steel Inc., Steel Dynamics, Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation, the following events have occurred. *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 8313 (February 19, 1999) (*Preliminary Determination*).

Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR 8313), and the final antidumping duty determination was postponed, the Department extended the final determination of the countervailing duty investigation until no later than July 6, 1999. *See Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil*, 64 FR 9474 (February 26, 1999) and *Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil*, 64 FR 24321 (May 6, 1999).

We conducted verification of the countervailing duty questionnaire responses from April 5 through April 16, 1999. Petitioners, the Government of Brazil (GOB) and respondent companies filed case briefs on May 10, 1999, and rebuttal briefs on May 17, 1999.

On June 21, 1999, we terminated the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date, pursuant to section 703(d) of the Act. *See* the "Suspension of Liquidation" section of this notice.

On June 7, 1999, the GOB and the U.S. Government initialed a proposed suspension agreement. On July 6, 1999, the U.S. Government and the GOB signed a suspension agreement (*see Notice of Suspension of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*) which is being published concurrently with this notice in the **Federal Register**. On July 6, 1999, the petitioners also requested that the Department and the International Trade Commission (ITC) continue this investigation in accordance with section 704(g) of the Act. As such, this final determination is being issued pursuant to section 704(g) of the Act.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR part 351 (1998).

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches;
Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because Brazil is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

Company History

USIMINAS was founded in 1956 as a venture between the Brazilian Government, various stockholders and Nippon Usiminas. In 1974, the majority interest in USIMINAS was transferred to SIDERBRAS, the government holding company for steel interests. The company underwent several expansions of capacity throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the GOB decided to include its operating companies, including USIMINAS, in its National Privatization Program (NPP). In 1991, USIMINAS was partially privatized; as a result of the initial auction, Companhia do Vale do Rio Doce (CVRD), a majority government-owned iron ore producer, acquired 15 percent of USIMINAS's common shares. In 1994, the Government disposed of additional holdings, amounting to 16.2 percent of the company's equity. USIMINAS is now owned by CVRD and a consortium of private investors, including Nippon Usiminas, Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) and the USIMINAS Employee Investment Club. CVRD was partially privatized in 1997, when 31 percent of the company's shares were sold.

COSIPA was established in 1953 as a government-owned steel production company. In 1974, COSIPA was transferred to SIDERBRAS. Like USIMINAS, COSIPA was included in the NPP after SIDERBRAS was put into liquidation. In 1993, COSIPA was partially privatized, with the GOB retaining a minority of the preferred shares. Control of the company was acquired by a consortium of investors led by USIMINAS. In 1994, additional government-held shares were sold, but the GOB still maintained approximately 25 percent of COSIPA's preferred shares. During the POI, USIMINAS owned 49.8 percent of the voting capital stock of the company. Other principal owners include Bozano Simonsen Asset Management Ltd., the COSIPA Employee Investment Club and COSIPA's Pension Fund (FEMCO).

CSN was established in 1941 and commenced operations in 1946 as a government-owned steel company. In 1974, CSN was transferred to SIDERBRAS; only a very small amount of shares, a fraction of a percent, were held by private investors. In 1990, when SIDERBRAS was put into liquidation, the GOB included CSN, in its NPP. In 1991, 12 percent of the equity of the company was transferred to the CSN employee's pension fund. In 1993, CSN was partially privatized; CVRD, through its subsidiary Vale do Rio Doce Navegacao S.A. (Docenave), acquired 9.4 percent of the common shares. The GOB's remaining share of the firm was sold in 1994. CSN is now owned by Docenave/CVRD and a consortium of private investors, including Uniao Comercio e Partipacoes Ltda., Textilia S.A., Previ, the CSN Employee Investment Club, and the CSN employee pension fund. As discussed above, CVRD was partially privatized in 1997; CSN was part of the consortium that acquired control of CVRD through this partial privatization.

Affiliated Parties

In the present investigation, there are affiliated parties (within the meaning of section 771(33) of the Act) whose relationship is sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently affiliated to warrant potential treatment as a single company where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also has stated that companies may be considered sufficiently affiliated where there are common directors or one company performs services for the other company. *See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 30287 (June 14, 1996) (*Pasta*). Companies that are sufficiently affiliated to warrant potential treatment as a single company and either (1) produce the subject merchandise or (2) have engaged in certain financial transactions, are required by the Department to respond to the questionnaire. This standard is designed to identify instances where two companies interests have merged and either both produce subject merchandise or there is "evidence of the transmittal of subsidies between the companies." *See Pasta*, 61 FR at 30308.

USIMINAS owns 49.79 percent of COSIPA. As such, the companies are affiliated within the meaning of section 771(33)(E) of the Act. Moreover, given the level of ownership and the fact that both companies produce the subject merchandise, we determine that it is appropriate to treat these two producers as a single company for purposes of this investigation. Accordingly, we calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their combined sales.

We also examined the relationship between USIMINAS and CSN in order to determine whether these two companies were affiliated and, if so, whether the level of affiliation between the two companies was sufficient to warrant treatment as a single company. As discussed in the *Preliminary Determination*, two entities, CVRD and Previ (the pension fund of the Bank of Brasil) have meaningful holdings in both USIMINAS and CSN. As these entities both have ownership interests in and elect members to the Boards of Directors of both companies, we examined whether CSN and USIMINAS could have merged interests through these investors.

CVRD holds 15.48 percent of USIMINAS and 10.3 percent of CSN (through Docenave) and holds two of the eight seats on each company's board of directors. Previ holds 15 percent of the common shares of USIMINAS and one seat on its board of directors and 13 percent of CSN and two seats on its board of directors. At verification, we learned more about the operations of the companies. Both companies are controlled through shareholders agreements, in which, the participating shareholders, who account for more than 50 percent of the shares of the company, pre-vote issues before the Board of Directors and vote as a block, in order to control the company. CVRD and Previ both participate in the CSN shareholders agreement, and therefore, exercise considerable control over the operations of the company. However, while both CVRD and Previ elect representatives to USIMINAS's Board of Directors, neither entity participates in the USIMINAS shareholders agreement, and therefore, neither is in a position to exercise control over the company's operations. *See* CSN and USIMINAS Verification Reports, dated April 29, 1999, and April 28, 1999, respectively, public versions on file in the CRU.

Thus, neither CVRD nor Previ exerts meaningful control over USIMINAS. There is no common control of USIMINAS and CSN which could lead to the interests of the companies being merged. Therefore, we do not consider that the record evidence supports a finding that USIMINAS and CSN are affiliated, and as a result, the record evidence is also not sufficient to warrant treating the two companies as a single entity. *See* Department's Position on Comment #8, below.

Changes in Ownership

In the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization).

Under this methodology, we estimate the portion of the company's purchase price which is attributable to prior subsidies. We compute this by first dividing the face value of the company's subsidies by the company's net worth for each of the years corresponding to the company's allocation period, ending one year prior to the privatization. We then take the simple average of these ratios, which serves as a reasonable surrogate for the percentage that subsidies constitute of the overall value, i.e., net worth, of the company. Next, we multiply the purchase price of the company by this average ratio to derive the portion of the purchase price that we estimate to reflect prior subsidies. Then, we reduce the benefit streams of the prior subsidies by the ratio of the repayment/reallocation amount to the net present value of all remaining benefits at the time of the change in ownership.

In the current investigation, we are analyzing the privatizations of USIMINAS, COSIPA and CSN, including the various partial privatizations. In conducting these analyses, to the extent that partially government-owned companies purchased shares, we have not applied our methodology to a percentage of the acquired shares equal to the percentage of government ownership in the partially government-owned purchaser. Further, we have determined that it is appropriate to make an additional adjustment to USIMINAS and CSN's calculations to account for CVRD's 1997 partial privatization. *See* Calculation Memo, dated July 6, 1999, public version on file in the CRU. In addition, we have adjusted certain figures included in the privatization calculations to account for inflationary accounting practices. *See* Department's Position on Comment #3, below.

In the *Preliminary Determination*, we noted that the use of privatization currencies, *i.e.*, certain existing government bonds, privatization certificates and frozen currencies, warranted additional examination in the context of our privatization methodology. Since the *Preliminary Determination*, we have obtained additional information about the use and valuation of the privatization currencies that were used in the NPP. At verification, we asked the GOB to explain how privatization currencies were valued in the context of the privatization auctions. Officials explained that the GOB accepted most of these currencies at their full redeemable value (face value discounted according to the time remaining until maturity); foreign debt and restructuring bonds (MYDFAs) were accepted at 75 percent of their redeemable value. Officials acknowledged that many of the government bonds that were accepted as privatization currencies traded at a discount on secondary markets, but the GOB officials were unable to provide any data or estimation of what discounts applied. *See* Verification Report of the Government of Brazil, dated April 28, 1999, public version on file in the Central Records Unit (CRU), Room B–099 of the Main Commerce Building (GOB Verification Report). In addition, the respondent companies were unable to provide any data on secondary market trading of currencies. *See* COSIPA, CSN and USIMINAS Verification Reports, dated April 29, 1999, April 29, 1999, and April 28, 1999, respectively, public versions on file in the CRU.

During verification we also met with an independent banker who provided information about how the bonds that were accepted as privatization currencies were valued in contemporary secondary markets. The banker said that it was common knowledge that these bonds traded at a fairly steep discount in these markets, and that investors actively traded to obtain the cheapest bonds in order to maximize their positions in the privatization auctions. The banker indicated that the value of the bonds varied depending on the instrument's yield and length to maturity and traded within a range of 40 percent to 90 percent of the redeemable value, *i.e.*, with a discount ranging from 10 percent to 60 percent. Because various issues of bonds were accepted as privatization currencies, with different yields and terms, precise valuation data was not available. However, the banker indicated that during the period 1991–1994 most bonds traded with discounts ranging from 40 to 60 percent. He also stated that Privatization Certificates (CPs), which banks were forced to purchase and could only be used in the privatization auctions, traded at a discount of approximately 60 percent, reflecting their low yield. See Independent Banker Report, a public document on file in the CRU. Prior to the *Preliminary Determination*, petitioners submitted information to the record indicating that the privatization currencies traded at a discount. For example, according to a press report submitted by petitioners, the market price for MYDFAs was about 30 percent of the face value, rather than the 75 percent accepted by the GOB. Thus, information submitted by petitioners and gathered by the Department prior to the preliminary determination from public sources corroborates the information provided by this banker. *See* Petitioners' October 22, 1998, submission, a public document on file in the CRU and attachments to Calculation Memo, dated February 12, 1999, public version on file in the CRU.

Record evidence supports the conclusion that some adjustment to the purchase price of the companies is warranted because of the use of privatization currencies in the auctions. In the *Preliminary Determination*, we discounted the MYDFAs based on the 30 percent value reported in the press article and then applied a ratio reflecting the percentage difference between the value assigned to the MYDFAs and accepted by the GOB and the actual market value of the MYDFAs to the other privatization currencies. Based on the information we gathered at verification, we have modified this approach in this final determination. We have continued to apply the discount reported in the press article to the MYDFAs. In addition, we have applied a 60 percent discount to the CPs, reflecting the information provided by the banker. For the remaining currencies, in accordance with section 776(a)(1) of the Act, we applied a 50 percent discount as facts available, reflecting the average of the range of discounts estimated by the banker. *See* Department's Position on Comment #3, below.

Subsidies Valuation Information

Discount Rates: In the years relevant to this investigation through 1994, Brazil has experienced persistent high inflation. There were no long-term fixed-rate commercial loans made in domestic currencies during those years that could be used as discount rates. As in the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 68 FR 37295, (July 9, 1993) (*Certain Steel from Brazil*), we have determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, and the lack of an appropriate Brazilian discount rate, is to convert the non-recurring subsidies into U.S. dollars. If available, we applied the

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exchange rate applicable on the day the subsidies were granted, or, if unavailable, the average exchange rate in the month the subsidies were granted. Then we applied, as the discount rate, a long-term dollar lending rate. Therefore, for our discount rate, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with our practice in *Certain Steel from Brazil* (58 FR at 37298) and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela* 62 FR 55014, 55019, 55023 (October 21, 1997) (*Steel Wire Rod from Venezuela*). Because we have determined CSN, COSIPA and USIMINAS to be uncreditworthy, as described below, we added to the discount rates a risk premium equal to 12 percent of the U.S. prime rate for each of the years the companies were determined to be uncreditworthy.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets (AUL) in determining the allocation period for non-recurring subsidies. *See GIA*, 58 FR at 37227. However, in *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). In accordance with our new practice following *British Steel II*, we intend to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16551, 16552 (April 7, 1997). When such data are not available (or are otherwise unusable), our practice is to rely upon the IRS depreciation tables.

In this investigation the Department, in accordance with *British Steel II*, requested that the respondents submit information relating to their average useful life of assets. However, as discussed in the *Preliminary Determination*, our analysis of the data submitted by COSIPA, CSN, and USIMINAS regarding the AUL of their assets revealed several problems related to the companies' changes in ownership which resulted in changes in investment patterns, asset revaluations, and in some cases, changed amortization periods. *See Preliminary Determination*, 64 FR at 8317. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination*. Accordingly, we determine that the most appropriate allocation period is 15 years, as set out in the U.S. Internal Revenue Service (IRS) depreciation tables.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion based on the information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time. In making an equityworthiness determination, the Department may examine the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts,
2. Future financial prospects of the firm including market studies, economic forecasts, and project or loan appraisals,
3. Rates of return on equity in the three years prior to the government equity infusion,
4. Equity investment in the firm by private investors, and
5. Prospects in the marketplace for the product under consideration.

For a more detailed discussion of the Department's equityworthiness criteria, see the *GIA*, 58 FR at 37244, and *Steel Wire Rod from Venezuela*.

The Department has examined the respondents' equityworthiness for each equity infusion covered by the initiation: For COSIPA, 1977 through 1989, and 1992 through 1993; USIMINAS, 1980 through 1988; and CSN, 1977 through 1992. We note that because the Department determined that it is appropriate to use a 15-year allocation period for non-recurring subsidies, equity infusions provided in the years 1977 through 1982 do not provide a benefit in the POI. In a prior investigation we found that COSIPA was unequityworthy in 1983--1989 and 1991, USIMINAS in 1983 through 1988, and CSN in 1983 through 1991. *See Certain Steel from Brazil*, 58 FR at 37296. No new information has been provided in this investigation that would cause us to reconsider these determinations.

As discussed in the *Preliminary Determination*, in considering whether COSIPA was equityworthy in 1992 and 1993, we examined information on the above-listed factors. *See*, 64 FR at 8318. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination*. Accordingly, we find that COSIPA was unequityworthy in 1992 and 1993.

As discussed in the *Preliminary Determination*, in considering whether CSN was equityworthy in 1992, we examined information on the above-listed factors. *See*, 64 FR at 8318–19. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination*. Accordingly, we find that CSN was unequityworthy in 1992.

Equity Methodology

In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. A market benchmark can be obtained, for example, where the company's shares are publicly traded. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain*, 58 FR 37374, 37376 (July 9, 1993).

Where a market benchmark does not exist, the Department has determined in this investigation to continue to follow the methodology described in the *GIA*. *See* 58 FR at 37239. Following this methodology, equity infusions made to unequityworthy companies are treated as grants. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year. *See also* Department's Position on Comment #2, below.

Creditworthiness

When the Department examines whether a company is creditworthy, it is attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. To do so, the Department examines whether the company received long-term commercial loans in the year in question, and, if necessary, the overall financial health and future prospects of the company. If a company receives long-term financing from commercial sources without government guarantees, that company will normally be considered creditworthy. In the absence of commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from the firm's financial statements and accounts,
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow, and
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness criteria, *see, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993).

The Department has previously determined that respondents were uncreditworthy in the following years: USIMINAS, 1983–1988; COSIPA, 1983–1989 and 1991; and CSN 1983–1991. *See Certain Steel from Brazil*, 58 FR at 37297. No new information has been presented in this investigation that would lead us to reconsider these findings.

COSIPA received no long-term financing from commercial sources in the years in question. As discussed in the *Preliminary Determination*, to determine whether COSIPA was creditworthy in 1992 and 1993, in accordance with the Department's past practice, we analyzed financial ratios for each of the three years prior to the year under examination. *See*, 64 FR at 8319. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination*. Thus, we find that COSIPA was uncreditworthy in 1992 and 1993.

As discussed in the *Preliminary Determination*, CSN received one small commercial loan in 1992. However, the terms and insignificant principal amount of this loan render it inconclusive in determining whether CSN was creditworthy in 1992. Therefore, to determine whether CSN was creditworthy in 1992, we also analyzed financial data for the prior three years. *See*, 64 FR 8319. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination*. Thus, we find that CSN was uncreditworthy in 1992.

I. Programs Determined To Be Countervailable

A. Pre-1992 Equity Infusions

The GOB, through SIDERBRAS, provided equity infusions to USIMINAS (1983 through 1988), COSIPA (1983 through 1989 and 1991) and CSN (1983 through 1991) that have previously been investigated by the Department. *See Certain Steel from Brazil*, 58 FR at 37298.

We determine that under section 771(5)(E)(i) of the Act, the equity infusions into USIMINAS, COSIPA and CSN were not consistent with the usual investment practices of private investors and confer a benefit in the amount of each infusion (*see* "Equityworthiness" section above). These equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to each of the companies. Accordingly, we find that the pre-1992 equity infusions are countervailable subsidies within the meaning of section 771(5) of the Act.

As explained in the "Equity Methodology" section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. We have further determined these infusions to be non-recurring subsidies because each required separate authorization from SIDERBRAS, the shareholder. Because USIMINAS, COSIPA and CSN were uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. Since USIMINAS, COSIPA and CSN have been privatized, we followed the methodology outlined in the "Change in Ownership" section above to determine the amount of each equity infusion attributable to the companies after privatization. For CSN, we summed the benefits allocable to the POI from all equity infusions and divided by CSN's total sales during the POI. For USIMINAS/COSIPA, we summed the benefits allocable to the POI from all of the equity infusions and divided this amount by the combined total sales of USIMINAS/COSIPA during the POI. On this basis, we determine the net subsidy to be 5.20 percent ad valorem for CSN and 5.55 percent ad valorem for USIMINAS/COSIPA.

B. GOB Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993

In 1990, the GOB decided to liquidate SIDERBRAS and to include the SIDERBRAS operating companies, including respondents, in its National Privatization Program. The NPP was a major initiative proposed by President Collor that was part of the GOB's larger strategy to liberalize the Brazilian economy. Under the NPP, approved in Law 8031 of April 12, 1990, a general framework was established to govern all privatizations. Two entities were charged with oversight of the process: the Privatization Committee and the Banco Nacionale de Desenvolvimento Economico e Social (BNDES), which acted as the general coordinator. The Privatization Committee, composed of government and private sector representatives, was responsible for approving the conditions of sale, guidelines and the minimum price for each privatization. BNDES commissioned three consultants to make recommendations with respect to each company undergoing privatization: two consultants to make an economic assessment of the company including its competitiveness and to recommend a minimum price and one consultant to act as an independent auditor.

One of the consultants who examined COSIPA's financial health and competitiveness recommended that financial adjustments be made to the company before privatization including debt-to-equity conversions and deferring certain tax liabilities (*see* "Negotiated Deferrals of Tax Liabilities" in the section "Programs Determined to be Non-Countervailable" below). In accordance with this consultant's recommendation, the GOB made two debt-to-equity conversions in 1992 and 1993 in preparation for COSIPA's privatization.

We determine that pursuant to section 771(5)(E)(i) of the Act, these debt-to-equity conversions were not consistent with the usual investment practices of private investors and confer a benefit in the amount of each conversion (*see* "Equityworthiness" section above). These debt-to-equity conversions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to COSIPA. Accordingly, we find that the GOB debt-to-equity conversions provided to COSIPA in 1992 and 1993 are countervailable

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subsidies within the meaning of section 771(5) of the Act.

As explained in the "Equity Methodology" section above, we have treated each debt-to-equity conversion as a grant given in the year the conversion was made. We have further determined that these conversions are non-recurring subsidies because they were specifically approved by the GOB. Because COSIPA was uncreditworthy in the years of receipt, we applied a discount rate that included a risk premium. Because COSIPA has been privatized, we followed the methodology outlined in the "Change in Ownership" section above to determine the amount of each debt-to-equity conversion attributable to the company after privatization. After accounting for the change in ownership, we divided the benefit allocable to the POI from these debt-to-equity conversions by the combined total sales of USIMINAS/COSIPA. On this basis, we determine the net subsidy to be 4.12 percent ad valorem for USIMINAS/COSIPA.

C. GOB Debt-to-Equity Conversion Provided to CSN in 1992

As discussed above, under the GOB's National Privatization program, companies were privatized under the supervision of BNDES and the Privatization Committee. In accordance with the established privatization procedures, BNDES commissioned three consultants with respect to the privatization of CSN: Two to analyze the firm's financial performance, make recommendations, and formulate the minimum price and one to act as an independent auditor. One of the consultants, after analysis of CSN's financial data, recommended that additional capital be provided to the firm in advance of its privatization. The GOB followed this recommendation and made a pre-privatization debt-to-equity conversion in 1992. We note that in the *Preliminary Determination*, we considered this program to be an "equity infusion." At verification, we learned that the GOB converted debt into equity as opposed to providing new equity in the form of cash infusions. Thus, we have modified the description of this program accordingly.

We determine that, pursuant to section 771(5)(E)(i) of the Act, this debt-to-equity conversion was not consistent with the usual investment practices of private investors and confers a benefit in the amount of the conversion (*see* "Equityworthiness" section above). This conversion is specific within the meaning of section 771(5A)(D) of the Act because it was limited to CSN. Accordingly, we find that the GOB debt-to-equity conversion provided to CSN in 1992 is a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained in the "Equity Methodology" section above, we have treated this debt-to-equity conversion as a grant given in the year the conversion was received. We have further determined that this infusion is a non-recurring subsidy because it required separate authorization from the GOB. Because CSN was uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. Because CSN was privatized, we followed the methodology outlined in the "Change in Ownership" section above to determine the amount of each equity infusion attributable to the company after privatization. After accounting for the change in ownership, we divided the benefit allocable to the POI from the debt conversion by CSN's total sales during the POI. On this basis, we determine the net subsidy to be 1.15 percent ad valorem for CSN.

II. Program Determined To Be Non-Countervailable

Negotiated Deferrals of Tax Liabilities

As discussed above, one of the privatization consultants recommended that COSIPA negotiate with the various tax authorities in order to arrange to pay its large tax arrears in deferred installments. COSIPA petitioned four different tax authorities in order to arrange for installment payments for ten different types of taxes owed. In addition, CSN petitioned to arrange for installment payments for one tax liability.

Each of the tax agencies, the Revenue Service, Social Security Authority, State of Sao Paulo, and City authority has established legal procedures for arranging installment payments for delinquent tax payers. The authorities established these rules in order to collect tax arrears without resorting to legal action. These procedures were contained in Law 8383/91, Law 8620/93 and Decree 612/92, Decree 33.118/91 and Law 1383/83, respectively, and specified penalties, interest rates, and in some cases, the maximum repayment term. For example, law 8383/91 that governs the Revenue Service's operations and applies to six of the ten types of taxes COSIPA deferred and the tax that CSN deferred, specifies that fines of 20 percent and interest of one per cent per month will be charged and that all amounts will be subject to monetary correction, i.e., adjustments for inflation. To the extent that terms, such as the maximum repayment period, were not covered in the agency's laws and regulations, they were negotiated by COSIPA or CSN and the relevant tax authority. Once the parties completed negotiations, the authority would endorse the petition and, in some cases, execute a separate agreement.

When determining whether a program is countervailable, we must ascertain whether it provides benefits to a specific enterprise, industry, or group thereof within the meaning of section 771(5A)(D) of the Act. By comparing the terms included in the agencies' laws and regulations and the terms provided to COSIPA and CSN, we were able to conclude that the respondent companies received the same terms as those specified in the laws and regulations. Therefore, as the GOB did not favor COSIPA or CSN over other companies, we turned to an examination of the general programs themselves in order to determine whether they are specific. We examined whether the programs are *de jure* specific and found that the laws do not limit eligibility to an enterprise, industry, or group thereof. We then analyzed whether the program meets the criteria for *de facto* specificity. The GOB indicated in its response that "[d]eferred payment terms are generally available for all companies that have outstanding tax obligations to the underlying tax authority." *See* GOB Supplemental Questionnaire Response dated January 12, 1999, public version on file in the CRU. Further, at verification we saw that tax deferral petitions are automatically approved by the authorities as long as they conform with the establishing laws and regulations and, as stated above, neither the laws nor regulations provide differential or special treatment to any company or industry. Authorities explained that an extremely broad range of companies and industries have used the programs—from industrial firms to professional soccer clubs. Further, at verification we saw that tens of thousands of taxpayers have petitioned the tax authorities to arrange for these tax deferral agreements. *See* GOB Verification Report, public version on file in the CRU. While the number of companies that receive benefits under a program is not dispositive as to a program's non-specificity, the extremely large number of companies receiving deferrals indicates that a broad range of companies and industries received benefits under the program, as was indicated by the tax authorities. Further, since the authorities automatically approved all applicants that requested the terms and agreed to the conditions specified in the agencies' laws and regulations, there is no basis for

concluding that these tax deferrals are limited to a specific enterprise, industry or group thereof. Thus, we determine that these tax deferrals are not countervailable.

III. Program Determined Not To Exist

GOB Equity Infusions to COSIPA in 1992 and 1993

The Department included two programs in its initiation relating to benefits provided to COSIPA in advance of the company's privatization: debt assumptions and equity infusions. According to information provided by respondents, there were no equity infusions, *per se*. Instead, all benefits were in the form of debt assumptions that were converted into equity and have been addressed in the "GOB Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993" section above. Accordingly, we determine that the separate "GOB Equity Infusions to COSIPA in 1992 and 1993" program does not exist.

Interested Party Comments

Comment #1: Privatization

Respondents state that 19 U.S.C. 1677(5)(B) and Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM) require that a financial contribution is made and a benefit is thereby conferred in order for the subsidy to exist and that both legal structures require a finding of a causal connection between the two on a continuing basis. Respondents hold that the Department is required to consider subsequent events and the Department's analysis only identifies a past financial contribution and presumes irrebuttably that the contribution continues to confer a benefit after the company has changed owners. They argue that the Department may not hide behind the fact that it is not required to conduct an "effects test" in explaining the lack of analysis of subsequent events. Respondents state that their position does not require analysis of the effects of a subsidy in all circumstances, rather only when a "significant event" occurs, such as privatization. This requirement, they explain, is the only justification for the inclusion of 19 U.S.C. 1677(5)(F), which directs the Department to consider that some privatizations do not eliminate the benefits of pre-privatization subsidies.

Respondents further argue that if the Department properly considered the impact of the subsequent event in this case, we would find that the arm's-length privatizations eliminated the pass-through of pre-privatization benefits. They state that unless there is some analytical basis to presume that subsidies have been passed through after an arm's-length privatization, the Department must conclude that the post-privatization owners do not benefit from pre-privatization subsidies. Respondents use a hypothetical example of a company purchasing a machine with government assistance, then selling that machine to another party for a market price to illustrate their point that the benefit from the original government assistance remains with the original company. Respondents further hold that the ownership of the company cannot be separated from consideration of the operating entity that uses the assets and liabilities. Thus, if the ownership of a company has changed, the company itself has changed. Respondents conclude that the Department's current methodology ignores the relevance of the new owners.

Respondents point to the Department's *Final Regulations*, 63 FR 65348, 65361, stating, "where a firm does not pay less for its inputs than it would otherwise have to pay * * * as a result of a (government) financial contribution, it would be very difficult to contend that a benefit exists." Since the new owners of the respondent companies did not pay less than they otherwise would have had to acquire these companies, they conclude that no benefit exists.

In addition, respondents state that the GOB's residual and/or indirect interest in the companies during the POI does not undermine this conclusion. Respondents state that GOB-owned entities such as CVRD outbid private investors to acquire shares; thus, no benefit arises from or passes through in this transaction. Further, they state that the GOB's residual holding in COSIPA is irrelevant to COSIPA's production and sales since privatization.

Petitioners reject respondents' argument as without authority. Petitioners submit that this argument may be reduced to an effects test, expressly not required by the Act and which has been prohibited by the Courts. Petitioners state that the Department's repayment/change in ownership methodology does not represent an inquiry into whether subsidies continue to exist; instead it merely allocates the remaining benefit stream between the seller and the purchaser.

Petitioners state that 19 U.S.C. 1677(5)(F) was intended to make clear that the Department does not have any obligation to reevaluate the subsidy after a significant event. Petitioners state that this provision was added expressly to overrule findings in which the Court ruled that an arms-length sale extinguished subsidies. *See Saarstahl AG* v. *United States (Saarstahl I)* and *Inland Steel Bar Co.* v. *United States (Inland I)*. These findings were subsequently reversed by the CAFC. *See Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*) and *Inland Steel Bar Co.* v. *United States*, 86 F.3d 1174 (Fed. Cir. 1996) (*Inland II*). Petitioners further object to respondents' interpretation of SCM Article 1.1 and the virtually identical 19 U.S.C. 1677(5)(B). Petitioners state that the CIT has held that this language does not require a finding of a current competitive benefit during the POI.

Petitioners argue that respondents mischaracterize the Department's obligation to consider significant subsequent events, as respondents attempt to define all subsequent events as significant. Petitioners conclude that under this definition, all subsequent events would have to be considered and subsidy benefits would have to be traced, a proposition that is unworkable.

Finally, petitioners disagree with respondents' focus on the ownership of the company. Petitioners state that the inquiry must focus on the "manufacture, production or export" of subject merchandise. To support this position, petitioners cite *Delverde II*, in which the CIT stated that there are practical reasons for excluding "the current owner of the goods at issue entirely from the determination of benefit * * *." *See Delverde SrL* v. *United States*, 24 F. Supp. 2d 314 (Ct. Int'l Trade 1998). In addition, petitioners state that the logical conclusion of respondents' arguments would require any change in ownership of shares on the open market to be examined, a result that the Department rejected as absurd in *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from* Italy, 64 FR 15508 (March 31, 1999). Petitioners conclude that focusing on production demonstrates that the benefits continue to exist after privatization.

Department's Position: We disagree with respondents. In accordance with the provisions of the statute (Sec. 771(5)(B) and 771(5)(E)), the Department has found that COSIPA, CSN and USIMINAS continue to benefit from pre-privatization equity infusions. We have examined the facts of this case in light of the above cited provisions and find that the methodology we follow is in accordance with the statute. As petitioners noted, the Departments' privatization/change-in-ownership methodology has been upheld by the

Courts both pre-and post-URAA. See *Saarstahl II, Inland II* and *Delverde II.*

The Department has satisfied both 19 U.S.C. 1677(5)(B) and Article 1.1. of the SCM in this investigation. We found that the GOB provided financial contributions to respondents, in the form of equity infusions and debt-to-equity conversions in the above-mentioned years which confer countervailable benefits through the POI. In accordance with the Department's standard methodology, the benefits from these subsidies were allocated over time. Neither of the above-mentioned provisions require the Department to revisit these determinations.

Under both the SCM and the Act, the Department has the discretion to determine the impact of a change in ownership on the countervailability of past subsidies. The Department has consistently applied its privatization/change in ownership methodology to determine the impact that a privatization/change in ownership has on pre-privatization subsidies. But, it has not done this by re-identifying or re-valuing the subsidy benefit based on events as of the time when the ownership of the subsidized company changed hands. The Department does not re-visit the determination identifying and valuing the subsidy event as of the time of the subsidy bestowal. As petitioners correctly note, the Department is not required to examine the effects of subsidies, *i.e.*, trace how benefits are used by companies and whether they provide competitive advantages. Instead, the Department's methodology addresses the impact of the change in ownership on the allocation of pre-privatization subsidies. The Department's methodology accounts for the impact that the change in ownership has on pre-privatization subsidies, by looking at how the Department already has allocated the subsidy benefit over time (based on events as of the time of the subsidy bestowal) under our normal allocation methodology and then allocating, or apportioning, that benefit between the buyer and the seller. As the Department said in *Stainless Steel Plate in Coils from Italy*, "[o]ur methodology recognizes that a change in ownership has some impact on the allocation of previously-bestowed subsidies and, through an analysis based on the facts of each transaction, determine the extent to which the subsidies pass through to the buyer." 64 FR at 15518. Thus, our methodology is wholly consistent with 19 U.S.C. 1677(5)(F) and, contrary to respondents' argument, provides the analytical basis for determining whether and to what extent subsidies have passed through to the privatized company in a change in ownership or remain, in whole or in part, with the seller.

In addition, section 701(a)(1) of the Act directs the Department to determine whether a government-entity is providing a countervailable subsidy "with respect to the manufacture, production, or export of a class or kind of merchandise." We note that the same terminology is also reflected in the SCM (footnote 34). Given this focus on the manufacture, production and/or exportation of merchandise, the focus of the inquiry here should not be on the new *owners* of the company and how they may or may not have benefitted from the privatization transaction. The Department has not separated the ownership of the company from its analysis. Rather we have, as directed by law, focused on the activities of the company, rather than its ownership structure. Our privatization methodology has accounted for the change in the ownership of the company conducting these activities. Thus, we have measured the amount of the benefit that passes through this transaction as respondent companies continued to manufacture, produce and export subject merchandise.

Respondents' reliance on the adequate remuneration standard is misplaced. This provision applies only to inquiries of whether government provided inputs are sold for adequate remuneration. The sale of an input and sale of an ongoing company are materially different.

Finally, we note that we have properly analyzed the GOB's residual and indirect interests in companies during the POI in the context of our standard privatization methodology. We have not considered shares bought by government-owned companies in privatization auctions as privatizations; these transactions do not reflect the change in ownership of the shares from government to private ownership, but rather a transfer from one government holding to another. However, when such companies were, themselves, privatized, we have made adjustments to reflect the change in ownership at that time.

Comment #2: Valuation of Equity Infusion Benefits

Respondents argue that the Department's policy of treating the benefit from equity infusions (into unequityworthy companies) as grants overstates the net benefits associated with the investments. Respondents hold that ignoring post-investment activities, such as the payment of dividends or privatizations, violates the principle contained in 19 U.S.C. 1671(a) specifying that the Department countervail the *net* subsidy. Respondents state that grants and equity infusions are different as equity infusions impose financial obligations on the firm, specifically, to pay dividends and the obligation to cede a claim on the company's assets to the investor.

Respondents point to the pre-1993 equity methodology, the so-called "rate of return shortfall" methodology, as recognition of the differences in benefits between grants and equity investments. Further, respondents state that the Department should recognize that paying dividends is, in a certain sense, the company's attempt to offset the benefits of a subsidy, and this is a result that the CVD law should encourage to eliminate subsidization. Respondents state that applying the grant methodology to equity infusions is tantamount to forming an irrebuttable presumption that unequityworthy companies incur absolutely no costs in connection with government investments.

Respondents state that the Department must accommodate all post-investment events in the calculation of the benefit to the company during the POI including the effects of privatization, increases in net worth, and the issuance of dividends to the investor.

Petitioners state that the Department has previously considered and rejected respondents' arguments with respect to treating equity infusions into unequityworthy companies as grants. Petitioners hold that this methodology correctly recognizes that a reasonable private investor would not invest in companies that are unable to generate a reasonable rate of return. Petitioners reject the notion that equity investments into unequityworthy companies impose costs on firms, citing *British Steel I*, in which the CIT stated that "* * * the Court is unconvinced by the argument that equity infusions impose costs on recipient firms, costs that differentiate equity infusions into unequityworthy firms from grants." In addition, petitioners argue that the Court has further rejected consideration of subsequent dividends and retained earnings in measuring the benefit from equity infusions. Petitioners further state that the Department may not consider these events as they do not appear on the list of offsets contained in 19 U.S.C. 1677(6).

Department's Position: Respondents are basically arguing a return to the pre-1993 equity methodology, known as the rate of "return shortfall methodology" (RORS). The Department rejected RORS in 1993 because, among other things, it relied on an *ex post facto* analysis of events and represented a cost-to-government analysis of the benefit. The Department instead determined that the grant methodology was the most appropriate for analyzing the benefit from an equity infusion into an unequityworthy company. As the Department said in the *GIA*, 58 FR at 37239:

> [u]sing the grant methodology for equity infusions into unequityworthy companies is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information. Thus, neither the benefit nor the equityworthiness determination should be reexamined *post hoc* since such information could not have been known to the investor at the time of the investment. Therefore, the grant methodology, when used for equity infusions into unequityworthy companies * * * should not be adjusted based on subsequent events (*e.g.*, dividends, profits).

The Department has consistently applied the grant methodology to measure the benefit from equity infusions into unequityworthy companies since 1993. *See, e.g., Certain Steel from Brazil; Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357 (March 18, 19994); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997); and *Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium*, 64 FR 15567, 15569 (March 31, 1999). This methodology has been upheld by the Court, as discussed by petitioners, above. Respondents' argument that equity investments impose additional costs on companies is not relevant and has been rejected by the Court. We have found respondents to be unequityworthy as discussed in the "Equityworthiness" section above. This finding has not been disputed by respondents. Our finding of unequityworthiness is tantamount to saying that private investors would not have invested *any* capital in the firm. Therefore, we have applied the grant methodology to measure the benefit of equity infusions (and debt-to-equity conversions), as discussed in the "Equity Methodology" section above.

Comment #3: Repayment Calculations

Respondents argue that if the Department continues to apply its standard privatization methodology, it must revise these calculations because the gamma ratio does not properly reflect the proportion of the purchase price that reflects repayment of prior subsides because they hold that an average of infusion values to net worth ratios over time does not provide a meaningful ratio. Respondents instead suggest using the present value of the unamortized pre-privatization infusions (at the time of the infusion) to the total net worth of the company at the time of privatization. They argue that this approach more properly accounts for the difference between a company that received an infusion ten years prior to subsidization from a company that receives the same infusion the year before privatization.

Respondents further argue that the Department incorrectly deflated the purchase price in each privatization because of privatization currencies. Respondents argue that the relevant value of the currencies, in identifying the purchase price of the companies, is the present value of the currencies (face value, discounted to account for the time remaining until maturity), the amount at which the currencies were accepted by the GOB. Respondents hold that this value is correct because it represents the value of the debt that the GOB retired through the sales. Further, the GOB had a real liability equal to the present value of the instrument and the value to the GOB must be used in the calculation as it attempts to identify the amount of subsidy "paid back" to the government in the privatization. Respondents state that the value of the privatization currencies to the purchasers of the shares is irrelevant. Respondents use examples of different currency exchange rates and different bond values to illustrate the point that the value to the GOB remains the same in each scenario. Respondents also argue that the Department's valuation of the privatization currencies assumes that all currencies were acquired by the users at a discount. They point to the Privatization Certificates (CPs), which banks were forced to purchase under the Collor Plan for 100 percent of their value. Respondents state that many banks chose to use the CPs in privatization auctions, exchanging one-to-one for shares, despite secondary market discounts. They hold that if instruments were not traded on secondary markets, a secondary market discount cannot be applied, and to do so is to apply an adverse inference without justification.

In addition, respondents state that the Department did not make any adjustments to the purchase price in its examination of the 1991 USIMINAS privatization examined in *Certain Steel From Brazil*. Respondents argue that the Department has changed its analysis without explaining the reasons for the departure.

Finally, respondents disagree with the treatment of shares purchased by CVRD in the privatizations. Respondents state that CVRD's share purchases were made on commercial terms, and cannot be considered to provide a financial benefit to the companies. Respondents state they cannot be penalized for a GOB investment made on terms consistent with commercial considerations.

Petitioners argue that respondents' suggested change to the gamma calculation is ambiguous. Petitioners state that the Department has rejected similar changes to the gamma in prior cases, specifically *Industrial Phosphoric Acid from Israel* and *Stainless Steel Plate in Coils from Italy*. They also note that the current gamma calculation received Court approval in *Saarstahl II, British Steel II* and *Delverde II.*

Petitioners support the Department's preliminary adjustments to account for the market value of privatization currencies. Petitioners state that record evidence demonstrates that the currencies traded at deep discounts from their face values on secondary markets. Petitioners state that CVD law and practice reveal a strong preference for using market-determined prices to make valuation decisions. They hold that the GOB could purchase the securities on the secondary market, just like private investors, and thus the value to the GOB was exactly the same as the market value. Petitioners disagree with respondents' arguments with respect to the CPs, noting that the Department must seek the market value at the time the currency as exchanged for shares.

Petitioners state that respondents never provided specific information on the secondary market prices of privatization currencies. Petitioners state that the repayment methodology, in effecting a downward adjustment on the benefit stream, benefits respondents and respondents bear the burden of demonstrating their entitlement to this adjustment. Thus, petitioners argue that the Department should apply the steepest discount on the record, 70 percent, in valuing the privatization currencies.

Petitioners disagree with respondents' arguments with respect to the valuation of privatization currencies in *Certain Steel From Brazil*. Petitioners state that the parties in that investigation did not address this issue as the Department did not apply the current privatization methodology until the final

determination. Thus, *Certain Steel From Brazil* should not be seen as a precedent on this matter.

Petitioners support the Department's treatment of CVRD share purchases in the *Preliminary Determination*, arguing that the repayment methodology may not be applied to public-to-public sales. Petitioners hold that applying the privatization methodology to such sales would create a massive loophole in the law where a government could reduce benefit streams simply by rearranging the holdings of government-owned companies.

Department's Position: For this final determination, we have continued to calculate gamma using historical subsidy and net worth data. The gamma calculation serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. This methodology has been upheld by the courts in *Saarstahl II* and *British Steel II*. Respondents' criticism of the Department's current methodology centers on the fact that the average of subsidies to net worth does not take into account the timing of the receipt of subsidies and the corresponding net present value of the subsidies. We note that while gamma itself does not factor in the net present value of the subsidies, the results of the gamma calculation are applied to the present value of the remaining benefit streams at the time of privatization. Thus, our current calculations, as a whole, do properly account for the present value of the remaining benefits at the time of privatization.

Respondents' arguments regarding the valuation of privatization currencies are also flawed. While we do not deny that the GOB's retired debts are equal to the present value of the currencies accepted in exchange for shares, the proper value used in the privatization calculation is the market selling price of the company, as indicated by the market selling price of the currencies. Since the currencies were discounted on secondary markets, the present value of the currencies overstates the cash, market value of the purchase price. As petitioners correctly point out, it is the Department's preference to use market values in calculations where possible.

Respondents' arguments with respect to CPs are also flawed. In discounting the CPs as described above, we have appropriately estimated their market values at the times of the privatization transactions.

We also agree with petitioners regarding the examination of the currencies in *Certain Steel From Brazil*. While the fact that privatization currencies were used to acquire USIMINAS shares was contained in the record of that case, parties did not have the opportunity to comment on the final privatization methodology applied and the implications that various facts in evidence may have had on this methodology. Furthermore, *Certain Steel From Brazil*, and the companion Certain Steel cases, were the first time that the Department applied this methodology. We have gained experience with the methodology since that time. In this investigation, we have properly determined that privatization currencies were overvalued by the GOB and that the discounted, market value should be used in the privatization calculation as discussed above. As discussed in the "Subsidies Valuation" section above, we have applied discounts to the various privatization currencies based on the record evidence.

Finally, we agree with petitioners with respect to the treatment of CVRD share purchases. Government purchases of government assets cannot be seen properly as a "privatization" or "change in ownership" that would give rise to a reallocation of subsidies between buyer and seller. Instead, these transactions represent a transfer of government funds from one account to another. Thus, we have continued to remove the CVRD purchases from the calculations as discussed above. In addition, we note that we have accounted for the 1997 partial privatization of CVRD in the calculations.

Comment #4: Asymmetrical Comparisons in Calculations

Respondents state that the Department must ensure that the ratios, such as gamma, used in the privatization calculations use symmetrical comparisons: both the numerator and denominator should be in either corrected values, or historical values. Respondents suggest that the Department apply historical values as the equity infusions were reported in historical terms; if historical values are unavailable, the Department should dollarize the net worth figure and the equity infusion amounts.

Petitioners argue that the Department must ensure that a symmetrical comparison is used in applying the 0.5 percent test. Because respondents have reported a mix of historical and corrected figures, petitioners state that the 0.5 percent test has been distorted.

In their reply brief, respondents agree with petitioners that symmetrical comparisons must be used in all calculations. In petitioners' reply brief, petitioners argue that the distortion identified by respondents was the result of a failure on the part of respondents to report consistent data. Petitioners disagree that dollarizing the net worth would correct the asymmetrical comparison problem and should not be applied as the problem arises from respondents' poor reporting and the correction should not benefit respondents. Petitioners further argue that if the Department does not have a historical value for total sales, the 0.5 percent test should not be applied in that year.

Department's Position: For the final determination, we have revised our calculations to include symmetrical comparisons in the numerator and denominator of the ratios used in the privatization calculation and 0.5 percent test where data on the record allows us to make this comparison. We used historical values for the subsidy to net worth ratios that are averaged to derive gamma. For the years in which historical values are not available for use in the gamma, we have continued to use corrected values. For the 0.5 percent test, in the instance where the asymmetrical comparison has a meaningful impact on the ratio, we used the historical sales value.

Comment #5: Application of New Risk Premium Methodology

Petitioners argue that the Department should apply the risk premium methodology contained in the *Final Regulations*, even though the *Final Regulations* do not govern this proceeding. Petitioners state that the Department has described the new methodology as "more appropriate" and "more accurate" and argues that the Court has reversed the Department when it has declined to apply a "more accurate" methodology. Finally, petitioners state that all parties have had ample notice as the new methodology was proposed in the 1997 Proposed Regulations and was applied in the petition.

Respondents reject petitioners' argument as they state there is no justification in departing from the current risk premium methodology at this stage. Respondents state that the *Final Regulations* do not apply to this investigation. Respondents argue that there would be procedural difficulties in applying this methodology as no parties have had the opportunity to comment and review its use. Respondents further state that the new methodology is complicated and requires the Department to consider default rates in the country if that information is submitted to the record and that the parties did not have the opportunity to submit such information in this case.

Finally, respondents reiterate their argument that the Department has improperly measured the benefit from the equity infusions by treating these amounts as grants.

Department's Position: We agree with respondents. The Department's *Final Regulations* do not govern this proceeding. While we have described the new risk premium methodology contained in the *Final Regulations* as "more accurate," because of the logistical reasons identified by respondents, it is not appropriate to apply this methodology in this case. To do so, without having given parties sufficient opportunity to address the options contained in the regulation, would forestall the participation of the parties.

Comment #6: Verification Clarifications

Respondents argue that minor refinements clarified at verification should be changed in the calculations for the final determination. Specifically the amount of the 1988 CSN equity infusions, USIMINAS' total and subject merchandise sales values, and COSIPA's total sales value.

COSIPA explained at verification that an amount contained in its 1993 capital advance account was actually the repayment of a debt from Siderbras. *See* COSIPA Verification Report, public version on file in the CRU.

Petitioners argue that COSIPA's claim about the debt does not withstand scrutiny as COSIPA did not provide information about how the debt arose or what it represents. Petitioners further state that while COSIPA demonstrated to the Department that the debt existed, the company did not show that the debt *was* paid with amounts from the capital advances account; on the contrary, they argue that since the amount remained in the capital advances account, it was not utilized to cancel the outstanding debt. Petitioners conclude that this amount should be added to the amount of the debt-to-equity conversion countervailed for 1992.

Respondents reply that the existence of the Siderbras debt was verified to the Department's satisfaction, and thus, petitioners' arguments with regard to the bona fides of the debt are inappropriate. Respondents state that verification exhibits demonstrate that the Siderbras debt was deducted from the capital advances account.

In addition, Petitioners argue that COSIPA withheld information pertaining to the date each equity infusion was received despite repeated requests from the Department for this information. COSIPA provided the specific dates that the 1992 and 1993 debt-to-equity conversions were made at verification. Petitioners reason that COSIPA withheld the relevant information and that the Department should reject the information obtained at verification as untimely. Petitioners conclude that the Department should apply an adverse inference as facts available and treat all equity infusions as having been received on the first day of the month.

Respondents reply that COSIPA did not attempt to conceal information from the Department with respect to the actual dates that the conversions were granted. Respondents state that COSIPA relied on information that was verified in other cases as some of the equity infusions are from years that the company no longer maintains records and that COSIPA was not able to determine the actual dates of the infusions in these cases. COSIPA was able to determine the dates of the 1992 and 1993 infusions and these dates were discussed at verification and the 1993 dates were reported in the February 8, 1999, questionnaire response. Finally, respondents state that use of the actual dates favors COSIPA; thus, there was no attempt by the company to withhold this information.

Petitioners also dispute the accuracy of corrections made to CSN's 1988 equity infusion amount at verification. Petitioners argue that the amount of the infusion was verified in the 1993 *Certain Steel from Brazil* investigation, and that the Department should not accept any changes at this point.

Department's Position: We agree with respondents. The corrections identified by the parties—the amount of the CSN 1988 equity infusion, dates of the COSIPA infusions, and sales amounts—were verified to the Department's satisfaction and tied directly to the respective companies' accounting documents. Further, COSIPA did report the dates of the 1993 conversions in the February 8, 1999, response as identified by respondents. Finally, CSN demonstrated that the numbers verified in this proceeding were accurate irrespective of their difference from amounts countervailed in the *Certain Steel from Brazil* investigation. It is standard Department practice to accept minor corrections at verifications, and the opportunity to make minor corrections was included in the companies' verification outlines that were used to prepare for verification. None of the corrections at issue are significant in nature; thus it is entirely appropriate to use the corrected numbers in our final calculations.

Comment #7: Tax Deferral Programs

Petitioners argue that COSIPA received deferral terms more favorable than those granted to other taxpayers and that record evidence indicates that COSIPA was a predominant user of the IPI, Social Contribution and ICMS tax deferral programs. Petitioners state that respondents failed to provide information regarding the terms of tax deferrals granted to other taxpayers. They submit that the administering authorities granted COSIPA installment periods for the IPI and Social Contribution tax longer than provided for in the applicable regulation. Petitioners reject the explanation provided at verification—that the Minister could grant longer periods than provided for in the regulations. They argue that the fact that COSIPA received an extended term, demonstrates that the laws and regulations were not followed and that the program is specific. Petitioners state that because COSIPA needed such a long period to repay the large debts, it is likely that COSIPA received a disproportionate amount of the subsidy. They conclude that the GOB exercised discretion to favor COSIPA over others.

With respect to the IRPJ tax, Petitioners state that the record shows COSIPA applied for and received the deferral program after the statutorily-mandated guideline expired. Petitioners argue that respondents have not demonstrated that any other taxpayer received the program after the deadline expired; thus, the Department should find that the program is specific.

Petitioners argue that COSIPA received a repayment term longer than specified in the applicable law for the INSS tax. Petitioners state that law 8630/93 provides for a 240-month deferral period only for applications submitted in February 1993, and that record evidence demonstrates that COSIPA did not submit its application in that month. Since respondents have not provided any evidence indicating that other taxpayers also received this term under these circumstances, Petitioners conclude that the program is specific to COSIPA.

Finally, Petitioners argue that COSIPA was a predominant user of the Sao Paulo State ICMS tax deferral program. Relying on press articles which mentioned the company's upcoming privatization, petitioners state that COSIPA's massive ICMS debts and reported negotiations with federal and state authorities dispute claims made by the GOB at verification. Petitioners submit that if all parties receive the same treatment under the law, there

would have been no need for lengthy

would have been no need for lengthy negotiations. They also state that the magnitude of the tax arrears demonstrates that COSIPA was a disproportionate user of the program—the size of the debt, viewed in the context of the large number of users of the tax deferral program suggests that program was specific to COSIPA.

Petitioners also argue that in measuring the benefit from the tax deferral programs, the Department should apply the monthly average overnight rate as the benchmark, which was applied in *Certain Steel from Brazil*.

Respondents reject petitioners arguments with respect to the tax deferral programs. Respondents state that the GOB provided the Department with all information requested, except for the proprietary information of companies not involved with this case.

With respect to the IPI and Social Contribution taxes, respondents state that petitioners mischaracterized the normative instruction cited by petitioners as this document does not apply to the Minister and does not limit the Minister's discretion to alter these instructions. Respondents state that record evidence demonstrates that more than 200 companies received terms other than those contained in the normative instruction in all sectors of the economy and that nothing points to the conclusion that these agreements are specific. Respondents also reject the argument that since COSIPA received a term of more than 60 months, the underlying debt must have been large and thus COSIPA was a disproportionate user of the program. Respondents instead state that the technical analysis required to receive a period longer than 60 months analyzed a number of factors, in particular cash flow and thus does not support Petitioners' assertion.

Respondents also characterize petitioners' arguments on the IRPJ program as innuendo. Respondents state that record evidence does not support the conclusion that COSIPA's IRPJ application was submitted after the deadline expired. Finally, respondents note that COSIPA did not make any IRPJ payments during the POI; thus, petitioners' arguments are moot.

Respondents also reject petitioners' argument that the INSS application was submitted after the deadline expired for receiving the maximum deferral. Respondents state that record evidence demonstrates that the petition was submitted within the relevant deadline.

With respect to the ICMS program, respondents reject the information contained in the press articles cited by petitioners. Respondents state that negotiations are a normal part of the deferral application process and that the fact that the authorities were aware of the company's upcoming privatization supports no conclusion one way or the other. They state that record evidence does not support the conclusion that COSIPA was a disproportionate user of the program.

Finally, respondents reject the petitioners' proposed benchmark, instead suggesting that the rate applied to other taxpayers should be applied. Alternatively, respondents suggest other long-term interest rates on the record.

Department's Position: We disagree with petitioners. As discussed in the "Programs Determined to Be Non-Countervailable" section above, we have found the negotiated tax deferral agreement programs to be non-countervailable because they are not specific within the meaning of the Act. Because of the nature of the programs, it was difficult for the GOB to provide the information required to address all of the questions addressing the *de facto* specificity criteria. At verification, we asked for and received sufficient information to determine that the programs are not specific including charts specifying the total number of applicants/users, regions of the applicants/users and amount of debts covered by the programs for the relevant years. *See*, GOB Verification Report, public version on file in the CRU. None of the GOB agencies collect information on an industry basis. However, we were able to determine from the record evidence that the programs are not *de facto* specific. Respondents demonstrated that tens of thousands of taxpayers applied for and received tax deferrals under these programs. Further, all applicants are automatically approved if they satisfy the eligibility criteria contained in the laws and regulations—basic criteria such as having a debt, not being delinquent on another tax deferral agreement, and willingness to pay within the specified period. The GOB not only did not exercise discretion to favor COSIPA over others, it exercised *no* discretion in the operation of the program.

The GOB explained at verification that applicants for deferral agreements of IPI and Social Contribution arrears could receive repayment periods longer than the 60 months specified in the normative instructions if the company demonstrated that it could not afford to repay the debt within the period. The GOB conducted a technical analysis of the cash-flow position of each applicant that requested longer than 60 months to repay and the Minister followed the recommendation of the technical experts in approving the more than 200 applicants that requested an extended period. Further, the companies that receive the extended period are required to pay the same amount of interest, penalty and monetary correction as the applicants that pay within 60 months. Thus, the record evidence does not support the conclusion that COSIPA was favored over other applicants with respect to its IPI and Social Contribution deferral agreements.

As respondents noted, COSIPA did not make any payments on its IRPJ agreement during the POI; thus, no benefit could arise from this tax deferral agreement in 1997. In addition, as respondents discuss in their reply brief, the tax consolidation table submitted in the response was dated February 19, 1993, within the time period specified in the regulations to receive the maximum deferral period.

With regard to the ICMS tax, officials demonstrated at verification that COSIPA applied for and received the tax deferral agreements because it satisfied the conditions contained in the laws and regulations. Further, petitioners misinterpret the significance of the "negotiation" for these agreements; as discussed with GOB officials during verification, COSIPA was automatically approved based on the analysis by the data processing system. In addition, the GOB officials explained that the only applicants that have been denied were due to the fact that the taxpayers have already exceeded the number of deferrals allowed by law. Thus, record evidence does not support petitioners' arguments regarding the IPRJ, INSS and ICMS tax deferral programs.

As we have found the programs non-countervailable on the basis that they are non-specific, both parties' comments regarding the benchmark are moot.

Comment #8: Affiliation of CSN and USIMINAS

Petitioners state that record evidence demonstrates that CSN and USIMINAS/COSIPA are sufficiently related to each other so as to find that their interests have merged. Petitioners state that respondents' reliance on the fact that neither CVRD nor Previ is a party to the USIMINAS shareholders agreement, and therefore, CSN does not exercise any control over USIMINAS, is incorrect. Petitioners argue that absolute control is not required for a finding of affiliation, merely that the companies are "sufficiently related"—if one company owns 20 percent of the other, the companies prepare consolidated financial statements, there are common directors, or one company performs services for the other. Petitioners state that CSN, through CVRD, and Previ have significant influence over USIMINAS through its substantial, albeit minority, presence on USIMINAS' Board of Directors. Petitioners conclude that record evidence supports a finding that USIMINAS and CSN are affiliated and should be treated as a single company for purposes of calculating the countervailing duty rate.

Respondents disagree with petitioners' arguments stating that the record indicates that CSN and USIMINAS are competitors. In addition, the record demonstrates that there is insufficient overlap in shareholder interests and/or directors to support a finding of affiliation and presumption that subsidy benefits could have been transferred between the companies. Respondents also state that the Department did not collapse the respondents when they were all owned and controlled by Siderbras, and thus, to do so now, when they have even less affinity of interests, would be inappropriate.

Department's Position: We disagree with petitioners. As discussed in the "Affiliation" section above, record evidence does not support a finding of affiliation between CSN and USIMINAS. We disagree with petitioners that the fact that CVRD and Previ do not participate in the USIMINAS shareholders agreement is not dispositive of a finding of no affiliation. The shareholders that participate in the shareholders agreements of USIMINAS are required to pre-vote all issues before the respective Boards of Directors and their representatives on the Boards are then required to vote as a block. *See* USIMINAS Verification Report at 2. Therefore, shareholders that do not participate in the shareholders agreement are effectively prevented from exercising any control over the operations of the company, irrespective of the size of their shareholdings. Neither CVRD nor Previ, on their own, are sufficiently related to satisfy the affiliation standard identified in the Department's countervailing duty questionnaire. CVRD and Previ are also not in the position to exercise joint control over USIMINAS since they do not participate in the shareholders agreement. There are no other connections between CSN and USIMINAS that could result in a finding of affiliation between the two companies. Therefore, no finding of affiliation is warranted and the issue of collapsing is moot.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU.

Ad Valorem Rates

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated individual subsidy rates for each of the companies under investigation. As discussed in the "Affiliated Parties" section of this notice, we are treating USIMINAS/COSIPA as one company and have calculated a single rate for USIMINAS/COSIPA. To calculate the "all others" rate, we weight-averaged the company rates by each company's exports of the subject merchandise to the United States.

Producer/exporter	Net subsidy rate %
USIMINAS/COSIPA	9.67
CSN	6.35
All Others	7.81

Suspension of Liquidation

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of hot-rolled flat-rolled carbon-quality steel from Brazil which were entered, or withdrawn from warehouse, for consumption on or after February 19, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after June 21, 1999, but to continue the suspension of liquidation of entries made between February 19, 1999, and June 20, 1999.

We have concluded a suspension agreement with the Government of Brazil which eliminates the injurious effects of imports from Brazil (*see, Notice of Suspension of Investigotion: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil* being published concurrently with this notice). As indicated in the notice announcing the suspension agreement, pursuant to section 704(h)(3) of the Act, we are directing the U.S. Customs Service to continue the suspension of liquidation for entries of subject merchandise entered, or withdrawn from warehouse, for consumption between February 19, 1999, and June 21, 1999. This suspension will terminate 20 days after publication of the suspension agreement or, if a review is requested pursuant to section 704(h)(1) of the Act, at the completion of that review. Pursuant to section 704(f)(2)(B) of the Act, however, we are not applying the final determination rate to entries of subject merchandise from Brazil; rather, we have adjusted the rate to zero to reflect the effect of the agreement.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, the suspension agreement will have no force or effect, this investigation will be terminated, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see*, section 704(f)(3)(A) of the Act). If the ITC's injury determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see*, section 704(f)(3)(B) of the Act).

Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 704(g) and 777(i) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–18224 Filed 7–16–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION, CONTACT: Maureen McPhillips at 202–482–0193 for CSN, Barbara Chaves at 202–482–0414 or Samantha Denenberg at 202–482–1386 for USIMINAS/COSIPA, or Linda Ludwig at 202–482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Final Determination

We determine that certain hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Brazil are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on February 19, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 8299 (Feb. 19, 1999) (Preliminary Determination). Since the publication of the Preliminary Determination the following events have occurred:

The respondents in this investigation: Companhia Siderurgica Nacional (CSN); Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS); and Companhia Siderurgica Paulista (COSIPA) requested postponement of the final determination in accordance with Section 735(a)(2) of the Act on February 2, 1999. Accordingly, we postponed the final determination in this investigation on February 18, 1999 for 30 days. See Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 9475 (February 26, 1999).

The Department verified sections A (General Information), B (Home Market Sales) and C (U.S. Sales) of CSN's responses on March 8 through March 12, 1999. The Department verified section D (Cost) of CSN's response on March 15 through March 19, 1999. These verifications were performed at CSN's production facility in Volta Redonda. See Memorandum to the File; "Sales Verification Report of Companhia Siderurgica Nacional (CSN)," April 7, 1999, (CSN's Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting: "Verification of the Cost of Production and Constructed Value Data—CSN," April 7, 1999, (CSN's Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

The Department verified sections A–C of USIMINAS' responses on March 15 through March 20, 1999 at USIMINAS' corporate headquarters in Belo Horizonte and its production facility in Ipatinga, Brazil. The Department verified section D of USIMINAS' response on March 22 through March 26, 1999 at USIMINAS" production facility in Ipatinga, Brazil. See Memorandum For the File; "Sales Verification of Sections A–C Questionnaire Responses Submitted by Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS)," April 9, 1999 (USIMINAS' Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; "Verification of the Cost of Production and Constructed Value Data—USIMINAS," April 9, 1999 (USIMINAS' Cost Verification Report).

The Department verified section D of COSIPA's response on March 15 through March 19, 1999 at COSIPA's production facility in Cubatão, Brazil. The Department verified sections A–C of COSIPA's responses on March 22 through March 27, 1999 at COSIPA's production facility in Cubatão, Brazil. See Memorandum to Neal Halper, Acting Director, Office of Accounting; "Verification of the Cost of Production and Constructed Value Submissions of Companhia Siderurgica Paulista," April 8, 1999 (COSIPA's Cost Verification Report) and Memorandum For the File; "Sales Verification of Sections A–C Questionnaire Responses Submitted by Companhia Siderurgica Paulista (COSIPA)," April 9, 1999 (COSIPA's Sales Verification Report).

On March 22, 1999, CSN, USIMINAS, and COSIPA (respondents) requested a public hearing in this case. California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel, Inc., IPSCO Steel Inc., Steel Dynamics, Inc., Weirton Steel Corporation, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (petitioners) also requested a public hearing on March 22, 1999. On April 16, 1999, petitioners and respondents in this investigation filed case briefs. We received rebuttal briefs from petitioners and respondents on April 26, 1999. On April 22, 1999, the Department sent a request to USIMINAS and COSIPA to report further information identified at the verifications. The Department received this information on April 28, 1999.

In addition, on April 15, 1999, General Motors Corporation ("GM") requested a scope exclusion for hot-rolled carbon steel that both meets the standards of SAE J2329 Grade 2 and is of a gauge thinner than 2 mm with a 2.5 percent maximum tolerance. On April 22, 1999, the petitioners requested that certain ASTM A570–50 grade steel be excluded from the investigation. For a more detailed discussion of scope issues, please see Scope Amendments Memorandum (April 28, 1999).

On May 5, 1999, the respondents and counsel for petitioners withdrew requests for a hearing, and therefore, there was no hearing for in this investigation. On, May 6, 1999, the Department published Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil, 64 FR 24321, further extending the deadline for this investigation.

Scope of the Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic

substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063—0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000—88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10—0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.
Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%.

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent

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silicon by weight, further characterized by either (i) tensile strength between 540 N/mm ² and 640 N/mm ² and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm ² and 690 N/mm ² and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1997 through June 30, 1998.

Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

The statute requires that certain conditions be met before the Department may resort to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by (the Department)" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong. 2nd Sess. (1994), at 870. Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Final Rule, 62 FR at 27340. The statute notes, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

CSN

We are applying adverse facts available where the criteria laid out in section 776(a)(2) of the Act are present. For this final determination, we have applied facts available to account for those unreported U.S. sales where the nota fiscal date—the date of sale—was within the POI but the commercial invoice date (the date of sale reported by CSN) fell outside the POI. Please see Comment 5 for a more detailed explanation of this issue.

USIMINAS/COSIPA

In March, 1999, the Department conducted verifications of USIMINAS and COSIPA and was unable to verify various issues. As noted in USIMINAS" Sales Verification Report, COSIPA's Sales Verification Report, and the respective Cost Verification Reports, respondents were either unprepared, unwilling, or unable to review certain issues at the verifications. When the material remained unverified, but respondents exhibited cooperation in supplying at least a basic level of information, the Department applied facts available in accordance with section 776(a) of the Act. This was the case in the Department's application of facts available for USIMINAS" costs. USIMINAS deviated from its normal allocation system in reporting its product-specific costs. As a result, it failed to pick up all costs captured in its financial accounting records. As facts available, the Department adjusted USIMINAS" reported costs to coincide with its normal accounting records. See Comment 47. The Department also used facts otherwise available in its determination of critical circumstances. See the Critical Circumstances section below.

In several other instances, the respondent failed to cooperate to the best of its ability. In these cases the Department asked repeatedly to cover certain issues, but respondents declined and they remained outstanding at the end of verification. Therefore, in accordance with section 776(b) of the Act, we have determined that adverse inferences are warranted for USIMINAS" unreported U.S. sales where the nota fiscal date—the date of sale—was within the POI but the commercial invoice date (the date of sale reported by USIMINAS) fell outside the POI. See Comment 19. We have also determined that adverse inferences are warranted for the following items: downstream sales data, USIMINAS' home market inland freight, USIMINAS' U.S. inland freight, USIMINAS' warranty expense, COSIPA's home market inland freight, COSIPA's brokerage and handling expenses, COSIPA's packing, and USIMINAS' failure to report its affiliated supplier's actual cost of production (COP).. See Comments 18, 25, 26, 30, 34, 35, 40, and 49. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey, 61 FR 30309, 30310 (June 14, 1996).

Critical Circumstances

In our preliminary determination, the Department found that there was no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Brazil. In this final determination, the Department finds the same to be true. In accordance with section 735(a)(3) of the Act, if a petitioner alleges critical circumstances, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As in the Preliminary Determination, the Department finds that the first criterion has been met since Mexico has an antidumping duty order on hot-rolled steel from Brazil. This shows a history of dumping and material injury by reason of dumped imports of the subject merchandise. To determine whether the second criterion is met, *i.e.* whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for at least three months immediately preceding and following the filing of the petition. See 19 CFR 351.206(i). The Department, therefore, requested on February 9, 1999, that respondents submit monthly U.S. shipment data from January 1997 through January 1999. COSIPA submitted this data on February 19, 1999; USIMINAS on March 1, 1999; and CSN on February 22, 1999. In the Department's verification outlines and at verification, the Department requested that respondents demonstrate their methodology in reporting the monthly U.S. shipment data. CSN's monthly shipment data was verified, but USIMINAS and COSIPA's was not. See USIMINAS' Sales Verification Report, page 59 and COSIPA's Sales Verification Report, page 45.

Pursuant to 19 CFR 351.206(h)(2), the Department will consider an increase of 15 % or more in the imports of the subject merchandise over the relevant period to be massive. CSN's verified data demonstrates that the threshold needed to find critical circumstances was not met since a comparison of shipments immediately preceding and following the filing of the petition did not reflect an increase of more than 15%. See Exhibit 5 of CSN's February 22, 1999 submission of monthly U.S. shipment data. We were unable to verify USIMINAS/COSIPA's shipment data, and therefore, are not using it in making our final critical circumstances determination. However, based on information available to the Department including official Census statistics, verified data for CSN, and the fact that CSN, USIMINAS, and COSIPA are the only known producers/exporters of the subject merchandise to the United States, we have determined that imports of the subject merchandise produced by USIMINAS/COSIPA did not increase by 15%. See Memorandum to the File: "Analysis for Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS) / Companhia Siderurgica Paulista (COSIPA) for the Final Determination of the Antidumping Duty Investigation of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil for the period July 1, 1997 through June 30, 1998," July 6, 1999, (USIMINAS/ COSIPA's Analysis Memo). Therefore, the threshold for critical circumstances was not met.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from Brazil to the United States were made at LTFV, we compared export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average export prices for comparison to weighted-average normal values or constructed values.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the Investigation" section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. If there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

Affiliated Respondents

In our preliminary determination, we determined that USIMINAS and COSIPA were affiliated parties, and we collapsed these entities. See Collapsing Memorandum to Joseph A. Spetrini from Richard Weible, December 22, 1998 (Collapsing Memo). For the purpose of this investigation, we continue to consider these two respondents as a single entity. See Comment 17 below for a further discussion of this issue. Petitioners also argue that all three respondents are affiliated and should be collapsed. For this final determination, the Department determined that there is insufficient evidence on the record to warrant a collapsing of all three respondents. See Comment 1 below for a further discussion of this issue. However, should this investigation result in an antidumping duty order, we intend to scrutinize this issue in any subsequent segment of this proceeding.

Level of Trade

CSN

In our preliminary determination we agreed with CSN that one level of trade (LOT) existed for CSN in the home market. Furthermore, we agreed with CSN that its EP sales in the United States were at a single LOT, and that CSN's sales in both markets were at the same LOT (see Preliminary Determination, 64 FR 8302). During verification, in the course of reviewing

CSN's sales process, accounting system, and sales documentation for both home market and U.S. customers, we found no evidence of different selling functions based on customer category, distribution channels, or market (see CSN's Sales Verification Report, p. 15).

No party to this investigation commented on this issue relative to CSN and the Department has no new evidence that would warrant altering our preliminary determination. Therefore, as in the preliminary determination, we find that CSN's sales within or between markets were made at the same LOT and, therefore, a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate.

USIMINAS/COSIPA

In our preliminary determination, the Department found that two LOTs existed in the home market, one to affiliated resellers and the other to all other types of customers which we termed mill direct sales. In the U.S. market, the Department determined that there was one LOT, and that the U.S. LOT was equivalent to all types of home market sales except those to affiliated resellers. However, we were unable to verify USIMINAS/COSIPA's LOT claims. Therefore, for this final determination we are considering all U.S. and home market sales to be at the same LOT. See Comment 18 below.

Export Price

The Department based its calculations on EP in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. The Department calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We calculated EP for CSN and USIMINAS/COSIPA based on the same methodology employed in the Preliminary Determination, except as noted in the Comment section below. See Memorandum to the File: "Analysis for Companhia Siderurgica Nacional (CSN) for the Final Results of the Antidumping Duty Investigation of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil for the period July 1, 1997 through June 30, 1998," (July 6, 1999), (CSN's Analysis Memo), and USIMINAS/COSIPA's Analysis Memo.

Normal Value

Home Market Viability

As discussed in the Preliminary Determination, in order to determine whether the home market was viable for purposes of calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. As CSN's and USIMINAS/COSIPA's aggregate volumes of home market sales of the foreign like product were greater than five percent of these companies' aggregate volumes of U.S. sales of the subject merchandise, we determined that the home market was viable for both CSN and USIMINAS/COSIPA. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 % or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that sales to that affiliated customer were made at arm's length prices and, therefore, we excluded them from our LTFV analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993).

Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Petitioners provided reasonable grounds to believe or suspect that CSN and USIMINAS/COSIPA's sales of the foreign like product under consideration for determining NV may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by the respondents in this investigation.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of respondents' cost of materials, fabrication, general expenses, and packing costs. We relied on CSN's and USIMINAS/COSIPA's submitted COP, except in the following specific instances:

CSN

1. We revised COP and CV to include the identified reconciliation items and minor corrections, presented on the first day of verification, which were not included in CSN's reported costs. See Comment 43.
2. We revised CSN's selling, general and administrative (SG&A) expense rate in order to include the net exchange loss and the amortization of goodwill. See Comment 44.
3. We recalculated CSN's financial expense rate to include certain net exchange losses which were financial in nature. We also revised the long-term financial income amount based on consolidated statement figures instead of company-specific figures. See Comment 44.

USIMINAS

1. We adjusted the reported cost of manufacturing (COM) for each CONNUM to coincide with its normal accounting records. See Comment 47.
2. Where different COM's were reported for the same CONNUM, we used the higher amount. See Comment 48.
3. We adjusted the transfer price for iron ore and coal obtained from an affiliated supplier in accordance with the major input rule. See Comment 49.
4. We computed the interest income offset using data from the USIMINAS unconsolidated entity. See Comment 51.
5. We adjusted the G&A rate calculation to exclude those expenses which directly relate to revenue received from non-operational activities. See Comment 52.

COSIPA

1. We revised the cost of iron ore to reflect the market value of this input. See Comment 54.

2. We revised COSIPA's G&A expense rate calculation to reflect amounts from the 1997 financial statements and disallowed income resulting from rescheduling of ICMS payments to offset general and administrative expenses. See Comment 55.
3. We revised the interest expense rate to use USIMINAS's revised rate. See Comment 51.

Price-to-Price Comparisons

CSN

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on CSN's sales to unaffiliated home market customers or sales to affiliated customers that we determined to be at arm's length. We made adjustments for U.S. packing expenses. We made deductions, where appropriate, for movement expenses, taxes, and home market packing pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made circumstance-of-sale (COS) adjustments for warranty expenses, credit, and interest revenue in accordance with section 773(a)(6)(C)(iii) of the Act.

USIMINAS/COSIPA

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on USIMINAS/COSIPA's sales to unaffiliated home market customers or prices to affiliated customers that we determined to be at arm's length prices. We made adjustments for selling expenses, discounts, movement expenses, packing and taxes in accordance with section 773(a)(6) of the Act. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made COS adjustments for warranty expenses, credit, and interest revenue in accordance with section 773(a)(6)(C)(iii) of the Act.

Price-to-Constructed Value Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. See section 773(e)(1). In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Brazil. We calculated the cost of materials, fabrication, and general expenses based upon the methodology described in the "Cost of Production Analysis" section above. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We made COS adjustments by deducting home market direct selling expenses from NV and adding U.S. direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

I. Sales Issues pertaining to all three respondents

Comment 1: Whether to collapse USIMINAS/COSIPA with CSN. Petitioners assert that in addition to collapsing USIMINAS and COSIPA, all of the respondents should be collapsed into a single entity for purposes of this investigation. They argue that CSN and USIMINAS/COSIPA produce the same products, share common directors, and have intertwined operations, all of which create the potential for the manipulation of price or production. Referring to the Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case No. A–351–828 (March 11, 1999) (Collapsing Comments), petitioners argue that the linkages between all three respondents clearly satisfy the affiliation and collapsing criteria set out in the Department's regulations.

Petitioners cite to the definition of affiliated parties in section 771(33) of the Act. Petitioners maintain that CSN, in conjunction with Companhia Vale do Rio Doce (CVRD) and other affiliated companies, or the "CSN/CVRD group," is affiliated with USIMINAS/COSIPA as evidenced by (1) the CSN/CVRD group sharing equity and managerial relationships which petitioners claim establish an integrated unit under the control of Benjamin Steinbruch and his family; (2) the "CSN/CVRD group" sharing board members with USIMINAS; and (3) the CSN/CVRD group holding significant equity interest in USIMINAS.

Petitioners first argue that CSN and CVRD should be treated as a single entity, and that this "CSN/CVRD" entity is affiliated with USIMINAS by virtue of the alleged control of both by Mr. Steinbruch. In support of this theory, petitioners note that Mr. Steinbruch is the head of the Vicunha Group, or Steinbruch family business, which owns 14.1% of CSN through Textilia. Textilia is a member of CSN's shareholders' agreement (a group of minority shareholders which vote as a block and together control 64.3% of the voting shares) and has two representatives on CSN's board, including Mr. Steinbruch. Mr. Steinbruch is chairman of both CSN and CVRD's boards, and petitioners cite Business Week and Financial Times articles referring to Mr. Steinbruch as controlling the "CSN/CVRD group." In fact, petitioners claim that CSN's stake in CVRD through its 31% ownership of Valepar, S.A. (Valepar) (which owns 27% of CVRD) and CVRD's stake in CSN through its 96.84% ownership of Vale do Rio Doce Navegacao (Docenave)(which, in turn, owns 25.2% of CSN), effectively makes CSN and CVRD a single business entity. In quoting the Financial Times, petitioners state that Mr. Steinbruch's reorganization of CVRD strengthened his control of this company beyond what CSN's ownership would imply.

Petitioners believe that the directors and officers shared by CVRD and Valepar and by CSN and CVRD further solidify Mr. Steinbruch's control over the companies, and "provide a ready means for the companies to act in concert (*e.g.*, planning and pricing decisions)." Petitioners point out that Gabriel Stoliar, a director of CVRD, sits on CSN's and USIMINAS" board of directors. On the subject of board members, petitioners take issue with the different explanations by USIMINAS and CSN of the function of a board of directors. They state that USIMINAS compares the function of the "Administrative Council" to a U.S. board of directors and the "Board of Directors" to a company's management, while CSN makes no such distinction. Therefore, when petitioners use the term "Board of Directors" they intend it to mean "the entity controlling the company."

Second, petitioners claim that because of CSN's equity interest in CVRD, which in turn owns a 23% interest in USIMINAS, CSN has more than 5% of the outstanding stock in USIMINAS. They believe that this factor demonstrates CSN's ability to exercise restraint or direction over USIMINAS and is sufficient grounds for finding affiliation between CSN and USIMINAS.

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Third, petitioners argue that CSN and USIMINAS are affiliated based on common ties to the Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) (employee pension fund of the Bank of Brazil). They believe that CSN has a close relationship with Previ and acts in concert with it to acquire and control various companies, including USIMINAS. They argue that Previ is not a passive investor of pension funds but an important source of capital for Mr. Steinbruch's investments. Petitioners state that Previ is a member of CSN's shareholders agreement, directly owns 13.8% of the company, and together with CSN, submitted the winning bid in the privatization of CVRD. According to petitioners, Previ and CSN together maintain 30 or 38% of the outstanding voting stock of CVRD. They also point out that Previ is the third largest shareholder in USIMINAS, and while not a member of its shareholders' agreement, has two employees from the Banco do Brasil on USIMINAS' Board of Directors. Petitioners argue that Previ's ownership in CSN, CVRD, and USIMINAS and its joint interests and activities with CSN demonstrate that Previ and CSN together are affiliated with USIMINAS.

Having explained their arguments for affiliation, petitioners next argue that CSN's legal, organizational, and operational ties with USIMINAS/COSIPA also satisfy the Department's other criteria for collapsing. Petitioners note that, pursuant to § 351.401(f)(1) of the Department's regulations, affiliated producers will be treated as a single entity if (1) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.

Petitioners believe that CSN and USIMINAS/COSIPA are capable of easily shifting production of identical or similar products among themselves, as evidenced by similar production facilities and similar products. In discussing the "significant potential" criterion, petitioners quote § 351.401(f)(2), which explains that the Department examines the following factors, among others: (i) The level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Petitioners cite cases (see FAG Kugelfischer v. United States, 932 F. Supp. 315 (CIT 1996); Nihon Cement Co., Ltd. v. United States, 17 CIT 400 (1993); Queen's Flowers de Colombia, et al., v. United States, 981 F. Supp. 617 (CIT 1997), in which the U.S. Court of International Trade (the Court) upheld the Department's articulation of these collapsing criteria. Petitioners believe that the central issue according to the Court is "whether parties are sufficiently related to present the possibility of price manipulation." Petitioners believe there is significant potential for manipulation of price or production between CSN and USIMINAS/COSIPA. Petitioners state that this potential stems from the high level of common ownership, common members on the boards of directors, and intertwined operations, and is reflected in the ongoing price fixing investigation of CSN, USIMINAS and COSIPA by the Brazilian government (see USIMINAS' Sales Verification Report, page 9 and COSIPA's Sales Verification Report, pages 5–6 for a discussion of the ongoing price-fixing investigation).

With respect to intertwined operations, petitioners cite several factors. They argue that there is a connection between USIMINAS and CSN through a third company in the United States. CSN is affiliated with this third company by way of two companies in which it has equity. USIMINAS also has a relationship with this third U.S. company through a commercial agreement. Petitioners believe there is potential for CSN and USIMINAS to use this common tie to manipulate U.S. prices. Additionally, petitioners believe that respondents' joint purchase of coal, common ownership in MRS Logistica (a railroad transport company), and a common source of inputs demonstrate operational links. Petitioners include iron ore among the common inputs, arguing that just as USIMINAS/COSIPA purchases iron ore from CVRD, a statement by Mr. Steinbruch in "CSN Denies Cartel Charges," *American Metal Market* (March 1, 1999) indicates that CSN does so as well.

In conclusion, petitioners argue that respondents' nearly identical production facilities and products, common equity ownership, shared board members, the on-going price-fixing investigation, and intertwined operations all indicate that there is a significant potential for price or production manipulation. Petitioners also believe that these factors are similar to those relied upon in prior determinations such as Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Columbia, 61 FR 42833, 42853, (August 19, 1996), (Fresh Cut Flowers) and Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico, 64 FR 13148, 13151 (March 17, 1999) and Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40453–54 (July 29, 1998) in which the Department collapsed respondents.

While respondents did not address the issue of collapsing CSN with USIMINAS/COSIPA, they did argue that USIMINAS and COSIPA should not be collapsed for this investigation. See Comment 17.

Department's Position: The Department has determined that USIMINAS and COSIPA should be collapsed for margin calculation purposes (see Comment 17). To collapse CSN with USIMINAS/COSIPA, as petitioners suggest, requires that we first find that CSN and USIMINAS/COSIPA are affiliated parties within the meaning of section 771(33) of the Act. Because we find that USIMINAS/COSIPA is not affiliated with CSN, we have not collapsed these entities for purposes of this investigation.

The issue of whether CSN is affiliated with USIMINAS/COSIPA, is governed by section 771(33) of the Act, which deems the following persons to be affiliated: (A) Members of a family; (B) any officer or director of an organization and such organization (C) partners; (D) employer and employees; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. For purposes of this provision, a person controls another person if the person is in a position to exercise restraint or direction over the other person. Petitioners arguments for finding USIMINAS/COSIPA and CSN affiliated appear to be based on subparagraphs (E), (F) and (G) of section 771(33) of the Act.

Pursuant to section 771(33)(E), the Department examined CSN's ownership interest, direct or indirect, in USIMINAS (USIMINAS/COSIPA does not own or control any shares in CSN). CSN owns a 31% equity interest in

Valepar, which owns 27%, 42%, or 52% of CVRD, depending on which of the sources submitted in this investigation is used. Throughout the POI, CVRD, in turn, had a 15.48% interest in USIMINAS. Even assuming the highest possible percentages of equity ownership by CSN in Valepar, by Valepar in CVRD, and by CVRD in USIMINAS, CSN would own well under 5% of USIMINAS. Based on this evidence, CSN and USIMINAS/COSIPA are not affiliated within the meaning of section 771(33)(E) of the Act.

With respect to affiliation based on control, petitioners have not clearly identified which entities they believe are in a position to exercise control over CSN and USIMINAS (or USIMINAS/COSIPA) or on which specific subparagraph (F or G) of section 771(33) they are relying in their analysis. Therefore, we have analyzed petitioners comments under both section 771(33)(F) and (G).

In accordance with section 771(33)(F), we first examined whether the record establishes common control over these entities by Mr. Steinbruch, CVRD, or Previ as separate entities. Assuming arguendo that we were to conclude that Mr. Steinbruch, as chairman of CSN's board of directors, controls CSN, the record contains no evidence that he controls USIMINAS.

CVRD is affiliated with both CSN and USIMINAS under section 771(33)(E). CVRD directly owns more than 5% of USIMINAS (15.48% of the voting shares) and indirectly owns, through its holdings in Docenave, more than 5% of CSN (10.3% of the voting shares). However, CVRD does not control both CSN and USIMINAS. Mr. Gabriel Stoliar, the CEO of CVRD, serves on the eight-to-ten-member boards of both CSN and USIMINAS. In addition, CVRD appoints an additional board member at USIMINAS and through Docenave (in which CVRD is the majority stockholder), appoints one at CSN. However, Brazilian law prohibits board members from representing any other company's interests while serving on the board of a different company. See USIMINAS' Sales Verification Report at 5–6 and COSIPA's Sales Verification Report at 2. In addition, the record indicates that the USIMINAS board of directors (the "administrative council") is responsible for macroeconomic issues such as large investment matters and does not control daily operations. See USIMINAS' Sales Verification Report, at 5. Finally, CVRD is not a member of the USIMINAS shareholder's agreement, whose members control 53% of the voting stock of that company. The Department finds that, under the circumstances of this case, CVRD is not in a position to control USIMINAS within the meaning of section 771(33) of the Act. Because CVRD does not control USIMINAS, it cannot exercise common control over both CSN and USIMINAS within the meaning of subsection (F). Therefore, the issue of whether CVRD controls CSN is moot for purposes of this analysis.

Previ, like CVRD, is affiliated with both CSN and USIMINAS through equity ownership. However, subsection (F) requires a finding of common control, not merely of common affiliation. Previ is not a member of the USIMINAS shareholders' agreement, which controls 53% of the voting stock of that company. Nor is there other evidence that Previ is in a position to control USIMINAS. Because the record evidence does not establish that Previ is otherwise in a position to control USIMINAS, we find that CSN and USIMINAS are not affiliated by virtue of common control by Previ.

The SAA recognizes that, even in the absence of an equity relationship, control may be established "through corporate or family groupings" (see SAA at 838), i.e., a corporate or family group may constitute a "person" within the meaning of section 771(33) of the Act. See *Ferro Union* v. *United States*, Slip Op. 99–27 (Ct. of Int'l Trade, March 23, 1999). In such a case, the control factors of individual members of the group (*e.g.*, stock ownership, management positions, board membership) are considered in the aggregate. Accordingly, the Department considered whether USIMINAS and CSN are affiliated by virtue of common control by a corporate or family group.

Petitioners allege that the Steinbruch family controls the "CSN/CVRD group." However, there is no record evidence that the family controls USIMINAS. Therefore, there is no basis to find CSN and USIMINAS affiliated through common control by the Steinbruch family.

What constitutes a "corporate group" for purposes of the affiliation analysis is not defined; the Department must address the issue on a case-by-case basis. The cases in which the Department has recognized that affiliation exists by virtue of participation in the same corporate or family group involved common control of the firms at issue by members of the same family, the same group of investors, or the same group of corporations. In other words, the "control group" language in the SAA does not add a new criterion to the statutory definition of "affiliation." It merely acknowledges that the controlling entity of the "common control" provision can be something other than a physical or legal person, and can exercise that common control by means other than equity ownership. It does not allow for treating all affiliation relationships as if they created new "control groups." With respect to USIMINAS and CSN, there is no such pattern of common control. Although petitioners reference a variety of connections between various other entities and CSN and USIMINAS, they do not identify, nor do we find, any definable corporate group that controls both CSN and USIMINAS. Thus, we do not have a basis in the record to find affiliation under section 771(33)(F) of the Act.

With respect to section 771(33)(G) of the Act, petitioners have again failed to clearly identify a basis for finding that CSN controls USIMINAS (or USIMINAS/COSIPA), or vice versa. Petitioners appear to argue that CSN and CVRD are a "corporate group" for purposes of the affiliation analysis. While we agree that CSN and CVRD are affiliated, that by itself is not sufficient to consider them a "corporate group" for purposes of an affiliation analysis. Moreover, even if the Department were to treat CSN and CVRD as a corporate group, there is no evidence that the alleged "CSN/CVRD group" controls USIMINAS within the meaning of section 771(33)(G) of the Act. In some instances petitioners appear to suggest that the corporate group includes not only CSN and CVRD, but also Previ. However, we do not find a sufficient basis in the record to treat CSN, CVRD and Previ as a corporate group for purposes of the affiliation analysis.

Because the record evidence does not support a finding that USIMINAS (or USIMINAS/COSIPA) and CSN are affiliated under any provision of section 771(33), there is no basis to apply the collapsing criteria in § 351.401(f). Therefore, the Department has continued to treat CSN and USIMINAS/COSIPA as separate entities for the purposes of this investigation.

Comment 2: PIS/COFINS Taxes. To avoid duplication, USIMINAS/COSIPA and CSN prepared a joint description of their PIS/COFINS tax argument in CSN's Case Brief of April 16, 1999 (CSN's Case Brief). In their argument, respondents note that section 773(a)(6)(B)(iii) of the Act ("the tax adjustment provision"), as amended, ensures that the Department makes a tax-neutral comparison when comparing normal value to export price. This section of the statute achieves this end by requiring the Department to adjust normal value by the amount of any

indirect taxes imposed on home market sales, but not on export sales. Respondents state that, until recently, the Department considered Brazil's Programa de Integracao Social (PIS) and Contribuicao do Fin Social (COFINS) taxes to be indirect taxes that fall within the meaning of the tax adjustment provision. The Department's change in its treatment of these taxes, according to respondents, is based on a factually incorrect assumption that these taxes apply to total gross revenue and on a legally improper understanding of what indirect taxes are.

Respondents point out that the statute and prior case law make clear that three circumstances must exist for the tax adjustment provision to apply to a particular tax. First, the tax must be "directly" imposed on the home market product. Second, it must be rebated or not collected on export sales. Third, it must be added to or included in the price of the home market sale. The fact that these taxes are not imposed on exports has never been an issue. Thus, respondents state that the only requirements of significance in this review are the first and third requirements.

In failing to adjust respondents' home market price for Brazil's PIS/COFINS taxes in the Preliminary Determination, respondents argue that the Department incorrectly determined that "these taxes are levied on total revenues." Respondents state that until recently, the Department consistently held that PIS/COFINS fall within the meaning of the tax adjustment provision. Respondents cite numerous antidumping cases from Brazil in support of their position that PIS and COFINS should be deducted from home market price. See CSN's Case Brief, p. 7.

Respondents contend that in the Final Administrative Review of Silicon Metal from Brazil, 62 FR 1970 (January 14, 1997)(Silicon Metal from Brazil, 1997), the Department erroneously determined that PIS/COFINS are analogous to two Argentine taxes previously determined not to be indirect taxes within the meaning of the tax adjustment provision. Respondents state that in the Final Determination of the Less-Than-Fair Value Investigation of Silicon Metal from Argentina, 56 FR 37891 (August 9, 1991) (Silicon Metal from Argentina), the Department refused to make an upward adjustment to U.S. price for two Argentine taxes because these taxes were based on non-sales revenue as well as sales revenue. The Department concluded that these taxes were not "directly" imposed on Argentine sales within the meaning of section 773(a)(6)(B)(iii) of the Act.

According to respondents, petitioners in Silicon Metal from Brazil, 1997 glossed over the fact that Brazilian and Argentine taxes are, in fact, vastly different and asserted that PIS/COFINS are "*almost* identical" to the two Argentine taxes. Respondents state that PIS/COFINS are imposed only on a company's total domestic sales. Respondents assert that CSN's Sales Verification Report and Exhibit 28 of the Report demonstrate that the basis for both PIS and COFINS is gross sales (Receita Bruta de Vendas), minus credit billing adjustments, canceled sales, and IPI, plus "other" sales revenue. Respondents state that the accounting documents in Exhibit 28 further demonstrate that it calculates its PIS and COFINS tax liability on sales revenue alone. Moreover, respondents note that Brazilian law specifies that the COFINS tax "shall be two percent and charged against monthly billing, that is gross revenues derived from the sale of goods and services of any nature." (emphasis added). See CSN's Supplemental Response—Sections B and C at Exhibit 9 (January 25, 1999). Likewise, the PIS tax represents 0.65% of invoicing—"invoicing" being defined as the "gross revenue* * *originating from the sale of goods from own account (sic), from the price of the services rendered and from the result obtained from alien's (i.e., consignees) account." See Supplementary Law No. 70 of September 7, 1970. Since neither tax is based on non-sales revenue, respondents maintain that PIS/COFINS are not "gross revenue taxes" and, therefore, not analogous to the Argentine taxes in Silicon Metal from Argentina.

In addition, respondents claim that the Department's decision not to make an adjustment for PIS and COFINS is unsupported by any accounting or economic analysis. The fact that PIS and COFINS sales taxes are calculated on an aggregate basis as opposed to an invoice-specific basis is irrelevant—the tax liability is the same. In respondents' view, no basis exists to conclude that the manner of calculating a tax disqualifies a tax from an adjustment under section 773(a)(6)(B)(iii) of the Act.

Respondents state that the Department has not, in any of its decisions relating to this issue, identified any support for its classification of a sales tax as a "gross revenue tax" simply because it is calculated on an aggregate basis. As a result, respondents reiterate that the taxes are based exclusively on home market sales and for this reason the Department for almost two decades found these taxes to qualify for a COS adjustment.

The third prong, inclusion of the taxes in the home market price, is satisfied in the instant case—the Department has never based its denial of the PIS/COFINS adjustment on a specific or explained finding that the taxes were not included in the price and passed through to the home market customer. Respondents note that in the Final Administrative Review of Color Television Receivers from Korea, 49 FR 50420 (December 28, 1984), the Department made an adjustment for home market taxes based on the conclusion that the taxes were fully passed through to the home market customers. The ensuing court appeals upheld the Department's practice of making an adjustment for home market taxes under section 772(d)(1)(C) of the Act. See *American Alloys, Inc.* v. *United States*, 810 F3d.1469, 1475 (Fed. Circ., 1994). Therefore, respondents urge the Department to determine that PIS and COFINS are included in the home market price, and passed through to home market customers. In addition, respondents assert that in the Preliminary Determination, the Department did not cite to any record evidence that there is no pass-through. Nor did it prepare any questions related to the pass-through aspect of these taxes in its questionnaires or at verification. Since the Department never asked respondents to rebut any newfound presumption that these taxes were not included in the home market price to the customers, respondents believe the Department is not justified in finding no pass-through in this investigation.

If the Department were to argue that PIS and COFINS are not included in the price because they are not itemized on the invoice (like the IPI and ICMS taxes), respondents maintain that it would be wrong for two reasons: (1) PIS and COFINS were not itemized on the Brazilian invoices in all the Department's previous investigations, yet it always found that these taxes were included in the home market price, and qualified for an adjustment. (2) Whether or not the tax is itemized on the invoice is irrelevant to a pass-through finding. If the tax is not itemized, it is included in the gross unit price. Itemization on the invoice only indicates how the tax is calculated in the accounting records of the company.

Respondents conclude that there is no justification for the Department's preliminary decision to ignore the necessary deduction for PIS and COFINS. The PIS/COFINS adjustment is consistent with Department findings (except for recent erroneous decisions),

and decisions by the Courts. Moreover, there is no evidence on the record to support a Department presumption that PIS/COFINS are not included in the home market price. The PIS/COFINS adjustment is required to ensure that the Department's LTFV comparisons are tax neutral, as contemplated by the U.S. dumping law and Article 2.4 of the WTO Antidumping Agreement.

Petitioners counter that the statute and the SAA clearly state that downward adjustments to normal value may only be made for tax amounts directly imposed upon sales of the foreign like product. See section 773(a)(6)(B)(iii) of the Act and SAA, pp. 827–828. In this case, neither the PIS nor the COFINS is directly imposed on sales of the foreign like product. To the contrary, petitioners maintain that these taxes are based on income, not sales prices, and are imposed on all of the company's domestic sales revenue, including service revenue, on an aggregate basis. In fact, petitioners contend that neither PIS nor COFINS appears to be a simple aggregation of sales revenue, as suggested by respondents. COFINS tax liability is net of the "tax on industrialized goods," and as to PIS, it is not clear that PIS is levied on sales revenues and exclusive of financial revenue. See Rebuttal Brief of Schagrin Associates, p. 3, April 27, 1999.

According to petitioners, respondents bear the burden of creating a record sufficient to support findings made by the Department. Petitioners claim that the record in the instant case is devoid of evidence that PIS and COFINS are fully passed through to purchasers.

Contrary to respondents' suggestion that the Department lacks an understanding of indirect taxes, petitioners state that the Department is "intimately familiar with the way the PIS/COFINS taxes are imposed and collected," and since mid-1997 has consistently disallowed claimed adjustments to normal value for these taxes. See footnote no. 10, p. 4 of Dewey Ballantine Rebuttal Brief, April 26, 1999. Petitioners urge the Department not to disturb its settled practice on this issue.

Department's Position: Petitioners are correct in stating that since mid-1997 the Department has consistently disallowed claimed adjustments to normal value for these taxes. Pursuant to section 773(a)(6)(B)(iii) of the Act, normal value of the merchandise will be reduced by the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product.

Respondents have not provided any evidence to support their claim that the Department incorrectly concluded that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue and, thus, are not imposed specifically on the merchandise or components thereof. Information on the record demonstrates that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue. These taxes do not appear to be imposed on the subject merchandise or components thereof, and therefore, we have no statutory basis to deduct them from NV. As in the most recent review of Silicon Metal from Brazil, 64 FR 6318 (February 19, 1999), (Silicon Metal from Brazil, 1999), the Department has determined that a deduction of the PIS and COFINS taxes is not correct in the calculation of NV because these taxes are levied on total revenues (except for export revenues), and thus the taxes are direct, similar to taxes on profit or wages. Therefore, we made no adjustment for PIS/COFINS taxes in the calculation of the dumping margin for this final determination.

Comment 3: Input Tax Credit. While petitioners made this comment with respect to CSN, it also applies to USIMINAS/COSIPA. According to petitioners, the Department inappropriately deducted the gross ICMS and IPI tax amounts shown on CSN's sales invoices from CSN's reported home market gross unit price. Petitioners believe that for the final determination, the Department should deduct only the actual net ICMS and IPI payments made by CSN to the state and federal governments from CSN's reported home market gross unit prices. Petitioners cite the statute, which states that normal value shall be reduced by "the amount of any taxes imposed directly upon the foreign like product* * *, *but only to the extent that such taxes are added to or included in the price of the foreign like product.*" See section 773(a)(6)(B)(iii) (emphasis added). The SAA reiterates petitioners' position: *"It would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on that sale."* See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–516, 103d Cong., 2d Sess. at 827–828. (emphasis added).

Petitioners argue that the actual net ICMS and IPI payments made by CSN to the state and federal governments were significantly less than the amounts reported by CSN in its home market database. First, petitioners aver that CSN clearly stated in its Section B Response that "the *net liability* is the amount of the IPI and ICMS owing on the sale of the finished product, minus the credit for ICMS and IPI paid on raw materials." (CSN Section B Response at B–23) (emphasis added). Second, petitioners point out that both ICMS and IPI are value-added taxes (VAT), meaning that they are intended to tax the value added by each producer, not the full amount of the producer's sales value. Petitioners suggest that CSN does not understand the nature of a VAT. Finally, petitioners state that the Department's Sales Verification Report clearly indicates that the actual ICMS and IPI tax payments made by CSN to the state and federal governments were significantly less than the gross tax amounts reported in the TAX1 and TAX2 fields of CSN's home market database. Petitioners provide specific examples from the Department's CSN Sales Verification Report at 35 to support this conclusion.

CSN counters that petitioners' arguments for reducing the amount of the adjustment to home market prices for ICMS and IPI taxes to account for the credit received by manufacturers for ICMS and IPI paid on inputs, are wrong both as a matter of fact and of law. CSN cites section 773(b)(6)(B)(iii) of the Act and Daewoo Electronics Co. v. United States, 6 F.3d 1511, 1513–14 (Fed. Cir. 1993) (Daewoo Electronics) in support of its position that the statute requires an adjustment "to the extent to which the company bears the burden of such taxes." The Court of Appeals of the Federal Circuit (CAFC) stated:

> *To prevent the creation of dumping margins merely because the country of exportation taxes home market sales but not exports*, the antidumping law provides an offsetting adjustment to the sales price of the goods. . . . (emphasis added).

CSN notes that the court refused to engage in an inquiry into the extent that the tax is "passed through" to the customer; if it is imposed on the home market sale but not on the U.S. sale, it is fully deductible.

CSN claims that the petitioners were selective in their reading of the *SAA*. CSN states that according to petitioners, the quoted language seeks only to distinguish between sales which incur a tax liability and those which do not. CSN, however, maintains that the clear language of the statute is to make sure that a fair comparison be made between prices on the same basis. CSN concludes that there is nothing in either the statute or the legislative history which requires

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any inquiry into the amount of payment actually remitted by the manufacturer.

However, CSN emphasizes that the steel companies, in fact, do incur the full amount of ICMS and IPI imposed on the sale of their products. In order to prevent the "cascading" of a tax, each processor is given a credit for the tax it pays on the inputs it uses to produce the product, so the tax that the manufacturer pays is no more than the tax that is incident on the sale of the finished product. Citing the antidumping statute, CSN notes that the tax is limited to "the extent that such taxes are added to or included in the price of the foreign like product."

According to CSN, petitioners are wrong in implying that value-added taxes are somehow different from excise taxes when in fact the courts have made clear that value-added taxes are to be treated in the same manner as excise taxes when it comes to granting the adjustment for indirect taxes. See Daewoo Electronics at 1517. In addition, CSN maintains that petitioners' ultimate conclusion is wrong in that value-added taxes do not ensure that a company's liability is less than the amount of the tax on the product; on the contrary, it is only by the credit against taxes paid on the inputs that the value-added tax ensures that the manufacturer's liability is equal to the amount of the tax on the product it manufactures.

Department's Position: We agree with CSN. To prevent the creation of dumping margins merely because the country of exportation taxes home market sales but not exports, the antidumping law provides an offsetting adjustment to the sales price of the goods in the United States. See section 773(a)(6)(B)(iii) of the Act.

The CAFC in Daewoo Electronics concluded that "[i]f an exporter's records show that a tax was either a separate "add on" to the domestic price or, although not separately stated, was, in fact, included in the price and that the taxes were paid to the government, that satisfies the tax inquiry required by the statute for an adjustment of the U.S. price." The CAFC further stated that the statute does not speak to tax incidence, shifting burdens, or pass-through, nor does it contain any hint that an econometric analysis must be performed. The statutory language does not mandate that the ITA look at the effect of the tax on consumers rather than on the . . . company. The CAFC reasoned that as an unavoidable incident of any sale by the company, these taxes can only be recouped in their entirety from purchasers. *Id.* at 1517.

Section 773 (a)(6)(B)(iii) of the Act requires the deduction from NV of any taxes imposed directly upon the foreign like product or components thereof which have been rebated or which have not been collected on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product. The SAA (see, Section B.2.c.(2), at 157)) explains that the deduction of indirect taxes from NV constitutes a change from the existing statute, which required the addition of the tax amount to the U.S. price. The requirement that the home-market consumption taxes in question be "added to or included in the price" of the foreign-like product is intended to ensure that such taxes actually have been charged and paid on the home market sales used to calculate NV, rather than charged on sales of such merchandise in the home market generally. As the SAA states, "[it] would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on that sale." At verification, we verified the amount of ICMS and IPI taxes CSN reported for home market sales used to calculate NV. Besides tracing CSN's monthly payments to the government for these taxes from CSN's fiscal accounts to the proof of payment form, in the course of our home market sales traces, we verified that the ICMS and IPI taxes were included on each home market sale invoice. See Exhibits 25 and 29 of CSN's Sales Verification Report.

In sum, the Department is treating consumption taxes in a manner consistent with its longstanding policy (*i.e.*, calculating tax-neutral dumping margins), and in conformity with the statute as amended by the URAA. Since the reported home market gross unit price includes ICMS and IPI taxes, as demonstrated at verification, we have continued to deduct the full amount of these taxes from the home market price in order to achieve parity between the reported U.S. price, exclusive of taxes, and the NV of the comparison model.

Comment 4: Quality Designations. Though petitioners commented on CSN's quality designations, USIMINAS/COSIPA also submitted additional quality fields. Therefore, in the Department's Position below, we have addressed both companies' quality designations.

In petitioners' opinion, the Department should not allow CSN to adopt two additional quality designations: American Petroleum Institute (API) quality (code 9) and automotive wheel quality (code 10). According to CSN, code 9 is produced to API standards for oil pipelines, has a high silicon content, and very clean edges to ensure a tight weld. Petitioners note that end use is irrelevant and the limited information on the record indicates that this quality of steel is already identified by the Department's quality designation "1" (i.e., "High Strength Low Alloy"). According to petitioners, the American Society of Testing and Materials (ASTM) specification A 572 is within quality code "1" and contains the "high silicon content" that CSN claims is limited to its API quality products. Moreover, petitioners state that CSN's claims regarding the "very clean" or "purified" nature of this quality steel is equally inappropriate for requiring a separate quality designation. They state that CSN's claim that all its products are "either aluminum killed or a combination of aluminum killed and silicon" applies equally to the ASTM A 572 family of steels.

With respect to CSN's claims regarding the need for an automotive wheel quality designation (code "10"), petitioners assert that this separate designation is based on end use and the Department's existing quality designations confirm that application or use is not the determining factor in distinguishing quality designations. Furthermore, petitioners state that steel products with these characteristics are already separately identified in quality code "6" (*i.e.*, deep drawing, whether or not fully stabilized (interstitial-free) or special killed; pressure vessel) is comprised almost exclusively of steels with low silicon content, mechanical strength, and formability.

For the foregoing reasons, petitioners recommend that the Department revise CSN's quality designations so that quality designation "9" is revised to "1" and quality designation "10" is revised to "6". Furthermore, they state that the cost dataset should be revised to weight-average the cost of CONNUMS that are identical but for quality code "1" and "9", and "6" and "10," respectively. If this approach proves too difficult to program, petitioners recommend that the Department use the higher of the two reported cost amounts.

Respondents did not comment on this issue.

Department's Position: We agree with petitioners. We believe that the quality codes designated by the Department in its initial questionnaire to the respondents adequately cover the different classifications possible for hot-rolled flat-rolled carbon-quality steel products. Therefore, we have designated the quality code "9" as quality code "1" and quality code "10" as quality code "6") and adjusted the cost of the CONNUMS accordingly. See Analysis Memo for CSN.

USIMINAS/COSIPA also adopted four additional quality designations which we believe are adequately covered by the codes designated by the Department in its initial questionnaire. We have changed the new codes created by them and matched each one to the correct code among the eight originally designated by the Department. We have, therefore, changed codes "9" and "11" to code "3" and codes "10" and "12" to code "4" and adjusted the cost of the CONNUMS accordingly. See USIMINAS/COSIPA's Analysis Memo.

II. Company Specific Sales Comments

CSN

Comment 5: Date of Sale. Petitioners argue that for sales to the United States, the commercial invoice date is not an appropriate date of sale for CSN in this investigation. Rather, the record in this case overwhelmingly indicates that the date of the order confirmation is the date when the material terms of sale are established and, therefore, should be used as the date of sale.

Although the Department's regulations provide that the date of sale will normally be the invoice date, petitioners state that, as a general rule, the date of sale may not occur after the date of shipment (see Department Questionnaire, B–16, n.7 ("no date occurring after the date of shipment, including invoice may be used as the "date of sale"'). Moreover, petitioners note that a date other than invoice date may be used where "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." See Preliminary Results of Antidumping Duty Administrative Review of Circular Welded Non-alloy Steel Pipe from Korea, 62 FR 64559, 64560 (December 8, 1997).

Petitioners point out that in its Preliminary Determination the Department stated that "in most cases, the U.S. date of sale reported by respondents is after the date of shipment of the product from the factory. Because it is the Department's practice to use shipment date as the latest date of sale, the Department is using the ex-factory shipment date as the date of sale for U.S. sales in those cases in which the commercial invoice date is later." See Preliminary Determination, p. 8304. Petitioners term the Department's practice of not using a date of sale after shipment as "appropriate," because it reflects the common sense notion that a producer does not ship a product, particularly one made to order, without agreement on the material terms of sale.

Petitioners term the selection of the date of the "nota fiscal" (*i.e.*, the ex-factory date) as the Department's "default" date of sale methodology. However, in petitioners" view, the ex-factory date evinces no particular establishment of the material terms of sale. According to petitioners, the record in this investigation indicates that the material terms for CSN's U.S. sales were established at the order confirmation date. To support their position, petitioners cite CSN's Section A submission, which states that the order confirmation is computer generated and "sets forth the general terms of sale, and specifies...the product type, weight, weight tolerance, price, delivery, destination and other terms and conditions for sale." See Section A of CSN's Questionnaire Response (November 11, 1998), p. 27. Moreover, petitioners note that a discussion of the sales process with company personnel at verification confirmed that material terms of sale are established by negotiation of price and quantity, the specific terms of which are confirmed by fax to the customer. See CSN's Sales Verification Report, p. 9).

CSN's U.S. shipment data also supports order confirmation as the date of sale, according to petitioners. They point out that for a large majority of CSN's U.S. sales, the quantities shipped met the order confirmation terms, and even where the quantities shipped exceeded contract quantity tolerances, there appeared to be no change in the unit price for the merchandise. Petitioners note that order date is available for most CSN sales and non-adverse facts available can be used for those instances where the date is not available.

Petitioners conclude that invoice date is not an acceptable date of sale and shipment date is simply an arbitrary construction which does not reflect the evidence of record. Therefore, the Department should use order confirmation date as the date of sale for CSN's sales to the United States.

CSN maintains that the Department should continue to use the nota fiscal date as the home market date of sale and use the commercial invoice date as the U.S. date of sale. CSN notes that petitioners seem to acquiesce in the use of nota fiscal date as the date of sale for home market sales. It is CSN's opinion that petitioners are briefing the U.S. date of sale because (a) an earlier U.S. date of sale will move the universe of POI sales to the United States forward so as to capture invoices issued after the POI and (b) CSN's failure to report sales with nota fiscal or commercial invoice dates outside the POI could result in application of facts available.

CSN states that the commercial invoice date is the only appropriate date of sale for U.S. sales because it is the earliest date by which the material terms of sale are finalized. To support its position CSN notes the following: (1) The fact that quantity tolerances are often exceeded is enough to establish a post-order confirmation date of sale (see, e.g., Final Results of Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from Thailand, 63 FR 55578, 55588 (October 16, 1998)); (2) use of the order confirmation date is not practicable for CSN because it is not maintained in the computer system for more than a few months, after which point, the numbers are reused; (3) the only purpose of the nota fiscal is to accompany the over-land shipment from the mill to the port, in conformity with Brazilian law; (4) once at the port, a product originally destined for one market can be diverted to another market; and (5) as verified by the Department, "the commercial invoice is issued after the coils are in the hold of the ship and, therefore, at that time it is definitely an export sale." See CSN's Sales Verification Report, p. 9.

CSN, therefore, stands by its position that the only appropriate U.S. date of sale is the date of the commercial invoice. To the extent that the commercial invoice date is after the ex-port shipment date, CSN suggests that the Department use the ex-port shipment date as an alternative date of sale.

In an issue related to the selection of the date of the U.S. sale, petitioners believe that the Department should apply facts available to those sales CSN failed to report based on the date of shipment from the factory. Although CSN claimed that the date of invoice from its affiliate CSN Cayman/Overseas was the most appropriate date for determining date of sale, petitioners note that the Department used the date of shipment from the mill as the date of sale in its Preliminary Determination. Petitioners state that this information was obtained as a result of a request in the Department's supplemental questionnaire.

Petitioners claim that the Department discovered at verification that CSN had failed to report all sales based on date of shipment from the factory, and subsequently requested that CSN provide the additional sales information. Petitioners argue that because this information was provided late and contains fundamental flaws (*i.e.*

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lack of CONNUM designation, price adjustment amounts), the Department should reject it and employ the highest calculated margin to these sales. See section 776(a)(1995) of the Act.

Department's Position: We agree with CSN that the order confirmation date is not the appropriate date of sale. We have determined that the nota fiscal date is the home market date of sale. For U.S. sales, we have continued to use the ex-factory shipment date as the date of sale because the commercial invoice date, the date CSN reported as the date of sale, is after shipment from the factory.

The Department considers the date of sale to be the date on which all substantive terms of sale are agreed upon by the parties. This normally includes the price, quantity, delivery terms and payment terms. In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than the invoice date. See Preamble to the Department's Final Regulations at 19 CFR part 351 ("Preamble"), 62 FR 27296 (1997); Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from Taiwan, 61 FR 14067 (March 29, 1996). Further, in submissions throughout this investigation, CSN has reiterated the fact that the date of the order confirmation is not maintained in its computer system, hard copies are not always kept, and the order confirmation numbers are reused after a few months. Department staff verified the accuracy of these statements (see CSN's Sales Verification Report, pp. 9–11).

The Department does *not* consider dates subsequent to the date of shipment from the factory as appropriate for date of sale. We also disagree with CSN's assertion that invoice date or export shipment date most appropriately represent date of sale. Because the commercial invoice date reported by CSN as its U.S. date of sale falls after the date of shipment of the product from the factory, the Department is continuing to use the ex-factory shipment date as the date of sale for its U.S. merchandise. CSN reported the date of the nota fiscal (*i.e.*, the ex-factory shipment date) of its U.S. sales in its supplemental submission.

However, although we gave CSN ample opportunity to report the dates of all potential dates of sale, including order confirmations and notas fiscais issued during the POI, CSN elected not to submit the requested data in its entirety.

In our supplemental questionnaire to CSN's Section A Response (December 4, 1998), we requested that CSN report:

> all sales for which "the order confirmation date (or comparable date if data on order confirmation does not exist) was within the POI. If you believe another date is a more appropriate date of sale, you should provide all sales during the POI based on order confirmation date, using alternative production or accounting records, and the other date (*provided the other date is not after the merchandise is shipped from the plant*). (emphasis added)

In our January 4, 1999 Supplemental Questionnaire to Sections BCD, we repeated this question and added:

> If CSN chooses not to report order confirmation date, and we determine at verification that this information is available and is a more appropriate date of sale than that reported, CSN may be subject to the use of adverse facts available pursuant to section 776 of our statute.

In its response to this submission (January 25, 1999), CSN did provide the dates of the U.S. notas fiscais, but only those dates associated with the commercial invoices issued during the POI. In their pre-verification comments, petitioners requested that at verification the Department examine those sales shipped from the factory, but not invoiced during the POI (see, Dewey Ballantine's Letter to the Secretary, March 8, 1999). Accordingly, the Department specifically requested this information in its verification outline. At verification, CSN prepared a printout of the quantity and value of those U.S. sales which left the mill (*i.e.*, which had a nota fiscal date) during the POI, but were not invoiced until after the POI (see Exhibit 27 of CSN's Sales Verification Report), which represent unreported U.S. sales.

Since CSN failed to follow explicit instructions in the questionnaire, or to contact the Department to determine whether an alternate reporting basis was appropriate, we find that CSN did not cooperate to the best of its ability. Therefore, as adverse facts available, we are applying the highest calculated margin to those U.S. sales. The Department finds that this margin is indicative of CSN's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

Comment 6: Affiliation. Petitioners contend that despite explicit instructions in the Department's questionnaire to report U.S. prices that are "calculated from the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter," CSN inappropriately reported as its ultimate U.S. price the transaction between itself and a trading company to which CSN has numerous connections. Petitioners note that in response to the Department's request for additional information on the relationship between CSN and this customer, CSN stated that its customer is "simply a trading company that receives a commission from its suppliers." See Section A of CSN's Supplemental Response, January 19, 1999, p. 41.

Petitioners claim that CSN failed to inform the Department that the person who manages the trading company's daily operations is also a board member of both CSN and the trading company's controlled subsidiary, Emesa, which, petitioners point out, CSN acknowledges as a "related party." According to petitioners, the fact that the manager of the trading company's operations is "required by law to act in the best interest of CSN" further demonstrates an affiliation between the two parties. Petitioners assert that, faced with similar circumstances in the past, the Department not only deemed companies to be affiliated, but also collapsed companies, based on overlapping board involvement by senior managers. In support of their position, petitioners cite the Final Results of New Shippers Antidumping Duty Administrative Review of Certain Welded Carbon Standard Steel Pipes and Tubes From India, 62 FR 47632, 47639 (September 10, 1997) (Steel Pipes and Tubes From India).

In addition, petitioners note that CSN's Sales Verification Report reveals a surprising similarity in terminology between Brazilian GAAP's definition of a related party and the Act's definition of an affiliated entity (see Exhibit 2a, p. 4 and 771(33) (1995) of the Act). As stated under Brazilian GAAP, petitioners claim that CSN's transactions with the trading company should also be described as "lacking the independence that characterizes the transactions with independent third parties." *Ibid.* Petitioners also contend that the language of the Brazilian GAAP suggests other undisclosed links between the two parties. For example, even though CSN has stated that there is no controlling relationship between itself and the trading company's subsidiary, Emesa, CSN's 1998 Financial Statement indicates that Emesa is related to CSN. Moreover, petitioners note that CSN's disclosure of

the trading company's subsidiary as a related party is in isolation. The important point, according to petitioners is that the subsidiary is defined as a related party even though CSN did not fully disclose why it was deemed a related party.

Petitioners conclude that the evidence on the record indicates that the Department should not base its final determination on the reported transaction prices between CSN and the trading company. Rather, the Department should resort to adverse facts available and apply the highest transaction margin in the petition or the highest calculated transaction margin to these sales.

CSN rejects petitioners' conclusion that the trading company and CSN are affiliated because a customer of CSN owns a percentage of Emesa, which in turn owns 1.1% of CSN. The fact that one of the officers of the trading company sits on the boards of both Emesa and CSN is equally unconvincing in CSN's view.

CSN contends that petitioners' reasoning cannot possibly lead to a determination that Emesa, with only 1.1% of CSN shares, controls CSN. Moreover, CSN notes that Emesa must vote with the majority of the parties to the shareholders' agreement and consequently has as little power as other shareholders with similar percentage holdings in CSN.

According to CSN, the critical question regarding Mr. Netto's position as an officer of the trading company and a member of CSN's board, is whether Mr. Netto is in a position to control both companies. While Mr. Netto may be able to control the trading company, CSN maintains that he has no ability to control CSN because Emesa, the company he represents, holds only 1.1 % of CSN shares.

Furthermore, CSN argues that evidence on the record shows that CSN board members play no role in setting prices (see CSN's Sales Verification Report, pp. 4–5). To confirm this statement, CSN ran the traditional arm's length test used by the Department and found that sales to this customer passed the test, *i.e.*, the prices charged to this company were not lower than the prices charged to its other U.S. customers.

For all the above reasons, CSN urges the Department to use the U.S. sales data as reported by CSN (*i.e.*, CSN's sales to the trading company) and not require CSN to report the resales of the trading company.

Department's Position: We agree with CSN. Section 771(33) of the Act provides that the following persons are affiliated: (A) Members of a family; (B) any officer or director of an organization and such organization; (C) partners; (D) employer or employee (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons, directly or indirectly controlling, controlled by, or under common control with, any person; (G) any person who controls any other person and such other person.

An examination of each of these criteria results in the conclusion that the trading company and CSN are not affiliated pursuant to section 771(33) of the Act. The relationships among the trading company, Emesa, and CSN, and the connection that Mr. Netto has to each as a board member of CSN and a corporate officer of the trading company and of Emesa provide, the basis for petitioners' conclusion that CSN and the trading company are affiliated. First, section 771(33)(A) of the Act is inapplicable because evidence on the record does not reveal any familial ties among the three entities and Mr. Netto. Nor is the relationship between CSN and its customer, the trading company, one of a partnership or employer or employee within the meaning of sections 771(33)(C) and (D) of the Act.

As a corporate officer of the trading company and a member of CSN's board, the Department considers Mr. Netto affiliated to the trading company and CSN pursuant to section 771(33)(B) of the Act. As a corporate officer of the trading company, Mr. Netto may be able to control that entity within the meaning of section 771(33), but he is in no position to control CSN because Emesa, the company he represents on CSN's board, holds only 1.1% of CSN's shares. We find this percentage ownership, even with Emesa's participation in CSN's shareholders agreement, insufficient to establish that Emesa is in a position to control CSN, as required under section 771(33)(F) or (G) of the Act. Moreover, Mr. Netto is obligated to vote with the majority of the parties to the shareholders' agreement and has little say in the operations of CSN. Mr. Netto's affiliation with the trading company and CSN does not put him in a position to control CSN or Emesa, even though he is on the board of each of these companies.

Finally, section 771(33)(E) of the Act, which considers any persons or parties affiliated if they directly or indirectly own, control, or hold with power to vote 5% or more of the outstanding votes in a company, does not apply. Although Emesa is considered a subsidiary of the trading company, its 1.1% voting share in CSN's stock does not meet the statutory criteria.

In conclusion, we find no basis for affiliation between CSN and its customer, the trading company. Petitioners' reliance on the similarity between the Brazilian GAAP's definition of a "related party" and the Act's definition of an "affiliated party" is irrelevant. A similarity in the definition of two words does not necessarily give them the same meaning, especially when applied in different circumstances. Petitioners provide no support for their conclusion that CSN's dealings with the trading company "lack independence." Finally, the fact that CSN's 1998 financial statement indicates that Emesa is related to CSN does not establish that CSN is affiliated with the trading company within the meaning of section 771(33) of the Act.

Therefore, for this final determination, we are using the U.S. sales between CSN and the trading company as reported by CSN.

Comment 7: Commissions. Petitioners object to CSN's characterization of a certain payment directly to CSN's customer as a "commission," when, in fact, it is a rebate or discount. According to petitioners, when customers receive payments from suppliers, those payments cannot be classified as commissions unless the party that receives the payment is functioning solely as a commissionaire and not as a purchaser—which is not the case in this instance. Petitioners state that there is no dispute in this investigation that the so-called "commission agent" is affiliated with the U.S. customer. Therefore, petitioners contend that the Department should follow its practice of treating payments made directly to the U.S. customer or to a customer's affiliate as a rebate or discount, not a commission. Petitioners cite the Preliminary Determination of Sales at Less-than-Fair-Value; Open-End Spun Rayon Singles Yarn from Austria, 62 FR 14399, 14401 (March 26, 1997), (Preliminary Determination of Spun Rayon Singles Yarn) in support of their position.

CSN claims that petitioners' reading of this case improperly suggests that the Department's analysis focuses entirely on whether an unaffiliated purchaser resells subject merchandise to a party with whom that purchaser is affiliated. CSN notes that petitioners conceded that the Department reversed its preliminary determination to treat the commission as rebates in the Final Determination of Sales at Less Than Fair Value of Open-End Spun Rayon Singles

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Yarn From Austria, 62 FR 43708–09 (August 15, 1997) (Final Determination of Spun Rayon Singles Yarn) after it learned that the unaffiliated purchaser indeed acted as a commissionaire. CSN claims that contrary to what petitioners suggest, the Department did *not* reverse its treatment of the commission from the Preliminary Determination to the Final Determination of Spun Rayon Singles Yarn *solely* because the selling agent and the selling agent's customer were unaffiliated, but because the unaffiliated selling agent "performed the functions of a commission agent" and because the respondent made "payments directly to the selling agent for services rendered in the sales transaction" See *Id.*

CSN states that it pays a commission directly to the affiliate of its ultimate customer, not to these companies' customers, for the selling services these companies perform for CSN (*e.g.*, handling the paperwork involved in a sale). Moreover, CSN directly invoices the ultimate customers and consistently refers to the payments it makes to these two parties as commissions in its accounting records.

CSN also rejects petitioners' claim that its payments to another customer for sales services are rebates because the party is a customer, not a commissionaire. According to CSN, this party earns the commission by establishing a portion of CSN's export business in the United States and handling sales paperwork and claims that arise from that portion of CSN's export business. For these reasons, and the fact that CSN refers to these payments as commissions in its questionnaire responses and its accounting records, CSN maintains that the Department was correct in treating these payments as commissions.

Department's Position: We agree with CSN. Generally speaking, a commission is a payment to a sales representative for engaging in sales activity. See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, and Revocation in Part of the Antidumping Duty Orders, 60 FR 10900, 10914 (February 28, 1995). A discount is a reduction in price to a customer, while a commission is a form of payment for services. Therefore, the issue is not whether or not the trading company is affiliated with the customer but whether there was one transaction between CSN and the ultimate customer in which the trading company acted as sales agents for a commission; or whether there were two transactions, one in which the trading company bought from CSN and received a discount on the price for that initial sale and subsequently resold the merchandise to the ultimate purchaser. See Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Review 60 FR 65264, 65277–8 (December 19, 1995); Certain Carbon Steel Products from Austria; Final Determination of Sales at LTFV, 50 FR 33365 (August 19, 1985).

The general purpose and administration of the payments at issue is, in most instances, consistent with the characteristics of commissions to trading companies outlined in the Final Determination of Sales at Less-Than-Fair Value: Stainless Steel Angle from Japan, 60 FR 16608, 16611 (March 31, 1995): The Department has recognized that commissions paid to trading companies have certain characteristics: (1) They are agreed upon in writing, (2) they are earned directly on sales made, based on flat rates or percentage rates applied to the value of individual orders, (3) they take into consideration the expenses which a trading company incurs, and (4) they take into consideration the sales and marketing services performed by a trading company in lieu of an exporter/manufacturer establishing its own larger sales force. See Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review, 61 FR 67308–67318 (December 20, 1996) and Oil Country Tubular Goods from Austria, 60 FR 33551 (June 28, 1995) (OCTG from Austria).

Although CSN does not maintain general commission agreements with either the agents or with the trading companies it uses, the commission rate is negotiated on a sale-by-sale basis and is referenced on the "production order" that CSN issues upon receiving an order from a client. See Document B in Exhibit 5 of CSN's Section A Response.

Commissions are normally set at given rates prior to sale. During the POI, CSN's commission rate remained constant, regardless of the price of the individual sale or the trading company involved. The trading companies used for sales of the subject merchandise performed the functions of a commission agent. CSN characterizes its payments to these trading companies as recognition for services performed in the sales process. As such, they are by nature sales commissions (see OCTG From Austria).

Each U.S. sale involved one transaction between CSN and its U.S. customer. CSN, through CSN Overseas or CSN Cayman, invoiced the U.S. customer directly. The U.S. customer, not the selling agent, paid for the merchandise. If CSN had paid the "commission" to the ultimate unaffiliated U.S. customer the expense would be considered a discount on the price between the U.S. customer and CSN. CSN paid the trading companies a commission in a separate transaction for services rendered. Moreover, at verification we established that the payments CSN made to the trading companies during the POI were administered and documented as commissions in CSN's accounting records. See CSN's Section A Response to the Department's Questionnaire, Exhibit 5.

Comment 8: Overruns. Petitioners maintain that, consistent with its prior practice, the Department should not include overrun sales in its calculation of normal value because these sales are not in the ordinary course of trade.

In CSN's opinion, the fact that these products are sold out of inventory does not make them a different product from that which is produced to order. CSN concedes that if the product were non-prime quality, petitioners would have a good argument. However, CSN states that these products are mostly prime-quality merchandise. CSN maintains that the fact that these products are sometimes sold at a discount is no reason to exclude them.

Department's Position: We agree with respondent. To determine if sales or transactions are outside the ordinary course of trade, the Department evaluates all of the circumstances particular to the sales in question. Examples of sales that we might consider outside the ordinary course of trade are sales involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price. See 19 CFR 351.102.

In its questionnaire response, CSN stated that it generally produces to order. Sometimes, however, the company runs coil that weighs more than the customer will accept or is of a quality that meets the necessary specifications but does not meet the customer's particular quality expectations. The product is set aside to be sold out of inventory to other customers that will accept it. CSN then assigns an order confirmation number identifying the sale as an overrun. At verification we learned that overruns, like any of the merchandise produced by CSN can occasionally be judged as off-quality by a committee of production engineers, be placed in inventory, and subsequently sold as non-prime product. However, the merchandise can just as readily involve the wrong dimensions for a specific customer's order and continue to be sold as prime merchandise.

Moreover, CSN did not produce any of the subject merchandise according to unusual specifications. Nor were any of CSN's products sold at aberrational prices, with abnormally high profits, or sold pursuant to unusual terms of sale.

Finally, at verification we determined that those sales classified as overruns by CSN were only sold in the home market and represent such an insignificant portion of total home market sales during the POI that their effect on the margin, if any, would be negligible (see Exhibit 9 (c) of CSN's Sales Verification Report). Since the factors that the Department considers in determining if merchandise is outside the ordinary course of trade are not germane to the sales CSN classifies as overruns, we do not think they warrant exclusion from the home market database.

Comment 9: Duty Drawback. Since CSN failed to present the requested information on duty drawback at verification, petitioners state that consistent with the Act and Department practice regarding information that is unverified, the Department should disallow any duty drawback adjustment for purposes of this final determination.

CSN counters that it is not uncommon for the Department to decline to verify several items during the course of a verification. In fact, CSN notes that this practice is specifically endorsed in the Department's Antidumping Manual (see Chapter 13, pp. 5–6, January 22, 1998). CSN states that since this item has a relatively small impact on the antidumping margin and verification of duty drawback adjustments can take an inordinate amount of time, the Department elected not to verify CSN's duty drawback adjustment. CSN concludes that denial of this adjustment would be inconsistent with Department policy and would set a bad precedent for future cases.

Department's Position: We disagree with petitioners. The petitioners are incorrect in stating that it is consistent with the Act and Department practice to disallow any unverified adjustment. In Monsanto v. United States, 698 F. Supp 275, 281 (CIT 1988) the Court upheld the Department's discretion to pick and choose which items it wants to examine in detail. The Court stated that "verification is a spot check and is not intended to be an exhaustive examination of the respondent's business." *Id.* In addition, in the Department's Antidumping Duty Manual we state the following:

> Usually, it is not necessary, nor is there time to verify every bit of data in the questionnaire response. Therefore, it is critical to rank your verification topics in priority . . . . The fact that an item was not actually verified will not mean that the item is unverified. Verifications involve a great deal of sampling. Consequently, assumptions about items not selected for verification will depend on how the verification went for the selected items . . . .

Due to time constraints and the relatively small impact of the duty drawback adjustment on the dumping margin, it was mutually agreed that other adjustments (*e.g.*, interest rate for imputed credit) were of greater significance. Therefore, we did not examine the documentation relating to CSN's duty drawback adjustment. We have continued to adjust U.S. price for duty drawback in this final determination.

Comment 10: Inland Freight Costs. Petitioners cite a number of instances in the Department's Verification Report where it was unable to verify CSN's reported home market and U.S. inland freight costs. Moreover, petitioners note that the Department was unable to verify the arm's length nature of CSN's freight expenses with MRS and FCA, both rail companies in which CSN owns shares.

Accordingly, petitioners maintain that the Department should not rely on CSN's reported amounts, but rather should resort to (adverse) facts available, using either zero or the lowest amount reported for home market sales and the highest amount reported for all U.S. sales.

CSN strongly objects to petitioners' recommendation that the Department use adverse facts available for its home market and U.S. inland freight expenses. CSN points out that for each of the many shipments which leave its mill every day, it receives an invoice from the transportation company, the amounts of which are input manually into CSN's nota fiscal database. According to CSN, since verification of these amounts involved searching manually for the transportation invoice(s) associated with each selected sale, time did not permit finding all of the documentation for the pre-selected and surprise sales chosen by the Department.

In response to petitioners' claim that CSN could not establish the arm's length nature of its rail expenses, CSN states that MRS's financial statements during the POI demonstrate its profitability. CSN also showed the arm's length nature of its purchase of transportation services from FCA by comparing the rates charged to CSN with the rates charged to unaffiliated customers for similar distances and similar products.

CSN points out that it did not provide documents showing that the reported inland freight amounts were wrong. It simply did not have enough time. CSN concludes that since the integrity of the reported amounts was never questioned, the Department should find CSN's methodology for reporting inland freight to be reasonable and accurate. If the Department determines otherwise, CSN suggests the following: an alternative combined port expense/inland freight adjustment (see CSN's Sales Verification Report, p. 29 and Exhibit 23) for U.S. sales; use the amount in CSN's income statement for the POI for freight and divide by the POI sales value for a factor to be applied to the gross unit price).

Department's Position: We agree with CSN. At verification we determined that CSN used the actual freight expenses incurred for its home market inland freight expenses. We were able to trace these amounts to CSN's nota fiscal database. For U.S. inland freight expenses, the only error as noted by CSN during verification was the incorrect coding of a U.S. shipment by truck when, in fact, the merchandise was shipped by rail. Since trucking is more expensive than rail, this error was not to CSN's advantage.

In addition, we cannot accept petitioners' claim that CSN's freight expenses were not made at arm's length. MRS' financial statements during the POI indicate that the rail company sold above its cost of production and the Department's cost verifiers noted its net profitability in its financial statements covering the POI (see Exhibit 14 of CSN's Section A Response, November 16, 1998 and CSN's Cost Verification Report, April 8, 1999, p. 14). In addition, in its Supplemental Section BCD Response, CSN demonstrated the arm's length nature of its purchase of FCA transportation services, showing CSN's expenses as greater than the average rate charged to other FCA customers.

We are satisfied that CSN demonstrated the integrity of its home market and U.S. inland freight expenses. Moreover, CSN showed that its transactions with the affiliated rail companies were arm's length in nature. Therefore, we have accepted CSN's freight expenses as reported for the final determination.

Comment 11: Imputed Credit. According to CSN, the Department erred in its calculation of both U.S. and home market imputed credit in the

Preliminary Determination. CSN objects to the Department's use of the period between the ex-factory date and date of payment by the customer in calculating U.S. credit. In its calculation of home market credit, CSN contends that the Department should use the gross unit price, inclusive of ICMS and IPI, and not the net unit price.

U.S.

CSN argues that the ex-port shipment date more accurately reflects the theory behind the U.S. imputed credit adjustment. According to CSN, under the time value of money theory, a seller begins losing money the day the product is released from its possession for *delivery* to a customer until the day the seller receives payment from the customer. To support its opinion, CSN cites the CAFC in LMI-LaMetalli Industriale v. United States, 912 F.2d 455, 460–61 (Fed. Cir. 1990)(LMI-LaMetalli), which stated that the imputation of credit costs "must correspond to a . . . figure reasonably calculated to account for such value during the gap between delivery and payment."

CSN asserts that the Department determined during verification that shipment of the product to the port simply represents the day the product leaves the mill for the port, where it may or may not be placed on a ship for export. CSN notes that the nota fiscal, not the commercial invoice, accompanies the merchandise to the port, where it can then be diverted to other markets, including the home market. CSN states that since "delivery" can only be deemed to begin when the product leaves the port, the Department should use ex-port date to calculate U.S. imputed credit expenses.

Petitioners point out that CSN recognizes that the appropriate calculation of U.S. credit is inextricably linked to the issue of the appropriate U.S. date of sale. Since the Department correctly used the date of the nota fiscal as the date of sale in the Preliminary Determination, petitioners believe the U.S. imputed credit should be calculated from this date to the date of payment by the customer.

Petitioners note that CSN has reported that the vast majority of its U.S. sales are produced to order. Therefore, they conclude that CSN knows that the product is destined for the United States in most instances. As support for their argument, petitioners point out that the Department verified that the only merchandise diverted to the home market is damaged merchandise. See CSN's Sales Verification Report, p. 9. In petitioners' opinion, CSN is asking the Department to determine the date of sale, and thereby, the appropriate date for calculating imputed credit costs, on exceptional cases rather than on the vast majority of sales.

Moreover, regardless of its destination, petitioners contend that the product, once it leaves the factory, incurs an imputed credit cost. This, according to petitioners, is the "commercial reality" which must be reflected in the Department's calculations. See, LMI–LaMetalli v. United States, 912 F.2d 455 (Federal Circuit 1990); cf CSN's Case Brief, p. 5.

Alternatively, petitioners state that if no credit cost is incurred until shipment from the port, then CSN must incur an inventory carrying cost for the time between shipment from the factory and shipment from the port.

Home Market

CSN views the Department's calculation of the home market imputed credit adjustment net of ICMS and IPI taxes as inappropriate because the money lost as a result of the passage of time between shipment to the customer and the receipt of payment from the customer is the entire amount of the payment due on the invoice (*i.e.*, inclusive of on-invoice taxes).

CSN states that it is required to pay the government each month for the amount of the invoiced ICMS and IPI it collects (net of credit for taxes paid on inputs). CSN emphasizes that it alone is responsible for any time value of money losses it incurs as a result of extending its customers' credit terms. Therefore, CSN asserts that the basis for the calculation of home market credit should be the gross unit price, inclusive of taxes.

To support its position, CSN cites the final LTFV determination in Silicon Metal from Brazil, 56 FR 26982 (June 12, 1991) as precedent for this approach: "The ICMS incident to a home market sale is outstanding until the time that the customer pays for its merchandise. Until the customer pays . . . the (producer) cannot use the ICMS collected on the sale to offset the ICMS it has paid on purchases of materials used in the production of the subject merchandise * * * . Therefore, we have included the ICMS in the home market price when calculating imputed credit expenses." The respondent also cites the CAFC, in LMI-LaMetalli v. United States, which stated that the imputation of credit cost, as "a reflection of the time value of money, * * * must correspond to a * * * figure reasonably calculated to account for such value during the gap between delivery and payment," and that it should conform with "commercial reality." 912 F.2d at 460–61.

CSN concludes that the VAT taxes in Brazil, which are included on each invoice, are a part of the time value losses incurred by Brazilian companies when extending credit terms to their customers. Therefore, it reflects commercial reality to include these taxes in the home market imputed credit adjustment.

Petitioners argue that the Department correctly calculated home market credit expenses using a price net of ICMS and IPI taxes. (Petitioners noted that although the Department intended to calculate home market credit expenses net of taxes, it inadvertently failed to do so in the computer programming.) They maintain that there are no credit costs associated with the ICMS and IPI payments to the government because CSN admits that it does not pay these taxes until it collects from its customers. Petitioners state that even if CSN pays the government on an invoice-specific basis, these taxes are only paid once a month. Moreover, the record contains no data which correlates shipments, customer payments to CSN, and CSN's payment of VAT taxes to the government, which would permit the accurate calculation of the claimed imputed credit cost adjustment.

Regarding CSN's contention that an imputed credit cost inclusive of ICMS and IPI taxes is warranted because the producer cannot use the ICMS collected on the sale to offset the tax paid on raw materials used in the production of the merchandise, petitioners argue that the imputed credit costs would be incurred only on the amount of the VAT on the raw material costs and not on the finished product. Furthermore, petitioners maintain that this imputed credit cost would have to reflect the CSN payment period on raw material purchases for both home market and exported merchandise. Petitioners add that even if CSN did pay the VAT on the final product prior to payment from CSN's customer, the period for home market imputed credit costs would be the date of payment to the government, not the date of shipment.

Petitioners note in the Final Results of the Antidumping Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18486, 18488 (April 15, 1997), the Department stated that there is no statutory or regulatory requirement for making this adjustment. According to petitioners, to allow the type of credit adjustment suggested by the respondents would imply that in the future the Department would be faced with the virtually impossible task of trying to determine

the potential opportunity cost or gain of every charge and expense reported in respondents' home market and U.S. databases.

Therefore, petitioners conclude that the Department should continue to use its well-supported and consistent practice of calculating imputed home market credit expenses net of ICMS and IPI taxes.

Department's Position: Both petitioners and the respondent are incorrect in their contention that the credit period is inextricably linked to the date of sale. As cited by petitioners, the seller begins losing money the day the product is released from its possession for *delivery* to a customer until the day the seller receives payment from the customer. This period comprises the imputed credit period. It is the Department's longstanding policy when calculating imputed credit to use the period between the date of shipment from the factory and the date of payment by the customer. See Notice of Final Results of Antidumping Duty Administrative Review; Ferrosilicon From Brazil, 62 FR 43508 (August 14, 1997).

CSN's characterization of the ex-factory date as "simply the day the product leaves the mill for the port, where it may or may not be placed on a ship for export" is misleading. The ex-factory date is the date marking the commencement of delivery of an order to a specific customer. The imputation of credit costs "must correspond to a * * * figure reasonably calculated to account for such value during the gap between delivery and payment." See LMI–LaMetalli, 912 F.2d at 460–61.

Since the vast majority of CSN's sales are produced to order, CSN knows which products are destined for the United States when the product leaves the factory. Diverting an order of merchandise destined for export to a home market customer because of damage or some other reason is certainly the exception, not the rule, as CSN seems to characterize it.

CSN itself characterized the calculation of the imputed credit adjustment as "the difference between ex-factory shipment date and payment date divided by 365 multiplied by the interest rate multiplied by the gross unit price. See CSN's Section C Response to the Department's Questionnaire, p. C–34.

Therefore, we have continued to use the day the product leaves the factory for *delivery* to a customer until the day the seller receives payment from the customer as the period for the calculation of both home market and U.S. imputed credit.

With regard to CSN's contention that home market imputed credit should be calculated using a gross price, the Department agrees with petitioners that home market imputed credit expense should be calculated using the price net of taxes, rather than the gross unit price. It is the Department's practice not to impute credit expenses related to VAT payments. Nor is there any statutory or regulatory requirement for making the adjustment proposed by the respondent.

While there may be an opportunity cost associated with the respondents' prepayment of the VAT, this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons. Virtually every charge or expense associated with price-to-price comparisons is either prepaid or paid for at some point after the cost is incurred. Consequently, there is potentially an opportunity cost or gain associated with each expense. To allow the type of credit adjustment suggested by CSN would imply that the Department would have the impossible task of trying to determine the opportunity cost or gain of every charge and expense reported in the respondent's U.S. and home market databases. Therefore, we have changed the computer program for this final determination to reflect our intention in the Preliminary Determination of calculating home market imputed credit expenses using the price net of VAT taxes. See Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18488, (April 15, 1997); Notice of Final Determination of Sales at LTFV: ESBR from Korea, 64 FR 14865, 14868–69 (March 29, 1999).

Comment 12: Late Payment Fee. CSN objects to the Department imputing a late payment fee on CSN's home market sales when payment had not been received by the date of CSN's January 25, 1999 submission. CSN notes that imputing such late payment fees for these sales is inappropriate because the Department discovered at verification that CSN does not always charge its customers with these late payment fees. The Department, therefore, should not add the imputed fees to CSN's home market price.

Petitioners, however, maintain that in the Preliminary Determination the Department correctly imputed late payment fees for home market sales with missing payment dates because this reflects commercial reality, and CSN's stated policy. Since the Department found at verification that it was CSN's practice to charge late payment fees, petitioners state that it is only logical to impute late payment fees for sales that have missing payment dates. The burden was on CSN to provide specific information on those sales exempt from a late payment fee. In fact, petitioners note that it is the Department's practice to supply facts available data where the information on the record is missing or inadequate. See Final Determination of Sales at Less Than Fair Value; Certain Preserved Mushrooms from Chile, 63 FR 56613, 56622 (October 22, 1998). Given that it is CSN's practice to charge late payment fees and CSN failed to report payment dates on a number of sales, petitioners believe the Department's decision to impute late payment fees was reasonable and in accordance with commercial reality. Moreover, the burden was on CSN to provide specific information on those sales exempt from late payments.

Department's Position: We agree with petitioners. Although CSN's statement that late payment fees on home market sales were not always assessed was borne out at verification, it is CSN's general policy to require a late payment fee. In fact, in the course of the sales verification, we noted that specific rates for late payments appeared on the invoices of some of the customers. Absent any specific information which would indicate which sales were exempt from payment of a late fee, for this final determination, the Department has assumed that CSN assesses a late payment fee on home market sales under the contractual sales terms.

USIMINAS/COSIPA

Comment 13: What Constitutes Verification. In several comments, respondents disagree with the Department's assessment in USIMINAS" and COSIPA's Sales Verification Reports of what constitutes a verified item. Specifically they dispute the use of terms such as "spot-checking," "unable to fully review," and "unverified." They particularly disagree with the Department's assessment in the USIMINAS and COSIPA verification reports that several items were deemed unverified "because the Department has not reviewed that item, or not reviewed all accounting records related to that document or transaction." They find the Department's practices in several instances to not be in keeping with Chapter 13 of the Department's Antidumping Manual. Furthermore, respondents argue that the vast majority of their fundamental sales and cost data verified.

In referring specifically to certain home market sales trace packets, respondents disagree with the term "spot checking," since they believe that

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the documents reviewed in fully verified traces were similar to those reviewed in spot checks. Respondents believe that both types of checks included the documents of internal order allocation screen, nota fiscal, order confirmation sheet, mill certificate, and the bill of lading. USIMINAS states that the only additional documents found in a fully verified trace were bank documents, accounting ledgers, and payment advices. Additionally, respondents argue that checking every document for every field in order to consider them fully verified contradicts Department practice as noted in the Antidumping Manual, Chapter 13, 47–50. They note that this section of the manual says the goal of this phase of verification is to verify the details of each sale, such as date of sale, product description, customer, destination, date of invoice, date of shipment, quantity, price, credit terms, and date of payment.

USIMINAS also disagrees with the Department's use of the expression "unable to fully review" in referring to a sales trace and dispute the accuracy of this phrase. Respondents also do not believe that they suggested that the Department "spot check" sales traces but rather insisted that the Department "move on and verify the items that are most important to the verification" so as not to spend an "inordinate amount of time verifying such insignificant expenses" as had been verified in previous sales traces. USIMINAS cited the length of the COSIPA inland insurance and the USIMINAS indirect selling expense exhibits, noting the insignificance of these adjustments.

Petitioners argue that the Department should stand by its verified sales findings in the final determination. They believe that respondents were "woefully unprepared" for verification and little of the submitted information could be verified. In citing Chapter 13 of the Antidumping Manual, petitioners note that the Department's verifiers correctly followed Departmental practice by examining source documents "rather than simply accepting 'explanations'" offered by respondents. Petitioners note that in respondents' first example of a spot-checked sales trace, they mistakenly appear to be comparing a home market with a U.S. sales trace. Petitioners also argue that absent proof of payment and proof of receipt of payment, a sales trace is incomplete and cannot be considered "verified." They subsequently quote eleven statements in the verification reports that they believe demonstrate USIMINAS and COSIPA's general lack of preparation in providing fundamental verification documentation. In petitioners' view, this lack of preparation and uncooperative behavior call for the application of total adverse facts available in the final determination.

Department's Position: As indicated by the USIMINAS and COSIPA verification reports, respondents either said they were unprepared or preferred to cover other topics at each point when items requested by the Department were left unaddressed. In the Department's March 8, 1999 verification outline sent to USIMINAS and the March 11, 1999 outline sent to COSIPA, we stated, "If your clients are not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. If, due to time constraints, it is not possible to return to that item, we may consider the item unverified. Furthermore, if information requested for verification is not supplied, or is unverified, pursuant to section 776(a) of the Act, we may use facts available for our final determinations, which may include information supplied by the petitioners." Respondents were fully aware that failure to cover items requested by the Department could result in these items being considered unverified. The Department sought to verify each of the items at issue, but these items were not addressed by the company at the time of the request. Further, the verification procedures and verification reports were in compliance with Departmental procedures laid out in Chapter 13 of the Antidumping Manual.

At the same time, most of the items that Commerce was unable to verify are relatively minor and the most essential components of verification were successfully completed. The Department, therefore, does not agree with petitioners that the use of total adverse facts available is warranted. The Department is, instead, applying partial facts available where necessary and using an adverse inference where appropriate under section 776(b) of the Act. See the Facts Available section of this notice and the treatment of specific issues in the comments.

Comment 14: Prioritization and Volume of Material Covered. USIMINAS/COSIPA generally argue that the large volume of material the Department attempted to review in one week and the time the Department spent reviewing "many items in detail" did not permit certain items to be verified. They disagree with the manner in which the Department conducted verification and do not believe the Department followed proper time management and prioritization procedures as outlined in Chapter 13 of the Antidumping Manual. Respondents had four specific comments related to prioritization and time management.

USIMINAS believes that the Department's attempt to review USIMINAS and its downstream affiliates, Rio Negro and Fasal, within one week was misguided. It argues that the Department sought to review in detail each company's accounting practices, corporate structure, sales process, quantity and value, and sales trace documents. The respondent believes that this was too difficult and time consuming a task and notes that the review of Fasal as discussed in the USIMINAS Verification Report took nearly a full day of the USIMINAS verification.

Respondents claim that the Department sought to verify "numerous time consuming and contentious issues" such as date of sale, order confirmation, CONNUM methodologies, and production and cost information. Respondents argue that the Department should have allotted extra time for the verification, given the level of complexity and detail with which the Department reviewed these items.

Respondents state that the Department requested twenty preselected sales traces, fourteen partial sales traces for specific issues in the verification report, ten surprise sales traces on the first day of verification, and twenty more surprise "date of sale" sales traces. They argue that retrieving and compiling all the source documents for these sales was unduly burdensome for USIMINAS staff to prepare, review for accuracy, and present to the Department.

Lastly, respondents argue that the Department sought to verify each item of a sales trace in detail regardless of its importance to the Department's calculations. For instance, they believe that the Department spent "hours verifying USIMINAS' inland insurance" and that the length of COSIPA's exhibit on inland insurance demonstrates the Department's overemphasis on the issue. Respondents quote sections of Chapter 13 of the Department's Antidumping Manual to demonstrate that the Department should not "spend one day verifying inland insurance" and that verifiers should not treat all information with the same importance.

Petitioners argue that the Department did prioritize issues but USIMINAS and COSIPA prevented the verifiers from verifying those issues. As noted in Chapter 13 of the Antidumping Manual, petitioners state that setting priorities is the responsibility of the verifiers, not

the respondents. They argue that the verifiers' efforts to keep the verification moving and to set priorities were constantly challenged by respondents. They cite thirteen quotations from the verification report which they believe support this claim. An example of such a quote is, "Although we asked for documentation regarding Dufer's sales process, COSIPA requested that we move on to verify other verification subjects, and return to Dufer. We never returned to this issue." Petitioners argue that if USIMINAS and COSIPA could dictate which issues could be verified and how deeply, they would be able to "manipulate the outcome of the verification."

Petitioners state that "the verification agenda is not to blame for the fact that USIMINAS and COSIPA were unprepared for verification." They disagree that the "large volume of material the Department attempted to verify" or the "considerable time" the Department spent reviewing items were responsible for USIMINAS and COSIPA's performance at verification. Petitioners note that the Department issues a similarly detailed verification agenda in virtually every proceeding and that respondents never complained to the Department prior to verification. Petitioners contradict respondents' assumption that more time would have allowed verifiers to consider each issue by stating that "virtually no issue could be verified, regardless of the amount of time devoted to it." For example, petitioners note that the Department was unable to verify Fasal's quantity and value despite the amount of time spent reviewing Fasal. Instead, petitioners argue that respondents were unprepared and uncooperative and the Department should apply total adverse facts available in the Final Determination.

Department's Position: In the Department's verification agendas, we informed respondents to contact the Department "[I]f you have any questions regarding this verification or if you believe any of the verification procedures cannot be performed." The Department did not receive any submissions from respondents regarding the length or breadth of the outline prior to verification. The outlines given to the companies were based on Departmental standards with the exception of downstream data, a topic only covered when merited by the facts of a case. The Department disagrees with respondents' description of the amount of time it took to review certain topics such as USIMINAS' corporate structure and inland insurance, and notes that the length of time it took to cover other topics such as quantity and value was left unaddressed by respondents. The verification exhibits themselves demonstrate one factor that contributed to the slow pace of verification—the number of untranslated pages.

The Department recognizes that, like many verifications, there was a significant amount of material to cover. However, it is the Department's responsibility to set priorities and to determine the amount of time spent on topics to ensure that the verification moves forward. As noted in the Department's verification outline, it is the responsibility of the respondents to be prepared for verification to allow this information to be covered expeditiously. The Department believes that it met its responsibilities and that the time spent reviewing certain fundamental issues, such as downstream affiliates, date of sale, order confirmation, and CONNUM methodologies was appropriate for information essential to this investigation.

Comment 15: Use of Total Facts Available. Petitioners state that, based on multiple problems with USIMINAS' sales verification, the Department should apply total adverse facts available. Petitioners specifically reference the Department's inability to complete all of the pre-selected and surprise sales trace examinations in the home market and the U.S. market during its verification of USIMINAS. Based on the problems noted in the USIMINAS' Sales Verification Report, petitioners question the reliability and accuracy of the following reported information in the home market: Taxes, billing adjustments, quantity discounts, other discounts, inland freight, inland insurance, payment date, credit expense, interest revenue, warranty expense, indirect selling expenses, inventory carrying costs, packing expenses, and variable cost of manufacture. Petitioners also question, in most instances, the reliability of the following reported information in the U.S. market: Product characteristics, customer name, date of payment, sales terms, terms of payment, level of trade, domestic inland freight, domestic brokerage and handling, international freight, destination, credit expense, interest revenue, warranty expense, indirect selling expenses, packing expenses, and variable costs. Petitioners recommend that the Department apply as total adverse facts available, the highest rate calculated in the petition, 85.71%.

Petitioners likewise state that based on multiple problems with COSIPA's sales verification, the Department should apply total adverse facts available. Petitioners specifically reference the Department's inability to complete all of the pre-selected and surprise sales trace examinations in the home market and the U.S. market. Petitioners question the reliability and accuracy of the following reported information in the home market: value-added tax credits on production inputs, billing adjustments, quantity discounts, other discounts, inland freight, inland insurance, payment date, credit expense, interest revenue, warranty expenses, indirect selling expenses, inventory carrying costs, packing expenses, and variable cost of manufacture. Petitioners question, in most instances, the reliability of the following reported information in the U.S. market: product characteristics, customer name, order date, sale date, date of shipment, date of payment, sales terms, terms of payment, quantity, level of trade, domestic inland freight, domestic brokerage and handling, destination, credit expense, interest revenue, warranty expense, indirect selling expense, packing expense, and variable costs.

As further argument that the Department should apply total adverse facts available in this case, petitioners state that the Department was unable to verify the accuracy of the date of sale reported by COSIPA for home market sales. Petitioners refer to the COSIPA verification where the Department requested specific documents for ten additional home market sales. Petitioners state that since the Department only received one document for a limited number of the requested sales, that the Department cannot be confident that the appropriate date of sale was reported for home market sales. Petitioners also maintain that other problems discovered at verification are cause to use total facts available. Petitioners refer to COSIPA's omission of supplementary notas fiscais issued during the period of investigation, the Department's inability to verify the reported order confirmation date, and instances where the Department requested but did not receive sales process information and documentation. Furthermore, petitioners refer to problems with verification of COSIPA's quantity and value. Petitioners highlight instances where the company neglected to report certain home market sales to the Department for more than one customer. Petitioners recommend that the Department apply as total adverse facts available, the highest rate calculated in the petition, 85.71%.

Respondents do not feel that the information willingly submitted by

USIMINAS and COSIPA satisfies the high threshold for the application of total adverse facts available.

Respondents refer to Borden, Gooch Foods and Hershey Foods v. United States, 4 F. Supp. 2d. 1221, 1244 (CIT 1998) (Borden Foods), to support their opinion that it is not proper for the Department to apply total adverse facts available in this investigation.

Respondents provide several facts to support their claim that they cooperated fully in these proceedings. First, respondents point to the number of questionnaire and supplemental questionnaire responses that they have submitted in this investigation as evidence that they have fully cooperated. In addition to the numerous questionnaire responses, respondents note the refinements to submitted data that were researched by hand, such as multiple payment dates, calculating actual freight amounts, creating additional CONNUMS for unique qualities, creating additional methodologies to report missing carbon and yield strengths, and designing and implementing complicated computer programs to extract scope merchandise based on chemical composition.

Respondents refer to NSK Ltd. and NSK Corp. v. United States, 919 F. Supp. 422, 448 (CIT 1996) (NSK Ltd.) and Ferro Union v. United States, Slip Op. 99–27 (CIT March 23, 1999) (Ferro Union), as support for their argument that the Department should not accept petitioners' suggestion that it disregard months of work on USIMINAS' and COSIPA's parts in lieu of total facts available since they cooperated throughout the proceeding. Second, respondents state that the USIMINAS and COSIPA opened up company books, records, and computer systems to Department officials during verification. Respondents state that they brought representatives of the affiliated resellers to their own locations to provide source documentation and maintain that they prepared volumes of information for verification. Respondents argue they did not hamper the investigation in any way and state that it was only when the companies were faced with unrealistic demands at verification that they were unable to provide all the information sought by the Department.

Respondents refute petitioners' claim that much of the submitted data was unverified, claiming that value and volume, product characteristics, date of sale, sales processes, accounting processes, corporate structures, and production processes were fully verified. Respondents assert that quantity and value were verified and that any discrepancies were either noted at the beginning of verification, or minor errors discovered during the course of verification. Respondents state that petitioners did not allege any significant errors regarding the quantity and value of respondents' reported sales.

Respondents maintain that the Department reviewed and verified the sales processes of the companies and that the verification reports did not note significant discrepancies. Respondents believe that the verification reports substantiate respondents' claims that order date should not be used for date of sale purposes. Respondents point out that no discrepancies were noted in the verification reports regarding the Department's review of production processes and facilities, the explanation of the classification of products, and plant tours. Respondents cite Asociacion Colombiana de Exportadores v. United States, 704 F. Supp. 1114, 1117 (CIT 1989) (Asociacion Colombiana) as further evidence that the verification deficiencies of minor expenses are not enough to justify the use of total adverse facts available.

Respondents state that petitioners' claim that Department verifiers were unable to verify USIMINAS' and COSIPA's sales data is incorrect. Respondents maintain that the Department's sampling of the selected sales traces was reasonable and therefore, the sales information should be considered verified. Respondents point to the number of home market sales traces that were completed by the Department and state that the spot checks of the other traces in conjunction with the separate verification of the allocated expenses constitute verification of sales data.

Respondents also state that petitioners do not point to basic problems or flaws with the sales data actually reviewed. Respondents assert that petitioners focus on the Department's inability to review information at verification, and that it would be inconceivable for the Department to apply total facts available simply because the Department did not review all the fields of all of the sales traces. Respondents state that petitioners incorrectly make the assumption that the Department's inability to verify certain subjects means that those subjects were not considered verified. Respondents maintain that the Department's failure to review an item does not mean that the item is not verified.

Respondents also state that petitioners are incorrect in asserting that COSIPA did not report certain home market sales. COSIPA maintains that these sales had been previously reported, but had been inadvertently omitted from the March 1, 1999 submission of data. COSIPA states that these sales were corrected and reported at verification.

Department's Position: The Department disagrees with petitioners' call for total adverse facts available for USIMINAS and COSIPA. While the Department acknowledges that there were multiple problems at the sales verifications of USIMINAS and COSIPA, the nature and extent of these problems do not support the use of total facts available. The Department agrees with respondents that the major components of verification verified. These include quantity and value, production characteristics, and sales and accounting processes. By contrast, the majority of the information that did not verify generally constituted relatively minor issues and adjustments. The Department does not find that the inability to complete all of the pre-selected and surprise sales traces is substantial enough in this case to necessitate the use of total facts available.

Respondents' reference to Borden Foods, however, is off point. In the Borden Foods case, the Court did not disagree with the Department's use of total adverse facts available. Instead, that case dealt with the subject of corroboration of the facts available margin imposed in that proceeding.

Further, the Department disagrees with respondents' assumption that the Department's failure to review certain items at verification equates to the verification of those items. As stated in USIMINAS' and COSIPA's Sales Verification Reports, there were numerous instances in which the Department sought to cover certain items, and the respondents declined for reasons described in the report. These items do not have the same status as items which the Department chooses not to raise at verification. The Department considers these items which were raised by the Department, but not addressed by the respondents, to be unverified. Please see Comment 13 on What Constitutes Verification for a complete discussion of this issue.

While the Department does not find the use of total facts available appropriate in this investigation, there were several instances which merited the use of partial facts available. See the comments below for specific applications of facts available.

Comment 16: Use of Facts Available. Petitioners state that if the Department decides to accept USIMINAS and COSIPA's questionnaire responses, facts available must be applied in certain instances as described in several comments below.

Respondents refer to Borden Foods in asserting that the Department must use caution in applying facts available, but respondents suggest that the Department use facts available in certain instances as described in specific comments below. Respondents also refer to National Steel in stating that the Department should not make adverse inferences where respondents have acted to the best of their ability and the error is minor.

To support their claim that verification problems were insignificant, respondents cite NSK Ltd., which in turn cites Ad Hoc Comm. Of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States, 865 F. Supp. 857, 866, (CIT 1994), stating, "Neutral BIA is 'applied only to a respondent who has substantially complied and there is also an inadvertent or unavoidable gap in the record, or when a minor or insignificant adjustment is involved.'" 919 F. Supp. at 448.

Department's Position: As discussed in the Facts Available section above, the Department has determined that facts available should be applied for certain sales adjustments and expenses. The Department gave USIMINAS and COSIPA substantial opportunity to verify multiple outstanding issues at the sales verification. As noted in the Sales Verification Reports for both companies, respondents were either unable to or unwilling to verify these issues. The agendas were provided to respondents prior to verification, and the information was repeatedly requested by the Department officials at the verification. In instances in which the material remained unverified, the Department applied facts available. In several instances, because the respondents failed to cooperate to the best of their abilities, the Department applied adverse facts available in accordance with section 776(b) of the Act. See the individual comments below for specific applications of facts available and adverse facts available.

In reference to Borden Foods and National Steel, the Department notes that these cases were not governed by the current statute, and the use of adverse inferences is now governed by section 776(b) of the Act. Moreover, respondents' reference to Borden Foods is off point. See Comment 15 above. In addition, respondents' reliance on National Steel in asserting that the Department should not make adverse inferences in the application of facts available is misplaced. Further examination of National Steel supports the use of partial facts available "when only part of the submitted information is deficient," and the use of an adverse inference "depend[ing] on the level of sufficiency of the information provided." 919 F. Supp. at 442.

Comment 17: Collapsing USIMINAS AND COSIPA. Respondents assert that the Department's decision to collapse USIMINAS and COSIPA into a single company for purposes of calculating dumping margins, a single average cost of production and unified average prices was incorrect. Respondents do not dispute two of the criteria used by the Department in making this determination: (1) The two companies manufacture substantially similar products and (2) USIMINAS has a high level of direct ownership in COSIPA. They do, however, dispute the Department's determination that there is some intertwining of operations and do not believe that USIMINAS is in a position to manipulate COSIPA's prices or production. Though USIMINAS is the largest shareholder in COSIPA and appoints two members to its Administrative Council, respondents argue that USIMINAS" influence is limited. Respondents state that the Administrative Council focuses on "large-impact corporate decisions" and not pricing. They also indicate that each company's Directorate, where pricing and sales policies are discussed, is composed entirely of its own employees with neither company appointing directors of the other. Citing their letter of February 9, 1999, respondents note that the companies maintain separate and distinct sales staff and offices, do not make joint sales calls, meet with their own customers, and determine prices separately.

Respondents contest the Department's view that USIMINAS and COSIPA have some intertwining of operations as shown by the supply of technology from USIMINAS to COSIPA. They state that this supply has to do with the sale of computer programs and discussions on optimizing productivity of equipment, but nothing to do with the pricing or marketing of products. For all these reasons, respondents do not believe that there is a basis for collapsing USIMINAS and COSIPA to determine dumping margins.

Petitioners disagree with respondents' argument that USIMINAS" and COSIPA's operations are not sufficiently intertwined to justify collapsing the two companies. First, they cite the Preliminary Results and Partial Rescission of Antidumping Administrative Review of Sulfanilic Acid from the People's Republic of China, 61 FR 29073, 29075 (June 7, 1996) and the Fresh Cut Flowers, 61 FR 42833, 42853, arguing that substantial intertwining of operations is not a necessary precondition to collapsing where evidence on the other collapsing factors is sufficient to indicate a significant possibility of price manipulation and where determinations are made based on the totality of the circumstances. Secondly, petitioners refer again to Fresh Cut Flowers in arguing that the lack of current intertwining of operations does not establish that there is no potential that such will occur. They believe that the circumstances of this case indicate the significant potential for such intertwining to occur.

Petitioners contest respondents' assertion that USIMINAS and COSIPA were improperly collapsed for this investigation. Citing the Department's findings in the U.S. Department of Commerce Internal Memorandum from R. Weible for J. Spetrini, Case No. A–351–828 (December 22, 1998) ("Collapsing Memorandum"), petitioners state that the first prong of the collapsing test, that both companies' facilities and products were similar enough so as not to require substantial retooling in order to restructure manufacturing priorities, had been met. Regarding the second prong of the test, in which the Department examines the potential for price manipulation or production, petitioners state that there are three relevant factors the Department considers as listed in the Collapsing Memorandum. They note that all three factors need not be present in order to find significant potential for price or production manipulation. Petitioners point out that respondents conceded that the first two factors, a high level of common ownership and common employees or board members, are present in this case. They also refer to the Collapsing Memorandum, in which the Department found that the third criterion of intertwined operations was met by virtue of transferred technology. Petitioners reiterate that even though all three factors need not be present, the Department's findings and the record show that all three are present and sufficiently demonstrate the significant potential for price or production manipulation.

Department's Position: The Department agrees with petitioners. On December 22, 1998, the Department outlined in its Collapsing Memorandum referenced above its decision to collapse USIMINAS and COSIPA. For this final determination, we have continued to collapse these two companies. Because the Department is concerned with price and cost manipulation, it must ensure that reviewed companies "constitute

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separate manufacturers or exporters for purposes of the dumping law." See, Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain, 53 FR 24335, 24337 (June 28, 1988). Where there is evidence indicating a significant potential for the manipulation of price and production, the Department will "collapse" related companies; that is, the Department will treat the companies as one entity for purposes of calculating the dumping margin.

Before considering whether companies should be collapsed, the Department must first find that the companies in question are affiliated within the meaning of section 771(33) of the Act. As outlined in the Department's Collapsing Memorandum, USIMINAS and COSIPA meet the criteria for affiliation which is undisputed by respondents. Under § 351.401(f)(1) of the Department's regulations, to determine whether to collapse, we examine whether the affiliated producers have similar production facilities, such that retooling would not be required to shift production from one company to another, and if there is significant potential for the manipulation of prices or production. USIMINAS and COSIPA meet the first prong of this test since they are both fully integrated producers of steel offering a similar range of products. See the Collapsing Memorandum for further discussion of this issue. In examining the potential for the manipulation of price or production, the Department considers the following: (1) The level of common ownership; (2) the existence of interlocking officers or directors; and (3) the existence of intertwined operations. The Department notes that section 351.401(f)(2) states that all three factors need not be present to find a significant potential for the manipulation of price or production.

Since USIMINAS is the largest single shareholder in COSIPA, owning 49.79% of its voting stock, the level of common ownership is significant. USIMINAS' Chairman of the Board (or Administrative Council) and USIMINAS' Director both serve on COSIPA's board of directors. See COSIPA Verification Exhibit 1 at 7 and USIMINAS Verification Exhibit 2 at 6. Regarding intertwined operations, as noted in the Collapsing Memorandum, Brazil's Securities Commission reports that USIMINAS has supplied COSIPA with technology. USIMINAS and COSIPA, together with CSN, also joined in a consortium to buy a controlling interest in MRS Logistica, a rail transport company. Additionally, USIMINAS, COSIPA, and CSN cooperate in the buying of imported coal.

Even if the degree of intertwined operations between USIMINAS and COSIPA is insufficient by itself to find a potential for the manipulation of prices or production, we rely on the totality of the circumstances in deciding this issue. See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Product, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 37154, 37159 (July 9, 1993), (Japanese Steel). The Department finds that the preponderance of evidence on the record indicates a significant potential for USIMINAS and COSIPA to manipulate prices or production. Since the criteria outlined in § 351.401(f)(1) of the Department's regulations have been met, the Department is continuing to collapse USIMINAS and COSIPA in this final determination.

Comment 18: Downstream Sales/Level of Trade. Petitioners state that due to the Department's inability to verify downstream sales data, facts available should be applied for the final determination. Petitioners recall that in the Preliminary Determination, the Department used facts available because the reported downstream sales data was incomplete and not useable. Petitioners state that problems with the verification of downstream data (e.g., the Department was unable to verify quantity and value for the downstream companies, USIMINAS was unable to provide information requested by the verifiers regarding the completeness of sales through one of the downstream companies, and the Department's inability to verify the sales process of some downstream companies) necessitate the use of facts available. Petitioners also maintain that the Department's inability to verify the respondents' LOT claims make it impossible to determine if different levels of trade exist. Petitioners state that because of these problems, the Department must resort to facts available. As facts available, the petitioners recommend that the Department apply the same facts available methodology that was applied in the Preliminary Determination.

Respondents believe that the Department inaccurately portrayed the fact that the Rio Negro was not verified by making the statement, "USIMINAS said it preferred to review other topics instead." They argue that a more accurate representation is that the Department's verification methods prevented respondents from presenting all information requested in the outline in the manner desired by the Department. These methods included spending a "full day and a half reviewing USIMINAS' corporate structure and price fixing allegations," a full day reviewing USIMINAS' other downstream affiliate, Fasal, and not following the recommendation in Chapter 13 of its Antidumping Manual on setting verification priorities. Moreover, respondents suggested that the verification of Rio Negro take place at COSIPA's offices because USIMINAS and COSIPA were collapsed for this investigation, because it would save time at USIMINAS, and because Rio Negro's facilities were closer to COSIPA. For all of these reasons, respondents made clear that it preferred to move on to topics other than Rio Negro.

Respondents maintain that the petitioners overstate claims that the Department's verification reports note several flaws and problems with the USIMINAS and COSIPA verifications. Respondents state that petitioners focus too much emphasis on respondents' downstream sales data, and that petitioners misquote portions of the verification reports. Respondents state that many of the flaws pointed out by petitioners are not flaws, but rather items that the Department was not able to verify because of time constraints.

Respondents state that the Department should disregard petitioners calls for the use of facts available in lieu of respondents' downstream sales data. While the respondents agree that the Department officials were unable to review much of the affiliates' downstream sales data, they state that there was not enough time allotted to the verification to allow for the review of the downstream data. Respondents maintain that it would be incorrect for the Department to resort to facts available based on the fact that all downstream sales data were not verified. Respondents have maintained throughout the proceeding that the Department should not use downstream data in calculating margins since these sales account for a small percentage of the respondents' home market sales, are physically different products, and are made at a different LOT. Respondents also note that it was very difficult for the companies to gather the downstream data as requested by the Department. Respondents maintain that based on the facts listed above, the Department should simply disregard downstream sales. Respondents state that if the Department does not choose to disregard these sales, facts available should not be used. Rather, respondents suggest the Department should use the

downstream information reported because the downstream companies provided this information to the best of their abilities. Respondents state that section 782 of the Act provides that the Department should not disregard the information submitted by an interested party if it has acted to the best if its ability, and that the Department should take into consideration any difficulties experienced by interested parties in providing information to the Department.

Department's Position: The Department agrees in part with both petitioners and respondents. At verification, the Department requested to cover LOT, but respondents indicated they preferred to move on to other topics. We repeatedly asked to return to this issue, but were unsuccessful. Because respondents showed no cooperation in verifying this topic and the burden is on respondents to support all LOT claims, we are not making an LOT adjustment. See Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 63 FR 13205, 13206 (March 18, 1998) ("the burden is on a respondent to demonstrate that its categorizations of LOT are correct.")

The Department was also unable to verify most issues regarding the affiliated downstream companies. We were unable to verify quantity and value for any downstream entity. We were only able to verify portions of one sales trace and product characteristics for one downstream company. There were many variables for this sales trace that we could not verify. Therefore, pursuant to section 776(a)(2)(D) of the Act, we must us the facts available. Respondents suggest that the verification of downstream companies was burdensome, but upon receiving the verification outline, they did not indicate that they were unable to comply with this section. See section 782(c)(1) of the Act. The Department made repeated attempts to verify downstream sales information, but respondents declined to cover these topics. For these reasons we find that respondents failed to cooperate to the best of their abilities and pursuant to section 776(b) of the Act, the Department is applying adverse facts available to downstream sales.

As adverse facts available, the Department used the downstream data reported by USIMINAS and COSIPA for CONNUM matching purposes only. In cases in which the best match is to a downstream home market sale, we applied as adverse facts available the highest calculated margin for any USIMINAS/COSIPA CONNUM. The Department finds that this margin is indicative of USIMINAS/COSIPA's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

The approach proposed by petitioners—using only identical matches at the same LOT—is not appropriate for several reasons. First, as noted above, because respondent did not support its claims for multiple LOTs, we are determining there is a single LOT for all U.S. and home market sales for this final determination. Second, we are able to calculate difference in merchandise adjustments for this final determination, because the deficiencies in the cost data at the time of the preliminary determination have been subsequently remedied.

Comment 19: Date of Sale. Petitioners assert that the verifications of USIMINAS and COSIPA establish that documents issued long before the commercial invoice memorialize the agreed terms of sale. USIMINAS sends the customer an export contract which sets out the general terms of sale, including price and quantity. The attached order confirmation specifies quantity, price, tolerances, order date, and expected delivery date. Similarly, COSIPA's export contract specifies the estimated delivery time, sales conditions, payment terms, and the date of issuance. Attachments to this document specify dimensions, price, quantity, and tolerances. See USIMINAS" Sales Verification Report, p. 15 and COSIPA's Sales Verification Report, p.10.

Petitioners maintain that USIMINAS" and COSIPA's shipment data likewise indicate no change in material terms which invalidate order confirmation or export contract date as the date of sale. In the great majority of instances, petitioners argue that shipments were within contract tolerances. Even where quantity tolerances are not met, petitioners note that the price was unaffected. Petitioners conclude that invoice date is not acceptable as the date of sale for USIMINAS and COSIPA. Therefore, the Department should use the order confirmation date, or alternatively, the export contract date, which is available for most U.S. sales.

Respondents counter that the Department was correct in using the date of nota fiscal as the date of sale for home market sales and relying on the commercial invoice date for USIMINAS and the nota fiscal date for COSIPA in its Preliminary Determination. According to USIMINAS/COSIPA, the Department's regulations make clear that the "invoice" date is the preferred sale date because it simplifies reporting and verification of information and accommodates changes that often occur up to the invoice date. In support of this argument, they cite the Department's Antidumping Regulations, 62 FR 27296, 27348 (May 19, 1997). Moreover, USIMINAS and COSIPA state that their sales terms are not set with finality until the invoice date. Respondents assert that Department verifiers were unable to locate any retrievable date to use as the "order" date. (See USIMINAS" Sales Verification Report, pp. 12–16.) Therefore, the Department should continue to use the invoice date as the date of sale for the final determination.

Respondents also raise several issues related to the Department's methodology in verifying date of sale and the discussion of the issue in the USIMINAS and COSIPA verification reports. They dispute the Department's phrasing that "it was not possible to verify USIMINAS" order dates due to the apparent unavailability of certain documents." They believe that a more accurate statement would have been that respondents "do not reliably keep order confirmation date information in their normal course of business." Respondents assert that they made clear in prior submissions that they could not provide this information because they do not reliably keep such records in their normal course of business. They also state that the Department spent significant time at verification searching for order date information and that the Department's verification report supports their claim that these documents are elusive, not that they are not verified.

USIMINAS points out that while the Department did not receive alteration history screens for all sales traces as requested, it did receive printouts of this document for "nearly all" of the sales traces. It adds that copies of the screens were presented on the last day of COSIPA's verification, but the Department did not choose to take all of them. Additionally, USIMINAS states that the computer screens themselves, if not actual copies, were available to the verifiers. Respondents argue that the Department spent "considerable time reviewing information that appears to be more relevant to costs than to sales." They find it conceivable that the Department originally sought this information to address the order date issue, but believe that the Department's focus was more on production and cost information. Respondents cite as evidence of this that the Department insisted on visiting the control tower, witnessing the types of computer

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reports used to generate production reports, and later meeting with production planning staff.

Respondents believe that the amount of time devoted to the order confirmation and date of sale issues and the level of detail sought by the Department limited the amount of time that could be devoted to other topics. Respondents note the number of pages written by the Department about the topic and comment that the discussions included details about their price circulars, location and responsibilities of each sales office, the method by which the mill is contacted, time and manner of computer record keeping, and the frequency of internal sales meetings. Respondents argue that despite their indications that order confirmation information was not stored in the computers in any organized fashion, the Department spent considerable time at both USIMINAS and COSIPA learning more about the order confirmation process, reviewing computer records, and asking for production records.

Department's Position: The Department disagrees in part with both petitioners and the respondents. The date of sale is the date on which all substantive terms of sale are agreed upon by the parties, including the price, quantity, delivery and payment terms. In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. For example, in Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from Taiwan, 61 FR 14067 (March 29, 1996), the Department used the date of the purchase order as the date of sale. In addition, it is the Department's practice not to use a date of sale that falls after the shipment of the product from the factory for delivery, *e.g.* an ex-port shipment date. This practice is dictated by the fact that a customer's price and quantity would rarely, if ever, change after a delivery has commenced.

The Department agrees with the respondents that the nota fiscal is the correct date of sale in the home market. The nota fiscal represents the first point at which USIMINAS" and COSIPA's records can establish that the material terms of sale are set, it is issued as products leave the factory, and it serves as the invoice. For this final determination, the Department will continue to use the nota fiscal as the date of sale in the home market for both USIMINAS and COSIPA.

For COSIPA's U.S. date of sale, the Department agrees with the respondent that the commercial invoice represents the correct date of sale. The terms of sale are set at this point, and the commercial invoice is generally issued at the same time that the subject merchandise leaves COSIPA's factory. See COSIPA's Sales Verification Report, p. 11.

For USIMINAS, the Department disagrees with the respondent that the commercial invoice represents the correct date of sale in the U.S. market. The commercial invoice is issued when the merchandise is shipped from the port. As noted below, we explicitly instructed USIMINAS that date of sale may not be after the merchandise was shipped from the factory. Because the terms of sale are set at the issuance of the nota fiscal (as acknowledged by USIMINAS on page 32 of the November 16, 1998 Section A Response and verified by the Department) and the nota fiscal represents an ex-factory, not ex-port shipment date, the Department finds that nota fiscal is the correct U.S. date of sale.

The Department notes that petitioners argue that order confirmation is the correct date of sale in both the home and U.S. markets. However, as indicated in USIMINAS' Sales Verification Report at 15 and Exhibit 7 of the January 19, 1999 Supplemental Section A Response, there is evidence of significant change in the terms of sale, specifically quantities exceeding tolerances, between the issuance of the order confirmation and the nota fiscal. The Department was also able to verify respondent claims that they are unable to reliably report order confirmation as their U.S. or home market date of sale. See USIMINAS Sales Verification Report at 18 and COSIPA Sales Verification Report at 14. Since the record does not establish that order confirmation best reflects the date at which the terms of sale are set, and it is difficult or impossible for respondents to report this date, the Department does not consider order confirmation the appropriate date of sale.

In reference to USIMINAS' U.S. date of sale, the Department specifically requested in its supplemental questionnaire to USIMINAS' Section A Response (December 4, 1998) that USIMINAS report:

> all sales for which "the order confirmation date (or comparable date if data on order confirmation does not exist) was within the POI. If you believe another date is a more appropriate date of sale, you should provide all sales during the POI based on order confirmation date, using alternative production or accounting records, and the other date (*provided the other date is not after the merchandise is shipped from the plant*). (emphasis added)

In our January 4, 1999 Supplemental Questionnaire to Sections BCD, we repeated this question and added:

> If USIMINAS chooses not to report order confirmation date, and we determine at verification that this information is available and is a more appropriate date of sale than that reported, USIMINAS may be subject to the use of adverse facts available pursuant to section 776 of our statute.

USIMINAS, however, continued to report the commercial invoice date as the date of sale even though this date is after shipment from the factory, and it did not report all sales during the POI based on an ex-factory date of sale. Since USIMINAS failed to follow explicit instructions in the questionnaire, or to contact the Department to determine whether an alternate reporting basis was appropriate, we find that USIMINAS did not cooperate to the best of its ability. Therefore, we are applying adverse facts available for the sales that were not reported based on an ex-factory date of sale. For the unreported sales we estimated the average number of days between the ex-factory shipment date and the commercial invoice date, using USIMINAS' submitted data. We then estimated the value of USIMINAS' unreported sales for the estimated amount of time using the data USIMINAS submitted for purposes of our critical circumstances analysis. See USIMINAS/COSIPA's Analysis Memo. We applied the highest margin calculated for any CONNUM to this value. The Department finds that this margin is indicative of USIMINAS/COSIPA's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

In reference to respondents' general comments regarding date of sale issues discussed in the Department's verification reports, the Department did seek information on production in order to understand the order confirmation process. Both respondents and petitioners in this investigation have spent considerable time analyzing and writing about date of sale. Date of sale is an important issue in this investigation and the amount of time spent reviewing the topic was merited and within Departmental practices.

Comment 20: Contracts with affiliated suppliers—USIMINAS. The respondent believes that the statement, "USIMINAS did not provide any contracts with affiliated suppliers" should have been further explained. USIMINAS argues that its rail contracts were not presented because they do not exist. They further assert that the Department acknowledged this by saying, "USIMINAS stated that Rios Unidos does not have exclusive agreements with any of these companies" and "USIMINAS said that CVRD negotiates and sells separately to its customers and they do not have any special buying arrangements together with CSN and COSIPA."

Petitioners believe that the Department's conclusion that USIMINAS failed to provide the requested documentation was correct. Petitioners argue that statements asserting that such contracts do not exist do not constitute verification. Furthermore, they note that the lack of "exclusive agreements" does not demonstrate that USIMINAS had no contracts whatsoever with affiliated suppliers. Petitioners believe it is also unclear how the stated absence of a "special buying arrangement" between CVRD, CSN, and COSIPA indicates that USIMINAS had no contract with CVRD. Petitioners maintain that because USIMINAS did not provide the requested contracts with affiliated suppliers, the Department should make an adverse inference with respect to the costs of materials purchased from affiliated suppliers such as iron ore and coal. Petitioners state that the respondent's cost of production should be increased as facts available.

Department's Position: The two statements about USIMINAS' contracts with Rios Unidos and CVRD were taken out of context. These sentences referred to contractual agreements between all three of the respondents (CSN, COSIPA, USIMINAS) and affiliated suppliers, and not to individual contracts USIMINAS had with affiliated suppliers. Furthermore, the fact that USIMINAS asserted that it did not have any special or exclusive buying relationship in concert with all respondents or individually is not the same thing as saying that it had no contract with its affiliated suppliers. See Comments 49 and 50 for a complete discussion of the costs of iron ore and coal.

Comment 21: Fasal's Commissions—USIMINAS. Petitioners state that since the Department was not able to verify the reported commission for Fasal's (one of USIMINAS/COSIPA's affiliated resellers) home market sales, the Department should deny the commission adjustment as facts available.

Department's Position: Because the Department was unable to verify downstream sales, including Fasal's sales, we have based the margin for all U.S. sales matching to any of respondent's downstream sales solely on adverse facts available. Therefore, we need not reach the question of commission adjustments. See Comment 18 on Downstream Sales/Level of Trade for a complete discussion of the downstream sales issue.

Comment 22: Fasal's Inventory Carrying Costs—USIMINAS. Petitioners state that the Department's inability to verify Fasal's reported inventory carrying cost necessitates that the Department apply adverse facts available.

Department's Position: We are not using inventory carrying costs in our analysis because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 23: Theoretical weight sales—USIMINAS. The respondent disagrees with the Department's conclusion that the gross unit price calculations for a small number of sales made on a theoretical weight basis is unverified. USIMINAS does not dispute that it made a clerical error in its calculation and reporting of these sales, and that this error was discovered during verification, not at the beginning of it. However USIMINAS states that it provided the Department with a reconciliation worksheet correcting the prices and quantities. The respondent points out that the impact of the error is minuscule, the Department is emphasizing a clerical error, and USIMINAS found the error in a voluntary attempt to revise unusual transactions in its database.

Petitioners argue that all U.S. sales made on a theoretical weight basis had incorrectly calculated gross unit prices. Petitioners state that theoretical weight sales were only made in the United States. Petitioners feel that the Department should apply facts available to all U.S. sales made on a theoretical weight basis by assigning the highest margin alleged in the petition, 85.71%.

Department's Position: Regarding USIMINAS' U.S. sales made on a theoretical weight basis, we agree with respondents. At verification, USIMINAS realized that a clerical error had been made in the computation of gross unit prices on this small number of sales. USIMINAS presented the Department with a list of revised gross unit prices during the verification. Given the nature and extent of the error, the Department accepted these revised prices and has used them in the final calculations. See USIMINAS' Sales Verification Report, Exhibit 31, and USIMINAS/COSIPA's Analysis Memo.

Comment 24: Indirect Selling Expenses—USIMINAS. USIMINAS believes that the Department's statement that it was unable to verify indirect selling expenses for a certain transaction because of mistakes discovered at verification is a mischaracterization that is contradicted by the Department's report. It argues that this shows the Department does not realize this is an allocated expense which is applied across the board to all sales. Respondents also state that the Department verified indirect selling expenses on page 58 of the verification report.

Petitioners state that based on errors in the calculation of U.S. indirect selling expenses found at verification, the Department should apply as facts available the highest indirect selling expense amount reported on the USIMINAS U.S. or home market sales databases.

Respondents dispute petitioners' proposal for facts available and state that a reasonable facts available approach would be to use COSIPA's indirect selling expenses for USIMINAS since the two companies are collapsed for the purpose of this investigation.

Department's Position: We are not using indirect selling expenses in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 25: Home Market Inland Freight—USIMINAS. USIMINAS believes the Department made a false statement in saying that USIMINAS did not have anything prepared to prove that transactions with affiliated rail companies were at arm's length. The respondent argues that the Department contradicts this assertion with two statements: "USIMINAS stated that CVRD and MRS have no preferential arrangement with it even though they are affiliated parties" and "USIMINAS also stated that it is difficult to prove this issue because some of the rail companies provide transportation for routes that no other rail company services." With these statements, USIMINAS feels it explained this situation and the Department's findings were false.

Petitioners assert that USIMINAS' statements made at verification do not constitute demonstration of a claim. They further note that if verbal

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explanations rather than concrete documentation were all that was required, there would be no point in conducting verifications.

Petitioners maintain that because the Department was not presented with requested proof that freight transactions with affiliated trucking or rail companies were made at arm's length, the Department should deny the inland freight adjustment for all home market sales.

Respondents reply that petitioners are incorrect and that USIMINAS has no contracts with these affiliated companies and that USIMINAS staff presented oral testimony that the company does not receive preferential treatment from affiliated transportation companies. Respondents state that the Department should reject petitioners' facts available suggestion because it is excessively punitory. Furthermore, respondents claim that since the Department verified the arm's length nature of COSIPA's affiliated freight transactions and since the Department has collapsed USIMINAS and COSIPA, the Department should assume that USIMINAS' affiliated freight transactions were also made at arm's length. Respondents suggest that should the Department reject USIMINAS' reported freight expenses and apply facts available, COSIPA's freight rates should be used as surrogate values for USIMINAS' freight expenses.

Department's Position: The Department agrees in part with petitioners. USIMINAS' assertion that it has no preferential arrangements with CVRD and MRS does not constitute proof that it has no arrangement or contract with these affiliated rail companies or that transactions were at arm's length. As noted in USIMINAS' Sales Verification Report, p. 50, we requested information from USIMINAS showing that its rail and trucking freight transactions were at arm's length. We reminded respondents that an alternative way to demonstrate arm's length transactions to affiliated companies is to show that the transactions were above those companies' costs or that the companies were profitable. Nevertheless, USIMINAS had nothing prepared to demonstrate that the freight charges were at arm's length. After several attempts to verify the arm's length nature of USIMINAS' transactions with affiliated transportation companies, we determined that the USIMINAS claim that these sales are made at arm's length had not been substantiated or verified.

USIMINAS made no attempt to establish that its inland freight transactions were at arm's length, despite the Department's repeated attempts to verify this issue. Further, the Department offered alternative solutions for verifying this topic in accordance with section 782(c)(2), but USIMINAS made no attempt to provide verifying information. Therefore, the Department is applying adverse facts available to USIMINAS' home market inland freight. Accordingly, for sales in which USIMINAS incurred a freight expense, the Department used the lowest value for inland freight reported by USIMINAS. Because we are already making an adverse assumption in assigning inland freight expenses, we are not making an additional adjustment for VAT taxes. See USIMINAS/COSIPA's Analysis Memo.

Comment 26: U.S. Inland Freight—USIMINAS. Petitioners maintain that since the Department was only able to verify the reported inland freight for one U.S. sale, as facts available, the Department should apply to all U.S. sales the highest reported inland freight expense.

Respondents state that petitioners' call for facts available for the inland freight value associated with USIMINAS' U.S. sales should be rejected. Respondents claim that petitioners acknowledge in their case brief that the Department verified USIMINAS' inland freight adjustments, and therefore, the Department should use USIMINAS' reported U.S. inland freight expense.

Department's Position: We agree with petitioners that adverse facts available should be applied to USIMINAS' reported U.S. inland freight expenses. Respondents mis-characterize petitioners' brief by stating that the petitioners asserted that the Department was able to verify this adjustment, when in fact, the brief suggests that the Department was only able to review the U.S. inland freight adjustment for one observation, and the reported amount for that observation did not reconcile to company records. We note that it is not necessary for the Department to verify more than one example of an expense to consider the expense to be verified. See Monsanto v. United States. However, the reported expense for the sale we examined did not agree with the actual expense. (See Verification Exhibit 36). Therefore, we have rejected USIMINAS' inland freight adjustments due to failure of this data to verify and instead have used the facts available, pursuant to section 776(a)(2)(D) of the Act. The unexplained failure of this data to verify demonstrates that USIMINAS failed to cooperate to the best of its ability in responding to our request for inland freight data. Therefore, we are applying as adverse facts available USIMINAS' highest reported amount for inland freight. See USIMINAS/COSIPA's Analysis Memo.

Comment 27: Warehousing Expense—USIMINAS. Petitioners state that since the Department was unable to verify USIMINAS' U.S. warehousing expenses, facts available should be applied. Petitioners argue that since USIMINAS claims to have reported these expenses with the indirect selling expenses that as adverse facts available, the Department should treat all of USIMINAS' reported indirect selling expenses as direct selling expenses.

Department's Position: We disagree with petitioners. Respondent consistently told the Department that it was unable to segregate warehousing expenses from its indirect selling expenses and that it had reported warehousing as part of these expenses. See USIMINAS' Section B response at B–41 and Section C response at C–38 (December 21, 1998). Therefore, we have accepted respondent's data, as reported, and are not reclassifying respondent's indirect selling expenses as direct selling expenses for this final determination.

Comment 28: Inland Insurance—USIMINAS. In referring to inland insurance for home market sales, petitioners state that since the Department was not able to completely verify the reported amounts, for all home market sales, the inland insurance adjustment should be denied as adverse facts available.

Department's Position: We disagree with petitioners that adverse facts available should be applied to USIMINAS' reported inland insurance expenses. At verification, the Department verified USIMINAS' nominal rate, discount rate, and reported rate. We were satisfied with the verification of USIMINAS' reported expense. In an April 22, 1999 letter to respondents, we requested that USIMINAS correct the reported inland insurance amount to include IOF taxes and fees. We accept the reported amount and adjusted for the inland insurance amount accordingly.

Comment 29: Billing Adjustments—USIMINAS. Petitioners maintain that USIMINAS incorrectly included canceled sales (sales in which the billing adjustment is equal to the gross unit price) within the billing adjustment field of its home market database. Petitioners state that these sales should be removed. Petitioners also reference an error discovered at verification in which the reported billing adjustment for observation 52003 was incorrectly reported. Petitioners state that the adjustment for this transaction should be denied.

Department's Position: We agree with petitioners that canceled sales should be removed from the database and have done so for this final determination. We also agree that there was an error with respect to the observation cited by petitioners and the billing adjustment should be denied for this sale.

Comment 30: Warranty Expense—USIMINAS. Petitioners maintain that because the Department was unable to verify USIMINAS' warranty expense, the Department should apply adverse facts available and deny the adjustment in its entirety.

Department's Position: We determine that adverse facts available should be applied to USIMINAS'' reported warranty expense. As noted in USIMINAS'' Sales Verification Report, at 57, we requested to verify warranty expenses several times but USIMINAS asked to skip this topic. Thus, despite our repeated attempts to verify this data, we were unable to do so. By declining our request to verify warranty expenses, USIMINAS did not cooperate to the best of its ability. Therefore, as adverse facts available, we are denying the warranty expense adjustment for all of USIMINAS'' home market sales. Since USIMINAS did not report any warranty expenses for U.S. sales, we are not making any changes to these sales. See USIMINAS/COSIPA's Analysis Memo.

Comment 31: Packing Expenses—USIMINAS. Petitioners state that since the verification of U.S. and home market packing expenses was not completed, the Department should use the highest reported packing expense on the USIMINAS U.S. sales database as the packing adjustment for all U.S. sales. Petitioners then state that for home market sales, the packing adjustment should be set equal to zero.

Respondents disagree with petitioners suggestions for facts available with regard to USIMINAS'' packing expenses. Respondents state that the Department should accept USIMINAS'' reported packing expenses. Respondents maintain that USIMINAS presented information to Department officials at the mill, and that Department staff preferred to return to the head office and after they returned, discovered that they had more questions about the packing expense. Respondents further state that USIMINAS made the packing expense information available to the cost verification team, but that the cost verifiers elected not to examine the documents. USIMINAS maintains that since USIMINAS presented the packing information to the Department, and since verifiers elected not to review the information, the Department should consider the packing expenses verified for USIMINAS.

Department's Position: The Department disagrees with petitioners that facts available should be applied to USIMINAS'' reported packing expenses. Respondent presented information about packing to the verification team at the mill and, subsequent to leaving the mill, the team asked for additional information. We were not able to review this additional information, and requested that the cost verification team review this issue. Due to time constraints, the cost verification team was not able to verify the outstanding questions regarding packing because the Department determined that other issues were more important to verify in the remaining time period. We are therefore accepting USIMINAS'' submitted packing information in this final determination.

Comment 32: Inland Insurance—COSIPA. Petitioners state that, due to errors in the verification of COSIPA's inland insurance, the Department should apply adverse facts available and not make an adjustment for home market inland insurance.

Department's Position: The Department disagrees with petitioners that adverse facts available should be applied to COSIPA's reported inland insurance expenses. At verification, we verified COSIPA's nominal rate, discount rate and reported rate. In an April 22, 1999 letter to respondents, we requested that COSIPA correct the reported inland insurance amount to include certain taxes and fees. We accept the reported amount and adjusted for the inland insurance amount accordingly.

Comment 33: IPI Tax—COSIPA. Petitioners state that due to problems with the verification of the IPI tax, as adverse facts available, the reported tax amounts should be revised downward to reflect the actual amounts paid to the federal government.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported IPI tax. Although the verification did reveal a clerical error on the part of COSIPA in calculating the IPI tax paid to the government for one month of the period of investigation, we do not believe that this error justifies the use of adverse facts available. See COSIPA's Sales Verification Report at 31. The Department is generally satisfied with the verification of the IPI tax. We accept the reported amount and adjusted for the tax accordingly.

Comment 34: Home Market Inland Freight—COSIPA. Petitioners maintain that because COSIPA failed to demonstrate that freight services provided by affiliated parties were made at arm's length prices, the inland freight adjustment should be denied for home market transactions, and for U.S. transactions, the highest reported expense should be applied as domestic inland freight.

Respondents state that COSIPA established the arm's length nature of its transactions with affiliated transportation companies. Respondents state that the Department should reject petitioners' facts available suggestion because it is excessively punitory.

Department's Position: The Department agrees in part with petitioners. The respondent was able to demonstrate that transactions with one of its two affiliated trucking companies were at arm's length. See COSIPA's Sales Verification Report at 39. However, despite the Department's repeated attempts to verify the arm's length nature of transactions with affiliated rail companies including offering alternative solutions for verifying this topic, the respondent failed to cooperate with our verification efforts. Therefore, in accordance with section 782(c)(2), the Department is applying adverse facts available to COSIPA's home market inland freight. Accordingly, for sales in which COSIPA incurred a freight expense, the Department used the lowest value for inland freight reported by COSIPA. Because we are already making an adverse assumption in assigning inland freight expenses, we are not making an additional adjustment for VAT taxes. See USIMINAS/COSIPA's Analysis Memo.

Comment 35: Brokerage and Handling—COSIPA: Petitioners state that because the Department was unable to verify the reported brokerage and handling expenses, the reported amount should be doubled as facts available for all U.S. sales.

Respondents dispute petitioners' interpretation of COSIPA's Sales Verification Report. Respondents interpret the Department's inability to verify the reported brokerage and handling expenses as an indication that the Department simply ran out of time and was therefore unable to review the information. Respondents claim that the Department should consider COSIPA's reported brokerage and handling expenses verified. However, respondents do suggest that the Department use USIMINAS' verified brokerage and handling expenses as facts available for COSIPA in the event that the Department does not consider the COSIPA expense to be verified.

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Department's Position: Since the Department repeatedly attempted to verify brokerage and handling, COSIPA declined to review this item within the time frame allotted for verification (see COSIPA's Sales Verification Report at 41), and there is no indication that the reported amounts are accurate, the Department is applying adverse facts available to COSIPA's reported U.S. brokerage and handling. As adverse facts available, we are using the highest reported brokerage and handling amount for all U.S. sales. See USIMINAS/COSIPA's Analysis Memo.

Comment 36: Home Market Credit—COSIPA. Petitioners maintain that due to the Department's inability to verify the reported home market credit expense, as adverse facts available, it should deny the adjustment.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported home market credit expense. As is discussed in the verification report, COSIPA intended to calculate the reported credit expense using the same formula and interest rates as did USIMINAS; however, a clerical error was made by COSIPA when the expense was calculated, and the incorrect factors were input into the credit formula. The Department verified that USIMINAS correctly calculated its credit expense. Furthermore, the Department agrees with USIMINAS and COSIPA that the financing rates received by USIMINAS would be much more conservative than those received by COSIPA or any of the other downstream companies. This can be illustrated by the Brazilian publications of lending rates supplied to the Department by USIMINAS at verification. See USIMINAS' Sales Verification Report and Exhibits 23 and 43. Therefore, the Department recalculated COSIPA's home market credit expense by using the interest rates supplied by USIMINAS to correct for the clerical error discovered at verification. See USIMINAS/COSIPA's Analysis Memo.

Comment 37: Interest Revenue—COSIPA. Petitioners state that because COSIPA did not provide certain documentation at verification, the reported interest revenue (INTREV1H) is called into question, and as adverse facts available, the Department should apply the highest reported amount of interest revenue to all home market sales where interest revenue was reported.

Respondents state that the Department should disregard petitioners' call for facts available for this issue. Respondents' interpretation of the verification report is that the interest revenue amount reported in the INTREV1H field was verified. Respondents state that the verification report indicates that only the highest interest rate used to calculate interest revenue was not documented, and claim that this documentation was not provided because it was not requested.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported interest revenue expense. As is discussed in the verification report, COSIPA stated at the verification that the Department should not adjust for the second interest revenue field (INTREV2H) because COSIPA incorrectly reported the additional interest revenue field. COSIPA explained that the interest rate is negotiated on a sale by sale basis with customers depending on the risk factor associated with the customer. The verification report also notes that COSIPA was unable to provide documentation illustrating the highest interest revenue percentage that COSIPA might assign to any sale. However, the Department did not review any documentation or information that would alter its position in the Preliminary Determination. Based on information reviewed at COSIPA, we consider its reported interest revenue (INTREV1H) to be verified. See COSIPA's Sales Verification Report at 43. We are, therefore, accepting the reported amount for INTREV1H, setting INTREV2H equal to zero, and adjusting for interest revenue as appropriate. For sales with unreported payment dates, we are continuing as we did in the Preliminary Determination to calculate an imputed interest revenue expense for both COSIPA and USIMINAS. See USIMINAS/COSIPA's Analysis Memo.

Comment 38: Inventory Carrying Costs—COSIPA. Petitioners feel that because the Department was unable to verify the reported inventory carrying costs, which were only reported for home market sales, the Department should deny the adjustment as adverse facts available.

Department's Position: We are not using inventory carrying costs in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 39: Indirect Selling Expenses—COSIPA. Petitioners state that COSIPA reported a higher unit value indirect selling expense than the amount discovered at verification. They therefore argue that the Department should apply as adverse facts available the reported indirect selling expenses discovered at the verification.

Department's Position: We are not using indirect selling expenses in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 40: Packing—COSIPA. Petitioners maintain that since the reported packing expenses were unverified, the Department should apply facts available as follows: in the home market, the packing expense adjustment should be denied; in the U.S. market, the highest reported packing expense should be applied to all U.S. sales.

Respondents state that as facts available, the Department should employ USIMINAS' packing expenses to COSIPA on a CONNUM specific basis as a surrogate value. Respondents also state that for any COSIPA CONNUM that does not have a packing expense, the Department should use an average of USIMINAS packing expenses.

Department's Position: We agree with petitioners that adverse facts available should be applied to COSIPA's reported packing expenses. Since the Department repeatedly attempted to verify packing, COSIPA declined to review this item within the time frame allotted for verification (see COSIPA's Sales Verification Report at 45), and there is no indication that the reported amounts are accurate, the Department is applying adverse facts available to COSIPA's packing expenses. As adverse facts available, we are applying the highest reported packing amount to all U.S. sales, and we are denying the packing adjustment in the home market. See USIMINAS/COSIPA's Analysis Memo.

Comment 41: Corporate Structure. USIMINAS disagrees with the use of the phrase "exercises control" in the statements "CVRD is the largest single shareholder in USIMINAS and exercises control in USIMINAS as such" and "Previ is the third largest shareholder in USIMINAS * * * and exercises control over USIMINAS by utilizing its voting share as a shareholder." Respondents believe that there is no factual evidence to support this language. Since USIMINAS' group of shareholders that vote as one block have 53% of the voting capital and CVRD and Previ have 23.14% and 15% respectively, respondents do not believe these companies can be said to "exercise control" over USIMINAS.

Department's Position: The Department does not believe that this clarification adds to or subtracts from its

determination regarding collapsing USIMINAS/COSIPA with CSN. See Comment 1 for a complete discussion of the collapsing issue .

Comment 42: U.S. Sales Processes for USIMINAS and COSIPA. USIMINAS states that the Department incorrectly referred to a U.S. company that buys the respondent's products from one of its customers as USIMINAS' customer. USIMINAS pointed out that its contractual relationship is with its own customer, not its customer's customer. Similarly, COSIPA believes that the Department was mistaken in saying that its product is shipped to COSIPA's contractual customer which is a company in the Cayman Islands that facilitates international transactions. COSIPA states that the Department did however correctly describe its U.S. sales process when it stated that "such sales have 'two financial paths, a financial flow of documents and a physical flow of products."

Department's Position: The Department agrees with respondents. We recognize that USIMINAS's contractual relationship is with its own customer, not its customers' customers. The Department also recognizes that COSIPA's products are not shipped to the Cayman Island company but wherever the contractual customer directs them to ship the products.

III. Cost Issues

CSN

Comment 43: Adjustments Identified in the Overall Cost Reconciliation. CSN argues that the Department should not adjust the company's reported COP and CV amounts to include the reconciling items shown in the cost reconciliation. Specifically, CSN states that the first reconciling item in question relates to the company's discovery of an overstatement of its inventory values in the normal course of business. This overstatement was found when the company switched to a new financial accounting system in 1997. According to CSN, the company did not reflect this adjustment in its cost accounting system until the new cost accounting systems became fully functional in 1999. Moreover, CSN claims that since the adjustment did not affect monthly POI cost or POI inventory levels it does not impact the reported costs. As for the second reconciling item in question, CSN states that this item relates to the total adjustment needed to reconcile the submitted costs to the costs of goods sold reported on the financial statements. According to the company, this reconciling item is negligible and does not cast doubt on the submitted costs. Moreover, the time and effort required to determine what this small amount represents is simply unreasonable in light of its insignificance. Therefore, CSN argues that no adjustment to the reported costs is necessary.

According to the petitioners, CSN has inappropriately excluded certain costs from the calculation of COP and CV even though they relate to the production of the subject merchandise. The petitioners argue that the Department normally requires respondents to include these types of reconciling items in the reported costs. To support their position, the petitioners cite the Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rod from France, 58 FR 68865, 68873 (December 29, 1993), in which the Department included similar reconciling items.

Department's Position: We agree with petitioners that we should include certain reconciling items in the calculation of COP and CV. As noted by CSN, the first reconciling item in question relates to a difference in production costs that exists between CSN's cost accounting system and financial accounting system. Specifically, the financial accounting system reflects a loss realized on missing raw materials while the cost accounting system does not. Thus, CSN's cost accounting system and financial accounting system generate different results due to this inventory adjustment. (For submission purposes, CSN relied on its cost accounting system to calculate the reported costs.) In such instances where the total costs reported in the cost accounting system differ from the total costs reported on the financial statements, we typically rely on the amounts reported on a company's audited financial statements prepared in accordance with generally accepted accounting principles ("GAAP"), provided that it does not result in distorted per-unit costs. In this instance, we do not find it unreasonable to include raw material write-offs in the reported costs. This practice has been upheld by the Court (see, FAG U.K. Ltd. v. United States, 945 F. Supp. 260, 271 (CIT 1996) (upholding the Department's reliance on a firm's expense as recorded on the firm's financial statements.) and Hercules, Inc. v. United States, 673 F. Supp. 454 (CIT 1987) (upholding the Department's reliance on COP information from the respondent's normal financial statements maintained in conformity with GAAP).

As for the second reconciling item, which relates to the unreconcilable difference that cannot be explained by CSN, we note that our normal practice is to include such items in the calculation of COP and CV unless respondent can identify and document why such amount does not relate to the merchandise under investigation. See, Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493, 15498 (March 31, 1999). (The Department determined that the respondent should include the unreconciled difference between amounts in the accounting records and reported costs in reported costs.) In this case, CSN failed to do so.

Comment 44: Including Foreign Exchange Gains and Losses in SG&A and Interest Expense. The petitioners argue that CSN's exchange gains and losses related to accounts payable for the POI should be included in the company's SG&A expense rate calculation. Citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17334 (April 9, 1999) (Comment 16), petitioners assert that exchange gains and losses for accounts payable are related to purchases of raw materials, and that therefore, the Department normally includes them in the COP and CV calculations. In addition, petitioners argue that the Department should include all exchange losses that relate to financing transactions in CSN's financial expense rate calculation.

CSN, on the other hand, claims that exchange gains and losses that relate to both accounts payable and accounts receivable should be included in the company's G&A expense rate calculation. CSN realizes that the Department's normal practice is to include in COP net exchange gains and losses associated with accounts payable but not accounts receivable. However, it contends that the Department should reconsider this policy because no adjustment is ever made to gross unit prices under the antidumping law to account for exchange gains or losses on sales. As an alternative to reconsideration of including gains and losses associated with accounts receivables CSN claims that the Department should simply not adjust the company's price of inputs for exchange gains and losses incurred on accounts payable. Therefore, CSN requests that the Department use the G&A rate presented at verification, exclusive of exchange gains and losses related to accounts receivable and accounts payable, in calculating COP and CV. As for net exchange losses that relate to debt, CSN argues that it has included them in the calculation of

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G&A. Thus, the Department would double-count this expense if it also included them in the calculation of the financial expense rate.

Department's Position: We disagree with respondent that exchange gains and losses related to accounts payable should not be included in CSN's G&A rate calculation. We also disagree with CSN that the calculation of COP and CV should reflect exchange gains and losses realized on accounts receivables. As the Department has repeatedly stated, our normal practice is to include a portion of the respondent's foreign-exchange gains and losses in the calculation of COP and CV. Specifically, it is our normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. (See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17334 (April 9, 1999) (Comment 16); Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea ("ESBR"), 64 FR 14865, 14871 (March 29, 1999) (Comment 7); Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31430 (June 9, 1998) and Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181 (February 24, 1998)). We normally include in the calculation of COP and CV the foreign-exchange gains and losses that result from the transactions related to a company's manufacturing activities. We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. Accordingly, for purposes of the final determination, we have included all foreign-exchange gains and losses in the G&A rate calculation, except for those related to accounts receivable and debt.

As for exchange gains and losses associated with financing transactions (*i.e.*, debt), we agree with the petitioners that the respondent should include them in the calculation of the financial expense rate. We normally include the foreign exchange gains and losses resulting from debt in the calculation of the financial expense rate (see, ESBR). For the final determination, we included the exchange gains and losses generated from financial transactions in the calculation of the financial expense rate and included the exchange gains and losses generated from accounts payable in the calculation of the G&A expense rate.

Comment 45: Unreported COP/CV Data. CSN states that the Department should not apply adverse facts available to those CONNUMS for which they did not provide COP data as of the date of the preliminary determination. CSN notes that it submitted the missing data to the Department following the preliminary determination, which the Department verified during the cost verification.

Petitioners had no comment on this issue.

Department's Position: We agree with CSN. For the preliminary determination, we applied adverse facts available for those CONNUMS for which CSN failed to provide a cost. Following the preliminary determination, CSN submitted revised cost files at our request. CSN filed these cost files on a timely basis and we verified the information contained in these files. As a result, we have used CSN's data.

Comment 46: Major Input Rule in Relation to Electricity Costs. CSN contends that the Department should not increase COP and CV for the difference between the energy costs it incurred and its affiliated suppliers total per-unit COP. According to CSN, the Department overlooked the fact that the company's affiliation to its energy supplier (*i.e.*, Light-Servicios de Electricidade S.A. ("Light")) has no bearing on prices which Light charges to CSN because the Brazilian government prohibits Light from deviating from the regulated rates. Consequently, CSN claims that it is not reasonable for the Department to compare the transfer price with either the COP or the market price because of the regulatory aspect involved. CSN further notes that it is quite common throughout the world for electricity companies to charge a broad range of rates to different types of customers. For example, utility companies typically charge residential customers a higher rate than industrial users because they require additional lines and converters to supply the electricity. As for Light's reported COP, CSN claims that Light's overall profit recorded on its financial statement proves that the company is not losing money on larger users like CSN. Therefore, the Department should not rely on Light's COP in this instance. CSN also argues that the Department has the discretion to not apply the major input rule (i.e., higher of COP, market value, or transfer price) in this case. Thus, the company concludes that the Department should not apply the major input rule in this instance.

Petitioners state that the Department should revise CSN's reported electricity costs from transfer prices to the affiliate's average COP as done in the preliminary determination. In addition, the petitioners disagree with CSN's arguments that the Department should not adjust the cost for the following reasons. First, petitioners note that CSN's argument that it costs more to supply electricity to residential customers than to industrial users is not supported by the respondent's submitted data. Second, petitioners dispute that the company's overall profitability does not provide any support for the transfer prices to a specific entity. Finally, petitioners maintain that the statute does not specify that inputs which are charged at government rates are exempt from the major input rule (see section 773(f)(3) of the Act). Petitioners further argue that the Department only ignores the major input rule when it involves collapsed entities. Since CSN and Light are not collapsed entities, petitioners conclude that the Department should continue to apply the major input rule to CSN's electricity costs as it did in its preliminary determination.

Department's Position: We agree with respondent that it is inappropriate to apply the major input rule in this instance. The price charged by Light to CSN for electricity is set by the Brazilian government. Accordingly, we have not disregarded the transaction prices between CSN and Light because they are government regulated prices that cannot be affected by the relationship between the parties. As such, the regulated price charged to CSN by Light, which is the same rate charged to other companies in the same general industry, fairly represents market value.

USIMINAS/COSIPA

Comment 47: USIMINAS" Reported Cost Methodology. Petitioners argue that the Department should resort to total facts available because USIMINAS failed to provide cost data from its normal cost accounting system. Petitioners claim that the system used to derive the cost data (*i.e.*, USIMINAS" "Dumping Matrix") does not calculate costs on a more specific level than the normal cost accounting system. Petitioners assert that the Dumping Matrix results in a loss of product specificity because the system begins with the average slab cost for all grades and sizes of steel, whereas the normal cost accounting system calculates costs at a level of detail which accounts for these differences.

According to petitioners, there were significant differences between the submitted product-specific costs from the Dumping Matrix and product-specific costs from the normal cost accounting system. Petitioners note that all the transformation costs for the selected products were lower in the Dumping matrix system compared to the costs in the normal cost accounting system. Petitioners argue that the total cost captured by the Dumping Matrix system for subject merchandise was less than the total cost captured in the normal cost accounting system, and that thus, the costs could not be tied to the financial accounting system. The petitioners further note that USIMINAS did not provide documentation for the revisions to its standard costs and therefore, the Department could not verify the reasonableness of the standards. Petitioners argue that since the Department was not able to verify these critical data, the Department has no choice but to apply facts available as mandated by the statute. Finally, petitioners argue that the Department is not obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in a prior review, as suggested by USIMINAS. Petitioners note that in Final Results of Antidumping Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 64 FR 12927, 12945–48 (March 16, 1999), the Department applied facts available to adjust for reporting errors despite the fact that the Department had accepted an identical cost system in every other case involving the respondent.

USIMINAS states that the Department should accept the costs as submitted and not resort to facts available. USIMINAS maintains that the cost verification report wrongly criticizes the integrity of the Dumping Matrix. USIMINAS states that the Department's concern about the Dumping Matrix methodology was first raised in the cost verification report. USIMINAS asserts that the cost verification report inaccurately says that "the Dumping Matrix does not distinguish between grade, width, thickness and process." According to USIMINAS, once an adjustment factor is applied to the Dumping Matrix cost then these differences are accounted for.

USIMINAS believes that the Department's concerns about its reporting methodology are based solely on the results of the reconciliation which showed overall hot rolling costs were less in the Dumping Matrix than in the cost accounting system. USIMINAS claims that the cost verification report leaves the wrong impression that the identified methodological difference was for subject merchandise only. USIMINAS claims that the Department did not find that the global costs were wrong in the Dumping Matrix.

USIMINAS argues that it used the Dumping Matrix system in the 1995/1996 cut-to-length plate review and the Department did not question the methodology. USIMINAS asserts that the Department should rely on the Dumping Matrix based on its prior use of the system. USIMINAS alleges that the Department never asked it to resubmit its costs using the financial-cost accounting system and there is nothing in the report that indicates that the Department found methodological differences between the Matrix system and the financial cost accounting system.

USIMINAS contends that the financial-cost accounting system has several shortcomings. The largest is that variances and depreciation are allocated on a factory-wide basis. USIMINAS states that the Matrix system is the only system that correctly assigned variances and depreciation to products. Therefore, it had to resort to the usage of the Dumping Matrix.

Department's Position: We agree with petitioners, in part. We agree that USIMINAS did not use its normal cost accounting system to derive the reported costs and, as a result, it understated its submitted costs. However, because we were able to adjust for the understatement of reported costs, it was not necessary to resort to total facts available.

Because of the ambiguity and numerous inconsistences in USIMINAS' responses regarding its multiple costing systems, we were not able to discern the differences between these systems until the cost verification. At verification we learned that the normal cost accounting system was fully integrated with USIMINAS' financial accounting system. USIMINAS' normal cost accounting system which was used to prepare the audited financial statements was a process cost accounting system based on standards. Even though USIMINAS' cost accounting system calculated product-specific costs which accounted for the differences in steel grade, width, thickness and process, USIMINAS did not rely on it to prepare the submitted COP and CV data. We do not find persuasive USIMINAS' claim that its normal cost accounting system did not contain the level of cost detail requested by the Department. The normal cost accounting system utilized a twenty-seven digit product coding scheme with the various product characteristics accounted for. The underlying cost detail remained despite the fact that USIMINAS averaged multiple products together for inventory valuation while preparing the financial statements. Thus, the normal cost accounting system was sufficient for Department cost reporting purposes. See, Memorandum from Laurens van Houten, et al. to Neal Halper—Verification of the Cost of Production and Constructed Value Data, April 9, 1999 (Cost Verification Report).

Despite the existence of a detailed cost accounting system, USIMINAS used its dumping matrix system, which was outside its normal cost and financial accounting system, to calculate the reported costs. The dumping matrix is not audited by the independent auditors, nor did the independent auditors opine as to whether the principles used by the matrix were in accordance with Brazilian generally accepted accounting principles (GAAP). The USIMINAS dumping matrix system reallocates costs to broad product groups and does not account for the physical characteristics defined by the Department. This is undisputed by USIMINAS. In an attempt to differentiate costs for each CONNUM's physical characteristics, USIMINAS applied a correction factor to the cost calculated by the dumping matrix. The correction factor was the ratio of the product specific cost from the normal cost accounting system to the average group cost from the normal cost accounting system.

There were numerous problems with the methodology employed by USIMINAS to develop the reported costs. First and foremost, USIMINAS failed to use its normal cost accounting system to prepare the reported costs. Section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country *and* reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with the statutory directive, the Department will accept costs of the exporter or producer if they are based on records kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise (*i.e.*, the cost data can be reasonably allocated to subject merchandise). In determining whether the costs were reasonably allocated to all products the Department will, consistent with section 773(f)(1)(A) of the Act, examine whether the allocation methods are used in the normal accounting records and whether they have been historically used by the company. As demonstrated by the

record evidence in this case (see, e.g., Cost Verification Report), the normal cost accounting system was based on records kept in accordance with GAAP of the exporting country and reasonably reflected the costs associated with the production and sale of the merchandise (*i.e.*, the costs were reasonably allocated to subject merchandise). Because USIMINAS' normal cost accounting system was maintained in accordance with Brazilian GAAP and reasonably reflected the costs associated with the production and sale of subject merchandise, USIMINAS should have reported the costs from its normal cost accounting system.

We allow companies to deviate from their normal cost accounting system when that system does not appropriately allocate costs to specific products. See, e.g., Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review 64 FR 76, 80 (January 4, 1999). This is not the case here. In the instant case, USIMINAS normal cost accounting system calculated costs at a much greater level of detail than the dumping matrix. Therefore, contrary to USIMINAS' claim, it was not necessary for it to resort to the dumping matrix to develop the reported costs.

Another shortcoming of USIMINAS' reporting methodology is that the product costs in the dumping matrix are based on a single average cost for slab. That is, USIMINAS used the average cost of all slab regardless of the grade or quality of the steel. Hence, in the dumping matrix there is no cost differentiation for grade or quality of steel. USIMINAS claims to have accounted for this difference in the reported costs by applying a correction factor to the dumping matrix costs. However, USIMINAS calculated the correction factor based on the ratio of a product-specific slab cost to the group-specific cost it relates to and applied the factor to the company-wide average slab cost (which is an average of numerous product groups). As a result, the ratio used to compute the slab cost adjustment has nothing to do with the average slab cost to which it is applied. Thus, this methodology does not appropriately allocate slab costs to the specific product.

In order to test the reported product-specific costs, we compared the reported costs for several products to the product-specific costs recorded in the normal cost accounting system. We found that the dumping matrix costs, even after they were adjusted by the "correction factor," were consistently lower than the costs recorded in the normal cost accounting system used to prepare the audited financial statements. Additionally, during our testing we noted that the dumping matrix allocated process center costs to products on a basis different from that used in the normal cost accounting system to allocate these costs. Therefore, the allocation methods used for the reported costs were not those historically used by the company as required by section 773(f)(1)(A).

Before the Department can assess the reasonableness of a respondent's cost allocation methodology, it must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a reconciliation of the respondent's submitted COP and CV data to the company's audited financial statements, when such statements are available. Because of the time constraints imposed on verifications, the Department generally must rely on the independent auditor's opinion concerning whether a respondent's financial statements present the actual costs incurred by the company, and whether those financial statements are in accordance with GAAP of the exporting country. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV. Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products.

In performing this reconciliation, at verification USIMINAS provided a reconciling schedule which indicates an amount which was identified as that corresponding to the methodological difference between the normal cost accounting system and the reported costs. The amount of the overall reconciliation difference was consistent with the highest difference we found when we compared the reported product-specific costs to the product-specific costs in the normal cost accounting system. Therefore, to correct USIMINAS' mis-allocation of costs and its failure to use its normal cost accounting system as required by section 773(f)(1)(A), as facts available we increased the reported costs for all products by the largest reconciliation difference we found between the reported product-specific costs from the dumping matrix and the product specific costs in the normal cost accounting system.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this case USIMINAS failed to provide COP and CV data in the form and manner requested, *i.e.*, based on its normal cost accounting system as required by section 773(f)(1)(A). Since USIMINAS failed to provide the necessary information in the form and manner requested, and in some instances the submitted information was found to be inaccurate, we conclude that, pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. As discussed above and in the verification report, USIMINAS failed to use its normal cost accounting system to report the submitted COP and CV data and, as a result, failed to reconcile the reported costs to its normal cost accounting system. In this case, however, an adverse inference is not warranted. The Department has applied the reconciliation difference to correct the submitted cost data. As explained above, the Department determined at verification that this reconciliation difference accurately represents the actual variation between product-specific costs generated by the dumping matrix and product-specific costs generated by the normal cost accounting system.

We also disagree with USIMINAS' claim that the Department should have relied on its dumping matrix because it had done so in a previous review. As articulated in Final Results of Antidumping Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 64 FR 12927, 12945–48 (March 16, 1999), the Department is not obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in a prior review, as suggested by USIMINAS.

We disagree with USIMINAS' claim that it had to use the dumping matrix because it was the only system that correctly allocated variances and depreciation. In its normal cost accounting system, USIMINAS did not allocate these costs to specific products. However, USIMINAS allocated them to the cost of goods sold and the cost of inventory based on the standard costs. In its normal accounting system, USIMINAS recognizes that standard cost is the appropriate allocation base for variances and depreciation. As this allocation methodology factors in the cost drivers of the variances and depreciation (*e.g.* machine time, labor hours, direct and indirect material cost and usage, energy cost and usage, other variable costs, maintenance, and other services) it would have been a reasonable method to report costs for Department purposes. Therefore, we disagree that the dumping matrix was the only system that correctly accounted for these costs.

Comment 48: USIMINAS' Different COP and CV values. Petitioners argue that the Department should employ as facts available the higher of the COP or CV when the COP and CV differ for an identical CONNUM. Petitioners argue that USIMINAS did not calculate a weight-averaged cost based on global sales quantities for each product as instructed by the Department. Petitioners argue that it is impossible to fix this error with either of the remedies suggested by USIMINAS. Petitioners argue that without the sales quantity for each 27-digit product in a CONNUM, the Department cannot correct the error.

USIMINAS maintains that the existence of different CONNUM-specific costs in the COP and CV files is not a problem. USIMINAS argues that the submitted global cost file provides the cost for each CONNUM, segregated by product groups, which the Department may use to calculate a unique cost for each CONNUM. In addition, USIMINAS states that, in the event the Department elects to collapse USIMINAS and COSIPA, the Department will ultimately rely on the consolidated cost file provided for USIMINAS and COSIPA. USIMINAS claims that in this file USIMINAS and COSIPA have provided unique costs for each CONNUM and, as a result, the Department's observation about a distinct CONNUM cost in the USIMINAS-specific COP and CV file should have no impact on the Department's calculations in this investigation.

Department's Position: We agree with petitioners. USIMINAS calculated a COM for COP purposes which was different from the COM it calculated for CV purposes for identical CONNUMS. Because the COM for a given CONNUM is the weighted average cost of producing that CONNUM, at least one of the reported COMs for each such "two-value" CONNUMS is incorrect. Although USIMINAS has provided a "global" file that consolidates COM (for both COP and CV) for both USIMINAS and COSIPA on a per-CONNUM basis, this global figure is not sufficient for the Department's needs. Specifically, the Department needs an accurate USIMINAS-specific COM for each CONNUM in order to make USIMINAS-specific adjustments to that COM before it is averaged with the COSIPA-specific COM data, to which COSIPA-specific adjustments have been made.

The apparent reason why there are different USIMINAS COMs for COP and CV is that the former represents the COM of units sold in the home market, whereas the latter represents the COM of units sold to the United States. Instead, the Department's practice is to calculate COM values (for both COP and CV) for each CONNUM (which in this case is a group of multiple discrete products, each represented by a 27-digit product code) based on production of that CONNUM for sale to the worldwide market. The Department repeatedly requested that USIMINAS provide a single, weighted average COM for each USIMINAS CONNUM, but USIMINAS failed to provide this. Furthermore, the Department is unable to calculate such a COM from the data supplied by USIMINAS because it does not have the sales quantity data for each 27-digit product code needed to calculate the CONNUM-specific average across production for world-wide sale. Because USIMINAS has not provided the USIMINAS-specific weighted average COM for each CONNUM, the Department must use the facts otherwise available for this information. Therefore, when the COM reported for COP purposes and the COM reported for CV purposes differed for any USIMINAS CONNUM, we have used the higher of the two figures as the COM value for that CONNUM.

Comment 49: USIMINAS' Major Inputs from CVRD. Petitioners argue that iron ore is a major input and that since USIMINAS failed to provide the COP information for iron ore purchased from its affiliate Companhia do Vale Rio Doce ("CVRD"), the Department should use facts available to value this input.

USIMINAS argues that Department should accept the iron ore transfer price from CVRD, as the Department has done in a prior administrative review because the iron ore prices charged by CVRD were above the price charged by unaffiliated companies. USIMINAS argues that the circumstances in this case are identical to that in a prior review in which the Department made no adjustment. In addition, USIMINAS maintains that the Department has confirmed that the iron ore prices charged by CVRD are above the prices charged by unaffiliated suppliers. USIMINAS argues that it could not compel CVRD to provide its COP of iron ore.

USIMINAS states that the Department overestimated the percentage of CVRD's iron ore in the total cost of manufacturing in its verification report. USIMINAS argues that the Department's calculation incorrectly assumes that the entire cost of sinter is equivalent to iron ore, whereas sinter is a value-added product in which iron ore is one input. USIMINAS argues that cost verification exhibit C–15 shows that the monthly consumption of iron ore is less than half of the amount assumed by the Department. USIMINAS states that when the correct monthly cost of iron ore is used in the Department's methodology, the cost of iron ore is a much lower percentage of the total cost of manufacturing.

Department's position: We have applied the major input rule in accordance with section 773(f)(3) of the Act in valuing the iron ore received from CVRD. In doing so, we have used, as facts available, the COP information provided in the September 30, 1998 petition as the COP of iron ore from CVRD since USIMINAS did not provide the COP information as requested by the Department.

We consider iron ore to be a major input in accordance with section 773(f)(3) of the Act. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value (*i.e.*, major or minor inputs) are at prices that "fairly reflect the market under consideration." Section 773(f)(3) allows the Department to test whether, for transactions between affiliated parties involving a major input, the value of the major input is not less than the affiliated supplier's COP where there is reasonable cause to believe or suspect the price is below COP. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is not below cost. We consider the initiation of a sales-

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below-cost investigation reasonable grounds to believe or suspect that major inputs to the foreign like product may also have been sold at prices below the COP within the meaning of section 773(f)(3) of the Act (see e.g., Final Results of Antidumping Administrative Review: Silicomanganese from Brazil, 62 FR 37871 (July 15, 1997)).

In determining whether an input is considered major, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus unaffiliated suppliers) and the percentage the individual element represents of the product's COM. Even though we agree with USIMINAS that the Department overestimated the percentage of CVRD's iron ore in USIMINAS's total COM in the USIMINAS cost verification report, we still determined in this case that iron ore represents a significant percentage of the total cost of manufacturing and that USIMINAS receives a significant portion of its iron ore from its affiliate CVRD. The combination of the significant amounts of the inputs obtained from CVRD and the relatively large percentage the iron ore represents of the product's COM increases the risk of misstatement of the subject merchandise's costs to such a degree that we have determined that section 773(f)(3) of the Act applies to this input.

Because we have determined that iron ore purchased from an affiliate is a major input in USIMINAS' production of carbon steel, the statute requires that, for the dumping analysis, the major input should be valued at the higher of transfer price, market price or COP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999). In accordance with sections 773(f)(2) and (3) of the Act, we attempted to compare the transfer price for iron ore purchased from USIMINAS' affiliated supplier to the supplier's COP and a market price. Even though the Department requested that USIMINAS provide its affiliated supplier's actual COP for iron ore in the original section D questionnaire, the supplemental questionnaires and at verification, USIMINAS failed to do so.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that, if the administering authority "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," then in determining the applicable facts available it "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."

In the instant case, the use of facts available is warranted because USIMINAS failed to provide the COP of iron ore received from its affiliated supplier. Because USIMINAS failed to respond to repeated requests for this information, as adverse facts available, we have relied on the COP provided in the September 30, 1998 petition. For the final determination, we adjusted the transfer price of the iron ore inputs received from CVRD to reflect the higher COP in the petition.

Comment 50: USIMINAS' Major Inputs from USIMPEX. Petitioners note that USIMINAS purchases the majority of its coal from an affiliate, USIMINAS Importacao e Exportacao S.A. ("USIMPEX"). Petitioners argue that USIMPEX's COP for coal was higher than the market value and the transfer price used to establish the COP and CV. Petitioners contend that since coal is a major input, the Department should apply the major input rule and use the higher of market value, transfer price or COP.

USIMINAS argues that the Department incorrectly calculated the amount of USIMPEX's 1997 loss and USIMPEX actually had a gross profit. USIMINAS argues that the amount the Department stated was USIMPEX's negative gross profit was the company's net operating expenses. USIMINAS argues that because USIMPEX had a gross profit in 1997 its sales prices were above its costs. USIMINAS further argues that if the Department were to subtract USIMPEX's SG&A expenses, there is still no indication that USIMPEX is selling below its costs because the resulting loss is insignificant and would show that it was essentially operating at the break-even point.

Department's position: As it relates to the facts of this case, we consider coal to be a major input in the production of carbon steel in accordance with section 773(f)(3) of the Act (see response to Comment 49).

Because we have determined that coal purchased from an affiliate is a major input in USIMINAS' production of carbon steel in this case, the statute requires that, for the dumping analysis, the major input should be valued at the higher of transfer price, market price or COP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999). In accordance with section 773(f)(2) and (3) of the Act, we compared the transfer price to the affiliated supplier's COP and the market price (*i.e.*, prices from un-affiliated suppliers) and found that the market price was greater than both the transfer price and the COP. Thus, for the final determination we have adjusted the reported cost for coal purchases from USIMINAS' affiliated supplier to reflect the higher market price.

Comment 51: USIMINAS' Interest Revenue Offset. Petitioners argue that the Department should deny USIMINAS' claimed interest income offset in its entirety because USIMINAS was unable to segregate the long- and short-term components of the consolidated interest revenue. Petitioners argue that the segregation of long- and short-term interest revenue for the producing entity alone is inappropriate because the producer's interest income may include amounts derived from affiliated party transactions which would be eliminated in the preparation of consolidated financial statements.

USIMINAS argues that if the Department does not accept USIMINAS' submitted short-term financial income values identified in the response, the Department should use the ratio between USIMINAS' short-term and long-term financial income as a surrogate to derive short-term income from the total consolidated financial income for USIMINAS companies. USIMINAS notes that the Department examined USIMINAS' interest income for the purposes of distinguishing short-term and long-term portions. USIMINAS argues that the Department must allow interest on accounts receivable and accounts receivable discounts as an offset to interest expense because these two items are short-term in nature. In addition, USIMINAS argues that given the sizable increase in total financial income from the USIMINAS parent company to the USIMINAS consolidated entity, the Petitioners' theory, that the short-term financial income may include revenue derived from affiliated party transactions, has no merit.

Department's position: We agree with USIMINAS that it is reasonable to use the USIMINAS company-specific short-term to long-term financial income ratio as a surrogate to derive the short-term portion of total interest income from the USIMINAS consolidated financial

statements. While USIMINAS was unable to document the short-term portion of interest income for the consolidated entity, we found that the USIMINAS company-specific interest income represented the majority of the consolidated entity's interest income. Therefore, we have found it reasonable to use the USIMINAS company-specific short-term to long-term financial income ratio as a surrogate to derive the short-term interest income from the total USIMINAS consolidated financial income.

We disagree with USIMINAS that interest income earned on accounts receivable and accounts receivable discounts should be included as an offset to interest expense. Interest charged to customers relating to specific sales are more appropriately treated as sales revenue. In fact, there is a separate field identified in the section B and C questionnaires in which this revenue is to be reported (*i.e.*, INTREVH for home market sales and INTREVU for U.S. sales). Accordingly, we have disallowed this interest income on accounts receivable and accounts receivable discounts as an offset to interest expense.

Comment 52: USIMINAS' SG&A. USIMINAS argues that the Department incorrectly excluded the income from certain USIMINAS operations, while including the associated expenses (for example USIMINAS ownership of the Ipatinga airport) in the preliminary determination. USIMINAS argues that if Department excludes the income from any non-operational activity, it should also exclude the expense associated with that activity.

Petitioners argue that USIMINAS has not demonstrated that the revenue in question is related to operations for which SG&A expenses were reported. Petitioners further argue that it would be improper to use revenue as an offset if no related expenses were included in the SG&A, thus, USIMINAS does not qualify for an offset to its SG&A expenses.

Department's position: We agree with USIMINAS. In the preliminary determination we excluded the income from certain USIMINAS operations, while including the associated expenses (for example USIMINAS ownership of the Ipatinga airport). At verification, we reviewed source documents and obtained explanations from company officials on all the income items that were used to offset USIMINAS' SG&A costs. We found that certain revenue items (*e.g.*, airport leases and rent) were related to investments, and not to the general operations of the company as a whole. In addition, we found that certain expense items related to the activities which produced this income were included in the SG&A calculation. For the final determination we have excluded the expenses which directly relate to the excluded revenues.

Comment 53: COSIPA's Errors in Reporting Sales Quantities. Petitioners argue that errors in COSIPA's calculation of sales quantity result in an understatement of the total cost of manufacturing which requires the use of facts available. Petitioners assert that to correct this error the Department should increase the total cost of manufacturing for each product by the same percentage since the product-specific impact of these errors is not known.

COSIPA retorts that the errors in sales quantity as originally submitted do not result in an understatement of the total cost of manufacturing but an overstatement of costs. COSIPA argues that petitioners' justification for using facts available is flawed since the product-specific corrections were submitted at the Department's request.

Department's Position: We agree with COSIPA. The sales quantities as originally reported overstated the total cost of manufacturing. The Department obtained at the first day of verification an exhibit explaining the error in sales quantities and in the provisions account. We verified the accuracy and impact of the product-specific corrections and obtained revised databases. As a result, no additional adjustment as a result of this correction is necessary.

Comment 54: COSIPA's Iron Ore Purchases from Affiliates. Petitioners argue that COSIPA failed to provide CVRD's COP for the major input iron ore, despite repeated requests from the Department throughout the course of this investigation. Petitioners advocate the use of facts available to value iron ore.

COSIPA argues that the Department should accept the iron ore costs based on the transfer price because COSIPA acted to the best of its ability to obtain cost information from CVRD but were unable to do so because of the nature of affiliation with CVRD. COSIPA also states that the affiliated prices from CVRD are higher than iron ore prices from unaffiliated suppliers. COSIPA claims that this would be consistent with the Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Brazil 63 FR 12744, 12751 (March 16, 1998) where the Department decided to accept COSIPA's submitted iron ore costs from CVRD.

Department's Position: In determining whether an input is considered major in accordance with section 773(f)(3) of the Act, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus un-affiliated suppliers) and the percentage the individual element represents of the product's total cost of manufacturing. COSIPA purchased iron ore from an affiliate, CVRD. We have determined that the quantity and value of iron ore purchased during the POI from CVRD are not of enough significance to be considered a major input in accordance with section 773(f)(3). However, pursuant to section 773(f)(2) of the Act, the Department may disregard the transfer price from an affiliated supplier if it is less than the market price for the same input. We compared the transfer price of iron ore purchased from CVRD to the market price (*i.e.*, prices for purchases from unaffiliated suppliers) and found that the market price was higher. Therefore, for the final determination, we adjusted the submitted iron ore costs to reflect a market price.

Comment 55: COSIPA's Coal Purchases from Affiliates. Petitioners assert that the cost of coal obtained by COSIPA from affiliated parties is undervalued, requiring the use of facts available. Petitioner states that coal is a major input and since the affiliate's cost, excluding freight, is higher than the price charged to COSIPA, the Department should increase the reported value for coal by the percentage difference between the cost and the transfer price.

In comparing transfer price to cost, respondents state that the petitioners' analysis is flawed due to double-counting of COSIPA expenses. Respondents argue that it is incorrect to include any of COSIPA Overseas' financial expenses as a cost because these expenses are already captured in the consolidated financial expenses for COSIPA using the COSIPA/USIMINAS consolidated financial statement. Second, respondents state the inclusion of SG&A expenses of COSIPA Overseas is also incorrect, as the SG&A used by the Department in the preliminary determination was apparently the consolidated SG&A for both COSIPA and COSIPA Overseas.

Department's Position: COSIPA purchased coal from an affiliate, COSIPA Overseas. We have determined that the quantity and value of coal purchased during the POI from the affiliate were significant. Pursuant to sections 773(f)(2) and (3) of the Act, the Department may value major inputs purchased from affiliated suppliers at the higher of market value, transfer

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price or the affiliated supplier's COP. See Comment 49.

In accordance with sections 773 (f)(2) and (3) of the Act we attempted to compare the transfer price of the coal purchased from the affiliated supplier to the market price for coal and to the affiliate's COP. Since COSIPA did not purchase coal from any other supplier nor did the affiliate sell coal to another customer during the period of investigation, we were unable to establish a market price for coal. We agree with the respondent's assertion that the Department's cost verification report double counted financial expenses in calculating the affiliate's COP. The double counting occurred as a result of consolidating the affiliate's expenses into COSIPA's financial statements. After adjusting for this duplication, the transfer price from the affiliate is higher than the affiliate's calculated COP. Since our testing indicated that the transfer price between COSIPA and its affiliate was higher than COP, no adjustment was necessary. We disagree with respondent's contention that we used the consolidated SG&A for the preliminary determination. In fact we used the unconsolidated COSIPA SG&A expenses.

Comment 56: COSIPA's SG&A Expenses. Petitioners state that COSIPA's SG&A rate was understated and must be revised to reflect all related expenses. Petitioners point out that COSIPA failed to include expenses related to the depreciation and amortization on administrative assets in its SG&A rate calculation. Petitioners also point out that accruals for lawsuit contingencies were omitted. Petitioners argue these amounts should be included in the SG&A rate calculation.

The respondent did not comment on this issue.

Department's Position: We agree with petitioners that the costs associated with depreciation and amortization on administrative assets and accruals for lawsuit contingencies should be included in COSIPA's SG&A expense rate calculation. We consider these costs to be related to the general operations of the company as a whole. We have therefore revised COSIPA's SG&A calculation to include these costs. Since we did not include ICMS taxes in the COP and CV computations, we did not allow income recognized from rescheduling of ICMS taxes as an offset to SG&A expense.

Comment 57: Dufer's Further Processing Costs. Petitioners argue that the Department should use facts available to determine the cost of further processing at Dufer because Dufer has no product-specific cost records.

Respondents argue that Dufer has no basis for determining product-specific costs as required by the Department. Respondents state that Dufer is a small company and cooperated to the best of its ability by providing all of the information it could to the Department. Respondent's cite Annex II of the 1994 Agreement on Implementation of Article VI of the GATT in arguing that the Department should use information provided to it by respondents, "provided the interested party has acted to the best of its ability." In the instant case, respondents argue that Dufer provided all of the information it had to the best of its ability and fully cooperated with the Department at verification, and thus there is no basis for the Department to use facts available to determine Dufer's costs.

Department's Position: These comments on Dufer's cost issues are moot due to the Department's decision to use adverse facts available for sales from Dufer. See Comment 18.

Suspension of Liquidation

On July 6, 1999, the Department signed a suspension agreement with CSN, USIMINAS, and COSIPA suspending this investigation. Pursuant to section 734(f)(2)(A) of the Act, we are instructing Customs to terminate the suspension of liquidation of all entries of hot-rolled flat-rolled, carbon-quality steel products from Brazil. Any cash deposits of entries of hot-rolled flat-rolled, carbon-quality steel products from Brazil shall be refunded and any bonds shall be released.

On July 2, 1999, the Department received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Exporter/manufacturer	Weighted-average margin (percent)
CSN	41.27
USIMINAS/COSIPA	43.40
All Others	42.12

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (see section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (see section 734(f)(3)(B) of the Act).

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–18225 Filed 7–16–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Brazil. The basis for this action is an agreement between the Department and producers/exporters accounting for substantially all imports of hot-rolled steel from Brazil wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930 (the Act), as amended, to determine whether imports of hot-rolled steel from Brazil are being or are likely to be sold in the United States at less than fair value (63 FR 56607, October 22, 1998). On November 16, 1998, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary finding of threat of material injury in this case. Additionally, on November 25, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Brazil (63 FR 65221). On February 12, 1999, the Department preliminarily determined that hot-rolled steel is being, or is likely to be sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act (64 FR 8299, February 19, 1999).

The Department and the Brazilian producers/exporters of hot-rolled steel initialed a proposed agreement suspending this investigation on June 6, 1999. On June 6, 1999, we invited interested parties to provide written comments on the agreement. We received comments from petitioners (Bethlehem Steel Corp., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., U.S. Steel Group (a Unit of USX Corp.), California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., Ipsco Steel Inc., Steel Dynamics, Weirton Steel Corporation, and Independent Steelworkers Union).

The Department and the Brazilian producers/exporters of hot-rolled steel signed the final suspension agreement on July 6, 1999.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, signed July 6, 1999.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. (See July 6, 1999, Extraordinary Circumstances Memorandum to Robert S. LaRussa).

The suspension agreement provides that: (1) The subject merchandise will be sold at or above the established reference price; and (2) for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. We have determined that this suspension agreement will: (1) Eliminate completely the injurious effect of exports to the United States of the subject merchandise; and (2) prevent the suppression or undercutting of price levels of domestic hot-rolled steel by imports of that merchandise from Brazil.

We have also determined that the suspension agreement can be monitored effectively and is in the public interest, pursuant to section 734(d) of the Act. (See July 6, 1999, Public Interest Memorandum to Robert S. LaRussa.) We find, therefore, that the criteria for suspension of the investigation pursuant to section 734(c) of the Act have been met. The terms and conditions of the suspension agreement, signed July 6, 1999, are set forth in Appendix 1 of this notice.

The suspension of liquidation ordered in the preliminary affirmative determination in this case shall continue in effect, subject to section 734(h)(3) of the Act. Section 734(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required from signatories to zero. The security rates in effect for imports from non-signatory producers/exporters remain as published in our final determination.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: July 6, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

Appendix 1—Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(c)) (the "Act"), and section 208 of part 351 of Title 19 of the Code of Federal Regulations (the "Regulations"), the U.S. Department of Commerce (the "Department") and the signatory producers/exporters of Hot-Rolled Steel from Brazil (the "Signatories") agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. Agreement—means this suspension agreement.

B. Date of Sale—means the date on which a Signatory confirms an order for a fixed quantity of Hot-Rolled Steel at a fixed price. Each Signatory and the Department will determine individual dates of sale for deliveries of Hot-Rolled Steel more than one year after the confirmation date.

C. Effective Date—means the date on which this Agreement is signed and on which the Parties to the Proceeding are notified of its signature.

D. Hot-Rolled Steel—means the certain hot-rolled, flat-rolled carbon-quality steel products from Brazil described in Appendix I and sometimes referred to as the "subject merchandise" of the suspended investigation. The individual categories of Hot-Rolled Steel for which the Department will determine Reference Prices are listed in Paragraph IV.B.

E. Party to the Proceeding—means any producer, exporter, or importer of Hot-Rolled Steel, union of workers engaged in the production of Hot-Rolled Steel, associations of such parties, or the government of Brazil, as provided for in section 771(9) of the Act, that actively participated in the antidumping investigation, through written submission of factual information or written argument.

F. Producer/Exporter—means: (1) A foreign manufacturer or producer of Hot-Rolled Steel; (2) a foreign producer or reseller that also exports Hot-Rolled Steel; and (3) an affiliated person by whom or for whose account Hot-Rolled Steel is imported into the United States, as defined in section 771(33) of the Act.

G. Quarter—means the relevant quarter calendar year, consistent with the following schedule:

First Quarter—January 1–March 31;
Second Quarter—April 1–June 30;
Third Quarter—July 1–September 30; and
Fourth Quarter—October 1–December 31.

H. Reference Price—means the price for Hot-Rolled Steel established under Section IV of this Agreement. Reference prices include all transportation charges to the U.S. port of entry, together with port fees, duties, offloading, wharfage and other charges incurred in bringing the steel to the first customs port of discharge in the U.S. market. If the sale for export is on terms that do not include these expenses, the Signatories will ensure that the actual terms are equivalent to a price that is not lower than the Reference Price.

I. U.S. Price—means the export price or constructed export price at which

Hot-Rolled Steel is sold by the producer or exporter to the first unaffiliated party in the United States or for export to an unaffiliated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department consistent with section 772 of the Act.

J. U.S. Market Price—The U.S. market price is the Purchasing Magazine spot market price for Hot-Rolled Steel.

K. Violation—means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

II. Suspension of Investigation

On the Effective Date, the Department will suspend its antidumping investigation of Hot-Rolled Steel from Brazil initiated on October 15, 1998 (63 FR 56607, October 22, 1998), in accordance with Section 734(c) of the Act and 19 CFR 351.208.

III. U.S. Import Coverage

The Signatories collectively are the producers and exporters in Brazil that, during the antidumping duty investigation of Hot-Rolled Steel from Brazil, accounted for substantially all of the subject merchandise exported from Brazil to the United States, as defined in § 351.208(c) of the regulations. The Department may at any time during the operation of the Agreement require additional producers/exporters in Brazil to sign the Agreement in order to ensure that not less than substantially all sales of Hot-Rolled Steel from Brazil to the United States are covered by the Agreement.

IV. Revised prices

A. On and after the Effective Date, no Signatory will sell Hot-Rolled Steel from Brazil in, or for direct or indirect delivery to, the United States at prices that are less than the Reference Price in effect on the Date of Sale for that category of Hot-Rolled Steel, as established under Paragraphs B and C of this Section.

B. The Reference Prices for the fourth Quarter of 1999 shall be as follows:

Product category	Price per metric ton
1. Commercial Quality, not pickled and oiled, not temper-rolled, not edge-trimmed.	$327.00.
2. Structural quality, not pickled and oiled, not temper-rolled, not edge-trimmed.	The price for Prod. Category 1 plus $16.35.
3. Commercial quality pickled and oiled, temper-rolled, and edge-trimmed.	The price for Prod. Category 1 plus $47.00.
4. Structural Quality, pickled and oiled, temper-rolled, and edge-trimmed.	The price for Prod. Category 2 plus $47.00.

C. The Reference Price for Category one steel (commercial quality, not pickled and oiled, not tempter-rolled, and not edge-trimmed) shall be fixed on the last day of that Quarter (and Quarterly, thereafter) at the higher of the average U.S. Market Price for that Quarter, less 6 percent, or $327. The prices for the other categories of Hot-Rolled Steel shall be adjusted accordingly.

D. Until such time as the Department and the Signatories agree, after consultations, upon Reference Prices for other Hot-Rolled Steel products, only the products listed in Appendix II may be exported from Brazil to the United States. Consultations regarding Reference Prices for other Hot-Rolled Steel products shall be held within 30 days of a request and shall be completed within 15 days.

E. In order to satisfy the requirements of section 734(c)(1)(B) of the Act, each Signatory agrees that, for each entry of Hot-Rolled Steel subject to this Agreement, the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 per cent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-valne entries of the Signatory examined during the investigation.

V. Reporting Requirements

A. Each Signatory will supply to the Department 30 days after the end of each Quarter all information that the Department determines is necessary to ensure that the Signatory is in full compliance with the terms of this Agreement. Such information shall include complete price information on each sale of Hot-Rolled Steel directly or indirectly to unaffiliated purchasers in the United States, including information supporting any relevant adjustments to the price under section 772 of the Act.

B. Each Signatory shall include, as part of the documentation presented to U.S. Customs for entry of Hot-Rolled Steel subject to this Agreement into the United States, an export license issued by the Government of Brazil that includes the price at which that Hot-Rolled Steel is sold to the first unaffiliated purchaser in the United States.

C. The Department may reject any information submitted under this Agreement that is untimely or any information which it is unable to verify to its satisfaction.

VI. Disclosure

The Department may make available to representatives of each domestic Party to the Proceeding, under administrative protective orders drawn in accordance with section 777 of the Act and § 351.305 of the regulations, business proprietary information submitted to the Department for each Quarter, as well as the results and methodology of its calculation of Reference Prices.

VII. Monitoring

A. The Department will monitor entries of Hot-Rolled Steel from Brazil to ensure compliance with this Agreement. Among other means, the Department will review publicly-available data and other official import data, including, as appropriate, records maintained by the U.S. Customs Service, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

B. The Department may require, and each Signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided, and be subject to verification, within 30 days of the sale.

C. The Department may require, and each Signatory agrees to report, on computer disk in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

D. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

VIII. Administrative Reviews

The Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of Hot-Rolled Steel from Brazil are at prices consistent with the terms of this Agreement.

IX. Anticircumvention

The Signatories will not circumvent this Agreement. Together with each sales report provided pursuant to Section V.A, each Signatory will certify to the Department in writing that the sales reported therein include all sales directly or indirectly to unaffiliated purchasers in the United States or for delivery to the United States, and that the Signatory did not make any other such sales pursuant to any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap, exchange, or other arrangement in circumvention of this Agreement.

X. Consultations

A. The Department and any Signatory may request consultations with the other at any time regarding the implementation, operation (including any changes in the relationship of the reference price to market prices), and/or enforcement of this Agreement.

B. If the Department requests consultations with any Signatory concerning potential noncompliance with, or Violation of, this Agreement, it may simultaneously request that Signatory to provide the Department with all information relating to the allegation, including all sales information pertaining to covered and non-covered merchandise manufactured or sold by the Signatory. The Signatory will provide the requested information to the Department within 15 days of the Department's request. Any Party to the Proceeding may submit comments on the information submitted by the Signatory within 10 days after the information is received by the Department. The consultations shall be held within 45 days after the Department's request for consultations or for relevant information, unless the Department and the Signatory agree on a later date.

XI. Violations

A. In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or no longer meets the requirements of section 734(d)(1) of the Act, the Department will consider imports of Hot-Rolled Steel into the United States from all sources, and factors including, but not limited to, the volume of trade, patterns of trade, whether any reseller is an original equipment manufacturer, any reseller's export price, and the extent to which the Agreement Suspending the Countervailing Duty Investigation of Hot-Rolled Steel from Brazil is being complied with and is satisfying the conditions under section 704 of the Act.

B. If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of section 734(c) or (d) of the Act, the Department shall take whatever action it deems appropriate under section 734(i) of the Act and the Regulations.

C. In the event that the Department resumes the original investigation, it will conduct the resumed investigation on the basis of the original administrative record and the statutes, regulations, policies, and practices in effect on the Effective Date.

XII. Other Provision

By entering into this Agreement, the Signatories do not admit that any sales of Hot-Rolled Steel have been made at less than fair value.

XIII. Duration

A. This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. law.

B. Any Signatory may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is received by the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

Robert Larussa,

Assistant Secretary for Import Administration.

William H. Barringer,

Counsel to: Companhia Siderurgica Paulista (COSIPA); Usinas Siderurgicas de Minas Gerais (USIMINAS); and Companhia Siderurgica Nacional (CSN).

Appendix I

Definition of Hot-Rolled Steel

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.

• Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.

• ASTM specifications A710 and A736.

• USS Abrasion-resistant steels (USS AR 400, USS AR 500).

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Min	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width=44.80 inches maximum;
Thickness=0.063—0.198 inches;
Yield Strength=50,000 ksi minimum;
Tensile Strength=70,000—88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Min	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ...	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max

Width=44.80 inches maximum;
Thickness=0.350 inches maximum;
Yield Strength=80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

	C	Min	P	S	Si	Cr	Cu	V(wt.)	Cb
10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20%	0.10 Max ...	0.08% Max

Width=44.80 inches maximum;
Thickness=0.350 inches maximum;
Yield Strength=80,000 ksi minimum;
Tensile Strength=105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Min	P	S	Si	Cr	Cu	Nb	Ca	Al
0.15% Max ..	1.40% Max	0.025% Max.	0.010% Max.	0.50% Max	1.00% Max	0.20% Max	0.005% Min	Treated	0.01–0.07%

Width=39.37 inches;
Thickness=0.181 inches maximum;
Yield Strength=70,000 psi minimum for thicknesses>0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; 16Tensile Strength=80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≤ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≤ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

Products Initially Covered by Reference Prices

Not painted
Not varnished
Not coated with plastics
Structural Quality (not including High Strength Low Alloy) or Commercial Quality
In coils
Width greater than or equal to 600mm
Nominal Thickness greater than 0.09 inches
Minimum Specified Yield Strength of less than 50,000 psi
Carbon content less than or equal to 0.25%
Carbon content greater than 0.06%
Without patterns in relief

Either including all of these extras or none of them: temper rolled; pickled & oiled; edge trimmed

[FR Doc. 99–18226 Filed 7–16–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Suspension of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the countervailing duty investigation involving certain hot-rolled flat-rolled carbon-quality steel products from Brazil. The basis for the suspension is an agreement between the Department and the Government of Brazil wherein the GOB has agreed not to provide any new or additional export or import substitution subsidies on the subject merchandise and has agreed to restrict the volume of direct or indirect exports to the United States of hot-rolled flat-rolled carbon-quality steel products from all Brazilian producers/exporters in order to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated a countervailing duty investigation under section 702 of the Tariff Act of 1930 (the Act), as amended, to determine whether manufacturers, producers, or exporters of certain hot-rolled flat-rolled carbon-quality steel products from Brazil receive subsidies (63 FR 56623). On November 25, 1998, the International Trade Commission (ITC) published its affirmative preliminary injury determination. On December 1, 1998 and January 22, 1999, we postponed the preliminary determination until no later than February 12, 1999. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Postponement of Time Limit for Countervailing Duty Investigation*, 63 FR 67459 (December 7, 1998) and *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Postponement of Time Limit for Countervailing Duty Investigation*, 64 FR 4638 (January 29, 1999).

On February 12, 1999, the Department preliminary determined that countervailable subsidies are being provided to Companhia Siderugica Nacional (CSN), Usinas Siderugicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA). *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 8313 (February 19, 1999). We conducted verification of the questionnaire responses of the Government of Brazil (GOB), CSN, USIMINAS and COSIPA from April 5 through April 16, 1999.

The Department and the GOB initialed a proposed agreement suspending the investigation on June 6, 1999. Interested parties were informed that the Department intended to finalize the Agreement on July 6, 1999, and were invited to provide written comments on the agreement. We received comments from petitioners (Bethlehem Steel Corp., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., U.S. Steel Group (a Unit of USX Corp.), California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., Ipsco Steel Inc., Steel Dynamics, Weirton Steel Corporation, and Independent Steelworkers Union).

The Department and the GOB signed the final suspension agreement on July 6, 1999.

Scope of Suspension Agreement

See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, signed on July 6, 1999.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered their positions with respect to the proposed suspension agreement. In accordance with section 704(c) of the Act, we have determined that extraordinary circumstances are present in this case as defined by section 704(c)(4) of the Act. (*See* July 6, 1999, Extraordinary Circumstances Memorandum to Robert S. LaRussa.)

The suspension agreement provides that: (1) The GOB will not provide any new or additional export or import substitution subsidies on the subject merchandise; and (2) the GOB will restrict the volume of direct or indirect exports to the United States of subject merchandise from all Brazilian producers/exporters.

We have also determined that the suspension agreement can be monitored effectively and is in the public interest, pursuant to section 704(d) of the Act. (*See* July 6, 1999, Public Interest Memorandum to Robert S. LaRussa.) We find, therefore, that the criteria for suspension of the investigation pursuant to section 704(c) of the Act have been met. The terms and conditions of the suspension agreement, signed July 6, 1999, are set forth in Appendix I to this notice.

The suspension of liquidation ordered in the final affirmative determination in this case shall continue in effect, subject to section 704(h)(3) of the Act. Section 704(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effects of the imports and, thus, the Department is adjusting the security required from producers and/or exporters to zero. The security rates in effect for imports from non-signatory producers/exporters remain as published in our final determination.

On July 6, 1999, we received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we are continuing the investigation in accordance with section 704(g) of the Act and have notified the ITC of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated

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(*see* section 704(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force (*see* section 704(f)(3)(B) of the Act).

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Dated: July 6, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

Appendix I: Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil

The U.S. Department of Commerce (the "DOC") enters into this countervailing duty suspension agreement ("the Agreement")[1] with the Government of Brazil (the "GOB") through the Ministry of Foreign Relations. Pursuant to this suspension agreement, the GOB will restrict exports to the United Sates of certain hot-rolled flat-rolled carbon-quality steel products (hereinafter called Hot-Rolled Steel) from all Brazilian producers/exporters, subject to the terms and conditions set forth below.

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. Date of Export—of Hot-Rolled Steel into the United States shall be the date on which the GOB's export license issuing authority issued the Export License.

B. Effective Date—means date on which this Agreement and the notice of suspension of investigation are published in the **Federal Register**.

C. Export License—is the document issued by the GOB's export license issuing authority that serves as both an export limit certificate and a certificate of origin.

D. Export and Import Substitution Subsidies—include those subsidies that have been determined to be export or import substitution subsidies in the preliminary determination in the countervailing duty investigation underlying this agreement (unless the investigation is continued and a contrary decision is reached in the final determination), in any final U.S. countervailing duty investigation of a Brazil product, or in any final review of a Brazil product under section 751 of the Act, and include subsidies which may apply to other products or exports to other destinations to the extent that such subsidies cannot be segregated as applying solely to such other products or exports.

D. Hot-Rolled Steel means the certain hot-rolled, flat-rolled, carbon quality steel products from Brazil described in Appendix II and sometimes referred to as the "subject merchandise" of the suspended investigation.

E. Indirect Exports means exports of Hot-Rolled Steel from Brazil to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin.

F. Party to the Proceeding means any producer, exporter, or importer of Hot-Rolled Steel, union of workers engaged in the production of Hot-Rolled Steel, associations of such parties, or the government of any country from which such merchandise is exported, that actively participated in the countervailing duty investigation, through written submission of factual information or written argument, as provided for in section 771(9) of the Act.

G. Export Limit Period means one of the following periods:

H. Initial Export Limit Period—The Initial Export Limit Period shall begin on October 1, 1999, and end on September 30, 2000. The Subsequent Export Limit Periods shall consist of each subsequent year period from October 1 through the following September 30.

I. United States means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

J. Violation means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

II. Suspension of Investigation

On the Effective Date, the DOC will suspend its countervailing duty investigation of Hot-Rolled Steel from Brazil initiated on October 15, 1998 (63FR56607, published October 22, 1998), in accordance with Section 704 of the Act and Section 208 of the Regulations.

III. Non-provision of Export Subsidies

A. The GOB will not bestow any Export Subsidies or Import Substitution Subsidies upon the subject merchandise.

B. The GOB recognizes that the provision of export or import substitution subsidies on the production or shipment of Hot-Rolled Steel exported directly or indirectly from Brazil to the United States may result in termination of this Agreement and resumption of the investigation pursuant to the provisions of section 704(i) of the Act.

C. The GOB shall notify the DOC in writing of any new benefit which is, or which the GOB has reason to know would be, an export or import substitution subsidy on shipments of Hot-Rolled Steel exported, directly or indirectly, from Brazil to the United States, including subsidies which may apply to both the subject merchandise and other products or exports to other destinations, to the extent such benefits cannot be segregated as applying solely to such other products or exports.

IV. Export Limits

A. The quota level in metric tons (MT) for each of the periods shall be as follows:

Effective Date through September 30, 1999: 0 MT
October 1, 1999 through September 30, 2000: 295,000 MT
October 1, 2000 through September 30, 2001: 295,000 MT
October 1, 2001 through September 30, 2002: 295,000 MT
October 1, 2002 through September 30, 2003: 295,000 MT
October 1, 2003 through September 30, 2004: 295,000 MT

B. No Hot-Rolled Steel covered by this Agreement, whether exported directly or indirectly from Brazil, shall be entered into the United States unless, when cumulated with all prior entries of Hot-Rolled Steel exported from Brazil during each yearly Export Limit Period in which that Hot-Rolled Steel was exported, it does not exceed the export limits set forth in the previous paragraph.

C. When Hot-Rolled Steel is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, or further processed (but still covered by this Agreement) and re-exported, the amount re-exported shall be deducted from the amount of exports that have been counted against the export limit for the Export Limit Period in which the re-export takes place. The deduction will be applied only after the DOC has received, and has had the opportunity to verify, evidence demonstrating the original importation, any repackaging or further processing, and subsequent exportation.

D. The GOB's export license issuing authority will not issue export licenses authorizing the exportation to the United States of Hot-Rolled Steel covered by this Agreement in any half of any Export Limit Period that exceeds 60 percent of the export limit for that Export Limit Period.

E. Notwithstanding any other provision of this Agreement, up to 15 percent of the export limit for any Export Limit Period may be carried over to the Subsequent Export Limit Period and up to 15 percent of the export limit for any Export Limit Period may be carried back to the last 90 days of the previous Export Limit Period. Any carried over or carried back allowance shall be counted against the export limit for the subsequent or previous Export Limit Period, respectively.

V. Implementation

A. The United States shall require presentation of an original stamped Export License as a condition for entry into the United States of Hot-Rolled Steel covered by this Agreement, except where there are multiple shipments under a single license. For multiple shipments at multiple ports, the original license shall be presented at each port and deductions made upon that original license for individual entries at each Port. For multiple entries at one port, the original license will be presented and deductions made for the first entry drawn from that license. Subsequent entries at that port can be made from certified copies of the original which reflect all of the deductions made from the original license. The United States will prohibit the entry of any Hot-Rolled Steel from Brazil not accompanied by an original stamped Export License, except as provided herein.[1]

B. Export Licenses must contain, for each Hot-Rolled Steel product covered by the license, the exact product description, applicable reference price, the quantity in metric tons, and dimensions (gauge, width, and, in the case of coils, length, if appropriate). If necessary, additional information may be included on the Export License or, if necessary, a separate page attached to the Export License. DOC will deduct the quantity listed on each Export License from the export limit for the Export Limit Period in which the Date of Export falls. However, if the bills of lading for all of the shipments under an Export License establish that the actual imports into the United States under that license were less than the total volume listed on the license, DOC will reflect the actual amount as having been deducted from the volume listed on the export license, but, notwithstanding the carry-over and carry-back limitations in section IV.D., will authorize the export license issue a new Export License in the same or Subsequent Export Licensing Period authorizing additional exports equal in volume to the volume of the undershipment. Exports under such additional licenses will be counted against the export limit for the Export Limit Period containing the Date of Export of the undershipment.

C. The GOB will ensure compliance with all of the provisions of this Agreement. In order to ensure such compliance, the GOB will take at least the following measures:

1. Ensure that no steel subject to this Agreement is exported from Brazil for entry into the United States during any Export Limit Period that exceeds the export limit for that Export Limit Period.

2. Establish an export limit licensing and enforcement program for all direct and indirect exports of Hot-Rolled Steel to the United States no later than 120 days after the Effective Date.

3. Require that applications for Export Licenses be accompanied by a report containing all of the information listed in Appendix III (Exports of Hot-Rolled Steel).

4. Refuse to issue an Export License to any applicant that does not permit full verification and reporting under this Agreement of all of the information in the application.

5. Issue Export Licenses sequentially, endorsed against the export limit for the relevant Export Limit Period, and reference any notice of export limit allocation results for the relevant Export Limit Period. Export Licenses shall remain valid for entry into the United States for six months. DOC and GOB may agree to an extension of the validity of the Export License in extraordinary circumstances.

6. Issue Export Licenses in the English language and, at the discretion of the export license issuing authority, also in the Portugese language.

7. Issue Export Licenses no earlier than 90 days before the day on which the Hot-Rolled Steel is accepted by a transportation company, as indicated in the bill of lading or a comparable transportation document, for export.

8. Permit full verification of all information related to the administration of this Agreement on an annual basis or more frequently, as deemed necessary, to ensure that the GOB is in full compliance with this Agreement.

9. Ensure compliance with all procedures established in order to effectuate this Agreement by any official Brazilian institution, chamber, or other authorized Brazilian company, and any Brazilian producer, exporter, broker, and trader of Hot-Rolled Steel.

10. Impose strict measures, such as prohibition from participation in the export limits allowed by the Agreement, in the event that any Brazilian company does not comply in full with the requirements established by GOB pursuant to this Agreement.

D. If any Hot-Rolled steel from Brazil is entered into the United States in excess of the Export Limit or without a valid Export Licence, DOC shall notify GOB of the entry(ies) and provide to GOB all of the information concerning the entry(ies) that DOC is able to disclose consistent with U.S. law. GOB shall respond within 21 days. If DOC determines that entry of Hot-Rolled Steel from Brazil in excess of the Export Limit or without a valid Export License has occurred, DOC shall provide GOB with an opportunity for prompt consultations, which shall be completed within 60 days after DOC notified GOB of the excessive or unlicensed entry. Once the consultations have been completed, unless DOC has concluded that the excessive or unlicensed entry did not occur, DOC shall count against the Export Limit for the period in which the excessive or licenced entry occurred twice the volume of the entry. If the Export Limit for the period in which the excessive or unlicensed entry occurred has been reached, any remaining portion of the excessive or unlicensed entry will be subtracted from the next period's Export Limit.

VI. Anticircumvention

A. The GOB will take all necessary measures to prevent circumvention of this Agreement. These measures shall include requiring that all Brazilian exporters of Hot-Rolled Steel agree, as a condition of receiving any Export License under this Agreement, not to export directly or indirectly to the United States Hot-Rolled Steel that is not accompanied by an Export License issued pursuant to this Agreement.

1. When GOB has received an allegation that circumvention has occurred, including an allegation from DOC, GOB shall promptly initiate an inquiry, normally complete the inquiry within 45 days and notify DOC of the results of the inquiry within 15 days after the conclusion of the inquiry.

2. If GOB determines that a Brazilian company has participated in a

[1] Pursuant to Section 704(b) and (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1671c(b) & (c)) (the "Act"), and Section 208 of part 351 of Title 19 of the Code of Federal Regulations (the "Regulations").

[1] The validity of an Export License will not be affected by a subsequent change of an HTS number.

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transaction circumventing this agreement, GOB shall impose penalties upon such company including, but not limited to, denial of access to export certificates for hot-rolled steel under this agreement.

3. If GOB determines that a Brazilian company has participated in the circumvention of this agreement, GOB shall count against the export limit for the Export Limit Period in which the circumvention took place and amount of hot-rolled steel equivalent to the amount involved in such circumvention and shall immediately notify DOC of the amount deducted. If sufficient tonnage is not available in the current Export Limit Period, then the remaining amount shall be deducted from the subsequent Export Limit Period or Periods.

4. If GOB determines that a company from a third country has circumvented the Agreement and DOC and GOB agree that no Brazilian company participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the parties are unable to reach mutual agreement within 45 days, then DOC may take appropriate measures, such as deducting the amount of hot-rolled steel involved in such circumvention from the export limit for the then-current Export Limit Period or a subsequent Period. Before taking such measures, DOC will notify GOB of the facts and reasons constituting the basis for DOC's intended action and will afford GOB 15 days in which to comment.

B. DOC will investigate any allegations of circumvention which are brought to its attention both by asking GOB to investigate such allegations and by itself gathering relevant information. GOB will respond to requests from DOC for information relating to such allegations. In distinguishing normal arrangements from those which would result in the circumvention of the export limits established by this Agreement, DOC will take the following factors into account:

1. Existence of any verbal or written agreement leading to circumvention of this agreement;

2. Existence and function of any subsidiaries or affiliates of the parties involved;

3. Existence and function of any historical and traditional patterns of production and trade among the parties involved, and any deviation from such patterns;

4. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for Hot-rolled steel delivered or swapped by another party;

5. Sequence and timing of the arrangements; and

6. Any other information relevant to the transaction or circumstances.

C. In the event that DOC determines that a Brazilian company has participated in a transaction circumventing this Agreement, DOC and GOB shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If DOC and GOB are unable to reach mutual agreement within 60 days, DOC may take appropriate measures, such as deducting the amount of hot-rolled steel involved in such circumvention from the export limit for the current Export Limit Period (or, if necessary, the Subsequent Export Limit Period) or instructing U.S. Customs to deny entry to any Brazilian hot-rolled steel sold by the company found to be circumventing the Agreement. Before taking such measures, DOC will notify GOB of the basis for DOC's intended action and GOB will comment within 30 days. DOC will enter its determinations regarding circumvention into the record of the Agreement. GOB may request an extension of up to 15 days for any of the deadlines mentioned in this Section.

VII. Monitoring and Notifications

A. GOB will collect and provide to DOC such information as is necessary and appropriate to monitor the implementation of, and compliance with, this Agreement, including the following:

1. Thirty days following the allocation of export rights for any Export Limit Period, GOB shall notify DOC of each allocation recipient and the volume granted to each recipient. GOB also shall inform DOC of any changes in the volume allocated to individual quota recipients within 60 days of the date on which such changes become effective.

2. GOB shall collect and provide to DOC information on exports to the United States in the format in Appendix III to this Agreement, and on the aggregate quantity and value of exports of Hot-Rolled Steel to all other countries. This information will be based on semi-annual periods (October 1 through March 31 and April 1 through September 30), and will be provided no later than 90 days following the end of each half year period, beginning on June 30, 2000 (for the period from the Effective Date through March 31, 2000).

3. The GOB shall certify to DOC, in accordance with the reporting schedule in section VII.A.2., whether it continues to be in compliance with the Agreement by providing that all exports of Hot-Rolled Steel to the United States are not and will not be eligible for any export subsidies, as provided in Section III. The GOB shall notify the DOC if any producer/exporter of Hot-Rolled Steel to the United States applies for or receives, directly or indirectly, any export or import substitution subsidy.

4. The GOB shall immediately notify and provide copies to the DOC of any resolution, decree, legislation or equivalent Government action governing any export or import substitution subsidy which is issued, altered or amended in any way as to be applicable or available to producers/exporters of Hot-Rolled Steel to the United States.

5. The GOB will inform the DOC of any violations of any provisions of this Agreement that come to its attention and of the measures taken with respect thereto.

6. The GOB and the DOC recognize that the effective monitoring of this Agreement may require that the GOB provide information additional to that identified above. Accordingly, after consulting with the GOB, the DOC may request additional reporting requirements consistent with U.S. law and regulations during the course of this Agreement. The GOB shall also collect and provide to DOC, within 45 days of the request, any such additional information requested by DOC.

B. The DOC will verify all information related to the administration of this Agreement, including all information relating to potential circumvention of this Agreement, annually or more frequently as deemed necessary.

C. The DOC may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

VIII. Disclosure and Comment

A. The DOC shall make available to representatives of each Party to the Proceeding, under appropriately-drawn administrative protective orders consistent with U.S. laws and regulations, business proprietary information submitted to the DOC semi-annually or upon request pursuant to this Agreement, and in any administrative review of this Agreement.

B. Not later than 45 days after the date of disclosure of information pursuant to section VII.A., the Parties to the Proceeding may submit written comments to DOC, not to exceed 30 pages.

C. At the end of each Export Limit Period, each Party to the Proceeding may request a hearing on issues raised during the preceding Export Limit Period. If such a hearing is requested, it will be conducted in accordance with U.S. laws and regulations.

IX. Consultations

A. The DOC and the GOB may request consultations with the other concerning this agreement at any time.

B. If the DOC requests consultations with the GOB concerning potential noncompliance with, or Violation of, this Agreement, it may simultaneously request the GOB to provide the DOC with all information relating to the allegation. The GOB will provide the requested information to the DOC within 21 days of the DOC's request. Any Party to the Proceeding may submit comments on the information submitted by the Signatory within 10 days after the DOC receives the information. The consultations shall be held within 45 days after the DOC's request for consultations or for relevant information, unless the DOC and the GOB agree on a later date.

X. Violations

A. If the DOC determines that this Agreement is being or has been violated, DOC will take such action as it determines appropriate under U.S. laws and regulations.

B. If the DOC determines that this Agreement no longer meets the requirements of the Act, the DOC shall take whatever action it deems appropriate under Section 704(i) of the Act and the Regulations.

C. In the event that the DOC resumes the original investigation, it will conduct the resumed investigation on the basis of the original administrative record and the statutes, regulations, policies, and practices in effect on the Effective Date.

XI. Duration

A. This Agreement will remain in force until the underlying countervailing duty proceeding is terminated in accordance with U.S. law.

B. The GOB may terminate this Agreement at any time upon written notice to the DOC. Termination shall be effective 60 days after such notice is given to the DOC. Upon termination at the request of the GOB, the provisions of U.S. countervailing duty law and regulations shall apply.

XII. Other Provisions

A. The DOC determines that extraordinary circumstances are present in this case, that this Agreement is in the public interest, that effective monitoring of this Agreement by the United States is practicable, and that this Agreement will completely eliminate injury to the domestic industry producing the like product by imports of Hot-Rolled Steel from Brazil.

B. For all purposes hereunder, the signatory Parties shall be represented by, and all communications and notices shall be given and addressed to:

DOC:
U.S. DOC of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

GOB:
Ministério das Relaçõ6es Exteriores, Divisão de Política Comercial, 70.170–900—Brasília—DF—Brazil
Embassy of Brazil, 3006 Massachusetts Ave. NW, Washington, D.C. 20008

Signed on this 6th of July 1999. 3

Robert Larussa,

Assistant Secretary for Import Administration, U.S. Department of Commerce.

Regis Arslanian,

Minister-Counselor, Embassy of Brazil.

Appendix I—Definition of Hot-Rolled Steel

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063—0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000—88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches;
Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II—Information To Be Contained in Export Licenses

1. Export License: Indicate the number(s) relating to each sale and or entry.
2. Complete Description of Merchandise: Include the 10 digit HTS category, the ASTM or equivalent grade, and the width and thickness of merchandise.
3. Quantity: Indicate in metric tons.
4 F.O.B. Sales Value: Indicate value and currency used.
5. Unit Price: Indicate unit price per metric ton and currency used, and reference price.
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Brazilian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Brazilian exporter.
14. Allocation to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Allocation Remaining: Indicate the remaining export limit allocation available to the individual exporter during the export limit period.
16. Destination: The complete name and address of the first unaffiliated purchaser.
17. Other: The identity of any party(ies) in the transaction chain between the producer and the first unaffiliated purchaser.

List of Heat Numbers

GOB shall ensure that all shipments of Hot-Rolled Steel exported to the United States pursuant to this Agreement, shall be accompanied by a list of heat numbers under the shipment. GOB understands that DOC intends to fully verify this data during verifications.

Appendix III—Information on Exports of Hot-Rolled Steel

In accordance with the established format, the GOB's license issuing authority shall collect and provide to DOC all information necessary to ensure compliance with this Agreement. This information will be provided to DOC on a semi-annual basis.

The GOB's license issuing authority will collect and maintain data on exports to the United States on a continuous basis. Data for exports to countries other than the United States, will be reported upon request.

The GOB's license issuing authority will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

The GOB's license issuing authority will provide all Export Licenses issued to Brazilian entities, which shall contain the following information with the exception that information requested in item #9, date of entry, item #10, importer of record, item #16, final destination, and item #17, other, may be omitted if unknown to the licensing authority and the licensee.

1. Export License: Indicate the number(s) relating to each sale and or entry.
2. Complete Description of Merchandise: Include the 10 digit HTS category, the ASTM or equivalent grade, and the width and thickness of merchandise.
3. Quantity: Indicate in metric tons.
4 F.O.B. Sales Value: Indicate value and currency used.
5. Unit Price: Indicate unit price per metric ton, currency used, and reference price
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Brazilian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Brazilian exporter.
14. Allocation to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Allocation Remaining: Indicate the remaining export limit allocation available to the individual exporter during the export limit period.
16. Destination: The complete name and address of the first unaffiliated purchaser.
17. Other: The identity of any party(ies) in the transaction chain between the producer and the first unaffiliated purchaser.

List of Heat Numbers

The GOB's license issuing authority shall ensure that all shipments of Hot-Rolled Steel exported to the United States pursuant to this Agreement, shall be accompanied by a list of heat numbers under the shipment. The GOB's license issuing authority understands that DOC intends to fully verify this data during verifications.

[FR Doc. 99–18227 Filed 7–16–99; 8:45 am]
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Part IV

Department of Education

The Native Hawaiian Family-Based Education Centers Program; Notice

federal register

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.209A]

The Native Hawaiian Family-Based Education Centers Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose of Program

To expand the operation, throughout the Hawaiian Islands, of Family-Based Education Centers that include: (1) Parent-infant programs for prenatal through three-year-olds; (2) preschool programs for four-and five-year-olds; (3) continued research and development; and (4) a long-term follow-up and assessment program, which may include educational support services for Native Hawaiian language immersion programs or transition to English speaking programs.

Eligible Applicants

Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Applications Available: July 19, 1999.

Applications Must Be Received By: August 17, 1999.

Note: Applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102 Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested partied the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: August 17, 1999.

Available Funds: $475,000.

Estimated Number of Awards: 1–2.

Estimated Size of Awards: $200,000–$475,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

SUPPLEMENTARY INFORMATION: A notice inviting applications for new awards under the Native Hawaiian Family-Based Education Centers Program was published in the **Federal Register** on April 6, 1999 (64 FR 16718). In response to this notice, the Secretary did not receive a sufficient number of quality applications to allocate all of the funds available under this program. Therefore, the Secretary is conducting a new competition and inviting applications for the remaining $475,000 available under the Native Hawaiian Family-Based Education Centers.

Applicants should refer to the April 6, 1999 notice inviting applications (64 FR 16718) in developing their proposals for funding. Applicants are reminded that all proposals must meet the requirements of the Native Hawaiian Family-Based Education Centers Program (20 U.S.C. 7905). Applications will be reviewed on the basis of the selection criteria announced in the April 6, 1999 notice inviting applications.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format also by contacting that person. However, the Department is not able to reproduce in an alternate format the standards forms included in the application package.

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http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 7905.

Dated: July 14, 1999.

Judith Johnson,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 99–18339 Filed 7–16–99; 8:45 am]

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Part V

Department of Education

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.297A]

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purposes of Program

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program supports—

(1) *Curricula*—the development of curricula to address the needs of Native Hawaiian students, particularly elementary and secondary students, which may include programs of instruction conducted in the Native Hawaiian language and mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions;

(2) *Preteacher training*—the development and implementation of preservice teacher training to ensure that student teachers within the State, particularly those who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions;

(3) *Inservice teacher training*—the development and implementation of inservice teacher training to ensure that teachers, particularly those employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions; and

(4) *Teacher recruitment*—the development and implementation of teacher recruitment programs to enhance teacher recruitment within communities with a high concentration of Native Hawaiian students and to increase the numbers of teachers who are of Native Hawaiian ancestry.

Eligible Applicants

Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Applications Available: July 19, 1999.

Applications Must Be Received By: August 17, 1999.

Note: All applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR75.102 Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Deadline for intergovernmental Review: August 17, 1999.

Available Funds: $120,000 for computer literacy and technology education; $250,000 for prisoner education programs; and $250,000 for waste management programs.

Estimated Number of Awards: 1 for computer literacy and technology education; 1 to 2 for prisoner education; and 1 to 2 for waste management.

Estimated Size of Awards: $120,000 for computer literacy and technology education; $125,000 to $250,000 for prisoner education and for waste management.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

SUPPLEMENTARY INFORMATION: A notice inviting applications for new awards under the Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program was published in the **Federal Register** on April 6, 1999 (64 FR 16716). A notice of final funding priorities was published at the same time (64 FR 16715). The Secretary invited applications to address one of six absolute priorities—(1) Computer literacy and technology education; (2) agriculture education partnerships; (3) astronomy; (4) indigenous health; (5) waste management; and (6) prisoner education programs.

In response to the original notice inviting applications, the Secretary did not receive a sufficient number of quality applications in three of the priority areas—computer literacy and technology education; waste management; and prisoner education—to make the awards that were intended to be granted in these areas. Therefore, the Secretary is running a new competition and inviting applications that address one of these three priority areas.

Absolute Priorities

Applicants should refer to the original notice inviting applications (64 FR 16716) and the notice of final funding priorities (64 FR 16715) in developing their proposals for funding. Applicants are reminded that all proposals must meet the requirements of the Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program (20 U.S.C. 7909) and address one of the following absolute priorities—computer literacy and technology education; waste management; or prisoner education—as announced in the April 6, 1999 notice of final funding priorities. Applications will be reviewed on the basis of the selection criteria announced in the April 6, 1999 notice inviting applications. Applications addressing the agriculture partnerships, astronomy or indigenous health priorities will not be considered for funding.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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http://www.access.gpo/gov/nara/index.html

Program Authority: 20 U.S.C. 7909.

Dated: July 14, 1999.

Judith Johnson,

Acting Assistant Secretary, Elementary and Secondary Education.

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Part VI

Department of Housing and Urban Development

24 CFR Part 570

Community Development Block Grant (CDBG) Program; Clarification of the Nature of Required CDBG Exenditure Documentation; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4449–I–01]

RIN 2506–AC00

Community Development Block Grant (CDBG) Program; Clarification of the Nature of Required CDBG Expenditure Documentation

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This rule clarifies the level of expenditure documentation that is needed to meet the financial management requirement that grantees and subrecipients maintain adequate records to identify the use of Community Development Block Grant (CDBG) funds provided for assisted activities. This change will provide the public with more assurance that CDBG funds are used only for allowable purposes.

DATES: *Effective Date:* August 18, 1999.

Comments Due Date: September 17, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Regulations Division, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (fax) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1577. Persons with hearing or speech-impairments may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0077. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Background

The Office of Inspector General (OIG) audits have found various cases in which grantees and subrecipients were not maintaining sufficient documentation to clearly identify the actual use of Community Development Block Grant (CDBG) funds provided to assisted projects. This issue has particularly arisen in regard to special economic development activities where the funds are ultimately expended by for-profit businesses. Such lack of appropriate documentation increases the potential for misuse of CDBG funds. This rule clarifies the level of documentation that is needed for grantees and subrecipients to demonstrate compliance with the existing financial management requirements in 24 CFR parts 84 and 85 relating to maintaining adequate records to identify the use of funds provided for assisted activities. This change will provide the public with more assurance that CDBG funds are used only for allowable purposes.

OMB Uniform Administrative Requirements for grants to local governments and nonprofit organizations have long required that grantees and subrecipients maintain records which adequately identify the source and application of funds provided for financially-assisted activities. This requirement is found at § 85.20(b)(2) for local governments and at § 84.21(b)(2) for nonprofit organizations. These requirements are specifically made applicable to the CDBG program by §§ 570.502(a)(4) and (b)(3), respectively. The CDBG regulations at § 570.506(h) also require maintaining financial records in accordance with the applicable requirements listed in § 570.502.

Most grantees and subrecipients comply satisfactorily with the subject requirement, particularly for those activities that the grantee and/or subrecipient directly implements or for which it procures goods or services. Problems are most likely to occur in instances where the grantee and/or subrecipient provides CDBG financial assistance to an entity that is neither a contractor nor a subrecipient, but rather possesses characteristics of a "beneficiary." Such entities carry out assisted activities directly and are not subject to the provisions of 24 CFR part 84 or part 85.

A common example of these latter type of assisted activities is that of a grantee making a CDBG economic development loan to a for-profit business to carry out an economic development project. The private business is then generally responsible for all direct implementation actions and is not governed by the OMB uniform administrative requirements. The grantee must thus exercise due diligence in obtaining documentation from the business to support the use of CDBG funds in order to ensure that the grantee is in compliance with its responsibilities under the uniform administrative requirements which only allow costs that are necessary, reasonable, and adequately supported to be charged to the CDBG program.

In the example case, the grantee's records relating to its review and approval of the business' loan application are not sufficient to provide the adequate documentation of the "application of funds" required by § 85.20(b)(2). The grantee's loan agreement with the business and related security filings, while important, are also not in themselves adequate to document the actual use of the funds. The grantee must have records to support the scope of the activity that is actually accomplished and to clearly demonstrate how the CDBG funds were used to assist the activity.

This interim rule amends 24 CFR 570.506(h) to clarify the extent of documentation needed to meet the financial management requirement that grantees and subrecipients maintain adequate records to identify the use of funds provided for assisted activities. A broad range of types of documentation is described in an effort to reflect the myriad of different activities and financing mechanisms that can be undertaken with CDBG funds. Comment on this method of addressing the issue of adequate financial support documentation is welcome.

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment because this rule clarifies requirements already in place for grantees and subrecipients. In consideration of this fact, advance public comment was determined not necessary, but HUD welcomes comments from the public and is soliciting comment on this rule.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a substantial economic impact on small entities. This interim rule will have no economic impact on small entities since it is a clarification of existing policy. Notwithstanding HUD's determination regarding small entities, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

Environmental Impact

This amendment is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(2), this amendment is categorically excluded because it amends an existing document where the existing document as a whole would not fall under the exclusion in 24 CFR 50.19 (c)(1), but the amendment by itself would do so.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The clarification resulting from this interim rule will not affect the relationship between the Federal Government and State and local governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the Community Development Block Grants program are 14.218, 14.219, 14.225, 14.227, 14.246, and 14.248.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Section 570.506 is amended by revising paragraph (h) to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(h) Financial records, in accordance with the applicable requirements listed in § 570.502, including source documentation for entities not subject to parts 84 and 85 of this title. Grantees shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

* * * * *

Dated: June 16, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–18378 Filed 7–16–99; 8:45 am]

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H.R. 435/P.L. 106–36
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This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–0002–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
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13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
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1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
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400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
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141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
*300–499	(869–038–00063–6)	50.00	[3] Apr. 1, 1999
500–599	(869–034–00064–9)	26.00	Apr. 1, 1998
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
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1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
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*0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
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26 Parts:			
§§ 1.0–1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
*§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
*§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
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§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
*2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
*30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

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200-End	(869-034-00097-5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869-034-00098-3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0-99	(869-034-00100-9)	26.00	July 1, 1998
100-499	(869-034-00101-7)	12.00	July 1, 1998
500-899	(869-034-00102-5)	40.00	July 1, 1998
900-1899	(869-034-00103-3)	20.00	July 1, 1998
1900-1910 (§§ 1900 to 1910.999)	(869-034-00104-1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869-034-00105-0)	27.00	July 1, 1998
1911-1925	(869-034-00106-8)	17.00	July 1, 1998
1926	(869-034-00107-6)	30.00	July 1, 1998
1927-End	(869-034-00108-4)	41.00	July 1, 1998
30 Parts:			
1-199	(869-034-00109-2)	33.00	July 1, 1998
200-699	(869-034-00110-6)	29.00	July 1, 1998
700-End	(869-034-00111-4)	33.00	July 1, 1998
31 Parts:			
0-199	(869-034-00112-2)	20.00	July 1, 1998
200-End	(869-034-00113-1)	46.00	July 1, 1998
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-034-00114-9)	47.00	July 1, 1998
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400-629	(869-034-00116-5)	33.00	July 1, 1998
630-699	(869-034-00117-3)	22.00	[4] July 1, 1998
700-799	(869-034-00118-1)	26.00	July 1, 1998
800-End	(869-034-00119-0)	27.00	July 1, 1998
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1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-034-00121-1)	38.00	July 1, 1998
200-End	(869-034-00122-0)	30.00	July 1, 1998
34 Parts:			
1-299	(869-034-00123-8)	27.00	July 1, 1998
300-399	(869-034-00124-6)	25.00	July 1, 1998
400-End	(869-034-00125-4)	44.00	July 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-034-00127-1)	20.00	July 1, 1998
200-299	(869-034-00128-9)	21.00	July 1, 1998
300-End	(869-034-00129-7)	35.00	July 1, 1998
37	(869-034-00130-1)	27.00	July 1, 1998
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18-End	(869-034-00132-7)	39.00	July 1, 1998
39	(869-034-00133-5)	23.00	July 1, 1998
40 Parts:			
1-49	(869-034-00134-3)	31.00	July 1, 1998
50-51	(869-034-00135-1)	24.00	July 1, 1998
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-034-00137-8)	33.00	July 1, 1998
53-59	(869-034-00138-6)	17.00	July 1, 1998
60	(869-034-00139-4)	53.00	July 1, 1998
61-62	(869-034-00140-8)	18.00	July 1, 1998
63	(869-034-00141-6)	57.00	July 1, 1998
64-71	(869-034-00142-4)	11.00	July 1, 1998
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
86	(869-034-00144-9)	53.00	July 1, 1998
87-135	(869-034-00146-7)	47.00	July 1, 1998
136-149	(869-034-00147-5)	37.00	July 1, 1998
150-189	(869-034-00148-3)	34.00	July 1, 1998
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42 Parts:			
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430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	18.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	29.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
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166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
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29-End	(869-034-00191-2)	24.00	Oct. 1, 1998
49 Parts:			
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100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-034-00194-7)	11.00	Oct. 1, 1998
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
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1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
1-199	(869-034-00199-8)	42.00	Oct. 1, 1998
200-599	(869-034-00200-5)	22.00	Oct. 1, 1998
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-034-00049-6)	46.00	Jan. 1, 1998
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Subscription (mailed as issued)		247.00	1998
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Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

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106th Congress, 1st Session, 1999

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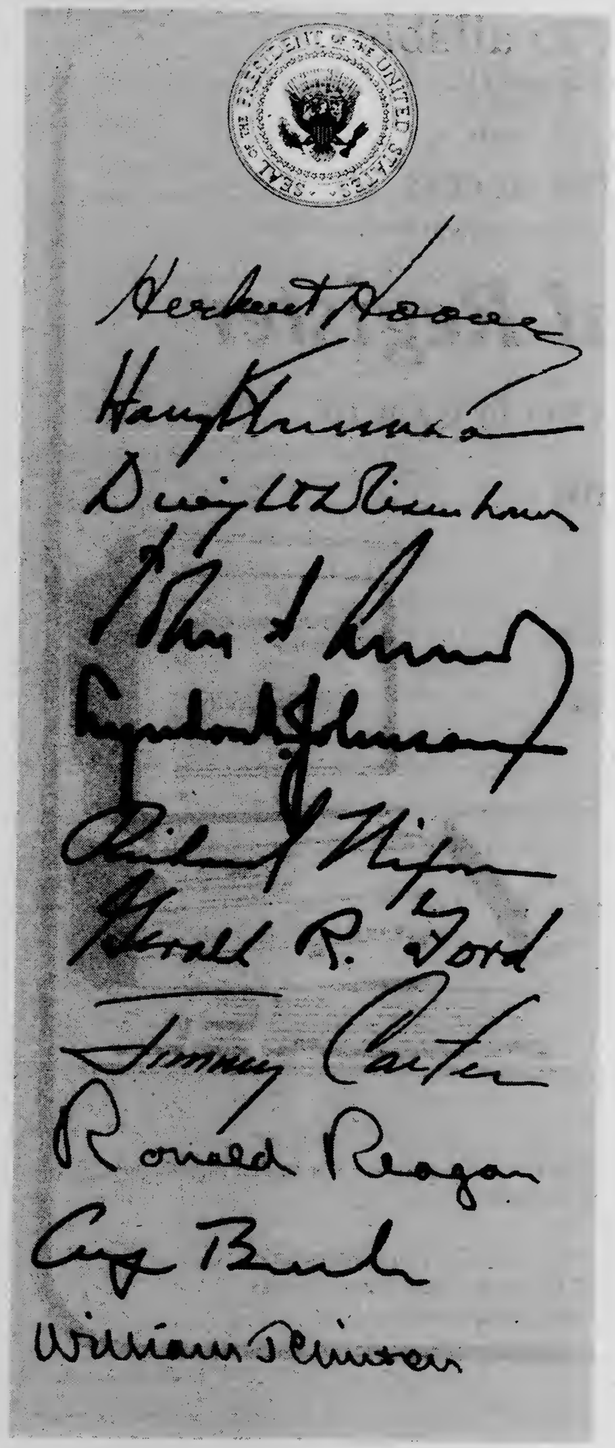
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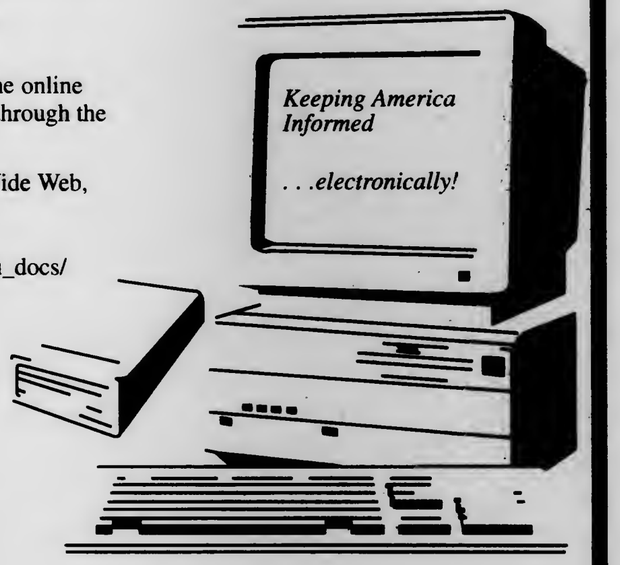
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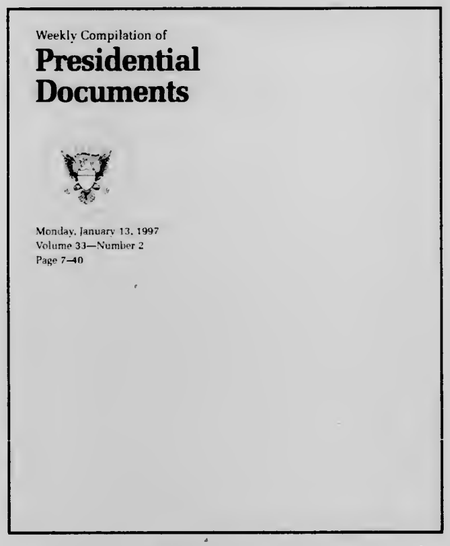
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Rules and Regulations

Federal Register
Vol. 64, No. 138
Tuesday, July 20, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–086–3]

Citrus Canker; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, two interim rules that amended the citrus canker regulations by adding portions of Broward, Collier, Dade, and Manatee Counties, FL, to the list of quarantined areas. These actions imposed certain restrictions on the interstate movement of regulated articles from and through the quarantined areas. The interim rules were necessary to prevent the spread of citrus canker into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule published at 61 FR 1519 became effective on January 16, 1996, and the interim rule published at 64 FR 4777 became effective January 26, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; or e-mail: Stephen.R.Poe@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective January 16, 1996, and published in the **Federal Register** on January 22, 1996 (61 FR 1519–1521, Docket No. 95–086–1), we amended the citrus canker regulations (contained in 7 CFR 301.75–1 through 301.75–14) by designating an area of approximately 140 square miles within Dade County, FL, as a quarantined area and by amending the definition of citrus canker. In a second interim rule effective January 26, 1999, and published in the **Federal Register** on February 1, 1999 (64 FR 4777–4780, Docket No. 95–086–2), we expanded the quarantined area in Dade County and quarantined additional areas in Broward, Collier, and Manatee Counties, FL. These actions restricted the interstate movement of regulated articles from and through the quarantined areas.

Comments on the first interim rule were required to be received on or before March 22, 1996. We received two comments, one from a State agricultural agency and one from an association representing citrus growers. Both comments fully supported the interim rule.

Comments on the second interim rule were required to be received on or before April 2, 1999. We did not receive any comments.

Therefore, for the reasons given in the interim rules, we are adopting the interim rules as a final rule.

This action also affirms the information contained in the interim rules concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms two interim rules that amended the citrus canker regulations by adding portions of Broward, Collier, Dade, and Manatee Counties, FL, to the list of quarantined areas. These actions imposed certain restrictions on the interstate movement of regulated articles from and through the quarantined areas. The interim rules were necessary to prevent the spread of citrus canker into noninfested areas of the United States.

In accordance with 5 U.S.C. 604 of the Regulatory Flexibility Act, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of the interim rules on small entities. In the interim rules, we requested comments with information on the number and kinds of small entities that may have incurred benefits or costs from the implementation of the interim rules. None of the comments we received addressed these issues. Therefore, we have based this analysis on the information available to us.

We have identified approximately 4,056 entities within the quarantined areas that could be affected by this interim rule. These entities consist of 81 nurseries, 6 nursery stock dealers, 224 fresh fruit retail stores, 13 fruit packers, 13 gift fruit shippers, 73 commercial groves, 33 grove maintenance services, 43 fruit harvesting contractors, 3,549 lawn maintenance businesses, 13 fruit transporters, 2 fruit processors, and 6 flea markets. The numbers provided for all entities except commercial groves include entities that are located within the quarantined area as well as entities located outside the quarantined area that could be affected.

The number of these entities that meet the Small Business Administration (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's annual sales) is not currently available. However, it is reasonable to assume that most of these entities are small in size because the majority of the same or similar businesses in southern Florida, as well as in the rest of the United States, are small entities by SBA standards. In 1992, for example, the average sales per establishment for all metropolitan Miami area establishments primarily engaged in selling trees, shrubs, and seed to the general public (SIC 526, which includes retail nurseries) was $340,340, which is well below the SBA's current small entity size standard for such businesses of $5 million in sales. In 1992, the average sales per establishment for all metropolitan Miami area establishments primarily engaged in selling general food items for home consumption (SIC 541, which includes grocery stores) was $2.6 million, which is also well below the SBA's current small entity size standard for such businesses of $20 million in sales. Similarly, in 1992 the average sales per establishment for all metropolitan Miami area establishments primarily engaged in selling certain other food items for home consumption (SIC 543, 544, 545, and 549, which include fruit and vegetable markets) was $453,138, which is well below the SBA's current small entity size standard for such businesses of $5 million in sales. Finally, in 1993, the average sales

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per firm for all 33,301 U.S. firms primarily engaged in providing lawn and garden services (SIC 0782, which includes lawn maintenance businesses) was $222,571, which is well below the SBA's current small entity size standard for such businesses of $5 million in sales.

Fresh fruit retail stores, nurseries, and lawn maintenance companies comprise, on a combined basis, 3,860 (approximately 95 percent) of the total 4,056 entities potentially affected by this interim rule. The operations of those entities are, for the most part, local in nature; they do not typically move regulated articles outside of the State of Florida during the normal course of their business, and consumers do not generally move products purchased from those entities out of the State. The fruit sold by grocery stores and other retail food outlets is generally sold for local consumption. Retail nurseries also market their products for local consumption. Lawn maintenance businesses collect yard debris, but they do not normally transport that debris outside the State for disposal.

The fresh fruit retailers affected by this interim rule will be required to abide by restrictions on the interstate movement of regulated articles. They may be affected by this interim rule because fruit sold within the quarantined areas in retail stores cannot be moved outside of the quarantined areas. However, we expect any direct costs of compliance for fresh fruit retailers to be minimal.

The lawn maintenance companies affected by this interim rule will be required to perform additional sanitation measures when maintaining an area inside the quarantined areas. Lawn maintenance companies will have to clean and disinfect their equipment after grooming an area within the quarantined areas, and they must properly dispose of any clippings from plants or trees within the quarantined areas. These requirements will slightly increase costs for lawn maintenance companies affected by this interim rule.

Commercial citrus growers, processors, packers, and shippers within the quarantined areas will still be able to move their fruit interstate, provided the fruit is treated and not shipped to another citrus-producing State. Growers will have to bear the cost of treatment, but that cost is expected to be minimal. The prohibition on moving the fruit to other citrus-producing States is not expected to negatively affect entities within the quarantined areas because most States do not produce citrus and growers are expected to be able to find a ready market in non-citrus-producing States.

The nurseries and commercial groves affected by this interim rule will be required to undergo periodic inspections. These inspections may be inconvenient, but the inspections will not result in any additional costs for the nurseries or growers because APHIS or the State of Florida will provide the services of the inspector without cost to the nursery or grower.

The alternative to the interim rules was to make no changes in the citrus canker regulations. We rejected this alternative because failure to quarantine portions of Broward, Collier, Dade, and Manatee Counties, FL, could result in great economic losses for domestic citrus producers.

The interim rules contained no new information collection or recordkeeping requirements.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, two interim rules that amended 7 CFR part 301 and that were published at 61 FR 1519–1521 on January 22, 1996, and 64 FR 4777–4780 on February 1, 1999.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 13th day of July 1999.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18438 Filed 7–19–99; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG08

Revision of Fee Schedules; 100% Fee Recovery, FY 1999; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on June 10, 1999 (64 FR 31448), concerning the licensing, inspection, and annual fees charged to its applicants and licensees in compliance with the Omnibus Budget Reconciliation Act of 1990. This action is necessary to correct typographical and printing errors.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

In rule FR Doc. 99–14697 published on June 10, 1999 (64 FR 31448), make the following corrections:

1. On page 31458, in the second column, in the first complete paragraph, in lines 17 and 18, the words "the NRC reviewer's title" are removed and replaced with "a brief description of the work being performed'.

2. On page 31466, in the second column, under 5c(2), in the sixth line, the word "no" is removed.

3. On page 31470, in the first column, paragraphs (a)(7)(ii) and (a)(7)(iii) are redesignated as paragraphs (a)(7)(iii)(B) and (a)(7)(ii)(C), respectively, and a new paragraph (a)(7)(ii)(A) is added to read as follows:

§ 170.12 Payment of fees.

(a) * * *

(7) * * *

(ii)(A) In the case of a design which has been approved but not certified and for which no application for certification is pending, if the design is not referenced, or if all costs are not recovered within five years after the date of the preliminary design approval (PDA), or the final design approval (FDA), the applicant shall pay the costs, or remainder of those costs, at that time.

* * * * *

§ 171.15 [Corrected]

4. On page 31475, in the second column, the heading for § 171.15 is corrected to read: "§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses."

§ 171.16 [Corrected]

5. We are correcting the table in § 171.16(d), "Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC," in the following manner:

a. On pages 31477 through 31479, insert "$" before each amount listed under the heading "Annual fees [1][2][3]."

b. On page 31477, under 1.B, remove the sentence "See 10 CFR part 171.15(c)," and under the heading "Annual fees [1][2][3]," insert " [11]N/A."

c. On page 31479, under 10.A, under the heading "Annual fees [1][2][3]," the word "[6]N" is corrected to read "[6]N/A."

d. On page 31479, under 13.B, remove the sentence "N/A (See 10 CFR Part 171.15(c)," and under the heading "Annual fees [1][2][3]," insert " [11]N/A."

e. On page 31479, footnote 11 is added to read as follows: " [11]Annual fees for this category of licenses are assessed under 10 CFR 171.15(c)."

Dated at Rockville, Maryland, this 14th day of July, 1999.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 99–18469 Filed 7–19–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–40–AD; Amendment 39–11228; AD 99–13–09]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc (MDHI) Model 369D and E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–13–09 which was sent previously to all known U.S. owners and operators of MDHI Model 369D and E helicopters by individual letters. This AD requires, prior to further flight, inspecting and replacing, if necessary, a certain four-bladed tail rotor fork (fork) assembly. This AD also requires a repetitive inspection of certain fork assemblies at intervals not to exceed 50 hours time-in-service (TIS) and removing and replacing, if necessary, each unairworthy fork assembly with an airworthy fork assembly before further flight. This amendment is prompted by reports from the manufacturer of the discovery of a discrepant part. The actions specified by this AD are intended to prevent failure of certain fork assemblies, which could cause loss of a tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective August 4, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–13–09, issued on June 16, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before September 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–40–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: John L. Cecil, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5228, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On June 16, 1999, the FAA issued Priority Letter AD 99–13–09, applicable to MDHI Model 369D and E helicopters with fork assembly, part number (P/N) 369D21701–2 installed, which requires, prior to further flight, inspecting each fork assembly, P/N 369D21701–2, for the presence of ridges on the arms and, if no ridges are present, conducting a dye-penetrant and visual inspection for cracks. If a crack is found, the fork assembly must be replaced with an airworthy fork assembly that has ridges. This AD also requires a repetitive visual inspection at intervals not to exceed 50 hours TIS of those fork assemblies without ridges that are currently installed but for which the initial visual and dye-penetrant inspection did not uncover a crack and removing and replacing, if necessary, each unairworthy fork assembly with an airworthy fork assembly before further flight. That action was prompted by reports from the manufacturer of the discovery of a discrepant part. During the manufacturing process, an unknown number of certain fork assemblies were incorrectly machined in critical areas after the shot-peening process. The two ridges on each of the arms of the fork assemblies were incorrectly machined off. This condition, if not corrected, could result in failure of certain fork assemblies, which could cause loss of a tail rotor blade and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other MDHI Model 369D and E helicopters of the same type design, the FAA issued Priority Letter AD 99–13–09 to prevent failure of the fork assembly which can result in loss of a tail rotor blade and subsequent loss of control of the helicopter. The AD requires, prior to further flight, inspecting and replacing, if necessary, the fork assembly, P/N 369D21701–21, with an airworthy fork assembly. This AD also requires a repetitive inspection of P/N 369D21701–21 without ridges, at intervals not to exceed 50 hours TIS and removing and replacing, if necessary, each unairworthy fork assembly with an airworthy fork assembly before further flight. The actions are required to be accomplished in the area defined in Figure 1, Sheet 2 of 2 of this AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inspecting and replacing, if necessary, the fork assembly, P/N 369D21701–21, with an airworthy fork assembly is required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 16, 1999 to all known U.S. owners and operators of MDHI Model 369D and E helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 24 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to perform the initial inspection and 1 work hour per helicopter for each repetitive inspection. Replacing a fork assembly, if necessary, will take approximately 5 work hours. The average labor rate is $60 per work hour. The manufacturer states that there will be no parts cost since the required parts are covered under the manufacturer's warranty. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,880; assuming $2,880 for the initial inspection of the entire fleet, $14,400 for 10 repetitive inspections for the entire fleet, and $3,600 to replace 12 fork assemblies.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the

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Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–40–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–13–09 MD Helicopters, Inc.: Amendment 39–11228. Docket No. 99–SW–40–AD.

Applicability: Model 369D and E helicopters, with four-bladed tail rotor fork (fork) assemblies, part number (P/N) 369D21701–21, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fork assembly, P/N 369D21701–21, which can result in loss of a tail rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, inspect each fork assembly, P/N 369D21701–21, for the presence of ridges on the arms. See Figure 1, sheets 1 and 2.

Note 2: MD Helicopters, Inc., Service Bulletin SB369D–198, SB369E–092, dated May 10, 1999, pertains to the subject of this AD.

(1) If ridges are found, no further action is required by this AD.

(2) If no ridges are found, chemically remove paint from the machined areas, inspect the fork assembly for a crack using the dye-penetrant procedure of MIL–STD–6866 or ASTM–E1417, and conduct a visual inspection using a 10X or higher magnifying glass. (See Figure 1, sheets 1 and 2.) Replace a cracked fork assembly with an airworthy fork assembly. A fork assembly without ridges, P/N 369D21701–21, may not be installed.

Note 3: The fork assembly is titanium, which requires dwell times for the dye-penetrant inspection that are appropriate for titanium.

(b) Thereafter, at intervals not to exceed 50 hours time-in-service (TIS), visually inspect each fork assembly without ridges, P/N 369D21701–21, for a crack using a 10X or higher magnifying glass. (See Figure 1, sheets 1 and 2.) If a crack is found, replace the cracked fork assembly with an airworthy fork assembly. A fork assembly without ridges, P/N 369D21701–21, may not be installed.

(c) Replacing an unairworthy fork assembly with an airworthy fork assembly other than P/N 369D21701–21 without ridges constitutes terminating action for this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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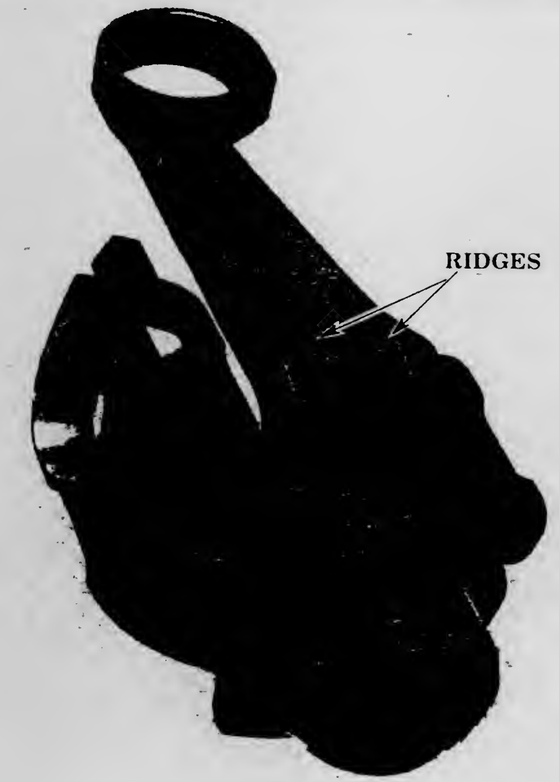


Figure 1. Fork Assembly with ridges (Sheet 1 of 2).

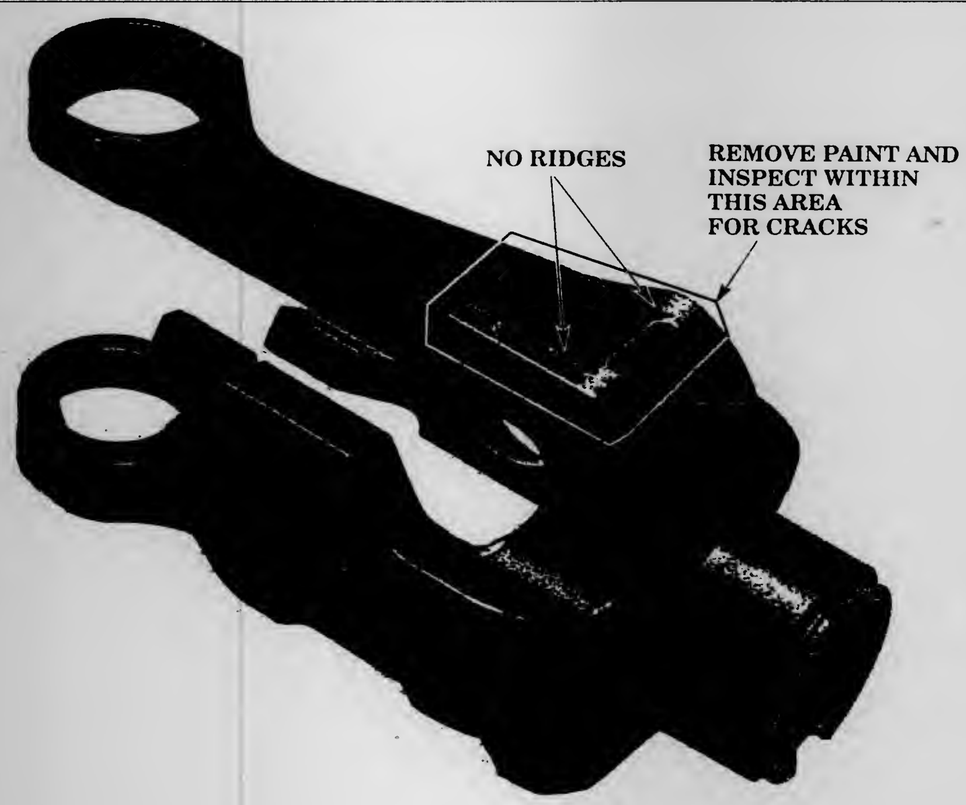


Figure 1. Fork Assembly without ridges (Sheet 2 of 2).

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on August 4, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–13–09, issued June 16, 1999, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on July 13, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–18367 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–115–AD; Amendment 39–11231; AD 99–15–11]

RIN 2120–AA64

Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This AD requires repetitively removing the nose landing gear steering selector valve and installing either a new nose landing gear steering selector valve or one that has been overhauled in accordance with the appropriate component maintenance manual. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent the inability to steer the airplane because of wear in the nose landing gear steering selector differential, which could result in loss of control of the airplane during take-off, landing, or taxi operations.

DATES: Effective September 10, 1999.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–115–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 23, 1999 (64 FR 19936). The NPRM proposed to require repetitively removing the nose landing gear steering selector valve and installing either a new nose landing gear steering selector valve or one that has been overhauled in accordance with the appropriate component maintenance manual.

Accomplishment of the proposed action as specified in the NPRM would be required in accordance with the applicable maintenance manual, as specified in British Aerospace Jetstream Service Bulletin 32–JA980841, Original Issue: October 28, 1998.

The FAA is requiring in another action (Docket No. 98–CE–117–AD) a one-time inspection of the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, with adjustment as necessary.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the NPRM and no comments were received on the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 350 airplanes in the U.S. registry will be affected by the initial replacement, that it will take approximately 4 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $2,500 per airplane. Based on these figures, the total cost impact of the initial replacement on U.S. operators is estimated to be $959,000, or $2,740 per airplane.

These figures only take into account the cost of the initial overhaul or replacement and do not take into account the cost of subsequent overhauls or replacements. The FAA has no way of determining the number of overhauls or replacements that each owner/operator of the affected airplanes will incur over the life of his/her airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–15–11 British Aerospace: Amendment 39–11231; Docket No. 98–CE–115–AD.

Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Upon accumulating 10,000 hours time-in-service (TIS) on the nose landing gear selector valve or within the next 12 calendar months after the effective date of this AD, whichever occurs later, unless already accomplished; and thereafter each time 10,000 hours TIS is accumulated on a nose landing gear selector valve.

To prevent the inability to steer the airplane because of wear in the nose landing gear steering selector differential, which could result in loss of control of the airplane during take-off, landing, or taxi operations, accomplish the following:

(a) Remove the nose landing gear steering selector valve, part number (P/N) 8668C or AIR86002–0 (or FAA-approved equivalent part number), and install one of the following in accordance with the applicable maintenance manual, as specified in British Aerospace Jetstream Service Bulletin 32–JA980841, Original Issue: October 28, 1998:

(1) A new steering selector valve, P/N 8668C or AIR86002–0 (or FAA-approved equivalent part number); or

(2) An FAA-approved nose landing gear steering selector valve that has been overhauled in accordance with the appropriate component maintenance manual.

Note 2: The FAA is requiring in another action (Docket No. 98–CE–117–AD) a one-time inspection of the nose wheel steering system to assure that the free play between the steering bandle or knob and the nose wheels is within acceptable limits, with adjustment as necessary.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to British Aerospace Jetstream Service Bulletin 32–JA980841, Original Issue: October 28, 1998, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in British Aerospace Jetstream Alert Service Bulletin 32–JA980841, Original Issue: October 28, 1998. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(e) This amendment becomes effective on September 10, 1999.

Issued in Kansas City, Missouri, on July 13, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18366 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 71

[Airspace Docket No. 99–ASW–11]

Revision of Class E Airspace; Raton, NM.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Raton, NM. The development of a very high frequency omnidirectional range/distance measuring equipment (VOR/DME) and global positioning system (GPS) standard instrument approach procedure (SIAP), at Raton Municipal/Crews Field, Raton, NM, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Raton Municipal/Crews Field, Raton, NM.

DATES: *Effective:* 0901 UTC, November 4, 1999. Comments must be received on or before September 3, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–11, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Raton, NM. The development of a NDB and GPS SIAP, at Raton Municipal/Crews Field, Raton, NM has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Raton Municipal/Crews Field, Raton, NM.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing data for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–11." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Raton, NM [Revised]

Raton Municipal/Crews Field, Raton, NM
(lat. 36°44′30″N., long. 104°30′08″W.)
Cimarron VORTAC
(lat. 36°29′29″N., long. 104°52′19″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Raton Municipal/Crews Field excluding that portion northwest of a line 4.4 miles northwest of and parallel to the 050° radial of the Cimarron VORTAC and within 1.6 miles each side of the 034° bearing from the airport extending from the 6.7-mile radius to 7.8 miles northeast of the airport and within 3.7 miles each side of the 050° radial of the Cimarron VORTAC extending from the 6.7-mile radius to 11.4 miles southwest of the airport and that airspace extending upward from 1,200 feet above the surface within 5.7 miles northwest of the 050° radial of the Cimarron VORTAC extending from the VORTAC to 39.1 miles northeast, within 14.4 miles southeast of the Cimarron VORTAC 050° and 230° radials extending from 1.3 miles southwest to 25.2 miles northeast of the VORTAC, and within 7.4 miles southeast of the Cimarron VORTAC 050° radial extending from 25.2 miles northeast to 39.1 miles northeast of the VORTAC.

* * * * *

Issued in Fort Worth, TX, on June 15, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18351 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–22]

Amendment to Class E Airspace; Harlan, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Harlan, IA.

DATES: The direct final rule published at 64 FR 24510 is effective on 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 7, 1999 (64 FR 24510). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 6, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18349 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–21]

Amendment to Class E Airspace; Ottawa, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date on a direct final rule which revises Class E airspace at Ottawa, KS.

DATES: The direct final rule published at 64 FR 31119 is effective on 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 10, 1999 (64 FR 31119). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 6, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18348 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–33]

Amendment to Class E Airspace; North Platte, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace areas at North Platte Regional Airport, Lee Bird Field, North Platte, NE. A review of the Class E surface airspace area for North Platte Regional Airport, Lee Bird Field indicates the extension to the southeast can be eliminated. The Class E surface area is revised to eliminate reference to the Lee Bird Nondirectional Radio Beacon (NDB) and the extension to the southeast. The airport name has been changed from North Platte, Lee Bird Field to North Platte Regional, Lee Bird Field. The Class E airspace area does not comply with the 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria of FAA Order 7400.2D. Enlarging the Class E airspace area eliminates all extensions.

In addition, a minor revision to Airport Reference Point (ARP) coordinates is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP coordinates, eliminate extensions, eliminate reference to Lee Bird NDB, change the airport name, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 25, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–33, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace areas at North Platte, NE. A review of the Class E surface airspace area indicates the extension to the southeast can be eliminated. A review of the Class E airspace area for North Platte Regional Airport, Lee Bird Field, NE, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at North Platte Regional Airport, Lee Bird Field, NE, will provide additional controlled airspace for aircraft operating under IFR, eliminate extensions, revise the ARP coordinates, change the airport name, and comply with the criteria of FAA Order 7400.2D. The areas will be depicted on appropriate aeronautical charts. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substances of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–33." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE NE E2 North Platte, NE [Revised]

North Platte Regional Airport, Lee Bird Field, NE
(lat. 41°07′34″N., long. 100°41′14″W.)
North Platte VORTAC
(lat. 41°02′55″N., long. 100°44′50″W.)

Within a 4.6-mile radius of North Platte Regional Airport, Lee Bird Field and within 1.1 miles each side of the 029° radial of the North Platte VORTAC extending from the 4.6-mile radius to the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 North Platte, NE [Revised]

North Platte Regional Airport, Lee Bird Field, NE
(lat. 41°07′34″N., long. 100°41′14″W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of North Platte Regional Airport, Lee Bird Field.

Issued in Kansas City, MO, on June 16, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18347 Filed 7–19–99; 8:45 am]

BILLING CODE 49°0–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8806]

RIN 1545–AV94

Employee Stock Ownership Plans; Section 411(d)(6) Protected Benefits (Taxpayer Relief Act of 1997); Qualified Retirement Plan Benefits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Friday, January 8, 1999, (64 FR 1125), relating to employee stock ownership plans and protected benefits under section 411(d)(6) and qualified retirement plan benefits.

DATES: This correction is effective January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to this correction are under section 411 of the Internal Revenue Code.

Need for Correction

On January 8, 1999, final regulations (TD 8806) were published in the **Federal Register** at 64 FR 1125. These regulations inadvertently amended § 1.411(d)–4 Q&A–2(d)(2)(ii) instead of § 1.411(d)–4 Q&A–2(d)(1)(ii). This document is correcting this amendment by providing the correct language for § 1.411(d)–4 Q&A–2(d)(1)(ii) and restoring the language for § 1.411(d)–4 Q&A–2(d)(2)(ii).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.411(d)–4 [Corrected]

Par. 2. Section 1.411(d)–4 Q&A–2 is amended by:

1. Removing paragraph (d)(1)(ii).

2. Redesignating paragraph (d)(2)(ii) as paragraph (d)(1)(ii).

3. Adding paragraph (d)(2)(ii).

The addition reads as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

Q–2: * * *

A–2: * * *

(d) * * *

(2) * * *

(ii) *ESOP investment requirement.* Except as provided in paragraph (d)(2)(iii) of this Q&A–2, benefits provided by employee stock ownership plans will not be eligible for the exceptions in paragraph (d)(1) of this Q&A–2 unless the benefits have been held in a tax credit employee stock ownership plan (as defined in section 409 (a)) or an employee stock ownership plan (as defined in section 4975 (e)(7)) subject to section 409 (h) for the five-year period prior to the exercise of employer discretion or any amendment affecting such benefits and permitted under paragraph (d)(1) of this Q&A–2. For purposes of the preceding sentence, if benefits held under an employee stock ownership plan are transferred to a plan that is an employee stock ownership plan at the time of transfer, then the consecutive periods under the transferor and transferee employee stock ownership plans may be aggregated for purposes of meeting the five-year requirement. If the benefits are held in an employee stock ownership plan throughout the entire period of their existence, and such total period of existence is less than five years, then such lesser period may be substituted for the five year requirement.

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–18394 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–039–FOR, Amendment No. XXVIII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revising its statute prescribing who may preside over formal hearings and informal conferences.

The amendment is intended to revise a North Dakota State statute to be consistent with its counterpart State regulation.

DATES: *Effective date:* July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 207/261–6550, Internet address: GPadgett@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated March 31, 1999, North Dakota submitted a proposed amendment to its program (Amendment number XXVIII, administrative record No. ND–CC–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative. The provision of the North Dakota Century Code (NDCC) that North Dakota proposes to revise is: NDCC 38–14.1–30.3.f, concerning formal hearings on surface coal mining and reclamation permit applications.

We announced receipt of the proposed amendment in the April 15, 1999, **Federal Register** (64 FR 18586), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–CC–08). Because no one requested a public hearing or meeting, none was held.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on March 31, 1999, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

Substantive Revisions to North Dakota's Statute That Are Substantively Identical to the Corresponding Provisions of SMCRA

North Dakota proposes revisions to the following statute that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal provisions in SMCRA (listed in parentheses).

NDCC 38–14.1–30.3.f (SMCRA 514(c)), formal hearings on surface coal mining and reclamation permit applications.

Because this proposed North Dakota statute is substantively identical to the corresponding pertinent provisions of Subsection 514(c) of SMCRA which deals with who may preside at administrative hearings or appeals thereof, the Director finds that it is no less stringent than SMCRA and therefore she approves it.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that we received, and our responses to them.

1. Public Comments

We invited public comments on the proposed amendment, but none was received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program (administrative record No. ND–CC–03).

The Natural Resources Conservation Service of the U.S. Department of Agriculture responded on April 15, 1999, that it concurred with the changes (administrative record No. ND–CC–04).

The Bureau of Indian Affairs of the U.S. Department of the Interior responded on April 24, 1999 that it did not have any objections or comments that would adversely affect the final review and approval (administrative record No. ND–CC–05).

The Bureau of Reclamation of the U.S. Department of the Interior responded on April 28, 1999, that it had no comments on the proposed amendment (administrative record No. ND–CC–06).

The U.S. Army Corps of Engineers responded on April 29, 1999, that its review of the proposed project found it to be satisfactory (administrative record No. ND–CC–07).

The U.S. Fish and Wildlife Service responded on May 11, 1999, that it did not anticipate any significant impacts to fish and wildlife resources. . . . (administrative record No. ND–CC–09).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

None of the revisions that North Dakota proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment on April 9, 1999 (administrative record No. ND–CC–03). EPA did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND–CC–03). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, we approve North Dakota's proposed amendment as submitted on March 31, 1999.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 6, 1999.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
March 31, 1999	July 20, 1999	NDCC 38–14.1–30.3.f.

[FR Doc. 99–18439 Filed 7–19–99; 8:45 am]

Background and Purpose

nautical miles of this anchorage ground

have a significant economic impact on

3. In § 110.155, add paragraph (

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[FR Doc. 99–18439 Filed 7–19–99; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD01–97–086]

RIN 2115–AA98

Anchorage Grounds: Hudson River, Hyde Park, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing Federal Anchorage 19–A in the Hudson River near Hyde Park, NY. This action is necessary to provide an anchorage ground on the Hudson River for vessels awaiting favorable tides and/or daylight for passage to facilities north of New York City. This action is intended to increase safety for vessels transiting the Hudson River by providing an anchorage ground away from congested traffic lanes used in New York Harbor.

DATES: This final rule is effective August 19, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 10, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Anchorage Grounds; Hudson River, Hyde Park, NY in the **Federal Register** (63 FR 37297). The Coast Guard received two letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

On March 31, 1999, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) entitled Anchorage Grounds: Hudson River, Hyde Park, NY in the **Federal Register** (64 FR 15322). The Coast Guard received no letters commenting on the supplemental proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Hudson River Pilots Association requested that the Coast Guard establish a federal anchorage ground in the Hudson River near Hyde Park, New York. The closest anchorage to the requested anchorage is down river to anchorage number 17, the northern boundary of which lies between the Yonkers municipal pier and the pilot station just to the north. The area that the Pilots Association has suggested for consideration is bound by the following coordinates:

NW corner: 41° 48′ 35″ N 073° 57′ 00″ W.
NE corner: 41° 48′ 35″ N 073° 56′ 44″ W.
SE corner: 41° 47′ 32″ N 073° 56′ 50″ W.
SW corner: 41°47′32″N 073°57′10″W. (NAD 1983)

The Coast Guard received two letters commenting on the NPRM. Comments received prompted the Coast Guard to reevaluate the proposal.

One comment recommended that a minimum size of 65 feet in length be established for vessels authorized to use the anchorage because the smaller vessels would be less visible at anchor, even if they displayed the required lights or day shapes, and pose a potential hazard to mariners. The comment noted that the entire anchorage area, including the area outside the designated navigation channel, is routinely transited by vessels of various sizes and that the Special Anchorage Area at Hyde Park, NY, (33 CFR 110.60(p–3)) is available for use by vessels less than 65 feet in length. This Special Anchorage Area at Hyde Park, NY that the comment referred to was disestablished on June 1, 1998 (63 FR 23662). However, in response to these safety concerns, the Coast Guard re-evaluated the NPRM. Upon further analysis, the Coast Guard agreed that safety concerns warranted a minimum vessel length restriction and a SNPRM including this restriction was published. The safety concerns stem from the high number of vessels that transit the area of Anchorage 19–A and from background lighting on shore that will interfere with smaller vessels' anchorage lights.

In the SNPRM, the Coast Guard proposed an additional regulation restricting vessels less than 20 meters in length from using this anchorage ground without prior approval from the Captain of the Port, New York. The Coast Guard believes this restriction is reasonable given the noted safety concerns and that there are over 75 transient berths at 8 marinas within approximately 15 nautical miles of this anchorage ground for use by vessels less than 20 meters in length. Additionally, the Coast Guard is aware that transient vessels anchor to the east of Esopus Island in order to use the island as a breakwater to block the wake action caused by commercial shipping transiting the Hudson River. This protected area may be easily used by vessels less than 20 meters in length as an alternative to Anchorage 19–A because Esopus Island is approximately 500 yards north of Anchorage 19–A.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the supplemental proposed rulemaking. No changes were made to the supplemental proposed rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the following reasons: Due to icing of the river in winter months, the anchorage will be seasonal in nature, recreational traffic can still traverse the anchorage when necessary, there are over 75 transient berths at 8 marinas within approximately 15 nautical miles of this anchorage ground for use by vessels less than 20 meters in length, and the anchorage ground permits unobstructed navigation in the western 350 yards of the Hudson River.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of informaiton under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Public Law 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, loca, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under paragraph 2–1, pargraph 34(f), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 110 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).;

2. In § 110.155, add paragraph (c)(6) to read as follows:

§ 110.155 Port of New York.

* * * * *

(c) * * *

(6) Anchorage No. 19–A. An area located west of Hyde Park enclosed by the coordinates starting at 41°48′35″N 073°57′00″W; to 41°48′35″N 073°56′44″W; to 41°47′32″N 073°56′50″W; to 41°47′32″N 073°57′10″W; thence back to 41°48′35″N 073°57′00″W (NAD 1983).

(i) No vessel may anchor in Anchorage 19–A from December 16 to the last day of February without permission from the Captain of the Port, New York.

(ii) No vessel less than 20 meters in length may anchor in Anchorage 19–A without prior approval of the Captain of the Port, New York.

* * * * *

Dated: June 30, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–18487 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–99–038]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Beaufort, SC

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Lady's Island Bridge at Beaufort, SC. This rule changes the operating requirements for a seasonal operating schedule to a single annual schedule that coincides with daily traffic volume. The rule permits the draw to remain closed Monday through Friday during morning and afternoon rush hours, from 7:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., and to open on the hour and half hour between rush hours.

DATES: This rule becomes effective August 23, 1999. Comments must be received on or before November 17, 1999.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, Bridge Section, Brickell Plaza Federal Building, 909 S.E. First Avenue, Miami, Florida 33131–3050, or may be delivered to Room 406 at the same address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (305) 536–5621.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt, Project Manager, Bridge Management Specialist, Seventh Coast Guard District, Bridge Section at (843) 747–5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking [CGD07–99–038] and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period and may revise this rule before making it final.

Background and Purpose

The Lady's Island Bridge (also known as the Woods Memorial Bridge) over the AIWW, mile 536.0 at Beaufort, has a vertical clearance of 30 feet at mean high water and 37 feet at mean low water. Presently, the draw opens on signal, except that from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Saturday the draw need open only on the hour. During the months of April, May, June, September, October, and November, Monday through Friday from 9 a.m. to 4 p.m., the draw need open only on the hour, twenty minutes after the hour and forty minutes after the hour.

The City of Beaufort has requested that the Coast Guard change the existing regulations by eliminating openings during morning and evening rush hours, and limiting the openings to twice an hour between rush hours. The operating regulations for this bridge have not been changed since 1986 and vehicular traffic has increased. The new schedule will allow individuals crossing the swingbridge by vehicle to plan their transit times across this swingbridge to avoid delays from bridge openings. The Commander, Seventh Coast Guard

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District has examined the operating requirements listed in 33 CFR 117.911(f) governing the Lady's Island Bridge and has determined that the revised schedule is appropriate for local conditions and should balance the needs of vehicular and vessel traffic. Under this interim rule, from Monday through Friday except Federal holidays, the Lady's Island Bridge will open on signal except that during the morning and afternoon rush hours from 7:30 a.m. to 9 a.m. and 4 p.m. to 6 p.m., the draw need not open. Between rush hours, the draw need only open twice an hour. At all other times, the draw will open on signal. The draw shall open at any time for public vessels of the United States, State and local vessels used in public safety, and vessels in distress where a delay would endanger life or property.

In accordance with 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) for this interim rule. Publishing a NPRM would unnecessarily delay the implementation of the revised bridge opening schedules, since tests have indicated that this operating schedule would balance the needs of vehicular traffic and navigation. The public will have an opportunity to comment on the rule during the first 120 days of its implementation, and changes to the rule may be made before it is finalized.

Regulatory Evaluation

This rule is not a significant regulatory action under the regulatory section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The interim rule is a reasonable balance between waterway and land transportation. Therefore, because it expects the impact of this rule to be so minimal, the Coast Guard certifies that under 5 U.S.C. 604(b) this rule will not have a significant economic impact on a substantial number of small entities.

If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principals and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has determined, under Figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" has been prepared and is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations: In consideration of the foregoing, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.911(f) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(f) *Lady's Island Bridge, across the Beaufort River, Mile 536.0 at Beaufort.* The draw shall operate as follows:

(1) On Monday through Friday, except Federal holidays:

(i) from 7:30 a.m. to 9 a.m. and 4 p.m. to 6 p.m., the draw need not open; and,

(ii) from 9 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

(2) At all other times the draw shall open on signal.

Dated: July 13, 1999.

Thad W. Allen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–18488 Filed 7–16–99; 10:03 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–091]

RIN 2115–AE47

Drawbridge Operation Regulations; Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the S46 Bridge, mile 14.0, across the Hackensack River at Little Ferry, New Jersey to open on signal after a twenty four hour advance notice is given by calling the number posted at the bridge. There have been no requests to open the S46 Bridge since 1978. This rule is expected to relieve the bridge owner of the requirement to crew the bridge and still meet the needs of navigation.

DATES: This final rule is effective August 19, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, MA, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 18, 1999, the Coast Guard published a notice of proposed rulemaking entitled drawbridge operation regulations; Hackensack River, NJ, in the **Federal Register** [64 FR 8033]. The Coast Guard received no letters commenting on the proposed rulemaking. A hearing was not requested and none was held.

Background and Purpose

The S46 Bridge, at mile 14.0, in Little Ferry, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. The existing operating regulations for the S46 Bridge, listed at § 117.723(f), require the bridge to open on signal, if at least six (6) hours advance notice is given.

The Coast Guard is changing the regulations to require that the S46 Bridge open on signal after a twenty four hour notice is given. The bridge owner, the New Jersey Department of Transportation, asked the Coast Guard to change the regulations to require a twenty four hour notice for bridge openings because there have been no requests to open this bridge since 1978. The Coast Guard believes this change to the regulations is reasonable because the bridge owner has not received a request to open the bridge since 1978.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that no requests to open this bridge have been made since 1978.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2, Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.723(f) is revised to read as follows:

§ 117.723 Hackensack River.

* * * * *

(f) Except as provided in paragraph (a)(1) of this section, the draw of the S46 Bridge, at mile 14.0, in Little Ferry, shall open on signal if at least a twenty four hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: June 30, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–18497 Filed 7–19–99; 8:45 am]

BILLING CODE 4915–01–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes To Implement Nonprofit and Classroom Periodicals Classification Changes and Notice of Refund Procedures

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document sets forth the changes to the Domestic Mail Manual to implement the July 12, 1999, Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission (PRC) on Periodicals Classification Changes. In addition, it contains procedures for obtaining refunds for the difference between postage paid on certain mailings at Periodicals Nonprofit or Classroom rates and postage computed at Periodicals Regular rates on those same mailings.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jerry Lease, 202–268–5188.

SUPPLEMENTARY INFORMATION: On April 9, 1999, the Postal Service filed with the PRC a request for a recommended decision on Periodicals classification changes designed to provide a remedy to a rate anomaly resulting from the last omnibus rate case, Docket No. R97–1. The PRC designated the filing as Docket No. MC99–3. On April 23, 1999, the PRC published a notice of the filing, with a description of the Postal Service's proposal, in the **Federal Register** (64 FR 13613).

On June 23, 1999, the PRC issued to the Governors of the Postal Service its recommended decision on the Postal Service's request. The PRC recommended the changes proposed by the Postal Service. On July 12, 1999, the Governors of the United States Postal Service voted to approve the PRC's recommendations, and the Board of Governors set an effective date of August 1, 1999.

This final rule contains the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Governors' decision. The revised DMM standards take effect on August 1, 1999.

Because of the unusual circumstances of this anomaly, the Postal Service has also decided to make refunds available for the excess of postage paid using Nonprofit or Classroom rate schedules over postage computed using the Regular rate schedule. These circumstances include the following. The anomaly was an unintended byproduct of the highly complex Periodicals rate design process.

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resulting in higher postage for Preferred rate publications than Regular rate publications for certain mail with the same characteristics. Moreover, both the Regular and Preferred rates were available to the publications affected by the anomaly at the time of mailing; and mailers would have qualified for the lower Regular rates if they had surrendered their Nonprofit or Classroom authorizations.

For mailings made prior to August 1, a publisher of a Nonprofit or Classroom Periodicals publication may request a refund for the difference between postage paid at Nonprofit or Classroom rates and postage computed at Regular rates, if the Regular postage is lower. On April 26, 1999, the Postal Service published a notice in the **Federal Register** (see 64 FR 20340–20341) of procedures for tracking differences in postage between Regular rates and Nonprofit or Classroom rates, for the purpose of making refunds for mailings made starting April 9, 1999. The Postal Service has decided that appropriate refunds may be made back to January 10, 1999.

An application for a refund will consist of a written statement that the mailer is currently authorized to use either Classroom or Nonprofit Periodicals rates and wishes to retain that authorization, but also wishes to be considered under these procedures for a refund to be calculated with reference to Regular rate postage statements to be submitted with the refund application and Preferred rate postage statements on file at the post office. Mailers must use the instructions published in the April 26, 1999, **Federal Register** notice. Some publishers may have already submitted refund requests for mailings made between April 9, 1999, and August 1, 1999. Refund requests must be submitted according to published instructions and received no later than September 15, 1999. No refunds will be given for mailings entered on or after August 1, 1999, regardless of whether a mailer could have claimed a lower postage rate.

Under the new rules, the mailer must choose either Regular or Preferred rates for each issue of a publication and complete the applicable postage statement, except that a supplemental mailing at least 10 calendar days after other mailings for the issue can be treated separately. All postage statements for a particular issue should be provided with an application for a refund, but a supplemental mailing at least 10 calendar days after other mailings does not need to be included in calculating refunds.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR Part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as follows:

E Eligibility

E200 Periodicals

* * * * *

E270 Preferred Periodicals

* * * * *

2.0 NONPROFIT RATE—BASIC INFORMATION:

* * * * *

[Add new 2.4 as follows:]

2.4 Rate Anomaly

When the Nonprofit postage computed for a single issue is higher than the Regular postage computed for the same issue, that issue is eligible for postage at Regular rates. Mailers cannot use different rate schedules for the same issue, except for a supplemental mailing for a particular issue entered at least 10 calendar days after other mailings for that issue. Publications claimed at Regular rates under this section with an advertising percentage of 10% or less are considered 100% nonadvertising for Regular rate purposes. Those publications may use "0" as the "advertising percentage" when computing the nonadvertising adjustment to be applied to outside-county piece rate charges.

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5.0 CLASSROOM RATES

* * * * *

[Add new 5.5 as follows:]

5.5 Rate Anomaly

When the Classroom postage computed for a single issue is higher than the Regular postage computed for the same issue, that issue is eligible for postage at Regular rates. Mailers cannot use different rate schedules for the same issue, except for a supplemental mailing for a particular issue entered at least 10 calendar days after other mailings for that issue. Publications claimed at Regular rates under this section with an advertising percentage of 10% or less are considered 100% nonadvertising for Regular rate purposes. Those publications may use "0" as the "advertising percentage" when computing the nonadvertising adjustment to be applied to outside county-piece rate charges.

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–18510 Filed 7–19–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 105–153a; FRL–6378–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; Mojave Desert Air Quality Management District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), the Mojave Desert Air Quality Management District (MDAQMD), and the Ventura County Air Pollution Control District (VCAPCD). The rules control oxides of nitrogen (NO_X) from cement kilns and electric power generating facilities. This approval action will incorporate these three rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: These rules are effective on September 20, 1999 without further notice, unless EPA receives adverse comments by August 19, 1999. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: KCAPCD's Rule 425.3, Portland Cement Kilns (Oxide of Nitrogen); MDAQMD's Rule 1158, Electric Power Generating Facilities; and VCAPCD's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions. These rules were submitted by the California Air Resources Board (CARB) to EPA on October 19, 1994 (Rule 425.3) and March 10, 1998 (Rule 1158 and Rule 59).

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992, proposed rule should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Kern County area is classified as serious; the Southeast Desert Air Basin managed by MDAQMD and the Ventura County area are classified as severe; [1] therefore these areas were subject to the RACT requirements of section 182(b)(2), cited below, and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

The State of California submitted many RACT rules for incorporation into its SIP on October 19, 1994, March 3 and 10, 1998 including the rules being acted upon in this document. This document addresses EPA's direct-final action for KCAPCD Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen); MDAQMD Rule 1158, Electric Power Generating Facilities; and VCAPCD Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions. KCAPCD adopted Rule 425.3 on October 13, 1994, MDAQMD adopted Rule 1158 on August 25, 1997, and VCAPCD adopted Rule 59 on July 15, 1997. The submitted KCAPCD's Rule 425.3 was found to be complete on October 21, 1994; MDAQMD's Rule 1158 and VCAPCD's Rule 59 were found to be complete on May 21, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [2] and are being finalized for approval into the SIP. By today's document, EPA is taking direct final action to approve these rules into the Federally approved SIP.

NO_X emissions contribute to the production of ground level ozone and smog. KCAPCD's Rule 425.3 controls emissions of NO_X from cement kilns; MDAQMD's Rule 1158 and VCAPCD's Rule 58 control emissions of NO_X from electric power generating facilities. These rules were adopted as part of KCAPCD's, MDAQMD's, and VCAPCD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to

[1] Kern County area, Ventura County area, and Southeast Desert Air Basin managed by MDAQMD retained their designations of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

2 EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

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section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently no version of KCAPCD Rule 425.3, Portland Cement Kilns in the SIP. Rule 425.3 controls NO_X emissions from Portland cement kilns operated within the Kern County area. The submitted rule includes the following provisions: applicability, exemptions, definitions, emission limits, compliance determination and monitoring, recordkeeping, test methods, and compliance schedule.

EPA developed alternative control technique (ACT) documents for categories of stationary sources that either emit or have the potential to emit 25 tons per year or more of NO_X, to assist states in making RACT determinations. However, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. Cement kilns have been identified as a major stationary source that emit more than 25 tons of NO_X per year. The ACT for cement kilns provides technical information for use by state and local agencies to develop and implement regulatory programs to control NO_X emissions from cement manufacturing operations. The ACT reports a range of NO_X emission factors from 0.90 to 19.5 lbs./ton for different cement kiln types and processes.

Rule 425.3 sets RACT NO_X emission limits at 11.6 lbs./ton of clinker produced averaged on a 24 consecutive hour period and/or at 6.4 lbs./ton of clinker produced averaged on a 30 consecutive day period. These limits were set based on initial source tests and are comparable to other district NO_X emission limits for cement kilns; they are within the ACT NO_X emissions factors (0.90–19.5 lbs./ton) for cement manufacturing operation.

When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, recordkeeping, and compliance determinations in addition to RACT emission limits. Rule 425.3 strengthens the SIP with enforceable measures such as applicability, definition, emission limits, recordkeeping, test methods, and compliance schedule. Therefore, Rule 425.3 meets the federal RACT by meeting the above requirements.

In evaluating the rule, EPA must determine whether the CAA requirement that RACT will be implemented by May 31, 1995 is met. The rule requires final compliance by May 31, 1995. Kilns that need to retrofit are allowed full compliance by May 31, 1997. Rule 425.3 meets EPA's RACT guideline and May 31, 1995 implementation requirements by requiring RACT be implemented by May 1997 and interim measures including submission of a compliance plan, and an application for authority to construct, are met to ensure progress toward final compliance with the rule.

There is currently no version of MDAQMD's Rule 1158, Electric Power Generating Facilities in the SIP. Rule 1158 controls NO_X emissions from electric power generating facilities within the Southeastern Desert Air Basin managed by MDAQMD. The submitted rule includes the following provisions: applicability, emission limits, exemptions, monitoring requirements, recordkeeping, averaging time, test methods, definitions, and compliance schedule.

EPA established RACT emission levels for electric utility boilers and recommended for other source categories that States/Districts make RACT determinations comparable to those EPA established for electric utility boilers. This comparability should be based on several factors including cost, cost-effectiveness, and emission reductions.

The CARB RACT/BARCT Guidance [4] document for stationary gas turbines suggests the NO_X limits of 42 ppm (gas-fired) and 65 ppm (liquid-fired) for units rated 0.30 MW and greater. EPA has used the NO_X Supplement to the General Preamble (NO_X Supplement) document and the CARB's RACT/BARCT Guidance for gas turbines in evaluating Rule 1158 for consistency with the CAA's RACT requirements.

The RACT limits for utility boilers range 0.20–0.30 pounds of NO_X per million Btu (lbs./MMBtu) (≈167–251 ppm) for burning gaseous and liquid fuels. The emission limits in CARB's RACT/BARCT determination (42/65 ppm) are generally comparable to those specified in the NO_X Supplement for electric utility boilers.

Rule 1158's NO_X emission limits ((70–125 ppm) gas-fired and (115–225 ppm) liquid-fired) for boilers, and (42 ppm (gas-fired) and 65 ppm (liquid-fired) for combined-cycle gas turbines are below or within the NO_X Supplement allowable emission limits (167–251 ppm) for electric utility boilers and the CARB's RACT/BARCT Guidance emission limits (42/65 ppm) for gas turbines. The rule is generally consistent with EPA guidelines and CARB's RACT/BARCT Guidance requirements. The rule contains enforceability measures such as applicability, emission limits, exemptions, monitoring requirements, recordkeeping, averaging time, test methods, definitions, and compliance schedule. The rule also requires final compliance with the emission limits by May 31, 1995. Therefore, Rule 1158 meets the federal RACT guidance and the May 31, 1995 implementation deadline by meeting the above requirements.

On January 22, 1997, EPA approved into the SIP a version of Rule 59, Electric Power Generating Equipment that had been revised by VCAPCD on October 12, 1993. Revisions to this rule were subsequently adopted on July 15, 1997 and submitted to EPA. VCAPCD's submitted Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions includes the following significant changes from the current SIP:

- Rule 59 has been revised so it will apply to any owner/operator of electric power generating steam boilers within VCAPCD area;
- A threshold heat input capacity greater than 300 million British Thermal Unit per hour (MMBtu/hr) has been added;
- The NO_X emission limits have been changed to a uniform and more stringent limit of 0.10 pounds per megawatt hour (lbs./MW-hr);
- The use of continuous emission monitoring (CEM) system to determine compliance has been added;
- Compliance period has been changed from the rolling twenty-four hours to an hourly average not to exceed twenty-four hours;
- Use of 40 CFR 75.10(d)(1) provisions in lieu of the hourly calculation of NO_X emission rates;
- Clarification of the 96-hours exemption during fuel oil system tests;
- Recordkeeping has been increased from four to five years;
- Deletion of extraneous provisions and obsolete requirements in the rule; and

[4] Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for gas turbines (RACT/BARCT Guidance for stationary gas turbines). California Air Resources Board, May 18, 1992.

- Other minor changes of the rule to improve clarity.

When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, recordkeeping, and compliance determinations as well as RACT emission limits. All these elements are already in the SIP-approved version of the rule. The revised rule is more stringent than the SIP approved version of the rule, which was previously determined to meet RACT requirements. EPA believes the addition of 300 MMBtu/hr applicability cut-off and the changing of the compliance period from a 24-hour averaging to a flexible hourly average is not a relaxation restricted under 110(l) of the Act because the heat rate ratings of the existing units affected by this amendment are much higher than the 300 MMBtu/hr cut-off and the hourly averaging is more stringent than the 24-hour average compliance period. The additional reduction obtained beyond those attributable to RACT are assumed necessary for VCAPCD's attainment planning purposes.

A more detailed discussion of the sources controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Documents (TSDs) for KCAPCD's Rule 425.3, MDAQMD's Rule 1158, and VCAPCD's Rule 59 dated June 1, 1999.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, KCAPCD's Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen), MDAQMD's Rule 1158, Electric Power Generating Facilities, and VCAPCD's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 20, 1999 without further notice unless the Agency receives adverse comments by August 19, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 20, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small

entities because SIP approvals under

required information to the U.S. Senate,

(i) * * *

Information Center, U.S. Environmental

Any parties interested in commenting

preferable to other potentially effective

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entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 29, 1999.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(202)(i)(B), (c)(254)(i)(H)(*2*) and (c)(254)(i)(K) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(202) * * *

(i) * * *

(B) Kern County Air Pollution Control District.

(*1*) Rule 425.3, adopted on October 13, 1994.

* * * * *

(254) * * *

(i) * * *

(H) * * *

(*2*) Rule 1158, adopted on February 22, 1995 and amended on August 25, 1997.

* * * * *

(K) Ventura County Air Pollution Control District.

(*1*) Rule 59, adopted on October 6, 1969 and amended on July 15, 1997.

* * * * *

[FR Doc. 99–18360 Filed 7–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD063–3023a; FRL–6379–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland—Fuel Burning Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision does not change current requirements. The intended effect of this action is to approve a change in the terms used in the text of a regulation to more accurately reflect its intended purpose to exempt fuel burning equipment, not installations, from certain general requirements pertaining to sulfur oxides (SO_x) . EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on September 20, 1999 without further notice, unless EPA receives adverse written comment by August 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Artra B. Cooper at (215) 814–2096, or by e-mail at cooper.artra@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 6, 1998, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a technical amendment to the text of COMAR 26.11.06.05—Sulfur Compounds from Other than Fuel Burning Equipment, to more accurately reflect the applicability of the regulation. The amendment changes the term "fuel burning installation" to "fuel burning equipment."

Summary of SIP Revision

The SIP revision consists of a technical amendment that corrects the text of COMAR 26.11.06.05—Sulfur Compounds from Other than Fuel Burning Equipment. The correction removes the term "fuel burning installations" and replaces it with "fuel burning equipment." The intent of the regulation is to exempt fuel burning equipment (boilers) from the provisions found in COMAR 26.11.06.05 because these units are specifically regulated under COMAR 26.11.09—Control of Fuel Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel Burning Installations. This SIP revision simply clarifies the applicability of COMAR 26.11.06.05 and does not change any current emission standards.

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective on September 20, 1999 without further notice unless the Agency receives adverse comments by August 19, 1999. If EPA receives adverse comment, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

II. Final Action

EPA is approving administrative amendments to clarify the applicabilty of COMAR 26.11.06.05—Sulfur Compounds from Other than Fuel Burning Equipment, as submitted by the Maryland Department of the Environment on February 6, 1998.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the

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Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 1999. Filing a petition for reconsideration by the Administrator of this final rule pertaining to technical amendments to COMAR 26.11.06.05, Sulfur Compounds from Other than Fuel Burning Equipment does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: July 8, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(129) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(129) Revisions to the State of Maryland Regulations COMAR 26.11.06.05—Sulfur Compounds from Other than Fuel Burning Equipment submitted on February 6, 1998 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of February 6, 1998 from the Maryland Department of the Environment transmitting amendments to Code of Maryland Administrative Regulations (COMAR) 26.11.06.05—Sulfur Compounds from Other than Fuel Burning Equipment.

(B) Revision to COMAR 26.11.06.05—Sulfur Compounds from Other than Fuel Burning Equipment, effective September 22, 1997 to replace the term "installations" with the term "equipment" throughout the regulation.

(ii) Additional Material.—Remainder of February 8, 1998 submittal.

[FR Doc. 99–18358 Filed 7–19–99; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 64, No. 138
Tuesday, July 20, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225 and 226

RIN 0584–AC82

Modification of the "Vegetable Protein Products" Requirements for the National School Lunch Program, School Breakfast Program, Summer Food Service Program and Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service is proposing to update the requirements on using "Vegetable Protein Products" in the National School Lunch Program, School Breakfast Program, Summer Food Service Program, and Child and Adult Care Food Program (the Child Nutrition Programs) given changes in food technology since the current provisions were adopted. The major changes proposed are to: rename "Vegetable Protein Products" as "Alternate Protein Products;" remove the limit on the amount of these products that can be used; eliminate the requirement that alternate protein products be specially fortified; and update the test used to determine protein quality. These proposed changes would give menu planners more flexibility to incorporate these products into their menus along with the traditional protein sources of meat, poultry and seafood.

DATES: To be assured of consideration, comments must be postmarked on or before September 20, 1999.

ADDRESSES: Comments may be mailed to: Mr. Robert M. Eadie, 3101 Park Center Drive, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Hinners or Ms. Janice Fabina, at the above address or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

What Are Alternate Protein Products and How Are They Used?

In the 1960's, protein products processed from vegetable sources, primarily soybeans, became more prevalent. Because of their low cost and their protein quality, vegetable protein products could be used with meat, poultry and seafood in food items. This blending enhanced use of both meat and vegetable protein products. As the use of alternate protein products increased, we felt that we needed to determine how such products would be credited in the Child Nutrition Programs (CN Programs) in order to give menu planners flexibility while maintaining the nutritional quality of our meals.

Originally, our policies concerning alternate protein products were delineated in informal guidance. In 1983, however, we amended our regulations by adding a section entitled "Alternate Foods for Meals—Vegetable Protein Products" which was located in Appendix A, to 7 CFR Part 210, the National School Lunch Program (NSLP); 7 CFR Part 225, the Summer Food Service Program (SFSP); and 7 CFR Part 226, the Child and Adult Care Food Program (CACFP). Appendix A to Part 210 also applied to 7 CFR Part 220, the School Breakfast Program (SBP).

What Are Vegetable Protein Products (VPP)?

Appendix A to the various CFR Parts identified above defines vegetable (plant) protein products as foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products (VPP) are safe and suitable edible products produced from vegetable (plant) sources such as soybeans, peanuts, wheat, and corn. Because they are both nutritious and versatile, VPP may be included in meals offered in the various CN Programs.

Currently, VPP fortified with iron and zinc may constitute up to 30 percent of the meat/meat alternate component of the food-based menu planning approaches used in all of the CN Programs. However, the VPP fortification and limitation requirements do not apply to menus planned under the nutrient standard approaches of the NSLP and the SBP. The nutrient standard menu planning approaches incorporate nutrient analysis into the process and consequently do not need the assurances provided by the fortification and limitation requirements applied to the food-based approaches.

What are the Current Regulatory Provisions Concerning VPP?

These provisions, all contained in Appendix A to 7 CFR Parts 210, 225, and 226, are:

(1) use of the names and nutritional requirements for VPP developed by the Food and Drug Administration (FDA);

(2) use of VPP in the dry, partially hydrated form, or fully hydrated form;

(3) establishment of appropriate hydration of dry VPP by setting the protein quantity requirements for a product "when hydrated or formulated;"

(4) use of VPP only in combination with meat, poultry or seafood for the meat/meat alternate component;

(5) use of up to 30 percent (by uncooked weight) of fully hydrated VPP as a substitute for meat, poultry, or seafood; and

(6) use of fortified VPP meeting USDA–FNS specifications.

Why is the Amount of VPP Limited?

When the VPP requirements were originally incorporated into the regulations, nutritionists felt that VPP should be limited to no more than a 30 percent substitution level for raw or cooked meat, poultry, or seafood. This limit was established because data from studies available at that time indicated that the bioavailability of iron and zinc decreased when foods were formulated with more than 30 percent VPP. Given these findings, we adopted the 30 percent limitation on VPP use as our policy.

Why Does FNS Require VPP to be Fortified?

Even with the limited use of VPP, we were still concerned that children would not receive adequate levels of certain nutrients. Therefore, as an added precaution, we required that VPP used in the CN Programs be fortified with iron and zinc. We did this so that the fully hydrated VPP was similar to meat

another test in the future, we will

in both nutrients and the bioavailability of minerals.

Why is FNS Proposing to Change the Provisions on VPP?

A lot of progress has been made in the areas of nutrition science, food technology and analysis in the 25 years that have elapsed since the initial formulation of our policies on use of VPP. We need to update our requirements on VPP in conjunction with the continued use of animal sources of protein.

We are also looking for ways to enhance flexibility for menu planners and to assist them in meeting the 1995 *Dietary Guidelines for Americans*. Additional ways are especially needed to help menu planners reduce fat and saturated fat in meals while still maintaining calorie levels and cost-effectiveness.

We also received requests from schools, sponsors and the food industry to allow food items with as much as 100 percent VPP. Unrestricted use of VPP would increase the variety of food items and products that could be offered and would assist schools and sponsors in accommodating the vegetarian and ethnic preferences of the participants in our programs.

Is Crediting of VPP Consistent Among the Menu Planning Approaches?

As a result of recent efforts to improve the meals offered to children, schools now have a variety of menu planning approaches from which to choose. However, the policies for crediting VPP are not consistent among the various menu planning approaches. Two such approaches allow food based menu planning and two others employ nutrient standard menu planning which are based on nutrient analysis of menus. Another option, proposed in a May 15, 1998 rulemaking (63 FR 27162), would permit schools to develop their own "reasonable approach" to menu planning and will be available after publication of a final rule in 1999. However, the limitations and crediting policies for VPP *only* apply to the food-based menu planning approaches. Schools using one of the nutrient standard menu planning approaches do not have to apply the VPP provisions in the Alternate Foods for Meals provisions. This proposal will alleviate these inconsistencies among the various menu planning approaches.

Which Programs Would be Affected by the Proposed Changes?

The current VPP provisions and the proposed changes apply to all CN Programs. However, their greatest impact is on the school meals programs which have the most participants. The SFSP and the CACFP would also benefit from the greater selection of menu items that would result from these proposed changes. However, we understand that these changes may present some new challenges to operators of these programs. Comments related specifically to how these two programs will adopt these proposed modifications are requested.

What are the Proposed Changes to Appendix A?

We are proposing to:

(1) change the name from vegetable protein products (VPP) to alternate protein products (APP) and remove the requirement that APP only be of plant origin;

(2) remove the limitation of 30 percent (by weight) maximum substitution for meat, seafood, or poultry;

(3) remove the fortification requirement; and

(4) update the protein quality test to the Protein Digestibility Corrected Amino Acid Score (PDCAAS) from the currently required Protein Efficiency Ratio (PER) test.

Why Change the Name From VPP to APP?

We are proposing to remove the requirement that protein products used in our programs be derived only from plant protein sources. Instead of the term "Vegetable Protein Products," we are proposing the term "Alternate Protein Products" to indicate that alternate protein products are no longer only vegetable-based. Under our proposal, APP may be derived from animal sources such as whey-based protein products. (Therefore, VPP will be referred to as APP for the remainder of the preamble.)

Why is FNS Proposing to Eliminate the Limit on the Amount of APP That may be Used?

We are proposing to remove the requirement that APP be used only in combination with meat, poultry and seafood by eliminating the requirement that APP be no more than 30 percent (by weight) of the food item. The 30 percent limitation was based on the best data available at the time. That data indicated that alternate protein products appeared to inhibit the absorption of iron and other nutrients.

Current expert opinion (Messina, Bothwell, Cook, et al.) is that moderate intakes of APP will not have a negative affect on the levels of iron and other nutrients in the body. We also believe that removing the limit on use of APP will not adversely affect a child's diet if menu planners follow the recommendations of the Dietary Guidelines on moderation and on offering a variety of foods. If menus with APP, like any foods offered in our programs, are planned with the key elements of moderation and variety in mind, any risk to dietary status should be eliminated.

Why is FNS Proposing to Remove the Requirement for Fortification?

We established the requirement that only fortified VPP be used as an additional safeguard to further assure that children received adequate nutrients. We now can remove this requirement as the additional fortification is unnecessary. In fact, scientific evidence indicates that unrestricted use of *fortified* APP could actually result in excessive intakes of iron and zinc.

Eliminating the requirement on fortification would allow the food industry to directly market their existing products to schools and sponsors as they would no longer need to develop and maintain a special product exclusively for the CN Programs. This would reduce the burden on the food manufacturing industry. Schools and institutions would have a greater selection of products to incorporate into their menus to assist them with meeting our nutrition goals as well with cost effectiveness.

Why is FNS Proposing a Different Test for Protein Quality?

Currently, a Protein Efficiency Ratio (PER) is the only method for protein quality evaluation specified in our regulations. We permitted use of other tests on an exception basis only if the test provided similar information and results as the PER method. The PER method was, at the time of publication of current regulations, in agreement with FDA's prescribed method of determining protein quality. However, in 1993, FDA revised its regulations to require use of the Protein Digestibility Corrected Amino Acid Score (PDCAAS) for all ages except for infants. For children under one, PER remains the best method.

In addition to being more accurate, efficient, and less costly, PDCAAS has generally been recognized as the most appropriate for evaluating protein quality. In order to achieve consistency with FDA regulations and to reflect the latest scientific advances, we are proposing that PDCAAS be our standard method of determining protein quality for APP. Should FDA accept or require another test in the future, we will update our regulations to reflect that change.

As we noted, the PER test is still the preferred method for determining protein quality of APP for infants. We are not, however, requiring that the PER test be conducted as our infant meal pattern is based on specific foods, not the more general food components. Consequently, menu planners are unlikely to offer APP to infants.

Will Protein Quality be Compromised?

In considering possible changes to current requirements, we were concerned about protein quality given the unrestricted levels of APP in food items. There is general scientific agreement that protein quality need not be a major concern, provided that fluid milk continues to be a part of the CN Programs. A study conducted by Reeds and Stuff in 1993 compared meals with several combinations of meat and plant-based proteins. That study found both the protein and specific amino acid contribution of meatless lunches that included milk was adequate. Since fluid milk continues to be a requirement for all menu planning approaches, we do not believe that protein quality poses any significant problems.

There is, however, a current proliferation of protein isolates being developed by the food industry, some of which may be very low in protein quality. Consequently, we intend to maintain a requirement that protein quality of an APP be determined through testing. Further, in order to maintain protein quality, we are not proposing to change the requirement for APP that the biological quality of the protein in the APP be at least 80 percent that of casein (milk protein). This is the established benchmark for a high quality protein product.

In the interests of further maintaining protein quality, we are also retaining the requirement that the protein content of the fully hydrated APP be a minimum of 18 percent by weight. We also retained the requirement that the equivalent of 18 percent protein be provided for dry or partially hydrated forms. The 18 percent protein requirement, use of a more accurate test to determine the protein quality, and requiring a 80 percent PDCAAS score as compared to casein for an acceptable APP all combine to assure the quality of the food items offered to participating children.

How Will Schools and Institutions Know if the APP Meet the Requirements?

We currently require that VPP be labeled in accordance with regulations published by the Food and Drug Administration (FDA). These regulations have since been withdrawn, so we are removing any provisions related to the FDA regulations.

In order to assure that APP used in our programs meet the protein quality standards, we are proposing that manufacturers document that their products meet the following requirements:

1. the APP is processed so that some portion of the non-protein constituents of the food is removed;

2. the biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS); and

3. the APP contains at least 18 percent protein by weight when fully hydrated or formulated.

We are not specifying the form of documentation required. For example, the manufacturer could provide specification sheets, a letter attesting the requirements were met, or could put a label on the product. While we want to assure that the APP used in our programs meet our nutritional standards, we do not want to impose a burden on manufacturers to individually label their products unless they choose to do so.

What APP Will Be Used in the CN Programs?

Currently, the most widely used type of APP used in our programs are soy-based. Because this proposed rule will increase the varieties of products that could be used, we are particularly interested in learning what sorts of APP are available and how they could be used in our programs as well as any future trends for APP. This information will assist us in developing any guidance that may be needed for schools and institutions on how APP can be used to meet all or part of the meat/meat alternate component of the food-based menu planning approaches.

What Technical Amendments Are Being Proposed?

The flexibility provided to school food authorities participating in the NSLP under Appendix A, Alternate Foods for Meals, Alternate Protein Products (formerly entitled "Vegetable Protein Products") (7 CFR part 210, Appendix A) has always been extended to the School Breakfast Program. This rule proposes to formalize this flexibility by adding to 7 CFR Part 220, Appendix A, a new section entitled "Alternate Protein Products."

We are also using this opportunity to redraft the section on APP in Appendix A to each part in plain language as directed by the Vice President. Therefore, the paragraphs in each Appendix A on APP to each section are reorganized for clarity as well as amended to reflect the revisions discussed in this preamble. We would appreciate comments on the format and on other ways in which we can make this information more useful to those who apply these provisions.

Executive Order 12866

This proposed rule has been determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. First, there are relatively few companies

that supply alternate protein products to (7 CFR § 235.11(b)) must follow FNS requirements, Surplus agricultural

that supply alternate protein products to the Child Nutrition Programs. Secondly, removing the fortification requirement eliminates the burden on manufacturers to develop and market a product specially for use in the Child Nutrition Programs. Lastly, menu planners would have greater flexibility to incorporate alternate protein products into their menus along with the traditional protein sources of meat, poultry and seafood.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively. The Child and Adult Care Food Program and the Summer Food Service Program are listed under Nos. 10.558 and No. 10.559, respectively. Each is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments and, for disputes involving procurements by State agencies and sponsors, any administrative appeal procedures to the extent required by 7 CFR Part 3016.

In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) school food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR § 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR § 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR § 235.11(b)) must follow FNS Administrative Review Process as established pursuant to 7 CFR § 235.11(f).

In the Summer Food Service Program, the administrative procedures are set forth under the following regulations: (1) program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR § 225.13; and (2) disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR § 225.17 and 7 CFR Part 3015.

In the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) institution appeal procedures in 7 CFR § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR § 226.22 and 7 CFR 3015.

Paperwork Reduction Act

This proposed rule contains no new paperwork burdens or information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

References/Sources

1. Vernon R. Young; "Soy Protein in Relation to Human Protein and Amino Acid Nutrition"; *Journal of the American Dietetic Association;* 1991.
2. Peter Reeds, Janice Stuff; "Protein Quality and Amino Acid Requirements of Children"; USDA/ARS Children's Nutrition Research Center; 1993.
3. Joanne Slavin; "Nutritional Benefits of Soy Protein and Soy Fiber"; *Journal of the American Dietetic Association;* 1991.
4. Mark Messina, Virginia Messina; *SoyFacts, Soy Foods and Iron; Number 6.*
5. T. H. Bothwell, F. M. Clydesdale, J. D. Cook et al; *Report of the International Nutritional Anemia Consultative Group (INACG);* Nutrition Foundation, Washington, DC.
6. J. D. Cook; "Adaptation in Iron Metabolism"; *American Journal of Clinical Nutrition;* 1990.
1. *The Soy Connection. Health and Nutrition News about Soy;* Volume 1, Number 3; United Soybean Board, Chesterfield, MO, 63017.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

7 CFR Part 225

Food and Nutrition, Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Port 226

Accounting, Aged, Day care, Food and Nutrition Service, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210, 220, 225 and 226 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.10, amend the first sentence of paragraph (k)(3)(i) by removing the words "Vegetable protein products" and adding the words "Alternate protein products" in their place.

3. In § 210.10a, amend the first sentence of paragraph (d)(2)(i) by removing the words "Vegetable protein products" and adding the words "Alternate protein products" in their place.

4. In Appendix A to part 210, entitled Alternate Foods for Meals, revise the undesignated centerheading "Enriched Macaroni Products with Fortified Protein" to read "I. Enriched Macaroni Products with Fortified Protein."

5. In Appendix A to part 210, entitled Alternate Foods for Meals, revise the section entitled "Vegetable Protein Products" to read as follows:

Appendix A to Part 210—Alternate Foods for Meals

* * * * *

II. Alternate Protein Products

A. What are the Criteria for Alternate Protein Products (APP) Used in the National School Lunch Program?

1. An alternate protein product used in meals planned under the food-based menu planning approaches in § 210.10(k) or § 210.10a, whichever is applicable, must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat, poultry or seafood must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs a. through c above.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers provide information on:

(1) the amount by weight of dry alternate protein product in the package;

(2) hydration instructions; and

(3) instructions on how to combine the mix with meat, poultry or seafood.

B. How are Alternate Protein Poducts Used in the National School Lunch Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 210.10 or § 210.10a, whichever is applicable.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How are Commercially Prepared Products Used in the National School Lunch Program?

Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In Appendix A to part 220, entitled Alternate Foods for Meals, revise the undesignated centerheading "Formulated Grain-Fruit Products" to read "I. Formulated Grain-Fruit Products".

3. Add a new section to Appendix A of part 220 entitled, "II. Alternate Protein Products" following the table at the end of the Appendix to read as follows:

Appendix A to Part 220—Alternate Foods for Meals

* * * * *

II. Alternate Protein Products

A. What are the Criteria for Alternate Protein Products (APP) Used in the National School Breakfast Program?

1. An alternate protein product used in meals planned under the food-based menu planning approaches in § 220.8(g) or § 220.8a, whichever is applicable, must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat, poultry or seafood must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs a through c above.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers provide information on:

(1) the amount by weight of dry alternate protein product in the package;

(2) hydration instructions; and

(3) instructions on how to combine the mix with meat, poultry or seafood.

B. How are Alternate Protein Products Used in the National School Breakfast Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 220.8 or § 220.8a, whichever is applicable. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How are Commercially Prepared Products used in the National School Breakfast Program?

Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

* * * * *

PART 225-SUMMER FOOD SERVICE PROGRAM

1. The authority citation for 7 CFR Part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In 225.16, amend the first sentence of paragraph (f)(3) by removing the words "Textured vegetable" and adding the word "alternate" in their place.

3. Revise Appendix A to Part 225, entitled Alternate Foods for Meals, to read as follows:

Appendix A to Part 225—Alternate Foods for Meals

Alternate Protein Products

A. What are the Criteria for Alternate Protein Products (APP) Used in the Summer Food Service Program?

1. An alternate protein product used in meals planned under the provisions in § 225.16 must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat, poultry or seafood must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs a through c above.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers provide information on:

(1) the amount by weight of dry alternate protein product in the package;

(2) hydration instructions; and

(3) instructions on how to combine the mix with meat, poultry or seafood.

B. How are Alternate Protein Products Used in the Summer Food Service Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 225.20.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How are Commercially Prepared Products Used in the Summer Food Service Program?

Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 7 CFR 225 continues to read:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. Revise Appendix A to Part 226, entitled Alternate Foods for Meals, to read as follows:

Appendix A to Part 226—Alternate Foods for Meals

Alternate Foods for Meals

A. What are the Criteria for Alternate Protein Products (APP) Used in the Child and Adult Care Food Program?

1. An alternate protein product used in meals planned under the provisions in § 226.20 must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat, poultry or seafood must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. ("When hydrated or formulated" refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs a through c above.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers provide information on:

(1) the amount by weight of dry alternate protein product in the package;

(2) hydration instructions; and

(3) instructions on how to combine the mix with meat, poultry or seafood.

B. How are Alternate Protein Products Used in the Child and Adult Care Food Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 226.20.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How are Commercially Prepared Products Used in the Child and Adult Care Food Program?

Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

Dated: July 14, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–18433 Filed 7–19–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–92–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. This proposal would require removal of the insulation blankets surrounding the emergency overwing exit hatches. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the freezing of moisture entrapped in the fiberglass/foam insulation installed on the fuselage structure between the overwing exit door and the fuselage door frame and intercostal, which could interfere with the opening of the overwing emergency exit hatches during an emergency evacuation of the airplane.

DATES: Comments must be received by August 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Paolo Farina, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7530; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–92–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. TCA advises that, during airplane maintenance that was carried out within approximately one hour of the last flight of the day, an operator experienced problems removing the emergency overwing exit hatches on three Model CL–600–2B19 series airplanes. An investigation revealed that the problem was due to the freezing of moisture in the fiberglass/foam insulation installed on the fuselage structure between the overwing exit door and the fuselage door frame and intercostal. This condition, if not corrected, could prevent the opening of the emergency overwing exit hatches during an emergency evacuation of the aircraft.

Explanation of Relevant Service Information

Bombardier has issued Canadair Regional Jet Alert Service Bulletin S.B. A601R–25–152, Revision 'A,' dated February 25, 1999, which describes procedures for removal of the insulation blankets surrounding the emergency overwing exit hatches. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. TCA classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–99–01, dated February 9, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

The FAA estimates that 157 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $28,260, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

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PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 99–NM–92–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7067 inclusive and 7069 through 7292 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the freezing of moisture entrapped in the fiberglass/foam insulation installed on the fuselage structure between the overwing exit door and the fuselage door frame and intercostal, which could interfere with the opening of the overwing emergency exit hatches during an emergency evacuation of the airplane, accomplish the following:

(a) Within 100 flight hours or 30 days after the effective date of this AD, whichever occurs first, remove the insulation blankets surrounding the emergency overwing exit hatches in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–25–152, Revision 'A,' dated February 25, 1999.

Note 2: Removal of the insulation blankets surrounding the emergency overwing exit hatches accomplished in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–25–152, dated December 26, 1998, prior to the effective date of this AD, is considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–99–01, dated February 9, 1999.

Issued in Renton, Washington, on July 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18413 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–89–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 and –300 series airplanes. This proposal would require modification of the slide/raft evacuation system by installing a girt reinforcement chafing patch. This proposal is prompted by reports of holes in the inflatable area of the slide/raft evacuation system. The actions specified by the proposed AD are intended to prevent holes in the inflatable portion of the slide/raft evacuation system, which could result in the slide/raft being unusable as a raft during an emergency water landing.

DATES: Comments must be received by September 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Air Cruisers Company, Technical Publications Department, P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–89–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of holes in the inflatable portion of certain slide/raft evacuation systems on Boeing Model 757–200 and –300 series airplanes. The holes result from chafing of the slide/raft on a bracket harness assembly used to attach the system to the aircraft door. This condition, if not corrected, could result in the slide/raft being unusable as a raft during an emergency water landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Air Cruisers Company Service Bulletin 757–105–25–51, dated January 29, 1999, which describes procedures for modifying the slide/raft evacuation system by installing a girt reinforcement patch in the area prone to chafing against the bracket harness assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and Service Bulletin

Operators should note that this proposed AD would require modification of the slide/raft within 36 months after the effective date of this AD. The service bulletin recommends that this action should be accomplished, "* * * at the next regular scheduled maintenance to the equipment." In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification (5 hours per airplane). In light of all of these factors, the FAA finds a 36-month compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 445 airplanes of the affected design in the worldwide fleet. The FAA estimates that 310 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $145 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $137,950, or $445 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–89–AD.

Applicability: Model 757–200 and –300 series airplanes, equipped with Air Cruisers Company slide/raft evacuation systems having part and serial numbers identified in Table 1 of this AD; certificated in any category.

Table 1.—Air Cruisers Company Slide/Raft Evacuation Systems Subject to this AD

Name	Part No.	Serial Nos.
Air Cruisers	D30657–( )	Prior to 1132.
Air Cruisers	D30658–( )	Prior to 0859.
Air Cruisers	D30659–( )	Prior to 0860.
Air Cruisers	61570–( )	Prior to 0321
Air Cruisers	61475–( )	Prior to 0137.
Air Cruisers	61475–( )	0138, 0139.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent holes in the inflatable portion of the slide/raft evacuation system, which

Explanation of Relevant Service

the proposed requirements of this AD

Note 1: This AD applies to each airplane

could result in the slide/raft being unusable as a raft during an emergency water landing, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the slide/raft evacuation system in accordance with Air Cruisers Company Service Bulletin 757–105–25–51, dated January 29, 1999.

(b) As of the effective date of this AD, no person shall install a slide/raft evacuation system having a part number and serial number identified in Table 1 of this AD, on any airplane, unless that slide/raft evacuation system has been modified in accordance with Air Cruisers Company Service Bulletin 757–105–25–51, dated January 29, 1999.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18412 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–08–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–300 and A300–600R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310–300 and A300–600R series airplanes. This proposal would require installation of a new cover assembly, associated new drain and vent pipework, and a new electrical harness on the trimmable horizontal stabilizer for the fuel tank water scavenge motive pump. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fuel leakage from the seal of the water scavenge pumps, which, if not corrected, could result in leakage of fuel into fuselage areas not designed for fuel, and consequent potential for fuel to be in contact with a fuel ignition source.

DATES: Comments must be received by August 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–08–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310–300 and A300–600R series airplanes. The DGAC advises that it has received reports of excessive water and ice build-up in the fuel tanks, particularly in the trim tank and inner tanks. This was occurring increasingly during extended twin engine operations (ETOPS), when turn around times were short, and water drainage was ineffective due to frozen drain valves.

In an attempt to reduce the need for manual sumping of the tanks, a water scavenge system was developed. The scavenge system is powered by a dedicated pump installed inside the tank, without canister type outside access. The pumps are located on the rear spar of the wing and on the horizontal stabilizer front spar in the trim tank. These pumps provide the motive force for new jet pumps installed in the tanks. The jet pumps will continually pick up water from the low points in the tanks, and therefore, prevent any ice build-up.

It was found that the trim tank scavenge pump installations did not have a double seal between the tank and fuselage section 19. If the seal on this optionally installed pump does not perform its function, the possibility exists that without a second, normally redundant seal, leakage could occur into the fuselage section 19. This condition, if not corrected, could result in leakage of fuel into fuselage areas not designed for fuel, and consequent potential for fuel to be in contact with a fuel ignition source.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–28–6035, Revision 2, dated March 17, 1993 (for Model A300–600R series airplanes), and Service Bulletin A310–28–2058, Revision 2, dated February 22, 1995 (for Model A310–300 series airplanes), which describe procedures for installation of a new cover assembly, associated new drain and vent pipework, and a new electrical harness on the trimmable horizontal stabilizer for the fuel tank water scavenge motive pump. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 98–354–256(B), dated September 9, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 102 Model A310–300 and A300–600R series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,710. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $704,820, or $6,910 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–08–AD.

Applicability: Model A310–300 and A300–600R series airplanes, except those airplanes on which Airbus Modification 10003 (reference Airbus Service Bulletin A310–28–2058, Revision 2, dated February 22, 1995, or A300–28–6035, Revision 2, dated March 17, 1993) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage from the seal of the water scavenge pumps, which, if not corrected, could result in leakage of fuel into fuselage areas not designed for fuel, and consequent potential for fuel to be in contact with a fuel ignition source, accomplish the following:

Model A310–300 Series Airplanes: Modification

(a) For Model A310–300 series airplanes on which a water scavenge pump has been installed prior to the effective date of this AD, in accordance with Airbus Modification 8679 (reference Airbus Service Bulletin A310–28–2049, dated February 6, 1992; Revision 1, dated June 17, 1992; Revision 2, dated June 3, 1994; or Revision 3, dated April 5, 1996): Within 18 months after the effective date of this AD, install a new cover assembly, associated new drain and vent pipework, and a new electrical harness, in accordance with Airbus Service Bulletin A310–28–2058, Revision 2, dated February 22, 1995.

(b) For Model A310–300 series airplanes on which a water scavenge pump is installed after the effective date of this AD, in accordance with Airbus Modification 8679 (reference Airbus Service Bulletin A310–28–2049, dated February 6, 1992; Revision 1, dated June 17, 1992; Revision 2, dated June 3, 1994; or Revision 3, dated April 5, 1996): The actions required by paragraph (a) of this AD must be accomplished simultaneously with Airbus Modification 8679.

Model A300–600R Series Airplanes: Modification

(c) For Model A300–600R series airplanes on which a water scavenge pump has been installed prior to the effective date of this AD, in accordance with Airbus Modification 8679 (reference Airbus Service Bulletin A300–28–6028, dated February 6, 1992; Revision 1, dated June 5, 1992; Revision 2, dated October 14, 1993; Revision 3, dated April 5, 1996; or Revision 4, dated April 3, 1997): Within 18 months after the effective date of this AD, install a new cover assembly, associated new drain and vent pipework, and a new electrical harness, in accordance with Airbus Service A300–28–6035, Revision 2, dated March 17, 1993.

Note 2: Installation of a new cover assembly, associated new drain and vent pipework, and a new electrical harness in accordance with Airbus Service Bulletin

A300–28–6035, Revision 1, dated December

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A300–28–6035, Revision 1, dated December 4, 1992, is considered acceptable for compliance with the requirements specified in paragraph (c) of this AD.

(d) For Model A300–600R series airplanes on which a water scavenge pump is installed after the effective date of this AD, in accordance with Airbus Modification 8679 (reference Airbus Service Bulletin A300–28–6028, dated February 6, 1992; Revision 1, dated June 5, 1992; Revision 2, dated October 14, 1993; Revision 3, dated April 5, 1996; or Revision 4, dated April 3, 1997): The actions required by paragraph (c) of this AD must be accomplished simultaneously with Airbus Modification 8679.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–354–256(B), dated September 9, 1998.

Issued in Renton, Washington, on July 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18411 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–384–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes. This proposal would require replacement of the main landing gear (MLG) uplock actuator on both the left and right MLG with a new redesigned uplock assembly. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the MLG to extend when a "gear down" selection is made.

DATES: Comments must be received by August 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–384–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Paolo Farina, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7530; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–384–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–384–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100 and –300 series airplanes. TCA advises that operators have reported incidents of the main landing gear (MLG) failing to extend (gear hung up) when a down selection is made. The cause is attributed to failure of the uplock unit to disengage due to wear. This condition, if not corrected, could result in a gear-up landing.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–32–98, Revision 'C,' dated July 31, 1998, which describes procedures for replacement of the main landing gear uplock actuator on both the left and right main landing gear with a new redesigned uplock assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–98–26, dated August 26, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 148 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost between $4,030 and $5,016 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $649,720 and $795,648, or between $4,390 and $5,376 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 98–NM–384–AD.

Applicability: Model DHC–8–100 and –300 series airplanes, serial numbers 3 through 339 inclusive, except those on which Modification 8/1828 has been incorporated; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear to extend when a "gear down" selection is made, accomplish the following:

(a) Within 12 months after the effective date of this AD: Replace the uplock actuator with a new, improved part in accordance with deHavilland Service Bulletin S.B. 8–32–98, Revision 'C,' dated July 31, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–26, dated August 26, 1998.

Issued in Renton, Washington, on July 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18410 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

Public Meetings on Proposed Rulemaking on Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: The FAA will hold public meetings on two notices of proposed rulemaking (NPRMs) that were published in the **Federal Register** on July 9, 1999. Those notices are: Modifications of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, and Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area. The FAA will also receive comments on the draft environmental assessment (EA) associated with these rulemakings, which was also published in the **Federal Register** on July 9, 1999. The purpose of these meetings is to provide an additional opportunity for the public to comment on the proposals.

DATES: The meetings will be held on Tuesday, August 17, 1999, beginning at

9:00 a.m. and on Thursday, August 19, 1999, beginning at 9:00 a.m.

ADDRESSES: The meetings will be held at the following locations: August 17, 1999—The Cline Library Assembly Hall (Building 28) on the campus of Northern Arizona University, Knoles Drive, Flagstaff, Arizona.

August 19, 1999—Room 241 in the Frank and Estella Beam Hall on the campus of the University of Nevada at Las Vegas, 4505 South Maryland Parkway, Las Vegas, Nevada.

Persons unable to attend the meetings may send their comments on the NPRMs in triplicate to: U.S. Department of Transportation Dockets, Docket No. (the docket number on the NPRMs), 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted electronically to the Rules Docket by using the following Internet address: 9–NPRM–CMTS@faa.gov. Comments must be marked Docket No. FAA–99–5927 (Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area) or FAA–99–5926 (Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones), as appropriate to the NPRM. Comments on both NPRMs or on the EA should reference both docket numbers.

Comments may be examined in Room Plaza 401 weekdays, except Federal holidays, from 10:00 a.m. to 5:00 p.m.

Written and electronic comments to the docket will receive the same consideration as statements made at the public meeting.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meeting on either of these NPRMs or EA, or questions regarding information on the logistics of the meeting should be directed to Mark Lawyer, Federal Aviation Administration, Office of Rulemaking (ARM–107), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–4531; fax (202) 267–5075; e-mail mark.lawyer@faa.gov.

Technical questions concerning the NPRMs should be directed to:

For the Airspace Modification NPRM—Joe White, Airspace and Rules Program, Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591. Telephone: (202) 267–8783.

For the Commercial Air Tour Limitation NPRM—Alberta Brown, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591. Telephone: (202) 267–8321.

Questions on the draft environmental assessment (EA) should be directed to Tina Hunter, ATA–300, Federal Aviation Administration, 800, Indpependence Ave., SW, Washington, DC 20591; telephone (202) 267–7685.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the meetings is for the FAA to receive comments on two Grand Canyon National Park proposed rules and associated draft EA. Comments from the public at these meetings should be directed specifically to the proposed rules cited above or the draft EA.

The notices of proposed rulemaking to be discussed at the public meetings were published in the **Federal Register** on July 9, 1999. The Airspace Modification NPRM proposes to modify flight-free zones to accommodate concerns expressed by Native Americans and also to accommodate a new route structure. Maps showing this new route structure are made available through a notice of availability that was published in the **Federal Register** on July 9, 1999; maps also will be available at the public meetings. The Commercial Air Tour Limitation NPRM proposes to limit the number of commercial air tours that could be conducted in the Special Flight Rules Area (SFRA) of GCNP. It also contains a reporting requirement for all commercial flights, not just air tours, that are being conducted in the SFRA.

The notice of availability for the draft environmental assessment was issued on July 2, 1999, and published in the **Federal Register** on July 9, 1999.

The closing date for comments on the proposals and the draft EA is September 7, 1999. In order to give the public an additional opportunity to comment on the proposed rules and the draft EA, the FAA is conducting these public meetings.

Persons interested in obtaining a copy of the Grand Canyon proposed rules or the draft EA should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Participation at the Public Meeting

The FAA will explain the purpose and background of the NPRMs and the EA at the beginning of the public meetings.

Persons who wish to present oral statements at the public meeting on the Grand Canyon National Park proposals or draft EA must contact the FAA no later than August 9, 1999. Such requests should be submitted to Mark Lawyer as listed in the section titled **FOR FURTHER INFORMATION CONTACT** and should include a summary of the oral comments to be presented and an estimate of the time needed. Requests received after August 9, 1999 will be scheduled if time is available; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers. This agenda will be available at each meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The following procedures are established to facilitate the public meeting on the NPRMs and draft EA.

1. There will be no admission fee or other charge to attend or to participate in the public meetings. The meetings will be open to all persons who have requested in advance to present statements or who register on the day of the meetings (between 8:30 a.m. and 9:00 a.m.), subject to availability of space in the meeting room.

2. Representatives from the FAA and National Park Service (NPS) will conduct the public meetings. A panel of experts will be present to explain the NPRMs and receive information presented by participants. The FAA chairperson will explain procedural rules specific to these meetings in an introduction at the beginning of each meeting.

3. The public meetings are intended as a forum to seek additional data and to obtain clarification of supporting methodologies from the industry. Participants must limit their presentations and submissions of data to the issues of the NPRMs and the draft EA.

4. The meetings will offer the opportunity for all interested parties to present additional information not currently available to the FAA and NPS.

5. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group. The August 17 meeting may be extended to the evening, if necessary, to accommodate speaking requests. If practicable, the meetings may be accelerated to enable adjournment in less than the time scheduled. Once all speakers have been called upon and all attendees have had an opportunity to comment, the meetings will adjourn.

6. Sign and oral interpretation can be made available at the meetings, as well as an assistive listening device, if requested 10 calendar days before each meeting.

7. The meetings will be recorded by a court reporter. A transcript of the meetings and all material accepted by the panel during the meetings will be included in the public docket, unless protected from disclosure. Each person interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at each meeting.

8. The FAA will review and consider all information presented by participants at the public meetings. Position papers or materials presenting views or information related to the draft NPRMs may be accepted at the discretion of the presiding officer and will be subsequently placed in the public docket. The FAA requests that presenters at the meetings provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the presenter.

9. Statements made by members of the panel are intended to facilitate discussion of the issues or to clarify issues. Comments made at these public meetings will be considered by the FAA before making a final decision on issuance of any final rule.

10. The meetings are designed to solicit public views and more complete information relevant to the NPRMS under consideration. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Washington, DC, on July 14, 1999.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. 99–18502 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of Management Plan/Regulations of the Channel Islands National Marine Sanctuary; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Scoping Meeting

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Scoping meeting.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) was designated in September 1980, and consists of 1,252 square nautical miles of open ocean and near shore habitat approximately 25 miles off the coast of Santa Barbara, California, encompassing the waters surrounding San Miguel, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands from mean high tide to six nautical miles offshore. The present management plan for the Sanctuary was completed in 1982. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) has initiated a review of the management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA. The notice of intent to revise the management plan was issued on June 11, 1999 (64 FR 31528).

The proposed revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen to twenty-four months.

NOAA has already conducted five public scoping meetings (as announced in the notice in 64 FR 31528) to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the sanctuary's management plan and regulations. Because of the interest of individuals and communities located north of the Sanctuary, NOAA has decided to add a scoping meeting for the San Luis Obispo region.

DATES: Written comments should be received on or before August 14, 1999.

The new scoping meeting will be held on Thursday, August 5 at 6:30 p.m.

ADDRESSES: Written comments may be sent to the Channel Islands National Marine Sanctuary (Management Plan Review), 113 Harbor Way, Santa Barbara, California 93109. Comments will be available for public review at the same address.

The new scoping meeting will be held at the PG and E Community Center, 6588 Ontario Road, San Luis Obispo, California.

FOR FURTHER INFORMATION CONTACT: Anne Walton, Management Plan Specialist, at (805) 884–1470.

Authority: 16 U.S.C. § 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–18458 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–4423–N–05]

Negotiated Rulemaking Committee on Capital Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee Meetings.

SUMMARY: This document announces two meetings of the Negotiated Rulemaking Committee on Capital Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of capital funds to public housing agencies (PHAs).

DATES: The first committee meeting announced by this notice will be held on July 26 and July 27, 1999. The second committee meeting announced by this notice will be held on August 3 and 4, 1999. On the first day of each meeting, the meeting will begin at approximately 9:30 am and run until completion. On the second day of each meeting, the meeting will begin at approximately 9:00 am and run until approximately 5:00 pm.

ADDRESSES: Both committee meetings will take place at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, SW, Washington, DC 20024; telephone

1–800–635–5065 or (202) 484–1000;

formula, HUD believes it is imperative

jointly administered water resources

1–800–635–5065 or (202) 484–1000; FAX (202) 863–4497 (With the exception of the "800" telephone number, these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

On April 26, 1999 (64 FR 20234), HUD announced in the **Federal Register** the establishment of the Negotiated Rulemaking Advisory Committee on Capital Fund Allocation. The purpose of the committee is to discuss and negotiate a proposed rule that would change the current method of determining the allocation of capital funds to public housing agencies (PHAs).

This document announces two meetings of the Negotiated Rulemaking Committee on Capital Fund Allocation. The meetings of the negotiated rulemaking committee will take place as described in the "DATES" and **ADDRESSES** section of this document.

The agenda planned for the committee meetings includes: (1) Discussion of issues related to the development of a Capital Fund formula; (2) development of draft regulatory language; (3) development of agenda for future meetings; and (4) the scheduling of future meetings.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting announcement at least 15 calendar days before the date of an advisory committee meeting). The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting announcement. (See 41 CFR 10–6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area during July, 1999, it has not been possible for HUD to announce the date and location of the July 26 and July 27, 1999 committee meeting before today. Given the October 1, 1999 statutory deadline for implementation of the Capital Fund formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Capital Fund final rule on a timely basis will delay the provision of capital subsidies to PHAs. Accordingly, rather than defer the negotiations, HUD has decided to proceed with the committee meeting on July 26 and July 27, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: July 16, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–18593 Filed 7–19–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

36 CFR Part 327

Public Use of Water Resources Development Projects Administered by the Chief of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Army Corps of Engineers proposes to amend the rules and regulations governing public use of water resources development projects administered by the Chief of Engineers. The regulations contained in this proposed rule are designed to ensure safe, enjoyable, and environmentally sound visitation on the public lands, free from unwarranted disturbances. The regulations accomplish this by setting minimum standards of conduct for individuals using the public lands, and establishing penalties that may be imposed for failure to obey the regulations.

These rules and regulations apply to water resources development projects completed and under construction, which are administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects, which are under the administrative jurisdiction of the Chief of Engineers.

DATES: Comments must be received by August 19, 1999.

ADDRESSES: Submit comments to U.S. Army Corps of Engineers, ATTN: CECW–ON, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Austin, Outdoor Recreation Planner, 202–761–1796.

SUPPLEMENTARY INFORMATION:

Required Determinations

Executive Order 12291

This proposed rule is not a major rule as defined by Executive Order 12291.

Regulatory Flexibility Act Determination (5 U.S.C. 601 et seq.)

As required by the Regulatory Flexibility Act, the U.S. Army Corps of Engineers certifies that these regulatory amendments will not have a significant impact on small business entities. This rule is an update to the current regulations governing public use on Corps of Engineers Water Resources Development Projects.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act.

Unfunded Mandates Reform Act (2 U.S.C. 1502 et seq.)

This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more on State, local, or tribal governments or private entities.

The amendments to 36 CFR Chapter III Part 327 are necessary to clarify and strengthen selected regulations for more effective management and to enhance public safety and enjoyment of Corps water resource development projects. Some of the sections have been reworded and/or have had information added or deleted to clarify the regulations. These minor changes are editorial in nature and have been made to express the intent of the regulation more concisely, and to maintain consistency with existing Public Laws.

Disscussion of Specific Rule Changes:

In Part 327, §§ 327.1 through 327.26, revise all references to "District Engineer" to read "District Commander."

36 CFR 327.0 Applicability

Section 327.0 is republished with no changes.

36 CFR 327.1 Policy

Section 327.1, paragraph (h), is revised to better define the responsibility of an operator or owner of any vehicle, vessel, or aircraft. Paragraph (i) is added to define the responsibility of a registered user of a campsite, picnic area, or other facility.

36 CFR 327.2 Vehicles

Section 327.2, paragraphs (b) and (d), is edited for consistency. A portion of a sentence has been moved from paragraph (d) into a new paragraph (h) to emphasize the laws and regulating authority for the operation of vehicles. Paragraph (e) is revised by removing the word "project" and paragraph (f) is revised by using the word "designated" to define the recreation area.

36 CFR 327.3 Vessels

Section 327.3, paragraph (a), is revised to substitute the term "personal watercraft" for "jetskis" and to add navigation on ice. A portion of a sentence has been moved from paragraph (c) into a new paragraph (k) to emphasize the laws and regulating authority for the operation of vessels. Paragraph (d) is rewritten for ease of readability and to include environmental features. Paragraph (e) has been edited for clarity and to include requirements of enforcement for non-compliance. Paragraph (h) has been modified to include a restriction about mooring vessels to project structures.

36 CFR 327.4 Aircraft

Section 327.4 is revised to include environmental features in paragraph (c), and the retrieval of person or material or equipment from project lands, and the use of balloons in paragraph (e). Paragraph (f)(3) is revised to be consistent with other sections, and to more concisely define navigation rules. Paragraph (f)(6) is revised to remove repetitiveness.

36 CFR 327.5 Swimming

Section 327.5, paragraph (a), is updated to include wading and public docks, and the last sentence is removed to eliminate repetitiveness with paragraph (c) of this section. Paragraph (b) is revised to include appropriate terminology. Paragraph (c) is revised to include the activity of swinging, and to include trees and structures which are adjacent to project waters.

36 CFR 327.6 Picnicking

Section 327.6 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.7 Camping

Section 327.7 is revised to comply with the National Recreation Reservation Service.

36 CFR 327.8 Hunting, Fishing, and Trapping

Section 327.8 is revised by breaking out each activity into separate paragraphs for better clarification.

36 CFR 327.9 Sanitation

Section 327.9, paragraph (a), is revised to include gray water. Paragraph (b) is revised to clarify the responsibility of the owner of garbage as defined in this section. Paragraph (c) is revised to include disposal of wastes for consistency with other paragraphs in this section.

36 CFR 327.10 Fires

Section 327.10, paragraph (b), is revised to include floatation materials and to clarify the regulation of open burnings for environmental considerations.

36 CFR 327.11 Control of Animals

Section 327.11, paragraph (a), is revised to include waters adjacent to developed recreation areas; to include a sentence which provides enforcement for animals which unreasonably disturb other people; to include the prohibition of animals and pets on playgrounds; and to include a sentence on the prohibition of abandoning any animal on project lands or waters. Paragraph (b) is revised to remove the words, "in sanitary facilities". The word "trails" is added to paragraph (c) for clarification on the types of recreation areas at Corps projects. Paragraph (g) is added to this section to restrict the presence of wild or exotic pets and animals, or any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance on project lands and waters unless authorized by the District Commander.

36 CFR 327.12 Restrictions

Section 327.12 is revised by adding resource protection to the list of reasons that a District Commander may close or restrict the use of a project or portion of a project. Paragraph (c) has been modified by changing the phrase "the safety of another person" to "the safety of any person." The list of audio producing devices has been removed in paragraph (d) and is now generalized to read as a "sound producing device" and generators have been added to the examples of motorized equipment. Paragraph (e) is added to clarify the potential prohibition of alcohol on project lands. Paragraph (f) is added to reflect requirements in E.O. 13058, August 9, 1997.

36 CFR 327.13 Explosives, Firearms, Other Weapons and Fireworks

Section 327.13 is revised by adding the words "other weapons" to paragraph (a). Information on explosives and fireworks is moved from paragraph (a) into a new paragraph (b) for clarification purposes.

36 CFR 327.14 Public Property

Section 327.14 is revised to include paleontological resources, and boundary monumentation or markers in paragraph (a). Paragraph (c) is revised to include clarification on site specific prohibitions. Paragraph (d) is added for clarification on metal detectors and is in conformance with existing Corps regulations.

36 CFR 327.15 Abandonment and Impoundment of Personal Property

Section 327.15, paragraph (a), is revised to include public safety or resource protection to the reasons for closure of a public use area. Paragraphs (b) and (c) are switched for better readability. Paragraph (b) is revised to include private facilities, and to include the impoundment of property for consistency with paragraph (c). Paragraph (c) is revised to increase the fair market value of property which may be disposed of after 90 days, and to correct the word "covered" to "conveyed."

36 CFR 327.16 Lost and Found Articles

Section 327.16 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.17 Advertisement

Section 327.17 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.18 Commercial Activities

Section 327.18 is revised by adding the words "project lands or waters", to clarify where the solicitation of business is prohibited.

36 CFR 327.19 Permits

Section 327.19, paragraph (b), is revised for consistency with current Corps of Engineers terminology. The words "Rivers and Harbors" are added to paragraph (c) for clarification of the referenced Act. The words "Water

Quality" are added to paragraph (d) for clarification on the type of required certification.

36 CFR 327.20 Unauthorized Structures

Section 327.20 is revised to include hunting stands or blinds, buoys, and docks in the list of structures for purposes of clarification. The section is also revised by changing the word "agreement" to "authorization" for consistency within the document.

36 CFR 327.21 Special Events

Section 327.21, paragraph (a), is revised to include fishing tournaments in the list of special events. Paragraph (b) is revised to include the restoration of an area to pre-event conditions for consistency with Corps of Engineers regulations.

36 CFR 327.22 Unauthorized Occupation

Section 327.22 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.23 Recreation Use Fees

Section 327.22 is revised by removing paragraph (b) and incorporating the information contained in this paragraph into paragraph (a) for better readability. Paragraph (c) is redesignated as paragraph (b) and a new paragraph (c) is added to include a prohibition on the failure to pay day use fees and to properly display the day use pass. A prohibition about the fraudulent use of a Golden Age or Golden Access Passports is added to paragraph (d). Paragraph (e) is removed for consistency with the National Recreation Reservation Service.

36 CFR 327.24 Interference with Government Employees

Section 327.24, paragraph (a), is revised to include the words "attempt to kill, or kill," for consistency with Title 18, United States Code. Paragraph (b) is revised to include the words "information deemed necessary for," to provide clarification on type of other identification which may be required by a Federal employee in the performance of issuing citations.

36 CFR 327.25 Violations of Rules and Regulations

Section 327.25 is revised to increase the amount of the maximum fine in accordance with 18 USC, section 3571, and to remove duplicate words.

36 CFR 327.26 State and Local Laws

Section 327.26 is revised to include the "possession" of firearms or other weapons, and "alcohol or other controlled substances" to the list of examples which are governed by state and local laws and ordinances. The paragraphs in this section have been renumbered for consistency and better readability.

36 CFR 327.30 and 327.31

These sections are not amended in this proposed rule.

List of Subjects for 36 CFR Chapter III Part 327

Natural Resources, Penalties, Public Lands, Recreation and Recreation Areas, Resource Management, Water Resources.

Dated: July 13, 1999.

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director of Civil Works.

For the reasons set forth in the preamble, amend Part 327 of Title 327 of the Code of Federal Regulations as follows:

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCES DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for Part 327 is revised to read as follows:

Authority: 16 U.S.C. 460d; 16 U.S.C. 4601–6a; and Sec. 210, Pub. L. 90–483, 82 Stat. 746.; 33 U.S.C. 1, 28 Stat. 362.

2. Sections 327.0 through 327.26 are revised to read as follows:

§ 327.0 Applicability.

The regulations covered in this part 327 shall be applicable to water resources development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, state and local laws and regulations remain in full force and effect where applicable to those water resources development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term "District Commander" shall include the authorized representatives of the District Commander.

(c) The term "project" or "water resources development project" refers to the water areas of any water resources development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resources development project.

(d) All water resources development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Commander by lease, license or other written agreement.

(f) The regulations in this part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resources development projects administered by the Chief of Engineers, to the extent that the regulations in this part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this part 327, the operator of any vehicle, vessel or aircraft as described herein shall be presumed to be responsible for its use on project property. In the event where an operator cannot be determined, the owner of the vehicle, vessel, or aircraft, whether attended or unattended, will be presumed responsible. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25.

(i) For the purposes of this part 327, the registered user of a campsite, picnic area, or other facility shall be presumed to be responsible for its use. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to

the use of such facilities as provided for in § 327.25.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, minibikes, snowmobiles, dune buggies, all-terrain vehicles, and trailers, campers, bicycles, or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions and regulations, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Commander. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier is prohibited.

(d) Vehicles shall be operated in accordance with posted restrictions and regulations.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(f) At designated recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Commander, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(h) Vehicles shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, personal watercraft, and any other such equipment capable of navigation on water or ice, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations and restrictions, including buoys. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is on project waters.

(d) No person shall operate any vessel or other watercraft in a careless, negligent, or reckless manner so as to endanger any person, property, or environmental feature.

(e) All vessels, when on project waters, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with boating safety laws issued and enforced by the state in which the vessel is located. Owners or operators of vessels not in compliance with this section may be requested to remove the vessel immediately from project waters until such time as items of non-compliance are corrected.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are not to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any person, property or environmental feature.

(h) Vessels shall not be attached or anchored to structures such as locks, dams, buoys or other structures unless authorized by the District Commander. All vessels when not in actual use shall be removed from project lands and waters unless securely moored or stored at designated areas approved by the District Commander. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L. 92–75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Commander, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(k) All vessels or other watercraft shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.4 Aircraft.

(a) This Section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultra-light aircraft, motorized hang gliders, hot air balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Commander is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Commander or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(d) Nothing in this section bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery or retrieval of any person, material or equipment by parachute, balloon, helicopter or other means onto or from project lands or waters without written permission of the District Commander is prohibited.

(f) In addition to the above provisions, seaplanes, as defined below, are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff,

Commander. Abandonment of any

herein called seaplanes, at the risk of owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Commander (pursuant to part 328 of this Title) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with U.S. Coast Guard navigation rules for power boats or vessels and § 327.3.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Commander. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Commander, for periods less than 24 hours providing:

(i) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public and

(ii) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Commander following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless approved by the District Commander.

§ 327.5 Swimming.

(a) Swimming, wading, snorkeling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and public docks, or other areas so designated by the District Commander.

(b) An international diver down, or inland diving flag must be displayed during underwater activities.

(c) Diving, jumping or swinging from trees, bridges or other structures which cross or are adjacent to project waters is prohibited.

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Commander.

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Commander.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Commander.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance at a campsite for the purpose of reserving a campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Commander is prohibited.

(e) Occupying or placement of any camping equipment at a campsite which is posted as "reserved" without an authorized reservation for that site is prohibited.

§ 327.8 Hunting, fishing, and trapping.

(a) Hunting is permitted except in areas and during periods where prohibited by the District Commander.

(b) Trapping is permitted except in areas and during periods where prohibited by the District Commander.

(c) Fishing is permitted except in swimming areas, on boat ramps or other areas designated by the District Commander.

(d) Additional restrictions pertaining to these activities may be established by the District Commander.

(e) All applicable Federal, State and local laws regulating these activities apply on project lands and waters, and shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, gray water, or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Commander. For the purposes of this regulation, the owner of any garbage, trash, rubbish, debris, dead animals or litter of any kind shall be presumed to be responsible for proper disposal. Such presumption will be sufficient to issue a citation for violation.

(c) The spilling, pumping, discharge or disposal of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resources development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Commander.

(b) Fires shall be confined to those areas designated by the District Commander, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic and other floatation materials or treated wood products is prohibited. The District Commander may prohibit open burning of any type for environmental considerations.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas or adjacent waters unless penned, caged, on a leash under six feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. No person shall allow animals to bark or emit other noise which unreasonably disturbs other people. Animals and pets, except properly trained animals assisting those with disabilities (such as seeing-eye dogs), are prohibited in sanitary facilities, playgrounds, swimming beaches and any other areas so designated by the District Commander. Abandonment of any animal on project lands or waters is prohibited. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas or on trails except in areas designated by the District Commander.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Commander.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Commander, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

(g) Wild or exotic pets and animals (including but not limited to cougars, lions, bears, bobcats, wolves, and snakes), or any pets or animals displaying vicious or aggressive behavior or otherwise posing a threat to public safety or deemed a public nuisance, are prohibited from project lands and waters unless authorized by the District Commander, and are subject to removal in accordance with Federal, state and local laws.

§ 327.12 Restrictions.

(a) The District Commander may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Commander may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, resource protection or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Commander. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of any person is prohibited. Individuals who are boisterous, rowdy, disorderly, or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any sound producing or motorized equipment, including but not limited to generators, vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) The possession and/or consumption of alcoholic beverages on any portion of the project land or waters, or the entire project, may be prohibited when designated and posted by the District Commander.

(f) Unless authorized by the District Commander, smoking is prohibited in Visitor Centers, enclosed park buildings and in areas posted to restrict smoking.

§ 327.13 Explosives, firearms, other weapons and fireworks.

(a) The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons is prohibited unless:

(1) In the possession of a Federal, state or local law enforcement officer;

(2) Being used for hunting or fishing as permitted under Section 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;

(3) Being used at authorized shooting ranges; or

(4) Written permission has been received from the District Commander.

(b) Possession of explosives or explosive devices of any kind, including fireworks or other pyrotechnics, is prohibited unless written permission has been received from the District Commander.

§ 327.14 Public Property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, paleontological resources, boundary monumentation or markers and vegetative growth, is prohibited except when in accordance with written permission of the District Commander.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Commander.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted, unless prohibited and posted by the District Commander.

(d) The use of metal detectors is permitted on designated beaches or other previously disturbed areas unless prohibited by the District Commander for reasons of protection of archaeological, historical or paleontological resources. Specific information regarding metal detector policy and designated use areas is available at the Manager's Office. Items found must be handled in accordance with Part 327.15 and Part 327.16 except for non-identifiable items such as coins of value less than $25.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area or for the purpose of providing public safety or resource protection, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Commander, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) Personal property placed on Federal lands or waters adjacent to a private residence, facility and/or developments of any private nature for more than 24 hours without permission of the District Commander shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to impound the property and/or issue a citation as provided for in § 327.25.

(c) The District Commander shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if

it has a fair market value of $100 or

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it has a fair market value of $100 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Commander. The net proceeds from the sale of property shall be conveyed into the Treasury of the United States as miscellaneous receipts.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Commander. Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial Activities.

(a) The engaging in or solicitation of business on project land or waters without the express written permission of the District Commander is prohibited.

(b) It shall be a violation of these regulations to refuse to or fail to comply with any terms, clauses or conditions of any lease, license or agreements issued by the District Commander.

§ 327.19 Permits.

(a) It shall be a violation of these regulations to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Commander under the authority of this regulation. District Commanders will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Manager's office.

(c) Permits for non-floating structures (issued under the authority of § 327.30) of any kind constructed, placed in or affecting waters of water resources development projects where such waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Rivers and Harbors Act approved March 3, 1899 (33 USC 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under Section 404 of the Clean Water Act (33 USC 1344). (See 33 CFR parts 320–330.)

(d) Permits for non-floating structures (issued under the authority of § 327.30) of any kind in waters of water resources development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States, shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under section 404 of the Clean Water Act (33 USC 1344) (See CFR parts 320–330). Water quality certification may be required pursuant to Section 401 of the Clean Water Act (33 USC 1341).

(e) Shoreline Use Permits to authorize private shoreline use facilities, activities or development (issued under the authority of Section § 327.30) may be issued in accordance with the project Shoreline Management Plan. Failure to comply with the permit conditions issued under Section 327.30 is prohibited.

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs, hunting stands or blinds, buoys, docks, or landscape features) of any kind under, upon, in or over the project lands, or waters is prohibited unless a permit, lease, license or other appropriate written authorization has been issued by the District Commander. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license, or other written authorization is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Commander.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, fishing tournaments, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Commander. An appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Commander has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Commander shall have authority to revoke permission, require removal of any equipment, and require restoration of an area to pre-event condition, upon failure of the sponsor to comply with terms and conditions of the permit/permission or the regulations in this part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining the same as a full- or part-time residence without the written permission of the District Commander is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Commander.

§ 327.23 Recreation use fees.

(a) In accordance with the Land and Water Conservation Fund Act of 1965 (16 USC 460l) and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, the Corps of Engineers collects day use fees, special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) Where such fees are charged, the District Commander shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88–578, 78 Stat. 897, as amended (16 USC 460l-6a), is prohibited and is punishable by a fine of not more than $100.

(c) Failure to pay authorized day use fees, and/or properly display applicable receipt, permit or pass is prohibited.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at Federally operated areas.

Fraudulent use of a Golden Age or Golden Access Passport is prohibited.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 111 and 1114 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with, attempt to kill or kill any civilian official or employee for the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out these regulations are also a violation of these regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to these regulations shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other information deemed necessary for identification upon request of the Federal employee, when that employee is authorized by the District Commander to issue citations in the performance of the employee's official duties.

§ 327.25 Violations of Rules and Regulations.

(a) Any person who violates the provisions of these regulations, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than $5,000 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Commander shall have the authority to issue a citation for violation of these regulations, requiring any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located (16 USC 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 111 or section 1114 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided under Federal or state law, as the case may be.

§ 327.26 State and local laws.

(a) Except as otherwise provided herein or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

(1) Operation and use of motor vehicles, vessels, and aircraft;

(2) Hunting, fishing and trapping;

(3) Use or possession of firearms or other weapons;

(4) Civil disobedience and criminal acts;

(5) Littering, sanitation and pollution; and (6) Alcohol or other controlled substances.

(b) These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

[FR Doc. 99–18426 Filed 7–19–99; 8:45 am]
BILLING CODE 3710–92–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 99–4 CARP DPRA]

Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of initiation of negotiation period.

SUMMARY: The Copyright Office of the Library of Congress is announcing the initiation of the negotiation period for determining reasonable rates and terms for digital transmissions that constitute a digital phonorecord delivery for the period commencing January 1, 2001. This negotiation period is intended to promote an industry-wide agreement as to the rates and terms for digital phonorecord deliveries.

DATES: The negotiation period begins on July 20, 1999, and ends on December 31, 1999. Petitions for an arbitration for rate adjustment must be filed during the year 2000.

ADDRESSES: If sent by mail, an original and five copies of the petition should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of the petition should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380 or Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 ("Digital Performance Right Act"), Pub. L. 104–39, 109 Stat. 336. Among other things, it confirms and clarifies that the scope of the statutory license to make and distribute phonorecords of nondramatic musical compositions, 17 U.S.C. 115, includes the right to distribute or authorize distribution by means of a digital transmission which constitutes a "digital phonorecord delivery." 17 U.S.C. 115(c)(3)(A). A "digital phonorecord delivery" is defined as "each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording * * *." 17 U.S.C. 115(d).

The Digital Performance Right Act established that the rate for all digital phonorecord deliveries ("DPDs") made or authorized under a compulsory license on or before December 31, 1997, was the same as the rate in effect for the making and distribution of physical phonorecords for that period. 17 U.S.C. 115(c)(3)(A)(i). For digital phonorecord deliveries made or authorized after December 31, 1997, the Digital Performance Act established a two-step process for determining the terms and rates: either the copyright owners of nondramatic musical works and those persons entitled to obtain a license may negotiate the rates and terms for the statutory license, or they may participate in a Copyright Arbitration Royalty Panel ("CARP") proceeding. 17 U.S.C. 115(c)(3)(A)–(D). Such rates and terms, whether negotiated by the parties or determined by a CARP, are to distinguish between "digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general." 17 U.S.C. 115(c)(2)(C)–(D). This two-step process is to be repeated "in each fifth calendar year after 1997," 17 U.S.C. 115(c)(3)(F), unless the parties agree to different years for the repeating

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and concluding of such proceedings. 17 U.S.C. 115(c)(3)(B)–(F).

The first proceeding to adjust the royalty rates for the delivery of digital phonorecords concluded earlier this year. In that proceeding, the parties reached an industry-wide agreement setting the rate for the delivery of digital phonorecords and deferring until the next scheduled rate adjustment proceeding the determination of the rate for the delivery of a digital phonorecord where the reproduction or distribution is incidental to the transmission which constitutes a digital phonorecord delivery. In accordance with § 251.63(b), the Librarian published a notice in the **Federal Register** requesting public comment on the proposed rates and terms. 63 FR 71249 (December 24, 1998). Upon receiving no comments opposing the rates and terms for the delivery of digital phonorecords set forth in the December 24, 1998, notice, the Librarian adopted the proposed rates and amended part 255 of the Copyright Office's rules accordingly. 64 FR 6221 (February 9, 1999). The newly adopted regulation requires that the two-step process for adjusting the royalty rates be repeated in 1999 in order "to determine the applicable rates and terms * * * during the period beginning January 1, 2001." 37 CFR 255.7.

Initiation of Voluntary Negotiations

Pursuant to sections 115(c)(3)(B)–(F) and § 255.7, the Copyright Office of the Library of Congress is initiating the voluntary negotiation period for the determination of reasonable rates and terms for the delivery of digital phonorecords and the delivery of a digital phonorecord where the reproduction or distribution is incidental to the transmission which constitutes a digital phonorecord delivery for the two-year period commencing January 1, 2001. The negotiation period shall run from the date of publication of this notice in the **Federal Register** and end on December 31, 1999. Such terms and rates shall distinguish between (a) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (b) digital phonorecord deliveries in general.

Petitions

In the absence of a license agreement negotiated under 17 U.S.C. 115(c)(3)(B)–(C), a party with a significant interest in establishing reasonable rates and terms for this compulsory license may file a petition to convene a CARP with the Copyright Office. Accordingly, the petition shall detail petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the rate. The petition must also identify the extent to which the petitioner's interest is shared by other owners and users; owners and users with similar interests may file a joint petition. 37 CFR 251.62. Petitions should be filed with the Copyright Office during the year 2000.

Dated: July 15, 1999.

David O. Carson,

General Counsel.

[FR Doc. 99–18489 Filed 7–19–99; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 105–153; FRL–6378–8]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; Mojave Desert Air Quality Management District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_X) emissions from cement kilns and electric power generating facilities.

The intended effect of this action is to regulate emissions of NOx in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by August 19, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District's Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen); Mojave Desert Air Quality Management District's Rule 1158, Electric Power Generating Facilities; and Ventura County Air Pollution Control District's Rule 59, Electric Power Generating Equipment—Oxides of Nitrogen Emissions. These rules were submitted by the California Air Resources Board to EPA on October 19, 1994 (Rule 425.3) and March 10, 1998 (Rule 1158 and Rule 59). For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: June 29, 1999.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–18361 Filed 7–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD063–3023b; FRL–6379–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Fuel Burning Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of amending the text of COMAR 26.11.06.05—Sulfur Compounds from Other than Fuel Burning Equipment. The technical amendment removes the term "fuel burning installations" and replaces it with "fuel burning equipment." The intent of the regulation is to exempt fuel burning equipment (boilers) from the general provisions found in this regulation because these units are specifically regulated under COMAR 26.11.09—Control of Fuel Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel Burning Installation. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 19, 1999.

ADDRESSES: Written comments should be addressed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Artra B. Cooper, (215) 814–2096, at the EPA Region III address above, or by e-mail at cooper.artra@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: July 8, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–18359 Filed 7–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 442

[FRL–6400–4]

Data Availability; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On June 25, 1998 (63 FR 34685), EPA proposed technology-based effluent limitations guidelines, pretreatment standards, and new source performance standards for the discharge of pollutants into waters of the United States and into publicly owned treatment works (POTWs) by existing and new facilities that perform transportation equipment cleaning operations. Transportation equipment cleaning (TEC) facilities are defined as facilities that generate wastewater from cleaning the interior of tank trucks, closed-top hopper trucks, rail tank cars, closed-top hopper rail cars, intermodal tank containers, inland tank barges, closed-top hopper barges, ocean/sea tankers, and other similar tanks (excluding drums and intermediate bulk containers) used to transport materials or cargos that come into direct contact with the tank or container interior.

This notice presents a summary of data received in comments since the proposal and an assessment of the usefulness of the data in EPA's analyses; presents new data collected by EPA to support effluent limitations in the Barge/Chemical & Petroleum Subcategory; presents a change from the mass-based limits format of the proposal; presents a modified subcategorization approach; reviews technology options considered for regulation; and discusses other specific issues raised by commenters including: selection of pollutants proposed for regulation, the costs associated with the regulation, a low flow exclusion, and the applicability of the rule. EPA solicits public comment on any of the issues or information presented in this notice of data availability and in the administrative record supporting this notice.

DATES: Submit your comments by September 20, 1999.

ADDRESSES: Submit comments to Mr. John Tinger at the following address: US EPA, Engineering and Analysis Division (4303), 401 M. St. SW, Washington, DC 20460.

The data and analyses being announced today are available for review in the EPA Water Docket at EPA Headquarters at Waterside Mall, Room EB–57, 401 M. St. SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9:00 a.m. and 4:00 p.m. for an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For additional technical information, contact Mr. John Tinger at (202) 260–4992 or at the following e-mail address: Tinger.John@epa.gov. For additional economic information contact Mr. George Denning at (202) 260–7374 or at the following e-mail address: Denning.George@epa.gov.

SUPPLEMENTARY INFORMATION:

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X. Presentation of Concentration-Based Limitations

I. Purpose of This Notice

On June 25, 1998 (63 FR 34685), EPA proposed regulations for the Transportation Equipment Cleaning Point Source Category. EPA has received numerous comments and data submissions concerning the proposal. In this document, EPA is making these new data submissions available for comment. Additionally, EPA is providing a discussion of additional analyses performed relating to specific issues raised by commenters. EPA is also presenting a revised approach to several aspects of the proposal which received numerous comments. EPA solicits comment on all revised approaches that EPA will consider for final action.

II. Data Acquired Since the Proposal

Since proposal, EPA has obtained additional data and information from the industry, publicly owned treatment works (POTWs), and the Agency's continued data collection activities. The Agency has included these data, information, and the preliminary results of EPA's evaluation in sections 15 through 22 of the supporting record of this document, available for review in the Water Docket (see **ADDRESSES** section). The industry and POTW information and data submittals are related to cost of treatment, pass through of pollutants at POTWs, and site visit reports from several facilities visited since proposal. The specific data, information, and comments provided to EPA are discussed in detail throughout the following sections of this document.

The Agency collected treatment performance data from two additional Barge/Chemical & Petroleum facilities operating BPT/BAT treatment. The data consisted of effluent self monitoring data for conventional pollutants over a one year period from both facilities, and effluent self monitoring data for priority pollutants over a one year period from one facility, totaling approximately 190 effluent data points. The facilities also provided self monitoring data for chemical oxygen demand (COD) at the influent to biological treatment over the same time period. Complete site visit reports, raw data results, and statistical methodology are available for review in sections 17 and 21 of the supporting record of this document. EPA recalculated the BPT concentration-based effluent limitations and new source performance standards for biochemical oxygen demand (BOD) and total suspended solids (TSS) based on effluent data from these two facilities.

III. Concentration-Based Limitations

EPA proposed to establish mass-based rather than concentration-based limits for the TEC industry, specified as grams of pollutant per tank cleaned. Numerous stakeholders have identified potential difficulties with implementing mass-based limits as proposed. In proposing mass-based limits, the Agency envisioned that the allowable discharge by a facility would be based on the average number of tanks cleaned at that facility on an annual basis. One of the main difficulties with this approach is the high variability in the number of tanks cleaned by a facility. The nature of a service industry is such that a tank cleaning facility has little control over the number of tanks which are brought in to be cleaned on a daily, monthly, or yearly basis. It is similarly difficult to predict the number of tanks that a facility will clean in an upcoming year. The Agency agrees with commenters that this variation may make it difficult to develop appropriate mass-based limits for a facility.

Additionally, the Agency agrees with stakeholders who have stated that the amount of wastewater necessary to clean a tank is dependent on several factors which may make it difficult for a permitting authority to develop appropriate mass based limits. These factors may not have been fully accounted for in the Agency's calculation of the regulatory flow per tank which was used to establish mass-based limits. For example, the amount of water necessary to clean a tank depends on the cargos accepted (products such as molasses and tar will require more water), the type of tanks cleaned (a tank with an interior frame will require more water to clean), and the condition of the tank (some barges are only cleaned every few years and may have accumulated significant amounts of residue which would require greater volumes of water to clean). Because of the variation in the water volumes which may be necessary to clean a tank, EPA agrees that the regulatory flow per tank developed in the proposal may not be appropriate for some facilities. This in turn could lead to inappropriate calculations of mass-based limits, since mass-based limits are calculated on the basis of flow.

Based on these comments and due to the potential difficulties of implementing mass-based limits, EPA will consider promulgating concentration-based limits for the final regulation. Because of this possibility, EPA has presented revised effluent limitations, pretreatment standards and new source performance standards as concentration-based standards for all subcategories in tables at the end of this notice.

Although EPA will consider promulgating concentration-based limits, EPA believes that there would remain an economic incentive for facilities to use as little water as possible in their cleaning operations. In the cost model developed for the proposal, for example, EPA has assessed the cost to install water conservation measures as well as various end-of-pipe wastewater treatment technologies. EPA has determined that the compliance cost to the industry is generally less when water conservation measures are employed. EPA has therefore continued to cost wastewater flow reduction as a component of treatment options in the truck and rail subcategories, even though it may decide to promulgate concentration-based limits. For the Barge/Chemical & Petroleum Subcategory, however, EPA has eliminated costs for flow reduction because of the high variability in wastewater volumes required for barge cleaning.

EPA solicits comment on setting concentration-based limitations.

IV. Modification to Subcategorization Approach

In the proposal, the Agency solicited comment on an approach to subcategorization that would combine the chemical and petroleum subcategories.

The majority of stakeholders submitting comments supported combining the petroleum and chemical subcategories in order to facilitate implementation of the rule. Stakeholders have identified several specific examples of products and situations where it may be difficult to clearly determine whether a facility would be subject to the chemical or petroleum limitations. EPA agrees that the proposed definition of the petroleum and chemical subcategories are not as clear as the Agency would prefer.

One option to address this would be for EPA to clarify the definitions of the petroleum and chemical subcategories, and therefore to clarify the definitions of "petroleum" and "chemical" cargos. In this instance, EPA would have to make the definitions much more specific to address the numerous applicability issues raised in comments by amending the definition or by specifically listing a significant number of products. EPA believes that this may not be the best approach because it may increase confusion by creating a set of unwieldy definitions which still may not be able to address all potential regulatory circumstances.

In addition, many parties requested that EPA simplify the TEC rule so as to create as little ambiguity as possible. Of particular concern to affected parties was that EPA provide unambiguous, straightforward definitions which provide clear direction for implementation. Therefore, EPA does not believe that augmenting the definition of the petroleum and chemical subcategories would be the best option.

Due to concerns with implementing the subcategorization approach as proposed and the support for this change by commenters, EPA will consider combining the petroleum and chemical subcategories. EPA believes that this approach may provide the most unambiguous and implementable subcategorization scheme.

However, EPA realizes that combining these subcategories would have the consequence of bringing 37 petroleum facilities which the Agency had previously concluded did not merit regulation under coverage of the TEC rule. In the proposal, EPA tentatively decided not to establish limits for the petroleum subcategories due to the low pollutant loadings associated with this segment of the industry. One of the greatest differences in wastewater characteristics between the chemical and petroleum subcategories was the amount of wastewater generated from tank cleaning. Generally, petroleum facilities generate significantly less water than chemical facilities. For example, 288 truck chemical facilities generated 708 million gallons per year of interior cleaning wastewater (average of 2.5 million gallons per facility per year), compared to 34 truck petroleum facilities which generated 2.5 million gallons per year (average of 74,000 gallons per facility per year). For the rail facilities, 38 chemical grade facilities generated 91 million gallons per year (average of 2.4 million gallons per facility per year) compared to three petroleum facilities which generated 2,800 gallons per year (average of 930 gallons per facility per year). The low pollutant loadings associated with the petroleum subcategories can be predominantly attributed to the low wastewater volumes generated from cleaning petroleum products. As discussed in Section V of this notice, EPA is also considering a low flow exclusion of 100,000 gallons per year of regulated TEC process wastewater. As stated above, one reason for not regulating facilities in the petroleum subcategories was due to the low pollutant loads generated by this subcategory. Twenty eight of the 37 facilities in the proposed Truck/Petroleum and Rail/Petroleum Subcategories discharge less than 100,000 gallons of wastewater per year. These facilities also generate much less than 1% of the industry loadings calculated for proposal. Thus, EPA continues to believe that the majority of petroleum facilities do not merit regulation. EPA believes that the approach of excluding facilities on the basis of flow rather than on the basis of cargo would result in a more implementable regulation, and that these changes would be consistent with the rationale and conclusions reached in the proposal.

The combined result of the revised subcategorization approach and low flow exclusion is that one model facility (representing nine facilities) excluded at proposal would be added to the Truck/Chemical & Petroleum Subcategory. This model facility was evaluated as a small business in the impacts analysis and Small Business Regulatory Enforcement Fairness Act (SBREFA) panel report and review (section 12, DCN T10301 of the proposed record) and dischargers approximately 200,000 gallons per year of TEC wastewater. This facility does not experience closure as a result of compliance costs in the Truck/Chemical & Petroleum Subcategory. In addition, one model facility (representing 11 facilities) previously regulated in the Truck/Chemical Subcategory would be excluded from the regulation.

In the Rail/Chemical & Petroleum Subcategory, two model facilities (representing 8 facilities) previously covered at proposal would be excluded from the regulation if EPA adopts the low flow exclusion. The complete revised costs, loads, and impacts for the subcategories are discussed in section IX of this document.

In addition to combining the chemical and petroleum subcategories, EPA will also consider combining the Truck/Food, Rail/Food, and Barge/Food Subcategories. In the proposal, subcategorization was necessary because the truck, rail, and barge facilities had different regulatory flows per tank which resulted in different mass-based limits for each subcategory. However, if EPA decides to promulgate concentration-based limits, subcategorization by transportation mode is unnecessary and EPA will likely promulgate one set of limits for all food subcategories.

EPA solicits comments on the alternative subcategorization approach that combines the chemical and petroleum subcategories for rail and truck cleaning facilities.

V. Low Flow Exclusion

In the proposal, EPA considered establishing a minimum flow level for defining the scope of the regulation. EPA conducted an analysis of the loads discharged by low flow facilities, but concluded that these facilities discharged proportional loadings and therefore EPA did not propose a low flow exclusion.

Several commenters noted that the lowest flow level EPA considered for an exclusion was 2,000 gallons per day. They suggested that the Agency consider a flow exclusion based on a lower level of wastewater generation. The commenters noted that several POTWs have successfully implemented low flow exclusions of 300 to 500 gallons per day. In order to address these comments, EPA conducted an analysis to determine the effect of a low flow exclusion at 100,000 gallons per year of regulated TEC process wastewater. This equates to approximately 400 gallons per day (assuming 250 days of operation), as was suggested by the commenters. EPA believes that an exclusion based on annual flow is more appropriate than daily flow due to the potential daily variation in wastewater generation rates.

Based on this analysis, EPA found that 28 of 37 facilities in the proposed Truck/Petroleum and Rail/Petroleum Subcategories would qualify for the low flow exclusion. Additionally, 11 indirect discharging Truck/Chemical facilities and eight indirect discharging Rail/Chemical facilities would qualify for the exclusion. One model direct discharging Barge/Chemical & Petroleum facility (representing three facilities) would be excluded because the majority of wastewater generated at this facility is subject to another categorical standard, and the facility generates a small amount of TEC wastewater incidental to its main business.

As discussed in section IV, EPA will consider combining the chemical and petroleum subcategories for the Truck and Rail segments of the industry. EPA therefore analyzed the low flow exclusion in terms of this combined

herbicide removals had on the

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subcategorization. EPA determined that the loads from the facilities discharging less than 100,000 gallons per year generated much less than 1% of the total loads for the entire truck and rail subcategories.

Due to the very low loadings associated with facilities discharging less than 100,000 gallons per year, EPA will consider adopting a low flow exclusion from this regulation for the TEC guideline. Additionally, EPA has received comments from commercial and manufacturing facilities that may clean a small number of tanks which may not clearly qualify for the exclusion of manufacturing facilities. EPA believes that the adoption of a low flow exclusion will have the benefit of providing flexibility to these facilities which may be unsure of their regulatory status under the TEC guideline.

EPA envisions that the low flow exclusion would apply to any facility which discharges less than 100,000 gallons per year of regulated TEC process wastewater. Regulated TEC wastewater includes only wastewater generated from a regulated TEC subcategory. Process wastewater includes all wastewaters associated with cleaning the interiors of tanks including, but not limited to: tank trucks; rail tank cars; intermodal tank containers; inland tank barges; and ocean/sea tankers used to transport commodities or cargos that come into direct contact with the tank or container interior. TEC process wastewaters also include wastewater generated from washing vehicle exteriors, equipment and floor washings, and TEC-contaminated stormwater. The revised costs and loads discussed in section IX of this document reflect the deletion of model facilities that discharge less than 100,000 gallons per year of regulated TEC process wastewater.

Facilities discharging less than 100,000 gallons per year of regulated TEC process wastewater will remain subject to limitations and standards established on a case by case basis using best professional judgement by the permitting authority.

EPA requests comment on the low flow exclusion from this regulation of 100,000 gallons per year. EPA additionally requests comment on alternative low flow exclusions between 100,000 and 500,000 gallons per year. EPA notes that an exclusion set at 200,000 gallons per year would exclude the one remaining model facility in the Truck/Chemical & Petroleum Subcategory that EPA did not originally intend to regulate as part of the proposed Truck/Petroleum Subcategory. EPA will analyze the economic and environmental effects of an exclusion set at this flow level and may consider such an exclusion for the final rule.

VI. Revision of Pollutant Loading Estimates

In the proposal, the Agency calculated pollutant loadings for each regulatory option in each subcategory based on the set of pollutants effectively removed by the treatment technology. These loadings were then used for evaluating the various technology options in each subcategory.

In order to determine the list of pollutants effectively removed, EPA used a set of editing criteria to identify pollutants of interest in the subcategory, and to determine which pollutants were effectively treated by the regulatory option. In general, pollutants were only included in the analysis if they were detected in raw wastewater samples from more than one facility, were detected at an average concentration at least five times the minimum level of quantification (ML), and were removed by 50% or more in the proposed treatment option. These criteria were used to ensure that the pollutants were present at treatable concentrations in raw wastewaters, and that the presence of the pollutant was representative of the industry's wastewater, as described in section VIII.C of the proposal.

In the proposal, EPA described that it used a modified set of editing criteria for pesticide and herbicide pollutants than was used for the other pollutants. Due to the relative toxicity of some pesticides and herbicides even at low levels, the Agency proposed that any pesticide or herbicide detected in any raw wastewater sample be considered a pollutant of interest. No other editing criteria were used to determine if a pesticide or herbicide was a pollutant of interest for the industry.

Many commenters were concerned that the pesticides and herbicides account for a large portion of the toxic loads in the Truck/Chemical and Rail/Chemical Subcategories. Several commenters disagreed with the adoption of modified screening criteria and questioned whether these pesticides and herbicides were actually present in raw wastewaters. Specifically, several of the pesticides and herbicides which contributed a significant portion of the toxic loadings were detected at only one or two facilities, and/or were found at levels only slightly above the ML. Also, commenters noted in several instances that the laboratory results from the primary and secondary columns differed by more than a factor of three, thereby resulting in a "best obtainable" qualification of these data. Notably, the detects for coumaphos and azinphos ethyl, which accounted for 74% of the pound equivalent removals in the Truck/Chemical Subcategory Option II, both had this data qualifier. In these instances, commenters argued that the presence of the pesticides and herbicides in the analytical samples may be the result of matrix interference due to the low quantification levels.

Consequently, EPA reviewed the data to confirm that the target analytes were appropriately identified and quantified. EPA reviewed laboratory calculations; compared the database, summary hard copy, and raw data results for transcription errors; double checked all QC data; and evaluated the chromatograms and other raw data. EPA concluded that all calculations were correct and no transcription errors were present among the raw data, summary level, and database results. Blank results showed no signs of contamination, and all calibration verification and ongoing precision and recovery results were within acceptable limits. In addition, surrogate standards, which are spiked into each of the field samples, generated acceptable recoveries. An evaluation of the chromatograms for these samples confirmed that azinphos ethyl and coumophos were appropriately identified within the respective retention time windows of both the primary and secondary columns. The results of this analysis, including the chromatograms, are available for review in section 17.2 of the supporting record for this document.

In instances where the values obtained from the primary and secondary columns differed, the final result reported in the database and used for all Agency calculations is the lower of the two values. This only affected raw wastewater values because effluent wastewater concentrations were generally found below the quantification level, and were therefore set at the ML. Therefore, EPA has consistently used the lowest of the potential sampling values for determining the raw wastewater concentrations, and has used the highest of the potential sampling values for effluent concentrations. This is a conservative approach that likely results in a low bias in subsequent pollutant reduction estimates.

Although the Agency has confirmed the presence of these analytes in wastewater samples, the Agency agrees with commenters that there are concerns about the level of certainty that can be achieved when such low quantification levels are involved. This is a particular concern due to the significant impact that pesticide and herbicide removals had on the calculation of toxic loadings. Therefore, the Agency is considering applying the same editing criteria to pesticides and herbicides as were established in the proposal for all other pollutants.

In this case, EPA would only consider those pollutants detected at more than one wastewater characterization sample and at an average concentration at least five times the ML as a potential pollutant effectively removed. Although EPA has concluded that pollutants such as azinphos ethyl and coumophos are indeed present in TEC wastewaters, EPA also believes that it may be appropriate to utilize the same criteria for pesticide/herbicide pollutants as were used in the proposal for all non-pesticide/herbicide parameters.

EPA has therefore re-evaluated its list of pollutants effectively removed for each subcategory, applying the applicable criteria to pesticides and herbicides. Under this approach, several pesticides and herbicides would be deleted from the list of pollutants effectively removed. This would in turn significantly decreased the toxic pound equivalents attributed to raw and treated TEC wastewaters.

In section VIII of the proposal, EPA also discussed analytical results for dioxins and furans in raw wastewater for the TEC industry. EPA did not include dioxins and furans in the loadings calculations because EPA assumed that these were isolated, site-specific instances. EPA received several comments disagreeing with the Agency's assumption. In response to this, EPA re-evaluated the presence of dioxins and furans in wastewater based on the standard editing criteria described above. EPA found that several pollutants met the editing criteria to be considered a pollutant effectively removed, and EPA has therefore included several dioxin and furan removals in the loadings calculations.

The revised removals of toxic pound equivalents by each technology option are presented in section IX of this document. EPA solicits comment on the revised methodology for calculating pollutant removals.

VII. Discussion of Applicability Issues

A. Coverage of IBCs

In the proposal, EPA indicated that it did not intend to regulate wastewater generated from Intermediate Bulk Containers (IBCs) for several reasons discussed in the preamble and in the report prepared by the Small Business Advocacy Review Panel. IBCs were defined in the proposal as portable containers with 450 liters (119 gallons) to 3000 liters (793 gallons) capacity. Although EPA did not have data to calculate the loads associated with IBC cleaning, EPA assumed that the loadings generated from IBC cleaning were not a significant portion of the loadings of the TEC industry. EPA based this assumption on several data comparisons. First, based on responses to the 1994 detailed questionnaire (section 6.3. DCN T09842 of the proposed record), EPA estimated that 84,500 IBCs per year were cleaned by the TEC industry. This accounted for only 3% of the units cleaned at TEC facilities. Second, EPA assumed that wastewater generated from IBCs is similar to that of the drum reconditioning industry. EPA reasoned that IBCs were being used as a replacement for 55 gallon drums, and that the cargos being transported in IBCs were similar to those being transported in drums. Therefore, resulting IBC wastewater would be expected to be similar to that of drum reconditioning wastewater. EPA had conducted The Preliminary Data Summary for the Drum Reconditioning Industry (EPA 440/1–89/101 September 1989), and EPA concluded at that time that the industry did not merit national regulation. Drum reconditioning facilities were therefore not considered within the scope of the TEC guideline, and EPA concluded that IBCs should also be excluded from the scope of this guideline.

EPA has received comments which have both agreed and disagreed with the Agency's proposal to exclude IBCs from the scope of the TEC regulation. The most significant comments received on the IBC issue have described the changes in the industry since EPA's data collection efforts. In 1989, the Preliminary Data Summary for the Drum Reconditioning Industry did not collect any data on IBCs because so few IBCs were being used by the industry. By 1994, according to responses to the detailed questionnaire for the TEC industry, over 84,000 IBCs were being cleaned at TEC facilities. Data submitted by commenters have shown that IBC cleanings have increased dramatically in each year since EPA's survey. Based on data provided in comments, EPA now believes that there are up to several million IBCs being cleaning annually.

In the preamble, EPA solicited comment on the loads associated with IBC cleaning, and on the assumption that IBC wastewater was similar to drum reconditioning wastewater. Although no commenters provided data on the raw wastewater characteristics of IBC cleaning wastewater, several commenters did provide information on the amount of heel associated with IBCs as compared to that from drums and tank trucks. As several commenters noted, most IBCs are cleaned at facilities which have historically cleaned either drums or tank trucks, and IBC wastewater is therefore commingled with drums or tank truck cleaning wastewater. For this reason, EPA was unable to obtain wastewater sampling data which would be representative of wastewater generated solely from cleaning IBCs.

In terms of the amount of heel contained in an IBC, one commenter who supports coverage of IBCs said that IBCs typically contain between 0.5 to two gallons of heel. In comparison, a tank truck typically contains one to two gallons of heel, but may contain up to five to 10 gallons of heel for more viscous products. Another commenter who supports no regulation for IBCs noted that IBCs that have carried hazardous waste must contain less than one gallon of residue to be processed by a reconditioner, less than one inch of heel (typically 1.6 gallons) for more viscous products for containers less than 110 gallons, or less than 0.3% residue for containers greater than 110 gallons (approximately 0.83 gallons for a 275-gallon IBC) to be considered RCRA empty.

The 1994 questionnaire for the TEC industry gave similar results, with tank trucks containing <1 to 9 gallons of heel for non-food grade products, and IBCs containing <1 to 2 gallons of heel. EPA has not received any comments on whether or not the cargos transported in IBCs are similar or dissimilar to those transported by drum or tank truck. Based on site visits and conversations with the National Tank Truck Carriers Association, EPA believes that all truck facilities which clean IBCs treat IBC and tank washwater in the same wastewater treatment system, indicating that IBC and tank washwater contain similar constituents in terms of treatability. Personnel at these sites also indicated that they see no significant difference in the types of cargos transported in IBCs or tank trucks. EPA believes that all drum reconditioning facilities that clean IBCs also treat IBC and drum washwater in the same wastewater treatment system.

Based on the increase in IBC cleaning and on the heel generation rate from IBCs, EPA no longer believes that wastewater generated from IBC cleanings represents an insignificant amount of pollutant loadings.

The Association of Container Reconditioners argued that IBCs should be considered industrial packaging units and should be regulated similarly to drums because IBCs are closer in nature

to drums than to tank trucks. The commenter argued that IBCs (typically 275 gallons) are closer in volume to drums (55 gallons) than tank trucks (typically 3,000 gallons), and that IBCs are replacing drums, not tank trucks, in the industry because of their increased efficiency and ability to be re-used. The commenter further stated that this designation is consistent with policies developed by the Department of Transportation, which includes IBCs with drums as industrial packaging units.

EPA agrees that IBCs are more similar to drums than transportation equipment, and continues to believe that wastewater generated from IBC cleaning is outside the scope of this guideline. However, EPA does agree with commenters that IBC wastewater may represent more loadings than was originally considered at proposal. Due to this, EPA is conducting a preliminary evaluation of the industrial repackaging industry, which includes cleaning drums and IBCs, to determine if this industry merits development of national categorical wastewater regulation at a later date. Wastewater generated from IBC cleaning will remain subject to limitations and standards established on a case by case basis using best professional judgement by the permitting authority.

One issue that was raised in comments by the National Tank Truck Carriers Association (NTTC) as a result of EPA proposing to exclude IBCs was the issue of market competition. NTTC argues that tank truck cleaners would suffer a competitive disadvantage from the IBC cleaning business if tank trucks were required to comply with the regulation but IBCs were not covered by the regulation. The commenter argued that a tank truck facility would be subject to effluent guidelines and that IBC wastewater generated at the facility would therefore also be subject to the guidelines, thereby increasing the cost of IBC cleaning at tank truck facilities as compared to the cost at drum reconditioning facilities. EPA agrees that most tank truck facilities commingle wastewater generated from IBC and tank cleaning for treatment, and that IBC wastewater would therefore be subjected to guidelines established for the TEC industry. NTTC further argues that a facility not subject to the TEC guideline, such as a drum reconditioning facility, is not subject to national effluent guidelines and therefore may not incur a similar cost increase for IBC cleaning. EPA realizes that, even if the Agency decides to establish effluent limitations, guidelines and standards for the container reconditioning industry, there may be an interim period where wastewater from IBC cleaning at tank truck facilities may incur additional costs while wastewater from IBC cleaning at drum reconditioning facilities would not incur this cost. This may have an impact on the market for IBC cleaning if the costs are significant.

EPA conducted a market analysis based on the TEC cost model, data submitted in comments, and data gathered by EPA since the proposal. The complete analysis can be found in section 20 of the regulatory record in support of this document. EPA does not have sufficient data to compare the number of IBC cleanings conducted by TEC affected tank truck facilities to the number of IBC cleanings conducted at facilities unaffected by the guideline. Therefore, EPA relied on an analysis of the incremental compliance cost of IBC cleaning that would result from this rule, and compared that to the potential market effects that this increase would have on TEC facilities.

In order to determine the incremental cost per gallon of wastewater treated as a result of the TEC regulation, EPA divided the facility-specific annualized compliance costs by the facility's annual baseline wastewater flow. The incremental cost for IBC cleaning was determined by assuming that 100 gallons of wastewater generated per IBC cleaning would be treated at the facility's treatment system. EPA estimated 100 gallons per cleaning based on facility site visits, comments received on the proposal, and the 308 Detailed Questionnaire. The incremental costs are a result of the additional operation and maintenance costs associated with this wastewater flow. This is consistent with an assumption that the primary business of TEC facilities is cleaning tank trucks, and that capital equipment for wastewater pollutant control is installed for, and effluent monitoring is performed for, tank truck cleaning. Based on this analysis, EPA estimates that the average cost increase incurred by tank truck facilities to clean an IBC as a result of this regulation would be $0.38 per IBC. This represents a cost increase of less than 1% for IBC cleaning at TEC facilities, assuming an average cost per cleaning of $65 to $100.

For a sensitivity analysis, EPA also looked at the total post-tax annualized compliance costs (including annualized capital and monitoring costs in addition to operating and maintenance costs) to determine an upper bound estimate of incremental IBC cleaning costs. For this analysis, EPA found that the full compliance costs of installing capital equipment and monitoring requirements to treat IBC wastewater would increase by a maximum of $1.10 per cleaning, representing less than 2% cost increase for the most conservative assumption.

Based on this analysis, EPA believes that the cost increase to clean IBCs will not have a significant impact on the competitive ability of tank truck carriers to compete for the IBC cleaning market.

EPA solicits comment on the assumptions, methodology, and conclusions of the market analysis conducted by EPA on the effect of not including IBCs within the scope of the TEC regulation. EPA solicits any information on the price of IBC cleaning, the volume of wastewater generated from IBCs, the economic importance of IBC cleaning to affected facilities, and the relative market shares of different types of facilities engaged in IBC cleaning.

B. Overlap With Other Guidelines

EPA has received numerous comments from industrial facilities that are concerned that they may be affected by the TEC guideline. In the proposal, EPA noted that there may be instances when the TEC guideline may overlap with other categorical effluent guidelines.

In the proposal, EPA explained that it does not intend to cover manufacturing facilities which clean their own transportation equipment and treat the wastewater in their treatment system. EPA has outlined its rationale for the exclusion of manufacturing facilities in the proposal. This rationale includes: (1) That wastewater generated from tank cleaning operations at manufacturing facilities is typically a very small percentage of the total flow, (2) that tank cleaning wastewater is typically included in the coverage of the applicable categorical standard, and (3) that the characteristics of the tank cleaning wastewater are similar in treatability to the wastewater generated at the rest of the facility.

EPA has proposed to define the exclusion for manufacturing facilities by excluding those facilities covered, or proposed to be covered, under other Clean Water Act categorical standards. This has excluded most manufacturing facilities in operation, including facilities covered under Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) (40 CFR part 414); Centralized Waste Treatment (CWT) (proposed 40 CFR part 437, 60 FR 5464, January 27,1995; supplemental proposal 64 FR 8, January 13, 1999); Dairy Products Processing Point Source Category (40 CFR part 405); Inorganic Chemicals Manufacturing Point Source Category (40 CFR part 415); and Petroleum Refining Point Source Category (40 CFR part 415).

Based on the data collected in preliminary studies for certain industries (e.g., Chemical Formulators, Packagers, and Repackagers, Paint Formulators), EPA determined that development of effluent guidelines was not necessary. TEC wastewaters generated by these facilities in these industries are excluded from the applicability of this rule.

In addition, EPA further qualified the exclusion by stating that the exclusion applies only to facilities which clean "tanks containing cargos or commodities generated or used on-site, or by a facility under the same corporate structure." EPA used this qualifier to ensure that a manufacturing facility does not become a commercial TEC operation without being subject to this rulemaking, and that the excluded facility only cleans those cargos which are compatible with the existing wastewater treatment system.

Based on comments received on the proposed rule, EPA believes that it should consider making the exclusion somewhat broader in order to encompass TEC activities which fall within EPA's rationale for exclusion, yet which may fall outside the definition of "on-site" or "same corporate structure." Commenters have identified several areas which EPA intends to address in this exclusion: product stewardship activities, tolling or contract manufacturing operations, and manufacturing agreements that are part of divestitures, partnerships, or joint-ventures.

Several commenters to the proposed rule indicated that product stewardship activities are intended to promote recycling and reuse of products, and to reduce the environmental impact of chemical products. Product stewardship activities may include taking back: spent, used, or unused products; containers (i.e., those used for shipping) with product residues; off-specification products; and waste materials from use of products. Where possible, these materials are recovered and reused in chemical processes at the manufacturing plants. Returned materials that are not reusable, or residues that remain after reuse, are usually treated or disposed in the existing on-site wastewater treatment system, incinerator, or placed in an appropriately regulated landfill.

Tolling or contract manufacturing operations are described by commenters as an arrangement used in the chemical industry to enable a company to contract with a second company (i.e., a "toller") to engage in specified production activities on behalf of the first company. Toll manufacturers often perform one step in a customer's multi-step process, such as production of an intermediate, and are often an integral part of the supply chain for the customer's final product. Raw materials used by toll manufacturers are often provided by the primary manufacturer and the toller returns the intermediate along with any by-products and waste materials.

Commenters also provided input on manufacturing agreements that are part of divestitures, partnerships, or joint-ventures. Commenters felt that manufacturing complexes that have individual operating units or have created joint venture partnerships under separate legal ownership should still be considered "on-site" for the purposes of the TEC rulemaking, provided: The facilities continue to manufacture the same products and generate the same wastewater destined for the same on-site treatment system, including TEC wastewater. Any infrastructure operations such as waste treatment and TEC operations continue to be provided to the new company per an agreement established at the time of divestiture or formation of the joint venture partnership.

In each of these cases, commenters believe that the wastewaters generated from performing TEC activities is very similar to that generated by the primary manufacturing facility. If TEC wastewaters are returned to the primary manufacturing facility, or TEC wastewaters are generated from cleaning tanks containing materials returned to the primary manufacturer, these facilities should be considered under the control of the primary manufacturer and excluded from the TEC regulation.

EPA believes that these activities satisfy the proposed exclusion rationale because: (1) TEC wastewater comprises a very small percentage of flow, (2) TEC wastewater is typically included in the coverage of the applicable categorical standard, and (3) TEC wastewater characteristics are similar in treatability to wastewater generated by other facility operations. Therefore, EPA will consider excluding TEC wastewater generated at manufacturing facilities which have resulted from product stewardship activities, tolling or contract manufacturing operations, and manufacturing agreements that are part of divestitures, partnerships, or joint-ventures.

However, EPA is rejecting the comment that all manufacturing facilities simply be excluded from the TEC guideline. EPA does not believe that a manufacturing facility which accepts off site cargos for cleaning should be excluded because the wastewater generated from these cargos may not be compatible with the treatment system in place and may not be compatible with the existing discharge limitations established for that facility. Additionally, this blanket exclusion could allow a manufacturing facility to become a for-profit tank cleaner without comparable environmental controls.

Although EPA is not providing a blanket exclusion for manufacturing facilities, EPA will consider a low flow exclusion of 100,000 gallons per year for TEC wastewaters as discussed in section V. EPA believes the exclusion would provide some flexibility to manufacturing facilities which clean small numbers of tanks which may not fit into the strict definition given for the exclusion of tank cleaning operations at manufacturing facilities.

EPA is considering the following language to exclude these manufacturing facilities: "The final TEC limitations do not apply to wastewaters associated with tank cleanings operated in conjunction with other industrial or commercial operations so long as the facility only cleans tanks that have contained raw materials, by-products and finished products that are associated with the facility's on-site processes." On-site means the contiguous and non-contiguous property within the established boundary of a facility.

With regard to the overlap with the Metal Products and Machinery (MP&M) guideline, EPA has also received numerous comments, many of them asking the Agency to more clearly distinguish an MP&M facility from a TEC facility.

In the proposal, EPA stated that facilities which are predominately engaged in MP&M operations and clean barges, railcars, or tank trucks as part of those activities are proposed to be regulated by the MP&M guideline and are excluded from this guideline. EPA has received numerous comments asking EPA to more clearly define what is meant by "predominantly engaged."

One commenter suggested that EPA use flow as a basis for the determination; facilities should be covered under the guideline that generates the largest flow volume. Although this would be a relatively straightforward definition, EPA does not believe that flow volume represents the best method for determining TEC or MP&M applicability. EPA believes that the activities performed at the site (both tank cleaning and maintenance and repair), and the objective of those

activities, have a more significant

VIII. Modification to Pollutants

Tetradecane, EPA has primarily made

calculated a removal rate based on SCT

activities, have a more significant impact on the total final effluent loads and wastewater characteristics than the actual flow volume generated.

However, EPA does agree with commenters that the Agency needs to further clarify when a facility is to be subject to the TEC guidelines or the MP&M guidelines. Therefore, EPA has attempted to further define wastewaters subject to the TEC guideline, according to the following:

Wastewater generated from cleaning tank interiors for the purposes of maintenance and repair on the tank is considered MP&M process wastewater and is subject to the MP&M guideline. Facilities which clean tank interiors solely for the purposes of repair and maintenance would be solely regulated under the MP&M guideline.

Wastewater generated from cleaning tank interiors for purposes of shipping products (i.e., cleaned for purposes other than maintenance and repair) is considered TEC process wastewater and is subject to the TEC guideline. If EPA promulgates a 100,000 gallons per year low flow exclusion, only facilities which discharge more than 100,000 gallons per year of TEC process wastewater would be subject to the TEC guideline.

It is possible that a facility may be subject to both the TEC regulations and the MP&M regulations. If a facility generates wastewater from MP&M activities which are subject to the MP&M guideline and also discharges wastewater from cleaning tanks for purposes other than repair and maintenance of those tanks, then that facility may be subject to both guidelines.

At the time of proposal, EPA included all facilities which would potentially be covered by the MP&M guideline in the analysis of costs and impacts due to the uncertainty of the classification of these facilities. Based on the new definition, which EPA believes more clearly defines an MP&M facility, EPA has collected additional data on those facilities which indicated in the 308 survey that they perform a predominant amount of MP&M activities. Based on this data, EPA determined that several facilities proposed to be covered by the TEC rule would now not be affected by the TEC rule. These facilities have been excluded from EPA's analyses, the results of which are described in section IX of this document.

EPA solicits comment on the revised applicability language of the rule, including the definition "MP&M generated wastewaters."

VIII. Modification to Pollutants Selected for Regulation

In the proposal, EPA solicited, and has received, numerous comments from stakeholders on the pollutants selected for regulation in each subcategory. EPA is considering several changes based on the comments received. The tables in section X present limitations and standards for the revised set of pollutants EPA will consider for regulation. EPA solicits comment on the list of analytes being considered for regulation in all subcategories.

A. Oil and Grease and Non-Polar Material as Indicator Parameters

EPA has revised the name of "total petroleum hydrocarbons" in Method 1664 to "non-polar material" to indicate that the new test method is different from previous versions. (64 FR 26315, May 14, 1999). Non-polar materials are measured by Silica-gel Treated n-Hexane Extractable Material (SGT-HEM). Oil and Grease continues to be synonymous with the Method 1664 for n-Hexane Extractable Material (HEM).

EPA received numerous comments from POTWs, industry trade associations, and affected facilities suggesting that EPA use oil and grease (measured as HEM) and total petroleum hydrocarbons (now referred to as "non-polar materials" measured as SGT-HEM) as indicator pollutants for straight chain hydrocarbons proposed for regulation. In the proposal, EPA proposed to regulate HEM for direct discharging facilities, and SGT-HEM for indirect discharging facilities. As discussed in section XIII.G of the proposal, EPA recognizes the distinction between edible oils (such as animal fats and vegetable oils) included in the HEM analysis, and petroleum based oils as measured by the SGT-HEM analysis. As discussed in section VIII.B of this document, EPA has deemed SGT-HEM to pass through a POTW due to the prevalence of petroleum based compounds.

Many commenters argued that straight chain hydrocarbons are components of HEM and SGT-HEM, and that their regulation would be redundant and would impose additional, unnecessary costs on the industry. EPA agrees with the commenters that HEM and SGT-HEM are good indicator parameters for a number of pollutants proposed for regulation. EPA believes that the following pollutants would be adequately controlled through the regulation of HEM and SGT-HEM: n-Hexadecane, n-Tetradecane, n-Decane, n-Docosane, n-Dodecane, n-Eicosane, n-Octadecane, n-Tetracosane, and n-Tetradecane. EPA has primarily made this determination based on the similar chemical structure of these parameters which indicate that they will behave similarly in a treatment system. EPA believes that HEM and SGT-HEM are the best indicators for demonstrating treatment effectiveness for this range of pollutants with similar chemical characteristics.

EPA has reviewed the treatment effectiveness data collected in support of this regulation, and has found that the treatment effectiveness of these parameters is strongly correlated to the treatment effectiveness of HEM and SGT-HEM. In cases where HEM and SGT-HEM were effectively controlled, all of the previously discussed pollutants were treated to very low levels, often at the detection limit. For example, PSES/PSNS Option II in the Rail/Chemical & Petroleum Subcategory, consisting of oil/water separation and dissolved air flotation. This system achieved a 98% removal for HEM and 97% removal for SGT-HEM. Treatment effectiveness for the straight chain hydrocarbons listed above averaged 98% across the same system and were all treated to non-detect levels. Treatment effectiveness in the Barge/Chemical & Petroleum Subcategory demonstrated similar results.

Additionally, EPA reviewed data collected for the Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category (62 FR 242, December 17, 1997, proposed 40 CFR part 441), which conducted a characterization study of the HEM and SGT-HEM test methods. This study was performed to determine what individual constituents are measured by the analytical methods, and is available for review in section 16 of the regulatory record for the Industrial Laundries Effluent Guideline. This data demonstrates that the previously mentioned pollutants were found to be measured by the HEM and SGT-HEM test methods, thus supporting EPA's conclusion that HEM and SGT-HEM are good indicators of these pollutants.

B. Pass Through of SGT-HEM

EPA received one comment which disagreed with the Agency's pass through conclusion for SGT-HEM. The commenter stated that SGT-HEM is adequately treated by POTWs or does not pass through and thus should not be regulated.

In the proposal, EPA did not have actual data for removals of SGT-HEM in a POTW. Instead, EPA relied on the methodology developed in the Industrial Laundries proposal, which

calculated a removal rate based on SGT-HEM constituents. One commenter, the County Sanitation Districts of Los Angeles County, disagreed with this approach and submitted five days of influent and effluent SGT-HEM using Method 1664. This information was also submitted and evaluated for the Proposed Effluent Limitations, Guidelines, and Standards for the Industrial Laundries Point Source Category (62 FR 242, December 17, 1997).

Of the five days of data, only three of the days contained usable paired data for calculating SGT-HEM removals. Two of the five days of data could not be used because one day had an effluent value greater than the influent value, and the other day did not have a reported influent concentration. A limitation of the three remaining paired data sets that were used to calculate the percent removal for SGT-HEM was that the sets did not result in a precise estimate, but only a lower bound estimate. Because the effluent concentrations were below the method detection level, a percent removal could only be calculated as "greater than" some value. The greater than values ranged from 37.5 percent to 73.7 percent. For the purpose of this document, EPA used the daily data with the highest influent concentration, resulting in a percent removal estimate of 74 percent for the revised pass-through evaluation.

The percent removal for SGT-HEM using one day of data from LA County (the day with the highest influent concentration) is 74 percent, compared to 65 percent POTW removal used in the proposed rule. This value is still significantly lower than the 99% removal achieved by preferred BPT treatment technologies evaluated in the Rail/Chemical & Petroleum and Barge/Chemical & Petroleum Subcategories.

EPA believes SGT-HEM has been demonstrated to pass through, and that SGT-HEM is a good indicator parameter for a number of toxic and nonconventional pollutants as discussed in section VIII.B. In addition, the use of a relatively inexpensive monitoring method for SGT-HEM justifies regulating SGT-HEM rather than individually regulating the host of pollutants controlled by such a limitation.

Additionally, several commenters from industry as well as POTW representatives have requested that EPA use oil and grease and SGT-HEM as indicator parameters for a number of other pollutants. As discussed above, EPA has reviewed the data from sampling episodes, and believes that the data clearly demonstrates a correlation between oil and grease and the pollutants listed in section VIII.B. Therefore, EPA believes that SGT-HEM does pass through a POTW, and furthermore that HEM and SGT-HEM can be used as effective indicator parameters.

IX. Technology Options

In the proposal, EPA considered establishing 11 sets of effluent limitations, pretreatment standards or new source performance standards for six subcategories. EPA received many comments suggesting that EPA simplify the proposal in order to ease the implementation burden of the rule. In this document, EPA has described several regulatory alternatives, including the use of concentration-based limits, a low flow exclusion, combining the chemical and petroleum subcategories and combining the Truck/Food, Rail/Food, and Barge/Food Subcategories, which EPA believes will simplify the TEC rule. EPA has also considered the effects of clarification of scope in evaluating costs and loadings and in evaluating the proposed technology options.

A. Truck/Chemical & Petroleum Subcategory

As mentioned previously, EPA will consider combining the proposed Truck/Chemical and Truck/Petroleum Subcategories. EPA will also consider a low flow exclusion of 100,000 gallons per year. The results presented in this section reflect these potential changes.

EPA is re-evaluating the proposed options in this subcategory in response to comments received on the proposal. The major changes that have affected this analysis include revising the list of pollutants effectively removed and adjusting the cost model. Revisions to the cost model were made based on comments received and based on a thorough review of the model by EPA. The complete list of revisions to the cost model can be found in section 19.1 of the regulatory record. In summary, EPA increased several cost factors, increased capital and annual costs for activated carbon, increased the size (and associated costs) of equalization tanks, corrected several cost model inaccuracies identified in the proposal rulemaking record, revised the methodology to credit treatment in place, and removed flow reduction for some facilities. EPA also significantly reduced the monitoring costs associated with compliance due to the selection of indicator parameters (further discussed in section VIII.B) to replace specific pollutants proposed for regulation, and use of less expensive analytical methods.

1. BPT, BCT, BAT and NSPS for the Truck/Chemical & Petroleum Subcategory

In the proposal, EPA evaluated the following treatment options:

Option I: Flow Reduction, Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Biological Treatment, and Sludge Dewatering.

Option II: Flow Reduction, Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Biological Treatment, Activated Carbon Adsorption, and Sludge Dewatering.

EPA proposed to establish BPT limits based on Option II, and to establish BCT, BAT, and NSPS equivalent to BPT. In the proposal, EPA stated that all model facilities have equalization, coagulation/clarification, biological treatment, and activated carbon in place. Two of the three facilities in the cost model have sufficient treatment in place and only costs for additional monitoring are attributed to these facilities. The third facility was costed for flow reduction, sludge dewatering, and monitoring. Flow reduction and sludge dewatering generates net cost savings for the facility's entire treatment train. In addition, these net cost savings are larger than the monitoring costs incurred by the other two facilities.

EPA is not considering any changes to the option selected for this subcategory. The revised concentration-based limits for Option II are presented in section X of this document.

2. PSES and PSNS for the Truck/Chemical & Petroleum Subcategory

In the proposal, EPA evaluated two treatment options, consisting of:

Option I: Flow Reduction, Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, and Sludge Dewatering.

Option II: Flow Reduction, Equalization, Oil/Water Separation, Chemical Oxidation, Neutralization, Coagulation, Clarification, Activated Carbon Adsorption, and Sludge Dewatering.

In response to comment, EPA is presenting the following additional option in this notice:

Option A: Flow Reduction, Equalization, Oil/Water Separation.

Option A was determined to have a post tax annualized cost of $5.5 million ($8.6 million pre-tax) for 286 affected facilities. Option I cost $9.1 million

($14.3 million pre-tax) and Option II cost $19.9 million ($31.2 million pre-tax) annualized.

EPA projects that there will be no adverse economic impacts for any option when a positive cost pass through assumption is made. However, EPA has also looked at the conservative assumption of no cost pass through, which resulted in seven closures at Option II and no closures at Option I.

Option A is projected to remove 1,700 toxic pound-equivalents, while Option I removes 26,000 and Option II removes 42,000 toxic pound-equivalents.

EPA does not believe that the lower cost Option A demonstrated significant removals of toxics to justify its selection as a regulatory option. Option A was considerably less cost effective than Option I. Additionally, EPA received comments from pretreatment authorities, including the Association of Metropolitan Sewerage Agencies (AMSA), which argued that oil/water separation alone is not effective for achieving concentration standards for the pollutants which may be discharged by tank cleaning operations.

Option II was not demonstrated to achieve significant reductions incremental to Option I for any pollutant proposed for regulation. The majority of the additional pound-equivalent removals achieved at Option II were due to the removal of a pesticide not proposed for regulation and not contributing to the monetized benefits. EPA estimates that implementation of Option I will result in monetized benefits of $2.7 million to $9.4 million (1994 dollars) annually. EPA estimates that Option II will not result in any significant additional benefits incremental to Option I.

EPA proposed to establish PSES and PSNS on Option II. Due to the high costs and potential economic impacts associated with Option II, and due to the significant removals of regulated parameters achieved by Option I, EPA will consider establishing PSES and PSNS based on Option I.

The pretreatment standards that would result based on Option I technology are presented in section X of this document. EPA solicits comment on the revised costs, benefits, and economic impacts associated with these options.

B. Rail/Chemical & Petroleum Subcategory

As mentioned previously, EPA will consider combining the proposed Rail/Chemical and Rail/Petroleum Subcategories. EPA will also consider a low flow exclusion of 100,000 gallons per year. The results presented in this section reflect these potential changes.

EPA is re-evaluating the proposed options in this subcategory in response to comments received on the proposal. The major changes that have affected this analysis include revising the list of pollutants effectively removed and adjusting the cost model. Revisions to the cost model were made based on comments received and based on a thorough review of the model by EPA. The complete list of revisions to the cost model can be found in section 19.1 of the regulatory record. In summary, EPA increased several cost factors, corrected several cost model inaccuracies identified in the proposal rulemaking record, revised the methodology to credit treatment in place, and removed flow reduction for some facilities. EPA also significantly reduced the monitoring costs associated with compliance due to the selection of indicator parameters (further discussed in section VIII.B) to replace specific pollutants proposed for regulation, and use of less expensive analytical methods.

1. BPT, BCT, BAT and NSPS for the Rail/Chemical & Petroleum Subcategory

In the proposal, EPA evaluated three treatment options, consisting of:

Option I: Flow Reduction, Oil/Water Separation, Equalization, Biological Treatment, and Sludge Dewatering.

Option II: Flow Reduction, Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Biological Treatment and Sludge Dewatering.

Option III: Flow Reduction, Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Biological Treatment, Organo-Clay/Activated Carbon Adsorption, and Sludge Dewatering.

EPA proposed Option I for BPT, and proposed to establish BCT and BAT equivalent to BPT. EPA proposed to establish Option III for NSPS.

As discussed in section VIII.B:1.c of the proposal, EPA evaluated the costs, loads, and impacts of one model direct discharging facility which currently has equalization, pH adjustment, biological treatment and a filter press in place. Because EPA is considering adopting concentration based standards, the model facility no longer incurs costs for flow reduction. EPA estimates that the cost of implementing Option I is for monitoring costs only, totaling approximately $7,000 annually; and that Option II costs $57,000 annualized, and Option III costs $85,000 annualized.

All parameters proposed for regulation, with the exception of oil and grease and N-Dodecane, were treated to the same level at Options I, II and III. As discussed in section VIII.B., EPA is no longer considering regulating N-Dodecane. For oil and grease, EPA would transfer effluent limitations from BPT biological treatment operated in the Barge/Chemical & Petroleum Subcategory because EPA does not have treatment data for a biological system operated in the Rail/Chemical & Petroleum Subcategory. Therefore, the effluent limitation established for oil and grease would be based on biological treatment which has been demonstrated to achieve significant removals. Effluent limitations for oil and grease based on Options II or III would not be significantly different than those established for Option I, and EPA therefore projects no additional benefits for Option III incremental to Option I.

EPA believes that there are few additional pollutant removals to be achieved by establishing NSPS based on Option III. EPA will therefore consider establishing NSPS equivalent to BPT, BCT, and BAT at Option I.

EPA solicits comment on establishing NSPS equivalent to BAT for the Rail/Chemical & Petroleum Subcategory. The revised concentration-based limits for Option I are presented in section X of this document.

2. PSES and PSNS for the Rail/Chemical & Petroleum Subcategory

In the proposal, EPA considered three options for PSES and PSNS:

Option I—Flow Reduction, Oil/Water Separation.

Option II—Flow Reduction, Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), and Sludge Dewatering.

Option III—Flow Reduction, Oil/Water Separation, Equalization, Dissolved Air Flotation (with Flocculation and pH Adjustment), Organo-Clay/Activated Carbon Adsorption, and Sludge Dewatering.

EPA proposed Option I for PSES and Option III for PSNS. As discussed in section VIII.B.5.d of the preamble, the economic impacts to the industry played a large role in EPA's selection of Option I for pretreatment standards. EPA noted that its preliminary conclusion was that the Rail/Chemical facilities would not be able to absorb the cost of installing Option II levels of treatment without incurring significant economic impacts.

EPA received several comments on the pollutant control technologies proposed for the Rail/Chemical Subcategory. EPA received comments from several entities, including AMSA, who argued that oil/water separation alone is not sufficient pretreatment for the pollutants in Rail/Chemical Subcategory wastewaters. Additionally, many commenters have expressed concern about the discrepancy in treatment technology proposed for the rail and truck facilities. Several commenters have argued that the wastewater characteristics are similar for truck and rail facilities, and that the treatment options should therefore be similar for facilities which potentially compete with each other.

In the proposal, EPA also noted this discrepancy, and noted that there were many similarities between the truck and rail subcategory wastewaters, and that the most significant reason for proposing dissimilar technology options in the truck and rail subcategories was due to economic considerations. EPA's analysis showed that several rail facilities were unable to incur the costs of a more stringent regulatory option without sustaining significant economic impacts. However, many of the rail facilities included in this analysis will qualify for the low flow exclusion for TEC wastewater. Many of these facilities which discharge low volumes of TEC wastewater would not be affected by the TEC rule if EPA adopts a low flow exclusion. EPA has therefore removed these facilities from its analysis, which has in turn affected the total costs, loads, and economic impacts of the technology options.

EPA estimates that Option I will have an annualized cost of $0.54 million ($0.82 million pre-tax), Option II will cost $0.93 million ($1.4 million pre-tax), and Option III will cost $1.5 million ($2.3 million pre-tax). EPA projects that Option I and Option II will result in annual benefits of $51,000 to $270,000.

For Options I, II, and III, EPA anticipates no closures at even the most conservative assumption of no cost pass through, and anticipates no revenue or employment impacts when a positive cost pass-through is assumed for Options I or II. For the most conservative zero cost pass through assumption, EPA calculates that Option II would result in 18 facilities experiencing revenue impacts of 1% and six facilities experiencing impacts of 3%. The less costly Option I would result in 15 facilities experiencing revenue impacts of 1% and no facilities experiencing impacts of 3%. At both options, six of the facilities experiencing 1% revenue impacts are small businesses. Option III would result in 22 facilities experiencing revenue impacts of 1% and 20 facilities experiencing impacts of 3%. At Option III, nine of the facilities experiencing 1% impacts and six of the facilities experiencing 3% impacts are small businesses.

EPA also considers the cost effectiveness of each option. The preamble to the proposal describes EPA's cost effectiveness analysis in section X. EPA uses cost effectiveness to evaluate the relative efficiency of each option in removing toxic pollutants. Option I is projected to remove 6,500 pound-equivalents, Option II will remove 7,100 pound-equivalents, and Option III will remove 7,600 pound-equivalents. The average cost effectiveness of Option I is $83 (1981 dollars) per pound-equivalent removed. The incremental cost effectiveness of moving from Option I to Option II is $533 per pound-equivalent removed, and the incremental cost effectiveness of moving from Option II to Option III is $1,282 per pound-equivalent removed.

EPA will consider establishing PSES and PSNS based on Option II. Option II achieves a significant reduction in toxic loadings and results in no facility closures. Furthermore, EPA believes it is appropriate to establish similar levels of control for the Rail/Chemical & Petroleum Subcategory and the Truck/Chemical & Petroleum Subcategory, and will therefore consider establishing PSES and PSNS at Option II, which is analogous to Option I in the Truck/Chemical & Petroleum Subcategory.

In addition, EPA notes that the total costs for Option II presented today are roughly equivalent to the costs estimated for Option I at proposal. This is primarily due to EPA reducing the burden of the regulation through reduced monitoring requirements and the consideration of a low flow exclusion.

EPA notes that the cost of Option II presented in today's notice is nearly 70% higher than the costs for Option I presented today, and the corresponding increase in pound-equivalents removed is approximately 10%. Option II is also associated with some additional economic impacts not incurred at Option I. Notwithstanding the reasons described above supporting Option II, EPA will also consider establishing PSES and PSNS based on Option I.

EPA solicits comment on the revised costs, benefits, and economic impacts associated with this subcategory and on the appropriate technology basis for pretreatment standards for new and existing sources. The revised concentration-based limits for Option II are presented in section X of this document.

C. Barge/Chemical & Petroleum Subcategory

EPA is re-evaluating the proposed options in this subcategory due to changes in the industry since proposal and due to comments received on the proposal. At the time of proposal, EPA noted that there was only one identified facility discharging to a POTW. Since the proposal, several model facilities that previously discharged to surface waters have begun discharging or plan to discharge wastewater to a POTW. EPA is also considering several changes in response to comment that include revising the list of pollutants effectively removed and adjusting the cost model. As discussed in section II of this notice, EPA has also collected data from two additional facilities operating BAT treatment. EPA has used this data, which represents each facilities performance over a one year period, to develop Long Term Averages (LTAs) and variability factors for BOD and TSS.

Revisions to the cost model were made based on comments received and based on a thorough review of the model by EPA. Additionally, the cost model has been adjusted to reflect the changes in long term averages for BOD and TSS. The complete list of revisions to the cost model can be found in section 19.1 of the regulatory record. In summary, EPA increased several cost factors, corrected several cost model inaccuracies identified in the proposal rulemaking record, revised the methodology to credit treatment in place, and removed flow reduction. EPA also significantly reduced the monitoring costs associated with compliance due to the selection of indicator parameters (further discussed in section VIII.B) to replace specific pollutants proposed for regulation, and use of less expensive analytical methods.

1. BPT, BCT, BAT and NSPS for the Barge/Chemical & Petroleum Subcategory

The Agency's engineering assessment of BPT consisted of the following options:

Option I: Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, Filter Press, Biological Treatment, and Sludge Dewatering.

Option II: Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, Filter Press, Biological Treatment, Reverse Osmosis, and Sludge Dewatering.

EPA proposed Option I for BPT, and proposed to establish BCT, BAT and NSPS equivalent to BPT. EPA estimates the revised annualized costs for Option I at $82,000 ($134,000 pre-tax) and

Option II at $316,000 ($494,000 pre-tax). The costs to the industry have decreased significantly for several reasons. One, EPA is no longer costing flow reduction as a required component of the regulation because EPA may not establish mass based limits. Two, several model facilities which did not employ biological treatment at proposal have switched discharge status; and three, EPA has reduced the monitoring burden of the rule due to the use of indicator parameters. EPA determined that neither Option will result in any closures, revenue, or employment losses.

EPA estimates that both Option I and Option II removes 19,000 pounds of BOD and TSS. Based on the treatment technologies in place at the model facilities, EPA believes at this time that the regulation will not result in significant incremental removals of toxic pollutants. EPA predicts that Option II would not result in any additional removal of toxic pounds because most pollutants are already treated to very low levels, often approaching or at non-detect levels, by the technology utilized by Option I. EPA therefore continues to believe that BPT, BCT, BAT, and NSPS should be based on Option I levels of control. The revised concentration-based limits for Option I are presented in section X of this document.

2. PSES and PSNS for the Barge/Chemical & Petroleum Subcategory

The Agency's engineering assessment of PSNS consisted of the following options:

Option I—Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, and In-Line Filter Press.

Option II—Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, In-Line Filter Press, Biological Treatment, and Sludge Dewatering.

Option III—Flow Reduction, Oil/Water Separation, Dissolved Air Flotation, In-Line Filter Press, Biological Treatment, Reverse Osmosis, and Sludge Dewatering.

EPA proposed Option II for PSNS. EPA did not propose PSES standards for the Barge/Chemical & Petroleum Subcategory because EPA identified only one facility discharging to a POTW. However, since the proposal, EPA has identified four facilities which previously discharged directly to surface waters and have since either switched or plan to switch discharge status. EPA now estimates that there are five facilities in EPA's model which discharge wastewater to a POTW.

EPA evaluated the treatment in place and levels of control currently being achieved by the model indirect discharging Barge/Chemical & Petroleum facilities. EPA was able to evaluate effluent discharge concentrations of BOD, TSS, and Oil & Grease from each of these model facilities. EPA did not have the data to evaluate the discharge concentrations of other parameters. Based on the discharge concentrations of these conventionals, EPA believes that all model indirect discharging facilities are meeting the levels of control that would be established under PSNS. Although EPA does not generally establish technology based pretreatment standards for conventionals, EPA believes that these parameters demonstrate a level of control similiar to the systems being proposed for NSPS at Option II, and that the effluent concentrations of other pollutants of interest would also be controlled similarly.

Therefore, EPA estimates that the cost of implementing PSES standards equivalent to PSNS would be solely for increased monitoring costs, totaling approximately $60,000 annually. EPA believes that all indirectly discharging facilities have sufficient treatment in place to prevent pass through or interference and are predicted to be meeting standards that would be established under PSES. EPA predicts that there would be no incremental removals or benefits associated with establishing PSES standards. EPA therefore believes that it will continue to establish PSNS standards based on Option II, and that it will continue not to establish PSES standards.

EPA solicits comment on the conclusion that all indirect discharging Barge/Chemical & Petr leum facilities have treatment in place sufficient to prevent pass through or interference at a POTW.

D. Food Subcategory

EPA proposed to establish separate subcategories for the Barge/Food, Truck/Food, and Rail/Food subcategories due to the differences in water generated per cleaning by truck, rail, and barge facilities. The different volumes of wastewater were used to establish distinct mass-based limits in each of the subcategories. However, EPA will consider establishing concentration-based instead of mass-based limits, and EPA will therefore consider establishing one set of concentration limits for all food grade facilities. EPA is continuing to consider Option II as BPT, BCT, BAT, and NSPS.

BPT, BCT, BAT and NSPS for the Truck/Food, Rail/Food, and Barge/Food Subcategories

EPA considered the following BPT options for the food subcategories:

Option I—Flow Reduction and Oil/Water Separation.

Option II—Flow Reduction, Oil/Water Separation, Equalization, Biological Treatment and Sludge Dewatering.

The revised costs, loads, economic impacts, cost reasonableness, and environmental benefits for BPT, BCT, and BAT have not changed significantly since the proposal, and EPA is therefore not considering any changes to the options selected for the food subcategories.

The revised concentration-based limits for Option II are presented in section X of this document.

X. Presentation of Concentration-Based Limitations

The following tables present the numerical standards that would be adopted based on the revisions described in this section and throughout this document. The data and methodology is located in section 21 of the regulatory record. The data and methodology is the same as proposed with several exceptions. One, EPA has calculated concentration instead of mass-based limits. Two, EPA has used data from two additional Barge/Chemical & Petroleum facilities in the calculation of BOD and TSS limits, as discussed in section II of this document. Third, EPA has used the pollutant-specific variability factor where available, and then calculated fraction and group level variability factors by taking a median of all pollutants effectively removed in a chemical class, rather than using the median of only those pollutants selected for regulation in a chemical class. EPA believes this revised methodology is appropriate because the Agency believes that all pollutants in a chemical class will behave similarly, regardless of whether or not it is selected for regulation. EPA requests comment on this conclusion and on the revision to its methodology.

Fourth, EPA has used technology transfer to establish PSES standards for SGT–HEM in the Truck/Chemical & Petroleum Subcategory. As in the proposal, EPA has continued to use technology transfer to establish BPT limits for conventional pollutants BOD, TSS, and oil and grease in the Truck/Chemical & Petroleum and Rail/Chemical & Petroleum Subcategories.

EPA does not have sampling data from a facility operating BPT biological treatment in either the Truck/Chemical & Petroleum or Rail/Chemical & Petroleum Subcategories. Therefore, EPA will consider transferring effluent limitations for BOD, TSS, and oil and grease from a biological system in the Barge/Chemical & Petroleum Subcategory.

EPA proposed pretreatment standards for SGT–HEM in the Truck/Chemical Subcategory based on the data from two Truck/Chemical facilities. However, EPA feels that the SGT–HEM standards developed for this subcategory may not be achievable because the raw wastewater concentrations at these facilities were 65 mg/L and 61 mg/L, whereas the average raw wastewater concentration for this subcategory was measured to be 1,600 mg/L. EPA is aware that some facilities in the Truck/Chemical & Petroleum Subcategory may be generating wastewater with significantly higher concentrations of oil and grease than EPA considered in the proposed limitations. Therefore, EPA will consider transferring standards for SGT–HEM from similar treatment technologies operated in the Rail/Chemical & Petroleum Subcategory. As mentioned previously, this system consisted of oil water separation followed by DAF and achieved 98% removal of HEM for wastewater that had an influent concentration of 1,994 mg/L. EPA believes that technology transfer of SGT–HEM would establish limitations that would be achievable for all facilities in the Truck/Chemical & Petroleum Subcategory. As discussed in section VIII, EPA will consider using HEM (for direct dischargers) and SGT–HEM (for indirect dischargers) as indicator pollutants for several other constituents in the Truck/Chemical & Petroleum Subcategory.

The proposed mass-based standards were published in the **Federal Register** Notice of Proposed Rulemaking (63 FR 34685) and the associated concentration-based standards were presented in appendix E.1 through E.7 of the Statistical Support Document of Proposed Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Industry. Concentration based limits are again presented in the tables below for the purposes of review and comment. In sections XV and XVI of the proposal, EPA outlined its requirements for submission of additional monitoring data which may be used in support of this guideline. EPA will continue to analyze monitoring data, statistical methodologies, and pass-through analysis for regulated pollutants prior to the final promulgation of effluent limitations and pretreatment standards.

TABLE 1-TRUCK/CHEMICAL & PETROLEUM SUBCATEGORY: BPT, BCT, BAT, AND NSPS CONCENTRATION-BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

Pollutant or pollutant property	[mg/L]	
	Maximum for any one day	Monthly average
BOD_5	61	22
TSS	58	26
Oil and Grease (HEM)	36	16
pH	Shall be in the range of 6.0 to 9.0 pH units	
Chromium	0.055	N/A
Copper	0.14	N/A
Zinc	0.037	N/A
Bis (2-ethylhexyl) phthalate	0.032	N/A

TABLE 2—TRUCK/CHEMICAL & PETROLEUM SUBCATEGORY: PSES AND PSNS CONCENTRATION-BASED LIMITATIONS FOR DISCHARGES TO POTWS

Pollutant or pollutant property	[mg/L] Maximum for any one day
Non-polar Material (SGT-HEM)	26.
pH	Shall be in the range of 6.0 to 9.0 pH units.
Chromium	0.055.
Copper	0.143.
Zinc	0.037
Bis (2-ethylhexyl) phthalate	0.032.

TABLE 3—RAIL/CHEMICAL & PETROLEUM SUBCATEGORY: BPT, BCT, BAT AND NSPS CONCENTRATION-BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

Pollutant or pollutant property	[mg/L]	
	Maximum for any one day	Monthly average
BOD_5	61	22
TSS	58	26
Oil and Grease (HEM)	36	16
pH	Shall be in the range of 6.0 to 9.0 pH units	
Fluoranthene	0.076	N/A
Phenanthrene	0.341	N/A

TABLE 4.—RAIL/CHEMICAL & PETROLEUM SUBCATEGORY: PSES AND PSNS CONCENTRATION-BASED LIMITATIONS FOR

conclusions of the market analysis propose to refine the method for

TABLE 4.—RAIL/CHEMICAL & PETROLEUM SUBCATEGORY: PSES AND PSNS CONCENTRATION-BASED LIMITATIONS FOR DISCHARGES TO POTWS

Pollutant or pollutant property	[mg/L] Maximum for any one day
Non-polar Material (SGT–HEM)	26.
pH	Shall be in the range of 6.0 to 9.0 pH units.
Fluoranthene	0.076.

TABLE 5.—BARGE/CHEMICAL & PETROLEUM SUBCATEGORY: BPT, BCT, BAT, AND NSPS CONCENTRATION-BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

Pollutant or pollutant property	[mg/L]	
	Maximum for any one day	Monthly average
BOD_5	61	22
TSS	58	26
Oil and Grease (HEM)	36	16
pH	Shall be in the range of 6.0 to 9.0 pH units	
Cadmium	0.014	N/A
Chromium	0.42	N/A
Copper	0.10	N/A
Lead	0.11	N/A
Nickel	0.58	N/A
Zinc8.3	N/A	
1-Methylphenanthrene	0.11	N/A
Bis (2-ethylhexyl) phthalate	0.071	N/A

TABLE 6.—BARGE/CHEMICAL & PETROLEUM SUBCATEGORY: PSNS CONCENTRATION-BASED LIMITATIONS FOR DISCHARGES TO POTWS

Pollutant or pollutant property	[mg/L] Maximum for any one day
Non-polar Material (SGT-HEM)	22.
pH	Shall be in the range of 6.0 to 9.0 pH units.
Cadmium	0.014.
Chromium	0.42.
Copper	0.10.
Lead	0.11.
Nickel	0.58.
Zinc	8.3.
1-Methylphenanthrene	0.11.
Bis (2-ethylhexyl) phthalate	0.071.

TABLE 7.—FOOD SUBCATEGORY: BPT, BCT AND NSPS CONCENTRATION-BASED LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

Pollutant or pollutant property	[mg/L]	
	Maximum for any one day	Monthly average
BOD_5	56	24
TSS	225	86
Oil and Grease (HEM)	20	8.8
pH	Shall be in the range of 6.0 to 9.0 pH units.	

XI. Solicitation of Comments

1. EPA solicits comment on setting concentration-based limitations. (Section III).

2. EPA solicits comments on the alternative subcategorization approach that combines the chemical and petroleum subcategories for rail and truck cleaning facilities. (Section IV).

3. EPA requests comment on the low flow exclusion from the TEC regulation of 100,000 gallons per year and on alternative low flow exclusions in the range of 100,000 to 500,000 gallons per year. (Section V).

4. EPA solicits comment on the revised methodology for calculating pollutant removals. (Section VI).

5. EPA solicits comment on the assumptions, methodology, and conclusions of the market analysis conducted by EPA on the effect of not including IBCs within the scope of the TEC regulation. EPA solicits any information on the price of IBC cleaning, the volume of wastewater generated from IBCs, the economic importance of IBC cleaning to affected facilities, and the relative market shares of different types of facilities engaged in IBC cleaning. (Section VII.A).

6. EPA solicits comment on the revised applicability language of the rule, including the definition "MP&M generated wastewaters". (Section VII.B).

7. EPA solicits comment on the revised costs, benefits, and economic impacts associated with establishing PSES and PSNS at Option I for the Truck/Chemical & Petroleum Subcategory. (Section IX.A.2).

8. EPA solicits comment on establishing NSPS equivalent to BAT for the Rail/Chemical & Petroleum Subcategory. (Section IX.B.1).

9. EPA solicits comment on establishing PSES and PSNS at Option II, or alternatively at Option I, for the Rail/Chemical & Petroleum Subcategory. (Section IX.B.2).

10. EPA solicits comment on the conclusion that all indirect discharging Barge/Chemical & Petroleum facilities have treatment in place sufficient to prevent pass through or interference at a POTW. (Section IX.C.2).

11. EPA solicits comment on using HEM and SGT-HEM as indicator parameters and on the pass-through of SGT-HEM. (Section VIII.B and VIII.C).

12. EPA solicits comment on the list of analytes being considered for regulation in all subcategories. (Section VIII).

Dated: July 12, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–18478 Filed 7–19–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket 99–231; FCC 99–149]

Spread Spectrum Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the rules for frequency hopping systems operating in the 2.4 GHz band (2400–2483.5 MHz) to allow for wider operational bandwidths. We also propose to refine the method for measuring the processing gain of direct sequence systems. This action is taken to facilitate the continued development and deployment of spread spectrum technology, particularly for high data rate wireless applications.

DATES: Comments must be filed on or before October 4, 1999, and reply comments must be filed on or before November 2, 1999.

ADDRESSES: Address all comments concerning this proposed rule to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: nmcneil@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket 99–231, FCC 99–149, adopted June 21, 1999, and released June 24, 1999. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center, (Room TW–A306) 445 12th Street SW, Washington, DC. The complete text of this document also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Notice of Proposed Rulemaking

1. *Frequency Hopping Systems.* Section 15.247 of the Commission's rules, permits frequency hopping spread spectrum systems to operate in the 2.4 GHz band with a maximum output power of 30 dBm (1 watt). The rules specify that frequency hopping systems operating in this spectrum must use a minimum of 75 hopping channels with each channel having a 20 dB bandwidth not exceeding 1 MHz. The average time of occupancy on any frequency must not be greater than 0.4 second within a 30 second period.

2. The Home RF Working Group ("HRFWG") filed a request that the Commission interpret section 15.247 to allow frequency hopping systems in the 2.4 GHz band to operate with 3 MHz and 5 MHz bandwidths. HRFWG proposes to allow systems with bandwidths of up to 3 MHz to operate with output power no more than 25 dBm and channel occupancy time no greater than 0.05 second per hop. Each of the 75 channels will be used at least once during a 3.75 sec period. Like existing 1 MHz systems, the average time of occupancy on any channel will not be greater than 0.4 second within a 30 second period. HRFWG's proposal will allow systems using 5 MHz channels to operate with output power no more than 23 dBm and channel occupancy time no greater than 0.02 second per hop. Each of the 75 hopping channels will be used at least once during a 1.5 second period. Again, the average occupancy time on any channel will remain 0.4 second or less per 30 second period.

3. We do not believe these proposed rule changes will result in any significant increase in interference to direct sequence spread spectrum systems. We recognize that spectrum occupancy of frequency hopping systems in the 2.4 GHz band will increase as a result of the proposed changes. The existing rules require a minimum of 75 hopping channels each with a bandwidth of no more than 1 MHz. Given the 83.5 MHz of spectrum available in the 2.4 GHz band, no frequency is used more than once in the hop sequence. However, if the channel bandwidth is increased to 3 MHz or 5 MHz, overlapping channels will be needed to accommodate 75 hops. Accordingly, the average time of occupancy on any one frequency will increase. However, it appears that the proposed reduction in output power and time of occupancy would offset any potential increase in interference. Further, we observe that manufacturers of direct sequence systems that are concerned about interference can improve the robustness of their systems by increasing processing gain.

4. *Direct Sequence Processing Gain.* Under section 15.247(e) of the Commission's rules, direct sequence systems are required to exhibit a processing gain of at least 10 dB. The 10 dB minimum was established to ensure that a system is, in fact, spread spectrum in nature. Generally, systems employing a spreading rate of at least 10 chips/symbol meet the 10 dB processing gain requirement. The number of chips per symbol refers to the ratio of spreading imposed by the direct sequence high speed spreading code.

5. The Commission allows processing gain to be determined by either of two methods. The first is a direct measurement taken from the demodulated output of the receiver. The processing gain is calculated as the ratio, in dB, of the signal-to-noise ratio with the system spreading code turned off to the signal-to-noise ratio with the system spreading code turned on. Alternatively, in cases where the design of the system does not permit de-activation of the spreading code, an

indirect measurement of processing gain, based on receiver jamming margin (the "CW jamming margin method"), is permitted. *See* 15 CFR 15.247(e)(2). The receiver jamming margin is representative of the ability of the receiver to reject other radio signals appearing on the same frequency. The test is generally viewed as an accurate measure of processing gain for systems employing spreading rates of at least 10 chips/symbol. However, in cases where the spreading rate is less, the results of the test are questionable.

6. The jamming margin test is based on use of a CW signal as an interference source. Some spread spectrum device manufacturers have suggested that the use of a Guassian noise interferer. instead of a CW interferer, would be more suitable for the jamming margin test. After reviewing the various submissions, we tentatively conclude that a Guassian interferer is likely to give a more accurate measure of processing gain because it is more closely related to the noise a system would encounter in a real-world environment. Therefore, we propose to permit the use of a Guassian interferer for determining receiver jamming margin.

7. The Commission has also received comments from manufacturers asserting that the current jamming margin test, along with a mathematical calculation of processing gain, should be required to demonstrate that systems using fewer than 10 chips per symbol are in compliance with the rules. The mathematical calculation would take into account the "coding gain" achieved by modulating and spreading of the baseband signal. We believe that this approach will provide greater assurance that the systems are in compliance. Accordingly, we propose to amend the rules to require manufacturers of direct sequence spread spectrum systems that use a spreading rate less than 10 chips per symbol to submit the results of the jamming margin test as well as a calculation of processing gain to verify compliance. Omnidirectional antenna operating at 250 mV/m.

Initial Regulatory Flexibility Analysis

8. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* ("NPRM"). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

A. Reason for Action

9. This rule making proceeding is initiated to obtain comment regarding proposed changes to the regulations for non-licensed transmitters.

B. Legal Basis

10. The proposed action is taken pursuant to Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

11. For the purposes of this NPRM, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. *See* 5 U.S.C. 601(3). Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. 632. SBA has defined a small business for Standard Industrial Classification (SIC) category 4812 (Radiotelephone Communications) to be small entities when they have fewer than 1500 employees. *See* 13 CFR 121.201. Given this definition, nearly all such companies are considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. *See* 47 CFR 15.101, 15.201, 15.305, and 15.405. The changes proposed in this proceeding would not change any of the current reporting or recordkeeping requirements. Further, the proposed regulations adds permissible measurement techniques and methods of operation. The proposals would not require the modification of any existing products.

E. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

13. None.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

14. None.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18428 Filed 7–19–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208, 212, 213, 214, 215, 232, and 252

[DFARS Case 98–D026]

Defense Federal Acquisition Regulation Supplement; Streamlined Payment Practices

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to require use of the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold, unless an exception is authorized. Use of the purchase card streamlines purchasing and payment procedures and, therefore, increases operational efficiency.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before September 20, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 98–D026.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 98–D026 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 98–D026 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0131. Please cite DFARS Case 98–D026.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to the DFARS to require use of the Governmentwide commercial purchase card as the method of purchase and/or method of payment for DoD purchases valued at or below the micro-purchase threshold of $2,500, unless an exception is authorized. The rule implements a policy memorandum issued by the Principal Deputy Under Secretary of Defense (Acquisition and Technology) on October 2, 1998, Subject: Streamlined Payment Practices for Awards/Orders Valued at or below the Micro-Purchase Threshold; and a policy memorandum issued by the Under Secretary of Defense (Personnel and Readiness) on September 25, 1998, Subject: Use of Government-Wide Purchase Cards. The memoranda are available via the Internet at http://purchasecard.sarda.army.mil.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Governmentwide commercial purchase card is similar in nature to commercial credit cards that are commonly used in the commercial marketplace. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D026 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208, 212, 213, 214, 215, 232, and 252

Government procurement.

Michele P. Peterson,

Executive Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 208, 212, 213, 214, 215, 232, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 208, 212, 213, 214, 215, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.405–2 is amended by revising paragraph (4) to read as follows:

208.405–2 Order placement.

* * * * *

(4) If permitted under the schedule contract, use of the Governmentwide commercial purchase card—

(i) Is mandatory for placement of orders valued at or below the micro-purchase threshold; and

(ii) Is optional for placement of orders valued above the micro-purchase threshold.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f)(vi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(vi) Use the clause at 252.232–7XXX, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

4. Section 212.303 is added to read as follows:

212.303 Contract format.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

5. Subpart 213.1 is added to read as follows:

Subpart 213.1—Procedures

Sec.
213.101 General.

213.101 General.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

6. Subpart 213.2 is added to read as follows:

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

Sec.
213.270 Use of the Governmentwide commercial purchase card.

213.270 Use of the Governmentwide commercial purchase card.

Use the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold. This policy applies to all types of contract actions authorized by the FAR unless—

(1) The Deputy Secretary of Defense has approved an exception for an electronic commerce/electronic data interchange system or operational requirement that results in a more cost-effective payment process;

(2)(i) A general or flag officer or a member of the Senior Executive Service (SES) makes a written determination that—

(A) The source or sources available for the supply or service do not accept the purchase card; and

(B) The contracting office is seeking a source that accepts the purchase card.

(ii) To prevent mission delays, if an activity does not have a resident general or flag officer or SES member, delegation of this authority to the level of the senior local commander or director is permitted; or

(3) The purchase or payment meets one or more of the following criteria:

(i) The place of performance is entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(ii) The purchase is a Standard Form 44 purchase for aviation fuel or oil;

(iii) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7);

(iv) The purchase is a transaction in support of intelligence or other specialized activities addressed by Part 2.7 of Executive Order 12333;

(v) The purchase is for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations;

(vi) The payment is made with an accommodation check;

(vii) The payment is for a transportation bill;

(viii) The purchase is under a Federal Supply Schedule contract that does not permit use of the Governmentwide commercial purchase card;

(ix) The purchase is for medical services and—

(A) It involves a controlled substance or narcotic;

(B) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(C) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(D) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(E) The purchaser is a beneficiary seeking medical care; or

(F) The cardholder determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

PART 214—SEALED BIDDING

7. Section 214.201–1 is added to read as follows:

214.201–1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 215—CONTRACTING BY NEGOTIATION

8. Section 215.204–1 is added to read as follows:

215.204–1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 232—CONTRACT FINANCING

9. Subpart 232.11 is added to read as follows:

Subpart 232.11—Electronic Funds Transfer

Sec.

232.1108 Payment by Governmentwide commercial purchase card.
232.1110 Solicitation provisions and contract clauses.

232.1108 Payment by Governmentwide commercial purchase card.

The Governmentwide commercial purchase card is the mandatory EFT payment method for purchases valued at or below the micro-purchase threshold, except as provided in 213.270.

232.1110 Solicitation provisions and contract clauses.

Use the clause at 252.232–7XXX, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements when—

(1) Placement of orders or calls valued at or below the micro-purchase threshold is anticipated; and

(2) Payment by Governmentwide commercial purchase card is required for orders or calls valued at or below the micro-purchase threshold under the contract or agreement.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 252.232–7XXX is added to read as follows:

252.232–7XXX Mandatory Payment by Governmentwide Commercial Purchase Card.

As prescribed in 232.1110, use the following clause:

MANDATORY PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (XXX 1999)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below $2,500 under this contract or agreement.

(End of clause)

[FR Doc. 99–18218 Filed 7–19–99; 8:45 am]

BILLING CODE 5000–04–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Risk Management

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the NASA FAR Supplement (NFS) to emphasize considerations of risk management, including safety, security (including information technology security), health, export control, and damage to the environment, within the acquisition process. The proposed rule addresses risk management within the context of acquisition planning, selecting sources, choosing contract type, structuring award fee incentives, administering contracts, and conducting contractor surveillance. Additionally, this proposed rule would require offeror proposals to include a risk management plan whenever the value of the resulting contract is expected to exceed $5,000,000, or whenever the contracting officer determines that it would be appropriate. Furthermore, this proposed rule would allow that contractors not be paid award fee for any evaluation period in which there is a major breach of safety or security.

DATES: Comments should be submitted on or before September 20, 1999.

ADDRESSES: Interested parties should submit written comments to Kenneth A. Sateriale, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to kenneth.sateriale@hq.nasa.gov

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, (202) 358–0491.

SUPPLEMENTARY INFORMATION:

A. Background

The NASA Administrator, in a January 11, 1999 message, called upon NASA to become an agency of informed risk takers. Furthermore, he emphasized that it is critically important for NASA to achieve mission success without compromising safety. On February 26, 1999, the Administrator emphasized the need for NASA contractors, both on-site and others, to be supportive of, and accountable for safety. Safety, in this context, is freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property (including intellectual property), or damage to the environment. However, given the fact that many of NASA's activities involve advanced research, aeronautics, and space flight, NASA cannot completely avoid risk. Therefore, risk must be managed, i.e., comprehensively identified, analyzed, planned, tracked, and controlled. While risk management is not a new acquisition concept, NASA has initiated a risk-based acquisition management initiative to re-focus on risk as a core acquisition concern. That initiative will be implemented through training as well as through revisions to several of NASA's internal processes and guidelines. This proposed rule only implements that part of the initiative pertaining directly to the procurement process. Since NASA's activities often include contractor efforts, NASA's focus on safety and mission success must be conveyed in NASA contracts. (Risk issues will also be addressed in a separate NFS revision to the NASA structured approach for developing a fee/profit negotiation objective.)

Sections 1816.405–274(c) and 1852.223–76(a)(1) in this proposed rule reference definitions in NASA Procedures and Guidelines (NPG) 8621.1, NASA Procedures and Guidelines for Mishap Reporting, Investigating, and Recordkeeping. NPG 8621.1 is currently in draft and will soon be published. Until such time, it will not be easy for the public to obtain access to the definitions. Therefore, draft definitions are provided below:

Mishap—Any unplanned occurrence or event resulting from any NASA operation or equipment anomaly, involving injury to or death of any persons (including the general public, astronauts and pilots, and NASA employees and contractors), damage to or loss of property or equipment, or mission failure.

Type A Mishap—A mishap causing death and/or damage to equipment or property equal to or greater than $1 million. Mishaps resulting in damage to aircraft, space hardware, or ground support equipment that meet these criteria are included, as are test failures in which the damage was unexpected or unanticipated.

Type B Mishap—A mishap resulting in permanent disability to one or more persons, hospitalization (within a 30-day period from the same mishap) of three or more persons, and/or damage to equipment, or property equal to or greater than $250,000, but less than $1 million. Mishaps resulting in damage to aircraft, space hardware, or ground support equipment that meet these criteria are included, as are test failures in which the damage was unexpected or unanticipated.

Mission Failure—A mishap of whatever intrinsic severity that, in the judgment of the Enterprise Associate Administrator/Institutional Program Officer, in coordination with the Associate Administrator for Safety and Mission Assurance, prevents the achievement of primary NASA mission objectives as described in the Mission Operations Report or equivalent document.

B. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because few small businesses are awarded contracts valued in excess of the $5,000,000 threshold established in the proposed rule for submission of a risk management plan and inclusion of the safety clause.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 41 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

2. Section 1807.104 is added to read as follows:

1807.104 General procedures. (NASA supplements paragraph (a))

(a) Safety is NASA's highest core value. The acquisition planning team shall include representatives from the center offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Their presence on the team shall help to ensure that all NASA acquisitions are structured in accordance with NASA safety, occupational health, environmental, export control, and security policy. As part of this process, the team shall recommend any appropriate solicitation or contract requirements for implementation of safety, occupational health, environmental, information technology, export control, and security concerns. (See NPG 8705.X, Risk Management Procedures and Guidelines.)

3. In section 1807.105, paragraph (a)(7) is added to read as follows:

1807.105 Contents of written acquisition plans.

(a)* * *

(7) Discuss project/program risks (see NPG 7120.5, NASA Program and Project Management Processes and Requirements, and NPG 8705.X, Risk Management Procedures and Guidelines). These risks include such considerations as: the security of personnel, information technology, and property; the NASA Export Control Program and risks of unauthorized technology transfer; damage to the environment; program test conduct and schedules; performance incentives and contract management concerns; and the necessary level of NASA personnel resources required to manage the project/program, including whether current staffing limitations require a special plan for surveillance. This discussion should also identify those areas that have safety risk, and how safety will be addressed in contract requirements and evaluated in the source selection, and how safety will be managed and incentivized, where appropriate. Appropriate planning, i.e., decisions to research, accept, watch, or mitigate, shall be identified for each risk.

* * * * *

PART 1811—DESCRIBING AGENCY NEEDS

4. Section 1811.101(b) is added to read as follows:

1811.101 Order of precedence for requirements documents. (NASA supplements paragraph (b))

(b) When establishing product descriptions in either a solicitation or contract, contracting officers shall include safeguards, as applicable, to ensure safety and security, and preclude environmental damage.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

5. Section 1812.301, paragraph (f)(i) is revised to read as follows:

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

(A) 1852.214–71, Grouping for Aggregate Award.

(B) 1852.214–72, Full Quantities.

(C) 1852.215–84, Ombudsman.

(D) 1852.219–75, Small Business Subcontracting Reporting.

(E) 1852.219–76, NASA Small Disadvantaged Business Goal.

(F) 1852.223–71, Frequency Authorization.

(G) 1852.223–75, Risk Management Plan.

(H) 1852.228–72, Cross-Waiver of Liability for Space Shuttle Services.
(I) 1852.228–76, Cross-Waiver of Liability for Space Station Activities.
(J) 1852.228–78, Cross-Waiver of Liability for NASA Expendable Launch Vehicles.
(K) 1852.232–70, NASA Progress Payment Rates.
(L) 1852.246–72, Material Inspection and Receiving Report.

PART 1815—CONTRACTING BY NEGOTIATION

6. In section 1815.201, paragraph (c)(6)(A) is revised to read as follows:

1815.201 Exchanges with industry before receipt of proposals.

(c)(6)(A) Except for acquisitions described in 1815.300–70(b), contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements, and whether the requirements of any Government-unique standards may be satisfied by voluntary consensus standards or industry standards. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the work. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

* * * * *

7. In section 1815.304–70, paragraphs (b)(5) and (d)(4) are added to read as follows:

1815.304–70 NASA evaluation factors.

* * * * *

(b) * * *

(5) If the solicitation requires either the submission of a Safety and Health Plan (see 1823.7001(c)), or a Risk Management Plan (see 1823.7001(d)), then the Mission Suitability factor shall include a subfactor for safety, occupational health, and mission success. Otherwise use of that subfactor is optional. (For discussion of risk management, see NPG 7120.5, NASA Program and Project Management Processes and Requirements, and NPG 8705.X, Risk Management Procedures and Guidelines.)

* * * * *

(d) * * *

(4) The contracting officer shall evaluate the offeror's past performance in occupational health, security, environmental protection, and safety and mission success (e.g., mishap rates and problems in delivered hardware and software that resulted in mishaps or failures) when these areas are germane to the requirement.

8. In section 1815.305, paragraph (a)(vi) is revised to read as follows:

1815.305 Proposal evaluation.

(a) * * *

(vi) Any programmatic risk, e.g., technical, schedule, cost, safety, occupational health, security, export control, environmental. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, or as a result of the cost, schedule, and performance impacts associated with its approach. Risk evaluations must consider the probability of success, the impact of failure, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths, weaknesses, deficiencies, and numerical/adjectival ratings. Identified risks and the potential for cost impact shall be considered in the cost or price evaluation. The offeror's Risk Management Plan, if required, shall be used to support this evaluation.

* * * * *

9. In section 1815.406–170, paragraphs (c)(5) and (c)(6) are revised and paragraph (c)(7) is added to read as follows:

1815.406–170 Content of the prenegotiation position memorandum.

* * * * *

(c)* * *

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government);

(6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required; and

(7) Any risk management issues, e.g., safety, occupational health, security.

* * * * *

PART 1816—TYPES OF CONTRACTS

10. In section 1816.405–274, paragraphs (c), (d), (e), (f), (g), and (h) are redesignated as paragraphs (d), (e), (f), (g), (h), and (i), respectively; and new paragraph (c) is added to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(c) The technical factor, if used, must include consideration of risk management (including safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security is considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security. A major breach of safety consists of either any Type A or Type B mishap, or Mission Failure, as defined in NPG 8621.1, NASA Procedures and Guidelines for Mishap Reporting, Investigating, and Recordkeeping, or any violation cited by the Occupational Safety and Health Administration that results in either a final order of the Review Commission assessing a civil penalty, or a criminal conviction. Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security results in damage or loss greater than $250,000 to the Government. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; or theft.

(1) For evaluation of service contracts under 1816.405–273(a), an overall fee determination of zero for any evaluation period in which there is a major breach of safety or security; or

(2) For evaluation of end item contracts under 1816.405–273(b), an overall fee determination of zero for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if a zero fee determination was made because of a major breach of safety or security.

* * * * *

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

11. 1823.7001 is revised to read as follows:

1823.7001 NASA solicitation provisions and contract clauses.

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223–70, Safety and Health, shall be included in all solicitations and contracts for—

(1) Negotiated acquisitions of $1,000,000 or more;

(2) Construction, repair, or alteration in excess of the simplified acquisition threshold;

(3) Acquisitions having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and

(4) Acquisitions regardless of dollar amount when—

(i) Any deliverable contract end item is of a hazardous nature; or

(ii) It can reasonably be expected that hazards will be generated and controlled within the operational environment during the life of the contract and the contracting officer determines that they warrant inclusion of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded—

(1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR subpart 22.10) in which the application of either act and its implementing regulations constitute adequate safety and occupational health protection; or

(2) When the contracting officer, with the concurrence of the installation official(s) responsible for matters of safety and occupational health, makes a written determination that the clause is not necessary under the circumstances of the acquisition.

(c) The contracting officer shall insert the provision at 1852.223–73, Safety and Health Plan, in solicitations containing the clause at 1852.223–70, when a Safety and Health Plan is to be submitted with the offeror's proposal. This clause may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract.

(d) The contracting officer shall insert the provision at 1852.223–75, Risk Management Plan, in all solicitations for negotiated acquisitions of $5,000,000 or more, unless waived at a level above the contracting officer with the concurrence of the project/program office and the center safety and occupational health official(s). For other solicitations, use of the provision is optional. After receiving the concurrence of the project/program office and the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract.

(e) The contracting officer shall insert the clause at 1852.223–76, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of $500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety and occupational health. For other contracts, use of the clause is optional.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

12. In section 1842.503, paragraph (1)(iv) is revised to read as follows:

1842.503 Postaward conferences.

(1) * * *

(iv) Complex contract management issues are expected, e.g., safety, security, occupational health, environmental protection, export control, and/or risk management.

* * * * *

PART 1846—QUALITY ASSURANCE

13. Section 1846.000 is added to read as follows:

1846.000 Scope of part.

The Government has a duty to assure that appropriated funds are spent wisely. That duty is fulfilled in part through surveillance. Surveillance may be conducted through "insight" (i.e., monitoring of selected metrics and/or milestones) or "oversight" (i.e., Government review and concurrence with contractor decisions). The decision to use insight or oversight is based on an assessment of the risk inherent in the activity being surveilled. Surveillance must be conducted whether or not the contract effort has been structured as performance-based.

14. Section 1846.401 is added to read as follows:

1846.401 General. (NASA supplements paragraph (a)).

(a) The quality assurance surveillance plan (QASP) which the project office prepares in conjunction with the statement of work is preliminary. It reflects the Government's surveillance approach relative to the perceived programmatic risk, and is written at a general rather than specific level because the risks will not be completely identified at that time. After contract award, contracting officers shall ensure that the QASP is revised to reflect the risks associated with the successful proposal. This final QASP shall not be included in the contract, but should be periodically reviewed to ensure its currency.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Section 1852.223–70 is revised to read as follows:

1852.223–70 Safety and Health.

As prescribed in 1823.7004(c), insert the following clause:

Safety and Health

(Date)

(a) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(b) The Contractor shall take, or cause to be taken, any other safety and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of $25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee.

(d) Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as

the Contracting Officer may require, of the

Safety and Health Plan

18. Section 1852.223–76 is added to

the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(e)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (e)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(f) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (f) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that—

(1) Amount to $1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required);

(2) Require construction, repair, or alteration in excess of $25,000; or

(3) Regardless of dollar amount, involve the use of hazardous materials or operations.

(g) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(h) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence—

(1) Written hazardous operating procedures for all hazardous operations; and/or

(2) Qualification Standards for personnel involved in hazardous operations.

(End of clause)

16. In section 1852.223–73, Alternate I is removed and the basic clause is revised to read as follows:

1852.223–73 Safety and health plan.

* * * * *

Safety and Health Plan

(Date)

NASA requires that the contractor furnish supplies and services in a safe and healthful manner and develops, produces, and/or delivers products to NASA that will be safe and successful for their intended use. The offeror shall submit a detailed safety and occupational health plan, as part of its proposal. The plan must include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of contractor employees and to ensure the safety of all working conditions throughout the performance of the contract. The plan must similarly address safety and occupational health for subcontractor employees for any proposed subcontract whose value is expected to exceed $500,000, including commercial services and services provided in support of a commercial item. Also, when applicable, the plan must address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of NASA employees and the public. This plan, as approved by the Contracting Officer, will be included in any resulting contract. (For additional detail on content for the Safety and Health Plan, see NPG 8715.1, NASA Safety Manual Procedures and Guidelines, Appendix H.)

(End of provision)

17. Section 1852.223–75 is added to read as follows:

1852.223–75 Risk Management Plan.

As prescribed in 1823.7001(d), insert the following provision:

Risk Management Plan

(Date)

The offeror shall submit a detailed Risk Management Plan, as part of the offeror's proposal. The plan must include a detailed description of the offeror's plan to use risk management techniques to manage programmatic risks (e.g., safety, technical, cost, schedule, security, export control, and damage to the environment) throughout the performance of the contract. The plan must conform to NASA's guidance on risk as described in NASA Procedures and Guidelines 8705.X, Risk Management Procedures and Guidelines. The plan must similarly address risk management for subcontracted effort whose value is expected to exceed $500,000. Costs solely attributable to risk management must be clearly identifiable in the offeror's proposal. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

18. Section 1852.223–76 is added to read as follows:

1852.223–76 Safety.

As prescribed in 1823.7001(e), insert the following clause:

Major Breach of Safety or Security

(Date)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of safety is an act or omission of the contractor that results in either—

(1) Any Type A or Type B mishap, or Mission Failure as defined in NPG 8621.1, NASA Procedures and Guidelines for Mishap Reporting, Investigating, and Recordkeeping; or

(2) Any violation cited by the Occupational Safety and Health Administration that results in a final order of the Review Commission assessing a civil penalty, or a criminal conviction.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security results in damage or loss greater than $250,000 to the Government. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; or theft.

(c) In the event of a major breach of safety or security, the Contractor shall, if directed by the Contracting Officer, conduct its own investigation and report the results to the Government, and the Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

[FR Doc. 99–18414 Filed 7–19–99; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register
Vol. 64, No. 138
Tuesday, July 20, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 98–093–1]

Declaration of Emergency Because of the Mediterranean Fruit Fly and the Mexican Fruit Fly

Serious outbreaks of the Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), and the Mexican fruit fly, *Anastrepha ludens* (Loew), are occurring in California.

The Mediterranean fruit fly is one of the most destructive pests of over 200 species of fruits, nuts, and vegetables, especially citrus and stone fruits. The pest can develop rapidly and spread easily, causing severe damage to entire areas where citrus and other fruits and vegetables are grown.

The Mexican fruit fly is a destructive pest of citrus and many other types of fruits. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

As of July 1999, there is an infestation of the Mediterranean fruit fly in portions of Orange and Riverside Counties, CA. Also, an infestation of the Mexican fruit fly has been found in a portion of San Diego County, CA. The presence of these fruit flies in the continental United States could severely disrupt the fruit and vegetable industry due to crop damages. additional pesticide use, and quarantine requirements. The permanent presence of these pests in California would result in yearly losses of over $205 million. If allowed to spread throughout the United States, the estimated annual losses are over $1.5 billion for the Mediterranean fruit fly alone.

In cooperation with the State of California, the Animal and Plant Health Inspection Service (APHIS) has initiated a program to eradicate these fruit fly infestations in California. The State of California is assisting APHIS in the funding of the program costs. However, APHIS resources are insufficient to meet the estimated $8.7 million needed for the Federal share. In addition, some of these resources may be needed to fund other Mediterranean and Mexican fruit fly emergencies before the end of the year.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. (7 U.S.C. 147b), I declare that there is an emergency which threatens the citrus-and other fruit-and-vegetable-growing industries in this country and hereby authorize the transfer and use of such funds as may be necessary from appropriations or other funds available to the agencies or corporations of the United States Department of Agriculture for conducting a program to detect and identify Mediterranean fruit fly and Mexican fruit fly infested areas, to control and prevent the spread of the Mediterranean fruit fly and the Mexican fruit fly to noninfested areas in the United States, and to eradicate the Mediterranean fruit fly and the Mexican fruit fly wherever they may be found in the continental United States.

EFFECTIVE DATE: This declaration of emergency shall become effective July 9, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–18436 Filed 7–19–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 99–004–1]

Declaration of Emergency Because of the Mediterranean Fruit Fly in Mexico

A serious outbreak of the Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is occurring in Chiapas, Campeche, and Tabasco, Mexico.

The Mediterranean fruit fly (Medfly) is one of the most destructive pests of over 200 species of fruits, nuts, and vegetables, especially citrus and stone fruits. Infestations can develop rapidly and spread easily, causing severe damage to entire citrus and other fruit and vegetable growing areas. At least 43 countries are known to regulate in some manner for the Medfly.

In cooperation with the governments of Mexico and Guatemala, the Animal and Plant Health Inspection Service (APHIS) conducts activities in Mexico and Guatemala to maintain a sterile Medfly barrier in western Guatemala to prevent the spread of Medfly through Mexico and into the United States. This program is called the Moscamed Program.

During the summer and fall of 1998, APHIS and cooperators in Mexico detected 253 infestations of Medfly in the States of Chiapas, Campeche, and Tabasco, Mexico. Over 160 infestations are currently active in the State of Chiapas. Mexico has initiated programs to eradicate the infestations, but does not have the resources to eradicate the Medfly and keep the Moscamed Program running without assistance from the United States.

The establishment of Medfly in the continental United States could severely disrupt the fruit and vegetable industry due to crop damage and loss of export markets. An economic assessment completed in 1993 estimates that if Medfly were established in the continental United States, losses attributed to the Medfly would cost $1.5 billion annually. Keeping Mexico free of Medfly will greatly reduce the risk that this pest will be introduced into the United States. Fruit fly experts predict that if the pest is allowed to continue to spread in Mexico, the Medfly will reach the U.S. border by the year 2005.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency that threatens the citrus and other fruit and vegetable industries of this country, and I authorize the transfer and use of such funds as may be necessary from appropriations or other funds available to the United States Department of Agriculture to conduct a program to detect, control, and prevent the spread of the Medfly in Mexico, in order to prevent its introduction into the United States.

EFFECTIVE DATE: This declaration of emergency shall become effective July 9, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–18437 Filed 7–19–99; 8:45 am]

BILLING CODE 3410–34–P

VOL 64 ISS 138 JL 20 1999 UMI

DEPARTMENT OF AGRICULTURE

Willamette Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA Forest Service.

ACTION: Action of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, August 12, 1999. The meeting is scheduled to be a field trip and is scheduled to leave the Eugene BLM at 8:30 a.m., and will conclude at approximately 5:00 p.m. The field trip will leave from the Eugene BLM Office, 2890 Chad Drive, Eugene, Oregon 97401, phone (541) 683–6000.

The PAC will visit various private, BLM, and Forest Service sites in the McKenzie Watershed to review road management practices. The public is welcome to attend, but will need to provide their own transportation.

An agenda, including a list of the field trip stops, will be available for the public. There will be no formal public forum due to the nature of this meeting; however, written comments may be submitted prior to the August 12 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest, 211 East Seventh Avenue, Eugene, Oregon 97401; (541) 465–6924.

Dated: July 14, 1999.

Darrell L. Kenops,

Forest Supervisor.

[FR Doc. 99–18406 Filed 7–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration.

Title: Requirement for Approved Construction Projects.

Agency Form Number: Not Applicable.

OMB Approval Number: 0610–0096.

Type of Request: Extension of a currently approved collection.

Burden: 23,200 hours.

Number of Respondents: Approximately 1,160 respondents.

Average Hours Per Response: 20.

Needs and Uses: This information collection is needed to monitor construction projects for compliance with Federal and other program and administrative requirements as set forth in EDA's authorizing legislation the Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendments by the Economic Development Reform Act of 1998, Pub. L. 105–393, (PWEDA), EDA's implementing regulations at 13 CFR parts 305 and 308, and the Common Rule as set forth at 15 CFR parts 14 and 24. The information collected from grant recipients is used by EDA to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds accomplishing the purpose for which they were granted. Additionally, the information is used to monitor project progress in order to detect delays and to offer assistance to resolve delays when appropriate. EDA uses information gathered to analyze and report on program performance.

Affected Public: State, local or tribal government and not-for-profit organizations.

Frequency: On occasion, quarterly and semiannually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503.

Dated: July 15, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–18453 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Survey of State & Local Government Finance.

Form Number(s): F–5, F–5A, F–11, F–12, F–13, F–21, F–22, F–25, F–28, F–29, F–32, F–42.

Agency Approval Number: 0607–0585.

Type of Request: Extension of a currently approved collection.

Burden: 22,798 hours.

Number of Respondents: 7,459.

Avg Hours Per Response: 3.1 hours.

Needs and Uses: The Census Bureau conducts the Annual Survey of State and Local Government Finance to collect data on state government finances and estimates of local government revenue, expenditures, debt, and assets, nationally and within state areas. Data are collected for all agencies, departments, and institutions of the fifty state governments and for a sample of all local governments (counties, municipalities, townships, and special districts). The forms and procedures are similar to those used in previous annual surveys. Data for school districts are collected under a separate survey.

The Census Bureau incorporates the data collected in this survey into its government finance program which has disseminated comprehensive and comparable governmental statistics since 1902. The Bureau of Economic Analysis uses our government finance data to develop the public sector components of the National Income and Product Accounts and to determine the gross domestic product. Other users include state and local government executives and legislators, policy makers, economists, researchers, the media, and the general public.

We are requesting no changes other than to extend the current OMB clearance for another three years.

Affected Public: State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 15, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–18454 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1043]

Expansion of Foreign-Trade Zone 202, Los Angeles, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, submitted an application to the Board for authority to expand existing Site 4, Dominguez Technology Center, and to include three new sites at the Harbor Gateway Center (Site 9), the Watson Industrial Center South (Site 10) and the Watson Corporate Center (Site 11) in the Los Angeles, California, area, within the Los Angeles/Long Beach Customs port of entry (FTZ Docket 42–98; filed August 28, 1998);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 45998, September 10, 1998) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 202 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000 acre activation limit.

Signed at Washington, DC, this 9th day of July, 1999.

Bernard Carreau,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:
Dennis Puccinelli,
Acting Executive Secretary.

[FR Doc. 99–18463 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1044]

Expansion of Foreign-Trade Zone 37, Orange County, New York

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Orange County, New York, grantee of Foreign-Trade Zone 37, submitted an application to the Board for authority to expand FTZ 37 to include five new sites, located at Stewart International Airport/Northeast Business Center (Site 3), the IBM Hudson Valley Research Park (Site 4), the AT&T Rockland Export Center (Site 5), the Port of Newburgh (Site 6), and the Goshen/Westgate FTZ Industrial Park (Site 7) in the Hudson Valley area, adjacent to the New York Seaport Area Customs port of entry (FTZ Docket 6–98; filed February 2, 1998, amended January 25, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 6890, February 11, 1998) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal would be in the public interest, if approval is subject to the restrictions listed below;

Now, therefore, the Board hereby orders:

The amended application to expand FTZ 37 is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to the conditions and restrictions listed below.

1. The approval of FTZ status at Stewart Airport includes only that area east of Drury Lane.

2. The approval of FTZ status of the Port of Newburgh site includes only that area bounded by the Hudson River, Quassic Creek, South Water Street and South Williams Street.

3. Based on the amended application, the Middletown/Wallkill and Port Jervis CRAFT sites are not included in this action.

4. Each site, except the amended Stewart Airport site, is subject to a sunset provision that terminates FTZ status on December 31, 2004 unless the site is activated pursuant to 19 CFR part 146 of the U.S. Customs Service Regulations.

5. The zone project is subject to the Board's standard 2,000 acre activation limit.

6 All foreign steel mill products must be entered for consumption prior to admission to the Port of Newburgh site.

Signed at Washington, DC, this 9th day of July 1999.

Bernard Carreau,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:
Dennis Puccinelli,
Acting Executive Secretary.

[FR Doc. 99–18464 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Final Results of Changed Circumstances Antidumping Duty Administrative Review; Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation of antidumping duty order.

SUMMARY: On June 8, 1999, the Department of Commerce published a notice of initiation of a changed circumstances antidumping duty administrative review and preliminary results of review with intent to revoke the antidumping duty order on certain fresh cut flowers from Colombia. We are now revoking this order, retroactive to March 1, 1997, based on the fact that domestic parties no longer have an interest in maintaining the antidumping duty order.

EFFECTIVE DATE: July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong or Marian Wells, Office of AD/CVD Enforcement, Import

Administration, International Trade

0603.10.70.10, 0603.10.70.20, and

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Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3853 or (202) 482–6309, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On May 21, 1999, Timothy Haley, the president of Pikes Peak Greenhouses, a domestic wholesaler of the subject merchandise; the Floral Trade Council; and the FTC's Committees on Standard Carnations, Miniature Carnations, Standard Chrysanthemums, and Pompom Chrysanthemums (collectively "the FTC and its Committees") requested that the Department of Commerce conduct a changed circumstances administrative review to revoke the antidumping duty order on certain fresh cut flowers from Colombia retroactive to March 1, 1997. The FTC and its Committees stated that they no longer have an interest in maintaining the antidumping duty order. The FTC is a domestic interested party and was the petitioner in the less-than-fair-value (LTFV) investigation of this proceeding.

We preliminarily determined that the affirmative statement of no interest by the domestic interested party constituted changed circumstances sufficient to warrant revocation of this order. Consequently, on June 8, 1999, we published a notice of initiation of a changed circumstances antidumping duty administrative review and preliminary results of review with intent to revoke order (64 FR 30487). We invited interested parties to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The products covered by this changed circumstances review are certain fresh cut flowers from Colombia including standard carnations, miniature (spray) carnations, standard chrysanthemums, and pompon chrysanthemums. These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope remains dispositive.

This changed circumstances review covers all producers and exporters of certain fresh cut flowers from Colombia.

Final Results of Changed Circumstances Antidumping Duty Administrative Review; Revocation of Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances. The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances administrative review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide further that the Department may revoke an order, in whole or in part, if it concludes that the order under review is no longer of interest to domestic interested parties.

The FTC is a domestic interested party as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and was the petitioner in the LTFV investigation of this proceeding. Based on the affirmative statement by the FTC and its Committees of no interest in the continued application of the order and the fact that no interested parties objected to or otherwise commented on our preliminary results of this review, we determine that there are changed circumstances sufficient to warrant revocation of the order. Therefore, the Department is revoking the antidumping duty order on certain fresh cut flowers from Colombia, retroactive to March 1, 1997.

As the result of the revocation, the Department is terminating the administrative reviews covering the following periods: March 1, 1997, through February 28, 1998 (initiated on April 21, 1998 (63 FR 19709)); March 1, 1998, through February 28, 1999 (initiated on April 30, 1999 (64 FR 23269)).

In accordance with 19 CFR 351.222(g)(4), we will instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of certain fresh cut flowers from Colombia on or after March 1, 1997. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act.

This changed circumstances administrative review, revocation of the antidumping duty order and notice are in accordance with sections 751(b), 751(d) and 782(h) of the Act and 19 CFR 351.216 and 351.222.

Dated: July 13, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18462 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty review.

SUMMARY: In accordance with 19 CFR 351.216(b), Goss Graphic Systems, Inc., an interested party in this proceeding, requested a changed circumstances review. In response to this request, the Department of Commerce is initiating a changed circumstances review on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan.

EFFECTIVE DATE: July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Dinah McDougall or David J. Goldberger, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3773 or (202) 482–4136, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1999, Goss Graphic Systems, Inc. (Goss), the petitioner in this proceeding, requested that the Department revoke in part the antidumping duty order on large newspaper printing presses (LNPP) and components thereof, whether assembled or unassembled, from Japan. Specifically, Goss requested that the Department revoke the order with respect to imports of the elements and components of LNPP systems, and additions thereto, imported to fulfill a contract for one or more complete LNPP systems which feature a 22 inch cut-off, 50 inch web width and a rated speed no greater than 75,000 copies per hour, utilizing exclusively the type of printing unit and color keyless inking system detailed in Goss' request, in a tower configuration coupled with folder, reel tension paster, conveyance and access apparatus, and computerized control system meeting all of the specifications described in Goss' request.

Goss is a domestic producer of the subject merchandise and the petitioner in the underlying sales at less-than-fair-value investigation. In its changed circumstances request, Goss stated that it has no interest in maintaining the antidumping duty order on LNPPs from Japan with respect to the specific category of LNPP systems identified in its request.

In its May 28, 1999 letter, Goss also requested that the Department publish concurrently its notice of initiation and preliminary results of changed circumstances review, pursuant to 19 CFR 351.221(c)(3)(ii). Goss stated that it accounts for substantially all of the production of the domestic like product for which partial revocation is sought. Thus, since this portion of the order is no longer of interest to domestic parties, Goss stated that expedited action is warranted in this case. Goss requested that the effective date of this partial revocation be September 4, 1996, the publication date in the **Federal Register** of the antidumping duty order and amended final determination of sales at less-than-fair value.

On June 15, 1999, Tokyo Kikai Seisakusho, Ltd., (TKS), a Japanese exporter of the subject merchandise and a respondent in the underlying less-than-fair-value investigation and administrative review covering the period September 1, 1997, through August 31, 1998, submitted comments on Goss' changed circumstances request. TKS requested that, if the changed circumstances review were initiated, the Department determine and explain why it would be appropriate to exclude from the order the specific merchandise identified by the petitioner, but not the broader category of color keyless inking equipment as a whole. TKS has also requested that the Department investigate the basis of Goss' request.

Scope of Review

The products covered by this antidumping order are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of this order includes the five press system components. They are:

(1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

(2) A reel tension paster, which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) A folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this antidumping duty order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of this antidumping duty order, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the HTSUS: (1) The term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this order. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, the scope of the antidumping duty order covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this order are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large

newspaper printing press computerized line in the back-to-back configuration

results of changed circumstances

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newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90.

The products covered by this changed circumstances review are elements and components of LNPP systems, and additions thereto, imported to fulfill a contract for one or more complete LNPP systems which feature a 22 inch cut-off, 50 inch web width and a rated speed no greater than 75,000 copies per hour. In addition to the specifications set out in this paragraph, all of which must be met in order for the product to fall within this changed circumstances review, the product must also possess all of the specifications detailed in the five (5) numbered sections following this paragraph and in any figures referenced below. If one or more of these criteria is not fulfilled, the product is not within the scope of this changed circumstances review:

1. *Printing Unit:* A printing unit which is a color keyless blanket-to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:

- Each tower consisting of four levels, one or more of which must be populated.
- Plate cylinders which contain slot lock-ups and blanket cylinders which contain reel rod lock-ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in-line with bearers of other cylinders.
- Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non-anilox and non-porous metering roller.
- The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
- The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.

2. *Folder:* A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut-off length of 22 inches. The upper section consists of three-high double formers (total of 6) with six sets of nipping rollers.

3. *RTP:* A component which is of the two-arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back-to-back configuration (left and right hand load pairs).

4. *Conveyance and Access Apparatus:* Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.

5. *Computerized Control System:* A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

The order with regard to imports of other LNPPs is not affected by this request.

Initiation of Changed Circumstances Antidumping Duty Review

Pursuant to section 751(d)(1) of the Act, the Department may partially revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. 19 CFR 351.222(g) provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

The Department concludes that it would be inappropriate to expedite this action pursuant to 19 CFR 351.221(c)(3)(ii) by issuing a preliminary determination prior to conducting an investigation in the instant case. The Department may need additional information regarding the basis for Goss' request and the ability of the U.S. Customs Service to enforce the antidumping duty order under the revised scope as proposed by Goss. Therefore, the Department is not issuing preliminary results of its changed circumstances antidumping duty administrative review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(c), and will publish these results in the **Federal Register**.

While the changed circumstances administrative review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the LNPP components and systems that are the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: July 12, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18461 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Oil Country Tubular Goods from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 20, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on oil country tubular goods from Korea, covering the period August 1, 1997 through July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons or Steve Bezirganian, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0374 or (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days after the last day of the anniversary month for the relevant order. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until August 31, 1999. This extension fully extends the statutory deadline to 365 days after the last day of the anniversary month for the relevant order. The Department previously extended the time period for the preliminary results from May 3, 1999 to August 13, 1999. 64 FR 7855 (February 17, 1999).

Dated: July 14, 1999.

Edward C. Yang,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–18465 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990709188–9188–01]

National Weather Service (NWS) Modernization and Associated Restructuring; Final Certification of No Degradation of Service for the Combined Consolidation and/or Automation and Closure of Seven Weather Service Offices (WSO)

AGENCY: NWS, NOAA, Commerce.

ACTION: Notice.

SUMMARY: On July 7, 1999, the Under Secretary of Commerce for Oceans and Atmosphere transmitted to Congress notice of approval for five WSO consolidation, seven WSO automation, and seven WSO closure certifications. Pub. L. 102–567 requires the final certifications be published in the FR. This notice is intended to satisfy that requirement.

EFFECTIVE DATE: July 20, 1999.

ADDRESSES: Requests for copies of the final certification packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910–3283.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300 ext. 136.

SUPPLEMENTARY INFORMATION: The WSO Fresno, CA, automation and closure certification was proposed in the July 14, 1997, **Federal Register**. The 60-day public comment period closed on September 12, 1997. No public comments were received. At its September 24, 1997, meeting, the Modernization Transition Committee (MTC) endorsed the WSO Fresno certifications as not resulting in a degradation of service.

The automation and closure certifications for WSO Huntington, WV; and consolidation, automation, and closure certifications for WSO Chattanooga, TN, and WSO Syracuse, NY, were proposed in the April 9, 1998, **Federal Register**. The 60-day public comment period closed on June 8, 1998.

Fourteen public comments were received pertaining to WSO Syracuse. No comments were received pertaining to WSOs Huntington and Chattanooga. A synopsis of the public comments on WSO Syracuse and NWS response are set forth here for reference.

Comments on WSO Syracuse, New York: Fourteen public comments were received raising two concerns: loss of the snowfall measurements at the Syracuse airport, and a degradation of radar coverage and forecasting accuracy for lake effect snow events. One comment came from Representative James T. Walsh who stated, "I write to you today to express my concerns regarding the removal of an accurate snow measuring system and on-site observation for Syracuse." One of the fourteen comments was in favor of closing the Syracuse office.

NWS Response: The NWS provided the following information to the Modernization Transition Committee (MTC) on June 18, 1998, in response to the concerns raised in the public comments. The NWS stated there will not be a loss of snowfall measurement because:

- Syracuse is a Service Level A airport, and there is a Federal Aviation Administration contractor in place to provide snow depth on the ground and snow increasing rapidly remarks in the observations.
- The Binghamton forecast office has an agreement with the contractor at the Syracuse airport to provide hourly snowfall updates as needed.
- 2 Cooperative observers are located within 20 miles and 4 cooperative observers are within 30 miles of the Syracuse airport to provide additional snowfall measurements.
- 17 volunteer snow spotters are located in Onondaga County including 2 within the Syracuse city limits.

The NWS stated there has not been a degradation of radar coverage or forecast accuracy for lake effect snow events because:

- The center of the Binghamton WSR–88D beam is 6500 feet over Syracuse and the center of the Montague WSR–88D beam is 6,000 feet over Syracuse providing non-degraded radar coverage of lake effect snow events. WSO Syracuse did not have a local radar.
- The 1995—1997 NWS Lake Effect Snow Study demonstrated forecast accuracy for lake effect snow events in the Syracuse area has improved.

At its June 18, 1998, meeting, the MTC endorsed the WSO Huntington, Chattanooga, and Syracuse certifications as not resulting in a degradation of service.

The consolidation, automation, and closure certifications for WSOs Charlotte, NC, Fort Wayne, IN, and South Bend, IN, were proposed in the July 17, 1998, FR. The 60-day comment period closed on September 15, 1998.

One public comment was received pertaining to WSO Fort Wayne. No public comments were received pertaining to WSOs Charlotte and South Bend. The public comment on WSO Fort Wayne and the NWS response are set forth here for reference. *Comment on WSO Fort Wayne, Indiana:* On July 23, 1998, Mr. Ned A. Speiser, CEM, Director, Defiance County Emergency management wrote, "The service received has been poor to fair at best. Services I was use to receiving from the Cleveland Ohio NWS office are not offered by the North Webster Indian . office. Services such as a paging system that warned of watches and warnings at no cost, a simple phone call from NWS to relay emergency information or to get information from me during bad weather. We do not receive the NOAA Radio transmission either.

There have been several bad storm cells that have moved through the area that warranted at least a watch, but none were received. Warnings have also not been received when NWS says there was one issued. They said it was due to

computer and technical communication

At its September 29, 1998, meeting

The current limit for Category 870

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computer and technical communication problems. This is not acceptable.

The North Webster Indiana NWS informed me that they had put a cut off date on providing severe weather classes when I called to schedule a class. There was never a cut off date before. The Cleveland Office was always willing to work around my schedule as well as the people taking the class.

Last, but most important, is the attitude of the employees at the North Webster Office. We, other NW OHIO EMA Directors, and myself have had to call not one, but two emergency meetings in the past four months to discuss the above mentioned problems. Our complaints have fallen on deaf ears. It seems that they do not want to assist us in receiving the quality of service that we deserve and need to protect the citizens in our counties.

I would be happy to discuss this in further detail if you wish by contacting me at 419–782–1130. Thank you and I appreciate any help you may be able to offer." *NWS Response:* Mr. Michael Sabones, Meteorologist in Charge, Northern Indiana office worked with Mr. Speiser to satisfy his concerns. First, NWS has agreed to continue the pager service for Mr. Speiser. Second, there are areas of the country not covered by NOAA Weather Radio (NWR). The NWS is working with state and local governments and private entities in a public/private partnership to increase the NWR coverage. Third, outdated communications software has been updated with more reliable software which alleviated the technical and communications problems referred to by Mr. Speiser. Fourth, due to the upcoming severe weather season, the North Webster Indiana forecast office set a goal to complete spotter training by April 15. This did not fit with Mr. Speiser's schedule, and after clearing up the misunderstanding, a second training session was scheduled after April 15 for Defiance county spotters. On April 21, 1998, Mr. Speiser wrote, "Thank you for providing the great informational Severe Weather Spotter classes in the month of April." Finally, the perceived attitude of the employees at the North Webster Indiana forecast office, related to the pager problem, was resolved to Mr. Speiser's satisfaction. Mr. Sabones met with Mr. Speiser on September 15, 1998, at the Ohio Emergency Management Association meeting and again on September 29, 1998, during a meeting to review flooding concerns in Defiance county. Mr. Speiser is satisfied with the efforts of the North Webster Indian forecast office to resolve his concerns.

At its September 20, 1998, meeting, the MTC endorsed the WSO Charlotte, WSO Fort Wayne, and WSO South Bend certifications as not resulting in a degradation of service.

After consideration of public comments received and the MTC endorsements, the Under Secretary of Commerce for Oceans and Atmosphere approved these seven combined consolidation and/or automation and closure certifications and transmitted notice of approval to Congress on July 7, 1999. Certification approval authority was delegated from the Secretary of Commerce to the Under Secretary in June 1996. The NWS is now completing the certification requirements of Pub. L. 102–567 by publishing the final consolidation and/or automation and closure certification notice in the **Federal Register**.

Dated: July 14, 1999.

John E. Jones, Jr.

Deputy Assistant Administrator for Weather Services.

[FR Doc. 99–18455 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–KE–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

July 15, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 870 is being increased for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67046, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 15, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 21, 1999, you are directed to increase the limit for Category 870 to 34,928,462 [1] kilograms, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–18466 Filed 7–19–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

July 15, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 64069, published on November 18, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 15, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 21, 1999, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
336/636	315,299 dozen.
340	471,102 dozen.
341	1,056,370 dozen.
342/642	275,067 dozen.
347/348	904,593 dozen.
640	108,754 dozen.
641	329,149 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–18467 Filed 7–19–99; 6:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Tuesday, July 20, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–18594 Filed 7–16–99; 2:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, July 29, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–18595 Filed 7–16–99; 2:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974: System of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of new systems of records.

SUMMARY: This notice adds three systems to the Commodity Futures Trading Commission's systems of records maintained under the Privacy Act: Freedom of Information Act requests, Privacy Act requests, and requests for confidential treatment. This notice informs the public of the existence and character of these systems and the routine uses which the Commission may make of the information contained in the systems.

DATES: Comments on the establishment of the new systems of records must be received no later than August 19, 1999. The new systems of records will be effective August 29, 1999 unless the Commission receives comments which would result in a contrary determination.

ADDRESSES: Comments should be addressed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Comments may also be sent via electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Office of the Executive Director, (202) 418–5157, or Eileen Donovan, Office of the Secretariat, (202) 418–5096, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and the Commission's implementing regulations, 17 CFR part 146, the Commission is publishing a description of three new systems of records. Each is described in detail below.

1. **Freedom of Information Act Requests.** The Commission established this system of records to manage the processing of requests received under the Freedom of Information Act. Because this system allows retrieval of information about an individual through his or her name, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public.

The Freedom of Information Act (FOIA) provides individuals with a right of access to federal agency records.

except to the extent that such records

Once the requester's identity is

Commission staff review the

Routine Uses." Nos. 1 and 2. Privacy

CATEGORIES OF INDIVIDUALS COVERED BY THE

except to the extent that such records are protected from disclosure by one of nine exemptions. When the Commission receives a FOIA request, the request is assigned a control number for tracking purposes and a letter is sent to the requester acknowledging receipt of the request.

Search forms are sent to the Commission offices or divisions which maintain the records requested. Staff members in the responding office or division complete the form and return it to the Commission's FOIA Compliance Office with any responsive material located. When all completed search forms have been returned, a response letter is prepared and sent to the requester with any responsive material not exempt from disclosure.

A file folder is maintained for each request received and each folder contains the original request, copies of the acknowledgment and response letters, the search forms, any memoranda or notes related to the processing of the request, a copy of the bill sent to the requester if fees were incurred, and a copy or record of the material provided to the requester. The records are kept in locked file cabinets until destroyed in accordance with National Archives and Records Administration (NARA) General Records Schedule (GRS) 14. Once a request is closed, the records are used only to expedite the processing of appeals and subsequent requests for the same information and to prepare the Commission's annual report to the Department of Justice on FOIA activity for the fiscal year, without reference to the individual who made the request. Information pertaining to the processing and disposition of each request is compiled electronically in the FOIA Tracking System database and destroyed in accordance with GRS–14.

2. **Privacy Act Requests.** The Commission established this system of records to manage the processing of requests received under the Privacy Act. Because this system allows retrieval of information about an individual through his or her name, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public.

The Privacy Act provides individuals with a right of access to records about themselves that are maintained in a federal agency's system of records. When the Commission receives a Privacy Act request, the request is assigned a control number for tracking purposes and a letter is sent to the requester acknowledging receipt of the request and asking for proof of the requester's identity.

Once the requester's identity is confirmed, search forms are sent to the Commission offices or divisions which maintain the records requested. Staff members in the responding office or division complete the form and return it to the Commission's FOIA Compliance Office with any responsive material located. When all completed search forms are returned, a response letter is prepared and sent to the requester with any responsive material not exempt from disclosure.

A file folder is maintained for each request received and each folder contains the original request, copies of the acknowledgement and response letters, the requester's proof of identity, the search forms, any memoranda or notes related to the processing of the request, a copy of the bill sent to the requester if fees were incurred, and a copy or record of the material provided to the requester. The records are kept in locked file cabinets until destroyed in accordance with GRS–14. Once a request is closed, the records are used only to process appeals and to prepare the Commission's biennial Privacy Act report to Congress, without reference to the individual who made the request. Information pertaining to the processing and disposition of each request is compiled electronically in the FOIA Tracking System database and destroyed in accordance with GRS–14.

3. **Requests for Confidential Treatment.** Individuals submitting information to the Commission may also submit a written request for confidential treatment of that information. The Commission maintains these requests for confidential treatment in a system of records so that if the Commission receives a FOIA request for the information, the submitter can be notified and given the opportunity to justify withholding the information from the requester. Because this system allows retrieval of information about an individual through his or her name, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public.

A submitter seeking confidential treatment must request such treatment in writing and copies of the request must be sent to the Commission office or division receiving the information for which confidential treatment is sought and to the Commission's FOIA Compliance Office. The request is indexed and placed in a file folder in a locked cabinet until a FOIA request for the subject information is received.

If such a FOIA request is received, the submitter is notified and asked to submit a detailed written justification of the confidential treatment request. Commission staff review the justification and determine whether confidential treatment should be granted or denied. If it is denied, the submitter may appeal that determination to the Commission's Office of the General Counsel. Information pertaining to the processing and disposition of each request is compiled electronically in the petitions database.

These new systems of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, have been submitted to the Committee on Government Oversight and Reform of the U.S. House of Representatives, the Committee on Governmental Affairs of the U.S. Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996. Accordingly, the Commission is giving notice of the establishment of the following systems of records:

CFTC–39

SYSTEM NAME:

Freedom of Information Act Requests.

SYSTEM LOCATION:

FOI, Privacy and Sunshine Acts Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies of the requests and any related internal administrative records may also be maintained by other offices involved in the processing of requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting information from the Commission pursuant to provisions of the Freedom of Information Act, 5 U.S.C. 552, and persons who are the subjects of Freedom of Information Act requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, internal memoranda, response letters, appeals of denials, appeal determinations and electronic tracking data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by Commission staff to process FOIA requests and appeals and to prepare an annual report to the Department of Justice on the Commission's FOIA activity. See also the Commission's "General Statement of Routine Uses," Nos. 1 and 2, Privacy Act Issuances, 1997 Comp.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, and microfiche.

RETRIEVABILITY:

By assigned control number, by name of requester, or by subject of request.

SAFEGUARDS:

Paper records and microfiche are maintained in lockable file cabinets on secured premises. Information stored on computers is protected by a password, with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

FOIA requests are retained in accordance with General Records Schedule 14 of the National Archives and Records Administration.

SYSTEM MANAGERS AND ADDRESS:

Assistant Secretary to the Commission for FOIA Matters, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Persons requesting information from the Commission pursuant to the Freedom of Information Act and employees processing the requests.

CFTC–40

SYSTEM NAME:

Privacy Act Requests.

SYSTEM LOCATION:

FOI, Privacy and Sunshine Acts Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies of the requests and any related internal administrative records may also be maintained by other offices involved in the processing of requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons filing requests for access to, correction of, or an accounting of disclosures of personal information contained in system of records maintained by the Commission, pursuant to the Privacy Act of 1974. 5 U.S.C. 552a.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, internal memoranda, response letters, appeals of denials, appeal determinations and electronic tracking data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by Commission staff to process Privacy Act requests and appeals and to prepare the Commission's Biennial Privacy Act report to Congress. See also the Commission's "General Statement of Routine Uses," Nos. 1 and 2, Privacy Act Issuances, 1997 Comp.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, and microfiche.

RETRIEVABILITY:

By assigned control number or by name of requester.

SAFEGUARDS:

Paper records and microfiche are maintained in lockable file cabinets on secured premises. Information stored on computers is protected by a password, with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Privacy Act requests are retained in accordance with General Records Schedule 14 of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary to the Commission for FOIA Matters, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Persons requesting information from the Commission pursuant to the Privacy Act and employees processing the requests.

CFTC–41

SYSTEM NAME:

Requests for Confidential Treatment.

SYSTEM LOCATION:

FOI, Privacy and Sunshine Acts Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. A copy of the request may also be kept by the office receiving the document for which confidential treatment is being requested.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting confidential treatment of, and persons who are the subjects of, documents filed with the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for confidential treatment, the documents for which confidential treatment is requested and electronic tracking data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

The records are used by Commission staff to determine whether to grant or deny confidential treatment of information submitted to the Commission for which a FOIA request has been received and to process appeals of determinations denying confidential treatment for submitted information. See also the Commission's "General Statement of Routine Uses," Nos. 1 and 2, Privacy Act Issuances, 1997 Comp.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, and microfiche.

RETRIEVABILITY:

By name of requester or by subject of request

SAFEGUARDS:

Paper records are maintained in lockable file cabinets on secured premises. Information stored on computers is protected by a password, with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for 20 years, then destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant Secretary to the Commission for FOIA Matters, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Future Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Persons submitting documents to the Commission.

Issued in Washington, DC this 14th day of July, 1999 by the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary to the Commission.

[FR Doc. 99–18393 Filed 7–20–99; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Meeting Notice

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, July 27, 1999, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS

Matter to be Considered

Open to the Public.

FY 2001 Budget Request

The Commission will consider issues related to the Commission's budget for fiscal year 2001.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 15, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–18648 Filed 7–16–99; 3:24 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0139]

Proposed Collection; Comment Request Entitled Federal Acquisition and Community Right-To-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Federal Acquisition and Community Right-to-Know. The clearance currently expires on October 31, 1999.

DATES: Comments may be submitted on or before September 20, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 23.9 and its associate solicitation provision and contract clause implement the requirements of E.O. 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), "Federal Acquisition and Community Right-to-Know," and the Environmental Protection Agency's "Guidance Implementing E.O. 12969; Federal Acquisition Community Right-to-Know; Toxic Chemical Release Reporting" (60 FR 50738, September 29, 1995). The FAR coverage requires offerors in competitive acquisitions over $100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 USC 11001–11050) and the Pollution Prevention Act of 1990 (42 USC 13101–13109).

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *167,487;* responses per respondent, *1;* total annual responses, *167,487,* preparation hours per response, *0.50;* and total response burden hours, *83,744.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202)208–7312. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: July 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–18397 Filed 7–19–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Waiver of 10 U.S.C. 2534 for Certain Defense Items Produced in the United Kingdom

AGENCY: Department of Defense (DoD).

ACTION: Notice of waiver of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom.

SUMMARY: The Under Secretary of Defense (Acquisition and Technology) is waiving the limitation of 10 U.S.C. 2534 for certain defense items produced to the United Kingdom (UK). 10 U.S.C. 2534 limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of items enumerated from sources in the UK, unless otherwise restricted by statute.

EFFECTIVE DATE: This waiver is effective for one year, beginning August 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Mutty, OUSD (A&T), Director of Defense Procurement, Foreign Contracting, Room 3C762, 3060 Defense Pentagon, Washington, DC 20301–3060, telephone (703) 697–9353.

SUPPLEMENTARY INFORMATION:

Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (i) of 10 U.S.C. 2534 authorizes the Secretary of Defense to exercise the waiver authority in subsection (d), on the basis of the applicability of paragraph (2) or (3) of that subsection, only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country. Subsection (d) authorizes a waiver if the Secretary determines that application of the limitation "would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items" and if he determines that "that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country." The Secretary of Defense has delegated the waiver authority of 10 U.S.C. 2534(d) to the Under Secretary of Defense (Acquisition and Technology).

DoD has a reciprocal procurement Memorandum of Understanding (MOU) with the UK that was signed on December 13, 1994.

The Under Secretary of Defense (Acquisition and Technology) finds that the UK does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in the UK, and also finds that application of the limitation in 10 U.S.C. 2534 against defense items produced in the UK would impede the reciprocal procurement of defense items under the MOU.

Under the authority of 10 U.S.C. 2534, the Under Secretary of Defense (Acquisition and Technology) has determined that application of the limitation of 10 U.S.C. 2534(a) to the procurement of any defense item produced in the UK that is listed below would impede the reciprocal procurement of defense items under the MOU with the UK.

On the basis of the foregoing, the Under Secretary of Defense (Acquisition and Technology) is waiving the limitation in 10 U.S.C. 2534(a) for procurements of any defense item listed below that is produced in the UK. This waiver applies only to the limitations in 10 U.S.C. 2534(a). It does not apply to any other limitation, including sections 8016 and 8067 of the DoD Appropriations Act for Fiscal Year 1999 (Pub. L. 105–262). This waiver applies to procurements under solicitations issued during the period from August 4, 1999, to August 3, 2000. A similar waiver was granted for the period from August 4, 1998, to August 3, 1999 (63 FR 38815, July 20, 1998). For contracts entered into prior to August 4, 1998, this waiver applies to procurements of the defense items listed below under—

(1) Subcontracts entered into during the period from August 4, 1999, to August 3, 2000, provided the prime contract is modified to provide the Government adequate consideration such as lower cost or improved performance; and

(2) Options that are exercised during the period from August 4, 1999, to August 3, 2000, if the option prices are adjusted for any reason other than the application of the waiver, and if the contract is modified to provide the Government adequate consideration such as lower cost or improved performance.

List of Items to Which This Waiver Applies

1. Air circuit breakers
2. Welded shipboard anchor and mooring chain with a diameter of four inches or less
3. Gyrocompasses
4. Electronic navigation chart systems
5. Steering controls
6. Pumps
7. Propulsion and machinery control systems
8. Totally enclosed lifeboats
9. Ball and roller bearings

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–18217 Filed 7–19–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

U.S. Army Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Construction of a Containerized Cargo and Cruise Ship Terminal, Along Port Road, East of Old Highway 146, in the Extra-territorial Jurisdiction of the City of Pasadena and the City of Seabrook, Harris County, Texas

AGENCY: U.S. Army Corps of Engineers, Galveston District, DoD.

ACTION: Revised Notice of Intent: Date and Location Change for Public Scoping Meeting.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District intends to prepare a DEIS to access the social, economic and environmental effects of the proposed multi-year phased construction of a container terminal and cruise ship facility. The DEIS will assess potential impacts on a range of alternatives, including the preferred alternative.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed action and DEIS, please contact Mr. Mark King, Project Manager, by letter at U.S. Army Corps of Engineers, P.O. Box 1229, Galveston, Texas 77550, by telephone at (409) 766–3991, or by electronic mail at john.m.king@swg02.usace.army.mil.

SUPPLEMENTARY INFORMATION: The Galveston District intends to prepare a DEIS on the proposed container cargo and cruise ship terminal which would be located along Port Road, east of Old Highway 146, in the Extra-territorial Jurisdiction of the City of Pasadena and the City of Seabrook, Harris County, Texas. The Port of Houston Authority (PHA) proposes this project.

1. Description of the Proposed Project

The PHA proposes to construct containerized cargo loading areas, roadways, rail lines, an intermodal transit yard, and associated warehouses, administration, and operations buildings. It is the PHA's projection that initial construction would use approximately 1,600 feet of waterfront and 54 acres of land for a container

Esq., Glenn E. Camus, Esq., Southern

contaminated groundwater until the

increasing travel time, thereby

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yard. Construction beyond this initial phase would occur in increments (50–100 acre yard expansions and associated waterfront construction). These additional phases of construction would occur based upon cargo demand. It is currently estimated that the ultimate build-out of the container terminal to seven berths and over 608 acres of container yard and a 90 acre intermodal transit facility (rail yard) could take 15 to 20 years. Cruise ship facilities beyond the initial single berth would be constructed based upon passenger demand.

2. Alternatives

The following alternatives will be examined to identify the reasonable alternatives to be fully evaluated in the DEIS: No Action; the modification of existing PHA facilities to meet the purpose and need of and for the proposed project; alternative locations within the jurisdictional authority of the PHA where the proposed facilities might be developed; off-site alternatives such as Spillman Island, Shoal Point (Texas City), and Galveston Harbor; modified on-site alternatives. The applicant's preferred alternative is the PHA owned property on the Bayport Ship Channel (95°00′ longitude and 29°36.7′ latitude).

3. Scoping and Public Involvement Process

A workshop and scoping meeting to gather information on the subjects to be studied in detail in the DEIS will be conducted on August 17, 1999, at the Pasadena Convention Center, 7902 Fairmont Parkway, Pasadena, Texas.

4. Significant Issues

Issues associated with the proposed facilities to be given significant analysis in the DEIS are likely to include, but may not be limited to, the potential impacts of the proposed dredging, the beneficial uses of dredged material, placement of fill, construction and operation of the proposed facility and surface transportation facilities, and of induced developments on: wetland resources; upland and aquatic biotic communities; water quality; fish and wildlife values including threatened and endangered species; noise and light levels in areas adjoining the proposed facilities; air quality; land forms and geologic resources; community cohesion; environmental justice; roadway traffic; socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; public infrastructure and services; energy supply and natural resources; hazardous waste and materials; land use; aesthetics; public health and safety; navigation; flood plain values; shoreline erosion and accretion; and the needs and welfare of the people.

5. Cooperating Agencies

No other Federal agencies have been identified having permitting, certifying, or other approval authority for the proposed project. However, the Federal Highway Administration, the Environmental Protection Agency and Texas Natural Resources Conservation Commission have agreed to cooperate in the technical review of the DEIS.

6. Additional Review and Consultation

Additional review and consultation which will be incorporated into the preparation of this DEIS will include: compliance with the Texas Coastal Management Program; protection of cultural resources under Section 106 of the Historic Preservation Act; protection of navigation under the Rivers and Harbors Act of 1899; protection of water quality under Section 401 of the Clean Water Act; and protection of endangered and threatened species under Section 7 of the Endangered Species Act.

7. Availability of the DEIS

The Draft Environmental Impact Statement is projected to be available in March 2000. A Public Hearing will be conducted following the release of the DEIS.

Dated: July 2, 1999.

Nicholas J. Buechler,

Col, EN Commanding.

[FR Doc. 99–18391 Filed 7–19–99; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF ENERGY

[Docket No. EA–214]

Application To Export Electric Energy; Southern Company Energy Marketing L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Southern Company Energy Marketing L.P. (SCEM) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 19, 1999.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 2, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from SCEM to transmit electric energy from the United States to Canada. SCEM, a Delaware limited partnership, is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised service territory in the United States.

SCEM proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power & Light, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by SCEM, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the SCEM application to export electric energy to Canada should be clearly marked with Docket EA–214. Additional copies are to be filed directly with JoAnn P. Russell, Esq., Glenn E. Camus, Esq., Southern Company Energy Marketing L.P., 900 Ashwood Parkway, Suite 490, Atlanta, GA 30338 AND James C. Beh, Esq., Antoine P. Cobb, Esq., Troutman Sanders LLP, Suite 500 East, 1300 I Street, N.W., Washington, D.C. 20005–3314.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on July 13, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–18430 Filed 7–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Wetland Involvement for Interim Measures for the Mixed Waste Management Facility (MWMF) Groundwater at the Burial Ground Complex (BGC), Savannah River Site, Aiken, South Carolina

AGENCY: Savannah River Operations Office (SR), Department of Energy (DOE).

ACTION: Notice of wetland involvement.

SUMMARY: DOE–SR proposes to install a small metal sheet pile wall dam which would be positioned to impound about 0.49 hectares (1.2 acres) of water around and over the BGC southwest groundwater seepline. This action would be taken in cooperation with the South Carolina Department of Health and Environmental Control (SCDHEC) to reduce the amount of tritium contaminated water seeping to the surface from the BGC southwest plume and eventually discharging to Fourmile Branch, an onsite stream. This interim measure is intended to control the movement and discharge of contaminated groundwater until the final, more permanent corrective measure is taken. In accordance with 10 CFR 1022, DOE will prepare a wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected wetland.

DATES: Comments on the proposed action due on or before August 4, 1999.

ADDRESSES: For further information, including a site map and/or copy of the wetland assessment, or to submit comments regarding this notice, contact A. R. Grainger, National Environmental Policy Act (NEPA) Compliance Officer, Savannah River Operations Office, Building 742–A, Room 185, Aiken, South Carolina 29808. The fax/phone number is (800) 881–7292. The e-mail address is nepa@srs.gov.

FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: A groundwater contaminant plume has been detected and is emanating from the Old Radioactive Waste Burial Ground (ORWBG) which is located at the southwest corner of the BGC at SRS. Tritium-contaminated water from this southwest plume is seeping to the surface at areas along the Old F-Area Effluent Ditch (OFED). Currently, groundwater that emanates from this seep combines with surface drainage from the immediate area to form a small stream in the southern portion of the OFED. Eventually, this stream mixes with F-Area discharge water which then flows into Fourmile Branch, an onsite stream.

DOE–SR proposes to install a small metal sheet pile wall dam [approximately 1.5 to 2.1 meters (5 to 7 feet) high and 100.6 meters (330 feet) long] which would be positioned to impound about 0.49 hectares (1.2 acres) of water around and over the BGC southwest groundwater seepline. The impounded 0.49 hectares (1.2 acres) has been determined to be jurisdictional wetlands. The proposed action is not within the 100-year or baseline floodplain.

This action would be taken in cooperation with SCDHEC to reduce the amount of tritium-contaminated water seeping to the surface and eventually discharging to Fourmile Branch. The impoundment would retard surface water flow to Fourmile Branch by increasing travel time, thereby mitigating the discharge of tritium-contaminated water. In addition, a drip irrigation system is being evaluated to enhance the effectiveness of the interim measure. This feature would further minimize discharges to Fourmile Branch by pumping impounded water behind the dam during peak flow conditions to upstream locations.

The interim measure will also address the remediation of volatile organic compounds (VOCs) from "hotspot" regions associated with the southwest plume area. Airlift recirculation wells will be installed in "hotspot" regions where concentrations of VOCs have routinely exceeded drinking water standards. Airlift recirculation wells provide a means for removing VOCs from contaminated groundwater, through a combination of in place air stripping and airlift pumping processes.

This interim measure is intended to control the movement and discharge of contaminated groundwater until the final, more permanent corrective measure is taken.

Undertaking the proposed action will not affect DOE's ability to fully evaluate reasonable alternatives for the final action. An Environmental Assessment (EA) will also evaluate several alternatives to the proposed action.

In accordance with DOE regulations for compliance with wetland environmental review requirements (10 CFR 1022), DOE–SR will prepare a wetland assessment for this proposed DOE action. The assessment will be included in the EA (DOE/EA–1302) that is being prepared for the proposed action in accordance with the requirements of NEPA.

Issued in Aiken, SC, on July 7, 1999.

Lowell E. Tripp,

Director, Engineering and Analysis Division, Savannah River Operations Office.

[FR Doc. 99–18432 Filed 7–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[DE–PS26–99FT40613]

Federal Energy Technology Center; Notice of Intent To Issue a Program Solicitation for Cooperative Agreements

AGENCY: Federal Energy Technology Center, DOE.

ACTION: Notice.

SUMMARY: Notice is hereby given of the intent to issue a Program Solicitation No. DE–PS26–99FT40613 entitled "Research and Development of Technologies for the Management of

Greenhouse Gases." The Federal Energy Technology Center invites any university or other institution of higher education, non-profit, not-for-profit or for-profit organization, non Federal agency, or other entity to submit competitive applications for cooperative agreements for the conduct of research and development that addresses the following six elements of the FETC sequestration program.

- Separation and Capture
- Sequestration of CO_2 in Geological Formations
- Ocean Sequestration
- Sequestration in Terrestrial Ecosystems
- Advanced Concepts
- Modeling and Assessments

DATES: Applications may be submitted at any time after the issuance date of the solicitation up to and including 1 year after the issue date. The issue date of the solicitation is expected to be August 1, 1999. Applications will be reviewed individually, or in groups which will be assembled as often as practical considering the number of applications received and availability of competent reviewers. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation. Prospective offerors should check the Internet location frequently for any solicitation amendments prior to submitting applications.

ADDRESSES: The solicitation will be available for viewing and downloading from FETC's Internet site at http://www.fetc.doe.gov/business. Solicitations will not be distributed on diskette or in paper form. Candidates may register through FETC's Business Alert Notification service on our homepage. The category to register under is Advanced Electric Power Generation, Coal Conversion/Solid Fuels and Feedstocks, Oil and Gas, or Environmental R&D for Fossil Fuels. In accordance with FAR 52.232–18, "Availability of Funds," funds are not presently available for this procurement. The Government's obligation under this award is contingent upon the availability of appropriated funds from which payment for award purposes can be made.

SUPPLEMENTARY INFORMATION: The overall goals for the FETC Carbon Sequestration Program are:

- To provide economically competitive and environmentally safe options to offset all projected growth in baseline emissions of greenhouse gases by the U.S. after 2010, with offsets starting in 2015.
- To achieve the long-term cost goal in the range of $10/ton of avoided net costs for carbon sequestration.
- To offset at least one-half the required reductions in global greenhouse gases, measured as the difference in a business-as-usual baseline and a strategy to stabilize atmospheric CO_2 concentrations at 550 ppm, beginning in the year 2025.

The latter goal represents the global potential for these technology options if broadly applied by the United States and other countries.

These research pathways stem directly from the Carbon Sequestration: State of the Science report, available from the Office of Fossil Energy's web site at www.fe.doe.gov/sequestration. The program portfolio covers the entire carbon sequestration "life cycle" of capture, separation, transport, and storage or reuse. Also of interest is the FETC Carbon Sequestration Program Plan is available on the web site at www.fetc.doe.gov/products/gcc.

DOE anticipates multiple cooperative agreement awards resulting from this solicitation and no fee or profit will be paid to a recipient or subrecipient under the awards.

Issued: July 9, 1999.

Randolph L. Kesling,

Supervisory Contract Specialist, Acquisition and Assistance Division.

[FR Doc. 99–18431 Filed 7–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 99–15–Certification Notice—176]

Kissimmee Utility Authority; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On June 22, 1999, Kissimmee Utility Authority submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G-039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20583.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Kissimmee Utility Authority and Florida Municipal Power Agency.

Operator: Kissimmee Utility Authority.

Location: Near Intercession City in Osceola County, FL.

Plant Configuration: Combined cycle.

Capacity: 250 megawatts.

Fuel: Natural gas.

Purchasing Entities: Kissimmee Utility Authority and the Florida Municipal Power Agency systems.

In-Service Date: June 2001.

Issued in Washington, D.C., July 14, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulations, Office of Cool & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–18429 Filed 7–19–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–520–001, FERC–520]

Information Collection Submitted for Review and Request for Comments

July 14, 1999.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under the provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in responses to an earlier **Federal Register** notice of May 29, 1999 (64 FR 14894) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Michael Miller, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–520 "Application for Authority to Hold Interlocking Directorate Positions".
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* OMB No. 1902–0083.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection of data. There is an increase in the reporting burden due to an increase in the number of entities that submit this collection of information. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of this information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Section 305(b) of the Federal Power Act (FPA), 16 U.S.C. Section 305(b). This section specifies that the holding of certain defined interlocking corporate positions is unlawful unless the FERC has authorized the interlocks to be held, and requires of the applicant a showing that neither public nor private interests will be affected by the holding of such a position. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 45.

5. *Respondent Description:* The respondent universe currently comprises on average 28 entities subject to the Commission's jurisdiction.

6. *Estimated Burden:* 1,450 total burden hours, 28 respondents, 1 response annually, 51.8 hours per response.

7. *Estimated Cost Burden to Respondents:* 1,450 hours ÷ 2,080 hours per year × $109,889 per year = $76,605, average cost per respondent = $2,736.

Statutory Authority: Section 305(b) of the Federal Power Act, 16 U.S.C. 825(d).

David P. Boergers,

Secretary.

[FR Doc. 99–18444 Filed 7–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1698–000]

The Detroit Edison Company; Notice of Filing.

July 14, 1999.

Take notice that on June 30, 1999, The Detroit Edison Company filed an amendment in response to the Federal Energy Regulatory Commission's (FERC) notification regarding the omission of the Specifications for Long-Term Firm Point-to-Point Transmission Service between the Detroit Edison Company and the Detroit Edison Company Merchant Operations.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also he viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18445 Filed 7–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–435–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Tariff Filing

July 14, 1999.

Take notice that on July 9, 1999 Maritimes & Northeast Pipleine, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to become effective August 1, 1999:

First Revised Sheet No. 230
Second Revised Sheet No. 292

Maritimes states that the purpose of this filing is to comply with Order No. 587–k, Final Rule issued on April 2, 1999 in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Maritimes states that copies of the filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

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rims.htm (call 202–208–2222 for assistance).

David P. Boegers,

Secretary.

[FR Doc. 99–18447 Filed 7–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–333–001]

Questar Pipeline Company; Tariff Filing

July 14, 1999.

Take notice that on July 9, 1999, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Seventh Revised Sheet No. 46, to be effective July 9, 1999.

On June 9, 1999, Questar filed tariff sheets to be effective July 9, 1999. The Commission issued a letter order in this proceeding on June 30, 1999, indicating that the red-lined version of Seventh Revised Sheet NO. 46 was not consistent with the proposed tariff sheet. This filing corrected this inconsistency as well as an incorrect section reference.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18446 Filed 7–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL95–71–004, et al.]

Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc., et al., Electric Rate and Corporate Regulation Filings

July 13, 1999.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc.

[Docket No. EL95–71–004]

Take notice that on July 8, 1999, Public Service Company of New Hampshire tendered for filing a compliance filing in the above captioned matter. On June 16, 1999, the Commission ordered Public Service Company of New Hampshire (PSNH) to recalculate its billing for service to the New Hampshire Electric Cooperative, Inc. (NHEC) since June 6, 1998, to refund with interest certain charges it had made based upon those recalculated bills, and to file a refund report with the Commission. 87 FERC ¶61,294. PSNH provided a refund with interest relating to 0.45 megawatt of capacity from Bio Energy, a Qualifying Facility, claimed during the winter period under section 15.6 of the NEPOOL Agreement.

Copies of this filing were served upon the New Hampshire Electric Cooperative, Inc., counsel for Bio Energy Corporation, and the Executive Director and Secretary of the New Hampshire Public Utilities Commission.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Central Maine Power Company

[Docket No. EL99–76–000]

Take notice that on July 7, 1999, Central Maine Power Company (CMP) tendered for filing, pursuant to Section 385.207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), and the Commission's Order No. 889 regarding a request for waiver of separation of functions requirement (18 CFR 37.4).

CMP requests that the waiver become effective in 60 days.

CMP has served a copy of this filing upon the Maine Public Utilities Commission.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. PanEnergy Lake Charles Generation, Inc.

[Docket No. ER96–1335–013]

Take notice that on July 8, 1999, in compliance with the Commission's May 17, 1996 Letter Order approving its market-based rate schedule, PanEnergy Lake Charles Generation, Inc. (Lake Charles) tendered for filing a Notification of Change in Status relating to the ownership of Lakes Charles' stock.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Quark Power L.L.C. United American Energy Corp.

[Docket Nos. ER97–2374–009 and ER96–3092–012]

Take notice that on July 9, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. New England Power Pool

[Docket No. ER98–3853–004]

Take notice that on July 7, 1999, the New England Power Pool (NEPOOL) Participants Committee submitted unmarked versions of those portions of the Restated NEPOOL Open Access Transmission Tariff that were changed by the Thirty-Ninth Agreement Amending New England Power Pool Agreement in accordance with the Commission's order in New England Power Pool, 87 FERC ¶ 61,347 (1999).

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Grayling Generating Station L.P., Direct Electric Inc., Central Hudson Gas & Electric Corporation

[Docket Nos. ER 99–791–001, ER94–1161–019, and ER97–2872–003]

Take notice that on July 8, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. Duquesne Light Company

[Docket No. ER99–1132–002]

Take notice that on July 7, 1999, Duquesne Light Company tendered for filing its compliance filing to amend Duquesne's Open Access Transmission Tariff in compliance with the Commission's Order of June 22, 1999 in Docket No. ER99–1132–001.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. SOWEGA Power LLC

[Docket No. ER99–3427–000]

Take notice that on July 8, 1999, in the above-referenced docket, SOWEGA Power LLC (SOWEGA) amended its filing for authority to make sales at market-based rates. The original filing inadvertently omitted a copy of the proposed SOWEGA FERC Rate schedule No. 1, the market-based tariff for which approval is being sought, and which would provide the tariff authority for the two service agreements that were filed on June 30, 1999. SOWEGA hereby amends its filing to include a copy of the tariff.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

[Docket No. ER99–3503–000]

Take notice that on July 7, 1999, Tampa Electric Company (Tampa Electric) tendered for filing an umbrella service agreement with Koch Energy Trading, Inc. (Koch) under Tampa Electric's Market-Based Sales Tariff. Tampa Electric proposes that the service agreement be made effective on June 7, 1999.

Copies of the filing have been served on Koch and the Florida Public Service Commission.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Cleco Corporation

[Docket No. ER99–3504–000]

Take notice that on July 7, 1999, Cleco Corporation, (Cleco) tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with the City of Ruston, Louisiana.

Cleco states that a copy of the filing has been served on the City of Ruston.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER99–3505–000]

Take notice that on July 7, 1999, Ameren Services Company (ASC) tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Allegheny Energy, British Columbia Power Exchange Corporation, Duke Power, a division of Duke Energy Corporation, Kansas Electric Power Cooperative, Inc., Merrill Lynch Capital Services, Inc., and Southern Indiana Gas and Electric Company (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Ameren Services Company

[Docket No. ER99–3506–000]

Take notice that on July 7, 1999, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Allegheny Energy, British Columbia Power Exchange Corporation, Duke Power, a division of Duke Energy Corporation, Kansas Electric Power Cooperative, Inc., Merrill Lynch Capital Services, Inc., and Southern Indiana Gas and Electric Company (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corp., Power Authority of the State of New York, New York Power Pool

[Docket No. ER99–3508–000]

Take notice that on July 7, 1999, the New York Independent System Operator, Inc. (New York ISO) and the Member Systems of the New York Power Pool (Member Systems) tendered for filing Temporary Extraordinary Procedures for Correcting Market Design Flaws and Addressing Transitional Abnormalities and an unexecuted letter agreement between the New York ISO and the Member Systems providing for a Cutover Plan.

The New York ISO and Member Systems request an effective date of September 1, 1999 and waiver of the Commission's notice requirements and of any applicable filing requirements not otherwise satisfied.

A copy of this filing was served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER99–3509–000]

Take notice that on July 7, 1999, Florida Power Corporation (FPC) tendered for filing an unexecuted service agreement between El Paso Power Services Company and FPC for service under FPC's Cost-Based Wholesale Power Sales Tariff (CR–1), FERC Electric Tariff, Original Volume Number 9. This Tariff was accepted for filing by the Commission on April 20, 1998, effective as of October 29, 1997, in Docket No. ER98–374–000.

The service agreement is proposed to be effective June 8, 1999.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of Colorado

[Docket No. ER99–3510–000]

Take notice that on July 7, 1999, Public Service Company of Colorado filed a Service Agreement with Basin Electric Power Cooperative for Coordination Power and Energy sales under PS Colorado's Electric Coordination Service Tariff.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER99–3511–000]

Take notice that on July 8, 1999, Western Resources, Inc., tendered for filing an agreement between Western Resources and Northern Indiana Public Service Company. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission.

Power Marketing, Inc. (Enron) pursuant

The agreement is proposed to become effective June 9, 1999.

Copies of the filing were served upon Northern Indiana Public Service Company and the Kansas Corporation Commission.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Avista Corporation

[Docket No. ER99–3512–000]

Take notice that on July 7, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, an Executed Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, replacing a previously filed Unexecuted Service Agreement No. 4 under Docket No ER99–2826–000 with PacifiCorp, effective April 4, 1999.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of April 4, 1999.

Avista Corporation has served a copy of this filing to PacifiCorp.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER99–3513–000]

Take notice that on July 7, 1999, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated February 1, 1999 between Avista Energy, Inc. (Avista) and OVEC.

OVEC proposes an effective date of June 16, 1999 and requests waiver of the Commission's notice requirement to allow the requested effective date.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon Avista.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3514–000]

Take notice that on July 7, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing Center (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3515–000]

Take notice that on July 7, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to Southern Company Energy Marketing, L.P. (Southern).

Con Edison states that a copy of this filing has been served by mail upon Southern.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Avista Corporation

[Docket No. ER99–3516–000]

Take notice that on July 8, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an Executed Service Agreement with Sovereign Power, Inc. under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of July 1, 1999.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3517–000]

Take notice that on July 7, 1999, Central Hudson Gas & Electric Corporation (CHG&E) tendered for filing, pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement for Firm Point-to-Point Transmission Service between CHG&E and The New York Power Authority. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume 1 (Transmission Tariff) filed in compliance with the Commission's Order 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 C.F.R. Section 35.11.

CHG&E requests an effective date of May 20, 1999 for the Service Agreement.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Carolina Power & Light Company

[Docket No. ER99–3518–000]

Take notice that on July 8, 1999, Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with West Penn Power Company d/b/a Allegheny Energy. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of June 30, 1999 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER99–3519–000]

Take notice that on July 8, 1999, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with ACN Energy, Inc. under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Ohio Edison requests that the service agreement become effective on July 1, 1999.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Florida Power Corporation

[Docket No. ER99–3520–000]

Take notice that on July 8, 1999, Florida Power Corporation (Florida Power) tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for short term firm point-to-point transmission service by Florida Power to Enron Power Marketing, Inc. (Enron) pursuant to its open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on July 9, 1999.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Florida Power and Light Company

FPL Energy Power Marketing, Inc.

[Docket No. ER99–3521–000]

Take notice that on July 8, 1999, Florida Power and Light Company (FPL) and FPL Energy Power Marketing, Inc. (FPL Power Marketing) filed a request that Supplement No. 79 to Western Systems Power Pool (WSPP) Rate Schedule, FERC No. 1, be amended to reflect the transfer of FPL's membership in the WSPP to its affiliate, FPL Power Marketing.

FPL and FPL Power Marketing state that copies of this filing were served on other WSPP members and the general counsel of the WSPP.

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Boston Edison Company

[Docket No. ER99–3522–000]

Take notice that on July 8, 1999, Boston Edison Company (Boston Edison) tendered for filing a Standstill Agreement between itself and The Boylston Municipal Light Department, City of Holyoke Gas & Electric Department, Hudson Light and Power Department, Littleton Electric Light & Water Departments, Marblehead Municipal Light Department, Middleborough Gas and Electric Department, North Attleborough Electric Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, and Westfield Gas & Electric Light Department (Municipals). The Standstill Agreement extends the time in which the Municipals may institute a legal challenge to the 1997 true-up bill under their respective contracts to purchase power from Boston Edison's Pilgrim Nuclear Station, to permit finalization of a settlement in Docket Nos. EC99–18, et al.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective July 12, 1999.

The Standstill Agreement relates to the following Boston Edison FERC Rate Schedules:

(1) Supplement to Rate Schedule No. 77—Standstill Agreement with Boylston Municipal Light Department
(2) Supplement to Rate Schedule No. 79—Standstill Agreement with Holyoke Gas and Electric Department
(3) Supplement to Rate Schedule No. 81—Standstill Agreement with Westfield Gas and Electric Light Department
(4) Supplement to Rate Schedule No. 83—Standstill Agreement with Hudson Light and Power Department
(5) Supplement to Rate Schedule No. 85—Standstill Agreement with Littleton Electric Light and Water Department
(6) Supplement to Rate Schedule No. 87—Standstill Agreement with Marblehead Municipal Light Department
(7) Supplement to Rate Schedule No. 89—Standstill Agreement with North Attleborough Electric Department
(8) Supplement to Rate Schedule No. 91—Standstill Agreement with Peabody Municipal Light Plant
(9) Supplement to Rate Schedule No. 93—Standstill Agreement with Shrewsbury's Electric Light Plant
(10) Supplement to Rate Schedule No. 95—Standstill Agreement with Templeton Municipal Light Plant
(11) Supplement to Rate Schedule No. 97—Standstill Agreement with Wakefield Municipal Light Department
(12) Supplement to Rate Schedule No. 99—Standstill Agreement with West Boylston Municipal Lighting Plant
(13) Supplement to Rate Schedule No. 102—Standstill Agreement with Middle- borough Gas and Electric Department

Comment date: July 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18395 Filed 7–19–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6400–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NESHAP National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ICR for NESHAP Subpart N, National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants, OMB Control Number 2060–0043, expiration date July 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1081.06.

SUPPLEMENTARY INFORMATION: *Title:* ICR for NESHAP Subpart N, National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants, OMB Control Number 2060–0043, EPA ICR Number 1081.06, expiration date July 31, 1999. This is a request for extension of a currently approved collection.

Abstract: These standards apply to each glass melting furnace that uses commercial arsenic as a raw material. This subpart does not apply to pot furnaces. Also, rebricking is not considered construction or modification

for the purposes of 40 CFR 61.05. This

soliciting comments on this collection

Compressor Station Sites, Americus,

refer to the matter name and the docket

FEDERAL COMMUNICATIONS

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for the purposes of 40 CFR 61.05. This information is being collected to assure compliance with 40 CFR part 61, subpart N. The EPA is charged under section 112 of the Clean Air Act, as amended, to establish standards of performance for each category or subcategory of major sources and area sources of hazardous air pollutants. These standards are applicable to new or existing sources of hazardous air pollutants and shall require the maximum degree of emission reduction. Owners or operators of the affected facilities described are subject to the recordkeeping and reporting requirements in the NESHAP general provisions and the requirements of 40 CFR part 61, subpart N. The regulation requires initial notifications including construction, modifications, CMS demonstration, and performance testing. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to NESHAP subpart N, National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants provide information on the operation of the missions control device and compliance with the emission limit. Records and reports of approved control device bypass are required. Arsenic emission estimates and semiannual reports of uncontrolled Arsenic emission rates are required. These notifications, reports, and records are essential in determining compliance. All requirements are mandatory under 40 CFR part 61, subpart N. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, reports, and records.

Approximately 47 sources are currently subject to the standard. There continues to be on growth in this industry, and it is estimated that no new sources will become subject to the standard in the next three years. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 01/05/99 (64 FR 499); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 157 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintain information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondnets/Affected Entities: Owners and Operators of Glass Manufacturing Plants.

Estimated Number of Respondents: 47.

Frequency of Response: Initial and semiannual.

Estimate Total Annual Hour Burden: 6,769 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $164,500.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1081.06 and OMB Control No. 2060–0043 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 14, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–18479 Filed 7–19–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6400–6]

Sun Laboratories Superfund Site/ Atlanta, Georgia; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Sun Laboratories Site (Site) located in Atlanta, Georgia, with Nasaro Incorporated. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: July 6, 1999.

Franklin E. Hill,

Chief, Program Services Branch.

[FR Doc. 99–18471 Filed 7–19–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6400–7]

Proposed Cost Recovery Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h)(1), Williams Gas Pipelines Central, Inc. Compressor Station Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed cost recovery settlement under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h)(1), Williams Gas Pipelines Central, Inc. Compressor Station Sites, Americus, Corwin, Grabham, Matfield Green, Stafford, Tonganoxie and Welda, Kansas and Peculiar and Pierce City, Missouri.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a cost recovery administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h)(1). This settlement is intended to resolve the liability of Williams Gas Pipelines Central, Inc. (WGPC) for response costs incurred by the EPA in connection with removal actions conducted by WGPC at nine compressor stations located in Kansas and Missouri. The compressor stations addressed in the proposed settlement are (1) Americus Compressor Station, Americus, Lyon County, Kansas; (2) Corwin Compressor Station, Corwin, Harper County, Kansas; (3) Grabham Compressor Station, Grabham, Montgomery County, Kansas; (4) Matfield Green Compressor Station, Matfield Green, Chase County, Kansas; (5) Peculiar Compressor Station, Peculiar, Cass County, Missouri; (6) Pierce City Compressor Station, Lawrence County, Missouri; (7) Stafford Compressor Station, Stafford, Stafford County, Kansas; (8) Tonganoxie Compressor Station, Tonganoxie, Leavenworth County, Kansas; and (9) Welda Compressor Station, Welda, Anderson County, Kansas. The proposed settlement agreement was signed by the Environmental Protection Agency (EPA) on May 20, 1999. Because EPA's total response costs did not exceed $500,000, the Attorney General's concurrence is not required for this settlement.

DATES: Written comments must be provided on or before August 19, 1999.

ADDRESSES: Comments should be addressed to Daniel J. Shiel, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: *In the matter of Williams Gas Pipeline Central, Inc. Compressor Station Sites,* EPA Docket Nos. CERCLA–7–99–0018, CERCLA–7–99–0019, CERCLA–7–0020, CERCLA–7–99–0021, CERCLA–7–99–0022, CERCLA–7–99–0023, CERCLA–7–99–0024, CERCLA–7–99–0025, and CERCLA–7–99–0026.

The proposed administrative settlement may be examined in person at the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. To request a copy by mail please refer to the matter name and the docket numbers set forth above and enclose a check in the amount of $3.50 (25 cents per page for reproduction costs), payable to the United States Environmental Protection Agency.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement concerns the nine compressor station sites listed above. Williams Gas Pipelines Central, Inc., formerly Williams Natural Gas Company, conducted removal actions at each of these sites pursuant to CERCLA section 160 administrative consent orders issued by EPA Region VII. Each of these consent orders required WGPC to reimburse EPA's oversight costs beginning on the effective date of each consent order, respectively. WGPC has reimbursed EPA's oversight costs as provided in the orders. However, in connection with each of the above WGPC Compressor Stations, EPA incurred response costs prior to the effective data of the consent order which have not been reimbursed by WGPC. EPA's unreimbursed response costs for the each of these WGPC Compressor Station Sites is as follows: (1) Americus Compressor Station, Site/Spill ID number 07GR, $39,537.27; (2) Corwin Compressor Station, Site/Spill ID number 07GZ, $4,006.24; (3) Grabham Compressor Station, Site/Spill ID number 07GT, $9,126.45; (4) Matfield Green Compressor Station Site/Spill ID number 07GP, $14,383.28; (5) Peculiar Compressor Station Site/Spill ID number 07TD, $1,670.60; (6) Pierce City Compressor Station Site/Spill ID number 07NT, $2,375.44; (7) Stafford Compressor Station Site/Spill ID number 07GQ, $19,168.57; (8) Tonganoxie Compressor Station Site/Spill ID number 07GS, $15,529.07; and (9) Welda Compressor Station Site/Spill ID number 07NW, $1,039.15. The total of these unreimbursed site costs is $106,836.07.

In the proposed settlement agreement, WGPC has agreed to reimburse EPA for $106,836.07, which is the full amount of these costs.

Dated: June 9, 1999.

U. Gale Hutton,

Acting Regional Administrator, Region 7.

[FR Doc. 99–18480 Filed 7–19–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 14 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 20, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0311.

Title: Section 76.54 Significantly viewed signals; method for special showing.

Form Number: None.

Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 12.
Estimated Time Per Response: 15 hours.
Frequency of Response: On occasion third-party disclosure requirement.
Total Annual Burden: 180 hours.
Total Annual Cost: $48.
Needs and Uses: Section 76.54 requires that notice of an audience survey that is conducted by an organization for significantly viewed signal purposes is to be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, and all other system community units, franchisees and franchise applicants in the cable community or communities, as well as the franchise authority. This notification shall be made at least 30 days prior to the initial survey period and shall include the name of the survey organization and a description of the procedures to be used. The notifications are used by interested parties to give them an opportunity to file objections to the methodology of the survey.
OMB Approval Number: 3060–0315.
Title: Section 76.221 Sponsorship ID, list retention, related requirements.
Form Number: None.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 450.
Estimated Time Per Response: 30 minutes.
Frequency of Response: On occasion notice and recordkeeping requirement.
Total Annual Burden: 225 hours.
Total Annual Cost: $900.
Needs and Uses: Section 76.221(a) and (c) state that when a cable operator engaged in origination cablecasting presents any matter for which valuable consideration is paid, the operator must announce the sponsorship of such matter if the sponsor has not already done so. Section 76.221(f) states that sponsorship announcements are waived with respect to the broadcast of "want ads" sponsored by an individual but the licensee shall maintain a list to be made available for public inspection showing the name, address and telephone number of each advertiser. Section 76.221(d) states that when a cablecast is of a political or controversial nature, the cable operator is required to retain a list of the executive officers, or board of directors, or executive committee, etc. of the organization sponsoring the cablecast. The records and sponsorship announcements are used by the public so that they may know by whom origination cablecasts are sponsored.
OMB Approval Number: 3060–0395.
Title: Section 73.54 Antenna resistance and reactance measurements.
Form Number: None.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 200 AM Licensees.
Estimated Time Per Response: 1.25 hours (0.25 hours consultation time; 1 hour contract consulting engineer).
Frequency of Response: Recordkeeping.
Total Annual Burden: 50.
Total Annual Cost: $30,000.
Needs and Uses: Section 73.54(d) requires that AM licensees file notification with the FCC when determining power by the direct method. This notification requirement is accomplished through a formal application process and has OMB approval under FCC Form 302, (OMB Control No. 3060–0029). In addition, Section 73.54(d) requires that background information regarding antenna resistance measurement data for AM stations must be kept on file at the station. The background information is used by FCC staff in field investigations to ensure that measurements are taken properly and by station licensees to identify any problems that may occur.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–18427 Filed 7–19–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 3, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Alice Bernice Sale, Chattanooga, Tennessee; Tracie Lynn Calfee, Chattanooga, Tennessee; and David Reynolds Housley, Muscatine, Iowa; all to acquire additional voting shares of Rossville Bankshares, Inc., Rossville, Georgia, and thereby indirectly acquire additional voting shares of Rossville Bank, Rossville, Georgia.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Michael Weeks, and Linda Weeks, both of Premont, Texas; to acquire additional voting shares of Coastal Bend Bancshares, Inc., Corpus Christi, Texas, and thereby indirectly acquire additional voting shares of First Community Bank, NA, Alice, Texas.

Board of Governors of the Federal Reserve System, July 14, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–18398 Filed 7–19–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Westborough Bancorp, M.H.C., and Westborough Financial Services, Inc., both of Westborough, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Westborough Savings Bank, Westborough, Massachusetts.

Board of Governors of the Federal Reserve System, July 14, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–18400 Filed 7–19–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Firstar Corporation, Milwaukee, Wisconsin (Firstar); to acquire all the nonbank subsidiaries of Mercantile Bancorporation, Inc., St. Louis, Missouri (Mercantile), and to engage, directly or indirectly through such nonbank subsidiaries, in a variety of nonbanking activities that have previously been determined to be permissible for bank holding companies. The nonbanking companies that Firstar proposes to acquire are listed in the notice filed with the Board, and include FFG Trust, Inc., Springfield, Illinois, Mercantile Trust Company National Association, St. Louis, Missouri, D.D. Development of Sterling, Sterling, Illinois, Mercantile Consumer Loan Company, Rock Island, Illinois, and Mississippi Valley Life Insurance Company, St. Louis, Missouri. The nonbanking activities of the companies to be acquired also are listed in the notice and include engaging in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; community development financing and investment activities, pursuant to § 225.28(b)(12)(i) of Regulation Y; making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; and credit insurance activities, pursuant to § 225.28(b)(11)(i) of Regulation Y; and in engaging all activities that Mercantile currently is authorized to conduct.

Board of Governors of the Federal Reserve System, July 14, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–18399 Filed 7–19–99; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 29, 1999, 8 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, ext. 118, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12523. Please call the information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a urethral bulking and coaptation device for the treatment of stress urinary incontinence due to intrinsic sphincter insufficiency. The committee will also discuss possible revisions to the document entitled "Draft Guidance For Preparation of PMA Applications for Testicular Prostheses," issued March 16, 1993. Single copies of the draft guidance are available to the public by calling 1–800–899–0381 or 301–827–0111, and requesting Facts-On-Demand document number 809, or on the Internet at "http://www.fda.gov/cdrh/ode/oderp809.html".

Procedure: On July 29, 1999, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 23, 1999. Oral presentations from the public will be scheduled between approximately 9 a.m. and 9:30 a.m., and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 23, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 29, 1999, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding present and future FDA issues.

FDA regrets that it was unable to publish this notice 15 days prior to the

July 29, 1999 Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 29, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–18383 Filed 7–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–0359/0360/R–0055]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Information Collection Requirements in 42 CFR 485.56, 485.58, 485.60, 485.64, 485.66, 410.105; *Form No.:* HCFA–0359/0360/R–0055 (OMB #0938–0267); In order to participate in the Medicare proram as a CORF, providers must meet federal conditions of participation. The certification form is needed to determine if providers meet at least preliminary requirements. The survey form is used to record provider compliance with the individual conditions and report findings to HCFA.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 540; *Total Annual Responses:* 540; *Total Annual Hours:* 260,848.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 12, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18448 Filed 7–19–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of a Cooperative Agreement With the University of Southern California AIDS Social Policy Archive

The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces that it will award a cooperative agreement to The University of Southern California AIDS Social Policy Archive (USC).

The purpose of this cooperative agreement is to (1) assist USC in an expansion of training programs to help community-based organizations train, place, and support a cadre of HIV/AIDS peer treatment educators from racial and ethnic minority groups as a strategy to engage and retain more persons of color in high quality care and to evaluate the effectiveness of this type of intervention; and (2) establish a Center for Peer HIV/AIDS Treatment Educators in order to support the training and development of knowledgeable peer educators to work within minority communities on treatment education, to increase the awareness, acceptance and appropriate utilization of effective new therapies by HIV positive persons. This project is an essential part of HAB's response to address HIV/AIDS among racial and ethnic minority populations as a part of the Congressional Black Caucus Initiative. HRSA's role in the cooperative agreement will include providing consultation and technical assistance in planning, operating, and evaluating program activities; facilitating collaboration with Ryan White grantees and other HIV national and community organizations to reach the target population; facilitating efforts in the provision of technical assistance and training to specified individuals and organizations; participating, as appropriate, in planning and producing any conferences, meetings, or workgroups conducted during the period of the cooperative agreement; and maintaining an ongoing dialogue with the applicant concerning program plans, policies, and other issues which may have major implications for any activities undertaken by the applicant under the Cooperative Agreement.

Authorizing Legislation

An award will be made under the program authority of Section 2692 (a) of the Public Health Service Act, 42 U.S.C. 300ff–11.

Background

Assistance will only be provided to USC. No other applications are solicited, nor will they be accepted. This organization is the only qualified entity to administer this cooperative agreement because:

1. The University of Southern California AIDS Social Policy Archive is the only entity that has designed a university-based peer treatment educator training program that will create a cadre of highly-trained HIV/AIDS peer treatment educators for the purpose of increasing the numbers of HIV infected African Americans entering and remaining in health care, adhering to treatment regimes, and advocating for their own health care needs.

2. This organization and its staff are established leaders in developing and promoting national and local HIV-related treatment education and policy campaigns aimed at reducing the impact

of HIV in minority populations and improving health outcomes.

3. This organization has developed a base of critical knowledge, skills, and abilities related to HIV treatment and barriers to accessing and adhering to prescribed treatments.

4. This organization has nationally recognized experts in HIV treatments (FDA approved and experimental), process and outcome evaluation, and curriculum development as core resources to support the project through out the project period.

5. This organization has demonstrated the ability to work with minority and non-minority entities, the Federal Government, academic institutions, and health groups on mutually beneficial education, research, and health endeavors related to the goal of health promotion and disease prevention among racial and ethnic minority populations; the national leadership necessary to focus the Nation's attention on minority-related health issues; and the leadership needed to organize health care professionals to work with and train racial/ethnic minority treatment educators and advocates.

Up to $2,000,000 is available in fiscal year (FY) 1999 for a 12-month budget period with a project period of 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where to Obtain Additional Information

Additional information may be obtained from Ms. Brenda Woods-Francis, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–29, Rockville, MD 20857 or telephone (301) 443–0415.

Dated: July 14, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–18385 Filed 7–19–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Targeted Provider Education Demonstration Grants

AGENCY: Health Resources and Services Administration

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of funds for fiscal year 1999 for discretionary grants supporting Targeted Provider Education Demonstration (TPED) Grants. These demonstration grants will provide treatment education and training to health care and support service providers who deliver Ryan White CARE Act services.

The TPED Grants will serve as an adjunct to existing HRSA HIV training initiatives which focus on providing training to primary care providers on Department of Health and Human Services (DHHS) treatment guidelines including the "DHHS Guidelines on the Use of Antiretroviral Agents in HIV infected Adults and Adolescents' and the "Guidelines for the Use of Antiretroviral Agents in Pediatric HIV Infection". The existing HIV training initiatives include: regional AIDS Education and Training Centers (AETC), the National AIDS Education and Training Centers Resource Center; and the National Minority AIDS and Education and Training Center.

The proposed demonstration grants will target HIV/AIDS providers such as case managers, peer counselors, mental health professionals, substance abuse providers, prison health and discharge providers, outreach workers, treatment educators, etc. who are not targeted to receive training through the other HRSA Ryan White Care Act training initiatives. Training topics supported under this grant announcement focus on areas required to support the delivery of quality health and social service support services through Ryan White CARE Act programs. Grantees will be expected to coordinate and work cooperatively with the AETCs and other HRSA training initiatives.

Successful grant applicants will propose to deliver innovative education and training programs tailored to the assessed training needs of the targeted populations. The proposed geographical area will be a region, state(s) or other large geographic area(s) defined by the applicant. The selected geographic area(s) should include areas with a demonstrable need for training providers that serve large minority and other underserved populations. The core components of the program will include a needs assessment, comprehensive evaluation component, and a time-framed implementation plan for education and training program activities.

Eligible Applicants

Eligible applicants are public and nonprofit entities and schools and academic health science centers. In addition, the applicant should have a demonstrable track record in (1) designing and implementing training or educational programs, serving minority populations, and assessing HIV/AIDS service provider training needs; (2) be located within the training catchment area defined by the applicant; and (3) possess the capacity to use multifaceted strategies to outreach to minority providers and provide HIV/AIDS training.

Availability of Funds

Up to $3.3 million dollars are available in FY 1999 to fund 5–10 awards. Funding will be allocated according to the number of grants awarded. It is expected that the awards will be made on or about September 30, 1999. Funding will be made available for 12-months, with a project period for up to three years. Continuation awards within the approved project period will be made on the basis of satisfactory progress and the availability of funds.

Authorization

Section 2692 of the Public Health Service Act, 42 U.S.C. 300ff–11.

Funding Priorities and/or Preferences

Funding priority will be given to proposals that propose to provide innovative education and training to targeted providers serving racial/ethnic minority communities highly impacted by HIV/AIDS. Geographical area and uniform national distribution of TPED programs will be considered in final funding decisions.

DATES: In order to be considered for competition, applications for these announced grants must be received at the HRSA Grants Application Center by the close of business 45 days following the date of this announcement. Applications shall be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing and submission to the review committee. Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant and not reviewed.

ADDRESSES: All applications should be mailed or delivered to: Grants Management Officer, HRSA Grants Application Center, 5600 Fishers Lane, Room 4–91, Rockville, MD 20857. Grant applications sent to any address other than that above are subject to being returned. **Federal Register** notices and application guidance for the HIV/AIDS Bureau programs are available on the

World Wide Web via the Internet. The

—Map 3–18, "Elk Hunt Areas" and Map

DEPARTMENT OF THE INTERIOR

All persons authorized to enforce

World Wide Web via the Internet. The web site for the HIV/AIDS Bureau is: http://www.hrsa.gov/hab/. Federal grant application kits are available at the following Internet address: http://forms.psc.gov/phsforms.htm. For those applicants who are unable to access application materials electronically, a hard copy of the official grant application kit (PHS Form 6025–1) must be obtained from the HRSA Grants Application Center. The Center may be contacted by (1) telephone, 1–888–300–4772, (2) fax, 301–309–0579, or (3) e-mail, HRSA.GAC@ix.netcom.com.

Where To Obtain Additional Information

Additional technical information may be obtained from Brenda Woods-Francis, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–29, Rockville, MD 20857. The telephone number is (301) 443–0415 and the FAX number is (301) 443–6709.

Dated: July 14, 1999.

Claude Earl Fox, M.D., M.P.H.,

Administrator.

[FR Doc. 99–18384 Filed 7–19–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate an Agreement Between the Central Utah Water Conservancy District and Department of the Interior for Construction of the Alpine Aqueduct Reach 3 Raw Water Bypass Pipeline, Utah County, UT

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate an agreement between the Central Utah Water Conservancy District (CUWCD) and Department of the Interior (Interior) for construction of the Alpine Aqueduct Reach 3 Raw Water Bypass Pipeline, Utah County, Utah.

SUMMARY: Under repayment contract No. 14–06–400–4286, dated December 28, 1965, as amended and supplemented, the United States and CUWCD agreed to the terms and conditions for the delivery of project water from the Bonneville Unit of the Central Utah Project. The project purposes for the Bonneville Unit include but are not limited to, irrigation, municipal and industrial, water conservation, water efficiency improvements, fish and wildlife, and recreation. As part of the Bonneville Unit, the Alpine Aqueduct System was constructed to convey Project municipal and industrial water to North Utah County. CUWCD is under contract for the operation and maintenance of Alpine Aqueduct System. Since treated Project water is not yet available for delivery through the Alpine Aqueduct, CUWCD intends to use Alpine Aqueduct Reach 3 to deliver untreated raw water. To deliver the raw water, a pipeline must be constructed to bypass the Utah Valley Water Purification Plant. This bypass pipeline, will be approximately 2,030 feet in length, up to 60 inches in diameter, and will connect Alpine Aqueduct Reach 1 to Alpine Aqueduct Reach 3, which will enable the delivery of the untreated municipal and industrial water to the North Utah County communities.

When construction of the bypass pipeline is completed it will become a CUP Project feature and title will be in the name of the United States. National Environmental Policy Act compliance will be completed by Interior.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Michael Hansen, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1194, Internet: mhansen@uc.usbr.gov

Dated: July 14, 1999.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 99–18408 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–080–1610–00]

Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Newcastle Field Office Administrative Area, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Proposed Newcastle Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS). The proposed RMP describes the proposed future management direction for approximately 291,168 acres of BLM-administered public land surface and 1,407,698 acres of BLM-administered Federal mineral estate in the Wyoming portion of the Newcastle Field Office administrative area.

If you are interested in being involved in future activity planning and implementation of management decisions addressed in the proposed RMP, please contact the Newcastle Field Office at the address below.

The Proposed Newcastle Resource Management Plan and FEIS document is a complete reprinting of the material presented in the draft EIS document. It contains updated and revised chapter narratives, maps, tables, and appendices. Therefore, it should not be necessary to refer to the draft EIS in reviewing this proposed RMP and FEIS.

The Proposed Newcastle Resource Management Plan is a comprehensive land use plan for the management of the BLM-administered public lands in the Newcastle Field Office administrative area. The proposed RMP is a refinement of the preferred alternative presented in the draft EIS. Comments from the public, review and corrections by BLM staff, and new information developed since the distribution of the draft EIS have prompted some changes in the Preferred Alternative. The environmental effects of the proposed RMP are not substantively different from those of the Preferred Alternative. The proposed RMP focuses on the resolution of key resource management issues that were identified with public involvement early in the planning process. These issues include: (1) split estate land management; (2) special management area designations; and (3) resource accessibility and manageability.

The draft EIS for the Newcastle RMP was made available for public review and comment in April 1998. Comments received on the draft EIS were considered in preparing the Proposed Newcastle RMP and FEIS.

The following are changes made to the draft EIS in preparing the FEIS as a result of the public comments received, correcting errors, and updating information.

—Three planning criteria have been added: biological diversity, leasable minerals potential, and wild and scenic rivers. None of these additional criteria caused any changes in the Preferred Alternative.

—The "Socioeconomic" section in Chapter 3 has been updated and revised using current data.

—Map 3–18, "Elk Hunt Areas" and Map 3–24, "Elk and Antelope Herd Unit Boundaries" have been updated to reflect current information.

—Map 3–19, "Threatened or Endangered Species Habitat," from the draft was eliminated because the information was incomplete and misleading.

—Information pertaining to big game population objectives was updated with current data.

—An Appendix N, "Fire Management Implementation Plan for the BLM-Administered Public Lands in the State of Wyoming" was added.

—Two appendices were updated with more current information: (1) Appendix H, "A Detailed Discussion of Oil and Gas Activities and Processes in the Newcastle Resource Area," and (2) Appendix I, "Reasonably Foreseeable Development Scenario for Oil and Gas."

All or part of the Proposed Newcastle Resource Management Plan and FEIS may be protested by parties who participated in the planning process and who have an interest which is or may be adversely affected by the adoption of the plan. A protest may raise only those issues which were submitted for the record during the planning process and by only those parties who raised those issues.

DATES: Protests on the Proposed Newcastle RMP and FEIS must be postmarked no later than 30 days following the date that the Environmental Protection Agency Notice of Availability (NOA) is published in the **Federal Register**. That NOA is expected to be published on July 16, 1999.

ADDRESSES: Protests on the Proposed Newcastle RMP and FEIS should be sent to: Director (210), Bureau of Land Management, Attention: Brenda Williams, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bill Hill, Newcastle Field Manager, Bureau of Land Management, 1101 Washington Blvd., Newcastle, Wyoming 82701, Phone: 307–746–4453.

Dated: July 14, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–18407 Filed 7–19–99; 8:45 am]

BILLING CODE 4310 22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 125–09–6250–02–GP0249]

Closure Notice for Motor Vehicles on Designated Roads

AGENCY: Bureau of Land Management, U.S. Department of Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the following listed roads have been selected for closure to motorized vehicles in accordance with the Coos Bay Resource Management Plan & Environmental Impact Statement and its Record of Decision (BLM, 1995) (RMP); which is in conformance with the Final Supplemental and Environmental Impact Statement on Management of Habitat for Late Successional and Old-growth Forest Related Species within the Range of the Northern Spotted Owl and its Record of Decision (Interagency, 1984) (Northwest Forest Plan). Selected roads will have barriers installed on the Coos Bay District, within Coos and Douglas Counties. Closure is for an indefinite period (15 years or longer) beginning on or about 15 July, 1999, when roads will have barriers installed. Closures may be reversed by the BLM. Reopening of a road will be for temporary periods of time and the condition of the road will be restored to the original condition found (including erosion control and barriers). Acceptable reasons for reopening include the following: fire (prescribed or suppression), emergency, rescue, forestry management on lands administered by a private party (including but not limited to thinning, fertilization, stand exams, reforestation and harvesting activities on private lands and as authorized by the Area Manager on BLM administered lands). Closures otherwise may only be reopened for agency purposes by initiating an environmental assessment for a site specific project. Any use of motor vehicles by all parties within the closed areas is prohibited. This does not effect non-motorized forms of travel. The reason for this order is to implement the Northwest Forest Plan as it relates to road density management. Benefits to road closures include but are not limited to: improving water quality, reducing sedimentation, enhancing big game habitat, and reducing habitat disturbance to other wildlife species. Copies of the administrative determination and its environmental assessment, as well as maps of the roads affected are available from the Coos Bay District Office, at the address below.

All persons authorized to enforce state game laws may enforce this closure. Oregon State Police and the Coos and Douglas County Sheriff Departments are hereby authorized to enforce state and federal laws and regulations on federal properties affected in this notice.

This closure order is in accordance with the provisions of Pub. L. 93452, the Sikes Act (88 Stat. 1369), (16 U.S.C. 670 et seq.) and Pub. L. 94–579, the Federal Land Policy and Management Act of 1976 (90 stat. 2743), (43 U.S.C. 1701), 43 CFR, Subpart 8364 and 13LM Manual Handbook, State Office—Oregon H–2812–1—Logging Road Right-of-Way.

Any person who fails to comply with the provisions of this order may be subject to penalties outlined in 43 CFR 8360.0–7 or as ordered through the Oregon Judicial system.

The following is a list of road closures identified by this order, by Field Office and road number. Unless noted otherwise, the location of the gates or barriers will be at or near the beginning of each road.

TABLE 1.—UMPGUA FIELD OFFICE PROPOSED ROAD CLOSURES

Road No.	Approx. miles
27–10–30.1	0.5
27–10–6.2*	1.2
26–10–25.1	0.5
26–10–35.0	0.7
20–9–29	1.5
Total	4.4

*Only the portion of Road No. 27–10–6.2 north of the junction with Road No. 27–10–31.1 is proposed for closure.

ADDRESSES: Detailed information concerning this notice, including the environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459–2000.

DATES: On or before August 19, 1999, interested parties may submit comments to the Umpqua Field Office Manager at the above address. Objections will be evaluated by the Field Office Manager, who may sustain, vacate or modify this action. In the absence of any objection, this action will become the final determination of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Dan R. Van Slyke (541) 756–0100.

Gary Johnson,

Umpqua Field Manager.

[FR Doc. 99–18449 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Sec. 22, lots 3, 4, 5, 6, 11, and 12, and

Salt Lake Meridian

VOL 64 ISS 138 JL 20 1999 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–1430–01; UTU 42936, UTU 42937, UTU 42942, UTU 42943, and UTU 42944]

Public Land Order No. 7401; Revocation of Secretarial Orders Dated February 29, 1912, April 16, 1913, and April 19, 1913, and Partial Revocation of Secretarial Orders Dated April 11, 1889, and May 2, 1914; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three Secretarial orders in their entirety and partially revokes two Secretarial orders insofar as they affect 5,457.36 acres of lands withdrawn for the Bureau of Reclamation's Utah Lake Reservoir Site and the Strawberry Valley Project. The lands are no longer needed for reclamation purposes and the Bureau of Reclamation has requested that the withdrawals be revoked. Of the lands included in these revocations, 2,563.86 acres are within overlapping withdrawals and will remain closed to surface entry and mining, and 2,171.80 acres will be made available for exchange. These lands have been and will remain open to mineral leasing. The remaining 721.70 acres will be transferred to the State of Utah in accordance with the Utah State Enabling Act.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Nelson, BLM Salt Lake Field Office (UT–020), 2370 South 2300 West, Salt Lake City, Utah 84119, 801–977–4355.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated February 29, 1912, April 16, 1913, and April 19, 1913, which withdrew lands for the Bureau of Reclamation's Strawberry Valley Project, are hereby revoked in their entirety as they affect the following described lands:

Salt Lake Meridian

T. 8 S., R. 1 E.,
Sec. 10, lots 1 to 8, inclusive, and SW¼SE¼;
Sec. 11, E½SW¼ and SW¼SE¼.
T. 9 S., R. 1 E.,
Sec. 8, W½SE¼NW¼, NE¼SW¼, SW¼NW¼SE¼, and SW¼SE¼SE¼;
Sec. 22, NE¼SW¼ and NW¼SW¼SE¼.
T. 7 S., R. 1 W.,
Sec. 13, lots 2, 3, 4, 9, 10, 11, and 12, and W½;
Sec. 22, lots 3, 4, 5, 6, 11, and 12, and NW¼;
Sec. 24, lots 1, 2, 3, 11, 12, 17, and 18, N½NW¼, and SW¼NW¼;
Sec. 26, NW¼NW¼ and NW¼SW¼;
Sec. 34, NW¼NE¼.

The areas described aggregate 1,927.00 acres in Utah County.

2. The Secretarial Order dated April 11, 1889, which withdrew lands for the Utah Lake Reservoir Site, is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 5 S., R. 1 E.,
Sec. 27, lot 3;
Sec. 29, lots 1 and 2;
Sec. 34, lot 1;
Sec. 36, lots 1 to 4, inclusive, N½NW¼, and SE¼NW¼.
T. 7 S., R., 1 E.,
Sec. 6, lot 1 and NE¼SE¼;
Sec. 7, lot 1;
Sec. 26, lot 1.
T. 8 S., R., 1 E.,
Sec. 10, lots 1, 2, 7, and 8.
T. 7 S., R., 2 E.,
Sec. 15, lot 1;
Sec. 25, lots 2, 3, and 4, and SE¼SW¼;
Sec. 26, lots 1 to 4, inclusive;
Sec. 27, lot 1;
Sec. 36, W½E½ and W½.
T. 5 S., R., 1 W.,
Sec. 23, lot 3;
Sec. 24, lots 2 and 4;
Sec. 36, lots 1 and 2.
T. 7 S., R. 1 W.,
Sec. 13, lots 9 to 12, inclusive;
Sec. 24, lots 1, 2, 3, 10, 11, 12, 13, 17, and 18, and NW¼;
Sec. 26, NW¼SW¼;
Sec. 34, NW¼NE¼.

The areas described aggregate 2,113.99 acres in Utah County.

3. The Secretarial Order dated May 2, 1914, which withdrew lands for the Bureau of Reclamation's Strawberry Valley Project is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 9 S., R. 1 E.,
Sec. 18, lots 1 and 2;
Sec. 20, W½NE¼ and W½.
T. 9 S., R. 1 W.,
Sec. 2, SW¼NE¼ and S½SE¼;
Sec. 11, lots 1, 2, 3, and 4, SW¼SW¼, N½SW¼, and NW¼;
Sec. 13, lots 1 to 4, inclusive;
Sec. 14, lots 1 to 4, inclusive, and W½W½;
Sec. 15, E½E½;
Sec. 22, E½;
Sec. 23, lots 1 and 2, NE¼SE¼, and S½SE¼.

The areas described aggregate 2,158.05 acres in Utah County.

4. The following described lands are within overlapping withdrawals and will remain closed to surface entry and mining:

Salt Lake Meridian

T. 7 S., R. 1 E.,
Sec. 26, lot 1.
T. 8 S., R. 1 E.,
Sec. 11, E½SW¼ and SW¼SE¼.
T. 9 S., R. 1 E.,
Sec. 18, lots 1 and 2;
Sec. 20, W½NE¼ and W½.
T. 7 S., R. 2 E.,
Sec. 15, lot 1;
Sec. 25, lots 2 and 3, and SE¼SW¼;
Sec. 26, lots 1 to 4, inclusive;
Sec. 27, lot 1.
T. 5 S., R. 1 W.,
Sec. 24, lots 2 and 4.
T. 9 S., R. 1 W.,
Sec. 2, SW¼NE¼ and S½SE¼;
Sec. 11, lots 1 to 4, inclusive, SW¼SW¼, N½SW¼, and NW¼;
Sec. 13, lots 1 to 4, inclusive;
Sec. 14, lots 1 to 4, inclusive, and W½W½;
Sec. 15, E½E½;
Sec. 22, E½;
Sec. 23, lots 1 and 2, NE¼SE¼, and S½SE¼.

The areas described aggregate 2,563.86 acres in Utah County.

5. The following described lands are being conveyed to the State of Utah in accordance with the Utah State Enabling Act:

Salt Lake Meridian

T. 5 S., R. 1 E.,
Sec. 36, lots 1 to 4, inclusive, N½NW¼, and SE¼NW¼.
T. 7 S., R. 2 E.,
Sec. 36, W½E½ and W½.
T. 5 S., R. 1 W.,
Sec. 36, lots 1 and 2.

The areas described aggregate 721.70 acres in Utah County.

6. At 10 a.m. on August 19, 1999 the lands described in Paragraphs 1, 2, and 3, except for those described in Paragraphs 4 and 5 will be opened for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: July 8, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–18450 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–D9–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–57883]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated on July 23, 1997 for exchange purposes under serial number N–61855. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the lands for a public park.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E., M.D.M., sec. 31, Lots 15, 18, 20,
SE¼NW¼SW¼, W½NE¼SW¼SW¼, W½NW¼SE¼SW¼, W½SW¼SE¼SW¼, SE¼SW¼SW¼.
T. 20 S., R. 60 E., M.D.M., sec. 6, Lots 27, 32–35, 37.

Containing 80.00 acres, more or less, located at Lone Mountain Road and Jensen Street.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for distribution line purposes which have been granted to Kern River Gas Company by Permit No. N–42581 under the Act of February 25, 1920 (30 U.S.C 185, sec. 28).

3. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. N–59043 under the Act of October 21, 1976 (43 U.S.C 1761).

4. Those rights for roadway purposes which have been granted to Clark County by Permit No. N–59198 under the Act of October 21, 1976 (43 U.S.C 1761).

5. Those rights for roadway purposes which have been granted to Clark County by Permit No. N–60728 under the Act of October 21, 1976 (43 U.S.C 1761).

6. Those rights for roadway purposes which have been granted to Clark County by Permit No. N–60903 under the Act of October 21, 1976 (43 U.S.C 1761).

7. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. N–61629 under the Act of October 21, 1976 (43 USC 1761).

8. Those rights for distribution line purposes which have been granted to Las Vegas Valley Water District by Permit No. N–62096 under the Act of October 21, 1976 (43 USC 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a park site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 8, 1999.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 99–18392 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Decision Notice and Finding of No Significant Impact for the Environmental Assessment of Restoration Alternatives for the March 28, 1993, Colonial Pipeline Oil Spill Near Reston, Virginia

ACTION: Notice of availability of the Decision Notice (DN) and Finding of No Significant Impact (FONSI) for the Environmental Assessment of Restoration Alternatives for the March 28, 1993, Colonial Pipeline Oil Spill near Reston, Virginia.

SUMMARY: Pursuant to the Council on Environmental Quality regulations, the Trustees, representing the National Park Service, U.S. Fish and Wildlife Service, Commonwealth of Virginia, and District of Columbia, prepared and made available for a 30-day public review the Draft Restoration Plan and Environmental Assessment for the Colonial Pipeline Oil Spill, Reston, Virginia (the EA). During the review period, the Trustees held a public meeting in Herndon, Virginia, to discuss the EA. See the notice of availability for the EA published in the **Federal Register** on October 23, 1998 (63 FR 56939).

After the end of the 30-day public availability period, the Trustees selected the preferred alternative, described in Sections 3.1 and 3.2 of the EA, and determined that the implementation of the preferred alternative will not cause a significant environmental impact (FONSI). In making that selection and determination, the Trustees considered the information and analysis contained in the EA and the comments received during the 30-day public availability period. As a result, the Trustees adopted certain modifications to the preferred

alternative. Those modifications are described in the DN/FONSI and will be incorporated in the Final Restoration Plan and Environmental Assessment.

The preferred alternative contains both primary and compensatory restoration actions. Natural recovery is the primary restoration action selected to return injured natural resources to their baseline conditions. A package of multiple compensatory restoration actions, including various wildlife habitat and recreational use enhancement projects, was selected to replace the interim loss of natural resource services. The goal of primary and compensatory restoration is to make the environment and the public whole for injuries to, or loss of, natural resources and services resulting from the oil spill.

SUPPLEMENTARY INFORMATION: Requests for copies of the DN/FONSI, or for any additional information, should be directed to Daniel Hamson, National Park Service, Environmental Quality Division, 1849 C Street, NW (Mail Stop 2749), Washington, DC 20240, Telephone: (202) 208–7504.

Dated: July 14, 1999.

Mike Soukup,

Associate Director, Natural Resource Stewardship and Science, National Park Service.

[FR Doc. 99–18386 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Prepare an Environmental Impact Statement for a Roads and Trails Management Plan for Big Fork National River and Recreation Area, Kentucky and Tennessee

SUMMARY: Road and trail uses are among the most serious and volatile issues facing Big South Fork National River and Recreation Area (BISO) personnel. Therefore, the National Park Service (NPS) has decided to prepare a Roads and Trails Management Plan (RTMP) which will include an Environmental Impact Statement (EIS). While roads and trails provide appropriate access to resources and recreational opportunities, their use often involves resource impacts, user conflicts, and carrying capacity concerns. Strong pressures exist to develop additional trails, and there are strongly held positions of various user groups concerning the amounts, locations, and types of roads and trails that are needed. Road and trail standards are needed. The RTMP will address these concerns and needs and provide guidance to BISO personnel. The EIS will provide an environmental evaluation of system options. The RTMP is considered a follow-up implementation effort to BISO's General Management Plan (GMP) which is nearing completion.

DATES: The NPS currently estimates formulating and evaluating alternatives by December 31, 1999, and comments would be most helpful prior to that date. Comments concerning roads and trails that were furnished by the public during the GMP process will be fully considered for development of the draft RTMP/EIS and need not be resubmitted. The public will be furnished an opportunity to review the draft RTMP/EIS and submit comments. Written comments and suggestions on the RTMP/EIS will be accepted anytime during the process.

FOR FURTHER INFORMATION CONTACT: Superintendent, Big South Fork National River and Recreation Area, 4564 Leatherwood Road, Onieda, Tennessee 37841, Telephone (423) 569–2404.

Dated: July 9, 1999.

W. Thomas Brown,

Regional Director, Southeast Region.

[FR Doc. 99–18387 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 10, 1999. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 4, 1999.

Carol D. Shull,

Keeper of the National Register.

Connecticut

Hartford County

Capewell Horse Nail Company, 60–70 Popieluszko St., Hartford, 99000927
Melrose Road Bridge, Melrose Rd. over Scantic River, East Windsor, 99000922
Town Bridge, Town Bridge over Farmington River, Canton, 99000923
Woodbridge Farmstead, 495 Middle Turnpike East, Manchester, 99000925
Middlesex County
Emmanuel Church, 50 Emmanuel Church Rd., Killingworth, 99000924

Georgia

Chatham County
Tybee Island Back River Historic District, Along Chatham Ave., from Tybee River to Venetian Dr., Tybee Island, 99000928

Louisiana

Avoyelles Parish
Bailey Hotel, 102 Magnolia St., Bunkie, 99000929
Ouachita Parish
Wossman House, 1205 St. John Dr., Monroe, 99000930

Maryland

Washington County
St. Mark's Episcopal Church—Lappans, 18313 Lappans Rd., Boonsboro vicinity, 99000931

Minnesota

Hennepin County
Glen Lake Children's Camp, 6350 Indian Chief Rd., Eden Prairie, 99000932
Nokomis Knoll Residential Historic District, Bounded by W. Fifty-Second St., West Lake Nokomis Parkway, E Fifty-Fourth St., and Bloomington Ave., Minneapolis, 99000938
Le Sueur County
Broadway Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS) MN 99 over Minnesota River, Saint Peter, 99000934
Nicollet County
Bridge No. 6422—Saint Peter (Reinforced-Concrete Highway Bridges in Minnesota MPS) MN 99 over Washington Ave., Saint Peter, 99000933

Missouri

Johnson County
Pleasant View School, 674 SW 131 Highway, Medford vicinity, 99000935
Osage County
Townley, Alvah Washington, Farmstead Historic District, 304 S. Market St., Chamois, 99000937
St. Louis Independent City
Bell Telephone Building, 920 Olive St., St. Louis, 99000936

Nevada

Washoe County
First Church of Christ, Scientist, 501 Riverside Dr., Reno, 99000939

New Jersey

Bergen County
Palisade Interstate Parkway, Palisade Interstate Parkway, Fort Lee, 99000940

Oregon

Jackson County
Rich Gulch Diggings, 0.75 mi. SW of Jacksonville, Jacksonville, 99000947

Josephine County
Nauke, William and Nannie, House, 24195 Redwood Highway, Kerby, 99000946
Lane County
Chase Gardens Residential Grouping, 274 S. Garden Way, Eugene vicinity, 99000943
Malheur County
Oregon Short Line Railroad Depot, 300 Depot Lane, Ontario, 99000950
Multnomah County
Abraham, Simon, Duplex (Eliot Neighborhood MPS) 522–530 NE San Rafael, Portland, 99000945
Crum, Virgil and Beulah, House, 4438 NE Alameda St., Portland, 99000944
Jensen Investment Company Building, 2500 NE Martin Luther King Jr. Blvd., Portland, 99000941
Johnson, Charles E., Building (Eliot Neighborhood MPS) 442 NE Russell, Portland, 99000949
Spencer, Arthur Champlin, and Margaret Fenton Spencer House (Architecture of Ellis F. Lawrence MPS) 1812 SE Myrtle St., Portland, 99000942
Union County
Liberty Theater, 1008 and 1010 Adams Ave., Lagrande, 99000948
South Dakota
Butte County
Newell Depot Bridge (Historic Bridges in South Dakota MPS) Local Rd. over Horse Creek, Newell vicinity, 99000953
Vale Bridge (Historic Bridges in South Dakota MPS) Local Rd. over Belle Fourche River, Vale vicinity, 99000954
Minnehaha County
Bridge No. 50–122–155—Brandon vicinity (Historic Bridges in South Dakota MPS) Local Rd. over Skunk Creek, Brandon Township vicinity, 99000956
Dell Rapids Bridge, Local Rd. over Big Sioux River, Dell Rapids, 99000952
Old Yankton Bridge (Historic Bridges in South Dakota MPS) Old Yankton Rd. over the Big Sioux River, Sioux Falls, 99000955
Turner County
Bridge No. 63–137–090—Parker (Historic Bridges in South Dakota MPS) Cty. Rd. 22 over unnamed stream,
Parker vicinity, 99000951

Tennessee

Davidson County
Castner—Knott Building, 616–618 Church Building St., Nashville, 99000957

Virginia

Buckingham County
Chellowe, VA 623, Sprouses Corner vicinity, 99000961
Gloucester County
Zion Poplars Baptist Church, 7000 T.C. Walker Rd., Gloucester, 99000970
Goochland County
Rochambeau Farm, 1080 Manakin Rd., Manakin-Sabot vicinity, 99000969
Halifax County
Pleasant Grove, Deer Run Rd., Halifax vicinity, 99000966
Hanover County
Oak Forest, 7400 Rual Point Road, Mechanicsville vicinity, 99000964
Henry County
Eltham Manor, 405 Riverside Dr., Bassett vicinity, 99000960
Ingleside,
500 Mica Rd., Ridgeway vicinity, 99000963
Loudoun County
Ashburn Presbyterian Church, 20962 Ashburn Rd., Leesburg vicinity, 99000962
Madison County
Homeplace, The, US 29, jct. with VA 603, Madison vicinity, 99000959
Orange County
Lessland, 4256 Bushy Mountain Rd., Culpepper vicinity, 99000965
Page County
Kanawha, 4 Jamison Rd., Luray, 99000968
Hampton Independent City
Scott House, 232 S. Armistead Ave., City of Hampton, 99000967
Norfolk Independent City
HUNTINGTON (Tugboat), 1 Waterside Dr.—Nauticus Pier, Norfolk, 99000958

A Request for a MOVE has been made for the following resource:

VIRGINIA

King George County
Office Hall, VA 3, King George, 90002164

A request for REMOVAL has been made for the following resources:

ARKANSAS

Cleburne County, Winkley Bridge, E of Heber Springs at Little Red River, Heber Springs vicinity, 84000020
Columbia County
Caraway Hall-Southern Arkansas University, Adjacent to E. Lane Dr., Magnolia, 93000088
Crawford County
Mountainburg High School, AR 71, Mountainburg, 93001216
Hot Springs County
Rockport Bridge, W of Rockport, across Ouachitar, Rockport vicinity, 82000829
Madison County
Alabam School, S of Alabam at jct. Of AR68 and AR127, Alabam, 76000432
Miller County
Red River Bridge, (Historic Bridges of Arkansas MPS), US 82, over the Red River, Garland City, 90000517
Monroe County
Old Monroe County Jail 2nd and Kendall, Clarendon, 77000262
Pulaski County
Second Street Bridge, (Historic Bridges of Arkansas MPS), Second St., over the Missouri-Pacific Railroad, Little Rock, 90000528
Union County
Ouachita River Bridge, (Historic Bridges of Arkansas MPS), US 167 over the Oachita River, Calion, 9000507
SAU at Dorado, (Thompson, Charles L., Design Collection TR), Summit at Clocks Sts., El Dorado, 82000939
Yell County
Achmum Creek Bridge, (Historic Bridges of Arkansas MPS), Co. Rd. 222, over Achmum Creek, Ola vicinity, 90000539

[FR Doc. 99–18396 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans; and 30 CFR part 887, Subsistence Insurance Program Grants. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by August 19, 1999 in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities

(see 5 CFR 1320.8(d)). OSM has

Bureau Form Number: None.

DATES: OMB has up to 60 days to

Total Annual Burden Hours: 1,582.

2. Minutes.

(see 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans; and 30 CFR part 887, Subsidence Insurance Program Grants. OSM is requesting a 3-year term of approval for each information collection activity

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0036 for part 780, and 1029–0107 for part 887.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on April 16, 1999 (64 FR 18934). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan—30 CFR 780.

OMB Control Number: 1029–0036.

Summary: Permit application requirements in sections 507(b), 508(a), 510(b), 515(b) and (d), and 552 of Pub. L. 95–87 require the applicant to submit the operations and reclamation plan for coal mining activities. Information collection is needed to determine whether the mining and reclamation plan will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits.

Total Annual Responses: 420.

Total Annual Burden Hours: 186,081.

Title: Subsidence Insurance Programs Grants—30 CFR 887.

OMB Control Number: 1029–0107.

Summary: States and Indian tribes having an approved reclamation plan may establish, administer and operate self-sustaining State and Indian Tribe-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States and Indian tribes interested in requesting monies for their insurance programs would apply to the Director of OSM.

Bureau Form Number: None.

Frquency of Collection: Once.

Description of Respondents: States and Indian tribes with approved coal reclamation plans.

Total Annual Responses: 1.

Total Annual Burden Hours: 8.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029–0036 for part 780, and 1029–0107 for Part 887 in your correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: July 12, 1999.

Richard G. Bryson,

Chief, Division of Regulotory Support.

[FR Doc. 99–18440 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR parts 740 and 745 which relate to surface coal mining and reclamation operations on Federal lands and State-Federal cooperative agreements, respectively. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by August 19, 1999, in order to be assured of consideration.

FUR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtrelease@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR part 740—General requirements for surface coal mining and reclamation operations on Federal lands; and 30 CFR part 745—State-Federal cooperative agreements. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0027 for Part 740, 1029–0092 for Part 745.

As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information was published on March 16, 1999 (64 FR 13055). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities.

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029–0027.

Summary: Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. the information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

Frequency of Collection: Once.

Description of Respondents: Coal mine operators on Federal lands.

Total Annual Responses: 31.

Total Annual Burden Hours: 1,582.

Title: State-Federal cooperative agreements—30 CFR 745.

OMB Control Number: 1029–0092.

Summary: 30 CFR 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities.

Bureau Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: State governments which regulate coal mining operations.

Total Annual Responses: 12.

Total Annual Burden Hours: 12,344.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Office of information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: July 12, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support

[FR Doc. 99–18441 Filed 7–19–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 22, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–364 (Review)(Aspirin from Turkey)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 29, 1999.)
5. Inv. No. 731–TA–841 (Preliminary)(Certain Non-Frozen Concentrated Apple Juice from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 22, 1999.)
6. Outstanding action jackets:

(1.) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).

(2.) Document No. GC–99–057: Regarding Inv. No. 337–TA–412 (Certain Video Graphics Display Controllers and Products Containing Same).

(3.) Document No. GC–99–066: Regarding Inv. No. 731–TA–752 (Final)(Crawfish Tail Meat from China).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 15, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18563 Filed 7–16–99; 11:51 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of Information Collection Under Review; Application for Replacement Naturalization/Citizenship Document.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published by the Immigration and Naturalization Service (INS) in the **Federal Register** on February 19, 1999 at 64 FR 8405, allowing for a 60-day public review and comment period. The INS received no public comments. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days, until August 19, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Reinstatement without change of previously approved collection.*

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/ Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–565. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by the INS to determine the applicant's eligibility for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate that was lost, mutilated or destroyed, or if the applicant's name was changed by marriage or by court order after issuance of original document. This form may also be used to apply for special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 22,567 responses at 55 minutes (0.916) per response.

(6) *An estimate of the total public*

(3) That increases of imports of articles like

TA–W–36,287: Western Gas Resources,

TA–W–36,253: Venture Petroleum Inc.

TA–W–36,080: Burlington Resources

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,671 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 14, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–18389 Filed 7–19–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W36,274; Dupont Newport, Holly Run Plant, Newport, DE
TA–W–36,123; Irwin Research & Development, Yakima, WA
TA–W–35,724 & A, B; IRI International, Headquartered in Houston, TX, Pampa, TX and Beaumont, TX
TA–W–35,994; National Roll Co., Avonmore, PA
TA–W–35,959; Bonney Forge Cop., Allentown, PA
TA–W–36,098; Panoramic, Inc., Janesville, WI
TA–W–36,200; AMG Resources Corp., Pittsburgh, PA
TA–W–36,259; Reef Chemical Co., Inc., Midland, TX
TA–W–35,952; Parker Hannafin Corp., Atlas Cylinder Div., Eugene, OR
TA–W–35,728; Teledyne Ryan Aeronautical, Aircraft Business Unit, San Diego, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–36,218; Trans Texas Gas Corp., Laredo, TX
TA–W–36,158; Command Security, Inc., Hopkinsville, KY
TA–W–35,900; Item Eyes, Inc., New York, NY
TA–W–36,084; Grant Geophysical Corp., Houston, TX
TA–W–36,261; Avondale Mills, New York, NY
TA–W–36,115; Siemens Westinghouse, Birmingham, AL
TA–W–36,170; Blue Flame, Inc., d/b/a Eagle Meter & Pump, Inc., Hobbs, NM
TA–W–36,309; Grainger Integrated Supply, Broussard, LA

The workers firm does not produce an article as require for certification under Section 222 of the Trade Act of 1974.

TA–W–35,984; Royal Monarch, Beaver Falls, PA
TA–W–36,389; Safecar, Inc., San Angelo, TX
TA–W–35,975; Goodyear Tire and Rubber Co., Logan, OH
TA–W–35,825; Keystone Powered Metal Co., St. Mary's PA
TA–W–36,287; Western Gas Resources, Inc., Giddings, TX
TA–W–36,160; Polaroid Corp., Film Manufacturing (Integral), R1, R2, & R3 Plants, Waltham, MA
TA–W–35,874; Southwestern Energy Production Co., Okahoma City, OK
TA–W–36,265; Ingersoll-Dresser Pump Co., Phillipsburg, NJ
TA–W–36,273 & A; McCulloch North America, Inc., Die Cast & Machining Operations, Lake Havasu City, AZ and Corporate Headquarters & Distribution Center, Tucson, AZ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–36,101; Dal-Tile Corp., Dallas Plant Die Shop, Dallas, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–35,992; Bayer Corp., Baytown, TX

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–36,233; ADC Solitra, Inc., Hutchinson, MN

Company officials made a business decision to close its Hutchinson, MN facility and transfer production and employment to another domestic facility.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–36,116; Smurfit-Stone Container Corp., Missoula, MT: April 9, 1998
TA–W–36,038; Phillips Petroleum Co., Odessa, TX: March 24, 1998
TA–W–36,176; Phoenix Production Co., Cody, WY: April 30, 1998
TA–W–36,231; BASF Corp Rensselaer, NY: April 26, 1998
TA–W–36,091; $ A, B, Texas Boot Co., Hartsville, TN, Carthage, TN and Lebanon, TN: March 30, 1998
TA–W–35,245; Clariant Corp & Hoechst Corp., Coventry, RI: May 10, 1998
TA–W–35,244; White Knight Healthcare, Douglas, AZ: May 7, 1998

TA–W–36,253; Venture Petroleum Inc., Noble, IL: April 19, 1998
TA–W–35,778; The Macwhyte Co., Kenosha, WI: February 18, 1998
TA–W–36,149; Franco Manufacturing Co., Inc. Monroe Prints Plant, Monroe, NC: April 16, 1998
TA–W–36,193; Andin International, Inc., New York, NY: October 30, 1998
TA–W–36,111; Berendsen Fluid Power, Rahway, NJ: April 1, 1998
TA–W–36,180; The Aromat Corp., San Jose, CA: April 12, 1998
TA–W–36,924; Beloit Corp., Beloit, WI: March 11, 1998
TA–W–36,006; Ansewn Shoe Co., Bangor, ME: March 19, 1999
TA–W–36,028; Black Hills Trucking, Williston, ND: January 27, 1998
TA–W–36,163; L.A. Roustabout, Inc., Kermit, TX: April 14, 1998
TA–W–35,838; Equistar Chemicals L.P., Port Arthur, TX: February 14, 1998
TA–W–36,896; Electroalloys Corp., Elyria, OH: March 12, 1998
TA–W–36,139; Russell Corp, Lafayette, AL: April 21, 1998
TA–W–36,705; Kelly Springfield Tire Co., Freeport, IL: February 11, 1998
TA–W–36,988; Mitsubishi International Corp., Durham, NC: March 5, 1998
TA–W–36,205; Dante Fashions, Jeannette, PA: April 26, 1998
TA–W–36,254; Riggs Petroleum Co., Graham, TX: April 27, 1998
TA–W–36,220 & A, B; Forcenergy, Inc., Anchorage, AK, McCook, NB and Metairie, LA: April 1, 1998
TA–W–36,217; Fairweather E & P, Inc., Anchorage, AK: April 6, 1998
TA–W–36,593; The Rival Co., Fayetteville, NC: January 18, 1998
TA–W–36,196; Biological Abstracts, d/b/a Boisis, Data Capture Section of The Database Production Dept, Philadelphia, PA: April 25, 1998
TA–W–36,120; D & A Industries, Inc., El Paso, TX: March 1, 1998
TA–W–35,983; Good Lad Co., Philadelphia, PA: March 19, 1998
TA–W–36,250; ASCG Inspection, Inc., Anchorage, AK: April 9, 1998
TA–W–36,184 & A; LM & Sons, Inc., Vineland, NJ and Marcyn, Inc., Vineland, NJ: April 22, 1998
TA–W–36,297; Woolrich, Inc., Soperton Facility, Soperton, GA: May 21, 1998
TA–W–36,181; Lighthouse Electric, Ltd, Middlesex, NC: April 23, 1998
TA–W–36,095; Ford Microelectronics, Inc., Including Adecco Employment Service, Olsten Staffing Service, Volt Services Group, Superior Technical Resources, Kelly Services, Colorado Springs, CO: March 26, 1998
TA–W–36,105; Streamline Cutting, Inc., New York, NY: April 8, 1998
TA–W–36,089; Burlington Resources Oil and Gas Co., Mid-Continent Div., Midland, TX: March 30, 1998
TA–W–35,833; Vanity Fair Intimates, Sabta Rosa Div., Melton, FL: February 22, 1998
TA–W–35,879; Marui International Products Corp., El Paso, TX: March 3, 1998
TA–W–35,803; Outokumpu Copper, Inc., Kenosha, WI: February 24, 1998
TA–W–36,012; Rhone-Poulenc AG Co., Ambler, PA: March 25, 1998
TA–W–35,914; Plainville Oil Well Service, Plainville, KS: February 8, 1998
TA–W–35,972; M. Wile & Co, d/b/a Intercontinental Branded Apparel, Whiteville, NC: April 16, 1998
TA–W–36,210; Flying J. Oil & Gas, Inc., Williston, ND & Operating at The Following Locations: A; Dickinson, ND, B; Douglas, WY, C; Casper, WY, D; Sidney, MT, E; Roosevelt, UT and F; Vernal, UT: April 8, 1998
TA–W–36,071; Bordo Knitting Mills, Union City, NJ: March 29, 1998
TA–W–36,018 & A; Gloria Gay Coats, Inc., New York, NY and HMC Fashion Coats, Inc., Brooklyn, NY: March 30, 1998
TA–W–36,064; Equitable Bag Co., Inc., Orange, TX: March 31, 1998
TA–W–36,248 & A, B & C; Levi Strauss & Co., Morrilton Sewing Facility, Morrilton, AR, Little Rock, Transportation Dept, Little Rock, AR, Murphy Sewing Facility, Murphy, NC and Charlotte, Transportation Dept, Charlotte, NC: May 10, 1998
TA–W–36,303; Monde Knitwear Limited, Middle Village, NY: May 18, 1998
TA–W–36,215; Circle C Tool and Wireline Co., Snyder, TX: April 14, 1998
TA–W–36,319; Unger Fabric, Los Angeles, CA: May 3, 1998
TA–W–36,300; Titanium Metals Corp. (TIMET), Henderson, NV: May 18, 1998
TA–W–36,345 & A; Thomas & Bets Corp. Including Leased Workers of Manpower, Inc., Vidalia, GA, Including Leased Workers of Manpower, Inc., Lyons, GA: May 22, 1998
TA–W–36,364; SWACO/Drilling Fluids, Div. of M–I L.L.C., Headquartered in Houston, TX & Operating in The Following States: A; TX, B; AK, C; CA, D; CO, E; LA, F; OK: March 24, 1998
TA–W–36,213; Veritas Geoservices, A Subsidiary of DGC Land, Inc., Dallas, TX: April 12, 1998

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely.

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03164; Rich Bar Processing, Inc., Bethlehem, PA
NAFTA–TAA–03238; Columbus Energy Corp., Sidney, MT
NAFTA–TAA–03119; Willow Creek Apparel, Inc., Jonesville, NC
NAFTA–TAA–03041; Parker Hannifin Corp., Atlas Cylinder Div., Eugene, OR
NAFTA–TAA–03086; JPS Converter and Industrial Corp., A Subsidiary of JPS Textile, Inc., Rocky Mount, VA
NAFTA–TAA–02979; Marui International Products Corp., El Paso, TX
NAFTA–TAA–03182; Baroid Drilling Fluids, A Halliburton Co., Potosi, MO
NAFTA–TAA–03114; ADC Solitra, Inc., Hutchinson, MN

The petition was filed by

NAFTA–TAA–03127; Polaroid Corp., Film Manufacturing (Integral), R1, R2 & R3 Plants, Waltham, MA
NAFTA–TAA–03017; Bonney Forge Corp., Allentown, PA
NAFTA–TAA–03076; Stonecutter Textiles, Inc., Spindale, NC
NAFTA–TAA–03093; Thomson Crown Wood Products, Mocksville, NC
NAFTA–TAA–03222; Modern Machine Works, Inc., Cudahy, WI
NAFTA–TAA–03020; Beloit Corp., Beloit, WI
NAFTA–TAA–03225; Crown Cork and Seal Co., Inc., Omaha, NE
NAFTA–TAA–03091; Harvard Industries, Trim Trends, Div., Snover Stamping Co., Snover, MI
NAFTA–TAA–02960; Keystone Powdered Metal Co., St. Mary's, PA
NAFTA–TAA–03107; Dal-Tile Corp., Dallas Plant Die Shop, Dallas, TX
NAFTA–TAA–03166; Reef Chemical Co., Inc., Midland, TX
NAFTA–TAA–03149; Lighthouse Electric, Ltd, Middlesex, NC

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03270; Televisa International, L.L.C.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03266; Pilkington Libbey-Owens-Ford, a/k/a Libby Owens Ford, Sherman, TX: June 3, 1998
NAFTA–TAA–03250; Rockwell Automation Power Systems, Dodge Mechanical Group, Mishawaka, IN: June 7, 1998
NAFTA–TAA–03246; Salant Corp., Manhattan Accessories, Long Island City, NY: June 9, 1998
NAFTA–TAA–03170; C & D Technologies, Inc., Costa Mesa, CA: May 4, 1998
NAFTA–TAA–03184; McCulloch North America, Inc., Corporate Headquarters and Distribution Center, Tucson, AZ: May 24, 1998
NAFTA–TAA–03212; Crouzet Corp., Carrollton, TX: November 8, 1998
NAFTA–TAA–03151; Homemaker Industries, Inc., North Charleston, SC: May 4, 1998
NAFTA–TAA–03251; Dyersburg Corp., Alamac Knit Fabrics, Hamilton, NC: June 2, 1998
NAFTA–TAA–03198; General Motors Corp., Delco Defense Systems Operation (DDSO), Goleta, CA: March 19, 1999
NAFTA–TAA–03197; Royce Hosiery Mills, Inc., Conover, NC: May 14, 1998
NAFTA–TAA–03191; Medtronic, Inc., Parker, CO: May 19, 1998
NAFTA–TAA–03188; Philips Electronics North America Corp., Philips Components Div., Departments 133, 134, 136, 400, 630, 420, 240, 261 and 266, Saugerties, NY: May 19, 1998
NAFTA–TAA–03161 & A, B, C; Levi Strauss & Company, Morrilton Sewing Facility, Morrilton, AR, Little Rock Transportation Department, Little Rock, AR, Murphy Sewing Facility, Murphy, NC and Charlotte Transportation Department, Charlotte, NC: May 10, 1998
NAFTA–TAA–03221; National Wood Products, Glasgow, KY: May 26, 1998
NAFTA–TAA–03242; Woolrich, Inc., Soperton Facility, Soperton, GA: June 8, 1998
NAFTA–TAA–03232; May Tag & Label Corp., Div. Of ACCO Brands, Including Leased Workers of Agency Solution Staffing Services, Hillside, NJ: May 13, 1998
NAFTA–TAA–03318; Jantzen, Inc. Portland, OR: June 2, 1998
NAFTA–TAA–03255; Medtronics, Inc., & Temporary Employees from Norrell Temporary Services, Anaheim, CA: May 26, 1998
NAFTA–TAA–03173; Mitel, Inc., Manufacturing Div., Ogdensburg, NY: May 6, 1998
NAFTA–TAA–03102; D & A Industries, Inc., El Paso, TX: April 1, 1998
NAFTA–TAA–03106; General Electric Co., Power Management Div., Malvern, PA: April 12, 1998
NAFTA–TAA–03175; White Knight Healthcare, Douglas, AZ: May 13, 1998
NAFTA–TAA–03027; M. Wile and Company, d/b/a/ Intercontinental Branded Apparel, Whiteville, NC: March 22, 1998
NAFTA–TAA–03051; Ansewn Shoe Co., Bangor, ME: April 1, 1998
NAFTA–TAA–03028; The Aromat Corp., San Jose, CA: April 12, 1998
NAFTA–TAA–03187; Master Lock Co., Milwaukee, WI: May 4, 1998
NAFTA–TAA–03004; The Macwhyte Company, Kenosha, WI: February 18, 1998
NAFTA–TAA–03206; Federal-Mogul, Friction Products and World-Wide Aftermarket Distribution, Manila, AR: May 14, 1998
NAFTA–TAA–03034; Mishy Sportswear, Opa Locka, FL: March 24, 1998

I hereby certify that the aforementioned determinations were issued during the month of June, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 13, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18421 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,321]

Blanch, Div. of Warnaco, New York, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 1, 1999 in response to a worker petition which was filed on June 1, 1999 on behalf of workers at Blanch, a division of Warnaco, located in New York, New York.

An active certification covering the petitioning group of workers remains in effect (TA–W–35,700). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–18418 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,401; TA–W–36,401A and TA–W–36,401B]

Coeur Rochester, Inc., Lovelock, Nevada; Klondike Mine, Austin, Nevada and Meridian Gold, Reno, Nevada: Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 14, 1999 in response to a worker petition which was filed on behalf of workers at Coeur Rochester, Lovelock, Nevada, Klondike Mine, Austin, and Meridian Gold, Reno, Nevada.

The petition was filed by one worker who was not a company official. By law the petition must be filed by three workers, a company official, or a union official. The petitioner was a part-time temporary worker and thus, not eligible to file on behalf of himself.

Further, the worker was separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–18419 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 410]

Grey Wolf, Incorporated Alice, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 14, 1999 in response to a worker petition which was filed on behalf of workers at Grey Wolf, Incorporated, Alice Texas.

One of the three petitioners were separated from the subject firm more than a year prior to the date of the petition (May 22, 1999). Section 223(b)(1) of the Trade Act of 1974 specifies that no certification may apply to any worker whose last separation occurred more than a year before the date of the petition.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 8th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18425 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,394]

Lambda Electronics, Inc., McAllen, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 14, 1999, in response to a petition filed on behalf of workers at Lambda Electronics, Inc., McAllen, Texas.

On June 14, 1999, the petitioner formally requested that the petition be withdrawn. Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–18417 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,130]

Lee Textile, Incorporated, Ewing, Virginia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 3, 1999 in response to a worker petition which was filed on behalf of all workers at Lee Textile, Incorporated, located in Ewing, Virginia (TA–W–36,130).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of June, 1999.

Linda Poole.

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18416 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 643]

Peak Oilfield Service Company Anchorage, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Peak Oilfield Service Company, Anchorage, Alaska. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,643; Peak Oilfield Service Company, Anchorage, Alaska (July 8, 1999)

Signed at Washington, DC this 9th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18423 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 172]

Pennant Etc., Incorporated, Long Island City, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a worker petition which was filed by U.N.I.T.E., Local Shop No. 102, on behalf of former workers at Pennant Etc., Incorporated, located in Long Island City, New York (TA–W–36, 172).

The Department of Labor has been unable to locate an official of the company to provide the information necessary to render a trade adjustment assistance determination.

Consequently, the Department of Labor cannot conduct an investigation to make a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974. Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 14th day

The petitioners or any other persons

Signed at Washington, D.C. this 14th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18424 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,685]

The Worcester Company, New York, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at The Worcester Company, New York, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,685; The Worcester Company, New York, New York (July 8, 1999)

Signed at Washington, D.C. this 9th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18422 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–2760]

International Paper Corporation, Containerboard Division, Gardiner, Oregon; Notice of Revised Determination on Reopening

On July 7, 1999, the Department, on its own motion, reopened its investigation for workers and former workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 8, 1999, because workers of International Paper Corporation, Containerboard Division in Gardiner, Oregon did not import linerboard from sources located in Canada or Mexico, nor was there a shift of production to Canada or Mexico. Furthermore, a survey of the subject firm's customers revealed that none of the customers increased reliance on import purchases of linerboard from Canada or Mexico during the relevant periods. The denial notice was published in the **Federal Register** on February 25, 1999 (64 FR 9355).

New information obtained during a TAA petition investigation on reconsideration (TA–W–35,322) for the workers of the subject firm included additional customer survey conducted by the Department for the time period relevant to the investigation. The survey results show that a major declining customer of the subject firm increased import purchases of linerboard from Mexico and Canada while decreasing purchases from the subject firm from 1997 to 1998.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles from Mexico or Canada, like or directly competitive with linerboard produced by the subject firm, contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of International Paper Corporation, Containerbord Division, Gardiner, Oregon, who became totally or partially separated from employment on or after November 24, 1997, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 8th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18415 Filed 7–19–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of OTAA not later than July 30, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than July 30, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW Washington, DC 20210.

Signed at Washington, DC this 8th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Procter and Gamble (Co.)	Greenville, NC	6/10/1999	NAFTA–3,247	Feminine hygiene supplies.
Brady T-Shirt (Co.)	East Brady, PA	6/8/1999	NAFTA–3,248	T-shirts and sportswear tops.
Lee County Textiles (Wkrs)	Giddings, TX	6/9/1999	NAFTA–3,249	Printed baby bids and childrenswear
Rockwell Automation Power Systems (USWA).	Mishawaka, IN	6/7/1999	NAFTA–3,250	Cast iron sheaves.
Dyersburg (Co.)	Hamilton, NC	6/8/1999	NAFTA–3,251	Knit fabrics.
Ovalstrapping—Strapping & Wire Machine (Wkrs).	Hoquiam, WA	6/9/1999	NAFTA–3,252	Wire machines.
Wales Fabrics (Co.)	Gastonia, NC	6/10/1999	NAFTA–3,253	Fabric.
Damascus Steel Casting (Wkrs)	New Brighton, PA	6/11/1999	NAFTA–3,254	Crusing equipment and tubular tooling.
Medtronic (Co.)	Anaheim, CA	6/7/1999	NAFTA–3,255	Medical devices.
Trim Master (Co.)	Ontario, CA	6/7/1999	NAFTA–3,256	Flat, molded and graphic wood.
Skinner Engine (UAW)	Erie, PA	6/7/1999	NAFTA–3,257	Intensive mixers and spare parts.
Vesuvius USA (IAMA)	Zelienople, PA	6/15/1999	NAFTA–3,258	Slide gate refractories.
Unitog (UFCW)	Concordia, MO	6/7/1999	NAFTA–3,259	Rental uniform, denim jeans.
Parker Hannifin—Parflex (Wkrs)	Mooresville, NC	6/15/1999	NAFTA–3,260	Pneumatic fittings.
Miller Group (The) (Co.)	Schuylkill Haven, PA	6/17/1999	NAFTA–3,261	T-shirts and sweatshirts.
Techneglas (GMP)	Pittston, PA	6/16/1999	NAFTA–3,262	Glass for television screens.
Smurfit Stone (PACE)	Fulton, NY	6/18/1999	NAFTA–3,263	Corrugated packaging, boxes, paper rolls.
Maine Rubber International (Co.)	Scarborough, ME	6/18/1999	NAFTA–3,264	Base bands.
Georgia Pacific (AWPPW)	Bellingham, WA	6/17/1999	NAFTA–3,265	Chlorine and related by products
Pilkington Libbey Owens Ford (Wkrs)	Sherman, TX	6/15/1999	NAFTA–3,266	Automotive windshields.
Thomson Precision Ball (Co.)	Unionville, CT	6/17/1999	NAFTA–3,267	Precision balls.
Roxobel Curtain Company (Co.)	Roxobel, NC	6/21/1999	NAFTA–3,268	Curtains.
International Paper Decorative Products (Wkrs).	Spring Hope, NC	6/17/1999	NAFTA–3,269	Fiberboard.
Televisa International (Wkrs)	Miami, FL	6/1/1999	NAFTA–3,270	Administration.
Ashmore Sportswear (Co.)	Leola, PA	6/23/1999	NAFTA–3,271	T-shirts.
Sensus Tech (USWA)	Uniontown, PA	6/23/1999	NAFTA–3,272	Water meters and registers.
Stuffed Shirt (Wkrs)	New York, NY	6/28/1999	NAFTA–3,273	Women's clothing.
Acme United (Wkrs)	Goldsboro, NC	6/24/1999	NAFTA–3,274	Scissors and medical instruments.
Cutler Hammer Sensors—Eaton (Co.)	Everett, WA	6/28/1999	NAFTA–3,275	Photo electric sensors.
Bon Worth (Co.)	Victoria, VA	7/1/1999	NAFTA–3,276	Ladies apparel.
Cajun Bag and Supply (Wkrs)	Evans, GA	7/2/1999	NAFTA–3,277	Bulk containers.
Albany International—Appleton Wire (Co.)	Weaverville, NC	6/29/1999	NAFTA–3,278	Fabrics.
Thomaston Mills (Co.)	Thomaston, GA	7/2/1999	NAFTA–3,279	Denim, industrial and recreational fabrics.
Caterpillar Work Tools (Wkrs)	Dallas, OR	6/30/1999	NAFTA–3,280	Pallet forks, couplers, landfill blades.

expand its recognition as an NRTL to

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Willamette Industries (Wkrs)	Woodburn, OR	6/30/1999	NAFTA–3,281	Wood I beams for floors.
Hewlett Packard (Co.)	Roseville, CA	5/27/1999	NAFTA–3,282	Personal computer.
International Business Machines (Wkrs)	San Jose, CA	6/24/1999	NAFTA–3,283	Hard disk drives and tape products.
United Technologies (SMWIA)	Syracuse, NY	6/30/1999	NAFTA–3,284	Building size air conditioner.
Maid Bess—Fairfield Apparel (Co.)	Fairfield, VA	6/29/1999	NAFTA–3,285	Men and women's medical uniforms.
ALBITI Consolidated (AWPPW)	Lakwood, WA	6/29/1999	NAFTA–3,286	Paper from wood chips.
Baver Nike Hockey U.S.A. (Co.)	Greenland, NH	6/25/1999	NAFTA–3,287	Hockey equipment, skates, elbow pads.
Martin County Residential Services (Co.)	Williamston, NC	6/29/1999	NAFTA–3,288	Collars and welts for knit shirts.
Triple S Plastics (Co.)	Tucson, AZ	6/30/1999	NAFTA–3,289	Plastics parts.
First Reserve Oil and Gas (Wkrs)	Houston, TX	6/29/1999	NAFTA–3,290	Oil and gas.
Eagle Ottawa (GMP)	Milwaukee, WI	7/6/1999	NAFTA–3,291	Finished leather.

[FR Doc. 99–18420 Filed 7–19–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association, Application for Expansion of Recognition; American Gas Association, Voluntary Termination of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Canadian Standards Association (CSA) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application. This notice also includes certain other changes requested by CSA for its recognition as an NRTL. In addition, this notice includes the voluntary termination of recognition of the American Gas Association.

DATES: Comments submitted by interested parties must be received no later than September 20, 1999. Only submit comments on the application for expansion.

ADDRESSES: Send comments concerning the application for expansion to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that the Canadian Standards Association (CSA) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion request covers the use of an additional test standard. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of the preliminary finding on an application.

CSA has also informed OSHA of several changes to its operations that impact its recognition as an NRTL. The NRTL Program staff have reviewed these changes, which are detailed below, and will formally show them in OSHA's records on the CSA recognition.

In this notice, OSHA also includes the voluntary termination of recognition of the American Gas Association (AGA). As discussed below, AGA has transferred all of its NRTL facilities to CSA.

CSA's previous application as an NRTL covered its expansion of recognition for additional programs (60 FR 36763, July 12, 1996), which OSHA granted on November 20, 1996 (61 FR 59110).

The current addresses of the testing facilities (sites) ** that OSHA recognizes for CSA are:

Canadian Standards Association, Etobicoke (Toronto), 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3

CSA International, Pointe-Claire (Montreal), 865 Ellingham Street, Point-Clair, Quebec H9R 5E8

CSA International, Richmond (Vancouver), 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9

CSA International, Edmonton, 1707–94th Street, Edmonton, Alberta T6N 1E6

CSA International, Cleveland, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131 (formerly part of the American Gas Association)

CSA International, Irvine, 2805 Barranca Parkway, Irving, California 92606 (formerly part of the American Gas Association)

General Background on the Application

CSA has submitted a request, dated December 23, 1998 (see Exhibit 22A), to expand its recognition as an NRTL to include one (1) additional test standard, and provided some additional information relative to its request on January 5, 1999 (see Exhibit 22B). CSA seeks recognition for testing and certification of products to demonstrate compliance to the following test standard: UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use. The designation and title of the test standard was current at the time of the preparation of this notice, and OSHA has determined the standard is appropriate, as prescribed by 29 CFR 1910.7(c). OSHA recognition of any NRTL for a particular test standard is limited to products for which OSHA safety standards (generally found in 29 CFR part 1910) require third party testing and certification before use in the workplace.

In letters dated March 5, 1999 (see Exhibit 22C), CSA has also informed OSHA regarding the following changes in its operations that affect its recognition as an NRTL: (1) It is also known as CSA International; (2) the markings for its NRTL activities will include the initials "US" in place of the initials "NRTL"; (3) it no longer operates two Canadian sites formerly recognized by OSHA; (4) it has acquired two NRTL sites that OSHA formerly recognized for the American Gas Association (AGA); and (5) it has time-limited use of AGA's "blue star" marks for its NRTL certification activities. CSA has requested that OSHA amend its records to reflect the above changes. The NRTL Program staff has already indicated to CSA that it does not object to these changes, which the Agency will formally reflect in its records. OSHA has no requirement to give public notice of such changes, but it is doing so because some of the changes relate to information that the Agency has made public in previous notices regarding CSA's and AGA's recognitions. We give some details on these changes below but will not repeat these details in the notice of our final decision on the expansion request.

Regarding the change of initials, when OSHA recognized CSA as an NRTL (see 57 FR 61452, December 24, 1992), it imposed a condition on CSA to use the "NRTL" initials in the product markings that it authorized in its capacity as an NRTL. However, the NRTL Program staff believes there currently are no compelling reasons to continue this condition. CSA's use of the "US" initials is consistent with the markings of other NRTLs. Regarding the Canadian sites, CSA has stated it no longer uses the sites in Moncton, New Brunswick, and in Winnipeg, Manitoba, for its NRTL operations. OSHA recognized CSA for these two sites on August 9, 1994 (see 59 FR 40602).

Regarding the changes related to AGA, CSA acquired two testing sites that were a part of AGA when OSHA recognized it as an NRTL (see 55 FR 23312, June 7, 1990). As part of the acquisition, CSA also gained exclusive, but time-limited, use of the AGA "blue star" mark. In recognizing AGA's facilities for CSA, OSHA recognizes that the scope of recognition that now exists for the AGA sites will be integrated into the scope of recognition for CSA. This means the Agency will just list the former AGA sites under the CSA recognition, as if these sites had been recognized for CSA, and will not separately identify the test standards that OSHA had recognized for those sites. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. For these NRTLs, OSHA generally recognizes the NRTL for the test standards for which it is qualified, and the NRTL may then use a site to perform product testing and certifications only to the test standards for which the site has the proper capability and programs. OSHA does not limit recognition of a site to particular test standards unless specific limitations are warranted.

Notice of Voluntary Termination

In transferring all of its NRTL facilities and mark to CSA, AGA has in effect provided OSHA notice of its voluntary termination of its recognition. Under section II.D of Appendix A to 29 CFR 1910.7, OSHA must "inform the public of any voluntary termination by **Federal Register** notice." For convenience, the Agency is complying with this provision in conjunction with this notice on its preliminary finding on the CSA expansion request.

Preliminary Finding on the Application

CSA has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of CSA's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and, in a memo dated February 10, 1999 (see Exhibit 23), recommended that CSA's recognition be expanded to include the additional test standard listed above.

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant, to the CSA facilities listed above, the expansion of recognition to use the additional test standard. However, CSA must use a site to perform testing and certifications only to the test standards for which the site has the proper capability and programs. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Canadian Standards Association facilities listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether CSA has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of CSA's requests, the memo on the recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–2–92, the permanent record of public information on CSA's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant CSA's expansion request. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 8th day of July, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–18382 Filed 7–19–99; 8:45 am]
BILLING CODE 4510–26–P

** Note: As mentioned below, OSHA is deleting the sites located in Moncton and Winnipeg that it had recognized for CSA.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

collection; (c) ways to enhance the

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ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request approval of an information collection currently in use without an OMB Control Number when veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before September 20, 1999.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Authorization for Release of Military Medical Patient Records, Request for Information Needed to Locate Medical Records, Request for Information Needed to Reconstruct Medical Data, and Questionnaire about Military Service.

OMB number: 3095–New.

Agency form number: NA Forms 13036, 13042, 13055, and 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.162. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents on military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

Dated: July 14, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–18442 Filed 7–19–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request approval of an information collection, currently in use without an OMB Control Number, used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law, and (2) the information to be provided so that records may be identified. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Court Order Requirements.

OMB number: 3095—New.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.162. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

Dated: July 14, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–18443 Filed 7–19–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meetings of the Combined Arts Panel, Local Arts Agencies Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on August 4–5, 1999 in Room 708 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The panel will meet from 9 a.m. to 5 p.m. on August 4th and from 9 a.m. to 4:30 p.m. on August 5th. A portion of this meeting, from 1:45 p.m. to 3 p.m. on August 5th, will be open to the public for policy discussions.

The remaining portions of this meeting, from 9 a.m. to 5 p.m. on August 4th and from 9 a.m. to 1:45 p.m. and 3 p.m. to 4:30 p.m. on August 5th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 9, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–18401 Filed 7–19–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Central Hudson Gas & Electric Corporation (Nine Mile Point Nuclear Station, Unit No. 2); Order Extending Approval Regarding Restructuring of Central Hudson Gas & Electric Corporation by Establishment of a Holding Company Affecting License No. NPF–69, Nine Mile Point Nuclear Station, Unit No. 2

I.

By Order dated July 19, 1998, the Nuclear Regulatory Commission (the Commission or NRC) approved the proposed indirect transfer of Facility Operating License No. NPF–69, to the extent it is held by Central Hudson Gas & Electric Corporation (Applicant), to an unnamed holding company to be created with the Applicant, a wholly owned subsidiary, in accordance with electric industry restructuring goals established by the New York State Public Service Commission (NYSPSC). The approval was given in response to Applicant's application dated April 8, 1998, as resubmitted June 8, 1998, and supplemented by letters dated April 22 and July 9, 1998, for consent under Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.80). By its terms, the Order of July 19, 1998, becomes null and void if Applicant's proposed holding company restructuring is not completed by July 19, 1999, unless on application and for good cause shown, this date is extended by the Commission.

Applicant is licensed by the Commission to own and possess a 9-percent interest in Nine Mile Point Nuclear Station, Unit 2 (NMP2), under Facility Operating License No. NPF–69, issued by the Commission on July 2, 1987. In addition to Applicant, the other owners who may possess, but not operate, NMP2 are New York State Electric & Gas Corporation with an 18-percent interest, Long Island Lighting Company with an 18-percent interest, and Rochester Gas and Electric Corporation with a 14-percent interest. Niagara Mohawk Power Corporation (NMPC) owns a 41-percent interest in NMP2, is authorized to act as agent for the other owners, and has exclusive

responsibility and control over the

Dated at Rockville, Maryland, this 13th day

MC99–3. The Governors approved the

Periodicals

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responsibility and control over the operation and maintenance of NMP2. NMP2 is located in the town of Scriba, Oswego County, New York.

II.

Under cover of a letter dated June 7, 1999, Applicant submitted an application requesting that the expiration date set forth in the Order of July 19, 1998, be extended to June 30, 2000. According to this submittal, under the terms of paragraph VIB6 of the Amended and Restated Settlement Agreement (referenced in Part II of the NRC's Order dated July 19, 1998), the NYSPSC permitted Applicant to invest $100 million in its unregulated subsidiaries, but only before the date the holding company restructuring is effected. Thus far, Applicant has so invested $25.5 million. However, Applicant needs additional time to invest the remaining $74.5 million in suitable investments. Applicant further states that there have been no material changes from the facts set forth in its previous application, as resubmitted and supplemented, leading to the Order of July 19, 1998.

The NRC staff has considered the foregoing request of June 7, 1999, and has determined that Applicant has demonstrated good cause to extend the expiration date set forth in the Order of July 19, 1998, approving the proposed restructuring.

III.

Accordingly, pursuant to Sections 161b and 161i of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b) and 2201(i), *it is hereby ordered* That the effectiveness of the Order of July 19, 1998, approving the application regarding the proposed restructuring of Applicant by the establishment of a holding company, is extended such that if the restructuring is not completed by June 30, 2000, the Order of July 19, 1998, as hereby extended, shall become null and void.

This Order is effective upon issuance.

For further details with respect to this Order, see letter and request dated June 7, 1999, from Applicant which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 13th day of July 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18470 Filed 7–19–99; 8:45 am]

BILLING CODE 7590–01–U

POSTAL SERVICE

Periodicals Rate Anomaly; Changes in Classification and Rate Schedule

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule and Periodicals Regular Rate Schedule.

SUMMARY: This notice sets forth the changes to Domestic Mail Classification Schedule (DMCS) section 441 and to Periodicals Regular rate schedule 421, to be implemented as a result of the July 12, 1999, Decision of the Governors of the United States Postal Service on Periodicals Classification Change.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION CONTACT: David Rubin, (202) 268–2986.

SUPPLEMENTARY INFORMATION: On April 9, 1999, pursuant to its authority under 39 U.S.C. 3621 *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on Periodicals classification changes designed to provide a remedy to a rate anomaly resulting from the last omnibus rate case, Docket No. R97–1. The PRC designated the filing as Docket No. MC99–3. On April 23, 1999, the PRC published a notice of the filing, with a description of the Postal Service's proposal, in the **Federal Register** (64 FR 13613–13617).

On June 23, 1999, pursuant to its authority under 39 U.S.C. 3624, the PRC issued to the Governors of the Postal Service its recommended decision on the Postal Service's request. The PRC recommended the changes proposed by the Postal Service.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendations on July 12, 1999. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Periodicals Classification Change, Docket No. MC99–3. The Governors approved the Commission's recommendations. The rate schedule and classification changes approved by the Governors were attached to that decision, and are set forth below.

Also on July 12, 1999, the Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. § 3625(f), determined to make the classification and rate schedule changes approved by the Governors effective at 12:01 a.m. on August 1, 1999 (Resolution No. 99–6).

In accordance with the aforementioned Decision of the Governors and Resolution No. 99–6, the Postal Service hereby gives notice that the classification and rate schedule changes set forth below will become effective at 12:01 a.m. on August 1, 1999. Implementing regulations also become effective at that time, as noted elsewhere in this issue.

Changes in the Domestic Mail Classification Schedule

The following material represents changes to Domestic Mail Classification Schedule section 441, approved by the Governors of the United States Postal Service on July 12, 1999, in response to the Postal Rate Commission's Recommended Decision in Docket No. MC99–3.

Periodicals

Classification Schedule

* * * * *

440 POSTAGE AND PREPARATION

441 Postage.

Postage must be paid on Periodicals class mail as set forth in section 3000. *When the postage computed for a particular issue using the Nonprofit or Classroom rate schedule is higher than the postage computed using the Regular rate schedule, that issue is eligible to use the Regular rate schedule. For purposes of this section, the term issue is subject to certain exceptions related to separate mailings of a particular issue, as specified by the Postal Service.*

Changes in Rate Schedule 421

The following material represents changes to Rate Schedule 421 approved by the Governors of the United States Postal Service on July 12, 1999, in response to the Postal Rate Commission's Recommended Decision in Docket No. MC99–3.

Periodicals

RATE SCHEDULE 421

[Regular Subclass [1, 2]]

	Postage rate unit	Rate [3] (cents)
Per Pound:		
Nonadvertising Portion	Pound	16.1
Advertising Portion: [11]		
Delivery Office [4]	Pound	15.5
SCF [5]	Pound	17.8
1 & 2	Pound	21.5
3	Pound	22.9
4	Pound	26.3
5	Pound	31.6
6	Pound	37.1
7	Pound	43.8
8	Pound	49.5
Science of Agriculture:		
Delivery Office	Pound	11.6
SCF	Pound	13.3
Zones 1 & 2	Pound	16.1
Per Piece:		
Less Nonadvertising Factor [6]		5.9
Required Preparation [7]	Piece	29.4
Presorted to 3-digit	Piece	25.3
Presorted to 5-digit	Piece	19.7
Presorted to Carrier Route	Piece	12.2
Discounts:		
Prepared to Delivery Office [4]	Piece	1.3
Prepared to SCF [5]	Piece	0.7
High Density [8]	Piece	1.9
Saturation [9]	Piece	3.7
Automation Discounts for Automation Compatible Mail [10]		
From Required:		
Prebarcoded letter size	Piece	6.2
Prebarcoded flats	Piece	4.6
From 3-Digit:		
Prebarcoded letter size	Piece	4.7
Prebarcoded flats	Piece	3.9
From 5-Digit:		
Prebarcoded letter size	Piece	3.5
Prebarcoded flats	Piece	2.9

Schedule 421 Notes

1. The rates in this schedule also apply to commingled nonsubscriber, non-requester, complimentary, and sample copies in excess of 10 percent allowance in regular-rate, non-profit, and classroom periodicals.

2. Rates do not apply to otherwise regular rate mail that qualifies for the Within County rates in Schedule 423.2.

3. Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

4. Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.

5. Applies to mail delivered within the SCF area of the originating SCF office.

6. For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.

7. Mail not eligible for carrier-route, 5-digit or 3-digit rates.

8. Applicable to high density mail, deducted from carrier route presort rate.

9. Applicable to saturation mail, deducted from carrier route presort rate.

10. For automation compatible mail meeting applicable Postal Service regulations.

11. *Not applicable to qualifying Nonprofit and Classroom publications containing 10 percent or less advertising content.*

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–18509 Filed 7–19–99; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment.

(2) *Form(s) submitted:* G–19L.

(3) *OMB number:* 3220–0179.

(4) *Expiration date of current OMB clearance:* 10/31/1999.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 5,000.

(8) *Total annual responses:* 5,000.

(9) *Total annual reporting hours:* 1,250.

(10) *Collection description:* Under Section 2(e)(3) of the Railroad Retirement Act, an annuity is not payable or is reduced for any month in which the beneficiary works for a

railroad or earns more than the

SMALL BUSINESS ADMINISTRATION

Dated: June 30, 1999.

railroad or earns more than the prescribed amounts. The collection obtains earnings information needed by the Railroad Retirement Board to determine possible reduction in annuities because of LPE earnings.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–18451 Filed 7–19–99; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 08/08–0155]

CapEx L.P.; Notice of Issuance of a Small Business Investment Company License

On May 8, 1998, an application was filed by CapEx L.P. at 1670 Broadway, Suite 3350, Denver, Colorado 80202 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/08–0155 on March 4, 1999, to CapEx Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 6, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–18495 Filed 7–19–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/76–0317]

TD Origen Capital Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On September 14, 1998, an application was filed by TD Origen Capital Fund, L.P. at One Technology Center, 1155 University Blvd., S.E., Albuquerque, New Mexico 87106 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/76–0317 on March 1, 1999, to TD Origen Capital Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: July 6, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–18494 Filed 7–19–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0365]

VK Capital Company; Notice of Surrender of License

Notice is hereby given that VK Capital Company, 600 California Street, Suite 1700, San Francisco, California 94108–2704, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act).

VK Capital Company, L.P. was licensed by the Small Business Administration on February 7, 1986.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was effective as of May 26, 1999, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–18493 Filed 7–19–99; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Peaking Capacity Additions

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has decided to adopt the preferred alternative identified in its Final Environmental Impact Statement for Peaking Capacity Additions. The Final Environmental Impact Statement (EIS) was made available to the public on May 13, 1999. A Notice of Availability (NOA) of the Final EIS was published by the Environmental Protection Agency in the **Federal Register** on May 21, 1999. Under the preferred alternative, TVA will construct additional peaking capacity at two TVA fossil plants: 340 megawatts (MW) at Johnsonville Fossil Plant, in Humphreys County, Tennessee and 340 MW at Gallatin Fossil Plant in Sumner County, Tennessee. The additions will be gas fired simple cycle combustion turbines.

FOR FURTHER INFORMATION CONTACT: Richard B. Armstrong Jr., NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, mail stop WT 8C, Knoxville, Tennessee 37902–1499; telephone (423) 632–8059 or e-mail rbarmstrong@tva.gov.

SUPPLEMENTARY INFORMATION: In December 1995, TVA issued its final Energy 2020 Integrated Resource Plan and Programmatic Environmental Impact Statement. This document projected demands for electricity in the TVA power service area through the year 2020 and evaluated different ways of meeting these projected increases. Under the forecast adopted by TVA, the demand for electricity was projected to exceed TVA's 1996 generating capacity of 28,000 (MW) by approximately 6,250 MW in the year 2005. TVA decided to meet this demand through a combination of supply-side options and customer service options.

One of the supply-side options was to construct additional peaking capacity within the TVA power system. Tiering from the Energy Vision 2020 EIS, this Peaking Addition EIS evaluates the decision of adding up to 1,530 MW capacity among three existing TVA fossil plants; Colbert Fossil Plant, Colbert County, Alabama; Gallatin Fossil Plant, Sumner County and Johnsonville Fossil Plant, Humphreys County, Tennessee. The evaluation considered the following: the No Action Alternative, and seven Action Alternatives based on all combinations of the use of one, two or three candidate sites. Other options evaluated included generation technology, transmission connectivity and distribution, and fuel supply. The three candidate sites were selected based on the following criteria: location in the TVA service area, sites currently owned by TVA, and use of TVA fossil plants that now operate combustion turbines. Operating nuclear plant sites were not considered. The alternative selected was based on both economic and environmental considerations. The preferred alternative locates the capacity additions at Gallatin and Johnsonville Fossil Plants, Tennessee.

On August 12, 1998, TVA issued a Notice of Intent (NOI) to prepare an EIS on its proposed construction of additional peaking capacity at TVA existing sites. Press announcements were sent to TVA region news media on July 22, 1998, which generally described TVA's plans to add new peaking capacity by June 2000. On August 24, 1998, TVA issued a press release which contained specific information about TVA's intent to hold public scoping meetings concerning the peaking additions. Also, newspaper notices were published for the meetings. These meetings were held at the following locations: Gallatin, Sumner County, Tennessee; Waverly, Humphreys County, Tennessee and Cherokee, Colbert County, Alabama. Public comments were considered in preparing the draft EIS. A NOA of the draft EIS was published by the Environmental Protection Agency (EPA) in the **Federal Register** on January 29, 1999. Three public information and comment meetings were held on February 16, 18, and 22, 1999 at Waverly, Tennessee; Cherokee, Alabama; and Gallatin, Tennessee respectively. Comments were received from three federal and three state agencies, two corporations, and eight individuals. After considering all comments, TVA revised the EIS appropriately. The Final EIS was distributed to commenting agencies and the public on May 13, 1999. A NOA of the final EIS was published by EPA in the **Federal Register** on May 21, 1999.

Alternatives Considered

Alternative methods of meeting TVA's future electrical generation capacity requirements were evaluated in Energy Vision 2020. One of the selected methods was to construct additional electric generation capacity within the TVA system. Tiering from Energy Vision 2020, to address the peaking capacity additions, two alternatives were evaluated: a No Action Alternative and an Action Alternative.

Under the No Action Alternative, TVA would not construct additional peaking generation capacity and would not construct or upgrade transmission lines or natural gas lines connecting to the new facilities to the TVA transmission system and fuel supplies. Instead, TVA would select another fossil alternative evaluated in Energy Vision 2020, such as an option purchase agreement or spot market purchases. This would not necessarily preclude development and construction of additional generating capacity in the future by TVA or suppliers of power to TVA. However, this would be uncertain at this time.

Under the Preferred Alternative, TVA would construct peaking capacity additions of 340 MW at both Gallatin and Johnsonville Fossil Plant sites, increasing the total peaking capacity of the TVA system by 680 MW. Each site would receive four simple-cycle combustion turbines (CT) with a per unit capacity of 85 MW. These CTs are designed to operate with dual fuel capacity firing either natural gas or low sulfur distillate fuel oil to maximize fuel flexibility and lower operational cost. The CTs at both sites would be equipped with dry low nitrogen oxides (NO_x) burners for natural gas firing and would use water injection for NO_x control when firing No. 2 distillate oil. The peaking capacity additions are proposed to be completed and operational by June 2000. In addition to the peaking capacity additions, associated transmission lines serving as a connection to TVA's power distribution system would be constructed and or upgraded.

Decision

TVA has decided to implement the Preferred Alternative at Gallatin and Johnsonville fossil plant sites, because it would add a total capacity of 680 MW to the TVA power system with minimal environmental impacts and would be more cost effective than constructing additional capacity at the Colbert Fossil Plant in Colbert County, Alabama. TVA will also build and upgrade the associated transmission lines serving as a connection to the TVA power distribution system. This will help TVA meet the projected demand for electricity in its service area as well as maintain reliable service to TVA customers.

Environmentally Preferred Alternative

TVA has concluded that the Preferred Alternative is the environmentally preferred alternative. Alternatives that included the Colbert Fossil plant required the construction of new or upgraded natural gas pipelines which had additional potential impacts. There is no clear basis for identifying either the No Action or the Preferred Alternative as environmentally preferable to the other. Selection of the No Action Alternative would eliminate potential adverse impacts from TVA's construction and operation of new generation peaking capacity. However, there is no assurance that power purchased by TVA under the No Action Alternative would be produced by existing facilities or by facilities with less environmental impacts than the facilities contemplated by the Preferred Alternative. To the contrary, given the current and projected needs for new power generation, it may be more reasonable to assume the purchased power would be produced by new generating units with unknown environmental cost. Also, by selecting the Preferred Alternative and constructing its own generation units, TVA can better assure that appropriate mitigation measures are employed and that the construction and operation of the new units will comply with all environmental regulations and policies. In addition, the Preferred Alternative may better assure the reliability necessary to meet customer demand.

Environmental Consequences and Commitments

Standard construction and best management practices would be followed in all aspects of the project construction and operation to avoid or minimize adverse environmental impacts. In addition, TVA has adopted the following mitigation measures pertaining to the construction and operation of the peaking capacity additions at Gallatin and Johnsonville:

- Air quality impacts of construction dust will be mitigated by sprinkling water on open construction areas and roads to reduce fugitive dust emissions.
- Air emission during operation will comply with limits set in the PSD permit to be issued by Tennessee Department of Environment and Conservation (TDEC).

- TVA will use natural gas and low sulfur distillate oil (maximum sulfur content of 0.05%) as fuels.
- TVA will install post-combustion emission controls on all CTs.
- Best Management Practices will be used at all stream and river crossings by natural gas pipelines and transmission line resagging, reconductoring, and new construction activities.
- All wetlands will be avoided by vans, trucks, bulldozers and other equipment used to access points along transmission ROW where resagging and reconductoring activities are required. In no case will equipment pass through wetlands.
- Discharges to surface waters will comply with limits set in NPDES permits issued by Tennessee Department of Environment and Conservation.
- Stormwater will be managed in accordance with Storm Water Pollution Prevention Control and Countermeasure plans.
- A TVA botanist will delineate a 50 feet buffer around each population of bladderpod (*Lesquerella perforata*) plant in the Spring Creek bottom area along the Gallatin to Lebanon Industrial Park ROW. No construction related traffic, vehicular or pedestrian, will be allowed within the delineated buffer area. Botanists from TVA and TDEC will meet on site with the transmission line reconductoring project engineer or project manager to emphasize the significance of the bladderpod populations and the importance of enforcing the restrictions of maintaining the non-intrusive 50 feet buffer zone. If any activities relating to the reconductoring of the transmission line through the Spring Creek bottom area are modified to the extent that these activities may directly or indirectly impact this species, TVA, U.S. Fish and Wildlife Service, and TDEC would meet to establish a strategy to protect the species.
- TVA will use BMP techniques in accordance with TVA guidelines for environmental protection (Muncey 1992) during the construction of transmission lines.
- Transmission line and natural gas pipeline ROW will be revegetated where natural vegetation is removed.
- TVA will avoid the removal of unique vegetation.
- Construction delivery trucks will not be loaded beyond legal limits and will meet all safety standards. Hauling will comply with all state, federal, and local ordinances.
- Impacts on cultural resources will be mitigated in accordance with the Memorandum of Agreement (MOA) between TVA and the Tennessee State Historical Preservation Officer and with Section 106 of the National Historical Preservation Act (NHPA). All proposed transmission line ROWs that require reconductoring, resagging or new construction will be surveyed for cultural, archaeological and historic resources.

Dated: June 28, 1999.

Joseph R. Bynum,

Executive Vice President, Fossil Power Group.

[FR Doc. 99–18452 Filed 7–19–99; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Application of Puerto Rico Airways, Corp. for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 99–7–7), Docket OST–98–4838.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Puerto Rico Airways, Corp. fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 27, 1999.

ADDRESSES: Objections and answers to objections should e filed in Docket OST–98–4838 and addressed to Department of Transportation Dockets (SVC–124 Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Galvin Coimbre, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5347.

Dated: July 13, 1999.

A. Bradley Mims,

Acting Secreatary for Aviation and International Affairs.

[FR Doc. 99–18307 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1999–5126]

Collection of Information by Agency Under Review by the Office of Management and Budget (OMB)

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the Information Collection Report (ICR) abstracted below to OMB for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OMB ensure we impose on the public the lightest burden of paperwork compatible with our performance of duties.

DATES: Please submit comments on or before August 19, 1999.

ADDRESSES: Please send comments to both (1) the Docket Management Facility (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), OMB, 725 17th Street NW, Washington, DC 20503, attention: USCG Desk Officer.

Copies of the complete ICR are available for inspection and copying in public docket USCG 1999–5126 of the DMS between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. They are also available for downloading, inspection, and printing from the internet at *http://dms.dot.gov;* and for inspection at Commandant (G–SII–2), U.S. Coast Guard, room 6106, 2100 Second Street SW, Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this document, call Barbara Davis, Office of Information Management of the Coast Guard, at 202–267–2326. For questions on this docket, call Dorothy Walker, Chief of Dockets of the DMS, at 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [64 FR 9371 (February 25, 1999)] the 60-day notice required by OMB. That request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for proper performance of the duties of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information sought in the collection; and (4) ways to minimize the burden of the collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, whether to DMS or to OIRA, must contain the OMB Control Number of the ICR addressed by the comments. Comments to DMS must contain the docket-number of this request, USCG 1999–5126. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

Title: National Recreational Boating Survey.

OMB Control Number: 2115–0638.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of recreational boats.

Form(s): National Recreational Boating Survey.

Abstract: The goal of the National Recreational Boating Survey is to obtain information on boating practices, safety, and exposure. This information will enable boating-safety officials to assess boating risks and implement appropriate strategies for safety intervention. It will also provide means to measure the effectiveness of the program in reducing the number of fatalities and injuries and the amount of property damage associated with the use of recreational boats.

Annual Estimated Burden Hours: The estimated burden is 3,926 hours annually.

G.N. Naccara,

Director of Information and Technology.

[FR Doc. 99–18498 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 9, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cheri Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on July 14, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemptions

Docket No.: 29499.
Petitioner: Alaska's Enchanted Lake Lodge, Inc.
Section of the FAA Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought: To permit pilots employed by AELL to perform the preventative maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Docket No.: 29505.
Petitioner: Rough and Ready Guide Services, Inc. dba Nordic Flying Service.
Sections of the FAA Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought: To permit pilots employed by NFS to perform the preventative maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Docket No.: 29598.
Petitioner: The Boeing Company.
Section of the FAA Affected: 14 CFR 25.571(b) and 25.671(c)(1).
Description of Relief Sought: To allow the McDonnell Douglas Corporation time to substantiate, including redesign and retrofit, as necessary, that the flap system on the Model 717–200 meets the damage-tolerance and fail-safe criteria of the subject regulations.

Dispositions of Petitions

Docket No.: 29514.
Petitioner: Decatur Aero Club.
Section of the FAA Affected: 14 CFR 135.251, 135.255, and 135.353.
Description of Relief Sought/Disposition: To permit Decatur Aero Club to conduct sightseeing rides at an airport in the vicinity of Decatur, Illinois for their pancake breakfast on June 13, 1999, for compensation or hire, without complying with the drug and alcohol testing requirements in part 135. *GRANT, 6/11/99, Exemption No. 6899.*

[FR Doc. 99–18402 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for

To permit SCI to allow nonstudent

airplanes equipped with a functioning

DEPARTMENT OF TRANSPORTATION

Issued in Washington, DC on July 14, 1999.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 10, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 14, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27672
Petition: Skydive Chicago, Inc.
Sections of the FAR Affected:
14 CFR 91.307(a)(2) and (c)(1) and 105.43(a)(2)
Description of Relief Sought/ Disposition:

To permit SCI to allow nonstudent, foreign national parachutists to make intentional parachute jumps at SCI's facilities without complying with the parachute equipment packing requirement of § 105.43(a).

Docket No.: 28868
Petition: Skydive Space Center, Inc.
Section of the FAR Affected:
14 CFR 105.43(a)
Description of Relief Sought:
To permit SSC to continue to allow nonstudent parachutists who are foreign nationals to make intentional parachute jumps for the purpose of training and recreational activities at SSC's facilities without complying with the parachute equipment packing requirements of § 105.43(a).

Docket No.: 29516
Petition: Wildman Lake Lodge
Sections of the FAR Affected:
14 CFR 43.3(a) and (g) and paragraph (c) of appendix A of part 43.
Description of Relief Sought:
To permit pilots employed by WLL to perform the preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Docket No.: 29518
Petition: Brown Bear Air, Inc.
Sections of the FAR Affected:
14 CFR 43.3(a) and (g) and paragraph (c) of appendix A of part 43
Description of Relief Sought:
To permit pilots employed by BBA to perform the preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Docket No.: 29532
Petition: Cub Drivers
Section of the FAR Affected:
14 CFR 43(a) and (g)
Description of Relief Sought/ Disposition:
To permit pilots employed by Cub Drivers to perform the preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Dispositions of Petitions

Docket No.: 27251
Petitioner: BPPP, Inc. and ABS/Air Safety Foundation
Sections of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To permit BPPP and ABS/ASF flight instructors to conduct certain flight instruction and simulated instrument flights to meet the recent instrument experience requirements in Beechcraft Baron, Bonanza, and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 06/16/99, Exemption No. 5733D

Docket No.: 28877
Petitioner: Mr. Itzhak Jacoby
Sections of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To permit Mr. Jacoby to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/23/99, Exemption No. 6649A

Docket No.: 29529
Petitioner: Oliver's Helicopters, Inc.
Sections of the FAR Affected:
14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition:
To permit OHI to operate its Enstrom Model 480 helicopter (Registration No. N480FX, Serial No. 5028) under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 6/23/99, Exemption No. 6907

Docket No.: 29604
Petitioner: Lacon Aero Service, Inc.
Sections of the FAR Affected:
14 CFR 135.251, 135.255, 135.353, and Appendices I & J of part 121
Description of Relief Sought/ Disposition:
To permit Lacon to conduct local sightseeing rides at the Marshall County Airport for an annual fly-in/drive-in breakfast on June 20, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 6/18/99, Exemption No. 6903

Docket No.: 29612
Petitioner: Blue Sky Flying Services, Inc.
Sections of the FAR Affected:
14 CFR 135.251, 135.255, 135.353, and Appendices I & J of part 121
Description of Relief Sought/ Disposition:
To permit Blue Sky to conduct local sightseeing rides at an airshow at the Lake in the Hills Airport on June 19, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 6/18/99, Exemption No. 6904

[FR Doc. 99–18500 Filed 7–19–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 10, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB) 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 14, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29468
Petition: China Aircraft Services Limited
Section of the FAR Affected: 14 CFR 145.37(b)
Description of Relief Sought/ Disposition:
To permit CASL to qualify for a part 145 repair station certificate without meeting the special housing and facility requirements of § 145.37(b).

Dispositions of Petitions

Docket No.: 20583
Petitioner: Tenneco
Sections of the FAR Affected:
14 CFR 61.57(a)(3) and (b)(2) and 61.58(e)
Description of Relief Sought/ Disposition:
To permit Tenneco's pilots to complete a 24-month pilot-in-command check conducted by Tenneco in an FAA-approved flight simulator without Tenneco holding a 14 CFR part 142 certificate.

Denial, 6/18/99, Exemption No. 6906

Docket No.: 28868
Petitioner: Skydive Space Center, Inc.
Sections of the FAR Affected:
14 CFR 105.43(a)
Description of Relief Sought/ Disposition:
To allow SSC to permit non-student parachutists who are foreign nationals to make intentional parachute jumps for the purpose of training and recreational activities at SSC's facilities without complying with the parachute equipment and packing requirements of § 105.43(a).

Grant, 6/25/99, Exemption No. 6644A

Docket No.: 29207
Petitioner: American Airlines Flight Academy
Sections of the FAR Affected:
14 CFR 121.434(c)(1)(ii)
Description of Relief Sought/ Disposition:
To permit AAL to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424.

Partial Grant, 7/6/99, Exemption No. 6916

Docket No.: 29250
Petitioner: True North, Inc.
Sections of the FAR Affected:
14 CFR 135.299(a)
Description of Relief Sought/ Disposition:
To permit True North pilots to a accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft

Denial, 6/29/99, Exemption No. 6913

Docket No.: 29481
Petitioner: Republic Helicopters, Inc.
Sections of the FAR Affected:
14 CFR 135.153(c)(2)
Description of Relief Sought/ Disposition:
To permit Republic Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft.

Grant, 6/69/99, Exemption No. 6912

Docket No.: 29513
Petitioner: Fairchild Dornier/Dornier Luftfahrt GmbH.
Sections of the FAR Affected:
14 CFR C36.9(e)(1)
Description of Relief Sought/ Disposition:
To permit the Dornier 328–300 noise certification reference approach speed to be determined on the basis of the 1–g stall speed.

Grant, 6/14/99, Exemption No. 6900

Docket No.: 29562
Petitioner: Sky King Soaring, L.L.C.
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Russell M. Hustead to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6909

Docket No.: 29563
Petitioner: Mr. Ronald Jay Timmermans
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Ronald Jay Timmermans to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/28/99, Exemption No. 6914

Docket No.: 29572

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–23]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 10, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 14, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29565
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6910

Docket No.: 29566
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6911

Docket No.: 29567
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6908

Docket No.: 29568
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6907

Docket No.: 29569
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6905

Docket No.: 29570
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6904

Docket No.: 29571
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6903

Docket No.: 29573
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6902

Docket No.: 29574
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6901

Docket No.: 29575
Petitioner: Mr. Jeffrey Lee Hall
Section of the FAR Affected:
14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition:
To allow Mr. Jeffrey Lee Hall to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 6/29/99, Exemption No. 6900

Petitioner: Spectrum Aeromed, Inc.,
Section of the FAR Affected:
14 CFR 25.562 and 25.785(b)
Description of Relief Sought/ Disposition:
To permit certification of medical stretchers for transport of persons whose medical condition dictates such accommodation. The exemption is for installation on Gulfstream Model G–V series airplanes

Grant, 7/1/99, Exemption No. 6911

Docket No.: 29596
Petitioner: EMBRAER—Empresa Brasileria de Aeronautica S.A.
Section of the FAR Affected:
14 CFR C36.9(e)(1)
Description of Relief Sought/ Disposition:
To allow EMBRAER to use the 1–g stall speed used for the 14 CFR part 25 airworthiness certification to also be used for the 14 CFR part 36 noise certification for the approach reference and test limitations on the EMBRAER EMB–135 model airplane.

Grant, 6/30/99, Exemption No. 6910

Docket No.: 29613
Petitioner: Torrance Air Fair Association
Section of the FAR Affected:
14 CFR 135.251, 135.255, 135.353 and 121 Appendices I & J
Description of Relief Sought/ Disposition:
To allow Benbow to conduct local sightseeing rides at Zamperini Field, Torrance Airport, for the 7th Annual Torrance Air Fair on July 10 and 11, 1999, for compensation or hire without complying with the anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 7/6/99, Exemption No. 6915

Docket No.: 29638
Petitioner: Plainwell Pilots Association
Section of the FAR Affected:
14 CFR 135.251, 135.255, 135.353 and 121 Appendices I & J
Description of Relief Sought/ Disposition:
To allow Plainwell Pilots Association to conduct local sightseeing rides at Zamperini Field, Torrance Airport, for the 7th Annual Torrance Air Fair on July 10 and 11, 1999, for compensation or hire without complying with the anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 7/1/99, Exemption No. 6917

[FR Doc. 99–18501 Filed 7–19–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of public meeting.

SUMMARY: the FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 26–29, 1999, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Experimental Aircraft Association Museum, 3000 Poberezny Road, Batten Room, OshKosh, Wisconsin, 54901.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, En Route/Terminal Operations and Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held July 26 through July 29, 1999, at the Experimental Aircraft Association Museum, 3000 Poberezny Road, Batten Room, OshKosh, Wisconsin, 54901.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 23, 1999. The next quarterly meeting of the FAA ATPAC is planned to be held from October 4–7, 1999, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 30, 1999.

Eric Harrell,
Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 99–18499 Filed 7–19–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Seat Belt Enforcement In Major Metropolitan Areas

AGENCY: National Highway Traffic Safety Administration, DOT
ACTION: Announcement of Discretionary Cooperative Agreements in conjunction with the *Buckle Up America campaign* to increase seat belt enforcement in major metropolitan areas.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to solicit support for the *Buckle Up America* (BUA) campaign. NHTSA solicits applications from law enforcement agencies which have jurisdiction in major metropolitan areas to participate in the BUA under this program. NHTSA seeks the participation and support of these law enforcement agencies to increase the use of seat belts and child safety seats, the most effective safety devices for reducing injuries and fatalities in traffic crashes.

DATES: Applications must be received at the office designated below on or before August 19, 1999.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN.: Joseph Comella, 400 7th Street S.W., Room 5301, Washington, D.C. 20590. All applications submitted must include a reference to NHTSA Program No. NTS–01–9–05102.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Joseph Comella, Office of Contracts and Procurement, at (202) 366–9568. Programmatic questions should be directed to Mr. Philip Gulak, Occupant Protection Division, NHTSA, Room 5118 (NTS–12), 400 7th Street, S.W., Washington, D.C., 20590 (202) 366–2725. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Each year, approximately 42,000 Americans die in traffic crashes and another three million are injured. Sadly, many of these deaths and injuries could have been prevented if the victims had been wearing seat belts or were properly restrained in child safety seats.

Seat belts, when properly used, are 45 percent effective in preventing deaths in potentially fatal crashes and 50 percent effective in preventing serious injuries. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. The current level of seat belt use across the nation prevents more than 9,500 deaths and well over 200,000 injuries annually. Through 1997, more than 100,000 deaths and an estimated 2.5 million serious injuries have been prevented by seat belt use.

But, seat belt use rates and the resulting savings could be much higher. As of 1998, the average use rate among States in the U.S. was still well below the goal of 85 percent announced by the President for the year 2000 and at least a dozen States have use rates below 60 percent. On the other hand, use rates of 85–95 percent are a reality in most developed nations with seat belt use laws, and at least six States and the District of Columbia achieved use rates greater than 80 percent in 1998. A national use rate of 90 percent, among front seat occupants of all passenger vehicles, would result in prevention of an additional 5,500 deaths and 13,000 serious injuries annually. This would translate into a $9 billion reduction in societal costs, including 356 million for Medicare and Medicaid.

In April 1997, the *Buckle Up America* (BUA) campaign established ambitious national goals: (a) To increase seat belt use to 85 percent and reduce child-related fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child-related fatalities by 25 percent by the year 2005. This campaign advocates a four-part strategy: (1) Building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; (4) and conducting effective public education. Central to this Campaign's successes is the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays).

Objectives

To help achieve the new national seat belt goals, NHTSA seeks to establish cooperative efforts between NHTSA and qualified major metropolitan law enforcement agencies to increase the use of seat belts and child safety seats. Specific objectives for this cooperative agreement program will be to support the BUA campaign by increasing periodic waves of high visibility enforcement and promoting participation in Operation: *America Buckles Up Children* (ABC) national mobilizations (May and November).

1. Periodic "Waves" of High Visibility Enforcement

The history of efforts to increase seat belt use in the U.S. and Canada suggests that highly visible enforcement of seat belt laws must be the core of any successful program to increase seat belt use. No State has ever achieved a high seat belt use rate without such a component.

Canada currently has a national seat belt use rate well above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). By 1985, it became obvious to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 to 1995, centered around highly publicized "waves" of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The Canadian successes using periodic, highly visible "waves" of enforcement, as well as successes of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement *Operation Buckle Down* (also called the "70" by "92" Program) in 1991. This two-year program focused on Special Traffic Enforcement Programs (STEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys). Neither the level of enforcement nor its public visibility was uniform in every State. Had these "waves" of enforcement been implemented in a more uniform fashion in every state, the impact would likely have been much greater.

In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its Click-It or Ticket program in 1993. In this program, waves of coordinated and highly publicized enforcement efforts (i.e., checkpoints) were implemented in every county. As a result, seat belt use increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction.

2. National Mobilizations

National law enforcement mobilizations have also proven effective in increasing seat belt use. The BUA campaign supports two national mobilizations each year (Memorial Day and Thanksgiving holidays). During the 1998 mobilizations conducted throughout the week surrounding Memorial Day and the week surrounding Thanksgiving, between 4,000 and 5,000 law enforcement agencies participated in Operation ABC. Their efforts were covered by several hundred national and local television organizations in all major media markets. More than 1,500 print articles were written in response to each mobilization. As a result of the May mobilization, seat belt use increased significantly nationwide as more than 6,000,000 motorists were convinced to buckle up. Since that time, seat belt use has continued to increase significantly.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the selected major metropolitan law enforcement agencies and NHTSA;
2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;
3. Act as a liaison between the selected metropolitan law enforcement agencies and with other government and private agencies as appropriate; and
4. Stimulate the exchange of ideas and information among cooperative

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agreement recipients through periodic meetings.

Availability of Funds and Period of Support

Cooperative agreements may be awarded for a period of support for (1) year and (1) option year. The application for the funding period (12 months) should address what is proposed and can be accomplished during that period.

Subject to the availability of funds, the agency anticipates awarding up to four (4) cooperative agreements in the amount of $250,000 each, totaling $1,000,000. NHTSA may choose to extend the period of performance under this agreement for an additional 12 months, subject to the availability of funds. If NHTSA elects to do so, it will notify the recipients within 50 days prior to the expiration of this agreement and the recipient will submit a proposal for an additional 12 months of performance. Federal funding should be viewed as seed money to assist local law enforcement agencies in the development of traffic safety initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to the support of the proposed projects.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be a metropolitan law enforcement agency and must meet the following requirements:

—have jurisdiction to enforce traffic safety laws within the metropolitan area;
—have support and political permission from the Mayor or other chief executive officer (in the form of a proclamation or letter of support) to conduct seat belt enforcement with the metropolitan area;
—have a population of at least 400 thousand within their metropolitan area's jurisdiction;
—obtain written support from the Governor's Representative or his/her designee in the State Highway Safety Agency (SHSA) demonstrating that the applicant's proposal is consistent with the State's overall plan;

Application Procedure

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN.: Joseph Comella, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. An additional five copies will facilitate the review process, but are not required. Applications are due no later than August 19, 1999. Only complete application packages received by the due date shall be considered. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Program No. NTS–01–9–05102. The proposal shall not exceed 25 pages, not including budget, letters of endorsement, and résumés.

Application Contents

The application package must be submitted with OMB Standard Form 424 (Rev. 4–88), Application for Federal Assistance, including 424A, Budget Information—Nonconstruction Program, and 424B Assurances—Nonconstruction Programs, with the required information filled in and the certified assurances included. The OMB Standard Forms SF–424, SF–242A and SF424B may be downloaded directly from the OMB Internet web site, http://www.whitehouse.gov/WH/EOP/OMB/Grants/. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor categories, level of effort and rate; direct material, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts/subgrants with similar cost detail, if known; and overhead costs), as well as any costs which the applicant proposes to contribute in support of this effort. The budget should be a 1-year plan. Also, the application shall include a program narrative statement which addresses the following:

1. A description of the project to be pursued which provides:
   a. A detailed explanation of the proposed strategy to increase seat belt use in the metropolitan area, including methods for gaining support (both within the community and law enforcement leadership). In addition, strategies for participation in the operation ABC national mobilizations and plans to conduct "waves" of highly publicized seat belt enforcement. A description of efforts to address training needs (i.e., differential enforcement or diversity sensitivity).
   b. The goals, objectives, and the anticipated results and benefits of the project (supporting documentation from concerned interests other than the applicant can be used.)
   c. A summary which includes the population of the metropolitan area for which the law enforcement agency has traffic enforcement jurisdiction and evidence of support of the enforcement program. The project must have the written support from the State Highway Safety Agency; however additional written support may be provided from Mayoral, and other law enforcement agencies (with overlapping jurisdictions).
   d. List the project activities in chronological order to show the schedule or accomplishments and their target dates.
   e. An explanation demonstrating the need for assistance.
   f. Description of any unusual features, such as design or technological innovations, reductions in cost or time, or extraordinary social/community involvement.
2. A description of the applicant's previous experience related to this proposed program effort, i.e., past participation in highly publicized enforcement or participation in the Operation ABC national seat belt mobilizations.
3. An evaluation section which describes how the recipient will evaluate and measure the project activities and outcomes. Describe the methods for assessing actual results achieved. Outcomes can be documented in a number of ways (e.g., number of citations, seat belt use surveys, level of earned media coverage, etc.). Increases in observed seat belt and child safety seat use are the ultimate measure of success. Other measures may include: (i) Increases in number of law enforcement personnel trained to enforce occupant protection laws; (ii) increased metropolitan participation in Operation ABC enforcement mobilizations; (iii) increased perception of ongoing enforcement and public education activities; (iv) incentive programs to complement enforcement efforts or (v) integration of occupant protection enforcement activities with other local enforcement activities. Data sources should be identified and collection and analysis approaches should be described.
4. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed project.
5. Identification of the proposed program coordinator and other key personnel identified for participation in the proposed project effort, including a description of their qualifications, the nature of their contribution, and their respective organizational responsibilities.
6. A detailed breakdown of the proposed costs, as well the applicant's financial or in-kind resources to the support of the proposed projects.

Review Process and Criteria

Initially, all applications will be screened to ensure that they meet the eligibility requirements.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The potential of the proposed project effort to significantly increase the enforcement of seat belt laws, with a corresponding increase in seat belt use within the major metropolitan area. (80 percent)

The evaluation will include the proposed strategy for participating in the Operation: *A*merica *B*uckles Up *C*hildren (ABC) national seat belt mobilizations and the applicant's proposed strategy to coordinate this effort with other law enforcement agencies with overlapping jurisdictions. The applicant's ability to demonstrate support from local government officials and national organizations will also be considered in evaluating the potential impact of the proposed project. (See Application Contents paragraphs 1, 2, 3, and 4)

2. The program management experience and technical expertise of the proposed personnel and the financial merit of the proposed project (20 percent)

Program management and technical expertise will be estimated by reviewing the qualifications and experience of the professional team, the various disciplines represented, and the relative level of effort proposed for professional, technical, contractual, and support staff. Consideration will be given to the adequacy of the organizational plan for accomplishing the proposed project effort. Also, the adequacy of the facilities, equipment, and other resources identified to accomplish the proposed project effort will be considered. Financial merit will be estimated by the cost of the cooperative agreement to be borne by NHTSA and the in-kind contribution provided by the applicant as compared to the anticipated benefits. (See Application Contents paragraphs 5 and 6)

Terms and Conditions of Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restriction on Lobbying, and 49 CFR Part 29, Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).
2. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements (7/95).
3. Reporting Requirements
   a. Monthly Reports, which shall be due 15 days after the end of each month, shall be submitted to document project efforts and results. The reports should include up to date information (including summarizing accomplishments, obstacles and problems encountered, noteworthy activities) and should be suitable for public dissemination.
   b. Final Report: The recipient shall submit a final report summarizing the project effort within 30 days after the completion of the project. The final report will include an evaluation section as proposed in the initial proposal. An original and three copies of each of these reports shall be submitted to the COTR. The recipient shall submit a draft final report to the NHTSA COTR 60 days prior to end of the performance period. The COTR will review the draft report and provide comments to the recipient within 30 days of receipt of the document.
   c. Briefing to NHTSA: The recipient may be requested to conduct an oral presentation of project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Traffic and Injury Control Programs, Washington, D.C. An original and three copies of briefing materials shall be submitted to the COTR.

Issued on: July 15, 1999.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–18503 Filed 7–19–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33770]

Norfolk Southern Railway Company—Trackage Rights Exemption—Grand Trunk Western Railroad Incorporated

Grand Trunk Western Railroad Incorporated (GTW), a wholly owned subsidiary of Canadian National Railway Company (CN), has agreed to grant non-exclusive overhead trackage rights to Norfolk Southern Railway Company (NSR) over a 4.4-mile segment of GTW's Shoreline Subdivision between the proposed CN/Consolidated Rail Corporation (Conrail) [1] connection at approximately milepost 54.6 at Milwaukee Junction in Detroit, MI, and the existing CN connection with NSR at approximately milepost 50.2 at West Detroit, MI. [2]

The transaction was expected to be consummated on or after July 7, 1999, the effective date of the exemption (7 days after notice of the exemption was filed).

The Shoreline Subdivision runs generally north-south through Detroit and connects with NSR, CSXT, and Conrail lines in Detroit. The trackage rights will permit NSR to move

[1] By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of the assets of Conrail was effected by CSX and NS on June 1, 1999. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999). Conrail continues to operate rail properties in Michigan, New Jersey, and Pennsylvania.

[2] A redacted version of the Trackage Rights Agreement between GTW and NSR was filed with the notice of exemption. The full version of the agreement was concurrently filed under seal along with a motion for a protective order. The motion will be addressed in a separate decision

overhead traffic more safely, efficiently

overhead traffic more safely, efficiently, and quickly through the Detroit area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33770, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18329 Filed 7–19–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 138X)]

Union Pacific Railroad Company—Abandonment Exemption—in Adams County, CO

On June 30, 1999, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Boulder Branch, from Engineering Station 8+00 to the end of the line at Engineering Station 32+21, a distance of 2,421 feet at Brighton, Adams County, CO. The line traverses U.S. Postal Service Zip Code 80601. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 18, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 9, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 138X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830. Replies to the UP petition are due on or before August 9, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 12, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18215 Filed 7–19–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–941–86 and INTL–655–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–941–86, and temporary regulation, INTL–655–87 (TD 8178), Passive Foreign Investment Companies (§§ 1.1294–1T and 1.1297–3T).

DATES: Written comments should be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Foreign Investment Companies.

OMB Number: 1545–1028.

Regulation Project Number: INTL–941–86 (Notice of Proposed Rulemaking); INTL–655–87 (Temporary regulation).

Abstract: These regulations specify how United States persons who are shareholders of passive foreign investment companies (PFICs) make elections with respect to their PFIC stock.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 275,000.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 112,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–18490 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 10001

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 10001, Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Rev. Proc. 96–41.

DATES: Written comments should be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Rev. Proc. 96–41.

OMB Number: 1545–1492.

Form Number: 10001.

Abstract: Form 10001 is used in conjunction with a closing agreement program involving certain issuers of tax-exempt advance refunding bonds. Revenue Procedure 96–41 established this voluntary compliance program and prescribed the filing of Form 10001 to request a closing agreement.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments, and not-for-profit institutions.

Estimated Number of Responses: 100.

Estimated Time Per Response: 3 hours.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 12, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–18491 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS.

DATES: Written comments should be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: W–2 (Wage and Tax Statement), W–2c (Corrected Wage and Tax Statement), W–2AS (American Samoa Wage and Tax Statement), W–2GU (Guam Wage and Tax Statement), W–2VI (U.S. Virgin Islands Wage and Tax Statement), W–3 (Transmittal of Wage and Tax Statements), W–3c (Transmittal of Corrected Wage and Tax Statements). W–3PR (Informe de Comprobantes de Retencion), W–3cPR (Transmision de Comprobantes de Retencion Corregidos), and W–3SS (Transmittal of Wage and Tax Statements).

OMB Number: 1545–0008.

Form Number: Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W-3c, W–3cPR, W–3PR, and W–3SS.

Abstract: Employers report income and withholding information on Form W–2. Forms W–2AS, W–2GU and W–2VI are variations of Form W–2 for use in U.S. possessions. The Form W–3 series is used to transmit W–2 series forms to the Social Security Administration. Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms W–2, W–3, and W–3PR. Individuals use Form W–2 to prepare their income tax returns.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations individuals, or households, not-for-profit institutions, farms. and Federal, state, local or tribal governments.

Estimated Number of Responses: 253,007,121.

Estimated Time Per Response: Varies.

Estimated Total Annual Burden Hours: 133,959,675.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 13, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–18492 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPAA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 1999.

Last name	First name	Middle name
ADAMS	WASHINGTON	
ALLEN	CHRISTOPHER	SAMUEL
ALLEN	MIA	LIZBET
BARILI	OK	PUN
BARTLETT	CHARLES	THOMAS
BARTLETT	INGEBURG	ALICE
BEAUCHAMP	DAMON	LEE
BIESANZ	BARRY	CHARLES
BOHANNON	GAIL	
BOHN	ROBERT	MURRAY
BOND	DAVID	ANTHONY
BOND	DAVID	ANTHONY
CABBETT-SIIMPSON	JEREMY	JOHN
CARRASCO	RANDI	
CECIL	ROBERT	SALISBURY
CHUNG	STEPHEN	CHIN-KIANG
CORTEZ	ALLAN	DWIGHT
DAVIS	TAURUS	MICHAEL
DE BEDIS	ANTHONY	PETERS
DE GASPE BEAUBIEN	FRANCOIS	MERCIER
DE GASPE BEAUBIEN	PHILIPPE	AUBERT
DE LIA	SPARTACUS	
DE SMOURS	LUIGI	DUSMET
DEMMERLE	RICHARD	ROLF
ECSERY-MERRENS	FRANCESCA	EVA
ESSELSTROM	JAN	UNO
FERGUSON	LARRY	WYLLIS

Last name	First name	Middle name
FIND	NATASCHA	
FLEMING	DENNIS	BRIGIT
FONDAS-MITROGIANNIS	GABRIELLA	STOCKDALE
FRITH	ALEXANDER	SOPHIA
GARBER	SYLVIA	JOHN
GARDNER	WILLA	LOUISE
GOLDEN-BJORNDAHL	CAROL	JOSEPHINE
GRAYKEN	JOHN	ANNE
GRONIK	RICHARD	PATRICK
GROVES	KAREN	ALLEN
GRUYICH	MICHAEL	LOUISE
GULLAND	SANDRA	SAINOVICH
GULLICHISEN	ERIC	LEE
HAYASHI	KAZUKO	ALEXANDER
HIEP	LAM	
HIRAYAMA	KAORU.	MINH
HUFF	CATHY	
HUISSEN	HAYATO	SHERMAN
HUISSEN	HITOMI	MICHAEL
JARRETT-GOODNOW	JACQUELINE	MICHELLE
JISKRA	MICHAL	MARY
KIM	ANGELA	
KIM	MYUNG	
KOBAYASHI	TORU	NAM
KRIEBLE	ROBERT	
KWAN	YUK	H.
LACHANCE	MARC	NOAN
LATSIS	JOHN	RICHARD
LEE	JENNIFER	SPIRO
LEE	KATIE	KYUNGAHE
LIU	CHUNG	MI
LOVRET	DAVID	LAUNG
LYNGBORG, NEE OFFNER	VLASTA	MICHAEL
MACDONALD-MILLER	JOHN	STANKA
MAKI	ROBERT	ANGUS
MARTIN	ANTHONY	ANTONOVICH
MATHIESEN	HELLE	VICTOR
MOREDCHAY	IRYAH	MARI
NIELSEN, NEE PAPARIELLO	CATHERINE	HEUMAN
OFSTAD	ELIZABETH	
PAK	KIEJOON	BAUMANN
PANNY	ROLF	
PARK	KEY	ERNST
PARK	SEON	SOOK
PIETILA	HELLEN	JA
PISCIOTTA	WALTER	AMANDA
PIXLEY	DANIEL	JAMES
PLATT	ANNELISE	
PRASHKER	DALIA	
RAHMEYER	THEA	
RANCK	JAMES	ROXANNE
RASTALL	RICHARD	HUTCHISON
RIVERS-SARASIN	LORETTA	JOGE
RO	VICTOR	DAWN
RUMDEY (K–A YONATAN YEHUDA RAMNI)	JONATHAN	
SANN	JOHN	JEHUDA
SAWCHUK	DMYTRO	
SELVAAG	OLAV	
SIMPSON	MICHAEL	HINDAHL
SMITH-AKA KYONG SUK CHO	KYONG	PHILLIP
SOLHEIM (NEE CARLSEN)	MARGARET	SUK
SONG	JASON	
STEERS	INGE	
STROMKVIST	ERNST	MARIE-GABRIELE
SUBLETT	SOO	OLA
SWEENEY	JOHN	JA
TEMPLE	MAKOTO	EDWARD
TRAVOUSSIS	ALEXIA	HUGHES
VAN KAN	MARGARET	FOTINI
WALRAVEN	PIETER	HAYS
WATANABE	HIDEKI	CORNELIS
WEBB	DAPHINE	
WEBB	DAVID	PATRICIA
WEIRSUUM	ROBERT	FREDERICK
		ROSS

Corrections

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Last name	First name	Middle name
WESSEL-AAS	OLA	PEDER
WONG	ARNOLD	CHI CHIU
WYNNE	ROBERT	GRAVES
YIM	KYUNG	BIN
ZAHARA	CAROL	ANN

Approved: July 12, 1999.

Doug Rogers,

Chief, Special Projects & Support Branch, International District.

[FR Doc. 99–18459 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program, Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 2000 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 2000 Tax Counseling for the Elderly (TCE) Program is August 27, 1999.

ADDRESSES: Application Packages may be requested by contacting: Internal Revenue Service, 5000 Ellin Road, Lanham, MD, 20706, Attention: Program Manager, Tax Counseling for the Elderly Program, OP:C:E:W:E, Building C–7, Room 185.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Tyler, OP:C:E:W:E, Building C–7, Room 185, Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706. The non-toll-free telephone number is (202) 283–0189.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Pub. L. 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 2000 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

Dated: July 2, 1999.

John B. Gunner,

National Director, Education, Walk-In, and Correspondence Improvement Division.

[FR Doc. 99–18388 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 64, No. 138

Tuesday, July 20, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–379–000]

Dynergy Midstream Pipeline, Inc.; Tariff Filing

Correction

In notice document 99–17690, beginning on page 37759 in the issue of Tuesday, July 13, 1999, the docket number should appear set forth above.

[FR Doc. C9–17690 Filed 7–19–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

Correction

In notice document 99–16532, beginning on page 34839 in the issue of Tuesday, June 29, 1999, make the following correction:

On page 34839, in the second column, in the **ADDRESSES** section, in the second line, after "General Aviation Manufacturers", add "Association, 1400 K Street NW, Washington, DC 20005-2485."

[FR Doc. C9–16532 Filed 7–19–99; 8:45 am]

BILLING CODE 1505–01–D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Source Categories: National Emission Standards for Off-Site Waste and Recovery Operations; Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6377–5]

RIN 2060–AH96

National Emission Standards for Hazardous Air Pollutants for Source Categories: Off-Site Waste and Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments to rule.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for off-site waste and recovery operations (OSWRO) that the EPA promulgated on July 1, 1996, under authority of section 112 of the Clean Air Act (CAA). The rule applies to owners and operators of facilities that are major sources of hazardous air pollutants (HAP) and manage certain wastes, used oil, or used solvents received from off-site locations. The EPA is amending specific provisions in the rule to resolve issues and questions raised after promulgation of the final rule. In addition, the EPA is amending other rule language to correct technical omissions; to make specific requirements consistent and up-to-date with recent decisions made by the Agency for other related air rules; and to correct typographical, printing, and grammatical errors. The amendments do not significantly change the EPA's original projections for the rule's environmental benefits, compliance costs, burden on industry, or the number of affected facilities.

DATES: Effective Date. This rule is effective on September 20, 1999 without further notice, unless the EPA receives adverse comment by August 19, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments. Interested parties having adverse comments on this action may submit these comments in writing (in duplicate, if possible) to Docket No. A–92–16 at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW, Room 1500, Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside mall (ground floor).

Today's document and other materials related to this direct final rulemaking are available for review in the docket. Copies of this information may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Manning, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, telephone number (919) 541–5499, facsimile number (919) 541–0246, electronic mail address "manning.elaine@epa.gov".

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include the following types of facilities if the facility receives "off-site material" as defined in the rule, and the facility is determined to be a major source of HAP emissions as defined in 40 CFR 63.2.

Category	Examples of regulated entities
Industry	Businesses that receive waste, used oil, or used solvent from off-site locations and manage this material in any of the following waste management or recovery operations: hazardous waste treatment, storage, and disposal facilities (TSDF); hazardous wastewater treatment operations exempted from air emission control requirements in 40 CFR part 264 or 265; nonhazardous wastewater treatment facilities other than publicly-owned treatment works; used solvent recovery operations; recovery operations that recycle or reprocess hazardous waste and are exempted from regulation as a TSDF in 40 CFR part 264 or 265; and used oil re-refineries.
Federal Government	Federal agency facilities that operate any of the waste management or recovery operations that meet the description of the entities listed under the "Industry" category in this table.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action.

A comprehensive list of Standard Industrial Classification (SIC) codes cannot be compiled for businesses potentially regulated by this action due to the structure of the rule. The rule may be applicable to any business that receives waste, used oil, or used solvent from an off-site location and then manages this material in one of the operations or processes specified in the rule. Thus, for many businesses subject to the rule, the regulated sources (i.e., off-site waste management or recovery operations) are only a small part of the overall manufacturing process or service conducted at the facility. In these cases, the SIC code indicates the primary product produced or service provided at the facility rather than the presence of an off-site waste management or recovery operation at the site which is operated to support the predominate function of the facility. For example, SIC code classifications likely to have off-site waste management or recovery operations at some (but not all) facilities include, but are not limited to, petroleum refineries (SIC code 2911), industrial organic chemical manufacturing (SIC code 286x), plastic materials and synthetics manufacturing (SIC code 282x), and miscellaneous chemical products manufacturing (SIC code 289x). However, the EPA also is aware of off-site waste management or recovery operations potentially subject to the rule being located at a few facilities listed under SIC codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable. Thus, the SIC code alone for a given facility does not determine whether the facility is or is not potentially subject to this rule.

To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in § 63.680 under 40 CFR part 63, subpart DD. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

Internet

The text of today's document is also available on the EPA's web site on the Internet under recently signed rules at the following address: http://

www.epa.gov/ttn/oarpg/rules.html. The EPA's Office of Air and Radiation (OAR) homepage on the Internet also contains a wide range of information on the air toxics program and many other air pollution programs and issues. The OAR's homepage address is: http://www.epa.gov/oar/.

Electronic Access and Filing Addresses

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–92–16 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address listed in the **ADDRESSES** section at the beginning of this document.

Interested parties having adverse comments on this action may submit those comments electronically to the EPA's Air and Radiation Docket and Information Center at: "A-and-R-Docket@epa.gov." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–92–16). No CBI should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Judicial Review

Under section 307(b)(1) of the CAA, judicial review of an NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline

The information in this document is organized as follows.

I. Statutory Authority
II. Background
III. Amendments to Subpart DD—National Emission Standards for Off-Site Waste and Recovery Operations
A. Applicability
B. Definitions
C. Standards: General
D. Standards: Off-Site Material Treatment
E. Standards: Tanks
F. Standards: Process Vents
G. Standards: Closed-Vent Systems and Control Devices
H. Testing Methods and Procedures
I. Inspection and Monitoring Requirements
J. Notification and Reporting Requirements
K. HAP List for Subpart DD
IV. Amendments to Subpart OO—National Emission Standards for Tanks—Level 1
A. Definitions
B. Standards—Tank Fixed Roof
C. Test Methods and Procedures
D. Inspection and Monitoring Requirements
V. Amendments to Subpart PP—National Emission Standards for Containers
A. Definitions
B. Test Methods and Procedures
C. Inspection and Monitoring Requirements
VI. Amendments to Subpart QQ—National Emission Standards for Surface Impoundments
A. Definitions
B. Test Methods and Procedures
C. Inspection and Monitoring Requirements
VII. Amendments to Subpart RR—National Emission Standards for Individual Drain Systems
VIII. Amendments to Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators
A. Definitions
B. Standards—Pressurized Separator
C. Test Methods and Procedures
D. Inspection and Monitoring Requirements
IX. Administrative Requirements
A. Docket
B. Executive Order 12866: Regulatory Planning and Review
C. Executive Order 12875: Enhancing the Intergovernmental Partnerships
D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
F. Unfunded Mandates Reform Act
G. Regulatory Flexibility Act
H. Paperwork Reduction Act
I. Submission to Congress and the General Accounting Office
J. National Technology Transfer and Advancement Act

I. Statutory Authority

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*).

II. Background

The EPA, under 40 CFR part 63, subpart DD promulgated National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (hereinafter referred to as the "OSWRO NESHAP") on July 1, 1996 (see 61 FR 34140). The OSWRO NESHAP establishes standards to control HAP emissions from certain waste management and recovery operations that are not subject to Federal air standards under other subparts in 40 CFR parts 61 or 63. Subpart DD specifies the rule's applicability, standards for affected sources, compliance requirements, and reporting and recordkeeping provisions. In addition, subpart DD cross-references other subparts in 40 CFR part 63 for the specific air emissions control requirements to be used for affected tanks, surface impoundments, containers, individual drain systems, and oil-water and organic-water separators. The cross-referenced subparts are Subpart OO—National Emission Standards for Tanks—Level 1, Subpart PP—National Emission Standards for Containers, Subpart QQ—National Emission Standards for Surface Impoundments, Subpart RR—National Emission Standards for Individual Drain Systems, and Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators.

Since the promulgation of the OSWRO NESHAP, the EPA has received many inquiries asking for the Agency's interpretation of specific provisions of the rule. In addition, the Chemical Manufacturers Association (CMA), the Environmental Technology Council (ETC), and the Hazardous Waste Management Association (HWMA) petitioned for judicial review of the final rule, as provided for in CAA section 307(b), with respect to certain provisions regarding rule applicability, definitions, process vent standards, test methods, and inspection and monitoring requirements.

To resolve issues and questions raised after promulgation of the final rule, the EPA decided that technical amendments to subparts DD, OO, PP, QQ, RR, and VV in 40 CFR part 63 are appropriate and to use a direct final rulemaking action to promulgate these amendments. Also, as part of this action, the EPA is amending other rule language to correct technical omissions; to make specific requirements consistent and up-to-date with recent EPA decisions made for other related air rules; and to correct terminology, typographical, printing, and grammatical errors. The amendments do not significantly change the EPA's original projections for the rule's compliance costs, environmental benefits, burden on industry, or the number of affected facilities.

The EPA is publishing these amendments to subparts DD, OO, PP, QQ, RR, and VV in 40 CFR part 63 without prior proposal, because we

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view the amendments to be noncontroversial and anticipate no adverse comment. The amendments do not change the substantive requirements of the rule. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal of the identical amendments to these subparts if adverse comments are filed. The amendments will be effective 60 days from today's date without further notice, unless we receive adverse comment by the date specified in the **DATES** section at the beginning of this document. If the EPA receives adverse comment on these amendments, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments will not take effect. We will address the comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period for these amendments. Any parties interested in commenting on the amendments must do so at this time (see **ADDRESSES** section at the beginning of this document).

III. Amendments to Subpart DD—National Emission Standards for Off-Site Waste and Recovery Operations

The EPA is amending 40 CFR part 63, subpart DD, to clarify the Agency's intent for applying and implementing specific rule requirements and to correct unintentional omissions and editorial errors. Also, we are amending the OSWRO NESHAP to make the applicable provisions of the rule consistent (to the extent permissible and practicable under the CAA) with a related set of air standards for hazardous waste treatment, storage, and disposal facilities (TSDF) established under the Resource Conservation Recovery Act (RCRA) in 40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC. A summary of amendments to 40 CFR part 63, subpart DD, and the rationale for the amendments is presented below.

A. Applicability

The EPA is amending § 63.680 to clarify which types of materials received at a plant site are "off-site materials" and to clarify the designation of the affected sources at a plant site subject to the rule as discussed below. In addition, the EPA is extending the compliance date by 7 months to February 1, 2000. We believe this is appropriate to allow affected sources time to comply with today's amended rule.

1. "Off-Site Material"

The OSWRO NESHAP applies to those plant sites that are a "major source" as defined in 40 CFR 63.2 and receive "off-site material" as specified in subpart DD. For implementing the OSWRO NESHAP, a material is an "off-site material" if the material meets all three of the criteria specified in § 63.680(b)(1). To clarify that a given material must meet all three criteria to be considered an "off-site material," the wording in § 63.680(b)(1)(ii) and (b)(1)(iii) is revised by replacing the word "material" with the phrase "waste, used oil, or used solvent."

Section 63.680(b)(2) lists specific categories of wastes that are not considered "off-site material" regardless if the waste contains HAP or is received from an off-site location. The rule language is amended to clarify the compliance liability of an owner or operator potentially subject to the OSWRO NESHAP but receiving a waste that is exempted from the rule because it is already complying with air emission control requirements under the National Emission Standards for Benzene Waste Operations (40 CFR part 61, subpart FF) or the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry under 40 CFR part 63 (the HON). Section 63.680(b)(2)(v) is revised to clarify that a waste is not an "off-site material" under the OSWRO NESHAP when it is transferred from a chemical manufacturing plant or other facility subject to the HON provisions for wastewater under 40 CFR part 63, subpart G (i.e., § 63.132 through 63.147), and the owner or operator of the facility from which the waste is transferred complies with the HON provisions in § 63.132(g). Similarly, § 63.680(b)(2)(vi) is revised to clarify that a waste is not an "off-site material" under the OSWRO NESHAP when it is transferred from a chemical manufacturing plant, petroleum refinery, or coke by-product recovery plant subject to 40 CFR part 61, subpart FF, and the owner or operator of the facility from which the waste is transferred complies with the provisions of § 61.342(f) of the Benzene Waste Operations NESHAP.

Finally, the list of wastes not considered off-site material under the OSWRO NESHAP is amended by adding another waste category under § 63.680(b)(2)(viii). This category is RCRA hazardous waste stored for 10 days or less at a transfer facility and in compliance with the provisions for hazardous waste transporters in 40 CFR part 263. When the EPA was developing the OSWRO NESHAP, the Agency did not intend that subpart DD be applicable to those waste management operations that serve to consolidate multiple, small hazardous waste shipments into a single, larger load which then can be more efficiently delivered to the final destination for the waste. For example, a hazardous waste transporter may use a fleet of trucks to pickup small shipments of hazardous waste from many different waste generators; deliver these shipments to an interim transfer facility where the small shipments are unloaded; store the waste in the shipping containers at the transporter's facility for a short period (10 days or less); and then, when a sufficient quantity of waste has been collected, consolidate the containers as a single load on another truck or railcar for shipment of the waste to the facility where the waste is to be treated or disposed.

2. Designation of Affected Sources

Section 63.680(c) is revised to clarify for a plant site subject to the OSWRO NESHAP which processes, units, and equipment are designated as affected sources under the rule. These amendments are format and editorial revisions that do not substantively change the affected sources regulated under the rule, but are made to clarify the EPA's intent and improve ease of implementing these affected source designations.

First, the designation of "off-site material management units" in § 63.680(c)(1) is revised to clarify that a given tank or container cannot be subject to both the air standards for off-site material management units (as applicable to the particular type of unit) and for process vents. Language is added to clarify that if a tank or container is equipped with a vent that serves as a process vent for one of the six treatment processes specified in the rule, then the unit is not part of the "off-site material management unit" affected source. Instead, the unit (i.e., the process vent on this unit) is subject to the standards for process vents in § 63.683(c). The standards for off-site material management units in § 63.683(b) do not apply to the unit. An example of such a case is the vent on a distillate receiver vessel serving a distillation column used for reprocessing used solvent. Although the distillate receiver vessel meets the definition for a "tank" in the rule, it is not regulated as a tank under § 63.683(b), but instead the vessel is considered part of the "process vent" affected source.

Second, the designation of "process vents" in § 63.680(c)(2) is revised to explicitly state the six types of treatment processes vented to the atmosphere that are considered "process vent" affected sources under the OSWRO NESHAP. The EPA intended the air standards for process vents under the OSWRO NESHAP to apply to the same types of processes that the Agency regulates under related RCRA air rules for process vents in 40 CFR part 264, subpart AA, and 40 CFR part 265, subpart AA. These processes are distillation processes, fractionation processes, thin-film evaporation processes, solvent extraction processes, steam stripping processes, and air stripping. The revision to § 63.680(c)(2) includes detailed descriptions for each of the six treatment process types. The description included for each type of process is consistent with the definition used by the EPA for the process under the RCRA air rules in 40 CFR part 264, subpart AA, and 40 CFR part 265, subpart AA.

Finally, the criteria designating which equipment components are subject to the equipment leak standards under the OSWRO NESHAP are moved from § 63.683(b)(3) to § 63.680(c)(3). This is a format and editorial revision to facilitate ease of understanding and implementing the rule and does not change the criteria used to designate which equipment components are subject to the leak standards under the rule.

B. Definitions

The amendments revise several existing rule definitions and add two new definitions to § 63.681. These definition changes are made in support of other amendments that the EPA has made to subpart DD to resolve applicability issues and to clarify the intent of certain standards under the rule.

The definition for a "used solvent" as used in § 63.680(b) to determine which types of materials received at a plant site are "off-site materials" is revised to mean a mixture of aliphatic hydrocarbons or a mixture of one and two ring aromatic hydrocarbons used as a solvent which because of such use is contaminated by physical or chemical impurities. This wording revision is made to clarify that only solvents considered under the rule to be an "off-site material" are those spent or otherwise contaminated solvents resulting from use by a consumer (e.g., solvents used for cleaning, degreasing, paint stripping, etc.) and subsequently returned to a facility for recycling or reprocessing.

The "process vent" definition is revised to be consistent with revisions made to § 63.680(c)(2) designating the "process vent" affected sources under the OSWRO NESHAP (see section III.A.2 of this document). Additional wording is also added to the definition for a "process vent" to clarify that for the purpose of implementing the OSWRO NESHAP, a process vent is neither a vent used as a safety device (as defined in the rule) nor an open-ended line or other vent that is subject to the rule's equipment leak control requirements in § 63.691.

A new definition is added for the term "off-site material service" for use in the revisions made to § 63.680(c)(3) designating the equipment leak affected sources under the OSWRO NESHAP (see section III.A.2 of this document). "Off-site material service" means any time when a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system contains or contacts off-site material.

The definition for "HAP" or "hazardous air pollutants" as used throughout subpart DD is clarified. The definition is revised to mean the specific organic chemical compounds, isomers, and mixtures listed in Table 1 of subpart DD. The definition for "volatile organic hazardous air pollutant concentration" (also referred to as "VOHAP concentration") is revised to clarify that the VOHAP concentration of an off-site material by definition is measured using Method 305 in 40 CFR part 63, appendix A. However, as an alternative to using Method 305, an owner or operator may determine the HAP concentration of an off-site material using any one of the alternative test methods specified in § 63.694(b)(2)(ii). When one of these alternative test methods is used to determine the speciated HAP concentration of an off-site material, the individual compound concentration may be adjusted by the corresponding f_{m305} value listed in Table 1 of subpart DD to determine an equivalent VOHAP concentration.

The definition for "point-of-treatment" is revised to clarify procedures for demonstrating compliance with the off-site material treatment standards in § 63.684. "Point-of-treatment" is revised to mean the point after the treated material exits the treatment process but before the first point downstream of the process where the organic constituents in the treated material have the potential to volatilize and be released to the atmosphere. For applying this definition to the rule, the first point downstream of the treatment process exit is not a fugitive emission point due to an equipment leak from any of the following equipment components: pumps, compressors, valves, connectors, instrumentation systems, or safety devices.

Several definition amendments are made to clarify the requirements for air emission control equipment under § 63.693. The definition for a "control device" is revised to clarify that a control device means equipment used for recovering, removing, oxidizing, or destroying organic vapors. The definition for a "cover" is revised to clarify that a cover must provide a continuous barrier over the off-site material, and that each cover opening (e.g., access hatches, sampling ports) must be in the closed position when the opening is not in use. A new definition is added to the rule for the term "flow indicator" in conjunction with amendments to the closed-vent system standards in § 63.693(c) (see section III.G.1 of this document). A "flow indicator" means a device that indicates whether gas is flowing, or whether the valve position would allow gas to flow in a bypass line.

Finally, the definition for a "safety device" is amended to mean a closure device (e.g., a pressure relief valve, frangible disc, fusible plug) which functions to prevent physical damage or permanent deformation to equipment by venting gases or vapors from the equipment during unsafe conditions resulting from an unplanned, accidental, or emergency event. The EPA has made this revision to the wording of the definition to provide owner and operator flexibility in the use and location of these necessary devices. Wording changes clarify that a safety device may be used on not just the air pollution control equipment operated to comply with the rule but also on the controlled source's process and ancillary equipment. Also, instead of venting a safety device directly to the atmosphere when emergency relief is necessary, a common practice at some facilities is to vent the safety device directly to equipment designed specifically and solely to contain or control the vented gases and vapors. The EPA made a second wording change to clarify that the EPA did not intend to preclude from the control equipment operating conditions allowed under the rule, the opening of a safety device when used with additional safety equipment.

C. Standards: General

Several revisions are made to the exemptions from air standards allowed

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under the OSWRO NESHAP for "off-site material management unit" and "process vent" affected sources. These amendments do not significantly change the HAP emission reductions and the implementation costs expected for the rule. Also, the format and organization used for the section is revised to improve the ease of understanding and applying the standards. The requirements and exemptions are grouped together by affected source type. For example, all of the requirements and exemptions applicable to off-site material management units are now found in § 63.683(b).

1. Off-Site Material Management Unit Exemptions

Amendments are made to two of the exemptions for off-site material management units in § 63.683(b). First, the exemption in § 63.683(b)(2)(iii) for a tank or surface impoundment used for a biological treatment process is revised to eliminate a redundant qualification condition. As originally published, to qualify for this exemption the OSWRO NESHAP required an owner or operator to demonstrate that the biological treatment process achieves two conditions: (1) an overall HAP reduction efficiency of 95 percent or more, and (2) a HAP biodegradation efficiency of 95 percent or more. Upon review of this requirement, the EPA concluded that demonstrating a HAP biodegradation efficiency of 95 percent or more also means that the process achieves an overall HAP reduction efficiency of at least 95 percent. Consequently, requiring an owner or operator electing to qualify for this exemption to perform the determination of overall HAP reduction efficiency is unnecessary. Therefore, § 63.683(b)(2)(iii) is amended by deleting the requirement to demonstrate that the process achieves a HAP reduction efficiency greater than or equal to 95 percent.

The exemption in § 63.683(b)(2)(iv) for an off-site material management unit in which RCRA hazardous waste is managed according to the applicable conditions specified by the RCRA Land Disposal Restrictions (LDR) in 40 CFR part 268, is amended. This provision is revised to clarify application of the exemption to those situations when the off-site material is a type of hazardous waste not prohibited from land disposal or is composed of a mixture of different hazardous wastes. The EPA previously addressed this question in amendments to related RCRA air rules in 40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC (see 62 FR 64636, December 8, 1997). The preamble to these amendments provides a detailed discussion of this provision, how it interacts with the RCRA LDR, and how the EPA interprets the application of this exemption in specific situations (see 62 FR 64643). The EPA is amending § 63.683(b)(2)(iv) by adopting the same rule language used for the provision in the RCRA air rules.

2. Process Vent Exemptions

Amendments for process vents in § 63.683(c) add new provisions to exempt certain vents that are part of a "process vent" affected source from the air rule standards. Three specific exemptions for process vents are provided in the amended rule. These exemptions do not significantly change the level of HAP emission reduction achieved under the OSWRO NESHAP for process vents.

The first exemption is added to be consistent with an exemption already provided in the rule for off-site material management units. A process vent is exempted from the air emission control requirements of the OSWRO NESHAP if the HAP emissions from the vent are already being controlled in compliance with the provisions specified in another subpart in 40 CFR part 61 or 40 CFR part 63.

The EPA is also adding exemptions for certain process vent streams with low flow, low HAP concentration characteristics, in response to comments received after promulgation of the rule, regarding the technical difficulty and high cost of controlling these process vent streams to achieve standards under the OSWRO NESHAP. The EPA acknowledges that, under certain circumstances, it may be technically difficult and costly to control a low flow, low HAP concentration vent stream to a level that achieves the standard for process vents specified in the rule (i.e., removal or destruction of the HAP from each individual affected process vent gas stream by 95 percent or more on a mass basis). For example, use of a thermal vapor incinerator to control a low flow, low organic HAP concentration vent stream may only achieve a 95 percent emission reduction by incurring the substantially higher equipment and operating costs required to overcome the technical limitations of enclosed combustion control devices. Other conventional air emission control devices commonly used at existing OSWRO sources (e.g., carbon adsorbers, condensers, catalytic vapor incinerators) also have technological constraints relative to controlling low flow, low concentration vent streams. Consequently, the level of potential HAP emission reduction that can be achieved for the low flow, low organic HAP concentration vent streams typically emitted from processes regulated by the OSWRO NESHAP is limited, in practical terms, by the technical limitations of conventional air pollution control devices and the costs to overcome these limitations.

The EPA reconsidered the potential HAP emission reduction levels achievable when conventional air emission control devices are applied to low flow, low organic HAP concentration vent streams from OSWRO processes. The EPA decided that it is reasonable and appropriate to exempt from the air emission control requirements under the OSWRO NESHAP those process vent streams for which the potential for HAP emission reduction is small and the application of conventional air emission control devices is not practical.

To exempt very low flow rate vent streams, the EPA selected an approach consistent with the approach the Agency has used for other NESHAP to exempt these types of process vent streams. A process vent is exempted from the air emission control requirements of the OSWRO NESHAP if the owner or operator determines the process vent stream flow rate to be less than 0.005 standard cubic meters per minute. Considering the range of the vent stream organic HAP concentrations typically emitted from the types of processes regulated by the OSWRO NESHAP, the potential HAP emission reductions achieved by controlling process vent streams below this flow rate cutoff value are extremely low regardless of the organic HAP concentration level.

The EPA decided that it is not appropriate to exempt OSWRO process vent streams with flow rates greater than 0.005 standard cubic meters per minute independent of considering the organic HAP concentration of the vent stream. Even though a given process vent stream has a low organic HAP concentration, the level of total organic HAP emissions to the atmosphere can still be substantial if the gas stream volume emitted is moderately high. Considering the organic HAP concentration of process vent streams for OSWRO sources, the EPA concluded that requiring control of those process vent streams having both a flow rate below 6.0 standard cubic meters per minute and a total organic HAP concentration less than 20 parts per million by volume (ppmv) does not provide sufficient HAP emission reductions from these sources to justify the substantial compliance costs for the OSWRO facility owner and operator. Therefore, the EPA is

amending the OSWRO NESHAP to exempt those affected process vent streams having a flow rate less than 6.0 standard cubic meters per minute and a total HAP concentration in the vent stream less than 20 ppmv. This process vent exemption requires that both the process vent flow rate and the organic HAP concentration criteria be met to qualify for the exemption.

D. Standards: Off-Site Material Treatment

Use of air emission controls for an affected off-site material management unit or process vent is not required under the OSWRO NESHAP if the HAP contained in the off-site material is removed or destroyed before placing the material in the affected unit. To comply with this provision, the rule provides alternative treatment standards in § 63.684. Revisions are made to several of the alternative treatment standards allowed under the rule. These amendments do not significantly change the HAP emission reductions and the implementation costs expected for the rule.

Some facility owners and operators misinterpreted the VOHAP concentration treatment alternative under § 63.684(b)(1)(ii), as published in the July 1996 version of the rule, to apply only to off-site material streams with a VOHAP concentration less than 500 parts per million by weight (ppmw), and that the EPA was requiring treatment of these low HAP streams contrary to the general standards stated in § 63.683. This is not the EPA's intent, and the rule language is amended to clarify that this alternative is used for the situation where the off-site material entering a treatment process is composed of a mixture of off-site material streams having an average VOHAP concentration greater than 500 ppmw with off-site material streams having an average VOHAP concentration less than 500 ppmw.

The HAP efficiency treatment alternative in § 63.684(b)(3) is amended to clarify that this treatment alternative is not applicable to a biological degradation process conducted in open tanks or surface impoundments (for open biodegradation processes an owner or operator may comply with § 63.684(b)(4)). Demonstrating an overall HAP reduction efficiency for a treatment process that is open to the atmosphere does not ensure that the HAP in the off-site material is actually destroyed or removed. A portion or all of the volatile organic HAP constituents present when the off-site material enters the process may volatilize directly to the atmosphere from the exposed surface of the material in an open tank or surface impoundment before this material finally exits the process.

Also in § 63.684(b)(3), a correction is made to the value of the HAP removal efficiency performance level required in circumstances where the off-site material stream entering the treatment process has an average VOHAP concentration equal to or greater than 10,000 ppmw at the point-of-delivery. The value for HAP removal efficiency performance level is corrected to read 99 percent (not 95 percent as published in July 1996). A treatment process can only meet the second condition of the standard that requires the average VOHAP concentration of the off-site material at the point-of-treatment to be less than 100 ppmw by achieving a HAP removal efficiency of at least 99 percent.

The biodegradation treatment alternative in § 63.684(b)(4) is amended to clarify that this alternative applies only to a biological degradation treatment process conducted in open tanks or surface impoundments. Also, consistent with the amendment made by the EPA to the exemption in § 63.683(b)(2)(iii) for a tank or surface impoundment used for biological treatment (see section III.B.1 of this document), § 63.684(b)(4)(i) is revised to eliminate the redundant condition requiring determination of the overall HAP reduction efficiency for the biodegradation process.

Provisions are added in § 63.684(e)(4) requiring the owner or operator to establish and implement a procedure to monitor appropriate parameters that demonstrate proper operation of a biological treatment unit according to the evaluation required in § 63.694(h). Under this requirement, the owner or operator must list the operating parameters monitored and state the frequency of monitoring to ensure that the biological treatment unit is operating between the minimum and maximum operating parameter values to establish that the unit is continuously achieving the relevant performance requirement.

E. Standards: Tanks

The standards for a tank required under § 63.685(b)(1) to use Tank Level 1 controls are amended to provide two alternatives for complying with the rule. First, an alternative is added to the rule (see § 63.685(c)(2)(ii)) to explicitly clarify that the owner or operator of the tank may instead choose to use the more stringent Tank Level 2 controls to comply with the rule. The EPA's intent is that an owner or operator may select a more stringent control level than the minimum control requirement. Second, an alternative is added to the rule (see § 63.685(c)(2)(iii)) for the special circumstance when a tank is used as an interim transfer point to transfer off-site material from containers to another off-site material management unit. An example of such a tank is an in-ground tank into which organic-contaminated debris is dumped from roll-off boxes or dump trucks, and then this debris is promptly transferred from the tank to a macroencapsulation unit by a backhoe. This alternative allows the cover to be removed during those periods of time when the material transfer activity is occurring. At all other times, air emissions from the tank must be controlled in accordance with the provisions specified in 40 CFR part 63, subpart OO—National Emission Standards for Tanks—Level 1. The EPA previously included provisions for these types of tanks in the related air rules for waste management units under the RCRA subpart CC air rules in 40 CFR parts 264 and 265 (see docket A–92–16, document VI–B–2).

The standards in § 63.685(b)(4) for a tank that manages off-site material having a maximum HAP vapor pressure that is equal to or greater than 76.6 kilopascals (kPa) are amended to provide two additional compliance alternatives. These additional compliance alternatives are using either (1) a pressure tank, or (2) a tank located inside an enclosure vented through a closed vent system to an enclosed combustion device. These two additional control alternatives provide a level of HAP emission control equivalent to the original control requirement (i.e., venting the tank directly to a control device), while at the same time providing greater compliance flexibility to the owners and operators subject to the rule.

The requirements in § 63.685(h) for owners and operators electing to use the Tank Level 2 control alternative of a pressure tank are amended to allow the purging of inert materials from the pressure tank. Inert material purging is a short duration maintenance procedure required by good engineering practice to ensure proper operation of this type of tank system.

The requirements in § 63.685(i) for owners and operators electing to use the Tank Level 2 control alternative of an enclosure vented to an enclosed combustion control device are amended to add a provision allowing a safety device to open anytime conditions require it to do so to avoid an unsafe condition. The EPA included this safety provision for all of the other tank control alternatives under the OSWRO NESHAP, but the provision

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inadvertently was not included in the regulatory language for this Tank Level 2 control alternative when the final rule was published in July 1996.

F. Standards: Process Vents

The air emission control requirements for process vents in § 63.690(b) are amended to clarify that for the purpose of complying with this standard, the EPA considers a primary condenser associated with an affected process to be part of the process and not the air emission control device. The primary condenser is a condenser for which the predominant function is the recovery or capture of solvents or other organics for use, reuse, or sale. The EPA considers a secondary condenser or other organic recovery device that is operated downstream of the primary condenser to be a control device for the purpose of complying with the OSWRO NESHAP.

G. Standards: Closed-Vent Systems and Control Devices

Amendments to the standards for closed-vent systems and control devices in § 63.693 correct technical omissions, update specific requirements consistent with recent decisions made by the EPA for other NESHAP, and correct terminology, typographical, printing, and grammatical errors. These amendments do not significantly change the HAP emission reductions and implementation costs expected for the rule.

1. Closed-Vent System Requirements

The inspecting and monitoring requirements for a closed-vent system in § 63.693(b)(5) are amended to add an alternative procedure. This alternative allows an owner or operator to inspect and monitor the closed-vent system according to the procedure specified in 40 CFR part 63, subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (specifically the procedure in § 63.172(f) through (h)). Although some details of the subpart H procedure vary from the procedure already specified in the OSWRO NESHAP, both procedures achieve the same overall result of ensuring that the closed-vent system continues to operate properly after its initial installation and testing. This amendment allows those owners and operators who are already inspecting and monitoring other closed-vent systems at their facility using the subpart H procedure to comply with another NESHAP allowing the flexibility to use a common procedure for all of the affected closed-vent systems at the facility.

Section 63.693(c) is amended to update the requirements for those situations when a closed-vent system bypass device is installed to be consistent with other recently promulgated NESHAP. The revised language does not significantly change the technical requirements but does clarify the requirements for an owner or operator choosing to use a flow indicator to comply with the provision. The rule requires that this device merely indicate the presence of gas flow through the bypass line or duct. The device does not need to measure or quantify the flow rate (although a flow measurement device can be used to comply with this provision of the rule if an owner or operator chooses to do so).

2. General Control Device Requirements

The requirements in § 63.693(b)(8) for using a design analysis to demonstrate that a given control device achieves the applicable performance requirements of the rule are amended. If the design analysis prepared by the owner or operator is determined by the Administrator to be incomplete or deficient, the amended rule allows the Administrator to first request that the design analysis be revised or amended by the owner or operator to correct the deficiencies identified by the Administrator. If the owner or operator and the Administrator still do not agree on the acceptability of using this revised design analysis to demonstrate that the control device achieves the applicable performance requirements, then the disagreement is to be resolved using the results of a performance test conducted by the owner or operator.

3. Carbon Adsorption System Requirements

The monitoring requirements in § 63.693(d)(3) for carbon adsorption control devices are amended to clarify the requirements. Section 63.693(d)(3)(i) is amended to clarify that owners and operators choosing this monitoring alternative for regenerative-type carbon adsorption systems must monitor both total regeneration stream mass flow and the carbon bed temperature. Section 63.693(d)(3)(ii) is amended to add a requirement that the daily average concentration level of organic compounds in the exhaust stream from the control device must be monitored. The EPA considers an averaging time to be necessary to properly determine compliance.

The spent carbon management requirements in § 63.693(d)(4) are amended to add two more alternatives. The amendments add the alternatives of using: (1) a thermal treatment unit using air emission controls according to the control device standards under the OSWRO NESHAP, or (2) a thermal treatment unit using organic air emission controls according to another NESHAP in 40 CFR part 61 or 40 CFR part 63. These changes make this requirement consistent with other air rules that affect similar waste management sources (see section 264.1088(c)(3)(ii) and section 265.1089(c)(3)(ii)).

4. Condenser Requirements

The monitoring requirements in § 63.693(e)(3) for condenser control devices are amended to clarify the requirements. Section 63.693(e)(3)(i) and (ii) are amended to require monitoring of either the daily average exhaust gas temperature or the daily average concentration level of organic compounds in the exhaust stream. The EPA considers monitoring one of these parameters to be necessary to properly determine compliance.

5. Vapor Incinerator Requirements

The monitoring requirements in § 63.693(f) for vapor incinerators are amended to add a requirement that owners and operators measure and record the daily average of the particular parameter being monitored (i.e., temperature or concentration). The EPA considers monitoring these parameters to be necessary to properly determine compliance.

6. Boiler and Process Heater Requirements

The monitoring requirements in § 63.693(g) for boilers and process heaters are amended to include provisions requiring that the monitoring systems for boilers and process heaters used as control devices measure and record the daily average of the particular parameter being monitored (i.e., temperature or concentration). The provision of a daily averaging time for control device monitoring parameters is necessary to properly determine compliance.

7. Flare Requirements

The requirements in § 63.693(h) for flares are amended to clarify the compliance demonstration and monitoring procedures to be used for a flare. Section 63.693(h)(2) is added to the rule to specify the procedure an owner or operator must use to demonstrate that the flare achieves the requirements in 40 CFR 63.11(b). This amendment is added because the cross-reference to the General Provisions in 40 CFR part 63, subpart A, as specified in

the version of the final rule published in July 1996, does not explain the specific flare compliance demonstration procedure that an owner or operator is to use for the OSWRO NESHAP.

The flare monitoring requirements are now specified in § 63.693(h)(3) and are amended to require that the owner or operator record for each 1-hour period whether the required pilot flame monitor was continuously operating and whether a flame was present during each hour as required. This change is made to add an averaging time.

H. Testing Methods and Procedures

1. Alternative Methods for Determination of Average VOHAP Concentration

The EPA is adding three more alternative methods in § 63.694(b)(ii) that an owner or operator may choose to determine the average HAP concentration of an off-site material. The methods added are Method 625 in 40 CFR part 136, appendix A, and Method 8260 and Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (or any more recent, updated version of these methods approved by the EPA). The EPA developed these methods for use in implementing rules under the Clean Water Act and RCRA, respectively. The methods measure the concentration of organic pollutants in municipal and industrial wastewaters. Commenters suggested that these methods are also applicable to the OSWRO NESHAP for the determination of off-site material HAP concentration. After review of the methods, the EPA decided that using the three methods for direct measurement of the HAP concentration of certain off-site material is reasonable and adding them to the OSWRO NESHAP is appropriate. The EPA believes that with the addition of these methods, the rule now provides a range of alternatives for determining the HAP concentration of an off-site material such that every owner and operator of facilities subject to the OSWRO NESHAP have available practical and inexpensive VOHAP determination alternatives.

It is important to note that for each of the alternative methods allowed under § 63.694(b)(ii) (i.e., the listed methods other than Methods 305 and 25D), there is a published list of chemical compounds that the EPA considers the method appropriate to measure. An owner or operator may only use an alternative method to measure compounds that are on the list associated with that method, unless the specified validation procedures are also performed. Furthermore, for a VOHAP concentration determination, the owner or operator must evaluate the total mass of HAP compounds in an off-site material (i.e., all compounds listed in Table 1 of subpart DD). Therefore, the owner or operator is responsible for determining that the analytical method used for a VOHAP concentration determination is sufficient to evaluate all of the applicable organic compounds contained in the off-site material. If an owner or operator chooses to use an alternative to Method 305 to analyze an off-site material that contains unknown compounds or many different compounds, performing "screening" analyses may first be necessary to verify that the alternative method chosen is, in fact, appropriate to evaluate all the necessary compounds.

The alternative test methods measure the total concentration of the HAP constituents listed in Table 1 of subpart DD. The VOHAP concentration of an off-site material by definition is the fraction by weight of those compounds listed in Table 1 as measured using Method 305. Owners and operators may choose to "correct" the HAP values measured by an alternative method to equate to the VOHAP values that would be measured using Method 305. This correction is made by multiplying the total concentration measured values times the appropriate "f_{m305} factor" listed in Table 1 of subpart DD to obtain the Method 305 VOHAP concentration equivalent.

Method 625 is appropriate for determining the HAP concentration of an off-site material provided that the corrections for the measured compounds in Table 7 of the method are made. Methods 8260 and 8270 are also considered appropriate provided that formal quality assurance procedures are established, followed, and recorded to address those elements of the methods considered relevant for measuring the actual concentration of organic compounds. The quality assurance program must address procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps, as well as addressing the overall accuracy and precision of the specific method used.

None of the alternative methods specify sample collection and handling procedures considered adequate by the EPA to minimize the volatilization of organics from the sample before analysis. Therefore, to ensure that a representative sample of an off-site material is analyzed, an owner or operator that chooses to use either Method 624, 625, 1624, 1625, 8260, or 8270 for the OSWRO NESHAP is required to develop and follow a written sampling plan. This plan describes a step-by-step procedure for collecting representative samples of the off-site materials such that material integrity is maintained and minimal loss of organics from the sample occurs throughout the collection and analysis process. An example of an acceptable sampling plan is one that incorporates sample collection and sample handling procedures similar to those specified in Method 25D. The sampling plan is to be maintained on-site in the facility records.

The provisions in § 63.694(c)(ii) listing the alternative methods for determining the average VOHAP concentration of an off-site material at the point-of-treatment are revised and simplified to cross-reference all of the methods allowed under § 63.694(b)(ii).

2. Equation Corrections

The equation in § 63.694(b)(2)(iii) used for calculating the average VOHAP concentration of an off-site material is amended to correct the rule citation used to define the term "C_i." The correct citation is § 63.694. The same correction is made for the terms "C_i" in the equation in § 63.694(c)(3), "y" and "C_y" in the equation in § 63.694(e)(4), and "Q_{by}" and "C_{bi}" in the equation in § 63.694(g)(4).

The equation in § 63.694(c)(3) used for calculating the average VOHAP concentration on a mass-weighted basis is corrected to clarify the inputs to the equation. In the equation, the value for Q_i is the sum of the Q_i's used in the equation. This value represents the sum or total off-site material quantity used to characterize the off-site material over the averaging period. Each VOHAP concentration determination must have a corresponding off-site material quantity that represents the amount of material generated or received over the averaging period used to determine the VOHAP concentration value. To calculate a mass-weighted average VOHAP concentration over the averaging period, multiply each VOHAP concentration by the quantity of material it represents and then divide by the total quantity of material (i.e., the sum of the individual off-site material quantities).

3. Procedure for Determination of No Detectable Emissions

Several amendments are made to the procedure for determination of no

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detectable emissions in § 63.694(k). As discussed in the appropriate later sections of this document, the same changes are made to the procedure as specified in 40 CFR part 63, subparts OO, PP, QQ, and VV.

The procedure is amended to allow either methane or n-hexane to be used as the calibration gas for the detection instrument. It is the EPA's intent that the calibration procedure be consistent with the procedure as applied to related air rules (e.g., see the equipment leak test methods and procedures at sections 264.1063 and 265.1063). Therefore, the requirement for calibration gases in § 63.694(k)(4) is amended to provide the owner or operator the choice of using methane or n-hexane as allowed under these other rules.

Section 63.694(k)(6) is amended to allow an owner or operator the option of choosing to adjust or not adjust the detection instrument readings to account for the background organic concentration level. Frequently at a source, the maximum organic concentration value measured by the detection instrument is well below the organic concentration value that defines "no detectable emissions." In this case, requiring an ambient background correction is an unnecessary step. Thus, the EPA decided that it is reasonable and appropriate for the correction of the measured value for the ambient background level to be an option used at the owner's or operator's discretion. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

Finally, the procedure is amended to add provisions for determination of no detectable emissions from a seal used around a rotating shaft that passes through a cover opening. In this case, if the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level is less than 10,000 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions. This addition is made for consistency with other related EPA air rules regarding the determination of no detectable emissions.

4. Determination of Process Vent Stream Flow Rate and Total HAP Concentration

A new § 63.694(m) is added to subpart DD specifying the testing methods and procedures that an owner or operator must follow to determine a process vent stream flow rate and total organic HAP concentration. These new requirements are added to the rule to support the amendments to § 63.683(b) adding exemptions for process vents based on the vent stream flow rate and total organic HAP concentration (see section III.F of this document). The procedures and test methods added to the rule for these determinations are the EPA reference methods in appendix A of 40 CFR part 60 for measuring gas stream flow rates and organic concentrations.

I. Inspection and Monitoring Requirements

Section 63.695 is amended to consolidate the inspection and monitoring requirements under subpart DD in this section, update the control device monitoring requirements to be consistent with recent decisions made by the EPA for compliance assurance monitoring of sources subject to using air emission controls under a NESHAP, and to make minor technical modifications. The amendments do not significantly change the estimated inspection and monitoring costs for the rule.

The inspection requirements for covers, closed-vent systems, and transfer systems in § 63.695 are amended to make allowances for units or equipment that an owner or operator determines to be unsafe to inspect on an annual interval. The rule requires that the owner or operator perform an initial inspection of the control equipment used to comply with the rule, and follow-up inspections at least once per calendar year. A new paragraph under § 63.695(f) is added to the rule that provides that following the initial inspection of an air pollution control device, an owner or operator may perform subsequent inspections at intervals longer than 1 year when the owner or operator determines that performing the applicable inspection and monitoring procedures would expose a worker to dangerous, hazardous, or otherwise unsafe conditions. In such a case, the owner or operator is required to: (1) Prepare written documentation that explains the reasons why the equipment is unsafe to inspect or monitor on an annual basis; and (2) develop and implement a written plan and schedule to inspect and monitor the air pollution control equipment using the applicable procedures specified in this section during times when a worker can safely access the air pollution control equipment. The required inspections and monitoring must be performed as frequently as practicable but do not need to be performed more frequently than the periodic schedule that would otherwise be applicable to the air pollution control equipment under the provisions of the rule. For example, when the rule requires a cover to be inspected at least once per calendar year, inspection of a cover designated as "unsafe to inspect" need not be performed more frequently than once during a calendar year if during that year unscheduled process shutdowns or other unexpected events create multiple times when a worker could safely access the cover.

A provision is added to the inspection requirements in § 63.695(b)(1) for tanks and in § 63.695(d)(1) for transfer systems to clarify that in the case where a tank or transfer system is buried partially or entirely underground, inspection is required only for those portions of the equipment and those connections to the equipment (such as fill ports, access hatched, or gauge wells) that extend to or above the ground surface and can be opened to the atmosphere. It was not the EPA's intent that those portions of the tank or transfer system that are located below ground and, consequently, not easily accessible, be inspected annually. The EPA previously included this provision in other related air rules for waste management units (e.g., the RCRA subpart CC air rules in 40 CFR parts 264 and 265).

The control device monitoring requirements under the rule are revised and updated to be consistent with the EPA's application of compliance assurance monitoring to sources under a NESHAP. A new § 63.695(e) is added to consolidate the control device monitoring requirements. This section establishes the technical specifications for continuous monitoring of control device operating parameters; establishes the criteria for calculating the daily average value for each monitored operating parameter; incorporates a requirement that the owner or operator establish appropriate operating parameter limits for the range of conditions at which the control device must be operated to continuously achieve the applicable performance requirements; and defines the conditions under which an excursion for a given control device is determined to have occurred based on the monitoring data results.

The EPA considers an excursion to be a failure to achieve the applicable standards due to improper operation of the control device. The rule allows one excused excursion for a control device per semiannual period for any reason. Should any additional excursions occur during this period (other than those that occur during the specific conditions listed in § 63.695(e)(6)(i)), each of these additional excursions is a violation of the standard. Conditions under which an excursion of the operating parameter limit is not a violation of the standard are: (1) periods of startup, shutdown, and malfunction if during the period the affected unit or facility is operated according to the facility's startup, shutdown, and malfunction plan; and (2) periods of non-operation of the unit or process that is vented to the control device that result in cessation of HAP emissions to which the monitoring applies.

J. Notification and Reporting Requirements

The notification requirements in § 63.697(a) are amended to allow owners and operators of existing sources subject to the amended OSWRO NESHAP, to file an initial notification (as required in § 63.9(b)) on or before 30 days after the date that today's amendments become effective. This provision is added to the rule in recognition by the EPA that, as a result of the clarifying amendments made by today's direct final rulemaking, there may be some facility owners and operators who now understand, for the first time, that their facility is subject to the OSWRO NESHAP.

The reporting requirements in § 63.697(b)(4) are amended by adding language to clarify the type of information the owner or operator should include in the semiannual report regarding control device excursions. The semiannual report must include a description of all excursions, as defined in the subpart, that have occurred during the 6-month reporting period. This includes excursions caused when the daily average value of a monitored operating parameter is outside the established operating parameter limit as well as excursions caused by a lack of adequate monitoring data.

K. HAP List for Subpart DD

Table 1 in subpart DD lists the specific organic chemical compounds, isomers, and mixtures that are HAP for the purpose of implementing the requirements of OSWRO NESHAP. Two changes are made to this table. First, the listing for the compound, 1,1-dimethyl hydrazine, is deleted from Table 1. As discussed in the preamble for the final rule (see 61 FR 34140), 1,1-dimethyl hydrazine was one of the specific compounds that EPA decided to delete from its proposed HAP list for this rulemaking because of the low potential for the compound to be emitted from the type of waste management and recovery operations subject to the rule. This compound inadvertently was not deleted from the version of Table 1 published in July 1996.

Table 1 also is amended to clarify that for the glycol ethers chemical group listing in the table, only those glycol ethers that have a Henry's Law constant value equal to or greater than 0.1 Y/X (1.8×10^{-6} atm/gm-mole/m^3) at 25 °C · must be included in the determination of the VOHAP concentration. The group of glycol ether chemicals contains a large number of compounds that have Henry's Law constant values both above and below this cutoff value. Therefore, rather than attempt to list the specific glycol ether compounds in the table and potentially omit a given glycol ether HAP, the criteria for identifying which glycol ether compounds must be included in the VOHAP determination was added to the rule.

IV. Amendments to Subpart OO—National Emission Standards for Tanks—Level 1

The EPA is amending 40 CFR part 63, subpart OO, to clarify several specific rule requirements, to correct minor typographical and terminology errors, and to make the provisions of subpart OO consistent with the technical amendments made to 40 CFR part 63, subpart DD, where applicable. The amendments to 40 CFR part 63, subpart OO, are summarized below.

A. Definitions

The definition for a "safety device" specified in § 63.901 is amended to incorporate the same changes made to the definition for a "safety device" for 40 CFR part 63, subpart DD, in § 63.681. These changes are discussed in section III.B of this document.

B. Standards—Tank Fixed Roof

The standards for fixed roof tanks in § 63.902 are amended with additional language to clarify the EPA's intent for compliance with two specific provisions. First, § 63.902(a) is amended to specifically state that the standards under this section do not apply to a fixed roof tank that is also equipped with an internal floating roof. Second, § 63.902(b) is amended with additional language to specifically state that a facility owner or operator is allowed to install a closure device on a tank manifold system or header vent when a series of tanks have their vents (i.e., tank openings) connected to a common header. This amendment makes EPA's application of the fixed roof standards to a tank connected to a manifold system consistent with other air rules that affect similar waste management sources (see 62 FR 64648, December 8, 1997).

C. Test Methods and Procedures

The procedure for determination of no detectable organic emissions specified in § 63.905 is amended to incorporate the same revisions and additions made to the procedure for 40 CFR part 63, subpart DD, in § 63.694(k). The specific amendments are discussed in section III.G of this document.

D. Inspection and Monitoring Requirements

The inspection and monitoring provisions for owners and operators that use a tank equipped with a fixed roof is amended by adding a new paragraph (d) to § 63.906 which allows alternative inspection intervals longer than 1 year when an owner or operator determines that performing a required inspection or monitoring procedures would expose a worker to dangerous, hazardous, or otherwise unsafe conditions. The alternative inspection interval provision is the same as that for 40 CFR part 63, subpart DD, in § 63.695(f). The alternative inspection interval provision and related compliance requirements are discussed in section III.I of this document.

V. Amendments to Subpart PP—National Emission Standards for Containers

The EPA is amending 40 CFR part 63, subpart PP, to clarify several definitions, to correct minor typographical and terminology errors, and to make the provisions of subpart PP consistent with the technical amendments made to 40 CFR part 63, subpart DD, where applicable. The amendments to 40 CFR part 63, subpart PP, are summarized below.

A. Definitions

Two of the definitions in § 63.921 are revised to clarify the EPA's intent in applying each definition to provisions in the rule. The definition for an "empty container" is revised to remove redundant language regarding a container that meets the definition of an "empty container" used for implementing RCRA hazardous waste rules (see 40 CFR 261.7(b)). The definition for a "safety device" is amended to incorporate the same revision made to the definition for a "safety device" for 40 CFR part 63, subpart DD, in § 63.681. This change is discussed in section III.B of this document.

B. Test Methods and Procedures

The procedure for determination of no detectable organic emissions specified in § 63.925 is amended to incorporate the same revisions and additions made

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to the procedure for 40 CFR part 63, subpart DD, in § 63.694(k). The specific amendments are discussed in section III.G of this document.

C. Inspection and Monitoring Requirements

The EPA has received questions regarding the implementation of the inspection requirements for containers using either Container Level 1 or Container Level 2 controls as specified under the rule. The EPA is amending several provisions in § 63.926 to clarify which containers are required to be inspected and when these inspections need to be performed.

The regulatory language in § 63.926(a)(1) is amended to clarify when the initial inspection must be performed for a container that already contains a regulated material when it is delivered to a facility. A visual inspection is required when the owner or operator first accepts possession of the container at the facility site if the container is not emptied (i.e., does not meet the conditions for an "empty container" as defined in the rule) within 24 hours after the container has been accepted at the facility site.

For a container that is delivered to an affected facility containing a regulated material but is not emptied within the allowed 24-hour period, the container must be inspected according to the requirements of the rule by the calendar day on which the facility owner or operator accepts possession of the container. For the purpose of compliance with subpart PP, this date of acceptance is the date of signature by the facility owner or operator on the manifest or shipping papers accompanying the container. It is allowable under subpart PP to have a party other than the owner or operator of the affected facility perform the inspection prior to the acceptance date. For example, if an owner or operator of an affected facility accepts a shipment of containers that arrives at the facility on a truck, it is allowable under the rule to have the shipper or transporter perform the visual inspection of the individual containers before or during loading of the containers onto the truck for transport to the affected facility. In this case, the party performing the inspections (e.g., the container shipper or transporter) needs to provide the owner or operator of the recipient facility with written documentation to verify that the containers have been inspected in accordance with the requirements of § 63.926. Regardless of who performs the inspections, it is ultimately the responsibility of the owner or operator of the affected facility to ensure that the inspections have been performed in compliance with all of the applicable requirements under subpart PP.

Section 63.926(a)(2) is amended to clarify the conditions under which additional visual inspections must be conducted for those containers, using either Container Level 1 or Container Level 2 controls that remain at the facility for more than 1 year. When a container, filled or partially filled with regulated-material, remains unopened at the facility site for a period of 1 year or more, the container and its cover and closure devices must be visually inspected by the owner or operator initially, and thereafter, at least once every calendar year.

Section 63.926(a)(3) is amended to provide additional compliance alternatives to owners and operators for those situations when a defective container is found during an inspection. The rule is amended to allow the owner or operator the alternatives of either emptying the regulated-material from the defective container or repairing the defective container. If the owner or operator elects to empty the regulated material from the defective container, the owner or operator must empty the defective container (i.e., meet the conditions for an "empty container" as defined in the rule) and transfer the removed material to either: (1) a container that meets the applicable standards under subpart PP; or (2) to a tank, process, or treatment unit that meets the applicable standards under a NESHAP referencing subpart PP. The defective container must be emptied no later than 5 calendar days after detection of the defect. The emptied defective container must be either repaired, destroyed, or used for purposes other than management of regulated-material. If the owner or operator elects to repair the defective container, first efforts at repair of the defect must be made no later than 24 hours after detection, and repair must be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the regulated-material must be emptied from the container and the container must not be used to manage regulated-material until the defect is repaired.

VI. Amendments to Subpart QQ—National Emission Standards for Surface Impoundments

The EPA is amending 40 CFR part 63, subpart QQ, to clarify several definitions, to correct minor typographical and terminology errors, and to make the provisions of subpart QQ consistent with the technical amendments made to 40 CFR part 63, subpart DD, where applicable. The amendments to 40 CFR part 63, subpart QQ, are summarized below.

A. Definitions

Two of the definitions in § 63.941 are revised to clarify the EPA's intent in applying the definitions. The definition for a "cover" is amended by adding examples of types of surface impoundment covers (e.g., a floating membrane cover placed on the surface of the material in the surface impoundment, an air-supported structure installed over the surface impoundment). The definition for a "safety device" is amended to incorporate the same change made to the definition for a "safety device" for 40 CFR part 63, subpart DD, in § 63.681. This change is discussed in section III.B of this document.

B. Test Methods and Procedures

The procedure for determination of no detectable organic emissions specified in § 63.945 is amended to incorporate the same revisions and additions made to the procedure for 40 CFR part 63, subpart DD, in § 63.694(k). The specific amendments are discussed in section III.G of this document.

C. Inspection and Monitoring Requirements

The inspection and monitoring provisions for air pollution control equipment are amended by adding a new paragraph (d) to § 63.946 which allows alternative inspection intervals longer than 1 year when an owner or operator determines that performing a required inspection or monitoring procedure would expose a worker to dangerous, hazardous, or otherwise unsafe conditions. The alternative inspection interval provision is the same as that for 40 CFR part 63, subpart DD, in § 63.695(f). The alternative inspection interval provision and related compliance requirements are discussed in section III.I of this document.

VII. Amendments to Subpart RR—National Emission Standards for Individual Drain Systems

The EPA is amending 40 CFR part 63, subpart RR, to clarify the EPA's intent with regard to the types of wastewater streams to which air emission controls must be applied in accordance with 40 CFR part 63, subpart RR. A definition for a "regulated-material" is added to § 63.961 to mean the wastewater streams, residuals, and any other materials specified by the referencing subpart to be managed in accordance with the standards under subpart RR. The definition is needed to clarify the EPA's intent that this rule apply to waste streams and residuals in addition to wastewater. In conjunction with this change, a change is made throughout subpart RR to replace the word "wastewater" with the term "regulated material."

VIII. Amendments to Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators

The EPA is amending 40 CFR part 63, subpart VV, to add a new air emission control alternative, to clarify several specific rule requirements, to correct minor typographical and terminology errors, and to make the provisions of subpart VV consistent with the technical amendments made to 40 CFR part 63, subpart DD, where applicable. The amendments to 40 CFR part 63, subpart VV, are summarized below.

A. Definitions

The definition for a "safety device" specified in § 63.1041 is amended to incorporate the same changes made to the definition for a "safety device" for 40 CFR part 63, subpart DD, in § 63.681. These changes are discussed in section III.B of this document.

B. Standards—Pressurized Separator

A new section, § 63.1045, is added to subpart VV which allows owners and operators to control air emissions from an oil-water or organic-water separator by using a pressurized separator that is operated as a closed-system. The provision requires that the pressurized separator be designed not to vent to the atmosphere as a result of compression of the vapor headspace during operation of the separator at its design capacity. All separator openings must be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in the subpart. Whenever a regulated-material is in the separator, the separator must be operated as a closed system that does not vent to the atmosphere except under emergency and maintenance conditions specified in the rule.

C. Test Methods and Procedures

The procedure for determination of no detectable organic emissions specified in § 63.1046(a) is amended to incorporate the same revisions and additions made to the procedure for 40 CFR part 63, subpart DD, in § 63.694(k). The specific amendments are discussed in section III.G of this document.

D. Inspection and Monitoring Requirements

The inspection and monitoring provisions for owners and operators that use a tank equipped with a fixed roof is amended by adding a new paragraph (e) to § 63.1047 which allows alternative inspection intervals longer than 1 year when an owner or operator determines that performing a required inspection or monitoring procedure would expose a worker to dangerous, hazardous, or otherwise unsafe conditions. This alternative inspection interval provision is the same as that for 40 CFR part 63, subpart DD, in § 63.695(f). The alternative inspection interval provision and related compliance requirements are discussed in section III.I of this document.

IX. Administrative Requirements

A. Docket

The docket is intended to be an organized and complete file of the administrative records complied by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).) The docket for this rulemaking containing the information considered by the EPA in development of the amendments is Docket No. A–92–16. This docket is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action amending the OSWRO NESHAP is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore not subject to OMB review.

C. Executive Order 12875: Enhancing the Intergovernmental Partnerships

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

The OSWRO NESHAP does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities, and State, local, and tribal governments are not directly impacted by this rule; i.e., they are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 1(a) of

Executive Order 12875 do not apply to this action.

D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analyses required under section 5–501 of the Order has the potential to influence the regulation. These amendments to the OSWRO NESHAP are not subject to Executive Order 13045 because the OSWRO NESHAP is based on technology performance and not on health or safety risks. In addition, the amendments are not economically significant regulatory actions as defined by E.O. 12866.

E. Executive Order 13084: Consultations and Coordination with Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The OSWRO NESHAP does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on tribal governments unless they own or operate a facility subject to the OSWRO NESHAP. Indian tribal governments which own or operate facilities subject to the OSWRO NESHAP would incur compliance costs; however, the EPA does not believe that there are many, if any, tribal governments which either own or operate such facilities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The amendments to the OSWRO NESHAP will likely reduce the costs of complying with the rule for many affected owners and operators. These amendments do not increase expenditures by State, local, and tribal governments or the private sector. Therefore, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternatives because these amendments are estimated to result in the expenditure by State and local governments, in aggregate, or by the private sector of less than $100 million in any 1 year. Because small governments will not be affected by this rule, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA determined that these amendments to the OSWRO NESHAP do not have a significant impact on a substantial number of small entities. The EPA has also determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action. These amendments will not result in increased impacts to small entities and will result in reduced impacts in all cases.

H. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the OMB. A copy of this Information Collection Request (ICR) document (OMB control number 1717.02) may be obtained from Sandy Farmer, OP Regulator Information Division; U.S. Environmental Protection Agency, 401 M Street, SW (mail code 2136), Washington, DC 20460, or by calling (202) 260–2740.

Today's amendments to the OSWRO NESHAP have no impact on the information collection burden estimates made previously. No additional certifications or filings were promulgated. Therefore, the ICR has not been revised.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These amendments are not a "major rule" as defined by 5 U.S.C. 804(2). These amendments will be effective July 20, 1999.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the NTTAA requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards. This section summarizes the EPA's response to the requirements of the NTTAA for the test methods added to the OSWRO NESHAP as part of today's amendments.

The OSWRO NESHAP involves technical standards. The amendments to the OSWRO NESHAP include the addition of test methods and procedures necessary for the determination of compliance and enforcement of air standards under the rule. Today's amendments increase the number of alternative test methods available to an owner or operator to determine the VOHAP concentration of an off-site material and provide for the use of other methods (i.e., those specified in the rule) subject to EPA approval. The EPA has determined that the owner or operator of an affected source must use the specified EPA reference methods when needed. While the American Society of Testing and Materials and other organizations have published a number of test methods and procedures applicable to organic content and material specifications which could be used to determine the flow rate and organic concentration of a process vent stream, these methods are not applicable to determining the volume, concentration, and type of air emissions from the affected sources. The use of these voluntary consensus standards would, therefore, have been impractical.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Containers, Hazardous air pollutants, Incorporation by reference, Individual drain systems, Oil-water separators, Organic-water separators, Recycling, Reporting and recordkeeping requirements, Surface impoundments, Tanks, Used oil, Used solvent, Waste management.

Dated: July 7, 1999.

Carol W. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

2. Section 63.680 is amended by adding paragraph (b)(2)(viii) and by revising paragraphs (a)(2)(v), (b)(1)(ii), (b)(1)(iii), (b)(2)(v), (b)(2)(vi), (c), (d), and (e) to read as follows:

§ 63.680 Applicability and designation of affected sources.

(a) * * *

(2) * * *

(v) A recovery operation that recycles or reprocesses used solvent which is an off-site material and the operation is not part of a chemical, petroleum, or other manufacturing process that is required to use air emission controls by another subpart of 40 CFR part 63 or 40 CFR part 61.

* * * * *

(b) * * *

(1) * * *

(ii) The waste, used oil, or used solvent is not produced or generated within the plant site, but the material is delivered, transferred, or otherwise moved to the plant site from a location outside the boundaries of the plant site; and (iii) The waste, used oil, or used solvent contains one or more of the hazardous air pollutants (HAP) listed in Table 1 of this subpart based on the composition of the material at the point-of-delivery, as defined in § 63.681 of this subpart.

(2) * * *

(v) Waste that is transferred from a chemical manufacturing plant or other facility for which both of the following conditions apply to the waste:

(A) The management of the waste at the facility is required either under part 63 subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry or under another subpart in 40 CFR part 63 to meet the air emission control standards for process wastewater specified in 40 CFR 63.132 through 63.147; and

(B) The owner or operator of the facility from which the waste is transferred has complied with the provisions of 40 CFR 63.132(g)(1)(ii) and (g)(2).

(vi) Waste that is transferred from a chemical manufacturing plant, petroleum refinery, or coke by-product recovery plant which is subject to 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations, and for which both of the following conditions apply to the waste:

(A) The waste is generated at a facility that is not exempted under the provisions of 40 CFR 61.342(a) from meeting the air emission control standards of 40 CFR part 61, subpart FF; and

(B) The owner or operator of the facility from which the waste is transferred has complied with the provisions of 40 CFR 61.342(f)(2).

(vii) * * *

(viii) Hazardous waste that is stored for 10 days or less at a transfer facility in compliance with the provisions of 40 CFR 263.12.

(c) *Affected sources.* (1) *Off-site material management units.* For each operation specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site, the affected source is the entire group of off-site material management units associated with the operation. An off-site material management unit is a tank, container, surface impoundment, oil-water separator, organic-water separator, or transfer system used to manage off-site material. For the purpose of implementing the standards under this

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subpart, a unit that meets the definition of a tank or container but also is equipped with a vent that serves as a process vent for any of the processes listed in paragraphs (c)(2)(i) through (c)(2)(vi) of this section is not an off-site material management unit but instead is a process vent and is to be included in the appropriate affected source group under paragraph (c)(2) of this section. Examples of such a unit may include, but are not limited to, a distillate receiver vessel, a primary condenser, a bottoms receiver vessel, a surge control tank, a separator tank, and a hot well.

(2) *Process vents.* For each operation specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site, the affected source is the entire group of process equipment associated with the process vents for the processes listed in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) Distillation process used for the treatment, recycling, or recovery of off-site material. Distillation means a process, either batch or continuous, separating one or more off-site material feed streams into two or more exit streams having different component concentrations from those in the feed stream or streams. The separation is achieved by the redistribution of the components between the liquid and vapor phases as they approach equilibrium within the distillation unit.

(ii) Fractionation process used for the treatment, recycling, or recovery of off-site material. Fractionation means a liquid mixture separation process or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(iii) Thin-film evaporation process used for the treatment, recycling, or recovery of off-site material. Thin-film evaporation means a liquid mixture separation process or method that uses a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(iv) Solvent extraction process used for the treatment, recycling, or recovery of off-site material. Solvent extraction means a separation process or method in which a solid or a solution is contacted with a liquid solvent (the material and the solvent being relatively insoluble in each other) to preferentially dissolve and transfer one or more components into the solvent.

(v) Steam stripping process used for the treatment, recycling, or recovery of off-site material. Steam stripping means a liquid mixture separation process or method in which vaporization of the volatile components of a liquid mixture occurs by the introduction of steam directly into the process.

(vi) Gas stripping process used for the treatment, recycling, or recovery of off-site material. Gas stripping means a desorption process or method used to transfer one or more volatile components from a liquid mixture into a gas stream either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are examples of the process configurations used for contacting the gas and a liquid.

(3) *Equipment leaks.* For each operation specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site, the affected source is the entire group of equipment components for which each component meets all of the conditions specified in paragraphs (c)(3)(i) through (c)(3)(iii) of this section. If any one of these conditions do not apply to an equipment component, then that component is not part of the affected source for equipment leaks.

(i) The equipment component is a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system;

(ii) The equipment component contains or contacts off-site material having a total HAP concentration equal to or greater than 10 percent by weight; and

(iii) The equipment component is intended to operate for 300 hours or more during a calendar year in off-site material service, as defined in § 63.681 of this subpart.

(d) *Facility-wide exemption.* The owner or operator of affected sources subject to this subpart is exempted from the requirements of §§ 63.682 through 63.699 of this subpart in situations when the total annual quantity of the HAP that is contained in the off-site material received at the plant site is less than 1 megagram per year. For a plant site to be exempted under the provisions of this paragraph (d), the owner or operator must meet the requirements in paragraphs (d)(1) through (d)(3) of this section.

(1) The owner or operator must prepare an initial determination of the total annual HAP quantity in the off-site material received at the plant site. This determination is based on the total quantity of the HAP listed in Table 1 of this subpart as determined at the point-of-delivery for each off-site material stream.

(2) The owner or operator must prepare a new determination whenever the extent of changes to the quantity or composition of the off-site material received at the plant site could cause the total annual HAP quantity in the off-site material received at the plant site to exceed the limit of 1 megagram per year.

(3) The owner or operator must maintain documentation to support the owner's or operator's determination of the total annual HAP quantity in the off-site material received at the plant site. This documentation must include the basis and data used for determining the HAP content of the off-site material.

(e) *Compliance dates.* (1) *Existing sources.* The owner or operator of an affected source that commenced construction or reconstruction before October 13, 1994, must achieve compliance with the provisions of this subpart on or before the date specified in paragraph (e)(1)(i) or (e)(1)(ii) of this section as applicable to the affected source.

(i) For an affected source that commenced construction or reconstruction before October 13, 1994 and receives off-site material for the first time before February 1, 2000, the owner or operator of this affected source must achieve compliance with the provisions of the subpart on or before February 1, 2000 unless an extension has been granted by the Administrator as provided in 40 CFR 63.6(i).

(ii) For an affected source that commenced construction or reconstruction before October 13, 1994, but receives off-site material for the first time on or after February 1, 2000, the owner or operator of the affected source must achieve compliance with the provisions of this subpart upon the first date that the affected source begins to manage off-site material.

(2) *New sources.* The owner or operator of an affected source for which construction or reconstruction commences on or after October 13, 1994, must achieve compliance with the provisions of this subpart on or before July 1, 1996, or upon initial startup of operations, whichever date is later as provided in 40 CFR 63.6(b).

* * * * *

3. Section 63.681 is amended by adding in alphabetical order the definitions of "Flow indicator" and "Hazardous air pollutants," by removing the definition of "HAP," and by revising the definitions of "Control device," "Cover," "Point-of-treatment," "Process vent," "Safety device," "Used solvent," "Volatile organic hazardous air pollutant concentration," and "Waste stabilization process" to read as follows:

§ 63.681 Definitions.

* * * * *

Control device means equipment used for recovering, removing, oxidizing, or destroying organic vapors. Examples of such equipment include but are not limited to carbon adsorbers, condensers, vapor incinerators, flares, boilers, and process heaters.

Cover means a device or system that provides a continuous barrier over the material managed in a off-site material management unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings needed for operation, inspection, sampling, maintenance, and repair of the unit provided that each opening is closed when not in use (e.g., access hatches, sampling ports). A cover may be a separate piece of equipment which can be detached and removed from the unit or a *cover* may be formed by structural features permanently integrated into the design of the unit.

* * * * *

Flow indicator means a device that indicates whether gas is flowing, or whether the valve position would allow gas to flow in a bypass line.

* * * * *

Hazardous air pollutants or *HAP* means the specific organic chemical compounds, isomers, and mixtures listed in Table 1 of this subpart.

* * * * *

Off-site material service means any time when a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system contains or contacts off-site material.

* * * * *

Point-of-treatment means a point after the treated material exits the treatment process but before the first point downstream of the treatment process exit where the organic constituents in the treated material have the potential to volatilize and be released to the atmosphere. For the purpose of applying this definition to this subpart, the first point downstream of the treatment process exit is not a fugitive emission point due to an equipment leak from any of the following equipment components: pumps, compressors, valves, connectors, instrumentation systems, or safety devices.

* * * * *

Process vent means an open-ended pipe, stack, or duct through which a gas stream containing HAP is continuously or intermittently discharged to the atmosphere from any of the processes listed in § 63.680(c)(2)(i) through (c)(2)(vi) of this section. For the purpose of this subpart, a process vent is none of the following: a pressure-relief vent or other vent that is used as a safety device (as defined in this section); an open-ended line or other vent that is subject to the equipment leak control requirements under § 63.691 of this subpart; or a stack or other vent that is used to exhaust combustion products from a boiler, furnace, process heater, incinerator, or other combustion device.

* * * * *

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions to prevent physical damage or permanent deformation to equipment by venting gases or vapors during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

* * * * *

Used solvent means a mixture of aliphatic hydrocarbons or a mixture of one and two ring aromatic hydrocarbons that has been used as a solvent and as a result of such use is contaminated by physical or chemical impurities.

* * * * *

Volatile organic hazardous air pollutant concentration or *VOHAP concentration* means the fraction by weight of those compounds listed in Table 1 of this subpart that are in an off-site material as measured using Method 305 in appendix A of this part and expressed in terms of parts per million (ppm). As an alternative to using Method 305, an owner or operator may determine the HAP concentration of an off-site material using any one of the other test methods specified in § 63.694(b)(2)(ii) of this subpart. When a test method specified in § 63.694(b)(2)(ii) of this subpart other than Method 305 is used to determine the speciated HAP concentration of an off-site material, the individual compound concentration may be adjusted by the corresponding f_{m305} value listed in Table 1 of this subpart to determine a VOHAP concentration.

* * * * *

Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a waste or eliminate free liquids as determined by Test Method 9095—Paint Filter Liquids Test in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. (As an alternative, an owner or operator may use any more recent, updated version of Method 9095 approved by the EPA.) A waste stabilization process includes mixing the waste with binders or other materials and curing the resulting waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification." A waste stabilization process does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

4. Section 63.683 is revised to read as follows:

§ 63.683 Standards: General.

(a) The general standards under this section apply to owners and operators of affected sources as designated in § 63.680(c) of this subpart.

(b) *Off-site material management units.* (1) For each off-site material management unit that is part of an affected source, the owner or operator must meet the requirements in either paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section except for those off-site material management units exempted under paragraph (b)(2) of this section.

(i) The owner or operator controls air emissions from the off-site material management unit in accordance with the applicable standards specified in §§ 63.685 through 63.689 of this subpart.

(ii) The owner or operator removes or destroys HAP in the off-site material before placing the material in the off-site material management unit by treating the material in accordance with the standards specified in § 63.684 of this subpart.

(iii) The owner or operator determines before placing off-site material in the off-site material management unit that the average VOHAP concentration of the off-site material is less than 500 parts per million by weight (ppmw) at the

point-of-delivery. The owner or operator

the exempt-units at the plant site. If an

requirements of § 63.694(e) of this

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point-of-delivery. The owner or operator must perform an initial determination of the average VOHAP concentration of the off-site material using the procedures specified in § 63.694(b) of this subpart. This initial determination must be performed either before the first time any portion of the off-site material stream is placed in the unit or by the compliance date, whichever date is later. Thereafter, the owner or operator must review and update, as necessary, this determination at least once every calendar year following the date of the initial determination for the off-site material stream.

(2) An off-site material management unit is exempted from the requirements in paragraph (b)(1) of this section when the owner or operator meets one of the exemptions provided in paragraphs (b)(2)(i) through (b)(2)(iv) of this section as applicable to the unit.

(i) An off-site material management unit is exempted from the requirements in paragraph (b)(1) of this section if the off-site material management unit is also subject to another subpart under 40 CFR part 63 or 40 CFR part 61, and the owner or operator is controlling the HAP listed in Table 1 of this subpart that are emitted from the unit in compliance with the provisions specified in the other applicable subpart under part 61 or part 63.

(ii) At the discretion of the owner or operator, one or a combination of off-site material management units may be exempted from the requirements in paragraph (b)(1) of this section when these units meet the condition that the total annual quantity of HAP contained in the off-site material placed in the units exempted under this paragraph (b)(2)(ii) is less than 1 megagram per year. For the off-site material management units selected by the owner or operator to be exempted from the requirements in paragraph (b)(1) of this section, the owner or operator must meet the requirements in paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this section. An owner or operator may change the off-site material management units selected to be exempted under this paragraph (b)(2)(ii) by preparing a new designation for the exempt-units as required by paragraph (b)(2)(ii)(A) of this section and performing a new determination as required by paragraph (b)(2)(ii)(B) of this section.

(A) The owner or operator must designate each of the off-site material management units selected by the owner or operator to be exempt under paragraph (b)(2)(ii) of this section by either submitting to the Administrator a written notification identifying the exempt-units or permanently marking the exempt-units at the plant site. If an owner or operator chooses to prepare and submit a written notification, this notification must include a site plan, process diagram, or other appropriate documentation identifying each of the exempt-units. If an owner or operator chooses to permanently mark the exempt-units, each exempt-unit must be marked in such a manner that it can be readily identified as an exempt-unit from the other off-site material management units located at the plant site.

(B) The owner or operator must prepare an initial determination of the total annual HAP quantity in the off-site material placed in the units exempted under this paragraph (b)(2)(ii). This determination is based on the total quantity of the HAP listed in Table 1 of this subpart as determined at the point where the off-site material is placed in each exempted unit. The owner or operator must perform a new determination whenever the extent of changes to the quantity or composition of the off-site material placed in the exempted units could cause the total annual HAP content in the off-site material to exceed 1 megagram per year. The owner or operator must maintain documentation to support the most recent determination of the total annual HAP quantity. This documentation must include the basis and data used for determining the HAP content of the off-site material.

(iii) A tank or surface impoundment is exempted from the requirements in paragraph (b)(1) of this section if the unit is used for a biological treatment process that meets the requirements in either paragraph (b)(2)(iii)(A) or (b)(2)(iii)(B) of this section and the owner or operator complies with the monitoring requirements in § 63.684(e)(4) of this subpart.

(A) The HAP biodegradation efficiency (R_{bio}) for the biological treatment process is equal to or greater than 95 percent. The HAP biodegradation efficiency (R_{bio}) shall be determined in accordance with the requirements of § 63.694(b) of this subpart.

(B) The total actual HAP mass removal rate (MR_{bio}) for the off-site material treated by the biological treatment process is equal to or greater than the required HAP mass removal rate (RMR) for the off-site material. The total actual HAP mass removal rate (MR_{bio}) must be determined in accordance with the requirements of § 63.694(i) of this subpart. The required HAP mass removal rate (RMR) must be determined in accordance with the requirements of § 63.694(e) of this subpart.

(iv) An off-site material management unit is exempted from the requirements in paragraph (b)(1) of this section if the off-site material placed in the unit is a hazardous waste that meets the conditions specified in either paragraph (b)(2)(iv)(A) or (b)(2)(iv)(B) of this section.

(A) The hazardous waste meets the numerical organic concentration limits, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions, listed in the table, "Treatment Standards for Hazardous Waste" in 40 CFR 268.40.

(B) The organic hazardous constituents in the hazardous waste have been treated by the treatment technology established by the EPA for the hazardous waste in 40 CFR 268.42(a), or have been removed or destroyed by an equivalent method of treatment approved by the EPA under 40 CFR 268.42(b).

(v) A tank used for bulk feed of off-site material to a waste incinerator is exempted from the requirements specified in paragraph (b)(1) of this section if the tank meets all of the conditions specified in paragraphs (b)(2)(v)(A) through (b)(2)(v)(C) of this section.

(A) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(B) The enclosure and control device serving the tank were installed and began operation prior to July 1, 1996; and

(C) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator must annually perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure."

(c) *Process vents.* (1) For each process vent that is part of an affected source, the owner or operator must meet the requirements in either paragraph (c)(1)(i) or (c)(1)(ii) of this section except for those process vents exempted under paragraph (c)(2) of this section.

(i) The owner or operator controls air emissions from the process vent in accordance with the standards specified in § 63.690 of this subpart.

(ii) The owner or operator determines before placing off-site material in the process equipment associated with the process vent that the average VOHAP concentration of the off-site material is less than ppmw at the point-of-delivery. The owner or operator must perform an initial determination of the average VOHAP concentration of the off-site material using the procedures specified in § 63.694(b) of this subpart before any portion of the off-site material stream is placed in the unit. Thereafter, the owner or operator must review and update, as necessary, this determination at least once every calendar year following the date of the initial determination for the off-site material stream.

(2) A process vent is exempted from the requirements of paragraph (c)(1) of this section when the owner or operator meets one of the exemptions provided in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) A process vent is exempted from the requirements in paragraph (c)(1) of this section if the process vent is also subject to another subpart under part 63 or 40 CFR part 61, and the owner or operator is controlling the HAP listed in Table 1 of this subpart that are emitted from the process vent in compliance with the provisions specified in the other applicable subpart under part 61 or part 63.

(ii) A process vent is exempted from the requirements specified in paragraph (c)(1) of this section if the owner or operator determines that the process vent stream flow rate is less than 0.005 cubic meters per minute (m^3/min) at standard conditions (as defined in 40 CFR 63.2). The process vent stream flow rate shall be determined in accordance with the procedures specified in § 63.694(m) of this subpart. Documentation must be prepared by the owner or operator and maintained at the plant site to support the determination of the process vent stream flow rate. This documentation must include identification of each process vent exempted under this paragraph and the test results used to determine the process vent stream flow rate.

(iii) A process vent is exempted from the requirements specified in paragraph (c)(1) of this section if the owner or operator determines that the process vent stream flow rate is less than 6.0 m^3/min at standard conditions (as defined in 40 CFR 63.2) and the total HAP concentration is less than 20 ppmv. The process vent stream flow rate and total HAP concentration shall be determined in accordance with the procedures specified in § 63.694(m) of this subpart. Documentation must be prepared by the owner or operator and maintained at the plant site to support the determination of the process vent stream flow rate and total HAP concentration. This documentation must include identification of each process vent exempted under this paragraph (c)(2)(iii) and the test results used to determine the process vent stream flow rate and total HAP concentration. The owner or operator must perform a new determination of the process vent stream flow rate and total HAP concentration when the extent of changes to operation of the unit on which the process vent is used could cause either the process vent stream flow rate to exceed the limit of 6.0 m^3/min or the total HAP concentration to exceed the limit of 20 ppmv.

(d) *Equipment leaks.* The owner or operator must control equipment leaks from each equipment component that is part of the affected source specified in § 63.680(c)(3) of this subpart by implementing leak detection and control measures in accordance with the standards specified in § 63.691 of this subpart.

5. Section 63.684 is amended by revising paragraphs (a), (b) introductory text, (b)(1)(ii), (b)(3) introductory text, (b)(4) introductory text, (b)(5), (d), (e), (f), and (g) to read as follows:

§ 63.684 Standards: Off-site material treatment.

(a) The provisions of this section apply to the treatment of off-site material to remove or destroy HAP for which § 63.683(b)(1)(ii) of this subpart references the requirements of this section for such treatment.

(b) The owner or operator shall remove or destroy the HAP contained in off-site material streams to be managed in the off-site material management unit in accordance with § 63.683(b)(1)(ii) of this subpart using a treatment process that continuously achieves, under normal operations, one or more of the performance levels specified in paragraphs (b)(1) through (b)(5) of this section (as applicable to the type of treatment process) for the range of off-site material stream compositions and quantities expected to be treated.

(1) * * *

(ii) In the case when off-site material streams entering the treatment process are a mixture of off-site material streams having an average VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery with off-site material streams having average VOHAP concentrations less than 500 ppmw at the point-of-delivery, then the VOHAP concentration of the off-site material must be reduced to a level at the point-of-treatment that meets the performance level specified in either paragraph (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section.

* * * * *

(3) *HAP reduction efficiency.* For any treatment process except a treatment process that uses biological degradation and is performed in an open tank or surface impoundment, the treatment process must achieve the applicable performance level specified in either paragraph (b)(3)(i) or (b)(3)(ii) of this section.

* * * * *

(4) *Biological degradation performed in an open tank or surface impoundment.* A treatment process using biological degradation and performed in an open tank or surface impoundment must achieve the performance level specified in either paragraph (b)(4)(i) or (b)(4)(ii) of this section.

* * * * *

(5) *Incineration.* The treatment process must destroy the HAP contained in the off-site material stream using one of the combustion devices specified in paragraphs (b)(5)(i) through (b)(5)(iv) of this section.

(i) An incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270, and the incinerator is designed and operated in accordance with the requirements of 40 CFR part 264, subpart O—Incinerators, or

(ii) An incinerator for which the owner or operator has certified compliance with the interim status requirements of 40 CFR part 265, subpart O—Incinerators.

(iii) A boiler or industrial furnace for which the owner or operator has been issued a final permit under 40 CFR part 270, and the combustion unit is designed and operated in accordance with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces.

(iv) A boiler or industrial furnace for which the owner or operator has certified compliance with the interim status requirements of 40 CFR part 266.

subpart H Hazardous Waste Burned in Boilers and Industrial Furnaces.

* * * * *

(d) When the owner or operator treats the off-site material to meet one of the performance levels specified in paragraphs (b)(1) through (b)(4) of this section, the owner or operator shall demonstrate that the treatment process achieves the selected performance level for the range of expected off-site material stream compositions expected to be treated. An initial demonstration shall be performed as soon as possible but no later than 30 days after first time an owner or operator begins using the treatment process to manage off-site material streams in accordance with the requirements of either § 63.683(b)(1)(ii) or § 63.683(b)(2)(ii) of this subpart as applicable to the affected off-site material management unit or process equipment. Thereafter, the owner or operator shall review and update, as necessary, this demonstration at least once every calendar year following the date of the initial demonstration.

(e) When the owner or operator treats the off-site material to meet one of the performance levels specified in paragraphs (b)(1) through (b)(4) of this section, the owner or operator shall ensure that the treatment process is achieving the applicable performance requirements by continuously monitoring the operation of the process when it is used to treat off-site material by complying with paragraphs (e)(1) through (e)(3) or, for biological treatment units, paragraph (e)(4) of this section:

(1) A continuous monitoring system shall be installed and operated for each treatment that measures operating parameters appropriate for the treatment process technology. This system shall include a continuous recorder that records the measured values of the selected operating parameters. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications or other written procedures that provide reasonable assurance that the monitoring equipment is operating properly. The continuous recorder shall be a data recording device that records either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15 minutes or less.

(2) For each monitored operating parameter, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate, to define the range of conditions at which the treatment process must be operated to continuously achieve the applicable performance requirements of this section.

(3) When the treatment process is operating to treat off-site material, the owner or operator shall inspect the data recorded by the continuous monitoring system on a routine basis and operate the treatment process such that the actual value of each monitored operating parameter is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the treatment process.

(4) When the treatment process is a biological treatment process that is complying with paragraph (b)(4) of this section, the owner or operator must establish and implement a written procedure to monitor the appropriate parameters that demonstrate proper operation of the biological treatment unit in accordance with the evaluation required in § 63.694(h) of this subpart. The written procedure must list the operating parameters that will be monitored and state the frequency of monitoring to ensure that the biological treatment unit is operating between the minimum operating parameter values and maximum operating parameter values to establish that the biological treatment unit is continuously achieving the performance requirement.

(f) The owner or operator must maintain records for each treatment process in accordance with the requirements of § 63.696(a) of this subpart.

(g) The owner or operator must prepare and submit reports for each treatment process in accordance with the requirements of § 63.697(a) of this subpart.

* * * * *

6. Section 63.685 is amended by adding paragraph (i)(3) and by revising paragraphs (b), (c)(2), (f)(1)(ii)(A), (g)(2)(i)(B), (h)(2), (h)(3), and (i) introductory text to read as follows:

§ 63.685 Standards: Tanks.

* * * * *

(b) The owner or operator shall control air emissions from each tank subject to this section in accordance with the following applicable requirements:

(1) For a tank that is part of an existing affected source but the tank is not used to manage off-site material having a maximum HAP vapor pressure kilopascal (kPa) that is equal to or greater than 76.6 kPa nor is the tank used for a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall determine whether the tank is required to use either Tank Level 1 controls or Tank Level 2 controls as specified for the tank by Table 3 of this subpart based on the off-site material maximum HAP vapor pressure and the tank's design capacity. The owner or operator shall control air emissions from a tank required by Table 3 to use Tank Level 1 controls in accordance with the requirements of paragraph (c) of this section. The owner or operator shall control air emissions from a tank required by Table 3 to use Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(2) For a tank that is part of a new affected source but the tank is not used to manage off-site material having a maximum HAP vapor pressure that is equal to or greater than 76.6 kPa nor is the tank used for a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall determine whether the tank is required to use either Tank Level 1 controls or Tank Level 2 controls as specified for the tank by Table 4 of this subpart based on the off-site material maximum HAP vapor pressure and the tank's design capacity. The owner or operator shall control air emissions from a tank required by Table 4 to use Tank Level 1 controls in accordance with the requirements of paragraph (c) of this section. The owner or operator shall control air emissions from a tank required by Table 4 to use Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(3) For a tank that is used for a waste stabilization process, the owner or operator shall control air emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(4) For a tank that manages off-site material having a maximum HAP vapor pressure that is equal to or greater than 76.6 kPa, the owner or operator must control air emissions by using one of the tanks specified in paragraphs (b)(4)(i) through (b)(4)(iii) of this section.

(i) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(ii) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(iii) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(c) * * *

(2) The owner or operator must control air emissions from the tank in accordance with the requirements in either paragraph (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section, as applicable to the tank.

(i) The owner or operator controls air emissions from the tank in accordance with the provisions specified in subpart 00 of 40 CFR part 63—National Emission Standards for Tanks—Level 1.

(ii) As an alternative to meeting the requirements in paragraph (c)(2)(i) of this section, an owner or operator may control air emissions from the tank in accordance with the provisions for Tank Level 2 controls as specified in paragraph (d) of this section.

(iii) As an alternative to meeting the requirements in paragraph (c)(2)(i) of this section when a tank is used as an interim transfer point to transfer off-site material from containers to another off-site material management unit, an owner or operator may control air emissions from the tank in accordance with the requirements in paragraphs (c)(2)(iii)(A) and (c)(2)(iii)(B) of this section. An example of such a tank is an in-ground tank into which organic-contaminated debris is dumped from roll-off boxes or dump trucks, and then this debris is promptly transferred from the tank to a macroencapsulation unit by a backhoe.

(A) During those periods of time when the material transfer activity is occurring, the tank may be operated without a cover.

(B) At all other times, air emissions from the tank must be controlled in accordance with the provisions specified in 40 CFR part 67, subpart 00—National Emission Standards for Tanks—Level 1.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in § 63.681 of this subpart. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters (24 inches) above the liquid surface.

* * * * *

(g) * * *

(2) * * *

(i) * * *

(B) To remove accumulated sludge or other residues from the bottom of the tank.

* * * * *

(h) * * *

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 63.694(k) of this subpart.

(3) Whenever an off-site material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 63.681 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 63.693 of this subpart.

(i) The owner or operator who elects to control air emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (i)(3) of this section.

* * * * *

(3) Opening of a safety device, as defined in § 63.681 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

7. Section 63.686 is amended by revising the paragraph (b) introductory text and adding paragraph (b)(3) to read as follows:

§ 63.686 Standards: Oil-water and organic-water separators.

* * * * *

(b) The owner or operator shall control air emissions from each separator subject to this section by using one of the following:

* * * * *

(3) A pressurized separator that operates as a closed system in accordance with all applicable provisions specified in 40 CFR part 63, subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators.

8. Section 63.687 is amended by revising the paragraph (b) introductory text to read as follows:

§ 63.687 Standards: Surface impoundments.

* * * * *

(b) The owner or operator shall control air emissions from each surface impoundment subject to this section by using one of the following:

* * * * *

9. Section 63.688 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.688 Standards: Containers.

* * * * *

(b) The owner or operator shall control air emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (c) of this section apply to the container.

(1) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the owner or operator must control air emissions from the container in accordance with the requirements in either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator controls air emissions from the container in accordance with the standards for Container Level 1 controls as specified in 40 CFR part 63, subpart PP—National Emission Standards for Containers.

(ii) As an alternative to meeting the requirements in paragraph (b)(1)(i) of this section, an owner or operator may choose to control air emissions from the container in accordance with the standards for either Container Level 2 controls or Container Level 3 controls as specified in subpart PP of this part 63—National Emission Standards for Containers.

(2) For a container having a design capacity greater than 0.46 m^3 and the container is not in light-material service as defined in § 63.681 of this subpart, the owner or operator must control air emissions from the container in accordance with the requirements in either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(3) For a container having a design capacity greater than 0.46 m^3 and the container is in light-material service as defined in § 63.681 of this subpart, the owner or operator must control air emissions from the container in accordance with the requirements in either paragraph (b)(3)(i) or (b)(3)(ii) of this section.

(i) The owner or operator controls air emissions from the container in accordance with the standards for Container Level 2 controls as specified in 40 CFR part 63, subpart PP—National Emission Standards for Containers.

(ii) As an alternative to meeting the requirements in paragraph (b)(3)(i) of

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this section, an owner or operator may choose to control air emissions from the container in accordance with the standards for Container Level 3 controls as specified in 40 CFR part 63, subpart PP—National Emission Standards for Containers.

(c) When a container subject to this subpart and having a design capacity greater than 0.1 m^3 is used for treatment of an off-site material by a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall control air emissions from the container at those times during the process when the off-site material in the container is exposed to the atmosphere in accordance with the standards for Container Level 3 controls as specified in 40 CFR part 63, subpart PP—National Emission Standards for Containers.

10. Section 63.689 is amended by revising paragraphs (b), (c), (d) introductory text, and (d)(5) introductory text to read as follows:

§ 63.689 Standards: Transfer systems.

* * * * *

(b) For each transfer system that is subject to this section and is an individual drain system, the owner or operator shall control air emissions in accordance with the standards specified in 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(c) For each transfer system that is subject to this section but is not an individual drain system, the owner or operator shall control air emissions by using one of the transfer systems specified in paragraphs (c)(1) through (c)(3) of this section.

(1) A transfer system that uses covers in accordance with the requirements specified in paragraph (d) of this section.

(2) A transfer system that consists of continuous hard-piping. All joints or seams between the pipe sections shall be permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(3) A transfer system that is enclosed and vented through a closed-vent system to a control device in accordance with the requirements specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) The transfer system is designed and operated such that an internal pressure in the vapor headspace in the enclosure is maintained at a level less than atmospheric pressure when the control device is operating, and

(ii) The closed-vent system and control device are designed and operated in accordance with the requirements of § 63.693 of this subpart.

(d) Owners and operators controlling air emissions from a transfer system using covers in accordance with the provisions of paragraph (c)(1) of this section shall meet the requirements specified in paragraphs (d)(1) through (d)(6) of this section.

* * * * *

(5) Whenever an off-site material is in the transfer system, the cover shall be installed with each closure device secured in the closed position except as specified in paragraph (d)(5)(i) or (d)(5)(ii) of this section.

* * * * *

11. Section 63.690 is revised to read as follows:

§ 63.690 Standards: Process vents.

(a) The provisions of this section apply to the control of air emissions from process vents for which § 63.683(c)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator must route the vent stream from each affected process vent through a closed-vent system to a control device that meets the standards specified in § 63.693 of this subpart. For the purpose of complying with this paragraph (b), a primary condenser is not a control device; however, a second condenser or other organic recovery device that is operated downstream of the primary condenser is considered a control device.

12. Section 63.691 is revised to read as follows:

§ 63.691 Standards: Equipment leaks.

(a) The provisions of this section apply to the control of air emissions from equipment leaks for which § 63.683(b)(3) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control the HAP emitted from equipment leaks in accordance with the applicable provisions specified in either paragraph (b)(1) or (b)(2) of this section.

(1) The owner or operator controls the HAP emitted from equipment leaks in accordance with § 61.242 through § 61.247 in 40 CFR part 61, subpart V—National Emission Standards for Equipment Leaks; or

(2) The owner or operator controls the HAP emitted from equipment leaks in accordance with § 63.162 through § 63.182 in subpart H—National Emission Standards for Organic Hazardous Air Pollutants from Equipment Leaks.

13. Section 63.693 is revised to read as follows:

§ 63.693 Standards: Closed-vent systems and control devices.

(a) The provisions of this section apply to closed-vent systems and control devices used to control air emissions for which another standard references the use of this section for such air emission control.

(b) For each closed-vent system and control device used to comply with this section, the owner or operator shall meet the following requirements:

(1) The owner or operator must use a closed-vent system that meets the requirements specified in paragraph (c) of this section.

(2) The owner or operator must use a control device that meets the requirements specified in paragraphs (d) through (h) of this section as applicable to the type and design of the control device selected by the owner or operator to comply with the provisions of this section.

(3) Whenever gases or vapors containing HAP are vented through a closed-vent system connected to a control device used to comply with this section, the control device must be operating except at those times listed in either paragraph (b)(3)(i) or (b)(3)(ii) of this section.

(i) The control device may be bypassed for the purpose of performing planned routine maintenance of the closed-vent system or control device in situations when the routine maintenance cannot be performed during periods that the emission point vented to the control device is shutdown. On an annual basis, the total time that the closed-vent system or control device is bypassed to perform routine maintenance shall not exceed 240 hours per each calendar year.

(ii) The control device may be bypassed for the purpose of correcting a malfunction of the closed-vent system or control device. The owner or operator shall perform the adjustments or repairs necessary to correct the malfunction as soon as practicable after the malfunction is detected.

(4) The owner or operator must inspect and monitor each closed-vent system in accordance with the requirements specified in either paragraph (b)(4)(i) or (b)(4)(ii) of this section.

(i) The owner or operator inspects and monitors the closed-vent system in accordance with the requirements specified in § 63.695(c) of this subpart, and complies with the applicable recordkeeping requirements in § 63.696 of this subpart and the applicable reporting requirements in § 63.697 of this subpart.

(ii) As an alternative to meeting the requirements specified in paragraph (b)(4)(i) of this section, the owner or operator may choose to inspect and monitor the closed-vent system in accordance with the requirements under 40 CFR part 63, subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks as specified in 40 CFR 63.172(f) through (h), and complies with the applicable recordkeeping requirements in 40 CFR 63.181 and the applicable reporting requirements in 40 CFR 63.182.

(5) The owner or operator must monitor the operation of each control device in accordance with the requirements specified in paragraphs (d) through (h) of this section as applicable to the type and design of the control device selected by the owner or operator to comply with the provisions of this section.

(6) The owner or operator shall maintain records for each control device in accordance with the requirements of § 63.696 of this subpart.

(7) The owner or operator shall prepare and submit reports for each control device in accordance with the requirements of § 63.697 of this subpart.

(8) In the case when an owner or operator chooses to use a design analysis to demonstrate compliance of a control device with the applicable performance requirements specified in this section as provided for in paragraphs (d) through (g) of this section, the Administrator may request that the design analysis be revised or amended by the owner or operator to correct any deficiencies identified by the Administrator. If the owner or operator and the Administrator do not agree on the acceptability of using the design analysis (including any changes requested by the Administrator) to demonstrate that the control device achieves the applicable performance requirements, then the disagreement must be resolved using the results of a performance test conducted by the owner or operator in accordance with the requirements of § 63.694(l) of this subpart. The Administrator may choose to have an authorized representative observe the performance test conducted by the owner or operator. Should the results of this performance test not agree with the determination of control device performance based on the design analysis, then the results of the performance test will be used to establish compliance with this subpart.

(c) Closed-vent system requirements.

(1) The vent stream required to be controlled shall be conveyed to the control device by either of the following closed-vent systems:

(i) A closed-vent system that is designed to operate with no detectable organic emissions using the procedure specified in § 63.694(k) of this subpart; or

(ii) A closed-vent system that is designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gage or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(2) In situations when the closed-vent system includes bypass devices that could be used to divert a vent stream from the closed-vent system to the atmosphere at a point upstream of the control device inlet, each bypass device must be equipped with either a flow indicator as specified in paragraph (c)(2)(i) of this section or a seal or locking device as specified in paragraph (c)(2)(ii) of this section. For the purpose of complying with this paragraph (c)(2), low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, or pressure relief valves needed for safety reasons are not subject to the requirements of this paragraph (c)(2).

(i) If a flow indicator is used, the indicator must be installed at the entrance to the bypass line used to divert the vent stream from the closed-vent system to the atmosphere. The flow indicator must indicate a reading at least once every 15 minutes. The owner or operator must maintain records of the following information: hourly records of whether the flow indicator was operating and whether flow was detected at any time during the hour; and records of all periods when flow is detected or the flow indicator is not operating.

(ii) If a seal or locking device is used, the bypass line valve must be secured in the non-diverting position with a car-seal or a lock-and-key type configuration. The seal or locking device must be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the non-diverting position such that the bypass device cannot be moved to the diverting position without breaking the seal or removing the lock. The owner or operator must visually inspect the seal or closure mechanism at least once every month to determine that the bypass line valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line.

(d) Carbon adsorption control device requirements.

(1) The carbon adsorption system must achieve the performance specifications in either paragraph (d)(1)(i) or (d)(1)(ii) of this section.

(i) Recover 95 percent or more, on a weight-basis, of the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the carbon adsorption system; or

(ii) Recover 95 percent or more, on a weight-basis, of the total HAP listed in Table 1 of this subpart contained in the vent stream entering the carbon adsorption system.

(2) The owner or operator must demonstrate that the carbon adsorption system achieves the performance requirements in paragraph (d)(1) of this section by either performing a performance test as specified in paragraph (d)(2)(i) of this section or a design analysis as specified in paragraph (d)(2)(ii) of this section.

(i) An owner or operator choosing to use a performance test to demonstrate compliance must conduct the test in accordance with the requirements of § 63.694(l) of this subpart.

(ii) An owner or operator choosing to use a design analysis to demonstrate compliance must include as part of this design analysis the information specified in either paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section as applicable to the carbon adsorption system design.

(A) For a regenerable carbon adsorption system, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration steam flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(B) For a nonregenerable carbon adsorption system (e.g., a carbon canister), the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration, carbon bed capacity, activated carbon type and working capacity, and design carbon replacement interval based on the total

carbon working capacity of the control

(B) Regenerated or reactivated in a

concentrations, flow rate, relative

longer and at a temperature of 760°C or

(iii) For either type of vapor

(2) The owner or operator must

carbon working capacity of the control device and emission point operating schedule.

(3) The owner or operator must monitor the operation of the carbon adsorption system in accordance with the requirements of § 63.695(e) of this subpart using one of the continuous monitoring systems specified in paragraphs (d)(3)(i) through (d)(3)(iii) of this section.

(i) For a regenerative-type carbon adsorption system:

(A) A continuous parameter monitoring system to measure and record the average total regeneration stream mass flow or volumetric flow during each carbon bed regeneration cycle. The integrating regenerating stream flow monitoring device must have an accuracy of ±10 percent; and

(B) A continuous parameter monitoring system to measure and record the average carbon bed temperature for the duration of the carbon bed steaming cycle and to measure the actual carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle. The accuracy of the temperature monitoring device must be ±1 percent of the temperature being measured, expressed in degrees Celsius or ±5°C, whichever is greater.

(ii) A continuous monitoring system to measure and record the daily average concentration level of organic compounds in the exhaust gas stream from the control device. The accuracy of the organic monitoring device must be ±1 percent of the concentration being measured.

(iii) A continuous monitoring system that measures other alternative operating parameters upon approval of the Administrator as specified in 40 CFR 63.8(f)(1) through (f)(5) of this part.

(4) The owner or operator shall manage the carbon used for the carbon adsorption system, as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) The spent carbon removed from the carbon adsorption system must be either regenerated, reactivated, or burned in one of the units specified in paragraphs (d)(4)(ii)(A) through (d)(4)(ii)(G) of this section.

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart X.

(B) Regenerated or reactivated in a thermal treatment unit equipped with and operating air emission controls in accordance with this section.

(C) Regenerated or reactivated in a thermal treatment unit equipped with and operating organic air emission controls in accordance with a national emission standard for hazardous air pollutants under another subpart in 40 CFR part 63 or 40 CFR part 61.

(D) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart O.

(E) Burned in a hazardous waste incinerator for which the owner or operator has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O.

(F) Burned in a boiler or industrial furnace for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 266, subpart H.

(G) Burned in a boiler or industrial furnace for which the owner or operator has designed and operates the unit in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(e) Condenser control device requirements.

(1) The condenser must achieve the performance specifications in either paragraph (e)(1)(i) or (e)(1)(ii) of this section.

(i) Recover 95 percent or more, on a weight-basis, of the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the condenser; or

(ii) Recover 95 percent or more, on a weight-basis, of the total HAP, listed in Table 1 of this subpart, contained in the vent stream entering the condenser.

(2) The owner or operator must demonstrate that the condenser achieves the performance requirements in paragraph (e)(1) of this section by either performing a performance test as specified in paragraph (e)(2)(i) of this section or a design analysis as specified in paragraph (e)(2)(ii) of this section.

(i) An owner or operator choosing to use a performance tests to demonstrate compliance must conduct the test in accordance with the requirements of § 63.694(l) of this subpart.

(ii) An owner or operator choosing to use a design analysis to demonstrate compliance must include as part of this design analysis the following information: description of the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature; and specification of the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(3) The owner or operator must monitor the operation of the condenser in accordance with the requirements of § 63.695(e) of this subpart using one of the continuous monitoring systems specified in paragraphs (e)(3)(i) through (e)(3)(iii) of this section.

(i) A continuous parameter monitoring system to measure and record the daily average temperature of the exhaust gases from the control device. The accuracy of the temperature monitoring device shall be ±1 percent of the temperature being measured, expressed in degrees Celsius or ±5°C, whichever is greater.

(ii) A continuous monitoring system to measure and record the daily average concentration of organic compounds in the exhaust vent stream from the control device. The accuracy of the concentration monitoring device shall be ±1 percent of the concentration being measured.

(iii) A continuous monitoring system that measures other alternative operating parameters upon approval of the Administrator as specified in 40 CFR 63.8(f)(1) through (f)(5) of this part.

(f) Vapor incinerator control device requirements.

(1) The vapor incinerator must achieve the performance specifications in either paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this section.

(i) Destroy the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a weight-basis, or

(B) To achieve a total incinerator outlet concentration for the TOC, less methane and ethane, of less than or equal to ppmv on a dry basis corrected to 3 percent oxygen.

(ii) Destroy the HAP listed in Table 1 of this subpart contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a total HAP weight-basis, or

(B) To achieve a total incinerator outlet concentration for the HAP, listed in Table 1 of this subpart, of less than or equal to ppmv on a dry basis corrected to 3 percent oxygen.

(iii) Maintain the conditions in the vapor incinerator combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher.

(2) The owner or operator must demonstrate that the vapor incinerator achieves the performance requirements in paragraph (f)(1) of this section by either performing a performance test as specified in paragraph (f)(2)(i) of this section or a design analysis as specified in paragraph (f)(2)(ii) of this section.

(i) An owner or operator choosing to use a performance test to demonstrate compliance must conduct the test in accordance with the requirements of § 63.694(l) of this subpart.

(ii) An owner or operator choosing to use a design analysis to demonstrate compliance must include as part of this design analysis the information specified in either paragraph (f)(2)(ii)(A) or (f)(2)(ii)(B) of this section as applicable to the vapor incinerator design.

(A) For a thermal vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures in the combustion chamber and the combustion chamber residence time.

(B) For a catalytic vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(3) The owner or operator must monitor the operation of the vapor incinerator in accordance with the requirements of § 63.695(e) of this subpart using one of the continuous monitoring systems specified in paragraphs (f)(3)(i) through (f)(3)(iv) of this section as applicable to the type of vapor incinerator used.

(i) For a thermal vapor incinerator, a continuous parameter monitoring system to measure and record the daily average temperature of the exhaust gases from the control device. The accuracy of the temperature monitoring device must be ±1 percent of the temperature being measured, expressed in degrees Celsius of ±0.5°C, whichever is greater.

(ii) For a catalytic vapor incinerator, a temperature monitoring device capable of monitoring temperature at two locations equipped with a continuous recorder. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For either type of vapor incinerator, a continuous monitoring system to measure and record the daily average concentration of organic compounds in the exhaust vent stream from the control device. The accuracy of the concentration monitoring device must be ±1 percent of the concentration being measured.

(iv) For either type of vapor incinerator, a continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (f)(3)(i) or (f)(3)(ii) of this section upon approval of the Administrator as specified in 40 CFR 63.8(f)(1) through (f)(5) of this part.

(g) Boilers and process heaters control device requirements.

(1) The boiler or process heater must achieve the performance specifications in either paragraph (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), or (g)(1)(v) of this section.

(i) Destroy the total organic compounds (TOC), less methane and ethane, contained in the vent stream introduced into the flame zone of the boiler or process heater either:

(A) By 95 percent or more, on a weight-basis, or

(B) To achieve in the exhausted combustion gases a total concentration for the TOC, less methane and ethane, of less than or equal to 20 parts ppmv on a dry basis corrected to 3 percent oxygen.

(ii) Destroy the HAP listed in Table 1 of this subpart contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a total HAP weight-basis, or

(B) To achieve in the exhausted combustion gases a total concentration for the HAP, listed in Table 1 of the subpart, of less than or equal to 20 ppmv on a dry basis corrected to 3 percent oxygen.

(iii) Introduce the vent stream into the flame zone of the boiler or process heater and maintain the conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher.

(iv) Introduce the vent stream with the fuel that provides the predominate heat input to the boiler or process heater (i.e., the primary fuel); or

(v) Introduce the vent stream to a boiler or process heater for which the owner or operator either has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H of this chapter; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H of this chapter.

(2) The owner or operator must demonstrate that the boiler or process heater achieves the performance specifications in paragraph (g)(1) of this section chosen by the owner or operator using the applicable method specified in paragraph (g)(2)(i) or (g)(2)(ii) of this section.

(i) If an owner or operator chooses to comply with the performance specifications in either paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section, the owner or operator must demonstrate compliance with the applicable performance specifications by either performing a performance test as specified in paragraph (g)(2)(i)(A) of this section or a design analysis as specified in paragraph (g)(2)(i)(B) of this section.

(A) An owner or operator choosing to use a performance test to demonstrate compliance must conduct the test in accordance with the requirements of § 63.694(l) of this subpart.

(B) An owner or operator choosing to use a design analysis to demonstrate compliance must include as part of this design analysis the following information: description of the vent stream composition, constituent concentrations, and flow rate; specification of the design minimum and average flame zone temperatures and combustion zone residence time; and description of the method and location by which the vent stream is introduced into the flame zone.

(ii) If an owner or operator chooses to comply with the performance specifications in either paragraph (g)(1)(iv) or (g)(1)(v) of this section, the owner or operator must demonstrate compliance by maintaining the records that document that the boiler or process heater is designed and operated in accordance with the applicable requirements of this section.

(3) For a boiler or process heater complying with the performance specifications in either paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section, the owner or operator must monitor the operation of a boiler or process heater in accordance with the requirements of § 63.695(e) of this subpart using one of the continuous monitoring systems specified in paragraphs (g)(3)(i) through (g)(3)(iii) of this section.

(i) A continuous parameter monitoring system to measure and record the daily average combustion zone temperature. The accuracy of the temperature sensor must be ±1 percent of the temperature being measured, expressed in degrees Celsius or ±0.5°C, whichever is greater;

section 5.3 and the corresponding

previous testing that are still applicable

(ii) A continuous monitoring system to measure and record the daily average concentration of organic compounds in the exhaust vent stream from the control device. The accuracy of the concentration monitoring device must be ±1 percent of the concentration being measured.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (g)(3)(i) or (g)(3)(ii) of this section upon approval of the Administrator as specified in 40 CFR 63.8(f)(1) through (f)(5) of this part.

(h) Flare control device requirements.

(1) The flare must be designed and operated in accordance with the requirements in 40 CFR 63.11(b).

(2) The owner or operator must demonstrate that the flare achieves the requirements in paragraph (h)(1) of this section by performing the procedures specified in paragraph (h)(2)(i) of this section. A previous compliance demonstration for the flare that meets all of the conditions specified in paragraph (h)(2)(ii) of this section may be used by an owner or operator to demonstrate compliance with this paragraph (h)(2).

(i) To demonstrate that a flare achieves the requirements in paragraph (h)(1) of this section, the owner or operator performs all of the procedures specified in paragraphs (h)(2)(i)(A) through (h)(2)(i)(C) of this section.

(A) The owner or operator conducts a visible emission test for the flare in accordance with the requirements specified in 40 CFR 63.11(b)(4).

(B) The owner or operator determines the net heating value of the gas being combusted in the flare in accordance with the requirements specified in 40 CFR 63.11(b)(6); and

(C) The owner or operator determines the flare exit velocity in accordance with the requirements applicable to the flare design as specified in 40 CFR 63.11(b)(7) or 40 CFR 63.11(b)(8).

(ii) A previous compliance demonstration for the flare may be used by an owner or operator to demonstrate compliance with paragraph (h)(2) of this section provided that all conditions for the compliance determination and subsequent flare operation are met as specified in paragraphs (h)(2)(ii)(A) and (h)(2)(ii)(B) of this section.

(A) The owner or operator conducted the compliance determination using the procedures specified in paragraph (h)(2)(i) of this section.

(B) No flare operating parameter or process changes have occurred since completion of the compliance determination which could affect the compliance determination results.

(3) The owner or operator must monitor the operation of the flare using a heat sensing monitoring device (including but not limited to a thermocouple, ultraviolet beam sensor, or infrared sensor) that continuously detects the presence of a pilot flame. The owner or operator must record, for each 1-hour period, whether the monitor was continuously operating and whether a pilot flame was continuously present during each hour as required in § 63.696(b)(3) of this subpart.

14. Section 63.694 is amended by adding paragraphs (a)(12) and (m) and by revising paragraphs (b)(2)(ii), (b)(2)(iii), (b)(3)(i), (c), (e), (f), (g), (h), (i) and (k) to read as follows:

§ 63.694 Testing methods and procedures.

(a) * * *

(12) To determine process vent stream flow rate and total organic HAP concentration for compliance with the standards specified in § 63.693 of this subpart, the testing methods and procedures are specified in paragraph (m) of this section.

(b) * * *

(2) * * *

(ii) *Analysis.* Each collected sample must be prepared and analyzed in accordance with one of the following methods as applicable to the sampled off-site material for the purpose of measuring the HAP listed in Table 1 of this subpart:

(A) Method 305 in 40 CFR part 63, appendix A.

(B) Method 25D in 40 CFR part 60, appendix A.

(C) Method 624 in 40 CFR part 136, appendix A. If this method is used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR 136.4 and 40 CFR 136.5 must be followed.

(D) Method 625 in 40 CFR part 136, appendix A. For the purpose of using this method to comply with this subpart, the owner or operator must perform corrections to these compounds based on the "accuracy as recovery" using the factors in Table 7 of the method. If this method is used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR 136.4 and 40 CFR 136.5 must be followed.

(E) Method 1624 in 40 CFR part 136, appendix A.

(F) Method 1625 in 40 CFR part 136, appendix A:

(G) Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. As an alternative, an owner or operator may use any more recent, updated version of Method 8260 approved by the EPA. For the purpose of using Method 8260 to comply with this subpart, the owner or operator must maintain a formal quality assurance program consistent with section 8 of Method 8260, and this program must include the following elements related to measuring the concentrations of volatile compounds:

(*1*) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps.

(*2*) Documentation of specific quality assurance procedures followed during sampling, sample preparation, sample introduction, and analysis.

(*3*) Measurement of the average accuracy and precision of the specific procedures, including field duplicates and field spiking of the off-site material source before or during sampling with compounds having similar chemical characteristics to the target analytes.

(H) Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. As an alternative, an owner or operator may use any more recent, updated version of Method 8270 approved by the EPA. For the purpose of using Method 8270 to comply with this subpart, the owner or operator must maintain a formal quality assurance program consistent with Method 8270, and this program must include the following elements related to measuring the concentrations of volatile compounds:

(*1*) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps.

(*2*) Documentation of specific quality assurance procedures followed during sampling, sample preparation, sample introduction, and analysis.

(*3*) Measurement of the average accuracy and precision of the specific procedures, including field duplicates and field spiking of the off-site material source before or during sampling with compounds having similar chemical characteristics to the target analytes.

(I) Any other analysis method that has been validated in accordance with the procedures specified in section 5.1 and section 5.3 and the corresponding calculations in section 6.1 or section 6.3 of Method 301 in appendix A in 40 CFR part 63. The data are acceptable if they meet the criteria specified in section 6.1.5 or section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range of 0.7 to 1.30. Other sections of Method 301 are not required.

(iii) Calculations. The average VOHAP concentration ($\bar{C}$) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (b)(2)(ii) of this section and the following equation. An owner or operator using a test method that provides species-specific chemical concentrations may adjust the measured concentrations to the corresponding concentration values which would be obtained had the off-site material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the off-site material is multiplied by the appropriate species-specific adjustment factor (f_{m305}) listed in Table 1 of this subpart.

$$\bar{C} = \frac{1}{Q} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

Where:

$\bar{C}$ = Average VOHAP concentration of the off-site material at the point-of-delivery on a mass-weighted basis, ppmw.

i = Individual sample "i" of the off-site material.

n = Total number of samples of the off-site material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of off-site material stream represented by $C_{i,\ kg/hr.}$

Q_T = Total mass quantity of off-site material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample "i" as determined in accordance with the requirements of § 63.694(a), ppmw.

* * * * *

(3) * * *

(i) Documentation shall be prepared that presents the information used as the basis for the owner's or operator's knowledge of the off-site material stream's average VOHAP concentration. Examples of information that may be used as the basis for knowledge include: material balances for the source or process generating the off-site material stream; species-specific chemical test data for the off-site material stream from previous testing that are still applicable to the current off-site material stream; previous test data for other locations managing the same type of off-site material stream; or other knowledge based on information in documents such as manifests, shipping papers, or waste certification notices.

* * * * *

(c) Determination of average VOHAP concentration of an off-site material stream at the point-of-treatment.

(1) *Sampling.* Samples of the off-site material stream shall be collected at the point-of-treatment in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(i) The averaging period to be used for determining the average VOHAP concentration for the off-site material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the off-site material stream but shall not exceed 1 year.

(ii) A sufficient number of samples, but no less than four samples, shall be collected to represent the complete range of HAP compositions and HAP quantities that occur in the off-site material stream during the entire averaging period due to normal variations in the operating conditions for the treatment process. Examples of such normal variations are seasonal variations in off-site material quantity or fluctuations in ambient temperature.

(iii) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the off-site material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the plant site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(2) *Analysis.* Each collected sample must be prepared and analyzed in accordance with one of the methods specified in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(I) of this section, as applicable to the sampled off-site material, for the purpose of measuring the HAP listed in Table 1 of this subpart.

(3) *Calculations.* The average VOHAP concentration ($\bar{C}$) a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (c)(2) of this section and the following equation. An owner or operator using a test method that provides species-specific chemical concentrations may adjust the measured concentrations to the corresponding concentration values which would be obtained had the off-site material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the off-site material is multiplied by the appropriate species-specific adjustment factor (f_{m305}) listed in Table 1 of this subpart.

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

Where:

$\bar{C}$ = Average VOHAP concentration of the off-site material on a mass-weighted basis, ppmw.

i = Individual sample "i" of the off-site material.

n = Total number of samples of the off-site material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of off-site material stream represented by C_i, kg/hr.

Q_T = Total mass quantity of off-site material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample "i" as determined in accordance with the requirements of § 63.694(a), ppmw.

* * * * *

(e) Determination of required HAP mass removal rate (RMR).

(1) Each individual stream containing HAP that enters the treatment process shall be identified.

(2) The average VOHAP concentration at the point-of-delivery for each stream identified in paragraph (e)(1) of this section shall be determined using the test methods and procedures specified in paragraph (b) of this section.

(3) For each stream identified in paragraph (e)(1) of this section that has an average VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery, the average volumetric flow rate and the density of the off-site material stream at the point-of-delivery shall be determined.

(4) The required HAP mass removal rate (RMR) shall be calculated by using the average VOHAP concentration, average volumetric flow rate, and density determined in paragraph (e)(3) of this section for each stream and the following equation:

$$RMR = \sum_{y=1}^{n}\left[V_y \times k_y \times \frac{\left(\overline{C_y} - 500\ ppmw\right)}{10^6}\right]$$

Where:

RMR = Required HAP mass removal rate, kg/hr.

y = Individual stream "y" that has a VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery as determined in § 63.694(b).

n = Total number of "y" streams treated by process.

V_y = Average volumetric flow rate of stream "y" at the point-of-delivery, m^3/hr.

k_y = Density of stream "y", kg/m^3.

$\overline{C_y}$ = Average VOHAP concentration of stream "y" at the point-of-delivery as determined in § 63.694(b)(2), ppmw.

(f) Determination of actual HAP mass removal rate (MR).

(1) The actual HAP mass removal rate (MR) shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(2) The HAP mass flow entering the process (E_b) and the HAP mass flow exiting the process (E_a) shall be determined using the test methods and procedures specified in paragraphs (g)(2) through (g)(4) of this section.

(3) The actual mass removal rate shall be calculated using the HAP mass flow rates determined in paragraph (f)(2) of this section and the following equation:

$MR = E_b - E_a$

where:

MR = Actual HAP mass removal rate, kg/hr.

E_b = HAP mass flow entering process as determined in paragraph (f)(2) of this section, kg/hr.

E_a = HAP mass flow exiting process as determined in paragraph (f)(2) of this section, kg/hr.

(g) Determination of treatment process HAP reduction efficiency (R).

(1) The HAP reduction efficiency (R) for a treatment process shall be determined based on results for a minimum of three consecutive runs.

(2) Each individual stream containing HAP that enters the treatment process shall be identified. Each individual stream containing HAP that exits the treatment process shall be identified. The owner or operator shall prepare a sampling plan for measuring the identified streams that accurately reflects the retention time of the material in the process.

(3) For each run, information shall be determined for each stream identified in paragraph (g)(2) of this section as specified in paragraphs (g)(3)(i) through (g)(3)(iii) of this section.

(i) The mass quantity shall be determined for each stream identified in paragraph (g)(2) of this section as entering the process (Q_b). The mass quantity shall be determined for each stream identified in paragraph (g)(2) of this section as exiting the process (Q_a).

(ii) The average VOHAP concentration at the point-of-delivery shall be determined for each stream entering the process (C_b) (as identified in paragraph (g)(2) of this section) using the test methods and procedures specified in paragraph (b) of this section.

(iii) The average VOHAP concentration at the point-of-treatment shall be determined for each stream exiting the process (C_a) (as identified in paragraph (g)(2) of this section) using the test methods and procedures specified in paragraph (c) of this section.

(4) The HAP mass flow entering the process (E_b) and the HAP mass flow exiting the process (E_a) shall be calculated using the results determined in paragraph (g)(3) of this section and the following equations:

$$E_a = \frac{1}{10^6}\sum_{j=1}^{m}\left(Q_{aj} \times \overline{C_{aj}}\right)$$

$$E_b = \frac{1}{10^6}\sum_{j=1}^{m}\left(Q_{bj} \times \overline{C_{bj}}\right)$$

Where:

E_b = HAP mass flow entering process, kg/hr.

E_a = HAP mass flow exiting process, kg/hr.

m = Total number of runs (at least 3)

j = Individual run "j"

Q_{bj} = Mass quantity of material entering process during run "j", kg/hr.

Q_{aj} = Average mass quantity of material exiting process during run "j", kg/hr.

C_{aj} = Average VOHAP concentration of material exiting process during run "j" as determined in § 63.694(c), ppmw.

C_{bj} = Average VOHAP concentration of material entering process during run "j" as determined in § 63.694(b)(2), ppmw.

(5) The HAP reduction efficiency (R) shall be calculated using the HAP mass flow rates determined in paragraph (g)(4) of this section and the following equation:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

Where:

R = HAP reduction efficiency, percent.

E_b = HAP mass flow entering process as determined in paragraph (g)(4) of this section, kg/hr.

E_a = HAP mass flow exiting process as determined in accordance with the requirements of paragraph (g)(4) of this section, kg/hr.

(h) Determination of HAP biodegradation efficiency (R_{bio}).

(1) The fraction of HAP biodegraded (F_{bio}) shall be determined using one of the procedures specified in appendix C of this part 63.

(2) The HAP biodegradation efficiency (R_{bio}) shall be calculated by using the following equation:

$R_{bio} = F_{bio} \times 100$

where:

R_{bio} = HAP biodegradation efficiency, percent.

F_{bio} = Fraction of HAP biodegraded as determined in paragraph (h)(1) of this section.

(i) Determination of actual HAP mass removal rate (MR_{bio}).

(1) The actual HAP mass removal rate (MR_{bio}) shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(2) The HAP mass flow entering the process (E_b) shall be determined using the test methods and procedures specified in paragraphs (g)(2) through (g)(4) of this section.

(3) The fraction of HAP biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this part.

(4) The actual mass removal rate shall be calculated by using the HAP mass

flow rates and fraction of HAP biodegraded determined in paragraphs (i)(2) and (i)(3), respectively, of this section and the following equation:

$MR_{bio} = E^b \times F_{bio}$

Where:

MR_{bio} = Actual HAP mass removal rate, kg/hr.

E_b = HAP mass flow entering process, kg/hr.

F_{bio} = Fraction of HAP biodegraded.

* * * * *

(k) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the unit contains a material having a total organic concentration representative of the range of concentrations for the materials expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the material placed in the unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane or n-hexane in air at a concentration of approximately, but less than, 10,000 ppmv.

(6) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (k)(8)(i) or (k)(8)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (k)(9) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (k)(6) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (k)(9) of this section.

(9) A potential leak interface is determined to operate with no detectable emissions using the applicable criteria specified in paragraphs (k)(9)(i) and (k)(9)(ii) of this section.

(i) For a potential leak interface other than a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (k)(8) is less than 500 ppmv.

(ii) For a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (k)(8) is less than 10,000 ppmv.

* * * * *

(m) Determination of process vent stream flow rate and total HAP concentration.

(1) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, must be used for selection of the sampling site.

(2) No traverse site selection method is needed for vents smaller than 0.10 meter in diameter.

(3) Process vent stream gas volumetric flow rate must be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(4) Process vent stream total HAP concentration must be measured using the following procedures:

(i) Method 18 of 40 CFR part 60, appendix A, must be used to measure the total HAP concentration. Alternatively, any other method or data that has been validated according to the protocol in Method 301 of appendix A of this part may be used.

(ii) Where Method 18 of 40 CFR part 60, appendix A, is used, the following procedures must be used to calculate parts per million by volume concentration:

(A) The minimum sampling time for each run must be 1 hour in which either an integrated sample or four grab samples must be taken. If grab sampling is used, then the samples must be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(B) The total HAP concentration (C_{HAP}) must be computed according to the following equation:

$$C_{HAP} = \frac{\sum_{i=1}^{x}\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{HAP} = Total concentration of HAP compounds listed in Table 1 of this subpart, dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of the sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

15. Section 63.695 is revised to read as follows:

§ 63.695 Inspection and monitoring requirements.

(a) This section specifies the inspection and monitoring procedures required to perform the following:

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(1) To inspect tank fixed roofs and floating roofs for compliance with the Tank Level 2 controls standards specified in § 63.685 of this subpart, the inspection procedures are specified in paragraph (b) of this section.

(2) To inspect and monitor closed-vent systems for compliance with the standards specified in § 63.693 of this subpart, the inspection and monitoring procedures are specified in paragraph (c) of this section.

(3) To inspect and monitor transfer system covers for compliance with the standards specified in § 63.689(c)(1) of this subpart, the inspection and monitoring procedures are specified in paragraph (d) of this section.

(4) To monitor control devices for compliance with the standards specified in § 63.693 of this subpart, the monitoring procedures are specified in paragraph (e) of this section.

(b) Tank Level 2 fixed roof and floating roof inspection requirements.

(1) Owners and operators that use a tank equipped with an internal floating roof in accordance with the provisions of § 63.685(e) of this subpart shall meet the following inspection requirements:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, the internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the waste surfaces from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided for in paragraph (b)(1)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every calendar year after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(iii) As an alternative to performing the inspections specified in paragraph (b)(1)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(2) Owners and operators that use a tank equipped with an external floating roof in accordance with the provisions of § 63.685(f) of this subpart shall meet the following requirements:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 days after initial operation of the separator following installation of the floating roof and, thereafter, at least once every year. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(C) If a tank ceases to hold off-site material for a period of 1 year or more, subsequent introduction of off-site material into the tank shall be considered an initial operation for the purposes of paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section.

(D) The owner shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure.

(*1*) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(*2*) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) (⅛-inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(*3*) For a seal gap measured under paragraph (b)(2) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in § 63.685(f)(1) of this subpart.

(E) In the event that the seal gap measurements do not conform to the specifications in § 63.685(f)(1) of this subpart, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform the inspections following installation of the external floating roof and, thereafter, at least once every year.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696(d) of this subpart.

(3) Owners and operators that use a tank equipped with a fixed roof in accordance with the provisions of § 63.685(g) of this subpart shall meet the following requirements:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the case when a tank is buried partially or entirely underground, inspection is required only for those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (e.g., fill ports, access hatches, gauge wells, etc.) and can be opened to the atmosphere.

(ii) The owner or operator must perform an initial inspection following installation of the fixed roof. Thereafter, the owner or operator must perform the inspections at least once every calendar year except as provided for in paragraph (f) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696(e) of this subpart.

(4) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (b)(1), (b)(2), or (b)(3) of this section in the following manner:

(i) The owner or operator shall within 45 calendar days of detecting the defect either repair the defect or empty the tank and remove it from service. If within this 45-day period the defect cannot be repaired or the tank cannot be removed from service without disrupting operations at the plant site, the owner or operator is allowed two 30-day extensions. In cases when an owner or operator elects to use a 30-day extension, the owner or operator shall prepare and maintain documentation describing the defect, explaining why alternative storage capacity is not available, and specify a schedule of actions that will ensure that the control equipment will be repaired or the tank emptied as soon as possible.

(ii) When a defect is detected during an inspection of a tank that has been emptied and degassed, the owner or operator shall repair the defect before refilling the tank.

(c) Owners and operators that use a closed-vent system in accordance with the provisions of § 63.693 of this subpart shall meet the following inspection and monitoring requirements:

(1) Each closed-vent system that is used to comply with § 63.693(c)(1)(i) of this subpart shall be inspected and monitored in accordance with the following requirements:

(i) At initial startup, the owner or operator shall monitor the closed-vent system components and connections using the procedures specified in § 63.694(k) of this subpart to demonstrate that the closed-vent system operates with no detectable organic emissions.

(ii) After initial startup, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air emissions. The owner or operator shall monitor a component or connection using the procedures specified in § 63.694(k) of this subpart to demonstrate that it operates with no detectable organic emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (c)(1)(ii)(A) of this section, shall be monitored at least once per year using the procedures specified in § 63.694(k) of this subpart to demonstrate that components or connections operate with no detectable organic emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (c)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 63.696 of this subpart.

(2) Each closed-vent system that is used to comply with § 63.693(c)(1)(ii) of this subpart shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping; loose connections; or broken or missing caps or other closure devices.

(ii) The owner or operator must perform an initial inspection following installation of the closed-vent system. Thereafter, the owner or operator must perform the inspections at least once every calendar year except as provided for in paragraph (f) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection.

(ii) Repair of a defect may be delayed beyond 45 calendar days if either of the conditions specified in paragraph (c)(3)(ii)(A) or (c)(3)(ii)(B) occurs. In this case, the owner or operator must repair the defect the next time the process or unit that vents to the closed-vent system is shutdown. Repair of the defect must be completed before the process or unit resumes operation.

(A) Completion of the repair is technically infeasible without the shutdown of the process or unit that vents to the closed-vent system.

(B) The owner or operator determines that the air emissions resulting from the repair of the defect within the specified period would be greater than the fugitive emissions likely to result by delaying the repair until the next time the process or unit that vents to the closed-vent system is shutdown.

(iii) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.696 of this subpart.

(d) Owners and operators that use a transfer system equipped with a cover in accordance with the provisions of § 63.689(c)(1) of this subpart shall meet the following inspection requirements:

(1) The cover and its closure devices shall be visually inspected by the owner or operator to check for defects that

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could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover sections or between the cover and its mounting; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the case when a transfer system is buried partially or entirely underground, inspection is required only for those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (e.g., access hatches, etc.) and can be opened to the atmosphere.

(2) The owner or operator must perform an initial inspection following installation of the cover. Thereafter, the owner or operator must perform the inspections at least once every calendar year except as provided for in paragraph (f) of this section.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(5) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(5) The owner or operator shall repair all detected defects as follows:

(i) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (d)(5)(ii) of this section.

(ii) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the transfer system and no alternative transfer system is available at the site to accept the material normally handled by the system. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the material handled by the transfer system stops operation. Repair of the defect must be completed before the process or unit resumes operation.

(iii) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.696 of this subpart.

(e) *Control device monitoring requirements.* For each control device required under § 63.693 of this subpart to be monitored in accordance with the provisions of this paragraph (e), the owner or operator must ensure that each control device operates properly by monitoring the control device in accordance with the requirements specified in paragraphs (e)(1) through (e)(7) of this section.

(1) A continuous parameter monitoring system must be used to measure the operating parameter or parameters specified for the control device in § 63.693(d) through § 63.693(g) of this subpart as applicable to the type and design of the control device. The continuous parameter monitoring system must meet the following specifications and requirements:

(i) The continuous parameter monitoring system must measure either an instantaneous value at least once every 15 minutes or an average value for intervals of 15 minutes or less and continuously record either:

(A) Each measured data value; or

(B) Each block average value for each 1-hour period or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values.

(ii) The monitoring system must be installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications or other written procedures that provide reasonable assurance that the monitoring equipment is operating properly.

(2) Using the data recorded by the monitoring system, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If operation of the control device is continuous, the operating day is a 24-hour period. If control device operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(3) For each monitored operating parameter, the owner or operator must establish a minimum operating parameter value or a maximum operating parameter value, as appropriate, to define the range of conditions at which the control device must be operated to continuously achieve the applicable performance requirements specified in § 63.693(b)(2) of this subpart. Each minimum or maximum operating parameter value must be established in accordance with the requirements in paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(i) If the owner or operator conducts a performance test to demonstrate control device performance, then the minimum or maximum operating parameter value must be established based on values measured during the performance test and supplemented, as necessary, by the control device design specifications, manufacturer recommendations, or other applicable information.

(ii) If the owner or operator uses a control device design analysis to demonstrate control device performance, then the minimum or maximum operating parameter value must be established based on the control device design analysis and supplemented, as necessary, by the control device manufacturer recommendations or other applicable information.

(4) An excursion for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (e)(4)(i) through (e)(4)(iii) of this section being met. When multiple operating parameters are monitored for the same control device and during the same operating day more than one of these operating parameters meets an excursion criterion specified in paragraphs (e)(4)(i) through (e)(4)(iii) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

(i) An excursion occurs when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the operating parameter in accordance with the requirements of paragraph (e)(3) of this section.

(ii) An excursion occurs when the period of control device operation is 4 hours or greater in an operating day and the monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours. Monitoring data are insufficient to constitute a valid hour of data if measured values are unavailable for any of the 15-minute periods within the hour.

(iii) An excursion occurs when the period of control device operation is less than 4 hours in an operating day and more than 1 of the hours during the period does not constitute a valid hour of data due to insufficient monitoring data. Monitoring data are insufficient to constitute a valid hour of data if measured values are unavailable for any of the 15-minute periods within the hour.

(5) For each excursion, except as provided for in paragraph(e)(6) of this section, the owner or operator shall be deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.

(6) An excursion is not a violation of this standard under any one of the conditions specified in paragraphs (e)(6)(i) and (e)(6)(ii) of this section.

(i) An excursion is not a violation nor does it count toward the number of excused excursions allowed under paragraph (e)(6)(ii) of this section when the excursion occurs during any one of the following periods:

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with the facility's startup, shutdown, and malfunction plan; or

(B) During periods of non-operation of the unit or the process that is vented to the control device (resulting in cessation of HAP emissions to which the monitoring applies).

(ii) For each control device, one excused excursion is allowed per semiannual period for any reason. The initial semiannual period is the 6-month reporting period addressed by the first semiannual report submitted by the owner or operator in accordance with § 63.697(b)(4) of this subpart.

(7) Nothing in paragraphs (e)(1) through (e)(6) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart.

(f) *Alternative inspection and monitoring interval.* Following the initial inspection and monitoring of a piece of air pollution control equipment in accordance with the applicable provisions of this section, subsequent inspection and monitoring of the equipment may be performed at intervals longer than 1 year when an owner or operator determines that performing the required inspection or monitoring procedures would expose a worker to dangerous, hazardous, or otherwise unsafe conditions and the owner or operator complies with the requirements specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The owner or operator must prepare and maintain at the plant site written documentation identifying the specific air pollution control equipment designated as "unsafe to inspect and monitor." The documentation must include for each piece of air pollution control equipment designated as such a written explanation of the reasons why the equipment is unsafe to inspect or monitor using the applicable procedures under this section.

(2) The owner or operator must develop and implement a written plan and schedule to inspect and monitor the air pollution control equipment using the applicable procedures specified in this section during times when a worker can safely access the air pollution control equipment. The required inspections and monitoring must be performed as frequently as practicable but do not need to be performed more frequently than the periodic schedule that would be otherwise applicable to the air pollution control equipment under the provisions of this section. A copy of the written plan and schedule must be maintained at the plant site.

16. Section 63.697 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.697 Reporting requirements.

(a) Each owner or operator of an affected source subject to this subpart must comply with the notification requirements specified in paragraph (a)(1) of this section and the reporting requirements specified in paragraph (a)(2) of this section.

(1) The owner or operator of an affected source must submit notices to the Administrator in accordance with the applicable notification requirements in 40 CFR 63.9 as specified in Table 2 of this subpart. For the purpose of this subpart, an owner or operator subject to the initial notification requirements under 40 CFR 63.9(b)(2) must submit the required notification on or before October 19, 1999.

(2) The owner or operator of an affected source must submit reports to the Administrator in accordance with the applicable reporting requirements in 40 CFR 63.10 as specified in Table 2 of this subpart.

(b) The owner or operator of a control device used to meet the requirements of § 63.693 of this subpart shall submit the following notifications and reports to the Administrator:

(1) A Notification of Performance Tests specified in § 63.7 and § 63.9(g) of this part.

(2) Performance test reports specified in § 63.10(d)(2) of this part, and

(3) Startup, shutdown, and malfunction reports specified in § 63.10(d)(5) of this part.

(i) If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's startup, shutdown, and malfunction plan specified in § 63.6(e)(3) of this part, the owner or operator shall state such information in the report. The startup, shutdown, or malfunction report shall consist of a letter, containing the name, title, and signature of the responsible official who is certifying its accuracy, that shall be submitted to the Administrator, and

(ii) Separate startup, shutdown, or malfunction reports are not required if the information is included in the summary report specified in paragraph (b)(4) of this section.

(4) A summary report specified in § 63.10(e)(3) of this part shall be submitted on a semiannual basis (i.e., once every 6-month period). The summary report must include a description of all excursions as defined in § 63.695(e) of this subpart that have occurred during the 6-month reporting period. For each excursion caused when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit), the report must include the daily average values of the monitored parameter, the applicable operating parameter limit, and the date and duration of the period that the exceedance occurred. For each excursion caused by lack of monitoring data, the report must include the date and duration of period when the monitoring data were not collected and the reason why the data were not collected.

* * * * *

17. Table 1 in Subpart DD is revised to read as follows:

TABLE 1 TO SUBPART DD—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART DD

CAS No.[a]	Chemical name	$f_{m\ 305}$
75–07–0	Acetaldehyde	1.000
75–05–8	Acetonitrile	0.989
98–86–2	Acetophenone	0.314

TABLE 1 TO SUBPART DD—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART DD—Continued

CAS No.[a]	Chemical name	$f_{m\ 305}$
107–02–8	Acrolein	1.000
107–13–1	Acrylonitrile	0.999
107–05–1	Allyl chloride	1.000
71–43–2	Benzene (includes benzene in gasoline)	1.000
98–07–7	Benzotrichloride (isomers and mixture)	0.958
100–44–7	Benzyl chloride	1.000
92–52–4	Biphenyl	0.864
542–88–1	Bis(chloromethyl)ether[b]	0.999
75–25–2	Bromoform	0.998
106–99–0	1,3-Butadiene	1.000
75–15–0	Carbon disulfide	1.000
56–23–5	Carbon tetrachloride	1.000
43–58–1	Carbonyl sulfide	1.000
133–90–4	Chloramben	0.633
108–90–7	Chlorobenzene	1.000
67–66–3	Chloroform	1.000
107–30–2	Chloromethyl methyl ether[b]	1.000
126–99–8	Chloroprene	1.000
98–82–8	Cumene	1.000
94–75–7	2,4-D, salts and esters	0.167
334–88–3	Diazomethane[c]	0.999
132–64–9	Dibenzofurans	0.967
96–12–8	1,2-Dibromo-3-chloropropane	1.000
106–46–7	1,4-Dichlorobenzene(p)	1.000
107–06–2	Dichloroethane (Ethylene dichloride)	1.000
111–44–4	Dichloroethyl ether (Bis(2-chloroethyl ether)	0.757
542–75–6	1,3-Dichloropropene	1.000
79–44–7	Dimethyl carbamoyl chloride[c]	0.150
64–67–5	Diethyl sulfate	0.0025
77–78–1	Dimethyl sulfate	0.086
121–69–7	N,N-Dimethylaniline	0.0008
51–28–5	2,4-Dinitrophenol	0.0077
121–14–2	2,4-Dinitrotoluene	0.0848
123–91–1	1,4-Dioxane (1,4-Diethyleneoxide)	0.869
106–89–8	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.939
106–88–7	1,2-Epoxybutane	1.000
140–88–5	Ethyl acrylate	1.000
100–41–4	Ethyl benzene	1.000
75–00–3	Ethyl chloride (Chloroethane)	1.000
106–93–4	Ethylene dibromide (Dibromoethane)	0.999
107–06–2	Ethylene dichloride (1,2-Dichloroethane)	1.000
151–56–4	Ethylene imine (Aziridine)	0.867
75–21–8	Ethylene oxide	1.000
75–34–3	Ethylidene dichloride (1,1-Dichloroethane)	1.000
	Glycol ethers[d] that have a Henry's Law constant value equal to or greater than 0.1 Y/X (1.8 x 10^{-6} atm/gm-mole/m^3) at 25°C.	[e]
118–74–1	Hexachlorobenzene	0.97
87–68–3	Hexachlorobutadiene	0.88
67–72–1	Hexachloroethane	0.499
110–54–3	Hexane	1.000
78–59–1	Isophorone	0.506
58–89–9	Lindane (all isomers)	1.000
67–56–1	Methanol	0.855
74–83–9	Methyl bromide (Bromomethane)	1.000
74–87–3	Methyl chloride (Choromethane)	1.000
71–55–6	Methyl chloroform (1,1,1-Trichloroethane)	1.000
78–93–3	Methyl ethyl ketone (2-Butanone)	0.990
74–88–4	Methyl iodide (Iodomethane)	1.0001
108–10–1	Methyl isobutyl ketone (Hexone)	0.9796
624–83–9	Methyl isocyanate	1.000
80–62–6	Methyl methacrylate	0.916
1634–04–4	Methyl tert butyl ether	1.000
75–09–2	Methylene chloride (Dichloromethane)	1.000
91–20–3	Naphthalene	0.994
98–95–3	Nitrobenzene	0.394
79–46–9	2-Nitropropane	0.989
82–68–8	Pentachloronitrobenzene (Quintobenzene)	0.839
87–86–5	Pentachlorophenol	0.0898
75–44–5	Phosgene	1.000
123–38–6	Propionaldehyde	0.999
78–87–5	Propylene dichloride (1,2–Dichloropropane)	1.000
75–56–9	Propylene oxide	1.000

TABLE 1 TO SUBPART DD—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART DD—Continued

CAS No.[a]	Chemical name	$f_{m\ 305}$
75–55–8	1,2–Propylenimine (2–Methyl aziridine)	0.945
100–42–5	Styrene	1.000
96–09–3	Styrene oxide	0.830
79–34–5	1,1,2,2–Tetrachloroethane	0.999
127–18–4	Tetrachloroethylene (Perchloroethylene)	1.000
108–88–3	Toluene	1.000
95–53–4	o-Toluidine	0.152
120–82–1	1,2,4–Trichlorobenzene	1.000
71–55–6	1,1,1–Trichloroethane (Methyl chloriform)	1.000
79–00–5	1,1,2–Trichloroethane (Vinyl trichloride)	1.000
79–01–6	Trichloroethylene	1.000
95–95–4	2,4,5–Trichlorophenol	0.108
88–06–2	2,4,6–Trichlorophenol	0.132
121–44–8	Triethylamine	1.000
540–84–1	2,2,4–Trimethylpentane	1.000
108–05–4	Vinyl acetate	1.000
593–60–2	Vinyl bromide	1.000
75–01–4	Vinyl chloride	1.000
75–35–4	Vinylidene chloride (1,1–Dichloroethylene)	1.000
1330–20–7	Xylenes (isomers and mixture)	1.000
95–47–6	o-Xylenes	1.000
108–38–3	m-Xylenes	1.000
106–42–3	p-Xylenes	1.000

Notes:

$f_{m\ 305}$ = Method 305 fraction measure factor.

a. CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

b. Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.

c. Denotes a HAP that may react violently with water, exercise caustic is an expected analyte.

d. Denotes a HAP that hydrolyzes slowly in water.

e. The f_{m305} factors for some of the more common glycol ethers can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

18. Table 2 in Subpart DD is revised to read as follows:

TABLE 2 TO SUBPART DD—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD

Subpart A reference	Applies to Subpart DD	Explanation
63.1(a)(1)	Yes	
63.1(a)(2)	Yes	
63.1(a)(3)	Yes	
63.1(a)(4)	No	Subpart DD (this table) specifies applicability of each paragraph in subpart A to subpart DD.
63.1(a)(5)–63.1(a)(9)	No	
63.1(a)(10)	Yes	
63.1(a)(11)	Yes	
63.1(a)(12)	Yes	
63.1(a)(13)	Yes	
63.1(a)(14)	Yes	
63.1(b)(1)	No	Subpart DD specifies its own applicability.
63.1(b)(2)	Yes	
63.1(b)(3)	No	
63.1(c)(1)	No	Subpart DD explicitly specifies requirements that apply.
63.1(c)(2)	No	Area sources are not subject to subpart DD.
63.1(c)(3)	No	
63.1(c)(4)	Yes	
63.1(c)(5)	Yes	Except that sources are not required to submit notifications overridden by this table.
63.1(d)	No	
63.1(e)	No	
63.2	Yes	§ 63.681 of subpart DD specifies that if the same term is defined in subparts A and DD, it shall have the meaning given in subpart DD
63.3	Yes	
63.4(a)(1)–63.4(a)(3)	Yes	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes	
63.4(b)	Yes	

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TABLE 2 TO SUBPART DD—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD—Continued

Subpart A reference	Applies to Subpart DD	Explanation
63.4(c)	Yes	
63.5(a)(1)	Yes	Except replace term "source" and "stationary source" in § 63.5(a)(1) of subpart A with "affected source."
63.5(a)(2)	Yes	
63.5(b)(1)	Yes	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes	
63.5(b)(4)	Yes	Except the cross-reference to § 63.9(b) is changed to § 63.9(b)(4) and (5). Subpart DD overrides § 63.9(b)(2) and (b)(3).
63.5(b)(5)	Yes	
63.5(b)(6)	Yes	
63.5(c)	No	Reserved.
63.5(d)(1)(i)	Yes	
63.5(d)(1)(ii)	Yes	
63.5(d)(1)(iii)	Yes	
63.5(d)(2)	No	
63.5(d)(3)	Yes	
63.5(d)(4)	Yes	
63.5(e)	Yes	
63.5(f)(1)	Yes	
63.5(f)(2)	Yes	
63.6(a)	Yes	
63.6(b)(1)	No	Subpart DD specifies compliance dates for sources subject to subpart DD.
63.6(b)(2)	No	
63.6(b)(3)	Yes	
63.6(b)(4)	No	May apply when standards are proposed under section 112(f) of the Clean Air Act.
63.6(b)(5)	No	§ 63.697 of subpart DD includes notification requirements.
63.6(b)(6)	No	
63.6(b)(7)	No	
63.6(c)(1)	No	§ 63.680 of subpart DD specifies the compliance date.
63.6(c)(2)–63.6(c)(4)	No	
63.6(c)(5)	Yes	
63.6(d)	No	
63.6(e)	Yes	
63.6(f)(1)	Yes	
63.6(f)(2)(i)	Yes	
63.6(f)(2)(ii)	Yes	Subpart DD specifies the use of monitoring data in determining compliance with subpart DD.
63.6(f)(2)(iii) (A), (B), and (C)	Yes	
63.6(f)(2)(iii) (D)	No	
63.6(f)(2)(iv)	Yes	
63.6(f)(2)(v)	Yes	
63.6(f)(3)	Yes	
63.6(g)	Yes	
63.6(h)	No	Subpart DD does not require opacity and visible emission standards.
63.6(i)	Yes	Except for § 63.6(i)(15), which is reserved.
63.6(j)	Yes	
63.7(a)(1)	No	Subpart DD specifies required testing and compliance demonstration procedures.
63.7(a)(2)	Yes	
63.7(a)(3)	Yes	
63.7(b)	No	
63.7(c)	No	
63.7(d)	Yes	
63.7(e)(1)	Yes	
63.7(e)(2)	Yes	
63.7(e)(3)	No	Subpart DD specifies test methods and procedures.
63.7(e)(4)	Yes	
63.7(f)	No	Subpart DD specifies applicable methods and provides alternatives.
63.7(g)	Yes	
63.7(h)(1)	Yes	
63.7(h)(2)	Yes	
63.7(h)(3)	Yes	
63,7(h)(4)	No	
63.7(h)(5)	Yes	
63.8(a)	No	
63.8(b)(1)	Yes	
63.8(b)(2)	No	Subpart DD specifies locations to conduct monitoring.
63.8(b)(3)	Yes	

TABLE 2 TO SUBPART DD—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD—Continued

Subpart A reference	Applies to Subpart DD	Explanation
63.8(c)(1)(i)	Yes	
63.8(c)(1)(ii)	Yes	
63.8(c)(1)(iii)	Yes	
63.8(c)(2)	Yes	
63.8(c)(3)	Yes	
63.8(c)(4)	No	Subpart DD specifies monitoring frequency
63.8(c)(5)–63.8(c)(8)	No	
63.8(d)	No	
63.8(e)	No	
63.8(f)(1)	Yes	
63.8(f)(2)	Yes	
63.8(f)(3)	Yes	
63.8(f)(4)(i)	Yes	
63.8(f)(4)(ii)	Yes	
63.8(f)(4)(iii)	No	
63.8(f)(5)(i)	Yes	
63.8(f)(5)(ii)	No	
63.8(f)(5)(iii)	Yes	
63.8(f)(6)	Yes	
63.8(g)	Yes	
63.9(a)	Yes	
63.9(b)(1)(i)	Yes	
63.9(b)(1)(ii)	No	
63.9(b)(2)	Yes	
63.9(b)(3)	No	
63.9(b)(4)	Yes	
63.9(b)(5)	Yes	
63.9(c)	Yes	
63.9(d)	Yes	
63.9(e)	No	
63.9(f)	No	
63.9(g)	No	
63.9(h)	Yes	
63.9(i)	Yes	
63.9(j)	No	
63.10(a)	Yes	
63.10(b)(1)	Yes	
63.10(b)(2)(i)	Yes	
63.10(b)(2)(ii)	Yes	
63.10(b)(2)(iii)	No	
63.10(b)(2)(iv)	Yes	
63.10(b)(2)(v)	Yes	
63.10(b)(2)(vi)–(ix)	Yes	
63.10(b)(2)(x)	Yes	
63.10(b)(2) (xii)–(xiv)	No	
63.10(b)(3)	Yes	
63.10(c)	No	
63.10(d)(1)	No	
63.10(d)(2)	Yes	
63.10(d)(3)	No	
63.10(d)(4)	Yes	
63.10(d)(5)(i)	Yes	
63.10(d)(5)(ii)	Yes	
63.10(e)	No	
63.10(f)	Yes	
63.11–63.15	Yes	

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

Subpart OO—National Emission Standards for Tanks—Level 1

19. Section 63.901 is amended by revising the definition of "Safety device" to read as follows:

§ 63.901 Definitions.

* * * * *

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions to prevent physical damage or permanent deformation to equipment by venting gases or vapors during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal

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ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

* * * * *

20. Section 63.902 is amended by revising paragraphs (a) and (b)(3) introductory text to read as follows:

§ 63.902 Standards—Tank fixed roof.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from a tank using a fixed roof. This section does not apply to a fixed-roof tank that is also equipped with an internal floating roof.

(b) * * *

(3) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

* * * * *

21. Section 63.905 is revised to read as follows:

§ 63.905 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the unit contains a material having a total organic concentration representative of the range of concentrations for the materials expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the material placed in the unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane or n-hexane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (a)(8)(i) or (a)(8)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (a)(9) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (a)(6) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (a)(9) of this section.

(9) A potential leak interface is determined to operate with no detectable emissions using the applicable criteria specified in paragraphs (a)(9)(i) and (a)(9)(ii) of this section.

(i) For a potential leak interface other than a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (a)(8) is less than 500 ppmv.

(ii) For a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (a)(8) is less than 10,000 ppmv.

(b) [Reserved]

22. Section 63.906 is amended by revising paragraphs (a)(2) and (b)(2), and adding paragraph (d) to read as follows:

§ 63.906 Inspection and monitoring requirements.

(a) * * *

(2) The owner or operator must perform an initial inspection following installation of the fixed roof. Thereafter, the owner or operator must perform the inspections at least once every calendar year except as provided for in paragraph (d) of this section.

* * * * *

(b) * * *

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the regulated material normally managed in the tank. In this case, the owner or operator shall repair the defect the next time alternative tank capacity becomes available and the tank can be emptied or temporarily removed from service, as necessary to complete the repair.

* * * * *

(d) *Alternative inspection and monitoring interval.* Following the initial inspection and monitoring of a fixed roof in accordance with this section, subsequent inspection and monitoring of the equipment may be performed at intervals longer than 1 year when an owner or operator determines that performing the required inspection or monitoring procedures would expose a worker to dangerous, hazardous, or otherwise unsafe conditions and the owner or operator complies with the requirements specified in paragraphs (d)(1) and (d)(2) of this section.

(1) The owner or operator must prepare and maintain at the plant site written documentation identifying the specific air pollution control equipment designated as "unsafe to inspect and monitor." The documentation must include for each piece of air pollution control equipment designated as such a written explanation of the reasons why the equipment is unsafe to inspect or monitor using the applicable procedures under this section.

(2) The owner or operator must develop and implement a written plan and schedule to inspect and monitor the air pollution control equipment using the applicable procedures specified in this section during times when a worker can safely access the air pollution control equipment. The required inspections and monitoring must be performed as frequently as practicable but do not need to be performed more frequently than the periodic schedule that would be otherwise applicable to the air pollution control equipment under the provisions of this section. A copy of the written plan and schedule must be maintained at the plant site.

Subpart PP—National Emission Standards for Containers

23. Section 63.921 is amended by revising the definitions of "Empty container" and "Safety device" to read as follows:

§ 63.921 Definitions.

* * * * *

Empty container means a container for which either of the following conditions exists: the container meets the conditions for an empty container specified in 40 CFR 261.7(b); or all regulated-material has been removed from the container except for any regulated-material that remains on the interior surfaces of the container as clingage or in pools on the container bottom due to irregularities in the container.

* * * * *

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions to prevent physical damage or permanent deformation to equipment by venting gases or vapors during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

24. Section 63.925 is amended by revising paragraph (a) to read as follows:

§ 63.925 Test methods and procedures.

(a) Procedures for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the unit contains a material having a total organic concentration representative of the range of concentrations for the materials expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the material placed in the unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane or n-hexane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (a)(8)(i) or (a)(8)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (a)(9) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (a)(6) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (a)(9) of this section.

(9) A potential leak interface is determined to operate with no detectable emissions using the applicable criteria specified in paragraphs (a)(9)(i) and (a)(9)(ii) of this section.

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(i) For a potential leak interface other than a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (a)(8) is less than 500 ppmv.

(ii) For a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (a)(8) is less than 10,000 ppmv.

* * * * *

25. Section 63.926 is amended by revising paragraph (a) to read as follows:

§ 63.926 Inspection and monitoring requirements.

(a) Owners and operators of containers using either Container Level 1 or Container Level 2 controls in accordance with the provisions of § 63.922 and § 63.923 of this subpart, respectively, shall inspect the container and its cover and closure devices as follows:

(1) In the case when a regulated-material already is in the container at the time the owner or operator first accepts possession of the container at the facility site and the container is not emptied (i.e., does not meet the conditions for an empty container as defined in § 63.921 of this subpart) within 24 hours after the container has been accepted at the facility site, the container and its cover and closure devices shall be visually inspected by the owner or operator to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. This inspection of the container must be conducted on or before the date that the container is accepted at the facility (i.e., the date that the container becomes subject to the standards under this subpart). For the purpose of this requirement, the date of acceptance is the date of signature of the facility owner or operator on the manifest or shipping papers accompanying the container. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (a)(3) of this section.

(2) In the case when a container filled or partially filled with regulated-material remains unopened at the facility site for a period of 1 year or more, the container and its cover and closure devices shall be visually inspected by the owner or operator initially and thereafter, at least once every calendar year, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (a)(3) of this section.

(3) When a defect is detected for the container, cover, or closure devices, the owner or operator must either empty the regulated-material from the defective container in accordance with paragraph (a)(3)(i) of this section or repair the defective container in accordance with paragraph (a)(3)(ii) of this section.

(i) If the owner or operator elects to empty the regulated-material from the defective container, the owner or operator must remove the regulated-material from the defective container to meet the conditions for an empty container (as defined in § 63.921 of this subpart) and transfer the removed regulated-material to either a container that meets the applicable standards under this subpart or to a tank, process, or treatment unit that meets the applicable standards under the subpart referencing this subpart. Transfer of the regulated-material must be completed no later than 5 calendar days after detection of the defect. The emptied defective container must be either repaired, destroyed, or used for purposes other than management of regulated-material.

(ii) If the owner or operator elects not to empty the regulated-material from the defective container, the owner or operator must repair the defective container. First efforts at repair of the defect must be made no later than 24 hours after detection and repair must be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the regulated-material must be emptied from the container and the container must not be used to manage regulated-material until the defect is repaired.

* * * * *

Subpart QQ—National Emission Standards for Surface Impoundments

26. Section 63.941 is amended by revising the definitions of "Cover" and "Safety device" to read as follows:

§ 63.941 Definitions.

* * * * *

Cover means a device or system that provides a continuous barrier over the material managed in a surface impoundment to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings needed for operation, inspection, sampling, maintenance, and repair of the surface impoundment provided that each opening is closed when not in use (e.g., access hatches, sampling ports). Examples of a cover for a surface impoundment include, but are not limited to, a floating membrane cover placed on the surface of the material in the surface impoundment or an air-supported structure installed over the surface impoundment.

* * * * *

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions to prevent physical damage or permanent deformation to equipment by venting gases or vapors during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

* * * * *

27. Section 63.945 is revised to read as follows:

§ 63.945 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the unit contains a material having a total organic concentration representative of the range of concentrations for the materials expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the material placed in the unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane or n-hexane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (a)(8)(i) or (a)(8)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (a)(9) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (a)(6) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (a)(9) of this section.

(9) A potential leak interface is determined to operate with no detectable emissions using the applicable criteria specified in paragraphs (a)(9)(i) and (a)(9)(ii) of this section.

(i) For a potential leak interface other than a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (a)(8) is less than 500 ppmv.

(ii) For a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (a)(8) is less than 10,000 ppmv.

(b) [Reserved]

28. Section 63.946 is amended by adding paragraph (d) and by revising paragraphs (a)(2) and (b)(1)(ii) to read as follows:

§ 63.946 Inspection and monitoring requirements.

(a) * * *

(2) The owner or operator must perform an initial inspection following installation of the floating membrane cover. Thereafter, the owner or operator must perform the inspections at least once per calendar year except as provided for in paragraph (d) of this section.

* * * * *

(b) * * *

(1) * * *

(ii) The owner or operator must perform an initial inspection following installation of the cover. Thereafter, the owner or operator must perform the inspections at least once per calendar year except as provide for in paragraph (d) of this section.

* * * * *

(d) *Alternative inspection and monitoring interval.* Following the initial inspection and monitoring of a piece of air pollution control equipment in accordance with the applicable provisions of this section, subsequent inspection and monitoring of the equipment may be performed at intervals longer than 1 year when an owner or operator determines that performing the required inspection or monitoring procedures would expose a worker to dangerous, hazardous, or otherwise unsafe conditions and the owner or operator complies with the requirements specified in paragraphs (d)(1) and (d)(2) of this section.

(1) The owner or operator must prepare and maintain at the plant site written documentation identifying the specific air pollution control equipment designated as "unsafe to inspect and monitor." The documentation must include for each piece of air pollution control equipment designated as such a written explanation of the reasons why the equipment is unsafe to inspect or monitor using the applicable procedures under this section.

(2) The owner or operator must develop and implement a written plan and schedule to inspect and monitor the air pollution control equipment using the applicable procedures specified in this section during times when a worker can safely access the air pollution control equipment. The required inspections and monitoring must be performed as frequently as practicable but do not need to be performed more frequently than the periodic schedule that would be otherwise applicable to the air pollution control equipment under the provisions of this section. A copy of the written plan and schedule must be maintained at the plant site.

Subpart RR—National Emission Standards for Individual Drain Systems

29. Section 63.961 is amended by adding in alphabetical order the definition of "Regulated-material" and by revising the definitions of "Individual drain system," "Sewer line" and "Waste management unit" to read as follows:

§ 63.961 Definitions.

* * * * *

Individual drain system means a stationary system used to convey regulated-material to a waste management unit or to discharge or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer lines and other junction boxes (e.g., manholes, sumps, and lift stations)

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conveying regulated-material. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (e.g., stormwater sewer system) and is segregated from all other individual drain systems.

* * * * *

Regulated-material means the wastewater streams, residuals, and any other materials specified by the referencing subpart to be managed in accordance with the standards under this subpart.

Sewer line means a lateral, trunk line, branch line, or other conduit used to convey regulated-material to a downstream waste management unit. Sewer lines include pipes, grates, and trenches.

Waste management unit means the equipment, structure, or device used to convey, store, treat, or dispose of regulated-material. Examples of waste management units include: wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units.

* * * * *

30. Section 63.962 is amended by revising paragraph (b) to read as follows:

§ 63.962 Standards.

* * * * *

(b) Owners and operators controlling air emissions from an individual drain system in accordance with paragraph (a)(1) of this section shall meet the following requirements:

(1) The individual drain system shall be designed to segregate the organic vapors from regulated material managed in the controlled individual drain system from entering any other individual drain system that is not controlled for air emissions in accordance with the standards specified in this subpart.

(2) *Drain control requirements.* Each drain shall be equipped with either a water seal or a closure device in accordance with the following requirements:

(i) When a water seal is used, the water seal shall be designed such that either:

(A) The outlet to the pipe discharging the regulated-material extends below the liquid surface in the water seal of the drain; or

(B) A flexible shield or other device is installed which restricts wind motion across the open space between the outlet of the pipe discharging the regulated material and the drain.

(ii) When a closure device is used (e.g., securing a cap or plug on a drain that is not receiving regulated-material), the closure device shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the drain opening and the closure device.

(3) *Junction box control requirements.* Each junction box shall be equipped with controls as follows:

(i) The junction box shall be equipped with a closure device (e.g., manhole cover, access hatch) that is designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the junction box opening and the closure device.

(ii) If the junction box is vented, the junction box shall be vented in accordance with the following requirements:

(A) The junction box shall be vented through a closed vent system to a control device except as provided for in paragraph (b)(3)(ii)(B) of this section. The closed vent system and control device shall be designed and operated in accordance in accordance with the standards specified in § 63.693 in subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

(B) As an alternative to paragraph (b)(3)(ii)(A) of this section, the owner or operator may vent the junction box directly to the atmosphere when all of the following conditions are met:

(*1*) The junction box is filled and emptied by gravity flow (i.e., there is no pump) or is operated with no more than slight fluctuations in the liquid level. Large changes in the size of the junction box vapor headspace created by using a pump to repeatedly empty and then refill the junction box do not meet this condition.

(*2*) The vent pipe installed on the junction box shall be at least 90 centimeters in length and no greater than 10 centimeters in nominal inside diameter.

(*3*) Water seals are installed at the liquid entrance(s) to or exit from the junction box to restrict ventilation in the individual drain system and between components in the individual drain system. The owner or operator shall demonstrate (e.g., by visual inspection or smoke test) upon request by the Administrator that the junction box water seal is properly designed and restricts ventilation.

(4) *Sewer line control requirements.* Each sewer line shall not be open to the atmosphere and shall be covered or closed in a manner such that there are no visible cracks, holes, gaps, or other open spaces in the sewer line joints, seals, or other emission interfaces.

(5) *Operating requirements.* The owner or operator shall operate the air emission controls required by paragraphs (b)(2) through (b)(4) of this section in accordance with the following requirements:

(i) Each closure device shall be maintained in a closed position whenever regulated-material is in the individual drain system except when it is necessary to remove or open the closure device for sampling or removing material in the individual drain system, or for equipment inspection, maintenance, or repair.

(ii) Each drain equipped with a water seal and open to the atmosphere shall be operated to ensure that the liquid in the water seal is maintained at the appropriate level. Examples of acceptable means for complying with this provision include but are not limited to using a flow-monitoring device indicating positive flow from a main to a branch water line supplying a trap; continuously dripping water into the trap using a hose; or regular visual observations.

(iii) Each closed-vent system and the control device used to comply with paragraph (b)(3)(ii)(A) of this section shall be operated in accordance with the standards specified in 40 CFR 63.693.

31. Section 63.964 is amended by revising paragraph (b)(2) to read as follows:

§ 63.964 Inspection and monitoring requirements.

* * * * *

(b) * * *

(2) Repair of a defect may be delayed beyond 15 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the individual drain system and no alternative capacity is available at the facility site to accept the regulated-material normally managed in the individual drain system. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the regulated-material managed in the individual drain system stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

* * * * *

32. Section 63.965 is amended by revising paragraph (b) to read as follows:

§ 63.965 Recordkeeping requirements.

* * * * *

(b) Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962 of this subpart shall prepare and maintain the records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

33. Section 63.966 is revised to read as follows:

§ 63.966 Reporting requirements.

Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962 of this subpart shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693 in subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators

34. Section 63.1041 is amended by revising the definition of "Safety device" to read as follows:

§ 63.1041 Definitions.

* * * * *

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions to prevent physical damage or permanent deformation to equipment by venting gases or vapors during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

* * * * *

35. Section 63.1045 is added to read as follows:

§ 63.1045 Standards—Pressurized separator.

(a) This section applies to owners and operators controlling air emissions from an oil-water or organic-water separator that is pressurized and is operated as a closed-system.

(b) The pressurized separator must meet the following requirements.

(1) The separator must be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the separator during operation of the separator at its design capacity.

(2) All separator openings must be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 63.1046(a) of this subpart.

(3) Whenever a regulated-material is in the separator, the separator must be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in paragraph (b)(3)(i) or (b)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 63.1041 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the separator is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the applicable requirements of § 63.693 in subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

36. Section 63.1046 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 63.1046 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the unit contains a material having a total organic concentration representative of the range of concentrations for the materials expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the material placed in the unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane or n-hexane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

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(8) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (a)(8)(i) or (a)(8)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (a)(9) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (a)(6) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (a)(9) of this section.

(9) A potential leak interface is determined to operate with no detectable emissions using the applicable criteria specified in paragraphs (a)(9)(i) and (a)(9)(ii) of this section.

(i) For a potential leak interface other than a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (a)(8) is less than 500 ppmv.

(ii) For a seal around a shaft that passes through a cover opening, the potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (a)(8) is less than 10,000 ppmv.

(b) * * *

(3) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where 0.32-centimeter (cm) (⅛ inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the separator and measure the circumferential distance of each such location.

* * * * *

37. Section 63.1047 is amended by adding paragraph (e) and by revising paragraphs (a)(2) and (c)(1)(ii) to read as follows:

§ 63.1047 Inspection and monitoring requirements.

(a) * * *

(2) The owner or operator must perform an initial inspection following installation of the fixed roof. Thereafter, the owner or operator must perform the inspections at least once every calendar year except as provided for in paragraph (e) of this section.

* * * * *

(c) * * *

(1) * * *

(ii) The owner or operator must perform an initial inspection following installation of the fixed roof. Thereafter, the owner or operator must perform the inspections at least once every calendar year except as provided for in paragraph (e) of this section.

* * * * *

(e) *Alternative inspection interval.* Following the initial inspection of a fixed roof in accordance with the applicable provisions of this section, subsequent inspection of the fixed roof may be performed at intervals longer than 1 year when an owner or operator determines that performing the required inspection would expose a worker to dangerous, hazardous, or otherwise unsafe conditions and the owner or operator complies with the requirements specified in paragraphs (e)(1) and (e)(2) of this section.

(1) The owner or operator must prepare and maintain at the plant site written documentation identifying the specific fixed roof designated as "unsafe to inspect." The documentation must include for each fixed roof designated as such a written explanation of the reasons why the fixed roof is unsafe to inspect using the applicable procedures under this section.

(2) The owner or operator must develop and implement a written plan and schedule to inspect and monitor the fixed roof using the applicable procedures specified in this section during times when a worker can safely access the fixed roof. The required inspections and monitoring must be performed as frequently as practicable but do not need to be performed more frequently than the periodic schedule that would be otherwise applicable to the fixed roof under the provisions of this section. A copy of the written plan and schedule must be maintained at the plant site.

[FR Doc. 99–17943 Filed 7–19–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6377–4]

RIN 2060–AH96

National Emission Standards for Hazardous Air Pollutants for Source Categories: National Emission Standards for Off-Site Waste and Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for off-site waste and recovery operations (OSWRO) that the EPA promulgated on July 1, 1996, under authority of section 112 of the Clean Air Act (CAA). The rule applies to owners and operators of facilities that are major sources of hazardous air pollutants (HAP) and manage certain wastes, used oil, or used solvents received from off-site locations. We are proposing to amend specific provisions in the rule to resolve issues and questions raised after promulgation of the final rule; correct technical omissions; update specific requirements to be consistent with recent decisions made by the Agency for other related air rules; and correct typographical, printing, and grammatical errors.

In the "Rules and Regulations" section of this **Federal Register** publication, we are amending the OSWRO NESHAP as a direct final rule without prior proposal because we view the amendments as noncontroversial and anticipate no adverse comment. We have explained our reasons for the amendments in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address the comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received by August 19, 1999. Additionally, a public hearing regarding the proposed amendments will be held if anyone requesting to speak contacts the EPA by August 10, 1999. If a hearing is requested, the hearing will be held on August 19, 1999 beginning at 10:00 a.m., and the record on the hearing will remain open for 30 days after the hearing date to provide an opportunity for submittal of rebuttal and additional information.

ADDRESSES: *Comments:* Written comments (in duplicate, if possible) should be submitted to Docket No. A–92–16 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Washington, DC 20460. We request that a separate copy of the comments also be sent to the contact person listed below.

Comments on this action also may be submitted electronically to the EPA's Air and Radiation Docket and Information Center at: "A-and-R-Docket@epamail.epa.gov." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–92–16). No CBI should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Public Hearing. If a public hearing is requested by the required date (see **DATES** section in this notice), the public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, telephone number (919) 541–5671.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Manning, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, telephone number (919) 541–5499, facsimile number (919) 541–0246, electronic mail address "manning.elaine@epamail.epa.gov".

SUPPLEMENTARY INFORMATION: This document concerns proposed amendments to the National Emission Standards for Hazardous Air Pollutants for Off-site Waste and Recovery Operations. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: July 7, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–17944 Filed 7–19–99; 8:45 am]

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Part III

Environmental Protection Agency

Methyl Parathion, Revised Organophosphate Pesticide Risk Assessments; Public Meeting; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34161A; FRL–6091–5]

Methyl Parathion, Revised Organophosphate Pesticide Risk Assessments; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessments for one organophosphate pesticide, methyl parathion, to interested stakeholders. This public meeting, called a "Technical Briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessments for methyl parathion. In addition, representatives of the U.S. Department of Agriculture (USDA) will provide ideas on possible risk management for methyl parathion.

DATES: The technical briefing will be held on Monday, August 2, 1999, from 9 a.m. to noon.

ADDRESSES: The technical briefing will be held at the Holiday Inn-Old Town, 625 First St., Alexandria, VA, (703) 548–6300.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphates, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A brief summary of the methyl parathion revised risk assessments is now available at: http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2. of this document. To access information about the revised risk assessments, which are scheduled for release on the day of the technical briefing, for the organophosphate pesticide methyl parathion, go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/op/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34161A. The official record consists of the documents specifically referenced in this action, any public comments received during the applicable comment period, and other information related to this action, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during the applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

II. What Action has EPA Taken?

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticide, methyl parathion. The Agency is presenting the revised risk assessments for methyl parathion to interested stakeholders. Technical briefings are designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessments, including: The major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessments affected the revised risk assessments; and the pesticide use information/data that was used in developing the revised risk assessments. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management for methyl parathion.

Technical briefings are part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefing, in addition to making copies available at the meeting site, the Agency will also release for public viewing the methyl parathion revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. of this document. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day public participation period during which the public may submit recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 16, 1999.

Jack E. Housenger.

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–18649 Filed 7–16–99; 4:17 pm]

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H.R. 435/P.L. 106–36
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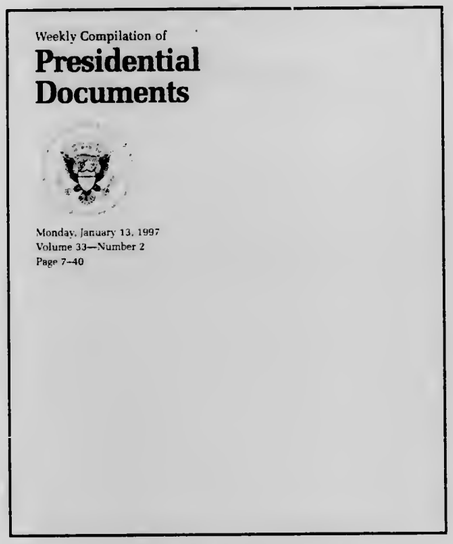
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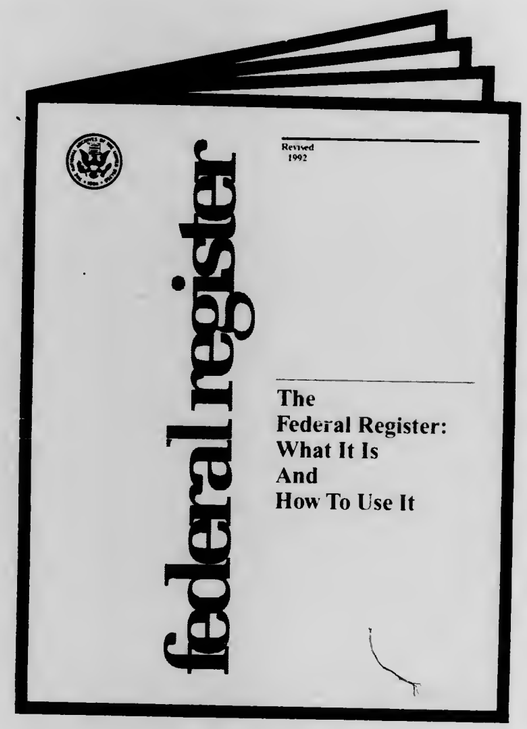
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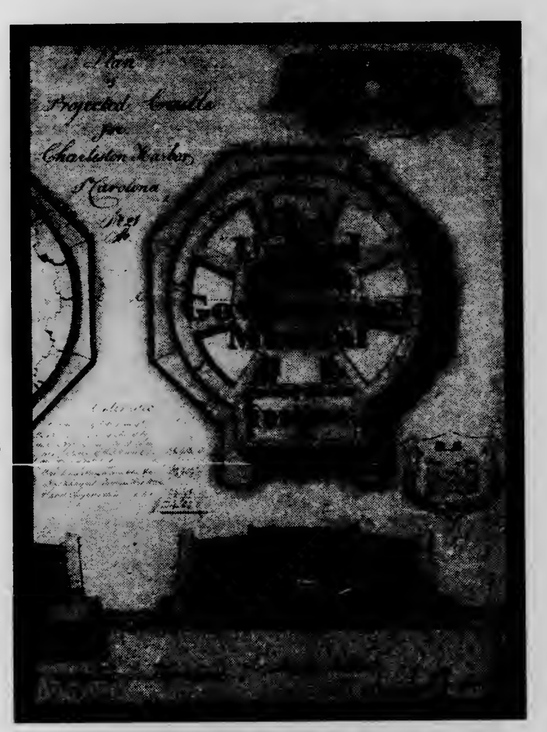
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